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11–12–97
Vol. 62 No. 218

federal register

Wednesday
November 12, 1997

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11–12–97
Vol. 62 No. 218
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federal register

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Presidential Documents

Title 3—

The President

Proclamation 7049 of November 6, 1997

National Day of Concern About Young People and Gun Violence, 1997

By the President of the United States of America

A Proclamation

On this day in America, as on every other day, children will die by gunfire, and many of them will be killed because other children are pulling the trigger. This is a stark and sad reality and a call to each of us, not only to raise public awareness of a national tragedy, but also to do everything within our power to end the killing.

There is some encouraging news. The Department of Justice recently reported that violent crime among youths dropped by more than 9 percent in 1996. However, we still have a long way to go in our efforts to save lives and help ensure a brighter future for our children.

One of my Administration's highest law enforcement priorities is to protect our children from violent crime, and we are especially concerned with stopping crimes committed by young people. I am pleased that eight of the Nation's largest gun manufacturers have responded to my Administration's call to provide child safety lock devices with every handgun they sell. We proposed a $60 million increase for the Safe and Drug-Free Schools Program this year, which reaches almost all of our Nation's school districts. These funds will help communities protect students from violence. My Administration also proposed funding for after-school initiatives in communities across the country to give our young people something positive to say yes to, to keep them off the streets, and to keep them out of trouble. Through our Anti-Gang and Youth Violence Strategy, we are working to provide for more prosecutors and probation officers, tougher penalties, and better gang prevention efforts.

But government alone cannot guarantee our children will grow up free from violence and fear. Parents, teachers, religious and community leaders, businesses, youth organizations, and especially young people themselves have a vital part to play. Parents and other adults must set a good example for the children in their care and teach them right from wrong. Adults who own a gun have a responsibility to keep that weapon out of the hands of our youth. Communities must unite to keep schools safe and to provide young people with positive, fulfilling activities after school and during summers and holidays. Most important, young people themselves have a duty to learn that violence solves nothing; to act responsibly when confronted by peer pressure by relying on their own good judgment, and to encourage their friends and classmates to resolve conflicts peacefully.

I am heartened by the knowledge that hundreds of thousands of young Americans across the country will have an opportunity on this National Day of Concern to sign the Student Pledge Against Gun Violence. By making this earnest promise never to take a gun to school, never to use a gun to settle a dispute, and to use their influence to keep their friends from using guns, these young people will take a giant step toward a brighter, safer future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 6, 1997, as a National Day of Concern About Young People and Gun Violence. On this day, I call upon young Americans in classrooms and communities across the country to make a solemn decision about their future by signing the Student Pledge Against Gun Violence. I further urge all Americans to help our Nation's young people avoid violence and grow up to be healthy, happy, productive adults.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-29907
Filed 11-10-97; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97-036-2]

Brucellosis in Cattle; State and Area Classifications; Iowa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Iowa from Class A to Class Free. We have determined that Iowa meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Iowa.

EFFECTIVE DATE: The interim rule was effective on July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 14, 1997, and published in the **Federal Register** on July 18, 1997 (62 FR 38443-38445, Docket No. 97-036-1), we amended the brucellosis regulations in 9 CFR part 78 by removing Iowa from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before September 16, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 62 FR 38443-38445 on July 18, 1997.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 5th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-29711 Filed 11-10-97; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket Nos. R-0935; R-0936]

Bank Holding Companies and Change in Bank Control (Regulation Y); Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction to an amendment.

SUMMARY: The Board is correcting an error in the text of the comprehensive amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) that appeared in the **Federal Register** on February 28, 1997. The correction restores the time limit required for Board action in processing nonexpedited notices under section 4 of the Bank Holding Company Act (BHC Act) that was inadvertently deleted from the text of the final rule.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Walter R. McEwen, Attorney (202/452-3321), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, contact Diane Jenkins, Telecommunication Device for the Deaf (TDD), (202/452-3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On February 19, 1997, the Board adopted comprehensive amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) to improve the competitiveness of bank holding companies by eliminating unnecessary regulatory burden and operating restrictions, and by streamlining the application/notice process.[1] In taking this action, the Board stated in the preamble that proposals that did not qualify for expedited processing under the new streamlined procedures would be processed under the Board's current procedures.[2] The procedures at that time and the specific provisions of the BHC Act, required action on any notice considered by the Board to engage in nonbanking activities under section 4 of the Bank Holding Company Act ("BHC Act") within 60 calendar days after the submission of a complete notice, and the text of the amendments proposed for public comment contained a provision describing the time limit required for Board action.[3] This 60-day processing schedule was included in the rule as proposed in August 1996.

The final rule, however, inadvertently omitted that provision. The correction would restore the time-limit provision as originally proposed, thereby conforming the final rule to the Board's stated intent in the preamble and to the specific provisions of the BHC Act. The notice also changes certain cross-references in light of this amendment.

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date do not apply

[1] See 62 FR 9290 (February 28, 1997).
[2] See 62 FR at 9293.
[3] See 225.24(d)(2)(ii), 61 FR 47242, 47272 (September 6, 1996).

to this amendment because the change to be effected corrects an inadvertent deletion from the rule as proposed, is necessary to prevent confusion in the administration of the Board's processing guidelines for nonexpedited notices under section 4 of the BHC Act, is technical and procedural in nature, and does not constitute a substantive rule subject to the requirements of that section. Moreover, because it restores a statutorily required processing schedule, the proposal reduces burden by assuring timely processing of applications subject to System action.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828o, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3106, 3310, 3331–3351, 3907, and 3909.

2. Under subpart C, § 225.24 is amended as follows:

a. Paragraph (d)(2) is revised;

b. Paragraphs (d)(3) and (d)(4) are redesignated as paragraphs (d)(4) and (d)(5); and

c. A new paragraph (d)(3) is added.

The revision and addition read as follows:

§ 225.24 Procedures for other nonbanking proposals.

* * * * *

(d) * * *

(2) *Board action; internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board shall notify the notificant and explain the reasons and the date by which the Board expects to act.

(3)(i) *Required time limit for System action.* The Board or the Reserve Bank shall act on any notice under this section within 60 days after the submission of a complete notice.

(ii) *Extension of required period for action* (A) *In general.*—The Board may extend the 60-day period required for Board action under paragraph (d)(3)(i) of this section for an additional 30 days upon notice to the notificant.

(B) *Unlisted activities.* If a notice involves a proposal to engage in an activity that is not listed in § 225.28, the Board may extend the period required for Board action under paragraph (d)(3)(i) of this section for an additional 90 days. This 90-day extension is in addition to the 30-day extension period provided in paragraph (d)(3)(ii)(A) of this section. The Board shall notify the notificant that the notice period has been extended and explain the reasons for the extension.

* * * * *

3. Under subpart C, § 225.25 is amended by revising paragraph (b)(1) as follows:

§ 225.25 Hearings, alteration of activities, and other matters.

* * * * *

(b) *Approval through failure to act.* (1) Except as provided in paragraph (a) of this section or § 225.24(d)(5), a notice under this subpart shall be deemed to be approved at the conclusion of the period that begins on the date the complete notice is received by the Reserve Bank or the Board and that ends 60 calendar days plus any applicable extension and tolling period thereafter.

* * * * *

By order of the Board of Governors of the Federal Reserve System, under delegated authority, November 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–29762 Filed 11–10–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–144; Special Conditions No. 25–ANM–134]

Special Conditions: Learjet Inc. Model 55 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Model 55 airplanes modified by Learjet. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 31, 1997. Comments must be received on or before December 29, 1997.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–144, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–144. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-144." The postcard will be date stamped and returned to the commenter.

Background

On August 27, 1997, Learjet Inc. applied for a supplemental type certificate (STC) to modify Learjet Model 55 airplanes listed on Type Certificate A10CE. The modification incorporates the installation of a digital electronic flight instrument system (EFIS) for display of critical flight parameters (attitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Learjet Inc. must show that the Learjet Model 55 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Model 55 airplane includes 14 CFR part 25, as amended by Amendments 25–2 through 25–4, 25–7, 25–10, 25–12, 25–18, 25–21, 25–30, and certain later amendments, special conditions, exemptions, and optional requirements listed in the type certificate data sheet that are not relevant to these special conditions. In addition, the certification basis for the modifications, and for areas affected by the modifications, will be amended to include the following sections:

Section	Amendment	Title
25.901	25–38	Installation.
25.1301(d)	25–38	Function and installation.
25.1303	25–38	Flight and navigation instruments.
25.1309	25–41	Equipment, systems, and installations.
25.1321	25–41	Arrangement and visibility.
25.1322	25–38	Warning, caution, and advisory lights.
25.1331	25–41	Instruments using a power supply.
25.1333	25–41	Instrument systems.
25.1335	25–41	Flight director systems.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 55 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Learjet Inc. apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified Learjet Model 55 will incorporate a new electronic flight instrument system that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 55, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

Applicability

As discussed above, these special conditions are applicable to Learjet Model 55 airplanes modified by Learjet. Should Learjet apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Learjet Model 55 airplanes modified by Learjet. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein.

For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Learjet Model 55 airplanes modified by Learjet Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–29730 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–219–AD; Amendment 39–10199; AD 97–23–11]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires modifying the main landing gear (MLG) bay areas by installing additional slush protection covers in those areas. This amendment is prompted by the identification of a problem during flight test analysis, which indicated that slush can accumulate in the MLG bay areas. The actions specified by this AD are intended to prevent the accumulation of slush in the MLG bay areas, which could freeze and interfere with the landing gear or render it inoperative.

DATES: Effective December 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on March 12, 1997 (62 FR 11390). That action proposed to require modifying the main landing gear (MLG) bay areas by installing additional slush protection covers in those areas.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 40 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be negligible. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $19,200, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–11 Dornier: Amendment 39–10199. Docket 96–NM–219–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of slush in the main landing gear (MLG) bay areas that could freeze and interfere with the landing gear and result in it becoming inoperative, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the MLG bay areas by installing additional slush protection covers in those areas in accordance with Dornier Service Bulletin SB–328–30–132, dated October 11, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Dornier Service Bulletin SB–328–30–132, dated October 11, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 95–412, dated November 2, 1995.

(e) This amendment becomes effective on December 17, 1997.

Issued in Renton, Washington, on November 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29445 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–115–AD; Amendment 39–10198; AD 97–23–10]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires modification of the cable tension regulator on both the left and right elevators by installing certain parts on the lever arm of the regulator. This amendment is prompted by a report indicating that design testing and analysis have shown applied loads could cause the regulator's lever arm to break. The actions specified by this AD are intended to prevent failure of the regulator, and consequent reduced controllability of the airplane.

DATES: Effective December 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on March 12, 1997 (62 FR 11386). That action proposed to require modification of the cable tension regulator on both the left and right elevators by installing certain parts on the lever arm of the regulator.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 27 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,240, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–10 Dornier: Amendment 39–10198. Docket 96–NM–115–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3045 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the cable tension regulator on both the left and right elevators, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the cable tension regulator on both the left and right elevators by installing two lateral plates on the lever arm, in accordance with Dornier Service Bulletin SB–328–27–116, dated September 26, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Dornier Service Bulletin SB–328–27–116, dated September 26, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 95–434, dated November 14, 1995.

(e) This amendment becomes effective on December 17, 1997.

Issued in Renton, Washington, on November 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29444 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–165–AD; Amendment 39–10200; AD 97–23–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 and 0070 series airplanes, that requires replacement of the fusible pin in the upper torque link of the main landing gear with an improved pin. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity and potential collapse of the main landing gear.

DATES: Effective December 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 and 0070 series airplanes was published in the **Federal Register** on August 11, 1997 (62 FR 42951). That action proposed to require replacement of the fusible pin in the upper torque link of the main landing gear with an improved pin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The commenters state that the proposed AD does not affect their fleet of airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,400, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–12 Fokker: Amendment 39–10200. Docket 97–NM–165–AD.

Applicability: Model F28 Mark 0100 and 0070 series airplanes, equipped with Monaco Aerospace Ltd. main landing gears having part number (P/N) 41050, including the fusible upper torque link pin having P/N 41223–1; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity and potential collapse of the main landing gear, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace any main landing gear upper torque link fusible pin having P/N 41223–1 with a pin having P/N 41223–3, in accordance with Fokker Service Bulletin SBF100–32–099, dated June 14, 1996.

(b) As of the effective date of this AD, no person shall install a main landing gear upper torque link fusible pin having P/N 41223–1 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Fokker Service Bulletin SBF100–32–099, dated June 14, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1996–074 (A), dated June 28, 1996.

(f) This amendment becomes effective on December 17, 1997.

Issued in Renton, Washington, on November 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29443 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–167–AD; Amendment 39–10201; AD 97–23–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 and A321 series airplanes, that requires a one-time inspection for discrepancies of the release cable of the forward and rear passenger doors, and replacement of any discrepant release cable with a new release cable. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to

prevent failure of the passenger door to open and consequent inability of the slide/slide raft to deploy, which could delay or impede passengers when exiting the airplane during an emergency.

DATES: Effective December 17, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes was published in the **Federal Register** on August 7, 1997 (62 FR 42430). That action proposed to require a one-time inspection for discrepancies of the release cable of the forward and rear passenger doors, and replacement of any discrepant release cable with a new release cable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 132 Airbus Model A320 and A321 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,920, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–13 Airbus Industrie: Amendment 39–10201. Docket 97–NM–167–AD.

Applicability: Model A320 and A321 series airplanes, as specified in French airworthiness directive 96–171–083(B), dated August 28, 1996, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the slide/slide raft to deploy due to a failure of the passenger door, which could delay or impede passengers when exiting the airplane during an emergency, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD, perform a detailed inspection of each release cable at the left- and right-hand side of doors 1 and 4 for any discrepancy, in accordance with Airbus All Operators Telex (AOT) 25–12, Revision 1, dated March 21, 1996. If any discrepancy is found, prior to further flight, replace the release cable in accordance with the AOT.

Note 2: This AD supersedes any relief provided by the Master Minimum Equipment List (MMEL).

(b) As of the effective date of this AD, no person shall install a release cable, part number C37103–101 or C37103–103, on any airplane unless the release cable has been inspected to detect any discrepancy in accordance with Airbus All Operators Telex (AOT) 25–12, Revision 1, dated March 21, 1996. If any discrepancy is detected in accordance with the AOT, that release cable shall not be installed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Airbus All Operators Telex (AOT) 25–12, Revision 1, dated March 21, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–171–083(B), dated August 28, 1996.

(f) This amendment becomes effective on December 17, 1997.

Issued in Renton, Washington, on November 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29445 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–16]

RIN 2120–AA66

Modification of Class D Airspace South of Abbotsford, British Columbia (BC), on the United States Side of the U.S./Canadian Border, and the Establishment of a Class C Airspace Area in the Vicinity of Point Roberts, Washington (WA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the modification of Class D Airspace South of Abbotsford, British Columbia (BC), on the United States Side of the U.S./Canadian Border, and the Establishment of a Class C Airspace Area in the Vicinity of Point Roberts, Washington (WA) until further notice. Nav-Canada requested a delay in implementation of the expanded airspace to accommodate a new review process for air traffic procedures.

DATES: The effective date of Airspace Docket No. 93–AWA–16 (FR. Doc. 97–22972) is delayed until further notice.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 93–AWA–16, published in the **Federal Register** on August 28, 1997, (62 FR 45526), established a Class C airspace area in the United States (U.S.), southeast of Vancouver, BC in the vicinity of Point Roberts, WA., and extended the existing Abbotsford, BC, Class D airspace 7 miles to the west. This action was originally scheduled to become effective on November 6, 1997; however, a delay by NAV—Canada in implementing procedures to provide service in the newly established airspace areas requires that the effective date be delayed until further notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a: significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date on Airspace Docket 93–AWA–16 is hereby delayed until, further notice.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

* * * * *

Issued in Washington, DC, on November 5, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–29706 Filed 11–6–97; 9:31 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29055; Amdt No. 1634]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 31, 1997.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

Note: The FAA published an Amendment in Docket No. 29050, Amdt. No 1831 to Part 97 of the Federal Aviation Regulations (VOL 62 FR No. 207 Pages 55505, 55506, 55507 and 55508; dated Oct 27 1997) under Section 97.23, 97.27, 97.33 and 97.35 effective Jan 1, 1997, which is hereby amended as follows:

Change Effective Date to Jan 1, 1998 for the following procedures:

Texarkana, AR, Texarkana Regional-Webb Field, NDB or GPS RWY 22, Amdt 11B CANCELLED
Texarkana, AR, Texarkana Regional-Webb Field, NDB RWY 22, Amdt 11B
Rensselaer, IN, Jasper County NDB or GPS RWY 18, Amdt 3A CANCELLED
Rensselaer, IN, Jasper County, NDB RWY 18, Amdt 3A
Winchester, IN, Randolph County, NDB or GPS RWY 25, Amdt 4 CANCELLED
Winchester, IN, Randolph County, NDB RWY 25, Amdt 4
Chapel Hill, NC, Horace Williams, VOR/DME RNAV or GPS RWY 9, Orig CANCELLED
Chapel Hill, NC, Horace Williams, VOR/DME RNAV RWY 9, Orig
Chapel Hill, NC, Horace Williams, VOR/DME or GPS RWY 27, Orig-B CANCELLED
Chapel Hill, NC, Horace Williams, VOR/DME RWY 27, Orig-B
London, OH, Madison County, NDB or GPS RWY 8, Amdt 7 CANCELLED
London, OH, Madison County, NDB RWY 8, Amdt 7
Cincinnati, OH, Cincinnati-Blue Ash, NDB or GPS RWY 24, Amdt 1A CANCELLED
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 24, Amdt 1A
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, NDB or GPS RWY 25, Amdt 1 CANCELLED
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, NDB RWY 25, Amdt 1

* * * *Effective Jan 1, 1998*

Soldotna, AK, Soldotna, RNAV or GPS RWY 7, Amdt 3 CANCELLED
Soldotna, AK, Soldotna, VOR/DME RNAV or GPS RWY 7, Amdt 3
Soldotna, AK, Soldotna, RNAV RWY 25, Amdt 3 CANCELLED
Soldotna, AK, Soldotna, VOR/DME RNAV RWY 25, Amdt 3
Auburn, AL, Auburn-Opelika Robert G. Pitts, RNAV or GPS RWY 36, Amdt 3A CANCELLED
Auburn, AL, Auburn-Opelika Robert G. Pitts, VOR/DME RNAV or GPS RWY 36, Amdt 3A
Mobile, AL, Mobile Downtown, RNAV or GPS RWY 36, Orig CANCELLED
Mobile, AL, Mobile Downtown, VOR/DME RNAV or GPS RWY 16, Orig
Montgomery, AL, Dannelly Field, RNAV or GPS RWY 3, Amdt 5A CANCELLED
Montgomery, AL, Dannelly Field, VOR/DME RNAV or GPS RWY 3, Amdt 5A
Crossett, AR, Z M Jack Stell Field, RNAV or GPS RWY 23, Orig A CANCELLED
Crossett, AR, Z M Jack Stell Field, VOR/DME RNAV or GPS RWY 23, Orig A
Window Rock, AZ, Window Rock, RNAV or GPS RWY 2, Amdt 1 CANCELLED
Window Rock, AZ, Window Rock, VOR/DME RNAV or GPS RWY 2, Amdt 1
Yuma, AZ, Yuma MCAS/Yuma Intl, RNAV or GPS RWY 21R, Amdt 3 CANCELLED
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV or GPS RWY 21R, Amdt 3

Eureka, CA, Murray Field, RNAV or GPS RWY 11, Amdt 5 CANCELLED
Eureka, CA, Murray Field, VOR/DME RNAV or GPS RWY 11, Amdt 5
Ukiah, CA, Ukiah Muni, RNAV or GPS–B, Amdt 4 Cancelled
Ukiah, CA, Ukiah Muni, VOR/DME RNAV or GPS–B, Amdt 4
Vacaville, CA, Nut Tree, RNAV or GPS RWY 20, Amdt 1 CANCELLED
Vacaville, CA, Nut Tree, VOR/DME RNAV or GPS RWY 20, Amdt 1
Meeker, CO, Meeker, RNAV or GPS RWY 3, Orig CANCELLED
Meeker, CO, Meeker, VOR/DME RNAV or GPS RWY 3, Orig
Washington, DC, Washington National, RNAV-A Amdt 6 CANCELLED
Washington, DC, Washington National, VOR/DME RNAV-A Amdt 6
Washington, DC, Washington National, RNAV or GPS RWY 3, Amdt 6 CANCELLED
Washington, DC, Washington National, VOR/DME RNAV or GPS RWY 3, Amdt 6
Washington, DC, Washington National, RNAV or GPS RWY 33, Amdt 5 CANCELLED
Washington, DC, Washington National, VOR/DME RNAV or GPS RWY 33, Amdt 5
Gainesville, FL, Gainesville Regional, RNAV or GPS RWY 28, Amdt 5 CANCELLED
Gainesville, FL, Gainesville Regional, VOR/DME RNAV or GPS RWY 28, Amdt 5
Kissimmee, FL, Kissimmee Muni, RNAV or GPS RWY 15, Amdt 5 CANCELLED
Kissimmee, FL, Kissimmee Muni, VOR/DME RNAV or GPS RWY 15, Amdt 5
Perry, FL, Perry-Foley, RNAV or GPS RWY 18, Amdt 1 CANCELLED
Perry, FL, Perry-Foley, VOR/DME RNAV or GPS RWY 18, Amdt 1
Punta Gorda, FL, Charlotte County, RNAV RWY 27, Orig CANCELLED
Punta Gorda, FL, Charlotte County, VOR/DME RNAV RWY 27, Orig
Athens, GA, Athens/Ben Epps, RNAV or GPS RWY 9, Amdt 1 CANCELLED
Athens, GA, Athens/Ben Epps, VOR/DME RNAV or GPS RWY 9, Amdt 1
Athens, GA, Athens/Ben Epps, RNAV or GPS RWY 20, Amdt 2 CANCELLED
Athens, GA, Athens/Ben Epps, VOR/DME RNAV or GPS RWY 20, Amdt 2
Augusta, GA, Daniel Field, RNAV RWY 11, Amdt 5A CANCELLED
Augusta, GA, Daniel Field, VOR/DME RNAV RWY 11, Amdt 5A
Brunswick, GA, Glynco Jetport RNAV RWY 7, Amdt 6B CANCELLED
Brunswick, GA, Glynco Jetport VOR/DME RNAV RWY 7, Amdt 6B
Brunswick, GA, Glynco Jetport, RNAV or GPS RWY 25, Amdt 6B CANCELLED
Brunswick, GA, Glynco Jetport, VOR/DME RNAV or GPS RWY 25, Amdt 6B
Cedartown, GA, Cornelius-Moore Field, RNAV or GPS RWY 10, Amdt 2A CANCELLED
Cedartown, GA, Cornelius-Moore Field, VOR/DME RNAV or GPS RWY 10, Amdt 2A
Cedartown, GA, Cornelius-Moore Field, RNAV or GPS RWY 28, Amdt 2 Cancelled
Cedartown, GA, Cornelius-Moore Field, VOR/DME RNAV or GPS RWY 28, Amdt 2
Dublin, GA, W.H. "Bud" Barron, RNAV or GPS RWY 20, Amdt 2 CANCELLED
Dublin, GA, W.H. "Bud" Barron, VOR/DME RNAV or GPS RWY 20, Amdt 2
Eastman, GA, Heart of Georgia Regional, RNAV or GPS RWY 2, Amdt 2 CANCELLED
Eastman, GA, Heart of Georgia Regional, VOR/DME RNAV or GPS RWY 2, Amdt 2
La Grange, GA, Callaway, RNAV or GPS RWY 31, Amdt 3 CANCELLED
La Grange, GA, Callaway, VOR/DME RNAV or GPS RWY 31, Amdt 3
Cedar Rapids, IA, Cedar Rapids Muni, RNAV or GPS RWY 13, Amdt 8 CANCELLED
Cedar Rapids, IA, Cedar Rapids Muni, VOR/DME RNAV or GPS RWY 13, Amdt 8
Cedar Rapids, IA, Cedar Rapids Muni, RNAV or GPS RWY 31, Amdt 7 CANCELLED
Cedar Rapids, IA, Cedar Rapids Muni, VOR/DME RNAV or GPS RWY 31, Amdt 7
Forest City, IA, Forest City Muni, RNAV or GPS RWY 33, Orig-A CANCELLED
Forest City, IA, Forest City Muni, VOR/DME RNAV or GPS RWY 33, Orig-A
Fort Dodge, IA, Fort Dodge Regional, RNAV or GPS RWY 6, Amdt 6 CANCELLED
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RNAV or GPS RWY 6, Amdt 6
Fort Dodge, IA, Fort Dodge Regional, RNAV or GPS RWY 24, Amdt 5A CANCELLED
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RNAV or GPS RWY 24, Amdt 5A
Maquoketa, IA, Maquoketa Muni, RNAV or GPS RWY 33, Orig-A CANCELLED
Maquoketa, IA, Maquoketa Muni, VOR/DME RNAV or GPS RWY 33, Orig-A
Mason City, IA, Mason City Muni, RNAV or GPS RWY 30, Amdt 5 CANCELLED
Mason City, IA, Mason City Muni, VOR/DME RNAV or GPS RWY 30, Amdt 5
Muscatine, IA, Muscatine Muni, RNAV RWY 23, Orig-A CANCELLED
Muscatine, IA, Muscatine Muni, VOR/DME RNAV RWY 23, Orig-A
Oelwein, IA, Oelwein Muni, RNAV or GPS RWY 13, Amdt 2 CANCELLED
Oelwein, IA, Oelwein Muni, VOR/DME RNAV or GPS RWY 13, Amdt 2
Ottumwa, IA, Ottumwa Industrial, RNAV or GPS RWY 22, Amdt 3 CANCELLED
Ottumwa, IA, Ottumwa Industrial, VOR/DME RNAV or GPS RWY 22, Amdt 3
Burley, ID Burley Muni, RNAV or GPS RWY 20, Amdt 2 CANCELLED
Burley, ID, Burely Muni, VOR/DME RNAV or GPS RWY 20, Amdt 2
Chicago/Waukegan, IL, Waukegan Regional, RNAV or GPS RWY 5, Amdt 1 CANCELLED
Chicago/Waukegan, IL, Waukegan Regional, VOR/DME RNAV or GPS RWY 5, Amdt 1
Danville, IL, Vermilion County, RNAV or GPS RWY 34, Amdt 4 CANCELLED
Danville, IL, Vermilion County, VOR/DME RNAV or GPS RWY 34, Amdt 4
Joliet, IL, Joliet Park District, RNAV RWY 12, Amdt 12 CANCELLED
Joliet, IL, Joliet Park District, VOR/DME RNAV RWY 12, Amdt 12
Kankakee, IL, Greater Kankakee, RNAV RWY 22, Amdt 3 CANCELLED
Kankakee, IL, Greater Kankakee, VOR/DME RNAV RWY 22, Amdt 3
Moline, IL, Quad-City, RNAV or GPS RWY 31, Amdt 9 CANCELLED
Moline, IL, Quad-City, VOR/DME RNAV or GPS RWY 31, Amdt 9
Pekin, IL, Pekin Muni, RNAV or GPS RWY 9, Amdt 4 CANCELLED
Pekin, IL, Pekin Muni, VOR/DME RNAV or GPS RWY 9, Amdt 4
Peoria, IL, Greater Peoria Regional, RNAV or GPS RWY 22, Amdt 8 CANCELLED
Peoria, IL, Greater Peoria Regional, VOR/DME RNAV or GPS RWY 22, Amdt 8
Quincy, IL, Quincy Muni-Baldwin Field, RNAV or GPS RWY 13, Amdt 4 CANCELLED
Quincy, IL, Quincy Muni-Baldwin Field, VOR/DME RNAV or GPS RWY 13, Amdt 4
Quincy, IL, Quincy Muni-Baldwin Field, RNAV or GPS RWY 31, Amdt 3 CANCELLED
Quincy, IL, Quincy Muni-Baldwin Field, VOR/DME RNAV or GPS RWY 31, Amdt 3
Elkhart, IN, Elkhart Muni, RNAV or GPS RWY 17, Amdt 3
Elkhart, IN, Elkhart Muni, VOR/DME RNAV or GPS RWY 17, Amdt 3
Kentland, IN, Kentland Muni, RNAV or GPS RWY 27, Orig CANCELLED
Kentland, IN, Kentland Muni, VOR/DME RNAV or GPS RWY 27, Orig
Valparaiso, IN, Porter County Muni, RNAV or GPS RWY 9, Amdt 2A CANCELLED
Valparaiso, IN, Porter County Muni, VOR/DME RNAV or GPS RWY 9, Amdt 2A
Topeka, KS, Forbes Field, RNAV RWY 13 Amdt 3A
Topeka, KS, Forbes Field, VOR/DME RNAV RWY 13 Amdt 3A
Topeka, KS, Philip Billard Muni, RNAV or GPS RWY 18, Amdt 6 CANCELLED
Topeka, KS, Philip Billard Muni, VOR/DME RNAV or GPS RWY 18, Amdt 6
Wichtia, KS, Beech Factory, RNAV or GPS RWY 18, Orig CANCELLED
Wichita, KS, Beech Factory, VOR/DME RNAV or GPS RWY 18, Orig
Wichita, KS, Beech Factory, RNAV or GPS RWY 18, Orig CANCELLED
Wichita, KS, Beech Factory, VOR/DME RNAV or RNAV or GPS RWY 18, Orig
Wichita, KS, Beech Factory, RNAV or GPS RWY 36, Orig CANCELLED
Wichita, KS, Beech Factory, VOR/DME RNAV or GPS RWY 36, Orig
Elizabethtown, KY, Addington Field, RNAV or GPS RWY 5, Amdt 2 CANCELLED
Elizabethtown, KY, Addington Field, VOR/DME RNAV or GPS RWY 5, Amdt 2
Lake Charles, LA, Lake Charles Regional, RNAV or GPS RWY 5, Amdt 3 CANCELLED
Lake Charles, LA, Lake Charles Regional, VOR/DME RNAV or GPS RWY 5, Amdt 3
Lake Charles, LA, Lake Charles Regional, RNAV or GPS RWY 23, Amdt 3A CANCELLED
Lake Charles, LA, Lake Charles Regional, VOR/DME RNAV or GPS RWY 23, Amdt 3A
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 22, Amdt 6A CANCELLED
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RNAV RWY 22, Amdt 6A
Salisbury, MD, Salisbury-Wicomico County Regional, RNAV or GPS RWY 5, Amdt 3B CANCELLED

Salisbury, MD, Salisbury-Wicomico County Regional, VOR/DME RNAV or GPS RWY 5, Amdt 3B
Salisbury, MD, Salisbury-Wicomico County Regional, RNAV or GPS RWY 23, Amdt 3A CANCELLED
Salisbury, MD, Salisbury-Wicomico County Regional, VOR/DME RNAV or GPS RWY 23, Amdt 3A
Ann Arbor, MI, Ann Arbor Muni, RNAV RWY 24, Amdt 6A CANCELLED
Ann Arbor, MI, Ann Arbor Muni, VOR/DME RNAV RWY 24, Amdt 6A Menominee, MI, Menominee-Marinette Twin County, RNAV or GPS RWY 21, Amdt 1A CANCELLED
Menominee, MI, Menominee-Marinette Twin County, VOR/DME RNAV or GPS RWY 21, Amdt 1A
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), RNAV or GPS RWY 17, Amdt 2A CANCELLED
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), VOR/DME RNAV or GPS RWY 17, Amdt 2A CANCELLED
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), VOR/DME RNAV or GPS RWY 17, Amdt 2A
Redwood Falls, MN, Redwood Falls Muni, RNAV or GPS RWY 30, Orig CANCELLED
Redwood Falls, MN, Redwood Falls Muni, VOR/DME RNAV or GPS RWY 30, Orig
Ava, MO, Ava Bill Martin Memorial, RNAV or GPS RWY 31, Amdt 1 CANCELLED
Ava, MO, Ava Bill Martin Memorial, VOR/DME RNAV or GPS RWY 31, Amdt 1
Fulton, MO, Elton Hensley Memorial, RNAV or GPS RWY 5, Amdt 1 CANCELLED
Fulton, MO, Elton Hensley Memorial, VOR/DME RNAV or GPS RWY 5, Amdt 1
Malden, MO, Malden Muni, RNAV or GPS RWY 13, Orig CANCELLED
Malden, MO, Malden Muni, VOR/DME RNAV or GPS RWY 13, Orig
Moberly, MO, Omar N. Bradley, RNAV or GPS RWY 13, Amdt 1 CANCELLED
Moberly, MO, Omar N. Bradley, VOR/DME RNAV or GPS RWY 13, Amdt 1
Moberly, MO, Omar N. Bradley, RNAV or GPS RWY 31, Amdt 1 CANCELLED
Moberly, MO, Omar N. Bradley, VOR/DME RNAV or GPS RWY 31, Amdt 1
Monroe City, MO, Monroe City Regional, RNAV RWY 27 Orig-A CANCELLED
Monroe City, MO, Monroe City Regional, VOR DME RNAV RWY 27 Orig–A
Neosho, MO, Neosho Memorial, RNAV or GPS RWY 19, Amdt 3 CANCELLED
Neosho, MO, Neosho Memorial, VOR/DME RNAV or GPS RWY 19, Amdt 3
Rolla/Vichy, MO, Rolla National, RNAV OR GPS RWY 22, Amdt 2A CANCELLED
Rolla/Vichy, MO, Rolla National, VOR/DME RNAV or GPS RWY 22, Amdt 2A
St Joseph, MO, Rosecrans Memorial, RNAV or GPS RWY 17, Amdt 4 CANCELLED
St Joseph, MO, Rosecrans Memorial, VOR/DME RNAV or GPS RWY 17, Amdt 4
Springfield, MO, Springfield-Branson Regional, RNAV or GPS RWY 14, Amdt 4 CANCELLED
Springfield, MO, Springfield-Branson Regional, VOR/DME RNAV or GPS RWY 14, Amdt 4
Bay St Louis, MS, Stennis Intl, RNAV or GPS RWY 18, Amdt 2A CANCELLED
Bay St Louis, MS, Stennis Intl, VOR/DME RNAV or GPS RWY 18, Amdt 2A
Greenwood, MS, Greenwood-leflore, RNAV RWY 18, Amdt 6,CANCELLED
Greenwood, MS, Greenwood-leflore, VOR/DME RNAV RWY 18, Amdt 6
Greenwood, MS, Greenwood-Leflore, RNAV or GPS RWY 36, Amdt 3 CANCELLED
Greenwood, MS, Greenwood-Leflore, VOR/DME RNAV or GPS RWY 36, Amdt 3
Jackson, MS, Hawkins Field, RNAV RWY 16, Amdt 4A CANCELLED
Jackson, MS, Hawkins Field, VOR/DME RNAV RWY 16, Amdt 4A
McComb, Mc Comb-Pike County-John E. Lewis Field, RNAV or GPS RWY 33, Amdt 6 CANCELLED
Mc Comb, MS, Mc Comb-Pike County-John E. Lewis Field, VOR/DME RNAV or GPS RWY 33, Amdt 6
Meridian, MS, Key Field, RNAV or GPS RWY 19, Amdt 3 CANCELLED
Meridian, MS, Key-Field, VOR/DME RNAV or GPS RWY 19, Amdt 3
Oxford, MS, University-Oxford, RNAV or GPS RWY 9, Amdt 2 CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV or GPS RWY 9, Amdt 2
Oxford, MS, University-Oxford, RNAV or GPS RWY 27, Amdt 2 CANCELLED
Oxford, MS, University-Oxford, VOR/DME RNAV or GPS RWY 27, Amdt 2
Starkville, MS, George M Bryan, RNAV or GPS RWY 36, Orig, CANCELLED
Starkville, MS, George M Bryan, VOR/DME RNAV or GPS RWY 36, Orig
West Point, MS, McCharen Field, RNAV or GPS RWY 36, Amdt 3A CANCELLED
West Point, MS, McCharen Field, VOR/DME RNAV or GPS RWY 36, Amdt 3A
Greenville, NC, Pitt-Greenville, RNAV RWY 25, Amdt 3A CANCELLED
Greenville, NC, Pitt-Greenville, VOR/DME RNAV RWY 25, Amdt 3A
Southern Pines, NC, Moore County, RNAV RWY 23, Amdt 3 CANCELLED
Southern Pines, NC, Moore County, VOR/DME RNAV RWY 23, Amdt 3
Matawan, NJ, Marlboro, RNAV or GPS RWY 9, Amdt 1 CANCELLED
Matawan, NJ, Marlboro, VOR/DME RNAV or GPS RWY 9, Amdt 1
Somerville, NJ, Somerset, RNAV or GPS RWY 12, Amdt 2 CANCELLED
Somerville, NJ, Somerset, VOR/DME RNAV or GPS RWY 12, Amdt 2
Lovington, NM, Lea County-Zip Franklin Memorial, RNAV or GPS RWY 3, Orig CANCELLED
Lovington, NM, Lea County-Zip Franklin Memorial, VOR/DME RNAV or GPS RWY 3, Orig
Buffalo, NY, Greater Buffalo Intl, RNAV or GPS RWY 23, Orig CANCELLED
Buffalo, NY, Greater Buffalo Intl, VOR/DME RNAV or GPS RWY 23, Orig
Buffalo, NY, Greater Buffalo Intl, RNAV or GPS RWY 32, Amdt 5A CANCELLED
Buffalo, NY, Greater Buffalo Intl, VOR/DME RNAV or GPS RWY 32, Amdt 5A
Newburgh, NY, Stewart Intl, RNAV or GPS RWY 16, Amdt 2A CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV or GPS RWY 16, Amdt 2A
Newburgh, NY, Stewart Intl, RNAV or GPS RWY 27, Amdt 1A CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV or GPS RWY 27, Amdt 1A
Olean, NY, Cattaraugus County-Olean, RNAV RWY 22, Amdt 4A CANCELLED
Olen, NY, Cattaraugus County-Olean, VOR/DME RNAV RWY 22, Amdt 4A
Poughkeepsie, NY, Dutchess County, RNAV or GPS RWY 6, Amdt 5 CANCELLED
Poughkeepsie, NY, Dutchess County, VOR/DME RNAV or GPS RWY 6, Amdt 5
Elk City, OK, Elk City Muni, RNAV or GPS RWY 17, Amdt 2A CANCELLED
Elk City, OK, Elk City Muni, VOR/DME RNAV or GPS RWY 17, Amdt 2A
Grove, OK, Grove Muni, RNAV RWY 18, Amdt 2 CANCELLED
Grove, OK, Grove Muni, VOR/DME RNAV RWY 18, Amdt 2
Grove, OK, Grove Muni, RNAV or GPS RWY 36, Amdt 2 CANCELLED
Grove, OK, Grove Muni, VOR/DME RNAV or GPS RWY 36, Amdt 2
Norman, OK, University Of Oklahoma Westhdimer Airpark, RNAV or GPS RWY 3, Orig A CANCELLED
Norman, OK, University Of Oklahoma Westhdimer Airpark, VOR/DME RNAV or GPS RWY 3, Orig A
Butler, PA, Butler County/K W Scholter Field, RNAV or GPS RWY 36, Amdt 2 CANCELLED
Butler, PA, Butler County/K W Scholter Field, VOR/DME RNAV or GPS RWY 26, Amdt 2
Du Bois, PA, Du Bois-Jefferson County, RNAV or GPS RWY 7, Amdt 1 CANCELLED
Du Bois, PA, Du Bois-Jefferson County, VOR/DME RNAV or GPS RWY 7, Amdt 1
Latrobe, PA, Westmoreland County, RNAV RWY 5, Amdt 1 CANCELLED
Latrobe, PA, Westmoreland County, VOR/DME RNAV RWY 5, Amdt 1
Philadelphia, PA, Northeast Philadelphia, RNAV or GPS RWY 15, Amdt 2 CANCELLED
Philadelphia, PA, Northeast Philadelphia, VOR/DME RNAV or GPS RWY 15, Amdt 2
Philadelphia, PA, Northeast Philadelphia, RNAV or GPS RWY 33, Amdt 4 CANCELLED
Philadelphia, PA, Northeast Philadelphia, VOR/DME RNAV or GPS RWY 33, Amdt 4
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 17, Amdt 4, CANCELLED
Philadelphia, PA, Philadelphia Intl, VOR/DME RNAV or GPS RWY 17, Amdt 4
Philadelphia, PA, Philadelphia Intl, RNAV or GPS RWY 35, Amdt 3A CANCELLED
Philadelphia, PA, Philadelphia Intl, VOR/DME RNAV or GPS RWY 35, Amdt 3A
Reading, PA, Reading Regional/Carl A Spaatz Field, RNAV or GPS RWY 13, Amdt 7 CANCELLED
Reading, PA, Reading Regional/Carl A Spaatz Field, VOR/DME RNAV or GPS RWY 13, Amdt 7
Reading, PA, Reading Regional/Carl A Spaatz Field, RNAV or GPS RWY 18, Amdt 5 CANCELLED
Reading, PA, Reading Regional/Carl A Spaatz Field, VOR/DME RNAV or GPS RWY 18, Amdt 5
St. Marys, PA, St. Marys Muni, RNAV RWY 10, Amdt 5A CANCELLED
St. Marys, PA, St. Marys Muni, VOR/DME RNAV RWY 10, Amdt 5A
St. Marys, PA, St. Marys Muni, RNAV RWY 28, Amdt 5 CANCELLED
St. Marys, PA, St. Marys Muni, VOR/DME RNAV RWY 28, Amdt 5
Charleston, SC, Charleston Executive, RNAV RWY 9, Amdt 5A CANCELLED
Charleston, SC, Charleston Executive, VOR/DME RNAV RWY 9, Amdt 5A
Columbia, SC, Columbia Metropolitan, RNAV or GPS RWY 5, Orig-A CANCELLED
Columbia, SC, Columbia Metropolitan, VOR/DME RNAV or GPS RWY 5, Orig-A
Columbia, SC, Columbia Owens Downtown, RNAV RWY 31, Orig CANCELLED
Columbia, SC, Columbia Owens Downtown, VOR/DME RNAV RWY 31, Orig
Hilton Head Island, SC, Hilton Head, RNAV or GPS RWY 3, Amdt 4A CANCELLED
Hilton Head Island, SC, Hilton Head, VOR/DME RNAV or GPS RWY 3, Amdt 4A
Hilton Head Island, SC, Hilton Head, RNAV RWY 21, Amdt 4B CANCELLED
Hilton Head Island, SC, Hilton Head, VOR/DME RNAV RWY 21, Amdt 4B
Mount Pleasant, SC, East Cooper, RNAV or GPS RWY 17, Orig CANCELLED
Mount Pleasant, SC, East Cooper, VOR/DME RNAV or GPS RWY 17, Orig
Spartanburg, SC, Spartanburg Downtown Memorial, RNAV or GPS RWY 5, Amdt 6B CANCELLED
Spartanburg, SC, Spartanburg Downtown Memorial, VOR/DME RNAV or GPS RWY 5, Amdt 6B
Austin, TX, Lakeway Airport, RNAV or GPS RWY 16, Amdt 1 CANCELLED
Austin, TX, Lakeway Airport, VOR/DME RNAV or GPS RWY 16, Amdt 1
Brownsville, TX, South Padre Island Intl, RNAV or GPS RWY 17, Amdt 3 CANCELLED
Brownsville, TX, South Padre Island Intl, VOR/DME RNAV or GPS RWY 17, Amdt 3
Brownsville, TX, South Padre Island Intl, RNAV or GPS RWY 35, Amdt 3 CANCELLED
Brownsville, TX, South Padre Island Intl, VOR/DME RNAV or GPS RWY 35, Amdt 3
Giddings, TX, Giddings-Lee County, RNAV or GPS RWY 35, Orig CANCELLED
Giddings, TX, Giddings-Lee County, VOR/DME RNAV or GPS RWY 35, Orig
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 17R, Amdt 3 CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV or GPS RWY 17R, Amdt 3
Houston, TX, David Wayne Hooks Memorial, RNAV or GPS RWY 35L, Amdt 3 CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV or GPS RWY 35L, Amdt 3
Houston, TX, Houston-Southwest, RNAV or GPS RWY 9, Amdt 1B CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV or GPS RWY 9, Amdt 1B
Houston, TX, Houston-Southwest, RNAV or GPS RWY 27, Amdt 2B CANCELLED
Houston, TX, Houston-Southwest, VOR/DME RNAV or GPS RWY 27, Amdt 2B
Houston, TX, West Houston, RNAV or GPS RWY 15, Amdt 2 CANCELLED
Houston, TX, West Houston, VOR/DME RNAV or GPS RWY 15, Amdt 2
Houston, TX, West Houston, RNAV or GPS RWY 33, Amdt 2 CANCELLED
Houston, TX, West Houston, VOR/DME RNAV or GPS RWY 33, Amdt 2
Junction, TX, Kimble County, RNAV or GPS RWY 17, Amdt 2 CANCELLED
Junction, TX, Kimble County, VOR/DME RNAV or GPS RWY 17, Amdt 2
Midland, TX, Midland Intl, RNAV or GPS RWY 16R, Amdt 2 CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV or GPS RWY 16R, Amdt 2
Midland, TX, Midland Intl, RNAV or GPS RWY 34L, Amdt 1 CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV or GPS RWY 34L, Amdt 1
Marshall, TX, Harrison County, RNAV or GPS RWY 33, Amdt 1B CANCELLED
Marshall, TX, Harrison County, VOR/DME RNAV or GPS RWY 33, Amdt 1B
Mineola/Quitman, TX, Mineola-Quitman, RNAV or GPS RWY 18, Amdt 1A CANCELLED
Mineola/Quitman, TX, Mineola-Quitman, VOR/DME RNAV or GPS RWY 18, Amdt 1A
Lewisburg, TN, Ellington, RNAV or GPS RWY 20, Orig CANCELLED
Lewisburg, TN, Ellington, VOR/DME RNAV or GPS RWY 20, Orig
Shelbyville, TN, Bomar Field-Shelbyville Muni, RNAV or GPS RWY 18, Amdt 3 CANCELLED
Shelbyville, TN, Bomar Field-Shelbyville Muni, VOR/DME RNAV or GPS RWY 18, Amdt 3
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, RNAV or GPS RWY 36, Amdt 4 CANCELLED
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, VOR/DME RNAV or GPS RWY 36, Amdt 4
Ogden, TU, Ogden-Hinckley, RNAV or GPS RWY 3, Orig CANCELLED
Ogden, TU, Ogden-Hinckley, VOR/DME RNAV or GPS RWY 3, Orig
Roosevelt, UT, Roosevelt Muni, RNAV or GPS RWY 25, Amdt 1A CANCELLED
Roosevelt, UT, Roosevelt Muni, VOR/DME RNAV or GPS RWY 25, Amdt 1A
Danville, VA, Danville Regional, RNAV or GPS RWY 20, Amdt 1 CANCELLED
Danville, VA, Danville Regional, VOR/DME RNAV or GPS RWY 20, Amdt 1
Norfolk, VA Norfolk Intl, RNAV or GPS RWY 14, Amdt 4, CANCELLED
Norfolk, VA Norfolk Intl, VOR/DME RNAV or GPS RWY 14, Amdt 4,
Wise, VA, Lonesome Pine, RNAV or GPS RWY 24, Amdt 2 CANCELLED
Wise, VA, Lonesome Pine, VOR/DME RNAV or GPS RWY 24, Amdt 2
Quincy, WA, Quincy Muni, RNAV or GPS RWY 27, Orig CANCELLED
Quincy, WA, Quincy Muni, VOR/DME RNAV or GPS RWY 27, Orig
Spokane, WA, Spokane Intl, RNAV or GPS RWY 21, Orig CANCELLED
Spokane, WA, Spokane Intl, VOR/DME RNAV or GPS RWY 21, Orig
Lone Rock, WI, Tri-County Regional, RNAV, or GPS RWY 27, Amdt 6 CANCELLED
Lone Rock, WI, Tri-County Regional, VOR/DME RNAV, or GPS RWY 27, Amdt 6
Madison, WI, Morey, RNAV or GPS RWY 12, Amdt 3 CANCELLED
Madison, WI, Morey, VOR/DME RNAV or GPS RWY 12, Amdt 3
Portage, WI, Portage Muni, RNAV or GPS RWY 17, Amdt 3 CANCELLED
Portage, WI, Portage Muni, VOR/DME RNAV or GPS RWY 17, Amdt 3
West Bend, WI, West Bend Muni, RNAV or GPS RWY 13, Amdt 5 CANCELLED
West Bend, WI, West Bend Muni, VOR/DME RNAV or GPS RWY 13, Amdt 5

[FR Doc. 97–29728 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29054; Amdt. No. 1833]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPS. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 31, 1997.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 4, 1997*

Des Moines, IA, Des Moines Intl, ILS RWY 31R, Amdt 20
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS PRM RWY 30L, (Simultaneous Close Parallel), Amdt 1
Minneapolis, MN, Minneapolis-St. Paul Intl/Wold-Chamberlain, ILS PRM RWY 30R, (Simultaneous Close Parallel), Amdt 1
Lee's Summit, MO, Lee's Summit Municipal, NDB RWY 18, Orig
Lee's Summit, MO, Lee's Summit Municipal, NDB RWY 36, Orig
St Louis, MO, Lambert-St Louis Intl, ILS RWY 6, Orig

** * * Effective January 1, 1998*

Grass Valley, CA, Nevada County Air Park, VOR OR GPS–A, Amdt 1
Huslia, AK, Huslia, VOR/DME RWY 3, Orig
Huslia, AK, Huslia, VOR/DME RWY 21, Orig
Nome, AK, Nome, MLS RWY 9, Orig
Stuart, FL, Witham Field, GPS RWY 12, Orig-A, CANCELLED
Winter Haven, FL, Winter Haven's Gilbert, VOR/DME OR GPS–A, Amdt 6
Boone, IA, Boon Muni, NDB OR GPS RWY 32, Amdt 6
Boone, IA, Boone Muni, COPTER NDB OR GPS 225, Amdt 4
Dwight, IL, Dwight, NDB OR GPS 1 RWY 27, Amdt 3, CANCELLED
Dwight IL, Dwight, GPS RWY 27, Orig
Greenville, MS, Mid Delta Regl, GPS RWY 18L, Orig
Greenville, MS, Mid Delta Regl, GPS RWY 18R, Orig
Greenville, MS, Mid Delta Regl, GPS RWY 36L, Orig
Greenville, MS, Mid Delta Regl, GPS RWY 36R, Orig
Chapel Hill, NC, Horace Williams, GPS RWY 27, Orig
Smithfield, NC, Johnston County, NDB RWY 3, Orig
Smithfield, NC, Johnston County, ILS RWY 3, Orig
Smithfield, NC, Johnston County, LOC/DME RWY 3, AMDT 1, CANCELLED
Smithfield, NC, Johnston County, NDB OR GPS RWY 21, Amdt 6
Crete, NE, Crete Muni, VOR/DME OR GPS RWY 17, Amdt 3
Crete, NE, Crete Muni, VOR/DME RWY 35, Amdt 3
Crete, NE, Crete Muni, NDB RWY 17, Amdt 2
Crete, NE, Crete Muni, NDB RWY 35, Amdt 2
Crete, NE, Crete Muni, GPS RWY 35, Orig
Lumberton, NJ, Flying W, VOR OR GPS–A, Amdt 2
Lumberton, NJ, Flying W, GPS RWY 1, Orig
Lumberton, NJ, Flying W, GPS RWY 19, Orig
Syracuse, NY, Syracuse Hancock Intl, VOR RWY 14, Amdt 22
Syracuse, NY, Syracuse Hancock Intl, GPS RWY 10, Orig
Syracuse, NY, Syracuse Hancock Intl, GPS RWY 14 Orig
Syracuse, NY, Syracuse Hancock Intl, GPS RWY 28, Orig
Syracuse, NY, Syracuse Hancock Intl, GPS RWY 32, Orig
Wilmington, OH, Clinton Field, GPS RWY 21, Orig
Tulsa, OK, Tulsa Intl, GPS RWY 26 Orig
Tullahoma, TN, Tullahoma Regional Airport/WM Northern Field, VOR OR GPS–A, AMDT 3A, CANCELLED
Tullahoma, TN, Tullahoma Regional Airport/WM Northern Field, VOR/DME–A, Orig
Amarillo, TX, Amarillo Intl, GPS RWY 22, CANCELLED
Fort Worth, TX, Bourland Field, GPS RWY 17, Orig
Gillette, WY, Gillette-Campbell County, LOC/DME BC RWY 16, Amdt 3
Manassas, VA, Manassas Regional/Harry P Davis Field, ILS RWY 16L, Amdt 4
Manassas, VA, Manassas Regional/Harry P Davis Field, GPS RWY 16L, Orig
Manassas, VA, Manassas Regional/Harry P Davis Field GPS RWY 34R, Orig
Osceola, WI, L O Simenstad Muni, NDB RWY 26, Amdt 10
Osceola, WI, L O Simenstad Muni, GPS RWY 26, Orig
Elkins, WV, Elkins-Randolph Co-Jennings Randolph Field, VOR/DME–B Amdt 3A, CANCELLED
Elkins, WV, Elins-Randolph Co-Jennings Randolph Fld, GPS RWY 5, Orig
Elkins, WV, Elkins-Randolph Co-Jennings Randolph Fld. NDB–A, Orig
Pineville, WV, Kee Field, GPS RWY 25, Orig

[FR Doc. 97–29727 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29053; Amdt. No. 1822]

RIN 2120–AA65

Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 31, 1997.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
10/16/97	IL	CHICAGO/AURORA	AURORA MUNI	7/6782	VOR OR GPS RWY 36, AMDT 1A...
10/20/97	MS	PASCAGOULA	TRENT LOTT INTL	7/6828	ILS RWY 17, ORIG–1A...
10/20/97	MS	PASCAGOULA	TRENT LOTT INTL	7/6829	GPS RWY 17, ORIG...
10/20/97	MS	PASCAGOULA	TRENT LOTT INTL	7/6830	VOR OR GPS–A, ORIG...
10/21/97	KS	COFFEYVILLE	COFFEYVILLE MUNI	7/6854	VOR/DME OR GPS–A, AMDT 6A...
10/22/97	GA	JEFFERSON	JACKSON COUNTY	7/6883	NDB RWY 34, ORIG...
10/22/97	MN	MINNEAPOLIS	CRYSTAL	7/6864	GPS RWY 13L, ORIG...
10/22/97	MN	MINNEAPOLIS	CRYSTAL	7/6865	VOR OR GPS–A, AMDT 9B...
10/22/97	MN	MINNEAPOLIS	FLYING CLOUD	7/6860	VOR OR GPS RWY 36, AMDT 11A...
10/22/97	MN	MINNEAPOLIS	FLYING CLOUD	7/6861	VOR OR GPS RWY 9R, AMDT 7A...
10/22/97	MN	MINNEAPOLIS	FLYING CLOUD	7/6863	ILS RWY 9R, AMDT 1A...
10/22/97	MN	MORRIS	MORRIS MUNI	7/6857	VOR OR GPS RWY 32, AMDT 4A...
10/23/97	TX	LUBBOCK	LUBBOCK INTL	7/6908	VOR/DME OR TACAN RWY 26, AMDT 10...
10/26/97	LA	ALEXANDRIA	ALEXANDRIA INTL	7/6989	VOR OR GPS RWY 32, ORIG–A...
10/28/97	LA	ALEXANDRIA	ALEXANDRIA INTL	7/6990	VOR OR GPS RWY 14, ORIG–B...
10/26/97	LA	ALEXANDRIA	ALEXANDRIA INTL	7/6991	GPS RWY 18, ORIG–A...
10/28/97	MI	GRAND RAPIDS	KENT COUNTY INTL	7/6972	RADAR–1, AMDT 10...
10/29/97	LA	ALEXANDRIA	ALEXANDRIA INTL	7/7006	ILS/DME RWY 14, AMDT 1...

Jefferson

JACKSON COUNTY
Georgia
NDB RWY 34, ORIG...
FDC Date: 10/22/97

FDC 7/FDC 7/6883 /19A/ FI/P JACKSON COUNTY, JEFFERSON, GA. NDB RWY 34, ORIG...TERMINAL ROUTE WOMAC INT TO COMMERCE NDB MIN ALT 3700. THIS IS NDB RWY 34 ORIG–A.

Chicago/Aurora

AURORA MUNI
Illinois
VOR OR GPS RWY 36, AMDT 1A...
FDC Date: 10/16/97

FDC 7/6782 /ARR/FI/P AURORA MUNI, CHICAGO/AURORA, IL. VOR OR GPS RWY 36, AMDT 1A...CHANGE NOTE TO READ... WHEN CONTROL TOWER CLOSED USE DUPAGE ALTIMETER SETTING. CHANGE ALTERNATE MINIMUMS TO READ... STANDARD, EXCEPT NA WHEN CONTROL TOWER CLOSED. THIS IS VOR OR GPS RWY 36, AMDT 1B.

Coffeyville

COFFEYVILLE MUNI
Kansas
VOR/DME OR GPS–A, ADMT 6A...
FDC Date: 10/21/97

FDC 7/6854 /CFV/ FI/P COFFEYVILLE MUNI, COFFEYVILLE, KS. VOR/DME OR GPS–A, AMDT 6A...CIRCLING MDA 1200/ HAA 466 CAT A. THIS IS VOR/DME OR GPS–A, AMDT 6B.

Alexandria

ALEXANDRIA INTL
Louisiana
VOR OR GPS RWY 32, ORIG–A...
FDC Date: 10/28/97

FDC 7/6989 /AEX/ FI/P ALEXANDIRA INTL, ALEXANDRIA, LA. VOR OR GPS RWY 32, ORIG–A...CIRCLING CAT A MDA 520/

HAA CAT A 431. CAT B/C HAA 451. CAT D HAA 551. NOTE...RADAR REQUIRED. THIS IS VOR OR GPS RWY 32, ORIG–B.

Alexandria

ALEXANDRIA INTL
Louisiana
VOR OR GPS RWY 14, ORIG–B...
FDC Date: 10/28/97

FDC 7/6990 /AEX/ FI/P ALEXANDRIA INTL, ALEXANDRIA, LA. VOR OR GPS RWY 14, ORIG–B...CIRCLING CAT A MDA 520/ HAA CAT A 431. CAT B/C HAA 451, CAT D HAA 551. NOTE...WHEN R–3801 B ACTIVE, RADAR REQUIRED. NOTE...FOR INOPERATIVE ALSF INCREASE S–14 CAT D VISIBILITY TO 1¼. THIS IS VOR OR GPS RWY 14, ORIG–C.

Alexandria

ALEXANDRIA INTL
Louisiana
VOR OR GPS RWY 18, ORIG–A...
FDC Date: 10/28/97

FDC 7/6991 /AEX/ FI/P ALEXANDRIA INTL, ALEXANDRIA, LA GPS RWY 18, ORIG–A...NOTE... WHEN R–3801 A OR B ACTIVE, RADAR REQUIRED. THIS IS GPS RWY 18, ORIG–B.

Alexandria

ALEXANDRIA INTL
Louisiana
ILS/DME RWY 14, AMDT 1...
FDC Date: 10/29/97

FDC 7/7006 /AEX/ FI/P ALEXANDRIA INTL, ALEXANDRIA, LA. ILS/DME RWY 14, AMDT 1...CIRCLING CAT A MDA 520/HAT CAT A 431. CAT B/C/ HAT 451. CAT D HAT 551. NOTE... WHEN R–3801 B ACTIVE, RADAR REQUIRED. THIS IS ILS/DME RWY 14, AMDT 1A.

Grand Rapids

KENT COUNTY INTL
MICHIGAN
RADAR–1, AMDT 10...
FDC Date: 10/28/97

FDC 7/6972/GRR/ FI/P KENT COUNTY INTL, GRAND RAPIDS, MI. RADAR–1, AMDT 10...S–26R MDA 1160/HAT 373 ALL CATS. THIS IS RADAR–1, AMDT 10A.

Morris

MORRIS MUNI
Minnesota
VOR OR GPS RWY 32, AMDT 4A...
FDC Date: 10/28/97

FDC 7/6857 /MOX/ FI/P MORRIS MUNI, MORRIS, MN. VOR OR GPS RWY 32, AMDT 4A...CHANGE DME MNMS...S–32... MDA 1500/HAT 370, ALL CATS. THIS IS VOR OR GPS RWY 32, AMDT 4B.

Minneapolis

FLYING CLOUD
Minnesota
VOR OR GPS RWY 36, AMDT 11A...
FDC Date: 10/22/97

FDC 7/6860 /FCM/ FI/P FLYING CLOUD, MINNEAPOLIS, MN. VOR OR GPS RWY 36, AMDT 11A...DELETE NOTE...WHEN CONTROL TOWER CLOSED, USE MINNEAPOLIS ST. PAUL INTL ALTIMETER SETTING AND INCREASE ALL MDA'S 40 FEET DELETE PROFILE NOTE...ASTERISK 1460 WHEN USING MINNEAPOLIS ALTIMETER SETTING. ALTERNATE MNMS STANDARD. ADD...CHART ASOS. THIS IS VOR OR GPS RWY 36, AMDT 11B.

Minneapolis

FLYING CLOUD
Minnesota
VOR OR GPS RWY 9R, AMDT 7A...
FDC Date: 10/22/97

FDC 7/6861 /FCM/ FI/P FLYING CLOUD, MINNEAPOLIS, MN. VOR OR GPS RWY 9R, AMDT 7A...DELETE NOTE...WHEN CONTROL TOWER CLOSED, USE MINNEAPOLIS ST. PAUL INTL ALTIMETER SETTING AND INCREASE ALL MDA'S 40 FEET AND INCREASE CAT C S–9R DME VIS TO ¾ MILE. DELETE PROFILE NOTE... ASTERISK 1400 WHEN USING MINNEAPOLIS ALTIMETER SETTING. ALTERNATE MNMS STANDARD. ADD... CHART ASOS. THIS IS VOR OR GPS RWY 9R, AMDT 7B.

Minneapolis

FLYING CLOUD
Minnesota
ILS RWY 9R, AMDT 1A...
FDC Date: 10/22/97

FDC 7/6863/FCM/FI/P FLYING CLOUD, MINNEAPOLIS, MN. ILS RWY 9R, AMDT 1A...DELETE NOTE... WHEN CONTROL TOWER CLOSED, USE MINNEAPOLIS ST. PAUL INTL ALTIMETER SETTING AND INCREASE ALL DH/MDA'S 40 FEET, AND INCREASE CAT C S–LOC 9R DME VIS TO ¾ MILE. DELETE PROFILE NOTE...ASTERISK 1380 WHEN USING MINNEAPOLIS ALTIMETER SETTING. ALTERNATE MNMS STANDARD. ADD...CHART ASOS. THIS IS ILS RWY 9R, AMDT 1B.

Minneapolis

CRYSTAL
Minnesota
GPS RWY 13L, ORIG...
FDC Date: 10/22/97

FDC 7/6864 /MIC/ FI/P CRYSTAL, MINNEAPOLIS, MN. GPS RWY 13L, ORIG...DELETE...MINNEAPOLIS ALTIMETER SETTING MNMS. DELETE NOTE... WHEN CONTROL TOWER CLOSED, USE MINNEAPOLIS ALTIMETER SETTING. ADD... CHART ASOS. THIS IS GPS RWY 13L, AMDT ORIG–A.

Minneapolis

CRYSTAL
Minnesota
VOR OR GPS–A, AMDT 9B...
FDC Date: 10/22/97

FDC 7/6865 /MIC/FI/P CRYSTAL, MINNEAPOLIS, MN. VOR OR GPS–A, AMDT 9B...DELETE... MINNEAPOLIS ALTIMETER SETTING MNMS. DELETE NOTE... WHEN CONTROL TOWER CLOSED, USE MINNEAPOLIS ALTIMETER SETTING. ALTERNATE MNMS STANDARD. ADD... CHART ASOS. THIS IS VOR OR GPS–A, AMDT 9C.

Pascagoula

TRENT LOTT INTL
Mississippi
ILS RWY 17, ORIG–A
FDC Date: 10/20/97...

FDC 7/6828 /PQL/ FI/P TRENT LOTT INTL, PASCAGOULA, MS. ILS RWY 17, ORIG–A...DELETE NOTE... OBTAIN LOCAL ALTIMETER SETTING ON CTAF, WHEN NOT RECEIVED USE MOBILE ALTIMETER SETTING. MOBILE ALTIMETER SETTING MINIMUMS FOR INOPERATIVE MALSR, INCREASE S–ILS RWY 17 VISIBILITY TO 1 ALL CATS. DELETE... MOBILE ALTIMETER SETTING MINIMUMS. THIS IS ILS RWY 17, ORIG–B.

Pascagoula

TRENT LOTT INTL
Mississippi
GPS RWY 17, ORIG...
FDC Date: 10/20/97

FDC 7/6829 /PQL/ FI/P TRENT LOTT INTL, PASCAGOULA, MS. GPS RWY 17, ORIG...DELETE MOBILE, AL. ALTIMETER MINIMUMS. DELETE NOTE... OBTAIN LOCAL ALTIMETER SETTING ON CTAF, WHEN NOT RECEIVED USE MOBILE ALTIMETER SETTING. THIS IS GPS RWY 17, ORIG–A.

Pascagoula

TRENT LOTT INTL
Mississippi
VOR OR GPS–A, ORIG...
FDC Date: 10/20/97

FDC 7/6830 /PQL/FI/P TRENT LOTT INTL, PASCAGOULA, MS. VOR OR GPS–A, ORIG...DELETE MOBILE ALTIMETER SETTING MINIMUMS. DELETE NOTE... OBTAIN LOCAL ALTIMETER SETTING ON CTAF, IF NOT RECEIVED USE MOBILE ALTIMETER SETTING. ALTERNATE MINIMUMS... CATS A/B/C STANDARD, CAT D 800–2¼. THIS IS VOR OR GPS–A, ORIG–A.

Lubbock

LUBBOCK INTL
Texas
VOR/DME OR TACAN RWY 26, AMDT 10...
FDC Date: 10/23/97

FDC 7/6908/LBB/FI/P LUBBOCK INTL, LUBBOCK, TX. VOR/DME OR TACAN RWY 26, AMDT 10...S–26 VSBY CAT A/B 1.CHANGE INOPERATIVE TABLE NOTE TO READ... INOPERATIVE TABLE DOES

NOT APPLY. THIS IS VOR/DME OR TACAN RWY 26, AMDT 10A.

[FR Doc. 97–29726 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Chlortetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for oral use of chlortetracycline hydrochloride soluble powder in the drinking water of swine for control and treatment of certain diseases caused by pathogens susceptible to chlortetracycline and chickens and turkeys for control of certain diseases caused by pathogens susceptible to chlortetracycline.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–236 that provides for oral use of chlortetracycline hydrochloride soluble powder in animal drinking water as follows: (1) Swine: Control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and *Salmonella* spp., and bacterial pneumonia associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Haemophilus* spp.) and *Klebsiella* spp.; (2) Chickens: Control of infectious synovitis caused by *Mycoplasma synoviae*, and chronic respiratory disease (CRD) and air-sac infections caused by *M. gallisepticum* and *E. coli*; and (3) Turkeys: Control of infectious synovitis caused by *M. synoviae* and complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis).

Approval of Phoenix Scientific Inc.'s ANADA 200–236 chlortetracycline hydrochloride soluble powder is as a generic copy of ADM Animal Health & Nutrition Div.'s NADA 65–256 Chlortet™-Soluble-O chlortetracycline hydrochloride soluble powder. ANADA 200–236 is approved as of September 24, 1997, and the regulations are amended in 21 CFR 520.445b(b) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.445b [Amended]

2. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfite)* is amended in paragraph (b) by removing "No. 017519" and adding in its place "Nos. 017519 and 059130."

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–29650 Filed 11–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Neomycin Sulfate Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Pharmacia & Upjohn Co. The supplemental ANADA provides for a shorter withdrawal period following use of neomycin sulfate oral solution in the drinking water or in milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental ANADA 200–113 that provides for a shorter withdrawal period following use of neomycin sulfate oral solution in the drinking water or in milk for cattle (excluding veal calves), swine, sheep, and goats for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin sulfate.

Approval of supplemental ANADA 200–113 is as a generic copy of the sponsor's approved supplemental NADA 11–315. The supplemental ANADA is approved as of February 7, 1997, and the regulations are amended in § 520.1485(d)(3) (21 CFR 520.1485(d)(3)) to reflect the approval.

The previously approved supplement to NADA 11–315 included data to support revised tolerances for residues of neomycin in the edible tissues of cattle, swine, sheep, and goats. Based on evaluation of the data as provided in the "General Principles for Evaluating the Safety of Compounds Used in Food-Producing Animals Guidelines," tolerances of 1.2 parts per million (ppm) in muscle, 3.6 ppm in liver, and 7.2 ppm in kidney and fat, and withdrawal times of 1 day for cattle, 2 days for sheep, and 3 days for swine and goats were established. The revised withdrawal times were established in 21 CFR 520.1484(c)(3) and now for ANADA 200–113 in § 520.1485(d)(3).

No additional effectiveness or safety studies were required for this approval. Therefore, a freedom of information summary is not required. A summary of data and information submitted to support the original ANADA approval may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1485 is amended by revising the last sentence of paragraph (d)(3) to read as follows:

§ 520.1485 Neomycin sulfate oral solution.

* * * * *

(d) * * *

(3) * * * Discontinue treatment prior to slaughter as follows: For sponsor 059130: 30 days for cattle and goats, and 20 days for swine and sheep; for sponsors 000009 and 050604: 1 day for cattle, 2 days for sheep, and 3 days for swine and goats.

Dated: October 10, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–29654 Filed 11–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Medicated Feed Applications; Lasalocid; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the correct assay limits for lasalocid in Type A medicated articles. Although a supplement to the new animal drug application (NADA) was approved, the regulations had not been previously amended to reflect that approval. At this time the regulations are amended to reflect the current assay limits in the approved NADA.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mary G. Leadbetter, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1662.

SUPPLEMENTARY INFORMATION: FDA is amending the regulation concerning use of animal drugs in medicated feeds in § 558.4(d) (21 CFR 558.4(d)) to reflect that the assay limit for lasalocid Type A medicated articles is 95 to 115 percent of the labeled amount. Although the original approval for NADA 96–298 Hoffmann-LaRoche, Inc., provided for a 10 percent overage (an assay limit of 100 to 120 percent), a supplemental approval dated August 25, 1992, revised that overage to 5 percent (95 to 115 percent). The regulation in § 558.4(d) is amended in the table entitled "Category I," in the entry for "Lasalocid," accordingly.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d), in the table entitled "Category I," in the entry for "Lasalocid," in the second column by removing "100–120" and adding in its place "95–115".

Dated: October 21, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–29649 Filed 11–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Amprolium Plus Ethopabate With Bacitracin Zinc and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved amprolium plus ethopabate with bacitracin zinc and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used as an aid in the prevention of coccidiosis and improved feed efficiency or improved feed efficiency and improved pigmentation.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed ANADA 200–214 that provides for combining approved amprolium plus ethopabate with bacitracin zinc and roxarsone Type A medicated articles to make Type C medicated broiler feeds. The Type C medicated feed containing amprolium 113.5 grams per ton (g/t) plus ethopabate 36.3 g/t with bacitracin zinc 10 to 50 g/t and roxarsone 15.4 to 45.4 g/t is used as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina*, *E. maxima*, and *E. brunetti* is likely to occur, and for improved feed efficiency. The Type C medicated feed containing amprolium 113.5 g/t plus ethopabate

36.3 g/t with bacitracin zinc 10 g/t and roxarsone 30 to 45.4 g/t is used as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *E. acervulina*, *E. maxima*, and *E. brunetti* is likely to occur, and for improved feed efficiency and improved pigmentation.

Alpharma Inc.'s ANADA 200–214 provides for combining approved AMPROL HI–E® (Merck Research Laboratories' amprolium and ethopabate NADA 13–461), ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223), and 3–NITRO® (Alpharma Inc.'s roxarsone NADA 7–891) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–214 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 105–758. The ANADA is approved as of November 12, 1997, and the regulations are amended in 21 CFR 558.58(d)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.58 [Amended]

2. Section 558.58 *Amprolium and ethopabate* is amended in the table in paragraph (d)(1)(iii) in the entry for "Bacitracin 10 to 50 plus roxarsone 15.4 to 45.4 (0.0017% to 0.005%)" under "Limitations" by removing "No. 000004" both times it appears and adding in their place "Nos. 000004 and 046573", and under "Sponsor" by removing "000004" and adding in its place "000004, 046573".

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–29853 Filed 11–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[VA–108–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects and explains an OSM decision on a provision of a proposed amendment submitted by the State of Virginia as a modification to its permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM published its decision on the provision in a September 17, 1997, final rule **Federal Register** document. The provision concerns an exemption from the requirement to conduct mitigation measures to prevent or lessen the impact of subsidence damage, when planned subsidence mining methods are used, when the structure owners deny the permittee access to implement the measures to minimize material damage.

DATES: Effective: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION: By letter dated May 21, 1996 (Administrative Record No. VA–882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1–243 and 45.1–258 of the Code of Virginia.

On September 17, 1997, OSM approved, with certain exceptions, the amendment submitted by Virginia (62 FR 48758). This document revises and explains one of OSM's decisions.

Subsidence Control

In the September 17, 1997, final rule, **Federal Register** document, OSM stated that it was approving, for longwall mining permittees, Virginia's proposed language at 480–03–19.817.121(a)(2)(iii) concerning an exemption from the requirement to conduct mitigation measures to minimize material damage from subsidence. The exemption would apply when the structure owners deny the permittee access to implement the measures to minimize material damage. (See Finding No. 5 of the September 17, 1997, final rule, 62 FR 48760.

In that finding, OSM excluded room and pillar retreat mining from qualifying for the proposed exemption. Upon further consideration of Virginia's proposed provision at 480–03–19.817.121(a)(2)(iii), OSM is changing is previous finding and decision. The rational for the revised decision is discussed below. The following finding replaces the preamble discussion for that part of Finding 5 that concerns amendments to subsection (a) of 480–03–19.817.121, in the final rule (62 FR 48758, second and third columns on page 48760).

5. § 480–03–13.817.121 Subsidence Control

Subsection (a) concerning measures to prevent or minimize damage is amended by adding new language (at new subsection (a)(2)) to provide that planned subsidence must include measures to minimize material damage to protected structures, except if the permittee has written consent of the structure owners, the costs of such measures exceed the anticipated costs of repair (unless the anticipated damage would constitute a threat to health or safety), or the structure owners deny the permittee access to implement the measures to minimize material damage and the permittee provides written evidence of good faith efforts to obtain access.

The proposed language is substantively identical to and no less effective than the counterpart Federal language at 30 CFR 817.121(a)(2) with one exception. 30 CFR 817.121(a)(2) contains no counterpart to the proposed language that provides an exception to the requirement to include measures to minimize material damage to protected

structures if the structure owners deny the permittee access to implement the measures to minimize material damage.

"Planned subsidence in a predictable and controlled manner" includes longwall mining and pillar retreat mining. Mitigation efforts performed on the surface to minimize material damage from planned subsidence include trenching, bracing, or jacking of the structures to be protected. These mitigation measures remain in place while the ground underneath the structures subsides, keeping the structures level and, thereby, helping to minimizing damage to the structures.

It is possible to prevent or minimize damage to the surface and surface structures by leaving coal in place (for example, by leaving support pillars or reducing the width of a longwall extraction panel). Such underground measures are not undertaken, however, if the approved mining method involves planned subsidence in a predictable and controlled manner as with longwall and pillar retreat mining, "because they are not normally consistent with longwall technology." (60 FR at 16731) As stated in the final rule preamble to 30 CFR 784.20(b), "OSM does not intend to require anything other than surface measures to minimize material damage from longwall mining where conventional underground measures may not be practicable." (60 FR at 16731) Note that in the preamble, OSM used the term "longwall mining" to refer to the "longwall mining and pillar recovery technologies." (60 FR at 16731)

Subsidence is a natural and common result of underground mining. However, there is a clear distinction between the mining methods that produce planned subsidence and those that produce unplanned subsidence. The following is a brief explanation of planned and unplanned subsidence and the mining methods that produce them.

Unplanned subsidence. The standard method of room and pillar mining produces unplanned subsidence. Standard room and pillar mining is accomplished as follows. First, a series of parallel paths are cut through the coal. These cuts are called entries. As the entries are increased in length, they are connected together by cutting a series of cross cuts through the coal from one entry to the next. These cross cuts produce a series of coal pillars surrounded by mined-out spaces (called rooms). Room and pillar mining produces a pattern much like a common checkerboard: on a checkerboard, each black square is surrounded by red squares. In a room and pillar underground mine, a pillar of coal is surrounded by mined-out coal. In standard room and pillar mining, the pillars are left in place to support the rock (roof) above the coal layer.

The size of the pillar that is left to support the roof is determined by the strength of the coal, depth of the coal, the characteristics of the rock (above the coal) that is being supported, and the width of the entry system. The pillars in place support the roof of an underground coal mine for an undetermined length of time. It is possible that, sometime in the future, roof and/or pillar failure may occur and surface subsidence may take place. Normally, the extraction of coal from this type of mine development is less than 70 percent.

Planned subsidence. Planned subsidence is achieved by both retreat mining of the pillars of a room and pillar system, and by longwall mining. In retreat mining, the pillars of a room and pillar system are reduced in size (robbed) as the miners retreat back out of the room and pillar system. In retreat mining, the pillars are reduced in size to the point of allowing a controlled failure of the roof (roof fall) to occur. Total extraction of coal within the area defined for retreat mining is usually greater than 75 percent. It is important to note that in pillar retreat mining, it is essential that the roof fall take place in order to reduce the forces on the remaining pillars. If the load forces on the remaining pillars aren't reduced by roof fall, the mining equipment can't properly and safely mine the remaining pillars.

A longwall mining operation is first developed by using room and pillar methods to develop entries, haulageways, paths for ventilation, and to define the blocks of coal to be removed by the longwall cutter. the blocks of coal to be removed are often quite large (for example, 500 to 1,000 feet wide by thousands of feet long). Since all the coal is removed in these large blocks, the unsupported roof falls shortly following passage of the longwall cutter. The amount of surface subsidence that is expected to take place is determined from the thickness of the coal, width of the block of coal removed, and the characteristics and thickness of the overburden.

The Federal regulations at 30 CFR 817.121(a)(1) provide that a permittee must either adopt measures to prevent subsidence from causing material damage, or adopt mining technology that provides for planned subsidence in a predictable and controlled manner. Room and pillar retreat mining and longwall mining are examples of mining technology that provides for planned subsidence in a predictable and controlled manner. Thus, Virginia's proposal with regard to longwall mining operations and room and pillar retreat mining operations is consistent with the Federal rule at 30 CFR 817.121(a)(2) which requires measures to minimize subsidence damage only when such measures are "consistent with the mining method employed" and they are "technologically feasible."

Section 516(b)(1) of SMCRA provides a special exemption for planned subsidence methods of mining from the requirement to adopt measures consistent with known technology in order to prevent subsidence from causing material damage. Section 720(a)(2) of SMCRA, which concerns subsidence related to underground mining operations, provides that nothing in section 720(a)(2) "shall be construed to prohibit or interrupt underground coal mining operations." Additionally, the preamble to 30 CFR 817.121(a)(2) states that the damage minimization requirements for planned subsidence operations are based on both sections of SMCRA. (60 FR at 16734, 1st column; March 31, 1995)

OSM was also concerned about whether or not the structure owner would be notified by the longwall permittee of the consequences of failing to allow access for the placement of mitigation measures. Since Virginia's proposal had no direct Federal counterpart, there was no direct Federal notice counterpart. The Federal regulations at 30 CFR 784.20(a)(3) provide a relevant comparison. 30 CFR 784.20(a)(3) provides that, if an owner denies access for a pre-mining survey, the permittee must provide certain information to the landowner concerning the potential negative effect of their actions, but the lack of access does not prevent the permittee from mining. Virginia, by a letter dated January 3, 1997 (Administrative Record Number VA–902) clarified that under 480–03–19.817.121(a)(2)(iii), the permittee must provide a written document to the structure owner informing the owner of the consequences of denying access. Further, the permittee must provide Virginia with evidence documenting such notice.

The Director finds, therefore, that Virginia's proposal is reasonable and not inconsistent with SMCRA, since it would facilitate both the use of planned subsidence mining methods and the continuation of underground mining in situations in which surface owners refuse to allow implementation of surface measures approved by the regulatory authority.

In addition, the preamble to the Federal regulation at 30 CFR 817.121(a)(2) does not address the question of what happens when a landowner denies access. Therefore, it is reasonable to presume that OSM never envisioned this situation, thus creating the regulatory gap that Virginia is endeavoring to fill.

Subsection (c) has been revised by deleting the existing language and replacing new language.

* * * * *

The Federal regulations at 30 CFR part 946 codifying decisions concerning the Virginia program are being amended to implement this revised finding.

Section 946.15 Approval of Virginia regulatory program amendments is being amended in the table (third column on page 48765, 62 FR 48758) to show both the September 17, 1997, final publication of this amendment, and the date of the revision discussed in this notice.

Dated: November 3, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by revising the entry having the original amendment submission date of May 21, 1996, to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 21, 1996	September 17, 1997, and November 12, 1997	VA Code §§ 480–03–19.700.5; 784.14, 20; 817.41, 121.

[FR Doc. 97–29724 Filed 11–10–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300505A; FRL–5750–3]

40 CFR Part 180

RIN 2070–AB78

Corn Gluten; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of corn gluten also known as corn gluten meal, when used as an herbicide in or on all food commodities, when applied in accordance with good agricultural practice. This exemption from requirement of a tolerance is being established by the Agency on its own initiative, under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation becomes effective November 12, 1997. Written objections and requests for hearings must be received by January 12, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300505A], must be submitted to: Hearing Clerk (1900); Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300505A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300505A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Freshteh Toghrol, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th Floor, Crystal Station 1, 2805 Crystal Drive, Arlington, VA; (703) 308–7014; e-mail: toghrol.freshteh@epamail.epa.gov..

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 18, 1997 (62 FR 38513) [OPP–300505; FRL–5717–8], EPA proposed, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(d) to amend 40 CFR 180.1164 by establishing an exemption from the requirement of a tolerance for corn gluten in or on all food commodities, when applied in accordance with good agricultural practice.

There were no comments received in response to the proposed rule.

Based on the reasons set forth in the preamble to the proposed rule, EPA establishes an exemption from tolerance for corn gluten as provided below.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(e) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 12, 1998, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ADDRESSES section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300505A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

This action finalizes an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: October 27, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. Section 180.1164 is amended by adding a new paragraph (c) to read as follows:

§ 180.1164 Food and food by-products; exemption from the requirement of a tolerance.

* * * * *

(c) Corn gluten (CAS Reg. No. 66071–96–3) is exempt from the requirement of a tolerance on all food commodities when used as an herbicide in accordance with good agricultural practice.

[FR Doc. 97–29746 Filed 11–10–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7676]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Roselle Park, borough of, Union County.	340472	Dec. 17, 1971, Emerg; July 17, 1978, Reg.; Nov. 5, 1997, Susp.	Nov. 5, 1997	Nov. 5, 1997.
New York: Fort Ann, town of, Washington County.	361231	Feb. 2, 1976, Emerg.; Apr. 17, 1985, Reg.; Nov. 5, 1997, Susp.	do	Do.
Region III				
Virginia:				
Chilhowie, town of, Smyth County	510185	Jan. 15, 1974, Emerg.; June 15, 1978, Reg.; Nov. 5, 1997, Susp.	do	Do.
Louisa County, unincorporated areas	510092	Mar. 1, 1974, Emerg.; June 1, 1989, Reg.; Nov. 5, 1997, Susp.	do	Do.
Smyth County, unincorporated areas	510184	Dec. 26, 1973, Emerg.; May 15, 1980, Reg.; Nov. 5 1997, Susp.	do	Do.
Region VI				
Oklahoma: Piedmont, city of, Canadian and Kingfisher Counties.	400027	Feb. 4, 1985, Reg.; Nov. 5, 1997, Susp	do	Do.
Texas: Junction, city of, Kimble County	480421	Feb. 27, 1975, Emerg.; Sept. 26, 1979, Reg.; Nov. 5, 1997, Susp.	do	Do.
Region IX				
California:				
Grover, city of, San Luis Obispo County	060306	Mar. 27, 1975, Emerg.; Aug. 1, 1984, Reg.; Nov. 5, 1997, Susp.	do	Do.
Pismo Beach, city of, San Luis Obispo County.	060309	Feb. 25, 1977, Emerg.; Aug 1, 1984, Reg.; Nov. 5, 1997, Susp.	do	Do.
Region X				
Oregon: Marion County, unincorporated areas.	410154	Dec. 10, 1971, Emerg.; Aug 15, 1979, Reg.; Nov. 5, 1997, Susp.	do	Do.
Region I				
Maine: Bowdoinham, town of, Sagadahoc County.	230119	Apr. 16, 1981, Emerg.; May 19, 1987, Reg.; Nov. 19, 1997, Nov. 19, 1997, Susp.	Nov. 19, 1997	
Vermont: Duxbury, town of, Washington County.	500110	June 10, 1975, Emerg.; Mar. 15, 1982, Reg.; Nov. 19, 1997, Susp.	do	Do.
Region IV				
Florida:				
Melbourne, city of, Brevard County	120025	Aug. 30, 1974, Emerg.; July 1, 1979, Reg.; Nov. 19, 1997, Susp.	do	Do.
Tallahassee, city of, Leon County	120144	Mar. 10, 1972, Emerg.; Dec. 6, 1976, Reg.; Nov. 19, 1997, Susp.	do	Do.
Region V				
Indiana:				
LaFontaine, town of, Wabash County	180267	June 4, 1975, Emerg.; Apr. 17, 1987, Reg.; Nov. 19, 1997, Susp.	do	Do.
LaGro, town of, Wabash County	180268	Aug. 15, 1975, Emerg.; June 18, 1987, Reg.; Nov. 19, 1997, Susp.	do	Do.
North Manchester, town of, Wabash County.	180269	Mar. 24, 1975, Emerg.; Aug. 19, 1985, Reg.; Nov. 19, 1997, Susp.	do	Do.
Wabash, city of, Wabash County	180271	Oct. 28, 1975, Emerg.; Jan. 18, 1984, Reg.; Nov. 19, 1997, Susp.	do	Do.
Wabash County, unincorporated areas	180266	Apr. 3, 1975, Emerg.; Aug. 19, 1986, Reg.; Nov. 19, 1997, Susp.	do	Do.
Michigan: Albee, township of, Saginaw County.	260498	Apr. 22, 1976, Emerg.; Aug. 1, 1986, Reg.; Nov. 19, 1997, Susp.	do	Do.
Minnesota: Prior Lake, city of, Scott County	270432	Feb. 6, 1974, Emerg.; Sept. 29, 1978, Reg.; Nov. 19, 1997, Susp.	do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: November 3, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–29753 Filed 11–10–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5, 21, 22, 23, 24, 25, 26, 27, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[ET Docket No. 96–2; FCC 97–347]

Arecibo Coordination Zone

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to one of the final rules adopted in "Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico", which was published Monday, October 27, 1997 (62 FR 55525).

EFFECTIVE DATE: December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION:

Background

This document corrects Section 101.123(d) of the Commission's rules, as modified in "Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico," ET Docket 96–2, FCC 97–347 (released October 15, 1997), 62 FR 55525 (October 27, 1997). This rule, which deals with Quiet Zones and Arecibo Coordination Zone was published with a clerical error.

Need for Correction

As published, this final rule contains an error that may be misleading and is in need of clarification.

Correction of Publications

Accordingly, the publication on October 27, 1997, of final rules in ET Docket No. 96–2, which was the subject of FR Doc. 97–28296, is corrected as follows:

§ 101.123 [Corrected]

On page 55536, in the third column, within the regulatory instruction for § 101.123, paragraph (d) is correctly designated as paragraph 101.123(e).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29661 Filed 11–10–97; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL–5919–4]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revises the EPA Acquisition Regulation (EPAAR) on calculation of profit or fee. Two unrelated administrative corrections are also being made.

EFFECTIVE DATE: November 12, 1997.

ADDRESSES: Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, Telephone: (202) 564–4369.

SUPPLEMENTARY INFORMATION:

I. Background Information

The proposed rule was published in the **Federal Register** (62 FR 27712–27715) on May 21, 1997, providing for a 60-day comment period.

Interested parties were afforded the opportunity to participate in the making of this rule. The following is a summary of each comment and the Agency disposition of those comments.

1. *Comment:* EPA should make it clear that Subpart 1515.970–2(b)(iv) cannot be interpreted to allow only one profit or fee determination for both the general contractor and subcontractor levels of an acquisition.

Response: Privity of contract is an established principle in Government contracting. The Government's contract is with the prime (general) contractor. Duties such as direction and payment of the subcontractors are solely the responsibility of the prime contractor. Therefore, profit or fee determinations are solely based on the prime contractor's effort.

2. *Comment:* We are concerned about the soundness of "structured approach" policy. We believe the structured approach prevents the Government from receiving best value by adding unnecessary expense to the negotiation process. Further, the structure approach distorts market value in competitive procurements by substituting private industry competitive determinations of cost and profit with Government notions of what the market "should be."

Response: As stated in EPAAR 1515.902(a)(3), the structured approach is a basis for negotiations, not a final determination. Also, EPAAR 1515.903 is being added by this rule to allow exemption of cost realism evaluations from required use of a structured approach. Cost realism is a factor in best value procurements. Furthermore, EPAAR 1515.902(b) specifies numerous other types of contracts and circumstances where methods other than the structured approach set forth in EPAAR 1515.970 may be used. For instance, the structured approach is not required for construction contracts (EPAAR 1515.902(b)(vi)).

3. *Comment:* We are concerned that Subpart 1515.970–2(b)(2)(iii)(C) of the proposed rule could be misinterpreted by contracting officers. Each construction acquisition, regardless of the contract type or contractor experience, is a unique project which can have significant distinguishing characteristics. Profit or fee weighted guidelines should therefore be considered anew for each acquisition.

Response: We agree that the cited provision may be subject to misinterpretation. It is also unnecessary, since it is not a mandatory requirement and the contracting officer has a certain amount of flexibility in making weighted guideline determinations. The provision at 1515.970–2(b)(2)(iii)(C) will be deleted.

4. *Comment:* EPA should emphasize to contracting officers that weighted guidelines are prenegotiation benchmarks, not unchangeable standards.

Response: See EPAAR 1515.902(a)(3) and the Agency policy at EPAAR 1515.970–1. Both citations provide for a structured approach as a basis for negotiations, rather than as a final determination.

5. *Comment:* EPA should review and update its statement in EPAAR 1515.970–2(a)(3), relating to facilities capital cost of money.

Response: Based on a review of approaches taken by other Agencies on this matter, EPA will reassess EPAAR 1515.970–2, for possible revision in a future action.

II. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

IV. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. There are no requirements for contractor compliance under the proposed rule.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Regulated Entities

EPA contractors are entities potentially regulated by this action.

Category	Regulated entity
Industry	EPA Contractors.

List of Subjects in 48 CFR Parts 1515 and 1552

Environmental protection, Government procurement.

For the reasons set forth in the preamble, Chapter 15 of Title 48 Code of Federal Regulations 1515 and 1552 is amended as follows:

PARTS 1515 AND 1552—[AMENDED]

1. The authority citation for 1515 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

2. Subpart 1515.9 is revised to read as follows:

Subpart 1515.9—Profit

Table of Contents

1515.900 Scope of subpart.
1515.902 Policy.
1515.903 Cost realism.
1515.905 Profit-analysis factors.
1515.970 EPA structured approach for developing profit or fee objectives.
1515.970–1 General.
1515.970–2 EPA structured system.

1515.900 Scope of subpart.

This subpart implements FAR subpart 15.4, and prescribes the EPA structured approach for determining profit or fee prenegotiation objectives.

1515.902 Policy.

(a) *EPA structured approach.* The purpose of EPA's structured approach is:

(1) To provide a standard method of evaluation;

(2) To ensure consideration of all relevant factors;

(3) To provide a basis for documentation and explanation of the profit or fee negotiation objective;

(4) To allow contractors to earn profits commensurate with the assumption of risk; and

(5) To reward contractors who undertake more difficult work requiring higher risks.

(b) *Other methods.*

(1) Contracting officers may use methods other than those prescribed in 1515.970 for establishing profit or fee objectives under the following types of contracts and circumstances:

(i) Architect-engineering contracts;

(ii) Personal service contracts;

(iii) Management contracts, e.g., for maintenance or operation of Government facilities;

(iv) Termination settlements;

(v) Services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor's contribution constitutes the furnishing of personnel.

(vi) Construction contracts; and

(vii) Cost-plus-award-fee contracts.

(2) Generally, it is expected that such methods will:

(i) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under "Profit Factors," in 1515.970–2, and

(ii) Serve as a basis for documentation of the profit or fee objective.

(c) Under unusual circumstances, the CCO may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing, and authorized only in situations where the guidelines method is unsuitable. In the event that any of the methods used would result in establishing a fee objective in violation of limitations established by statute (see FAR 15.404–4(b)(4)(i)), the maximum fee objective shall be the percentage allowed pursuant to such limitations. No administrative ceilings on profits or fees shall be established.

(d) The contracting officer shall not consider any known subcontractor profit/fee as part of the basis for determining the contractor profit/fee.

1515.903 Cost realism.

The EPA structured approach is not required when the contracting officer is evaluating cost realism in a competitive acquisition.

1515.905 Profit-analysis factors.

Profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.404–4(d)(1), and additional factors authorized by FAR 15.404–4(d)(d) to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.970–2.

1515.970 EPA structured approach for developing profit or fee objectives.

1515.970–1 General.

(a) The Agency's policy is to utilize profit to attract contractors who possess talents and skills necessary to the accomplishment of the objectives of the Agency, and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relevant factors be considered, and that fair and reasonable amounts be negotiated which give the contractor a profit objective commensurate with the nature of the work to be performed, the contractor's input to the total performance, and the risks assumed by the contractor.

(b) To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and (EPAAR) 48 CFR 1515.970–2(a)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract's overall effort, and the range of weights to be applied to each profit factor.

1515.970–2 EPA structured system.

(a)(1) *Profit/fee factors.* The factors set forth in the following table, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

	Weight range (percent)
Direct material	1 to 5.
Professional/technical labor	8 to 15.
Professional/technical overhead	6 to 9.
General labor	5 to 9.
General overhead	4 to 7.
Subcontractors	1 to 4.
Other direct costs	1 to 3.
General and administrative expenses.	5 to 8.
Contractor's assumption of contract cost risk.	0 to 6.

(2) The contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee (see FAR 15.404–4(c)(3)). The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205–10, and the Appendix to the FAR (see 48 CFR 9904.414).

(4) After computing a total dollar profit or fee for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900–2 to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed in this subsection are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code (Title 26, United States Code).

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, a special factor of –3 percent shall be assigned in all cases.

(b) Assignment of values to specific factors—

(1) *General.* In making a judgment on the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluation set forth in this paragraph.

(2) *Contractor's input to total performance.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is separate from the contractor's responsibility for contract performance, takes into account what resources are necessary, and the creativity and ingenuity needed for the contractor to perform the statement of work successfully. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value, quantity, and quality, and that the profit or fee objective should reflect the extent and nature of the contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct material (purchased parts and other material).* (A) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required material. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design.

(B) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and to select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition.

(C) Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation.

(D) If intracompany transfers are accepted at price, in accordance with FAR 31.205–26(e), they should be excluded from the profit or fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(E) Normally, the lowest weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor in relation to the total cost of the material.

(ii) *Professional/technical and general labor.* Analysis of labor should include evaluation of the comparative quality and level of the talents and experience to be employed. In evaluating labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed, in contrast to journeyman effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance, and the corresponding need for supervision and coordination, should also be evaluated.

(iii) *Overhead and general and administrative expenses.* (A) Where practicable, analysis of these overhead items of cost should include the evaluation of the individual elements of these expenses, and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools, and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration as if they were direct labor. The other elements of indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead expenses within the classification of professional/technical overhead, general overhead and general and administrative expenses.

(iv) *Subcontractors.* (A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the contractor is using subcontractors to perform labor which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(B) In accordance with (EPAAR) 48 CFR 1515.902(d), whenever the subcontractor profit/fee is known to the contracting officer, that profit/fee shall not be considered as part of the basis for determining the contractor profit/fee.

(v) *Other direct costs.* Items of costs, such as travel and subsistence, should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of

(A) The degree of cost responsibility the contractor assumes,

(B) The reliability of the cost estimates in relation to the task assumed, and

(C) The chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a low rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

1552.217–73 [Amended]

3. Section 1552.217–73 is amended by revising the clause heading as follows:

1552.217–73 Option for Increased Quantity—Cost Type Contract (JUN 1997)

1552.217–74 [Amended]

4. Section 1552.217–74 is amended by revising the clause heading as follows:

1552.217–74 Option for Increased Quantity—Cost Plus Award Fee Contract (JUN 1997)

Dated: October 27, 1997

John C. Gherardini,

Acting Director, Office of Acquisition Management.

[FR Doc. 97–29593 Filed 11–10–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970520118–7251–02; I.D. 050197A]

RIN 0648–AJ00

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Standard Allowances for Ice and Slime

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that establishes standard allowances for ice

and slime found on unwashed Pacific halibut and sablefish landed in the Individual Fishing Quota (IFQ) fisheries for these species and incorporates them into the conversion factors for halibut and product recovery rates for sablefish used by NMFS to debit IFQ accounts. This action is necessary to correct inaccuracies in the current accounting process for landed IFQ product and is intended to support the goals and objectives of the IFQ program.

DATES: Effective December 12, 1997.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from: National Marine Fisheries Service, Alaska Region, Fisheries Management Division, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands in the exclusive economic zone are managed by NMFS pursuant to the fishery management plans (FMPs) for groundfish in the respective management areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773 *et seq.*, authorizes the Council to develop, and NMFS to implement, regulations applicable in waters under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea to allocate halibut fishing privileges among U.S. fishermen.

Under these authorities, the Council developed the IFQ program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries. The IFQ program was approved by NMFS, and fishing under that program began in March 1995. The Magnuson-Stevens Act and the Halibut Act authorize the Council and NMFS to make regulatory changes to the IFQ program that are consistent with the FMPs and that are necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

Rationale and Management Action for Establishing Standard Allowances for Ice and Slime

Accurately accounting for the harvest of IFQ halibut and IFQ sablefish (IFQ species) is an important component of the IFQ program. Participants in the IFQ program are given specified allocations of IFQ species. Inaccurate accounting of the harvest of these allocations could cause either the underharvesting or overharvesting of IFQ species.

A major source of inaccurate accounting currently occurs because the current regulations do not provide for the adjustment of landed weights of unwashed IFQ species by either NMFS or program participants (fishermen and purchasers). An adjustment is needed to allow participants landing fish or fish products with ice and slime to harvest their full IFQ species share. Participants have been making, without regulatory authorization, adjustments of up to 9 percent to account for ice and slime. To the extent that the amount of adjustment is too high, these participants harvest more than their IFQ species share, potentially leading to a total overharvest. Also anecdotal reports from industry indicate that some purchasers of IFQ species have used their practice of making high ice and slime allowance adjustments to the weights they report to NMFS as an inducement to fishermen to deliver their catch to them rather than to a competitor who makes no adjustment or at least attempts to make a fair adjustment. The larger the percentage allowance for ice and slime used, the smaller the amount of landed IFQ species is reported to NMFS and the smaller the deduction from an IFQ participant's account with the ultimate consequence being overharvest. This method of inducing a participant's business is unfair to other purchasers of IFQ species.

In recognition that persons who land unwashed IFQ fish and products and who, in compliance with the regulations, report actual scale weights do not get to harvest their full IFQ shares while those who land washed fish and products do, and those who make unauthorized deductions harvest more than their share, NMFS proposed establishing a standard allowance of 2 percent for ice and slime on unwashed IFQ species (62 FR 32734, June 17, 1997). A 2-percent allowance for unwashed Pacific halibut is based on long-standing industry convention and has been accepted by the International Pacific Halibut Commission (IPHC), the international body entrusted with the primary responsibility for managing Pacific halibut. A 2-percent allowance for unwashed sablefish was proposed by the industry. NMFS specifically requested comments on this proposed standard. Only one comment was received. That comment is addressed in the comment section below.

NMFS, by this rule, adopts a 2-percent allowance for ice and slime on unwashed halibut and sablefish. NMFS is implementing this allowance by incorporating it into the conversion factors and product recovery rates it uses to adjust reported weights to "standardized" weight measurements when debiting a participant's IFQ account. When applying conversion factors and product recovery rates, NMFS relies on product codes. The following new product codes are established and codified to accommodate the new conversion factors and product recovery rates for the ice and slime standard allowance: Product code 51—Whole fish/food fish with ice and slime (sablefish only); product code 54—Gutted only with ice and slime (Pacific halibut and sablefish); product code 55—Headed and gutted with ice and slime (Pacific halibut only); product code 57—Headed and gutted, Western cut, with ice and slime (sablefish only); and Headed and gutted, Eastern cut, with ice and slime (sablefish only). IFQ program participants are to use these new product codes only for unwashed IFQ species. Existing product codes 01, 04, 05, 07, and 08 are available for washed IFQ species (i.e., IFQ species without ice and slime).

These changes do not affect the requirement that IFQ program participants accurately report the scale weight actually measured without any adjustments at the time of landing. NMFS will adjust these weights to compensate for ice and slime by using the appropriate conversion factor or product recovery rate based on the product code(s) reported. By NMFS adopting a standard allowance and by NMFS doing the adjustments instead of industry participants, the practice of some industry participants using large allowances to "induce" business will be eliminated and the playing field will be leveled for all. Recording any amount on the IFQ landing report that is different from the scale weight actually measured at time of landing is a violation of the regulations and is subject to penalty.

Other Changes Made by This Action

The following changes are made to the regulatory text found at 50 CFR part 679 to clarify ambiguities concerning IFQ program requirements and deducted amounts.

First, the information required by § 679.5(l)(1)(iv) to be reported by IFQ landing reports is clarified by changing the words "fish product weight of sablefish and halibut landed" to "the scale weight of the product at the time of landing."

Second, the requirement to "sign any required fish ticket" in § 679.42(c)(3) is separated from the requirement to sign the IFQ landing report. Separating these requirements is intended to clarify that the IFQ landing report is the exclusive source of data NMFS will use to debit an IFQ account and to make all other IFQ calculations (e.g., adjustments under § 679.40(c)).

Third, the regulatory text in § 679.42(c)(3) (i) and (ii) explaining exactly what amount must be reported to NMFS for debit against an IFQ account is removed. These requirements will now appear at § 679.5(l)(1)(iv). Other provisions that were found in § 679.42(c)(3) (i) and (ii) are moved to § 679.42(c)(2), and new language is added to § 679.42(c)(2) specifying that the IFQ landing report will be the exclusive source of data NMFS will use for debiting an IFQ account.

Response to Comments

NMFS received one letter of comment was received on the proposed rule during the comment period. The following paragraphs summarize and respond to that comment.

Comment 1: The commenter fully supports establishing a standard allowance for ice and slime on unwashed IFQ species; however, the commenter indicates that 4 percent, rather than 2 percent, is a more accurate percentage based on derived recovery rates on IFQ species purchased and prepared for marketing. Further, the commenter states that the derived recovery rates are also affected by the allowance for heads, which is fixed at 10 percent for Pacific halibut. For example, when the weights of the heads of IFQ species are a greater percentage of body weight than the current allowance for heads, which frequently occurs with smaller fish, recovering buying and processing costs, even with a 4 percent allowance for ice and slime, is difficult. The head weight/body weight ratio is also affected by where the head is severed from the body. Historically, the standard head cut used to be on the back side of the eye socket; currently the head cut must be through the middle of the eye socket, or even lower, to achieve an economically viable head weight/body weight ratio.

Response: Historical information and the best available data support the determination that 2 percent is an appropriate standard allowance for ice and slime. Calculating an allowance for ice and slime by comparing recovery rates of purchased product to processed product is not statistically accurate because it does not account for other variables, such as the loss of body weight through loss of moisture content, different head cuts, etc. The only statistically accurate method of deriving a percentage for an allowance for ice and slime is to measure the product before and after washing. To ensure the accuracy of the percentage, the time period between the two weighings should be minimal and the product should not be affected by any other procedures, such as heading the product or chilling the product. Changing the ice and slime standard allowance to account for varying head weights is inappropriate. Furthermore, NMFS contacted the IPHC and confirmed that the standard head cut percentage allowance is based on a head cut through the second eye ball. Therefore, cutting the head behind the eye socket would change the head weight/body weight ratio. This change would reduce the processed product weight, thereby requiring an increase in some allowance to account for the loss. This could be the reason why the commenter prefers 4 percent, rather than 2 percent ice and slime allowance to achieve an economically viable derived rate. However, the two allowances should not be dependent on one another and, for the reasons stated above, a 2-percent standard allowance for ice and slime is appropriate.

Changes Made to the Final Rule

Two changes were made to the final rule as compared with the proposed rule. First, the fifth clause of the first sentence of § 679.5(l)(1)(iv) was removed because it was the same as the previous clause. Second, the words "actually measured" and "actually measured and reported" were removed from § 679.5(l)(1)(iv) and § 679.42(c)(2)(i) and (ii), respectively.

These phrases did not add any additional clarification to the regulatory text.

Classification

NMFS prepared an EA/RIR for this rule, and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the quality of the human environment as a result of this rule. This action will not significantly alter the impacts analyzed in the Final Environmental Impact Statement (FEIS) for the IFQ program. A copy of the FEIS for the IFQ program or the EA/RIR for this action is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Fisheries, Recordkeeping and reporting requirements.

Dated: November 4, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.5, paragraph (l)(1)(iv) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(1) * * *

(iv) *Information required.* Information contained in a complete IFQ landing report shall include: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; product type landed; and the scale weight of the product at the time of landing.

* * * * *

3. In § 679.42, paragraph (c) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(c) *Requirements and deductions.* (1) Any individual who harvests halibut or sablefish with fixed gear must:

(i) Have a valid IFQ card.

(ii) Be aboard the vessel at all times during the fishing operation.

(iii) Sign any required fish ticket.

(iv) Sign the IFQ landing report required by § 679.5(l)(1)(iv).

(2) The scale weight of the halibut or sablefish product actually measured at

the time of landing, required by § 679.5(l)(1)(iv) to be included in the IFQ landing report, shall be the only source of information used by NMFS to debit an IFQ account. An IFQ account will be debited as follows:

(i) For sablefish product, dividing the scale weight at the time of landing by the product recovery rate found in Table 3 of this part that corresponds to the product code reported in the IFQ landing report; or

(ii) For halibut product, multiplying the scale weight at the time of landing by the conversion factor listed in paragraph (c)(2)(iii) of this section that corresponds to the product code reported in the IFQ landing report.

(iii) *Halibut conversion factors.*

Product code	Product description	Conversion factor
04	Gutted, head on	0.90
05	Gutted, head off	1.00
54	Gutted, head on, with ice and slime	0.88
55	Gutted, head off, with ice and slime	0.90

4. In 50 CFR part 679, Table 1 is amended by adding the following fish product codes/descriptions in numerical order to read as follows:

TABLE 1 TO PART 679—PRODUCT CODES

Fish product code	Description
5	*Headed and gutted.* Pacific halibut only.
51	*Whole fish/food fish with ice and slime.* Sablefish only.
54	*Gutted only with ice and slime.* Belly slit and viscera removed. Pacific halibut and sablefish only.
55	*Headed and gutted with ice and slime.* Pacific halibut only.
57	*Headed and gutted, Western cut, with ice and slime.* Sablefish only.
58	*Headed and gutted, Eastern cut, with ice and slime.* Sablefish only.

5. In 50 CFR part 679, Table 3 is amended by adding new product code columns with the following descriptions and product code numbers between Column 37 (Butterfly Backbone Removed) and Column 96 (Decomposed Fish) and adding the following product recovery rate values for the listed FMP species "SABLEFISH" in new columns 51, 54, 57, and 58:

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES PRODUCT CODE

FMP species	Species code	Whole fish/ food fish with ice and slime	Gutted with ice and slime	H&G western cut with ice and slime	H&G eastern cut with ice and slime
		51	54	57	58
Sablefish	710	1.02	0.91	0.70	0.65

[FR Doc. 97–29707 Filed 11–10–97; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 218
Wednesday, November 12, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Parts 204

[Regulation D; Docket No. R–0968]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to Regulation D, Reserve Requirements of Depository Institutions, to move from the current system of contemporaneous reserve maintenance for institutions that are weekly reporters to a system under which reserves are maintained on a lagged basis by such institutions. Under a lagged reserve maintenance system, the reserve maintenance period for a weekly reporter will begin 30 days after the beginning of a reserve computation period. Under the current system, the reserve maintenance period begins only two days after the beginning of the computation period.

DATES: Comments must be submitted on or before January 12, 1998.

ADDRESSES: Comments, which should refer to Docket No. R–0988, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Whitesell, Section Chief, Money and Reserves Projections Section, Division of Monetary Affairs (202/452–2967); Oliver Ireland, Associate General Counsel, (202/452–3625) or Lawranne Stewart, Senior Attorney (202/452–3513), Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In order to satisfy the reserve requirements imposed under Regulation D (Reserve Requirements of Depository Institutions), depository institutions that file detailed deposit reports with the Federal Reserve once a week ("weekly reporters") are required to maintain reserves against their deposits on a virtually contemporaneous basis.[1] Weekly reporters are required to maintain average reserve balances over a 14-day reserve maintenance period that begins only two days after the beginning of the 14-day computation period.[2] The requirement for contemporaneous reserve maintenance was implemented in 1984 to enhance the conduct of monetary policy by strengthening the ability of the Board to control M1, the narrowest measure of the money supply, through operations directed at the supply of reserves.[3]

Since that time, however, the Federal Reserve's operating procedures have changed and it no longer maintains target ranges for M1. Additionally, the use of contemporaneous reserve maintenance requires depositories and the Federal Reserve to estimate and project the quantity of reserves that will be needed to meet reserve requirements during the current maintenance period. These estimates have become increasingly difficult to formulate with any precision on a timely basis, in part because of the implementation by many depository institutions of retail sweep programs. Such programs have lowered required reserves for institutions that have implemented them and have increased uncertainties regarding the reserve balances depository institutions must hold at the Reserve Banks. For example, for some large institutions, required reserves are sometimes above and sometimes below their holdings of vault cash, with the result that it is difficult to project reliably the extent to which reserves in excess of applied vault cash will be required by these institutions.

The Board therefore is requesting comment on a proposal to amend Regulation D to return to a system of lagged reserve requirements. Under the proposal, a lag of thirty days (two full maintenance periods) would be introduced between the beginning of a reserve computation period and the beginning of the maintenance period during which reserves for that computation period must be maintained. The reserve maintenance period therefore would not begin until seventeen days after the end of the computation period. The proposal also provides for a two-period lag in the computation of the vault cash to be applied to satisfy reserve requirements.[4] Providing a two-period lag for both required reserves and applied vault cash will allow the Federal Reserve, as well as the depository institutions, to calculate the level of required reserve balances before the beginning of the maintenance period. The increased lag also should reduce the level of resources that depository institutions and the Federal Reserve currently must devote to estimating and projecting required reserve balances.

The Board's proposal will not affect the provisions of Regulation D concerning the carryover of excess or deficiencies in a depository institution's reserve account.

The Board proposes to implement the shift to a lagged reserve requirement in July 1998. The Board believes that the transition to the new system could be

[1] Weekly reporters include domestic depository institutions with total reservable liabilities greater than the exemption amount provided by the zero-reserve tranche, currently $4.4 million, and total deposits at or above the deposit cut-off established for institutions that are not fully exempt from reserve requirements, currently $75 million. U.S. branches and agencies of foreign banks and Edge and Agreement corporations, regardless of their size, must report weekly.

Institutions that are not weekly reporters file deposit reports on either a quarterly or annual basis, depending on the size of their total deposits and their total reservable liabilities. This proposal will have no effect on those institutions.

[2] In the past, the threshold deposit level for weekly reporters has been indexed to the growth of total deposits and revised annually. As part of the Board's most recent review of the deposit reporting forms, however, the threshold deposit level for weekly reporting of deposits was raised to $75 million, effective as of the reporting week ending September 15, 1997.

[3] See 47 FR 44705 (October 12, 1982).

[4] Applied vault cash for an individual institution is equal to the lesser of total vault cash or required reserves.

made most easily after completion of the changeover of software used by the Federal Reserve to process most data flows, currently projected for March 1998, and prior to the annual deposit panel shifts that will take place in September 1998.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. An initial regulatory flexibility analysis must include: (1) A description of the reasons why action by the agency is being considered; (2) a statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rules. 5 U.S.C. 603(b).

As discussed above, the Board is considering this action to improve the ability of the Federal Reserve to estimate accurately the need for reserves on a timely basis, with the objective of ensuring greater effectiveness of the Federal Reserve's open market operations. Under section 19 of the Federal Reserve Act, the Board is authorized to promulgate rules concerning the maintenance of reserves. 12 U.S.C. 461(c). The Board does not believe that there are any Federal rules that duplicate, overlap, or conflict with the proposed rule.

The proposal will affect only institutions that are weekly deposit reporters, which generally include depository institutions that have total deposits of $75 million or greater, as only these institutions currently are required to maintain reserves on a contemporaneous basis.[3] The proposed amendments will not increase reporting or recordkeeping requirements associated with Regulation D for institutions that are weekly reporters, but will significantly simplify compliance with the rule for these institutions. The proposal therefore will not increase regulatory burden on small institutions generally and will reduce regulatory burden for those small institutions that are affected.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board proposes to amend part 204 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.3, paragraph (c) is revised to read as follows:

§ 204.3 Computation and maintenance.

* * * * *

(c) *Computation of required reserves for institutions that report on a weekly basis.* (1) Required reserves are computed on the basis of daily average balances of deposits and Eurocurrency liabilities during a 14-day period ending every second Monday (the "computation period"). Reserve requirements are computed by applying the ratios prescribed in § 204.9 to the classes of deposits and Eurocurrency liabilities of the institution. In determining the reserve balance that is required to be maintained with the Federal Reserve, the average daily vault cash held during the computation period is deducted from the amount of the institution's required reserves.

(2) The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a 14-day period (the "maintenance period") that begins on the third Thursday following the end of a given computation period.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–29761 Filed 11–10–97; 8:45 am]

BILLING CODE 6210–01–P

[3] While weekly reporters that are Edge or Agreement corporations or U.S. branches or agencies of a foreign bank may have deposits of less than $75 million, the deposits of these entities represent only a portion of the total deposits of the larger organizations to which they belong.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE35

Reduction of Disability Benefits—Workers' Compensation and Public Disability Benefits and Payments

AGENCY: Social Security Administration.

ACTION: Proposed rules; extension of comment period.

SUMMARY: On September 4, 1997, in the **Federal Register** (62 FR 46682), we published a proposal to revise our rules on the reduction of Social Security benefits based on disability on account of receipt of workers' compensation and/or public disability benefits and payments provided under Federal (other than Social Security), State, or local laws or plans to clarify our existing policies. To allow the public additional time to send us comments, we are extending the comment period. We are also making a few changes in the address and contact information.

DATES: To be sure that your comments are considered, we must receive them no later than January 5, 1998.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov", or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–0001, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules.

Dated: November 6, 1997.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 97–29842 Filed 11–10–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 50

Draft Program Policy Letter on Reporting Occupational Illness

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) voluntarily requests comments on a draft Program Policy Letter (PPL) that restates the reporting requirements of 30 CFR part 50 as they apply to occupational illnesses among miners, including retired or inactive miners. MSHA is publishing this notice to afford an opportunity for interested persons to comment on the draft PPL before it is issued.

DATES: Submit comments on or before January 12, 1998.

ADDRESSES: Send written comments to George M. Fesak, Program Evaluation and Information Resources, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 715, Arlington, Virginia 22203. Commenters are encouraged to submit comments on a computer disk or via e-mail to gfesak@msha.gov, along with an original hard copy.

FOR FURTHER INFORMATION CONTACT: George Fesak or Jay Mattos, 703–235–8378.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements associated with this policy are approved by the Office of Management and Budget (OMB) under OMB control number 1219–0007.

II. Background

MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPL's). These PPL's are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPL's do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPL's are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations. Once adopted, the policy statements are published in the MSHA Program Policy Manual and given wide distribution.

To increase public participation in selected draft PPL's, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the selected PPL's. By this notice, MSHA is affording an opportunity for public comment on a draft PPL that restates the reporting requirements for occupational illnesses. The text of the draft PPL follows this supplemental information. MSHA will consider all timely submitted comments before finalizing the PPL.

III. Discussion of Draft Policy

The mining industry has made significant improvements over the last few decades in protecting the health and safety of the men and women who work in the nation's mines. Significant progress has been made in reducing the number of fatal mining accidents and cases of occupational illness, but some miners continue to suffer from work-related illnesses such as black lung disease, occupational asthma, silicosis, asbestos-related diseases, and musculoskeletal disorders, conditions which can disable miners and sometimes lead to premature death.

In order for the mining community to accurately assess the risks to miners' health, accurate information on mining-related illnesses and deaths is essential. The primary way for MSHA to receive data on occupational illnesses is through the reporting requirements of 30 CFR part 50. Reports under part 50 provide MSHA with comprehensive information about the nature and extent of work-related illnesses in the mining industry. Part 50 occupational illness reports alert MSHA to potential health hazards and expedite corrective action to reduce or eliminate hazards. They also allow MSHA to verify that current health hazard controls are effective, to tailor its health-related education and training efforts, and to provide effective technical assistance to miners and operators.

Some work-related illnesses, such as cyanide poisoning, are acute illnesses. Other occupational illnesses may take years to detect or develop and may not be recognized until after a miner leaves employment. As a result, a miner may be retired or otherwise off-work or deceased before an occupational illness is diagnosed or an award of compensation is made. Reporting the occupational illnesses of retired and former miners, along with active miners, is essential for providing a true picture of health conditions and practices in the mining industry, as well as for evaluating the effectiveness of controls in preventing work-related disease.

Section 50.20(a) requires mine operators, including independent contractors, to submit a report to MSHA when they are notified or otherwise learn that a miner has an illness which may have resulted from work in a mine, or for which an award of compensation has been made. Within 10 working days of becoming aware of such a diagnosis or award of compensation, the operator is required to report the occurrence by completing and mailing a Form 7000–1 to MSHA. An intent to contest the award or diagnosis does not relieve the mine operator of the responsibility to file the required report within 10 working days. (However, an operator need not report to MSHA within 10 working days any chest x-ray result if the operator is actively seeking a more definitive second opinion in a timely manner and has supporting documentation.)

Since 1978, when MSHA's part 50 requirements took effect, some mine operators have reported cases of occupational illness in retired and inactive miners formerly employed at the operators' mines. For example, in the past 5 years, one mine operator reported a case of lung disease to the Agency, stating that the "former employee has been informed by his doctor that he has contracted an occupational disease." Another mine operator reported to MSHA that an "employee has received an award from workers comp for exposure to coal dust * * * employee is now retired from this mine." A third mine operator reported cases of noise-induced hearing loss among retired miners. MSHA is concerned, however, that other mine operators have limited their reporting to miners who are still working when an occupational illness is diagnosed and that some mine operators have not reported all known work-related illnesses to the Agency. As an example, MSHA has learned of a miner who left his work and died while awaiting a lung transplant for silicosis; his illness was not reported to the Agency. Limiting reporting to currently employed miners understates the risk of work-related illness in mining and impairs MSHA's ability to take necessary corrective action to reduce hazards and protect the health of miners.

MSHA previously clarified the issue of reporting responsibilities on retired or inactive miners in 1987 by issuing Program Information Bulletin (PIB) No. 87–4C/87–2M for the purpose of "* * * clarify[ing] operator compliance responsibilities for reporting occupational illnesses * * *" The PIB stated that the reporting requirements of 30 CFR part 50 apply "* * * regardless

of whether the individual is currently working as a miner." The PIB was distributed to the entire mining community including every coal, metal, and nonmetal mine operator in the United States, as well as to key officials of trade and labor associations in the mining community. The text of the PIB is included as Appendix I of this notice. A list of the individuals to whom the PIB was distributed can be obtained from the Agency.

The 1987 PIB was never formally withdrawn, but neither was it incorporated into MSHA's Program Policy Manual, which was first issued in 1988. This may have caused confusion among some mine operators and even certain MSHA personnel about the responsibility to report cases of occupational illness in retired or otherwise inactive miners. This PPL will eliminate any ambiguity about the reporting requirements under part 50.

Beginning on the effective date of the PPL, MSHA will observe a grace period of 90 days to allow for unreported cases of occupational illness in retired or inactive miners from the previous 5 years to be submitted to MSHA in accordance with 30 CFR part 50 without penalty. This grace period will be announced at the time the PPL is issued.

MSHA is issuing this PPL to restate its occupational illness reporting requirements. The purpose of the PPL is to eliminate possible confusion about the reporting requirements as they apply to occupational illnesses among miners, including retired or inactive miners. MSHA requests written comments regarding the PPL from interested persons.

Draft Program Policy Letter

Subject: Reporting Occupational Illness

Scope: This Program Policy Letter (PPL) applies to mine operators, including independent contractors, and Mine Safety and Health Administration (MSHA) enforcement personnel.

Purpose: This PPL clarifies and restates MSHA's requirements for reporting occupational illnesses, including cases involving retired or inactive miners, under 30 CFR Part 50.

Policy: Under 30 CFR 50.20(a), mine operators and independent contractors are required to submit a report to MSHA when they are notified of a diagnosis or otherwise learn that a miner has an illness which may have resulted from work in a mine, or for which an award of compensation has been made. These reporting requirements apply regardless of the employment status of the miner (i.e., active, retired, otherwise off-work, or deceased) at the time of the diagnosis or award. Within 10 working days of becoming aware of such a compensation award or diagnosis, the operator is required to report the occurrence by completing and mailing a Form 7000–1 to MSHA. An intent to contest the award or diagnosis does not relieve the mine operator of the responsibility to file the required report within 10 working days. (The limited exception is that an operator need not report to MSHA within 10 working days any chest x-ray result for which the operator is actively seeking a more definitive second opinion in a timely manner and has supporting documentation, as stated in Program Policy Manual Vol. III, 50.2.)

Effective Date: After considering comments from the public, MSHA anticipates that this PPL will take effect on March 12, 1998 and will be incorporated into MSHA's Program Policy Manual.

Authority: Section 103(h) of the Federal Mine Safety and Health Act of 1977.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Appendix I

[Note: This is the text of the Program Information Bulletin that was widely distributed to the mining community in 1987. No changes have been made to the text. It is reprinted here solely for the convenience of miners, mine operators, and independent contractors.]

August 31, 1987

MSHA Program Information Bulletin No. 87–4C and 87–2M

Subject: Reporting Occupational Illnesses to MSHA

The purpose of this Bulletin is to clarify operator compliance responsibilities for reporting occupational illnesses under the Federal Mine Safety and Health Act of 1977.

Title 30, Code of Federal Regulations, Part 50 requires mine operators to report occupational illnesses of miners. A miner is defined as "any individual working in a mine," and occupational illness is defined as "an illness or disease which may have resulted from work at a mine or for which an award of compensation is made." Illnesses that are reportable include noise-induced hearing loss, silicosis, coal workers' pneumoconiosis (black lung), poisoning by toxic materials, and cancer. Part 50 further requires that the operator mail a completed Form 7000–1 to the Mine Safety and Health Administration (MSHA) within 10 working days after a miner is diagnosed as having an occupational illness.

Industry reporting activity for occupational illnesses suggests there is operator uncertainty about the relationship between Part 50 reporting obligations and the information provided to the operator through Federal and State occupational illness compensation programs.

In order to ensure that data reported by mine operators reflects the incidence of occupational illnesses associated with the mining industry, the reporting requirements of Part 50 apply when compensation programs provide an operator notice that an individual has been awarded compensation for or is diagnosed as having an occupational illness resulting from employment in a mine, regardless of whether the individual is currently working as a miner. Thus, within 10 days of becoming aware of any such compensation award or diagnosis, the operator must report the occurrence by completing and mailing a Form 7000–1 to MSHA.

Accordingly, effective 30 days after the issuance date of this Bulletin, MSHA will require that operators report occupational illnesses consistent with the Part 50 regulations and the clarification provided by this bulletin. MSHA's district and subdistrict offices will be pleased to provide additional guidance or assistance regarding the reporting of occupational illnesses and the proper completion of the Form 7000–1.

Roy. L Bernard,

Administrator, Metal and Nonmetal Mine Safety and Health.

Jerry L. Spicer,

Administrator, Coal Mine Safety and Health.

Inquiries

William H. Sutherland, Chief, Division of Health, Coal Mine Safety and Health, (703) 235–1358

Marvin W. Nichols, Jr., Chief, Division of Health, Metal and Nonmetal Mine Safety and Health, (703) 235–8307

Distribution

All Mine Operators, Coal and Metal and Nonmetal Coal District Managers, Mine Safety and Health Metal and Nonmetal District Managers, Mine Safety and Health Principal Officials, Headquarters Superintendent, National Academy

[FR Doc. 97–29635 Filed 11–10–97; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5919–7]

RIN 2060–AE–81

National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: The EPA is announcing a 30-day reopening of the public comment period for the proposed "National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production." As initially published in the **Federal Register** on September 4, 1997 (62 FR 46804), written comments on the proposed rule were to be submitted to the EPA on or before November 3, 1997 (a 60-day public comment period). The public comment period is being reopened for 30 days and will now end on December 3, 1997.

DATES: Comments must be received on or before December 3, 1997.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–96–38, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Mr. David Svendsgaard; Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380.

SUPPLEMENTARY INFORMATION: *Electronic Filing.* Electronic comments can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–96–38. Electronic comments may be filed online at many Federal Depository Libraries.

Discussion

On September 4, 1997, at 62 FR 46804, the EPA published the proposed National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production and provided a 60-day public comment period. Requests have been received to extend the public comment period beyond the 60 days originally provided. These requests have been made by businesses that will be affected by the rule. In consideration of these requests, the EPA is reopening the comment period by 30 days (until December 3, 1997), in order to give all interested persons the opportunity to comment fully.

Dated: November 3, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–29735 Filed 11–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[FRL–5919–5]

Proposed Alternative Tier 2 Requirements for Baseline Gasoline and Oxygenated Gasoline Categories of Methyl Tertiary Butyl Ether, Ethyl Alcohol, and Other Oxygenates

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The purpose of this document is to announce that the Environmental Protection Agency (EPA) is extending the comment periods, which published on September 9, 1997 (62 FR 47400), on the proposed Alternative Tier 2 testing requirements under the fuel and fuel additive (F/FAs) registration testing requirements of 40 CFR part 79, subpart F an additional 60 days.

EPA has extended the comment periods for the following reasons. First, the API 211(b) Research Group has requested an extension because there are many inherent complexities in the proposed testing, especially in regard to the required exposure work. Second, the public has shown an interest in the testing being required under the proposed Alternative Tier 2 notification.

DATES: Comments on these proposed Alternative Tier 2 provisions must be received from the public by January 7, 1998. Comments on the proposed Alternative Tier 2 provisions now must be received from the API 211(b) Research Group within 120 days of their initial receipt of the proposed testing regimen.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–96–16, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Materials relevant to this rulemaking have been placed in Docket A–96–16. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: John Brophy, Environmental Scientist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9068.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture gasoline with or without the fuel additives MTBE, ethyl tertiary butyl ether (ETBE), ethyl alcohol (EtOH), tertiary amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary butyl alcohol (TBA) and manufacturers of these oxygenates and other gasoline additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, oxygenate and fuel additive manufacturers.

This table is not intended to be exhaustive, but, rather illustrates the types of entities that EPA is currently aware of that are likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether an entity not described by the examples listed in the table is subject to these requirements, refer to the applicability criteria in part 79 of title 40 of the Code of Federal Regulations. If questions remain regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This document serves as a notice to all manufacturers of the subject F/FAs, that are not exempted from these requirements section.

EPA has extended the comment periods for the following reasons. First, the API 211(b) Research Group has requested an extension because there are many inherent complexities in the proposed testing, especially in regard to the required exposure work. Second, the public has shown an interest in the testing being required under the proposed Alternative Tier 2 notification.

Therefore, EPA has decided to extend the comment periods for both the the API 211(b) Research Group and for the public in order to assure that all commenters are able to fully review and comment on the proposed testing regimen.

The Agency notified the API 211(b) Research Group, by certified letter of the 60-day extension and a copy of this extension letter as well as the

notification letter of the proposed tests and schedule under the Alternative Tier 2 provisions have been placed in the public record.

In accordance with 40 CFR 79.56(a), manufacturers of F/FAs may satisfy the Subpart F testing requirements on a group basis, e.g. the API 211(b) Research Group. Each individual manufacturer that is a member of such a group, however, continues to be individually subject to the testing and data submission requirements.

This document serves as a notice to all manufacturers of the subject F/FAs, that are not exempted from these requirements under the small business provisions of 40 CFR 79.58(d), that they are subject to these requirements.

List of Subjects in 40 CFR Part 79

Environmental protection, Air pollution control, Gasoline, Conventional gasoline, Oxygenates, Methyl tertiary butyl ether, and Motor vehicle pollution.

Dated: November 3, 1997

Richard D. Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 97–29594 Filed 11–10–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE 27

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Threatened Status for Newcomb's Snail From the Island of Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed threatened status for Newcomb's snail (*Erinna newcombi*). In addition, the Service has reopened the comment period. All parties are invited to submit comments on this proposal.

DATES: The public comment period now closes on December 15, 1997. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 2:00 p.m. to 4:00 p.m. and from 6:00 p.m. to 8:00 p.m. on Wednesday, December 3, 1997.

ADDRESSES: The public hearing will be held at the Outrigger Kauai Beach Hotel, 4331 Kauai Beach Drive, Lihue, Kauai, Hawaii. Written comments and materials concerning this proposal may be submitted at the hearing or sent directly to Mr. Brooks Harper, Field Supervisor, Ecological Services, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 3108, P.O. Box 50088, Honolulu, HI 96850. Comments and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Christine Willis (see **ADDRESSES** section) or at 808/541–3441.

SUPPLEMENTARY INFORMATION:

Background

Newcomb's snail (*Erinna newcombi*) is a freshwater snail restricted to the island of Kauai, Hawaii. The distribution of this snail has greatly decreased from the known historic distribution and extant populations are presently limited to restricted habitats within five perennial streams on State land. The five known populations of this snail and its habitat are currently threatened by predation by a species of non-native predatory snail and two species of non-native marsh flies. These populations are also subject to an increased likelihood of extirpation from water development projects and naturally occurring events, including natural disasters such as hurricanes and landslides.

On July 21, 1997, the Service published a rule proposing threatened status for Newcomb's snail in the **Federal Register** (62 FR 38953–38958). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. A public hearing request by the State of Hawaii, Department of Land and Natural Resources, was received within the allotted time period. The Service has scheduled a public hearing on Lihue, Kauai on Wednesday, December 3, 1997, at the Outrigger Kauai Beach Hotel from 2:00 to 4:00 p.m. and from 6:00 to 8:00 p.m.

Oral and written comments will be accepted and treated equally. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

The comment period on the proposal was initially closed on September 19, 1997. To accommodate the hearing, the public comment period is reopened upon publication of this notice. Written comments may now be submitted until December 15, 1997, to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Christine Willis (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 3, 1997.

Cynthia U. Barry,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 97–29439 Filed 11–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971030259–7259–01; I.D. 101497C]

RIN 0648–AJ90

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 24

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 24 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). This framework would implement measures to adjust the Gulf of Maine (GOM) cod trip limit provision (1,000 lbs (453.6 kg) per day; 1,500 lbs (680.4 kg) per day, starting with day 5) by requiring vessels to come into port and report to NMFS at least once every 14 days and, for those vessels that exceed the trip limit, to remain in port until days-at-sea (DAS) used equate to the allowable cod landings and by adjusting the trip limit boundary line from 42°00' N. lat. to 42°20' N. lat. east of 69°30' W. long.; allow vessels to carry-over up to 10 unused multispecies DAS into the next fishing year; and exempt vessels that fish in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area from certain provisions of the NE multispecies FMP, such as the DAS program. The intended effect of this rule is to improve the effectiveness of the GOM cod trip limit, promote safety, and provide flexibility and opportunity to vessels fishing under the multispecies stock-rebuilding program.

DATES: Comments must be received on or before December 10, 1997.

ADDRESSES: Comments on the rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930 ATTN: Susan A. Murphy. Copies of Amendment 7 to the FMP (Amendment 7), its regulatory impact review (RIR), and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 24 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906–1097.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator (See **ADDRESSES**) and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20502 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, (978) 281–9252.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP restrict landings of GOM cod. Vessels fishing under a multispecies DAS north of 42°00' N. lat. are allowed to retain up to 1,000 lb (453.6 kg) of cod per day, or any part of a day, for each of the first 4 days of a trip, and up to 1,500 lb (680.4 kg) of cod per day, or any part of a day, in excess of 4 consecutive days. To minimize discarding, vessels may land cod in excess of the trip limit provided that they do not call-out of the multispecies DAS program until DAS per trip correspond to the total allowable landings of cod per trip.

Recent concern has been raised that the intent of these regulations was being circumvented by fishers directing on GOM cod early in the trip and allowing their DAS clock continue to run while returning to fish for other regulated species. This practice allows vessels to take advantage of the 1,500 lb (680.4 kg) cod trip limit after the fourth day of a "trip," and permits some Trip-gillnet category vessels, which normally bring in their nets at the end of each trip, to leave them in the water.

This framework proposes to adjust the GOM cod trip limit by requiring vessels subject to this provision (i.e., all vessels fishing under a multispecies DAS that are not fishing under the trip limit exemption specified at § 648.86(b)(2) and that have exceeded the trip limit) to remain in port until sufficient DAS have passed to equate to the cod landed. In addition, these vessels would be required to come into port and report to NMFS by calling either the cod hail line or the DAS call-out number within 14 days of starting a trip, whichever is appropriate. For instance, if the trip limit is exceeded, the operator would call the cod hail line, if not exceeded, the operator must call the DAS number and end the trip.

This measure is intended to prevent vessels from "running their clock" and taking advantage of the 1,500 lb (680.4 kg) cod trip limit after the fourth day of a trip, as well as help ensure that Trip-gillnet vessels retrieve their nets from the water periodically. Vessels exceeding the cod trip limit, and thus required to remain in port, may transit to another port, provided the operator or owner calls the cod hail line and reports the vessel name and permit number, time of departure, destination port, and estimated time of arrival before leaving the dock to transit. Transiting vessels would be required to stow all nets and would be prohibited from having fish on board the vessel.

Because current regulations contained in § 648.4(c)(2)(iii)(B) specify that gillnet vessels must select either the Day- or Trip-gillnet category for an entire fishing year, and since the cod trip limit as implemented may have influenced a vessel owner's selection, this framework would allow gillnet vessels to switch categories once during the 1997 fishing year. Vessels electing to change their gillnet category would need to complete the Gillnet Category Designation and Tag Program Application Form within 30 days of the date of effectiveness of the final rule implementing Framework 24. A vessel switching from the Trip- to Day-gillnet category would be required to take the full 120 days out of the gillnet fishery, starting with the time the vessel was issued a Day gillnet category designation.

Also, to better represent the stock boundary between GOM and Georges Bank cod, this framework would modify the current GOM cod trip limit boundary. Specifically, the trip limit boundary line would be modified from 42°00' N. lat. to 42°20' N. lat. east of 69°30' W. long.

Due to a concern that unforeseen circumstances may result in forfeiture of DAS or fishing under unsafe circumstances, such as bad weather conditions or mechanical breakdowns near the end of the year, the Council developed a measure to allow vessels to carry-over up to 10 unused multispecies DAS from one fishing year to the next. This action would credit each active vessel with the amount of unused DAS remaining, up to a maximum of 10. The carry-over allowance could not be accumulated year to year; e.g., a vessel that receives an allocation of 88 DAS per year would not be allowed to use more than 176 DAS over a 2-year period. This measure would promote safety by reducing risk and increasing planning flexibility, while not compromising the conservation impact of the DAS program.

In September 1996 and 1997, NAFO allocated the U.S. allocations of redfish and *Illex* squid, as well as a small effort allocation for shrimp (*Pandalus* sp.). The U.S. has an interest in increasing U.S. participation in NAFO fisheries. In response, the Council developed steps to remove regulatory obstacles to allow vessels to fish for species currently regulated under the FMP and to land in U.S. ports. Specifically, Framework 24 would exempt multispecies vessels that possess a High Seas Fishing Compliance Act permit and that are fishing exclusively in the NAFO Regulatory Area from DAS, minimum mesh size, and possession limit requirements of the multispecies FMP. These vessels would, instead, be subject to the requirements imposed by NAFO. Vessels would be required to call the NMFS Office of Law Enforcement, nearest to the point where the vessel intends to offload, to declare their intent to fish in the NAFO area prior to leaving port, and to call-in by marine radio-telephone to the NMFS Law Enforcement Office nearest to the point of offloading when leaving the NAFO area to return home. If necessary for enforcement or administrative reasons, the Administrator, Northeast Region, NMFS (Regional Administrator) is authorized to require that a NMFS-issued exemption certificate be on board the vessel.

NMFS is requesting comments on the proposed measures contained in this action, and in particular, the proposed modification of the current GOM cod trip limit boundary line. Comments

must be received on or before December 10, 1997.

Classification

This rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is based on the following analysis which takes into account the applicable criteria established by the agency for determining whether economic impacts on small entities are "significant" under the Regulatory Flexibility Act. For the purposes of the GOM cod trip limit adjustment and the 10–DAS carry-over provision, there are approximately 1,650 limited access multispecies vessels, virtually all of which are small entities that are subject to these regulations. However, based on the best available information, both of these measures would affect fewer than 20 percent of the vessels in the fishery. Recent information shows that most vessels have begun redirecting effort off GOM cod and, therefore, are not catching cod at rates greater than the trip limit. Preliminary reports show that for the first 2 months of the 1997 fishing year, 250 calls were made to the cod hail line. This figure constitutes fewer than 5 percent of the 5,300 DAS notification calls made during this time. Further, with a 50 percent DAS reduction now in effect (May 1, 1997), a strong incentive exists for vessels to call-in and end a DAS trip, i.e., not exceeding the cod trip limit. In regards to the DAS carry-over provision, based on 1996 DAS utilization rates, it is anticipated that far fewer than 20 percent of all vessels will utilize their DAS to within 10 days of their annual allocation. Of those that do, only a subset will actually benefit, that is, use the carryover. For the NAFO exemptions proposed in this rule, the universe of vessels for practical purposes is limited to the vessels that are physically capable of making the trip. As these exemptions would apply to all vessels regardless of whether or not they have a multispecies permit, the universe of small entities is all U.S. vessels capable of making the trip. Variables involved in determining ability to make a trip include vessel size, hull design, fuel capacity, captain and crew experience, and weather conditions. Based on this, the number of affected vessels cannot be currently estimated; however, recent information shows that a total of 40 vessels have obtained a High Seas Fishing Compliance Act permit from NMFS and, thus, have indicated an interest in participating in this exemption program. Considering the necessity of vessel capability and the limited number of vessels that have demonstrated an interest thus far in fishing in the NAFO Regulatory Area, the impact of these exemptions is expected to be positive since it provides additional opportunity to fish and, therefore, will not have a significant adverse effect. As a result, an initial regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements. The collection-of-information requirements have been submitted to the OMB for approval under control number 0648–0202, and the estimated response times are as follows:

1. Declaration of transit to another port under the exception to the cod trip limit requirement to remain in port (1–minute response when made in conjunction with a cod hail line call, 3–minutes response when made as a separate call).

2. Declaration to fish in and to leave the NAFO Regulatory Area (3–minutes response for initial call, 5–minutes response for second call).

3. Request for letter of authorization to fish in the NAFO Regulatory Area (3–minutes response).

This rule also restates current information requirements that had been approved by OMB under the PRA and that are needed for the implementation of Framework Adjustment 24. These current information requirements are approved under OMB control number 0648–0202. Their estimated response times are as follows:

1. Declaration into the Trip or Day gillnet vessel category and request for initial gillnet tags requires written declaration (5–minutes response).

2. Declaration of 120 days out of the gillnet fishery in minimum blocks of 7 days requires vessel notification (3–minutes response).

3. Reporting of cod catch on board and off-loaded for vessels fishing north of the cod exemption line, specified at § 648.86(b)(1), while fishing under a NE multispecies DAS requires vessel notification (3–minutes response).

4. Declaration that a vessel will be fishing south of the cod exemption line, specified at § 648.86(b)(2), while fishing under a NE multispecies DAS requires vessel notification (2– minutes response).

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to the Regional Administrator and to OMB (see **ADDRESSES**).

Public comment is sought regarding whether this proposed collection of information is necessary and practical for the proper performance of the functions of the agency; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information techniques or other forms of information technology.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 5, 1997.

David Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definitions for "NAFO", "NAFO Convention Area", and "NAFO Regulatory Area" are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

NAFO means Northwest Atlantic Fisheries Organization.

NAFO Convention Area means the waters of the Northwest Atlantic Ocean north of 35°00' N. lat. and west of a line extending due north from 35°00' N. lat. and 42°00' W. long. to 59°00' N. lat., thence due west to 44°00' W. long., and thence due north to the coast of Greenland and the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78°10' N. lat.

NAFO Regulatory Area means the part of the NAFO Convention Area that lies beyond the 200–mile zones of the coastal States.

* * * * *

3. In § 648.4, paragraphs (a)(1) introductory text and (c)(2)(iii)(B) are revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) *NE multispecies vessels.* Except for vessels that have been issued a valid High Seas Fishing Compliance Act permit, have declared their intent to fish, and fish exclusively in the NAFO Regulatory Area as provided in § 648.17(a), any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). Vessel owners electing a Day gillnet designation must indicate the number of gillnet tags that they are requesting and must include a check for the cost of the tags. A permit holder letter will be sent to all eligible gillnet vessels informing them of the costs associated with this tagging requirement and directions for obtaining tags. Except for fishing year 1997, once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. For the 1997 fishing year, a vessel may change its gillnet category designation once, provided the vessel owner submits a Gillnet Category Designation and Tag Program Application Form to NMFS within 30 calendar days of the effectiveness date of this provision. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

4. In § 648.10, paragraph (c)(5) is revised and paragraph (f)(3) is added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(c) * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181.44 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

(f) * * *

(3) *Cod trip limit call-in.* (i) A vessel subject to the cod landing limit restriction specified in § 648.86(b)(1)(i), that has not exceeded the allowable limit of cod based on the duration of the trip, must enter port and call-out of the DAS program no later than 14 DAS after starting (i.e., the time of issuance of a DAS authorization number) a multispecies DAS trip.

(ii) A vessel subject to the cod trip limit restriction specified in § 648.86(b)(1)(i), that exceeds or is expected to exceed the allowable limit of cod based on the duration of the trip, must enter port no later than 14 DAS after starting (i.e., the time of issuance of a DAS authorization number) a multispecies DAS trip, and, must report, upon entering port and before offloading, its hailed weight of cod under the separate call-in system specified at § 648.86(b)(1)(ii)(B). Such vessel must remain in port, unless for transiting purposes as allowed in § 648.86(b)(3), and may not call-out of the DAS program for that trip, until sufficient time has elapsed to account for and justify the amount of cod on board in accordance with § 648.86(b)(1)(ii).

5. In § 648.14, paragraphs (a)(12), (a)(13), (a)(31)(iii), (a)(33), (a)(35) through (37), (a)(47), (a)(55), (b), (c) introductory text, (d) introductory text, (e), (g) introductory text, (t), (x)(4)(i), and (ii) are revised, and paragraphs (a)(31)(iv), and (c)(22) through (25) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

* * * * *

(12) Fish for, take, catch, harvest, possess or land any species of fish regulated by this part in or from the EEZ, on or by a vessel, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended, or unless otherwise specified in § 648.17.

(13) Purchase, possess or receive for a commercial purpose, or attempt to purchase possess or receive for a commercial purpose, any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part that fished exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(31) * * *

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel; or

(iv) Unless otherwise specified in § 648.17.

* * * * *

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a)(3) through (6), (a)(8), (a)(9), (d), (e) and (i), unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(37) Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller that the minimum mesh size specified in § 648.80(c)(2), except as provided in § 648.80(c)(3), (d), (e), and

(i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limit specified in § 648.86 applicable to a vessel issued a multispecies permit, unless otherwise specified in § 648.17.

* * * * * *

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a) and (b), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(H)(3), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(22) Fail to comply with the exemption specifications as described in § 648.17.

(23) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting (i.e., the time of the issuance of the DAS authorization number) a multispecies DAS trip, as specified in § 648.86(b)(1)(i), unless otherwise specified in § 648.86(b)(1)(ii), or unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2).

(24) Fail to enter port and report the hail weight of cod no later than 14 DAS after starting (i.e., the time of the issuance of the DAS authorization number) a multispecies DAS trip, if the vessel exceeds the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2).

(25) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

* * * * *

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of regulated species specified at § 648.88(c) or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

* * * * *

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, to, unless otherwise specified in § 648.17:

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued a nonregulated multispecies permit to possess or land any regulated species as defined in § 648.2, or violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

* * * * *

(x) * * *

(4) * * *

(i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part fished exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part fished exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

* * * * *

6. Section 648.17 is added to read as follows:

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) *Multispecies vessels.* (1) A vessel issued a valid High Seas Fishing Compliance Act permit under 50 CFR part 300 is exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§ 648.4, 648.80, 648.82 and § 648.86, respectively, while transiting the EEZ with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(i) Prior to leaving port, the vessel operator notifies the Regional Administrator of his/her intent to fish in the NAFO Regulatory Area by calling the NMFS Office of Law Enforcement nearest to the point where the vessel intends to offload, (contact the Regional Administrator for locations and phone numbers), unless otherwise required by the Regional Administrator under paragraph (a)(2) of this section;

(ii) Prior to leaving the NAFO Regulatory Area to return to the EEZ, the vessel operator notifies the Regional Administrator by calling the NMFS Office of Law Enforcement nearest to the point of offloading (contact the Regional Administrator for locations and phone numbers) via marine-radio telephone or other voice communications system, unless otherwise required by the Regional Administrator under paragraph (a)(2) of this section, and provides the following information: His/her intent to return to the EEZ, the vessels destination port, and the estimated time of arrival;

(iii) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(iv) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.81(e); and

(v) Vessels comply with the High Seas Fishing Compliance Act permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

(2) Vessels fishing in the NAFO Regulatory Area under the multispecies exemptions specified in paragraph (a)(1) of this section may be required to have a letter of authorization issued by the Regional Administrator on board the vessel should he/she determine that it is needed for purposes of enforcement and administration of this provision. In the event that a letter of authorization is required, vessel owners will be informed through a permit holder letter at least two weeks prior to the change.

(b) [Reserved]

7. Section 648.80 is amended by revising the introductory text to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in § 648.17(a), all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

* * * * *

8. In § 648.82, paragraph (a) and (k)(1)(iv)(A) are revised and (k)(1)(iv)(D) and (l) are added to read as follows:

§ 648.82 Effort-control program for limited access vessels.

(a) General. Except as provided in § 648.17(a), a vessel issued a limited access multispecies permit may not fish for, possess, or land regulated species, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in these regulations.

* * * * *

(k) * * *

(1) * * *

(iv) * * *

(A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year, unless otherwise specified in paragraph (k)(1)(iv)(D) of this section. The spawning season time out period required by § 648.82(g) will be credited toward the 120-days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken, any or all of the remaining periods of time required by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.81(e)(4), while fishing under a multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable, unless otherwise specified in paragraph (k)(1)(iv)(D) of this section.

* * * * *

(D) For the 1997 fishing year, vessels that switch mid-year from the Trip gillnet category to the Day gillnet category, as described in § 648.4(c)(2)(iii)(B), must take 120-days out of the non-exempt gillnet fishery between the time that the vessel receives its new Day gillnet category designation and gillnet tags and the end of the fishing year.

* * * * *

(l) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year, may carry over a maximum of 10 DAS into the next year. This carry-over allowance may not be accumulated year-to-year, e.g., a vessel that receives an allocation of 88 DAS per fishing year is not allowed to use more than 176 DAS over a 2-year period.

9. In § 648.83, paragraph (a)(1) introductory text is revised to read as follows:

§ 648.83 Minimum fish sizes.

(a) * * *

(1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17(a), all other vessels are subject to the following minimum fish sizes (TL):

* * * * *

10. In § 648.86, introductory text and paragraph (b)(3) are added, and (b)(1) introductory text, (b)(1)(i), and (ii) introductory text, (b)(1)(ii)(A) and (B), and (b)(2) are revised to read as follows:

§ 648.86 Possession restrictions.

Except as provided in § 648.17(a) of this section, the following possession restrictions apply:

* * * * *

(b) * * *

(1) *Gulf of Maine trip limit.* (i) Except as provided in paragraph (b)(1)(ii) and (b)(2) of this section, and subject to the cod trip limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod per DAS, or any part of a DAS, for each of the first 4 days of a trip, and may land up to 1,500 lb (680.4 kg) of cod per day for each DAS, or any part of a day, in excess of 4 consecutive DAS. A day, for the purposes of this paragraph, means a 24-hour period. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized "part of a DAS" (less than 24 hours) may land up to an additional 1,000 lb (453.6 kg) of cod for that "part of a DAS"; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the "part of the DAS" utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 2,000 lb (907.2 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section, and subject to the cod trip limit call-in provision specified at § 648.10(f)(3)(ii), may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3), and remains in port, unless for transiting purposes as allowed in paragraph (b)(3) of this section, until sufficient time has elapsed to account for and justify the amount of cod harvested at the time of offloading regardless of whether all of the cod on board is offloaded (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on Monday may fish and come back into port at 4 p.m. on Wednesday of that same week with 4,000 lb (1,814.4 kg) of cod, and offload some or all of its catch, but cannot call out of the DAS program until 3:01 p.m. the next day, Thursday (i.e., 3 days plus one minute); and

(B) Upon returning to port and before offloading, the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 for the Regional Administrator's address) and provides

the following information: Vessel name and permit number, owner and caller name, DAS confirmation number, phone number, and the hail weight of cod on board and the amount of cod to be offloaded, if any. A vessel that has not exceeded the landing limit and is offloading and ending its trip by calling out of the multispecies DAS program does not have to report under this call-in system.

* * * * *

(2) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) when fishing south of a line beginning at the Cape Cod, MA coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°20' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.81(e).

(3) *Transiting.* A vessel that has exceeded the cod trip limit as specified in paragraph (b)(1) of this section and is, therefore, subject to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 for the Regional Administrator's address) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e), and may not have any fish on board the vessel.

* * * * *

[FR Doc. 97–29706 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 110697A]

RIN: 0648–AH67

Fisheries of the Exclusive Economic Zone Off Alaska; Forage Fish Species Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 36 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 39 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) for Secretarial review. Amendments 36 and 39 would define a forage fish species category in both FMPs and implement associated management measures. The intended effect of the amendments is to prevent the development of an unrestricted fishery for forage fish, which are a critical food source for many marine mammal, seabird, and fish species.

DATES: Comments on Amendment 36 and 39 must be received by January 12, 1998.

ADDRESSES: Comments on Amendments 36 and 39 should be submitted to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the amendments and the Environmental Assessment/Regulatory Impact Review prepared for the amendments are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The intent of the Council is to implement a program that would establish a forage fish species category and would allow for the management of these species in a manner that prevents the development of a commercial directed fishery for forage fish, which are a critical food source for many marine mammal, seabird and fish species. Management measures for this species category will be specified in regulations and may include such measures as prohibitions on directed fishing, limitations on allowable bycatch retention amounts, or limitations on the sale, barter, trade or any other commercial exchange, as well as the processing of forage fish in a commercial processing facility.

A proposed rule to implement Amendments 36 and 39 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the amendments, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by January 12, 1998, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendments 36 and 39. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on these amendments or on the proposed rule during their respective comment periods will be addressed in the final rule.

Dated: November 5, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29769 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 218

Wednesday, November 12, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–106–1]

Availability of an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the proposed release into the environment of nonindigenous species of wasps for use as biological control agents to suppress the Pink Hibiscus Mealybug. The environmental assessment provides a basis for our conclusion that the release into the environment of the biological control agents will not present a risk of introducing plant pests into the United States or disseminating plant pests within the United States and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Meyerdirk, Senior Staff Officer, Pink Hibiscus Mealybug Program, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236, (301) 734–5667. For copies of the environmental assessment and finding of no significant impact, write to Dr. Meyerdirk at the same address. Please refer to the title of the environmental assessment when ordering copies.

SUPPLEMENTARY INFORMATION: As a part of a biological control project to suppress the Pink Hibiscus Mealybug (PHM) (*Maconellicoccus hirsutus*) (Homoptera: Pseudococcidae), the Animal and Plant Health Inspection Service (APHIS) is proposing to release nonindigenous wasps in the genus *Leptomastix* in the continental United States and its Caribbean territories. PHM is currently established on the islands of St. Thomas, St. Croix, and St. John in the U.S. Virgin Islands and on Vieques of Puerto Rico. However, we anticipate that PHM will spread to other U.S. territories in the Caribbean and to the mainland United States. As PHM spreads, nonindigenous wasps in the genus *Leptomastix*, which have controlled PHM in Egypt, would be released in affected areas to suppress PHM. PHM is a devastating pest of cocoa, grapes, fiber crops, hibiscus, and many other field crops and ornamental plants.

To provide the public with documentation of APHIS' review and analysis of the environmental impact and plant pest risk associated with releasing these biological control agents into the environment, we have prepared an environmental assessment and finding of no significant impact relative to the release into the environment of the following biological control agents:

Organisms	Title of environmental assessment	Date of finding of no significant impact
Leptomastix spp.	"Field Releases of Nonindigenous Species of *Leptomastix* (Hymenoptera: Encyrtidae) for Biological Control of Pink Hibiscus Mealybug, *Maconellicoccus hirsutus* (Homoptera: Pseudococcidae)" (September 1997).	10/14/97

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.G. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 5th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29712 Filed 11–10–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Cut-to-Length Carbon Steel Plate From Finland; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of Cut-to-Length Carbon Steel Plate from Finland. This review covers the period August 1, 1995 through July 31, 1996.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3833.

SUPPLEMENTARY INFORMATION: Due to unforeseen circumstances facing the Department at this time, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the final results until December 15, 1997, in accordance with Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675 (a)(30(A)). See memorandum to Robert S. La Russa from Joseph A. Spetrini regarding the extension of case deadline, dated November 3, 1997.

Dated: November 4, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 97–29768 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by the petitioner and five exporters of the subject merchandise, the Department of Commerce is conducting administrative reviews of the antidumping orders on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China. These reviews cover five exporters of the subject merchandise, Tianjin Machinery Import & Export Corporation, Fujian Machinery & Equipment Import & Export Corporation, Shandong Machinery Import & Export Corporation, Liaoning Machinery Import & Export Corporation, and Shandong Huarong General Group Corporation. The period of review is February 1, 1996 through January 31, 1997.

We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or James Terpstra, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5831/3965.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department of Commerce's new regulations, codified at 19 CFR part 351 (62 FR 27296, May 19, 1997), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current Departmental practice.

Background

On February 19, 1991, the Department of Commerce (Department) published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (certain heavy forged hand tools or HFHTs) from the People's Republic of China (PRC). On February 3, 1997, the Department published in the **Federal Register** (62 FR 4978) a notice of opportunity to request administrative reviews of these antidumping duty orders. In accordance with 19 CFR 353.22(a), on February 21 and 25, 1997, three exporters of the subject merchandise, Tianjin Machinery Import & Export Corporation (TMC), Fujian Machinery & Equipment Import & Export Corporation (FMEC), and Shandong Machinery Import & Export Corporation (SMC), requested that the Department conduct administrative reviews of their exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks. On February 26, 1997, another exporter, Liaoning Machinery Import & Export Corporation (LMC), requested that the Department conduct an administrative review of its exports of bars and wedges. Also on February 26, 1997, Olympia Industrial, Inc., a U.S. importer of the subject merchandise, requested administrative reviews of Shandong Huarong General Group Corporation's (Shandong Huarong) exports of bars/wedges and FMEC's exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks. On February 28, 1997, the petitioner, WVS Corporation, formerly known as Woodings-Verona Tool Works, Inc., requested administrative reviews of SMC's and FMEC's exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks and TMC's exports of axes/adzes and hammers/sledges.

We published the notice of initiation of these reviews on March 18, 1997 (62 FR 12793). In its May 16, 1997 response to Section A of the Department's questionnaire, TMC withdrew its request for a review of bars/wedges and picks/mattocks because it did not export these products during the period of review. Because TMC withdrew its request within the time limit provided by the Department's regulations at 19 CFR section 353.22(a)(5), the Department is terminating its review of bars/wedges and picks/mattocks with respect to TMC. The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar

products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Duty Absorption

On April 17, 1997, WVS Corporation requested that the Department conduct a duty absorption inquiry in order to determine whether antidumping duties had been absorbed by a foreign producer or exporter subject to the order. This request was made pursuant to the March 18, 1997, notice of initiation of administrative review (62 FR 12793). However, the Department's invitation for such requests only applies to certain administrative reviews of orders that were in effect before January 1995.

Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations did not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Tariff Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's new antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. Although these antidumping regulations do not apply to this review, they do represent the Department's interpretation of section 751(a)(4) of the Act. This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for sunset review of the order under section 751(c) on entries for which the second and fourth years following an order have already passed. Because the antidumping duty order in HFHTs from the PRC has been in effect since 1991, this is a "transition order" in accordance with section 751 (c)(b)(C) of the Tariff Act. Since this administrative review was not initiated in 1996 or 1998, the Department will not make a duty absorption determination.

Verification

Because Shandong Huarong and LMC had not been previously reviewed we verified these companies' questionnaire responses as provided in Section 782 (i) of the Act. From August 25 through September 6, 1997, we conducted the verifications using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant accounting, sales, and other financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports which are on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to Section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. The quantities the respondents reported for factors of production were "caps" or standards based on the producer's experience. At verification, LMC's supplier was unable to provide any documentation that substantiated the accuracy of the "caps" reported for labor and paint. Because the reported information could not be verified, we must use facts otherwise available to determine the amount of labor and paint used to produce the subject merchandise.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action (SAA) accompanying the URAA, at 870. We determined that LMC did not act to the best of its ability because it failed to provide any information that could be used to support the reasonableness of the reported labor usage and paint consumption. Therefore, as adverse facts available, we have assigned labor usage and paint consumption figures to each model of subject merchandise equal to the greatest figures reported for each factor for any of the models of subject merchandise manufactured by LMC's producer. For further discussion regarding the use of facts available, see Decision Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary, Group II, dated October 31, 1997, "Use of Facts Available: 1996/1997 Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools From the People's Republic of China," which is on file in the CRU.

Separate Rates

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (Sparklers), as amplified in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (59 FR 22585 May 2,1994) (Silicon Carbide). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. Evidence supporting, though not requiring, a finding of de jure absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and; (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) *Whether export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making*

decisions regarding the selection of management; and, (4) whether each exporter has the authority to negotiate and sign contracts. See Silicon Carbide, 59 FR at 22587.

In the final results of the 1995–1996 reviews of HFHTs, the Department granted separate rates to FMEC, SMC and TMC. See Heavy Forged Hand Tools From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews (62 FR 11813, March 13, 1997). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. Because the evidence submitted in the instant reviews is consistent with the Department's findings in the 1995–1996 reviews, we preliminarily determine that these three companies continue to be entitled to separate rates.

Shandong Huarong and LMC, which we had not previously reviewed, provided the Department with separate rates information that we examined at verification. After analyzing the record evidence using the criteria identified in Sparklers and Silicon Carbide, we have preliminarily found an absence of government control, both in law and in fact, with respect to both Shandong Huarong's and LMC's export activities. Accordingly, for this review, we have assigned separate rates to Shandong Huarong and LMC. For further discussion of this finding, see Decision Memorandum to Holly A. Kuga Senior Director Office IV, Enforcement, Group II, dated October 31, 1997, "Assignment of a separate rate for Shandong Huarong General Group Corporation and Liaoning Machinery Import & Export Corporation in the 1996/1997 administrative review of certain heavy forged hand tools from the People's Republic of China," which is on file in the CRU.

Export Price

The Department calculated an export price (EP) on sales to the United States in accordance with section 772(a) of the Act and because use of constructed export price was not otherwise warranted. We made deductions from the selling price to unaffiliated parties, where appropriate, for ocean freight, marine insurance, foreign brokerage and handling, and foreign inland freight. Each of these services was either provided by a non-market economy vendor or paid for using a non-market economy currency. Thus, we based the deduction for these movement charges on surrogate values (see the discussion regarding companies located in NME countries and the Department's surrogate country selection in the *Normal Value* section of this notice).

We valued ocean freight using the October 1996 and July and August 1995 rates that were obtained and used in the 1995–1996 administrative review of HFHTs from the PRC (62 FR 11813, March 13, 1997) and the Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China (Brake Drums and Brake Rotors) (62 FR 9160, February 28, 1997), respectively. We valued marine insurance using the average rate in effect during the period November 1991 through April 1992. This rate was reported in public information placed on the record in the Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes From India (58 FR 11835, March 1, 1993), and recently used in Brake Drums and Brake Rotors.

For foreign brokerage and handling, we used the average of the rates reported in the public version of a document submitted in the antidumping duty investigation of Stainless Steel Bar From India (59 FR 66915, December 28, 1994). These rates, which were in effect between October 1993 and January 1994, were recently used in the Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China (62 FR 27222, May 19, 1997).

The sources used to value foreign inland freight are identified below in the *Normal Value* section of this notice. To account for price changes between the time period that the freight, brokerage, and insurance rates were in effect and the period of review (POR), we inflated or deflated the rates using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, International Financial Statistics. For further discussion of the surrogate values used in these reviews see the File Memorandum From the Team dated October 31, 1997, "Surrogate Values used for the Preliminary Results of the Sixth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China," (*Surrogate Value Memorandum*) which is on file in the CRU.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, in accordance with Section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the factors of production utilized in producing HFHTs include, but are not limited to—(A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the factors of production to the extent possible, using the prices or cost of factors of production in a market economy that is—(A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. For a further discussion of the Department's selection of India as the surrogate country, see Memorandum From Jeff May, Director, Office of Policy, to Holly Kuga, Director, Office 4, AD/CVD Enforcement Group II, dated June 24, 1997, "Certain Heavy Forged Hand Tools ("Hand Tools") from the PRC: Nonmarket Economy Status and Surrogate Country Selection" which is on file in the CRU.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we valued PRC factors of production based on data for the POR. Surrogate values that were in effect during periods other than the POR were inflated or deflated, as appropriate, to account for price changes between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, International Financial Statistics. We calculated the inflation or deflation adjustment for labor using the consumer price indices (CPI) for India that were reported in the IMF's International Financial Statistics. We valued PRC factors of production as follows:

• We valued direct material used to produce HFHTs (*i.e.*, steel scrap, paint, paint thinner (dilution), and anti-rust oil) and the steel scrap generated from the production of HFHT's, using the rupee per metric ton, per kilogram, or per cubic meter value of India imports between February 1996 and August 1996. We used imports into India between April 1995 and March 1996 to value steel bars used to produce HFHTs because the Harmonized Tariff Schedule (HTS) subheading that we selected for the steel surrogate value, HTS 7214.50, does not appear in the Indian import statistics for April 1996 through August 1996. Although petitioner claimed that HTS subheading 7214.50 was changed to subheading 7214.99 for import statistics for 1996, we did not use statistics from the subheading suggested by petitioner because it was not clear that this change was implemented by India in its import statistics. For further discussion regarding the HTS category used to value steel, see Decision Memorandum to Holly A. Kuga, Senior Director, Enforcement Group II, dated October 31, 1997, "Issues Concerning Surrogate Values for Steel, Labor Rates and Trucking: 1996/1997 Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools From the People's Republic of China," which is on file in the CRU. We used import statistics in our valuations that were published in the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics).

• We valued labor using the October 1995 Indian labor rates reported in the International Labour Office's Statistics on Occupational Wages and Hours of Work and on Food Prices, October Inquiry, 1994 and 1995.

• We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1992–1993 in the Reserve Bank of India Bulletin. From this information, we were able to calculate factory overhead as a percentage of direct material, labor, and energy expenses; SG&A as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A.

• We valued packing materials, including cartons, pallets, anti-rust paper, anti-damp paper, plastic straps, plastic bags, iron buttons and knots, and iron wire, using the rupee per metric ton, per kilogram, or per cubic meter value of imports into India between February 1996 and August 1996. Because iron straps were not imported into India between February 1996 and August 1996, we based the value of iron straps on imports between April 1995 and March 1996. The import values were published in the publication, Indian Import Statistics.

• We valued coal using the price of steam coal in 1996 as reported in the International Energy Agency's publication Energy Prices and Taxes, 1st Quarter 1997.

• We valued electricity, using the simple average of the March 1, 1995 Indian regional electricity prices for large industries as reported in the India's Energy Sector, September 1996, published by the Centre for Monitoring Indian Economy Pvt. Ltd.

• We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight—If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck which we calculated from information published in the Times of India on April 24, 1994. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using the rates reported in an August 1993 cable from the U.S. Embassy in India to the Department. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833, September 20, 1993).

Rail Freight—We valued rail freight services using the April 1, 1995 rates published by the Indian Railway Conference Association. These rates were recently used in Brake Drums and Brake Rotors. For further discussion of the surrogate values used in these reviews, see the Surrogate Value Memorandum which is on file in the CRU.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1996 through January 31, 1997:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Huarong General Group Corporation: Bars/Wedges	2/1/96–1/31/97	25.26
Liaoning Machinery Import & Export Corporation: Bars/Wedges	2/1/96–1/31/97	8.97
Fujian Machinery & Equipment Import & Export Corporation:		
Axes/Adzes	2/1/96–1/31/97	10.43
Hammers/Sledges	2/1/96–1/31/97	17.03
Shandong Machinery Import & Export Corporation:		
Bars/Wedges	2/1/96–1/31/97	52.29
Hammers/Sledges	2/1/96–1/31/97	32.60
Picks/Mattocks	2/1/96–1/31/97	53.43
Tianjin Machinery Import & Export Corporation:		
Axes/Adzes	2/1/96–1/31/97	7.26
Hammers/Sledges	2/1/96–1/31/97	44.30

Parties to the proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of these administrative reviews, which will include the results of its analysis of issues raised in any such comments.

Assessment Rates

The Department shall determine, and the Customs Service shall assess,

antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated importer-specific duty assessment rates for each class or kind of HFHTs by dividing the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of the importer's/customer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (Shandong Huarong, LMC, TMC, FMEC, and SMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds listed above; (2) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of the previous administrative reviews; and (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. The PRC-wide rates are: 21.93 percent for axes/adzes; 66.32 percent for bars/wedges; 44.41 percent for hammers/sledges; and 108.2 percent for picks/mattocks. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29763 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–820]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 25, 1997, the Department of Commerce ("the Department") published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany, covering the period August 1, 1996 through July 31, 1997. The review has now been rescinded as a result of the withdrawal of the request for administrative review by the interested party that requested the review.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone: (202) 482–0196.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1997, the Department received a request from the respondent in this case, Mannesmannrohren-Werke AG ("MRW") and Mannesmann Pipe & Steel Corporation ("MPS") (collectively "Mannesmann"), to conduct an administrative review of Mannesmann, pursuant to section 19 CFR 351.213(b) of the Department's regulations. The period of review is August 1, 1996 through July 31, 1997. On September 25, 1997, the Department published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany, covering the period August 1, 1996 through July 31, 1997.

Rescission of Review

On October 7, 1997, we received a timely request for withdrawal of the request for administrative review from Mannesmann. Because there were no other requests for administrative review from any other interested party, in accordance with section 351.213 (d) (1) of the Department's regulations, we have rescinded this administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213 (d) (4).

Dated: October 29, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–29766 Filed 1–10–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–068]

Steel Wire Strand for Prestressed Concrete From Japan; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of final court decision and amended final results of antidumping duty administrative reviews.

SUMMARY: On April 22, 1997, the Court of International Trade (the Court) affirmed the Department of Commerce's (the Department) second remand determination arising out of the administrative reviews of the antidumping finding on steel wire strand for prestressed concrete ("PC Strand") from Japan. *See Mitsui & Co., Ltd.* v. *United States*, Slip Op. 97–49 (CIT April 22, 1997). As there is now a final and conclusive court decision in this action, we are amending the final results of review in this matter and will instruct the U.S. Customs Service to liquidate Mitsui's entries covered by these amended final results at the rates assigned to each of Mitsui's suppliers for the periods April 1, 1978 through March 31, 1979; April 1, 1979 through November 30, 1980; December 1, 1980 through November 30, 1981; December 1, 1981 through November 30, 1982; and December 1, 1982 through November 30, 1983.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Heaney or Linda Ludwig, Office Eight, Antidumping and Countervailing Duty Enforcement Group III, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4475.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1994, the Court issued an order remanding to the Department the final results of the administrative reviews of the antidumping finding on PC Strand from Japan, covering exports by Mitsui & Co. (Mitsui) during the period April 1, 1978 through November 30, 1985.[1] *Mitsui & Co.* v. *United States*, Slip Op. 94–44 (CIT March 11, 1994).

On August 5, 1994, in accordance with the Court's remand order, the Department filed its final results of redetermination. (See Final Redetermination Pursuant to the Court Remand, August 5, 1994, *Mitsui & Co., Ltd.* v. *United States*, Court No. 90–12–00633 (Remand Results 1)). In this determination, to determine whether Mitsui had engaged in middleman dumping during each period of review (POR), the Department considered whether a substantial portion of Mitsui's sales were at prices that were substantially below its acquisition costs. Based on our analysis of the number of sales made at prices below acquisition costs and the magnitude of resulting losses, the Department determined that Mitsui had engaged in middleman dumping because Mitsui made a "substantial number of sales at prices substantially below its acquisition cost" (See Final Remand Results 1 at 9).

In response to comments on the redetermination submitted by the plaintiffs and the defendant intervener, the Department requested a remand to address clerical errors and methodological questions raised by both parties concerning the existence or absence of middleman dumping. (*See* Defendant's Response to the Comments Filed by Plaintiffs and the Intervenor to the Redetermination Upon Remand Filed by the Department of Commerce, Nov. 30, 1994 *Mitsui & Co., Ltd.* v. *United States*.)

On June 10, 1996, the Court issued an order remanding the Department's Final Redetermination of August 1994. The Court directed the Department to: (1) Correct clerical errors noted by the plaintiffs and the defendant intervener relating to currency conversion, average movement charges, and acquisition costs; (2) consider the methodological questions raised by plaintiffs relating to (a) the use of number of transactions as opposed to the relative quantity or value of PC strand, (b) the calculation of "value" in determining the extent of below-cost sales, (c) the calculation of the cost of acquisition, and (d) the need for information from Mitsui's suppliers in order to review the existence or absence of middleman dumping; and (3) consider the intervenor's claim that the Department failed to include certain expenses reported by Mitsui in its sales listings.

On October 9, 1996, the Department filed its second redetermination with the Court. (See Prestressed Concrete Strand from Japan, Final Results of Redetermination Pursuant to Court Remand, October 9, 1996, Court No. 90–12–00633 (Remand Results 2).) In this redetermination, the Department corrected clerical errors identified by both parties. With respect to the methodological issues, the Department determined that because a value-based methodology provides a more meaningful understanding of the extent to which merchandise has been sold below acquisition costs, a value-based methodology was appropriate to determine whether Mitsui had engaged in middleman dumping during the PORs. Accordingly, we determined whether a substantial portion of Mitsui's sales were below acquisition costs by comparing the total value of PC strand sales below acquisition costs to the total value of PC strand sales. Based on our examination of Mitsui's sales, we determined that Mitsui did not make a substantial portion of sales below acquisition costs during each POR. Because the portion of below-acquisition-cost sales during each POR was not substantial, and examination of whether prices were substantially below acquisition cost was unnecessary. See Remand Results 2 at 6.

We also determined that (1) reexamining our methodology for calculating "value" was unnecessary because we did not need to determine whether Mitsui's sales were substantially below acquisition cost, (2) Mitsui's acquisition costs should be calculated using currency conversions based on the exchange rate in effect on the date of shipment, (3) we did not require additional information from Mitsui's suppliers during the PORs, and (4) we included all actual expenses incurred and reported by Mitsui in comparing Mitsui's resale prices to its acquisition costs. *See* Remand Results 2 at 7. Finally, because we had determined that Mitsui did not engaged in middleman dumping during the periods covered by the redetermination, we concluded that it was appropriate to instruct the U.S. Customs Service to liquidate Mitsui's entries according to the rates determined for reach of Mitsui's suppliers for the relevant periods. We noted that this was the methodology followed in the relevant administrative reviews of the antidumping finding on PC Strand from Japan for other exporters. See Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review, 48 FR 45586 (Oct. 6, 1983) (1978–1979; 1979–1980 POR); and Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review, 51 FR 30894 (Aug. 29, 1986) (1980–1981; 1981–1982 POR) Steel Wire Strand for Prestressed Concrete from Japan; Final Results of Antidumping Duty Administrative Review, 52 FR 4373 (Feb. 11, 1987) (1982–1983 POR).

On April 22, 1997, the Court upheld the Department's second redetermination on remand. *Mitsui & Co., Ltd.* v. *United States*, Slip Op. 97–49 (CIT April 22, 1997). The period to appeal has expired and no appeal was filed. Therefore, as there is now a final and conclusive court decision in this action, we are amending our final results of review.

Amended Final Results of Reviews

Pursuant to section 516A(e) of the Act, we are now amending the final results of the administrative reviews of the antidumping finding on PC strand from Japan with respect to exports by Mitsui and determine that the following margins exist:

[1] For the period December 1, 1983 through November 30, 1985, Mitsui had no shipments of merchandise subject to the order.

Manufacturer/exporter	Period	Margin (percent)
Shrinko Wire Company, Ltd./Mitsui & Co., Ltd	04/01/78–03/31/79	0
	04/01/79–11/30/80	0
	12/01/80–11/30/81	0
	12/01/81–11/30/82	0
	12/01/82–11/30/83	0
Sumitomo Electric Ind., Ltd./Mitsui & Co., Ltd	04/01/78–03/31/79	0
	04/01/79–11/30/80	0
	12/01/80–11/30/81	0
	12/01/81–11/30/82	0
	12/01/82–11/30/83	0
Suzuki Metal Ind. Co., Ltd./Mitsui & Co., Ltd	04/01/78–03/31/79	0
	04/01/79–11/30/80	0
	12/01/80–11/30/81	0
	12/01/81–11/30/82	0
	12/01/82–11/30/83	0
Teikoku Sangyo Co., Ltd./Mitsui & Co., Ltd	04/01/78–03/31/79	0
	04/01/79–11/30/80	0
	12/01/80–11/30/81	0
	12/01/81–11/30/82	0
	12/01/82–11/30/83	0
Tokyo Rope Mfg. Co. Ltd./Mitsui & Co., Ltd	04/01/78–03/31/79	0
	04/01/79–11/30/80	0
	12/01/80–11/30/81	4.5
	12/01/81–11/30/82	4.5
	12/01/82–11/30/83	[1] 4.5

[1] No shipments during the POR.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. We will issue appraisement instructions directly to the U.S. Customs Service. Further, for any shipments form the remaining known manufacturers and/or exporters not covered by these reviews, the current cash deposit shall remain in effect until publication of the final results of the next administrative review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(8).

Dated: November 3, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29765 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke Export Trade Certificate of Review No. 83–00034.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Micro Products Company. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent Micro Products Company.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on April 13, 1984 to Micro Products Company.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14(a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (§ 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Micro Products Company on April 3, 1997, a letter containing annual report questions with a reminder that its annual report was due on May 28, 1997. Additional reminders were sent on August 7, 1997, and on September 12, 1997. The Department has received no written response to any of these letters.

On November 6, 1997, and in accordance with § 325.10 (c)(1) of the Regulations, a letter was sent by certified mail to notify Micro Products Company that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 6, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–29751 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102997C]

Marine Mammals; Public Display Permit (PHF# 830–1428)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of withdrawal.

SUMMARY: Notice is hereby given that the Big Apple Circus, 35 West 35th Street, New York, NY 10001, has withdrawn its application to import Patagonian sea lions (*Otaria byronia*) for purposes of public display.

ADDRESSES: The documents related to this action are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13822, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (508/281–0250).

FOR FURTHER INFORMATION CONTACT: Ann Hochman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On Friday, August 29, 1997, notice was published in the **Federal Register** (62 FR 45796) that an application had been filed by the Big Apple Circus to import two Patagonian sea lions (*Otaria byronia*), from Lipperswil, Switzerland, where they are currently maintained by Conny-Land, for public display during the 1997–1998 exhibition season.

By facsimile letter of October 29, 1997, the Big Apple Circus withdrew its application from consideration.

Dated: November 5, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29656 Filed 11–10–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Defense Outplacement Referral System (DORS) and Public Community Service (PACS) Programs; DD Forms 2580/2580C, 2581, and 2581–1; OMB Number 0704–0324.

Type of Request: Reinstatement.

Number of Respondents: 11,331.

Responses Per Respondent: 1.847.

Annual Responses: 20,931.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 4,136.

Needs and Uses: This information collection is used to enroll separating service members, their spouses, and DoD civilian personnel in the Defense Outplacement Referral System (DORS).

In accordance with 10 U.S.C. 1143 and 1144, the information is provided to private and public employers, including local, state, and Federal employment and outplacement agencies, as notice of available individuals with interest in potential employment. In accordance with U.S.C. 1143a(c), the Public and Community Service (PACS) Registry provides registered PACS organizations with information regarding the availability of individuals with interest in working in a PACS organization. The 800 phone resume request line associated with this information collection as well as the DD Form 2580, "Operation Transition—Department of Defense Outplacement Referral System (DORS)/Public and Community Service (PACS) Individual Application," DD Form 2580C, "Operation Transition—Department of Defense Outplacement Referral System (DORS)/Public and Community Service (PACS) Individual Application (Cont.);" DD Form 2581, "Operation Transition Employer Registration;" and DD Form 2581–1, "Public and Community Service Organization Validation," are used in support of the Department of Defense programs for employment assistance.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 5, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29657 Filed 11–10–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Dependency Statements; DFAS–DE Form 1865, 1866 1867, and 1868; OMB Number 0730-[to be determined].

Type of Request: New Collection;
Number of Respondents: 4,200.
Responses Per Respondent: 1.
Annual Response: 4,200.
Average Burden Per Response: 2 hours.
Annual Burden Hours: 8,400.
Needs and Uses: The information collection is used to certify dependency or obtain information to determine entitlement to basic allowance for quarters (BAQ) with-dependent rate, travel allowances, or Uniformed Services Identification and Privilege Card. Information regarding a child born out-of-wedlock (DFAS–DE Form 1865), a full-time student 21–22 years of age (DFAS–DE Form 1867), a parent (DFAS–DE Form 1868), or incapacitated child over age 21 (DFAS–DE Form 1866), is provided by the military member or by another individual who may be a member of the public. DoDFMR 7000.14, Vol. 17A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from the forms to determine the degree of benefits. The requirement to provide the information decreases the possibility of monetary allowances being approved on behalf of ineligible dependents.
Affected Public: Individuals or households.
Frequency: On occasion; annually.
Respondents's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 5, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29658 Filed 11–10–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Transition to the Defense Table of Official Distances (DTOD)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), on behalf of the Department of Defense (DOD), intends to utilize a standard integrated mileage guide in DOD freight, household goods (HHG), travel, and finance programs. The DTOD will replace existing distance calculation products used within the DOD such as Rand McNally TDM Mileagemaker System, Household Goods Carriers' Mileage Guide, and the DOD Official Table of Distances and will become the DOD standard source for highway mileages. The DTOD will consist of a modified Commercial off the Shelf (COTS) product and full operating capability is projected for October 1998. Notice of the DTOD product specifications and transition plan for the freight and household goods program will be published for public comment at a later time.

DATES: Initial operating capability for the three target DOD programs is estimated to be: Travel—Jun 98; Household Goods—Jun 98; Freight—Aug 98.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTIM–I, Room 332A, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Ethel J. Anderson (703) 681–7793 or Ms. Amy R. Hopfe (703) 681–5702.

SUPPLEMENTARY INFORMATION: Currently, several sources for distance information are being used within DOD to support various functional areas, such as travel, travel entitlement reimbursement, freight, and personal property movements. Moreover, separate products are used to calculate overseas distances. The result is a variance in mileage computations produced by different products and a high cost of licensing and maintaining multiple mileage sources.

Until 1996, DOD was required by law to maintain an official mileage table, known as the Official Table of Distances, to use for payment of travel and transportation allowances. The FY96 Defense Authorization Act deleted this requirement, thus providing the opportunity to use a commercial mileage product to support travel mileage distance.

In October 1996, the DOD Comptroller tasked the U.S. Transportation Command (USTRANSCOM) to identify and implement a single source for distance information in support of travel, freight, and personal property movements for the Continental United States (CONUS) and Outside the Continental United States (OCONUS). USTRANSCOM tasked the Military Traffic Management Command to lead the effort.

The DTOD integration contractor, Science Applications International Corporation (SAIC), is supporting the identification, modification, installation and testing of the Commercial off the Shelf (COTS) product. SAIC has selected ALK Associates, Inc., as the source of the distance calculation data and software for DTOD.

The transition to a single standard DTOD will require changes to existing MTMC rules publications and rate solicitations. Since this action is considered to be a significant procurement policy change under 41 U.S.C. 418b, another public notice will be published providing the public an opportunity to comment on the specific product, its capabilities, and DOD's plan to introduce the product to ongoing acquisition activities. Details relating to interface with industry providers and trade associations will be provided at that time. It is anticipated that transition to DTOD will have no significant impact on small businesses since those businesses currently use one or more distance calculation sources of a similar nature. Because specific policy and the related impact is yet to be fully developed, public comment on this notice is not being requested at this time. A 60-day public notice period will be provided for in forthcoming notices that describe implementation plans, requirements, and responsibilities.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–29699 Filed 11–10–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 5, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Fiscal Operations Report & Application to Participate in Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant, and Federal Work-Study Program.
Frequency: Annually.
Affected Public: Business or other for-profit; not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 4,800.
Burden Hours: 80,586.
Abstract: This application data will be used to compute the amount of funds needed by each institution during the 1999–2000 Award Year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 1997–98 Award Year, and as part of the institutional funding process.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Application for Grants Under the Javits Gifted and Talented Students Education Program.
Frequency: Annually.
Affected Public: Businesses or other for-profits; not-for-profit institutions; State, local or Tribal Governments, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 300.
Burden Hours: 13,200.
Abstract: Program participants such as SEAs, LEAs, institutions of Higher Education, and other public and private agencies and organizations including Indian tribes and organizations will apply for grants under the Javits Gifted and Talented Students Education Program. The Department will use the information to make grant awards.

[FR Doc. 97–29703 Filed 11–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 12, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 5, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Observational Study of Even Start Family Literacy Projects.

Frequency: Annually.

Affected Public: Individuals or households; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 15.

Burden Hours: 510.

Abstract: This study will include 15 in-depth case studies of local family literacy projects that have fully implemented the Even Start program model and that have produced at least two years of positive outcomes for participants. The case studies will focus on how and why these projects have been successful. The case studies will also examine how the projects adjust to changes in client needs, their strategies for integrating program services and activities, their use of evaluation results for improving the quality of services, and their strategies for building a solid base of support to sustain the activities and services after federal funding ends. Data collection will include interviews with project staff, their partners, and project participants. Data collection will also include observation of activities and services and review of project documents.

[FR Doc. 97–29704 Filed 11–10–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Department of Energy (DOE) Notification of a 45-Day Extension in Providing the Defense Nuclear Facilities Safety Board (DNFSB) an Implementation Plan for Recommendation 97–2

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 97–2, concerning Criticality Safety at Defense Nuclear Facilities in the DOE Complex, on May 29, 1997 (62 FR 2918). Section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), requires the Department of Energy to transmit an implementation plan to the Defense Nuclear Facilities Safety Board by October 28, 1997, or submit a notification of extension for an additional 45 days. The Secretary's notification of extension for an additional 45 days follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before December 12, 1997.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Robin Staffin, Deputy Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington DC 20585

Issued in Washington, DC, on November 5, 1997.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy
Washington, DC 20585
October 28, 1997.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

Dear Mr. Chairman: This is to notify you, pursuant to 42 U.S.C. 2286d(e), that the Department of Energy requires an additional 45 days to transmit the Implementation Plan for addressing the issues described in the Defense Nuclear Facilities Safety Board's Recommendation 97–2 concerning criticality safety. A Department response team developed a draft Implementation Plan which outlines specific actions to improve the effectiveness of criticality safety practices and programs. Technical issues raised by your staff concerning the draft Implementation Plan have been resolved. However, the Department requires more time to develop an equitable, lasting funding arrangement that takes into account the crosscutting nature of the criticality safety program.

We will continue to work closely with your staff to develop a fully funded, mutually acceptable Implementation Plan. The Department will make every effort to provide the Implementation Plan to the Board within the next two weeks, but no later than December 12, 1997.

Sincerely,

Federico Peña

[FR Doc. 97–29740 Filed 11–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL).

DATES: Tuesday, November 18, 1997 from 8:00 a.m. to 6:00 p.m. Mountain Standard Time (MST); Wednesday, November 19, 1997 from 7:30 a.m. to 5:00 p.m. MST. There will be public comment sessions on Tuesday, November 18, 1997 from 5:00 p.m. to 6:00 p.m. MST and Wednesday, November 19, 1997 from 1:00 p.m. to 1:30 p.m. MST.

ADDRESSES: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: INEEL Information (1–800–708–2680) or Wendy Green Lowe, Jason Associates Corp. (208–522–1662).

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The EM SSAB, INEEL will finalize recommendations on Siting the pits-to-powder and mixed oxide fuel fabrication mission at INEEL, the High Level Waste Environmental Impact Statement, continuing education opportunities for K–12 teachers in Idaho, and public use of INEEL Technical Library. The board will also learn about the proposed plan for the soil repository at Waste Area Group 3 and receive presentations on plutonium contamination at INEEL and the results from Pit 9 and Subsurface Disposal Area studies, and what these studies imply for cleanup of the pits and trenches. For a most current copy of the agenda, contact Woody Russell, DOE-Idaho, (208) 526–0561, or Wendy Green Lowe, Jason Associates Corp., (208) 522–1662. The final agenda will be available at the meeting.

Public Comment Availability: The two-day meeting is open to the public, with public comment sessions scheduled for Tuesday, November 18, 1997 from 5:00 p.m. to 6:00 p.m. MST and Wednesday, November 19, 1997 from 1:00 p.m. to 1:30 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the INEEL Information line or Wendy Green Lowe, Jason Associates Corp., at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC on November 4, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–29742 Filed 11–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATES AND TIMES: Wednesday, December 10, 1997, 6:00 p.m.–8:00 p.m.

ADDRESSES: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (970) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Update on project status, and reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC on November 4, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–29743 Filed 11–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Advisory Committee on Appliance Energy Efficiency Standards

AGENCY: Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of a meeting of the Advisory Committee on Appliance Energy Efficiency Standards. The Department will consider the information and comments received at this meeting in the conduct of its appliance standards program.

DATES: December 12, 1997, 9:00 a.m.–3:30 p.m.

ADDRESSES: Embassy Row Hilton, 2015 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandy Beall, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7574, or Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Appliance Energy Efficiency Standards was established to provide input on the appliance standards rulemaking process. The Committee serves as the focal point for discussion on the implementation of the procedures, interpretations, and policies set forth in the rule on Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (61 FR 36973 (July 15, 1996)) and on cross-cutting analytical issues affecting all product standard rulemakings.

Tentative Agenda

9:00 am Opening Remarks, Introductions, and Agenda Review
9:30 am Public Comments on Agenda
9:35 am Recent Successes (Standards Issued, Test Procedures Issued, Workshops)
10:00 am Break
10:15 am Priority Setting Process
10:30 am Begin Subcommittee Reports to the Committee

11:45 am Public Comments on Morning Session
12:00 n Lunch (on your own)
1:00 pm Continue Subcommittee Reports and Discussion
2:00 pm Break
2:15 pm Public Comments
2:30 pm New Business
3:00 pm Action Items and Deliverables for Next Meeting
3:15 pm Chairman's Closing Remarks
3:30 pm Adjourn

Please note that this draft agenda is preliminary. The times and agenda items listed are guidelines and are subject to change. A final agenda will be available at the meeting on Friday, December 12, 1997.

Public Participation: The meeting is open to the public. Please notify either Brenda Edwards-Jones, (202) 586–2945, or Sandy Beall, (202) 586–7574, if you plan to attend the Advisory Committee meeting. Written statements may be filed either before or after the meeting. In order to have your written comments distributed at the Advisory Committee meeting, please provide 10 copies to the contacts listed in the FOR FURTHER INFORMATION CONTACT section at least 7 days prior to the meeting. Members of the public who wish to make oral statements should contact the Office of Codes and Standards at the address or telephone numbers listed in the FOR FURTHER INFORMATION CONTACT section. Requests must be received 7 days prior to the meeting, and a reasonable provision will be made to include the presentation in the agenda. Such presentations may be limited to five minutes. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Copies of the Committee's charter, minutes of the Committee meetings held on January 8, 1997, and June 23, 1997, this notice, and other correspondence regarding the Committee may be viewed at the U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. A copy of the Committee's meeting transcript will be available in the DOE public reading room approximately 10 days after the meeting. Minutes will also be available 60 days after the meeting by writing to Brenda Edwards-Jones or Sandy Beall at the address listed in the FOR FURTHER INFORMATION CONTACT section.

Issued in Washington, DC, on November 5, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–29744 Filed 11–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–53–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

November 5, 1997.

Take notice that on October 29, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–53–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection between ANR and Louisiana Intrastate Gas Company L.L.C. (LIG) for delivery of natural gas to LIG in St. Mary Parish, Louisiana, under ANR's blanket certificate issued in Docket No. CP88–532 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to install on its above grade facilities a 16-inch tee, a 16-inch valve, an electronic measurement system, and approximately fifteen (15) feet of tie-in piping. The total cost of the facilities will be approximately $168,000 which will be fully reimbursed by LIG. The maximum capacity of the proposed interconnection will be 300 Mmcf/d.

ANR states that the construction of the proposed interconnection will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit additional interconnections, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29679 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–57–000]

ANR Pipeline Company; Notice of Application

November 5, 1997.

Take notice that on October 31, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–57–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas transportation service for Indiana Glass Company (IGC), all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that by mutual agreement ANR and IGC have agreed to abandon Rate Schedule X–143 under which ANR transports up to 4,500 dekatherms of natural gas per day on a best efforts basis for IGC from various wells in Texas, Oklahoma and Kansas to an interconnection with Indiana Gas Company, Inc. in Delaware County, Indiana.

ANR further states that no facilities are proposed to be abandoned and that the proposal will have no impact on the environment.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29681 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–370–000]

Cinergy Services, Inc., Notice of Filing

November 5, 1997.

Take notice that Cinergy Services, Inc., on behalf of PSI Energy, Inc. (PSI), on October 29, 1997, tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1996, Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29677 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–181–006]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

November 5, 1997.

Take notice that on October 29, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Substitute Original Sheet No. 386A. CNG requests an effective date of June 1, 1997, for its proposed tariff sheet.

CNG states that the purpose of its filing is two fold: To revise CNG's FERC Gas Tariff in compliance with the September 15, 1997 Letter Order, regarding Standard 5.3.5 of the Gas Industry Standards Board (GISB); and to request Commission approval of a further brief deferral of CNG's implementation of certain system-based and EDM-related GISB standards. CNG will separately submit a status report to the Commission regarding its implementation of certain additional Version 1.1 GISB business practice standards, as required by the Letter Order.

CNG states that copies of its filing have been mailed to all parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29690 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–54–000]

Conoco, Inc. v. Williams Natural Gas Company; Notice of Complaint

November 5, 1997.

Take notice that on October 29, 1997, Conoco, Inc. (Conoco), 600 N. Dairy Ashford, ML–1034, Houston, Texas 77079, filed a complaint against Williams Natural Gas Company (WNG), pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), alleging violations by WNG of Section 7 of the Natural Gas Act, all as more fully set forth in the complaint on file with the Commission and open to public inspection.

Conoco states its belief that WNG has constructed and is about to begin operating an expansion of its pipeline facilities in Hemphill County, Texas, consisting of 13.5 miles of pipeline extending from the Williams Field Service Hobart Ranch plant to WNG's 26-inch Canadian-Blackwell mainline. Conoco also states its belief that WNG will abandon its Pampa outlet line, which also runs from the WFS Hobart Ranch plant to WNG's Canadian-Blackwell line, as well as the Higgins compression facility, a 1,200 horsepower compressor located at the intersection of the Pampa and Canadian-Blackwell lines. Conoco requests that the Commission issue a cease and desist order to stop WNG from operating the facilities installed, to stop WNG from constructing additional facilities and from abandoning existing facilities. Conoco further requests that WNG be compelled to file applications for the certificate and abandonment authorizations for its activities.

Any person desiring to be heard or to make any protest with reference to said complaint should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such

motions, together with the answer of Respondent to the complaint and motions filed with the Commission should be filed on or before November 26, 1997. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29680 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–760–004]

Duke Energy Corporation; Notice of Filing

November 5, 1997.

Take notice that Duke Energy Corporation tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29675 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–009]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff revised tariff sheets in compliance with the Commission's "Order on Rehearing" dated October 16, 1997 (the "October 16 Order"). Equitrans proposes separate rate sheets to be effective September 1, 1997 and October 1, 1997.

Equitrans states that the rate sheets establish rates for all services which reflect a return on equity level of 13 percent which was the level which Equitrans originally proposed in this proceeding. Equitrans states that the Commission permitted to place its originally filed return on equity level into effect, effective September 1, 1997, subject to refund, pending the outcome of a hearing.

Equitrans states that the rates proposed for October 1, 1997 effectiveness are the same base rates for all services as those proposed for September 1, 1997 effectiveness with the exception of an increase in the ACA charge to $0.0022/Dth which has been approved by the Commission for October 1, 1997 effectiveness.

Equitrans states that copies of this rate filing were served on Equitrans' jurisdictional customers and interested state commissions.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20046, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29692 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–8–007]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 136, to become effective November 1, 1997.

According to Granite State, First Revised Sheet No. 136 removes from its tariff a provision that required Granite State to credit 90% of revenues for interruptible transportation services, less variable costs and surcharges, to its firm transportation customers. Granite State further states that the elimination of the crediting provision was agreed to in an uncontested settlement in Docket No. RP97–8–000 approved by the Commission on October 20, 1997.

Granite State further states that copies of its filing have been served on its firm and interruptible customers, on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire and the intervenors in the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29687 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–33–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets listed below to be effective November 30, 1997.

Third Revised Sheet No. 2
Second Revised Sheet No. 252
First Revised Sheet No. 320
First Revised Sheet No. 321
Third Revised Sheet No. 322
Second Revised Sheet No. 323
First Revised Sheet No. 325

MRT states that this filing is being made to make minor housekeeping changes including removing the Index of Firm Transportation, Storage and Sales Customers from the Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29694 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–008]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. Original Sheet No. 12, to be effective November 1, 1997.

National Fuel states that the instant filing is made to amend its firm storage service agreement filed in Docket No. RP96–331–007, between National Fuel and Engage Energy U.S., L.P. (Engage). National Fuel states that its amended service agreement with Engage provides a stated charge based on a locked-in price spread for Engage's FSS storage service.

National Fuel states that it is serving copies of this filing with its firm customers, interested state commissions and each party designated on the official service list compiled by the Secretary.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29686 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–026]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Seventh Revised Sheet No. 7A
Sixth Revised Sheet No. 7B
Sixth Revised Sheet No. 7E
Third Revised Sheet No. 7E.02
Second Revised Sheet No. 7F
Third Revised Sheet No. 7G
Third Revised Sheet No. 7G.01
Third Revised Sheet No. 7H
First Revised Sheet No. 7I
First Revised Sheet No. 7J
First Revised Sheet No. 7M
Original Sheet No. 7N

NGT states that these tariff sheets, to be effective November 1, 1997, reflect either contract expirations or elimination of formula-based negotiated rates that are no longer applicable as the underlying rate agreements now reflect terms which do not qualify as negotiated rates. Furthermore, certain of these tariff sheets reflect modifications to existing negotiated rates terms as well as the addition of a new negotiated rate contract.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29684 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–52–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 5, 1997.

Take notice that on October 28, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP98–052–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to modify existing facilities at its Walker Hollow Meter Station in Uintah County, Utah to more efficiently accommodate existing deliveries of natural gas to Citation Oil & Gas Corp. At the Walker Hollow Delivery point, authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to modify the Walker Hollow Meter Station by installing 50 percent restricted trip plates in the two existing 1-inch regulators and by installing a new 2-inch regulator with ¼-inch trip plate upstream of the two existing regulators to more accurately measure the low peak hourly flow rate of natural gas through the meter station. Northwest states that as a result of these modifications the maximum design capacity of the meter station will decease from 4,128 Dth per day (at 65 psig) to approximately 408 Dth per day at a constant delivery pressure of 100 psig.

Northwest further states that the cost of the proposed facility modification at the Walker Hollow Meter Station is estimated to be approximately $1,500.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If not protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29678 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4883–000]

Ohio Edison Company; Pennsylvania Power Company; Notice of Filing

November 5, 1997.

Take notice that on October 10, 1997, Ohio Edison Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29676 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–109–009]

Sabine Pipe Line Company; Notice of Compliance Filing

November 5, 1997.

Take notice that on October 31, 1997, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective November 1, 1997:

2nd Sub Third Revised Sheet No. 297
Substitute First Revised Sheet No. 228

Sabine states that the tariff sheet revisions are in compliance with the Commission's order issued October 23, 1997 in Docket Nos. RP97–109–007 and RP97–109–008. Sabine states that the tariff sheets listed above have been revised to reflect incorporation by reference of version 1.1 of the GISB Nominations Related Standards, Flowing Gas Related Standards, Invoicing Related Standards, and Capacity Release Standards.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29689 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–34–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

November 5, 1997.

Take notice that on October 31, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of November 1, 1997:

Tariff Sheets Applicable to Contesting Parties

Thirty Fourth Revised Sheet No. 14
Fifty Fifth Revised Sheet No. 15
Thirty Fourth Revised Sheet No. 16
Fifth Fifth Revised Sheet No. 17
Thirty Seventh Revised Sheet No. 29

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, due to a decrease in GSR billing units effective November 1, 1997.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All Such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29695 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–007]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff and of Compliance Filing

November 5, 1997.

Take notice that on October 31, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to become effective on November 1, 1997:

Nineteenth Revised Sheet No. 30

Tennessee states that the above tariff sheet is being filed for the dual-purpose of (1) implementing negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000 and (2) complying with the Commission's October 29, 1997 letter Order issued in the above-referenced docket. Tennessee Gas Pipeline Company, 81 FERC ¶ 61,114 (1997).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29685 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, First Revised Volume No. 1, and Original Volume No. 2.

Texas Gas states that this motion rate/compliance filing is being made to place certain tariff sheets to be effective on November 1, 1997, in compliance with the Commission's Order issued May 29, 1997, in Docket No. RP97–344 at 79 FERC § 61,257 (1997).

Texas Gas requests an effective date of November 1, 1997, for the proposed tariff sheets.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested state commissions, and all parties appearing on the official restricted service list in Docket No. RP97–344.

Any person desiring to protest said filing should file a Protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests may be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29691 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–35–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing.

Transco is proposing herein to implement a new flexible firm transportation service under Rate Schedule FT–2 as an alternative to Rate Schedule FT service. FT–2 Service will be applicable only to capacity created by incrementally priced expansion facilities that are attached to Transco's supply laterals upstream of Stations 30, 45, 50, 62, or to the mainline system upstream of Station 85 for Buyers willing to make a life of reserves commitment for production from specified leases. Rate Schedule FT–2 is structured so that a Buyer of this service may establish Transportation Contract Quantity (TCQ) entitlements that change over time based on the production profile of the committed reserves.

Transco states that it is serving copies of the instant filing to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29696 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-3-29-000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 31, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 50 to be effective November 1, 1997.

Transco states that the purpose of the instant filing is to track fuel changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT-NT. Transco states that the filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT-NT.

Transco states that included in Appendix B attached to the filing is the explanation of the fuel changes and details regarding the computation of the revised Rate Schedule FT-NT fuel percentages.

Transco states that copies of the filing are being mailed to each of its FT-NT customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-29698 Filed 11-10-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-484-001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1997.

Take notice that on October 3, 1997, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 254, with a proposed effective date of September 25, 1997.

WNG states that on August 27, 1997, it filed in Docket No. RP97-484-000, tariff sheets to comply with Order No. 636-C. WNG states that Sheet No. 254 filed in this docket did not include the one-year extension for recovery of GSR costs approved by the Commission by order issued July 21, 1997 in Docket No. RP97-317-001. WNG states that the instant filing is being made to reflect the one-year extension filed July 23, 1997 in Docket No. RP97-317-001, in Docket No. RP97-484.

WNG states that a copy of its filing was served on all participants listed on the service listed maintained by the Commission in the dockets referenced above and on all WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before November 12, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-29693 Filed 11-10-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-62-006]

Wyoming Interstate Company; Notice of Tariff Compliance Filing

November 5, 1997.

Take notice that on November 3, 1997, Wyoming Interstate Company (WIC), tendered for filing to become part of its FERC gas Tariff, Second Revised Volume No. 2 tariff, Substitute First Revised Sheet No. 52C, Substitute First Revise Sheet No. 64C, Substitute First Revised Sheet No. 64D Substitute Original Sheet No. 64E, Substitute Original Sheet No. 64F, Substitute Original Sheet No. 64G and Substitute Original Sheet No. 64H to be effective November 1, 1997.

WIC states the tariff sheets are filed in compliance with the order issued October 29, 1997 in Docket No. RP97-62-007, as well as Section 154.203 of the Commission's regulations. As required WIC is reinstating language in Article 7.1(d)(iv) on Sheet No. 64C and has revised the reference to standard No. 2.3.31 (Version 1.1) on Sheet No. 52C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-29688 Filed 11-10-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98-2-76-000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

November 5, 1997.

Take notice that on October 31, 1997, Wyoming Interstate Company (WIC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5.2 and Second Revised Volume No. 2, Sixth Revised Sheet No. 4A reflecting an increase in the percentage for Fuel, Lost and Unaccounted-for Gas (FL&U Percentage) from 0.31% to 0.49% effective December 1, 1997.

WIC states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions, and are otherwise available for public inspection at WIC's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-29697 Filed 11-10-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-171-000, et al.]

Energy 2000, Incorporated, et al.; Electric Rate and Corporate Regulation Filings

November 3, 1997.

Take notice that the following filings have been made with the Commission:

1. Energy 2000, Incorporated

[Docket No. ER98-171-000]

Take notice that on October 15, 1997, Energy 2000, Incorporated (Energy 2000) petitioned the Commission for acceptance of Energy 2000 Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based prices; and the waiver of certain Commission Regulations.

Energy 2000 intends to engage in wholesale electric power and energy purchases and sales as a marketer. Energy 2000 is not in the business of generating or transmitting electric power. Energy 2000 is an independent corporation which is not a subsidiary or affiliate of any other entity nor does it have affiliates of its own.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Washington Water Power Company

[Docket No. ER98-172-000]

Take notice that on October 15, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Cook Inlet Energy Supply, LP and NP Energy, Inc. WWP requests the Service Agreements be given effective dates of October 1, 1997.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PP&L, Inc.

[Docket No. ER98-173-000]

Take notice that on October 15, 1997, PP&L, Inc., (Formerly known as Pennsylvania Power & Light Company) (PP&L), tendered for filing a Transformer Disconnection Agreement between PP&L and Metropolitan Edison Company, d/b/a GPU Energy (GPU), pursuant to which PP&L has agreed to permanently disconnect a 500/230 kV transformer located at PP&L's Hosensack substation. GPU has agreed to pay a contribution-aid-of-construction (CIAC) in return for PP&L disconnecting this transformer. PP&L has not yet collected any monies owed it for disconnecting the transformer.

PP&L states that copies of this filing have been served on GPU and on the Pennsylvania Public Utility Commission.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Millennium Energy Corporation

[Docket No. ER98-174-000]

Take notice that on October 15, 1997, Millennium Energy Corporation (Millennium Energy), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective on the date of the Commission's order accepting the Rate Schedule for filing.

Millennium Energy intends to engage in electric power and energy transactions as a marketer. In these transactions, Millennium Energy proposes to charge market-determined rates, mutually agreed upon by the parties. All sales and purchases will be arms-length transactions.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Power Service, Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98-175-000]

Take notice that on October 16, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 33, to add four (4) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of October 15, 1997, to CNG Retail Services Corporation, New Energy Ventures, L.L.C., QST Energy Trading Inc., and Williams Energy Services Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER98-176-000]

Take Notice that on October 16, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated October 7, 1997, with Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, each trading and doing business as GPU Energy (GPU) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds GPU as an eligible customer under the Tariff.

PP&L requests an effective date of October 16, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to GPU and to the Pennsylvania Public Utility Commission.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L, Inc.

[Docket No. ER98–177–000]

Take Notice that on October 16, 1997, PP&L, Inc., (formally known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 2, 1997, with Amoco Energy Trading Corporation (Amoco) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Amoco as an eligible customer under the Tariff.

PP&L requests an effective date of October 16, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Amoco and to the Pennsylvania Public Utility Commission.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Light Company

[Docket No. ER98–178–000]

Take notice that on October 16, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and two service agreements for two new customers, ProLiance Energy LLC and Virginia Electric and Power Company.

CILCO requested an effective date of October 10, 1997.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER98–179–000]

Take notice that on October 16, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing Kansas City Power & Light Company as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of September 16, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER98–180–000]

Take notice that on October 16, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: Northern Indiana Public Service Company. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate sales to this customer.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER98–182–000]

Take notice that on October 16, 1997, Florida Power Corporation (FPC), tendered for filing a service agreement between South Carolina Electric and Gas and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective October 14, 1997.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Pennsylvania Power & Light Company

[Docket No. ER98–183–000]

Take notice that on October 15, 1997, Pennsylvania Power & Light Company (PP&L), tendered for filing an Interconnection between PP&L and Williams Generation Company—Hazelton.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Rochester Gas and Electric Corporation

[Docket No. ER98–184–000]

Take notice that on October 14, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the New Energy Ventures, L.L.C. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Tariff, Original Volume No. 3 (Market-Based Rate Tariff) accepted by the Commission in Docket No. ER97–3553–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 8, 1997, for the New Energy Ventures, L.L.C. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–185–000]

Take notice that on October 14, 1997, the PJM Inter-connection, L.L.C.(PJM) filed, on behalf of the Members of the LLC, membership applications of Allegheny Electric Cooperative, Inc., MidCon Power Services Corp., Commonwealth Edison Company and Edison Source. PJM requests an effective date of October 16, 1997.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Orange and Rockland Utilities, Inc.

[Docket No. ER98–186–000]

Take notice that on October 15, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which O&R will provide capacity and/or energy to New Energy Ventures, L.L.C.(New Energy).

O&R requests waiver of the notice requirement so that the service agreement with New Energy becomes effective as of October 10, 1997.

O&R has served copies of the filing on The New York State Public Service Commission and New Energy.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER98–187–000]

Take notice that on October 15, 1997, the New England Power Pool (NEPOOL or Pool) Executive Committee filed a request for termination of membership in NEPOOL, with a retroactive date of October 1, 1997, of Oceanside Energy, Inc., and Louis Dreyfus Electric Power, Inc., (collectively, the Terminating Participants). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by each of the Terminating Participants. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that termination of the Terminating Participants with a retroactive date of October 1, 1997, would relieve those entities, at their individual requests, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove the Terminating Participants from membership in the Pool. Neither of the Terminating Participants has received any energy related services (such as scheduling, transmission, capacity or energy services) under the NEPOOL Agreement.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–188–000]

Take notice that on October 16, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 25 to add Avista Energy, CNG Retail Services Corporation, Entergy Power Marketing Corporation, New Energy Ventures, L.L.C., QST Energy Trading Inc., and Williams Energy Services Company to Allegheny Power Open Access transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is October 15, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Wisconsin Company)

[Docket No. ER98–189–000]

Take notice that on October 16, 1997, Northern States Power Company-Wisconsin (NSP), tendered the Second Amendment to the Power and Energy Supply Agreement between NSP and the City of Spooner. NSP requests an effective date of October 25, 1997.

A copy of the filing was served upon each of the parties named in the Service List.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Texas Utilities Electric Company

[Docket No. ER98–190–000]

Take notice that on October 16, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA) with Avista Energy, Inc., for certain Economy Energy Transmission Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Avista Energy, Inc., as well as the Public Utility Commission of Texas.

Comment date: November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

[Docket No. EC98–12–000]

Take notice that Pacific Gas and Electric Company, San Diego Gas & Electric, Company and Southern California Edison Company (the Companies), on October 27, 1997, tendered for filing a Joint Application For Authorization To Permit The Use of Designated Energy Management Facilities And Systems By The California Independent System Operator Corporation. This application requests authorization for the use (including the shared use) by the California Independent System Operator (ISO) of certain Companies' energy management facilities and systems. The application describes the energy management facilities and systems as certain portions of the Companies' communications infrastructure, power system monitoring and control systems, computers, and computer software.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Cataula Generating Company, L.P.

[Docket No. EC98–13–000]

Take notice that Cataula Generating Company, L.P., (Cataula) on October 29, 1997, tendered for filing a Petition that the Commission approve a disposition of facilities and grant any other authorization the Commission may deem to be required under Section 203 of the Federal Power Act in connection with a proposed sale of all of the stock of Peach II Power Corporation, a partner in Cataula, to PG&E Generating Company.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Amoco Canada Power Resources Company

[Docket No. EG98–5–000]

On October 29, 1997, Amoco Canada Power Resources Company, a company formed under the laws of Nova Scotia, whose address is c/o Amoco Canada Petroleum Company Ltd., 240 4th Avenue S.W., Calgary, Alberta, Canada, T2P 4H4 (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

The Applicant will be engaged directly in owning and operating eligible facilities to be constructed in Canada: the 84 MW Primrose power plant to be located near Bonnyville, Alberta, consisting of one General Electric natural-gas fired combustion turbine and electric generator and associated equipment and real estate. The turbine is natural gas-fired only.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29731 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 459–068, 069 & 091]

Union Electric Company; Notice of Availability of Environmental Assessment

November 5, 1997.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of approving three non-project lands applications at the Osage Hydroelectric Project FERC No. 459. The Osage Hydroelectric Project is on the Osage River in Benton and Camden Counties, Missouri. Its reservoir is the Lake of the Ozarks. The applications reviewed in the EA include: (1) A permit to dredge 4,000 cubic yards (cy) of sediment and construct a new marina, (2) a permit to dredge 600 cy of sediment and construct a new boat ramp, and (3) a permit to dredge 4,500 cy of gravel to reduce flooding of adjacent properties and install 500 feet of riprap to protect an eroding streambank. These permits are for work in the Gravois Arm, mile 78.7, and Indian Creek Arm of Lake of the Ozarks, respectively

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Commission staff conclude that approving the licensee's applications to grant the three permits would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29682 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

November 5, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* 2835.

c. *Date filed:* October 20, 1997.

d. *Submitted By:* New York State Electric & Gas Corporation, current licensee.

e. *Name of Project:* Rainbow Falls Hydroelectric Project.

f. *Location:* On the Ausable River, in Clinton and Essex Counties, New York.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* April 1, 1962.

i. *Expiration date of current license:* November 30, 2002.

j. *The project consists of:* (1) A 435-foot-long concrete gravity dam comprising; (a) a 345-foot-long, 19-foot-high spillway equipped with 3-foot-high flash boards; (b) a sluice gate section and intake works; and (c) a concrete abutment and earthen dike; (2) a 17-acre reservoir with a maximum water surface elevation of 311 feet msl; (3) a power intake leading to a 250-foot-long, 14-foot-wide, and 22-foot-deep power canal; (4) a gatehouse with a trashrack and three gates; (5) a 411-foot-long and a 401-foot-long, 6-foot-diameter penstocks; (6) a powerhouse containing two generating units with a total installed capacity of 2,640 kW; and (7) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, Kirkwood, NY 13795, Attn: Carol Howland, (607) 762–8881.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2000.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29683 Filed 11–10–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of August 11 Through August 15, 1997

During the Week of August 11 through August 15, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: October 27, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 11 through August 15, 1997]

Date	Name and location of applicant	Case No.	Type of submission
8/12/97	Damar Worldwide, Inc., Memphis, Tennessee.	VEE–0048	Request for Exception. If granted: Damar Worldwide, Inc. would be granted exception relief from the energy efficiency standards for 75 watt RB30 incandescent light bulbs specified in 10 CFR Part 430 which would permit the firm to import lamps of that wattage that were ordered from foreign manufacturers before it received actual notice that the regulations were modified in a Final Rule published in the FEDERAL REGISTER on May 29, 1997.
8/13/97	Personnel Security Hearing	VSO–0171	Request for Hearing under 10 CFR Part 710 If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
8/14/97	Karen Coleman-Wiltshire, Olney, Maryland	VFA–0325	Request of an Information Request Denial If granted: The June 27, 1997 Freedom of Information Request Denial issued by the Department of the Army would be rescinded, and Karen Coleman-Wiltshire would receive access to certain DOE information.
8/14/97	Primerica Corp., Hardin, Kentucky	RR272–300	Request for Modification/Rescission in the Crude Oil Refund Proceeding If granted: The August 8, 1997 Decision and Order Case No. RG272–1074 issued to Primerica Corp. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 11 through August 15, 1997]

Date	Name and location of applicant	Case No.	Type of submission
8/13/97	Personnel Security Hearing	VSO–0171	Request for Hearing under 10 CFR Part 710 If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
8/14/97	Karen Coleman-Wiltshire, Olney, Maryland	VFA–0325	Request of an Information Request Denial If granted: The June 27, 1997 Freedom of Information Request Denial issued by the Department of the Army would be rescinded, and Karen Coleman-Wiltshire would receive access to certain DOE information.
8/14/97	Primerica Corp., Hardin, Kentucky	RR272–300	Request for Modification/Rescission in the Crude Oil Refund Proceeding If granted: The August 8, 1997 Decision and Order Case No. RG272–1074 issued to Primerica Corp. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

[FR Doc. 97–29738 Filed 11–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of August 25 Through August 29, 1997

During the Week of August 25 through August 29, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: October 28, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 25 through August 29, 1997]

Date	Name and location of applicant	Case No.	Type of submission
8/26/97	INEL Research Bureau, Troy, Idaho	VFA–0328	Appeal of an Information Request Denial. If granted: The July 25, 1997 Freedom of Information Request Denial issued by Richland Operations Office would be rescinded, and INEL Research Bureau would receive access to certain DOE information.
8/27/97	Travelers Group, New York, NY	RR272–301	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The August 8, 1997 Decision and Order (Case No. RG272–1074) issued to Travelers Group would be modified regarding the firm's Application for Refund submitted in the Crude Oil refund proceeding.
8/28/97	Personnel Security Review	VSA–0150	Request for Review of Opinion Under 10 CFR Part 710. If granted: The August 7, 1997 Hearing Officer Opinion (Case No. VSO–0150) would be reviewed at the request of an individual by the Department of Energy.

[FR Doc. 97–29739 Filed 11–10–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of September 15 Through September 19, 1997

During the Week of September 15 through September 19, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: October 28, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of September 15 through September 19, 1997]

Date	Name and location of applicant	Case No.	Type of submission
9/17/97	VSO–0175	Personnel Security Hearing	Request for Hearing Under 10 C.F.R. Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
9/17/97 Personnel Security Hearing.	VSO–0176	Personnel Security Hearing	Request for Hearing Under 10 C.F.R. Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
9/17/97	Personnel Security Hearing	VSO–0177	Request for Hearing Under 10 C.F.R. Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
9/18/97	Personnel Security Hearing	VSA–0139	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The August 14, 1997 Opinion of the Office of Hearings and Appeals Case No. VSO–0139 would be reviewed at the request of an individual employed by the Department of Energy.
9/19/97	Pillsbury Co., Minneapolis, MN	RR272–303	Request for Modification/Rescission.

[FR Doc. 97–29741 Filed 11–10–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of $2,451,396 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Crude Oil Purchasing, Incorporated (Case No. LEF–0058), Jaguar Petroleum, Incorporated (Case No. LEF–0059), Westport Energy Corporation/Westport Petroleum Corporation (Case No. LEF–0113), and Gratex Corporation/Compton Corporation (Case No. VEF–0012). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

FOR FURTHER INFORMATION CONTACT: Bryan F. MacPherson, Assistant Director, Office of Hearings and Appeals, Washington, DC 20585–0107, (202) 426–1571.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth procedures that the DOE will use to distribute a total of $2,451,396, plus accrued interest, remitted to the DOE by (1) Crude Oil Purchasing, Incorporated, (2) Jaguar Petroleum, Incorporated, (3) Westport Energy Corporation & Westport Petroleum Corporation, and (4) Gratex Corporation/Compton Corporation. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution.

The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986)(the MSRP). Under the MSRP, crude oil overcharge moneys are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury. Because the June 30, 1995, deadline for the crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted.

Dated: October 29, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Crude Oil Purchasing, Incorporation; Jaguar Petroleum, Incorporated; Westport Energy Corporation & Westport Petroleum Corporation; Gratex Corporation/Compton Corporation.

Dates of Filings: July 20, 1993; July 20, 1993; September 9, 1993; March 23, 1995.

Case Numbers: LEF–0058, LEF–0059, LEF–0113, VEF–0012.

The Economic Regulatory Administration (ERA) of the Department of Energy filed four Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA). In the petitions, ERA asks OHA to distribute funds remitted to the DOE pursuant to settlements between Crude Oil Purchasing, Incorporated (COP), Jaguar Petroleum, Incorporated (Jaguar), Westport Energy Corporation & Westport Petroleum Corporation (Westport), Gratex Corporation and its parent, Compton Corporation (Gratex/Compton). A total of $2,451,396, plus interest, is available for restitution. All of these funds are now being held in interest-bearing escrow accounts pending a determination regarding their proper disposition.

In accordance with the procedural regulations codified at 10 C.F.R. Part 205, Subpart V, the ERA requests in its Petitions that the OHA establish special refund procedures to remedy the effects of any regulatory violations which were resolved by these settlements. This Decision and Order sets forth the OHA's final plan to distribute these funds.[1]

I. Background

On September 21, 1982, DOE and COP entered into a Consent Order which resolved all pending or potential claims that DOE had or may have against COP relating to COP's compliance with the federal petroleum price and allocation regulations during the period from January 1, 1973 to January 27, 1981. There is a total of $93,750, plus interest, available from COP for restitution.

On May 31, 1983, DOE and Jaguar entered into a Consent Order which resolved all pending or potential claims that DOE had or may have against Jaguar relating to Jaguar's compliance with the federal petroleum price and allocation regulations during the period from November 14, 1979 to January 27, 1981. There is a total of $64,500, plus interest, available from Jaguar for restitution.

On May 11, 1983, the EAR issued a Proposed Remedial Order (PRO) to Westport alleging overcharges in the resale of crude oil during the period from June 1980 to November 1980. OHA dismissed this PRO after Westport was discharged in bankruptcy and DOE was entitled to receive payments under the bankruptcy reorganization plan. Under Westport's Second Amended Liquidating Plan of Reorganization, approved by the U.S. Bankruptcy Court for the District of Colorado on July 30, 1986, Westport was required to make payments to DOE, and OHA was directed to distribute to the Westport escrow account %35 of any refunds that it granted to Westport in other refund proceedings. Thus far, DOE has collected a total of $126,172 from Westport. That amount, plus interest, is available for restitution.

ERA filed claims in the bankruptcy cases of Gratex and Compton alleging overcharges in the resale of crude oil during the period from December 1978 to December 1980. On April 27, 1984, ERA issued a PRO to Gratex and Compton based on these same facts. On October 18, 1988, the United States Bankruptcy Court for the Northern District of Texas approved a Compromise Agreement in the Gratex proceeding which obligated Gratex to pay DOE a lump sum plus a percentage of future distributions made to unsecured creditors. In 1992, the United States Bankruptcy Court for the Northern District of Texas approved a compromise agreement in the Compton proceeding. Thus far, Gratex and Compton have paid to the DOE the sum of $2,166,974. This amount, plus interest, is available for restitution.

II. The Proposed Refund Procedures

On April 22, 1997, we issued a proposed Decision and Order (PDO) that tentatively concluded that ERA's Petitions for the Implementation of Special Refund Procedures with respect to the funds collected from these four firms should be approved. Notice of Proposed Implementation of Special Refund Procedures, 62 Fed. Reg. 23444 (April 30, 1997). In each case, we proposed to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986) (the MSRP). The MSRP has been the basis for the distribution in these Subpart V proceedings of all crude oil funds DOE has obtained. *See* Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986); Notice regarding the Order Implementing the MSRP, 52 Fed. Reg. 11737 (April 10, 1987).

The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for payment of claims to injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

OHA did not receive any comments on the PDO, and we adopt its tentative determination to distribute the funds remitted by COP, Jaguar, Westport, and Gratex/Compton in accordance with the MSRP. Accordingly, we will reserve 20 percent of these funds for direct refunds to claimants.[2] The remaining 80 percent of the funds collected from these firms shall be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls, as set forth in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement. If additional funds are subsequently collected from these firms after the issuance of this Decision and Order, such funds shall be distributed in the same manner.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the full balances from the following accounts: approximately $93,750, plus all accrued interest, from the Crude Oil Purchasing, Incorporated subaccount (Account No. 6A0X00269T), approximately $64,500 plus all accrued interest from the Jaguar Petroleum, Incorporated subaccount (Account No. 640X00444T), approximately $126,172, plus all accrued interest from the Westport Energy Corporation & Westport Petroleum Corporation subaccount (Account No. 6C0X00292Z), approximately $2,166,974 plus all accrued interest from the Gratex Corporation/Compton Corporation subaccount (Account No. 6A0X00340W), for a total of approximately $2,451,396, plus all accrued interest, pursuant to Paragraphs (2), (3), and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $980,558 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—States," Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $980,558 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $490,280 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—Claimants 4," Number 999DOE010Z.

(5) This is a final Order of the Department of Energy.

Dated: October 29, 1997.

George B. Breznay,
Director, Office of Hearings and Appeals.

[FR Doc. 97–29737 Filed 11–10–97; 8:45 am]
BILLING CODE 6450–01–M

[1] For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–07, and Office of Enforcement, 9 DOE ¶82,508 (1981).

[2] It is no longer possible to file an Application for Refund from the crude oil funds as the final deadline for such Applications was June 30, 1995. See 60 FR 19914 (April 21, 1995). A party that submitted a timely claim in the crude oil refund proceeding need not file another claim in order to share in the funds at issue in this Decision. OHA is currently paying crude oil refund claims at the rate of $0.0016 per gallon. We will decide whether additional refunds will be made when we are better able to determine how much additional money will be collected from firms that have either outstanding obligations to the DOE or enforcement cases currently in litigation.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5920–1]

Announcement of Stakeholders Meeting Regarding the Use of Screening Procedures for Drinking Water Compliance Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency will be holding a public meeting on Thursday, December 4, 1997. The purpose of this meeting is to present information regarding EPA's plans for the approval of screening procedures for the compliance monitoring of drinking water contaminants, to solicit public input on the potential uses of screening procedures, and to seek the preferences of the public regarding approaches for continued public involvement. This meeting is a continuation of public meetings that started in 1995 to obtain input on the Agency's Drinking Water Program. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, states, local governments, and the public. At the upcoming meeting, EPA is seeking input from the regulated community (public water systems), method developers/vendors, analytical laboratories, research and regulatory personnel, environmental and public interest groups, and other stakeholders. Input is requested regarding the current and potential applications of screening procedures for drinking water compliance monitoring, their anticipated availability and costs, the development of a framework for the approval and use of screening procedures and of a screening procedure validation protocol, and other considerations that may shape future EPA action regarding contaminant analysis. EPA encourages the full participation of the public throughout this process.

DATES: The stakeholders meeting on Screening Procedures will be held on December 4, 1997 from 9:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RESOLVE, 1255 23rd Street, NW. (Suite 275), Washington, DC 20037. For additional information, please contact the Safe Drinking Water Hotline, at phone: (800) 426–4791 or FAX: (703) 285–1101. Members of the public wishing to attend the meeting may register by telephone through the Safe Drinking Water Hotline by November 21, 1997. Those registered for the meeting by November 21, 1997 will receive background materials prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should also register with the Safe Drinking Water Hotline by November 21, 1997. Members of the public who cannot participate via conference call or in person may submit comments in writing by December 19, 1997 to: William Labiosa, U.S. Environmental Protection Agency, 401 M Street, SW. (4607), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For other information on activities related to the approval of screening procedures, please contact William Labiosa at U.S. Environmental Protection Agency, Phone: 202–260–4835, Fax: 202–260–3762.

SUPPLEMENTARY INFORMATION:

A. Background

On August 6, 1996, the Congress passed amendments to the Safe Drinking Water Act (SDWA), which establishes a new charter for the nation's public water systems, states, and EPA in protecting the safety of drinking water. The amended SDWA requires EPA to review "new analytical methods to screen for regulated contaminants." After this review, EPA "may approve such methods as are more accurate or cost-effective than established reference methods for use in compliance monitoring" [SDWA, Section 1445(i)]. EPA is also exploring the use of screening procedures for use in the monitoring of unregulated contaminants with monitoring requirements. These methods are expected to provide flexibility to PWSs in compliance monitoring and are expected to be "better and/or cheaper and/or faster" than existing analytical methods.

B. Request for Stakeholder Involvement

EPA has announced this public meeting to obtain stakeholder input to the development of a framework for the identification, approval, use, and validation of screening procedures for the monitoring of drinking water contaminants. Approval and method validation processes based on the Streamlining protocol that was proposed on March 28, 1997 [62 FR 14975] will be discussed. EPA is also seeking input regarding the types of monitoring and contaminants for which screening procedures may be most amenable.

The public is invited to provide comments on the issues listed above and other issues related to screening procedures during the December 4, 1997, meeting or in writing by December 19, 1997.

Dated: November 5, 1997.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–29736 Filed 11–10–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34116; FRL 5753–4]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 11, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This Notice announces receipt by the Agency of applications from registrants to delete uses in the three pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before May 11, 1998 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: Registration number(s) preceded by ** indicate a 30–day comment period.)

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
**019713–00304	Green Devil Containing 50% Malathion	Malathion	Fleas on dogs and pets, household pests
059144–00003	Sevin 5% Brand Carbaryl Insecticide Dust	Carbaryl	Use on citrus trees, ornamental trees
059144–00005	Sevin 10% Brand Carbaryl Insecticide Dust		Use on citrus trees, ornamental trees

(Note: Registration number (s) preceded by ** indicate a 30–day comment period)

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
019713	Drexel Chemical Co., P.O. Box 13327, Memphis, TN 38113.
059144	GRO TEC, Inc., P.O. Box 290, Madison, GA 30560.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: October 29, 1997.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 97–29745 Filed 11–10–97; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 13, 1997, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
B. *New Business*
Regulation
Loan Policies and Operations; Loan Sales Relief

* *Closed Session*

C. *Reports*
1. OSMO Quarterly Report
2. Litigation Update

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8), (9) and (10)

Dated: November 6, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–29799 Filed 11–6–97; 4:39 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2327]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted (CC Docket No. 90–571)

Released: November 5, 1997.

Notice is hereby given that the states listed below have applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225. These rules are codified at 47 CFR 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments on or before December 12, 1997. Comments should reference the relevant

state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–40
Applicant: Connecticut Department of Public Utility Control
State of Connecticut

File No: TRS–97–37
Applicant: New Mexico Commission for the Deaf and Hard of Hearing
State of New Mexico

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–29647 Filed 11–10–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2237]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed November 28, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Telephone Number Portability (CC Docket 95–116, RM–8535).

Number of Petitions Filed: 1.

Subject: Closed Captioning and Video Description of Video Programming Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility (MM Docket No. 95–176).

Number of Petitions Filed: 9.

Subject: Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) Communications Act of 1934 (WT Docket 97–192).

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (ET Docket No. 93–62).

Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Amendment of the Commissions's Rules to Preempt State and Local Regulation of Commercial Mobile Radio Service Transmitting Facilities (RM–8577).

Number of Petitions Filed: 1.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–29648 Filed 11–10–97; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Wednesday, November 5, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Ms. Judy Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: November 6, 1997.

Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.
[FR Doc. 97–29850 Filed 11–7–97; 11:45 am]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community First Banking Corporation, Carrollton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Carrollton Federal Bank, FSB, Bowden, Georgia, following its conversion to a commercial bank.

2. Compass Bancshares, Inc., Birmingham, Alabama; Compass Banks of Texas, Inc., Birmingham, Alabama; and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to merge with First University Corporation, Houston, Texas, and thereby indirectly acquire West University Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, November 6, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–29758 Filed 11–10–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. SunTrust Banks of Georgia, Inc., Atlanta, Georgia; to acquire Equitable Securities Corporation, Nashville, Tennessee, and thereby engage in underwriting and dealing in all types of ineligible securities. See *J.P. Morgan & Co. Incorporated, et al.*, 75 Fed. Res. Bull. 192 (1989); extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; activities related to extending credit, specifically, arranging commercial real estate equity financing, pursuant to § 225.28(b)(2)(ii) of the Board's Regulation Y; leasing personal or real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; trust company activities, pursuant to § 225.28(b)(5) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; securities brokerage activities; riskless principal activities; private placement services; and other transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; underwriting and dealing in government obligations and money market instruments, pursuant to § 225.28(b)(8)(i) of the Board's Regulation Y; investing and trading activities, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y; and other related incidental activities. See, e.g., *J.P. Morgan & Co.*, 75 Fed. Res. Bull. at 213, n. 59.

Board of Governors of the Federal Reserve System, November 6, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–29759 Filed 11–10–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: 10:00 a.m., Friday, November 14, 1997.
PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Proposed 1998 Federal Reserve Board employee salary structure adjustments and merit program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal System employees.
3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.
SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meetings.

Dated: November 7, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–29821 Filed 11–7–97; 10:08 am]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0987]

Policy Statement on Privately Operated Multilateral Settlement Systems

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Request for comment.

SUMMARY: As part of its payment system risk reduction program, the Board of Governors is requesting comment on a proposal to integrate its policies on "Privately Operated Large-Dollar Multilateral Netting Systems" and "Private Small-Dollar Clearing and Settlement Systems" into a single, comprehensive policy statement on "Privately Operated Multilateral Settlement Systems."

DATES: Comments must be received by February 10, 1998.

ADDRESSES: Comments should refer to Docket No. R–0987 and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. on weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Marquardt, Assistant Director (202/452–2360), Paul Bettge, Assistant Director (202/452–3174), or Heidi Richards, Senior Financial Services Analyst (202/452–2598), Division of Reserve Bank Operations and Payment Systems; or Oliver Ireland, Associate General Counsel (202/452–3625); for the hearing impaired only,

Telecommunications Device for the Deaf, Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, the Board adopted a policy statement on Privately Operated Large-Dollar Multilateral Netting Systems (Large-Dollar Policy Statement).[1] The Large-Dollar Policy Statement, which replaced earlier policy statements on large-dollar funds transfer networks and offshore dollar clearing and netting systems, contains minimum standards for multilateral netting systems (Lamfalussy Minimum Standards) set forth in The Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries (Lamfalussy Report).[2] The criteria for identifying arrangements subject to the policy were designed to limit the scope and application of the policy to large-dollar multilateral netting systems for payments and foreign exchange contracts that involve settlements in U.S. dollars and have the potential to increase systemic risk in financial markets.

At the time the Large-Dollar Policy Statement was adopted, the Board recognized that in the case of larger multilateral netting systems for "batch-processed" payments, such as checks or automated clearing house (ACH) payments, certain electronic controls that would be required to implement the Lamfalussy Minimum Standards might not be feasible. In addition, the characteristics of the instruments cleared in such systems, along with the scale of systemic risk, might differ from large-dollar systems. Consequently, the Board stated its intent to study further the implications of the Lamfalussy Minimum Standards for privately operated multilateral netting systems for batch-processed payments and did not apply the Large-Dollar Policy Statement to those systems at that time.

In addition, in 1995, the Board began a comprehensive evaluation of its policies regarding Federal Reserve net settlement services, which are typically used by privately operated clearinghouses for batch-processed and other small-dollar payments, including checks, ACH payments, and in some cases, automated teller machine (ATM) and credit card transactions. The Board's review addressed both the need to enhance the Federal Reserve's net settlement services and risk-reduction policies toward small-dollar payments clearinghouses more generally, including, potentially, the Lamfalussy Minimum Standards. As a result of this review, the Board issued for public comment a proposal for enhancing the Federal Reserve's net settlement services (62 FR 32118, June 12, 1997).

The proposed modifications to the Policy Statement on Payments System Risk issued in this notice also stem from this comprehensive evaluation of net settlement services and policies. This proposal would repeal the existing Large-Dollar Policy Statement and replace it with a unified policy statement on risks in multilateral settlement arrangements. The proposal is not intended to alter the Board's current policy as applied to those existing privately operated large-dollar multilateral netting systems that are currently subject to the Large-Dollar Policy Statement, but to integrate that policy within a broader and more consistent policy framework.

II. The Proposed Policy Statement

Rationale for and Scope of the Policy

The proposed policy statement is designed to address risks in multilateral settlement arrangements for both "small-dollar" payments, such as checks and ACH transfers, and "large-dollar" payments, which are typically used to settle interbank and other financial market transactions. The policy statement recognizes that settlement of payments through a multilateral clearinghouse arrangement may not necessarily pose material additional risks for participants relative to other methods of settlement, such as bilateral or correspondent settlement. For example, in smaller arrangements used primarily to settle customer or third-party payments, such as check clearinghouses, participants generally are not exposed to significant credit risk with respect to the underlying payments. Payments are supported by a well established body of law and operational practice that would help determine the resolution of a participant default or clearinghouse settlement failure. In other arrangements, however, such as those for some types of electronic payments, the characteristics of the underlying payments in the event of a settlement disruption or failure and the operational options for resolving such a situation may be much less clear.

The proposed policy statement, therefore, is directed only at those multilateral settlement arrangements that heighten existing risks inherent in the settlement process or that create new risks to their participants or to financial markets. For these systems, the Board believes that policy guidance on settlement risk concerns at the clearinghouse or system level is warranted. For other systems, which are likely to include the vast majority of clearinghouse arrangements for small-dollar payments, reliance on existing supervisory approaches aimed at promoting the safe and sound operation of financial institutions, including the Bank Service Company Act, is appropriate.

Fundamental categories of risk, including credit, liquidity, operational, legal, and systemic risk, are common to many different types of multilateral settlement arrangements. The magnitude and specific manifestation of these settlement-related risks, as well as the most cost-effective means of managing them, differ across systems. Therefore, the proposed policy statement provides a flexible, risk-based approach to risk management, rather than imposing uniform, rigid requirements on all systems. While the flexible approach may lead to some initial uncertainties in the implementation of the policy statement, the Board expects that the costs of such uncertainty would be significantly lower than the costs of an alternative policy that mandated uniform risk management standards for all systems. Further, such a uniform, rigid policy would likely not adequately address risks in some systems and would impose unnecessary costs on the majority of systems that pose limited or no additional risks relative to other forms of settlement.

Risk Factors and Risk Management Measures

The proposed policy statement identifies five categories of settlement-related risks—credit, liquidity, operational, legal, and systemic—that may arise in multilateral settlement systems. For each type of risk, the policy statement includes (1) a discussion of risk factors that give rise to concerns, (2) threshold criteria for each risk category that are intended to serve as "safe harbors" for purposes of compliance with the policy statement, and (3) common examples of risk management or mitigating controls that can be used to address these risk factors. Systems would be expected to address any material risks in each category.

First, the discussion of risk factors for each category is intended to identify multilateral systems where such risks are heightened relative to other means of settlement. In general, risks may be heightened in multilateral settlement arrangements if the ability of participants to manage settlement-related risks individually are reduced for operational or other reasons, or because risk management incentives are reduced as a result of shifts in bilateral obligations and risk exposures between participants. Risks could also be increased if no alternative to multilateral settlement in a particular system is available, such that settlements could not reasonably be expected to be completed by participants in a timely manner outside the system in the event that settlement could not be completed within the system.

Second, for each risk category the policy statement specifies qualitative and quantitative thresholds and other criteria intended to identify more clearly systems in which these risks are not likely to arise. These criteria are intended to simplify administration of the policy. Many clearinghouse arrangements will fall below the thresholds or not meet specified criteria and therefore will not be required to assess their compliance with the policy statement. The Board requests comment on the appropriateness of these threshold criteria. The Board expects that smaller check clearinghouses, for example, will not need to modify their operations at all in order to comply with the policy; others should only have to make minimal changes, for example, changes in settlement timing or settlement failure notification policies. To provide further guidance on application of the policy, the Appendix to the policy statement also contains specific illustrative examples.

Third, the risk management discussion in the proposed policy statement provides illustrations of the type of risk management measures that may be appropriate given the particular risk factors identified. Particularly for multilateral settlement systems that are not likely to raise systemic risk concerns, this policy is intended to provide flexible guidance on means to address risks. In general, the Board believes that risk management measures should be commensurate with the scale and scope of risks. In some cases, the Board recognizes that systems may need to consult with Board staff regarding approaches to addressing identified risk factors.

For multilateral settlement systems that are sufficiently large to raise potential systemic risk concerns, the proposed policy statement imposes higher risk management standards. The Board is proposing to retain the threshold criteria for application of the Large-Dollar Policy Statement, including $500 million in daily net settlement amounts or an average payment size of $100,000. The Board requests comment on the appropriate level of these thresholds, or whether a different measure, such as gross payment value settled, or net settlement amounts alone, would be more appropriate proxies for systemic risk.

Under the proposed policy statement, those larger systems that meet the systemic risk criteria would be expected to demonstrate robust policies and procedures for addressing settlement failures and disruptions, but would not necessarily be required to meet all of the Lamfalussy Minimum Standards. The Board believes that full application of the Lamfalussy Minimum Standards embodied in the existing Large-Dollar Policy Statement may not be necessary or appropriate for some of those arrangements. These standards were designed for those multilateral netting systems for which a failure to settle all positions on a multilateral net basis as and when expected could pose a high degree of systemic risk. As a result, these standards require systems, among other things, to have the ability to settle all positions on a multilateral net basis even if the participant with the largest debit position defaults on its settlement obligations. In contrast, the Board recognizes that for many small-dollar multilateral settlement systems, such as check clearinghouses, a recast of multilateral net settlement positions (to exclude transactions with the defaulting participant) or similar procedures may be an effective risk management tool. This presumes that settlement for non-defaulting participants can be completed in a timely manner and that any liquidity effects on participants are manageable.

For some larger multilateral settlement systems, however, there is no feasible or reasonable alternative to settlement of all multilateral net positions within the system as and when expected, due primarily to potentially systemic credit and liquidity effects. As a result, these systems are expected to meet fully the Lamfalussy Minimum Standards. For such systems, the proposed policy statement retains the same requirements of the Board's existing Large-Dollar Policy Statement. The Board expects that these requirements would apply to those multilateral netting systems for large-dollar payments and foreign exchange contracts that are currently required to meet the Lamfalussy Minimum Standards under the Board's existing Large-Dollar Policy Statement. For other systems meeting the systemic risk criteria under the new policy but for which real-time controls may not be operationally feasible, the Board would consider alternative risk management measures that would provide an equivalent level of risk management.

Repeal of Existing "Small-Dollar" Policies

The Board is also proposing to repeal its existing policies for certain "small-dollar" payments clearing and settlement arrangements. These policies date from 1984 and 1990, when the Board approved the provision of Federal Reserve net settlement services to ATM and national ACH clearing arrangements, respectively, subject to certain conditions. These conditions were also restated as part of the Board's Policy Statement on Payments System Risk (57 FR 40455, September 3, 1992).

The earlier policies were designed to address specific situations that arose in the Federal Reserve's provision of net settlement services to depository institutions and were not intended to represent a comprehensive approach to fundamental risks that arise in payments clearing and settlement arrangements. In addition, the policies were developed before the Federal Reserve had fully implemented its program for managing risks in providing payment services to depository institutions, as well as other policy developments relevant to the management of interbank exposures, such as the issuance of Regulation F.

Furthermore, a policy that links clearinghouse usage of a particular Federal Reserve net settlement service to its compliance with particular risk management standards (which do not apply to other clearinghouse arrangements), may have the unintended effect of discouraging the use of settlement services with potentially lower risks to financial institutions and their customers, such as those providing same-day finality. Moreover, many of the fundamental risks that may exist in a clearing arrangement are not linked to a particular form of settlement. Consequently, the Board is proposing to repeal these policy statements once a revised, unified policy statement on risks in multilateral settlement arrangements is finalized.

Specific Questions for Comments

1. The Board requests comment on whether the policy statement adequately identifies settlement arrangements that exhibit material settlement-related risks. Please address the usefulness of the base criteria. Are there any other such thresholds or criteria that the Board should consider?

2. How should the policy statement distinguish systems that may pose systemic risk and are thus subject to

[1] 59 FR 67534, December 29, 1994.

[2] Bank for International Settlements (Basle, 1990).

higher risk management standards from those that do not? Should the thresholds be based on net settlement amounts, gross settlement amounts, average payment size, or some other measure?

3. Should the policy statement include an Appendix with illustrative examples of application of the policy in different circumstances?

Regulatory Flexibility Act Analysis

The Board has determined that this proposed policy statement would not have a significant economic impact on a substantial number of small entities. The proposal would require multilateral settlement arrangements to address material risks in their systems. The proposal is designed to minimize regulatory burden on smaller arrangements that do not raise material risks.

Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[3] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

The Board does not believe that the adoption of this policy statement will have a direct and material adverse impact on the ability of other service providers to compete effectively with the Reserve Banks' payments services. A number of the payment services potentially covered by the proposed policy statement are not offered by the Federal Reserve Banks. In addition, the revised policy statement may have the effect of encouraging competition with the Federal Reserve in areas such as national check and ACH clearing and settlement. The repeal of the Board's existing policies for small-dollar payments clearing arrangements, together with the Board's proposal for an enhanced net settlement service, may reduce barriers to establishing such arrangements.

[3] These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990. (55 FR 11648, March 29, 1990).

Federal Reserve System Policy Statement on Payments System Risk

The Board is amending its "Federal Reserve System Policy Statement on Payments System Risk" under the heading "II. Policies for Private-Sector Systems" by removing "A. Privately Operated Large-Dollar Multilateral Netting Systems" in its entirety and adding in its place "A. Privately Operated Multilateral Settlement Systems" and removing "C. Private Small-Dollar Clearing and Settlement Systems" in its entirety.

II. Policies for Private-Sector Systems

A. Privately Operated Multilateral Settlement Systems

Introduction

Multilateral settlement systems, such as clearinghouses and similar arrangements, may produce important efficiencies in the clearance and settlement of payments and financial contracts. Participants in such systems, typically depository institutions, exchange payments for their own account or the accounts of their customers in a coordinated fashion and settle the resulting obligations on a multilateral, often net, basis.

A variety of credit, liquidity, and other risks can arise in the clearing and settlement process that institutions must manage in the normal course of business, regardless of the method of clearing and settlement. Existing supervisory standards are generally directed at ensuring that institutions establish appropriate policies and procedures to manage such risks. For example, Regulation F directs insured depository institutions to establish policies and procedures to avoid excessive exposures to any other depository institutions, including exposures that may be generated through the clearing and settlement of payments.[1]

However, the use of multilateral settlement systems introduces the risk that a failure of one participant in the system to settle its obligations will have credit or liquidity effects on participants that have not dealt with the defaulting participant. Multilateral settlement may have the effect of altering the underlying bilateral relationships that arise between institutions during the clearing and settlement process. As a result, the incentives for, or ability of, institutions to manage effectively the risk exposures to other institutions may be reduced. In addition, in some cases, there may be no feasible or timely alternative to settlement through the multilateral system in the event that the system fails to complete settlement, due, for example, to a participant default. These factors may create added risks to participants in multilateral settlement systems relative to other settlement methods.

Clearinghouses also may generate systemic risk that could threaten the financial markets or the economy more broadly. The failure of a system to complete settlement as and when expected could generate unexpected credit losses or liquidity shortfalls that participants in the system are not able to absorb. Thus, the inability of one participant to meet its obligations within the system when due could lead to the illiquidity or failure of other institutions. Further, the disruption of a large number of payments and the resulting uncertainty could lead to broader effects on economic activity. In addition, as the Federal Reserve has established fees for daylight overdrafts, along with other risk management measures for Federal Reserve payment services, the potential exists for intraday credit risks to be shifted from the Federal Reserve to private, multilateral settlement arrangements, either domestically or in other countries, that have inadequate risk controls.

The Board believes that these concerns warrant the application of a risk management policy to a limited number of multilateral settlement systems that raise material added risks for participants or financial markets. The Board recognizes that multilateral settlement systems differ widely in terms of form, function, scale, and scope of activities. As a general rule, risk management measures should be commensurate with the nature and magnitude of risks involved, but risk management measures may be designed differently for different types of payments or systems. This policy statement, therefore, is designed to permit market participants to determine the best means of addressing risks, within certain guidelines.

The Board's adoption of this policy in no way diminishes the primary responsibilities of participants in, and operators of, multilateral settlement systems to address settlement and other risks that may arise in these systems. In addition, the Board encourages all multilateral settlement systems to consider periodically cost-effective risk management improvements, even if not specifically required under this policy. Insured depository institutions participating in multilateral settlement systems are also expected to limit their bilateral credit and liquidity exposures

[1] See 12 CFR 208.

as required under Federal Reserve Regulation F.

Scope and Administration of the Policy

This policy statement will be applied to privately operated multilateral settlement systems or arrangements with three or more participants that settle U.S. dollar payments, including but not limited to systems for the settlement of checks, automated clearinghouse (ACH) transfers, credit, debit, and other card transactions, large-value interbank transfers, or foreign exchange contracts involving the U.S. dollar. It does not apply to clearing and settlement systems for securities or exchange-traded futures and options. This policy statement is not intended to apply to bilateral relationships between financial institutions, such as those involved in traditional correspondent banking. The Board may also apply this policy to any non-U.S. dollar system based, or operated, in the United States that engages in the multilateral settlement of non-dollar payments among financial institutions and that would otherwise be subject to this policy.

The Board expects to be guided by this policy statement in taking action in its supervisory and operational relationships with state member banks, bank holding companies, and clearinghouse arrangements, including, for example, the provision of net settlement services and the implementation of the Bank Service Company Act.[2] Systems subject to this policy may be asked to provide gross and net settlement data, as well as intraday position data, if applicable, to the Federal Reserve.

Risk Factors and Risk Management Measures

The risk factors described below are intended to identify those multilateral settlement systems that may pose material added risks relative to conventional bilateral means of settlement, and which therefore must address these risks under this policy statement. The Board believes that the vast majority of multilateral settlement systems, including most clearinghouses for checks and other small-value payments, do not raise the risks identified below to a material degree. Threshold criteria for each risk category exclude many such systems from the need to assess risk factors under the policy. The Appendix to this policy statement also provides several illustrative examples of the likely application of the requirements of the policy statement.

Systems that exhibit one or more risk factors should take steps to address those specific risks, including consideration of the risk management measures listed below. If necessary, the Board will work with systems to determine whether changes in their policies or operations are required and, if so, whether steps proposed by the system would satisfy the requirements of the policy. In some cases, an operational change may mitigate a particular risk factor. In other cases, systems may need to develop or modify written rules, policies, and procedures that specify the rights and obligations of participants, as well as other relevant parties, such as settlement agents for the system, in the event that a settlement cannot be completed as and when expected. Such rules and procedures should be disclosed to all participants and their primary regulatory authorities.

In general, risk management controls should be proportional to the nature and magnitude of risks in the particular system. For larger systems that have the potential to create systemic risk, the Board expects systems to demonstrate commensurately robust procedures for addressing settlement disruptions, including, in some cases, meeting the Lamfalussy Minimum Standards for multilateral netting systems, discussed below under *Systemic risk*.[3]

(1) Credit risk. Risk factors: A multilateral settlement system would give rise to material credit risk if its rules or practices materially increase or shift the bilateral obligations or credit exposures between participants in the clearing and settlement process. One example is a clearinghouse operator or agent that provides a guarantee of settlement. Such a guarantee might be implemented explicitly through the establishment of a central counterparty for all transactions, or through other provisions in the system's rules, such as a guarantee of members' settlement obligations, third-party credit arrangements, or the system's ability to recover settlement-related losses from participants. Additionally, a system in which participants are exposed to material credit risk to one another by virtue of their participation in the system, due for example, to agreements to mutualize any settlement losses, would be considered to give rise to material credit risk if participants have no means to control these exposures.

Threshold criteria: Multilateral settlement systems in which underlying bilateral obligations between participants are not altered, such as those that do not employ settlement guarantees, loss-sharing, or other techniques, would not give rise to additional material credit risk. Thus, most traditional check clearinghouses would not be considered to give rise to credit risk under this policy statement.

Risk management measures: Measures that are commonly used to mitigate credit risk in a multilateral settlement system and provide support for settlement guarantees include monitoring of participants' financial condition, caps or limits on some or all participants' positions in the system, and requirements for collateral, margin, or other security from some or all participants. Systems in which participants have material bilateral exposures to one another or to the system, such as through loss-sharing agreements, may implement mechanisms for participants to control these exposures. Use of settlement methods with same-day finality may also shorten the duration of credit risk exposure in a system.

(2) Liquidity risk. Risk factors: A multilateral settlement system would give rise to significant liquidity risk for its participants if a delay, failure, or reversal of settlement would be likely to cause a significant change in settlement amounts to be paid or received by participants on the settlement date. The degree of liquidity risk in a particular system is greater (1) the larger are gross payment flows relative to netted amounts to be settled; (2) the larger are participants' settlement positions relative to their available funding resources; (3) the later that participants would be notified of a settlement disruption relative to the timing of activity in the money markets and through other funding channels, and (4) the greater the likelihood that a settlement failure of the particular system would be accompanied by abnormal market conditions.

Threshold criteria: The Board expects that participants in multilateral net settlement systems ordinarily would be able to fund their bilateral obligations in

[2] 12 USC 1861–67.

[3] The *Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries* (Bank for International Settlements, November 1990), known as the Lamfalussy Report, recognized that netting arrangements for interbank payment orders and forward-value contractual commitments, such as foreign exchange contracts, have the potential to improve the efficiency and the stability of interbank settlements through the reduction of costs along with credit and liquidity risks, provided certain conditions are met. That Report developed and discussed "Minimum Standards for Netting Schemes" (Lamfalussy Minimum Standards) and "Principles for Co-operative Central Bank Oversight" of such arrangements. These standards have been adopted by the central banks of the G–10 and European Union countries.

the event of a delayed or failed settlement where the netting factor for the system is 10 or less, provided settlement activity does not reach levels likely to raise systemic risk, as discussed under Systemic risk, below.[4]

Risk management measures: One approach to mitigating liquidity risk is to implement measures to reduce significantly both the probability and the effect of a settlement disruption. Measures that are often used to support a settlement guarantee, as described under Credit risk, above, as well as establishing external liquidity resources and adequate operational contingency arrangements may mitigate liquidity risk.

Some systems anticipate performing a recast of settlements in the event of a participant default by recalculating multilateral net settlement obligations among participants. These systems are expected to address the liquidity impact of such a procedure.[5] For example, timely notification of settlement failure before or during the period of active money market trading would permit participants readily to borrow funds to cover any shortfalls due to the recast. Individual participants may also take steps to limit their own liquidity exposures or increase available liquidity resources. The system itself may utilize committed lines of credit or other external liquidity resources that can be drawn upon to complete settlements in the event of a temporary settlement disruption.

(3) Operational risk. Risk factors: Operational risks, such as those relating to the reliability and integrity of electronic data processing facilities used in the clearing and settlement process, are addressed in standard supervisory guidance for depository institutions and their service providers. Operational risk factors for purposes of this policy statement include those that could hinder the timely completion of settlement or the timely resolution of a settlement disruption in a multilateral settlement system. For example, operational obstacles could make it difficult or impossible for participants to arrange settlement outside the system on a timely basis in the event of a settlement failure. As a result, those participants expecting to receive funds could face significant liquidity risk. In addition, in some cases, failure to complete settlement on a timely basis could change the rights of participants with respect to the underlying payments, creating potential credit or liquidity risks. For example, institutions that are unable either to return or to settle for checks presented to them on the same day may lose the right to return the checks for insufficient funds. Further, risk control procedures implemented by a particular system may themselves entail operational risks. The ability of a system to execute a recast of settlements, implement guarantee provisions, or access lines of credit may depend on the operational reliability of the system's facilities.

Threshold criteria: In smaller multilateral settlement systems, it is less likely that operational complexities or constraints would prevent the resolution of a participant default or other settlement disruption, provided that participants receive notice of a settlement failure with adequate time to make alternative arrangements before the closing of funds transfer systems. Thus, the Board does not consider systems with less than one hundred participants that normally settle sufficiently early in the day to raise material operational risks.

Risk management measures: Multilateral settlement systems and their participants typically mitigate the risk of operational failure in their daily processing activities through standard techniques, such as contingency plans, redundant systems, and backup facilities. For purposes of this policy statement, systems should ensure the reliable operational capability to execute procedures used to resolve a participant default or other settlement disruption as well as to implement other risk management measures. For example, if a system anticipates recasting settlements by excluding transactions of a defaulting participant, it should ensure that the system can perform any required processing, generate the necessary information, and provide it to participants in a timely manner. To the extent that payments would be expected to be settled outside the system, participants should have adequate time, settlement information, and operational capabilities to complete such settlements before the close of critical funds transfer systems.

(4) Legal risk. Risk factors: Legal risk may exist in a multilateral settlement system if there is significant uncertainty regarding the legal status of settlement obligations or the underlying transactions in the event of a settlement failure. This legal uncertainty would greatly exacerbate efforts to achieve an orderly and timely resolution and could expose participants to credit and liquidity risks. If the obligations of participants with respect to underlying transactions exchanged in the system have no enforceable legal status in the event of a system settlement failure, the ability of the participants to revert to other methods of settlement on a timely basis may be in doubt. Legal risk would also arise if the legal enforceability of any risk management measures, netting agreements, or related arrangements, is questionable.

Threshold criteria: Systems that clear and settle payments that are supported by a well established legal framework that is independent of the particular settlement system are unlikely to give rise to significant legal risk.

Risk management measures: Systems may be able to address legal risk factors through changes to operating rules or other agreements between participants. Rules and related agreements may provide an adequate legal basis for enforceable netting of obligations or for other arrangements that would be invoked in the event of a settlement failure, such as unwind or reversal provisions.

(5) Systemic risk. Risk factors: For some multilateral settlement systems, settlement risk factors could have systemic implications. The failure of a multilateral settlement system to complete settlement as and when expected could generate unexpected credit losses or liquidity shortfalls that participants in the system are not able to absorb, or disrupt a large number of payments. In general, the larger the size of settlement activity in a multilateral settlement system, the greater the potential for systemic risk.

Threshold criteria: The Board considers as posing systemic risk multilateral settlement systems that have, or that expect to have, on any day, settlements with a system-wide aggregate value of net settlement credits (or debits) larger than $500 million (in U.S. dollars and any foreign currencies combined), or that clear and settle payments or foreign exchange contracts with a daily average stated dollar value larger than $100,000 (calculated over a twelve month period corresponding to the most recent fiscal year for the netting system). Multilateral settlement systems of any size that serve core financial markets may also be considered to pose systemic risk.

Risk management measures: Systems posing systemic risk as defined above are expected to adopt more robust risk management policies and procedures addressing participant defaults and other settlement disruptions and to demonstrate that they are able to execute these procedures. In order to determine the adequacy of risk management controls, systems may need to establish a capability to simulate or test the effects of one or more participant defaults or other possible sources of settlement disruption on the system and its participants.[6]

Systems with activity exceeding the systemic risk thresholds, and for which there is no feasible or reasonable alternative to settlement of all positions within the system as and when expected due to credit, liquidity, or operational risks, are expected to meet the six Lamfalussy Minimum Standards, below. These standards are designed to address the main risk factors that may be present in multilateral clearing and settlement systems and to provide confidence that such systems can settle all positions as and when expected, thereby reducing substantially the risk that a default by one participant will cause defaults by others.

Lamfalussy Minimum Standards for the Design and Operation of Privately Operated Large-Dollar Multilateral Netting Systems[7]

1. Netting systems should have a well-founded legal basis under all relevant jurisdictions.
2. Netting system participants should have a clear understanding of the impact of the particular system on each of the financial risks affected by the netting process.
3. Multilateral netting systems should have clearly-defined procedures for the management of credit risks and liquidity risks which specify the respective responsibilities of the netting provider and the participants. These procedures should also ensure that all parties have both the incentives and the capabilities to manage and contain each of the risks they bear and that limits are placed on the maximum level of credit exposure that can be produced by each participant.
4. Multilateral netting systems should, at a minimum, be capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single net debit position.
5. Multilateral netting systems should have objective and publicly-disclosed criteria for admission which permit fair and open access.
6. All netting systems should ensure the operational reliability of technical systems and the availability of backup facilities capable of completing daily processing requirements.

In meeting these standards, the Board expects that systems will utilize the following risk management measures, or their equivalent: (1) To the extent that participants are exposed to credit and liquidity risks from other participants, require each participant to establish bilateral net credit limits vis-à-vis each other participant in the system; (2) establish and monitor in real-time system-specific net debit limits for each participant; (3) establish real-time controls to reject or hold any payment or foreign exchange contract that would cause a participant's position to exceed the relevant bilateral and net debit limits; (4) establish liquidity resources, such as cash, committed lines of credit secured by collateral, or a combination thereof, at least equal to the largest single net debit position; and (5) establish rules and procedures for the sharing of credit losses among the participants in the netting system.[8] The Board will consider, on a case-by-case basis, alternative risk management measures that provide for an equivalent level of risk management controls for systems in which real-time risk controls are not operationally feasible. However, the Board strongly encourages systems that perform sequential processing of payments or other obligations to develop real-time risk management controls. The Board may also encourage or require higher risk standards, such as the ability to ensure timely multilateral net settlement in the event of multiple defaults, of individual systems that present a potentially high degree of systemic risk, by virtue of their high volume of large-value transactions or central role in the operation of the financial markets.

Offshore Systems

The Board has a long-standing concern that steps taken to reduce systemic risk in U.S. large-dollar payments systems may induce the further development of multilateral systems for settling U.S. dollar payments that are operated outside the United States. Such systems, if implemented with inadequate attention to risk management, may increase risks to the international banking and financial system. In addition, offshore arrangements have the potential to operate without sufficient official oversight.

As a result, the Board has determined that offshore, large-dollar multilateral netting systems and multicurrency clearing and settlement systems should at a minimum be subject to oversight or supervision, as a system, by the Federal Reserve, or by another relevant central bank or supervisory authority. The Board recognizes that central banks have common policy objectives with respect to large-value clearing and settlement arrangements. Accordingly, the Board expects that it will cooperate, as necessary, with other central banks and foreign banking supervisors in the application of the Lamfalussy Minimum Standards to offshore and multicurrency systems. In this regard, the Principles for Co-operative Central Bank Oversight outlined in the Lamfalussy Report provide an important international framework for cooperation.

By order of the Board of Governors of the Federal Reserve System, November 6, 1997.

William W. Wiles,

Secretary of the Board.

Appendix

Example #1

A local or regional check clearinghouse with less than 100 members that settles sufficiently early in the day to allow settlement disruptions to be resolved on a timely basis would typically not give rise to risks addressed under this policy statement. Generally, such arrangements do not guarantee settlement, mutualise losses, or involve a central counterparty to all transactions, and therefore the settlement arrangement itself does not give rise to added or shifted credit risk for participants. In addition, the liquidity risks of such arrangements generally are low, with netting factors of less than 10, so that liquidity shortfalls due to a disruption in settlement are likely to be within the funding capabilities of participants. From an operational standpoint, these arrangements usually exchange checks in the morning. If prompt notice is given of a recast of settlements at that time, participants should be able to meet their recast settlement obligations, settle any payments excluded from the system bilaterally as necessary, and manage any liquidity shortfalls. Similarly, the existence of established check law would satisfy any legal concerns. Finally, such check clearing arrangements generally do not have aggregate net settlement credits (or debits) larger than $500 million per day, nor do the checks cleared through such

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[4] The netting factor, calculated as the ratio of gross transactions exchanged in a particular period to the resulting multilateral net amounts (aggregate net debits or net credits) settled, is one indicator of the magnitude of the change in positions if all multilateral net settlement obligations had to be settled on a gross basis.

[5] For example, in a "recast" of settlements, some or all transactions involving the defaulting participant would be removed from the system's settlement process, to be settled or otherwise resolved outside the system. A revised multilateral settlement with recalculated settlement obligations would then be conducted among the remaining participants. In an "unwind," transactions or settlement obligations to be settled on the day of the default for all participants would be removed from the system.

[6] Such simulations may include, if appropriate, the effects of changes in market prices, volatilities, or other factors.

[7] The minimum standards adopted by the Board are identical to those set out in the Lamfalussy Report, with minor changes to terminology.

[8] The term "largest single net debit position" means the largest intraday net debit position of any individual participant at any time during the daily operating hours of the netting system.

arrangements have a daily average dollar value larger than $100,000, so the arrangements would not be considered to give rise to systemic risk.

Example #2

An ACH clearinghouse with more than 100 members, net settlement debits averaging less than $500 million per day, and a netting factor of five would not be considered to raise significant credit, liquidity, or systemic risks. Such a system would likely not involve settlement guarantees or mutualization of losses, and without high netting factors or similar concerns, it would not be likely to lead to significant liquidity risks. Given the large number of participants, it is unlikely that participants would be able to resolve a settlement failure among themselves without prior coordinated procedures. The system would need to have reliable operational procedures to resolve a settlement failure in a timely manner on the settlement date, such as through a recast of settlements. The rules of the system would need to specify settlement failure procedures, including those for identifying and reversing non-settled entries under applicable rules.

Example #3

A foreign exchange clearinghouse that clears and settles contracts that average more than $100,000 through a central counterparty arrangement would be required to address potential credit, liquidity, and legal risks, as well as systemic risks. Netting and novation of transactions, for example, would shift credit risk to the central counterparty. Legal risk could exist if the arrangements to implement the netting of underlying foreign exchange contracts could be invalidated or ineffective in the event of bankruptcy of the central counterparty. Given that the arrangement exceeds or plans to exceed the base criteria for potential systemic risk, and serves a key financial market, it would be required to implement robust risk controls and fully meet the Lamfalussy Minimum Standards.

[FR Doc. 97–29760 Filed 11–10–97; 8:45 am]
BILLING CODE 8210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be held on Friday, November 21, 1997 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Nancy Foster, Coordinator of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 502, Rockville, Maryland 20852, (301) 594–1349 ext. 1307.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6665 ext. 1055 no later than November 14, 1997.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal ex-officio members. The Council will be chaired by Harold S. Luft, Ph.D.

II. Agenda

On Friday, November 21, 1997, the meeting will begin at 9:00 a.m., with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency programs and initiatives. The Council will then discuss strategic directions for the Agency, how the Agency can most productively advance outcomes research, and the U.S. Preventive Services Task Force.

The meeting will adjourn at 4:00 p.m. Agenda items are subject to change as priorities dictate.

Dated: November 3, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–29660 Filed 11–10–97; 8:45 am]
BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0436]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form FDA 3397, User Fee Cover Sheet that must be submitted along with certain drug and biologic product applications and supplements.

DATES: Submit written comments on the collection of information by January 12, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

User Fee Cover Sheet; Form FDA 3397—(OMB Control Number 0910–0297)—Reinstatement

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), FDA has the authority to assess and collect user fees for certain drug and biologic product applications and supplements. Under this authority, pharmaceutical companies pay a fee for each new drug application, biologic product license application, biologic license application, or supplement submitted for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Form FDA 3397 is the user fee cover sheet, which is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by utilizing a unique number tracking system. The information collected is used by FDA, Center for Drug Evaluation and Research (CDER), and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, new biologic product license applications, and supplemental applications.

Respondents to this collection of information are drug and biologic product applicants.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3397	200	9.44	1,888	.15	283

There are no capital costs or operating and maintenance costs associated with this collection.

Based on the agency's experience of 4 years, FDA estimates there are approximately 200 manufacturers of products subject to Prescription Drug User Fee Act. Of the 200 manufacturers, CDER estimates 141 are drug manufacturers and CBER estimates 59 are biologics manufacturers. CDER estimates 1,721 annual responses that include the following: 125 new drug applications, 1,096 chemistry supplements, 400 labeling supplements, and 98 efficacy supplements. CBER estimates 167 annual responses that include the following: 157 annual product supplements, and 10 original license applications.

Dated: November 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–29710 Filed 11–10–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0436]

Bottled Water Study: Feasibility of Appropriate Methods of Informing Customers of the Contents of Bottled Water; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting public comment on what are feasible methods for providing people who purchase bottled water with information about the contents of that bottled water and on what information should be provided. FDA will consider the information that it receives in response to this notice in conducting a study of the feasibility of appropriate methods, if any, for informing customers about the contents of bottled water. FDA is required to conduct the feasibility study under the Safe Drinking Water Act Amendments of 1996 (SDWA Amendments).

DATES: Written comments by December 12, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION:

I. Background

On August 6, 1996, Congress passed, and the President signed into law, the SDWA Amendments (Pub. L. 104–182). Under the SDWA Amendments' Public Notification (section 114) provisions designed to further public awareness about the quality of their drinking water, section 114(a) mandates that, not later than 24 months after the date of enactment of this law, the Environmental Protection Agency (EPA) issue regulations requiring community water systems to provide their customers with an annual report, referred to as a consumer confidence report (CCR), that contains information on the level of contaminants in drinking water purveyed by the systems.

Parallel to this requirement, section 114(b) of the SDWA Amendments requires that not later than 18 months after the date of its enactment, FDA in

consultation with EPA publish for notice and comment a draft study on the feasibility of appropriate methods, if any, of informing customers of the contents of bottled water. A final study is to be published not later than 30 months after the date of enactment of the SDWA Amendments.

II. Procedure for the Feasibility Study

In carrying out the provisions of section 114(b) of the SDWA Amendments, FDA intends to: (1) Solicit through this notice information on appropriate methods, if any, that are feasible for conveying information about the contents of bottled water to customers; (2) evaluate the information received to tentatively identify the appropriate methods, if any, that are feasible for conveying information about the contents of bottled water to people who purchase that bottled water; (3) publish for notice and comment a draft feasibility study report in which the agency will present its tentative findings; and (4) consider the comments the agency receives on the draft feasibility study report and publish a final report on the feasibility of appropriate methods, if any, for providing information about the contents of bottled water to customers.

In this notice, FDA is soliciting information that it will use in conducting the feasibility study. FDA is requesting comments about: (1) The methods, if any, that may be appropriate, and why they are appropriate, for conveying information about the contents of bottled water to consumers; (2) whether any appropriate method is feasible as a means of providing information about the contents of bottled water to customers, and the supporting reasons for why the method is feasible; and (3) the type of information about the contents of bottled water that should be provided within the context of the SDWA Amendments.

FDA considers this solicitation of information through this **Federal Register** notice to be the most effective means of obtaining information from all segments of the general public (i.e., industries, trade associations, consumers, consumer advocacy groups, educational institutions) that are interested in the subject of feasibility of appropriate methods of providing information about the contents of bottled water to customers. FDA thus deems this approach to be the most appropriate means of obtaining sufficient and pertinent information from stakeholders for conducting the feasibility study as required by the SDWA Amendments.

III. Request for Information

A. Methods for Conveying Information to Customers

FDA requests comments on what methods, if any, are appropriate for conveying to customers information about the contents of bottled water. FDA also requests for any method identified that the comment state why that method is appropriate for communicating information about the contents of bottled water to people who purchase that product.

For example, for bottled waters that are sold at retail (e.g., grocery stores), comments may wish to address whether it would be appropriate to provide the information directly on the product's label or through an address or a toll-free telephone number on the product's label that customers can write to or call to obtain the information. In the latter instance, would it be appropriate for bottlers to operate a menu driven system for callers to directly access the information? Would it be appropriate for bottlers to take the name and address of the caller and mail the information in the form of a pamphlet, for example? Comments should provide the reasons why any method identified is appropriate.

Noting that the SDWA Amendments require community water systems to mail their annual CCR to customers, comments may wish to address whether it is appropriate for firms that deliver bottled water to customer's homes, office buildings, schools, and hospitals to mail the information to the customer along with the invoice that they normally provide. Why would providing the information in this manner be considered appropriate?

Recognizing the increasing prominence of the Internet as a source of public information, comments may wish to address whether it is appropriate for firms to provide information about bottled water to customers over the Internet. Again, why would this method be deemed appropriate?

FDA also requests comments about other methods that are appropriate for conveying information to customers about the contents of bottled water, and why they are appropriate.

B. Feasibility of Appropriate Methods

For each method identified as being appropriate for conveying information to customers about the contents of bottled water, FDA also requests information on whether the provision of information by such method is feasible, i.e., "capable of being done or carried out" (Webster's Third New International Dictionary, 1976). Thus persons who believe that an appropriate method is feasible for a stated purpose should state why the provision of information by that method can be done or carried out, i.e., is feasible. Likewise, interested persons who believe that an appropriate method is not feasible should state why the provision of information by that method cannot be done or carried out. Comments should address the costs to bottlers and all other relevant factors that support the position they take with respect to the feasibility of the method in question.

For example, those who comment on the possibility of providing information directly on a product's label should address the feasibility of doing so in light of the obvious concern about the limited label space available on a bottled water product. Is it feasible to provide the subject information directly on the label of a bottled water product notwithstanding the limited label space, or is the limited label space such a significant obstacle that use of a product's label would not be feasible?

Again, by way of example, comments that address providing the information on the Internet should address feasibility with respect to the cost of establishing and maintaining an Internet site, particularly for small firms.

C. Information on the Contents of Bottled Water

FDA requests comments on the type of information about the contents of bottled water that should be provided to convey to customers, to the extent possible, information analogous to that provided in a CCR. In this regard, FDA notes that a CCR must contain: (1) Information about the source of the drinking water purveyed by the system; (2) definitions for the terms "maximum contaminant level goal" (MCLG), "maximum contaminant level" (MCL), "variances," and "exemptions;" (3) the MCLG, MCL, and the actual level found for contaminants detected in the water and, for any contaminants detected that violated the MCL during the year, information on the health effects that led EPA to regulate that contaminant; (4) information on compliance with EPA's National Primary Drinking Water Regulations, and notice if the system is operating under a variance or an exemption and the basis on which the variance or exemption was granted; (5) information on the levels of unregulated contaminants for which monitoring by the system is required (including levels of cryptosporidium and radon where States determine that they may be found); and (6) a statement that the presence of contaminants in drinking water does not necessarily indicate that the drinking water poses a health risk, and that more information about contaminants and potential health effects can be obtained by calling the EPA hotline.

What type of information about the contents of bottled water could be provided that would be analogous to the previously described information required in a CCR? For example, because FDA establishes "allowable levels" and not MCL's for contaminants in bottled water, would providing information describing the term "allowable level" as established in FDA's quality standard regulation for bottled water be analogous to the provision of information about MCL's required in a CCR? Also, by way of an example, for information concerning MCLG's, variances, exemptions that are required in a CCR, are there similar or analogous types of information with respect to bottled water that could be provided to customers?

IV. Comments

Interested persons may, on or before December 12, 1997, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 3, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–29655 Filed 11–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; NLM Online Application Packet

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 10, 1997, page number 37068, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: Title: NLM Online Application Packet. Type of Information Collection Request: Extension of OMB No. 0925–0223. Expires 11/30/97. Need and Use of Information Collection: The NLM uses the information provided by individuals and institutions for MEDLARS online system user code assignments and invoices for system use. Frequency of Response: On occasion. Affected Public: Individuals or households; businesses or other for profit; State or local governments; Federal agencies; Non-profit institutions; Small businesses or organizations. Type of Respondents: Organizations, Health Care Providers, Students. The annual reporting burden is as follows: Estimated Number of Respondents annually: 2,640. Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: 0.0833 hours; and Estimated Total Annual Burden Hours Requested: 219. The annualized cost to respondents is estimated at: $11,383. There are no capital costs to report. There are no operating or maintenance costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Carolyn Tilley, Head, Medlars Management Section, BSD, LO, NLM, NIH, Building 38A, Room 4N–04, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number (301) 402–1078 or E-mail your request, including your address to: carolyn_tilley@ccmail.nlm.nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 12, 1997.

Dated: November 3, 1997.

Donald C. Poppke,

Executive Officer, NLM.

[FR Doc. 97–29660 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

This meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretatin or other reasonable accommodations, should notify Linda Quick-Cameron, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 609, 6130 Executive Blvd., MSC 7410, Bethesda, MD 20892–7410 (301/496–5708). A summary of the meeting and the roster of committee members will be provided upon request. Other information pertaining to the meeting may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Date: November 21, 1997.

Place: Moffitt Cancer Center, Research Center (Across from Cancer Center), 12902 Magnolia Drive, Tampa, FL 33612.

Open: 8:00 a.m. to Adjournment.

Agenda: Concerns of special populations in the National Cancer Program:

responsiveness of the health care system to the needs of special populations.

Contact Person: Maureen O. Wilson, Ph.D, Executive Secretary, National Cancer Institute, Building 31, Room 4A48, Bethesda, MD 20892, Telephone: (301) 496–1148.

Dated: November 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29672 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging, Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, National Institute on Aging, November 17, 1997, Gateway Building, 7201 Wisconsin Avenue, Bethesda, Maryland which was published in the **Federal Register** on October 16, (Vol. 62, No. 200).

This committee was to have convened at 12:00 noon on November 17, but has been changed to 12:00 noon on December 2. The location remains the same.

As previously announced, this meeting is closed to the public.

Dated: November 4, 1997.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 97–29664 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of SEP: National Institute on Aging Special Emphasis Panel Pathogenesis of sarcopenia and metabolic change in aging (Teleconference).

Date of Meeting: November 24, 1997.

Time of Meeting: 1:15 p.m. to adjournment.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814.

Purpose/Agenda: To review and amended application.

Contact Person: Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: November 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29665 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 13, 1997.

Time: 11 a.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 14, 1997.

Time: 5 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 17, 1997.

Time: 3 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 24, 1997.

Time: 1:30 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzbeck, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29666 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 17, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 24, 1997.

Time: 2:30 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29667 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 13, 1997.

Time: 10:00 a.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6470.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 4, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29668 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: ZDK1–GRB–8–J–3.

Date: December 9, 1997.

Time: 11:00 am.

Place: Room 6as–25E, Natcher Building, NIH (Telephone Conference Call).

Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7798.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: ZDK1–GRB–4.

Date: December 12, 1997.

Time: 8:30 am.

Place: Doubletree Guest Suites, 1300 Concourse Drive, Linthicum, Maryland 21090.

Contact Person: William Elzinga, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: November 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29670 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of F32 grants (98–15).

Dates: December 2, 1997.

Time: 12:00 noon.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01 grant (98–17).

Dates: December 10, 1997.

Time: 12:00 noon.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: November 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29671 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Environmental/Occupational Medicine Academic Awards (K07s) (Telephone Conference Call).
Date: November 12, 1997.
Time: 9:30 a.m.
Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.
Contact Person: Dr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant/contract review and funding cycle.

Name of SEP: Center for the Evaulation of Risks to Human Reproduction.
Date: December 5, 1997.
Time: 9:00 a.m.
Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.
Contact Person: Dr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.
Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institute of Health)

Dated: November 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29673 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: November 12, 1997.
Time: 12:30 p.m.
Place: NIH, Rockledge 2, Room 6164, Telephone Conference.
Contact Person: Dr. Kirsh Krishnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 6164, Bethesda, Maryland 20892, (301) 435–1779.
Name of SEP: Behavioral and Neurosciences.
Date: November 19, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 5170, Telephone Conference.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 280892, (301) 435–1246.
Name of SEP: Chemistry and Related Sciences.
Date: November 19–20, 1997.
Time: 8:00 a.m.
Place: Holiday inn, Chevy Chase, MD.
Contact Person: Dr. Robert Manning, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892, (301) 435–1723.
Name of SEP: Behavioral and Neurosciences.
Date: November 21, 1997.
Time: 9:00 a.m.
Place: Holiday inn, Chevy Chase, Md.
Contact Person: Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892 (301) 435–1252.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Clinical Sciences.
Date: November 25, 1997.
Time: 9:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Nancy Shinowara, Scientific Review Administrator, 6701 Rockledge Drive, Room 5216, Bethesda, Maryland 20892, (301) 435–1173.

The meetings will be closed in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 3, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29674 Filed 11–10–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4213–N–04]

Announcement of Funding Awards for the Historically Black Colleges and Universities Program, Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Historically Black Colleges and Universities (HBCUs) Program. This announcement contains the names and addresses of the awardees and the amount of the awards made available by HUD to provide assistance to the HBCUs.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Pruden or Mr. John Simmons, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th St., S.W., Washington, DC 20410; telephone (202) 708–1590 (this is not a toll-free number). Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from a HUD field office, see Appendix A for names, addresses and telephone numbers, or for general information, applicants can call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act) (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). The program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

This notice announces FY 1997 funding of $6.5 million to HBCUs to be used to stimulate economic and community development activities in the HBCUs' locality. The FY 1997 grantees announced in this Notice were selected for funding consistent with the provisions in the NOFA published in the **Federal Register** on May 12, 1997 (62 FR 26180).

The Catalog of Federal Domestic Assistance number for this program is 14.237.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix B.

Dated: November 5, 1997.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs, Community Planning and Development.

Appendix A—Community Planning and Development (CPD) Directors With Historically Black Colleges and Universities Located Within Their Jurisdiction

William H. Dirl, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7630
Bill Parsley, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–6375
John Perry, Richard B. Russell Federal Building, 75 Spring Street S.W., Atlanta, GA 30303–3388, 404–331–5139
Ben Cook, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, 502–582–6142
Gregory Hamilton, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7212
Joseph O'Connor, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, MD 21201–2505, 410–962–2520
Jeanette Harris, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–4343
Jeanie E. Smith, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1016, 601–965–4765
James A Cunningham, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 63103–2818, 314–539–6524
Jorgelle Lawson, Acting, 200 North High Street, Columbus, OH 43215–2499, 614–469–6743
David Long, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7571
Joyce Gaskins, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0624
Louis E. Bradley, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, 803–765–5564
Virginia Peck, John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, 423–545–4391
Katie Worsham, 1600 Throckmorton Street, PO Box 2905, Fort Worth, TX 76113–2905, 817–885–5483
John T. Maldonado, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–475–6821
Joseph K. Aversano, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539
Millicent C. Grant, Acting, 820 First Street NE, Suite 450, Washington, DC 20002–4205, 202–275–0994
Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4005
Angelo Castillo, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4570
Carmen R. Caberra, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5576
James N. Nichol, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–3587
Lynn B. Daniels, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–2999

Appendix B—Funding Awards

Alabama

1. Dr. Delbert W. Baker, President, Oakwood College, Oakwood Road N.W., Huntsville, AL 35896, Phone: 205–726–7334, Fax: 205–726–8335 compu serve: shirley ihenacho 75374,1134, Grant Amount: $380,000
2. Dr. Ernest McNealy, President, Stillman College, 3706 Stillman Boulevard, P.O. Box 1430, Tuscaloosa, AL 35403, Phone: 205–366–8808, Fax: 205–758–0821, Grant Amount: $400,000

Arkansas

3. Dr. William T. Keaton, President, Arkansas Baptist College, 1600 Bishop Street, Little Rock, AR 72202, Phone: 501–372–6883, Fax: 501–372–0321, Grant Amount: $400,000

District of Columbia

4. Dr. H. Patrick Swygert, President, Howard University, 2400 6th Street, N.W., Washington, D.C., 20059, Phone: 202–806–2500, Fax: 202–806–5934, hp__swygert@capstone.howard.edu, Grant Amount: $370,000

Florida

5. Dr. Frederick S. Humphries, President, Florida A&M University, 400 Lee Hall, Tallahassee, FL 32307, Phone: 904–599–3225, Fax: 904–561–2152, e-mail: fhumphries@crotalus.famu.edu, Grant Amount: $350,000

Georgia

6. Dr. Samuel D. Jolly, Jr., President, Morris Brown College, 643 Martin Luther King, Jr., Drive, Atlanta, GA 30314, Phone: 404–220–0100, Fax: 404–659–4315, Grant Amount: $400,000

Kentucky

7. Dr. Mary L. Smith, President, Kentucky State University, East Main Street, Room 201 Hume Hall, Frankfort, KY 40601, Phone: 502–227–6260, Fax: 502–227–6490, e-mail: msmith@gwmail.kysu.edu, Grant Amount: $400,000

Louisiana

8. Dr. Leon Tarver, II, President, Southern University/A&M, College System, Baton Rouge, LA 70813, Phone: 504–771–4680, Fax: 504–771–5522, Grant Amount: $330,000

Mississippi

9. Dr. James E. Lyons, Sr., President, Jackson State University, P.O. Box 17390, 1400 J.R. Lynch Street, Jackson, MS 39217, Phone: 601–968–2323, Fax: 601–968–2948, e-mail: jelyons@ccaix.jsums.edu Grant Amount: $400,000
10. Dr. Joe A. Lee, President, Tougaloo College, 500 E. County Line Road, Tougaloo, MS 39174, Phone: 601–

977–7730, Fax: 601–977–7739, Grant Amount: $400,000

North Carolina

11. Dr. Gloria R. Scott, President, Bennett College, 900 E. Washington Street, Greensboro, NC 27401, Phone: 910–370–8626, Fax: 910–272–7143, e-mail: gscott@bennett1.bennett.edu, Grant Amount: $300,000
12. Dr. Mickey L. Burnim, Chancellor, Elizabeth City State University, P.O. Box 790, Elizabeth City, NC 27909, Phone: 919–335–3230, Fax: 919–335–3731, e-mail: burnimml@alpha.ecsu.edu, Grant Amount: $393,000
13. Dr. Willis B. McLeod, Chancellor, Fayetteville State University, 1200 Murchinson Road, Fayetteville, NC 28301, Phone: 910–486–1141, Fax: 910–486–4732, Grant Amount: $400,000
14. Dr. Bernard W. Franklin, President, St. Augustine's College, 1315 Oakwood Avenue, Raleigh, NC 27610 Phone: 919–516–4200, Fax: 919–828–0817, e-mail: bfranklin@fs1.st-aug.edu, Grant Amount: $400,000
15. Dr. Alvin J. Schexnider, Chancellor, Winston-Salem State University, 601 Martin Luther King, Jr., Drive, Winston-Salem, NC 27110, Phone: 910–750–2041, Fax: 910–750–2049, e-mail: schexnidera@wssu1.sdp.wssu.edu, Grant Amount: $377,000

South Carolina

16. Dr. Leonard Dawson, President, Voorhees College, Denmark, SC 29042, Phone: 803–793–3544, Fax: 803–793–4584, e-mail: dawson@voorhees.edu, Grant Amount: $400,000

Texas

17. Dr. Julius S. Scott, Jr., President, Wiley College, 711 Wiley Avenue, Marshall, TX 75670, Phone: 903–927–3300, Fax: 903–938–8100, Grant Amount: $400,000

[FR Doc. 97–29750 Filed 11–10–97; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–00; NMNM 98531]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Act Classification.

SUMMARY: The following public land in Otero County, New Mexico has been examined and found suitable for classification for lease or conveyance to Otero County under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et. seq.*). The land had been previously identified as suitable for disposal by sale under Section 203 and Section 209(b) of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2740; 43 U.S.C. 1713) at no less than the appraised fair market value. Otero County proposes to use the land for a road department.

T. 15 S., R. 10 E., NMPM
Section 34, Lot 11.
Containing 17.32 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before December 29, 1997.

ADDRESSES: Comments should be sent to the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Lorraine J. Salas at the address above or at (505) 525–4388.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
4. Upon determination by the authorized officer that the project has successfully been completed in accordance with the approved plan of development and management, the subject parcel will be conveyed. The mineral estate will be conveyed simultaneously pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).
5. Subject to right-of-way NMLC066065 held by Plains Electric G&T Cooperative for the purpose of a 115 kV powerline.
6. Subject to right-of-way NMNM025146 held by the New Mexico State Highway Department for the purpose of a Federal Aid highway.
7. Subject to a 30-foot easement on the northwest corner of the parcel.
8. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal land and interests therein.

Detailed information concerning this action is available for review at the BLM, Las Cruces District, 1800 Marquess, Las Cruces, New Mexico. Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before December 29, 1997, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a road department. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proposed administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a road department.

Dated: November 5, 1997.

Stephanie Hargrove,

Acting District Manager.

[FR Doc. 97–29709 Filed 11–10–97; 8:45 am]
BILLING CODE 4310–VC–P

DEPARTMENT OF JUSTICE

President's Advisory Board on Race; Meeting

ACTION: President's Advisory Board on Race; notice of meeting.

SUMMARY: The President's Advisory Board on Race will meet on November 19, 1997, in the Grand Ballroom of the Adele Stamp Student Union, Building 163, on Campus Drive at the University of Maryland, College Park, Maryland.

The meeting will start at 9:00 a.m. and end at approximately 3:30 p.m. The agenda will include a discussion of the degree and value of diversity in higher education. It also may include consideration of existing racial discrimination in various sectors of society. Expedited scheduling considerations for this meeting precluded the full notice period; however timely advance notice is being provided to allow for appropriate public review and comment.

The meeting will be open to the public on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, or facsimile, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any.

FOR FURTHER INFORMATION CONTACT: Comments or questions regarding this meeting may be directed to Randy Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: November 7, 1997.

Robert Wexler,

General Counsel.

[FR Doc. 97–29797 Filed 11–6–97; 4:55 pm]
BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated March 31, 1997, and published in the **Federal Register** on May 8, 1997, (62 FR 25209), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Difenoxin (9168)	I
Methylphenidate (1724)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Thebaine (9333)	II
Alfendanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 24, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–29645 Filed 11–10–97; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated May 12, 1997, and published in the **Federal Register** on June 13, 1997, (62 FR 32374), Radian International LLC, 8501 North Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydromorphinol (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II

Drug	Schedule
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Radian International LLC to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 4, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–29646 Filed 11–10–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 23–97]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Monday, November 17, 1997, 9:30 a.m. to 5:00 p.m.

Subject Matter: (1) Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, November 7, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–29661 Filed 11–7–97; 12:25 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Sunshine Act Meeting

[F.C.S.C. Meeting Notice No. 24–97]

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Monday, November 24, 1997, 9:30 a.m. to 5:00 p.m.

Subject Matter: (1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claim Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington DC, November 7, 1997.

Judith H. Lock,

Administrative Officer.

[FR Doc. 97–29662 Filed 11–7–97; 12:25 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Revision of existing collection; Refugee/Asylee Relative Petition.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted this information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on April 9, 1997, at 62 FR 17203, allowing for a 30-day public comment period. No comments were received by the Immigration and Naturalization Service.

Comments are encouraged and will be accepted for an additional "thirty days" until December 12, 1997. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, NW., Room 5307, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection.* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–730. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form is used by the Service to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, 1001 G Street, NW., Washington, DC 20530.

Dated: November 6, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–29754 Filed 11–10–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 29, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Office of the Secretary of Agriculture, Modernization of Administrative Processes office (N1–16–97–1). Subject files related to the improvement of administrative processes.

2. Department of Commerce, Economic Development Administration (N1–378–97–1). Loan project case files, litigation case files, and other program records.

3. Department of Commerce, Patent and Trademark Office (N1–241–98–1). Electronic records of the OPBUDGET system, with related software and documentation.

4. Department of the Interior, Bureau of Land Management (N1–49–96–3). Records covering law enforcement, fire management and hazardous materials program files.

5. Department of Veterans Affairs (N1–15–97–8). Records relating to computer matching agreements.

6. National Archives and Records Administration (N2–318–97–2). Administrative and facilitative records relating to the production, inventorying, and delivery of notes and certificates accumulated by the Bureau of Engraving and Printing.

Dated: November 3, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–29636 Filed 11–10–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation, (FPC or the licensee), for operation of the Crystal River Nuclear generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment addresses the methodology for post-loss of coolant accident (LOCA) boron precipitation prevention for CR–3. FPC concludes

that the change in boron precipitation prevention methodology represents an unreviewed safety question (USQ) in that it involves a change in the previously NRC-approved methodologies by incorporating credit for hot leg nozzle gaps into its design and licensing basis as a qualified passive method for boron precipitation mitigation under certain scenarios. Therefore, this action requires NRC approval.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This LAR [license amendment request] addresses the methodology that will be used following a design basis LOCA to ensure that the boron concentration in the reactor vessel does not reach the solubility limit during long term cooling. This methodology utilizes systems and procedures that will be implemented following the previously evaluated accident (i.e., a LOCA). This proposed change does not result in any modifications to the plant or change in a procedure that is used prior to the postulated accident; therefore, these changes cannot result in an increase in the probability of an accident previously evaluated.

The methodology in this LAR will be implemented to ensure that boron precipitation, which may interfere with long term cooling, will not occur following a design basis LOCA. This methodology consists of systems and procedures to provide additional defense in depth that for varying plant conditions will prevent the boron concentration in the RV [reactor vessel] from reaching the boron solubility limits. Evaluations are provided in this submittal that conclude that these methods are effective.

By ensuring that boron solubility limits are not reached in the RV, the analyses for the ECCS [emergency core cooling system] that ensure adequate core cooling following a design basis LOCA remain applicable. Therefore, the consequences of accidents previously evaluated are not increased and offsite dose consequences remain a small fraction of 10 CFR Part 100 limits.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes reflect the methodology that will be used for CR–3 following a design basis accident to prevent a boron precipitation event, which previously has been evaluated. The proposed LAR does not involve any new accident initiators nor any modification to the plant nor a change in the operation of the plant prior to the postulated design basis LOCA. Therefore, the possibility of a new or different kind of accident is not created.

3. Does not involve a significant reduction in the margin of safety.

This change does not result in a reduction to the margin of safety for any accident. The proposed LAR ensures adequate defense in depth in that systems and procedures available following a design basis LOCA will prevent the precipitation of boron in the RV [reactor vessel] that could interfere with ECCS flow.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 12, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 31, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 5th day of November 1997.

For the Nuclear Regulatory Commission.

L. Raghavan, Sr.,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29714 Filed 97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation (FPC or the licensee), for operation of the Crystal River Nuclear Generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment would revise the Operating License No. DPR–72, License Condition 2.C.(5) and delete the requirement for installation and testing of flow indicators in the emergency core cooling system (ECCS) to provide indication of 40 gallons per minute flow for boron dilution. Approval of this amendment will also allow removal of the associated flow indicators, DH–45–FI and DH–46–FI, from the Crystal River 3 (CR3) Final Safety Analysis Report (FSAR). This **Federal Register** (FR) notice supersedes the previous notice 62 FR 43368 dated August 13, 1997 in its entirety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This License Amendment Request removes the Operating License Condition that requires flow indication in the ECCS system for boron dilution. Under certain post-accident scenarios, boron dilution actions could be required following design basis LOCAs [loss-of-coolant-accidents] to ensure that boron precipitation does not occur within the reactor core. Since these methods involve post-accident conditions, they are not the initiators for any design basis accident. Removal of this requirement from the license condition does not involve a change in the Improved Technical Specifications. Since these instruments are no longer used for boron precipitation mitigation during a LOCA, abandonment or removal of flow indicators DH–45–FI and DH–46–FI does not increase the probability of an accident

because no previously evaluated accidents at CR–3 are initiated by DH–45–FI or DH–46–FI. Since DH–45–FI and DH–46–FI are attached to the outside of the DH [decay heat] System drop line and the Auxiliary Pressurizer Spray line, respectively, their removal will not change the design, material, or construction standards applicable to the DH System piping. Therefore, the removal of the requirement for this instrumentation does not increase the probability of an accident previously evaluated.

Removal of the requirement for the flow indicators does not change the effectiveness of the post-LOCA boron dilution capabilities at CR–3. Removal of DH–45–FI and DH–46–FI will not alter any assumptions made in evaluating the radiological consequences of any accident described in the FSAR nor will it affect any fission product barrier since the ECCS and containment systems will still perform to meet design requirements. Based on these conclusions, previously calculated 10 CFR [Code of Federal Regulations] Part 100 consequences have not changed as a result of this action.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The flow indicators are external to the DH System piping. They do not penetrate any piping so their removal cannot create the possibility of a new or different kind of accident. The function of the valve position indicator on each valve in the active mitigation paths provide the operators with indication of valve open/close status. The indicators do not actuate any systems, structures, or components that are credited with accident mitigation. They can not initiate a new or different kind of accident. The boron precipitation mitigation methods are all implemented after the accident has occurred. None of the mitigative methods are required before an accident. The DH System drop line and the Auxiliary Pressurizer Spray are used during the course of CR–3's normal operation. Those methods of operation have been evaluated in the development of previously approved licensing basis and found acceptable. Using these previously approved methods in these post-accident conditions, elimination of the subject license condition language, and the utilization of the boron dilution mitigation methods does not create the possibility of a new or different kind of design basis accident.

3. Does not involve a significant reduction in the margin of safety.

Mitigation of potential boron precipitation will be accomplished by a combination of active and passive methods already included in the CR–3 licensing basis. The margin of safety for being able to abate boron precipitation is improved through the utilization of multiple available options. Therefore, there is no reduction in the margin of safety as a result of not utilizing DH–45–FI and DH–46–FI.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 12, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 31, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 5th day of November 1997.

For the Nuclear Regulatory Commission.

L. Raghavan, Sr.,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29715 Filed 11–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation, (FPC or the licensee), for operation of the Crystal River Nuclear Generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment involves a revision to the CR3 Technical Specifications (TS) relating to decay heat removal requirements in Mode 4. The proposed modification will revise the TS and associated Bases to require in Mode 4, one operable emergency feedwater (EFW) train and associated equipment, including the EFW tank, emergency feedwater initiation and control actuation instrumentation for EFW, post accident monitoring instrumentation, and the turbine bypass valves. Additionally, the TS and associated Bases would be revised to require in Mode 4, a low-pressure injection (LPI) train, dedicated to the borated water storage tank, and to reflect that the available loops for decay heat removal do not include this dedicated LPI train. Editorial changes would also be made to clarify the description of Mode 4 accidents requiring emergency core cooling system injection, and to revise the title of TS limiting condition for operation 3.7.5.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed ITS [Improved Technical Specifications] changes and operator actions involving mitigation of postulated Mode 4 LOCAs [loss-of-coolant-accidents] will not result in a significant increase in the probability of an accident previously evaluated. The initiators of any accident previously evaluated are not affected by the proposed ITS changes and operator actions involving mitigation of Mode 4 LOCAs. Consequently, there is no significant impact on any previously evaluated accident probabilities.

The proposed ITS changes and operator actions involving mitigation of Mode 4 LOCAs do not result in a significant increase in the consequences of any accidents previously evaluated. The proposed ITS changes, modifications and operator actions will not adversely affect the integrated ability of any system to perform its intended safety functions. Therefore, the combined ability of these components, systems and actions to mitigate the consequences of a Mode 4 LOCA will continue to be maintained. In fact, the collective impact of these ITS changes and operator actions improves the capability of CR–3 to mitigate Mode 4 LOCAs by requiring additional equipment operable in Mode 4, by reducing operator burden, and by decreasing the time to initiate LPI. The proposed ITS changes are either consistent with or exceed the original licensing and design basis for CR–3. In addition, the ITS changes and operator actions do not affect the onsite or offsite doses which remain well below 10 CFR Part 100 limits.

2. The proposed ITS changes and operator actions do not create the possibility of a new or different kind of accident from any accident previously evaluated. Since, the ITS changes and operator actions do not involve a different initiator for any accident previously evaluated, they also do not create any new kind of accident. Mitigation of Mode 4 LOCAs, utilizing manual actions, is already part of the CR–3 licensing basis. Manual operator actions necessary for the mitigation

of Mode 4 LOCAs are currently addressed or are being addressed in CR–3 procedures.

3. The proposed ITS changes and operator actions do not involve a significant reduction in the margin of safety for mitigation of Mode 4 LOCAs. In fact, the collective impact of the ITS changes and operator actions represent a[n] improvement in the overall margin of safety to a degree that exceeds the original plant design and licensing bases for mitigation of Mode 4 LOCAs by requiring additional equipment operable in Mode 4, by reducing operator burden, and by decreasing the time to initiate LPI. The proposed ITS changes are either consistent with or exceed the original licensing and design basis for CR–3.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 12, 1997 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 31, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 5th day of November 1997.

For the Nuclear Regulatory Commission.

L. Raghavan, Sr.,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29716 Filed 11–10–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 10, 17, 24, and December 1, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 10

There are no meetings the week of November 10.

Week of November 17—Tentative

Friday, November 21

11:30 a.m.—Affirmation Session (public meeting) (if needed)

Week of November 24—Tentative

There are no meetings the week of November 24.

Week of December 1—Tentative

There are no meetings the week of December 1.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http:/www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 6, 1997.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 97–29885 Filed 11–17–97; 2:27 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application To Withdraw From Listing and Registration: (Brandywine Realty Trust, Common Shares of Beneficial Interest Par Value $.01) File No. 1–9106

November 5, 1997.

Brandywine Realty Trust ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Trustees authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

In making the decision to withdraw its Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security on the New York Stock Exchange ("NYSE") and the Amex. The Company does not see any particular advantage in the dual trading of its security and believes that dual listing would fragment the market for its security.

By letter dated October 8, 1997, the Exchange has informed the Company that its has no objection to the withdrawal of the Company's Security from listing on the Amex. Trading in the Security on the NYSE commenced on October 21, 1997 and concurrently therewith the Security were suspended from trading on the Amex.

Any interested person may, on or before November 28, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29701 Filed 11–10–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39292; File No. SR-CBOE-97-35]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Trading Halts and Suspensions

November 3, 1997.

I. Introduction

On July 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove a requirement that a halt declared by Floor Officials may continue for only two consecutive days and to delete a requirement that a suspension must be declared by the CBOE's Board of Directors ("Board").

The proposed rule change was published for comment in the **Federal Register** on August 21, 1997.[3] No comments were received on the proposal. On October 21, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to amend Rule 6.3 to remove the requirement that a halt declared by Floor Officials may continue for only two consecutive business days, to delete Rule 6.4 relating to the suspension of trading by the Exchange's Board, and to make certain conforming amendments to Rules 21.12 and 23.8 and to Interpretation of .02 of Rule 21.19.

Currently, pursuant to existing Rule 6.3, any two Floor Officials may halt trading in any security in the interests of a fair and orderly market for a period not in excess of two consecutive business days. Pursuant to existing Rule 6.4, the CBOE's Board may suspend trading in any security in the interests of a fair and orderly market. The Exchange believes that there is no practical difference between a halt in trading and a suspension in trading, except for the present two-day limit for a halt and the fact that a halt is declared by two Floor Officials and a suspension is declared by the Board. According to the CBOE, the same factors considered by its Board in deciding whether to "suspend" trading are considered by Floor Officials in deciding whether to "halt" trading. Rules 6.3 and 6.4 require, however, that trading may be stopped for more than two consecutive business days only if the Board acts to "suspend" trading.

The CBOE believes it is not necessary to require the Board to decide whether trading in an options class may be stopped for more than two consecutive business days. The Exchange believes that the participation of senior exchange officials is sufficient and that Board participation is unnecessary. The Exchange also believes that it is unduly cumbersome and often, impractical, to convene its Board on short notice just to decide whether trading in an options class may be stopped for more than two consecutive business days.

Pursuant to the proposed rule change, the duration of a halt declared by two Floor Officials pursuant to Rule 6.3 would not be limited to a particular number of days. Nonetheless, any halt exceeding two consecutive business days would require Floor Officials to consult with a designated senior Exchange official.[5] Further, the proposal would require a decision to extend a trading halt beyond two consecutive business days to be reviewed at the next meeting of the Exchange's Floor Officials Committee.[6] The proposed rule change correspondingly would delete Rule 6.4, so that Board action no longer would be required before trading in an options class could be stopped for more than two consecutive business days. This proposed approach is consistent with the procedure for index options under Rule 24.7, where trading halts or suspensions are decided in consultation with senior Exchange officials and do not require action by the CBOE's Board.

In addition, the proposed rule change would make clear that trading may resume only upon a determination by two Floor Officials that such a resumption is in the interests of a fair and orderly market. Currently, Rule 6.3(b) allows trading to resume when two Floor Officials determine *either* that the conditions that led to the halt no longer are present *or* that a resumption of trading would serve the interests of a fair and orderly market. The Exchange believes that taken literally, the existing language would enable trading to resume if the conditions that led to the halt no longer are present, even if a resumption of trading would be contrary to the interests of a fair and orderly market, an interpretation that would conflict with the CBOE's practice and would be contrary to the policies under the Act.

Finally, the deletion of Rule 6.4 requires conforming deletions of certain non-substantive references to trading suspensions under Rule 6.4 that appear in Rule 21.12 and Interpretation .02 of Rule 21.19 (concerning government securities options) and in Rule 23.8 (concerning interest-rate option contracts).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[7] and the rules and regulations thereunder applicable to a national securities exchange.[8] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[9] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest by allowing Floor Officials, in consultation with senior Exchange officials, to evaluate and to consider market conditions and circumstances and to halt trading for as long as necessary in the interests of a fair and orderly market.

Specifically, the Commission believes that it is reasonable to declare a trading halt in a particular security for a period exceeding two consecutive business days without requiring the specific approval of a majority of the Exchange's Board. The Commission recognizes that it may be impractical to convene the Board each time a determination must be made as to whether to extend a trading halt in a particular security beyond two consecutive business days. The Commission notes that in eliminating the Board's participation in the decisionmaking process, the proposed rule change, as amended, does not provide unbridled discretion to the Exchange's Floor Officials to declare a trading halt of such duration. Instead, the Commission notes that the proposal, as amended, requires two procedures which the Commission believes will provide some assurances that a decision to halt trading in a security for longer than two consecutive business days will receive proper consideration. First, the Commission believes that the involvement of a senior Exchange official should ensure that the interests of all market participants are carefully considered in determining the propriety of a trading halt. Second, the review of each trading halt declared exceeding two consecutive business days by the Exchange's Floor Officials Committee should ensure that the CBOE's management structure remains apprised of the manner in which the proposed rules are applied. In the event that the Exchange's Floor Officials Committee determines that the rules are not being applied in an even-handed and fair manner, the Commission expects the Exchange to reevaluate the process and propose changes, as necessary.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 further clarifies the process by which a determination is made to halt trading in a particular security for more than two consecutive business days. The Commission believes that requiring the consultation of a senior Exchange official and review by the Exchange's Floor Officials Committee clarifies the discretion granted to Floor Officials with respect to trading halts and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act[10] to approve Amendment No. 1 to CBOE's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–97–35 and should be submitted by December 3, 1997.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–97–35), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29700 Filed 11–10–97; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 38937 (August 14, 1997), 62 FR 44500.

[4] See Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated October 14, 1997 ("Amendment No. 1"). In Amendment No. 1, the CBOE revises the proposed rule change to require under Rule 6.3 that Floor Officials consult with a designated senior exchange official prior to halting trading in a security for more than two consecutive business days. In addition, in Amendment No. 1, the Exchange proposes to provide that any trading halt under Rule 6.3 that lasts more than two consecutive business days must be reviewed at the next regularly scheduled meeting of the Exchange's Floor Officials Committee, which is authorized to determine whether, in the interests of a fair and orderly market, to terminate or modify any such trading halt that is then still in effect.

[5] See Amendment No. 1, *supra* note 4.

[6] *Id.* Amendment No. 1 provides that the Floor Officials Committee will make a determination as to whether to terminate or modify any trading halt still in effect at the time of the Floor Officials Committee's next regularly scheduled meeting. It is the understanding of Commission staff that the Floor Officials Committee will review and discuss all trading halts with durations exceeding two consecutive business days regardless of whether trading has since resumed in the particular security. Telephone conservation on October 20, 1997 between Arthur B. Reinstein, Senior Attorney, the CBOE and Deborah L. Flynn, Attorney, Division of Market Regulation, SEC.

[7] 15 U.S.C. 78f.

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)(1994).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39295; File No. SR-PCX-97-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Charges and Recommended Fines for Late SIPC Reports

November 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on October 14, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I II and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify the late charges and recommended fines applicable to members' late filing of forms and assessments with the Exchange pursuant to the Securities Investor Protection Act of 1970 ("SIPA").[2] The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

Text of the Proposed Rule Change

Financial Reports

¶3405

Rule 2.12(a)—(b)(1)—No change.

Rule 2.12(b)(2). Each member organization *for which the Exchange is the designated collection agent must* [shall] file with the Exchange such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any member organization that fails to file such form or assessment in a timely manner *will* [shall] be subject to a late filing charge as follows:

Number of days late	Amount of charge
1–30	[$200] *$100*
31–60	[400] *200*
61–90	[800] *300*

Provided however: (A) If a member organization files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such member organization *will* [shall] be subject to a fine pursuant to Rule 10.13; and (B) if a member organization fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such member organization *will* [shall] be subject to formal disciplinary action pursuant to Rule 10.3.

Commentary:

:01–.02—No change.

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[2] 15 U.S.C. 78aaa–78111(1994).

Minor Rule Plan

¶6133

Rule 10.13(a)—(j)—No change.
(k) Minor Rule Plan: Recommended Fine Schedule
(i)–(ii)—No change.
(iii) Record Keeping and Other Minor Rule Violations
1. No change.
2. Failure to file a Securities Investors Protection Corporation form and assessment in a timely manner. (Rule 2.12(b))

[$1,200.00]	[$1,800.00]	[$2,400.00]
$500	*$1,000*	*$1,500*

3.–6. No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

PCX Rule 2.12(b)(2) provides that each member organization is required to file with the Exchange such forms and assessments as are required pursuant to SIPA. Rule 2.12(b)(2) further provides that any member organization that fails to file such form or assessment will be subject to a late charge of $200 if 1–30 days late; $400 if 31–60 days late; and $800 if 61–90 days late. The Exchange is proposing to reduce these charges to $100, $200 and $300, respectively.

PCX Rule 2.12(b)(2) further provides that, if a member organization files its form and assessment after its receipt of the final late notice from the Securities Investor Protection Corporation ("SIPC"), but files within five business days after its receipt of SIPC's final late notice, such member organization will be subject to a fine pursuant to the Exchange's Minor Rule Plan.[3] The current recommended fines for such violations are $1,200 for a first violation, $1,800 for a second violation and $2,400 for a third violation.[4] The Exchange is proposing to reduce these recommended fines to $500, $1,000 and $1,500 for first, second and third violations, respectively.

(b) Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange notes that the amounts of the charges and fines were originally based upon proposed fines and charges for late FOCUS Reports.[5] However, after reconsidering the levels of these fines, the Exchange believes that the filing of late FOCUS reports raises more serious investor protection concerns and warrants a higher fine than the filing of late SIPC reports.

The Exchange also believes that the proposal is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable charges among its members and it is consistent with Section 6(b)(7) in that it provides a fair procedure for the disciplining of members. The late charges and fines applicable to late SIPC reports were adopted originally in 1992 and 1993, respectively.[6] Since that time, the Exchange has reconsidered the levels of these recommended fines and has determined that the penalties are too severe for the violations at issue. The Exchange notes that SIPC has determined, for the years 1996 and 1997, to assess all of its members a flat minimum assessment of $150 (rather than a percentage of net revenues). In that regard, the Exchange believes that a reduction in charges and recommended fines for lateness is warranted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore, has become effective on October 14, 1997, pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and Rule 19b–4(e)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–38 and should be submitted by December 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H.McFarland,

Deputy Secretary.

[FR Doc. 97–29747 Filed 11–10–97; 8:45 am]

BILLING CODE 8010–01–M

[3] PCX rule 10.13(j)(2).

[4] PCX Rule 10.13(k)(iii)(2).

[5] Securities Exchange Act Release No. 32510 (June 24, 1993) 58 FR 35491 (July 1, 1993) (order approving File No. SR–PSE–92–15).

[6] Securities Exchange Act Release Nos. 33347 (December 15, 1993) 58 FR 67888 (December 22, 1993) (order approving File No. SR–PSE–93–21)(adopting late charges); and 32510 (June 24, 1993) 58 FR 35491 (July 1, 1993) (order approving File No. SR–PSE–92–15)(amending the Exchange's Minor Rule Plan and adopting recommended fines).

[7] 15 U.S.C. 78s(b)(3)(A)(ii) (1994).

[8] 17 CFR 240.19b–4(e)(2) (1997).

[9] 17 CFR 200.30–3(a)(12) (1997).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39303; File No. SR–PCX–97–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc., Relating to Codifying Certain Requirements of the Telemarketing and Consumer Fraud and Abuse Prevention Act

November 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PCX filed Amendment No. 1 to its proposed rule change on October 14, 1997,[3] and Amendment No. 2 on October 23, 1997.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Rules in order to codify certain requirements of the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), which became law in August 1994.[5] The text of the proposed rule change and Amendment Nos. 1 and 2 is available at the Office of the Secretary, PCX, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the PCX requested accelerated approval of its filing on the ground that the Commission has already approved similar filings of other Self-Regulatory Organizations. See Letter from Michael Pierson, Senior Attorney, Regulatory Policy, PCX, to Jerome Roche, Law Clerk, Division of Market Regulation, SEC, dated October 9, 1997.

[4] In Amendment No. 2, the PCX narrowed the scope and applicability of PCX Rule 9.20(b). Additionally, the PCX amended Rule 9.23 to include "telemarketing scripts" within the definition of "sales literature." See Letter from Michael Pierson, Senior Attorney, Regulatory Policy, PCX, to Jerome Roche, Law Clerk, Division of Market Regulation, SEC, dated October 22, 1997.

[5] 15 U.S.C. 6101–08.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the Telephone Consumer Protection Act ("TCPA"),[6] the Exchange adopted in October 1996 a "cold call" rule to implement certain rules of the Federal Communications Commission ("FCC Rule")[7] that require persons who engage in telephone solicitations to sell products and services ("telemarketers") to establish and maintain a list of persons who have requested that they not be contacted by the caller (a "do-not-call" list).[8] Under the Telemarketing Act, the Federal Trade Commission adopted detailed regulations ("FTC Rules")[9] to prohibit deceptive and abusive telemarketing acts and practices; the regulations became effective on December 31, 1995.[10] The FTC Rules, among other things, (i) require the maintenance of "do-not-call" lists and procedures, (ii) prohibit abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself, the company he works for, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before use of negotiable instruments called "demand drafts."[11]

Under the Telemarketing Act, the SEC is required either to promulgate or to require the self-regulatory organizations ("SROs") to promulgate rules substantially similar to the FTC Rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection.[12] The

[6] 47 U.S.C. 227.

[7] Pursuant to the TCPA, the FCC adopted rules in December 1992 that, among other things, (1) prohibit cold-calls to residential telephone customers before 8 a.m. or after 9 p.m. (location time at the called party's location) and (2) require persons or entities engaging in cold-calling to institute procedures for maintaining a "do-not-call" list that includes, at a minimum, (a) a written policy for maintaining the do-not-call list, (b) training personnel in the existence and use thereof, (c) recording a consumer's name and telephone number on the do-not-call list at the time the request not to receive calls is made, and retaining such information on the do-not call list for a period of at least ten years; and (d) requiring telephone solicitors to provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made and a telephone number or address at which such person or entity may be contacted. 57 FR 48333 (codified at 47 CFR 64.1200). With certain limited exceptions, the FCC Rule applies to all residential telephone solicitations, including those relating to securities transactions. *Id.* The term "telephone solicitation" refers to the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, other than with the called person's express invitation or permission; or to a person with whom the caller has an established business relationship, or by tax-exempt non-profit organization. *Id.*

[8] Securities Exchange Act Release No. 37997 (October 30, 1996) 61 FR 57937 (November 8, 1996) (order approving File No. SR–PSE–96–32).

[9] 16 CFR 310.

[10] §§ 310.3–4 of FTC Rules.

[11] *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A "demand draft" is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account information that permits the payee to create a piece of paper that will be processed like a check, including the words "signature on file" or "signature preapproved" in the location where the customer's signature normally appears.

[12] In response, the National Association of Securities Dealers ("NASD"), the Municipal Securities Rulemaking Board ("MSRB"), the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), the Philadelphia Stock Exchange ("Phlx"), and the Chicago Board Options Exchange ("CBOE") have adopted rules to curb abusive telemarketing practices. See Securities Exchange Act Release Nos. 38009 (Dec. 2, 1996) 61 FR 65625 (Dec. 13, 1996) (order approving File No. SR–NASD–96–28); 38053 (Dec. 16, 1996) 61 FR 66078 (Dec. 26, 1996) (order approving File No. SR–MSRB–96–06); 38636 (May 14, 1997) 62 FR 27823 (May 21, 1997) (order approving File No. SR–NYSE–97–07); 38724 (June 4, 1997) 62 FR 32300 (June 13, 1997) (order approving File No. SR–Amex–97–17); 38875 (Jul. 25, 1997) 62 FR 41983 (Aug. 4, 1997) (order approving File No. SR–Phlx–97–18); and 39010 (Sep. 3, 1997) 62 FR 47712 (Sep. 10, 1997) (order approving File No. SR–CBOE–97–39).

The Commission has determined that the NASD Rule, MSRB Rule, the NYSE Rule, the Amex Rule, and the Phlx Rule, together with the Act and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act because the applicable provisions of such laws and rules are substantially similar to the FTC Rules except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions. Securities Exchange Act Release No. 38480 (Apr. 7, 1998) 62 FR 16666 (Apr. 10, 1996).

Continued

purpose of the proposed rule change is to amend PCX Rule 9.20 in response to the Commission's request that SROs promulgate rules substantially similar to applicable provisions of the FTC Rules adopted pursuant to the Telemarketing Act.

Time Limitations and Disclosure. The proposed rule change adds new Rule 9.20(b)(1) to prohibit a member or person associated with a member from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location and to require, under proposed paragraph (b)(2) to Rule 9.20, such member or associated person to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Proposed paragraph (b)(3) to Rule 9.20 creates exemptions from the time-of-day and disclosure requirements of paragraphs (1) and (2) for telephone calls by associated persons, or other associated persons acting at the direction of such persons for purposes of maintaining and servicing existing customers assigned to or under the control of the associated persons, to certain categories of "existing customers." Proposed paragraph (3) defines "existing customer" as a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of the broker or dealer, carries an account. Proposed subparagraph (3)(A) exempts calls to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to the associated person at the time of the transaction or deposit. Proposed subparagraph (3)(B) exempts calls to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to such associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or dividend income during the preceding twelve months.

Proposed subparagraph (3)(C) exempts telephone calls to a broker or dealer. the proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the Rule do not otherwise expressly or by implication impose on members any additional requirements with respect to the relationship between a member and a customer or between a person associated with a member and a customer.

Demand Draft Authorization and Recordkeeping. The proposed rule change adds Rule 9.20(d) to: (i) Prohibit a member or person associated with a member from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account ("demand draft") without that person's express written authorization, which may include the customer's signature on the instrument; and (ii) require the retention of such authorization for a period of three years.

Telemarketing Scripts. The proposed rule change also amends the definition of "sales literature" contained in Rule 9.23 to include "telemarketing scripts" within that definition. This will require telemarketing scripts to be retained for a period of three years.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [13] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.[14]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–36 and should be submitted by December 3, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act [15] which requires, among other things, that the rules of the exchange be designed to prevent further fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[16] The proposed rule change, as amended, is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, on members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing activities.

The Commission believes that the amendments to Rule 9.20, prohibiting a member of person associated with a member from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m and 9 p.m. local time at the called person's location, without prior consent of the person, is appropriate. The Commission notes that, by restricting the times during which a member of a person associated with a member may call a residence, the proposal furthers the interest of the public and provides for the protection of investors by preventing members and member organizations from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the amendments to Rule 9.20, requiring a member of person associated with a member to promptly disclose to the called person in a clear and conspicuous manner the caller's identify and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services, are appropriate. By requiring the caller to identify himself or herself and the purpose of the call, the Rule assists in the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision about purchasing securities. Moreover, by requiring the associated person to identify the firm for which the caller is being contacted, the Rule encourages responsible use of the telephone to market securities.

The Commission also believes that Rule 9.20, creating exemptions from the time-of-day and disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of "existing customers" is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customer in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker has a least a minimally active relationship. In this regard, the Commission believes that Rule 9.20 achieves an appropriate balance between providing protection for the public and the members' interest in competing for customers.

The Commission also believes that the amendment to Rule 9.20, requiring that a member or a person associated with a member obtain from a customer, and maintain for three years, express written authorization when submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that requiring a member or person associated with a member to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a member or person associated with a member to misappropriate customers' funds. Moreover, the Commission believes that by requiring a member or person associated with a member to retain the authorization for three years, Rule 9.20 protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a security.

The Commission also believes that the amendment to Rule 9.23 requiring the retention of telemarketing scripts for three years is appropriate. By requiring the retention of telemarketing scripts for three years, Rule 9.23 assists in the prevention of fraudulent and manipulative acts and practices and provides for the protection of the public in that interested parties will have the ability to acquire copies of the scripts used to solicit the purchase of securities to ensure that members and associated persons are not engaged in unacceptable telemarketing practices.

Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' interest in conducting legitimate telemarketing practices.

The Commission finds good cause for approving the proposed rule change, including Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The proposal is identical to the NASD and MSRB rules, which were published for comment and, subsequently, approved by the Commission. The approval of the PCX's rules provides a consistent standard across the industry. In that regard, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–PCX–97–36), including Amendment Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29748 Filed 11–10–97; 8:45 am]

BILLING CODE 8010–01–M

Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. *Id.* Notwithstanding this determination, the Commission still expects the Boston Stock Exchange, the Cincinnati Stock Exchange, and the Chicago Exchange to file similar proposals.

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission, however, received two comment letters on a NASD proposal (SR–NASD–96–28), which is substantially similar. See Letter from Brad N. Bernstein, Assistant Vice President and Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated Aug. 19, 1996 ("Merrill Lynch Letter"), and Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC, dated Aug. 21, 1996 ("ICI Letter"). For a discussion of the letters and responses thereto, see Securities Exchange Act Release No. 38009 (Dec. 2, 1996) (approving File No. SR–NASD–96–28).

[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Small Disadvantaged Business Certification Application".

Type of Request: New Collection.

Form No: N/A.

Description of Respondents: Small Businesses seeking certification as a Small Disadvantaged Business.

Annual Responses: 100,000.

Annual Burden: 5,000.

Comments: Send all comments regarding this information collection to Patricia A. Lefevre, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W., Suite 8000, Washington, D.C. 20416. Phone No: 202–205–6416. Send

comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: October 31, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–29755 Filed 11–10–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before December 12, 1997. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory, Affairs Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: "Mentor Information Forms".

Form No's: SBA Forms 2031, 2031A, B, C, D, E, F, G, H.

Frequency: On Occasion.

Description of Respondents: Entrepreneurial Women and Women Business Owners.

Annual Responses: 10,000.

Annual Burden: 2,000.

Dated: October 27, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–29756 Filed 11–10–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2984]

Commonwealth of the Northern Mariana Islands

The Islands of Saipan and Tinian in the Commonwealth of the Northern Mariana Islands constitute a disaster area as a result of damages caused by Super Typhoon Joan which occurred October 10, 1997. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on December 29, 1997 and for economic injury until the close of business on July 29, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage	
Homeowners With Credit Available Elsewhere	7.625
Homeowners Without Credit Available Elsewhere	3.812
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 298406 and for economic injury the number is 963300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 29, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–29757 Filed 11–10–97; 8:45 am]

BILLING CODE 8025–01–P

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATE AND TIME: Monday, November 17, 1997; 9:00 a.m.–5:00 p.m.

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

MATTERS TO BE CONSIDERED: FY 1997 grant requests, internal Institute business matters.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board of Directors' committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 97–29840 Filed 11–7–97; 12:24 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of October 31, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3053.
Date Filed: October 28, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC1 Telex Mail Vote 894
Chile-Brazil fares
r1–070j, r2–072vv, r3–078m
Intended effective date: November 15, 1997.

Docket Number: OST–97–3054.
Date Filed: October 28, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 Telex Mail Vote 896
TC2 Fares from Algeria
Intended effective date: November 15, 1997.

Docket Number: OST–97–3055.
Date Filed: October 28, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0023 dated October 24, 1997
South Atlantic-Europe Expedited Resos r1–6
r–1—002r, r–3—076w, r–5—078LL
r–2—071y, r–4—078f, r–6—085L
Intended Effective Date: December 1, 1997.

Docket Number: OST–97–3068.
Date Filed: October 30, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR-SEA 0042 dated October 7, 1997
Europe-Southeast Asia Resos r1—29
Correction—PTC23 EUR–SEA 0043 dated October 21, 1997
Minutes—PTC23 EUR–SEA 0044 dated October 24, 1997
Tables—PTC23 EUR–SEA Fares 0009 dated October 28, 1997
Intended effective date: April 1, 1998.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–29723 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 31, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–477.
Date Filed: October 31, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1995.
Description: Application of L.B. Limited pursuant to 49 U.S.C. 41302, applies for amendment and re-issuance of its foreign air carrier permit to engage in scheduled air transportation of persons, property and mail on the following Bahamas-U.S. scheduled combination route: Freeport on the one hand, and the coterminal points Atlantic City, NJ; Pittsburgh, PA; Louisville, KY; Clearwater, FL; and Charleston, SC on the other hand.

Docket Number: OST–97–3075.
Date Filed: October 31, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1997.
Description: Application of Northern Airlines Corporation; pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in scheduled and charter interstate air transportation of persons, property and mail, and respectfully requests that it be accomplished through show cause or other expedited procedures.

Docket Number: OST–97–3076.
Date Filed: October 31, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1997.
Description: Application of Servicios Aereos Profesionales, S.A., pursuant to Subpart Q and Section 402 of the Federal Aviation Act of 1958, applies for issuance of an initial Foreign Air Carrier Permit, to operate between the Dominican Republic and the United States under a wet lease agreement.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–29722 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Air Carrier Operations Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Quentin J. Smith, Federal Aviation Administration (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–5819; fax (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its regulations and practices with its trading partners in Europe and Canada.

One area ARAC deals with is air carrier operations issues. These issues involve the operational requirements for air carriers, including crewmember requirements, airplane operating performance and limitations, and equipment requirements.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization tasks:

Airplane Performance Operating Limitations

1. Review FAA and JAA airplane operational performance requirements (14 CFR parts 121 and 135/JAR–OPS) and develop a list of differences between the two sets of requirements. (use should be made of preliminary work on the task carried out by industry). During this review, if differences are identified in the associated certification requirements, such difference should be reported to the Aviation Rulemaking Advisory Committee (ARAC) and the Harmonization Management Team by the FAA and JAA contacts.

2. When the first step is completed, explore the feasibility of harmonization of each identified difference in the following order of priority: Performance Class A, Class B, and Class C.

3. Within one year of publication of the ARAC task in the **Federal Register**, develop recommendations for common (harmonized) operational performance requirements for those items identified under item above as being feasible for harmonization. If the working group determines FAA rulemaking is required, that determination must be forwarded to the FAA for consideration of rulemaking priority, resource allocation, and additional tasking to ARAC, as appropriate.

Working Group Activity

The Airplane Performance Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of that tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider air carrier operations issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft an appropriate report.

4. Provide a status report at each meeting of ARAC held to consider air carrier operations issues.

Participation in the Working Group

The Airplane Performance Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee..

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, and the individual will be advised whether or not the request can be accommodated. Requests to participate on the Airplane Performance Harmonization Working Group should be submitted no later than January 2, 1998. To the extent possible, the composition of the working group will be balanced among the aviation interests selected to participate.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meeting of ARAC will be open to the public. Meetings of the Airplane Performance Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 5, 1997.

Quentin J. Smith,

Assistant Executive Director, for Air Carrier Operations Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–29729 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Joint RTCA Special Committee 180 and Eurocae Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held December 3–5, 1997, starting at 8:30 a.m. on December 3. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) FAR part 21 Revision Activity Report; (7) Review Issue Logs; (8) Issue Team Status; (9) Break into Teams; (10) Issue Team Reports; (11) New Items for Consensus; (12) Special Committee 190 Committee Activity Report; (13) Other Business; (14) Establish Agenda for Next Meeting; (15) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 933–9339 (phone); (202) 933–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 3, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–29725 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice 97–13]

Safety Advisory: Unauthorized Cans Used to Package and Transport HC–12a®, a Liquefied Petroleum Gas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that cans labeled as DOT–2Q containing HC–12a®, a liquefied petroleum gas, packaged and distributed by OZ Technology, Inc. (OZ), Rathdrum, Idaho are unauthorized for the packaging and transportation of HC–12a®, and that tests on these cans show that they may fail at ambient temperatures normally encountered in transportation. Failure of cans containing a liquefied petroleum gas could result in serious personal injury, death, and property damage.

FOR FURTHER INFORMATION CONTACT: Raymond L. LaMagdelaine, Chief, Special Investigations, telephone (202) 366–4700, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (HMR) (49 CFR Parts 171–180) authorize certain specification containers for liquefied petroleum gas. A specification DOT–2Q container may be used if quantity and pressure limits are met. Specification DOT–2Q cans, when not equipped with a pressure relief device, are authorized to transport liquefied petroleum gas with a vapor pressure not exceeding 35 p.s.i.g. at 70° F. and 100 p.s.i.g. at 130° F. (49 CFR 173.304(d)(3)(ii)). The cans used by OZ to package HC–12® have no pressure relief device. According to the OZ Material Safety Data Sheet (MSDS), the vapor pressure of HC–12a® is 72 p.s.i.g. at 70° F. Therefore, a DOT–2Q can is not authorized for shipment of HC–12a®.

When a DOT–2Q can is authorized, the HMR require that "[e]ach completed container filled for shipment must have been heated until contents reached a minimum temperature of 130° F., without evidence of leakage, distortion, or

defect." (49 CFR 173.304(d)(3)(ii) Note 1). RSPA had 18 cans of HC–12a® tested by an independent test laboratory. Of the 18 cans tested, six cans burst (i.e., the valve assembly separated from the can), three leaked, and seven distorted. All 18 cans tested were over-pressurized at 70° F. and those cans that did not leak or burst prior to 130° F were also over-pressurized.

A person who possesses a can of HC–12a® described in this safety notice should ensure that the can is not offered for transportation or transported and that it is stored in a cool or refrigerated location. If you have further questions, please contact Mr. LaMagdelaine.

Issued in Washington, D.C. on November 5, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–29720 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Potential Failure of Check Valves Following Remanufacturing

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing an advisory bulletin to owners and operators of Hazardous Liquid and Natural Gas Pipelines. The bulletin advises the industry about potential failure of check valves following remanufacture.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty, (202) 366–4577.

SUPPLEMENTARY INFORMATION:

I. Background

In a recent accident, a hazardous liquid pipeline cleaning pig was late arriving at a pump station. The pig was thought to be lodged in the check valve due to the noise level at the valve. The valve was equipped with a lock open device and the wrench was locked in the open position by a bolt intended for that function. An attempt was made to remove the bolt from the operating handle on the check valve in order to exercise the valve and dislodge the cleaning pig. The wrench locking bolt was moved about one-half of a turn and the shaft unexpectedly blew out of the valve releasing liquefied petroleum gas into the environment. The on-site valve inspection indicated that the valve stem was held in place only by the locking bolt. The clapper and hinge were detached and the set screws were missing.

II. Advisory Bulletin (ADB–97–05)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

Subject: Potential Failure of Check Valves Following Remanufacturing.

Purpose: Inform system owners and operators of the need to inspect/test remanufactured check valves.

Advisory: Recent information discovered during the course of an Office of Pipeline Safety (OPS) accident investigation indicates certain older check valves were not remanufactured within specified tolerances. Significant differences were found in several of the same type of remanufactured check valves. All of the shafts were different and none of the valves appear to match the description given in the check valve remanufacture procedure. Additionally, the valves were assembled differently. Evaluation of other remanufactured check valves also shows evidence of improper reassembly.

Remanufactured check valves should undergo a thorough quality assessment to assure tolerances are within design parameters, particularly valves where the shaft is retained inside the valve by set screws. Operators should consider including testing or inspection as part of the quality assessment. Remanufactured check valves currently in service are included in this advisory because damage to a pipeline and release of pressurized product may occur as a result of improper remanufacturing of check valves.

OPS recommends operators also be aware of an October 30, 1997, Environmental Protection Agency (EPA) and Occupational Safety and Health Administration Joint Safety Alert (Alert) concerning a similar but unrelated problem with certain types of check and butterfly valves. According to the Alert, certain types of check and butterfly valves can undergo shaft-disk separation and fail catastrophically or "blow-out". For more information on the Alert, visit the EPA CEPPO home page at http://www.epa.gov/swercepp/ or contact the Emergency Planning and Community Right-to-Know Hotline at 1–800–424–9346 or 703–412–9810.

(49 U.S.C. Chapter 601; 49 CFR 1.53)

Issued in Washington, D.C. on November 5, 1997.

Stacey L. Gerard,

Acting Director for Program Development.

[FR Doc. 97–29721 Filed 11–10–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Covington & Burling on behalf of Union Pacific Corporation (WB468–4—10/28/97), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29787 Filed 11–10–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning October 1, 1997, the rates will remain at 8 percent for overpayments and 9 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

The IRS announced September 12, 1997, that the rates of interest for the first quarter of fiscal year (FY) 1998 (the period of October 1–December 31, 1997) will remain at 8 percent for overpayments and 9 percent for underpayments. These interest rates are subject to change for the second quarter of FY–1998 (the period of January 1–March 31, 1998).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, since July 1, 1975 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)
070175	013176	9	9
020176	013178	7	7
020178	013180	6	6
020180	013182	12	12
020182	123182	20	20
010183	063083	16	16
070183	123184	11	11
010185	063085	13	13
070185	123185	11	11
010186	063086	10	10
070186	123186	9	9
010187	093087	9	8
100187	123187	10	9
010188	033188	11	10
040188	093088	10	9
100188	033189	11	10
040189	093089	12	11
100189	033191	11	10
040191	123191	10	9
010192	033192	9	8
040192	093092	8	7
100192	063094	7	6
070194	093094	8	7
100194	033195	9	8
040195	063095	10	9
070195	033196	9	8
040196	063096	8	7
070196	033197	9	8

Dated: November 5, 1997.

Samuel H. Banks,

Acting Commissioner of Customs.

[FR Doc. 97–29663 Filed 11–10–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

1998 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing the schedule of fees to be charged in 1998 on the transfer of book-entry Treasury securities between depository institution accounts maintained at Federal Reserve Banks and Branches, as well as transfers to and from Federal Reserve Bank accounts.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 534, E St. Building, Washington, D.C. 20239–0001, telephone (202) 219–3350.

Diane M. Polowczuk, Government Securities Specialist, Bureau of the Public Debt, Room 534, E St. Building, Washington, D.C. 20239–0001, telephone (202) 219–3350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between one book-entry account to another book-entry account of the same depository institution, and between the accounts of one depository institution and the accounts of another depository institution that maintain their accounts at Federal Reserve Banks and Branches. This fee schedule also applies to the book-entry transfer of securities between depositary institution accounts and Federal Reserve Bank accounts.

Based on the latest review of book-entry costs and volumes, the Treasury has decided that the fees for securities transfers in 1998 should remain unchanged from the levels currently in effect.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses the fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will be effective January 1, 1998, for the Treasury book-entry transfer service:

1998 FEE SCHEDULE

	Cost per transfer
On-line transfers originated	$1.65
On-line reversal transfers received	1.65
Off-line transfers originated	9.40
Off-line transfers received	9.40
Off-line reversal transfers received	9.40

Dated: October 31, 1997.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 97–29719 Filed 11–10–97; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Termination of Authority

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Surety Companies Acceptable on Federal Bonds Termination of Authority: Cumberland Surety Insurance Company, Inc.

SUMMARY: Dept. Circ. 570, 1997—Rev., Supp. No. 2.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (202) 874–6779.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certification of

Authority issued by the Treasury to Cumberland Surety Insurance Company, Inc., Lexington, Kentucky, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective immediately

The Company was last listed as an acceptable surety on Federal bonds at 62 FR 35557, July 1, 1997.

With respect to any bonds currently in force with Cumberland Surety Insurance Company, Inc., bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A14, Hyattsville, MD 20782.

Dated: October 31, 1997.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 97–29764 Filed 11–10–97; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 62, No. 218
Wednesday, November 12, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-218-000]

Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Notice of Filing

Correction

In notice document 97–29191 beginning on page 59857, in the issue of Wednesday, November 5, 1997, make the following corrections:

1. On page 59857, in the third column, the docket number is corrected to read as set forth above.

2. On page 59857, in the third column, under the heading, insert the date "October 30, 1997."

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5916–6]

Final NPDES General Permit for Discharge From New and Existing Sources in the Offshore Subcategory of the Oil and Gas Extraction Category for the Territorial Seas of Louisiana (LAG260000)

Correction

In notice document 97–29152, beginning on page 59687, in the issue of Tuesday, November 4, 1997, make the following corrections.

1. On page 59691, in the first column, at the end of the entry 2., the following equation should be inserted:

$$\frac{C_i}{C} = \left(erf \left[\left(\frac{1.5}{\left(1+8AH^{\frac{4}{3}}\frac{t}{H^2}\right)^3 - 1} \right)^{\frac{1}{2}} \right] \right)^{-1}$$

2. On page 59704, in the first column, in the FR Doc. line, "11-4-97" should read "11-3-97".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, and 74

[MM Docket No. 97-217; FCC 97-360]

MDS and ITFS Two-Way Transmissions

Correction

Proposed rule document 97-29346 was inadvertently published in the Rules and Regulations section of the issue of Thursday, November 6, 1997, beginning on page 60025. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

Correction

In notice document 97–29084, appearing on page 59706, in the issue of Tuesday, November 4, 1997, make the following correction:

On page 59706, in the third column, in the FR Doc. line, "11-4-97" should read "11-3-97".

BILLING CODE 1505-01-D

federal register

Wednesday
November 12, 1997

Part II

Department of Education

National Center or Centers for Research in Vocational Education; Notice

DEPARTMENT OF EDUCATION

National Center or Centers for Research in Vocational Education

AGENCY: Department of Education

ACTION: Notice of final interpretation and waivers.

SUMMARY: The Secretary of Education (Secretary) announces an interpretation of the statute authorizing the National Center or Centers for Research in Vocational Education (National Center), section 404, Part A, Title IV of the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (Act). Under the interpretation, the Secretary has the authority to extend the five-year project period for the current National Center at the University of California at Berkeley. In addition, for the National Center at Berkley, the Secretary waives the regulations in 34 CFR 75.250 of the Education Department General Administrative Regulations (EDGAR), which provide that the Secretary may approve a project period of up to 60 months; the regulations in 34 CFR 75.261(c)(2) and (3) of EDGAR, which provide for circumstances under which the Secretary may extend the project period of an award; and the regulations in 34 CFR 413.4(a), which provide that the Secretary designates a National Center or Centers once every five years.

EFFECTIVE DATE: This notice becomes effective on December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Jackie Friederich or Pariece Wilkins, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, Room 4526), 600 Independence Avenue, SW, Washington, DC 20202–7242. Telephone (202) 205–9071. Internet address: Jackie__friederich@ed.gov and Pariece__wilkins@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In December 1992, after a competition conducted under the authority of section 404 of the Perkins Act and the implementing regulations at 34 CFR Part 413, the Secretary awarded grants to the University of California at Berkeley to operate the current National Center for Research in Vocational Education. At that time, the Secretary approved a five-year project period. The National Center has received annual grant awards since December 1992 for the purpose of conducting applied research and development activities in vocational education as well as annual awards for the purpose of conducting dissemination and training activities in vocational education. Section 3 of the Act, as amended by Public Law 101–392, authorized appropriations for Titles I through IV of the Act (including appropriations for the National Center) for Fiscal Years (FYs) 1991, 1992, 1993, 1994, and 1995. Calendar year 1997 will be the fifth year of the project period for which the University of California at Berkeley was selected and awarded grants in 1992. The funds awarded to the National Center in December of 1992 were utilized by the University of California at Berkeley to carry out activities in 1993. Since section 3 of the Act only authorized appropriations under Perkins Act programs through FY 1995, FY 1996 Perkins Act programs were extended under the authority of section 422 of the General Education Provisions Act (Pub. L. 103–382). In FY 1997, Perkins Act programs that were funded, including the National Center program, operated by authority of annual congressional appropriations.

On June 20, 1997, the Secretary published a notice of proposed interpretation and proposed waiver in the **Federal Register** (62 FR 33726). Except for technical revisions and the waiver of 34 CFR 75.261(c) (2) and (3), there are no differences between the proposed and final interpretation and waivers.

Analysis of Comments

Interpretation

In response to the Secretary's invitation, 17 parties submitted comments on the notice of proposed interpretation of section 404 of the Perkins Act and on the proposed waivers of §§ 75.250 and 413.4(a).

Comments: All seventeen commenters supported the continuation of the National Center at the University of California at Berkeley. Fourteen of these commenters thought the National Center should continue because they either benefited from or were pleased with the National Center's work. Five commenters agreed with the Department that the National Center should be continued because of uncertainties regarding reauthorization and future funding for the National Center.

Discussion: The Secretary is also pleased with work performed by the National Center at the University of California at Berkeley. The National Center has provided valuable research in tech-prep, integration of academic and vocational education, and both performance and skills standards. Moreover, the Secretary believes Berkeley is likely to continue to operate a National Center that addresses the needs of the vocational education community.

The uncertainties regarding reauthorization and future funding for the National Center, which prompted the Department to propose the notice of interpretation and waivers, remain. The Secretary continues to want to avoid holding a grant competition for a new National Center in an atmosphere of uncertainty in which potential applicants would not have critical information. The Secretary is, therefore, issuing this notice of interpretation that will enable the Department to continue the existing National Center beyond the 60-month project period, with new work beginning under the grants in 1998.

Change: None.

Comment: One commenter strongly encouraged the National Center, during its one-year extension, to provide research that supports a strengthened State leadership role for vocational technical education and to conduct research that will assist States in critical issues such as vocational technical education's role in welfare reform and vocational teacher education.

Discussion: The Secretary believes that one of the most important activities of the National Center is applied research and dissemination that help to shape the future of vocational education and that are especially useful to educators in strengthening vocational education programs. In this regard, the Secretary plans for the National Center to enhance its dissemination activities and efforts to assist States and localities to address their needs. During the 1998 project period the National Center will provide States with materials and services in key areas of need, which may include use performance data, professional development, welfare reform, and curriculum integration, and will provide technical assistance in the use of the National Center's research findings through regional workshops.

Change: None.

Waiver

Comment: None.

Discussion: In order to extend the five-year project period for the current National Center, the Secretary has waived 34 CFR 75.250, which provides that the Secretary may approve a project period of up to 60 months, and § 413.4(a), which provides that the Secretary designates a National Center or Centers once every five years. Consistent with these two waivers, the Secretary has determined that he will waive 34 CFR 75.261(c)(2) and (3) so as to authorize the extension to Berkeley even though the extension will involve the obligation of new Federal monies and the performance of new work.

Change: This notice now includes a waiver of 34 CFR 75.261(c)(2) and (3).

Interpretation and Waivers

The authorization of appropriations for the Perkins Act has expired and the National Center is being funded and administered on the basis of year-to-year congressional appropriations. There is no authorization of appropriation for the years that would be covered by new five-year National Center grants, were there to be a competition. The National Center authority in section 404 of the Perkins Act requires that the Secretary operate a National Center or Centers for a period of five years. December 31, 1997 will be the end of the five-year period for the current National Center and, therefore, the statutory requirement will have been met. The Secretary does not view the statute as requiring a new competition for new five-year grants especially since there are no appropriations authorized. Accordingly, the Secretary interprets the statute as authorizing him to extend the current National Center.

In view of the uncertainties presented by the absence of appropriation authority, the Secretary seeks to avoid a situation where the current National Center ceases operations and a new National Center starts up operations the next year, very possibly resulting in a difficult transition period and a truncated project period during which essential research, development, dissemination, and training activities will not be undertaken, causing a potentially serious disruption of services to the vocational education community. The Secretary also does not wish to place potential applicants in the position of expending resources applying for Federal funds without knowing the full amount of funds for which they are applying or the period of years for which they are seeking to be funded. Also, the Secretary is generally reluctant to announce a competition whereby eligible entities would be expected to proceed through the application preparation and submission processes while lacking critical information and does not think that it would be in the public interest to do so. The Secretary, therefore, adopts the interpretation and waives certain regulations for the National Center at Berkeley in order to provide an appropriate and cost-effective way of implementing existing legislation while serving the interest of the education community.

The Secretary adopts the interpretation of section 404 of the Perkins Act and waives §§ 75.250 and 75.261(c)(2) and (3) of EDGAR and § 413.4(a) of the program regulations as they apply to the National Center at Berkeley. This interpretation and these waivers authorize the Secretary to extend the grants to the University of California at Berkeley beyond the 60-month period provided for in § 75.250, with new work beginning under the grants in 1998. The Secretary will extend the grants if it is determined, based on information available, that Berkeley is making substantial progress and will likely continue to make substantial progress in performing all required activities.

Assuming that Berkeley is making substantial progress in performing the required activities, the Secretary will extend the grants to Berkeley for one additional year (through December, 1998), by awarding two grants totaling $4.5 million under the authority of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, Public Law 104–208. However, additional extensions could be made if Congress makes further appropriations without underlying authorizing legislation. During the period of any extension, the Secretary will review the activities of the National Center to ensure that Berkeley continues to make substantial progress in performing all required activities.

The Secretary does not interpret the waivers as exempting the grantee from the account closing provisions of Pub. L. 101–510 or as extending the availability of FY 1992, 1993, 1994, 1995, and 1996 funds awarded to the grantee. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose. Therefore, FY 1993 funds awarded to Berkeley for the National Center will not be available for payments on obligations after September 30, 1998. If the grants are extended for additional years, funds will be available for payments on valid obligations for only five years after the expiration of their period of availability. For example:

(a) FY 1994 funds [or appropriations] will not be available for payment of obligations after September 30, 1999.

(b) FY 1995 funds [or appropriations] will not be available for payment of obligations after September 30, 2000.

During the period of the extension of the National Center, the Secretary will give special emphasis to several of the mandatory statutory and regulatory activities the National Center is required to carry out, which appear to be of particular concern to the education community, in the following areas:

(a) Integration of academic and vocational education.

(b) Accountability in vocational education, including the use of performance standards for program improvement.

(c) Education of students in all aspects of an industry.

(d) Development of effective methods for promoting literacy and communication skills in students.

(e) Use of technology to enhance learning and support the transference of knowledge.

(f) Teacher and administrator training and leadership development.

(g) Articulation of secondary and postsecondary instruction with high quality work-based learning.

(h) A study on the research conducted on approaches that lead to effective articulation of the education-to-work transition.

(i) Dissemination of exemplary practices and materials, including curriculum and instructional materials.

(j) Development and utilization of a national level dissemination network, including the broad dissemination of the results of research and development conducted by the National Center.

(k) Development and publication of curriculum materials.

(l) Development of processes for the synthesis of research.

The activities of the National Center provide valuable support to the Department's new initiatives that are geared toward preparing students for high-skill jobs by providing them with the academic, technical, and related skills needed for the twenty-first century. These initiatives support the development of high levels of academic standards and occupational skills for all students by promoting education reform, improvements at the postsecondary level in the delivery of services to vocational education students and in teacher and administrator training and leadership

development, and the development of school-to-work systems. Through research and dissemination initiatives in areas such as the integration of academic and vocational education and the education of students in all aspects of an industry, new findings can be identified and disseminated in areas such as linking secondary and postsecondary learning, and the formation of effective partnerships among schools, employers, parents, and community and labor organizations that enhance school-based and work-based learning. Other possible research, development, and dissemination strategies that address these priorities could include the use of support services and supportive learning environments, the development and use of effective performance management systems for program improvement, and the integration of occupational skill standards and assessments with academic performance standards and assessments. Through the exploration, development, identification, and dissemination of these strategies, the work of the National Center will have a significant impact on education policy and practice which will benefit the collaborative education and training efforts of institutions, educators, businesses, and students.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the waiver of 34 CFR 75.261(c)(2) and (3) is a procedural change only and does not establish new substantive policy. Moreover, the waiver of 34 CFR 75.261(c)(2) and (3) is fully consistent with the Secretary's waiver of 34 CFR 75.250 and 413.4(a)—on which the Secretary sought public comment on June 20, 1997 (62 FR 33726)—in that 75.261(c)(2) and (3) provide for circumstances under which the Secretary may extend the project period of an award. Therefore, proposed rulemaking is not required under 5 U.S.C. 553(b)(A) and is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

(Catalog of Federal Domestic Assistance Number 84.051 National Center for Research in Vocational Education)

Authority: 20 U.S.C. 1221e–3; 20 U.S.C. 2404; 20 U.S.C. 3474.

Dated: October 4, 1997.

Christine D. Kulick,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 97–29611 Filed 11–10–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
November 12, 1997

Part III

Department of Transportation

Federal Transit Administration

Section 5309 (Section 3(j)) FTA New Starts Criteria; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Section 5309 (Section 3(j)) FTA New Starts Criteria

AGENCY: Federal Transit Administration (FTA), DOT

ACTION: Amendment of notice.

SUMMARY: The Federal Transit Administration (FTA) is amending its December 19, 1996 Notice describing the criteria it will use to evaluate candidate projects for discretionary New Starts funding under Title 49 United States Code (U.S.C.) Section 5309. Specifically, the Notice is amended to reflect Departmental guidance issued on April 9, 1997 establishing a Department-wide standard for the value of travel time; correct an editorial error regarding the application of travel time savings to the criteria for mobility improvements; account for the lack of standardized national assumptions regarding the unit value of criteria pollutant and greenhouse gas emissions; reflect a change in the definition of "boarding points associated with the proposed new start" for purposes of evaluating mobility improvements; and reflect a change in the definition of "new start service area" for purposes of evaluating operating efficiencies.

EFFECTIVE DATES: This Notice will be used to evaluate projects for discretionary new start funding recommendations for the 1999 Fiscal Year.

FOR FURTHER INFORMATION CONTACT: John Day, Office of Policy Development, FTA, Washington, D.C. 20590, (202) 366–4060.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1996, FTA issued a Notice describing the criteria it will use to evaluate candidate projects for discretionary New Starts funding under Title 49 United States Code (USC) Section 5309. These criteria replaced those which had been in effect since the May 18, 1984 Statement of Policy on Major Urban Mass Transportation Capital Investments, and incorporated the expanded range of factors implemented by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

Value of Travel Time Savings

The Notice established a measure for the statutory criteria of "mobility improvements" of "[t]he projected value of aggregate travel time savings per year (forecast year [1]) anticipated from the new investment, compared with the no-build and TSM (Transportation System Management) alternatives." It further established the value of total travel time savings at 80 percent of the average wage rate in the urbanized area.

On April 19, 1997, the Secretary of Transportation issued "The Value of Travel Time: Departmental Guidance for Conducting Economic Evaluations," which established department-wide guidance for calculating the value of time saved or lost by users of the transportation system. The values of time and procedures set forth in the Departmental guidance are to be used for all DOT cost-benefit and cost-effectiveness analyses that employ measures of the value of travel time lost or saved. They replace mode-specific methods for valuing travel time with a consistent set of monetary values applicable to all modes.

The Departmental guidance establishes a common value of local travel time for automobile drivers and passengers, public transit passengers, pedestrians, and bicyclists. Separate values are specified for personal travel (including commuting, shopping, conducting personal business, and social and recreational travel), business or work-related travel, and travel by truck drivers.

Hourly wages were derived from several sources. For personal travel by surface modes, the standard adopted is median household income, as reported by the Bureau of the Census, divided by 2,000 hours. This figure amounted to $17.00 in 1995. The standard for business travel is derived from employee compensation figures supplied by the Bureau of Labor Statistics. For business travel by surface mode (except truck drivers), the hourly wage figure was $16.80 including fringe benefits. For truck drivers, the hourly wage was $16.50.

The values adopted by the Department for travel time are as follows: 50 percent of the wage for all local personal travel, regardless of mode; 70 percent of the wage for all intercity personal travel; and 100 percent of the wage (plus fringe benefits) for all local and intercity business travel, including travel by truck drivers. In special cases where out-of-vehicle time (access, waiting, and transfer time) on transit trips is isolated as an object of analysis, time is valued at 100 percent of the wage.

Using these percentages and wage rates, the hourly value of travel time for local travel on surface modes (transit's market) is as follows: $8.50 for personal local travel by all (50 percent of the median household income, divided by 2,000 hours); $16.80 for local business travel, and $16.50 for truck drivers. The hourly value for walking, waiting, and access time associated with transit improvements is $17.00 (100 percent of the median household income, divided by 2,000 hours).

The Office of the Assistant Secretary for Transportation Policy will publish periodic updates of the values of travel time to be used in DOT economic analyses. This updating will be performed using the same data sources used to develop the initial values, including the Bureau of the Census, the Bureau of Labor Statistics, and the Air Transport Association. The updating process will automatically index the values to reflect increases in hourly earnings throughout the nation's economy.

Application of Value of Travel Time Savings

In addition to the revised values for travel time, the December 19, 1996 Notice is being amended to correct an editorial error regarding the application of travel time savings to the criteria for mobility improvements. Specifically, in the summary of comments to the September 28, 1994 Policy Discussion Paper, the Notice indicated that travel time increases "should not be counted against overall travel time improvements for new riders (**Federal Register**, Vol. 61, No. 245, p. 67100)." This position was adopted because some people who switch to transit can incur longer travel times, but are deriving other benefits such as reduced travel under congested conditions, improved ride quality, reduced commuting costs, etc. Lacking a reliable means for placing a value on such benefits, the value of the travel time increase would be used as a surrogate and not be deducted from overall travel time savings.

However, section II(a)(1) of the policy statement itself notes incorrectly that the projected value of aggregate travel time savings per year "is a net figure in the sense that travel time increases should be explicitly considered and used to offset the time savings of those people who experience savings (**Federal Register**, Vol. 61, No. 245, p. 67105)." This statement is incorrect, and this amendment removes the above sentence from the original Notice.

[1] The original Notice established the forecast year as year 20 of the analysis period, and noted that an opening year forecast will be used for financial analysis and as a check on initial ridership projections.

Valuation of Criteria Pollutant and Greenhouse Gas Emissions

The Notice established a measure for the statutory criteria of "environmental benefits" of "the value per year (forecast year) of the forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated according to standardized national assumptions about the unit value of each emission." These values were to have been determined by the Environmental Protection Agency (EPA). However, to date no values have been set. This amendment strikes the requirement that a value be placed on the forecast change in emissions.

Definition of "Boarding Points" for Evaluating Mobility Improvements

Section II(a)(1) of the Notice states that one of the factors for rating the mobility improvements expected to be derived from a proposed new start would be the absolute number of low income households (households below the poverty level) located within ½-mile of boarding points associated with the proposed system increment (**Federal Register**, Vol. 61, No. 245, p. 67105). This is still true. However, the discussion for this measure found in the summary of comments (**Federal Register**, Vol. 61, No. 245, p. 67100) defines "boarding points associated with the proposed system" as "not limited to stations that are part of the proposed project," and including "boarding points that will feed into the new system." In practice, this would have included bus stops on routes serving the new stations, as well as existing rail stations on lines that intersect with the new system at the new stations (such as when a new rapid rail line intersects with an existing commuter rail line, and a new station is constructed).

In developing guidance for this measure, FTA concluded that including all potential boarding points associated with a new system would place an unnecessary and unfair burden on local agencies, would lead to reporting inconsistencies, and lack comparability among projects proposed for discretionary new starts funding. As a result, this amendment revises this measure to include only those stations located directly on the proposed new facility.

Definition of "Service Area" for Evaluating Operating Efficiencies

Section II(a)(3) of the December 19, 1996 Notice indicates that the measure for "operating efficiencies" would be based on the "forecast change in operating cost per passenger mile" for the new start service area, defined as "that part of the system that will be directly affected by the proposed new investment." Though not specifically stated, this measure would have included the change in operating cost per passenger mile not only for the new facility, but also for connecting bus routes and rail lines.

In developing guidance for the revised criteria, FTA concluded that this measure as defined would place an unfair and unnecessary burden on local agencies, would lead to reporting inconsistencies, and lack comparability among projects proposed for discretionary new starts funding. As a result, this amendment revises the definition of "service area" for this measure to include the entire transit system.

II. Incorporation of DOT Guidance Into FTA New Starts Criteria

The December 19, 1996 **Federal Register** Notice adopted aggregate travel time savings as one of the measures for "mobility improvements." This aggregate includes travel time savings for all travelers affected by the proposed transit investment; new and existing transit riders as well as highway users, business travel as well as personal. Given that the DOT Guidance establishes different values for different trip purposes (plus additional values for wait time and truck drivers), FTA has adopted a weighted average approach for valuing travel time savings (or increases) associated with a proposed new start, using distributions of travel by mode and by trip purpose.

The revised value of travel time consists of three components: out-of-vehicle time for all modes; in-vehicle time for highway modes; and in-vehicle time for transit modes.

Out-of-vehicle time (time spent accessing, waiting, and transferring) is valued at 100 percent of the wage rate, as specified in the DOT Guidance. Using the wage rates specified earlier, out-of-vehicle time is valued at $17.00 per hour.

The value for in-vehicle travel time for transit modes is a weighted average based on trip purpose, i.e., business or personal. The DOT Guidance uses data from the 1990 Nationwide Personal Transportation Survey for trip purpose information. For surface modes, the distribution for local travel is 95.8 percent personal, 4.2 percent business. This results in a weighted average value of in-vehicle time for surface modes, for all purposes, of $8.90 per hour.

The value for in-vehicle highway time includes an additional variable for vehicle mix, as the DOT Guidance establishes a separate value of time for truck drivers. For this component, FTA calculated a weighted average of highway travel time based on vehicle mix information provided by the 1995 Highway Statistics report published by the Federal Highway Administration. According to this report, automobiles account for 92.4 percent of vehicle miles traveled (VMT), and trucks account for the remaining 7.6 percent. Using these figures, and applying the weighted average value of in-vehicle time for business and personal travel as calculated above, the resulting value for in-vehicle highway time is $9.50 per hour.

III. Amendments to Section 5309 FTA New Starts Criteria

The December 19, 1996 **Federal Register** Notice, "Section 5309 (Section 3(j)) FTA New Starts Criteria," issued by the Federal Transit Administration (FTA), is amended as follows:

The sentence reading, "It is a net figure in the sense that travel time increases should be explicitly considered and used to offset the time savings of those people who experience savings," in regard to the measure for "mobility improvements," is stricken from the Notice.

The sentence reading, "Total travel time savings will be valued at 80 percent of the average wage rate in the urbanized area," regarding the measure for "mobility improvements," is stricken and replaced with the following:

"Travel time savings will be valued according to trip purpose, using standardized values established by the Department of Transportation, based on average national wage rates as reported in the decennial Census. For transit riders, travel time will be valued at 50 percent of the wage rate for non-work travel (including commuting) and 100 percent of the wage rate for work-related travel. The total value of travel time for transit riders will be calculated using a weighted average by trip purpose. For highway users, the weighted average will also include travel by truck drivers, based on vehicle mix. In addition, time spent waiting for, accessing, and boarding transit vehicles will be valued at 100 percent of the wage rate."

The phrase reading, "the value per year (forecast year) of the forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated according to standardized national assumptions

about the unit value of each emission," regarding the measure for "environmental benefits," is stricken and replaced with the following:

"[T]he annual forecast change in criteria pollutant emissions and in greenhouse gas emissions, ascribable to the proposed new investment, calculated in terms of tons for each criteria pollutant or gas."

The sentence reading, "This measure is not limited to stations that are part of the proposed project, and includes boarding points that will feed into the new system," contained in the discussion of "mobility improvements" with respect to the definition of "boarding points," is stricken and replaced with the following:

"Boarding points are defined as those transit stations located directly on the proposed new start transit facility."

In Section II(a)(3), the phrase "for that part of the system that will be directly affected by the proposed new investment" is stricken and replaced with the following:

"[F]or the entire transit system."

Issue Date: November 5, 1997.

Gordon J. Linton,

Administrator.

[FR Doc. 97–29718 Filed 11–10–97; 8:45 am]

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federal register

Wednesday
November 12, 1997

Part IV

The President

Proclamation 7050—Veterans Day, 1997

Federal Register
Vol. 62, No. 218
Wednesday, November 12, 1997

Presidential Documents

Title 3—

The President

Proclamation 7050 of November 7, 1997

Veterans day, 1997

By the President of the United States of America

A Proclamation

Americans have always looked to the future. Planning for next week, next month, or next year, we rarely dwell on the past, but rather look ahead to tomorrow. But each year in November, we pause to look back, to reflect with pride and profound gratitude on the achievements of our Nation's veterans. The service and sacrifice of these millions of courageous men and women is a gleaming thread that weaves, unbroken, through the fabric of American history.

More than two centuries ago, the framers of our Constitution outlined in a few brief words the burden and privilege that generations of American veterans would willingly embrace: to "provide for the common defence . . . and secure the Blessings of Liberty to ourselves and our Posterity . . . ." Since the days of the American Revolution, nearly 42 million patriots have taken up arms to defend America and to guarantee that the blessings of liberty are, indeed, secure. From Lexington and Concord to Fort McHenry and San Juan Hill, from the Argonne Forest to the shores of Normandy, from the frozen terrain of Korea to the jungles of Vietnam and the sands of Kuwait, America's veterans have risked—and more than half a million have lost—their lives to preserve our freedom and defend our national interests.

Today, more than 25 million American veterans live among us. They come from every walk of life and from every ethnic, religious, and racial background. They are our family members, friends, and neighbors, but these seemingly ordinary citizens have accomplished extraordinary things. They have defended our liberty against every challenge, preserved our values, advanced democracy across the globe, and made America the world's best hope for freedom and lasting peace.

For these contributions, and for so much more, we owe our veterans an enormous debt of gratitude that we can never fully repay. To those who have completed their service and returned to civilian life, we owe the opportunity for a good education, a good job, and the chance to buy a home. For those who have suffered injury or illness in service to America, we must provide relief, quality health care, and the opportunity to live out their dreams. To the families of those still missing, we owe the fullest possible accounting and every effort to determine the fate of their loved ones. And to those who have died for us and for our country, whether here at home or on some foreign battlefield, we owe our lasting respect and the pledge to meet America's future challenges with the same valor and generosity that infused their sacrifice.

In recognition of and gratitude for the contributions of those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Tuesday, November 11, 1997, as Veterans Day. I urge all Americans to acknowledge the courage and sacrifice of our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–29980
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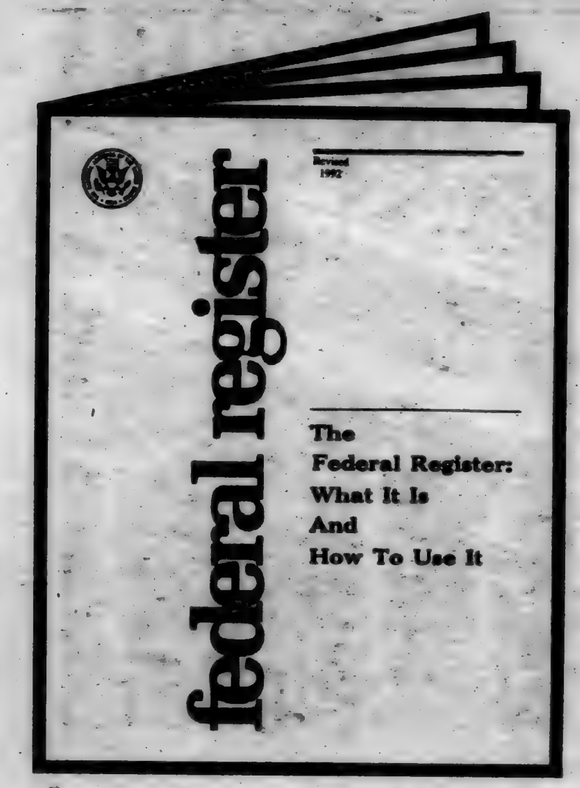
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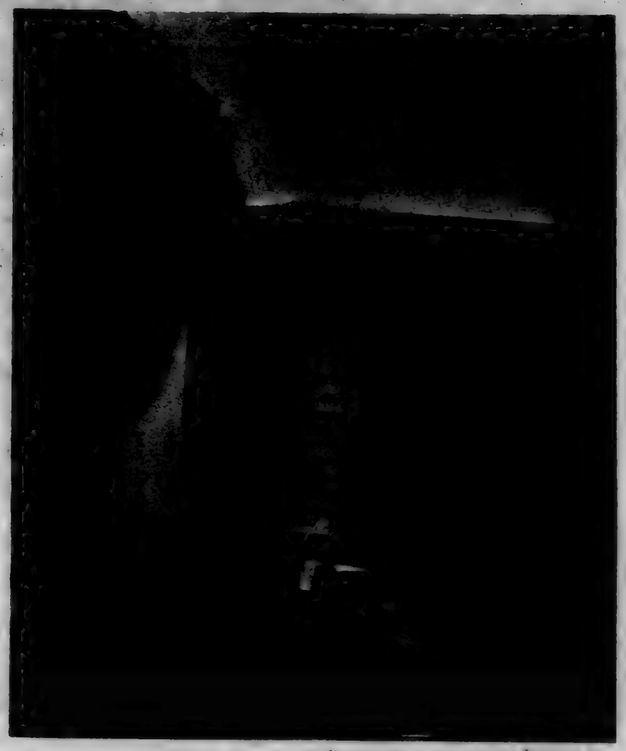
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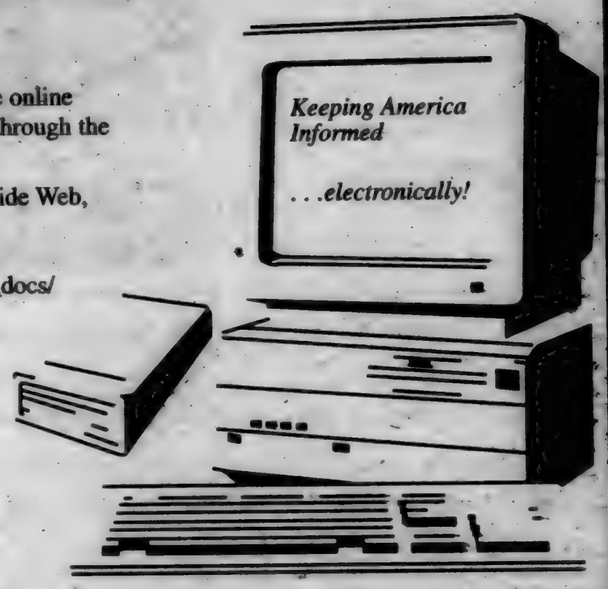
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–102–2]

Asian Longhorned Beetle; Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the domestic quarantine regulations by quarantining a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of the Asian longhorned beetle and by restricting the interstate movement of regulated articles from these quarantined areas. These actions are necessary to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy trees of maple (including Norway, sugar, silver, red, and others), horse chestnut, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus. It may also attack other species of hardwood trees. ALB bores into the heartwood of host trees, eventually killing the host trees. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on and over-winter in the interior of the trees. Adult beetles emerge in the spring and summer months from large, round holes approximately ⅜-inch in diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles fly for 2 to 3 days, when they feed and mate. Adult females then lay eggs in grooves that they make on the branches of trees. A new generation of ALB is produced each year.

First detected in the United States in August 1996, ALB has been found in hardwood trees in an area in the boroughs of Brooklyn and Queens, NY, and in the vicinity of Amityville, NY. In these locations, the beetle appears to prefer maple and horse chestnut trees. However, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are also subject to infestation. Therefore, if this pest moves into the hardwood forests of the northeastern United States, severe economic impact to the nursery and forest products industries in that part of the United States could result.

In an interim rule effective on February 28, 1997, and published in the **Federal Register** on March 7, 1997 (62 FR 10412–10419, Docket No. 96–102–1), we amended the domestic quarantine regulations in 7 CFR part 301 by adding a new subpart 301.51, "Asian Longhorned Beetle." The regulations in the new subpart quarantine a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of ALB and restrict the interstate movement of regulated articles from these quarantined areas. These actions are necessary to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending May 6, 1997. We received one comment by that date. It was from a representative of a State government.

The commenter asked that we expand the list of regulated articles to include all hardwood trees, not just those tree types that have been determined to be susceptible to infestation by ALB based on current infestations in New York State and scientific literature. The commenter also asked that we require burning of infested material because chipping or grinding infested material may not destroy all of the adult beetles, larvae, or eggs in the material. Lastly, the commenter suggested that we establish guidelines for host tree replantings in quarantined areas to limit ALB access to host sources in quarantined areas.

Based on this comment, we are adding birch (*Betula*) and Rose of Sharon (*Hibiscus syriacus L.*) to the list of regulated articles. These two plant types have proven to be likely host material for ALB. At this time, we do not feel that it is necessary to list all hardwood trees as regulated articles because we have not determined that hardwood trees other than those currently listed as regulated articles and those added to the list of regulated articles by this document are likely hosts for ALB. However, we continue to monitor infestations in the quarantined areas, and if necessary, we will add additional plant types to the list of regulated articles in the future.

All infested material is destroyed under a cooperative agreement with the State of New York. The cooperative agreement requires additional mitigating measures (e.g., chipping and burning of infested host material) to prevent the spread of ALB. Therefore, there is no need to require the burning of infested material in the regulations.

In quarantined areas and their environs in New York State, there is an abundance of host trees. Therefore, a probihition on the planting of host species in quarantined areas would have little or no impact on the spread of ALB. However, when infested trees in the quarantined area are removed for processing, replacement trees are ordinarily non-host species. We are making no changes to the interim rule in response to this portion of the comment.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, and Executive Orders 12372 and 12988.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0122.

Accordingly, the interim rule amending 7 CFR part 301 that was published at 62 FR 10412–10419 on March 7, 1997, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.51–2, paragraph (a) is revised to read as follows:

§ 301.51–2 Regulated articles.

* * * * *

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Betula* (birch), *Hibiscus syriacus L.* (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus*.

* * * * *

Done in Washington, DC, this 6th day of November 1997.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29869 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV97–989–3 IFR]

Raisins Produced From Grapes Grown in California; Modifications to the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule modifies the raisin diversion program (RDP) currently authorized under the Federal marketing order for California raisins. The marketing order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Under the raisin diversion program, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule makes various modifications to the diversion program to improve compliance and bring the program in line with current industry practices. Improving compliance with the RDP will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

DATES: Effective November 14, 1997; comments received by January 12, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule modifies the raisin diversion program currently authorized under the Federal marketing order for California raisins. Under the RDP, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with

market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule makes various modifications to the RDP to improve compliance and bring the RDP in line with current industry practices. Improving compliance with the RDP will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

The Federal marketing order for California raisins provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage of the crop must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve pool raisins are disposed through certain programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for sale to any market; exported to authorized countries; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. The RDP is another program concerning reserve pool raisins authorized under the order, and may be used as a means for controlling overproduction. The RDP is described in the following paragraphs.

Pursuant to § 989.56 of the order, the Committee meets by November 30 of each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the Committee determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the Committee. Such producers then curtail their production by vine removal or some other means established by the Committee and receive a certificate from the Committee which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the Committee and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The Committee then gives the handler raisins from the reserve pool in an amount equal to the tonnage represented by the diversion certificate.

Section 989.156 of the order's administrative rules and regulations prescribes additional procedures for the RDP. At a meeting on August 14, 1997, the Committee unanimously recommended that various changes be made to these additional RDP procedures to improve compliance and bring the RDP in line with current industry practices.

The first change to the RDP recommended by the Committee concerns references throughout § 989.156 to partial production units. Such references are contained in paragraphs (d), (h)(2), (h)(3), (i), (s)(1), and (s)(3) of § 989.156. As defined in § 989.156(o), a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). For example, a production unit could be 30 acres of raisins surrounded by a permanent road on two sides and permanent fencing on the other two sides.

Partial production units have been allowed under the RDP in past years. For instance, in the 30-acre production unit example, three rows of vines from that unit could qualify as a partial production unit under the RDP. Under § 989.156(s)(3) of the order's administrative rules and regulations, the determination of the tonnage allowed for acreage removed for such a partial unit would be computed by multiplying the previous year's tonnage produced and verified on the entire unit by the ratio of the acreage removed divided by the acreage contained in the total production unit. However, the Committee is concerned that some producers may be removing weak vines in a production unit and getting credit under the RDP for an inflated amount of tonnage. In the 30-acre example, a producer could have an average past production of 2.2 tons of raisins on the entire unit, remove three rows of low-producing vines that averaged only 1.5 tons of raisins per acre, and get credit in the RDP for 2.2 tons of raisins per acre. Although § 989.56(a) of the order specifies a cap of 2.75 tons of raisins per acre for an approved production unit (which can be changed through informal rulemaking), the Committee is still concerned that actual production on a partial unit could be inflated.

Thus, the Committee recommended that partial production units no longer be accepted as part of the RDP. This change will help ensure that producers who participate in an RDP do not receive credit for an inflated amount of tonnage and gain a financial advantage over other producers. This change will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

In addition, the Committee believes that this change will improve the accuracy of the amount of tonnage accepted into the RDP. When an RDP is established, a quantity of raisins equivalent to the amount diverted would be made available in the subsequent crop year from the prior year's reserve. This RDP diverted tonnage from the reserve is included in the Committee's marketing policy computations for that year and subject to free and reserve percentages. Thus, it is important for the Committee to have as accurate a figure as possible for RDP tonnage. The Committee believes that not allowing partial production units into the RDP will improve the accuracy of this figure. Appropriate changes have been made to the applicable paragraphs to implement this recommended change.

According to Committee staff, most of the RDP applications over the years have been for full production units. The partial unit authority has typically been used by a producer desiring to receive credit under the RDP for a few weak rows of vines, which usually amounts to less than an acre. Thus, this change is not expected to adversely impact RDP participants.

The second change recommended by the Committee concerns paragraph (g) of § 989.156 regarding procedures to verify whether producers under the RDP are curtailing their production. This section currently specifies that committees of industry persons may be established to serve as agents of the Committee in assuring producer compliance with the RDP. These groups of industry persons may be furnished approved RDP applications and are to advise the Committee on the progress of the diversion within a particular district.

Such industry committees have been utilized during only one season since the inception of the RDP in 1985. Committee staff has assumed the functions of monitoring producer diversion and assuring program compliance. Thus, the Committee recommended that reference to these RDP industry committees be removed from § 989.156(g) of the order's administrative rules and regulations.

This change will bring RDP procedures in line with current industry practices.

A third change to the RDP recommended by the Committee concerns paragraph (h) of § 989.156 regarding compliance. Paragraph (h)(1) of § 989.156 currently specifies that an approved applicant must remove or spur-prune vines to preclude grapes from being produced and harvested on the production unit involved in the program: *Provided*, That vine removal may be the only acceptable means of diversion in some seasons as determined by the Committee. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on a properly spur-pruned production unit, the producer must be notified in writing and given 2 weeks to remove such bunches.

The Committee recommended that this section be modified to remove the impression that spur-pruning is the only acceptable method of diverting the crop, other than removing the vines altogether. Other methods such as spraying with certain substances should also be allowed. Producers should be allowed to remove and destroy the bunches of grapes by whatever method they choose in order to receive a diversion certificate. The Committee also recommended that the word "acceptable" in the first sentence in § 989.156(h)(1) be removed because it is not necessary. In addition, the Committee recommended that the section be modified to strengthen the requirement regarding producer notification of noncompliance with the RDP. Specifically, Committee staff must notify producers "immediately by certified mail," in writing, and give producers 2 weeks to remove extra bunches. The Committee believes that this added language will strengthen producer compliance with the RDP.

The Committee also recommended that paragraph (h)(3) of § 989.156 concerning failure to divert be revised to specify that any producer who has more than one production unit and fails to divert on an approved production unit may be denied the opportunity to participate in the next RDP on all of that producer's production units. The current provisions specify that the producer should be denied participation, and not the specific production unit. However, the provisions have been interpreted so that producers only have been denied the opportunity to participate in the next RDP on the unit that was not properly diverted, not all of that producer's units. The clarification will eliminate the confusion and is expected to provide producers more incentive to remain in compliance with the RDP because the clarified provisions specify that the failure to comply could mean denial to participate on any of that producer's production units in the next RDP. Thus, this provision is expected to strengthen producer compliance with the RDP which will help ensure that the integrity of the program is maintained.

The fourth change to the RDP recommended by the Committee concerns paragraph (o) of § 989.156. This section defines a production unit. As previously mentioned, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). Under the RDP, producers must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. Additional criteria are specified for new production units and existing units that may have been transferred to another producer.

The Committee believes that additional information may be necessary in some cases to verify the appropriate production figure to apply to a production unit. There have been concerns that some producers have inflated their production units under past RDP's by reporting statistics showing higher than actual raisin production. For example, since diversion certificate tonnage is based on the tons of raisins delivered per acre during the prior year, producers could inflate their tonnage by acquiring raisins from another source and adding them to deliveries from their production units, thereby receiving credit for a greater amount of raisins than actually produced on the acreage. By inflating yield figures, producers could receive diversion certificates equal to more raisins from the reserve pool than they actually would have produced from those production units.

Thus, the Committee recommended that authority be added to paragraph (o) of § 989.156 authorizing Committee staff to request additional documentation to substantiate the tonnage of raisins produced on any known production unit. This documentation may include information such as tray count, employee payroll records, prior years' production for all production units, and insurance records. This information is maintained by producers in the normal course of business. Such information for approved production units, in addition to producers' other known production units, will give Committee staff another tool to ensure producer compliance with the RDP so that the integrity of the program is maintained.

This rule also makes minor changes to remove obsolete language in paragraph (s)(1) in § 989.156. That paragraph makes two references to provisions particular to the 1985 calendar year which marked the inception of the RDP. Certain parameters regarding dates particular to 1985 were incorporated into the order's administrative rules and regulations that are no longer necessary. Thus, this rule removes those two references.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule modifies the RDP currently authorized under § 989.56 of the Federal marketing order for California raisins. Under the RDP, the Committee issues diversion certificates to producers who have removed grapes in accordance with § 989.156 to reduce raisin production and bring raisin supplies more closely in line with market needs. Such certificates represent an amount of reserve tonnage raisins equal to the amount of raisins diverted. Diversion certificates may be submitted by producers only to handlers. Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. This rule makes various modifications to § 989.156 of the order's administrative rules and regulations concerning the RDP. The changes include: Removing authority for the diversion of partial production units in an RDP; removing authority for committees of industry persons to assist the Committee in compliance efforts; clarifying that spur-pruning is not the only acceptable method of aborting a crop; and making other changes to strengthen compliance with the RDP. These changes will help improve compliance with the RDP and bring the program in line with current industry practices.

Regarding the impact of this rule on affected entities, the changes are designed to either improve compliance with the RDP, or are administrative in nature to bring the RDP in line with current industry practices. None of the changes concerning compliance are expected to increase the cost of administering the RDP. Also, because most of the producer applications over the years have been for full production units, rather than for partial production units, discontinuance of partial production units as part of the RDP is not expected to increase appreciably costs to producers. Moreover, the addition of other methods of diversion, like chemical application, should have a positive affect. The changes are intended to ensure equity among all those participating in the RDP and to maintain the integrity of the program. Thus, the changes are expected to be equally beneficial to all affected entities who are adhering to the requirements of the program, regardless of size.

Other alternatives to the RDP procedures were considered by the raisin industry prior to the Committee's recommendation. The Committee has an appointed Amendment Subcommittee and Working Group which have held several public meetings throughout the year to consider changes to the RDP and other order provisions. One alternative considered was to leave the RDP procedures unchanged. However, the Committee concluded that the changes established by this rule were necessary to improve the RDP and better accomplish program objectives. The Working Group also considered adding to the rules and regulations a scale that would correlate production ranges with an appropriate production cap for each range, to help ensure that participating producers did not receive credit for an inflated amount of tonnage and gain a financial advantage over other participants. Another related option concerned modifying the rules and regulations to specify that the production cap should be based on a 5-year rolling average of production per acre with a maximum of 2.75 tons per acre. However, Committee staff indicated that data concerning total industry production on a per acre basis was not available, and the Working Group decided not to recommend these changes.

The Working Group also considered adding guidelines to the RDP procedures for hardship cases where producers have been denied participation in an RDP. For example, there have been cases in past seasons where producers have submitted an application to participate in an RDP, curtailed production, and then been denied a certificate from Committee staff because such producers did not satisfy the terms of the RDP (*i.e.*, could not document their previous year's production). Under the current rules and regulations, such producers have the option of appealing such a decision to the Committee and ultimately the Department. After some deliberation, the Working Group decided not to change this appeal process by trying to specify various "what if" scenarios in the rules and regulations. The group believed it was best to address each such situation on a case-by-case basis. Ultimately, the full Committee concluded that the changes to the RDP previously discussed were appropriate at this time.

Regarding any additional reporting or recordkeeping requirements, this rule allows Committee staff to request additional information from producers participating in an RDP to verify production. However, such information will only be requested on a case-by-case basis for use as a compliance tool when the information submitted on a producer's application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or when Committee staff is unable to verify production based on submitted documentation. For instance, if a producer had multiple production units of similar size, and the production on the unit to be diverted was significantly different than the others, the Committee wants its staff to be authorized to request additional information such as that mentioned to verify the accuracy of the producer application. Additional information may be needed in cases where the production on a unit to be diverted is significantly different from that of neighboring production units. As a third example, if information obtained from weigh tags and other delivery documents provided to the Committee did not correspond to the production figure indicated on the producer's application, Committee staff may request additional information.

This rule will not require new forms and the number of producers for which additional information may be requested is expected to be small. According to the Committee staff, only about 5–10 percent of producer applications raise questions for which additional information may be needed. During the industry's last diversion program in 1996 which provided for only vine removal (as opposed to allowing spur pruning), 66 producers participated. In 1995's program, which provided for spur pruning and vine removal, 778 producers participated. The Department plans to monitor producer reporting under this rule during the first season an RDP is implemented.

Using the 778 participation figure and the 10 percent figure for questionable applications, a total of 78 producer applicants might need to provide additional information. The Committee staff estimated that it will take each of these participants about 10 minutes to compile, package, and submit this information. Thus, the time taken by the 78 participants as a group will total about 13 hours, and this time is currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

This rule does not impose a reporting burden above that currently approved for small and large raisin producers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the raisin industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 14, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. As previously mentioned, the Committee's Amendment Working Group met throughout the year at public meetings

to discuss various changes to the raisin order, including the recommended changes to the RDP. The Working Group made its recommendations concerning revisions to the RDP to the Amendment Subcommittee on August 7, 1997. The Amendment Subcommittee in turn made its recommendations to the full Committee on August 14, 1997. All of these meetings were public meetings and both large and small entities were able to participate and express their views. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

As stated earlier and in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule also invites comments on modifications to the diversion program authorized under the California raisin order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (2) the order specifies that the Committee must meet by November 30 of each crop year to review pertinent data and decide whether a diversion program should be implemented; the Committee plans to meet on November 13 to review this issue and this rule should be in place prior to implementation of any diversion program; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (s)(3) is removed, and the first sentence of paragraph (d), and paragraphs (g),(h), (i), (o), and (s)(1) are revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(d) *Priority of applications and allocations of tonnage.* Those producer applications indicating that the vines of the producing units will be removed shall receive first priority over other applicants when reserve tonnage under the program is to be allocated. * * * * * * * * *

(g) *Verification.* Any applicant whose application has been approved, authorizes Committee representatives and agents to have access to the production unit in the diversion program during reasonable business hours during the crop year to confirm compliance with the program. Notice will be provided to the applicant of such visits.

(h) *Compliance.* (1) *Methods of diversion.* An approved applicant shall be required to remove the vines, spur-prune the vines, remove the bunches or take other means to preclude grapes from being produced and harvested on the production unit: *Provided,* That vine removal may be the only means of diversion in some seasons as determined and announced by the Committee. Bunches which occur on vines in an approved production unit shall be removed and destroyed by the applicant before maturity. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on an approved production unit, the producer shall be notified immediately by certified mail, in writing, and given 2 weeks to remove such bunches. Grafting vines of one varietal type to another varietal type does not constitute removal of vines under the program.

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit designated in the application not later than June 1 of the crop year in which a raisin diversion program is implemented. Producers who remove the vines on a production unit after August 15 may qualify for a diversion program for that crop year if a diversion program is announced and if diversion on that unit and vine removal after August 15 can be documented and verified.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in the next diversion program, when implemented: *Provided,* That any producer who has more than one production unit and fails to divert on an approved production unit may be denied the opportunity to participate on all of that producer's production units, in the next diversion program. For spur-pruned vines, this date may be extended 2 weeks from the date of the inspection of a producer's vineyard if more than four bunches on spur-pruned vines are present at the time of inspection.

(i) *Issuance of certificates.* When preliminary percentages are announced, the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. Such certificates shall represent an amount of reserve tonnage raisins equal to the amount of raisins diverted from the production unit(s) specified in the producer application, or additional quantity granted by the Committee when vines are diverted through vine removal or any other means established by the Committee, as the case may be. If, prior to issuance of a certificate, the Committee is notified by an approved applicant that such applicant's interest in the production unit(s) involved in the program has been transferred to another person, the Committee may substitute the transferee for the applicant provided the transferee agrees to comply with the provisions of this section.

* * * * *

(o) *Production unit.* For the purposes of the raisin diversion program, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). A producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. If the information submitted by producers on the application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers' would not be precluded from submitting other information substantiating production if those producers' desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

* * * * *

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1. The diversion certificates will be issued only for the production units from which vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units for which such applications are approved not later than June 1.

* * * * *

Dated: November 7, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–29971 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1845–97]

RIN 1115–AE77

Prima Facie Review of Form I–360 When Filed by Self-Petitioning Battered Spouse/Child

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interm rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations to enable the Service to review Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant, filed by a battered spouse or child, to determine whether a prima facie case has been established. Recent legislation broadened the definition of aliens who qualify for public assistance to include battered aliens, and specifically those aliens whose self-petitions have been approved and those who file a self-petition which establishes a prima facie case for immigrant classification under the Violence Against Women Act.

DATES: *Effective Date:* This interim rule is effective November 13, 1997.

Comment Date: Written comments must be submitted on or before January 12, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS number 1845–97 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3291 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Karen FitzGerald, Staff Officer, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Nationality Act (the Act) allows a citizen or lawful permanent resident (LPR) of the United States to seek immigrant status for certain alien relatives from the Service. In order to receive this benefit, a visa petition must be filed on behalf of the alien relative and approved by the Service. The alien must then qualify for immigrant visa issuance abroad or adjustment of status in the United States.

Historically, the initiation of the visa petition process was solely at the discretion of the U.S. citizen or LPR relative. For that reason, the citizen or LPR effectively controlled the ability of an alien spouse or child to regularize his or her immigration status. Congress, in the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), Public Law 103–322, dated September 13, 1994, recognized the potential for misuse of this discretion within households where domestic violence occurs. Title IV of the Crime Bill, the Violence Against Women Act (VAWA), contains provisions which enable these battered spouses and children to self-petition for immigrant classification, thus limiting the ability of an abusive citizen or LPR to use the immigration laws to perpetuate further violence against a spouse or child residing in the United States.

Interim Rule

On March 26, 1996, the Service published an interim rule at 61 FR 13061, establishing the eligibility requirements for battered spouses and children using the self-petitioning process. The Service received numerous comments which are under consideration as the final rule is prepared for publication. This rule does not in any way alter the eligibility or evidentiary requirements set forth in that interim rule.

Impact of New Legislation

Since the Service published its interim rule, Congress has enacted new legislation that affects the ability of most aliens to receive public assistance. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress mandated that only "qualified aliens," as defined by statute, were eligible for public assistance. Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), amended the definition of "qualified alien" to include battered aliens, including certain aliens who file or have

approved self-petitions. This "qualified alien" status is afforded not only to aliens with approved self-petitions, but also to those who file a self-petition which establishes a prima facie case for immigrant classification.

Purpose of Establishing a Prima Facie Case

At the present time, the Service adjudicates the Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant, and issues a notice of approval to those self-petitioning spouses and children who demonstrate eligibility. Upon approval of the self-petition, the applicant is a "qualified alien" for purposes of the PRWORA. Often, however, the initial submission does not comply with all of evidentiary burdens required for the Service to adjudicate the self-petition. In such cases, pursuant to Service regulations, self-petitioners are generally sent a request for evidence which sets forth the deficiencies of the application and allows the applicant 60 days in which to submit supplemental documentation. The applicant may be granted an additional 60 days at the discretion of the Service pursuant to current regulations at 8 CFR 204.1(h).

However, because battered aliens can be "qualified aliens" without approval of the petition, the Service must also evaluate the petition and the evidence submitted in support of the petition to determine if the alien has established a prima facie case. Although the statute affords benefits to those who establish prima facie eligibility, neither the statute nor the legislative history adequately details the requirements for establishing this eligibility. Conventional dictionary definitions are of little assistance in this regard. Without standards, determinations could be made inconsistently and with varying constancy to Congressional intent, which would be detrimental to the purpose of the statute and to the individual petitioner trying to meet it. This interim rule explains the standards to be utilized by the Service in determining whether the petitioner has established a prima facie case.

Requirements for Demonstrating a Prima Facie Case

The prima facie determination will be made only after a self-petition has been filed with the Service, and the decision to issue that Notice of Prima Facie Case (Notice) rests solely with the Service. In evaluating whether a self-petitioner has established a prima facie case, the Service must have evidence of each of the required elements of the self-petition as detailed in Service regulations at § 204.2 (c)(1) and (e)(1). Accordingly, self-petitioners should submit Form I–360 and credible relevant evidence in support of the petition addressing each of the statutory elements as detailed in the instructions accompanying Form I–360: (1) existence of the qualifying relationship; (2) the citizenship or immigration status of the abuser; (3) the self-petitioner's eligibility for immigrant classification; (4) residence in the United States; (5) evidence that, during the qualifying relationship, the petitioner and abuser resided together in the United for some unspecified period of time; (6) battery or extreme cruelty; (7) good moral character; (8) extreme hardship; and (9) in the case of a self-petitioning spouse, good faith marriage. The elements and evidentiary requirements are set forth in 8 CFR § 204.2 (c)(1) and (e)(1).

If the Service determines that a petitioner has demonstrated prima facie eligibility, a Notice of Prima Facie Case will be issued. The Notice is neither a benefit nor immigration status in its own right, and an applicant cannot apply solely for a Notice of Prima Facie Case. The decision to issue such a notice rests solely with the Service. Applicants are encouraged to submit full documentation at the earliest possible time. However, bona fide candidates for self-petitioning should not postpone filing the petition because they are unable to immediately comply with all of the regulatory requirements.

As an example, an applicant who has been unable to obtain police reports from each place of residence during the past 3 years could submit other supporting documentation which addresses the good moral character element of the adjudication. For the purpose of making a prima facie determination, an affidavit from the applicant stating he or she has never been arrested and is a person of good moral character may be considered acceptable for purposes of establishing a prima facie case. However, on its own, this affidavit is not sufficient to meet the evidentiary burden of § 204.2 (c)(2)(v) and (e)(2)(v). Before final adjudication, the applicant must still submit police reports or, if they are unavailable, some other type of documentation as required by those provisions.

The Service's decision to issue or not to issue a Notice will not be a factor in the adjudication of the underlying petition, nor will it constitute a binding determination of the credibility of the evidence submitted. Prima facie evidence will not always fully or completely satisfy the evidentiary burdens, and may be contradicted by evidence, documentation, or affidavits (or any other credible evidence) which come to the attention of the Service after a favorable prima facie determination has been made. Self-petitioners should be aware that such situations may result in the denial of the I–360 petition, even if a favorable prima facie determination was initially made. Conversely, the Service's decision not to issue the Notice of Prima Facie Case is not fatal to the underlying petition.

The prima facie evaluation will consist of an initial review of the Form I–360 and the supporting documentation. Applicants who set forth a prima facie case will receive a Notice of Prima Facie Case to document their "qualified alien" status for public benefits. The Notice is valid until the Service has adjudicated the petition. At present, the Service intends to issue the Notice with a validity period of 150 days, which exceeds the time required for adjudication in the majority of these cases. In those few cases when the Service is unable to complete the adjudication within the 150-day period, the applicant will be able to request an extension pursuant to the instructions on the Notice. Because the Notice is intended solely for the purpose of enabling petitioners to apply for public benefits within the United States, the Service will only issue the Notice to petitioners residing in the United States.

Filing and Initial Processing

Because the prima facie determination is not a separate benefit granted by the Service, the procedures that an applicant must follow are those set forth in the interim rule. The only procedural change concerns the filing of the Form I–360. As a result of the Direct Mail Notice published at 62 FR 16607 on April 7, 1997, all I–360 petitions filed by a self-petitioning spouse, child, or parent on behalf of a battered child, must be mailed directly to the Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479. Self-petitioners will be provided with documentation indicating the Service has received the self-petition (Notice of Receipt). After reviewing the petition, the Service will mail applicants notification of the status of the petition. Regardless of whether a Notice of Prima Facie Case is issued, applicants who receive notice of an adverse preliminary finding will have the opportunity to respond with additional evidence or arguments. The self-petitioner will be advised by the Service as to the additional evidence or documentation needed to support the petition, and will be provided the opportunity to submit this additional evidence until the Service makes a final decision.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d). It is in the public interest to provide prima facie determinations, which will enable qualifying spouses and children to apply for public assistance benefits. These resources and services may be critical to some applicants as they seek safety and independence from the abuser.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule addresses the grant of immigration benefits to certain individuals based on a family relationship to an abusive citizen or lawful permanent resident of the United States. This rule affects individuals, not small entities, and the economic impact is not significant.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to and approved by the Office of Management and Budget.

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

PART 204–IMMIGRANT PETITIONS

1. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 1641; 8 CFR part 2.

2. Section 204.2 is amended by adding new paragraphs (c)(6) and (e)(6), to read as follows:

§ 204.2 Petitions for relatives, widows, and widowers, and abused spouses and children.

* * * * *

(c) * * *

(6) *Prima facie determination*—(i) Upon receipt of a self-petition under paragraph (c)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a "prima facie case" for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.

(ii) For purposes of paragraph (c)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (c)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a "prima facie case," the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (c)(1) of this section, a prima facie determination—

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (c)(2) of this section.

* * * * *

(e) * * *

(6) *prima facie determination*—(i) Upon receipt of a self-petition under paragraph (e)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a "prima facie case" for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.

(ii) For purposes of paragraph (e)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (e)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a "prima facie case" the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (e)(1) of this section, a prima facie determination:

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or

probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (e)(2) of this section.

* * * * *

Dated: July 21, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–29770 Filed 11–12–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–89–AD; Amendment 39–10196; AD 97–23–08]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R3000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin Model R3000 airplanes that are equipped with yaw damper Modification No. 013. This AD requires inspecting the bridle cable ends for correct installation in the grooved screw, inspecting for correct cable winding on the capstan and correct cable tension, and correcting any discrepancies found. This AD also requires installing lockwire to the tension adjustment screw. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent the rudder control from becoming jammed because of the yaw damper control cables slipping out of the groove on the tension adjustment screw, which could result in a reduction in the directional controllability of the airplane.

DATES: Effective December 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 03 80 44 20 50; facsimile: 03 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to Issuance of This AD

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Avion Pierre Robin Model R3000 airplanes that are equipped with yaw damper Modification No. 013. The DGAC reports an incident where the yaw damper jammed due to the cable slipping out of the tension adjustment screw during operation. This condition, if not corrected in a timely manner, could result in the rudder control becoming jammed with possible reduction in the directional controllability of the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 152, dated September 30, 1996, which specifies the following:

—inspecting the bridle cable ends for correct installation in the grooved screw;

—inspecting for correct cable winding on the capstan and correct cable tension;

—correcting any discrepancies found; and

—installing lockwire to the tension adjustment screw.

The DGAC classified this service bulletin as mandatory and issued French AD 97–079(A), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Pierre Robin Model R3000 airplanes of the same type design registered in the United States that are equipped with yaw damper Modification No. 013, the FAA is issuing an AD. This AD requires inspecting the bridle cable ends for correct installation in the grooved screw, inspecting for correct cable winding on the capstan and correct cable tension, correcting any discrepancies found, and installing lockwire to the tension adjustment screw. Accomplishment of the actions of this AD would be in accordance with the previously referenced service bulletin.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–89–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–23–08 Avions Pierre Robin: Amendment 39–10196; Docket No. 97–CE–89–AD.

Applicability: Model R3000 airplanes; all serial numbers; certificated in any category, that are equipped with yaw damper Modification No. 013.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent the rudder control from becoming jammed because of the yaw damper control cables slipping out of the groove on the tension adjustment screw, which could result in a reduction in the directional controllability of the airplane, accomplish the following:

(a) Inspect the bridle cable ends for correct installation in the grooved screw and inspect for correct cable winding on the capstan and correct cable tension in accordance with Avions Pierre Robin Service Bulletin No. 152, dated September 30, 1996. Prior to further flight, correct any discrepancies in accordance with this service bulletin.

(b) Install lockwire to the tension adjustment screw in accordance with Avions Pierre Robin Service Bulletin No. 152, dated September 30, 1996.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The inspections and installation required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 152, dated September 30, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 97–079(A), dated March 12, 1997.

(f) This amendment (39–10196) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 31, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29535 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–275–AD; Amendment 39–10202; AD 97–21–16]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 97–21–16 that was sent previously to all known U.S. owners and operators of Dassault Model Mystere-Falcon series airplanes by individual notices. This AD requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. This action is prompted by a report indicating that erroneous minimum anti-icing N1 thrust setting indications were displayed on the Engine Indication Electronic Display (EIED). The actions specified by this AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the EIED, which could result in in-flight shutdown of engine(s).

DATES: Effective November 18, 1997, to all persons except those persons to whom it was made immediately effective by emergency AD 97–21–16, issued October 14, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before December 15, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On October 14, 1997, the FAA issued emergency AD 97–21–16, which is applicable to Dassault Model Mystere-Falcon 50 series airplanes. That action was prompted by a report indicating that erroneous minimum anti-icing N1 thrust setting indications were displayed on the Engine Indication Electronic Display (EIED). The erroneous minimum N1 indications do not correspond with minimums specified in the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) for operations in icing conditions. This condition, if not corrected, could result in flightcrew use of erroneous N1 thrust setting information displayed on the EIED and consequent in-flight shutdown of engine(s).

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 97–21–16 to prevent flightcrew use of erroneous N1 thrust setting information displayed on the EIED, which could result in in-flight shutdown of engine(s). The AD requires revision of the Limitations Section of the AFM to include procedures to use values indicated in Normal Section 4, Sub-section 140, Page 2, of the AFM to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions.

Interim Action

This AD is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on October 14, 1997, to all known U.S. owners and operators of Dassault Model Mystere-Falcon series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–275–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–21–16 Dassault Aviation: Amendment 39–10202. Docket 97–NM–275–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 251, 253, and subsequent, equipped with Allied-Signal TFE–731–40 engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight shutdown of the engine(s) due to the flightcrew using erroneous N1 speed values displayed on the Engine Indication Electronic Display (EIED), accomplish the following:

(a) Within 1 day after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Operation in Icing Conditions: The N1 speed of the operating engines must not be less than the minimum values specified in Normal Section 4, Sub-section 140, Page 2, of the AFM."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French telegraphic airworthiness directive No. T 97–310–019 (B), dated October 10, 1997.

(d) This amendment becomes effective on November 18, 1997, to all persons except those persons to whom it was made immediately effective by emergency AD 97–21–16, issued October 14, 1997, which contained the requirements of this amendment.

Issued in Renton, Washington, on November 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29789 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–35–AD; Amendment 39–10204; AD 97–23–15]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model F–27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fairchild Model F–27 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: December 18, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fairchild Model F–27 series airplanes was published in the **Federal Register** on April 24, 1997 (62 FR 19948). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Conditional Support for the Proposal

One commenter supports the intent of the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this AD. No change to the AD is required.

Request To Withdraw the Proposal

One commenter, an operator, requests that the proposed rule be withdrawn for the following reasons. One, the commenter points out that the Fairchild Model F–27 series airplane has been type certificated for more than 35 years and has flown millions of flight hours without a single report of an intentional or inadvertent ground fine pitch (GFP) selection in flight. Two, the commenter's research of the flight manuals revealed that there is no normal or abnormal operational condition that would result in GFP selection being made in flight. Therefore, the commenter considers the unsafe condition to be a "perceived" problem. Three, the commenter states that, because the Model F–27 series airplane is equipped with a Rolls-Royce Dart engine that requires a positive torque pressure on approach, the power lever must be positioned beyond flight

idle with the propeller in a corresponding position above the flight fine lock to maintain a positive torque pressure. Therefore, the commenter concludes that the system design is adequate and that an unsafe condition does not exist. Four, the commenter considers that the proposed rule would cause a "great economic burden" to the owners and operators. Five, the commenter states that the FAA did not specify that the "perceived" unsafe condition does affect airplanes built in accordance with the requirements of part 4B of the Civil Air Regulations (CAR).

The FAA does not concur with the commenter's request to withdraw the proposed rule. As explained in the proposed rule, the accident/incident history of several airplanes involving intentional or inadvertent operation of the propellers in the beta range indicates that an unsafe condition does exist on airplanes equipped with turboprop engines. The FAA considers that revision of the AFM, as required in the final rule, will ensure that pilots are reminded that positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. The FAA further considers this to be a minimum action to ensure that pilots do not carry certain flight habits from an airplane design that mitigates the effects of beta inflight over to a design that does not.

However, the FAA notes that the commenter addresses GFP rather than operations below the flight idle stop, although the operations manual refers to both. To clarify the usage of those terms, the FAA has added the phrase "(i.e., including ground fine pitch)" as a parenthetical definition of "below the flight idle stop" in paragraph (a) of the final rule.

In addition, since operators may simply insert a copy of the AD into the AFM in order to comply with the requirements of this rule, the FAA cannot consider that action to be a "great economic burden."

Finally, the FAA did not specify that the AD was also applicable to airplanes that had been type certificated in accordance with the requirements of part 4b of the CAR since, by definition, the applicability of this AD specifically states that the AD applies to all airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 70 Fairchild Model F–27 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $420, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–15 Maryland Air Industries: Amendment 39–10204. Docket 97–NM–35–AD.

Applicability: All Fairchild Model F–27 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop (i.e., including ground fine pitch) while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 18, 1997.

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29824 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–34–AD; Amendment 39–10203; AD 97–23–14]

RIN 2120–AA64

Airworthiness Directives; Fairchild Model FH–227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fairchild Model FH–227 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning of the power levers below the flight idle stop during flight, and to add a statement of the consequences of such positioning of the power levers. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop when the airplane is in flight.

EFFECTIVE DATE: December 18, 1997.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fairchild Model FH–227 series airplanes was published in the **Federal Register** on April 24, 1997 (62 FR 19951). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Conditional Support for the Proposal

The commenter supports the intent of the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this AD. No change to the AD is required.

Clarification of the Rule

Since the issuance of the NPRM, the FAA has noted that operations manuals for certain airplanes equipped with Dart turboprop engines may contain reference to "ground fine pitch" rather than "operations below the flight idle stop," as specified in the proposed rule. Although the operations manuals refer to both of those phrases, the FAA finds that some clarification is necessary. Therefore, the FAA has added the phrase "(i.e., including ground fine pitch)" in paragraph (a) of the final rule as a parenthetical definition of "operations below the flight idle stop" in the final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that there are approximately 45 Fairchild Model FH–227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $60.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–14 Maryland Air Industries: Amendment 39–10203. Docket 97–NM–34–AD.

Applicability: All Fairchild Model FH–227 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

"Positioning of power levers below the flight idle stop (i.e., including ground fine pitch) while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Operators shall submit their requests through an appropriate FAA Maintenance Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 18, 1997.

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29825 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–17]

Amendment to Class E Airspace, Jefferson City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Jefferson City Municipal Airport, Jefferson City, MO. The FAA has developed a Nondirectional Radio Beacon (NDB) Runway (RWY) 30 Standard Instrument Approach Procedure (SIAP) to serve the Jefferson City Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. A review of the airspace required for instrument approaches at Jefferson City Memorial Airport indicates that the surface airspace area extension to the southeast can be removed. The enlarged area will contain the new NDB RWY 30 SIAP in controlled airspace.

DATES: *Effective date:* 0901 UTC April 23, 1998.

Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–17, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a RWY 30 SIAP utilizing the NDB at Jefferson City, MO. The amendment to Class E airspace at Jefferson City, MO, will provide additional controlled airspace at and above 700 feet AGL to contain the SIAP within controlled airspace. A review of the airspace required for instrument approaches at Jefferson City Memorial Airport indicates that the Class E surface area extension to the southeast can be removed. The areas will be depicted on appropriate aeronautical charts. Class E surface area extensions are published in paragraph 6004, and areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–17." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ACE MO E4 Jefferson City, MO [Revised]

Jefferson City Memorial Airport, MO
(Lat. 38°35'28" N., long. 92°09'22" W.)
NOAH NDB
(Lat. 38°38'14" N., long. 92°14'41" W.)
ALGOA LOM
(Lat. 38°32'53" N., long. 92°04'19" W.)

That airspace extending upward from the surface within 2.6 miles each side of the Jefferson City Memorial Airport localizer back course extending from the 4.1-mile radius of Jefferson City Memorial Airport to 5 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Jefferson City, MO [Revised]

Jefferson City Memorial Airport, MO
(Lat. 38°35'28" N., long. 92°09'22" W.)
NOAH NDB
(Lat. 38°38'14" N., long. 92°14'41" W.)
ALGOA LOM
(Lat. 38°32'53" N., long. 92°04'19" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Jefferson City Memorial Airport and within 3.1 miles each side of the NOAH NDB 303° bearing extending from the 6.6-mile radius to 14.3 miles northwest of the airport, and within 4 miles each side of the Jefferson City ILS localizer course extending from the 6.6-mile radius to 11.8 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 4, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–29834 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–19]

Amendment to Class E Airspace, Eagle Grove, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Eagle Grove Municipal Airport, Eagle Grove, IA. The FAA has developed a Global Positioning System (GPS) Runway (RWY) 31 Standard Instrument Approach Procedure (SIAP) to serve the Eagle Grove Municipal Airport, Eagle Grove, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 31 SIAP in controlled airspace.

DATES: *Effective date:* 0901 UTC April 23, 1998.

Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–19, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Airspace Branch, Air Traffic Division, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a GPS RWY 31 SIAP at Eagle Grove Municipal Airport, Eagle Grove, IA. The amendment to Class E airspace at Eagle Grove, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–19." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 10, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Eagle Grove, IA [Revised]

Eagle Grove Municipal Airport, IA
(Lat. 42°42'35" N., long 93°54'58" W.)
Eagle Grove NDB
(Lat. 42°42'31" N., long 93°54'38" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Eagle Grove Municipal Airport and within 2.6 miles each side of the 306° bearing from the Eagle Grove NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport, excluding that airspace within the Clarion, IA, Class E airspace area.

* * * * *

Issued in Kansas City, MO, on November 4, 1997.

Herman J. Lyons, Jr.,
Manager, Air Traffic Division, Central Region.

[FR Doc. 97–29833 Filed 11–12–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two abbreviated new animal drug applications (ANADA's) filed by Alpharma Inc. The ANADA's provide for using approved salinomycin and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for the prevention of coccidiosis and for increased rate of weight gain. This document is also amending the animal drug regulations to reflect the correct sponsor name for Alpharma Inc.

EFFECTIVE DATE: November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA's 200–204 and 200–210 that provide for combining approved salinomycin and bacitracin zinc Type A medicated articles to make Type C medicated broiler feeds containing salinomycin 40 to 60 grams per ton (g/t) and bacitracin zinc 10 to 50 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain.

ANADA 200–204, filed by Alpharma Inc., provides for using approved BIO–COX® (Hoffmann-LaRoche Inc.'s salinomycin NADA 128–686) and ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223) Type A medicated articles to make the combination drug Type C medicated feeds. ANADA 200–210, also filed by Alpharma Inc., provides for using approved SACOX® (Hoechst-Roussel Vet's salinomycin ANADA 200–075) and ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–204 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 139–235. Alpharma Inc.'s ANADA 200–210 is approved as a generic copy of Hoechst-Roussel Vet's ANADA 200–089. The ANADA's are approved as of September 19, 1997, and the regulations are amended in 21 CFR 558.550(b)(1)(vii)(*c*) to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

FDA is also amending the animal drug regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the correct firm name for Alpharma Inc.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "ALPHARMA INC." and in paragraph (c)(2) in the entry for "046573" by removing the name "ALPHARMA INC." and adding in its place "Alpharma Inc."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.550 [Amended]

4. Section 558.550 *Salinomycin* is amended in paragraph (b)(1)(vii)(*c*) by removing "No. 000004" and adding in its place "Nos. 000004 and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,
Director, Center for Veterinary Medicine.

[FR Doc. 97–29905 Filed 11–12–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final Rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to exempt the system of records entitled, "Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018," from certain provisions of the Privacy Act.

EFFECTIVE DATE: November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Sincavage, Director, 6103/Privacy Operations, Governmental Liaison & Disclosure, Internal Revenue Service at (202) 622–6240.

SUPPLEMENTARY INFORMATION: The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as Amended, at 60 FR 40797, dated August 10, 1995. The Internal Revenue Service published an alteration to the system notice on July 31, 1995, at 60 FR 30972.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the

Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes. The Internal Revenue Service has as its principal function enforcement of the tax law of the United States. System of records Treasury/IRS 34.018—Integrated Data Retrieval System Security Files, contains records that enable the Service to investigate and monitor the activities of its employees to ensure the protection and confidentiality of tax return information. The information in this system is used in investigations relating to unauthorized use of the Integrated Data Retrieval Files.

The proposed rule requested that public comments be sent to the Director, Office of Disclosure, Internal Revenue Service no later than September 11, 1995. No comments pertaining to the proposed rule were received by the Office of Disclosure. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled, "Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018," is exempt from certain provisions of the Privacy Act. The following are the reasons why certain systems of records maintained by the Internal Revenue Service are exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his request. The reasons for exempting systems of records from the foregoing provision are as follows:

(i) The release of disclosure accounting would put the subject of an investigation on notice of the existence of an investigation and that such person is the subject of that investigation;

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy;

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating this person and the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d)(1),(2),(3), and (4), (e)(4)(G) and (H) and (f). These provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in such record systems. The reasons for exempting systems of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. In cases where an exemption from this provision has been claimed, the reasons are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting systems of records from the foregoing provisions are as follows:

(i) The Internal Revenue Service will limit its inquiries to information which is necessary for the enforcement and administration of tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of a tax audit or other investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgement and timing. What appears relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(iii) When information is received by the Internal Revenue Service relating to violations of law within the jurisdiction of other agencies, the Service processes this information through Service systems in order to forward the material to the appropriate agencies.

As required by Executive Order 12866, it has been determined that this final rule is not a significant regulatory action and, therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this rule will not impose new record keeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order under the heading THE INTERNAL REVENUE SERVICE:

* * * * * * *

(b) * * *

(1) * * *

Name of System	No.
* * * * *	
Integrated Data Reporting System (IDRS) Security Files	34.018

Name of System	No.
* * * * *	

* * * * * * *

Dated: October 3, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration)

[FR Doc. 97–29794 Filed 11–12–97; 8:45 am]

BILLING CODE 4830–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AI84

Grants to States for Construction or Acquisition of State Home Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the "Medical" regulations regarding applications for grants to States for the construction or acquisition of State home facilities. VA awards grants based on a priority ranking system. Usually, the higher priority applications deplete the available funding to the extent that the lowest ranking application to be offered funding is offered only a partial grant. This final rule provides that if the lowest ranking grant application receives only a partial grant in a fiscal year and if such grant award is partial solely because VA has insufficient funds for a full grant, the application would be placed at the top of the list within its priority group for the next fiscal year. Often applicants are hesitant to accept a partial grant because of the uncertainty of receiving an additional grant the next fiscal year. This final rule will encourage States to accept a partial grant by creating the likelihood that the State would receive an additional grant in the subsequent fiscal year. Accordingly, this will help ensure that VA would be able to award grants to higher priority applicants that might otherwise reject partial funding.

Also, this final rule provides that the applicant receiving partial funding and receiving priority as proposed will not be required to submit a second application for additional funds in the subsequent fiscal year, but could be required to update information already submitted. The first application would normally be adequate because the grant award in the second fiscal year would be for the same project which received the partial grant award.

Further, the final rule provides that the total amount awarded for the application may not exceed 65 percent of the total cost of the project as determined at the time of the second grant award for that grant application. This is consistent with the statutory requirement that limits grant awards to no more than 65 percent of the estimated cost construction or acquisition.

DATES: *Effective Date:* December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Greve, Geriatrics and Extended Care Strategic Healthcare Group, (202) 273–8534.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 29, 1997 (62 FR 40492), VA proposed to amend the "Medical" regulations in 38 CFR part 17 as set forth in the SUMMARY portion of this document. The document provided a 60-day comment period, which ended on September 29, 1997. Three commentors submitted comments, all of whom expressed full approval for the provisions of the proposed rule.

Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted as a final rule without change.

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect grants to States and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of secs. 603 and 604.

The Catalog of Federal Domestic Assistance program number for this document is 64.005.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure. Alcohol abuse, Alcoholism, Claims, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: November 3, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set forth above, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follow:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.212, paragraph (d) is added and the authority citation for the section is revised to read as follows:

§ 17.212 Scope of grants program.

* * * * *

(d)(1) Notwithstanding paragraph (c) of this section and the provisions for ranking projects within a priority group in § 17.213(c)(3)(i), the Secretary shall give an application first priority within the priority group to which it is assigned on the list of projects established under § 17.213(d) for the next fiscal year if:

(i) the State has accepted a grant for that application as of August 15 of the current fiscal year that is less than the amount that the Secretary would have awarded if VA had sufficient grant funds to award the grant in such amount in that fiscal year; and

(ii) the application is the lowest ranking application on the priority list for the current fiscal year for which grant funds are available as of August 15 of that year.

(2) The Secretary shall not require a State to submit a second grant application for a project which receives priority under paragraph (d)(1) of this section but may require the State to update information already submitted in the application for the project. The Secretary shall determine the amount of a second grant at the time of the award of that grant. In no case shall the total amount awarded for the application exceed 65 percent of the total cost of the project as determined at the time of the second grant award for that grant application.

(Authority: 38 U.S.C. 8135(b))

[FR Doc. 97–29788 Filed 11–12–97; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 034–0045; FRL–5917–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 23, 1992 and May 14, 1997. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from the formulation and manufacture of pharmaceuticals and cosmetics and from facilities that load organic liquids into tank trucks, trailers, or railroad tank cars. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on December 15, 1997.

ADDRESSES: Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 1103, Pharmaceuticals and Cosmetic Manufacturing Operations; and SCAQMD Rule 462, Organic Liquid Loading. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 13, 1991 and October 13, 1995, respectively.

This Federal Register action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.[1]

II. Background

On September 23, 1992 in 57 FR 43960 and May 14, 1997 in 62 FR 26460, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SCAQMD Rule 1103, Pharmaceutical and Cosmetic Manufacturing Operations, and SCAQMD Rule 462, Organic Liquid Loading. Rule 1103 was adopted by SCAQMD on December 7, 1990 and Rule 462 was adopted by SCAQMD on June 9, 1995. These rules were submitted by the CARB to EPA on May 13, 1991 and October 13, 1995, respectively. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the proposed rules (PRs) cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PRs. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. SCAQMD Rule 1103 deficiencies include the following: (1) Air Pollution Control Officer discretion in the approval of equivalent control systems; (2) inadequate recordkeeping requirements for key operating parameters for monitoring control systems; (3) the lack of necessary recordkeeping requirements to show compliance with exemption levels; and (4) the lack of a test method for measuring vapor pressure. In SCAQMD Rule 462 the deficiency is the definition of "facility vapor leak" that allows a measurement distance of 2 centimeters from the source according to procedures listed in EPA Test Method 21. This 2 centimeter distance is inconsistent with EPA Test Method 21, which requires measurement at the surface of the source or 1 centimeter for moving parts. A detailed discussion of the rule provisions and evaluations has been provided in the PRs and in the technical support documents (TSDs) available at EPA's Region IX office (TSDs dated June 19, 1992 (Rule 1103) and March 12, 1997 (Rule 462)).

III. Response to Public Comments

A 30-day public comment period was provided in 57 FR 43960 and 62 FR 26460. EPA received no comments on the PRs.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the PRs. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the PRs, upon the effective date of this FR, the 18-month clock for sanctions and the 24-month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the FR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this FR have been adopted by the SCAQMD and are currently in effect in the SCAQMD. EPA's limited disapproval action will not prevent a local agency or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: October 24, 1997.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*5*) Rule 1103, adopted on December 7, 1990.

* * * * *

(225) * * *

(i) * * *

(A) * * *

(*2*) Rule 462, revised on June 9, 1995.

* * * * *

[FR Doc. 97–29863 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

[1] The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code. Reg. § 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley Region in Los Angeles County is a part of the Mojave Desert Air Basin (17 Cal. Code. Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–70–1–6738a; FRL–5920–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 State Plan submitted by Florida on November 18, 1996, for implementing and enforcing the Emissions Guidelines (EG) applicable to

existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This final rule is effective January 12, 1998 unless significant material, and adverse comments are received by December 15, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, and at Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Davis at 404/562–9127 or Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, Subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Under section 129 of the Act, emission guidelines are not Federally enforceable. Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. EPA amended Subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by Florida to implement and enforce Subpart Cb, as it applies to large MWC units only.

II. Discussion

The Florida Department of Environmental Protection (FDEP) submitted to EPA the following in their 111(d)/129 State Plan for implementing and enforcing the emission guidelines for existing MWCs in the State: Legal Authority; Enforceable Mechanisms; Inventory of MWC Units; Emission Inventory; Compliance Schedules and Closure Agreements; Testing, Monitoring, Recordkeeping and Reporting; Annual State Progress Reports; and applicable State regulations (Rules 62–204.800(8), 62–296.416, and 62–296.401(6) of the Florida Administrative Code) on November 18, 1996. FDEP submitted its plan before the Court of Appeals vacated Subpart Cb as it applies to small MWC units. Thus, FDEP's plan covers both large and small MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no emission guidelines promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of FDEP's State Plan for MWCs addresses only those parts of FDEP's Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. Until EPA again promulgates emission guidelines for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of FDEP's State Plan is based on finding that: (1) FDEP provided adequate public notice of public hearings for the proposed rulemaking which allows Florida to implement and enforce the EG for large MWCs, and (2) FDEP also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Sections 2.1, 2.2, and 2.3 of the State Plan, FDEP cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in Rules 62–204.800(8) and 62–296.416 are approved as being at least as protective as the Federal requirements contained in Subpart Cb for existing large MWC units.

Florida submitted compliance schedules and legally enforceable increments of progress and, where applicable, closure agreements for each large MWC. This portion of the State Plan (Section 5.0) has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

Florida's Plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and any other information that may be necessary to enable the State to judge the compliance status of the facilities. Florida also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards that apply, available to the general public. Florida submitted Rule 62–204.800(8)(b) F.A.C. to support the requirements of monitoring, reporting, and compliance assurance. These State rules have been reviewed and approved as meeting Federal requirements for existing large MWC units.

As stated in Section 8.0 of the State Plan, Florida plans to provide progress reports of plan updates on an annual basis in conjunction with the required annual reports pursuant to 40 CFR section 51.321. This meets the minimum requirement for State reporting and is approved.

Final Action

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective January 12, 1998 unless, by December 15, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 12, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: October 14, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7842.

Subpart K—Florida

2. Part 62.2350 is amended by adding paragraphs (b)(5) and (c)(3) to read as follows:

§ 62.2350 Identification of plan.

* * * * *

(b) * * *

(5) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors was submitted by the Florida Department of Environmental Protection on November 18, 1996.

(c) * * *

(3) Existing municipal waste combustors.

3. Subpart K is amended by adding a new § 62.2355 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.2355 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW).

[FR Doc. 97–29860 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970429101–7101–01; I.D. 103097A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustment From Sisters Rocks to Mack Arch, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Sisters Rocks to Mack Arch, OR, opened for 7 days per week beginning August 13, 1997. This adjustment was intended to provide commercial fishermen with additional opportunity to harvest chinook salmon without exceeding the ocean share allocated to the commercial fishery in this area.

DATES: Effective 0001 hours local time, August 13, through 2400 hours local time, August 31, 1997. Comments will be accepted through November 28, 1997.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this action is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (62 FR 24355, May 5, 1997), NMFS announced that the commercial fishery in the area from Sisters Rocks to Mack Arch, OR, would open August 1 and continue through the earlier of August 31 or attainment of the 3,000 chinook salmon quota. The season was scheduled to follow a cycle of 2 days open/2 days closed for the purpose of dampening catch rates and extending the fishing season.

The best available information on August 11 indicated that a sufficient number of chinook salmon remained in the quota to rescind the catch dampening measure. Hence, effective 0001 hours local time, August 13, the commercial salmon fishery in this area opened 7 days per week. This fishery operated through August 31.

Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). All other restrictions that applied to this fishery remained in effect as announced in the annual management measures.

The Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this adjustment. The State of Oregon managed the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 0001 hours local time, August 13, 1997 by telephone hotline numbers (206) 526–6667 and (800) 662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to take advantage of the opportunity to harvest the available quota, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29878 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 219

Thursday, November 13, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The proposed amendments are intended to allow application of technological developments that have occurred since the original rule was adopted in 1989, while achieving the original goals of facilitating the Commission's ability to comply with the schedule for decision on the construction authorization for the repository contained in Section 114(d) of the Nuclear Waste Policy Act, and providing for a thorough technical review of the license application and equitable access to information for the parties to the hearing.

DATES: Submit comments by January 27, 1998. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The existing procedures for licenses to receive high-level radioactive waste at a geologic repository were developed to address the Nuclear Regulatory Commission's concern regarding how best to review the U.S. Department of Energy (DOE) license application for a first-of-a-kind high-level radioactive waste (HLW) repository during the 3-year time period dictated by Section 114(d) of the Nuclear Waste Policy Act. The Commission believed it necessary to reduce the time normally spent on the discovery process at the start of a licensing proceeding and the time-consuming service of documents during the proceeding if the Commission were to reach its decision within the allotted time. The Licensing Support System (LSS) concept, an electronic information management system, was created to achieve this time reduction by making the information and data supporting a DOE application available simultaneously in a centralized database to all interested parties before the application is submitted and formal NRC review begins. Emerging information management technologies for issue identification, electronic storage and retrieval, and electronic mail were recommended for these functions to help achieve the objectives of more effective and efficient review.

The Commission employed the technique of negotiated rulemaking to develop the regulations governing the development and use of the LSS. Negotiated rulemaking is the process by which the agency and the interests affected by a rulemaking meet to attempt to reach a consensus on a draft proposed rule. If a consensus is reached, the agency publishes the negotiated rule as the agency's proposed rule. The Commission selected the negotiated rulemaking approach to address the LSS issue for several reasons. In 1987, the idea of use of an electronic information management system in a Commission adjudicatory proceeding was novel, not only for the Commission, but in general. Therefore, the development of the rules for the use of such a system would benefit from discussion and joint problem solving by those who might ultimately use the system and had experience with the Commission's traditional adjudicatory process. Furthermore, the potential users of the LSS possessed unique information that would be important to the design of the system, such as their computer capability and the amount and types of relevant documents that they might generate. In addition, the potential for consensus was enhanced by the fact that the LSS rule focused on procedures for conducting the licensing process that might benefit all parties, rather than focusing on substantive technical criteria for a licensing process. Finally, the success of the LSS concept depended upon potential parties voluntarily complying with the licensing process for document identification and submission in the period before the DOE license application was submitted. Therefore, the involvement of interested parties in the development of the provisions to govern the use of the LSS was essential.

The Commission initiated the negotiated rulemaking in August 1987. The negotiating committee, composed of State, local, and tribal governments, industry representatives, NRC, DOE, and environmental groups, completed its work in July 1988. Except for the industry coalition, all the parties on the negotiating committee agreed on the text and supplementary information of a draft proposed rule. However, even the one dissenting party, the industry representative, had been a full and active participant in the drafting of the regulatory text and supporting information. Industry did not join the final consensus at the end of the process based on its belief that the use of a new technology in the licensing process

would not prove cost-beneficial. At that time, the cost of the LSS was estimated by DOE to be in the $200 million range. The Commission, recognizing the agreement among the other parties on the negotiating committee, decided to publish the negotiated draft proposed rule as the Commission's proposed rule in November 1988. Because of this effort, the final LSS rule (10 CFR part 2, subpart J), "Procedures Applicable to Proceeding for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository", was promulgated on April 24, 1989 (54 FR 14925).

The LSS rule assigned the LSS Administrator (LSSA) function to the NRC which would be responsible for the management, administration, operation, and maintenance of the LSS; pursuant to DOE's agreement, gave DOE responsibility for the design, development, and implementation of the LSS; and established the charter of the LSS Advisory Review Panel (LSSARP) to provide consensus guidance on the design and development of the LSS to both NRC and DOE. The LSS was intended to provide a central, shared, federally funded database of licensing information beginning in 1995, the year DOE was expected to submit its application for a construction permit for the repository. The Commission adopted minor amendments further clarifying these procedures in a final rule published on February 26, 1991 (56 FR 7787).

The Licensing Support System Administrator (LSSA) was appointed in January 1989. The LSSARP was formed, holding its first meeting in December 1989. Also in December 1989, well before any serious development work could be started on the LSS, the Department of Energy revised its repository program schedule to extend its anticipated license application date from 1995 to 2001. Consequently, the LSS development schedule was extended.

II. Discussion

The development of the LSS that was devised in the original procedural rules in 10 CFR Part 2, Subpart J, has not been accomplished during the time that has passed since adoption of the rule. Many delays and changes in personnel and program structure have attended the Department of Energy's efforts to develop the LSS. Budgetary shortfalls and the unanticipated length of time that it has taken to develop the licensing application for the repository not only delayed the development of the LSS, but also resulted in several additional years' accumulation of potential licensing information.

Because of the length of time involved and the narrowing of the repository development program, much of the early material thought to be relevant at the time the rule was developed may no longer be relevant to the actual licensing proceeding that may not begin until about 2002. Also because of the extended period of time it has taken to develop the LSS for DOE's use as a document management system, it appears that all accumulated documents may not have been identified and maintained properly for tracking of important repository development decisions. In addition, because document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture all the material originally required to be placed in the LSS is substantially larger than originally assumed. In order for the current Subpart J rules to apply, the LSSA must certify that the DOE has complied with the requirement to enter all relevant documents in the LSS. Therefore, all of these factors combine to produce the high likelihood that the current rule cannot be implemented as originally envisioned. If not, then 10 CFR part 2, subpart J, will no longer apply. Instead, subpart G, the generally applicable procedures for licensing proceedings, will apply. This means that there would be no pre-license application access to documents.

Although the development of the LSS has remained stalled, the state of technology in document automation and retrieval has overtaken the 1986 technology on which the original LSS was to be based. The use of computers to generate and maintain the complex documents of a party in litigation is widespread and commonplace. The Internet is universally available to tie disparate and geographically dispersed systems together. Readily available commercial software applications can perform the document management functions of the LSS. Therefore, the centralized LSS envisioned at the time the LSS rule was developed has become obsolete. The enormous expense of designing and maintaining a stand-alone system required by the current rules appears to be an unjustified expense, especially when it appears unlikely that the rule will be able to be implemented successfully even if the LSS is created.

Consequently, the Commission is proposing to amend its rules to allow more flexibility to incorporate the advantages of new information management technologies in the procedural rules for the licensing of the geologic repository. This would eliminate the LSS as a uniquely designed stand-alone system, while still maintaining the following primary functions of the LSS as a mechanism for the:

(1) Discovery of documents before the license application is filed;

(2) Electronic transmission of filings by the parties during the proceeding;

(3) Electronic transmission of orders and decisions related to the proceeding; and

(4) Access to an electronic version of the docket.

The Commission believes that the proposed rule would continue to support the model schedule for conducting the licensing proceeding within the 3-year statutory period that was published in the Statement of Considerations for the original 10 CFR part 2, subpart J, rule published on April 14, 1989 (54 FR 14925, 14939).

The proposed rule would eliminate the current prescriptive requirement in 10 CFR part 2, subpart J, for a centralized "Licensing Support System" administered by the NRC and therefore also would eliminate the requirement for an LSS Administrator to ensure the viability of the central database. To replace these features of the existing rule, the proposed rule would require that all potential parties, including the NRC and DOE, make their documentary material available in electronic form to all other participants beginning in the pre-license application phase. This requirement is stated without unduly restrictive technological specifications, in order to accommodate flexible implementation consistent with current or future technological developments.

Documentary material would be defined as the material upon which a party intends to rely in support of its position in the licensing proceeding; any material which is relevant to, but does not support, that material or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. For the purposes of this rule, the pre-application phase would begin on the date that the President submits the site recommendation to Congress. This timing would allow access to the parties' documentary material enough before DOE submits the license application to allow advance preparation of contentions and discovery requests before the license application, but late enough in the repository development process to provide meaningful information.

A Pre-License Application Presiding Officer would resolve any disputes over electronic access to documents during the pre-license application phase. Potential parties would be required to certify to the Pre-License Application Presiding Officer that they have complied with the requirement to provide electronic access to their documentary material. The requirements of the current rule for an electronic hearing docket would be retained, as well as the limitations on the permissible forms of discovery after the application is filed.

The Commission is considering two alternatives regarding the LSS Advisory Review Panel. In this proposed rule, because the concept of the LSS would be replaced, the requirement for an LSS Advisory Review Panel would be modified so the panel can advise the Secretary of the Commission regarding standards and procedures for electronic access to documents and for maintenance of the electronic docket. This would require renaming of the advisory committee and redrafting of the committee charter. However, the Commission is also considering the alternative of replacing the Advisory Review Panel with a more informal users group, and particularly requests comments from potential parties to the HLW repository licensing proceeding regarding these two alternative arrangements.

III. Section-by-Section Description of Changes

In § 2.1000, the reference to § 2.709 would be removed because it would require compliance with § 2.706 that would not apply to this subpart.

In § 2.1001, the following definitions would be added, amended, or removed:

ASCII File

This definition would be removed and no longer used in the rule. Prescriptive references to specific technical standards would be removed to allow flexible implementation consistent with developing technology.

Documentary Material

The definition of documentary material would be revised to cover material upon which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the licensing proceeding; any material or other information which is relevant to, but does not support, that material or information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. This definition would be used in the rule in § 2.1003 to define what material must be provided in electronic form for access beginning in the pre-license application phase. Therefore the term "documentary material" would be intended to describe the most important body of material and would be defined clearly to require that all parties include electronic access to any relevant material in their possession that does not support their position in the licensing proceeding, as well as providing access to the material that does support their position, and any reports and studies prepared by the party on issues described in the Topical Guidelines, regardless of whether or not they would be relied upon or cited by the party. The scope of the documentary material would still be governed by the topical guidelines.

Electronic Docket

A new definition would be added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC adjudicatory docket materials in the licensing proceeding.

Integrated Electronic Information

A new definition would be added to describe material made available in electronic form to potential parties, parties, or interested governmental participants to the licensing proceeding for the high-level waste geologic repository, either as part of the NRC's pre-license application electronic docket or electronic docket or pursuant to electronic access to documentary material made available by individual potential parties, parties, and interested governmental participants. This is a term for the information access that would replace the LSS in this rule.

LSS Administrator

This term would be eliminated from the rule because the concept of the LSS would also be removed. The Pre-license Application Presiding Officer will resolve disputes about electronic access to documents in the pre-license application phase.

Party

This definition would be revised to add "affected unit of local government", as that term is defined in the Nuclear Waste Policy Act of 1982, as amended, and also to refer to that act for the definition of affected Indian tribe. In addition, any affected unit of local government, the host State, and any affected Indian Tribe would be required to file a list of contentions.

Potential Party

This definition would be revised to remove the reference to the LSS, and to substitute the term *integrated electronic information* to describe the material to which the potential party will be given access.

Pre-license Application Electronic Docket

A new definition would be added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC pre-license application docket materials during the pre-license application phase.

Pre-License Application Phase

This definition is being specified for the purposes of this rule to begin on the date that the President submits the site recommendation to the Congress. This date has been chosen to allow access to the potential parties' documentary material enough before the license application to allow advance preparation of contentions and discovery requests before the application is filed, but late enough in the repository development process to provide meaningful information.

Searchable Full Text

This definition would be revised to remove references to ASCII and to the LSS.

Topical Guidelines

A new definition would be added to describe the set of topics set forth in Regulatory Guide 3.69 that are intended to guide the scope of documentary material under this subpart.

Section 2.1002 would be removed because the LSS would no longer be required. Access to integrated electronic information would provide the major functions which the LSS was designed to provide. Paragraphs (c) and (d), which state that participation by the host State in the pre-application phase will not affect its disapproval rights, and that this subpart shall not affect any participant's independent right to receive information, would be incorporated in the revised § 2.1003 as paragraphs (a)(2) and (3).

Section 2.1003 would be revised to describe information that would be required to be made available electronically by all potential parties, parties, and interested governmental

participants (including the NRC and DOE). This information would have to be made available to all other participants beginning in the pre-license application phase, which starts at the date of the President's submission of the site recommendation to the Congress. The requirements of the rule would be simplified to require only that access to an electronic file be provided. All references to specific formats would be removed to allow flexibility in implementation. The Commission intends that a potential party, party, or interested governmental participant might offer electronic access to its documentary material in a number of different ways, including by providing its documents in electronic form either to the NRC or to the DOE, to have the NRC or the DOE maintain the documents for electronic access.

Although the draft rule would require that documentary material be made available electronically beginning on the date of the President's site recommendation to the Congress, the Commission would encourage the earliest feasible availability of documentary material in order to enhance the future smooth operation of the licensing proceeding. The paragraphs relating to evaluations and certifications by the LSS Administrator would be removed because the LSS (and LSSA) concept would be removed. Section 2.1010 states that the Pre-License Application Presiding Officer will resolve any disputes relating to electronic access to documents in the pre-license application phase. Accordingly, the paragraphs which stated that the application would have to be docketed under Subpart G if the LSSA did not certify compliance would be removed, and Subpart J (including specifically referenced sections of Subpart G) would unconditionally embody the rules of procedure for the HLW licensing proceeding.

Section 2.1004 would be revised to provide procedures for providing access to a document that has not previously been provided in electronic form and to delete previous references to the LSS and the LSSA.

Section 2.1005 would be revised to delete reference to the LSS and to add an exclusion of readily available references, such as journal articles or proceedings, which may be subject to copyright.

Section 2.1006 would be revised to refer to providing a document in electronic form and to delete references to the LSS and the LSSA.

Section 2.1007 would be revised to refer to providing systems for access to integrated electronic information rather than providing terminals for access to the LSS. These systems must be maintained by DOE and NRC at the locations specified in the current version of the rule (except for the Uranium Recovery Field Office which no longer exists), beginning in the pre-license application phase.

Section 2.1008 would be revised to allow electronic access to the integrated electronic information to any person who complies with the requirements of Subpart J, including the requirement in § 2.1003 to make documentary material available, and who agrees to comply with the orders of the Pre-license Application Presiding Officer. The previous requirement to petition to the Pre-license Application Presiding Officer would be removed.

Section 2.1009 would be revised to delete references to the LSS and the LSSA, and to refer instead to the responsibility to provide electronic files. The responsible official for each potential party would be required to certify to the Pre-License Presiding Officer that procedures to comply with § 2.1003 have been implemented and that its documentary material has been made electronically available. A new requirement to update the certification at the request of the presiding officer would be added to replace a previous requirement to provide this certification at 6 month intervals.

Section 2.1010 would be revised to delete references to the LSS and the LSSA and to refer instead to electronic access. The reference to petitions for access would be removed to conform to removal of this requirement.

Section 2.1011 is being considered for revision in either of two alternative ways and the Commission requests specific comments on these alternatives. This proposed rule would revise § 2.1011 to reflect that the electronic availability of documentary material that is specified in this rule no longer requires special equipment. The name and functions of the LSS Advisory Review Panel would be amended to delete the reference to the LSS and substitute the purpose of arriving at standards and procedures to facilitate the electronic access to material and to the electronic docket. Because of the broad and non-prescriptive requirements regarding providing electronic files in this proposed rule, the Advisory Review Panel would be very useful in discussing standards and procedures to ensure that all participants are able to access the electronic information. Because the LSS concept would be replaced, and the requirement for an LSS Advisory Review Panel would be modified in the proposed rule to accommodate a new purpose, the advisory committee would have to be renamed and the committee charter would have to be redrafted.

However, the Commission is also considering the alternative of eliminating the requirement for an advisory committee chartered under the Federal Advisory Committee Act, and substituting a more informal voluntary users group to perform the functions of discussing electronic format standards, procedures, and other details. If this option were adopted, the final rule would be revised to refer to the users group. This group would be able to interact using Internet discussion areas (like LSSNet) as well as meetings, video conferences, or teleconferences. This users group would ideally make use of the current LSSARP members' knowledge and experience. The Commission is particularly requesting comment from potential parties to the HLW repository concerning their interest and support for the informal users group alternative.

Section 2.1012(a) would be revised to allow the Director of the NRC Office of Nuclear Material Safety and Safeguards (NMSS) to determine that the application would not be acceptable if it is not able to be accessed through the electronic docket. Section 2.1012(b)(1) would be revised to substitute *integrated electronic information* for *Licensing Support System* so that a person who has had access to the integrated electronic information would not be granted party status in the licensing proceeding if it cannot demonstrate compliance with the requirements of § 2.1003. Section 2.1012 (d) would be revised to substitute *pre-license application electronic docket or electronic docket* for *Licensing Support System* to indicate that access to either the pre-license application electronic docket or the electronic docket may be suspended or terminated for failure to comply with the orders of the Pre-License Application Presiding Officer or the Presiding Officer.

Section 2.1013 would be revised to delete references to the LSS and LSSA and would refer to the provision of information in electronic form. The requirement in § 2.1013(c)(5) to file one signed paper copy of each filing with the Secretary, NRC, would be removed because the electronic docket would not require signed paper copies.

Section 2.1014(c)(4) would delete a reference to the LSS and make the failure of a petitioner to participate in the pre-license application phase a criterion in considering whether to grant a petition to intervene.

Section 2.1017 would use the unavailability of the *electronic docket* instead of the LSS as a justification for extending the computation of time in the proceeding.

Sections 2.1016 and 2.1019 would be revised to delete references to the LSS and instead to refer to providing documents electronically.

In addition, minor editorial changes have been made throughout the proposed rule to improve readability.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The history of the development of the existing rule, 10 CFR part 2, subpart J, and the current regulatory problem are described in the Background and Discussion sections of this notice. To address the regulatory problem, several alternative approaches to amending the regulations in subpart J of part 2 were considered.

Option 1: Existing Rule

This approach would not take advantage of current and future technology. It would require an enormously expensive custom designed system to be developed using old assumptions about technological standards and the universe of "relevant" material. At the time of the development of the existing rule, the cost of the LSS was estimated by DOE to be in the $200 million range. Furthermore, given the large backlog that contains a substantial amount of documents that may no longer be relevant because of the unanticipated delay in developing the LSS as initially designed in 1988, there is a substantial chance that it would be impossible for the DOE to achieve, and for the LSSA to certify, compliance with the provisions of the current rule. In this case, the proceeding would have to be conducted under 10 CFR part 2, subpart G, and could result in a protracted discovery phase. In addition to the very costly and ineffective system, the further costs of using this approach are difficult to quantify, however the lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application. This delay could also result in possible increased spent fuel storage costs for the additional length of the licensing proceeding.

Option 2: 10 CFR Part 2, Subpart G

Because the NRC is developing a new system called the Agency-wide Documents Access and Management System (ADAMS), which will provide an agency-wide electronic docket, it would be possible to rely on existing adjudicatory procedure rules in 10 CFR part 2, subpart G (which will have to be updated to reflect the electronic docket) to conduct the licensing proceeding. However, this approach would not provide pre-license application access to documents and could result in a protracted discovery phase. The costs of using this approach are difficult to quantify. However the lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application and result in possible increased spent fuel storage costs, as in Option 1.

Option 3: Existing Rule Using a Distributed System

This approach would allow using linked individual Internet sites to serve as the LSS. However, this approach does not solve the problem discussed in Option 1 concerning the requirement to capture a huge backlog of material that may not have been maintained in a manner that would ever permit compliance with the rule, and which may not all be relevant to the future license application. Therefore, the costs of this approach, as in Option 1, would include the possibility that the LSS rule compliance finding could not be made and the proceeding would have to be conducted under 10 CFR part 2, subpart G. A lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application and result in possible increased spent fuel storage costs, as in Option 1.

Option 4: Revised Rule With More Realistic Document Discovery Approach

This approach would remove the requirement for a central LSS system and LSS Administrator, but would require each potential party to provide for the electronic availability of both the material it intends to rely upon to support its position, any material which does not support that material or that position, and any reports or studies prepared by or for the party, beginning in the pre-application phase (presided over by a Pre-License Application Presiding Officer). This definition of documentary material would provide pre-application access to a more focussed set of the materials most important to the licensing proceeding. It would not require electronic access to the entire backlog of DOE and other parties' material, some of which may no longer be relevant to the licensing proceeding. The electronic docket functionality of the LSS would be provided by the NRC agency-wide system with supervision of the Presiding Officer. Participation in the pre-license application phase would be one criterion for participating in the hearing. After the application is filed, in addition to the electronically available material, discovery would be limited to interrogatories and depositions as in the current rule. The specific method of providing electronic access to documentary would not be specified, which would allow flexibility to accommodate current and future technology advances. Individual parties may give their documents in electronic form to NRC or DOE in order to provide electronic access. Because this rule would unconditionally provide the procedural rules for the HLW licensing proceeding, there would be no last minute danger that the proceeding would have to be conducted under 10 CFR part 2, subpart G.

The Commission believes that Option 4 provides the most effective solution for maintaining the basic functionality of the LSS conceptual design, while most flexibly accommodating current and future technological developments. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the Addresses heading.

Regulatory Flexibility Certification

The amendments would modify the Commission's rules of practice and procedures. The rule would be amended to allow more widely available electronic access to information before the license application is filed. Participants would be required to make their own documentary material available electronically. This proposed rule would not have a significant economic impact upon a substantial number of small entities. The license applicant for the HLW repository would be the Department of Energy . DOE would not fall within the definition of a "small entity" in the NRC's size standards (10 CFR 2.810). Although a few of the intervenors in the HLW

proceeding would likely qualify as small entities, the impact on intervenors or potential intervenors would not be significant. The requirement for participants to make their own documentary material available electronically is stated in a manner that would allow flexibility in implementation. Furthermore, it is consistent with current business practice to create documents electronically. Therefore, the exact additional costs involved in making the documentary materials available electronically are difficult to quantify. However, to avoid those costs, participants would have the option of providing their documents to NRC or DOE to maintain electronic availability. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this proposed rule would not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rules in 10 CFR Chapter 1, §§ 50.109, 72.62, and 76.76, do not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in those rules.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954; as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by Section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note.) Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.105(a)(5). The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

3. Section 2.1001 is amended by removing the definitions of *ASCII File* and *LSS Administrator*; adding definitions of *Electronic docket*, *Integrated electronic information*, *Pre-license application electronic docket*, and *Topical Guidelines*; and revising the definitions of *Documentary material*, *Party*, *Potential party*, *Pre-license application phase*, and *Searchable full text*, to read as follows:

§ 2.1001 Definitions.

* * * * *

Documentary material means any material or other information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; any material or other information that is relevant to, but does not support, that material or information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

Electronic docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

* * * * *

Integrated electronic information means the material that is made available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.1014 to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; provided that a host State, affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§ 2.1014(a)(2) (ii) and (iii).

* * * * *

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d), is given access to the integrated electronic information and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

Pre-license application electronic docket means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3). For the purpose of this subpart, this period begins on the date that the President submits the site recommendation to the Congress pursuant to section 114(a)(2)(A) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10134(a)(2)(A)).

* * * * *

Searchable full text means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to guide the scope of "documentary material".

§ 2.1002 [Removed and reserved]

4. Section 2.1002 is removed and reserved.

5. Section 2.1003 is revised to read as follows:

§ 2.1003 Availability of material.

(a) Beginning in the pre-license application phase, subject to the exclusions in § 2.1005 and paragraphs (b) and (c) of this section, each potential party, interested governmental participant or party, shall make available to other potential parties, interested government participants or parties—

(1) An electronic file for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party. Concurrent with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.

(2) The participation of the host State in the pre-license application phase shall not affect the State's ability to exercise its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(3) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

(b)(1) Each potential party, interested governmental participant, or party shall make available in electronic image form, subject to the claims of privilege in § 2.1006, graphic-oriented documentary material that includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or hand written. Text embedded within these documents need not be separately entered in searchable full text. Graphic-oriented documents may include—

Calibration procedures, logs, guidelines, data and discrepancies;

(ii) Gauge, meter and computer settings;

(iii) Probe locations;

(iv) Logging intervals and rates;

(v) Data logs in whatever form captured;

(vi) Text data sheets;

(vii) Equations and sampling rates;

(viii) Sensor data and procedures;

(ix) Data Descriptions;

(x) Field and laboratory notebooks;

(xi) Analog computer, meter or other device print-outs;

(xii) Digital computer print-outs;

(xiii) Photographs;

(xiv) Graphs, plots, strip charts, sketches;

(xv) Descriptive material related to the information identified in paragraph (b)(1) of this section.

(2) Each potential party, interested governmental participant, or party shall make available in an electronic file, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for image or searchable full text.

(c) Each potential party, interested governmental participant, or party shall make available electronically a bibliographic header for each documentary material—

(1) For which a claim of privilege is asserted;

(2) Which constitutes confidential financial or commercial information; or

(3) Which constitutes safeguards information under § 73.21 of this chapter.

(d) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC, such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be made available in electronic form by the respective agency that generated the document.

6. Section 2.1004 is revised to read as follows:

§ 2.1004 Amendments and additions.

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental participant, or party responsible for the submission of the document within two days after it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding. The time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

7. Section 2.1005 is revised to read as follows:

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)—

(a) Official notice materials;

(b) Reference books and text books;

(c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Junk mail;

(f) Preferences cited in contractor reports that are readily available;

(g) Classified material subject to subpart I of this part;

(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

8. Section 2.1006 is revised to read as follows:

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(c), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 may be asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The other participants; or

(2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

9. Section 2.1007 is being revised to read as follows:

§ 2.1007 Access.

(a)(1) A system to provide electronic access to the integrated electronic information shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the integrated electronic information shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices beginning in the pre-license application phase.

(3) The systems for electronic access specified in paragraphs (a)(1) and (a)(2) of this section shall include locations at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(b) Public availability of paper and electronic copies of the records, as well as duplication fees, and fee waiver for those records, is governed by the Freedom of Information Act (FOIA) regulations of the respective agencies.

(c) Documents to which electronic access has been provided by other parties, potential parties, or interested governmental participants pursuant to this subpart shall not be considered as agency records of the Nuclear Regulatory Commission or the Department of Energy unless and until they have been entered into the docket of the proceeding pursuant to § 2.702 for purposes of the FOIA, 5 U.S.C. 552, if these documents remain under the custody and control of the agency or organization that identified the documents. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that Federal agency.

10. Section 2.1008 is revised to read as follows:

§ 2.1008 Potential parties.

Any person who complies with the regulations in this subpart, including § 2.1003, and agrees to comply with the orders of the Pre-License Application Presiding Officer designated under § 2.1010, may have electronic access to the integrated electronic information made available pursuant to this subpart in the pre-license application phase.

11. Section 2.1009 is revised to read as follows:

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(c).

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. Upon order of a duly appointed presiding officer, the responsible official shall update this certification.

12. Section 2.1010 is revised to read as follows:

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(e).

(2) The Pre-License Application Presiding Officer shall be designated before the integrated electronic information is scheduled to be available.

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

(3) Whether the material is prvileged or otherwise excepted from disclosure under § 2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from production under § 2.1005, the potential party, interested governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within two days.

(d) The service of all pleadings and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in § 2.1013(c) and entered into the pre-license application electronic docket.

(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(c) and 2.718.

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

13. Section 2.1011 is revised to read as follows:

§ 2.1011 Management of electronic information.

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b) The NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(c)(1) The Secretary of the Commission shall establish an Advisory Review Panel composed of the Advisory Committee members identified in paragraph (c)(2) of this section who wish to serve. The Secretary of the Commission shall have the authority to appoint additional representatives to the Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC HLW Licensing Support System Advisory Committee.

(2) The Advisory Committee membership will initially include the State of Nevada, a coalition of affected units of local government in Nevada who were on the NRC High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (d) of this section.

(d)(1) The Advisory Review Panel shall provide advice to—

(i) NRC on the fundamental issues of the type of computer system necessary to access the integrated electronic information effectively under paragraph (b) of this section; and

(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket under the Commission's Rules of Practice (10 CFR part 2).

(2) The responsibilities of the Advisory Review Panel shall include advice on—

(i) Format standards for providing electronic access to documentary material to the parties, interested governmental participants, or potential parties;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

14. In § 2.1012, paragraphs (a), (b)(1), and (d) are revised to read as follows:

§ 2.1012 Compliance.

(a) In addition to the requirements of § 2.101(f), the Director of the NRC's Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under this subpart if the Secretary of the Commission determines that it cannot be effectively accessed through the Commission's electronic docket.

(b)(1) A person, including a potential party given access to the integrated electronic information under this subpart, shall not be granted party status under § 2.1014, or status as an interested governmental participant under § 2.715(c), if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation in the high-level waste licensing proceeding under § 2.1014 or § 2.715(c).

* * * * *

(d) Access to the pre-license application electronic docket or electronic docket may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

15. Section 2.1013 is revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a)(1) Pursuant to § 2.702, the Secretary of the Commission will maintain the official docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the docketing in an electronic form of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, the Secretary of the Commission, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket contains a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts will be entered into the electronic docket on a daily basis in order to

provide next-day availability at the hearing.

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, parties, and the Secretary of the Commission, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is completed when the sender receives electronic acknowledgment ("delivery receipt") that the electronic submission has been placed in the recipient's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

(i) Electronic acknowledgment ("delivery receipt");

(ii) The affidavit of the person making the service; or

(iii) The certificate of counsel.

(5) All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties and interested governmental participants.

(d) Online access to the electronic docket, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and interested governmental participants, and the witnesses while testifying, for use during the hearing. Use of paper copy and other images will also be permitted at the hearing.

16. In § 2.1014, paragraph (c)(4) is revised to read as follows:

§ 2.1014 Intervention.

* * * * *

(c) * * *

(4) The failure of the petitioner to participate as a potential party in the pre-license application phase.

* * * * *

17. Section 2.1017 is revised to read as follows:

§ 2.1017 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

18. In § 2.1018, paragraph (a)(1) and the introductory text of paragraph (e) are revised to read as follows:

§ 2.1018 Discovery.

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods:

(i) Access to the documentary material made available pursuant to § 2.1003 ;

(ii) Entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020;

(iii) Access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003 (b) and (c);

(iv) Depositions upon oral examination pursuant to § 2.1019;

(v) Requests for admission pursuant to § 2.742;

(vi) Informal requests for information not made electronically available, such as the names of witnesses and the subjects they plan to address; and

(vii) Interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

* * * * *

(e) A party, potential party, or interested governmental participant who has made available in electronic form all material relevant to any discovery request or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement its response to include information thereafter acquired, except as follows:

* * * * *

19. In § 2.1019, paragraphs (d), (e), and (i) are revised to read as follows:

§ 2.1019 Depositions.

* * * * *

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2), the party or interested governmental participant taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted in electronic form to the Secretary of the Commission for entry into the electronic docket as in the case of a deposition on oral examination.

* * * * *

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically , whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of § 2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section—

(i) Personal records;

(ii) Travel vouchers;

(iii) Speeches;

(iv) Preliminary drafts;

(v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

* * * * *

Dated at Rockville, MD, this 6th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–29884 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

The Freedom of Information Act and Privacy Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to revise its regulations governing the disclosure of information pursuant to the Freedom of Information Act (FOIA) to reflect recent changes to FOIA brought about by the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). The proposed rule, among other things, sets forth new procedures NCUA will employ to implement provisions of E–FOIA, such as expedited treatment of requests and multi-track processing. The proposed rule also clarifies the information which must be included in FOIA requests so that NCUA can process them. Other proposed changes to the rule are designed to provide guidance to the public on how to obtain records contained in the files of the Office of Inspector General.

DATES: Comments must be submitted on or before January 12, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Dianne Salva, Staff Attorney, or Sheila Albin, Associate General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Freedom of Information Act (FOIA) was enacted in 1966 to establish the right of any member of the public to obtain access to government information. FOIA was amended several times before 1996, when the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, was enacted. E–FOIA has twin goals of making records contained in government files more easily accessible to the public and improving administration of FOIA programs in the agencies. In particular, Congress moved to amend the FOIA because it found that government agencies were increasingly using computers to conduct agency business and store valuable agency records and information. When the Senate passed FOIA in 1966, the government is reported to have had just 1,826 computers in use. By 1994, in addition to the proliferation of individual personal computers used by government employees, the number of government computers had climbed to almost 35,000. In recognition of the vast amount of information the government maintains in electronic format, E–FOIA was designed to ensure continued public access to government information, including that maintained in electronic format.

FOIA ensures that the public has access to government information by requiring agencies to disclose information in three ways. First, FOIA requires agencies to disclose basic information about agency structure and general rules of procedure within the agency by publication in the **Federal Register**. Second, FOIA requires agencies to make certain categories of records available for the public to inspect and copy. Many agencies have established public reading rooms to comply with this requirement. And, third, FOIA requires agencies to respond to individual requests for other specific agency records. Records must be released unless one or more of FOIA's nine statutory exemptions applies.

Under E–FOIA, public access to "reading room" records, which are those records that must be made available for inspection and copying, will be enhanced in two ways. The categories of records which fall within the "reading room" provision of FOIA have been expanded. Previously, three categories of records were required to be made available for inspection and copying: Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public. Under E–FOIA two new categories have been added: Records released under the FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests, and a general index of the new category of records.

Public access to reading room records will be further enhanced by the provision in E–FOIA which requires that agencies make their reading room records available electronically, if they are created by the agency on or after November 1, 1996. The "electronic reading room" can be implemented by placing records on the internet.

As for individual requests, E–FOIA clarifies that reasonable efforts must be made to search for records electronically. It also requires agencies to provide requesters with records in the form or format the requester chooses, if the agency can readily do so. Perhaps most fundamental to the new law is its provision that clarifies that records, if they meet other legal requirements, are subject to FOIA even though they are maintained in electronic format.

The other goal of E–FOIA was to improve the administration of FOIA programs in the agencies. Congress found that due to a lack of resources, some agencies suffered stubborn

backlogs. E–FOIA is designed to ensure timely responses to FOIA requests by requiring that specific types of requests be answered on an expedited basis and by encouraging a dialogue between the agency and the requester to frame more targeted requests. E–FOIA also enlarges the time for response to requests from 10 to 20 business days. Agencies are encouraged to employ multi-track processing systems, so that requesters who seek simple information are not made to wait while the agency processes more complex requests or requests for voluminous material.

Proposal

NCUA is proposing changes to 12 CFR part 792 to implement both expedited processing and multi-track processing. In addition, changes are proposed to incorporate the new processing deadlines, appeal rights and other disclosure procedures mandated by E–FOIA. NCUA is also proposing a change to reflect the delegation of authority from NCUA's Board to the Inspector General to grant or deny initial requests for records contained in Office of Inspector General files. Subpart A has been reorganized, streamlined and rewritten in question and answer format to improve its readability and simplify its use. A description of the more significant proposed changes is set forth below. Due to the fact that the regulation has been rewritten in question and answer format, the section numbers in the proposed rule in most cases do not correlate to the section numbers in the existing regulation.

Section 792.02 now reflects the additional category of records NCUA will make publicly available for inspection and copying: Records released under FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests.

Section 792.03 sets forth the indices of records made available for public inspection and copying and includes the additional index of popular FOIA responses.

Section 792.04 informs the public that certain records created by NCUA after November 1, 1996 are also available on the NCUA website.

Section 792.06 clarifies that records maintained in electronic format are subject to FOIA.

Section 792.07 identifies the places within NCUA where the public may write to request records. The Office of Inspector General has been added to reflect that the NCUA Board delegated authority to the Inspector General to respond to initial FOIA requests for records contained in Office of Inspector General files.

Sections 792.08 and 792.09 clarify administrative requirements and procedures for submitting FOIA requests. In order to improve communications between the agency and requesters, requesters are instructed to include their name, address and telephone number with their request. In recognition of the new requirement that agencies honor form or format requests, requesters are also asked to designate their form or format of choice, if other than paper copy, at the time they make their request.

Section 792.10 sets forth the procedures for the multi-track processing system comprised of a fast-track and regular-track. Fast-track processing will apply to records that are easily identifiable by NCUA staff and have been previously cleared for release to the public. Fast-track requests will be handled as expeditiously as possible in the order in which they are received. All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing, but whose request does not meet those standards, may contact the NCUA to try to narrow the scope of the request so that it will qualify for fast-track processing.

Section 792.12 was added to inform requesters that, as long as it is technically feasible and would not harm an interest that a FOIA exemption is intended to protect, then NCUA will indicate where, why and how much information was withheld from its response.

Section 792.13 was added to advise requesters that they may obtain information in any readily reproducible form or format they request. It also clarifies that only one copy of a record will be produced.

Section 792.15 sets forth the new processing time limit of 20 working days. It also sets forth the two exceptions to the 20 working day time limit: the suspension of time for the payment of fees or if unusual circumstances exist.

Section 792.16 describes the criteria for determining whether unusual circumstances exist. The criteria have not changed. The proposed regulation contains a new provision on aggregating multiple requests which, together, cause unusual circumstances to exist. NCUA will now aggregate multiple requests from the same requester or group of requesters acting in concert, if it believes they constitute a single request, and if, taken together, the requests satisfy the unusual circumstances criteria. This section also contains a new provision advising requesters that, if NCUA sends them a notice extending the processing time due to unusual circumstances, it will also tell them that they may reduce the scope of their request so that it can be processed within the statutory time frame or agree to an alternative time frame.

Section 792.18 has been added to implement the expedited processing provision of E–FOIA. It sets forth the criteria for a requester seeking to establish a compelling need to support a request for expedited processing. E–FOIA permits two categories of requests involving compelling needs to be granted expedited treatment: Those which entail an imminent threat to the life or physical safety of an individual or those which are filed by persons primarily engaged in disseminating information and involve an urgency to inform the public concerning actual or alleged government activity. For ease of administration and consistency, the proposed rule uses the term "representative of the news media" to describe a person primarily engaged in disseminating information, because the term has been used for many years in other provisions of the regulation and is familiar to the public and agency staff. In keeping with Congress' express intent that the specified criteria for compelling need be narrowly applied, expedited processing will only be granted in those extraordinary cases meeting the specific requirements of the regulation. H.R. Rep. 795, 104th Cong., 2d Sess. 26 (1996). As the legislative history states, "the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest." *Id.* To meet the criterion of an urgency to inform the public concerning an actual or alleged Federal Government activity, the requester must show that a delay in the release of the information would compromise a significant recognized interest, and that the requested information pertains to a matter of current exigency to the American public. This section also informs the public of the right of appeal for denial of a request for expedited processing.

Section 792.19 has been amended to reflect that the current fee schedule is available on the NCUA website. The current regulation sets out that searches for records responsive to a FOIA request will be conducted by computer using existing programming. The proposal strikes the reference to existing programming and adds language to say that no modification of existing programming or system will be made if it would significantly interfere with the operation of an NCUA automated information system.

Section 792.28 clarifies that appeals are permitted when NCUA denies a request for a fee waiver or reduction.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposal simplifies some of the procedures regarding the release of information and requires disclosure of information in certain instances in accordance with law. The disclosure requirements are imposed on the NCUA, therefore, they should not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act Analysis

These regulations, if adopted, will impose no additional information collection, reporting or record keeping requirements subject to the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

Executive Order 12,612

The NCUA Board certifies that the proposal will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Confidential business information, Credit unions, Freedom of Information Act, Privacy.

By the National Credit Union Administration Board on October 22, 1997.

Hattie M. Ulan,

Acting Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to amend 12 CFR part 792 as follows:

PART 792—[AMENDED]

1. The authority citation for part 792 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p.333.

§§ 792.20–792.37 (Subpart B) [Redesignated as §§ 792.52–792.69 (Subpart E)]

2. Redesignate subpart B (§§ 792.20–792.37) as subpart E (§§ 792.52–792.69) and reserve subpart B.

3. Revise subpart A of part 792 to read as follows:

Subpart A—The Freedom of Information Act

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Subpart A—The Freedom of Information Act

General Purpose

§ 792.01 What is the purpose of this subpart?

This subpart describes the procedures you must follow to obtain records from NCUA under the Freedom of Information Act (FOIA), (5 U.S.C. 552).

Records Publicly Available

§ 792.02 What records does NCUA make available to the public for inspection and copying?

Except for records that are exempt from public disclosure under FOIA as amended (5 U.S.C. 552) or are promptly published and copies are available for purchase, NCUA routinely makes the following five types of records available for you to inspect and copy:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(b) Statements of policy and interpretations which have been adopted by the agency but not published in the **Federal Register**;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Copies of all records, regardless of form or format, which have been released after March 31, 1997, in response to a FOIA request and which, because of the nature of their subject matter, NCUA determines have been or are likely to become the subject of subsequent requests; and

(e) Indices of the documents referred to in this paragraph.

§ 792.03 How will I know which records to request?

NCUA maintains current indices providing identifying information for the public for any matter referred to in § 792.02, issued, adopted, or promulgated after July 4, 1967. The listing of material in an index is for the convenience of possible users and does not constitute a determination that all of the items listed will be disclosed. NCUA has determined that publication of the indices is unnecessary and impractical. You may obtain copies of indices by making a request to the Office of Administration, at NCUA, 1775 Duke Street, Alexandria, VA 22314–2387 or, as indicated, on the NCUA website. The indices are available for public inspection and copying and are provided at their duplication cost. The indices are:

(a) NCUA Publications List: Manuals relating to general and technical information, booklets published by NCUA, and the Credit Union Directory. The NCUA Publications list is available on the NCUA Website.

(b) Directives Control Index: A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions, and certain internal manuals.

(c) Popular FOIA Index: Records released in response to a FOIA request, which NCUA determines are likely to be the subject of subsequent requests because of the nature of their subject matter. The Popular FOIA Index will be available on the NCUA website on or before December 31, 1999.

§ 792.04 How can I obtain these records?

You may obtain these types of records or information in the following ways:

(a) You may obtain copies of the records referenced in § 792.02 by obtaining the index referred to in § 792.03 and following the ordering instructions it contains, or by making a request to the FOIA Officer, NCUA, Office of General Counsel at 1775 Duke Street, Alexandria, Virginia 22314–3428.

(b) If they were created by NCUA on or after November 1, 1996, records referenced in § 792.02 are available on the NCUA website, found at http://www.ncua.gov.

§ 792.05 What is the significance of records made available and indexed?

The records referred to in § 792.02 may be relied on, used, or cited as precedent by NCUA against a party, provided:

(a) The materials have been indexed and either made available or published; or

(b) The party has actual and timely notice of the materials' contents.

Records Available Upon Request

§ 792.06 Can I obtain other records?

Except with respect to records routinely made available under § 792.02 or published in the **Federal Register**, or to the extent that records are exempt under the FOIA, if you make a request for records in accordance with this section, NCUA will make such records available to you, including records maintained in electronic format, as long as you agree to pay the actual, direct costs.

§ 792.07 Where do I send my request?

(a) You must send your request to one of NCUA's Information Centers. The Central Office, Regional Offices, Office of Inspector General and the Asset Management and Assistance Center are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices. The Inspector General is responsible for the operation of the Office of Inspector General Information Center.

(b) If you think that the records are located at one of NCUA's Regional Offices, then you should send your request to the appropriate Regional Director, whose address can be found in § 790.2(c) of this chapter.

(c) If you think that the records are located at the Asset Management and Assistance Center, then you should send your request to the President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

(d) If you think that the records you want are in the files of the Office of Inspector General, then you should send your request to the Inspector General, NCUA, 1775 Duke Street, Alexandria, Virginia 22314–3428.

(e) When you are not sure of the location of records, or if you think that the records you want are located in the Central Office, you should send your request to the Freedom of Information Officer at NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428.

§ 792.08 What must I include in my request?

Your request must include the following:

(a) Your name, address and a telephone number where you can be reached during normal business hours.

(b) A reasonable description of the records you seek. A reasonable description is one which enables an NCUA employee, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(c) A statement agreeing to pay all applicable fees or to pay fees up to a certain maximum amount, or requesting a fee reduction or waiver in accordance with § 792.27. If the actual fees are expected to exceed the maximum amount you indicate in your request, NCUA will contact you to see if you are willing to pay the estimated fees. If you do not want to pay the estimated fees, your request will be closed and no bill will be sent.

(d) If other than paper copy, you must identify the form and format of responsive information you are requesting.

§ 792.09 What if my request does not meet the requirements of this subpart?

NCUA need not accept or process your request if it does not comply with the requirements of this subpart. NCUA may return such a request to you with an explanation of the deficiency. You may then submit a corrected request, which will be treated as a new request.

§ 792.10 What will NCUA do with my request?

(a) On receipt of any request, the Information Center assigns it to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to NCUA by another agency, is the date the appropriate Information Center actually receives the request.

(b) NCUA has a multi-track processing system. Requests for records that are readily identifiable by the Information Center and have already been cleared for public release may qualify for fast-track processing. All other requests will be handled under normal processing procedures.

(c) The Information Center will make the determination whether a request qualifies for fast-track processing. You may contact the Information Center to learn whether your request has been assigned to fast-track processing. If your request has not qualified for fast-track processing, you will be given an opportunity to limit the scope of material requested in order to qualify for fast-track processing. Limitations of requests must be in writing.

(d) In accordance with sound administrative procedure, the Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion a particular request may be processed out of turn.

(e) Upon a determination by the appropriate Information Center to comply with your initial request for records, the records will be made promptly available to you. If we notify you of a denial of your request, we will include the names and titles or positions of each person responsible for the denial.

§ 792.11 What kind of records are exempt from public disclosure?

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and exempt from disclosure, except as otherwise provided in this part, if they are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to:

(i) The personnel records of the NCUA;

(ii) The personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and

(iii) Files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source;

(v) Would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

(b) We will provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt from disclosure under this section.

§ 792.12 How will I know what records NCUA has determined to be exempt?

As long as it is technically feasible and does not threaten an interest protected by the FOIA, we will:

(a) Mark the place where we redacted information from documents released to

you and note the exemption that protects the information from public disclosure; or

(b) Make reasonable efforts to include with our response to you an estimate of the volume of information withheld.

§ 792.13 Can I get the records in different forms or formats?

NCUA will provide a copy of the record in any form or format requested, such as computer disk, if the record is readily reproducible by us in that form or format, but we will not provide more than one copy of any record.

§ 792.14 Who is responsible for responding to my request?

The appropriate Regional Director, the Inspector General, the President of the Asset Management and Assistance Center, or the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to an NCUA employee who is familiar with the subject area of the request. Other NCUA staff members may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in § 792.15 unless the request involves an unusual circumstance as provided in § 792.16.

§ 792.15 How long will it take to process my request?

NCUA will respond to requests within 20 working days, except:

(a) Where the running of such time is suspended for payment of fees pursuant to § 792.26;

(b) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and § 792.16, the time limit may be extended for:

(1) An additional 10 working days as provided by written notice to you, stating the reasons for the extension and the date on which a determination will be sent; or

(2) Such alternative time period as mutually agreed by you and the Information Office, when NCUA notifies you that the request cannot be processed in the specified time limit.

§ 792.16 What unusual circumstances can delay NCUA's response?

(a) In unusual circumstances, the time limits for responding to your request (or your appeal) may be extended by NCUA. If NCUA extends the time it will provide you with written notice, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Our notice will not specify a date that would result in an extension for more than 10 working days, except as set forth in paragraph (c) of this section. The unusual circumstances that can delay NCUA's response to your request are:

(1) The need to search for, and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of NCUA having substantial subject-matter interest therein.

(b) If you, or you and a group of others acting in concert, submit multiple requests which NCUA believes actually constitute a single request, which would otherwise satisfy the unusual circumstances criteria specified in this section, and the requests involve related matters, then NCUA may aggregate those requests and the provisions of § 792.15(b) will apply.

(c) If NCUA sends you an extension notice, it will also advise you that you can either limit the scope of your request so that it can be processed within the statutory time limit or agree to an alternative time frame for processing your request.

§ 792.17 What can I do if the time limit passes and I still have not received a response?

You can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. But if NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court will consider your refusal to reasonably modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

Expedited Processing

§ 792.18 What if my request is urgent and I cannot wait for the records?

You may request expedited processing of your request if you can show a compelling need for the records. In cases where your request for expedited processing is granted or if NCUA has determined to expedite the response, it will be processed as soon as practicable.

(a) To demonstrate a compelling need for expedited processing, you must provide a certified statement. The statement, certified by you to be true and correct to the best of your knowledge and belief, must demonstrate that:

(1) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The requester is a representative of the news media, as defined in § 792.20, and there is urgency to inform the public concerning actual or alleged NCUA activity.

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten days of receipt of the request. If the Information Center denies your request for expedited processing, you may file an appeal pursuant to the procedures set forth in § 792.28, and NCUA will expeditiously respond to the appeal.

(c) Priority of responses. The Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion, a particular request may be processed out of turn.

Fees

§ 792.19 How does NCUA calculate the fees for processing my request?

We will charge fees that recoup the full allowable direct costs we incur, unless those costs are less than our cost of processing your remittance. Direct costs means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request. Search means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer. Search does not include modification of an existing program or system that would significantly interfere with the operation of an automated information system.

Review means examining documents to determine whether any portion should be withheld and preparing documents for disclosure. Fees are subject to change as costs increase. The current rate schedule is available on our website at http://www.ncua.gov.

We may contract with the private sector to locate, reproduce or disseminate records. In no case will NCUA contract out responsibilities which the FOIA requires us alone to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. The following labor and duplication rate calculations apply:

(a) NCUA will charge fees at the following rates for manual searches for and review of records:

(1) If search/review is done by clerical staff, the hourly rate for CU–5, plus 16 percent of that rate to cover benefits;

(2) If search/review is done by professional staff, the hourly rate for CU–13, plus 16 percent of that rate to cover benefits.

(b) NCUA will charge fees at the hourly rate for CU–13, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(c) NCUA will charge the following duplication fees:

(1) The per-page fee for paper copy reproduction of a document is $.25;

(2) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(3) If any other method of duplication is used, NCUA will charge the actual direct cost of duplication.

§ 792.20 What are the charges for each fee category?

The fee category definitions are:

(a) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

(c) *Noncommercial scientific institution* means an institution that is not operated for a "commercial" purpose as that term is used in paragraph (a) of this section and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(d) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

Included within the meaning of public is the credit union community. The term news means information that is about current events or that would be of current interest to the public. You may consult the following chart to find the fees applicable to your request:

If your fee category is	You'll receive	And you'll be charged
Commercial use	0 hours free search	Search time.
	0 hours free review	Review time.
	0 free pages	Duplication.
Educational institution, noncommercial scientific institution, newsmedia.	Unlimited free search hours	
	Unlimited free review hours	
	100 free pages	Duplication.
All others	2 hours free search	Search time.
	Unlimited free review hours	
	100 free pages	Duplication.

§ 792.21 Will NCUA provide a fee estimate?

NCUA will notify you of the estimated amount if fees are likely to exceed $25, unless you have indicated in advance a willingness to pay fees as high as those anticipated. You will then have the opportunity to confer with NCUA personnel to reformulate the request to meet your needs at a lower cost.

§ 792.22 What will NCUA charge for other services?

Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

§ 792.23 Can I avoid charges by sending multiple, small requests?

You may not file multiple requests, each seeking portions of a document or similar documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge you accordingly.

§ 792.24 Can NCUA charge me interest if I fail to pay my bill?

NCUA can assess interest charges on an unpaid bill starting on the 31st day following the date of the bill. If you fail to pay your bill within 30 days, interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 792.25 Will NCUA charge me if the records are not found or are determined to be exempt?

NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

§ 792.26 Will I be asked to pay fees in advance?

NCUA will require you to give an assurance of payment or an advance payment only when:

(a) NCUA estimates or determines that allowable charges that you may be required to pay are likely to exceed $250. NCUA will notify you of the likely cost and obtain satisfactory assurance of full payment where you have a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case where you have no history of payment; or

(b) You have previously failed to pay a fee charged in a timely fashion. NCUA may require you to pay the full amount owed, plus any applicable interest, or demonstrate that you have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before we begin to process a new request or a pending request from you.

(c) If you are required to make an advance payment of fees, then the administrative time limits prescribed in § 792.16 will begin only after NCUA has received the fee payments described.

Fee Waiver or Reduction

§ 792.27 Can fees be reduced or waived?

You may request that NCUA waive or reduce fees if disclosure of the information you request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in your commercial interest.

(a) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(b) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(1) Whether you have a commercial interest that would be furthered by the requested disclosure; and if so

(2) Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(c) If the required public interest exists and your commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(d) If you are not satisfied with our determination on your fee waiver or reduction request, you may submit an appeal to the General Counsel in accordance with § 792.28.

Appeals

§ 792.28 What if I am not satisfied with the response I receive?

If you are not satisfied with NCUA's response to your request, you can file an administrative appeal. Your appeal must be in writing and must be filed within 30 days from receipt of the initial determination (in cases of denials of an entire request, or denial of a request for fee waiver or reduction), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials.) In its response to your initial request, the Freedom of Information Act Officer, Inspector General, President of the Asset Management and Assistance Center, or responsible Regional Director, (or designee,) will notify you that you may appeal any adverse determination to the Office of General Counsel. The General Counsel, or designee, as set forth in this paragraph, will:

(a) Make a determination with respect to any appeal within 20 days (except Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is, in whole or in part, upheld, the Office of General Counsel will notify you of the provisions for judicial review of that determination under FOIA. Where you do not address your request or appeal to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in the General Counsel's stead will make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(c) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator "FOIA-APPEAL." Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(1) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

§ 792.29 If I send NCUA confidential commercial information can it be disclosed under FOIA?

(a) If you submit confidential commercial information to NCUA , it may be disclosed in response to a FOIA request in accordance with this section.

(b) For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under § 792.11(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Submitters of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under § 792.11(a)(4). Such a designation shall expire ten years after the date of submission.

(d) We will provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under § 792.11(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under § 792.11(a)(4).

(e) A copy of the notice to the submitter will also be provided to the FOIA requester.

(f) Through the notice described in paragraph (d) of this section, NCUA will afford the submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. The statement must describe why the information is confidential commercial information and why it should not be disclosed.

(g) Whenever we decide that we must disclose confidential commercial information over the objection of the submitter, we will send both the submitter and the FOIA requester, within a reasonable number of days prior to the specified disclosure date, a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained; and

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(h) If a requester brings suit to compel disclosure of confidential commercial information, we will promptly notify the submitter.

(i) The notice requirements of paragraph (d) of this section do not apply if:

(1) We determine that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that in such case, NCUA will provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to the specified disclosure date.

Release of Exempt Information:

§ 792.30 Is there a prohibition against disclosure of exempt records?

Except as provided in §§ 792.31–792.32, and subpart C of this part, no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of NCUA to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

§ 792.31 Can exempt records be disclosed to credit unions, financial institutions and state or federal agencies?

The NCUA Board, in its sole discretion, or any person designated by it in writing, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

§ 792.32 Can exempt records be disclosed to investigatory agencies?

The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of federal or state, civil or criminal law.

[FR Doc. 97–28586 Filed 11–12–97; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require modification of certain passenger doors. This proposal is prompted by reports that certain passenger doors could not be opened due to the escape slide shelf assembly and escape slide falling onto the girt bar lifting mechanism of the door. The actions specified by the proposed AD are intended to prevent the escape slide shelf assembly and escape slide from falling on the girt bar of a passenger door due to failed rivets of the escape slide shelf assembly, and consequent inability to open the passenger door and to use the escape slide at that door during an emergency evacuation of the airplane.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that various passenger doors (Number 1, 2, or 4) could not be opened. Investigation revealed that the escape slide shelf assembly and escape slide had fallen onto the girt bar lifting mechanism of the passenger door due to failure of four rivets of the shelf assembly. Such failure, if not corrected, could result in inability to open the Number 1, 2, or 4 passenger door, and consequent inability to use the escape slide at the door during an emergency evacuation of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–25–0175, dated May 30, 1996, and Revision 1, dated March 6, 1997, which describes procedures for modifying the escape slide shelf assemblies of the Number 1, 2, and 4 passenger doors. The modification entails replacing the four existing rivets of the escape slide shelf assembly of the passenger doors with steel rivets. The modification will ensure that the escape slide shelf assembly and escape slide do not fall onto the girt bar lifting mechanism.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the escape slide shelf assemblies of the Numbers 1, 2,

and 4 passenger doors. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 673 Boeing Model 757–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 381 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $234 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $226,314, or $594 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 96–NM–232–AD.

Applicability: Model 757–200 series airplanes, as listed in Boeing Service Bulletin 757–25–0175, Revision 1, dated March 6, 1997, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inability to open the Number 1, 2, or 4 passenger door and to use the escape slide at that door during an emergency evacuation of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the escape slide shelf assemblies of the Numbers 1, 2, and 4 passenger doors in accordance with Boeing Service Bulletin 757–25–0175, dated May 30, 1996, or Revision 1, dated March 6, 1997.

(b) As of the effective date of this AD, no person shall install an escape slide shelf assembly having part number 416N2400–6 or 416N2400–7 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29822 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder power control unit, and replacement of the valve with a valve having a different part number, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by that AD are intended to prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers. This action would make certain editorial changes to clarify the requirements of the existing AD.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tin Truong, Aerospace Engineer, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2764; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–157–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 24, 1997, the FAA issued AD 97–09–15, amendment 39–10011 (62 FR 24325, May 5, 1997), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, to require a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper, and replacement of the valve with a valve having a different part number, if necessary. That action was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The requirements of that AD are intended to prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers.

Actions Since Issuance of Previous Rule

Since the issuance of AD 97–09–15, the FAA has re-reviewed the requirements of paragraph (a) and the information specified in "Note 3" of that AD.

The FAA finds that, as paragraph (a) of AD 97–09–15 is currently worded, operators could misinterpret exactly which engage solenoid value of the yaw damper must be inspected. Therefore, the FAA has revised the phrase "engage solenoid valve of the yaw damper" to read "engage solenoid valve of the yaw damper on the rudder power control unit (PCU)."

The FAA also finds that paragraph (a) of AD 97–09–15 specifies only the Boeing part number (P/N) for some affected parts. For clarification purposes, the FAA has revised paragraph (a) of the existing AD to include both the Boeing P/N and the vendor P/N's for all affected parts.

The FAA also has revised paragraph (a) of the existing AD to reference Chapter 22–11–61 (for Model 737–100 and –200 series airplanes) and Chapter 22–12–21 (for Model 737–300, –400, and –500 series airplanes) of the Boeing Maintenance Manual as the appropriate sources of service information for accomplishment of the actions required by that paragraph.

Furthermore, the FAA finds that some engage solenoid valves may be labeled with only the name "Bertea," rather than "Parker" or "Parker-Bertea." Therefore, the FAA has revised "Note 3" of AD 97–09–15 to include such information regarding the labeling of the engage solenoid valves.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 97–09–15 to continue to require a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder PCU, and replacement of the valve with a valve having a different part number, if necessary. The proposed AD would make certain editorial changes to clarify the requirements of the existing AD.

Cost Impact

There are approximately 2,675 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $65,460, or $60 per airplane. The requirements of this AD will add no new costs to affected operators.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10011 (62 FR 24325, May 5, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 97–NM–157–AD. Revises AD 97–09–15, Amendment 39–10011.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers, accomplish the following:

(a) Perform a one-time inspection of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU) to determine the part number (P/N) of the valve. If any valve having Parker P/N 59600–5011 (Boeing P/N 10–60811–9), Parker P/N 59600–5007 (Boeing P/N 10–60811–3), or Parker P/N 59600–5003 (Boeing P/N 10–60811–1) is installed, prior to further flight, replace it with a valve having Parker P/N 881600–1001 (Boeing P/N 10–60811–13), Sterer P/N 45080–1 (Boeing P/N 10–60811–8), or Sterer P/N 45080 (Boeing P/N 10–60811–3). Accomplish the actions in accordance with procedures specified in Chapter 22–11–61 (for Model 737–100 and –200 series airplanes) or Chapter 22–12–21 (for Model 737–300, –400, and –500 series airplanes) of the Boeing Maintenance Manual, as applicable. Accomplish the inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 5 years or 15,000 flight hours after June 9, 1997 (the effective date of AD 97–09–15, amendment 39–10011), whichever occurs first.

(2) At the next time the PCU is sent to a repair facility.

Note 2: Boeing In-Service Activities Report 95–03–2725–10, dated February 16, 1995 (for Model 737–100 and –200 series airplanes), or 95–04–2725–10, dated February 24, 1995 (for Model 737–300, –400, and –500 series airplanes), provides additional information concerning interchangeability of solenoid valve part numbers.

Note 3: Operators should note that, as specified in paragraph (a) of this AD, both the Parker and Sterer P/N's have the same Boeing P/N (10–60811–3). If, upon inspection, Boeing P/N 10–60811–3 is found to be installed, operators must ascertain the vendor P/N. Parts having Boeing P/N 10–60811–3 and Parker P/N 59600–5007 must be replaced and are not considered to be acceptable replacement parts. In addition, some engage solenoid valves may be labeled with only the name "Bertea," rather than "Parker" or "Parker-Bertea."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29820 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require installation of a placard that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the "DRAIN" position during flight. This proposal also would require installation of an isolation valve in the drain line downstream of the selector valve. This proposal is prompted by reports of damage to the horizontal stabilizer and engine flameout caused by ice formed from water drained inadvertently through a mispositioned selector valve. The actions specified by the proposed AD are intended to prevent damage to the engines, airframe, or horizontal stabilizer, and/or prevent a hazard to persons or property on the ground, as a result of ice that could dislodge from the airplane.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–238–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports that ice has formed on the skin of Boeing Model 737 series airplanes due to drainage of potable water through an incorrectly positioned selector valve for the forward lavatory water supply. Two of these incidents resulted in engine flameout and two other incidents resulted in damage to the horizontal stabilizer.

The selector valve is a three-position ("DRAIN," "SUPPLY," and "SHUTOFF") selector valve for the forward lavatory water supply. It is possible to place the selector valve in the "DRAIN" position instead of the "SHUTOFF" position during flight, which results in the contents of the potable water supply tank draining onto the skin of the airplane. This condition, if not corrected, could result in the formation of ice that could dislodge from the airplane and, consequently, cause damage to the engines, airframe, or horizontal stabilizer and/or pose a hazard to persons or property on the ground.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of a placard to warn the cabin crew not to put the selector valve for the forward lavatory water supply in the "DRAIN" position during flight. In addition, the proposed AD would require installation of an isolation valve in the drain line downstream of the selector valve. These actions would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 2,830 Boeing Model 737–100, –200, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,037 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this installation proposed by this AD on U.S. operators is estimated to be $62,220, or $60 per airplane.

It would take approximately 6 work hours per airplane to accomplish the proposed installation of an isolation valve, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of this installation proposed by this AD on U.S. operators is estimated to be $684,420, or $660 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–238–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the engines, airframe, or horizontal stabilizer, and/or a hazard to persons or property on the ground, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a placard (as shown in Figure 1 of this AD) on the door beneath the forward lavatory sink that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the "DRAIN" position during flight. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 36 months after the effective date of this AD, install an isolation valve in the drain line downstream of the selector valve for the forward lavatory water supply, in accordance with a method approved by the Manager, Seattle ACO.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

BILLING CODE 4910-13-U

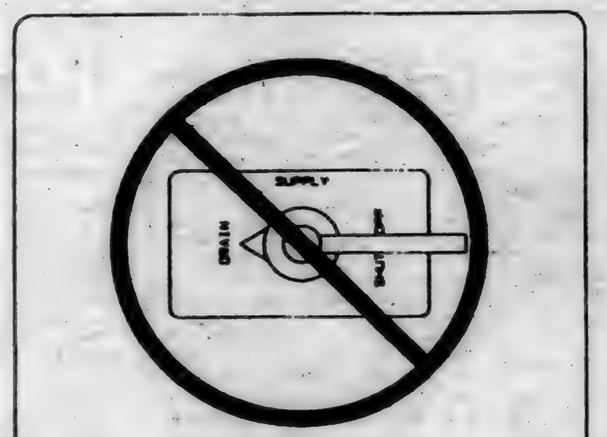


Figure 1

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29819 Filed 11–12–97; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require modification of a certain electrical panel and relay support. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent possible electrical short circuits, which could result in loss of certain electrical indicating and recording systems, and the possibility of a fire.

DATES: Comments must be received by December 15, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–111–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report of loose relay terminals, caused by vibration, in certain electrical circuits. These loose relay terminals could result in an electrical short circuit at electrical panel 35VE, and relay support 36VE. This condition, if not corrected, could result in loss of certain electrical indicating and recording systems, and the possibility of a fire.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–31–172, dated June 18, 1996, which describes procedures for modifications of electric panel 35VE and relay support 36VE by installing new terminal studs, spacers, and U-sections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–289, dated October 10, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $39,360, or $960 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

DORNIER: Docket 97–NM–111–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3065 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible electrical short circuits, which could result in loss of certain electrical indicating and recording systems, and the possibility of a fire, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify electrical panel 35VE and relay support 36VE in accordance with Dornier Service Bulletin SB–328–31–172, dated June 18, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–289, dated October 10, 1996.

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29826 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–43]

Proposed Amendment to Class E Airspace; Somerset, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Somerset, PA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Somerset County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–43, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–43." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Somerset, PA. A GPS RWY 6 SIAP has been developed for the Somerset County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Somerset, PA [Revised]

Somerset County Airport, PA
(lat. 40°02'20"N., long. 79°00'47"W.)
Stoystown NDB
(lat. 40°05'09"N., long. 78°55'00"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Somerset County Airport and within 3.1 miles each side of the 058° bearing from the Stoystown NDB extending from the 6.4-mile radius to 9.6 miles northeast of the NDB and 4 miles each side of the 236° bearing from the Somerset County Airport extending from the 6.4-mile radius to 9.5 miles southwest of the airport, excluding that portion that coincides with the Seven Springs, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on October 7, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–29835 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC82

Delaware Water Gap National Recreation Area; Designation of Bicycle Routes; Deletion of Climbing Registration Regulation

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to amend its special regulations to designate certain routes within a nondeveloped area as open for bicycle use and to regulate their use in this area and to delete the regulation concerning the mandatory registration of technical rock climbing activities at Delaware Water Gap National Recreation Area. Bicycle use has been determined by the Superintendent to be a desirable recreational use within the Blue Mountain Lakes area of the park because such use is consistent with the protection of the park's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources. The requirement to register for climbing activities was originally intended to promote climbing safety, provide information concerning the location and difficulty of routes and provide climbers with procedures to follow in the event of an emergency. However, the registration system has not been effective and the NPS believes that a better course of action will be to promote self-responsibility within the climbing community. Many NPS areas with significant rock climbing activities do not require technical climbing registration. The deletion of this regulation will also remove an unnecessary administrative burden for both the climbing community and the NPS.

DATES: Written comments will be accepted until January 12, 1998.

ADDRESSES: Comments should be addressed to: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania, 18324.

FOR FURTHER INFORMATION CONTACT: Wayne Valentine, Kittatinny Subdistrict Ranger, Delaware Water Gap National Recreation Area. Telephone 908–841–9533.

SUPPLEMENTARY INFORMATION:

Background

Bicycle Routes

This proposed rule will designate certain trails and former roads for bicycle use in the Blue Mountain Lakes area of the park. This area was originally intended for a housing development associated with the proposed Tocks Island Dam prior to the establishment of Delaware Water Gap National Recreation Area in 1965.

On April 2, 1987, the NPS published revised regulations in the **Federal Register** amending 36 CFR part 4 which, among other regulations, states that "(T)he use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use" (52 FR 10670). This regulation, found at 36 CFR 4.30, requires that such designation be made only after "a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources" (36 CFR 4.30(a)). This regulation further requires that, "except for routes

designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations" (36 CFR 4.30(b)).

The trails and former roads in the Blue Mountain Lakes area of the park are proposed for designation as open to bicycle use. These trails will not adversely impact other park users such as hikers and hunters, nor the park's natural and cultural resources. Currently, approximately eleven miles of trail and former road in the Blue Mountain Lakes area are recommended for bicycle trail use. All have suitable width and visibility and can be adequately maintained for multiple uses, including bicycling. This same trail network is also designated as a cross country ski trail during the winter months when snow covered.

Any additional trails, other than those in the Blue Mountain Lakes area, will be permitted on routes in developed areas and special use zones which have been designated by the Superintendent by the posting of signs and as designated on maps which will be available in the office of the superintendent and at other places convenient to the public. Further, the authority of the Superintendent to "impose public use limits, or close all or a portion" of a designated trail according to the criteria at 36 CFR 1.5 is not restricted by this rule.

Climbing Registration

The present regulation concerning mandatory registration for technical rock climbing at Delaware Water Gap National Recreation Area is codified at 36 CFR 7.71(c)(2). Mandatory registration of technical rock climbing activities was instituted at Delaware Water Gap in 1976. This regulation was intended to promote safety by educating climbers, especially novice or new climbers to the area about safety hazards, to provide climbers with the location and difficulty of climbing routes, and to provide climbers with procedures to follow in the event of an emergency. A check-in and check-out system that would activate a search and rescue effort for overdue climbers was also implemented.

Although many climbers register, just as many climbers do not, especially those climbing at locations not in the immediate vicinity of the Kittatinny Point Visitor Center where registration occurs. In most instances, climbers do not receive good practical information about the climbing area, because the rangers on duty at the visitor center are often not climbers and are often not familiar with the routes or with specific climbing hazards. Too often, the only information climbers receive at the visitor center is a climbing safety handout. The check-in and check-out portion of the registration system has failed to provide a timely method to insure that all climbers have safely completed their climbs. There have been no documented cases of lives saved as a result of the check-in and check-out registration system.

Many NPS areas with significant rock climbing activity such as Joshua Tree, Rocky Mountain and Yosemite National Parks do not require climbers to register and have not experienced any adverse results. Denali National Park revised its mandatory climbing registration regulation in 1996. With the deletion of this park specific regulation, it will be the climbing party's responsibility to insure that responsible friends or relatives are advised of where they will be climbing, what kind of equipment they will use, the experience level of the climbers and when they expect to complete the climb and return.

Public Participation

It is the policy of the Department of Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon analysis of the comments.

Drafting Information

The primary authors of this rule making are Wayne Valentine, Kittatinny Subdistrict Ranger, Robert Wilson, Law Enforcement Specialist, both of Delaware Water Gap National Recreation Area, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are negligible.

NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) conflict with adjacent ownership or land uses; or

(d) cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is proposed to be amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. code 40–721(1981).

2. Section 7.71 is amended by revising paragraph (c) to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this chapter and, in nondeveloped areas, as follows: Bicycle use is permitted on trails and former roads in the Blue Mountain Lakes area of the park which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the Superintendent and other places convenient to the public.

* * * * *

Date: August 26, 1997.

William Leary,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–29776 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–70–8738b; FRL–5920–4]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Section 111(d)/129 State Plan submitted by Florida on November 18, 1996. The State Plan was submitted by Florida to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the State's Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by December 15, 1997.

ADDRESSES: Written comments should be addressed to Joey LeVasseur at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Scott Davis at 404/562–9127 or Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register** and incorporated by reference herein.

Dated: October 15, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–29859 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 350

Public Meeting To Discuss the Development of Functional Specifications for Performance-Based Brake Testers Used To Inspect Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA is announcing a public meeting to discuss the development of functional specifications for performance-based brake testing machines purchased with Federal funds through the FHWA's Motor Carrier Safety Assistance Program (MCSAP). The FHWA is nearing the completion of a multi-year research program to evaluate prototype performance-based brake testing technologies, including roller dynamometers, flat-plate brake testers, and breakaway torque brake testers. The agency has determined that certain performance-based brake testing machines are eligible for funding under MCSAP but only as screening and sorting devices in commercial vehicle inspections. The purpose of the public meeting is to discuss the establishment of generic functional specifications that would be applicable to a range of brake testing technologies. The functional specifications would serve as guidelines for the States to use in determining whether the purchase of a specific brake tester would be an eligible expense under the MCSAP.

DATES: The meeting will be held on December 8, 1997. The meeting will begin at 9:00 a.m. and end at 4:00 p.m. The meeting will include a presentation of the results to date from the brake tester evaluation program and a review of preliminary functional specifications.

ADDRESSES: The meeting will be held at the National Highway Traffic Safety Administration's (NHTSA) Vehicle Research and Test Center in East Liberty, Ohio.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. Steve Keppler, Intelligent Transportation Systems—Commercial Vehicle Operations Division, Office of Motor Carrier Safety and Technology, (202) 366–0950; or Mr. Paul Alexander, State Programs Division, Office of Motor Carrier Safety and Technology (202) 366–9579, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1993, the FHWA initiated a research program to evaluate various performance-based brake testing technologies for use on commercial motor vehicles. The purpose of the program was to determine, through field-test data collection, if performance-based brake inspection technologies could improve or assist with the throughput and accuracy of the current inspection techniques which involve visual examination of components, measurement of push-rod travel on air-braked vehicles, and listening for air leaks. Following the completion of the first task of the program, in which various performance-based technologies were analyzed, several of the systems were selected for evaluation in a roadside field-test inspection program.

During the field tests, inspections were performed using both visual and performance-based methods to compare their ability to detect vehicle brake defects. In particular, a Commercial Vehicle Safety Alliance Level 4 inspection (consisting of the brake and tire portion of a Level 1 inspection) was conducted in addition to a performance-based brake test. The dual inspections were performed by State officials in each of eight States that volunteered to participate in the field test program.

The data collected from these dual inspections were tabulated and

correlations were sought between Federal Motor Carrier Safety Regulations (FMCSRs) violations, the North American Uniform Vehicle Out-of-Service Criteria used by officials in the United States, Canada, and Mexico, and various pass/fail criteria used by manufacturers of performance-based technology. In addition to the performance-based brake "failure" information, data relating to the operational characteristics of each prototype machine were also collected and evaluated. These data included setup and tear down times, vehicle inspection times, maintenance requirements, user friendliness, calibration procedures and results, operator skill-level requirements and information to generate a cost-benefit analysis. A key source of data was the interviews with State inspectors.

The preliminary findings from the first phase of the prototype brake testing program are documented in an interim report, "Evaluation of Performance-Based Brake Testing Technologies," December 1995, FHWA–MC–96–004. A copy of this report may be obtained by contacting one of the individuals listed at the beginning of this notice. The interim report presents findings based upon approximately one year of data from roller dynamometers used in Colorado and Ohio, and a flat plate tester in Minnesota.

West Virginia is currently participating in the field test evaluation of a roller dynamometer, Wisconsin is collecting data on a flat-plate tester, and Maryland and Nevada are collecting data on breakaway torque testers. Connecticut participated in the testing of a roller dynamometer for several months but elected to discontinue its involvement in the research program. The final report on the research program will be published in 1998.

Determination of Eligibility for MCSAP Funding

On April 1, 1996, the FHWA issued a memorandum advising agency staff that two specific performance-based brake testing machines are eligible for funding under MCSAP. The memorandum indicated that the devices are prototypes, and are approved for screening and sorting purposes only. This means that States may request MCSAP funding to purchase one of the approved brake testers for use in screening or sorting vehicles at inspection cites. Vehicles that fail the performance test would be inspected to determine the reason for the poor test results. Generally, motor carriers cannot be cited for brake-related violations of the FMCSRs solely on the basis of the results from a performance-based brake tester. Citations are based upon the specific defects or deficiencies found during the in-depth inspection.

The FHWA is considering the development of pass/fail criteria for braking force that could be enforced by Federal and State officials using performance-based brake testing technologies. As inspection criteria or regulations are developed through the rulemaking process, the use of the performance-based brake testing machines could be expanded to include enforcement of the new Federal brake performance standards. The new standards would be an alternative to the stopping distances from 32.2 kilometers per hour (20 miles per hour) currently specified in 49 CFR 393.52 but rarely enforced by Federal and State officials because of difficulties in performing such tests at roadside. If brake force standards are developed through the rulemaking process, the States would be able to issue citations based upon the output from the brake testers.

The development of pass/fail criteria for braking force in commercial motor vehicles will be considered for rulemaking but will not be a topic of discussion at the meeting. The meeting will focus only on the development of functional specifications for the brake testing technologies to ensure that the equipment accepted as eligible expenses under the MCSAP are capable of accurately measuring brake forces.

Meeting Information

The meeting will be held on December 8, 1997, at the NHTSA's Vehicle Research and Test Center, located near the intersection of State Routes 33 and 347, East Liberty, Ohio. This location is approximately 55 miles northwest of Columbus, Ohio. The meeting is scheduled from 9:00 a.m. to 4:00 p.m. The NHTSA's Vehicle Research and Test Center is located on the grounds of the Transportation Research Center, a privately owned facility with controlled access. All visitors to the Transportation Research Center must be registered with the security office and wear a visitor's badge at all times while on the premises. Therefore, the FHWA requests that all interested parties contact one of the individuals listed at the beginning of this notice by December 1 to provide their name and company affiliation so that security personnel at TRC can be notified in advance. This will prevent delays in gaining access to the facility.

List of Subjects in 49 CFR Part 350

Highway safety, Motor carriers, motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: November 5, 1997.

George L. Reagle,

Associate Administrator for Motor Carriers.

[FR Doc. 97–29832 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register

Vol. 62, No. 219

Thursday, November 13, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 7, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) May be obtained by calling (202) 720–6746.

An agency May not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

• Agricultural Marketing Service

Title: Regulations for the Donation of Foods for use in the United States, its Territories and Possessions and Areas Under its Jurisdiction (7 CFR Part 250).

OMB Control Number: 0581–New.

Summary of Collection: The State Option Contract is completed by cooperating State agencies. The States report contractual information to assure the correct billing between the Agency and the State agency.

Need and Use of the Information: The information is used to assure compliance with and administration of the SOC program.

Description of Respondents: State, Local or Tribal Government

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40.

• Food Safety and Inspection Service

Title: Processing Procedures and Quality Control Systems.

OMB Control Number: 0583–0089.

Summary of Collection: The information collection addresses processing procedures for meat and poultry products and quality control systems.

Need and Use of the Information: The information is necessary to ensure that meat and poultry products are wholesome, unadulterated, and properly labeled and packaged.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,186.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Daily.

Total Burden Hours: 743,906.

• Animal and Plant Health Inspection Service

Title: Importation of Tomatoes from France, Morocco and Western Sahara, Chile, and Spain.

OMB Control Number: 0579–New.

Summary of Collection: Each shipment of tomatoes must be accompanied by a phytosanitary certificate stating that the tomatoes were grown in registered greenhouses.

Need and Use of the Information: The information will provide importers and consumers in the U.S. with additional sources of tomatoes while continuing to provide protection against the introduction and dissemination of injurious plant pests.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 6.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 220.

• Animal and Plant Health Inspection Service

Title: Export certification: Accreditation of non-Government' Facilities.

OMB Control Number: 0579–New.

Summary of Collection: Non-government facilities wishing to become accredited laboratories must submit an application and provide information on equipment a quality manual, and personnel employed.

Need and Use of the Information: The information will be used to provide additional qualified personnel and laboratory facilities to conduct export certification activities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 15.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 300.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–29800 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–116–7]

Agency Information Collection Activities; OMB Approval Received

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service's final rule that allows fresh Hass avocado fruit from Michoacan, Mexico, to be imported into certain areas of the United States under certain conditions.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Jenkins, APHIS Information

Collection Coordinator, AIM, APHIS, suite 2C42, 4700 River Road Unit 103, Riverdale, MD 20737–1235, (301) 734–5360.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1997, we published a final rule in the **Federal Register** (62 FR 5293–5315, Docket No. 94–116–5) amending 7 CFR 319.56 to allow fresh Hass avocado fruit from Michoacan, Mexico, to be imported into certain areas of the United States under certain conditions. That rule contains information collection requirements. On October 23, 1997, the Office of Management and Budget (OMB) approved the collection of information requirements with respect to that final rule under OMB control number 0579–0129 (expires October 31, 2000).

Done in Washington, DC, this 6th day of November 1997.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29870 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request Forms FCS–683, WIC Farmers' Market Nutrition Program Financial Report and FCS–203, WIC Farmers' Market Nutrition Program Recipient Report, and WIC Farmers' Market Nutrition Program Regulations.

AGENCY: Food and Consumer Service, USDA

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request revision and extension of a currently approved information collection pursuant to the WIC Farmers' Market Nutrition Program Regulations. The currently approved collection includes the WIC Farmers' Market Nutrition Program Financial Report, the WIC Farmers' Market Nutrition Program Recipient Report and WIC Farmers' Market Nutrition Program Regulations. The proposed revision and extension will include a reduction in overall burden under the regulations due to previous overestimation of costs for some reporting items and a reduction in burden for the Recipient Report based on the elimination of the monthly reporting requirement.

DATES: Comments on this notice must be postmarked by January 12, 1998.

ADDRESSES: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection forms and instructions should be directed to: Barbara Hallman or Debra Whitford, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Title: WIC Farmers' Market Nutrition Program Financial Report, WIC Farmers' Market Nutrition Program Recipient Report and WIC Farmers' Market Nutrition Program Regulations.

OMB Number: 0584–0447.

Expiration Date: June 30, 1998.

Type of Request: Revision and extension of a Currently Approved Collection Form.

Abstract: Pursuant to section 17(m)(8) of the Child Nutrition Act of 1966, 42 U.S.C. § 1786(m)(8), section 248.23 of the WIC Farmers' Market Nutrition Program (FMNP) regulations requires that certain Program-related information be compiled and submitted to FCS. Based on reassessment of our previous calculations for reporting and recordkeeping for the FMNP, we realized that we had overstated the time necessary to complete some reporting items. In addition, respondents' experience in implementing and administering the program has reduced the cost overall. The number of estimated hours per response for selection of farmers/farmers' markets has been reduced from 2 hours to 1 hour for a total of 1,248 burden hours. The number of estimated hours per response for completion of the State Plan has been reduced from 50 hours to 30 hours for a total of 900 burden hours. The overall burden for FMNP regulations has been reduced from 5,952 hours to 4,664 hours.

The burden hours for completion of the FMNP Recipient Report (FCS–203) have been decreased from 1.5 hours to 1 hour per response due to elimination of the requirement for monthly recipient counts. This revision allows States to report annual totals for each category of information indicated on the form rather than entering monthly totals. Due to the short, seasonal nature of the program, it is administratively more efficient for States to report data once for the entire program year rather than on a monthly basis.

Affected Public: State Directors of the FMNP, farmers and market managers.

Estimated Number of Respondents: 30.

Estimated Number of Responses Per Respondent: 39.

Estimated Total Annual Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response for the Financial Report (FCS–683); 1 hour per response for the Recipient Report (FCS–203); and 76.5 hours per response for other program reporting requirements that do not require specific forms. Examples include, but are not limited to the submission of State Plans, monitoring requirements and authorization of farmers and markets. These requirements, together with the financial and recipient reporting requirements; give an overall total of 80.5 hours per response. These totals include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Dated: October 30, 1997.

Yvette S. Jackson,

Acting Administrator, Food and Consumer Service.

[FR Doc. 97–29871 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Statements; Availability, etc.: Eldorado National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: On November 7, 1989, the Forest Service filed a notice of intent in the **Federal Register** to prepare an environmental impact statement (EIS) to analyze management of off-highway vehicle use in the Rock Creek area, Eldorado National Forest, Georgetown Ranger District, El Dorado County, California. An update was filed in the **Federal Register** on March 5, 1996 to update the expected date for release of the draft EIS (DEIS), provide a list of issues and alternatives considered, and to note that the scope was expanded to include non-motorized uses (hiking, equestrians, and mountain bikes) in response to public comments. Notice of availability of the Rock Creek Recreational Trails DEIS was filed in the **Federal Register** on April 26, 1996. Another update was filed in the **Federal Register** on August 4, 1997, to notify the public that changes were made to the alternatives in response to comments on the DEIS, and that a Revised Draft EIS (RDEIS) was being prepared. Since then, it was determined that five of the six alternatives under consideration would require nonsignificant amendments to the Eldorado National Forest Land and Resources Management Plan (LMRP). For this reason, the responsible official has been changed from the Georgetown District Ranger to the Eldorado National Forest Supervisor. This notice is filed to notify interested parties of the nonsignificant amendments under consideration, the change in responsible official, and the new expected release date.

DATES: The RDEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November 1997. At that time EPA will publish a notice of availability in the **Federal Register**. The public comment period on the RDEIS would normally be 45 days from the date of EPA's notice of availability in the **Federal Register**; however, the comment period will be extended to 60 days.

ADDRESSES: John Phipps, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Direct questions or requests for copies of the EIS to Linda Earley, Interdisciplinary Team Leader, Georgetown Ranger District, 7600 Wentworth Springs Road, Georgetown, California, 95634; phone (916) 333–4312.

SUPPLEMENTARY INFORMATION: Work on the EIS began in 1989 with a study of impacts to the Pacific Deer Herd. Since that time the deer study has been completed, issues identified, alternative management plans developed, and extensive data collection and analysis conducted. The draft Rock Creek Recreational Trails EIS was released for public comment in April 1996.

The draft EIS analyzed alternative management plans for all types of recreation uses on the trails: hiking, equestrians, mountain bikes, and OHVs. The need to look at all uses of the trails arose from concerns that other types of recreation use may have some of the same impacts as OHVs; as well as concerns about compatibility of uses. Another concern identified in the analysis is open road densities which exceed limits established in the *Eldorado National Forest Land and Resource Management Plan* (LRMP). Because the EIS analyzes road and trail densities, and because the EIS proposes designation of both open and closed roads for OHV use, it was decided that proposals for road closures to meet the LRMP management direction would also be analyzed in this EIS.

The following issues identified during scoping for this EIS were used to develop and compare alternative management plans.

1. *Erosion:* The bare soils on road and trail surfaces create a potential for erosion. The amount of erosion may be affected by total miles of roads and trails, soil type, trail location, design, maintenance, grade, vegetative cover, type and intensity of use, and use in excessively dry conditions. Use in excessively wet conditions may cause rutting which will accelerate erosion by channeling water.

2. *Water Quality:* Erosion of soils can impact water quality by adding sedimentation to streams. Sedimentation may be affected by erosion from trails, design of stream approaches and crossings, and proximity of trails to streams. Another potential impact to water quality from use of trails is the risk of oil or fuel spills at stream crossings.

3. *Wildlife Species:* Use of the trails has the potential to impact wildlife species primarily through disturbance by human presence or noise. Road and trail densities influence the potential disturbance by providing increased or decreased access into the area.

4. *Air Quality:* Air quality may be affected by emissions from motorized vehicles as well as dust from use of roads and trails.

5. *Noise:* The sound of OHVs is unacceptable to many people, and therefore may have a negative impact on adjacent landowners and the experience of other Forest users. The sound of OHVs may also contribute to disturbance of wildlife.

6. *Opportunity and Quality of the Recreation Experience:* The quality of the recreation experience may be affected by: the condition, variety, and level of challenge of the trails; the availability of staging areas and the level of development there; other uses allowed on the trails; and the aesthetics of the trail experience. Opportunity for recreation is determined by the trail mileage available and uses allowed on each; the number and size of recreation events allowed; and the frequency and duration of trail closures.

7. *Health and Safety:* Safety may be affected by a variety of factors. Width of trails may affect speeds traveled, and therefore risk of accidents. Intersections of roads and trails may pose increased risks of accidents. Combination of equestrian and mountain bike use on trails may pose a risk since bikes come up quietly and may startle horses. Two-way traffic poses a risk for OHVs since they cannot hear each other coming, which could result in a head-on collision. Chipsealing of road surfaces poses a risk to equestrians due to the slippery contact between the chipseal and the horseshoes. Trail structures such as gabions and cinderblocks may also pose a risk to horses. Health may be affected by availability of drinking water and sanitation facilities for recreationists.

8. *Risk of Fire:* Risk of fire is increased by human activity such as campfires and smoking that may be associated with use of trails. Internal combustion engines, such as OHVs also increase the risk, particularly if proper spark arresters are not in place.

9. *Funding:* Levels of funding available affects the ability to maintain trails properly, the number of trails that can be maintained, ability to construct trails, ability to effectively rehabilitate closed trails, the amount of monitoring that can be conducted, and the level of law enforcement that can be maintained. These, in turn, affect the ability to implement the chosen alternative and, therefore, to protect the environment and the quality of the recreation experience.

The following alternatives are analyzed in the revised draft EIS:

Alternative 1—No Action

This alternative would continue the current management of the Rock Creek Trails. Most trails in the area are multiple use, open to all four use types: hiking, equestrians, mountain bikes, and OHVs. There are approximately 136 miles of multiple use routes (roads and trails) and 5 miles of routes restricted to non-motorized uses. The current management plan includes closure of the critical deer winter range to OHVs and mountain bikes from generally November 1 to May 1 each year. Trails are also closed to OHVs during wet weather conditions. This alternative would require a nonsignificant LRMP amendment to increase the open road density limit in the Rock Creek area to 3.25 miles per square mile.

Alternative 2—No OHV Use

OHV use would be eliminated in this alternative. There would be approximately 46 miles of non-motorized routes available. Approximately 33 miles of roads would be closed. Trails would be closed to equestrians and mountain bikes during wet weather conditions, and staging areas in the critical deer winter range would be closed from February 1 to May 1. Up to two large recreation events, with up to 300 participants, would be allowed each year for each non-motorized use type.

Alternative 3—Increased Multiple Use Recreation

This alternative reduces trail closures and allows the maximum trail density. Approximately 130 miles of multiple use routes would be available, and 15 miles of non-motorized routes. Approximately 30 miles of roads would be closed. There would be no closure of the critical deer winter range. Wet weather closures would apply to OHVs, equestrians, and mountain bikes. Up to two large recreation events per year, with up to 500 participants each, would be allowed for each use type. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, and to establish a vegetation buffer along the trails. These amendments would apply to the Rock Creek area only.

Alternative 4—Separated Multiple Use Recreation

This alternative addresses concerns about shared use of trails by different types of uses. The system would include approximately 86 miles of multiple use routes, 17 miles of non-motorized routes, 5 miles of hiking only routes, and 11 miles of hiking and equestrian routes. Approximately 28 miles of roads would be closed. Staging areas in the critical deer winter range would be closed from February 1 to May 1. Trails would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. One large recreation event would be allowed per year for each use type, with up to 300 participants in each. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, to close staging areas in the critical deer winter range from February 1 to May 1, and to prohibit OHV use on trails when the Sale Activity Level is 4 or 5. These amendments would apply to the Rock Creek area only.

Alternative 5—Reduced Multiple Use Recreation

This alternative includes approximately 71 miles of multiple use routes and 28 miles of non-motorized routes. Approximately 34 miles of roads would be closed. Routes in the critical deer winter range would be closed to all uses from November 10 to May 1 of each year. Roads and trails would be closed to OHVs, equestrians, and mountain bikes during the Forest seasonal road closures (generally November through March). Trails would be closed to OHVs during Forest fire restrictions (generally August and September). Large recreation events with over 75 people involved would be prohibited. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, to close staging areas in the critical deer winter range from November 10 to May 1, to close trails to OHVs during Forestwide fire restrictions, to close trails in the critical deer winter range to all uses from November 10 to May 1, to prohibit large recreation events, and to limit OHV sound levels to 94 dB using 20-inch SAE J1287 test methods. These amendments would apply to the Rock Creek area only.

Alternative 6—"Carrying Capacity" Alternative

This alternative was developed based on a review of effects of other alternatives. The goal of the alternative is to maximize recreation opportunity while providing protection of the natural resources. The system would include approximately 111 miles of multiple use routes, and 14 miles of non-motorized routes. Approximately 34 miles of roads would be closed. Routes would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. Vegetation treatments, including mastication of brush and understory burning, would be implemented on the critical deer winter range to improve the quantity and quality of forage for the wintering deer. The critical deer winter range would be divided into two zones: north and south. Routes in the south would be closed to OHVs and mountain bikes from November 10 to May 1 each year. Deer use would be monitored and the seasonal deer closure reevaluated in five years. Up to two recreation events, with up to 300 participants, would be allowed each year for each type of use. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, and to close the Crossier Loop Staging Area from November 10 to May 1. These amendments would apply to the Rock Creek area only.

John Phipps, Forest Supervisor, Eldorado National Forest, Eldorado National Forest, is the responsible official.

The revised draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in November 1997. At that time the EPA will publish a notice of availability of the revised draft EIS in the **Federal Register**.

The comment period on the draft EIS would normally be 45 days from the date EPA's notice of availability appears in the **Federal Register**; however, the comment period will be extended to 60 days. It is very important that reviewers participate at that time. To be the most helpful, comments on the revised draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. Comments received, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, the confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the Agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within five days.

After the comment period ends on the revised draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. the final EIS is scheduled to be completed in March 1998. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal.

Dated: November 3, 1997.

Raymond E. Labos,

Acting Forest Supervisor, Eldorado National Forest.

[FR Doc. 97-29791 Filed 11-12-97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting To Discuss an Opportunity To Join a Cooperative Research and Development Consortium on Brachytherapy Manufacturing Technology

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on December 9, 1997 to discuss the possibility of setting up a cooperative research consortium on Brachytherapy Manufacturing Technology. The goal of the consortium is to identify critical industrial needs for NIST to be involved in source dosimetry modeling, developing necessary standards and standard reference materials, and developing and disseminating systems for performing automated high accuracy dosimetry measurements and calculations.

DATES: The meeting will take place on December 9, 1997 at 10:00 a.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place and inquiries should be sent to Room C301, Building 245, National Institute of Standards and Technology, Gaithersburg, MD 20899-0001.

FOR FURTHER INFORMATION: Christopher Soares, 301-975-5589; FAX 301-869-7682

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99-502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may provide "personnel, service, facilities, equipment, or other resources with or without reimbursement (but not funds to non-federal parties)"—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers on generic measurement needs in the industry for specific brachytherapy source designs. The industrial partners will also be able to schedule at NIST collaborative projects in which they could participate. All partners will receive a copy of all non-proprietary data on all materials measured. All partners will have a certain amount of NIST measurements made on materials they request. All partners have some influence as to the type and accuracy of the measurements and calculations pursued by the consortium. Development of standard reference materials suitable for use for the range of activities and radioisotopes and photon energies appropriate for use in brachytherapy in accordance with U.S. regulatory protocols and accepted standard protocols is an integral part of the mission of the NIST Brachytherapy Manufacturing Technology Consortium.

Dated: November 6, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97-29883 Filed 11-12-97; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 970828206-7282-02; I.D. 072997C]

Scup and Black Sea Bass; Interstate Fishery Management Plans; Cancellation of Moratorium

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of determination of compliance; cancellation of moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act), the Federal moratorium on fishing for scup and black sea bass in the coastal waters of the State of Maryland and the Commonwealth of Massachusetts that would have been effective on November 15, 1997, is cancelled. The Secretary was notified by the Atlantic States Marine Fisheries Commission (Commission) that because Maryland and Massachusetts are now in compliance with the provisions of the Commission's Interstate Fishery Management Plans (FMPs) for scup and black sea bass, that it was withdrawing its findings and determinations of noncompliance. The Secretary concurs. Accordingly, the moratorium is cancelled.

DATES: Effective November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301–427–2014.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1997, NMFS published a document in the **Federal Register** (FR) (62 FR 48060) announcing the Secretary's determination that the State of Maryland and the Commonwealth of Massachusetts were not in compliance with the Commission's FMPs for scup and black sea bass. In the document a moratorium was declared on fishing for these two species in Maryland and Massachusetts state waters, effective November 15, 1997, if Maryland and Massachusetts were not in compliance by November 1, 1997. Details were provided in the September 12, 1997, FR document and are not repeated here.

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan(s). If the State is determined to be in compliance, the moratorium shall be terminated.

Activities Pursuant to the Act

On October 31, 1997, the Secretary received letters from the Commission prepared pursuant to the Act. The Commission's letters stated that the State of Maryland and the Commonwealth of Massachusetts had now in effect regulations on scup and black sea bass implementing the provisions of the Commission's FMPs, and, therefore, the Commission was withdrawing its determinations of noncompliance. In addition, upon further evaluation of the noncompliance status of the Commonwealth of Massachusetts, the Secretary has determined that Massachusetts had in place the proper permit and reporting requirements for scup, and, therefore, was not out of compliance on these measures.

Cancellation of the moratorium

Based on the Commission's October 31, 1997, letter, and information received from the State of Maryland, the Commonwealth of Massachusetts, and the Department of Interior's U.S. Fish and Wildlife Service, the Secretary has determined that Maryland and Massachusetts are now in compliance with the Commission's FMPs for scup and black sea bass. Therefore, the moratorium on fishing for these species in Maryland and Massachusetts state waters is canceled.

Dated: November 6, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29877 Filed 11–7–97; 4:04 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Bahrain

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Bahrain and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 13, 1997, you are directed to increase the limit for Categories 338/339 to 581,866 dozen [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–29879 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Burma (Myanmar) and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the availability of the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Burma (Myanmar) and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	97,791 dozen.
342/642	26,414 dozen.
347/348	137,005 dozen.
351/651	41,513 dozen.
448	2,410 dozen.
647/648/847	25,548 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29875 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following restraint limits:

Category	Twelve-month limit
315	23,696,384 square meters.
443	127,799 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–29876 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Suspension of Group II Restriction for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending suspension of the Group II restriction for certain products from India.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

A document published in the **Federal Register** on March 31, 1997 (62 FR 15159) announces suspension of the Group II restriction for rayon filament yarn in HTS number 5403.31.0040 in Category 606 from India for the period March 31, 1997 through December 31, 1997.

The Committee for the Implementation of Textile Agreements has decided to extend the suspension for the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998. A visa is still required for this product.

Anyone wishing to comment or provide data or information regarding the treatment of imports in HTS number 5403.31.0040 from India or to comment on domestic production or availability of products included in HTS number 5403.31.0040 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on January 1, 1998, man-made fiber textile products in HTS 5403.31.0040 in Category 606, in Group II, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, shall not be subject to the Group II quota established for the 1998 period. A visa is still required for this product.

For U.S. Customs' administrative purposes, the remaining HTS numbers in Category 606 shall be designated Category 606(1)[1].

To facilitate implementation of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), I request that, effective on January 1, 1998, entry/entry summary procedures be required, and that you continue to count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2)[2], produced or manufactured in India and exported during the period March 31, 1997 through December 31, 1997.

Also effective on January 1, 1998, I request that entry/entry summary procedures be required, and that you count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2), produced or manufactured in India and exported during the period January 1, 1998 through December 31, 1998.

Inasmuch as these imports may later be charged against the Group II level, it is important that an accurate count be taken.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29896 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 606(1): all HTS numbers except 5403.31.0040 (Category 606(2)).

[2] Category 606(2): only HTS number 5403.31.0040.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68143, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 13, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level[1]
218	11,140,199 square meters.
219	63,803,082 square meters.
314	7,163,193 square meters.
315	12,236,009 square meters.
334/634	143,977 dozen.
335/635	507,735 dozen.
336/636	900,539 dozen.
338/339	3,899,054 dozen.
340/640	1,996,493 dozen.
342/642	1,210,095 dozen.
351/651	265,272 dozen.
363	42,398,013 numbers.
369–D[2]	1,250,947 kilograms.
369–S[3]	510,233 kilograms.
641	1,321,089 dozen.
647/648	462,706 dozen.
Group II 200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O[4], 666, 669, 670, and 831–859, as a group.	110,796,693 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29898 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period. The 1998 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	272,125 dozen.
341/641	149,669 dozen.
361	–0–

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such

products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29899 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated November 6, 1996 and June 20, 1997, between the Governments of the United States and Nepal establish limits for the period January 1, 1998 through December 31, 1998.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and Memoranda of Understanding dated November 6, 1996 and June 20, 1997 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	234,214 dozen.
340	338,279 dozen.
341	1,086,589 dozen.
342/642	295,242 dozen.
347/348	761,956 dozen.
363	6,890,000 numbers.
369–S [1]	927,000 kilograms.
640	170,254 dozen.
641	383,880 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 5, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29874 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	436,033 dozen.
341/641	201,246 dozen.
347/348	496,407 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 7, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29897 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	436,033 dozen.
341/641	201,246 dozen.
347/348	496,407 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 7, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29897 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In exchange of notes, the Governments of the United States and Thailand agreed to amend the existing visa arrangement for textile products, produced or manufactured in Thailand and exported on and after January 1, 1998. The amended arrangement consolidates existing and new provisions of the export visa arrangement, including provisions for the Electronic Visa Information System (ELVIS). In addition to the ELVIS requirements, shipments will continue to be accompanied by an original visa stamped on the front of the original commercial invoice issued by the Government of Thailand. Goods which currently require an exempt certificate shall not require an ELVIS transmission, but will continue to require the exempt certificate.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing visa requirements for textile products produced or manufactured in Thailand and exported on and after January 1, 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 42 Fr 5994, published on February 1, 1977; and 57 FR 2713, published on January 23, 1992.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 16, 1992, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand for which the Government of Thailand has not issued an appropriate export visa or exempt certification.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Export Visa Arrangement, effected by exchange of notes between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1998, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, including part categories and merged categories (see Annex A), produced or manufactured in Thailand and exported on and after January 1, 1998 for which the Government of Thailand has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission or exempt certification fully described below. Should additional categories, part categories or merged categories become subject to import quota the entire category(s), part category(s) or merged category(s) shall be included in the coverage of this arrangement.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or its successor document. The original visa shall not be

stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Thailand is "TH"), and a six digit numeric serial number identifying the shipment; e.g., 8TH123456. Typewritten letters and numbers may be used in the visa seal instead of handwritten letters and numbers.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued, which could be the year after the actual date the merchandise leaves the country of exportation. However, the date of export and the year of the visa must agree. For example, if the date of export is 1997, the visa number must begin with "7TH," even though the date of issuance is 1998.

3. The original signature of the issuing official of the Royal Thai Government.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the bilateral agreement shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 434–210 DZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 359–H/659–H may be visaed as 359–H/659–H or if the shipment consists solely of Category 359–H merchandise, the shipment may be visaed as "Category 359–H," but not as "Category 659–H"). If, however, a merged quota category such as 625/626/627/628/629 has a quota sublimit on Category 625, then there must be a "Cat. 625" visa for the shipment if it includes Category 625.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Government of Thailand or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy of Thailand in Washington, DC., and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. Visa waivers will only be issued for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If a shipment from Thailand has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

ELVIS Requirements:

An ELVIS transmission as well as an export visa is required for each non-exempt entry subject to this directive.

A. Each ELVIS message will include the following information:

I. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Thailand is "TH"), and a six digit numeric serial number identifying the shipment; e.g., 8TH123456.

II. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued, which could be the year after the actual date the merchandise leaves the country of exportation. However, the date of export and the year of the visa number must agree. For example, if the date of export is 1997, the visa number must begin with "7TH," even though the date of issuance is 1998.

III. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents.

IV. The quantity of the shipment in the correct units of quantity.

V. The manufacturer ID number (MID). The MID shall begin with "TH," followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name. However, due to the absence of an official English language address conversion in Thailand, the Government of Thailand shall provide the most accurate MID number possible to the U.S. Customs Service. The U.S. Government understands and acknowledges that the MID number is highly sensitive and should be kept confidential for official use only. The MID number is not to be released to third parties without prior written consent by the Government of Thailand.

B. Entry of a shipment shall not be permitted:

I. if an ELVIS transmission has not been received for the shipment from Thailand;

II. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number
b. category, part category or merged category
c. quantity
d. unit of measure
e. date of issuance
f. manufacturer ID number

III. if the ELVIS transmission for the shipment does not match the information supplied by the importer or the Customs Broker acting as an agent on behalf of the importer, with regard to any of the following:

a. visa number
b. category, part category or merged category
c. unit of measure
d. manufacturer ID number

IV. if the quantity being entered is greater than the quantity transmitted.

V. if the visa number has previously been used, or canceled, except in the case of a split shipment or if any entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the country of origin is required before a shipment that has been denied entry for one of the circumstances mentioned in paragraph B.I–V will be released.

D. Visa waivers will only be considered for circumstances described in paragraph B.I, if the shipment qualifies as a one time special purpose shipment that is not part of an ongoing commercial enterprise or for legitimate classification disputes.

E. Shipments will not be released for forty-eight hours in the event of a system failure. If system failure exceeds forty-eight hours, for the remaining period of the system failure the U.S. Customs Service will release shipments on the basis of the paper visaed document.

If a shipment from Thailand has been allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, and if the Government of Thailand does not issue a visa or ELVIS transmission or request a visa waiver (if applicable), the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided or a new ELVIS tansmission is transmitted.

Exempt certification requirements:

A. The exempt certification system established in a directive dated January 26, 1977, as amended, which exempts handmade cottage industry products of handloomed fabric, and an agreed list of Thai traditional folklore products, shall be continued unchanged, except for the following:

1. The exemption for all items valued at U.S.$250 or less shall not be continued.

2. Handloomed fabrics produced in Thailand may be certified as exempt.

3. The exemption for handknotted/tufted carpets shall be clarified to be for "handmade carpets," (i.e., carpets in which the pile was inserted/knotted by hand in HTS numbers 5701.10.1600 (Category 465), 5701.10.4000 (Category 465), 5702.42.2020 (Category 665), 5702.49.1020 (Category 369); and 5703.20.1000 (Category 665)).

B. Textiles and textile articles provided for in the exempt certification system as exempt from the levels of restraint (quotas), and visa and ELVIS requirements if they are properly certified, prior to the shipment leaving Thailand.

Other Provisions:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or ELVIS transmission for entry and shall not be charged to agreement levels.

Any shipment which is not accompanied by a valid and correct visa with an ELVIS transmission or exempt certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States unless the Government of Thailand authorizes the entry and any charges to the agreement levels.

The actions taken concerning the Government of Thailand with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Annex A

Part Categories (Descriptions below are for general reference only.)

301–P	Chief weight cotton combed yarn, less than 85 percent cotton: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

Annex A—Continued

301–O	Chief weight cotton combed yarn, 85 percent or more cotton: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090.
359–H	Cotton headwear: only HTS numbers 6505.90.1540 and 6505.90.2060.
359–O	Other cotton apparel, not elsewhere specified: all HTS numbers except those in Category 359–H.
369–D	Cotton dish towels: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
369–S	Cotton shop towels: only HTS number 6307.10.2005.
369–O	Other cotton made-ups, not elsewhere specified: all HTS numbers except those in Category 369–D and Category 369–S.
604–A	Piled acrylic spun yarn: only HTS number 5509.32.0000.
604–O	Other staple fiber yarn, 85 percent or more synthetic: all HTS numbers except those in Category 604–A.
659–H	Man-made fiber headwear: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

Annex A—Continued

659–O	Other man-made fiber apparel, not elsewhere specified: all HTS numbers except those in Category 659–H.
669–P	Man-made fiber bags: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.
669–O	Other man-made fiber manufactures, NSPF: all HTS numbers except those in Category 669–P.

Merged Categories and Subcategories

317/326
331/631
334/634
335/635/835
336/636
338/339
341/641
342/642
347/348/847
351/651
359–H/659–H
613/614/615 (Subcategories 614 and 613/615)
625/626/627/628/629 (Subcategory 625)
638/639
645/646
647/648

[FR Doc. 97–29780 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Order To Change and To Supplement Delivery Specifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order to Chicago Board of Trade to change and to supplement delivery specifications.

SUMMARY: The Commodity Futures Trading Commission (Commission) is issuing an Order to the Board of Trade of the City of Chicago (CBT), under Section 5a(a)(10) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(10), to change and to supplement the delivery terms of the CBT corn and soybean futures contracts. The CBT submitted proposed changes to the delivery specifications of its corn and soybean futures contracts in response to a December 19, 1996, notification to the CBT by the Commission that the CBT corn and soybean futures contracts no longer accomplish the objectives of that section of the Act. The Commission in

its Order changes and supplements the CBT proposal for its soybean futures contract by making all changes to such CBT rules as required to effect the following: (i) retaining the Toledo, Ohio switching district as a delivery location; (ii) retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and (iii) making soybeans from the Toledo delivery location deliverable at contract price and from all other locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price.

The Commission changes and supplements the CBT proposal for its corn futures contracts by making corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. With respect to both the CBT corn and soybean futures contracts, the Commission also is ordering that the proposed CBT contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed be changed and supplemented and is ordering that the $40 million minimum net worth eligibility requirement for issuers of shipping certificates be eliminated. Finally, the Commission is disapproving the proposed terms for the March, July and December 1999 corn futures contracts and the January, July and November 1999 soybean futures contracts. Such contract months and any other 1999 contract months are hereby authorized to trade under the existing contract terms. The terms of the corn and soybean futures contracts proposed by the CBT as changed and supplemented herein will apply beginning with the January 2000 soybean futures contract and the March 2000 corn futures contract.

The Commission has determined that publication of the Order is in the public interest, will provide the public with notice of its action, and is consistent with the purposes of the Commodity Exchange Act.

DATES: This Order became effective on November 7, 1997.

ADDRESSES: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION: Section 5a(a)(10) of the Act provides that, as a condition of contract market designation, boards of trade are required to:

> Permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contact market within seventy-five days fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, on November 7, 1997, issued an Order under section 5a(a)(10) of the Act to change and to supplement the delivery specifications proposed by the CBT for its corn and soybean futures contracts. That proposal was submitted in response to prior Commission notification to the CBT that its futures contracts for corn and soybeans no longer were in compliance with the requirements of section 5a(a)(10) of the Act. The text of the Order is set forth below.

In the Matter of the Section 5a(a)(10) Notification to the Board of Trade of the City of Chicago Dated December 19, 1996, Regarding Delivery Point Specifications of the Corn and Soybean Futures Contracts

Dated: November 7, 1997.

Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago Submitted for Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans.

The Commodity Futures Trading Commission (CFTC or Commission) hereby orders changes and supplements to the Board of Trade of the City of Chicago (CBT) proposed rules relating to its futures contracts in corn and soybeans as shown in attachment 1 to this Order. Under this Order, the Commission takes the following actions:

(1) changes and supplements under section 5a(a)(10) of the Commodity Exchange Act (Act) the proposed delivery specifications of the CBT's soybean futures contract by making all changes to such rules as required to effect the following:

i. retaining the Toledo, Ohio switching district as a delivery location;

ii. retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and

iii. making soybeans from the Toledo delivery location deliverable at contract price and making soybeans from shipping locations within the St. Louis-East St. Louis-Alton and the northern Illinois River delivery locations deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(2) changes and supplements under section 5a(a)(10) of the Act the proposed delivery specifications of CBT's corn futures contract by making all changes to such rules as required to make corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(3) changes and supplements under section 5a(a)(10) of the Act the proposed CBT contingency plan for alternative delivery when river traffic is obstructed by reducing the continuous period of such an obstruction which triggers application of the plan's special procedures from the 45 days proposed to 15 days, by eliminating the condition which triggers the contingency plan that notice of the obstruction must have been given six-months prior to such an obstruction, by making the contingency plan applicable whenever a majority of shipping stations within the northern Illinois River delivery area is affected by an obstruction and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent;

(4) changes and supplements under sections 5a(a)(10) and 15 of the Act the proposed CBT corn and soybean futures contracts by eliminating the $40 million minimum net worth eligibility requirement for issuers of shipping certificates;

(5) disapproves under sections 5a(a)(10), 5a(a)(12), and 15 of the Act and Commission rule 1.41(b) CBT's proposed terms for the March, July, and December 1999 corn futures contracts and the January, July, and November 1999 soybean futures contracts. Such contract months and any other 1999 contract months are hereby authorized to trade under the existing contract terms or, if the CBT so elects, under the contract terms proposed by the CBT as changed and supplemented by this Order;

(6) orders that the terms of the corn and soybean futures contracts proposed by the CBT as changed and supplemented by this Order shall apply to contract months beginning with and subsequent to the January 2000 soybean futures contract month and the March 2000 corn futures contract month, whenever such contract months are listed for trading.

Nothing in this Order precludes the CBT from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts.

The Commission, as discussed below, bases these actions on its finding that the CBT proposal in response to the Commission's section 5a(a)(10) notification relating to the CBT's corn and soybean futures contracts does not meet the requirements, or accomplish the statutory objectives, of that section and also violates sections 8a(7) and 15 of the Act. The Commission's determination is based upon: (1) the inadequate amount of deliverable supplies of soybeans available under the proposed contract terms in the delivery area as proposed by the CBT; (2) the failure of the CBT's proposed corn and soybean contracts to include required locational differentials; (3) the failure of the CBT's proposed corn and soybean contracts to provide an adequate rule for alternative deliveries if river transportation is obstructed; and (4) the substantial impediment to eligibility for issuing corn and soybean shipping certificates imposed by the CBT's proposed $40 million net worth requirement.

Specifically, under the CBT proposal, the amount of deliverable supplies of soybeans during the critical summer delivery months of July, August, and September fails to meet the level that, in the opinion of the Commission, is necessary to tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of soybeans in interstate commerce. The gross amount of potentially deliverable supplies historically has failed to reach an adequate level on a significant number of occasions during the past 11 years which the Commission has examined. Moreover, on those occasions when the gross amount of potentially deliverable supplies did reach that level, it frequently did so only because of supplies available at the Chicago/Burns Harbor (Chicago) delivery point, the continuing decline of which precipitated the section 5a(a)(10) notification in the first instance. This inadequacy is further demonstrated when required downward adjustments are made to reflect only that portion of gross deliverable supplies which would likely be available for futures deliveries. Thus, gross deliverable supplies would be diminished by the effects of the proposed three-day barge queuing rule, prior commercial commitments of available stocks, the lack of locational price differentials, and the unjustifiably high financial eligibility requirements. The frequent interruptions in barge transportation on the northern Illinois River due to lock closings and weather conditions also create foreseeable disruptions to deliverable supplies under the CBT proposal. The inadequacy of deliverable supplies of soybeans under the CBT proposal requires the retention of the CBT's current delivery points at Toledo and St. Louis, where additional deliverable supplies would be available.

The Commission does not find that available deliverable supplies of corn under the CBT's proposal are so inadequate under section 5a(a)(10) as to require additional delivery points. However, changes and supplements to other aspects of the CBT's proposal as to its corn contracts are required to meet the objectives of section 5a(a)(10), as discussed below. Moreover, the adequacy of corn supplies cannot be accurately and fully ascertained until after there is a history of deliveries occurring under the CBT's proposal, as changed and supplemented by this Order. If in operation the proposal results in inadequate deliverable supplies of corn, the Commission will reconsider the need to require additional delivery points for the corn contract. To that end, the Commission directs the CBT to report on the experience with deliveries and expiration performance in the corn futures contract on an annual basis for a five-year period after contract expirations begin under the revised contract terms.

Neither the CBT proposal for soybeans nor its proposal for corn provides for locational price differentials among spatially separated delivery points, as section 5a(a)(10) of the Act requires. In addition to tending to reduce deliverable supplies, the lack of locational price differentials reflecting the differentials in the underlying cash markets for corn and soybeans would render the futures contracts susceptible to price manipulation, market congestion, and the abnormal movement of the commodities in interstate commerce.[1]

In addition, the proposed contingency plan providing for alternative delivery procedures when river traffic is obstructed does not meet the objectives of section 5a(a)(10). By requiring lengthy advance notice of a river traffic obstruction before the contingency plan applies, by limiting the contingency plan only to instances of river traffic obstructions south of the delivery area, by limiting the relevant river traffic obstructions to lock closures, by requiring unduly lengthy obstructions, and by specifying a differential that does not conform to the locational differentials found to be appropriate by the Commission, the CBT's proposed plan fails to diminish the potential for price manipulation, market congestion, or the abnormal movement of the commodities in interstate commerce arising from foreseeable river traffic obstructions.

Finally, in addition to its likely detrimental effect on the amount of available deliverable supplies on the contracts, the proposed $40 million net worth eligibility requirement for issuers of shipping certificates poses a significant, unnecessary, and unjustified barrier to entry to those wishing to participate as issuers of shipping certificates on the contracts in violation of section 15 of the Act. This proposed $40 million net worth requirement is in addition to other minimum financial requirements that shipping certificate issuers must meet, including minimum working capital of $2 million, a bond or other financial guarantee equal to the full market value of all outstanding shipping certificates, and a limitation on the value of outstanding certificates an issuer may issue to 25 percent of the issuer's net worth. These requirements are fully adequate to ensure the financial ability of issuers to perform their responsibilities under the contracts. The burden imposed by the

[1] The lack of locational price differentials not only violates section 5a(a)(10) of the Act, but also is contrary to Commission Guideline No. 1 and the Commission's policy on differentials. *See*, CFTC Guideline No. 1, 17 CFR part 5, appendix A; and Memorandum from Mark Powers, Chief Economist to the Commission, dated March 22, 1977, adopted by the Commission at its meeting of May 3, 1977 (Powers Memorandum).

additional $40 million net worth requirement on those otherwise eligible to participate in the contract as shipping certificate issuers would not only be unnecessary, but would act as a significant barrier to participation as an issuer and would create and tend to preserve a high level of concentration among issuers.

The Commission's conclusions, as discussed in greater detail below, are supported by factual analyses made by the CFTC staff and by a large number of well-informed written comments submitted to the Commission by commercial users of the corn and soybean futures contracts and by other interested persons both prior to and in response to the Commission's issuance of the proposed order. The Commission also analyzed the documentary evidence submitted by the CBT and other commenters in support of the CBT proposal. In addition, the CBT and other interested members of the public presented oral and written comments to the Commission during an open meeting of the Commission prior to its issuance of the proposed order. The CBT was also heard by the Commission at a public hearing convened subsequent to issuance of the proposed order. The written and oral comments of the CBT received in connection with that hearing, along with comments filed by the public on the proposed order and written exceptions filed by the CBT, were reviewed by the Commission and were considered by it in arriving at its conclusions and in adopting this final Order.

The CBT and a number of commenters raised objections to the Commission's proposed order. In response to some of these points, the Commission has made a number of changes from the order as proposed in adopting this Order as final. These changes include revisions to the calculation of some of the data in the Order. These revisions were made in response to suggestions and questions raised by the CBT at its hearing and in its various filings and in informal discussions with the CBT staff. They reflect corrections of calculations and of the formatting of certain data submitted to the Commission by the CBT. In addition, at the suggestion of the CBT in its oral and written statements filed at the hearing and in its written exceptions filed thereafter, the Commission has modified its estimate of September corn and soybean production.

The final Order clarifies two provisions in attachment 1 by deleting several references to "warehouse receipts" which appeared in attachment 1 to the proposed order because they are surplusage.

In addition, as explained in greater detail below, the Commission has determined to authorize for trading the 1999 contract months in the CBT's corn and soybean futures contracts under the current terms of those contracts, while disapproving the CBT's proposed terms for those contracts. In doing so, the Commission is responding to many commenters who requested that the Commission authorize the listing of these trading months in order to permit trading without delays or interruption. The Commission recognizes the urgent need to have certainty with respect to the terms of those contracts and the legality of their listing.

This action by the Commission permits the continuation of trading in the corn and soybean contracts under the current terms, which are familiar to the CBT, its members, and the agricultural users of these contracts, until contract months for the year 2000, which would be governed by the new terms of the contracts as contained in this Order. In the interim the CBT will continue to be free to propose revisions of the new terms to the Commission for its consideration under sections 5a(a)(10) and 5a(a)(12) or to submit a petition to the Commission to reconsider or to amend this Order. If the CBT believes that an alternative to the new terms and to its original proposal would better serve its business interests and would also meet the statutory requirements, the CBT should submit such a proposed rule revision or petition.

I. The Section 5a(a)(10) Proceeding

The Commission, by letter dated December 19, 1996, commenced this proceeding by issuing to the CBT a notification under section 5a(a)(10) of the Act finding that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of "permit[ting] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification). The section 5a(a)(10) notification detailed long-term trends in the storage, transportation and processing of corn and soybeans, related those trends to changes in cash market conditions at the CBT delivery locations, and analyzed the lack of consistency between the cash market for these commodities and the delivery provisions of the contracts. Id. at 68000–68004.

The section 5a(a)(10) notification also recounted the CBT's failure over the last 25 years adequately to address these structural problems with the contracts. As noted in the section 5a(a)(10) notification, section 5a(a)(10) was itself expressly added to the Act in 1974 after a number of apparent manipulations and problem liquidations involving the CBT grain contracts. *Id.* at 68005. In July 1989 an emergency action was required relating to CBT's soybean contract because of a commercial trader's holding of futures positions which substantially exceeded the total amount of soybeans that could be delivered at the contract's delivery points. By 1991 several major studies had been completed demonstrating the inadequacy of the CBT's delivery points. Nevertheless, the CBT's response to these problems was limited. *Id.* at 68006. As the Commission noted in the section 5a(a)(10) notification, when the Commission approved certain changes proposed by the CBT to address these problems in 1992, it cautioned that the CBT's response was merely a short-term palliative and urged the CBT actively to consider more significant contract changes. *Id.* at 68007.

Only three years later, three of the existing six Chicago warehouses regular for delivery under the futures contracts ceased operations, a symptom of the serious, fundamental problems with the contracts' delivery specifications. At the urging of the Commission, the CBT formed a special task force to address the delivery problems. That task force spent a year developing proposed changes to the contracts' specifications which were modified by the CBT's board of directors. The modified proposal was then defeated by a vote of the CBT membership on October 17, 1996.

Subsequently, after an additional Chicago delivery warehouse stopped accepting soybeans and corn in late October 1996, the Commission formally commenced this proceeding under section 5a(a)(10) of the Act on December 19, 1996. The section 5a(a)(10) notification found that the CBT corn and soybean futures contracts no longer met the requirements of that section of the Act and notified the CBT that it had until March 4, 1997, the statutory period of 75 days, to submit for Commission approval proposed amendments to the contracts' delivery specifications to bring them into compliance with the Act.

The CBT, on April 16, 1997, submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments.[2] Previously, the Commission had published the substance of the CBT's proposed amendments in the **Federal Register** for a 15-day comment period.[3] 62 FR 12156 (March 14, 1997). In response to requests for additional time to comment on the proposal, the Commission on April 24, 1997, extended the comment period until June 16, 1997. 62 FR 1992.[4]

The CBT requested the opportunity to appear before the Commission "to address issues that have been generated during the comment period."[5] The Commission granted the CBT's request (62 F.R. 29107 (May 29, 1997)), holding a public meeting on June 12, 1997, to accept oral and written statements by the CBT and interested members of the public. The participants represented a cross-section of views, both favoring and opposing the CBT proposal.[6]

On September 15, 1997, the Commission issued a proposed order, publishing its text in the **Federal Register** with a request for public comment.[7] 62 FR 49474 (September 22, 1997). It should be noted that problems under the current corn and soybean contracts have continued to the present. For example, the September 1997 soybean contract experienced significant price distortions during September apparently due in part to shortness of available deliverable supplies.

The comment period on the proposed order expired on October 22, 1997. Over 230 commenters submitted comments to the Commission on the proposed order.[8] In addition, the Commission held a public hearing on October 15, 1997, at which the CBT was afforded the opportunity mandated under section 5a(a)(10) of the Act to appear before the Commission and to be heard. In addition to its oral presentations, the CBT submitted written statements and documentary evidence. A transcript of the hearing and all attendant written statements and documents have been included in the public comment file of this proceeding.[9] The CBT was also provided with an opportunity to file exceptions to the proposed order by October 22, 1997, and the CBT did so.

II. The CBT Proposal Responding to the Section 5a(a)(10) Notification

In correspondence dated April 16, 1997, the CBT responded to the section 5a(a)(10) notification by submitting proposed amendments to the terms and conditions of its corn and soybean futures contracts for Commission review. The data submitted by the CBT to justify its proposal were inadequate to permit a determination of whether the proposal met the requirements of section 5a(a)(10) of the Act and contained certain flaws.[10] Therefore, the Commission was required independently to collect and to analyze the data necessary for a proper analysis of the CBT's proposal. The CBT supplemented its original submission on more than one occasion—most recently on August 25, 1997. It also modified and supplemented its analysis supporting its proposal during the meeting of June 12, 1997, during the hearing of October 15, 1997, and in its various written submissions and comments.

The CBT's proposal would replace the existing delivery system involving delivery of warehouse receipts representing stocks of grain stored at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[11] A shipping certificate

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[2] While the CBT labeled its submission of the proposed rule amendments as having been made pursuant to section 5a(a)(12) of the Act as well as section 5a(a)(10), the Commission is applying its authority and procedures set forth in section 5a(a)(10) with regard to its consideration of the CBT's submission.

Section 5a(a)(12) of the Act provides that "the Commission shall disapprove after appropriate notice and opportunity for hearing any such [exchange] rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission." In addition, section 8a(7) of the Act empowers the Commission to alter or to supplement exchange rules as necessary or appropriate "to insure fair dealing in commodities traded for future delivery on such contract market." Such changes or alterations may address contract terms or conditions, among other matters.

The Commission is exercising its authority under section 5a(a)(10) of the Act to change and to supplement the CBT proposal. Nevertheless, the Commission, for the reasons discussed in this Order, necessarily also finds that the CBT proposal must be disapproved under section 5a(a)(12) of the Act as being inconsistent with the requirements of sections 5a(a)(10), 8a(7) and 15 of the Act and must be altered and supplemented under section 8a(7) of the Act.

[3] On March 4, 1997, the CBT notified the Commission that its Board had authorized the submission of the proposed amendments to the CBT membership for a formal vote. On April 15, 1997, the CBT membership voted in favor of the proposed amendments, and the CBT formally submitted them for Commission review the next day.

[4] Also on April 24, 1997, the CBT informed the Commission by letter that it would the next day list, or relist, for trading the July and December 1999 corn futures contract months and the July and November 1999 soybean futures contract months. By letter dated May 2, 1997, the Commission notified the CBT that the listing or relisting of these contract months "is not legally authorized at the present time," that the Commission "reserves all of its authority under sections 5a(a)(10), 5a(a)(12) and 8a(7) of the Act to approve, disapprove, supplement, or modify the proposed delivery specifications of the CBT corn and soybeans futures contract and to apply that determination to the[se] . . . trading months," and that the CBT "must notify all market participants that the Commission has not approved the listing of these contract months."

[5] The Commission received almost 700 comments on the CBT's proposal, the largest number of comments ever received by the Commission on any issue before it. The vast majority of the comments were opposed to the CBT proposal for a variety of reasons. Many of the comments were well reasoned and contained valuable factual information and data which were important supplements to the information provided by the CBT in its submission.

[6] Written statements in connection with the meeting were submitted to the Commission for inclusion in the record and, along with a transcript of the meeting, have been entered into the Commission's comment file. Participants included a United States Senator, a United States Representative and a state government representative from the state of Ohio, (transcript at 69–75, 29–35, 19–26); a United States Representative and a state government representative from the state of Michigan, (transcript at 9–14, 14–19); representatives of six commercial users of the contracts (transcript at 116–168); and representatives of three producer associations (transcript at 169–183). The CBT presented its views through the statements of six persons (transcript at 27–29, 36–69).

[7] Subsequently, the Commission also published for public comment notice that it was proposing to disapprove application of the terms proposed by the CBT to the January 1999 soybean futures contract and the March 1999 corn futures contract. 62 FR 5108 (September 30, 1997). The CBT purportedly listed those futures contracts for trading after issuance of the September 15, 1997, proposed order. The comment period on that notice also ended on October 22, 1997.

[8] Comments were received by the Commission offering a wide range of opinion. Many took issue with the philosophy underlying the section 5a(a)(10) statutory authority which permits the Commission to order an exchange to change or to supplement contract terms that in its opinion do not accomplish the objectives of providing for delivery at such point or points and at such price differentials as will tend to prevent or to diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. Others took issue with the Commission's proposed order for not going far enough, particularly with respect to its failure to order the retention of Toledo and St. Louis as delivery points for the CBT corn contract. As discussed above, the Commission has considered carefully all of the comments submitted and has made several changes or modifications to the final Order in response to them.

[9] Testimony given by CBT spokespersons during the October 15, 1997, public hearing, as reflected in the hearing transcript, is cited hereinafter by using the abbreviation "tr." followed by the relevant page number(s). Citations to the CBT letter of exceptions dated October 22, 1997, use the abbreviation "October 22, 1997 exceptions" followed by the relevant page number(s).

[10] In this regard, the Act, Guideline No. 1, and Commission rule 1.41 provide that an exchange must demonstrate that its proposed rule amendments meet the requirements of the law. When exchange submissions fail to provide sufficient information to permit the Commission to make a determination, the Commission can refuse to consider a proposed amendment and can remit the proposed rule for further justification. *See*, 17 CFR 1.41(b). However, in this case the Commission chose to supplement the CBT submission with its own research and to act on the CBT proposal.

[11] A shipping certificate is a negotiable instrument that represents a commitment by the

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would provide for corn or soybeans to be loaded into a barge at one of the shipping stations located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. (See map below.) Delivery in Chicago would also be permitted by rail or vessel. Delivery at all eligible locations would be at par. The CBT's proposal would eliminate the current delivery points on its corn and soybean futures contracts at Toledo, Ohio, and St. Louis, Missouri.

In addition to having a shipping station located along the specified segment of the Illinois River capable of loading barges, firms eligible to issue shipping certificates would be required to meet a minimum net worth standard of $40 million. This minimum net worth standard is not applicable to the CBT's other agricultural futures contracts and would be in addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery under all of its futures contracts for agricultural products. The CBT proposal also would require the issuer to have a letter of credit or other guaranteed credit instrument collateralizing the full market value of the issued certificates and would establish limits on the amount of outstanding shipping certificates issued by an issuer. These limitations would be: (a) for northern Illinois River locations, 30 times the registered daily barge loading rate of each shipping station; (b) a value no greater than 25% of the issuer's net worth; and (c) for Chicago locations only, the registered storage capacity of the facility.

In addition, the proposal would impose requirements regarding an issuer's rate of loading barges.[12] Once a shipping certificate was surrendered to the issuer, the issuer would have to begin loading product within three business days of surrender and receipt of loading orders or one business day after placement of the certificate holder's barge, whichever were later. This loading would be required to take precedence over all other barge loadings for eight hours per day at the issuer's loading facility.

Shipping certificate holders would be required to pay shipping certificate issuers a daily premium charge until the certificate were surrendered.[13] The last trading day for expiring corn and soybean futures months would be the business day preceding the 15th calendar day of the delivery month, with all deliveries of shipping certificates required to be completed by the second business day following the last trading day. (Currently, the last trading day is the eighth-to-last business day of the delivery month, with futures delivery of warehouse receipts continuing through the end of the month.)

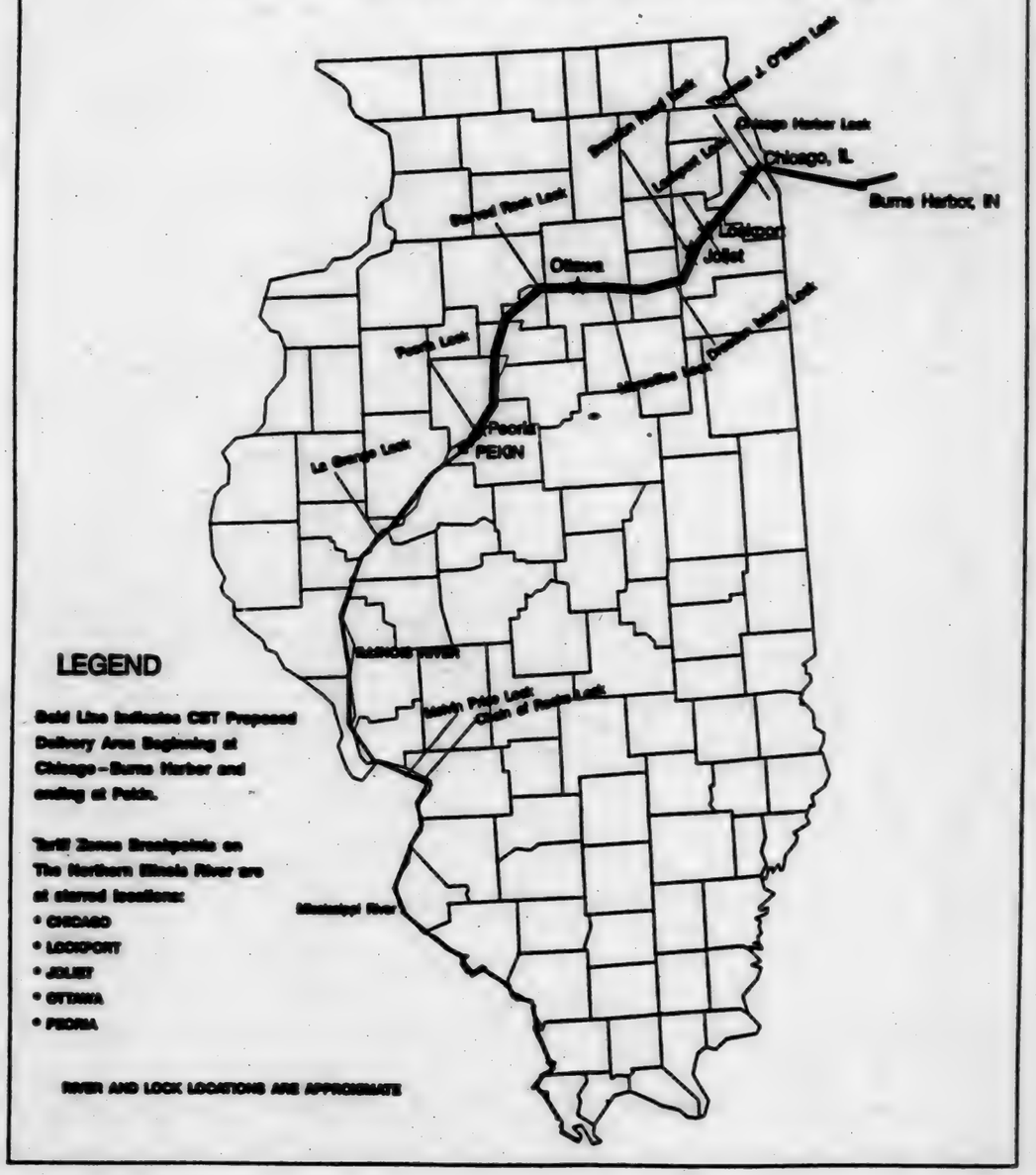
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issuer to deliver (e.g., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer. Unlike an issuer of a corn or soybean warehouse receipt, which must have the product in storage to back the receipt, an issuer of a shipping certificate would be able to honor its delivery obligation not only from inventories, but also from anticipated receipts or purchases of corn or soybeans after the holder surrenders the certificate.

[12] The issuer's registered daily rate of loading would be not less than (a) for northern Illinois River locations, one barge per day per shipping station and (b) for Chicago locations, three barges per day per shipping station.

[13] This charge would be 12/100 of one cent per bushel for Chicago and 10/100 of one cent per bushel for issuers along the northern Illinois River.

PROPOSED NORTHERN ILLINOIS RIVER DELIVERY AREA



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III. Deliverable Supplies of Soybeans Are Inadequate Under Section 5a(a)(10)

A. The Standard for Measuring Adequacy of Deliverable Supplies

Pursuant to section 5a(a)(10), the Commission must assess whether the CBT proposal meets the standard set by that section to "permit the delivery * * * at such point or points and at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce."

One criterion for whether a delivery proposal meets the standards of section 5a(a)(10) is whether the available deliverable supplies of the commodity at the delivery points specified are adequate to tend to prevent or to diminish price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce. As discussed below, other aspects of a proposed futures contract may violate section 5a(a)(10) by tending to cause the prohibited results, but adequate deliverable supplies are a sine qua non for any contract under section 5a(a)(10).

The Commission believes that, to meet the statutory requirement of tending to prevent or to diminish price manipulation, market congestion, or the abnormal movement of a commodity in interstate commerce, a futures contract should have a deliverable supply that, for all delivery months on the contract, is sufficiently large and available to market participants that futures deliveries, or the credible threat thereof, can assure an appropriate convergence of cash and futures prices. To prevent unwarranted distortion of futures prices in relation to the cash market, the futures contract's delivery terms must reflect a product—in quality, form, location, mode of transportation, etc.—that is readily saleable in the cash market.

Commission Guideline No. 1 (17 CFR part 5, appendix A) provides some guidance with respect to the adequacy of the delivery terms of a futures contract. Guideline No. 1 requires that exchanges provide justification concerning significant contract terms—particularly delivery provisions—for new or amended futures contracts. This justification should provide evidence that the proposed contract terms and conditions are in conformity with practices in the underlying cash market, that those terms and conditions will provide for deliverable supplies that will not be conducive to price manipulation or distortion, and that such supplies reasonably can be expected to be available to the short trader and saleable by the long trader at their market value in normal cash market channels.[14]

Judging the adequacy of deliverable supply in the context of a section 5a(a)(10) proceeding is more important than and significantly different from determining adequacy in the routine review of applications for new contract market designations. This section 5a(a)(10) proceeding involves contracts that are known to have very large and well-established markets, a history of large trader positions, and a decades-long history of surveillance problems. Indeed, the Commission has already made an affirmative finding that the delivery provisions of the current contracts do not meet the standards of section 5a(a)(10) of the Act, and the Commission must decide whether the CBT's proposal goes far enough to cure that failure.

To determine an appropriate standard for measuring the adequacy of deliverable supplies under the CBT proposal, the Commission has examined separately for corn and soybeans the relationship between the level of deliverable stocks and the presence of a price premium for the expiring futures month over the next futures month (a price inverse). The presence of such a premium is an indication of tight deliverable supplies, potentially creating a price distortion. In situations where limited supplies lead to such a price inverse, futures contracts are significantly vulnerable to price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce under the terms of section 5a(a)(10), particularly when traders hold large positions.[15]

For soybeans, the Commission's staff analysis demonstrated a positive relationship between price inverses and deliverable supplies of less than 12 million bushels (2,400 contracts). Price inversions occurred in 12 of the 17 expirations of the CBT's soybean futures contracts when deliverable supplies were less than 12 million bushels or 2,400 contracts. Furthermore, such inversions occurred in 10 of the 11 such expirations when a trader's position exceeded 600 contracts, a relatively common occurrence in the soybean futures market. In contrast, when deliverable supplies exceeded 2,400 contracts, regardless of the size of large traders' positions, there was only a single instance of price inversion. The 2,400-contract level of deliverable supplies constitutes four times the speculative position limit for the contract, a benchmark historically used by the Commission's staff in analyzing the adequacy of deliverable supplies for new contracts.

The analysis for the corn market found a comparable relationship between price inverses and deliverable supplies at the level of 15 million bushels or 3,000 contracts. Price inverses occurred in seven of the ten corn expirations when deliverable supplies were less than 3,000 contracts.[16] This analysis supports using as a measure of an inadequate level of deliverable supplies under section 5a(a)(10) a level below 2,400 contracts for soybeans and a level below 3,000 contracts for corn.

However, the history of these contracts demonstrates that a higher level of deliverable supplies may, in fact, be necessary to protect against price manipulation. Therefore, the Commission also has decided to consider an additional measure based on historic experience with manipulation and price distortion in these contracts. During the July 1989 soybean futures contract expiration, the Commission exercised its surveillance powers to force the reduction of the long futures position of the Ferruzzi group of companies, and the CBT declared a market emergency and ordered the phased reduction of all positions above a specified size. Both the Commission and the CBT believed that the position of the Ferruzzi group posed a significant threat of manipulation and acted on that belief.[17] Just prior to the CBT emergency action, Ferruzzi's long position in the July 1989 soybean future was about 20 million bushels or 4,000 contracts. To avoid a repetition of such a situation, deliverable supplies of at least 4,000 contracts would be necessary.

In its analysis of the adequacy of the deliverable supplies under the CBT proposal, the Commission has considered both of these measures, as well as other relevant information.

B. The CBT Submission Does Not Demonstrate That Its Proposal Meets the Statutory Standard of Adequate Deliverable Supplies

The CBT has failed to provide data that demonstrates the adequacy of available deliverable supplies under its proposal. It supports its proposal by general statements about production and transactions in the cash markets in the vicinity of the delivery area, contending, for example, that its proposed delivery area

> * * * is located along more than 150 miles of the northern Illinois River, which is one of the world's largest and most active cash grain markets, handling over 500 million bushels of corn and soybeans per year. It substantially increases the supply of grain eligible for delivery on our futures contracts over the current delivery system, thereby minimizing the potential for price distortions and manipulation.

CBT July 1, 1997, submission, p. 2–2.

Data concerning total corn and soybean production and handling in the areas near the delivery points are not an adequate measure of deliverable supplies under the proposed contracts in light of the CBT proposal's heavy reliance on barge delivery along the northern Illinois River, which involves product primarily destined for the export market. Most production and handling of corn and soybeans in the vicinity of the proposed delivery points historically have involved product destined for the domestic market, and only a portion of that product has traditionally been loaded on barges as required in the CBT proposal. Therefore, the proper measure of available supplies must be based on historical barge shipment data. Such data are the best measure of that portion of the stocks in the vicinity of the northern Illinois River delivery points which is realistically available for delivery onto barges on the river as required by the CBT proposal.[18]

To rely on additional supplies destined for domestic processing and other uses would be to assume that the futures contract would divert those supplies to the export market which barge delivery largely constitutes, thus causing an abnormal movement in interstate commerce forbidden by section 5a(a)(10). The CBT has suggested that an appropriate measure of deliverable supplies is the amount of commodity that would be made available for futures deliveries in response to price increases on the futures markets resulting from manipulation attempts and other causes—its "elasticity of supply" argument. CBT October 22, 1997 exceptions at p. 19. However, diversions of a commodity from its normal movement and uses in the cash market in response to rising prices on futures markets which are not reflective of price increases in the cash market are precisely the prohibited effects which section 5a(a)(10) seeks to prevent.

The CBT also argued that deliverable supplies are adequate based on the delivery capacity of firms along the river. The CBT states that there are seven firms with a cumulative daily barge loading capacity of 5.5 million bushels of grain and a 30-day loading capacity of 171.8 million bushels of grain.[19] (CBT April 16, 1997, submission, attachment 4.) However, the CBT's reliance on the loading capacity of firms in the delivery area as an indicator of adequacy of deliverable supplies is misplaced. As the unused delivery capacity in Chicago clearly demonstrates, delivery capacity bears little relation to the amount of deliverable supplies actually available at a particular location. The CBT's loading capacity measure, which is based on its proposed maximum limits on the shipping station's ability to issue shipping certificates (30 times a station's 8-hour loading capacity), far exceeds the highest observed level of actual combined monthly corn and soybean barge shipments at the delivery points during the 11-year period studied, 1986 through 1996.

Moreover, the CBT overstated the loading capacity related to the contracts by including the capacity of three firms that would not meet the CBT's proposed $40 million minimum net worth requirement to qualify as shipping certificate issuers under the contracts. In doing so, the CBT also significantly understated the level of concentration of the proposed delivery system and ignored the exclusionary effect of its $40 million net worth requirement.

The CBT, in its initial submission, also provided inflated data on barge shipments. These data significantly overstated the amount of barge shipments by including shipments from part of the Illinois River outside of the CBT's proposed delivery area of the contracts. The CBT's data also included barge shipments by all shippers, including three shippers not meeting the eligibility requirements to be issuers of certificates under the contracts, and thus overstated the deliverable supplies available in that respect as well.

C. The CBT Proposal Fails to Provide Adequate Deliverable Supplies For Soybeans

1. Methodology

The Commission staff compiled an extensive amount of data from which the Commission could estimate deliverable supplies. These data were assembled from information supplied by the United States Department of Agriculture (USDA), the U.S. Army Corps of Engineers, the Coast Guard, grain merchants, and the CBT.

The CBT proposal provides for delivery from Chicago by rail, vessel, and barge and along the northern Illinois River by barge. The contracts are

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[14] This Commission standard addresses concerns over manipulation from both the long and short side. Availability of adequate deliverable supplies tends to prevent price manipulation by the longs on a futures contract by ensuring that the shorts on the futures contract can obtain the commodity to make delivery on the futures contract without artificial constraints at a price reflecting fundamental demand and supply conditions in the cash market. The ready saleability in the cash market of the commodity received through delivery on the futures contract by contract longs tends to prevent price manipulation by the shorts on the futures contract. The Commission has considered both short-side and long-side manipulations in making its determinations in this Order.

The CBT has attempted to justify its proposal by arguing that restricting available deliverable supplies through contract delivery terms is an appropriate method of reducing the likelihood of short-side price manipulation. The Commission disagrees with this argument. Such restrictions in supplies render a contract highly vulnerable to price manipulation by the longs and are unnecessary if the contract is designed so as to permit the saleability of the commodity received by the takers of delivery at the normal cash market price.

[15] Of course, price inverses in futures contracts can occur as a normal result of short supplies in the cash market and can thus accurately reflect the cash market. However, when the available deliverable supplies under a futures contract have been so limited by the contract terms as to create such a shortage artificially, then the resultant susceptibility to price manipulation and price distortion are exactly the results forbidden by section 5a(a)(10). The CBT proposal's contract terms would cause such a limitation in available deliverable supplies, as discussed below.

[16] In all seven expirations the largest long position exceeded 600 contracts.

[17] Although this incident involved soybean futures, it was recognized to have broader implications for the CBT's grain contracts and led to a reappraisal of the adequacy of the CBT's delivery terms for its wheat, corn, and soybean futures contracts and to revisions of all three contracts.

[18] At the October 15, 1997 hearing (tr. at pp. 34–35) and in its October 22, 1997 exceptions at pp. 29–30, the CBT introduced new arguments relating to corn and soybean stocks based upon data provided to the CBT by the Commission. Those data consisted of a survey of data for one year estimating September stocks within the vicinity of the northern Illinois River and extrapolations from that data for additional years. The Commission placed little weight on these data not only because they rely upon only one year's actual observation, but more importantly because they provide no guidance in determining the proportion of such stocks which form part of the proposed contracts' deliverable supplies.

The CBT argued that *all* stocks of soybeans within twenty-five miles (or more) of the northern Illinois River should be included in deliverable supplies. However, only that relatively small portion of the stocks available for barge shipment is properly considered as available for delivery under the terms of the contract proposed by the CBT. Stocks destined for other uses, such as the larger domestic processing market, cannot be considered to be available.

[19] According to the CBT, the firms and their percentage share of loading capacity are: Archer Daniels Midland Co., 41 percent; Continental Grain Company, 23 percent; Cargill, Inc., 12 percent; Consolidated Grain and Barge, ten percent; Sours Grain Company, six percent; American Milling Company, six percent; and Garvey International, two percent. (CBT April 16, 1997, submission, attachment 14.)

essentially designed to reflect the export market price for corn and soybeans, since the vast majority of corn and soybeans loaded on vessels and barges at Chicago and on barges along the northern Illinois River is destined for export markets. While Chicago rail shipments play some role in the domestic market, that role has diminished so as to be very small.

The potentially available gross deliverable stocks along the northern Illinois River delivery area for each delivery month were estimated by summing barge shipments from the CBT's proposed delivery points on the northern Illinois River for that month and all subsequent months of the same crop year to and including September, which was assumed to be the end of the crop year.[20] Since the amount shipped during a given month and in each succeeding month of the crop year must have been in transit or in storage in some location near the river at the beginning of the month, this summing procedure provides an estimate of the gross corn and soybean supplies potentially available for delivery from the proposed delivery points during each delivery month.[21]

Because these stocks reflect the quantity of soybeans and corn actually shipped via the northern Illinois River, they represent a reasonable and accurate historical estimate reflecting the quantity of these commodities that was potentially available to the proposed northern Illinois River delivery points at prevailing cash market supply and demand conditions. While other supplies of corn and soybeans are in the vicinity, they historically moved to other demand centers rather than moving into the flow of product via barge shipment down the northern Illinois River primarily destined for the export market. If the CBT contracts under the proposed delivery terms were to draw these supplies from their usual destinations in the domestic market to futures deliveries, an abnormal movement in interstate commerce would occur. Therefore, such other supplies should not be considered in determining the adequacy of potentially available deliverable supplies.

For Chicago, potentially available gross deliverable supplies were estimated as the sum of stocks available at the beginning of each delivery month plus receipts of corn or soybeans during that month. Receipts were included because shipping certificates do not require the commodity to be in store at the delivery point. Thus, Chicago warehouse operators potentially could issue shipping certificates against stocks in store at the beginning of a delivery month and against actual and/or anticipated receipts of corn or soybeans as well.

These estimates of potentially available gross deliverable supplies were adjusted to reflect the effect of the CBT's proposed minimum net worth requirement on the number of firms that would be eligible to make delivery and, for Chicago, the proposed limits on the number of shipping certificates that could be issued by those firms. The CBT proposal restricts eligibility of issuers of shipping certificates to firms meeting a $40 million minimum net worth requirement. This eligibility requirement would eliminate barge shipments made by ineligible firms among those firms which currently operate loading facilities along the northern Illinois River delivery area and likely would reduce deliverable supplies originating from the proposed northern Illinois River delivery area by an average of about five percent. However, it is possible that some portion of the supplies that normally are shipped by the firms not meeting that eligibility requirement—although certainly not all those supplies—would become available for futures delivery by diversion of the supplies to the four eligible firms. Accordingly, the Commission calculated two separate estimates of potentially available gross deliverable supplies: one excluding shipments by firms not eligible to issue shipping certificates under the CBT's proposal and the second including such ineligible firms' shipments.

Another adjustment was made to reflect current capacity restraints. Because of the recent closure of four of the six elevators in Chicago, prior years' data for Chicago were adjusted to reflect current maximum capacity levels in that area.[22]

Through this analysis, the Commission arrived at potentially available gross deliverable supplies, as discussed below. As is also described in more detail below, those gross amounts do not constitute a basis for determining whether deliverable supplies under the CBT proposal are adequate to meet the requirements of section 5a(a)(10). Instead, those amounts are only the beginning point for an analysis of deliverable supplies and must be reduced because of various additional factors limiting the available deliverable supplies, as discussed below.

2. Potentially Available Gross Deliverable Soybean Supplies

Delivery months under the CBT proposed soybean futures contract include July, August, and September, *inter alia*. These months are at the end of the crop year and therefore historically reflect the lowest available supplies. As shown in the following charts for soybean supplies attributable to the four firms which would be eligible to issue shipping certificates, potentially available gross deliverable supplies under the CBT proposal for July, August, and September do not meet an adequate level considered by the Commission to be required by section 5a(a)(10) of the Act. Specifically, for July, the gross deliverable supplies of soybeans were less than the 2,400-contract level in three of the 11 years covered by the analysis, while the 4,000-contract level was not reached in eight of the 11 years. For August, gross deliverable soybean supplies fell below 2,400 contracts in four years, and the 4,000-contract level was not reached in any of the 11 years. Gross deliverable supplies in September were less than the 2,400-contract level in seven of the 11 years and did not reach the 4,000-contract level on any occasion.[23] As demonstrated in the following charts, Chicago supplies played a critically important role in almost all instances in which the 2,400-contract level was reached or exceeded.

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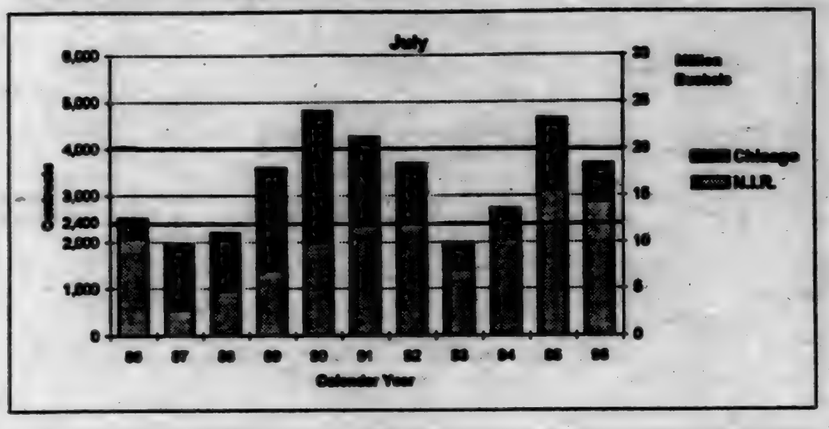
[20] Corn and soybeans are both harvested beginning in mid-September or October, the start of a new crop year. All deliveries of corn and soybeans throughout the year subsequent to harvest are made from stored supplies. These supplies are consumed over time, reaching their lowest level during the summer, until the next harvest replenishes the supply.

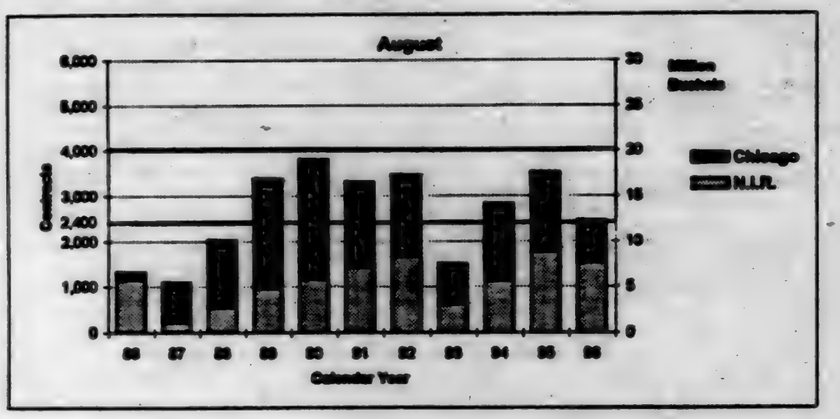
[21] The amount of barge shipments for September was reduced by 50% prior to its inclusion in the sum for earlier old crop months. This 50% reduction is an amount suggested by trade sources to reflect the likelihood that September barge shipments consisted, in part, of new crop supplies which were not available for shipment during the old crop year. The full amount of September shipments was included, however, in determining September supplies. This calculation has been adjusted in response to the CBT's suggestions. Generally, September new crop production occurs late in the month.

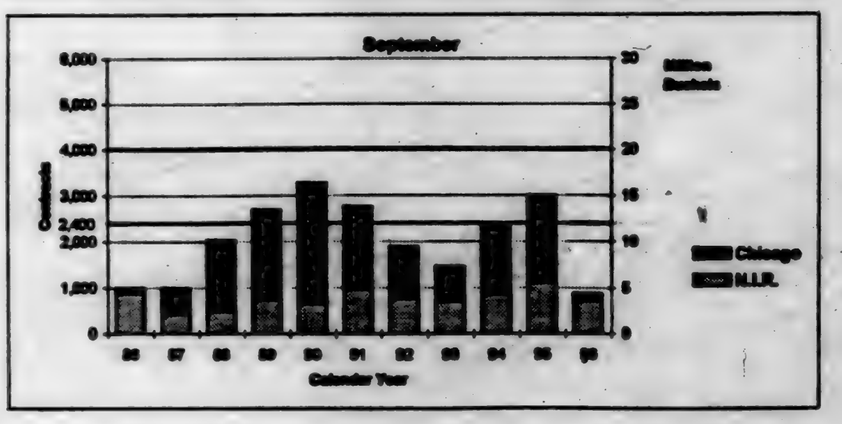
[22] The procedure to determine the amount of this adjustment was to sum the observed stocks and receipts of corn and soybeans in Chicago plus stocks of wheat. Whenever such a sum would have exceeded current total registered storage capacity, the estimated supplies of corn and soybeans were reduced proportionately by share of stocks. The result clearly overstates potential gross deliverable supplies of corn and soybeans in Chicago because it assumes that the facilities eligible for delivery of such commodities would be operating at full capacity, while Chicago facilities have historically operated at a fraction of capacity and continue to do so, as shown on a chart below. The numbers in the final Order are adjusted from those in the proposed order to reflect corrections in computation and in the CBT data on stocks of grain and soybeans in Chicago.

[23] As shown in the charts for shipments by all firms, including those firms that would be ineligible to issue certificates under the CBT proposal, the proposal improved marginally in that gross deliverable supplies for all firms were less than 2,400 contracts in six rather than seven years for September.

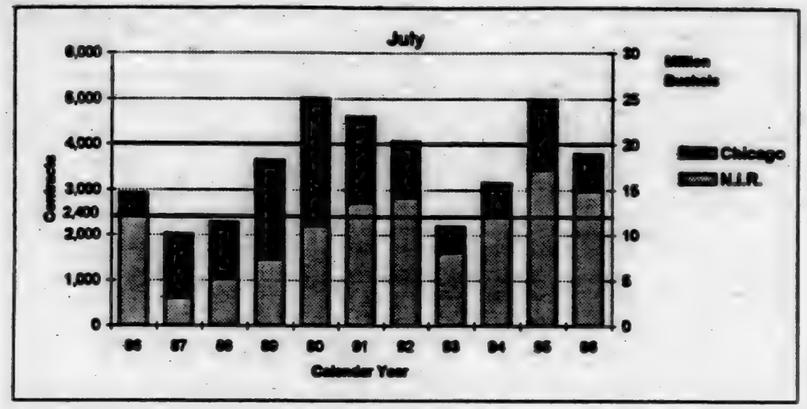
Soybeans -- Gross Deliverable Supplies for July, August and September for the Eligible Four Firms

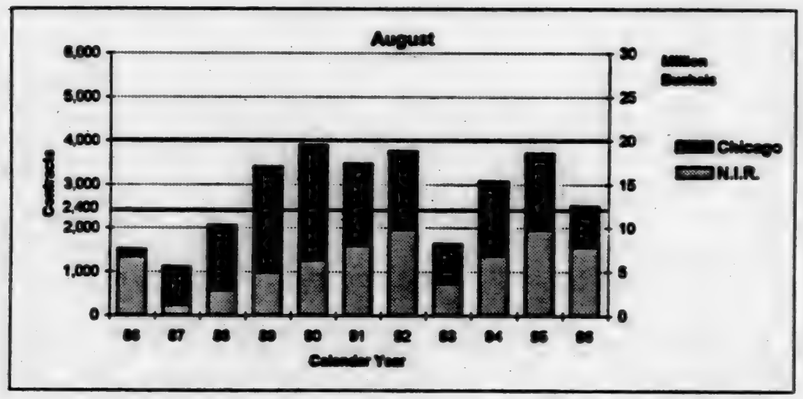


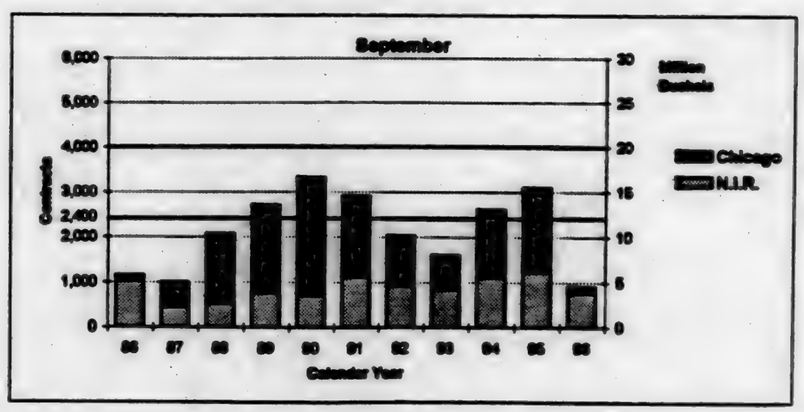




Soybeans -- Gross Deliverable Supplies for July, August and September for All Firms







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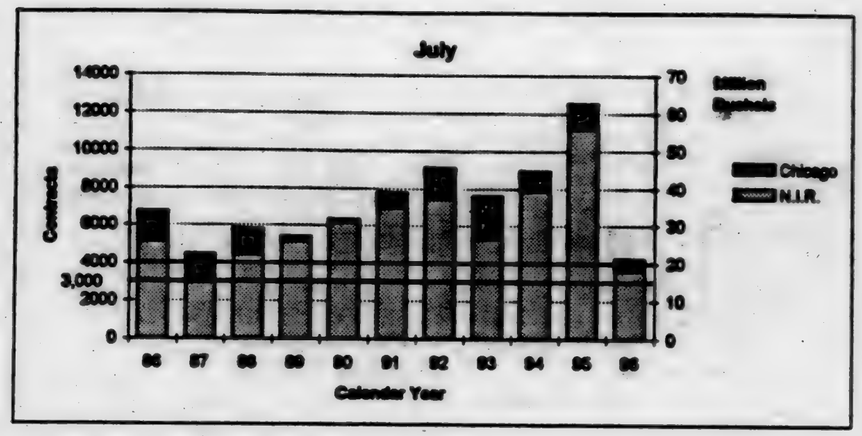
3. Potentially Available Gross Deliverable Corn Supplies

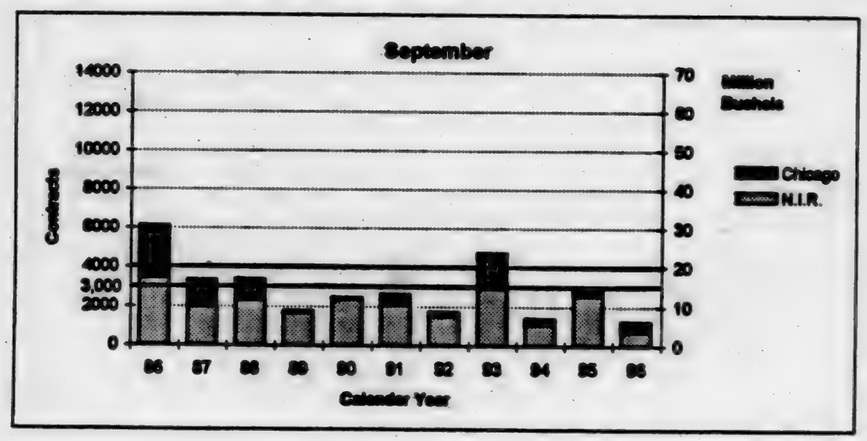
The CBT's proposed corn contract would include the contract months of July and September, *inter alia*.[24] In the case of corn, the potentially available estimated gross deliverable supplies for July attributable to the four eligible firms reached or exceeded the 3,000 and 4,000 contract levels in all years. However, gross deliverable supplies of corn for the four eligible firms in September fell below the 3,000-contract level in seven of the 11 years analyzed and were less than 4,000 contracts in nine years. The gross deliverable supply estimates for all existing firms differed only slightly from the results for the four eligible firms.

[24] Unlike the soybean futures contract, there is no August contract month listed for corn.

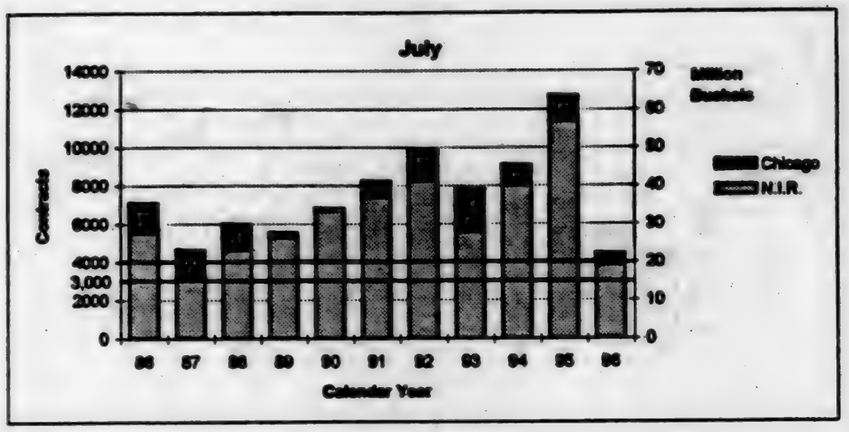
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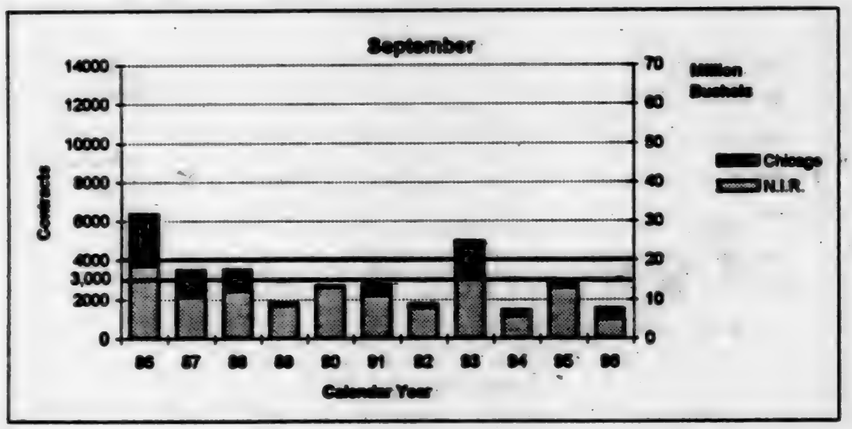
Corn -- Gross Deliverable Supplies for July and September for the Eligible Four Firms





Corn – Gross Deliverable Supplies for July and September for All Firms





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4. September New Crop Production

Neither corn nor soybeans reached adequate levels of potentially available gross deliverable supplies for September. However, because September is a transition month between the old crop and the new crop, deliverable supplies estimates based upon barge shipments data for September may understate September potentially available gross deliverable supplies. The harvest of the new crops of corn and soybeans generally begins sometime in mid to late September, and thus, new crop production may be available for delivery on the September contracts. Accordingly, the Commission also calculated estimates of new crop production of corn and soybeans that may have become available during the month of September. Those estimates, however, are less reliable than the barge shipment data discussed above.

The following table shows estimated September new crop production within 25 miles (trucking distance) of the proposed delivery points for corn and soybeans derived from U.S. Department of Agriculture data submitted to the Commission by the CBT.[25] Some portion of this new crop production might have been available for delivery during September. However, the Commission has already assumed that half of the September northern Illinois River shipment data shown above constitutes new crop supplies, based on discussions with trade sources. Furthermore, a substantial portion of the new crop production historically has been destined for uses other than barge shipments, such as domestic processing.

A significant amount of corn was produced during September and possibly might augment to some extent the potentially available gross deliverable supplies discussed above. September soybean production has generally been considerably smaller than September corn production. Moreover, September soybean production does not overcome the inadequate potentially available gross deliverable supplies of soybeans in July and August.

The likelihood of price manipulation in September may be somewhat less than in July or August because it is a transitional month between old and new crop years. The end of the crop year generally is a period of low supplies and relatively high prices. However, the harvest of the new crop replenishes supplies and frequently leads to lower prices. Significant new crop supplies usually become available in areas tributary to the northern Illinois River by mid October. The incentive to manipulate prices of the September futures contracts by attempting to corner the remaining old crop supplies might be reduced by the potential losses that a manipulator might incur in reselling the shipping certificates or product obtained through September deliveries at lower prices after the arrival of new crop supplies.

Nonetheless, it should be noted that a significant price distortion was experienced in connection with the expiration of the September 1997 soybean futures contract. Under the CBT proposal, the use of shipping certificates rather than warehouse receipts to effect delivery might permit expanded deliveries of new crop production under the September contract. Rather than requiring movement of new crop supplies into a warehouse at a terminal market before delivery, as is necessary under current warehouse receipt delivery, the CBT proposal would allow the issuance of shipping certificates for locations closer to the production area and for up to 30 days of loading capacity and thus would give issuers more opportunity to deliver some new crop production. Issuers might issue some shipping certificates on the basis that new crop supplies which were not immediately in hand might be available by the time loading was required under the shipping certificates.

The Commission considers the low level of potentially available gross deliverable supplies of corn, which is limited to September, to be of less regulatory concern than the low levels of such supplies of soybeans which extend throughout the three summer months. The shortage of corn supplies is apparently of brief duration, and the expectation of abundant supplies of new crop production of corn by October reduces the likelihood that the corn shortage in September would lead to the prohibited effects under section 5a(a)(10).

ESTIMATED CORN AND SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS DURING SEPTEMBER

[5,000-Bushel Contract Units]

Crop year	Estimated September production*	
	Corn	Soybeans
1986	15,218	3,109
1987	26,784	6,056
1988	12,955	5,749
1989	10,169	6,143

ESTIMATED CORN AND SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS DURING SEPTEMBER—Continued

[5,000-Bushel Contract Units]

Crop year	Estimated September production*	
	Corn	Soybeans
1990	9,305	2,491
1991	41,663	8,729
1992	2,884	3,536
1993	6,513	1,670
1994	13,299	10,417
1995	12,359	5,646
1996	5,271	1,013

* The estimated production by September 30 of each year was calculated by multiplying U.S. Department of Agriculture harvesting progress estimates for the Illinois and Indiana crop reporting districts adjacent to the revised delivery points by U.S. Department of Agriculture production data for counties located within about 25 miles of the proposed delivery points.

5. The CBT's Objections on Gross Deliverable Supplies

At the October 15, 1997 hearing and in its October 22, 1997 letter of exceptions, the CBT raised various objections to the Commission's evaluation of potentially available gross deliverable supplies of soybeans. In doing so, the CBT failed to recognize that the estimate of such supplies is merely the starting point for the Commission's analysis of available deliverable supplies, which can be arrived at only after taking into consideration various factors reducing the availability of supplies, as is discussed below. Furthermore, the CBT focused solely on the 2,400 contract measure for soybeans and virtually ignores the other important measure of 4,000 contracts.

The CBT objected to the Commission's consideration of 1987 and 1993 river shipment data because floods and lock closings occurred during those years. For example, the CBT objected that the gross deliverable supplies for 1993 obtained from barge shipment data should be augmented because in that year the upper Midwest experienced severe floods. CBT October 22, 1997 exceptions at p. 38, tr. at pp. 22–28. The CBT argued that the Commission should assume that the CBT would have responded by declaring a market emergency and requiring use of alternate delivery areas with additional deliverable supplies. However, U.S. Army Corps of Engineer data show that barge shipments continued to move down the Illinois River throughout this period despite the flooding and the area

[25] The table has been modified to reflect corrections to the CBT-supplied data noted by the CBT at the October 15, 1997, hearing.

from which the CBT argued it would have required deliveries may have experienced even greater flooding than the regular delivery area. Whether the CBT would have taken any action under such circumstances and, if so, what action it would have taken are in the realm of pure speculation. Similarly, the CBT argued that the deliverable supplies for 1987 should be augmented because certain locks were closed, which arguably would have triggered the CBT's contingency plan.[26] While the CBT's argument does underscore the need for an effective contingency plan because of foreseeable periods of river traffic obstruction, it does not justify ignoring historical data concerning gross deliverable supplies.

The CBT also sought to bolster the potentially available gross deliverable supplies for the August and September soybean futures contracts by relying on new crop production. *See*, tr. at pp. 17–22 and October 22, 1997 exceptions at pp. 29–30. As noted above, the Commission has considered the availability of some new crop production for the September futures contract. Although the ability to issue shipping certificates would give issuers some flexibility to effect deliveries from potential new crop production during September, new crop production would not realistically be available for delivery on the August futures contract, and the CBT has grossly overstated the amount of new crop production available for delivery on the September futures contract.

It is not realistic to assume that issuers would issue certificates representing their full 30-day capacity and would choose to load out at least one barge per day over a six-week period. Shipments on the northern Illinois River in the August-September period have never approached such a large volume during the eleven years studied. Shipments from any one shipping station on the northern Illinois River at a rate as high as one barge per day per month have been observed only once in July and once in September and only three times in August during the entire eleven year period analyzed. Moreover, shipments from a shipping station at a daily rate of one barge for one month would have exceeded by five times the monthly average number of barges of soybeans shipped from individual shipping stations during July, August, and September over that period.

Furthermore, it is extremely unlikely that an issuer would undertake the risk involved in the CBT's hypothetical scenario. An issuer would have to have a very large amount of old crop supplies available to deliver until significant supplies from the harvest became available, and the timing of the harvest is extremely variable and difficult to predict.

6. Necessary Reductions From Gross Deliverable Supplies

Additional factors must be considered which necessarily reduce the above estimates of potentially available gross deliverable supplies. These factors include: (a) the CBT proposal's reliance on Chicago as a source of deliverable supplies; (b) the CBT's proposed three-day barge queuing and priority load-out requirements; and (c) prior commercial commitments of available supplies.

In addition, further reductions must be made from gross deliverable supplies resulting from the CBT proposal's lack of locational price differentials and foreseeable disruptions in barge transportation on the Illinois River. As discussed above, the CBT's proposed $40 million minimum net worth requirement for issuers of shipping certificates also reduces gross deliverable supplies. These additional factors are analyzed separately in later sections of this Order.

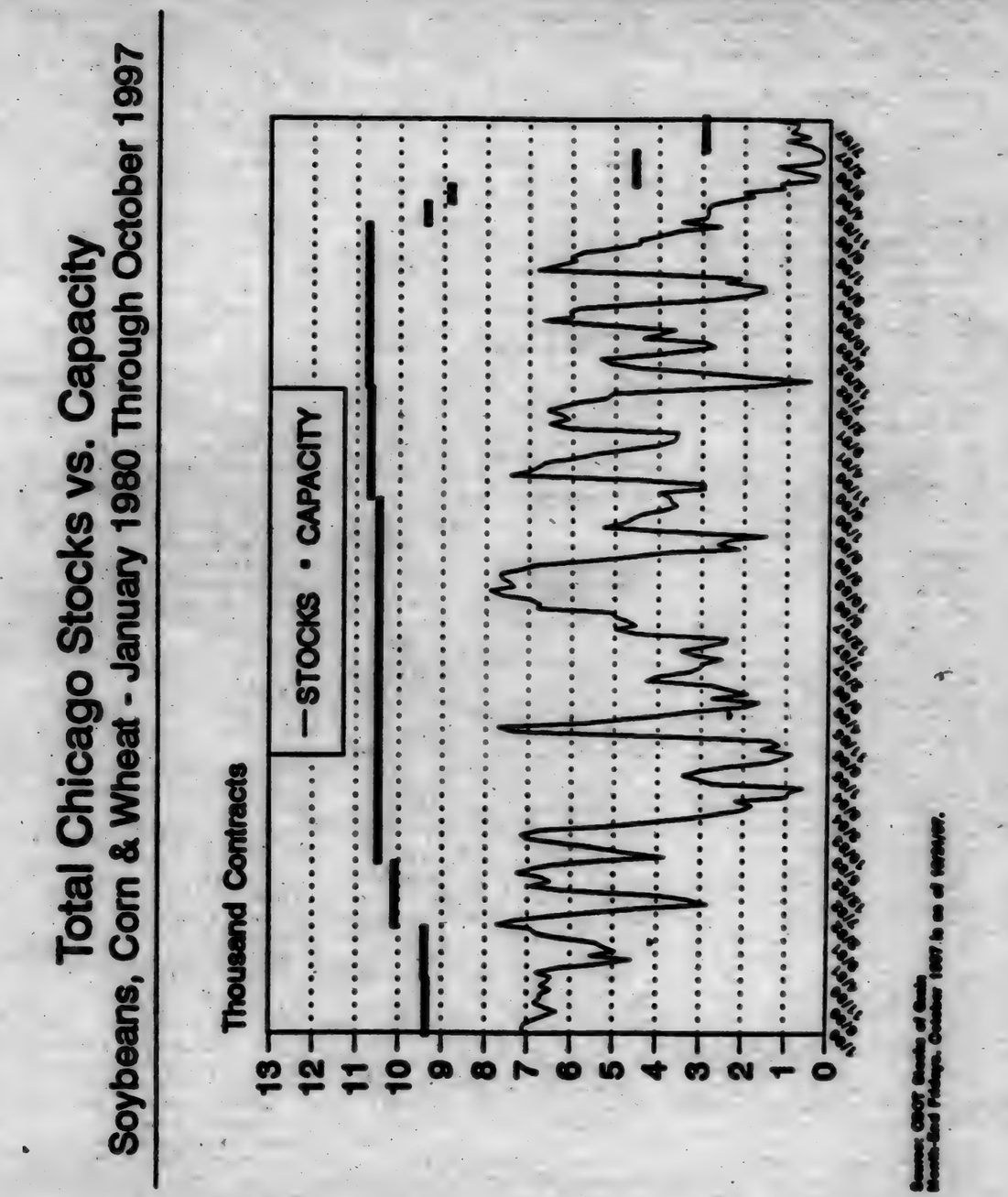
a. Reliance on Chicago. To the extent that potentially available gross deliverable supplies of soybeans in some years have been at or above the 2,400 and 4,000 contract levels, they have generally depended on Chicago supplies to do so. For July, under the CBT proposal gross deliverable supplies of soybeans originating solely from the northern Illinois River delivery area reached or exceeded the 2,400-contract level in only three of the 11 years. In August and September, under the CBT proposal gross deliverable supplies of soybeans originating from the northern Illinois River alone did not exceed the 2,400-contract level on any occasion. The 4,000-contract level was not exceeded by northern Illinois River gross deliverable supplies of soybeans under the CBT proposal in any year in the July, August, or September delivery months. Thus, to the very limited extent that potentially available gross deliverable supplies in the past would have reached an adequate level before consideration of necessary reductions, they would have done so because of supplies in Chicago.

Cash market activity in Chicago is likely to continue its historical decline. While the estimation procedure for gross deliverable supplies used in this analysis tried to correct for the precipitous decline of the cash market in Chicago by using 100 percent of the current capacity as a constraint on past supplies, that method certainly overstates the actual deliverable supplies that may originate from Chicago in the future. Chicago elevators for many years have held stocks well below their maximum capacity levels, particularly in the critical summer months. The following chart demonstrates that significant underutilization of the remaining capacity in Chicago is continuing despite the dramatic contraction in available capacity and is highly likely to continue to do so in the future. Indeed, stocks in Chicago in the recent past have been at less than half of capacity. Thus, Chicago supplies will most likely be reduced significantly in the future and would not be available in significant quantities under the CBT proposal.[27]

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[26] In addition to being speculative, the CBT's approach improperly over-counts gross deliverable supplies during this period. The CBT apparently uses as a base amount the deliverable supplies shown by the Commission's analysis for those months and then adds to that base an additional amount based on shipments for those same months from areas eligible for delivery under the proposed contingency rule. However, the contingency plan would be triggered only during such period as shipment on the northern Illinois River was obstructed. Hence, even if the Commission were to accept the CBT's assumptions, the shipments shown in the Commission's analysis should not be included in the CBT's calculation.

[27] Moreover, there is no reason to believe, as the CBT argued in its October 22, 1997 exceptions at p. 30, that any significant amount, much less 20%, of the soybeans that previously flowed to Chicago would be redirected to flow down the northern Illinois River on barges to the Gulf. There has not been a notable increase in barge shipments from the shipping stations on the northern Illinois River closest to Chicago during the recent closures of elevators in Chicago, demonstrating that such a redirection has probably not occurred and is not likely in the future.



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b. The Three-Day Barge Queuing and Priority Load-Out Requirements. The CBT proposal includes a provision requiring a shipping certificate issuer to begin loading onto the certificate holder's barges within three business days after it receives loading instructions and the holder's barges are at the delivery facility ready to load. Most significantly, the issuer would be required to give preference to shipping certificate holders relative to any other customer and proprietary business for eight hours of load-out capacity per day. This requirement is contrary to the current contracts' delivery terms and to cash market practice, where customers are generally accommodated on a first-come, first-served basis. Concerns have been expressed by some commenters that, by requiring issuers to cease loading corn and soybeans in barges for their cash market business in order to meet the requirements of the shipping certificates and by requiring that only limited advance notice would have to be given to issuers, the CBT proposal would discourage potential issuers from issuing shipping certificates for futures delivery.

The CBT, on the other hand, has argued that the impact of the proposed preferential load-out requirement for futures deliveries on an issuer's willingness to issue shipping certificates would be limited because the rules would require the issuer to load out only eight hours per day, leaving the remaining 16 hours of each day to load other barges. CBT's position assumes, without providing supporting data, that issuers would be able and willing to obtain labor for a 24-hour day, to procure additional transportation and supplies quickly, and to move the supplies to the waiting barges efficiently.

While the effect of the proposed loading requirements on the willingness of issuers to issue shipping certificates for futures delivery is difficult to measure in advance, it represents a significant departure from cash market practice and most likely would reduce the amount of gross deliverable supplies.

c. Prior Commercial Commitments of Stocks for Shipment. An additional factor which would reduce the above estimates of gross deliverable supplies is prior commitment of stocks for shipment. Determining deliverable supplies on the basis of shipment information does not make necessary deductions for that amount of the shipments which would be unavailable for futures delivery because they were otherwise committed and because no substitution was possible at an equivalent market price. While a number of commenters indicated that much of the corn and soybeans shipped on the northern Illinois River is not irrevocably committed at the time of the shipment's origination, the ability of firms economically to obtain supplies to meet existing commitments for shipment from alternative sources would certainly be limited at times. This situation would be more likely to occur in those periods when supplies are limited, such as during the critical summer months of July, August, and September. The commitment of supplies of corn and soybeans under forward contracts or other marketing arrangements would at times make them unavailable to the futures delivery process until futures prices were significantly distorted relative to cash prices, a result that section 5a(a)(10) is intended to prevent. Thus, it is likely that the actual available deliverable supplies for the futures contracts would be significantly less than indicated by the above gross estimates.

7. Conclusion

In summary, the proposed delivery provisions of the soybean contract clearly fail to meet the statutory requirement for adequate levels of deliverable supplies throughout the summer months of July, August, and September even before the above reductions (plus those discussed below) have been made, and the additional adjustments required by such factors would further reduce the available deliverable supplies. For these reasons, price distortions and manipulation, market congestion, and abnormal movements of soybeans in interstate commerce would be likely to occur. Additional delivery points to increase the available deliverable supplies of soybeans, as well as other adjustments to the CBT's proposal discussed below, are necessary to achieve the objectives of section 5a(a)(10).

As to the CBT proposal for corn, gross deliverable supplies throughout the year appear to be adequate except for September. Gross deliverable supplies for September as estimated by the Commission may be further supplemented to some extent by new crop production in September, and the September corn contract would be somewhat less likely to be subject to manipulation than other months with similar low levels because of the expectation of abundant supplies of new crop production in the immediate future. The Commission's action in changing and supplementing the CBT's proposed corn contract to add locational differentials, to eliminate the $40 million minimum net worth eligibility requirement, and to broaden the contingency plan for river disruptions, discussed below, will have the effect of alleviating some limitations on deliverable supplies of corn under CBT's proposal. In light of those changes and supplements, the Commission does not find that the available deliverable supplies of corn under the revised CBT proposal are so inadequate under section 5a(a)(10) that additional delivery points are necessary. Actual trading experience will reveal whether the level of deliverable supplies meets the requirements of section 5a(a)(10). Accordingly, the Commission directs the CBT to report on the actual delivery and contract expiration experience on an annual basis for the first five years after contract expirations begin under the revised contract terms.

IV. The Lack of Locational Price Differentials Violates Section 5a(a)(10)

Section 5a(a)(10) requires that, where more than one delivery point or commodity grade is specified, a futures contract must specify quality and locational price differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. Guideline No. 1 and the Commission's policy on price differentials are based on section 5a(a)(10) requirements. As discussed above, Guideline No. 1 requires that futures contract terms and conditions provide for deliverable supplies that will not be conducive to price manipulation or distortion and that such supplies reasonably can be expected to be available to the short trader and saleable by the long trader at their market value in normal cash market channels. 17 CFR Part 5, Appendix A(a)(2)(i). In addition, the Commission's policy on price differentials requires that, where cash market locational or quality differentials are stable, the futures contract should reflect "normal commercial price differences as represented by cash price differences * * *" Powers Memorandum, *supra* note 1, at p.15. When cash market price differences are unstable or where the product flow in the cash market is not relevant to the futures delivery points, the Commission's policy requires that differentials must be set at levels which fall within the range of values that are commonly observed.

The CBT's failure to specify locational price differentials violates section 5a(a)(10) as well as the requirements of Guideline No. 1 and the Commission's policy on locational price differentials. The cash market on the northern Illinois River clearly reflects a unidirectional flow of corn and soybeans and exhibits significant locational price differences at the proposed delivery points which have a stable relationship with one another. The failure of the CBT proposal to provide for locational price differentials reflecting the cash market not only would reduce available deliverable supplies on the contracts, but would result in price distortions and susceptibility to price manipulation, market congestion, and the abnormal movement of corn and soybeans.

Although the CBT describes its delivery system as a simple single delivery area, in fact it is a multiple delivery point system without differentials. This multiple delivery point system is comprised of spatially-separated points along the northern Illinois River, which are affected by a unidirectional demand from the Gulf market across five different barge freight zones, including Chicago. Chicago may also be affected, at times, by a number of competing cash market demand pulls.

The value of corn and soybeans loaded into barges generally is greater at barge-loading facilities located down river relative to the value of grain loaded in barges at upriver locations, including Chicago. As indicated above, the CBT proposal essentially would price corn and soybeans when they are loaded on barges along the northern Illinois River destined for the export market centered in New Orleans. The futures contracts would be priced FOB barge at the loading facilities.[28] Currently, the cash market for such products prices them at the CIF New Orleans price, which is uniform and widely known.[29] The cost of barge freight to New Orleans included in that price varies based on established barge freight costs that are higher at Chicago and lower as one descends the northern Illinois River and thus is closer to New Orleans. Those freight rates are transparent and widely reported publicly. While they vary to some extent, they are expressed as a varying percentage of the fixed amounts found in the Waterways Freight Bureau Tariff No. 7. By backing out the freight amounts from the CIF price, one can calculate the differences in the value of the commodities FOB various Illinois River points.

During the critical summer months the price differential based on the freight rate between Chicago (the most northerly Illinois River delivery point) and Pekin (the most southerly Illinois River delivery point) has ranged in recent years between 4.1 and 5.3 cents per bushel of corn and between 4.4 and 5.7 cents per bushel of soybeans. These differences are very significant and are sufficient to distort prices, to limit deliverable supplies, and to divert supplies from one delivery point to another.[30]

Where as here, futures contracts provide for multiple delivery points and significant normal commercial price differences exist in the cash market between those locations, section 5a(a)(10) requires that the terms of the futures contracts include locational price differentials. The failure to set locational price differentials reflecting normal cash market price differences has the economic effect of excluding the disadvantaged delivery point from being used for delivery. Such an exclusion may result in abnormal movement of the commodity away from the disadvantaged delivery point and to the advantaged delivery point. In order for a disadvantaged delivery point to function, the futures price has to increase above the commodity's underlying cash market value at the disadvantaged delivery point to overcome this built-in penalty. This opens the door to price distortion and price manipulation in the amount of the "differential penalty." Alternatively, market congestion at the advantaged delivery point may result. These are precisely the types of market abuse that section 5a(a)(10) sought to avoid by requiring exchanges to "permit delivery * * * at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." For these reasons, the Commission finds that the lack of locational price differentials violates section 5a(a)(10).

The CBT argued that section 5a(a)(10) is not violated by its proposal's lack of differentials because "locational differentials for corn and soybeans at par fall well within the expected values of cash market differentials between the delivery points." CBT June 16, 1997 submission, at 40. However, this is not the appropriate standard because the relative value of these commodities among the northern Illinois River delivery points is constant, quite transparent and based on established barge freight differences, as discussed above. Furthermore, even if it were the appropriate standard, we find that a lack of price differentials is not commonly observed in the cash market, for the reasons discussed above.

The CBT's argument erroneously relies on bid prices to farmers at various delivery points rather than prices FOB barge, the prices that the CBT's proposed contracts are designed to reflect. The CBT also relies on information that suggests that the cash market value of corn and soybeans loaded onto vessels and rail cars at Chicago may at times equal or exceed the value of corn or soybeans loaded onto barges at locations on the northern Illinois River delivery area. However, with the precipitous decline in the available deliverable supplies in Chicago, such occasional variances from the prices loaded on barges at Chicago and along the northern Illinois River play a small role in the cash market and should not be a significant factor in setting locational differentials under the CBT's proposal. The prices for barges loaded on the northern Illinois River at Chicago and at delivery points south of Chicago reflect the differences in freight costs on which the Commission bases it price differentials for those delivery points.

V. The Failure Adequately To Address Foreseeable Interruptions to Deliveries Violates Section 5a(a)(10)

An additional concern regarding the operation of the CBT proposal applicable to both the corn and soybean contracts is its reliance chiefly upon a single mode of transportation to effect delivery—Illinois River barge transportation. A large number of commenters questioned the reliability of barge transportation on the Illinois River from the standpoint of assuring that takers of futures delivery would be able to receive and to transport their grain promptly in the event of a disruption of barge transportation on the river due to weather or lock maintenance.

[28] The acronym FOB, free on board, means that, under the terms of the sale of a commodity, the price agreed between the buyer and seller includes the cost of loading the product into transportation equipment (barge, rail car, vessel, etc.) at a designated location.

[29] CIF New Orleans means that, under the terms of the sale, the price agreed upon between the buyer and the seller includes the freight and insurance to transport the products to New Orleans and to deliver them there. This market, which calls for the products to be shipped at the cost of the seller to export points in New Orleans, is very liquid, with corn and soybeans being actively traded throughout the year.

[30] The CBT implicitly recognized these cash market value relationships and the importance of barge-freight differences in valuing the commodities in its proposed contingency plan to allow deliveries at alternative delivery locations during transportation disruptions on the Illinois River. As described below, that proposal provides that deliveries at alternative locations must be priced CIF New Orleans with the delivery taker reimbursing the issuer for the cost of freight to New Orleans from the original delivery location.

There has been a history of repeated, significant interruptions in transportation along the northern Illinois River. In three of the last 13 years, one or more of the locks on this portion of the river have been closed for repair by the U.S. Army Corps of Engineers for 60 or more consecutive days during the critical summer months, with the result that no barge traffic could pass through that point on the river on its way south to New Orleans.[31] In addition, traffic on the Illinois River is frequently impacted by weather conditions, including wind, high water during the spring and summer, and icing during the winter. The Coast Guard, an agency of the U.S. Department of Transportation, is responsible for maintaining safe passage along the nation's waterways and, when conditions warrant, issues compulsory safety zones restricting transportation on certain segments of the river. Between January 1991 and June 1997 the Coast Guard issued compulsory safety zones on segments of the northern Illinois River on 21 separate occasions. The delivery area on the northern Illinois River was affected by such a safety zone for substantial portions of the river south of the delivery area from early June through the middle of August in 1993.[32]

The CBT proposal's heavy reliance on barge delivery would disadvantage delivery takers during those periods when barge traffic is negatively impacted by weather conditions or lock maintenance and repair. Prolonged obstruction of transportation on the river would increase the susceptibility of the futures contract to manipulation by issuers, who could issue large numbers of certificates during periods when those taking delivery would be unable to transport and to sell the product at an economic value in relation to the CIF New Orleans market.

The Commission is of the view that it is not an appropriate use of exchange emergency authority to address such foreseeable disruptions to the operation of contract terms.[33] In response to repeated requests by the Commission staff, the CBT, by submission dated August 22, 1997, sought to cure this defect in its proposal by proposing a plan to be followed in the case of transportation disruptions. This proposed contingency plan provides that, in the event that either the Peoria or LaGrange lock on the Illinois River (the two most southerly locks without an auxiliary lock allowing river movement) is scheduled, with six-months prior notice, to be closed for a period of 45 days or more, then the delivery maker and taker may mutually agree to alternative terms or, failing such agreement, the deliverer is obligated to provide loaded barges to the taker at a point between the lowest closed lock and St. Louis or on the mid-Mississippi River between St. Louis and Dubuque, inclusive. The loaded barges would be valued CIF New Orleans, with the delivery taker responsible for paying to the delivery maker the transportation cost between the original shipping station and New Orleans. The reimbursement in transportation cost would be computed based upon 100 percent of the Waterways Freight Bureau Tariff No. 7 barge freight rate.

This proposal falls short of achieving its apparent objective of addressing the susceptibility of the corn and soybean futures contracts to price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce resulting from disruptions to river traffic. First, the proposed rule only addresses sustained blockages due to lock closures south of the delivery area. However, similar problems could be caused by closure of one or a number of locks within the delivery area sufficient to disrupt traffic at a majority of shipping stations. Repairs are often made to more than one lock at a time, having the potential to increase the impact of the disruption within the delivery area from such projects. Thus, although the same foreseeable situation rendering the contracts vulnerable to price manipulation and market congestion exists when the disruption is within the delivery area as when it is south of the delivery area, the contingency plan fails to address that situation. Furthermore, obstructions and disruptions to river traffic other than lock closures—such as those caused by flooding—are foreseeable, would render the proposed contracts vulnerable to price manipulation and market congestion and should be addressed in the contingency plan.

Secondly, when a sustained river traffic obstruction of less than 45 days is announced, vulnerability to price manipulation and market congestion is foreseeable. This is also true when there has been less than the six-month advance notice which the CBT has proposed as a condition for triggering the contingency procedures. This vulnerability arises from the ability of shipping certificate issuers under the CBT proposal to issue certificates representing up to 30 days of their capacity. Thus, an announced river traffic obstruction of between 30 and 45 days, for example, would enable eligible issuers to deliver into the market the maximum number of shipping certificates permitted, secure in the knowledge that the holders of those certificates could not accept delivery of the corn or soybeans while the river was obstructed and that, once the obstruction to river movement was ended, the issuer could only be required to deliver on the certificates over an entire-month period.

In this connection, it should be noted that closures for lock repairs generally are scheduled for the summer months, the time when deliverable supplies are lowest and futures contracts are most susceptible to manipulation. (Indeed, a prolonged closure extending to the arrival of the new crop could allow futures deliverers to depress the price of an old crop futures month to levels reflecting new crop values at a time when the broader cash market was reflecting the usual old crop/new crop price differences based on supply and demand conditions.)

In addition, the proposal to value alternate delivery locations using 100 percent of the Waterways Freight Bureau Tariff No. 7 rate is inconsistent with the locational price differential found to be applicable by the

[31] Specifically, in 1984 the Lockport and Brandon Road locks were closed for 60 days in July, August, and September; in 1987 the Peoria lock was closed for 60 days in July, August, and September; and in 1995 the Lockport, Brandon Road, Dresden Island, and Marseilles locks each were closed for between 64 days and 77 days in July, August, and September. The CBT, in its October 22, 1997 exceptions at p. 30, agrees that these disruptions have in the past (in 1987, for example) been severe and prolonged enough to curtail the ability to take delivery within the northern Illinois River delivery area. *See also*, tr. at 22–24.

[32] In addition to weather actions taken by the Coast Guard, the U.S. Army Corps of Engineers, which has operational control over river locks, may close a lock when it determines that icing conditions so require.

[33] The CBT proposed a separate rule, regulation 1081.01(12)(G)(8), to address possible disruptions to shipping traffic within the delivery area. That proposed rule provides that, if it becomes impossible to load at a designated shipping station "because of an Act of God, fire, * * * an act of government, labor difficulties, or unavoidable mechanical breakdown, the shipper will arrange for water conveyance to be loaded at another regular shipping station * * *" and will compensate the taker for resulting transportation costs, if any. It further provides, however, that if the impossibility of delivery exists at a majority of shipping stations within the delivery area, then delivery may be delayed. Although this proposed rule addresses conditions impeding delivery at one or some locations within the delivery area, it does not offer an acceptable solution to the contingency that all or most deliveries may be rendered impossible due to disruptions of river traffic south of the delivery area or at points affecting a majority of shipping stations within the delivery area. Because of the increased likelihood of price manipulation and market congestion arising from delayed delivery in such circumstances, a different and more effective contingency plan is required under section 5a(a)(10).

Commission, as discussed below. The application of different differentials to the contracts, depending upon whether deliveries were subject to the contingency rule or to normal delivery procedures, could also contribute to price manipulation, market congestion, or the abnormal movement of commodities in interstate commerce.[34]

VI. The Minimum Net Worth Eligibility Requirement for Issuers Violates Section 15

In addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery under all its agricultural futures contracts, the CBT has proposed to require that firms eligible to issue shipping certificates under its soybean and corn contracts must also meet a minimum net worth standard of $40 million. As discussed above, this requirement has the effect of reducing the amount of deliverable supplies by making ineligible for delivery certain existing loading facilities in the delivery areas owned by otherwise eligible firms. In addition, the requirement constitutes a barrier to entry of firms wishing to establish facilities and to become eligible to issue shipping certificates. The Commission has analyzed this requirement under the provisions of section 15 of the Act and finds that it constitutes an unjustifiable barrier to entry and leads to undue market concentration when considered in the context of the other requirements issuing firms must meet.

Section 15 of the Act requires the Commission, when considering exchange rule proposals or amendments, to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act.[35] Therefore, the CBT proposal's possible anticompetitive effects must be evaluated against its potential effectiveness in achieving the policies and purposes of the Act.

All existing futures contracts that provide for delivery using shipping certificate delivery specify certain financial requirements for certificate issuers. Consistent with this approach, the CBT proposal requires that issuers of certificates have through-loading facilities on the northern Illinois River, obtain an irrevocable letter of credit in an amount equal to the value of their delivery commitments, and maintain a minimum of two million dollars in working capital. These requirements are comparable to those imposed on shipping certificate issuers in other futures markets, including the CBT's own soybean meal, diammonium phosphate and anhydrous ammonia futures contracts, the New York Cotton Exchange's frozen concentrated orange juice futures contract and the Minneapolis Grain Exchange's white wheat futures contract. Moreover, issuers of a shipping certificate under the CBT proposal would also be limited to issuing certificates of a value no greater than 25 percent of the issuer's net worth. However, in addition to all these requirements, the CBT's proposed corn and soybean contracts would require shipping certificate issuers to have a minimum net worth of $40 million, a requirement that is not imposed in any other futures contract involving shipping certificates.

The effect of the proposed $40 million minimum net worth requirement would be to limit issuance of shipping certificates to four large grain firms among the seven firms with shipping stations along the northern Illinois River delivery area. At least three firms which currently operate shipping stations on the designated segment of the northern Illinois River and have participated in the cash market by loading barges of corn and soybeans would be excluded from issuing shipping certificates for delivery on the CBT's proposed futures contracts. The Commission does not believe that the CBT has presented a reasonable justification for this requirement.

Although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it is adequately achieved through the working capital and letter of credit requirements, as it has been for all other shipping certificate contracts, and through the limit on the value of certificates issued to 25 percent of an issuer's net worth. Forty million dollars is a high level of net worth that excludes three of the seven existing firms with loading facilities along the northern Illinois River and would act as a barrier to new entrants. The resulting extremely high level of concentration of the market restricted to four issuers is demonstrated by the fact that the Herfindahl-Hirschman Index (HHI) for the proposed market would be approximately 3,300.[36] This increase in concentration as compared with the current delivery system—530 points in the HHI—would likely create or enhance market power or facilitate its exercise in an already highly concentrated market.

The CBT has failed to demonstrate a need for this particular requirement. Accordingly, the Commission finds that the $40 million minimum net worth requirement would be an unjustified barrier to entry into a highly concentrated market and its approval by the Commission would be contrary to section 15 of the Act.[37]

VII. Proposed Changes and Supplements to Comply With Sections 5a(a)(10) and 15

Under the provisions of section 5a(a)(10) of the Act, the Commission, having found that the response of the CBT to the notification relating to its corn and soybean futures contracts does not accomplish the statutory objectives of that section and "after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *." The Commission has determined that the following changes and supplements to the CBT's proposal are necessary to achieve the objectives of section 5a(a)(10) and compliance with section 15 of the Act.

The Commission has determined that deliverable supplies of soybeans under the CBT's proposal should be increased through the retention of those delivery points under the CBT's current contracts which the CBT has proposed to eliminate and that appropriate locational differentials should be

[34] Even if such differing differentials would not have such adverse results, it would be nonetheless "necessary or appropriate * * * to insure fair dealing * * *" in such futures contracts to apply the same differential in both instances under section 8a(7) of the Act.

[35] *British American Commodity Options Corp. v. Bagley*, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,336 (S.D.N.Y. 1976) *aff'd in part and rev'd in part on other grounds*, 552 F. 2d. 282 (2d. Cir. 1977), *cert. denied*, 98 S. Ct. 427 (1977).

[36] The HHI is calculated by summing the squares of the individual market share of each of a market's participants. The 3,300 figure is obtained using rated delivery capacity of the four firms currently meeting the proposed capital requirements to measure market share. Those firms and their respective market shares are Archer Daniels Midland Co. (49 percent), Continental Grain Company (22 percent), Cargill, Incorporated (19 percent), and Consolidated Grain and Barge (10 percent). Adding in the three firms (American Milling Company, Gervey International, and Soure Grain Company) which, absent the proposal's $40 million net worth requirement, also would be eligible to issue delivery certificates in the proposed markets would lower the HHI to 2,511, still a high level of concentration but substantially less than that under the CBT proposal (and indeed less than under the current delivery system).

[37] Concerns about concentration among those firms eligible to issue shipping certificates under the CBT's proposal are compounded by the sizeable ownership interests some of the firms have in barge fleets operating on the northern Illinois River and in Gulf export and processing facilities. Several commenters expressed concern that this vertical integration increases their opportunity for price manipulation.

applied to such delivery points. In addition, the Commission has determined for both the corn and soybean contracts to revise the CBT's proposal to impose appropriate locational differentials for northern Illinois River delivery points. The Commission has determined to revise the proposed eligibility requirements for issuers of corn and soybean shipping certificates by eliminating the minimum net worth requirement of $40 million, which is an unnecessary barrier to entry. The Commission also has determined to revise the river traffic obstruction contingency rule by reducing the continuous period of obstruction from 45 days as proposed to 15 days, by making it applicable whenever a majority of shipping stations within the northern Illinois River delivery area are affected by obstruction of river traffic, by making it applicable to all announced obstructions with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

A. Delivery Points

In determining how to remedy the inadequacy of deliverable supplies under the CBT soybean proposal, the Commission accepts the delivery points in the proposal itself as a starting point and believes that the most reasonable and feasible way to enhance deliverable supplies is by adding additional delivery points. To do so, the Commission has decided to retain the delivery points under which the CBT's existing contract has been operating for years. Thus, the Commission had determined to retain Toledo and St. Louis as delivery points for soybeans.

In this regard, many commenters supported retaining the delivery point at Toledo, pointing out that Toledo's effectiveness as a delivery point is proven. They also maintained that Toledo brings with it the advantage of having transportation ties to both the export market via vessels on the Great Lakes and the expanding livestock feed demand in the southeastern U.S. via rail transportation. Although St. Louis has not been an important delivery point under the current contract, it likely would become one under the contract's revised shipping certificate format.[38]

These two delivery points have the strong advantage of having been chosen by the CBT as appropriate delivery points for its soybean contract and having been used as delivery points for the contract for a number of years. Toledo has been a delivery point on the CBT soybean contract since 1979; St. Louis has been a delivery point since 1993. The resulting experience and familiarity with these delivery points of the CBT, its members and commercial users of the soybean contract are strong indicators that the delivery points are feasible, workable and acceptable.[39]

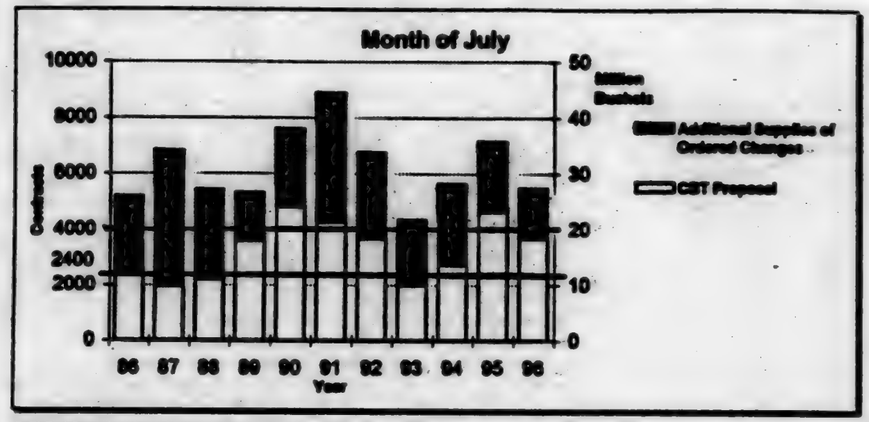
The retention of Toledo and St. Louis as delivery points provides a substantial increase in the available deliverable supplies of soybeans and in the number of potential shipping certificate issuers on the contract. When Toledo and St. Louis are included as delivery points on the soybean futures contract, the number of entities eligible as issuers increases by three, significantly reducing the degree of concentration among potential shipping certificate issuers. The following chart shows the increases in gross deliverable supplies of soybeans which result from the retention of Toledo and St. Louis as delivery points and from the elimination of the $40 million minimum net worth requirement for eligibility as shipping certificate issuers, as discussed in section D, below. Pursuant to these changes ordered by the Commission, potentially available gross deliverable supplies of soybeans are at or above the 2,400-contract level in both July and August during each of the past 11 years and in September during all but one of the 11 years. Indeed, the gross deliverable supplies are also at or above the 4,000-contract level for 25 of the 33 months examined.

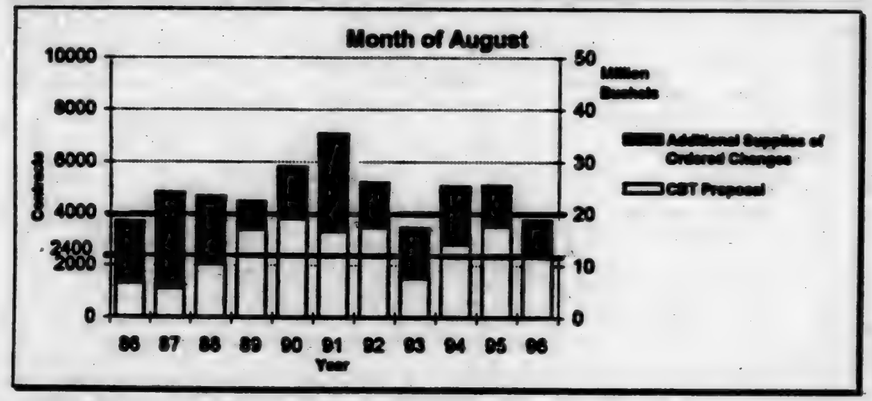
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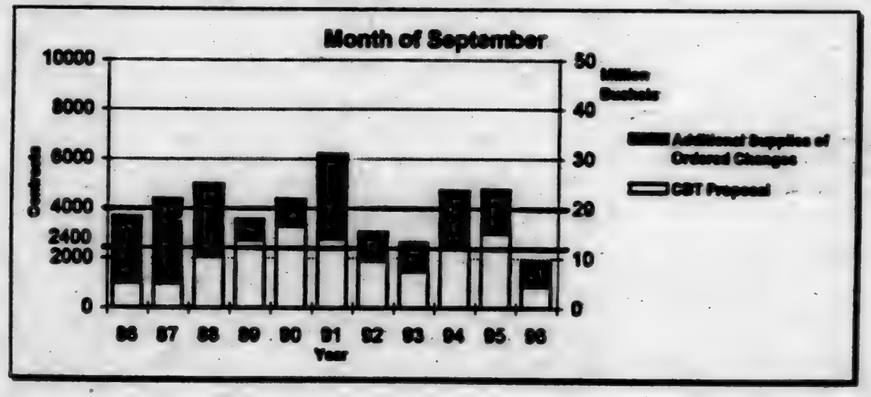
[38] Some commenters advocated the addition of new and completely untried delivery points, such as locations in the interior of Iowa, or delivery points that have been used for other contracts, such as Minneapolis, Minnesota. Although those suggestions may have merit, the Commission has decided that the experience with the current delivery points is entitled to significant weight.

[39] The CBT argues that the Commission should not determine to order the CBT to retain Toledo and St. Louis as delivery points because their retention would permit multiple delivery locations on the soybean futures contracts and because selection of delivery points is the responsibility of the contract market alone. However, the current contract has included Toledo and St. Louis as delivery points for many years with no apparent ill effects. Moreover, section 5a(a)(10) directs the Commission to act when the contract market's proposed contract terms fail to accomplish the objectives of that section of the Act, and additional delivery points are necessary to assure adequate deliverable supplies under section 5a(a)(10) in this instance. By beginning its analysis with the CBT's proposed delivery specifications and next considering delivery points already chosen and used by the exchange as existing delivery points, the Commission has sought to achieve the most conservative means of reaching the required levels of deliverable supplies. Of course, the CBT continues to be free to indicate by proposed rule or petition that its business preference for delivery locations is otherwise, and the Commission would consider such a new proposal under the standards for review provided under the Act.

Soybeans: Comparison of Gross Deliverable Supplies under the CBT Proposal and the Ordered Changes







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Accordingly, the retention of Toledo and St. Louis as delivery points is appropriate to provide adequate levels of gross deliverable supplies of soybeans for the July and August futures contracts. Although the retention of Toledo and St. Louis does not yield gross deliverable supplies which meet the 2,400-contract level in one of the last 11 years in September, September is a transition month between the old and new crop year, as discussed above. New crop production is in the offing. Thus, even if September gross deliverable supplies might on rare occasion fall below the 2,400-contract level, the incentive to manipulate prices based on a shortfall of old crop supplies is reduced because of the likelihood of rapidly falling prices as significant amounts of new crop supplies become available in the near future. In light of the reduced threat of price manipulation due to the imminence of new crop production, the Commission is not ordering that additional delivery points be added to the contract beyond retention of Toledo and St. Louis. If September deliverable supplies of soybeans appear to be inadequate once trading under the revised soybean contract begins, the Commission would take appropriate steps to provide for additional delivery locations.[40]

Accordingly, the Commission finds that retention of Toledo and St. Louis is appropriate to provide an adequate level of available deliverable supplies as required by section 5a(a)(10).

B. Differentials

Section 5a(a)(10) requires that, where more than one delivery point is specified in a futures contract, the contract terms must provide for locational differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. As discussed above, in light of the significant locational price differentials in the cash market among the proposed delivery locations, the CBT's par delivery proposal for all proposed corn and soybean delivery locations would reduce the level of economically available deliverable supplies and would increase the susceptibility of the contracts to the prohibited effects under section 5a(a)(10). Accordingly, to meet the objectives of section 5a(a)(10), locational differentials must be set for the delivery locations on the corn and soybean contracts.

In setting those differentials, the Commission has been guided by commonly observed cash market price differences among the delivery points. The cash market differences in the prices of corn and soybeans for delivery points on the northern Illinois River are based primarily upon the cost of barge freight—the price of the product increases as one goes down the river and the cost of freight to New Orleans decreases. These differences in freight prices are transparent, readily available, and commonly accepted as the best measure of cash price values. An analysis of barge freight rate data indicates that 150 percent of the Waterways Freight Bureau Rate Tariff No. 7 rate provides an appropriate basis for the differential. The difference between that rate as applicable to the delivery location and that rate as applicable to Chicago, Illinois, constitutes an appropriate differential reflecting cash market price differences.

Barge freight rate data for the years 1990 through 1996 indicate that 150 percent of tariff is well within the range of commonly observed freight rates and closely approximates the average percent of tariff quoted by barge companies for Illinois River shipment during this period. These data also indicate that 150 percent of tariff approximates the average percent of tariff quoted for July, August, and September, the months when deliverable supply concerns and the need to maximize available deliverable supplies are the greatest. A majority of those commenting on the issue agreed that it was appropriate to base price differentials on barge freight cost differences, and several of the commenters that suggested a fixed rate recommended 150 percent of tariff.

St. Louis is being retained as a delivery point for soybeans. The relative price of soybeans in the cash market among the various delivery points on the northern Illinois River and St. Louis is consistently determined based on the difference in freight costs to New Orleans, and therefore the Commission has decided to base the differential for St. Louis on 150 percent of the freight tariff as well. Most commenters agreed that this approach is the appropriate measure of such cash market price differences.

The differential applicable to Toledo, which is also retained as a delivery point for soybeans, cannot be set based on the differentials relating to barge freight since Toledo is not located on the Illinois River and does not tend to deliver soybeans CIF New Orleans. The Commission's policy on locational differentials provides that such differentials must fall within the range of commonly observed cash market price differences. Available data indicate that cash price differentials between Chicago and Toledo commonly range from Chicago's being at a premium to its being at a discount to Toledo. Therefore, establishing Toledo deliveries at par with Chicago is well within the range of commonly observed cash market price differences and provides an adequate approximation of the cash market price relationship between the two delivery points. Most commenters expressing an opinion on this issue agreed that soybeans should be deliverable in Toledo at par with Chicago.

Accordingly, the Commission has determined that for soybeans Chicago and Toledo should be at contract price with all other delivery locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois. For corn, Chicago should be at contract price with all other delivery locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois.

C. Disruptions to River Traffic

The CBT proposal's heavy reliance on a single mode of transportation to effect delivery renders the contract susceptible to significant disruption of the delivery process, increasing the possibility of price manipulation, market congestion, or the abnormal movement of corn and soybeans in interstate commerce. Although the CBT submitted a contingency plan for alternate delivery procedures to address disruptions to river traffic, that plan only addressed long-term disruption to river traffic resulting from closure of locks south of the delivery area announced six months in advance. As the Commission discussed above, however, the threat of manipulation of prices arises from the possible inability of long position holders to take delivery from all, or a significant number, of shipping stations due to the closures of a lock or locks or other river traffic obstructions located either within or south of the delivery area. The longer the period of the delay before alternate delivery procedures can be invoked, the greater the potential for manipulation. Moreover, this threat also exists when an obstruction to river traffic has occurred with less than six-months notice. Accordingly, section 5a(a)(10) of the Act requires that this threat be diminished by reducing the period during which delivery may be delayed by eliminating the six-month notice requirement and by applying the contingency delivery provision to all obstructions to movement on the river arising either inside or outside of the delivery area.

In determining the length of an announced obstruction which should give rise to a contingency plan, the Commission analyzed information on past lock closures by the U.S. Army Corps of Engineers and on the issuance of river advisories or safety zones by the Coast Guard. During the last 17 years for which this information could be ascertained, it appears that there have been no unplanned and unannounced river obstructions of greater than two weeks duration. Accordingly, obstructions lasting at least 15 days after they are announced are appropriately addressed by application of the contingency plan.

In addition, as discussed above, the application of different differentials to the futures contracts depending upon whether the delivery is subject to the contingency rule might also contribute to price manipulation or market congestion. Since the Commission has determined that a differential based on 150 percent of the Waterways Freight Bureau Tariff No. 7 rate should be applied to the corn and soybean futures contracts, the Commission believes that the provision in the contingency plan should be conformed to that differential, which will be applicable to all deliveries made on the contracts at non-par locations.

Accordingly, the Commission under section 5a(a)(10) of the Act changes and supplements the provisions of this part of the CBT proposal by reducing the continuous period of river traffic obstruction from 45 days as proposed to 15 days, by making the rule applicable to any obstruction which affects shipments from a majority of shipping stations within the northern Illinois River delivery area, by making the rule applicable to all announced obstructions with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

D. Net Worth

The $40 million minimum net worth requirement for eligibility of shipping certificate issuers restricts deliverable supplies of corn and soybeans by eliminating several firms and potentially barring new entrants. As the Commission found above, although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it would be adequately achieved through the CBT's proposed requirements on working capital, letters of credit, and the ceiling on issuance of shipping certificates to 25 percent of net worth. Contrary to the policies underlying the federal antitrust laws, the $40 million minimum net worth requirement would operate as a significant bar to entry for entities that would be eligible in all other respects, and the resulting market concentration would be very high. The CBT has failed to demonstrate a regulatory need for the requirement. Accordingly, the Commission eliminates the requirement under sections 5a(a)(10) and 15 of the Act.

E. 1999 Contract Months

The Commission's section 5a(a)(10) notification advised the CBT that the terms of its corn and soybean futures contracts did not meet the objectives of that provision of the Act. In light of that determination, the Commission advised the CBT that "the CBT should refrain from listing additional months of trading in those contracts during the pendency of these proceedings." 61 FR at 67999. Nevertheless, by letter dated April 24, 1997, to the Chairperson of the Commission, the CBT advised the Commission that it had determined to list or to relist for trading the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts, respectively, prior to Commission review and approval of the proposed changes to the delivery specifications.[41]

By letter dated May 2, 1997, the Commission responded that it "will consider whether to approve the listing of these contract months as part of its ongoing proceeding pursuant to section 5a(a)(10) of the Act * * *." The Commission found that the "listing of these trading months is not consistent with Commission rule 1.41(l) and that * * * their listing for trading by the CBT is not legally authorized at the present time." On September 15, 1997, the Commission issued its proposed Order which, in part, proposed to disapprove the application of the CBT's proposed delivery terms to the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts. Four days later, the CBT notified its members of its intent to list for trading the January 1999 soybean futures contract and the December 1999 corn futures contract under the same proposed terms as the Commission had proposed to disapprove. The Commission then notified the CBT that it proposed to disapprove the listing for trading of these two contract months and to disapprove, to change and to supplement the terms proposed by the CBT for these two trading months on the same basis and for the same reasons as it previously determined in its proposed order to disapprove, to change and to supplement the terms of the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts. 62 FR 51087 (Sept. 30, 1997).

A number of commenters on the proposed order requested that the Commission authorize the listing of these trading months. They suggested that having these trading months available to them without delay or interruption was important for their ability to use the markets for hedging purposes. Other commenters suggested that authorizing the trading of these contract months under the current contract terms rather than the CBT's proposed contract terms would provide the CBT with a period of time in which to propose alternative amendments to the delivery specifications of the corn and soybean futures contracts terms. The Commission, in response to these comments, hereby authorizes the listing of the January, July and November 1999 soybean futures contract and the March, July and December 1999 corn futures contracts under their current terms, while disapproving the application of the terms contained in the CBT's proposal to these contract months.[42] The

[40] Should actual trading experience reveal that September supplies must be supplemented, one means of accomplishing that objective would be to expand the delivery area to include a greater segment of the northern Illinois River. With the specification of appropriate locational differentials, such a change could probably be made at a later time with little disruption to the contract.

[41] In doing so, the CBT indicated that it would: list the aforementioned contracts with a special indicator * * * denot[ing] that the Exchange's Board of Directors and Membership have approved the terms of the listed contracts; however, the terms are subject to CFTC approval.

[42] The CBT in the October 15, 1997, hearing and in its October 22, 1997 letter of exceptions argued that these trading months were approved for listing subject to previously approved listing procedures. The Commission rejects these arguments. The four contract months cited in the proposed Order were listed initially (December and July 1999 corn futures contracts)—or relisted after having been previously delisted (July and November 1999 soybean futures contracts)—at a time and in a manner other than specified in a previously approved rule, thus requiring the prior approval of the Commission, which was never granted. Moreover, all of the futures contract months at issue, including the January 1999 soybean futures contract and the March 1999 corn futures, were not eligible for automatic listing procedures. A condition in such automatic listing procedures is that the contract terms or their listing not violate legal requirements. *See, e.g.*, 1.41(l). The Commission's finding in the December section 5a(a)(10) notification that the corn and soybean futures contracts are not in compliance with section

Continued

Commission also authorizes the listing of other 1999 corn and soybean futures contracts under their current terms. However, the CBT may propose to list the 1999 corn and soybean contracts incorporating the changes and supplements contained in this Order, and the Commission would approve such listing.

In approving the 1999 contract months for trading under their current terms, the Commission is responding to the views of numerous agricultural interests that there is a need for certainty and clarity about the legality and terms of these contracts and for their immediate availability for trading for hedging purposes. It also responds to arguments of the CBT urging that the Commission allow listing of the 1999 contract months pursuant to the current contract terms in the event that the Commission disapproves the CBT's proposal, as it has done in this Order. The Commission's action in this regard obviates the need to address a difficult legal issue of the interpretation of section 5a(a)(10) as to contracts which have been illegally listed by an exchange but have nonetheless been trading. Finally, the Commission's action permits all 1999 contract months to trade on identical terms and establishes a clear point at which the new terms ordered by the Commission will be applicable.

For the reasons discussed herein, the Commission in this Order is changing and supplementing the amendments to the CBT corn and soybean futures contracts which the CBT has proposed and is directing that they be made effective for all contract months, whenever listed for trading, beginning with and subsequent to the January 2000 soybean futures contract and the March 2000 corn futures contract. In so ordering, the Commission finds that the amendments proposed by the CBT to its corn and soybean futures contract are not consistent with section 5a(a)(10) and that their approval by the Commission would violate section 15 of the Act. Accordingly, the Commission under sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act is disapproving application of those proposed terms to the CBT's corn and soybean contracts, including the 1999 contracts.

Dated: November 7, 1997.

By the Commission (Chairperson Born, Commissioner Dial, Commissioner Spears; Commissioners Tull and Holum Concurring in Part and Dissenting in Part with Opinion)

Edward W. Colbert,

Deputy Secretary of the Commission.

Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago Submitted for Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans, Opinion of Commissioner John E. Tull, Jr., Concurring in Part and Dissenting in Part, Joined by Commissioner Barbara Pedersen Holum.

I concur in that part of the order which provides that the CBOT may continue to trade the 1999 contracts under the existing contract terms. I also concur in that part of the order which provides that the CBOT may submit alternative proposed delivery specifications for those two contracts.

I strongly disagree with the majority's decision to issue this order which changes and supplements the CBOT's proposed amendments to the delivery specifications to their corn and soybean contracts.

As I noted in my earlier dissent, Section 5a(a)(10) of the Commodity Exchange Act requires us to determine whether the delivery terms proposed by the CBOT "will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." We must also "take into consideration the public interest to be protected by the antitrust laws in requiring or approving any rule of a contract market." Based on my review of the data available at the time of the Commission's proposed order and as supplemented by the CBOT on October 15, 1997, I remain convinced that the proposed terms for both contracts as submitted by the CBOT meet these statutory requirements.

In conclusion, both of these contracts will have a tremendous effect on the world marketplace. For both markets, the price discovery process and the published prices determine the price, through basis, to every soybean and corn farmer in the United States; actually every oil seed and corn farmer and end user throughout the world. While it is my serious hope that the contracts designed by the Commission will work, I believe we could have had better contracts and I sincerely hope that the Exchange will take advantage of the opportunity to resubmit proposed terms for both contracts and that the majority will approve such resubmission if it satisfies the requirements of the Act.

Attachment 1

For the reasons explained in the "Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago Submitted For Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans," the Commission is changing and supplementing under section 5a(a)(10) of the Commodity Exchange Act proposed rules of the Board of Trade of the City of Chicago. The Commission hereby makes the following changes: [43]

1. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words "Corn Differentials," to read as follows:

In accordance with the provisions of Rule 1041.00A, corn for shipment from regular warehouses or shipping stations located within the Chicago Switching District or the Burns Harbor, Indiana Switching District may be delivered in satisfaction of corn futures contracts at contract price, subject to the differentials for class and grade outlined above. Corn for shipment from shipping stations located on the northern Illinois River may be delivered at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

* The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.

2. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words "Soybean Differentials," to read as follows:

In accordance with the provisions of Rule 1041.00D, soybeans for shipment from regular warehouses or shipping stations located within the Chicago Switching District, the Burns Harbor, Indiana Switching District, or the Toledo, Ohio Switching District may be delivered in satisfaction of soybean futures contracts at contract price, subject to the differentials for class and grade outlined above.

In accordance with the provisions of Rule 1041.00D, soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

* The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.

3. To change and to supplement Rule 1041.00A to read as follows:

Corn. Corn for shipment from regular warehouses or shipping stations located within the Chicago Switching District or the Burns Harbor, Indiana, Switching District may be delivered in satisfaction of corn futures contracts at contract price. Corn for shipment from shipping stations located within the northern Illinois River may be delivered in satisfaction of corn futures

5a(a)(10) of the Act rendered further automatic listings unavailable, as did the Commission's explicit direction to the CBT to refrain from any such further listings.

[43] Bold-face type denotes the Commission's proposed changes or supplements to the CBT proposal. Underlinings denote changes proposed by the CBT. Deletions to proposed CBT language are not shown.

contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

* The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.

4. To change and to supplement Rule 1041.00D to read as follows:

Soybeans. Soybeans for shipment from regular warehouses or shipping stations located within the Chicago Switching District, the Burns Harbor, Indiana, Switching District or the Toledo, Ohio, Switching District may be delivered in satisfaction of soybean futures contracts at contract price. Soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.

5. To change and to supplement Regulation 1044.01 following the list of delivery locations and immediately prior to the issuer's signature block by adding, as follows:

soybeans only:

____St. Louis, MO, river mile marker _____

____Toledo, OH, Switching District

6. To change and to supplement Regulation 1056.01 by adding after the last paragraph the following:

The premium charges on soybeans for delivery from regular shippers within the Toledo, Ohio, Switching District shall not exceed 12/100 of one cent per bushel per day.

The premium charges on soybeans for delivery from regular shippers within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) shall not exceed 10/100 of one cent per bushel per day.

7. To change and to supplement the second paragraph of Regulation 1081.01(1) to read as follows:

(c) and in the case of Chicago, Illinois, Burns Harbor, Indiana, and Toledo, Ohio, Switching Districts only, his registered storage capacity.

8. To change and to supplement the third paragraph of Regulation 1081.01(1)(a) to read as follows:

(a) one barge per day at each shipping station on the northern Illinois River and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205); and

9. To change and to supplement Regulation 1081.01(2) to read as follows:

Except for shippers located on the northern Illinois River and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205), such warehouse shall be connected by railroad tracks with one or more railway lines.

10. To change and to supplement the first sentence of Regulation 1081.01(12)A to read as follows:

A. Load-Out Procedures for Wheat and Oats and Rail and Vessel Load-Out Procedures for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana, and Toledo, Ohio, Switching Districts Only * * *.

11. To change and to supplement the first sentence of Regulation 1081.01(12)B to read as follows:

B. Load-Out Rates for Wheat and Oats and Rail and Vessel Load-Out Rates for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana, and Toledo, Ohio, Switching Districts Only * * *.

12. To change and to supplement Regulation 1081.01(12)G(7) to eliminate the words "on the Illinois Waterway," to read as follows:

Any expense for making the grain available for loading will be borne by the party making delivery, provided that the taker of delivery presents barge equipment clean and ready to load within ten calendar days following the scheduled loading date of the barge. If the taker's barges are not made available within ten calendar days following the scheduled loading date, the taker shall reimburse the shipper for any expenses for making the grain available. Taker and maker of delivery have three days to agree to these expenses.

13. To change and to supplement the last sentence of Regulation 1081.10(12)(G)(8) to read as follows:

(8) * * * If the aforementioned condition of impossibility prevails at a majority of regular shipping stations, then shipment shall be made under the provisions of rule 1081.(12)(G)(9).

14. To change and to supplement the first paragraph and paragraph 9(b)(iii) and add a new paragraph at the end of Regulation 1081.01(12)(G)(9) to read as follows:

(9). In the event that it has been announced that river traffic will be obstructed for a period of fifteen days or longer as a result of one of the conditions of impossibility listed in regulation 1081.10(12)(G)(8) and in the event that the obstruction will effect a majority of regular shipping stations located on the northern Illinois River, then the following barge load-out procedures for corn and soybeans shall apply:

(b) * * *

(iii) The taker of delivery shall pay the maker 150% of the Waterways Freight Bureau Tariff Number 7 barge benchmark rate from the original delivery point stated on the Shipping Certificate to NOLA.

(c) In the event that the obstruction or condition of impossibility listed in regulation 1081.10(12)(G)(8) will affect a majority of regular shipping stations located on the northern Illinois River, but no announcement of the anticipated period of obstruction is made, then shipment may be delayed for the number of days that such impossibility prevails.

15. To change and to supplement the first paragraph of Regulation 1081.01(13)A by eliminating the words "and soybeans" in both instances in which they appear.

16. To change and to supplement Regulation 1081.01(13)D by retaining it and changing it to read as follows:

Soybeans. For the delivery of soybeans, regular warehouses or shipping stations may be located within the Chicago Switching District, within the Burns Harbor, Indiana, Switching District (subject to the provisions of paragraph A above), within the Toledo, Ohio, Switching District, or shipping stations may be located on the northern Illinois River (subject to the provisions of paragraph A above), or within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205).

Delivery in Toledo must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to normal seaway draft of 27 feet. However, deliveries of soybeans may be made in off-water elevators within the Toledo, Ohio, Switching District PROVIDED that the party making delivery makes the soybeans available upon call within five calendar days to load into water equipment at one water location within the Toledo, Ohio, Switching District. The party making delivery must declare within one business day after receiving shipping certificates and loading orders the water location at which soybeans will be made available. Any additional expense incurred to move delivery soybeans from an off-water elevator into water facilities shall be borne by the party making delivery PROVIDED that the party taking delivery presents water equipment clean and ready to load within 15 calendar days from the time the soybeans have been made available. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes. Delivery in the greater St. Louis river-loading area must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to the average draft of the current barge loadings in this delivery area. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes.

17. To change and to supplement Regulation 1081.01(14)E by retaining it and changing it to read as follows:

Soybeans. The warehouseman or shipper is not required to furnish transit billing on soybeans represented by shipping certificate delivery in Toledo, Ohio. Delivery shall be flat.

18. To change and to supplement the first paragraph of the applicant's declaration contained in Regulation 1085.01 to read as follows:

We, the _____ (hereinafter called the Warehouseman/Shipper) owner or lessee of the warehouse located at _____ or shipping station located at mile marker _____ of the _____ River, having a storage capacity * * *.

19. To change and to supplement appendix 4E, paragraph 2, by eliminating the sentence

which reads, "The net worth of a firm regular to deliver corn or soybeans must be greater than or equal to $40,000,000."

The Commission has determined that publication of the Order will provide notice to interested members of the public of its action, is consistent with the Commodity Exchange Act and is in the public interest.

Issued in Washington, D.C., this 7th day of November 1997, by the Commodity Futures Trading Commission.

Edward W. Colbert,

Deputy Secretary of the Commission.

[FR Doc. 97–29695 Filed 11–12–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Petition for Exemptions From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to condition and proposed order granting conditional exemptions from the prohibition on dual trading in seven affected contract markets.

SUMMARY: For the reasons set forth in the Proposed Order Granting Conditional Dual Trading Exemptions ("proposed Order"), the Commodity Futures Trading Commission ("Commission") intends to grant, subject to a stated condition, the petition of the Chicago Mercantile Exchange ("CME" or "Exchange") for exemptions from the dual trading prohibition in Section 4j(a) of the Commodity Exchange Act ("Act") and Commission Regulation 155.5 for its Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.[1] Pursuant to the Act and Commission Regulation 155.5(d)(8)(C)(iii), CME may submit written supplemental data, views or arguments and will have the opportunity to make an oral presentation to the Commission before the Commission makes its final determination.

DATES: If CME intends to make an oral presentation, it must submit its request in writing no later than ten days after receipt of this proposed Order. CME must submit any written supplemental data, views or arguments within 30 days of receipt of this proposed Order.

ADDRESSES: CME's requests for oral presentation and submission of written supplements are to be sent to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, or Rachel Fanaroff Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: A floor broker engages in dual trading when he or she executes a customer's order during the same trading session in which he or she executes, directly or indirectly, a trade in the same contract for his or her own account or an account in which he or she has an interest. Dual trading can afford floor brokers the opportunity to abuse customer orders if audit trail information and surveillance are insufficient to permit the detection of such abuses. Specifically, a dual trading floor broker can directly commit abuses of customer orders such as trading ahead or against those orders and also has an informational advantage for his or her personal trading.[2] Section 4j(a) of the Act and Regulation 155.5 prohibit dual trading and establish trade monitoring standards that must be met in order for contract markets to be exempted from the prohibition.

The Commission intends to issue the following proposed Order granting CME conditional dual trading exemptions pursuant to Section 4j(a) of the Act and Commission Regulation 155.5. In accordance with Regulation 155.5(d)(8), CME may submit to the Commission in writing any supplemental data, views or arguments within 30 days of receipt of this Notice and proposed Order. In addition, CME may request, in writing within ten days of receipt of this Notice and proposed Order, an opportunity to make an oral presentation to the Commission. If CME submits a request for an oral presentation, the Exchange will be notified by the Commission of the date and the terms under which CME may make such presentation. Public notice of such an oral presentation also will be provided in accordance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b (Supp. I 1995).

Proposed Order Granting Conditional Dual Trading Exemptions

On October 20, 1993, CME submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Act and Commission Regulation 155.5 in CME's Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc, British Pound, Eurodollar and S&P 500 futures contracts and the option contracts on the Deutsche Mark, Eurodollar and S&P 500 futures. The Exchange corrected that petition on December 1, 1993. Subsequently, the Exchange amended its petition on January 21, 1994. CME updated its petition on January 21, 1997, with respect to eight affected contract markets.[3] Notice of the public availability of the CME's updated exemption petition was published in the **Federal Register** on February 20, 1997.[4]

Upon consideration of CME's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results

reconciling imputed times to underlying trade documentation and verifying data on "window sizes";

actions taken in response to the Commission's November 1994 *Report to Congress on Futures Exchange Audit Trails*, June 1995 *Report on Audit Trail Accuracy and Sequencing Tests* ("Audit Trail Report"), and August 12, 1996 *Report on Audit Trail Status and Re-Test* ("Audit Trail Re-Test Report");

Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities;[5]

the Exchange's existing dual trading and top step trading restrictions;[6]

the Division of Trading and Markets Memorandum dated October 28, 1997;

and upon review of each element of CME's trade monitoring system and of CME's trade monitoring system as a whole, the Commission finds that the Exchange's trade monitoring system does not fully satisfy the requirements of Sections 5a(b) and 4j(a)(3) of the Act and Regulation 155.5 in that the audit trail component is deficient. The Commission finds that corrective actions are sufficient and appropriate to meet those standards. In addition, the Commission finds that, based on an analysis of the composition of trading (by transaction size and volume) of certain distant contract expirations and option markets, there is a substantial likelihood that the broad scope of the dual trading prohibition specified under Section 4j of the Act and Regulation 155.5, which applies to a contract market as a whole, would harm the public interest in hedging or price basing in less liquid months of the affected contract markets. Therefore, the Commission has determined to grant CME conditional exemptions from the dual trading prohibition of Section 4j of the Act and Regulation 155.5 in the seven affected contract markets.

The Commission is granting the Exchange's petition subject to the Exchange taking the corrective action specified below and implementing and enforcing the dual trading restriction described in the Appendix to this proposed Order. The Commission has concluded that the proposed dual trading restriction, which imposes a prohibition on dual trading in actively traded months but has no impact on less actively traded back months, is appropriate as a method to deter dual trading-related abuses and other customer abuses. The Commission's limited restriction, as opposed to the statutory dual trading ban, strikes a balance between the need to preserve liquidity in certain low volume months and the need to protect customers from the potential abuses that are associated with dual trading.

The Commission Hereby finds as follows:

Components of Exchange's Trade Monitoring System

Audit Trail System

One-Minute Execution Time Accuracy

The Exchange's audit trail system fails to record "reliably accurate" trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5.[7] Specifically, the Exchange has not established for the seven affected contract markets that 90 percent or more of imputed trade times, as assigned by the Exchange's trade timing system, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less ("90 percent performance standard"). Thus, an impermissible amount of trade timing data, an integral part of an exchange's trade monitoring system, is not reliably accurate in accordance with that standard and thus negatively impacts the Exchange's surveillance systems and investigatory and disciplinary action programs.

The Commission has made clear that a reliably accurate imputed trade execution time only can be demonstrated by a timing window that narrows the time assigned to the trade to a two-minute period within which the trade is most likely to have occurred. Even where an exchange can demonstrate a trade timing window of two minutes or less, it is not possible to determine where within that window, the trade occurred. This underscores the critical need for compliance with the 90 percent performance standard.

CME's Regulatory Trade Timing System ("RTT") imputes an execution time for every trade.[8] Trade times are imputed based upon entry and exit timestamps on order tickets; time and sales reports; times that the trades were submitted for clearing; trading card numbers and sequence of trades on trading cards; 15-minute bracket codes; manual execution times for certain types of trades; calculated differentials for spread trades; identification of spread legs and types of spread trades; and any available times resulting from electronic order entry or trading systems. Based on these data, RTT determines various time spans within which a trade is likely to have been executed and ultimately assigns an imputed execution time for the trade.

The audit trail tests designed and reviewed by the Commission and conducted by the Exchange in response to a November 23, 1994 Commission letter involved a determination of the consistency of imputed trade execution times with all underlying audit trail records and data. Based upon that process, trade timing accuracy and sequencing rates for CME's imputed system were computed.[9] In reviewing

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[1] The Commission is granting CME an unconditional exemption from the dual trading prohibition for its S&P 500 futures contract. An Order granting such exemption is being submitted for publication together with this Notice.

[2] The Commission has previously discussed in several instances, including its November 28, 1994 *Report to Congress on Futures Exchange Audit Trails*, the possible abuses attendant to dual trading. *See also* the Commission's Proposed Regulation Prohibiting Dual Trading by Floor Brokers, 56 FR 13025 (March 9, 1993).

[3] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* Section 4j(a)(4) of the Act. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading a screen-based trading system. The Commission further stated that, while not excluding electronic trading from the dual trading prohibition, the Commission was retaining the flexibility to consider the matter further. *See* 58 FR 40335 (July 28, 1993). The Commission is not addressing screen-based trading in this proposed Order.

Two contract markets included in the original petition, British Pound futures and options on Deutsche Mark futures, no longer are affected contract markets as defined in the Act and regulations. This proposed Order is not applicable to those two contract markets. As previously noted, this proposed Order also is not applicable to the S&P 500 futures contract market.

[4] 62 FR 7755 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. In June 1994, the Commission was informed that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CME had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CME the opportunity to supplement its petition.

[5] A list of the specific documents considered in connection with this proposed Order will be made available to the Exchange upon request. Copies of any documents not originally furnished by CME also will be made available upon request.

[6] Under CME Rule 552, adopted in 1991, dual trading is, with certain exceptions, prohibited in any contract month which is mature and liquid, *i.e.*, a contract month by position in relation to the front month contract at any given point in time that has had during the prior six calendar months an average daily pit-traded volume of 10,000 or more contracts. In any such contract months, members may trade only for their personal accounts until they have executed a customer order and then may no longer execute personal trades in that contract month during that trading session. Under CME Rule 555, effective July 1993, a member may not, with certain exceptions, while standing on the top step, execute a trade or place an order for his personal account in any contract months subject to the CME Rule 552 dual trading restriction which are traded in the contract month where the member stands.

[7] Commission Regulation 1.35(g) requires that "[a]ctual times of execution shall be stated in increments of no more than one minute in length." Section 5a(b)(2) of the Act, among other things, codified that timing requirement by stating that an exchange's audit trail system shall, "consistent with Commission regulation, accurately record the times of trades in increments of no more than one minute in length." Section II of Appendix A to Commission Regulation 155.5 requires that a contract market, in describing its audit trail system in a petition for exemption from the dual trading prohibition, "[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) ° ° °." In addition, the contract market must "[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses." For contract markets that impute trade execution times, Appendix A requires that the contract market provide a description of the trade imputation algorithm, "including how and why it reliably establishes the accuracy of the imputed trade execution times."

[8] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data.

[9] To the extent that the time imputed by a computer algorithm was consistent with required trade documentation, time and sequence data and time and sales information for the subject trade and surrounding trades, that time was deemed accurate. If that imputed time fell within a two-minute level of precision as measured by the size of the final time window determined by such algorithm, that imputed time was considered to be verifiable, reliable and precise. Thus, the Commission stated in its Audit Trail Report, "[a]lthough 90 percent of CME trade times satisfied the standards (of consistency with underlying data) for Test I, available data do not permit sufficiently precise

the results of the test designed to evaluate trade timing accuracy, Commission staff determined that, although 90.4 percent of CME's trade times satisfied the standard for consistency with the underlying data, only 72 percent of those trade times had timing windows of two minutes or less and thus could be verified.[10] In March 1996, the Commission conducted a re-test of CME's audit trail system. Although 94.2 percent of CME's trades times satisfied the standard for consistency with the underlying data, only 79.5 percent of those trade times had timing windows of two minutes or less and thus could be verified.

Subsequent to the re-test, the Exchange provided windows data for all affected contract markets (including the S&P 500 futures market) in response to Commission requests. For December 10, 1996, the overall percentage of trades with timing windows of two minutes or less was 82 percent. The percentage of trades with timing windows of two minutes or less computed separately for each of the seven affected contract market ranged from 37 percent to 89 percent. For March 12, 1997, the overall percentage of trades with timing windows of two minutes or less was 83 percent and the percentages for the seven affected contract markets ranged from 62 percent to 87 percent.

On June 30, 1997, the Exchange provided windows data for three additional trade dates selected at random by the Commission which showed that the overall percentage of trades with timing windows of two minutes or less ranged from 82 percent to 85 percent. The percentage of trades with timing windows of two minutes or less computed separately for each of the seven affected contract market ranged from 65 to 92 percent on May 28, 1997; 66 to 86 percent on June 5, 1997; and 60 to 88 percent on June 10, 1997. Thus, the Exchange has not demonstrated that its imputed trade execution times are sufficiently reliable, precise, and verifiable in that it has not established that 90 percent or more of such times are imputed within timing windows of two minutes or less.[11]

The negative impact on the components of the Exchange's trade monitoring system resulting from its failure to satisfy the 90 percent performance standard is exacerbated because CME does not require the recordation of a member's personal and customer trades in sequence.[12] Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades. Where the sequence of customer and personal trades is not determined, possible dual trading-related abuses, such as trading ahead of customer orders and trading against customer orders, could go undetected.

Other Components of CME's Audit Trail System

With regard to the requirement that trade data be provided continually to the Exchange in accordance with Section 5a(b)(3)(A)(ii) of the Act, exchange audit trail systems must provide trade data, including trade timing information, on a periodic, but not necessarily real-time, basis.[13] Such information also must be obtained in a timely manner. The Exchange requires that clearing members submit trade data for clearing no later than 60 minutes after the end of the last time bracket on the trading card or floor order ticket. CME's trade data, therefore, are provided periodically to the Exchange at no more than hourly intervals, which is continual.

With regard to unalterability, as mandated by Section 5a(b)(3)(A)(i) of the Act, the Exchange's trade records are unalterable, since they are recorded on trading cards and order tickets in nonerasable ink. Trade corrections also are not permitted to obscure original data.[14]

verification of the accuracy of all of these trade times." Audit Trail Report at 11.

Under the 90 percent performance standard, only trade times assigned by the Exchange's imputed timing system within timing windows of two minutes or less are reliably accurate. As noted above, Commission staff deems accurate those trades for which the imputed trade times are consistent with all underlying audit trail records and data, as determined by manual review. When comparing windows data for accurate trades and all trades, the Division has found that a higher percentage of accurate trades are assigned imputed times that fall within windows of two minutes or less and thus meet the 90 percent performance standard. However, the resulting percentage difference between accurate and all trades generally has not exceeded one percent. In addition, since the use of all trades data facilitates exchange submission of timing windows percentages because such data do not have to be generated in conjunction with an accuracy test, which requires an analysis of extensive trade documentation, the Commission finds that the use of all trades data provides an acceptable basis for determining windows performance.

[10] In response to recommendations made in the Audit Trail Report, the Exchange modified its trading card procedures such that only six trades can be recorded on a card, trade data can be entered only on one side of the card, and a new card must be used with the change of each time bracket. The Exchange modified its reporting and enforcement procedures to supply members more promptly with information on audit trail inconsistencies and to require corrections that reflect actual events, to enforce more aggressively data recordation and submission requirements, including spread quote reporting and timing data, and to enforce more aggressively timestamping procedures for flashed orders.

The Exchange also made a number of improvements to its trade timing system. Since 1995, the CME has required a trade submission indicator for executions of orders flashed upon receipt, used seconds in the imputed timing system, including seconds from order ticket timestamps, added exit timestamps to the imputed timing system, used order type information to time trades, and used the clearing receipt time in its timing system. The Exchange also made a number of programming improvements to its timing algorithm.

CME declined to implement two Commission recommendations: that members record and use manual execution times for at least the first and sixth trades on trading cards and that the Exchange synchronize timestamp clocks across the floor and upgrade the clocks to record times to the second.

[11] The windows data percentages indicated for the trade dates December 10, 1996, through June 10, 1997, do not include windows data for the S&P futures contract market. As noted above, the Commission is issuing a separate order granting CME an unconditional dual trading exemption for the S&P 500 futures contract market.

The Exchange submitted data indicating that 90 percent or more of the imputed trade times in its S&P 500 futures contract had timing windows of two minutes or less on all three dates selected by Commission staff using a random sampling method, as well as two prior dates selected by the Exchange based upon Commission timeframes. The Commission believes that, while timing windows data for all dates provided should be considered, the dates selected randomly by persons other than those affiliated with the Exchange should be accorded greater weight in determining whether an affected contract market attains the 90 percent performance standard. The windows data for the S&P 500 futures contract market demonstrates consistent compliance with the 90 percent performance standard. None of the Exchange's other affected contract markets demonstrated consistent compliance.

[12] Notably, although there are differences in various systems among the exchanges, the three other exchanges for which the Commission has granted unconditional exemptions from the dual trading prohibition require that customer and personal trades be recorded sequentially on a single trading document. Similar to CME, one of those exchanges, the Coffee, Sugar and Cocoa Exchange, Inc., also uses an imputed timing system to assign trade execution times. Such sequencing also can be achieved by recording personal and customer trades in sequence on one set of sequentially numbered trading documents. As the Commission noted in discussing the results of CME's first audit trail test, "recordation of a member's personal and customer trades in sequence should be the Exchange's objective." Audit Trail Report at 14–15. Section 5a(b)(3) of the Act provides, among other things, that an exchange's audit trail system must record accurately and promptly essential data on all trades, including execution time, through a means that is adequately precise to determine the sequence of customer and personal trades, to the extent practicable as determined by the Commission by rule or order.

[13] *See* Audit Trail Re-Test Report at 39.

[14] The Commission requires retention of a record of any cancellations, changes, or corrections to trades. Commission Regulation 1.35(d) and the Outtrade Interpretation, 54 FR 37004 (September 6, 1989). The Commission amended Regulation 1.35(d)(7), effective October 21, 1996, to require that the correction of erroneous information on trading records be accomplished in such a manner that the originally recorded information must not be obliterated or otherwise made illegible. 61 FR 42999 (August 20, 1996). In November 1996, CME amended its CME Rule 536 to comport with the Commission's amendment to Regulation 1.35(d)(7).

CME's imputed timing system, which uses data from sources other than the trader, as well as data provided by the trader, to derive times, also meets the Section 5a(b)(3)(A)(iii) standards for independence, to the extent practicable.[15] The Exchange's existing system uses, among other things, data generated by both buyers and sellers for personal trades, including trading card numbers and sequence of trades on trading cards, certain execution times required to be entered manually, entry and exit timestamps on order tickets, time and sales data and 15-minute bracket codes to impute trade execution times.

The Exchange requires that personal trades be recorded in sequence, consistent with Commission regulations, by requiring that members record such trades in sequence on pre-numbered trading cards.[16] The Exchange adopted a single-sided trading card on which all personal buy and sell trades are required to be recorded sequentially in response to an Audit Trail Report recommendation. However, as noted elsewhere, the Exchange does not require the recordation of a member's personal and customer trades in sequence. Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades.

CME enforces its audit trail requirements and integrates audit trail data into its surveillance system for dual trading-related abuses. However, because the Exchange's trade surveillance system incorporates into its data, including exception reports, an impermissible amount of imputed trade execution times that are not reliably accurate, the effectiveness of the Exchange's integration of audit trail data is diminished.

As required by Section 5a(b)(1)(B) of the Act, CME's trade entry and outtrade resolution programs capture certain essential data on cleared trades, unmatched trades, and outtrades.

Finally, with regard to broker receipt times, the Commission finds that it is not practicable at this time for CME to record the time that each order is received by a floor broker for execution. Immediately executable flashed orders, however, are in substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act, as stated previously by the Commission in its Order on flashed orders and broker receipt times.[17]

Physical Observation of Trading Areas

CME's trade monitoring system satisfies the requirements of Section 5a(b)(1)(A) of the Act in that CME maintains and executes an adequate program for physical observation of Exchange trading areas and integrates the information obtained from such observation into its compliance programs. The Exchange conducts daily floor surveillance during the open and close on all affected contract markets and at random times during each trading day. CME also performs floor surveillance when warranted by special market conditions, such as exceptional volatility or contract expirations. Finally, the Exchange employs a video camera logging system in the interest rate quadrant on the upper trading floor.[18]

Recordkeeping System

CME's recordkeeping system captures certain essential data on trades and uses information from the records and violations of recordkeeping requirements to bring appropriate disciplinary actions. However, the Exchange needs to improve member compliance with Regulation 1.35(j), in that only 83 percent of the trading cards selected for review by Division staff were submitted to the clearing member within 15 minutes following 30-minute trading intervals and timestamped promptly to the nearest minute following collection.

In addition, because CME does not meet the 90 percent performance standard, the system captures an impermissible amount of trade timing data that is not reliably accurate. This circumstance is compounded by the fact that CME does not require the recordation of personal and customer trades in sequence. As a result, the Exchange's recordkeeping system is limited in its capability to capture essential data on the sequence of customer trades.

CME generally conducts back office audits of trading cards and order tickets at each clearing member firm at least once a year for a representative sample of customer orders and personal trades. CME also uses a computerized tracking system to monitor member compliance daily with certain trade timing and sequencing requirements, regularly examines trading records during the course of investigations for possible recordkeeping violations, and uses information from these audits to generate investigations. The Exchange requires that the account identifier reflected on the floor order ticket relate back to the ultimate customer account.

Surveillance Systems and Disciplinary Actions

The inclusion of an impermissible amount of trade timing data that is not reliably accurate in the Exchange's trade monitoring system diminishes the capability of the Exchange's trade surveillance system to review trade data effectively, and as a result, possible dual trading-related abuses could go undetected. Further, the lack of reliably accurate trade timing data diminishes the capability of the Exchange's disciplinary program to bring appropriate disciplinary actions against violators. In other respects, the Exchange's trade surveillance system may be capable of reviewing and is used to review trading data on a regular basis to detect possible dual trading-related abuses and other customer order abuses. In addition, CME did bring disciplinary actions against offenders and issued meaningful penalties against violators. Therefore, CME has demonstrated the capability to use information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders as required by Sections 5a(b)(1)(C), (D) and (F) of the Act. Further, CME refers appropriate cases to the Commission.

On a daily basis, CME reviews computerized surveillance reports generated by the Exchange's Automated Trade Surveillance system to detect possible instances of dual trading-related abuses and other trading abuses. All relevant trade data, including account numbers, are included in these reviews. Among the computerized exception reports generated by the Exchange and reviewed daily are those designed to identify such suspicious trading activity as trading ahead of a customer, trading against a customer, wash trading, and trading against a customer with a collaborator, as well as those designed to provide data on personal profit and loss, member dual trading and outtrade resolution. Once an investigation has been opened, the Exchange's Compliance Department can use video cameras, on a for cause basis,

[15] *See* Audit Trail Re-Test Report at 40.

[16] Commission Regulation 1.35(d)(2) requires that each member of a contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card.

[17] 60 FR 58049 (November 24, 1995).

[18] Although primarily employed for dispute resolution, the 38 cameras run continuously throughout the trading day and may enable investigators to view virtually all activity in the quadrant to resolve irregularities detected by the Exchange's computerized surveillance system or to follow up on tips from members, clerks or floor surveillance staff.

to assist in the conduct of the investigation.[19]

During 1996, the Exchange initiated 429 investigations and/or inquiries into all types of trading-related abuses. Approximately 80 percent of the investigations opened and closed during 1996 were closed within the four-month standard set forth in Regulation 8.06. During that same period, the Exchange initiated 98 dual trading-related investigations and referred three of these investigations to a disciplinary action committee. During the period of January 1994 through December 1996, CME assessed substantial penalties in 14 disciplinary actions involving dual trading-related abuses.

Commitment of Resources

The Commission finds that CME meets the requirements of Section 5a(b)(1)(E) of the Act by committing sufficient resources for its trade monitoring system to be effective in detecting and deterring violations and by maintaining an adequate staff to investigate and to prosecute disciplinary actions. For fiscal year 1996, CME committed 99 personnel to the Exchange's Compliance, Market Surveillance and Audits Departments and reported its total self-regulatory costs to be $15,388,000. CME's reported volume for this period was 177,027,583 contracts, and the number of trades exceeded 16,000,000.

Accordingly, the Commission Hereby Orders that:

The Exchange must implement the following corrective action: achieve compliance with the 90 percent performance standard.

The Commission further orders that:

Until such time as the Exchange demonstrates that its trade monitoring system satisfies the relevant standards, the Exchange shall be subject to the following condition: Within 60 days from the effective date of a final Order, the Exchange must implement and enforce the limited dual trading restriction described in the Appendix to this proposed Order, which is less restrictive than the dual trading prohibition of Section 4j of the Act and Regulation 155.5. Such dual trading restriction currently would apply to the following affected contract markets: Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.

Accordingly, the Commission proposes to grant CME's Petition for Exemption, subject to the stated condition, from the dual trading prohibition for trading in its Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.

If, at any time, CME believes that it can demonstrate to the Commission's satisfaction that it meets, for an affected contract market subject to this Order, all of the standards set forth in this Order, including, but not limited to, those in Section 5a(b) and Regulation 155.5, the Exchange may petition for an unconditional exemption to the dual trading prohibition for that affected contract market.

Unless otherwise specified, the provisions of this proposed Order shall be effective on the date on which it is issued as a final Order by the Commission, and the condition shall become effective as stated herein and shall remain in effect unless and until removed, as provided above, or revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). Failure of CME to abide by the condition of a limited dual trading restriction will automatically cause the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5 to go into effect.

If other CME contract markets become affected contract markets after the date this Order becomes final, the Exchange would be required, absent submission of a dual trading exemption petition, to restrict dual trading in those affected contract markets in accordance with the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5. Further, if CME demonstrates to the Commission's satisfaction that an affected contract market subject to this Order has ceased to meet the Regulation 155.5(a)(9) affected contract market threshold, that contract market no longer would be subject to this Order.

Dated: November 7, 1997.

By the Commission.

Edward W. Colbert,

Deputy Secretary.

Appendix—Dual Trading Restriction

a. Restriction

A floor broker is prohibited from executing customer orders in an affected contract market month, as defined below, during the same pit trading session in which the floor broker executes directly, or initiates and passes to another member for execution, a transaction in any such affected contract market month for (1) the floor broker's own account, (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more, (3) any account for which the floor broker has trading discretion, or (4) any other account controlled by a person with whom such floor broker is subject to trading restrictions under Section 4j(d) of the Act to the extent such section is applied by Commission regulation or order.

b. Affected Contract Market Month (Volume)

Affected contract market month means: (1) For each affected non-agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by, at the election of the Exchange, either (i) CME Rule 552 with respect to a contract month position or (ii) trading in the previous calendar month; and (2) For each affected agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by trading in the previous calendar month. For this purpose, daily trading volume means the total number of contracts sold (or bought) in any contract month of an affected contract market during a trading day, with the average computed as set forth above and excluding ex-pit transactions as permitted under contract market rules that have been made effective under the Act. There will be a two business day allowance at the beginning of each calendar month for computation and member notification purposes.

c. Affected Contract Market Month (Front Month)

Front month means, for each affected contract market, the month which is either the expiration or delivery month which is nearest to expiration or, at the Exchange's discretion, the expiration or delivery month which is next nearest to expiration when the contract month nearest to expiration is five business days or less from the first notice day or last trading day for cash settled contracts for futures contracts or the expiration date for futures options contracts. If a front month is not subject to a prohibition pursuant to paragraph b. above, then it shall, nonetheless, be an affected contract market month and be subject to a prohibition unless, on the basis of historical data, that front month reasonably can be expected to have an average daily trading volume of less than 500 contracts.

d. Exceptions

Dual trading shall be permitted under exceptions contained in CME Rule 552 or other exceptions consistent with Commission Regulation 155.5(c)(4) in accordance with Exchange rules which the Commission has permitted to go into effect pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41.

Dissenting Opinion of Commissioner Barbara Pedersen Holum on the Disposition of the Chicago Mercantile Exchange's Dual Trading Petition

Section 4j(a)(3) of the Commodity Exchange Act requires the Commission to exempt a contract market unconditionally from the dual trading prohibition of Section 4j(a) of the Act upon finding that the trade monitoring system satisfies the requirements of Section 5a(b) of the Act by effectively detecting and deterring dual trading-related abuses. I dissent from the Commission's proposed Order granting the CME a conditional exemption in seven affected markets.

Based on information provided to the Commission, I find that the CME's trade monitoring system as a whole effectively detects and deters dual trading abuses and therefore accomplishes the intended objectives of the Act. Additionally, in 1991 the CME implemented a dual trading restriction as part of its trade monitoring system which the Commission approved. The Commission has reviewed the CME's enforcement of that restriction over the past six years and found it to be effective.

Therefore, I find that CME's trade monitoring system, including its dual trading restriction, meets the standards for an unconditional exemption from the dual trading prohibition.

[FR Doc. 97-29892 Filed 11-12-97; 8:45 am]

BILLING CODE 6351-01-P

[19] During 1996, the CME significantly expanded its video surveillance capability. The two cameras on the upper trading floor were replaced with ten cameras, and the single camera on the lower trading floor was replaced with seven cameras. All 17 are state-of-the-art "pan, tilt and zoom" professional grade cameras.

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Petition for Exemptions From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to condition and proposed order granting conditional exemptions from the prohibition on dual trading in 13 affected contract markets.

SUMMARY: For the reasons set forth in the Proposed Order Granting Conditional Dual Trading Exemptions ("proposed Order"), the Commodity Futures Trading Commission ("Commission") intends to grant, subject to the stated conditions, the petition of the Chicago Board of Trade ("CBT" or "Exchange") for exemptions from the dual trading prohibition in Section 4j(a) of the Commodity Exchange Act ("Act") and Commission Regulation 155.5 for its Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the Corn, Soybean, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures. Pursuant to the Act and Commission Regulation 155.5(d)(8)(C)(iii), CBT may submit written supplemental data, views or arguments and will have an opportunity to make an oral presentation to the Commission before the Commission makes its final determination.

DATES: If CBT intends to make an oral presentation, it must submit its request in writing no later than ten days after receipt of this proposed Order. CBT must submit any written supplemental data, views or arguments within 30 days of receipt of this proposed Order.

ADDRESSES: CBT's request for oral presentation and submission of written supplements are to be sent to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Rachel Fanaroff Berdansky, Special Counsel, or Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone: (202) 418-5490.

SUPPLEMENTARY INFORMATION: A floor broker engages in dual trading when he or she executes a customer's order during the same trading session in which he or she executes, directly or indirectly, a trade in the same contract for his or her own account or an account in which he or she has an interest. Dual trading can afford floor brokers the opportunity to abuse customer orders if audit trail information and surveillance are insufficient to permit the detection of such abuses. Specifically, a dual trading floor broker can directly commit abuses of customer orders such as trading ahead or against those orders and also has an informational advantage for his or her personal trading.[1] Section 4j(a) of the Act and Regulation 155.5 prohibit dual trading and establish trade monitoring standards that must be met in order for contract markets to be exempted from the prohibition.

The Commission intends to issue the following proposed Order granting CBT conditional dual trading exemptions pursuant to Section 4j(a) of the Act and Commission Regulation 155.5. In accordance with Regulation 155.5(d)(8), CBT may submit to the Commission in writing any supplemental data, views or arguments within 30 days of receipt of this Notice and proposed Order. In addition, CBT may request, in writing within ten days of receipt of this Notice and proposed Order, an opportunity to make an oral presentation to the Commission. If CBT submits a request for an oral presentation, the Exchange will be notified by the Commission of the date and the terms under which CBT may make such presentation. Public notice of such an oral presentation also will be provided in accordance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b (Supp. I 1995).

Proposed Order Granting Conditional Dual Trading Exemptions

On October 25, 1993, CBT submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Act and Commission Regulation 155.5 for its Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the U.S. Treasury Bond and 10-Year Treasury Note futures. The Exchange corrected that petition on December 2, 1993. Subsequently, by letters dated March 25 and May 14, 1994, CBT supplemented its petition to include the option contracts on its Corn, Soybean and 5-Year Treasury Note futures since such contract markets had reached average daily volumes of 8,000 contracts and, thus, had become affected contract markets ("affected contract markets") as defined in the Act and regulations thereunder.[2] CBT updated its petition on January 17, 1997, with respect to all 13 of its affected contract markets. Notice of the public availability of the CBT's updated exemption petition was published in the **Federal Register** on February 20, 1997.[3]

[1] The Commission has previously discussed in several instances, including its November 28, 1994 *Report to Congress on Futures Exchange Audit Trails,* the possible abuses attendant to dual trading. *See also* the Commission's Proposed Regulation Prohibiting Dual Trading by Floor Brokers, 56 FR 13025 (March 9, 1993).

[2] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* Section 4j(a)(4) of the Act. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading a screen-based trading system. The Commission further stated that, while not excluding electronic trading from the dual trading prohibition, the Commission was retaining the flexibility to consider the matter further. *See* 58 FR 40335 (July 28, 1993). The Commission is not addressing screen-based trading in this proposed Order.

[3] 62 FR 7754 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. By letter dated June 22, 1994, CBT informed the Commission that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CBT had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate

Continued

Upon consideration of CBT's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results reconciling imputed times to underlying trade documentation and verifying data on "window sizes";

actions taken in response to the Commission's November 1994 *Report to Congress on Futures Exchange Audit Trails*, June 1995 *Report on Audit Trail Accuracy and Sequencing Tests* ("Audit Trail Report"), and August 12, 1996 *Report on Audit Trail Status and Re-Test* ("Audit Trail Re-Test Report");

Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities; [4]

the Division of Trading and Markets Memorandum dated October 28, 1997;

and upon review of each element of CBT's trade monitoring system and of CBT's trade monitoring system as a whole, the Commission finds that the Exchange's trade monitoring system does not fully satisfy the requirements of Sections 5a(b) and 4j(a)(3) of the Act and Regulation 155.5 in that the audit trail, recordkeeping, and physical observation of trading areas components are deficient. The Commission finds that corrective actions are sufficient and appropriate to meet those standards. In addition, the Commission finds that, based on an analysis of the composition of trading (by transaction size and volume) of certain distant contract expirations and option markets, there is a substantial likelihood that the broad scope of the dual trading prohibition specified under Section 4j of the Act and Regulation 155.5, which applies to a contract market as a whole, would harm the public interest in hedging or price basing in less liquid months of the affected contract markets. Therefore, the Commission has determined to grant CBT conditional exemptions from the dual trading prohibition of Section 4j of the Act and Regulation 155.5 in its 13 affected contract markets.

The Commission is granting the Exchange's petition subject to the Exchange taking the corrective actions specified below and implementing and enforcing the dual trading restriction described in the Appendix to this proposed Order. The Commission has concluded that the proposed dual trading restriction, which imposes a prohibition on dual trading in actively traded months but has no impact on less actively traded back months, is appropriate as a method to deter dual trading-related abuses and other customer abuses. The Commission's limited restriction, as opposed to the statutory dual trading ban, strikes a balance between the need to preserve liquidity in certain low volume months and the need to protect customers from the potential abuses that are associated with dual trading.

The Commission *Hereby Finds* as follows:

Components of Exchange's Trade Monitoring System

Audit Trail System

One-Minute Execution Time Accuracy

The Exchange's audit trail system fails to record "reliably accurate" trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5. [5] Specifically, the Exchange has not established for any of its 13 affected contract markets that 90 percent or more of imputed trade times, as assigned by the Exchange's trade timing system, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less ("90 percent performance standard"). Thus, an impermissible amount of the trade timing data, an integral part of an exchange's trade monitoring system, is not reliably accurate in accordance with that standard and thus negatively impacts the Exchange's surveillance systems and investigatory and disciplinary action programs.

The Commission has made clear that a reliably accurate imputed trade execution time only can be demonstrated by a timing window that narrows the time assigned to the trade to a two-minute period within which the trade is most likely to have occurred. Even where an exchange can demonstrate a trade timing window of two minutes or less, it is not possible to determine where within that window the trade occurred. This underscores the critical need for compliance with the 90 percent performance standard.

CBT's Advanced Computerized Trade Reconstruction ("Advanced CTR") system imputes an execution time for every trade. [6] Trade times are imputed based upon entry and exit timestamps on order tickets; time and sales reports; trading card numbers and sequence of trades on trading cards; certain handwritten execution times; times that trades were submitted for clearing; 15-minute bracket codes; calculated differentials for spread trades; identification of spread legs and types of spread trades; and any available times resulting from electronic order entry or trading systems. Based on these data, Advanced CTR determines various time spans within which a trade is likely to have been executed and ultimately assigns an imputed execution time for the trade.

The audit trail tests designed and reviewed by the Commission and conducted by the Exchange in response to a November 23, 1994 Commission letter involved a determination of the consistency of imputed trade execution times with all underlying audit trail records and data. Based upon that process, trade timing accuracy and sequencing rates for CBT's imputed system were computed. [7] In reviewing the results of the test designed to evaluate trade timing accuracy, Commission staff determined that, although 91 percent of CBT's trade times satisfied the standard for consistency with the underlying data, only 41 percent of those trade times had timing windows of two minutes or less and thus could be verified. [8] In March 1996, the Commission conducted a re-test of CBT's audit trail system. Although 92.7 percent of CBT's trade times satisfied the standard for consistency with the underlying data, only 69.2 percent of the trade times had timing windows of two minutes or less and thus could be verified.

Subsequent to the re-test, the Exchange provided windows data for all affected contract markets in response to Commission requests. For December 19, 1996, the overall percentage of trades with timing windows of two minutes or less was 67 percent. For subsequent dates, the Exchange computed windows data separately for each affected contract market in addition to computing overall windows data. The overall percentage of trades with timing windows of two minutes or less was 84 percent on March 26, 1997, and 85 percent on May 28, 1997; June 5, 1997; and June 10, 1997. For those same dates, the percentage of trades with timing windows of two minutes or less computed separately for each affected contract market ranged from 58 to 89 percent on March 26, 1997; 74 to 89 percent on May 28, 1997; 69 to 91 percent on June 5, 1997; and 70 to 90 percent on June 10, 1997. [9] Thus, the Exchange has not demonstrated that its imputed trade execution times are sufficiently reliable, precise, and verifiable in that it has not established that 90 percent or more of such times are imputed within timing windows of two minutes or less.

The negative impact on the components of the Exchange's trade monitoring system resulting from its failure to satisfy the 90 percent performance standard is exacerbated because CBT does not require the recordation of a member's personal and customer trades in sequence. [10] Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades. Where the sequence of customer and personal trades is not determined, possible dual trading-related abuses, such as trading ahead of customer orders and trading against customer orders, could go undetected.

Other Components of CBT's Audit Trail System

With regard to the requirement that trade data be provided continually to the Exchange in accordance with Section 5a(b)(3)(A)(ii) of the Act, exchange audit trail systems must provide trade data, including trade timing information, on a periodic, but not necessarily real-time, basis. [11] Such information also must be obtained in a timely manner. The Exchange requires that clearing members submit trade data for clearing within one hour after the end of each hour on the half-hour. However, as explained below, the Exchange fails to enforce the requirement that trading cards be collected and timestamped in a timely manner. This failure calls into question the Exchange's ability to assure that trade data are provided continually to clearing.

With regard to unalterability, as mandated by Section 5a(b)(3)(A)(i) of the Act, the Exchange's trade records are unalterable, since they are recorded on trading cards and order tickets in nonerasable ink. Trade corrections also are not permitted to obscure original data. [12]

CBT's imputed timing system, which uses data from sources other than the trader, as well as data provided by the trader, to derive times, also meets the Section 5a(b)(3)(A)(iii) standards for independence, to the extent

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its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CBT the opportunity to supplement its petition.

[4] A list of the specific documents considered in connection with this proposed Order will be made available to the Exchange upon request. Copies of any documents not originally furnished by CBT also will be made available upon request.

[5] Commission Regulation 1.35(g) requires that "[a]ctual times of execution shall be stated in increments of no more than one minute in length." Section 5a(b)(2) of the Act, among other things, codified that timing requirement by stating that an exchange's audit trail system shall, "consistent with Commission regulation, accurately record the times of trades in increments of no more than one minute in length." Section II of Appendix A to Commission Regulation 155.5 requires that a contract market, in describing its audit trail system in a petition for exemption from the dual trading prohibition, "[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) * * *." In addition, the contract market must "[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses." For contract markets that impute trade execution times, Appendix A requires that the contract market provide a description of the trade imputation algorithm, "including how and why it reliably establishes the accuracy of the imputed trade execution times."

[6] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data.

[7] To the extent that the time imputed by a computer algorithm was consistent with required trade documentation, time and sequence data and time and sales information for the subject trade and surrounding trades, that time was deemed accurate. If that imputed time fell within a two-minute level of precision as measured by the size of the final time window determined by such algorithm, that imputed time was considered to be verifiable, reliable and precise. Thus, the Commission stated in its Audit Trail Report, "90 percent of CBT trade times satisfied the standards [of consistency with underlying data] for Test 1. However, for 59 percent of the trade times deemed accurate, available data are not sufficiently precise to verify that the one-minute audit trail time chosen was actually within the minute of execution." Audit Trail Report at 17.

Under the 90 percent performance standard, only trade times assigned by the Exchange's imputed timing system within timing windows of two minutes or less are reliably accurate. As noted above, Commission staff deems accurate those trades for which the imputed trade times are consistent with all underlying audit trail records and data, as determined by manual review. When comparing windows data for accurate trades and all trades, the Division has found that a higher percentage of accurate trades are assigned imputed times that fall within windows of two minutes or less and thus meet the 90 percent performance standard. However, the resulting percentage difference between accurate and all trades generally has not exceeded one percent. In addition, since the use of all trades data facilitates exchange submission of timing windows percentages because such data do not have to be generated in conjunction with an accuracy test, which requires an analysis of extensive trade documentation, the Commission finds that the use of all trades data provides an acceptable basis for determining windows performance.

[8] In response to recommendations made in the Audit Trail Report, the Exchange modified its trading card procedures such that a member can record only one time bracket per trading card, record no more than six trades per trading card, and use only one-sided trading cards to record for each trader all personal buy and sell trades in sequence. Additionally, the Exchange implemented recommendations that it enforce certain data recordation and submission requirements, requirements to record correct customer type indicator codes, and timestamping procedures for flashed orders.

The Exchange also made a number of improvements to its trade timing system. CBT now requires a trade submission indicator for flashed orders, uses seconds in the imputed timing system, when available, including seconds from order ticket timestamps, requires member firms to input the seconds from order entry and order confirmation timestamps into the trade entry system, reprogrammed CTR to impute proper execution times for trades executed during the close, and upgraded synchronized timestamp clocks to record times to the nearest second. The Exchange also made programming improvements to its timing algorithm.

CBT declined to implement two Commission recommendations: that members record and use manual execution times for at least the first and sixth trades on trading cards, and that the Exchange include the identity of traders in the spread time and sales.

[9] May 28, 1997; June 5, 1997; and June 10, 1997 were selected by Commission staff using a random sampling method. The Exchange also provided similar percentage data for three days of its own choosing. The overall percentage of trades with timing windows of two minutes or less was 87 percent on May 13 and May 20, 1997 and 88 percent on May 15, 1997. For those same dates, the percentage of trades with timing windows of two minutes or less computed separately for each affected contract market ranged from 74 to 90 percent on May 13, 1997; 72 to 91 percent on May 15, 1997; and 68 to 90 percent on May 20, 1997.

The Exchange submitted data indicating that 90 percent or more of the imputed trade times in its Soybean futures contract had timing windows of two minutes or less on one of the three dates selected at random by Commission staff and on all three dates selected by the Exchange. Although the Commission considers timing windows data for all dates provided, the dates selected by persons other those affiliated with the Exchange are accorded greater weight in determining whether an affected contract market attains the 90 percent performance standard. Overall, the windows data for the Soybean futures contract market does not demonstrate consistent compliance with the 90 percent performance standard.

[10] Notably, although there are differences in various systems among the exchanges, the three other exchanges for which the Commission has granted unconditional exemptions from the dual trading prohibition require that customer and personal trades be recorded sequentially on a single trading document. Similar to CBT, one of those exchanges, the Coffee, Sugar and Cocoa Exchange, Inc., also uses an imputed timing system to assign trade execution times. Such sequencing also can be achieved by recording personal and customer trades in sequence on one set of sequentially numbered trading documents. As the Commission noted in discussing the results of CBT's first audit trail test, "recordation of a member's personal and customer trades in sequence should be the Exchange's objective." Audit Trail Report at 20. Section 5a(b)(3) of the Act provides, among other things, that an exchange's audit trail system must record accurately and promptly essential data on all trades, including execution time, through a means that is adequately precise to determine the sequence of customer and personal trades, to the extent practicable as determined by the Commission by rule or order.

[11] See Audit Trail Re-Test Report at 39.

[12] The Commission requires retention of a record of any cancellations, changes, or corrections to trades. Commission Regulation 1.35(d) and the Outtrade Interpretation, 54 FR 37004 (September 6, 1989). The Commission amended Regulation 1.35(d)(7), effective October 21, 1996, to require that the correction of erroneous information on trading records be accomplished in such a manner that the originally recorded information must not be obliterated or otherwise made illegible. 61 FR 42999 (August 20, 1996). In December 1996, CBT amended its Floor Practices Rule 332.05 and 332.07 to comport with the Commission's amendment to Regulation 1.35(d)(7).

practicable.[13] The Exchange's existing system uses, among other things, data generated by both buyers and sellers for personal trades, including trading card numbers and sequence of trades on trading cards, certain execution times required to be entered manually, entry and exit timestamps on order tickets, time and sales data and 15-minute bracket codes to impute trade execution times.

The Exchange requires that personal trades be recorded in sequence, consistent with Commission regulations, by requiring that members record such trades in sequence on pre-numbered trading cards.[14] The Exchange adopted a single-sided trading card on which all personal buy and sell trades are required to be recorded sequentially in response to an Audit Trail Report recommendation. However, as noted elsewhere, the Exchange does not require the recordation of a member's personal and customer trades in sequence. Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades.

CBT enforces its audit trail requirements and integrates audit trail data into its surveillance system for dual trading-related abuses. However, because the Exchange's trade surveillance system incorporates into its data, including exception reports, an impermissible amount of imputed execution times that are not reliably accurate, the effectiveness of the Exchange's integration of audit trail data is diminished.

As required by Section 5a(b)(1)(B) of the Act, CBT's trade entry and outtrade resolution programs capture certain essential data on cleared trades, unmatched trades, and outtrades.

Finally, with regard to broker receipt times, the Commission finds that it is not practicable at this time for CBT to record the time that each order is received by a floor broker for execution. Immediately executable flashed orders, however, are in substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act, as stated previously by the Commission in its Order on flashed orders and broker receipt times.[15]

Physical Observation of Trading Areas

CBT's trade monitoring system does not provide for physical observation of trading areas in accordance with Section 5a(b)(1)(A) of the Act in that the Exchange does not conduct daily floor surveillance on the open and close to the extent practicable in each affected contract market as required by Appendix A to Regulation 155.5. As part of the Exchange's Market Open/Close Floor Surveillance Program, CBT currently conducts floor surveillance on the open for only half of the affected contract markets and on the close for the remaining half. The Exchange conducts some additional open/close floor surveillance as part of other specialized surveillance programs. The Exchange does conduct floor surveillance at random times and when special market conditions warrant. Information obtained during floor surveillance is integrated into the Exchange's other compliance activities. During 1996, the Exchange initiated two investigations based upon floor surveillance observations.

Recordkeeping System

The recordkeeping component of CBT's trade monitoring system fails to comply with Section 5a(b)(1)(B) of the Act because it does not satisfy the trading record collection and timestamping requirements of Regulation 1.35(j). These requirements are essential to maintaining the basic integrity of trading records used in the Exchange's system to capture essential data on the sequence of transactions in that they ensure the removal of such records from the member's possession in a timely manner and thereby limit the opportunity to alter records, to fabricate trades, or otherwise to use trading records to disadvantage customer accounts. Only approximately 67 percent of the trading cards selected for review by Commission staff were submitted to the clearing member within 15 minutes of the 30-minute trading interval and timestamped promptly to the nearest minute following collection as required by Regulation 1.35(j). The Exchange, however, does use information from the records and violations of recordkeeping requirements to bring disciplinary actions.

In addition, because CBT does not meet the 90 percent performance standard, the system captures an impermissible amount of trade timing data that is not reliably accurate. This circumstance is compounded by the fact that CBT does not require the recordation of personal and customer trades in sequence. As a result, the Exchange's recordkeeping system is limited in its capability to capture essential data on the sequence of customer trades.

CBT generally conducts back office audits of trading cards and order tickets at each clearing member firm twice a year for a representative sample of customer orders and personal trades. CBT also uses a computerized tracking system to monitor member compliance daily with certain trade timing and sequencing requirements, regularly examines trading records during the course of investigations for possible recordkeeping violations, and uses information from these audits to generate investigations. The Exchange requires that the account identifier reflected on the floor order ticket relate back to the ultimate customer account.

Surveillance Systems and Disciplinary Actions

The inclusion of an impermissible amount of trade timing data that is not reliably accurate in the Exchange's trade monitoring system diminishes the capability of the Exchange's trade surveillance system to review trade data effectively, and as a result, possible dual trading-related abuses could go undetected. Further, the lack of reliably accurate trade timing data diminishes the capability of the Exchange's disciplinary program to bring appropriate disciplinary actions against violators. In other respects, the Exchange's trade surveillance system may be capable of reviewing and is used to review trading data on a regular basis to detect possible dual trading-related abuses and other customer order abuses. In addition, CBT did bring disciplinary actions against offenders and issued meaningful penalties against violators.[16] Therefore, CBT has demonstrated the capability to use information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders as required by Sections 5a(b)(1)(C), (D) and (F) of the Act. Further, CBT refers appropriate cases to the Commission.

On a daily basis, CBT reviews Trade Practice Investigation Reports and uses its Sophisticated Market Analysis Research Technology system, a framework for reviewing such data, to detect possible instances of dual trading-related abuses and other trading abuses. All relevant trade data, including account numbers, are included in these reviews. Among the computerized exception reports generated by the Exchange and reviewed daily are those designed to identify such suspicious trading activity as trading ahead of a customer, trading against a customer, preferential trading and wash trading and to review outtrade resolution and U.S. Treasury Bond futures contract broker association top step trading.[17]

During 1996, CBT initiated 309 investigations into all types of trading related abuses. Of the 86 investigations opened and closed during this period, 34 percent were closed within the four-month objective set forth in Commission Regulation 8.06, and an additional 28 percent were closed within four to six months. Thus, approximately 62 percent of the investigations opened and closed during 1996 were closed in six months or less. CBT should improve the timeliness of its investigations or provide the reasons that such investigations require more than four months to complete. During that same period, the Exchange opened and closed 45 dual trading-related investigations, and referred nine of those investigations to a disciplinary committee. CBT assessed substantial penalties in 13 disciplinary actions involving dual trading-related abuses.

Commitment of Resources

The Commission finds that CBT commits sufficient monetary resources to its trade monitoring system to be effective in detecting and deterring violations attributable to dual trading. The Exchange maintains an adequate staff to conduct investigations and to develop and prosecute disciplinary actions. For calendar year 1996, the Exchange reported that it committed 141 personnel to the Exchange's various self-regulatory activities and reported its total self-regulatory costs to be $15,456,317. CBT's reported volume for this period was 222,438,505 contracts, and the number of trades was 17,675,749. However, CBT should allocate its resources as appropriate to improve its trade monitoring system, as discussed above.

Accordingly, the Commission *Hereby orders* that:

The Exchange must implement the following corrective actions:

(1) achieve compliance with the 90 percent performance standard,
(2) significantly improve compliance with the requirement that trading records be collected and timestamped in accordance with Commission regulations, and
(3) conduct floor surveillance daily on the open and close for each affected contract market.

The Commission *Further orders* that:

Until such time as the Exchange demonstrates that its trade monitoring system satisfies the relevant standards, the Exchange shall be subject to the following condition: Within 60 days from the effective date of a final Order, the Exchange must implement and enforce the limited dual trading restriction described in the Appendix to this proposed Order, which is less restrictive than the dual trading prohibition of Section 4j of the Act and Regulation 155.5. Such dual trading restriction currently would apply to the following affected contract markets: Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the Corn, Soybean, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures.

Accordingly, the Commission proposes to grant CBT'S Petition for Exemption, subject to the stated conditions, from the dual trading prohibition for trading in its Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the Corn, Soybean, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures.

If, at any time, CBT believes that it can demonstrate to the Commission's satisfaction that it meets, for an affected contract market subject to this Order, all of the standards set forth in this Order, including, but not limited to, those in Section 5a(b) and Regulation 155.5, the Exchange may petition for an unconditional exemption to the dual trading prohibition for that affected contract market.

Unless otherwise specified, the provisions of this proposed Order shall be effective on the date on which it is issued as a final Order by the Commission, and the condition shall become effective as stated herein and shall remain in effect unless and until removed, as provided above, or revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). Failure of CBT to abide by the condition of a limited dual trading restriction will automatically cause the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5 to go into effect.

If other CBT contract markets become affected contract markets after the date this Order becomes final, the Exchange would be required, absent submission of a dual trading exemption petition, to restrict dual trading in those affected contract markets in accordance with the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5. Further, if CBT demonstrates to the Commission's satisfaction that an affected contract market subject to this Order has ceased to meet the Regulation 155.5(a)(9) affected contract market threshold, that contract market no longer would be subject to this Order.

Dated: November 7, 1997.

By the Commission:

Edward W. Colbert,

Deputy Secretary.

Appendix—Dual Trading Restriction

a. Restriction

A floor broker is prohibited from executing customer orders in an affected contract market month, as defined below, during the same pit trading session in which the floor broker executes directly, or initiates and passes to another member for execution, a transaction in any such affected contract market month for (1) the floor broker's own account, (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more, (3) any account for which the floor broker has trading discretion, or (4) any other account controlled by a person with whom such floor broker is subject to trading restrictions under Section 4j(d) of the Act to the extent such section is applied by Commission regulation or order.

b. Affected Contract Market Month (Volume)

Affected contract market month means: (1) For each affected non-agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by, at the election of the Exchange, either (i) trading in a contract month by position in relation to the front month contract, as defined below, during the prior six calendar months or (ii) trading in the previous calendar month; and (2) For each affected agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by trading in the previous calendar month. For this purpose, daily trading volume means the total number of contracts sold (or bought) in any contract month of an affected contract market during a trading day, with the average computed as set forth above and excluding ex-pit transactions as permitted under

[13] See Audit Trail Re-Test Report at 40.

[14] Commission Regulation 1.35(d)(2) requires that each member of a contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card.

[15] 60 FR 58049 (November 24, 1995).

[16] This proposed Order does not address certain disciplinary actions taken by the Exchange regarding the March 1996 Wheat futures contract expiration. Those matters are before the Commission in a separate proceeding.

[17] Broker association members trading on the top step of the U.S. Treasury Bond pit are subject to trading restrictions. These restrictions limit the amount of customer and personal trades members can execute opposite each other in the most active contract month. Members cannot trade more than 20% of their monthly volume (brokerage and personal trades) opposite members of their broker association. The members also cannot trade more than 20% of their monthly volume against members of a contiguous broker association. In total, the members cannot trade more than 30% of their monthly volume against members of their own and a contiguous broker association.

contract market rules that have been made effective under the Act. There will be a two business day allowance at the beginning of each calendar month for computation and member notification purposes.

c. Affected Contract Market Month (Front Month)

Front month means, for each affected contract market, the month which is either the expiration or delivery month which is nearest to expiration or at the Exchange's discretion the expiration or delivery month which is next nearest to expiration when the contract month nearest to expiration is five business days or less from the first notice day or last trading day for cash settled contracts for futures contracts or the expiration date for futures options contracts. If a front month is not subject to a prohibition pursuant paragraph b. above, then it shall, nonetheless, be an affected contract market month and be subject to a prohibition unless, on the basis of historical data, that front month reasonably can be expected to have an average daily trading volume of less than 500 contracts.

d. Exceptions

Dual trading shall be permitted under exceptions consistent with Commission Regulation 155.5(c)(4) in accordance with Exchange rules which the Commission has permitted to go into effect pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41.

Notice of Intent To Condition and Proposed Order Granting Conditional Dual Trading Exemptions to the Chicago Board of Trade, Supplemental Statement of Commissioner John E. Tull, Jr.

I am happy to support the Commission's action proposing to grant the CBOT conditional dual trading exemptions for its affected markets. I am troubled, however, by that part of the Commission's Proposed Order which orders the CBOT to conduct floor surveillance daily on the open and close for each affected market when such surveillance is not required by the Act or the Commission's Regulations. Appendix A to Regulation 155.5 states that such surveillance should be conducted to the extent practicable. In my opinion, the Commission should not attempt to instruct an exchange regarding the allocation of its resources with such specificity. Such management decisions are better left to the exchange leadership, which has hands-on, daily contact with the markets at issue. Management should have the discretion to assign exchange personnel as needed to monitor "hot" markets or pits with trading activity of concern.

Opinion of Commissioner Barbara Pedersen Holum, Concurring in Part and Dissenting in Part, on the Disposition of the Chicago Board of Trade's Dual Trading Petition

For the reasons set out below, I concur with the findings of the proposed Order but I dissent from the proposed Order's imposition of a Commission-designed dual trading restriction.

Section 4j(a)(3) of the Commodity Exchange Act requires the Commission to exempt a contract market conditionally from the dual trading prohibition of Section 4j(a) of the Act upon finding that: (1) There is a substantial likelihood that a dual trading suspension would harm the public interest in hedging or price basing at the contract market, and (2) other corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards of Section 5a(b) of the Act by effectively detecting and deterring dual trading-related abuses. The Commission has determined that the Chicago Board of Trade's trade monitoring system fails to satisfy the standards necessary for an unconditional exemption, but that it meets the criteria for granting a conditional exemption. In addition, the Commission has determined to impose a dual trading restriction on the CBT as condition to the exemption. Given these findings, I agree with the majority's view that the CBT should be granted a conditional exemption. However, I dissent from the proposed Order because it would impose a Commission-designed dual trading restriction on the CBT as a condition to the exemption.

Consistent with the statutory framework of self-regulation, I believe that the CBT should adopt its own rules to detect and deter dual trading abuses. When the CBT's trade monitoring system as a whole is determined by the Commission to meet the objectives of the Act by detecting and deterring dual trading abuses, the CBT would be granted an unconditional exemption.

[FR Doc. 97–29893 Filed 11–12–97; 8:45 am]
BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Petition for Exemption From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is granting the petition of the Chicago Mercantile Exchange ("CME" or "Exchange") for exemption from the prohibition against dual trading in its S&P 500 futures contract.

DATES: This Order is to be effective November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, or Rachel Fanaroff Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On October 20, 1993, CME submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Commodity Exchange Act ("Act") and Regulation 155.5 for its affected contract markets, including the S&P 500 futures contract market.[1] The Exchange corrected that petition on December 1, 1993. Subsequently, the Exchange amended its petition on January 21, 1994. CME updated its petition on January 21, 1997. Notice of the public availability of the CME's updated exemption petition was published in the **Federal Register** on February 20, 1997.[2]

Upon consideration of CME's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results reconciling imputed times to underlying trade documentation and verifying data on "window sizes"; actions taken in response to the Commission's November 1994 *Report to Congress on Futures Exchange Audit Trails*, June 1995 *Report on Audit Trail Accuracy and Sequencing Tests* ("Audit Trail Report"), and August 12, 1996 *Report on Audit Trail Status and Re-Test* ("Audit Trail Re-Test Report"); Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities.

The Exchange's S&P 500 futures contract trading restrictions.[3]

[1] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 5,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). See Section 4j(a)(4). The Commission is granting CME conditional exemptions from the dual trading prohibition for its remaining seven affected contract markets. A Notice of Intent to Condition and proposed Order granting such conditional exemptions is being submitted for publication together with this Order.

[2] 62 FR 7755 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. In June 1994, the Commission was informed that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CME had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CME the opportunity to supplement its petition.

[3] Under CME Rule 541 (S&P 500 Top Step rule), a member cannot trade an S&P futures contract for his or her own account while on the top step of the S&P 500 futures pit, except to liquidate a position that resulted from an error. Further, a member who has executed a customer order for an S&P 500 futures contract while on the top step of the S&P 500 futures pit may not on the same day trade such contracts for his or her own account.

The Division of Trading and Markets Memorandum dated October 28, 1997; and upon review of each element of CME'S trade monitoring system and of CME's trade monitoring system as a whole, the Commission hereby finds that CME meets the standards for granting a dual trading exemption contained in Section 4j(a) of the Act as interpreted in Regulation 155.5 for its S&P 500 futures contract market.

Subject to CME's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds with respect to the S&P 500 futures contract market that CME maintains a trade monitoring system which is capable of detecting and deterring, and is used on a regular basis to detect and to deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by Section 5a(b) of the Act and Regulation 155.5.2[4] The Commission further finds that CME's trade monitoring system includes audit trail and recordkeeping systems that satisfy the Act and regulations.

With regard to the S&P 500 futures contract market, each required component of CME's trade monitoring system, with the exception of one-minute execution time accuracy, is described in the Commission's Notice of Intent to Condition and proposed Order being submitted for publication together with this Order. With respect to one-minute execution time accuracy, the Commission finds as follows:

One-Minute Execution Time Accuracy

CME's Regulatory Trade Timing system ("RTT") imputes an execution time for every trade.[5] Trade times are imputed based upon entry and exit timestamps on order tickets; time and sales reports; times that the trades were submitted for clearing; trading card numbers and sequence of trades on trading cards; 15-minute bracket codes; manual execution times for certain types of trades; calculated differentials for spread trades; identification of spread legs and types of spread trades; and available times resulting from electronic order entry or trading systems, if any.

[4] The Commission considers CME Rule 541 to be an integral part of the Exchange's trade monitoring system. In the event of any material change in such system, the Commission may revisit its determination to grant this exemption for the S&P 500 futures contract.

[5] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data.

The Commission has made clear that a "reliably accurate" imputed trade execution time can be demonstrated only by a timing window that narrows the time assigned to the trade to a two-minute period within which the trade is most likely to have occurred. For the S&P 500 futures contract, CME's audit trail system records reliably accurate trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5.[6] Specifically, the Exchange has established for the S&P 500 futures contract market that 90 percent or more of imputed trade times, as assigned by RTT, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less ("90 percent performance standard").

In order to demonstrate attainment of the 90 percent performance standard, the Exchange has provided windows data for the S&P 500 futures contract market in response to Commission requests. For both December 10, 1996, and March 12, 1997, the percentage of trades with timing windows of two minutes or less was 90 percent. On June 30, 1997, the Exchange provided windows data for three specific trade dates selected by the Commission using a random sampling method. The windows data revealed that the percentage of trades with timing windows of two minutes or less was 91 percent on May 28, 1997, and June 5, 1997, and 92 percent on June 10, 1997. Thus, the Exchange has demonstrated consistent compliance with the 90 percent performance standard for the S&P 500 futures contract.

Accordingly, on this date, the Commission HEREBY GRANTS CME's Petition for Exemption from the dual trading prohibition for trading in its S&P 500 futures contract.

For this exemption to remain in effect, CME must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CME's program.

Unless otherwise specified, the provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. § 12e(b)(3)(B).

It is so ordered.

Dated: November 7, 1997.

Edward W. Colbert,

Deputy Secretary to the Commission.

[FR Doc. 97–29894 Filed 11–12–97; 8:45 am]
BILLING CODE 6351–01–P

[6] Commission Regulation 1.35(g) requires that "[a]ctual times of execution shall be stated in increments of no more than one minute in length." Section 5a(b)(2) of the Act, among other things, codified that timing requirement by stating that an exchange's audit trail system shall, "consistent with Commission regulation, accurately record the times of trades in increments of no more than one minute in length." Section II of Appendix A to Commission Regulation 155.5 requires that a contract market, in describing its audit trail system in a petition for exemption from the dual trading prohibition, "[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) * * *. . ." In addition, the contract market must "[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses." For contract markets that impute trade execution times, Appendix A requires that the contract market provide a description of the trade imputation algorithm, "including how and why it reliably establishes the accuracy of the imputed trade execution times."

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Friday, November 21, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: November 10, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–30037 Filed 11–10–97; 2:38 pm]
BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

November 5, 1997.

The Corporation for National and Community Service (CNCS), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Levon Buller, (202) 606–5000, Extension 383. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 1–(800) 833–3722 between the hours of 9:00 am and 5:00 pm Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503. (202) 395–7316, by December 15, 1997. *The OMB is particularly interested in comments which:* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Renewal

Agency: Corporation for National and Community Service.

Title: Voucher and Payment Request Form

OMB Number: 3045–0014

Frequency: The form will be used an estimated average of 40,000 times per year

Affected Public: AmeriCorps participants and the loan holders or schools to which they wish to make payments.

Number of Respondents: 40,000.

Estimated Time Per Respondent: Three minutes (1/4 minute for AmeriCorps participants and 2 3/4 minute for school/loan holder)

Total Burden Hours: 2,000 hours

Total Annualized capital/startup costs: none

Total Annual Cost (operating/maintaining systems or purchasing services): $250,000

Description: The Corporation for National and Community Service proposes to revise a form that is currently being used by former AmeriCorps members to make payments from their accounts in the National Service Trust Fund. The National and Community Service Trust Act of 1993 states that individuals who complete a term of community service in an approved national service position be given an "educational award". These awards represent amounts of money kept in the National Service Trust, which is an account in the U.S. Treasury. The education awards may be used by the individuals who earn them— AmeriCorps members—to pay costs of attending educational institutions and to repay student loans. The Act requires the Corporation for National Service to establish procedures that will allow AmeriCorps members to make payments to qualified institutions of higher education and to holders of their qualified student loans.

The form under consideration here, the Voucher and Payment Request Form (OMB No. 3045–0014), has been used since the summer of 1994 to meet the payment requirements of the Act. This form has three purposes. It is the vehicle by which an AmeriCorps member authorizes and requests that a payment be made from his or her account. It serves as the document by which the school or loan company indicates the amount for which the individual is eligible. And the school or loan company uses it to certify that the payment meets various legislative and regulatory requirements.

This application is to renew the form but in a somewhat revised format. The revisions are to (1) eliminate one unnecessary response contained on the current form, (2) clarify instructions for completing the form, (3) simplify technical language on the original form, and (4) put onto one document space for signatures and the statements for which the signatories indicate affirmation. Regarding this last point, the current form refers those who complete the form to certain statements contained in a separate document. It is assumed that, by signing the form, the signatories are verifying agreement with those statements. On the proposed revised form, the statements and the signatures will be on one document. This will clearly bind the statements to the affirming signatures.

Dated: November 5, 1997.

David N. Spevacek,

Director, Financial Operations.

[FR Doc. 97–29779 Filed 11–12–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–29]

36(b)(1) Arms Sales Notification; Republication

Editorial Note: FR Doc. 97–28687 which was originally published in the issue of Thursday, October 30, 1997 on page 58709 is being republished in its entirety because of editorial errors.

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–29, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–01–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50619/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-29, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ 20 million
Other	$ 7 million
TOTAL	$ 27 million

(iii) Description of Articles or Services Offered:
Seventy-two RIM-7M (F1 Build) SEASPARROW missiles with one training missile, containers, spare and repair parts, supply support, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AAK)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - RIM-7M (F1 Build) SEASPARROW Missiles

The Government of the United Arab Emirates has requested the purchase of 72 RIM-7M (F1 Build) SEASPARROW missiles with one training missile, containers, spare and repair parts, supply support, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $27 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. The platform for these surfaced-launched, anti-aircraft missiles will be the two Kortenaer class frigates being obtained by the UAE from the Netherlands.

The United Arab Emirates will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company, Lowell, Massachusetts and Hughes Missile System Company, Tucson, Arizona. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale may require the assignment of three to five contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The external view of the RIM-7M (F1 Build) SEASPARROW missile is Unclassified and not sensitive. The SEASPARROW missile does have the following classified components, including applicable technical equipment, documentation, and manuals:

a.	Guidance and Control Section:	Confidential
b.	Rocket Motor:	Confidential
c.	Safety and Arming Device:	Confidential
d.	Fuzing hardware:	Confidential
e.	Fuzing frequency/characteristics:	Secret
f.	Exportable parametric threat data programmed into ECM/ECCM software packet:	Secret
g.	Documentation*:	Confidential

* Manuals and technical documents are those necessary for Organizational and Intermediate level maintenance.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Editorial Note: FR Doc. 97–28687 which was originally published in the issue of Thursday, October 30, 1997 at page 58709 is being republished in its entirety because of editorial errors.

[FR Doc. 97–28687 Filed 10–29–97; 8:45 am]
BILLING CODE 1505–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–28]

36(b)(1) Arms Sales Notification; Republication

Editorial Note: FR Doc. 97–28688 which was originally published in the issue of Thursday, October 30, 1997, on page 58709 is being republished in its entirety because of editorial errors.

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–28, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 1505–01–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50620/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-28, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

Major Defense Equipment*	$ 36 million
Other	$ 54 million
TOTAL	$ 90 million

(iii) Description of Articles or Services Offered:
Twenty-four RGM-84G-4 HARPOON missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AAH)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - HARPOON Missiles

The Government of the United Arab Emirates (UAE) has requested the purchase of 24 RGM-84G-4 HARPOON missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $90 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. The platform for these anti-ship missiles will be the two Kortenaer class frigates being obtained by the UAE from the Netherlands.

The United Arab Emirates will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, Saint Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale may require the assignment of three to five contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The RGM-84G-4 HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker
b. Missile characteristics and performance data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Editorial Note: FR Doc. 97–28688 which was originally published in the issue of Thursday, October 30, 1997, on page 58709 is being republished in its entirety because of editorial errors.

[FR Doc. 97–28688 Filed 10–29–97; 8:45 am]
BILLING CODE 1505–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–26]

36(b)(1) Arms Sales Notification; Republication

Editorial Note: FR Doc. 97–28689 which was originally published in the issue of Thursday, October 30, 1997, at page 58710 is being republished in its entirety because of editorial errors.

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–26, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 1606–01–M

Editorial Note: FR Doc. 97–28689 which was originally published in the issue of Thursday, October 30, 1997, at page 58710 is being republished in its entirety because of editorial errors.

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50410/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-26, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $479 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) Total Estimated Value:

Major Defense Equipment*	$341 million
Other	$138 million
TOTAL	$479 million

(iii) Description of Articles or Services Offered: Twenty-one AH-1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SCP, Amendment 6)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - AH-1W Super Cobra Helicopters

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 21 AH-1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support. The estimated cost is $479 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The recipient will use these helicopters primarily to conduct military exercises for purpose of self-defense and military preparedness. The recipient will have no difficulty absorbing these additional helicopters into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Bell Helicopter, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-1W Super Cobra Helicopter and associated systems, including operations manuals and maintenance publications, are unclassified. The following components are classified:

a. The AN/APR-44(V)1 radar warning system hardware is unclassified. After software (parametric threat data) is incorporated into the system, it is then classified Secret. Publications and personnel training related to this equipment are classified Confidential.

b. The AN/APR-39 Radar Signal Detecting Set is Confidential when it is loaded with classified threat warning parameters.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Editorial Note: FR Doc. 97–28689 which was originally published in the issue of Thursday, October 30, 1997, at page 58710 is being republished in its entirety because of editorial errors.

[FR Doc. 97–28689 Filed 10–29–97; 8:45 am]
BILLING CODE 1505–01–C

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: DoD, National Defense Panel.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 12, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0900–1700, November 12, 1997 in order for the Panel to discuss classified material.

DATES: November 12, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Pub. L. 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 0900–1700 on November 12. During the closed session on November 12th from 0900–1700 the Panel will discuss the NDP staff presentations on various future strategies, desired capabilities, and developing force elements at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This notification also is written verification that the Panel was unable to provide notice of this meeting 15 days prior to the date of the meeting, due to the fact that this particular (additional) meeting wasn't added to the schedule by the Panel until 3 November.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: November 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29784 Filed 11–12–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 2, 1997; December 9, 1997; December 16, 1997; December 23, 1997; and December 30, 1997, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: November 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29783 Filed 11–12–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force (CCAF) Board of Visitors Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on December 17, 1997, at 8:00 a.m. on the first floor Conference Room, Community College of the Air Force, Building 836, 130 West Maxwell Air Force Base, Alabama. The meeting will be open to the public.

The purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact Major David Rogers, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on December 8, 1997. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to Major David Rogers no later than the time of the meeting for distribution to the board and interested members of the public. Visual aids must be submitted to Major David Rogers on a 3½" computer diac in Microsoft PowerPoint format no later than 4:00 p.m. on December 8, 1997 to allow sufficient time for virus scanning and formatting of the slides.

For further information, contact Major David Rogers or Lieutenant Cornel Taite, (334) 953–7937, Community College of the Air Force, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail at drogers@max1.au.af.mil or ctaite@max1.au.af.mil.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–29790 Filed 11–12–97; 8:45 am]
BILLING CODE 3910–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Legislative Environmental Impact Statement (LEIS) for the Continued Withdrawal of Lands at Bravo 20 Bombing Range (B–20), Fallon, Nevada as Identified in the Military Land Withdrawal Act of 1986

SUMMARY: The Department of the Navy announces its intent to prepare a Legislative Environmental Impact Statement (LEIS) pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by Council on Environmental Quality regulations (40 CFR parts 1500–1508). The LEIS will analyze the proposed continued withdrawal of lands supporting B–20 at Naval Air Station (NAS) Fallon, Nevada. Section 5 of the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) directs the Navy to prepare an LEIS to evaluate the environmental effects of continued naval operations on the checkerboard pattern of withdrawn public lands that make up the B–20 training range. The LEIS will evaluate the cumulative effects of all NAS Fallon land withdrawals and serve as a Navy recommendation to Congress for consideration in determining the continued withdrawal of B–20 lands. In order to maintain the military mission, the Navy is proposing the continued use of the B–20 as defined by the Military Lands Withdrawal Act, Section 1(a). The actions considered in the LEIS would not result in the withdrawal of additional lands. The LEIS will analyze the potential environmental effects of the proposed action, public scoping alternatives, if applicable, and a "no action" alternative. Under the "no action" alternative, withdrawn lands listed in Section 1(a) of the Military Lands Withdrawal Act would not be renewed for continued military purposes.

ADDRESSES: The Navy is initiating a public scoping process for the purpose of determining public concerns and issues to be analyzed and addressed for this action. The Navy will hold public scoping meetings on December 9, 1997, from 7:00 p.m. to 10:00 p.m., at the Fallon Convention Center, 100 Campus Way, Fallon, Nevada; on December 10, 1997, from 7:00 p.m. to 10:00 p.m., at Pershing County District Office, 1150 Elmhurst Avenue, Lovelock, Nevada; and on December 11, 1997, from 7:00 p.m. to 10:00 p.m., at Reno Sparks Convention Center, 4590 S. Virginia Street, Reno, Nevada. A Navy public open house will occur at each site from 3:00 p.m. to 5:30 p.m. prior to each scoping meeting.

A brief presentation will precede a request for public information and comments. Navy representatives will be available at these meetings to receive information and comments from agencies and the public regarding issues of concern. It is important that federal, state and local agencies, and interested individuals take this opportunity to provide information or identify environmental concerns that should be addressed during the analysis and preparation of the LEIS. In the interest of the available time, each speaker will be asked to limit oral comments to three minutes. Comment forms will also be available to submit written comments at these meetings.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public scoping meetings. To be most helpful, scoping comments should clearly describe specific information, data, issues or topics which the commenter believes the LEIS should address. Written comments or questions regarding the scoping process and/or LEIS should be postmarked no later than Friday, February 13, 1998 and sent to the following address.

FOR FURTHER INFORMATION CONTACT: Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006 (Attn: Mr. Sam Dennis, Code 7031), telephone (650) 244–3007, fax (650) 244–3206, e-mail at: *sldennis@efawest.nav-fac.navy.mil.*

Dated: November 19, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–29904 Filed 11–12–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive License; Edge Technologies, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Edge Technologies, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned inventions described in: U.S. Patent Number 4,906,879 entitled *Terbium-Dysprosium Magnetostrictive High Power Transducers*

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, Maryland 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director, Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, Maryland 20817–5700, telephone (301) 227–4299.

Dated: November 4, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–29793 Filed 11–12–97; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a regular business meeting on Wednesday, November 19, 1997. The meeting is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The subjects of the meeting will be as follows:

A. Minutes of the October 22, 1997 business meeting.

B. Announcements.

C. Report on Hydrologic Conditions in the Delaware River Basin. The report will include an update on the Basin's current drought warning status.

D. General Counsel's Report.

E. Jefferson Township Sewer Authority Docket No. D–97–6 CP. The Commission conducted public hearings on this project application on June 25 and July 28, 1997.

F. A Resolution to Adopt the Commission's Annual Budgets for the Fiscal Year Ending June 30, 1999 and to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets. A public hearing on this budget was held on October 22, 1997.

G. A Resolution to Amend the Administrative Manual—Rules of Practice and Procedure. The Commission conducted a public hearing on the proposed amendments to its Rules of Practice and Procedure on October 22, 1997.

H. Public Dialogue.

Dated: November 3, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–29868 Filed 11–12–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Floodplain and Wetlands Involvement for the Proposed Jacksonville Electric Authority Circulating Fluidized Bed Combustor Project

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), and notice of floodplain and wetlands involvement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental and human health impacts of the construction and operation of a project proposed by the Jacksonville Electric Authority (JEA) that has been selected by DOE to demonstrate circulating fluidized bed (CFB) technology under the Clean Coal Technology (CCT) Program. The proposed project would involve construction and operation of a CFB combustor fueled by coal and petroleum coke to repower an existing steam turbine at JEA's Northside Generating Station in Jacksonville, Florida, to generate nearly 300 megawatts of electricity (MWe). This EIS will support a DOE decision regarding whether DOE will provide approximately $75 million in cost-shared funding (about 24% of the total cost of approximately $309 million) for the proposed project.

The purpose of this Notice of Intent is to inform the public about the proposed action; present the schedule for the action; announce the plans for a public scoping meeting; invite public participation in the scoping process; and solicit public comments for consideration in establishing the scope and content of the EIS. The EIS will evaluate the potential impacts of the proposed action and reasonable alternatives. Because the proposed project may involve an action in floodplains and wetlands, the EIS will include a floodplain and wetlands assessment and a statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022).

DATES: To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the scope and content of the EIS from all interested parties. All comments must be received by December 31, 1997, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at the Northside Generating Station, In-Plant Conference Room, 4377 Heckscher Drive, Jacksonville, Florida, on Wednesday, December 3, 1997, at 7 p.m.

ADDRESSES: Written comments and requests to participate in the public scoping process should be addressed to: Dr. Jan Wachter, NEPA Document Manager for the JEA Project, Federal Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, WV 26507–0880. Individuals who would like to verbally or electronically provide comments should contact Dr. Wachter at direct telephone 304–285–4607; toll free number 1–800–432–8330 (ext. 4607); fax 304–285–4469; or E-mail JWACHT@FETC.DOE.GOV.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project or to receive a copy of the draft EIS when it is issued, contact Dr. Jan Wachter at the address provided above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119; telephone 202–586–4600; or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under Public Law 99–190, Congress provided authorization and funds to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's CCT Program. In December 1985, Congress made funds available to DOE for conducting the first round of the CCT Program. Congress directed that this first solicitation for federal cost-sharing (1) be open to all market applications of clean coal technologies, (2) apply to any segment of the U.S. coal resource base, and (3) encompass both new and retrofit applications. In response to the solicitation, proposals were received and projects were selected by DOE for negotiation. In addition, a list of alternate candidates was established from which replacement selection could be made should any of the original selections not proceed. JEA's proposed CFB combustor project has evolved through a series of site changes from a project that was selected from the alternate list for demonstration.

The demonstration of JEA's CFB combustor project under the CCT Program would fulfill an existing DOE programmatic need. Coal has the potential to address critical energy supply issues because of its abundant reserves; however, barriers to increased use of coal include concerns about environmental issues, such as acid deposition, global climate change, polyaromatic hydrocarbon emissions, and solid waste. Since the early 1970's, DOE and its predecessor agencies have sponsored long-term programs to develop innovative coal technologies through the proof-of-concept stage to overcome these environmental barriers while improving combustion efficiency and reducing costs.

However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can seriously be considered for commercialization, it must be demonstrated at a large enough scale to prove its reliability and to show economically competitive performance. The financial risk associated with such large-scale demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The congressionally-directed CCT Program provides a mechanism to accelerate the commercialization of innovative technologies to meet the nation's near-term energy and environmental goals, to

reduce technological risk to industry to an acceptable level, and to provide private sector incentives required for continued research and development aimed at finding solutions to long-range energy supply problems.

Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with JEA, cost-shared financial assistance to JEA for the design, construction, and operation of the proposed project, as described below. JEA plans to form an alliance with Foster Wheeler Corporation through its subsidiary, Foster Wheeler Power Systems, Inc., to jointly own and operate the project. Together with other Foster Wheeler affiliates, Foster Wheeler Power Systems, Inc. will provide the CFB combustor and perform the project engineering, procurement, and construction. The demonstration project would last 24 months and cost approximately $309 million, with DOE's share being nearly $75 million (24%). The proposed project would be located at JEA's existing Northside Generating Station in Jacksonville, Florida, which currently consists of 3 heavy oil- and natural gas-fired steam generation units and 4 diesel oil-fired combustion turbine units.

The Northside Generating Station is approximately 10 miles north of downtown Jacksonville, Florida. The Northside Generating Station is an industrial site encompassing approximately 400 acres, with 200 acres devoted to existing steam generation units, combustion turbine units, and associated infrastructure. New construction associated with JEA's proposed CFB combustor project would occupy approximately 60 acres of previously disturbed land. The Northside Generating Station contains a number of wetland areas, especially in the perimeter areas. Preliminary analysis indicates that the site may be in a hurricane storm surge area, in addition to the 100-year floodplain of the St. Johns River. The most significant environmental feature associated with the Northside Generating Station is the nearby presence of estuarine salt marsh backwaters of the St. Johns River. St. Johns River Power Park, an industrial site which consists of two 624 MWe coal- and petroleum coke-burning power plants on 1,656 acres, is adjacent to the Northside Generating Station.

The overall objective of the project is to demonstrate the feasibility of CFB technology at a size that will be attractive for large-scale utility operation. The new CFB combustor would use coal and petroleum coke to generate nearly 300 MWe by repowering the existing Unit 2 steam turbine, a 297.5-MWe unit that has been out of service since 1983. The project is expected to provide JEA with a low-cost, efficient, and environmentally-sound generating resource. In addition, JEA plans to repower the currently operating Unit 1 steam turbine without cost-shared funding from DOE. The Unit 1 steam turbine will be essentially identical to the turbine for Unit 2, and is scheduled to be repowered about 6 to 12 months after the Unit 2 repowering. While the proposed project only consists of the Unit 2 repowering (because DOE would provide no funding for the Unit 1 repowering), the EIS will evaluate the Unit 1 repowering as a related action.

In a CFB combustor, coal and coal/fuel blends, air, and limestone are introduced into the lower portion of the combustor, where initial combustion occurs. As the fuel is reduced in size through combustion and breakage, it is transported higher in the combustor where additional air is introduced. Ash and unburned fuel and limestone pass out of the combustor, collect in a particle separator, and recirculate to the lower portion of the combustor. Sulfur reacts with limestone added in the furnace to form ash that can be marketed as a useful byproduct such as roadbed material.

For the proposed project, the combined installation of the CFB combustor and a flue gas scrubber is expected to remove over 97% of the sulfur dioxide emitted from burning coal that contains up to 4.5% sulfur. The relatively low furnace operating temperature of about 1650°F would result in appreciably lower nitrogen oxide emissions compared to conventional coal-fired power plants.

The project would also include a new selective non-catalytic reduction system to further reduce emissions of nitrogen oxides. Over 99.8% of particulate emissions would be removed by a new baghouse or a new electrostatic precipitator.

In addition to the CFB combustor itself and the air pollution control systems, new equipment for the project would include a new stack and new fuel, limestone, and ash handling systems. The height of the proposed new stack is expected to be approximately 450 feet compared to 300 feet for the existing stack at Unit 2. The project would also require overhaul and/or modifications to existing systems such as the steam turbine, condensate and feedwater systems, circulating water systems, water treatment systems, plant electrical distribution systems, the switchyard, and the control systems.

Options being considered for transport of coal include (1) an extension of conveyors from the nearby St. Johns River Power Park, and (2) construction of new receiving, handling, and storage facilities for solid fuel. Limestone and ash storage and handling facilities also would be required. Wherever possible, existing facilities and infrastructure located at the Northside Generating Station would be used for the proposed project. These include the discharge system for cooling water to the St. Johns River, the wastewater treatment system, and the electric transmission lines and towers.

Because Unit 2 has not operated since 1983, the baseline emissions from that unit are zero. Units 1 and 3 have been operating at annual capacity factors of less than 40%, firing either heavy oil or natural gas. Unit 3 would continue as a 563.7-MWe oil/gas-fired unit. With the exception of low-NO_X (nitrogen oxide) burners on Unit 3, Units 1 and 3 are not currently equipped with emission control systems.

The area is in attainment of the National Ambient Air Quality Standards. However, as part of JEA's commitment to the local community in the implementation of this project, JEA has committed to a 10% reduction in the annual stack emissions for criteria pollutants (i.e., sulfur dioxide, nitrogen oxides, and particulate matter) from the Northside Generating Station (as compared to recent annual emissions). In achieving this objective, the combined emissions from the repowered Units 1 and 2 operating at annual capacity factors of 100% are projected to be less than recent typical annual emissions from Unit 1 alone.

Another part of JEA's community commitment is that groundwater consumption will be reduced by at least 10% from recent levels. This would be accomplished by increased recycling of the treated wastewater produced at the station. Plant wastewater is presently treated with lime, followed by clarification in settling basins. While some recycled water is currently utilized, most of the treated wastewater is discharged to percolation ponds. Should the proposed project be implemented, the discharge of treated wastewater to the ponds would be reduced.

Project activities would include engineering and design, permitting, equipment procurement, construction, startup, and a 24-month demonstration of the commercial feasibility of the technology. DOE plans to complete the EIS and issue a Record of Decision within 15 months of publication of this Notice of Intent, assuming timely delivery of environmental information from JEA for use in developing the EIS. Upon completing its NEPA review, if DOE decides to implement the proposed action, construction would commence in early 1999 and finish in late 2001, startup would occur in early 2002, and demonstration of the technology would begin in April 2002. During the demonstration, Unit 2 would be operated on several different types of coal and coal/fuel blends to demonstrate the flexibility of the technology. Upon completion of the demonstration phase, the facility would continue its commercial operation.

Alternatives

NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. Congress established the CCT Program with a specific purpose: to demonstrate the commercial viability of technologies that use coal in more environmentally benign ways than conventional coal technologies. Congress also directed DOE to pursue the goals of the CCT Program by means of partial funding (cost-sharing) of projects owned and controlled by non-federal government sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

An overall strategy for compliance with NEPA was developed for the CCT Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. As part of the NEPA strategy, the EIS for JEA's proposed CFB combustor project will tier off the program's final Programmatic Environmental Impact Statement (PEIS) that was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) the no action alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies, with flue gas desulfurization and nitrogen oxide controls to meet New Source Performance Standards, would continue to be used; and (2) the proposed action, which assumed that the clean coal projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

For JEA's proposed CFB combustor project, the range of reasonable alternatives to be considered in the EIS is also narrowed in accordance with the overall NEPA strategy. The no action alternative will be analyzed in the EIS as a reasonable alternative to the proposed action of providing cost-shared funding support for the proposed project. DOE will consider any other reasonable alternatives that may be suggested during the public scoping period.

Under no action, DOE would not provide partial funding for the design, construction, and operation of the project. In the absence of DOE funding, there are three options that JEA could reasonably pursue. These options will be analyzed under the no action alternative. JEA could construct the proposed project without DOE cost-shared funding. Under this scenario, the potential environmental impacts or benefits at Northside Generating Station are expected to be identical to those of the proposed project. A second option is that JEA could construct a new gas-fired combined cycle facility at Northside Generating Station or at another location. Under this scenario, potential environmental impacts or benefits at Northside Generating Station would vary from those of the proposed project. A third option is that JEA could purchase electricity from other utilities to meet JEA's projected demand. Under this scenario, potential environmental impacts or benefits at Northside Generating Station related to demonstration of the proposed project would not be realized. In addition, the second and third options would not contribute to the objective of the CCT Program, which is to make available to the U.S. energy marketplace advanced, more efficient, economically feasible, and environmentally acceptable coal technologies.

Because of DOE's limited role of providing cost-shared funding for JEA's proposed project and because of the advantages associated with the proposed location, DOE does not plan to evaluate alternative sites for the proposed project. JEA considered additional sites during its site selection process. Site selection was governed primarily by benefits that could be realized by JEA. An existing plant site was preferred because the cost associated with construction of the project at a "greenfield" site in an undisturbed area would be much higher, and the environmental impact likely would be much greater than at an existing facility. The existing Northside Generating Station has several advantages because it is an operating plant with land available for installation of new facilities. Much of the required infrastructure, including the electric transmission lines and towers, is already in place, thereby reducing the level of capital investment and construction impacts. The station has the flexibility to accommodate possible fuel delivery needs with its existing rail and water facilities. Furthermore, most of the operational staffing for the new facility would be accommodated by the existing Northside Generating Station staff.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list, which was developed partly on the basis of concerns provided by the public in response to JEA's stakeholder outreach program, is not intended to be all inclusive, but is presented to facilitate public comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the scoping process. The issues include:

(1) Atmospheric Resources: potential air quality impacts resulting from air emissions during current and future operation of Northside Generating Station (e.g., effects of ground-level concentrations of criteria pollutants, and trace metals including mercury, on surrounding residential areas and the Timucuan Preserve (a National Park Service Class II ecological and historic preserve adjacent to the western edge of the Northside Generating Station); potential effects of greenhouse gas emissions on global climate change;

(2) Water Resources and Aquatic Ecology: potential effects on surface water and groundwater resources consumed and discharged; potential effects on estuarine salt marsh ecosystems and aquatic biota resulting from withdrawing and discharging cooling water from the St. Johns River (e.g., thermal discharge, entrainment or impingement of fish and invertebrate species);

(3) Infrastructure and Land Use: potential effects resulting from the transport of coal, petroleum coke, and limestone required for the proposed project, including the development of land for infrastructure, storage, or waste disposal; affected resource areas including land (e.g., existing shoreline and wetlands), utilities, and

transportation routes (e.g., train traffic to supply coal);

(4) Solid Waste: pollution prevention and waste management practices, including solid waste impacts, caused by the generation, treatment, transport, storage, and disposal of solid wastes;

(5) Construction: impacts associated with noise, traffic patterns, and construction-related emissions;

(6) Visual: impacts associated with a new stack that is taller than existing structures at Northside Generating Station;

(7) Floodplains: potential impacts (e.g., impeding floodwaters, re-directing floodwaters, on-site and off-site property damage) of siting new buildings and infrastructure within floodplain and hurricane storm surge areas;

(8) Wetlands: potential reduction of wetlands due to new construction (e.g., construction associated with feedstock transport infrastructure);

(9) Community Impacts: impacts on public safety related to fire and emergency vehicle access to the Northside community of Jacksonville; impacts to local traffic patterns resulting from rail traffic; socioeconomic impacts on public services and infrastructure (e.g., police protection, schools, and utilities); noise associated with project operation; environmental justice with respect to the surrounding community; and

(10) Cumulative effects that result from the incremental impacts of the proposed project when added to other past, present, and reasonably foreseeable future actions (e.g., incremental discharge of cooling water affecting aquatic biota).

Public Scoping Process

To ensure that the full range of issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run until December 31, 1997. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed.

Scoping comments should clearly describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues. Written, e-mailed, faxed, or telephoned comments should be communicated by December 31, 1997 (see **ADDRESSES**).

In addition, a public scoping meeting to be conducted by DOE will be held in the In-Plant Conference Room at the Northside Generating Station on December 3, 1997, at 7 p.m. The address of the Northside Generating Station is 4377 Heckscher Drive, Jacksonville, Florida. DOE requests that anyone who wishes to speak at this public scoping meeting contact Dr. Jan Wachter, either by phone, fax, computer, or in writing (see **ADDRESSES** in this Notice). Individuals who do not make advance arrangements to speak may register at the meeting and will be given the opportunity to speak after all previously scheduled speakers have made their presentations. Speakers who wish to make presentations longer than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, it may be necessary to limit speakers to five minute presentations initially, with the opportunity for additional presentation as time permits. Speakers can also provide additional written information to supplement their presentations. Oral and written comments will be given equal weight.

DOE will begin the meeting with an overview of the proposed CFB combustor project. A presiding officer will be designated by DOE to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked to clarify their statements to ensure that DOE fully understands the comments or suggestions. The presiding officer will establish the order of speakers and provide, any additional procedures necessary to conduct the meeting.

Issued in Washington, D.C., this 6th day of November, 1997.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 97–29890 Filed 11–12–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–512]

Information Collection Submitted for Review and Request For Comments

November 6, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 28, 1997 (62 FR 28844) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–512 "Application for Preliminary Permit"

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* OMB No. 1902–0073. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a decrease in the reporting burden due to a decrease in the number of applicants filing with the Commission. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–512 is filed in accordance with Sections 4(f), 5, 7, (FPA). The Part I of the FPA gives the Commission authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The purpose of obtaining a preliminary permit is to maintain priority status for an application for a license, while the applicant conducts site examinations and surveys and to prepare maps, plans, specifications and estimates. The Commission's staff use the information collected under FERC–512 to conduct research on the jurisdictional aspects of the project. The research includes a determination of the applicant's qualifications to hold a preliminary permit, a review of the proposed hydro development for feasibility and to issue public notice of the application to solicit public and agency comments.

5. *Respondent Description:* The respondent universe currently comprises on average, 45 applicants for an application for a hydroelectric preliminary permit.

6. *Estimated Burden:* 3,285 total burden hours, 6 respondents, 1 response annually, 73 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 3,285 hours ÷ 2,087 hours per year × $110,000 per year = $173,142.

Statutory Authority: Sections 4(f), 5, 7 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.*

Lois D. Cashell,

Secretary.

[FR Doc. 97–29801 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–006]

Granite State Gas Transmission, Inc., Notice of Proposed Changes in FERC Gas Tariff

November 6, 1997.

Take notice that on November 3, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below, to become effective November 1, 1997:

Fourth Revised Sheet No. 215
Fourth Revised Sheet No. 289

Granite State Asserts that the tariff sheets are in compliance with the Director letter order issued in this proceeding on October 30, 1997. Further Granite State asserts that, it has submitted prior tariff filings with the Commission adopting and making effective as of November 1, 1997 certain Gas Industry Standard Board's (GISB) requirements related to Electronic Data Interchange (EDI) and Electronic Delivery Mechanism (EDM). Granite State asserts that complications and delays have occurred in establishing computer capability to implement the GISB EDI/EDM standards and requirements in Granite State's operations. Accordingly, Granite State further requests an extension until December 31, 1997 to comply with the EDI/EDM requirements and the foregoing tariff sheets remove from the tariff those requirements until Granite State has the capability to comply with them.

Granite State states that copies of its filing were served on its firm and interruptible customers, the regulatory agencies of the states of Maine, Massachusetts and New Hampshire, and the intervenor in Docket No. RP07–137–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29810 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–154–006]

Koch Gateway Pipeline Company; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Substitute Fourth Revised Sheet No. 802
Second Revised Sheet No. 2401

Koch states that this filing is being submitted in compliance with OPR Letter Order dated October 22, 1997. Koch revised its tariff to reflect GISB November 1, 1997, Standards, as directed by the Commission.

Koch also states that it has served copies of this filing upon each person designated on the official service list as compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29811 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–000]

Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

November 6, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on November 19, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29816 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–176–006]

MIGC, Inc.; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

MIGC states that the purpose of the filing is to comply with the Commission's June 10 Letter Order (as modified by a June 20 Errata to the Letter Order) directing MIGC to file to reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order Nos. 587–C.

MIGC states that copies of its filing are being mailed to its jurisdictional customers, all parties on the official service list in Docket No. RP97–176–000, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29813 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–155–008]

Mobile Bay Pipeline Company; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, Mobile Bay Pipeline Company (Mobile) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Substitute Third Revised Sheet No. 132
Substitute Second Revised Sheet No. 133
Second Revised Sheet No. 134

Mobile states that this filing is being submitted in compliance with OPR Letter Order dated October 22, 1997. Mobile revised its tariff to reflect GISB November 1, 1997, Standards, as directed by the Commission.

Mobile also states that it has served copies of this filing upon each person designated on the official service list as compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29812 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–392–001]

National Fuel Gas Supply Corporation; Notice of Technical Conference

November 6, 1997.

Pursuant to the Commission's order, issued on October 29, 1997, a technical conference will be held to resolve the issues raised in the above-captioned proceeding.

The conference will be held on Tuesday, November 18, 1997 from 10:00 a.m. to 5:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29617 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–275–006, and TM97–2–59–006]

Northern Natural Gas Company; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 109
Third Revised Sheet No. 123
Fifth Revised Sheet No. 132
Substitute Original Sheet No. 301
Substitue First Revised Sheet No. 301.
Original Sheet No. 301A
Substitute Original Sheet No. 301A

Northern states that this filing is made in compliance with the Commission's Order issued October 17, 1997 in the above-referenced dockets addressing the fuel periodic rate adjustment (PRA) mechanism.

Northern states that copies of the filing were serve upon Northern's customers and interested State Commissions.

Any person desiring to to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29814 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–275–000 and TM97–2–59–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

November 6, 1997.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10:00 a.m. on Wednesday, November 12, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) prior to attending.

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29815 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

Department of Energy

Federal Energy Regulatory Commission

[Docket No. OA97–618–000]

Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation; Notice of Revision of Tariff

November 6, 1997.

Take notice that on July 9, 1997, Ohio Valley Electric Corporation and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (together, the "OVEC System") tendered for filed an amended version of their Open Access Transmission Tariff (the "compliance Tariff").

As required by the Commission's Order No. 888–A, the Compliance Tariff incorporates changes to the OVEC System's Open Access Transmission Tariff filed with the Commission on July 9, 1996. The requested effective date of the Compliance Tariff is September 7, 1997, sixty (60) days after the date of the OVEC System's filing.

Copies of the filing were served upon the OVEC System's jurisdictional customers and upon each state public service commission with retail rate jurisdiction over such customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 18, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29808 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–008 and ER96–1663–007]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filings

November 6, 1997.

Take notice that on October 31, 1997, the California Power Exchange Corporation (PX), tendered for filing a *pro forma* agreement and PX protocols that it had committed to file with the Commission by November 1, 1997. In addition, the PX submitted proposed amendments to the PX Tariff. The PX states that certain of these protocols and proposed tariff changes are submitted for informational purposes.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29803 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–007, ER96–1663–008, et al.]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, et al.; Notice of Filings

November 6, 1997.

Take notice that on October 31, 1997, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (Edison), (collectively "the Companies"), and the California Independent System Operator Corporation (ISO), tendered for filing several filings related to the *pro forma* reliability Must-Run Agreements contained in Exhibit G of the ISO Operating Agreement and Tariff.

Docket Nos. EC96–19–007 and ER96–1663–008

In Docket No. EC96–19–007 and ER96–1663–008, the ISO filed amendments to the *pro forma* reliability Must-Run Agreements contained in Exhibit G of the ISO Operating Agreement and Tariff. The ISO requests that these amendments be considered with the reliability Must-Run Agreement rate filings of the Companies, filed on October 31, 1997.

Docket No. ER98–495–000

In Docket No. ER98–495–000, PG&E tendered for filing a proposed Must-Run Agreement and Cost support for rates included in schedules to the Agreement. PG&E requests that this filing be made effective by January 1, 1998, to enable the ISO to provide transmission service using the dispatch of reliability must-run generating units covered by this Agreement when needed.

PG&E states that this filing is a further part of the comprehensive restructuring proposal for the California electric power industry whose implementation relies on several rate schedules filed and to be filed with the Commission. According to PG&E, the Agreement authorizes the ISO to dispatch, for

energy or specified ancillary services, certain steam thermal, geothermal and hydroelectric generating facilities owned and operated by PG&E, when needed to assure reliable service. PG&E states that this dispatch will normally be necessary when a local transmission constraint limits the ability of the ISO to transmit enough energy or ancillary services available from successful bids into the California Power Exchange (PX) to serve load in certain areas with transmission constraints.

Docket No. ER98–496–000

In Docket No. ER98–496–000, SDG&E tendered for filing the terms and conditions, including rates and performance criteria of SDG&E's proposed Master Must Run Agreement to be entered into with the ISO. SDG&E requests that the filing be made effective subject to refund within 60 days of this filing but no later than January 1, 1998.

SDG&E states that the proposed filing is intended to implement a portion of the comprehensive restructuring of the California electric industry proposed in Docket Nos. EC96–19–000 and ER96–1663–000. SDG&E further states that the proposed filing would establish the rates, terms, and conditions under which it will provide energy and ancillary services to the ISO as necessary to ensure reliability of the ISO controlled grid.

Docket No. ER98–441–000

In Docket No. ER98–441–000, Edison filed six Must-Run Agreements, applicable to Edison's six must-run facilities. Edison requests that the proposed filing be made effective on the date that the PX commences operations.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules or Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29804 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–008 and ER96–1663–009]

Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company; Notice of Filings

November 6, 1997.

Take notice that on October 31, 1997, the California Independent System Corporation (ISO), tendered for filing *pro forma* agreements and ISO protocols that it had committed to file with the Commission by November 1, 1997. In addition, the ISO submitted proposed amendments to the ISO Operating Agreement and Tariff. The ISO states that certain of these protocols and proposed tariff changes are submitted for informational purposes.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29805 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Project No. 2042–008]

Public Utility District No. 1 of Pend Oreille County, Washington; Notice Of Application For Approval of Contracts For The Sale Of Power for A Period Extending Beyond The Term of The License

November 6, 1997.

On October 3, 1997, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. § 815, Public Utility District No. 1 of Pend Oreille County, Washington (Pend Oreille), filed an application requesting Commission approval of a contract for the sale of power from the Box Canyon Project No. 2042 for a period extending approximately three and one-half years beyond the January 30, 2002 expiration date of the license. The project is located on the Pend Oreille River in Pend Oreille County, Washington.

Section 22 provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made. Pend Oreille states in its application that Commission approval of the power sales contract is in the public interest because the contract permitted Pend Oreille to finance the construction of the project when it did not have the necessary credit rating to do so independently.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may became a party to the proceeding. Comments, protests, or motions to intervene must be filed by [the 30th day following publication of this notice in the **Federal Register**]; must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and "Project No. 2042." Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the licensee specified in its application.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29806 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–146–006]

U–T Offshore System; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, U–T Offshore System (U–TOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective November 1, 1997:

Sub Seventh Revised Sheet No. 73
Sub Second Revised Sheet No. 73A
Sub First Revised Sheet No. 73B

U–TOS asserts that the purpose of this filing is to comply with the Commission's October 24, 1997, letter order in the captioned proceeding regarding Order No. 587–C. The above mentioned letter order indicated that a number of the standards did not reflect the correct version number set forth in Section 284.10(b) of the regulations, with the exception of the Electronic Delivery Mechanism Standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29809 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–655–001 and CP97–291–000, *et al.*]

Destin Pipeline Company, L.L.C. and Southern Natural Gas Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Destin Pipeline Project

November 6, 1997.

The staff of Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed by Destin Pipeline Company, L.L.C. and Southern Natural Gas Company in the above-referenced dockets and referred to as the Destin Pipeline Project.

The staff prepared the FEIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would have limited adverse environmental impact.

The FEIS assesses the potential environmental effects of the construction and operation of the following facilities in the central Gulf of Mexico and Mississippi:

- a total of about 215.5 miles of 36–, 30–, and 16-inch-diameter interstate pipeline, consisting of 75.6 miles offshore pipeline and 139.9 miles of onshore pipeline;
- about 27,078 horsepower of new compression at two new compressor stations;
- seven new meter stations; and
- associated aboveground facilities, including a liquids slug catcher, and offshore gathering platform, and a related nonjurisdictional gas processing plant.

The purpose of the proposed facilities is to transport up to 1 billion cubic feet per day of natural gas from the development of new offshore deepwater production areas in the central Gulf of Mexico to interconnections with six major interstate pipelines in Mississippi. The proposed facilities would provide a new natural gas transportation infrastructure that would avoid the overburdened pipeline systems in southeastern Louisiana.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E. Washington, D.C. 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Branch identified above.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

Lois D. Cashell

Secretary.

[FR Doc. 97–29802 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

November 6, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license.

b. *Project No:* 2170–008.

c. *Date Filed:* May 27, 1997.

d. *Applicant:* Chugach Electric Association, Inc.

e. *Name of Project:* Cooper Lake.

f. *Location:* On the Cooper Creek, Copper Lake, and Kenai Lake on Kenai Peninsula, in the vicinity of Cooper Landing, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Burke Wick, Chugach Electric Association, Inc., 5601 Minnesota Drive, P.O. Box 196300, Anchorage, Alaska 99519–6300, Tel: (907) 563–7494.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* December 22, 1997.

k. *Description of Amendment:* Licensee proposes to increase the spillway capacity to allow passage of the probable maximum flood (PMF). The proposed work consists of installing a 4.5-ft-high sheetpile parapet wall along the crest of the dam. The spillway channel will be deepened and the

spillway crest elevation will be reduced from 1,210 ft to 1,206 ft. This will allow raising the operating pool level of the lake to 1,206 ft.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D.2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29807 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–59206]

Proposed Settlement; Municipal Solid Waste Landfills NSPS and EG Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.*, No. 96–1152 (D.C. Cir). This case involves a challenge to EPA's rule entitled "Standards of Performance For New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," issued on March 12, 1996. 61 FR 9905 (March 12, 1996). The major action the Environmental Protection Agency ("Agency") would take under this proposed settlement would be to propose a subpart-specific definition of the term "modification" for landfills. Under this definition, the term "modification" would be defined solely for landfills as any increase in the permitted volume design capacity of the landfill, by either vertical or horizontal expansion. EPA believes this definition is consistent with the existing definition of modification found at 40 CFR 60.14 and, in particular, is consistent with the exemption at 40 CFR 60.14(e) for modifications that do not require a capital expenditure. Other actions to be taken under the proposed settlement include a number of technical corrections and clarifications, including a clarification of the timing of Title V permitting obligations for sources subject to the rule.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement, which includes a draft rulemaking proposal as an attachment, are available from Samantha Hooks, Air And Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–3804. Written comments should be sent to Michael Goo, Air and Radiation Division, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and must be submitted on or before December 15, 1997.

Copies of the settlement also are available through the Technology Transfer Network ("TTN"), which is an Agency electronic bulletin board that may be accessed by dialing (919) 541–5472 for up to a 14,400 baud modem; this service is free except for the cost of the phone call. The TTN is also available on the Internet (access: http://ttnwww.rtpnc.epa.gov). If more information on the TTN is needed, call the HELP line at (919) 541–5472.

Dated: November 6, 1997.

Jonathan Z. Cannon,

General Counsel.

[FR Doc. 97–29857 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5920–7]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0234.06; Performance Evaluation Studies on Water and Wastewater Laboratories; was approved 09/30/97; OMB No. 2080–0021; expires 09/30/2000.

EPA ICR No. 1791.01; Establishment of Drinking Water Intake No Discharge Zone(s) under Clean Water Act; was approved 10/20/97; OMB No. 2040–0187; expires 10/31/2000.

EPA ICR No. 1815.01; Small Business Compliance Assistance Centers; was approved 10/22/97; OMB No. 2020–0010; expires 10/31/2000.

EPA ICR No. 1414.03; Hazardous Organic NESHAP (HON)—NESHAP Subparts F, G, H, and I; was approved 05/30/97; OMB No. 2060–0282; expires 05/31/2000.

EPA ICR No. 1695.03; Amendment to the Information Collection Request; Emission Standards for New Non-road Spark-Ignition Engines; was approved 11/03/97; OMB No. 2060–0338; expires 11/30/2000.

EPA ICR No. 0011.09; Selective Enforcement Auditing and Recordkeeping Requirements for On-Highway HDE, Non-road Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks; was approved 11/03/97; OMB No. 2060–0064; expires 08/31/99.

EPA ICR No. 1684.04; Compression Ignition Non-Road Engine Certification Application; was approved 11/03/97; OMB No. 2060–0287; expires 11/30/2000.

EPA ICR No. 1826.01; Information Collection for Equipment Manufacturer Flexibility; was approved 11/03/97; OMB No. 2060–0369; expires 11/30/2000.

EPA ICR No. 0282.10; Emission Defect Information and Voluntary Emission Recall Report; was approved 11/03/97; OMB No. 2060–0048; expires 7/31/99.

EPA ICR No. 0095.10; Precertification and Testing Exemption Reporting and Recordkeeping Requirements; was approved 11/03/97; OMB No. 2060–0007; expires 07/31/99.

OMB Disapproval

EPA ICR No. 1821.01; National Emission Standards for Hazardous Air Pollutants for Steel Pickling; was disapproved by OMB 10/28/97.

Dated: November 6, 1997.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 97–29858 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5922–1]

Proposed Settlement Involving EPA and the Loef Company

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has offered to Potentially Responsible Parties (PRPs); the Loef Company, Inc., a debtor-in-possession in bankruptcy case no. 96–31517 pending before the United States Bankruptcy Court for the Middle District of Georgia (Bankruptcy Court), Robert L. Blumberg, Frederick J. Loef, and Sarah G. Loef; an Agreement for Recovery of Response Cost at the Interstate Lead Company Superfund Site (ILCO) in Leeds, Alabama, and the Sapp Battery Superfund Site (Sapp Battery) in Alford, Florida. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the Agreement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsyth St., Atlanta, GA 30303, 404–562–8887.

Written comments may be submitted to Mrs. Kim Dao Vu at the address above within 30 days of the date of publication.

Dated: November 4, 1997.

Anita Davis,

Acting Chief, Programs Services Branch, Waste Management Division.

[FR Doc. 97–30017 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 17, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1998 Federal Reserve Bank officer salary structure adjustments.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29963 Filed 11–7–97; 5:11 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission of Dietary Supplement Labels: Notice of Meeting #10

AGENCY: Office of Disease Prevention and Health Promotion, HHS.

ACTION: Notice of meeting.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice of the tenth meeting of the Commission on Dietary Supplement Labels.

DATES: The Commission intends to hold a brief meeting on November 24, 1997, beginning about 1:30 p.m. E.S.T., or shortly thereafter, at the HHS Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201, (202) 690–7102.

SUPPLEMENTARY INFORMATION: Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the

Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is evaluating how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's report may include recommendations on legislation, if appropriate and necessary.

The purpose of Meeting #10 is to announce the completion and public availability of the Final Report of the Commission. The meeting agenda will include approval of the minutes of the previous meeting and follow-up activities to be undertaken by the staff.

The meeting is open to the public; however seating is limited. If you will require a sign language interpreter, please call Sandra Saunders (202) 690–7102 by 4:30 p.m. E.S.T. on November 14, 1997.

Dated: November 5, 1997.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.

[FR Doc. 97–29872 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be open to the public, limited only by the space available.

Place of Meeting: William Natcher Conference Center, National Institutes of Health (Building 45), 45 Center Drive, Bethesda, MD 20892. Exact locations of the sessions will be available at the conference center and on the Commission's web site, "www.hcqualitycommission.gov".

Times and Dates: The public meeting will span two days. On Tuesday, November 18, 1997, the subcommittee break-out sessions will take place from 8:30 a.m. until 4:30 p.m. On Wednesday, November 19, 1997, the general plenary session will begin at 8:00 a.m. and it will continue until 4:00 p.m.

Purpose/Agenda: To hear testimony and continue formal proceedings of the Commission's three (3) remaining subcommittees (Subcommittee on Consumer Rights has completed its work). Agenda items are subject to change as priorities dictate.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, SW., Washington, DC 20201; [202/205–3333].

Dated: November 5, 1997.

Janet Corrigan,

Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 97–29873 Filed 11–12–97; 8:45 am]

BILLING CODE 4119–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces that the Agency for Health Care Policy and Research (AHCPR) is planning to request the Office of Management and Budget (OMB) to allow a proposed information collection of the "Medical Expenditure Panel Survey Household Component (MEPS–HC)—Panels 3 and 4." In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on September 8, 1997 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 15, 1997.

ADDRESSES: Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Medical Expenditure Panel Survey Household Component (MEPS–HC)—Panels 3 and 4."

The AHCPR is planning to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first two panels of MEPS began in 1996 and 1997. Panels 3 and 4 of the MEPS–HC begin in 1998 and 1999, respectively. The MEPS–HC is jointly sponsored by the AHCPR and the National Center for Health Statistics (NCHS). It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. Due to the Department of Health and Human Services (HHS) efforts to integrate survey data collection activities, the NHIS is used as the sampling frame for the MEPS and several other surveys.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, medications, employment, and health insurance. Subject to AHCPR and NCHS confidentiality statutes, data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs, and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and
- Examining access to and costs of health care for common diseases and conditions, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations on the civilian noninstitutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

Method of Collection

The data will be collected using a combination of modes. For example, the AHCPR intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHCPR will then conduct five (in-person) interviews with each household to obtain health care use and expense data. Lastly, the AHCPR will conduct one telephone interview with each household to obtain tax and asset information. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHCPR will conduct interviews over the telephone, if necessary. Burden estimates follow:

Initial Number of Respondents: 10,000.

Panel 3: 4800.

Panel 4: 5200.

Number of Surveys Per Respondent: 6.

Average Burden Per Respondent: 9.0 hours.

Estimated Burden Total: 81,100 hours.

Panel 3: 39,050 hours.

Panel 4: 42,050 hours.

Request for Comments

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: November 4, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–29837 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following advisory subcommittees scheduled to meet during November 1997:

Name: Health Services Research Initial Review Group (Subcommittees: Health Systems Research, Health Care quality and Effectiveness Research, Health Care Technology and Decision Sciences, and Health Research Dissemination and Implementation).

Date and Time: November 19, 1997, 8:00 a.m.

Place: Bethesda Hyatt Hotel, One Metro Plaza, Bethesda, Maryland 20816.

Open November 19, 8:00 a.m. to 8:30 a.m.

Closed for remainder of meetings.

Purpose: The Health Systems Research Subcommittee is charged with the initial review of research applications relating to cost and financing of health care, health care markets, organizational and delivery system issues, and the provider workforce. The Health Research Dissemination and Implementation Subcommittee is charged with the initial review of research applications relating to behavior change, demonstrations and interventions, consumer decision-making, dissemination, health professional and consumer education, and translation of research findings. The Health Care Technology and Decision Sciences Subcommittee is charged with the initial review of research applications relating to the development, refinement, assessment, cost-effectiveness, and application of health care technologies. The Health Care Quality and Effectiveness Research Subcommittee is charged with the initial review of research applications relating to clinical outcomes and effectiveness, quality and cost-effectiveness of health care, effectiveness research, evidence-based medicine, and quality of care research.

Agenda: The open sessions of these meetings on November 19, from 8:00 a.m. to 8:30 a.m., will be devoted to business meetings covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain rosters of members, minutes of the meetings, or other relevant information should contact Sheila S. Simmons, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1452 ext. 1627.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: November 4, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–29836 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Exchange of Letters Between the Food and Drug Administration and the Australian Therapeutic Goods Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of an exchange of letters (EOL) between FDA and the Australian Therapeutic Goods Administration. The purpose of the EOL is to facilitate the exchange of documents and information concerning a drug or biological preparation that is considered for orphan status.

DATES: The agreement became effective August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Marlene E. Haffner, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: It is FDA's policy that EOL's be used in lieu of a formal agreement when the actions contemplated require only a limited resource expenditure and do not rise to the significance of a formal agreement. For example, an exchange of letters could formalize an understanding that each agency will provide the other with documents that are available upon request to any member of the public. Each letter should set out only the actions to be carried out by the agency signing the letter and not mutual considerations. FDA uses the same clearance for EOL's as it does for memoranda of understanding (MOU's). Therefore, MOU's in accordance with 21 CFR 20.108 (c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this EOL.

Dated: November 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

The EOL's are set forth as follows:

Exchange of Letters Between the Food and Drug Administration and the Australian Therapeutic Goods Administration

225–97–8003

August 12, 1997
Mr. Terry Slater
National Manager
Therapeutic Goods Administration
Commonwealth Department of Health and Family Services
P.O. Box 100
Woden ACT 2606
AUSTRALIA
Dear Mr. Slater:

The U.S. Food and Drug Administration is pleased to cooperate with your government in facilitating the exchange of documents and information concerning a drug or biological preparation that your government is considering for orphan product status. We hope that this cooperation will facilitate and expedite access to needed therapy for Australian patients with rare diseases.

Upon request from the Australian Therapeutic Goods Administration (TGA), and to the extent permitted by U.S. law and FDA regulations, and as appropriate, with the permission of the U.S. sponsor, the FDA Office of Orphan Products Development (OPD) intends to provide to the TGA a copy of the U.S. designation request and review performed by the OPD on a particular product, whether such orphan designation request has or has not been granted.

Upon request from the TGA, and under the same terms and conditions noted in the preceding paragraph, the Center for Drug Evaluation and Research (CDER) or the Center for Biologic Evaluation and Research (CBER) intends to provide summary information concerning evaluation and approval of a particular product. OPD expects to be receptive to requests for assistance in seeking permission of the sponsor to permit TGA to utilize the necessary information. We understand that the reports and information FDA provides will form the basis for a similar orphan product evaluation for Australia.

Information provided by FDA pursuant to this arrangement will be provided in confidence to the TGA. The information will be provided in accordance with FDA law and regulations, including privacy and confidentiality requirements, and only with assurances of TGA's authority and commitment to protect the information from public disclosure in Australia. Copies of designation or evaluation reports will be provided to the TGA in conformance with the requirements of Part 20 of Title 21, U.S. Code of Federal Regulations, and with the written consent (where appropriate) of the U.S. sponsor of the designation request or product approval application.

For the purpose of coordination, we propose that the respective liaison officials be:

For the FDA:
Director, Office of Orphan Products Development
Food and Drug Administration/HF–35
5600 Fishers Lane Room 8–73
Rockville, Maryland 20857
U.S.A.
Telephone: 301–827–3666
FAX: 301–443–4915

For the Australian TGA:
Director, Drug Safety and Evaluation Branch
Therapeutic Goods Administration
P.O. Box 100
Woden, ACT 2606
Australia
Telephone: 61 2 6232 8100
FAX: 61 2 6232 8140

To help ensure that this information exchange program works well and meets our mutual needs and requirements, we feel that it is important that, at appropriate intervals, and by mutual concurrence, a discussion or meeting take place between representatives of our two agencies to assess the activities and the provisions outlined in this letter.

We anticipate that these arrangements will provide a sound basis on which further cooperative arrangements between us on products for patients with rare diseases will develop.

Sincerely,
Marlene E. Haffner, M.D., M.P.H.
Rear Admiral, United States Public Health Service
Director, Office of Orphan Products Development
Marlene E. Haffner, MD, MPH
Rear Admiral, United States Public Health Service
Director, Office of Orphan Products Development
5600 Fishers Lane, HF–35
Room 8–73
Rockville, MD 20857 USA

Dear Dr. Haffner:

The purpose of this letter is to formalize our agreement regarding provision of information on orphan drugs by the U.S. Food and Drug Administration (FDA) U.S.A. to the Therapeutic Goods Administration (TGA), Department of Health and Family Services, Australia.

The TGA formally requests that the U.S. FDA provide orphan drug designation reports and orphan drug evaluation reports to the TGA.

In the spirit of co-operation, and on behalf of the TGA, I agree as follows:

1. Following receipt by the TGA of an application requesting orphan drug designation of a drug in Australia, the TGA will request from the Office of Orphan Drugs Development a copy of an orphan drug designation report for the drug.

This request will apply in cases where the drug has been granted orphan drug designation in the U.S. or where the drug has been refused orphan drug designation in the U.S.

2. Following receipt by the TGA of an application to register a product for which orphan designation has been granted for the drug in Australia, the TGA will request from the U.S. FDA a copy of the Center for Drug Evaluation and Research (CDER) evaluation reports or the Center for Biologics Evaluation and Research (CBER) evaluation report.

This request will apply in cases where a drug has been granted orphan drug designation in the U.S. and where an application to register a product containing that drug in the U.S. has been approved, refused, or is pending.

3. It is intended that where possible, the reports provided under this arrangement will form the basis of the evaluation of similar application sin Australia. Therefore, the reports must be sufficiently complete to enable appropriate evaluation of the product.
4. Information will be provided in accordance with agency regulations (including confidentiality requirements).
5. Copies of designation reports of evaluation reports will be provided to the TGA only after the written consent of the U.S. sponsor of the designation request or product registration application has been obtained, except as otherwise provided in FDA's regulations disclosure (21 CFR 20.89).
6. Liaison officers for the purpose of coordinating these provisions are as follows:

For the FDA:
Director, Office of Orphan Products Development
Food and Drug Administration/HF–35
5600 Fishers Lane, Room 8–73
Rockville, Maryland 20857
U.S.A.
Telephone: 301–827–3666
FAX: 301–443–4915

For the TGA:
Director, Drug Safety and Evaluation Branch
Therapeutic Goods Administration
P.O. Box 100
Woden, ACT 2606
Australia
Telephone: 61 2 6232 8100
FAX: 61 2 6232 8140

I am confident the implementation of these provisions will provide a sound basis on which to develop further cooperative arrangements between us on orphan drug products and to work toward a reciprocal arrangement in the future.

I look forward to your official confirmation these arrangements can be agreed.

Yours sincerely
Terry Slater
National Manager
Therapeutic Goods Administration
12 August 1997

[FR Doc. 97–29906 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0450]

Nalco Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nalco Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an emulsifier blend containing sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate, and polyoxyethylene (20) sorbitan monolaurate as an anti-corrosive agent in boilers where steam may contact food.

DATES: Written comments on the petitioner's environmental assessment by December 15, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7A4540) has been filed by Nalco Chemical Co., One Nalco Center, Naperville, IL 60568–1198. The petition proposes to amend the food additive regulations in § 173.310 *Boiler water additives* (21 CFR 173.310) to provide for the safe use of an emulsifier blend containing sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate, and polyoxyethylene (20) sorbitan monolaurate as an anti-corrosive agent in boilers where steam may contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 15, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 28, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–29771 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 1997

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective date
Program-Related Convictions	
ADEFHAN, TITILAYO O, MILWAUKEE, WI	11/20/97
ALEXANDER, EDNA DENISE, DEVINE, TX	11/20/97
ALLEN, ANDREW JACKSON, WINSLOW, AZ	11/20/97
AMICUCCI, DIANE CAROL, CARMEL, NY	11/20/97
BANDY, BRIAN DWAYNE, ASHLAND, KY	11/20/97
BARNES, DAVID L, HAMMOND, LA	11/20/97
BATRA, KRISHAN KUMAR, ODESSA, FL	11/20/97
BEAUDOIN, GERARD MARCEL JR, EGLIN AFB, FL	11/20/97
BROWN, YVONNE, ROCKVILLE CENTRE, NY	11/20/97
BROYLES, STEPHEN R, TAMPA, FL	11/20/97
BUDDE, MICHAEL J, COLUMBIA, IL	11/20/97

Subject City, State	Effective date
CASTILLO, JESUS N, ASHLAND, KY	11/20/97
CATO, DEBORAH ANN, ATLANTA, GA	11/20/97
CHAMPION, DAVID, DECATUR, GA	11/20/97
CHAN, SOPHEATEVY, COACHELLA, CA	11/20/97
CHERKAS, LEONARD A, HUNTINGDON VALLEY, PA	11/20/97
CHERKAS DENTAL ASSOCIATES, HUNTINGDON VALLEY, PA	11/20/97
CHRISTIAN, KELLY WAYNE, BEAVER, WV	11/20/97
CIGGS, JIMMY D, LAKE WORTH, FL	11/20/97
CONORMAN, GEORGE JAMES, BEAVER, WV	11/20/97
CONTE, JOANNE, NEW YORK CITY, NY	11/20/97
COTO'S PHARMACY, HIALEAH, FL	11/20/97
DANLEY, MELANIE REBECCA, ARLINGTON, TX	11/20/97
FEINISTEIN, DAVID S, CROSS RIVER, NY	11/20/97
FERRIS, SAM, W PALM BEACH, FL	11/20/97
GAMEZ, JORGE, MIAMI, FL	11/20/97
GELLER, STANLEY J, SAN DIEGO, CA	11/20/97
GIBSON, ROGER L, ASHLAND, KY	11/20/97
GOLD COAST TAXI, INC, LAKE PARK, FL	11/20/97
GONZALEZ, YOHANKA, MIAMI, FL	11/20/97
GONZALEZ, RAFAEL, TEANECK, NY	11/20/97
GREEN, TONY GERALD, LAKELAND, FL	11/20/97
GUZMAN, CARMEN, BRONX, NY	11/20/97
HALL, CHARLIEMAE, ATLANTA, GA	11/20/97
HALL, WAYNE, ATLANTA, GA	11/20/97
HARKLESS, WILLIE EARL, ATLANTA, GA	11/20/97
HATCHER, KRISTIE, JUPITER, FL	11/20/97
HATHCOCK, KITTY ARMEDIA, FORT WORTH, TX	11/20/97
HATHCOCK, BOBBY EUGENE, BEAVER, WV	11/20/97
HEALTH CARE PROVIDERS INC, CHESTERFIELD, MO	08/04/97
HERNANDEZ, EDGAR, MIAMI, FL	11/20/97
HICKMAN, MICHAEL, CHATTANOOGA, TN	11/20/97
HOME MEDICAL EQUIPMENT, INC., FALSTON, MD	08/11/97
HYSON, BRADFORD A., STREET, MD	08/12/97
HYSON, MARY, BEL AIR, MD	08/12/97
HYSON, RODNEY F., FALSTON, MD	08/12/97
INNOVATIVE MEDICAL PRODUCTS INC, CHESTERFIELD, MO	08/04/97
JOHNSON, EARL, STONE MOUNTAIN, GA	11/20/97
JOHNSON, SHARON, MARIETTA, GA	11/20/97
JOHNSON, CHARLENE L, EAST POINT, GA	11/20/97
JONES, HENRY LEE, PINE BLUFF, AR	11/20/97
JONES, BRENDA GAIL, ATLANTA, GA	11/20/97
KNIGHT, FAY DENISE, ORLANDO, FL	11/20/97
KNIGHT, LEONARD ISAIAH, ORLANDO, FL	11/20/97
LAWRENCE, TERI TYLER, PINE GROVE, LA	11/20/97
LEONE, JOSEPH J, MANALAPAN, NJ	11/20/97
LIM, MILLIAN K, PALM BCH GARDENS, FL	11/20/97
MALONE, HELEN, DECATUR, GA	11/20/97
MARIN, PHILIP G, ELK GROVE, CA	11/20/97
MARRERO, MARIA DEL CARMAN, MIAMI, FL	11/20/97
MARSHALL, GARY SCOTT, PEEKSKILL, NY	11/20/97
MCBROOM, WILLIAM DAVID, GOLDSBORO, NC	11/20/97
MCCORMICK, MELINDA, SIKESTON, MO	11/20/97
MCKISIC, BELINDA, ATLANTA, GA	11/20/97
MILLBURG, LAURA HART, AUBURN, IL	11/20/97
MORALES, IRIS, BRONX, NY	11/20/97
MORRISON, WYVETTE J, LEXINGTON, KY	11/20/97
MOSCH, PAUL G, COUDERSPORT, PA	11/20/97
MOSS, CHARLES C, PORTLAND, OR	11/20/97
MUKHTAR, JUNAID, ORLANDO, FL	11/20/97
MURRAY, LINDA SUE PIERCE, BOWIE, TX	11/20/97
NAWROCKI, RAYMOND, JUPITER, FL	11/20/97
OREM MEDICAL CORPORATION, FALSTON, MD	08/12/97
OTT, KENNETH J, BORON, CA	11/20/97
PALMA, NITA ALMUETE PADDIT, WHITTIER, CA	11/20/97
PAPPALARDO, JOSEPH F, STATEN ISLAND, NY	11/20/97
PAUL, FITZPATRICK, BROOKLYN, NY	11/20/97
PONDER, KATHY ANN, W PALM BEACH, FL	11/20/97
PROHIAS, MARIA LOURDES, MARIANNA, FL	11/20/97
QUALITY AMBULANCE SERVICE, INC, ASHLAND, KY	11/20/97
RAY, EARL F, LENEXA, KS	08/04/97
RODRIGUEZ, AMERICA, HIALEAH GARDENS, FL	11/20/97
ROGOVE, JAY H, DIX HILLS, NY	11/20/97
ROS, VANNARA, WHITTIER, CA	11/20/97

Subject City, State	Effective date
SACASAS, ROBERTO, MIAMI, FL	11/20/97
SKJONSBERG, DOLLIE, SEATTLE, WA	11/20/97
SLOMAN, ERIC, WALTHAM, MA	11/20/97
SLOMAN, ROGER H, LAKE PARK, FL	11/20/97
STECKELBERG, JUDITH A, LONE ROCK, WI	11/20/97
STRAND, STEVEN D, DINUBA, CA	11/20/97
SUMP, CAROLYN ANN, CLARINDA, IA	11/20/97
SWAN, ROBERT N, HIALEAH, FL	11/20/97
TANG, SARETH, LONG BEACH, CA	11/20/97
THOMPSON, JACK JR, W PALM BEACH, FL	11/20/97
TORRES, PEDRO, NEW ROCHELLE, NY	11/20/97
UY, SIENG, LONG BEACH, CA	11/20/97
VALLE, BLANCA, MIAMI, FL	11/20/97
VASQUEZ, HUMBERTO, MIAMI, FL	11/20/97
VERGEL, JAIME, MIAMI, FL	11/20/97
WALKER, JOYCE OLA, HOUSTON, TX	11/20/97
WALLACE, WILLIAM W, JACKSONVILLE, FL	11/20/97
WARD, WOODROW W, BUTNER, NC	11/20/97
WHITE, MARGARET E, BLAIRS, VA	11/20/97
WILLIAMS, DAVID L, BAY SHORE, NY	11/20/97
WORCESTER UNIVERSITY PHARMACY, WORCESTER, MA	11/20/97

Patient Abuse/Neglect Convictions

AROJO, VANILZA, MARLBORO, MA	11/20/97
BENNETT, KEVIN W, BUFFALO, NY	11/20/97
BRUSO, LAUREEN, CHICOPEE, MA	11/20/97
BUTLER, LISA RUTH, TWIN GROVES, AR	11/20/97
CARSON, RODNEY D, JOPLIN, MO	11/20/97
CRAGG, JOSEPH, ROCHESTER, NY	11/20/97
DANTZLER, DEBORAH, HEIDELBERG, MS	11/20/97
DAVIS, LATISHA, LAUREL, MS	11/20/97
DUBE, CALVIN E, LEWISTON, ME	11/20/97
ESLINGER, BERTA C, SIOUX CITY, IA	11/20/97
FIRESTONE, MOREY HARVEY, W BLOOMFIELD, MI	11/20/97
FONTANEZ, LINDA, E PATCHOGUE, NY	11/20/97
FOREMAN, ROBIN LYNN CHASTAIN, DURANT, OK	11/20/97
FOSS, CATHERINE E, FREDERICA, DE	11/20/97
FOX, BETTY, DERMA, MS	11/20/97
GAITER, SHANDRA NICOLE, SAGINAW, MI	11/20/97
GRIFFIN, PATRICK H, NEW YORK CITY, NY	11/20/97
GROCE, MICHELLE, WILMINGTON, DE	11/20/97
HARTE, BRIAN K, PENSACOLA, FL	11/20/97
HEROD, HAROLD J, MILWAUKEE, WI	11/20/97
HOYLE, JACQUELINE D, JACKSON, TN	11/20/97
JOHNSON, RICHARD H, AIRWAY HEIGHTS, WA	11/20/97
JOHNSON, BRENDA CHRISTINE, PHOENIX, AZ	11/20/97
JORDAN, ROBERT, CLEVELAND, OH	11/20/97
JORDAN, JOY F, HILLSBORO, TX	11/20/97
KEISTER, JERRY, JACKSONVILLE, AR	11/20/97
LOWE, LINDA K, BESSEMER CITY, NC	11/20/97
MARTINEZ, MARTHA O, BIG LAKE, TX	11/20/97
MARTINEZ, JAY, ALTUS, OK	11/20/97
MCCLOUD, ANNA SUE, NEWPORT, AR	11/20/97
MCNEAR, REBECCA, CAWLING, IL	11/20/97
MIDDLETON, TONJA G, FAYETTESVILLE, NC	11/20/97
PAIGE, LAKISHA K, SWEENY, TX	11/20/97
PURDOM, BERTHA L PRITCHETT, BIRMINGHAM, AL	11/20/97
RAY, HENRY C, SEATTLE, WA	11/20/97
ROBERTS, DONALD, STARKVILLE, MS	11/20/97
SILVA, RAY, HURLEY, NM	11/20/97
STEWART, SUSIE MAE, SHREVEPORT, LA	11/20/97
THOMPSON, GENE A, SIDNEY, OH	11/20/97
TUTOR, ROBERT LEE, TEMPLE, TX	11/20/97
VON SEE, GERALDINE, SOMERSET, MA	11/20/97
WATSON, MARY ANN, PORTLAND, OR	11/20/97
WILLIS, VIDA MARIE, BALTIMORE, MD	11/20/97
YOUNG, LATONYA, COMO, MS	11/20/97

Conviction For Health Care Fraud

ALEXANDER, BRENDA, INDIANAPOLIS, IN	11/20/97
ATKINS, VANESSA, CHICAGO, IL	11/20/97

Subject City, State	Effective date
BIANCHI, MARIA, STATEN ISLAND, NY	11/20/97
CHRONIS, KIM, CLINTON TWNSHP, MI	11/20/97
HARRIS, STEFFENY T, CLINTON, SC	11/20/97
JOHNSON, MICHAEL D, JACKSON, TN	11/20/97
LEVIN, CHAIA, PHILADELPHIA, PA	11/20/97
LYERLA, JON R, GREENVILLE, IL	11/20/97
MARTIN, STELLA, CLINTON TWNSHP, MI	11/20/97
MCDONALD, ROBIN, PORT BYRON, NY	11/20/97
NAVARRA, ELIZABETH, DOBBS FERRY, NY	11/20/97
NOE, ALBERT D, JACKSON, TN	11/20/97
PROVENCIO, MICHELLE, ALBUQUERQUE, NM	11/20/97
SARTIANO, FRANCIS A, MADISON, CT	11/20/97
SHAFIR, RITA, PHILADELPHIA, PA	11/20/97
STONE, MARY S, COLLINSVILLE, VA	11/20/97
Conviction-Obstruction Of An Investig.	
AZAN, MOHAMMAD, NEW YORK, NY	11/20/97
Controlled Substance Convictions	
ABDUL, DURRANI, STERLING HGHTS, MI	11/20/97
BRADFIELD, SHARON L, WALLED LAKE, MI	11/20/97
MUNSON, ERIC G, BIRMINGHAM, MI	11/20/97
License Revocation/Suspension/Surrender	
ANFENSON, DOROTHEA MAE, GLENDALE, CA	11/20/97
ARMSTRONG, DIANA L, MURRAY, KY	11/20/97
ATWOOD, RONALD DWIGHT, BRISBANE, CA	11/20/97
BASCOM, DELLA M, VERGENNES, VT	11/20/97
BHARMOTA, HARJIT S, MARION, OH	11/20/97
BORISUK, LYNN MARIE, AKRON, OH	11/20/97
BOROWEC, LAWRENCE W, NEWFIELD, NJ	11/20/97
BOZZO, LAURA, NORTH CANAAN, CT	11/20/97
BRAYSHAW, NORA, WOODSIDE, CA	11/20/97
BROWN, IAN STEVEN, LOS ANGELES, CA	11/20/97
BROWN, JIMMIE RUSSELL, SANGER, CA	11/20/97
BRYANT, MARY M, PUYALLUP, WA	11/20/97
BURKETT, ROX C, MODESTO, CA	11/20/97
BUSER, MARCIA CYN, MAGALIA, CA	11/20/97
CAHALL, JOSEPH WILLIAM, CINCINNATI, OH	11/20/97
CAMPBELL, ALICE MARIE, ROANOKE, VA	11/20/97
CHICKOS, PATRICK J, FELTON, CA	11/20/97
CIELO, PATRIA CORDERO, FOSTER CITY, CA	11/20/97
CLEGG, CHARLES T, ANAHEIM, CA	11/20/97
CODERRE, JOHN DAVID, BAYSIDE, NY	11/20/97
COLLING, SANDRA FAYE, LAPEER, MI	11/20/97
DELACOSTE, MARGARET J, ANDOVER, MA	11/20/97
DRYER, RICGINDA LYNN, AHWAHEE, CA	11/20/97
EDDLEMAN-JOHNSON, PATRICIA ANN, VISALIA, CA	11/20/97
EWERS, CYNTHIA, EAST HADDAM, CT	11/20/97
FEENEY, JAY L, PLYMOUTH, MA	11/20/97
FELDMAN, BENJAMIN J, RANCHO MIRAGE, CA	11/20/97
FOSTER, LEBARON A, MOBILE, AL	11/20/97
FREEMAN, TERRY MITCHELL, LOS ANGELES, CA	11/20/97
GAITAN, ISABEL M, SAN FRANCISCO, CA	11/20/97
GELLINGS, BRIAN, QUINTON, VA	11/20/97
GREEN, MARK D, BOSTON, MA	11/20/97
GREENE, MARIA A, WEST WARWICK, RI	11/20/97
HAHS, GARY L, HESPERIA, CA	11/20/97
HARNEDY, NOREEN THERESA, SAN FRANCISCO, CA	11/20/97
HASSARD, ALEXANDER DANIEL, YOUNGSTOWN, OH	11/20/97
HAZELTINE, LAURIE KYLE, CAMBRIDGE, VT	11/20/97
HOLLOWAY, LAWRENCE M JR, FLINT, MI	11/20/97
HRABARCHUK, EUGENE, CEDAR GROVE, NJ	11/20/97
ISERMAN, BARBARA, ROCKFORD, MN	11/20/97
JUAREZ, JESUS R, FRESNO, CA	11/20/97
KATZ, GERALD S, LYNN, MA	11/20/97
KAZALLA, SCOTT M, TAMARAC, FL	11/20/97
KEENAN-FRIDAY, GERALDINE L, MINNEAPOLIS, MN	11/20/97
KUTZNER, ROBERT RUSSELL, SANTA MARIA, CA	11/20/97
LAFRANCE, MELODY R, ST LOUIS PARK, MN	11/20/97

Subject City, State	Effective date
LANDAU, ALLYN BETH, SAN FRANCISCO, CA	11/20/97
LANO, PAUL MICHAEL, ALAMEDA, CA	11/20/97
LASKY, KELLYE JO KING, SAN JOSE, CA	11/20/97
LEE, MUN FA, CLEARLAKE, CA	11/20/97
LEE, ROBERT, EVERGREEN PARK, IL	11/20/97
LEWIS, CHARLES M, BROOKLYN, NY	11/20/97
LEWIS, DANNY MICHAEL, FREMAN, VA	11/20/97
LILLO, JOSE ALBERTO, SANTA ANA, CA	11/20/97
LLOYD, DONALD B, WENTACHEE, WA	11/20/97
MACCANI, JAMES E, MINNEAPOLIS, MN	11/20/97
MANSMANN, PATRICIA A, EXTON, PA	11/20/97
MARQUIS, BETTY, ELLINGTON, CT	11/20/97
MCCARTHY, BRIAN ALAN, RICHMOND, VA	11/20/97
MCFADDEN, MICHAEL J, SAN FRANCISCO, CA	11/20/97
MCPARTLAND, SHAWN D, ROCKY POINT, NY	11/20/97
MEREDITH, CATHERINE M, RICHMOND, VA	11/20/97
MILLER, JANE E, STOCKTON, CA	11/20/97
MILLER-LUNDAHL, MARIANNE, FULLERTON, CA	11/20/97
MISTO, RALPH L, CRANSTON, RI	11/20/97
NEGRON, ROSALINDA, PHILADELPHIA, PA	11/20/97
NIGL, ALFRED JAMES, LA MESA, CA	11/20/97
NODAL, RAUL FROILAN, TAMPA, FL	11/20/97
NOSAL, JULIE A, BIRCHDALE, MN	11/20/97
OKUN, JAMES D, BAKERSFIELD, CA	11/20/97
PATHAK, RAMESHWAR, SHIRLEY, NY	11/20/97
PAWLISZ, TADEUSZ, CHICAGO, IL	11/20/97
POLITO, MATTHEW A, WILLOWICK, OH	11/20/97
RAMIREZ, CARLOS, HARWICH, MA	11/20/97
RANDALL, EDWARD A, LA QUINTA, CA	11/20/97
REDFIELD, JOHN T, EUGENE, OR	11/20/97
REED, JUDI, EUREKA, CA	11/20/97
REIMAN, JOHN KARL, COLUMBIA, CA	11/20/97
REITMAN, TONI JEAN, RIVERSIDE, CA	11/20/97
RIVER, ELLIOT, SAN FRANCISCO, CA	11/20/97
ROBERTS, MARY HOLLAND A, SANTA ANA, CA	11/20/97
ROBERTS, IFOR JOHN, DURHAM, NC	11/20/97
ROSENSTEIN, MELVYN, SANTA MONICA, CA	11/20/97
ROTRAMEL, JAMES D, CASTAIC, CA	11/20/97
RUSSELL, IDA MAY, NORTH POWNAL, VT	11/20/97
SALEM, NYMPHA Y, TULARE, CA	11/20/97
SANDERS, RAYMOND, CITRUS HEIGHTS, CA	11/20/97
SANDLIN, CARROLL MILTON, ESCONDIDO, CA	11/20/97
SANTIAGO, REYNALDO, PHILADELPHIA, PA	11/20/97
SBORDONE, GARY N, MELROSE, MA	11/20/97
SCHMUCKER-KARPOW, CELESTE, MONTVILLE, NJ	11/20/97
SCHROETER, DAVID B, JENISON, MI	11/20/97
SIETSEMA, GERALDINE, SACRED HEART, MN	11/20/97
SMITH, KENNETH C, HUBBARD, OH	11/20/97
SZYFERBLATT, LEO BERNARD, MONTICELLO, NY	11/20/97
TANG, BING HUEI, FLUSHING, NY	11/20/97
TAYLOR, DAVID L, REDONDA, AZ	11/20/97
TAYLOR, KATHARINE, CONCORD, NH	11/20/97
THUROW, JEAN, EVANSTON, IL	11/20/97
TOWLES, WILLIAM J, SAN CLEMENTE, CA	11/20/97
TUKEY, JAMES H, POWNAL, ME	11/20/97
VAN VLIET, BRADLEY RUSSELL, CONCORD, CA	11/20/97
WALDROP, RICHARD MORRIS, SOLEDAD, CA	11/20/97
WALKER, DEANA L, CHICO, CA	11/20/97
WALTON, JOYCE LEE, CARMICHAEL, CA	11/20/97
WENTWORTH, THOMAS, MINNEAPOLIS, MN	11/20/97
WILLIAMSON, WILLIAM T, REDLANDS, CA	11/20/97
WONG, GEORGE S, WALNUT CREEK, CA	11/20/97
WORLEY, RONALD D, OAKLAND, CA	11/20/97
WYMAN, ROSEMARY A, SANTA ANA, CA	11/20/97
YAGOOBIAN, EDWARD, DIAMOND BAR, CA	11/20/97
YOUNG, YAVARACE, ALTON, IL	11/20/97
Federal/State Exclusion/Suspension	
BECKER, JON, LEWISTON, ME	11/20/97
CAMPBELL, MARJORIE, NEW YORK, NY	11/20/97
CUTLER-OROSI FAMILY MEDICAL, OROSI, CA	11/20/97
DELUCA, VINCENT M, BEECHURST, NY	11/20/97

Subject City, State	Effective date
GIBBONS, WAYNE L, WILLINGBORO, NJ	11/20/97
JENAMED INC, E NORTHPORT, NY	11/20/97
KANG, PETER, ELMHURST, NY	11/20/97
LAWRENCE, ELSA L, MOSCOW, ID	11/20/97
PEYKAR, EZZAT O, GREAT NECK, NY	11/20/97
SCHWARTZ, JEFFREY SCOTT, ATLANTIC BEACH, NY	11/20/97
SEARS, MARY JEAN, CALDWELL, ID	11/20/97
TAMES, STEVEN M, HAWTHORNE, NY	11/20/97
WOODLAKE RURAL HEALTH CLINIC, WOODLAKE, CA	11/20/97
Fraud/Kickbacks And Other Prohibited Activities	
EGOZI, MAURICE, NORTH MIAMI BEACH, FL	07/29/97
EGOZI, ANOUCHKA, NORTH MIAMI BEACH, FL	07/29/97
MEDEL, RAQUEL, MIAMI BEACH, FL	07/29/97
MEDEL, ROGELIO, MIAMI BEACH, FL	07/29/97
R & M LABORATORY, MIAMI, FL	07/29/97
Owned/Controlled By Convicted Excluded	
AMBULANCE SERVICE, INC, JACKSONVILLE, FL	11/20/97
B & V MEDICAL SUPPLY, MIAMI, FL	11/20/97
BBC MEDICAL CENTER, MIAMI, FL	11/20/97
C & S LABORATORY, INC, MIAMI, FL	11/20/97
CARIBMED CARE CENTER, INC, MARIANNA, FL	11/20/97
CPC MEDICAL CENTER, HIALEAH, FL	11/20/97
DADE DIAGNOSTIC SERVICES, INC, ASHLAND, KY	11/20/97
DADE HEALTH CARE CENTER, INC, ASHLAND, KY	11/20/97
FAR SOUTH SIDE HEALTH ASSOC, CHICAGO, IL	11/20/97
FIRST COAST TRANS SVC, INC, JACKSONVILLE, FL	11/20/97
FLORIDA NATIONAL HEALTH CORP, ALTAMONTE SPRGS, FL	11/20/97
GREAT MIAMI PATIENT CARE, MIAMI, FL	11/20/97
INSTITUTO LATINO AMER DE IMPOT, MIAMI, FL	11/13/97
MEDIX PHYSICIAN INC, HIALEAH, FL	11/20/97
MIRAMAR MEDICAL TRAUMA CENTER, ASHLAND, KY	11/20/97
NEW HORIZONS OF PINELLAS, INC, TAMPA, FL	11/20/97
ORLANDO RECOVERY CENTER, ORLANDO, FL	11/20/97
P R MEDICAL SERVICES, MIAMI, FL	11/20/97
PARADISE TAXI CAB, INC., DADE CITY, FL	11/20/97
SMILE BRITE FAMILY DENTISTRY, ATLANTA, GA	11/20/97
SUPREME MEDICAL SERVICES, MIAMI, FL	11/20/97
WILLIAMS CLINICAL LABORATORY, BIRMINGHAM, AL	11/20/97
Default On Heal Loan	
ALTER, DON E, LUBBOCK, TX	11/20/97
AYBAR, RANDALL, LOS ANGELES, CA	11/20/97
BRITT, WILLIAM R, COLLEYVILLE, TX	11/20/97
CARTER, KENNETH O, PIKESVILLE, MD	11/20/97
CENTOLA, ROBERT L, RICHARDSON, TX	11/20/97
COHEN, DOROTHY A, SAN JOSE, CA	11/20/97
COLLYER, GEORGE H, SAN FRANCISCO, CA	11/20/97
DODSON, MASON D, LINDALE, TX	11/20/97
DREW, GARY WILLIAM, CARROLLTON, TX	11/20/97
ELY, STEPHEN ROBERT, FRESNO, CA	11/20/97
HENTHRON, WILLIAM H II, MCALLEN, TX	11/20/97
HOEHN, FRANK G, MIDLAND, TX	11/20/97
ITO, STEPHEN M, MURRIETA, CA	11/20/97
LINDSEY-WRIGHT, KAREN N, LONG BEACH, CA	11/20/97
MORONEY, WILLIAM P JR, SAN MATEO, CA	11/20/97
PALLADINO, JENNIFER M, WHITTIER, CA	11/20/97
WILLIAMS, LAURA ANN, LANHAM, MD	11/20/97

Dated: October 30, 1997.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Investigations, OI.

[FR Doc. 97–29792 Filed 11–12–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; 'Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample'

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which provides for an opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

The Biometry Branch (BB), Division of Biometry and Epidemiology (DBE), NIAAA, intends to conduct the 'Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample' to assess the test-retest reliability of new sections of the AUDADIS–IV in a general population sample. The AUDADIS–IV is a fully-structured interview designed to collect information on alcohol and drug use disorders and their associated psychiatric and medical conditions. The NIAAA is authorized by Section 464H of Title IV of the Public Health Act (42 U.S.C. 285n).

The information proposed for collection in this study will be used by the NIAAA to develop and finalize psychometrically sound measures of alcohol and drug-related disabilities for use in major epidemiologic surveys conducted in the United States. Currently, there is a great need for more reliable measurement of alcohol and drug use disorders and their associated disabilities in all fields of substance use research.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
(First (Test Interviews) 500	1	500	1	500
(Second (Retest) Interviews) 500	1	500	1	500
Total Number of Respondents—500 (per year)				
Total Number of Responses—1000 (per year)				
Total hours—1000 (per year)				

Request for Comments

Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology (DBE), NIAAA, NIH, Willco Bldg., Suite 514, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

For Further Information

To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology, NIAAA, Willco Bldg., 6000 Executive Boulevard, Suite 514, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before January 12, 1998.

Dated: November 5, 1997.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 97–29841 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Identification of the Gene Causing Familial Mediterranean Fever

D Kastner (NIAMS) et al.
Serial No. 60/056,217 filed 21 Aug. 97
Licensing Contact: Stephen Finley, 301/496–7056 ext. 215

The invention identifies the gene (MEFV) encoding the protein (pyrin) that is associated with familial Mediterranean fever (FMF). FMF, a recessive inherited disorder, is characterized by episodes of fever, inflammation, and unexplained arthritis, pleurisy, or abdominal pain. Pyrin is thought to play a role in keeping inflammation under control, whereas mutated forms lead to a malfunctioning protein and uncontrolled inflammation. Mutated forms of MEFV were isolated and correlated to FMF disease. It is anticipated that the immediate use of the pyrin gene and its mutations will be to aid in the diagnosis of FMF. It may also prove useful for evaluating FMF as a possible cause of currently unexplained fevers or abdominal pain.

The normal gene and its mutations may also be useful for studying and controlling inflammation.

Methods for Inactivating Enveloped RNA Virus Particles and Compositions for Use Therewith

HF Rosenberg, JB Domachowske (NIAID)
Serial Number: 60/052,986 filed 02 Jul 97
Licensing Contact: Robert Benson, 301/496–7056 ext. 267

The inventors have discovered that treatment of enveloped single-stranded RNA viruses with eosinophil-derived neurotoxin (EDN), a ribonuclease, inactivates the viruses in cell culture. Respiratory Syncytial Virus (RSV) and Parainfluenza Virus (PIV) are medically the most important enveloped RNA viruses; together they hospitalize over 100,000 infants per year in the US. EDN is the major eosinophil ribonuclease. It has been cloned and recombinant EDN is available. Despite its name, EDN is not toxic to respiratory epithelial or other somatic cells. Both parenteral and aerosol administration are contemplated. Claimed are methods of treatment and pharmaceutical compositions.

Actinomycin D: A New Use for AIDS Therapy

JG Levin, J Guo (NICHD)
Serial No. 60/047,223 filed 20 May 97
Licensing Contact: Robert Benson, 301/496–7056 ext. 267

This invention is a method of treating HIV infection by administering Actinomycin D. In a broader sense the invention is the discovery of a new target for anti-HIV therapy, namely the inhibition of the first strand transfer step in reverse transcription, an early step in HIV replication. Actinomycin D, a licensed drug used to treat Wilm's tumor, inhibits the first strand transfer step at a concentration estimated to be an order of magnitude lower than that used to treat cancer, as shown by inhibition studies with purified reverse transcriptase and detergent-treated HIV virions.

Rapid Method for Diagnosing the Various Forms of Alpha-Thalassemia

GP Rodgers, DC Tang (NIDDK)
Serial No. 60/031,880 filed 27 Nov 96
Licensing Contact: J. Peter Kim, 301/496–7056 ext. 264

The present invention is directed to a simple, inexpensive, and rapid method for detecting thalassemias. The present invention provides for the identification of nucleic acid primers capable of detecting and distinguishing between the various forms of alpha-thalassemia using any biological material (dry or fluid) containing nucleic acid material. The invention further provides for a method and diagnostic kit for the detection and quantitation of hemoglobin (Hb) alpha gene(s) in alpha-thalassemia patients, a method and kit for screening for carriers of this genetic disorder, a sensitive non-radioisotopic test capable of differentiating between the various forms of thalassemia, and a means to identify persons who are at risk of having offspring with homozygous alpha-thalassemia.

Dated: November 4, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–29843 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, November 24–25, 1997, Natcher Conference Center, Conference Rooms E1–E2, Bethesda, Maryland.

The meeting will be open to the public from 8:00 a.m. to 5:00 p.m. on November 24 and 8:00 a.m. to adjournment on November 25. Attendance by the public will be limited to space available. Board topics will include: (1) A report on fiscal issues concerning the National Center for Medical Rehabilitation Research (Center) and the Institute; (2) reports on the program activities of the Center; (3) a discussion of general priority areas of research for the Center; and (4) a discussion of support for medical rehabilitation research by government agencies.

Ms. Debbie Welty, Board Secretary, NICHD, 6100 Building, Room 2A03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2242, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Welty.

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29847 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Cancer Drug Discovery: Diversity Generation and Smart Assays.
Date: December 14–16, 1997.
Time: December 14–7:00 p.m. to Recess, December 15–8:00 a.m. to Recess, December 16–8:00 a.m. to Adjournment.
Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643, 6130 Executive Boulevard, MSC 7407, Bethesda, MD 20892–7407, Telephone: 301/496–3428.
Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29844 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following of the National Cancer Institute Initial Review Group:

Agency/Purpose To review, discuss and evaluate grant applications.
Committee Name: Subcommittee C—Basic and Preclinical Sciences.
Date: December 9–10, 1997.
Time: December 9—8:00 a.m. to Recess, December 10—8:00 a.m. to Adjournment.
Place: Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Virginia P. Wray, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 635, Bethesda, MD 20892–7408, Telephone: 301–496–0236.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29845 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.
Committee Name: Subcommittee D—Clinical Research Studies.
Date: December 2–3, 1997.
Time: 8 a.m. to Adjournment.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Martin H. Goldrosen, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 635C, Bethesda, MD 20892–7408, Telephone: 301–496–7930.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29849 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: NCI Scholars Program.
Date: November 18, 1997.
Time: 8:00 a.m. to Adjournment.
Place: Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Gerald Lovinger, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630C, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7987.
Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29848 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 2, 1997.
Time: 8 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Lawrence E. Chaitkin, Parklawn, Room 9c–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29848 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: November 19, 1997.
Time: 12 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Salvador H. Cuellar, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 4, 1997.
Time: 10 a.m.
Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29853 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute or Mental Special Emphasis Panel.
Date: December 2, 1997.
Time: 4 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301–443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29854 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Specialized Cooperative Centers Program in Reproductive Research.
Date: November 12–14, 1997.
Time: November 12—6:00 p.m.–10:00 p.m.; November 13—8:30 a.m.–5:00 p.m.; November 14—8:30 a.m.–adjournment.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.
Contact Person: A. T. Gregoire, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852; Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a research grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29855 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: November 13, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Clinical Sciences.
Date: November 19–20, 1997.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: December 1, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4128, Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

Name of SEP: Biological and Physiological Sciences.
Date: December 2–4, 1997.
Time: 7:00 p.m.
Place: Colony Inn, New Haven, CT.
Contact Person: Dr. Dave Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1036.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.
Date: December 9, 1997.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 5146, Telephone Conference.
Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

Name of SEP: Clinical Sciences.
Date: December 12, 1997.
Time: 10:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (301) 435–1776.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–29848 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: State Prevention Needs Assessments: Alcohol and Other Drugs—New—SAMHSA's Center for Substance Abuse Prevention (CSAP) has awarded contracts to several States to assess the nature and extent of substance abuse prevention services needs. The information collected in this project will be combined with existing sources and may use multiple approaches to assess risk and protective factors for substance use, prevention service needs, and substance abuse prevalence. These needs assessment studies will permit some cross-State comparisons of predictor variables to assist Federal program planning, allocating resources, and responding to GPRA. The estimated annualized burden for the three-year project is shown below.

	No. of respondents	No. of responses per respondent	Average burden per response	Total burden hours	Total annualized burden hours
Students	45,600	1	0.75	34,200	11,400
Young Adults	3,100	1	0.50	1,550	517
Community/Program Providers	1,253	1	1.00	1,253	418

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before January 12, 1998.

Dated: November 6, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–29839 Filed 11–12–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December 1997.

A portion of the meeting will be open and will include a general announcements and discussions and advice on issues and initiatives relevant to the policy and operation of CMHS/SAMHSA. Public comments are welcome during the open session. Please notify the contact listed below if you would like to make comments or if you have a disability which requires reasonable accommodation.

The meeting also will include the review, discussion, and evaluation of individual contract proposals. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. App. 2, Section 10(d).

A summary of the agenda and a roster of Council members may be obtained from Ms. Patricia Gratton, Committee

Management Officer, CMHS, Room 11C–26, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: CMHS National Advisory Council.

Meeting Dates: December 4–5, 1997.

Place: Omni Shoreham Hotel, 2500 Calvert Street, N.W. Washington, D.C.

Closed: December 4, 9:00 a.m.–9:15 a.m.

Open: December 4, 9:15 a.m.–4:45 p.m.

Open: December 5, 9:00 a.m.–Adjournment.

Contact: Ina B. Lyons, Room 13–103, Parklawn Building, Telephone: (301) 443–7586 and FAX (301) 443–5163.

Dated: November 6, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–29838 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Jan Roger van Oosten, Seattle, WA. The applicant wishes to amend his approved cooperative breeding program to include additional specimens of the Yellow-bibbed lory (*Lorius chlorocercus*). The International Loriinae Society maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 6, 1997.

Dr. Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 97–29829 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Susan Boyer, Julian, CA. The applicant wishes to amend her approved cooperative breeding program to include the Greater Indian Hill mynah (*Gracula religiosa intermedia*). The American Federation of Aviculture maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 6, 1997.

Dr. Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 97–29830 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Sharon Steel Restoration Plan and Public Information Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public informational meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the release of the Draft Sharon Steel Restoration . Plan for public review and comment. The draft plan identifies restoration projects to restore migratory bird resources injured by the release of hazardous materials from the Sharon Steel and Midvale Slag Superfund Sites, along the Jordan River in Salt Lake County, Utah. Restoration proposals were solicited through the Final Sharon Steel Damage Settlement: A Conceptual Restoration Plan and the Commerce Business Daily.

DATES: Written comments must be submitted on or before December 15, 1997.

ADDRESSES: Requests for copies of the Draft Plan may be made to U.S. Fish and Wildlife Service, Salt Lake City Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments should be sent to the above address.

FOR FURTHER INFORMATION CONTACT: Reed Harris, Field Supervisor, or Elise Peterson Environmental Contaminants Program, at the above Salt Lake City Field Office address (telephone 801/524–5001 extension 123).

SUPPLEMENTARY INFORMATION:

Background

A $2.3 million damage settlement was awarded to the U.S. Department of the Interior (DOI) in compensation for injuries to Federally-protected trust resources caused by contamination of the Jordan River corridor from the Sharon Steel and Midvale Slag Superfund Sites. Under Federal law, these trust resources are specifically protected on behalf of the public, and include migratory birds, as well as threatened and endangered species and their habitats. Consequently, Sharon Steel damage settlement money must be used to restore, replace, or acquire the equivalent of the trust resources injured on site by contaminants.

The DOI and the State of Utah signed a Memorandum of Understanding (MOU) July 11, 1991, to cooperate as trustees in planning and implementing resource restoration with Sharon Steel settlement money. The MOU established a Trustee Committee consisting of representatives from DOI and the State of Utah to plan and direct restoration activities.

The Trustee Committee outlined the following project goals: (1) to restore, replace, enhance, or acquire appropriate natural , functioning habitats along the Jordan River corridor for the benefit of identified trust resources; (2) to ensure that funds are utilized to provide maximum benefits for trust resources; and (3) to ensure the provision of benefits to trust resources in perpetuity. Restoration alternatives to meet these goals were identified. These alternatives included: (a) no-action or natural recovery, (b) restoration on the Sharon Steel/Midvale Slag sites, and (c) Jordan River Corridor replacement/enhancement of habitat for trust resources. Due to its protective and relatively cost effective nature, replacement/enhancement of resources in the Jordan River corridor was chosen as the preferred alternative for enhancement of wetland and riparian migratory bird habitats.

The primary steps towards achievement of project restoration objectives were subsequently identified as: (1) definition of restoration targets in terms of species and habitats, (2) development of criteria to consider when identifying and ranking projects, (3) identification of restoration tools or activities and solicitation of cooperative project proposals, (4) identification and ranking of specific restoration projects (cooperative proposals) and/or sites, (5) implementation of selected project(s), and (6) monitoring of the project(s) to ensure long-term viability.

The Sharon Steel Damage Settlement Restoration Plan: A Concept Document was subsequently issued which lent guidance to the restoration project selection process. The Draft Sharon Steel Restoration Plan identifies restoration projects selected for funding through cooperative agreements that will be implemented through partnerships with State or Federal agencies, county or local governments, or nonprofit organizations. Close cooperation among all programs in the Jordan River corridor (e.g., Central Utah Project, Jordan River Parkway plans, Jordan River Sub-basin Watershed Management Council, etc.) will insure cost-effective expenditure of public funds, increase success of all programs, and provide maximum benefits to the Jordan River ecosystem.

Management in perpetuity for wildlife will be assured by Restoration Plan stipulations which require land/wildlife management plans for each project proposal, and deed restrictions, which stipulate future land uses and return of lands to DOI or the State of Utah if cooperative agreements and management plan objectives are not upheld. Monitoring of sites will be performed by the Service to document project progress, assure compliance with management objectives and deed restrictions, and to measure timely success in the restoration of trust resources.

Interested members of the public are invited to review and comment on the Draft Restoration Plan. In Utah, copies are available for review at the U.S. Fish and Wildlife Service's Ecological Services Office in Salt Lake City (145 East 1300 South, Suite 404, Salt Lake City), the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (168 North 1950 West, Salt Lake City), and the Salt Lake City Library.

A public informational meeting will be held to describe the restoration projects proposed in the Restoration Plan and to answer questions. The meeting will be held November 20, 1997, at Midvale City Hall at 7:30 p.m. All written and public meeting comments will be considered and addressed in the final Restoration Plan.

Dated: November 6, 1997.

Joseph J. Webster,

Acting Regional Director, Denver, Colorado.

[FR Doc. 97–29828 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Mananagement, Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: The U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Tuesday, Dec. 2, 1997, at the BLM's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA 96130.

SUPPLEMENTARY INFORMATION: The meeting begins at 10 a.m. in the conference room of the BLM office. Members will discuss development of BLM-California's Environmental Impact Statement for Healthy Rangeland Standards and Guidelines, and discuss progress on phase one fire management planning in the Alturas, Eagle Lake and Surprise Resource Areas. Public comments will be taken at 1 p.m. Depending on the number of persons wishing to speak a time limit could be established.

FOR FURTHER INFORMATION: Contact Jeff Fontana, public affairs officer, (530) 257–5381.

John Bosworth,

Acting Area Manager.

[FR Doc. 97–29818 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–07–1220–00; 8322]

Arizona: Closure of All Public Lands Within the La Posa Plain Camping Closure Area to Overnight Occupation, Identification of Five "Fourteen-Day Camping Areas," and Restriction of Native Wood Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of all public lands within the La Posa Plain Camping Closure Area to overnight occupation, identification of five "Fourteen-Day Camping Areas," and restriction of Native Wood Collection.

SUMMARY: Notice is hereby given that all types of camping and night-time occupation must occur within designated camping areas within the La Posa Plain Area, and that native wood collection is prohibited on the public land within the La Posa Plain Camping Closure Area. The area affected by the closure contains 121,500 acres more or less.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, Yuma Field Office, La Posa Interdisciplinary Management Plan specified that no overnight occupation or collection of native wood shall be permitted with the closure area. This closures of public land within this area to overnight occupation and firewood collection is being implemented to resolve natural resource impacts resulting from unauthorized dumping of solid and liquid waste, disturbance of native soils, and depletion of native wood resources. Camping and occupation of public land within this area is restricted to five designated 14-day camping areas and the La Posa Long-Term Visitor Area (LTVA). The five 14-day camping areas are: Plomosa Road located 5 miles north of Quartzsite, Arizona, on the north and south sides of Plomosa Road; Dome

Rock located 6 miles west of Quartzsite south of Interstate 10; Hi-Jolly located 3 miles north of Quartzsite east of Highway 95 at mile marker 112; Scaddan Wash located 3 miles east of Quartzsite south of Interstate 10 adjacent to the south frontage road; and Road-Runner located 5 miles south of Quartzsite west of Highway 95 at mile marker 99. These areas are clearly identified on the ground with perimeter signs and information kiosks at the ignress and egress points which provide maps of the areas.

Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. A map of the overnight occupation and camping closure areas and designate camping areas is available at the Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365, or by mail.

EFFECTIVE DATES: September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Outdoor Recreational Planner John Reid, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365; (520 317–3274.

Dated: November 3, 1997.

Curt Gunn,

Program Manager, Resources, Lands, and Minerals.

[FR Doc. 97–29866 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations: National Preserve; Correction

AGENCY: National Park Service, Interior.

ACTION: Correction to public notice, proposal to award concession permits, Wrangell—St. Elias National Preserve.

SUMMARY: This notice contains a correction to the public notice that was published Friday, October 17, 1997 (62 FR 54127–54128). That notice advertised the National Park Service's proposal to award 17 concession permits authorizing the operation of sport hunting guide-outfitter services for the public at Wrangell St. Elias National Preserve.

EFFECTIVE DATE: November 13, 1997.

FOR FURTHER INFORMATION CONTACT: Superintendent, Wrangell St. Elias National Park and Preserve, P.O. Box 439,Copper Center, Alaska 99573.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Summary action of the notice published on Friday, October 17, 1997 (62 FR 54127–54128) incorrectly stated that the existing permits expire by limitation of time on December 31, 1997 and that the term of the proposed new permits will be for "a period of five years from January 1, 1998 through December 31, 2002." The Effective Date was stated "December 16, 1997".

Correction of Notice

The existing permits expire by limitation of time on December 31, 1998, and proposed new permits will have a term of five years from January 1, 1999 through December 31, 2003. The date applications are due has been extended from December 16, 1997 to January 15, 1998.

Paul Anderson,

Acting Regional Director, Alaska Region.

[FR Doc. 97–29775 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Assessment

ACTION: Release of Draft Environmental Assessment for Navigational Improvements for Washington Sailing Marina and Columbia Island Marina for public review and announcement of a public meeting on November 21, 1997 at Patowmack Landing Restaurant at the Washington Sailing Marina in Alexandria, Virginia.

SUMMARY: Washington Sailing Marina (WSM), located on Dangerfield Island, just opposite National Airport and Columbia Island Marina (CIM), at the southern end of Lyndon Baines Johnson Grove and 3 miles upstream from WSM are owned by the National Park Service (NPS) and managed by Guest Services, Inc. The marinas provide for recreational boating and access to the Federal navigational project in the Potomac River. The WSM provides recreational sailing and the CIM provides recreational power boating. The access channels serving to connect these marinas with the Federal Navigational channel are inadequate and unsafe for the types of boats currently using these marinas.

Through both studies, the benefits which may reasonably be expected to accrue from the proposed project are being balanced against its reasonable foreseeable detriments.

In accordance with the National Environmental Policy Act and Clean Water Act the NPS is soliciting comments from the public, state, and local agencies and officials, and other interested parties. The public review and comment period for the draft feasibility study and draft environmental assessment will begin on November 21, 1997 and close on December 21, 1997.

A public meeting will be held on November 21, 1997 at 7:00 p.m. at Patowmack Landing Restaurant meeting room, located at the Washington Sailing Marina, one mile south of National Airport, on George Washington Memorial Parkway.

For further information please contact Superintendent, George Washington Memorial Parkway at 703–285–2600. Requests for copies of the draft plan or written comments may be addressed to Superintendent, at George Washington Memorial Parkway, c/o Turkey Run Park, McLean, Virginia 22101. Comments must be received by December 21, 1997, to be addressed by the Final Feasibility Study and Environmental Assessment.

Dated: November 3, 1997.

Audry F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 97–29774 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1997 Christmas Pageant of Peace, which opens December 4, on the Ellipse (President's Park), south of the White House.

The meeting will be held at 1 p.m., Thursday, November 13, 1997, in room 234 of the National Park Service's National Capital Region Building, at 1100 Ohio Drive, S.W., in East Potomac Park.

Persons who would like to comment at the meeting should notify the National Park Service by November 10, by calling the White House Visitor Center between 9 a.m. and 4 p.m. weekdays, at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242, and can be accepted until November 7.

Dated: November 3, 1997.

Tom Peyton,

Park Manager, President's Park.

[FR Doc. 97–29773 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that a meeting of the National Park System Advisory Board will be held on November 20–21, 1997, at the Presidio, Golden Gate Club, Building 135, Fisher Loop, San Francisco, California. November 20, 1997, will be a meeting day for the committees of the Board. The Committee on Use, Recreation and Tourism will meet at the Presidio. The Committee on Humanities, Science and Education will meet at Point Reyes National Seashore. The full Board will meet November 21, 1997, beginning at 8:30 a.m. and will adjourn at 4:30 p.m.

On November 21, after remarks from the Chairman, the Board will be addressed by Director Robert Stanton. NPS Deputy Director Jackie Lowey will report on the NPS Transportation Working Group, followed by committee reports. The Board will vote on National Historic Landmark nominations in the afternoon.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and persons will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW., Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: November 5, 1997.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 97–29778 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 1,1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 28, 1997.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

Hartford County

Hubberd Park, Roughly bounded by W. Main St., I–691, CT 66, Reservoir Ave., Edgewood Dr, and Berlin, Meriden and Southing townlines, Meriden, 97001466

New London County

Burnett's Corner, Along Packer Rd., S of CT 184, Groton, 97001468

Woodbridge Farm, 29, 30, and 90 Woodbridge Rd., Salem, 97001467

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

United States Daughters of 1812, National Headquarters, 1461 Rhode Island Ave., NW., Washington, 97001469

GEORGIA

Richmond County

Bethlehem Historic District, Roughly bounded by Wrightsboro Rd., MLK Jr. Blvd., Railroad, Poplar, and Clay Sts., Augusta, 97001470

IOWA

Montgomery County

Moore, Josiah B. and Sara, House, 508 E. Second St., Villisca, 97001471

MASSACHUSETTS

Middlesex County

Prince Hall Mystic Cemetery, Address Restricted, Arlington, 97001473

Suffolk County

St. Luke's and St. Margaret's Church, 5–7 St. Luke's Rd., Boston, 97001472

MICHIGAN

Cass County

Jones, Carroll and Bessie E. (Caul), House, 170 W. Main St., Marcellus, 97001482

Delta County

Sand Lighthouse, 12 Waterplant Rd., Escanaba, 97001474

Newaygo County

Hardy Hydroelectric Plant, 6928 E. 36th St., Newaygo vicinity, 97001479

Wayne County

Ford—Bacon House, 45 Vinewood, Wyandotte, 97001476

Grindley, Robert M. and Matilda (Kitch), House, 123 Parsons, Detroit, 97001475

Hook and Ladder House No. 5—Detroit Fire Department Repair Shop, 3400–3434 Russell, Detroit, 97001481

Warren—Prentis Historic District, Bounded by Woodward, Warren, Third, and alley S of Prentis, Detroit, 97001477

Willis—Selden Historic District, Bounded by alley N of W. Willis, Woodward, alley S of Selden, and Third Ave., Detroit, 97001478

Woodbridge Neighborhood Historic District (Boundary Increase), 4304–14 Trumbull Ave. and 3800 Grand River, Detroit, 97001480

MISSOURI

Jackson County

Scarritt Point North Historic District, Roughly along Gladstone Blvd., Windor, Bales, Indiana, and Norledge Aves., Kansas City, 97001484

Scarritt Point South Historic District, Roughly along Gladstone and Benton Blvds., and Thompson Ave., Kansas City, 97001483

Saline County

Sweet Springs Historic District (Sweet Springs MPS), Roughly along Lexington, Marshall, Miller, and Spring Sts., Sweet Springs, 97001485

NEW YORK

Cattaraugus County

Oak Hill Park Historic District, Roughly along Laurens, N. Second, Third, Fourth, and W. Sullivan Sts., Olean, 97001495

Livingston County

Linwood, 1912 York Rd., York vicinity, 97001493

Tioga County

Belcher-Holden Farm (Newark Valley MPS), 5825 NY 38, Newark Valley, 97001486

Chamberlain, Daniel, House (Newark Valley MPS), 627 Brown Rd., Newark Valley, 97001489

Farrand-Pierson House (Newark Valley MPS), 441 Brown Rd., Newark Valley, 97001490

Maple Lawn Farm (Newark Valley MPS), 10981 NY 38, Newark Valley, 97001487

Nowland House (Newark Valley MPS), 88 S. Main St., Newark Valley, 97001488

Sutton-Chapman-Howland House (Newark Valley MPS), 55 Main St., Newark Valley, 97001492
Wade Farm (Newark Valley MPS), 5579 NY 38, Newark Valley, 97001491

Westchester County

Trinity Episcopal Church Complex, 335 Fourth Ave., Mount Vernon, 97001494

NORTH CAROLINA

Brunswick County

Bald Head Creek Boathouse, Smith Island, mouth of Cape Fear R, Smith Island, 97001496

Surry County

Bank of Pilot Mountain, (Former), 100 E. Main St., Pilot Mountain, 97001497

Wake County

Odd Fellows Building, 19 W Hargett St., Raleigh, 97001498
Pine Street Creamery, (Former), 414 Glenwood Ave., Raleigh, 97001499

TENNESSEE

Bedford County

River Side Farmhouse, 497 Shofner Rd., Shelbyville vicinity, 97001501

Maury County

Prewitt-Amis-Finney House, 2629 Pullen Mill Rd., Culleoka vicinity, 97001503

Roane County

Kingston Avenue Historic District, Roughly along N. Kingston, S. Kingston, and E. Rockwood Aves., Rockwood, 97001500

Sevier County

Wade, Dwight and Kate, House, 114 Joy St., Sevierville, 97001502

VIRGINIA

Albemarle County

Earlysville Union Church, VA 743, NW of jct. with VA 633, Earlysville, 97001504

Arlington County

Calvert Manor, 1925–1927 N. Calvert St., Arlington vicinity, 97001506

Culpeper County

Maple Springs, 20509 Clover Hill Rd., Jeffersonton vicinity, 97001510

Franklin County

Early, Jubal A., House, NW of jct. of VA 116 and VA 684, Boones Mill vicinity, 97001507

Goochland County

Jackson Blacksmith Shop, 2558 Blacksmith Shop Rd., Goochland vicinity, 97001511

Rappahannock County

Flint Hill Baptist Church, 0.3 mi N of jct. of US 522 and VA 729, Flint Hill, 97001509

Spotsylvania County

La Vista, 4420 Guinea Station Rd., Guinea vicinity, 97001508

Bedford Independent City

Ballard, John D., House, 525 Longwood Ave., Bedford, 97001505

WISCONSIN

La Crosse County

Chicago, Milwaukee and Saint Paul Railway Passenger Depot, 601 Saint Andrew Rd., LaCrosse, 97001512

[FR Doc. 97–29777 Filed 11–12–97; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plan for Delano-Earlimart Irrigation District.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993, and revised in September 1996. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contracts in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by December 15, 1997.

ADDRESSES: Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Under provisions of Section 3405(e) of the CVPIA (Title 34 of Pub. L. 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria. For evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contacts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets, and projected results.
7. Review, evaluate, and adopt the water conservation plan.
8. Implement, monitor, and update the water conservation plan.

The MP contractor listed below has developed a water conservation plan which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Delano-Earlimart Irrigation District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Billingsley to find the office nearest you.

Dated: November 6, 1997.

Robert F. Stackhouse,

Regional Resources Manager.

[FR Doc. 97–29827 Filed 11–12–97; 8:45 am]
BILLING CODE 4310–94–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Malaria Vaccine Development Program Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 8:30 AM to 5:00 PM on December 15, 1997 and from 8:30 to noon on 16 December 1997 at the Conference Room of the Environmental Health Project located in Suite 300, 1611 North Kent Street in Arlington, VA 22209–2111.

The agenda will concentrate on the activities of the MVDP over the past six months and plans for the next year.

The meeting will be open to the public except for a 30 to 60 minute segment at approximately 2:30 PM on December 15, 1997, during which procurement sensitive information will be discussed. Any interested person may attend the meeting, may file written statements with the committee before or after the meeting, or present any oral statements in accordance with procedures established by the committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting or to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MDP Federal Advisory Committee at the Office of Health and Nutrition USAID/G/PHN/HN/EH, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728, Fax (202) 216–3702, cdiggs@usaid.gov.

Carter Diggs,

USAID Designated Federal Officer (Technical Advisor, Malaria Vaccine Development Program).

[FR Doc. 97–29867 Filed 11–12–97; 8:45 am]
BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–388]

Simplification of the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: November 5, 1997.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2592). The O/TA&TA fax number is: 202/205–2616. Mr. Rosengarden may also be reached via Internet e-mail at rosengarden@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Media representatives should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). This notice, and any subsequent notices published pursuant to section 332(g) of the Tariff Act of 1930, may be obtained from the ITC Internet web server: http://www.usitc.gov.

SUMMARY: Following receipt of a letter from the Chairman, Committee on Ways and Means, U.S. House of Representatives, the Commission has instituted investigation No. 332–388, Simplification of the Harmonized Tariff Schedule of the United States, under section 332(g) of the Tariff Act of 1930. The purpose of the investigation is to propose modifications to the Harmonized Tariff Schedule of the United States (HTS) in order to make it simpler, more transparent and easier to use.

Background:

As requested by the Committee, the Commission will conduct the investigation in accordance with the following guidelines:

—The investigation should examine the difficulties arising from the complexity and size of the HTS, and the Commission should suggest modifications to alleviate compliance and administrative burdens for the business community and the U.S. Customs Service.
—Concession-rate levels scheduled to go into effect on January 1, 2004 should be used as the basis for general rates and special rates of duty. Tariff categories scheduled for rate reductions beyond January 1, 2004 should be identified and their staging schedules indicated in the report, along with any suggested modification that take delayed staging into account.
—Consistent with sound nomenclature principles and U.S. international obligations under the Harmonized System Convention, the Commission should suggest ways to simplify the U.S. tariff structure to the extent practicable without affecting duty-rate changes with a significant effect on U.S. industry and trade.
—For each of HTS chapters 1 through 97, the Commission should suggest appropriate methods of reflecting Column 2 rates. Consistent with guidelines for rate changes, the Commission should avoid proposing or maintaining rate lines solely for the purpose of reflecting Column 2 rates of duty.
—The Commission should suggest conversions of all specific, compound, and complex rates of duty to ad valorem equivalent rates, provided that such conversions would not have significant effects on U.S. industry and trade. In calculating rate conversions, the Commission should use trade data from the three most recent calendar years.
—The Commission should suggest an appropriate simplification of HTS statistical reporting categories for consideration by the Committee for Statistical Annotation of the Tariff Schedules, in accordance with section 484(f) of the Tariff Act of 1930, as amended.

The Committee on Ways and Means has requested that the Commission complete its investigation and submit its report to that Committee, the Committee on Finance of the Senate, and to the President, by July 13, 2000.

As requested by the Committee, the Commission will consult with interested agencies in the Executive Branch, including the Office of the U.S. Trade Representative, the U.S. Customs Service, and the U.S. Bureau of the Census. In addition, a primary focus of the investigation will be to obtain the broadest possible range of private-sector input including U.S. producers, U.S. importers, and, via foreign embassies, major foreign exporters to the United States. To that end, the Commission anticipates that frequent notices and repeated contacts with interested parties will take place. Commission staff expect to work closely with various industry groups to ensure that the Commission is in a position to understand their interests and will be able to see that their concerns are recognized in the development of proposals to simplify the U.S. tariff structure. The Commission believes that it is vital to have significant private-sector input during all phases of this work.

The Commission will from time to time issue notices and solicit comments and proposals with respect to specific portions of the HTS. However, comments addressed to the overall scope and direction of this investigation must be submitted by C.O.B. May 29, 1998.

Written Submissions: All submissions in connection with this investigation should be addressed to the Secretary, United States International Trade

Commission, 500 E Street S.W., Washington, D.C. 20436.

Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons.

Public Hearing: At an appropriate time during the investigation, the Commission will hold public hearings to obtain the views of interested parties. Any such hearings will be announced in a future public notice.

Issued: November 6, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–29782 Filed 11–12–97; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* One-time submission of operating license renewals and occasional submissions for holders of renewed licenses.

5. *Who will be required or asked to report:* Commercial nuclear power plant licensees who renew operating licenses.

6. *An estimate of the number of responses:* 1.33 responses (4 renewal applications during the 3-year clearance).

7. *The estimated number of annual respondents:* 1.33 respondents.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 89,333 hours (85,333 hours one-time reporting burden and 4,000 recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 54 of the NRC regulations, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations necessary to promote the health and safety of the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by December 15, 1997. Norma Gonzales, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 6th day of November 1997.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–29887 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New

2. *The title of the information collection:* Request for Taxpayer Identification Number.

3. *The form number if applicable:* NRC Form 531

4. *How often the collection is required:* One time from each applicant or individual to enable the Department of Treasury to process electronic financial payment or collect debts owed to the government.

5. *Who will be required or asked to report:* All individuals doing business with the Nuclear Regulatory Commission, including contractors and recipients of credit, licenses, permits, and benefits.

6. *An estimate of the number of responses:* 2,600 (1,600 the first year and 500 annually thereafter or 867 annually over a three year period).

7. *The estimated number of annual respondents:* 867.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 72 (5 minutes per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by December 15, 1997. Norma Gonzales, Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 6th day of November 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–29888 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation, (FPC or the licensee), for operation of the Crystal River Nuclear Generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment involves modifications to the electrical controls of the Reactor Building (RB) Recirculation System Fan/Cooler, AHF–1C. FPC has determined that the modification involves an Unreviewed Safety Question, in that modification will install additional components that could increase the probability of occurrence of a malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report (FSAR). Therefore, this action requires NRC approval. The proposed modification to the fan logic will enable utilization of AHF–1C, in place of either AHF–1A or AHF–1B (the normally running RB Recirculation System fans), by providing engineered safeguards (ES) auto-start permissive interlocks from its MCC–3AB transfer switch. This modification will automatically prevent inadvertent loading of two RB Recirculation System fans on a single emergency diesel generator when the ES–MCC–3AB source is transferred. The AHF–1C Engineered Safeguards "A" train auto start signal will be enabled only when AHF–1C is ES-selected as the "A" train fan with ES–MCC–3AB supplied from the "A" train source. Conversely, the AHF–1C ES "B" train auto-start signal will be enabled only when AHF–1C is ES-selected as the "B" train fan with ES–MCC–3AB supplied from the "B" train source.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment involves the addition of electrical circuits to preclude the loading of two Reactor Building Recirculation System fans onto the same Emergency Diesel Generator when AHF–1C is in service. This equipment will enable use of Reactor Building Recirculation System fan/cooler unit AHF–1C in place of either AHF–1A or AHF–1B by providing ES auto-start permissive interlocks from the source transfer switch for Motor Control Center ES–MCC–3AB. The AHF–1C ES-select control circuitry and ES–MCC–3AB do not initiate any accidents previously evaluated. Accident mitigation strategies assume that one train of the Reactor Building Recirculation System is available. This license amendment does not restrict the availability of one train. One Reactor Building Recirculation System fan/cooler unit will always be in operation even if AHF–1C is not available because of a malfunction in this control circuitry.

A failure to open or close a manual Nuclear Services Closed Cycle Cooling (SW) System valve at a Reactor Building Recirculation System cooling coil is a remote possibility. Adequate procedural controls are in place to ensure that proper steps are taken when a fan/cooler unit is being placed in service or removed from service. These procedures are not required during an accident, but are part of the normal operation of CR–3. However, should a failure occur, the other aligned Reactor Building Recirculation fan/cooler unit is available. In addition, both trains of the Reactor Building Spray System will be available to perform the post accident containment heat removal function.

Failure to properly ES-select a fan/cooler unit could result in a failure of the ES start function. However, an alignment error in the ES-selection of AHF–1C is annunciated and printed out by the events recorder to minimize the effect of this type of failure. Also procedural controls are in place to align the ES-selection for the fan/cooler unit being placed in service. The other train of the Reactor Building Recirculation System would be available, as well as, both trains of the Reactor Building Spray System. Therefore, this license amendment does not involve a significant increase in the probability of an accident previously evaluated.

Because of CR–3 single failure design bases considerations, a failure of one-half of the Reactor Building Recirculation System during accident mitigation would mean that both trains of the Reactor Building Spray System are available for mitigating any accident previously evaluated. Accident analyses for CR–3 assume only one train of the Reactor Building Recirculation System. Either train of the Reactor Building Spray System has the capability to maintain the accident dose consequences well below the requirements of 10 CFR 100 (25 rem whole body, 300 rem thyroid) and General Design Criteria 19 (5 rem whole body, or its equivalent to any part of the body). Installation of the ES auto-start permissive interlocks from the transfer switch for Motor Control Center ES-MCC–3AB will not alter any assumptions made in evaluating the radiological consequences of any accident described in the FSAR nor will it affect any fission product barriers since the post-accident containment heat removal functions will still meet design requirements. Therefore installation of ES auto-start permissive interlocks from Motor Control Center ES-MCC–3AB transfer switch does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The accident mitigation strategies for CR–3 assume two different types of post-accident

containment heat removal functions—Reactor Building Recirculation System and Reactor Building Spray System. This license amendment will allow the use of Reactor Building Recirculation System fan/cooler unit AHF–1C, which is presently administratively out of service, to control the Reactor Building temperature during normal operations and to mitigate any postulated accidents. The use of AHF–1C in place of either AHF–1A or AHF–1B does not alter the success path for post-accident mitigation. The addition of the ES auto-start permissive interlocks from the ES-MCC–3AB transfer switch will not introduce failure modes and effects that create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in the margin of safety.

This license amendment will allow the use of Reactor Building Recirculation System fan/cooler unit AHF–1C that is presently administratively out of service. AHF–1C is identical in design function to the other two fan/cooler units that are presently in service. During normal operation, two operating Reactor Building Recirculation System fan/cooler units maintain the Reactor Building temperature below the Improved Technical Specification limit of 130°F. Installation of this modification will allow the use of AHF–1C in place of either AHF–1A or AHF–1B, and maintain the licensing and design bases that assume two trains are operable for accident mitigation. The use of AHF–1C in place of the other fan/cooler units will preserve the margin of safety, pre-accident and post-accident, because the assumptions used in FSAR analyses remain valid. Peak Reactor Building pressures and temperatures will not be exceeded and the margin provided by this fission product barrier will not be reduced. Therefore, this license amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 15, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 4, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 6th day of November 1997.

For the Nuclear Regulatory Commission.

L. Raghavan,

Sr. Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 97–29689 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–31373; License No. 12–16559–01; EA 97–207]

In the Matter of Conam Inspection, Inc. Itasca, IL; Order Imposing Civil Monetary Penalty

I

Conam Inspection, Inc. (Conam or Licensee) is the holder of Byproduct Materials License No. 12–16559–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 2, 1990. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facilities in Columbus, Ohio; Gary, Indiana; Reading, Pennsylvania; Gallipolis, Ohio; and at temporary job sites anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material.

II

An inspection and investigation of the Licensee's activities were conducted between March 26, 1996 and November 12, 1996. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 9, 1997. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for three of the violations in the aggregate (Violations I.A, I.B, and I.C).

The Licensee responded to the Notice in a letter dated July 7, 1997. In its response, the Licensee denied Violations I.B and I.C, and requested remission or full mitigation of the civil penalty.

III

After consideration of the Licensee's response and arguments for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee did not provide an adequate basis for withdrawing Violations I.B and I.C, or mitigating the severity level of Violations I.A, I.B, and I.C in the aggregate, or mitigating the civil penalty associated with Violations I.A, I.B, and I.C. Therefore, a civil penalty in the amount of $16,000 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $16,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.B and I.C of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 5th day of November 1997.

James Lieberman,

Director, Office of Enforcement.

Appendix A—Evaluations and Conclusion

On June 9, 1997, the NRC issued to Conam Inspection, Inc., (Licensee or Conam) a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $16,000 for violations identified during an NRC inspection and investigation conducted from March 26 through November 12, 1996. The Licensee responded to the Notice by letter dated July 7, 1997. With regard to the violations assessed a civil penalty, the Licensee admitted Violation I.A; denied Violations I.B and I.C; and requested remission or full mitigation of the civil penalty. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

Restatement of Violation I.B

I.B 10 CFR 34.43(b) requires, in part, a licensee to ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on February 27, 1996, at Eli Lilly, Indianapolis, IN, a Licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source had been returned to its shielded position, in that the survey did not include the entire circumference of the radiographic exposure device and the source guide tube.

Summary of Licensee's Response to Violation I.B

The Licensee, in its response, denies Violation I.B and states that on February 28, 1996, the day following the incident, the radiographer expressly stated to the Licensee's Radiation Safety Officer (RSO) that he had performed a full 360-degree circumferential survey of the radiographic exposure device.

NRC Evaluation of Licensee's Response to Violation I.B

The specific issue addressed in Violation I.B is whether the radiographer performed the required survey to determine that the source had completely been withdrawn into the radiographic exposure device. This requires, among other things, that the radiographer be aware of the results of the survey, especially the dose rate measured at the exit port (front) of the radiographic exposure device. As noted on page 7 of the Licensee's reply to the Notice, the Licensee states (regarding the radiographer's survey) that: "He then failed to properly read his survey meter when he performed a radiation survey in a 360-degree motion around the camera." The fact that the radiographer improperly read the survey meter means that he failed to properly determine: (1) Whether the source had been completely withdrawn into the radiographic exposure device; and (2) the radiological conditions and potential hazards incident to use of radioactive material.

In addition, during the investigation conducted by the NRC's Office of Investigations, the radiographer stated that he surveyed the radiographic exposure device, but only on the sides. He also stated to the investigator that because of the position of the radiographic exposure device, he did not survey the front part. This conflicts with the information provided by the radiographer to the Licensee's RSO, but appears to be more in line with the facts of the case given the elevated exposure result to the radiographer's film badge.

In either case, whether the radiographer improperly read the survey meter or whether the radiographer failed to survey the front part, the NRC concludes that Violation I.B occurred as stated in the Notice.

Restatement of Violation I.C

I.C 10 CFR 20.1201(a)(1)(i) requires, with exceptions not applicable here, that a licensee control the occupational dose to individual adults to an annual dose limit of 5 rems total effective dose equivalent.

Contrary to the above, the Licensee did not limit the annual occupational dose to an adult radiographer to 5 rems, total effective dose equivalent. Specifically, the individual received a radiation dose of a minimum of 6 rems, total effective dose equivalent, during an event on February 27, 1996.

Summary of Licensee's Response to Violation I.C

The Licensee, in its response, denies Violation I.C, states that the NRC's methodology in determining the total effective dose equivalent is flawed, and does not agree with the intent of the regulations. The Licensee contends that using conventional dose assessment models, consensus industry standards, and the NRC's own definitions, the maximum likely Total Effective Dose Equivalent (TEDE) incurred by the radiographer during the event was 2.9 rems, based upon the radiographer's *description* of time and motion.

As a basis for its argument, the Licensee asserts that while the Licensee's consultant calculated a dose to the right thigh of 9.369 rems, this dose does not constitute the TEDE. The Licensee states that the dose limits are based on the 1976 [1977] recommendations of the International Commission on Radiological Protection (ICRP), which states that there is a predictable relationship between irradiation of the whole body and biological effects. The Licensee argues that the dose to the radiographer's thigh is not an appropriate predictor of biological effects, and thus should not be compared to the primary dose limit in 10 CFR 20.1201.

The Licensee asserts that the ICRP recommendations should take precedence in determining how the TEDE is computed. As such, in calculating the TEDE, the Licensee uses weighting factors for each tissue area which are derived from ICRP Publication 26. The Licensee believes this is an acceptable approach because the Statements of Consideration for the issuance of the revised 10 CFR Part 20 included, as reasons for the revision, the need to incorporate updated scientific information, to reflect changes in the basic philosophy of radiation protection, and to put into practice recommendations from ICRP 26 and subsequent ICRP publications. The Licensee asserts that sections 10 CFR 20.1003, which defines the TEDE, and 10 CFR 20.1201(a), which specifies exposure limits, conform with ICRP 26 recommendations.

The Licensee maintains that the NRC's guidance on interpretation of 10 CFR 20.1201(c) permits use of external dose weighting factors. However, the Licensee argues that the language in 10 CFR 20.1201(c): (1) Conflicts with the definition of deep-dose equivalent provided in 10 CFR 20.1003; (2) is inconsistent with the ICRP recommendations; and (3) deviates from the fundamental principles underlying the dose limits in 10 CFR Part 20.

The Licensee does note that the specific use of weighting factors other than 1.0 for all organs was not approved by 10 CFR Part 20; rather, 10 CFR 20.1003 states that "[f]or the purpose of weighting the external whole-body dose (for adding it to the internal dose), a single weighting factor, Wt=1.0, has been specified. The use of other weighting factors for external exposures will be approved on a case-by-case basis until such time as specific guidance is issued." The Licensee notes that the NRC has not yet issued specific guidance in interpreting this issue; however, since the American National Standards Institute (ANSI) has issued N13.41, "Criteria for Performing Multiple Dosimetry," the Licensee believes that it should be able to use this methodology in computing its TEDE value. This guidance was utilized and the resulting TEDE was 2.9 rems.

The Licensee asserts that in light of the conflicting regulatory language in 10 CFR Part 20 regarding non-uniform exposure of the whole body, and the fact that 10 CFR 20.1003 allows weighting factors to be considered, the dose determined for the radiographer using ANSI N13.41 protocol was appropriate and consistent with the rationale underlying the occupational dose limits.

NRC Evaluation of Licensee's Response to Violation I.C

The specific issue addressed in Violation I.C is whether the radiographer's total effective dose equivalent *as defined in the regulations* exceeded the regulatory limits. The Licensee's use of ICRP 26 and ANSI N13.41 (i.e., use of a compartmentalization methodology to sum the effective dose equivalents for various areas of the whole body) was neither approved by the NRC nor in accordance with NRC requirements, for the reasons described below.

1. NRC Basis for Violation I.C

As noted in the Notice, 10 CFR 20.1201(a)(1)(i) requires, in part, that a licensee control the occupational dose to individual adults to an annual dose limit of 5 rems total effective dose equivalent. In addition, 10 CFR 20.1201(c) requires, in part, that the assigned deep-dose equivalent must be for the part of the body receiving the highest exposure and that the deep-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure. As defined in 10 CFR 20.1003, Whole body means: "for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee." [1]

Based on the findings in the NRC inspection report dated November 18, 1996, the NRC concluded, as described in the Notice, that the radiographer received a TEDE of 6 rems. The conclusion was based on: (1) Measurements of time and distances as re-enacted by the radiographer and the Licensee's film badge dose; and (2) the dose to the part of the body receiving the highest exposure (i.e., upper left thigh), given that the individual monitoring device was not in the region of highest potential exposure, the dose field from the radiographic exposure device was non-uniform, and the position of the radiographer and his film badge in relationship to the radiographic exposure device.

2. The Licensee's Use of ICRP 26 and ANSI N13.41

The NRC agrees that the dose limits in 10 CFR Part 20 are based on the ICRP 26 recommendations and acknowledges that the radiographer's thigh may not be an appropriate predictor of biological effects. However, the Licensee's use of ICRP 26 and the draft ANSI N13.41 for calculating the radiographer's whole-body dose is inappropriate in this case.

While the ICRP 26 recommendations in principle permit the use of external weighting factors, no specific recommendations were included concerning the use of weighting factors for external dose because there are practical problems with such use. The application of weighting factors also entails calculation of organ doses instead of whole-body doses from external radiation. One component of this calculation is the estimation of radiation attenuation as a function of the depth in the body. Therefore, as noted in the NRC's Statement of Consideration for 10 CFR Part 20 (56 FR 23369), the Commission decided that "application of weighting factors for external exposures will be evaluated on a case-by-case basis until more guidance and additional weighting factors (such as for the head and the extremities) are recommended * * * The use of other weighting factors for external exposure *may be approved on a case-by-case basis upon request to the NRC.*" (emphasis added). This means that, if a licensee proposes to use other weighting factors for external use, the licensee needs to develop the basis and technical justification for its request, submit the request to the NRC, and await approval of its request *before using* any modified weighting factors. To date, the Licensee has not submitted to the Commission such a request for an exemption of 10 CFR 20.1201.

With regard to ANSI N13.41, this is a *draft* standard that has been neither approved by ANSI, nor reviewed and approved by the Commission for use by NRC licensees. Moreover, ANSI N13.41 is not applicable because this case falls outside of the scope of that standard. This is evident from the standard itself, which states, under *Scope*, page 9, that "this standard contains criteria applicable to *routine occupational activities* (emphasis added) for when and how to use multiple dosimeters to monitor the body and extremity of individuals exposed to sources of ionizing radiation." The next paragraph under this section goes on to state, "Sudden or unexpected changes in the radiation environment *as might occur during accidents are beyond the scope of this standard*" (emphasis added).

The dose calculated by the consultant to the radiographer's right thigh was 9.369 rems. As noted in the Licensee's response, the footnote attached to 10 CFR 20.1003 specifies that a single weighting factor, Wt=1.0, be used for external exposures.

However, rather than using this weighting factor, the Licensee applied the factors provided in ANSI N13.41 (which are less than 1.0) to calculate exposures of portions of the whole body to arrive at the overall dose determination. The Licensee's use of weighting factors (on the basis that the NRC has not issued new weighting factors) without prior NRC approval is contrary to NRC requirements. Given the above, the Licensee's method for calculating the radiographer's exposure is incorrect.

3. Arguments Concerning Deep-Dose Equivalent

10 CFR 20.1201(c) requires, in part, that the assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. 10 CFR 20.1003 defines deep-dose equivalent as the dose equivalent at a tissue depth of 1 cm (1000 mg/cm²) [regardless of the part of the whole body that is exposed]. Given that ICRP 26 did not include specific recommendations concerning the use of weighting factors for external dose, and the fact that there are practical problems in using weighting factors to assess external exposure as noted above, the NRC disagrees with the Licensee's argument that 10 CFR 20.1201(c) is inconsistent with the ICRP recommendations and that 10 CFR 20.1201(c) deviates from the fundamental principles underlying the dose limits in 10 CFR Part 20.

4. Use of the Consultant Results and Part 20 Weighting Factors

The NRC bases its enforcement actions on its regulations as codified in Title 10, Code of Federal Regulations. In this case, 10 CFR 20.1003 defines the weighting factor for the whole body as 1.0. As noted in the Licensee's response, the NRC has not approved the use of

[1] The NRC's definition is based, in part, on the fact that these portions of the whole body contain blood-forming organs.

other weighting factors for external exposures nor has the NRC issued specific guidance on the use of other weighting factors. The regulations do allow for the use of a different methodology, but only after review and prior approval by the NRC. In this case, such approval was not obtained by the Licensee. Because the thigh (right or left) is an area of the body meeting the definition for whole body, the appropriate weighting factor per the regulations is 1.0. Therefore, if the Licensee chooses to use the consultant's results in conjunction with the Part 20 weighting factors, the radiographer's TEDE for the event would be:

Dose to right thigh (9.369 rems) × weighting factor (1.0) = 9.369 rems

The Licensee correctly notes that the limit for whole-body exposure in 10 CFR 20.1201(a)(1)(i) is a TEDE of 5 rems. 10 CFR 20.1003 defines the TEDE as the sum of the deep-dose equivalent (external exposure) and committed effective dose equivalent (internal exposure). In this case, the TEDE can be considered to be equal to the deep-dose equivalent, because there was no internal exposure involved.

The circumstances surrounding the exposure, as described in the inspection report and by the radiographer during the conduct of the NRC's investigation, demonstrated that the radiographer's body was between the radiographic exposure device and the radiographer's film badge. As noted in the radiographer's and RSO's description of the Licensee's time-motion study, no props were used—the event was discussed at a table with the radiographer describing to the RSO what occurred. During this time-motion discussion, it was not clear that the radiographer's film badge was at the point nearest the source. It was clear that the beam from the exit port of the radiographic exposure device would be very directional and non-uniform. Later, on April 11, 1996, a re-enactment of the event by the radiographer in the presence of the Licensee's RSO and NRC personnel was performed and appropriate props were used. The radiographer was asked to demonstrate his activities at the time the exposure occurred. This re-enactment provided information that the Licensee had not obtained during its verbal time-motion discussion, namely, that the radiographer's leg was significantly closer to the source than was his film badge. For the sake of argument, the NRC has chosen to utilize the Licensee's dose calculation based on its verbal characterization, and the resulting dose obtained to the right thigh. If the Licensee chooses to use the consultant's results (which utilized variables from the NRC's re-enactment) in conjunction with the Part 20 weighting factors, the radiographer's TEDE for the event would be:

Dose to left thigh (42.075 rems) × weighting factor (1.0) = 42.075 rems

10 CFR 20.1201(c) states that "the assigned deep-dose equivalent and shallow-dose equivalent must be for the part of the body receiving the highest exposure. The deep-dose equivalent, eye dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable." In this case, the individual monitoring device was not in the region of highest potential exposure, given the non-uniform nature of the dose field from the radiographic exposure device and the position of the radiographer and his film badge in relationship to the radiographic exposure device. Therefore, per this requirement, the assigned deep-dose equivalent must be for the right thigh (using the Licensee's computation), as it is part of the whole body. This results in an assigned deep-dose equivalent of 9.369 rems. As noted above, the TEDE consists of the sum of the deep-dose equivalent and committed effective dose equivalent. In this case, it is equal to the deep-dose equivalent, 9.369 rems, a value that is in excess of the limit specified in 10 CFR 20.1201(a)(1)(i).

Given the above, the NRC concludes that: (a) The Licensee has not provided a basis to substantiate that the radiographer's TEDE was below 5 rems; and (b) Violation I.C occurred as stated in the Notice.

Summary of Licensee's Request for Remission or Mitigation and Reconsideration of Severity Level

The Licensee offered several arguments in support of its request for remission or mitigation of the proposed penalty. Below is a summary listing of the Licensee's arguments that are related to its request for remission or mitigation, some of which have been consolidated. The NRC's evaluation follows each argument.

Appendix A

1. Licensee's Argument

The Licensee asserts that violations cited in Section I of the Notice should not be considered willful, for the following reasons:

- Based on the Licensee's discussion of the event on February 28, 1996, between the RSO and the radiographer, the Licensee concluded that the radiographer was negligent in failing to rotate the selector ring from the "operate" to the "lock" position and failing to depress the plunger mechanism of the radiographic exposure device.
- This act was not the result of deficiencies in the Licensee's Radiation Safety Program, nor did it follow other incidents of a similar nature. As evidence for its argument, the Licensee notes that seven prior unannounced NRC inspections had not identified any violations of applicable regulations.
- The Licensee disputes the fact that it was a "typical" practice of Conam radiographers to rely upon the automatic locking mechanism of their radiographic exposure devices rather than locking them in the manner required by the Licensee's radiation safety procedures.
- The Licensee believes that "[b]ecause the NRC's conclusion that a "willful" violation has occurred is influenced by its erroneous conclusion that a violation of the occupational exposure limit occurred, its characterization of the violation as "willful" is flawed."

NRC Evaluation

In its Notice, the NRC did not conclude that the violations in Section I were willful; rather, the NRC concluded that only Violation I.A was willful. In this regard, Section IV.C of the NRC Enforcement Policy defines willful violations to encompass not merely deliberate acts but acts of careless disregard as well. As part of the NRC's evaluation of this event, an investigation was conducted by the NRC's Office of Investigations (OI). That investigation concluded that the Licensee's radiographer willfully failed to follow the Licensee's procedures while operating the radiographic exposure device. The radiographer, who was knowledgeable of the requirement but failed to perform it due to being "lax," demonstrated careless disregard for NRC requirements, a condition that clearly meets the NRC's definition of a willful violation.

Given the results of the OI investigation, the problem with failing to follow procedures was not isolated. As noted both in the November 18, 1996 inspection report and during the subsequent Predecisional Enforcement Conference, the Licensee's policy for performing field audits did not encompass multiple exposures or other situations where the potential existed for a radiographer to fail to properly rotate the selector ring and depress the plunger. A single radiographic shot was often used, where this act would be performed prior to moving the radiographic exposure device. As such, the Licensee was unaware of the problem until it manifested itself in the exposure event that occurred on February 27, 1996, although a better field auditing technique may have allowed the Licensee to identify the problem prior to the February event. Therefore, the Licensee's arguments (i.e., lack of deficiencies in its radiation safety program and the lack of NRC findings during prior unannounced NRC inspections) do not alter the NRC's conclusion concerning the willful act of the radiographer.

When questioned by the OI investigator, approximately 25% of the Licensee's radiographers at the Gary, Indiana facility, including the radiographer associated with the event, admitted that on or prior to February 28, 1996, they failed on occasion to rotate the selector ring from the "operate" to the "lock" position and failed to depress the plunger mechanism as required by the Licensee's operating procedures. They stated to the investigator that they had been "lax," but that they were knowledgeable of the requirement. They also stated that after the memo was issued by the RSO discussing the event and the need to follow procedures, they no longer violated this requirement.

In determining whether the radiographer willfully failed to lock the radiographic exposure device, the NRC based its conclusion on interviews with the radiographer as noted above. The Licensee's belief that the NRC's conclusion concerning willfulness was influenced by whether a violation of the occupational exposure limit occurred is simply incorrect.

2. Licensee's Argument

The Licensee asserts that the NRC improperly denied identification and corrective action credit under the terms of the NRC Enforcement Policy, Section VI.B.2.b and c, by ignoring essential facts. The Licensee asserts that while the incident was identified through an event, this fact does not preclude identification credit where the problem arose from a single incident of negligence by a radiographer in violation of well-publicized Conam safety procedures, where the Licensee's quarterly radiation safety compliance audit program was demonstrably adequate, and where there were no prior deficient occurrences to identify the problem.

In addition, the Licensee argues that its corrective actions were also prompt and comprehensive and should result in credit. The Licensee believes that the incident was promptly and comprehensively addressed and corrected by the Licensee's RSO through his analysis of the film badge, his issuance of a February 29, 1996, memorandum reminding all Conam radiographic personnel of the proper procedure for operating radiographic exposure devices, his withdrawal of the radiographer from further radiographic duties, and the suspension of the radiographer without pay for one week.

The Licensee disagrees with the NRC's position, as described in the Notice, that credit should not be given because the Licensee did not confirm that each radiographer had received the February 29, 1996, memorandum from the RSO, nor had the Licensee instituted any monitoring/auditing program to evaluate the effectiveness of the memorandum. The Licensee states that there is no evidence that the radiographers did not receive the memorandum, and that there has been no repetition of the problem since the February event's occurrence. The Licensee believes that the NRC's dismissal of credit for identification and corrective action ignores the fact that the February event was the only one of its kind against a record of no violations whatsoever during seven prior NRC inspections, and no that subsequent violations since the event have been identified by NRC inspections.

NRC Evaluation

The NRC Enforcement Policy, Section VI.B.2.b, discusses the criteria to be considered when deciding if a licensee should be given credit for actions related to identification. These circumstances include: (i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event; and (ii) for a problem revealed through an event, the ease of discovery, the licensee's self-monitoring effort, the degree of licensee initiative in identifying the problem requiring corrective action, and whether prior opportunities existed to identify the problem (Section VI.B.2.b(2)(ii) of the Enforcement Policy).

The NRC and the Licensee both agree that the problem requiring corrective action was revealed through an event. Therefore, the criteria in Section VI.B.2.b(2)(ii) of the Enforcement Policy are applicable in this case. Regarding the ease of discovery, as well as the Licensee's self-monitoring effort, the radiographer involved in the incident reported the problem to the Licensee's RSO; and the problem was not identified through any self-monitoring action of the Licensee's RSO or management, such as an audit. Regarding the degree of licensee initiative in identifying the problem requiring corrective action, the Licensee's initiative does not deserve credit, as described below. Regarding the existence of prior opportunities to identify the problem, as stated earlier, the OI investigation revealed that approximately 25% of the Licensee's radiographers and assistant radiographers at the Gary, Indiana facility admitted that on or prior to February 28, 1996, they on occasion failed to rotate the selector ring from the "operate" to the "lock" position and failed to depress the plunger mechanism as required by the Licensee's operating procedures. Thus, the problem with failing to follow procedures was not isolated. The Licensee performs quarterly field audits of its radiographers. As noted in the inspection report and during the Predecisional Enforcement Conference, the Licensee's policy for performing field audits did not encompass multiple exposures or other situations where the potential existed for a radiographer to fail to properly rotate the selector ring and depress the plunger. Therefore, numerous prior opportunities existed to identify the problem, yet the problem was not identified prior to the February 27, 1996 incident. Thus, credit for identification is not warranted.

The NRC Enforcement Policy, Section VI.B.2.c, discusses the criteria to be considered when deciding if a licensee should be given credit for prompt and comprehensive corrective actions. These criteria include: (i) The timeliness of the corrective action, (ii) the adequacy of the licensee's root cause analysis for the violation, and (iii) the comprehensiveness of the corrective action. As stated in the inspection report, the NRC acknowledges the Licensee's prompt action in issuing a memorandum to all radiation safety supervisory personnel advising all radiography staff to complete a full and accurate survey of the radiographic exposure device, collimator, guide tube, and connector after each exposure and to secure the source assembly in accordance with the Licensee's procedures. However, although the issuance of the memorandum was timely, it does not constitute a comprehensive corrective action.

Specifically, after the Licensee received the vendor's report indicating the radiographer's dose, the Licensee

did not perform an exact time-motion study at the scene of the event to determine the locations of the whole body, film badge and radiographic exposure device exit port. Photographs of the scene that were obtained later did not include the position of the radiographer. In addition, the Licensee could not confirm that each radiographer had received the memorandum, nor had the Licensee instituted any monitoring/auditing program to evaluate the effectiveness of the memorandum. The Licensee's argument that there is no evidence that the radiographers did *not* receive the memorandum is not persuasive; a comprehensive corrective action would ensure that each radiographer had received, reviewed, and understood the memorandum, and would monitor the radiographers' understanding of and compliance with the memorandum. Such comprehensive corrective actions were not implemented by the Licensee.

Finally, the fact that no violations had been identified during seven NRC inspections prior to the February 27, 1996 event, although commendable, is not relevant as far as credit for corrective action is concerned. Further, in accordance with Section VI.B.2.c of the NRC Enforcement Policy, the adequacy of a licensee's corrective actions is judged at the time of the enforcement conference, not on the basis of whether subsequent violations following the event have been identified by the NRC. Given the above, the NRC concludes that while the Licensee took some timely actions, on balance, such actions did not address the root cause of the violations and were not comprehensive. Thus, credit for prompt and comprehensive corrective actions is not warranted.

3. Licensee's Argument

The Licensee asserts that the NRC Enforcement Policy should find, at worst, that the February 27,1996 incident involved two non-willful Severity Level III violations which, with appropriate identification and corrective action credit, do not justify any civil penalty. The Licensee asserts that to aggregate the violations cited in Section I of the Notice and assign a Severity Level II "problem" to this collection is not consistent with the NRC's Enforcement Policy published in 60 FR 34381 (June 30, 1995). The Licensee believes that the NRC's Notice compounds that error by determining that the Severity Level II problem was willful, and on that basis justifying a 100% escalation of the $8,000 Severity Level II base penalty.

NRC Evaluation

As described above, the NRC has determined that Violation I.A was willful, that Violations I.A, I.B, and I.C occurred as described in the inspection report, and that credit for identification and corrective action is not warranted. The NRC Enforcement Policy, Section IV.A, states, in part, that the purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may, therefore, warrant a more substantial enforcement action. As noted in the Notice, in consideration of the willfulness involved, the relationship of these violations to a single incident, and the fact that two safety barriers were breached, the violations are of very significant regulatory concern. Therefore, consistent with Section IV.A of the Enforcement Policy, the violations in Section I of the Notice were combined to reflect that, collectively, they are more significant than individually and, therefore, warrant a more substantial enforcement action.

As to the Licensee's argument concerning escalation of the $8,000 base penalty, the NRC did not escalate the civil penalty on the basis of a willful violation. The base amount for a Severity Level II problem is $8,000. Credit was not warranted for the identification and corrective action factors. Therefore, in accordance with the civil penalty assessment process described in Section VI.b.2, the civil penalty for the Severity Level II problem is twice the base amount (i.e., $16,000).

NRC Conclusion

The NRC concludes that the Licensee did not provide an adequate basis for withdrawing Violations I.B and I.C, for mitigating the severity level of Violations I.A, I.B, and I.C in the aggregate, or for mitigating the civil penalty associated with Violations I.A, I.B, and I.C. Therefore, the proposed civil penalty in the amount of $16,000 should be imposed by order.

Appendix B Evaluation of Violations Not Assessed a Civil Penalty

Of the violations not assessed a civil penalty, the Licensee admitted violation II.B and denied Violation II.A.

Restatement of Violation II.A

II.A 10 CFR 20.2203(a)(2)(i) requires, in part, that a licensee submit a written report within 30 days after learning of a dose in excess of the occupational dose limits for adults as defined in 10 CFR 20.1201.

Contrary to the above, on April 11, 1996, the Licensee learned of an event that caused an adult radiographer to receive a total effective dose equivalent of more than 5 rems total effective dose equivalent and did not submit a written report within 30 days as required.

Summary of Licensee's Response to Violation II.A

The Licensee, in its response, denies Violation II.A and states that, because the radiographer was not exposed to a dose in excess of 5 rems, total effective dose equivalent, no reporting obligation arose under applicable regulations.

NRC Evaluation of Licensee's Response to Violation II.A

The specific issue raised by Violation II.A was whether the Licensee was required to submit a report to the NRC after learning of a dose in excess of the occupational dose limits for adults as defined in 10 CFR 20.1201. In this case, the Licensee's evaluation of the circumstances did not appear to be adequate in that the Licensee did not complete an exact time/motion study at the scene of the event to determine the locations of the whole body, film badge, and radiography exposure device. As a result, the Licensee did not conclude that an exposure in excess of the dose limits occurred.[2]

By letter dated June 23, 1997, the Licensee did submit the report required by 10 CFR 20.2203(a)(2)(i), but solely on the basis that the NRC's letter transmitting the Notice of Violation and Proposed Imposition of Civil Penalty specifically stated that the Licensee was required to make such a report. As noted above, the Licensee still contends that an exposure in excess of regulatory limits did not occur based on the Licensee's unapproved methodology it used to compute the TEDE.

Given that the Licensee did not learn that the radiographer's exposure was in excess of regulatory limits, and that, after being informed by the NRC of the radiographer's exposure, the Licensee submitted a report per the requirements of 10 CFR 20.2203(a)(2)(i), the NRC concludes that Violation II.A should be withdrawn.

NRC Conclusion

The NRC staff concludes that the Licensee provided an adequate basis for withdrawing Violation II.A. Therefore, Violation II.A should be withdrawn.

[2] For details concerning the Licensee's evaluation, see Summary of the Licensee's Response to Violation I.C and the NRC's Evaluation of the Licensee's Response to Violation I.C.

[FR Doc. 97–29886 Filed 11–12–97; 8:45 am]
BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Allocating Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Allocating Unfunded Vested Benefits (29 CFR Part 4211) (OMB control number 1212–0035; expires February 28, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 12, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4211(c)(5)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the PBGC to prescribe by regulation a procedure whereby multiemployer pension plans can change the way they allocate unfunded vested benefits to withdrawing employers, subject to PBGC approval. Approval of a change is to be based on a determination that the change will not significantly increase the risk of loss to plan participants or the PBGC.

The PBGC's regulation on Allocating Unfunded Vested Benefits (29 CFR Part 4211) includes, in § 4211.22, rules for requesting the PBGC's approval of an amendment to a plan's allocation method. Section 4211.22(d) prescribes information that the PBGC needs to identify the plan and evaluate the risk of loss, if any, posed by the amendment (and, hence, determine whether it should approve the amendment). Section 4211.22(e) requires the submission of other information that the PBGC may need to review the amendment. (The regulation may be accessed on the PBGC's home page at http://www.pbgc.gov.)

The collection of information under the regulation has been approved by OMB under control number 1212–0035 through February 28, 1998. The PBGC intends to request that OMB extend its approval for another three years. The PBGC estimates that it receives five submissions from plan sponsors annually under the regulation; that virtually all submissions are prepared by outside consultants; that the total annual hour burden of engaging the services of such consultants is one hour; and that the total annual cost burden of having the submissions prepared is $1,575.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 7th day of November, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–29880 Filed 11–12–97; 8:45 am]
BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26774]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 6, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 1, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–9143); Notice of Proposal to Amend Articles of Incorporation and Authorize Registered Holding Company to Acquire Preferred Stock of Utility Subsidiaries; Order Authorizing Solicitation of Proxies

New England Electric System ("NEES"), a registered holding company, and its wholly-owned public utility subsidiaries, New England Power Company ("the Power Company"), Massachusetts Electric Company ("Mass Electric"), and the Narragansett Electric Company ("Narragansett"), all located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 12(d) and 12(e) of

the Act and rules 43, 44, 51, 54, 62 and 65 under the Act.[1]

The Power Company

The Power Company has outstanding 6,449,896 shares of common stock, $100 par value per share ("Power Company Common Stock"), all of which are held by NEES. The Power Company also has issued a 6% cumulative preferred stock, outstanding 75,020 shares, $100 par value ("Power Company Cumulative Preferred Stock"). The Power Company's other outstanding preferred stock consists of 321,640 shares of dividend series preferred stock, $100 par value per share ("Power Company Dividend Series Preferred Stock"), issued in four series.[2] There is also authorized another class of preferred stock ("Power Company Preferred Stock—Cumulative"), $25 par value, of which there are no series currently outstanding. The Power Company Common Stock shares general voting rights with the Power Company Cumulative Preferred Stock, and are entitled to one vote per share. No other class of Power Company equity securities is outstanding.

The Power Company's by-laws and articles of incorporation ("Power Company Articles") currently provide that, without a vote of a majority of the outstanding Power Company Dividend Series Preferred Stock and Preferred Stock—Cummulative, the Power Company will not issue or assume any evidence of unsecured indebtedness (except for redemption of outstanding shares of all series of the stock), if the total amount (exclusive of certain unsecured indebtedness) immediately after the issue would exceed 20% of total secured indebtedness, capital, premium, and retained earnings, of which 20%, not more than one-half shall be short-term unsecured indebtedness.[3] ("(Power Company Restriction Provision").

The Power Company proposes to solicit proxies from the holders of outstanding shares of Power Company Dividend Series Preferred Stock and Common Stock ("Power Company Proxy Solicitation") for use at a special meeting of its stockholders ("Power Company Special Meeting") to consider a proposed amendment to the Power Company Articles that would eliminate in its entirety the Power Company Restriction Provision ("Power Company Proposed Amendment") from the Power Company Articles. Approval of the Power Company Proposed Amendment requires the affirmative vote at the Power Company Special Meeting of the holders of not less than two-thirds of the total number of the then-outstanding shares of (1) The Power Company Dividend Series Preferred Stock of all Power Company Series, voting together as one class, and (2) the Power Company Common Stock. NEES will vote its shares of Power Company Stock in favor of the Power Company Proposed Amendment.

If the Power Company Proposed Amendment is adopted, the Power Company would make a special cash payment of $1.00 per share ("Power Company Cash Payment") to each holder of Power Company Dividend Series Preferred Stock of any Series who voted shares (in person by ballot or by proxy) (each, a "Power Company Share") in favor of the Power Company Proposed Amendment at the Power Company Special Meeting (except that no Power Company Cash Payment will be made with respect to any Power Company Share validly tendered under the concurrent tender offer described below). The Power Company will disburse Power Company Cash Payments out of its general funds following adoption of the Power Company Proposed Amendment.

Concurrently with or shortly before the Power Company Proxy Solicitation, and subject to the terms and conditions stated in an Offer to Purchase and Proxy Statement and Information Statement and accompanying Letter of Transmittal (collectively, "Power Company Offer Documents"), NEES proposes to make a cash tender offer ("Power Company Tender Offer") to acquire any and all outstanding shares of Power Company Preferred Stock of each Power Company Series, at cash purchase prices which NEES anticipates will include a market premium for each Series (each, a "Power Company Purchase Price"). The Power Company Purchase Price and the other terms and conditions of the Power Company Tender Offer apply equally to all preferred stockholders of the respective Power Company Series. The offer for any one Power Company Series is independent of the offer for any other Power Company Series or for the shares of any other subsidiary.

NEES anticipates that the Power Company Tender Offer will expire at 5:00 p.m. Eastern Standard Time on December 12, 1997, the date of the Power Company Special Meeting ("Power Company Expiration Date"), unless otherwise extended. The Power Company Tender Offer is not conditioned upon any minimum number of shares of Power Company preferred stock being tendered. Preferred stockholders who tender their shares under a Power Company Tender Offer are required to vote in favor of or consent to the Power Company Proposed Amendment, and one of the conditions of the Power Company Tender Offer requires that the Power Company Proposed Amendment be approved and adopted.

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[1] The Power Company, Mass. Electric and Narragansett are sometimes referred to individually as a "Subsidiary" or collectively as "Subsidiaries."

[2] The four series of Power Company Dividend Series Preferred Stock consist of a 4.56% series, of which 100,000 shares are outstanding; a 4.60% series, of which 80,140 shares are outstanding; a 4.64% series, of which 41,500 shares are outstanding; and a 6.08% series, of which 100,000 shares are outstanding (each, a "Power Company Series").

[3] The Power Company Restriction Provision specifically provides that the Power Company will not:

[I]ssue any unsecured notes, debentures or other securities representing unsecured indebtedness, or assume any such unsecured securities, for purposes other than the redemption or other retirement of outstanding shares of all series of the Dividend Series Preferred Stock and the Preferred Stock—Cumulative, if immediately after such issue or assumption the total principal amount of all unsecured notes, debentures or other securities representing unsecured indebtedness issued or assumed by the corporation and then outstanding (including unsecured securities then to be issued or assumed but excluding unsecured securities theretofore so voted for by holders of Dividend Series Preferred Stock and Preferred Stock—Cumulative) (the "Unsecured Indebtedness") would exceed twenty per cent (20%) of the aggregate of (i) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by the corporation and then outstanding and (ii) the capital, premium and retained earnings of the corporation as then stated on the books of account of the corporation; provided, however, that after July 1, 1976, short-term unsecured indebtedness shall not exceed ten per cent (10%) of such aggregate of (i) and (ii) above; and provided, further, that after July 1, 1976, in the event unsecured securities representing short-term unsecured indebtedness (excluding unsecured securities theretofore so voted for by the holders of Dividend Series Preferred Stock and Preferred Stock—Cumulative) exceed ten per cent (10%) of (i) and (ii) above, no unsecured securities representing unsecured indebtedness shall be issued or assumed (except for the purpose of redemption or other retirement of outstanding shares of all series of the Dividend Series Preferred Stock and the Preferred Stock—Cumulative) unless such ratio of short-term unsecured indebtedness immediately after such issue or assumption is to be not over ten per cent (10%) of such aggregate of (i) and (ii) above. "Short-term unsecured indebtedness" as used herein means unsecured indebtedness of an original maturity of less than ten years and "long-term unsecured indebtedness" means unsecured indebtedness of ten years or more. For the purposes hereof, when any long-term unsecured indebtedness becomes due within ten years, or when any long-term unsecured indebtedness is to be retired within ten years through a sinking fund or otherwise, such long-term unsecured indebtedness, in each case, shall be considered short-term unsecured indebtedness; provided, however, that any long-term unsecured indebtedness of a single maturity (except as provided above in respect of a sinking fund therefore), or the last maturity of any long-term unsecured indebtedness of serial maturities, shall not be considered short-term unsecured indebtedness until due within five years.

Mass. Electric

Mass Electric has outstanding 2,398,111 shares of common stock, $25 par value ("Mass. Electric Common Stock"), all of which are held by NEES. Mass. Electric's outstanding preferred stock consists of 350,000 shares of dividend series preferred stock, $100 par value, issued in three series[4] ("Mass. Electric Dividend Series Preferred Stock"), and 600,000 shares of preferred stock—cumulative, $25 par value, of which there is one series outstanding,[5] all of which are traded over the counter. ("Mass. Electric Preferred Stock—Cumulative"). Mass. Electric Common Stock and Mass. Electric Dividend Series Preferred Stock are entitled to one vote per share. The Mass. Electric Preferred Stock—Cumulative is entitled to a quarter vote per share. No other class of Mass. Electric equity securities is outstanding.

Mass. Electric's By-Laws and Articles of Organization ("Mass. Electric Articles") currently provide that, without a vote of a majority of the outstanding Mass. Electric Dividend Series Preferred Stock and Preferred Stock—Cumulative, Mass. Electric will not issue or assume any unsecured indebtedness (except for redemption of outstanding shares of all series of preferred stock), if the total amount of the indebtedness (exclusive of certain unsecured indebtedness) immediately after the issue would exceed 20% of total capitalization, or if, immediately after the issue, the total amount of the short-term unsecured indebtedness (exclusive of certain short-term unsecured indebtedness) issued or assumed by Mass. Electric after September 30, 1998, would exceed 10% of total capitalization.[6] ("Mass. Electric Restriction Provision").

Mass. Electric proposes to solicit proxies from the holders of outstanding shares of Mass. Electric Dividend Series Preferred Stock and Common Stock ("Mass. Electric Proxy Solicitation") for use at a special meeting of its stockholders ("Mass. Electric Special Meeting") to consider a proposed amendment to the Mass. Electric Articles that would eliminate in its entirety the Mass. Electric Restriction Provision ("Mass. Electric Proposed Amendment") from the Mass. Electric Articles. Approval of the Mass. Electric Proposed Amendment requires the affirmative vote at the Mass. Electric Special Meeting of the holders of not less than two-thirds of the total number of the then-outstanding shares of (1) the Mass. Electric preferred stock of all Mass. Electric Series, voting together as one class, and (2) the Mass. Electric Common Stock. NEES will vote its shares of Mass. Electric Common Stock in favor of the Mass. Electric Proposed Amendment.

If the Mass. Electric Proposed Amendment is adopted, Mass. Electric would make a special cash payment of $1.00 per share ("Mass. Electric Cash Payment") to each holder of Mass. Electric Dividend Series Preferred Stock of any Series, and 25 cents per share to each holder of the Mass. Electric Preferred Stock—Cumulative who voted shares (each, a "Mass. Electric Share") (in person by ballot or by proxy) in favor of the Mass. Electric Proposed Amendment at the Mass. Electric Special Meeting (except that no Mass. Electric Cash Payment will be made with respect to any Mass. Electric Share validly tendered under the concurrent tender offer described below). Mass. Electric will disburse Mass. Electric Cash Payments out of its general funds following adoption of the Mass. Electric Proposed Amendment.

Concurrently with or shortly before the Mass. Electric Proxy Solicitation, and subject to the terms and conditions stated in an Offer to Purchase Proxy Statement and accompanying Letter of Transmittal (together, "Mass. Electric Offer Documents"), NEES proposes to make a cash tender officer ("Mass. Electric Tender Offer") to acquire any and all outstanding shares of Mass. Electric Preferred Stock of each Series, at cash purchase prices which NEES anticipates will include a market premium for each Mass. Electric Series (each, a "Mass. Electric Purchase Price"). The Mass. Electric Purchase Price and the other terms and conditions of the Mass. Electric Tender Offer apply equally to all preferred stockholders of the respective Mass. Electric Series. The offer for any one Mass. Electric Series is independent of the offer for any other Mass. Electric Series or for the shares of any other subsidiary.

NEES anticipates that the Mass. Electric Tender Offer will expire at 5:00 P.M. Eastern Standard Time on December 12, 1997, the date of the Mass. Electric Special Meeting ("Mass. Electric Expiration Date"), unless otherwise extended. The Mass. Electric Tender Offer is not conditioned upon any minimum number of shares of Mass. Electric preferred stock being tendered. Preferred stockholders who tender their shares under a Mass. Electric Tender Offer are required to vote in favor of or consent to the Mass. Electric Proposed Amendment, and one of the conditions of the Mass. Electric Tender offer requires that the Mass. Electric Proposed Amendment be approved and adopted.

Narragansett

Narragansett has outstanding 1,132,487 shares of common stock, $50 par value ("Narragansett Common Stock"), all of which are held by NEES. Narragansett's outstanding preferred stock consists of 730,000 shares of

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representing both long and short-term unsecured indebtedness issued or assumed by the corporation and then to be outstanding (but excluding unsecured indebtedness theretofore so voted for by holders of Preferred Stock and Preferred Stock—Cumulative) would exceed twenty per cent (20%) of total capitalization, or if, immediately after such issue or assumption, such short-term unsecured indebtedness issued or assumed by the corporation after September 30, 1998, and then to be outstanding (but excluding short-term indebtedness theretofore so voted for by holders of Preferred Stock or Preferred Stock—Cumulative) would exceed ten per cent (10%) of total capitalization; provided, however, that in the event such short-term unsecured indebtedness (but excluding short-term unsecured indebtedness theretofore so vetoed by holders of Preferred Stock and Preferred Stock—Cumulative) exceeds such latter limit, no unsecured securities representing unsecured indebtedness shall be issued or assumed (except for the purposes specified in clauses (x) and (y) above) unless such ratio of short-term unsecured indebtedness immediately after such issue or assumption is not in excess of such limit.

"Short-term unsecured indebtedness" as used in this subsection E(4) means unsecured indebtedness of an original maturity of less than ten years and "long-term unsecured indebtedness" means unsecured indebtedness of an original maturity of ten years or more. For the purposes hereof, when any long-term unsecured indebtedness becomes due within five years, or when any long-term unsecured indebtedness is to be retired within five years through a sinking fund or otherwise, such long-term unsecured indebtedness, in each case, shall be considered short-term unsecured indebtedness. "Total capitalization" as used in this subsection E(4) means the aggregate of (i) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by the corporation and then outstanding and (ii) the capital, premium and surplus of the corporation as then stated on the books of account of the corporation.

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[4] The three series of Mass. Electric Dividend Series Preferred Stock consist of a 4.44% series, of which 75,000 shares are outstanding; a 4.78% Series, of which 75,000 shares are outstanding; and a 6.99% series, of which 200,000 shares are outstanding.

[5] The single series of Mass. Electric Preferred Stock—Cumulative is a 6.84% series. Each of the series referred to in footnote 4 and this series shall be referred as a "Mass. Electric Series."

[6] The Mass. Electric Restrictive Provision specifically provides that Mass. Electric will not:

[I]ssue or assume any unsecured notes, debentures or other securities representing unsecured indebtedness for purposes other than (x) the refunding of outstanding unsecured indebtedness theretofore issued or assumed by the corporation resulting in maturities later than the maturity of the indebtedness being refunded or (y) the reacquisition, redemption or other retirement of any indebtedness which reacquisition, redemption or other retirement has been authorized under the provisions of the Public Utility Holding Company Act of 1935, if, immediately after such issue or assumption, the total principal amount of all unsecured notes, debentures or other securities

cumulative preferred stock, $50 par value, issued in three series,[7] all of which are traded over the counter. ("Narragansett Cumulative Preferred Stock"). Narragansett Common Stock and Narragansett Cumulative Preferred Stock are entitled to one vote per share. No other class of Narragansett equity securities is outstanding.

Narragansett's Preferred Stock Provisions ("Narragansett Provisions") currently provide that, without a vote of a majority of the outstanding Narragansett preferred stock, voting as a class, Narragansett will not issue or assume any unsecured indebtedness (except for redemption of outstanding shares of all series of preferred stock) if the total amount of the indebtedness (exclusive of certain unsecured indebtedness) immediately after the issue would exceed 10% of all secured indebtedness and capital and surplus of Narragansett.[8] ("Narragansett Restriction Provisions").

Narragansett proposes to solicit proxies from the holders of outstanding shares of Narragansett Cumulative Preferred Stock and Common Stock ("Narragansett Proxy Solicitation") for use at a special meeting of its stockholders ("Narragansett Special Meeting") to consider a proposed amendment to the Narragansett Provisions that would eliminate in its entirety the Narragansett Restriction Provision ("Narragansett Proposed Amendment") from the Narragansett Provisions. Approval of the Narragansett Proposed Amendment requires the affirmative vote at the Narragansett Special Meeting of the holders of (1) not less than two-thirds of the total number of the then-outstanding shares of Narragansett preferred stock of all Narragansett Series, voting together as one class, (2) 75% of the preferred shares present or represented at the meeting, and (3) a majority of the Narragansett Common Stock. NEES will vote its shares of Narragansett Common Stock in favor of the Narragansett Proposed Amendment.

If the Narragansett Proposed Amendment is adopted, Narragansett would make a special cash payment of 50 cents per share ("Narragansett Cash Payment") to each holder of Narragansett Cumulative Preferred Stock of any Narragansett Series who voted shares (each, a "Narragansett Share") (in person by ballot or by proxy) in favor of the Narragansett Proposed Amendment at the Narragansett Special Meeting (except that no Narragansett Cash Payment will be made with respect to any Narragansett Share validly tendered under the concurrent tender offer described below). Narragansett will disburse Narragansett Cash Payments out of its general funds following adoption of the Proposed Amendment.

Concurrently with or shortly before the Narragansett Proxy Solicitation, and subject to the terms and conditions stated in an offer to Purchase Proxy Statement and accompanying Letter of Transmittal (collectively, "Narragansett Offer Documents"), NEES proposes to make a cash tender offer ("Narragansett Tender Offer") to acquire any and all outstanding shares of Narragansett Cumulative Preferred Stock of each Narragansett Series, at cash purchase prices which NEES anticipates will include a market premium for each Narragansett Series (each, a "Narragansett Purchase Price"). The Narragansett Purchase Price and the other terms and conditions of the Narragansett Tender Offer apply equally to all preferred stockholders of the respective Narragansett Series. The offer for any one Narragansett Series is independent of the offer for any other Narragansett Series or for the shares of any other subsidiary.

NEES anticipates that the Narragansett Tender Offer will expire at 5:00 p.m. on December 12, 1997, the date of the Narragansett Special Meeting ("Narragansett Expiration Date"), unless otherwise extended. The Narragansett Tender Offer is not conditioned upon any minimum number of shares of Narragansett preferred stock being tendered. Preferred stockholders who tender their shares under a Narragansett Tender Offer are required to vote in favor of or consent to the Narragansett Proposed Amendment, and one of conditions of the Narragansett Tender offer requires that the Narragansett Proposed Amendment be approved and adopted.

Tenders of Power Company Shares, Mass. Electric Shares and Narragansett Shares (collectively, "Shares") made under the Power Company Tender Offer, Mass. Electric Tender Offer and Narragansett Tender Offer, respectively (individually, "Tender Offer" and collectively, "Tender Offers"), may be withdrawn at any time prior to the Power Company Expiration Date, Mass. Electric Expiration Date and the Narragansett Expiration Date, respectively (individually and collectively, "Expiration Date"). Thereafter, the tenders are irrevocable, subject to certain exceptions identified in the Power Company Offer Documents, Mass. Electric Offer Documents and Narragansett Offer Documents (individually and collectively, "Offer Documents"). NEES states that its obligations to proceed with the Tender Offers and to accept for payment and to pay for any Shares tendered will be made in accordance with rule 51 under the Act and are subject to various conditions enumerated in the Offer Documents, including the receipt of a Commission order under the Act authorizing the proposed transactions and the adoption of the Power Company Proposed Amendment, Mass. Electric Proposed Amendment and the Narragansett Proposed Amendment (individually, "Proposed Amendment" and collectively, "Proposed Amendments") at the Power Company Special Meeting, Mass. Electric Special Meeting and Narragansett Special Meeting, respectively (individually and collectively, "Special Meeting").

Applicants undertake to comply with all requirements of the Securities Exchange Act of 1934 ("Exchange Act") and rules and regulations thereunder in connection with the Power Company Proxy Solicitation, Mass. Electric Proxy Solicitation and Narragansett Proxy Solicitation, as applicable (individually, "Proxy Solicitation" and collectively, "Proxy Solicitations"), except to the extent applicants rely on exemptions from the requirements of rule 13e–3 and regulation 14A of the Exchange Act, and acknowledge that any authorization granted under the Act is conditioned upon their compliance. Shares validly tendered will be held by NEES until the Expiration Date (or returned in the event a Tender Offer is terminated). Subject to the terms and conditions of the Tender Offers, as promptly as practicable after the Expiration Date, NEES will accept for payment (and thereby purchase) and pay for Shares validly tendered and not withdrawn. NEES intends to use its general funds (which, in the ordinary course, include funds from the Power Company, Mass. Electric and Narragansett) and incur indebtedness under NEES' committed lines of credit, including any bank revolving credit agreements, in an amount sufficient to pay the Power Company Purchase Price, Mass. Electric Purchase Price and Narragansett Purchase Price (individually and collectively, "Purchase Price") for all tendered Shares. Merrill Lynch, Pierce, Fenner & Smith Incorporated will act as dealer manager for NEES in connection with the Tender Offers.[9]

If a Proposed Amendment is adopted at a Subsidiary's Special Meeting, promptly after consummation of the Tender Offer, either the issuing Subsidiary will purchase the Shares sold to NEES under the Tender Offer at the relevant Purchase Price plus expenses incurred in the Tender Offer, or NEES will donate the Shares to that Subsidiary as a capital contribution. The Subsidiary will then retire and cancel the shares.

If a Proposed Amendment is not adopted at the relevant Special Meeting, NEES may elect, but is not obligated, to waive adoption of the Proposed Amendment as a condition to its obligation to proceed with the Tender Offer, subject to applicable law. In that case, as promptly as practicable after NEES's waiver of the condition and its purchase of Shares validly tendered under the Tender Offers, the affected Subsidiary anticipates that it would call another special meeting and solicit proxies to secure the requisite affirmative vote of stockholders to amend the Power Company Articles, Mass. Electric Articles and Narragansett Provisions (individually and collectively, "Articles"), to eliminate the Power Company Restriction Provision, Mass. Electric Restriction Provision and Narragansett Restriction Provision (collectively, "Restriction Provisions"), as the case may be. At each meeting, NEES would vote any Shares acquired by it under the Tender Offer or otherwise [10] (as well as all of its shares of Common Stock of the affected Subsidiaries) in favor of the Proposed Amendment. If a Proposed Amendment is adopted at that meeting and in any event within one year from the Expiration Date (including any potential extension under a Tender Offer), NEES will promptly after the meeting or at the expiration of the one-year period, as applicable, sell the Shares to the Subsidiary at the applicable Purchase Price plus expenses paid under the Tender Offer, and the Subsidiary will retire and cancel the Shares.

The Applicants believe that the purchase of the Shares at this time represents an attractive economic opportunity that will benefit NEES, its shareholders, and its Subsidiaries. The Applicants further contend that elimination of the Restriction Provisions will produce savings in financing costs that outweigh the one-time costs of the Tender Offers and the Proxy Solicitations,[11] and will be in the best interests of their customers and shareholders.[12]

To finance its proposed purchase of Shares under the Tender Offers, NEES plans to use general funds and incur debt under its committed lines of credit, including any bank revolving credit agreements, in an amount sufficient to pay the Purchase Price for all tendered Shares, an amount expected to be approximately $135 million, excluding payment of accrued dividends, but including fees and other expenses.

The applicants also request authorization to deviate from the preferred stock provisions of the *Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935*, HCAR No. 13106 (Feb. 16, 1956), to the extent applicable with respect to the Proposed Amendments.

It appears to the Commission that the application-declaration, to the extent that it relates to the proposed Proxy Solicitations should be permitted to become effective immediately under rule 62(d).

It is ordered, that the application-declaration, to the extent that it relates to the proposed Proxy Solicitations be, and it hereby is, permitted to become effective immediately, under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29881 Filed 11–12–97; 8:45 am]

BILLING CODE 8010–01–M

[7] The three series of Narragansett cumulative preferred stock consist of a 4.50% series, of which 180,000 shares are outstanding; a 4.64% series, of which 150,000 shares are outstanding; and a 6.95% series, of which 400,000 shares are outstanding (each, a "Narragansett Series").

[8] The Narragansett Restriction Provision specifically provides that Narragansett will not:

[I]ssue any unsecured notes, debentures or other securities representing unsecured indebtedness, or assume any such unsecured securities, for purposes other than the refunding of outstanding unsecured securities theretofore issued or assumed by the Company resulting in equal or longer maturities or the redemption or other retirement of all outstanding shares of the Preferred Stock, if, immediately after such issue or assumption, the total principal amount of all unsecured notes, debentures or other securities representing unsecured indebtedness issued or assumed by the Company and then outstanding (including unsecured securities then to be issued or assumed) but excluding unsecured securities therefore so consented to by holders of Preferred Stock, would exceed ten per cent (10%) of the aggregate of (i) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by the Company and then outstanding and (ii) the capital and surplus of the Company as then stated on the books of account of the Company.

[9] NEES has agreed to pay the dealer manager a fee of .5% of par per share for any Shares tendered, accepted for payment and paid for pursuant to the Tender Offers, the Subsidiaries have agreed to pay the dealer managers a fee of .5% of par per share for any Shares that are not tendered pursuant to the Tender Offers but which vote in favor of the Proposed Amendment. NEES has agreed to reimburse the dealer manager for its reasonable out-of-pocket expenses, including attorneys' fees.

In addition, NEES has agreed to pay soliciting brokers and dealers a separate fee of 1.5% of per per share for any Shares tendered, accepted for payment and paid for pursuant to the Tender Offers except that for transactions with beneficial owners equal to or exceeding 2,500 Shares, NEES will pay a solicitation fee of 1% of par per share for Shares of such Series.

Any fee payable for transactions equal to or exceeding 2,500 shares shall be payable 80% to the dealer manager and 20% to any soliciting dealer (which may be the dealer manager). No fee shall be payable to a soliciting dealer in respect of shares (a) beneficially owned by such soliciting dealer or (b) registered in the name of such soliciting dealer as nominee when the shares are being rendered for the benefit of one or more beneficial owners identified in the applicable Letter of Transmittal or in the applicable Notice of Solicited Tenders (including in the materials provided to brokers and dealers).

NEES proposes to pay Boston Equiserve, L.P., in its capacity as depositary for the Tender Offers, a fee estimated at approximately $40,000.

[10] Applicant states that, in contrast, if the Subsidiary, rather than NEES, had acquired its shares under the Tender Offer, upon the acquisition the shares would be deemed treasury shares under applicable state law and, as such, the Subsidiary would be precluded from voting those shares under any circumstance.

[11] Each of the Subsidiaries have engaged Georgeson & Company, Inc. to act as information agent in connection with the Proxy Solicitations for a fee and reimbursement of reasonable out-of-pocket expenses expected not to exceed approximately $10,000.

[12] The Applicants state that the proposed acquisition by NEES of Shares under the Tender Offers will benefit NEES' utility system customers and shareholders by (1) contributing to the elimination of the provisions concerning unsecured indebtedness, and (2) acquiring and retiring of outstanding shares of the preferred stock and their potential replacement with comparatively less expensive financing alternatives. Moreover, the applicants maintain that tendering Power Company Preferred Stockholders, Mass. Electric Preferred Stockholders and Narragansett Preferred Stockholders will benefit by having the option to sell their Preferred Stock at prices that NEES expects will be a premium to the market price and without the usual transaction costs associated with a sale.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39302; File No. SR–OPRA–97–4]

Options Price Reporting Authority; Order Granting Approval of Amendment to OPRA Plan Revising OPRA's Dial-Up Market Data Service Rider to Its Vendor Agreement To Accommodate the Vendor's Provision of Dial-Up Service to Customers of OPRA Subscribers

November 5, 1997.

I. Introduction

On September 11, 1997, the Options Price Reporting Authority ("OPRA") [1]

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Exchange Act Release No. 17638 (March 16, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the

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submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Exchange Act"), an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed amendment revises the Dial-Up Market Data Service Rider ("Rider") to OPRA's vendor agreement to accommodate a third party vendor's provisions of dial-up service to customers of an OPRA subscriber.

The proposed amendment was published for comment in the **Federal Register** on October 2, 1997.[2] No comments were received on the proposal. This order approves the proposal.

II. Description and Purpose of the Amendment

The purpose of the amendment is to add provisions to OPRA's Rider to the vendor agreement to accommodate the situation in which an OPRA vendor provides a dial-up service to the customers of an OPRA subscriber, rather than to its own customers. According to OPRA, several vendors and broker-dealer subscribers have recently expressed interest in such an arrangement. As this arrangement is not currently contemplated under the Rider, the proposal would amend the Rider to address the one significant difference between the traditional situation of a firm providing a dial-up service to its own customers and the recent proposals for firms to arrange for third-party vendors to provide a dial-up service for the firms' customers. In the former case, there is a direct contractual relationship between the vendor, a party to the Rider, and the vendor's customers. In the latter case, however, the vendor's subscriber, rather than the vendor, has a contractual relationship with the customer.

In its current form, the Rider imposes certain obligations on vendors who provide a dial-up service. These obligations require that contracts between vendors and their customers contain specific provisions, for the benefit of OPRA, relating to proprietary rights to OPRA data, non-retransmission of data, the absence of any guarantee of the data and a disclaimer of liability. The proposed amendment to the Rider would mandate that vendors require comparable provisions to be included in contracts between subscribers and their customers who receive a dial-up service from a third-party vendor.[3]

Other than as described above, OPRA proposes no change in the way in which dial-up services may be offered to investors. OPRA represents that no new or additional OPRA fees will result from this proposed amendment and the amendment will not make any new parties subject to OPRA's existing fee. OPRA proposes to phase in the revised form of the Rider to take the place of the existing Rider.

III. Discussion

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[4] Specifically, the Commission believes that the proposed amendment, which accommodates the provision of OPRA data through third-party vendors, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system.

The Commission notes that the proposed amendment will require third party vendors that provide a dial-up service to the customers of OPRA subscribers to obtain an agreement from the subscribers, in writing, that the subscribers will include provisions for the benefit of OPRA in the subscribers' written agreements with its customers. The Commission believes that it is reasonable for OPRA to extend its existing contractual protections to situations in which a third party vendor provides a dial-up service to the customers of an OPRA subscriber. The Commission notes that the proposed amendment also provides OPRA subscribers with alternatives for the provision of the dial-up service to their customers. Accordingly, the Commission believes that the proposed amendment will provide additional flexibility to OPRA subscribers while providing OPRA with the contractual protections that it requires.

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act, that the proposed amendment (SR–OPRA–97–4) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29882 Filed 11–12–97; 8:45 am]

BILLING CODE 8010–01–M

OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

[2] See Exchange Act Release No. 39137 (September 26, 1997) 62 FR 51707.

[3] The proposal would require vendors to obtain a written agreement from each OPRA subscriber whose customers will be provided the dial-up service from the vendor that the subscriber will: (1) obtain from each of its customers to whom the vendor furnishes the service an agreement that the customer will: (a) receive OPRA data only for such person's use, (b) not retransmit the data to anyone else, and (c) acknowledge that OPRA data is the property of the respective exchange or market in which a reported transaction occurred or a reported quotation was entered; (2) provide to the vendor a current list of customers entitled to receive the service from the vendor and to certify that each named customer has entered into the required agreement; (3) maintain the same customer records required to be maintained by the vendor with respect to customers; and (4) acknowledge the absence of any guarantee and the disclaimer of liability on the part of OPRA, OPRA's processor and each participating exchange.

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(29).

DEPARMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. RE–97–57]

Petitions for Exemption Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 3, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No: _____, 800 Independence Avenue, SW., Washington, DC. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC, 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson, (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on November 6, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29038.
Petitioner: GE Varig.
Sections of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought: To permit the petitioner to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection equipment.

Docket No.: 29039.
Petitioner: Worldwide Aircraft Services, Inc.
Sections of the FAR Affected: 14 CFR 25.807(g)(1), 25.807(i)(1), and 25.857(e).
Description of Relief Sought: To exempt Worldwide Aircraft Services from the requirements of 14 CFR §§ 25.807(g)(1), 25.807(i)(1), and 25.857(e) for the carriage of supernumeraries on Embraer model 120 airplanes with a Class E cargo compartment.

Docket No.: 26734.
Petitioner: Sierra Industries, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought: To permit certain qualified pilots of Cessna Model 500 Citation (CE–500) airplanes with Supplemental Type Certificate (STC) No. SA09377SC to operate those airplanes within a pilot who is designated as second in command.

Docket No.: 29027.
Petitioner: National Business Aviation Association, Inc.
Sections of the FAR Affected: 14 CFR 61.57(b).
Description of Relief Sought: To permit NBAA-member companies to meet night takeoff and landing recent flight experience requirements using a Level C or Level D flight simulator, and to accomplish the required takeoffs and landings every 180 days rather than every 90 days.

Docket No.: 27052.
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c).
Description of Relief Sought: To permit the petitioner to continue to operate its Bell Model 206L–1 helicopters (Registration Nos. N2761X, N5005B, N50182, and N50046; and Serial Nos. 45283, 45175, 45242, 45173, respectively) without having a TSO–C112 (Mode S) transponder installed on those aircraft.

Docket No.: 29034.
Petitioner: Eagle Jet Charter, Inc.
Sections of the FAR Affected: 14 CFR 93.316(b).
Description of Relief Sought: To permit the petitioner to continue to operate its Fokker F–27 turboprop aircraft after January 31, 1998, under instrument flight rules in the Grand Canyon National Park Special Flight rules Area at cruise altitudes of 15,000 and 16,000 feet mean sea level without those aircraft being listed on its operations specifications as commercial sightseeing aircraft.

Dispositions of Petitions

Docket No.: 012SW.
Petitioner: Frank D. Robinson.
Sections of the FAR Affected: 14 CFR 27.1(a).
Description of Relief Sought/Disposition: To permit certification of hydraulically boosted controls on the Model R44 helicopter without the necessity of considering the jamming of a control valve as a possible single failure. *Grant, October 17, 1997, Exemption No. 6692.*

Docket No.: 23771.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought/Disposition: To permit certain qualified pilots of Cessna Citation Model 550, S550, 552, or 560 aircraft to operate those aircraft without a pilot who is designated as second in command. *Grant, October 28, 1997, Exemption No. 4050J.*

[FR Doc. 97–29902 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Standards District Office at Scottsdale, AZ; Certificate Management Office at Phoenix, AZ; Notice of Consolidation

Notice is hereby given that on or about November 10, 1997, the Flight Standards District Office at Scottsdale, Arizona and the Certificate Management Office at Phoenix, Arizona will be consolidated as Arizona Flight Standards District Office. Services to the general public of Arizona will continue to be provided by the new organization at the same physical locations. This information will be reflected in the FAA Organizational Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Los Angeles, CA, on October 27, 1997.

Lynore C. Brekke,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 97–29903 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Sec. 5a Application No. 61]

National Classification Committee—Agreement

AGENCY: Surface Transportation Board, DOT.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board is commencing a proceeding to determine whether, under 49 U.S.C. 13703(d) and (e), it is in the public interest to renew the bureau agreement of the National Classification Committee, which administers the National Motor Freight Classification.

DATES: Written notices of intent to participate are due by November 28, 1997. Shortly thereafter, we will serve a preliminary service list and request for written corrections. By December 11, 1997, we will serve any necessary corrections to the service list. Opening comments are due by January 8, 1998. Reply comments are due by February 5, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and comments, referring to "Section 5a Application No. 61," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

Opening and reply comments must be served on the persons identified as "parties of record" on the service list.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 13703, we have the authority to immunize approved motor carrier bureau agreements from the antitrust laws. One such bureau, the National Motor Freight Traffic Association, operating through its National Classification Committee (NCC), administers the National Motor Freight Classification (NMFC). The NMFC groups all articles moving by truck into classes based on their transportation characteristics. The NCC operates pursuant to a bureau agreement approved in *National Classification Committee—Agreement*, 299 I.C.C. 519 (1956), and renewed in *National Classification Committee—Agreement*, Section 5a Application No. 61 (ICC served May 18, 1987).[1] Under 49 U.S.C. 13703(d) and (e), all motor carrier bureau agreements will expire on December 31, 1998, unless we approve renewal. Renewal of the collective rate setting bureau agreements of the motor carriers is under investigation in Section 5a Application No. 118 (Amendment No. 1), *et al.*[2]

By this notice, we are commencing a separate proceeding to explore whether we should renew the NCC's agreement before its statutory expiration. In particular, we question whether the NCC needs antitrust immunity given the fact that its activities, such as grouping freight with common transportation characteristics, publishing bill of lading formats, and gathering information, would not, on the surface, appear to involve antitrust violations. The parties are invited to address, and organize their discussion of, this and other public interest issues by answering the following specific questions:

1. Does the NCC in fact engage in activities that would violate the antitrust laws in the absence of antitrust immunity conferred under 49 U.S.C. 13703?

2. If the NCC engages in activities that would violate the antitrust laws in the absence of antitrust immunity under section 13703, does the public interest require (a) continued exemption of these activities from antitrust law, subject to our regulation, or (b) a regime of marketplace competition subject to antitrust law? Are there "borderline" areas of NCC activity that might be subject to antitrust enforcement in the absence of immunization under 49 U.S.C. 13703, where the public interest warrants continued antitrust immunity for those activities under that section?

3. Should we exclude from any immunity we might confer activities that would *not* violate the antitrust laws in the absence of antitrust immunity, so as to avoid confusing the public about the scope and impact of our regulatory jurisdiction?

4. How do the public interests aspects of the NCC's activities relate to the public interest aspects of the activities of the operating motor carrier rate bureaus, whose renewal is the subject of the proceedings in Section 5a Application No. 118 (Amendment No. 1), *et al., supra*? If we decide not to renew the rate setting immunity of those bureaus, could we, and should we, nonetheless continue immunity for classification?

Decided: November 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29901 Filed 11–12–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Traditionally, motor carrier rate bureau proceedings have been identified as "Section 5a" proceedings, in reference to section 5a of the Interstate Commerce Act as it existed prior to its 1978 codification as 49 U.S.C. 10706. In the ICC Termination Act of 1995, the statutory provisions governing motor carrier rate bureau agreements were severed from the rail provisions of section 10706 and recodified as section 13703.

[2] See the notice published in the **Federal Register** on May 20, 1997, at 62 FR 27653, and the Board's decisions in those consolidated proceedings served on May 20, 1997, and August 15, 1997. In the decision served on August 15, 1997, we denied a petition to expand the consolidated proceedings to consider whether antitrust immunity should be continued for activities under the NCC agreement, but stated that we would in the future address matters relating to antitrust immunity for NCC activities separately.

DEPARTMENT OF VETERANS AFFAIRS

[OMB CONTROL NO. 2900–0546]

Proposed Information Collection Activity; Proposed Collection; Comment Request, Revision

AGENCY: National Cemetery System, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery System (NCS) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the biennial survey of individuals holding gravesite set-asides in national cemeteries to determine if they wish to retain their set-aside, or wish to relinquish it.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 1998.

ADDRESSES: Submit written comments on the collection of information to Rosetta Holloway, National Cemetery System (402D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0546" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Rosetta Holloway at (202) 273–5185.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCS invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of NCS's functions, including whether the information will have practical utility; (2) the accuracy of NCS's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Adjacent Gravesite Set-Aside Survey (2 Year), VA Form Letter 40–40.

OMB Control Number: 2900–0546.

Type of Review: Revision of a currently approved collection.

Abstract: In the past, the survey was conducted annually. VA Form Letter 40–40 will be sent biennially (once every two years on a 24 month rotating basis) to individuals holding gravesite set-asides in national cemeteries to ascertain their wish to retain their set-aside, or wish to relinquish it. The collection of information is necessary to assure that gravesite set-asides are not wasted. Some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside for them. Without this information, unused set-asides would exist which could be used by other veterans.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Biennially.

Estimated Number of Annual Respondents: 18,000.

Dated: October 17, 1997.

By direction of the Secretary.

Barbara Epps,

Management Analyst, Information Management Service.

[FR Doc. 97–29785 Filed 11–12–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0227]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice of the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on VHA's National Customer Feedback Surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 1998.

ADDRESSES: Submit written comments on the collection to Ann Bickoff, Veterans health Administration (161A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0227" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) way to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: National Customer Feedback Surveys.

Survey Instruments and Form Numbers: a. Prosthetic Patient Satisfaction Survey, VA Form 10–0142B.

b. Customer Feedback Surveys, VA Form 10–1465 (Series): Nationwide Inpatient Survey, VA Form 10–1465–1; Mental Health Insert, VA Form 10–1465–2; Nationwide Outpatient Survey, VA Form 10–1465–3; Health Update Insert, VA Form 10–1465–4; Persian Gulf Patient Survey Inpatient, VA Form 10–1465–5; Persian Gulf Patient Survey Inpatient, VA Form 10–1465–5; Persian Gulf Patient Survey Outpatient, VA Form 10–1465–6; Spinal Cord Injury Inpatient Survey, VA Form 10–1465–7; Spinal Cord Injury Outpatient Survey, VA Form 10–1465–8; Home Based Primary Care, VA Form 10–1465–9; Nursing Home Care, VA Form 10–1465–10; Women Veterans Patient Survey, VA Form 10–1465–11; Ambulatory Care Team, VA Form 10–1465–12.

c. Dietetic Service Survey, VA Form 10–5387.

OMB Control Number: 2900–0227.

Type of Review: Extension of a currently approved collection.

Abstract: a. The Prosthetic Patient Satisfaction Survey is used to systematically obtain information from prosthetic patients that can be used to identify problems or complaints that need attention and to improve the quality of prosthetic services. The information obtained from the survey will be integrated into each VA filed facility's overall Quality Management Program.

b. The Customer Feedback Surveys are used to implement Title 38, U.S.C., Section 219, which requires the Secretary of Veterans Affairs to evaluate programs and provision of services to beneficiaries. The information collected meets management, medical and legislative requirements and helps assure that the VA maintains a high quality of care for those who have served the nation.

c. The Dietetic Service Survey is used to collect the necessary information to determine whether improvements are needed to enhance the patients's nutritional therapy. The information will be used to effectively gauge when improvements are needed to enhance patient's nutritional therapy. The information obtained through the survey will have practical utility at all levels of the program to plan and redirect resources and efforts to improve or maintain a high quality of service.

Affected Public: Individuals or households.

Estimated Annual Burden: 87,032 total hours.

a. Prosthetic Patient Satisfaction Survey—1,557 hours.

b. Customer Feedback Surveys: Nationwide Inpatient Survey—8,452 hours; Mental health Insert—4,226 hours; Nationwide Outpatient Survey—6,875 hours; Health Update Insert—6,875 hours; Persian Gulf Patient Inpatient Survey—12,500 hours; Persian Gulf Patient Outpatient Survey—12,500 hours; Spinal Cord Injury Inpatient Survey—1,875 hours; Spinal Cord Injury Outpatient Survey—1,875 hours; Home Based Primary Care Survey—627 hours; Nursing Home Care Survey—1,333 hours; Women Veterans Patient Survey—1,250 hours; Ambulatory Care Team Survey—22,500 hours.

c. Dietetic Service Survey—4,587 hours.

Estimated Average Burden Per Respondent. a. Prosthetic Patient Satisfaction Survey—3 minutes.

b. Customer Feedback Surveys: Nationwide Inpatient Survey—15 minutes; Mental Health Insert—7.5 minutes; Nationwide Outpatient Survey—15 minutes; Health Update Insert—15 minutes; Persian Gulf Patient Inpatient Survey—30 minutes; Persian Gulf Patient Outpatient Survey—30 minutes; Spinal Cord Injury Inpatient Survey—22 minutes; Spinal Cord Injury Outpatient Survey—22 minutes; Home Based Primary Care Survey—15 minutes; Nursing Home Care Survey—20 minutes; Women Veterans Patient Survey—15 minutes; Ambulatory Care Team Survey—15 minutes.

c. Dietetic Service Survey—2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 349,673. a. Prosthetic Patient Satisfaction Survey—31,145.
b. Customer Feedback Surveys: Nationwide Inpatient Survey—33,810; Mental Health Insert—33,810; Nationwide Outpatient Survey—27,500; Health Update Insert—27,500; Persian Gulf Patient Inpatient Survey—25,000; Persian Gulf Patient Outpatient Survey—25,000; Spinal Cord Injury Inpatient Survey—5,000; Spinal Cord Injury Outpatient Survey—5,000; Home Based Primary Care Survey—2,507; Nursing Home Care Survey—4,000; Women Veterans Patient Survey—5,000; Ambulatory Care Team Survey—90,000.
c. Dietetic Service Survey—34,400.

Dated: October 17, 1997.
By direction of the Secretary.

Barbara Epps,
Management Analyst, Information Management Service.

[FR Doc. 97–29786 Filed 11–12–97; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, December 8, 1997, through Wednesday, December 10, 1997, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 230, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 A.M. to 5:00 P.M. On Monday, December 8, the Committee will receive an orientation on its duties and responsibilities. On Tuesday, December 9, the Committee will review the implementation plan for the 63 recommendations contained in its third Annual Report. The Committee will also finalize plans for each subcommittee and set the agenda for the coming year. On Wednesday, December 10, the Subcommittees will examine issues germane to their assigned areas of responsibility. These sessions will be open to the public, up to the seating capacity of the meeting room. Because seating is limited, it will be necessary for those wishing to attend to contact Mrs.Crystal Lawrence-Greenwell, Department of Veterans Affairs (phone (202) 273–6708) prior to December 5, 1997. No time will be allocated for the purpose of receiving oral presentations from the public. However, the Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: November 5, 1997.
By Direction of the Acting Secretary.

Heyward Bannister,
Committee Management Officer

[FR Doc. 97–29787 Filed 11–12–97; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 219
Thursday, November 13, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 27

[CGD 97-064]

RIN 2115-AF-53

Towing Vessel Safety

Correction

In proposed rule document 97–26304 beginning on page 52057, in the issue of Monday, October 6, 1997, make the following correction:

§ 27.325 [Corrected]

On page 52069, in the third column, in § 27.325(a), in the third line from the bottom, "or" should read "and".

BILLING CODE 1505-01-D

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federal register

Thursday
November 13, 1997

Part II

Department of Education

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research

Subject: Notice Reinviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1998.

Purpose: On May 9, 1997 a notice was published in the **Federal Register** inviting applications for new awards under the Rehabilitation Research and Training Center (RRTC) program and Knowledge Dissemination and Utilization Program (D&U) for fiscal year 1997 (62 FR 25770). The same **Federal Register** included a notice of final funding priorities establishing the required activities for the RRTCs and D&U projects (62 FR 25760). There were no satisfactory applications received for an RRTC on effective interventions for children and youth who exhibit severe problem behaviors (62 FR 25767) and a D&U project on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs (62 FR 25769).

On July 1, 1997 a notice was published in the **Federal Register** inviting applications for a new award under the D&U program (62 FR 35644). The same **Federal Register** included a notice of final funding priority establishing the required activities for a D&U project on Parenting with a Disability Technical Assistance Center (62 FR 35643). There were no satisfactory applications received for this project.

On July 14, 1997 a notice was published in the **Federal Register** inviting applications for a new award under the RRTC program (62 FR 37650). The same **Federal Register** included a notice of final funding priority establishing the required activities for an RRTC on Medical Rehabilitation Services and Outcomes (62 FR 37646). There were no satisfactory applications received for this RRTC.

There is a continuing need for these RRTCs and D&U projects. The purpose of this notice is to reinvite applications for these projects for FY 1998.

On February 6, 1997 NIDRR published in the **Federal Register** regulations consolidating a number of regulations governing NIDRR's existing programs, including, but not limited to, Parts 350 (General Provisions), 352 (Rehabilitation Research and Training Centers), and 355 (Knowledge Dissemination and Utilization Programs) (62 FR 5712). These new regulations took effect on October 1, 1997 and apply to this competition. The new regulations include a new menu of selection criteria (34 CFR 350.54) for use in evaluating all applications. NIDRR has drawn from this menu of selection criteria to establish the specific selection criteria that will be used to evaluate applications for the four priorities included in this notice reinviting applications. In addition, because Part 355 was consolidated into Part 350, the final priorities established for D&U projects in FY 1997 will be used for equivalent training, dissemination, and technical assistance projects in FY 1998.

Note To Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

Program Title: Disability and Rehabilitation Research Project and Centers Program.

CFDA Numbers: 84.133A and 84.133B.

Purpose Of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762 (a) and (b)(6).

APPLICATION NOTICE FOR FISCAL YEAR 1998 DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
(1). Improving the Utilization of Emerging and Existing Rehabilitation Technology in State VR Programs	1/12/98	1	$500,000	60
(2). Parenting with a Disability Technical Assistance Center	1/12/98	1	500,000	60

*NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Priority 1: The final priority on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs published in the **Federal Register** on May 9, 1997 applies to this competition (62 FR 25769).

Priority 2: The final priority on parenting with a disability technical assistance center published in the **Federal Register** on July 1, 1997 applies to this competition (62 FR 35643).

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for a Training, Dissemination, and Technical Assistance Project on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs and a Technical Assistance Center on parenting with a disability under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of training activities* (13 points total).

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (4 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (3 points).

(iii) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (4 points).

(iv) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (2 points).

(d) *Design of dissemination activities* (24 points total).

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (7 points).

(ii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (7 points).

(iii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (7 points).

(iv) The extent to which the information to be disseminated will be accessible to individuals with disabilities (3 points).

(e) *Design of utilization activities* (8 points total).

(i) The extent to which the utilization strategies are likely to be effective (8 points).

(f) *Design of technical assistance activities* (10 points total).

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (3 points).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (3 points).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (2 points).

(g) *Plan of operation* (6 points total).

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (3 points).

(h) *Collaboration (2 points total).*

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (4 points total).

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 point).

(j) *Plan of evaluation* (7 points total).

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(i) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(ii) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(iii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iv) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(l) *Adequacy and accessibility of resources* (4 points total).

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1998 REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
3.) Effective Interventions for Children and Youth who Exhibit Severe Problem Behaviors	1/12/98	1	$600,000	60
4.) Medical Rehabilitation Services and Outcomes	1/12/98	1	950,000	60

*NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Priority 3: The RRTC final priority on effective interventions for children and youth who exhibit severe problem behaviors published in the **Federal Register** on May 9, 1997 applies to this competition (62 FR 25767).

Priority 4: The RRTC final priority on medical rehabilitation services and outcomes published in the **Federal Register** on July 14, 1997 applies to this competition (62 FR 37646).

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for an RRTC on effective interventions for children and youth who exhibit severe problem behaviors and an RRTC on medical rehabilitation services and outcomes under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(i) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 points).

(ii) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(iii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iv) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(v) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (4 points).

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions For Application Narrative

The Secretary strongly recommends that applicants include a one-page abstract in their application.

Strict Page Limits

Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant for an RRTC must limit Part III—Application Narrative to no more than 125 double-spaced 8½×11" pages (on one side only) with one inch margins (top, bottom, and sides). The applicant for a Training, Dissemination and Technical Assistance Project on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs, or a Technical Assistance Center on parenting with a disability must limit Part III—Application Narrative to no more than 75 double-spaced 8½×11" pages (on one side only) with one inch margins (top, bottom, and sides).

These page limitations applies to all materials presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications.

All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). The double-spacing requirement applies to *EVERY* line on a page, including every line in the title, headings, footnotes, quotations, references, figure captions, and all parts of tables.

If using a proportional computer font, an applicant must use a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch. If using a nonproportional font or typewriter, an applicant must use more no than 12 characters per inch.

The one-page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation, double spacing, and font requirements. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above.

Note: The Secretary will reject without consideration or evaluation any application that does not adhere to these page limit, double-spacing, and font requirements.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed

postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Note to Applicants

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742.

Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format(e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the Federal Register, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

5http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: November 6, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for a Training, Dissemination, and Technical Assistance project or a Technical Assistance Center should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

An applicant for an RRTC is limited to an indirect cost rate of 15 percent.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting fupding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503.

Disability and Rehabilitation Research Projects (CFDA No. 84.133A) 34 CFR Part 350 Subpart B.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

Notice To All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provision Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for fund (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT NAME	PR/AWARD NUMBER AND / OR PROJECT
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year ____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other, specify.	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind, specify. nature value		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: Print Name: Title: Telephone No.: Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

[FR Doc. 97-29795 Filed 11-12-97; 8:45 am]
BILLING CODE 4000-01-C

federal register

Thursday
November 13, 1997

Part III

Environmental Protection Agency

40 CFR Part 247
Comprehensive Guideline for Procurement of Products Containing Recovered Materials; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[SWH–FRL–5909–5]

RIN 2050–AE23

Comprehensive Guideline for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today is issuing an amendment to the May 1, 1995 Comprehensive Procurement Guideline (CPG). EPA is designating 12 new items that are or can be made with recovered materials. These items are shower and restroom dividers/partitions; consolidated and reprocessed latex paint for specified uses; parking stops; channelizers; delineators; flexible delineators; plastic fencing for specified uses; garden and soaker hoses; lawn and garden edging; printer ribbons; plastic envelopes; and pallets. In addition, this action clarifies EPA's previous designation of floor tiles, structural fiberboard, and laminated paperboard as items that can be made with recovered materials.

The CPG implements section 6002 of the Resource Conservation and Recovery Act (RCRA), which requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Once EPA designates an item, RCRA requires any procuring agency using appropriated Federal funds to procure that item to purchase it with the highest percentage of recovered materials practicable. Today's action will foster markets for materials recovered from solid waste by using government purchasing power to stimulate the use of these materials in the manufacture of new products.

RCRA section 6002 provides certain limited exceptions to the general requirement to buy EPA-designated items. Under certain circumstances based on competition, price, availability, and performance, procuring agencies are not required to purchase an item designated by EPA. In the May 1, 1995 CPG, EPA codified the RCRA section 6002 procurement requirements for the convenience of procuring agencies so they can find all of the RCRA section 6002 procurement provisions, as well as EPA's item designations, in one location. EPA inadvertently omitted the limitations from the codification of agency requirements, however. Today, EPA is codifying these procurement limitations with the affirmative procurement program portion of the CPG for the convenience of procuring agencies.

EFFECTIVE DATES: The amendments to the Comprehensive Procurement Guideline designating additional procurement items (§§ 247.3; 247.12 through 247.17) are effective on November 13, 1998. The amendment adding the procurement limitations (§ 247.2(d)) is effective November 13, 1997.

ADDRESSES: The public docket for this notice is Docket F–97–CP2F–FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), which is located at U.S. Environmental Protection Agency, Crystal Gateway One, 1235 Jefferson Davis Highway, Ground Floor, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See Section VIII of the "Supplementary Information" section below for information on accessing the documents electronically.

FOR FURTHER INFORMATION CONTACT:

General procurement guidelines information: RCRA Hotline at (800) 424–9346, TDD (800) 553–7672 (hearing impaired) or, in the Washington, DC area at (703) 412–9810 or TDD (703) 412–3323.

Technical information on individual item recommendations: For paper and paper products, vehicular products, construction products, non-paper office products, and pallets: Dana Arnold, (703) 308–7279; for landscaping products, transportation products, and park and recreation products: Terry Grist, (703) 308–7257.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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IX. Submission to Congress and the General Accounting Office

I. Authority

This amendment to the Comprehensive Procurement Guideline is promulgated under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962, and section 502 of Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention" (58 FR 54911, October 22, 1993).

II. Regulated Entities

This action may potentially affect those procuring agencies that purchase the following: shower and restroom dividers/partitions, consolidated and reprocessed latex paint for specified uses, floor tiles, structural fiberboard, laminated paperboard, parking stops, temporary traffic control devices, plastic fencing for specified uses, garden and soaker hose, lawn and garden edging, printer ribbons, plastic envelopes, or pallets. For purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). See RCRA section 1004(17). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more worth of a designated item in a given year.
State Government	A State agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year.
Local Government	A local agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more worth of a designated item in a given year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Background

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to procurement of designated items under RCRA section 6002. RCRA requires that each procuring agency, when purchasing an EPA-designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (Executive Order) establishes the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish its recommended procurement practices for purchasing designated items, including recovered materials content levels, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG annually and to issue RMANs periodically to reflect changing market conditions. The original CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items, and consolidated five earlier item designations. Concurrently, EPA published the first RMAN (RMAN I) (60 FR 21386).

On November 7, 1996, EPA proposed to designate 13 additional items (CPG II) and published draft recommendations for purchasing those items containing recovered materials (RMAN II). See 61 FR 57748–57759 and 61 FR 57760–57766, respectively. EPA also proposed clarifications of the previous designations of floor tiles, structural fiberboard, and laminated paperboard. In addition, EPA proposed to codify the RCRA section 6002 limitations on the affirmative procurement requirements, which had inadvertently been omitted from CPG I. Today, EPA is (1) designating 12 of the items, (2) clarifying the previous designations of floor tiles, structural, fiberboard, and laminated paperboard, and (3) codifying the procurement limitations. As explained in section V.B.3 below, EPA has decided not to designate ink jet cartridges. The 12 newly-designated items are listed below under their associated product category.

Construction Products

Shower and restroom dividers/partitions
Consolidated and reprocessed latex paint for specified uses

Transportation Products

Parking stops
Channelizers
Delineators
Flexible delineators

Park and Recreation Products

Plastic fencing for specified uses

Landscaping Products

Garden and soaker hoses
Lawn and garden edging

Non-Paper Office Products

Printer ribbons
Plastic envelopes

Miscellaneous

Pallets

A. Criteria for Selecting Items for Designation

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA consulted with Federal procurement and requirements officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) the item is not reasonably available within a reasonable period of time; (2) the item fails to meet the performance standards set forth in the agency's specification; or (3) the item is available only at an unreasonable price.

EPA recognized that these limitations could limit the potential impact of an individual item designation to the extent they provide procuring agencies with a rationale for not purchasing EPA-designated items with recovered materials content. (The limitations of section 6002(c) also effectively describe the circumstances in which a designated

item is "available" for purposes of the statute.) For this reason, EPA takes into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in the CPG. Thus, in the May 1, 1995 CPG I, the Agency stated that it had developed the following criteria for use in selecting items for designation: use of materials found in solid waste, economic and technological feasibility and performance, impact of government procurement, availability and competition, and other uses for recovered materials. EPA provided a detailed discussion of these criteria in the CPG I background documents and repeated that discussion, for the convenience of the reader, in Section II of the document entitled, "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses." A copy of this document is included in the RCRA public docket for the proposed CPG II rule, docket F–96–CP2P–FFFFF.

In CPG I, EPA stated that it had adopted two approaches in its designation of items that are made with recovered materials. For some items, such as floor tiles, the Agency designated broad categories of items and provided information in the RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designated specific items, and, in some instances, included in the designation the specific types of recovered materials or applications to which the designation applies. The Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material. For example, EPA included the following statement in the preamble discussion for plastic desktop accessories (59 FR 18879, April 20, 1994): This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials."

The Agency understands that some procuring agencies may believe that the designation of a broad category of items in the CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is clearly not required under RCRA as implemented through the CPG and the RMAN. RCRA section 6002 does not require a procuring agency to purchase items with recovered materials content that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, if all other factors are equal, the procuring agency should seek to purchase the product made with highest percentage of recovered materials practicable.

The items designated today have all been evaluated with respect to the EPA's criteria. Details of these evaluations are discussed in "Final CPG II/RMAN II Background Document," which has been placed in the docket for the final CPG II and RMAN II and is available electronically. (See Section VIII below for Internet access directions.)

B. Procurement Limitations of RCRA Section 6002

In the May 1, 1995 CPG, the Agency amended 40 CFR 247.2 to include the RCRA provisions on the applicability of the guidelines to procuring agencies. (See 60 FR 21381.) In that amendment, EPA inadvertently failed to include the statutory exceptions to the general requirement to purchase designated items set forth in section 6002(c)(1) (A) through (C). Today, in § 247.2(d), EPA is adding these procurement limitations. As discussed in the previous section, these provisions authorize a procuring agency to decide not to purchase EPA designated items with recovered materials based on the following determinations:

1. The agency is unable to secure a satisfactory level of competition;
2. The item is not reasonably available within a reasonable period of time;
3. The item fails to meet the reasonable performance standards set forth in the agency's specification; and
4. The item is available only at an unreasonable price.

EPA received no comments on the proposed language and, as noted above, is today amending § 247.2 to add these provisions. EPA is making this amendment effective immediately. Section 553(d) of the Administrative Procedure Act authorizes an exception to the general requirement that a substantive rule must be published 30 days before its effective date where an agency determines there is good cause for doing so. As explained above, these amendments merely codify the statutory conditions spelled out in section 6002(c) under which a procuring agency may determine not to procure items designated in the guidelines. Today's amendments do not change a procuring agency's current obligations under section 6002 of RCRA to procure designated items to the maximum extent practicable but merely restate in the regulations the exceptions to the general requirement provided in the statute. Under the circumstances, there is good cause for making these amendments effective immediately.

C. Clarification of Floor Tiles, Structural Fiberboard and Laminated Paperboard Designations

In the May 1, 1995 CPG, EPA designated floor tiles, structural fiberboard, and laminated paperboard and, in the RMAN, provided recommendations for purchasing these items containing recovered materials. EPA has since learned that there may be some confusion on the part of procuring agencies as to their obligation to purchase these items for specific applications. In fact, the Agency received inquiries regarding the requirements to purchase floor tile and structural fiberboard for use as acoustical ceiling tile. Based on these inquiries, the Agency concluded that it should clarify the obligations of procuring agencies with respect to these items. Additionally, the Agency published a separate notice in the **Federal Register** providing additional information to assist procuring agencies in determining their obligation to purchase designated items for specific applications and to clarify these issues. See 61 FR 58067, November 12, 1996.

1. Floor Tiles

In the original CPG, EPA designated 19 items that are, or can be, produced with recovered materials content, including floor tiles and patio blocks containing recovered rubber or plastic [40 CFR 247.12(e)]. The Agency designated these items as broad categories of items, encompassing many different applications. In the companion RMAN, however, the Agency recommended that procuring agencies purchase floor tiles with specified minimum recovered rubber or plastic content for "heavy duty/commercial type" applications only. EPA limited the recommended applications to heavy-duty/commercial-type uses because, at the time CPG I was issued, the Agency was not aware of any manufacturers that made floor tile with recovered materials for standard office flooring. However, at least two manufacturers were reportedly considering using recovered materials in standard office flooring and one manufacturer indicated that these products would be available in 1995, the year CPG I was issued. This information suggested to the Agency that floor tiles could be made with recovered materials for standard office flooring. Therefore, the Agency elected to broadly designate floor tiles and limit its initial recommendations to heavy-duty/commercial type uses. The Agency has no information that standard office floor tiles are currently commercially available containing recovered materials.

In CPG I and RMAN I, EPA used the term "heavy-duty, commercial-type uses" because there were no published industry-wide definitions to describe the applications to which the recovered materials requirements of the CPG should be applied. In the supporting analysis for RMAN I, EPA explained what it meant by "heavy-duty, commercial-type applications." There, the Agency described, in general terms, a number of commercial and industrial settings where the use of such tiles with recovered materials content would be appropriate. These would include entranceways in airports and stores, furniture showrooms, skating rinks and fitness centers. EPA has learned that this discussion may have caused some confusion. Some procuring agencies may have confused EPA's description of the areas where, given special circumstances, such tiles might be appropriate, with an EPA recommendation that such tile should always be used in such settings. This was not the Agency's intention. Therefore, the Agency is today clarifying its recommendation that the use of these tiles would be appropriate for specialty purpose uses at such locations (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Commenters also supported the Agency in its views about the limitations on uses for floor tiles containing recovered materials. Thus, EPA is not, at this time, recommending floor tile made with recovered materials for standard office or more general purpose uses.

2. Structural Fiberboard and Laminated Paperboard

In CPG I, EPA designated structural fiberboard and laminated paperboard products for applications other than building insulation [40 CFR 247.12(b)]. EPA included acoustical and non-acoustical ceiling tiles and lay-in panels in its list of applications to which the designation applies. Since CPG I was issued, one manufacturer of mineral fiber ceiling products has expressed concern over the scope of the structural fiberboard and laminated paperboard designations, particularly as they apply to acoustical and non-acoustical ceiling tiles and lay-in panels.

EPA is clarifying that the specific applications included in the structural fiberboard and laminated paperboard designation, i.e., building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard), apply to the purchase of cellulosic fiber structural fiberboard and laminated paperboard products only. The listed applications, and therefore the designation, do not apply to products made from other similar or competing materials. In other words, if a procuring agency is purchasing a cellulosic fiberboard acoustical ceiling tile, then the agency should purchase the ceiling tile made with recovered materials. However, if the agency prefers to purchase a ceiling tile made with mineral fiber rather than fiberboard, it is free to do so. In the latter instance, there is no requirement to purchase a cellulosic fiberboard ceiling tile.

IV. Definitions

Today, in § 247.3, EPA is adding definitions for the following new item-specific terms: channelizers, delineators, flexible delineators, garden hoses, latex paint, lawn edging, pallets, parking stops, plastic fencing, printer ribbons, restroom dividers/partitions, shower dividers/partitions, and soaker hoses. These definitions are based on industry definitions, including ASTM or other standard specifications, or represent descriptions of the scope of items being designated.

For several items being designated today, EPA recommends in the final RMAN II that procuring agencies use two-part content levels—a postconsumer recovered materials component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture the products. Recommending only postconsumer content levels would be contrary to the RCRA mandate to maximize the use of recovered materials because it would fail to acknowledge the contribution to solid waste management made by manufacturers using other manufacturers' byproducts as feedstock.

Because the recommendations for the items being designated today use the terms "postconsumer materials" and "recovered materials," the definitions for these terms are repeated in this action as a reference for the convenience of the reader. These definitions were part of CPG I and can be found at 40 CFR § 247.3.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. *Postconsumer material* is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

V. Comment Summary and Agency's Response

EPA received submittals from 20 commenters in response to the proposed CPG II and the draft RMAN II. These commenters represented various interests, including Federal agencies, State agencies, local governments, product manufacturers, and product users. A summary of the comments and EPA's response can be found in "Final CPG II/RMAN II Background Document."

In this section, EPA discusses the major comments regarding the proposed CPG II. For a discussion of the major comments pertaining to the draft RMAN II, see the preamble to the notice of

availability of the final RMAN II, which is found in the notices section of today's **Federal Register**.

A. General Comments

1. Recordkeeping and Reporting

Comment: A Federal agency expressed concern about the burden of tracking purchases of each procurement item designated by EPA and the potential difficulty in establishing the infrastructure to institute policies and procedures at a time when administrative staff is being reduced. The commenter further noted that the use of government credit cards increases the difficulty of tracking purchases. In addition, the commenter suggested that an interagency reporting task force convened by the Office of Federal Procurement Policy (OFPP) and the Office of the Federal Environmental Executive (OFEE) should address streamlining reporting requirements.

Response: Because EPA addressed the RCRA reporting requirements in the CPG I rulemaking, reporting issues were not addressed as part of the CPG II proposal. See, for example, the background documents for the final CPG I and RMAN I for EPA's previous discussions of the RCRA annual review and reporting requirements: "Items Designated in the Comprehensive Procurement Guideline—Supporting Analyses," pages 40–41, and "RMAN for Items Designated in the Comprehensive Procurement Guideline—Supporting Analyses," pages 8–9.

The requirement that Federal procuring agencies report on their procurement of EPA-designated items is mandated by RCRA section 6002(g) and Section 301 of Executive Order 12873. Therefore, reporting is not at the discretion of OFEE or EPA. While EPA and OFEE are cognizant of the labor necessary to collect and report annual procurement data, neither office is authorized to significantly change the data contained in the final report.

As noted by the commenter, OFEE and OFPP chartered an interagency steering committee to identify streamlining initiatives for the data collection requirements. As a result of the committee's recommendations, the agency data collection requirements for FY96 were reduced by ⅓ by capturing data in a more efficient manner. For agencies that requisition CPG items from the U.S. General Services Administration's (GSA) Federal Supply System, the supply center tracks and reports on the agencies purchases. While this significantly reduces an agency's data collection and reporting burden, the final report contains the same itemized information.

2. Interaction Between RCRA Section 6002 and the Federal Acquisition Regulation

Comment: A Federal agency raised issues specific to the Federal Acquisition Regulation (FAR), which governs Federal acquisition activities. The agency stated that the proposed CPG II and draft RMAN II did not adequately address the importance of and the responsibility of key non-procurement personnel, who generally develop and define a procuring agency's environmental needs. The agency referenced provisions of the FAR. Additionally, the agency stated that the draft RMAN II provides no specific guidance on the use of required sources, such as Federal Prison Industries (UNICOR) and Javits-Wagner-O'Day (JWOD) participating non-profit agencies.

Response: EPA has stated on many occasions that implementation of RCRA section 6002 must be consistent with other Federal procurement law. For example, in Appendix I to "Final CPG II/RMAN II Background Document," EPA states the following:

> The purchase of recycled products under RCRA section 6002 must be consistent with other Federal procurement law, which requires that contracts be awarded to the lowest priced, responsive, responsible bidder * * *
>
> On August 27, 1997, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued an interim rule amending the Federal Acquisition Regulation (FAR) parts 1, 10, 11, 13, 15, 23, 36, 42, and 52 to reflect the government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. See 62 FR 44809, August 22, 1997.

As the commenter indicated, the FAR specifies the role of contracting officers and other agency personnel in acquisitions, as well as providing for implementation of the required sources requirements and the RCRA section 6002 affirmative procurement requirements. To the extent that the FAR generally dictates use of certain required sources like UNICOR, EPA believes that it is reasonable to assume that federal procuring agencies will look to such sources for procurement of designated items. In fact, required sources such as UNICOR and the National Industries for the Blind offer several of the items previously designated by EPA (e.g., toner cartridges, recycled paper products). Therefore, EPA refers procuring agencies to the FAR for guidance regarding these acquisitions issues.

3. Designation of Materials

Comment: A commenter requested that EPA designate steel in order to recognize that this material is recyclable, has a high recycling rate, and contains recovered materials.

Response: EPA agrees that steel, like many metals, is both recyclable and can contain recovered materials. EPA also agrees that steel, like many metals, is a waste management success story in terms of its recyclability, high recycling rate, and recovered materials content. EPA also applauds the steel industry's source reduction efforts to produce stronger, lighter weight steel products, in response to customer demand.

However, RCRA specifically requires EPA to designate products that are or can be made with recovered materials, not the component materials used in those products. Accordingly, EPA designates products that are manufactured with steel, but not materials, such as steel, that can contain recovered materials.

B. Comments on Proposed Item Designations

No commenters opposed the designations of the following items: parking stops, channelizers, delineators, flexible delineators, garden and soaker hoses, lawn and garden edging, printer ribbons, plastic envelopes, and pallets. EPA is promulgating these items as proposed. Commenters suggested revisions to the designations of shower and restroom dividers, latex paint, and snow fencing, and opposed the proposed designation of ink jet cartridges. In response, EPA is designating shower and restroom dividers and latex paint, with modifications, and revising the designation of snow fencing to plastic fencing for specific uses. EPA is not designating ink jet cartridges at this time. The comments on shower and restroom dividers and snow fencing, and the significant comments pertaining to the proposed designations of latex paint and ink jet cartridges, as well as EPA's response, are discussed in the following subsections. For a full discussion of the comments and EPA's response, including additional research conducted by EPA, see "Final CPG II/RMAN II Background Document."

1. Shower and Restroom Dividers

Comment: EPA received one comment suggesting that shower and restroom dividers be referred to as dividers/partitions.

Response: After additional research into industry practices, EPA found that both of the terms—"partitions" and "dividers"—are commonly used. Generally speaking, "partition" implies that a door is used, and "divider" implies a dividing wall. Based on the comment and the additional research, EPA is revising the term for this item in the final CPG II and companion RMAN II to "shower and restroom dividers/partitions."

2. Latex Paint

Comment: A commenter opposed the proposed designation of latex paint based on concerns about performance and availability. The commenter further noted that the proposed designation was overly broad and did not reflect the variety of different latex paint applications in government buildings and their performance requirements. The commenter suggested that EPA could limit the designation and recommendations to interior and exterior architectural applications where color, consistency of performance, and durability are not primary concerns and a spray-gun application is not used.

EPA met with the commenter on June 17, 1997 to discuss this and other comments. A copy of the meeting notes has been placed in the RCRA docket for the final CPG II.

In supplemental comments, the commenter suggested that EPA distinguish between consolidated and reprocessed latex paints. The commenter suggested that EPA revise the designation so as to designate only:

- Consolidated latex paint used for covering graffiti, where consistent color and consistency of performance are not primary concerns.
- Reprocessed latex paint used for interior and exterior architectural applications where the reprocessed latex paint meets all end use specifications (e.g., color, weathering, durability, hiding power, and applicability) for a particular application.

These suggestions are similar to the applications for reprocessed and consolidated latex paints that EPA had recommended in the draft RMAN II.

The commenter stated that adding the language about end use specifications in the suggested designation would alleviate paint industry concerns that the listing of latex paints will require the use of reprocessed latex paints for all interior and exterior uses without regard to any performance criteria. The commenter further stated that the selection of latex paint for a particular application is a complex process and that, while the GSA specification for "recycled" latex paint covers certain performance attributes, it may not include all of the attributes necessary for a particular application. The commenter referenced three ASTM latex paint specifications that the commenter believes procuring agencies should consider in evaluating whether reprocessed latex paint has the appropriate performance attributes for a particular application. A copy of the supplemental comments is included in the docket for the final CPG II.

Response: EPA agrees that reprocessed and consolidated latex paints are not suitable for all applications. In the proposed CPG II, EPA noted, for example, that there is little available information on the performance of reprocessed or consolidated paints for non-architectural applications. See 61 FR 57752. In the draft RMAN II, EPA recommended the use of consolidated paint in limited applications, such as covering graffiti, where color and consistency of performance are not primary concerns. EPA recommended the use of reprocessed paint for interior and exterior architectural applications. See Section C–7 of the draft RMAN II at 61 FR 57763.

In researching latex paint for the proposed CPG II, EPA identified a latex paint study by the California Polytechnic University (CalPoly). The CalPoly study included testing of reprocessed and consolidated latex paints for various key parameters that measure the performance and durability of paint for a number of different applications. The CalPoly study concluded that reprocessed paints are suitable for these applications reviewed in the study. A copy of this study was included in the docket for the proposed CPG II and draft RMAN II, docket F–96–CP2P–FFFFF. Both the GSA's Engineering and Commodity Management Division and CalPoly found that latex paints containing postconsumer materials can be manufactured to provide consistent performance, normal coverage and hiding of the underlying surface, and durability. In addition, the GSA specification provides for testing of color and application properties, among other requirements.

Latex paints containing postconsumer materials also can be formulated to be used in spray-guns. According to paint manufacturers and municipalities contacted by EPA, spray applications of reprocessed latex paint pose few, if any, problems as long as the paint is clean and has been filtered properly. EPA notes, however, that some users have encountered problems with clogged spray nozzles, and one manufacturer recommends using a larger diameter spray tip to ensure that the nozzle will not become clogged. GSA specification TT–P–2846 requires that the reprocessed and consolidated latex paint meet specified brushing, roller coating, and spraying properties, which should ensure that manufacturers properly filter their products.

EPA also conducted additional research into the applications for which agencies currently are using reprocessed latex paints. EPA found that agencies currently are using reprocessed paints for the same uses for which they would normally use latex paint—e.g., interior and exterior wallboard, ceilings, and trim; exterior gutter boards; and concrete, stucco, masonry, and wood, as well as metal surfaces.

After considering the comments and conducting further research on reprocessed latex applications, EPA has concluded that the proposed designation of "latex paint" is too broad given the uses for which consolidated and reprocessed latex paints currently are available. As discussed above in Section III.A, EPA sometimes designates broad category items and provides information in the RMAN as to their appropriate applications or uses. In other instances, EPA designates specific items and might include in the designation the specific types of applications to which the designation applies. The approach that EPA uses depends on the whether items manufactured from other types of materials or for other applications are made with or could contain recovered materials. In the past, if EPA was not aware that items used for other applications were available, EPA limited its designations so as not to create an unnecessary burden on agencies to try to purchase an item that is not available. (See the preamble to CPG I, 60 FR 21373, May 1, 1995, for a more detailed discussion of EPA's approach.)

Based on the available information, EPA has concluded that consolidated latex paints are currently used for graffiti abatement. EPA further has determined that reprocessed latex paints are available for architectural applications, but not for non-architectural applications, such as marking pavements or athletic fields. EPA also agrees with the commenter that reprocessed latex paints may not be available for all architectural performance needs.

Therefore, to avoid confusion by procuring agencies about the scope of the latex paint designation, EPA has

concluded that it is preferable to limit the scope of the latex paint designation, rather than designating the broad category "latex paint," and recommending specific applications for using consolidated and reprocessed latex paints in RMAN II. A narrower designation will enable procuring agencies to focus their procurement efforts on the types of latex paint currently available either through GSA or directly from paint manufacturers.

Therefore, in today's final CPG II, EPA is revising the broad "latex paint" designation to provide the following specific designations:

- Consolidated latex paint used for covering graffiti.
- Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

Under this revised designation, procuring agencies must purchase reprocessed latex paint for the interior and exterior architectural applications for which they would ordinarily use latex paint, such as wallboard, concrete, stucco, masonry, wood, and metal. Procuring agencies requiring a latex paint not meeting GSA's general "recycled" latex paint specification should determine whether a latex paint containing recovered materials is available and if not, may use a latex paint not containing recovered materials for that particular application.

As discussed in section III.B above, RCRA section 6002 provides that a procuring agency is not required to purchase an EPA-designated item containing recovered materials if that item is not reasonably available or fails to meet the reasonable performance standards set forth in the agency's specifications. Thus, if an agency has a particular need (e.g., color, weathering, durability, hiding power) for a particular application, and consolidated or reprocessed latex paint is not available (or does not meet that specification), the agency may purchase a latex paint not containing recovered materials. Given the obligation of procuring agencies to procure designated items with the highest percentage of recovered materials practicable, an agency should thoroughly research the availability of consolidated or reprocessed latex paint meeting its specifications.

However, because RCRA provides for performance exceptions to the requirement to purchase EPA-designated items containing recovered materials, it would be redundant for EPA to include performance considerations in the description of the designation of consolidated and reprocessed latex paints. For this reason, in the final designations published today, EPA has not included the language about end use specifications suggested by the commenter.

Comment: The commenter also had noted that an Army Corps of Engineers study of reprocessed and consolidated latex paints had not yet been completed. The commenter stated that it was therefore premature for EPA to designate latex paints.

Response: EPA noted in the background document for the proposed CPG II that the Paint Technology Center at the U.S. Army Construction Engineering Research Laboratories (USACERL) was planning to test the performance of latex paint containing postconsumer materials. See page 28, "Comprehensive Procurement Guideline (CPG) II—Supporting Analyses," August 1, 1996. EPA contacted USACERL about the study of reprocessed latex paint. USACERL informed EPA that it does not have any specific concerns about the performance qualities of reprocessed latex paint in different applications. Rather, USACERL tested reprocessed latex paints to confirm that they met GSA specification TT–P–2846 for "recycled" latex paints. USACERL also tested reprocessed latex paints against the GSA specifications for interior and exterior latex paints. To date, USACERL found that the reprocessed paints tested met the specifications for recycled latex paint and interior latex paints. USACERL is completing testing against the exterior paint specification, but the reprocessed latex paints performed well against the exterior paint tests conducted to date. Based on this information about the results of the USACERL testing of reprocessed and consolidated latex paints, EPA does not believe that the designation of latex paint should be delayed pending the final outcome of the USACERL study.

Further, USACERL informed EPA that the Army uses acrylic latex paints to paint primed metal and expressed concern only about the availability of reprocessed latex paint containing 100% acrylic. USACERL had not researched the availability of this item, however. EPA notes that under RCRA section 6002, a procuring agency is not required to purchase an EPA-designated item containing recovered materials if that item does not meet the agency's reasonable performance standards or if the item is not reasonably available. If the Army requires acrylic latex paints for a particular application and this item is not available containing recovered materials, then the Army is not required to purchase latex paint containing recovered materials for that application. For such situations, EPA has previously recommended that agencies place a statement in their affirmative procurement programs indicating that the item is not available.

Because the purpose of the government buy-recycled program is to develop markets for recovered materials, EPA is reluctant to exclude acrylic latex paints from the scope of the latex paint designation. Rather, EPA believes that the Army should determine periodically whether acrylic latex paints containing recovered materials are available in order to encourage the recovery of this type of paint from the waste stream. Further, EPA notes that during development of CPG II, neither the Army nor any other Federal agency requested that EPA limit the scope of the designation. Therefore, in the final CPG II, EPA is designating latex paints and not excluding acrylic latex paints.

Comment: The commenter further stated that EPA had failed to examine the true costs of using reprocessed latex paint because it is "likely" that more coats of reprocessed paint would be required and "it seems likely that" more frequent repainting will be required where reprocessed latex paint is used. The commenter provided no documentation to support these comments.

Response: The information available to EPA from research, product testing by CalPoly, and users indicates that reprocessed latex paints cover the same as virgin latex paints and do not require more frequent repainting. This information is included in the record for this rulemaking. According to the CalPoly research report and additional research conducted by EPA, reprocessed and consolidated paints meet specifications for sag resistance (a measure of a paint's tendency to run on a vertical surface), contrast ratios (ability to hide the underlying surface), and scrub resistance (an indication of the resistance of a paint film to repeated washing or scrubbing). None of the users contacted by EPA had experienced problems with paint coverage or durability. Based on this testing and use information, EPA believes that procuring agencies will not incur additional costs from extra or more frequent coats of paint.

Comment: The commenter also noted that reprocessed and consolidated latex paints are not universally available in the United States.

Response: EPA has never limited its designations only to items that are "universally" available or immediately available in every part of the United States. Because the purpose of the federal buy-recycled program is to develop markets for, and spur development of, products containing recovered materials, it has always been understood that these items might not be available to all procuring agencies in all instances. Nor does RCRA specify universal availability as a criteria for EPA to consider when designating items. Rather, it is expected that, as procuring agencies seek to purchase products containing recovered materials, these items will become more widely and universally available. For this reason, RCRA section 6002 provides that procuring agencies are not required to buy an EPA-designated item containing recovered materials if that item is not available within a reasonable time.

EPA explicitly recognized this early in its development of the guidelines program. Thus, for example, in the first procurement guideline issued in 1983, EPA designated cement and concrete containing coal fly ash, even though coal fly ash was not available in every part of the country. EPA recommended that agencies provide incentives for greater availability by allowing for the use of coal fly ash as an optional or alternate material. EPA stated that "[a]llowing fly ash will also serve as an incentive to potential users in that area. Contractors will not make the commitment necessary to use fly ash unless it is more readily accepted. Including it in bid solicitations and allowing it to be used provides this incentive." See 48 FR 4242, January 28, 1983.

3. Snow Fencing

Comment: GSA recommended that EPA revise the definition of "snow fencing" by adding "and to delineate construction areas."

Response: EPA reviewed its research into snow fencing and found that plastic fencing containing recovered materials can be used for several applications, including control of drifting snow and sand and as a warning or safety barrier at construction areas. Plastic fencing used in these applications is called many names—snow fencing, temporary fencing, beach or dune fencing, warning barrier, and safety barrier. While "snow fencing" is a commonly used term, EPA agrees with GSA that using this term alone can mislead procuring agencies about the scope of EPA's designation. Therefore, in § 247.14(b) of today's final CPG II, EPA is revising the designation of "snow fencing" as follows: plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications. EPA also is changing the term "snow fencing" to "plastic fencing" in the definitions and adding the phrase "and to provide a warning or barrier in construction and other areas" to the definition.

4. Ink Jet Cartridges

Commenters raised a number of concerns in opposing the proposed designation of ink jet cartridges. These comments raised solid waste, performance, quality, availability, and patent and trademark concerns. After considering the information submitted by commenters, EPA has concluded that there is insufficient evidence to support a designation of ink jet cartridges at this time. On April 14, 1997, EPA published a Notice of Data Availability in the **Federal Register** (62 FR 18072) to notify interested parties of the tentative decision not to designate ink jet cartridges, summarize the information available to the Agency, and request further public comment.

EPA received only two responses to the April 14 notice—one from a vendor of ink jet refilling equipment and additional information from one of the original commenters. The vendor appears to have promising technology for resolving many of the performance and solid waste issues raised by commenters. The vendor did not, however, submit sufficient information to change EPA's earlier conclusion that there is insufficient information to support designating ink jet cartridges at this time. In particular, the commenter did not address the lack of industry quality and performance standards. Therefore, EPA has decided not to designate ink jet cartridges in today's final CPG II. EPA also is deleting the recommendations for purchasing ink jet cartridges from the final RMAN II published in the notice section of today's **Federal Register**. EPA will continue to monitor developments in ink jet cartridge and refilling/remanufacturing technology and will consider designating ink jet cartridges in the future.

C. Comments on Other Items Considered for Designation

In the background document for the proposed CPG II, EPA stated that it had considered the following 12 items and determined that it was inappropriate to designate them: lead-acid batteries, water retention systems, flat sheet glass, wall covering, ceramic and glass tile, glass fiber-reinforced concrete, curbing, dock bumpers, glass beads for reflective paint, magazine boxes, rulers, and pallet stretch wrap. EPA requested additional information demonstrating that the items should be reconsidered for possible future designation. No comments were submitted on these items or on EPA's decision not to designate them. Therefore, EPA is no longer considering these items for future designation in the CPG.

D. Comments on Public Participation Process

On September 20, 1995, EPA issued a notice in the **Federal Register** explaining the procedures for interested persons to (1) suggest items for EPA to consider for designation in future updates to the CPG and (2) provide information for EPA to use in developing or revising its recommendations for recovered materials content levels contained in the RMANs that accompany the CPG updates (60 FR 48714). EPA stated that it would issue annual notices to request additional information from interested persons.

No comments were received on these procedures, and EPA plans to continue to use them. Over 30 commenters submitted information on items for EPA to consider. Some of these comments provided supporting information for items designated in today's CPG II. EPA currently is evaluating the other items for potential designation in future CPG updates. Because EPA is still considering these items, we will not be issuing annual notices requesting additional suggestions and information. However, persons wishing to submit information for EPA to consider may send it to: Buy Recycled Program, U.S. Environmental Protection Agency, 5306W, 401 M Street, SW., Washington, DC 20460. Any submittals should address the seven areas listed in the September 20, 1995 **Federal Register** notice. See 60 FR 48715.

VI. Availability of Designated Items

EPA has developed lists of manufacturers and vendors of the items designated in today's rule. In addition, EPA has updated the lists of manufacturers and vendors of the 24 items designated in the original CPG. These lists have been placed in the RCRA docket for this action and will be updated periodically as new sources are identified and product information changes. These lists will also be available through EPA's web site on the Internet. (See section VIII below for Internet access information.) Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to

obtain detailed information on the availability and price of recycled products meeting those needs.

Other information is available from the GSA, the Defense Logistics Agency (DLA), State and local recycling offices, private corporations, and trade associations. Refer to Section XV of the document, "Final CPG II/RMAN II Background Document" for more detailed information on these other sources of information.

State and local recycling programs are also a potential source of information on local distributors and availability. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information. A current list of state purchasing/procurement officials has been placed in the docket for the final CPG II. Also included in the public docket is a list of states with recycled content products purchasing programs, current as of April 1994. Information is also available from trade associations whose members manufacture or distribute products containing recovered materials. These trade associations are included in the updated lists of product manufacturers and vendors described above.

Additionally, Environmental Newsletters, Inc., publisher of *Waste Reduction Tips*, prepared a directory of recycled product directories. EPA has placed the "1996 Directory of Recycled Product Directories," from Environmental Newsletters' *Recycled Products Business Letter*, in the public docket for the final CPG II. Environmental Newsletters, Inc. can be reached at 703 758–8436 for further information.

Finally, EPA is considering mechanisms to increase the electronic dissemination of information about the items designated in the CPG, such as a buy-recycled home page on the Internet. If the Agency decides to implement such mechanisms, we will provide public notice in the **Federal Register** in concert with future revisions to the CPG.

VII. Economic Impact Analysis

A. Requirements of Executive Order 12866

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA estimates that the costs associated with today's rule is well below the $100 million threshold. To enable the Agency to evaluate the potential impact of today's action, EPA has prepared an Economic Impact Analysis (EIA), as discussed below. For more information on the estimated economic impact of today's rule, see the "Economic Impact Analysis for the Final Comprehensive Procurement Guideline II."

1. Summary of Costs

EPA estimated that the annualized costs of the proposed rule to designate 13 items would fall in the range of $4.6 to $8.7 million. Because today's final rule designates 12 items, rather than 13 items, EPA revised the economic impact analysis to reflect the fact that fewer items are being designated than originally proposed.

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from $4.5 to $8.4 million, with costs being spread across all procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that drive the costs, EPA conducted sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with today's final rule are provided in the Economic Impact Analysis for this rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF CPG II AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)
Federal Agencies	5,008–2,584	5,008
States	926–520	926
Local Governments	2,337–1,324	1,700
Contractors	81–27	54
Total	8,352–4,455	8,352

As a result of today's action, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's rule are included in the Economic Impact Analysis.

With regard to possible impacts to business, including small businesses, there may be both positive and negative impacts to individual businesses. EPA anticipates that today's final rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials recovered from municipal solid waste.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's final rule. It is possible that if a business that currently supplies products to a procuring agency uses virgin materials only, the amendments to the CPG may reduce its ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than their virgin counterparts. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's final rule will result in increased opportunities for recycling and waste prevention (e.g., from reinking ribbons or repairing pallets). Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Less raw materials use results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. For example, according to information published by the Steel Recycling Institute, recycling one ton of steel saves nearly 11 million Btus of energy; 2,500 lbs. of ore; 1,000 lbs. of coal; and 40 lbs. of limestone. Recycling can also reduce greenhouse gas emissions associated with manufacturing new products. When compared to landfilling, recycling one ton of high density polyethylene, low density polyethylene, or polyethylene terephthalate plastic can reduce greenhouse gas emissions by up to 0.64 metric tons of carbon equivalent (MTCE). In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for realizing these benefits. On a national and regional level, today's final rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many State and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses engaged in recycling activities.

B. Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this rule on State and local governments, they are exempt from inclusion as Federal inter-governmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $2.6 million annually. The cost of enforceable duties which may arise as a result of today's rule on the private sector are estimated not to exceed $54,000 annually. Thus, today's rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The newly designated items included in the CPG may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement program and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $2.6 million annually. In compliance with E.O. 12875, which requires the involvement of State and local governments in the development of certain Federal regulatory actions,

EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in the CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in the CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, the Environmental Defense Fund, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to State and local governments, is not expected to exceed, at the maximum, $2.6 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 have been satisfied.

C. Impacted Entities

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over $10,000 worth of a designated product in a given year. EPA estimates that this rule would apply to 35 Federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local entities that would be impacted based on information regarding the amount of Federal funds that are dispersed to specific counties. In addition, EPA assumed that 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

D. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to public a general notice of proposed rulemaking, the agency must prepare a final regulatory flexibility analysis (FRFA). The agency must prepare an FRFA for a final rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an FRFA.

The final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines "small entity" to mean a small business, small organization or small governmental jurisdiction. EPA's action today in designating 12 new items that are or may be produced with recovered materials content may establish requirements applicable, in some cases, to small governmental jurisdictions and small businesses.

In the case of small entities which are small governmental jurisdictions, EPA has concluded that the rule will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 12 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances items with recovered materials content may be less expensive than items produced from virgin material.

Similarly, EPA has concluded that the economic impact on small entities that are small businesses would not be significant. The CPG applies to small businesses that are "procuring agencies." The potential economic impact of the CPG on small businesses that are "procuring agencies" is minimal.

RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under Section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are "incidental to" the purposes of the contract, i.e., not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a "procuring agency" for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if the State or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (and any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are "procuring agencies" (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. § 605(b), I hereby certify that today's designations will not have a significant economic impact on a substantial number of small entities. Because today's action does not impose significant new burdens on small entities, this rule does not require a final regulatory flexibility analysis.

The basis for EPA's conclusions that today's rule will not have a significant impact on a substantial number of small entities is described in greater detail in the "Economic Impact Analysis" for the rule which is located in the RCRA public docket.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, EPA believes that the effect of today's rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

VIII. Supporting Information and Accessing Internet

The index of supporting materials for today's final CPG II is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in ADDRESSES above. The index and the following supporting materials are available in the RIC and on the Internet:

"Final CPG II/RMAN II Background Document," U.S. EPA, Office of Solid Waste and Emergency Response, September 1997.

Copies of the following supporting materials are available for viewing at the RIC only:

"Economic Impact Analysis for the Final Comprehensive Procurement Guideline II," U.S. Environmental Protection Agency, August 1997.

"Ex Parte Meeting Notes, Meeting Between U.S. Environmental Protection Agency and National Paint & Coatings Association, June 17, 1997."

"Letter to Dana F. Arnold, U.S. Environmental Protection Agency, from National Paint & Coatings Association, July 28, 1997."

"Telephone Notes, Testing of Reprocessed/consolidated Latex Paint, Between Dana Arnold, U.S. Environmental Protection Agency and Sue Drozdz, Army Corps of Engineers, May 19, 1997."

"National Association of State Purchasing Officials, 1996–1997 Membership Roster."

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/index.htm#procure.

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 247

Environmental protection, Channelizers, Consolidated latex paint, Construction products, Delineators, Flexible delineators, Garden hose, Garden edging, Government procurement, Laminated paperboard, Landscaping products, Latex paint, Lawn edging, Office products, Pallets, Park and recreation products, Parking stops, Plastic fencing, Printer ribbons, Procurement guidelines, Recycling, Reprocessed latex paint, Restroom dividers/partitions, Shower dividers/partitions, Soaker hose, Structural fiberboard, Temporary traffic control devices, Transportation products.

Dated: October 8, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 , chapter I of the Code of Federal Regulations, part 247, is amended as set forth below.

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 continues to read as follows:

Authority: 24 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

2. In § 247.2, paragraph (d) is added to read as follows:

§ 247.2 Applicability.

* * * * *

(d) RCRA section 6002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Procuring agencies may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

3. In § 247.3, the following definitions are added alphabetically:

§247.3 Definitions.

* * * * *

Channelizers means highly visible barrels or drums that can be positioned to direct traffic through detours;

Delineator means a highly visible pavement marker that can be positioned to direct traffic or define boundaries;

* * * * *

Flexible delineator means a highly visible marker that can be positioned to direct traffic or define boundaries and that will flex if struck by a vehicle to prevent damage to the vehicle or the delineator;

* * * * *

Garden hose means a flexible tubing that conducts water to a specific location;

* * * * *

Latex paint means a water-based decorative or protective covering having a latex binder;

Lawn edging means a barrier used between lawns and landscaped areas or garden beds to prevent grass roots or weeds from spreading to the landscaped areas;

* * * * *

Pallet means a portable platform for storing or moving cargo or freight;

* * * * *

Parking stop means a barrier used to mark parking spaces and keep parked vehicles from rolling beyond a designated parking area;

* * * * *

Plastic fencing means a barrier with an open-weave pattern that can be used to control drifting snow or sand by restricting the force of wind and to provide a warning or barrier in construction and other areas;

* * * * *

Printer ribbon means a nylon fabric designed to hold ink and used in dot matrix and other types of impact printers;

* * * * *

Restroom divider/partition means a barrier used to provide privacy in public restroom facilities;

* * * * *

Shower divider/partition means a water-proof barrier used to provide privacy in public shower facilities;

Soaker hose means a perforated flexible tubing that is used to deliver gentle irrigation to plants;

* * * * *

4. Section 247.12 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 247.12 Construction products.

* * * * *

(f) Shower and restroom dividers/partitions containing recovered plastic or steel.

(g)(1) Consolidated latex paint used for covering graffiti; and

(2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

5. Section 247.13 is amended by redesignating the existing text as paragraph (a) and by adding new paragraphs (b), (c), (d), and (e) to read as follows:

§ 247.13 Transportation products.

* * * * *

(b) Parking stops made from concrete or containing recovered plastic or rubber.

(c) Channelizers containing recovered plastic or rubber.

(d) Delineators containing recovered plastic, rubber, or steel.

(e) Flexible delineators containing recovered plastic.

6. Section 247.14 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 247.14 Park and recreation products.

* * * * *

(b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

7. In § 247.15, new paragraphs (c) and (d) are added to read as follows:

§ 247.15 Landscaping products.

* * * * *

(c) Garden and soaker hoses containing recovered plastic or rubber.

(d) Lawn and garden edging containing recovered plastic or rubber.

8. In § 247.16, new paragraphs (f) and (g) are added to read as follows:

§ 247.16 Non-paper office products.

* * * * *

(f) Printer ribbons.

(g) Plastic envelopes.

9. Section 247.17 is revised to read as follows:

§ 247.17 Miscellaneous products.

(a) Pallets containing recovered wood, plastic, or paperboard.

(b) (Reserved)

[FR Doc. 97–29734 Filed 11–12–97; 8:45 am]
BILLING CODE 6560–50–P

federal register

Thursday
November 13, 1997

Part IV

Environmental Protection Agency

Recovered Materials Advisory Notice II; Notice of Availability

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–5909–7]

Recovered Materials Advisory Notice II

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Final Document.

SUMMARY: The Environmental Protection Agency is providing notice of the availability of the final Recovered Materials Advisory Notice II (RMAN II) and supporting materials. The final RMAN II contains EPA's recommendations for purchasing 12 items designated in the final Comprehensive Procurement Guideline II, which is published elsewhere in today's **Federal Register**. This action will promote recycling by using government purchasing to expand markets for recovered materials. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. The 12 items for which EPA is making recommendations are shower and restroom dividers/partitions, consolidated and reprocessed latex paint for specified uses, parking stops, channelizers, delineators, flexible delineators, plastic fencing for specified uses, garden and soaker hoses, lawn and garden edging, printer ribbons, plastic envelopes, and pallets. The final RMAN II contains recommended recovered materials content levels for these items and other purchasing recommendations. In addition, today's final RMAN II clarifies recommendations for floor tiles previously made in a May 1, 1995 RMAN (60 FR 21392).

EFFECTIVE DATES: The recommendations for purchasing the 12 newly-designated items are effective November 13, 1998. The clarifications to the recommendations for purchasing floor tiles are effective upon publication.

ADDRESSES: The public docket for this notice is Docket F–97-CP2F-FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), which is located at U.S. Environmental Protection Agency, Crystal Gateway One, 1235 Jefferson Davis Highway, Ground Floor, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See Section V of the "Supplementary Information" section below for information on accessing the documents electronically.

FOR FURTHER INFORMATION CONTACT: *General procurement guidelines information:* RCRA Hotline at (800) 424–9346, TDD (800) 553-7672 (hearing impaired) or, in the Washington, DC area at (703) 412–9810 or TDD (703) 412-3323.

Technical information on individual item recommendations: For paper and paper products, vehicular products, construction products, non-paper office products, and pallets: Dana Arnold, (703) 308–7279; for landscaping products, transportation products, and park and recreation products: Terry Grist, (703) 308–7257.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Definitions
IV. Agency's Response to Comments
A. Ink Jet Cartridges
B. Comments on Other Items
V. Supporting Information and Accessing Internet

I. Authority

The Recovered Materials Advisory Notice II (RMAN II) is published under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962; and Executive Order 12873 (58 FR 54911, October 22, 1993).

II. Background

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be produced with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase it containing recovered materials to the maximum extent practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; and (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring a designated item where the price of the item exceeds $10,000 or when the quantity of the item, or functionally equivalent items, purchased in the previous year exceeded $10,000.

Executive Order 12873 (58 FR 54911, October 22, 1993) directs EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered materials content levels for the designated items in Recovered Materials Advisory Notices (RMAN). The Executive Order further directs EPA to update the CPG annually and the RMAN periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the recommendations are guidance, the RMAN is not codified in the CFR. This process enables EPA to make timely revisions to its recommendations in response to changes in a product's availability or recovered materials content.

EPA issued the CPG I and RMAN I on May 1, 1995 (60 FR 21370 and 21386, respectively). CPG I designated 19 items and consolidated five previous item designations made in earlier EPA procurement guidelines, and RMAN I recommended purchasing practices for these 24 items. On November 7, 1996, EPA published CPG II (61 FR 57747), which proposed to designate an additional 13 items. EPA concurrently published a draft RMAN II (61 FR 57759). The 13 items proposed for designation were: shower and restroom dividers, latex paint, parking stops, chamelizers, delineators, flexible delineators, snow fencing, garden and soaker hoses, lawn and garden edging, printer ribbons, ink jet cartridges, plastic envelopes, and pallets. The draft RMAN II also provided clarification of EPA's 1995 recommendations for purchasing floor tiles containing recovered materials. In today's final RMAN II, EPA is publishing recommendations for 12 of the 13 items, as well as the floor tiles clarification. For reasons discussed in subsection A below, EPA has decided not to designate ink jet cartridges and, therefore, is not publishing draft recommendations for purchasing this item.

EPA, once again, wants to stress that the recommendations in its RMAN are just that—recommendations and guidance to procuring agencies in fulfilling their obligations under section 6002. The designation of an item as one that is or can be manufactured with recovered materials and the inclusions of recommended content levels for an item in an RMAN do not compel the procurement of an item when it is not suitable for an agency's intended purpose. Section 6002 is explicit in this regard when it authorizes a procuring agency not to procure a designated item which "fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the procuring agencies." Section 6002(1)(B), 42 U.S.C. 6962(c)(B).

Thus, for example, in the final CPG II published elsewhere in today's **Federal Register**, EPA is designating shower and restroom dividers/partitions as items that are or can be produced with recovered materials. The Agency's research shows that these items are available in either steel or plastic containing recovered materials. However, the mere fact that these items are available containing recovered materials does not require the procurement of steel or plastic dividers/partitions in every circumstance. The choice of appropriate materials used in construction remains with building engineers and architects. The effect of designation (and section 6002) is simply to require the purchase of items with recovered materials where consistent with the purpose for which the item is to be used. Procuring agencies remain free to procure dividers/partitions made of materials other than steel or plastic (e.g., wood) where the design specifications call for other materials.

III. Definitions

Today's final RMAN II recommends postconsumer or recovered materials content levels at which EPA believes the designated items are generally available. For shower and restroom dividers/partitions, plastic fencing, lawn and garden edging, and plastic envelopes, the RMAN II recommends two-part content levels—a postconsumer recovered materials component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture these products. Recommending only postconsumer content levels would be contrary to the RCRA mandate to maximize the use of recovered materials because it would fail to acknowledge the contribution to solid waste management made by manufacturers using other recovered materials as feedstock. The terms "recovered materials" and "postconsumer materials" are defined in the CPG at 40 CFR 247.3. These definitions are repeated in this notice as a reference for the convenience of the reader.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly used within an original manufacturing process.

IV. Agency's Response to Public Comments

A. Ink Jet Cartridges

EPA received comments opposing the proposed designation of ink jet cartridges. These comments raised solid waste, performance, quality, availability, and patent and trademark concerns. After considering the information submitted by commenters, EPA tentatively concluded that there was insufficient evidence to support a designation of ink jet cartridges at this time. On April 14, 1997, EPA published a Notice of Data Availability in the **Federal Register** (62 FR 18072) in order to notify interested parties of the tentative decision not to designate ink jet cartridges, summarize the information available to the Agency, and request further public comment.

EPA received only two responses to the April 14 notice—one from a vendor of ink jet refilling equipment and additional information from one of the original commenters. The vendor appears to have promising technology for resolving many of the performance and solid waste issues raised by commenters. The vendor did not, however, submit sufficient information to change EPA's earlier conclusion that there is insufficient information to support designating ink jet cartridges at this time. Therefore, EPA is not designating ink jet cartridges in the final CPG II published elsewhere in today's **Federal Register**. EPA also is deleting the recommendations for purchasing ink jet cartridges from today's final RMAN II. EPA will continue to monitor developments in ink jet cartridge and refilling/remanufacturing technology and will consider designating ink jet cartridges in the future.

B. Comments on Other Items

EPA received only a few comments on the draft RMAN II. One commenter recommended that EPA refer to shower and restroom dividers as "dividers/partitions." After researching common industry terminology, EPA revised the term in the final CPG II and is using the term "dividers/partitions" in today's final RMAN II.

Commenters also recommended revisions to the recovered materials content recommendations for steel shower and restroom dividers, white and other light-colored reprocessed latex paints, and plastic pallets. Based on the information provided by these commenters and additional research, EPA revised the recommendations for these items in today's final RMAN II. EPA revised the steel content recommendations, added content recommendations for white and other light-colored reprocessed latex paint, and distinguished between plastic lumber pallets and thermoset plastic pallets in recommending content levels for plastic pallets.

In addition, in the final CPG II published in the final rules section of today's **Federal Register**, EPA revised the latex paint designation from the broad category "latex paint" to a more specific designation of "consolidated latex paint used for covering graffiti and reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces." Because the more specific designation includes the applications that EPA previously had recommended in the draft RMAN II, EPA has deleted those recommendations from Section C–7 of the final RMAN II. EPA also added a note to the table of recommended content levels for reprocessed and consolidated latex paint informing agencies that the recommendations applied to reprocessed and consolidated latex paints used for the designated applications.

Similarly, in today's final CPG II, EPA revised the snow fencing designation to "plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications." In the final RMAN II, EPA added information about specifications for plastic fencing used for warning and safety barriers.

Commenters also provided additional information about specifications and available sources of the designated products. These comments have been incorporated into today's final RMAN II.

A summary of all of the comments and the Agency's response are provided in the document entitled "Final CPG II/RMAN II Background Document." A copy of this document has been placed in the docket for the final RMAN II. See ADDRESSES above for information

about reviewing documents in the public docket.

V. Supporting Information and Accessing Internet

The index of supporting materials for today's final RMAN II is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in ADDRESSES above. The index and the following supporting materials are available on the Internet:

"Final CPG II/RMAN II Background Document," U.S. EPA, Office of Solid Waste and Emergency Response, September 1997.

Copies of the following supporting materials are available for viewing at the RIC only:

"Ex Parte Meeting Notes, Meeting Between U.S. Environmental Protection Agency and National Paint & Coatings Association, June 17, 1997."

"Letter to Dana F. Arnold, U.S. Environmental Protection Agency, from National Paint & Coatings Association, July 28, 1997."

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/index.htm#procure.
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer.

Dated: October 8, 1997.

Carol M. Browner,

Administrator.

Recovered Materials Advisory Notice II

The following represents EPA's recommendations to procuring agencies for purchasing the items designated today in the Comprehensive Procurement Guideline II in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA). These recommendations are intended to be used in conjunction with the RMAN issued on May 1, 1995 (60 FR 21386) and the Paper Products RMAN issued on May 29, 1996 (61 FR 26985). Refer to the May 1, 1995 RMAN for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items.

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I. General Recommendations
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Section C–6—Shower and Restroom Dividers/Partitions Containing Recovered Plastic or Steel
Section C–7—Reprocessed and Consolidated Latex Paints for Specified Uses
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Section D–3—Channelizers, Delineators, and Flexible Delineators Containing Recovered Plastic, Rubber, or Steel
Part E—Park and Recreation Products
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Section F–4—Lawn and Garden Edging Containing Recovered Plastic or Rubber
Part G—Non-Paper Office Products
Section G–6—Printer Ribbons
Section G–7—Plastic Envelopes
Part H—Miscellaneous Products
Section H–1—Pallets Containing Recovered Wood, Plastic, or Paperboard

I. General Recommendations

(See the May 1, 1995 RMAN for EPA's general recommendations for definitions, specifications, and affirmative procurement programs.)

II. Specific Recommendations for Procurement of Designated Items

(See the May 1, 1995 RMAN and the May 29, 1996 Paper Products RMAN for recommendations for purchasing previously-designated items.)

Part C—Construction Products

Note: Refer to Section E–2—Plastic Fencing Containing Recovered Plastic for Specified Uses and to Part F—Landscaping Products for additional items that can be used in construction applications.

Section C–5—Floor Tiles and Patio Blocks Containing Recovered Plastic or Rubber

Note: Table C–5 contains a clarification of EPA's recommendations for floor tiles. Table C–5 originally was published in the May 1, 1995 RMAN and contained EPA's recommendations for patio blocks, as well as recommendations for floor tiles. For the convenience of procuring agencies and other interested parties, EPA is republishing all of Section C–5, including Table C–5, with both the floor tiles and patio blocks recommendations. Readers should note that no change has been made to the recommendations for patio blocks.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–5, procuring agencies establish minimum content standards for use in purchasing floor tiles and patio blocks. The recommended use of floor tiles containing recovered materials is limited to the applications cited in Table C–5.

TABLE C–5.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR FLOOR TILES AND PATIO BLOCKS CONTAINING RECOVERED PLASTIC OR RUBBER

Product	Material	Postconsumer materials (%)	Total recovered materials content (%)
Patio Blocks	Rubber or rubber blends	90–100	—
	Plastic or plastic Blends	—	90–100
Floor Tiles (heavy duty/commercial use)	Rubber	90–100	—
	Plastic	—	90–100

NOTES: The use of floor tiles with recovered materials content may be appropriate only for specialty purpose uses (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Thus, EPA has no recovered materials content level recommendations for floor tiles made with recovered materials for standard office or more general purpose uses.

The recommended recovered materials content levels are based on dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agent. EPA's recommendation does not preclude agencies from purchasing floor tiles or patio blocks manufactured from other materials. It simply recommends that procuring agencies, when purchasing floor tiles or patio blocks made from rubber or plastic, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements.

Section C–6—Shower and Restroom Dividers/Partitions Containing Recovered Plastic or Steel

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–6, procuring agencies establish minimum content standards for use in purchasing shower and restroom dividers/partitions.

TABLE C–6.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SHOWER AND RESTROOM DIVIDERS/PARTITIONS CONTAINING RECOVERED PLASTIC OR STEEL

Material	Postconsumer materials (%)	Total recovered materials content (%)
Steel	16	20–30
Plastic	20–100	20–100

NOTE: EPA's recommendation does not preclude agencies from purchasing shower and restroom dividers/partitions manufactured from another material, such as wood. It simply recommends that procuring agencies, when purchasing shower and restroom dividers/partitions made from plastic or steel, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the following specifications when procuring shower and restroom dividers/partitions:

(1) The American Institute of Architects (AIA) has issued guidance for specifying construction materials, including plastic and steel dividers/partitions. The AIA guidance is known throughout the construction industry as the "Masterspec" and is available through the U.S. General Services Administration (GSA).

(2) U.S. Army Corps of Engineers' Guide Specification CEGS–10160, Toilet Partitions.

Section C–7—Reprocessed and Consolidated Latex Paints for Specified Uses

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–7, procuring agencies establish minimum content standards for use in purchasing reprocessed and consolidated latex paints.

TABLE C–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR REPROCESSED AND CONSOLIDATED LATEX PAINTS

Product	Postconsumer latex paint (%)
Reprocessed Latex Paint.	
White, off-white, and pastel colors	20
Grey, brown, earthtones, and other dark colors	50–99
Consolidated latex paint	100

NOTES: EPA's recommendations apply to reprocessed latex paints used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces, and to consolidated latex paints used for covering graffiti, where color and consistency of performance are not primary concerns.

EPA's recommendation does not preclude agencies from purchasing paints manufactured from other, non-latex materials, such as oil-based paints. It simply recommends that procuring agencies, when purchasing latex paints, purchase these items made from postconsumer recovered materials when these items meet applicable specifications and performance requirements.

Reprocessed and consolidated latex paints are available to Federal agencies through the GSA Federal Supply Service by ordering the following stock numbers:

National Stock Numbers	Colors FEDSTD 595B Color No.
Semi-gloss	
8010–01–380–2400	Beige #27769
8010–01–380–2405	Blue-gray #26420
8010–01–380–2438	Sand-green #26307
8010–01–380–2382	Sand-gray #26306
8010–01–380–2331	Gray #26134
8010–01–380–2429	Dark gray #26081
8010–01–380–2338	Green #24491
8010–01–380–2379	Sand #23690
8010–01–380–2332	Tan #23617
8010–01–380–2417	Tan #20372
8010–01–380–2353	Sand-yellow #20318
8010–01–380–2363	Dark brown #20140
8010–01–380–2447	Red brown #20100
Flat	
8010–01–380–3293	White #37886
8010–01–380–2425	Beige #37769

National Stock Numbers	Colors FEDSTD 595B Color No.
8010–01–380–2442	Blue-gray #36650
8010–01–380–2381	Gray #36134
8010–01–380–2367	Dark gray #36081
8010–01–380–2396	Blue #35526
8010–01–380–2366	Green #34491
8010–01–380–2421	Sand #33690
8010–01–380–2351	Tan #33617
8010–01–380–2416	Dark brown #30140

The GSA Federal Supply Service has a free paint brochure available by calling 1–800–241–RAIN or FAX requests to (206) 931–7544.

Specifications: (1) EPA recommends that procuring agencies use GSA specification TT–P–2846, Paint, Latex (Recycled with Post-Consumer Waste). This specification applies to interior, exterior, and interior/exterior latex paints intended for use on wallboard, concrete, stucco, masonry, and wood.

(2) GSA specification TT–P–2846 requires high content levels (50–90% postconsumer paint). EPA recommends that procuring agencies refer to the requirements and quality assurance provisions in TT–P–2846 when purchasing reprocessed latex paint containing lower levels of postconsumer paint (e.g., whites, off-whites, and pastel colors).

Part D—Transportation Products

Section D–2—Parking Stops Made from Concrete or Containing Recovered Plastic or Rubber

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table D–2, procuring agencies establish minimum content standards for use in purchasing parking stops.

TABLE D–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PARKING STOPS MADE FROM CONCRETE OR CONTAINING RECOVERED PLASTIC OR RUBBER—Continued

Material	Postconsumer content (%)	Recovered materials content (%)
Plastic and/or rubber	100	—
Concrete containing coal fly ash	—	20–40
Concrete containing GGBF slag	—	25–70

NOTES: Parking stops made with recovered plastics may also include other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the parking stops.

ASTM specification C595M–95 Standard Specification for Blended Hydraulic Cements specifies the appropriate mix design, including recovered materials content, for concrete containing coal fly ash and GGBF slag.

EPA's recommendation does not preclude a procuring agency from purchasing parking stops manufactured from another material. It simply requires that a procuring agency, when purchasing concrete parking stops or parking stops made with plastic or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Section D–3—Channelizers, Delineators, and Flexible Delineators Containing Recovered Plastic, Rubber, or Steel

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table D–3, procuring agencies establish minimum content standards for use in purchasing channelizers, delineators, and flexible delineators.

TABLE D–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR CHANNELIZERS, DELINEATORS, AND FLEXIBLE DELINEATORS CONTAINING RECOVERED PLASTIC, RUBBER, OR STEEL

Product	Material	Postconsumer content (%)
Channelizers	Plastic	25–95
	Rubber (base only)	100
Delineators	Plastic	25–90
	Rubber (base only)	100
	Steel (base only)	25–50
Flexible delineators	Plastic	25–85

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing channelizers, delineators, or flexible delineators manufactured from another material. It simply requires that a procuring agency, when purchasing these items made from rubber, plastic, or steel, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the following specifications when procuring channelizers, delineators, and flexible delineators:

(1) The Federal Highway Administration's *Manual on Uniform Traffic Control Devices* contains specifications for the size, shape, mounting, and placement of temporary traffic control devices.

(2) The States of Florida and North Carolina have specifications that require the use of recovered materials in their flexible delineators. The California Department of Transportation (CALTRANS) has specifications for "Drivable Flexible Plastic Guide Marker and Clearance Marker Posts." A copy of these specifications are available from the RCRA Hotline at 1–800–424–9346.

Part E—Park and Recreation Products

Section E–2—Plastic Fencing Containing Recovered Plastic for Specified Uses

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table E–2, procuring agencies establish minimum content standards for use in purchasing plastic fencing for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

TABLE E–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR FENCING CONTAINING RECOVERED PLASTIC

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastic	60–100	90–100

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing fencing manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic fencing, purchase this item made with recovered materials when this item meets applicable specifications and performance requirements.

Specifications: The State of New York developed a specification for orange-colored plastic fencing used for snow barriers, warning barriers, and safety barriers, but discontinued its use because the state did not purchase enough fencing to warrant maintaining the specification. Height varied, depending on application, from four to six feet. Weight varied from 17 pounds per 100 foot section for warning barriers to 48 pounds per 100 foot section for snow fencing to 66 pounds per 100 foot section for six-foot safety barrier fencing. The New York specification also addressed mesh size, porosity, service temperature range, and strength for each application. A copy of this specification is available from the RCRA Hotline by calling 1–800–424–9346.

Part F—Landscaping Products

Section F–3—Garden and Soaker Hoses Containing Recovered Plastic or Rubber

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table F–3, procuring agencies establish minimum content standards for use in purchasing garden and soaker hoses.

TABLE F–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR GARDEN AND SOAKER HOSES CONTAINING RECOVERED PLASTIC OR RUBBER

Product	Material	Postconsumer content (%)
Garden hose	Rubber and/or plastic	60–65
Soaker hose	Rubber and/or plastic	60–70

NOTES: EPA's recommendation does not preclude a procuring agency from purchasing garden and soaker hoses manufactured from another material. It simply requires that a procuring agency, when purchasing garden and soaker hoses made from plastic or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

The Green Seal specification for watering hoses includes a 50 percent postconsumer content level. However, all companies from which EPA obtained information manufacture garden and/or soaker hoses with at least 60 percent postconsumer content.

Specifications: EPA recommends that procuring agencies use the following specifications when procuring garden and soaker hoses:

(1) ASTM D3901 Consumer Specification for Garden Hose. The specification addresses physical and performance characteristics (pressure, tensile, and ripping strength tests) and states that the material components are to be agreed upon by the purchaser and seller.

(2) Green Seal GC–2: Watering Hoses. The standard calls for the use of 50 percent postconsumer rubber material in garden hoses and 65 percent postconsumer rubber material in soaker hoses. EPA recommends that, when purchasing garden hoses, procuring agencies reference the technical requirements of this specification but set a higher content standard. Section F–4—Lawn and Garden Edging Containing Recovered Plastic or Rubber

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table F–4, procuring agencies establish minimum content standards for use in purchasing lawn and garden edging.

TABLE F–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR LAWN AND GARDEN EDGING CONTAINING RECOVERED PLASTIC OR RUBBER

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastic and/or rubber	30–100	30–100

NOTES: EPA's recommendation does not preclude a procuring agency from purchasing lawn and garden edging manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing lawn and garden edging made from plastic and/or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Part G—Non-Paper Office Products

Section G–6—Printer Ribbons

Preference Program: Minimum content standards are not appropriate for remanufactured items, such as printer ribbons, because a core part of the item is reused in the new product, even though certain components of a printer ribbon may contain recovered materials. In lieu of content standards, EPA recommends that procuring agencies adopt one or both of the following approaches: (1) procure printer ribbon reinking or reloading services or (2) procure reinked or reloaded printer ribbons. EPA further recommends that procuring agencies establish policies that give priority to reinking or reloading their expended printer ribbons. If reinking and reloading services are unavailable, procuring agencies should attempt to purchase reinked or reloaded printer ribbons. GSA offers remanufactured printer ribbons on the New Item Introductory Schedule (NIIS).

Specifications: The State of Alabama has a specification for reinked ribbons which requires the ribbons to be vacuum cleaned, reinked, and rewound to proper tension. A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

Section G–7—Plastic Envelopes

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–7, procuring agencies establish minimum content standards for use in purchasing plastic envelopes.

TABLE G–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC ENVELOPES

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastic	25	25–35

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing envelopes manufactured from another material, such as paper. It simply requires that a procuring agency, when purchasing envelopes made from plastic, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements. Procuring agencies should note, however, that paper envelopes fall within the scope of EPA's previous designation of paper and paper products. EPA issued postconsumer and recovered materials content recommendations for paper products, including envelopes, in the Paper Products RMAN, which was issued in the FEDERAL REGISTER on May 29, 1996 at 61 FR 26985. A copy of the Paper Products RMAN is available from the RCRA Hotline at 1–800–424–9346 and electronically via EPA's Public Access Server at http://www.epa.gov/fedrgstr/search.htm.

Specifications: (1) GSA, the Government Printing Office (GPO), and the U.S. Postal Service (USPS) all currently purchase plastic envelopes made from Tyvek® containing recovered HDPE. GSA specifies "DuPont Tyvek® or equal." USPS requires "DuPont Tyvek®." GPO requires "white spunbonded polyethylene with the characteristics of DuPont's product no. 1073;" the title of the solicitation, however, states "Tyvek® envelopes or similar."

(2) The Navy requests that plastic envelopes not be sent to ships in order to minimize onboard disposal of plastic.

Part H—Miscellaneous Products

Section H–1—Pallets Containing Recovered Wood, Plastic, or Paperboard

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–1, procuring agencies establish minimum content standards for use in purchasing pallets.

TABLE H–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PALLETS CONTAINING RECOVERED WOOD, PLASTIC, OR PAPERBOARD

Product	Material	Postconsumer content (%)
Wooden pallets	Wood	95–100
Plastic pallets:		
Plastic lumber	Plastic	100
Thermoformed	Plastic	25–50
Paperboard pallets	Paperboard	50

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing pallets manufactured from another material. It simply requires that a procuring agency, when purchasing pallets made from wood, plastic, or paperboard, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the following specifications when procuring pallets:

(1) The Grocery Manufacturers of America issued a widely used standard for 48 by 40-inch stringer pallets known as the "GMA spec." A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

(2) The National Wooden Pallet and Container Association is developing a standard through the American National Standards Institute (ANSI) for repairable 48 by 40-inch lumber-deck pallets. Contact NWPCA at (703) 527–7667 for current information about the availability of this standard.

(3) U.S. Postal Service specification USPS–P–1108, "Pallet, Nestable, Plastic, Thermoformed (Item No. 3919B)" is for thermoformed HDPE pallets. A copy of the current version, USPS–P–1108E, is available from the RCRA Hotline at 1–800–424–9346.

[FR Doc. 97–29733 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
November 13, 1997

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 47

National Mine Health and Safety Academy; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 47

RIN 1219–AB04

National Mine Health and Safety Academy

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the existing MSHA standards for charging tuition and room and board at MSHA's National Mine Health and Safety Academy (Academy) in Beckley, West Virginia. The final rule provides that MSHA may waive tuition fees and room and board charges for the training or meetings of students and non-profit organizations, after the Agency determines that the program would improve the implementation of a statutory function or an activity under the Federal Mine Safety and Health Act of 1977 (Mine Act) or a function related to an MSHA appropriation.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; MSHA, Office of Standards, Regulations, and Variances; phone 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This final rule contains no information collection requirements.

II. Introduction and Rulemaking Background

Under § 502(c)(1) of the Mine Act, the Academy is responsible for training programs for mine inspectors, mining personnel, or other persons as designated by the Secretary of Labor.

On March 22, 1985, MSHA published a final rule (50 FR 11642) in part 47 of title 30 of the Code of Federal Regulations. Part 47 contains the Agency's regulations on tuition fees, procedures for tuition payment and refunds, and charges for room and board. The rule was promulgated pursuant to OMB Circular A–25, which provides that government agencies are to recover all expenses for federally provided services which convey special benefits to recipients beyond those accruing to the general public.

Existing § 47.10 provides that the Academy will charge tuition fees to all persons attending Academy courses except employees of Federal, State, or local governments and persons attending the Academy under an MSHA State grant program. The authority to waive tuition fees was based, in part, upon § 302 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4742), which generally permits Federal agencies to admit State and local government employees to Agency training programs established for Federal personnel and to waive the costs of training.

Existing § 47.50 states that the Academy will charge room and board to all persons staying at the Academy except MSHA personnel, other persons performing a direct service for MSHA, and persons attending the Academy under a program supported through an MSHA State grant. Under existing § 47.50, MSHA has discretion, although very limited, to waive expenses for room and board for private persons, provided that they are performing a direct service for MSHA. For example, this provision may be applied when persons actively participate in the presentation of an Agency-sponsored event.

The general prohibition on waiving the collection of room and board expenses was derived from 31 U.S.C. 551 (now 31 U.S.C. 1345) which prohibits the use of appropriated funds for transportation and room and board for non-governmental personnel. The narrow discretion to waive the collection of room and board expenses for private persons performing a direct service for MSHA was derived from 5 U.S.C. 5703 which authorizes per diem, travel, and transportation expenses for non-governmental personnel, such as experts, consultants, and persons serving without pay.

Since promulgation of the current regulation, the Department of Labor has received permanent Congressional authorization to use appropriated funds for expenses for non-governmental attendees at meetings, including training seminars. Section 505 of Pub. L. 102–394, 106 Stat. 1792 (Oct. 6, 1992), the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for fiscal year 1993 provides permanent authority to use specified appropriations for:

> • • • [the] expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities.

MSHA believes that this authority can be used effectively to advance safety and health protection for the Nation's miners by fostering the professional expertise and participation of non-profit organizations and students who can assist the Agency in the implementation of its statutory functions related to activities such as inspections, investigations, compliance promotions, accident prevention initiatives, and training development programs.

On occasion, under appropriate statutory authority, MSHA authorizes, on a reimbursable basis, use of the Academy for programs unrelated to the Agency's mission. This practice is unchanged by the final rule.

III. Discussion and Summary of the Final Rule

The final rule amends existing §§ 47.10 and 47.50, regarding tuition fees and room and board charges at the Academy by adding a new provision allowing MSHA discretion to waive such fees and charges for students, or persons employed by non-profit organizations to attend training or meetings. MSHA may waive such fees only when training or a meeting at the Academy would contribute to an improvement in the conduct, supervision, or management of a Mine Act function or activity or a function related to an MSHA appropriation. The training or meeting would have to be MSHA-sponsored, and the qualifying non-governmental personnel would have to be invited by MSHA to participate in the training or meeting. Requests for waivers must be in writing.

The objective of this rule is to further MSHA's mission of preventing accidents and illnesses among miners through education. The waiver of fees and room and board charges will be dependent upon the availability of MSHA resources. In implementing this rule, MSHA may waive fees and charges after determining that the content of the training or meeting furthers the Agency's mission or a function related to an MSHA appropriation. MSHA will not waive fees and room and board charges for any program unrelated to the Agency's mission.

MSHA reserves the authority not to grant a waiver of fees, in whole or in part, although the training or meeting may directly further the Agency's mission and the person is invited by MSHA. The Agency intends to administer the rule in a fair and equitable manner in order to expand safety and health educational opportunities for the mining public. Training for MSHA personnel will be given first priority.

IV. Exemption From Notice and Comment

This final rule amends a general statement of Agency practice and relates to Agency management. Publication of a general notice of proposed rulemaking, therefore, is not required by the Administrative Procedure Act, 5 U.S.C. 553.

V. Executive Order 12866, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of final regulations. It has been determined that this final rule is a significant regulatory action. MSHA has determined that this final rule will further the Agency's mission of preventing accidents and illnesses among miners through education at an annual cost of approximately $60,000.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the SBREFA amendments to the RFA, MSHA must consult with the Small Business Administration (SBA) concerning any rule for which a regulatory flexibility analysis is required. This is not a major rule under SBREFA. This final rule imposes no costs on the public. A regulatory flexibility analysis, therefore, is not required. In the spirit of SBREFA, however, the Agency has provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all mine operators and miners' representatives.

Regulatory Flexibility Certification Statement

In accordance with § 605 of the RFA, MSHA certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

The Agency has used a qualitative approach in concluding that the final rule does not have a significant impact on a substantial number of small entities. MSHA estimated that the final rule would result in an annual net benefit to the public and that the only effect of the final rule will be to reduce costs to the public. Therefore, there is no need for a regulatory flexibility analysis.

VI. Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect small governments.

List of Subjects in 30 CFR Part 47

Education, Intergovernmental relations, Mine safety and health.

Dated: November 6, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, part 47, chapter I, subchapter H, of title 30 of the Code of Federal Regulations is amended as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 continues to read as follows:

Authority: 30 U.S.C. 957.

2. Section 47.10 is revised to read as follows:

§ 47.10 Tuition fees.

The National Mine Health and Safety Academy, located in Beckley, West Virginia, will charge tuition fees to all persons attending Academy courses, except employees of Federal, State, or local governments, persons attending the Academy under a program supported through an MSHA State grant, and persons performing a direct service. Also, subject to available resources, MSHA may waive all or part of fees for students, or persons employed by a non-profit organization, who are invited by MSHA to attend an Academy course which would, in the Agency's judgment, contribute to improved conduct, supervision, or management of a function or activity under the Federal Mine Safety and Health Act of 1977 or a function related to an MSHA appropriation. Requests for waivers must be in writing.

3. Section 47.50 is revised to read as follows:

§ 47.50 Charges for room and board.

The Academy will charge room and board to all persons staying at the Academy, except MSHA personnel, persons attending the Academy under a program supported through an MSHA State grant, and persons performing a direct service. Also, subject to available resources, MSHA may waive all or part of fees for students, or persons employed by a non-profit organization, who are invited by MSHA to attend an MSHA-sponsored training or meeting which would, in the Agency's judgment, contribute to improved conduct, supervision, or management of a function or activity under the Federal Mine Safety and Health Act of 1977 or a function related to an MSHA appropriation. Requests for waivers must be in writing. Charges for room and board will be based upon the average cost per person of the lodging, meals, and services provided and will be reassessed on an annual basis.

[FR Doc. 97–29900 Filed 11–12–97; 8:45 am]

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Part VI

Department of Education

Notice Inviting Application for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program

Purpose

The Secretary announces closing dates for applications from institutions that wish to be designated as an eligible institution under the Strengthening Institutions Program authorized under Title III, part A of the Higher Education Act of 1965, as amended (HEA). If an institution qualifies as an eligible institution under that program, it is eligible to receive program funds if it submits a successful grant application. It is also eligible to have certain of its matching requirements waived under the Federal Supplemental Educational Grant (FSEOG) and Federal Work Study (FWS) Programs. Moreover, the institution is eligible for a waiver even if it does not apply for a grant under the Strengthening Institutions Program. (The FSEOG and FWS programs are student financial assistance programs authorized under Title IV of the HEA.)

The Department will hold a Fiscal Year 1998 funding competition for new awards under the Strengthening Institutions Program and will publish a closing date notice in a future **Federal Register**. (There will be no competition for new awards under the Hispanic-Serving Institutions and Endowment Challenge Grant Programs because no funds were appropriated for those awards.)

An institution that wishes to be designated as an eligible institution under the Strengthening Institutions Program for any purpose must submit its application to the Department by February 2, 1998.

If an institution submits its application by December 29, 1997, the Department will notify the applicant of its eligibility status by February 2, 1998. If an applicant believes it failed to be designated as an eligible institution because of errors in its application or insufficient information in its waiver request, it may submit an amended application to the Department no later than March 20, 1998.

If an applicant submits its initial application after December 29, 1997, but on or before February 2, 1998, the Department does not guarantee that it will be able to review the application and notify the applicant in time for the applicant to submit an amended application by March 20, 1998, the deadline date for amended applications.

An applicant will not be designated as an eligible institution if the applicant misses the February 2, 1998 deadline for initial applications or the March 20,1998 deadline for amended applications. The Department strongly recommends that applicants apply by December 29,1997 to take advantage of the opportunity to amend unapproved applications.

Deadline for Transmittal of Applications

December 29, 1997 for early applications, February 2, 1998 for all initial applications, and March 20, 1998 for amended applications. These deadlines apply to institutions of higher education that anticipate competing for new awards under the Strengthening Institutions Program, and for institutions that plan to obtain a waiver of certain non-Federal share requirements under the FSEOG and FWS Programs.

Applications Available

November 20, 1997.

Eligibility Information

To qualify as an eligible institution an applicant must (1) be accredited or preaccredited by a nationally recognized accrediting agency; (2) be legally authorized by the State in which it is located to be a junior or community college or to provide a bachelor's degree program; and (3) have a high enrollment of needy students. In addition, its educational and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in the Strengthening Institutions Program regulations, 34 CFR 607.2–607.5.

Enrollment of Needy Students

Under 34 CFR § 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction. To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1995–96 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational and General Expenditures per Full-Time Equivalent Student

An institution should compare its average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditure for the 1995–1996 base year is less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the average E&G expenditures per FTE student for the four categories of comparable institutions:

	Median Federal Pell Grant percentage	Average E&G expenditure per FTE student
2-year Public Institutions	30.16	$7,114
2-year Non-Profit Private Institutions	31.57	11,704
4-year Public Institutions	28.00	16,594
4-year Non-Profit Private Institutions	28.53	22,479

Waiver Information

Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 607.3(b) and 607.4(c) and (d). *Institutions requesting a waiver of the needy student requirement must include the detailed information as set forth in the instructions for completing the application.*

The waiver authority provided in 34 CFR 607.3(b)(2) and (3), refers to "low-income" students and families. The regulations define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level in 1995–97 base year as established by the U.S. Bureau of the Census, 34 CFR 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

1995–96 BASE YEAR LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia, and outlying jurisdictions	Alaska	Hawaii
1	$11,205	$14,010	$12,915
2	15,045	18,810	17,325
3	18,885	23,610	21,735
4	22,725	28,410	26,145
5	26,565	33,210	30,555
6	30,405	38,010	34,965
7	34,245	42,810	39,375
8	38,085	47,610	43,710

For family units with more than eight members, add the following amount for each additional family member: $3,840 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,800 for Alaska; and $4,410 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 9, 1995 (Volume 60, Number 27, pages 7772–7774).

In reference to the waiver option specified in § 607.3(b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by requesting the *Metropolitan Statistical Areas, 1993*, order number PB 93–192664, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. There is a charge for this publication.

Applicable Regulations

Regulations applicable to the eligibility process include the Strengthening Institutions Program Regulations in 34 CFR part 607, and the Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 82, 85, and 86.

For Applications or Information Contact

Blanca Westgate or Jane Wrenn, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals CY–80) Washington, D.C. 20202–5335. Telephone: (202) 708–8866, 708–9926 and 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: November 5, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–29796 Filed 11–12–97; 8:45 am]
BILLING CODE 4000–01–P

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Part VII

The President

Notice of November 12, 1997—
Continuation of Emergency Regarding
Weapons of Mass Destruction

Federal Register
Vol. 62, No. 219
Thursday, November 13, 1997

Presidential Documents

Title 3—

The President

Notice of November 12, 1997

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons ("weapons of mass destruction") and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on November 14, 1994, and extended on November 14, 1995 and November 14, 1996, must continue in effect beyond November 14, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 12, 1997.

[FR Doc. 97-30110
Filed 11-12-97; 11:40 am]
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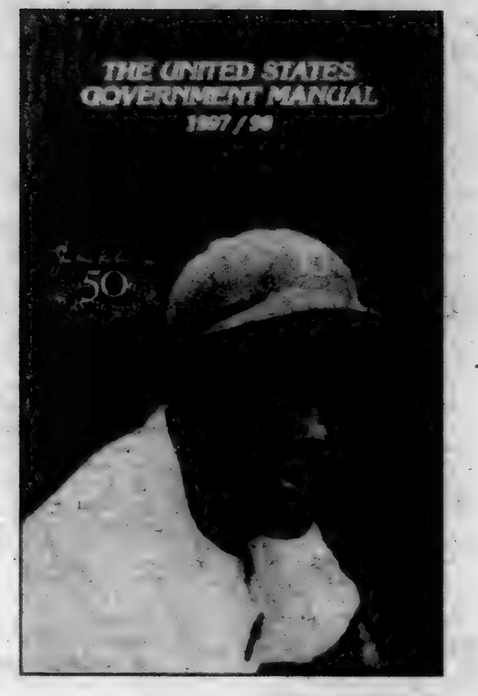
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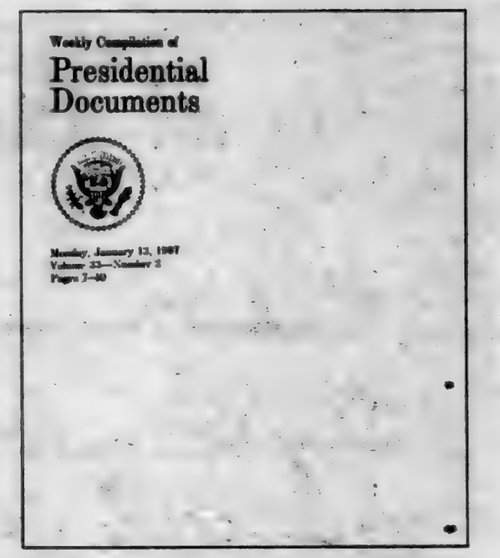
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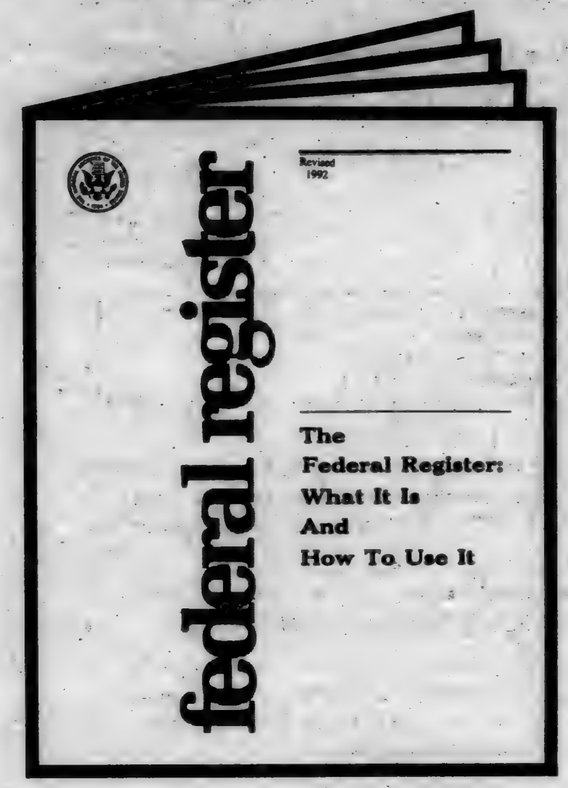
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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Memorandum of November 4, 1997

Authorization To Redelegate Certain Responsibilities Vested in the President and Delegated to the Secretary of State

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States, including section 301 of Title 3 of the United States Code, to the extent that you consider doing so appropriate to facilitate the consolidation of the Arms Control and Disarmament Agency and the Department of State, I hereby authorize you to redelegate to any officer of the executive branch any or all authorities vested in the President that are delegated to the Secretary of State by any act, order, determination, delegation of authority, regulation, or Executive order heretofore or hereinafter enacted or issued and that have been or may be redelegated to the Under Secretary of State for Arms Control and International Security Affairs.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 4, 1997.

[FR Doc. 97–30160
Filed 11–13–97; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 62, No. 220
Friday, November 14, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Revision of Freedom of Information Act Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (FLRA) are amending their regulations governing the release of information as these regulations pertain to the timing of FLRA responses to requests for information. This action is taken to conform the FLRA's regulations to the requirements of the Freedom of Information Act, 5 U.S.C. 552, *et seq.* (FOIA), as amended by the Electronic Freedom of Information Act Amendments of 1996 (EFOIA).

DATES: Effective November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, N.W., Room 415, Washington, D.C. 20424–0001, or by telephone at (202) 482–6540.

SUPPLEMENTARY INFORMATION: Through the EFOIA, Pub. L. 104–231, 110 Stat. 3048 (1996) Congress amended the FOIA, 5 U.S.C. 552 et seq., to, among other things, increase the time limit for agency responses to requests for information from ten (10) to twenty (20) working days. Accordingly, the FLRA is amending its regulations at 5 CFR Part 2411 to reflect this change. The revisions to the FLRA's FOIA regulations set forth below are neither interpretive nor controversial. For these reasons, the FLRA finds good cause to determine that public notice of, and comments on, this amendment are impracticable, unnecessary, and contrary to the public interest. Therefore, pursuant to 5 U.S.C. 553(b), this regulatory action is exempt from notice and comment requirements.

Executive Order 12866

This final regulation has been reviewed in accordance with Executive Order 12866. It is not classified as significant because it does not meet the criteria for significant regulatory action established by the E.O.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The amendments are procedural in nature and are required to implement EFOIA.

Paperwork Reduction Act of 1995

The proposed regulations contain no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*.

List of Subjects in 5 CFR Part 2411

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons stated in the preamble, the FLRA amends part 2411 of chapter XIV, title 5 of the Code of Federal Regulations as follows:

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. In § 2411.6, paragraph (b) is revised to read as follows:

§ 2411.6 Time limits for processing requests.

* * * * *

(b) Except as provided in § 2411.8, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, shall, within twenty (20) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

* * * * *

3. In § 2411.10, paragraph (g)(2) is revised to read as follows:

§ 2411.10 Fees.

* * * * *

(g) * * *

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the Authority, the General Counsel or the Panel requires the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel or the Panel acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel or the Panel has received fee payments described above.

* * * * *

Dated: November 7, 1997.

Solly Thomas,

Executive Director.

[FR Doc. 97–29915 Filed 11–13–97; 8:45 am]
BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV97–355]

Revision to Part 46, Regulations Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising the regulations (other than Rules of Practice) Under the Perishable Agricultural Commodities Act (PACA or Act) to establish that electronic transmissions are "ordinary and usual billing or invoice statements" within the meaning of the PACA.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, 1400 Independence Avenue, S.W.,Washington, D.C. 20250, Phone (202) 720–4180.

SUPPLEMENTARY INFORMATION: This regulation is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The PACA establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. It protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. Thus, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefitting the whole marketing chain from farmer to consumer. The PACA provides for a forum to adjudicate commercial disputes in which USDA may award damages against a licensee who fails to meet contractual obligations in violation of the Act. The law also imposes a statutory trust on perishable agricultural commodities received but not yet paid for, products derived from those commodities, and any receivables or proceeds due from the sale of those commodities or products thereof for the benefit of unpaid suppliers or sellers. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA Amendments of 1995, among other things, eliminated the requirement for unpaid produce suppliers to file trust notices with USDA in order to preserve their trust rights under the statutory trust provision of the Act. Additionally, the amendments to the PACA allow unpaid sellers of fresh and frozen fruits and vegetables to preserve trust benefits by adding language to "ordinary and usual billing or invoice statements" that advises the buyer of the creditor's intention to preserve trust benefits. This addition of language indicating the intent to preserve trust benefits to bills or invoices eliminates the need for a trust creditor to provide any additional notice to the debtor of the creditor's intention to preserve trust benefits. However, the Act does not explicitly declare that information transmitted in the course of electronic transactions would constitute "ordinary and usual billing or invoice statements".

On January 15, 1997, the United Fresh Fruit and Vegetable Association (UFFVA), a produce industry trade association based in Alexandria, Virginia, petitioned AMS to adopt regulations under the PACA to recognize the use of Electronic Data Interchange. Ten other produce industry organizations joined the UFFVA on the petition. The petitioners sought clarification as to whether EDI transactions are considered by AMS to be "ordinary and usual billing or invoice statements" within the meaning of the 1995 PACA amendments. USDA agreed with petitioners that a revision to the regulations would eliminate any uncertainty in this regard and would ensure that licensees can use reasonable technological advances while still receiving appropriate trust protection under the PACA.

Therefore, USDA proposed a change in the PACA regulations to achieve this end. The proposal was published in the **Federal Register** on June 20, 1997 (62 FR 33574). The proposal contained a definition for the term "ordinary and usual billing or invoice statements" to be added in section 46.46(a) as follows:

"Ordinary and usual billing or invoice statements" as used in section 5(c)(4) of the Act and "invoice or other billing statement" as used in section 46.46(f)(3) mean communications customarily used between parties to a transaction in perishable agricultural commodities in whatever form, documentary or electronic, for billing or invoicing purposes.

The proposed definition specifies that "ordinary and usual billing or invoice statements" as used in the PACA and "invoice or other billing statement" as used in section 46.46(f)(3) include both paper documentation and electronic transmissions customarily used between a seller and a buyer for billing or invoicing purposes. This change to the regulations is very similar to the change suggested in the UFFVA petition. The 30-day comment period on the proposed rule closed on July 21, 1997.

Comments

USDA received comments on the proposed rule from the American Frozen Food Institute (AFFI), McLean, Virginia; Western Growers Association, Newport Beach, California; Driscoll's Strawberry Associates, Inc., Watsonville, California; and The Nunes Company, Inc., Salinas, California. All of the commentors supported USDA's proposal to amend the regulations to establish that electronic transmissions are "ordinary and usual billing or invoice statements" within the meaning of the PACA.

In its favorable comment, AFFI suggested that in order to clarify and strengthen the proposal, USDA should confirm in the final rule that including a statement on an electronic invoice or other billing document that the sale is subject to the provisions of the PACA statutory trust will satisfy the notice requirements under the statute. AFFI is concerned that the statement preserving trust benefits may not be recognized as a standard data field on an electronic document, and therefore may not be received or read by the party to which the information is being disclosed. However, as we stated in the preamble to the proposed rule, both parties to an electronic transaction must agree to the format of the information to be transmitted and received in an electronic transmission. USDA believes that this agreement is the proper forum for ensuring that the buyer receives notice of trust preservation from the seller in the electronic transmission. The PACA requires that the seller give notice to the buyer in order to preserve its trust benefits. Therefore, a seller engaged in electronic transactions must ensure in the agreement with its buyer that the buyer is receiving the trust statement as part of the electronic transmission. Otherwise, the seller is responsible for finding other means of giving notice to the buyer in order to qualify for PACA trust protection. Under these circumstances, USDA is making no change to the final rule based on this comment.

Executive Orders 12866 and 12988

This rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, many of which may be classified as small entities.

The revised regulations establish that the electronic transmissions used in perishable agricultural commodity transactions are, in fact, "ordinary and usual billing or invoice statements." The use of electronic transactions is voluntary, and the revised regulations specifically provide companies an electronic alternative to paper documentation to give notice of intent to preserve trust rights.

Accordingly, based on the information in the above discussion, AMS has determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements covered by this rule were approved by OMB on October 31, 1996, and expires on October 31, 1999.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

2. In § 46.46, a new paragraph (a)(5) is added to read as follows:

§ 46.46 Statutory trust.

* * * * *

(a) * * *

(5) "Ordinary and usual billing or invoice statements" as used in section 5(c)(4) of the Act, and "invoice or other billing statement" as used in § 46.46(f)(3), mean communications customarily used between parties to a transaction in perishable agricultural commodities in whatever form, documentary or electronic, for billing or invoicing purposes.

Dated: November 7, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–29926 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket Nos. AO–00–A7; FV96–927–1]

Winter Pears Grown in Oregon, Washington, and California; Order Amending the Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order (order) for winter pears grown in Oregon, Washington, and California. The amendments remove the State of California from the order and make related changes to provisions concerning the production area, districts, and establishment and membership of the Committee. Another amendment allows the use of telecopiers or other electronic means in Committee voting procedures. The amendments will improve the administration, operation and functioning of the order.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or FAX (202) 720–5698; or Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, OR 97204–2807; telephone (509) 326–2724 or FAX (509) 326–7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 24, 1996, and published in the June 28, 1996, issue of the **Federal Register** (61 FR 33047). Recommended Decision and Opportunity to File Written Exceptions issued on June 9, 1997, and published in the **Federal Register** on June 16, 1997 (62 FR 32548). Secretary's Decision and Referendum Order issued July 22, 1997, and published in the **Federal Register** on July 28, 1997 (62 FR 40310).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The final rule was formulated on the record of a public hearing held in Sacramento, California, on July 9, 1996, and in Portland, Oregon, on July 10, 1996, to consider the proposed amendment of Marketing Order and Agreement No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to as the "order." Notice of the Hearing was published in the June 26, 1996, issue of the **Federal Register** (61 FR 33047).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained proposals submitted by the Winter Pear Control Committee (Committee), which locally administers the order.

The Committee's proposals pertained to: (1) revising the definition of "production area" to mean only the States of Oregon and Washington; (2) revising "district" by removing California, leaving only those districts designated in the States of Oregon and Washington; (3) revising "establishment and membership" of the Committee to be consistent with the reduction in size of the regulated production area; (4) revising "procedure of Control Committee", "(a) quorum and voting", so that the number of members needed for a quorum is consistent with the revised Committee representation, and amending "(b) mail voting", to allow for the use of telecopiers and other electronic means; and (5) revising the definition of "pears" to exclude pears produced in California.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on June 9, 1997, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by June 26, 1997. No exceptions were received.

A Secretary's Decision and Referendum Order was issued on July 22, 1997, directing that a referendum be conducted during the period August 8 through August 29, 1997, among producers of winter pears in Oregon, Washington, and California to determine whether they favored the proposed amendments to the order. All of the proposed amendments were favored by more than the requisite two-thirds of the producers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all winter pear handlers throughout the production area for their approval. The marketing agreement was signed by handlers of more than 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 1996, through June 30, 1997.

Also, this final rule includes an additional modification to the regulatory text concerning the definition of "pears" to clarify that the definition applies to winter pears that are grown in the production area.

Small Business Considerations

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1800 winter pear producers in Oregon, Washington, and California and approximately 100 handlers of winter pears who are subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that handlers will not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1995–96 crop year, approximately 100 handlers were regulated under Marketing Order No. 927. In addition, there were about 1,800 producers of winter pears in the production area. Production for the 1995–96 season showed that 15,316,776 standard boxes were produced in Oregon and Washington, while California produced 434,380 standard boxes.

The removal of the State of California will allow the Northwest winter pear industry to operate more efficiently. There are approximately 60 growers and 19 handlers of winter pears in California who have asked to be removed from the marketing order since the harvesting and marketing seasons for California pears are different than those for pears grown in Oregon and Washington. Production for the 1995–96 season showed that 15,316,776 standard boxes were produced in Oregon and Washington, while California produced 434,380 standard boxes. Revenue generated from assessments collected in 1995–96 would be $175,923 from California compared to $6,203,295 from Oregon and Washington.

Record evidence indicated that during the 1994–95 crop year winter pears were assessed at $.43 per standard box. According to preliminary figures in the record, returns to handlers per standard box for that year were $8.31. The assessment rate is about 5 percent of the preliminary returns.

California growers believed they were funding promotion programs that are in direct competition with their own product. Record evidence showed that there will not be any additional burden imposed on handlers with the implementation of these amendments. In fact, handlers in the State of California will be relieved of any regulatory burden. Those in Oregon and Washington will continue to benefit from operation of the program. There are currently 1,700 winter pear growers and 93 winter pear handlers in Oregon and Washington producing over 15 million standard boxes of pears annually. In California, there are approximately 60 winter pear growers and 19 handlers of winter pears producing over 400,000 standard boxes of pears annually.

Record evidence also showed that the collection of information under the marketing order will not be effected by removing California from the marketing order. A witness testified that there are alternatives that will replace the current information that is being collected from the State of California, if it is needed. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

The amendment allowing Committee members to vote by telecopiers or other electronic means provides members with the option to use these methods if available when voting on an action is to be done quickly. This allows Committee members to vote without assembling at a meeting place and, therefore, reduce administrative costs and act quickly on a recommendation that needs the Committee's attention. "Other electronic means" includes the use of modems, video and teleconferencing. The term is flexible to allow for the use of new technologies by the Committee for voting.

The additional amendments are changes that need to be made to the marketing order to reflect the removal of the State of California.

All of these amendments are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry.

Order Further Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and applicable rules of practice and procedure effective thereunder (7 CFR part 900), public hearings were held upon the amendments to Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings were held;

(3) The order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The order, as amended, as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in the production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective one day after publication.

This final order changes the production area by removing the State of California from order provisions. Upon the effective date of this order, effected parties will need to be informed of these provisions. In addition, the committee needs to make budgetary and other administrative decisions implementing the new provisions. The 1997–98 fiscal period began on July 1, 1997, and these provisions need to be in place as soon as possible as handlers are already shipping winter pears. A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective one day after publication, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping winter pears covered by the said order, as amended, and as hereby further amended) who, during the period July 1, 1996, through June 30, 1997, handled 50 percent or more of the volume of such winter pears covered by said order, as amended, and as hereby further amended, have signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 1996, through June 30, 1997 (which has been deemed to be a representative period), have been engaged within the production area in the production of such winter pears for fresh market.

(3) The signed marketing agreement and the issuance of this amendatory order are the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of winter pears in the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Recommended Decision issued by the Administrator on June 9, 1997, and published in the **Federal Register** on June 16, 1997 (62 FR 32548), and in the Secretary's Decision issued on July 22, 1997, and published in the **Federal Register** on July 28, 1997 (62 FR 40310), and as modified in this final rule, shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The part heading is revised to read as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

3. Section 927.4 is revised to read as follows:

§ 927.4 Pears.

Pears means and includes any and all of the Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Forelle, and Seckel varieties of pears, and any other winter pear varieties or subvarieties that are grown in the production area and are recognized by the Control Committee and approved by the Secretary.

4. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon and Washington.

§ 927.11 [Amended]

5. In § 927.11, paragraph (e) is removed.

§ 927.20 [Amended]

6. Section 927.20 is amended by removing the number "14" in the first sentence and adding in its place the number "12", and removing the word "seven" each time it appears in the third sentence and adding in its place the word "six".

§ 927.33 [Amended]

7. In § 927.33, paragraph (a) is amended by removing the word "ten" in the first sentence and adding in its place the word "nine"; and adding the words "telecopier or other electronic means," and a comma after the word "mail" in paragraph (b) first sentence.

Dated: November 7, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–29927 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–066–2]

Importation of Sliced and Pre-Packaged Dry-Cured Pork Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to allow dry-cured pork products that have been sliced and packaged prior to shipment to the United States to be imported into the United States under specified conditions. This action will relieve some restrictions on the importation of pork into the United States without presenting a significant risk of introducing any serious communicable diseases of animals.

EFFECTIVE DATE: December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Sturm, Supervisory Staff Officer, Products Program, National Center for Import and Export, VS, APHIS, Suite 3B66, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3277; or E-mail: jsturm@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, hog cholera, African swine fever, and swine vesicular disease, into the United States. These are dangerous and destructive communicable diseases of ruminants and swine.

Under the regulations, certain animal products—whole hams, pork shoulders, and pork loins—from regions where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists may be imported into the United States only under certain conditions. To be eligible for importation, these products must have been dry-cured and otherwise handled in accordance with procedures specified in § 94.17 of the regulations. However, the regulations have not allowed these same products to be eligible for importation if they have been sliced and packaged prior to shipment. We have prohibited the importation of sliced and packaged dry-cured hams, pork shoulders, and pork loins because of the difficulty in verifying the origin of the meat and how it has been processed. Without this information, we cannot easily determine whether the meat has been treated and otherwise handled in a manner that ensures it is free of disease agents.

On April 14, 1997, we published in the **Federal Register** (62 FR 18055–18059, Docket No. 96–066–1) a proposal to allow presliced and prepackaged dry-cured pork to be imported into the United States under certain conditions from countries[1] where foot-and-mouth disease, rinderpest, swine vesicular disease, African swine fever, and hog cholera exist. The proposed conditions were designed to ensure that the origin of the pork and the method of processing could be verified.

We solicited comments concerning our proposal for 60 days ending June 13, 1997. We received 13 comments by that date. They were from importers, foreign governments and meat processors, and one veterinarian. The comments were primarily positive. Several comments suggested changes in the proposed regulations. These suggestions are discussed individually below.

Separation of Facilities

In our proposed rule, we required that the slicing/packaging facility itself would have to be in a separate building, physically detached from any area where pork or pork products are handled for other purposes. This requirement was designed to prevent any possible contamination of the meat.

Several commenters objected to this requirement as unnecessarily restrictive. Commenters made various suggestions as to how we could minimize contamination without requiring a separate building for the slicing/packaging facility. Among the suggestions were: require workers moving from the pork processing facility to the slicing/packaging facility to change into either freshly laundered or disposable clothing, including caps, masks, gloves and footwear; require a "changing/scrub" room for employees; and require "walls, doors, passageways, etc."

After carefully considering these comments, we have determined that our proposed requirement that the slicing/packaging facility be in a separate building is overly restrictive. Having the slicing/packaging facility in a separate building would achieve our goal of separating the facilities so that disease agents cannot be transmitted from areas in the facility where pork is cured and dried to the slicing/packaging facility. However, it may not be practical in all situations, and we believe the desired goal can be accomplished by other means. Therefore, our final rule (§ 94.17(p)(1)(ii)) will state that the slicing/packaging facility may either be in a separate, physically detached building, or in a separate room within the same building where the pork is cured and dried if the slicing and packing room has no direct access to areas in the facility where pork is cured and dried and if the room can be closed off from the rest of the facility so unauthorized individuals cannot enter.

We are not making any changes based on the commenters' suggestions regarding showering and clothing for workers. Our proposed rule included a requirement (see § 94.17(p)(1)(ix)) that workers in the slicing/packaging facilities who handle dry-cured hams, pork shoulders, and pork loins either shower and put on a full set of clean clothes, or wait 24 hours after handling other pork or pork products before handling dry-cured pork hams, pork shoulders, or pork loins in the facility that are intended for importation into the United States. We believe the commenters' suggestions are already covered by this requirement.

Safeguards

One commenter objected that our proposed rule would eliminate "critical safeguard and identification points." The commenter pointed out that no individual identification would remain on the pork after slicing and packaging, and that the Animal and Plant Health Inspection Service (APHIS) would have to rely on "paper certification" and records compiled by facilities that process, slice, and package dry-cured pork products.

As discussed in our proposal, we believe that the combination of inspection and recordkeeping requirements included in this rulemakng will allow verification of the meat's origin, treatment, and handling. Therefore, we have made no changes in response to this comment. Our rule provides for periodic inspections of slicing/packaging facilities (see proposed § 94.17(p)(1)). These include inspections by both APHIS personnel and personnel from the Food Safety Inspection Service (FSIS) of the U.S. Department of Agriculture. In addition, our rule requires slicing/packaging facilities to maintain specific, detailed records on the source and identity of all dry-cured pork they handle (see § 94.17(p)(1)(iv)). Access to these records must be restricted to officials of the national government of the region of origin, representatives of the United States Government, and persons maintaining the records (see § 94.17(p)(1)(v)). In addition, APHIS representatives, or individuals authorized by APHIS, will make unannounced visits to inspect the facility and the required records (see § 94.17(p)(1)(viii)).

Since April 1987, similar recordkeeping and inspection requirements have been in effect for facilities that cure and dry whole pork products. These products have been imported into the United States since 1988 without problems.

We realize that the effectiveness of our regulations is dependent to some extent on the honesty and reliability of others. However, this is also true in reverse: foreign governments rely on records maintained by U.S. producers and processors, and on certificates issued by APHIS. In a system of mutual reliance, we believe the possibility of violations is minimized.

Under these circumstances, we believe our regulations are adequate to protect the health of livestock in the United States.

Lot Numbers

One commenter suggested that we require lot numbers to be placed on packages of sliced pork.

When drafting the proposed rule, we considered requiring the lot number of the meat to appear on the label, or requiring that meat from only one lot be in a package. However, as we explained in our proposed rule, current industry practice is to label packages with the lot number. Current industry practice is also to package only meat from one lot in a package. Under these circumstances, it appears unnecessary to include either requirement in our regulations. However, if industry practices change, and we believe it is necessary to require lot numbers or to require that only meat from one lot be in a package, we will publish a proposal in the **Federal Register** for public comment.

Miscellaneous

On October 28, 1997, we published in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) a final rule establishing procedures for recognizing regions, rather than only countries, for the purpose of importation of animals and animal products into the United States. In that rule, scheduled to be effective on November 28, 1997, we amended 9 CFR part 94 to remove the words "country" and "countries" and replace them, respectively, with the words "region" and "regions". To reflect these intervening changes, we have therefore adjusted the language in this rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Act Analysis, set forth below, regarding the economic impact of this rule on small entities.

This final rule will amend the regulations regarding importation of dry-cured pork products from regions where certain diseases of concern exist, by providing that certain sliced and packaged products may be imported into the United States under specified conditions.

We have used all available data to estimate the potential economic effects of allowing these sliced and pre-packaged dry-cured pork products to be imported into the United States. However, some of the data we believe would be helpful in making this determination has not been available. Specifically, data on: (1) The quantity of specialty dry-cured hams produced domestically; (2) the quantity of potential imports; and (3) the degree to which imported presliced and prepackaged dry-cured pork products will displace existing imported or domestic products, is not available. In our proposed rule, we invited comments. However, none of the comments we received addressed these economic issues.

The pork products covered by the rule are specialty products, such as Parma hams from Italy. These products are similar to other dry-cured pork products consumed in the United States, some imported from other countries and some produced domestically. Currently, only whole dry-cured pork hams, pork shoulders, and pork loins are being imported into the United States. Slightly less than 3 million pounds of such whole products were imported in 1995, the most recent year for which figures are available. Presliced and prepackaged dry-cured pork products are not being imported into the United States at this time.

We estimate that fewer than 15 domestic companies produce dry-cured

[1] Since the proposed rule was published, we have amended our regulations for importing animals and animal products to refer to regions, rather than countries. See the paragraph headed "Miscellaneous," elsewhere in this Supplementary Information section.

pork products similar to those covered by this final rule as a primary or major product line. At least two of these companies are very large, and these types of products constitute only a small fraction of their overall business. Of the others, four are subsidiaries of Italian or Swiss companies.

There are also a number of other producers of cured and smoked hams who may produce similar products. If they do, this final rule could affect them. In addition, there are approximately 10 domestic establishments that buy cured hams and trim and dress them for resale. Some of the resulting products might be similar to the presliced and prepackaged products covered by this rule. If so, these businesses could also be affected by this final rule.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0015.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.17 [Amended]

2. Section 94.17 is amended as follows:

a. By revising the introductory text to read as set forth below.

b. In paragraph (d), by adding the word "whole" immediately before the word "ham,".

c. In paragraph (e), by adding the word "whole" immediately after the words "was processed"; and in footnote 14, by removing the words "9 CFR part 301, *et seq.*" and adding the words "9 CFR, chapter III" in their place.

d. In paragraph (f), by adding the word "whole" immediately after the words "was processed".

e. In paragraph (g), by adding the word "whole" immediately after the words "was processed", and by removing the words "within 12 months".

f. In the introductory text of paragraph (h), and in the introductory text of paragraph (i), by adding the word "whole" immediately after the words "was processed".

g. In paragraphs (j)(1), (j)(2), (j)(3), (k), (l), and (n), by adding the word "whole" immediately after the first word "The" in each paragraph.

h. In paragraph (j)(2), by adding the word "whole" immediately before the words "dry-cured pork shoulder".

i. In paragraph (n), by removing the words "trust fund agreement" and adding the words "cooperative service agreement" in its place each time it appears.

j. By adding a new paragraph (p) to read as set forth below.

§ 94.17 Dry-cured pork products from regions where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists.

Notwithstanding any other provisions in this part, dry-cured ham, pork shoulder, or pork loin, whether whole or sliced and packaged, shall not be prohibited from being imported into the United States if it meets the following conditions:

* * * * *

(p) Whole hams, pork shoulders, and pork loins that have been dry-cured in accordance with paragraph (i) of this section may be transported to a facility in the same region for slicing and packaging in accordance with this paragraph.

(1) *The slicing/packaging facility.* (i) The slicing/packaging facility[2] must be inspected, prior to slicing and packaging any hams, pork shoulders, or pork loins in accordance with this paragraph, by an APHIS representative and determined by the Administrator to be capable of meeting the provisions of this paragraph.

(ii) The slicing/packaging facility must be either in a separate, physically detached building, or in a separate room in the facility where the whole ham, pork shoulder, or pork loin was dry-cured in accordance with paragraph (i) of this section. If the slicing/packaging facility is in a separate room, the room must have no direct access to areas in the facility where pork is cured and dried and it must be capable of being closed off from the rest of the facility so unauthorized individuals cannot enter.

(iii) The slicing/packaging facility, including all equipment used to handle pork and pork products, such as containers, work surfaces, slicing machines, and packaging equipment, must be cleaned and disinfected after sliced and packaged pork products that are not eligible for export to the United States leave the facility, and before whole dry-cured hams, pork shoulders, or pork intended for importation into the United States enter the facility for slicing and packaging. Cleaning and disinfecting must be adequate to ensure that disease agents of concern are killed or inactivated and that pork products intended for importation into the United States are not contaminated.

(iv) The slicing/packaging facility must maintain under lock and key for a minimum of 2 years, original records on each lot of whole dry-cured hams, pork shoulders, and pork loins entering the facility for slicing and packaging under this section, including:

(A) The approval number of the facility where the whole ham, shoulder, or loin was dry-cured in accordance with paragraph (i) of this section;

(B) The date the whole ham, shoulder, or loin started dry-curing;

(C) The date the whole ham, shoulder, or loin completed dry-curing;

(D) The date the whole ham, shoulder, or loin was sliced and packaged; and

[2] See footnote 14 in § 94.17(e).

(E) A copy of all certifications required under paragraph (p) of this section.

(v) Access to records required to be maintained under paragraph (p) of this section must be restricted to officials of the national government of the region of origin, representatives of the United States Government, and persons maintaining the records.

(vi) The operator of the slicing/packaging facility must have signed a cooperative service agreement with APHIS prior to receipt of the whole dry-cured hams, pork shoulders, or pork loins for slicing and packaging, stating that all hams, pork shoulders, or pork loins sliced and packaged at the facility for importation into the United States will be sliced and packaged only in accordance with this section.

(vii) The operator of the slicing/packaging facility must be current, in accordance with the terms of the cooperative service agreement signed with APHIS, in paying all costs for an APHIS representative to inspect the establishment, including travel, salary, subsistence, administrative overhead, and other incidental expenses.

(viii) The slicing/packaging facility must allow the unannounced entry into the establishment of APHIS representatives, or other persons authorized by the Administrator, for the purpose of inspecting the establishment and records of the establishment.

(ix) Workers at the slicing/packaging facility who handle pork or pork products in the facility must shower and put on a full set of clean clothes, or wait 24 hours after handling pork or pork products that are not eligible for importation into the United States, before handling dry-cured hams, pork shoulders, or pork loins in the slicing/packaging facility that are intended for importation into the United States.

(x) Pork products intended for importation into the United States may not be in the slicing/packaging facility at the same time as pork products not intended for exportation to the United States.

(2) *Slicing and packaging and labeling procedures.* (i) A full-time salaried veterinarian employed by the national government of the region of origin must inspect each lot of whole dry-cured hams, pork shoulders, and pork loins at the slicing/packaging facility, before slicing is begun, and must certify in English that it is eligible for importation into the United States in accordance with this section; and

(ii) Either a full-time salaried veterinarian employed by the national government of the region of origin, or, if the national government of the region of origin recognizes a local consortium as responsible for product quality, a representative of that local consortium, must certify in English that he or she personally supervised the entire process of slicing and packaging each lot of dry-cured hams, pork shoulders, and pork loins at the slicing/packaging facility; that each lot of dry-cured hams, pork shoulders, and pork loins was sliced and packaged in accordance with the requirements of this paragraph; and that the sliced and packaged pork ham, shoulder, or loin is the same dry-cured ham, pork shoulder, or pork loin certified under paragraph (p)(2)(i).

(iii) The sliced and packaged dry-cured pork ham, pork shoulder, or pork loin must be labeled with the date that processing of the meat under paragraph (i) of this section began, and with the date the meat was sliced and packaged.

(Approved by the Office of Management and Budget under control number 0579–0015)

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29989 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 96–089–1]

Import/Export User Fees; Exemptions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the user fee regulations to provide that user fees are not charged for veterinary diagnostic services in the following cases: When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases) or in support of zoonotic disease surveillance when there is a significant risk to human health; and when veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases. In addition, we are eliminating the user fee for export health certificates that are requested and reviewed, but not endorsed. We are making these changes to eliminate confusion, clarify when certain user fees apply, and eliminate an unnecessary user fee.

DATES: Interim rule effective November 7, 1997. Consideration will be given only to comments received on or before January 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–089–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–089–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Division, M&B, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232, (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services, and import-related and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Sections 130.14 through 130.18 list the various veterinary diagnostic services for which user fees are charged and the associated user fees.

We are proposing to amend 9 CFR part 130 (the regulations) to provide that user fees will not be charged for veterinary diagnostic services listed in §§ 130.14 through 130.18 in the following cases: (1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of animals in the United States (program diseases) or in support of zoonotic disease surveillance when there is a significant risk to human health; and (2) when veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases. In addition, we are eliminating the user fee listed in § 130.20(d) for export health certificates that are requested and reviewed, but not endorsed.

Veterinary Diagnostic Services

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or

chemical agent is present in body tissues or cells and to identify those organisms or agents. Services in this category include performing laboratory tests at the National Veterinary Services Laboratories (NVSL) and providing diagnostic reagents and other veterinary diagnostic materials and services. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. NVSL also collects data and compiles statistics on the incidence of various livestock diseases based on the results of the veterinary diagnostic tests.

We do not charge user fees for veterinary diagnostic services provided in connection with Federal programs to control or eradicate diseases or pests (program diseases). Examples of program diseases are tuberculosis, brucellosis, and pseudorabies. These activities are covered by appropriated funding. Our policy not to charge for these services was specified in the background portion in previously published proposed and final rules concerning user fees for veterinary diagnostic services (58 FR 15292–15301, Docket No. 91–021–4, March 22, 1993, and 58 FR 38954–38961, Docket No. 91–021–5, July 21, 1993). In this document, we are amending the regulations to specify that user fees are not charged for these services.

While not specified in earlier user fee rules, there are other activities which we cover by appropriated funding instead of user fees. We routinely distribute veterinary diagnostic reagents free of charge to laboratories throughout the United States for testing for foreign animal diseases. This allows these laboratories to immediately test animals suspected of being infected with a foreign animal disease. The distribution of these diagnostic reagents is covered by appropriated funding to ensure that we are able to identify foreign animal diseases as quickly as possible. In this document, we are clarifying the regulations by specifying that this service is exempt from user fees.

In addition, we provide veterinary diagnostic services in support of zoonotic disease surveillance. Zoonotic diseases are those that affect both animals and humans and are communicable from animals to humans. Examples of zoonotic diseases are anthrax, brucellosis, leptospirosis, rabies, salmonellosis, tuberculosis, and vesicular stomatitis. Some of these are program diseases and, therefore, user fees are not charged, as stated above. Occasionally, there are zoonotic diseases that pose a significant threat to human health, and a thorough knowledge of the prevalence of the disease in animals will directly benefit control of the disease in humans. In these cases, we believe that the cost of the testing related to the zoonotic disease surveillance should be covered by appropriated funds. At this time, salmonellosis is the only zoonotic disease that falls into this second category, and user fees are not charged for the salmonella testing that will provide direct benefit to control of disease in humans. User fees are charged for other salmonellosis testing. Therefore, we are amending our regulations to state that user fees are not charged for veterinary diagnostic services provided in relation to zoonotic diseases when the Administrator has determined that there is a significant threat to human health.

We are adding a new § 130.49 to the regulations that lists the circumstances under which we do not charge user fees for veterinary diagnostic services. The exemptions will be specified as follows: User fees for veterinary diagnostic services, including, but not limited to, tests and diagnostic reagents specified in §§ 130.14 through 130.18, are not charged under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of animals in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant risk to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

Nonendorsed Export Health Certificates

We established a user fee for nonendorsed export health certificates in a final rule published in the **Federal Register** on May 7, 1996 (61 FR 20421–20437, Docket No. 92–174–2). These are certificates that are requested from the Animal and Plant Health Inspection Service (APHIS) and then are reviewed by APHIS, but either withdrawn or returned without being endorsed. The user fee was intended to cover the costs of the APHIS review. We have reviewed this user fee and have determined that we do not need to charge for these services because these services are comparable to those consultation services that we provide via the telephone to customers requesting information about animal or animal product exportation requirements. Most export health certificates that are returned by the APHIS veterinarian for corrective action are later resubmitted and endorsed. The user fee for the endorsement of these export health certificates recovers the costs for the full review including any consultations. Therefore, we are removing § 130.20(d) from the regulations and will not charge a user fee for export health certificates that are reviewed but not endorsed.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to encourage participation in programs to control and eradicate disease and pests of livestock or poultry, eliminate confusion about when user fees are charged, and to eliminate an unnecessary user fee. These changes will benefit users and help ensure that veterinary diagnostic services will continue to be requested for testing in connection with program diseases and zoonotic disease surveillance when there is a significant risk to human health.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule provides that we do not charge user fees for (1) veterinary diagnostic services related to program diseases, (2) veterinary diagnostic services related to zoonotic disease surveillance when there is a significant risk to human health, (3) the distribution of diagnostic reagents within the United States used in testing for foreign animal diseases, or (4) services provided to review, but not endorse, export health certificates. Our policy, has been not to charge user fees for these services, and we are now clarifying that policy in the regulations. Therefore, this rule should have no impact on entities whether they are large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, 9 CFR part 130 is amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.20 [Amended]

2. Section 130.20 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

3. A new § 130.49 is added to read as follows.

§ 130.49 Exemptions.

(a) *Veterinary diagnostics.* User fees for veterinary diagnostic services, including, but not limited to, tests and diagnostic reagents specified in §§ 130.14 through 130.18, are not charged under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

(b) [Reserved].

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29990 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310, 381, and 417

[Docket No. 97–056DF]

RIN 0583–AC40

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Sample Collection—Technical Amendments and Corrections: Direct Final Rule

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: FSIS is making technical corrections and amendments to the final rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems," published on July 25, 1996. In response to worker safety concerns, FSIS will permit samples collected for generic *E. coli* testing of turkeys to be collected by sponging two sites. Samples may still be collected by the whole bird rinse procedure (shaking turkeys in a bag containing a buffer solution). FSIS will also permit chickens and turkeys to be taken from the end of the slaughter line if it is impracticable to take a whole bird from the end of the chilling process. Additionally, FSIS is amending the regulations to add the performance standard for *Salmonella* in fresh pork sausage, which was unavailable at the time the rule was published, and correct a minor editorial oversight.

DATES: This rule will be effective on January 13, 1998, unless adverse or critical comments are received on or before December 15, 1997. If adverse or critical comments within the scope of the rulemaking are received, FSIS will issue timely notice in the **Federal Register**.

ADDRESSES: Send an original and two copies of adverse written comments within the scope of the rulemaking to: FSIS Docket Clerk, DOCKET # 97–056DF, Room 102, Cotton Annex, 300 12th Street, SW, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700. Reference materials cited in this docket will be available for public inspection in the FSIS Docket Room from 8:30 to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation, (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, FSIS published a final rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems," (61 FR 38806). The final rule required all slaughter establishments to test for generic *E. coli* at a frequency based on production volume to verify that plants are meeting the established performance criteria. In the preamble to the final rule, FSIS solicited comments and information on a number of technical issues concerning the protocols for generic *E. coli* testing and announced that conferences would be held to discuss these issues.

The first conference was held on September 12 and 13, 1996. Participants discussed issues such as testing frequency, sampling procedures, and revision of the testing protocol to better account for differing establishment characteristics. In light of these comments, FSIS published the May 13, 1997, final rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Technical Amendments and Corrections" (62 FR 26211). The final rule made some changes to the *E. coli* testing requirements.

On May 8, 1997, FSIS held a follow-up conference "Technical Conference: Review of *E. coli* Testing." A panel of

industry and academia representatives made presentations about the on-going generic *E. coli* verification testing by establishments and discussed their observations and views. In response to information provided at the conference, FSIS is amending the sample collection procedures for turkeys and allowing flexibility for the collection of poultry to be sampled.

Currently, turkeys randomly selected for sampling must be rinsed in a buffer solution. The rinsing technique involves shaking a whole turkey carcass in a bag containing the buffer solution. Prior to the meeting, FSIS was aware of concerns regarding this process. At the meeting, commenters raised the issue and presented data that supports an alternative means of sample collection.

The primary concern regarding the current sampling technique for turkeys is the physical difficulty of shaking large turkeys (i.e., those that are 15 to 20 pounds). Also, some commenters have stated that the size of the turkeys makes it difficult to prevent sample contamination when the buffer solution is decanted from the sampling bag into the sample bottle for transportation to the laboratory. At the conference, data was presented which indicated that a sponging technique is more practical, and provides accurate and reliable results for microbiological sampling.

FSIS agrees that shaking turkeys in the bag may be difficult for individuals taking the sample and that sample contamination may occur. Because of the lack of data in support of an alternative method, FSIS has not previously adopted another sample collection method for turkeys. However, after reviewing the data presented at the conference, FSIS has determined that a sponge method for the collection of turkey samples is effective. Therefore, FSIS will amend the Pathogen Reduction/HACCP final rule to permit establishments to sample turkeys by sponging the back and thigh or to continue using the whole bird rinse procedure.

Data collected using the sponge technique will be evaluated using statistical process control techniques as required in the May 13, 1997, technical amendments final rule. FSIS has begun to develop m/M criteria for turkey samples collected by the sponge method and will release data from this baseline quarterly so that establishments can use them for statistical process control techniques. FSIS also is in the process of developing m/M criteria for cattle and swine samples collected by the sponge method. The results from FSIS's first quarter of the study is as follows: for cattle m=negative and M=1; for swine m=.1 and M=100.

Commenters also expressed concern about the difficulty in taking whole birds from the end of the chilling process, after the drip line, because the birds on the drip line are often high off the ground and hard to reach. FSIS understands this concern. In the technical amendments final rule, FSIS provided establishments with the option of taking birds from the end of the slaughter line for carcasses that are hot-boned. With this rule, FSIS is amending the regulations to permit birds to be taken at the end of the slaughter line for carcasses, if sampling at the end of the drip line is impracticable.

In the pathogen reduction/HACCP final rule, FSIS stated that it was in the process of developing a *Salmonella* performance standard for fresh pork sausages. That work has been completed and the performance standard will be added to the regulations. The performance standard is 30% (percent positive for *Salmonella*), the number of samples tested (n) equals 53, and the maximum number of positives to achieve the standard (c) equals 18. The methodology used to develop this performance standard was the same as for the other ground products. To further explain how the performance standard was developed, FSIS is making available copies of the paper "Estimation of *Salmonella* Prevalence in 25-gram Portions of Fresh Ground Pork" in the FSIS Docket Room.

Lastly, FSIS is making a technical correction to 9 CFR 417.2(e). The section should reference the Poultry Products Inspection Act (PPIA) and the Federal Meat Inspection Act (FMIA). FSIS inadvertently omitted references to sections 21 U.S.C. 456 and 463 of the PPIA and only referenced sections 21 U.S.C. 608 and 621 of the FMIA. Therefore, references to the PPIA authority will be added to this section.

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless the Agency receives adverse or critical comments within the scope of this rulemaking, or a notice of intent to submit adverse comments within the scope of this rulemaking within 30 days, the action will become final 60 days after publication in the **Federal Register**. If adverse comments within the scope of the rulemaking are received, the final rulemaking notice will be withdrawn and a proposed rulemaking notice will be published. The proposed rulemaking notice will establish a comment period.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

The Pathogen Reduction/HACCP final rule included a Final Regulatory Impact Assessment (FRIA) (61 FR 38945). The technical corrections and amendment do not change the cost and benefit estimates and impact assessments presented in the FRIA.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In this final rule: (1) all state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

The Pathogen Reduction/HACCP final rule included a paperwork analysis (61 FR 38862) prepared in accordance with the Paperwork Reduction Act. FSIS has determined that the technical corrections and amendments in this rule do not change any information collection burden hours.

Final Rules

List of Subjects

9 CFR Part 310

Meat inspection, Microbial testing.

9 CFR Part 381

Poultry and poultry products, Microbial testing.

For reasons set forth in this preamble, 9 CFR chapter III is amended as follows:

PART 310—POST MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 310.25 is amended by revising Table 2 in paragraph (b)(1) to read as follows:

§ 310.25 Contamination with microorganisms; pathogen reduction performance standards for Salmonella.

* * * * *

(b) * * *

(1) * * *

TABLE 2.—SALMONELLA PERFORMANCE STANDARDS

Class of product	Performance standard (percent positive for Salmonella) [a]	Number of samples tested (n)	Maximum number of positives to achieve standard (c)
Steers/heifers	1.0	82	1
Cows/bulls	2.7	58	2
Ground beef	7.5	53	5
Hogs	8.7	55	6
Fresh pork sausages	30	53	18

[a] Performance Standards are FSIS's calculation of the national prevalence of *Salmonella* on the indicated raw product based on data developed by FSIS in its nationwide microbiological data collection programs and surveys. (Copies of Reports on FSIS's Nationwide Microbiological Data Collection Programs and Nationwide Microbiological Surveys used in determining the prevalence of *Salmonella* on raw products are available in the FSIS Docket Room.)

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470, 7 CFR 2.18, 2.53.

Subpart K—Post Mortem Inspection; Disposition of Carcasses and Parts

4. Section 381.94 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 381.94 Contamination with microorganisms; process control verification criteria and testing; pathogen reduction standards.

(a) * * *

(2) Sampling requirements.

(ii) *Sample collection.* A whole bird must be taken from the end of the chilling process. If this is impracticable, the whole bird can be taken from the end of the slaughter line. Samples must be collected by rinsing the whole carcass in an amount of buffer appropriate for that type of bird. Samples from turkeys also may be collected by sponging the carcass on the back and thigh.[1]

* * * * *

PART 417—HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS

3. The authority citation for part 417 continues to reads as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470, 601–695; 7 U.S.C. 1901–1906; 7 CFR 2.18, 2.53.

§ 417.2 Hazard Analysis and HACCP Plan.

4. Section 417.2 is amended by revising paragraph (e) to read as follows:

* * * * *

(e) Pursuant to 21 U.S.C. 456, 463, 608, and 621, the failure of an establishment to develop and implement a HACCP plan that complies with this section, or to operate in accordance with the requirements of this part, may render the products produced under those conditions adulterated.

Done at Washington, DC, on November 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–29929 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 97–050F]

Designation of the State of Florida Under the Federal Meat Inspection Act and the Poultry Products Inspection Act

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Representatives of the State of Florida have advised the Agency that, because of a lack of funding, the State of Florida will no longer continue administering its State meat and poultry inspection programs after November 30, 1997. The Food Safety and Inspection Service (FSIS) is mandated by law to assume the responsibility, previously held by the State of Florida, for administering the meat and poultry inspection programs with respect to operations and transactions within the State of Florida. Therefore, in accordance with the law, the Secretary of Agriculture is designating the State of Florida to receive Federal inspection with respect to operations and transactions within the State, and FSIS is amending the Federal meat and poultry inspection regulations by adding Florida to the list of "designated" States.

DATES: This final rule will be effective on December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. William Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700 at (202) 720–6313.

SUPPLEMENTARY INFORMATION:

Background

Under section 301 of the Federal Meat Inspection Act (FMIA) and section 5 of the Poultry Products Inspection Act (PPIA), a State may administer State meat and poultry inspection programs provided the State has developed and is effectively enforcing State meat and poultry inspection requirements at least equal to those imposed under titles I and IV of the FMIA and section 1–4, 6–10, and 12–22 of the PPIA (collectively referred to below as the titles). These titles contemplate continuous ongoing programs. When States can no longer effectively enforce meat and poultry inspection requirements at least equal to Federal requirements, then they must be "designated" by the Secretary to receive Federal inspection.

In accordance with the FMIA and PPIA, the Secretary had determined that the State of Florida had developed and was enforcing State meat and poultry inspection requirements for establishments at least equal to Federal meat and poultry inspection

[1] A copy of FSIS's "Guidelines for *Escherichia coli* Testing for Process Control Verification in Poultry Slaughter Establishments" and "FSIS Turkey Microbiological Procedures for Sponge Sample Collection and Methods of Analysis" are available for inspection in the FSIS Docket Room.

requirements under the titles. However, on July 23, 1997, representatives of the State of Florida notified FSIS that, because of a lack of funding, Florida will no longer continue to administer its State meat and poultry inspection programs after November 30, 1997. The representatives have requested that the Department assume responsibility for the meat and poultry inspection programs.

In view of the termination date, it is determined that the State of Florida would not effectively enforce requirements at least equal to those imposed under the titles. Therefore, the Secretary of Agriculture must designate the State of Florida under section 301(c)(3) of the FMIA and section 5(c)(3) of the PPIA. Therefore, on and after December 2, 1997, the provisions of the titles will apply to operations and transactions within the State of Florida, unless exempt under sections 23 or 301(c)(2) of the FMIA or sections 5(c)(2) or 15 of the PPIA.

Owners or operators of Florida's meat and poultry establishments wishing to continue operations after November 30, 1997, must contact the FSIS District Office in order to receive Federal inspection. This office will provide information concerning requirements and exemptions under the FMIA and the PPIA, applications for inspection, and requests for surveys of establishments. Address correspondence to USDA/FSIS District Office, 100 Alabama Street, SW, Suite 3R90, Atlanta, GA 30303.

The Administrator, FSIS, has determined that there is good cause for issuing this final rule without prior notice and opportunity for public comment. Because the State of Florida has advised FSIS that its State-operated meat and poultry inspection programs will be discontinued, the Agency is mandated by law to assume the responsibilities for administering the meat and poultry inspection programs. It is necessary, therefore, to designate the State of Florida immediately, in accordance with section 301(c)(3) of the FMIA and section 5(c)(3) of the PPIA, in order to carry out the Secretary's responsibilities under the FMIA and PPIA.

In addition, it does not appear that additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to the public interest.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant under Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Florida, of administering the meat and poultry inspection programs with respect to operations and transactions within the State of Florida. This action will affect approximately 122 State, 26 custom exempt, and 0 Talmadge Aiken meat and poultry establishments in Florida, and most, if not all, of which may be presumed to be small businesses. However, this is not a substantial number of establishments given the approximately 6,800 small meat and small poultry establishments nationwide, which are either federally or State inspected. In addition, the application of certain Federal facility and other requirements will be flexible, and each facility will be reviewed with regard to the circumstances peculiar to that establishment. Further, it is not anticipated that significant costs will be incurred by these Florida establishments as a result of this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or the PPIA.

Paperwork Requirements

This rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

List of Subjects

9 CFR Part 331

Meat inspection.

9 CFR Part 381

Poultry and poultry products.

Accordingly, 9 CFR parts 331 and 381 are amended as follows:

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 331.2 [Amended]

2. The table in section 331.2 is amended in the "State" column by adding "Florida" immediately below "Connecticut" and in the "Effective date of application of Federal provisions" column, by adding "Dec. 2, 1997" on the line with "Florida."

PART 381—POULTRY PRODUCTS INSPECTION

3. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.221 [Amended]

4. The table in section 381.221 is amended in the "States" column by adding "Florida" immediately below "Connecticut" and in the "Effective date of application of Federal provisions" column, by adding "Dec. 2, 1997," on the line with "Florida."

Done at Washington, DC, on: November 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–29928 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–35; Amendment 39–10134; AD 97–19–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 97–19–13 applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines that was published in the **Federal Register** on September 19, 1997 (62 FR 49135). The paragraph references to the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 16, 1994, in paragraph (a)(3) of the compliance section are incorrect. This document corrects the paragraph references. In all other respects, the original document remains the same.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, was published in the **Federal Register** on September 19, 1997 (62 FR 49135). The following correction is needed:

§ 39.13 [Corrected]

On page 49136, in the third column, in the Compliance Section, in paragraph (a)(3), in the sixth line, "2.A.(2) (c) and (d) or (f) and (g)" is corrected to read "2.A.(2) (a) and (b) or (d) and (e)".

Issued in Burlington, MA, on November 6, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–29968 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Carbarsone and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved carbarsone and bacitracin zinc Type A medicated articles to make Type C medicated turkey feeds used for prevention of blackhead, increased rate of weight gain, and improved feed efficiency.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–203 that provides for combining approved carbarsone and bacitracin zinc Type A medicated articles to make Type C medicated feeds for turkeys containing carbarsone 227 to 340.5 grams per ton (g/t) and bacitracin zinc 4 to 45 g/t. The Type C medicated feed is used as an aid in the prevention of blackhead, for increased rate of weight gain, and improved feed efficiency.

Alpharma Inc.'s, ANADA 200–203 is approved as a generic copy of Hoffmann-LaRoche's NADA 136–484. The ANADA is approved as of November 14, 1997, and the regulations are amended in § 558.120 (21 CFR 558.120) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, § 558.120 is revised by redesignating paragraph (c) as (d), by reserving paragraph (c), and newly redesignated paragraph (d)(1)(iii)(*b*) is amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.120 [Amended]

2. Section 558.120 *Carbarsone (not U.S.P.)* is amended by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and in newly redesignated paragraph (d)(1)(iii)(*b*) by removing "No. 000004" and adding in its place "Nos. 000004 and 046573".

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30033 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure for E–Z Trials

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: This document restores the selection provision for commencing E–Z Trial, 29 CFR 2200.203(a), which was inadvertently removed.

DATES: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th Street NW., 9th Floor, Washington, DC 20036–3419.

SUPPLEMENTARY INFORMATION: On October 30, 1997, (62 FR 58650), paragraph (a) of § 2200.203 was inadvertently removed. In order for the Rules of Procedures for E–Z trial to operate effectively, paragraph (a) must be restored.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2200, Subpart M of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.203 is amended by adding paragraph (a), to read as follow:

§ 2200.203 Commencing E–Z Trial.

(a) *Selection.* Upon receipt of a Notice of Contest, the Chief Administrative Law Judge may, at his or her discretion, assign an appropriate case for E–Z Trial.

* * * * *

Dated: November 7, 1997.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 97–29956 Filed 11–13–97; 8:45 am]

BILLING CODE 7600–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in December 1997.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during December 1997.

For annuity benefits, the interest assumptions will be 5.60 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for November 1997) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for November 1997.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during December 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 50 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *						
December 1997	.0560	1–25	.0500	>25	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *								
50	12–1–97	01–1–98	4.50	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 10th day of November 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–30043 Filed 11–13–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 285

[DoD 5400.7]

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This revision conforms 32 CFR part 285, DoD Freedom of Information Act (FOIA) program, to the requirements of the Electronic Freedom of Information Act Amendments of 1996, as amended by Pub. L. 104–231.

EFFECTIVE DATE: September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703–697–1171.

SUPPLEMENTARY INFORMATION: On May 12, 1997 (62 FR 25875), the Department of Defense published a proposed rule for comment. No comments were received.

Executive Order 12866, Regulatory Planning and Review

It has been determined that this final rule (32 CFR part 285) is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity' competition; jobs; the environment; public health or safety; or State, local, or tribal governments, or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statue concerning the release of Federal Government records, and does not economically impact Federal Government relations with the private sector.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 285

Freedom of information.

Accordingly, 32 CFR part 285 is revised to read as follows:

PART 285—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Sec.

285.1 Purpose.
285.2 Applicability and scope.
285.3 Policy.
285.4 Responsibilities.
285.5 Information requirements.

Authority: 5 U.S.C. 552.

§ 285.1 Purpose.

This part:

(a) Updates policies and responsibilities for the implementation of the DoD FOIA Program under 5 U.S.C. 552.

(b) Continues to delegate authorities and responsibilities for the effective administration of the FOIA program.

§ 285.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

(b) National Security Agency/Central Security Service records are subject to this part unless the records are exempt under section 6 of Pub. L. 86–36 (1959), codified at 50 U.S.C. 402 nots. The records of the Defense Intelligence Agency, National Reconnaissance Office, and the National Imagery and Mapping Agency are also subject to this part unless the records are exempt under 10 U.S.C. 424.

§ 285.3 Policy.

It is DoD policy to:

(a) Promote public trust by making the maximum amount of information available to the public, in both hard copy and electronic formats, on the operation and activities of the Department of Defense, consistent with DoD responsibility to ensure national security.

(b) Allow a requester to obtain agency records from the Department of Defense that are available through other public information services without invoking the FOIA.

(c) Make available, under the procedures established by 32 CFR part 286, those agency records that are requested by a member of the general public who explicitly or implicitly cites the FOIA.

(d) Answer promptly all other requests for information, agency records, objects, and articles under established procedures and practices.

(e) Release agency records to the public unless those records are exempt from mandatory disclosure as outlined in 5 U.S.C. 552. Make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption.

(f) Process requests by individuals for access to records about themselves contained in a Privacy Act system of records under procedures set forth in

DoD 5400.11–R,[1] and procedures outlined in this part amplified by 32 CFR part 286.

§ 286.4 Responsibilities.

(a) The Assistant Secretary of Defense for Public Affairs shall:

(1) Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

(2) Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

(3) Internally administer the FOIA Program for OSD, the Chairman of the Joint Chiefs of Staff and, as an exception to DoD Directive 5100.3,[2] the Combatant Commands.

(4) As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities within OSD, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the DoD Field Activities.

(b) The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this part.

(c) The Heads of the DoD Components shall:

(1) Publish in the **Federal Register** any instructions necessary for the internal administration of this part within a DoD Component that are not prescribed by this Directive or by other issuances of the Assistant Secretary of Defense (Public Affairs). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) shall be published in accordance with DoD Directive 5400.9.[3]

(2) Conduct training on the provisions of this part, 5 U.S.C. 552, and 32 CFR part 286 for officials and employees who implement the FOIA.

(3) Submit the report prescribed in subpart G of 32 CFR part 286.

(4) Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the **Federal Register**, the records specified in 10 U.S.C. 552(a)(2), unless such records are published and copies are offered for sale. These records shall be made available to the public in hard copy, by computer telecommunications, or other electronic means.

(5) Maintain and make available for public inspection and copying current indices of all (a)(2) records as required by 10 U.S.C. 552(a)(2).

§ 286.5 Information requirements.

The reporting requirements in subpart G of 32 CFR part 286 have been assigned Report Control Symbol DD–PA(A) 1365.

Dated: November 5, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29659 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1.

[3] See footnote 1.

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This notice adopts a proposed rule which was published in the **Federal Register** on September 8, 1997 (62 FR 47178–47179). It amends the regulations of the Postal Service governing the eligibility requirements for mail to be sent at the Nonprofit Standard Mail rates of postage. For the most part, this final rule adopts the proposal as it was published with changes suggested in comments received from interested parties.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202–268–5188.

SUPPLEMENTARY INFORMATION: The proposed rule discussed in detail the common practice of nonprofit organizations to offer premium items, such as tote bags, umbrellas, t-shirts, and coffee mugs when seeking contributions or membership dues payments from new members. As explained in the proposed rule, by statute, material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service, other than separately restricted travel, insurance, and financial instruments such as credit cards, is ineligible for the nonprofit rates of postage unless the sale of the product or the provision of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the Nonprofit Standard Mail rates or other prescribed exceptions are met. 39 U.S.C. 3626(j)(1)(D).

The Postal Service promulgated standards implementing the statute effective October 1, 1995. Since that time, the Postal Service has consistently held that "backend premiums" such as those described above are to be considered advertising for the product offered as a premium. In addition, the Postal Service has generally concluded that "utilitarian" items such as coffee mugs, t-shirts, tote bags, umbrellas, and similar items are not normally related to an organization's qualifying purposes, thus disqualifying such advertisements from being mailed at the Nonprofit Standard Mail rates.

The proposed rule offered standards by which, if met, the Postal Service would not consider the announcement of the backend premium as an "advertisement." Specifically, the Postal Service proposed two tests. First, the requested contribution must be at least five (5) times the cost of the premium to exempt the announcement from being considered as an advertisement for the premium. The cost of the premium is its actual cost to the nonprofit organization. Second, the requested contribution must be at least three (3) times the represented value in the mailpiece, if any, of the premium. *Each* test must be met or the offer will be considered an advertisement.

The Postal Service received a total of 12 comments on the proposed rule. In one fashion or another, all of the commenters expressed their support for a test or threshold by which announcements of backend premiums would not be considered as advertisements, thereby eliminating the need for consideration of the substantially related test. Accordingly, after full consideration of the comments received, the Postal Service believes it is appropriate to adopt, with revision of the ratios, the proposed changes in eligibility requirements at this time.

Evaluation of Comments Received

Written comments were received from 12 organizations and associations representing nonprofit organizations. Of primary concern to 11 of the 12 commenters is the Postal Service's proposed test of requiring a contribution or dues payment to be at least five times the cost and three times the represented value of the premium to activate the exception from material being considered as an advertisement. Four commenters supported the proposal in its entirety including the five times cost and three times represented value criteria. On the other hand, two commenters requested a test of three times the cost and eliminating the represented value test. Other suggestions included a test of three times cost and 1½ times represented value; three times cost and two times represented value; four times cost and two times represented value; and a single test that would be based on the lower of cost or market value of the premium.

The most common reason for requesting lower numbers be used, particularly with respect to the test related to the "represented value" of the premium, is a disclosure requirement of the Internal Revenue Service which requires that the "fair market value" of a premium be disclosed. (The donor may not take a charitable deduction for that part of his or her payment). Along those same lines, one commenter was concerned about using a cost figure when merchandise which is "obsolete" and without current market value is offered as a premium. Others simply cited lower numbers as a more reasonable way to fairly assess whether the offer of a premium should be considered advertising.

We have considered the comments, and determined to adopt both of the proposed tests, albeit with modifications in the original ratios. Up to this time, the Postal Service viewed these solicitations as two distinct transactions (i.e., part donation and part sale). Even though the amount of the donation generally exceeded the amount of the sale, the premium offer was considered to be an advertisement for that item. The rulemaking looks to the premise, supported by a recent ruling of another agency, that the solicitation is a single transaction (rather than part solicitation and part sale); it then looks to whether the solicitation or sale is the predominant part of the transaction. That is, it looks to whether the amount of the sale is greater than the amount of the donation.

One means to make this judgment would be to compare the fair market value of the premium(s) with the "donation" (i.e., the difference between the amount solicited and the fair market value). However, the fair market value of the premium may not always be clear or readily ascertained. Accordingly, the Postal Service proposal looked to the represented value, if any, of the premium(s), since this would be the perceived value of the premium(s), as well as the cost to the nonprofit, since there is generally a relationship (i.e., markup) between cost and market value.

We continue to believe that both of these standards are appropriate, but will adjust the ratios. With respect to represented value, the solicitation will not be considered to be an advertisement if the requested donation is *more* than two times the represented value of the premium(s). (For example, if the request is for $100.00, the represented value of the premium(s) could be no more than $49.99). With respect to cost to the nonprofit, the solicitation will not be considered an advertisement if the requested donation is *more* than four times the represented value of the premium(s). (For example, if the request is for $100.00, the cost of the premium(s) may be no more than $24.99). In adopting this test, we considered that a usual "markup" over costs is two to one, which was suggested in some comments (although other comments suggest the ratio may be higher).

The comment concerning application of the test to "obsolete" merchandise raises an interesting concern. Even if we would be inclined to consider this concern, it is not clear to us how a standard could easily be administered (e.g., how can we determine what is "obsolete?"). While we do not believe it appropriate to delay this rulemaking to give further consideration to this concern, we will consider further proposals regarding it.

Two commenters were concerned that the proposed rule does not make clear that only premium offers which are not substantially related to a nonprofit organization's qualifying purposes must meet the test incorporated in the final rule to be eligible for mailing at Nonprofit Standard Mail rates. We believe that adoption of these suggestions is not needed, and would unnecessarily complicate the regulations. The rule is intended to define the solicitations which will not be considered advertising. If solicitations are advertising, they may still be eligible for nonprofit rates if the premiums are substantially related to the organization's purposes or contained in material meeting the content requirements of a periodical.

One commenter also suggested that future adjustments be made possible, such as adjustments for inflation. We will remain open to future suggestions to change the standards adopted here.

Another commenter requested that the Postal Service include a provision for "one written warning" if a premium offer for a product or service is determined to be ineligible for mailing at the nonprofit rates; and, to create a statute of limitations to limit a nonprofit organization's liability for making improper mailings. This same commenter requested "retroactive" application of the policy adopted in the final rule, although no justification for this request was offered in the comment provided. These requests are beyond the scope of this rulemaking. Nevertheless, the Postal Service has an ongoing dialogue with the nonprofit community and concerns such as those expressed here have been considered.

Finally, one commenter offered views concerning the application of the "substantially related" standard. These comments were beyond the scope of the rulemaking.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. In the Domestic Mail Manual, redesignate 5.9, 5.10, 5.11, and 5.12 as 5.10, 5.11, 5.12, and 5.13, respectively; add new 5.9 to read as follows:

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.9 Contribution and Membership Premiums

Announcements for premiums received as a result of a contribution or payment of membership dues are not considered advertisements if the requested contribution or membership dues is more than 4 times the cost of the premium item(s) offered and more than 2 times the represented value in the mailpiece, if any, of the premium item(s) offered.

* * * * *

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30008 Filed 11–13–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–5029a; FRL–5921–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC RACT Determinations for Individual Sources; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; corrections.

SUMMARY: This document corrects the preamble to a direct final rule published in the **Federal Register** of October 14, 1997 regarding the approval of Reasonably Available Control Technology (RACT) for six major sources of volatile organic compounds (VOC) located in Virginia. The document contains an incorrect annual emission rate and a typographical error.

DATES: Effective November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kimberly Peck, (215) 566–2165.

SUPPLEMENTARY INFORMATION: In direct final rule FRL–5904–3, beginning on page 53243 in the **Federal Register** issue of October 14, 1997, make the following corrections, in the Preamble section. On page 53243 in the middle column, change the second full paragraph to the following:

"The uncontrolled stack VOC emissions from the Bermuda Hundred Facility are estimated to be 93.4 tons per year."

On page 53243 in the middle column, change the third full paragraph to the following:

"RACT as prescribed in the Consent Agreement, Registration Number 50722, dated March 26, 1997 is determined to be no controls as Virginia determined that add-on controls were not economically feasible or cost-effective."

Dated: November 3, 1997.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–30020 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–376]

Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order and Second Further Notice of Proposed Rulemaking* which addresses rules and policies concerning cable inside wiring. The *Second Further Notice of Proposed Rulemaking* segment of this decision may be found elsewhere in this issue of the **Federal Register**. *The Report and Order* ("*Order*") segment amends the Commission's regulations relating to the disposition of cable home wiring and establishes regulations for the disposition of home run wiring and related issues including the sharing of molding, the demarcation point for multiple dwelling unit buildings ("MDUs"), loop-through cable wiring configurations, customer access to cable home wiring before termination of service, and signal leakage. This action was necessary because competition is currently being deterred by disputes over control and use of the wires necessary to reach each unit in an MDU. The intended effect of this action is to expand opportunities for new entrants seeking to compete in distributing video programming and to broaden consumers' ability to install and maintain their own wiring.

DATES: Amendments in §§ 76.613, 76.802 and 76.804 contain information collection requirements, and will not become effective until approved by the Office of Management and Budget ("OMB"). Amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806 become effective December 15, 1997. However, compliance with amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806 will not be required until OMB approval of the information collection requirements in §§ 76.613, 76.802 and 76.804. When approval is received, the Commission will publish a document announcing the effective date of the amendments in §§ 76.613, 76.802 and 76.804, and the date of compliance for the amendments in §§ 76.5, 76.620, 76.800, 76.805 and 76.806.

Written comments by the public on the modified information collections are due on or before January 13, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained herein, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

Paperwork Reduction Act

The *Order* contains modified information collection requirements. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0692.

Title: Cable Inside Wiring Provisions.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals; Businesses or other for-profit entities.

Number of Respondents: 30,500 (20,500 MVPDs and 10,000 MDU owners).

Estimated Time Per Response: 5 minutes to 30 minutes.

Total Annual Burden to Respondents: 46,114 hours, calculated as follows: This collection (3060–0692) accounts for all information collection requirements that may come into play during the disposition of cable home wiring in single dwelling units, as well as the disposition of home run wiring and cable home wiring in multiple dwelling units. All multichannel video programming distributors ("MVPDs"), both cable and non-cable alike, will be subject to the disposition rules in MDUs. Pursuant to the Paperwork Reduction Act, when modifying only portions of an information collection, agencies are still obligated to put forth the entire collection for public comment.

This information collection also now accounts for information collection stated in 47 CFR 76.613, where MVPDs causing harmful signal interference may be required by the Commission's District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures. Through the course of this rulemaking proceeding, the Commission has identified this information collection requirement as not having previously been reported to OMB for approval. We estimate that no more than 10 interference reports will be submitted annually to the Commission's District Director and/or Resident Agent, each having an average burden of 2 hours to prepare. (10 reports × 2 hours = 20 hours).

47 CFR 76.620 applies the Commission's signal leakage rules to all non-cable MVPDs. Our rules require that each cable system perform an independent signal leakage test annually, therefore, non-cable MVPDs will now be subject to the same requirement. We recognize, however, that immediate compliance with these requirements may present hardships to existing non-cable MVPDs not previously subject to such rules. We will allow a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The transition period will apply only to systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. Considering non-cable MVPD systems that will be built after January 1, 1998, we estimate that 500 new entities will be subject to signal leakage filing requirements, with an estimated burden of 20 hours per entity. (500 systems × 20 hours = 10,000 hours). 47 CFR 76.802, Disposition of Cable Home Wiring, gives individual video service subscribers in single unit dwellings and MDUs the opportunity to purchase their cable home wiring at replacement cost upon voluntary termination of service. In calculating hour burdens for notifying individual subscribers of their purchase rights, we make the following assumptions: There are approximately 20,000 MVPDs serving approximately 72 million subscribers in the United States. The average rate of churn (subscriber termination) for all MVPDs is estimated to be 1% per month, or 12% per year. MVPDs own the home wiring in 50% of the occurrences of voluntary subscriber termination and subscribers or property owners already have gained ownership of the wiring in the other 50% of occurrences (*e.g.*, where the MVPD has charged the subscriber for the wiring upon installation, has treated the wiring as belonging to the subscriber for tax purposes, or where state and/or local law treats cable home wiring as a fixture). Where MVPDs own the wiring, we estimate that they intend to actually remove the wiring 5% of the time, thus initiating the disclosure requirement. We believe in most cases that MVPDs will choose to abandon the home wiring because the cost and effort required to remove the wiring generally outweigh its value. The burden to disclose the information at the time of termination will vary depending on the manner of disclosure, *e.g.*, by telephone, customer visit or registered mail. Virtually all voluntary service terminations are done by telephone. The estimated average time consumed in the process of the MVPD's disclosure and subscriber's election is 5 minutes (.083 hours). Estimated annual number of occurrences is 72,000,000 × 12% × 50% × 5% = 216,000. (216,000 × .083 hours = 17,928 hours).

In addition, 47 CFR 76.802 states that if a subscriber in an MDU declines to purchase the wiring, the MDU owner or alternative provider (where permitted by the MDU owner) may purchase the home wiring where reasonable advance notice has been provided to the incumbent. According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. We estimate that 2,000 MDU owners will provide advance notice to the incumbent that the MDU owner or alternative provider (where permitted by the MDU owner) will purchase the home wiring where a terminating individual subscriber declines. The estimated average time for MDU owners to provide such notice is estimated to be 15 minutes (.25 hours). The estimated average time consumed in the process of the MVPD's subsequent disclosure and the MDU owner or alternative provider's election is 5 minutes (.083 hours). Estimated annual time consumed is 2,000 notifications × .333 hours = 666 hours. 47 CFR 76.802 also states that, to inform subscribers of per-foot replacement costs, MVPDs may develop replacement cost schedules based on readily available information; if the MVPD chooses to develop such schedules, it must place them in a public file available for public inspection during regular business hours. We estimate that 50% of MVPDs will develop such cost schedules to place in their public files. Virtually all individual subscribers terminate service via telephone, and few subscribers are anticipated to review cost schedules on public file. The annual recordkeeping burden for these cost schedules is estimated to be 0.5 hours per MVPD. (20,000 MVPDs × 50% × 0.5 hours = 5,000 hours).

47 CFR 76.804 Disposition of Home Run Wiring. We estimate the burden for notification and election requirements for building-by-building and unit-by-unit disposition of home run wiring as described below. Note that these requirements apply only when an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the entity that owns or controls the common areas of the MDU or have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes. We use the term "MDU owner" to include whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. For building-by-building disposition of home run wiring, the MDU owner gives the incumbent service provider a minimum of 90 days' written notice that its access to the entire building will be terminated. The incumbent then has 30 days to elect what it will do with the home run wiring. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. Also, regarding cable home wiring, when the MDU owner notifies the incumbent service provider that its access to the building will be terminated, the incumbent provider must, within 30 days of the initial notice and in accordance with our home wiring rules, (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove, and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring. The MDU owner must then notify the incumbent provider as to whether the MDU owner or an alternative provider intends to purchase the home wiring not later than 30 days before the incumbent's access to the building will be terminated.

For unit-by-unit disposition of home run wiring, an MDU owner must provide at least 60 days' written notice to the incumbent MVPD that it intends to permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit. The incumbent service provider then has 30 days to provide the MDU owner with a written election as to whether, for all of the incumbent's home run wires

dedicated to individual subscribers who may later choose the alternative provider's service, it will remove the wiring, abandon the wiring, or sell the wiring to the MDU owner. In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch service providers; that election will then be implemented each time an individual subscriber switches service providers. Where parties negotiate a price for the wiring and are unable to agree on a price, the incumbent service provider must elect among abandonment, removal of the wiring, or arbitration for a price determination. The MDU owner also must provide reasonable advance notice to the incumbent provider that it will purchase, or that it will allow an alternative provider to purchase, the cable home wiring when a terminating individual subecriber declines. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election during the initial 30-day notice period for each subscriber who switches back from the alternative provider to the incumbent MVPD.

According to the Statistical Abstracts of the United States, 1995 at 733 Table No. 1224, over 28 million people resided in MDUs with three or more units in 1993. We therefore estimate that there are currently 30 million MDU residents and that MDUs house an average of 50 residents, and so we estimate that there are approximately 600,000 MDUs in the United States. In many instances, incumbent service providers may no longer own the home run wiring or may continue to have a legally enforceable right to remain on the premises. Also, MDU owners may forego the notice and election processes for various other reasons, e.g., they have no interest in purchasing the home run or cable home wiring. We estimate that there will be approximately 12,500 notices and 12,500 elections made on an annual basis. The number of notices accounts for the occasions when the MDU owner simultaneously notifies the incumbent provider that: (1) It is invoking the home run wiring disposition procedures, and (2) whether the MDU owner or alternative provider intends to purchase the cable home wiring. It also accounts for those occasions when the MDU owner makes a separate notification regarding the purchase of cable home wiring. The number of elections accounts for instances when the incumbent elects to sell the wiring but the parties are unable to agree on a price, therefore necessitating a second election. We assume all notifications and elections (except when an individual subscriber is terminating service) will be in writing and take an average burden of 30 minutes (0.5 hours) to prepare. (25,000 notifications and elections × 0.5 hours = 12,500 hours).

Total Annual Cost to Respondents: $37,510, estimated as follows: Under the annual operation and maintenance costs category, we estimate that stationery and postage costs for interference reports submitted to the Commission pursuant to § 76.613 to be $1 per report. (10 reports × $1 = $10). We estimate stationery and postage costs for signal leakage filings to be $1 per filing. (500 filings × $1 = $500). We estimate that 50% of the 20,000 MVPDs will annually develop cost schedules. We estimate recordkeeping expenses for these schedules to be $1 per MVPD. (20,000 × 50% × $1 = $10,000). We estimate stationery and postage costs for the various disposition notifications and elections to be $1 per occurrence. (27,000 notifications and elections × $1 = $27,000). There are no estimated capital and start-up costs.

Needs and Uses: The various notification and election requirements in this collection (3060–0692) are set forth in order to promote competition and consumer choice by minimizing any potential disruption in service to a subscriber switching video providers.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's *Report and Order* in CS Docket No. 95–184 and MM Docket No. 92–260, FCC No. 97–376, adopted October 9, 1997 and released October 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800 (phone), (202) 857–3805 (fax), 1231 20th Street, NW, Washington, DC 20036.

Synopsis

I. Introduction

The *Order* addresses the issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95–184, 61 FR 3657 (February 1, 1996) ("*Inside Wiring Notice*"), the *Order On Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92–260, 61 FR 6131 (February 16, 1996) and 61 FR 6210 (February 16, 1996) ("*Cable Home Wiring Further Notice*"), and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, 62 FR 46453 (September 3, 1997) ("*Inside Wiring Further Notice*") regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace.

II. Disposition of Home Run Wiring

1. We believe that one of the primary competitive problems in MDUs is the difficulty for some service providers to obtain access to the property for the purpose of running additional home run wires to subscribers' units. Home run wiring is defined as the wiring from the point at which it becomes dedicated to an individual unit in an MDU to the cable demarcation point. The record indicates that MDU property owners often object to the installation of multiple home run wires in the hallways of their properties, for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Incumbents often refuse to sell the home run wiring to the new provider or to cooperate in any transition. The result, regardless of the cable operators' motives, is to chill the competitive environment.

2. In the *Order*, we establish procedures for building-by-building disposition of the home run wiring (where the MDU owner decides to convert the entire building to a new video service provider) and for unit-by-unit disposition of the home run wiring (where an MDU owner is willing to permit two or more video service providers to compete for subscribers on a unit-by-unit basis) where the MDU owner wants the alternative provider to be able to use the existing home run wiring. We believe that our procedural mechanisms will not create or destroy any property rights, but will promote competition and consumer choice by bringing order and certainty to the disposition of the MDU home run wiring upon termination of service. We clarify that riser cable is not covered by the following procedures.

A. Building-by-Building Procedures

3. We adopt the following procedures for building-by-building disposition of home run wiring. Where the incumbent service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises, and the MDU owner wants to be able to use the existing home run wiring for service from another provider, the MDU owner may give the incumbent service provider a minimum of 90 days' written notice that the provider's access to the entire building will be terminated. By adopting this procedural mechanism, we do not intend to affect any contractual rights the parties may have to terminate service in a different manner. We believe that it is reasonable to require, and thus our rules will require, that MDU owners that wish to avail themselves of these procedures notify the incumbent providers of termination of service for the entire building in writing. The incumbent provider will have 30 days to notify the MDU owner in writing of its election to do one of the following for all the home run wiring inside the MDU: (1) to remove the wiring and restore the MDU consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; (2) to abandon and not disable the wiring at the end of the 90-day notice period; or (3) to sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative video service provider to purchase it. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider will be required to notify the MDU owner at the time of this election of the date on which it intends to terminate service.

4. If the incumbent elects to abandon the wiring, its ownership will be determined as a matter of state law. Passive devices such as splitters, as in the cable home wiring context, will be considered part of the home run wiring for this purpose. While the operator may remove its amplifiers or other active devices used in the wiring, it may do so only if an equivalent replacement can easily be reattached. Our decision in this proceeding assumes adherence to standards of good faith that are necessary elements of an orderly transition. In addition, we will require the party removing any active elements to comply with the notice requirements and other rules regarding the removal of home run wiring. Although we will not require that incumbents must transfer or relinquish all rights in molding or conduit when they sell, remove or abandon their wiring, we will prohibit incumbent providers from using any ownership interests they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede or in any way interfere with the ability of an alternative MVPD to use the home run wiring.

5. Where the incumbent provider elects to sell the home run wiring, we will allow the parties to negotiate the price of the wiring. We believe that market forces will provide adequate incentives for the parties to reach a reasonable price, particularly in these circumstances where the incumbent has no legally enforceable right to remain on the premises. The parties will have 30 days from the date of the incumbent's election to negotiate a price for the home run wiring. The parties may also negotiate to purchase additional wiring (e.g., riser cables) at their option. As stated above, our procedures do not apply to riser cable in that the incumbent provider is not required to sell, remove or abandon its riser cable, but it does have the option of doing so if all parties agree. If the parties are unable to agree on a price, the incumbent will then be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert. If the incumbent fails to comply with any of the deadlines established herein, it will be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment will become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. Similarly, if the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it will have to do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first.

6. At this time we decline to establish a penalty for an incumbent provider that fails to remove wiring after electing to do so, or, for that matter, for any other party that violates our cable inside wiring rules. We expect all parties participating in the procedures for the disposition of home run wiring to cooperate and act in full compliance with our rules and the policies underlying them. Similarly, at this time we will not require the incumbent to post a performance bond prior to removal. There is not sufficient evidence to conclude that a significant problem will exist, or that MDU owners are unable to protect their interests pursuant to contract or state law.

7. If the incumbent chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. In addition to this and other notice requirements, we will adopt a general rule requiring the parties to cooperate to avoid service disruption to subscribers to the extent possible. One of our overriding goals in this proceeding is to ensure as seamless a transition as possible. Our rules are premised on the good faith cooperation of all parties to protect against such disruption. We expect service providers to cooperate and to make all necessary efforts to minimize any service disruption when a transition is undertaken. We believe that the current notification requirements, in conjunction with a general rule requiring a seamless transition, are sufficient to protect subscribers from lengthy service disruptions when switching providers. We therefore will not require incumbents to continue service until the new provider is connected.

8. If the parties are unable to agree on a price and the incumbent elects to submit to binding arbitration, the parties will have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or, in some cases, the alternative provider) refuses to participate, the incumbent will have no further obligations under our home run wiring disposition procedures.

B. Unit-by-Unit Procedures

9. We adopt the following procedures for unit-by-unit disposition of home run wiring. Where the incumbent video service provider owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain its home run wiring on the premises, the MDU owner may permit multiple service providers to compete head-to-head in the building for the right to use the individual home run wires dedicated to each unit. Where an MDU owner wishes to permit such head-to-head competition, the MDU owner must provide at least 60 days' written notice to the incumbent provider of the owner's intention to invoke the following procedure. The incumbent service provider will then have 30 days to provide the MDU owner with a written election as to whether,

for all of the incumbent's home run wires dedicated to individual subscribers who may later choose the alternative provider's service, it will: (1) remove the wiring and restore the MDU consistent with state law; (2) abandon the wiring without disabling it (as in the building-by-building situation, if the incumbent elects to abandon the wiring, its ownership will be determined by state law, and passive devices will be considered part of the home run wiring); or (3) sell the wiring to the MDU owner (as in the building-by-building situation, the MDU owner may permit the alternative provider to purchase the home run wiring if the MDU owner refuses to purchase it). In other words, the incumbent service provider will be required to make a single election for how it will handle the disposition of individual home run wires whenever a subscriber wishes to switch video service providers; that election will then be implemented each time an individual subscriber switches service providers. As in the context of building-by-building dispositions of home run wiring, incumbent providers will be prohibited from using any ownership interests they may have in property on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with the ability of an alternative MVPD to use the home run wiring. If the MDU owner permits the alternative service provider to purchase the home run wiring, the alternative service provider will be required to make a similar election within this same 30-day period for any home run wiring that the alternative provider subsequently owns (i.e., after the alternative provider has purchased the wiring from the current incumbent provider) and that is solely dedicated to a subscriber who switches back from the alternative provider to the incumbent.

10. We continue to believe that it would streamline and expedite the process of changing service providers if alternative service providers and MDU owners were permitted to act as subscribers' agents in providing notice of a subscriber's desire to change services. However, consistent with our intention not to "create or destroy any property rights" by these procedures, we will not create any new right of MDU owners and alternative providers to act on behalf of subscribers in terminating service. Nor will we restrict the rights of such MDU owners and alternative providers under state law. We therefore decline at this time to adopt specific procedures to guard against unauthorized changes in service, i.e., "slamming." ("Slamming" is the unauthorized change of a consumer's chosen long distance service. We use the term more generically here to mean an unauthorized change in any communications service.)

11. As with the proposed building-by-building procedures, we will permit the parties to negotiate for the sale of the home run wiring. If one or both of the video service providers elects to negotiate for the sale of the home run wiring it may own, the parties will have 30 days from the date of such election to reach an agreement. During this 30-day negotiation period, the incumbent, the MDU owner and/or the new provider may also work out arrangements for an up-front lump sum payment in lieu of a unit-by-unit payment. An up-front lump sum payment would permit either service provider to use the home run wiring to provide service to a subscriber without the administrative burden of paying separately for each home run wire every time a subscriber changes providers.

12. If the parties cannot agree on a price, the provider that has elected to sell the wiring will be required to elect: (1) to abandon without disabling the wiring; (2) to remove the wiring and restore the MDU consistent with state law; or (3) to submit the price determination to binding arbitration by an independent expert. Again, if the MDU owner (or, in some cases, the alternative provider) refuses to submit the issue to arbitration, the incumbent's obligations under our procedures will cease. If the incumbent fails to comply with any of the deadlines established herein, the home run wiring will be considered abandoned and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service.

13. If the incumbent elects to submit to binding arbitration, the parties will have seven days to agree on an independent expert or each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen would be required to assess the price for the wiring within 14 days. We realize that the expert's price determination may not be issued for up to 28 days after the 60-day notice period has expired. If subscribers wish to switch service providers during this period, the procedures set forth below should be followed, subject to the price established by the arbitrator. If the MDU owner (or, in some cases, the alternative provider) refuses to participate, the incumbent's obligations under the Commission's home run wiring procedures will cease.

14. After completion of this initial process, a provider's election will be carried out if and when the provider is notified either orally or in writing that a subscriber wishes to terminate service and that an alternative service provider intends to use the existing home run wire to provide service to that particular subscriber. At that point, a provider that has elected to remove its home run wiring will have seven days to do so and to restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period will begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination).

15. If the current service provider has elected to abandon or sell the wiring, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent will be required to inform the subscriber or the subscriber's agent (whichever is notifying the incumbent that the subscriber wishes to terminate service) at the time of the request for service termination of the date on which service will be terminated. In addition, the incumbent provider must disconnect the home run wiring from its lockbox and leave it accessible for the new provider within 24 hours of actual service termination.

16. We base the above procedures on the assumption that the alternative service provider will have an incentive to ensure that the incumbent is notified that the alternative service provider intends to use the existing home run wire to provide service. If, however, the subscriber's service is simply terminated without any indication that a competing service provider wishes to use the home run wiring, the incumbent service provider will not be required to carry out its election to sell, remove or abandon the home run wiring. This might occur, for instance, where an MDU tenant is moving out of the building. In such cases, we do not believe that it would be appropriate to require the incumbent to sell, remove or abandon the home run wiring when it might have every reasonable expectation that the next tenant will request its service. However, the incumbent provider will be required to carry out its election with regard to the home run wiring if and when it receives notice from a subsequent tenant (either directly or through an alternative provider) that the tenant wishes to use the home run wiring to receive a competing service.

17. Where the incumbent receives a request for service termination but does not receive notice that an alternative provider wishes to use the home run wiring, the incumbent will still be required to follow the procedures set forth in our cable home wiring rules—e.g., to offer to sell to the subscriber any cable home wiring that the incumbent provider otherwise intends to remove. The required notice in the unit-by-unit context may be effected in two stages (i.e., the subscriber may call to terminate service and the alternative provider may separately notify the incumbent that it wishes to use the home run wiring). In order for the home run wiring and the home wiring to be disposed of in a coordinated manner, we believe that our cable home wiring rules must apply upon any termination of service. In addition, we believe that subscribers should have the right to purchase their home wiring to protect themselves from unnecessary disruption associated with removal of home wiring, regardless of whether they intend to subscribe to an alternative service.

C. Ownership of Home Run Wiring

18. In both the building-by-building and unit-by-unit approaches, the MDU owner will have the initial option to negotiate for ownership and control of the home run wiring because the property owner is responsible for the common areas of a building, including safety and security concerns, compliance with building and electrical codes, maintaining the aesthetics of the building and balancing the concerns of all of the residents. Moreover, vesting ownership of the home run wiring in the MDU owner, as opposed to the alternative service provider, will reduce future transaction costs since the above procedures will not need to be repeated if service is subsequently switched again. Nevertheless, we recognize that some MDU owners may not want to own the home run wiring in their buildings; in such cases, the MDU owner may permit the alternative service provider to purchase the wiring.

19. We will not require video service providers to transfer ownership of cable inside wiring to MDU owners upon installation. At this time, we believe this issue is best left to marketplace negotiations between the service provider and the MDU owner. Some MDU owners may choose to bargain for ownership of the inside wiring, while others may prefer to let the service provider maintain ownership. We are not convinced that MDU owners have insufficient bargaining power in this situation to protect their interests. Even under the home run disposition procedures adopted above, we recognize that some MDU owners may not wish to exercise ownership over the inside wiring. We believe that MDU owners should have the same option at the time of installation.

20. We do believe, however, that all parties involved would benefit from additional certainty regarding ownership of the home run wiring upon termination of a service contract. For any contracts between MVPDs and MDU owners entered into after the effective date of our rules, we will require the MVPD to include a provision describing the disposition of the home run wiring upon the contract's termination. We believe that such a rule will provide certainty to the parties and permit them to address the disposition of home run wiring in light of their circumstances. Where the parties' contract clearly and expressly addresses the disposition of the home run wiring, our procedures will not apply. We also reiterate that the parties may rely upon any existing contractual rights upon termination, in addition to the procedures we are adopting.

D. Application of Procedural Framework

21. As noted above, the procedural mechanisms we are adopting will apply only where the incumbent provider no longer has an enforceable legal right to maintain its home run wiring on the premises against the will of the MDU owner. These procedures will not apply where the incumbent provider has a contractual, statutory or common law right to maintain its home run wiring on the property. We also reiterate that we are not preempting any rights the incumbent provider may have under state law. In the building-by-building context, the procedures will not apply where the incumbent provider has a legally enforceable right to maintain its home run wiring on the premises, even against the MDU owner's wishes, and to prevent any third party from using the wiring. In the unit-by-unit context, the procedures will not apply where the incumbent provider has a legally enforceable right to keep a particular home run wire dedicated to a particular unit (not including the wiring on the subscriber's side of the demarcation point) on the premises, even against the property owner's wishes.

22. We will adopt a presumption that the building-by-building and unit-by-unit procedural mechanisms will apply unless and until the incumbent obtains a court ruling or an injunction enjoining its displacement during the 45-day period following the initial notice. The incumbent will still be required to make its election to sell, remove or abandon the wiring by the end of the initial 30-day period in the absence of such a ruling or injunction. In light of this rule, we decline to shorten the initial election period. We also decline to stay our procedures until all judicial procedures are terminated, including all appeals. We have not received evidence sufficient to persuade us that state courts will not respond expeditiously. Significantly, the record indicates state courts' ability to protect incumbents' rights. The record continues to support our judgment that an incumbent's failure to obtain a state court injunction justifies a presumption that the incumbent no longer has an enforceable legal right to remain on the premises. We do not believe that this presumption interferes with the incumbent's state law rights. A court applying state law will continue to be the ultimate arbiter of whether the incumbent has a legally enforceable right to remain on the premises, and possesses the ability to take any necessary and appropriate steps to make the parties whole under state law. Our presumption simply means that if the incumbent cannot obtain an injunction to maintain its home run wiring on the premises, it is appropriate to permit the MDU owner to invoke our procedures pending any further litigation.

23. We will adopt one exception to our presumption that our procedures will apply in the absence of a state court ruling or injunction obtained within 45 days of the initial notice. We will not require an incumbent provider to obtain such a ruling or injunction where a state's highest court has found that, under its state mandatory access statute, the incumbent always has an enforceable right to maintain its home run wiring on the premises. We believe that to require the incumbent to initiate court proceedings in this situation is wasteful and unnecessary. In such cases, we believe that the burden should shift to the new provider to obtain a judicial determination to the contrary.

24. We decline, however, to provide that our procedures do not apply in states that have enacted mandatory access statutes. Several parties take issue with our statement that where the incumbent provider's mandatory right of access is dependent upon a subscriber's request for service, the provider may no longer have a legally enforceable right to maintain that subscriber's home run wiring on the premises against the MDU owner's wishes once the subscriber no longer requests service. We clarify that we did

not intend to and do not now express any opinion on the merits of this issue. The enforceability of a state mandatory access statute is an issue for the state courts to decide under their particular statutes. We are unwilling to conclude that state mandatory access statutes always grant incumbents the right to maintain their home run wiring in an MDU over the MDU owner's objection. Similarly, we express no opinion on whether state mandatory access statutes permit an incumbent MVPD to block moldings or conduits with unused wiring. Contrary to the arguments of some cable operators, this is not an issue of the right to install wiring. Rather, the issue is whether the incumbent has a legally enforceable right to maintain its home run wiring on the premises over the objection of the MDU owner. Accordingly, our procedures will apply in mandatory access states to the extent state law does not permit the incumbent to maintain its home run wiring (in the case of a building-by-building disposition) or a particular home run wire to a particular subscriber (in the case of a unit-by-unit disposition) against the will of the MDU owner.

25. The above procedural mechanisms will apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent would commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We believe that this will ensure competitive parity among MVPDs and ensure that MDU owners are able to benefit from these procedures regardless of the MVPD that initially wired their buildings.

III. Sharing of Molding

26. We will permit an alternative MVPD to install its wiring within an incumbent's existing molding, even over the incumbent provider's objection, where the MDU owner agrees that there is adequate space in the molding and the MDU owner gives its affirmative consent. We believe that such a rule will promote head-to-head competition among MVPDs by overcoming the resistance of MDU owners to the installation of redundant molding. At this time we will not require the sharing of space within conduits. However, we will not apply this rule where the incumbent has an exclusive contractual right to occupy the molding. Since we do not believe that the incumbent ordinarily will have a property interest in the vacant air space inside the hallway molding, we will not require the alternative MVPD to compensate the incumbent for the placement of its wires. The alternative provider will, however, be required to pay any and all installation costs, including the costs of restoring the property to its prior condition and the costs of any damage to the incumbent's wiring or other property.

27. Under the rule we will adopt, where the MDU owner does not agree that there is adequate space in the molding for the additional wiring, and the MDU owner is willing to permit the installation of larger molding that could contain both the incumbent's and the alternative MVPD's wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding (and return the molding to the incumbent, if appropriate) and replace it with the larger molding at the alternative MVPD's expense. Again, the alternative MVPD would be required to pay any and all installation costs, including the costs of restoring the property to its prior condition and the costs of any damage to the incumbent's wiring or other property. This rule will not apply if the incumbent has contracted for the right to maintain its molding on the MDU owner's property without alteration by the MDU owner. Absent such a contractual provision, we believe that the incumbent has no right to prevent the MDU owner from altering the molding in its hallways and other areas of its property.

IV. Disposition of Cable Home Wiring

28. The procedural framework discussed above addresses the disposition of MDU home run wiring. Here, we set forth specific rules on how to address certain issues regarding the disposition of MDU cable home wiring that were not addressed in our prior home wiring order. Cable home wiring is defined as the internal wiring contained within the premises of a subscriber which begins at the demarcation point, not including any active elements such as amplifiers, converter or decoder boxes, or remote control units. As in the context of home run wiring, our MDU home wiring rules will apply regardless of the identity of the incumbent video service provider involved. While initially this incumbent will commonly be a cable operator, it could also be a SMATV provider, an MMDS provider, a DBS provider or others. We therefore will apply all of our cable home wiring rules for multiple-unit installations to all MVPDs. We also believe that it may be beneficial to apply our cable home wiring rules for single-unit installations to all MVPDs. We seek comment on this issue in the *Second Further Notice of Proposed Rulemaking*, which is summarized elsewhere in the **Federal Register**.

A. Disposition of Home Wiring When Service is Terminated for an Entire MDU

29. We conclude that, if the MDU owner has the legal right, either by law or by contract, to terminate the subscriber's cable service, the owner terminating service for the entire building is effectively voluntarily terminating service on the subscriber's behalf, and our home wiring rules would be triggered. We conclude that providing the cable operator a single point of contact (i.e., the MDU owner) will further the statutory purposes of minimizing disruption and facilitating the transfer of service to a competing video service provider. Because we believe that it would be impractical and inefficient for the incumbent provider to deal with each individual subscriber regarding the disposition of his or her cable home wiring when the entire MDU is switching providers, we will deem the MDU owner to be acting as the terminating "subscriber" for purposes of the disposition of the cable home wiring within the individual dwelling unit where the cable home wiring is not already owned by a resident. We clarify, however, that we are not changing our definition of subscriber to include MDU owners. We believe that, when as a matter of law or contract, the MDU owner has the right to terminate service, the MDU owner is effectively terminating service on behalf of the subscriber. Similarly, with regard to exclusive bulk service contracts, we conclude that it is logical for the landlord to be deemed the subscriber, and thus for the landlord to have the right to purchase the home wiring as provided in our general rules.

30. For those MDU owners proceeding under our home run wiring disposition procedures, we will adopt the following framework in order to ensure the orderly disposition of the home wiring. When an incumbent provider is notified under our home run wiring disposition procedures that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider must, within 30 days: (1) offer to sell to the MDU owner any home wiring within the individual dwelling units which the incumbent provider owns and intends to remove; and (2) provide the MDU owner with the total per-foot replacement cost of such home wiring.

31. As with the home run wiring, if an MDU owner declines to purchase the cable home wiring not already owned by a resident, the MDU owner may permit the alternative service provider to purchase the wiring upon service termination under our rules. We will require that the MDU owner decide whether it or the alternative provider will purchase the cable home wiring and so notify the incumbent provider no later than 30 days before the termination of access to the building will become effective. If the MDU owner and the alternative service provider decline to purchase the home wiring, the incumbent provider will not be permitted to remove the home wiring until the date of actual service termination, i.e., likely 90 days after the building owner notified the incumbent that its access to the entire building will be terminated. We will modify our current home wiring rules to allow the incumbent provider 30 days after service termination, rather than the current seven days, to remove all of the cable home wiring for the entire building if the MDU owner has terminated service for the entire building and has declined to purchase the home wiring. We believe this is appropriate given the amount of home wiring that may need to be removed from an entire building. Under these circumstances, if the incumbent provider fails to remove the home wiring within 30 days of actual service termination, it cannot make any subsequent attempt to remove the wiring or restrict its use.

B. Disposition of Home Wiring When Service Is Terminated by an Individual Subscriber

32. We will continue to apply our rules permitting individual terminating subscribers (or their agents) to purchase the cable home wiring up to a point at or about 12 inches outside their individual units. We continue to believe that this is consistent with the purposes of section 624(i) to promote consumer choice and competition by permitting subscribers to avoid the disruption of having their home wiring removed upon voluntary termination and to subsequently utilize that wiring for an alternative service. If the subscriber declines to purchase its home wiring, we believe that the premises owner should be permitted to purchase the cable home wiring within the individual's premises based on the per-foot replacement cost. This approach will preserve the current subscriber's rights, and still allow the premises owner to act on behalf of future tenants, thus promoting competition and consumer choice. As with the home run wiring in an MDU, if the premises owner declines to purchase the cable home wiring, the owner may permit the alternative service provider to purchase it.

33. Where an individual MDU resident terminates service, the MDU owner must provide reasonable advance notice to the incumbent provider if it wishes to purchase the home wiring (or that the alternative provider will purchase it) if and when an individual subscriber declines. The MDU owner will be required to inform the incumbent provider one time for the entire building. If the MDU owner fails to provide the incumbent with such notice, the incumbent will be under no obligation to sell the home wiring to the MDU owner or the alternative provider when an individual subscriber terminates and declines to purchase the wiring. Where an MDU owner does not or cannot invoke our unit-by-unit home run wiring disposition procedures (e.g., if it elects to have two-wire competition to each unit), we will require the MDU owner to provide the incumbent provider reasonable advance notice if the MDU owner or the alternative provider intends to purchase the home wiring if and when a subscriber declines.

34. In addition, where an individual subscriber is terminating service, we will change the time in which an incumbent provider must remove the home wiring or make no further effort to use it or restrict its use in single unit installations from seven business days to seven calendar days after the individual subscriber terminates service. We believe that this minor change is sufficient time for removal of a single subscriber's cable home wiring, and will avoid customer confusion by having the time permitted for the provider to remove the home wiring within the individual unit run concurrently with the time permitted for the provider to remove, sell or abandon the home run wiring under our procedural framework.

C. Effect of Subscriber Vacating the Premises on the Application of Cable Home Wiring Rules

35. We conclude that our cable home wiring rules should apply even when the subscriber terminates cable service, elects not to purchase the wiring and vacates the premises within the seven-day time period the operator has to remove the home wiring. A cable operator that owns the wiring and intends to remove it must offer to sell the cable home wiring to the subscriber upon voluntary termination, and if the subscriber declines, the operator must remove the wiring within seven days or make no further effort to remove it or restrict its use. We expressly state that the cable operator must be given reasonable access to the individual premises during the removal period. We believe that the foregoing policy will promote the objectives of section 624(i) by minimizing disruption and facilitating subsequent subscribers' ability to use their home wiring to connect to the video service provider of their choice.

36. The disposition of the cable home wiring under these circumstances will not affect our rules for the unit-by-unit disposition of the MDU home run wiring. As described above, our rules regarding the disposition of the home run wiring are not triggered where a subscriber terminates service and vacates the premises unless and until a new or subsequent subscriber (or his or her agent) notifies the incumbent service provider that the subscriber wishes to receive service from an alternative service provider lawfully serving the premises.

V. MDU Demarcation Point

37. We believe that it is not necessary to establish a common cable and telephone demarcation point at this time. At least as far as inside wiring is concerned, telephony generally appears to continue to be delivered over twisted pair wiring and multichannel video programming generally appears to be delivered over coaxial cable. Based on the record in this proceeding, it appears that cable operators and other entities planning to offer telephone service generally will do so by connecting to the existing telephone inside wiring network. The record before us indicates that this distinction is likely to continue for at least the near future. If and when circumstances change, we will revisit this issue with the goal of creating a single set of inside wiring rules. We note that, as a practical matter, the telephone demarcation point in new single family home installations may be located at a point outside of where the wiring enters the home, near the cable demarcation point. Similarly, the points at which the telephone and cable inside wiring become devoted to individual multiple dwelling units may be at similar locations (e.g., in garden-style apartment buildings, such points may both be located in the basement of the individual buildings). While such examples may create a de facto convergence in many cases, so long as the cable and telephone inside wiring networks remain distinct, we do not

believe that the Commission need require such a result.

38. At this time, we will not modify the cable demarcation point in MDUs. We will, however, adopt our tentative conclusion that where the cable demarcation point is "physically inaccessible" to an alternative MVPD, the demarcation point should be moved to the point at which it first becomes physically accessible. We clarify that this movement should be the closest point at which the wiring becomes physically accessible that does not require access to the subscriber's unit. Moving the demarcation point into the unit in such situations would add significantly to the disruption and inconvenience of switching service providers, contrary to the intent of section 624(i).

39. In addition, we will adopt a definition of "physically inaccessible" which asks whether accessing the demarcation point (1) would require significant modification or damage of preexisting structural elements, and (2) would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring. For example, wiring embedded in brick, metal conduit or cinder blocks would likely be "physically inaccessible" under this definition; wiring simply enclosed within hallway molding would not.

VI. Loop-Through Cable Wiring Configurations

40. In a loop-through cable wiring system, a single cable is used to provide service to either a portion of or an entire MDU. Every subscriber on the loop is therefore limited to receiving video services from the same provider. If the cable is broken or removed, signals to all succeeding units are interrupted. Previously, we excluded MDU loop-through wiring from the cable home wiring rules because we believed that applying our rules to loop-through wiring would give the initial subscriber control over cable service for all subscribers in the loop. Because loop-through configurations are excluded from the home wiring rules, cable operators are not currently required to offer to sell the wire to subscribers upon termination of service, and no subscriber on the loop has the right to purchase that portion of the loop-through cable wiring located inside his or her dwelling unit. The ownership of loop-through wiring therefore currently depends on the circumstances (e.g., who installed the wire, whether the wire has been sold and state fixture law) and is not affected by our rules.

41. As with other cable inside wiring configurations in MDUs, a wiring loop may include both wiring inside the individual dwelling unit and wiring in common areas which extends outside the individual dwelling unit to the riser or feeder cable. We now believe that, for purposes of our cable inside wiring rules, all loop-through wiring should not be treated the same. We therefore conclude that, when the property owner or the entity that owns or controls the common areas elects to switch to a new service provider, our cable home wiring rules will apply to that portion of the loop-through wiring that is inside the individual dwelling unit (up to the demarcation point(s) discussed below). For example, when an MDU owner wishes to terminate service for a building with loop-through wiring and invokes our building-by-building procedures for disposition of the home run wiring, those procedures will govern the disposition of the wiring that is dedicated to each loop other than the cable home wiring within each unit. Consistent with our building-by-building procedures, the MDU owner will be permitted to purchase the loop-through home wiring pursuant to our cable home wiring rules. In addition, where the MDU owner terminates service for the entire loop but does not or cannot invoke our procedures for the disposition of home run wiring, the MDU owner will nevertheless have certain rights to the home wiring within the individual dwelling units.

42. Where a building is comprised of rental units, the building owner will have the right to elect to switch service providers and the right to purchase the loop-through home wiring. In buildings in which persons have a direct or indirect ownership interest in individual units (as with condominiums and cooperatives), the election of whether to switch service providers will be determined under the rules of the association or entity that owns and controls the building's common areas, in a manner similar to other decisions made by the entity with respect to the common areas. If the MDU owner elects to switch to a new service provider but does not wish to purchase the loop-through home wiring, the new service provider may elect to purchase the wiring.

43. Allowing the MDU owner to purchase loop-through home wiring under these circumstances will allow that party to control the wiring. We believe that, at least in competitive markets, the MDU owner has a significant incentive to represent the subscribers' interests. In addition, the management structures of condominium or cooperative buildings are designed to reflect their residents' interests. Allowing the MDU owner to control loop-through home wiring gives the subscriber an opportunity for increased choice and enhanced service, and furthers section 624(i)'s statutory purpose of facilitating the transfer to an alternate service provider with minimal disruption to the subscriber. We previously excluded loop-through wiring from our cable home wiring rules because we did not believe it was appropriate to give the initial individual subscriber in the loop control over the cable service of all remaining subscribers on the loop. Under the procedures we adopt today, that situation cannot occur.

44. We clarify that our rules will provide the MDU owner, not the alternative provider, with the first opportunity to purchase the loop-through wiring. Once the MDU owner owns and controls the wiring, the cable operator will be on equal footing under our rules with other video service providers with regard to subsequently providing service to the tenants. Only if the MDU owner declines to purchase the wiring will the alternative provider have the opportunity to purchase the loop-through wiring.

45. We will set the demarcation points, i.e., the points between which the MDU owner may purchase the loop-through home wiring under our cable home wiring rules, at or about 12 inches outside the point at which the loop enters or exits the first and last individual dwelling units on the loop, or as close as practicable where 12 inches outside is physically inaccessible. In some cases, the loop may begin and end outside of the same unit, and thus the demarcation points shall be 12 inches outside the point at which the loop enters and exits that one unit, or as close as practicable where 12 inches outside is physically inaccessible. We believe that this is consistent with section 624(i), i.e., the loop-through home wiring is within the customer's premises, and with the cable demarcation point for non-loop-through configurations. We note that one of our prior concerns was that establishing a separate demarcation point for each subscriber on the loop was not feasible. Under the rules set forth herein, however, one entity will be purchasing the entire home wiring loop, making it unnecessary to set a demarcation point for each subscriber's unit.

46. We will apply the same rules with respect to compensation and technical standards that we apply to non-loop-through wiring systems as well. In other words, the loop-through wiring on the subscriber's side of the demarcation point may be purchased by the MDU owner at the replacement cost as defined in § 76.802(a). The loop-through wiring outside the demarcation points up to the point at which the loop connects with the riser or feeder cable may be addressed pursuant to the procedures set forth above with regard to the disposition of home run wiring.

47. Despite the competitive drawbacks of loop-through wiring, we do not believe it necessary for the Commission to prohibit future installations of loop-through wiring configurations. We believe that such a prohibition would unduly restrict the configuration options available to building owners and service providers. We have found no evidence in the record that cable operators have installed loop-through wiring in order to evade our rules since they were implemented in 1993. Also, the application of our home wiring rules to loop-through systems where the MDU owner seeks to switch service providers should reduce any incentive cable operators may have to install loop-through configurations for anti-competitive reasons.

VII. Video Service Provider Access to Private Property

A. Federal Mandatory Access Requirements

48. While we believe that nondiscriminatory access for video and telephony service providers enhances competition, we will not adopt a federal mandatory access requirement at this time. We note that telecommunications carriers' access to telephone companies' facilities and rights-of-way under the 1996 Act are currently under reconsideration in *First Report and Order* in CC Docket No. 96–98 and CC Docket No. 95–185 ("*Interconnection Order*"). We do not believe that the record in this proceeding provides a sufficient basis for us to address these issues. We will defer decisions on these issues to that proceeding. Similarly, we do not decide herein whether under section 207 of the 1996 Act viewers living in rental properties, and those who need access to common property, have the right to receive certain video programming services over the property owner's objections. This issue will be addressed in IB Docket No. 95–59 (Preemption of Local Zoning Regulation of Satellite Earth Stations) and CS Docket No. 96–83 (Implementation of section 207 of the Telecommunications Act, Restrictions on Over-the-Air Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service).

49. In addition, commenters in this proceeding urged the Commission to construe section 621(a)(2) to prohibit a property owner from denying a franchised cable operator access to an easement on the property when the owner has already granted or is obligated to grant an easement to other utilities, whether public or private. Section 621(a)(2) provides that "[a]ny franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses * * *." Numerous court decisions have interpreted the statutory language and legislative history of section 621(a)(2), several finding that this section does not provide cable operators access to purely private easements granted to utilities. We decline to address those rulings here, but will continue to examine these issues as we seek to ensure parity of access among all telecommunications and video services providers. Similarly, we decline at this time to adopt a mandatory access rule under section 706 of the 1996 Act, but may revisit this issue as we consider issues of service provider access in the broader competitive context.

50. We believe that whether an incumbent provider may use its existing easements or rights-of-way to provide new or additional services generally depends on state law interpretations of the terms of the easements or rights-of-way. While we decline at this time to decide as a general matter whether such easements and rights-of-way permit the provision of additional services, we believe that we do have the authority in certain instances to review restrictions imposed upon such use.

B. State Cable Mandatory Access Requirements

51. According to the record in this proceeding, some form of mandatory access law may exist in approximately 18 jurisdictions, including Connecticut, Delaware, the District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia and Wisconsin. The record also indicates that there may be local ordinances that provide similar access rights. We believe that the record in this proceeding does not support the preemption of state mandatory access laws at this time. While commenters opposing state mandatory access laws argue that these laws act as a barrier to entry, the record also indicates that property owners deny access for reasons unrelated to the state laws, including property damage, aesthetic considerations and space limitations. We believe that our rules regarding the building-by-building and unit-by-unit disposition of home run wiring adopted herein will lower many of these barriers to entry and may alleviate some of the advantages incumbent providers may have with respect to providing service to particular buildings.

52. We remain concerned, however, about disparate regulation of MVPDs that unfairly skews competition in the multichannel video programming marketplace. Despite our decision not to preempt state and local mandatory access laws at this time, we encourage these jurisdictions to evaluate present laws and circumstances to determine whether a nondiscriminatory and competitively neutral environment exists. We believe that establishing competitive parity under these statutes will promote competition among MVPDs and will expand consumer choice.

C. Exclusive Service Contracts

53. We recognize that there are significant competitive issues regarding exclusive contracts. We are concerned that long-term exclusive contracts may raise anti-competitive concerns because they "lock up" properties, preventing consumers from receiving the benefits of a newly competitive market. However, we also note that alternative providers cite the competitive benefits of exclusive contracts as a means of financing "specialized investments." Without exclusive contracts to allow recovery over time on the cost of new installation, these parties assert that they will be unable to compete with the incumbent cable operator. We believe that the record would benefit from further comment on these issues. In the *Second Further Notice of Proposed Rulemaking*, summarized elsewhere in the **Federal Register**, we seek comment on various options, including: (1) adopting a maximum "cap" on the enforceability of all MVPDs' exclusive contracts; (2) limiting the ability of MVPDs with market power from entering into exclusive contracts; and (3) adopting a "fresh look" period for so-called "perpetual" exclusive contracts.

VIII. Customer Access to Cable Home Wiring Before Termination of Service

54. We will establish a rule allowing customers to provide and install their own cable home wiring within their premises, and to connect additional home wiring within their premises to

the wiring installed and owned by the cable operator prior to termination of service. Under this rule, customers will be able to select who will install their home wiring (e.g., themselves, the cable operator or a commercial contractor). In addition, customers may connect additional wiring, splitters or other equipment to the cable operator's wiring, or redirect or reroute the home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. Subscribers will not be permitted to physically cut, improperly terminate, substantially alter or otherwise destroy cable operator-owned inside wiring. To protect cable operators' systems from signal leakage, electronic and physical harm and other types of degradation, we will permit cable operators to require that any home wiring (including any passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator. If, however, the subscriber's connection to, redirection of or rerouting of the home wiring causes electronic or physical harm to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. We believe that subscriber access to home wiring is necessary to enhance competition, which will result in lower and more reasonable rates for services such as the installation of additional outlets. Indeed, where competition is introduced, consumers benefit from lower prices, greater technological innovation, and additional consumer choice.

55. We do not believe that the rule we are adopting will pose an undue risk of signal leakage or harm to the cable system. Many subscribers already own and control their home wiring—e.g., where the cable operator charges for it upon installation or where state law deems home wiring to be a "fixture." Indeed, as many cable interests have pointed out in this proceeding, the marketplace has established the F-type connector as the de facto standard for connecting coaxial cable to CPE. Such connectors are readily available and, if properly used, provide adequate signal leakage protection. In addition, cable operators can provide guidance to subscribers who install their own wiring. Also, as stated above, we will permit cable operators to establish reasonable technical specifications for subscriber-installed home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring), not to exceed the specifications of their own wiring and equipment. Furthermore, we will protect the cable system from electronic and physical harm by allowing the cable operator to impose additional technical specifications where such harm exists.

56. We will not modify our current requirement that cable operators monitor signal leakage and eliminate harmful interference while they are providing service, regardless of who owns the home wiring. We also will continue to require cable operators to discontinue service to a subscriber where signal leakage occurs, until the problem is corrected. *See* 47 CFR 76.617. A cable operator will not be held responsible for facilities over which it no longer provides service. We believe that the continuation of these requirements will appropriately balance the interests of subscribers with the interests of those engaged in licensed over-the-air communications and cable operators in maintaining the security and integrity of the cable systems.

57. Allowing subscribers to install their own cable home wiring prior to termination of service may raise concerns regarding physical and electronic harm to the cable system and degradation of signal quality, including interference with other customers' service. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, we will allow cable operators to discontinue service to that subscriber, as operators may do where a customer's wiring causes signal leakage, until the degradation or interference is resolved. We note, however, that cable operators are not responsible for degradation of signal quality to the subscriber where a subscriber has added outlets or owns and maintains his or her own wiring. While we recognize that theft of cable service is a legitimate concern, we do not agree that our rules granting customers pre-termination access to cable home wiring will promote theft of service. Some cable companies already provide customer pre-termination access to wiring, and there is no evidence in the record that these policies have resulted in increased theft of service. In addition, cable operators may take security measures, such as scrambling of their signals, to deter theft of service.

58. We will neither establish a presumption of ownership of cable home wiring nor deregulate home wiring rates at this time. These issues are beyond the scope of this proceeding. We believe that our rules allowing consumers to install, redirect and reroute their cable home wiring adequately promote the goals of expanded competition and consumer choice without the need to address ownership issues. We also note our obligation under section 623 to regulate the rates of equipment used by subscribers to receive the basic service tier. *See* 47 U.S.C. § 543.

IX. Signal Leakage

59. The purpose of the Commission's signal leakage rules is to protect licensed over-the-air communications, including aeronautical, police, and fire safety communications, from interference caused by signal leakage. Until now, the Commission rules governing signal leakage have been applied only to cable systems, which often deliver signals over the same frequency bands as many over-the-air licensees. Specifically, § 76.605(a)(12) establishes the maximum individual signal leakage limits for all cable operators using frequencies outside the broadcast television bands, while §§ 76.610–76.617 impose more stringent operating and monitoring requirements for cable systems operating in the bands that are used by aircraft for communications and navigation.

60. An increasing number of MVPDs are competing with cable operators in the provision of video programming and other services. Because these MVPDs often transmit signals over the same public safety and navigation frequencies as cable operators, they may be a source of potentially harmful signal leakage. The public safety concerns that underlie application of our signal leakage regulations to cable operators are equally present with respect to other MVPDs such as SMATV, MMDS and open video system operators and others. We will therefore modify our rules to extend existing cable signal leakage requirements to non-cable MVPDs. In light of the potential harm to public safety that may be caused by broadband signal leakage interfering with aeronautical, navigational and communications radio systems, we will not rely on labelling requirements, installation instructions or cable performance specifications.

61. Systems transmitting digitized signals may operate in the restricted aeronautical and public safety bands. Our signal leakage rules provide that systems operating in the restricted bands are only subject to the testing and monitoring requirements when they operate above a threshold power level. Systems using digital transmissions normally operate below this power threshold. Systems using digital technology that operate below our threshold power level therefore would not generally be subject to the most rigorous sections of our signal leakage rules. For digital transmissions that may operate above the power threshold, the Commission shall continue to apply the same requirements as those for analog transmissions due to the potential harm to public safety. MVPDs using digital transmission will be subject to section 76.605(a)(12) which sets forth the maximum signal leakage limits for systems, regardless of the frequency band or power level in use.

62. We will require that all MVPDs comply with § 76.613 of our rules upon the effective date of the *Order*. Section 76.613 protects licensed over-the-air communications from harmful interference and requires prompt action to eliminate such interference. We believe that immediate compliance with § 76.613 is necessary because, unlike our other signal leakage rules that are designed to minimize the risk of interference by requiring that leakage be detected and repaired, § 76.613 provides that once harmful interference actually occurs it must be promptly eliminated. We recognize, however, that immediate compliance with many of our other signal leakage requirements may present hardships to existing MVPDs not previously subject to such rules. We will allow for a five-year transition period from the effective date of these rules to afford non-cable MVPDs time to comply with our signal leakage rules other than § 76.613. The five-year transition period will apply only to the systems of those non-cable MVPDs that have been substantially built as of January 1, 1998. We will define "substantially built" as having 75% of the distribution plant completed. The signal leakage requirements under Part 15 of the Commission's rules will continue to apply during the transition period.

63. Our rules require that each cable system perform an independent signal leakage test annually. 47 CFR 76.611. Based on the current record, we will not amend our rules to treat MDUs or different geographic areas connected by microwave link as separate systems for testing purposes. We believe that for the past six years our testing criteria have provided effective standards for monitoring and rectifying signal leakage in 31,000 cable communities nationwide. Cognizant of the changing technologies that may be used by MVPDs, we will continue to review specific systems' operations and designs that may warrant adjustments to our signal leakage testing criteria.

64. We will not establish any new signal leakage testing procedures such as tracking systems to identify the source of signal leakage. We believe that MVPDs are capable of devising and selecting the most appropriate methods for detecting signal leakage on their own systems. We encourage MVPDs to work together to develop methods that will permit them to accurately identify the source of any signal leakage.

65. While our signal leakage rules generally require cable operators to perform signal leakage monitoring and testing, § 76.615 requires cable operators to file specific information with the Commission. In particular, § 76.615(b)(7) requires that cable operators annually file with the Commission the results of signal leakage testing. The reporting requirements of § 76.615(b)(7) may impose undue burdens on small MVPDs. In the *Second Further Notice of Proposed Rulemaking*, we seek comment on whether certain MVPDs should be exempted from the reporting requirements of § 76.615(b)(7). Since § 76.615(b)(7) is one of the provisions covered by the five-year transition period, all non-cable MVPDs will have five years to comply with the filing requirements; the *Second Further Notice of Proposed Rulemaking* seeks comment on whether we should create a permanent exemption for certain types of MVPDs.

X. Signal Quality

66. By statute, the Commission is charged with promulgating regulations governing the quality of television signals delivered to cable subscribers. We believe that continued application of the Commission's signal quality standards to cable operators is necessary because, despite the recent entrance of other service providers into the video market, cable operators, in most areas of the country, still exercise significant market power. We do not believe at this time that market forces alone will ensure that cable subscribers receive the quality picture they are entitled to expect. With regard to non-cable broadband service providers, we believe that government regulation of signal quality would be unnecessary and unduly intrusive. These alternative providers do not exercise market power and virtually always compete with an incumbent cable operator. Head-to-head competition with a cable operator should ensure that alternative MVPDs deliver a good quality picture in order to attract and retain customers. We believe that, as cable operators become subject to vigorous competition, market forces will ensure that they, too, deliver a good quality picture. As competition develops and its effects become clearer, we expect to leave the issue of signal quality wholly to market forces.

XI. Means of Connection

67. Based on the record, we will not adopt uniform technical standards for jacks and connectors for broadband service. The F-type connector has emerged as the de facto broadband connection standard within the cable industry. We believe that, properly used, the F-type connector is an effective means of connecting coaxial cable to customer premises equipment while minimizing the potential for signal leakage. Non-cable video service providers also use the F-type connector to connect their services via coaxial cable to customer premises equipment. Further government action in this area is therefore unwarranted at this time. In addition, in light of the fact that we are extending our cable signal leakage rules to all broadband service providers, we believe that such providers will have the incentive and obligation to ensure that connections are properly made with high quality materials, without the Commission mandating a connection standard.

XII. Dual Regulation

68. We do not believe that the record before us provides sufficient information to address the issue of whether and how to harmonize the dual systems of regulation governing cable and telephone companies where broadband or multiple services are provided over a single wire or multiple wires. Based on the current record, it appears that service providers will continue to use separate inside wiring to provide cable and telephone service for at least the near future. If and when circumstances change, we will revisit this issue with the goal of creating a single set of inside wiring rules.

XIII. Regulation of Simple and Complex and of Residential and Non-Residential Wiring

69. We will not, at this time, establish common definitions in the common carrier and cable rules with regard to simple versus complex wiring and residential versus non-residential wiring. *See* 47 CFR 68.213, 68.215. In the telephone context, we believe that our distinction between simple and complex wiring has proven to be a workable and effective way to promote competition while ensuring network protection. Similarly, in the cable context, there may be substantial differences between residential and

commercial buildings which would make it difficult to adopt uniform rules for all kinds of property. We do not believe that the current record provides sufficient evidence to support the need for a modification of our rules, nor does it provide adequate guidance on the direction any such modification should take. We therefore will not modify our rules at this time.

XIV. Customer Premises Equipment

70. The issue of whether we should revise our rules regarding customer premises equipment will be addressed in a separate ongoing Commission rulemaking proceeding arising under new section 629 of the Communications Act.

XV. Final Regulatory Flexibility Act Analysis

71. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 ("RFA"), Initial Regulatory Flexibility Analyses ("IRFAs") were incorporated in the *Inside Wiring Notice, the Cable Home Wiring Further Notice,* and the *Inside Wiring Further Notice*. The Commission sought written public comments on the proposals in these notices, including comments on the IRFAs. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 ("CWAAA"), Public Law 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 *et seq.*

Need for Action and Objectives of the Rule

72.This *Order* adopts new procedural mechanisms to provide order and certainty regarding the disposition of MDU home run wiring upon termination of existing service. In addition, this *Order* promotes competition and consumer choice by establishing rules for the disposition of cable "loop through" wiring upon termination of service. This *Order* also permits consumers to provide or install their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring. These rules will promote competition among MVPDs as well as cable wiring services, which will result in lower prices, greater technological innovation, and additional consumer choice. Finally, to protect public safety and navigation frequencies, this *Order* applies the cable signal leakage rules to all broadband service providers that pose a similar threat of interference with licensed over-the-air communications.

Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

73. In response to the IRFAs contained in the *Inside Wiring Notice* and the *Cable Home Wiring Further Notice,* Building Owners, et al., filed comments arguing that the proposed rules would have a significant effect on small residential and commercial building operators and that the Commission should exempt these entities from any final rules. In response to the IRFA contained in the *Inside Wiring Notice,* CATA filed comments and an ex parte submission requesting that the Commission rescind the *Inside Wiring Notice* and reissue it as a notice of inquiry or reissue it with specific proposed rules. CATA argues that the *Inside Wiring Notice* failed to propose specific rules, thereby preventing both the Commission staff and small entities from analyzing and commenting on the effects of proposed rules on small entities. RTE Group filed its comments and reply comments as "a response by a small business pursuant to section 603 of the Regulatory Flexibility Act." The issues raised by RTE Group are addressed above. No comments were filed in response to the IRFA contained in the *Inside Wiring Further Notice.*

Description and Estimate of the Number of Small Entities Impacted

74. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we adopt in this *Order* will affect video service providers and MDU owners.

75. Small MVPDs: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). We will address each service individually to provide a more succinct estimate of small entities.

76. Cable Systems: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the *Order.*

77. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

78. MMDS: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions has been approved by the SBA.

79. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

80. ITFS: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

81. DBS: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

82. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service providers, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

83. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

84. OVS: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems ("MFS," certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network ("RCN," certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

85. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

86. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order,* we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. We have not yet received approval by the SBA for this definition.

87. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We

tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

88. MDU Operators: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually. According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

89. Disposition of MDU Home Run Wiring: The *Order* requires MVPDs to comply with a set of procedural timetables for the disposition of home run wiring upon termination of service when an MDU owner invokes the Commission's procedures. In addition, it requires MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon the termination of the contract. It also requires the parties to cooperate to ensure as seamless a transition as possible for subscribers.

90. Sharing of Molding: The *Order* permits an MVPD to install home run wiring in an existing molding if the MDU owner determines that there is sufficient space, if the incumbent MVPD's ability to provide service is not impaired, and if the MDU owner gives its affirmative consent. If the MDU owner determines that there is not sufficient space, and the MDU owner will permit larger moldings, the MDU owner may install larger moldings at the alternative MVPD's expense.

91. Disposition of Cable Home Wiring: The *Order* requires MVPDs to implement their election to remove or abandon home wiring within seven days of learning that the home wiring will not be purchased.

92. Customer Access to Cable Home Wiring before Termination of Service: The *Order* requires cable operators to permit subscribers to provide or install their own cable home wiring, or redirect, reroute or connect additional wiring to the cable operator's home wiring, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact. The cable operator may choose to impose requirements that any home wiring meet reasonable technical specifications, not to exceed the technical specifications of such wiring installed by the cable operator; however, the cable operator may require additional technical specifications to eliminate electronic or physical harm.

93. Signal Leakage: The *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Section 76.615(b)(7) of the cable signal leakage rules requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to section 76.611.

Significant Alternatives and Steps Taken To Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations adopted, amended, modified, or clarified in this *Order*.

94. Disposition of MDU Home Run Wiring: We considered several alternatives for the disposition of MDU home run wiring, including: (1) Creating a single demarcation point for cable and telephony providers; (2) moving the cable demarcation point; and (3) maintaining our current rules. The record indicates that MDU owners often object to the installation of multiple home run wires for reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage. Small video service providers often are new entrants that will have to install new home run wiring (if they cannot use the existing wiring), while incumbent service providers often are established entities that may resist efforts by both new entrants and MDU operators to arrange for use of the existing wiring. By bringing order and certainty to the disposition of the home run wiring upon termination of service, the rules adopted herein advance the interests of both small video service providers and small MDU owners.

95. Transfer of Ownership of Home Run Wiring in Future Installations: We considered adopting a requirement that, for future installations, MVPDs transfer ownership of home run wiring to MDU owners. We instead decided to require MVPDs to include in future contracts with MDU owners a provision addressing the disposition of home run wiring upon termination of the contract. This requirement will provide all MDU owners, including small MDU owners, the flexibility to negotiate for ownership of the home run wiring.

96. Sharing of Molding: We considered not requiring the sharing of molding even when empty space exists. We concluded, however, that the ability to share molding often may assist small MVPDs, which frequently are new entrants, to gain access to MDUs. We considered Time Warner's proposal to allow affected MVPDs and the MDU owner to determine whether the molding contains adequate space. Our rule, however, does not require the concurrence of the affected MVPDs in the determination of whether adequate space exists.

97. Customer Access to Cable Home Wiring before Termination of Service: We believe that subscriber access to home wiring will advance the interests of small entities. As customers gain the ability to select who will install and maintain their home wiring, small entities will be able to compete with the incumbent cable operator to provide such services.

98. Signal Leakage: This *Order* extends the Commission's cable signal leakage rules to all broadband service providers that pose a similar threat of interference with frequencies used for over-the-air communications. Although this modification will impact small broadband service providers, we are exploring the possibility of exempting certain categories of broadband service providers from the reporting requirements of the signal leakage rules.

Report to Congress

99. The Commission shall send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of the *Order* and the FRFA will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

XVI. Ordering Clauses

100. *It is Ordered* that, pursuant to sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, the Commission's rules are hereby amended as set forth below.

101. *It is further ordered* that the amendments in 47 CFR 76.613, 76.802 and 76.804 impose information collection requirements, and will therefore not become effective until approved by the Office of Management and Budget ("OMB"). The amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 will become effective 30 days following publication of this *Order* in the **Federal Register**. However, compliance with amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806 will not be required until OMB approval of the information collection requirements in 47 CFR 76.613, 76.802 and 76.804. The Commission will publish a document at a later date announcing the effective date of the amendments in 47 CFR 76.613, 76.802 and 76.804, and the date of compliance for the amendments in 47 CFR 76.5, 76.620, 76.800, 76.805 and 76.806.

102. *It is further ordered* that the Commission *shall send* a copy of the *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising paragraph (mm)(2) and adding paragraphs (mm)(3) and (mm)(4), to read as follows:

§ 76.5 Definitions.

* * * * *

(mm) * * *

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit.

(3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit.

(4) As used in this paragraph (mm)(3), the term "physically inaccessible" describes a location that:

(i) Would require significant modification of, or significant damage to, preexisting structural elements, and

(ii) Would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

Note to paragraph (mm)(4): For example, wiring embedded in brick, metal conduit or cinder blocks with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

* * * * *

3. Section 76.613 is amended by revising the heading and by revising paragraphs (b), (c), and (d) to read as follows:

§ 76.613 Interference from a multichannel video programming distributor ("MVPD").

* * * * *

(b) An MVPD that causes harmful interference shall promptly take appropriate measures to eliminate the harmful interference.

(c) If harmful interference to radio communications involving the safety of life and protection of property cannot be promptly eliminated by the application of suitable techniques, operation of the offending MVPD or appropriate elements thereof shall immediately be suspended upon notification by the District Director and/or Resident Agent of the Commission's local field office, and shall not be resumed until the interference has been eliminated to the satisfaction of the District Director and/or Resident Agent. When authorized by the District Director and/or Resident Agent, short test operations may be made during the period of suspended operation to check the efficacy of remedial measures.

(d) The MVPD may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

4. Section 76.620 is added to read as follows:

§ 76.620 Non-cable multichannel video programming distributors ("MVPDs").

(a) Sections 76.605(a)(12), 76.610, 76.611, 76.612, 76.614, 76.615(b)(1–6), 76.616, and 76.617 shall apply to all non-cable MVPDs. However, non-cable MVPD systems that are substantially built as of January 1, 1998 shall not be subject to these sections until January 1, 2003. "Substantially built" shall be defined as having 75 percent of the distribution plant completed. As of January 1, 2003, § 76.615(b)(7) shall apply to all non-cable MVPDs.

(b) To comply with § 76.615(b)(2), a non-cable MVPD shall submit its Internal Revenue Service's Employer Identification (E.I.) number instead of an FCC identifier.

5. Subpart M is amended by revising the heading to read as follows:

Subpart M—Cable Inside Wiring

6. Section 76.800 is added to read as follows:

§ 76.800 Definitions.

(a) *MDU.* A multiple dwelling unit building (e.g., an apartment building, condominium building or cooperative).

(b) *MDU owner.* The entity that owns or controls the common areas of a multiple dwelling unit building.

(c) *MVPD.* A multichannel video programming distributor, as that term is defined in Section 602(13) of the Communications Act, 47 U.S.C. 522(13).

(d) *Home run wiring.* The wiring from the demarcation point to the point at which the MVPD's wiring becomes devoted to an individual subscriber or individual loop.

7. Section 76.802 is amended by revising paragraphs (a) and (g), and adding paragraph (l) to read as follows:

§ 76.802 Disposition of cable home wiring.

(a)(1) Upon voluntary termination of cable service by a subscriber in a single unit installation, a cable operator shall not remove the cable home wiring unless it gives the subscriber the opportunity to purchase the wiring at the replacement cost, and the subscriber declines. If the subscriber declines to purchase the cable home wiring, the cable system operator must then remove the cable home wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(2) Upon voluntary termination of cable service by an individual subscriber in a multiple-unit installation, a cable operator shall not be

entitled to remove the cable home wiring unless: it gives the subscriber the opportunity to purchase the wiring at the replacement cost; the subscriber declines, and neither the MDU owner nor an alternative MVPD, where permitted by the MDU owner, has provided reasonable advance notice to the incumbent provider that it would purchase the cable home wiring pursuant to this section if and when a subscriber declines. If the cable system operator is entitled to remove the cable home wiring, it must then remove the wiring within seven days of the subscriber's decision, under normal operating conditions, or make no subsequent attempt to remove it or to restrict its use.

(3) The cost of the cable home wiring is to be based on the replacement cost per foot of the wiring on the subscriber's side of the demarcation point multiplied by the length in feet of such wiring, and the replacement cost of any passive splitters located on the subscriber's side of the demarcation point.

* * * * *

(g) If the cable operator adheres to the procedures described in paragraph (b) of this section, and the subscriber asks for more time to make a decision regarding whether to purchase the home wiring, the seven (7) day period described in paragraph (b) of this section will not begin running until the subscriber declines to purchase the wiring; in addition, the subscriber may not use the wiring to connect to an alternative service provider until the subscriber notifies the operator whether or not the subscriber wishes to purchase the wiring.

* * * * *

(l) The provisions of § 76.802, except for § 76.802(a)(1), shall apply to all MVPDs in the same manner that they apply to cable operators.

8. Section 76.804 is added to read as follows:

§ 76.804 Disposition of home run wiring.

(a) *Building-by-building disposition of home run wiring.* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90-day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90-day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90-day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90-day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90-day notice period or within 30 days of actual service termination, which ever occurs first.

(3) If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90-day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90-day notice period.

(4) The MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under § 76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per-foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of § 76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent attempt to remove it or to restrict its use.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(b) *Unit-by-unit disposition of home run wiring:* (1) Where an MVPD owns the home run wiring in an MDU and does not (or will not at the conclusion of the notice period) have a legally enforceable right to maintain any particular home run wire dedicated to a particular unit on the premises against the MDU owner's wishes, the MDU owner may permit multiple MVPDs to compete for the right to use the individual home run wires dedicated to each unit in the MDU. The MDU owner must provide at least 60 days' written notice to the incumbent MVPD of the MDU owner's intention to invoke this procedure. The incumbent MVPD will then have 30 days to provide a single written election to the MDU owner as to whether, for each and every one of its home run wires dedicated to a subscriber who chooses an alternative provider's service, the incumbent MVPD will: remove the wiring and restore the MDU building consistent with state law; abandon the wiring without disabling it; or sell the wiring to the MDU owner. If the MDU owner refuses to purchase the home run wiring, the MDU owner may permit the alternative provider to purchase it. If the alternative provider is permitted to purchase the wiring, it will be required to make a similar election within this 30-day period for each home run wire solely dedicated to a subscriber who switches back from the alternative provider to the incumbent MVPD.

(2) If the incumbent provider elects to sell the home run wiring under paragraph (b)(1), the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. During this 30-day negotiation period, the parties may arrange for an up-front lump sum payment in lieu of a unit-by-unit payment. If the parties are unable to agree on a price during this 30-day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring within 14 days. If subscribers wish to switch service providers after the expiration of the 60-day notice period but before the expert issues its price determination, the procedures set forth in paragraph (b)(3) of this section shall be followed, subject to the price established by the arbitrator. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures.

(3) When an MVPD that is currently providing service to a subscriber is notified either orally or in writing that that subscriber wishes to terminate service and that another service provider intends to use the existing home run wire to provide service to that particular subscriber, a provider that has elected to remove its home run wiring pursuant to paragraph (b)(1) or (b)(2) of this section will have seven days to remove its home run wiring and restore the building consistent with state law. If the subscriber has requested service termination more than seven days in the future, the seven-day removal period shall begin on the date of actual service termination (and, in any event, shall end no later than seven days after the requested date of termination). If the provider has elected to abandon or sell the wiring pursuant to paragraph (b)(1) or (b)(2) of this section, the abandonment or sale will become effective upon actual service termination or upon the requested date of termination, whichever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the incumbent provider intends to terminate service prior to the end of the seven-day period, the incumbent shall inform the party requesting service termination, at the time of such request, of the date on which service will be terminated. The incumbent provider shall make the home run wiring accessible to the alternative provider within twenty-four (24) hours of actual service termination.

(4) If the incumbent provider fails to comply with any of the deadlines established herein, the home run wiring shall be considered abandoned, and the incumbent may not prevent the alternative provider from using the home run wiring immediately to provide service. The alternative provider or the MDU owner may act as the subscriber's agent in providing notice of a subscriber's desire to change services, consistent with state law. If a subscriber's service is terminated without notification that another service provider intends to use the existing home run wiring to provide service to that particular subscriber, the incumbent provider will not be required to carry out its election to sell, remove or abandon the home run wiring; the incumbent provider will be required to carry out its election, however, if and when it receives notice that a subscriber wishes to use the home run wiring to receive an alternative service. Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will apply where a subscriber's service is terminated without notifying the incumbent provider that the subscriber wishes to use the home run wiring to receive an alternative service.

(5) The parties shall cooperate to avoid disruption in service to subscribers to the extent possible.

(6) Section 76.802 of the Commission's rules regarding the disposition of cable home wiring will continue to apply to the wiring on the subscriber's side of the cable demarcation point.

(c) The procedures set forth in paragraphs (a) and (b) of this section shall apply unless and until the incumbent provider obtains a court ruling or an injunction within forty-five (45) days following the initial notice enjoining its displacement.

(d) After the effective date of this rule, MVPDs shall include a provision in all service contracts entered into with MDU owners setting forth the disposition of any home run wiring in the MDU upon the termination of the contract.

(e) Incumbents are prohibited from using any ownership interest they may have in property located on or near the home run wiring, such as molding or conduit, to prevent, impede, or in any way interfere with, the ability of an alternative MVPD to use the home run wiring pursuant to this section.

(f) Section 76.804 shall apply to all MVPDs.

9. Section 76.805 is added to read as follows:

§ 76.805 Access to molding.

(a) An MVPD shall be permitted to install one or more home run wires within the existing molding of an MDU where the MDU owner finds that there is sufficient space to permit the installation of the additional wiring without interfering with the ability of an

existing MVPD to provide service, and gives its affirmative consent to such installation. This paragraph shall not apply where the incumbent provider has an exclusive contractual right to occupy the molding.

(b) If an MDU owner finds that there is insufficient space in existing molding to permit the installation of the new wiring without interfering with the ability of an existing MVPD to provide service, but gives its affirmative consent to the installation of larger molding and additional wiring, the MDU owner (with or without the assistance of the incumbent and/or the alternative provider) shall be permitted to remove the existing molding, return such molding to the incumbent, if appropriate, and install additional wiring and larger molding in order to contain the additional wiring. This paragraph shall not apply where the incumbent provider possesses a contractual right to maintain its molding on the premises without alteration by the MDU owner.

(c) The alternative provider shall be required to pay any and all installation costs associated with the implementation of paragraphs (a) or (b) of this section, including the costs of restoring the MDU owner's property to its original condition, and the costs of repairing any damage to the incumbent provider's wiring or other property.

10. Section 76.806 is added to read as follows:

§ 76.806 Pre-termination access to cable home wiring.

(a) Prior to termination of service, a customer may: install or provide for the installation of their own cable home wiring; or connect additional home wiring, splitters or other equipment within their premises to the wiring owned by the cable operator, so long as no electronic or physical harm is caused to the cable system and the physical integrity of the cable operator's wiring remains intact.

(b) Cable operators may require that home wiring (including passive splitters, connectors and other equipment used in the installation of home wiring) meets reasonable technical specifications, not to exceed the technical specifications of such equipment installed by the cable operator; provided however, that if electronic or physical harm is caused to the cable system, the cable operator may impose additional technical specifications to eliminate such harm. To the extent a customer's installations or rearrangements of wiring degrade the signal quality of or interfere with other customers' signals, or cause electronic or physical harm to the cable system, the cable operator may discontinue service to that subscriber until the degradation or interference is resolved.

(c) Customers shall not physically cut, substantially alter, improperly terminate or otherwise destroy cable operator-owned home wiring.

[FR Doc. 97–29514 Filed 11–13–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–258; FCC 97–156]

Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission's amendments to 47 CFR Sections 76.701 and 76.702, which contained information collection requirements, became effective on October 29, 1997. These amendments, which were published in the **Federal Register** on May 23, 1997, relate to implementation of the cable television leased access and public, educational, and governmental access indecency provisions of the 1992 Cable Act.

EFFECTIVE DATE: The amendments to 47 CFR Sections 76.701 and 76.702, published at 62 FR 28371, became effective on October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Meryl S. Icove, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION:

1. On May 7, 1997, the Commission released an order revising its indecency rules for leased access and public, educational and governmental access channels, a summary of which was published in the **Federal Register**. See 62 FR 28371, May 23, 1997. Because they imposed new or modified information collection requirements, 47 CFR Sections 76.701 and 76.702 could not become effective until approved by the Office of Management and Budget ("OMB"). OMB approved these rule changes on October 29, 1997.

2. The **Federal Register** summary stated that the Commission would publish a document confirming the effective date and notifying parties that these rules have become effective. The amendments to 47 CFR Sections 76.701 and 76.702 became effective on October 29, 1997.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29986 Filed 11–13–97; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 220
Friday, November 14, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2411

Revision of Freedom of Information Act Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (FLRA) are proposing to amend their regulations relating to the Freedom of Information Act to implement certain changes mandated by the Electronic Freedom of Information Act Amendments of 1996, (EFOIA). The regulatory changes proposed in this notice will provide for expedited processing of information requests, as required by the EFOIA.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Mail or deliver written comments to Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, N.W., Room 415, Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Shari Polur (202) 482–6695 ext. 340.

SUPPLEMENTARY INFORMATION: Through the EFOIA, Pub. L. 104–231, 110 Stat. 3048 (1996), Congress amended the FOIA 5 U.S.C. 552 *et seq.*, to address, among other things, the expedited processing of requests for information. Specifically, Congress required agencies to promulgate regulations under which requests for expedited processing would be considered. In addition, Congress mandated that agencies grant such requests upon a showing of compelling need.

Written comments are solicited at the address given above. Copies of all written comments will be available for inspection and photocopying during normal business hours, in the Office of Case Control.

The FLRA proposes to amend part 2411, *Availability of Official Information*. The EFOIA requires agencies to promulgate, through notice and comment rulemaking, regulations providing for expedited processing of initial requests that demonstrate a *compelling need*. In addition, the regulations must provide for expedited processing in other cases when the agency determines it is warranted. *Compelling need* is defined as cases where "a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. 552(a)(6)(E)(v). A requester seeking expedited processing can demonstrate a *compelling need* by submitting a statement certified by the requester "to be true and correct to the best of such person's knowledge and belief" that satisfies the statutory and regulatory definitions of *compelling need*. 5 U.S.C. 552(a)(6)(E)(vi). FOIA officers must notify the requester within ten (10) calendar days whether or not expedited processing has been granted. If denied, any appeals made must be processed expeditiously. The proposed regulations would reflect these changes through modifications to § 2411.8, including a retitling of the section and the addition of a new paragraph (b).

Executive Order 12866

This final regulation has been reviewed in accordance with Executive Order 12866. It is not classified as significant because it does not meet the criteria for significant regulatory action established by the E.O.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The amendments are procedural in nature and are required to implement EFOIA.

Paperwork Reduction Act of 1995

The proposed regulations contain no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2411

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons stated in the preamble, the FLRA is proposing to adopt the following amendments to 5 CFR part 2411, Freedom of Information Act Regulations:

1. The authority citation for Part 2411 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Revise § 2411.8 to read as follows:

§ 2411.8 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited

processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, *compelling need* means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

Dated: November 7, 1997.

Sally Thomas,

Executive Director.

[FR Doc. 97–29914 Filed 11–13–97; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–086–1]

Changes in Disease Status of Belgium, France, Greece, Luxembourg, Portugal, and Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Luxembourg and Portugal free of rinderpest and foot-and-mouth disease; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of exotic Newcastle disease; Portugal free of African swine fever; and Belgium, France, and Portugal free of swine vesicular disease. These proposed actions are based on a request from the European Commission's Directorate General for Agriculture and on our review of the supporting documentation supplied with that request. These proposed actions would relieve some restrictions on the importation into the United States of certain animals and animal products from those countries. However, because of the status of those countries with respect to other diseases, and because of other factors that could result in a risk of introducing animal diseases into the United States, the importation into the United States of animals and animal products from those countries would continue to be subject to certain restrictions.

DATES: Consideration will be given only to comments received on or before January 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–086–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–086–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8695; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD), rinderpest, exotic Newcastle disease (END), African swine fever (ASF), hog cholera, swine vesicular disease (SVD), and bovine spongiform encephalopathy (BSE). These are dangerous and destructive communicable diseases of ruminants, swine, and poultry.

In this document, we are proposing to declare Luxembourg and Portugal free of FMD and rinderpest; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of END; Portugal free of ASF; and Belgium, France, and Portugal free of SVD. We are proposing these actions in response to a request submitted to the Animal and Plant Health Inspection Service (APHIS) in July 1997 by the European Commission's (EC's) Directorate General for Agriculture. With its request, the EC's Directorate General for Agriculture provided supporting documentation that included information about the capability of each country's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction of the diseases of concern into each country through the importation of live animals, meats, and animal products.

Since this request was received and reviewed by APHIS, we have published a final rule and policy statement in the **Federal Register** that establish procedures for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States, and that establish procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status (see 62 FR 56000–56033, October 28, 1997, Dockets 94–106–8 and 94–106–9). The final rule is scheduled to become effective on November 28, 1997. The request from the EC addressed by this proposed rule is not a request to recognize regions, rather than countries, nor a request to establish new import conditions based the disease status of any region. Therefore, as we explained we would do in our final rule and policy statement on regionalization, we have handled and evaluated this request in the traditional framework of recognizing a country as free or not free of a specified disease. If this proposed rule is adopted, the current regulations regarding importation of animals and animal products from regions "free" of a specified disease will apply.

Luxembourg and Portugal Free of Rinderpest and FMD

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all regions of the world except those listed in § 94.1(a)(2), which have been declared to be free of those diseases. The regulations in § 94.1(b) prohibit, with certain specific exceptions, the importation into the United States of any ruminant or swine, or any fresh, chilled, or frozen meat of any ruminant or swine, that is from any region where rinderpest or FMD exists, or that has entered a port in or otherwise transited a region where rinderpest or FMD exists. Furthermore, the regulations in § 94.2 restrict the importation of fresh, chilled, or frozen products other than meat, and milk and milk products, of ruminants or swine that originate in or transit a region where rinderpest or FMD exists. Additionally, the importation of organs, glands, extracts, and secretions of ruminants or swine originating in a region where rinderpest or FMD exists is restricted under the regulations in § 94.3, and the importation of cured or cooked meat from a region where rinderpest or FMD exists is restricted under the regulations in § 94.4. Finally, the regulations in 9 CFR part 98 restrict the importation of ruminant and swine embryos and animal semen from a region where rinderpest or FMD exists.

We will consider declaring a region to be free of rinderpest and FMD if, among other things, there have been no cases of those diseases reported there for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that region for at least the previous 1-year period. There has never been a reported case of rinderpest in Luxembourg or Portugal, and the last reported cases of FMD in Luxembourg and Portugal occurred in 1964 and 1984, respectively. Both Luxembourg and Portugal have prohibited vaccinations for rinderpest and FMD since 1991.

We have reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Luxembourg and Portugal be declared free of rinderpest and FMD. Based on that documentation, we believe that Luxembourg and Portugal qualify to be designated as free of rinderpest and FMD. Therefore, we are proposing to add Luxembourg and Portugal to the list in § 94.1(a)(2) of regions declared free of rinderpest and FMD. This proposed action would remove the rinderpest- and FMD-based prohibition on the importation from Luxembourg and Portugal of live ruminants and fresh, chilled, or frozen meat from ruminants and would relieve restrictions on the importation, from these two countries, of milk and milk products from ruminants. However, the importation of fresh, chilled, or frozen meat and edible products other than meat (excluding gelatin, milk, and milk products) from ruminants that have been in Portugal would continue to be restricted under § 94.18 because Portugal is listed in § 94.18 as a region in which BSE exists. Additionally, the importation from Luxembourg and Portugal of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under § 94.9 of the regulations because these countries have not been declared free of hog cholera.

We are also proposing to add Luxembourg and Portugal to the list in § 94.11(a) of regions declared free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from regions that are designated in § 94.1(a) as infected with rinderpest or FMD; or (2) have a common land border with regions designated as infected with rinderpest or FMD; or (3) import ruminants or swine from regions designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Both Luxembourg and Portugal supplement their national meat supplies by the importation of fresh, chilled, or frozen meat of ruminants and swine from regions designated in § 94.1(a)(1) as regions in which rinderpest or FMD exists. Furthermore, both Luxembourg and Portugal import live ruminants and swine from regions not recognized as being free of FMD under conditions less restrictive than would be acceptable for importation into the United States. As a result, even though we propose to designate Luxembourg and Portugal as being free of rinderpest and FMD, the meat and other animal products produced in these countries may be commingled with the fresh, chilled, or frozen meat of animals from a region in which rinderpest or FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from Luxembourg and Portugal be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) at 9 CFR Chapter III. Section 94.11 generally requires that the meat and other animal products of ruminants and swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government that is responsible for the health of the animals within the exporting region, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a region where rinderpest or FMD exists.

Greece Free of Rinderpest

Although Greece does not appear to qualify to be declared free of both rinderpest and FMD, the EC's Directorate General for Agriculture has requested that Greece be declared free of rinderpest. As noted above with regard to both rinderpest and FMD, we will consider declaring a region to be free of rinderpest if, among other things, there have been no cases of the disease reported there for at least the previous 1-year period and no vaccinations for rinderpest have been administered to swine or ruminants in that region for at least the previous 1-year period. There has not been a reported case of rinderpest in Greece since 1926, and vaccinations for that disease have been prohibited in Greece since 1991.

We have reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Greece be declared free of rinderpest. Based on that documentation, we believe that Greece qualifies to be designated as free of rinderpest. We are, therefore, proposing to amend § 94.1(a) to designate Greece as a region free of rinderpest. To do so, we are proposing to add a new paragraph § 94.1(a)(3) in which Greece's status as a region free of rinderpest would be designated.

However, because Greece would be declared free of rinderpest only, and not FMD, the prohibitions and restrictions found in §§ 94.1(b), 94.2, 94.3, and 94.4 on the importation from Greece of ruminants and swine, and fresh, chilled, or frozen meat of ruminants and swine; products other than meat; milk and milk products; organs, glands, extracts, and secretions; and cured or cooked meat of ruminants or swine would continue to apply.

France, Greece, Luxembourg, and Spain Free of END

Section 94.6(a)(1) of the regulations provides that END is considered to exist in all regions of the world except those listed in § 94.6(a)(2), which have been declared to be free of END. The importation into the United States of any carcasses, or parts or products of carcasses, of poultry, game birds, or other birds that are from a region where END is considered to exist, or that have been imported from or moved into or through any region where END is considered to exist, is subject to the restrictions contained in § 94.6(c). In addition, the importation into the United States of eggs (other than hatching eggs) laid by poultry, game birds, or other birds that are from a region where END or *Salmonella*

enteritidis (SE) phage-type 4 is considered to exist or that have been imported from or moved into or through any region where END or SE phage-type 4 is considered to exist is subject to the restrictions contained in § 94.6(d). Poultry eggs for hatching imported from a region where END exists must be quarantined in accordance with § 93.209(b).

We will consider declaring a region to be free of END if there have been no reported cases of the disease in that region for at least the previous 1-year period. There has been no documented case of END in France, Greece, or Spain during the reporting period that began in 1994, and there has been no reported case of END in Luxembourg since 1995.

APHIS has reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that France, Greece, Luxembourg, and Spain be declared free of END. Based on that documentation, we believe that France, Greece, Luxembourg, and Spain qualify to be designated as free of END. Therefore, we are proposing to amend § 94.6(a)(2) by adding France, Greece, Luxembourg, and Spain to the list of regions declared free of END. This proposed action would relieve the restrictions of § 94.6(c) on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from those countries, and would relieve the END-specific restrictions of § 94.6(d)(1)(ix) on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from those countries. This proposed action would also relieve the quarantine requirements of § 93.209(b) for poultry hatching eggs imported from France, Greece, Luxembourg, and Spain.

Portugal Free of ASF

Section 94.8 of the regulations states that ASF exists or is reasonably believed to exist in all the regions of Africa; in Brazil, Cuba, Haiti, Malta, and Portugal; and on the island of Sardinia, Italy. Paragraph (a) of § 94.8 provides that no pork or pork products may be imported into the United States from a region where ASF exists unless the pork or pork product meets certain specified conditions. Also, § 94.17 provides, in part, that dry-cured pork products may be imported into the United States from a region where ASF exists if the dry-cured pork products meet the conditions specified in that section.

In addition to the restrictions on pork and pork products contained in the regulations in part 94, live domestic swine from a region where ASF exists may not be imported into the United States because the regulations in 9 CFR 93.505(a) require, among other things, that live domestic swine be accompanied by a certificate showing that the entire region of origin of the swine is free of ASF and other specified diseases. The importation of swine casings from regions where ASF exists is likewise prohibited by 9 CFR 96.2(a) unless the swine casings originated in a region free of ASF and were processed in the region where ASF exists at a facility that meets the criteria of § 94.8(a)(3)(iv) of the regulations.

We will consider declaring a region free of ASF if there have been no reported cases of the disease in that region for at least the previous 1-year period. The last case of ASF in Portugal occurred in 1993.

APHIS has reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Portugal be declared free of ASF. Based on that documentation, we believe that Portugal qualifies to be designated as free of ASF. Therefore, we are proposing to amend § 94.8 by removing Portugal from the list of regions in which ASF exists or is reasonably believed to exist. This proposed action would result in the importation of pork and pork products from Portugal no longer being subject to the restrictions found in § 94.8 of the regulations. Another effect of this proposed action would be that the importation of swine casings that originated in or were processed in Portugal would no longer be subject to the restrictions in 9 CFR 96.2(a).

However, Portugal is still considered to be affected with hog cholera, so the importation of pork and pork products from Portugal would remain subject to the restrictions in § 94.9 for hog cholera. Similarly, the importation of dry-cured pork products from Portugal would continue to be subject to the regulations in § 94.17 due to hog cholera. In addition, the importation of pork and pork products from Portugal would continue to be subject to the restrictions in § 94.11 because, as discussed above with respect to our proposal to declare Portugal free of rinderpest and FMD, Portugal would be listed in § 94.11(a) as a region that has been declared free of rinderpest and FMD, but from which the importation of all meat and other animal products is restricted due to the nature of its requirements for importing animal products from with regions affected with rinderpest or FMD or because they have a common land border with a region affected with rinderpest or FMD. Finally, declaring Portugal free of ASF would not relieve any of the current restrictions in 9 CFR part 93 on the importation into the United States of live swine from Portugal because Portugal remains affected with hog cholera.

Belgium, France, and Portugal Free of SVD

Section 94.12(a) of the regulations provides that SVD is considered to exist in all regions of the world except those listed in § 94.12(a), which have been declared to be free of SVD. Paragraph (b) of § 94.12 provides that no pork or pork products may be imported into the United States from a region where SVD exists unless the pork or pork product meets certain specified conditions and is not otherwise prohibited importation into the United States by the regulations.

We will consider declaring a region to be free of SVD if there have been no reported cases of the disease in that region for at least the previous 1-year period. The last cases of SVD in Belgium, France, and Portugal were reported in 1993, 1983, and 1995, respectively.

APHIS has reviewed the documentation submitted by the EC's Directorate General for Agriculture in support of its request that Belgium, France, and Portugal be declared free of SVD. Based on that documentation, we believe that Belgium, France, and Portugal qualify to be designated as free of SVD. Therefore, we are proposing to amend § 94.12(a) by adding Belgium, France, and Portugal to the list of regions declared free of SVD. This proposed action would relieve certain restrictions on the importation of pork and pork products from those countries.

However, Belgium, France, and Portugal are still considered to be affected with hog cholera, so pork and pork products from those countries offered for importation into the United States would remain subject to the restrictions in § 94.9 for hog cholera. The importation of live swine, except for wild swine, from Belgium, France, and Portugal would likewise continue to be prohibited due to hog cholera in accordance with § 94.10. Similarly, dry-cured pork products from Belgium, France, and Portugal would continue to be subject to the regulations in § 94.17 due to hog cholera. In addition, pork and pork products from Belgium, France, and Portugal would continue to be subject to the restrictions in § 94.11 because Belgium, France, and Portugal are among the regions listed (or, in the case of Portugal, would be listed) in § 94.11(a) that have been declared free of rinderpest and FMD, but from which the importation of all meat and other animal products is restricted due to the nature of their requirements for importing animal products from regions affected with rinderpest or FMD or because they have a common land border with a region affected with rinderpest or FMD. (Portugal is not currently on the list in § 94.11(a), but, as discussed above, we are proposing to add Portugal to that list as part of our proposal to declare Luxembourg and Portugal free of rinderpest and FMD.)

We are also proposing to amend § 94.13 by adding Belgium, France, and Portugal to the list of regions that have been declared free of SVD, but from which the importation of pork and pork products is restricted. The regions listed in § 94.13 are subject to these restrictions because they: (1) Supplement their national pork supply by importing fresh, chilled, or frozen pork from regions where SVD is considered to exist; (2) have a common border with regions where SVD is considered to exist; or (3) have certain import requirements that are less restrictive than are acceptable to the United States.

Belgium, France, and Portugal all supplement their national pork supplies by importing fresh, chilled, or frozen pork from regions where SVD is considered to exist. In addition, France has a common land border with Italy, which is designated in § 94.12(a) as a region where SVD exists. Furthermore, Belgium, France, and Portugal have certain import requirements that are less restrictive than are acceptable to the United States. As a result, even though Belgium, France, and Portugal appear to qualify for designation as regions free of SVD, there is potential for pork and pork products produced in Belgium, France, and Portugal to be commingled with fresh, chilled, or frozen pork from a region where SVD exists. This potential for commingling constitutes an undue risk of introducing SVD into the United States.

Therefore, we are proposing that pork and pork products, as well as any ship's stores, airplane meals, and baggage containing such pork, offered for importation into the United States from Belgium, France, or Portugal be subject to the restrictions specified in § 94.13 of the regulations and to the applicable requirements contained in the FSIS regulations at 9 CFR chapter III. Section 94.13 requires, in part, that pork and pork products, except those treated in accordance with § 94.12(b), be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by a foreign meat inspection certificate and a certification issued by a full-time salaried veterinary official of the national government that is responsible for the health of the animals within the exporting region, stating that certain precautions have been taken so that the pork or pork product has not been commingled with or exposed to animals, pork, or pork products originating in, or transported through, a region in which SVD is considered to exist.

Miscellaneous

In §§ 94.3 and 94.4, reference is made to articles "originating in any region designated in § 94.1." Although the intent of those sections is to restrict the importation of certain articles from regions where rinderpest or FMD exists, the phrase "designated in § 94.1" could also be interpreted as referring to those regions declared free of rinderpest and FMD, since those regions are listed in § 94.1(a)(2). To make the intent of those two sections clear, we are proposing to amend those sections so that they refer to "regions where rinderpest or foot-and-mouth disease exists, as designated in § 94.1." We would also amend §§ 94.1(c) and 94.11(a), where reference is made to § 94.1(a); for the sake of accuracy, those paragraphs should specifically refer to § 94.1(a)(2).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would amend the regulations in part 94 by declaring Luxembourg and Portugal free of rinderpest and FMD; Greece free of rinderpest; France, Greece, Luxembourg, and Spain free of END; Portugal free of ASF; and Belgium, France, and Portugal free of SVD.

Pork and Pork Products and Swine

Although this proposed rule would declare Luxembourg and Portugal free of rinderpest and FMD; Greece free of rinderpest; Belgium, France, and Portugal free of SVD; and Portugal free of ASF, all those countries are still considered affected with hog cholera, and Greece is still considered to be affected with FMD. Because of this, this proposed rule would not lead to any substantive relaxation of restrictions imposed on the importation of pork and pork products and live swine from those countries, as these products would continue to be restricted based on the presence of hog cholera and, in the case of Greece, FMD. Therefore, the effect of this proposed rule on the importation of pork and pork products and live swine would be minimal, and thus the potential impact on the domestic producers of pork and pork products and swine would be minimal.

Ruminants and Ruminant Products

This proposed rule would declare Greece free of rinderpest, but that country is still considered to be affected with FMD. Similarly, Portugal would be declared free of rinderpest and FMD, but that country is still considered to be affected with BSE. Because imports of ruminants and ruminant products from regions with FMD and BSE are restricted, this proposed rule would not lead to a substantive change in the restrictions imposed on the importation of ruminants and ruminant products from Greece and Portugal.

By declaring Luxembourg free of rinderpest and FMD, this proposed rule would reduce the restrictions placed on the importation of ruminants and ruminant products from Luxembourg. However, that proposed change in disease status should have a minimal effect on the amount of ruminants and ruminant products imported into the United States from Luxembourg.

The cattle industry in Luxembourg is very small relative to the U.S. domestic market. Cattle and buffalo inventories for 1996 were more than 103 million head in the United States ("Agricultural Statistics," 1997), compared to fewer than 3.4 million in Belgium and Luxembourg (those two nations are reported collectively in the United Nations' Food and Agriculture Organization (FAO) Yearbook). Also, of the 2 million cattle and calves that were imported into the United States in 1996, more than 99 percent were from Canada and Mexico. Sheep and goat inventories are also much smaller in Luxembourg than in the United States. According to the FAO, there were 8.9 million sheep and 2 million goats in the U.S. in 1995, as opposed to 150,000 sheep and 9,000 goats in Belgium and Luxembourg. The United States is also a strong net exporter of sheep and goats, with 48,792 head imported and 397,395 head exported in 1996 ("World Trade Atlas," June 1997). Of the sheep that the United States does import, more than 99 percent are from Canada and Mexico ("World Trade Atlas," June 1997). Luxembourg exported no live ruminants to the United States in 1996. In fact, there were fewer than 100 cattle, sheep and goats imported from the European Union in 1996. Western Europe is not a significant source of live ruminants for the United States, and any importation of live ruminants from Luxembourg as

a result of this proposed rule likely would be negligible.

The effect of this proposed rule on the importation of ruminant meat and meat products should also be minimal. The 1995 production of beef, veal, mutton, lamb and goat meat for Belgium and Luxembourg was approximately 3 percent of the U.S. production of 11.6 million metric tons for that year ("FAO Yearbook," 1995). The United States imports only a small portion of its overall supply of these products, an amount equal to about 6 percent of production. In addition, the United States imports very little ruminant meat and meat products from Luxembourg or from Western Europe in general. Moreover, nearly 85 percent of the imports that come into the United States are from Australia, Canada, and New Zealand. Because we believe that it is unlikely that Luxembourg would export a significant portion of its comparatively small meat production exclusively to the United States, any effect on domestic prices or supplies would likely be negligible.

The importation of dairy products from Luxembourg into the United States should be at most minimally affected by this proposed rule. Dairy product production in Luxembourg is small relative to that of the United States. Milk production in Belgium and Luxembourg was less than 5 percent the size of U.S. production in 1995 ("FAO Yearbook," 1995). For dairy products in general, we believe that it is unlikely that Luxembourg would redirect a significant portion of its production exclusively to the United States, which is a significant net exporter of those products. Belgium and Luxembourg do export significant quantities of butter and dried milk, but those products may currently be exported to the United States under the current regulations. Therefore, the impact on domestic dairy producers should be minimal.

The potential effect of this proposed rule on the importation into the United States of ruminant embryos and animal semen would also likely be minimal. The United States is a net exporter of both bovine semen and cattle embryos. In 1996, the value of U.S. bovine semen and cattle embryo imports was $7.7 million and $701,000, respectively, while the value of U.S. exports of bovine semen and cattle embryos was $63.1 million and $12.6 million respectively ("World Trade Atlas," June 1997). Given this trade balance and the size difference between the cattle industries of the United States and Luxembourg, the amount imported of each will likely be minimal.

Bird and Poultry Products

The proposed rule would declare France, Greece, Luxembourg, and Spain free of END. This proposed action would relieve restrictions on the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from those countries, and would relieve certain restrictions on the importation of eggs (other than hatching eggs) laid by poultry, game birds, or other birds from those countries. This proposed action would also relieve the quarantine requirements for poultry hatching eggs imported from France, Greece, Luxembourg, and Spain.

Egg production in those four countries is considerable: In 1995, the reported egg production in Belgium and Luxembourg was 3,858 million; in France, 16,911 million; in Greece, 2,600 million; and in Spain, 9,983 million ("Agriculture Statistics," 1997). U.S. production is also large, 74,280 million in 1995. In addition, the U.S. imports few eggs, with the total amount being equal to less than 0.1 percent of U.S. production. We believe that it is unlikely that these countries would redirect a significant portion of their production toward such a small U.S. import market.

Total poultry meat production in France, Greece, Luxembourg, and Spain in 1995 was about 3.5 million metric tons, or about 26 percent the size of U.S. production of 13.8 million metric tons. However, the United States is a very strong net exporter of poultry meat, with imports of only 3,546 metric tons and exports of more than 2 million metric tons in 1996 ("World Trade Atlas," June 1997). Very few of the imports are from western Europe. Moreover, more than 99 percent of U.S. poultry meat imports originated in Canada. We do not expect that these countries would redirect a significant amount of poultry meat toward such a small U.S. import market.

Impact on Small Entities

The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact associated with the proposed rule on small entities. Those likely to be affected by this proposed rule are those entities engaged in the production of live swine, pork and pork products, live ruminants, meat, meat products, and dairy products derived from ruminants, and poultry products.

The Small Business Administration's (SBA's) definition of a "small" cattle, swine, or poultry farm is one whose total sales is less than $0.5 million annually. In 1992, 97.8 percent of cattle and calf farms would be considered small entities. The vast majority of the domestic hog and pig farms qualify as small entities (96.3 percent in 1992). Eighty-seven percent of poultry farms would be considered small entities in 1992 ("1992 Census of Agriculture," U.S. Department of Commerce, 1993).

The SBA's guidelines state that a "small" producer of poultry meat (Standard Industrial Classification (SIC) 2015, poultry slaughtering and processing) is one employing fewer than 500 workers. In 1992, 74 percent of 591 poultry slaughtering and processing establishments were considered small entities. These small entities accounted for approximately 30 percent of the total value of shipments of the industry, $7.2 billion.

The SBA's guidelines state that a "small" producer of pork and ruminant products (part of SIC 2011 or 2013, meat packing plants) is one employing fewer than 500 workers. In 1992, 97 percent of the 1,367 meat packing establishments in SIC 2011 were considered small entities. These small establishments accounted for approximately 40 percent of the total value of shipments of the industry, $50.4 billion. Ninety-eight percent of the 1,264 establishments in SIC 2013 were considered small entities in 1992. These producers accounted for 84 percent of the total value of shipments of the industry, $19.97 billion.

Although the majority of the domestic entities potentially affected by this proposed rule are small, there should be only a minimal change in the level of imports that may compete with the output of these small entities, and thus there would be a minimal impact on any domestic producer of these products, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 94.1 would be amended as follows:

a. In paragraph (a)(1), the words "or (a)(3)" would be added immediately after the words "paragraph (a)(2)".

b. In paragraph (a)(2), the word "Luxembourg," would be added immediately after the word "Japan," and the word "Portugal," would be added immediately after the word "Poland,";

c. A new paragraph (a)(3) would be added to read as set forth below.

d. In the introductory text of paragraph (c), the words "paragraph (a) of" would be removed and the words "paragraph (a)(2) of" would be added in their place.

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) * * *

(3) The following regions are declared to be free of rinderpest: Greece.

* * * * *

§ 94.3 [Amended]

3. Section 94.3 would be amended by adding the words "where rinderpest or foot-and-mouth disease exists, as" immediately before the word "designated".

§ 94.4 [Amended]

4. In § 94.4(a), the introductory text of the paragraph would be amended by adding the words "where rinderpest or foot-and-mouth disease exists, as" immediately before the word "designated".

§ 94.6 [Amended]

5. In § 94.6, paragraph (a)(2) would be amended by adding the words "France, Greece," immediately after the word "Finland,"; by adding the word "Luxembourg," immediately after the word "Iceland,"; and by adding the word "Spain," immediately after the words "Republic of Ireland,".

§ 94.8 [Amended]

6. In § 94.8, the introductory text of the section would be amended by removing the words "Malta, and Portugal" and adding in their place the words "and Malta".

§ 94.11 [Amended]

7. In § 94.11, paragraph (a), the first sentence would be amended by adding the word "Luxembourg," immediately after the word "Japan,"; by adding the word "Portugal," immediately after the word "Poland,"; and by removing the reference "§ 94.1" and adding the reference "§ 94.1(a)(2)" in its place.

§ 94.12 [Amended]

8. In § 94.12, paragraph (a) would be amended by adding the word "Belgium," immediately after the words "The Bahamas,"; by adding the word "France," immediately after the word "Finland,"; and by adding the word "Portugal," immediately after the word "Panama,".

§ 94.13 [Amended]

9. In § 94.13, the introductory text of the section would be amended by adding the word "Belgium," immediately after the words "The Bahamas,"; by adding the word "France," immediately after the word "Denmark,"; and by adding the word "Portugal," immediately after the words "Northern Ireland,".

Done in Washington, DC, this 12th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30105 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 77N–094W]

RIN 0910–AA01

Over-the-Counter Drug Products Containing Analgesic/Antipyretic Active Ingredients for Internal Use; Required Alcohol Warning

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would establish alcohol warnings for all over-the-counter (OTC) drug products containing internal analgesic/antipyretic active ingredients labeled for adult use. The proposed warning statements advise consumers who have a history of heavy alcohol use or abuse to consult a physician for advice about the use of OTC internal analgesic/antipyretic drug products. A warning would be required for all OTC internal analgesic/antipyretic drug products marketed under an OTC drug monograph or an approved new drug application (NDA). FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of its Nonprescription Drugs Advisory Committee (NDAC) and Arthritis Drugs Advisory Committee (ADAC), public comments on the proposed rule for OTC internal analgesic, antipyretic, and antirheumatic drug products, and other available information.

DATES: Written comments by January 28, 1998. Written comments on the agency's economic impact determination by January 28, 1998. The agency is proposing that any final rule based on this proposal be effective 6 months after the date of its publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Debbie L. Lumpkins, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2241.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 8, 1977 (42 FR 35346), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, together with the recommendations of the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (the Panel), which was the panel responsible for evaluating data on the active ingredients in these drug products. In that notice, the Panel discussed the effects of alcohol ingestion on the safe use of OTC internal analgesic, antipyretic, and antirheumatic drug products containing aspirin and acetaminophen (42 FR 35346 at 35395).

Based on the data evaluated, the Panel found evidence of a possible synergism between alcohol and aspirin's ability to cause gastrointestinal (GI) bleeding (42 FR 35346 at 35395). The Panel stated that the data supported the hypothesis that aspirin may enhance or potentiate bleeding from GI lesions, even though aspirin alone may not initiate the lesion. However, the Panel stopped short of recommending a warning concerning the use of aspirin with alcohol.

The Panel did not receive data on the effect of alcohol use with other salicylates. However, based on its evaluation of the available data, the Panel concluded that carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate all have safety profiles similar to aspirin and should bear similar labeling (42 FR 35346 at 35417 through 35422).

In evaluating the safety of acetaminophen (42 FR 35346 at 35413 to 35415), the Panel considered data on the metabolism of acetaminophen in the presence of various types of liver disease, including alcoholic liver cirrhosis. The Panel determined that the decreased metabolism of acetaminophen by the usual principal mechanisms (glucuronidation and sulfation) observed in some people with chronic liver disease could potentially increase the toxicity of acetaminophen by increasing the relative fraction metabolized through the other pathway(s) leading to the toxic metabolite. The Panel found that the evidence suggested that the overall elimination of acetaminophen by conjugation is decreased in alcohol abusers and is similar to that observed in cases of decreased liver function. The Panel suggested, however, that this decreased conjugation and the increased susceptibility of chronic alcohol abusers to the hepatotoxicity of acetaminophen was not necessarily due to liver cirrhosis but resulted from the induction of microsomal enzymes by the chronic use of alcohol. However, the Panel did not recommend a warning concerning the use of normal doses of acetaminophen by individuals with a history of liver disease or chronic alcohol abuse. The Panel's recommended label warning on liver damage referred only to the well-documented injury that can occur with overdose. The Panel recommended the following warning: "Do not exceed recommended dosage because severe liver damage may occur."

In the **Federal Register** of November 16, 1988 (53 FR 46204), the agency published a proposed rule (tentative final monograph) for OTC internal analgesic, antipyretic, and antirheumatic drug products. In the preamble to the proposed rule, the agency responded to a number of comments concerning the Panel's recommended liver warning for acetaminophen and the need for a warning on the increased risk of liver toxicity when acetaminophen is taken with substances or drugs that induce microsomal enzyme activity, i.e., alcohol, barbiturates, or prescription drugs for epilepsy (53 FR 46204 at 46213 through 46218). The agency found that the available data did not provide a sufficient basis to require such a warning.

The agency also received a number of comments opposed to warnings that cite organs of the body as possible cites for damage from acute overdoses of internal analgesic/antipyretic drug products. The agency agreed with the comments and determined that warnings for acetaminophen need not specify the toxic effects on particular organs of the body that can be caused by acute overdose of a drug, as in a suicide attempt. However, the agency further stated (53 FR 46204 at 46213):

> * * * the warnings should include specific information on the known side effects or adverse reactions that may occur from use of the drug according to labeled directions, as well as potential dangers that may occur if the labeled directions are exceeded.
>
> The agency concludes that when medical evidence shows that toxicity is associated with the use of an OTC drug, either within its recommended dosage or when used beyond its recommended time limit or dosage (except for acute overdose), it is appropriate to warn consumers of the potential toxicity. In some cases it may be necessary to include organ-specific warnings as well as general labeling statements.

The agency received no comments concerning the Panel's comments about a possible synergism between alcohol and aspirin's ability to cause GI bleeding or the lack of a reference to such effect in labeling.

II. Summary of the Comments Received

In response to the proposed rule, the agency received comments concerning the need for an alcohol warning for acetaminophen. One comment recommended that the labeling of OTC drug products containing acetaminophen include the following warning: "Do not drink alcoholic beverages while taking acetaminophen. To do so may increase the chance of liver damage, especially if you drink large amounts of alcoholic beverages regularly." Citing 75 incidences of liver damage in alcohol abusers who consumed acetaminophen for therapeutic reasons (Refs. 1 through 27), the comment asserted that the reports strongly suggest that alcohol abuse potentiates acetaminophen's liver toxicity.

The comment stated that the clinical observation of increased liver toxicity of acetaminophen in alcohol abusers has been confirmed by experimental data in animals and humans (Refs. 22 and 28 through 46). In the comment's view, these experimental data demonstrate that: (1) Alcohol has a significant effect on acetaminophen metabolism; (2) chronic alcohol ingestion has been shown to induce microsomal enzymes, thereby increasing the formation of the toxic intermediate metabolite of acetaminophen, known as *N*-acetyl-*p*-benzoquinoneimine (NAPQI); and (3) chronic alcohol ingestion interferes with the detoxification of NAPQI by depleting hepatic glutathione (GSH).

Citing information indicating that alcohol is consumed by two-thirds of the American population (12 percent of this population considered to be heavy drinkers (Ref. 47) and that acetaminophen is widely available (present in over 200 OTC drug products), the comment asserted that the concurrent use of alcohol and acetaminophen can be predicted to be extraordinarily common. The comment suggested that the use of acetaminophen with alcohol may be even greater because heavy promotion stating that acetaminophen causes less stomach irritation than aspirin has made it the preferred OTC internal analgesic/antipyretic used in the presence of alcohol-related gastric upset. The comment asserted that these new data suggest that alcohol abusers appear to be at greater risk of hepatotoxicity from the therapeutic use of acetaminophen. Accordingly, the comment recommended that the labeling of these OTC drug products be strengthened to ensure that consumers who abuse alcohol are not exposed to unnecessary daily use of acetaminophen. The comment added that warnings concerning the use of acetaminophen by alcohol abusers are included in the United States Pharmacopeial Dispensing Information (Refs. 48 and 49).

In addition to its proposed warning, the comment suggested that the maximum daily dose of acetaminophen be reduced from 4 to 2 grams (g) per day for this segment of the population. However, the comment did not provide data to support the reduced maximum daily dose. The comment recommended the following revision to the dosing directions proposed for acetaminophen in § 343.50(d)(2) (21 CFR 343.50(d)(2)) of the tentative final monograph: "If you drink large amounts of alcoholic beverages regularly, do not exceed 2 grams of acetaminophen (4 to 6 tablets) a day."

The comment subsequently submitted additional data to support its recommendations that included the following: (1) Reports of acetaminophen hepatotoxicity in alcohol abusers or associated with Psittacosis (Refs. 50 through 53), (2) a retrospective study of the effects of chronic alcohol intake on the prognosis and outcome of acetaminophen overdose (Ref. 54), and (3) a study of acetaminophen metabolism in alcohol abusers (Ref. 55).

Two comments disagreed with the need for the proposed warning, arguing that the existing data provide no rational basis for a warning. Citing its review of the scientific literature (Ref. 56), one comment questioned the number of cases of acetaminophen-induced liver toxicity due to the ingredient's therapeutic use by alcohol abusers. The comment stated that the majority of the reports involved subjects with a history of alcohol abuse and use of amounts of acetaminophen far in excess of the maximum daily therapeutic dose. The comment contended that the reliability of the history of acetaminophen use and the regularity of dosing included in these reports was questionable. The comment cited six additional published articles (Refs. 57 through 62) containing reports of acetaminophen-induced liver toxicity in alcohol abusers and contended that none of these reports supports an alcohol warning.

One of the comments disagreed with the assertion that experimental data in animals and humans have demonstrated chronic microsomal induction or increased NAPQI production in association with acetaminophen-alcohol use. The comment cited studies by Critchley et al. (Refs. 63 and 64) and Lauterberg and Velez (Ref. 65) in which no evidence of microsomal induction was found in heavy drinkers. Moreover, the comment cited additional studies (Refs. 66, 67, and 68) that it asserted demonstrated a reduction of microsomal enzyme activity in subjects with liver disease (including alcoholic hepatitis). The comment noted the results of a study in mice by Mitchell et al. (Ref. 35) that demonstrated for covalent binding or hepatic necrosis to occur GSH levels need to be reduced to approximately 20 to 30 percent of normal. The comment asserted that a reduction of such magnitude is unlikely except in severe malnutrition. Concerning the cited animal data, the comment noted that in the vast majority of studies the amounts of acetaminophen ingested would correspond to overdose amounts in humans.

The comment concluded by stating that the safety profile of acetaminophen in alcohol abusers should be evaluated in the context of their inclination to develop gastritis, gastroduodenal ulceration, hepatic cirrhosis, impairment of coagulation mechanisms, portal hypertension, and GI hemorrhage. Citing the fact that doctors frequently recommend acetaminophen to their alcohol abusing patients because it does not cause GI irritation or have platelet inhibiting effects, the comment asserted that an alcohol warning for OTC drug products containing acetaminophen would be contrary to the public interest. The comment suggested that such a warning might encourage individuals who abuse alcohol to use other OTC internal analgesic/antipyretic drug products containing ingredients that carry a greater risk of injury.

III. The Advisory Committees Meetings

The agency subsequently asked NDAC for advice on the need for an alcohol warning for OTC drug products containing acetaminophen. On June 29, 1993, NDAC met to consider the issue. The agency provided NDAC the following data and information: (1) The history of the agency's evaluation of the issue, (2) a summary of issues raised by comments in response to the tentative final monograph, (3) published reports of acetaminophen-induced liver toxicity in alcohol users at various acetaminophen doses, (4) data on the pharmacokinetics of acetaminophen metabolism in alcohol abusers, (5) data on microsomal enzyme induction in subjects with liver disease, (6) epidemiological data on the effect of alcohol abuse on acetaminophen overdose, (7) animal data on the effects of ethanol on acetaminophen metabolism, and (8) animal studies of the effect of diet on glutathione levels. A copy of this information is on file in the Dockets Management Branch (Ref. 69). Interested parties were also given the opportunity to present their positions.

The agency asked NDAC to consider: (1) Whether the data supported the need for an alcohol warning for OTC drug products containing acetaminophen; (2) the population at risk in terms of alcohol consumption, e.g., people who rarely drink, social drinkers, or alcohol abusers, and the acetaminophen dose ingested; (3) any special benefit/risk considerations concerning the use of an alcohol warning in the population at risk, e.g., will alcohol abusers switch to other OTC internal analgesic/antipyretic ingredients that have equivalent or greater risks; (4) the type of information that should be included in an alcohol warning, e.g., organ-specific information, description of alcohol amount, or other information; (5) whether the data are sufficient to support a reduced maximum daily acetaminophen dose for alcohol abusers; and (6) if so, what the reduced maximum daily dose should be.

NDAC concluded that alcohol abusers or heavy drinkers are at increased risk for developing liver toxicity when using acetaminophen. Based on this conclusion, NDAC recommended that an alcohol warning informing heavy alcohol users or abusers of their increased risk from the use of acetaminophen be included in the labeling of such products. Recommending that the exact wording of such a warning be developed by the agency, NDAC advised that the warning should specifically refer to possible liver damage. However, NDAC did not recommend a reduced maximum daily dose of acetaminophen for alcohol abusers. NDAC was concerned that an alcohol warning on OTC drug products containing acetaminophen in the absence of a similar warning on products containing other internal analgesic/antipyretic ingredients would cause alcohol abusers to switch to products containing those other ingredients, which may have equivalent or greater risks. Therefore, NDAC recommended that the agency not implement an alcohol warning for OTC drug products containing acetaminophen until NDAC had a chance to consider data on the risk of alcohol use with other internal analgesic/antipyretic ingredients (Ref. 70).

On September 8, 1993, NDAC and ADAC (the Committees) met jointly to consider data on the risk of the use of aspirin and other OTC analgesics by

heavy alcohol users or abusers. The agency provided the Committees the following data and information: (1) Published and unpublished epidemiological data on the risk of upper GI bleeding associated with the use of alcohol and aspirin, ibuprofen, and naproxen sodium; (2) data on the additive effects of these ingredients and alcohol on the GI tract; (3) data on the ability of alcohol to potentiate aspirin-prolonged bleeding times; (4) data on the effect of aspirin on ethanol pharmacokinetics; and (5) the Panel's conclusions on the safety of the OTC use of acetaminophen, aspirin, carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate. A copy of this information is on file in the Dockets Management Branch (Ref. 71). Interested parties were also given the opportunity to present their positions.

The agency asked the Committees to consider the following in evaluating the data: (1) Whether the data are sufficient to support an alcohol warning for OTC drug products containing aspirin, ibuprofen, and naproxen sodium; (2) whether the data are sufficient to support an alcohol warning for other salicylates (carbaspirin calcium, choline salicylate, magnesium salicylate, or sodium salicylate); (3) the type of information an alcohol warning should include, i.e., organ specific information or statement of risk; and (4) the type of information that should appear in the labeling of combination drug products containing aspirin and acetaminophen.

The Committees concluded that the use of aspirin, ibuprofen, and naproxen sodium increases the risk of upper GI bleeding in heavy alcohol users or abusers. Concerning whether the data support an alcohol warning for OTC drug products containing these ingredients, the Committees voted 12 yes, 2 no for aspirin; 12 yes, 2 no for ibuprofen, and 12 yes, 1 no, and 1 abstention for naproxen sodium. The Committees further concluded that there are no data to support a warning for nonaspirin salicylates and, therefore, a recommendation on the need for an alcohol warning for these OTC drug products was outside their advisory scope. Regarding the type of information that should be included in an alcohol warning, the Committees recommended that the warning not mention a specified level of alcohol consumption, but were unable to reach a consensus whether the warning should be general or organ-specific (Ref. 72).

IV. Summary of Comments on the Committees' Recommendations

In response to the Committees' recommendations, the agency received 11 comments. Several comments from a manufacturers' association urged the agency to reject the Committees' recommendation for an alcohol warning for OTC aspirin drug products. One comment suggested that such a warning may jeopardize the compliance of individuals on low-dose aspirin regimens for cardiovascular indications. Other comments contended that the recommendation was not supported by reliable scientific data, but reflected concerns about unsubstantiated risks from the use of aspirin by individuals with a history of alcohol use. These concerns, the comments asserted, were based on submissions that included inaccurate summaries of studies without raw data and erroneous projections of morbidity and mortality based on incorrect assumptions. The comment suggested that these distortions had a significant impact on the Committees' recommendations.

In support of its contentions, the comment noted: (1) Criticisms of the available published data made by some Committee members during deliberations, and (2) specific comments made by an agency reviewer concerning unpublished epidemiological data presented to the Committees (Ref. 73). The comment pointed out that most of the studies were uniformly rejected by the Committees' members or the agency's reviewer, and thus the meeting produced no reliable evidence on which to justify a label warning regulation.

The comments also included critical assessments of the unpublished epidemiological data presented to the Committees: (1) A prospective observational study (Ref. 74), (2) a retrospective study of adverse drug reaction reports (Ref. 75), (3) a study conducted at the SUNY-Health Science Center (Ref. 76), (4) a study conducted at the Sloane Epidemiology Unit (Ref. 77), (5) a study conducted by Strom (Ref. 78), and (6) a study conducted at the University of Newcastle (Ref. 79). The comments contended that, based on these criticisms, the data from these studies could not be relied upon to support the need for an alcohol warning for OTC aspirin drug products. The comments asserted that an independent analysis of the data from two of the epidemiological studies (Refs. 77 and 79) is necessary to verify the studies' conclusions and requested that the agency obtain the raw data from the studies.

The comments asserted that the Committees misunderstood the agency's proposed warning in § 343.50(c)(1)(v)(B) that advises against the use of aspirin by persons that have stomach problems that persist or recur, or have ulcers, or bleeding problems, without consulting a doctor. The comments noted that most of the data submitted related to upper GI bleeding by persons with existing GI disease. The comments advised FDA to base its decision on the available scientific data and concluded that those data do not demonstrate that heavy alcohol users or abusers, with no preexisting ulcers or recurrent stomach or bleeding problems, are at an increased risk of upper GI bleeding from the use of OTC aspirin drug products.

In response to the comments' assertions, the agency received reply comments from members of the Committees (Ref. 80). One member stated that the Committees' final decision was based on the information available and was justified. Another member contended that if acetaminophen is to have a warning, then all OTC internal analgesic/antipyretic drug products should have a warning, preferably the same for all products. A third member expressed disagreement with the Committees' recommendation, explaining that a test of enhanced risk should be an odds ratio substantially greater than one. The member further recommended that an odds ratio of two or greater should be required, and the difference from one should be statistically significant.

A number of comments from the investigators for three of the unpublished epidemiological studies presented to the Committees addressed point by point the criticisms raised about the studies. These comments concluded that the data from these studies support the need for an alcohol warning. Another comment concluded that the data from these studies show that: (1) There is an increased risk of major upper GI bleeding in aspirin users that is independent of alcohol use, (2) there is an increased risk of major upper GI bleeding in alcohol users that is independent of aspirin use, and 3) aspirin further increases this risk in alcohol users.

V. The Agency's Tentative Conclusions on the Committees' Recommendations

A. Acetaminophen

After considering NDAC's recommendations and all available data and information, the agency has determined that the data are sufficient to warrant an alcohol warning for OTC drug products containing acetaminophen. Based on an evaluation of the scientific literature, the agency has determined that individuals with a history of heavy alcohol use or abuse have an increased risk from the hepatotoxic effects of acetaminophen. In order to advise consumers with such a history to consult a physician for advice on the use of OTC acetaminophen drug products, the agency is proposing that OTC analgesic/antipyretic drug products containing acetaminophen bear an alcohol warning.

Acetaminophen is considered a dose dependent hepatotoxin (Ref. 81). Acute doses of acetaminophen of 15 g or more in adults have been associated with hepatotoxicity (Refs. 81 and 82). However, the scientific literature from 1966 to the present contains at least 97 reports of hepatotoxicity attributed to the ingestion of less than 15 g of acetaminophen (Refs. 1 through 27, 51, 52, 53, 57 through 62, and 83 through 93). With few exceptions, these case reports describe a clinical and laboratory picture consistent with acetaminophen overdose: Nausea, vomiting, hematemesis (bloody vomitus), jaundice, markedly elevated liver enzymes (aspartate aminotransferase (AST) and alanine aminotransferase (ALT)), elevated bilirubin, prolonged prothrombin time, and liver biopsy results (when obtained) demonstrating centrilobular necrosis.

Seventy-one of the 97 cases (73 percent) involve a history of heavy alcohol use or abuse (Refs. 1, 2, 3, 5 through 20, 22 through 26, 52, 53, 57 through 62, 86, 87, and 93). While a number of these reports lack sufficient information to permit a detailed assessment, the long history of the reports, their diverse countries of origin, consistent presentation and pattern of usage suggest that individuals with a history of heavy alcohol use or abuse are more susceptible to acetaminophen's hepatotoxic effects. Further, a majority of the 71 cases (41 cases or 58 percent) are associated with acetaminophen doses at or below the currently proposed maximum daily OTC dose (4 g per day) or moderate overdoses of approximately 6 g (Refs. 7, 12 through 18, 20, 22, 23, 24, 26, 52, 53, 57, 58, 60, 61, 62, 86, 87, and 93).

A number of these cases provide sufficient detail to suggest acetaminophen induced hepatotoxicity in heavy alcohol users or abusers at acetaminophen doses of 6 g or below. Bell, Schonsby, and Raknerud (Ref. 57) reported a 32-year-old male "periodic alcoholic" (patient 3) who began drinking after a period of abstinence, used acetaminophen to treat withdrawal symptoms, and took 3.4 g acetaminophen per day for 5 days prior to hospital admission. On the day of admission, the patient developed nausea and hematemesis. Jaundice and bruising were also observed.

Laboratory tests revealed elevated liver enzymes (AST 13,420 International Units/Liter (IU/L) and ALT 7,510 IU/L (reference AST and ALT 10 to 40 IU/L)) and hyperbilirubinemia (297 micromole/liter (μmole/L) or 17.4 milligrams (mg)/deciliter (dL) (reference bilirubin 3 to 25 μmole/L or 0.2 to 1.5 mg/dL)). Tests for hepatitis C surface antigen, hepatitis A and cytomegalovirus antibody, and Monospot were negative. The serum acetaminophen level 2 days after the last dose was 2.5 micrograms/milliliter (μg/mL). No liver biopsy was done. N-acetylcysteine (NAC) was not administered. The patient improved with supportive treatment and was discharged. At outpatient followup, 5 weeks after admission, all laboratory tests were normal.

Bell, Schonsby, and Raknerud (Ref. 57) also reported a 57-year-old woman (patient 4) with a history of gout who ingested 40 to 50 g of alcohol a day. For several years, she had taken 400 mg acetaminophen and 5 mg prednisone per day. In response to an increase in leg pain, she increased her intake to 2.4 to 3.2 g acetaminophen per day for several days. On the day of hospital admission, she vomited blood and developed symptoms compatible with hepatic encephalopathy (jaundice, somnolence, and bruising).

Laboratory tests revealed elevated aminotransferases (AST 16,180 IU/L and ALT 8,950 IU/L). Bilirubin was 123 μmole/L or 7.2 mg/dL. NAC was not administered. The patient died the day following admission with massive hematemesis and hypotension. Autopsy revealed abundant blood in the stomach and intestines but no sign of an ulcer. Microscopically, a marked centrilobular liver cell necrosis was seen.

Floren, Thealeff, and Nilsson (Ref. 7) described hepatotoxicity in a 58-year-old woman (patient 1) who regularly consumed a bottle of red wine a day. The patient was hospitalized due to a slight intoxication. Before admission, she admitted to ingesting 1 to 1.5 g acetaminophen, sedatives (oxazepam), and antidepressants (lorazepam) for an unspecified period of time. The patient was transferred from the psychiatric ward to the medical clinic due to elevated liver enzymes (AST 14.3 microkatal/L (μkat/L) and ALT 14.0 μkat/L). Reference levels for AST and ALT were less than 0.7 μkat/L.

At the time of transfer, the concentration of acetaminophen in serum was not measurable and NAC was not administered. Tests for hepatitis B surface antigen and hepatitis A were negative. A liver biopsy demonstrated centrilobular necrosis with normal portal zones. The biopsy revealed no evidence of steatosis, fibrosis, or cirrhosis. The patient recovered uneventfully.

Licht, Seeff, and Zimmerman (Ref. 20) reported a 53-year-old man who ingested 2.6 to 3.9 g acetaminophen daily for an undisclosed period of time. He admitted to a 15-year history of excessive alcohol intake with a recent intake of 2 quarts of whiskey daily. He entered the hospital after 3 days of weakness, abdominal discomfort, and jaundice.

Laboratory values at the time of admission indicated markedly elevated liver enzymes (AST 19,710 milliunits (mU)/mL) and ALT 4,560 mU/mL), a bilirubin of 13 mg/dL, and a prolonged prothrombin time of 22 seconds (control 10 seconds). A serum acetaminophen level obtained 12 hours after ingestion was in the nontoxic range (2 μg/mL). A test for hepatitis B surface antigen was negative. No liver biopsy was obtained. NAC was not administered. The patient recovered.

Luquel et al. (Ref. 60) described a 49-year-old man who was admitted to the hospital with confusion, hematemesis, and decreased urine output. In addition to increasing his beer intake, he also took 1.2 g acetaminophen and 25 mg ethyl loflazepate for 2 days prior to hospitalization. Laboratory values were AST 1,870 IU/L, ALT 640 IU/L, total bilirubin 39 μmole/L or 2.3 mg/dL, and a prothrombin rate of 75 percent. No serum acetaminophen was detected, and NAC was not administered. The results of a liver biopsy performed on the third day of hospitalization revealed centrilobular necrosis. The patient recovered uneventfully.

Seeff et al. (Ref. 26) reported six cases of acetaminophen hepatotoxicity in alcohol abusers. Three cases (patients 2, 3, and 6) involved doses of approximately 4 g acetaminophen. Patient 2 was a 30-year-old male chronic alcohol abuser who ingested 12.5 g acetaminophen over a 3-day period for pain related to a dental abscess. (Assuming that the doses were evenly distributed over the 3 days, he ingested approximately 4.2 g acetaminophen per day.) His laboratory values showed elevated liver enzymes (AST greater than 10,000 IU/L and ALT 7,610 IU/L), a bilirubin of 2.4 mg/dL, and a prothrombin time 9.3 seconds longer than control. A test for hepatitis B surface antigen was negative. Serum acetaminophen level and liver biopsy

were not done. The patient was treated with NAC, improved, and was released from the hospital.

Patient 3 was a 39-year-old man who was hospitalized for a submandibular infection following a fracture. Over a 1-week period, he had taken approximately 3.8 g acetaminophen per day. On admission, his laboratory values revealed elevated liver enzymes (AST 5,640 IU/L and ALT 354 IU/L), bilirubin 16.5 mg/dL, and a prothrombin time twice the control. Serum acetaminophen levels were not determined, nor was a liver biopsy performed. NAC was not administered. The patient improved over the next few weeks and was discharged.

Patient 6 was admitted to the hospital for acute alcohol withdrawal syndrome. During the 3 days prior to admission, she took approximately 3.7 g acetaminophen a day for headache. Laboratory values included AST 6,888 IU/L, ALT 2,480 IU/L, total bilirubin 6.6 mg/dL, and a prothrombin time 10 seconds longer than control. Serum acetaminophen level, liver biopsy, and viral screening were not performed. NAC was not administered and with supportive treatment, the patient recovered.

Edwards and Oliphant (Ref. 86) described a 46-year-old man who presented to the hospital with a 2-hour history of epigastric pain with hematemesis. The patient gave a history of regular alcohol consumption. In the week prior to admission, he had consumed two 1,250 mL spirits over the week and 12 cans of beer daily and concurrently taken not more than 3 g of acetaminophen daily for hangover, up to a total dosage of 18 g. He took an additional 3 g of acetaminophen 6 hours prior to his admission to the hospital.

Liver function tests conducted on day 2 of hospitalization showed markedly abnormal aminotransferases (AST 30,000 IU/L and ALT 9,750 IU/L) and a bilirubin of 86 µmole/L or 5 mg/dL. At 6 hours post ingestion, the serum acetaminophen level was 0.04 µg/mL. On day 2 the level was 0.005 µg/mL. Hepatitis serology was negative for hepatitis A, B, and C. No liver biopsy was performed. NAC was not administered. The patient's convalescence was slow but uneventful.

Johnson, Friedman, and Mitch (Ref. 12) described a 23-year-old female alcohol abuser who developed acute hepatitis and renal failure 3 days after ingesting a bottle of cold medication containing 6 g acetaminophen in 25 percent alcohol. The patient's medical history included a previous hepatitis infection. Laboratory values at admission were AST 4,320 IU/L, ALT 1,130 IU/L, total serum bilirubin 10 mg/dL, and a prothrombin time of 13.1 seconds (control 12 seconds). Serum acetaminophen was undetectable 6 days after acetaminophen ingestion. A test for hepatitis B surface antigen was negative. Antibodies to hepatitis B surface antigen were detected. No liver biopsy was conducted. NAC was not administered. Hepatic function gradually improved and the patient was discharged.

Kartsonis, Reddy, and Schiff (Ref. 13) reported a 39-year-old male alcohol abuser who developed vague inguinal discomfort and began self-medicating with 5 g acetaminophen per day over a 6-day period. He presented to the hospital with nausea, vomiting, and abdominal pain. Laboratory tests revealed elevated aminotransferases (AST more than 8,270 IU/L and ALT 6,494 IU/L), total bilirubin 4.2 mg/dL, and an extended prothrombin time of 21 seconds (control 12 seconds). Acetaminophen was not detectable in the blood. Neither a liver biopsy nor viral screening were done. NAC was not administered. The man had an uneventful recovery with supportive care and was discharged from the hospital after 7 days.

O'Dell, Zetterman, and Burnett (Ref. 24) reported a 36-year-old woman who took 6 g acetaminophen for 5 days for stomach pain. She had a history of chronic pancreatitis and chronic alcoholism (approximately 200 g ethanol a day for 10 years). She presented to the hospital with nausea, vomiting, and abdominal pain. Liver enzymes on admission were AST 1,512 IU/L and ALT 554 IU/L. Bilirubin levels and prothrombin times were normal. Acetaminophen blood levels were not determined. A liver biopsy revealed centrilobular necrosis without signs of alcoholic hepatitis or centrilobular fibrosis.

Acetaminophen administration was discontinued and liver enzymes returned to normal. The patient was counseled about acetaminophen and alcohol toxicity, and discharged. Subsequently, she was readmitted to the hospital with abdominal pain of 2 weeks duration for which she had taken 6 g acetaminophen a day.

On admission, her liver enzymes were AST 5,210 IU/L and ALT 1,580 IU/L, and total bilirubin was 1.1 mg/dL. A serum acetaminophen level was not determined. A second biopsy showed extensive centrilobular fibrosis. Alcoholic hyalin and polymorphonuclear leukocyte inflammation were not observed. The periportal regions were normal and there was no portal fibrosis. The patient recovered and was discharged from the hospital.

Seeff et al. (Ref. 26) reported a 58-year-old male chronic alcohol abuser hospitalized for alcoholic hepatitis and cervical neck pain. The patient's history included a recent increase in alcohol consumption and chronic ingestion of 4 to 6 g acetaminophen daily for an unspecified period of time. On admission, AST was 2,870 IU/L, bilirubin was 3.6 mg/dL, and prothrombin time was 14 seconds (control 11.3 seconds). ALT was not reported, and serum acetaminophen levels were not determined. NAC was not administered. Laboratory values on the next day included an AST level of 790 IU/L and an ALT level of 2,300 IU/L. Serologic tests for hepatitis B were negative. No liver biopsy was done. Serum aminotransferases and prothrombin time returned to normal, and the patient was discharged 12 days after admission.

Kumar and Rex (Ref. 52) reported six cases of hepatotoxicity, four of which involved acetaminophen doses of 5 to 6 g. Case 2 was a 65-year-old female alcohol abuser admitted to the hospital after 1 day of vomiting. Her admitting AST and ALT levels were 3,199 IU/L and 1,270 IU/L, respectively. Her total bilirubin level peaked at 41 µmole/L or 2.4 mg/dL. After 2 days of observation and improvement, it was discovered that she had been taking about 6 g/day acetaminophen for back pain. Serum acetaminophen level, liver biopsy, and viral screening were not done. She was discharged in stable condition with near normal liver test results.

Case 3 was a 43-year-old woman admitted to the hospital with a 6-day history of fatigue, malaise, nausea, and vomiting. Peak laboratory values included elevated liver enzymes (AST 14,920 IU/L and ALT 3,304 IU/L), total bilirubin 126 µmole/L or 7.4 mg/dL, and a prothrombin time of 46 seconds (no control reported). No serum acetaminophen levels, liver biopsy, or viral screening was performed. Initially, the woman denied alcohol or acetaminophen use. However, a friend subsequently reported that she was a heavy drinker and had been taking 5 g acetaminophen daily for an unspecified period of time. NAC was not administered, and she was discharged in stable condition.

Kumar and Rex (Ref. 52) also described a 55-year-old man (case 4) with a history of heavy alcohol use who was hospitalized after 3 to 4 weeks of nausea and vomiting. On admission, laboratory values included elevated liver enzymes (AST 1,240 IU/L and ALT 252 IU/L), total bilirubin 35 µmoles/L, and a prothrombin time of 15 seconds (no control reported). His liver enzyme levels peaked on day 2 (AST 7,225 IU/L and ALT 1,280 IU/L). It was later determined that he had ingested 6 g acetaminophen daily for an unspecified period of time for headaches and arthritic pain. Serum acetaminophen level, viral screening, and liver biopsy were not done. The patient was discharged after 20 days with normal liver function tests.

Another case reported by Kumar and Rex (Ref. 52) was a 59-year-old male alcohol abuser (case 5) who was admitted to the hospital with dizziness and orthostatic hypotension. He reported ingesting 5 g acetaminophen daily for 1 month for hip pain. Peak liver test abnormalities were present on the day of admission (AST 3,000 IU/L, ALT 290 IU/L, total bilirubin 133 µmole/L, and prothrombin time 19 seconds, no control reported). Serum acetaminophen levels, liver biopsy, and viral screening were not done. NAC was not administered. The patient subsequently developed sepsis and GI bleeding and died 2 weeks after hospitalization.

The agency subsequently received an additional 19 reports of acetaminophen liver toxicity (Ref. 94). Fifteen of these reports involved acetaminophen doses of less than 6 g daily in individuals with a history of moderate to heavy alcohol use. Five of the reports (case numbers 9, 11, 12, 13, and 19) provided sufficient detail to suggest acetaminophen-induced hepatotoxicity.

Case number 9 was a 45-year-old woman with a history of alcohol abuse who, at the time of admission, had a history of ingesting one to two glasses of wine daily (only at night). The patient had a history of acetaminophen use along with alcohol. For approximately 5 days prior to admission, the patient reportedly took acetaminophen at the recommended dose (4 g per day) for flu-like symptoms. The patient vomited (some "coffee ground" emesis) for 5 days prior to admission, and for 2 days had a progressive deterioration of mental status. On the night prior to admission, she became delirious and was brought to the emergency room.

Laboratory values showed grossly elevated liver enzymes (AST 15,205 IU/L and ALT 4,051 IU/L), a prothrombin time of 63.7 seconds (no control reported), and a total bilirubin of 3.8 mg/dL. The serum acetaminophen level was 12 µg/mL (time after last dose unknown). No record of hepatitis screening was provided. During the hospital stay, an upper endoscopy showed bleeding secondary to diffuse gastritis and portal gastropathy. The patient continued to deteriorate and died 1 month after hospital admission. Autopsy findings included diffuse hepatic necrosis with micro vesicular fat and bile stasis.

Case number 11 was a 43-year-old man with a long-standing history of alcohol abuse (at least 12 cans of beer daily for 16 years). He developed lower abdominal pain and fever, followed 2 days later by nausea and vomiting, for which he took two medications containing acetaminophen (estimated dose less than 4 g per day) for at least 1 day. He was admitted to the hospital 2 days later with hypotension and abnormal liver and renal function.

Laboratory values showed elevated liver enzymes (AST 5,450 IU/L and ALT 2,251 IU/L) a prothrombin time of 55.9 seconds (no control reported), and a total bilirubin of 89 µmole/L. The serum acetaminophen level was 5 µg/mL (time after last dose unknown). The patient died 10 days after admission to the hospital. No record of hepatitis screening was provided. Post-mortem findings included centrilobular necrosis and widespread mucosal hemorrhages consistent with coagulopathy. The autopsy report noted that while there was no evidence of cirrhosis, the presence of ascites, muscle wasting, and testicular wasting was consistent with the effect of chronic liver disease.

Case number 12 was a 41-year-old man who had taken acetaminophen-containing drugs for 2 days (4 to 5 g/day) to alleviate the pain of fractured ribs. He had a history of alcohol abuse and had recently been drinking 12 beers a day. He was admitted to the hospital with complaints of shortness of breath and left-side chest pain. On examination, he was found to have greater than an 80-percent pneumothorax of the left lung and was also deeply jaundiced. A blood alcohol level done at time of admission was reported as "0."

Laboratory findings included AST 21,900 IU/L, ALT 11,200 IU/L, total bilirubin 17.8 mg/dL, and a prothrombin time of 40 seconds (no control reported). The serum acetaminophen level was 2.1 µg/mL 4 days after the last acetaminophen ingestion. The results of screening for hepatitis A antibody, hepatitis B surface antigen and antibody, and hepatitis B core antibody were negative. Screening for Epstein-Barr surface antigen was also negative. A liver biopsy showed fulminant hepatic necrosis with mild to moderate evidence of alcohol-related liver disease. A diagnosis of acute toxic liver failure was made, and the patient was transferred to a second hospital for a liver transplant, which was done within 72 hours of transfer. Following the transplant, the patient was discharged in stable condition. Sections of the removed liver showed extensive centrilobular necrosis, with up to 50 or 60 percent necrosis in some areas.

Case number 13 was a 62-year-old man with a history of heavy alcohol use and severe steroid-dependent chronic obstructive pulmonary disease. He subsequently reduced his alcohol intake to two to four beers a day for several years. A few days prior to admission, he developed flu-like symptoms (sore throat, myalgia, and sleeping difficulty) for which he took an estimated 4 to 5 g acetaminophen over an 8-hour period. He became progressively weaker and fell on the day prior to admission.

On admission, he was found to have hypotension, weakness, grossly elevated liver function tests (AST 16,279 IU/L, ALT 10,942 IU/L, a total bilirubin of 7.8 mg/dL, and a prothrombin time of 55.7 seconds, no control reported). Serum acetaminophen levels were not determined. The patient was diagnosed with acute hepatic failure and died within 24 hours of admission. A post-mortem liver biopsy revealed massive hepatocellular necrosis.

Case number 19 was a 30-year-old man with a history of occasional alcohol use. Four days prior to admission, he developed malaise and a sore throat and drank six glasses of wine prior to retiring for the evening. His symptoms became progressively worse, and he took acetaminophen (4 g per day) for 3 to 4 days. On the morning of admission, he became disoriented, unable to speak, and agitated.

Admission laboratory data revealed markedly elevated liver enzymes (AST 13,580 and ALT 11,250 IU/L), a prothrombin time of 32.4 seconds (no control reported), and a bilirubin of 7.0 mg/dL. No blood alcohol was detected. A serum acetaminophen level of 7 µg/mL was obtained approximately 46 hours after the last acetaminophen dose. Screening for hepatitis B surface antigen and core antibody was negative. Tests for herpes simplex virus were initially negative but were positive after transfusions. The patient deteriorated rapidly and lapsed into a coma. A liver transplant was done, after which the patient was initially stable, but subsequently developed deteriorating kidney function. The liver pathology report described extensive centrilobular hemorrhagic necrosis.

Zimmerman and Maddrey (Ref. 95) reported 67 additional cases of hepatic injury in regular alcohol users associated with the use of acetaminophen for therapeutic purposes. The majority of cases

involved subjects considered to be alcohol abusers or who reported alcohol intakes of at least 60 g/day. In 27 of the cases (40 percent), hepatic injury was attributed to acetaminophen doses under 4 g/day. In another 13 cases (19.4 percent), hepatic injury was associated with acetaminophen doses of 4.1 to 6 g/day. Unfortunately, specific details of the individual cases were not provided. Thus, a definitive assessment of the role of acetaminophen in the reported liver injuries is difficult.

Acetaminophen is metabolized principally by glucuronide and sulphate conjugation in the liver. When acetaminophen is taken at therapeutic doses, glucuronide and sulphate metabolites account for 80 to 90 percent of the acetaminophen metabolites in urine (Ref. 80). Ordinarily, a small fraction of acetaminophen is metabolized by microsomal enzyme cytochrome P450 2E1 to NAPQI (Ref. 96), but if the capacity of the glucuronidation and sulfation metabolic pathways is exceeded, as in overdose, or if the synthesis of P450 2E1 is inducod, increased amounts of NAPQI are produced.

NAPQI is avidly electrophilic and can bind to liver cell macromolecules, disrupt cell function, and ultimately cause liver cell death. The binding of NAPQI to liver cell components is prevented if the compound is detoxified by conjugation with GSH or other sulfhydryl compound. The detoxification of NAPQI generates, through a series of reactions, mercapturic acid and cysteine metabolites. GSH is depleted in the detoxification process and must be replenished by sulfhydryl compounds from the diet or by drugs given as therapy, e.g., the cysteine containing compound NAC. NAC has well-documented effectiveness as an antidote for acetaminophen overdose. More recently, it has been recommended for the treatment of acetaminophen liver toxicity after ingestion of therapeutic doses of acetaminophen by individuals with a history of heavy alcohol use or abuse (Ref. 95).

Pharmacokinetic studies in humans suggest an increased sensitivity of heavy alcohol users or abusers to the hepatotoxic effects of acetaminophen. The data suggest that the ingestion of even relatively small doses of acetaminophen (1 g) by heavy alcohol users or abusers results in a higher than normal percentage of acetaminophen metabolized by the microsomal enzyme pathway that yields NAPQI. The available pharmacokinetic data suggest that the rate of metabolism of acetaminophen is increased in alcohol abusers (as evidenced by an increase in the plasma clearance rate (CL) and a decrease in the plasma elimination half-life of acetaminophen ($t_{1/2}$)). This increased metabolism suggests increased activity of the microsomal pathway in this population.

Dietz et al. (Ref. 28) compared the metabolism of acetaminophen in six healthy alcohol abusers (240 to 480 mL alcohol daily for 2 to 40 years) to eight healthy nondrinking adults. The alcohol abusers had stopped drinking within the previous 48 hours. Baseline laboratory data were obtained from both groups. Following a 12-hour fast, a single 1 g dose of acetaminophen was administered. Blood samples were collected immediately before acetaminophen administration and at 30, 60, 90, 120, and 240 minutes thereafter. Acetaminophen plasma data were fit to a one-compartment open model for oral dosing using nonlinear regression analysis. The time to peak concentration (t_{max}), peak plasma concentration (C_{max}), the area under the concentration-time curve (AUC), and CL were determined. Laboratory screening data revealed significant differences between the controls and alcohol abusers only in gamma-glutamyl transpepsidase activity (12.6 units in controls and 204.7 units in alcohol abusers, $p = 0.01$). There was no significant difference in renal function between the two groups. The acetaminophen plasma AUC's for the groups were significantly different ($p < 0.01$). While both groups achieved C_{max} at approximately the same time, C_{max} for the nondrinkers was significantly higher than for the alcohol abusers (20.2 µg/mL versus 15.4 µg/mL). The CL was also significantly accelerated in the alcohol abusers (247.4 mL/minute (min) versus 154.4 mL/min, $p < 0.001$).

Girre et al. (Ref. 55) obtained similar results in a comparison of the pharmacokinetics of acetaminophen in 12 chronic alcohol abusers and 12 healthy controls. The mean daily alcohol consumption for the alcohol abusers was 210 ± 95 g of absolute alcohol for a mean duration of 14.5 ± 9.5 years. Control subjects drank only moderately (defined in the study as a weekly alcohol consumption < 80 g) and were asked to abstain from alcohol consumption for 36 hours before the trial. A single, 1-g acetaminophen dose was administered following a 12-hour fast. Blood samples were taken before acetaminophen intake and at 0.25, 0.5, 0.75, 1, 1.5, 2, 2.5, 3, 4, 6, 8, and 24 hours thereafter.

The following pharmacokinetic parameters were determined: C_{max}, t_{max}, AUC, CL, and $t_{1/2}$. A comparison of C_{max} and t_{max} showed no significant differences between the two groups. However, in the alcohol abusers, $t_{1/2}$ was significantly shorter than for the controls (1.71 versus 2.84 hours, $p < 0.05$). CL was increased in the alcohol abusers (30.34 versus 26.52 L/hour, $p < 0.05$).

Observed increases in the excretion of metabolites (mercapturate and cysteine) of the microsomal pathway also suggest increased activity of this pathway in this population. Villeneuve et al. (Ref. 27) observed an increased urinary excretion of cysteine and mercapturate metabolites of acetaminophen in alcohol abusers. The authors compared the pharmacokinetics of acetaminophen metabolism in nine alcohol abusers (457 ± 50 g ethanol per day for at least 3 months), eleven subjects with alcoholic cirrhosis, and six healthy normal subjects. Subjects in the control group consumed no alcohol or other medications.

Subjects with a history of alcohol abuse were selected based on the absence of alcoholic hepatitis or cirrhosis (determined by physical examination and standard biological tests for liver function) and the lack of drug use (other than alcohol). The diagnosis of cirrhosis was confirmed by liver biopsy. Cirrhotic subjects were hospitalized at the time of the study and did not consume alcohol for at least 30 days prior to the start of the study. Five of the cirrhotic subjects received spironolactone (100 mg/day) for treatment of their ascites.

After 12 hours of fasting, a liquid preparation of acetaminophen was administered orally at a dose of 12 mg/kilogram with 200 mL of water (mean dose: Controls 920 mg, alcohol abusers 805 mg, and cirrhotics 872 mg). Blood samples were taken at 0, 5, 15, 30, 45, 60, 90, 120, 180, 240, 300, 360, and 420 minutes after ingesting acetaminophen. Urine was collected for 24 hours after ingestion. The apparent oral clearance (CL_o), AUC, and $t_{1/2}$ were determined.

The percentage of the acetaminophen dose eliminated in the urine of alcohol abusers was significantly decreased from the controls (88.6 to 63.4 percent). In the cirrhotics, clearance was decreased by 50 percent ($p < 0.05$), $t_{1/2}$ was extended ($p < 0.05$), and urinary elimination was not significantly decreased in relation to the controls. The level of glucuronide and sulfate conjugates in the alcohol abusers was not significantly different in comparison to the controls. The excretion of cysteine and mercapturate metabolites of acetaminophen was increased in a significant manner for the alcohol abusers ($p < 0.05$). When this increase was expressed as a percent of the administered dose, the mean augmentation for the alcohol abusers was 92 percent. In cirrhotics, the profile of these metabolites was comparable to the controls.

An additional mechanism of the increased sensitivity of alcohol abusers to acetaminophen toxicity has been postulated to be a diminished capacity to detoxify NAPQI by conjugation with GSH. Lauterberg and Velez (Ref. 65) studied glutathione levels and the formation of the toxic metabolite of paracetamol (acetaminophen) in chronic alcohol abusers. Study subjects were recruited from an alcohol treatment program and had a history of heavy drinking (average consumption of 180 g ethanol per day) up to 2 days prior to study initiation. Some of these subjects received chlorodiazepoxide (last dose 10 mg more than 10 hours prior to the study) as part of their treatment. Control subjects denied consumption of alcohol in excess of 10 g/day and were not taking any medications.

The study determined the plasma GSH levels of alcohol abusers without clinical evidence of alcoholic liver disease and in controls following an overnight fast. The GSH plasma concentration was about 50 percent lower in alcohol abusers than in the controls (8.48 versus 4.35 micromoles (µmole), $p < 0.05$). In contrast, the plasma concentration of free cysteine was similar for alcohol abusers and for controls.

The study also examined the effect of acetaminophen administration on plasma GSH. Subjects were given a 2 g acetaminophen dose in lemonade after a 10-hour fast. Blood samples were taken hourly for 4 hours. Urine was collected for 6 hours. After the administration of acetaminophen, the plasma GSH concentration in controls was significantly decreased at 3 hours from a mean concentration of 8.37 to 6.26 µmole ($p < 0.02$ by paired t-test). The plasma GSH levels in alcohol abusers were significantly lower than baseline at 2 and 3 hours (3.10 and 2.40 µmole, respectively, baseline 4.66 µmole). All GSH levels in the alcohol abusers were significantly lower ($p < 0.05$) than the corresponding values in the control group. The decrease in plasma cysteine was not significantly different from control values. Urinary excretion of mercapturic acid and cysteine conjugates was slightly increased in alcohol abusers. However, the difference was not statistically significant. There was no significant difference in the relative amounts or proportions of glucuronide and sulfate metabolites between alcohol abusers and controls, suggesting no impact of alcohol abuse on these metabolic pathways.

To confirm that low plasma GSH levels reflect low intrahepatic GSH, the authors measured hepatic GSH in liver samples obtained from alcohol abusers in whom a percutaneous liver biopsy was indicated. The biopsied subjects all had histological evidence of alcoholic hepatitis with and without cirrhosis and had more severe liver disease than the alcohol abusers in whom plasma GSH was measured. The hepatic concentration of GSH in the biopsied subjects was about 50 percent lower than in subjects without liver disease and subjects with a mild inflammatory process or nonalcoholic cirrhosis.

Based on the data discussed above, the agency concludes that chronic heavy alcohol use or abuse has a significant effect on the metabolism of acetaminophen and the detoxification of acetaminophen's toxic metabolite, NAPQI. These changes put individuals with a history of heavy alcohol use or abuse at an increased risk from acetaminophen liver toxicity. Therefore, the agency believes that an alcohol warning for adult OTC internal analgesic/antipyretic drug products containing acetaminophen is warranted. However, the agency does not find the submitted data sufficient to demonstrate the safety of a lower maximum daily dose (2 g acetaminophen) in heavy alcohol users or abusers or to support a specific labeling recommendation to that effect. Therefore, the agency is not proposing a reduction in the recommended maximum OTC daily 4 g dose of acetaminophen at this time. Rather, the agency believes that OTC labeling should recommend contact with a physician to these individuals. A physician familiar with a consumer's history can advise them on whether a particular OTC analgesic/antipyretic drug product is appropriate for their use, suggest other appropriate therapies, and counsel them about their alcohol use.

B. Other Monograph Ingredients

The agency has carefully considered the Committees' recommendations, all comments received in response to those recommendations, and all available data and information and has determined that an alcohol warning for OTC internal analgesic/antipyretic drug products containing aspirin is warranted. The agency agrees with the comments that the unpublished epidemiological data presented to the Committees at the September 8, 1993, meeting alone were insufficient to document an increased risk of GI bleeding associated with aspirin use by individuals with a history of heavy alcohol use or abuse. At that meeting (Ref. 72), agency representatives stated that the unpublished studies had design problems and did not convince them that the use of alcohol with OTC internal analgesic/antipyretic ingredients (such as aspirin) can cause excess GI bleeding. Agency representatives also stated that, based on these studies, the magnitude of the risk and the confidence level of the estimated risk were uncertain.

However, the irritant effects of aspirin on the gastric mucosa are well documented. In discussing the effect of aspirin on the gastric mucosa (42 FR 35346 at 35386 to 35397), the Panel concluded that aspirin and salicylic acid have a direct local irritant effect on the surface of mucosal cells lining the GI tract. The Panel asserted that the acute use of aspirin may activate symptoms of both gastric and duodenal ulcer, such as epigastric pain and GI hemorrhage. The Panel stated that the initiation or exacerbation of stomach ulcers, stomach irritation, and intestinal inflammation occurs in a significant number of aspirin users. Individuals particularly at risk are those with a history of symptoms of GI problems.

Alcohol is also a gastric irritant. Tarnawski et al. (Ref. 97) studied the effect of the intragastric administration of 100 mL of 40 percent ethanol (the alcohol content of 80 proof whiskey) or saline in 15 healthy volunteers (ten test and five control subjects). Changes in the appearance of the gastric mucosa, mucosal histology, luminal pH, and gastric mucosal potential were evaluated. The authors found that a single dose of 40 percent alcohol produced rapid endoscopic changes (congestion and focal hemorrhages) and prominent histologic changes (exfoliation of the surface epithelium, edema of the lamina propria, and hemorrhagic lesions associated with mucosal microvascular damage). Histologic changes were seen as early as 5 minutes after alcohol administration.

Individuals with a history of heavy alcohol consumption commonly develop characteristic subepithelial hemorrhages with the endoscopic appearance of "blood under plastic wrap." Although termed "hemorrhagic gastritis," these lesions are composed of hemorrhage and edema in the interstitial space under the surface epithelium, without inflammation (Ref. 98). While there are no controlled studies demonstrating that ethanol in lower doses will precipitate relevant gastric hemorrhage, acute hemorrhagic gastritis accounts for 25 percent of the cases of major bleeding in alcohol

abusers compared to 5 percent in the population without a history of prior alcohol abuse (Ref. 99). As with gastritis from other causes, individuals with alcoholic gastritis may have no symptoms whatsoever (Ref. 100). Currently available data do not provide sufficient information to assess the magnitude of the risk of aspirin use by individuals with a history of heavy alcohol use or abuse.

Further, in the last 15 to 20 years, the use of aspirin for the prevention of recurrent myocardial infarction (MI), transient ischemic attacks (TIA), and stroke has become prevalent. The agency has evaluated the available literature on aspirin for cerebral vascular and cardiovascular indications and the incidence of GI bleeding and ulcers in these studies. Eighteen of the 19 studies that included aspirin and placebo groups and evaluated GI bleeding reported an increase in GI bleeds in the aspirin group when compared to the placebo group (Refs. 101 through 118). One study reported no GI bleeds in either group (Ref. 119). Aspirin dosages in the studies ranged from 75 to 1,500 mg daily. Increases in bleeding were reported at all aspirin dosage levels when compared to the control groups. The number of subjects in the studies ranged from 125 to 22,071. The overall results of these studies show that GI bleeding increases with long-term aspirin use, even at low aspirin doses.

The UK–TIA study (Ref. 106) suggested a risk of GI bleeding that increased in a dose-dependent manner. The odds ratio (95 percent confidence interval) was 3.3 (1.2 to 9.0) for 300 mg daily aspirin and 6.4 (2.5 to 16.5) for 1,200 mg daily aspirin (Ref. 120). Several studies reported the number of ulcers in the aspirin and placebo groups. The Aspirin Myocardial Infarction Study Research Group (Ref. 112) reported "symptoms suggestive of peptic ulcer, gastritis, or erosion of gastric mucosa" in 14.9 percent of the placebo group and in 23.7 percent of the aspirin group. The British Doctors' Study (Ref. 102) reported a significant increase in peptic ulcers in the aspirin group compared to the placebo group.

The Physicians' Health Study (a 325 mg aspirin dose on alternate days (Ref. 101) reported a nonsignificant increase in upper GI ulcers in the aspirin arm compared to placebo (169/11,037 versus 138/11,034, p = 0.08). However, a statistically significant increase in the number of duodenal ulcers was reported in the aspirin group (46/11,037 versus 27/11,034, p = 0.03), where most of the subjects reported some alcohol use (more than 70 percent of the subjects reporting daily or weekly use).

The agency is currently evaluating several new professional vascular uses of aspirin and is aware that more people are taking aspirin chronically for cardiovascular and/or cerebrovascular indications and thus may have an increased risk of GI bleeding or susceptibility to ulcers. Further, the magnitude of the risk of heavy alcohol use in this population is not clearly defined.

The agency is aware that numerous studies have examined the effects of alcohol consumption on the rate of cardiovascular disease. In a review of these studies, Marmot and Brunner (Ref. 121) concluded that the evidence suggests that two drinks a day do not cause cardiovascular harm and may be protective against coronary heart disease. Above two drinks per day, the authors found evidence of harmful effects. Heavier alcohol intakes have been associated with an increase in cardiovascular diseases, such as heart muscle disease, hypertension, disturbances in heart rhythm, and stroke (Ref. 122). Pohorecky (Ref. 123) found that the risk for hypertension among individuals drinking three to four drinks per day was 50 percent higher than among nondrinkers.

The American Heart Association (AHA) (Ref. 124) does not currently recommend the ingestion of moderate amounts of alcohol for its protective effect against cardiovascular disease. However, based on the adverse effects of alcohol on blood pressure, the AHA recommends that alcohol intake should not exceed two drinks per day (Ref. 124). The Dietary Guidelines of the U.S. Departments of Agriculture and Health and Human Services (Ref. 125) also recommend moderate alcohol consumption. These guidelines define moderate alcohol consumption as one drink (12 ounces (oz) of regular beer, 5 oz of wine, or 1.5 oz of 80-proof distilled spirits) per day for women and two drinks per day for men. Based on these recommendations, the agency believes that the proposed warning provides appropriate advice to consumers on low-dose prophylactic aspirin regimens.

The agency acknowledges the Committees' conclusion that there are no clinical trial data supporting the need for an alcohol warning on OTC internal analgesic/antipyretic drug products containing carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate. However, the agency is concerned that the absence of an alcohol warning on OTC drug products containing these ingredients may lead consumers to conclude that they are safer to use with alcohol, when there are no data upon which to base such a conclusion. Therefore, based, among other things, on the Panel's conclusions that these OTC internal analgesic/antipyretic active ingredients all have safety profiles similar to aspirin and should bear similar labeling, the agency is also proposing that OTC drug products containing carbaspirin calcium, choline salicylate, magnesium salicylate, and sodium salicylate bear an alcohol warning.

C. OTC Internal Analgesic/Antipyretic Ingredients Switched From Prescription Status

After reviewing current data and information, and based on the Committees' recommendations, the agency is proposing to require an alcohol warning on all OTC drug products containing ibuprofen, ketoprofen, and naproxen sodium. Ibuprofen, ketoprofen, and naproxen sodium have been extensively marketed as prescription drugs at higher doses. Lower doses have been approved for OTC marketing through the new drug approval process. All OTC ketoprofen and naproxen sodium drug products are currently marketed with the following alcohol warning: "ALCOHOL WARNING [heading in bold face type]: If you generally consume 3 or more alcohol-containing drinks per day, you should consult your physician for advice on when and how you should take [product name inserted] and other pain relievers."

Ibuprofen, ketoprofen, and naproxen sodium are derivatives of propionic acid and, as such, share common pharmacologic effects. As with aspirin, propionic acid derivatives produce adverse GI side effects, alter platelet function, and prolong bleeding time (Refs. 126 through 129). GI complications are the most common side effects of these drugs and can include problems such as irritation, nausea, vomiting, bleeding, hematemesis, and activation of peptic ulcer (Refs. 127 and 128).

Articles in the scientific literature suggest a definitive relationship between the ingestion of propionic acid derivatives at prescription doses and GI complications. In a review article, Greene and Winickoff (Ref. 130) discussed the effectiveness, side effects, and costs of aspirin and various prescription nonsteroidal anti-inflammatory drugs (NSAID's), including ibuprofen, ketoprofen, and naproxen sodium. The authors stated that NSAID's share the risks of causing

gastric ulcer, upper GI bleeding, and GI perforation, and that GI side effects occur in roughly 25 percent of NSAID users. The authors also cited studies (Ref. 130) that attribute a relative risk of 4.03 for gastric ulcer and 3.09 for upper GI bleeding in users of these drug products.

Langman et al. (Ref. 131) compared previous use of propionic acid derivatives and other prescription NSAID's in patients age 60 and older admitted to hospitals with bleeding from peptic ulcers to controls (in hospital and community) matched for sex and age. The investigators found that peptic ulcer bleeding was strongly associated with the use of propionic acid derivatives, aspirin, and other prescription NSAID's during the 3 months before admission and that the risk of bleeding increased as dosage increased. An analysis of the risk according to drug dose (low, medium, high) revealed an odds ratio of 2.5 (1.7 to 3.8, 95 percent confidence interval) when exposure was to lower doses of these drugs and increased to 4.5 (3.3 to 6.0, 95 percent confidence interval) when exposure was to moderate doses. The study defined low dose as: (1) Less than 1,200 mg/day (OTC maximum daily dose) for ibuprofen, (2) less than 500 mg/day for naproxen (OTC maximum daily dose 660 mg/day), and (3) less than 100 mg/day for ketoprofen (OTC maximum daily dose 75 mg).

The use of ibuprofen, ketoprofen, or naproxen sodium may also predispose an individual to bleeding from a preexisting ulcer or other upper GI lesion. Increased severity of GI irritation is related to increased dosage of drug. While less severe irritation could be expected at the lower OTC doses, there are no data to clarify the magnitude of the risk for individuals with preexisting GI lesions due to a history of heavy alcohol use or abuse. In fact, more recent information (Ref. 132) suggests that OTC doses of ibuprofen or naproxen sodium increase by three times the risk of GI bleeding and that this risk is increased when OTC drug products containing these ingredients are used by individuals who consume alcohol.

The Committees discussed the relationship between alcohol and toxicities associated with OTC internal analgesic/antipyretic drug products (Ref. 72) and concluded that the effect of alcohol and ibuprofen or naproxen sodium was at least additive and that heavy and/or chronic drinkers of alcohol are at an increased risk of severe gastritis and GI bleeding. The Committees recommended that an alcohol warning should be required on OTC drug products containing ibuprofen or naproxen sodium.

On July 14, 1995, the Committees discussed two NDA's for OTC ketoprofen products (Ref. 133). The Committees agreed that ketoprofen can be used safely and effectively OTC. However, the Committees voted unanimously that, based on past Committee discussions, products containing this new OTC ingredient should be required to have the same alcohol warning in their labeling as that required for naproxen sodium.

Based on the Committees' recommendations and information in the literature, the agency has concerns that the use of OTC internal analgesic/antipyretic drug products containing aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate by individuals with a history of heavy alcohol use or abuse may increase their risk of adverse GI effects, including serious GI bleeding. Therefore, the agency has determined that an alcohol warning is needed for OTC internal analgesic/antipyretic drug products containing these ingredients. The agency invites the submission of comments and additional data supporting the safe use of these ingredients by individuals with a history of heavy alcohol use or abuse.

VI. The Agency's Proposal

Current data and information indicate that individuals with a history of heavy alcohol use or abuse have an increased sensitivity to the hepatotoxic effects of acetaminophen. Currently available data on the use of OTC internal analgesic/antipyretic drug products containing aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, naproxen sodium, magnesium salicylate, and sodium salicylate raise the logical concern that these OTC products pose an increased risk of GI bleeding to these individuals (i.e., individuals with a history of heavy alcohol use or abuse). However, the available data are not sufficient to assess the magnitude of this risk. Therefore, the agency is proposing that all OTC internal analgesic/antipyretic drug products and any combination product containing one of these ingredients labeled for adult use, whether marketed pursuant to an OTC drug monograph or an NDA, bear an alcohol warning. This proposal follows the agency's Committees' (NDAC and ADAC) recommendations for such a warning on OTC internal analgesic/antipyretic drug products containing acetaminophen, aspirin, ibuprofen, ketoprofen, and naproxen sodium.

A comment submitted in response to NDAC's recommendation for an alcohol warning for OTC acetaminophen drug products advised that all OTC internal analgesic/antipyretic drug products should bear a common alcohol warning. The comment proposed the following warning: "Use of certain medicines with alcohol can cause adverse effects. Consult a physician for appropriate use of this or other pain relievers if every day you consume excessive amounts of alcohol." The comment suggested that this warning would avoid the potential consumer confusion that could result from a more-detailed, ingredient-specific warning. The comment mentioned the following advantages of this warning: (1) Its educational nature, i.e., the warning heightens consumer awareness of a possible interaction between alcohol and OTC internal analgesic/antipyretic drug products, and (2) it helps consumers to understand that they simply cannot switch to another OTC internal analgesic/antipyretic drug product to avoid this risk.

Under the new drug approval process, the agency has approved the marketing of OTC internal analgesic/antipyretic drug products containing ketoprofen and naproxen sodium. The following warning was included in the products' approved labeling (Refs. 134, 135, and 136): "ALCOHOL WARNING: If you generally consume 3 or more alcohol-containing drinks per day, you should consult your physician for advice on when and how you should take [product name] and other pain relievers." Subsequently, this warning was included in the approved labeling of an OTC extended release drug product containing acetaminophen (Ref. 136). In April of 1996, the agency requested the voluntary implementation of this alcohol warning on all OTC analgesic/antipyretic drug products (Ref. 136). This request was based on a lack of uniformity in the use of an alcohol warning and the resultant consumer confusion.

In the **Federal Register** of February 27, 1997 (62 FR 9024), the agency published a proposed rule to establish a standardized format for the labeling of OTC drugs. During the agency's evaluation of data relating to consumers' perception of label warnings it became clear that more specific information heightens the effectiveness of risk communication (Ref. 139). Therefore, the agency is concerned about the effectiveness of the general alcohol warning currently used and is proposing more specific alcohol warnings.

The warnings being proposed are similar to that suggested by the comment but contain more specific information. The warnings specify "3 or more" instead of the general term "excessive." The agency has included a specific number of drinks in the warnings to help consumers identify a level of alcohol consumption that may increase their risk from the use of OTC internal analgesic/antipyretic drug products. However, the agency acknowledges that the data are not sufficient to clearly identify a level of alcohol consumption that increases the risk of OTC internal analgesic/antipyretic drug use.

In the proposed warnings, the agency has included a level of alcohol consumption that is consistent with limitations on daily intake recommended by the AHA (Ref. 124) and by the Dietary Guidelines for Americans developed by the U.S. Departments of Agriculture and Health and Human Services (Ref. 125). The AHA recommends that men and women limit alcohol intake to 1 oz of alcohol per day and defines this amount as follows: (1) 2 oz of 100-proof whiskey, (2) 3 oz of 80-proof whiskey, (3) 8 oz of wine, or (4) 24 oz of beer. The Dietary Guidelines recommend no more than two drinks per day for men and one drink per day for women. The guidelines define one drink as follows: (1) 12 oz of regular beer, (2) 5 oz of wine, or (3) 1.5 oz of 80-proof distilled spirits. The agency believes that the number of drinks included in the proposed warnings are consistent with these recommendations. However, the agency invites comment on the proposed warnings specifying "3 or more alcoholic beverages daily."

In addition, the warnings being proposed include organ-specific information. When NDAC discussed a warning for acetaminophen, it recommended that product labeling refer specifically to possible damage to the liver. However, when the Committees considered the need for an alcohol warning for other OTC internal analgesic/antipyretic drug products (e.g., aspirin), they were unable to reach a consensus on whether the warning should be general or should specify bleeding or GI effects. Based on its recent experience with OTC consumer labeling, the agency has concluded that warnings containing more specific information are more effective. Therefore, the agency is proposing that OTC analgesic/antipyretic drug products containing acetaminophen, labeled for adult use, should bear the following warning: "Alcohol Warning" [heading in boldface type]: "If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage." For OTC analgesic/antipyretic drug products containing other OTC active ingredients, i.e., aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, naproxen sodium, magnesium salicylate, and sodium salicylate, labeled for adult use, the agency is proposing the following warning: "Alcohol Warning" [heading in boldface type]: "If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of stomach bleeding." The agency is proposing that OTC analgesic/antipyretic drug products containing acetaminophen in combination with any other OTC analgesic/antipyretic ingredient, labeled for adult use, should bear the following warning: "Alcohol Warning" [heading in boldface type]: "If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage and stomach bleeding." However, the agency invites comment on the above organ-specific alcohol warnings.

VII. Voluntary Implementation

The agency acknowledges that these proposed alcohol warnings represent a significant change from the labeling required for OTC analgesic/antipyretic new drug products approved since naproxen sodium. Therefore, holders of approved applications for OTC internal analgesic/antipyretic drug products will not be required to implement the proposed warnings at this time. However, holders of approved applications for these drug products may implement the proposed warning without advance approval from FDA provided the warning includes at least the information in proposed § 201.322. A supplement must be submitted under § 314.70(c) (21 CFR 314.70(c)) in order to provide for the implementation of such labeling. The supplement and its mailing cover should be clearly marked: "Special Supplement—Changes Being Effected."

Voluntary compliance with these proposed warnings is subject to the possibility that FDA may change the wording of the statement, or not require the statement, as a result of comments filed in response to this proposal. Because FDA wishes to encourage the voluntary use of the proposed labeling statements, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation) in any 1 year.

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to add a warning statement to the labeling of OTC drug products labeled for adult use containing internal analgesic/antipyretic active ingredients. The warning statement concerns the increased risk of adverse effects from the use of OTC analgesic/antipyretic drug products by individuals with a history of heavy alcohol use or abuse. Potential benefits include a reduced risk of adverse effects when these consumers use these products.

This proposed rule amends Subpart C—Labeling Requirements of Over-the-Counter Drugs of 21 CFR part 201 and will require relabeling for many OTC drug products containing internal analgesic/antipyretic active ingredients. The agency's Drug Listing System identifies approximately 600 manufacturers and distributors of 5,000 to 6,000 OTC analgesic/antipyretic drug products with an average of 3 stock keeping units (SKU) (individual products, packages, and sizes) per product. It is also likely that there are some additional marketers and products that are not currently included in the agency's system. Nonetheless, the agency estimates that there are a total of 600 manufacturers and distributors and an estimated 18,000 SKU's.

The agency has been informed that relabeling costs of this type generally average about $2,000 to $3,000 per SKU. Assuming that there are approximately 18,000 affected SKU's in the marketplace, total one-time costs of relabeling would be $36 to $48 million. However, the agency believes that the actual costs may be lower because the agency is allowing supplementary labeling (e.g., stick on labeling) to be used for products not undergoing a new labeling printing within the 6-month implementation period. The agency solicits comments on whether these estimates are accurate and whether there are other effects that the agency should consider (e.g., the cost to manufacturers due to the effect on sales because of the decreased use of these products; or the implications to patients who take these products prophylactically for conditions such as heart ailments).

The proposed rule would not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. There are no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The agency does not believe that there are any significant alternatives to the proposed rule that would adequately provide for the safe and effective use of OTC drug products containing analgesic/antipyretic active ingredients.

This proposed rule may have a significant economic impact on some small entities. The labeling of some of the affected products is prepared by private label manufacturers for small marketers. Census data provide aggregate industry statistics on the total number of manufacturers for Standardized Industrial Classification Code 2384 Pharmaceutical Preparations by establishment size, but do not distinguish between manfacturers of prescription and OTC drug products. According to the U.S. Small Business Administration (SBA) designations for this industry, however, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

An analysis of IMS America listings for manufacturers of OTC drug products found that from 46 to 69 percent of the 400 listed firms are small using the SBA definition of 750 employees. The agency's Drug Listing System indicates that about 600 marketers will need to relabel. Thus, the agency believes that many of the manufacturers affected by this proposal would be small. Further, some entities, such as those private label manufacturers that provide labeling for a number of the affected products may also incur a significant impact. However, the agency has allowed for a 6-month implementation period and the use of supplementary labeling (e.g., stick-on labeling) in an attempt to minimize the economic impact of the proposed regulation. The agency believes that these measures should help reduce relabeling costs for small entities.

The agency considered but rejected the following alternatives: (1) Voluntary relabeling, and (2) a longer implementation period. However, the agency does not consider either of these approaches acceptable because they do not ensure that consumers will have the most recent needed information for the safe and effective use of OTC drug products containing internal analgesic/antipyretic drug active ingredients.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden of small entities. Nevertheless, some entities, especially those private label manufacturers that provide labeling for a number of the affected products, may incur significant impacts. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Act does not apply to the proposed rule because it would not result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on manufacturers of drug products that contain OTC internal analgesic/antipyretic active ingredients. Comments regarding the impact of this rulemaking on these drug products should be accompanied by appropriate documentation. A period of 75 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirement proposed in this document is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed warning statement is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

X. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Public Comment

Interested persons may, on or before January 28, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before January 28, 1998. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

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131. Langman, M. J. S. et al., "Risks of Bleeding Peptic Ulcer Associated with Individual Non-Steroidal Anti-Inflammatory Drugs," *The Lancet*, 343:1075–1078, 1994.

132. Peura, D. et al., "ACG Bleeding Registry (BR): Preliminary Findings," abstract of an unpublished study in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

133. Draft Summary Minutes of the Nonprescription Drugs Advisory Committee and the Arthritis Advisory Committee, July 14, 1995, in OTC. Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

134. "Approved Labeling, Aleve," NDA 20–204, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

135. "Approved Labeling, Orudis," NDA 20–429, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

136. "Approved Labeling, Actron," NDA 20–499, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

137. "Approved Labeling, Tylenol Extended Relief Caplets," NDA 19–872, in OTC Vol. 03AWNPR, Docket No. 77N–094W, Dockets Management Branch.

138. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET126, Docket No. 77N–0094, Dockets Management Branch.

139. Laughery, K. et al., "Explicitness of Consequence Information in Warnings," *Safety Science*, 16:597–613, 1993.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

2. New § 201.322 is added to subpart G to read as follows:

§ 201.322 Over-the-counter drug products containing internal analgesic/antipyretic active ingredients; required alcohol warning.

(a) People who regularly consume large quantities of alcohol have an increased risk of adverse effects (possible liver damage or gastrointestinal bleeding) when they use over-the-counter (OTC) drug products containing internal analgesic/antipyretic active ingredients. FDA concludes that the labeling of OTC drug products containing internal analgesic/antipyretic active ingredients should advise consumers with a history of heavy alcohol use or abuse to consult a physician about the use of these products. Accordingly, any OTC drug product, labeled for adult use, containing internal analgesic/antipyretic active ingredients (including, but not limited to, acetaminophen, aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate) shall bear an alcohol warning statement in its labeling as follows:

(1) *Acetaminophen.* "Alcohol Warning" [heading in boldface type]: "If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage."

(2) *Aspirin, carbaspirin calcium, choline salicylate, ibuprofen, ketoprofen, magnesium salicylate, naproxen sodium, and sodium salicylate.* "Alcohol Warning" [heading in boldface type]: "If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of stomach bleeding."

(3) *Combinations of acetaminophen with other analgesic/antipyretic active ingredients listed in § 201.322(a)(2).* "Alcohol Warning" [heading in boldface type]: "If you drink 3 or more alcoholic beverages daily, ask your doctor whether you should take [insert product name] or other pain relievers. [Product name] may increase your risk of liver damage and stomach bleeding."

(b) *Requirements to supplement approved application.* Holders of approved applications for OTC drug products that contain internal analgesic/antipyretic active ingredients that are subject to the requirements of paragraph (a) of this section must submit supplements under § 314.70(c) of this chapter to include the required warning in the product's labeling. Such labeling may be put into use without advance approval of FDA provided it includes at least the information included in paragraph (a) of this section.

(c) Any drug product subject to this section that is not labeled as required and that is initially introduced or initially delivered for introduction into interstate commerce after (date 6 months after
date of publication of the final rule in the **Federal Register**), is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is subject to regulatory action.

Dated: August 20, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–30035 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AD76

Law and Order on Indian Reservations; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to the proposed regulations which were published Friday, July 5, 1996 (61 FR 35158) and corrections to the proposed regulations which were published Wednesday, February 26, 1997 (62 FR 8665). The proposed rule amends regulations governing Courts of Indian Offenses.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4641–MIB, Washington, DC 20240; or, hand delivered to Room 4641 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–4400.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections supersedes 25 CFR 11.100(a) and affects those tribes that have exercised their inherent sovereignty by removing the names of those tribes from the list of Courts of Indian Offenses.

The Assistant Secretary-Indian Affairs, or her designee, has received law and order code adopted by the Confederated Tribes of the Goshute Reservation of Nevada in accordance with their constitutions and by-laws and approved by the appropriate bureau official. The Assistant Secretary-Indian Affairs recognizes that this court was established in accordance with the tribe's constitutions and by-laws. Also, the list of Courts of Indian Offenses has been corrected to include tribes inadvertently omitted from the correction and to reflect the decision of the Court in *Fletcher* v. *United States*, No. 95–5208 (10th Cir. Dec. June 10, 1997, reh. den. Aug. 18, 1997).

Inclusion in § 11.100, *Where are Courts of Indian Offenses established?*, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett* v. *Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts "retain some characteristics of an agency of the federal government" but they "also function as tribal courts"); *Combrink* v. *Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a "federally administered tribal court"); *Ponca Tribal Election Board* v. *Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) ("The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits."). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements in 25 CFR 11.100(c).

Need for Correction

As published, the proposed rule and the correction to the proposed rule contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on July 5, 1996 (61 FR 35158), of the proposed regulations, which were the subject of FR Doc. 96–16039, and the publication of February 26, 1997 (62 FR 8664), corrections to the proposed regulations, which were the subject of FR Doc. 97–4686, are corrected as follows:

§ 11.100 [Corrected]

In the **Federal Register** published July 5, 1996 on page 35159, and corrected on February 26, 1997 on 1997 on page 8665, in § 11.100, paragraph (a) is, corrected to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this part, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the tribes listed below:

(1) Red Lake Band of Chippewa Indians (Minnesota).

(2) Te-Moak Band of Western Shoshone Indians (Nevada).

(3) Yomba Shoshone Tribe (Nevada).

(4) Kootenai Tribe (Idaho).

(5) Shoalwater Bay Tribe (Washington).

(6) Eastern Band of Cherokee Indians (North Carolina).

(7) Ute Mountain Ute Tribe (Colorado).

(8) Quechan Indian Tribe (Arizona) (except resident members).

(9) Hoopa Valley Tribe, Yurok Tribe and Coast Indian Community of California (California jurisdiction limited to special fishing regulations).

(10) Louisiana Area (includes Coushatta and other tribes located in the State of Louisiana which occupy Indian country and which accept the application of this part); *Provided*, that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**.

(11) For the following tribes located in the former Oklahoma Territory (Oklahoma):

(i) Absentee Shawnee Tribe of Indians of Oklahoma.

(ii) Apache Tribe of Oklahoma.

(iii) Caddo Tribe of Oklahoma.

(iv) Cheyenne-Arapaho Tribe of Oklahoma.

(v) Citizen Band of Potawatomi Indians of Oklahoma.

(vi) Comanche Tribe of Oklahoma (Except Comanche Children's Court).

(vii) Delaware Tribe of Western Oklahoma.

(viii) Fort Sill Apache Tribe of Oklahoma.

(ix) Iowa Tribe of Oklahoma.

(x) Kaw Tribe of Oklahoma.

(xi) Kickapoo Tribe of Oklahoma.

(xii) Kiowa Tribe of Oklahoma.

(xiii) Otoe-Missouria Tribe of Oklahoma.

(xiv) Pawnee Tribe of Oklahoma.
(xv) Ponca Tribe of Oklahoma.
(xvi) Tonkawa Tribe of Oklahoma.
(xvii) Wichita and Affiliated Tribes of Oklahoma.

(12) For the following tribes located in the former Indian Territory (Oklahoma):
(i) Chickasaw Nation.
(ii) Choctaw Nation.
(iii) Thlopthlocco Tribal Town.
(iv) Seminole Nation.
(v) Eastern Shawnee Tribe.
(vi) Miami Tribe.
(vii) Modoc Tribe.
(viii) Ottawa Tribe.
(ix) Peoria Tribe.
(x) Quapaw Tribe.
(xi) Wyandotte Tribe.
(xii) Seneca-Cayuga Tribe.
(xiii) Osage Tribe.

Dated: October 29, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–29938 Filed 11–13–97; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA37

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Reimbursement

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise certain requirements and procedures for reimbursement under the TRICARE program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this proposed rule include: implementation of changes made to the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled and required by law to follow wherever practicable, along with changes to make our DRG-based payment system operate better; extension of the balance billing limitations currently in place for individual and professional providers to non-institutional, non-professional providers; adjusting the CHAMPUS maximum allowable charge (CMAC) rate in the small number of cases where the CMAC rate is less than the Medicare rate; and implementing the government-wide debarment rule where any provider excluded or suspended form CHAMPUS shall be excluded from all other programs and activities involving Federal financial assistance, such as Medicare or Medicaid, and adding violations of our balance billing or claims filing requirements to the list of provider actions considered violations of the TRICARE/CHAMPUS program.

DATES: Comments must be received on or before January 13, 1998.

ADDRESSES: Tricare Support Office (TSO), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Kathleen Larkin, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate TRICARE/CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Proposed Changes Regarding The Champus DRG-Based Payment System

The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 42560). This rule proposes to amend 32 CFR 199 to conform to changes made to the Medicare Prospective Payment System (PPS) upon which the CHAMPUS DRG-based payment system is modeled and required by law to follow whenever practicable. In addition, the rule proposes to: eliminate the requirement for the physician attestation form and change the requirement for physician acknowledgment statements; clarify authorized payment reductions by managed care support contractors for noncompliance with required utilization review procedures and; limit the ambulatory surgery group payment rate to the amount that would be allowed if the services were provided on an inpatient basis.

A. Heart and Liver Transplants

When we first implemented the CHAMPUS DRG-based payment system in 1987, we exempted all services related to heart and liver transplantation. Although both of these types of transplants are subject to the Medicare PPS, we initially exempted them because at that time we had limited experience and claims data for them. We believed these limitations could significantly skew the relative weights we would calculate for such transplants.

Since 1987 we have continued to collect data on these services. From the beginning, heart transplants were grouped to DRG 103 and exempted. For Fiscal Year 1991 the Health Care Financing Administration (HCFA) created DRG 480 for liver transplants, but we continued to exempt them.

In our notice of updated rates and weights for Fiscal Year 1991, which was published on November 5, 1990 (55 FR 46545), we noted that we intended to consider including both heart and liver transplants in our DRG system in the future, and we invited any comments in that regard. We received none.

Since we have enough claims data to calculate accurate weights for these transplants, we are proposing to end the DRG exemption for all CHAMPUS covered solid organ transplants for which there is an assigned DRG and enough data to calculate the DRG weight. Just as Medicare does, we will continue to exempt acquisition costs for all CHAMPUS covered solid organ transplants.

B. Payment Requests for Capital and Direct Medical Education Costs

Initially we required that hospitals submit their request for payment of capital and direct medical education costs within three months of the end of the hospital's Medicare cost-reporting period. However, some hospitals encountered difficulties in meeting this deadline, because HCFA implemented changes which resulted in extensions to the filing deadline. Therefore, we often did not enforce our deadline, and as of October 1988 we eliminated the requirement entirely.

We eliminated the requirement because we believed hospitals would submit their requests at the earliest possible time anyway. Also, we believed there would be no adverse impact on TRICARE/CHAMPUS. Neither of these has proven to be correct. We continually receive these requests well after the end of the Medicare cost-reporting period—in some cases several years later. As a result, it is necessary for our contractors to retain claims data in their systems indefinitely, so that they can verify the reported amounts when the requests are submitted. This is proving to be a very burdensome and costly requirement for our contractors.

On June 27, 1995, HCFA published a final rule (60 FR 33137) extending the time frame providers have to file cost reports from no later than 3 months after the close of the period covered by the report to no later than 5 months after the close of that period. The rule also changed the regulations for granting extensions to providers. Under the new regulation, an extension may be granted by the intermediary only when a provider's operations were significantly adversely affected due to extraordinary circumstances over which the provider had no control, such as flood or fire. We are proposing to adopt these same requirements for submitting requests for payment of capital and direct medical education costs with TRICARE/CHAMPUS.

Currently, TRICARE/CHAMPUS has no deadline, other than the six year statute of limitations, for submitting payment requests for Medicare cost-reporting periods. In order to allow up to close out our data for these periods, we are proposing that any capital and direct medical education payment requests that fall within the six year statute of limitations and the effective date of this change must be submitted to the appropriate TRICARE/CHAMPUS contractor no later than 5 months after the effective date of this change.

In addition, since capital and direct medical education costs are included in the national children's hospital differential, we are proposing to eliminate the clause allowing children's hospitals to request reimbursement of capital and direct medical education costs as an alternative to being paid the national differential.

C. Indirect Medical Education Adjustment Factor

An indirect medical education (IDME) adjustment factor is calculated for all hospitals which have teaching programs approved under the Medicare regulation. This factor is calculated using a formula developed by HCFA (see our previous final rules for a discussion of the application of this formula to CHAMPUS), and is based on the number of interns and residents and the number of beds in the hospital. Each DRG-based payment is increased by this factor for that hopsital.

Initially, the number of residents and interns for each hospital was derived from the most recently available audited HCFA cost report, and the number of beds was derived from the American Hospital Association Annual Survey of Hospitals. The factors have been updated annually based on data submitted by hospitals on the annual request for payment of capital and direct medical education costs.

While this updating procedure ensures that hospitals' factors are as current as possible, it is dependent upon the hospitals' submission of requests for payment of capital and direct medical education costs. Since the crucial components (number of interns, residents and beds) can change from year to year, and since many hospitals do not submit requests for payment of capital and direct medical education costs, we believe it is necessary to establish an alternative updating method.

We are proposing to use the Medicare adjustment factor for any hospital for which a CHAMPUS-specific factor has not been calculated based on the hospital's request for payment of capital and direct education costs. We will update the factors using the Medicare amounts as of October 1 of each year when we routinely update the DRG rates and weights. Any hospital which has not submitted a capital and direct medical education payment request to CHAMPUS since the previous October 1, will be assigned the most recent Medicare adjustment factor.

HCFA uses a slightly different formula than that used by CHAMPUS, and we are aware that this will result in a different adjustment factor than would otherwise be used. Nevertheless, we believe this is justified. When the Medicare factor is used, the difference is likely to be small. In addition, CHAMPUS accounts for a very small portion of most hospital's claims, and those hospitals which do not request payment of capital and direct medical education costs probably have few, if any, CHAMPUS admissions. Therefore, the financial impact of using the Medicare factor will be negligible. Yet it will ensure that the factors are kept current, so that factors which are no longer representative of a hospital's teaching program are not used indefinitely. And, of course, hospitals can ensure that a CHAMPUS-specific factor is used simply by submitting a request for payment of capital and direct medical education costs.

For hospitals which have indirect medical education factors for CHAMPUS but are not subject to the Medicare PPS, we will eliminate the factor if a CHAMPUS-specific factor cannot be calculated based on a current request from the hospital for payment of capital and direct medical education costs. The factor will be eliminated as of October 1 if no capital and direct medical education payment request has been received since the previous October 1.

In any case where a hospital submits a capital and direct medical education payment request after the Medicare factor has been implemented (or the factor has been eliminated for hospitals not subject to the Medicare PPS, including children's hospitals), the CHAMPUS-specific factor will become effective in accordance with existing requirements. In no case will the CHAMPUS-specific factor be effective retroactively.

For children's hospitals which have indirect medical education factors for CHAMPUS, the factor will be eliminated as of October 1 of each year if during the past year, the hospital did not provide the contractor with updated information on the number of its interns, residents and beds. Since amounts for capital and direct medical education are included in the national children's hospital differential, children's hospitals are not required to submit capital and direct medical education payment requests. Because of this, the contractor is not able to update the CHAMPUS-specific factor unless requested by the children's hospital.

For Fiscal Year 1998, HCFA revised its indirect medical education adjustment formula to gradually reduce the current level of IDME adjustment over the next several years. Since the IDME formula used by CHAMPUS does not include disproportionate share hospitals (DSHs), the variables in the formula are different from Medicare's however, the percentage reductions that will be applied to Medicare's formula are being adopted by CHAMPUS.

D. Long Stay Outliers

For Fiscal Year 1998, HCFA eliminated payment for day outliers, referred to as long stay outliers under CHAMPUS. CHAMPUS also eliminated long stay outliers for all cases except children's hospitals and neonates for Fiscal Year 1998. We are proposing to eliminate the long stay outliers for children's hospitals and neonates for Fiscal Year 1999.

For Fiscal Year 1993, HCFA changed the payment procedures for day outlier per diems under the PPS. Prior to this change, the day outlier per diem was calculated using the DRGs geometric mean length of stay and a marginal payment factor of 60 percent. For discharges occurring on or after October 1, 1992, HCFA revised the day outlier payment policy to reflect that the per diem payment would be calculated using the arithmetic mean and a marginal payment factor of 55 percent. This meant that the per diem day outlier payment under the PPS for operating costs would be determined by dividing the standard DRG payment by the arithmetic mean length of stay for that DRG, and multiplying the result by 55 percent. The change in the payment policy for day outliers provided better protection against costly cases for hospitals, while maintaining a more appropriate level of payment for cases

with extraordinarily long lengths of stay that were not also extraordinarily costly.

CHAMPUS did not adopt the PPS per diem day outlier changes at that time because it required a regulatory change and there was a moratorium on publication of rules. Over the years, HCFA has reduced the marginal payment factor for day outliers from 55 percent to 47 percent to 44 percent, to 33 percent, to the point of eliminating payment of day outliers, effective with discharges occurring after September 30, 1997. CHAMPUS adopted the day outlier marginal payment factor of 47 percent for Fiscal Year 1995, 44 percent for Fiscal Year 1996, and 33 percent for Fiscal Year 1997, but has not adopted the arithmetic mean to calculate the per diem payment. As a result, CHAMPUS has been paying more than Medicare on claims qualifying for long-stay day outliers. Although we eliminated the long stay outliers for all cases except children's hospitals and neonates for Fiscal Year 1998, and are proposing to eliminate the long stay outliers for them in Fiscal Year 1999, we are still proposing to adopt the arithmetic mean to calculate the per diem, in order to be consistent with the Medicare PPS in calculating payments for transfer cases.

E. Cost Outliers

Beginning in Fiscal Year 1998, HCFA adopted a requirement that in determining the additional payment for IME (referred to as IDME under CHAMPUS), the IME adjustment factor will only be applied to the base DRG payment. In addition, the fixed loss cost outlier threshold is based on the sum of the DRG payment plus IME plus a fixed dollar amount. CHAMPUS adopted this requirement in Fiscal Year 1998 for all cases except children's hospitals and neonates. We are proposing to adopt this same requirement for children's hospitals and neonates Fiscal Year in 1999.

F. Payment for Transfer Cases

Beginning in Fiscal Year 1996, HCFA adopted a graduated per diem payment methodology for transfer cases. As of October 1, 1996, CHAMPUS adopted this payment methodology; however, we elected not to offset these additional payments with reductions in outlier payments. Using this payment methodology, CHAMPUS will pay transferring hospitals twice the per diem amount for the first day of any transfer stay plus the per diem amount for each of the remaining days before transfer, up to the full DRG amount. For neonatal cases, other than normal newborns, the transferring hospital will be paid twice the per diem amount for the first day of any transfer stay plus 125 percent of the per diem rate for all remaining days before transfer, up to the full DRG amount. This proposed change will allow hospitals to be compensated more appropriately for the treatment they furnish to patients before transfer. Transferring hospitals will continue to be paid in full for discharges classified into DRG 456 (burns, transferred to another acute care facility or DRG 601 (neonate, transferred less or equal to 4 days old).

G. Elimination of Separate Adjusted Standardized Amounts for Rural Areas

Beginning in Fiscal Year 1995, HCFA's average standardized amounts for hospitals located in "rural" areas were required to be equal to the average standardized amount for hospitals located in "other urban" areas. Based on this, separate national average standardized amounts for "other urban" and "rural" areas no longer existed. As of Fiscal Year 1995, CHAMPUS no longer differentiated between "other urban" and "rural" areas. The adjusted standardized amounts for "other urban" and "rural" areas are now listed as "other" areas.

H. Payment for Blood Clotting Factor

For Fiscal Year 1994, HCFA reinstated payments for the cost of administering blood clotting factor to beneficiaries who have hemophilia through discharges occurring before October 1, 1994. CHAMPUS also reinstated payments for the cost of administering blood clotting factor through discharges occurring before October 1, 1994. For Fiscal Year 1998, HCFA again reinstated payments for the cost of administering blood clotting factor. CHAMPUS also reinstated payments for discharges occurring on or after October 1, 1997.

I. Effect of Change of Ownership on Exclusion of Long-Term Care Hospitals

Beginning in Fiscal Year 1996, HCFA adopted new requirements for certain long-term care hospitals excluded from the PPS. The requirements specify that if a hospital undergoes a change of ownership at the start of a cost reporting period or at any time within the preceding 6 months, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare. CHAMPUS also adopted these new requirements beginning in Fiscal Year 1996.

J. Empty and Low-Volume DRGs

Currently, 32 CFR 199.14 (a)(1)(iii)(B) specifies that the Medicare weight shall be used for any DRG with less than 10 occurrences in the CHAMPUS database. Since the CHAMPUS weights are used by military treatment facilities and by an increasingly large number of state Medicaid programs, the direct substitution of the Medicare weight for the CHAMPUS weight, causes inconsistencies. These inconsistencies may pose more of a problem for other payors than it does for CHAMPUS; particularly if they have more cases in the DRG categories where the substitutions have occurred. Because of these inconsistencies, we are proposing that the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DGR categories.

K. Hospitals Within Hospitals

For Fiscal Year 1998, HCFA established additional criteria for excluding from the PPS, long-term care hospitals that occupy space in the same building or on the same campus as another hospital, sometimes called "hospitals within hospitals." The additional criteria extends the hospital within hospital criteria to excluded hospitals other than long-term care hospitals. CHAMPUS also adopted these requirements beginning in Fiscal Year 1998.

II. Proposed Changes Regarding Elimination of Physician Attestation Requirement

On September 1, 1995, Medicare eliminated the requirement for the physician attestation form that requires doctors to certify the accuracy of all diagnoses and procedures before submitting claims for payment. In addition, instead of requiring a physician to sign an acknowledgment statement every year, Medicare changed its regulations to require a physician need only sign the acknowledgment statement upon receiving admitting privileges at a hospital. CHAMPUS adopted these requirements effective the same date.

III. Proposed Changes Regarding Clarification of Payment Reduction for Noncompliance with Required Utilization Review Procedures

To cover those situations where network providers have agreements with the managed care contractors for denial of payments for the provider's failure to obtain the required preauthorization, we are proposing to add the words "at least" before the words "ten percent". By adding the words "at least", the managed care support contractor is authorized to apply reductions in payments in accordance with the network provider's contract.

IV. Clarification Regarding List of Ambulatory Surgery Procedures

On October 1, 1993, we published a final rule (58 FR 51227) which included prospective payment procedures for ambulatory surgery. These procedures were modeled on the Medicare methodology. In that rule, we stated that "A list of ambulatory surgery procedures will appear as Attachment 2 (to be published later) to this preamble." We subsequently published the list of procedures on October 15, 1993, (58 FR 53411).

The list of procedures published on October 15, 1993, was not made part of the Code of Federal Regulations (CFR) at that time, and it was not, and continues not to be, our intention that it be part of the CFR. However, the final rule did not make this clear. The list of procedures to be "published periodically by the Director, OCHAMPUS," as cited in section 199.14 paragraph (d)(1), is contained in the TRICARE/CHAMPUS Policy Manual.

V. Proposed Changes Regarding Limits On Ambulatory Surgery Group Payment Rates

Effective November 1, 1994, CHAMPUS identified a number of procedures which can be performed safely and effectively as ambulatory surgery and established prospective payment procedures for reimbursing these services. Ambulatory surgery often is less disruptive to the patient's life than an inpatient stay. It also provides a less expensive alternative to an inpatient stay, since the patient does not require a hospital room and all the costs associated with it. As a result, TSO wants to encourage the use of ambulatory surgery whenever it is reasonable, but we do not believe it ever should be more expensive than an inpatient stay. Therefore, we are adding a provision that gives discretion to the Director, TSO, to limit the ambulatory surgery group payment rate to the amount that would be allowed if the services were provided on an inpatient basis. To calculate the allowable inpatient amount we will multiply the applicable DRG relative weight times the national large urban adjusted standardized amount (ASA). We will use the large urban ASA rather than the "other area" ASA because it is higher and will not economically disadvantage any provider, and we expect that most ambulatory surgery centers are located in large urban areas.

VI. Proposed Changes Regarding Balance Billing

Section 731 of the National Defense Authorization Act for Fiscal Year 1996, revised 10 U.S.C. 1079(h) which provides the statutory basis for limits on balance billing of CHAMPUS beneficiaries established in section 199.14(h)(1)(i)(D). Section 731 extends the balance billing limit authority to non-institutional, non-professional providers, such as clinical laboratories and ambulance companies.

This paragraph explains that non-institutional, non-professional providers will be limited in the amount they may bill a TRICARE/CHAMPUS-eligible beneficiary an actual charge in excess of the allowable amount. This provides financial protection for our beneficiaries by preventing excessively high billing by providers by establishing the balance billing limit to these new categories of providers as the same percentage as that used for TRICARE/CHAMPUS professional providers: 115 percent of the allowable charge. In order to provide flexibility to continue CHAMPUS benefits in special circumstances in which a beneficiary may feel strongly about using a particular provider, notwithstanding high fees, the proposed rule states that the limitation may be waived on a case-by-case basis.

VII. Proposed Changes Regarding CMAC Rates

CHAMPUS policy, based on Congressional enactment, is to set CHAMPUS Maximum Allowable Charge (CMAC) rates comparable to Medicare rates. For almost all procedure codes, the CMAC rate has been reduced to equal the Medicare rate or is in the process of being phased down to that level. For a very small number of procedures, for unusual reasons or idiosyncrasies of the data used for calculations, however, the CMAC rate is less than the Medicare rate. We propose to establish a special rule for these cases to permit an increase in the CMAC up to the Medicare rate. This is based on the authority of 10 U.S.C. 1079(h)(4), which allows for exceptions to the normal statutory payment limitation if DoD determines it necessary to assure that beneficiaries have adequate access to health care services. Because the Medicare rates are products of a system that reflects careful governmental judgments of factors suggesting fair payment rates, we propose to adopt these rates as indicators of payment levels associated with adequate access. In addition, under the applicable Appropriations Act general provision, DoD may increase CMAC rates that are lower than Medicare rates by reference to appropriate economic index data similar to that used by Medicare. We have heretofore utilized only the Medicare Economic Index in this connection, but we propose to adopt an additional Medicare indicator of economic factors, namely the data used for the Medicare fees determination, to adjust the rates in these special cases. This is set forth in the proposed new section 199.14(h)(1)(iii)(D).

VIII. Proposed Changes Regarding Government-Wide Effect Of Exclusion Or Suspension From Champus

Section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, October 13, 1994, and Executive Order 12549, "Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs," February 18, 1986, require that any entity debarred, suspended, or otherwise excluded under any program or activity involving Federal financial assistance shall also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. We are restating this requirement in the context specific to CHAMPUS through a proposed addition to section 199.9. The proposed addition provides that any health care provider excluded or suspended from CHAMPUS shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving the Federal financial assistance. Among these other such programs are Medicare and Medicaid. Other regulations related to this authority are 32 CFR Part 25 (DoD rules) and 45 CFR Part 76 (HHS rules).

In conjunction with implementation of this government-wide debarment rule, we are strengthening the linkage between CHAMPUS and these other programs on the important issues of submittal of claims and balance billing by providers. Current regulations generally require providers to file claims on behalf of beneficiaries and to limit balance billing to 15% greater than the CHAMPUS Maximum Allowable Charge (CMAC). These regulations also provide that violations are grounds for exclusion or suspension from CHAMPUS. We are proposing to reinforce these compliance provisions by adding violations of these requirements to the list of provider actions that are considered abuse of the program for purposes of termination,

suspension and other administrative remedies.

A principal effect of these proposed revisions is that any provider who fails to file CHAMPUS claims or exceeds the balance billing limits risks not only exclusion or suspension from CHAMPUS, but also exclusion or suspension from Medicare, Medicaid, and other Federal programs.

IX. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this proposed rule have been submitted to OMB for review under 3507(d) of the Act.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have any practical utility; (2) the accuracy of the agency's estimated burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The collection of information allows TRICARE to collect the information necessary to properly reimburse institutional providers based on diagnosis-related groups (DRGs) for their share of these costs. The collection of this information is authorized by 32 CFR 199.14(a)(1)(G)(1) and (2). The CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987.

Affected Public: Individuals; Business or Other For Profit.

Annual Burden Hours: 5,532.

Number of Respondents: 5,400.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes for physicians, 1 hour for institutions.

Frequency: On occasion.

Respondents are institutional providers and admitting physicians. Institutional providers are requesting reimbursement for allowed capital and direct medical education costs from the TRICARE/CHAMPUS contractor. The information can be submitted in any form, most likely in the form of a letter. The contractor will calculate the TRICARE/CHAMPUS share of capital and direct medical education costs and make a lump-sum payment to the hospital.

Physicians sign a physician acknowledgement, maintained by the institution, at the time the physician is granted admitting privileges. This acknowledgement indicates the physician understands the importance of a correct medical record, and misrepresentation may be subject to penalties.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, DC 20503, marked "Attention Desk Officer for Department of Defense, Health Affairs." Copies should be sent to the Office of the Assistant Secretary of Defense (Health Affairs), 1200 Pentagon, Washington, DC 20301–1200, Attention: Kathleen Larkin. When the Department of Defense promulgates the Final Rule, the Department will respond to comments by OMB or the public regarding the information collection provisions of the rule.

The is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues raised by public comments will be included with issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.9 is proposed to be amended by adding new paragraph (m) to read as follows:

§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest.

* * * * *

(m) *Government-wide effect of exclusion or suspension from CHAMPUS.* As provided by section 2455 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, October 13, 1994, and Executive Order 12549, "Debarment and Suspension from Federal Financial and Nonfinancial Assistance Programs," February 18, 1986, any health care provider excluded or suspended from CHAMPUS under this section shall, as a general rule, also be debarred, suspended, or otherwise excluded from all other programs and activities involving Federal financial assistance. Among the other programs for which this debarment, suspension, or exclusion shall operate are the Medicare and Medicaid programs. This debarment, suspension, or termination requirement is subject to limited exceptions in the regulations governing the respective Federal programs affected.

Note: Other regulations related to this government-wide exclusion or suspension authority are 32 CFR part 25 and 45 CFR part 76.

3. Section 199.14 is proposed to be amended by revising the first sentence of (a)(1) introductory text, and paragraphs (a)(1)(i)(C)(*8*)(*iv*), (a)(1)(ii)(C)(*2*), (*3*), (*4*) and (*10*) first sentence, (a)(1)(ii)(D)(*4*), redesignating paragraphs (a)(1)(ii)(D)(*5*) through (a)(1)(ii)(D)(*8*) as (a)(1)(ii)(D)(*6*) through (a)(1)(ii)(D)(*9*), revising (a)(1)(iii)(a)(*3*), (a)(1)(iii)(B), (a)(1)(iii)(D) (*1*), (*2*) and (*5*), (a)(1)(iii)(E)(*1*)(*i*) (*A*) and (*B*), (a)(1)(iii)(E)(*1*)(*ii*) (*A*) and (*B*), (a)(1)(iii)(G)(*3*) introductory text, (d)(3)(iv), and (h) introductory text, and by adding new paragraphs (a)(1)(ii)(D)(*5*), (a)(1)(iii)(E)(*3*) (*i*), (*ii*), (*iii*), (*iv*), and (*v*), and (h)(1)(iii)(D), to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(a) * * *

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital service furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applies on a per discharge basis using DRGs. * * *

(i) * * *

(C) * * *

(*8*) * * *

(*iv*) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital subject to the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate (except that in neonatal cases, other than normal newborns, the hospital will be paid at 125 percent of that per diem rate), as determined under instructions issued by TSO, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. For admissions occurring on or after October 1, 1995, the transferring hospital shall be paid twice the per diem rate for the first day of any transfer stay, and the per diem amount for each subsequent day up to the limit described in this paragraph.

* * * * *

(ii) * * *

(C) * * *

(*2*) All services related to solid organ acquisition for CHAMPUS covered transplants by CHAMPUS-authorized transplantation centers.

(*3*) All services related to heart and liver transplantation for admissions prior to October 1, 1998, which would otherwise be paid under DRG 103 and 480, respectively.

(*4*) All services related to CHAMPUS covered solid organ transplantations for which there is no DRG assignment.

* * * * *

(*10*) For admissions occurring on or after October 1, 1990, and before October 1, 1994, and for discharges occurring on or after October 1, 1997, the costs of blood clotting factor for hemophilia patients. * * *

(D) * * *

(*4*) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, TSO, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.23 of title 42 CFR.

(*5*) *Hospitals within hospitals.* A hospital within a hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a hospital within a hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, TSO, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in § 412.22 and the criteria for one or more of the excluded hospital classifications described in § 412.23 of Title 42 CFR.

* * * * *

(iii) * * *

(A) * * *

(*3*) *Indirect medical education standardization.* The charges shall be standardized for the cost effects of indirect medical educational factors. If the Medicare adjustment factor was used in calculating a teaching hospital's indirect medical education adjustment factor, the Medicare factor shall be used when standardizing the charges.

* * * * *

(B) *Empty and low-volume DRGs.* For any DRG with less than ten (10) occurrences in the CHAMPUS database, the Director, TSO, or designee, has the authority to consider alternative methods for estimating CHAMPUS weights in these low-volume DRG categories.

* * * * *

(D) * * *

(*1*) *Differentiate large urban and other area charges.* All charges in the database shall be sorted into large urban and other area groups (using the same definitions for these categories used in the Medicare program).

(*2*) *Indirect medical education standardization.* The charges shall be standardized for the cost effects of indirect medical education factors. If the Medicare adjustment factor was used in calculating a teaching hospital's indirect medical education adjustment factor, the Medicare factor shall be used when standardizing the charges.

* * * * *

(*5*) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban or other area group and dividing by the total number of discharges in the respective group.

* * * * *

(E) * * *

(*1*) * * *

(*i*) * * *

(*A*) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's arithmetic LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the arithmetic mean length-of stay for the DRG.

(*B*) *Long-stay outliers.* Any discharge (except for neonatal services and services in children's hospitals) which has a length-of-stay (LOS) exceeding a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.82 shall be classified as a long-stay outlier. Any discharge for neonatal services or for services in a children's hospital which has a LOS exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's arithmetic mean LOS also shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier threshold. The per diem rate shall equal the DRG amount divided by the arithmetic mean LOS for the DRG. For admissions on or after October 1, 1997, the long stay outlier has been eliminated for all cases except children's hospitals and neonates. For admissions on or after October 1, 1998, the long stay outlier has been eliminated for children's hospitals and neonates.

(ii) * * *

(A) *Cost outliers except those in children's hospitals or for neonatal services.* Any discharge which has standardized costs that exceed a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.84 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(*4*) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1997, the standardized costs are no longer adjusted for indirect medical education costs.

(B) *Cost outliers in children's hospitals and for neonatal services.* Any discharge for services in a children's hospital or for neonatal services which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,800 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(*4*) (adjusted to include average capital and direct medical education costs) and adjusting this amount for indirect medical education costs. Cost outliers for services in children's hospitals and for neonatal services shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. Effective with admissions occurring on or after October 1, 1998, the cost outlier thresholds for children's hospitals and neonatal services are the same as other hospitals and the standardized costs are no longer adjusted for indirect medical education costs.

* * * * *

(*3*) * * *

(*i*) The indirect medical education adjustment factor is calculated for all hospitals which have teaching programs approved under the Medicare regulation. The factor is based on the number of interns, residents and beds in the hospital. Each DRG-based payment is increased by this factor for that hospital. The factors are updated yearly based on data submitted by hospitals on the annual request for payment of capital and direct medical education costs.

(*ii*) To ensure the indirect medical education factors are as current as possible, the Medicare adjustment factor will be used for any hospital for which a CHAMPUS-specific factor has not been calculated based on the hospital's request for payment of capital and direct medical education costs. The factors will be updated using the Medicare amounts as of October 1 of each year; the same time the DRG rates and weights are updated. Any hospital which has not submitted a capital and direct medical education payment request to CHAMPUS since the previous October 1, will be assigned the most recent Medicare adjustment factor.

(iii) For hospitals which have indirect medical education factors for CHAMPUS but are not subject to the Medicare prospective payment system, the indirect medical education adjustment factor will be eliminated if a CHAMPUS-specific factor cannot be calculated based on a current request from the hospital for payment of capital and direct medical education costs. The factor will be eliminated as of October 1 if no capital and direct medical education payment request has been received since the previous October 1.

(iv) For children's hospitals which have indirect medical education factors for CHAMPUS, the factor will be eliminated as of October 1 of each year if during the past year, the hospital did not provide the contractor with updated information on the number of interns, residents and beds. Since amounts for capital and direct medical education are included in the national children's hospital differential, children's hospitals are not required to submit capital and direct medical education payment requests. Because of this, the contractor is not able to update the CHAMPUS-specific factor unless requested by the children's hospital.

(v) In any case where a hospital submits a capital and direct medical education payment request after the Medicare factor has been implemented (or the factor has been eliminated for hospitals not subject to the Medicare prospective payment system, including children's hospitals), the CHAMPUS specific factor will become effective in accordance with existing requirements. In no case will the CHMPUS-specific factor be effective retroactively.

* * * * *

(G) * * *

(*3*) *Information necessary for payment of capital and direct medical education costs.* All hospitals subject to the CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Such request shall be filed with CHAMPUS on or before the last day of the fifth month following the close of the hospitals' cost reporting period, and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. An extension of the due date for filing the request may only be granted if an extension has been granted by HCFA due to a provider's operations being significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

* * * * *

(d) * * *

(3) * * *

(iv) *Step 4: standard payment amount per group.* The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group. For cases in which the standard payment amount per group exceeds the CHAMPUS-determined inpatient allowable amount, the Director, TSO, or his designee, may make adjustments.

* * * * *

(h) *Reimbursement of individual health care professionals and other non-institutional, non-professional providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the service of an individual health care professional or other non-institutional, non-professional provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) * * *

(iii) * * *

(D) *Special rule for cases in which the national CMAC is less than the Medicare rate.* In any case in which the national CMAC calculated in accordance with paragraphs (h)(1) (i) through (iii) of this section is less than the Medicare rate, the Director, TSO, may determine that the use of the Medicare Economic Index under paragraph (h)(1)(iii)(B) of this section will result in a CMAC rate below the level necessary to assure that beneficiaries will retain adequate access to health care services. Upon making such a determination, the Director, TSO, may increase the national CMAC to a level not greater than the Medicare rate.

* * * * *

4. Section 199.15 is proposed to be amended by revising paragraphs (b)(4)(iii)(B), (c)(2), (d)(2)(iii) and (e)(3)(i) and (ii), to read as follows:

§ 199.15 Quality and utilization review peer review organization program.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(B) In a case described in paragraph (b)(4)(iii)(A) of this section, reimbursement will be reduced, unless such reduction is waived based on special circumstances. The amount of this reduction shall be at least ten percent of the amount otherwise allowable for services for which preauthorization (including preauthorization for continued stays in connection with concurrent review requirements) approval should have been obtained, but was not obtained.

* * * * *

(c) * * *

(2) The physician acknowledgment required for Medicare under 42 CFR 412.46 is also required for CHAMPUS as a condition for payment and may be satisfied by the same statement as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used.

* * * * *

(d) * * *

(2) * * *

(iii) Review for physician's acknowledgment of annual receipt of the penalty statement as contained in the Medicare regulation at 42 CFR 412.46.

* * * * *

(e) * * *

(3) * * *

(i) If the diagnostic and procedural information in the patient's medical record is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(ii) If the information stipulated under paragraph (d)(2) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

* * * * *

Dated: November 7, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29975 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[FRL–5821–1]

Hazardous Waste Combustors; Continuous Emissions Monitoring Systems; Proposed Rule—Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This announcement is a notice of advanced availability of a test report pertaining to the proposed requirement for Particulate Matter (PM) Continuous Emissions Monitoring Systems (CEMS) for hazardous waste combustors: "Draft Particulate Matter Continuous Emissions Monitoring Systems Demonstration", dated October 1997. The report documents PM CEMS demonstration tests conducted between September 1996 and May 1997 at the DuPont, Inc. Experimental Station On-Site Incinerator, in Wilmington, Delaware. Included in the report are the testing scheme, raw data, and discussion of results. Appendices to the report include: Method 5I—Determination of Low Level Particulate Matter Emissions from Stationary Sources; Revised Draft Performance Specification 11—Specifications and Test Procedures for PM CEMS in Stationary Sources; and Appendix F to 40 CFR Part 60, Quality Assurance Requirements for PM CEMS used for Compliance Determination.

FOR FURTHER INFORMATION CONTACT: To obtain the October 1997, Draft PM CEMS Demonstration test report, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9:00 a.m. to 6:00 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed the Revised Standards for Hazardous Waste Combustors (i.e., incinerators, cement and lightweight aggregate kilns that burn hazardous waste). The revised standards would limit emissions of PM at these facilities and address the application of PM CEMS for compliance monitoring. See 61 FR 17358. On March 21, 1997, EPA published a Notice of Data Availability (NODA) that further examined the issues concerning PM CEMS as compliance instruments. See 62 FR 13776. EPA published an additional NODA on May 2, 1997, to inform the public of: (1) Significant changes the Agency is considering on aspects of the proposal based on public comments and new information; and (2) the Agency's own re-evaluation of MACT standard-setting approaches based on new data and public comments.

The proposed rule would require that PM CEMS be used to document compliance with the proposed PM standards. To be effective for compliance monitoring, the Agency determined that commercially available PM CEMS must meet certain performance specifications. The results of the demonstration tests assist in the development of these PM CEMS performance specifications.

EPA plans to follow today's NODA with a second NODA which will discuss issues pertaining to the demonstration test report and PM CEMS implementation considerations. The second NODA will provide the opportunity to comment on the report and the issues.

Dated: November 5, 1997.

David Bussard,

Acting Director, Office of Solid Waste.

[FR Doc. 97–30019 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–184; MM Docket No. 92–260; FCC 97–376]

Inside Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a *Report and Order and Second Further Notice of Proposed Rulemaking* which addresses rules and policies concerning cable inside wiring. The *Report and Order* segment of this decision may be found elsewhere in this issue of the Federal Register. The *Second Further Notice of Proposed Rulemaking* (*"Second Further Notice"*) segment seeks comment on proposed amendments to the Commission's regulations relating to exclusive service contracts, application of cable inside wiring rules to all multichannel video programming distributors ("MVPDs"), signal leakage reporting requirements, and simultaneous use of home run wiring. This action was necessary because exclusive service contracts and

access to home run wiring are significant competitive issues in multiple dwelling unit buildings ("MDUs"). In addition, this action was necessary in order to ensure that all MVPDs are treated equitably under our inside wiring rules. The intended effect of this action is to expand opportunities for new entrants seeking to compete in distributing video programming and to ensure that the Commission's inside wiring rules remain pro-competitive.

DATES: Comments must be submitted on or before December 23, 1997 and reply comments must be submitted on or before January 22, 1998.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rick Chessen, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the *Second Further Notice* segment of the Commission's *Report and Order and Second Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, FCC No. 97–376, adopted October 9, 1997 and released October 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800 (phone), (202) 857–3805 (fax), 1231 20th Street, NW, Washington, DC 20036.

Synopsis

I. Introduction

1. The *Second Further Notice* addresses issues raised in the *Notice of Proposed Rulemaking* in CS Docket No. 95–184, 61 FR 3657 (February 1, 1996) (*"Inside Wiring Notice"*), the *Order On Reconsideration and Further Notice of Proposed Rulemaking* in MM Docket No. 92–260, 61 FR 6131 (February 16, 1996) and 61 FR 6210 (February 16, 1996) (*"Cable Home Wiring Further Notice"*), and the *Further Notice of Proposed Rulemaking* in CS Docket No. 95–184 and MM Docket No. 92–260, 62 FR 46453 (September 3, 1997) (*"Inside Wiring Further Notice"*) regarding potential changes in our telephone and cable inside wiring rules in light of the evolving telecommunications marketplace.

II. Second Further Notice of Proposed Rulemaking

A. Exclusive Service Contracts

2. We believe that exclusive service contracts between MDU owners and MVPDs can be pro-competitive or anti-competitive, depending upon the circumstances involved. The term "MDU owner" (sometime referred to as the "premises owner") as used herein includes whatever entity owns or controls the common areas of an apartment building, condominium or cooperative. Some alternative providers have commented that in order to initiate service in an MDU, they must be able to use exclusive contracts to ensure their ability to recover investment costs. Other alternative providers have argued that the Commission should limit the ability of incumbent cable operators to enter into exclusive contracts with MDU owners.

3. We seek comment on whether the Commission should adopt a "cap" on the length of exclusive contracts for all MVPDs that would limit the enforceability of exclusive contracts to the amount of time reasonably necessary for an MVPD to recover its specific capital costs of providing service to that MDU, including, but not limited to, the installation of inside wiring, headend equipment and other start-up costs. Commenters have suggested exclusivity periods such as five to six years, seven years and seven to ten years as reasonable. We seek comment on what would be a reasonable period of time for a provider to recoup its specific investment costs in an MDU. We seek comment on an approach under which a presumption that all existing and future exclusivity provisions would be enforceable for a maximum term of seven years, except for exceptional cases in which the MVPD could demonstrate that it has not had a reasonable opportunity to recover its specific investment costs. For instance, the exclusivity of a "perpetual" exclusive contract entered into in 1983 would no longer be enforceable; however, if the service provider completed a substantial rebuild of its plant in 1996, the provider may be able to show that it has not had a reasonable opportunity to recover its investment costs notwithstanding the fact that the exclusive contract was entered into more than seven years ago. Similarly, a provider may be able to show that it has not had an opportunity to recover its costs where it provided discounted service in the early years of an exclusive contract with the expectation of making its returns in later years. We inquire whether there should be different treatment accorded existing contracts and future contracts. We also seek comment on the appropriate forum for such a showing and whether the enforceability of an exclusivity provision should be extended only for the time period reasonably necessary for the provider to recover its costs.

4. If a "cap" is adopted, we seek comment on whether service providers would generally be able to structure their business arrangements so as to recover their capital costs within that time limit. After a video service provider has had an opportunity to recover its costs under an exclusive contract on a particular property, we seek comment on whether we should prohibit future exclusive contracts between the video service provider and the property owner, unless the service provider can demonstrate that the exclusive contract is necessary to recoup a substantial new investment in the property. We also inquire whether MDU owners should be afforded an opportunity to terminate the exclusive contract and retain the inside wiring, in exchange for a payment to the provider compensating it for unrecovered investment costs. We seek to determine what circumstances allow MDU owners and tenants to receive the benefits of technological improvements most expeditiously, while at the same time enhancing competition among MVPDs.

5. In the alternative, we seek comment on whether the Commission should only limit exclusive contracts where the MVPD involved possesses market power. The Supreme Court has noted: "Exclusive dealing is an unreasonable restraint on trade only when a significant fraction of buyers or sellers are frozen out of a market by the exclusive deal." *Jefferson Parish Hosp. Dist. No. 2* v. *Hyde*, 466 U.S. 2, 45 (1984), citing *Standard Oil* v. *United States*, 337 U.S. 293 (1949). We seek comment on circumstances encompassing the video distribution market and whether the Commission can and should restrict or prohibit MVPDs with market power from entering into or enforcing exclusive service contracts. In particular, we seek comment on how to define "market power" for these purposes, as well as how to define the relevant geographic market.

6. We are concerned about the administrative practicability of making market power determinations on a widespread, case-by-case basis and seek comment on whether we should establish any presumptions in this regard. We seek comment on whether our decision not to preempt state mandatory access statutes effectively means that non-cable MVPDs cannot enforce exclusive agreements in those states, even where such agreements may be pro-competitive. We also seek comment on any other issues relevant to the analysis of market power and exclusive contracts in the context of this proceeding.

7. In addition, we seek comment on whether the Commission can and should take any specific actions regarding so-called "perpetual" exclusive contracts (i.e., those running for the term of a cable franchise and any extensions thereof). For instance, under the market power approach, we seek comment on whether the Commission should adopt a presumption that the MVPDs involved possessed market power when such contracts were executed. Under the seven-year "cap" approach, we seek comment on whether "perpetual" exclusive contracts would simply fall within the general rule limiting the enforceability of exclusive contracts to seven years from execution unless the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs.

8. Under one proposal, property owners that have committed to long-term perpetual exclusive contracts would have a window of 180 days to take a "fresh look" at the marketplace to renegotiate or terminate those contracts without liability in order to avail themselves of a competitive alternative service provider. We seek comment on whether we can and should adopt a "fresh look" for "perpetual" exclusive contracts. In addition, we seek comment on several implementation issues: (1) whether the "fresh look" would apply only to "perpetual" exclusive contracts and, if so, how such contracts reasonably can be distinguished from other long-term exclusive contracts; (2) the scope of the "fresh look" and how the "fresh look" period would be triggered to ensure a viable choice exists (e.g., whether the "fresh look" be applied on an MDU-by-MDU basis upon the request of a private cable operator able to serve the MDU, or more generally on a franchise-by-franchise basis where competitive choices exist in the franchise area); and (3) whether the "fresh look" would be a one-time opportunity or whether there could be additional "fresh look" windows in light of the development of new technology and the entry of new video service providers.

9. If we were to adopt a "fresh look" for "perpetual" exclusive contracts, we seek comment on whether we should open a 180-day "fresh look" window for MDU owners upon the effective date of our rules, unless the "perpetual" exclusive contract was entered into less than seven years earlier, in which case the "fresh look" window would open for that MDU at the end of the seven-year period. We also seek comment on whether the MVPD should be able to apply to the Commission for an extension if the MVPD can demonstrate that it has not had a reasonable opportunity to recover its specific capital costs by the end of this seven-year period. Further, we seek comment on whether, if an MDU owner does not enter into a new contract during its initial "fresh look" period, a new 180-day "fresh look" window should open at the expiration of each subsequent franchise period until the MDU owner opts out of its "perpetual" exclusive contract. We seek comment on whether this framework would protect MDU owners who do not have a competitive alternative and therefore would be prejudiced by a one-time "fresh look" window, while ensuring that the MVPDs involved have a reasonable opportunity to recover their costs.

10. We also seek comment on our statutory authority to adopt the exclusive contracts proposals discussed above. We also seek comment on any other constitutional, statutory or common law implications that these proposals raise.

B. Application of Cable Inside Wiring Rules to All MVPDs

11. We propose to apply our cable home wiring rules for single-unit installations to all MVPDs in the same manner that they apply to cable operators. We believe that applying those rules to all MVPDs would promote competitive parity and facilitate the ability of a subscriber whose premises was initially wired by a non-cable MVPD to change providers. We seek comment on this proposal and on our authority to adopt it.

12. We also propose to expand to all MVPDs the rule we are adopting herein regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the cable operator. We believe that applying this rule to all MVPDs will promote the same consumer benefits as in the cable context: increased competition and consumer choice, lower prices and greater technical innovation. We seek comment on this proposal, and in particular on the Commission's authority for expanding this rule to all MVPDs.

C. Signal Leakage Reporting Requirements

13. Section 76.615 of the Commission's signal leakage rules requires cable operators to file certain information with the Commission when operating in the aeronautical radio frequency bands. 47 CFR 76.615. In particular, § 76.615(b)(7) requires cable operators to file annually with the Commission the results of their signal leakage tests conducted pursuant to § 76.611. 47 CFR 76.611 and 76.615(b)(7). We are concerned that the reporting requirements of § 76.615(b)(7) may impose undue burdens on small broadband service providers, including small cable operators. We seek comment on whether certain categories of broadband service providers should be exempt from the filing requirements of § 76.615(b)(7) and, if so, what criteria the Commission should use in defining those providers. We would not propose to exempt any broadband service providers from the testing requirements of § 76.615(b)(7), but simply the requirement to report the results of such tests to the Commission. For instance, we seek comment on whether we should exempt small broadband service providers from the filing requirements of § 76.615(b)(7) based on an existing definition in the Commission's rules, a particular number of subscribers served, the length of the cable plant or some other criteria. For example, we have defined a small cable system as any system that serves 15,000 or fewer subscribers and a small cable company as one serving a total of 400,000 or fewer subscribers over all of its systems. *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92–266 and 93–215 (Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation), 60 FR 35854 (July 12, 1995). We seek comment on the risks to safety of life communications posed by such an exemption. We also seek comment on any other changes in this area that would reduce burdens, yet meet the goals of protecting against signal leakage.

D. Simultaneous Use of Home Run Wiring

14. As stated above, DIRECTV suggests that the Commission should establish a "virtual" demarcation point from which an alternative provider could share the wiring simultaneously with the cable operator. Other alternative providers endorse this view, if it is technically possible, and CEMA states that some of its members are

currently developing equipment that will allow multiple uses of a single broadband wire. Cable operators generally oppose DIRECTV's suggestion that two video service providers may share a single wire, stating that the alternative provider would have to use different frequency bands to avoid interference, and, while theoretically possible, most systems do not have sufficient bandwidth capacity to carry multiple MVPDs. DIRECTV acknowledges that only service providers that use different parts of the spectrum technically may be able to share a single wire.

15. We believe that the sharing of a single wire by multiple service providers deserves further exploration. We seek comment on DIRECTV's proposal that we require competing broadband service providers to share a single home run wire in MDUs. In particular, we seek comment on the current technical, practical and economic feasibility and limitations of sharing of home run wiring. We also seek comment on our legal authority to impose such a requirement and whether such a requirement would constitute an impermissible taking of private property under the Fifth Amendment.

III. Initial Regulatory Flexibility Act Analysis

16. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected significant impact on small entities by the policies and rules proposed in this *Second Further Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures as other comments in this proceeding, but they must be have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the RFA. In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**, pursuant to 5 U.S.C. 603(a).

Need for Action and Objectives of the Proposed Rules

17. The Commission issues this *Second Further Notice* to consider additional rules to promote competition and enhance consumer choice. In particular, we seek comment on the competitive implications of exclusive service contracts between MDU owners and MVPDs, and whether we should: (1) limit exclusive contracts to a time certain; (2) adopt restrictions on the ability of MVPDs to enter into exclusive contracts; or (3) adopt a "fresh look" for "perpetual" exclusive contracts. In addition, we propose to expand to all MVPDs the rule regarding cable subscribers' rights, prior to termination of service, to provide and install their own cable home wiring and to connect additional home wiring to the wiring installed and owned by the MVPD. We also ask whether certain categories of broadband service providers (e.g., small broadband service providers, including small cable operators) should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). Finally, we seek comment on the current technical, practical, economic, and legal limitations of requiring competing broadband service providers to share a single home run wire in MDUs.

Legal Basis

18. *This Second Further Notice* is adopted pursuant to sections 1, 4, 224, 251, 303, 601, 623, 624, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 224, 251, 303, 521, 543, 544, and 552.

Description and Estimate of the Number of Small Entities Impacted

19. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we propose in this *Second Further Notice* will affect MVPDs and MDU owners.

20. Small MVPDs: SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. We will address each service individually to provide a more succinct estimate of small entities.

21. Cable Systems: The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Second Further Notice*.

22. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. MMDS: The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of the Commission's *Report and Order* concerning MMDS auctions has been approved by the SBA.

24. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of $11 million annually. We believe that there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

25. ITFS: There are presently 1,989 licensed educational ITFS stations and 97 licensed commercial ITFS stations. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees and are unable to ascertain how many of the 97 commercial stations would be categorized as small under the SBA definition. Thus, we believe that at least 1,989 ITFS licensees are small businesses.

26. DBS: There are presently nine DBS licensees, some of which are not currently in operation. The Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

27. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by video service providers, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other video service providers; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

28. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

29. OVS: The Commission has certified nine OVS operators. Because these services were introduced so recently and only one operator is currently offering programming to our knowledge, little financial information is available. Bell Atlantic (certified for operation in Dover) and Metropolitan Fiber Systems ("MFS," certified for operation in Boston and New York) have sufficient revenues to assure us that they do not qualify as small business entities. Two other operators, Residential Communications Network ("RCN," certified for operation in New York) and RCN/BETG (certified for operation in Boston), are MFS affiliates and thus also fail to qualify as small business concerns. However, Digital Broadcasting Open Video Systems (a general partnership certified for operation in southern California), Urban Communications Transport Corp. (a corporation certified for operation in New York and Westchester), and Microwave Satellite Technologies, Inc. (a corporation owned solely by Frank T. Matarazzo and certified for operation in New York) are either just beginning or have not yet started operations. Accordingly, we believe that three OVS licensees may qualify as small business concerns.

30. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

31. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. An LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined above. A small radiotelephone entity is one with 1500 employees or less. For the purposes of this proceeding, we include only an estimate of LMDS video service providers. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *LMDS Second Report and Order*, we defined a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million. We have not yet received approval by the SBA for this definition.

32. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

33. MDU Operators: The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually. According to the

Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

Reporting, Recordkeeping, and Other Compliance Requirements

34. The *Second Further Notice* seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). Such an exemption would relieve qualifying providers from only the relevant filing requirements, but not from the signal leakage testing requirements.

Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With the Stated Objectives

This section analyzes the impact on small entities of the regulations proposed or considered in the *Second Further Notice.*

35. The *Second Further Notice* seeks comment on several proposals which could minimize the economic impact on a substantial number of small entities. For instance, in seeking comment on what policies should be adopted with respect to exclusive contracts, the Commission raises the option of a limit on the length of exclusive contracts that would still permit a small MVPD to obtain exclusive contracts for the period of time necessary to recover its investment costs in the MDU building. In addition, the Commission seeks comment on whether small broadband service providers, including small cable operators, should be exempt from the signal leakage reporting requirements in § 76.615(b)(7). The issue of whether competing providers should be required to share home run wiring explores the possibility of another means by which small MVPDs may be able to access MDUs. Commenters are invited to address the economic impact of these proposals on small entities and offer any alternatives.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

IV. Procedural Provisions

36. Ex parte Rules—"Permit-but-Disclose" Proceeding. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b). 47 CFR 1.1206(b).

37. Filing of Comments and Reply Comments. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 23, 1997, and reply comments on or before January 22, 1998. 47 CFR 1.415 and 1.419. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street NW, Washington DC 20554.

V. Ordering Clauses

38. *It is ordered* that, pursuant to sections 1, 4(i), 201–205, 214–215, 220, 303, 623, 624 and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201–205, 214–215, 220, 303, 543, 544 and 552, NOTICE IS HEREBY GIVEN of proposed amendments to the Commission's rules, in accordance with the proposals, discussions and statements of issues in the *Second Further Notice of Proposed Rulemaking,* and COMMENT IS SOUGHT regarding such proposals, discussions and statements of issues.

39. *It is further ordered* that the Commission SHALL SEND a copy of this *Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29513 Filed 11–13–97; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Revision of the Freedom of Information Act Regulations of the National Railroad Passenger Corporation and Implementation of the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231)

AGENCY: National Railroad Passenger Corporation.

ACTION: Proposed rule.

SUMMARY: This notice sets forth proposed revisions of the Freedom of Information Act (FOIA) regulations of the National Railroad Passenger Corporation ("Amtrak"). The rules reflect recent developments in the statute and case law, including the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231). The proposed revisions provide substantive and procedural changes to conform to the amendments. Amtrak has also taken this opportunity to streamline its rules and include updated cost figures to be used in calculating and charging fees.

DATES: Submit comments on or before December 15, 1997.

ADDRESSES: Address all comments concerning this proposed rule to Medaris Oliveri, Freedom of Information Office, National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri at 202/906–2728.

SUPPLEMENTARY INFORMATION: These revisions incorporate changes to the language and structure of Amtrak's regulations and also add new provisions

to implement the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104–231). New provisions implementing the amendments are found at § 701.2 definitions, § 701.3 policy, § 701.4 (c) and (d) reading room records, § 701.5 requirements for making requests, § 701.6(f) electronic records, § 701.7 timing of responses to requests, § 701.8 (a) and (b) content of responses, § 701.9 business information, § 701.10 appeals, and § 701.11 fees.

Proposed revisions of the fee schedule can be found at § 701.11(e). The duplication charge will remain the same at 25 cents per page, while document search and review charges will increase from $27 to $38 per hour. The amount at or below which a requester will not be charged will remain the same.

List of Subjects in 49 CFR Part 701

Freedom of Information.

For the reasons stated in the preamble, Amtrak proposes to revise 49 CFR part 701 as follows:

PART 701—AMTRAK FREEDOM OF INFORMATION ACT PROGRAM

Sec.

701.1 General provisions.
701.2 Definitions.
701.3 Policy.
701.4 Amtrak public information.
701.5 Requirements for making requests.
701.6 Release and processing procedures.
701.7 Timing of responses to requests.
701.8 Responses to requests.
701.9 Business information.
701.10 Appeals.
701.11 Fees.
701.12 Other rights and services.

Authority: 5 U.S.C. 552; 49 U.S.C. 24301(e).

§ 701.1 General provisions.

This part contains the rules that the National Railroad Passenger Corporation ("Amtrak") follows in processing requests for records under the Freedom of Information Act (FOIA), Title 5 of the United States Code, section 552. Information routinely provided to the public (i.e., train timetables, press releases) may be obtained without following Amtrak's FOIA procedures. As a matter of policy, Amtrak may make discretionary disclosures of records or information exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption; however, this policy does not create any right enforceable in court.

§ 701.2 Definitions.

Unless the context requires otherwise in this part, masculine pronouns include the feminine gender and "includes" means "includes but is not limited to."

(a) *Amtrak or Corporation* means the National Railroad Passenger Corporation.

(b) *Appeal* means a request submitted to the President of Amtrak or designee for review of an adverse initial determination.

(c) *Business days* means working days; Saturdays, Sundays, and legal public holidays are excluded in computing response time for processing FOIA requests.

(d) *Disclose or disclosure* means making records available for examination or copying, or furnishing a copy of nonexempt responsive records.

(e) *Electronic data* means records and information (including E-mail) that are created, stored, and retrievable by electronic means.

(f) *Exempt information* means information that is exempt from disclosure under one or more of the nine exemptions to the FOIA.

(g) *Final determination* means a decision by the President of Amtrak or designee concerning a request for review of an adverse initial determination received in response to a FOIA request.

(h) *Freedom of Information Act or "FOIA"* means the statute as codified in section 552 of Title 5 of the United States Code as amended.

(i) *Freedom of Information Officer* means the Amtrak official designated to fulfill the responsibilities of implementing and administering the Freedom of Information Act as specifically designated under this part.

(j) *Initial determination* means a decision by an Amtrak FOIA Officer in response to a request for information under the FOIA.

(k) *Pages* means paper copies of standard office size or the cost equivalent in other media.

(l) *President* means the Chairman, President and Chief Executive Officer (CEO) of the National Railroad Passenger Corporation (Amtrak) or designee.

(m) *Record* means any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved in any format, including electronic format. A record must exist and be in the possession and control of Amtrak at the time of the request to be subject to this part and the FOIA. The following are not included within the definition of the word "record":

(1) Library materials compiled for reference purposes or objects of substantial intrinsic value.

(2) Routing and transmittal sheets, notes, and filing notes which do not also include information, comments, or statements of substance.

(3) Anything that is not a tangible or documentary record such as an individual's memory or oral communication.

(4) Objects or articles, whatever their historical or value as evidence.

(n) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(o) *Requester or requesting party* means any person who has submitted a request to Amtrak.

(p) *Responsive records* means documents determined to be within the scope of a FOIA request.

§ 701.3 Policy.

(a) Amtrak will make records of the Corporation available to the public to the greatest practicable extent in keeping with the spirit of the law. Therefore, records of the Corporation are available for public inspection and copying as provided in this part with the exception of those that the Corporation specifically determines should not be disclosed either in the public interest, for the protection of private rights, or for the efficient conduct of public or corporate business, but only to the extent withholding is permitted by law.

(b) A record of the Corporation, or parts thereof, may be withheld from disclosure if it comes under one or more exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law. Disclosure to a properly constituted advisory committee, to Congress, or to federal agencies does not waive the exemption.

(c) In the event one or more exemptions apply to a record, any reasonably segregable portion of the record will be made available to the requesting person after deletion of the exempt portions. The entire record may be withheld if a determination is made that nonexempt material is so inextricably intertwined that disclosure would leave only essentially meaningless words or phrases, or when it can be reasonably assumed that a skillful and knowledgeable person could reconstruct the deleted information.

(d) The procedures in this part apply only to records in existence at the time of a request. The Corporation has no obligation to create a record solely for the purpose of making it available under the FOIA or to provide a record that will be created in the future.

(e) Each officer and employee of the Corporation dealing with FOIA requests is directed to cooperate in making

records available for disclosure under the Act in a prompt manner consistent with this part.

(f) The FOIA time limits will not begin to run until a request has been identified as being made under the Act and deemed received by the Freedom of Information Office.

(g) Generally, when a member of the public complies with the procedures established in this part for obtaining records under the FOIA, the request shall receive prompt attention, and a response shall be made within twenty business days.

§ 701.4 Amtrak public information.

(a) *Public reading room.* Amtrak maintains a public reading room at its headquarters at 60 Massachusetts Avenue, N.E. in Washington, D.C. The public reading room contains records required under the FOIA to be regularly available for public inspection and copying. A current subject-matter index shall be maintained of records in the public reading room that are available for inspection and copying. The index shall be updated at least quarterly with respect to newly included records. A copy of the index shall be provided upon request at a cost not to exceed the direct cost of duplication.

(b) *Electronic reading room.* Amtrak will make available electronically reading room records created by the Corporation on or after November 1, 1996 on its World Wide Web site which can be accessed at http://www.Amtrak.com. An index of the Corporation's reading room records will also be made available at the web site. The index will indicate reading room records that are available electronically.

(c) *Frequently requested information.* The FOIA requires that copies of records, regardless of form or format, released pursuant to a FOIA request under 5 U.S.C. 552(a)(3) that have become or are likely to become the subject of subsequent requests for substantially the same records be made publicly available. Such records created by the Corporation after November 1, 1996 will be made available electronically while records created prior to this date will be made available for inspection and copying in Amtrak's public reading room.

(1) Amtrak shall decide on a case-by-case basis whether records fall into the category of "frequently requested FOIA records" based on the following factors:

(i) Previous experience with similar records;

(ii) The nature and type of information contained in the records;

(iii) The identity and number of requesters and whether there is widespread media or commercial interest in the records.

(2) The provision in this paragraph is intended for situations where public access in a timely manner is important. It is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Amtrak may remove the records from this category when it is determined that access is no longer necessary.

(d) *Guide for making requests.* A guide on how to use the FOIA for requesting records from Amtrak shall be made available to the public upon request. Amtrak's major information systems will be described in the guide.

§ 701.5 Requirements for making requests.

(a) *General requirements.* (1) A FOIA request can be made by "any person" as defined in 5 U.S.C. 551(2), which encompasses individuals (including foreign citizens; partnerships; corporations; associations; and local, state, tribal, and foreign governments). A FOIA request may not be made by a federal agency.

(2) A request must be in writing, indicate that it is being made under the FOIA, and provide an adequate description of the records sought. The request should also include applicable information regarding fees as specified in paragraphs (d) and (e) of this section.

(b) *How to submit a request.* (1) A request must clearly state on the envelope and in the letter that it is a Freedom of Information Act or "FOIA" request.

(2) The request must be addressed to the Freedom of Information Office; National Railroad Passenger Corporation; 60 Massachusetts Avenue, N.E.; Washington, D.C. 20002. Requests will also be accepted by facsimile at (202) 906–2169. Amtrak cannot assure that a timely or satisfactory response under this part will be given to written requests addressed to Amtrak offices, officers, or employees other than the Freedom of Information Office. Amtrak employees receiving a communication in the nature of a FOIA request shall forward it to the FOIA Office expeditiously. Amtrak shall advise the requesting party of the date that an improperly addressed request is received by the FOIA Office.

(c) *Content of the request.* (1) *Description of records*—Identification of records sought under the FOIA is the responsibility of the requester. The records sought should be described in sufficient detail so that Amtrak personnel can locate them with a reasonable amount of effort. When possible, the request should include specific information such as dates, title or name, author, recipient, subject matter of the record, file designation or number, or other pertinent details for each record or category of records sought.

(2) *Reformulation of a request.* Amtrak is not obligated to act on a request until the requester provides sufficient information to locate the record. Amtrak may offer assistance in identifying records and reformulating a request where the description is considered insufficient, the production of voluminous records is required, or a considerable number of work hours would be required that would interfere with the business of the Corporation. The Freedom of Information Office shall notify the requester within ten business days of the type of information that will facilitate the search. The requesting party shall be given an opportunity to supply additional information and may submit a revised request, which will be treated as a new request.

(d) *Payment of fees.* The submission of a FOIA request constitutes an agreement to pay applicable fees accessed up to $25.00 unless the requesting party specifies a willingness to pay a greater or lesser amount or seeks a fee waiver or reduction in fees.

(1) *Fees in excess of $25.00.* When Amtrak determines or estimates that applicable fees are likely to exceed $25.00, the requesting party shall be notified of estimated or actual fees, unless a commitment has been made in advance to pay all fees. If only a portion of the fee can be estimated readily, Amtrak shall advise the requester that the estimated fee may be a portion of the total fee.

(i) In order to protect requesters from large and/or unexpected fees, Amtrak will request a specific commitment when it estimates or determines that fees will exceed $100.00.

(ii) A request shall not be considered received, and further processing carried out until the requesting party agrees to pay the anticipated total fee. Any such agreement must be memorialized in writing. A notice under this paragraph will offer the requesting party an opportunity to discuss the matter in order to reformulate the request to meet the requester's needs at a lower cost.

(iii) Amtrak will hold in abeyance for forty-five (45) days requests requiring agreement to pay fees and will thereafter deem the request closed. This action will not prevent the requesting party from refiling the FOIA request with a fee commitment at a subsequent date.

(2) *Fees in excess of $250.* When Amtrak estimates or determines that allowable charges are likely to exceed $250, an advance deposit of the entire fee may be required before continuing to process the request.

(e) *Information regarding fee category.* In order to determine the appropriate fee category, a request should indicate whether the information sought is intended for commercial use or whether the requesting party is a member of the staff of an educational or noncommercial scientific institution or a representative of the news media.

(f) *Records concerning other individuals.* If the request is for records concerning another individual, either a written authorization signed by that individual permitting disclosure of those records to the requesting party or proof that the individual is deceased (*i.e.*, a copy of a death certificate or an obituary) will help to expedite processing of the request.

§ 701.6 Release and processing procedures.

(a) *General provisions.* In determining records that are responsive to a request, Amtrak will ordinarily include only records that exist and are in the possession and control of the Corporation as of the date that the search is begun. If any other date is used, the requesting party will be informed of that date.

(b) *Authority to grant or deny requests.* Amtrak's FOIA officer is authorized to grant or deny any request for records.

(c) *Notice of referral.* If Amtrak refers all or any part of the responsibility for responding to a request to another organization, the requesting party will be notified. A referral shall not be considered a denial of access within the meaning of this part. All consultations and referrals of requests will be handled according to the date that the FOIA request was initially received.

(d) *Creating a record.* There is no obligation on the part of Amtrak to create, compile, or obtain a record to satisfy an FOIA request. The FOIA also does not require that a new computer program be developed to extract the records requested. Amtrak may compile or create a new record, however, when doing so would result in a more useful response to the requesting party or would be less burdensome to Amtrak than providing existing records. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record.

(e) *Incomplete records.* If the records requested are not complete at the time of a request, Amtrak may, at its discretion, inform the requester that complete nonexempt records will be provided when available without having to submit an additional request.

(f) *Electronic records.* Amtrak is not obligated to process a request for electronic records where creation of a record, programming or a particular format would result in a significant expenditure of resources or interfere with the corporation's operations.

§ 701.7 Timing of responses to requests.

(a) *General.* (1) The time limits of the FOIA will begin only after the requirements for submitting a request as established in § 701.5 have been met, and the request is deemed received by the Freedom of Information Office.

(2) A request for records shall be considered to have been received on the later of the following dates:

(i) The requester has agreed in writing to pay applicable fees in accordance with § 701.5(d), or

(ii) The fees have been waived in accordance with § 701.11(k), or

(iii) Payment in advance has been received from the requester when required in accordance with § 701.11(i).

(3) The time for responding to requests set forth in paragraph (b) of this section may be delayed if:

(i) The request does not sufficiently identify the fee category applicable to the request;

(ii) The request does not state a willingness to pay all fees;

(iii) A request seeking a fee waiver does not address the criteria for fee waivers set forth in § 701.11(k);

(iv) A fee waiver request is denied, and the request does not include an alternative statement indicating that the requesting party is willing to pay all fees.

(b) *Initial determination.* Whenever possible, an initial determination to release or deny a record shall be made within twenty business days after receipt of the request. In "unusual circumstances" as described in paragraph (d) of this section, the time for an initial determination may be extended for ten business days.

(c) *Multitrack processing.* (1) Amtrak may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process a request or the number of pages involved.

(2) In general, when requests are received, Amtrak's FOIA Office will review and categorize them for tracking purposes. Requests within each track will be processed according to date of receipt.

(3) The FOIA Office may contact a requester when a request does not appear to qualify for fast track processing to provide an opportunity to limit the scope of the request and qualify for a faster track. Such notification shall be at the discretion of the FOIA Office and will depend largely on whether it is believed that a narrowing of the request could place the request on a faster track.

(d) *Unusual circumstances.* (1) The requesting party shall be notified in writing if the time limits for processing a request cannot be met because of unusual circumstances, and it will be necessary to extend the time limits for processing the request. The notification shall include the date by which the request can be expected to be completed. Where the extension is for more than ten business days, the requesting party will be afforded an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the initial request or modified request.

(2) If Amtrak believes that multiple requests submitted by a requester or by a group of requesters acting in concert constitute a single request that would otherwise involve unusual circumstances and the requests involve clearly related matters, the requests may be aggregated. Multiple requests concerning unrelated matters may not be aggregated.

(3) Unusual circumstances that may justify delay include:

(i) The need to search for and collect the requested records from other facilities that are separate from Amtrak's headquarters offices.

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records sought in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with agencies having a substantial interest in the determination of the request, or among two or more Amtrak components having a substantial subject-matter interest in the request.

(e) *Expedited processing.* (1) Requests and appeals may be taken out of order and given expedited treatment whenever it is determined that they involve a compelling need, which means:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; and

(ii) An urgency to inform the public about an actual or alleged Amtrak activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at a later date.

(3) A requester seeking expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. This statement must accompany the request in order to be considered and responded to within the ten calendar days required for decisions on expedited access.

(4) A requester who is not a full-time member of the news media must establish that he is a person whose main professional activity or occupation is information dissemination, though it need not be his sole occupation. A requester must establish a particular urgency to inform the public about the Amtrak activity involved in the request.

(5) Within ten business days of receipt of a request for expedited processing, Amtrak shall determine whether to grant such a request and notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable.

(6) Amtrak shall provide prompt consideration of appeals of decisions denying expedited processing.

§ 701.8 Responses to requests.

(a) *Granting of requests.* When an initial determination is made to grant a request in whole or in part, the requesting party shall be notified in writing and advised of any fees charged under § 701.11(e). The records shall be disclosed to the requesting party promptly upon payment of applicable fees.

(b) *Adverse determination of requests.* (1) *Types of denials.*—The requesting party shall be notified in writing of a determination to deny a request in any respect. Adverse determinations or denials of records consist of:

(i) A determination to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located;

(iii) A denial of a request for expedited treatment; and

(iv) A determination on any disputed fee matter including a denial of a request for a fee waiver.

(2) *Deletions.* When practical, records disclosed in part shall be marked or annotated to show both the amount and location of the information deleted.

(3) *Content of denial letter.* The denial letter shall be signed by the Freedom of Information Officer or designee and shall include:

(i) A brief statement of the reason(s) for the adverse determination including any FOIA exemptions applied in denying the request;

(ii) An estimate of the volume of information withheld (number of pages or some other reasonable form of estimation). An estimate does not need to be provided if the volume is indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(iii) A statement that an appeal may be filed under § 701.10 and a description of the requirements of that section; and

(iv) The name and title or position of the person responsible for the denial.

§ 701.9 Business information.

(a) *General.* Business information held by Amtrak will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information held by Amtrak that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity including partnerships; corporations; associations; and local, state, tribal, and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) *Notice to submitters.* Amtrak shall provide a submitter with prompt written notice of a FOIA request or an appeal that seeks its business information when required under paragraph (e) of this section, except as provided in paragraph (h), in order to give the submitter an opportunity to object to disclosure of any specified portion of the information under paragraph (f). The notice shall either describe the business information requested or include copies of the requested records or portions of records containing the information.

(e) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) Amtrak has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* Amtrak will allow a submitter a reasonable amount of time to respond to the notice described in paragraph (d) of this section.

(1) A detailed written statement must be submitted to Amtrak if the submitter has any objection to disclosure. The statement must specify all grounds for withholding any specified portion of the information sought under the FOIA. In the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

(2) In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information sought under the FOIA.

(3) Information provided by a submitter in response to the notice may be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* Amtrak shall consider a submitter's objections and specific grounds for disclosure in making a determination whether to disclose the information. In any instance, when a decision is made to disclose information over the objection of a submitter, Amtrak shall give the submitter written notice which shall include:

(1) A statement of the reason(s) why each of the submitter's objections to disclosure was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of this section shall not apply if:

(1) Amtrak determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such a case, Amtrak shall within a reasonable time prior to a specified disclosure date, give the submitter written notice of the final decision to disclose the information; or

(5) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, unless Amtrak has substantial reason to believe that disclosure of the information would result in competitive harm.

(i) *Notice of a FOIA lawsuit.* Whenever a FOIA requester files a lawsuit seeking to compel disclosure of business information, Amtrak shall promptly notify the submitter.

(j) *Notice to requesters.* (1) When Amtrak provides a submitter with notice and an opportunity to object to disclosure under paragraph (f) of this section, the FOIA Office shall also notify the requester(s).

(2) When Amtrak notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, Amtrak shall also notify the requester(s).

(3) When a submitter files a lawsuit seeking to prevent the disclosure of business information, Amtrak shall notify the requester(s).

§ 701.10 Appeals.

(a) *Appeals of adverse determinations.* (1) The requesting party may appeal:

(i) A decision to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located;

(iii) A denial of a request for expedited treatment; or

(iv) Any disputed fee matter or the denial of a request for a fee waiver.

(2) The appeal must be addressed to the Chairman, President and CEO; National Railroad Passenger Corporation; 60 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

(3) The appeal must be in writing and specify the relevant facts and the basis for the appeal. The appeal letter and envelope must be marked prominently "Freedom of Information Act Appeal" to ensure that it is properly routed.

(4) The appeal must be received by the President's Office within thirty (30) days of the date of denial.

(5) An appeal will not be acted upon if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on any appeal shall be made in writing.

(1) A decision upholding an adverse determination in whole or in part shall contain a statement of the reason(s) for such action, including any FOIA exemption(s) applied. The requesting party shall also be advised of the provision for judicial review of the decision contained in 5 U.S.C. 552(a)(4)(B).

(2) If the adverse determination is reversed or modified on appeal in whole or in part, the requesting party shall be notified, and the request will be reprocessed in accordance with the decision.

(c) *When appeal is required.* The requesting party must appeal any adverse determination prior to seeking judicial review.

§ 701.11 Fees.

(a) *General.* Amtrak shall charge for processing requests under the FOIA in accordance with this section. A fee of $9.50 per quarter hour shall be charged for search and review. For information concerning other processing fees, refer to paragraph (e) of this section. Amtrak shall collect all applicable fees before releasing copies of requested records to the requesting party. Payment of fees shall be made by check or money order payable to the National Railroad Passenger Corporation.

(b) *Definitions.* For purposes of this section:

(1) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(2) *Review* means the process of examining a record located in response to a request to determine whether one or more of the statutory exemptions of the FOIA apply. Processing any record for disclosure includes doing all that is necessary to redact the record and prepare it for release. Review time includes time spent considering formal objection to disclosure by a commercial submitter under § 701.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if a record ultimately is not disclosed.

(3) *Reproduction* means the making of a copy of a record or the information contained in it in order to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (i.e., magnetic tape or disk) among others. Amtrak shall honor a requester's specified preference for the form or format of disclosure if the record is readily reproducible with reasonable effort in the requested form or format by the office responding to the request.

(4) *Direct costs* means those expenses actually incurred in searching for and reproducing (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include such costs as the salary of the employee performing the work (the basic rate of pay for the employee plus applicable benefits and the cost of operating reproduction equipment). Direct costs do not include overhead expenses such as the costs of space and heating or lighting of the facility.

(c) *Fee categories.* There are four categories of FOIA requesters for fee purposes: "commercial use requesters," "representatives of the news media," "educational and non-commercial scientific institution requesters," and "all other requesters." The categories are defined in paragraphs (c)(1) through (5), and applicable fees, which are the same for two of the categories, will be assessed as specified in paragraph (d) of this section.

(1) *Commercial requesters.* The term "commercial use" request refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers his commercial, trade, or profit interests, including furthering those interests through litigation. Amtrak shall determine, whenever reasonably possible, the use to which a requester will put the records sought by the request. When it appears that the requesting party will put the records to a commercial use, either because of the nature of the request itself or because Amtrak has reasonable cause to doubt the stated intended use, Amtrak shall provide the requesting party with an opportunity to submit further clarification. Where a requester does not explain the use or where explanation is insufficient, Amtrak may draw reasonable inferences from the requester's identity and charge accordingly.

(2) *Representative of the news media or news media requester* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of news). For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through an organization. A publication contract would be the clearest proof, but Amtrak shall also look to the past publication record of a requester in making this determination. A request for records supporting the news dissemination function of the requester shall not be considered to be for commercial use.

(3) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program of scholarly research. To be in this category, a requestor must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial use but to further scholarly research.

(4) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, the requesting party must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial use but to further scientific research.

(5) *Other requesters* refers to requesters who do not come under the purview of paragraphs (c) (1) through (4) of this section.

(d) *Assessing fees.* In responding to FOIA requests, Amtrak shall charge the following fees unless a waiver or a reduction in fees has been granted under paragraph (k) of this section:

(1) *"Commercial use" requesters:* The full allowable direct costs for search, review, and duplication of records.

(2) *"Representatives of the news media" and "educational and non-commercial scientific institution" requesters:* Duplication charges only, excluding charges for the first 100 pages.

(3) *"All other" requesters:* The direct costs of search and duplication of records. The first 100 pages of duplication and the first two hours of search time shall be provided without charge.

(e) *Schedule of fees.* (1) *Manual searches*—Personnel search time includes time expended in either manual searches for paper records, searches using indices, review of computer search results for relevant records, and personal computer system searches.

(2) *Computer searches.* The direct costs of conducting a computer search will be charged. These direct costs will include the cost of operating a central processing unit for that portion of the operating time that is directly attributable to searching for responsive records as well as the costs of operator/programmer salary apportionable to the search.

(3) *Duplication fees.* Duplication fees will be charged all requesters subject to limitations specified in paragraph (d) of this section. Amtrak shall charge 25 cents per page for a paper photocopy of a record. For copies produced by computer (such as tapes or printouts), Amtrak will charge the direct costs, including the operator time in producing the copy. For other forms of duplication, Amtrak will charge the direct costs of that duplication.

(4) *Review fees.* Review fees will be assessed for commercial use requests. Such fees will be assessed for review conducted in making an initial determination, or upon appeal when review is conducted to determine whether an exemption not previously considered is applicable.

(5) *Charges for other services.* The actual cost or amount shall be charged for all other types of output, production, and duplication (e.g., photographs, maps, or printed materials). Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item available for release, and an allocated cost for the equipment used in producing the item. The requesting party will be charged actual production costs when a commercial service is required. Items published and available through Amtrak will be made available at the publication price.

(6) *Charges for special services.* Apart from the other provisions of this section, when Amtrak chooses as a matter of discretion to provide a special service such as certifying that records are true copies or sending records by other than ordinary mail, the direct costs of providing such services shall be charged.

(f) *Commitment to pay fees.* When Amtrak determines or estimates that applicable fees will likely exceed $25.00, the requesting party will be notified of the actual or estimated amount unless a written statement has been received indicating a willingness to pay all fees. To protect requesters from large and/or unexpected fees, Amtrak will request a specific commitment when it is estimated or determined that fees will exceed $100.00. See § 701.5(d) for additional information.

(g) *Restrictions in accessing fees.* (1) *General*—Fees for search and review will not be charged for a quarter-hour period unless more than half of that period is required.

(2) *Minimum fee.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the costs to Amtrak for billing, receiving, recording, and processing the fee for deposit, which has been deemed to be $10.00.

(3) *Computer searches.* With the exception of requesters seeking documents for commercial use, Amtrak shall not charge fees for computer search until the cost of search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(h) *Nonproductive searches.* Amtrak may charge for time spent for search and review even if responsive records are not located or if the records located are determined to be entirely exempt from disclosure.

(i) *Advance payments.* (1) When Amtrak estimates or determines that charges are likely to exceed $250, an advance payment of the entire fee may be required before continuing to process the request.

(2) When there is evidence that the requester may not pay the fees that would be incurred by processing the request, an advance deposit may be required. Amtrak may require the full amount due plus applicable interest and an advance payment of the full amount of anticipated fees before beginning to process a new request or continuing to process a pending request where a requester has previously failed to pay a properly charged FOIA fee within thirty (30) days of the date of billing. The time limits of the FOIA will begin only after Amtrak has received such payment.

(3) Amtrak will hold in abeyance for forty-five (45) days requests where deposits are due.

(4) Monies owed for work already completed (i.e., before copies are sent to a requester) is not considered an advance payment.

(5) Amtrak shall not deem a request as being received in cases in which an advance deposit or payment is due, and further work will not be done until the required payment is received.

(j) *Charging interest.* Amtrak may charge interest on any unpaid bill for processing charges starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate that Amtrak pays for short-term borrowing.

(k) *Waiver or reduction of fees.* (1) *Automatic waiver of fees*—When the costs for a FOIA request total $10.00 or less, fees shall be waived automatically for all requesters regardless of category.

(2) *Other fee waivers.* Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. Records responsive to a request will be furnished without charge or at below the established charge where Amtrak determines, based on all available information, that disclosure of the requested information is in the public interest because:

(i) It is likely to contribute significantly to public understanding of the operations or activities of Amtrak and

(ii) It is not primarily in the commercial interest of the requesting party.

(3) To determine whether fee waiver requirement in paragraph (k)(2)(i) of this section is met, Amtrak will consider the following factors:

(i) *The subject of the request—whether the subject of the requested records concerns the operations or activities of Amtrak.* The subject of the requested records must concern identifiable operations or activities of Amtrak with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed—whether the disclosure is likely to contribute to an understanding of Amtrak operations or activities.* The disclosable portions of the requested records must be meaningfully informative about Amtrak's operations or activities in order to be found to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure—whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's ability and expertise in the subject area as well as the requester's intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding—whether the disclosure is likely to contribute significantly to public understanding of Amtrak operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(4) To determine whether the fee waiver requirement in paragraph (k)(2)(ii) of this section is met, Amtrak will consider the following factors:

(i) *The existence and magnitude of a commercial interest—whether the requesting party has a commercial interest that would be furthered by the requested disclosure.* Amtrak shall consider any commercial interest of the requesting party (with reference to the definition of "commercial use" in paragraph (c)(1) of this section), or any person on whose behalf the requesting party may be acting that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure—whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than any identified commercial interest in disclosure.

(5) Requests for a fee waiver will be considered on a case-by-case basis, based upon the merits of the information provided. Where it is difficult to determine whether the request is commercial in nature, Amtrak may draw inference from the requester's identity and the circumstances of the request.

(6) Requests for a waiver or reduction of fees must address the factors listed in paragraphs (k)(3) and (4) of this section. In all cases, the burden shall be on the requesting party to present evidence of information in support of a request for a waiver of fees.

(l) *Aggregating requests.* A requester may not file multiple requests at the same time in order to avoid payment of fees. Where Amtrak reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, Amtrak may aggregate those requests and charge accordingly. Amtrak may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, Amtrak may aggregate them only when there exists a solid basis for determining that aggregation is warranted. Multiple requests involving unrelated matters may not be aggregated.

§ 701.12 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: November 6, 1997.

Sarah H. Duggin,

Vice President and General Counsel.

[FR Doc. 97–29717 Filed 11–13–97; 8:45 am]

BILLING CODE 7531–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 971023253–7253–01; I.D. 093097E]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition for regulations and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received a request from the 30th Space Wing, U.S. Air Force for a small take of marine mammals incidental to missile and rocket launches, aircraft flight test operations and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg). As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than December 15, 1997.

ADDRESSES: Comments should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be

obtained by writing to the above address, telephoning the person below (see FOR FURTHER INFORMATION CONTACT).

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (310) 980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking, and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Description of Request

On September 30, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the 30th Space Wing, Vandenberg to take marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg.

Vandenberg is located on the south-central coast of California. The base covers approximately 98,000 acres in western Santa Barbara County. The Air Force's primary missions at Vandenberg are to launch and track satellites in space, test and evaluate the United State's intercontinental ballistic missile systems, and support aircraft operations. As a nonmilitary facet of operations, Vandenberg is also committed to promoting commercial space launch ventures.

Vandenberg anticipates a total of 10 launches annually for Minuteman and Peacekeeper missiles from North Vandenberg and a total of 20 launches annually for space launches (6 Delta II, 3 Taurus, 2 Atlas, 3 Titan IV, 2 Titan II and 4 Lockheed launch vehicles) from South Vandenberg.

Launch operations are a major source of noise. The operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch. They are: (1) Combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms.

Noise disturbance from operations on Vandenberg may cause negligible short-term impacts to pinnipeds (seals and sea lions) hauled out on the Vandenberg coastline. The principal form of impacts would be infrequent and unintentional incidental harassment resulting from noise generated by aircraft and by missile and rocket launches. There is a potential for launch noises and sonic booms to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that may haul out on the coastline of Vandenberg and on the Northern Channel Islands (NCI). Launch noise is expected to occur over the coastal habitats in the vicinity of the Vandenberg launch site during every launch, while sonic booms may be heard on NCI, specifically San Miguel and Santa Rosa Islands, only during certain launches of certain rocket types (principally Titan IV). Because the noise may potentially result in disturbance of pinnipeds, an MMPA authorization is required in order to exempt the applicant from the penalties of the MMPA for taking by harassment that occurs in compliance with such authorization.

Regulations, if issued, would replace annual incidental harassment authorizations issued to Vandenberg for takings incidental to launches by Lockheed Martin launch vehicles (62 FR 40335, July 28, 1997), McDonnell Douglas Aerospace Delta II rocket launches (61 FR 59218, November 21, 1996), Taurus launches (62 FR 734, January 6, 1997) and Titan II and Titan IV launches (61 FR 64337, December 4, 1996). In addition, these regulations would authorize takings incidental to Minuteman and Peacekeeper missile launches, aircraft flight test operations and helicopter operations, which have not been authorized previously.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS will consider this information in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment.

Dated: November 6, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–29935 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 220

Friday, November 14, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–109–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the export of poultry and poultry hatching eggs from the United States.

DATES: Comments on this notice must be received by January 13, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–109–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–109–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Certificate for Poultry and Hatching Eggs for Export, contact Dr. Andrea Morgan, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1236, (301) 734–8068. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Certificate for Poultry and Hatching Eggs for Export

OMB Number: 0579–0048.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. In accordance with 21 U.S.C. 112 and 113, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), collects information and conducts inspections to ensure that poultry and hatching eggs exported from the United States are free of communicable diseases. Receiving countries have specific health requirements for poultry and hatching eggs exported from the United States. Most countries require a certification that our poultry and hatching eggs are disease free. This certification generally must carry the USDA seal and be endorsed by an APHIS veterinarian. VS Form 17–6, Certificate for Poultry and Hatching Eggs for Export, is generally used to meet these requirements.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: U.S. exporters of poultry and hatching eggs, Federal veterinarians, accredited veterinarians.

Estimated number of respondents: 300.

Estimated number of responses per respondent: 70.

Estimated annual number of responses: 21,000.

Estimated total annual burden on respondents: 10,500 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29992 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–001–3]

Handling, Training, and Exhibition of Potentially Dangerous Exotic or Wild Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our notice requesting information concerning what practices are currently used for handling and training potentially dangerous exotic or wild animals used in exhibition (such as, but

not limited to, elephants, lions, or tigers), and what training and experience levels trainers and handlers of such animals have. This reopening and extension will provide interested groups and individuals with additional time to prepare comments on the request for information.

DATES: Consideration will be given only to comments on Docket No. 97–001–1 that are received on or before December 12, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–001–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–001–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1997, we published in the **Federal Register** (62 FR 39802, Docket No. 97–001–1) a notice requesting information concerning the training and handling of potentially dangerous wild and exotic animals used in exhibition in order to obtain a better understanding of the issues pertaining to their welfare. Comments on the request for information were required to be received on or before September 22, 1997. On September 22, 1997, we published in the **Federal Register** (62 FR 49468–49469, Docket No. 97–001–2) a notice that reopened and extended the comment period for an additional 45 days, to November 6, 1997.

In the notice requesting information, we said we were most interested in receiving information that is in the form of published industry standards, published reports in peer-reviewed journals, studies, and objective scientific data. We have been made aware that several industry associations interested in submitting information have been unable to complete their consultation with members of their associations in order to compile information on accepted industry standards for the handling and training of exotic or wild animals. We believe this information would be helpful to us in obtaining a better understanding of the issues pertaining to the welfare of exotic or wild animals used in exhibition.

In order that these groups can have time to compile the requested information, we are reopening and extending the comment period on Docket No. 97–001–1 to December 12, 1997. This action will also allow any other interested groups and individuals additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 7th day of November 1997.

Charles Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29991 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on December 1, 1997 at Rock Springs Guest Ranch 7 miles north of Bend, OR. The meeting will start at 9:00 a.m. and finish at 5:00 p.m. Agenda items include: (1) Completion of comments on the DEIS documents for the Eastside Ecosystem project, (2) Monitoring Reports, (3) Update on Working Groups (4) Open Public Forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Fort Rock Ranger District, 1230 N. E. 3rd, Bend, Oregon 97701, 541–383–4769.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 97–29917 Filed 11–13–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 15, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 11, August 1, 8, September 5 and 12, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 37192, 41339, 42745, 46944 and 48050) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Central Facility Management (Including Janitorial/Custodial, Grounds Maintenance, Interior Landscaping, Copier Operation, Mail and Messenger Service & Shipping/Receiving), U.S. Department of Agriculture, Beltsville Office Complex, 5601 Sunnyside Avenue, Beltsville, Maryland

Food Service Attendant, Naval Air Station, Jacksonville, Florida

Mailroom Operation, National Oceanic and Atmospheric Administration, Western Regional Center & Pacific Marine Center, Seattle, Washington

Operation of Postal Service Center, Building 337, Goodfellow Air Force Base, Texas

Warehouse Operation, 565th Quartermaster Company, 80th Street, Fort Hood, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30006 Filed 11–13–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 15, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

HVAC System Filter Maintenance

Basewide (less Family Quarters), Fort Sam Houston, Texas

NPA: Goodwill Industries of San Antonio, San Antonio, Texas

Janitorial/Custodial

Naval Air Reserve, Moffett Field, California

NPA: VTF Services, Palo Alto, California

Janitorial/Grounds Maintenance

VA Outpatient Clinic, Griffiss Air Base, Rome, New York

NPA: The Arc of Oneida County, Inc., Utica, New York

Kennel Caretaker

U.S. Customs Service, JFK Airport, Jamaica, New York

NPA: The Corporate Source, Inc., New York, New York

Laundry Service

Naval Amphibious Base, Buildings 302, 303 and 505, Coronado, California

NPA: Job Options, Inc., San Diego, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30007 Filed 11–13–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Ocean Carriers' Expenses in the United States—BE–29.

Form Number(s): BE–29.

OMB Approval Number: 0606–0012.

Type of Request: Extension—regular submission.

Burden: 620 hours.

Number of Respondents: 155.

Avg Hours Per Response: 4 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the transportation account would be omitted. No other Government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States.

Affected Public: U.S. agents of foreign ocean carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade Services Act. 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room, 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of this notice to Paul Bugg, OMB Desk Officer, Room 10201,

New Executive Office Building, Washington, DC 20503.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc.97–29999 Filed 11–13–97; 8:45am]

BILLING CODE: 3510–EA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States—BE–36.

Form Number(s): BE–36.

OMB Approval Number: 0608–0013.

Type of Request: Extension—regular submission.

Burden: 350 hours.

Number of Respondents: 70.

Avg Hours Per Response: 5 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in this survey, an integral component of the transportation account would be omitted. No other Government agency collects comprehensive annual data on foreign airline operators' revenues and expenses in the United States.

Affected Public: Foreign air carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade Services Act. 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room, 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc.97–30000 Filed 11–13–97; 8:45am]

BILLING CODE: 3510–08–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Application for Transfer of Licenses to Another Party

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Certain circumstances such as company mergers, company takeovers, etc., necessitate the transfer of an active export license from one party to another. When a licensee transfers an unexpired license to another party, there must be assurances that the other party, the transferee, will also be accountable for the proper use of the license. The required information collected from both parties provides assurances that the balance of the shipments will not be diverted or used for purposes contrary to the authorized use of the approved license.

II. Information Submitted in Writing

III. Data

OMB Number: 0694–0051.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 18.

Estimated Total Annual Cost: $200 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 6, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–29964 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

One-time Report for Foreign Software or Technology Eligible for De Minimis Exclusion

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 734.4 exempts from the EAR reexports of foreign technology commingled with or drawn from controlled U.S. origin technology valued at 10% or less of the total value of the foreign technology. However, persons must submit a one-time report for the foreign software or technology to BXA prior to reliance upon this *de minimis* exclusion.

II. Method of Collection

Exporters submit a one-time written report.

III. Data

OMB Number: 0694–0101.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 25 hours.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual Cost: $5,000 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30001 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

License Exception; Humanitarian Donations

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Public Law 99–64), exempts from foreign policy controls exports of donations to meet basic human needs. Previously an exporter had to apply for a bulk Humanitarian License when wishing to export goods to restricted countries. Under the current regulations, there is license exception procedure which allows exporters to ship humanitarian donations to restricted countries by simply maintaining certain records. The records can be used for enforcement purposes.

III. Data

OMB Number: 0694–0033.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 4.

Estimated Time Per Response: 4 hours per response.

Estimated Total Annual Burden Hours: 16.

Estimated Total Annual Cost: $60 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 7, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30002 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–802]

Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 8, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on furfuryl alcohol from the Republic of South Africa. The review covers shipments of this merchandise to the United States during the period December 16, 1994, through May 31, 1996, the period of review.

Based on our analysis of the comments received, and the correction of certain ministerial errors, we have changed the preliminary results. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0186 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreement Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the provisions codified at 19 CFR part 353, as of April 1, 1996. Where we cite to the Department's new regulations (19 CFR part 351, 62 FR 27926 (May 19, 1997) ("New Regulations") as an indication of current Department practice, we have so stated.

Background

This review covers one manufacturer/exporter to the United States of the subject merchandise, Illovo Sugar Limited ("ISL"). On July 8, 1997, the Department published in the **Federal Register** the *Preliminary Results of Administrative Review of the Antidumping Duty Order on Furfuryl Alcohol from the Republic of South Africa*, 62 FR 36488 ("the preliminary results"). We received case and rebuttal briefs from QO Chemicals, Inc ("the petitioner") and ISL on August 7, 1997, and August 26, 1997, respectively. A public hearing was held on August 28, 1997.

The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Constructed Export Price ("CEP")

For sales to the United States, we calculated CEP based on the same methodology used in the preliminary results, with the following exceptions:

1. We excluded certain sales made of furfuryl alcohol which entered the United States prior to the suspension of liquidation. *See* Comment 6.
2. We based the calculation of the CEP profit rate on information contained in ISL's audited financial statements regarding profits made on "by-products" rather than on the total profit figure in the company's financial statements. *See* Comment 8.
3. We have treated the quality testing expense that ISL incurs upon furfuryl alcohol's arrival in the United States as a movement expense and not as an indirect selling expense. *See* Comment 9.
4. We limited the deduction of indirect expenses incurred in the home market on behalf of U.S. sales to the expenses of ISL personnel incurred for travel to the United States. *See* Comment 10.
5. Tank car rental credits gained for transporting furfuryl alcohol in the United States are no longer added to CEP because the reported tank car rental expense is net of such credits. *See* Comment 11.
6. Certain U.S. inventory carrying costs have been converted from Rand to U.S. dollars. *See* Comment 12.

Normal Value ("NV")

We used the same methodology to calculate NV as that described in the preliminary results.

Analysis of Comments Received

In accordance with 19 CFR 353.38, we gave interested parties an opportunity to comment on the preliminary results. We received a case brief from the petitioner and a rebuttal brief from ISL (*e.g.*, "Petitioner Case Brief", "ISL Rebuttal Brief").

Comment 1: Fictitious Home Market: The petitioner argues that the Department erred in the preliminary results by not determining that a fictitious market exists in South Africa rendering HM sales of furfuryl alcohol inappropriate as a basis for NV. The petitioner contends that the Department unlawfully restricted the applicability of the fictitious market provision (section 773(a)(2) of the Act) to situations where there is evidence of different movements in prices at which different forms of the foreign like product are sold or offered for sale.

Specifically, the petitioner argues that the Department's restriction of this provision to situations involving price movements of different forms of the foreign like product is incorrect for the following reasons. First, the legislative history of the 1988 amendment to the fictitious market provision (which provides that the Department may consider "different movements in prices at which different forms of the foreign like product are sold or offered for sale" as evidence of a fictitious market) clearly indicates that this evidence is simply an illustrative example of a fictitious market and does not prevent the Department from finding a fictitious market based on other evidence. In this regard, the petitioner cites the Senate Report accompanying this amendment: "The purpose of this provision is to *highlight one particular example* of a fictitious market." S.Rep. No. 71, 100th Congress., 1st Sess. at 126 (1987) (*Senate Report*) (emphasis petitioner's). Second, the petitioner contends that the Department's interpretation conflicts with *PQ Corp* v. *United States*, 652 F. Supp. 724, 729 (CIT 1987) ("*PQ Corp.*"), which, although it predated the 1988 amendment, continues to offer the proper reading of the general purpose of the fictitious market provision as concerned with preventing "parties from manipulating dumping margins by * * * offering merchandise at a price that does not reflect its actual market price." Third, the petitioner claims that the Department's reasoning renders the provision a nullity in all cases where there is only one form of the foreign like product, as in this review. The petitioner concludes that the Department's overly restrictive reading of the fictitious market provision has allowed ISL to manipulate the results of this review by establishing a fictitious market through severe home market price reductions even though the world price for furfuryl alcohol increased during the period of review ("POR").

ISL responds that the petitioner's reading of the fictitious market provision is overly broad and contends that the Department should sustain its position in the preliminary results that a fictitious market does not exist in the home market. Citing *Tubeless Steel Disc Wheels from Brazil*, 56 FR 14083 (April 5, 1991) (*Disc Wheels*), *Porcelain-on-Steel Cooking Ware from Mexico*, 58 FR 32095 (June 8, 1993) (*Porcelain Cookware*), and the Department's *June 30, 1997, Memorandum*, ISL contends that: (a) The Department has always required evidence of price movements of different forms of the foreign like product before pursuing a fictitious market allegation; (b) furfuryl alcohol is a single, unitary product and there is no possibility that the prices of different forms of the foreign like product could be manipulated to distort the dumping margin; and (c) contrary to the petitioner's interpretation of *PQ Corp.*, this case stands for the proposition that there is no reason to invoke the fictitious market provision absent evidence that a sale is anything less than a *bona fide* transaction; in this case, the viability and reality of the transactions is not in dispute. ISL adds that the petitioner's concern with reduced home market prices is more appropriate to a below-cost allegation, which the petitioner chose not to file, and concludes that a respondent is within its discretion to eliminate price discrimination by either raising U.S. price, lowering home market price, or doing a combination of the two, citing Final Results of Redetermination to Court Remand, *The Timken Company* v. *United States*, CIT Case No. 94–01–00008 (December 17, 1996)) (*Timken Remand*).

DOC Position: We agree with ISL that the record evidence regarding its South African sales does not warrant a finding that ISL has established a fictitious home market. Our general practice in determining whether a fictitious market exists is to require evidence that the decrease in the price of home market sales of the foreign like product was accompanied by an increase in the price of sales of "different forms of the foreign like product." *See Disc Wheels*, 56 FR at 14085 ("[B]efore pursuing a [fictitious market] allegation, the Department must have sufficient evidence to believe that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market") and *Porcelain Cookware*, 58 FR at 32096 ("In order for price differences to serve as a basis for initiating a fictitious sales inquiry . . . the Department must have sufficient evidence to believe or suspect that there have been different movements in the prices at which different forms of the subject merchandise have been sold in the home market and that such movements appear to reduce the amount by which foreign market value (FMV) exceeds the U.S. price of the merchandise"). As we explained in the *June 30, 1997, Memorandum*, the facts that the petitioner presents in support of its claim, centering around a single supplier selling at low prices in the home market, do not justify an expansion of our practice.

Although our position regarding the petitioner's claim was stated clearly in that memorandum, we make the following additional points regarding the petitioner's comments as contained in its case brief. First, given the language in the Senate Report to the 1988 amendment to the fictitious market provision that price movements within a foreign like product are "one example of a fictitious market," it is possible that we may determine in the future that a fact pattern other than price movements within a foreign like product constitutes a fictitious market. However, the fact pattern before us, involving a single respondent that lowered its home market prices during the POR, is insufficient to make such a determination and, in fact, would conflict with a basic tenet of the dumping law were we to do so. As noted in the *Timken Remand*, a respondent may reduce or eliminate dumping either by raising its U.S. prices or by lowering its home market prices of merchandise subject to the order. A finding that ISL has created a fictitious market based solely on ISL's lowering of its home market furfuryl alcohol prices would contradict this basic proposition.

Second, regarding the petitioner's argument that CIT's decision in *PQ Corp.* requires a different result, we agree with the petitioner that the court indicated that a fictitious market could exist when the price of merchandise "does not reflect its actual price." However, we disagree that the information on the record indicates that ISL's home market sales fail to meet this standard. Rather, ISL's home market sales were *bona fide* transactions involving a significant number of customers made during the course of the POR. These customers ordered, received, and paid for the merchandise in the normal course of business based on prices contained in ISL's price lists. Further, the total quantity of ISL's home market sales was far in excess of the viability threshold and in our view those South African sales must be considered one of the company's primary markets.

Finally, based on the above facts concerning ISL's home market sales, we disagree with the petitioner's assertion that the Department is rendering the fictitious market provision a nullity where, as here, there was no other form of the foreign like product to which a price comparison can be made. Rather, given the facts surrounding ISL's home market sales, we have determined that the harm that this provision seeks to prevent (artificial pricing leading to the elimination of a finding of dumping) is not present in this case. As a result, there is no reason in this proceeding to go beyond our normal practice of determining the existence of a fictitious market based on a comparison of prices of different forms of the foreign like product.

Comment 2: Home Market Customer Affiliation: The petitioner argues that ISL is affiliated with its home market customers due to its self-described status as the only established producer and seller of furfuryl alcohol in South Africa. Citing the SAA's discussion (at 838) of possible affiliation in the absence of an equity relationship (in elaborating on section 771(33)(G) of the Act), the petitioner states that affiliation can result from the ability of one company "to exercise restraint or direction" over another company through a "close supplier relationships in which the supplier or buyer becomes reliant upon the other."

In addition, the petitioner commented on the following specific aspects of the Department's *June 30, 1997, Memorandum*, which provided an analysis of this issue for the preliminary results. In this memorandum, the Department noted that: (a) ISL's home market customers appear to be free to purchase furfuryl alcohol from any source willing to offer it; (b) a 10 percent tariff rate appeared to be the only barrier to trade facing furfuryl alcohol; and (c) that it appears that furfuryl alcohol based resins compete with phenolic resins.

The petitioner counters these points by arguing that: (a) as stated in the *Final Results of Antidumping Duty*

Administrative Review: Certain Welded Stainless Steel Pipe from Taiwan, 62 FR 37543, 37550 (July 14, 1997), the Department focuses on actual supplier relationships, not putative statements regarding freedom to purchase from other suppliers; (b) the 10 percent tariff is significant given the absence of furfuryl alcohol imports to South Africa during the POR; (c) there is evidence of barriers to trade such as insignificant purchasing power, immense transportation distances from foreign suppliers, insufficient storage for foreign bulk shipments, and the possibility of ISI.'s customers' damaging their relationship with ISL, the sole domestic supplier; and (d) there are in fact no substitutes for furfuryl alcohol in its primary uses.

These facts, the petitioner concludes, demonstrate affiliation between ISL and its home market customers, warranting the rejection of ISL's home market sales unless they are determined to have been made at arm's length.

ISL responds that the Department was correct in determining, in its *June 30, 1997, Memorandum* at 8, that the petitioner's allegation that ISL is affiliated with its home market customers is "an overly broad interpretation of the affiliation via control provision in section 771(33)(G)." According to ISL, the fact that it is the sole domestic producer of furfuryl alcohol in South Africa is not sufficient to support a finding of affiliation with its home market customers. Specifically, ISL argues that: (a) None of the home market customers is related to ISL by ownership; (b) sales are freely negotiated with home market customers using the company's price lists; (c) there are no long-term sales or agency agreements with home market customers; (d) all home market customers are free to purchase from abroad; (e) there are no import barriers on furfuryl alcohol—the tariff rate on this product entering South Africa before December 1996 was 10 percent and zero thereafter; and (f) the International Trade Commission's (ITC) report notes that while there are no precise substitutes for furfuryl alcohol itself, phenolic resins compete in the foundry industry with furfuryl alcohol's primary downstream products, furan resins. Accordingly, ISL contends, there are no indicia of control.

Finally, ISL notes that the Department has recently considered this issue in a number of cases and did not find affiliation between domestic producers of the foreign like product and home market customers because the requisite control did not exist, citing *inter alia, Final Determination of Sales at Less than Fair Value: Open-End Spun Rayon Singles Yarn from Austria*, 62 FR 43701 (August 15, 1997). ISL states that in each case involving this issue, the petitioner argued that affiliation existed because of a close supplier relationship between the producer and its customer or supplier, and the Department declined to find the parties affiliated because the requisite control relationship did not exist.

DOC Position: We disagree with the petitioner's contention that ISL is affiliated with all of its home market customers. The basis for petitioner's claim, the fact that ISL is the only manufacturer of furfuryl alcohol in South Africa, is insufficient for a finding of affiliation. Further, the petitioner failed to provide any evidence that ISL controls its home market customers. As we stated in the *June 30, 1997, Memorandum* at 8, "ISL's dominant position in the home market is not sufficient, in and of itself, to find affiliation between ISL and its customers." We also noted in that memorandum that the other primary evidence that the petitioner provided to support its affiliation claim, ISL's POR pricing in the home market, "does not suggest that the company is in a position to exercise restraint or control over its customers, since customers will generally seek the lowest price possible from their suppliers." *Id.*

We also do not accept the petitioner's allegation that ISL controls its home market customers due to significant barriers to trade, an absence of imports during the POR of the subject merchandise, and no substitutes for furfuryl alcohol in its primary uses. First, the factors proposed by the petitioner would be more relevant to an assertion that ISL is controlling its customers through high pricing, not low pricing. Second, while we agree with the petitioner that there was an absence of imports during the POR, the petitioner's other arguments are speculative (*e.g.*, whether a 10 percent tariff is a "significant" barrier to trade). Further, if we were to consider the absence of imports as determinative of affiliation, we would in effect find affiliation in any sole supplier situation. In sum, these factors, whether true or not, do not indicate that ISL controls its customers.

Comment 3: Particular Market Situation in the Home Market: The petitioner disagrees with the Department preliminary determination (as detailed in its *June 30, 1997, Memorandum*) that a "particular market situation" did not exist in South Africa. Citing this Memorandum, the petitioner first notes that this finding was based in part on the inapplicability of any of the three illustrative examples of particular market situations in the SAA and the absence of any model matching complications. Moreover, the petitioner states that the Department based its finding on the position that the facts of the case be analyzed more appropriately under the below-cost and fictitious market provisions of the Act.

The petitioner disagrees with this finding based on its contention that a particular market situation does exist in South Africa due to the absence of competitive pricing. It maintains that the SAA makes clear that competitive pricing is an important consideration in assessing the existence of a particular market situation, citing the "government control over pricing" example of a possible particular market situation listed in the SAA (at 822) (*i.e.*, "where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set"). Acknowledging that the instant proceeding does not involve government control, the petitioner argues that the key element of this example of a particular market situation is whether prices are competitively set, not whether there is government control of prices. In support of its argument, the petitioner cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 16404 (April 15, 1997), where the Department considered whether pricing practices in an oligopolistic market constituted a particular market situation but ultimately found competitive pricing, and no particular market situation, in that case. Contrary to the Korean oligopoly in question, the petitioner asserts that ISL is a monopolist and as such, allowed for no price competition of any type in this case.

Regarding the Department's position that the facts of the case are more appropriately analyzed under the fictitious market provision, the petitioner argues that both the fictitious market and particular market situation provisions are applicable because both are intended to preserve the integrity of the Department's analysis by eliminating inappropriate sales from consideration. The petitioner affirms its claim that, given a correct understanding of the facts of this case and of the particular market situation provision, the Department should disregard ISL's home market sales and require ISL to submit third country sales data.

ISL responds that the Department should sustain its position in the preliminary results that a particular market situation does not exist in the home market. In its rebuttal brief (at 8) ISL interprets *Certain Cold-Rolled and Corrosion-Resistant Steel Flat Product from Korea* to mean that "[t]he fact that there are very few, or even one, producer in a market is not evidence, *per se*, that prices are not competitively set." ISL reiterates its claim, first made in Comment 3, above, that there are no import barriers to furfuryl alcohol entering South Africa and, therefore, foreign producers are free to compete, just as non-furfuryl alcohol products compete in the foundry industry with furfuryl alcohol's primary downstream products.

ISL further argues that none of the circumstances of particular market situations outlined in the SAA are present in this case. Thus, ISL concludes, the petitioner is actually arguing for the creation of a new form of particular market situation based on the sole criterion that a foreign producer has lowered it home market prices. Accordingly, ISL, urges the Department to reject the petitioner's expansive reading of the Act.

DOC Position: Although we agree with the petitioner that the list of examples in the SAA regarding what may constitute a particular market situation is not exhaustive, we disagree that such a finding is warranted under the facts of this case. First, we do not agree with the petitioner that the facts of this case are analogous to the "government control over pricing" example in the SAA. In this regard, we agree with ISL's interpretation of *Cold-Rolled Steel*. In that case, although we considered whether oligopolistic pricing practices might constitute a particular market situation, we ultimately determined that prices were competitively set. In fact, we explicitly found that even though different pricing patterns may occur in an oligopolistic market, such patterns are not evidence, per se, sufficient to establish that prices are not competitively set. We conceded that there was substantial Korean government involvement in the industry, but did not find "convincing evidence" of control (*Cold-Rolled Steel*, 62 FR at 18412). The Department found that there was price competition based on discounts, credit adjustments, and freight equalization. Similarly, the fact pattern in the instant proceeding, involving a large volume of low-priced sales of furfuryl alcohol sold to a significant number of home market customers from price lists, does not indicate an absence of competitive pricing.

As we stated in the *June 30, 1997, Memorandum*, the facts as presented by the petitioner, focusing on a single supplier that has lowered its home market prices, are more appropriately analyzed in the context of the below-cost and fictitious market provisions of the statute. In this regard, the petitioner did not make a below-cost allegation in this segment of the proceeding and, as discussed above, our analysis of the petitioner's claim in the context of a fictitious market allegation indicates that the facts presented by petitioner do not warrant such a finding.

Comment 4: Whether the Antidumping Duty Reimbursement Regulation Applies to ISL: ISL argues that the Department's doubling of the assessment rate in the preliminary results, which was based on the Department's finding that ISL reimbursed its affiliated U.S. importer Harborchem, is impermissible because: (1) The reimbursement regulation should not apply to affiliated importers; (2) the reimbursement provision's focus on raising U.S. prices is improper, since the Act itself is not concerned with the absolute level of the price at which subject merchandise is sold in the United States; and (3) even if the reimbursement provision is valid and can legally be applied to affiliated parties, there was no reimbursement of actual duties assessed in this case.

The petitioner disagrees with ISL, stating that: (1) The Department can apply the reimbursement regulation to affiliated parties; and (2) there is clear evidence in this case that ISL reimbursed its U.S. affiliate for AD duties during the POR, citing the Department's proprietary preliminary analysis memorandum (*Analysis Memorandum to the File*, June 30, 1997, at 2).

DOC Position: Since the assessment rate for this review is zero, there are no duties to be assessed. Hence, this issue is moot.

Comment 5: Affiliation of ISL and Harborchem: The petitioner argues that ISL and its U.S. importer, Harborchem, are not affiliated parties and, accordingly, the Department should base U.S. price on export price rather than CEP in the final results. The petitioner maintains that the Department's finding in the original investigation that these parties are affiliated, on which the Department subsequently relied in stating that the facts had not changed in this review, was incorrect. The petitioner contends that the record demonstrates that Harborchem is not ISL's agent under the law of agency or the four-part test originally relied on by the Department.

The petitioner states that since the Act does not define the term "agent," the term must give its common law meaning, *i.e.*, "that an agent is to act on behalf of and for the benefit of the principal." Petitioner Brief at 16. Citing, *inter alia, Waterhout* v. *Associated Dry Goods, Inc.*, 835 F.2d 718 (8th Cir. 1987), the petitioner adds that a second tenet of the law of agency is that a determination as to the existence of an agency relationship is to be based on the factual circumstances at hand and not on a party's characterization of itself as an agent.

The petitioner submits that, in this case, there is no record evidence indicating an agency relationship between ISL and Harborchem, since ISL merely characterizes Harborchem as its an agent; instead, the evidence shows two distinct commercial transactions: one in which Harborchem purchases furfuryl alcohol from ISL and another in which Harborchem resells the merchandise to a third party. Specifically, the petitioner states that:

(a) ISL negotiates price and quantity with Harborchem;

(b) ISL sells to Harborchem;

(c) ISL invoices and receives payment Harborchem; and

(d) Harborchem then separately stores, markets, ships, and receives payment for the merchandise.

Thus, the petitioner asserts, Harborchem acts on its own behalf, and ISL and Harborchem each seek to maximize profits. Moreover, the petitioner asserts that mere coordination of certain activities for their mutual benefit is not critical in determining an agency relationship.

ISL responds that it is in fact affiliated with Harborchem. First, ISL argues that the question of relationship was examined thoroughly in the investigation and at on-site verifications of both ISL and Harborchem. Second, ISL agrees with the Department's preliminary finding that the facts considered by the Department in its original determination are the same as those in the current review, namely:

(a) ISL participated directly with Harborchem in the marketing of furfuryl alcohol to ultimate U.S. customers;

(b) ISL participated directly in pricing and sales negotiations with ultimate U.S. customers;

(c) ISL interacted directly, as well as through Harborchem, with ultimate U.S. customers on product testing and quality control;

(d) ISL and Harborchem communicated on a daily basis on matters related to marketing and sales to the ultimate customers;

(e) ISL exerted a substantial degree of control over Harborchem marketing and pricing of furfuryl alcohol to the ultimate U.S. customers; and

(f) the two parties viewed their relationship as one of principal and agent.

As support for its contention that these facts apply to the POR as well as the period of investigation (POI), ISL cites to evidence on the record of this review regarding the correspondence between Harborchem and ISL on the setting of U.S. prices, the approval by ISL of any significant sales and marketing efforts, and the granting of permission by ISL on other business decisions.

Regarding the petitioner's arguments concerning the nature of an "agency" relationship, ISL submits that although the URAA replaced the definition of "related party" with the definition of "affiliation" based on a "control" concept, Congress did not intend to narrow the criteria it uses for determining affiliation, and the Department has in fact continued to use the same criteria for assessing "control" as was used under the pre-URAA law related party "agency" provision. In this respect, ISL cites the post-URAA cases *Melamine from Indonesia* and *Rayon Singles Yarn from Austria*, where the Department examined:

(a) Whether one party controlled pricing of the subject merchandise;

(b) Whether a long-term sales agreement existed;

(c) Whether there were any restrictions on purchasing from or selling to other sources; and

(d) Whether there were other indicia of affiliation, such as a joint venture arrangement.

ISL asserts that the facts surrounding its relationship with Harborchem meet this standard.

Finally, ISL cites the preamble to the New Regulations as proving that, because section 771(33) of the statute refers to a person being in a position to exercise restraint or direction, the Department is required to examine the ability to control, not the actual exercise of control (62 FR 27298). ISL concludes that, based on the facts as stated above, the record shows that ISL is in a position to exercises restraint over Harborchem.

DOC Position: We disagree with the petitioner. As both parties note, in the less-than-fair-value (LTFV) investigation, we examined this issue in depth at verification (*see Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa*, 60 FR 22550 (May 8, 1995) (*Final Determination of Sales at LTFV*)). Our examination was based on the criteria for determining an agency relationship as established in *Final Determination of Sales at Not Less Than Fair Value: Certain Forged Steel Crankshafts from Japan*, 52 FR 36984, 36985 (October 2, 1987). Contrary to the petitioner's assertions, the information on the record in this review again indicates that a finding of affiliation between ISL and Harborchem is appropriate.

As noted in our preliminary results, the facts that led to our finding in the LTFV investigation have not changed. The petitioner provides no evidence that the facts have changed. ISL, on the other hand, submitted evidence (at Exhibit A–4 of its September 19, 1996 response) in response to our questionnaire that indicates that the agency relationship between ISL and Harborchem still exists. For example, this evidence indicates that ISL and Harborchem routinely coordinate marketing and sales activity, including pricing, for sales to U.S. customers.

Rather than provide evidence that the facts have changed during this review period, the petitioners are suggesting that these facts are not sufficient for a finding of affiliation. We agree with the petitioner that although the Act does not define agency, the existence of an agency relationship is based on the factual circumstances. The four-pronged test relied upon in the LTFV investigation explores the factual circumstances of the relationship between ISL and Harborchem. At verification, based on correspondence files, we determined that ISL: (1) participates directly with Harborchem in marketing furfuryl alcohol to U.S. customers; (2) participates directly in pricing and sales negotiations with U.S. customers; (3) interacts directly, as well as through Harborchem, with U.S. customers on product testing and quality control matters; and (4) interacts with U.S. customers directly (*Final Determination of Sales at LTFV*, 60 FR at 22552–53). In the current review, ISL provided additional documentary evidence of this relationship consistent with our finding in the LTFV investigation. Proprietary correspondence documents were submitted by ISL in its September 1996 response (Exhibit A–4a and b) that demonstrated that: ISL and Harborchem have an exclusive distributor agreement; frequently discuss pricing to U.S. customers; and participate in joint marketing efforts. Documents submitted also show that ISL maintains direct contact with U.S. end-user customers and exerts control over U.S. marketing efforts. In addition, documentation concerning the arrangement and sharing of profits between the two parties were included in Exhibit A–22 of the April 10, 1997, response and documentation showing Harborchem seeking and obtaining ISL's approval of a purchase of furfuryl alcohol from alternative source, were submitted in Exhibit A–23 of the same response. Therefore, we continue to find that, based on our four-prong test, ISL and Harborchem maintain an agency relationship and are affiliated within the meaning of section 771(33) of the Act. Consequently, we have used CEP for sales to the United States.

Comment 6: Exclusion of Certain U.S. Sales: ISL requests that the Department exclude from its analysis U.S. sales of subject merchandise that entered prior to suspension of liquidation, which ISL identified using a first-in, first-out ("FIFO") inventory accounting methodology. ISL further asserts that certain of these sales merit exclusion regardless of the validity of its FIFO analysis, based on the fact that they were shipped prior to the first post-suspension entry of merchandise.

In the preliminary results, the Department rejected ISL's request, citing *Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Italy*, 57 FR 8295 (March 9, 1992) (*"Industrial Belts"*), wherein the Department had similarly rejected an exclusion request based on a FIFO inventory analysis. ISL states that the preliminary results did not sufficiently explain the Department's reasons for denying the request. ISL contemplates two possible reasons for this rejection: (a) that the Department finds a FIFO matching methodology to be inherently unacceptable; or (b) that the Department requires a further explanation regarding ISL's FIFO analysis.

In arguing against the first reason, ISL states that Harborchem's normal inventory accounting records use the FIFO methodology employed in its exclusion request. ISL also notes that Harborchem uses FIFO to match specific entries and sales as part of its internal cost control and reporting systems to ensure proper accounting treatment. ISL contends that since furfuryl alcohol is a fungible liquid, this is the only methodology available for matching pre-suspension entries to specific POR sales. ISL notes that the Department verified Harborchem's inventory accounting records during the less than fair value investigation. Citing *Industrial Quimica del Nalon* v. *United States*, 15 CIT 240, 243–44 (1991), ISL contends that the Department's rejection of the only methodology available to link entries to sales would constitute an abuse of the Department's discretion and, in the words of the ruling, "fly in the face of established business practice."

Regarding the second possible reason, ISL provides in its brief a further explanation of the methodology employed in the company's responses to ensure that the analysis is clear to the Department. In so doing, ISL points to worksheets, inventory records, and entry and sales data that provide sufficient information to allow the Department to tie the sales in question to pre-suspension entries.

Finally, ISL asserts that even if the Department chooses to reject again ISL's FIFO methodology, the company is still entitled to the exclusion of certain sales from the antidumping analysis. ISL notes that the record shows that the first shipment of furfuryl alcohol to enter the United States during the POR, *i.e.*, after suspension, entered the United States after sales by Harborchem to U.S. customers had already been made and delivered during the POR. ISL states that it is therefore physically impossible for those sales to have been made using furfuryl alcohol entered during the POR.

The petitioner responds that the Department should continue to reject ISL's exclusion request. It argues that ISL did not sufficiently link POR sales to specific pre-suspension entries because the company's receipt and inventory records are inconsistent and unreliable, as demonstrated by certain discrepancies on the record. Specifically, the petitioner notes that ISL, in its April 10, 1997, supplemental response, conceded that it made two mistakes in reporting its inventory in its initial response. The petitioner asserts that this unreliability, together with "the Department's justifiable reluctance to use hypothetical constructions to link U.S. sales to specific pre-suspension entries," necessitates the Department's continued rejection of the request.

DOC Position: We agree with ISL, in part. As discussed below, all but one of the POR sales that ISL requested be excluded are not appropriately part of our analysis because they involve merchandise that entered the United States prior to the suspension of liquidation. *See Certain Stainless Steel Wire Rod from France*, 61 FR 47874, 47875 (September 11, 1996). Accordingly, we have not included these sales in our calculation of ISL's antidumping duty rate for this POR. However, we have included one such sale in our analysis because it cannot be tied to pre-suspension merchandise.

We note that the petitioner is correct in pointing out the Department's reluctance to use hypothetical constructions to link U.S. sales to specific pre-suspension entries. This was demonstrated in *Industrial Belts*, wherein the Department rejected an exclusion request based on a FIFO inventory analysis. However, we excluded a majority of the sales at issue based not on a FIFO analysis but on the fact that these sales were shipped before the first post-suspension entry of subject merchandise. *See Memorandum from Michelle Frederick and Scott Oudkirk to Richard W. Moreland* (November 5, 1997) (*"November 5, 1997, Memorandum"*). We have excluded these sales from our analysis because it would not be possible for those sales to have been shipped using merchandise that entered during the POR.

We excluded a second group of sales based on a FIFO analysis that involves a single POR entry made prior to these sales. For these sales, the data contained in ISL's response indicates that the company's storage of inventory involved the co-mingling of only one POR entry of furfuryl alcohol with a pre-existing inventory of pre-suspension furfuryl alcohol. As detailed in the *November 5, 1997, Memorandum*, ISL's inventory, sales, and entry data contained in its responses establishes that it had sufficient pre-suspension inventory, prior to the one POR entry of subject merchandise at issue, to cover all but one of the second group of sales for which ISL requested the exclusion. To the extent that we attribute the merchandise involved in such sales to this pre-suspension inventory, rather than to the single POR entry that occurred prior to these sales, this analysis is based on a FIFO methodology. However, given that the fact pattern involves only a single POR entry occurring prior to these sales, along with the fact that this is a unitary liquid product, it is appropriate under these circumstances to determine that these sales involved pre-suspension merchandise. We note that, in the unique circumstances of this case, the respondent was able to provide supporting documentation regarding entry and sales data not only for the claimed exclusions, but also for the remainder of the South African-sourced POR sales.

Finally, we have not excluded one sale (the final chronological sale in the second group) because the inventory of pre-suspension furfuryl alcohol was insufficient to cover this sale.

Regarding the petitioner's contention that ISL's inventory records are inconsistent and unreliable, we found that an examination of the evidence on the record demonstrates that any inconsistencies are relatively minor and that the mistakes reported by ISL were corrected in supplemental responses (see the memorandum referenced above). Therefore, the record as a whole allowed us to sufficiently link entries to sales and to exclude sales when appropriate.

Finally, we note that the petitioner claimed at the public hearing, with respect to ISL's counsel's discussion of this issue, that certain information presented by ISL was not included in its hearing briefs. We have determined that ISL's counsel did not reveal new information during the hearing and that it was responding to a question raised by the Department regarding this issue. The information that ISL's counsel referenced was already on the record in the form of entry dates, sale dates, inventory records and location of inventory.

Comment 7: Level of Trade and CEP Offset: ISL asserts that the Department's preliminary determination that the level of trade (LOT) at which ISL sold furfuryl alcohol in the home market level is not more advanced than the LOT of the CEP sales is incorrect because it ignores significant selling functions performed in the home market. In particular, ISL states that there is a "significant difference in the level of selling function provided at each LOT."

ISL argues that the Department ignored the level or degree of selling activities that ISL performed with respect to home market versus U.S. sales, as well as the corresponding greater amounts of time and energy spent performing these activities in conducting home market sales. Further, ISL stated that, whereas ISL itself undertook all of these activities in conducting home market sales, it merely supported Harborchem, which was principally responsible for marketing and selling activities in the United States. For this reason, ISL claims that the degree of the selling functions it provides to home market customers is greater than that of those provided for Harborchem such that the home market LOT is more advanced than the LOT of the CEP. In support of this claim, ISL compared the number of customers, the number of shipments, and the individual shipment sizes in the home market to shipments to Harborchem, noting that "[t]he average size of a shipment to Harborchem was over 30 times as large as a shipment in the home market." Therefore, ISL claims it is entitled to a CEP offset.

The petitioner responds that the Department did not ignore specific selling functions in the home market but, rather, determined that the selling functions performed by ISL for sales in the home market did not differ substantially from those performed by

ISL for sales to Harborchem. The petitioner adds that ISL exaggerates the differences between the number of customers and shipments in the home market compared with those to Harborchem. Finally, the petitioner notes that ISL's contention in its case brief that the company plays a supporting, non-principal role for U.S. sales is at variance with earlier statements made in support of ISL's claim of affiliation with Harborchem, i.e., that ISL plays a joint role with Harborchem in the U.S. market.

DOC Position: We disagree with ISL. We have continued to find that a CEP offset is inappropriate because the record evidence indicates that ISL's home market sales are not made at a more advanced LOT than that of the CEP.

Section 773(a)(7) of the Act provides that one requirement for granting a CEP offset is that the home market sale must be made at a more advanced stage of distribution than the LOT of the CEP. In order to determine whether home market sales were at the same, or a different, LOT than U.S. sales, we examined whether home market sales had been made at a different stage in the marketing process. Section 351.412(c)(2) of the new regulations defines an LOT as a marketing stage "or the equivalent" and provides that different LOTs depend on one level (or stage) being more remote, characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different LOTs.

Accordingly, as a threshold matter in examining whether home market sales were made at a more advanced LOT than the LOT of the CEP, we considered the selling activities performed for the home market LOT and compared them to the selling activities performed for the LOT of the CEP. Specifically, we examined the selling activities performed by ISL for setting up, shipping, and delivering furfuryl alcohol destined for the U.S. market up to the point of tank storage at the U.S. port of entry (selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act). Next, we compared the selling activities performed by ISL for home market sales.

In the preliminary results, we determined that there was one LOT in the home market and, furthermore, that the LOT for home market sales was comparable to the LOT of the CEP. In other words, we determined that the home market LOT did not constitute a more advanced stage of distribution than the LOT of the CEP and, therefore, no adjustment to price (i.e., LOT adjustment or CEP offset) was necessary. We explained, in detail, in the preliminary results our rationale for making this determination. 62 FR 36488, 36490 (July 8, 1997). ISL's arguments in its case brief do not establish that our analysis in the preliminary results was incorrect.

We disagree with ISL's argument that we ignored the level or degree of selling functions performed in the home market. While it is our preference to examine selling functions on both a qualitative and a quantitative basis, our examination is not contingent on the number of customers nor on the number of sales for which the activity is performed.

Thus, having determined that the LOT for home market sales is comparable to the LOT of the CEP, we are precluded in this case from granting a CEP offset.

Comment 8: Basis for the Calculation of CEP Profit: The petitioner argues that the Department's calculation of CEP profit understates the amount of profit that should be deducted from CEP. In the preliminary results, the Department relied upon revenue and cost of sales data from ISL's 1995 and first-half 1996 financial statements to calculate a profit ratio. The figures in those financial statements are representative of all ISL products. The petitioner cites the SAA (at 824–825, regarding section 772(f)(2)(C) of the Act) for the proposition that, where the Department has not requested cost data, CEP profit information shall be based on "the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise or * * * the narrowest category of merchandise sold in all countries which includes the subject merchandise." The petitioner contends that there is information on the record, in the form of an internal report, that would allow the Department to base the calculation of a CEP profit ratio on a more narrow category of merchandise, *e.g.* excluding sugar, than that contained in ISL's financial statements.

ISL argues that the financial statements on which the Department relied in its calculation of profit are audited and, given the Department's normal reliance on audited or published data, are the proper basis for the calculation of a CEP profit ratio. ISL notes that the information that the petitioner advocates is found in an unverified internal report used to report gross sales and profit figures. As such, it does not take account of reversals, reconciliations, and adjustments made only at year-end. Therefore, the Department should continue to use the information contained in the audited financial statements in its calculation of a CEP profit ratio for the final results.

DOC Position: We agree with the petitioner in part. Section 772(f)(2)(C)(iii) of the Act provides that, absent more specific data related to expenses incurred in selling subject merchandise in the United States or home market, the expenses used in the profit calculation should be based on "the narrowest category of merchandise sold in all countries which includes the subject merchandise." In this review, there is information on the record that would allow the Department to base the calculation of a CEP profit ratio on a more narrow category of merchandise than that covered by ISL's overall profit amount for all products sold by the company. However, contrary to petitioner's assertions, the audited financial statements contain profit data on a product basis (*i.e.* by-products) that is sufficiently narrow to fulfill the statutory requirements regarding CEP profit.

Instead of relying on the internal report, we were able to derive a more appropriate CEP profit ratio from the audited financial statements, thus meeting our obligation to rely on information for the "narrowest category of merchandise." We were able to discern from the audited financial statements the relative amount of profit due to the sale of sugar, ISL's primary merchandise, and the profit due to the sales of by-products, which includes the subject merchandise sold. Thus, we revised the CEP profit ratio for the final results based on information from audited financial statements. (*See Analysis Memorandum to File*, November 5, 1997.)

We note that, given the statutory preference for profit based on a narrow category of merchandise, the use of internal financial reports may be appropriate where we do not otherwise have sufficiently tailored profit data. The preamble of the proposed regulations at 61 FR 7308, 7332 (February 27, 1996), reflects this, stating "[p]aragraph (d)(2) [of section 351.402] specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that the Department make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible to the merchandise under investigation or review."

Comment 9: Inclusion of Quality Testing Expenses in the Calculation of CEP Profit: The petitioner notes that the Department determined that the expense ISL incurs for the quality testing of furfuryl alcohol upon its arrival in the United States is an indirect selling expense. The Department therefore made a circumstance of sale adjustment to CEP for the preliminary results, but the petitioner contends that this quality testing expense should also be included as part of total selling expenses for the calculation of CEP profit.

ISL argues that this expense is a movement expense undertaken solely for U.S. sales insurance purposes because of the possibility of contamination during shipment and because the U.S. Customs periodically requires purity reports. Therefore, ISL argues that this expense is not an indirect selling expense and, as a movement expense, should not be included as part of selling expenses when calculating CEP profit.

DOC Position: We agree with ISL that the quality testing expense that the company incurs upon furfuryl alcohol's arrival in the United States is a movement expense undertaken solely for U.S. sales as a result of shipment from South Africa. We note ISL's description at page 84 of its September 19, 1996, response, that, "Furfuryl alcohol is tested on arrival to detect any impurities that may have entered the product while in transit * * * [t]he testing is performed * * * at the time the product is unloaded from the maritime vessel." We also note that there is no similar testing done for shipments in the home market; all semi-bulk sales of furfuryl alcohol in the home market are made f.o.b., so there is no chance of contamination that will result in a loss to the company and though drum sales are sometimes made on a c.i.f. basis, it is not subject to contamination because it is packed. Because contamination only results from transporting furfuryl alcohol via a shipping vessel, which carries many other different products, not just furfuryl alcohol, we have determined that the quality testing expense is associated with the type of transportation, and, thus, is a movement expense. Accordingly, we have changed the margin calculation to treat this expense as a movement expense, which is not included in total U.S. expenses in the calculation of CEP profit.

Comment 10: Treatment of ISL U.S. Travel Expenses in the Margin Calculation: The petitioner claims that the expenses ISL personnel incurred for travel to the United States to market furfuryl alcohol are indirect selling expenses incurred in the United States. As such, they should be deducted from U.S. price when calculating CEP and should be included in the total U.S. selling expenses used to derive profit attributable to those expenses.

ISL contends that the expenses in question are already included in the South African component of U.S. indirect selling expenses, given that most of the expenses associated with U.S. travel of ISL personnel, such as airfare and salaries, were incurred and paid for in the home market. Therefore, it would be incorrect for the Department to deduct these expenses once again.

DOC Position: We agree with ISL that the expenses ISL personnel incurred for travel to the United States to market furfuryl alcohol are included in the South African component of U.S. indirect selling expenses (DINDIRSU). As such, for the preliminary results, they had already been deducted from U.S. price when calculating CEP.

We do not deduct indirect selling expenses incurred in the home market on behalf of U.S. sales, except when such expenses are associated with economic activity in the United States. The expenses of ISL personnel incurred for travel to the United States are associated with economic activity in the United States. Therefore, for these final results, we segregated the expenses of ISL personnel incurred for travel to the United States from all other indirect expenses incurred in the home market on behalf of U.S. sales, and deducted only those travel expenses from CEP. *See Final Results and Partial Rescission of Antidumping Duty Administrative Review; Certain Fresh Cut Flowers from Colombia*, 62 FR 53287, 53293 (October 14, 1997) ("selling expenses incurred in the home market that are not associated with U.S. economic activity should neither be deducted from CEP nor included in the basis for calculating CEP profit").

Comment 11: Addition of Tank Car Rental Credits to CEP: The petitioner claims that the U.S. tank car rental expense is reported net of credits. Therefore, tank car rental credits should not be added to CEP.

ISL concedes the petitioner's claim.

DOC Position: We agree that the U.S. tank car rental expense reported is net of credits for tank car utilization. Therefore, we have deducted these expenses from CEP.

Comment 12: Conversion of Certain Inventory Carrying Cost Expenses: ISL contends that the Department failed to convert the U.S. inventory carrying cost expense, which is expressed in rand, to U.S. dollars.

The petitioner did not comment on this issue.

DOC Position: We agree with ISL. This expense was expressed in rand because the inventory value used in the calculation of this inventory carrying cost was the total cost of manufacture in rand. Accordingly, we have converted this to U.S. dollars.

Final Results of Review

As a result of our review, we determine that the following margin exists for the period of December 16, 1994, through May 31, 1996:

Manufacturer/exporter	Margin (percent)
Illovo Sugar Ltd	0.00

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturer/exporter subject to this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for ISL is zero; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the "all others" rate of 11.55 percent established in the less than fair value investigation (60 FR 28840, June 21, 1995). These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

This notice is the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a) of the Act and 19 CFR 353.22, and this notice is published in accordance with section 777(i) of the Act.

Dated: November 5, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29958 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–089. *Applicant:* Worcester Polytechnic Institute, 100 Institute Road, Worcester, MA 01609. *Instrument:* Fire Modeling Research Apparatus. *Manufacturer:* Fire Testing Technology Ltd., United Kingdom. *Intended Use:* The instrument will be used to determine certain fire properties from a particular substance, object or material—sometimes testing each type of material present in a composite then calculating experimental values if the materials were burned together. In addition, the instrument will be used for educational purposes in the course FPE580F. *Special Problems:* Fire Science Laboratory providing overall instruction and hands-on experience with fire science related experimental measurement techniques. *Application accepted by Commissioner of Customs:* October 23, 1997.

Docket Number: 97–090. *Applicant:* University of Minnesota, Department of Psychology, N218 Elliott Hall, 75 East River Road, Minneapolis, MN 55455. *Instrument:* Visual Stimulus Generator, Model VSG2/3S. *Manufacturer:* Cambridge Research Systems Ltd., United Kingdom. *Intended Use:* The instrument will be used to investigate the sensory limitations on letter recognition which involves measuring the spatio temporal properties of letter recognition across the human visual field. The experiments will tell the size of the visual span (the number of letters that can be recognized in a single fixation) for different print sizes, contrasts and fixation duration. This data will test models that relate letter recognition to reading. *Application accepted by Commissioner of Customs:* October 23, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–29957 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083097E]

Small Takes of Marine Mammals Incidental to Specified Activities; Space Launch Vehicles at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of applications and proposed authorizations for small take exemptions; request for comments.

SUMMARY: NMFS has received a request from the U.S. Air Force for continuation of incidental harassment authorizations to take small numbers of marine mammals incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to continue to authorize these takings (limited to harassment), for a period not to exceed 1 year.

DATES: Comments and information must be received no later than December 15, 1997.

ADDRESSES: Comments on this application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. A copy of this application, previous documentation and Federal Register notices on this action may be obtained by writing to this address or by telephoning the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 562–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to one year. The MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 7, 1997, NMFS received an application from the U.S. Air Force, Vandenberg, requesting continuation of an authorization for the harassment of small numbers of seals and sea lions incidental to launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg. This application incorporates by reference the information contained in applications provided last year for these rocket launches. These applications (Titan II and IV-January 24, 1996, Delta II-July 17, 1996, Taurus-August 14, 1996) are available upon request (see **ADDRESSES**).

NMFS has received a petition for regulations and an application for a small take authorization under section 101(a)(5)(A) of the MMPA. If implemented, this rulemaking will replace these 1-year authorizations, along with another issued previously for Lockheed launch vehicles (62 FR 40335, July 28, 1997) with a 5-year regulatory program, governing incidental takes of marine mammals by launches of all rocket and missile types from Vandenberg. This petition is published elsewhere in this issue of the Federal Register.

Description of Marine Mammals and Potential Effects of Launches on Marine Mammals

The marine mammal species anticipated to be incidentally harassed by launches from Vandenberg are harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*) and possibly Guadalupe fur seals (*Arctocephalus townsendi*) in the vicinity of Vandenberg and on the Northern Channel Islands (NCI). In conjunction with publication of the previous application notices for launch activities, a description of the Southern California Bight population of seals and sea lions and the potential impacts from rocket launches on these species and stocks was provided on August 18, 1995 (60 FR 43120), and August 29, 1996 (61 FR 45404), for Delta II authorizations, September 25, 1996 (61 FR 50276), for Taurus rocket authorization, and March 15, 1996 (61 FR 10727), for Titan II and IV authorizations. Interested reviewers are encouraged to refer to those documents for the appropriate discussion. These documents are available from NMFS (see **ADDRESSES**)

As a result of the noise associated with launches and the sonic boom resulting from some launch vehicles at certain trajectories, there is a potential to cause a startle response to those seals and sea lions that haul out on the coastline of Vandenberg and on the NCI. The effect on the above listed seals and sea lions would be anticipated to result in a negligible short-term impact to small numbers of seals and sea lions that are hauled out at the time of a launch. No impacts are anticipated to animals that are in the water at the time of launch. Detailed descriptions of the expected impact from rocket launches on harbor seals and other marine mammals have been provided in the above referenced Federal Register notices and are not repeated here.

Conclusions

Based upon information provided by the applicant, and previous reviews of the incidental take of seals and sea lions by this activity, NMFS believes that the short-term impact of the rocket launches at Vandenberg is expected to result at worst, in a temporary reduction in utilization of the haulout as seals and/or sea lions leave the beach for the safety of the water. The launching is not expected to result in any reduction in the number of seals or sea lions, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on seals and sea lions at Vandenberg are unlikely.

Proposed Authorization

NMFS proposes to issue individual incidental harassment authorizations for a period of time not to exceed 1 year for launches of Delta II, Titan II, Titan IV, and Taurus launch vehicles at Vandenberg provided the monitoring and reporting requirements currently in effect are continued. NMFS has preliminarily determined that the proposed launches of these launch vehicles at Vandenberg would result in the harassment taking of only small numbers of seals and sea lions, and will have no more than a negligible impact on the species and stocks of marine mammals.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: November 6, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29939 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110697A]

Marine Mammals; Scientific Research Permit (PHF# 875–1401)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Christopher W. Clark, Cornell University, Ithaca, New York 14850, has requested an amendment to Permit No. 875–1401.

DATES: Written comments must be received on or before December 14, 1997.

ADDRESSES: The application for amendment and related documents, including a draft environmental assessment (EA) that examines the environmental consequences of issuing the requested amended permit, are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application for amendment to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 875–1401 is requested under the authority of the Marine Mammal Protection Act of

1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

Permit No. 875–1401 currently authorizes the harassment of several species of marine mammals during the conduct of research to study the effects of low-frequency sound produced by the Navy's Surface Towed Array Surveillance System Low Frequency Active (SURTASS LFA) system on the behavior of blue whales (*Balaenoptera musculus*) and fin whales (*Balaenoptera physalus*) feeding in the Southern California Bight during September/October of 1997 and/or 1998. The permit holder is now requesting that the Permit be amended to provide for: 1) the conduct of playback experiments using a SURTASS LFA sound source to study behavioral responses of gray whales (*Eschrichtius robustus*) to SURTASS LFA signals and related stimuli; and 2) radio tagging via suction cup attachment of up to 14 gray whales. Individuals of several other species of cetaceans, pinnipeds, and possibly sea turtles, may be taken (*i.e.*, by harassment or auditory temporary threshold shift) incidentally during the proposed experiments.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a draft EA examining the environmental consequences of issuing the requested amended permit has been prepared. Based upon this draft EA, NMFS has preliminarily concluded that issuance of the requested permit will not have a significant effect on the human environment.

Dated: November 6, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–29937 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on December 17–18, 1997. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

DATES: The meeting will be held on December 17–18, 1997 from 9 a.m. to 6 p.m.

ADDRESSES: The meeting will take place at the Hotel Inter-Continental, 444 St. Charles Street, New Orleans LA.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the "for further information" section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Dated: November 5, 1997.

Mark Bohannon,

Chief Counsel for Technology Administation.

[FR Doc. 97–29955 Filed 11–13–97; 8:45 am]

BILLING CODE 3510–CN–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Information Collection Activities Under OMB Review; Cellulose Insulation

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*) this notice announces that the CPSC has submitted to the Office of Management and Budget (OMB) a request for extension of approval through November 30, 2000, of current collection of information requirements regarding testing of cellulose insulation. These requirements are set forth in 16 CFR Part 1209, Amended Interim Safety Standard for Cellulose Insulation, which prescribes requirements for flammability and corrosiveness of cellulose insulation produced for sale to or use by consumers. The standard requires manufacturers, private labelers, and importers of cellulose insulation to test insulation for resistance to smoldering and small open-flame ignition, and for corrosiveness, and to maintain records of that testing.

DATES: Any comments must be submitted to OMB on or before December 15, 1997.

ADDRESSES: *Send comments to:* Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CPSC, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION OR A COPY CONTACT: Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504–0416.

SUPPLEMENTARY INFORMATION: Cellulose insulation is a form of thermal insulation used in houses and other residential buildings. Most cellulose insulation is manufactured by shredding and grinding used newsprint and adding fire-retardant chemicals.

In 1979, the CPSC issued the Interim Safety Standard for Cellulose Insulation, which is codified at 16 CFR Part 1209. That standard contains performance tests to assure that cellulose insulation will resist ignition from sustained heat sources, such as smoldering cigarettes or recessed light fixtures, and from small open-flame sources, such as matches or candles. The standard also contains tests to assure that cellulose insulation will not be corrosive to copper, aluminum, or steel, if exposed to water.

Certification regulations in the standard require manufacturers, importers, and private labelers of cellulose insulation subject to the standard to perform tests to demonstrate that their products meet the requirements of the standard. These parties are also required to maintain records of those tests. The certification requirements are codified at 16 CFR Subpart B.

The Commission uses the information compiled and maintained by these parties to help determine whether cellulose insulation subject to the standard complies with all applicable requirements. The Commission also uses this information to obtain corrective actions if cellulose insulation fails to comply with the standard in a way that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations under control number 3041–0022. OMB's most recent extension of approval will expire on November 30, 1997. The Commission has requested an extension without change until November 30, 2000.

Burden statement: The Commission's staff estimates that the respondent burden will average 1,320 hours per response. That estimate includes the time needed to conduct the tests required by the regulations and to create and maintain records of the results of those tests.

Respondents/Affected entities: Businesses that manufacture, import, or private label cellulose insulation used in houses and other residential buildings.

Estimated number of respondents: 45.

Estimated Total Annual Burden on Respondents: 59,400 hours.

Frequency of Collection: As determined by respondents to be necessary to provide a reasonable testing program.

On August 28, 1997, the Commission published a **Federal Register** notice stating its intention to request an extension of approval of this collection of information, and requesting comments from the public. 62 FR 45630. The Commission received no comments on that notice.

Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CPSC, 725 17th Street, NW, Washington, DC 20503. Please refer to OMB Control No. 3041–0022 in any correspondence.

Dated: November 10, 1997.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 97–30036 Filed 11–13–97; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0002]

Ross Stores, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provision acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with Ross, Inc., a corporation, "containing a civil penalty of $200,000."

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 29, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 10, 1997.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Ross Stores, Inc., (hereinafter, "Ross Stores" or "Respondent"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. The purpose of this Agreement and Order is to settle the staff's allegations that Respondent sold and offered for sale, in commerce, certain women's 100% rayon sheer chiffon skirts and scarves and certain cotton/polyester reverse fleece shirts that failed to comply with the Clothing Standard for the Flammability of Clothing Textiles (hereinafter, "Clothing Standard"), 16 CFR Part 1610, in violation of section 3 of the Flammable Fabrics Act (FFA), 15 U.S.C. § 1192.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2053.

3. Respondent Ross Stores is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 8333 Central Avenue, Newark, California 94560. Respondent operates a chain of off-price retail stores offering apparel and apparel-related merchandise as well a merchandise for the home.

II. Allegations of the Staff

A. Rayon Sheer Chiffon Skirts

4. Between April 1994 and August 1994, Respondent sold, or offered for sale, in commerce, approximately 1,500 style no. 15016 and approximately 1,200 style no. PS 480 women's 100% sheer chiffon rayon skirts.

5. The skirts identified in paragraph 4 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

6. The staff tested samples of the skirts identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610 .3 and .4. The test results showed that

the skirts violated the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

7. On August 6, 1994, the staff informed Respondent that the skirts identified in paragraph 4 above failed to comply with the Clothing Standard and requested that it review its entire product line for other potential violations.

8. Respondent knowingly sold, or offered for sale, in commerce, the skirts identified in paragraph 4 above, as the term "knowingly" is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

B. Rayon Scarves

9. Between August 1994 and September 1995, Respondent sold, or offered for sale, in commerce, approximately 16,000 rayon scarves.

10. The scarves identified in paragraph 9 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

11. The staff tested samples of the scarves identified in paragraph 9 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The test results showed that the scarves violated the requirements of the Clothing Standard, and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

12. Respondent knowingly sold, or offered for sale, in commerce, the scarves identified in paragraph 9 above, as the term "knowingly" is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

C. Reverse Fleece Shirts

13. Between August 1996 and April 1997, Respondent sold, or offered for sale, in commerce, approximately 28,000 style no. 853020, approximately 400 style no. 11261217, and approximately 1,300 style no. 1266/2216 cotton/polyester reverse fleece shirts.

14. The reverse fleece shirts identified in paragraph 13 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. § 1193.

15. The staff tested samples of the reverse fleece shirts identified in paragraph 13 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The test results showed that the fleece wear violated the requirements of the Clothing Standard and, therefore, were dangerously flammable and unsuitable for clothing because of rapid and intense burning.

16. On January 8, 1997, April 8, 1997, and April 11, 1997, the staff informed Respondent that the reverse fleece shirts identified in paragraph 13 above failed to comply with the Clothing Standard.

17. Respondent knowingly sold, or offered for sale, in commerce, the reverse fleece shirts identified in paragraph 13 above, as the term "knowingly" is defined in section 5(e)(4) of the FFA, 15 U.S.C. § 1194(e)(4), in violation of section 3 of the FFA 15 U.S.C. § 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. § 1194(e)(1).

III. Response of Ross Stores

18. Ross Stores denies the allegations of the staff set forth in paragraphs 4 through 17 above, and in particular, that it knowingly sold, or offered for sale, in commerce, the violative skirts, scarves, and reverse fleece shirts identified in paragraphs 4, 9, and 13 above, in violation of section 3 of the FFA, 15 U.S.C § 1192.

19. Respondent states that it ordered the skirts, scarves, and reverse fleece shirts identified in paragraphs 4, 9, and 13 above from reliable vendors who purported to sell to Respondent skirts, scarves, and reverse fleece shirts that complied with all laws, including the Flammable Fabrics Act and the Clothing Standard.

20. Any payment referenced in the attached Order is proffered solely in compromise of the staff's allegations and shall not be construed as an admission of any liability for a civil penalty or otherwise.

21. Respondent participated with the Commission in voluntary recalls of the skirts on August 12, 1994, the scarves on September 6, 1995, and the reverse fleece shirts on February 28, 1997 and April 8, 1997.

22. Further, Respondent has received no reports of incidents or injuries from the use of any products enumerated in paragraphs 4, 9, and 13.

IV. Agreement of the Parties

23. The Commission has jurisdiction over Ross Stores and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*; the Flammable Fabrics Act (FFA), 15 U.S.C. § 1191 *et seq.*; and the Federal Trade Commission Act (FTCA), 15 U.S.C. § 41 *et seq.*

24. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA and the Clothing Standard. By entering into this Agreement, Respondent makes no admission, and the Commission makes no finding, of any fault, liability or statutory violation. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

25. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 20th day after the date it is published in the **Federal Register**.

26. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Ross Stores knowingly, voluntarily, and completely waives any rights if may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions; (3) to a determination by the Commission as to whether Ross Stores failed to comply with the FFA and the Clothing Standard as aforesaid, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

27. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, the Commission specifically waives its right to initiate any other civil, administrative or criminal action against the Respondent, its stockholders, officers, directors, employees, agents, successors, and assigns with respect to those alleged violations.

28. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

29. A violation of the attached Order shall subject Respondent to appropriate legal action.

30. The Commission may disclose the terms of this Settlement Agreement and Order to the public consistent with section 6(b) of the CPSA, 15 U.S.C. § 2055(b).

31. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

32. The provisions of the Settlement Agreement and Order shall apply to Ross Stores and each of its successors, assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality.

Dated: September 30, 1997.

Respondent Ross Stores, Inc.

Michael Balmuth,

Vice Chairman and Chief Executive Officer, Ross Stores, Inc., 8333 Central Avenue, Newark, CA 94560.

Commission Staff.

Eric L. Stone, Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer, Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

Dated: October 02, 1997.

Dennis C. Kacoyanis, Trail Attorney, Ronald G. Yelenik, Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Ross Stores, Inc., (hereinafter, "Ross Stores" or "Respondent"), a corporation, and the staff of the Consumer Product Safety Commission ("Commission"); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that Respondent pay to the United States Treasury a civil penalty of *Two Hundred Thousand Dollars* ($200,000.00) within twenty (2) days after service upon Respondent of the Final Order.

Provisionally accepted and Provisional Order issued on the 10th day of November 1997.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–30038 Filed 11–13–97; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting change.

SUMMARY: On October 9, 1997, 62 FR 5382, the Department of Defense published a notice to announce a meeting of the Defense Partnership Council to be held November 19, 1997. This notice is to announce that the meeting is changed to November 17, 1997, due to conflicts in members' schedules.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144, (703) 696–1450.

Dated: November 7, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–29974 Filed 11–13–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

In-Progress Air Force Cost Comparisons As of July 1, 1997

The Air Force is conducting the following cost comparisons in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	State	Cost comparison	Announced full time equivalents
Maxwell AFB	AL	Grounds Maintenance	8
Clear	AK	Power Production	34
Eielson AFB	AK	Miscellaneous Services	11
Eielson AFB	AK	Admin Telephone PBX	10
Elmendorf AFB	AK	Power Production	36
Elmendorf AFB	AK	Military Family Housing Mgmt	22
Edwards AFB	CA	Base Supply	327
Los Angeles AFS	CA	Communication Functions	13
Los Angeles AFS	CA	Publications Distribution Office	5
Los Angeles AFS	CA	Education Services	28
March AFB	CA	Airfield Operations & Weather	41
March AFB	CA	Transient Aircraft Maintenance	0
March AFB	CA	Base Operating Support	237
Onizuka AFS	CA	Utilities Plant	25
Travis AFB	CA	Military Family Housing Maint	38
Vandenberg AFB	CA	Base Operating Support	217
Vandenberg AFB	CA	Structural Maintenance	32
Buckley ANGB	CO	Airfield Management	37
Falcon AFB	CO	Communication O&M	205
Falcon AFB	CO	Utilities Plant	22
Peterson AFB	CO	Base Operating Support	179
USAF Academy	CO	Mess Attendents	170
Eglin AFB	FL	Library	8
Eglin AFB	FL	Civil Engineering	96
Homestead AFB	FL	Airfield Operations & Weather	25
Homestead AFB	FL	Base Operating Support	149

Installation	State	Cost comparison	Announced full time equivalents
Hurlburt Com Field	FL	Grounds Maintenance	11
Hurlburt Com Field	FL	Transient Aircraft Maintenance	11
Patrick AFB	FL	Base Operating Support	148
Tyndall AFB	FL	BOS & Backshop Aircraft Main	1360
Dobbins AFB	GA	Control Tower Operations	33
Dobbins AFB	GA	Communication Functions	0
Dobbins AFB	GA	Weather Services	0
Dobbins AFB	GA	Base Operating Support	127
Robins AFB	GA	Audiovisual	42
Robins AFB	GA	Military Family Housing Maint	12
Robins AFB	GA	Education Services	29
Ramstein AB	Germany	Mess Attendants	33
Ramstein AB	Germany	Military Family Housing Maint	129
Ramstein AB	Germany	PMEL	79
Spangdahlem AB	Germany	Mess Attendants	16
Hickam AFB	HI	Base Operating Support	528
Scott AFB	IL	Base Supply	106
Grissom ARB	IN	Airfield Operations & Weather	35
Grissom ARB	IN	Transient Aircraft Maintenance	0
Grissom ARB	IN	Base Operating Support	170
New Orleans NAS	LA	Base Operating Support	66
Hanscom AFB	MA	Audiovisual	19
Hanscom AFB	MA	Vehicle O&M	64
Hanscom AFB	MA	Laboratory Support Services	14
Hanscom AFB	MA	Communication Functions	93
Hanscom AFB	MA	Data Processing	18
Otis ANGB	MA	Transient Aircraft Maintenance	3
Westover AFB	MA	Control Tower Operations	19
Westover AFB	MA	Weather Services	0
Westover AFB	MA	Base Operating Support	210
Minn/St Paul	MN	Communication Functions	0
Minn/St Paul	MN	Base Operating Support	104
Columbus AFB	MS	Base Operating Support	341
Keesler AFB	MS	Tech Training Center Equip Maint	253
Malmstrom AFB	MT	Base Supply	150
Multiple Instlns	Mult	Tech Training-Elect Prin Trg	157
Multiple Instlns	Mult	Admin Switchboard	59
McGuire AFB	NJ	Military Family Housing Maint	19
Cannon AFB	NM	Military Family Housing Maint	21
Holloman AFB	NM	Military Family Housing Maint	66
Kirtland AFB	NM	Base Supply	170
Kirtland AFB	NM	PMEL	51
Kirtland AFB	NM	Vehicle O&M	156
Niagra Falls IAP	NV	Weather Services	4
Niagra Falls IAP	NV	Base Operating Support	39
Offutt AFB	NE	Heating Systems	30
Wright Patterson AFB	OH	Base Operating Support	632
Youngstown Muni Arpt	OH	Base Operating Support	102
Tinker AFB	OK	Communication Functions	136
Tinker AFB	OK	Civil Engineering	567
Greater Pittsburg Arpt	PA	Base Operating Support	111
Willow Grove NAS	PA	Base Operating Support	78
Charleston AFB	SC	Audiovisual	13
Brooks AFB	TX	Laboratory Support Services	44
Carswell AFB	TX	Base Operating Support	91
Lackland AFB	TX	Grounds Maintenance	16
Lackland AFB	TX	Animal Caretaking	26
Laughlin AFB	TX	Base Communications	62
Sheppard AFB	TX	Tech Training-Telephone System	16
Hill AFB	UT	Grounds Maintenance	12
Hill AFB	UT	Recreational Support	7
Hill AFB	UT	Heating Systems	38
General Mitchell Field	WI	Base Operating Support	93
F E Warren AFB	WY	Base Supply	187

Barbara A. Carmichael,
Alternate Air Force Federal Register Liaison Officer.
[FR Doc. 97–29919 Filed 11–13–97; 8:45 am]
BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 13, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 7, 1997.

Gloria Parker,
Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: 1998 National Assessment of Educational Progress (NAEP), Writing Special Study.
Frequency: One Time.
Affected Public: Individuals or households.
Reporting Burden and Recordkeeping:
Responses: 6,200
Burden Hours: 2,200

Abstract: The 1998 NAEP writing special study is designed to bolster the understanding of study NAEP writing achievement with information on student's best writing assignments, and the writing process. In addition, the study will collect information about teachers' emphasis on writing curriculum and instructional approaches. The study will be conducted with a sample of 6000 (4th and 8th grade) students and 200 teachers. The study will use a structured protocol to obtain more detailed and valid information about classroom instructional practices than a standard background questionnaire. Students will be asked to select three examples of their best writing and to fill out a brief questionnaire describing the samples of writing that they submit.

Office of the Under Secretary

Type of Review: New.
Title: Targeting and Resource Allocation Study.
Frequency: One time.
Affected Public: State education agencies, school districts and schools.
Reporting and Recordkeeping Hour Burden:
Responses: 6,097
Burden Hours: 6,000

Abstract: This study will examine targeting and resource allocation in major federal education programs, including Title I, Title II (Eisenhower Professional Development), Title IV (Safe and Drug-Free Schools and Communities), Title VI, and Goals 2000. The study will examine how resources are allocated among various strategies for improving student achievement, how the use of resources varies across schools and districts (e.g., by school poverty levels and size of allocation), and changes in the targeting of funds since the reauthorization of the Elementary and Secondary Education Act (ESEA) in 1994. The study will examine the extent to which funds are being used for strategies highlighted in Goals 2000 and the reauthorized Elementary and Secondary Education Act, including professional development, extended time, parent involvement, coordinated services, and schoolwide approaches. The study will obtain information on the kinds of expenditures, staff, and activities typically associated with different strategies; and how resource allocation decisions are made. The study will also examine the amount of federal funds retained at the state and district levels for administrative and other purposes, how those funds are used, and how much of the funds reach the school level.

[FR Doc. 97–29959 Filed 11–13–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office

Interim Management of Nuclear Materials at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Supplemental record of decision.

SUMMARY: The U.S. Department of Energy (DOE) prepared a final environmental impact statement (EIS), "Interim Management of Nuclear Materials" (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage certain nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their future use or ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present

environment, safety and health vulnerabilities in their current storage condition.

On December 12, 1995, DOE issued a Record of Decision (ROD) and Notice of Preferred Alternatives, 60 FR 65300 (December 19, 1995), on the interim management of several categories of nuclear materials at the SRS. That ROD announced DOE's decision to stabilize plutonium and uranium stored in vaults using a combination of four methods that were fully analyzed in the Final EIS: (1) Improving Storage, (2) Processing to Metal, (3) Processing to Oxide, and (4) Vitrification (F-Canyon). DOE also announced a narrowing of alternatives under consideration for the stabilization of plutonium-239 and neptunium-237 solutions in H-Canyon, and obsolete neptunium targets in K-Reactor.

On September 6, 1996, DOE issued a Supplemental ROD (61 FR 48474, September 13, 1996) to stabilize the H-Canyon plutonium-239 solutions to metal using the F–Canyon and FB-Line facilities, and to stabilize the H-Canyon neptunium-237 solution and obsolete neptunium targets (stored in K-Reactor) to glass using the F–Canyon vitrification capability.

Now, after further review of the plutonium and uranium materials stored in vaults, and considering DOE's recent adoption of a phased canyon strategy for current and potential nuclear material management missions, DOE has decided to: (1) add an additional method, Processing and Storage for Vitrification in the Defense Waste Processing Facility (DWPF), to those being implemented for the management of plutonium and uranium stored in vaults; and (2) amend its September 6, 1996, ROD to stabilize the plutonium-239 and neptunium-237 solutions stored in H-Canyon and obsolete neptunium-237 targets stored in K-Reactor to oxide forms using the H-Canyon facilities. These management methods were fully analyzed in the Final EIS.

FOR FURTHER INFORMATION CONTACT: This is the fourth ROD to be issued to supplement the initial ROD for the interim management of nuclear materials at the SRS. (See 61 FR 6633 (February 21, 1996); 61 FR 48474 (September 13, 1996); 62 FR 17790 (April 11, 1997).) For further information on the interim management of nuclear materials at the SRS or to receive a copy of the Final EIS, the initial ROD and Notice, or the supplemental RODs contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 773–42A, Room 212, Aiken, South Carolina 29802, (800) 881–7292, Internet: drew.grainger@srs.gov.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Energy (DOE) prepared the final environmental impact statement (EIS), "Interim Management of Nuclear Materials" (DOE/EIS–0220, October 20, 1995), to assess the potential environmental impacts of actions necessary to manage certain nuclear materials at the Savannah River Site (SRS), Aiken, South Carolina, until decisions on their future use or ultimate disposition are made and implemented. Some of the particular materials considered in the EIS could present environment, safety and health vulnerabilities in their current storage condition.

The Final EIS identified Improving Storage, Processing to Metal, Processing to Oxide, and Vitrification (F-Canyon) using a combination of the F-Canyon, FB-Line, H-Canyon, HB-Line, and the to-be-constructed Actinide Packaging and Storage Facility (APSF) as the preferred alternative for managing the plutonium and uranium stored in vaults. The Final EIS identified Processing to Oxide, in conjunction with using the APSF, as the preferred alternative for managing the plutonium-239 and neptunium-237 solutions and obsolete neptunium targets.

On December 12, 1995, DOE issued a ROD and Notice of Preferred Alternatives (60 FR 65300) on the interim management of several categories of nuclear materials at the SRS. DOE decided to stabilize plutonium and uranium stored in vaults using a combination of four management methods: (1) Improving Storage, (2) Processing to Metal, (3) Processing to Oxide, and (4) Vitrification (F-Canyon). The amount of materials stabilized using each of the methods would be dependent upon: (a) the physical condition and chemical composition of the material (which DOE will determine upon opening each of the containers or packages inside a glove box in either FB-Line or HB-Line) and (b) the availability of the required facilities.

On February 8, 1996, DOE issued a supplemental ROD (61 FR 6633) for the stabilization of two of the remaining categories of nuclear materials (Mark-16 and Mark-22 fuels, and other aluminum-clad targets) analyzed in the Final EIS.

After considering a DOE staff study and recommendation on canyon facility utilization, DOE issued a second supplemental ROD on September 6, 1996 (61 FR 48474), for the stabilization of the neptunium-237 solution and obsolete neptunium targets, and plutonium-239 solutions.

On April 2, 1997, DOE issued a third supplemental ROD (62 FR 17790) for the stabilization of the remaining Taiwan Research Reactor (TRR) spent nuclear fuel (62 canisters, containing approximately 310 rods). These fuel rods were believed to be stable when the Final EIS and initial ROD were issued. However, given new evidence of apparent cladding failure from at least two canisters, and the fuel's storage, handling, and transportation history, DOE decided to stabilize in the F-Canyon and FB-Line facilities the remaining TRR fuel in the same manner as the original failed TRR fuel.

On July 17, 1997, the Secretary of Energy approved the adoption of a new phased canyon strategy on the use of the SRS canyon facilities, and DOE is now modifying the September 6, 1996 decision for the reasons explained below.

Interim Management of Nuclear Materials EIS

The Interim Management of Nuclear Materials (IMNM) Final EIS considered the interim management of certain nuclear materials at the SRS. These materials included approximately 3,000 containers of plutonium and uranium materials stored in vaults at the SRS, approximately 34,000 liters (9,000 gallons) of plutonium-239 solutions stored in the H-Canyon, approximately 6,100 liters (1,600 gallons) of neptunium-237 solution stored in H-Canyon, and nine (9) obsolete neptunium-237 targets for the production of plutonium-238 stored in K-Reactor. A small fraction of the vault containers, about five percent or 120 containers, contain a substantial fraction of the plutonium-238 isotope. Plutonium-238 is generally used as a heat source, and has been used to provide energy for deep space exploratory missions.

The plutonium and uranium vault materials contain potentially reactive compounds, plastics that can degrade and decompose, and unknown constituents that make them unsuitable for interim to long-term storage. The plutonium and neptunium solutions are unsuitable for extended storage because of the greater potential for abnormal events (e.g., criticality, leaks, spills) that could result in releases of radioactive materials to the environment and exposure to workers and the public. The continued storage of the obsolete neptunium targets leads to increased worker radiation exposure that could be reduced if DOE consolidated neptunium storage, thereby advancing DOE's radiation protection policy of reducing radiation exposure to as low as reasonably achievable levels.

The IMNM Final EIS evaluated the potential environmental impacts of several alternatives for stabilizing SRS nuclear materials. For the plutonium and uranium stored in vaults, these alternatives included processing the materials to either a metal or an oxide form, processing to a glass form in a new vitrification capability to be installed in the F-Canyon facility, processing the material for vitrification (conversion to glass) in the Defense Waste Processing Facility (DWPF), and improving storage through heat treating, sorting, and repackaging. For the plutonium-239 and neptunium-237 solutions and obsolete neptunium targets, the alternatives included processing the materials to an oxide form, processing to a glass form in the new vitrification capability to be installed in the F-Canyon facility, and processing the material for vitrification in the DWPF. Processing to metal, using the F-Canyon/FB-Line facilities, was also evaluated for the plutonium-239 solutions. DOE also considered continued storage of the materials, i.e., the "No Action" alternative. The IMNM Final EIS identified Processing to Metal, Processing to Oxide, Vitrification (F-Canyon), and Improving Storage as the preferred alternatives for managing the plutonium and uranium vault materials, and Processing to Oxide as the preferred alternative for managing the plutonium-239 and neptunium-237 solutions, and obsolete neptunium targets.

Environmental Impacts of Alternatives

DOE performed evaluations of the potential impacts of managing all SRS nuclear materials for each of the alternatives identified in the IMNM Final EIS. For each alternative, the evaluations assumed all the materials in each category (e.g., plutonium and uranium materials stored in vaults [approximately 3,000 containers], H-Canyon plutonium-239 solutions [approximately 34,000 liters], and neptunium-237 solution [approximately 6,100 liters] and 9 obsolete neptunium targets) would be managed using each alternative. Summaries of the potential impacts from the alternatives were presented in the IMNM Final EIS [Table 2–5 (page 2–51) for the neptunium solution and targets, Table 2–6 (page 2–52) for the plutonium-239 solutions, and Table 2–8 (page 2–54) for the plutonium and uranium stored in vaults].

DOE has concluded that there would be minimal environmental impact from the implementation of any of these alternatives in the areas of geologic resources, ecological resources (including threatened or endangered species), cultural resources, aesthetic and scenic resources, noise, and land use. Impacts in these areas would be limited because facility modifications or construction of new facilities would occur within existing buildings or industrialized portions of the SRS. DOE anticipates that the existing SRS workforce would support any construction projects and other activities required to implement any of the alternatives. As a result, DOE expects negligible socioeconomic impacts from implementing any of the alternatives.

Emissions of hazardous air pollutants and releases of hazardous liquid effluents for any of the alternatives would be within applicable federal standards and existing regulatory permits for the SRS facilities. Similarly, high-level liquid waste, transuranic waste, mixed hazardous waste and low-level solid waste generated by implementation of any of the alternatives would be handled by existing waste management facilities. All of the waste types and volumes are within the capability of the existing SRS waste management facilities for storage, treatment or disposal.

Environmentally Preferable Alternatives

As described in the IMNM Final EIS, certain management alternatives are expected to result in lower environmental impacts than others. However, a single alternative was rarely estimated to have lower impacts for all environmental factors. DOE reviewed the potential environmental impacts estimated for the alternatives evaluated for each material category at the SRS, and identified the following as the environmentally preferable alternatives:

Plutonium and Uranium Stored in Vaults

Improving storage for plutonium and uranium stored in vaults is estimated to result in the lowest radiological dose to the offsite public but a relatively higher dose to the SRS workers. This alternative would result in the lowest level of air emissions with comparable levels of water emissions; and would generate the least amount of high-level (zero) and mixed waste, with comparable amounts of transuranic and low-level waste as compared to the other alternatives. The improving storage alternative reduces the quantity of materials requiring chemical processing through the canyon facilities.

Plutonium-239 Solutions—Vitrification (F-Canyon)

Vitrification in F-Canyon of the H-Canyon plutonium-239 solutions is estimated to result in the lowest radiological doses to the offsite public and the SRS workers; result in comparable levels of hazardous pollutant emissions to the air and water; and generate the least amount of transuranic, mixed, and low-level waste, but comparable amounts of high-level waste as compared to the other alternatives.

Neptunium-237 Solution and Obsolete Targets—Vitrification (F-Canyon)

Vitrification in F-Canyon for stabilizing the solution and targets containing neptunium is estimated to result in slightly higher radiological doses to the SRS workers but result in the lowest radiological doses to the offsite public; result in higher airborne emissions of hazardous pollutants with comparable levels of liquid effluent emissions; and generate the least amount of high-level, transuranic and mixed wastes, but comparable amounts of low-level waste as compared to the other alternatives.

Decision

DOE has decided to supplement its previous decision for the management of plutonium and uranium stored in vaults (60 FR 65300), and amend its previous decision for the management of plutonium-239 solutions stored in H-Canyon, neptunium-237 solution stored in H-Canyon, and obsolete neptunium targets stored in K-Reactor (61 FR 48474).

Plutonium and Uranium Stored in Vaults

DOE has decided to implement Processing and Storage for Vitrification in the DWPF as an additional method for managing plutonium and uranium stored in vaults. This method is being implemented principally for a small quantity, approximately 10 kilograms, of plutonium-bearing materials containing plutonium-238. Plutonium-238 is an isotope of plutonium used generally as a heat source in National Aeronautics and Space Administration and other

national programs. Approximately five percent (120) of the 3,000 containers of plutonium and uranium stored in vaults are expected to be managed using this method. The plutonium-238 material is unsuitable for programmatic purposes without isotopic enrichment. The capability for plutonium-238 isotopic enrichment does not exist within the DOE complex and is not being developed. Other low-fissile content plutonium and uranium vault materials, upon inspection, may also be managed in this manner. The potential impacts from this action would be low and well within the potential impacts identified in the IMNM Final EIS. (The IMNM Final EIS considered the impacts of managing all of the plutonium and uranium stored in vaults with this management method.)

This decision permits the stabilization and ultimate disposition of scrap and residue material containing plutonium-238 in DWPF glass canisters. Some additional small fraction of low-fissile content plutonium and uranium vault materials may also, after inspection, be managed in this manner. The fissile content of these materials, diluted or poisoned as may be necessary, will not present criticality or waste disposal concerns within the waste management system. This management method involves minimal facility operations and can be initiated quickly to alleviate the vulnerabilities of continued vault storage. The remainder of the containers of plutonium and uranium stored in vaults will be stabilized using one of the four previously selected management methods (60 FR 65300, December 19, 1995).

The IMNM Final EIS (section 2.3.1, page 2–19) describes technical challenges that must be overcome to stabilize plutonium and uranium vault materials using the high-level waste system and the DWPF. The most significant is control of potential nuclear criticality. Plutonium-238 does not present a threat of inadvertent criticality because, unlike plutonium-239 and uranium-235 (the principal nuclear materials in the vault materials), very large quantities of plutonium-238 would have to be assembled to result in a criticality. Quantities of this magnitude would not occur in the high-level waste tanks. However, this management method will also entail the transfer of plutonium-239 mixed with the plutonium-238 (and potentially other vault materials containing low concentrations of plutonium-239 and uranium-235) to the high-level waste tanks. Therefore, dilution and/or neutron poisoning of the transferred materials as considered in the IMNM Final EIS may be required to ensure nuclear criticality safety requirements are met.

DOE has determined that adding this method for managing a small fraction of plutonium and uranium materials would be advantageous to the overall materials stabilization program. The facility, HB-Line, where plutonium-238 materials are processed, has completed plutonium-238 processing activities for programmatic purposes and DOE has now determined that HB-Line should be prepared for the stabilization of other materials in order to complete the SRS materials stabilization mission as soon as possible within existing resource and facility limitations. Eliminating the purification and resulting solution conversion processing of plutonium-238 at HB-Line enables this capability to be used for the stabilization of other materials.

This decision also eliminates a need to store plutonium-238, not expected to have any future programmatic use, in the new SRS storage vault, the APSF. This will allow DOE to save associated design, construction, and operating costs by eliminating the need for a cooled-storage array module in the APSF.

Plutonium-239 Solutions

DOE has decided to stabilize the H-Canyon plutonium-239 solutions by processing them to oxide in the H-Canyon and HB-Line facilities. The plutonium-239 solutions will undergo processing in H-Canyon as necessary to remove impurities that would interfere with the conversion-to-oxide process in HB-Line. The resulting stabilized plutonium oxide will be stored in an existing vault at the SRS until the new APSF is available. The stabilized plutonium will be stored until DOE implements disposition decisions on this surplus weapons-useable plutonium.

The SRS has an existing facility (HB-Line, Phase II) designed to purify and convert plutonium-239 (and neptunium) to an oxide, but it has never been operated. In the September 6, 1996 decision (61 FR 48474) for the stabilization of this plutonium-239, DOE had expected that by not starting up the Phase II facility, substantial costs associated with its future decontamination and decommissioning could be avoided. After further consideration, however, it has become clear that the facility, by virtue of its location within the H-Canyon structure and its inter-connection with other HB-Line processes, has been radioactively contaminated. The Department now believes that future decontamination and decommissioning will be required whether or not the HB-Line Phase II facility ever operates. Thus, operating the facility to purify and convert plutonium-239 (and neptunium) to an oxide will not add substantial costs to the facility's future decontamination and decommissioning.

Processing the plutonium-239 solutions in H-Canyon and HB-Line also will eliminate the need to transport 34,000 liters (9,000 gallons) of this material from H-Canyon to F-Canyon. This will eliminate the need to transport liquids containing fissile materials and associated transfer costs. HB-Line processing also will permit operation of the metal production part of the FB-Line, which was built in the early 1960's, to be terminated sooner.

The quantity of oxide produced (plus the metal to be produced as a result of decisions made in the December 12, 1995 (60 FR 65300) and April 2, 1997 (62 FR 17790) RODs) will constitute only a small fraction of DOE's existing inventory of weapons-useable plutonium. DOE believes that the addition of this small amount does not present new nuclear proliferation concerns. DOE already has made a commitment that plutonium from DOE's stabilization actions will not be used for nuclear explosive purposes.

Neptunium-237 Solution and Obsolete Neptunium Targets

DOE has decided to stabilize the neptunium-237 solution and obsolete neptunium targets to oxide in the H-Canyon and HB-Line facilities. The nine obsolete targets will be transported from K-Reactor to H-Canyon. At H-Canyon, the targets will be dissolved and processed to separate the neptunium from other materials (principally aluminum). These other materials will be sent to the high-level waste tanks for eventual treatment through the Saltstone and DWPF facilities. The existing neptunium solution and those generated from the obsolete targets will be converted to an oxide in the HB-Line facilities after purification in H-Canyon. In addition, neptunium separated from the stabilization of the Mark-16 and Mark-22 fuels (as announced in the February 8, 1996 supplemental ROD (61 FR 6633) will be stabilized along with the neptunium solution and targets. The resulting canisters containing the neptunium oxide will be stored in either the H- or F-Canyon facility or the new APSF, when constructed, until DOE implements programmatic decisions on the future use of the neptunium.

DOE has selected processing to oxide in H-Canyon/HB-Line for several reasons. The SRS has an existing facility (HB-Line, Phase II) designed to purify and convert neptunium (and plutonium-239) to an oxide. For the reasons discussed above regarding the stabilization of plutonium-239 solutions, not operating the Phase II line for neptunium stabilization would not save significant decontamination and decommissioning costs. In addition, DOE could use the HB-Line Phase III line, an operational facility, to allow neptunium stabilization activities to begin sooner than previously scheduled. HB-Line Phase III, however, has limited processing capacity. Relying solely on HB-Line Phase III for neptunium conversion would extend stabilization completion several years. Processing the neptunium-237 solution in H-Canyon and HB-Line, however, will eliminate the need to transport 6,100 liters (1,600 gallons) of this material from H-Canyon to F-Canyon. Furthermore, recent difficulties encountered in the development program for vitrification of the americium and curium solution indicate that the schedule and cost for vitrification of the neptunium in F-Canyon were significantly underestimated.

To maintain the neptunium in a concentrated physical form, thus preserving the potential for future use, DOE evaluated alternatives for converting the neptunium to either an oxide or glass. Either form was originally determined acceptable to support future use of the material, if required. DOE has now determined that to best preserve the neptunium for potential programmatic use (and to minimize associated future waste generation) it should be converted to a stable oxide. Neptunium oxide is the traditional form produced at the SRS and is the form used for programmatic purposes (i.e., plutonium-238 production).

Issued at Washington, DC, October 31, 1997.

Alvin L. Alm,

Assistant Secretary for Environmental Management.

[FR Doc. 97–30005 Filed 11–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Caliper Technologies, Inc.

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of Intent to Grant Exclusive or Partially Exclusive Patent License.

SUMMARY: Notice is hereby given of an intent to grant to Caliper Technologies, Inc., of Palo Alto, California, an exclusive or partially exclusive license to practice the invention described in Israel Patent Application S.N. 119,342, entitled "Method for Priming and DNA Sequencing," and corresponding Patent Applications in the U.S.A., Japan, certain European countries, and possible other countries. The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license may be exclusive, or partially exclusive, but will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than January 13, 1998.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR Part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Caliper Technologies, Inc., of Palo Alto, California, has applied for an exclusive license to practice the subject invention and has a plan for commercialization of the invention.

The proposed license is expected to be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty and other fees. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on November 7, 1997.

Paul A. Gottlieb,

Assistant General Counsel, for Technology Transfer and Intellectual Property.

[FR Doc. 97–30003 Filed 11–13–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–880–001]

Brooklyn Navy Yard Cogeneration Partners, L.P.; Notice of Filing

November 7, 1997.

Take notice that on October 30, 1997, Brooklyn Navy Yard Cogeneration Partners, L.P. tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Rules 211 and 214 of the, Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29946 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2878–000]

Delmarva Power & Light Company and Pennsylvania Power & Light Company; Notice of Filing

November 7, 1997.

Take notice that on October 31, 1997, Delmarva Power & Light Company and Pennsylvania Power & Light Company, now known as PP&L, Inc., tendered for filing an amendment in the above-captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29948 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES98–5–000]

Electric Energy, Inc., Notice of Application

November 7, 1997.

Take notice that on November 3, 1997, Electric Energy, Inc. filed an application with the Commission seeking authorization pursuant to Section 204 of the Federal Power Act, to issue up to $35,000,000 of notes under the terms of certain unsecured revolving credit agreements or under substantially similar thereto from time to time over the 24-month period immediately following the date of the Commission's approval of the application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29953 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–58–000]

Kern River Gas Transmission; Notice of Request Under Blanket Authorization

November 7, 1997.

Take notice that on October 31, 1997, Kern River Gas Transmission Company (Kern River), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP98–58–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate the Hunter Park Meter Station, located in Salt Lake County, Utah, as a certificated delivery point under Section 7(c) of the Natural Gas Act (NGA) for the delivery of gas under Kern River's blanket certificate issued in Docket No. CP89–2048–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River proposes to operate the Hunter Park Meter Station, located in Salt Lake County, Utah, as NGA jurisdictional facilities for the delivery of gas to any eligible shipper under Kern River's blanket transportation certificate. Kern River states the Hunter Park Meter Station was originally constructed in September 1993, pursuant to 18 CFR Section 284.3 as facilities to be utilized solely for transportation authorized by Section 311(a) of the Natural Gas Policy Act for Mountain Fuel Supply Company (Mountain Fuel).

Kern River declares the Hunter Park delivery point consists of a meter station with an 8-inch tap, one 12-inch turbine meter run, and appurtenant piping and facilities. Kern River states the original cost of the Hunter Park Meter Station was $315,532, which was reimbursed by Mountain Fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29942 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2903–000]

MidAmerican Energy Company; Notice of Filing

November 7, 1997.

Take notice that on October 28, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted to the Commission for filing an amendment to its initial filing in this proceeding. The change consists of the Second Amended and Restated Second Amendment dated October 1, 1997 entered into by MidAmerican and Central Iowa Power Cooperative (CIPCO) to Interconnection Agreement dated June 13, 1983 entered into by Iowa-Illinois Gas and Electric Company (a predecessor by merger to MidAmerican) and CIPCO.

MidAmerican states that the purpose of the rate schedule change is to

establish an additional connection by CIPCO; revise provisions relating to the basis upon which energy is delivered by CIPCO to MidAmerican at normally closed points or connection; revise provisions relating to the normal operating status of two Points of Connection; and revise the basis for billing the transmission service charge, but not the amount of the charge, as a result of the changes to provisions relating to the normal operating status of two points of connection.

MidAmerican requests an effective date in accordance with Section 5 of the Second Amended and Restated Second Amendment and further requests the Commission to accept the rate schedule change for filing within 60 days of the date of this submission to the Commission. MidAmerican has served a copy of the filing on CIPCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29949 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4031–000]

New York State Electric & Gas Corporation; Notice of Filing

November 7, 1997.

Take notice that New York State Electric & Gas Corporation filed on October 30, 1997 the revised Summary of Quarterly Activity (the "Summary") for the calendar year quarter ending June 30, 1997 pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and part 35 of the Commission's Rules of Practice and Procedure, 18 CFR part 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997 order (the "Order") in Docket No. ER97–2518–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29950 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4345–000]

OGE Energy Resources, Inc., Notice of Filing

November 7, 1997.

Take notice that on October 29, 1997, OGE Energy Resources, Inc. ("OERI") made a compliance filing with the Commission in the above-referenced docket in accordance with the Commission's October 17, 1997 order conditionally accepting for filing, without suspension or hearing, OERI's market-based power sales rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29951 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4704–000]

Rochester Gas and Electric Corporation; Notice of Filing

November 7, 1997.

Take notice that Rochester Gas and Electric Corporation (RG&E) on October 31, 1997, tendered for filing an amendment to its filing in the above-referenced proceeding.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 22, 1997 for the Virginia Electric and Power Company Service Agreement.

Copies of this filing have been sent to Virginia Power and the New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29952 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2596–000]

Rochester Gas & Electric Corp.; Notice of Meeting

November 7, 1997.

Rochester Gas & Electric Corporation (RG&E) has applied to the Commission for a subsequent license for the Station 160 Project No. 2596. The project is located on the Genesee River, in Livingston County, New York.

RG&E and the New York State Department of Environmental Conservation (DEC) are in the process of negotiating terms and conditions for Section 401 water quality certification for the Station 160 Project. RG&E and DEC have scheduled a meeting to facilitate the discussion. Commission staff will attend the meeting.

Meeting Date: Monday, November 24, 1997 from 11:00 a.m.

Location: New York State Department of Conservation offices, 50 Wolf Road, Albany, New York.

Meeting Scope: RG&E and DEC to discuss change in impoundment fluctuation at Station 2 and status of the 401 Water Quality Certification Settlement Agreement for Station 160.

Interested parties are welcome to attend this meeting. For further information please contact: Hal Waggoner, Rochester Gas & Electric Corporation, at (716) 724–8105.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29054 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–63–000]

Tennessee Gas Pipeline Company; Notice of Application

November 7, 1997.

Take notice that on October 31, 1997, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, requesting authority for Tennessee to abandon, by sale to Enogex, Inc. (Enogex), the Buzzard Gap System in Latimer County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee states that, by a Purchase and Sale Agreement dated September 10, 1997, and subsequent amendment dated October 19, 1997, Tennessee and Enogex mutually agreed that Tennessee will sell to Enogex all of Tennessee's rights, title and interests in and to the Buzzard Gap System and all rights of way, permits, licenses and other agreements associated with the system.

Tennessee states that the public interest will be served by the sale of the Buzzard Gap System to Enogex. Tennessee states that the Buzzard Gap System was constructed by Tennessee's merchant service. Tennessee also states that, as a result of Order No. 636, Tennessee has restructured its services and is now solely a transporter of gas. Tennessee, therefore, states that it no longer needs the Buzzard Gap System. Tennessee further states that the Buzzard Gap System is not integral to Tennessee's operations in the post-restructuring environment. Tennessee states that granting the requested abandonment authorization will enable Tennessee to streamline its transmission operations for its principal activity of mainline gas transportation. Finally, Tennessee states that the sale of the Buzzard Gap System will not adversely affect any of Tennessee's existing customers.

Tennessee requests that the Commission find that (1) upon the sale of the Buzzard Gap System to Enogex, the transferred facilities will be intrastate facilities which are exempt from the Commission's NGA jurisdiction, and (2) Enogex's acquisition of such facilities will not subject Enogex to the Commission's NGA jurisdiction. Tennessee also requests that the Commission grant all other authorizations and waivers that are necessary to effectuate the transactions contemplated in its application.

Any person desiring to be heard or to make any protests with reference to said application should on or before November 28, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29945 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2480–001]

Unitil Power Corp.; Notice of Filing

November 7, 1997.

Take notice that on October 10, 1997, Unitil Power Corp. (Unitil Power) tendered for filing pursuant to Rules 205 and 207, an amendment to its April 8, 1997, Petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective June 1, 1997. Unitil Power indicates in its amended filing that it will prohibit power sales to affiliates absent a separate 205 filing.

A copy of Unitil Power's amendment was served on the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29947 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–60–000, CP98–62–000, CP98–64–000, and CP98–65–000]

Viking Voyageur Gas Transmission Company, L.L.C.; Notice of Applications

November 7, 1997.

Take notice that on October 31, 1997, Viking Voyageur Gas Transmission Company, L.L.C. (Viking Voyageur), 825 Rice Street, St. Paul, Minnesota 55117–5484, filed in Docket Nos. CP98–60–000, CP98–62–000, CP98–64–000, and CP98–65–000 applications pursuant to Section 7(c) and Section 3 of the Natural Gas Act (NGA) and Parts 284 and 157 of the Commission's regulations for: a certificate of public convenience and necessity to construct, own, operate, and maintain natural gas pipeline facilities; authorization pursuant to Section 3 of the NGA and a Presidential Permit for the siting, construction, operation, and maintenance of certain facilities for the importation of natural gas; a blanket certificate authorizing non-discriminatory, open-access transportation services; and blanket certificate authorization to engage in certain routine activities, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

As part of a coordinated pipeline project designed to transport 1.4 Bcf per day of natural gas from Empress, Alberta to the Joliet, Illinois area, Viking Voyageur proposes to construct the United States portion of the pipeline facilities. The proposed pipeline facilities will interconnect with several interstate pipelines and local distribution companies and will directly provide service to various delivery points in Minnesota, Wisconsin, and Illinois. Upon acceptance of the requested certification, Viking Voyageur will be a natural gas company subject to the Commission's jurisdiction.

In Docket No. CP98–60–000, Viking Voyageur requests authorization to construct, own, operate, and maintain approximately 773 miles of 42-inch diameter pipeline originating at a point of interconnection with the Canadian portion of the coordinated project at the U.S./Canada border at Noyes, Minnesota (near Emerson, Manitoba). The proposed pipeline facilities would extend through Minnesota and Wisconsin to a terminus in Will County, Illinois. Viking Voyageur also proposes to construct twenty-two meter stations and compression facilities totaling 124,000 horsepower. The compression facilities will be located in Kittson and Otter Tail Counties, Minnesota and Polk and Waushara Counties, Wisconsin. The project cost is estimated to be about $1.24 billion.

Viking Voyageur requests a preliminary determination on non-environmental issues by April 1, 1998, and a final order granting certificate authority by November 1, 1998, in order to meet a proposed in-service date of November 1, 1999.

In Docket No. CP98–62–000, Viking Voyageur submitted an application pursuant to Section 3 of the NGA, part 153 of the Commission's regulations, and Executive Order 10485, as amended by Executive Order 12038, and the Secretary of Energy's Delegation Order No. 0204–112, for Section 3 authorization and a Presidential Permit to site, construct, operate, and maintain certain facilities for the importation of natural gas to be located at the international border between the United States of America and Canada near Noyes, Minnesota.

In Docket No. CP98–64–000, Viking Voyageur requests a blanket certificate under Part 284, Subpart G of the Commission's regulations. Viking Voyageur filed a *pro forma* tariff that offers firm and interruptible transportation with flexible delivery points. Viking Voyageur offers two negotiated rate options—either a 10-year or a 15-year negotiated rate contract—as alternatives to Commission approved cost-of-service recourse rates for a 15-year term for firm transportation.

In Docket No. CP98–65–000, Viking Voyageur requests a blanket certificate authorizing construction operation, and abandonment of certain facilities under Part 157, Subpart F of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is

filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Viking Voyageur to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29944 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–58–000]

Williams Natural Gas Company; Notice of Request under Blanket Authorization

November 7, 1997.

Take notice that on October 31, 1997, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–59–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon in place a portion of the 12-inch Independence pipeline lateral, along with related facilities and services, all of which are located in Cass County, Missouri. Williams makes such request under its blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Williams proposed to abandon in place, and cap approximately 6.09 miles of the Independence 12-inch lateral pipeline. Williams also proposes to abandon in place, by sale to Missouri Gas Energy (MGE) approximately 1.95 miles of the Independence 12-inch lateral pipeline, along with related services and facilities, and the Raymore town border station. It is stated that the 12-inch Independence pipeline was originally constructed, to enable Williams to supply the natural gas requirements of MGE, in the Independence, Missouri area.[1] The Raymore town border station was originally installed in 1963 and certificated in Docket No. CP63–345.[2]

Williams states that the Lee's Summit town border meter will become a single point of delivery for MGE. Williams further states that to maintain service to the Lee's Summit town border location, it will construct a tie-over line from its Sugar Creek line to the Lee's Summit town border station pursuant to Section 311 of the NGPA.

Williams indicates that the most recent volumes of gas delivered to the Raymore town border station was 7,565 MMcf on a peak day with 595,035 MMcf delivered annually. It is stated that service to the Raymore town border facility will continue to be provided by MGE.

Williams indicates that MGE will integrate into its system, the facilities that Williams has designated to sell to MGE in this proceeding. It is averred that one domestic customer, located on the 1.95-mile segment, will be impacted by the proposed abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29943 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

[1] The 12-inch pipeline segment proposed to be abandoned herein, was certificated in Docket No. G–756, 5 FPC 820, Cities Service Gas Company (1946).

[2] Cities Service Gas Company, 30 FPC 1,100 (1963).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–56–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

November 7, 1997.

Take notice that on October 30, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–56–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate new metering and associated appurtenant facilities for use in providing delivery of transportation service gas to Bear Paw Operating Company, Inc. (Bear Paw), under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin states that the facilities to be constructed at the proposed metering facility will consist of a building, an orifice meter, SCADA communication equipment and miscellaneous piping, gauges and valves, all of which will be constructed on existing right-of-way at the Baker Compressor Plant in Section 12, T7N, R59E, Fallon County, Montana. Williston Basin states that Bear Paw has requested installation of this metering facility to allow Williston Basin to make deliveries of up to 4,800 Mcf per day to Bear Paw to be used as emergency fuel at the Big Horn plant. The estimated cost of the proposed metering facilities is $11,400. The actual cost of the facility is 100% reimbursable by Bear Paw.

Williston Basin states that the addition of the proposed facilities will have no significant effect on its peak day or annual requirements, that the total volumes delivered will not exceed total volumes authorized prior to this request, that the existing tariff does not prohibit the addition of new delivery points and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29939 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1998

AGENCY: U.S. Department of Energy, Office of Hearings and Appeals.

ACTION: Notice of determination of excess monies pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $20,610,767 of the amounts currently in escrow is determined to be excess funds for fiscal year 1998. Pursuant to the statutory directive, these funds will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107, (202) 426–1492 [Mann]; (202) 426–1449 [Klurfeld].

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR Part 205, Subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $20,610,767 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1997, the total in escrow subject to the PODRA procedures was $96,366,739.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1997, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1997 PODRA determination (61 FR 58545 (1996)) are included as part of the "excess" for fiscal year 1998. No "other commitments" are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $96,366,739. The total amount needed as reserves for direct restitution in those cases is $75,755,972. When this figure is subtracted from the former, the remainder—$20,610,767—is the amount in fiscal year 1998 that is "in excess" of the amount that will be needed to make restitution to injured persons. The Appendix to this Notice sets forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the "excess" amount.

Accordingly, $20,610,767 will be transferred to a separate account within the United States Treasury and made available to the States for use in the designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 7, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

AMOUNT AVAILABLE FOR INDIRECT RESTITUTION IN FY 1998

Name of company	Consent order number	Equity as of Sept. 30, 1997	Amount available in FY 98
ATLANTIC RICHFIELD CO (ARCO)	RARH00001Z	$11,566,398.41	$7,000,000.00
ENRON CORPORATION	730V00221Z	21,225,255.49	3,200,000.00
TEXACO INC	RTXE008A1Z	3,166,580.85	3,166,580.85

AMOUNT AVAILABLE FOR INDIRECT RESTITUTION IN FY 1998—Continued

Name of company	Consent order number	Equity as of Sept. 30, 1997	Amount available in FY 98
ANCHOR GASOLINE CORPORATION	740S01247Z	4,821,029.39	1,500,000.00
GETTY OIL COMPANY	RGEA00001Z	6,515,165.75	1,500,000.00
EASON OIL COMPANY	740S01314Z	4,771,886.91	1,000,000.00
PERMIAN CORPORATION	650X00246T	1,607,933.32	1,000,000.00
WITCO CHEMICAL CORP	240S00054Z	912,335.34	912,335.34
HOUMA OIL CO	640H10422W	432,725.63	432,725.63
GULF OIL CORPORATION	RGFA00001Z	3,914,723.65	400,000.00
ESTE OIL COMPANY	533H00163T	76,895.24	76,895.24
PRODUCT TRACKING—PODRA	999DOE005W	68,191.04	68,191.04
G & G OIL COMPANY	550H00332T	59,862.61	59,862.61
KICKAPOO OIL	570H00214T	49,785.49	49,785.49
BELL FUELS INC	570H00195T	41,441.15	41,441.15
RECO PETROLEUM INC	320H00304T	32,290.43	32,290.43
GENERAL PETROLEUM	550H00075T	28,128.31	28,128.31
VERMONT MORGAN CORP	110H00514T	24,729.79	24,729.79
SKINNEY'S INC	400H00227T	19,514.04	19,514.04
CAPITOL 66 OIL COMPANY	422H00238T	19,229.53	19,229.53
MAXWELL OIL CO.	000H00425Z	18,854.94	18,854.94
LAMPTON-LOVE INC	422T00013T	15,834.29	15,834.29
CUMBERLAND FARMS DAIRY INC	120K00497T	7,567.04	7,567.04
EMPIRE GAS CORPORATION	720T00521Z	7,392.49	7,392.49
SOS MONARCH OIL CORP	240H00498T	7,193.33	7,193.33
N C GINTHER COMPANY	710V03022T	5,983.41	5,983.41
METROPOLITAN PETROLEUM CO, INC	414H00171Z	5,736.27	5,736.27
JEDCO INC	421K00107W	4,326.42	4,326.42
E-Z SERVICE INC	400H00220T	3,722.26	3,722.26
BEACON BAY ENTERPRISES, INC	999K90120T	1,015.95	1,015.95
MOCKABEE GAS & FUEL CO	311H00342W	752.83	752.83
ELWOOD CHEVRON SERVICE	999K90098T	547.67	547.67
DALCO PETROLEUM	660T00842Z	39.86	39.86
MARATHON PETROLEUM CO	RMNA00001Z	23.33	23.33
SUNSET BLVD CAR WASH	999K90113T	22.54	22.54
GENERAL EQUITIES, INC.	110H00527Z	15.41	15.41
QUANTUM CHEMICAL CORPORATION	720V01245Z	0.02	0.02
AOC ACQUISITION CORPORATION	RCKH016A1Z	10,089,118.08	0.00
GOOD HOPE REFINERIES INC.	150S00154Z	3,973,915.80	0.00
GULF STATES OIL & REFINING	6E0S00057T	609,991.91	0.00
HUDSON OIL CO. INC	740S01258W	9,214,807.75	0.00
INTERCOASTAL OIL CO	940X00076T	35,303.15	0.00
KENNY LARSON OIL CO	000H00439W	5,152.10	0.00
MACMILLAN OIL COMPANY, INC	730T00031Z	601,344.51	0.00
OASIS PETROLEUM CORP	940X00217Z	2,174,279.49	0.00
SHELL OIL COMPANY	RSHA00001Z	5,670,793.37	0.00
TESORO PETROLEUM CORP	BUBBBBBBBB	2,117,333.61	0.00
VESSELS GAS PROCESSING, LTD.	740V01367W	2,441,536.79	0.00
Totals		96,366,738.99	20,610,787.51

[FR Doc. 97-30004 Filed 11-13-97; 8:45 am]
BILLING CODE 6460-01-P

ENVIRONMENTAL PROTECTION AGENCY

(ER-FRL-5486-3)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 27, 1997 Through October 31, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564-7176. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D-AFS-K65199-AZ Rating EC2, Windmill Range Allotment Management Plan, Cattle Grazing Use, Implementation, Coconino National Forest, Mormon Lake, Peaks and Sedona Ranger Districts, Coconino and Yavapai County, AZ.

Summary: EPA expressed environmental concerns and recommended that the FEIS should include specific information on water quality monitoring, enforcement measures to ensure full compliance with the proposed allotment management plan, and fall back options in case adequate funding and resources are not obtained or if monitoring indicates continuing decline of rangeland conditions. EPA suggested reconsideration of Alternative G or a modification of preferred Alternative F to address critical resource needs in the Munds Pocket and Foxboro herd range.

ERP No. D-AFS-K65200-CA Rating EC2, San Juan Fuels and Wildlife Project, Implementation, Tahoe National Forest, Nevada City Ranger District, Nevada County, CA.

SUMMARY: EPA expressed environmental concerns about potential exceedences of the threshold of concern (TOC) in five subwatersheds in the analysis area, and recommended that additional road obliterations be added to the project plan.

Final EISs

ERP No. F-BLM-K67044-CA Soledad Mountain Open Pit Leap Leach Gold Mine Project, Construction and Operation, Plan-of-Operations Approval, Mojave, Kern County, CA.

SUMMARY: EPA continued to have environmental concerns and recommended that BLM assure against significant impacts to local air quality from possible aggregate loading and hauling operations. EPA also recommended that the Record of Decision include specific actions for the Mitigation and Monitoring Program.

Dated: November 10, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97-30022 Filed 11-13-97; 8:45 am]
BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-5486-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed November 3, 1997 Through November 7, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970429, Draft Supplement, NPS, CA, Yosemite Valley Comprehensive Implementation Plan, General Management Plan, Yosemite National Park, Mariposa, Madera and Tuolumne Counties, CA, Due: January 13, 1998, Contact: Alan Schmierer (415) 427-1441.

EIS No. 970430, Draft EIS, AFS, OR, Crown Pacific Limited Partnership Land Exchange Project, Implementation, Consolidate Land Ownership and Enhance Future Resource, Deschutes, Fremont and Winema National Forests, Deschutes, Jefferson, Klamath and Lake Counties, OR, Due: January 9, 1998, Contact: Kathy Farrell (541) 383-5571.

EIS No. 970431, Final EIS, FHW, NY, Stutson Street BIN-3317120 Over Genesee River (PIN 4751.05.121), from the Interchange of the Lake Ontario State Parkway and Latta Road to Lake Shore Boulevard, COE Section 10 and 404 Permit, and Coast Guard Bridge Permits, in the City of Rochester, Town of Greece and Irondequoit, Monroe County, NY, Due: December 15, 1997, Contact: Harold J. Brown (518) 431-4127.

EIS No. 970432, Final EIS, AFS, ID, Middle Fork Analysis Area Management Plan, Implementation, Nez Perce National Forest, Selway Ranger District, Idaho County, ID, Due: December 15, 1997, Contact: Jerome A. Bird (208) 926-4258.

EIS No. 970433, Final EIS, FHW, PA, US 202 Section 700 Corridor, Improvements, from PA 63 in Montgomeryville to the PA-611 Bypass in Doylestown Township, COE Section 404 Permit and Right-of-Way, Montgomery and Bucks Counties, PA , Due: December 31, 1997, Contact: Ronald W. Carmichael (717) 221-3461.

EIS No. 970434, Draft EIS, COE, FL, Sunny Isles (North Miami) Proposed Modification to Segment of the Dade County Beach Erosion Control and Hurricane Protection Project, Dade County, FL, Due: December 29, 1997, Contact: Kenneth Dugger (904) 232-1686.

EIS No. 970435, Final EIS, FRC, MS, Destin Natural Gas Pipeline Project, Construction and Operation, Six Major Interstate Pipelines in the Gulf of Mexico, Southern Natural Gas, COE Section 10 and 404 Permits, Right-of-Way and Special-Use Permits, MS, Due: December 15, 1997, Contact: Paul McKee (202) 208-1088.

EIS No. 970436, Draft EIS, EDA, PA, Lackawanna County New Business Park, Development and Operation, Funding Support from Economic Development Administration (EDA) under Title I, Site Lies Within Moosic Mountain Range, Straddling Jessup and Olyphant Boroughs, Lackawanna County, PA, Due: December 29, 1997, Contact: Edward L. Hummel (215) 597-6767.

EIS No. 970437, FINAL EIS, FHW, WI, WI-TH-29 (Wisconsin Corridors 2020 Project) Improvements, Linking I-94 in eastern Dunn to WI-TH-29/CTH J Interchange in south-central Chippewa, Funding and COE 404 Permit, Dunn and Chippewa Counties, WI, Due: December 15, 1997, Contact: Johnny M. Gerbitz (608) 829-7500.

EIS No. 970438, Draft EIS, COE, CA, Unocal Avila Beach Cleanup Project, Petroleum Hydrocarbon Contamination, Approval and Implementation, US Army COE Section 10 and 404 Permits Issuance, San Luis Obispo County, CA, Due: December 29, 1997, Contact: Tiffany Welch (805) 641-2935.

EIS No. 970439, Draft EIS, IBR, CA, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Central Valley, Trinity, Contra Costa, Alameda, Santa Clara and San Benito Counties, CA, Due: February 06, 1998, Contact: Alan Candlish (916) 978-5190.

EIS No. 970440, Draft Supplement, SCS, WV, North Fork Hughes River Watershed Project, New Information Concerning Zebra Mussels Assessment and Recreational Benefits Update, Ritchie County, WV, Due: December 29, 1997, Contact: Lynn Shutts (Ext 167) (304) 291-4152.

EIS No. 970441, Final EIS, AFS, OR, Kalmiopsis Wilderness, Approval for Motorized Vehicular Access to the Private Property within the Chetco River Drainage, Special-Use-Permit Issuance, Illinois Valley Ranger District, Siskiyou National Forest, Curry County, OR, Due: December 15, 1997, Contact: Don McLennan (541) 592-2166.

EIS No. 970442, Draft EIS, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, City of San Francisco, San Francisco County, CA, Due: December 29, 1997, Contact: Mary Doyle (650) 244-3024.

EIS No. 970443, Final EIS, COE, AZ, Tucson Drainage Area Arizona, Implementation, Reduce Flooding, City of Tucson, Pima County, AZ, Due: December 15, 1997, Contact: William Butler (213) 452-3845.

EIS No. 970444, Final Supplement, NOA, Snapper Grouper Fishery, Amendment 8 to the Fishery Management Plan, Regulatory Impact Review, South Atlantic Region, Due: December 15, 1997, Contact: Rolland A. Schmitter (301) 713-2239.

EIS No. 970445, Draft EIS, NPS, CA, Backcounty and Wilderness Management Plan, General Management Plan Amendment, Joshua Tree National Park, Riverside and San Bernardino Counties, CA, Due: December 29, 1997, Contact: Alan Schmierer (415) 427-1441.

Amended Notices

EIS No. 970426, Draft EIS, AFS, KY, Daniel Boone National Forest Off-Highway Vehicle (OHV) Management Policy, Modification, Several Counties, KY, Due: January 09, 1998, Contact: Kevin Lawrence (606) 745-3100.

Published FR—11-07-97—Due Date correction.

Dated: November 10, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–30023 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5920–9]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency

ACTION: Notice of request for applications.

SUMMARY: This notice provides information on the availability of the fiscal year 1998 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedule are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Ecological Indicators, (2) Drinking Water, (3) Air Pollution Chemistry and Physics, (4) Urban Air Toxics, (5) Health Effects and Exposures to Particulate Matter and Associated Air Pollutants, and (6) Decision-making and Valuation for Environmental Policy (joint with the National Science Foundation). Applications must be received as follows: January 15, 1998, for topic (6); January 29, 1998, for topics (3) and (5); February 12, 1998, for topic (4); and February 26, 1998 for topics (1) and (2).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the Ecological Indicators RFA is Barbara Levinson (levinson.barbara@epamail.epa.gov), telephone 202–564–6911; for Drinking Water, William Stelz (stelz.william@epamail.epa.gov), telephone 202–564–6834; for Air Pollution Chemistry and Physics, Urban Air Toxics, and Health Effects and exposures to Particulate Matter and Associated Air Pollutants is Deran Pashayan (pashayan.deran@epamail.epa.gov), telephone 202–564–6913; and for Decision-making and Valuation for Environmental Policy is Deborah Hanlon (hanlon.deborah@epamail.epa.gov), telephone 202–5646836.

Dated: November 3, 1997.

Approved for publication:

S. A. Lingle,

Acting Assistant Administrator for Research and Development.

[FR Doc. 97–30018 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–0]

Mississippi River/Gulf of Mexico Watershed Nutrient Task Force Meeting

The U.S. Environmental Protection Agency (EPA) Announces the Following Meeting

Name: First Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

Time and Date: 9:30 a.m.–5:00 p.m., December 4, 1997.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209, telephone 703/524–6400.

Status: Open to the public, limited only by the space available. The room accommodates approximately 150 people.

Purpose: A Task Force consisting of Federal, State, and Tribal members, will lead an effort to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

Matters To Be Discussed: Agenda items include: eutrophication of large areas of the Gulf of Mexico associated with drainage of the Mississippi River Basin; economic and ecological effects of recurring periods of low dissolved oxygen (hypoxia) in the Gulf of Mexico; and coordination of activities to reduce the size, severity, and duration of this phenomenon. The public will be afforded an opportunity to provide comments on these issues. Anyone interested in speaking should contact the person listed below prior to the meeting.

Contact Person for More Information: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone 202/260–7061; Internet: belefski.mary@epamail.epa.gov.

Dated: November 10, 1997.

Dana Minerva,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 97–30016 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–5]

Announcement and Notice of Availability of the General Policy on Superfund Ability to Pay Determinations

SUMMARY: As part of EPA's continuing commitment to foster fairness in the enforcement process, the Agency is issuing this policy to explain what is necessary for an acceptable ability to pay (ATP) settlement in Superfund cases. It is EPA's intent to balance the need for settling environmental liability equitably without jeopardizing the viability of a business or creating an undue financial hardship for either businesses or individuals. The main text of the policy document addresses general issues that apply to the ATP process and ATP settlements. The policy document also contains two appendices that address issues specific to making ATP determinations for individuals and businesses. The policy document establishes an "undue financial hardship" standard for determining a party's ability to pay its share of Superfund cleanup costs, and uses a two-part analysis to determine what is an acceptable ATP settlement amount. The first part of the analysis, called the "balance sheet phase," looks at the assets, liabilities, and owners' equity of the ATP Candidate, calculating the amount of money available from excess cash, the sale of assets that are not ordinary and necessary, borrowing against assets, and owners' equity. The second part of the analysis, called the "income and cash flow statement phase," looks at the income and expenses of the party and generally calculates "available income" for a Superfund settlement over a five-year period. In calculating "available income," the analysis takes into account "increased future needs" (i.e., ordinary and necessary expenses that will be incurred by the ATP Candidate that have not been incurred in the past or that were incurred previously but which are expected to be significantly greater than in the past).

FOR FURTHER INFORMATION CONTACT: Policy and Guidance Branch, Policy and Program Evaluation Division, Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460. Phone: (202) 564–5115. The policy is available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of the policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB97–199731. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553–NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: September 30, 1997.

Barry Breen,

Director, Office of Site Remediation Enforcement.

[FR Doc. 97–30011 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–6]

Announcement and Notice of Availability of the Guidance on EPA Participation in Bankruptcy Cases

SUMMARY: The purpose of this guidance is to identify the factors to be considered by the Environmental Protection Agency in determining whether to participate in a bankruptcy case, including whether to pursue collection of costs or penalties against debtors who have liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or other environmental statutes. This guidance also addresses issues in bankruptcy cases relating to the abandonment of contaminated property, cleanup activities under CERCLA on property included in the bankruptcy estate, and the impact of the automatic stay on different types of administrative and judicial enforcement activities. It supersedes the "Guidance Regarding CERCLA Enforcement Against Bankrupt Parties," OSWER Directive #9832.7 (May 24, 1984) and the "Revised Hazardous Waste Bankruptcy Guidance," OSWER Directive #9832.8 (May 23, 1986).

FURTHER INFORMATION CONTACT: Andrea Madigan, USEPA Region IV, 61 Forsyth Street, Atlanta, GA 30303. Phone: (404) 562–9518. Copies of the document are available from the Policy and Guidance Branch, Policy and Program Evaluation Division, Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460. Phone: (202) 564–5115. The guidance document is also available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of the policy can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB98–103146. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553–NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: September 30, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–30014 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–8]

Announcement and Notice of Availability of an Addendum to the "Interim CERCLA Settlement Policy" Issued on December 5, 1984

SUMMARY: This memorandum is an addendum to the "Interim CERCLA Settlement Policy" which was issued by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ) on December 5, 1984 (50 FR 5024, February 5, 1985). That policy sets forth the general principles governing settlements with potentially responsible parties under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On June 3, 1996, EPA issued an "Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time-Critical Removals." Because that guidance document does not apply to CERCLA cost recovery settlements in which the parties are not agreeing to perform remedial design/remedial action work or a non-time critical removal, EPA and DOJ are issuing the addendum to provide the Regions with direction for addressing potential compromises of CERCLA cost recovery claims due to the existence of a significant orphan share.

FOR FURTHER INFORMATION CONTACT: Laura Bulatao (202–564–6028) or Deniz Ergener (202–564–4233), Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460 or Bob Brook in the Environmental Enforcement Section of the Department of Justice at (202) 514–2738. This addendum is available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of this document can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB98–103138. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553-NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated: September 30, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance Environmental Protection Agency.

[FR Doc. 97–30012 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–7]

Announcement and Notice of Availability of the Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders

SUMMARY: This policy is intended to make calculation of civil penalties and punitive damages under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for purposes of settlement a fair and effective process for deterring noncompliance with EPA's administrative orders. The policy contains an innovative approach toward penalty calculation which takes into account factors particularly relevant to CERCLA cases by incorporating both harm and equitable adjustment factors into a single "harm-recalcitrance" matrix. Factors such as the noncomplier's degree of responsibility for the site and ability to finance compliance with an administrative order are considered early in the calculation process to encourage companies that have greater responsibility for the creation of the CERCLA site and/or are better able to finance a cleanup to step forward and work with other viable potentially responsible parties to take responsibility

for cleanups. The policy provides for smaller penalties for noncompliance by smaller contributors to Superfund sites, companies with limited financial resources, and less sophisticated parties. This policy reserves the highest penalties for the most egregious offenders—the noncompliers who are financially capable of performing, who are most responsible for creating the Superfund site, and whose failure to perform results in actual harm to human health, the environment, or EPA's enforcement and response program, or results in serious inequities to complying parties. Consistent with the Agency's "Policy on Civil Penalties" (Feb. 16, 1984), this policy should be used only in cases where the government is settling civil penalty and punitive damages claims.

FURTHER INFORMATION CONTACT: Steven Rollin, Policy and Guidance Branch, Policy and Program Evaluation Division, Office of Site Remediation Enforcement, 401 M St., SW, 2273A, Washington, D.C. 20460. Phone: (202) 564–5142. The policy is available electronically at http://www.epa.gov/envirosense/oeca/osre/osredoc.html. Copies of this document can be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Each order must reference the NTIS item number, PB97–208086. For telephone orders or further information on placing an order, call NTIS at (703) 487–4650 or (800) 553-NTIS. For orders via E-mail/Internet, send to the following address: orders@ntis.fedworld.gov.

Dated September 30, 1997.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–30013 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5921–2]

Proposed CERCLA Administrative De Minimis Settlement—Chemical Handling Corporation Site, Jefferson County, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: In accordance with the requirements of Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative *de minimis* settlement under section 122(g) of CERCLA, 42 U.S.C. 9622(g), concerning the Chemical Handling Corporation site located at 11811 Upham Street, near the City of Broomfield, in unincorporated Jefferson County, Colorado ("Site"), with the settling parties listed in the Supplementary Information portion of this notice. The settlement, embodied in a proposed Administrative Order on Consent ("AOC"), is designed to resolve fully each settling party's liability at the Site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The proposed AOC requires the Potentially Responsible Parties ("PRPs") listed in the Supplementary Information section below to pay an aggregate total of $131,646.24 to address their liability to the United States related to response actions taken at the Site.

OPPORTUNITY FOR COMMENT: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before December 15, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should reference the Chemical Handling Corporation Site, Jefferson County, Colorado and EPA Docket No. CERCLA VIII–97–05.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Notice of proposed administrative *de minimis* settlement under section 122(g) of CERCLA, 42 U.S.C. 9622(g): In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Administrative Order on Consent ("AOC") have been agreed to by the following settling parties, for the following amounts (where the name of a party is followed by a "/," that indicates that the name following the "/" is the name of the party as it appears on the AOC signature page):

AOC CERCLA, VIII–97–05

Name of party	Settlement amount
ADK Pressure Equipment Corp/Joslyn Company, LLC	$2,129.10
Advantage Advertising	263.72
Antique Refinisher, Inc	263.72
B.F. Pirelli's/Brad Fukui	263.72
Boyd Distributing/Boyd Investment Co	131.86
Cascade Collision/Cascade Collision, Inc	131.86
Chemcraft Sadolin International/Robert Schwartz	5,221.61
Coat Rite/Coats and Colors, Inc	145.04
Don's Auto Body	580.66
E/M Corporation/West Lafayette Corporation	8,148.88
E.T.I. Tank Cleaners/Southern Tank Cleaning, Inc	725.22

AOC CERCLA, VIII–97–05—Continued

Name of party	Settlement amount
Easter-Owens Electric Co	4,180.77
Econo Auto Painting (Little Rock)	2,535.56
Econo Auto Painting (Little Rock)	
Econo Auto Painting (Sherwood)	
Ed Black's Chevrolet Center/Casa Chevrolet	1,305.40
Front Range Dodge/Front Range Auto, Inc	395.58
Golden Geophysical/Fairfield Industries Incorporated	987.77
GTE Maintenance Department/GTE Southwest, Inc	19,581.04
Hallmark Cabinets	638.73
Harpers/FHL Group	4,206.30
Hoffmantown Body Shop	851.64
J.M. Martinac Shipbuilding/J.M. Martinac Shipbuilding Corporation	12,348.76
Kevin's Body Shop/Kevin's Auto Body and Paint	851.64
King Fiber Glass Corp., Fiber Resin Supply Div./CMI/Composite Materials Inc	10,026.11
Kresco Industrial Coatings/RFI Industries Inc	263.72
Lazer Products/Paper Manufacturers Company	263.72
Martin Marrietta ISG/Lockheed Martin	145.04
Metaltech Industries, Inc	1,374.24
New Mexico State Land Office	92.30
Odyssey Transportation/Odyssey Transportation Inc., of Nevada	741.71
Pacific Enterprises Oil Co	670.27
Partridge Industrial Coatings	5,535.65
Peachwood HOA, Inc./Peachwood Homeowners Association	448.32
Pollard Friendly Motor Co	580.66
Precision Body Shop Volkswagen/Suzuki/Precision Sales and Service Inc./RDS Inc	1,793.28
Precision Prefinish Inc./Precision Prefinishing, Inc	3,336.03
Rovalve, Technaflow/Technaflow, Inc	5,366.66
Smith.Woll Construction	5,037.01
Sorrells Body Shop, Inc	212.91
Spradley Lincoln Mercury	395.58
Starr Corp./Starr Corp. International	387.11
Starwood Air Service/Aspen Base Operation, Inc	263.72
Teledyne Getz (Denseo)/Teledyne Water Plk, division of Teledyne Industries, Inc	9,871.27
Teledyne Pines (H & H Tool)/Edward W. Slavin, Jr	425.82
Television Technology, Inc./Larcan—TTC	4,471.10
Town & Country Auto Center/Emanuel Bugelli	395.58
Twin City Optical/Twin City Optical Co., Inc	395.58
United Express—Air Wisconsin/Air Wisconsin Airlines Corporation	4,645.30
Vertical Honeycomb/Hexacomb Corporation	2,109.74
Western Slope Refining	6,329.23
Total	131,646.24

By the terms of the proposed AOC, the setting parties will pay a combined $131,646.24 to the Hazardous Substance Superfund. This payment represents approximately 4.6% of the $2,859,862.00 in response costs that EPA has incurred through March 31, 1997. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the United States and by private parties is between $2,926,862.00 and $3,000,000.00. To date, approximately $1,000,000.00 of these response costs have been recovered, primarily through earlier *de minimis* settlements. The setting parties under this AOC arranged for the disposal of 42,351.25 gallons of hazardous substances to the Site. This amount represents approximately 3.55% of the 1,193,613.15 gallons of hazardous substances manifested to the Site by all generators, both *de minimis* and non-*de minimis*.

In exchange for payment, EPA will provide the settling parties with a covenant not to sue under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act), which will resolve fully each settling party's liability at the Site.

The amount that each individual PRP will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. The total amount of settlement dollars owed by each party to the settlement was arrived at by multiplying the cost per gallon by the number of gallons a party manifested to the Site ("Base Amount") and then adding to this amount a premium payment equal to 9% or 60% (see discussion below) of the Base Amount. The cost per gallon of $2.1494287739 was derived by dividing the estimated total response costs at the time of calculation of $2,887,862.00 by the 1,193,613.15 total gallons of hazardous substances manifested to the Site.

To be eligible for the *de minimis* settlement, each PRP must have contributed no more than .7% of the total volume of hazardous substances manifested to the Site. PRPs that were identified or located subsequent to EPA's first *de minimis* settlement offer in March 1996 were allowed to participate in the current proposed settlement at the 9% premium level. PRPs that had been offered the opportunity to participate in EPA's first *de minimis* settlement offer in March 1996, but chose not to do so, have been allowed to participate in the current

proposed *de minimis* settlement at a 60% premium level.

It is so agreed:

Dated: November 5, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 97–30031 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5820–2]

Proposed Administrative Order on Consent With Compromise of CERCLA Response and Oversight Costs

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed AOC.

SUMMARY: U.S. EPA is proposing to sign and issue an Administrative Order on Consent (AOC) under Section 106 of CERCLA for a removal action at the Lake (Petro) Station Superfund Site. Respondents have agreed to perform a full clean up, in return for USEPA waiving response and oversight costs of approximately $20,000. U.S. EPA Today is proposing to sign and issue this AOC because it achieves a necessary removal action at a Site where there was problematic historical evidence of liability.

DATES: Comments on this proposed settlement must be received by December 15, 1997.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Ms. Noemi Emeric at (312) 886–0995 before visiting the Region V Office). Ms. Noemi Emeric, OPA (P19–J), U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Ms. Noemi Emeric, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 886–0995.

FOR FURTHER INFORMATION CONTACT: Ms. Noemi Emeric, Office of Public Affairs, at (312) 886–0995.

SUPPLEMENTARY INFORMATION: The Lake (Petro) Station Truck Stop Superfund Site is a 44 acre Truck Stop facility consisting of several buildings and parking lots. The Site is bordered immediately to the north by a creek and a truck stop, to the south by Interstate Highway 94, to the east by an interstate highway exchange, and to the west by Ripley Street. On July 18, 1996, several drums were discovered in the rear of the property by Mr. Jack Danskins, Regional Manager of Welsh Oil, Inc. He observed seven 55-gallon drums, six 30-gallon drums, and sixteen 5-gallon containers. There was spilled material from one of the 5-gallon containers which covered an approximate two-square-foot area. Welsh Oil, Inc., contracted OSI Environmental, Inc., for assistance (stabilization of the materials). After U.S. EPA and the Indian a Department of Environmental Management (IDEM) were contacted, and had sampled and assessed the situation, U.S. EPA contacted the named Respondent parties (due to some of the containers bearing their companies names) and negotiated an Administrative Order on Consent for the remainder of the removal action.

A 30-day period, beginning on the date of publication, is open pursuant to 42 U.S.C. section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Ms. Noemi Emeric of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Thomas Turner,

Assistant Regional Counsel, United States Environmental Protection Agency.

[FR Doc. 97–30015 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5820–5]

Final NPDES General Permits for Discharges Resulting From Implementing Corrective Action Plans for Cleanup of Petroleum UST Systems in Texas (TXG830000), Louisiana (LAG830000), Oklahoma (OKG830000) and New Mexico (NMG830000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final issuance of NPDES general permits.

SUMMARY: EPA Region 6 today issues National Pollutant Discharge Elimination System (NPDES) general permits authorizing discharges resulting from implementing Corrective Action Plans for the cleanup of Petroleum UST Systems in Texas, Louisiana, Oklahoma, New Mexico and the Pueblos of Santa Clara, San Juan, Pojoaque, Nambe and Picuris. A Petroleum UST System is an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. The permits place limits on benzene, Total BTEX and pH for all discharges, as well as limits on polynuclear aromatic hydrocarbons (PAH) for discharges from cleanups of Petroleum UST Systems other than gasoline, jet fuel and kerosene. Additional limits include those on lead and Total Petroleum Hydrocarbons in the Texas permit, lead and TOC in the Louisiana permit, Total Organic Carbon and Total Phenols in the Oklahoma permit, and lead, Chemical Oxygen Demand, No Visible Oil Sheen, as well as a biomonitoring requirement, in the New Mexico permit.

DATES: The limits and monitoring requirements in these permits shall become effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Wilma Turner, EPA Region 6 1445 Ross Avenue, Dallas Texas 75202–2733, telephone (214) 665–7516. Copies of the complete response to comments may be obtained from Ms. Turner. The general permits and response to comments may be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm.

SUPPLEMENTARY INFORMATION: Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of facilities discharging waste waters resulting from the cleanup of underground storage tank systems that contain petroleum substances, such as motor fuels, jet fuels and fuel oils.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I, Section A.1 of these permits. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited public comment on NPDES General Permits TXG830000, LAG830000, OKG830000 and NMG830000 at 61 FR 37894 (July 22, 1996). The comment period closed on September 20, 1996. Region 6 received written comments from Texas Natural Resources Conservation Commission, Louisiana Department of Environmental Quality, Oklahoma Department of Environmental Quality, Louisiana Mid-Continent Oil and Gas Association, Texas Mid-Continent Oil and Gas Association, American Petroleum Institute and Amoco Corporation.

EPA Region 6 has considered all comments received. In response to the comments, minor changes were made in the Texas and Louisiana permits and some monitoring frequency changes were made in the Oklahoma permit. Several changes were made to the permits for the Santa Clara and Pojoaque Pueblos as a result of conditional certifications received from these Pueblos. The Colorado River Salinity Standards requirements were removed from the Santa Clara and Pojoaque Pueblo permits. In addition, the COD limit was removed and a Total Phenols limit was added to the Santa Clara Pueblo permit.

Most of the commentors requested increasing the benzene and BTEX limits to those contained in current state-issued permits. Louisiana Department of Environmental Quality (LDEQ) commented that the overall influent and effluent averages for benzene and BTEX from LDEQ data were higher than the assumptions and the limits in the proposed permits. At EPA's request, they submitted these data to the Region. EPA declines to increase the BAT limits from those that were proposed. The administrative record supports the BAT limits for benzene and BTEX as proposed, as does the large body of data submitted by LDEQ. An examination of the nearly 2000 LDEQ data points each for both benzene and BTEX showed the proposed permit limits could be met the vast majority of the time. When the proposed limits were not being met, they were generally very high levels and caused by treatment system malfunctions.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The Region has received certification from the Texas Natural Resources Conservation Commission for TXG830000, the Louisiana Department of Natural Resources for LAG830000 and the New Mexico Environment Department for NMG830000. In addition, certification was received by the Pueblo of San Juan, and certifications with conditions were received by the Pueblos of Santa Clara and Pojoaque. The conditions of these certifications and the changes made to the permit requirements applying to discharges at these Pueblos are discussed in the Supplemental Information section, above. Certification was waived by the Oklahoma Department of Environmental Quality for OKG830000 and by the Pueblos of Nambe and Picuris. Certification was denied by the Pueblos of Sandia and Isleta. As a result of these certification denials, the general permits will not cover discharges at the Pueblos of Sandia and Isleta.

B. Endangered Species Act

The permit limits are sufficiently stringent to assure state water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of these permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA received written concurrence from the United States Fish and Wildlife Service.

C. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866.

E. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

F. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed previously in the Fact Sheet for the proposed permits, compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. This lack of significant impact is due, in part, to the State Reimbursement Fund's reimbursement to the discharger of all NPDES permit compliance costs, except for a small deductible amount. EPA Region 6 therefore certifies, pursuant to the provisions of 5 U.S.C. 605(b), that the permits issued today will not have a significant impact on a substantial number of small entities.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq; the "Act"), these permits authorize discharges to Waters of the United States resulting from the cleanup of Petroleum UST Systems (as defined in 40 CFR 280) in Texas, Louisiana, Oklahoma, New Mexico and the Pueblos of Santa Clara, San Juan, Pojoaque, Nambe and Picuris in New Mexico. These permits do not authorize such discharges in the Pueblos of Sandia and Isleta in New Mexico. The discharges are authorized in accordance with effluent limitations and other conditions set forth in Parts I and II of these permits.

In order for discharges to be authorized by these permits, operators of facilities discharging waste waters resulting from the cleanup of Petroleum UST Systems must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, operators requesting coverage are authorized to discharge under these general permits. Operators who fail to notify the Regional Administrator of intent to be covered

are not authorized to discharge under these general permits.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are not authorized to discharge under these permits.

These permits shall become effective at midnight, Standard Time on December 15, 1997.

These permits and the authorization to discharge shall expire at midnight, Central Standard Time on December 16, 2002.

Signed this 28th day of October, 1997.

Oscar Ramirez, Jr.,

Deputy Director, Water Quality Protection Division, EPA Region 6.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Discharges Covered

Discharges covered by these permits are discharges to Waters of the United States resulting from implementing corrective action plans, as required by 40 CFR Part 280, for cleanup of ground water contaminated by releases from Petroleum UST Systems. A Petroleum UST System is defined in 40 CFR Part 280 as an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

2. Notification Requirements

Dischargers desiring coverage under these general permits must submit a Notice of Intent (NOI) which shall include the legal name and address of the operator, the location of the discharge (including the street address, if applicable, and county of the facility for which the notification is submitted), the name of the receiving water, and a description of the activity and the pollutant source (for example, gasoline, diesel, etc.). The NOI shall also include the application/permit number if an application for an individual NPDES permit has previously been submitted for the facility of if an individual NPDES permit has been previously been issued to the facility. The NOI shall be submitted (1) for existing discharges, within 30 days of the effective date of these permits, (2) for new discharges, at least fourteen (14) days prior to commencement of discharge.

All notifications of intent to be covered and any subsequent reports shall be sent to the following address: Customer Service Branch (6WQ–C), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250.

Upon receipt of the NOI, the facility will be notified of its specific facility identification number that must be used on all correspondence with the Agency.

3. Termination of Operations

Where all discharges associated with activities authorized by this permit are eliminated, or where the operator of the discharge associated with activity at a facility changes, the operator of the facility must submit a Notice of Termination that is signed in accordance with Part II.D.11 of this permit. The Notice of Termination shall include the following information: legal name, mailing address and telephone number of the operator; the facility identification number assigned by the Agency; and the location of the discharge.

Section B

1. Any operator authorized by these permits may request to be excluded from the coverage under these general permits by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

2. When an individual NPDES permit is issued to an operator otherwise subject to these general permits, the applicability of the general permit to the permittee is automatically terminated on the effective date of the individual permit.

Section C. General Permit Limits

1. Permit Conditions Applicable to TXG830000

Flow	Daily avg	Daily max estimate
Benzene	5 ug/l (1)	5 ug/l (1)
Total BTEX	100 ug/l (2)	100 ug/l (2)
Total Petroleum Hydrocarbons	15 mg/l (3)	15 mg/l (3)
Total Lead	250 ug/l	250 ug/l
Polynuclear Aromatic Hydrocarbons	10 ug/l (4)	10 ug/l (4)
pH 6.0–9.0 Std. Units		

Monitoring shall be 1/week using grab samples, except for Polynuclear Aromatic Hydrocarbons (PAH's). If compliance with the limit is demonstrated for at least 6 months, the minimum frequency shall be reduced to 2/month upon the permittee's submission of a certification of such compliance. If a subsequent non compliance occurs, the frequency shall revert to 1/week until another 6 month period of compliance occurs.

PAH monitoring shall be 1/month using grab samples. If compliance with the limits is demonstrated for at least 6 months, the minimum frequency shall be reduced to once per 3 months upon the permittee's submission of a certification of such compliance. If a subsequent non compliance occurs, the frequency shall revert to 1/month.

Flow shall be monitored 1/week.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 ug/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) Shall be measured using EPA Method 418.1.

(4) The Daily Max limit and monitoring requirement for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Max value of any of the following PAH's shall not exceed 10 ug/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

2. Permit Conditions Applicable to LAG830000

Flow	Monthly avg	Daily max estimate
Benzene	5 ug/l (1)	5 ug/l (1)
Total BTEX	100 ug/l (2)	100 ug/l (2)
Total Lead	50 ug/l	50 ug/l
TOC	50 mg/l	50 mg/l
Polynuclear Aromatic Hydrocarbons	10 ug/l (3)	10 ug/l (3)
pH 6.0—9.0 Std. Units		

Monitoring shall be 1/week using grab samples, except for PAH's. After demonstrating permit limit compliance for 4 consecutive weeks, the frequency shall be reduced to 1/month upon the permittee's submission of a certification of such compliance. After a subsequent limit violation, the frequency reverts week until another 4 week compliance period is demonstrated. During the first 4 weeks of discharge, however, a limit violation increases frequency to daily until a sample demonstrates compliance, after which it will revert to 1/week for the remainder of the initial 4 week discharge period.

PAH monitoring shall be 1/month using grab samples with the requirements corresponding to those listed above applying except the frequency after 4 consecutive months of compliance is 1/quarter and a violation reverting the frequency to 1/month until 4 consecutive months of compliance are achieved.

Flow shall be monitored 1/week.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 µg/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) The limits and monitoring requirements for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Avg and Daily Max value of any of the following PAH's shall not exceed 10 µg/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

3. Permit Conditions Applicable to OKG830000

Flow	Daily avg	Daily max estimate
Benzene	5 µg/l (1)	5 µg/l (1)
Total BTEX	100 µg/l (2)	100 µg/l (2)
Polynuclear Aromatic Hydrocarbons	10 µg/l (3)	10 µg/l (3)
Total Phenols	0.15 mg/l	0.25 mg/l
Total Organic Carbon	75 mg/l	95 mg/l

pH 6.5—9.0 Std. Units

Monitoring shall be once per week using grab samples, except for PAH's. After demonstrating permit limit compliance for six consecutive months, the minimum frequency will be reduced to two per month upon the permittees submission of a certification of such compliance. If a subsequent violation occurs, the frequency shall revert to once per week.

PAH's shall be monitored 1/month. Flow shall be monitored daily.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 ug/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) The limits and monitoring requirements for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Avg and Daily Max value of any of the following PAH's shall not exceed 10 ug/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

4. Permit Conditions Applicable to NMG830000 for the State of New Mexico and the Pueblos of Santa Clara, San Juan, Pojoaque, Nambe and Picuris

a. Permit Limits

Flow	Daily avg	Daily max estimate
Benzene	5 ug/l (1)	5 ug/l (1)
Total BTEX	100 ug/l (2)	100 ug/l (2)
Polynuclear Aromatic Hydrocarbons	10 ug/l (3)	10 ug/l (3)
pH 6.0— 9.0 Std. Units		
Chemical Oxygen Demand (COD)(4)	125 mg/l	125 mg/l
Total Lead	50 ug/l	50 ug/l
Total Phenols (5)	4.6 ug/l	4.6 ug/l
No Visible Oil Sheen		

There shall be no discharge of floating solids or visible foam in other than trace amounts.

All facilities located within the Colorado River System shall comply with the Colorado River Salinity Control Forum's policies for implementation of Colorado River Salinity Standards. Note: this requirement does not apply to discharges at the Pueblos of Santa Clara and San Juan.

Monitoring shall be 1/week for Flow, Benzene, BTEX, pH, COD and Lead using grab samples. PAH's shall be monitored 1/month using grab samples. No Visible Oil Sheen shall be monitored 2/week using grab samples of the effluent collected in a wide mouth glass container of at least 500 ml capacity. The Oil Sheen observations must be reported and recorded.

(1) For Discharge Monitoring Report calculations and reporting requirements for benzene, analytical test results less than 10 ug/l may be reported as zero.

(2) BTEX shall be measured as the sum of benzene, toluene, ethylbenzene, and xylenes. EPA Method 8020 shall be used for the measurement of xylenes including ortho-, meta-, and para-xylenes.

(3) The Daily Max limit and monitoring requirement for PAH's do not apply to discharges from the cleanup of Petroleum UST Systems containing only gasoline, jet fuel and/or kerosene. The Daily Max value of any of the following PAH's shall not exceed 10 ug/l: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3,cd)pyrene, naphthalene, phenanthrene, pyrene.

(4) The COD limit and monitoring requirement does not apply to Santa Clara Pueblo discharges.

(5) The Total Phenols limits and monitoring requirements apply only to Santa Clara Pueblo discharges.

b. Whole Effluent Toxicity Testing (48-Hour Acute NOEC Freshwater)

Whole effluent toxicity testing (48 hr. static renewal [1]	Frequency	Type
Pimephales promelas (Fathead minnow)	1/Quarter	24-Hr. Composite.

[1] The first biomonitoring test shall be conducted on the effluent prior to the initial discharge. If no significant lethal effects are experienced in the first year of testing, the testing frequency will be reduced to once/year.

(1) Scope and Methodology

(a) The permittee shall test the effluent for toxicity in accordance with the provisions in this section.
Critical Dilution: 100% effluent.
Composite Sample Type: 24-hour composite.
Test Species/Methods: 40 CFR Part 136.

Pimephales promelas (Fathead minnow) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F, or the latest update thereof. A minimum of five (5) replicates with eight (8) organisms per replicate must be used in the control and in each effluent dilution of this test.

(b) The NOEC (No Observed Effect Concentration) is defined as the greatest effluent dilution which does not result in lethality that is statistically different from the control (0% effluent) at the 95% confidence level.

(2) Persistent Lethality

The requirements of this subsection apply only when a toxicity test demonstrates significant lethal effects at the critical dilution. Significant lethal effects are herein defined as a statistically significant difference at the 95% confidence level between the survival of the appropriate test organism in a specified effluent dilution and the control (0% effluent).

(a) The permittee shall conduct a total of two (2) additional tests for any species that demonstrates significant lethal effects at the critical dilution. The two additional tests shall be conducted monthly during the next two consecutive months. The permittee shall not substitute either of the two additional tests in lieu of routine toxicity testing. The full report shall be prepared for each test required by this section in accordance with procedures outlined in Item 4 of this section.

(b) If one or both of the two additional tests demonstrates significant lethal effects at the critical dilution, the permittee shall submit an application for an individual NPDES permit.

(3) Required Toxicity Testing Conditions

(a) Test Acceptance

The permittee shall repeat a test, including the control and the critical dilution, if the procedures and quality assurance requirements defined in the test methods or in this permit are not satisfied, including the following additional criteria:

i. Each toxicity test control (0% effluent) must have a survival equal to or greater than 90%.

ii. The percent coefficient of variation between replicates shall be 40% or less in the control (0% effluent) for the Fathead minnow survival test.

iii. The percent coefficient of variation between replicates shall be 40% or less in the critical dilution, *unless* significant lethal effects are exhibited for the Fathead minnow survival test.

Test failure may not be construed or reported as invalid due to a coefficient of variation value of greater than 40%. A repeat test shall be conducted within the required reporting period of any test determined to be invalid.

(b) Statistical Interpretation

For the Fathead minnow survival test, the statistical analyses used to determine if there is a statistically significant difference between the control and the critical dilution shall be in accordance with the methods for determining the No Observed Effect Concentration (NOEC) as described in EPA/600/4–90/027F or the most recent update thereof.

If the conditions of Test Acceptability are met in Item 3.a above and the percent survival of the test organism is equal to or greater than 80% in the critical dilution concentration, the test shall be considered to be a passing test, and the permittee shall report an NOEC of not less than the critical dilution for the DMR reporting requirements found in Item 4 below.

(c) Dilution Water

i. Dilution water used in the toxicity tests will be receiving water collected as close to the point of discharge as possible but unaffected by the discharge. The permittee shall substitute synthetic dilution water of similar pH, hardness, and alkalinity to the closest downstream perennial water for;

(A) toxicity tests conducted on effluent discharges to receiving water classified as intermittent streams; and

(B) toxicity tests conducted on effluent discharges where no receiving water is available due to zero flow conditions.

ii. If the receiving water is unsatisfactory as a result of instream toxicity (fails to fulfill the test acceptance criteria of Item 3.a), the permittee may substitute synthetic dilution water for the receiving water in all subsequent tests provided the unacceptable receiving water test met the following stipulations:

(A) a synthetic dilution water control which fulfills the test acceptance requirements of Item 3.a was run concurrently with the receiving water control;

(B) the test indicating receiving water toxicity has been carried out to completion (i.e., 48 hours);

(C) the permittee includes all test results indicating receiving water toxicity with the full report and information required by Item 4 below; and

(D) the synthetic dilution water shall have a pH, hardness, and alkalinity similar to that of the receiving water or closest downstream perennial water not adversely affected by the discharge, provided the magnitude of these parameters will not cause toxicity in the synthetic dilution water.

(d) Samples and Composites

i. The permittee shall collect two flow-weighted composite samples from the outfall(s) listed at Item 1.a above.

ii. The permittee shall collect a second composite sample for use during the 24-hour renewal of each dilution concentration the for both tests. The permittee must collect the composite samples so that the maximum holding time for any effluent sample shall not exceed 36 hours. The permittee must have initiated the toxicity test within 36 hours after the collection of the last portion of the first composite sample. Samples shall be chilled to 4 degrees Centigrade during collection, shipping, and/or storage.

iii. The permittee must collect the composite samples such that the effluent samples are representative of any periodic episode of chlorination, biocide usage or other potentially toxic substance discharged on an intermittent basis.

iv. If the flow from the outfall(s) being tested ceases during the collection of effluent samples, the requirements for the minimum number of effluent samples, the minimum number of effluent portions and the sample holding time are waived during that sampling period. However, the permittee must collect an effluent composite sample volume during the period of discharge that is sufficient to complete the required toxicity tests with daily renewal of effluent. When possible, the effluent samples used for the toxicity tests shall be collected on separate days. The effluent composite sample collection duration and the static renewal protocol associated with the abbreviated sample collection must be documented in the full report required in Item 4 of this section.

v. Multiple Outfalls: If the provisions of this section are applicable to multiple outfalls, the permittee shall combine the composite effluent samples in proportion to the average flow from the outfalls listed in Item 1.a above for the day the sample was collected. The permittee shall perform the toxicity test on the flow-weighted composite of the outfall samples.

(4) Reporting

(a) The permittee shall prepare a full report of the results of all tests conducted pursuant to this Part in accordance with the Report Preparation Section of EPA/600/4–90/027F, for every valid or invalid toxicity test initiated, whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of PART II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(b) A valid test for each species must be reported on the DMR during each reporting period specified in PART II.D.4 of this permit. Only ONE set of biomonitoring data is to be recorded on the DMR for each reporting period. The data submitted should reflect the LOWEST Survival results during the reporting period. All invalid tests, repeat tests (for invalid tests), and retests (for tests previously failed) performed during the reporting period must be attached to the DMR for EPA review.

(c) The permittee shall report the following results of each valid toxicity test on the subsequent monthly DMR for that reporting period in accordance with PART II.D.4 of this permit. Submit retest information clearly marked as such with the following month's DMR. Only results of valid tests are to be reported on the DMR.

Pimephales promelas (Fathead minnow)

i. If the No Observed Effect Concentration (NOEC) for survival is less than the critical dilution, enter a "1"; otherwise, enter a "0" for Parameter No. TEM6C.

ii. Report the NOEC value for survival, Parameter No. TOM6C.

Part II. (Applicable to TXG830000, LAG830000, OKG830000 and NMG830000)

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for terminating coverage under this permit, or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.4, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law, tribal law or regulation under authority preserved by Section 510 of the Act.

10. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. *Bypass not Exceeding Limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b. and 4.c.

b. *Notice.* (1) Anticipated Bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated Bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. *Prohibition of Bypass.* (1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. *Effect of an Upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. *Conditions Necessary for a Demonstration of Upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. *Burden of Proof.* In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Unless otherwise authorized, solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or waste water control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

Coverage under these permits is not transferable to any person except after notice to the Director.

4. Discharge Monitoring Reports and Other Reports

Monitoring results obtained during the previous 12 months shall be summarized and reported to EPA and the appropriate State agency on the 28th day of the month following the end of the twelve month period on Discharge Monitoring Report (DMR) Form EPA No. 3320–1 in accordance with the "General Instructions" provided on the form. The permittee shall submit the original DMR signed and certified as required by Part II.D.11 and all other reports required by Part II.D. to the EPA at the address below. Duplicate copies of DMR's and all other reports shall be submitted to the appropriate State agency(ies) at the following address(es):

EPA

Compliance Assurance and Enforcement Division, Water Enforcement Branch (6EN–W), U.S. Environmental Protection Agency, Region 6, P.O. Box 50625, Dallas, TX 75250

New Mexico

Program Manager, Surface Water Quality Bureau, New Mexico Environment Department, 1190 Saint Francis Drive, Santa Fe, NM 87502

Oklahoma

Director, Oklahoma Department of Environmental Quality, 1000 NE 10th Street, Oklahoma City, OK 73117–1212

Louisiana

Assistant Secretary for Water, Water Pollution Control Division, Louisiana Department of Environmental Quality, P.O. Box 82215, Baton Rouge, LA 70884–2215

Pueblo of Santa Clara

Governor, Santa Clara Pueblo, P.O. Box 580, Espanola, NM 87532

Pueblo of Pojoaque

Manager, Environmental Department, Pueblo of Pojoaque, Route 11, Box 208, Santa Fe, MN 87501

Pueblo of San Juan

Governor, San Juan Pueblo, P.O. Box 1099, San Juan Pueblo, MN 87566

Pueblo of Nambe

Governor, Pueblo of Nambe, Route 1, Box 117BB, Santa Fe, NM 87501

Pueblo of Picuris

Governor, Pueblo of Picuris, P.O. Box 127, Penasco, NM 87553

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the EPA Region 6 24-hour voice mail box telephone number 214–665–6593 within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any pollutants listed by the Director in Part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

d. For discharges covered by LAG630000: Louisiana State regulations require notification of noncompliances which may endanger health or the environment to Louisiana Department of Environmental Quality within one hour of becoming aware of the circumstances of the violation.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 and Part I.C at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/L);

(2) Two hundred micrograms per liter (200 ug/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/L) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;

(3) Five (5) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a non routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/L);

(2) One milligram per liter (1 mg/L) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. ALL PERMIT APPLICATIONS shall be signed as follows:

(1) by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) FOR A CORPORATION—The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) FOR A PARTNERSHIP OR SOLE PROPRIETORSHIP—by a general partner or the proprietor, respectively.

b. ALL REPORTS required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

E. Penalties for Violations of Permit Conditions

1. Criminal

a. *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing Section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. *Class I Penalty.* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. *Class II Penalty.* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

F. Definitions

All definitions contained in Section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. *Administrator* means the Administrator of the U.S. Environmental Protection Agency.

3. *Applicable Effluent Standards and Limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

4. *Applicable Water Quality Standards* means all water quality standards to which a discharge is subject under the Act.

5. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

6. *Daily Discharge* means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day. "Daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

7. *Daily Average* (also known as MONTHLY AVERAGE) discharge limitations means the highest allowable average of "daily discharge(s)" over a calendar month, calculated as the sum of all "daily discharge(s)" measured during a calendar month divided by the number of "daily discharge(s)" measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all "daily discharge(s)" of concentration determined during the calendar month where C = daily concentration, F = daily flow and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}$$

8. *Daily Maximum* discharge limitation means the highest allowable "daily discharge" during the calendar month.

9. *Director* means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

10. *Environmental Protection Agency* means the U.S. Environmental Protection Agency.

11. *Grab Sample* means an individual sample collected in less than 15 minutes.

12. *National Pollutant Discharge Elimination System* means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Act.

13. *Severe Property Damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

14. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

15. The term *"MGD"* shall mean million gallons per day.

16. The term *"mg/L"* shall mean milligrams per liter or parts per million (ppm).

17. The term *"μg/L"* shall mean micrograms per liter or parts per billion (ppb).

[FR Doc. 97–29864 Filed 11–13–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC office of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010776–105.

Title: Asia North America Rate Agreement ("ANERA")

Parties:

American President Lines, Ltd.

Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd
Neptune Orient Lines, Ltd
Nippon Yusen Kaisha Line
Orient Overseas Container Lines, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification adds a new Article 5.1(q) which authorizes the parties to consider and act upon proposals and recommendations of the Equipment Interchange Discussion Agreement with respect to activities within the scope of the ANERA agreement.

Agreement No.: 224–201040.
Title: Jaxport/Trailer Bridge Lease Agreement.
Parties: Jacksonville Port Authority ("Port") Trailer Bridge, Inc. ("Trailer Bridge").
Synopsis: The Agreement provides for the rental by Trailer Bridge of 17 acres at the Port's Blount Island Terminal and for Trailer Bridge's preferential, but non-exclusive use of to be constructed triple deck loading facility.

By Order of the Federal Maritime Commission.

Dated: November 7, 1997.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 97–29916 Filed 11–13–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Michael Frank Maluccio*, La Crescenta, California; Maluccio Company, Glendale, California; Nicholas J. Maluccio Trust, Glendale, California; and Malcor, Lancaster, California, parties acting in concert; to acquire voting shares of Verdugo Banking Company, Glendale, California.

Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 97–29906 Filed 11–13–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Mystic Financial, Inc.*, Medford, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Medford Co-operative Bank, Medford, Massachusetts.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. *Hometown Bancorp, Ltd.*, Fond du Lac, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of St. Cloud Bancshares, Inc., St. Cloud, Wisconsin, and thereby indirectly acquire State Bank of St. Cloud, St. Cloud, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *First Western Bancshares Employee Stock Ownership Trust*, Booneville, Arkansas; to become a bank holding company by acquiring at least 30.4 percent of the voting shares of First Western Bancshares, Inc., Booneville, Arkansas, and thereby indirectly acquire Citizens Bank, Booneville, Arkansas.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. *GEBSCO, Inc.*, Cochrane, Wisconsin; to merge with Firstmondovi, Inc., Mondovi, Wisconsin, and thereby indirectly acquire Bank of Mondovi, Mondovi, Wisconsin.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *State National Bancshares, Inc.*, Lubbock, Texas; to acquire 100 percent of the voting shares of First Sierra, Bancshares, Inc., Truth or Consequences, New Mexico, and thereby indirectly acquire Sierra Bank, Las Cruces, New Mexico.

2. *State National Bancshares, Inc.*, Lubbock, Texas, and State National Bancshares of Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First National Bank of Denver City, Denver City, Texas.

F. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *VIB Corp.*, El Centro, California; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Independent Bank, El Centro, California.

Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 97–29909 Filed 11–13–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Nonbanking Activities or to Acquire Companies That are Engaged in Nonbanking Activities

Popular, Inc., Hato Rey, Puerto Rico (Notificant), has provided notice pursuant to section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8)) (BHC Act), and section 225.24 of the Board's Regulation Y (12 CFR 225.24), to acquire through its wholly owned subsidiary, Popular Cash Express, Inc., Orlando, Florida, certain assets of Florida Exchange, Ltd., Oak Park, Illinois, and Mirando-J., Inc., Oak Park, Illinois, and thereby engage in the approved and new nonbanking activities. The approved activities are: (1) extending credit, servicing loans, and related activities, pursuant to § 12 C.F.R. 225.28(b)(1) of the Board's Regulation Y; (2) leasing personal and real property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; (3) providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; (4) providing transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; (5) providing investing and trading services, pursuant to § 12 C.F.R. 225.28(b)(8)(ii) of the Board's Regulation Y; (6) acting as principal, agent or broker for insurance related to extensions of credit, pursuant to § 225.28(b)(11)(i) of the Board's Regulation Y; (7) acting as agent or broker for insurance directly related to an extension of credit as would be sold by a finance company, pursuant to § 225.28(b)(ii) of the Board's Regulation Y; (8) issuing and selling money orders, savings bonds, and traveler's checks, pursuant to § 225.28(b)(13) of the Board's Regulation Y. Notificant also proposes to engage in (1) check cashing services; (2) accepting bill payments; (3) accepting or disbursing change in exchange for currency in a different denomination; and (4) transmitting or wiring money on a worldwide basis. *See Midland Bank, PLC*, 76 Fed. Res. Bull. 860 (1990); and *Norwest Corporation*, 81 Fed. Res. Bull. 974 (1995) and 81 Fed. Res. Bull. 1130 (1995).

In addition, the Notificant proposes to engage, either alone or as an incident to other activities, in the following new nonbanking activities that the Board previously has not determined are closely related to banking under section 4(c)(8) of the BHC Act: (1) selling bus passes, transit tokens, prepaid phone cards, event and attraction tickets, prepaid cellular phone time and other similar forms of alternate media of value; (2) selling postage stamps and postage-paid envelopes; (3) providing mailboxes and related services; (4) providing notary public services; (5) providing vehicle registration services and selling, distributing and renewing license plates and license tags for motor vehicles; (6) providing photocopying and facsimile transmission services; and (7) entering into arrangements with automobile clubs to promote membership in and services of such clubs. These activities will be conducted worldwide.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 794, 806 (1984).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on this issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1997. Any request for a hearing on this notice must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This notice may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 97–29910 Filed 11–13–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Docket No. R–0999

Policy Statement on Payments System Risk; Modification to the Time Credits are Posted to Federal Reserve Accounts for Checks Drawn on Local Federal Reserve Banks for Purposes of Measuring Daylight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy Statement.

SUMMARY: The Board has modified the daylight overdraft measurement rules to accommodate an earlier afternoon presentment deadline for checks drawn on local Federal Reserve Banks.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Myriam Payne, Senior Financial Services Analyst (202/452–3219), or Stacy Panigay, Financial Services Analyst (202/452–2934), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired *only*: Telecommunications Device for the Deaf, Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

When the Board modified the Payments System Risk Reduction policies in 1992 (57 FR 47093, October 14, 1992), it adopted a set of "posting rules" which comprise a schedule for the intraday timing of debits and credits to institutions' Federal Reserve accounts for different types of payments. With the implementation of these rules along with the imposition of fees for daylight overdrafts, the Board was interested in inducing behavioral changes to control risk and increase efficiency in the payments system. Under the daylight overdraft measurement rules that became effective on October 14, 1993, depository institutions that deposit in separately sorted cash letters Checks Drawn on Local Federal Reserve Banks

(i.e., Federal Funds checks), U.S. Treasury Checks, Postal Money Orders, and U.S. Savings Bonds Deposited under the EZ-Clear Program by 4 p.m. ET receive credit for these items at 5 p.m. ET.

Analysis of Federal Funds Checks Presentment Deadline

The Board believes that establishing a consistent presentment deadline for Federal Funds checks in all Federal Reserve districts will help reduce the routine use of Federal Funds checks.[1] Federal Funds checks are an inappropriate means of providing regular access to an institution's Federal Reserve account and their routine use is contrary to the Federal Reserve's strategy of promoting efficient and effective methods of payment. In almost all cases where Federal Funds checks are used as the payment instrument, the transaction could have been made through a more secure and efficient method, such as a funds transfer network. To discourage the use of Federal Funds checks and encourage depository institutions' use of more efficient means of payment, a 3 p.m. local time presentment deadline for Federal Funds checks will be implemented.

Policy Statement on Payments System Risk

The Federal Reserve Board has adopted the following changes to the "Federal Reserve System Policy Statement on Payments System Risk," under the heading "I. Federal Reserve Policy":

Modified Procedures for Measuring Daylight Overdrafts

Post at 5:00 p.m. Eastern Time:

- Treasury checks, postal money orders, and EZ-Clear Savings Bond redemptions in separately sorted deposits. These items must be deposited by 4:00 p.m. Eastern Time.
- Local Federal Reserve Bank checks. These items must be presented before 3:00 p.m. Eastern Time.
- Processed manual letters of credit.

+/- Same-day ACH transactions. These transactions include ACH return items, check truncation items, and flexible settlement items.

Post after the close of Fedwire funds transfer system:

+/- All other non-Fedwire transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3:00 p.m. Eastern Time but before 3:00 p.m. local time; noncash collection; credits for U.S. Treasury and government agency definitive security interest and redemption payments if the coupons or securities are received on or after the maturity date; Treasury Tax and Loan (TT&L) calls; subscriptions for SLGS; currency and coin shipments; small-dollar credit adjustments; all debit adjustments; and small-dollar check collections. Discount window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

By order of the Board of Governors of the Federal Reserve System, November 7, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29082 Filed 11–13–97; 8:45 am]

BILLING CODE 6210–01–P

[1] Federal Funds checks are drafts drawn by a depository institution against its account at a Federal Reserve Bank. These funds represent immediately available funds when presented for payment, and thus, when used, the checks are most often used to settle same-day securities transactions, interbank transfers, international transactions, real estate transactions, payments to state and local governments, Federal Reserve Bank transactions and for other situations where a bank check is required for legal reasons.

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:45 a.m., Wednesday, November 19, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30108 Filed 11–12–97; 10:40 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 19, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Proposed 1998–1999 Federal Reserve Board budget.

2. Proposed 1998–1999 budget for the Office of Inspector General.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30109 Filed 11–12–97; 10:40 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet on Monday, November 24, 1997, from 9:00 a.m. to 5:00 p.m., and Tuesday, November 25, 1997, from 8:30 a.m. to 3:00 p.m., in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, D.C.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact Government Auditing Standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, (202) 512–9321.

Dated: November 7, 1997.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 97–29011 Filed 11–13–97; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Data Policy and Standards Staff; Meeting

Name: ICD–9–CM Coordination and Maintenance (C&M) Committee meeting.

Times and Dates: 9 a.m.–5 p.m. December 4, 1997; 9 a.m.–5 p.m. December 5, 1997.

Place: The Health Care Financing Administration, Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public. In the interest of security, non-government employees must show a photo I.D., and sign-in to gain entrance to the building.

Purpose: The ICD–9–CM Coordination and Maintenance Committee will hold its final meeting of the 1997 cycle on Thursday, December 4 (Vol. 3 (Procedures)), and Friday, December 5 (Volumes 1 and 2 (Diagnosis)). The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed: Agenda items will include:

Injury aftercare status
Palliative care
Ostomy complications
Late effects of CVA
Diabetes
Group B strep carrier status
Complications of artificial skin replacement
Update on ICD–10 Procedure Coding System
Platelet inhibitors
Artificial skin grafts
Stereotactic radiosurgery
Cardiomyostimulator
Percutaneous vascular puncture closure
Amniofusion
Injection or infusion of thrombolytic agent
Addenda

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Amy L. Blum, 301/436–7050 ext. 164 (diagnosis), or Amy Gruber 410/786–1542 (procedures), NCHS, CDC, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Dated: November 7, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–29069 Filed 11–13–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Immunization Program (NIP) of the Centers for Disease Control and Prevention (CDC); Meeting

Name: Adolescent Immunization Meeting.

Time and Date: 7:30 a.m.–4 p.m. December 4, 1997.

Place: J.W. Marriott Hotel, Lenox, 3300 Lenox Road, NE Atlanta, Georgia 30326. Telephone 404/262–3344, fax 404/262–8803.

Status: The meeting is open to the public subject to the availability of conference room space. The meeting will be a round table discussion with public and private medical providers and experts who deal with adolescent health and immunization issues. Written comments will be accepted during the meeting or at the address below. Attendees must provide and pay for their own travel expenses.

Purpose: The meeting will bring together a small group of public and private medical experts, in adolescent health and immunization, to collaborate with the CDC in developing adolescent immunization disease reduction and coverage goals/objectives.

Matters To Be Discussed: CDC speakers will present background information; sample goals/objectives; year 2000 and possible 2010 Healthy People objectives; and other adolescent immunization health information. In addition, CDC speakers will describe vaccine-preventable diseases associated with adolescents and estimated immunization coverage levels.

Specific agenda items include adolescent immunization coverage goals; coverage estimates for childhood and adolescent immunization; adolescent disease reduction goals; epidemiology of vaccine preventable diseases in adolescents; implementation perspectives; HEDIS 3.0 adolescent immunization measures; and managed care organization adolescent immunization policies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Edith Gary, Health Services Research and Evaluation Branch, Immunization Services Division, CDC, NIP, 1600 Clifton Road, NE, M/S E–52, Atlanta, Georgia 30333. Telephone 404/639–8209, fax 404/639–8615, e-mail exg1@cdc.gov.

Dated: November 7, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–29070 Filed 11–13–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0431]

Iatric Corp.; Revocation of Product License for Coccidioidin, USP (BioCox)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biological product license issued to Iatric Corp., Tempe, AZ, for the manufacture of Coccidioidin, USP (BioCox). In a letter to FDA dated May 13, 1997, Iatric Corp. voluntarily requested revocation of its product license for Coccidioidin, USP (BioCox). In a letter dated June 25, 1997, FDA informed the firm that its product license for Coccidioidin, USP (BioCox) was revoked.

DATES: The revocation of the product license became effective June 25, 1997.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has revoked the product license issued to Iatric Corp., 2330 South Industry Park Ave., Tempe, AZ 85282, for the manufacture of Coccidioidin, USP (BioCox).

FDA inspected Iatric Corp. on April 7 through 11, 1997. The inspection of the facility revealed serious deviations from applicable Federal regulations. The inspection also included a concurrent investigation concerning the interstate distribution of the product. The deficiencies noted included, but were not limited to, the following: (1) Failure

of each person engaged in the manufacturing, processing, packing, or holding of a drug product to have the necessary education, training, and experience to perform their assigned functions § 211.25(a) (21 CFR 211.25(a)); (2) failure to thoroughly investigate any unexplained discrepancy in drug product production and control records or the failure of a batch to meet any of its specifications (21 CFR 211.192); (3) failure to establish separate or defined areas or other control systems for manufacturing and processing operations to prevent contamination or mixups (§ 211.42(c) (21 CFR 211.42(c)) and 21 CFR 600.11(a)); (4) failure to establish and follow appropriate written procedures designed to prevent microbiological contamination of drug products purporting to be sterile and to assure that such procedures include validation of any sterilization processes (21 CFR 211.113(b)); (5) failure to report adverse experience information (21 CFR 600.80(c)); (6) failure to establish laboratory controls that include scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to assure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity (21 CFR 211.160(b)); (7) failure to provide adequate space for the orderly placement of equipment and materials to prevent mixups between different components, drug product containers, closures, labeling, in-process materials, or drug products, and to prevent contamination (§ 211.42(b)); (8) failures to establish and/or follow written procedures for production and process controls designed to assure that the drug products have the identity, strength, quality, and purity they purport or are represented to possess and to assure that such procedures, including any changes, are drafted, reviewed, and approved by the appropriate organizational units and reviewed and approved by quality control (21 CFR 211.100); (9) failure to maintain buildings used in the manufacture, processing, packing, or holding of a drug product in a good state of repair (21 CFR 211.58); and (10) failure to demonstrate that adequate ventilation is provided (21 CFR 211.46(a)).

Based on the results of FDA's inspection and investigation, FDA determined that the firm's Coccidioidin, USP (BioCox) was adulterated within the meaning of section 501(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(b)) and in violation of section 351(a) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(a)). These products were also misbranded within the meaning of section 502(a) of the act (21 U.S.C. 352(a)).

FDA concluded that the nature of the deficiencies noted at Iatric Corp. were the direct consequence of a disregard for the applicable regulations and standards in the license application. These deficiencies also demonstrated management's failure to exercise control over the establishment in all matters relating to compliance and to ensure that personnel are adequately trained and supervised and have a thorough understanding of the procedures that they perform, as required by § 211.25. FDA determined that these deficiencies constitute a danger to the public health that warranted suspension under § 601.5(b) (21 CFR 601.5(b)) and 21 CFR 601.6(a).

In a letter to the firm dated April 25, 1997, FDA suspended the establishment license (U.S. License No. 0416) and product license for Coccidioidin, USP (BioCox). In a letter dated May 13, 1997, Iatric Corp. requested voluntary revocation of its product license for the manufacture of Coccidioidin, USP (BioCox).

FDA has placed copies of the letters relevant to the license revocation on file under the docket number found in brackets in the heading of this document with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under § 601.5(a), section 351 of the PHS Act, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the product license issued to Iatric Corp. for the manufacture of Coccidioidin, USP (BioCox) was revoked, effective June 25, 1997.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67(c).

Dated: October 31, 1997.

Mark Elengold,

Acting Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–30028 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0463]

HealthTronics, Inc.; Premarket Approval of Lithotron™ Lithotripsy System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by HealthTronics, Inc., Marietta, GA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the LithoTron™ Lithotripsy System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 21, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 15, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Russell P. Pagano, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On May 16, 1997, HealthTronic, Inc., Marietta, GA 30060, submitted to CDRH an application for premarket approval of the LithoTron™ Lithotripsy System. The device is an extracorporeal shockwave lithotripter and is indicated for use in patients with renal and upper ureteral calculi between 4 and 20 millimeters in size.

In accordance with the provisions of section 515(c)(2) of the the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On July 21, 1997, CDRH approved the application by a letter to the applicant from the Deputy Director of Clinical and Review Policy of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 15, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 17, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30029 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0458]

NeuroControl, Corp.; Premarket Approval of Freehand System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by NeuroControl, Corp., Cleveland, OH, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Freehand System . After reviewing the recommendation of the Neurological Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 15, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 15, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lovering G. Keely, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

SUPPLEMENTARY INFORMATION: On June 17, 1996, NeuroControl Corp., Cleveland, OH 44106, submitted to CDRH an application for premarket approval of the Freehand System . The system includes: implantable receiver-stimulator Model 202–1, implantable epimysial electrode set Model 203–1, surgical electrode positioning kit Model 207–1, patient external system Model 204–1, and programming system Model 209–1. The system is an upper extremity neuroprosthesis and is intended to improve a patient's ability to grasp, hold, and release objects. The system is indicated for use in patients who: (1) Are tetraplegic due to C5 or C6 spinal cord injury (ASIA Classification), (2) have adequate functional range of motion of the upper extremity, (3) have intact lower motor neuron innervation of the forearm and hand musculature, and (4) are skeletally mature.

On September 25, 1996, the Neurological Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 15, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 15, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30030 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 4, 1997, 8:30 a.m to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Rhonda W. Stover, or Robinette Taylor, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 4, 1997, the committee will hear presentations from the Institute of Medicine on the marketed product Halcion® (triazolam, Pharmacia and Upjohn Co.).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 1, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30034 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL)

Program: Application Form—0915–0038—Extension, No Change. The Health Education Assistance Loan (HEAL) program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies, make HEAL loans which are insured by the Federal Government against loss due to borrowers' death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational costs.

The HEAL program is being phased out and no new loans will be made after September 30, 1998, unless reauthorization is enacted. We are, however, requesting a 3-year extension of the OMB approval of the HEAL Application Form HRSA–700 because lenders will continue to use this form for consolidation loans through fiscal year (FY) 2000. Students use the application to apply for HEAL loans (through FY 1998) and consolidation of loans, schools use the application to determine a student's eligibility and maximum approval amount of each loan (through FY 1998 only), and lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given to the borrower, and to process consolidation loans.

The estimate of burden for the application form for FY 1998 is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden hours
Applicants	8,230	1	8,230	25	3,429
Schools	190	41	7,730	32	4,123
Lenders	11	748	8,230	35	4,801
Total	8,431		24,190		12,353

The estimate of burden for the application form for FY 1999 and 2000 (for consolidation loans only) is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden hours
Applicants	500	1	500	25	208
Lenders	11	45	500	35	292
Total	511		1,000		500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 7, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–30027 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Health Resources and Services Administration

Notice of a Cooperative Agreement with the American Public Health Association

The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau announces that it will award a sole source cooperative agreement to the American Public Health Association (APHA).

The purpose of this cooperative agreement is to assist, collaboratively with APHA, in the development and dissemination of resource materials relating to the care and treatment of individuals with HIV/AIDS and the prevention of the disease among individuals who are at risk. In addition, this agreement will assist with the training of health professionals in the care, treatment, and prevention of HIV/AIDS. Specifically, these activities will include, but not be limited to, identifying areas where best practice standards need to be investigated and developed; identifying and developing science expertise in areas agreed to by HRSA as critical to the appropriate delivery of HIV/AIDS care; using that expertise to develop best practices; and disseminating to the public health community information on best practices.

HRSA will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. HRSA may also participate and/or collaborate with the APHA in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

The goal of HRSA in entering into this cooperative agreement is to strengthen effective HIV/AIDS treatment programs at all levels throughout the United States and its territories; to prevent HIV transmission and effect, maintain, measure, and evaluate behavioral change among individuals whose behavior places them at risk of HIV infection; to reduce risks of further transmission and to maintain the health of asymptomatic clients; and to increase collaboration, support and technical competence among agencies, organizations, groups, and constituencies.

Authorizing Legislation

This cooperative agreement is authorized under Section 2692 of the Public Health Service Act.

Background

Assistance will be provided to the American Public Health Association. No other applications are solicited. The HIV/AIDS Bureau is committed to providing program expertise throughout the nation to ensure that the providers of HIV/AIDS services to underserved and vulnerable populations deliver appropriate and quality care. The Bureau believes that APHA is uniquely qualified to work with HRSA to meet this goal for the following reasons:

1. APHA has more than 50,000 members and affiliates from 50 occupations of public health, including medicine, social work, nursing, health education, epidemiology, and program evaluation. It represents all disciplines and specialities of public health. It stimulates and coordinates the development of the scientific basis for the Association's professional and public health policy programs. The development of a public health HIV/AIDS science and service delivery assistance program with APHA automatically covers all relevant disciplines and specialities needed for this effort. Because of the rapidly changing field of HIV/AIDS service delivery, it is impossible to predict which expertise will be needed of the 50 public health occupations.

2. The mission of this organization is to "prevent disease and promote health" throughout the United States making APHA a national leader. APHA has a history of providing science expertise to develop best practices for the delivery of public health programs, including HIV/AIDS services. Currently, it provides professional education and services for its members in a variety of areas. The APHA has valuable experience with issues important to the delivery of HIV/AIDS care—health care in jails and prisons, outreach to underserved groups, women's health, and primary health care delivery in community settings. This experience enables the APHA to contribute significantly to this effort. APHA can identify areas needing best practices, identify experts in these areas, and assign individual experts and groups to develop best practices.

3. APHA has established relationships with the major associations that represent single public health disciplines, such as the American Medical Association, and associations that represent health profession schools, such as the Association of Schools of Public Health. It can use these ties to further identify needed experts in the HIV/AIDS service field.

Approximately $100,000 is available in fiscal year 1997 for the first year of a 3-year project period for this cooperative agreement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Mr. William Aspden, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–05, Rockville, Maryland 20857 or telephone (301) 443–1993.

Dated: November 7, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–30026 Filed 11–13–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4263-N-54]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* January 13, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Josie D. Harrison, Reports Liaison Officer, Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, S.W. Room 5124, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, (202) 708–0836, extension 221 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as mended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information is: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology.

This Notice also lists the following information:

Title of Proposal: Housing Discrimination Information Form (Revision of the Housing Discrimination Complaint Form, HUD–903 (English); HUD 903–A, (Spanish).

OMB Control Number: 2529–0011.

Description of the need for the information and proposed use: The Department will use the Housing Discrimination Information Form for the collection of information from person(s) who wish to file a housing discrimination complaint. The form contains information necessary for HUD to make an initial determination regarding HUD's jurisdiction under the Fair Housing Act. Subsequently such data is used for notifying person(s) against whom a complaint is filed as required by Section 810 [42 U.S.C. 3610] of the Fair Housing Act; and Part 103, Subpart B, of the implementing regulations, 24 CFR Part 14 et. al., Implementation of the Fair Housing Amendments Act of 1988; Final Rule. The revised form is user-friendly; enhances the quality and clarity of information collected; reduces the time to complete it—from one hour to 20 minutes—and makes the public aware of their fair housing rights. The form will be distributed nationwide, as a printed, postage-paid flyer in English and Spanish. Further, once the form is approved, it will be downloaded onto the Internet for intrieval by complainants.

Agency form numbers, if applicable: Form HUD–903.1

Members of affected public: Individuals, households, or other entities who wish to file a complaint of housing discrimination under the Fair Housing Act.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis, 10,750 complainants, 1 response per complainant requiring 20 minutes per response = 3583 hours of response.

Status of the proposed information collection: Revision of a currently approved information collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, U.S.C. Chapter 35, as amended.

Dated: November 6, 1997.

Susan M. Forward,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 97–29961 Filed 11–13–97; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4196-N-05]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 15, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 4, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public/Private Partnerships for Mixed-Finance Development for Public Housing Units, (FR–4196).

Office: Public and Indian Housing.

OMB Approval Number: 2577–0033

Description of the Need for the Information and its Proposed use: The forms will provide the Department with sufficient information to determine relative funding priorities for localities, PHA eligibility to participate in the program, and whether project proposals meet the program requirements. PHAs must also provide information that must be met by the partnership before HUD will approve a proposal for mixed-finance development.

Form Number: HUD–52483A, 52851A, 52485, 51971–1, 51971–11, and 52482.

Respondents: State, Local, or Tribal Government and Business or Other For-Profit.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	334		1		13		4,635
Progress reviews	35		1		48		1,680
Recordkeeping	20		1		64		1,280

Total Estimated Burden Hours: 7,595.

Status: Reinstatement, with changes.

Contact: William Flood/David Sowell, HUD (202) 708–0282; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 4, 1997.

[FR Doc. 97–29960 Filed 11–13–97; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4235-N-29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 13, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days form the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (3010) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available for suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this

Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE:* Mr. Robert Swieconek, Army Corps of Engineers, Management & Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749;

Transportation: Mr. Philip Rockmaker, Acting Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–1803; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: November 6, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/14/97

Suitable/Available Properties

Buildings (by State)

California

3 Bldgs. La Mesa Village
Naval Support Activity
#39, 40, 117
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740030
Status: Excess
Comment: 3906 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

9 Bldgs. La Mesa Village
Naval Support Activity
#31, 33, 35, 36, 41, 116, 118, 121, 122
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740031
Status: Excess
Comment: 7109 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

5 Bldgs. La Mesa Village
Naval Support Activity
#32, 38, 42, 119, 123
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740032
Status: Excess
Comment: 4392 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

12 Bldgs. La Mesa Village
Naval Support Activity
#24–25, 45–48, 54–55, 57, 58, 113–114
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740033
Status: Excess
Comment: 4257 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

Bldg. 29 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740034
Status: Excess
Comment: 1276 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

23 Bldgs. La Mesa Village
Naval Support Activity
1–5, 27–30, 50–53, 83–85, 124–125, 129–132, 136
Monterey CA 93943–
Landholding Agency: Navy
Property Navy: 779740035
Status: Excess
Comment: 4482 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

9 Bldgs. La Mesa Village
Naval Support Activity
#137, 142–149
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740036
Status: Excess
Comment: 4482 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing

Bldg. 115 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740037
Status: Excess
Comment: 6000 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 120 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740038
Status: Excess
Comment: 5200 sq. ft., needs rehab, presence of lead paint, most recent use—housing

Bldg. 23 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740039
Status: Excess
Comment: 2800 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 34 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740040
Status: Excess
Comment: 8600 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 37 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740041
Status: Excess
Comment: 5200 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 44 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740042
Status: Excess
Comment: 2400 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Bldg. 49 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740043
Status: Excess
Comment: 7685 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—carport

Bldg. 56 La Mesa Village
Naval Support Activity
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740044
Status: Excess
Comment: 2400 sq. ft., needs rehab, presence of lead paint, most recent use—carport

Missouri

Meteorological Observatory
323 Farm Road
Monett Co: Berry MO 65708–9351
Landholding Agency: GSA
Property Number: 549740006
Status: Surplus
Comment: 2230 sq. ft., most recent use—weather service office, presence of asbestos
GSA Number: 7–C–MO–0639

Nebraska

Forecast Office
11404 N 72nd Street
Omaha Co: Douglas NE 58102–
Landholding Agency: GSA
Property Number: 549740005
Status: Surplus
Comment: 4755 sq. ft., most recent use—weather service office, presence of asbestos
GSA Number: 7–C–NE–0522

Texas

Bldg. 115
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630001
Status: Surplus
Comment: 500 sq. ft., most recent use-garage, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 114
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630002
Status: Surplus
Comment: 3150 sq. ft. per floor, 2-story, most recent use— residence, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 113
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA

Property Number: 879630003
Status: Surplus
Comment: 200 sq. ft., most recent use—garage, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 112
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630004
Status: Surplus
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 111
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630005
Status: Surplus
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 110
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630006
Status: Surplus
Comment: 500 sq. ft., most recent use—garage, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 109
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630007
Status: Surplus
Comment: 2880 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 428
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630009
Status: Surplus
Comment: 2700 sq. ft., most recent use—warehouse/office, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 433
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: GSA
Property Number: 879630010
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 439
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630011
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 440
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630012
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 441
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630013
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 442
Fort Crockett/53rd St. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630014
Status: Surplus
Comment: 1632 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 106
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630015
Status: Surplus
Comment: 2000 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 105
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630016
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 104
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630017
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 103
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630018
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Bldg. 102
Fort Crockett/Seawall Blvd. Housing
Galveston Co: Galveston TX 77553–
Landholing Agency: GSA
Property Number: 879630019
Status: Surplus
Comment: 1634 sq. ft. per floor, 2-story, most recent use—residential, historic properties
GSA Number: 7–U–TX–0549G, H, I

Virginia

Bldg. 2069
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779740084
Status: Excess
Comment: 5000 sq. ft., most recent use—storage, off-site use only

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: GSA
Property Number: 879120082
Status: Excess
Comment: 929 sq. ft., one story residence
GSA Number: 4–U–DE–461

Land (by State)

Colorado

Erie Substation
Hwy 87
Co: Weld CO
Landholding Agency: GSA
Property Number: 549740002
Status: Excess
Comment: 2.75 acres, most recent use—electrical substation, (transmission lines).

Nebraska

Radar Site
Hwy 92
Gandy Co: Logan NE 69163–
Landholding Agency: GSA
Property Number: 549740007
Status: Surplus
Comment: .52 acres
GSA Number: 7–C–NE–0523

South Dakota

Old Oahe Lock & Dam
Lake Oahe Project
Ft. Pierre Co: Stanley SD 57501–
Landholding Agency: GSA
Property Number: 549740004
Status: Excess
Comment: 1.91 acres, most recent use—old railroad grade, subject to existing easements
GSA Number: 7–D–SD–0520

Wyoming

Pavillion Substation
Wind River Meridian
Co: Fremont WY
Landholding Agency: GSA
Property Number: 549740003
Status: Excess
Comment: 0.11 acre tract, most recent use—powerline substation

Unsuitable Properties

Buildings (by State)

California

Bldg. 80
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 95
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740012
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 175
Naval Weapons Station, Concord
Concord CA 94520–5100

Landholding Agency: Navy
Property Number: 779740013
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. 179
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740014
Status: Excess
Reason: Secured Area

Bldg. 180
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740015
Status: Excess
Reason: Secured Area

Bldg. 197
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740016
Status: Excess
Reason: Secured Area

Bldg. A6A
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. A26
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. A30
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Bldg. E102
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. E104
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740021
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. E111
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740022
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A9
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740023
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A29
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740024
Status: Excess
Reason: Within 2000 ft. of flammable or explosive materials Secured Area

Bldg. 1A30
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740025
Status: Excess
Reason: Secured Area

Bldg. 1A35
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740026
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A41
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740027
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A44
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740028
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1A47
Naval Weapons Station, Concord
Concord CA 94520–5100
Landholding Agency: Navy
Property Number: 779740029
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 27, 30, 33, 36
Naval Command, Control & Ocean Surv. Center
San Diego CA
Landholding Agency: Navy
Property Number: 779740045
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 319740001
Status: Unutilized
Reason: Floodway Extensive deterioration

Michigan

Quarters B
U.S. Coast Guard
Marquette MI 49855–
Landholding Agency: DOT
Property Number: 879740001
Status: Unutilized
Reason: Secured Area

Missouri

South Coast Guard Base
Iron Street
St. Louis MO 63111–2536
Landholding Agency: GSA
Property Number: 549740010
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material Floodway Extensive deterioration
GSA Number: 7–U–MO–0576–B

North Carolina

Bldg. TC–614
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740046
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. TT–38
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779740047
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 156
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740048
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 183
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740049
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 925
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740050
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 926
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740051
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 938
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740052
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 954
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740053
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1021
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740054
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1098
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740055
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1655
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740056
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1738
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740057
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 1980
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740058
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 3172
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740059
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 3178
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740060
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 4260
Marine Corps Air Station
Havelock Co: Craven NC 28533
Landholding Agency: Navy
Property Number: 779740061
Status: Excess
Reason: Secured Area Extensive deterioration

Pennsylvania

Bldg. 022
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 779740062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 913
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 779740063
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldg. 2081
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779740065
Status: Excess
Reason: Extensive deterioration

Bldg. 3138
Naval Amphibious Base Little Creek
Norfolk VA 23521–2616
Landholding Agency: Navy
Property Number: 779740066
Status: Excess
Reason: Extensive deterioration

Land (by State)

South Carolina

1156 sq. ft. site
89 & 91 Broad Street
Charleston SC
Landholding Agency: GSA
Property Number: 549740009
Status: Excess
Reason: Other Secured Area
Comment: landlocked
GSA Number: 4–G–SC–592

Wyoming

Cody Industrial Area
Cody Co: Park WY 82414–
Landholding Agency: GSA
Property Number: 549740008
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 7–I–WY–0539

[FR Doc. 97–29856 Filed 11–13–97; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* [16 U.S.C. 1531, *et seq.*]:

PRT–836274

Applicant: Lance K. Parks, Billings, MT.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–833085

Applicant: Wayne Clark, Aurora, CO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–836264

Applicant: Richard N. Biower, St. Clair, MI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT 835829

Applicant: Curtis H. Springer, Urbana, OH.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the South Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–836256

Applicant: Charles Chappell, Gibsonia.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–836255

Applicant: Robert Chappell, Oley, PA.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 7, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–29918 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application From the County of San Diego, California, for an Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The County of San Diego, California (County), has applied to the Fish and Wildlife Service for a 50-year permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) to incidentally take up to 85 species. Take would occur in conjunction with urban growth within the southern coastal portion of the County. The application includes the County of San Diego Subarea Plan (Subarea Plan) and an Implementing Agreement, both of which were prepared in accordance with the regional Multiple Species Conservation Program (MSCP). The Subarea Plan would provide for the incidental take of species listed under the Act and those that may be listed in the future. The County's planning area includes approximately 252,132 acres of unincorporated land. The Subarea Plan addresses 85 sensitive plant and animal species and their habitats, and creates a process for the issuance of permits and other authorizations under the Federal and California Endangered Species Acts, and the California Natural Community Conservation Planning Act. The County's Subarea Plan and Implementing Agreement are available for public review and comment. The Service specifically requests comment on the appropriateness of the "No Surprises" assurances contained in section 9 of the Implementing Agreement.

DATES: Written comments on the permit application should be received on or before December 15, 1997.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments may be sent by facsimile to (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field Supervisor, at the above Carlsbad address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Persons wishing to obtain copies of the documents or additional background material should contact the County of San Diego, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, Mail Station 0650, San Diego, California 92123; telephone (619) 260–8316. Documents will be available for public inspection, by appointment, during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.), Monday through Friday, at the above County office and at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

Under section 9 of the Act and its implementing regulations, the take of wildlife species listed as threatened or endangered is prohibited. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempting to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under limited circumstances, the Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities. The taking prohibitions of the Act do not apply to listed plants on private lands unless such take is in violation of trespass law or would violate State law. Regulations governing permits for endangered and threatened species are in 50 CFR 17.22 and 17.32. Under section 10(a)(1)(B) of the Act, the Service may issue incidental take permits for listed species with an approved conservation plan. Among other criteria, issuance of such permits must not jeopardize the continued existence of listed plant and animal species.

The MSCP Plan is a regional habitat conservation plan that includes 12 local jurisdictions. Each jurisdiction is expected to apply for incidental take permits in conjunction with finalization of a subarea plan that is consistent with the regional MSCP Plan. The cities of San Diego and Poway finalized their subarea plans and received take authorizations under the MSCP on July 16, 1997, and July 19, 1996, respectively. The City of La Mesa has submitted an application, subarea plan, environmental assessment, and implementing agreement for which a 30-day public review period was announced in the **Federal Register** on October 31, 1997 (62 FR 58976). The County of San Diego submitted an application with its Subarea Plan and Implementing Agreement on November 6, 1997.

The regional MSCP Plan covers an approximately 900-square-mile area (580,000 acres) in southwestern San Diego County. Under the MSCP Plan, approximately 171,917 acres of vacant land, including 167,667 acres of wildlife habitat, will be preserved and managed within a designated area referred to as the Multiple Habitat Planning Area.

Nearly half of the MSCP planning area is within the County of San Diego Subarea. Approximately 73 percent (184,248 acres) of the County Subarea provides habitat for native plants and wildlife, whereas the remaining 27 percent is disturbed, developed, or agricultural land. Of the existing habitat in the County Subarea, approximately 55 percent (101,268 acres) is expected to be preserved under the Subarea Plan, in a manner consistent with the regional MSCP Plan.

The Subarea Plan is divided into three segments: the Lake Hodges segment, the Southern segment, and the Metro-Lakeside-Jamul segment. The Lake Hodges and Southern segments include projects where development and preserve boundaries have been determined and delineated in the Subarea Plan. Several major and minor amendment areas have been designated in these segments. Take for species within these amendment areas would only be authorized after they have become part of the Subarea Plan through the appropriate amendment process. The Metro-Lakeside-Jamul segment is composed of lands where preserve boundaries will be determined in the future based upon standards, goals, and criteria described in the Subarea Plan and in the County's Biological Mitigation Ordinance.

Environmental Documentation

To ensure compliance with the National Environmental Policy Act and the California Environmental Policy Act, in January, 1997, the Service (lead Federal Agency) and the City of San Diego (lead local agency) completed a final Environmental Impact Report/Statement on the MSCP Plan and draft subarea plans. This culminated a 2-year period during which the Service complied with scoping and public notice requirements, providing extensive opportunity for public comment on the MSCP Plan, draft subarea plans, template implementing agreements, and the draft Environmental Impact Report/Statement (60 FR 12246, 60 FR 25734, 60 FR 32990, 61 FR 45983, 61 FR 54675, 62 FR 14938). No further environmental documentation is necessary for the County Subarea Plan because it has not changed significantly since finalization of the Environmental Impact Report/Statement.

Five project alternatives were analyzed in the final Environmental Impact Report/Statement: (1) proposed project alternative (approve and implement the MSCP Plan that would establish a preserve within the Multi-Habitat Planning Area; (2) no project/no action alternative; (3) coastal sage scrub alternative; (4) biologically preferred alternative; and (5) public lands alternative. Each alternative was evaluated for its potential to result in significant adverse environmental impacts and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce and mitigate such negative effects.

The preferred alternative analyzed by the Service was approval of the MSCP Plan and issuance of incidental take permits with the mitigating, minimizing, and monitoring measures outlined in the proposed project alternative. The underlying goal of the preferred alternative is to implement ecosystem-based conservation measures aimed at the protection of multiple vegetation types on a regional scale, while accommodating compatible development. The MSCP plan is expected to result in the implementation of a comprehensive preserve strategy for coastal sage scrub and related vegetation types in the planning area, that is expected to provide long-term benefits to the 85 covered species and their habitats.

The Service will evaluate the permit application from the County of San Diego, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the Act. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Authority

This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended, and Service regulations for implementing the National Environmental Policy Act (40 CFR 1506.6). All comments received will become part of the public record and may be released.

Dated: November 6, 1997.

John H. Dodel,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–29967 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953 , 67 Stat. 586, 18 U.S.C. § 1161. I certify that Ordinance No. 15, Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona, was duly adopted and certified by the Kaibab Paiute Tribal Council on October 5, 1996. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Kaibab Indian Reservation, under the jurisdiction of the Kaibab Band of Paiute Indians, and is in conformity with the laws of the State of Arizona.

DATES: This Ordinance is effective November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street NW, MS 4603–MIB, Washington, D.C. 20240–4001; telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians is to read as follows:

Tribal Liquor Ordinance for the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation of Arizona

Section 1–10–010: Legislative Control

Federal law currently prohibits the introduction of liquor into Indian country and expressly delegates to tribes the decision regarding when and to what extent liquor transactions shall be permitted on their reservations. The Kaibab Band of Paiute Indians (herein, the "Tribe") has decided to open certain lands described below within its jurisdiction to the possession, consumption and sale of liquor by enacting this Ordinance, which is adopted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161) and shall serve as the "Liquor Ordinance" referenced herein. The lands which are open to the sale, possession, and consumption of alcoholic beverages shall be only commercial establishments in which the Tribe owns a controlling interest and which are located on the Reservation; provided that any Tribal convenience store shall only be open to sale and possession, but not consumption, of alcoholic beverages.

Section 1–10–020: Control Desired

This Ordinance shall govern all liquor sales and distribution on the reservation, will increase the ability of the Tribe to control reservation liquor distribution and possession, and will provide an additional source of revenue for tribal operations.

Section 1–10–030: Goals of Regulation

Tribal regulation of the sale, possession, and consumption of liquor on the reservation is necessary to protect the health, security, and general welfare of the Tribe, and to address tribal concerns relating to alcohol use on the reservation. In order to further these goals and to provide an additional source of governmental revenue, the Tribe has adopted this Ordinance, which shall be liberally construed to fulfill the purposes for which it has been adopted. This Ordinance is authorized by the Preamble and Article VI, Section I (a), (b), (c), (d), (e), (h), (j), and (k) and Section 2 (e) of the Constitution and By-laws of the Tribe which provide, among other things, that the Tribal Council shall have the power "to promulgate ordinances and resolutions to promote and protect the peace, health, education, safety and welfare of the band, its members and all other persons within its jurisdiction.

Section 1–20–010: Definitions of Words

As used in This Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) "Alcoholic Beverage" is synonymous with the term "liquor" as defined at Section 1–20–010(d) hereof.

(c) "Beer" means any beverage obtained by the fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in

water and which contains not more than four percent of alcohol by volume.

(d) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine, and malt liquor), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating. Every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or malt liquor, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, containing more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(e) "Malt Liquor" means beer, strong beer, ale, stout, and porter.

(f) "Package" means any container or receptacle used for holding liquor.

(g) "Reservation" means all lands of the Tribe described or referenced in the Tribe's Constitution, including, but not limited to, any lands which may in the future come within the jurisdiction of the Tribe by any lawful means.

(h) "Sale" and "Sell" mean exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as "beer" or by any name whatsoever commonly used to describe "malt liquor" or "liquor" or "wine" by any person to any person.

(i) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(j) "Strong Beer" means any beverage obtained by the alcoholic fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water, including ale, stout, and porter, containing more than four percent of alcohol by weight.

(k) "This Ordinance" means this liquor code, which shall serve the Tribe as the liquor ordinance referenced at 18 U.S.C. § 1161.

(l) "Tribe" means, and "Tribal" refers to, the Kaibab Band of Paiute Indians, a federally recognized Tribe of Native American Indians, listed at 53 F.R. 52829–02 as the "Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona."

(m) "Tribal Council" shall mean the duly elected Tribal Council of the Tribe which is the governing body of the Tribe.

(n) "Tribal Court" means the Tribal Courts of the Tribe as established pursuant to the Constitution and ordinances of the Tribe.

(o) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

Section 1–30–010: Authorization

The Tribe, its members and other persons, including, but not limited to, corporations, partnerships, associations and natural persons, are hereby authorized to introduce, sell, purchase, distribute, warehouse, possess and consume alcoholic beverages within certain areas of the Reservation as described in Section 1–10–010, in accordance with the laws of the State of Arizona (including Arizona liquor licensing provisions); provided, however, that any person or entity, other than the Tribe, which sells alcoholic beverages within the reservation must first obtain a tribal liquor license from the Tribal Council and such sales shall be subject to taxes and license fees as may be established by duly enacted resolution of the Tribal Council.

Section 1–30–020: Distribution of Taxes and Fees

All taxes and license fees related to the sale or introduction of alcoholic beverages on the reservation shall be remitted to the Tribal Council through the Tribal Comptroller, who shall keep accurate records of all such receipts, and shall be subject to distribution by the Tribal Council in accordance with its usual appropriation procedures for governmental and social services.

Section 1–30–030: Tribal Liquor License Elements

Tribal liquor licenses shall authorize the holder thereof to sell alcoholic beverages at wholesale or at retail in cans, bottles or any other package within a defined area; provided, however, that a tribal liquor license shall be valid only if the holder thereof is in compliance with the laws of any other jurisdiction which may have any authority with regard to liquor sales and regulation on the reservation.

Tribal liquor licenses shall set forth the location and description of the building and premises for which each license is issued and shall define the area where the holder of each tribal liquor license may sell alcoholic beverages for a period of one year.

Section 1–40–010: General

Notwithstanding any other provision of this Ordinance, no penalty may be imposed pursuant or related to this Ordinance in contravention or in excess of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. § 1301 *et seq.* ("ICRA") or other applicable Federal law.

Section 1–40–020: Illegal Transportation, Still, or Sale Without Permit

Any person who, within the reservation and without a valid tribal liquor license, sells or offers for sale or transport in any manner any liquor within the boundaries of the reservation in violation of this Ordinance, or who operates or has in his possession any spirit distillation device or any substance meant or specifically concocted to be distilled into liquor (not including devices or mash related to the home manufacture of beer, strong beer, or wine solely for the purpose of personal consumption and not for sale), shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–030: Illegal Purchase of Liquor

Any person who buys liquor within the boundaries of the reservation other than from an individual or entity properly licensed pursuant to this Ordinance shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–040: Furnishing Liquor to Minors

Except in the case of liquor given or administered to a person by his physician or dentist for medicinal purposes, no person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverages except when such beverages are used in connection with religious services. No person shall permit any other person under the age of 21 to consume liquor on his premises or on any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–050: Sales of Liquor to a Minor

Any person who shall sell any liquor to any person under the age of 21 years shall be guilty of an Offense punishable upon conviction in the Tribal Court and shall be further subject to forfeit any license issued pursuant to this Ordinance; provided, however, that the forfeiture of any license issued pursuant to this Ordinance may occur only after notice and a hearing according to the procedures set forth in Section 1–50–020 of this Ordinance.

Section 1–40–060: Unlawful Transfer of Identification

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of an Offense punishable upon conviction in the Tribal Court. Corroborative testimony of a witness other than the minor shall be a requirement of conviction under this section.

Section 1–40–070: Possession of False or Altered Identification

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of an Offense punishable upon conviction in the Tribal Court.

Section 1–40–080: General Penalties

Any person guilty of a violation of this Ordinance for which no penalty has been specifically provided shall be liable upon conviction for the maximum penalty prescribed in the Tribal Law and Order Code.

Section 1–40–090: Identification; Proof of Minimum Age

Where there may be a question of a person's right to purchase liquor by reason of his/her age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(a) Liquor control authority card of identification of any state;

(b) Driver's license of any state or "Identicard" issued by any state Department of Motor Vehicles;

(c) United States Active Duty Military Identification;

(d) Passport; or

(e) Identification or Enrollment Card issued by the Tribe or any other federally-recognized tribe.

Section 1–40–100: Illegal Items Declared Contraband

Alcohol beverages which are possessed contrary to the terms of this Ordinance are hereby declared to be contraband. Any officer who shall make an arrest under this section shall seize all contraband which he shall have the authority to seize consistent with the Tribe's Constitution, the Tribal Law and Order Code, the ICRA and any other applicable Federal law.

Section 1–40–110: Non-Indian Violations

Nothing in this Ordinance shall be construed to require or authorize the criminal trial and punishment by the Tribal Court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of this Ordinance is violated by a non-Indian, he or she shall be referred to state and/or Federal authorities for prosecution under applicable law. It is the expressed intent of the Tribe that any non-Indian referred to state and/or Federal authorities pursuant to this section be prosecuted to the furthest extent of applicable law.

Section 1–50–010: Declaration of Nuisance

Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance and all property kept in and used in maintaining such place, including tribal liquor licenses related to any such property, are hereby declared to be a common nuisance.

Section 1–50–020: Institution Action

The Chairperson of the Tribal Council or the head of the tribal law enforcement department may institute and maintain an action in the Tribal Court in the name of the Tribe to abate and perpetually enjoin any nuisance declared under article Section 1–50–010 of this Ordinance or any other violation of this Ordinance. The plaintiff shall be required to file grounds in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the case as in other injunction proceedings. Upon final judgment against the defendant, the Tribal Court may order the forfeiture of any license issued pursuant to this Ordinance and that the offending room, house, building, boat, vessel, vehicle, structure, or place be closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than $1,000.00 payable to the Tribe, which bond shall be conditioned on the agreement of such person that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of therein in violation of the provisions of this Ordinance and that such person will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the Tribe. Any action taken under this section shall be in addition to any criminal penalties provided for under this Ordinance or any other applicable provision of the Tribal Law and Order Code.

Section 1–50–030: Abatement of Nuisance

In all cases where any person has been convicted of a violation of this Ordinance, an action may be brought in Tribal Court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Section 1–60–01–0: Severability

If any application or provision, or any portion of any provisions, of this Ordinance is determined by review of any court of competent jurisdiction to be invalid such adjudication shall not render ineffectual the remaining portions of this Ordinance or render such provisions automatically inapplicable to other persons or circumstances.

Section 1–60–020: Effective Date

This Ordinance shall be effective as a matter of tribal law on October 15, 1996, upon approval by a majority of eligible voters attending the annual General Membership Meeting on October 5, 1996, and effective as a matter of Federal law on November 14, 1997.

Section 1–60–030: Inconsistent Enactments Rescinded

Any and all prior enactments of the Tribal Council which are inconsistent with the provisions of this Ordinance are hereby rescinded to the extent of such inconsistency.

Section 1–60–040: Application of 18 U.S.C. § 1161

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of Arizona to the extent required under 18 U.S.C. § 1161.

Section 1–60–050: Jurisdiction and Sovereign Immunity

Nothing in this Ordinance shall be construed to limit the jurisdiction of the Tribe, the Tribal Court, or Tribal law

enforcement personnel and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities and agents or authorize any form of a prospective waiver of such sovereign immunity. Nothing in this Ordinance shall be construed as an admission that any body politic, other than the Tribe, has jurisdiction over any matter arising from or related to the Reservation, except to the extent such jurisdiction is confirmed by Federal law.

Dated: October 29, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–29934 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Redwood Valley Rancheria of Pomo Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed certain lands in Mendocino County, California, as an addition to the reservation of the Redwood Valley Rancheria of Pomo Indians of California on November 3, 1997. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: By proclamation issued pursuant to the Act of June 18, 1934, (48 Stat. 986; 25 U.S.C. § 467), the land described in a Grant Deed, numbered 5369, recorded in Book 1502, pages 479, 480 and 481, of the official records of Mendocino County, California, were proclaimed to be an Indian Reservation for the exclusive use of Indians entitled by enrollment or tribal membership to reside at such reservation.

Dated: November 3, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–29912 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[OR–060–082–6230–00; GP8–0024]

Emergency Closure Restriction on Public Lands, Salem District, Oregon

ACTION: Emergency closure restriction on public lands notice, Salem District, Oregon.

SUMMARY: Notice is hereby given that public lands in Clackamas County, Oregon, are temporarily closed to all public use, including vehicle operation, camping, and shooting, from October 16, 1997, until further notice. This order is issued under the authority of 43 CFR 8364.1 and closes additional roads and public lands to public access and use. Notice is hereby given that the following areas are closed to motor vehicle access and use:

1. Approximately 5 acres incorporating two open areas, one east and one west of the Pine Creek; Bridge on the Molalla River, near the intersection of Pine Creek Road and the Molalla Forest; Road in Section 30, T. 6 S., R. 3 E.,Will. Mer., Oreg.;

EXEMPTIONS: The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: BLM employees; state, local, and federal law enforcement and fire protection personnel; holders of BLM road use permits or contracts that include areas within the closure including their employees and subcontractors. Access by additional parties may be allowed but must be approved in advance by the Authorized Officer.

PENALTIES: Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as penalties provided under Oregon State Law.

EFFECTIVE DATE: This emergency closure shall remain in effect until revised, revoked, or amended.

FOR FURTHER INFORMATION CONTACT: Richard Prather, Area Manager, Cascades Resource Area, 1717 Fabry Road SE, Salem, OR 97306, (503) 375–5646.

SUPPLEMENTARY INFORMATION: The purpose of these closures is to protect water quality, soil, vegetation, and sensitive cultural, paleontological, and riparian resources from excessive damage and provide for visitor safety.

Scott S. Abdon,

Acting Area Manager, Cascades Resource Area.

[FR Doc. 97–29941 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1910–00–4573]

Idaho: Filing of Plats of Survey; Idaho

The plat, in two sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 3, 1997.

The plat representing the dependent resurvey of portions of the west and north boundaries, subdivisional lines, and subdivision of sections 8 and 16, T.5 S., R.36 E., Boise Meridian, Idaho, Group 945, was accepted November 3, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: November 3, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–29920 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–857–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 4, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines, of the subdivision of section 31, and of Mineral Survey No. 2486, and the corrective dependent resurvey of Mineral Survey No. 2486, Hope lode, T. 2 N., R. 18 E, Boise Meridian, Idaho, Group 461, was accepted November 4, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: November 4, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–29921 Filed 11–13–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–5]

Martha Hernandez, M.D.; Reprimand and Continuation of Registrations With Restriction

On January 14, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Martha Hernandez, M.D., (Respondent) of Chicago, Illinois and Gary, Indiana, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificates of Registration, AH2262424 and BH4493475, pursuant to 21 U.S.C. 824(a)(1), and deny any pending applications for renewal of her registrations as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified two applications for registration with DEA.

By letter dated February 6, 1997, Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on May 27, 1997, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On September 5, 1997, Judge Randall issued her Opinion and Recommended Ruling, recommending that Respondent's registrations not be revoked, but that Respondent be reprimanded and that she be required to submit certain documentation to DEA on an annual basis for three years. On September 25, 1997, the Government filed exceptions to Judge Randall's Opinion and Recommended Ruling, and on October 6, 1997, the record was transmitted to the Acting Deputy Administrator.

On October 15, 1997, Respondent submitted a request to file a response to the Government's exceptions, as well as her response to the exceptions. Respondent argued that "[t]he Government filed its exceptions on September 25, 1997 and pursuant to regulation the Respondent has 20 days to request leave and file a response." In addition, Respondent stated that the Government does not object to Respondent filing a response to the exceptions. The Acting Deputy Administrator finds that Respondent has misread 21 CFR 1316.66, which provides for the filing of exceptions within 20 days of service of the Administrative Law Judge's Opinion and Recommended Ruling. The regulation further provides that the Administrative Law Judge may grant time beyond the twenty days for the filing of a response to any exceptions filed. Nowhere in the regulations is a party given 20 days from the filing of exceptions to submit a response. However, the Acting Deputy Administrator will nonetheless consider Respondent's response to the Government's exceptions since it has been represented that the Government does not object to the consideration of Respondent's response.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is a psychiatrist licensed to practice medicine in the states of Illinois and Indiana, with a DEA Certificate of Registration issued to her in each state. On June 15, 1990, the State of Illinois, Department of Professional Regulation (IDPR) refused to renew Respondent's Illinois medical license because she had defaulted on her student loan payments. On December 2, 1991, Respondent entered into a consent order with IDPR, which reinstated her Illinois medical license, but placed her license on probation until such time as she completes repayment of her student loan. The consent order set forth a schedule for repayment of the loan. However, by Order dated January 10, 1994, the IDPR indefinitely suspended Respondent's Illinois medical license due to her failure to abide by the repayment plan.

On October 1, 1994, Respondent submitted a renewal application for DEA Certificate of Registration AH2262424 issued to her in Illinois. On this renewal application, Respondent indicated that she was currently authorized to handle controlled substances "in the state in which [she is] operating or propos[ing] to operate", yet she listed her Indiana state medical license number. Also, Respondent answered "No" to the liability question which asked, "Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?"

DEA personnel telephonically contacted Respondent on January 31, 1995, and again on May 3, 1995. During these conversations, the DEA personnel discussed with Respondent the effect of the IDPR's suspension upon Respondent's DEA registration; the possible voluntary surrender of Respondent's Illinois DEA registration in light of the continued suspension of her Illinois medical license; and the need for Respondent to submit a new application for registration with DEA in the State of Indiana. However, the DEA personnel did not indicate to Respondent during these conversations that her answer to the liability question on the October 1, 1994 renewal application was incorrect or questionable.

On May 5, 1995, Respondent submitted a new application for a DEA registration in the State of Indiana. Again, she answered "No" to the liability question which asks, "Has the applicant ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" Subsequently, on July 10, 1995, Respondent was issued DEA Certificate of Registration BH4493475, in the State of Indiana.

On June 16, 1995, Respondent submitted an application to renew her Indiana medical license. On that application, Respondent answered "No" to a question which asked, "In the last two years, has disciplinary action been taken regarding any license, certificate, registration or permit you hold or have held?" As a result of this application, Respondent's Indiana medical license was renewed on June 30, 1995.

Following her conversations with the DEA personnel, Respondent decided not

to surrender her Illinois DEA registration. Judge Randall found that "Respondent credibly testified [at the hearing in this matter] that she had declined to surrender her DEA Certificate of Registration because she felt that the choices given on the DEA surrender form pertaining to the reason for the surrender implied failure on her part to comply with Federal law in her handling of controlled substances." Judge Randall further found that Respondent "credibly testified that she had believed such form language did not apply to her, since the suspension of her Illinois medical license was due to her inability to repay her Illinois student loan, not due to her failure to comply with Federal law in her handling of controlled substances."

Since Respondent declined to voluntarily surrender her Illinois DEA registration, on November 27, 1995, DEA issued an Order to Show Cause to Respondent proposing to revoke her Illinois DEA Certificate of Registration in light of the fact that she was not then authorized to handle controlled substances in the State of Illinois due to the continued suspension of her Illinois medical license. However, on November 29, 1995, the IDPR entered into another consent agreement with Respondent, which reinstated Respondent's Illinois medical license and placed this license on probation subject to Respondent's adhering to a student loan repayment schedule. As a result of the consent agreement, the November 27, 1995 Order to Show Cause was not pursued.

In July 1996, Respondent submitted an application to renew her Illinois medical license. On this application, Respondent answered "Yes" to a question which asked, "Since July 31, 1993, have you been denied a professional license or permit, or privilege of taking an examination, or had a professional license or permit disciplined in any way by any licensing authority in Illinois or elsewhere?" Respondent testified that she answered the question in the affirmative, after discussing the interpretation of the question with an Illinois official.

On July 8, 1996, the Indiana Medical Licensing Board (Indiana Board) issued a complaint against Respondent. The complaint alleged that Respondent had falsified her application for renewal of her Indiana medical license dated June 16, 1995, by indicating that in the last two years no disciplinary action had been taken against any licenses that she had held or was currently holding, even though the IDPR had indefinitely suspended her Illinois medical license on January 10, 1994. In a letter dated January 13, 1997, Respondent informed the Indiana Board that "[a]t the time I reapplied for my Indiana license [June 16, 1995] I was not aware of my Illinois license being resuspended." On July 14, 1997, the Indiana board issued its Findings of Fact and Order finding that Respondent's conduct constituted "knowingly engaging in fraud or material deception in order to obtain a license to practice in violation of Ind. Code. * * *" Accordingly, the Indiana Board ordered that Respondent be reprimanded, fined $200.00 and assessed costs.

At the hearing in this matter, Respondent contradicated her January 13, 1997 letter to the Indiana Board when she agreed that in January and May of 1995, she had had conversations with DEA personnel concerning the suspension of her Illinois medical license in January 1995.

Judge Randall found that "Respondent credibly testified [at the hearing in this matter] that during 1994 she had experienced unexpected financial difficulties which contributed to her inability to pay her student loans * * * [and] that the suspension of her Illinois medical license in January of 1994 was not a rememberable event to her, since she was primarily practicing medicine in Indiana in 1994, and given the general turmoil of her life at that time." Judge Randall further found that "Respondent credibly testified that she was unaware of a need for a separate DEA Certificate of Registration to reflect her Indiana place of business." In addition, Respondent testified that she answered "No" to the liability question on the DEA applications because she thought that since she was applying for a Federal registration to handle controlled substances, the question only pertained to actions taken based upon malpractice, criminal activity, or improper prescribing of controlled substances, and not to the suspension of a medical license due to a failure to repay a student loan.

Pursuant to 21 U.S.C. 824(a)(1), "A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant—(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter." The Government contends that Respondent's DEA Certificates of Registration should be revoked pursuant to 21 U.S.C. 824(a)(1) because she falsified two different DEA applications by indicating that no adverse action had been taken against any of her state professional licenses when in fact such action had been taken against her Illinois medical license. In addition, she improperly answered a similar question on her application for an Indiana medical license. The Government argues that the crucial issues are "Respondent's credibility and the ability of DEA investigators to ascertain the status of a registrant's or an applicant's past history based upon answers to the applicable liability questions." The Government contends that Respondent's testimony regarding her responses to the liability questions was not credible.

Respondent admits that her responses to the liability questions were incorrect. However, Respondent argues that the statements at issue were not "material" falsifications. Respondent further contends that revocation would be too harsh a sanction since she had no intent to deceive or mislead DEA; because her underlying misconduct was not related to malpractice in her treatment of patients or the mishandling of controlled substances; and, since once advised by the IDPR of the correct interpretation of the liability questions, she answered the question on her July 1996 state application appropriately.

As Judge Randall notes, "[a]nswers to the liability question are material, since the DEA relies upon such answers to determine whether an investigation is needed prior to grating the application." DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. *See Bobby Watts, M.D.*, 58 FR 4699 (1993); *Herbert J. Robinson, M.D.*, 59 FR 6304 (1994).

The Acting Deputy Administrator concurs with Judge Randall's conclusion that Respondent materially falsified her October 1, 1994 renewal application for her Illinois DEA Certificate of Registration and her May 5, 1995 application for a DEA registration in Indiana. Respondent indicated on both of these applications that she had not had a state professional license denied or suspended, even though she knew that the renewal of her Illinois medical license had been denied in 1990, and that after being reinstated, was again suspended in 1994. Respondent does not deny that she incorrectly answered the liability question on the applications, but contends that she did not think that the actions of the IDPR due to her failure to repay her student loan was the type of action that needed to be disclosed in response to the question. The Acting Deputy Administrator concurs with Judge Randall's conclusion that, "[a]lthough the Respondent credibly

testified concerning her misinterpretation of the question, she was not relieved of her responsibility to carefully read the question and to honestly answer all parts of the question."

Therefore, the Acting Deputy Administrator concludes that based upon Respondent's material falsification of the two applications, ground exist to revoke her DEA Certificates of Registration pursuant to 21 U.S.C. 824(a)(1). The question now becomes whether the Acting Deputy Administrator, in exercising his discretion, believes that revocation is the appropriate sanction in light of the facts and circumstances of this case.

Judge Randall found that "Respondent's testimony was credible during her explanation of her confusion concerning the DEA registration requirements for her Indiana practice, and her misunderstanding, albeit unjustified, concerning the phrasing of the liability questions in issue." Therefore, Judge Randall concluded that Respondent did not intend to deceive DEA, but that her falsification of the applications was due to her carelessness and negligence. As Judge Randall noted, "lack of intent is irrelevant to the legal test of material falsification." However she suggested that "such a lack of intent should be considered in fitting the remedy to the situation in this case."

The Government filed exceptions to Judge Randall's conclusion arguing that Respondent intentionally sought to deceive DEA by incorrectly answering the liability question on the applications. The Government argues that Respondent clearly knew that her Illinois medical license had been suspended, yet she indicated on her applications for registration that no adverse action had been taken against her state professional license.

The Acting Deputy Administrator agrees with Judge Randall that a lack of intent to deceive should be considered in determining whether a registration should be revoked. However, the Acting Deputy Administrator further notes that negligence and carelessness in completing an application could be a sufficient reason to revoke a registration. In determining whether revocation is warranted, the Acting Deputy Administrator looks at the totality of the circumstances in each case.

In this case, it is undisputed that Respondent knew that her Illinois medical license had been suspended. But, the Acting Deputy Administrator does not agree with the Government that Respondent intended to deceive DEA in responding to the liability question. Respondent testified at the hearing in this matter that she thought that since she was applying to handle controlled substances, the question on the applications did not apply to her since her Illinois medical license was suspended due to her failure to repay a student loan, and not due to inadequate patient care or mishandling of controlled substances. While this is clearly an incorrect interpretation of the liability question, the Acting Deputy Administrator concurs with Judge Randall's conclusion that this is a credible explanation for the falsification.

Notwithstanding the foregoing, the Acting Deputy Administrator is troubled by Respondent's carelessness in failing to carefully read the question on the applications. However, the Acting Deputy Administrator finds it significant that prior to receiving the Order to Show Cause in this matter alleging that Respondent materially falsified her applications, Respondent answered a similar liability question correctly on her July 1996 Illinois application. Respondent testified that she gave a different response on this application after discussing the matter with an Illinois official.

In considering the appropriate sanction, Judge Randall also found it significant that "both the Illinois medical board and the Indiana medical board chose to grant [Respondent's] applications, even in light of her past failures to remain current in the payment of her student loan, and more recently, even in light of the Indiana Board's finding that the Respondent's June 1995 renewal application had been prepared in a fraudulent or materially deceptive manner." The Government, in its exceptions, argues that the fact that the IDPR has not currently taken action against Respondent's Illinois medical license should not be considered a mitigating factor, since it has taken significant action against her state license in the past. The Acting Deputy Administrator finds that the actions of the state boards are relevant, although not dispositive, in determining the appropriate sanction in this matter. As stated previously, the Acting Deputy Administrator must look at all of the circumstances surrounding a particular case. The Acting Deputy Administrator concludes that while it is true that Respondent's Illinois medical license was not renewed in 1990 and was suspended in 1994 due to her failure to repay a student loan, the IDPR has seen fit to allow Respondent to continue to practice medicine as long as she continues to repay her loan.

The Government further argues in its exceptions that the action of the Indiana Board should not be considered a mitigating factor, because it was not the result of an adjudicatory proceeding, but rather a settlement conference. The Government contends that in *John W. Copeland, M.D.*, 59 FR 46,063 (1994), DEA previously held that a consent decree between the Respondent and the state in no way detracted from the findings and conclusions found in the DEA's final order. In that case the then-Deputy Administrator found egregious violations regarding the handling of controlled substances and that the consent order of the state board did not change those findings. In this case, the Acting Deputy Administrator has not found similar violations. In fact, as the Government points out, in this case the Indiana Board found that Respondent knowingly engaged in fraud or material deception. The Indiana Board nonetheless allowed her to continue to practice medicine with a reprimand and a fine. As stated previously, unlike the Indiana Board, the Acting Deputy Administrator has found that Respondent did not intend to deceive DEA with her answers to the liability question on the applications.

To not consider a state's action simply because it was reached by agreement, rather than following an adjudicatory proceeding, would be unreasonable. Therefore, the Acting Deputy Administrator disagrees with the Government's contention that consent orders should not be considered as mitigating evidence. Accordingly, the Acting Deputy Administrator agrees with Judge Randall in this case, that while not dispositive, the fact that both the Indiana and Illinois medical licensing authorities have allowed Respondent to continue to practice medicine is a mitigating factor when evaluating all of the circumstances of this case to determine the appropriate sanction.

Judge Randall also found it appropriate to consider that Respondent's falsification of her applications stemmed from her failure to repay a student loan, and that there are no allegations that Respondent improperly handled controlled substances. As Judge Randall noted, "this lack of connection to controlled substances is not dispositive of the matter," however, she suggested that, "it is relevant in determining the appropriate remedy." The Government, in its exceptions, argues that the lack of improper handling of controlled substances "should not be considered in mitigation," and that "DEA's past policy has been not to distinguish between those falsifications that do and do not

have related controlled substance issues."

The Acting Deputy Administrator agrees with the Government insofar as DEA has in fact revoked registrations in the past based upon the material falsification of an application that was not related to the mishandling of controlled substances. See *Ezzat E. Majd Pour, M.D.*, 55 FR 47,547 (1990). However, the Acting Deputy Administrator concludes that in exercising his discretion in determining the appropriate remedy, he must consider all of the facts and circumstances of a particular case. Here, it is relevant that Respondent credibly testified that she did not think that the liability question applied to her since the suspension of her Illinois license was to due to the improper handling of controlled substances. The Acting Deputy Administrator also finds it relevant that Respondent correctly answered a similar question on a subsequent state application even before she received the Order to Show Cause from DEA alleging that she had materially falsified two of her applications.

Judge Randall concluded that revocation would be too harsh a sanction in this case, "[h]owever, the Respondent's failure to pay close enough attention to the administrative details necessary to maintain her credentials in good standing warrants some concern about the Respondent's meeting the responsibilities levied against a person provided the authority to prescribe and to dispense controlled substances." Therefore, Judge Randall recommended that Respondent be reprimanded for her failure to properly complete here DEA registration applications; and "that for a period of three years, that Respondent be ordered to file with the appropriate local DEA resident office, on an annual basis, a copy of a document from both the Illinois and the Indiana medical boards certifying that her medical licenses remain in good standing in both States, and that there is no impediment to her handling controlled substances at the State level."

The Acting Deputy Administrator concludes that there is no question that Respondent materially falsified two of her applications for DEA registration. This is extremely troubling since DEA relies on accurate information being submitted by its applicants. Further, Respondent's actions indicate a careless disregard for attention to detail. This lack of attention to detail is of great concern to the Acting Deputy Administrator since DEA registrants are tasked with keeping meticulous records regarding the handling of controlled substances in order to prevent the diversion of these dangerous substances. However, the Acting Deputy Administrator agrees with Judge Randall that revocation would be too severe a sanction given the facts and circumstances of this case. The Acting Deputy Administrator concurs with Judge Randall's recommendation that Respondent be reprimanded for her failure to properly complete her applications for registration and that she be required for a period of three years to submit to the DEA Chicago Field Division, on an annual basis, documentation from both the Illinois and the Indiana medical licensing authorities certifying that her medical licenses remain in good standing in both states, and that there is no impediment to her handling controlled substances at the state level. The first such documentation should be forwarded to DEA within thirty days of the effective date of this final order.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby reprimands Martha Hernandez, M.D., for failing to properly complete her DEA registration applications. The Acting Deputy Administrator further orders that DEA Certificates of Registration AH2262424 and BH4493475, issued to Martha Hernandez, M.D., be continued, and any pending applications be granted, subject to the above described restriction. This order is effective December 15, 1997.

Dated: November 4, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–29972 Filed 11–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 29, 1997, and published in the **Federal Register** on August 26, 1997, (62 FR 45272), Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, New Jersey 07936, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 6, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–29973 Filed 11–13–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract

work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefits information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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- NJ970003 (Feb. 14, 1997)
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Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 7th day of November 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–29891 Filed 11–13–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: December 8, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1105.17, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29985 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Stellar Astronomy and Astrophysics Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 4 and 5, 1997, (2) and December 9 and 10, 1997 (3). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 a.m. to 5:00 p.m. each day.

Contact Person: Dr. Eileen Friel, Program Director, Stellar Astronomy and Astrophysics, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1825.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29984 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: December 4th & 5th, 1997, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1295, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Fred Stollnitz, Program Director, Research Experiences for Undergraduates, Room 615, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1413.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Research Experiences for Undergraduates program announcement.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29983 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in the Division of Electrical and Communications Systems; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period December 1 through December 31, 1997, the Special Emphasis Panel will be holding panel meetings to review and evaluate research proposals. The dates, contact person, and types of proposals are as follows:

Special Emphasis Panel in the Division of Electrical and Communications Systems

1. *Date:* December 1–2, 1997.

Contact: Radhakishan Baheti, Saifur Rahman, George Lea, and Paul Werbos, Program Directors, Knowledge, Modeling and Computational Intelligence, Division of Electrical and Communications Systems, Room 675, 703–306–1339.

Type of Proposal: Knowledge, Modeling and Computational Intelligence CAREER proposals.

2. *Date:* December 1–2, 1997.

Contact: Rajinder Kholsa, T.P. Lee, Program Directors, Physical Foundation and Enabling Technologies, Division of Electrical and Communications Systems, Room 675, 703–306–1339.

Type of Proposal: Physical Foundation and Enabling Technologies CAREER proposals.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Directorate as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29978 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: December 2–3, 1997; 8:30 am–5:00 pm.

Place: Room 725, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Blvd., Room 725, Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate LTER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29979 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development #1199).

Date and Time: December 2 and 3, 1997, 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA., Rooms 365, 370, 375.

Type of Meeting: Closed.

Contact Person: Lawrence Scadden & Mary Kohlerman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Programs for Persons with Disabilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29981 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences.

Date and Time: December 4, 1997 8:00 am–5:30 pm; December 5, 1997 8:00 am–2:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Adriaan de Graaf, Executive Officer, MPS, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1800.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda

December 4, 1997

AM
Introductory Remarks
Discussion on Science and Education Themes for the 21st Century

PM
Roundtable Discussion—Assessing the Value of Basic Research
Review of NSF GPRA documents and PHY COV Report

December 5, 1997

AM
Strategic Planning/Science and Education Themes

PM
Report on DMS Benchmarking Activity
Meeting Wrap-up/Future Business

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–29982 Filed 11–13–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

In the Matter of Toledo Edison Company, Centerior Service Company, The Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station, Unit 1); Exemption

I

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) are the holders of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit 1 (the facility). The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized-water reactor located at the licensees' site in Ottawa County, Ohio.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to provide the means for identifying quickly any personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for special nuclear material used or to be used in the reactor. Subsection (d) of 10 CFR 70.24 states that any licensee that believes that there is good cause why it should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The special nuclear material that could be assembled into a critical mass at DBNPS is in the form of nuclear fuel. The quantity of special nuclear material other than fuel that is stored onsite in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at DBNPS and has determined that it is extremely unlikely that such an accident will occur if the licensees meet the following seven criteria:

1. Only one new fuel assembly is allowed out of a shipping cask or storage rack at one time;

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water;

3. If optimum moderation occurs at low moderator density, the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation;

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water;

5. The quantity of special nuclear material, other than nuclear fuel, stored onsite in any given area is less than the quantity necessary for a critical mass;

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions; and

7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated January 30, 1997, as supplemented May 28 and October 3, 1997, the licensees requested an exemption from 10 CFR 70.24. In this request, the licensees addressed the seven criteria given above. The Commission's technical staff has reviewed the licensees' submittals and has determined that DBNPS meets the criteria for prevention of inadvertent criticality. Therefore, the staff has determined that it is extremely unlikely an inadvertent criticality will occur in the handling of special nuclear materials or in their storage areas at DBNPS.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur. Furthermore, the licensees have radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensees' adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

The Commission has determined that pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensees an exemption from the requirements of 10 CFR 70.24 for DBNPS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 59908).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of November 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29977 Filed 11–13–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to provide that the applicable percentage is 85 percent for plan years beginning on or after July 1, 1997, through (at least) plan years beginning before January 1, 2000.

However, under section 774(c) of the RPA, the application of the amendment is deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans will therefore remain 80 percent for plan years beginning before January 1, 1998. (The rules governing the applicable percentages for "partial" RPU plans are described in § 4006.5(g) of the premium rates regulation.)

For plans for which the applicable percentage is 85 percent, the assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 1997 is 5.38 percent (*i.e.*, 85 percent of the 6.33 percent yield figure for October 1997).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 1996 and November 1997. The rates for July through November 1997 in the table reflect an applicable percentage of 85 percent and thus apply only to non-RPU plans. However, the rates for months before July 1997, which reflect an applicable percentage of 80 percent, apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in:	The assumed interest rate is:
December 1996	5.18
January 1997	5.24
February 1997	5.46
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53
November 1997	5.38

For premium payment years beginning in November 1997, the assumed interest rate to be used in determining variable-rate premiums for RPU plans (determined using an applicable percentage of 80 percent) is 5.06 percent. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of November 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–30044 Filed 11–13–97; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

Date of Meeting: November 3, 1997.

Status: Closed.

Previous Announcement: 62 FR 55436, October 24, 1997.

Change: At its meeting on November 3, 1997, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date:

Consideration of Amendment to Board Bylaws.

Contact Person for More Information: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–30165 Filed 11–12–97; 3:07 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 19, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Draft Bill—Exemption from Full Rent
(2) Medicare contract fiscal year 1998 budget
(3) Coverage Determination—Transportation Management Services, Inc.
(4) Employee Service—Environmental Contractors with CSX Transportation Company
(5) Regulations—Part 220 (Subpart C, Occupational Disability)
(6) Fiscal Year 1998 Performance Appraisal Plans
(7) Year 2000 Issues
(8) Labor Member Truth in Budgeting Status Report

Portion Closed to the Public

(A) 1997 Performance Appraisals
(B) *Pending Board appeals:*
1. Beverly J. Anderson
2. Martha G. Arnold
3. Sandra B. Banner

4. Gussie Y. Brown
5. Odel Clay
6. James C. Coutee
7. Barbara A. Donofrio
8. Robert C. Hoffman, Sr.
9. Ronald E. Houck
10. John A. Soderman

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 10, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–30095 Filed 11–12–97; 9:52 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26776]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 7, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 1, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Services, Inc. (70–7671)

Central and South West Services, Inc. ("CSWS"), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75266, a non-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a post-effective amendment under sections 9(a) and 10 of the Act and rule 54 under the Act to an application-declaration filed under sections 9(a) and 10 of the Act.

By orders dated August 10, 1990 (HCAR No. 25132), December 18, 1992 (HCAR No. 25714), and December 28, 1994 (HCAR No. 26206) ("Orders"), CSWS was authorized, among other things, to license and sell to non-associate entities through December 31, 1997 specialized computer programs and to provide support services to licensees and entities that purchased the software. The support services were to include program enhancements and problem resolution and were to be sold to non-associate companies for an amount not less than cost to CSWS.

The Orders also authorized CSWS to make expenditures of up to $1 million per calendar year and to make expenditures of up to $250,000 per project to develop or change software for non-associate entities; to market software and services; and to add up to ten employees to support these activities.

Finally, the Orders authorized CSWS to sell reserve computer capacity and to provide data management services to non-associate entities provided that CSWS would limit computer capacity sales to non-associate entities to 50 percent of its total capacity.

CSWS now requests that the Commission extend the term of the authorizations contained in the Orders through December 31, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29988 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39306; File No. SR–AMEX–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to its Designated Options Area

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1997, the American Stock Exchange, Inc. (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its policy to include additional physically separate locations on the Exchange's trading floor where options on Amex-listed stocks may trade. The information will be found in an upcoming information circular of the Exchange.

II. Self-Regulatory Organization's

Statement of the Purpose of, and Statutory for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1988, the Exchange received Commission approval to trade options on Amex-listed stocks.[1] The approval was based upon the Amex's trading floor for equities and options on those equities being sufficiently separated such that there could be no time and place advantage derived from the physical proximity of the two floors which could be exploited.

Since the 1988 approval was granted, the trading of options on Amex-listed securities has continued to occur on the Exchange at locations that are physically separate from the locations where the trading of Amex-listed stocks occurs. The Exchange contains additional locations that are also physically separate from the locations where Amex-listed stocks trade that have yet to be designated as areas for the trading of options on Amex-listed stocks. The Exchange now proposes to amend its policy to include those additional physically separate locations as areas where the trading of options on Amex-listed stocks may occur (the "Designated Options Area").

While the number of options on Amex-listed stocks has increased slowly, to approximately 45 classes since 1988, the overall number of option classes traded on the Exchange has increased over 350% since that time. As a result of this increase in classes of options traded at Amex, the Exchange currently lacks flexibility in moving trading units around its trading floors. Those specialist units currently trading options on Amex-listed stocks are forced to remain in the current Designated Options Area, even though they have outgrown their space, or face giving up those classes to move to larger quarters. Moreover, specialist units that currently do not trade any options on Amex-listed stocks are unable to do so because there is no room left in the current Designated Options Area. The increase in classes of options traded on the Exchange and the Exchange's need for flexibility in moving the various trading units around the Exchange's trading floors has made it necessary for the Exchange to find additional physically separate locations to include in the Designated Options Area.

To address the above concerns, the Exchange proposes to include in its Designated Options Area the mezzanine trading level located above the Exchange's main equity trading floor area (the "Mezzanine") and that area of the Exchange consisting of the back row of the west side of the Exchange's main trading floor also referred to as the west side of Exchange Post 12, 13, and 15 (the "Back Row"). The Commission recognized in 1994 that the Mezzanine is a physically separate trading location when it approved the inclusion of Amex-listed stocks in stock industry index groups provided the index traded separate from the Exchange's Designated Stock Area.[2] Consistent with the Commission's approval of that proposal, the Mezzanine and the Back Row are physically separate from the Designated Stock Area so as to avoid direct sight lines and communication by means of hand signals between either the Mezzanine or the Back Row and the Designated Stock Area.

The proposed rule change will not increase the potential for trading abuse or manipulation as there is no line of sight between the Mezzanine and the Back Row and the Designated Stock Area, thus no time or place advantage results from the proposed rule change. Although the proposed rule change will not increase the potential for trading abuse or manipulation, the Exchange does currently have in place various safeguards to detect and prevent any such abuse or manipulation. These safeguards include Amex Rule 175, which prohibits any specialist from acting as an options specialist or functioning in any capacity involving marketmaking responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such.

In addition to the safeguards contained in Amex Rules 175, the Exchange prohibits, under Amex Rule 958, any equity specialist, odd-lot dealer or Nasdaq market maker from acting as a registered trader in a class of stock options on a stock in which he is registered in the primary market place. This Rule also prohibits any member, while acting as a Registered Options Trader, if he is also registered as a Registered Equity Trader or Registered Equity Marketmaker, from executing a proprietary Exchange option transaction on an Amex-listed stock if during the preceding 60 minutes, he has been in the Designated Stock Area where the Amex-listed stock is traded.

To insure compliance with the above safeguards, the Exchange has in place various surveillance procedures. The Exchange's surveillance procedures, which are set forth at Section XI, C of the Amex Trading Analysis Options Surveillance Manual Concerning Paired Security Review, including, among other items, the preparation of daily activity reports on Registered Options Trader's ("ROT") trading activity in Amex-listed stocks and options. These reports are than used to analyzed ROT trading activity to insure compliance with Amex Rule 958.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filled with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988).

[2] Securities Exchange Act Release No. 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994).

[3] 15 U.S.C. § 78f(b).

[4] 15 U.S.C. § 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–AMEX–97–37 and should be submitted by December 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29931 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39305; File No. SR–CBOE–97–57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Extension of the Permissible Maturity of FLEX Equity Options

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to change its rules to permit a FLEX equity option to have a term of five years in certain circumstances.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. § 78s(b)(1).
[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to allow FLEX equity options[3] traded on the Exchange to have a maturity beyond three years and up to five years in certain circumstances. Currently, FLEX equity options, by operation of Rule 24A.4(a)(4)(i), are limited to a maturity of three years.

When the Exchange filed for permission to list and trade FLEX equity options[4] it determined to limit the maturity of these options to three years because, unlike FLEX Index options which were already being traded on the Exchange since February 1993 and which could have a maturity of up to five years, the Exchange was concerned that there would not be sufficient liquidity in many equity option classes to support series with a longer term to expiration. Since it has traded FLEX equity options, however, the Exchange has had numerous requests from broker-dealers to extend the maturity of FLEX equity options to five years. Among the reasons the broker-dealer firms have been interested in seeking an extension in the allowable maturity is that these longer expiration FLEX equity options might be used to hedge a firm's longer term issuances of structured products linked to returns of an individual stock. The Rule would permit the longer term FLEX equity options to be listed when requested by the submitting member if the FLEX Post Official determined that sufficient liquidity existed among Equity FLEX qualified participants. By allowing for the extension of the maturity of FLEX equity options to five years in situations where there is demand for a longer term expiration and where there is sufficient liquidity among Exchange qualified market-makers to support the request, the proposed rule change will better serve the needs of CBOE's customers and the Exchange members who make a market for such customers.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

[3] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[4] SR–CBOE–95–43 approved in Exchange Act Release No. 36841 (February 14, 1996), 61 FR 8666 (February 21, 1996).

[5] 15 U.S.C. § 78f(b).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–57 and should be submitted by December 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29932 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39307; File No. SR–CHX–97–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Regarding Suitability of Customer Recommendations

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4,[2] notice is hereby given that on September 18, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") file with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change

The Exchange proposes to add Article VIII, Rule 25 to the Exchange's Rules relating to market-at-the-close orders. The text of the proposed rule change is as follows: new text is italicized.

[6] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. § 78s(b)(1).
[2] 17 CFR 240.19b–4.

Article VIII

Business Conduct

Rule 25. (a) In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(b) Prior to the execution of a transaction recommended to a customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

(i) the customer's financial status;

(ii) the customer's tax status;

(iii) the customer's investment objectives;

(iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Interpretations and Policies

.01 The following is a non-exclusive list of practices that the Exchange deems to violate a member's duty to recommend to a customer only securities suitable for that customer.

(a) Recommending speculative low-priced securities to customers without knowledge of or an attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data.

(b) Excessive activity in a customer's account, often referred to as "churning" or "overtrading." There are no specific standards to measure excessiveness of trading in customer accounts, because this must be related to the objectives and financial situation of the customer involved.

(c) Trading in mutual fund shares, particularly on a short-term basis. It is clear that normally these securities are not proper trading vehicles and such activity on its face may raise the question of trade violation.

(d) Fraudulent activity, including: establishing fictitious accounts in order to execute transactions which otherwise would be prohibited; executing transactions in discretionary accounts in excess of or without actual authority from customers; causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon; and unauthorized use or borrowing of customers' funds and securities.

(e) Recommending the purchase of securities or the continuing purchase of securities in amounts that are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

.02 Derivatives and Other New Financial Products. As new financial products are introduced into the marketplace, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding new financial products. Moreover, members should be careful to always comply with all Exchange requirements regarding the trading of such products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

The Exchange currently does not have a rule that expressly addresses suitability, churning and related matters for Exchange members. While the Exchange believes that such conduct may currently fall within existing Exchange rules, such as the Exchange's rule relating to "just and equitable" activity, the Exchange believes that it is desirable at this time to specifically address this type of conduct. As a result, the purpose of the proposed rule change is to add Rule 25 to Article VIII of the Exchange's rules, requiring that, in recommending to a customer the purchase, sale or exchange of any security, a member must have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to

his other security holdings and as to his financial situation and needs.

Specifically, prior to the execution of a transaction recommended to a customer, other than transactions with customers where investments are limited to money market mutual funds, a member would be required to make reasonable efforts to obtain information concerning the customer's financial status, the customer's tax status, the customer's investment objectives, and such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

The rule change would contain a non-exclusive list of practices that the Exchange deems to violate a member's duty to recommend to a customer only securities suitable for that customer. These would be: (1) Recommending speculative low-priced securities to customers without knowledge of or an attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data; (2) excessive activity in a customer's account, often referred to as "churning" or "overtrading"; (3) trading in mutual fund shares, particularly on a short-term basis; (4) fraudulent activity (including establishing fictitious accounts in order to execute transactions which otherwise would be prohibited, executing transactions in discretionary accounts in excess of or without actual authority from customers, causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon, and unauthorized use or borrowing of customers' funds and securities); and (5) recommending the purchase of securities or the continuing purchase of securities in amounts that are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

In addition, with regard to derivative financial products, the rule change would require that members made every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding new financial products.

2. Statutory Basis

The purposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–21 and should be submitted by December 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29987 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39309; File No. SR–GSCC–97–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Funds-Only Settlement Payment Procedures

November 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 16, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on September 19, 1997 and on November 4, 1997, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend GSCC's rules to provide netting members with the option of making funds-only settlement payments to GSCC by authorizing banks to accept payment directions directly from GSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The main purpose of the proposed rule change is to amend GSCC's rules concerning netting members' funds-only settlement payments to GSCC. Under the proposed rule change, netting members will have the option of satisfying their funds-only settlement obligations with GSCC by way of an automatic debit ("auto debit") arrangement. GSCC has informed the Commission that other clearing agencies, such as The Options Clearing Corporation, use such agreements to facilitate their funds-only settlement process.

Under GSCC's current rules, a netting member with an obligation to pay a funds-only settlement amount to GSCC on a particular business day instructs a depository institution acceptable to GSCC, currently The Bank of New York, to make such payment to GSCC on its behalf. These payment procedures oblige GSCC each day to monitor continuously its account at the depository institution to determine whether every netting member with a funds-only settlement obligation to GSCC has made its payment in a timely manner.

The proposed auto debit arrangement will supplement the current approach to payment processing. Under the proposed rule change, netting members will have the option to satisfy funds-only settlement obligations pursuant to payment instructions given directly by GSCC to their banks. Each netting member choosing this option will enter into an agreement with GSCC and a bank acceptable to both the member and GSCC.[3] The bank will be required to meet the financial, operational capability, and other requirements set forth in GSCC's rules for eligibility to issue letters of credit on behalf of members for clearing fund purposes. GSCC believes that because the bank will maintain accounts on behalf of both the member and GSCC, it will be able to make and to collect funds-only settlement payments efficiently by posting debit and credit entries to the applicable accounts on its own books.

Pursuant to the auto debit agreement, the bank generally will make payment to GSCC's account by 9:00 a.m.[4] on behalf of netting members owing funds to GSCC. If the bank does not intend to make any payments on behalf of members, it will so inform GSCC by 8:00 a.m. Therefore, GSCC effectively will be guaranteed payment by 8:00 a.m. unless it receives a notice of dishonor from the bank. GSCC believes that the use of the auto debit arrangement will promote the timely receipt of funds payments by GSCC and will reduce the operational duties GSCC encounters in monitoring its current funds-only settlement payment process.

In connection with the auto debit arrangement, GSCC has proposed changes to certain of its other procedures. First, GSCC will begin requiring all netting members to make funds-only settlement payments to GSCC by 9:00 a.m. and will enforce this deadline with the assistance of its new fine schedule described in File No. SR–GSCC–97–04 as of January 2, 1998. In December of this year, the earlier opening of the cash FedWire at 12:30 a.m. is scheduled to take effect. GSCC previously received authorization from the Commission to require netting members to make funds-only settlement payments to GSCC by 9:00 a.m.[5] However, because of its concern that members would not be able to meet this deadline on a consistent basis, GSCC has kept the deadline at 10:00 a.m.

Second, the proposed rule change will eliminate the extra hour for the payment to GSCC of funds-only settlement amounts currently in effect for netting members whose offices are located outside of the New York City time zone. GSCC believes that this extra hour is no longer necessary because of members' increased ability to make efficient and timely payments due to the earlier opening of the cash FedWire and the availability of the auto debit arrangement.

Finally, under the proposed rule change, GSCC will move the deadline for it to pay a netting member any funds-only settlement payment it owes from 11:00 a.m. to 10:00 a.m. GSCC believes that it is equitable for netting members also to benefit from the availability of the earlier opening of the cash FedWire and the efficiencies of the auto debit arrangement.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] because it will increase settlement efficiency and reduce payment related risks to GSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because the auto debit arrangement will allow GSCC to increase its control over the payment of funds-only settlement payments. As a result, the amount of time and energy GSCC currently spends monitoring netting members' payments of their funds-only settlement obligations should be reduced and the risk of nonpayment or late payment of such obligations should be reduced.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Approving prior to the thirtieth day after publication of notice will allow GSCC to immediately begin implementing the auto debit arrangement which should result in increased efficiency in the clearance and settlement process for GSCC's netting members that use the arrangement. The Commission also notes that use of the auto debit arrangement will not be mandated by GSCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

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[1] 17 CFR 300.30(a)(12).

[2] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] GSCC submitted a draft form of the agreement as Exhibit A to its filing, which is available for review and copying at the Commission's Public Reference Room and through GSCC.

[4] All times cited herein are New York time.

[5] Securities Exchange Act Release No. 33237 (November 22, 1993), 58 FR 63414 [File No. SR–GSCC–01–04].

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–97–06 and should be submitted by December 5, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–GSCC–97–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29930 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39311; File No. SR–PCX–97–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Fee Change for ASAP Members

November 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its Schedule of Rates for Exchange Services by changing its annual fee for Automatic System Access Privilege ("ASAP") Members.[3] The text of the proposed rule is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's current Schedule of Rates, an ASAP Member is required to pay the Exchange an annual fee equal to 20% of the average price of Exchange membership sales in the three months immediately preceding the Member's activation or renewal of membership.[4] The minimum ASAP fee is $4,000 (and it is non-refundable).

The Exchange is now proposing to modify this fee, making it $4,000 per year (non-refundable).

The Exchange is reducing its fee for ASAP memberships in order to make its rates applicable to electronic trading more competitive. The proposal is also intended to reduce the significant increase in fees for ASAP memberships that has accompanied the recent rise in Exchange seat prices.[5]

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4),[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(e) under the Act.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

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[1] 15 U.S.C. 78s(b)(2).

[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ASAP Memberships are governed by PCX Rule 1.14.

[4] See Exchange Act Release No. 37913 (November 1, 1996) 61 FR 57936 (November 8, 1996) (PCX–96–33). In that filing, the Exchange had changed its fee from $4,000 a year to the current schedule as described in the text.

[5] A PCX seat was sold for $380,000 recently; about the same time last year, a seat was sold for $145,000. Telephone conversation between Michael D. Pierson, Senior Attorney, PCX, and Vicky Berberi-Doumar, Special Counsel, Division of Market Regulation, Commission, on November 4, 1997.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e).

available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–40 and should be submitted by December 5, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29933 Filed 11–13–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Submissions for OMB Review

This notice lists information collection packages that have been sent to the Office of Management and Budget (OMB) for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. *Electronic Request for Replacement SSA–1099/SSA–1042S—0960–New.* The information requested will be used by the Social Security Administration (SSA) to provide replacement copies of Forms SSA–1099/SSA–1042S needed to prepare Federal tax returns. Over 700,000 requests are received annually for replacement forms from Social Security beneficiaries by SSA field offices and teleservice centers. SSA intends to offer the public the option to use the Internet to request that the Agency mail to them a replacement SSA–1099/SSA–1042S, eliminating the need for a phone call to a teleservice center or a visit to a field office. The respondents are Title II Social Security beneficiaries.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 583 hours.

2. *Discrimination Complaint Form—0960–New.* The information collected on form SSA–437 will be used by SSA to investigate and informally resolve complaints of discrimination based on race, color, national origin, sex, age, religion and retaliation in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above basis may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of the alleged act; obtain the identity of the individual(s)/facility/component that allegedly discriminated; and ascertain other relevant information that would assist in the investigation and resolution of the complaints. The respondents are individuals who allege discrimination on the grounds described above.

Number of Respondents: 250.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 250 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: November 7, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–29993 Filed 11–13–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2627]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting Notice

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9 a.m. on Thursday, December 4, 1997, in Room 1103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 41st Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on January 26–30, 1998, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. Harmonization of damage stability provisions in the IMO;

b. Progress of the Intercessional Correspondence Group on Load Lines issues;

c. Technical revisions to the Code on Intact Stability;

d. High Speed Craft Code revision;

e. Role of the human element, including shipboard loading and stability software; and

f. Safety aspects of ships engaged in a ballast water exchange.

Members of the public may attend this meeting up to the seating capacity of the room.

Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 5, 1997.

Russel A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–29923 Filed 11–13–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection was published on August 26, 1997 [62 FR 45287]. Three comments were received, two from gas pipeline operators and one from a pipeline engineering consultant. The two gas operators concurred with the need for NPMS. One commentor, a pipeline engineering consultant, disagreed with

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[9] 17 CFR 200.30–3(a)(12).

the need for a national mapping program and had several concerns with the August 26, 1997 notice. One operator agreed with RSPA's estimate for the burden hours per company. The other commentors stated that the burden hours were underestimated. One commentor did not provide numbers on the degree of the underestimate, while the other suggested two days per operator. RSPA's burden hour estimate was from an actual pre-pilot test of the mapping program. Because RSPA has actually pre-tested this program on operators some of whom had electronic maps and some who had only paper maps, RSPA stands by its burden hour estimates. The one dissenting commentor also raised issues concerning the need and value of NPMS, the accuracy of the maps required under the pilot program, the costs of the regional repositories, and the costs and benefits of a truly national mapping program.

RSPA believes that access to a complete and accurate NPMS is necessary to ensure that RSPA has the best information for its emergency response, compliance and enforcement responsibilities. RSPA further believes that it is important that its state partners also have this same information. It is important to note that this mapping program is a joint effort of the Federal government, state agencies, and the three major trade organizations representing the natural gas and hazardous liquid industries, the American Petroleum Institute (API), the American Gas Association (AGA), and the Interstate Natural Gas Association Of America (INGAA). The accuracy of the information required of these maps is to within 500 feet and the maps must have a quality code describing the quality of the data provided. The Federal Government has provided $2.4 million for the NPMS system prior to 1997. It has budgeted $500,000.00 for 1997 with an estimated $400,000.00 needed annually thereafter to maintain this repository system. While RSPA does not have an estimate of the potential costs and benefits of a national mapping network it is hoping that information provided by this pilot program will help RSPA estimate the net benefits of a national mapping system in the future if that is required. The question for now is to test a volunteer mapping pilot program.

DATES: Comments on this notice must be received on or before December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin Fell, (202) 366–6205 or write by E-mail to Fellm@rspa.dot.gov., Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Research and Special Programs Administration (RSPA)

Title: Mapping Pilot Program.

OMB Control Number: 2137–NEW.

Type of Request: New Collection.

Affected Public: Gas transmission and hazardous liquid operators.

Abstract: The Department of Transportation (DOT) along with other Federal and state agencies have been working side by side with natural gas and hazardous liquid operators to develop a national pipeline mapping system (NPMS). This system, when complete, will depict and provide data on the natural gas transmission and larger liquid pipelines operating in the United States. The DOT is beginning a volunteer pilot program consisting of 36 pipeline operators (three from each of 12 states participating in the program). These 36 pipeline operators will provide electronic maps of 10–20 miles of their pipeline to one state as well as to one of six regional repositories for their startup and operating costs.

Estimated Annual Burden Hours: 144 hours.

Number of Respondents: 48.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on November 5, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–30024 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Trumbull, Monroe and Newtown, CT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an Environmental Impact Statement will not be prepared for a proposed highway project in Trumbull, Monroe, and Newtown, Connecticut. A notice of Intent to prepare an EIS was published in the **Federal Register** on July 25, 1985. Instead, an Environmental Assessment will be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. West, Division Administrator, Federal Highway Administration, 628–2 Hebron Ave., Suite 303, Glastonbury, CT 06033–5007, Telephone: (860) 659–6703 extension 3009; Mr. Edgar Hurle, Director of Environmental Planning, Bureau of Policy and Planning, 3800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131–7546, Telephone: (860) 594–2920.

SUPPLEMENTARY INFORMATION: Existing State Route 25 is a major arterial from Interstate 95 in Bridgeport, Connecticut to U.S. Route 7 in Brookfield, Connecticut. The corridor under study involves the section from State Route 111 in Trumbull to Interstate 84 in Newtown. Following the Notice of Intent for the preparation of a Draft EIS, project scoping and preparation of the document began. Multiple expressway alternatives on new alignment were studied, as well as a widening of existing Route 25 with a 100 foot right of way for a length of approximately 11 miles. A minimal widening of the existing road with a 75 foot right of way and approximate length of 10 miles was also studied. In 1992, a strategic financial plan was developed by the Connecticut Department of Transportation (ConnDOT). This plan reevaluated major transportation project in light of transportation needs and financial constraints. Based on this plan, as well as severe environmental concerns of the expressway alternatives, the ConnDOT decided to narrow the scope of the project to only the widening alternative which has the least environmental and socio-economic impacts of all previously studied alternatives. No significant impacts are foreseen from the limited widening.

In light of the change of scope of the project, the FHWA and the ConnDOT agree that the foreseen impacts of this project no longer warrant an EIS. An Environmental Assessment will be prepared and processed to fully analyze the proposal.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 31, 1997.

Donald J. West,

Division Administrator, Glastonbury, Connecticut.

[FR Doc. 97–29924 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory amendment.

SUMMARY: FRA is amending Safety Advisory 97–1, which addresses safety practices to reduce the risk of casualties from train derailments caused by damage to tracks, roadbed, and bridges resulting from uncontrolled flows of water and similar weather-related phenomena, by revising the recommendation concerning the transmission of flash flood warnings to train dispatchers or other employees controlling the movement of trains.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS–15, Mail Stop 25, Washington, D.C. 20590 (telephone 202–632–3340) or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC–12, Mail Stop 10, Washington, D.C. 20590 (telephone 202–632–3186).

SUPPLEMENTARY INFORMATION: On September 4, 1997, FRA issued Safety Advisory 97–1 (SA 97–1) (62 FR 46793), recommending that railroads take certain actions to reduce the risk of train derailments which could result from severe weather conditions, particularly undetected flash floods. The first recommendation of SA 97–1 reads as follows:

1. The railroad should have in place a procedure that will assure that all notifications issued by the National Weather Service (NWS) of flash flood warnings will be received within 15 minutes of issuance from the NWS, directly or through a contract weather forecasting service, by the train dispatchers or other employees controlling the movement of trains on all track of Class 4 or higher or upon which passenger trains operate in commuter or intercity service, within the warning area. In the case of such track located outside of the warning area but subject to damage from water resulting from the storm, the information should be obtained in time to permit timely response by the railroad.

The intent of the recommendation is for all flash flood warnings issued by the NWS for the area in which an affected railroad operates to be received by the personnel who control train operations in the area of the warning. It is not necessary that the warning come directly from the NWS, but it should be received intact and in a timely manner.

Since SA 97–1 was issued, FRA has become aware of several circumstances in which large railroads with centralized dispatching operations have contracted with specialized weather services for weather information tailored to the situation and requirements of the railroad. Several of those contract services do not pass on all NWS warnings, but instead analyze the warnings in the light of other weather data available to them and their knowledge of the specific situation and requirements of their clients in order to provide only the weather information that affects the client and to filter out irrelevant information. This process reduces the amount of information that the client is required to consider and evaluate, and allows the client to focus on information that, in the view of the contract weather service, might actually affect the client's property and operations.

FRA now believes that this procedure offered by contract weather services might meet the requirements of some railroads better than if all NWS warnings are passed on by the contract weather service en masse, regardless of their relevance to the individual railroad. Therefore, Safety Advisory 97–1 is amended in part by revising Recommendation 1 to read as follows:

1. The railroad should have in place a procedure that will assure that the train dispatchers or other employees controlling the movement of trains on all track of Class 4 or higher or upon which passenger trains operate in commuter or intercity service will receive timely warnings of any flash flood that might damage that track or its supporting structures. In the case of such track located outside of the warning area but subject to damage from water resulting from the storm, the information should be obtained in time to permit timely response by the railroad. The warning procedure should incorporate either:

a. The means to receive within 15 minutes of issuance by the National Weather Service (NWS) all NWS flood warnings for the area in which the track is located; or

b. An arrangement with a competent commercial weather service which receives and reviews warnings and weather data from the NWS as part of its warning procedures, and from which the railroad receives warnings and weather information that is specific to the situation and requirements of the railroad.

Issued in Washington, DC, on November 10, 1997.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 97–30032 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the fourteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) and to discuss the work program for U.S. participation in future meetings of the UN Sub-Committee of Experts on the Transport of Dangerous Goods during the 1997–1998 biennium.

DATES: January 6, 1998 at 9:30 a.m.

ADDRESSES: Room 8236–8240 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to (1) review the outcome of the fourteenth session of the UNSCOE held from December 8–18, 1997 in Geneva Switzerland and to begin preparation for U.S. participation in the fifteenth session of the UNSCOE. Topics to be covered during the public meeting include matters related to reformatting the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of

intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous material, requirements for inhalation toxicity materials, requirements and international harmonization of classification criteria and labeling.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fourteenth session of the UNSCOE may be obtained from RSPA or may be downloaded from the Internet at http://www.itu.int/itudoc/un/editrans/dgdb/dgscomm/scdocsnw.html.

Issued in Washington, DC, on November 7, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–30025 Filed 11–13–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33471]

Coach USA, Inc.—Control Exemption—Air Travel Transportation, Inc.; Airlines Acquisition Co., Inc.; and Transportation Management Services, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier in control of 28 motor passenger carriers at the time it filed its petition,[1] seeks to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of Air Travel Transportation, Inc.; Airlines Acquisition Co., Inc., and Transportation Management Services, Inc., motor carriers of passengers.

DATES: Comments must be filed by December 15, 1997. Petitioner may file a reply by December 24, 1997.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 33471 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–0001. In addition, send one copy of comments to Petitioners' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695].

SUPPLEMENTARY INFORMATION: Coach, a noncarrier, seeks an exemption to acquire control of three motor carriers of passengers: (1) Air Travel Transportation, Inc., d/b/a Atlanta Airport Shuttle (MC–166420), a Georgia-based carrier that primarily operates airport shuttle service to and from Atlanta's Hartsfield International Airport; (2) Airlines Acquisition Co., Inc., d/b/a Airlines Transportation Company (MC–223575), a Pennsylvania-based carrier that primarily operates airport shuttle service to and from Greater Pittsburgh Airport and Allegheny County Airport; (3) Transportation Management Services, Inc., d/b/a Lenzner Coach Lines (MC–237433), a Pennsylvania-based carrier, which is affiliated with Airlines Transportation Company and which operates charter motorcoach service, contract service, sightseeing service and tour service.

Coach reported, at the time it filed this petition for exemption, that it controlled twenty-eight motor carriers of passengers. Coach states that its acquisition of control of the three motor carriers through the acquisition of their stock will not inhibit competition or reduce transportation options available to the public. Coach states that the three carriers do not compete with any Coach-owned carrier.

Petitioner also claims that the acquisition of control of the three carriers will allow each carrier to offer improved service at lower costs made possible by the coordination of functions, centralized management, financial support, rationalization of resources, and economies of scale that are anticipated from the common control. Coach also states that all collective bargaining agreements will be honored, that employee benefits will improve, and that no change in management personnel is planned. Additional information may be obtained from Petitioners' representatives.

A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street and Pennsylvania Avenue, N.W. Washington, D.C. 20530.

Decided: November 3, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29997 Filed 11–13–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Coach currently controls the nation's second largest group of motor passenger carriers. *See Coach USA, Inc.—Control Exemption—America Charters, Ltd.*, STB Finance Docket No. 33393 (STB served Oct. 3, 1997), slip op. at 1. In addition to the instant petition, Coach has three other pending petitions: Coach USA, Inc. and K-T Contract Services, Inc.—Control and Merger Exemption—Gray Line Tours of Southern Nevada, STB Finance Docket No. 33431 (STB served Aug. 22, 1997), in which it seeks an exemption to acquire control of one additional motor passenger carrier, *Coach USA, Inc., and Leisure Time Tours—Control and Merger Exemption—Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway-Wagar, Inc.*, STB Finance Docket No. 33428 (STB served Aug. 12, 1997), in which it seeks to acquire control of three additional motor passenger carriers, and *Coach USA, Inc.—Control Exemption—Browder Tours, Inc. and El Expresso, Inc.*, STB Finance Docket No. 33506 (STB filed Oct. 31, 1997), in which it seeks to acquire control of two additional motor passenger carriers.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–84]

Recordation of Trade Name: "IBBI"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On July 22, 1997, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "IBBI," was published in the **Federal Register** (62 FR 39302). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received no later than September 22, 1997. No responses were received in opposition to the notice. Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "IBBI," is recorded as the trade name used by International Business to Business, Inc., a corporation organized under the laws of Colorado, located at 566 #D Nucla Way, Aurora, Colorado 80011. The trade name is used in connection with an item known as a key safe or lock and lockbox which has a compartment in which keys are locked and a shackle to attach to a door or doorknob.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, N.W. (Ronald Reagan Building), Washington, D.C. 20229, (202) 927–2330.

Dated: November 6, 1997.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 97–29922 Filed 11–13–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Elementary-Level Teacher Education in Armenia

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop an approximately two-year program to train a group of Armenian educators of elementary level teachers, to develop a manual for elementary teacher education for use in Armenia, and to assist the Armenian educators to pilot-test the manual in Armenia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the program cited above is provided through the Freedom Support Act (FSA).

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AS–98–02.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, January 16, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is anticipated that program activities will begin approximately in March, 1998.

FOR FURTHER INFORMATION CONTACT: The Advising, Teaching, and Specialized Programs Division, Room 349, Office of Academic Programs, U.S. Information Agency, 302 4th Street, S.W., Washington, D.C. 20547; or 202–619–6038 (telephone), 202–619–6790 (telefax), or sukux@usia.gov (Internet) to request a Solicitation Package containing more detailed information and instructions. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Sally Kux on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AS–98–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense to encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The objective of this project is to work in partnership with the Armenian Ministry of Education to update Armenian in-service and pre-service training for elementary-level teachers (grades 1–4) by training a core team of Armenian teacher educators and by assisting them to develop a handbook on elementary education. The project will comprise three phases which are describe in detail in the Project Objectives, Goals, and Implementation (POGI).

Participants

The Armenian team will consist of approximately 6 educators representing the general content areas of elementary education in Armenia. These areas are mathematics, language (Armenian, Russian, and English) natural science, arts, and physical education. Armenian participants will be proficient in English.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

Proposed Budget

Applicants must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. The award will not exceed $300,000. Administrative costs may not exceed 25% of the total USIA-funded expenses.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and USIS Erevan. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, precision, relevance to Agency mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise.

2. Program Planning and Evaluation

Detailed agenda and work plan should demonstrate substantive undertakings and logistical capacity and should adhere to the program overview and guidelines stated above. Proposals should include a plan for continuous and summative evaluations.

3. Ability To Achieve Program Objectives

Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and how continuous evaluation will be used to adjust program plans as needed.

4. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals.

7. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) to ensure ongoing communication and involvement with Armenian teacher education projects.

9. Cost-Effectiveness and Cost-Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this REP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 6, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–29913 Filed 11–13–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 62, No. 220
Friday, November 14, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB-97-15]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

Correction

In notice document 97–29314 appearing on page 59846, in the issue of Wednesday, November 5, 1997, make the following correction:

On page 59846, in the first column, in the DATES section, in the second line, "January 5, 1997" should read "January 5, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1877-97; AG Order No. 2125-97]

RIN 1115-AE28

Designation of Sierra Leone Under Temporary Protected Status

Correction

In notice document 97–29078 beginning on page 59736, in the issue of Tuesday, November 4, 1997, make the following correction:

On page 59737, in the first column, in the paragraph designated (3), in the last line, "November 13, 1998" should read "November 3, 1998".

BILLING CODE 1505-01-D

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federal register

Friday
November 14, 1997

Part II

Environmental Protection Agency

40 CFR Parts 123, 233, and 271
Approval of Modifications to Michigan's Approved Program To Administer the National Pollutant Discharge Elimination System Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies; Final Rule

Approval of Modifications to Michigan's Assumed Program To Administer the Section 404 Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies; Final Rule

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–5918–6]

Approval of Modifications to Michigan's Approved Program To Administer the National Pollutant Discharge Elimination System Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) approves of the modifications of Michigan's approved National Pollutant Discharge Elimination System (NPDES) permitting program which resulted from certain Michigan Executive Orders which reorganized Michigan's environmental agencies.

EFFECTIVE DATE: Consistent with 40 CFR 123.62(b)(4), this action is effective November 14, 1997. In accordance with 40 CFR 23.2, EPA explicitly provides that this action shall be considered issued for the purposes of judicial review November 14, 1997, at 1 p.m. eastern daylight time. Under section 509(b)(1) of the Clean Water Act, judicial review of this action can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after it is considered issued for the purposes of judicial review.

FOR FURTHER INFORMATION CONTACT: Eugene Chaikan, Chief, NPDES Support and Technical Assistance Branch, Water Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604 (312) 886–0120.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in this **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

I. Background

On October 17, 1973, EPA approved the NPDES permitting program submitted by the State of Michigan pursuant to section 402 of the Clean Water Act. Procedures for revision of State programs at 40 CFR 123.62 provide for EPA review of any revisions to federally authorized State NPDES programs to determine whether or not such revisions are substantial and to approve or disapprove any such revisions.

The Michigan Water Resources Commission (MWRC) was the name of the agency authorized to administer the NPDES program in Michigan on October 17, 1973. On November 8, 1991, the Governor of Michigan issued Executive Order 1991–31, which reorganized and consolidated Michigan's environmental agencies. Though initially stayed in the Michigan court system, the Michigan Supreme Court ultimately upheld the validity of Executive Order 1991–31 on September 2, 1993. *Dodak* v. *Engler*, 443 Mich. 560, 506 N.W.2d 190 (1993).

Pursuant to Executive Order 1991–31, all of MWRC's authority, powers, duties, functions and responsibilities pertaining to Michigan's NPDES program were transferred to the Director of the Michigan Department of Natural Resources (MDNR), except that adjudicatory authority and authority to conduct contested case hearings were transferred to the Michigan Natural Resources Commission (MNRC). Executive Order 1995–4 then transferred all MNRC authority to make decisions regarding administrative appeals of surface water permit applications to the MDNR Office of Administrative Hearings. The Attorney General of the State of Michigan, in a statement dated August 2, 1995, certified to the following:

> Executive Order Nos. 1991–31 and 1995–4 and the Governor and Director's letter dated February 3, 1995 do not change the State's statutes or rules which provide adequate authority to the State of Michigan to carry out the program set forth in Governor William G. Milliken's "Program Description" dated July 17, 1973. In fact, State statutes and rules are essentially unaffected by these Executive Orders and letter. The only way in which the statutes and rules are affected is by changing the person or entity responsible for carrying out the various functions set forth within these statutes and rules. This type of reorganization of functions is consistent with the Constitution of Michigan of 1963, Article V, Section II.
>
> No authority, power, duties and functions contained within Michigan's statutes or rules applicable to the NPDES program have been eliminated or changed except for the party responsible for carrying out such authority, powers, duties and functions. Accordingly, in my opinion, the laws of the State of Michigan continue to provide adequate authority to carry out the program set forth in the "Program Description" submitted by Governor William G. Milliken on July 17, 1973. The adequacy of this legal authority is unaffected by Executive Order Nos. 1991–31, 1995–4 and the Governor and Director's letter dated February 3, 1995.

On July 31, 1995, Michigan's Governor John Engler signed Executive Order 1995–18, which *inter alia*, elevated the former Environmental Protection Bureau of the MDNR to full independent departmental status called the Michigan Department of Environmental Quality (MDEQ). The MDEQ retained all of its responsibilities and virtually all of its personnel assigned to it as a bureau in the MDNR. The Attorney General of the State of Michigan, in a statement dated June 13, 1996, certified to the following:

> It is my opinion that E.O. 1995–18 did not substantively change the State's statutes or rules relating to the administration of federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its federally delegated programs.

Based upon a review of this information, as well as a review of the NPDES program documents submitted in support of Michigan's original (1973) request for EPA approval, EPA preliminarily concluded on March 28, 1997, that the Executive Orders did not substantially revise the State of Michigan's Section 402 NPDES permitting program and that any revisions resulting from the executive orders should be approved. This conclusion was based on two factors.

First, none of the statutes or rules upon which EPA authorized Michigan's NPDES permitting program changed as a result of the Executive Orders. Instead, the Executive Orders simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules.

Second, as described in the October 24, 1996, letter from MDEQ to EPA, the Director of MDEQ has "directed that any MDEQ staff not in compliance with the federal requirements [governing conflict of interest set forth at 40 CFR 123.45(c)] are not permitted to approve permits, nor any portion of permits." Moreover, this directive will be incorporated into MDEQ's internal delegation letters and department policies. Finally, the Director of MDEQ will require all individuals that he appoints to decide administrative appeals of NPDES permits to certify that they comply with the CWA conflict of interest requirements. Consequently, Michigan's NPDES program assures compliance with conflict of interest requirements for NPDES state programs.

While not required to do so according to the State NPDES program regulations, EPA chose to invite public comment concerning the Agency's preliminary determinations. Consequently, on March 28, 1997, EPA published a notice in the **Federal Register** of its preliminary determinations that the Executive Orders caused no substantial revisions to Michigan's NPDES program and that any revisions to Michigan's NPDES program that resulted from the Executive Orders should be approved. Additionally, EPA requested specific comment on the impact, if any, the Executive Orders have on EPA approval of the modification to the Michigan NPDES program recognizing the State's authority to issue general permits. EPA also indicated that it could conduct a public hearing, if there was significant public interest based on requests received. Finally, EPA stated that its preliminary decision only addressed, and EPA was only seeking comment on, the impact of the Executive Orders on Michigan's NPDES program.

II. Comments

In response to the March 28, 1997, notice, EPA received comments from the Scio Residents for Safe Water and the Gelman Sciences Site Citizens Review Committee ("Scio Residents"). The Scio Residents allege that the individuals at MDEQ who are now responsible for making permitting decisions have "compromised independence," a "pro business agenda," and are attempting to "implement[] blatantly anti-environmental policies without substantive public involvement or notice." However, as noted above, none of the statutes or rules upon which EPA authorized Michigan's NPDES permitting program changed as a result of the Executive Orders and so Michigan continues to have the legal authority and obligation to issue NPDES permits which are consistent with the Clean Water Act. The fact that there may be different people—with allegedly "compromised independence" or different "agendas" or "policies"—who are responsible for exercising that authority and fulfilling that obligation as a result of the Executive Orders is not a basis for disapproving of any revisions resulting from those Executive Orders. Of course, EPA would have the authority to withdraw program approval pursuant to 40 CFR 123.63 if, as a result of any changes caused by the Executive Orders, Michigan repeatedly issues NPDES permits which do not conform with the requirements of the Clean Water Act. However, that is not at issue in this matter.

In addition to the comments from the Scio Residents, EPA also received comments which were jointly submitted by the National Wildlife Federation and the Michigan United Conservation Clubs (NWF and MUCC). NWF and MUCC argue that "EPA's 1993 approval of Michigan's General Permit Program was illegal" because, prior to approving of Michigan's General Permit Program, EPA allegedly violated its own regulations and past practices "(1) by failing to have a complete State program submission before approving Michigan's General Permit Program; (2) by failing to provide public notice of and comment on the proposed approval; and (3) by failing to hold a public hearing."

EPA believes that allegations about the unlawfulness of previous agency actions are not relevant to a pending agency matter, except to the extent that EPA proposes to take allegedly unlawful actions in the pending agency matter. In response to the first allegation of unlawful action, EPA continues to believe that neither the CWA nor NPDES State program regulations require comprehensive review and "reapproval" of the entire underlying NPDES program each time the Agency approves a modification to such a program. EPA regulations establish procedures for identification (both by EPA and interested persons) and review of any allegation of failure by a State to comply with NPDES State program requirements. *See* 40 CFR 123.64(b)(1). In the specific matter currently before the Agency, namely, the effect of the Executive Orders on the Michigan's program, the Agency believes that comprehensive review and "reapproval" is unnecessary. *See National Wildlife Federation* v. *Adamkus*, 936 F.Supp. 435, 440–41, 444 (W.D. Mich. 1996) (upholding EPA's decision, in interpreting comparable statutory and regulatory provisions pertaining to EPA's review of revisions to State Section 404 wetland permitting programs, that EPA need not perform a comprehensive review of an entire underlying State program when approving a modification to such program). Instead, as was made clear in the March 28, 1997, notice, the issues in the present matter are: (1) Whether the Executive Orders caused substantial revisions to Michigan's NPDES program; (2) whether any revisions to Michigan's NPDES program that resulted from the Executive Orders should be approved; and (3) whether the Executive Orders have had any impact on EPA approval of the modification to the Michigan NPDES program recognizing the State's authority to issue general permits.

On the other two issues identified by the commentors, the opportunity for public comment and the opportunity for a public hearing, EPA did provide an opportunity for public comment in this matter (and this notice responds to those comments) and an opportunity for the public to request a public hearing (although MWF and MUCC did not specifically request a public hearing in this matter). As described below, EPA does not believe that a public hearing is necessary based upon the comments received.

NWF and MUCC also raised a number of comments in which they claim that EPA has not fulfilled certain commitments it allegedly made in its August 16, 1994 "Unopposed Motion to Stay Briefing" and in subsequent status reports filed in *National Wildlife Federation et al.* v. *Browner, et al.*, No. 94–3309, a case which is currently pending in the United States Court of Appeals for the 6th Circuit. NWF and MUCC argue that, because the Agency notified the 6th Circuit that today's notice and comment proceedings might resolve NWF's and MUCC's concerns, and because NWF and MUCC believe the proceedings do not address their concerns, EPA has failed to fulfill a commitment it made to the court. EPA disagrees that it has failed to fulfill its commitment to the 6th Circuit. EPA explained to the court that these proceedings might resolve NWF's and MUCC's concerns. EPA's inability to satisfy NWF's and MUCC's concerns is not "failure" of the Agency, but merely continuing disagreement between EPA and the two groups. Based on comprehensive review of Michigan's public participation procedures (a copy of which is included in the administrative record for today's action), as well as review of the conflict of interest provisions applicable to States authorized to administer the NPDES program, the Agency believes that the Michigan program satisfies the applicable public participation and conflict of interest requirements.

NWF's and MUCC's final comment was that EPA should not approve of the revisions resulting from the Executive Orders because "the primary decision maker in contested case proceedings, the Director of the [MDEQ], has engaged in illegal ex parte communications about a contested case currently pending a decision," allegedly in violation of 40 CFR 124.78(b)(1). NWF and MUCC also argue that the Michigan Attorney General had an obligation to certify that the laws of Michigan are adequate to prohibit such *ex parte* communications. However, the prohibition on *ex parte* communications at 40 CFR 124.78(b)(1) applies only to EPA and to proceedings before EPA. Nothing in EPA's NPDES State program

regulations at 40 CFR part 123 requires that States authorized to administer the NPDES program prohibit such *ex parte* communications. Consequently, the allegation that the Director of MDEQ might be engaging in *ex parte* communications about a contested case, or the concern that the Michigan Attorney General has not certified that the laws of Michigan adequately prohibit such *ex parte* communications, are not sufficient bases for disapproving of any revisions to Michigan's NPDES program resulting from the Executive Orders.

The Scio Residents requested that EPA provide a public hearing on this matter. NWF and MUCC did not specifically request a public hearing in this matter (although, as noted above, NWF and MUCC did criticize EPA for not holding a public hearing in 1993 prior to approving of Michigan's General Permit Program). EPA is required to hold a public hearing under 40 CFR 123.62(b)(2) if a proposed revision is substantial and if there is significant public interest in holding a hearing based upon requests for a hearing received by EPA.

As noted above, EPA has determined that none of the statutes or rules upon which EPA authorized Michigan's NPDES permitting program changed as a result of the Executive Orders. Instead, the Executive Orders simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules. Consequently, EPA does not believe that the revisions to Michigan's NPDES program resulting from the Executive Orders are substantial. Moreover, EPA only received two sets of comments: one set from the Scio Residents and a second set that was jointly submitted by NWF and MUCC; and only the Scio Residents specifically requested a hearing. Thus, EPA does not believe that there is sufficient public interest in this matter to hold a public hearing. Finally, neither set of comments explained why a public hearing was necessary or would be helpful in resolving the question of whether EPA should approve of any revisions to Michigan's NPDES program resulting from the Executive Orders. Consequently, EPA is not providing for a public hearing.

Finally, EPA notes that the Michigan Environmental Council (MEC), in a letter to EPA dated June 14, 1996, raised questions regarding the impact of Michigan Public Act 132 of 1996 on Michigan's NPDES program. EPA is addressing those questions separately and EPA's approval of the modifications resulting from the Executive Orders in this proceeding does not express any viewpoint on those questions.

III. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has waived review of EPA action on State NPDES programs .

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

EPA's approval of any revisions to Michigan's NPDES program resulting from the Executive Orders contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination merely recognizes an internal reorganization of an existing approved NPDES State program; and this determination does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this determination is not subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because EPA's determination to approve of any revisions to Michigan's NPDES program resulting from the Executive Orders merely recognizes an internal reorganization of an existing approved NPDES State program, EPA's determination contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's NPDES program resulting from the Executive Orders will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval simply results in an administrative change in the structure of the approved NPDES program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. This approval will not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the NPDES program modification will not impose any new burdens on small entities.

D. Paperwork Reduction Act

This approval contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's NPDES program resulting from the Executive Orders should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29622 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 233

[FRL–5918–7]

Approval of Modifications to Michigan's Assumed Program To Administer the Section 404 Permitting Program Resulting From the Reorganization of the Michigan Environmental Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) approves of the modifications of Michigan's assumed Clean Water Act Section 404 (Section 404) permitting program which resulted from Michigan Executive Order 1995–18 which reorganized Michigan's environmental agencies.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Kevin Pierard, Chief, Watersheds and Non-Point Source Programs Branch, Water Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4448.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four Federal Register actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in the Federal Register, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

I. Background

The State of Michigan assumed Federal Clean Water Act Section 404 permitting authority on October 16, 1984. Procedures for revision of State programs at 40 CFR 233.16 require that EPA review any revisions to state assumed Section 404 programs, determine whether such revisions are substantial, and approve or disapprove the revisions.

On November 25, 1994, EPA approved of revisions to Michigan's Section 404 program resulting from Executive Order 1991–31, which transferred the responsibilities and authorities of the Michigan Department of Natural Resources (MDNR) to the Director of a new MDNR. On July 3, 1995, Michigan Governor John Engler signed Executive Order 1995–18 (Executive Order), which elevated the former Environmental Protection Bureau of MDNR to full departmental status as the Michigan Department of Environmental Quality (MDEQ), effective October 1, 1995. MDEQ retained all of its environmental duties, functions and responsibilities and virtually all of the personnel formerly assigned to it as a bureau in the MDNR. In addition, certain other environmental duties, functions and responsibilities of the Law, Geographical Survey and Land and Water Management Divisions were transferred to MDEQ, as was the authority to make decisions regarding administrative appeals in those matters under its purview.

The Attorney General, in a statement dated June 13, 1996, statement, certified to the following:

> It is my opinion that E.O. 1995–18 did not substantively change the state's statutes or rules relating to the administration of federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its federally delegated programs.

Based upon a review of this information, as well as a review of the Section 404 program documents submitted in support of Michigan's original (1983) request for EPA approval and the materials submitted by Michigan and considered by EPA in approving of revisions to Michigan's Section 404 program on November 25, 1994, EPA proliminarily concluded that the Executive Order did not substantially revise the State of Michigan's Section 404 program and that any revisions resulting from the Executive Order should be approved. This preliminary determination was based upon the fact that none of the statutes or rules which comprise Michigan's Section 404 program changed as a result of the Executive Order and MDEQ retained virtually all of the personnel formerly assigned to it as a bureau in MDNR.

Although none of the statutes or regulations which comprise Michigan's program changed, there was one additional matter that EPA considered before making its preliminary determination. Specifically, the Executive Order provides that the Director of MDEQ now decides administrative appeals of wetland permitting decisions, rather than the Michigan Natural Resources Commission. However, this change does not affect the Michigan Section 404 program's "area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability." 40 CFR 233.16(d)(3). Consequently, EPA did not view this change to be a substantial revision. Moreover, EPA preliminarily concluded that this revision should be approved because it is not inconsistent with anything in the Clean Water Act or its implementing regulations.

While not required to do so according to the State Section 404 program regulations, EPA chose to invite public comment concerning the Agency's preliminary determinations. Consequently, on March 28, 1997, EPA published a notice in the **Federal Register** of its preliminary determinations that the Executive Order caused no substantial revisions to Michigan's Section 404 program and that any revisions to Michigan's Section 404 program that resulted from the Executive Order should be approved. EPA also indicated that it might conduct a public hearing, if there was significant public interest based on requests received. Finally, EPA stated that its preliminary decision only addressed, and EPA was only seeking comment on, the impact of the Executive Order on Michigan's Section 404 program.

II. Comments

In response to the March 28, 1997, notice, EPA received comments from three commenters: the Tip of the Mitt Watershed Council, the East Michigan Environmental Action Council, and the Michigan Environmental Council. The commenters all raised the same two issues. First, the commenters noted that the Executive Order transferred authority to hold hearings and make findings of fact and render decisions on contested Section 404 permits from the Natural Resources Commission, a public body that was subject to Michigan's Open Meetings Act, to the Director of

the MDEQ, who in turn delegated that authority to the MDEQ Office of Administrative Hearings, an entity that is not a public body and therefore is not subject to Michigan's Open Meetings Act.

The public participation requirements for state Section 404 programs are set forth at 40 CFR 233.32–34. The only "Open Meetings Act" type requirements in those regulations is at 40 CFR 233.33, which requires that state Section 404 programs provide an opportunity for public hearings at which the public must be allowed an opportunity to submit oral and written statements or data concerning a permit application or draft general permit. Michigan clearly continues to comply with this requirement. *See* Section 281.708 of the Michigan Compiled Laws. Nothing in the state Section 404 wetland program regulations requires that adjudicatory hearings on contested permits be open to the public. Consequently, the fact that these types of hearings may not necessarily be open to the general public in Michigan is not a basis for disapproving of the revisions resulting from the Executive Order.

We further note that Michigan did not represent in its original 1983 program submission, and EPA in reviewing and approving of that original program submission did not find, that Michigan was relying on the Michigan Open Meetings Act to demonstrate that it had authority to comply with the federal public participation requirements. Rather, Michigan cited to Sections 8 and 10 of its Wetlands Protection Act, Section 5 of its Water Resources Act, Section 6 of its Inland Lakes and Streams Act, and Sections 41–42 of its Administrative Procedures Act, to demonstrate that it had such authority. None of these statutory provisions were affected by the Executive Order. Consequently, any changes resulting from the Executive Order pertaining to the applicability or inapplicability of the Michigan Open Meetings Act do not in any way constitute changes in Michigan's approved Section 404 program.

The second issue raised by the commenters is that, under the Executive Order, the Chief Administrative Law Judge for the Office of Administrative Hearings who decides certain contested Section 404 permits is appointed by the Director of the MDEQ and so allegedly will not be capable of exercising decisionmaking authority independent of the Director of the MDEQ. However, there is nothing in the state Section 404 program regulations pertaining to administrative appeals of permit decisions. Consequently, the possibility that the Chief Administrative Law Judge may not be entirely independent of the Director of the MDEQ is not a basis for disapproving of the revisions resulting from the Executive Order.

Of course, if as a result of the changes to the administrative appeals process resulting from the Executive Order, Michigan repeatedly issues Section 404 permits which do not conform with the requirements of the Clean Water Act, this might serve as a basis for withdrawal of Michigan's Section 404 program under 40 CFR 233.53. EPA notes that it currently has pending before it a February 4, 1997, petition to withdraw Michigan's Section 404 program that was filed by the Michigan Environmental Council (MEC) which alleges, among other things, that Michigan is in fact repeatedly issuing such permits in part because of the changes to the administrative appeals process. EPA is separately investigating the allegations in that petition to determine whether cause exists to commence withdrawal proceedings. EPA, in approving of the revisions to Michigan's Section 404 program resulting from the Executive Order, is in no way expressing any opinion on the question of whether withdrawal proceedings should commence in light of the allegations in the MEC petition. Moreover, EPA is not expressing any opinion on questions which MEC separately raised in a letter dated June 14, 1996, regarding the impact of Michigan's Public Act 132 of 1996 on Michigan's Section 404 program. Instead, EPA is addressing those questions separately.

In a related comment, one commenter argued that, under the Executive Order, the Director may "appoint an individual within or outside the [MDEQ]" to decide certain administrative appeals in which the Director has been involved. The commenter also noted that there is no statutory definition of the individuals eligible for service in this role and so "it is conceivable that an individual with a personal or financial interest in the project at issue could be appointed to decide an appeal." However, in contrast to 40 CFR 123.25(c), there is nothing in either the Clean Water Act or in EPA's implementing regulations governing conflicts of interest in state Section 404 programs. Consequently, the possibility that such a conflict could arise is not a sufficient basis to disapprove of the revisions to Michigan's Section 404 program resulting from the Executive Order. Moreover, although not necessary to our decision, we note that Michigan has represented to EPA that all decisionmakers appointed by the Director will be required to sign a "Conflict of Interest Certification" certifying that they "do not now receive, nor have ever received, any income directly or indirectly from any person who holds a permit, has applied for a permit, or who is subject to an enforcement order issued pursuant to or under the authority of [the Clean Water Act]." Consequently, the possibility that an appointed decisionmaker might have a financial conflict of interest is extremely remote.

Finally, all three commenters stated that they believed that the revisions resulting from the Executive Order were substantial and so requested a public hearing. EPA is required to provide an opportunity for a public hearing under 40 CFR 233.16(d)(3) if a proposed revision is substantial. 40 CFR 233.16(d)(3) provides that "substantial revisions include, but are not limited to, revisions that affect the area of jurisdiction, scope of activities regulated, criteria for review of permits, public participation, or enforcement capability." As described above, none of the statutes or rules upon which EPA authorized Michigan's Section 404 program changed as a result of the Executive Order. Instead, the Executive Order simply changed the people or entities responsible for carrying out the various functions set forth within these statutes and rules. Consequently, EPA does not believe that the revisions to Michigan's Section 404 program resulting from the Executive Order are substantial.

Moreover, in light of the fact that EPA only received three sets of comments which addressed virtually identical issues, EPA does not believe that there is sufficient public interest in this matter to hold a public hearing. Finally, none of the comments explained why a public hearing was necessary or would be helpful in resolving the question of whether EPA should approve of any revisions to Michigan's Section 404 program. Consequently, EPA is not providing for a public hearing.

III. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted EPA action on State Section 404 programs from OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

EPA's approval of any revisions to Michigan's Section 404 program resulting from the Executive Order contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination merely recognizes an internal reorganization of an existing approved Section 404 State program; and this determination does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this determination is not subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because EPA's determination to approve of any revisions to Michigan's Section 404 program resulting from the Executive Order merely recognizes an internal reorganization of an existing assumed State Section 404 program, EPA's determination contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's Section 404 program resulting from the Executive Order will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval simply results in an administrative change in the structure of the assumed Section 404 program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. This approval will not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the Section 404 program modification will not impose any new burdens on small entities.

D. Paperwork Reduction Act

This approval contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

IV. EPA's Final Determination

EPA, after review and consideration of all the information submitted by Michigan and the comments received, has determined that the revisions to Michigan's Section 404 program resulting from the Executive Order should be approved. Moreover, EPA has determined that the revisions are not substantial.

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29623 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5918–6]

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (U.S. EPA) approves the revisions to the State of Michigan's authorized hazardous waste management program resulting from Michigan Executive Order 1995–18.

EFFECTIVE DATE: November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy O'Malley, U.S. EPA, State Programs and Authorization Section, Waste Pesticides and Toxics Division, 77 W. Jackson Blvd. (DR–7J), Chicago, Illinois 60604, or telephone (312) 886–6085.

SUPPLEMENTARY INFORMATION:

Note: This action is one of four **Federal Register** actions related to reorganization of state environmental agencies in Michigan. All these actions are published together in this **Federal Register**, with the exception of a Clean Air Act State Implementation Plan published on November 6, 1997 at 62 FR 59995.

A. Background

On March 28, 1997, EPA published in the **Federal Register** a notice announcing the preliminary determination to approve the State of Michigan's hazardous waste management program, as revised, pursuant to Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) and 40 CFR 271.21(b)(4).

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(b) have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented,

or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21(b).

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR 36804–36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991); November 30, 1993 (58 FR 51244, October 1, 1993); January 13, 1995 (60 FR 3095, January 13, 1995); and April 8, 1996 (61 FR 4742, February 8, 1996). Michigan's Program Description dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; August 10, 1992; August 18, 1994; and September 6, 1995, which were a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description also indicated that the Site Review Board (SRB) had authority to approve or deny construction permit applications. The SRB was subsequently made a consultative body and the SRB's powers were transferred to the Director of the MDNR by Executive Order 1991–31, which took effect on September 2, 1993.

On July 31, 1995, the Governor of Michigan issued Executive Order 1995–18 (EO 1995–18), which became effective on October 1, 1995. On January 19, 1996, Michigan submitted materials for EPA to determine the impact of EO 1995–18 upon the authorized State hazardous waste management program. The materials consisted of a letter from the Michigan Attorney General's office setting forth the State of Michigan's analysis as to why the establishment of the new Michigan DEQ does not represent a transfer to a "new agency" pursuant to 40 CFR 271.21(c), a copy of EO 1995–18, updated letters of delegation and procedures regarding avoidance of conflict of interest in contested case proceedings. On June 13, 1996, Michigan submitted a supplemental statement of the Michigan Attorney General regarding the appraisal of the Attorney General of the impact of EO 1995–18 on Michigan's delegated environmental programs. In the supplemental statement, the Attorney General explained that the effect of EO 1995–18 was to elevate the former Environmental Protection Bureau of the Department of Natural Resources to full independent departmental status as the Department of Environmental Quality (DEQ). According to the Michigan Attorney General, "the DEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau of the DNR." The Attorney General further stated that "E.O. 1995–18 did not substantively change the State's statutes or rules relating to the administration of Federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to Federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its Federally delegated programs."

Based on the information available, EPA determined that the reorganization of the State's hazardous waste management program resulting from EO 1995–18 constitutes a program revision requiring appropriate EPA review and approval under RCRA. EPA also determined that the EO 1995–18 did not result in significant modification of Michigan's hazardous waste program, nor did the Order transfer any part of the program from the approved State agency to any other State agency. Therefore, EPA does not view the reorganization as a transfer within the purview of 40 CFR 271.21(c).

Based upon review of the documents submitted by Michigan, EPA made a preliminary determination to approve Michigan's hazardous waste management program, as revised, pursuant to 40 CFR 271.21(b). On March 28, 1997, EPA published a notice in the **Federal Register** announcing EPA's proposed decision. The notice also stated that the proposed decision would be subject to public review and comment, and announced the availability of Michigan's application for public inspection at three locations in Michigan as well as the EPA regional office in Chicago.

As was noted in the March 28, 1997, **Federal Register** notice, the EPA has pending before it a request, submitted in a letter dated June 14, 1996, by the Michigan Environmental Council (MEC), to revoke Michigan's National Pollution discharge Elimination System (NPDES) and Prevention of Significant Deterioration (PSD) program approvals, not grant additional program delegations and not grant program approval for Boiler and Industrial Furnace revisions under RCRA. This request is based upon Michigan's recent enactment of Public Act 132 of 1996, which establishes certain environmental audit privilege and immunity provisions in the State's natural resources and environmental protection code. EO 1995–18 predated passage of Act 132. EPA's March 28, 1997, proposed action only addressed and sought comment on the impact of EO 1995–18 noted above on Michigan's RCRA program. Accordingly, today's decision to preliminarily approve of revisions to Michigan's RCRA program arising out of EO 1995–18 does not express any viewpoint on the question of whether there are legal deficiencies in Michigan's RCRA program resulting from Public Act 132 of 1996, which was enacted after this Executive Order was issued. EPA is addressing the issues raised by MEC regarding Public Act 132 of 1996 separately.

B. Comments

No adverse comments were received by EPA during the public comment period.

C. Decision

I conclude that Michigan's application for final authorization of revisions resulting from EO 1995–18 meets the necessary requirements under RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste program as revised by EO 1995–18. Michigan has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of these revisions to the Michigan program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "Federal intergovernmental mandate" affects an annual Federal entitlement program of $500 million or more that are not applicable here. The Michigan request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of the EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to the EPA. In any event, the EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of the Michigan hazardous waste program referenced in today's notice will result in annual costs of $100 million or more. The EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of the EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once the EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved State hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270, this authorization does not impose any additional burdens on these small entities. This is because the EPA's authorization would result in an administrative change (i.e., whether the EPA or the State administers the RCRA Subtitle C program in that State), rather than result in a change in the substantive requirements imposed on small entities. Once the EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program. Moreover, this authorization, in approving a State program to operate in lieu of the Federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular State.

Therefore, the EPA provides the following certification under the regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the Michigan program to operate in lieu of the Federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

The proposal contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–29624 Filed 11–13–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
November 14, 1997

Part III

Department of Education

Bilingual Education: Program Development and Implementation Project; Notice Inviting Applications for New Awards for Fiscal Year (FY 1998); Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.288S]

Bilingual Education: Program Development and Implementation Project; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program is to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient (LEP) students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

Eligible Applicants: (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), other LEAs, or a State educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

Deadline for Transmittal of Applications: January 20, 1998.

Deadline for Intergovernmental Review: March 23, 1998.

Available Funds: $6,000,000.

Note: The Congress has not yet enacted an FY 1998 appropriation for the Department of Education. The actual level of funding for this program is contingent upon final congressional action.

Estimated Range of Awards: $100,000–$175,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 40.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 28247).

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7112 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7422 and 7426)).

The grants awarded under this section are to be used to improve the education of limited English proficient students and their families. Specifically, grantees are required to serve limited English proficient students by: (a) developing and implementing comprehensive preschool, elementary, or secondary bilingual education or special alternative instructional programs that are coordinated with other relevant programs and services; and (b) providing inservice training to classroom teachers, administrators, and other school or community-based organizational personnel. Grantees may also implement family education programs, improve the instructional program, compensate personnel, and provide tutorials.

Priorities

Competitive Priority: The Secretary gives preference to applications that meet the following competitive priority (34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b)). The Secretary awards 3 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program.

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided in the appendix to this notice.

Invitational Priorities: The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Reading

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

Invitational Priority 2—Mathematics

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

Invitational Priority 3—Preparation for Postsecondary Education

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition (34 CFR 75.209, 75.210, and 20 U.S.C. 7116(i)(1)).

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Extent of need for the project.* (20 points) (i) The Secretary considers the needs for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the following factors:

(A) The magnitude or severity of the problem to be addressed by the proposed project.

(B) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(Authority: 34 CFR 75.210(a)(1), (2)(i) and (iii))

(2) *Quality of the project design.* (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(D) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(E) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(1), (2)(i), (ii), (xii), (xvi), (xviii) and (xix))

(3) *Quality of project services.* (15 points) (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210(d)(1), (2), (3), (i), (v), and (vii))

(4) *Quality of project personnel.* (7 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of the project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience of the project director and principal investigator;

(B) The qualifications, including relevant training and experience, of key project personnel.

(C) The qualifications, including the relevant training and experience, of the project consultants or subcontractors.

(Authority: 34 CFR 75.210(e)(1)–(3)(i)–(iii))

(5) *Adequacy of resources.* (3 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1), (2)(iii)(iv)(v)(vi))

(6) *Quality of the management plan.* (15 points) (i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1), (2)(i) and (iv)–(v))

(7) *Quality of project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(C) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(D) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(E) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(1), (2)(i)–(iv) and (vi))

(8) *Proficiency in English and another language.* (5 points) The Secretary reviews each application to determine how well the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7428(i)(1))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more

than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on October 7, 1997 (62 FR 52448 through 52450).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.288S, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.288S), Washington, D.C. 20202–4725

or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.288S), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants.

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

g. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 6/90) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application has been received.

For Further Information Contact: Ana Garcia (202) 205–8077, Rik Lanzendorfer (202) 205–8840, Socorro Lara (202) 205–8730, Darlene Miles (202) 205–8259, Terence Sullivan (202) 205–9752, Itzetht Testa-Salcedo (202) 205–8726 or Edia Velez (202) 205–9715, U.S. Department of Education, 600 Independence Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate formats (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If your have questions about using the pdf, call the U.S. Government Printing Office toll-free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll-free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7422.

Dated: November 7, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Appendix

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collections of information is 1885–0528. Expiration date: 4/30/98. The time required to complete this collection of information is estimated to average 80 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the collection of information. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Room 5084, MES Building, Washington, D.C. 20202–6510.

Instructions for Application Narrative

Mandatory Page Limit for the Application Narrative. The narrative portion of the application must not exceed 35 pages. These pages must be double-spaced and printed on one side only. A legible font size and adequate margins should be used. The narrative section must be paginated and should include a one page abstract. The 35 page limit applies to the abstract, proposal narrative, charts, graphs, tables, graphics, position descriptions (end resumes, if included), and any appendices. The page limit does not apply to application forms, attachments to those forms, assurances, certifications, and the table of contents. The page limit applies only to items 14 and not to the other items in the Checklist for Applicants. *Applications with a narrative section that exceeds the page limit will not be considered for funding.*

Abstract. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria. The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumés or curriculum vitae for project personnel; provide position descriptions instead.

Empowerment Zone/Enterprise Community Priority. Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Zone or Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Zone or Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided in this appendix.

Additional Guidance

Table of Contents. The application should include a table of contents listing the sections in the order required.

Budget. Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation. Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency. Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirements of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the

materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 3/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

Empowerment Zones and Enterprise Communities

Empowerment Zones (Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and LeFlore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones (Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area, (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego, San Francisco (Hayview, Hunter's Pointer), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Havon
Delaware: Wilmiogton
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Taliaferro, and Warrent Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Quachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchia Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Caroline: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Areas (Braxton, Clay, Fayette, Nichols, and Roane Counties)
Wisconsin: Milwaukee

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

- ☐ 1. Application for Federal Assistance (SF 424).
- ☐ 2. Group Application Certification (if applicable).
- ☐ 3. Budget Information (ED Form No. 524).
- ☐ 4. Itemized Budget for each year.
- ☐ 5. Student Data.
- ☐ 6. Project Documentation, including—
  Transmittal Letter to SEA;
  Documentation of Consultation with nonprofit private school officials;
  Appropriate box checked in Section C.
- ☐ 7. Program Assurances Form.
- ☐ 8. Empowerment Zone or Enterprise Community Identification (if applicable).
- ☐ 9. Assurances—Non-Construction Programs (SF 424B).
- ☐ 10. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).
- ☐ 11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80–0014), if applicable.
- ☐ 12. Disclosure of Lobbying Activities (SF–LLL).
- ☐ 13. Information that addresses section 427 of the General Education Provisions Act. (See the section entitled "NOTICE TO ALL APPLICANTS" (OMB No. 1801–0004))
- ☐ 14. Table of Contents.
- ☐ 15. Application Narrative, including abstract (not to exceed 35 pages).
- ☐ 16. One original and two copies of the application for transmittal to the Department's Application Control Center.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 8 8S
TITLE: Bilingual Education: Program Development and Implementation Grant

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group (or a group to be established after receiving a grant). This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 76.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative				Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

STUDENT DATA

Name of Local Educational Agency

SECTION A

1. Total number of limited English proficient (LEP) students in the school district
2. Total number of students in the school district
3. Percentage of LEP students (line 1 divided by line 2)

SECTION B

Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	Non-LEP	Total
Total number of students to be served					

PROJECT DOCUMENTATION

NOTE: Submit the appropriate documents and information as specified below for the following programs:

PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANT

SECTION A

A copy of applicant's transmittal letter requesting the appropriate State educational agency to comment on the application. This requirement does not apply to schools funded by the Bureau of Indian Affairs. (See 34 CFR 75.155 and 75.156 below.)

§75.155 Review procedure if State may comment on applications: Purpose of §§75.156-75.158. If the authorizing statute for a program requires that a specific State agency be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§75.156-75.158 for that purpose.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Cross-Reference: See 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) for the regulations implementing the application review procedures that States may use under E.O. 12372. (In addition to the requirement in §75.155 for review by the State educational agency, the application is subject to review by State Executive Order 12372 process. Applicants must complete item 16 of the application face sheet (Standard Form 424, Application for Federal Assistance) by either (a) specifying the date when the application was made available to the State Single Point of Contact for review or (b) indicating that the program has not been selected by the State for review.)

§75.156 When an applicant under §75.155 must submit its application to the State: proof of submission.
(a) Each applicant under a program covered by §75.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Department.
(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

PROJECT DOCUMENTATION

(continued)

SECTION B

Evidence of compliance with the Federal requirements for participation of students enrolled in nonprofit private schools. (See section 7116(h)(2) of Public Law 103-382 and 34 CFR 75.119, 76.652, and 76.656 below.)

Sec. 7116. Applications. "(2) in designing the program for which application is made, the needs of children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type to those which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children."

(Authority: 20 U.S.C. 7426(h)(2))

§75.119 Information needed if private schools participate. If a program requires the applicant to provide an opportunity for participation of students enrolled in private schools, the application must include the information required of subgrantees under 34 CFR 76.656.

(Approved by the Office of Management and Budget under control number 1880-0513)
(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.652 Consultation with representatives of private school students.
(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:
(1) Which children will receive benefits under the project;
(2) How the children's needs will be identified;
(3) What benefits will be provided;
(4) How the benefits will be provided; and
(5) How the project will be evaluated.
(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

PROJECT DOCUMENTATION

(continued)

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§76.656 Information in an application for a subgrant.
An applicant for a subgrant shall include the following information in its application:
(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.
(b) The number of students enrolled in private schools who have been identified as eligible to benefit under the program.
(c) The number of students enrolled in private schools who will receive benefits under the program.
(d) The basis the applicant used to select the students.
(e) The manner and extent to which the applicant complied with §76.652 (consultation).
(f) The places and times that the students will receive benefits under the program.
(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

SECTION C

Check the appropriate box below:

- There are no eligible nonprofit private schools in the proposed service delivery area that wish to participate in the project. ☐
- One or more eligible nonprofit private schools in the proposed service delivery area wish to participate in the project and are listed on the enclosed Student Data form. ☐
- There are no eligible nonprofit private schools in the proposed service delivery area. ☐

SECTION D

If applicable, identify on the line at the right the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones and Enterprise Communities in previous sections of this application package.) _____

PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. This form must be completed for applications under the following programs:

PROGRAM DEVELOPMENT AND IMPLEMENTATION

As the duly authorized representative of the applicant, I certify that the applicant:

- Will not reduce the level of State and local funds that the applicant expends for bilingual education or special alternative instructional programs if the applicant is awarded a grant under the program.
- Will employ in the proposed project teachers who are proficient in English, including written and oral communication skills.
- Will integrate the proposed project with the applicant's overall educational program.
- Has developed this application in consultation with an advisory council, the majority of whose members are parents and other representatives of the children and youth to be served in the proposed project.

(Authority: 20 U.S.C. 7426(g))

Authorized Representative		Applicant Organization
Signature	Title	
Typed Name	Date Signed	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year ____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

[FR Doc. 97–29998 Filed 11–13–97; 8:45 am]
BILLING CODE 4000–01–C

federal register

Friday
November 14, 1997

Part IV

Environmental Protection Agency

40 CFR Part 69

United States Virgin Islands Final Ruling on Petition Pursuant to Section 325(a)(1) of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[FRL–5820–8]

United States Virgin Islands Final Ruling on Petition Pursuant to Section 325(a)(1) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On June 10, 1997, the Environmental Protection Agency (EPA) proposed to approve a petition submitted by the Governor of the U.S. Virgin Islands which requested a waiver from certain Clean Air Act (the Act) restrictions to the Hess Oil Virgin Islands Corporation (HOVIC) in St. Croix. This exemption was proposed pursuant to section 325(a)(1) of the Act. Specifically, the waiver would allow HOVIC to implement an Intermittent Control Strategy (ICS) based on atmospheric conditions, which is prohibited by section 123 of the Clean Air Act. The ICS would alleviate potential exceedances of the National Ambient Air Quality Standards for sulfur dioxide. In this action, EPA is promulgating this waiver which allows the HOVIC refinery in St. Croix to implement an ICS under conditions which will be specified in a federally enforceable Prevention of Significant Deterioration of Air Quality (PSD) permit.

EFFECTIVE DATE: This rule will be effective December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Annamaria Colecchia, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, Telephone: (212) 637–4016.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1996, the Governor of the United States Virgin Islands submitted a petition to the Administrator of the EPA for an exemption from certain requirements of the Act. The petition, submitted pursuant to Section 325(a)(1) of the Act, requests that the HOVIC refinery, located on the island of St. Croix, be granted an exemption from Section 123 of the Act which prohibits basing emission limitations using an ICS. HOVIC concurrently submitted a proposed modification to its existing Prevention of Significant Deterioration (PSD) permit to the EPA. Air quality analyses submitted in support of the proposed PSD modification indicated that although emissions of sulfur dioxide (SO_2) will be substantially reduced below the amount HOVIC is currently permitted to emit, occasional exceedances of the 24-hr National Ambient Air Quality Standard (NAAQS) for this pollutant could occur, to the north of the facility, during those days that the wind blows onshore for a persistent length of time.

The petition proposed to prevent these potential exceedances from occurring by reducing the sulfur content of the fuel processed during those time periods. Since this constitutes an ICS based on atmospheric conditions, reliance upon which in an implementation plan is specifically prohibited by the Act, the petition requested an exemption from this requirement through provisions available under Section 325 of the Act. Granting HOVIC's petition will make it possible for EPA to consider, in a separate action, HOVIC's request for a PSD permit modification. EPA is not entertaining HOVIC's PSD permit modification request in this action.

EPA proposed approval of the petition on June 10, 1997 (62 FR 31546) and this proposal contained the description of the petition, supporting documents and the minimum federally enforceable conditions under which the ICS shall be implemented. These conditions will also appear in a revised PSD permit. No comments were received on the proposed rulemaking. It should be noted, that for clarity EPA added some language into the CFR portion of this rulemaking which had previously been included in the preamble to this proposal (i.e., ICS must include a meteorological tower and ambient monitors).

Conclusion

Since HOVIC met the requirements in section 325 of the Act and EPA received no comments during the public comment period, EPA is promulgating this waiver to the HOVIC refinery in St. Croix under the conditions specified in the proposed approval.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action by the Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2215), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This is because the final rule applies only to the Hess Oil Virgin Islands refinery on St. Croix, Virgin Islands. This facility is not a small entity, and the action granting the petition will relieve the source from restrictions that would otherwise apply.

Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's rule does not contain a Federal mandate that may result in expenditures of $100 million or more in any one year. This is because the rule is mainly deregulatory, relieving (subject to conditions) the sole regulated entity of limitations that would otherwise apply, and possibly resulting in resource savings to the Hess Oil Virgin Islands refinery that would not likely be obtained in the absence of today's rule. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, since it imposes no additional significant or unique burdens on the Virgin Islands to implement today's rule.

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control.

Dated: November 6, 1997.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, 40 CFR part 69 is amended as set forth below:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows

Authority: Sec 325(a), Clean Air Act, as amended (42 U.S.C. 7625–1).

2. Subpart D is added consisting of § 69.41 to read as follows:

Subpart D—The U.S. Virgin Islands

§ 69.41 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act and a petition submitted by the Governor of the Virgin Islands, an exemption to section 123 of the Clean Air Act is granted to the Hess Oil Virgin Islands Corporation (HOVIC) at the St. Croix refinery. Specifically, the exemption waives the prohibition on the implementation of an Intermittent Control Strategy (ICS) based upon atmospheric conditions in order to set emission limitations. The emission limitations shall depend upon the sulfur content in the residual oil burned at the refinery.

(b) The protocol to be followed for the ICS shall be set forth in a Prevention of Significant Deterioration of Air Quality (PSD) permit issued to HOVIC; and shall include as a minimum, the conditions listed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section.

(1) HOVIC shall maintain a meteorological tower on its property for the purpose of the ICS which meets the required EPA QA/QC operating specifications. At a minimum, the wind direction data will be monitored, collected and reported as 1-hour averages, starting on the hour. If the average wind direction for a given hour is from within the designated sector, the wind will be deemed to have flowed from within the sector for that hour. Each "day" or "block period", for these purposes will start at midnight and end the following midnight.

(2) HOVIC shall maintain SO2 ambient monitors and collect ambient SO2 concentration data for the purpose of implementing the ICS at nearby locations approved by EPA and specified in the PSD permit. The ambient monitors must follow the required EPA QA/QC operating specifications. At a minimum, the data will be collected according to EPA approved State and Local Ambient Monitoring Stations procedures found at 40 CFR 58.20, but will, for these purposes, be averaged by the hour, starting on the hour.

(3) The switch to a lower sulfur fuel (0.5%) will take place when paragraphs (b)(3)(i) or (b)(3)(ii) of this section are met.

(i) The winds blow from a 45 degree sector defined as 143 to 187 degrees inclusive, where zero degrees is due north, for at least 6 consecutive hours during a 24-hour block period or any 12 non-consecutive hours during a 24 hour block period.

(ii) One of HOVIC's ICS monitors measures an average ambient SO2 concentration that is 75% of the 24-hour NAAQS during any rolling 24-hour average. (75% of the 24-hour NAAQS = 274 ug/m3 or 0.105 ppm).

(4) The switch back to the higher sulfur fuel (1.0%) may occur if the conditions in paragraphs (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) of this section are met.

(i) If the ICS was triggered by paragraph (b)(3)(i) of this section, the switch back may occur when the winds blow outside the sector listed in paragraph (b)(3)(i) of this section for at least 3 consecutive hours following the period during which the winds were blowing inside the sector.

(ii) If the ICS was triggered by paragraph (b)(3)(ii) of this section, the switch back may occur after all of HOVIC's ICS ambient monitors measure a 24-hour average concentration which is less than 75% of the NAAQS for at least one 24-hour block period following any occurrence when the monitor measured the concentration which was 75% of the NAAQS.

(iii) If the ICS was triggered by both paragraphs (b)(3)(i) and (b)(3)(ii) of this section, the switch back may occur when both of the conditions in paragraphs (b)(4)(i) and (b)(4)(ii) of this section are met.

(c) The protocol may be modified by EPA to protect against exceedances of the sulfur dioxide NAAQS.

(d) In the event that there is an exceedance of the NAAQS, HOVIC will report the exceedance to EPA and recommend corrective action as well as amendments to the protocol to ensure the protection of the NAAQS.

(e) HOVIC must comply with all fuel switching requirements, contained in HOVIC's PSD permit.

(f) This exemption shall take effect only in the event that a final PSD permit modification becomes effective.

(g) The Administrator may terminate the exemption through rulemaking procedures upon determining that HOVIC's use of the ICS is causing or contributing to an exceedance of the NAAQS.

[FR Doc. 97–30021 Filed 11–13–97; 8:45 am]

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H.R. 2013/P.L. 105–70
To designate the facility of the United States Postal Service located at 551 Kingstown Road in South Kingstown, Rhode Island, as the "David B. Champagne Post Office Building". (Nov. 10, 1997; 111 Stat. 1455)

H.J. Res. 105/P.L. 105–71
Making further continuing appropriations for the fiscal year 1998, and for other purposes. (Nov. 10, 1997; 111 Stat. 1456)

S. 1227/P.L. 105–72
To amend title I of the Employee Retirement Income Security Act of 1974 to clarify treatment of investment managers under such title. (Nov. 10, 1997; 111 Stat. 1457)

H.R. 2464/P.L. 105–73
To amend the Immigration and Nationality Act to exempt internationally adopted children 10 years of age or younger from the immunization requirement in sec tion 212(a)(1)(A)(ii) of such Act. (Nov. 12, 1997; 111 Stat. 1459)

S. 587/P.L. 105–74
To require the Secretary of the Interior to exchange certain lands located in Hinsdale County, Colorado. (Nov. 12, 1997; 111 Stat. 1460)

S. 588/P.L. 105–75
To provide for the expansion of the Eagles Nest Wilderness within the Arapaho National Forest and the White River National Forest, Colorado, to include land known as the Slate Creek Addition. (Nov. 12, 1997; 111 Stat. 1462)

S. 589/P.L. 105–76
To provide for a boundry adjustment and land conveyance involving the Raggeds Wilderness, White River National Forest, Colorado, to correct the effects of earlier erroneous land surveys. (Nov. 12, 1997; 111 Stat. 1463)

S. 591/P.L. 105–77
To transfer the Dillon Ranger District in the Arapaho National Forest to the White River National Forest in the State of Colorado. (Nov. 12, 1997; 111 Stat. 1465)

H.R. 2264/P.L. 105–78
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Electronic Bulletin Board
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Rules and Regulations

Federal Register
Vol. 62, No. 221
Monday, November 17, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Administrative Regulations; Privacy Act Regulations

AGENCY: Office of the Secretary, Agriculture.

ACTION: Final rule.

SUMMARY: This rule exempts four systems of records from certain sections of the Privacy Act (5 U.S.C. 552a) pursuant to U.S.C. 552a(j). The previous list of exempt systems published in the **Federal Register** at 54 FR 39517, September 27, 1989, was omitted inadvertently from 7 CFR 1.122. In addition, this rule changes the list of Office of Inspector General (OIG) systems of records covered under those sections to reflect changes in the names of two of the systems of records, to add a third system which is being split-off from one of the other systems, and to include the investigative records portion of a fourth system.

These amendments are being made in conjunction with the notice of amendments to the USDA/OIG systems of records which is published elsewhere in today's issue of the **Federal Register**.

DATES: Effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Paula F. Hayes, Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, USDA, Washington, D.C. 20250–2310 (202–720–6979).

SUPPLEMENTARY INFORMATION: OIG has revised its systems of records in order to more accurately meet its recordkeeping practices and needs. The system formerly know as USDA/OIG–2, "Intelligence Records," has been redesignated as "Informant and Undercover Agent Records." The system previously designated as USDA/OIG–3 "Investigative Files and Subject/Title Index," has been divided into two systems to be known as USDA/OIG–3, "Investigative Files and Automated Investigative Indices System" and USDA/OIG–4, "OIG Hotline Complaint Records." And USDA/OIG–5, known as "Management Information and Data Analysis System," has been renamed "Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN)."

These changes are not considered substantive because the basic records covered by the exemptions in 7 CFR 1.22 and 1.123 remain the same as before. The justifications for these exemptions were published as a proposed rule at 54 FR 11204–11206, March 17, 1989, and were further explained in a final rule published at 54 FR 39517, September 27, 1989.

The exemption revision applies to four Privacy Act systems of records: USDA/OIG–2, "Informant and Undercover Agent Records;" USDA/OIG–3, "Investigative Files and Automated Investigative Indices System;" USDA/OIG–4, "OIG Hotline Complaint Records;" and the Investigations Subsystem and Investigative Employee Time Records portions of USDA/OIG–5, "Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN)."

Pursuant to 5 U.S.C. 552a(k)(2), (5) and 552a(j)(2), exemption of records in four systems of records of OIG, USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, and the Investigations Subsystem and Investigative Employee Time Records portions of USDA/OIG–5, is authorized to the extent that information in the systems pertains to criminal law enforcement. This includes, but is not limited to information complied for the purpose of identifying criminal offenders and alleged offenders and consisting of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or reports of enforcement of the criminal laws from arrest or indictment through release from supervision.

The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take such action as is necessary to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, or retained would significantly impede the effectiveness of OIG investigatory activities, and in addition could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Information in these systems is maintained pursuant to official Federal law enforcement and criminal investigation functions of the Office of Inspector General. The exemptions are needed to maintain the integrity and confidentiality of criminal investigations, to protect individuals from harm, and for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since these systems of records are being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation or the existence of the investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person to whom it ask to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information and of the effects on the person, if any, of not providing all or any part of the requested information. The application of the provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) requires an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record, and how to contest its content. Since these systems of records are being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that these systems of records will be exempted from subsection (f) and (d) of the Act. Although the systems would be exempt from these requirements. OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the systems will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. a(f)(1) requires an agency to promulgate rules which shall establish procedures where by an individual can be notified in response to his/her request if of any system of records named by the individual contain a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since these systems would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (F)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that these systems of records will be exempted from subsection (d) of the Act. Although these systems would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish Agency procedures because under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in these systems of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since these systems of records would be exempt from subsections (c)(3) and (4), d, e(1), (2), (3) and 4(G) and (H), (e)(1) through (5) and (8) and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that these systems of records will be exempted from those subsections of the Act.

Under 5 U.S.C. 552a(j)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(a) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(b) Information compiled for the purpose of a criminal investigation including reports of informants and investigators, and associated with an identifiable individual; or

(c) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Under 5 U.S.C. 552a(k) the head of an agency may exempt any system of records if the system of records is investigatory material within the scope of subsection (j)(2). Section 552(a)(k)(2) provides for the exemption of investigative material compiled for law enforcement purposes, provided however that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he could otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Exemption under 552a(k)(2) is necessary to the extent the records constitute investigatory material compiled for law enforcement purposes, to protect the investigatory process, and protect the identity of a confidential source. 552(a)(k)(5) allows for the exemption of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service. Exemption under 552(a)(k)(5) is necessary to the extent that the disclosure of such material would reveal the identity of a confidential source and to maintain access to sources necessary in making determinations of suitability for employment.

USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, and the Investigations Subsystem and Investigative Employee Time Records portions of USDA/OIG–5, contain information of the type described above and are maintained by the Office of Inspector General, a component of USDA which performs as one of its principal functions activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the Office of Inspector General is the Inspector General Act of 1978, 5 U.S.C. app. 3. That legislation authorizes the Office of Inspector General to conduct investigations relating to programs and operations of the Department of Agriculture.

The list of exempt systems contained in the **Federal Register** document at 54 FR 39517, September 27, 1989, and proposed at 59 FR 51389, October 11, 1994, is amended by this document.

List of Subject in 7 CFR Part 1

Privacy.

For the reasons set out in the preamble, 7 CFR, subtitle A, part 1, subpart G is amended as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart G—Privacy Act Regulations

1. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Sections 1.122 is amended by revising the list of exempt systems of records for the Office of Inspector General and 1.123 by adding the list of exempt systems of records for the Office of Inspector General to read as follows:

§ 1.122 General exemptions.

* * * * *

Office of Inspector General

Informant and Undercover Agent Records, USDA/OIG–2.

Investigative Files and Automated Investigative Indices System, USDA/OIG–3.

OIG Hotline Complaint Records, USDA/OIG–4.

Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN), USDA/OIG–5.

§ 1.123 Specific exemptions.

* * * * *

Office of Inspector General

Informant and Undercover Agent Records, USDA/OIG–2.

Investigative Files and Automated Investigative Indices System, USDA/OIG–3.

OIG Hotline Complaint Records, USDA/OIG–4.

Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN), USDA/OIG–5.

* * * * *

Done at Washington, DC., this 3rd day of November 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–29606 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–23–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–061–2]

RIN 0579–AA85

Interstate Movement of Imported Plants and Plant Parts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing a new generic domestic quarantine notice. This domestic quarantine notice provides that, subsequent to their importation, foreign plants and plant parts prohibited under our foreign quarantine notices from being imported into certain States or areas are also prohibited from being moved interstate into those States or areas. This action will clarify and strengthen our ability to enforce restrictions on the movement in commerce of imported plants and plant parts that present a risk of introducing foreign plant pests and diseases. In conjunction with this action, we are also removing a domestic quarantine notice that prohibits certain interstate movements of Unshu oranges, subsequent to their importation into the United States, because the new domestic quarantine notice makes a specific one for Unshu oranges unnecessary.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

The regulations at title 7, part 301, of the Code of Federal Regulations (CFR) contain domestic quarantine notices designed to prevent the spread of certain plant pests and diseases through the interstate movement of regulated articles. The regulations at 7 CFR 319 contain foreign quarantine notices designed to prevent the introduction of foreign plant pests and diseases through the importation of regulated articles into the United States.

Some of the foreign quarantine notices in part 319 include destination restrictions for specified imported plants and plant parts. That is, these notices allow specified foreign plants or plant parts to be imported into some parts of the United States but not into other specified States or areas because movement into those States or areas could present a plant pest or disease risk. However, only one domestic quarantine notice (7 CFR 301.83, "Subpart-Unshu Oranges") prohibits the subsequent movement of an imported plant or plant part into or through certain portions of the United States based on importation restrictions specified in a foreign quarantine notice (7 CFR 319.28, "Subpart-Citrus Fruit").

On October 2, 1996, we published in the **Federal Register** (61 FR 51376–51377, Docket No. 96–061–1) a proposal to amend the regulations in title 7 by establishing a new generic domestic quarantine notice in part 301. We stated that the proposed quarantine notice would prohibit the subsequent interstate movement of imported plants and plant parts into or through areas identified in a foreign quarantine notice as being a prohibited destination for the imported plants and plant parts.

In conjunction with the action just described, we also proposed to remove the domestic quarantine notice, "Subpart-Unshu Oranges," contained in § 301.83. As mentioned previously, that subpart serves to reinforce the destination restrictions for imported Unshu oranges specified in the foreign quarantine notice "Subpart-Citrus Fruit." The establishment of the generic domestic quarantine notice described above would make the prohibitions in "Subpart-Unshu Oranges" redundant and, therefore, no longer necessary.

We solicited comments concerning our proposal for 45 days ending November 18, 1996. We received four comments by that date. They were from an industry group, a scientific organization, and two State governments.

While we will discuss specific comments below, we believe several of the concerns expressed in the comments stemmed from confusion about the language we used in the proposed domestic quarantine notice. We regret any misunderstanding that resulted from the proposal as written and will attempt to explain more clearly in this document our goal in promulgating this regulation. We also are revising the proposed regulatory language to clarify it.

To begin, we would like to emphasize that this generic domestic quarantine notice adds no new quarantine restrictions; it simply reiterates in the domestic quarantine notices (title 7, part 301) restrictions that are already stated in the foreign quarantine notices (title 7, part 319). Therefore, this notice will have no effect on the legal importation or interstate transport of foreign plants or plant parts. What this domestic quarantine notice will do is clarify that shipping an imported plant or plant part interstate to an area of the United States that is a prohibited destination for that plant or plant part under a foreign quarantine notice is a violation of Federal regulations. Because this notice clearly states that such interstate movement of certain imported plants and plant parts is prohibited, we believe that this notice strengthens our ability to take regulatory action against persons who engage in such prohibited interstate transport.

This new quarantine notice logically places any regulations setting forth restrictions on the interstate movement of imported plants and plant parts in the domestic quarantine notices in part 301 of the regulations instead of in the foreign quarantine notices in part 319. Any member of the public who might check the CFR to determine whether the domestic movement of an imported plant or plant part is prohibited or restricted could not reasonably be expected to look for that information in the foreign quarantine notices. Placing this quarantine notice and prohibition on interstate movement in a more logical position in the CFR will increase public awareness of and accessibility to these restrictions in the regulations.

Specific Concerns

One commenter expressed concern that the language in the proposed domestic quarantine notice was "vague and confusing and could easily result in misinterpretation as to its intent, especially where it states that the limited distribution areas are essentially quarantined areas."

As our proposal was worded, areas of the United States into which a plant or plant part may be imported under part 319 would be quarantined with respect to that plant or plant part; all other areas of the United States would not be quarantined with respect to that plant or plant part, and movement of the plant or plant part would be prohibited into nonquarantined areas.

We recognize that designating as "quarantined areas" the States and areas into which the foreign plants or plant parts may move could be confusing to some people. Under many plant pest quarantines, certain articles may not be moved from a quarantined area because there is an infestation in that area. The States and areas quarantined for a particular plant or plant part under the generic domestic quarantine notice will be "quarantined" because of the way in which our authorizing statute is written. According to 7 U.S.C. 161, the Secretary of Agriculture is authorized and directed to quarantine any portion of the United States he deems necessary to prevent the spread of a dangerous plant disease or insect infestation that is new to or not widely prevalent within the United States. Further, 7 U.S.C. 161 prohibits the interstate movement of any plants, plant parts, or other articles capable of carrying the disease or insect pest from any quarantined portion of the United States into or through any other part of the United States, except as prescribed by the Secretary of Agriculture.

We would like to illustrate how this authority is used in regard to the foreign quarantine notices in part 319. The purpose of the destination restrictions in the foreign quarantine notices that have such restrictions is to prevent the movement of an imported article that presents a risk of carrying a foreign plant pest or disease into an area of the United States where the pest or disease could become established. In the case of imported Unshu oranges, for example, all areas of the United States except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States are quarantined. The listed States and territories are the primary citrus-producing areas of the United States. Because we want to prevent the possibility that imported Unshu oranges could introduce citrus canker (a disease of citrus) into the United States, we prohibit these oranges from being moved into U.S. citrus-production areas, where the disease could become established. Therefore, according to 7 CFR 301.83 and 319.28, imported Unshu oranges grown in Japan or on Cheju Island, Republic of Korea, may be moved only into quarantined areas of the United States (all areas of the United States except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States).

Because of the way in which our statutory authority is written, the generic domestic quarantine notice will work in the same way as the Unshu orange quarantine: The areas into which a foreign plant or plant part *may* be moved are quarantined with respect to that plant or plant part, and any subsequent movement of the imported plant or plant part into nonquarantined areas is prohibited. However, as a result of the confusion generated by the language in the proposal, we are adding some introductory text to the quarantine notice in an attempt to make the rule more clear.

Some of the commenters expressed concern regarding the development of the destination restrictions on imported plants and plant parts contained in the foreign quarantine notices. One commenter questioned how the "protected" States and areas would be selected. Another commenter wanted us to make provision for several actions: Allowing exemptions to the restrictions for research purposes, consulting the scientific community during the selection process, conducting risk assessments of the imported plants and plant parts and associated plant pests, conducting periodic reviews of such plants and pests, and conducting reviews of taxonomic classifications.

We want to make clear that the process we follow to add a foreign plant or plant part to part 319 to allow the plant's or plant part's importation with or without destination restrictions will not change as a result of this rule. Moreover, we will not add to part 301 lists of plants or plant parts with domestic movement restrictions as a result of this rule. As stated previously, this proposed quarantine notice adds no new regulatory requirements; it simply restates in part 301 restrictions on interstate movement of plants and plant parts that have always been prohibited through the destination restrictions in part 319.

Before we add a foreign plant or plant part to part 319 to allow the plant's or plant part's importation, we publish in the **Federal Register** for public comment a proposal explaining our reasons for believing the plant or plant part could be imported under certain conditions without presenting a threat to the health of U.S. agriculture. All comments submitted are then carefully considered before we issue a final rule. If, after evaluating the comments received and all available scientific data, we believe the foreign plant or plant part presents a plant pest or disease risk to certain areas of the United States only, we may choose to add the plant or plant part to part 319 with destination restrictions and other risk-mitigation measures. (Destination restrictions are always only one part of a systems approach to pest and disease exclusion.) As part of this rulemaking process, we conduct periodic reviews and risk assessments of foreign plants and plant pests, track changes in taxonomy, and issue permits for movement of plants and plant parts for research purposes.

A couple of commenters raised concerns about enforcement of the proposed generic quarantine notice. The commenters were concerned that no additional enforcement mechanisms were provided in the notice and that enforcement would become the responsibility of the States.

It is true that no new enforcement mechanisms are included in the notice. They were not necessary, and no new enforcement responsibilities will devolve upon the States as a result of this action. Our goal in promulgating this action was simply to clarify our authority to take enforcement action, should the need arise, against persons who have moved imported plants or plant parts interstate in violation of destination restrictions in a foreign quarantine notice.

One commenter opposed the general concept of using limited distribution of an article as a means of mitigating pest or disease risk because enforcing restrictions on the distribution of commodities is difficult. We realize that some prohibited shipments, most often small shipments made by private citizens, may take place as the result of either ignorance of the regulations or purposeful deceit. However, limited distribution of a foreign plant or plant part is never the sole measure used to mitigate the pest or disease risks associated with importing the plant or plant part; destination restrictions are one of usually a series of risk-mitigation measures, or multiple safeguards, used to reduce a commodity's pest or disease risk to a negligible level. Moreover, we believe that the vast majority of commercial shippers try to abide by Federal requirements and that unscrupulous distributors are the exception rather than the norm.

One commenter requested that the proposed quarantine notice include a requirement that the shipping containers for plants and plant parts covered by the quarantine be labeled to indicate that reshipment to the restricted areas is prohibited. While the proposal includes no additional labeling requirements, the majority of foreign quarantine notices that have destination restrictions require that the containers carrying the product be labeled "not for distribution in" the restricted areas.

One commenter expressed concern that the proposed generic quarantine notice could infringe on a State's authority to restrict the entry from other States of plants and plant parts that present a plant pest risk to that State.

This quarantine notice will have no effect on a State's authority to regulate the interstate movement of domestic plants or plant parts. The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) allows a State to regulate the interstate movement of plants and plant parts coming into that State from a State where a plant pest or disease exists until the Secretary of Agriculture promulgates a quarantine or regulation regarding the plant pest or disease. Once the Secretary acts by promulgating a quarantine or regulation regarding a plant pest or disease, the States are precluded, or preempted, from regulating for that particular plant pest or disease, except that they may have regulations that parallel the Federal quarantine or regulations. However, the new domestic quarantine notice does not establish any new quarantine or regulations affecting the interstate movement of domestic plants or plant parts.

With respect to imported plants and plant parts, our new domestic quarantine notice prohibits the subsequent interstate movement of imported plants or plant parts into States or areas named in part 319 as States or areas into which the plants or plant parts may not be imported. If part 319 allows a foreign plant or plant part to be imported into a State, that State does not have authority to refuse the plant or plant part entry, either directly from the port of arrival, or from another State. The Federal Government retains jurisdiction over all plants and plant parts while they are in foreign commerce. If the Secretary of Agriculture does not prohibit or restrict the importation of a plant or plant part, any such prohibition or restriction is deemed to be unnecessary. When foreign commerce ceases is a question of fact that must be addressed in each individual case. However, the Department of Agriculture has taken the position that fresh fruits and vegetables imported into the United States for immediate distribution and sale remain in foreign commerce until they are sold to the ultimate consumer. Other questions regarding when foreign commerce ceases must be addressed on a case-by-case basis and will be resolved based on the facts in each particular case.

For these reasons, a State may not legally prohibit the interstate movement of a foreign plant or plant part into the State if the plant or plant part is allowed importation into the State under part 319, whether or not the plant or plant part is considered to be in foreign commerce or in interstate commerce. If an imported plant or plant part is deemed to be in interstate commerce (which could happen with plants and plant parts other than fresh fruits and vegetables), a State may not enforce regulations that are different from the Department's regulations. Any State that believes it should or should not be included as a restricted destination in part 319 should present its case to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

One commenter expressed concern that a State wishing to be included as a restricted destination in part 319 might be required first to conduct surveys to establish that the State is free of the pest of concern and then establish an official control program to prevent interstate movement of the pest into the State. The commenter was further concerned that this process could require funding and other resources that the State might not have.

We have no plans to require that, before a State may be considered for inclusion as a restricted destination in part 319, the State would need to conduct surveys to prove that it is free of a particular foreign pest or establish an official control program to prevent interstate movement of that pest into its jurisdiction. Any decision to include a State as a restricted destination in part 319 is based upon a risk assessment, conducted by the Department, that indicates that destination restrictions appear warranted to reduce the pest risk to susceptible crops within that State. The establishment of an official control program by a State would not be a prerequisite to a State's being listed as a restricted destination in part 319.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We do not anticipate that this action will have a significant economic impact on any small entities. Imported plants and plant parts, including fruits and vegetables, that are prohibited from being imported into specified States or areas under our foreign quarantine notices are, under those same notices, prohibited from being distributed in those States or areas. This action clarifies and strengthens the agency's ability to enforce these restrictions.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. A new subpart, Subpart-Imported Plants and Plant Parts, is added to part 301 to read as follows:

Subpart—Imported Plants and Plant Parts

Sec.
301.10 Definitions.
301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

Subpart—Imported Plants and Plant Parts

§ 301.10 Definitions.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

State. Any State, territory, district, or possession of the United States.

§ 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

(a) In accordance with part 319 of this chapter, some plants and plant parts may only be imported into the United States subject to certain destination restrictions. That is, under part 319, some plants and plant parts may be imported into some States or areas of the United States but are prohibited from being imported into, entered into, or distributed within other States or areas, as an additional safeguard against the introduction and establishment of foreign plant pests and diseases.

(b) Under this quarantine notice, whenever any imported plant or plant part is subject to destination restrictions under part 319:

(1) The State(s) or area(s) into which the plant or plant part is allowed to be imported is quarantined with respect to that plant or plant part; and

(2) No person shall move any plant or plant part from any such quarantined State or area into or through any State or area not quarantined with respect to that plant or plant part.

Subpart—Unshu Oranges—[Removed and Reserved]

3. Subpart-Unshu Oranges, consisting of § 301.83, is removed and reserved.

Done in Washington, DC, this 10th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30107 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–113–1]

Mexican Fruit Fly Regulations; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating a portion of Los Angeles County, CA, as a regulated area. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated area in California.

DATES: Interim rule effective November 10, 1997. Consideration will be given only to comments received on or before January 16, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–113–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–113–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, Texas was the only State quarantined for the Mexican fruit fly.

Section 301.64–3 provides that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Plant Protection and Quarantine (PPQ) shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that portions of Los Angeles County, CA, are infested with the Mexican fruit fly. Specifically, on October 10, 1997, inspectors found one female Mexican fruit fly in a trap in a residential area of Los Angeles County; on October 20, 1997, inspectors found one male Mexican fruit fly in the same area; and, on October 22, 1997, inspectors detected larvae in the same area as the adult finds, indicating that an infestation exists. The Mexican fruit fly is not known to occur anywhere else in the continental United States except parts of Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to other States, we are amending the regulations in § 301.64(a) by designating California as a quarantined State and in § 301.64–3(c) by designating as a regulated area a portion of Los Angeles County, CA. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California have begun an intensive Mexican fruit fly eradication program in the regulated area in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated area that are substantially the same as

those imposed with respect to the interstate movement of regulated articles.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make the rule effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule restricts the interstate movement of regulated articles from a portion of Los Angeles County, CA. Within the regulated area there are approximately 804 small entities that may be affected by this rule. These include 1 farmers' market, 2 community gardens, 298 distributors, 1 food bank, 440 fruit sellers, 5 growers, 4 haulers, 27 nurseries, 11 packers, 7 processors, 1 swap meet, and 7 transient load carriers. These 804 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Mexican fruit fly program. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a) is amended by removing the phrase "the State of Texas" and adding "the States of California and Texas" in its place.

3. In § 301.64–3, paragraph (c) is amended by adding in alphabetical order an entry for "California" to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

Los Angeles County. That portion of Los Angeles County in the Boyle Heights area bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 101 and Alvarado Street; then northeast along Alvarado Street to Sunset Boulevard; then southeast along Sunset Boulevard to Echo Park Avenue; then northeast along Echo Park Avenue to Morton Avenue; then northeast along Morton Avenue to Morton Place; then southeast along Morton Place to Academy Road; then east along Academy Road to State Highway 110; then northeast along State Highway 110 to Via Marisol Avenue; then east along Via Marisol Avenue to Monterey Road; then south along Monterey Road to Huntington Drive; then northeast along Huntington Drive to Poplar Boulevard; then east along Poplar Boulevard to Fremont Avenue; then south along Fremont Avenue to Interstate Highway 10; then east along Interstate Highway 10 to Atlantic Boulevard; then south along Atlantic Boulevard to Newmark Avenue; then east along Newmark Avenue to Garfield Avenue; then south along Garfield Avenue to Slauson Avenue; then west along Slauson Avenue to Eastern Avenue; then south along Eastern Avenue to Gage Avenue; then west along Gage Avenue to Interstate Highway 710; then south along Interstate Highway 710 to Florence Avenue; then west along Florence Avenue to Central Avenue; then north along Central Avenue to Slauson Avenue; then west along Slauson Avenue to Interstate Highway 110; then north along Interstate Highway 110 to Jefferson Boulevard; then northwest along Jefferson Boulevard to Hoover Street; then north along Hoover Street to Alvarado Street; then northeast along Alvarado Street to the point of beginning.

* * * * *

Done in Washington, DC, this 10th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30106 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 650

Protection of Wetlands

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to Government Performance Results Act, the Natural Resources Conservation Service (NRCS) is removing obsolete, unnecessary, or redundant regulations from the Code of Federal Regulations. This action removes the regulations found at 7 CFR 650.26 concerning the NRCS wetland technical assistance policy.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Warren M. Lee (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in E.O. 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Environmental Evaluation

This final rule will have no significant effect on the human environment and is categorically exempt under 7 CFR 1b.3(a)(6), therefore neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This rule does not contain reporting or record keeping requirements subject to the Paperwork Reduction Act.

Background

Pursuant to the Administration effort to review existing agency regulations and remove unnecessary regulations from the Code of Federal Regulations, the NRCS has determined that the regulation found at 7 CFR part 650.26, "Protection of Wetlands," is unnecessary because the regulation addresses a matter of internal agency policy, does not regulate any member of the public, conflicts with agency implementation of the wetland conservation provisions of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 *et seq.*, and utilizes a superseded classification of wetlands.

Executive Order 11990

Wetlands provide fish and wildlife habitats, maintain ground water supplies and water quality, protect shorelines from erosion, store floodwaters and trap sediments, and provide recreational and educational opportunities. Historically, wetlands have been converted at a rapid rate with the concomitant loss of the functions and values that they provide to the Nation. In some cases, activities of the Federal government contributed to the loss of the Nation's wetlands. To minimize adverse impacts on wetlands resulting from Federally-sponsored activities, President Carter in 1977 issued an Executive Order to protect wetlands. Executive Order 11990 established the policy that, to the extent authorized by law, the Executive Branch would avoid direct or indirect support of new construction in wetlands wherever there exists a practicable alternative.

Pursuant to the Soil Conservation and Domestic Allotment Act of 1935, 16 U.S.C. 590a *et seq.*, the Soil Conservation Service (SCS) of the United States Department of Agriculture provided technical assistance to landowners for the protection of natural resources on private lands. Technical assistance included the personnel and support resources needed to conduct planning and conservation practice survey, layout, design, installation and certification. Among activities conducted prior to 1977, SCS provided technical assistance related to the construction of drainage ditches and other structures that resulted in the conversion of wetlands.

Section 6 of Executive Order 11990 requires agencies to issue or amend their existing procedures to comply with the policies of the order, and accordingly, SCS revised its policy regarding technical assistance in 1977. These changes restricted the situations in which SCS employees could provide technical assistance to clients related to new construction in wetlands. In 1979, SCS codified the wetland technical assistance policy at 7 CFR 650.26. SCS modified this regulation in 1982 to enable SCS employees to provide assistance for new construction in wetlands when denial of such assistance would lead to "detrimental consequences on soil and water resources or on human welfare and safety." 47 FR 34111 (August 6, 1982).

Since 1982, SCS updated its technical assistance policy several times, but such updates did not require amendments to the regulation at 7 CFR 650.26. Pursuant to Departmental reorganization in 1994, SCS was abolished and the Natural Resources Conservation Service (NRCS) assumed most of the statutory and regulatory responsibilities of the SCS, including the provision of technical assistance on private lands.

The Conflict With the Wetland Conservation Provisions

The wetland conservation provisions of the Food Security Act of 1985 (the 1985 Act), as amended, 16 U.S.C. 3801 *et seq.*, encourage participants in United States Department of Agriculture (USDA) programs to adopt land management measures that protect wetland functions and values by linking eligibility for USDA program benefits to farming practices on converted wetlands. In particular, the wetland conservation (WC) provisions of the 1985 Act provide that after December 23, 1985, a program participant is ineligible for certain USDA program benefits for the production of an agricultural commodity on a converted wetland, or after November 28, 1990, for the conversion of a wetland that makes the production of an agricultural commodity possible. The 1985 Act, however, affords relief to program participants who meet certain conditions identified under the 1985 Act by exempting such actions from the ineligibility provisions.

The current version of the wetland technical assistance rule, 7 CFR 650.26, allows NRCS to provide technical assistance to a producer that could place the producer in violation of the WC provisions. In particular, the rule allows NRCS personnel to provide technical assistance for certain construction in types 1 and 2 wetlands under the Circular 39 classification of wetlands. The wetland classification system in

Circular 39 was established by the Fish and Wildlife Service (FWS), United States Department of the Interior, and used by state and Federal agencies. Currently, the FWS and other agencies do not use Circular 39.

Many types 1 and 2 wetlands correlate with the NRCS definition of "farmed wetlands". A producer can be found ineligible for USDA program benefits if the drainage on farmed wetlands is increased beyond that which existed on or before December 23, 1985. Thus, under the current wetland technical assistance rule, NRCS could help design the drainage system that causes the producer to lose program benefits and also would violate Section 404 of the Clean Water Act if the drainage activities were not permitted by the Army Corps of Engineers.

The current version of the wetland technical assistance rule also hinders the ability of NRCS to assist producers with WC provisions compliance. Since December 23, 1985, program participants are farming in a more environmentally-oriented manner, resulting in more wetlands remaining available to perform the myriad of functions and values for the Nation. Meeting the objectives of the WC provisions, however, has been difficult for some producers. Wherever possible, USDA has helped individual program participants address their unique resource concerns in a manner that meets the requirements of the WC provisions.

The Federal Agriculture Improvement and Reform Act (the 1996 Act), enacted April 4, 1996, made several amendments to the WC provisions which were intended to increase USDA's ability to meet these producers' situations in a more flexible manner. These amendments provide producers who wish to convert a wetland with greater flexibility to mitigate the loss of wetland functions and values through restoration, enhancement, or creation of wetlands.

The WC provisions provide that a person may remain eligible for USDA program benefits even if their action results in the conversion of a wetland if the wetland functions and values are adequately mitigated, as determined by NRCS, and the mitigation: is in accordance with a mitigation plan approved by NRCS; is in advance of, or concurrent with, the wetland conversion; is not at the expense of the Federal government; occurs on lands in the same general area of the local watershed as the converted wetlands; is on lands for which the owner has granted an easement to USDA, and recorded the easement on public land records; and provides the equivalent functions and values that will be lost as a result of the wetland conversion. A person may also remain eligible for USDA program benefits if the action has been permitted by the Army Corps of Engineers after December 23, 1985, via the individual permit process.

This increased mitigation flexibility for producers creates confusion between NRCS responsibilities under the WC provisions and under the current technical assistance rules. Under the WC provisions, NRCS must approve a mitigation plan if the producer meets the requirements identified above, whether or not the impact to wetlands from the conversion activity could have been minimized or avoided. However, when NRCS delivers technical assistance, the current technical assistance rule applies. Accordingly, NRCS cannot provide technical assistance to a client for the conversion activity unless there is no practicable alternative to the construction and the proposed conversion actions includes all practicable measures to minimize harm to wetlands which may result from such use.

Since 1987, USDA has identified the threshold characteristics that define: when a wetland has been manipulated sufficiently to make the production of an agricultural commodity possible; when a wetland is "converted;" which conditions meet a particular exemption identified under the WC provisions; or when a producer has expanded the drainage system beyond that which existed prior to December 23, 1985. The current wetland technical assistance rule is outdated because it fails to recognize these distinctions, utilizes a superseded classification system, and describes identical terms differently from the current prevailing methodologies and scientific understanding of wetland systems.

The removal of this regulation will not have any effect on the public, any private enterprise, or any other Government agency. This action will result in the removal of an unnecessary regulation from the Code of Federal Regulations. As a matter related to internal agency management, the policies and procedures related to the subject matter of the wetland technical assistance rule is currently addressed through agency manuals, handbooks, and directives.

The Revised NRCS Wetland Technical Assistance Policy

It is the policy of NRCS to protect and promote wetland functions and values in all NRCS planning and application assistance. NRCS recognizes the beneficial and varied functional attributes of the different wetland types, and as such, strives to reconcile the need for wetland protection with that of promoting viable agricultural enterprises. NRCS supports the restoration, enhancement, creation, and preservation of wetlands as important and realistic components of comprehensive conservation plans, not only on a farm-by-farm basis, but also on a watershed or landscape basis. When providing technical assistance, NRCS will conduct an environmental evaluation, considering the objectives of the client in the context of environmental, economic, and other pertinent factors.

Upon conducting an environmental evaluation, NRCS will identify whether any practicable alternatives exist that will either adequately maintain or improve the wetland functions and values, or avoid or minimize the harm to wetlands. If practicable alternatives exist, NRCS will inform and advise the client of the available options and explain the benefits of conducting the desired activity in a manner that will achieve the objectives of the client, while adequately maintaining or improving the functions and values of wetland resources in the area.

If the client selects one of the practicable alternative options, NRCS may provide technical assistance for the conversion activity, as well as the development of a mitigation plan. If the findings of the environmental evaluation show that no practicable alternatives exist, NRCS may provide technical assistance which allows for the conversion of the wetland and develop a mitigation plan for compensation of the functions and values that were lost through the conversion activity. Prior to or concurrent with NRCS assistance, the client will obtain all necessary permits or approvals related to the conversion activity.

If the client chooses to pursue an activity other than a practicable alternative, NRCS should advise the client about eligibility criteria under the WC provisions of the Food Security Act, as amended.

The regulation at 7 CFR 650.26 defines wetlands in accordance with Circular 39 of the Fish and Wildlife Service, and not the current definition recognized by all Federal agencies with wetland responsibilities. Additionally, the former wetland technical assistance policy and regulation allowed NRCS employees to provide technical assistance to producers which placed such producers in violation of the wetland conservation provisions of the Food Security Act of 1985, as amended (FSA). The removal of the regulation will prevent the implementation of inconsistent policies.

List of Subjects in 7 CFR Part 650.26

Technical Assistance, wetlands.

§ 650.26 [Removed]

In consideration of the above, 7 CFR part 650.26 is removed.

Signed at Washington, D.C. on November 6, 1997.

Paul W. Johnson,

Chief, Natural Resources Conservation Service.

[FR Doc. 97–29996 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–16–P

FEDERAL RESERVE SYSTEM

12 CFR Part 271

[Docket No. R–0983]

Federal Open Market Committee; Rules Regarding Availability of Information

AGENCY: Federal Open Market Committee, Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Federal Open Market Committee (Committee) hereby amends its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA).

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, (202/452–2418), or Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, (202/452–3920), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544), Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, which amend the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records. In addition to amendments intended to implement EFOIA, the Committee has updated its fee schedule and made other changes to streamline and clarify the Rules.

To implement these changes, the Committee published proposed amendments to the Rules on August 26, 1997 (62 FR 45178). The Committee received only one comment, submitted by an association established by news editors and reporters to defend First Amendment rights of the media. This comment requested two changes to the Committee's proposed rule—one specific change and one general change. Specifically, the association requested that the Secretary be given the discretion to waive the formal certification requirement for persons requesting expedited treatment of a FOIA request. The second, general suggestion was to incorporate the key mandates of EFOIA into the regulation, because "future FOI officers and specialists at the Committee [may not] realize the additional requirements placed on them by this law if regulations do not make adherence necessary." After review of the comment, the Committee has made the specific change regarding the discretionary waiver of formal certification. With regard to the second comment, the Committee does not believe that the Rules need to be amended to reflect statutory provisions that are not required to be implemented by regulation. When a FOIA request is received, FOMC officers routinely work with attorneys in the Board's Legal Division who are familiar with the law and the procedural requirements. Furthermore, incorporating these changes into the regulation would add nothing to the public's understanding of FOIA and would unnecessarily lengthen and complicate the regulation at a time when all agencies are attempting to simplify and streamline their regulations. The following is a section-by-section discussion of the final amendments.

Section 271.1—Authority and Purpose

This section has been revised to state the statutory authority for promulgation of the Rules and the purpose of the Rules.

Section 271.2—Definitions

The definitions have been alphabetized and now include the definitions relating to the fee schedule that were previously in § 271.8.

Section 271.3—Published Information

No substantive changes have been made to this section.

Section 271.4—Records Available for Public Inspection and Copying

This new section describes the types of Committee records that are available in the reading room of the Board's Freedom of Information (FOI) Office. Pursuant to EFOIA, it also describes the Committee records available on the Board's website.

Section 271.5—Records Available to the Public on Request

This is a revision of existing § 271.4, which describes the types of records available upon request, and the procedures for making such a request.

Section 271.6—Processing Request

This is a new section that describes the Committee's procedures in processing requests for information and appeals of denials of such requests. This section also contains the procedures for expedited processing of requests. As noted above, this section has been modified to give the Secretary the discretion to waive the formal certification requirement for expedited processing in exceptional situations. It is expected that, as a routine matter, certification will be required. Nevertheless, where time is important and the certification is in fact a formality, then the Secretary has the discretion to waive that formality.

Section 271.7—Exemptions From Disclosure

This section combines the rules currently found in §§ 271.5 and 271.6, regarding deferred release of information and information that is exempt from release under FOIA.

Section 271.8—Subpoenas

There are no substantive changes to this section, except that it is renumbered from § 271.7 to § 271.8.

Section 271.9—Fee Schedules; Waiver of Fees

This section is renumbered from § 271.8 to § 271.9. The Committee has moved the definitions that were in this section to § 271.2, which contains the other definitions for this part. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin in cases where advance payment is required until payment is received; or, where a person has requested a waiver of the fees, until the person agrees to pay the fees if the waiver request is denied. Additionally, the standards under which the Secretary may grant a request for waiver of fees have been modified to reflect the development of case law in this area. The rule provides for administrative appeal of a denial of a waiver request.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Committee certifies that the amendments will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the Committee, therefore they should not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 271

Federal Open Market Committee, Freedom of information.

For the reasons set forth in the preamble, the Committee is revising 12 CFR part 271 to read as follows:

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

Sec.

271.1 Authority and purpose.
271.2 Definitions.
271.3 Published information.
271.4 Records available for public inspection and copying.
271.5 Records available to the public on request.
271.6 Processing requests.
271.7 Exemptions from disclosure.
271.8 Subpoenas.
271.9 Fee schedules; waiver of fees.

Authority: 5 U.S.C. 552; 12 U.S.C. 263.

§ 271.1 Authority and purpose.

(a) *Authority.* This part is issued by the Federal Open Market Committee (the Committee) pursuant to the Freedom of Information Act, 5 U.S.C. 552, and also pursuant to the Committee's authority under section 12A of the Federal Reserve Act, 12 U.S.C. 263, to issue regulations governing the conduct of its business.

(b) *Purpose.* This part sets forth the categories of information made available to the public and the procedures for obtaining documents and records.

§ 271.2 Definitions.

(a) *Board* means the Board of Governors of the Federal Reserve System established by the Federal Reserve Act of 1913 (38 Stat. 251).

(b) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(c) *Direct costs* mean those expenditures that the Committee actually incurs in searching for, reviewing, and duplicating documents in response to a request made under § 271.5.

(d) *Duplication* refers to the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microform, audiovisual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk).

(e) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(f) *Federal Reserve Bank* means one of the district Banks authorized by the Federal Reserve Act, 12 U.S.C. 222, including any branch of any such Bank.

(g) *Information of the Committee* means all information coming into the possession of the Committee or of any member thereof or of any officer, employee, or agent of the Committee, the Board, or any Federal Reserve Bank, in the performance of duties for, or pursuant to the direction of, the Committee.

(h) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *Records of the Committee* includes rules, statements, decisions, minutes, memoranda, letters, reports, transcripts, accounts, charts, and other written material, as well as any materials in machine readable form that constitute a part of the Committee's official files.

(j) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) The term "news" means information about current events or that would be of current interest to the public.

(2) Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

(3) "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(k)(1) *Review* refers to the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release.

(2) *Review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l)(1) *Search* means a reasonable search, by manual or automated means, of the Committee's official files and any other files containing records of the Committee as seem reasonably likely in the particular circumstances to contain documents of the kind requested. For purposes of computing fees under § 271.9, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

(2) *Search* does not mean or include research, creation of any document, or extensive modification of an existing program or system that would significantly interfere with the operation of the Committee's automated information system.

§ 271.3 Published information.

(a) **Federal Register.** The Committee publishes in the **Federal Register**, in addition to this part:

(1) A description of its organization;

(2) Statements of the general course and method by which its functions are channeled and determined;

(3) Rules of procedure;

(4) Substantive rules of general applicability, and statements of general policy and interpretations of general applicability formulated and adopted by the Committee;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rulemaking.

(b) *Annual Report to Congress.* Each annual report made to Congress by the Board includes a complete record of the actions taken by the Committee during the preceding year upon all matters of policy relating to open market operations, showing the reasons

underlying the actions, and the votes taken.

(c) *Other published information.* From time to time, other information relating to open market operations of the Federal Reserve Banks is published in the *Federal Reserve Bulletin*, issued monthly by the Board, in the Board's annual report to Congress, and in announcements and statements released to the press. Copies of issues of the Bulletin and of annual reports of the Board may be obtained from the Publications Services of the Federal Reserve Board, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (pedestrian entrance is on C Street, N.W.). Subscription or other charges may apply.

§ 271.4 Records available for public inspection and copying.

(a) *Types of records made available.* Unless they were published promptly and made available for sale or without charge, certain records shall be made available for inspection and copying at the Board's Freedom of Information Office pursuant to 5 U.S.C. 552(a)(2).

(b) *Reading room procedures.* (1) Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (the pedestrian entrance is on C Street, N.W.).

(2) The Committee may determine that certain classes of publicly available filings shall be made available for inspection and copying only at the Federal Reserve Bank where those records are maintained.

(c) *Electronic records.* Information available under this section that was created on or after November 1, 1996, shall also be available on the Board's website, found at http://www.bog.frb.fed.us.

(d) *Privacy protection.* The Committee may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

§ 271.5 Records available to the public on request.

(a) *Types of records made available.* All records of the Committee that are not available under §§ 271.3 and 271.4 shall be made available upon request, pursuant to the procedures in this section and the exceptions in § 271.7.

(b) *Procedures for requesting records.* (1) A request for identifiable records shall reasonably describe the records in a way that enables the Committee's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Committee's operations.

(2) The request shall be submitted in writing to the Secretary of the Committee, Federal Open Market Committee, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST.*

(c) *Contents of request.* The request shall contain the following information:

(1) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(2) Whether the requested information is intended for commercial use, and whether the requester represents an educational or noncommercial scientific institution, or news media;

(3) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies § 271.9(f).

(d) *Defective requests.* The Committee need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Committee may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

§ 271.6 Processing requests.

(a) *Receipt of requests.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Committee by another agency or by a Federal Reserve Bank, is the date the Secretary of the Committee actually receives the request.

(b) *Priority of responses.* The Committee shall normally process requests in the order they are received. However, in the Secretary's discretion, or upon a court order in a matter to which the Committee is a party, a particular request may be processed out of turn.

(c) *Expedited processing.* Where a person requesting expedited access to records has demonstrated a compelling need for the records, or where the Committee has determined to expedite the response, the Committee shall process the request as soon as practicable.

(1) To demonstrate a compelling need for expedited processing, the requester shall provide a certified statement, a sample of which may be obtained from the Board's Freedom of Information Office. The statement, certified to be true and correct to the best of the requester's knowledge and belief, shall demonstrate that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is a representative of the news media, as defined in § 271.2, and there is urgency to inform the public concerning actual or alleged Committee activity.

(2) In response to a request for expedited processing, the Secretary of the Committee shall notify a requester of the determination within ten working days of receipt of the request. In exceptional situations, the Secretary of the Committee has the discretion to waive the formality of certification. If the Secretary of the Committee denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (i) of this section, and the Committee shall respond to the appeal within ten working days after the appeal was received by the Committee.

(d) *Time limits.* The time for response to requests shall be 20 working days, except:

(1) In the case of expedited treatment under paragraph (c) of this section;

(2) Where the running of such time is suspended for payment of fees pursuant to § 271.9(b)(2);

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B). In such circumstances, the time limit may be extended for a period of time not to exceed:

(i) 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(ii) Such alternative time period as mutually agreed to by the Secretary of the Committee and the requester when the Secretary of the Committee notifies the requester that the request cannot be processed in the specified time limit.

(e) *Response to request.* In response to a request that satisfies § 271.5, an appropriate search shall be conducted of records of the Committee in existence on the date of receipt of the request, and a review made of any responsive information located. The Secretary shall notify the requester of:

(1) The Committee's determination of the request;

(2) The reasons for the determination;

(3) The amount of information withheld;

(4) The right of the requester to appeal to the Committee any denial or partial

denial, as specified in paragraph (i) of this section; and

(5) In the case of a denial of a request, the name and title or position of the person responsible for the denial.

(f) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Committee may refer the request to that agency for a response and inform the requester promptly of the referral.

(g) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Committee deems it appropriate to send the documents by another means.

(2) The Committee shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Committee in that form or format, but the Committee need not provide more than one copy of any record to a requester.

(h) *Appeal of denial of request.* Any person denied access to Committee records requested under § 271.5 may file a written appeal with the Committee, as follows:

(1) The appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the Secretary of the Committee, Federal Open Market Committee, 20th and C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Secretary of the Committee, (202) 452–2921.

(2) An initial request for records may not be combined in the same letter with an appeal.

(3) The Committee, or such member of the Committee as is delegated the authority, shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Secretary, and the determination letter shall notify the appealing party of the right to seek judicial review of such denial.

§ 271.7 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Committee are exempt from disclosure under this part:

(1) *National defense.* Any information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to the Executive Order.

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) *Trade secrets; commercial or financial information.* Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be available by law to a party (other than an agency) in litigation with an agency, including, but not limited to:

(i) Memorandums;

(ii) Reports;

(iii) Other documents prepared by the staffs of the Committee, Board or Federal Reserve Banks; and

(iv) Records of deliberations of the Committee and of discussions at meetings of the Committee or its staff.

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Committee shall provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt under this section.

(c) *Discretionary release.* Except where disclosure is expressly prohibited by statute, regulation, or order, the Committee may authorize the release of records that are exempt from mandatory disclosure whenever the Committee or designated Committee members determines that such disclosure would be in the public interest.

(d) *Delayed release.* Publication in the **Federal Register** or availability to the public of certain information may be delayed if immediate disclosure would likely:

(1) Interfere with accomplishing the objectives of the Committee in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Committee, the Board, any Federal Reserve Bank, or any department or agency of the United States.

(e) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Committee or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Committee to any person (other than Committee officers, employees, or agents properly entitled to such information for the performance of official duties).

§ 271.8 Subpoenas.

(a) *Advice by person served.* If any person, whether or not an officer or employee of the Committee, of the Board of Governors of the Federal Reserve System, or of a Federal Reserve Bank, has information of the Committee that may not be disclosed by reason of § 271.7 and in connection therewith is served with a subpoena, order, or other process requiring his personal attendance as a witness or the production of documents or information upon any proceeding, he should promptly inform the Secretary of the Committee of such service and of all relevant facts, including the documents and information requested and any facts that may be of assistance in determining whether such documents or information should be made available; and he should take action at the appropriate time to inform the court or tribunal that issued the process, and the attorney for the party at whose instance the process

was issued, if known, of the substance of this part.

(b) *Appearance by person served.* Except as disclosure of the relevant information is authorized pursuant to this part, any person who has information of the Committee and is required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and decline to disclose such information or give any testimony with respect thereto, basing his refusal upon this part. If, notwithstanding, the court or other body orders the disclosure of such information, or the giving of such testimony, the person having such information of the Committee shall continue to decline to disclose such information and shall promptly report the facts to the Committee for such action as the Committee may deem appropriate.

§ 271.9 Fee schedules; waiver of fees.

(a) *Fee schedules.* The fees applicable to a request for records pursuant to §§ 271.4 and 271.5 are set forth in Appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at $5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The Secretary may assume that a person requesting records pursuant to § 271.5 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed $100, the Secretary of the Committee shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary to reformulate the request to lower the costs.

(2) *Advance payment.* The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to requests under § 271.6(d), and the processing of the request shall be suspended until the Secretary receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records are requested for commercial use.

(2) *Educational, research, or media use.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 271.6(d), shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(1) *Standards for determining waiver or reduction.* The Secretary shall grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(i) Whether the subject of the records concerns the operations or activities of the government;

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(iii) Whether the requester has the intention and ability to disseminate the information to the public;

(iv) Whether the information is already in the public domain;

(v) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(vi) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:

(i) A clear statement of the requester's interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

(iii) A statement of how the public will benefit from such use and from the Committee's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

(v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.

(3) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Determination by Secretary.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Committee in accordance with § 271.6(h).

(g) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Committee, fees shall be waived where the total charges (including charges for

information provided under the Privacy Act of 1974 (5 U.S.C. 552a) are $50 or less; but the Secretary may waive fees in excess of that amount.

(h) *Special services* The Secretary may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

Appendix A To § 271.8—Freedom of Information Fee Schedule

Duplication:	
Photocopy, per standard page	$.10
Paper copies of microfiche, per frame	.10
Duplicate microfiche, per microfiche	.35
Search and review:	
Clerical/Technical, hourly rate	20.00
Professional/Supervisory, hourly rate	38.00
Manager/Senior Professional, hourly rate	65.00
Computer search and production:	
Computer operator search, hourly rate	32.00
Tapes (cassette), per tape	6.00
Tapes (cartridge), per tape	9.00
Tapes (reel), per tape	18.00
Diskettes (3½"), per diskette	4.00
Diskettes (5¼"), per diskette	5.00
Computer Output (PC), per minute	.10
Computer Output (mainframe)	actual cost

By order of the Federal Open Market Committee, November 7, 1997.

Donald L. Kohn,

Secretary of the Federal Open Market Committee.

[FR Doc. 97–29965 Filed 11–14–97; 8:45 am]

BILLING CODE 6210–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–55–AD; Amendment 39–10205; AD 97–23–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires replacement of certain overhead electronics units (OEU) of the passenger address and entertainment communication systems with modified OEU's. This amendment is prompted by reports of smoke coming from the overhead panels near the passenger reading lights, which was caused by overheating of the transformers located in the OEU's. The actions specified by this AD are intended to prevent overheating of the transformers, which potentially could cause a fire in the transformer assembly and/or electronic components located in the OEU and could cause smoke to enter the passenger cabin.

DATES: Effective December 22, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2082; fax (425) 227–1182.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on April 4, 1997 (62 FR 16115). That action proposed to require replacement of certain overhead electronics units (OEU) of the passenger address and entertainment communication systems with modified OEU's.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Request To Extend the Compliance Time

One commenter requests that the compliance time for accomplishing the replacement of the OEU's be extended from the proposed 6 months to 12 months. The commenter contends that, even if it used two repair stations, it would still take an extraordinary effort and 8 to 9 months (best case) to accomplish the proposed replacement. The commenter points out that the 6-month compliance time also would result in schedule disruptions, which is a severe economic hardship on the airline.

The FAA does not concur with the commenter's request to extend the compliance time for accomplishment of the subject replacement. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required replacement with an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that it has shipped replacement units to all affected operators and can provide sufficient units to enable operators to comply within 6 months, and that it is supplying the labor for accomplishment of the replacement. In addition, the FAA has been informed that certain operators have accomplished the subject replacement overnight on their fleet.

However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 46 Boeing Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD, that it will take approximately 209 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $200,640, or $12,540 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–23–16 Boeing: Amendment 39–10205. Docket 97–NM–55–AD.

Applicability: Model 777–200 series airplanes, as listed in Boeing Alert Service Bulletin 777–23A0027, dated February 13, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the transformers of the overhead electronics units (OEU), which potentially could cause a fire in the transformer assembly and/or other electronic components of the OEU and could cause smoke to enter the passenger cabin, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace OEU's having part numbers (P/N) 285W0029–3, 285W0029–3 MOD A, and 285W0029–3 MOD B, of the passenger address and entertainment communication systems with modified OEU's having P/N's 285W0029–5, 285W0029–5 MOD A, and 285W0029–5 MOD B, in accordance with Boeing Alert Service Bulletin 777–23A0027, dated February 13, 1997.

Note 2: Boeing Component Service Bulletin 285W0029–23–01, dated February 13, 1997, describes procedures for reworking OEU's having P/N's 285W0029–3, 285W0029–3 MOD A, and 285W0028–3 MOD B, to a configuration having a dash number –5, and a MOD level marking (if applicable).

(b) As of the effective date of this AD, no person shall install an OEU having P/N 285W0029–3, 285W0029–3 MOD A, or 285W0028–3 MOD B, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin 777–23A0027, dated February 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 22, 1997.

Issued in Renton, Washington, on November 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29823 Filed 11–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–17–AD; Amendment 39–10206; AD 97–12–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness

directive (AD), applicable to McDonnell Douglas Helicopter Systems (MDHS) Model MD900 helicopters, which prohibits flight or ground operations of helicopters with a certain adjustable collective drive link assembly (link assembly) installed. This amendment requires installation of a redesigned airworthy link assembly after which further operations are permitted. This amendment is prompted by recent incidents in which the link assembly failed during flight. The actions specified by this AD are intended to prevent failure of the link assembly, which could result in loss of control of the helicopter.

DATES: Effective December 2, 1997.

Comments for inclusion in the Rules Docket must be received on or before January 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Greg DiLibero, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5231, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On May 29, 1997, the FAA issued priority letter AD 97–12–02, applicable to MDHS Model MD900 helicopters with collective drive link assembly (link assembly) part number (P/N) 900C2010233–103 and P/N 900C2010233–105, installed, which prohibits flight or ground operations of the helicopters. That action was prompted by recent incidents in which the link assembly failed during flight. The link assembly is part of the primary collective flight control system. Based on these incidents and further testing by the manufacturer, the FAA determined that further operations with either affected link assembly installed constituted an unsafe condition. That condition, if not corrected, could result in failure of the link assembly and subsequent loss of control of the helicopter.

Since the issuance of that AD, MDHS has issued MDHS Service Bulletin (SB) No. SB900–055R1, dated June 5, 1997, for the installation of a redesigned link assembly. The FAA has determined that installation of redesigned link assembly, P/N 900C2010233–107, will correct the unsafe condition. Additionally, in AD 97–12–02, the FAA has noted that the applicability section incorrectly stated that the AD applied to Model MD900 helicopters with P/N 900C2010233–103 and P/N 900C2010233–105 installed. The AD should have stated that it applied to Model MD900 helicopters with P/N 900C2010233–103 or P/N 900C2010233–105 installed. This imprecision in word choice is corrected in this AD.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model MD900 helicopters of the same type design, this AD supersedes AD 97–12–02 to require installation of a redesigned link assembly. This AD also clarifies the applicability statement that could be incorrectly interpreted to mean that two link assemblies must be installed in order for the AD to be applicable.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–17–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–12–02 McDonnell Douglas Helicopter Systems: Amendment 39–10206. Docket No. 97–SW–17–AD. Supersedes priority letter AD 97–12–02.

Applicability: Model MD900 helicopters, with adjustable collective drive link assembly (link assembly), part number (P/N) 900C2010233–103 or –105, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the link assembly, which could result in loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove the link assembly, P/N 900C2010233–103 or –105, and replace with link assembly, P/N 900C2010233–107.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on December 2, 1997.

Issued in Fort Worth, Texas, on November 6, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30058 Filed 11–14–97; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 403

Deceptive Use of "Leakproof," "Guaranteed Leakproof," Etc., As Descriptive of Dry Cell Batteries

AGENCY: Federal Trade Commission.

ACTION: Final rule; removal.

SUMMARY: The Federal Trade Commission (the "FTC" or "Commission") announces the repeal of the Trade Regulation Rule on Deceptive Use of "Leakproof," "Guaranteed Leakproof," Etc., as Descriptive of Dry Cell Batteries ("the Dry Cell Battery Rule" or "the Rule"), 16 CFR Part 403. The rulemaking record, changes in industry practice, and general voluntary compliance by the industry with the requirements of an American National Standards Institute standard for dry cell batteries, which has provisions similar to the Rule's, indicate that the Dry Cell Battery Rule is no longer necessary or in the public interest and should be repealed. This document contains a Statement of Basis and Purpose for repeal of the rule.

EFFECTIVE DATE: November 17, 1997.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Sixth Street and Pennsylvania Ave., N.W., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

On May 20, 1964, the Commission promulgated a trade regulation rule that states that in connection with the sale of dry cell batteries in commerce, the use of the word "leakproof," the term "guaranteed leakproof," or any other word or term of similar import, or any abbreviation thereof, in advertising, labeling, marking or otherwise, as descriptive of dry cell batteries, constitutes an unfair method of competition and an unfair or deceptive act or practice in violation of section 5 of the FTC Act (16 CFR 403.4). This rule was based on the Commission's finding that, despite efforts by dry cell battery manufacturers to eliminate electrolyte leakage, battery leakage and damage therefrom occurs from the use to which consumers ordinarily subject dry cell batteries.

The rule provides that manufacturers or marketers are not prohibited from offering or furnishing guarantees that provide for restitution in the event of damage from battery leakage, provided no representation is made, directly or indirectly, that dry cell batteries will not leak (16 CFR 403.5). The Rule further provides that in the event any person develops a new dry cell battery that he believes is in fact leakproof, he may apply to the Commission for an amendment to the rule, or other appropriate relief (16 CFR 403.6).

The Commission conducted an informal review of industry practices by examining the advertising, labeling and marketing of dry cell batteries available for retail sale. This review revealed no representations that the batteries were leakproof. The Commission's review, therefore, indicated general compliance with the Rule's provisions. Moreover, the Commission has no record of receiving any complaints regarding non-compliance with the Rule, or of initiating any law enforcement actions alleging violations of the Rule.

Additionally, the Commission's review indicated general voluntary compliance by the industry with the requirements of American National Standards Institute ("ANSI") Standard C18.1M–1992 Dry Cells and Batteries—Specifications. The ANSI standard contains specifications for dry cell batteries, and requirements for labeling the products and their packages. The ANSI standard requires the following information to be printed on the outside of each battery (when necessary, the standard permits some of this information to be applied to the unit package): (1) The name or trade name of the manufacturer; (2) the ANSI/National Electronic Distributors Association number, or some other identifying designation; (3) year and month, week or day of manufacture, which may be a code, or the expiration of a guarantee period, in a clear readable form; (4) the nominal voltage; (5) terminal polarity; and (6) warnings or cautionary notes where applicable. See section 8.1 of ANSI Standard C18.1M–1992.

The ANSI standard recommends that dry cell battery manufacturers and sellers include on their products and packages several battery user guidelines and warnings that are relevant to this proceeding. They are: (1) Although batteries basically are trouble-free products, conditions of abuse or misuse can cause leakage; (2) failure to replace all batteries in a unit at the same time may result in battery leakage; (3) mixing batteries of various chemical systems, ages, applications, types or manufacturers may result in poor device performance and battery leakage; (4) attempting to recharge a non-rechargeable battery is unsafe because it could cause leakage; (5) reverse insertion of batteries may cause charging, which may result in leakage; (6) devices that operate on either household current or battery power may subject batteries to a charging current, which may cause leakage; (7) do not store batteries or battery-powered equipment in high-temperature areas;

and (8) do not dispose of batteries in fire. See section 7.5 of ANSI Standard C18.1M–1992. At a minimum, each dry cell battery and battery package inspected by Commission staff informed consumers that the batteries may explode or leak if recharged, inserted improperly, disposed of in fire, or mixed with different battery types.

Based on the foregoing, on March 25, 1997, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") tentatively concluding that industry members that comply with the ANSI standard's point-of-sale disclosure requirements also comply with the Rule. Accordingly, the Commission tentatively determined that the Dry Cell Battery Rule is no longer necessary, and sought comments on the proposed repeal of the Rule until April 24, 1997. 62 FR 14050.

The only comment received in response to the ANPR was submitted by the National Electrical Manufacturers Association ("NEMA"), a trade association representing all major U.S. manufacturers of dry cell batteries.[1] NEMA supported repeal of the Commission's Dry Cell Battery Rule, indicating that it has been superseded effectively in the marketplace by ANSI Standard C18.1M–1992.[2]

After reviewing the comment submitted in response to the ANPR, and in light of ANSI Standard C18.1M–1992, on August 19, 1997, pursuant to the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, the Commission published a Notice of Proposed Rulemaking ("NPR") initiating a proceeding to consider whether the Dry Cell Battery Rule should be repealed or remain in effect (62 FR 44099).[3] This rulemaking proceeding was undertaken as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to ascertain their effectiveness, impact, cost and need. This proceeding also responded to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. In the NPR, the Commission announced its determination, pursuant to 16 CFR 1.20, to use expedited procedures in this proceeding.[4] The NPR comment period closed on September 18, 1997. The Commission received no comments and no requests to hold an informal hearing.

II. Basis for Repeal of Rule

The Commission has decided to repeal the Dry Cell Battery Rule for the reasons discussed in the NPR. In sum, the Commission has reviewed the rulemaking record and determined that the practices that brought about the Rule, labeling or advertising dry cell batteries as being "leakproof," are no longer common industry practices. In addition, general voluntary compliance by the industry with the requirements of ANSI Standard C18.1M–1992 Dry Cells and Batteries—Specifications assures compliance with the Rule. Although repealing the Dry Cell Battery Rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations that dry cell batteries are leakproof, the Commission has determined that, in these circumstances, repealing the Rule would not impair the Commission's ability to act effectively. Any significant problems that might arise could be addressed on a case-by-case basis under section 5 of the FTC Act, 15 U.S.C. 45, either administratively or through section 13(b) actions, 15 U.S.C. 53(b), filed in federal district court. Prosecuting serious misrepresentations in district court allows the Commission to obtain injunctive relief as well as equitable remedies, such as redress or disgorgement. Accordingly, the Commission hereby announces the repeal of the Dry Cell Battery Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–12, requires an analysis of the anticipated impact of the repeal of the rule on small businesses. The reasons for repeal of the Rule have been explained in this notice. Repeal of the rule would appear to have little or no effect on small businesses. Moreover, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Dry Cell Battery Rule. Further, no comments suggested any adverse effect on small business from repeal. For these reasons, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Dry Cell Battery Rule imposes no third-party disclosure requirements that constitute "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Since 1964, therefore, the Rule has imposed no paperwork burdens on marketers of dry cell batteries. In any event, repeal of the Dry Cell Battery Rule will permanently eliminate any burdens on the public imposed by the Rule.

List of Subjects in 16 CFR Part 403

Advertising, Dry cell batteries, Labeling, Trade practices.

PART 403—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 403.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–30111 Filed 11–14–97; 8:45 am]

BILLING CODE 6750–01–M

[1] The comment submitted in response to the ANPR was placed on the public record, and filed as document number B21969700001. In today's notice, the comment is cited as NEMA, #1.

[2] NEMA, #1.

[3] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted the NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Committee on Commerce, United States House of Representatives, 30 days prior to its publication in the **Federal Register**.

[4] These procedures included: publishing a Notice of Proposed Rulemaking; soliciting written comments on the Commission's proposal to repeal the Rule; holding an informal hearing, if requested by interested parties; receiving a final recommendation from Commission staff; and announcing final Commission action in the **Federal Register**.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 15

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its regulations to raise the nominal reporting level at which futures commission merchants, clearing members, foreign brokers, and traders must file large trader reports in Standard and Poors (S&P) 500 futures from 300 to 600 contracts. Levels for filing reports in the E-mini S&P 500 futures will remain at 300 contracts. The effect of this rule amendment is to maintain at current levels the amount of information the Commission receives concerning large traders in these contracts.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Commodity Futures Trading Commission, Division of Economic Analysis, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, telephone (202) 418-5310.

SUPPLEMENTARY INFORMATION:

I. Background

Reporting levels are set in futures to ensure that the Commission receives adequate information to carry out its market surveillance programs. These are designed to detect and prevent market congestion and price manipulation and to enforce speculative position limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, use of the markets by foreign participants, and other matters of public concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contract markets, FCMs, or foreign brokers (firms) and traders, respectively, when a trader holds a "reportable position"; i.e., any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the commission in § 15.03 of the regulations.[1]

Recently, however, the Commission approved rule changes submitted by the Chicago Mercantile Exchange (CME) which reduce the size of the S&P futures contract from $500 to $250 per index point. To implement this change, the exchange doubled the size of existing open positions effective after the close of the market on October 31, 1997. This increased traders' position size relative to the Commission's current reporting level of 300 contracts, resulting in an increased reporting burden on the public and the processing of unneeded reports by the Commission. In order to maintain the current level of large trader information it receives, the Commission is raising the reporting level for S&P 500 futures from 300 to 600 contracts.

The CME also currently trades a smaller size futures contract on the S&P 500 index. This contract, termed the "E-mini," is valued at $10 per index point and is currently subject to the same 300-contract reporting level as the larger contract. Since the Commission desires to maintain the reporting level for the small contract at 300, the S&P E-mini contract will be listed separately in § 15.03 of the regulations.

II. Related Matters

A. Notice and Comment

The Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register**, and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, when the agency for good cause finds (and incorporates the findings and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The Commission finds that notice and public comments on the rule changes announced herein are unnecessary, because the amendments are routine determinations necessitated by technical changes to a currently-traded contract. These routine determinations are made to adjust reporting levels, when such changes lead to the receipt by the Commission of a larger number of reports than is necessary for efficient surveillance of the market. In this regard, it should be further noted that these amendments do not establish any new obligations under the Commodity Exchange Act (Act). On the contrary, these changes simplify compliance with the Act by not changing persons' reporting obligations under the rules in question.

B. The Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small businesses. The Commission has previously determined that large traders and FCMs are not "small entities" for purposes of the RFA, 47 FR 18618–18621 (April 30, 1982). Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act (PRA)

The PRA of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While this final rule imposes no additional burden, the group of rules (3038–0009) of which this is a part has the following burden:

Average burden hours per response—0.3607

Number of respondents—6181

Frequency of response—Daily

Copies of the Office of Management and Budget approved information collection package associated with this rule may be obtained from Desk Officer, CFTC, Office of Management and Budget, room 10202, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5, and 8a of the Act, 7 U.S.C. 6g, 6i, 7, and 12a (1990), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19, and 21; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is revised to read as follows:

§ 15.03 Quantities fixed for reporting.

The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity	Quantity
Wheat (bushels)	500,000
Corn (bushels)	750,000
Soybeans (bushels)	500,000
Oats (bushels)	500,000
Cotton (bales)	5,000
Frozen Concentrated Orange Juice	50
Soybean Oil (contracts)	175
Soybean Meal (contracts)	175
Live Cattle (contracts)	100
Feeder Cattle (contracts)	50
Hogs (contracts)	50
Sugar No. 11 (contracts)	300
Sugar No. 14 (contracts)	100
Cocoa (contracts)	100
Coffee (contracts)	50
Copper (contracts)	100
Gold (contracts)	200
Silver bullion (contracts)	150
Platinum (contracts)	50
No. 2 Heating Oil (contracts)	250
Crude Oil, Sweet (contracts)	300
Unleaded Gasoline (contracts)	150
Natural Gas	100
Long-Term U.S. Treasury Bonds (contracts)	500

[1] Firms which carry accounts for traders who hold "reportable positions" are required to identify such accounts on a form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a form 103 showing positions and transactions in the contract market specified in the call.

Commodity	Quantity
GNMA (contracts)	100
Three-Month (13-Week) U.S. Treasury Bills (contracts)	150
Long-Term U.S. Treasury Notes (contracts)	500
Medium-Term U.S. Treasury Notes (contracts)	300
Short-Term U.S. Treasury Notes (contracts)	200
Three-Month Eurodollar Time Deposit Rates (contracts)	850
Thirty-Day Interest Rates (contracts)	100
One-Month Libor Rates (contracts)	100
Foreign Currencies (contracts)	200
U.S. Dollar Index (contracts)	50
Standard and Poor's 500 Stock Price Index (contracts)	600
Standard and Poor's 500 Stock Price Index, E-Mini (contracts)	300
New York Stock Exchange Composite Index (contracts)	50
Amex Major Market Index, Maxi (contracts)	100
Nikkei Stock Index (contracts)	50
Municipal Bonds (contracts)	100
Value Line Average Index (contracts)	50
All Other Commodities (contracts)	25

Issued in Washington, D.C., this 7th day of November 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–29995 Filed 11–14–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM98–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

Issued November 10, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8 ,1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201, May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1997, through September 30, 1998, the fees in this notice will become effective October 1, 1997. The fees will apply to fiscal year 1998 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2885.

SUPPLEMENTARY INFORMATION: In accordance with Section 11.2, 18 CFR, the land values included in this document will be published in the **Federal Register**. In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in Room 2A at the Commission's Headquarters, 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

CIPS can also be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1997, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

Appendix A to Part II—Fee Schedule For FY 1998

State	County	Rate per acre
ALABAMA	ALL COUNTIES	$24.43
ARKANSAS	ALL COUNTIES	18.34
ARIZONA	APACHE, COCHISE, GILA, GRAHAM, LA PAZ, MOHAVE, NAVAJO, PIMA, YAVAPAI, YUMA, COCONINO NORTH OF COLORADO RIVER.	6.10
	COCONINO SOUTH OF COLORADO RIVER, GREENLEE, MARICOPA, PINAL, SANTA CRUZ.	24.43
CALIFORNIA	IMPERIAL, INYO, LASSEN, MODOC, RIVERSIDE, SAN BERNARDINO	12.22

State	County	Rate per acre
	SISKIYOU	18.34
	ALAMEDA, ALPINE, AMADOR, BUTTE, CALAVERAS, COLUSA, CONTRA COSTA, DEL NORTE, EL DORADO, FRESNO, GLENN, HUMBOLDT, KERN, KINGS, LAKE, MADERA, MARIPOSA, MENDOCINO, MERCED, MONO, NAPA, NEVADA, PLACER, PLUMAS, SACRAMENTO, SAN BENITO, SAN JOAQUIN, SANTA CLARA, SHASTA, SIERRA, SOLANO, SONOMA, STANISLAUS, SUTTER, TEHAMA, TRINITY, TULARE, TUOLUMNE, YOLO, YUBA.	30.55
	LOS ANGELES, MARIN, MONTEREY, ORANGE, SAN DIEGO, SAN FRANCISCO, SAN LUIS OBISPO, SAN MATEO, SANTA BARBARA, SANTA CRUZ, VENTURA.	36.67
COLORADO	ADAMS, ARAPAHOE, BENT, CHEYENNE, CROWLEY, ELBERT, EL PASO, HUERFANO, KIOWA, KIT CARSON, LINCOLN, LOGAN, MOFFAT, MONTEZUMA, MORGAN, PUEBLO, SEDGWICK, WASHINGTON, WELD, YUMA.	6.10
	BACA, DOLORES, GARFIELD, LAS ANIMAS, MESA	12.22
	MONTROSE, OTERO, PROWERS, RIO BLANCO, ROUTT, SAN MIGUEL.	12.22
	ALAMOSA, ARCHULETA, BOULDER, CHAFFEE, CLEAR CREEK, CONEJOS, COSTILLA, CUSTER, DENVER, DELTA, DOUGLAS, EAGLE, FREMONT, GILPIN, GRAND, GUNNISON, HINSDALE, JACKSON, JEFFERSON, LAKE, LA PLATA, LARIMER, MINERAL, OURAY, PARK PITKIN, RIO GRANDE, SAGUACHE, SAN JUAN, SUMMIT, TELLER.	24.43
CONNECTICUT	ALL COUNTIES	6.10
FLORIDA	BAKER, BAY BRADFORD, CALHOUN, CLAY, COLUMBIA, DIXIE, DUVAL, ESCAMBIA, FRANKLIN, GADSDEN, GILCHRIST, GULF, HAMILTON, HOLMES, JACKSON, JEFFERSON, LAFAYETTE, LEON, LIBERTY, MADISON, NASSAU, OKALOOSSA, SANTA ROSA, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON, WASHINGTON.	36.67
	ALL OTHER COUNTIES	61.10
GEORGIA	ALL COUNTIES	36.67
IDAHO	CASSIA, GOODING, JEROME, LINCOLN, MINIDOKA, ONEIDA, OWYHEE, POWER, TWIN FALLS.	6.10
	ADA, ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE, BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT, GEM, IDAHO, JEFFERSON, KOOTENAI, LATAH, LEMHI, LEWIS, MADISON, NEZ PERCE.	18.34
	PAYETTE, SHOSHONE, TETON, VALLEY, WASHINGTON	18.34
KANSAS	ALL OTHER COUNTIES	6.10
	MORTON	12.22
ILLINOIS	ALL COUNTIES	18.34
INDIANA	ALL COUNTIES	30.55
KENTUCKY	ALL COUNTIES	18.34
LOUISIANA	ALL COUNTIES	36.67
MAINE	ALL COUNTIES	18.34
MICHIGAN	ALGER, BARAGA, CHIPPEWA, DICKINSON, DELTA, GOGEBIC	18.34
	HOUGHTON, IRON, KEWEENAW, LUCE, MACKINAC, MARQUETTE, MENOMINEE, ONTONAGON, SCHOOLCRAFT.	18.34
	ALL OTHER COUNTIES	24.43
MINNESOTA	ALL COUNTIES	18.34
MISSISSIPPI	ALL COUNTIES	24.43
MISSOURI	ALL COUNTIES	18.34
MONTANA	BIG HORN, BLAINE, CARTER, CASCADE CHOUTEAU, CUSTER, DANIELS, McCONE, MEAGHER, DAWSON, FALLON, FERGUS, GARFIELD.	6.10
	GLACIER, GOLDEN VALLEY, HILL, JUDITH BASIN, LIBERTY, MUSSELSHELL, PETROLEUM, PHILLIPS, PONDERA, POWDER RIVER, PRAIRIE, RICHLAND, ROOSEVELT, ROSEBUD, SHERIDAN, TETON, TOOLE, TREASURE, VALLEY, WHEATLAND, WIBAUX, YELLOWSTONE.	6.10
	BEAVERHEAD, BROADWATER CARBON, DEER LODGE, FLATHEAD, GALLATIN, GRANITE, JEFFERSON, LAKE, LEWIS & CLARK, LINCOLN, MADISON, MINERAL MISSOULA, PARK, POWELL, RAVALLI, SANDERS, SILVER BOW.	18.34
	STILLWATER SWEET GRASS	18.34
NEBRASKA	ALL COUNTIES	6.10
NEVADA	CHURCHILL, CLARK, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER, LINCOLN, LYON, MINERAL, NYE, PERSHING, WASHOE, WHITE PINE.	3.05
	CARSON CITY, DOUGLAS, STOREY	30.55

State	County	Rate per acre
NEW HAMPSHIRE	ALL COUNTIES	18.34
NEW MEXICO	CHAVES, CURRY, DE BACA, DONA ANA, EDDY, GRANT, GUADELUPE.	6.10
	HARDING, HIDALGO, LEA, LUNA, MCKINLEY, OTERO, QUAY, ROOSEVELT, SAN JUAN, SOCORRO, TORRANCE.	6.10
	RIO ARRIBA, SANDOUAL, UNION	12.22
	BERNALILLO, CATRON, CIBOLA, COLFAX, LINCOLN, LOS ALAMOS, MORA, SAN MIGUEL, SANTA FE, SIERRA, TAOS, VALENCIA.	24.43
NEW YORK	ALL COUNTIES	24.43
NORTH CAROLINA	ALL COUNTIES	36.67
NORTH DAKOTA	ALL COUNTIES	6.10
OHIO	ALL COUNTIES	24.43
OKLAHOMA	ALL OTHER COUNTIES	6.10
	BEAVER, CIMARRON, ROGER MILLS, TEXAS	12.22
	LE FLORE, MC CURTAIN	18.34
OREGON	HARNEY, LAKE, MALHEUR	6.10
	BAKER, CROOK, DESCHUTES, GILLIAM, GRANT, JEFFERESON, KLAMATH, MORROW, SHERMAN UMATILLA, UNION, WALLOWA.	12.22
	WASCO, WHEELER	12.22
	COOS, CURRY, DOUGLAS, JACKSON, JOSEPHINE	18.34
	BENTON, CLACKAMAS, CLATSOP, COLUMBIA, HOOD RIVER, LANE, LINCOLN, LINN, MARION, MULTNOMAH, POLK, TILLAMOCK, WASHINGTON, YAMHILL.	24.43
PENNSYLVANIA	ALL COUNTIES	24.43
PUERTO RICO	ALL	36.67
SOUTH DAKOTA	BUTTE, CUSTER, FALL RIVER, LAWRENCE	18.34
	MEAD, PENNINGTON	18.34
	ALL OTHER COUNTIES	6.10
SOUTH CAROLINA	ALL COUNTIES	36.67
TENNESSEE	ALL COUNTIES	24.43
TEXAS	CULBERSON, EL PASO, HUDSPETH	6.10
	ALL OTHER COUNTIES	36.67
UTAH	BEAVER, BOX ELDER, CARBON, DUCHESNE, EMERY, GARFIELD, GRAND, IRON, JAUB, KANE, MILLARD, SAN JUAN, TOOELE, UINTAH, WAYNE.	6.10
	WASHINGTON	12.22
	CACHE, DAGGETT, DAVIS, MORGAN, PIUTE, RICH, SALT LAKE, SANPETE, SEVIER, SUMMIT, UTAH, WASATCH, WEBER.	18.34
VERMONT	ALL COUNTIES	24.43
VIRGINIA	ALL COUNTIES	24.43
WASHINGTON	ADAMS, ASOTIN, BENTON, CHELAN, COLUMBIA, DOUGLAS, FRANKLIN, GARFIELD, GRANT, KITTITAS, KLICKITAT, LINCOLN, OKANAGAN, SPOKANE.	12.22
	WALLA WALLA, WHITMAN, YAKIMA	12.22
	FERRY, PEND OREILLE, STEVENS	18.34
	CALLAM, CLARK, COWLITZ, GRAYS HARBOR, ISLAND, JEFFERSON, KING, KITSAP, LEWIS, MASON, PACIFIC, PIERCE, SAN JUAN, SKAGIT, SKAMANIA, SNOHOMISH, THURSTON, WAHKIAKUM, WHATCOM.	24.43
WEST VIRGINIA	ALL COUNTIES	24.43
WISCONSIN	ALL COUNTIES	18.34
WYOMING	ALBANY, CAMPBELL, CARGON, CONVERSE, GOSHEN, HOT SPRINGS, JOHNSON, LARAMIE, LINCOLN, NATRONA, NIOBRARA, PLATTE, SHERIDAN, SWEETWATER, FREMONT, SUBLETTE, UINTA, WASHAKIE.	6.10
	BIG HORN, CROOK, PARK, TETON, WESTON	18.34
ALL OTHER ZONES		6.66

[FR Doc. 97-30082 Filed 11-14-97; 8:45 am]

BILLING CODE 4717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

RIN 1515–AC10

[T.D. 97–91]

Anticounterfeiting Consumer Protection Act: Disposition of Merchandise Bearing Counterfeit American Trademarks; Civil Penalties

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations.

SUMMARY: This document amends the Customs Regulations on an interim basis to implement two statutory changes contained in the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. In general, the amendments made by the ACPA are designed to help Customs fight counterfeiting more effectively by enhancing its information base to interdict illicit shipments of trademarked merchandise, by strengthening the civil remedies available to intellectual property owners harmed by counterfeiting, and by providing the government with additional tools to address intellectual property violations. The provisions of the ACPA addressed in this document concern the government disposition of merchandise bearing counterfeit American trademarks, and the imposition of civil penalties on any person who directs, assists financially or otherwise, or aids and abets the importation of counterfeit goods.

DATES: Interim rule effective November 17, 1997; comments must be submitted by January 16, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

For Entry Questions—Jerry Laderberg, Entry and Carrier Rulings Branch, (202) 927–2320, Office of Regulations and Rulings;

For Penalties and Other Legal Questions—Charles Ressin, Penalties Branch, (202) 927–2344, or John Atwood, Intellectual Property Rights Branch, (202) 927–2330, Office of Regulations and Rulings.

SUPPLEMENTARY INFORMATION:

Background

Finding that counterfeit products cost American businesses an estimated $200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. *See,* S. Rpt. No. 177, 104th Cong., 1st Sess. (1995), *reprinted in* (1996) 6 U.S.C.C.&A.N. 1074. On July 2, 1996, the President signed the ACPA into law (Pub. L. 104–153, 110 Stat. 1386). The ACPA was designed to provide important weapons against counterfeiters in four principal areas. First, it increases criminal penalties for counterfeiting and allows law enforcement to fight counterfeiters at the organizational level by making trafficking in counterfeit goods or services an offense under the Racketeer Influenced and Corrupt Organizations (RICO) Act, by providing increased imprisonment terms, criminal fines, and asset forfeiture against those involved in criminal counterfeiting enterprises. Second, the legislation enhances law enforcement's ability to fight counterfeiting more effectively by increasing the involvement of all levels of law enforcement and expanding their power to seize counterfeit goods and the tools of the counterfeit trade. Third, the legislation helps stem the flow of counterfeit goods by making it easier to find imported counterfeit goods and making it more difficult for seized goods to reenter the stream of commerce. Lastly, the ACPA, in part, strengthens the hand of businesses harmed by counterfeiters by updating existing statutes and providing additional civil penalties and remedies against counterfeiters.

Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA. Accordingly, Customs will amend its regulations as a result of the enactment of sections 8, 9, 10, 11, and 12 of the ACPA, and these changes will be implemented in several **Federal Register** documents. This document concerns sections 9 and 10 of the ACPA.

Section 9 of the ACPA pertains to government disposition of merchandise bearing American trademark information and amends section 526(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(e)) to ensure that counterfeits of American products are routinely destroyed, unless there is no public safety risk and the trademark owner agrees to some other disposition of the merchandise. Thus, section 9 of the ACPA makes the destruction of forfeited counterfeit merchandise the general rule, which is necessary to ensure that counterfeited merchandise is not returned to the violator who could simply redistribute the counterfeit goods. The provisions of section 526(e) are provided for, in part, at § 133.52(c) of the Customs Regulations (19 CFR 133.52(c)), which is amended by revising the introductory text of paragraph (c) and the texts of paragraphs (c)(1) through (c)(3), and removing the provisions of paragraph (c)(4).

Section 10 of the ACPA pertains to civil penalties and further amends section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) by adding a new subsection (f). New subsection (f) provides for civil fines on persons involved in the importation of merchandise bearing a counterfeit American trademark and are in addition to any other civil or criminal penalty or other remedy authorized by law. The fine may be imposed on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized pursuant to 19 U.S.C. 1526(e). For the first seizure, the fine imposed can be an amount up to the value of the merchandise as if it were genuine, based on the manufacturer's suggested retail price (MSRP). For subsequent seizures, the fine imposed can be an amount up to twice the value of the merchandise as if it were genuine, based on the MSRP. This provision has two primary purposes. First, it will provide a deterrent to counterfeiting in cases in which resources are not available to bring a criminal case. Second, it makes penalties related to imported counterfeit products at least as stringent as those penalties applied to counterfeits made in this country. For the purposes of mitigation of these civil fines, Customs has decided to apply the guidelines for remission contained in the Appendix of Customs Directive 4400–07 (January 26, 1988). As there are currently no Customs Regulations that provide for civil fines for those involved in the

importation of counterfeit trademark goods, a new § 133.25 is created to implement the provisions of section 526(f).

Comments

Before adopting these interim regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd floor, Washington, DC.

Inapplicability of Notice and Public Comment, Delayed Effective Date Requirement, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to 5 U.S.C. 553(b)(B), it has been determined that it would be contrary to the public interest to issue this rule with notice and public procedures because the rule implements statutory provisions enacted to protect trademark owners and the public from imported merchandise bearing a counterfeit American trademark. For this reason, and pursuant to 5 U.S.C. 553(d)(3), good cause exists to make this rule effective immediately without a 30-day delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 133

Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

Amendments to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended on an interim basis as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

2. A new § 133.25 is added to read as follows:

§ 133.25 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit American trademark as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed shall not be more than the domestic value of the merchandise, (*see*, § 162.43(a) of this chapter), as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and any subsequent seizure of such merchandise, the fine imposed shall not be more than twice the value of the merchandise as if it had been genuine, as determined by the manufacturer's suggested retail price of the merchandise at the time of seizure.

3. Section 133.52 is amended by revising paragraph (c) as follows:

§ 133.52 Disposition of forfeited merchandise.

* * * * *

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of the trademark laws shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark, where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

George J. Weise,
Commissioner of Customs.

Approved: July 3, 1997.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 97-30048 Filed 11-14-97; 8:45 am]
BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-393; 97-455]

RIN: 1512-AB62

Removal of Restrictions on Importation of Defense Articles From Specified New Independent States of the Former Soviet Union and Yugoslavia and To Amend the Term "Military Firearms and Ammunition"

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule removes the following States of the former Soviet Union from the list of countries from which the import of defense articles into the United States is proscribed: Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, and Uzbekistan. The rule also restricts the importation of certain firearms and ammunition located or manufactured in any of the above countries or previously manufactured in the Soviet Union to conform to limitations contained in an agreement between the United States and the Russian Federation and in accordance with advice from the Department of State. The final rule specifies the firearms that are allowed to be imported from these countries as well as ammunition that may not be imported from these countries. The final rule also revises the list of proscribed countries to reflect the lifting of the embargo on importation of defense articles and defense services from the states of the former Yugoslavia, except for Serbia and Montenegro. Finally, the regulations are being revised to require applications to import parts of military firearms or ammunition of United States manufacture to be submitted with statements certifying that the parts were not furnished to a foreign government under a foreign assistance or sales program of the United States.

DATES: The amendments to 27 CFR 47.52 are effective November 17, 1997. The amendment to 27 CFR 47.52(c) was effective December 20, 1996.

Applicability dates. Removal of the Russian Federation from the list of proscribed countries was applicable April 5, 1996. Removal of Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan, and Uzbekistan was applicable August 12, 1996. Removal of Ukraine was applicable September 10, 1996. Lifting of the embargo on importation of defense articles, other than heavy weapons, ammunition therefor, mines, military aircraft and helicopters from a number of the states of the country formerly known as Yugoslavia was applicable March 14, 1996. Lifting of restrictions on the importation of the remainder of defense articles and defense services from a number of the states of the former Yugoslavia was applicable July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Mendoza, Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927-8320.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act of 1976 (AECA), 22 U.S.C. 2778, gives the President of the United States the authority to control the import and export of defense articles and defense services.

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311), delegated the authority to control exports of defense articles and defense services to the Secretary of State. The Executive Order also delegated to the Secretary of the Treasury the authority to control the import of such articles and services. However, as stated in 27 CFR 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States.

New Independent States of the Former Soviet Union

By letter dated April 5, 1996, the Secretary of State advised the Director, ATF, that, under the authority of Section 38 of the AECA it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services destined for or originating in the Russian Federation (Russia). The State Department requested that the Director implement this decision immediately with respect to his authority over imports under Section 38 of the AECA and amend the regulation at 27 CFR 47.52(a) to reflect this change in foreign policy. On April 29, 1996, ATF published in the **Federal Register** a Statement of Policy announcing this change in foreign policy (Notice No. 821, 61 FR 18678).

The April 5, 1996, letter also informed ATF that an agreement between the United States and the Russian Federation on exports of firearms and ammunition from the Russian Federation to the United States (the Agreement) was signed on April 3, 1996, and entered into force on that date. The letter stated that carrying out such an agreement and keeping out unacceptable types of munitions from the United States are United States foreign policy concerns. On this basis, the State Department advised the Department of the Treasury to exercise its authority under the AECA by denying applications to import firearms and ammunition located or manufactured in Russia or previously manufactured in the Soviet Union that would be inconsistent with the Agreement. The State Department advised Treasury that the foregoing did not apply to conditional imports of firearms and ammunition that would serve as samples for purposes of determining whether the items are of a type authorized for importation under the Agreement.

The Agreement provides that Russia shall not allow the exportation to the United States of firearms other than those specified in Annex A to the Agreement and will prohibit exportation to the United States of ammunition specified in Annex B to the Agreement. The Agreement also provides that new types of firearms and ammunition manufactured after February 9, 1996, may not be exported by Russia under the Agreement unless the parties agree in writing to amend the Agreement accordingly. The Agreement, including Annexes A and B, was published in its entirety in Notice No. 821.

By letter dated June 24, 1996, the Secretary of State requested that ATF deny applications to import firearms located or manufactured in the non-Russian newly independent states of the former Soviet Union (NIS) that are not listed in Annex A to the Agreement, once those countries have been removed from the proscribed countries list. The letter further requested that ATF deny applications to import ammunition located or manufactured in the non-Russian NIS that is listed in Annex B to the Agreement, once those countries have been removed from the proscribed countries list. The letter stated that, for purposes of this request, the non-Russian NIS should be considered as Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The letter advised that the State Department would notify ATF when a decision had been made to remove from the list of proscribed countries any of the NIS listed above.

By letter dated August 12, 1996, the Secretary of State notified the Director, ATF, that the State Department had removed Georgia, Kazakstan, Kyrgyzstan, Moldova, Turkmenistan, and Uzbekistan from the list of proscribed countries in 22 CFR Part 126. The letter stated that it is no longer the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in these countries, except as provided in the June 24, 1996, letter. Consistent with ATF's authority over the importation of defense articles and defense services, the Secretary of State requested that ATF amend the list of proscribed countries in 27 CFR Part 47 to reflect this change in foreign policy.

By letter dated September 10, 1996, the Secretary of State advised the Director, ATF, that the Department of State had removed Ukraine from the list of proscribed countries in 22 CFR Part 126. The letter stated that it is no longer the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Ukraine, except as provided in the June 24, 1996, letter. The letter requested that ATF exercise its authority over the importation of defense articles and defense services and amend 27 CFR Part 47 to reflect this change in foreign policy.

The regulations in 27 CFR 47.52 have been amended to remove all the above NIS from the list of countries from which defense articles and defense services may not be imported. The regulations have also been amended to indicate that firearms may be imported from these countries only if they are listed in Annex A to the Agreement and that ammunition may be imported only if it is not listed in Annex B to the Agreement. The regulations also provide that firearms and ammunition manufactured in the NIS may not be imported from any location unless they are listed in Annex A, in the case of firearms, or not listed in Annex B, in the case of ammunition.

Importation of Defense Articles and Defense Services From States of the Former Yugoslavia

The States of Bosnia and Herzegovena, Croatia, Federal Republic of Yugoslavia (Serbia and Montenegro), Macedonia, and Slovenia were created with the dissolution of Yugoslavia.

Effective March 14, 1996, the Department of State announced a partial lifting of the suspension of licenses and approvals to export or otherwise transfer defense articles and defense services to the states of the former Yugoslavia, except Serbia and Montenegro, pursuant to section 38 of the AECA. The Department of State advised ATF that the suspension remained in place for all states of the former Yugoslavia with regard to importation of heavy weapons, ammunition therefor, mines, military aircraft and helicopters.

The Department of State subsequently advised ATF that, effective July 12, 1996, the remainder of the restrictions on importation of defense articles and defense services from the states of the former Yugoslavia, except Serbia and Montenegro, had been lifted (See 61 FR 36625, July 12, 1996). The State Department amended its regulations concerning exports of defense articles and defense services and requested that ATF amend the regulations in 27 CFR Part 47 to reflect this change in foreign policy.

The list of proscribed countries in 27 CFR 47.52(a) is being revised to replace the listing of Yugoslavia with the names of the former states still subject to import restrictions, i.e., the Federal Republic of Yugoslavia (Serbia and Montenegro). Accordingly, ATF will approve applications to import defense articles from Bosnia and Herzegovena, Croatia, Macedonia, and Slovenia.

Importation of Parts of Military Firearms or Ammunition of United States Manufacture

By letter dated December 20, 1996, the Department of State requested that ATF amend the regulations in 27 CFR 47.57(c) to require that applications to import parts of military firearms or ammunition of United States manufacture include statements certifying that the parts were not furnished to a foreign government under a foreign assistance or sales program of the United States. The letter advised ATF that the Department of State believes that the importation of such parts must be subject to their review to be consistent with the law and Department of State policy.

The regulations in 27 CFR 47.57(c) are being revised to delete the current exemption for component parts of firearms and ammunition.

Executive Order 12866

Because the amendments to 27 CFR Part 47 involve a foreign affairs function of the United States, Executive Order 12866 does not apply.

Administrative Procedure Act

Under 27 CFR 47.54, amendments made to 27 CFR Part 47 are excluded from the rulemaking provisions of 5 U.S.C. 553 because this Part involves a foreign affairs function of the United States. Accordingly, it is not necessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitations in 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law. 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Compliance With 5 U.S.C. Chapter 8

In accordance with 5 U.S.C. 808(2), ATF has found that, consistent with guidance from the Department of State and for reasons of the foreign policy of the United States, notice and public procedure under 5 U.S.C. 801 are unnecessary, impracticable, and contrary to the public interest.

Drafting Information

The principal author of this document is Scott Mendoza, Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms and munitions, Arms control, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

Accordingly, 27 CFR Part 47 is amended as follows:

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Paragraph 1. The authority citation for Part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52 is amended by revising paragraph (a); by redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (f); by removing "paragraph (c)" in the first sentence of redesignated paragraph (f) and adding in its place "paragraph (e)"; and by adding new paragraphs (b) and (c) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, Vietnam, and some of the states that comprised the former Soviet Union (Armenia, Azerbaijan, Belarus, and Tajikistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan, UNITA (Angola), and Zaire). It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

Note: Changes in foreign policy may result in additions to and deletions from the above list of countries. The ATF will publish changes to this list in the **Federal Register**. Contact the Firearms and Explosives Imports Branch at (202) 927–8320 for current information.

(b) Notwithstanding paragraph (a) of this section, the Director shall deny applications to import into the United States the following firearms and ammunition:

(1) Any firearm located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and any firearm previously manufactured in the Soviet Union, that is not one of the models listed below:

(i) Pistols/Revolvers:
(A) German Model P08 Pistol.
(B) IZH 34M, .22 caliber Target Pistol.
(C) IZH 35M, .22 caliber Target Pistol.
(D) Mauser Model 1896 Pistol.
(E) MC–57–1 Pistol.
(F) MC–1–5 Pistol.
(G) Polish Vis Model 35 Pistol.
(H) Soviet Nagant Revolver.
(I) TOZ 35, .22 caliber Target Pistol.

(ii) Rifles:
(A) BARS–4 Bolt Action Carbine.
(B) Biathlon Target Rifle, .22LR caliber.
(C) British Enfield Rifle.
(D) CM2, .22 caliber Target Rifle (also known as SM2, 22 caliber).
(E) German Model 98K Rifle.
(F) German Model G41 Rifle.
(G) German Model G43 Rifle.
(H) IZH–94.
(I) LOS–7 Bolt Action Rifle.
(J) MC–7–07.
(K) MC–18–3.
(L) MC–19–07.
(M) MC–105–01.
(N) MC–112–02.
(O) MC–113–02.
(P) MC–115–1.
(Q) MC–125/127.
(R) MC–126.
(S) MC–128.
(T) Saiga Rifle.
(U) Soviet Model 38 Carbine.
(V) Soviet Model 44 Carbine.
(W) Soviet Model 91/30 Rifle.
(X) TOZ 16, .22 caliber Bolt Action Rifle.
(Y) TOZ 55.
(Z) TOZ 78.
(AA) Ural Target Rifle, .22LR caliber.
(BB) VEPR Rifle.
(CC) Winchester Model 1895, Russian Model Rifle;

(2) Ammunition located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and ammunition previously manufactured in the Soviet Union, that is 7.62X25mm caliber (also known as 7.63X25mm caliber or .30 Mauser); or

(3) A type of firearm the manufacture of which began after February 9, 1996.

(c) The provisions of paragraph (b) of this section shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996.

* * * * *

Par. 3. Section 47.57(c) is amended by removing the last sentence.

Signed: August 22, 1997.
John W. Magaw,
Director.
Approved: August 29, 1997.
Dennis M. O'Connell,
Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).
[FR Doc. 97–29595 Filed 11–14–97; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651–AA80

Changes to Patent Practice and Procedure; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The Patent and Trademark Office (PTO) published a notice of final rulemaking entitled "Changes to Patent Practice and Procedure" in the **Federal Register** of October 10, 1997 (62 FR 53131). This document clarifies some of the comments, corrects a typographical error, and removes an incorrect paragraph.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein or Robert W. Bahr, Senior Legal Advisors, by telephone at (703) 305–9285; or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231 marked to the attention of Mr. Bernstein; or by facsimile to (703) 308–6916.

SUPPLEMENTARY INFORMATION: The PTO published a notice of final rulemaking entitled "Changes to Patent Practice and Procedure" in the **Federal Register** of October 10, 1997 (62 FR 53131). The comments on the changes to 37 CFR 1.16, 1.121, and 1.193 contained errors. In addition, the amendment to 37 CFR 1.17(q) contained a typographical error and the amendment to 37 CFR 1.121(a)(4) should have been withdrawn. This document clarifies the comments, corrects the typographical error, and removes an incorrect paragraph.

In the Changes to Patent Practice and Procedure notice of final rulemaking that was published in the **Federal Register** of October 10, 1997 (62 FR 53131), make the following changes:

1. On page 53134, second column, lines 7–10, delete the following sentence:

Section 1.16 is amended to add new paragraphs (m) and (n) including the unassociated text following paragraphs (d) and (l).

2. On page 53154, first column, lines 6–10, change the sentence—

The ability to provide directions to the Office for the handwritten deletion of five words or less for each claim does not encompass deletion of equations, charts or other non-word material.

to—

An equation, chart or other non-word material should not be amended by an instruction to delete (or add) only a part of the equation, chart, or non-word material. Rather, it should be amended by an instruction to delete the entire equation, chart, or non-word material and to add in its place the equation, chart or other non-word material to be substituted for the material that was deleted.

3. On page 53154, first column, lines 29–36, delete the following paragraph:

Paragraph (a)(4) of § 1.121 requires that any amendment presented in a substitute specification must be presented under the provision of this section either prior to or concurrent with the submission of the substitute specification. The paragraph contains material from canceled § 1.115.

4. On page 53168, second column, lines 8–12, change the sentences—

Thus, the Office does not consider such a rejection to constitute a "new ground of rejection" within the meaning of § 1.193(b). Nevertheless, § 1.193(b)(2)
* * *.

to—

Thus, the Office does not consider such a rejection to constitute a "new ground of rejection" within the meaning of § 1.193(a). Nevertheless, § 1.193(a)(2)
* * *.

§ 1.17 [Corrected]

5. Section 1.17 on page 53183, first column, correct paragraph (q) to read as follows:

§ 1.17 Patent application processing fees.
* * * * *

(q) For filing a petition to the Commissioner under a section listed below which refers to this paragraph—50.00.

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

§ 1.48—for correction of inventorship in a provisional application.

§ 1.53—to accord a provisional application a filing date or to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).
* * * * *

6. Section 1.121 on page 53193, first column, correct paragraph (a)(4) to read as follows:

§ 1.121 Manner of making amendments.
(a) * * *
(4) [Reserved]
* * * * *

Date: November 6, 1997.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 97–30118 Filed 11–14–97; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–036–1 9715; FRL–5822–4]

Revocation of the Section 182(f) Oxides of Nitrogen (NO_X) Exemption Granted to the Birmingham Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; informational notice.

SUMMARY: The EPA has rescinded its previous approval of the State of Alabama's exemption from NO_X provisions for the Birmingham marginal nonattainment area. The exemption was originally approved by EPA in 1993. It is now rescinded because the conditions which formed the basis of the original approval no longer exist; and there is no other showing from the State of Alabama that reductions of NO_X would not contribute to attainment of the ozone standard for the area.

EFFECTIVE DATE: This action was effective September 19, 1997.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by the Alabama Department of Environmental Management (ADEM) may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION:

Section 182(f)(1)(A) of the Clean Air Act (CAA) provides for an exemption from New Source Review (NSR) offsets for NO_X emissions in ozone nonattainment areas where a state shows and EPA agrees that additional NO_X reductions would not contribute to attainment of the ozone standard in that area. At the time of the request submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM), the Birmingham area was required to attain the National Ambient Air Quality Standards (NAAQS) for ozone by November 15, 1993. Given this deadline, offsets from new sources of NO_X emissions applying for a permit to locate in the Birmingham area after November 15, 1992, would not in practice have been achieved prior to the expected ozone attainment date. Based on this information, the EPA determined that the application of the NO_X provisions would not have contributed to the timely attainment of the ozone standard and, therefore, approved the NO_X exemption for the Birmingham area. (58 FR 45439). Moreover, the area had ambient air quality data that demonstrated attainment of the ozone NAAQS on November 15, 1993.

Accordingly, on August 30, 1993, the EPA announced in the **Federal Register** (58 FR 45439) that it had determined, pursuant to the State's request according to the provisions of section 182(f) of the CAA, that additional reductions of NO_X would not contribute to attainment of the NAAQS for ozone in the Birmingham nonattainment area. In that same notice, the EPA approved a request from ADEM for an exemption from the CAA requirements for NSR offsets for NO_X. In addition to exempting the Birmingham ozone nonattainment area from NO_X NSR, this action also exempted the Birmingham ozone nonattainment area from applicable transportation and general conformity requirements for NO_X in accordance with 58 FR 62188 and 58 FR 63214. Because the EPA previously issued an area wide exemption under section 182(f) of the CAA, Region 4 acknowledged on November 21, 1994, that additional exemptions from the conformity requirements automatically applied to the Birmingham area.

On March 16, 1995, ADEM submitted a request for redesignation of the Birmingham marginal ozone nonattainment area to attainment status. However, prior to the close of the administrative record on the redesignation request, the Birmingham area registered a violation of the ozone standard on August 18, 1995. EPA proposed disapproval of the redesignation request and the associated maintenance plan on April 30, 1997. On September 19, 1997, EPA published in the **Federal Register**, a final rulemaking which disapproved the ozone redesignation request for the Birmingham area (See 62 FR 49154). In light of the fact that the Birmingham area continued to violate the NAAQS for ozone in 1996, the EPA could no longer conclude that additional NO_X reductions would not contribute to attainment of the ozone standard for this area. For those reasons, the NO_X exemption for the Birmingham marginal ozone nonattainment area has been revoked.

This determination was made as of the effective date of the redesignation disapproval, September 19, 1997, because the basis of the disapproval is the violation of the ozone NAAQS. A letter dated September 11, 1997, provided ADEM official notification that the waiver for Birmingham would be revoked as of the aforementioned date.

As a result of the NO_X waiver being rescinded for the Birmingham marginal ozone nonattainment area, the State will be required to implement New Source Review for major stationary sources of NO_X. Furthermore, the State will no longer have a waiver for the Birmingham ozone nonattainment area which exempts the area from CAA requirements to satisfy the general and transportation conformity requirements for NO_X. Consequently, the Birmingham Metropolitan Planning Organization and the Alabama Department of Transportation must demonstrate that the future long-range transportation plan (LRTP) and the transportation improvement program (TIP) conformity analyses satisfy the applicable VOC and NO_X requirements in section 93.109 of the transportation conformity rule, as amended on August 15, 1997. The approved conformity determination for the existing 2015 LRTP demonstrated that the "Action" scenarios for 2005 and 2015 will have NO_X emissions over the respective "Baseline" scenarios. Without an NO_X waiver, any new LRTP and/or TIP for the Birmingham area which shows such increases would not satisfy the emission reduction requirements of section 93.119 of the transportation conformity rule and would not be in conformance with the Alabama State Implementation Plan.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–30137 Filed 11–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[VA062–5030 and VA060–5030; FRL–5821–3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation Request, Maintenance Plan and Mobile Emissions Budget for the Richmond Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the redesignation request and two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. On July 26, 1996, the Commonwealth of Virginia's Department of Environmental Quality submitted a maintenance plan as a revision to the SIP and a request to redesignate the Richmond moderate ozone nonattainment area from nonattainment to attainment. EPA's action is based upon the Commonwealth's submittal satisfying all five criteria for redesignation in the Clean Air Act (the Act), including the fact that the Richmond area has more than three years of complete, quality-assured ambient air monitoring data which demonstrates that the 1-hour .12 part per million (ppm) National Ambient Air Quality Standard (NAAQS) for ozone has been attained. The Richmond area has continued to attain the standard while its redesignation request was pending before the Agency. On July 30, 1996, the Commonwealth submitted another revision to the SIP modifying the mobile source emission budgets in the Richmond area maintenance plan in support of the area's transportation plans for the period after the year 2015. EPA is redesignating the Richmond ozone nonattainment area from nonattainment to attainment and approving the maintenance plan and mobile source emissions budget as revisions to the Virginia SIP.

EFFECTIVE DATE: This final rule is effective on December 17, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section at (215) 566–2092. Questions may also be addressed via e-mail, at the following address: Gaffney.Kristeen@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

On June 13, 1997, EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia (62 FR 38856). The NPR proposed approval of the redesignation request, maintenance plan and mobile source emissions budget for the Richmond moderate ozone nonattainment area. The redesignation request and maintenance plan were submitted as SIP revisions by the Commonwealth of Virginia on July 26, 1996. The mobile source emissions budget was submitted as a SIP revision on July 30, 1996. The SIP revisions establish a maintenance plan for Richmond, including contingency measures, which provides for continued attainment of the ozone NAAQS until the year 2007, and adjust the mobile source emissions budget established in the maintenance plan for Richmond to support the area's long-range transportation plans in the horizon years 2015 and beyond. This action is being taken under sections 107 and 110 of the Clean Air Act.

On July 18, 1997, EPA promulgated a new NAAQS for ozone, replacing the 1-hour .12 ppm standard with an 8-hour 0.08 ppm standard (62 FR 38856). EPA is in the process of developing guidance and proposed rules to implement the new ozone standard based on a Presidential Directive signed on July 16, 1997, and published in the **Federal Register** on July 18, 1997. Today's action is a redesignation to attainment for the Richmond area of the 1-hour .12 ppm ozone standard and approval of the maintenance plan and mobile source emissions budget as they relate to the 1-hour standard only. EPA's decision to redesignate Richmond to attainment and approve the related SIP revisions is based on the requirements of section 107 of the Act and existing EPA policy and guidance as they pertain to the 1-hour standard. Today's decision does not in any way make a determination regarding Richmond's attainment status for the newly promulgated 8-hour .08 ppm ozone standard. Decisions regarding the attainment status of areas for the new 8-hour .08 ppm ozone NAAQS will be conducted by EPA at a later date.

II. Outstanding Requirements

The June 13, 1997 NPR proposed approval of the redesignation to attainment of the Richmond area based on certain contingencies, as discussed in the NPR. Specifically, it was necessary for EPA to complete rulemaking on several outstanding Clean Air Act requirements for the Richmond area before final rulemaking on the redesignation request could be completed. These requirements, as outlined in the proposed rulemaking, are: (1) the determination of nonapplicability of certain requirements of the Act including reasonable further progress (RFP) and the attainment demonstration; (2) final approval of the proposed nitrogen oxides (NO_X) reasonably available control technology (RACT) waiver for the Richmond area; and (3) SIP approval of 12 source-specific volatile organic compound (VOC) reasonably available control technology (RACT) SIP revisions. Final EPA action has been completed for each of these requirements, as discussed below, and EPA finds that all the applicable requirements of the Act necessary for redesignations have been met for the Richmond area.

1. EPA's determination of nonapplicability of certain requirements of the Act for the Richmond area, specifically section 182(b)(1) (RFP, including the 15% plan, and attainment demonstration) and section 172(c)(9) (contingency measures) was proposed on June 13, 1997. The final determination was published in the **Federal Register** on October 6, 1997 (62 FR 52029).

2. EPA's final rulemaking to waive the NO_X RACT requirements of section 182(f) of the Act in the Richmond area was published in the **Federal Register** on July 21, 1997 (62 FR 38922).

3. EPA published final approval of 12 source specific VOC RACT SIP submittals in the **Federal Register** on October 14, 1997 (62 FR 53234 and 62 FR 53242). The approval of these 12 source specific VOC RACT approvals fulfills the section 182(a)(2) and 182(b)(2) requirements of the Act to impose RACT on major sources of VOCs in the nonattainment area.

III. Response to Public Comments

Two letters were received submitting public comments on the NPR. One letter of support for EPA's proposed action to redesignate Richmond was received from Virginia Power (July 14, 1997). The second letter was received from the New

York State Department of Environmental Conservation (NYSDEC), which submitted adverse comments regarding EPA's proposed action on the redesignation request and maintenance plan. Below are EPA's responses to the comments received in NYSDEC's letter.

Comment #1

NYSDEC disagrees with EPA's statement in the NPR that the Richmond area has met all relevant requirements of the Act that were due as of July 26, 1996, the date Virginia submitted its redesignation request. Specifically, NYSDEC states that the Commonwealth of Virginia missed the "November 15, 1995" statutory deadline for implementing the NO_X RACT requirements of the Act and continues to be delinquent.[1] It was noted that the Commonwealth of Virginia responded to EPA's July 8, 1994 finding of failure to submit a NO_X RACT SIP for the Richmond area with a petition for an exemption from the NO_X RACT requirement submitted on December 18, 1995. NYSDEC states that this December 18, 1995 petition was well after the mandated date of November 15, 1993 for submittal of a NO_X RACT SIP and after the mandatory implementation date. NYSDEC concludes that "(t)herefore, not implementing NO_X RACT in the Richmond area was not an option." NYSDEC states that it is not a relevant factor that Richmond is now attaining the ozone NAAQS because the Richmond area has avoided implementing the NO_X RACT requirements of the Act. NYSDEC objects to the proposed approval of the redesignation request on the grounds that the area failed to implement RACT on major sources of NO_X.

Response #1

According to section 107(d)(3)(E) of the Act, five requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area must have met all applicable requirements under section 110 and part D of the Act;
3. The area must have a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

[1] Actually, section 182(b)(2) of the Act specifies that RACT is to be implemented not later than May 15, 1995. The discrepancy in dates does not substantively affect the commenters argument.

The commenter asserts that the obligation to meet all applicable requirements includes the NO_X RACT requirements of part D, section 182(f) of the Act for controls on major sources of NO_X in the Richmond area. The commenter claims that Virginia's failure to implement NO_X RACT controls by November 15, 1995 disqualifies it from redesignation. This argument has been invalidated because EPA, subsequent to the proposed approval of the redesignation, has granted Virginia's request under section 182(f) for an exemption from this requirement. Therefore, the NO_X RACT requirement is no longer applicable to the Richmond area.

On December 18, 1995, the Commonwealth submitted a petition under section 182(f) of the Act to exempt the Richmond ozone nonattainment area from the NO_X RACT requirement. The exemption petition was based on ambient air monitoring data from 1993–1995 which demonstrated attainment of the 1-hour .12 ppm ozone standard. EPA proposed approval of the NO_X RACT exemption petition for the Richmond area in the **Federal Register** on March 19, 1996 (61 FR 11170). Moreover, in a separate **Federal Register** notice published on the same day, EPA made an interim final determination that stayed and deferred the implementation of sanctions which had started for this area by issuance of a July 8, 1994 EPA findings letter because the Commonwealth, contingent upon continued attainment of the ozone NAAQS, had corrected the deficiency of failing to submit the NO_X RACT rules (61 FR 11162). In conjunction with EPA's proposed approval of the NO_X waiver petition, on September 6, 1996, the Commonwealth withdrew from further EPA review the May 16, 1995 and July 17, 1995 draft NO_X RACT control SIPs submitted to EPA. EPA's proposed approval of the redesignation request and maintenance plan for Richmond was based, in part, on EPA's proposed approval of the NO_X exemption petition. As was stated in the July 13, 1997 NPR, "although EPA is proposing approval of the Richmond redesignation request in today's action, EPA must complete final rulemaking action on the NO_X waiver before the area can be finally redesignated." On July 21, 1997, EPA published final approval of an exemption from the NO_X RACT requirement for the Richmond area contingent upon air quality monitoring that demonstrates continued attainment of the ozone NAAQS (62 FR 38922). This final approval waives NO_X RACT as an applicable requirement in the Richmond area for as long as the area attains the 1-hour ozone standard.

The commenter's assertion that Virginia missed a May 15, 1995 statutory deadline for implementing the NO_X RACT requirements in Richmond is irrelevant in light of EPA's final approval of the NO_X RACT exemption petition. NO_X RACT was not implemented in the Richmond area because the area had attained the standard, without needing the additional reductions of NO_X. EPA has approved the exemption of NO_X RACT for the Richmond area, and therefore, the area meets the section 182(f) requirements of the Act and has a fully-approved SIP that meets the requirements of section 107 of the Act for the purposes of redesignating the area to attainment.

EPA has not required NO_X RACT SIP revisions in approving redesignation requests in a number of other areas where it has granted section 182(f) NO_X waivers at the time of or before the redesignation of an area. See 61 FR 20462–20468 (May 7, 1996); 59 FR 49361 (September 28, 1994); and 60 FR 12459 (March 7, 1995). Please refer to these rulemakings for additional explanation of EPA's interpretation of the NO_X RACT requirements for areas attaining the ozone standard.

Comment #2

NYSDEC also disagrees with EPA's determination that the Commonwealth of Virginia has a fully approved SIP for the Richmond area under section 110(a)(2). Section 110(a)(2)(D) requires SIPs to contain adequate provisions to assure that the emissions activity of one state does not adversely affect another state from attaining the ozone NAAQS. NYSDEC states that EPA regional oxidant modeling and the regional modeling done through the Ozone Transport Assessment Group (OTAG)[2] indicate that emissions of NO_X from stationary sources upwind of the Ozone Transport Region contribute to increased ozone levels in the Northeast, including New York State.

Response #2

As stated above, for an area to be redesignated to attainment it must meet all the requirements applicable to the area under section 110. Section 110(a)(2)(D) requires that the SIP

[2] OTAG was established approximately 2 years ago to undertake an assessment of the regional transport problem and develop solutions. OTAG was a collaborative process conducted by the affected States and also included representatives from EPA, environmental groups, industry and the public.

contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect to any NAAQS. This provision applies by its terms to all SIPs for each pollutant covered by a NAAQS and for all areas, regardless of their attainment designation. In other words, this provision applies to both nonattainment and attainment areas. EPA's decision to provide the NO_X RACT waiver under section 182(f) for any area or redesignate any area to attainment would not shield that state from the obligation, in response to a SIP call under section 110 by EPA, for NO_X emission reductions, if evidence such as photochemical grid modeling shows that NO_X emissions contribute significantly to downwind nonattainment or maintenance problems in another state.

On October 10, 1997, Administrator Browner signed a Notice of Proposed Rulemaking to issue a SIP call under section 110(k)(5) to reduce NO_X emissions which contribute to regional transport of ozone in the Northeastern portion of the country. This Notice of Proposed Rulemaking will be published shortly in the **Federal Register**. This proposed SIP call is being issued in accordance with section 110(k)(5) and 110(a)(2)(D) of the Act. The SIP call, as proposed, will require 22 states (including the Commonwealth of Virginia) and the District of Columbia to submit, as SIP revisions, control measures to reduce statewide NO_X emissions to ensure that emission reductions are achieved as needed to comply with section 110(a)(2)(D)'s provisions on interstate transport of ozone. This action reflects the technical work done by OTAG and other pertinent regional and urban scale analyses of ozone transport. The proposed rulemaking establishes statewide emissions budgets that the 22 states and the District of Columbia need to achieve to reduce the boundary condition concentrations of ozone and its precursors within a specified timeframe and require the submission of SIP controls to achieve those reductions. EPA is taking comment on this proposed rulemaking for 120 days. Final action on the section 110 SIP call that takes into consideration public comments received on the proposal is not expected to occur until 1998.

Redesignating the Richmond area to attainment under section 107 of the Act will in no way relieve the Commonwealth of Virginia from any future obligations to secure additional NO_X reductions in the Richmond area which may result from any final action EPA takes under section 110(a)(2)(D) and 110(k)(5). EPA has interpreted section 107(d)(3)(E) to permit the Agency, when reviewing requests for redesignation, to rely on a prior SIP approval as establishing compliance with section 110 of the Act. EPA approved the Virginia SIP as meeting the requirements of section 110 [45 FR 55180, August 19, 1980; 45 FR 66789, October 8, 1980; and 45 FR 85748, December 30, 1980].

A memorandum to EPA Regional Offices from John Calcagni, dated September 4, 1992, describes procedures that EPA regions should use to evaluate requests to redesignate areas to attainment status. The memo states on page 3:

> An area cannot be redesignated if a required element of its plan is the subject of a disapproval; a finding of failure to submit or to implement the SIP; or partial, conditional, or limited approval. However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required.

Prior to the 1990 Amendments, the predecessor to section 110(a)(2)(D) provided that SIPs must contain provisions "prohibiting any stationary source within the State from emitting any air pollutant in amounts which will: (1) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard." Section 110(a)(2)(E). The 1990 amendments to the Act clarified the section by providing that SIPS must contain provisions prohibiting emissions in amounts that "contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard." Section 110(a)(2)(D)(i)(I). This change codified the interpretation EPA had long given to the section. See *Air Pollution Control District* v. *EPA*, 739 F.2d 1071 (6th Cir. 1984). In 1992, EPA reviewed the amended section 110(a)(2)(D) and concluded that the 1990 Amendments merely incorporated the Agency's longstanding interpretation. See General Preamble, 57 FR 13556.

Section 110(n)(1) also states that provisions in SIPs that were approved before the 1990 Amendments shall remain in effect unless the Amendments require changes to the provisions. Thus, EPA is not obligated to reexamine the SIP provision previously approved under section 110 in the context of a redesignation rulemaking.

Based on its technical assessment that the issue of ozone transport should be addressed regionally, EPA is implementing section 110(a)(2)(D) by exercising its authority to issue SIP calls on a regional basis. EPA has not issued a final rulemaking finding that the SIP applicable to Richmond does not meet the requirements of section 110(a)(2)(D) of the Act.

Comment #3

NYSDEC also submitted several comments that were pertinent to EPA's proposed rulemaking to approve a NO_X RACT exemption for the Richmond area [March 19, 1996, 61 FR 11170]. NYSDEC believes that the NO_X RACT exemption request has been inappropriately segregated from and does not address the section 110(a)(2)(D) requirements of the Act. Further NYSDEC states that any NO_X exemption petition would also be invalid because section 110(a)(2)(D) prohibits granting an exemption from NO_X RACT pursuant to section 182(f) of the Act where there is evidence that the exemption would interfere with attainment of a NAAQS in another state.

Response #3

In the July 21, 1997 final rulemaking action on the NO_X exemption petition, EPA responded to similar adverse comments received that section 110(a)(2)(D) prohibits granting exemptions pursuant to section 182(f) where there is evidence that granting of the exemption would interfere with attainment of the ozone NAAQS in downwind areas [62 FR 38925]. In EPA's final rulemaking approving the exemption, EPA made the determination that the section 110(a)(2)(D) and 182(f) provisions must be considered independently and would not shield a state from complying with a SIP call issued by EPA pursuant to section 110 of the Act. EPA's rationale for making this determination can be found in the July 21, 1997 final approval of the NO_X exemption petition for the Richmond area and will not be restated here.

IV. Final Action

EPA has evaluated the Commonwealth's redesignation request for Richmond for consistency with the Act, EPA regulations, and EPA policy. EPA believes that the redesignation request and monitoring data demonstrate that this area has attained the 1-hour .12 ppm ozone standard. In addition, EPA has determined that the redesignation request meets the

requirements of section 107(d)(3)(E) and the policy set forth in the General Preamble and policy memoranda for area redesignations, and today is approving Virginia's redesignation request for Richmond, submitted on July 26, 1996. Furthermore, EPA is approving into the Virginia SIP the required maintenance plan, because it meets the requirements of section 175A of the Act, and the mobile source emissions budget for the Richmond area. Other specific requirements of redesignations and maintenance plans and the rationale for EPA's approval action were explained in the July 13, 1997 proposed rulemaking and will not be restated here.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of EPA's approval of the Richmond redesignation request, maintenance plan and mobile emissions budget must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirement.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(119) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(119) The ten year ozone maintenance plan for the Richmond, Virginia ozone nonattainment area submitted by the Virginia Department of Environmental Quality on July 26, 1996:

(i) Incorporation by reference.

(A) Letter of July 26, 1996 from the Virginia Department of Environmental Quality transmitting the 10 year ozone maintenance plan for the Richmond moderate ozone nonattainment area.

(B) The ten year ozone maintenance plan including emission projections, control measures to maintain attainment and contingency measures for the Richmond ozone nonattainment area adopted on July 26, 1996.

(ii) Additional material.

(A) Remainder of July 26, 1996 Commonwealth submittal pertaining to the redesignation request and maintenance plan referenced in paragraph (c)(119)(i) of this section.

3. Section 52.2424 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2424 Motor vehicle emissions budgets.

* * * * *

(b) Motor vehicle emissions budget for the Richmond maintenance area adjusting the mobile emissions budget contained in the maintenance plan for the horizon years 2015 and beyond adopted on July 30, 1996 and submitted by the Virginia Department of Environmental Quality on July 30, 1996.

PART 81—[AMENDED]

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671.

Subpart C—Section 107 Attainment Status Designations

4. In § 81.347 the "Virginia—Ozone" table is amended by revising the entry for "Richmond Area" to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Richmond Area:				
Charles City County (part)	12/17/97	Attainment.		
Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.				
Chesterfield County, Colonial Heights, Hanover County, Henrico County, Hopewell, Richmond.				
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 97–30138 Filed 11–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH107–3; KY94–9717a; FRL–5922–5]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Ohio; Kentucky

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On May 27, 1997, USEPA extended the attainment date for the Cincinnati-Hamilton interstate, moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 utilizing "direct final rulemaking" procedures. On July 28, 1997, USEPA withdrew the direct final rule due to the receipt of adverse comments. In this action USEPA is responding to public comments received in response to the proposed rule and announcing that it is extending the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. The USEPA is also revising the table in the Code of Federal Regulations concerning ozone attainment dates in this area.

EFFECTIVE DATE: This extension becomes effective December 17, 1997.

ADDRESSES: The Kentucky SIP revision is available for inspection at the following addresses:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

The Ohio SIP revision is available for inspection at the following addresses:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Ohio EPA, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Joseph M. LeVasseur at the USEPA Region 4 address listed above or Randolph O. Cano at Region 5 at the address listed above. (It is recommended that you contact Joseph M. LeVasseur at (404) 562-9035 before visiting the Region 4 office.) (It is recommended that you contact Randolph O. Cano at (312) 886–6036 before visiting the Region 5 office.)

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the Cincinnati-Hamilton Metropolitan Moderate Ozone Nonattainment Area

On November 7, 1996, the Ohio Environmental Protection Agency (Ohio EPA) requested a one-year attainment date extension for the Ohio portion of the Cincinnati-Hamilton moderate ozone nonattainment area which consists of Hamilton, Butler, Clermont and Warren Counties in Ohio. Similarly, on November 15, 1996, the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) requested

a one-year attainment date extension for the Kentucky portion of the Cincinnati-Hamilton moderate ozone nonattainment area which consists of Kenton, Boone and Campbell Counties. Since this area was classified as a moderate ozone nonattainment area, the statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act (CAA), is November 15, 1996. The submittals requested that the attainment date be extended to November 15, 1997. On May 27, 1997 (62 FR 28634), USEPA extended the attainment date for the Cincinnati-Hamilton interstate, moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 utilizing "direct final rulemaking" procedures. On July 28, 1997 (62 FR 40280), USEPA withdrew the direct final rule due to the receipt of adverse comments. In this action USEPA is responding to public comments received in response to the proposed rule and announcing that it is extending the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the ozone national ambient air quality standard (NAAQS) during 1996.

CAA Requirements and USEPA Actions Concerning Designation and Classification

Section 107(d)(4) of the CAA requires the States and USEPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) requires that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality. In a series of **Federal Register** documents, USEPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the CAA. The Cincinnati-Hamilton ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

CAA Requirements and USEPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, USEPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the most recent three-year period. See General Preamble, 57 FR 13506. In the case of moderate ozone nonattainment areas, the three-year period is 1994–1996. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upward (bumped-up).

A review of the actual ambient air quality ozone data from the USEPA Aerometric Information Retrieval System (AIRS), shows that a number of air quality monitors located in the Cincinnati-Hamilton ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1994 to 1996. At one of these monitors, Warren County, OH, the number of expected exceedances was 2.0 per year, for 1994 and 1995. Because these exceedances averaged more than 1.0 over the three-year period, they constitute a violation of the ozone NAAQS for the Cincinnati-Hamilton area during this three-year period. Thus, the area did not meet the November 15, 1996 attainment date.

However, CAA section 181(a)(5) provides an exemption from these bump-up requirements. Under this exemption, USEPA may grant up to two, one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for one additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) The State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) No more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the Extension Year.

No more than two one-year extensions may be issued for a single nonattainment area.

The USEPA interprets this provision to authorize the granting of a one-year extension under the following minimum conditions:

(1) The State requests a one-year extension,

(2) All requirements and commitments in the USEPA-approved SIP for the area have been complied with, and

(3) The area has no more than one measured exceedance of the NAAQS at each monitor in the area during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

TABLE 1.—EXCEEDANCES OF THE OZONE AIR QUALITY STANDARD IN THE CINCINNATI-HAMILTON AREA 1994 TO 1996

Site	County/state	Year	Exceedances measured	Expected exceedances
Oxford[1]	Butler, OH	1994	0	0.0
Middletown	Butler, OH	1994	0	0.0
Middletown	Butler, OH	1995	2	2.0
Middletown	Butler, OH	1996	1	1.0
Hamilton	Butler, OH	1994	0	0.0
Hamilton	Butler, OH	1995	1	1.0
Hamilton	Butler, OH	1996	0	0.0
4430 SR 222	Clermont, OH	1994	1	1.0
4430 SR 222	Clermont, OH	1995	1	1.0
4430 SR 222	Clermont, OH	1996	0	0.0
11590 Grooms Rd	Hamilton, OH	1994	0	0.0
11590 Grooms Rd	Hamilton, OH	1995	0	0.0
11590 Grooms Rd	Hamilton, OH	1996	0	0.0
6950 Ripple Rd	Hamilton, OH	1994	0	0.0
6950 Ripple Rd	Hamilton, OH	1995	1	1.0
6950 Ripple Rd	Hamilton, OH	1996	0	0.0

TABLE 1.—EXCEEDANCES OF THE OZONE AIR QUALITY STANDARD IN THE CINCINNATI-HAMILTON AREA 1994 TO 1996—Continued

Site	County/state	Year	Exceedances measured	Expected exceedances
Cincinnati	Hamilton, OH	1994	0	0.0
Cincinnati	Hamilton, OH	1995	1	1.0
Cincinnati	Hamilton, OH	1996	0	0.0
Lebanon	Warren, OH	1994	2	2.0
Lebanon	Warren, OH	1995	2	2.0
Lebanon	Warren, OH	1996	0	0.0
KY 338	Boone, KY	1994	0	0.0
KY 338	Boone, KY	1995	0	0.0
KY 338	Boone, KY	1996	0	0.0
Dayton	Campbell, KY	1994	0	0.0
Dayton	Campbell, KY	1995	0	0.0
Dayton	Campbell, KY	1996	1	1.0
Covington	Kenton, KY	1994	0	0.0
Covington	Kenton, KY	1995	1	1.0
Covington	Kenton, KY	1996	1	1.0

[1] This site was shutdown after 1994, so no data are available for 1995 and 1996.

In both extension requests Ohio and Kentucky indicated that they satisfied the attainment date extension criteria in as much as no monitors in the Cincinnati-Hamilton area monitored more than one exceedance each during 1996. The 1996 monitoring data has been quality controlled and quality assured, as has been the data for 1994 and 1995. These data are summarized in Table 1. An examination of the data indicates that three of the ten monitors recorded one exceedance each during 1996.

Both Ohio and Kentucky certified that they are implementing the ozone State Implementation Plans (SIPs) for the area. USEPA conducted a review of the ozone SIPs, as contained in 40 CFR part 52 and USEPA's electronic version of the SIP, and believes that the States are implementing the USEPA approved ozone SIPs. Additionally, USEPA has not made a finding of failure to implement the SIPs for the area. This supports the States' certification that the area is implementing its SIPs.

Ohio is implementing the requirements of the approved Ozone SIP. Regarding implementation of the vehicle inspection and maintenance (I/M) program, Ohio enacted legislation authorizing the I/M program and adopted regulations for the operation of the program. The USEPA approved the program on April 4, 1995 (see 60 FR 16989). The State of Ohio awarded a contract for program operations, and on January 2, 1996, Ohio began testing vehicles in the Cincinnati area. The enactment of legislation, adoption of regulations, and the capital investment in structures and equipment to perform testing meets the implementation test. While the Cincinnati program has been suspended due to program performance problems, Ohio is in compliance with CAA implementation requirements. The Ohio Stage II vapor recovery program is being implemented in the Cincinnati area. The State is also collecting emissions statements from sources in the area. The State is implementing its SIP for conformity. Also, the area is implementing its approved SIP which includes a program for controlling volatile organic compound (VOC) emissions from stationary sources. This includes the Non-Control Technique Guideline Reasonably Available Control Technique requirements approved within the past several years for the following plants in the Ohio portion of the area: Steelcraft Manufacturing Co., Chevron USA Inc., International Paper Co., Morton Thiokol, Armco Steel Co., Formica Corp., PMC Specialties Group, Hilton Davis Co., Monsanto Co., and Proctor and Gamble.

Kentucky is implementing the requirements of its approved ozone SIP for the Cincinnati-Hamilton interstate area. The Kentucky portion of the area is implementing its program for controlling oxides of nitrogen (NO_X) and VOC emissions from stationary sources.

Proposed Rule and Responses to Comments

The USEPA published a direct final rule to approve the attainment date extension request for the Cincinnati-Hamilton moderate ozone nonattainment area in the May 27, 1997 (62 FR 28634), **Federal Register**. This action was accompanied by a proposed rule (62 FR 28650). Because USEPA received comments adverse to this action, the direct final rule was withdrawn. The comments received are summarized below along with USEPA's responses. Copies of all comments have been placed in the docket file and are available for public review.

Comment 1: Ohio has failed to comply with the CAA implementation requirements under sec. 181 (a)(5)(B): "no more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the Extension Year." The USEPA's proposal states that "a review of the ozone data for the area indicates the area has monitored no more than one exceedance of the NAAQS at any monitor during 1996." Section 181 (a)(5)(B) states that one exceedance be allowed in the area, not one exceedance be allowed per monitor.

USEPA Response: Appendix H to Part 50.9 of Title 40 of the *Code of Federal Regulations* provides for review of the data from each monitor individually as opposed to adding up all of the individual monitor exceedances across the region to determine whether or not the area meets the air quality test for an extension. This is consistent with the process that USEPA uses to evaluate whether or not an area attained the ozone standard by its attainment date. For instance in the Cincinnati/Northern Kentucky area, USEPA reviewed the monitoring data collected for 1994 through 1996 at each of the ten monitors in the seven county multi-state area to determine whether or not the area attained the ozone standard by November 15, 1996. This review showed that the Lebanon monitor located in Warren County was in violation of the ozone standard. This resulted in the entire multi-state area having failed to attain the ozone standard by 1996.

In determining whether or not to extend the attainment date from 1996 to 1997, USEPA reviewed the ozone

monitoring data for 1996 at each monitoring site in the area to see if any of the sites recorded more than one exceedance of the ozone standard during 1996 (see table 1). The results of this review showed that while three of the monitors recorded an exceedance during 1996, none of the monitors recorded more than one exceedance. The monitors' exceedances were not added up to see if they were more than one, which is consistent with how USEPA evaluates data to determine if an area attained the standard by 1996. Therefore, the Cincinnati/Northern Kentucky area meets the monitoring requirements for an extension to November 15, 1997.

Comment 2: A fourth exceedance in three years was monitored at the Middletown monitoring site. Therefore, the area is in violation of the NAAQS for ozone and now qualifies for serious nonattainment so it does not meet the requirements for an extension.

USEPA Response: The criteria in section 181(a)(5) of the CAA requires that in order for an area to be eligible for an extension not more than one exeedance of the NAAQS for ozone may be monitored in the year prior to the extension year. The year prior to the extension year, in this case, is 1996. The ambient air monitoring data for the area shows that not more than one exeedance occurred in 1996 at any monitoring site in the area (see table 1). Therefore, the area satisfies the air quality requirements for an extension. The preliminary air monitoring data for 1997 shows no indication that any monitor recorded more than one exceedance.

Comment 3: Section 181 (a)(5) states that an extension may be granted if "(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan." The State committed to an I/M program in their submitted SIP. The I/M program began, but was suspended on August 20, 1996, and is not expected to resume until at least after the 1997 ozone season. Additionally, the I/M program has not yet made a full cycle (a full cycle takes two years to complete). No program was implemented that would take the place of the 18 ton/day reduction which the I/M program was to provide.

USEPA Response: Ohio is implementing the I/M requirements of the SIP. The State of Ohio awarded a contract for program operations, and on January 2, 1996, Ohio began testing vehicles in the Cincinnati area. The enactment of legislation, adoption of regulations, and the capital investment in structures and equipment to perform testing meets the implementation test.

The State of Ohio has been working to resume automobile testing in the Cincinnati area. The program was suspended, due to program performance requirements. However, the State has been actively working to get the program back up and running in the area. It is reasonable to allow the State the opportunity to improve the performance of the program and to allow sufficient time to get the program operational again. It is expected that the program will be operational in January 1998.

Comment 4: The extension proposal states that Stage II vapor recovery program is fully implemented, however, according to the Hamilton County Department of Environmental Services approximately 225 warning letters are issued annually to facilities whose vapor recovery devices were delinquent upon inspection. Since the area only has about 500 facilities, it is likely not achieving the required reductions.

USEPA Response: Ohio has implemented the Stage II gasoline vapor control program in the Ohio portion of the Cincinnati ozone nonattainment area. Subsequent to the beginning of the program, inspections have been carried out by the local Department of Environmental Services (DOES). These inspections have uncovered a number of deficiencies at some of the facilities inspected prompting warning letters to facility owners. The warning letters represent a concerted effort on the part of the DOES to encourage full compliance with requirements of the Stage II program. The DOES sent 291 warning letters to gasoline dispensing facilities for a number of different deficiencies. The warning letters do not necessarily mean that the facility is not complying with all of the required elements of the Stage II rule. Of all of the letters sent, 143 letters were sent to stations because of recordkeeping deficiencies as opposed to a control equipment problem. Of the remaining 148 letters, there were 431 physical problems such as a leaking nozzle or damaged hoses, cited out of approximately 10,000 gasoline dispensing nozzles in the four Ohio counties. Some of the nozzles, for example, were cited for multiple defects. These deficiencies represent 4.3 percent or less of the nozzles having some type of problem. This indicates that for the vast majority of the facilities visited, the Stage II control equipment is operational and the stage II program is being adequately implemented in the area.

Comment 5: The interstate area continues to violate the standard while claiming its Transportation Improvement Program (TIP) will meet the standards. The Ohio Indiana Kentucky Regional Planning Commission predicts that the area's TIP will conform, but fails to meet the standard each year. This is perhaps due to the use of outdated data and modeling (from the 1960's) for determining conformity with the TIP.

USEPA Response: The CAA requires the TIP to conform to the SIP. For the Cincinnati/Northern Kentucky area this means that the area must perform a build/no build analysis on its transportation plan to show that its volatile organic compound (VOC) and oxides of nitrogen emissions (NOx) will not increase if the transportation projects are built. Additionally as part of this conformity demonstration the emissions resulting from building projects outlined in the TIP must be shown not to exceed the emissions levels that are planned for in the SIP. For Cincinnati/Northern Kentucky this calls for comparing the projected TIP emissions to the emissions in the 15% rate of progress (ROP) plan submitted by the State of Ohio to USEPA. The ROP plan provides for an emissions reduction in VOC that the area is required to meet on its way toward achieving the NAAQS. This level of emissions will result in improved air quality, but not necessarily air quality that will attain the NAAQS. The current SIP does not provide for the reductions or a specific emissions level (attainment target) in order to reach attainment of the NAAQS. Until this level is set the TIP is only required to meet the Rate of Progress (ROP) emissions targets and the build/no build test. The State has been implementing its SIP for conformity in the Cincinnati area by ensuring that the TIP meets the ROP test. Therefore, the area satisfied the SIP implementation requirement for receiving an attainment date extension.

While the interstate area is in violation of the standard, it is eligible for an attainment date extension because it meets the air quality test of no more than one exceedance at each monitor in the area.

Comment 6: The proposed extension does not include any requirements that will bring the area into compliance. Therefore, it is not reasonable to expect that a one-year extension will improve the area's air quality.

USEPA Response: Section 181(a)(5) of the CAA authorizes the Administrator to provide a one-year extension of time to attain the ozone NAAQS upon State application as long as two requirements are met. The State must have complied with all requirements and commitments pertaining to the area in the applicable implementation plan. No more than one exceedance of the NAAQS level may have occurred in the extension area in the year proceeding the extension year. A second one-year extension may be granted if the requirements can be met the following year.

Congress likely intended the extension year as a period to evaluate the effectiveness of the control strategy prior to developing additional emission control measures. Over the course of the extension year, the Federal Motor Vehicle Emissions Control Program (FMVECP) will reduce mobile source emissions as older, more polluting motor vehicles were replaced by newer, less polluting motor vehicles. Providing an additional year for the FMVECP to operate will provide sufficient additional emission reductions bringing the area closer toward achieving attainment.

Comment 7: The scientific and medical evidence shows that levels of ozone in the area are unhealthy. The purpose of the CAA is to protect the environment and public health, and to prevent damage from air pollution. If the USEPA grants the area an extension, it would fail to enforce the CAA, and betray its mission to protect human health and the environment.

USEPA Response: As stated above, section 181(a)(5) authorizes the Administrator to grant a one-year extension of the ozone attainment date upon application by the State if the two conditions discussed above are met. In granting such an extension, the Administrator is clearly within the scope of authority granted him by the CAA. In as much as the extension is authorized by the CAA, it should be considered consistent with the goals and objectives of the CAA. The extension may allow the area to reach attainment without incurring the additional costs that would result from reclassification to a serious area.

Comment 8: The commenter states that an extension can only be granted upon state submittal of an approvable 15% plan. The areas current 15% plan is no longer valid because its I/M program has been suspended. The commenter requests further explanation of the suspension and a schedule for reimplementing the I/M program prior to any final action on the attainment date extension.

USEPA Response: In order to be granted an extension, the States are required to implement their SIPs for the Cincinnati/Northern Kentucky area. Neither Ohio nor Kentucky has 15% plans that are federally approved into the State Implementation Plans for the area. Therefore, the status of the 15% plan is not relevant to the question of whether or not the States are implementing their SIP since it is not part of the federally approved SIP. In regards to the I/M program, which is a part of the federally approved SIP for Ohio, it is expected that the program will be operational in January 1998. The State is actively working to improve the performance of the program and to restart the I/M program.

Comment 9: Implementation of NO_X Reasonably Available Control Technology (RACT) for major sources in the Ohio portion of the nonattainment area is over a year late. Concerns regarding this tardiness have been repeatedly expressed in letters addressed to USEPA. New York State Department of Environmental Conservation requests that pertinent NO_X requirements of the CAA be addressed expeditiously through revisions to the Ohio SIP.

USEPA Response: USEPA responded to the letters from the State of New York in three letters dated October 10, 1996, October 30, 1996, and January 17, 1997. In USEPA's correspondence with the State of New York, USEPA stated that it would publish a proposed rule in the Federal Register to provide the community with an opportunity to comment on removing the Cincinnati area's monitoring-based NO_X waiver and to comment on what "reasonable time" may be necessary to allow major stationary sources subject to the reasonably available control technology requirements to purchase install and operate the required controls.

Along with the USEPA's efforts in this regard, it should be noted that on October 10, 1997, USEPA Administrator Carol Browner signed a proposed rulemaking to require emissions reductions, including NO_X, in Ohio and twenty-one other states in order to reduce the effects on attainment caused by the interstate transport of ozone, which is clearly the issue that New York in its correspondence sought to have the USEPA address. The proposal reiterates USEPA's view that ozone pollution is a regional as well as a local problem. As USEPA has pointed out to New York in it's response letters, the State's concerns are more appropriately addressed through a process dealing with resolving the regional ozone pollution problem, particularly long-range transport. However, section 182(f), which authorizes the granting of NO_X waivers, focuses only on the effects of reducing NO_X in local nonattainment areas, like Cincinnati, while the provisions of section 110(a)(2)(D), the main statutory basis for the proposed action, are specifically intended to address the kinds of interstate problems exemplified by long-range ozone transport. The USEPA notes that the requirements of the proposed "SIP call" action if finalized would apply both to areas with approved NO_X waiver petitions and areas without such petitions. That is, any nonattainment area with NO_X waiver petitions approved by USEPA in the past or in the future are not proposed to be exempt from that action.

Comment 10: A commenter stated that the area should not be granted an extension because of existing air pollution problems that cause adverse health effects. Emission controls should be more strict. The area should not be given more time to comply because it is not enforcing current rules, and is not doing anything to solve current air pollution problems.

USEPA Response: As stated above, the one-year extension is authorized by the CAA for areas that meet the extension requirements. This gives the area an additional year to realize the benefits of the controls that are currently in place and the effects FMVECP on reducing automobile emissions. The CAA allows areas that qualify for an extension to request an attainment date extension instead of being reclassified upward to serious and implementing more emission controls. The area is enforcing its current controls as described in the above responses.

USEPA Final Action

USEPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) Ohio and Kentucky have formally submitted the attainment date extension requests.

(2) Ohio and Kentucky are implementing the USEPA-approved SIPs.

(3) A review of actual ozone ambient air quality data for the Cincinnati-Hamilton area indicates that the area has monitored no more than one exceedance of the NAAQS at any monitor during 1996. Therefore, USEPA is approving the attainment date extension requests for the Cincinnati-Hamilton moderate ozone nonattainment area from November 15, 1996 to November 15, 1997.

Therefore, USEPA approves the Ohio and Kentucky attainment date extension requests for the Cincinnati-Hamilton ozone nonattainment area. As a result, the Kentucky Control Strategy for Ozone which is codified at 40 CFR 52.930 and the Ohio Control Strategy for Ozone which is codified at 40 CFR 52.1885 are being amended to record these attainment date extensions. The chart in

40 CFR 81.318 entitled "Kentucky-Ozone" is being modified to reflect USEPA's approval of Kentucky's attainment date extension request. The chart in 40 CFR 81.336 entitled "Ohio-Ozone" is also being modified to reflect USEPA's approval of Ohio's attainment date extension request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. USEPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (Sections 3745.70—3745.73 of the Ohio Revised Code.) The USEPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the CAA. The USEPA will take appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio CAA program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, Federal approval for the CAA program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in this **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to grant Ohio and Kentucky an extension to attain the ozone NAAQS in the Cincinnati-Hamilton ozone nonattainment area as defined in 40 CFR 81.318 and 40 CFR 81.336 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 5, 1997.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Dated: November 6, 1997.

Gail C. Ginsberg,

Acting Regional Administrator, Region 5.

Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.930 is amended by adding paragraph (d) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(d) Kentucky's November 15, 1996, request for a one-year attainment date extension for the Kentucky portion of the Cincinnati-Hamilton metropolitan moderate ozone nonattainment area which consists of Kenton, Boone, and Campbell Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1997.

Subpart KK—Ohio

3. Section 52.1885 is amended by adding paragraph (bb) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(bb) Ohio's November 7, 1996, request for a one-year attainment date extension for the Ohio portion of the Cincinnati-Hamilton metropolitan moderate ozone nonattainment area which consists of Hamilton, Butler, Clermont and Warren Counties is approved. The date for attaining the ozone standard in these counties is November 15, 1997.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.318, the "Kentucky—Ozone" table is amended by revising the entry for the "Cincinnati-Hamilton Area" to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Cincinnati-Hamilton Area:				
Boone County		Nonattainment		Moderate,[2]
Campbell County		Nonattainment		Moderate,[2]
Kenton County		Nonattainment		Moderate,[2]

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

3. In Section 81.336, the "Ohio—Ozone" table is amended by revising the entry for the "Cincinnati-Hamilton Area" to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Cincinnati-Hamilton Area:				
Butler County		Nonattainment		Moderate,[2]
Clermont County		Nonattainment		Moderate,[2]
Hamilton County		Nonattainment		Moderate,[2]
Warren County		Nonattainment		Moderate,[2]

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

[FR Doc. 97–30136 Filed 11–14–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt

or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform.

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief Executive Officer of community	Effective date of modification	Community Number
Indiana: Allen (FEMA Docket No. 7225).	Unincorporated Areas	April 11, 1997, .. April 18, 1997, .. *Journal Gazette*	Mr. Edwin Rousseau, President of the Allen County Board of Commissioners, 1 East Main Street, Room 200, Fort Wayne, Indiana 46802.	April 4, 1997	180302 D
North Carolina: Durham (FEMA Docket No. 7197).	Unincorporated Areas	August 30, 1996,. September 6, 1996,. *The Herald-Sun*	Mr. David F. Thompson, Durham County Manager, 200 East Main Street, 2nd Floor, Durham, North Carolina 27701.	August 23, 1996	370085 G

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 31, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–30127 Filed 11–14–97; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
INDIANA	
Lebanon (City), Boone County (FEMA Docket No. 7172)	
New Reynolds Ditch:	
Approximately 1,200 feet upstream of confluence with Prairie Creek	*919
Approximately 80 feet upstream of Grant Drive	*939
Maps available for inspection at the Lebanon City Building, Inspector's Office, 201 East Main Street, Lebanon, Indiana	
MAINE	
Saco (City), York County (FEMA Docket No. 7199)	
Sawyer Brook:	
At upstream side of Sawyer Street	*63
Approximately 50 feet upstream of Therrien Avenue	*97
Atlantic Ocean (Saco Bay):	
Approximately 100 feet east of the intersection of King Avenue and Surf Street	*11
Approximately 225 feet east of the intersection of Oceanside Drive and Piney Woods Road	*13
Approximately 40 feet west of the intersection of Sunset Avenue and Surf Street	#1
Approximately 200 feet southeast of the intersection of Eastern Avenue and Bay Avenue	*13
Saco River (affected by Atlantic Ocean):	
At the intersection of Main Street and Camp Ellis Avenue	*10
Just downstream of Cataract Dam	*10
Goosefare Brook (affected by Atlantic Ocean):	
Approximately 1,500 feet west of the intersection of Green Avenue and Seaside Avenue	*10
Approximately 800 feet west of the intersection of Green Avenue and Seaside Avenue	*11
Approximately 75 feet downstream of Boston & Maine Railroad	*10
Unnamed Tributary to Scarborough River:	
Approximately 0.69 mile northeast of the intersection of Flag Road and Blue Star Memorial Highway to the downstream corporate limit	*9
Maps available for inspection at the Building Inspector's Office, City Hall, 300 Main Street, Saco, Maine.	
NORTH CAROLINA	
Wayne County (Unincorporated Areas), (FEMA Docket No. 7221)	
Mills Creek:	
Approximately 1,000 feet upstream of confluence with West Bear Creek	*95
Approximately 0.38 mile upstream of confluence with West Bear Creek	*97
Maps available for inspection at the Wayne County Planning Department, 224 East Walnut Street, Goldsboro, North Carolina	
PENNSYLVANIA	
Etna (Borough), Allegheny County (FEMA Docket No. 7223)	
Little Pine Creek West:	
At confluence with Pine Creek	*747
Approximately 600 feet upstream Greely Avenue	*763
Pine Creek:	
Confluence with Allegheny River	*736
Approximately 1,250 feet upstream of Grant Avenue	*751
Maps available for inspection at the Etna Borough Hall, 437 Butler Street, Pittsburgh, Pennsylvania	
Franklin Park (Borough), Allegheny County (FEMA Docket No. 7223)	
Pine Creek:	
Approximately 1,550 feet upstream of Meinert Road	*1,030
Approximately 0.43 mile upstream of Meinert Road	*1,033
Maps available for inspection at the Franklin Park Borough Hall, 2428 Rochester Road, Sewickley, Pennsylvania	
Hampton (Township), Allegheny County (FEMA Docket No. 7223)	
Gourdhead Run:	
At confluence with Pine Creek	*850
Approximately 0.62 mile upstream of Harts Run Road	*989
Harts Run:	
At confluence with Gourdhead Run	*925
Approximately 350 feet upstream of Harts Run Road	*1,034

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
McCaslin Run:	
At confluence with Gourdhead Run	*894
Approximately 320 feet upstream of McCully Road	*1,002
Montour Run No. 1:	
At confluence with Pine Creek	*939
Approximately 1.53 miles upstream of Wildwood Road	*990
Pine Creek:	
Approximately 1,500 feet downstream of State Route 8	*846
Approximately 160 feet upstream of Wildwood Road	*944
Crouse Run:	
At confluence with Pine Creek	*889
Approximately 50 feet downstream of Royalview Drive	*889
Maps available for inspection at the Hampton Township Hall, 3101 McCully Road, Allison Park, Pennsylvania	
Indiana (Township), Allegheny County (FEMA Docket No. 7223)	
Little Pine Creek East:	
Approximately 575 feet downstream of Saxonburg Boulevard	*897
Approximately 1,850 feet upstream of Klein Road	*955
Maps available for inspection at the Indiana Township Municipal Building, Route 910, Indianola, Pennsylvania	
McCandless (Township), Allegheny County (FEMA Docket No. 7223)	
Little Pine Creek West:	
Approximately 900 feet upstream of McIntyre Road	*1,015
Approximately 40 feet upstream of Babcock Boulevard	*1,060
Pine Creek:	
Approximately 650 feet downstream of Wildwood Road	*942
Approximately 1,800 feet upstream of Meinert Road	1,030
Maps available for inspection at the McCandless Township Hall, 9955 Grubbs Road, Wexford, Pennsylvania	
O'Hara (Township), Allegheny County (FEMA Docket No. 7223)	
Little Pine Creek East:	
Approximately 650 feet downstream of Saxonburg Boulevard	*799
Approximately 0.43 mile upstream of Browns Hill Road	*897
Maps available for inspection at the O'Hara Township Hall, 325 Fox Chapel Road, Pittsburgh, Pennsylvania	
Ross (Township), Allegheny County (FEMA Docket No. 7223)	
Little Pine Creek West:	
Approximately 0.39 mile downstream of Sutter Road	*978
Approximately 1,050 feet upstream of McIntyre Road	*1,015
Maps available for inspection at the Ross Township Hall, 5325 Perrysville Avenue, Pittsburgh, Pennsylvania	
Shaler (Township), Allegheny County (FEMA Docket No. 7223)	
Little Pine Creek East:	
At confluence with Pine Creek	*753
Approximately 750 feet upstream of Saxonburg Boulevard	*799
Little Pine Creek West:	
Approximately 850 feet upstream of confluence with Pine Creek	*747
Approximately 733 feet upstream of Clair Street	*975
Pine Creek:	
Approximately 375 feet upstream of Bridge Street	*738
Approximately 1,600 feet upstream of Elfinwild Road	*846
Maps available for inspection at the Shaler Township Building, 300 Wetzel Road, Glenshaw, Pennsylvania	
Sharpsburg (Borough), Allegheny County (FEMA Docket No. 7223)	
Pine Creek:	
Backwater area between Main Street and CONRAIL	*737
Maps available for inspection at the Sharpsburg Borough Office, 1021 North Canal, Pittsburgh, Pennsylvania	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 31, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–30128 Filed 11–14–97; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 62, No. 221
Monday, November 17, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 123

RIN 1515–AC12

Designated Land Border Crossing Locations for Certain Conveyances

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to allow Customs to designate certain land border crossing locations for specified traffic and merchandise. It is proposed to grant port directors the express authority to require that certain types of vehicles or vehicles carrying certain types of merchandise enter the United States only at designated locations within the jurisdiction of the port director. Allowing port directors to divert particular traffic to specific facilities equipped with appropriate inspection facilities will enable Customs to better balance its resources, reduce border crossing congestion, and more efficiently perform inspections of conveyances and imported merchandise while reducing risks to public health and safety.

DATES: Comments must be received on or before January 16, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Schack, Office of Field Operations, (202) 927–0251.

SUPPLEMENTARY INFORMATION:

Background

A port of entry, for Customs purposes, is any place that has been designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress as a place where a Customs officer is authorized to accept entries of merchandise, to collect duties, and to enforce the various provisions of the Customs and navigation laws. A Customs station, for Customs purposes, is any place, other than a port of entry, at which Customs officers or employees are stationed to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States. *See* 19 CFR 101.1. Regarding the entry of vehicles, pursuant to section 433 of the Tariff Act of 1930, as amended (19 U.S.C. 1433), vehicles may arrive in the United States only at border crossing points designated by the Secretary of the Treasury, and the person in charge of the vehicle, except as otherwise authorized by the Secretary, shall, immediately upon the vehicle's arrival, report the vehicle's arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection to the Customs officer at the Customs facility designated for that crossing point. Failure to report such arrival and make such presentation for inspection may result in the application of civil and criminal penalties, as provided under 19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law. *See* 19 U.S.C. 1459 and 1497. Customs reporting and inspection requirements applicable to individuals and vehicles entering the United States at land border crossings are delineated at § 123.1, Customs Regulations (19 CFR 123.1).

Generally, entry into the United States may be accomplished at any designated border crossing point. However, certain vehicles or imported merchandise carried thereon could be processed more thoroughly, safely, and expeditiously by having the vehicle report to a particular border crossing point designed to handle the identified vehicle or merchandise, rather than by allowing the vehicle or merchandise to be entered at any border crossing point. Also, in the interests of improving cross-border traffic as well as Customs law enforcement effectiveness, there are some border crossing points that could provide better service by being restricted to noncommercial traffic and pedestrians. Customs port directors may wish to limit certain traffic in this manner for many reasons, including for purposes of reducing congestion at a particular border crossing point or for purposes of protecting public health and safety. For example, the rerouting of hazardous material cargoes to alternate facilities in less-populated areas within a port of entry or at Customs stations under the jurisdiction of the port director may offer a dual benefit for a heavily populated downtown area by relieving traffic congestion and removing the threat of a catastrophic hazardous material spill. In this regard, certain crossing facilities are better equipped than others to handle certain kinds of traffic, such as trucks carrying hazardous materials.

Accordingly, Customs proposes to amend § 123.1(b) of the Customs Regulations (19 CFR 123.1(b)) (relating to report of arrival and presentation requirements) to provide that port directors, for good cause, may require certain types of vehicles or vehicles that carry certain types of merchandise be routed to a particular border crossing facility within the jurisdiction of the port director. If a particular border crossing point is so designated by a port director, it is proposed that the port director will communicate this to the public by the same means already specified in paragraph (d) of § 123.1 for local instructions regarding report of arrival.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment provides for the expeditious processing of certain conveyances at designated locations within a port of entry or at Customs stations designed to best provide inspection services for the identified conveyances, and concerns issues of public health and safety. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information: The principal author of this document was Gregory R. Vilders, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 123

Administrative practice and procedure, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Imports, International boundaries (Land border), Mexico, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 123 of the Customs Regulations (19 CFR part 123), as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624; Section 123.1 also issued under 19 U.S.C. 1459;

* * * * *

2. In § 123.1, paragraph (b) is amended by adding two new sentences after the first sentence to read as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

* * * * *

(b) *Vehicles.* * * * A port director, for good cause such as reducing traffic congestion or to protect public health and safety, may require certain types of vehicles or vehicles carrying certain types of merchandise to enter only at specified border crossing points within the jurisdiction of the port director. The port director shall communicate this requirement to the public by means of local instructions, as provided in paragraph (d) of this section. * * * * *

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: September 24, 1997

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–30049 Filed 11–14–97; 8:45 am]

BILLING CODE 4820–02–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Revision of Public Notice, Freedom of Information Act, and Privacy Act Regulations, and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The United States International Trade Commission (Commission) proposes to amend its rules of practice and procedure to make certain changes to rules relating to public notices, availability of information under the Freedom of Information Act (FOIA), and safeguarding of individual privacy under the Privacy Act of 1974 (Privacy Act). The intended effect of the changes is to implement the Electronic Freedom of Information Act Amendments of 1996 and otherwise to bring the rules into conformity with current Commission practices and procedures, and with current costs of providing services.

DATES: Comments must be submitted on or before Decemnber 17, 1997.

ADDRESSES: Written comments (original and 14 copies) concerning these proposed rule amendments may be submitted to the Secretary, U.S. International Trade Commission, 500 E. Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION: For further information contact the following persons in the Commission's Office of General Counsel: For the proposed Privacy Act and public notice rules amendments, Paul R. Bardos, telephone 202–205–3102; and for the proposed FOIA rules amendments, William W. Gearhart, telephone 202–205–3091. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

Public Notices

Commission rule § 201.10, which relates to public notices, currently provides that the Commission, *inter alia*, will publish a notice for every properly filed document that it receives, and that the Commission will furnish an announcement regarding notices to the Treasury Department for publication in *Treasury Decisions* and to the Department of Commerce for publication in *International Commerce*. The Commission seeks to bring the rule into conformity with current agency practice and eliminate both requirements. Because the Commission believes that it would be wasteful and unnecessary to provide public notice for every document filed, agency practice has been to not issue such notices. Nevertheless, the Commission will retain the discretion to provide public notification of properly filed documents as appropriate. The Commission no longer furnishes announcements of all public notices to Treasury and Commerce for further publication by those agencies and the agencies have not objected.

Freedom of Information Act

The Commission's Freedom of Information Act rules are set forth in subpart C of part 201 (currently 19 CFR 201.17 through 201.21). The Commission proposes to amend §§ 201.17, 201.18, and 201.20 to provide for expedited treatment of certain FOIA requests (as required by the Electronic Freedom of Information Act Amendments of 1996 (Pub.L. 104–231)), adjust its charges for search, review, and computer time to reflect current agency staff salary levels, and make certain other changes to clarify and update the rules.

More specifically, the Commission proposes to reorganize and amend § 201.17 of its rules to provide, in new paragraph (b), for expedited processing of FOIA requests under certain circumstances. The Commission also proposes to amend paragraph (a) of § 201.17 to state that FOIA requests will be processed in the order in which they are filed, except when expedited processing has been requested and granted; and to advise the public that requests for agency publications can be made to the Publications Office within the Commission's Office of the Secretary and do not need to be submitted under FOIA. Finally, in new paragraph (c) the Commission would advise the public that it maintains a public reading room in the Office of the Secretary, through which the public can obtain access to agency records that the FOIA requires be made regularly available for public inspection and copying, including access in electronic form to agency records created on or after November 1, 1996. The purpose of these changes is to implement the requirements of section 8 of the Electronic Freedom of Information Act Amendments of 1996 and provide additional information on how the public can access records and how it can obtain certain agency records, such as agency publications, most expeditiously. These changes parallel rules on expedited processing recently promulgated by the U.S. Department of Justice. *See* proposed DOJ rules §§ 16.2 and 16.5, 62 FR 45185 (Aug. 26, 1997). Although these rules amendments are not yet in effect, the Commission is prepared currently to entertain requests for expedited treatment according to the procedures set out in the proposed amendments.

The Commission proposes to amend paragraph (b) of § 201.18 to provide that appeals to the Commission of denials of requests by the Secretary must be filed within 60 days of the date of the letter denying the request. This will give finality to the request process. The Commission would also delete the reference in the current rule to the right to file an appeal if a response to a FOIA request is not forthcoming within 10 days of the filing of the request. The Electronic FOIA Amendments have changed the 10-day response requirement to 20 days. A requester would still have the right to file an appeal if no response were forthcoming after 20 days.

The Commission proposes to amend paragraph (c) of § 201.18 for conformity to state that persons filing an appeal of a denial of a FOIA request may request expedited processing of that appeal, and that the request for expedited processing should conform with the process set out in § 201.17(b) of the rules.

Finally, the Commission proposes to amend § 201.20 to adjust the fees for search and review and computer time to reflect current agency personnel costs. The fees for searches will continue to reflect the distinction between lower grade clerical/professional and higher grade professional/managerial staff costs. They are based on January 1997 salary levels for GS–8, step 1, and GS 12, step 1, respectively, plus agency-paid benefits, as calculated by the Commission's Office of Finance and Budget. The Commission estimates that these are the average staff grades in each of these two categories of personnel likely to be doing such searches. The fees for computer searches and review are also based on salary level GS–12, step 1, plus agency-paid benefits, which the Commission estimates is the average staff grade of personnel likely to be doing such computer searches or review. Other Commission fees will remain the same: the Commission's copying charge will remain at 10 cents per page, and no fee will be charged unless the fee exceeds $25.00.

Privacy Act

The Commission's Privacy Act rules are set forth in subpart D of section 201 (currently 19 CFR 201.22 through 201.32). The proposed amendments to the Commission's Privacy Act rules are in response to a comprehensive review of the Commission's Privacy Act compliance conducted by the Commission's Office of Inspector General and Office of General Counsel. In general, the Commission proposes to update and clarify its Privacy Act rules and conform them to the Commission's new and revised systems of records. *See* 62 FR 23485 (April 30, 1997). Where appropriate, the Commission has also based several of the proposed amendments on the recently published proposed revisions to the Department of Justice's Privacy Act regulations. *See* 62 FR 45184 (Aug. 26, 1997).

For clarity, this notice sets forth the Commission's Privacy Act rules in their entirety although revisions are not proposed for every provision of the rules. Throughout the proposed rules, the Commission has changed all references from the "Director of Personnel" to "Privacy Act Officer" since the Director of Personnel is no longer the designated Privacy Act Officer. Where necessary, the Commission has made revisions to cross-references because new sections have been added and certain paragraphs have been deleted, and has made other minor changes of a typographical or stylistic nature.

The Commission proposes to amend § 201.22, governing the purpose and scope of the regulations, by deleting the current text of the rule and replacing it with language that would clarify that the Privacy Act rules apply only to those records of individuals found in systems of records governed by the Privacy Act maintained by the Commission that are retrieved by an individual's name or other personal identifier. The Commission also proposes to add a sentence to § 201.22 describing the scope of the rules, i.e., that the rules set forth procedures governing access to individual records, requests for amendment or correction of records, and requests for accounting of disclosures of records. These proposed changes were modeled on the Department of Justice's proposed changes to its Privacy Act regulations. *See* DOJ proposed rule § 16.40(a), 62 FR 45192 (Aug. 26, 1997).

The only change the Commission proposes for § 201.23, covering the definitions of the subpart, is to indicate that the Commission's Privacy Act Officer is now the Director of Administration, rather than the Director of Personnel.

Section 201.24 governs the procedures an individual must follow to request his or her records in a system of records. Paragraph (b) of that section currently requires an individual requesting records to furnish the name of the system(s) of records containing the requested records or reasonably describe the requested records. The Commission proposes to amend paragraph (b) to require that an individual "whenever possible" furnish the name of the system of records, reasonably describe the requested records, and also identify the time period in which the records were compiled. These revisions will enable the Commission to locate the requested records in the most efficient and quickest manner possible and are also in conformity with the Department of Justice's requirements for access to records. *See* DOJ proposed rule § 16.41(b), 62 FR 45192 (Aug. 26, 1997). The Commission proposes to clarify in paragraph (c) of section 201.24 that any denials of requests for access to records will be made in writing, which also is in accordance with the Department of Justice's proposed rules amendments. *See* DOJ proposed rule § 16.43(b), 62 FR 45193 (Aug. 26, 1997).

Section 201.25 governs the times, places, and requirements for identification of individuals making Privacy Act requests. As currently drafted, § 201.25(d) states that the Commission "may" provide for copies of an individual's records to be sent by mail under certain circumstances. The Commission proposes to revise that paragraph to entitle an individual to obtain access to his or her records by certified mail without first having to establish that the individual is unable to appear in person, as the rule currently

requires. That amendment would appear in paragraph (c) rather than (d). Proposed paragraph (d) contains the requirements for verification of identity, currently set forth in paragraph (c), and adds identification requirements for individuals requesting records by certified mail. Such requirements are consistent with the Department of Justice's proposed identification rules. *See* proposed DOJ rule § 16.41(d), 62 FR 45192 (Aug. 26, 1997).

With respect to § 201.26, governing disclosure of requested information to individuals, the Commission proposes to amend paragraph (a). The Commission proposes to revise the first sentence by explicitly requiring that the Privacy Act Officer inform an individual in writing that his or her request for access to the individual's records has been granted once the Privacy Act Officer has determined to grant a request for records. This change conforms more closely to the Department of Justice's proposed Privacy Act revisions. *See* proposed DOJ rule § 16.43(b), 62 FR 45193 (Aug. 26, 1997). The Commission proposes to amend the second sentence by deleting a cross-reference to paragraph (c) of § 201.32, since the Commission is proposing to delete that paragraph, and instead cross-reference to § 201.32 generally (governing exemptions to disclosure requirements).

The only change the Commission proposes to make in § 201.27, governing procedures for access to an individual's medical records, is to change all references from the Director of Personnel to the Privacy Act Officer.

In § 201.28(a), governing requests for correction or amendment of records, the Commission proposes to add certain requirements which have been modeled on the Department of Justice's proposed Privacy Act rules amendments. *See* DOJ proposed rule § 16.46(a), 62 FR 45194 (Aug. 26, 1997). If an individual requests an amendment to his or her records, the Commission proposes to require that the request identify each particular record in question and the system(s) of records wherein the records are located, specify the amendment requested, and specify the reasons why the records are not correct, relevant timely or complete. The Commission also proposes to have individuals submit any documentation that would be helpful in determining whether the requested amendment should be granted.

The Commission proposes to move current § 201.29, governing review by the Commission of requests for correction or amendment of records, and renumber it as § 201.30. The Commission proposes that current § 201.30, which governs disclosure of records to persons other than the individual to whom it pertains, would become § 201.29. The Commission proposes this reordering because it proposes to expand the section governing review by the Commission of requests for amendment (currently § 201.29) to add provision for Commission review of requests for access to records and requests for accounting of disclosure of records. It is thus more logical to have the section setting forth requests for an accounting of disclosure, which will be covered in proposed § 201.29, to precede the section on review by the Commission.

In addition to renumbering the section governing disclosure of records as § 201.29, the Commission proposes to make other amendments to that section. First, the Commission proposes to change the statutory reference in paragraph (a) of proposed § 201.29 from "5 U.S.C. 552a(b)(1)–(b)(11)" to "5 U.S.C. 552a(b)." In 1982, the Privacy Act was amended to add subsection (b)(12) (authorizing agencies to disclose bad-debt information to credit bureaus), which is not reflected in the current Commission rule. The Commission also proposes to include in § 201.29 a new paragraph setting forth procedures to be followed if an individual requests an accounting of disclosures made of his or her records. The procedures would be in conformity with those for other Commission Privacy Act requests such as requests for access to records and amendment of records. The Commission proposes to insert the provisions governing request procedures at paragraph (e) and redesignate current paragraph (e) as paragraph (f). Finally, the Commission proposes to rename the section "Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures" to reflect the expanded scope of the rule.

Under the proposed revisions, current § 201.29—entitled "Commission review of request for correction or amendment to record"—would become § 201.30. The Commission proposes to expand the scope of that rule to include Commission review of denial of requests for access to records and denial of requests for an accounting of disclosure of records. Currently, the Commission rules contain no procedures for an individual to appeal to the Commission a denial by the Privacy Act Officer or Inspector General of a request for access or accountings of disclosure of records. The same appeal process would apply to all types of denials of requests under the Privacy Act rule. In addition, the Commission proposes to require an individual to make such an appeal within 60 days of receipt of the denial of a request by the Privacy Act Officer or Inspector General. These changes are consistent with the proposed Privacy Act rules amendments of the Department of Justice. *See* DOJ proposed rules §§ 16.45(a), 16.46(c), and 16.47(c), 62 FR 45194–45195 (Aug. 26, 1997). To reflect the expanded scope of section 201.30, the Commission proposes to change the name of the section from "Commission review of request for correction or amendment to record" to "Commission review of requests for access to records, for correction or amendment of records, or for an accounting of record disclosures."

In the rule governing fees for Privacy Act requests, § 201.31, the Commission will maintain its charge of $0.10 per page for copying an individual's Privacy Act records, but change the provision to require such fees only if the total cost of copying exceeds $25 rather than $0.50 as the rule currently provides. This would harmonize the Privacy Act's fees with the fees charged under FOIA procedures.

In addition, pursuant to 5 U.S.C. 552a(k), the Commission proposes to amend § 201.32, governing exemptions to certain Privacy Act requirements, by adding one exemption and deleting three exemptions currently set forth in the rules. The Commission proposes to delete three unnecessary general exemptions covering classified records, statistical records, and investigatory material compiled for determining suitability for employment, federal contracts, and other purposes. These exemptions are currently set forth at paragraphs (a), (b), and (c), respectively. Because these three exemptions are not applied to specific systems of records, as required by the Privacy Act, the Commission is proposing to delete them. The remaining two current exemptions covering Inspector General Investigative Files (General) and Inspector General Investigative Files (Criminal) will be retained and become paragraphs (a) and (b) of § 201.32, respectively. The Commission proposes to add an exemption for the system of records entitled "Personnel Security Investigative Files Records" from subsections (c)(3), (d), (e)(1), (e)(1)(G), (H) and (I), and (f) of the Privacy Act. For a complete description of the Personnel Security Investigative Files Records system, *see* 62 FR 23485–23496 (April 30, 1997). The Commission proposes to set forth this new exemption at paragraph (c), to protect from disclosure classified and other sensitive information.

Finally, the Commission proposes to add new § 201.33 entitled "Employee conduct." This proposed rule would implement the requirement of the Privacy Act, set forth at 5 U.S.C. 552a(e)(9), that agencies establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of the Privacy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules amendments set forth in this notice will not significantly affect any business or other entities, and thus are not likely to have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Commission has determined that the proposed rules amendments do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory action for purposes of the EO, since the revisions will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

The proposed rules amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Small Business Regulatory Enforcement Fairness Act of 1996

The proposed rules amendments are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). The proposed amendments will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Contract With America Advancement Act of 1996

The proposed rules amendments are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules "of agency organization, procedure, or practice" that do not substantially affect the rights or obligations of non-agency parties. *See* Contract With America Advancement Act, section 804(3)(c).

Paperwork Reduction Act

The proposed rules amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501), since they do not contain any new information collection requirements.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons set out in the preamble, the Commission proposes to amend 19 CFR part 201, subparts B, C, and D as follows:

PART 201—RULES OF GENERAL APPLICATION

1. It is proposed that the authority citation for part 201 continue to read as follows:

Authority: Sec. 335 of The Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. It is proposed that § 201.10 be revised to read as follows:

§ 201.10 Public notices.

As required or appropriate, formal notice of the receipt of documents properly filed, of the institution of investigations, of public hearings, and of other formal actions of the Commission will be given by publication in the **Federal Register**. In addition to such publication of notice, a copy of each published notice will be posted at the Office of the Secretary of the Commission in Washington, DC, and, as appropriate, copies will be sent to press associations, to trade and similar organizations of producers and importers, and to others known to the Commission to have an interest in the subject matter.

3. It is proposed that § 201.17 be revised to read as follows:

§ 201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly both on the envelope and in the letter that it is a "Freedom of Information Act Request."

(2) Any request shall reasonably describe the requested record to facilitate location of the record. If the request pertains to a record that is part of the Commission's file in an investigation, the request should identify the investigation by number and name. A clear description of the requested record(s) should reduce the time required by the Commission to locate and disclose releasable responsive record(s) and minimize any applicable search and copying charges.

(3) Except as provided in paragraph (b) of this section, requests will be processed in the order in which they are filed.

(4) Requests for transcripts of hearings should be addressed to the official hearing reporter, the name and address of which can be obtained from the Secretary. A copy of such request shall at the same time be forwarded to the Secretary.

(5) Copies of public Commission reports and other publications can be requested by calling or writing the Publications Office in the Office of the Secretary. Generally, such publications can be obtained more quickly from this office. Certain Commission publications are sold by the Superintendent of Documents, U.S. Government Printing Office, and are available from that agency at the price set by that agency.

(6) A day-to-day, composite record will be kept by the Secretary of each request with the disposition thereof.

(b) *Expedited processing.* (1) Requests for records under paragraph (a)(1) of this section will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within paragraph (b)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within paragraph (b)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the Secretary will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(c) *Public reading room.* The Commission maintains a public reading room in the Office of the Secretary for access to the records that the FOIA requires to be made regularly available for public inspection and copying. Reading room records created by the Commission on or after November 1, 1996, are available electronically. This includes a current subject-matter index of reading room records, which will indicate which records are available electronically.

4. It is proposed that paragraphs (b) and (c) of § 201.18 be revised to read as follows:

§ 201.18 Denial of requests, appeals from denial.

* * * * *

(b) An appeal from a denial of a request must be received within sixty days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall clearly indicate both on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

(c) Except when expedited treatment is requested and granted, appeals will be decided in the order in which they are filed, but in any case within twenty days (excepting Saturdays, Sundays, and legal holidays) unless an extension, noticed in writing with the reasons therefor, has been provided to the person making the request. Notice of the decision on appeal and the reasons therefor will be made promptly after a decision. Requests for expedited treatment should conform with the requirements in § 201.17(c) of this part.

5. It is proposed that paragraphs (b)(1)(ii) and (iii) and (b)(3)(i) of § 201.20 be revised to read as follows:

§ 201.20 Fees.

* * * * *

(b) *Charges.* * * *

(1) *Search.* * * *

(ii) For each quarter hour spent by agency personnel in salary grades GS–2 through GS–10 in searching for and retrieving a requested record, the fee shall be $4.00. When the time of agency personnel in salary grades GS–11 and above is required, the fee shall be $6.50 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $6.50 per quarter hour of time so spent).

* * * * *

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $6.50.

* * * * *

6. It is proposed that the authority citation for subpart D of part 201 read as follows:

Authority: 5 U.S.C. 552a.

7. It is proposed that subpart D of part 201 be revised to read as follows:

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

Sec.

201.22 Purpose and scope.
201.23 Definitions.
201.24 Procedures for requests pertaining to individual records in a records system.
201.25 Times, places, and requirements for identification of individuals making requests.
201.26 Disclosure of requested information to individuals.
201.27 Special procedures: Medical records.
201.28 Requests for correction or amendment of records.
201.29 Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures.
201.30 Commission review of requests for access to records, for correction or amendment to records, and for accounting of record disclosures.
201.31 Fees.
201.32 Specific exemptions.
201.33 Employee conduct.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

§ 201.22 Purpose and scope.

This subpart contains the rules that the Commission follows under the Privacy Act of 1974, 5 U.S.C. 552a. The rules in this subpart apply to all records in systems of records maintained by the Commission that are retrieved by an individual's name or other personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission.

§ 201.23 Definitions.

For the purpose of these regulations,

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use, or disseminate;

(c) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(d) The term *system of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual;

(e) The term *Privacy Act Officer* refers to the Director, Office of Administration, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, or his or her designee.

§ 201.24 Procedures for requests pertaining to individual records in a records system.

(a) A request by an individual to gain access to his or her record(s) or to any information pertaining to him or her which is contained in a system of records maintained by the Commission shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly both on the envelope and in the letter that it is a Privacy Act request.

(b) In order to facilitate location of requested records, whenever possible, the request of the individual shall name the system(s) of records maintained by the Commission which he or she believes contain records pertaining to him or her, shall reasonably describe the requested records, and identify the time period in which the records were compiled.

(c) The Privacy Act Officer shall acknowledge receipt of a request within ten days (excluding Saturdays, Sundays, and legal public holidays), and wherever practicable, indicate whether or not access can be granted. If access is not to be granted, the requestor shall be notified of the reason in writing.

(d) The Privacy Act Officer, or, the Inspector General, if such records are maintained by the Inspector General, shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual, and whether access will be granted. Thereupon the Privacy Act Officer shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in §§ 201.25 and 201.26 of this part by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays).

§ 201.25 Times, places, and requirements for identification of individuals making requests.

(a) If an individual wishes to examine his or her records in person, it shall be the responsibility of the individual requester to arrange an appointment with the Privacy Act Officer for the purpose of inspecting individual records. The time of inspection shall be during the regular office hours of the Commission, 8:45 a.m. to 5:15 p.m., Monday through Friday. The time arranged should be mutually convenient to the requester and to the Commission.

(b) The place where an individual may gain access to records maintained by the Commission which pertain to him or her shall be at the United States International Trade Commission Building, 500 E Street SW., Washington, DC 20436. The Privacy Act Officer shall inform the individual requester of the specific room wherein inspection will take place.

(c) An individual may also request the Privacy Act Officer to provide the individual with a copy of his or her records by certified mail.

(d) An individual who requests to gain access to those records maintained by the Commission which pertain to him or her shall not be granted access to those records without first presenting adequate identification to the Privacy Act Officer. Adequate identification may include, but is not limited to, a government identification card, a driver's license, Medicare card, a birth certificate, or a passport. If requesting records by mail, an individual must provide full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, a requestor may also, at his or her option, include the individual's social security number.

§ 201.26 Disclosure of requested information to individuals.

(a) Once the Privacy Act Officer has made a determination to grant a request for access to individual records, in whole or in part, the Privacy Act Officer shall inform the requesting individual in writing and permit the individual to review the pertinent records and to have a copy made of all or any portion of them. Where redactions due to exemptions pursuant to § 201.32 would render such records or portions thereof incomprehensible, the Privacy Act Officer shall furnish an abstract in addition to an actual copy.

(b) An individual has the right to have a person of his or her own choosing accompany him or her to review his or her records. The Privacy Act Officer shall permit a person of the individual requester's choosing to accompany the individual during inspection.

(c) When the individual requests the Privacy Act Officer to permit a person of the individual's choosing to accompany him or her during the inspection of his or her records, the Privacy Act Officer shall require the individual requester to furnish a written statement authorizing discussion of the records in the accompanying person's presence.

(d) The Privacy Act Officer shall take all necessary steps to insure that individual privacy is protected while the individual requester is inspecting his or her records or while those records are being discussed. Only the Privacy Act Officer shall accompany the individual as representative of the Commission during the inspection of the individual's records. The Privacy Act Officer shall be authorized to discuss the pertinent records with the individual.

§ 201.27 Special procedures: Medical records.

(a) While an individual has an unqualified right of access to the records in systems of records maintained by the Commission which pertain to him or her, medical and psychological records merit special treatment because of the possibility that disclosure will have an adverse physical or psychological effect upon the requesting individual. Accordingly, in those instances where an individual is requesting the medical and/or psychological records which pertain to him or her, he or she shall, in his or her Privacy Act request to the Privacy Act Officer as called for in § 201.24(a) of this part, specify a physician to whom the medical and/or psychological records may be released.

(b) It shall be the responsibility of the individual requesting medical or psychological records to specify a physician to whom the requested records may be released. If an individual refuses to name a physician and insists on inspecting his or her medical or psychological records in the absence of a doctor's discussion and advice, the individual shall so state in his or her Privacy Act request to the Privacy Act Officer as called for in § 201.24(a) of this part and the Privacy Act Officer shall provide access to or

transmit such records directly to the individual.

§ 201.28 Requests for correction or amendment of records.

(a) If, upon viewing his or her records, an individual disagrees with a portion thereof or feels sections thereof to be erroneous, the individual may request amendment(s) of the records pertaining to him or her. The individual should request such an amendment in writing and should identify each particular record in question, the system(s) of records wherein the records are located, specify the amendment requested, and specify the reasons why the records are not correct, relevant timely or complete. The individual may submit any documentation that would be helpful. The request for amendment of records shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act request for amendment of records.

(b) Not later than 10 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of a Privacy Act request for amendment of records, the Privacy Act Officer shall acknowledge such receipt in writing. Such a request for amendment will be granted or denied by the Privacy Act Officer or, for records maintained by the Inspector General. If the request is granted, the Privacy Act Officer, or the Inspector General for records maintained by the Inspector General, shall promptly make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete. If, however, the request is denied, the Privacy Act Officer shall inform the individual of the refusal to amend the record in accordance with the individual's request and give the reason(s) for the refusal. In cases where the Privacy Act Officer or the Inspector General has refused to amend in accordance with an individual's request, he or she also shall advise the individual of the procedures under § 201.30 of this part for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

§ 201.29 Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures.

(a) It is the policy of the Commission not to disclose, except as permitted under 5 U.S.C. 552a(b), any record which is contained in any system of records maintained by the Commission to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) Except for disclosures either to officers and employees of the Commission, or to contractor employees who, in the Inspector General's or the Privacy Act Officer's judgment, as appropriate, are acting as federal employees, who have a need for the record in the performance of their duties, and any disclosure required by 5 U.S.C. 552, the Privacy Act Officer shall keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and

(2) The name or address of the person or agency to whom the disclosure is made.

(c) The Privacy Act Officer shall retain the accounting required by paragraph (b) of this section for at least five years or the life of the record, whichever is longer, after such disclosure.

(d) Except for disclosures made to other agencies for civil or criminal law enforcement purposes pursuant to 5 U.S.C. 552a(b)(7), the Privacy Act Officer shall make any accounting made under paragraph (b) of this section available to the individual named in the record at the individual's request.

(e) An individual requesting an accounting of disclosure of his or her records should make the request in writing to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The request should identify each particular record in question and, whenever possible, the system[s] of records wherein the requested records are located, and clearly indicate both on the envelope and in the letter that it is a Privacy Act request for an accounting of disclosure of records.

(f) Where the Commission has provided any person or other agency with an individual record and such accounting as required by paragraph (b) of this section has been made, the Privacy Act Officer shall inform all such persons or other agencies of any correction, amendment, or notation of dispute concerning said record.

§ 201.30 Commission review of requests for access to records, for correction or amendment to records, and for accounting of record disclosures.

(a) The individual who disagrees with the refusal of the Privacy Act Officer or the Inspector General for access to a record, to amend a record, or to obtain an accounting of any record disclosure, may request a review of such refusal by the Commission within 60 days of receipt of the denial of his or her request. A request for review of such a refusal should be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the Commission receives a request for review of the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request has been reviewed by the Commission, if the Commission agrees with the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, in accordance with the individual's request, the Commission shall:

(1) Notify the individual in writing of the Commission's decision;

(2) For requests to amend or correct records, advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to grant the individual's request; and

(3) Notify the individual of his or her legal right, if any, to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement regarding an amendment of an individual's record, the Privacy Act Officer, or, for records maintained by the Inspector General, the Inspector General, shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 201.31 Fees.

(a) The Commission shall not charge any fee for the cost of searching for and reviewing an individual's records.

(b) Reproduction, duplication or copying of records by the Commission shall be at the rate of $0.10 per page. There shall be no charge, however, when the total amount does not exceed $25.00.

§ 201.32 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k)(2), and in order to protect the effectiveness of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records contained in the system titled Office of Inspector General Investigative Files (General), insofar as they include investigatory material compiled for law enforcement purposes, shall be exempt from this subpart and from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act. However, if any individual is denied any right, privilege, or benefit to which he is otherwise entitled to under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to government investigators under an express promise that the identity of the source would be held in confidence.

(b) Pursuant to 5 U.S.C. 552a(j)(2), and in order to protect the confidentiality and integrity of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records maintained in the Office of Inspector General Investigative Files (Criminal), insofar as they contain information pertaining to the enforcement of criminal laws, shall be exempt from this subpart and from the Privacy Act, except that subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) shall still apply to these records.

(c) Pursuant to 5 U.S.C. 552a(k)(1), (5) and (6), records contained in the system entitled "Personnel Security Investigative Files" have been exempted from subsections (c)(3), (d), (e)(1), (e)(1)(G)-(I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified information that pertains to national defense or foreign policy and is obtained from other systems of records or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d). All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is also exempted because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, Federal contracts or access to classified information. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should an individual request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source. All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is also exempt because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

§ 201.33 Employee conduct.

The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

Issued: November 7, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–29865 Filed 11–14–97; 8:45 am]

BILLING CODE 7020–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7236]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management

requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	‡Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maine	Union (Town), Knox County.	Medomak River	At downstream county boundary	*None	*137
			At upstream corporate limits	*None	*200
		Crawford River	At the confluence with Seven Tree Pond	*None	*45
			At the confluence with Crawford Pond	*None	*113
		St. George River	At the confluence with Round Pond	*None	*45
			At Sennebec Pond Dam	*None	*85
		Mill Stream	At downstream corporate limits	*None	*113
			At Lermond Pond Dam	*None	*289
		Sennebec Pond	Entire shoreline within community	*None	*92
		Round Pond	Entire shoreline within community	*None	*45
		Seven Tree Pond	Entire shoreline within community	*None	*45
		Crawford Pond	Entire shoreline within community	*None	*113
		Lermond Pond	Entire shoreline within community	*None	*270
Maps available for inspection at the Union Town Office, 568 Common Road, Union, Maine. Send comments to Mr. Andrew Hart, Union Town Manager, P.O. Box 186, Union, Maine 04862–0186.					
Michigan	Clinton (Township), Macomb County.	Clinton River	Approximately 800 feet downstream of Hall Road.	*594	*595
		Middle Branch	At Hall Road	*594	*595
Maps available for inspection at the Clinton Township Office, Planning Department, 40700 Romeo Plank Road, Clinton Township, Michigan. Send comments to Mr. James R. Sinnamon, Clinton Township Supervisor, 40700 Romeo Plank Road, Clinton Township, Michigan 48038.					
Mississippi	Laurel (City), Jones County.	Daphne Park Tributary	Upstream side of Illinois Central Gulf Railroad.	*229	*230
			Approximately 750 feet upstream of 8th Street.	*None	*270
Maps available for inspection at the City of Laurel Inspection Department, 401 North 5th Avenue, Room 304, Laurel, Mississippi. Send comments to Mr. T.G. Myrick, City of Laurel Chief Administrative Officer, P.O. Box 647, Laurel, Mississippi 39441.					
New Hampshire	Alexandria (Town), Grafton County.	Newfound Lake	Entire shoreline within community	None	*591
Maps available for inspection at the Alexandria Town Hall, Plummer Hill, Alexandria, New Hampshire. Send comments to Mr. Ernest Parmenter, Chairman of the Town of Alexandria Board of Selectmen, Alexandria Town Office, Plummer Hill, Alexandria, New Hampshire 03222.					
New Hampshire	Hebron (Town), Grafton County.	Newfound Lake	Entire shoreline within community	*None	*591

State	City/town/county	Source of flooding	Location	‡Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Hebron Town Hall, Church Lane, Hebron, New Hampshire. Send comments to Mr. William White, Chairman of the Town of Hebron Board of Selectmen, P.O. Box 188, Hebron, New Hampshire 03241.					
Pennsylvania	Carroll (Township) Perry County.	Sherman Creek	Approximately .43 mile downstream of State Route 34.	*441	*442
			Downstream side of Pisgah State Road	*456	*457
		Unnamed Tributary to Sherman Creek.	Confluence with Sherman Creek	*448	*447
			Approximately 350 feet downstream of Private Road.	*448	*447
Maps available for inspection at the Office of the Township Secretary, 5235 Spring Road, Shermans Dale, Pennsylvania. Send comments to Mr. Charles E. Lupfer, Chairman of the Carroll Township Board of Supervisors, 280 Airy View Road, Shermans Dale, Pennsylvania 17090.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: October 31, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–30125 Filed 11–14–97; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register
Vol. 62, No. 221
Monday, November 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Revision of Privacy Act systems of records.

SUMMARY: Pursuant to 5 U.S.C. 552a(e)(4) the United States Department of Agriculture (USDA) is revising the Privacy Act Systems of Records maintained by the Office of Inspector General (OIG) published in the **Federal Register** on October 11, 1994, on pages 54105–51413 and modifies the list of routine uses listed under USDA/OIG–1 and made applicable *in verbatim* to systems, USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, USDA/OIG–5, USDA/OIG–6, and USDA/OIG–7, by adding text to allow the release of names of arrested persons and to reflect changes in office addresses which are applicable to all USDA/OIG systems.

DATES: This revision becomes effective (January 2, 1998) without further notice unless changes are made in response to comments received from the public.

FOR FURTHER INFORMATION CONTACT: Paula F. Hayes, Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250–2310 (202–720–6979).

SUPPLEMENTARY INFORMATION: The revision in the routines uses listed under system USDA/OIG–1, Employee Records, USDA/OIG, and made applicable *in verbatim*, by reference, to systems USDA/OIG–2, USDA/OIG–3, USDA/OIG–4, USDA/OIG–5, USDA/OIG–6, and USDA/OIG–7, adds a routine use number 13 which reads as follows: "Relevant information from a system of records may be disclosed to the news media and general public where there exists a legitimate public interest, *e.g.*, to assist in the location of fugitives, to provide notification of arrests, where necessary for protection from imminent threat of life or property, or in accordance with guidelines set out by the Department of Justice in 28 CFR 50.2."

Proposed changes applicable to all USDA/OIG systems include changes in office addresses also under system USDA/OIG–1, Employee Records, USDA/OIG.

Accordingly, USDA is revising the full text of the OIG Systems of Records last published in full in 50 FR 50814, December 12, 1985, and amended in part in 54 FR 39552, September 27, 1989.

A Privacy Act Systems Report relating to the proposed changes, required by 5 U.S.C. 552a(r), has been set to the Office of Management and Budget and Congress.

Done at Washington, DC, this 3rd day of November 1997.

Dan Glickman,

Secretary of Agriculture.

USDA/OIG–1

SYSTEM NAME:

Employee Records, USDA/OIG.

SYSTEM LOCATION:

In the headquarters offices of the U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) and Office of Personnel (OP) in the Jamie L. Whitten Federal Building, 1400 Independence Avenue SW., Washington, DC 20250, and Franklin Court, 1099 14th Street NW., Washington, DC 20005, and in the following OIG regional offices and suboffices:

OIG Regional Offices

600 Harrison Street, Suite 225, San Francisco, California 94017
401 West Peachtree Street NW., Room 2328, Audit; Room 2329, Investigations, Atlanta, Georgia 30365–3520
111 North Canal Street, Suite 1130, Chicago, Illinois 60606–7295
ATTN: Suite 5006, 4700 River Road, Unit 151, Riverdale, Maryland 20737–1237
PO Box 293, Kansas City, Missouri 64141
26 Federal Plaza, Room 1409, New York, New York 10278
101 South Main, Room 324, Audit; Room 311, Investigations, Temple, Texas 76501

OIG/Audit Suboffices

1510 "J" Street, Suite 120, Sacramento, California 95814
2850 McClellan, Suite 3500, Fort Collins, Colorado 80525
3008 NW. 13th Street, Suite B, Gainesville, Florida 32609
3736 Government Street, Alexandria, Louisiana 71302
13800 Old Gentilly Road, New Orleans, Louisiana 70129
3001 Coolidge Road, Suite 150, East Lansing, Michigan 48823–6321
375 Jackson Street, Suite 320, St. Paul, Minnesota 55101–1850
Millsaps Building, Suite 400, 201 West Capitol Street, Jackson, Mississippi 39201
PO Box 14153 Main Post Office, St. Louis, Missouri 63120
100 Centennial Mall North, Room 276, Lincoln, Nebraska 68508
Mercer Corporate Park, 310 Corporate Boulevard, Robinsville, New Jersey 08691–1598
26 Federal Plaza, Room 1415, New York, New York 10278
4407 Bland Road, Room 110, Raleigh, North Carolina 27609
200 N. High Street, Room 346, Columbus, Ohio 43215–2408
Edith Green Wendell Wyatt Federal Office Building, 1220 SW. Third Avenue, Room 1640, Portland, Oregon 97204–2893
One Credit Union Place, Suite 350, Harrisburg, Pennsylvania 17110–2992
233 Cumberland Bend, Room 204, Nashville, Tennessee 37228
1200 Main Tower, Room 880, Dallas, Texas 75202

OIG/Investigation Suboffices

522 N. Central Avenue, Room 202, Phoenix, Arizona 85004
21660 East Copley Drive, Suite 370, Diamond Bar, California 91765
1510 "J" Street, Suite 110, Sacramento, California 95814
1961 Stout Street, Suite 1524, Drawer 3528, Denver, Colorado 80294
6039 Lakeside Boulevard, Indianapolis, Indiana 46278–1989
3001 Coolidge Road, Suite 150, East Lansing, Michigan 48823–6321
375 Jackson Street, Suite 320, St. Paul, Minnesota 55101–1850
Millsaps Building, Suite 410, 201 West Capitol Street, Jackson, Mississippi 39201
911 Washington Avenue, Suite 203, St. Louis, Missouri 63101

4407 Bland Road, Room 110, Raleigh, North Carolina 27609
200 North High Street, Room 350, Columbus, Ohio 43215–2408
660 American Avenue, Suite 201, King of Prussia, Pennsylvania 19406–4032
233 Cumberland Bend, Room 208, Nashville, Tennessee 37228
1200 Main Tower, Room 880, Dallas, Texas 75202
1000 Second Avenue, Suite 1950, Seattle, Washington 98104

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG temporary and permanent employees, former employees of OIG and predecessor offices, and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records show or relate to employment, personnel management, and work-related information, including position, classification, title, grade, pay rate, pay, temporary and permanent addresses and telephone numbers for home and work; copies of security clearance forms, program and performance evaluations, promotions, retirement, disciplinary actions, appeals, incentive programs, unemployment compensation, leave, complaints and grievances, health benefits, equal employment opportunity, automation of personnel data, travel information, accident reports and related information, activity reports, participation in savings and contribution programs, availability for employment, assignment, or for transfer, qualifications (for law enforcement employees this includes Attorney General designations, training certificates, physical fitness data, and medical officer's certification excluding personal medical data), awards, hours worked, issuance of credentials, passports and other identification, assignment and accountability of property and other things of value, parking space assignments, training and development, special assignments, and exit interviews.

Other employee records are covered by other systems as follows: For Official Personnel Folder (OPF) data refer to USDA/OP–1, Personnel and Payroll System for USDA Employees; for medical records, including SF–78, Certificate of Medical Examination, and drug testing records, refer to OPM/GOVT–10, Employee Medical File System; for pre-employment inquiries refer to USDA/OIG–3, Investigative Files and Automated Investigative Indices; for annual financial disclosure statements refer to OPM/GOVT–8, Confidential Statements of Employment and Financial Interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app.; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records which indicates either by itself or in combination with other information, a violation or potential violation of a contract or of law, whether civil, criminal, or regulatory, or which otherwise reflects on the qualifications or fitness of a licensed (or seeking to be licensed) individual, may be disclosed to a Federal, State, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), or other public authority that investigates or prosecutes or assists in such investigation, prosecution, enforcement, implementation, or issuance of the statute, rule, regulation, order, or license.

(2) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency, other public authority, consumer reporting agency, or professional organization maintaining civil, criminal, or other relevant enforcement or other pertinent records, such as current licenses, in order to obtain information relevant to an OIG decision concerning employee retention or other personnel action, issuance of a security clearance, letting of a contract or other procurement action, issuance of a benefit, establishment of a claim, collection of a delinquent debt, or initiation of an administrative, civil, or criminal action.

(3) A record from the system of records may be disclosed to a Federal, State, local, foreign, or self-regulatory agency (including but not limited to organizations such as professional associations or licensing boards), or other public authority, to the extent the information is relevant and necessary to the requestor's hiring or retention of an individual or any other personnel action, issuance or revocation of a security clearance, license, grant, or other benefit, establishment of a claim, letting of a contract, reporting of an investigation of an individual, for purposes of a suspension or debarment action, or the initiation of administrative, civil, or criminal action.

(4) A record from the system of records may be disclosed to any source—private or public—to the extent necessary to secure from such source information relevant to a legitimate OIG investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed to the Department of Justice in the course of litigation when the use of such records by the Department of Justice is deemed relevant and necessary to the litigation and may be disclosed in a proceeding before a court, adjudicative body, or administrative tribunal, or in the course of civil discovery, litigation, or settlement negotiations, when a part to a legal action or an entity or individual having an interest in the litigation includes any of the following:

(a) The OIG or any component thereof;

(b) Any employee of the OIG in his or her official capacity;

(c) Any employee of the OIG in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the OIG determines that litigation is likely to affect USDA or any of its components.

(6) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual. In such cases however, the Member's right to a record is no greater than that of the individual.

(7) A record from the system of records may be disclosed to the Department of Justice for the purpose of obtaining its advice on an OIG audit, investigation, or other inquiry, including Freedom of Information or Privacy Act matters.

(8) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding OIG obligations under the Privacy Act or in connection with the review of private relief legislation.

(9) A record from the system of records may be disclosed to a private firm with which OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(10) A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies if the OIG determines that: (a) The records are both relevant and necessary to the proceeding, and (b) such release is

compatible with the purpose for which the records were collected.

(11) A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, provided that the grand jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, and that the U.S. Attorney actually signs the letter specifying both the information sought and the law enforcement purpose served. In the case of a State grand jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.

(12) A record from the system of records may be disclosed, as a routine use, to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

(13) Relevant information from a system of records may be disclosed to the news media and general public where there exists a legitimate public interest, *e.g.*, to assist in the location of fugitives, to provide notification of arrests, where necessary for protection from imminent threat of life or property, or in accordance with guidelines set out by the Department of Justice in 28 CFR 50.2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computers and automated image filing systems, and in file folders, notebooks, and card file boxes.

RETRIEVABILITY:

The records are retrieved by name of individual employee and by social security number.

SAFEGUARDS:

Computer files are password protected and other records are kept in limited-access areas during duty hours and in locked offices during nonduty hours.

RETENTION AND DISPOSAL:

Retention periods and disposal methods vary by record categories as set forth in National Archives and Records Administration General Records Schedules 1 (Civilian Personnel Records) and 2 (Payrolling and Pay Administration Records). Personal information that the agency deems to be potentially derogatory or embarrassing is shredded when retention period expires.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resources Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2307.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her from the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system which pertains to him/her by submitting a written request to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system which pertain to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

RECORD SOURCE CATEGORIES:

The primary information is furnished by the individual employee. Additional information is provided by supervisors, coworkers, references, and others.

USDA/OIG–2

SYSTEM NAME:

Informant and Undercover Agent Records, USDA/OIG.

SYSTEM LOCATION:

In the OIG headquarters office in the Jamie L. Whitten Federal Building, 1400 Independence Avenue SW., Washington, DC 20250–2317, and in the OIG regional offices and Investigations suboffices listed in the system of records designated USDA/OIG–1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Confidential informants, investigative operatives, and undercover OIG special agents or other law enforcement personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, occupations, criminal histories, and other information about confidential informants and investigative operatives, together with allegations against them, and the types of information previously furnished by or to be expected from them. Types, dates of issuance and destruction, and details of false identification documents used by OIG special agents and other law enforcement personnel for undercover activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app.; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (13) listed in the system of records designated USDA/OIG–1.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on sheets of paper and index cards, and in file folders and computers.

RETRIEVABILITY:

The records are retrieved by name of confidential informant, investigative operative, or special agent.

SAFEGUARDS:

Computer files are password protected and other records are kept in limited-access areas during duty hours and in locked offices during nonduty hours.

RETENTION AND DISPOSAL:

Confidential informant and investigative operative information is kept for 5 years after the date it is put into inactive status. It is then destroyed. Undercover identification documents are kept until the agency determines them to be outdated. They are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2317.

NOTIFICATION PROCEDURE:

Inquiries and requests should be addressed to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

RECORD ACCESS PROCEDURES:

To request access to information in this system write to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

USDA/OIG–3

SYSTEM NAME:

Investigative Files and Automated Investigative Indices System, USDA/OIG.

SYSTEM LOCATION:

Physical files are kept in the OIG headquarters office in the Jamie L. Whitten Federal Building, 1400 Independence Avenue SW., Washington DC 20250–2307, and Franklin Court, 1099 14th Street NW., Washington, DC 20005, and in the OIG regional offices and Investigations suboffices listed in the system of records designed USDA/OIG–1.

The OIG regional offices and Investigations suboffices maintain physical files containing the report of investigation and the workpapers for each case investigated by that office. The headquarters files contain a copy of every investigative report, but do not contain workpapers and may not contain copies of all correspondence. Older investigative files may be stored in Federal Records Centers or on microfiche, microfilm, or electronic image filing systems. Therefore, delays in retrieving this material can be expected.

Selected portions of records have been computerized—see section 1 of "Categories of records" below. These records, used as a research tool, are accessible by computer terminals located in each OIG office. These records are maintained on a computer in the Jamie L. Whitten Federal Building.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individual names in the OIG index fall into one or more of the following categories:

Subjects. These are individuals against whom allegations of wrongdoing have been made. In some instances, these individuals have been the subjects of investigations conducted by OIG to establish whether allegations were true. In other instances, the allegations were deemed too frivolous or indefinite to warrant inquiry.

Principals. These are individuals who are not named subjects of investigative inquiries, but may be responsible for potential violations. For example, the responsible officers of a firm alleged to have violated laws or regulations might be individually listed in the OIG index.

Complainants. These are individuals who have not requested anonymity or confidentiality regarding their identity, who allege wrongdoing, mismanagement, or unfair treatment by USDA employees and/or relating to USDA programs.

Others. These are all other individuals closely connected with a matter of investigative interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

The OIG Investigative Files and Automated Investigative Indices System consist of:

1. Computerized records retrieved by case number or alphabetically by the names of individuals, organizations, and firms. A separate record for each contains, if applicable, identification of the OIG file or files which contain information on that subject and if such information was available when the record was created or modified; the individual's name, address, sex, race, date and place of birth, relationship to the investigation, FBI or State criminal identification number, and social security number (very few have the dates when entries were made into the index);

2. Files containing sheets of paper or microfiche of such sheets from investigative and other reports, correspondence, and informal notes and notations concerning (a) one investigative matter or (b) a number of incidents of the same sort of alleged violation or irregularity; and

3. Where an investigation is being or will be conducted, but has not been completed, various case management records, investigator's notes, statements of witnesses, and copies of records. These are contained on cards and sheets of paper located in an OIG office or in the possession of the OIG investigator. Certain management records are retained after the investigative report is released as a means of following action taken on the basis of the OIG investigative report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app.; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses (1) through (13) listed in the system of records designated USDA/OIG–1.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Automated Investigative Indices System consists of computerized records. The investigative files are stored in steel lektriever cabinets, on microfiche sheets, microfilm, electronic image filing systems, or in Federal Records Centers.

RETRIEVABILITY:

Computerized records are retrieved alphabetically or by using the case number, with each record identifying one or more OIG investigate case files or administrative files arranged numerically by file number.

SAFEGUARDS:

These records are kept in limited-access areas during duty hours, in locked offices during nonduty hours, or in the possession of the investigator. Computer files are password protected.

RETENTION AND DISPOSAL:

The investigative case files are maintained for 10 years after the case is closed. Administrative files are kept for 5 years after the case is closed.

Computerized records are destroyed at the same time as the physical files to which they relate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Resources Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2307.

RECORD ACCESS PROCEDURES:

To request access to information in this system, write to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURE:

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

USDA/OIG–4

SYSTEM NAME:

OIG Hotline Complaint Records, USDA/OIG.

SYSTEM LOCATION:

In the OIG headquarters office in the Jamie L. Whitten Federal Building, 1400 Independence Avenue SW., Washington, DC 20250–2317.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Complainants are persons who report or complain of possible criminal, civil, or administrative violations of law, rule, regulation, policy, or procedure, or fraud, waste, abuse, mismanagement, gross waste of funds, or abuse of authority in USDA programs or operations, or specific dangers to public health or safety, misuse of government property, personnel misconduct, discrimination, or other irregularities affecting USDA.

2. Subjects are persons against whom such complaints are made.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Identities of complaints, if known, and subjects.

2. Details of each allegation.

3.OIG case number and control number(s) used by other agencies for tracking each complaint.

4. Responses from agencies to which complaints are referred for inquiry.

5. Summary of substantiated information and results of agency inquiry into the complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF EACH SUCH USE:

Routine uses (1) through (13) listed in the system of records designated USDA/OIG–1.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a computer and on sheets of paper in file folders.

RETRIEVABILITY:

The records are retrieved by name of subject or complainant or by case number.

SAFEGUARDS:

Files are kept in a limited access area and are in locked storage when not in use. Access to computerized information is protected by requiring a confidential password.

RETENTION AND DISPOSAL:

Physical files and computerized records are retained 10 years after closing, after which they are shredded and deleted.

SYSTEMS MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2317.

NOTIFICATION PROCEDURE:

Inquiries and requests should be addressed to the Director, of Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

RECORD ACCESS PROCEDURES:

To request access to information in this system, write to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURE:

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

RECORD SOURCE CATEGORIES:

Identities of complainants and subjects are provided by individual complainants. Additional information may be provided by individual complaints, subjects, and/or third parties.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records has been exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), this system has been exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

USDA/OIG–5

SYSTEM NAME:

Consolidated Assignments Personnel Tracking Administrative Information Network (CAPTAIN), USDA/OIG.

SYSTEM LOCATION:

U.S. Department of Agriculture, National Computer Center, 8930 Ward Parkway, Kansas City, Missouri 64114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG professional employees who participate in either audit or investigative assignments.

Subjects of investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

CAPTAIN provides OIG management officials with a wide range of information on audit and investigative operations. The system identifies individual assignments of employees and provides information on their use of direct and indirect time, significant dates relating to each assignment, reported dollar deficiencies, recoveries, penalties, the number of investigative prosecutions, convictions, other legal and administrative actions, and subjects of investigation. The system is used to manage audit and investigative assignments and to facilitate reporting of OIG activities to Congress and other Governmental entities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH:

Routine uses (1) through (13) listed in the system of records designated USDA/OIG–1.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer discs, magnetic tape, and in file folders and notebooks.

RETRIEVABILITY:

Information in the system generally can be retrieved by OIG personnel in headquarters and the regions. Information is generally retrieved by assignment number or geographic location. However, information can be retrieved by any field in the system, including subject name, employee name, and employee social security number.

SAFEGUARDS:

Normal computer security is maintained including password protection. Printouts and source documents are kept in limited-access areas during duty hours and in locked offices during nonduty hours.

RETENTION AND DISPOSAL:

Computer files and other records are cleared, retired, or destroyed, when no longer useful, in accordance with National Archives and Records Administration General Records Schedules and USDA record retention and/or destruction schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Audit Subsystem—Assistant Inspector General for Audit, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2311.

Investigations Subsystem—Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2317.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her, from the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system which pertains to him/her by submitting a written request to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from various source documents related to audit and investigative activities including assignment letters, employee time reports, case entry sheets, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), the Investigations Subsystem and the Employee Time System are exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), the Investigations Subsystem and the Employee Time System are exempted from the following provisions of the Privacy Act of 1974, 5 U.S.C. 552a: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

USDA/OIG–6

SYSTEM NAME:

Training Tracking System, USDA/OIG.

SYSTEM LOCATION:

U.S. Department of Agriculture, National Computer Center, 8930 Ward Parkway, Kansas City, Missouri 64114.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OIG audit employees.

CATEGORIES OF RECORDS:

The system contains records of audit employee training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records may be disclosed as a routine use to a Federal agency or professional organization to document continuing education credits required by the Government Auditing Standards, U.S. General Accounting Office Standards of Audit of Governmental Organizations, Programs, Activities, and Functions. The record must be relevant to the determination of professional proficiency and compliance with the general qualification standard for government auditing, and retention of an employee or other personnel action.

(2) Routine uses (1) through (13) listed in the system of records designated USDA/OIG–1.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer and in file folders.

RETRIEVABILITY:

The records are retrieved by name of individual, social security number, or group of employees.

SAFEGUARDS:

Computer files are password protected and other records are kept in limited-access areas during duty hours and in locked offices during nonduty hours.

RETENTION AND DISPOSAL:

Records are retained as long as the agency determines they are needed. They are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Audit, Office of Inspector General, U.S.

Department of Agriculture, Washington, DC 20250–2311.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information, as to whether the system contains records pertaining to him/here from the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system which pertains to him/her by submitting a written request to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

RECORD SOURCE CATEGORIES:

Information in the system comes entirely from OIG audit employees.

USDA/OIG–7

SYSTEM NAME:

Freedom of Information Act and Privacy Act Request Records, USDA/OIG.

SYSTEM LOCATION:

Files are kept in the OIG headquarters office in the Jamie L. Whitten Federal Building, 1400 Independence Avenue SW., Washington, DC 20250–2309.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of individuals who have made requests under the Freedom of Information Act of Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The request records consist of the incoming request, all correspondence developed during the processing of the request, and the final reply.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

IG Act of 1978, 5 U.S.C. app. 3; 5 U.S.C. 301; 7 U.S.C. 2270.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by OIG employees as an internal control mechanism for tracking the disposition of requests and for responding to individuals who are checking on the status of their requests.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

The records are retrieved by name or by using a control number that is assigned upon date of receipt.

SAFEGUARDS:

Freedom of Information Act and Privacy Act request records are stored in file cabinets in limited-access areas during duty hours and in locked offices during nonduty hours.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with National Archives and Records Administration General Records Schedule 14 pertaining to informational services records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her, from the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

RECORD ACCESS PROCEDURES:

An individual may request access to a record in this system which pertains to him/her by submitting a written request to the Director, Information Management Division, Policy Development and Resources Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2309.

CONTESTING RECORD PROCEDURES:

An individual may contest information in this system which pertains to him/her by submitting a written request to the Assistant Inspector General for Policy Development and Resource Management, Office of Inspector General, U.S. Department of Agriculture, Washington, DC 20250–2310.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual making the request and from OIG employees processing the request.

[FR Doc. 97–29423 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–23–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Friday, November 21, 1997, in Chehalis, Washington, at the Lewis County Courthouse Annex Building (335 W. Main Street). The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the meeting is to: (1) Present the 1998/1999 Timber Sale Program, followed by discussion, advice and recommendations and decision, (2) update on the status of the socioeconomic subcommittee, (3) presentation on Yakama Indian Treaty Rights, and (5) public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (4) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 891–5091, or write Forest Headquarters Office, Gilford Pinchot National Forest, 10600 N.E. 51st Circle, Vancouver, WA 98682.

Dated: November 6, 1997.

Robert Yoder,

Province Lead Staff.

[FR Doc. 97–30100 Filed 11–14–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Reporting and Recordkeeping Requirements Under the Wassenaar Arrangement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 16, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Bureau of Export Administration (BXA), Department of Commerce, Room 6877, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202)482–3673).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information required by this collection is required biannually from all exporters of certain items specified in section 743.1 of the Export Administration Regulations controlled for national security reasons on the Commerce Control List and exported under certain License Exceptions.

A—Items controlled and decontrolled by the list. With the publication of the Wassenaar Arrangement's Dual-Use List, some items will be decontrolled for national security reasons and new controls will be placed on some items. BXA estimates that we will receive approximately 75 fewer applications because of these decontrols. But, this will be counteracted be approximately 45 new applications because of some new items added to the list.

B—Reporting and recordkeeping on license exceptions. Under the Wassenaar Arrangement, the U.S. Government must report twice a year to the other members on aggregate usage of 81 export control entries. The aggregate numbers are readily available from BXA's Export Control Automated Support System (ECASS), except when a licensing exception is used. It is very difficult for BXA to determine usage of licensing exceptions because the exporter determines if the licensing exception applies to a certain commodity and then exports that commodity if the licensing exception applies. BXA receives no record of licensing exception uses.

Because one or more of six licensing exceptions could be used with the 81 export control entries subject to Wassenaar Arrangement reporting, BXA must require exporters to keep a record of each time they use a licensing exception for one of the 81 export control entries (except for the destinations identified in Country Group A:1 of Supplement No. 1 to part 740 of the EAR) and submit this report to BXA biannually in time for the U.S. Government to make its report to the Wassenaar members.

C—Removing license exception availability. The Wassenaar Arrangement's Dual-Use List is composed of three parts: the Basic List, the Sensitive List and the Very Sensitive List. The United States allows some items on the Sensitive List to be shipped to some destinations using a licensing exception. The reporting and recordkeeping requirements described above will enable the United States to keep watch over these items. Currently, the United States also permits some items on the Very Sensitive List to be exported to some destinations using a licence exception. Therefore, in deference to our partners in the Wassenaar Arrangement, the United States is withdrawing the license exception privilege for any item on the Very Sensitive List. These items are mainly for licensing exception TSR, "Technology and Software under Restriction."

D—Removing license exceptions for missile tech items. The rule implementing the Wassenaar Arrangement's Dual-Use List removes license exception availability for missile technology controlled items. The decision to remove license exception availability was an interagency based agreement, particularly consultations with the Department of State.

II. Method of Collection

The information will be collected in electronic and written form.

III. Data

OMB Number: 0694–0106.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 2,275.
Estimated Time Per Response: 12 minutes.
Estimated Total Annual Burden Hours: 851 hours.
Estimated Total Annual Cost: $17,020 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30093 Filed 11–14–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; William F. McNeil

In the Matter of: William F. McNeil, 65 Woodland Road, Pittsfield, Massachusetts 01201.

Order Denying Permission To Apply for or Use Export License

On August 8, 1996, William F. McNeil (McNeil) was convicted in the United

States District Court for the District of Columbia of violating the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1997)) (IEEPA). McNeil was convicted of knowingly and willfully exporting, and causing to be exported, United States-origin electronic riot shields from the United States to Romania, without applying for and obtaining from the Department of Commerce the required authorization.

Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 & Supp. 1997)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of McNeil's conviction for violating IEEPA and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny McNeil permission to apply for or use any license, including any License Exception, issued pursuant to, or provide by, the Act and the Regulations, for a period of five years the date of his conviction. The denial period ends on August 8, 2001. I have also decided to revoke all licenses issued pursuant to the Act in which McNeil had an interest at the time of his conviction.

Accordingly, *it is hereby ordered*

I. Until August 8, 2001, William F. McNeil, #5 Woodland Road, Pittsfield, Massachusetts 01201, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to McNeil by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-producted direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 8, 2001.

VI. A copy of this Order shall be delivered to McNeil. This Order shall be published in the **Federal Register**.

Dated: November 3, 1997.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 97–30063 Filed 11–14–97; 8:45 am]

BILLING CODE 3510-DT-M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)) and August 13, 1997 (62 FR 43629, August 15, 1997) continued the Export Administration Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary of Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–056]

Melamine From Japan; Notice of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request by an importer, Taiyo America, Inc., the Department of Commerce initiated an administrative review of the antidumpting duty finding on melamine from Japan for the period of review, February 1, 1996, through January 31, 1997. The importer's request covered two producers/exporters of subject merchandise. Because no other interested party requested a review, this review has now been terminated as a result of the withdrawal of the request for administrative review by the importer.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or (202) 482–3814.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty finding on melamine from Japan on February 2, 1977 (42 FR 6665). On February 3, 1997, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty finding on melamine from Japan (62 FR 4978). On February 7, 1997, an importer, Taiyo America, Inc., requested an administrative review of two producers/exporters of the subject merchandise to the United States. In accordance with 19 CFR 353.22(c), we initiated the review on March 18, 1997 (62 FR 12793) covering the period of February 1, 1996 through January 31, 1997. On September 2, 1997, the importer withdrew its request for administrative review.

Termination of Review

Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. The Department may extend this time limit if the Department decides it is reasonable to do so.

This request for withdrawal was made early in the review process and there were no requests for review from other interested parties. Therefore, the Department is terminating this review.

This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Dated: October 30, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II Import Administration.

[FR Doc. 97–30145 Filed 11–14–97; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Final Results of Antidumping Duty Administrative Review of Solid Urea From the Former German Democratic Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review

SUMMARY: On July 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on solid urea from the Former German Democratic Republic (GDR). The review covers one manufacturer/exporter, SKW Stickstoffwerke Piesteritz GmbH (SKWP), and the period July 1, 1995 through June 30, 1996. We gave interested parties an opportunity to comment on our preliminary results.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan or Steven Presing, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless indicated, all citations to the Department's regulations are to the regulations, as codified at 19 C.F.R. part 353 (1996).

Background

On July 8, 1996, the Department published in the **Federal Register** (61 FR 35712) a notice of "Opportunity to Request Administrative Review" for the July 1, 1995 through June 30, 1996, period of review (POR) of the antidumping duty order on solid urea from the former GDR. In accordance with 19 CFR 353.22, the Ad Hoc Committee of Domestic Nitrogen Producers (petitioners) requested a review for the aforementioned period. On August 15, 1996, the Department published a notice of initiation of antidumping review (61 FR 42416, 42417). The Department is conducting a review of this respondent pursuant to section 751 of the Act.

On July 8, 1997, the Department published the preliminary results of review (62 FR 36492). The Department has now completed the review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are those of solid urea. At the time of the publication of the antidumping duty order, such merchandise was classifiable under item 480.30 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under the Harmonized Tariff Schedule of the United States (HTS) item number 3102.10.00. These TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The Department's written description of the scope remains dispositive for purposes of the order.

Analysis of Comments Received

Comment 1: Affiliation. Petitioners argue that the Department must adjust SKWP's cost of production to reflect an appropriate amount for depreciation of production equipment transferred to SKWP by Stickstoffwerke AG Wittenberg-Piesteritz (STAG). Petitioners contend that STAG is under the "control" of SKWP and that in accordance with section 771(33) of the Act, the Department must find SKWP and STAG to be "affiliated" persons. According to petitioners, the Department is required by sections 773(f)(2) and (3) of the Act to disregard STAG's "transfer" price to SKWP of the production equipment and substitute, in

its place, the higher of market value or cost.

Respondent insists that there is no evidence of affiliation between SKWP and STAG. Respondent maintains that the production equipment was purchased at a market price and that the Department verified SKWP's reported depreciation expense. Respondent adds that the purchase transaction between SKWP and STAG was scrutinized by the German government and independent auditors, and found to be properly valued through arm's-length negotiations.

Department's Position: We disagree with petitioners' contention that the purchase of the production equipment was a transaction between affiliated persons. Consequently, for the final results of this review, we have not adjusted SKWP's reported depreciation expense pursuant to sections 773(f)(2) and (3) of the Act.

In 1993, SKWP and STAG concluded an agreement whereby SKWP purchased certain assets from STAG. These assets consisted largely of the accounts receivable, inventories, and production equipment from a nitrogen production facility owned by STAG. As part of this contractual arrangement, SKWP also assumed responsibility for certain debts and other obligations of STAG's nitrogen facility, including accounts payable and costs associated with old, environmentally hazardous sites formerly owned by STAG. In accordance with German generally accepted accounting principles (GAAP), the total purchase price paid by SKWP determined the cost of the assets acquired by the company. Because the degree of convertibility to cash was taken into consideration in allocating the purchase price, much of that price was allocated to accounts receivable and other liquid assets with very little of the price allocated to the capital equipment acquired in the transaction.

In addition to the nitrogen facilities, SKWP also acquired from STAG as part of the purchase transaction, a five percent interest in VCE Vertriebsgesellschaft fur Chemische Erzeugnisse Piesteritz GmbH (VCE), a distributor of STAG's (now SKWP's) urea products. STAG continued to hold the remaining 95 percent of VCE's shares. At the same time, SKWP and STAG entered into a five-year agreement under which VCE became the exclusive distributor of SKWP's urea products and each company agreed to share in the profits or losses of VCE in accordance with their respective interests in the distributor. As part of this contractual arrangement, STAG also agreed that SKWP would assume complete operational control over VCE, providing all management and sales personnel as well as accounting, management and support staff. Further, SKWP assumed absolute control over all pricing and production decisions at VCE. Thus, STAG has, by contract, given up whatever control over VCE it would otherwise have by virtue of its ownership interest.

Petitioners cite, as evidence of affiliation between SKWP and STAG, the profit and loss sharing arrangement and SKWP's operational control over VCE. Indeed, petitioners assert, "STAG is wholly 'reliant' upon SKWP for income (through VCE), and STAG's pricing of assets sold to SKWP have affected the cost of the subject merchandise, as well as future income, to STAG."

For the following reasons, we cannot agree with petitioners. First, the temporary profit and loss agreement between SKWP and STAG is part of a larger asset purchase arrangement between two companies. It is part of the consideration that STAG received from SKWP for the assets. Therefore, as discussed in greater detail in response to Comment 2, below, we consider any profits accruing to STAG under the agreement to be part of the arm's-length purchase price paid by SKWP for the assets it acquired.

Second, petitioners do not allege (and nothing in the record suggests) that SKWP and STAG were affiliated at the time of the sale of the assets. STAG may be dependent upon SKWP to act in good faith and to pay whatever additional monies are owed for the assets, but that does not mean STAG and SKWP are "affiliated" within the meaning of the statute. STAG did not have to sell its equipment and other assets to SKWP. SKWP was not in a position to dictate the terms of the sale. Rather, each company was pursuing its own economic interests and those interests were in no way mutual. STAG's interest was to obtain the highest price possible for its assets at the time of the sale. Of its own choosing, it accepted an initial payment and the potential of additional payments over a five-year period. Nothing about this transaction put SKWP in a position to "legally or operationally * * * exercise restraint or direction" over STAG when it came to the price paid for the production equipment.

Third, there is no evidence on the record to suggest, as petitioners contend, that STAG would understate the value of the capital equipment that it sold SKWP in the hopes that SKWP, which controls the price and volume of urea products sold through VCE, would obtain greater profits on sales made by VCE. In fact, contrary to petitioners' assertions, STAG's pricing of the assets sold to SKWP does not affect directly the level of VCE's profits since VCE's costs (and thus its' profits) are determined based on the price SKWP charges VCE for urea and not on SKWP's production costs.

Petitioners also rely on two other points to advance their argument that SKWP and STAG are affiliated persons. First, petitioners note that VCE's financial results are consolidated with those of SKWP. According to petitioners, this would only be possible if STAG's 95 percent interest was indistinguishable from SKWP's interest. Second, petitioners consider STAG's agreement to absorb certain personnel costs associated with the purchase of its assets to be an indication of affiliation between STAG and SKWP.

In response to the first point, the consolidation of financial statements is done for accounting purposes when a parent company controls the operations of a subsidiary entity. In the present case, the consolidation of VCE's financial statements into SKWP's is merely an indication that SKWP controls VCE, not that SKWP controls STAG (or that both companies control VCE). As explained above, STAG contracted away its right to control VCE as part of the five-year distribution agreement.

In response to the second point, STAG's commitment to absorb certain personnel costs resulted from the arm's-length negotiations that took place between the parties. Stated differently, absorption of these costs was part of the *quid pro quo* that enabled STAG to obtain the highest price possible for its assets at the time of sale.

In conclusion, the Department finds no evidence to consider STAG and SKWP to be affiliated within the meaning of section 771(33) of the Act, and for purposes of these final results, will continue to treat them as parties to an arm's-length transaction in relation to the sale and acquisition of SKWP's production equipment.

Comment 2: Profit Adjustment.

Petitioners argue that even if the Department were to find STAG and SKWP unaffiliated, we should account for STAG's share of VCE's profit or loss as compensation for the assets transferred to SKWP, and add the value of these profits and losses to the reported costs of production.

Respondents counter that there is no statutory authority to add profit to a COP calculation, and these profits and losses are properly excluded from the reported costs.

Department Position: We agree, in principle, with petitioners that any profits that accrue to STAG under its profit and loss sharing arrangement with SKWP should be considered part of the purchase price of the assets acquired by SKWP from STAG. As discussed in our response to comment 1, above, the five-year arrangement between STAG and SKWP to share in the profits and losses of VCE, a distributor of SKWP's urea products, was concluded as an integral part of the asset purchase agreement between the two companies. Under the arrangement, SKWP agreed to forego its share of VCE's earnings from urea sales as part of the compensation it paid to STAG for the assets acquired. As such, any profits paid to STAG under the arrangement can reasonably be viewed as part of the purchase price for the assets.

We note, however, that evidence on the record shows that from 1993 to 1996 (the first three years of the arrangement), VCE incurred only losses on its sales of SKWP's urea products. Thus, as of the POR, STAG has not received any additional compensation for the assets it sold beyond that paid by SKWP at the time the agreement was concluded. In addition, we note that, were VCE to earn profits in the final two years of the agreement, such profits would first be netted against VCE's accumulated losses (in accordance with the arrangement) before distribution to STAG.

Finally, as a theoretical matter, we disagree with petitioners that all profits paid to STAG under the arrangement should go to increase the value of the production equipment purchased by SKWP. Rather, consistent with SKWP's GAAP accounting for all of the assets it acquired from STAG, any additional compensation in the form of VCE profits paid to STAG would first be applied to other, more liquid assets to reduce any remaining difference between their value at the time of purchase and the amount of the purchase price allocated to them.

Comment 3: Renovation Project.

Petitioners argue that the Department should increase SKWP's cost of production to account for amounts received from the German government to offset expenses associated with an ongoing renovation project at its nitrogen facility. According to petitioners, the Department routinely considers renovation costs to be part of the cost of production. In this regard, petitioners highlight the fact that SKWP has accounted for costs associated with the project as part of the company's operating costs. Citing Certain Iron Metal Castings from India, 46 FR 28463 (1981), petitioners contend that it is the Department's long-standing practice not to reduce costs to reflect the benefits received from government subsidies.

SKWP argues that, because it did not incur the renovation costs for which the subsidies were granted, these costs could not be part of the company's cost of production.

Department's Position: We disagree with petitioners. Costs associated with the renovation of SKWP's production facility were not incurred by SKWP. The costs in question were funded by the German government through reimbursement which was recorded in the audited financial statements of SKWP.

Contrary to petitioners' apparent belief, the Department's long-standing practice is to base COP upon a producer's actual costs and not to restate such costs to exclude government payments, linked to specific costs. See, *e.g.*, Red Raspberries from Canada; Final Determination of Sales at Less Than Fair Value, 50 FR 19768 (1985); Certain Iron Construction Castings from India; Final Determination of Sales at Less Than Fair Value, 51 FR 9486, 9488 (1986). This practice has been upheld by the courts on many occasions. See, *e.g.*, *United States* v. *European Trading Company*, 27 CCPA 289, C.A.D. 103 (1940); *Washington Red. Raspberry Comm.* v. *United States*, 657 F. Supp. 537 (CIT 1987); *Alhambra Foundry Co., Ltd.* v. *United States*, 685 F. Supp. 1252 (CIT 1988). Indeed, in the one case cited by petitioners, the very practice at issue was upheld by the court. *See Al Tech Specialty Steel Corp.* v. *United States*, 10 CIT 743, 751, 651 F. Supp. 1421 (1986) (court refused to overturn calculation of "fixed costs merely because the adjustment is based on subsidies").

Comment 4: Special Depreciation.

Petitioners argue that the Department should increase SKWP's reported depreciation expense to account for "special" depreciation excluded from COP and CV by the company. Petitioners maintain that the Department has a consistent practice of including special depreciation items in its calculation of respondent's costs and there is no justification for departing from that practice in this instance.

SKWP insists that it properly excluded special depreciation from the COP and CV figures it submitted to the Department. SKWP notes that the special depreciation in question relates to tax-basis depreciation granted by the German government to companies operating in the former GDR and, thus, represents no real additional cost to the company and should not be included in the cost of production. SKWP adds that actual depreciation (*i.e.*, not tax-related depreciation) is included in SKWP's fully-absorbed cost of production.

Department's Position: We disagree with SKWP in that, for purpose of computing COP and CV, we cannot simply ignore the amount that the company recorded as "special" depreciation expense during the POR. Each year in its accounting books and records, SKWP recognizes what it maintains is "normal" depreciation expense for the year. In addition, because SKWP operates in the former GDR, German tax law allows the company to recognize a "special" depreciation expense in the year in which an asset is purchased. Like normal depreciation, the amount of the special depreciation taken during the year of acquisition reduces the depreciable basis of the assets. Thus, while the special tax depreciation may be stated on an accelerated basis which may or may not reflect the underlying economic useful lives of the assets purchased by SKWP, to ignore the expense altogether, as SKWP suggests, fails to recognize as a cost that portion of each asset's depreciable basis that is written off as special depreciation in the year of acquisition. SKWP has not provided us with any alternative method of recognizing an appropriate amount for depreciation expense that is based on the economic useful lives of the assets purchased by the company. Rather, SKWP's position is that the Department must exclude special depreciation costs from COP and CV because the amounts at issue do not reflect what it calls "real" costs. However, as described above, the special depreciation expense amounts recorded by SKWP do reflect actual depreciation costs on an accelerated basis. Therefore, absent any other information on the record from which to derive an alternative measure of depreciation expense, we have included SKWP's special depreciation expense in the company's COP and CV.

Comment 5: Other Expenses Excluded from SKWP's Submitted Costs.

Petitioners claim that the Department should include in SKWP's COP and CV figures certain costs reported by the company in its financial statements. Specifically, petitioners contend that the Department should increase SKWP's reported costs for three expense items: amounts incurred by the company for environmental damages relating to SKWP's 100% owned affiliate, Agrochemie Handelsgesellschaft GmbH (Agrochemie); amounts incurred for the demolition of certain plant facilities;

and, costs relating to worker severance pay.

SKWP argues that the amounts reported in its financial statements for environmental damages and demolition costs were properly excluded from the costs reported to the Department. According to SKWP, expenses relating to environmental damages caused by Agrochemie were paid for by the German government and, therefore, no costs were actually incurred by the company. With respect to amounts reported for plant demolition, SKWP contends that the facilities at issue were not involved in the production of urea and that these amounts, too, were paid for by the German government.

Department's Position: We agree with petitioners and have adjusted SKWP's reported COP and CV figures to include amounts for Agrochemie's environmental damages, demolition of certain SKWP facilities, and worker severance pay as reported in the company's financial statements. As part of our cost verification, we reconciled the total amount of costs reported by SKWP in response to our antidumping questionnaire to the costs reported in the company's audited financial statements. Our reconciliation showed that SKWP had excluded from its COP and CV figures specific income statement items relating to reserves established for each of the three expense items described above. Although the record of this case shows that SKWP received funds from the German government to offset costs incurred by the company for certain plant renovations and for environmental clean-up at its nitrogen facility, SKWP failed to show that the receipt of these funds was specifically related to either the environmental damages caused by Agrochemie or to the demolition costs at issue. As petitioners note in their briefs, in past cases, the Department has accounted for expenses associated with environmental clean-up by respondents as part of the cost of production where, as in this case, such expenses are included in respondent's financial statements and reflect costs incurred during the period of investigation or review. See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from France, 58 FR 68865 (1993). With respect to SKWP's argument that the demolition costs relate to non-urea facilities, our understanding based on the evidence in the record is that the amounts incurred relate to the destruction of factory assets for discontinued operations. As such, we consider these costs to be related to SKWP's general operations and have therefore included them in COP and CV.

Comment 6: Reported Costs. Petitioners contend that SKWP has reported the costs for only one type of urea product and that a second, more costly type of urea referred to as "konf." in the verification exhibits, was manufactured by SKWP during the POR. Petitioners maintain that cost verification exhibits do not support SKWP's contention that "konf." urea is actually bagged urea since these exhibits show an amount for packing costs in the cost center report for what SKWP claims is bulk urea. Petitioners argue that the Department must increase SKWP's reported COP and CV to reflect the weighted-average cost for the two types of urea produced by the company.

SKWP maintains that "konf." urea is, in fact, bagged urea, and that the Department verified packing costs associated with begged urea as part of its sales verification. SKWP adds that the Department has factored the company's reported packing costs for bagged urea into its COP analysis.

Department's Position: We disagree with petitioners that SKWP failed to report the costs of a second type of urea that it produced during the POR. SKWP manufactures and sells urea in both bulk form, called "lager lose," and in bagged form, or "konf." In response to the Department's cost questionnaire, SKWP reported the cost of urea in bulk form only. The company reported the additional packing costs it incurred for bagged urea on a transaction-specific basis in response to the Department's sales questionnaire. In performing our COP test of SKWP's home market sales, we adjusted for the packing costs associated with bagged urea by deducting the reported amount from the home market sales price before comparing that price to the COP for bulk urea. Thus, to compute a single weighted-average cost for both bulk and bagged urea, as petitioners advocate, would result in an overstatement of costs.

With respect to petitioners observation that SKWP's cost center report for bulk urea shows an amount for packing costs, we note the fact that these amounts represent insignificant costs of less than one DEM per metric ton that are associated with packing bulk urea for sale. SKWP included these costs in its reported COP and CV amounts for bulk urea.

Comment 7: Labor Costs. Petitioners contend that a substantial portion of costs associated with SKWP's labor force are unaccounted for in the company's reported COP. In support of their claim, petitioners point to an agreement by SKWP to employ a minimum number of the workers formerly employed by STAG. Petitioners note the fact that, during the POR, the actual number of workers employed by SKWP exceeded the company's commitment level. According to petitioners, because SKWP developed its accounting systems subsequent to the date of the antidumping duty order, the company may have inappropriately assigned (or absorbed) excess personnel costs in areas responsible for producing non-subject merchandise, thereby artificially understating labor costs for urea.

As further evidence of their claim that SKWP may have understated its labor costs for the subject merchandise, petitioners assert that ammonia production reports obtained by the Department during its cost verification show what petitioners believe is a small percentage of the company's total workforce assigned to production of the input, and that there is no other evidence on the record to show the number of urea production workers.

SKWP argues that the Department thoroughly verified the company's cost centers and found that all labor costs had been appropriately allocated and accounted for. SKWP maintains that it is puzzled by petitioners' claim with respect to the number of workers in its ammonia production facility, noting that such facilities are not labor-intensive operations. SKWP also points out petitioners' own admission that personnel expenses are also accounted for through factory overhead and general and administrative (G&A) expenses.

Department's Position: We disagree with petitioners assertion that the analysis contained in their brief provides any basis for us to believe that SKWP may have understated its labor costs for urea. Rather, based on the results of our verification, we find that SKWP properly accounted for all labor costs incurred to produce the subject merchandise. Thus, for the final results of this review, we have not adjusted SKWP's labor costs as argued by petitioners. In a pre-verification letter to the Department dated April 2, 1997, petitioners expressed their concern that, in light of SKWP's commitment to employ a minimum number of former STAG employees, the variable overhead figure reported by SKWP appeared low. Based on this, petitioners requested that, as part of verification, "SKWP should explain how it has accounted for all labor costs." During verification, SKWP did, in fact, provide a full explanation of the methodology it used in its normal books and records to account for labor costs incurred to produce both subject and non-subject merchandise. Moreover, SKWP personnel demonstrated how that methodology was used to calculate the COP and CV data submitted to the Department. As described in SKWP's cost response and in the Department's cost verification report, SKWP charges labor costs, as well as other production costs, to a series of cost centers by cost type. The amounts charged to each "cost type-cost center" are then distributed in a multi-stage allocation to "process-cost centers" maintained by SKWP for both subject and non-subject merchandise. As explained in the Department's cost verification report, Department verifiers examined how production costs incurred within each of the various cost type-cost centers were allocated to the various process-cost centers under SKWP's accounting system. See Cost Verification Report at page 21.

In their case brief, petitioners cite to a list of participants at the cost verification as evidence that the Department verifiers examined only the labor costs incurred by SKWP in the production of ammonia and urea, and neglected to review the labor allocations to non-subject merchandise. Moreover, petitioners argue that verification exhibits collected by the Department show only the number of workers employed by SKWP at its ammonia production facility. While we do not believe that the participants list cited by petitioners provides any indication of the testing performed during verification, the Department's cost verification report does explain that the verifiers examined carefully amounts charged to, and allocated from, the various cost type-cost centers, including amounts incurred for labor costs. With respect to the ammonia production reports cited by petitioners, the verification report makes clear that these documents represent examples of the supporting documentation reviewed by the verifiers as part of their testing of SKWP's cost type-cost centers. As stated in the report, although the Department verifiers reviewed costs recorded in, and charged from, each category of cost type-cost center (including those in which SKWP recorded its labor costs), they did not collect as verification exhibits copies of all cost center reports. In fact, to have collected copies of all documents examined during verification would have placed an extreme and unnecessary burden on the respondent in this case.

Comment 8: Factory Overhead. Petitioners note that SKWP's reported factory overhead costs contain an adjustment that reduces a portion of those costs. Petitioners contend that there is no evidence on the record concerning the nature of this adjustment. According to petitioners, if, upon re-examining the record of this case, the Department finds that the amount of the adjustment is not justified, it should increase SKWP's factory overhead costs accordingly.

SKWP asserts that petitioners are overreaching when they request that the Department adjust the company's factory overhead costs for an offset that is included among thousands of other numbers contained in the record of this case. SKWP argues that its factory overhead costs should be accepted as reported since those amounts were verified by the Department.

Department's Position: For the final results of this review, we have not adjusted SKWP's factory overhead costs for the offset. The offset represents miscellaneous income earned by SKWP's Cunnersdorf research facility for projects conducted on behalf of outside parties. We did not describe the offset in our cost verification report simply because, relative to the production costs at issue in this case and the complexity of SKWP's cost accounting system, it is insignificant. Technically, because the work conducted was not so significant as to represent a separate line of business (and, thus, be excluded from COP and CV altogether), both the revenues from the projects and the associated R&D costs would more appropriately be considered part of G&A expense. However, in this instance, reclassification of these amounts would have little, if any, effect on SKWP's submitted costs. Thus, as noted above, we have not made any adjustments to SKWP's reported factory overhead costs.

Comment 9: Sales Reporting. Petitioners argue that SKWP only provided sales information on certain types of urea without consulting the Department. Petitioners insist that the Department should affirm in the final determination the inappropriateness of this unilateral modification.

Respondent argues that they reported all home market sales of identical merchandise rather than sales of the foreign like product. They claim that they did this in accordance with the statute at Section 773(a)(1) and Section 771(16)(A). Respondent also argues that the Department implicitly acknowledged this requirement when it advised SKWP that its omission of sales of non-identical merchandise may result in the use of facts available. Due to the fact that the Department's analysis indicates that only sales of identical merchandise were necessary for comparison purposes, petitioners' concerns are not justified.

Department's Position: During the review, SKWP only provided home market sales information of identical merchandise. In an October 30, 1996, letter to the respondent, the Department notified SKWP that failure to report the entire universe of the foreign like product may result in the Department using facts available, particularly if the Department determined after further analysis and verification of all relevant data that the omitted sales were necessary for comparison purposes. As evidenced by the preliminary results of review, the reported home market sales database of identical merchandise was adequate for making comparisons to the U.S. sales database and the omitted sales were not necessary for comparison purposes.

Comment 10: Model Match. Petitioners argue that SKWP inappropriately added a product characteristic in the model matching section and has not justified this modification. Petitioners argue that although there is no difference in the material costs of the two products, there is a difference in selling price. Additionally, petitioners argue that due to the fact that the U.S. sale is of one particular type of urea, SKWP's reporting methodology would cause the Department to select only certain home market sales for comparison purposes. Therefore, the Department should reject SKWP's reporting methodology. Alternatively, petitioners argue that if the Department accepts this SKWP's reporting methodology then it should adjust the cost for the second type of urea to ensure that all costs for all models are properly accounted for.

Respondent rebuts petitioners' argument by stating that the Department's questionnaire allows for the modification of the product characteristics if necessary. Respondent also objects to petitioners claim that the modification of the physical characteristics resulted in the comparison of U.S. sales to home market sales of similar merchandise. Respondent argues that due to the fact the record demonstrates that both types of urea are physically different products, comparison of one with the other is inappropriate.

Department's Position: The Department agrees with respondent. The Department's model match allows for respondent to report additional product characteristics if necessary. As evidenced by the preliminary results of review, the Department was able to compare the U.S. sale to the most comparable home market sale(s) and ensure that there were no distortions in the analysis. Based on the fact that there

is no evidence on the record to show that the product characteristics reported resulted in a distortive comparison, the Department has continued to use the model matching criteria set forth in the preliminary results of review.

Comment 11: Downstream Sales. Petitioners argue that sales from Agrochemie were not reported to the Department. Petitioners contend that SKWP has not indicated that it is otherwise justified in its reporting methodology, therefore, there exists the strong possibility for SKWP to avoid reporting less favorable home market sales to end-users by manipulating the transfer price to Agrochemie. Petitioners argue that the Department must increase normal value to reflect Agrochemie's profits on the resale of urea through its reseller. Because there is no evidence of Agrochemie's sales prices on the record, petitioners argue that the Department should use facts available regarding VCE's profit level to determine the selling price to Agrochemie's final customer.

Respondent argues that petitioners' request is without merit. Respondent asserts that the purpose of the arm's length test is to determine if the prices for sales between affiliated parties may have been manipulated to lower normal value. However, due to the fact that the Department found that sales to Agrochemie were at arm's length it would be inappropriate to penalize SKWP for avoiding the burden of reporting downstream sales that the Department did not require for its analysis.

Department's Position:. The Department agrees with respondent. During the review, SKWP did not report sales made from Agrochemie to unaffiliated customers in the home market. In an October 30, 1996, letter to the respondent, the Department notified SKWP that failure to report the Agrochemie sales to the first unaffiliated party may result in the Department using facts available, particularly if the Department determined after further analysis and verification of all relevant data, that these omitted sales were necessary for comparison purposes. As evidenced by the preliminary results of review, the Department found that SKWP's sales to Agrochemie were at arm's length and these omitted sales were not necessary for comparison purposes.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Margin (percent)
SKW Piesteritz	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisment instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751 (a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters, as indicated in the preliminary results of this review, the cash deposit rate shall be 44.80 percent, the "all others" rate established in the LTFV investigation (53 FR 2636). These deposit requirements shall remain in effect until publication of the final results of the next administrative review. In addition, we are terminating suspension of liquidation for shipments of solid urea produced by other firms in Germany.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 USC 1675(a)(1)) and 19 CFR 353.22.

Dated: November 5, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30144 Filed 11–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On July 9, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from the People's Republic of China (PRC). The period of review (POR) is June 1, 1995, through May 31, 1996.

Based on our analysis of comments received, we have made changes to the margin calculations, including corrections of certain clerical errors. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled **Final Results of Review.**

We have determined that sales have been made below normal value (NV) during the POR. Accordingly, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between export price (EP) or constructed export price (CEP) and NV.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Robin Gray or the appropriate case analyst, for the various respondent firms listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733: Mike Panfeld: Xiangfan Machinery Foreign Trade Corporation (formerly Xiangfan International Trade Corporation) (Xiangfan), China National Automotive Industry Import & Export Corporation (Guizhou Automotive), Peer Bearing Company and Chin Jun Industrial Ltd. (Peer/Chin Jun); Greg Thompson: Shandong Machinery & Equipment Import & Export Corporation (Shandong), Tianshui Hailin Import & Export Corporation (Hailin), Zhejiang Machinery Import & Export Corporation (Zhejiang); Tom Schauer: Premier Bearing & Equipment, Ltd. (Premier), Guizhou Machinery Import & Export Corporation (Guizhou Machinery), Jilin Machinery Import & Export Corporation (Jilin), Wanxiang Group Corporation (Wanxiang), China National Machinery & Equipment Import & Export Corporation (CMEC); Kristie Strecker: China National Machinery Import & Export Corporation (CMC), Luoyang Bearing Factory (Luoyang), Liaoning MEC Group Co., Ltd. (Liaoning), Hangzhou Metals, Mineral, Machinery & Chemical Import Export Corp. (Hangzhou), China Great Wall Industry Corp. (Great Wall).

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1997, we published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on TRBs from the PRC. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Administrative Review and Partial Termination of Administrative Review, 62 FR 36764 (July 9, 1997) (Preliminary Results). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on September 3, 1997. The following parties submitted comments and/or rebuttals: The Timken Company (Timken); Guizhou Machinery, Liaoning, Luoyang, Wanxiang, Xiangfan, CMC, Guizhou Automotive, Shandong, Zhejiang, and Premier (collectively referred to as Guizhou Machinery, et al.); China Great Wall Industrial Corp. (Great Wall) and Huangzhou Metals, Minerals, Machinery, and Chemical Import Export Corp. (Huangzhou); Peer/Chin Jun; Transcom, Inc. (Transcom); L&S Bearing Co. (L&S).

We have conducted this administrative review in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Scope of Review

Imports covered by these reviews are shipments of TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Changes Since the Preliminary Results

We have made the following changes to our margin calculations pursuant to comments we received from interested parties and clerical errors we discovered since the preliminary results:

For All Companies

We changed the surrogate-value information which we used to value steel inputs. See our response to comment 1 of section 2(a), below.

We calculated importer-specific assessment rates where possible. Where the data did not allow us to calculate importer-specific assessment rates, we calculated one rate which we will instruct Customs to apply to all entries from that respondent.

For Guizhou Machinery

We corrected the direct and indirect labor reported for models sold by a certain supplier pursuant to a clerical-error allegation by Guizhou Machinery. See comment 4 of section 2(b), below.

We corrected the formula for ocean freight so that TRBs shipped to west-coast ports received the ocean-freight factor for west-coast ports rather than east-cost ports pursuant to a clerical-error allegation by Guizhou Machinery. See comment 3 of section 3, below.

We discovered that we incorrectly summed the total sales quantities for certain suppliers and we corrected this error for these final results.

We discovered that we inadvertently used one supplier's surrogates for profit, overhead, indirect labor, and SG&A labor for all suppliers from which Guizhou Machinery purchased subject merchandise and we corrected this error for these final results.

For Wanxiang

We converted the marine-insurance charges to U.S. dollars. See comment 2 of section 3, below.

We used the reported gross-weight figures for cups and cones instead of using facts available. See comment 4 of section 2(a), below.

For Zhejiang

We discovered that we inadvertently used the incorrect surrogate values for ocean freight and corrected this error for these final results.

For Xiangfan

We corrected the rate for skilled labor from 46.60 to 29.66 to take into account the fact that Xiangfan did not report skilled and unskilled labor separately. We made this change pursuant to a clerical-error allegation by Xiangfan. See comment 4 of section 2(b), below.

For Luoyang

We used the amended database pursuant to a clerical-error allegation by Luoyang. See comment 10 of section 6, below.

For CMC

We deducted an amount for the selling, general, and administrative expenses of CMC's U.S. affiliate from constructed export price. See comment 5 of section 6, below.

We corrected the formula for cost of manufacture pursuant to a clerical-error allegation raised by Timken. See comment 9 of section 6, below.

We discovered that we inadvertently used the incorrect value for imported steel prices and corrected this error for these final results.

We included a certain expense in CMC's direct materials costs. See comment 11 of section 6, below.

We discovered that we inadvertently did not include inventory carrying costs in our calculation of CEP profit and corrected this error for these final results.

We discovered that we inadvertently deducted imputed credit from EP rather than adding it to NV and corrected this error for these final results.

For Chin Jun

We corrected the factory code for certain models, we corrected an error where we inadvertently omitted a constructed value for one particular model, and we corrected a clerical error made by Peer/Chin Jun in reporting entered value, international freight, and U.S. duties. We corrected these errors pursuant to allegations made by Peer/Chin Jun. See comment 1 of section 4 and comment 4 of section 6, below.

Analysis of Comments Received

We received comments from interested parties regarding the following topics:

1. Separate Rates
2. Valuation of Factors of Production
   (a) Material Valuation
   (b) Labor Valuation
   (c) Overhead, SG&A and Profit Valuation
3. Freight
4. Facts Available
5. Assessment
6. Miscellaneous Issues

Summaries of the comments and rebuttals, as well as our responses to the comments, are in each of the above sections.

1. Separate Rates

Comment 1: Peer/Chin Jun argues that the Department should not have used facts available for CMEC. Peer/Chin Jun notes that the Department determined that CMEC was not entitled to a separate rate because CMEC did not respond to certain questions in its supplemental questionnaire. Peer/Chin Jun argues that CMEC provided a wide range of information sufficient to demonstrate an absence of government control. Citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Preliminary Results of Antidumping Administrative Review, 60 FR 44302, 44303 (August 25, 1995), Peer/Chin Jun contends further that government control is only important if there is evidence that "pricing and export strategy are subject to [government] review or approval" or if there is evidence that the authority to negotiate and enter into contracts "is subject to any level of government approval." Peer/Chin Jun argues that the evidence on the record demonstrates that this is not the case for CMEC. Peer/Chin Jun asserts that the failure to answer one question is not sufficient cause to use facts available for a company which provides detailed sales and factors-of-production (FOP) information.

Peer/Chin Jun also notes that CMEC received a separate rate in the initial investigation and in the 1989–90 administrative review, and it argues that all relevant evidence shows that China has liberalized its control of the economy since 1990 and has no control over Chinese trading companies.

Timken contends that Peer/Chin Jun has no standing to request changes in the results of other respondents and notes that CMEC itself has not objected to the Department's decision.

Timken also argues that the Department's preliminary decision was appropriate because CMEC failed to cooperate with the Department's requests for information. Timken contends that, in addition to failing to provide information concerning its management-selection process, which was the basis of the Department's decision, CMEC failed to respond to the Department's questions concerning the CMEC Group's membership and activities. Timken also asserts that CMEC's responses indicate that it plays a leading role as part of a huge conglomerate, CMEC (Group), which is, according to Timken, controlled by the PRC government, but that CMEC failed to document the nature of this role or the government's role, or lack thereof, in CMEC's operations. Given these failures, Timken asserts that the Department's decision is reasonable.

Department's Position: We disagree with Peer/Chin Jun that our treatment of CMEC in the *Preliminary Results* was improper. Further, we note that, while Peer/Chin Jun may comment on this issue, it may not have standing to appeal this issue.

CMEC failed to respond adequately to our supplemental questionnaire and, as a result, we determined that the record did not contain sufficient evidence to warrant a determination that CMEC was entitled to a separate rate. Though Peer/Chin Jun claims that CMEC provided "detailed" information sufficient to demonstrate an absence of government control over its export activities in its original response, we found, after examining CMEC's response, that additional information was necessary in order for us to conclude that it would be appropriate to assign a separate rate to CMEC. However, CMEC did not respond adequately to our supplemental questionnaire. As Timken notes, CMEC failed to provide information concerning the identities and former positions of CMEC's senior management and/or board of directors, the process of selecting senior management, or details regarding the CMEC Group's members and operations. See CMEC's March 3, 1997 submission at pages 3 and 8. Given CMEC's failure to respond to our requests for information regarding these issues, it would be inappropriate to make assumptions about the answers to these questions that are favorable to CMEC. Further, while Peer/Chin Jun argues that all available information confirms that there is no governmental control of CMEC, because CMEC failed to respond to these questions, we must infer that CMEC failed to respond because the answers would have indicated that CMEC's export activities are in fact controlled by the government of the PRC. Therefore, we determine that CMEC is not entitled to a separate rate.

With regard to Peer/Chin Jun's argument that government control over CMEC's export activities is only important if there is evidence that "pricing and export strategy are subject to [government] review or approval" or if there is evidence that the authority to negotiate and enter into contracts "is subject to any level of government approval," we disagree. We use these factors to determine whether there is de facto government control. The evidence on the record is not sufficient for us to conclude that CMEC's export activities are not controlled by the PRC government. It is incumbent on respondents to demonstrate that they are entitled to separate rates. If a respondent fails to submit sufficient evidence to demonstrate the appropriateness of receiving a separate rate, especially when we request specifically that it submit such evidence in both the original and supplemental questionnaires, we cannot assume that a respondent is entitled to a separate rate based on evidence previously submitted.

Finally, the fact that CMEC received a separate rate in the initial investigation and in the 1989–90 administrative review is irrelevant in the context of this review. With regard to separate rates, each review requires a *de novo* determination because facts may change over time. Furthermore, Peer/Chin Jun's contention that all relevent evidence shows that China has liberalized its control of the economy since 1990 and has no control over Chinese trading companies is speculative and unsupported by record evidence. In addition, even if it were true generally, that does not prove that it is true for individual companies. Therefore, we have not altered our treatment of CMEC for these final results.

Comment 2: Timken claims that The Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People, Art. 44 (1988) (Chinese law), specifies that the government of China maintains control over the appointment and removal of top management in facilities in which the people of China have an ownership interest. Timken asserts that consideration of that Chinese law requires reversal of the separate-rate decisions concerning all respondents in this review period. Timken adds that the Chinese law demonstrates that not only is the choice for factory director subject to government review and approval or disapproval, so too are the factory director's choice for hiring or discharging others in top management positions. Timken states that, because respondents have not provided any information to explain the discrepancy between the text of the Chinese law and their claims, the Department should determine in the final results on the basis of facts available that respondents' management selection is, as provided by the Chinese law, subject to government control and, therefore, respondents are not entitled to separate rates.

Guizhou Machinery, et al. argue that the Department determined that there was an absence of both *de jure* and *de facto* government control over their operations in past reviews. Guizhou Machinery, et al. contend that, based on the *de jure* and *de facto* government control standard, the Department found in the *Preliminary Results* that the information submitted by Guizhou Machinery, et al. was unchanged and consistent with information reported in past reviews. In addition, Guizhou Machinery, et al. argue that the Chinese law to which Timken refers has been in existence since 1988 and, therefore, has been in existence in every review since the beginning of this order yet the Department has granted separate rates to respondents in the past. Moreover, Guizhou Machinery, et al. assert that nothing about the Chinese law has changed to alter the results of this review. Guizhou Machinery, et al. maintain that the Chinese law's actual impact on a company's operations is nonexistent and, in reality, companies do no more than record election results with a government agency. Guizhou Machinery, et al. argue that, if the Department accepts Timken's assertions, the Department would have to make the same determination in every antidumping case involving a Chinese company despite reliable evidence of independence.

Department's Position: We have determined in each review of this proceeding that ownership "by all the people" in and of itself cannot be considered as dispositive in establishing whether a company can receive a separate rate. *See* also Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). It is our policy that a respondent in a non-market economy (NME) is entitled to a separate rate if it demonstrates on a *de jure* and a *de facto* basis that there is an absence of government control over its export activities.

A separate-rate determination does not presume to speak to more than an individual company's independence in its export activities. The analysis is focused narrowly on an individual company, and the determination, if autonomy is found, is narrow. The Department analyzes that individual company's U.S. sales separately and calculates a company-specific antidumping rate. Thus, for purposes of calculating margins, we analyze whether specific exporters are free of government control over their export activities, using the criteria set forth in Silicon Carbide at 22585. Those exporters who establish their independence from government control are entitled to a separate margin calculation.

Thus, a finding that a company is entitled to a separate rate indicates that the company has sufficient control over its export activities to prevent the manipulation of such activities by a government. See Disposable Pocket Lighters from the PRC, 60 FR 22359, 22363 (May 5, 1995) (Disposable Lighters).

The PRC companies that responded to our questionnaire submitted information indicating a lack of both *de jure* and *de facto* government control over their export activities. Timken claims that the election of the general manager is subject to governmental approval. We examined this issue in prior cases and determined that such approval is strictly a pro forma exercise. Our review of the Chinese law and previous verifications of the various respondents indicate that this "approval process" is, in effect, a mere reporting exercise. As we stated in the *Preliminary Results* with regard to Huangzhou, and verified in the cases of respondents which we conducted a verification, respondents' management is generally elected by the employees of the enterprise and the results of such elections are recorded with the Ministry of Foreign Trade and Economic Cooperation or a similar governmental agency. There is no evidence that MOFTEC or any other governmental body controls the selection of management, nor has ever interfered with the election process. Therefore, we find that the companies independently select their management. Based on our analysis of the factors enunciated in Silicon Carbide, the verified information on the record supports our determination that the above-named respondents are, both in law and in fact, free of government control over their export activities. See, e.g., Luoyang's verification report dated April 23, 1997. Thus, it would be inappropriate to treat these firms as a single enterprise and assign them a single margin. Accordingly, we have continued to calculate separate margins for these companies. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews (TRBs IV–VI), 61 FR 65527, 65528 (December 13, 1996).

Comment 3: Timken argues that TRBs from the PRC are subject to direct government export control. Timken maintains that, contrary to respondents' narrative claims and the conclusion of the preliminary results, licenses are required to export TRBs. Because respondents have failed to come forward with any factual basis for believing that export controls do not apply, Timken argues that the Department should determine as facts available, that TRBs are subject to export controls on the basis of the Chinese law.

Guizhou Machinery, et al. argue that the Department rejected this same argument in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review, 62 FR 6173 (February 11, 1997) (TRBs VIII). Guizhou Machinery, et al. contend that they have provided further clarification to the Department on the nature of the controls and each company reported that it did not need to apply for an export license during the review period. Guizhou Machinery, et al. state that, since late 1993, the "Temporary Provisions for Administration of Export Commodities" have not been strictly implemented and no governmental approval has been required to export commodities on the list. Therefore, Guizhou Machinery, et al. contend that the Department should reject Timken's assertions and continue to grant separate rates to respondents for the reasons set forth above.

Department's Position: We obtained information regarding the extent of government control over respondents' export activities. The PRC companies that responded to our questionnaire submitted information indicating a lack of both *de jure* and *de facto* government

control over their export activities. Contrary to Timken's assertions, our determination in this regard did not hinge on the fact that the term "TRBs" does not appear on the "Temporary Provisions for Administration of Export Commodities" (Temporary Provisions). Further, we are not persuaded to change our separate-rates determinations based on the fact that the term "bearings" appears in the Temporary Provisions. The term "bearings" appears on a section of the Temporary Provisions that simply indicates that an exporter must obtain an "ordinary" license in order to export bearings. There is no evidence on the record that an "ordinary" export license involved any export controls or authorization beyond that involved in any market economy. Instead, as detailed in the *Preliminary Results*, the record evidence in this case, including our verification findings, clearly indicates a lack of both *de jure* and *de facto* government control over the export activities of the firms to which we have assigned separate rates.

We also do not agree with Timken's argument that we have misapplied the presumption of state control in this case. As noted previously, we stated in the *Preliminary Results* that there is no evidence of government control over exports. The record, based on information that respondents provided in response to our requests for information, indicates that the government of the PRC does not control respondents' export activities. Finally, this information was subject to verification and is discussed in the relevant verification reports. The verified information on the record supports our determination that the respondents are, both in law and in fact, free of government control over their export activities. Thus, it would be inappropriate to treat these firms as a single enterprise and assign them a single margin. Accordingly, we have continued to calculate separate margins for the companies listed above. See TRBs IV–VI at 65528.

Comment 4: Timken contends that, in the investigation stages of this proceeding, CMEC was the umbrella organization through which all companies in the PRC exported TRBs to the United States. Timken argues that CMEC's questionnaire responses in this review contradict its claim of independence and indicate that it plays a leading role as part of a huge conglomerate, controlled by the PRC government. Timken asserts that, at the very least, the Department should assume that CMEC's status as a core enterprise unifies all of the allegedly "independent" Chinese trading companies. Timken asserts further that, even if the Department decides that other PRC companies are entitled to separate rates, the Department should not assign separate rates to CMEC and its affiliates. Timken argues that the Department should reject CMEC's and is affilistes' responses regarding separate rates because CMEC has failed to discuss the state's role in the establishment of CMEC.

Guizhou Machinery, et al. argue that Timken's claim that CMEC acts as an umbrella organization for all Chinese TRB facilities is unfounded. Guizhou Machinery, et al. assert that the Department determined that CMEC was no longer an umbrella organization when it decided that Guizhou Machinery, et al. deserved separate rates in TRBs IV–VI. Guizhou Machinery, et al. state that the Department's preliminary conclusion to use separate rates is correct, and it should reject Timken's request to apply a single rate to Guizhou Machinery, et al.

Department's Position: We agree with respondents. Although CMEC failed to respond adequately to our requests for information with regard to separate rates and therefore did not receive a separate rate, as discussed in our response to comment 1 of this section, there is no record evidence in this review to support Timken's claims that other respondents in this review are accountable to or are connected in any way to CMEC. The factual situation in the original investigation has no relevance to this review, especially in light of the fact that the period of investigation was nearly 10 years prior to the POR. The data we received from respondents in response to our original and supplemental questionnaires suggests that the original factual situation no longer exists. Therefore, we have continued to calculate and apply separate margins for respondents in these reviews except as noted elsewhere.

Comment 5: Timken states that CMC's verification report indicates that appointments by the General Manager are not subject to approval by the board and, additionally, that the Board of Directors only appoints the General Manager. Timken claims that what is not discussed in the report is that CMC is a Chinese company "owned by all the people of the People's Republic of China." Timken claims that, under article 44 of The Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People, the Chinese government retains approval authority over the selection of CMC's Director or General Manager, and that nominations must be submitted to the government for approval. Similarly, Timken continues, Article 45 of that law permits the General Manager only to nominate or suggest appointments to and removals from the other top management positions, leaving approval of proposed appointments and removals with the government. Timken argues that the law was not addressed by CMC in its questionnaire responses or at verification and, absent proof of its repeal, it establishes government control at the highest levels of the company. Timken claims that a finding of separate status cannot rationally be made when the highest levels of management require government approval and provisions requiring government approval of other management certainly would apply to the appointment of CMC's representatives to the CMC board. Thus, Timken contends, CMC's management is controlled by the Chinese government.

Department's Position: We disagree with Timken. As we stated in our response to comment 2 of this section, ownership of a company by "all the people" does not in itself disqualify a respondent for application of a separate rate. We verified the fact that CMC's appointment of personnel is independent of government control. Accordingly, we have determined that CMC is eligible for a separate rate.

Comment 6: Timken argues that neither CMC's verification report nor the preliminary results recognize that the 1992 "Temporary Provisions for Administration of Export Commodities" include "bearings" among products subject to direct government export control. That law, Timken claims, submitted as an attachment to various respondent's Section A responses, lists bearings among articles subject to export controls. Under this provision, the government retains control over export activities sufficient to deprive CMC of separate entity status and the preliminary finding of a separate rate for CMC should be abandoned in the final results.

Department's Position: As explained in our response to comment 3 of this section, we have determined that this document alone does not suffice to deny CMC a separate rate. Therefore, we have calculated a separate rate for CMC for these final results.

2. Valuation of Factors of Production

2. (a) Material Valuation

Comment 1: Timken argues that the Department should use India, not Indonesia, as the surrogate country for valuing steel inputs. Timken contends that the Department in the *Preliminary Results* identified India as the primary surrogate and Indonesia as the secondary surrogate and that there is no reason to resort to the secondary surrogate as a source of values unless values available in the primary surrogate are deemed unreliable. Timken asserts further that information which it provided in its brief shows that the average unit values derived from the Indian import statistics are not dissimilar to the values reported by Asian Bearings and SKF India, actual Indian bearing producers. Timken also argues that the Department should use such values of actual bearing producers in India for its valuation of direct materials.

Timken contends that the decision that Indian import statistics are "unreliable" appears to be based largely upon an unreasonable comparison of the Indian import values with imports of bearing-quality steel to the United States, which is a country that is at a level of economic development not even remotely comparable to China. Citing Drawer Slides from the People's Republic of China, 60 FR 54472, 54476–76 (October 24, 1995) (Drawer Slides), Cased Pencils from the People's Republic of China, 59 FR 55625, 55629 (November 8, 1994) (Cased Pencils), and Helical Spring Lock Washers, 58 FR 48833, 48835 (September 20, 1993) (Lock Washers), as well as prior TRB reviews, Timken contends further that a comparison of the average unit values of U.S. imports, Indonesian imports, and Indian imports indicates that there is not a sufficient "aberration" in prices to justify the Department's findings in the preliminary results. In addition, Timken alleges that a large portion of the imports included in the U.S. statistics are shipped from Japan to U.S. ports located near the U.S. subsidiaries of companies subject to antidumping duty orders on bearings and, as such, the statistics reflect intra-company transfer prices between companies attempting to avoid antidumping orders.

Timken contends that it appears that the values which the Department found to be "unreliable" in the precedent determinations were "at least several times" or, when a specific figure is given, over 300 percent higher than the other information on the record. Timken further states that, in Lock Washers, even a value 600 percent higher than the alternative was not found sufficiently aberrant to warrant rejection. Timken contends that the fact that Indian values are only twice as high as the average unit value of U.S. imports supports the use of the Indian statistics. Timken also states that, in Drawer Slides and Lock Washers, Indian import values were found to be inconsistent with Indian export values, as well as with petitioner's costs for the items being valued. In this review, Timken argues, the prices actually paid by a producer and the results from the remand in the original investigation show the values from Indian import statistics to be reasonable under the standards applied in other antidumping proceedings.

Finally, Timken asks that, should the Department use the Indonesian statistics, it should exclude imports under the bearing-quality categories that come from countries not known to produce bearing-quality steel as it did in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania: Final Results of Administrative Review, 62 FR 37194, 37195 (July 11, 1997) (Romanian TRBs). In addition, Timken suggests that aberrationally high or low values and small quantities should be excluded from the calculations.

Guizhou Machinery, et al. argue that the Department should reject Timken's arguments. Guizhou Machinery, et al. state that the Department has used Indonesian import statistics to value steel inputs for the last five administrative reviews and that there is no information on the record of this review which would suggest that a change in methodology is appropriate. Guizhou Machinery, et al. argue further that the Department tested the Indian import statistics for steel using a methodology that is consistent with the statute, the Department's regulations, and administrative practices. Respondents assert that, based on the Department's determination that Indian steel import values are unreliable, the Department valued the steel input and scrap properly by using import statistics from Indonesia, the secondary surrogate country. Citing section 773(c)(1) of the Act, Guizhou Machinery, et al. state that the statute permits the Department to consider information from various market-based economies, including the United States, when selecting surrogate values. In addition, Guizhou Machinery, et al. state that the Court of International Trade recently confirmed the very method the Department used to determine the "best available information" on steel surrogate values, citing Olympia Industrial Inc. v. United States, Consol. Ct. 95–10–01339, Slip Op. 97–44 (April 10, 1997). Peer/Chin Jun and L&S Bearing Co. clarify that the Department is not using the United States as a surrogate; it is merely using steel prices in the United States as a basis of comparison.

Respondents state that Timken's attempt to discredit U.S. import statistics is based upon speculative assertions regarding the import values and should be rejected. Guizhou Machinery, et al. state further that the fact that United States maintains an antidumping duty order on TRBs from Japan in no way supports Timken's speculation that the U.S. import values for bearing-quality steel are understated. Furthermore, respondents contend, there is no evidence that the U.S. import prices are transfer prices because the import statistics do not identify the exporters. Peer/Chin Jun and L&S Bearing Co. state that, in fact, an analysis of the 1996 U.S. import statistics shows that the average import values for Japanese steel is only ten percent less than the average import value for all countries.

While Guizhou Machinery, et al. agree with Timken that the cited cases represent situations in which the proposed surrogates were aberrational, they argue that the cases cited do not stand for the proposition that only values which are over several times higher than other information on the record are aberrational. Respondents state that the Department has never adopted a numerical threshold or minimum standard for defining aberrational data but rather bases each finding upon the record in each case. Consistent with its determinations in prior Chinese TRB reviews, respondents submit that the Department should affirm, in the final results, its preliminary finding that the Indian import values for steel are aberrational for purposes of valuing the steel input and scrap in this review and continue to use Indonesian import statistics.

Finally, Guizhou Machinery, et al. state that the Department should not rely upon the publication provided by Timken for identifying the countries which produced bearing-quality steel during the POR because it is stale information.

Department's Position: We disagree with Timken. Although Indonesia is not the first-choice surrogate country in this review, in past cases the Department has used values from other surrogate countries for inputs where the value for the first-choice surrogate country was determined to be unreliable. See Drawer Slides at 54475–76, Cased Pencils at 55629, and Lock Washers at 48835. The Department has used Indonesia previously as a secondary source of surrogate data in cases involving the PRC where, as here, use of Indian data was inappropriate even though India was the primary surrogate. See, *e.g.*, Chrome-Plated Lug Nuts from the PRC: Final Results of Antidumping Duty

Administrative Review, 61 FR 58514, 58517–18 (November 15, 1996).

Timken's attempt to distinguish the instant proceeding from the cases in which we have departed from a primary surrogate demonstrates that there are a variety of factual situations in which recourse to a secondary source is appropriate with respect to the valuation of a given factor. Accordingly, we must determine the reliability of each factor based on the facts of each case. In this review, as noted above, a comparison of the Indian import values with other, more specific data regarding bearing-quality steel indicates that the Indian values are inappropriate. In contrast, the Indonesian data that we have chosen closely approximate observable market prices for this specific input and therefore constitute a more appropriate valuation source.

Finally, we disagree with Timken that the fact that Japanese values are included in the U.S. import statistics creates a distortion which would make U.S. import statistics an inappropriate gauge of the reasonableness of Indian import statistics. Timken's argument is speculative and unsupported by any evidence on the record. Furthermore, even if we were to disregard U.S. imports from Japan, the Indian import prices are substantially greater than the average U.S. import prices of countries other than Japan.

For these final results, where we have other sources of market value such as Indonesian import statistics or U.S. import statistics, we have compared the Indian import statistics to these sources of market value to determine whether the Indian import values are aberrational, *i.e.*, too high or too low. Based on this comparison, we have determined that the Indian steel values are aberrational and have used Indonesian steel values for our surrogates (see Selection of surrogate country memorandum, dated June 13, 1997).

We agree with Timken that imports under the bearing-quality steel categories that come from countries that do not produce bearing-quality steel should be excluded from our surrogate-value calculations. The data Timken submitted regarding which countries do not produce bearing-quality steel was published one year prior to the beginning of the POR. We do not consider the data to be stale because it is only one year removed from the POR. Therefore we consider this data to be the best facts available on the record of this review for determining which steel prices are properly included in our surrogate value calculations. See Revised Steel Factors-of-Production Values used for the Ninth Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China, dated October 29, 1997 (Revised Steel FOP Memorandum) for a description of how we recalculated the steel values. In addition, we discovered two clerical errors in our preliminary calculation of steel values. First, we used the average exchange rate for the time period which we excluded rather than the time period we used. Second, contrary to what we said in Memorandum to the File from Case Analysts: Factors of Production Values Used for the Ninth Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China dated June 20, 1997 (FOP Memorandum), in some instances, we inadvertently did not exclude imports from NMEs or from countries that shipped fewer than seven metric tons of steel to Indonesia. We have corrected these errors for these final results.

Comment 2: Timken states that the Department should not use Indonesian statistics to value the factors of production. Timken contends that Indonesian statistics do not describe bearing-quality steel as well as the Indian statistics because the Indian statistics are reported and maintained by eight-digit categories and the Indonesian statistics are reported and maintained by six-digit categories. Specifically, Timken contends that the average unit values for the two most important categories of Indonesian steel are inherently less likely to represent the value of bearing-quality steel. While Timken does concede that none of the eight-digit Indian categories correspond specifically to the bearing-quality steel used to manufacture cups and cones for TRBs, Timken claims that the Department can deduce the quality of steel which is in the "others" category. Based on its analysis, Timken states that the eight-digit "others" category defines bearing-quality alloy steel bar more narrowly than the six-digit Indonesian category for all types of steel bars.

Timken also contends that, because the Indonesian import statistics identifying the country of export are only available on an annual basis, the data does not permit consideration of values most contemporaneous with the POR. Timken contends further that, because the data most contemporaneous with the POR do not identify the source country, it is impossible to exclude imports from NMEs, countries which do not produce bearing-quality steel, or to identify small or otherwise aberrational quantities.

In addition, Timken states that, even assuming that the Indian statistical value for bar is "unreliable", other Indian statistic categories are not unreliable. Specifically, Timken presents an analysis which it deems as evidence that the Indian values for bar for rollers and sheet for cages are in line with U.S. values. Finally, Timken states that, if the U.S. values are the only "reliable" figures, then the Department should resort directly to them as the surrogate values.

Guizhou Machinery, et al. contend that the majority of Timken's assumptions are incorrect and that the Department used contemporaneous Indonesian import data, excluded NME imports from Indonesian statistics, and eliminated the values of steel imports entered in small quantities. Guizhou Machinery, et al. contend further that the Department's selection of Indonesian import statistics to value the steel inputs resulted in the use of the best available information on the record of this review.

Guizhou Machinery, et al. contend that Timken does not know, nor is there any factual description on the record of, the specific steel products which were imported under the Indian and Indonesian categories Timken compares for the purposes of its analysis. Respondents assert that Timken's analysis leaves the Department comparing two basket categories. Respondents argue that, even if the Indian import statistics more narrowly define the type of steel, the Indian data are still unreliable.

Department Position: We disagree with Timken. None of the eight-digit Indian tariff categories corresponds specifically to bearing-quality steel used in manufacturing TRBs and there is no evidence on the record to support Timken's argument that data based on the Indian eight-digit "others" category are in any way superior to data based on the Indonesian six-digit categories. We determine that the use of Indian import data is not appropriate to value steel because we are unable to isolate an Indian import value for bearing-quality steel and, more importantly, the steel values in the Indian import data are not reliable, as discussed in our response to comment 1 of this section, above.

As in TRBs IV–VI and in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189 (February 11, 1997) (TRBs VII), we have examined each of the eight-digit categories within the Indian

7228.30 group and have found that, although bearing-quality steel used to manufacture cups and cones is most likely contained within this basket category, there is no eight-digit sub-category that is reasonably specific to this type of steel. We have no information concerning what the "others" category of steel contains, and none of the parties in this proceeding has suggested that this category specifically isolates bearing-quality steel. More importantly, the value of steel in this eight-digit residual category is valued too high to be considered a reliable indicator of the price of bearing-quality steel.

In light of these findings, we have used import data from another surrogate country, Indonesia, a producer of merchandise comparable to TRBs, to value steel used to produce these components. As with the Indian data, we were unable to isolate the value of bearing-quality steel or identify an eight-digit category containing such steel imported into Indonesia; however, unlike the Indian data, the Indonesian six-digit category is consistent with the value of U.S. imports of bearing-quality steel under the comparable six-digit category in the United States, which specifically includes bearing-quality steel. Thus, we have determined that the Indonesian six-digit category is the best available information for valuing steel.

Comment 3: Timken contends that, even if there were a rational basis for rejecting the Indian import statistics, other Indian values, not Indonesian values, would be the appropriate replacements. Timken states that, in addition to the Indian import statistics, the record contains the values from the results of the court-ordered remand for the original investigation as well as recent public data for the actual prices paid for inputs by bearing producers in India, namely, Asian Bearing, SKF India and Tata Timken Ltd. (Tata). Timken contends that use of any of these sources would yield more reliable results than use of the basket categories in Indonesia.

Guizhou Machinery, et al. state that, while there may be no shortage of Indian data, the amount of data is irrelevant because the issue is whether the data are appropriate for purposes of establishing a reliable surrogate value. Guizhou Machinery, et al. state further that, in past reviews, the Department has repeatedly rejected the same alternative sources Timken presents in this review. Guizhou Machinery, et al. also contend that there are other flaws in the data available from the sources suggested by Timken and that the Department has not verified any of the purported factual statements, nor has Timken certified the accuracy of the information.

Guizhou Machinery, et al. state that the data in the remand determination of the original investigation is over 10 years old and is stale. In addition, Guizhou Machinery, et al. state that the consistency between 1985/86 and 1995/96 Indian import values for steel is irrelevant since the Department found the 1995/96 Indian import statistics to be aberrational.

Department's Position: We disagree with Timken. Section 773(c)(1) of the Act states that, for purposes of determining normal value (NV) in a NME country, "the valuation of the FOP shall be based on the best available information regarding the values of such factors * * *" As we stated in TRBs IV–VI and in TRBs VII, our preference is to value factors using published information that is closest in time with the specific POR. See also Drawer Slides at 54476. Also, we have a longstanding practice of relying, to the extent possible, on public statistics from the first-choice surrogate country to value any factors for which such information is available over company-specific data. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) (Butt-Weld Pipe) at 21062. Public statistics provide a more representative value for these material inputs than a single company's information. Therefore, surrogate-country import statistics exclusive of import duties comprise the best available information in this review for valuing raw-material costs. Our reasons for preferring data for Indonesia, rather than for our primary surrogate, India, for valuing steel are set forth in our response to the above comments.

Comment 4: Wanxiang contends that it reported the gross weight for the cup and cone in the data field for cones while reporting zero in the data field for cups. Wanxiang asserts that, because the Department used facts available for cups, the Department effectively double-counted the material costs for cups. As support for its contention, Wanxiang cites the data which it supplied another respondent. Wanxiang argues that the Department should either recalculate the cup and cone weights by allocating the cone weight which it reported on the basis of net weight or the Department should aggregate the gross-weight calculation for cups and cones because the distance from the steel mill and the surrogate value for steel are the same for both the cup and cone.

Timken contends that, because Wanxiang failed to furnish the information the Department requested, the Department was compelled to use facts available. Timken argues that it is too late now for Wanxiang to request that the Department reconfigure its response. Furthermore, Timken asserts that Wanxiang failed to demonstrate that its suggested revisions reflect reality. Finally, Timken argues that the Department should assume that the gross weight of the cup was, at a minimum, the same as that of the cone because the cone must fit within the cup and the cup is generally heavier than the cone. Therefore, Timken asserts, the Department should use the cone gross weight instead of the cup net weight to restate the cup gross weight.

Department's Position: We agree with Wanxiang. We have enumerated the criteria which must be met before we will correct an alleged clerical error in Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833 (August 19, 1996) (Colombian Flowers). We have corrected this error because it is obvious from the record that an error occurred. Furthermore, we examined the data that Wanxiang placed on the record on behalf of another respondent and found that the sum of the weights for cups and for cones is nearly identical to the single weight that Wanxiang reported. Furthermore, we agree with Wanxiang that we should aggregate the gross-weight calculation for cups and cones. While, for purposes of analyzing and verifying the reported data, we normally prefer that these data be segregated; it doesn't matter mathematically for the purposes of calculating the margin whether the gross weights for cups and cones are segregated or aggregated because we use the same steel values for both cups and cones. Therefore, for purposes of calculating Wanxiang's margin, we aggregated the cup and cone gross weights.

Comment 5: Peer/Chin Jun argues that the Department should not disallow a certain supplier's scrap offset to direct materials cost. Peer/Chin Jun argues that the Department has verified this supplier's scrap offset in previous reviews and that this supplier submitted adequate data on behalf of Peer/Chin Jun for the Department to find that the methodology used was reasonable.

Peer/Chin Jun contends further that the Department also cited the great variance in this supplier's reported scrap weights as a percentage of gross weight as a reason for disallowing the scrap offset. Peer/Chin Jun argues that it is logical that scrap weight should vary

depending on the model and component. Peer/Chin Jun also contends that the scrap weight does not vary much when compared only to other components of the same type, and it asserts that scrap rates will be higher for some types of components than for others. Peer/Chin Jun also asserts that the scrap weights reported by this supplier are similar to those claimed by other respondents.

Timken asserts that it would be ludicrous to accept this supplier's unsupported claim for a scrap allowance given the fact that this supplier failed to explain its allocation methodology after having been given an opportunity to do so.

Department's Position: We agree with Timken. We disallowed the scrap offset for this supplier because Peer/Chin Jun failed to support its claim for a scrap offset. Peer/Chin Jun failed to respond to our two requests to describe how it calculated the scrap offset. Moreover, Peer/Chin Jun failed to provide any useful information which we could use to calculate the scrap offset. It is irrelevant whether the great variance in scrap rates is reconcilable. The claim that it is reconcilable does not mitigate the failure to provide an explanation of how the calculation was performed. Therefore, we conclude that this supplier failed to support a scrap offset and we have disallowed this offset.

Comment 6: Timken claims that the verification report confirms CMC buys rings for cups and cones and cages from outside entities and that the turning of rings for cups and cones also occurs at outside entities. Timken states that it has submitted information on the record which will permit the direct valuation of these components based on the cost of those inputs in India and that these should be used in the final results. Timken contends further that the verification report indicates that no more than a certain percentage of scrap produced should be factored into the final result calculations for the final results.

Timken remarks that it has asked repeatedly that the Department conduct a top-down verification of total employment, total production, and total hours allocated to the subject merchandise. Timken claims that the lack of such information leaves each of the reported labor factors without an objective benchmark against which it could be compared.

Timken states that, because data pertaining to forging, machining, heat treatment, and grinding stages of production was provided by facsimile from a subcontractor, the information could not be traced to CMC's source documents. Timken claims that CMC cannot evade verification because operations were performed by subcontractors and that this should be a basis for finding that CMC failed verification, not an excuse to accept unsupported facsimile documents.

CMC responds that, as noted in the verification report, the FOP data for production not completed at CMC was provided voluntarily by its subcontractors and the Department noted no discrepancies; therefore, there is no reason to reject the subcontractors' facsimiles. CMC states that it is not surprising that the data reported by subcontractors could not be traced to CMC's source documents because the source documents involving the subcontractors' operations are maintained by the subcontractors and those documents could have been examined by the Department had it chosen to do so. Therefore, CMC argues, the Department should rely on the FOP information provided by Yantai CMC which included FOP data provided by subcontractors for various phases of the production process.

Department's Position: Although Timken states that it submitted information for the record to permit direct valuation in India of components purchased by CMC, this information is irrelevant. In fact, as the verification report describes on page 8, CMC imported *all* of the steel used in manufacturing all components of the subject merchandise. CMC then sent the imported steel to a subcontractor which made the component from CMC's steel. Thus, CMC did not actually purchase the component from the subcontractor, but rather, CMC purchased the processing services of the subcontractor. In short, the subcontractor merely performed part of the manufacturing process for CMC. Therefore, it is appropriate to use CMC's raw materials expenses and the subcontractor's FOP to construct NV rather than a surrogate value for the finished component.

We disagree with Timken that we should reject the information from verification which was provided to the verifiers at verification by facsimile transmission. We have conducted this administrative review in accordance with section 751(a)(2) of the Act and our regulations. Although a verification was not required by statute, the Department decided to verify the accuracy of CMC's submissions.

The courts have long agreed that verification is a selective procedure and the Department's ability to verify complete responses is constrained by limitations on time and resources. See, e.g., *Bomont Indus. v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990). As in this case, it is not always practicable for the Department to conduct verifications of all companies, suppliers, and subcontractors during every review. The Department has considerable latitude in picking and choosing which items it will examine in detail. *See Monsanto Co. v. United States*, 698 F. Supp. 275, 281 (CIT 1988) (citing *Hercules, Inc. v. United States*, 673 F. Supp. 454, 469 (CIT 1987)). It is enough for the Department "to receive and verify sufficient information to reasonably and properly make its determination." *Hercules*, 673 F. Supp. at 471; *see also Certain Internal-Combustion Industrial Forklift Trucks From Japan:* Final Results of Antidumping Duty Administrative Review, 62 FR 5992, 5602 (February 6, 1997).

Therefore, contrary to Timken's assertions, the fact that the Department could not devote the resources necessary to verify CMC Yantai's entire responses does not, alone, call those responses into question. Moreover, to the extent we found problems with those portions of the responses that we did verify, those problems were relatively minor and did not seriously call the responses into question, neither with respect to the portions we did verify nor those which we did not. See Forklift Trucks From Japan, 62 FR at 5602. For these reasons, we have continued to rely upon the respondents' complete responses, except where indicated.

2.(b) Labor Valuation

Comment 1: Timken argues that the Department should restate all respondents' indirect labor percentages because the reported percentages are, according to Timken, implausible. Citing an affidavit by one of its employees, Timken claims that it requires 3 to 4 minutes to produce a bearing in the United States, but that it requires an hour to produce a bearing in China. Timken then asserts that certain respondents reported direct labor figures lower than 3 to 4 minutes, which, Timken contends, would indicate a productivity rate greater than that which U.S. firms experience. Timken contends that the reported total labor hours per bearing respondents reported are therefore too low and argues that the Department should restate the figures. Timken argues that the available evidence, including an affidavit by one of its employees, as well as the productivity rates, numbers of employees, and indirect labor percentages of other TRB factories in other countries, indicates that respondents have grossly understated total labor and indirect labor costs. In addition, Timken asserts, respondents have not substantiated their reported indirect labor and selling, general, and administrative (SG&A) labor percentages and supplemental responses have not overcome the deficiencies in the original responses. Timken also suggests that the fact that the Department found at verification that Luoyang may have misclassified some types of labor indicates that other respondents made the same misclassification, given the uniformity of the indirect labor and SG&A labor percentages respondents reported. Timken argues that, for these reasons, the Department should reject the indirect and SG&A labor percentages all respondents reported and use labor percentages calculated based on other information which is on the record as the facts available in this case.

Guizhou Machinery, et al., Peer/Chin Jun, and L&S argue that the Department verified the ratios respondents reported in this review and in all previous reviews. Respondents also contend that the data which petitioner submitted in order to support its arguments are unsupported, self-serving, and unverified and that because petitioner's assertions are inconsistent with verified information, the Department should not use Timken's information to contradict substantiated data. Finally, respondents assert that petitioner has grossly exaggerated the significance of the discrepancy in Luoyang's data and use of facts available for all respondents as a result would be inappropriate.

Department's Position: We disagree with Timken. Timken essentially argues that we should restate respondents' indirect and SG&A labor percentages because the labor data respondents submitted is allegedly implausible. However, we examined the data Timken uses to support its assertions and found, as described below, that Timken's analysis of that data was flawed. Moreover, as respondents note, that data was neither verified nor substantiated on the record.

Timken asserts that some respondents reported direct labor figures which would indicate a productivity rate greater than the United States. In fact, when we examined the data, we found that, contrary to Timken's assertion, no respondent reported direct labor for a complete bearing as low as 4 minutes. Furthermore, in most instances, the reported direct labor for complete bearings was approximately two to three times the 3 to 4 minutes that Timken states are required to produce a bearing in the United States and, in some instances, the reported direct labor was significantly higher than 4 minutes. While we did find direct labor figures for individual components that were lower than 3 minutes, it is to be expected that the production time for a component would be less than that of a complete bearing. It would be inappropriate to presume that respondents understated direct labor because the reported time required to produce a component in China is less than the time Timken states is required to produce a whole bearing in the United States.

In addition, the affidavit Timken presents is internally inconsistent regarding productivity rates. See Memorandum from Program Manager to Office Director dated October 29, 1997. However, as noted above, we found that, in most instances, the direct labor respondents reported for complete bearings was approximately two to three times the 3 to 4 minutes that Timken states are required to produce a bearing in the United States. Thus, the direct-labor rates respondents reported are generally consistent with the productivity rates we can infer from the statements at paragraph 12 of the Timken affidavit.

From the evidence on the record, we conclude that the data respondents reported, far from being implausible, suggests strongly that the productivity rate for respondents is much lower than the rate for companies in the United States.

While respondents, as Timken notes, generally reported in their original responses that the indirect and SG&A labor percentages were both about twenty percent of direct labor, most respondents revised the reported percentages in response to our supplemental questionnaires. We have verified the direct labor hours and the indirect and SG&A labor percentages of two respondents.

Finally, while Luoyang may have misclassified some types of labor, as discovered at verification (*see* Luoyang Verification Report dated April 23, 1997 at page 8), we regard this as inconsequential in Luoyang's case. Luoyang reported some labor, which Timken asserts should have been classified as indirect labor, as direct labor. It is important to note that the labor which may be more properly classified as indirect labor is captured in the response as direct labor. Thus, were we to reclassify some of this labor as indirect labor, we would increase the indirect labor percentage and decrease the total direct labor figure by the amount of labor that was reclassified. The net result of this reclassification would therefore yield no difference in the total labor for Luoyang's merchandise. Moreover, as noted above, it would be inappropriate to make inferences about the data other respondents reported based on our findings at the verification of Luoyang's response.

In conclusion, for the reasons stated above, we find that the data respondents reported are reasonable and accurate. We see no reason to reject respondents' reported labor data or to resort to the use of facts available in order to restate the reported labor data. Therefore, we have accepted respondents' labor data as reported and corrected at verification.

Comment 2: Timken contends that the hourly costs which the Department used to value indirect labor and SG&A labor were understated in the preliminary results. Timken asserts that it is not appropriate to use the direct-labor hourly cost for indirect and SG&A labor rates because these hourly costs are considerably higher than direct-labor hourly costs, which the data from SKF India support. Timken also asserts that office employees, constituting SG&A labor, have a considerably shorter work week than factory workers in India and that the Department should have taken this into account in calculating hourly labor costs based on annual or monthly compensation.

Timken suggests that the Department assign costs among the different types of labor by applying the average hourly labor cost from SKF India's 1995–96 annual report to all labor hours. Timken contends that such a blended rate would reflect appropriate weights among direct, indirect, and SG&A labor hours, as well as among skilled, semi-skilled, and unskilled workers, at an actual bearing factory in a country at a level of economic development comparable to the PRC. Timken also suggests, as alternatives, a simple average of the average costs of workers that can be properly included and indirect and SG&A labor from Investing, Licensing & Trading Conditions Abroad, India (IL&T), rates based on SKF India's labor contract and rates based on data from Tata Timken, Timken's affiliate in India.

Guizhou Machinery, *et al.* argue that the Department should continue to use IL&T data because these data reflect publicly available published information, which Guizhou Machinery, *et al.* contend is more reliable than company-specific data which Timken submitted. Guizhou Machinery, *et al.* also note that the use of publicly available published information is consistent with the Department's practice and prior reviews of this order. Guizhou Machinery, *et al.* point out that all of Timken's alternative methodologies, except for the suggestion

to use a blended rate, rely on unpublished, unverified data that produce distortive results. Guizhou Machinery, *et al.* contend further that the Department should reject Timken's suggested blended-rate methodology because the Department has data more specific to the POR, because SKF India manufactures products other than bearings, and because the blended-rate methodology inflates the costs of skilled and unskilled direct labor improperly.

Peer/Chin Jun and L&S contend that hourly costs for indirect labor and SG&A labor were not understated in the preliminary results. Peer/Chin Jun and L&S argue that Timken's suggested methodology does not take into account the number of workers in each category of worker, which results in an improperly high representation of higher-paid workers. Based on the factual situation developed in this record, Peer/Chin Jun and L&S contend that the Department's methodology is appropriate.

Department's Position: We disagree with Timken. While it is true that some categories in IL&T, such as accountants and inspectors, have higher average labor costs than those of skilled laborers, other categories of workers that can be included properly in indirect and SG&A labor, such as quality inspectors, cleaning workers, clerks, and typists, have lower average labor costs than those of skilled laborers. Timken argues that, because the simple average of these wage rates is greater than the rates which we used in our preliminary results, the cost of indirect and SG&A labor was understated. We generally do not regard simple averages to be accurate reflections of actual experience because simple averages do not reflect factors other than the one being averaged. In this instance, a simple average of labor costs does not take into account the number of each type of worker employed by a producer. For example, it is unlikely that the respondents in this case employ the same number of toolmakers, quality inspectors, foremen, mechanical engineers, and cleaning workers. Thus, a simple average of the labor costs for these types of workers is an inaccurate measure of the actual experience because it assumes that there is an equal number of workers from each of the named vocations. The record does not contain any information which specifies the number and vocation of workers employed at each factory. Therefore, we conclude that the simple averages of wages from IL&T that Timken cites are an improper tool for analysis in this instance. In addition, for these same reasons, we conclude that Timken's suggestion to use a simple average of rates from IL&T in order to value indirect and SG&A labor costs is inappropriate and therefore unacceptable.

Timken also points to SKF India's 1995–96 annual report in support of its assertion that indirect and SG&A labor costs are higher than direct labor costs. As noted earlier, it is inappropriate to use SKF India's data, given the fact that we have other, broader-based data available for the valuation of indirect and SG&A labor expense. As we indicated in Butt-Weld Pipe at 21062, it is appropriate in NME cases to rely, to the extent possible, on publicly available statistical information from the first choice surrogate country to value factors of production over company-specific data. In addition, while it might be true that SKF India's overhead and SG&A labor costs are, on average, higher than its direct labor costs, it is not clear from the record that this is true of most, or even any, other companies that produce tapered roller bearings in India. It is also not clear whether SKF India employs workers of the various vocations found at a TRB factory in the same proportions as the Chinese respondents. Finally, SKF India produces merchandise other than TRBs and we cannot segregate the amount of labor dedicated to non-TRB production from the given total labor costs. Therefore, we continue to use public statistical information in place of company-specific data. We note, however, that we use SKF India's data for valuing overhead expenses other than indirect labor solely because we have no other, more appropriate data with which to value such expenses.

We find that Timken has not demonstrated successfully that direct-labor rates are not a reasonable surrogate for valuing indirect and SG&A labor expenses. For these reasons, we have not altered our methodology for these final results. We will examine this issue in future reviews, however, to determine the continued appropriateness of this methodology.

Comment 3: Timken asserts that the Department based labor costs on the hours paid rather than hours actually worked and contends that this methodology does not take into account vacations, sick leave, or any other time for which respondents paid but for which employees did not work. Consequently, Timken argues, the hourly rate thus calculated does not represent what the employer paid for an hour of actual work.

Guizhou Machinery, *et al.* argue that the Department has rejected this argument in prior reviews and should continue to do so in this review. Guizhou Machinery, *et al.* contend that there is no support for Timken's contention that hourly labor costs should reflect only the expenses accrued to an employer for the time the employee performs actual work. Guizhou Machinery, *et al.* further note that the Department's calculations include the cost of fringe benefits and argue that no adjustment is necessary. Finally, Guizhou Machinery, *et al.* claim that the verification report for CMC Yantai demonstrates that factory workers are not paid for idle time and thus Timken's argument that the Department's hourly rate does not represent what the employer paid for an hour of actual work is incorrect.

Department's Position: We disagree with Timken. In our preliminary results we valued direct labor using rates reported in IL&T, which states that fringe benefits normally add between 40 percent and 50 percent to base pay. See FOP Memorandum, attachment II at page 52. Accordingly, we multiplied base pay by 1.45 in order to incorporate fringe benefits. FOP Memorandum at 4.

Whereas Timken suggests we calculate a wage rate based only on time spent on the job, we find that expenses related to holidays, vacation, sick leave, etc., belong in the numerator of the surrogate labor-rate calculation and that the amount of time spent on vacation and sick leave belongs in the denominator of the calculation. Because the employer incurs expenses both for employees on vacation and employees on the job, it incurs a fully loaded labor cost to produce the merchandise. By adjusting the base pay to include such fringe benefits as vacation, sick leave, and casual leave, we calculated a fully loaded direct-labor rate that more accurately represents the actual direct-labor cost to the manufacturer. See TRBs VII at 6200–6201. Therefore, there is no need to account for actual hours worked.

Comment 4: Guizhou Machinery argues that the Department treated all labor reported from one supplier as skilled labor rather than unskilled labor erroneously. Guizhou Machinery cites its supplemental response in support of its assertion.

Timken contends that it is not clear from the record that the Department accepted Guizhou Machinery's claimed ratio of skilled to unskilled labor hours and argues that the Department should only make this change if it is convinced of the accuracy of the claimed ratio.

Department's Position: We agree with Guizhou Machinery. Guizhou Machinery indicated the actual amount of unskilled labor for the models

produced by the supplier in its April 24, 1997 response at page 6. Furthermore, the proportion of this unskilled labor to the total labor reported in the response is consistent with Guizhou Machinery's characterization in the narrative of its October 30, 1996 response at pages 6 through 7. Therefore, we have made this change for these final results.

Comment 5: Xiangfan argues that the Department treated all labor reported from one supplier as skilled labor rather than unskilled labor erroneously. Xiangfan cites its supplemental response in support of its argument. Xiangfan requests that the Department correct its labor rate by using the "blended" labor rate cited in the FOP memorandum at 4.

Timken contends that it is not clear from the record that the Department accepted Xiangfan's claimed ratio of skilled to unskilled labor hours and argues that the Department should only make this change if it is convinced of the accuracy of the claimed ratio.

Department's Position: We agree with Xiangfan. Although Xiangfan only reported assembly labor in the skilled-labor field in its database, its narrative response contained the ratio of skilled and unskilled labor. Upon review, it is clear that we should have applied the "blended" labor rate rather than the skilled labor rate and we have corrected this rate for these final results.

Comment 6: Timken argues that the selling activities of the U.S. affiliate are not included in the total labor hours upon which CMC bases its indirect and SG&A labor percentages. Timken notes that, while selling labor hours would need to be included in order to derive fair indirect and SG&A labor expenses, it is too late for CMC to place information on the record for the first time. Timken requests that the Department use the facts available to determine the margin or at least for the purpose of calculating indirect and SG&A labor.

Timken also contends that another respondent in this review included support workers in direct labor, thereby allegedly understating the percentage of indirect workers and, because the two respondents share the same counsel, it is possible that a similar problem exists with CMC's labor reporting.

CMC responds that Timken provides no basis for its argument that selling activities are not part of the calculation of SG&A. CMC states that the Department verified CMC's reported SG&A percentage by calculating the percentage itself and, therefore, the Department should use the verified number.

Department's Position: We disagree with Timken that we should recalculate CMC's indirect and SG&A labor percentages to reflect labor incurred by CMC's U.S. affiliate. This labor has nothing to do with the production of subject merchandise and is not a part of the cost of manufacture (COM). Rather, we find that CMC's U.S. affiliate's labor cost pertains to selling the merchandise to unaffiliated customers in the United States. Therefore, we have deducted the expenses associated with such labor from CEP instead of including them in the COM. As described in our response to comment 5 of section 6 (Miscellaneous Issues), below, we have deducted all expenses incurred by the U.S. affiliate from CMC's CEP.

We also disagree with Timken's supposition that CMC may have made an error in its SG&A calculation simply because another respondent, who shares the same counsel, made an error. It would be inappropriate for us to make such an assumption. Furthermore, we verified the SG&A percentage and, therefore, have used it for the final results.

2.(c) Overhead, SG&A and Profit Valuation

Comment 1: Timken argues that SKF India's overhead and SG&A ratios the Department used to calculate overhead and SG&A are understated. Timken contends that SKF India purchased forgings from its subcontractors. Because production of forgings from bearing-quality alloy steel is capital-intensive, Timken argues, a producer that subcontracts the forging operation would have higher material costs but lower fixed and overhead costs. Timken claims that, because the Chinese producers do not purchase forged materials, their experience is dissimilar to that of SKF India. Based on this reasoning, Timken states that the Department should increase the costs of raw materials to reflect the forging values or increase the overhead costs to reflect the use of lower-value materials and additional capital-intensive overhead costs. Timken suggests a method which the Department could use to achieve this. Finally, Timken states that the Department should also recalculate the ratio of SG&A to material costs using the revised material costs.

Guizhou Machinery, et al. state that, although the Department has a preference for basing overhead and SG&A rates on industry-wide published information, because industry-wide information is not available, the Department used overhead and SG&A rates applicable to SKF India. Guizho Machinery, et al. state further that, because SKF India produces non-subject merchandise, its annual report does not allow for the specific allocation of labor for overhead and SG&A used in the production of TRBs and, therefore, the Department cannot make any specific adjustments to these company-wide overhead and SG&A ratios. Furthermore, Guizhou Machinery, et al. state that the Department does not typically adjust the component values used to derive SG&A and overhead ratios in the manner Timken suggests. Consequently, Guizhou Machinery, et al. argue, the Department should not adjust the expenses it used from the SKF report to formulate ratios to determine actual amounts for overhead and SG&A.

Citing TRBs VIII at 6178, Peer/Chin Jun and L&S state that the Department should use the same methodology that it has in previous reviews.

Department Position: We disagree with Timken's request that we adjust the overhead and SG&A rates. While we prefer to base our factors information on industry-wide public information, information regarding overhead and SG&A rates for producers of subject merchandise during the POR (except for the indirect-labor portion of overhead and SG&A, which we valued separately) is not available. Therefore, we used the overhead and SG&A rates applicable to SKF India, a company that produces subject and non-subject merchandise.

In deriving these rates, we used the SKF data both with respect to the numerators (total overhead and SG&A expenses, respectively) and denominator (total cost of manufacturing). This methodology allowed us to derive internally consistent ratios of SKF India's overhead and SG&A expenses. These ratios, when multiplied by the factors of production we used in our analysis, constitute the best available information concerning the overhead and SG&A expenses that would be incurred by a PRC bearings producer given such factors of production. Timken's recommended adjustment would reduce the denominator but would leave the overhead and SG&A expenses in the numerator unchanged. As such, we find that this adjustment would itself distort the resulting ratio, rather than cure the alleged distortion in our calculations. Furthermore, because SKF India produces non-subject merchandise, its annual report does not allow us to allocate labor for overhead and SG&A used specifically in the production of TRBs. Thus, we cannot make any specific adjustments to these company-wide overhead and SG&A ratios. Therefore, we have used the ratios we

used in the preliminary results for these final results.

Comment 2: Timken claims that the Department must isolate the direct-labor component of SKF India's cost of goods sold in order to calculate the overhead rate as a percentage of the total of materials, plus direct labor, and overhead based on SKF India's annual report. Timken suggests that this can be done by subtracting from SKF India's total labor costs the proportion that relates to overhead and SG&A. Citing its comments with regard to labor costs, Timken also asserts that the Department should account for the differences in labor costs between direct labor and labor for overhead and SG&A.

Guizhou Machinery, et al. state that Timken has confused labor costs with labor inputs and attempted erroneously to use the former to establish ratios for the latter. Guizhou Machinery et al. contend that the Department calculates surrogate values for cost, not input quantities, and that the Department should reject Timken's suggested methodology.

Department's Position: We disagree with Timken. Timken mischaracterizes our calculation of overhead. Our calculation of overhead incorporates both direct and indirect labor costs as explained below. As we noted in the FOP Memorandum at page 5, we calculate an overhead-to-COM ratio by dividing SKF's total overhead expense by the sum of SKF's total materials, direct labor, indirect labor, and overhead expenses from its annual report. We calculate the COM component of constructed value for subject merchandise by summing direct material expense, direct labor expense, indirect labor expense, and overhead expense. However, while we know the direct material expense, direct labor expense, and indirect labor expense of the subject merchandise, we do not know the overhead expense of the subject merchandise. Therefore, in order to calculate the COM component of constructed value for subject merchandise, we must substitute a surrogate for overhead expense. We calculate this surrogate overhead expense by multiplying COM by the overhead-to-COM ratio we calculated using SKF India's data. This substitution leaves COM as the sole unknown factor. Therefore, we solve for COM using the direct material expense, direct labor expense, indirect labor expense, and the overhead-to-COM ratio. Because both direct and indirect labor figures are part of this calculation, we do not need to adjust for the fact that both direct and indirect labor are included in SKF India's labor expense in our calculation of the overhead-to-COM ratio. Therefore, there is no need to segregate the direct-labor component from SKF's financial statements in order to calculate the percentage because we do not use only direct labor expense in our calculations.

Comment 3: Timken argues that the Department designated the line item "traded goods" in the SKF India report incorrectly as a materials cost to include in the calculation of the overhead, SG&A, and profit rates. Timken asserts that "traded goods" are finished products which SKF India purchased and which have nothing to do with its manufacturing operations. Timken states that SKF India's financials segregate "purchases of traded goods" from "raw materials and bought out components consumed" and, in a different part of the report, separates them from products SKF "manufactured and sold during the year." Timken states further that the report identifies "purchases of traded goods" as "ball and roller bearings," "bearing accessories and maintenance products," and "textile machinery components." Timken notes that, in past reviews, the Department included only steel costs in the cost of materials, not finished products. Petitioner contends that this prior approach is correct and, because traded goods are already manufactured and do not affect production, the Department should exclude them from the overhead denominator.

Guizhou Machinery, et al. respond that Timken's argument with regard to "traded goods" is misguided and that the Department's calculations in the preliminary results concerning this line item were correct. Guizhou Machinery, *et al.* state further that the fact that SKF India did not manufacture these items does not mean that the expense of purchasing them should not be included as a part of the denominator the Department's overhead calculations.

Department's Position: We disagree with Timken. In past reviews we did not include a line item for "purchases of traded goods" in the COM because the SKF India financial statements that we used in those reviews did not include this line item. In this review, however, the SKF financials include a separate line item for this cost and we have included it in the COM. According to the description in the SKF report, it is appropriate to consider "purchases of traded goods" as COM expenses. They are not overhead or SG&A expenses but instead reflect the common practice of manufacturers purchasing finished and semi-finished goods to meet their clients' demand. SKF does not incur direct materials or direct labor expenses with respect to these products but instead incurs the expense of purchasing them. Because these purchased goods are an integral portion of cost of goods sold, they are ordinary business expenses that we cannot ignore. Therefore, for the final results, we included "purchases of traded goods" as part of the denominators in the overhead, SG&A, and profit-rate calculations.

3. Freight

Comment 1: Timken contends that the Department understated the marine-insurance expense by applying a per-ton insurance rate for sulfur dye instead of a value-based insurance rate as a surrogate value for shipments of subject merchandise. As evidence, Timken cites the Department's questionnaire as indicating marine-insurance premiums are normally based on the value of merchandise. Timken recommends that the Department calculate a marine-insurance factor based on the ratio of the insurance charge per ton of sulfur dye divided by the value of sulfur dye per ton (based on U.S. Customs value) and apply this factor to the price of TRBs sold in the United States. Timken claims that this rate can more reasonably be applied to U.S. TRB prices to estimate marine-insurance expenses.

Guizhou Machinery, *et al.* contend that it is not reasonable to assume that the difference, if it exists, in Indian marine-insurance rates applicable to shipments of sulfur dye and TRBs can be measured accurately simply by comparing the difference in product values because, Guizhou Machinery, *et al.* assert, insurance rates are not based on value alone. Guizhou Machinery, *et al.* claim that Timken has not demonstrated that its suggested adjustment would be more accurate than the actual rates which the Department used in the preliminary results and which are consistent with the calculations in other NME cases. Finally, Guizhou Machinery, *et al.* assert that Timken's argument is based upon Customs values which have not been submitted on the record for this review.

Department's Position: While we agree with Timken that the use of value-based rates is preferable to weight-based rates, we cannot use its suggested methodology to calculate an insurance rate based on value. Timken suggest that we use Customs value to compute the insurance rate. However, premiums are typically based on the sales value of the merchandise, not the U.S. Customs value. There may be a significant difference between the value that

Customs assigns to merchandise and the value that the market assigns to merchandise. Therefore, because we do not have the total sales price for sulfur dye, and because we do not have the Customs values of the imported subject merchandise, we must continue to value insurance expense based on weight, which we do have on the record.

It has been our practice in Chinese cases to base insurance rates on the sulfur dye data, regardless of the type of value of the product. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China, 62 FR 14392, 14396 (March 26, 1997), and Sebacic Acid from the People's Republic of China; Preliminary Results of Antidumping Administrative Review, 62 FR 42755, 42758 (August 8, 1997). Therefore, we have applied those data in this case.

Comment 2: Wanxiang asserts that the Department failed to convert the marine-insurance expense from rupees to U.S. dollars in its margin calculation.

Department's Position: We agree with Wanxiang and have corrected it for these final results.

Comment 3: Guizhou Machinery contends that the Department erred by using the east-coast rate to calculate ocean freight for all transactions in spite of the fact that some transactions had west-coast destinations.

Department's Position: We agree with Guizhou Machinery. This error is obvious from the record and we have corrected it for these final results.

4. Facts Available

Comment 1: Peer/Chin Jun argue that the Department inappropriately resorted to the use of facts available for calculating the margins for certain models for which FOP data were actually available. In one instance, Peer/Chin Jun contend that the Department failed to match U.S. sales appropriately with their FOP data because respondent miscoded the supplier code in the database.

In a second instance, Peer/Chin Jun argue that the Department should not have used facts available for models supplied by a firm which received facts available. Peer/Chin Jun asserts that such a decision penalizes Peer/Chin Jun unfairly. Peer/Chin Jun assert that the Department should apply the weighted-average margin it calculated for all of Peer/Chin Jun's other U.S. sales to these sales, as the Department did in the preliminary results for models for which Peer/Chin Jun's suppliers did not provide FOP data.

In a third instance, Peer/Chin Jun argue that the Department should use the FOP data for a certain model that was submitted by a "substitute" producer, which is a producer other than the actual supplier of the merchandise.

Finally, Peer/Chin Jun argue that, due to a typographical error, some sales had an incorrect factory code in the database. Peer/Chin Jun add that, even if the Department does not determine that this error is obvious from the record, the Department should use data submitted by a particular producer that did supply FOP data for this model.

With regard to the first instance, Timken notes that Peer/Chin Jun admit that this may have been the result of a typographical error. Timken argues that it is too late to attempt a correction of so fundamental an error.

Timken argues that, with respect to the second instance, the Department should continue to use facts available because the data submitted by the supplier of that data contained major flaws. Due to the proprietary nature of the flaws, cannot be discussed in this notice. See Peer/Chin Jun's final results analysis memorandum dated October 29, 1997.

With respect to the third instance, Timken argues the NV of merchandise of a producer is the NV of merchandise of that producer regardless of how the NV is determined. Timken contends that Peer/Chin Jun's request would be no different if it came from an importer of a respondent whose margin is determined on the basis of facts available asking to have the margin of a cooperating respondent applied instead. Timken argues that it would be contrary to the remedial purpose of the antidumping law to honor Peer/Chin Jun's request.

With regard to the final instance, Timken argues that the Department should not accept data from a "substitute" producer, which, Timken asserts, would enable a respondent to review the record for the most favorable data, unrelated to its own operations, which other respondents have submitted.

Timken adds that Peer/Chin Jun has not shown sufficient effort in gathering information from its suppliers or in encouraging those suppliers to submit complete information. Timken argues that, in light of this failure, the Department should base Peer/Chin Jun's margin on the facts available.

Department's Position: With regard to the first instance, we agree with Peer/Chin Jun that the firm reported the wrong factory code for these models in Exhibit 1 of its June 3, 1997 supplemental response. It is obvious from the record as it existed prior to the preliminary results that this was a clerical error and that the correct factory code can be obtained from the other models listed in that exhibit. Therefore, we have corrected the code for these models.

With regard to the second instance, we disagree with Peer/Chin Jun, but, because of its proprietary nature, we cannot discuss this issue in the context of this notice. For a discussion of this issue, please see Memorandum from Laurie Parkhill to Richard Moreland dated November 3, 1997.

With respect to the third instance, we agree with Peer/Chin Jun. We inadvertently omitted a constructed value for one particular model. We have corrected this error for the final results.

Finally, with regard to the last instance, we disagree with Peer/Chin Jun. Proprietary information contained in Exhibit 6 of the firm's November 12, 1996 response prevents our conclusion that this was a typographical error. See Peer/Chin Jun's final results analysis memorandum dated October 29, 1997 for a further discussion of this issue. Moreover, because Peer/Chin Jun failed to either provide FOP data directly from this supplier or name a source for substitute data in its supplemental response, we have applied facts available to these U.S. sales.

5. Assessment

Comment 1: Timken contends that one of the Harmonized Tariff Schedule (HTS) numbers listed in the scope section of the preliminary results does not exist and requests that the Department announce the correct number for TRBs in the final results. Timken also contends that the scope section did not include products corresponding to Tariff Schedules of the United States (TSUS) item number 692.32, which it claims were subject to the original order. Timken argues that, if the Department is unable to identify all of the HTS numbers that correspond to TSUS 692.32, it should at least identify two particular HTS numbers as within the scope of the order.

Department's Position: We agree with Timken. We examined the HTS and discovered that there were inaccuracies in the scope section of the *Preliminary Results*, we have fixed this error in the scope section of this notice, above, and we have reiterated the textual description of the order in this notice. Finally, we attempted to identify the HTS numbers which correspond to TSUS 692.32, but, aside from the two particular HTS numbers which Timken identified, we were unable to identify the specific HTS numbers that correspond to TSUS 692.32. We

determined that it is appropriate to apply the order to TRBs which enter under the two HTS numbers Timken identified (8708.99.80.15 and 8708.99.80.80) and we have added these two particular HTS numbers to the scope section of this notice.

Comment 2: Great Wall and Huangzhou argue that the Department should issue instructions to Customs to liquidate entries from Great Wall and Huangzhou at the duty rate at which entries from these companies were made. In addition, both companies claim that the deposit rate for future shipments from both companies should be 8.83 percent.

Timken argues that the Department should apply a rate of 25.56 percent to Great Wall because the 8.83 percent quoted in the final results of the 1994–95 review was a clerical error. Timken also asserts that the Department should apply a rate of 29.4 percent to Huangzhou because that is the PRC rate in the review in which it was first differentiated as a separate entity.

Department's Position: We agree with respondents in part. During this POR, Great Wall's and Huangzhou's entries of subject merchandise entered the United States with a cash-deposit requirement of 8.83 percent, the PRC-wide rate in effect during the POR, because we had never conducted a review of either entity. For this review, we determined that both respondents were separate from the PRC entity (see *Preliminary Results* at 36766–7). However, no party requested a review of either separate entity. Consistent with 19 CFR 353.22(e) which establishes the automatic liquidation of entries if the party is not subject to review, we will instruct Customs to liquidate entries during the POR at the rate required at the time of entry. Further, these companies will be required to post cash deposit at their current cash-deposit rate until such time as that rate is changed pursuant to a final results of review of the company.

Comment 3: Transcom argues that the Department cannot alter the rate of duties assessed on or to be deposited on entries of merchandise that were exported by companies which were not subject to this review because the statute limits the review, and the resulting determination, to those companies for which a review was requested. Transcom argues that the Department's regulations provide an explicit directive that merchandise exported by unreviewed companies will be liquidated at the duty deposit rate and that an exporter that is not under review would have no reason to anticipate that antidumping duties assessed on its merchandise would vary from the deposit rate. Citing *Sigma Corp.* v. *United States*, 841 F. Supp. 1255 (CIT 1993), Transcom contends that the Department's failure to provide notice to the unreviewed companies precludes a change in their deposit and assessment rates. Transcom also argues that, because unreviewed exporters do not meet the prerequisites for application of facts available, the Department is precluded from resorting to facts available in determining a rate for such companies. Finally, Transcom argues that the Department should not assign the PRC-wide rate to TRBs exported by companies outside of China. Transcom contends that the premise underlying the PRC rate is inapplicable to companies outside China.

Timken argues that Transcom fails to establish its claim that the companies to which it refers are not covered by review because it failed to name those companies. Timken contends that, to obtain separate rates, it is incumbent on Transcom to request a review and provide the necessary information for the Department to make a determination.

Department's Position: We disagree with Transcom. As we discussed in TRBs VIII at 6187:

> It is our policy to treat all exporters of subject merchandise in NME countries as a single government-controlled entity and assign that entity a single rate, except for those exporters which demonstrate an absence of government control, both in law and in fact, with respect to exports * * * Pursuant to our NME policy, we presume that all PRC exporters or producers that have not demonstrated that they are separate from PRC government control belong to a single, state-controlled entity (the "PRC enterprise") for which we must calculate a single rate (the "PRC rate"). The CIT has upheld our presumption of a single, state-controlled entity in NME cases. See *UCF America, Inc.* v. *United States*, 870 F. Supp. 1120, 1126 (CIT 1994), *Sigma Corp I*, and *Tianjin Machinery Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1013–15 (CIT 1992). Section 353.22(a) of our regulations allows interested parties to request an administrative review of an antidumping duty order once a year during the anniversary month. This regulation specifically states that interested parties must list the "specified individual producers" to be covered by the review. In the context of NME cases, we interpret this regulation to mean that, if at least one named producer or exporter does not qualify for a separate rate, the PRC enterprise as a whole (i.e., all exporters that have not qualified for a separate rate) is part of the review (this is analogous to our practice in market-economy cases of including in reviews persons affiliated to a company for which a review was requested). On the other hand, if all named producers or exporters are entitled to separate rates, there has been no request for a review of the PRC enterprise and, therefore, the NME rate remains unchanged.

The practice described above is a longstanding one. Therefore, we disagree with Transcom's assertion that companies not named in the initiation had no notice and opportunity to defend their interests by demonstrating their independence from the PRC entity. We attempted to send requests for information to every company named in the notice of initiation and to the government of the PRC, and we inquired with the U.S. Embassy and consulates in the PRC for addresses and telephone numbers of TRB producers in the PRC. See Letter from Laurie Parkhill to Interested Parties dated August 12, 1996, Letter from Laurie Parkhill to China Chamber of Commerce dated August 12, 1996, and the two Memoranda from Analyst to Program Manager dated August 19, 1996. Furthermore, the antidumping duty order on TRBs is 10 years old. Thus, any company in the PRC which exports TRBs to the United States should be aware of the fact that it must request a separate-rate determination in order to avoid the application of the PRC rate to its entries.

Any company that believes it is entitled to a separate rate may place evidence on the record supporting its claim. See our response to comment 2 of this section. Because the companies to which Transcom refers (Transcom does not name the companies in question; it is therefore impossible for us to determine who they are) evidently did not exercise their opportunity to request an administrative review or separate-rate determination, we have continued to apply the PRC rate to these firms.

Finally, we disagree with Transcom that we should not assign the PRC-wide rate to TRBs exported by companies outside of China. Although Transcom asserts that the premise underlying the PRC rate is inapplicable to companies outside China, it is impossible, given the lack of any information about these firms, to determine whether the appropriate sale to review is made by the third-country reseller to the United States or by the Chinese producer or exporter to the third-country reseller. If a third-country exporter of subject merchandise wishes to have its own margin rate, it is incumbent upon that exporter to submit information, as Premier and Chin Jun have done, demonstrating that it, and not the Chinese producers or exporters, made the sale to the United States.

6. Miscellaneous Issues

Comment 1: Timken argues that the Department should treat sales of subject merchandise by Chinese suppliers to Chin Jun as export price (EP) sales made by the Chinese suppliers instead of Peer/Chin Jun's sales because the record indicates that Peer/Chin Jun's suppliers knew or had reason to know that sales to Peer/Chin Jun were ultimately destined for sale to the United States and, therefore, the review should be terminated with respect to Chin Jun because Chin Jun had no reviewable sales.

Timken contends that Peer/Chin Jun's suppliers had reason to know the ultimate destination of the subject merchandise because bearings sold to the U.S. market are all identified with Peer's trade name. Citing Titanium Sponge from Russia (Titanium Sponge), 61 FR 9676, 9677 (1996), and Fresh Garlic from the People's Republic of China (Garlic), 61 FR 68229, 68230 (December 27, 1996), Timken argues that, for the reasons stated above, there is sufficient evidence on the record for the Department to impute knowledge on behalf of Peer/Chin Jun's suppliers.

Timken also asserts that Chin Jun is simply a purchasing office of Peer and has no independent existence. Timken argues that, because Peer and Chin Jun are effectively the same company, the sale from the unaffiliated supplier to Peer/Chin Jun is the appropriate sale to examine and, citing Persulfates from the People's Republic of China (Persulfates), 62 FR 27222, 27234 (May 19, 1997), argues that it is immaterial whether the merchandise purchased by Peer/Chin Jun is resold to a customer outside the United States. Timken also argues that, even if Department precedent permitted consideration of Peer's resales to third countries, Peer's third-country sales were nearly nonexistent and cannot rationally form the basis for assuming that Chinese vendors did not know that the United States was nearly always the ultimate destination. Timken contends that, even if the third-country sales were known by the Chinese suppliers, the volume of sales is small enough that it would not constitute sufficient cause of confusion about the ultimate destination of the merchandise.

Timken alleges that Peer/Chin Jun took affirmative steps to mislead its suppliers of subject merchandise as to the destination of the merchandise and that Peer/Chin Jun made its claim that its suppliers could not have known that the merchandise was for exportation to the United States based on this fact. Timken argues that, to the extent that Peer/Chin Jun affirmatively and deliberately attempted to mislead its suppliers in order to affect the dumping margin, the Department cannot permit this to avoid encouraging respondents to manipulate the rules to their advantage and, if Peer/Chin Jun's suppliers did not report such sales in their responses due to deception on the part of Peer/Chin Jun, the Department should assign a margin separately to Peer/Chin Jun based on adverse facts available.

Peer/Chin Jun argues that the Department correctly issued a rate to Chin Jun and notes that the Department issued antidumping margins to Chin Jun in four previous reviews. Peer/Chin Jun, in citing 19 CFR 353.45(b), argues that the statute and the Department's regulations provide for such a calculation when the reseller/exporter is related to the U.S. customer.

With respect to the sales from Chin Jun's suppliers, Peer/Chin Jun argues that Timken contradicts itself when Timken argues that Chin Jun's suppliers must have known the destination of bearings marked "Peer" and yet also argues that Chin Jun's suppliers' lack of knowledge of the destination was the result of Chin Jun's efforts to mislead these suppliers into believing that Peer/Chin Jun sell bearings on a worldwide basis. Peer/Chin Jun contends that both cannot be true. Rather, Peer/Chin Jun argues that its suppliers did not report these sales because they did not know that the ultimate destination was the United States.

Peer/Chin Jun argues that the test employed by the Department is whether Chin Jun's suppliers knew or should have known that the bearings were destined for the United States. Peer/Chin Jun argues that there is no evidence on the record that supports such a finding. Peer/Chin Jun argues that the "special markings" referred to in Titanium Sponge provide for specious logic in its case, because, Peer/Chin Jun contends, it is not uncommon for companies such as Peer and Timken to use their brand name for sales made throughout the world. Therefore, the trademark "Peer" imprinted on a bearing does not necessarily indicate knowledge of the merchandise's final destination.

In contrast to the cases cited by Timken, Peer/Chin Jun points to *NSK Ltd. et. al.* v. *United States (NSK)*, 969 F. Supp. 34 (CIT, June 17, 1997), in which the Court affirmed the Department's traditional application of the "knowledge test" to resellers. Peer/Chin Jun argue that *NSK* requires the Department to find evidence of actual knowledge that particular sales were destined for importation into the United States before concluding that the manufacturer knew or should have known the destination. Peer/Chin Jun contends that the factual situation does not exist in the instant case where it made sales to the United States but also made some sales to third countries.

Peer/Chin Jun also argues that, in *NSK*, the Court recognized that the "knowledge test" has such a high standard that a reseller can exploit the system by selectively providing knowledge to its suppliers (which the Court called the "perfect scenario"). Peer/Chin Jun argues that, even if this were the case, *NSK* would require the Department to reach the same conclusion. In contrast to Timken's allegations, Peer/Chin Jun asserts that it did not concoct a "perfect scenario." Rather, Peer/Chin Jun asserts that the special status of Hong Kong and a rationalized approach to purchasing, warehousing, and shipping lead to its particular manner of conducting business.

Department's Position: We disagree with Timken. In cases where evidence exists that a supplier had knowledge that the ultimate destination of the merchandise was the United States, such as in Titanium Sponge, Garlic, and Persulfates, we have considered the sale by the supplier to the reseller as the starting price in our margin calculations. However, no such evidence of knowledge exists here. We agree with Peer/Chin Jun's interpretation of *NSK*. Lacking evidence of actual knowledge that particular sales were destined for the United States, we cannot assume such knowledge, regardless of general knowledge that some merchandise was intended for exportation to the United States. Therefore, we continue to consider Peer's sales to the first unaffiliated U.S. customer as our starting price for U.S. sales and have neither terminated the review nor used facts available to calculate Chin Jun's margin.

Comment 2: Timken contends that Premier admitted that its suppliers knew or had reason to know that sales to Premier were destined to the United States in its response. Timken argues that the fact that Premier's suppliers made some shipments directly from China to the United States establishes the suppliers' knowledge of the export destination. Timken alleges that Premier failed to provide information concerning this issue which the Department requested. Given this fact pattern, Timken argues that the Department should treat all sales through Premier to the United States as export price sales of the suppliers and, in light of Premier's failure to provide the requested information, the

Department should apply adverse facts available to such sales.

Premier contends that the Department has reviewed and verified Premier many times in the past and has always based its margin calculations on Premier's own export prices. Premier argues that the fact that there were some direct shipments from China does not prove that the Chinese producers knew the ultimate destination of the bearings. Premier notes that the factories were not the exporters, but that they shipped the merchandise to freight forwarders who were responsible for arranging shipment to the United States and were the only parties other than Premier which knew the ultimate destination of the bearings.

Department's Position: We agree with Premier. As we noted in our response to comment 1 of this section, in cases where evidence exists that a supplier had knowledge that the ultimate destination of the merchandise was the United States, we have considered the sale by the supplier to the reseller as the starting price in our margin calculations. However, the record does not prove that Premier's suppliers knew or had reason to know that sales to Premier were to be shipped to the United States. In its original response, Premier stated that certain suppliers "may know or have reason to know that the ultimate destination of the merchandise purchased * * * was the United States." See Premier's September 26, 1996 submission at A–11. However, in response to a supplemental questionnaire, Premier clarified that "[s]ome supplier [sic] may have assumed that the subject merchandise would be shipped to the United States." Whether a supplier might assume the ultimate disposition of the product is not sufficient evidence of knowledge on the part of the supplier of subject merchandise that Premier sold to the United States. Therefore, we have treated Premier's reported sales as Premier's own sales for the purposes of calculating Premier's margin.

Comment 3: Guizhou Machinery contends that the Department erred by not matching two models purchased from a certain supplier to their correct FOP data. Guizhou Machinery argues that it can demonstrate the Department's error by a review of the catalogs it submitted in its response. Guizhou Machinery also contends that the two model numbers it reported in the FOP data do not actually exist.

Timken contends that this is not an error by the Department but by Guizhou Machinery and argues that it is not apparent from the record that Guizhou Machinery miscoded the entries for these two models inadvertently.

Department's Position: We disagree with Guizhou Machinery. As described in response to comment 4 of section 2.a. (Material Valuation), above, we enumerated the criteria which must be met before we will correct an alleged clerical error in Colombian Flowers. We have not corrected this alleged error because we do not regard the corrective documentation Guizhou Machinery provided in support of the clerical-error allegation to be reliable. The catalogs Guizhou Machinery referenced were not catalogs of the supplier in question but for other suppliers from whom Guizhou Machinery purchased subject merchandise. Furthermore, Guizhou Machinery neither provided nor cited to any documentary evidence to support its claim that the two purportedly erroneous model numbers do not exist. As a result, we find nothing on the record to corroborate Guizhou Machinery's clerical-error allegation and we have not made this change for these final results.

Comment 4: Peer/Chin Jun argue that the Department should correct a ministerial error for a certain U.S. sale. Peer/Chin Jun argue that the entered value for this transaction is incorrectly listed and contend that this error is obvious from the record. Moreover, because the firm's U.S. duties and international freight values are based on entered value, these fields should be adjusted as well.

Timken notes that Peer/Chin Jun admits that it was responsible for the error and that it is now too late to attempt to revise questionnaire responses.

Department's Position: We agree with Peer/Chin Jun. As described in response to comment 4 of section 2.a. (Material Valuation), above, we enumerated the criteria which must be met before we will correct an alleged clerical error in Colombian Flowers. In this case, we compared the data reported for this U.S. sale to additional contemporaneous U.S. sales of the same model. We conclude that Peer/Chin Jun made a simple error, the error is obvious from information already on the record, and that a correction is easy to make. Therefore, for these final results, because the alleged error met the criteria enumerated in Colombian Flowers for us to correct a clerical error, we have corrected the entered value for this transaction and recalculated any variables that are derived from this value.

Comment 5: Timken argues that the Department should deduct U.S. selling expenses for CMC's two U.S. subsidiaries from CMC's CEP. Timken contends that, given CMC's subsidiaries in California and Illinois, there must be costs other than inventory carrying costs, the only costs the Department deducted in the preliminary results, that CMC incurred in relation to these two companies. Timken claims that CMC did not submit financial statements showing indirect selling expenses, including SG&A expenses, incurred by these two subsidiary companies that the Department should have deducted from CEP. Timken requests the Department to either obtain this information from CMC or use the expenses of another company with CEP sales as facts available.

Department's Position: We agree with Timken that we should deduct an amount from CEP to account for selling expenses incurred by CMC's U.S. affiliate. We asked all respondent to report the selling expenses of U.S. affiliates in our original questionnaire. CMC reported only inventory carrying costs. We asked CMC in our supplemental questionnaire dated January 29, 1997 to explain how CMC's U.S. affiliates participate in the sales process. CMC replied that it described that process in its section A response. However, our review of section A revealed no such description beyond the U.S. affiliate's name and address.

We deduct from CEP all selling expenses incurred in connection with economic activity in the United States. Because CMC failed to report either the expenses incurred by its U.S. affiliates or any description of its U.S. affiliate's activities, we had to rely on the facts available to calculate the U.S. affiliate's actual selling expenses. Therefore, as facts available, we have deducted an amount for indirect selling expenses from CEP by basing this adjustment on the "other expenses" item from the SKF report, divided by COM. We then applied this ratio to the COM for CMC and deducted the resulting amount to calculate CEP.

Comment 6: Timken states that the fact that CMC failed to report that certain stages of the production process were contracted out to a subcontractor, but instead stated that the factors data were reported correctly, does not constitute verification and, as a result, CMC's responses were deficient. Moreover, Timken asserts, because CMC alerted the Department to the participation of this separate entity only after verification had begun, the Department did not have the opportunity to plan for the verification of the accuracy of information relating to this subcontractor. Timken argues that this oversight is not simply a typographical error. Rather, Timken contends, CMC failed to provide any information about the subcontractor.

Timken claims that, as a result, the Department was prevented from conducting verification relating to this subcontractor and that, when a respondent has not acted to the best of its ability to furnish information, the statute directs that Department to use facts otherwise available.

Timken adds that the name of the joint venture partner as stated in the response contradicts the name of the partner as identified in its verification exhibits.

CMC states that the Department should reject petitioner's claims because CMC Yantai did provide complete FOP data for this subcontractor, which the Department verified. CMC claims that the Department's report states that CMC "failed to report that the turning state for some cups and cones was contracted out to a subcontractor, but noted that the factors of production data were reported correctly." CMC explains that turning is only part of the manufacturing process and that this subcontractor only performed this function for "some" cups and cones. CMC states that petitioner's claim that CMC provided no information about this subcontractor is false and contradicted by the verification report. CMC quotes the report, "(f)actor-of-production data for stages of production not completed at CMC were provided voluntarily by its subcontractors," and the Department did not note any discrepancies for raw-material inputs. Furthermore, CMC notes that the Department did verify information provided by this contractor, including the turning stage and scrap, and the Department obtained worksheets and explanations for direct labor hours from subcontractors and identified no discrepancies in the report. CMC claims that it complied with the Department's requests during verification and provided accurate information regarding its factors-of-production data in the questionnaire responses. Therefore, CMC argues, there is no basis to apply facts available.

CMC explains the name of the joint venture partner as reported in the response is different from the name stated in the verification exhibit because the response uses the English translation of the name, whereas the verification exhibit uses the romanization of the Chinese words. Thus, CMC argues, both names refer to the same company, and there is no contradiction.

Department's Position: We agree with CMC. Timken has misinterpreted the verification report. At the beginning of the verification, Department officials asked CMC officials for any corrections to their data. CMC identified the fact that this particular subcontractor's name was omitted from the submitted FOP data, although the data itself was correct. The Department verified the data and found it to be accurate. Therefore, we find no reason to apply facts available.

We agree with CMC that the name of the joint venture partner as stated in the response and the Chinese version of the name both refer to the same company. Therefore, there is no discrepancy.

Comment 7: Timken argues that the Department should use facts available because CMC sold some parts separately but reported, for each component, the price for a set. Timken asserts that this discovery was made only at verification. Timken claims that this is not merely a ministerial error and implies that this type of reporting was intentional. Therefore, Timken argues, to the extent that the sales were not traced back to the invoices, the Department should assume that the pricing is for a set rather than a component.

CMC states that petitioner's assertion that all components were priced as a set cannot be substantiated and must be rejected. CMC claims that, as the Department verified, CMC mistakenly reported complete set prices for certain component sales in the U.S. sales listing. CMC remarks that the Department did not note any other discrepancies in the sales listing, and that the report indicates that these reporting errors were simply an oversight. CMC states further that there is no basis to suggest that CMC reported the prices of other component sales to the United States as sets and, therefore, the Department should rely in the final results on the verified sales prices CMC reported.

Department's Position: As stated in the verification report, the Department discovered an error in which a few sales which were priced as sets instead of components. When asked, CMC officials explained that this was a mistake. We performed sales traces for over fifty percent of CMC's sales and found no evidence to show that the prices for these few sales were intentionally misstated. Therefore, we made appropriate corrections to the submitted data and have used it for these final results.

Comment 8: Timken claims that there is a contradiction between the fact that CMC sold to its affiliate in the United States yet the verification report states that the affiliate did not take title to the merchandise. Timken also asserts that there is no indication that any SG&A labor hours incurred in the United States for sales through CMC's U.S. affiliate were included in the calculation of CMC's SG&A labor hours. Timken contends that these flaws represent reasons for the application of facts available to CMC.

Department's Position: We disagree with Timken. The fact that the affiliate did not take title to the merchandise is consistent with other verification evidence on record showing that CMC, and not its affiliate, actually made the sale. The affiliate was only authorized to sign a sales contract for CMC and then receive payment for the sale. Therefore, there is no contradiction and no correction is necessary. With respect to the SG&A expenses of CMC's U.S. affiliate, see our response to comment 6 of section 2.b. (Labor Valuation).

Comment 9: Timken states that, upon its review of the verification report for CMC, it observed clerical errors in the NV calculations and requests the Department to correct such errors.

CMC states that the request for corrections should be denied because the deadline for commenting on the analysis memoranda has passed. CMC remarks that there was ample time for Timken to include comments on the analysis and that Timken improperly included this comment in the comments intended solely for the verification report.

Department's Position: We agree with Timken in part. We neglected to include factory overhead in our calculation of COM. Correcting this error conforms the calculation with our stated methodology in the FOP Memorandum. With respect to CMC's argument that it is too late to correct this error, we note that, in instances where we make a clerical error in our calculations, we may correct that error at any time regardless of whether parties raise the issue. Accordingly, we have added factory overhead to COM as we intended for the preliminary results. However, contrary to Timken's assertion, we did include SG&A labor in our calculation of the cost of production of the subject merchandise, so no correction is necessary.

Comment 10: Luoyang contends that, in calculating Luoyang's margin, the Department inadvertently used factors-of-production data from the original diskette instead of the revised diskette. Luoyang request that the Department use the correct data to recalculate its dumping margin.

Timken agrees that the Department used the earlier diskette rather than the revised one.

Department's Position: We agree that we used the wrong diskette to calculate the dumping margin for the preliminary results. For these final results, we have used the revised database.

Comment 11: Timken argues that the Department should include a certain expense in CMC's direct materials costs because respondent incurred this expense.

Department's Position: We agree with Timken. Because CMC actually incurred this expense on its material inputs, it is appropriate to capture the expenses in CMC's direct materials costs. Therefore, we have included this expense in CMC's direct materials costs. *See* CMC's final results analysis memorandum dated October 29, 1997 for a discussion of how we captured this expense.

Final Results of the Review

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist for the period June 1, 1995, through May 31, 1996:

Manufacturer/ exporter [1]	Margin (percent)
Wanxiang	0.03
Shandong	17.76
Luoyang	2.35
CMC	0.39
Xiangfan	0.39
Guizhou Machinery	21.79
Zhejiang	0.18
Jilin	29.40
Liaoning	0.17
Premier	5.43
Chin Jun	5.23
PRC Rate	29.40

[1] The PRC rate applies to CMEC, Hailin, Guizhou Automotive, and all other firms which did not respond to the questionnaire or have not qualified for a separate rate.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between normal value (NV) and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under each order for the review period will be almost exactly equal to the total dumping margins.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the PRC companies named above that have separate rates and were reviewed (Guizhou Machinery, Luoyang, Jilin, Liaoning, CMC, Zhejiang, Xiangfan, Shandong, Wanxiang) will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for PRC companies (*e.g.*, Great Wall) which established eligibility for a separate rate in this review or a previous review but for which no review has ever been requested, the cash deposit rate will continue to be their current cash-deposit rate; (3) for all remaining PRC exporters, all of which were found to not be entitled to separate rates, the cash deposit rate will be 29.40 percent; (4) for non-PRC exporters Premier and Chin Jun the cash deposit rates will be the rates established above; and (5) for non-PRC exporters of subject merchandise from the PRC, other than Premier and Chin Jun, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 6, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97-30147 Filed 11-14-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Transition Orders; Schedule and Grouping of Five-Year Reviews; Comment Request

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to Notice of Proposed Schedule and Grouping of Five-Year Reviews of Transition Orders.

SUMMARY: On October 9, 1997, the Department of Commerce ("the Department") published a Notice of Proposed Schedule and Grouping of Five-Year Reviews of Transition Orders (62 FR 52686). The Department hereby amends the original notice. This amendment does not alter the comment due date. Comments on the proposed schedule and groupings continue to be due in accordance with the December 8, 1997 due date indicated in the original notice.

Amendment: Comments should be submitted to the Department at the following amended address: Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. This amends the room number as published in the October 9 notice. In addition, the ITC case number on the antidumping duty order covering large power transformers from France, as listed in the Appendix, is amended from AA-85 to AA-86.

Clarification: After publication of the October 9, 1997, notice, we received inquiries concerning the distinction between groups of orders. In response, we are providing additional clarification of the distinction between the groups of orders and posting it on the IA web site at: http://www.ita.doc.gov/import_admin/records/.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, or Andrew Lee Beller, Central Records Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482-1560 or 482-0866, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97-30146 Filed 11-14-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110697C]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committees will hold a public meeting.

DATES: The meeting will be held on Thursday, December 4, 1997; the Summer Flounder Monitoring Committee will meet from 10:00 a.m. until noon, the Scup Monitoring Committee wil meet from 1:00-3:00 p.m., and the Black Sea Bass Monitoring Committee will meet from 3:00-5:00 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610-521-5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302-674-2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to recommend the 1998 recreational measures for summer flounder, scup, and black sea bass.

Although other issues not contained in this agenda may come before these Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) least 5 days prior to the meeting date.

Dated: November 10, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-30122 Filed 11-14-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110797A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1070, 1091, 1097, 1105, 1106) and modifications to scientific research permits (1039, 1042)

SUMMARY: Notice is hereby given that Louisiana-Pacific Corporation (LPC) in Fort Bragg, CA (1070), the Santa Ynez River Technicial Advisory Committee (YTAC) in Santa Barbara, CA (1091), Resource Management International Inc. (RMI) in San Rafael, CA (1097), Hagar Environmental Science (HES) in Richmond, CA (1105), and Dr. David Wm. Owens of Texas A&M University (1106) have applied for scientific research permits authorizing the take of endangered or threatened species. Notice is also given that the Natural Resources Management Corporation (NRMC) in Eureka, CA (1039) and William M. Kier in Sausalito, CA (1042) have applied for modifications to their existing scientific research permits.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before December 17, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Application for permits 1070, 1091, 1097, and 1105, and modification requests for permits 1039 and 1042: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404-6528 (707-575-6066).

Application for permit 1106: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432 (813-893-3141).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401);

FOR FURTHER INFORMATION CONTACT: For Permits 1039, 1042, 1070, 1091, 1097, and 1105: Tom Hablett, Protected Species Division, NMFS Santa Rosa Office (707-575-6066).

For Permit 1106: Michelle Rogers, Office of Protected Resources (301-713-1401).

SUPPLEMENTARY INFORMATION: LPC, YTAC, RMI, HES, and David Wm. Owens, Texas A&M University, request permits and NRMC and William Kier request modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227). These listed species covered by these permits include: coho salmon (*Oncorhynchus kisutch*), steelhead trout (*Oncorhynchus mykiss*), loggerhead sea turtles (*Caretta caretta*), hawksbill sea turtles (*Eretmochelys imbricata*), and Kemp's ridley sea turtles (*Lepidochelys kempii*).

LPC (1070) requests a five-year permit for takes of adult and juvenile, threatened, southern Oregon/northern California coast (SONCC) coho salmon associated with fish population studies in Humboldt County drainages within the Evolutionarily Significant Unit (ESU). The studies consist of juvenile coho salmon distribution/abundance surveys and adult salmon spawner surveys. ESA-listed juvenile fish are proposed to be captured, anesthetized, handled (identified, measured, and sampled for tissues), allowed to recover from the anesthetic, and released. ESA-listed adult fish carcasses are proposed

to be collected, measured and sampled for tissues, and returned to the water. ESA-listed juvenile salmon indirect mortalities associated with the research are also requested.

YTAC (1091) requests a three-year permit for takes of adult and juvenile, endangered, southern California coast steelhead associated with fish population studies in the lower Santa Ynez River and its tributaries within the Evolutionarily Significant Unit. The studies consist of five assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) spawner surveys, (4) genetic sampling, and (5) habitat assessment. ESA-listed fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. ESA-listed adult and juvenile steelhead indirect mortalities associated with the research are also requested.

RMI (1097) requests a three-year permit for takes of adult and juvenile, endangered, southern California coast steelhead, threatened SONCC coho salmon, and threatened central California coho, associated with fish population studies in coastal waterways within the ESUs. The studies consist of five assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) spawner surveys, (4) genetic sampling, and (5) habitat assessment. ESA-listed fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

HES (1105) requests a five-year permit for takes of adult and juvenile, endangered, southern California coast steelhead, threatened SONCC coho salmon, and threatened central California coho, associated with fish population studies in coastal waterways within the ESUs. The studies consist of four assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) spawner surveys, and (4) habitat assessment. ESA-listed fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

David Wm. Owens, Texas A&M University, (1106) requests a five year scientific research permit to take listed loggerhead , hawksbill, and Kemp's ridley turtles at the Flower Garden Banks National Marine Sanctuary, Gulf of Mexico. Up to 15 loggerhead and 5 hawksbill turtles will be captured over the five-year life of the permit. Although no Kemp's ridley turtles have been observed at the site in the past, the applicant requests authorization to take this species in the event one is observed during sampling. The turtles will be captured by hand using SCUBA and a catch bag at the Flower Garden Banks National Marine Sanctuary for the puposes of habitat utilization, migration, and reproductive biological studies. Captured turtles will be weighed, measured, blood sampled, and PIT and flipper tagged. Satellite transmitters will be attached to the carapace of each turtle. Additionally, ultrasonography, a non-invasive technique that allows imaging of a female turtle's ovaries, will be performed on captured turtles.

NRMC requests modification 1 to permit 1039 for authorization to include takes of juvenile, threatened, SONCC coho salmon associated with fish population and habitat studies throughout the ESU. The studies consist of four assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) redd counts, and (4) habitat quality evaluation. ESA-listed juvenile fish are proposed to be observed and counted. Modification 1 is requested to be valid for the duration of the permit. Permit 1039 expires on June 30, 2002.

William M. Kier requests modification 1 to permit 1042 for authorization to include takes of juvenile, threatened, SONCC coho salmon associated with fish population and habitat studies throughout the ESU. The studies consist of three tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, and (3) habitat quality evaluation. ESA-listed juvenile fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. ESA-listed juvenile salmon indirect mortalities are also requested. Modification 1 is requested to be valid for the duration of the permit. Permit 1042 expires on June 30, 1999.

Those individuals requesting a hearing on any of these applications should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above permit application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: November 10, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–30123 Filed 11–14–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

November 12, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit for textile products, produced or manufactured in Fiji and exported during the period January 1, 1998 through December 31, 1998 is based on a limit notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the 1998 period. The sublimit for Categories 338–S/339–S/638–S/639–S is being reduced for carryforward applied to the 1997 sublimit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of 1,279,924 dozen of which not more than 1,008,174 dozen shall be in Categories 338–S/339–S/638–S/639–S[1].

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limit for that year (see directive dated October 16, 1996) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30120 Filed 11–14–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

November 12, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting import limits.

EFFECTIVE DATE: November 18, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1982, as amended.

The current limit for Categories 334/634 is being increased for special shift, reducing the limit for Categories 335/635/835, pursuant to a Memorandum of Understanding dated October 28, 1997 between the Governments of the United States and Thailand.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58044, published on November 12, 1996.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on November 18, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing and a Memorandum of Understanding dated October 28, 1997 between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit[1]
Sublevels in Group II	
334/634	731,826 dozen.
335/635/835	447,862 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30119 Filed 11–14–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–07, with attached transmittal, policy justification, and Certification Under Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: October 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON DC 20301-2800

10 OCT 1997

In reply refer to:
I-55506/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-07 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $42 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

H. DIEHL MCKALIP
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Separate Cover:
Classified Annex

Transmittal No. 98-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act (U)

(i) **Prospective Purchaser:** Greece

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 41 million
Other	$ 1 million
TOTAL	$ 42 million

(iii) **Description of Articles or Services Offered:** Ninety AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), missile containers, and other related elements of logistics and program support.

(iv) **Military Department:** Air Force (SBD, Amendment 6)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex under separate cover.

(vii) **Date Report Delivered to Congress:** 10 OCT 97

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - AIM-120B Advanced Medium-Range Air-to-Air Missiles

The Government of Greece has requested a possible sale of 90 AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), missile containers, and other related elements of logistics and program support. The estimated cost is $42 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece while enhancing weapon system standardization and interoperability with U.S. forces.

These additional missile systems will augment Greece's previous procurement of 150 AMRAAMs as well as enhance aircraft air-to-air capabilities. These missiles will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be Hughes Aircraft International Services Company, Tucson, Arizona and Raytheon Company, Bedford, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145, (sec. 1(a)(1) and 4(d)), I hereby certify that the furnishing to Greece of AMRAAM and HARPOON missiles and program support at an estimated cost of $42 million and $30 million respectively, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Strobe Talbott
Acting Secretary

[FR Doc. 97-29063 Filed 11-14-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97-16]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97-16 with attached transmittal and policy justification pages.

Dated: October 29, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

09 JUN 1997

In reply refer to:
I-04518/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-18, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $30 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. DIEHL MCKALIP
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$28 million
Other	$ 2 million
TOTAL	$30 million

(iii) Description of Articles or Services Offered:
Ninety-eight thousand seven hundred forty-five M107 high explosive 155mm projectiles and publications.

(iv) Military Department: Army (YPX)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 09 JUN 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - 155mm Projectiles

The Government of Israel has requested the purchase of 98,745 M107 high explosive 155mm projectiles and publications. The estimated cost is $30 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The purchase of the projectiles is required to maintain projected sustainment rates and reserve levels. Israel, which already has these projectiles in its inventory, will have no difficulty absorbing these projectiles.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Primex Technologies, Saint Petersburg, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 97-29066 Filed 11-14-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University, DOD.

ACTION: Board of visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Defense Systems Management College (DSMC), 9000 Belvoir Road, Building 184, Fort Belvoir, Virginia on Tuesday, December 2, 1997 from 0830 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest and discuss the DAU distance learning initiatives. The agenda will include continuing discussions concerning acquisition research, development of the continuing acquisition education policy, and the development of the DAU distance learning program plan and schedule.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere at (703) 805-5134.

Dated: November 10, 1997.

L.M. Bynum,

Alternate, OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 97-30047 Filed 11-13-97; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on year 2000

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on year 2000 will meet in closed session on December 1-2, 1997 and January 12-13, 1998 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will determine if the priorities assigned, resources allocated and funding strategy used to implement and Department's Y2K five phase process are sufficient to ensure all mission critical systems will function properly on, before and after January 1, 2000.

In accordance with Section 10(d) of the Federal Advisory Commission Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly these meetings will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-30045 Filed 11-14-97; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on November 18-19, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems approach to weapon systems, and to make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force should examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 10, 1997.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-30046 Filed 11-14-97; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Department of The Navy

Notice of Extension of Public Comment Period for Draft Environmental Impact Statement (DEIS) for Realignment of F/A-18 Aircraft and Operational Functions From Naval Air Station (NAS) Cecil Field, Florida to Other East Coast Installations and Draft Clean Air Act (CAA) Conformity Determination

SUMMARY: The Department of The Navy Announces That the Public Comment Period For the Draft Environmental Impact Statement (DEIS) And Draft Clean Air Act (CAA) Conformity Determination Which Evaluates The Realignment of F/A-18 Aircraft And Operational Functions From NAS Cecil Field, Florida To Other Navy And Marine Corps Air Stations On The East Coast Of The United States Has Been Extended By Two Weeks To December 2, 1997.

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy filed a DEIS with Environmental Protection Agency on September 12, 1997. A Notice of Availability of the DEIS was published in the **Federal Register** on September 19, 1997. This notice provided for a 60-day public comment period on the DEIS which would have expired on November 18, 1997. However, due to the fact that an additional public hearing has been scheduled for November 17, 1997 at the NC Aquarium in Manteo, NC (see **Federal Register:** October 31, 1997, Page 58950), the Navy has decided to extend the public comment period on the DEIS to December 2, 1997. All comments/questions on the DEIS must be received by close of business (5 p.m.) on this date. Comments may be mailed to: Commander, Atlantic Division, Naval Facilities Engineering Command, Attention: Mr. Dan Cecchini (Code 2032DC), 1510 Gilbert Street, Norfolk, VA 23511. Comments may also be faxed to (757) 322-4894.

POINT OF CONTACT: Additional information concerning this notice may be obtained by contacting Mr. Cecchini at (757) 322-4891.

Dated: November 7, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97-29940 Filed 11-13-97; 8:45 am]
BILLING CODE 3810-FF-M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 17, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 10, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: New.
Title: Streamlined Clearance Process for Discretionary Grant Information Collections. *Frequency:* Annually.
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 1.
Burden Hours: 1.
Abstract: This information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance process. This streamlined information to the Office of Management and Budget (OMB) and, at the same time, publishes a 30-day public comment period notice in the **Federal Register**. OMB will then have 60 days after the public comment period begins to reach a decision on the information collection.

[FR Doc. 97–30092 Filed 11–14–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board.

ACTION: Amendment to notice of closed and partially meetings of the Governing Board.

SUMMARY: This amends the notice of closed and partially closed meetings of the National Assessment Governing Board published on Monday, November 10, 1997 in Vol. 62, No. 217, page 60488. On November 21—full Board 8:00 to 10:15 a.m., (open). Full Board, 12:00 noon–4:00 p.m., (open); Joint meeting of Achievement Levels and Design and Methodology Committees, 4:00–5:00 p.m., (open); Reporting and Dissemination Committee, 4:00–5:00 p.m., (open); and Joint meeting of Subject Area Committees #1 and #2, 4:00–5:00 p.m., (open).

The agenda for the 8:00–10:15 a.m. session of the full Board has been changed to include a presentation and discussion on NAEP redesign issues and the Executive Director's report has been eliminated from the agenda.. The agenda for the full Board session scheduled for 12:00 noon to 4:00 p.m. has been changed to include an update on the voluntary national tests initiative, and discussion on processes to be utilized in the review of contracts and test specifications. The presentation on NAEP activities from framework development to reporting the results has been eliminated from the agenda. The agendas for the 4:00–5:00 p.m. meetings of the Governing Board committees are as follows: the joint Achievement Levels and Design and Methodology Committees will consider technical aspects of the current Voluntary National Tests contract; the Reporting and Dissemination Committee will discuss issues related to Voluntary National Tests reporting, use, and information for parents and the public; and the joint Subject Area Committees #1 and #2 will be provided an update on specifications for the Voluntary National Tests.

DATES: November 20–22, 1997.

LOCATION: Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–30279 Filed 11–14–97; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—computer matching between the Department of Education and the Internal Revenue Service, Department of Treasury.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Internal Revenue Service (IRS), Department of Treasury (the source agency).

Notice of the matching program was originally published in the **Federal Register** on June 3, 1993 (58 FR 31587); the program became effective on May 8,1995. Duration was 18 months plus a one-year extension permitted by the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(o)(2)(D)). The one-year extension expired on August 31, 1997. This document notifies the public of the approval of a new agreement between the Department of Treasury and Department of Education to continue the matching program. The Data Integrity Boards of both agencies have approved this new agreement.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and OMB guidance on the computer matching provision of the Privacy Act, the following is provided:

1. Name of Participating Agencies

The U. S. Department of Education (ED) and the Internal Revenue Service (IRS) of the U. S. Department of Treasury.

2. Purpose of the Match

This matching program, entitled Taxpayer Address Request , permits ED to have access to any taxpayer's mailing address who has defaulted on certain loans extended under the Higher Education Act for the purposes of locating the taxpayer to collect the loan. This Agreement further provides for redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or State or nonprofit guarantee agency, also participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

3. Authority for Conducting the Matching Program

The information contained in the IRS data base is referred to TAR, and is authorized under the Internal Revenue Code (IRC) 6103 (m) (4), Public Law 98–603. ED seeks access to this data base under the Higher Education Act of 1965, as amended under section 3 (a) (1) of the Migration and Refugee Assistance Act of 1962.

4. Categories of Records and Individuals Covered

The records to be used in the match and the roles of the matching participants are described as follows:

ED will provide the Social Security Number (ssn) and first four letters of the last name of each student who has defaulted under a loan program authorized under Title IV of the Higher Education Act of 1965. This information will be extracted from the Title IV Program File system of records (18–40–0024). The ED data will be matched against IRS" system of records to collect the most recent address of each taxpayer who matches the SSN and first four letters provided by ED.

5. Effective Dates of the Matching Program

The matching program will become effective 40-days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30-days after publication of this notice in the **Federal Register**, unless OMB disapproves the Matching Program within the 40-day review period. If OMB takes no action within the 40-days, this Matching Program becomes effective after both the 40-day OMB period and the 30-day **Federal Register** period have passed. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U. S. C. 552a (o) (2) (D) have been met.

6. Address for Receipt of Public Comments or Inquiries

The person to contact if there are any questions or inquiries is:

Cynthia D.B. Mills, Management Analyst, Federal Family Student Loan Systems Division, Office of Postsecondary Education, Development Division, US Department of Education, 600 Independence Avenue, SW, (Room 4613, ROB–3), Washington, DC 20202, Telephone: 202–708–9768. Individuals who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U. S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department . Telephone: (202) 219–1511 or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcement, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Dated: November 7, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–30050 Filed 11–14–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Office of Environmental Management; Energy Research Financial Assistance Program Notice 98–04; Environmental Management Science Program: Research Related to Decontamination and Decommissioning of Facilities

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Energy Research (ER) and Environmental Management (EM), U.S. Department of Energy, hereby announce their interest in receiving grant applications for performance of innovative, fundamental research to support specifically activities for facility decontamination and decommissioning (D&D); which include, but are not limited to, the characterization, monitoring, and certification of contaminated equipment and facilities; contaminant removal, contaminant control of various treatment processes; the treatment, removal, and stabilization of DOE D&D-derived radioactive, hazardous chemical, and mixed wastes.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98–04, should be received by DOE by 4:30 P.M. E.S.T., December 16, 1997. A response encouraging or discouraging a formal application generally will be communicated to the applicant within three weeks of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., March 17, 1998, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1998.

ADDRESSES: All preapplications, referencing Program Notice 98–04, should be sent to Dr. Roland F. Hirsch, ER–73, Mail Stop F–240, Office of Biological and Environmental Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. Preapplications will be accepted if submitted by U. S. Postal Service, including Express Mail, commercial mail delivery service, or hand delivery, but will not be accepted by fax, electronic mail, or other means.

After receiving notification from DOE concerning successful preapplications, applicants may prepare and submit formal applications. Applications must be sent to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 98–04. The above address for formal applications must also be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, ER–73, Mail Stop F–240, Office of Biological and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–5349, fax: (301) 903–0567, E-mail: roland.hirsch@oer.doe.gov, or Mr. Mark Gilbertson, Office of Science and Risk Policy, Office of Science and Technology, Office of Environmental Management, 1000 Independence

Avenue, SW, Washington, D.C. 20585, telephone: (202) 586–7150, E-mail: mark.gilbertson@em.doe.gov.

SUPPLEMENTARY INFORMATION: The Office of Environmental Management, in partnership with the Office of Energy Research, sponsors the Environmental Management Science Program (EMSP) to fulfill DOE's continuing commitment to the cleanup of DOE's environmental legacy. The program was initiated in Fiscal Year 1996.

The DOE Environmental Management program currently has ongoing applied research and engineering efforts under its Technology Development Program. These efforts must be supplemented with basic research to address long-term technical issues crucial to the EM mission. Basic research can also provide EM with near-term fundamental data that may be critical to the advancement of technologies that are under development but not yet at full scale nor implemented. Proposed basic research under this notice should contribute to environmental management activities that would decrease risk for the public and workers, provide opportunities for major cost reductions, reduce time required to achieve EM's mission goals, and, in general, should address problems that are considered intractable without new knowledge. This program is designed to inspire "breakthroughs" in areas critical to the EM mission through basic research and will be managed in partnership with ER. ER's well-established procedures, as set forth in the Energy Research Merit Review System, as published in the **Federal Register**, March 11, 1991, Vol. 56, No. 47, pages 10244–10248, will be used for merit review of applications submitted in response to this notice. This information is also available on the World Wide Web at http://www.er.doe.gov/production/grants/merit.html.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. Additional information can be obtained at http://www.em.doe.gov/science.

Additional Notices for the Environmental Management Science Program may be issued during Fiscal Year 1998 covering other areas within the scope of the EM program.

Purpose

The need to build a stronger scientific basis for the Environmental Management effort has been established in a number of recent studies and reports. The Galvin Commission report ("Alternative Futures for the Department of Energy National Laboratories," February 1995) also provided the following observations and recommendations:

> There is a particular need for long term, basic research in disciplines related to environmental cleanup" * * * "Adopting a science-based approach that includes supporting development of technologies and expertise" * * * "could lead to both reduced cleanup costs and smaller environmental impacts at existing sites and to the development of a scientific foundation for advances in environmental technologies."

The Environmental Management Advisory Board Science Committee (Resolution on the Environmental Management Science Program, May 2, 1997) made the following observations:

> "EMSP results are likely to be of significant value to EM" * * * "Early program benefits, include: improved understanding of EM science needs, linkage with technology needs, and expansion of the cadre of scientific personnel working on EM problems' * * * "Science program has the potential to lead to significant improvement in future risk reduction and cost and time savings."

The objectives of the Environmental Management Science Program are to:

- Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly reduce future costs, schedules, and risks;
- "Bridge the gap" between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Energy Research and needs-driven applied technology development that is conducted in EM's Office of Science and Technology; and
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Representative Research Areas

Basic research is solicited in all areas of science with the potential for addressing problems in decontamination and decommissioning of nuclear facilities, an important subject of concern to the Department's Environmental Management Program. The relevant scientific disciplines include, but are not limited to, bioremediation, chemistry (including analytical chemistry and instrumentation, surface chemistry, and separations chemistry), computational sciences (including research and development of digital control algorithms for robotics, communication procedures and software technology for remote control of processing equipment), engineering sciences (including control systems and optimization, diagnostics, transport processes, fracture mechanics, and bioengineering), materials science (including alternate materials processing routes for waste minimization, welding and joining, degradation mechanisms, including corrosion and irradiation damage in radioactive waste forms, and remote sensing and monitoring), and physics (including optical, surface, and fluid physics).

Program Funding

Up to a total of $4,000,000 of Fiscal Year 1998 Federal funds is expected to be available for new Environmental Management Science Program awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of funds. Award sizes are expected to be on the order of $100,000—$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this notice. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration and Training

Applicants to the EMSP are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subcontract) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic applicants who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subcontract). Rather each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for their portion of the project. The FFRDC must include separate Budget Pages for their portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The original and five copies must be received by December 16, 1997, to be considered. The preapplication should identify on the cover sheet the institution, PI name, address, telephone, fax and E-mail address for the principal investigator, title of the project, and the field of scientific research (using the list in the Application Categories section). The preapplication should consist of up to three pages of narrative describing the research objectives and the plan for accomplishing them, and should also include a paragraph describing the research background of the principal investigator and key collaborators if any.

Preapplications will be evaluated relative to the scope and research needs of the DOE's Environmental Management Science Program by qualified DOE program managers from both ER and EM. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Application Format

Applicants are expected to use the following format in addition to following instructions in the Office of Energy Research Application Guide. Applications must be written in English, with all budgets in U.S. dollars.

- ER Face Page (DOE F 4650.2 (10–91))
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget Explanation
- Budgets and Budget explanation for each collaborative subproject, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary up to a total of 40 pages)

Goals
Significance of Project to the EMSP
Background
Research Plan
Preliminary Studies (if applicable)
Research Design and Methodologies

- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches (limit 2 pages per senior investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

Application Categories

In order to properly classify each preapplication and application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research:
1. Bioremediation
2. Analytical Chemistry and Instrumentation
3. Separations Chemistry
4. Surface Chemistry
5. Computer and Mathematical Sciences
6. Engineering Sciences
7. Materials Science
8. Physics
9. Other

Application Evaluation and Selection

Scientific Merit

The program will support the most scientifically meritorious and relevant work, regardless of the institution. Formal applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Relevance to Mission

Subsequent to the formal scientific merit review, applications which are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the Environmental Management Science Program. These objectives were established in the Conference Report for the Fiscal Year 1996 Energy and Water Development Appropriations Act, and are published in the Congressional Record—House, October 26, 1995, page H10956.

DOE shall also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Research funded in the Environmental Management Science Program in Fiscal Year 1996 and Fiscal Year 1997 can be viewed at http://www.doe.gov/em52/science-grants.html.

Application Guide and Forms

Information about the development, submission of applications, eligibility,

limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at http://www.er.doe.gov/production/grants/grants.html.

Major Environmental Management Challenges

This research announcement has been developed for Fiscal Year 1998, along with a development process for a long-term program within Environmental Management, with the objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. The following is an overview of the technical challenge facing the Environmental Management Program in the area of Decontamination and Decommissioning which is the focus of this announcement. More detailed descriptions of the specific technical needs and areas of emphasis associated with this problem area can be found in the background section of this Notice.

Deactivation refers to ceasing facility operations and placing the facility in a safe and stable condition to prevent unacceptable exposure of people or the environment to radioactive or other hazardous materials until the facility can be decommissioned. Typically, deactivation involves removal of stored radioactive and other hazardous materials and the draining of systems. Decommissioning is the process of decontaminating or removing contaminated equipment and structures to achieve the desired end state for the facility. Desired end states include complete removal and remediation of the facility, release of the facility for unrestricted use, or release of facility for restricted use. Decontamination is the removal of unwanted radioactive or hazardous contamination by a chemical or mechanical process.

DOE must decontaminate and decommission a large number of aging, surplus facilities. The nature and magnitude of the facility decontamination, decommissioning, and material disposition problems requiri Environmental Management to address these problems quickly and cost-effectively. In Facility Decontamination and Decommissioning, Environmental Management is attempting to solve the problems of 7,000 contaminated buildings that require deactivation, and 900 contaminated buildings including their contents that require decommissioning. DOE is also responsible for decontaminating the metal and concrete within those buildings and disposing of 180,000 metric tons of scrap metal.

Several themes in the area of Facility Decontamination and Decommissioning were identified from research needs statements. These are summarized below:

- *Characterization:* Improved characterization and monitoring and certification of contaminated equipment and facilities with emphasis on real time characterization in the field.
- *Contaminant removal:* Advances in the removal of contamination from equipment and facilities, particularly metallic structures and equipment, and concrete structures. Other gaps in the knowledge base exist in containment technologies to prevent radioactive emissions and spread of contamination during deactivation and decommissioning; improved knowledge for safe removal of hazardous materials, including asbestos and lead; and remote handling and operations and ideas that could increase worker safety and productivity.
- *Reduction of waste:* Methods for reduction of waste volume produced by decontamination and decommissioning.

The aforementioned areas of emphasis does not preclude, and DOE strongly encourages, any innovative or creative ideas contributing to solving EM D&D challenges mentioned throughout this Notica.

Background

The United States involvement in nuclear weapons development for the last 50 years has resulted in the development of a vast research, production, and testing network known as the nuclear weapons complex. The Department has the challenge of deactivating 7,000 contaminated buildings and decommissioning 900 contaminated buildings that are currently on DOE's list of surplus facilities. It is also responsible for decontaminating the metal and concrete within those buildings and disposing of 180,000 metric tons of scrap metal. As stated earlier, deactivation refers to ceasing facility operations and placing the facility in a safe and stable condition to prevent unacceptable exposure of people or the environment to radioactive or other hazardous materials until the facility can be decommissioned. Typically, deactivation involves removal of fuel and stored radioactive and other hazardous materials and draining of systems. Decommissioning is the process of decontaminating or removing contaminated equipment and structures to achieve the desired end state for the facility. Desired end states include complete removal and remediation of the facility, release of facility for unrestricted use, or release of facility for restricted use. Decontamination is the removal of unwanted radioactive or hazardous contamination by a chemical or mechanical process.

Decontamination and Decommissioning (D&D) is centered around four main areas of surplus facilities. These are Reactor Facilities, Processing Facilities, Laboratory Facilities, and Infrastructure and Supporting Activities that pertain to all types of surplus facilities.

Reactor facilities include production, test, and research reactors and their associated buildings. These facilities represent a significant portion of DOE's D&D mortgage. The decontamination and decommissioning of these reactors could expose workers to high levels of radiation and hazardous material using currently-available, labor-intensive technologies.

Processing facilities includes plutonium, uranium, tritium, lithium processing facilities, and gaseous diffusion plants. Decommissioning of these facilities could benefit from innovative science in the areas of in-situ characterization and analysis, less costly waste disposal options, automated systems for containment and dismantlement, and material recycling.

Laboratory facilities include hot cells, gloveboxes, and analytical laboratories. Hot cells and gloveboxes have a high-radiation environment with highly-contaminated equipment. Decommissioning of these facilities could benefit from innovative science in the areas of debris removal, wet and dry decontamination methods, waste segregation and volume reduction, and remote and robotic dismantlement techniques.

Infrastructure and Supporting Activities includes innovative science in the areas of worker safety and protection; concrete and metal recycle; pollution prevention; and final waste forms.

This research agenda has been developed for Fiscal Year 1998, along with a development process for a long term program within EM, with the objective of providing continuity in scientific knowledge that will revolutionize technologies and clean-up approaches for solving DOE's most complex environmental problems. The following are descriptions of the Facility Decontamination and Decommissioning challenges which are intended to help align research and researchers in these efforts. Also included in bullet form are the specific science research challenges.

Characterization

Improvement of Characterization, Monitoring, and Certification of Contaminated Equipment and Facilities

Improvements are needed in the area of remote characterization and remote surveying, including improved means to obtain samples remotely from difficult-to-access places such as underground tanks and piping systems and in areas having high radiation fields or other hazardous situations. Rapid automated characterization and certification of levels of surface radioactive contamination on scrap metal is needed; that is, systems which can differentiate between contaminated and non-contaminated equipment and methods to aid in material segregation. Also, advances in engineering sciences associated with development of miniaturized and micro-equipment, robotics, and control theories are needed to support remote inspection needs. A method is needed to trace and plot the exact spatial location of underground piping and unknown buried or embedded objects. Improved remote and non-intrusive methods are needed to verify the existence or absence of contamination in drains, pipes, and associated equipment. Non-destructive characterization mapping methods are needed. Improved radiological characterization and certification of contaminated equipment and facilities are also needed. Improved methods and techniques are needed to detect the presence of asbestos-containing materials in the field in real-time or near real-time. Improved methods and ideas are needed to detect and quantify contaminants that have penetrated below the surface of porous materials such as concrete and transite.

Some examples of specific science research challenges include but are not limited to:

- Research to advance the state-of-the-art for radiation-hardened microelectronics, sensors, sample-collection systems, and controls in robotics for remote characterizations in difficult-to-access places and in areas having high radiation fields or other hazardous situations.
- Applications of new principles and innovations to support the development of sensors, detectors, or monitors for rapid automated characterization and certification of levels of radionuclides, asbestos, lead, dioxin, or other toxic substances that may exist on the surface of scrap metal, equipment, and facilities, or be introduced into the atmosphere during cleanup operations.
- Research to expand knowledge of the principles of energy beam-material interactions, including energy coupling, mass removal by vaporization and ablation, particle generation, gas dynamics, solid vapor entrainment, and transport processes, for characterizing and removing contamination from surfaces.

Deactivation.

Improved methods and ideas to reduce the cost to survey and maintain facilities awaiting deactivation or decommissioning, including automated, non-intrusive monitoring of facilities for structural integrity and contaminant migration. Improved methods and ideas should minimize labor and cost to survey and maintain facilities.

Some examples of specific science research challenges include but are not limited to:

- Exploration of computational and artificial intelligence approaches for robotics technology to enhance material packing, disposition, or recycling and thereby help reduce the health risks to workers, as well as the costs and time associated with decontamination and decommissioning.

Contaminant Removal

Improved Methods for Removing Contamination from Surfaces, including Metals, Concrete, and Non-Porous Surfaces

In contaminated facilities, much of the concrete, paint, or similar materials are contaminated only on the surface or to a relatively shallow depth (for concrete, typically less than one inch). Fundamental studies associated with diffusion of species into and out of porous materials are needed to design innovative approaches to cleaning of porous materials. Historically, such materials have been handled by mechanically removing the paint by sanding/blasting on the surface layers of concrete through a scrabbling operation. These processes are slow and costly and directly expose the workers to radiation fields. Dust control is also a problem. In addition to surface contamination, concrete often contains expansion joints or cracks where contamination may have penetrated deeper. Jackhammers are typically used to remove concrete from these cracks or seams in an attempt to remove the contamination. This is a labor intensive operation. It is desired that new or significantly improved ideas be developed to decontaminate these concrete structures and painted areas, and reduce the amount of secondary waste. In addition, improved methods and ideas are needed to remove greater than one-inch depth of concrete surface.

Improved understanding of radionuclide and heavy metal adhesion and adsorption to material surfaces is needed. Fundamental studies associated with structure bonding of materials is advantageous to develop new or improved removal methods. Steel or other metals are often encountered in a variety of shapes and sizes in contaminated nuclear facilities. Since the decontamination of metal often results in the generation of large volumes of secondary waste, the metal is disposed of as radioactive waste rather than expend funds on decontaminating and surveying the metal. New or significantly improved decontamination techniques are needed for stainless steel, copper, nickel, iron, carbon steel structural members, and galvanized siding that could lead to recycling the metal into products for use within DOE, or free releasing the metal to the commercial scrap metal market. The decontamination process should be cost effective and safe and should not generate large volumes of a secondary waste, which would be difficult or expensive to dispose of. Improved methods and ideas are needed for in-situ decontamination of contaminated pipes.

Some examples of specific science research challenges include but are not limited to:

- Research to develop understanding of the formation and dissolution of surface films, including structure, speciation, composition and energetics.
- Elucidation of the mechanisms of radionuclide and metal adhesion, adsorption, and structural bonding to material surfaces, including work specific to Pu and other actinides.
- Exploration of principles of ultrasonic irradiation and cavitation to evaluate potential for destroying organic contaminants, accelerating reaction rates, enhancing catalysis, and cleaning surfaces.
- Research on the nature and design of ligands that can photo-release radionuclides, metals, and contaminants from surfaces.
- Elucidation of the principles of biological approaches to surface cleaning and diagnostics.

Containment Methods/Techniques to Prevent spread of Contamination.

Cleanup, decommissioning, dismantling, and construction activities will require containment methods to prevent the spread of contamination offsite or to uncontaminated areas on-site. Containment of the airborne contamination during disassembly and

demolition activities is also a problem. Fundamental chemical research is desired for development of fixatives and auto-forming barriers to support development of cost effective containment technology. Fundamental chemical research is needed in the development of cost effective reactant or binding agents. Improved and easily portable containment systems are also needed. Research is needed to improve personal protective equipment to improve the level of worker protection, productivity, and comfort with emphasis on reducing heat stress to workers and ability to safely and comfortably work at heights and in confined or restricted spaces.

Some examples of specific science research challenges include but are not limited to:

- Research to support the development of fixatives, binding agents, and auto-forming barriers for effective containment on surfaces.
- Scientific and engineering research to support development of easily portable systems for containing environmental contaminants.

Remote Decontamination and Decommissioning Handling and Operations, including Demolition

Improved methods of remote demolition are needed: fast, cost-effective ways of dismantling metal structures, piping, machinery, and concrete structures. The goal is to reduce the requirement of hands-on dismantlement by D&D workers while reducing the cost of such operations. Basic science is needed to improve the ability of robotic devices to function in harsh environments such as high radiation, high temperature, and/or abrasive environments.

Some examples of specific science research challenges include but are not limited to:

- Work to improve the ability of robotic devices to function in harsh environments such as high radiation, high temperature, and/or abrasive environments.

Improvement of Decontamination Techniques for Process Equipment and Facilities Dismantlement

Research into ways to decontaminate complex process equipment and techniques to recycle materials or reduce waste are needed. Improved methods and ideas are needed to dismantle or cut metallic and other materials in the form of metallic equipment and piping, concrete structures, asbestos-containing materials, and other construction materials.

Some examples of specific science research challenges include but are not limited to:

- Research to remove limitations on achievable power levels in, and ease of control of, remotely operable focused heat sources, such as electron and laser beams.
- Research to establish criteria and methods for the identification and isolation of components which require further treatment.

Reduction of Waste

Reduction of Wastes Produced by Decontamination and Decommissioning

Many wastes are generated in the process of decommissioning a contaminated nuclear facility. Typically, large amounts of concrete, metal, and construction materials (e.g., roofing, asphalt, asbestos, lumber, tile, siding, and sometimes electronic equipment) are encountered as waste. Improved methods are needed for volume reduction of decommissioning waste such as metallic equipment, piping, conduit, concrete structures, metallic support structures, and asbestos-containing materials. Recycling or reuse of these materials would result in significant reductions in the volume of waste. Improved techniques or ideas are needed that could dismantle or decontaminate equipment and structures while minimizing the generation of secondary waste.

Some examples of specific science research challenges include but are not limited to:

- Research on fracture mechanisms in various types of materials.
- Elucidation of the principles of the diffusive and advective transport of chemical species in porous or fractured material.
- Engineering research to couple existing surface decontamination methods with diagnostic and control technologies to discriminate between contaminated and non-contaminated areas on heterogeneous surfaces.
- Research to support development of computational and artificial intelligence approaches for robotics technology to enhance material packing, disposition, or recycling and reduce the risks, costs and time associated with decontamination and decommissioning.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by Environmental Management Program can be found on the World Wide Web at http://www.em.doe.gov and at the extensive links contained therein. These programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

References for Background Information

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mark A. Gilbertson at the address listed in the FOR FURTHER INFORMATION CONTACT section.

DOE. 1997. Accelerating Cleanup: Focus on 2006, Discussion Draft http://www.em.doe.gov/acc2006

DOE. 1997. Research Needs Collected for the EM Science Program—June 1997. http://www.doe.gov/em52/needs.html

DOE. 1997. U. S. Department of Energy Strategic Plan http://www.doe.gov/policy/doeplan.htm

DOE. 1996. Decontamination and Decommissioning Focus Area Rainbow Book http://em-52.em.doe.gov/ifd/rbbooks/D&D/ddrb.htm

DOE. 1996. Decontamination and Decommissioning Focus Area Annual Report

DOE. 1996. Estimating the Cold War Mortgage: The 1996 Baseline Environmental Management Report. March 1996. U.S. Department of Energy Office of Environmental Management, Washington, D.C. http://www.em.doe.gov/bemr96/index.html

DOE. 1996. Office of Environmental Restoration EM–40. http://www.em.doe.gov/er/index.html

DOE. 1996. Office of Nuclear Material and Facility Stabilization EM–60. http://www.em.doe.gov/menu/?nucmat.html

DOE. 1996. Office of Science and Risk Policy EM–52 and Environmental Management Science Program. http://www.em.doe.gov/science/

DOE. 1996. Office of Science and Technology EM–50. http://em-50.em.doe.gov/

DOE. 1996. Office of Waste Management EM–30. http://www.em.doe.gov/menu/?wstmgmt.html

DOE. 1996. Spent Nuclear Fuel. DOE-Owned SNF Technology Integration Plan U.S. Department of Energy, Washington, DC. DOE/SNF–PP–002, May 1996. http://tikal.inel.gov/tip—int.htm

DOE. 1996. Taking Stock: A Look at the Opportunities and Challenges Posed by Inventories from the Cold War Era. The U.S. Department of Energy, Office of Environmental Management, Washington, DC. http://www.em.doe.gov/takstock/index.html

DOE. 1995. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, D.C. http://www.em.doe.gov/circle/index.html

National Research Council. 1997. Building an Environmental Management Science Program: Final Assessment. National Academy Press, Washington, DC. http://www.nap.edu/readingroom/books/envmanage/

National Research Council. 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, D.C. http://www.nap.edu/readingroom/books/doeemp/

Secretary of Energy Advisory Board. Alternative Futures for the Department of Energy National Laboratories. February 1995. Task Force on alternative Futures for the Department of Energy National Laboratories, Washington, D.C. http://www.doe.gov/html/doe/whatsnew/galvin/tf-rpt.html

U.S. Congress, Office of Technology Assessment. Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production, February 1991. U.S. Government Printing Office, Washington, D.C, NTIS Order number: PB91143743. To order, call the NTIS sales desk at (703) 487–4650. http://www.wws.princeton.edu:80/~ota/disk1/1991/9113—n.html

National Science and Technology Council. 1996. Assessing Fundamental Science, Council on Fundamental Science. http://www.nsf.gov/sbe/srs/ostp/assess/

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC November 12, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–30121 Filed 11–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–5–000]

American Ref-Fuel Company of Hempstead, Air Products Ref-Fuel of Hempstead, Inc., Duke/UAE Ref-Fuel LLC, and Duke/UAE of Hempstead LLC; Notice of Filing

November 10, 1997.

Take notice that American Ref-Fuel Company of Hempstead, Air Products Ref-fuel of Hempstead, Inc., Duke/UAE Ref-Fuel LLC, and Duke/UAE Hempstead LLC on November 5, 1997, tendered for filing, at the request of Commission staff, a Purchase Agreement reflecting the disposition for which Commission approval is sought in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30068 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–145–006]

Crossroads Pipeline Company; Notice of Compliance Filing

November 10, 1997.

Take notice that on November 6, 1997, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Tariff Sheet Nos. 76 and 76.1.

Crossroads asserts that this filing is being made to comply with the letter order of October 24, 1997, which accepted Tariff Sheet Nos. 26, 39, 66 and 76 effective November 1, 1997 and directed that Sheet Nos. 76 and 76.1 be corrected to reflect the correct versions of Gas Industry Standards Board (GISB) standards. The October 24, 1997 order also directed that a typographical error be corrected on the electronic version of Sheet No. 76.1, which had previously been accepted and made effective August 1, 1997.

Crossroads states that the purpose of its filing is to reflect the correct versions of the standards approved by GISB and correct the typographical error.

Crossroads states further that copies of the filing were served on its current firm and interruptible customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–6–000]

American Ref-fuel Company of Essex County, Air Products Ref-fuel of Essex County, Inc., Duke/UAE Ref-Fuel LLC, and Duke/UAE Essex LLC; Notice of Filing

November 10, 1997.

Take notice that American Ref-fuel Company of Essex County, Air Products Ref-fuel of Essex County, Inc., Duke/UAE Ref-Fuel LLC, and Duke/UAE Essex LLC, on November 5, 1997, tendered for filing, at the request of Commission staff, a Purchase Agreement reflecting the disposition for which Commission approval is sought in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30067 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of Crossroads' filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30076 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–3–000]

East Tennessee Natural Gas Company; Notice of Filing

November 10, 1997.

Take notice that on November 6, 1997, East Tennessee Natural Gas Company (East Tennessee) filed updated standards of conduct under Standard I, 18 CFR 161.3(i), and to reflect changes resulting from the corporate merger with El Paso Natural Gas Company and sale of Kern River Gas Transmission Company.

East Tennessee states that it served a copy of the filing on all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. All such motions to intervene or protest should be filed on or before November 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30071 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–147–006]

High Island Offshore System; Notice of Compliance Filing

November 10, 1997.

Take notice that on November 5, 1997, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 1, 1997:

Sub Fifth Revised Sheet No. 110
Sub First Revised Sheet No. 110A
Sub Second Revised Sheet No. 110B
Sub Original Sheet No. 110C

HIOS asserts that the purpose of this filing is to comply with the Commission's October 28, 1997, letter order in the captioned proceeding regarding Order No. 587–C. The above mentioned letter order indicated that a number of the standards did not reflect the correct version number set forth in section 204.10(b) of the regulations, with exception of the Electronic Delivery Mechanism Standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 308.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30077 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 503–022]

Idaho Power Company; Notice of Availability of Environmental Assessment

November 10, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) has reviewed as-built exhibits showing the constructed project transmission line. The as-built exhibits indicate the route of the constructed transmission line differs from the authorized transmission line route. Idaho Power Company requests Commission approval of the as-built exhibits, including the constructed transmission line. The Swan Falls Project is located on the Snake River, in Ada and Owyhee Counties, Idaho.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. In the EA, staff concludes that approval of the constructed transmission line would not constitute a major Federal action significantly affecting the quality of the human environment.

For further information, please contact the project manager, Jon Confrancesco, at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30073 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–36–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 10, 1997.

Take notice that on November 5, 1997, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1997:

First Revised Sheet No. 91, Original Sheet No. 91–A
First Revised Sheet No. 521, Original Sheet No. 521–A
First Revised Sheet No. 621, Original Sheet No. 621–A
First Revised Sheet No. 724, Original Sheet No. 724–A
Second Revised Sheet No. 810, Original Sheet No. 810–A

Kern River states that the purpose of this filing is to comply with the Commission's Order on Remand of Order No. 636–C issued February 27, 1997 in Docket No. RM91–11–006, *et al.* Kern River states that it has revised its right-of-first-refusal tariff provisions to reduce the term cap for matching a competitive bid from twenty years to five years in order to avoid pregranted abandonment of service.

Kern River states that a copy of this filing has been served upon Kern River's jurisdictional customers and upon interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30080 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–2–000]

Midwestern Gas Transmission Company; Notice of Filing

November 10, 1997.

Take notice that on November 6, 1997, Midwestern Gas Transmission Company (Midwestern) filed updated standards of conduct under Standard I, 18 CFR 161.3(i), and to reflect changes resulting from the corporate merger with El Paso Natural Gas Company and sale of Kern River Gas Transmission Company.

Midwestern states that it served a copy of the filing on all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. All such motions to intervene or protest should be filed on or before November 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30070 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF97–4347–000]

Northeast Energy Services, Inc.; Notice of Issuance of Order

November 12, 1997.

Northeast Energy Services, Inc. (Northeast Energy) submitted for filing a rate schedule under which Northeast Energy will engage in wholesale electric power and energy transactions as a marketer. Northeast Energy also requested waiver of various Commission regulations. In particular, Northeast Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Northeast Energy.

On October 24, 19976, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Northeast Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Northeast Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Northeast Energy's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 24, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30112 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–66–000]

Questar Pipeline Company; Notice of Application

November 10, 1997.

Take notice that on November 3, 1997, Questar Pipeline Company (Questar), 180 East First South Street, Salt Lake City, Utah 84111, filed in Docket No. CP98–66–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate a compressor station in Carbon County, Utah, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar states that the Oak Spring Compressor Station would be used to boost main-line pressure and provide additional firm capacity of 52,000 dt equivalent of natural gas per day on Questar's system. It is asserted that Questar would install a 5,940 horsepower compressor and 2 20-inch diameter pipelines, each about 605 feet in length, to connect the compressor to Questar's Main Line No. 40.

It is estimated that the cost of the facilities would be $8,216,000. Questar requests rolled-in rate treatment and requests that it not be placed at risk for the recovery of the costs associated with the compressor station. Questar explains that it held an open season between July 2, and July 17, 1997, to assess customer interest in the Oak Spring Compressor Station, and that the results of the open season clearly indicate that and that the results of the open season clearly indicate that sufficient market demand exists to support construction of the

compressor station. Questar further explains that it has executed 4 firm transportation agreements which account for 39,800 dt equivalent per day at Questar's maximum reservation and commodity rates for terms ranging from 1 to 20 years, including evergreen provisions.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.314 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission or its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30069 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–4–000]

SEMASS Partnership, American Ref-Fuel Company of SEMASS, L.P., Air Products Ref-Fuel of SEMASS, Inc, Air Products Ref-Fuel Operations of SEMASS, Inc., Duke/UAE Ref-Fuel LLC, Duke/UAE of SEMASS, LLC, and Duke/UAE Operations of SEMASS, LLC; Notice of Filing

November 10, 1997.

Take notice that SEMASS Partnership, Air Products Ref-Fuel of SEMASS, Inc., Air Products Ref-Fuel Operations of SEMASS, Inc., Duke/UAE Ref-Fuel LLC, Duke/UAE Operations of SEMASS, LLC, Duke/UAE SEMASS, LLC, and American Ref-Fuel Company of SEMASS, L.P., on November 5, 1997, tendered for filing, at the request of Commission staff, a Purchase Agreement reflecting the disposition for which Commission approval is sought in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene to protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30066 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–4–000]

Tennessee Gas Pipeline Company; Notice of Filing

November 10, 1997.

Take notice that on November 6, 1997, Tennessee Gas Pipeline Company (Tennessee) filed updated standards of conduct under Standard I, 18 CFR 161.3(i), and to reflect changes resulting from the corporate merger with El Paso Natural Gas Company and sale of Kern River Gas Transmission Company.

Tennessee states that it served a copy of the filing on all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. All such motions to intervene or protest should be filed on or before November 25, 2997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30072 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–534–001]

Viking Gas Transmission Company; Notice of Compliance Filing

November 10, 1997.

Take notice that on November 5, 1997, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing to be effective November 1, 1997.

Viking states that the purpose of this filing is to comply with the Office of Pipeline Regulation's October 22, 1997 Letter in Docket No. RP97–534–000 requesting that the subject tariff sheets state that they were filed to comply with the Commission's May 6, 1997 "Order Issuing Certificate" in Docket No. CP97–93–000, 79 FERC ¶ 61,136 (1997). As required by § 154.201(a) of the Commission's regulations, 18 CFR 154.201(a) Viking is submitting a marked version of each tariff sheet with this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section

385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30078 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–001]

West Texas Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 10, 1997.

Take notice that on November 6, 1997, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective December 1, 1997:

Second Revised Sheet No. 22

WTG states that this tariff sheet was inadvertently omitted from its October 31, 1997 Notice of Change in Rates. According to WTG, although the redlined version of Second Revised Sheet No. 22 was submitted with the filing, the clean version was omitted. WTG states that the only change on this tariff sheets was the elimination of a portion of its Purchased Gas Adjustment clause, as explained in its transmittal letter.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatoty Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30079 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–35–002, et al.]

Electric Rate and Corporate Regulation Filings; New England Power Pool, et al.

November 6, 1997.

Take notice that the following filings have been made with the Commission:

1. New England Power Pool

[Docket No. EC97–35–002]

Take notice that on September 18, 1997, the New England Power Pool (NEPOOL) Executive Committee submitted the Thirty-Fourth Agreement amending New England Power Pool Agreement and related materials, in compliance with the Commission's order in *New England Power Pool* 79 FERC ¶ 61,374, 62,576 (June 25, 1997) (Order Conditionally Authorizing Establishment of an Independent System Operator and Disposition of Control over Jurisdictional Facilities).

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service list in Docket No. EC97–35–000, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. ISO New England Inc.

[Docket No. EC97–35–003]

Take notice that on September 24, 1997, Counsel for ISO New England Inc. (ISO) tendered for filing copies of the following documents: (1) Certificate of Incorporation; (2) By-Laws of the ISO; (3) Code of Conduct and Ethics Policy of the ISO; and (4) Interim ISO Agreement. The letter states that these documents have been conformed to the Commission's June 25, 1997 order issued in this docket.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Heartland Energy Services, Inc., LG&E Energy Marketing Inc., Illinova Energy Partners, Inc., Entergy Power Marketing Corp., Duke/Louis Dreyfus, L.L.C., Plum Street Energy Marketing, Inc., and CNG Energy Services Corporation

[Docket Nos. ER94–108–014, ER94–1188–019, ER94–1475–010, ER95–1615–009, ER96–108–010, ER96–2525–005, and ER96–3068–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On November 3, 1997, Heartland Energy Services, Inc. filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–108–000.

On November 3, 1997, LG&E Energy Marketing Inc. filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–1188–000.

On October 29, 1997, Illinova Energy Partners, Inc. filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000.

On November 3, 1997, Entergy Power Marketing, Inc. filed certain information as required by the Commission's March 26, 1997, order in Docket No. ER95–1615–000.

On November 3, 1997, Duke/Louis Dreyfus, L.L.C. filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–108–000.

On November 3, 1997, Plum Street Energy Marketing, Inc. filed certain information as required by the Commission's September 25, 1996, order in Docket No. ER96–2525–000.

On November 3, 1997, CNG Energy Services Corporation filed certain information as required by the Commission's October 30, 1996, order in Docket No. ER96–3068–000.

4. Electrade Corporation, Howard Energy Marketing, Inc., Enpower, Inc., Russell Energy Services Company, Brennan Power, Inc., Colonial Energy, Inc., and Fina Energy Services Company

[Docket Nos. ER94–1478–012, ER95–252–011, ER95–1752–005, ER96–2882–004, ER97–1630–002, ER97–1968–002, and ER97–2413–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 28, 1997, Electrade Corporation filed certain information as required by the Commission's August 25, 1994, order in Docket No. ER94–1478–000.

On October 28, 1997, Howard Energy Marketing, Inc. filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–252–000.

On October 28, 1997, Enpower, Inc. filed certain information as required by

the Commission's October 23, 1995, order in Docket No. ER95–1752–000.

On October 27, 1997, Russell Energy Services Company filed certain information as required by the Commission's October 30, 1996, order in Docket No. ER96–2882–000.

On October 27, 1997, Brennan Power, Inc. filed certain information as required by the Commission's April 9, 1997, order in Docket No. ER97–1630–000.

On October 28, 1997, Colonial Energy, Inc. filed certain information as required by the Commission's April 9, 1997, order in Docket No. ER97–1968–000.

On October 27, 1997, Fina Energy Services Company filed certain information as required by the Commission's June 18, 1997, order in Docket No. ER97–2413–000.

5. Hartford Power Sales, L.L.C., Energy2, Inc., American Hunter Energy Inc., ProLiance Energy, LLC, Pacific Northwest Generating Cooperative, CNG Retail Services Corporation, and UTIL Power Marketing Inc.

[Docket Nos. ER95–393–016, ER96–3086–004, ER97–144–003, ER97–420–003, ER97–504–005, ER97–1845–001, and ER97–3306–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1997, Hartford Power Sales, L.L.C. filed certain information as required by the Commission's February 22, 1995, order in Docket No. ER95–393–000.

On November 3, 1997, Energy2, Inc. filed certain information as required by the Commission's October 22, 1996, order in Docket No. ER96–3086–000.

On October 29, 1997, American Hunter Energy Inc. filed certain information as required by the Commission's November 13, 1996, order in Docket No. ER97–144–000.

On October 29, 1997, ProLiance Energy, LLC filed certain information as required by the Commission's January 16, 1997, order in Docket No. ER97–420–000.

On November 3, 1997, Pacific Northwest Generating Cooperative filed certain information as required by the Commission's January 3, 1997, order in Docket No. ER97–504–000.

On November 3, 1997, CNG Retail Services Corporation filed certain information as required by the Commission's April 1, 1997, order in Docket No. ER97–1845–000.

On November 3, 1997, UTIL Power Marketing Inc. filed certain information as required by the Commission's July 22, 1997, order in Docket No. ER97–3306–000.

6. Energy Resource Management Corporation, Westar Electric Marketing Inc. Sandia Energy Resources Company, AYP Energy, Inc., American Hunter Energy Inc., Con Edison Solutions, Inc., and ConAgra Energy Service, Inc.

[Docket Nos. ER96–358–005, ER96–458–007, ER96–2538–004, ER96–2673–004, ER97–144–002, ER97–705–002, and ER97–1751–001]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On Energy Resource Management Corporation filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–358–000.

On April 7, 1997, Westar Electric Marketing Inc. filed certain information as required by the Commission's February 14, 1996, order in Docket No. ER96–458–000.

On September 4, 1997, Sandia Energy Resources Company filed certain information as required by the Commission's September 26, 1996, order in Docket No. ER96–2538–000.

On October 30, 1997, AYP Energy, Inc. filed certain information as required by the Commission's October 8, 1996, order in Docket No. ER96–2673–000.

On September 4, 1997, American Hunter Energy Inc. filed certain information as required by the Commission's November 13, 1996, order in Docket No. ER97–144–000.

On October 29, 1997, Con Edison Solutions, Inc. filed certain information as required by the Commission's March 14, 1997, order in Docket No. ER97–705–000.

On October 29, 1997, ConAgra Energy Service Inc. filed certain information as required by the Commission's April 1, 1997, order in Docket No. ER97–1751–000.

7. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER97–1793–001]

Take notice that on October 27, 1997, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the "CSW Operating Companies") submitted for filing supplemental information in compliance with the Commission's April 9, 1997 letter order in Docket No. ER97–1793–000.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER97–2364–000]

Take notice that on October 31, 1997, San Diego Gas & Electric Company ("SDG&E") tendered for filing revised original sheets governing rates for ancillary services under which it provides ancillary services to the California Independent System Operators ("ISO") in a competitive market that will commence on January 1, 1998. SDG&E requests that these ancillary service rates be made effective subject to refund within 60 days of this filing but no later than January 1, 1998. The proposed ancillary service rates would supersede SDG&E's Open Access Tariff terms relating to ancillary services presently on file with the Commission.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Clean Air Capital Markets Corporation

[Docket No. ER97–4434–000]

Take notice that on October 27, 1997 Clean Air Capital Markets Corporation (CACM) petitioned the Commission for acceptance of CACM Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CACM intends to engage in wholesale electric power and energy purchases and sales as a marketer. CACM is not in the business of generating or transmitting electric power.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Indiana Gas and Electric Company

[Docket No. ER98–250–000]

Take notice that on October 23, 1997, Southern Indiana Gas and Electric Company ("SIGECO"), tendered for filing summary information on transactions that occurred during the period June 30, 1997 through September 30, 1997, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER98–251–000]

Take notice that on October 23, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Kansas City Power & Light under LG&E's Open Access Transmission Tariff.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER98–252–000]

Take notice that on October 23, 1997, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with Entergy Power Marketing Corp., Koch Energy Trading, Inc., Market Responsive Energy, Inc. and New Energy Ventures, L.L.C. under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000. Delmarva requests that the Commission make the agreements with Entergy Power Marketing Corp., Koch Energy Trading, Inc. and New Energy Ventures, L.L.C. effective as of their respective execution dates and requests waiver of notice to make the agreement with Market Responsive Energy, Inc. effective as of October 23, 1997.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Washington Water Power

[Docket No. ER98–253–000]

Take notice that on October 23, 1997, Washington Water Power, tendered for filing their summary of activity for the quarter ending September 30, 1997.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Company

[Docket No. ER98–254–000]

Take notice that on October 20, 1997, Montaup Electric Company (Montaup), filed revised Attachment 1s to its Service Agreements for Network Integration Service to its retail distribution affiliates Blackstone Valley Electric Company, Newport Electric Corporation and Eastern Edison Company. The filing corrects errors in the delivery points shown on the Attachment 1s as originally filed.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota Company)

[Docket No. ER98–256–000]

Take notice that on October 23, 1997, Northern States Power Company (Minnesota) ("NSP"), tendered for filing the Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and North Central Power Co., Inc.

NSP requests that the Commission accept the agreement effective October 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company)

[Docket No. ER98–257–000]

Take notice that on October 23, 1997, Northern States Power Company (Minnesota) ("NSP"), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Tenaska Power Services Co.

NSP requests that the Commission accept both the agreements effective October 9, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Tucson Electric Power Company

[Docket No. ER98–258–000]

Take notice that on October 23, 1997, Tucson Electric Power Company(TEP), tendered for filing one (1) service agreement for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreement to become effective as of the earliest date service commenced under this agreement. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated October 23, 1997. Service under this agreement commenced on September 23, 1997.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER98–259–000]

Take notice that on October 23, 1997, Northern States Power Company (Minnesota) ("NSP"), tendered for filing the Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Northwestern Wisconsin Electric Company.

NSP requests that the Commission accept the agreement effective October 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company)

[Docket No. ER98–260–000]

Take notice that on October 23, 1997, Northern States Power Company (Minnesota) ("NSP"), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Powerex.

NSP requests that the Commission accept both the agreements effective October 3, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER98–262–000]

Take notice that on October 22, 1997, Northern Indiana Public Service Company, tendered for filing its Transaction Report for short-term transactions for the third second quarter of 1997 pursuant to the Commission's order issued January 10, 1997 in *Northern Indiana Public Service Company*, 78 FERC ¶ 61,015 (1997).

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Public Service Corporation

[Docket No. ER98–263–000]

Take notice that on October 24, 1997, Wisconsin Public Service Corporation ("WPSC"), tendered for filing an executed Network Service Agreement and an executed Network Operating Agreement for service with the Wisconsin Public Power Inc. (WPPI) under the WPSC's Open Access

Transmission Tariff. WPSC requests that the Commission make the service agreements effective on October 16, 1997.

WPSC states that copies of this filing have been served on WPPI, on the Michigan Public Service Commission and on the Public Service Commission of Wisconsin.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–264–000]

Take notice that on October 24, 1997, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to New Energy Ventures, L.L.C.

Con Edison states that a copy of this filing has been served by mail upon New Energy Ventures, L.L.C.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–265–000]

Take notice that on October 24, 1997, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for PECO Energy Company to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon PECO Energy Company.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–266–000]

Take notice that on October 24, 1997, Company of New York, Inc. ("Con Edison"), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for SONAT Power Marketing L.P. to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon SONAT Power Marketing L.P.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–267–000]

Take notice that on October 24, 1997, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing, pursuant to its FERC Electric Tariff Rate Schedule No. 2, a service agreement for the Cinergy Operating Companies to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions.

Con Edison states that a copy of this filing has been served by mail upon the Cinergy Operating Companies.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Washington Water Power

[Docket No. ER98–268–000]

Take notice that on October 24, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35 of the Commission Rules and Regulations, an executed Long Term Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9 with Public Utility District No. 1 of Pend Oreille County, Washington.

Notice of the filing has been served upon the following:

Mr. Larry Weis, General Manager, Public Utility District No. 1 of Pend Oreille County, Washington, PO Box 190, Newport, Washington 99156

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Kansas City Power & Light Company

[Docket No. ER98–269–000]

Take notice that on October 24, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 26, 1997, between KCPL and Northern Indiana Public Service Company. KCPL proposes an effective date of October 10, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–270–000]

Take notice that on October 24, 1997, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing an electric tariff providing for the sale of energy and capacity to implement retail access in New York City and Westchester County.

Con Edison states that a copy of this filing has been served by mail upon The New York State Public Service Commission.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Central Illinois Public Service Company

[Docket No. ES98–4–000]

Take notice that on October 30, 1997, Central Illinois Public Service Company filed an application under Section 204 of the Federal Power Act seeking authorization to issue unsecured promissory notes or commercial paper, from time to time, in an aggregate principal amount not to exceed $150 million outstanding at any one time, during the period from January 1, 1998 to December 31, 1999, with final maturities not later than December 31, 2000.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Androscoggin Energy LLC

[Docket No. QF96–114–001]

On October 27, 1997, Androscoggin Energy LLC (Applicant), c/o Polsky Energy Corporation, 650 Dundee Road, Suite 150, Northbrook, Illinois 60062, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the topping-cycle cogeneration facility, which will be located in Franklin County, Jay, Maine, will consist of three (3) combustion turbines generators and three (3) separately-fired heat recovery steam generators. Steam recovered from the facility will be purchased for process use by International Paper Company's Androscoggin paper mill for the production of paper products. The maximum net electric power production capacity of the facility will be 147 MW. Applicant intends to sell electric power output to International Paper Company and other qualified buyers. The primary energy source of the facility will be natural gas. Construction of the facility is expected to commence by the end of 1997, with commercial operation projected by the end of 1998. Earlier, on August 28, 1996, Applicant filed a notice of self certification in Docket No. QF96–114–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30113 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–14–000, et al.]

Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. EC98–14–000]

Take notice that Southern California Edison Company (Edison), on October 31, 1997, tendered for filing pursuant to Section 203 of the Federal Power Act, an Application For Authorization To Assign Must-Run Agreements.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Bangor Hydro-Electric Company and Bangor Energy Resale, Inc.

[Docket No. EC98–15–000]

Take notice that on October 31, 1997, Bangor Hydro-Electric Company (Bangor Hydro) and Bangor Energy Resale, Inc. (Bangor Energy), a wholly-owned subsidiary of Bangor Hydro, tendered for filing an application under Section 203 of the Federal Power Act for Bangor Hydro to dispose, by transfer to Bangor Energy, of Bangor Hydro's FERC Rate Schedule No. 46, a power sales agreement for the sale of energy and capacity by Bangor Hydro to UNITIL Power Corporation.

The Applicants state that the purpose of the transfer is to refinance certain debt arrangements and provide lenders with a security interest that is necessary in order for Bangor Hydro to receive certain loans. The Applicants also request expedited treatment of their proposal in order to allow the transfer to take place no later than December 31, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. EC98–16–000]

Take notice that on October 31, 1997, Boston Edison Company (Boston Edison) filed an application under Section 203 of the Federal Power Act for the sale of transmission facilities and transmission use rights in connection with voluntary divestiture of its fossil generation business. Boston Edison seeks approval of the sale at the earliest possible date.

Comment date: December 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. National Gas & Electric L.P., Rainbow Energy Marketing Corporation, and Powermarketing Coal Services, Inc., et, al.

[Docket Nos. ER90–168–035, ER94–1061–014, and Docket No. ER97–1548–002 (not consolidated), et, al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 20, 1997, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On October 22, 1997, Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994, order in Docket No. ER94–1061–000.

On October 23, 1997, IEP Power Marketing, LLC filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–802–000.

On October 22, 1997, E Prime filed certain information as required by the Commission's March 29, 1996, order in Docket No. ER95–1268–000.

On October 20, 1997, Wicor Energy Services, Inc. filed certain information as required by the Commission's November 9, 1995, order in Docket No. ER96–34–000.

On October 20, 1997, Global Petroleum Corp. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–359–000.

On October 21, 1997, Powermarketing Coal Services, Inc. filed certain information as required by the Commission's March 28, 1997, order in Docket No. ER97–1548–000.

5. Western Systems Power Pool

[Docket No. ER91–195–030]

Take notice that on October 30, 1997, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

6. Enron Power Marketing, Inc., PG&E Power Service Company, and El Paso Energy Marketing Co., et al.

[Docket No. ER94–24–021 (ER94–1394–013 and Docket No. ER96–116–010 (not consolidated), et. al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On November 3, 1997, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993, order in Docket No. ER94–24–000.

On October 24, 1997, PG&E Power Service Company filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER94–1394–000.

On October 24, 1997, EPEM Marketing Company filed certain information as required by the Commission's March 30, 1995, order in Docket No. ER94–428–000.

On October 28, 1997, Phibro Inc. filed certain information as required by the Commission's March 14, 1995, order in Docket No. ER95–430–000.

On October 30, 1997, Southern Energy Trading and Marketing, Inc. filed certain information as required by the Commission's September 29, 1995, order in Docket No. ER95–976–000.

On October 28, 1997, DuPont Power Marketing Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On October 24, 1997, El Paso Energy Marketing Company filed certain information as required by the Commission's November 28, 1995, order in Docket No. ER96–118–000.

7. North American Energy Conservation, Tenaska Power Services Company, Enserve, L.C., et al.

[Docket Nos. ER94–152–015, ER94–389–013, and Docket No. ER96–182–008 (not consolidated), et, al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1997, North American Energy Conservation filed certain information as required by the Commission's February 10, 1994, order in Docket No. ER94–152–000.

On October 24, 1997, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On October 30, 1997, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On October 30, 1997, CNG Power Services Corporation filed certain information as required by the Commission's October 25, 1994, order in Docket No. ER94–1554–000.

On October 30, 1997, The Power Company of America, L.P. filed certain information as required by the Commission's December 30, 1994, order in Docket No. ER95–111–000.

On October 27, 1997, Gateway Energy Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On October 27, 1997, Enserve, L.C. filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–182–000.

8. Vitol Gas & Electric LLC, American Power Exchange Inc., CMS Marketing, Services and Trading Company, et al.

[Docket Nos. ER94–155–019, ER94–1578–010 and ER94–1099–012 and Docket No. ER96–2350–008 (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 22, 1997, Vitol Gas & Electric LLC filed certain information as required by the Commission's January 14, 1994, order in Docket No. ER94–155–000.

On April 7, 1997, American Power Exchange, Inc. filed certain information as required by the Commission's October 19, 1994, order in Docket No. ER94–1578–000.

On April 7, 1997, Eclipse Energy Inc. filed certain information as required by the Commission's June 15, 1994, order in Docket No. ER94–1099–000.

On April 7, 1997, Prairie Winds Energy, Inc. filed certain information as required by the Commission's August 28, 1995, order in Docket No. ER95–1234–000.

On April 7, 1997, Enpower, Inc. filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1752–000.

On October 22, 1997, Northwest Power Marketing Company filed certain information as required by the Commission's June 3, 1996, order in Docket No. ER96–688–000.

On October 21, 1997, CMS Marketing, Services and Trading Company filed certain information as required by the Commission's September 6, 1996, order in Docket No. ER96–2350–000.

9. Eastern Power Distribution, Inc., Morgan Stanley Capital Group Inc., PacifiCorp, et al.

[Docket Nos. ER94–964–018, ER94–1384–016 and Docket No. ER97–2801–001 (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1997, Eastern Power Distribution, Inc., filed certain information as required by the Commission's April 5, 1994, order in Docket No. ER94–964–000.

On October 24, 1997, Morgan Stanley Capital Group Inc., filed certain information as required by the Commission's November 8, 1994, order in Docket No. ER94–1384–000.

On October 30, 1997, Federal Energy Sales, Inc., filed certain information as required by the Commission's March 1, 1996 order in Docket No. ER96–918–000.

On October 30, 1997, American Energy Solutions, Inc., filed certain information as required by the Commission's December 5, 1996, order in Docket No. ER97–360–000.

On October 29, 1997, Competitive Utility Services Corp. filed certain information as required by the Commission's April 8, 1997, order in Docket No. ER97–1932–000.

On October 30, 1997, Constellation Power Sources, Inc., filed certain information as required by the Commission's May 15, 1997, order in Docket No. ER97–2261–000.

On October 29, 1997, PacifiCorp filed certain information as required by the Commission's June 26, 1997, order in Docket No. ER97–2801–000.

10. C.C. Pace Energy Services, JEB Corporation, and Engage Energy US, L.P., et al.

[Docket Nos. ER94–1181–013, ER94–1432–013, and Docket No. ER97–854–003 (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1997, C.C. Pace Energy Services filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1181–000.

On October 30, 1997, JEB Corporation filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1432–000.

On October 28, 1997, Williams Energy Services Company filed certain information as required by the Commission's March 10, 1995, order in Docket No. ER95–305–000.

On October 29, 1997, Duke Energy Marketing Corp., filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–109–000.

On October 30, 1997, Entergy West Power Company, LLC filed certain information as required by the Commission's December 28, 1995, order in Docket No. ER96–392–000.

On October 20, 1997, Power Fuels, Inc., filed certain information as required by the Commission's July 5, 1996, order in Docket No. ER96–1930–000.

On October 30, 1997, Engage Energy US, L.P., filed certain information as required by the Commission's December 30, 1996, order in Docket No. ER97–654–000.

11. Citizens Power Sales, AIG Trading Corporation, and Sonat Power Marketing, Inc., et al.

[Docket Nos. ER94–1685–016, ER94–1691–016, and Docket No. ER96–2343–005 (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1997, Citizens Power Sales filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER94–1685–000.

On October 29, 1997, AIG Trading Corporation filed certain information as required by the Commission's January 19, 1995, order in Docket No. ER94–1691–000.

On October 29, 1997, Delhi Energy Services, Inc., filed certain information as required by the Commission's June 1, 1995, order in Docket No. ER95–940–000.

On October 28, 1997, Sonat Power Marketing, Inc., filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1050–010.

On October 29, 1997, Amoco Energy Trading Corporation filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–1359–000.

On October 29, 1997, Vastar Power Marketing, Inc., filed certain information as required by the Commission's October 26, 1995, order in Docket No. ER95–1685–000.

On October 28, 1997, Sonat Power Marketing, Inc., filed certain information as required by the Commission's August 12, 1996, order in Docket No. ER96–2343–000.

12. Tennessee Power Company, PacifiCorp Power Marketing Inc., Northrop Grumman Corporation, et al.

[Docket Nos. ER95–581–010, ER95–1096–011, and Docket No. ER96–2957–004 (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 14, 1997, Tennessee Power Company filed certain information as required by the Commission's April 28, 1995, order in Docket No. ER95–581–000.

On October 16, 1997, PacifiCorp Power Marketing, Inc., filed certain information as required by the Commission's February 2, 1996, order in Docket No. ER96–1096–000.

On October 15, 1997, PG&E Energy Services, Energy Trading Corporation filed certain information as required by the Commission's October 20, 1995, order in Docket No. ER95–1614–000.

On October 15, 1997, Powertec International, LLC filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–1–000.

On October 15, 1997, Energy Transfer Group, L.L.C., filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–280–000.

On October 14, 1997, CPS Capital, Ltd., filed certain information as required by the Commission's June 27, 1996, order in Docket No. ER96–1798–000.

On October 14, 1997, Northrop Grumman Corporation filed certain information as required by the Commission's November 13, 1996, order in Docket No. ER96–2957–000.

13. QST Energy Trading Inc., CoEnergy Trading Company, and Central Hudson Enterprises Corporation, et al.

[Docket Nos. ER96–553–008, ER96–1040–008, and Docket No. ER97–2869–001, (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 27, 1997, QST Energy Trading Inc., filed certain information as required by the Commission's March 14, 1996, order in Docket No. ER96–553–000.

On October 27, 1997, CoEnergy Trading Company filed certain information as required by the Commission's March 14, 1996, order in Docket No. ER96–1040–000.

On October 24, 1997, NIPSCO Energy Service Inc., filed certain information as required by the Commission's May 29, 1996, order in Docket No. ER96–1431–000.

On October 24, 1997, NIPSCO Energy Service Inc., filed certain information as required by the Commission's May 29, 1996, order in Docket No. ER96–1431–000.

On October 27, 1997, LS Power Marketing, LLC filed certain information as required by the Commission's August 5, 1996, order in Docket No. ER96–1947–000.

On October 24, 1997, CSW Power Marketing, Inc., filed certain information as required by the Commission's June 11, 1997, order in Docket No. ER97–1238–000.

On October 24, 1997, Central Hudson Enterprises Corporation filed certain information as required by the Commission's June 26, 1997, order in Docket No. ER97–2869–000.

14. Edison Source, DPL Energy, and GPU Advanced Resources Inc., et al.

[Docket Nos. ER96–2150–007, ER96–2601–005, and Docket No. ER97–3666–002, (not consolidated), et al.]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1997, Edison Source filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2150–000.

On October 30, 1997, DPL Energy filed certain information as required by the Commission's September 30, 1996, order in Docket No. ER96–2601–000.

On October 30, 1997, NP Energy Inc. filed certain information as required by the Commission's February 24, 1997, order in Docket No. ER97–1315–000.

On October 30, 1997, Unitil Power Corp. filed certain information as required by the Commission's September 25, 1997, order in Docket No. ER97–2460–000.

On October 30, 1997, Unitil Resources, Inc. filed certain information as required by the Commission's September 25, 1997, order in Docket No. ER97–2462–000.

On October 30, 1997, GPU Advanced Resources, Inc. filed certain information as required by the Commission's September 4, 1997, order in docket No. ER97–3666–000.

15. Southwestern Electric Power Company, West Texas Utilities Company

[Docket No. ER97–4133–000]

Take notice that on October 3, 1997, Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU) tendered for filing additional information in support of their filing made in this docket on August 8, 1997.

SWEPCO and WTU state that a copy of this supplemental filing has been served on East Texas Electric Cooperative, Inc., Tex-La Electric Cooperative, Inc., and the Public Utility Commission of Texas.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER98–227–000]

Take notice that on October 21, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Revised Form of Service Agreement (FSA) for Firm Point-to-Point Transmission service between Niagara Mohawk and the Power Authority of the State of New York (Power Authority) for retail delivery of High Load Factor Fitzpatrick Power to BOC Gases in Selkirk, New York.

Service is not to begin until approval by the Commission of the Settlement Agreement between Niagara Mohawk, the Power Authority and the New York State Department of Public Service dated May 22, 1997 and filed with the Commission in Docket Nos. EL97–29–000 (the May 22, 1997, Settlement Agreement). As of the date of this letter, the Commission has yet to approve the May 22, 1997, Settlement Agreement. As a result, no service has been provided under the Original FSA.

Niagara Mohawk does not seek Commission action on this Revised FSA at this time. In order to implement terms of the May 22, 1997, Settlement Agreement, however, Niagara Mohawk respectfully requests waiver of the Commission's 60-day notice requirement to permit service to be provided under the Revised FSA retroactive to July 1, 1997 once the May 22, 1997 Settlement Agreement is approved by the Commission. Upon approval, Niagara Mohawk will notify the Commission that further action is needed on the enclosed Revised FSA.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER98–228–000]

Take notice that on October 22, 1997, Arizona Public Service Company (APS), tendered for filing an Umbrella Service Agreement to provide Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Tucson Electric Power Company and AIG Trading Corporation.

A copy of this filing has been served on Tucson Electric Power Company, AIG Trading Corporation and the Arizona Corporation Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER98–229–000]

Take notice that on October 22, 1997, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Tucson Electric Power Company.

A copy of this filing has been served on Tucson Electric Power Company and the Arizona Corporation Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Arizona Public Service Company

[Docket No. ER98–230–000]

Take notice that on October 22, 1997, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit for Southern California Edison applicable under the APS–FERC Rate Schedule No. 120.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Central Illinois Public Service Company

[Docket No. ER98–231–000]

Take notice that on October 22, 1997, Central Illinois Public Service Company (CIPS) submitted one non-firm point-to-point service agreement and two umbrella short-term firm transmission service agreements, dated October 13, 1997 and October 14, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: ProLiance Energy, L.L.C., and Williams Energy Services Company.

CIPS requests an effective date of October 14, 1997, for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the two customers and the Illinois Commerce Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Arizona Public Service Company

[Docket No. ER98–232–000]

Take notice that on October 22, 1997, Arizona Public Service Company (APS), tendered for filing a transaction report for the third quarter of 1997, under APS FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served the Arizona Corporation Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER98–233–000]

Take notice that on October 22, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, filed a Notice of Cancellation for seventy-one (71) expired service agreements that were for short-term firm point-to-point transmission service under Part II of Southern Companies Open Access Transmission Tariff (Tariff) (FERC Electric Tariff, Original Volume No. 5).

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER98–234–000]

Take notice that on October 22, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated October 13, 1997, with Carolina Power & Light Company (Carolina) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Carolina as an eligible customer under the Tariff.

PP&L requests an effective date of October 22, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Carolina and to the Pennsylvania Public Utility Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–235–000]

Take notice that on October 22, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Eastern Power Distribution, Inc. (EPD), dated October 17, 1997. This Service Agreement specifies that EPD has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and EPD to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 17, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–236–000]

Take notice that on October 22, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and New Energy Ventures, L.L.C. (NEV), dated October 17, 1997. This Service Agreement specifies that NEV has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and NEV to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 17, 1997 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company, et al.

[Docket No. ER98–237–000]

Take notice that on October 22, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and PacifiCorp Power Marketing, Inc. (PPM), dated October 17, 1997. This Service Agreement specifies that PPM has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and PPM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 17, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER98–238–000]

Take notice that on October 22, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and E Prime, Inc. (E prime).

Cinergy and E Prime are requesting an effective date of August 31, 1997.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Western Resources, Inc.

[Docket No. ER98–239–000]

Take notice that on October 22, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Entergy Power Marketing Corporation. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources—open access transmission tariff on file with the Commission. The agreement is proposed to become effective October 20, 1997.

Copies of the filing were served upon Entergy Power Marketing Corporation and the Kansas Corporation Commission.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Jersey Central Power & Light Company, et al.

[Docket No. ER98–240–000]

Take notice that on October 22, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and EnerZ Corporation (NRZ), dated October 17, 1997. This Service Agreement specifies that NRZ has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and NRZ to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 17, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Jersey Central Power & Light Company, et al

[Docket No. ER98–241–000]

Take notice that on October 22, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Woodruff Oil Company (d/b/a Woodruff Energy)(WOC), dated October 10, 1997. This Service Agreement specifies that WOC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and WOC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 10, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. North American Energy, Inc.

[Docket No. ER98–242–000]

Take notice that on October 22, 1997, North American Energy, Inc. (NAE), petitioned the Commission for acceptance of NAE Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

NAE intends to engage in wholesale electric power and energy purchases and sales as a marketer. NAE is not in the business of generating or transmitting electric power.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Louisville Gas and Electric Company

[Docket No. ER98–243–000]

Take notice that on October 22, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Hamilton Department of Public Utilities under Rate GSS.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Louisville Gas and Electric Company

[Docket No. ER98–244–000]

Take notice that on October 22, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER98–245–000]

Take notice that on October 22, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and PECO Energy Company (PECO).

Cinergy and PECO are requesting an effective date of October 7, 1997.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Valley Electric Association, Inc.

[Docket No. ER98–246–000]

Take notice that on October 22, 1997, Valley Electric Association, Inc. (Valley), tendered for filing nine purchase and sale agreements with various electric utilities. Valley intends to utilize the agreements primarily for the purchase of supplemental power, but is authorized to make sales for resale under the agreements. Valley seeks a waiver of the Commission's prior notice requirements.

A copy of the filing was served upon each of the parties to the agreements: Citizens Lehman Power Sales, Duke Energy Trading & Marketing L.L.C. Electric Clearinghouse, Inc., Enron Power Marketing, Inc., Illinova Energy Partners, LG&E Energy Marketing Inc., Department of Water and Power of the City of Los Angeles, Salt River Project Agricultural Improvement and Power District, and USGen Power Services, L.P.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Rochester Gas and Electric Corporation

[Docket No. ER98–247–000]

Take notice that on October 22, 1997, Rochester Gas and Electric Corporation (RG&E), tendered for filing a summary of their first quarterly report of transactions under their market-based rate tariff for the period of July 1, 1997 to September 30, 1997.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. UtiliCorp United Inc.

[Docket No. ER98–248–000]

Take notice that on October 23, 1997, UtiliCorp United Inc., (UtiliCorp) filed service agreements with Tenaska Power Services Company for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Maine Public Service Company

[Docket No. ER98–249–000]

Take notice that on October 22, 1997, Maine Public Service Company submitted a Quarterly Report of Transactions for the period July 1 through September 30, 1997. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–255–000]

Take notice that on October 23, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with Public Service Electric & Gas Company and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Northeast Utilities Service Company

[Docket No. ER98–277–000]

Take notice that Northeast Utilities Service Company (NUSCO), on October 24, 1997, tendered for filing, a Service Agreement with the Northern Indiana Public Service Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Northern Indiana Public Service Company.

NUSCO requests that the Service Agreement become effective October 23, 1997.

Comment date: November 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Allegheny Power Service Corp. on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–336–000]

Take notice that on October 28, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates. Allegheny Power also seeks to amend its Standard Generation Service Rate Schedule to permit sales to affiliates at cost-based rates subject to limitations established by the Commission in previous orders.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public State Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Horizon Energy Company

[Docket No. ER98–380–000]

Take notice that on October 30, 1997, Horizon Energy Company (Horizon Energy) tendered for filing an application for waivers and approvals under regulations of the Commission and for an order accepting its Market Based Rate Tariff—FERC Electric Rate Schedule No. 1, which is necessary for Horizon Energy to make sales to certain Electric Distribution Companies to participate in those Electric Distribution Companies' pilot programs to address load balancing requirements. Horizon Energy has further requested that the Commission waive its regulations to the extent necessary such that its Market-Based Rates Tariff be permitted to take effect on November 1, 1997. Horizon Energy is an affiliate of PECO Energy Company.

In these transactions, Horizon Energy intends to charge rates as mutually agreed to by Horizon Energy and the Electric Distribution company purchaser. All other terms of the transactions also would be determined by negotiation between the parties. All sales and purchases will be arms-length transactions.

Comment date: November 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. New England Power Pool

[Docket No. ER98–499–000]

Take notice that on October 31, 1997, the New England Power Pool (NEPOOL) Executive Committee submitted the Fourth Supplement to Thirty-Third Agreement Amending New England Power Pool Agreement and related materials.

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service list in Docket No. ER97–4421–000, Docket Nos. OA97–608–000 and ER97–3574–000, Docket Nos. OA97–237–000, ER97–1079–000 and EC97–35–000, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: November 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30117 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894–193]

South Carolina Electric and Gas Company; Notice of Availability of Draft Environmental Assessment

November 10, 1997.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for an application filed by the South Carolina Electric and Gas Company, licensee for the Parr Hydroelectric Project. In its application, the licensee requests Commission approval of a land use and shoreline management plan for the project. The proposed plan provides for the conservation, development, and use of 142 miles of shoreline around the project's Parr Reservoir, Monticello Reservoir, and recreation subimpoundment.

Based on the comparative environmental analyses presented in the DEA, the Commission's staff has selected the licensee's proposed plan with staff modifications as the preferred alternative. The DEA finds that approving the staff modified plan would not be a major federal action significantly affecting the quality of the human environment.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's public reference room at (202) 208–1371.

Comments on the DEA must be filed with the Commission within 40 days from the date of this notice. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the project number (1894–193) on any comments filed.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30061 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Exemption

November 10, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Proposed Action:* Amendment of Exemption.

b. *Project No.:* 4478–005.

c. *Exemptee:* Bell Enterprises.

d. *Name of Project:* Bell Hydroelectric.

e. *Location:* Battle Creek, in Trinity County, California.

f. *Action Pursuant to:* Federal Power Act, 16 USC §§ 791—825(r).

g. *Ememptee Contact:* C. Larry Bell, Bell Enterprises, 2500 SE Nevada Court, Portland, OR 97219, (503) 245–8594.

h. *FERC Contact:* Regina Saizan, (202) 219–2673.

i. *Comment Date:* December 26, 1977.

j. *Description of the proposed action:* The proposed amendment will remove the existing diversion structure, the water ditch, the 4,860-foot-long penstock, and the 500–kw powerhouse from the exemption to reflect the project's as-built condition.

k. *this notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to filed comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30074 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

November 10, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* P–11282–001.

c. *Date Filed:* November 21, 1995.

d. *Applicant:* Summit Hydropower, Inc.

e. *Name of Project:* Gainer Dam.

f. *Location:* On the North Branch of the Pawtuxet River, Town of Scituate, Providence County, Rhode Island.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Duncan S. Broatch, 92 Rocky Hill Road, Woodstock, CT 06281, (860) 974–1620.

i. *FERC Contact:* Lee Emery (202) 219–2779.

j. *Deadline Date:* See paragraph D9.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The existing inoperative project would consist of: (1) A 3,500-foot-long, 109-foot-high earthen dam having a 450-foot-long overflow-type spillway at its right (southwest) abutment; (2) a reservoir, known as the Scituate Reservoir, having a 3,400-acre surface area and a 112,270 acre-foot gross storage capacity at spillway crest elevation of 283 feet MSL; (3) an intake structure; (4) a powerhouse containing a rehabilitated 1,500-kW generating unit operated at an 82-foot-net head and at a flow of 300 cfs and containing a new 70-kW generating unit operated at an 82-foot-net head and at a flow of 14 cfs; (5) a 400-foot-long tailrace tunnel and a 700-foot-long excavated tailrace; (6) a 500-foot-long underground, 2.3-kV transmission line; (7) A 2.3/23-kV Substation; (8) A 1.5-mile-long 23-kV transmission line; and (9) appurtenant facilities.

The primary purpose for the existing facilities, owned and operated by the Providence Water Supply Board (PWSB), is water supply for the city of Providence. Applicant estimates that the project's average annual generation would be 2,968,000 kWh. The applicant's estimated net investment in the project would amount to $494,607.

m. *Purpose of Project:* All project energy will be used on site with the excess power sold to a public utility company.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Summit Hydropower, Inc., 92 Rocky Hill Road, Woodstock, CT 06281, or by calling (860) 974–1620.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30075 Filed 11–14–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5822–3]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the first meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held on December 2 and 3, 1997, in Arlington, Virginia. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, December 2, 1997, from 9:30 a.m. to 5:00 p.m. and Wednesday, December 3, 1997, from 9:00 a.m. to 12:45 p.m.

ADDRESSES: Hyatt Regency Crystal City at the Washington National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202.

AGENDA ITEMS: The meeting of the CHPAC is open to the public. On Tuesday, December 2, 1997, the meeting will open with introductions, a review of the agenda and meeting objectives. The remaining agenda items for the first day of the meeting include (1) background and context of the Committee, (2) Office of Children's Health Protection's (OCHP) plan, (3) OCHP's Healthy Homes, Healthy Schools, Healthy Kids outreach campaign, and (4) introduction of the Work Groups. The meeting will continue on Wednesday, December 3, with (1) CHPAC Operating Principles and Ground Rules, (2) Work Group sessions and, (3) will conclude with a Plenary Session at which time the Work Groups will present their individual Work Plans and discuss future activities. The public will have an opportunity to comment at the end of both days.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Paula R. Goode, Office of Children's Health Protection, USEPA, WSM, 913, MC 1107, 401 M Street, SW, Washington, DC 20460, (202) 260–7778, goode.paula@epamail.epa.gov.

Dated: November 10, 1997.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 97–30139 Filed 11–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Draft American Indian and Alaska Native Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice, with request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has developed a draft American Indian and Alaska Native Policy that reflects the Agency's commitment to a government-to-government relationship. The draft policy reinforces the importance of partnership between and among all levels of government on issues related to disaster preparedness, mitigation, response and recovery. Contained within this draft policy are guiding principles for FEMA's interactions with Tribal governments.

DATES: We invite your comments, which should be submitted on or before January 5, 1998.

ADDRESSES: Please send written comments to the Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street SW., Washington DC 20472. Comments may also be submitted via facsimile, (202) 646–4215, or by e-mail to Tribal.Liaison@fema.gov.

FOR FURTHER INFORMATION CONTACT: Rachael A. Rowland, Intergovernmental Affairs, Office of Policy and Regional Operations, Federal Emergency Management Agency, 500 C Street SW., Washington DC 20472, (202) 646–2889.

SUPPLEMENTARY INFORMATION: The draft FEMA American Indian and Alaska Native Policy follows:

The United States has historically bonded together during times of disaster to provide assistance to those who have suffered the losses of loved ones or personal belongings. The guiding principle of the Federal Emergency Management Agency is "people helping people." It is in this spirit that the Federal Emergency Management Agency declares its policy towards America Indians and Alaska Natives.

Introduction

The American Indian and Alaska Native tribal governments hold a unique status in the United States with the rights and benefits of sovereign nations. This policy outlines the principles under which all employees of the Federal Emergency Management Agency are to operate with regard to American Indian and Alaska Native tribal governments. This policy is based on the United States Constitution, Federal treaties, policy, statutes, court decisions, and the ongoing political relationship between Indian tribes and the Federal Government.

In recognition of the historic relationship between the United States, the American Indians and Alaska Native tribal governments, the Federal Emergency Management Agency supports a government-to-government relationship between the Federal Government and American Indian and Alaska Native tribes.

This policy pertains to federally recognized tribes and provides guidance to employees of the Federal Emergency Management Agency for issues affecting American Indians and Alaska Natives. This policy does not apply to Federal Emergency Management Agency interactions with State-recognized tribes, Indians, or Alaska Natives who

are not members of tribes with respect to matters provided for by Federal statute or regulation.

This partnership is intended to be flexible and dynamic to provide for the evolution of the partnerships between the Federal Emergency Management Agency and American Indian governments. Working relationships between the Federal Emergency Management Agency and the American Indian governments will be generally consistent nationwide; however, they will vary according to the legal basis and management requirements for each relationship.

This policy is adopted pursuant to and consistent with existing law and does not pre-empt or modify the authorities of the Federal Emergency Management Agency or other Federal departments and agencies. Nor does the policy suggest recognition of tribal authority that does not currently exist. However, the Federal Emergency Management Agency need not wait for judicial recognition over emergency management programs when such authority is already supported by law. This policy is for internal management only and shall not be construed to grant or vest any right to any party in respect to any Federal action not otherwise granted or vested by existing law or regulations.

Definitions

Indian Tribe: Any tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native Village (as defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for Indians because of their status as Indians and tribes.

Tribal Government: The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that has been determined eligible for specific services by Congress or officially recognized by inclusion in 61 Fed. Reg. 58211, November 13, 1996, "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs."

Policy Principles

The following policy statements provide general guidance to Federal Emergency Management Agency employees for responsibilities associated with interactions with American Indian and Alaska Native governments.

1. The Federal Emergency Management Agency recognizes and commits to a government-to-government relationship with American Indian and Alaska Native tribal governments.

The Federal Emergency Management Agency recognizes that the tribal right of self-government flows from the inherent sovereignty of Indian tribes and Indian nations and that Federally recognized tribes have a unique and direct relationship with the Federal Government. The Federal Emergency Management Agency further recognizes the rights of each tribal government to set its own priorities and goals for the welfare of its membership and that the Federal Emergency Management Agency will deal with each tribal government, when appropriate as determined by FEMA, to meet that tribe's needs.

2. The Federal Emergency Management Agency acknowledges the policy commitments of the U.S. Congress and the Chief Executive as precedents.

The Federal Emergency Management Agency recognizes House Concurrent Resolution #331, passed in 1988, which declares the policy "To Acknowledge the Contribution of the Iroquois Confederacy of Nations to Reaffirm the Continuing Government-to-Government Relationship between Indian Tribes and the United States Established in the Constitution." In addition, the Federal Emergency Management Agency incorporates the Policy Memorandum of the White House, issued April 29, 1994, herein, as it guides the Executive Departments and Agencies in the "Government-to-Government Relations with Native American Tribal Governments."

3. The Federal Emergency Management Agency acknowledges the trust relationship between the Federal Government and American Indian and Alaska Native tribes as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies.

The Federal Emergency Management Agency recognizes its fiduciary relationship and recognizes its trust responsibility. Where appropriate as determined by FEMA, the Federal Emergency Management Agency will consult and work with tribal governments prior to implementing certain actions when developing legislation, regulations, or policies that will affect the sovereignty of tribal governments, their development efforts and their lands and resources.

4. The Federal Emergency Management Agency will, where appropriate as determined by FEMA, consult and work with tribal governments before making decisions or implementing policy, rules or programs that may affect tribes to ensure that tribal rights and concerns are addressed.

The Federal Emergency Management Agency recognizes that, as a sovereign government, the tribe is responsible for the welfare and rights of its membership. FEMA will, where appropriate as determined by FEMA, involve Indian tribes and seek tribal input at the appropriate level on policies, rules, programs and issues that may affect a tribe's sovereignty.

5. The Federal Emergency Management Agency will encourage cooperation and partnership among Tribal, State, and local governments to resolve issues of mutual concern relating to emergency management.

Effective emergency management requires the cooperation, partnership, and mutual consideration of neighboring governments, whether those governments are neighboring tribes, States, local governments, or Indian nations. Accordingly, the Federal Emergency Management Agency will encourage early communication and partnership among tribes, States, local governments, and Indian nations. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Instead, it recognizes that, in the field of emergency management, problems are often shared and the principle of partnership between equals and neighbors often serves the best interests of both.

6. The Federal Emergency Management Agency will identify and take appropriate steps to remove any impediments that diminish working directly and effectively with tribal governments.

The Federal Emergency Management Agency recognizes that there may be legal, procedural, organizational or other impediments that affect its working relationships with Indian tribes. The Federal Emergency Management Agency will apply the requirements of Executive Order 12875 ("Enhancing the Intergovernmental Partnership") to design solutions and tailor Federal programs, when appropriate as determined by FEMA, to address specific or unique needs of tribal communities. The Federal Emergency Management Agency will also use the National Performance Review and government reorganization to implement effective means for direct cooperation with tribal governments on issues that directly affect them.

7. The Federal Emergency Management Agency will work cooperatively with other Federal Departments and agencies, where appropriate as determined by FEMA, to further the goals of this policy.

The Federal Emergency Management Agency recognizes the importance of and is fully committed to the fulfillment of interagency partnership and will encourage communication, coordination and cooperation among all governmental agencies to ensure that the rights of tribal governments are fully represented and upheld.

8. The Federal Emergency Management Agency will internalize this policy to the extent possible so that it will be incorporated into ongoing and long-term planning and management processes, as well as day-to-day operations.

The Federal Emergency Management Agency will to the extent possible effectively and fully incorporate all of the principles of this policy into all operations and basic tenets of its mission. The Agency will identify the office or individual to coordinate this policy and act as a liaison with American Indian and Alaska Native Tribes in implementing and working with the policy and principles.

9. The effective date of this policy is upon signature by the Federal Emergency Management Agency after coordination and consultation with tribal governments.

As Director of the Federal Emergency Management Agency, I am designating Intergovernmental Affairs, Office of Policy and Regional Operations, as the focal point for coordination and implementation of this Interim Policy. I am further appointing a task force of representatives of the various program and support elements of the Federal Emergency Management Agency to define those ways in which the Agency can, when appropriate as determined by FEMA, fulfill the terms of this Interim Policy.

Therefore, as Director of the Federal Emergency Management Agency, I hereby direct all Agency components to implement this policy by incorporating all of the above principles in their planning and management activities, their legislative initiatives, as well as their policy development.

Dated: November 7, 1997.

James L. Witt,

Director.

[FR Doc. 97–30128 Filed 11–14–97; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 97–21]

Pyramids International, Inc. v. Stuart Roland and Container X-Press, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Pyramids International, Inc., ("Complainant") against Stuart Roland and Container X-Press, Inc. ("Respondents") was served November 10, 1997. Complainant alleges that Respondents have violated sections 8(a), 10(d)(1), and 23(a) of the Shipping Act of 1984, 46 U.S.C. app. Sections 1707(a), 1709(d)(1), and 1721(a), by contracting to provide ocean transport for a shipment from New Orleans, Louisiana to Kotka, Finland and issuing a bill of lading without a proper tariff on file with the Federal Maritime Commission and subsequent to cancellation of Respondents' bond; booking the shipment with a third party entity without informing Complainant; accepting Complainant's check, while failing to pay the third party entity, thus delaying delivery and causing the third party to refuse to release Complainant's cargo until Complainant paid it ocean freight and one month's demurrage.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 10, 1998, and the final decision of the Commission shall be issued by March 10, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30102 Filed 11–14–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–20]

Shipco Transport, Inc. v. Mr. Syed N. Shirazi a/k/a Mr. Bobby Shaida and American Packers & Shippers, Inc. and Homebound International Shipping, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Shipco Transport, Inc., ("Complainant") against Mr. Syed N. Shirazi aka MR. Bobby Shaida and American Packers & Shippers, Inc. and Homebound International Shipping, Inc. ("Respondents") was served November 10, 1997. Complainant alleges that Respondents have violated sections 8(a), 10(a)(1), 19(a) and (d)(1), and 23(a) of the Shipping Act of 1984, 46 U.S.C. app. Sections 1707(a), 1709(a)(1), 1718(a) and (d)(1), and 1721(a), by contracting for Complainant to provide ocean transport on three ships from Los Angeles to destinations in the United Kingdom and Germany; issuing checks in payments for the transport that were returned for insufficient funds, in order to fraudulently secure the release of cargo and cause Complainant to lose its lien; failing to remit ocean freight and charges due despite repeated demands for payment; acting as a non-vessel operating common carrier without a tariff or bond; and acting as a freight forwarder without a Federal Maritime Commission license or bond.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 10, 1998, and the final decision of the Commission shall be issued by March 10, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30101 Filed 11–14–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Bruce A. Mahon, Jupiter, Florida; Michael Edward Golden, Boca Raton, Florida; Thomas L. Gray, Jr., Princeton, New Jersey; Mark A. Wolters, Hamilton Square, New Jersey; Richard P. Rosa, Andover, New Jersey; and Ben Jeffrey Lichtenberg, Berwyn, Pennsylvania; to collectively acquire voting shares White Eagle Financial Group, Inc., Palm Beach Gardens, Florida, and thereby indirectly acquire Admiralty Bank, Palm Beach Gardens, Florida.

Board of Governors of the Federal Reserve System, November 10, 1997.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 97–30041 Filed 11–14–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Colonial BancGroup, Inc., Montgomery, Alabama; to merge with United American Holding Corporation, Orlando, Florida, and thereby indirectly acquire United American Bank of Central Florida, Orlando, Florida.

2. Riverside Banking Company, Fort Pierce, Florida; to acquire 23.53 percent of Class A, and 8.89 percent of Class B, voting shares of Riverside Gulf Coast Banking Company, Cape Coral, Florida (in organization), and thereby indirectly acquire Riverside Bank of the Gulf Coast, Cape Coral, Florida (in organization). Comments regarding this application must be received by December 1, 1997.

Board of Governors of the Federal Reserve System, November 10, 1997.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 97–30042 Filed 11–14–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Community National Bancorporation, Waterloo, Iowa; to engage *de novo* in the making and servicing of loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 10, 1997.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 97–30040 Filed 11–14–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–130]

Notice of the Revised Priority List of Hazardous Substances That Will be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) revise the Priority List of Hazardous Substances. This list includes substances most commonly found at facilities on the CERCLA National Priorities List (NPL) which have been determined to be of greatest concern to public health at or around these NPL hazardous waste sites. This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

In addition to the Priority List of Hazardous Substances, ATSDR has developed a Completed Exposure Pathway Site Count Report. This report lists the number of sites or events with ATSDR activities where a substance has been found in a completed exposure pathway (CEP). This report has been added to the Support Document of the Priority List.

ADDRESSES: Requests for a copy of the report, the 1997 CERCLA Priority List of Hazardous Substances That Will Be The Subject of Toxicological Profiles and Support Document, including the CEP report, should bear the docket control number ATSDR–130, and should be submitted to: Lydia Wilcox, ATSDR Information Center, Division of Toxicology, Mail Stop E–29, 1600 Clifton Rd., N.E., Atlanta, GA 30333. Requests must be in writing.

Electronic Availability: The 1997 Priority List of Hazardous Substances will be posted on ATSDR's World-Wide Web server on the Internet located at http://atsdr1.atsdr.cdc.gov:8080/atsdrhome.html. The priority list will also be posted on the Federal Bulletin Board on or near the day of publication of this notice in the **Federal Register**.

To access the Federal Bulletin Board via the Internet, telnet fedbbs.access.gpo.gov. This file is available in WordPerfect 5.1, Dbase III, and ASCII formats.

This is an informational notice only, and comments are not being solicited at this time. However, any comments received will be considered for inclusion in the next revision of the list and placed in a publicly accessible docket; therefore, please do not submit confidential business information.

FOR FURTHER INFORMATION CONTACT: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road NE, Mail Stop E–29, Atlanta, GA 30333, telephone 800–447–1544.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended (42 U.S.C. 9604(i)(2)), requires that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, have been determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also requires the agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, at least annually thereafter, revise the list to include additional hazardous substances that have been determined to pose the most significant potential threat to human health. In 1995, the agencies altered the publication schedule of the priority list by moving to a 2-year publication schedule, reflecting the stability of this listing activity (60 FR 16476, March 30, 1995). As a result, the priority list is now on a 2-year publication schedule with a yearly informal review and revision. Each substance on the CERCLA Priority List of Hazardous Substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

The initial priority lists of hazardous substances (1987–1990) were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure to substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database. Utilizing this database, a revised approach and algorithm for ranking substances was developed in 1991, and a notice announcing the intention of ATSDR and EPA to revise and rerank the Priority List of Hazardous Substances was published on June 27, 1991 (56 FR 29485). The subsequent 1991 Priority List and revised approach used for its compilation was summarized in the "Revised Priority List of Hazardous Substances" **Federal Register** notice published October 17, 1991 (56 FR 52166). The same approach and the same algorithm have been used in all subsequent activities, including the 1997 listing activity. The algorithm used in ranking hazardous substances on the priority list consists of three criteria, which are combined to result in the total score. The three criteria are: frequency of occurrence at NPL sites; toxicity; and potential for human exposure.

Since HazDat is a dynamic database with ongoing data collection, additional information from the HazDat database became available for the 1997 listing activity. This additional information has been entered into HazDat since the development of the 1995 Priority List of Hazardous Substances. The site-specific information from HazDat that is used in the listing activity has been collected from ATSDR public health assessments, health consultations, and from site file data packages that are used to develop these public health assessments. The new information may include more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure to substances at NPL sites. With these additional data, 28 substances have been replaced on the list of 275 substances. Of the 28 replacement substances, 10 are new candidate substances, and 18 are substances that were previously under consideration. These replacement substances and changes in the order of substances appearing on the CERCLA Priority List of Hazardous Substances will be reflected in the program activities that rely on the list for future direction. These changes reflect the dynamic nature of scientific data on substances present at NPL hazardous waste sites.

In 1996, an extensive review of the toxicity values (Reportable Quantities or Toxicity/Environmental Scores) for the candidate substances was performed. The purpose of this review was to determine if any new information on the toxicity of the candidate substances had become available since the substances were first evaluated (most in 1991). As a result, a number of substances had their toxicity values revised to reflect the new information. Lead is one of the few substances with a Reportable Quantity (RQ) change that was identified during this review (changed from RQ of 1 to RQ of 10). Since the toxicity component of the listing algorithm is based on the RQ, this

change caused Lead to drop from the number one rank on the priority list to the number two rank, with Arsenic replacing it at number one.

The 1997 Priority List of Hazardous Substances includes 275 substances that have been determined to be of greatest concern to public health based on the criteria of CERCLA section 104(i)(2) (42 U.S.C. 9604(i)(2)). A total of 775 candidate substances have been analyzed and ranked with the current algorithm. Of these candidates, the 275 substances on the priority list may become the subject of toxicological profiles in the future. The top 25 substances on the 1997 Priority List of Hazardous Substances are listed below.

Rank	Substance name
–1	Arsenic.
–2	Lead.
–3	Mercury.
–4	Vinyl chloride.
–5	Benzene.
–6	Polychlorinated biphenyls.
–7	Cadmium.
–8	Benzo (a) pyrene.
–9	Benzo (b) fluoranthene.
10	Polycyclic aromatic hydrocarbons.
11	Chloroform.
12	Aroclor 1254.
13	P,P'—DDT.
14	Aroclor 1260.
15	Trichloroethylene.
16	Hexavalent chromium.
17	dibenzo (a,h) anthracene.
18	Dieldrin.
19	Hexachlorobutadiene.
20	Chlordane.
21	Creosote.
22	P,P'—DDE.
23	Benzidine.
24	Cyanide.
25	Aldrin.

This evaluation activity and announcement of a revised Priority List of Hazardous Substances fulfills the conditions of CERCLA section 104(i), as amended. ATSDR and EPA intend to publish the next revised list of hazardous substances in two years, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the Support Document to the List and in the **Federal Register** notices mentioned previously.

In addition to the revised priority list, ATSDR is also releasing a Completed Exposure Pathway Site Count Report. A completed exposure pathway (CEP) is an exposure pathway that links a contaminant source to a receptor population. The CEP ranking is very similar to a sub-component of the potential-for-human-exposure component of the listing algorithm. The CEP ranking is based on a site frequency count, and thus lists the number of sites at which a substance has been found in a CEP. ATSDR's HazDat database contains this information which is derived from ATSDR public health assessments and health consultations. Because exposure to hazardous substances is of significant concern, ATSDR has been tabulating the substances to which people have been exposed at hazardous waste sites. Recently much interest has been focused on this tabulation. Therefore, ATSDR will henceforth publish this CEP report along with the CERCLA Priority List of Hazardous Substances. Since this CEP report focuses on documented exposure, it provides an important prioritization based on substances to which people are exposed.

The substances on the CEP report are similar to the substances on the CERCLA Priority List of Hazardous Substances. However, there are some substances that are on the CEP report, because they are frequently found in completed exposure pathways, but are not on the CERCLA Priority List because they have a very low toxicity (e.g., sodium). Since the CERCLA Priority List incorporates three different components (toxicity, frequency of occurrence, and potential for human exposure) to determine its priority substances, substances with very low toxicity are not on the CERCLA Priority List and consequently are not the subject of toxicological profiles. Of the 100 substances on the CEP report, the 25 substances found at the most number of sites in a CEP are presented below.

Substance name	No. of sites with substance in a CEP	
	All sites	NPL sites
TRICHLOROETHYLENE	227	213
LEAD	206	181
TETRACHLOROETHYLENE	171	157
ARSENIC	138	121
BENZENE	121	110
CADMIUM	102	91
CHROMIUM	99	91
1,1,1-TRICHLOROETHANE	95	86
POLYCHLORINATED BIPHENYLS	90	79
1,1-DICHLOROETHENE	77	73
CHLOROFORM	76	73
ZINC	76	66
MERCURY	74	61
1,1-DICHLOROETHANE	71	69
VINYL CHLORIDE	71	69
MANGANESE	70	60
1,2-DICHLOROETHANE	67	63
METHYLENE CHLORIDE	65	62
VOLATILE ORGANIC COMPOUNDS	61	54
TOLUENE	60	54
COPPER	60	51
NICKEL	53	49
CARBON TETRACHLORIDE	49	42
BARIUM	48	43
POLYCYCLIC AROMATIC HYDROCARBONS	47	44

Note: Sorted by the All Sites column.
ALL Sites = all sites with ATSDR activities; NPL sites = current and former sites on the National Priorities List, as mandated.

Administrative Record

An administrative record entitled ATSDR–130 will be established for materials pertaining to this notice. All materials received as a result of this notice will be included in the public file available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal legal holidays, at the Agency for Toxic Substances and Disease Registry, #4 Executive Park Drive, Suite 2400, Atlanta, Georgia (not a mailing address).

Dated: November 7, 1997.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 97–30055 Filed 11–14–97; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–03–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Validation of Self-Reported Health Outcomes from the Health Assessment of Persian Gulf War Veterans From Iowa—New—The purpose of this proposed study is to collect additional data to validate health outcomes reported by participants in the Health Assessment of Persian Gulf War Veterans From Iowa. The original data collection consisted of a telephone survey of 3,695 military personnel who served during the time of the Persian Gulf War and listed Iowa as their home of residence. Data will be collected from subjects who participated in the telephone survey to validate the self-report of four health outcomes: cognitive dysfunction, depression, asthma, and multi systemic conditions. Neuropsychological testing will be administered to validate cognitive dysfunction. Structured clinical interviews for mental disorders and paper-and-pencil questionnaires will be administered to validate depression. Lung function assessment, tests of airways hyperactivity, and standard respiratory health questionnaires will be administered to validate asthma. Review of medical records, standard physical examination, and laboratory evaluation will be conducted to validate multi systemic conditions, including chronic fatigue syndrome and fibromyalgia. In addition, a feasibility study will be conducted to explore the usefulness of two databases established by the Department of Defense, the Troop Exposure Assessment Model and the Registry of Unit Locations, to validate self-reported exposures among Persian Gulf War veterans who participated in the Iowa telephone survey.

The total annual burden hours are 947.

Form names	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)
Introductory Call (Attachment 1, Appendix C)	285	1	0.166
Scheduling of Appt. (Attachment 1, Appendix C)	200	1	0.083
Consent Procedures	200	1	0.166
Questionnaire Administration (Attachment 1, Appendix K):			
a. Medical Questionnaire	200	1	0.250
b. Occupational and Exposure History	200	1	0.250
c. Mental Health and Social Support History (Battery of standardized psychological tests)	200	1	1.583
d. American Thoracic Society Questionnaire	200	1	0.166
e. Iowa Persian Gulf Study Questionnaire (Selected questions on asthma)	200	1	1.583
f. Iowa Persian Gulf Study Questionnaire (Selected questions on health-related quality of life-SF36)	200	1	0.166
Physical Examination	200	1	0.500
Lung Function Testing	200	1	1.250

2. NCHS Laboratory-Based Questionnaire Research (0920–0222)—Revision—The QDRL conducts pretesting activities related to the development of NCHS and other Federal survey questionnaires, such as the National Health Interview Survey (NHIS). These activities mainly involve use of the cognitive interview, in which volunteer respondents ("laboratory subjects") are administered draft survey questions, and are asked to react to those questions. The cognitive interviewer notes sources of error in these questions, based on problems that subjects have in comprehending the questions and in attempting to recall the information requested. After several cycles of testing of small numbers of respondents (generally 10–12), and development of the questions between testing "rounds," the questionnaires are improved to the point to which they are ready for field testing and household administration. QDRL staff are also engaged in the conduct of general questionnaire design research, in which survey questions are administered to laboratory subjects using different phrasings, or under different administration modes (e.g., face-to-face versus telephone), in order to determine the optimal means for presenting the questions. These investigative pretesting activities are now routinely used by NCHS and by other survey organizations for testing and development purposes, and result in high data quality at a minimal cost, especially in terms of

respondent burden. The total annual burden hours are 500.

Project	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs.)
QDRL Laboratory Interviews:			
(1) NHIS modules	150	1	1.0
(2) Behavioral Risk Factors Survey	100	1	1.0
(3) Other Questionnaire Testing:			
1998	200	1	1.0
1999	200	1	1.0
2000	200	1	1.0
(4) Perceptions of Quality of Life Project	100	1	1.0
(5) Perceptions of Confidentiality Project	50	1	1.0
(6) Perception of Statistical Maps Project	100	1	1.0
(7) General Methodological Research	200	1	0.5
Pilot Household Interviews:			
1999 NHIS Modules	100	1	1.0
2000 NHIS Modules	100	1	1.0
2001 NHIS Modules	100	1	1.0

Dated: November 10, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30099 Filed 11–14–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control Meeting: Change of Time and Location

Federal Register Citation of Previous Announcement: 62 FR 54639—dated October 21, 1997.

SUMMARY: Notice is given that the meeting time and location of the Advisory Committee for Injury Prevention and Control (ACIPC) has changed. The meeting date, status, purpose, and matters to be discussed announced in the original notice remain unchanged. There will be no change in the meeting location of the Science and Program Review Work Group, which will be meeting prior to the full Committee from 1–1:45 p.m. at the Sheraton Washington Hotel.

Original Time and Location: 1–4:30 p.m., Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW, Washington, DC 20008.

New Time and Location: 2–4:30 p.m., Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

CONTACT PERSON FOR MORE INFORMATION: Thomas E. Blakeney, Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Dated: November 10, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30098 Filed 11–14–97; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships and Consultation Services for Ship Construction and Renovation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice and request for public comment.

SUMMARY: This notice announces fees for vessel sanitation inspections effective January 1, 1998. The Public Health Service (PHS) proposes an additional vessel size category for ships >90,000 gross register tonnage. The purpose of the new "Mega" size category is to more accurately recover costs of the Vessel Sanitation Program (VSP) for conducting sanitary inspections of these super-large ships. The PHS also proposes to begin charging fees for consultation services for ship construction and renovation. The purpose of these charges would be to recover costs of conducting the consultation services for ship construction and renovation.

Public comment is requested on the proposed administrative policies to add the new size category for inspections, and to charge for consultation services for ship construction and renovation.

DATES: To ensure consideration, respondents must have their written comments regarding the new size category and charges for services for ship construction and renovation to the VSP by January 2, 1998. Fees for vessel sanitation inspections are effective January 1, 1998.

ADDRESSES: Written comments should be sent by mail or facsimile to the Vessel Sanitation Program, Special Programs Group, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (F16), Atlanta, Georgia 30341–3724, facsimile (770) 488–4127.

FOR FURTHER INFORMATION CONTACT: Daniel M. Harper, Program Manager, Vessel Sanitation Program, National Center for Environmental Health, telephone (770) 488–7093 or e-mail DMH2@CDC.GOV, or Dave Forney, Public Health Advisor, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, telephone (770) 488–7333 or e-mail DLF1@CDC.GOV.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The Centers for Disease Control and Prevention (CDC) operates a vessel sanitation inspection program for cruise ships with international itineraries and calling at United States ports under sections 361–369 (42 U.S.C. 264–272) of the Public Health Service Act, as amended. Regulations for the inspection program appear at 42 CFR part 71.

The Vessel Sanitation Program is a cooperative activity between the cruise ship industry and CDC. The purpose and goals of the VSP are to achieve and maintain a level of sanitation that will lower the risk for gastrointestinal disease outbreaks and assist the passenger line industry in its effort to provide a healthful environment for passengers and crew.

The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the VSP was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). Since then, CDC has published the fee schedule annually. The purpose of this notice is to announce the revised fee schedule for the period January 1, 1998, through September 31, 1998. Public comment is also being requested on the proposal to create a new "Mega" category and on the proposal to charge fees for consultation services for ship construction and renovation.

Revised Inspection Fee Schedule

This notice announces fees effective January 1, 1998. The proposed revised size/cost factor is presented in Appendix A. The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The fee schedule for sanitation inspections is presented in Appendix A and will be effective January 1, 1998, through September 30, 1998. Beginning October 1, 1999, all VSP fiscal activities will be on a Federal fiscal year basis (October 1–September 30). Should a substantial increase occur in the cost of air transportation, it may be necessary to readjust the fees before September 30, 1998, since travel constitutes a sizable portion of the costs of this program. If such a readjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Calender year 1997 opened with the delivery of the first cruise ship exceeding 100,000 gross tonnage. Records for new ship construction document that additional ships of equal or greater tonnage are coming into the U.S. market in 1998 and beyond. As set out in Appendix A, the PHS proposes an additional vessel size category for ships >90,000 gross register tonnage. The purpose of the new "Mega" size category is to more accurately recover the VSP's costs for conducting sanitary inspections of these super-large ships.

Construction and Renovation Consultation Fees

As part of the program designed to assist cruise ship operators in achieving and maintaining a healthy level of sanitation, the VSP offers consultative services upon the request of a ship's owner or operator. The VSP staff review ship construction or renovation plans before construction begins and conduct on-site inspections of the cruise ship during construction as needed. After each review or inspection, VSP staff members issue a written advisory report summarizing any recommended changes to conform to CDC inspection guidelines.

The proposed fees for consultation services by VSP for ship construction and renovation will be three times the cost of a routine sanitation inspection of a passenger cruise ship (based on tonnage) inspected under the VSP, plus travel and per diem costs. The fee schedule for sanitation inspections of passenger cruise ships is published annually in the **Federal Register** and is determined by dividing the full cost of the VSP by the estimated number of inspections and multiplying by a size/cost factor based on the size of the vessel and the number of vessels in each category.

The proposed fee structure for consultation services is based on the following time commitment from two VSP inspectors:

Gross tonnage	Number of days for plan reviews	Number of days for office consultations	Number of days for shipyard visit (including travel)	Initial U.S. inspection	Total number of days consultation provided
<3,000	1	3	3	1	8
3,000–15,000	2	3	3	1	9
15,000–30,000	2	3	4	1	10
30,001–60,000	2	4	4	1	11
60,001–90,000	2	5	5	1	13
>90,000	2	5	6	1	14

Procedure for Requesting Consultation Services

Requests for consultation services for ship construction and renovation must be in writing and received at least 45 days prior to the requested travel dates. (See Appendix B for a sample request.)

Applicability

The inspection fee will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of CDC's VSP. The construction and renovation fees will be applicable to all passenger cruise vessels for which CDC provides consultation on ship construction and renovations.

Dated: November 7, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix A

SIZE/COST FACTOR

Vessel size (GRT[1])	Average cost X
Extra Small (< 3,001)	0.25
Small (3,001–15,000)	0.50
Medium (15,001–30,000)	1.00
Large (30,001–60,000)	1.50
Extra Large (60,001—90,000)	2.00
Mega (>90,000)	2.50

FEE SCHEDULE JANUARY 1, 1998—SEPTEMBER 30, 1998

Vessel size (GRT[1])	Inspection[2]	Consultation
Extra Small (< 3,001)	$ 1,075	$ 3,225
Small (3,001–15,000)	$ 2,150	$ 6,450
Medium (15,001–30,000)	$ 4,300	$12,900
Large (30,001–60,000)	$ 6,450	$19,350
Extra Large (60,001–90,000	$ 8,600	$25,800
Mega (>90,000)	$10,750	$32,250

[1] GRT-Gross Register Tonnage in cubic feet, as shown in Lloyd's Register of Shipping.
[2] Inspections and reinspections involve the same procedure, require the same amount of time, and will, therefore, be charged at the same rate.

Appendix B

Sample

Fax to: Henry Falk, M.D., Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (F28), Atlanta, GA 30341–3724 Facsimile (770) 488–4127

Fax copy to: Program Manager, Vessel Sanitation Program, Special Programs Group, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (F16), Atlanta, GA 30341–3724, Facsimile (770) 488–4127

We request the presence of a DHHS representative for consultation on cruise liner (NAME). We tentatively expect to take delivery of the cruise liner on (DATE). We would like to schedule the consultation for (DATE). We expect the consultation to take approximately (NUMBER OF DAYS).

We will pay CDC in accordance with the consultation fee published in the Federal Register, and for all expenses in connection with the shipyard inspection. We will make all necessary arrangements for lodging and transportation, which includes airfare and ground transportation in (CITY, STATE, COUNTRY). We will provide in-kind for lodging and transportation expenses. All remaining expenses, such as en route per diem and meals and miscellaneous expenses, including ground transportation to and from the airport nearest the representatives work site or residence, should be sent to the following address:

Company
Attention:
Street Address
City, State, Country
Zip Code
Office Telephone Number
Facsimile Number

If you have questions regarding this confirmation, please contact:

Signed:

[FR Doc. 97–30056 Filed 11–14–97; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 97N–0263 and 87N–0262]

European Research Associates, Ltd. et al.; Withdrawal of Approval of Three New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new drug applications (NDA's). The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports on these NDA's.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotics for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the Federal Register of July 10, 1997 (62 FR 37063), FDA offered an opportunity for a hearing on a proposal to withdraw approval of four NDA's because the firms had failed to submit the required annual reports for these NDA's.

The agency received one request for a hearing from Global Pharmaceutical Corp., Castor and Kensington Aves., Philadelphia, PA 19124–5694. Global has filed an annual report for NDA 9–273, Rauwolfia Serpentina Tablets, 50 and 100 milligram (mg). Therefore, approval of this NDA is not being withdrawn.

The holders of the other three applications did not respond to the notice of opportunity for hearing. Failure to file a written notice of participation and request for a hearing as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the NDA's listed in the table in this document.

Application No.	Drug	Applicant
NDA 11–623	Mucilose Super Powder	European Research Associates, Ltd., Pallinskis Bldg., Elisabeth Ave., P.O. Box N3334, Nassau, N.P., Bahamas.
NDA 12–748	Duotrate (pentaerythritol tetranitrate) Capsules, 45 mg	Jones Medical Industries, Inc., 1945 Craig Rd., St. Louis, MO 63146.
NDA 16–470	Duotrate (pentaerythritol tetranitrate) Capsules, 30 mg	Do.

The last two products listed, NDA's 12–748 and 16–470, were named in a notice of opportunity for hearing published in the Federal Register of October 14, 1984 (49 FR 40213), proposing to withdraw the applications, along with other applicants' products, because they lack substantial evidence of effectiveness. In response to that notice, hearings were requested and a hearing was granted (52 FR 32170; August 26, 1987); Jones Medical, the successor in interest to NDA's 12–748 and 16–470, filed a Notice of Participation; on May 10, 1989, the Administrative Law Judge issued his Initial Decision, ordering that NDA's 12–748 and 16–470, and others, be withdrawn; Jones Medical, as well as two other parties, appealed that decision to the Commissioner. On the basis of the present withdrawal of approval of NDA's 12–748 and 16–470 for failing to file required annual reports, the appeal by Jones Medical in Docket No. 87N–0262 is regarded as withdrawn.

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority of 21 CFR 5.82, finds that the holders of the applications listed above have repeatedly failed to submit reports required by § 314.81. Therefore, under this finding, approval of the NDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective November 17, 1997.

Dated: November 6, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–30148 Filed 11–14–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0456]

Osteonics Corp.; Premarket Approval of the Osteonics Constrained Acetabular Insert

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Osteonics Corp., Allendale, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Osteonics Constrained Acetabular Insert. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 13, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 17, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Erin I. Keith, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION: On December 16, 1996, Osteonics Corp., Allendale, NJ 07401–1677, submitted to CDRH an application for premarket approval of the Osteonics Constrained Acetabular Insert. The device is a constrained hip and is indicated for use as a component of a total hip prosthesis in primary and revision patients at high risk of hip dislocation due to a history of prior dislocation, bone loss, joint or soft tissue laxity, neuromuscular disease, or intraoperative instability.

On June 10, 1997, the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On June 13, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 17, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30149 Filed 11–14–97; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 8 and 9, 1997 in Building 10, Room 10B16, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 8 from 9 a.m. until approximately 10 a.m. for general remarks by the Director, Intramural Research Program, National Eye Institute (NEI), on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meting will be closed to the public on December 8 from approximately 10 a.m. until recess and

on December 9 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Sensory Motor Research. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Colleen Genovese, Counselor Assistant, NEI, Building 10, Room 10N202 Bethesda, Maryland 20892, (301) 496–3123, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Genovese in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: November 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30083 Filed 11–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: November 19, 1997.

Time: 11:00 am.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Katherine Woodbury/Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate Phase II RFP Contract Proposal(s).

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: November 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30084 Filed 11–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: November 17, 1997.

Time: 8:30 a.m.

Place: One Washington Circle, Washington, DC.

Contact Person: Dr. Alec Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, Maryland 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 5, 1997.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4190, Telephone Conference.

Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Clinical Sciences.

Date: December 5, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4144, Telephone Conference.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.

Date: December 9, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30085 Filed 11–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: November 14, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5140, Telephone Conference.

Contact Person: Dr. Gerald Greenhouse, Scientific Review Administrator, 6701 Rockledge Drive, Room 5140, Bethesda, Maryland 20892, (301) 435–1023.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892 93.893, National Institutes of Health, HHS)

Dated: November 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30086 Filed 11–14–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Assessment Plan: Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments; Notice of Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: Notice is given that the public comment period for the document titled "Assessment Plan: Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments" is extended for 30 days. Initial notice of availability was published on October 14, 1997 with a deadline for submittal of comments of November 13, 1997. This notice extends the comment period until 30 days from the date of publication in the Federal Register.

The U.S. Department of the Interior, and the State of Indiana ("trustees") are trustees for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR Part 11. The public review of the Plan announced by this Notice is provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan can be requested from the address listed below. All written comments will be considered by the trustees and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Plan must be submitted on or before December 17, 1997.

ADDRESSES: Requests for copies of the Plan may be made to: Supervisor, Ecological Services Office, U.S. Fish and Wildlife Service, 620 S. Walker Street, Bloomington, Indiana 47403 or:

Ms. Elizabeth Admire, Indiana Department of Environmental Management, 100 N. Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on the Plan should be sent to the Indiana Department of Environmental Management at the address listed above. The trustees will coordinate comment review.

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from the suspected injury to natural resources of the Grand Calumet River, Indiana Harbor Ship Canal, Indiana Harbor and Associated Lake Michigan Environments which have been exposed to hazardous substances released by area steel mills, refineries and other potential sources. It is suspected that this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended. The Plan addresses the trustees' overall assessment approach and utilizes existing data. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 97–30094 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The U.S. Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Lizardtech Company, Seattle, Washington. The purpose of the CRADA is to jointly discover the most efficient and affordable delivery mechanisms and product development methods for digital image data; specifically large numbers of Digital Orthophoto Quadrangles in more acceptable formats to a wider market segment.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet "ebrunson@usgs.gov".

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the USGS Survey Manual.

Dated: October 31, 1997.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 97–30064 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–017–1430–00/G010–G8–0250]

Emergency Closure for the Elk Springs Area of Critical Environmental Concern (ACEC), Sandoval County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of emergency closure of access.

SUMMARY: Notice is hereby given that effective November 17, 1997, a road located within the NE¼ of section 29, T. 19 N., R. 1 W., NMPM, is closed to all forms of access except as specifically authorized by the Bureau of Land Management. The purpose of this road closure is to prevent unnecessary degradation of resources, undue environmental damage and to ensure resource protection on public lands. The area is being temporarily closed during the winter and spring when the elk/deer are most heavily occupying the area. All roads within the proximity of the Elks Spring ACEC are limited to motorized vehicles, using existing roads and trials.

The emergency access closure is in accordance with the provisions of 43 CFR 8364.1. This designation remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Joe Jaramillo, Realty Specialist at Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761–8779.

Dated: November 5, 1997.

Michael R. Ford,

District Manager.

[FR Doc. 97–30060 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-96-1990-00]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 9:00 a.m., Wednesday, December 17, 1997. Issues that will be discussed include Whitetail/Pipestone ORV alternatives, and how the BLM's two-tier system will affect the Resource Advisory Councils.

The meeting will be held at the Butte District Office, 106 N. Parkmont, Butte, Montana.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard.

Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. 3388), Butte, Montana 59702-3388, telephone 406-494-5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: November 7, 1997.

Michele Good,

Acting District Manager.

[FR Doc. 97-30132 Filed 11-14-97; 8:45 am]

BILLING CODE 4310-GN-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-942-5700-00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Lance J. Bishop, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825-0451, (916) 978-4310.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Humboldt Meridian, California

Ts. 11N., Rs. 4 & 5 E.,—Dependent resurvey and corrective dependent resurvey, (Group 997) accepted October 29, 1997, to meet certain administrative needs of the US Forest Service, Six Rivers National Forest.

Mount Diablo Meridian, California

T. 8 N., R. 9 E.,—Dependent resurvey and metes-and-bounds survey, (Group 1279) accepted October 3, 1997, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 37 N., R. 16 E.,—Dependent resurvey and subdivision of sections, (Group 1102) accepted October 31, 1997, to meet certain administrative needs of the BLM, Surprise Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: November 7, 1997.

Lance J. Bishop,

Chief, Branch of Cadastral Survey.

[FR Doc. 97-30130 Filed 11-14-97; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-057-1430-00]

Idaho: Filing of Plats of Survey; Idaho

The protraction diagram of unsurveyed T. 30 N., R. 7 E., Boise Meridian, Idaho, was accepted on November 6, 1997 and was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. November 6, 1997. The preparation of this diagram was necessary to meet certain administrative needs of the USDA Forest Service, Geometronics Service Center, to support its mapping program. All inquiries concerning the protraction diagram of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709-1657.

Dated: November 6, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97-30059 Filed 11-13-97; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-958-1430-01; GP8-0031; OR-53466]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 207.22 acres of lands, of which 143.32 acres are public lands and 63.90 acres are non-Federal lands, to protect the natural and recreational values of four recreation sites. This notice closes the lands for up to 2 years from surface entry and mining. The public lands have been and will remain open to mineral leasing. Upon acquisition, the non-Federal lands will be opened to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by February 16, 1998.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208-2965.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, 503-952-6155.

SUPPLEMENTARY INFORMATION: On October 21, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal lands from settlement, sale, location, or entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Public Lands

Iron Mountain Gold Panning Area

T. 31 S., R. 7 W.,
sec. 4, NE¼SE¼, excluding that portion granted to the railroad under the Act of July 25, 1866 (14 Stat. 239).

Revested Oregon and California Railroad Grant Lands

Pickett Bridge Recreation Site

T. 30 S., R. 2 W.,
sec. 23, SW¼NE¼.

Olalla-Thompson Creek Day Use Area

T. 30 S., R. 7 W.,
sec. 5, SW¼NE¼NE¼SW¼, SE¼NW¼SW¼, and N½NE¼SW¼SW¼.

Island Creek Recreation Site

T. 31 S., R. 7 W.,
sec. 1, lot 5, excluding that portion granted to the railroad under the Act of July 25, 1866 (14 Stat. 239).

The areas described aggregate 143.32 acres in Douglas County.

Non-Federal Lands

Island Creek

T. 30 S., R. 7 W.,
sec. 36, S½S½S½SW¼.
T. 31 S., R. 7 W.,
sec. 1, that portion of lot 5 granted to the railroad under the Act of July 25, 1866 (14 Stat. 239), and NW¼NW¼.

Iron Mountain

T. 31 S., R. 7 W.,
sec. 4, that portion of the NE¼SW¼ granted as right-of-way to the railroad under the Act of July 25, 1866 (14 Stat. 239).

The areas described aggregate 63.90 acres in Douglas County.

The purpose of the proposed withdrawal is to expand opportunities for general recreation and recreational gold panning, to protect the public health and safety, and to protect current road improvements and future site development investments as to the public and non-Federal lands located in the four recreational sites.

For a period of 91 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 91 days from the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources.

Dated: October 31, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97-30061 Filed 11-14-97; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

National Park Service

Petroglyph National Monument Advisory Commission

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 9:00 a.m., Friday December 12, 1997, at the Indian Pueblo Cultural Center, 2401 12th Street, N.W., Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101-313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

Matters to be discussed at the December 12, 1997 meeting include:

Introduction of Commission members and guests
Superintendent's Report
Old Business
New Business
Public Comment

The meeting will be open to the public. Any member of the public may file a written statement concerning the matters to be discussed at the Commission meeting with the Superintendent.

Persons who wish further information concerning the meeting, or who wish to submit written comments may contact Judith Cordova, Superintendent, Petroglyph National Monument, 6001 Unser Boulevard N.W., Albuquerque, New Mexico 87120, telephone (505) 899-0205.

Minutes of the Commission meeting will be available for public inspection six weeks after the meeting at Petroglyph National Monument headquarters.

Dated: November 5, 1997.

Elizabeth Montano,

Acting Superintendent, Petroglyph National Monument

[FR Doc. 97-30134 Filed 11-14-97; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Klamath Project Interim Operations Plan, Klamath Project, Oregon and California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (DEIS) on a plan for operations of the Klamath Project (Project) to cover an interim period, pending completion of a water rights adjudication, currently underway by the State of Oregon. The plan will be developed to define project operations in relation to Reclamation's responsibilities and obligations concerning the Endangered Species Act, senior water rights, tribal trust resources, Project water users' contractual rights, wildlife refuges, and other requirements mandated by law and within the authority of the Secretary of Interior.

ADDRESSES: Ms. Laura Allen, NEPA Team Leader, Klamath Basin Area Office, Bureau of Reclamation, 6600 Washburn Way, Klamath Falls, OR 97603.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Allen at (541) 883-6935.

SUPPLEMENTARY INFORMATION: Drought conditions in the early 1990s demonstrated the need for Reclamation to develop an operations plan for the Project to assist those affected by Project operations to understand how Reclamation will manage the project, consistent with its responsibilities and obligations. Since 1995, Reclamation has operated the Project according to annual operations plans/advisories. During this time, Reclamation has received considerable information which will aid in the development of an interim operations plan for the Project.

When completed, the interim operations plan will supersede the annual operations plans/advisories and will guide Project operations until completion of the adjudication. At that time, the interim plan will be revised as necessary and additional NEPA documentation may be required.

Dated: November 5, 1997.

John F. Davis,

Acting Regional Director.

[FR Doc. 97–30096 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Westland Irrigation District Boundary Adjustment, Hermiston, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an environmental impact statement (EIS) for a proposed boundary adjustment to include additional lands into the Westland Irrigation District. Westland Irrigation District (WID) proposes the addition of 21,100 acres, of which 9,912 acres are currently irrigated, into their boundaries.

The NEPA process was initiated in late 1993 and, as a result of comments received then, has been on hold until additional information was obtained. This notice is to inform the public of the resumption of the NEPA process and the preparation of an EIS.

FOR FURTHER INFORMATION CONTACT: Mr. John Tiedeman, UCA–1607, Upper Columbia Area Office, Bureau of Reclamation, PO Box 1749, Yakima WA 98907–1749; Telephone (509) 575–5848 extension 238.

SUPPLEMENTARY INFORMATION: WID is one of several districts in the Umatilla basin either served by federally owned facilities or receiving federally controlled water. A Federal repayment contract with WID requires that changes to district boundaries must be approved by the Secretary of the Interior. During studies undertaken to implement the Umatilla Basin Project Act, it became apparent that WID was providing federally supplied water to lands outside of the district boundaries. In 1993, to address this problem, WID requested that Reclamation allow a change in their boundaries so that they may provide irrigation water to lands outside the current boundaries. In the interim Reclamation entered into a series of annual water service contracts with WID so irrigation of lands outside of the district boundaries with federally supplied water could continue while issues surrounding the boundary expansion were resolved.

Reclamation and the Natural Resources Department of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) held public meetings on November 4 and December 17, 1993, to gather comments from the public concerning the "Proposed Boundary Changes for Irrigation Districts in the Umatilla Project, Oregon." Key issues identified in the scoping effort included Umatilla River hydrology and passage conditions for anadromous fish, Native American trust resources, and continued viability of irrigated agriculture. Based on the complex and often controversial nature of the issues involved, the high level of public and agency interest, and Reclamation's Native American trust responsibilities, Reclamation concluded that an EIS should be prepared. Since then, a hydrologic model of the Umatilla basin, necessary to complete the assessment of the proposed boundary adjustment, has been developed. Completion of the hydrologic model is anticipated for February 1998.

Four alternatives are proposed, including the no action alternative. Under the no action alternative all deliveries of federally supplied water by WID to lands outside of the current district boundaries would cease. Under the action alternatives some, or all, of these deliveries could continue. The draft EIS is expected to be completed in March of 1999.

At this time, no additional scoping meetings are planned. A summary of scoping issues identified through previous meetings is available upon request. Anyone interested in more information concerning the proposed action or who has information concerning significant environmental issues, should contact Mr. Tiedeman as provided under the **FOR FURTHER INFORMATION CONTACT** section.

Dated: October 17, 1997.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 97–30062 Filed 11–14–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

[AG Order No. 2129–97]

Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Department of Justice.

ACTION: Notice of interim guidance with request for comments.

SUMMARY: Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA") requires the Attorney General, by February 1998, to promulgate regulations requiring verification that an applicant for federal public benefits is a qualified alien eligible to receive federal public benefits under the Act. Amendments to the PRWORA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 also require the Attorney General, within the same time period, to establish fair and nondiscriminatory procedures for applicants to provide proof of citizenship. Amendments to the PRWORA by the Balanced Budget Act of 1997 require the Attorney General, by November 3, 1997, to issue interim verification guidance that sets forth procedures that benefit providers can use to verify citizenship, qualified alien status, and eligibility under Title IV of the PRWORA prior to issuance of the final regulations. In accordance with this last statutory requirement, the Attorney General, in consultation with federal benefit-granting agencies, has developed this interim guidance.

DATES: This Interim Guidance is effective October 29, 1997.

ADDRESSES: Comments should be submitted to: John E. Nahan, Immigration and Naturalization Service, 425 I St., N.W., ULLICO Building, 4th Floor, Washington, D.C. 20536, (202) 514–2317.

FOR FURTHER INFORMATION CONTACT: John E. Nahan, Immigration and Naturalization Service, 425 I St., N.W., ULLICO Building, 4th Floor, Washington, D.C. 20536, (202) 514–2317.

SUPPLEMENTARY INFORMATION: By the authority vested in me as Attorney General by law, including section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as amended), I hereby issue the following Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Dated: October 20, 1997.

Janet Reno,

Attorney General.

Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Introduction

A. Summary

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act") provides that, with certain exceptions, only United States citizens, United States non-citizen nationals and "qualified aliens" (and sometimes only particular categories of qualified aliens) are eligible for federal, state and local public benefits. The Act, as amended by the Balanced Budget Act of 1997, requires the Attorney General, by November 3, 1997, to issue interim guidance on the verification of eligibility of aliens for federal public benefits. The Act also requires the Attorney General, by February 1998, to promulgate final regulations requiring verification that an applicant is a qualified alien eligible to receive federal public benefits under the Act. States have an additional twenty-four months to put into effect a verification system that complies with those regulations. Amendments to the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 further require the Attorney General to establish fair and nondiscriminatory procedures for applicants to provide proof of citizenship. Benefit providers, however, are required to implement the Act, and hence to make determinations regarding citizenship, qualified alien status, and eligibility under Title IV of the Act, before the Attorney General's issuance of new regulations and the States' development of conforming verification systems.

This memorandum provides guidance on how to verify citizenship, immigration status and eligibility under Title IV of the Act during this interim period. This guidance adopts a four-step procedure: (1) Determine if your program provides a "federal public benefit" subject to the Act's verification requirements; (2) Determine whether the applicant is otherwise eligible for benefits under general program requirements; (3) Verify the applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien; and (4) Verify the applicant's eligibility for benefits under the Act. If at any step you determine that you are not required to verify (or further verify) immigration status, you should not go on to the following step(s). If you have any questions regarding verification of immigration status pursuant to this Guidance, contact the local office of the Immigration and Naturalization Service ("INS") serving your geographic area. A list of local INS offices is set forth in Attachment 1. Attachment 1 also includes a copy of INS Form G–845 and the Supplement thereto to be used to verify immigration status pursuant to this Guidance.

This Guidance applies only to federal public benefits, and does not directly address the citizenship and immigration requirements that Title IV of the Act imposes on the provision of state and local public benefits. To the extent that you are required to verify that an applicant is a U.S. citizen, U.S. non-citizen national or qualified alien when determining eligibility for a state or local program, however, the Attorney General will be promulgating regulations that set forth procedures by which state and local providers can verify alien eligibility for such benefits. During the interim, we advise that you use this Guidance in consultation with state and local authorities.

B. Programs With Governmental Verification

Some federal programs (*e.g.*, Medicaid) require federal, state and local governmental agencies, but not private providers, to verify citizenship and immigration status as part of program eligibility determinations. The private entities actually providing the benefits must abide by the verification determination made by the governmental agency; they engage in no independent verification. Nothing in this Guidance modifies such program requirements: providers of benefits under programs where verification is performed by a governmental agency are not required by this Guidance to verify that an applicant is a U.S. citizen, non-citizen national or qualified alien, and they should not engage in such verification. They should continue to provide benefits pursuant to program requirements based on the verification determinations made by the appropriate governmental agency.

C. Programs Currently Required To Use the SAVE System

Some federal programs (*e.g.*, Medicaid, unemployment compensation, educational assistance under Title IV of the Higher Education Act of 1965, assisted housing programs administered by the Department of Housing and Urban Development) already require, absent a waiver, verification of the immigration status of noncitizens applying for benefits through the Systematic Alien Verification for Entitlements ("SAVE") system. SAVE is an intergovernmental information-sharing program that is available to benefit-granting agencies that need to determine an alien's immigration status. With one exception, nothing in the Act changes preexisting legal requirements regarding use of the SAVE system or relieves the administrators of statutorily mandated programs of their obligations to comply with the SAVE program (including the terms of any waiver of SAVE program requirements received from the appropriate federal agency); section 840 of the Act, however, did remove the requirement that a state agency use the SAVE system to verify eligibility for Food Stamps. You should note that SAVE does not provide all of the information that may now be necessary to determine an individual's eligibility under Title IV of the Act. You should use this Guidance to obtain or verify that new information.

D. Exemption for Nonprofit Charitable Organizations

Subject to such verification regulations as the Attorney General may subsequently adopt and the limitations set forth immediately below, a "nonprofit charitable organization" providing a federal, state or local public benefit covered by the Act is *not* required under Title IV of the Act to determine, verify, or otherwise require proof of an applicant's eligibility for such benefits based on the applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien. Thus, a nonprofit charitable organization is not required by the Act to seek an applicant's confirmation that he or she is a qualified alien, or to have a separate entity verify the applicant's status before providing benefits. To be eligible for this exemption, an organization must be both "nonprofit" and "charitable." For purposes of this Guidance, an organization is "nonprofit" if it is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders. An organization is "charitable" if it is organized and operated for charitable purposes. The term "charitable" should be interpreted in its generally accepted legal sense as developed by judicial decisions. It includes organizations

dedicated to relief of the poor and distressed or the underprivileged, as well as religiously-affiliated organizations and educational organizations. If you have any questions as to whether your organization is a nonprofit charitable organization exempt from the Act's verification requirements, you should contact the federal, state or local agency overseeing the program you administer to obtain guidance.

The exemption for nonprofit charitable organizations is limited to verification requirements imposed by Title IV of the Act and to those instances in which the nonprofit charitable organization itself would be required by Title IV to engage in verification. Certain programs, however, require federal, state and local agencies to verify citizenship and immigration status as part of program eligibility determinations, while benefits are provided, at least in part, by charitable organizations. Other programs currently require verification by the charitable organization itself. These independent requirements are not altered by the provision exempting nonprofit charitable organizations from the Act's verification requirements. If a non-exempt entity (*e.g.*, a state agency) performs verification for benefits provided through a nonprofit charitable organization, you must abide by those determinations. Similarly, if your program has procedures unrelated to Title IV of the Act that require verification by your charitable organization, or adopts such procedures in the future, you must comply with such procedures.

A nonprofit charitable organization that chooses not to verify cannot be penalized (*e.g.*, through cancellation of its grant or denial of reimbursement for benefit expenditures) for providing federal public benefits to an individual who is not a U.S. citizen, U.S. non-citizen national or qualified alien, except when it does so either in violation of independent program verification requirements or in the face of a verification determination made by a non-exempt entity. However, if your organization chooses to verify, even though it is a nonprofit charitable organization that is not required to do so under the Act, you should comply with the procedures set forth in this Guidance and provide benefits only to those whom you verify to be U.S. citizens, U.S. non-citizen nationals or qualified aliens. Any verification request to INS by a nonprofit charitable organization must be accompanied by the written consent of the individual whose status is to be verified to the release of information about the individual to a nongovernmental entity. The consent must be notarized or executed under penalty of perjury. (INS Form G–639 may be used for this purpose.)

E. Nondiscrimination and Privacy Requirements

Various federal civil rights laws and regulations prohibit discrimination by governmental and private entities on the basis of race, color, national origin, gender, religion, age and disability. They include Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* ("Title VI"), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, and the Fair Housing Act, 42 U.S.C. 3601 *et seq.* These laws apply to entities' provision of any public benefits, including their implementation of the Act. In particular, Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity, whether operated by a public or private entity, that receives federal funds or other federal financial assistance. Thus, in operating or participating in a federally assisted program and implementing the requirements of the Act, including those set forth in this Guidance, a provider should not, on the basis of race, color or national origin, directly or indirectly differentiate among persons in the types of program services, aids or benefits it provides or the manner in which it provides them. For example, benefit providers should treat all similarly situated individuals in the same manner, and should not single out individuals who look or sound foreign for closer scrutiny or require them to provide additional documentation of citizenship or immigration status. The nondiscrimination requirements of Title VI and other applicable civil rights laws are discussed more fully in Attachment 2.

If you have questions regarding issues of discrimination that may arise with respect to benefit-granting procedures or the implementation of this Guidance, you should contact the civil rights office of the pertinent benefit-granting agency or the applicable office in the Civil Rights Division of the U.S. Department of Justice. Contact numbers in the U.S. Department of Justice, Civil rights Division are set forth in Attachment 2.

When implementing the Act's verification requirements, you should be sensitive to privacy interests, and should use the citizenship and immigration status information received only for purposes of verifying the applicant's eligibility for benefits under the Act and, if you are a governmental entity, for sharing such information with the INS and other governmental entities as provided by the Act. You should also review the Privacy Act (5 U.S.C. 552a), state and local privacy laws, and your program's requirements to ensure that you comply with all applicable privacy requirements.

Verification Procedures

Step 1: Determine if Your Program Provides a "Federal Public Benefit" Subject to the Act's Verification Requirements

The Act's requirement that benefit recipients be U.S. citizens, U.S. non-citizen nationals or qualified aliens does not apply to all federally funded activity or programs; it applies only to non-exempted "federal public benefits". Therefore, benefit providers should first determine whether the particular program they are administering provides a "federal public benefit" for which the Act requires them to verify citizenship, nationality or immigration status. Preliminary guidance on which programs provide "federal public benefits" subject to the Act's verification requirements is set forth in Attachment 3. *If the federal program does not provide a "federal public benefit" covered by the Act* (*e.g.*, the program is exempted by Attorney General Order No. 2049, 61 FR. 45,985 (1996), regarding government-funded community programs, services or assistance that are necessary for the protection of life or safety), *the benefit provider is not required to, and should not attempt to, verify an applicant's status, unless otherwise required or authorized to do so by law,* because all aliens, regardless of their immigration status, are eligible for such benefits.

If one program provides several public benefits, the Act's requirements apply only to those benefits that are non-exempted federal public benefits under the Act. A provider is not required to, and should not, verify the citizenship, nationality and immigration status of applicants for other benefits provided by the program that do not constitute federal public benefits.

Step 2: Determine Whether Applicant is Eligible for Benefits Under General Program Requirements

Given the potential intrusiveness and possibly time-consuming nature of the citizenship and alien status verification inquiry, a provider should determine whether an applicant otherwise meets specific program requirements for

benefit eligibility before initiating the verification process, unless determining program eligibility would be considerably more complex and time-consuming than verifying immigration status. This will reduce verification inquiries that prove unnecessary because the applicant is not otherwise eligible for the benefits requested. This Guidance does not address these other program eligibility requirements; a provider should refer to the statute, regulations and agency guidance (if any) governing its program for such requirements. (Note, however, that Title IV contains provisions requiring that, upon the effective date of the new affidavit of support, required under section 213A of the Act, when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien is entitled, the income and resources of the alien be deemed to include those of any person executing an affidavit of support on behalf of the alien and that person's spouse, if applicable, with certain exceptions for indigent qualified aliens and aliens who (or whose children or parents) have been battered or subjected to extreme cruelty in the U.S. by a spouse, parent or member of the spouse or parent's family. See Exhibit B of Attachment 5.)

Determining program eligibility will normally include verifying that the applicant is who he or she claims to be. Although many of the documents and procedures relevant to determining citizenship or immigration status may also be relevant to identity verification, this Guidance is designed to provide assistance in determining the status of applicants whose identity has already been verified, and does not address appropriate identity verification procedures. It is your responsibility to assure yourself, pursuant to non-discriminatory procedures, of the identity of the applicant.

Step 3: Verify Applicant's Status as A U.S. Citizen, U.S. Non-Citizen National or Qualified Alien

Because the process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national or qualified alien raises significant issues involving privacy and anti-discrimination protections, no verification of an applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien should be undertaken where benefits are not contingent on such status. In addition, if an alien is applying for benefits on behalf of another person, you may, under federal law, only verify the status of the person who will actually be receiving the benefits.

Except as set forth in this paragraph, if your program provides a non-exempted "federal public benefit," and thus is available only to U.S. citizens, U.S. non-citizen nationals and qualified aliens, you should verify an applicant's status as set forth below. If you are a private provider of a "federal public benefit" and your program requires verification by a federal, state or local governmental agency, but not by a private provider, you should not engage in any independent verification and should continue to comply with the verification determinations made by the appropriate governmental entity. If you are on the SAVE system, you should continue following the SAVE procedures and should use this Guidance only for matters not addressed under the SAVE program.

A. U.S. Citizen or Non-Citizen National

1. *Ask for Declaration of Status.* If you are required to verify an applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien, you should begin by asking the applicant to submit a written declaration, under penalty of perjury, that he or she is a citizen or non-citizen national of the U.S. (or that he or she is a qualified alien—see Paragraph B.1. below).

Subject to certain exceptions and qualifications (particularly with respect to derivative citizenship), a United States citizen is:

- A person (other than the child of a foreign diplomat) born in one of the several States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;
- A person born outside of the United States to at least one U.S. citizen parent (sometimes referred to as a "derivative citizen"); or
- A naturalized U.S. citizen.

As a general matter, a United States non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

The law regarding U.S. citizenship and nationality is complex. These broad definitions are provided for general guidance only, and do not address all of the complexities involved in attaining or losing status as a U.S. citizen or non-citizen national. See 8 U.S.C. 1401 *et seq.*

If you have any questions regarding whether an applicant is a U.S. citizen or non-citizen national, you should consult with the INS (in the case of a naturalized citizen) or the federal agency or department that oversees your program.

2. *Verify Status.* A number of programs have existing procedures for verifying that an applicant is a U.S. citizen or non-citizen national for purposes of program eligibility. You should continue to comply with any existing or future legal requirements for verifying citizenship and nationality that are imposed on your program, as well as with any applicable existing or future guidance provided by the agency or department overseeing your program. If a program has no requirements or guidance regarding verification, a benefit provider should refer to this Guidance.

The appropriate method of verifying an applicant's citizenship will depend upon the requirements and needs of the particular program, including, but not limited to , the nature of the benefits to be provided, the need for benefits to be provided on an expedited basis, the length of time during which benefits will be provided, the cost of providing the benefits, the length of time it will take to verify based on a particular method, and the cost of a particular method of verification. For example, a benefit provider could adopt a quick and simple verification procedure if it provides short-term benefits and the cost of extensive verification will outweigh the cost of the benefits or if verification will be time-consuming and the benefits are needed in the short term. On the other hand, if the benefit provider provides substantial, long-term benefits, it may be reasonable to require more extensive verification of citizenship.

Regardless, a benefit provider's decision as to the appropriate method must be made in a non-discriminatory fashion; for example, it cannot turn on the fact that the applicant looks or sounds foreign or has an ethnic surname. A benefit provider should adopt neutral procedures that apply equally to all applicants regardless of their appearance, ethnicity or accent. A benefit provider should not implement its procedures in a manner that discriminates against applicants whom it assumes to be foreign; nor should a benefit provider treat any applicant in a more beneficial manner based on assumptions as to the applicant's citizenship. (See Nondiscrimination Advisory in Attachment 2.)

To verify that an applicant is a U.S. citizen or non-citizen national, a benefit provider could do any one of the following:

(a) Ask the applicant to present a document demonstrating that he or she is a U.S. citizen or non-citizen national. Documents that can be used to make this demonstration are described in Attachment 4. (A benefit provider may also consult records of verified citizenship, if any, maintained by the agency overseeing its program.)

(i) If the document reasonably appears on its face to be genuine and to relate to the individual presenting it (or, if your program already has existing guidance or procedures mandating a higher standard of proof for acceptance of documentary evidence of status, the document satisfied that higher standard), the provider should accept the document as conclusive evidence that the applicant *is* a U.S. citizen or non-citizen national, and should not verify status any further.

(ii) If the document presented does not on its face reasonably appear to be genuine (or to satisfy a higher applicable standard) or to relate to the individual presenting it, the benefit provider should contact the governmental entity that originally issued the document presented or that can confirm the applicant's status as a U.S. citizen or non-citizen national. (With regard to naturalized citizens and derivative citizens presenting certificates of citizenship, the INS is the appropriate governmental entity to contact for verification of such status. If the applicant presents a document relating to such status and that document does not on its face reasonably appear to be genuine or to relate to the applicant (or to satisfy a higher applicable standard), the provider may request verification of status by filing INS Form G–845 along with copies of the pertinent documents provided by the applicant with the local INS office. If an applicant has lost his or her original documents or never had an original document demonstrating naturalized or derivative citizenship, refer the applicant to the local INS office to obtain documentation of status.)

(b) Accept a written declaration, made under penalty of perjury and possibly subject to later verification of status, from one or more third parties indicating a reasonable basis for personal knowledge that the applicant is a U.S. citizen or non-citizen national.

(c) Accept the applicant's written declaration, made under penalty of perjury and possibly subject to later verification of status, that he or she is a U.S. citizen or non-citizen national.

The options described in subparagraphs (b) and (c) above present a greater potential for undetected false claims of being a United States citizen or non-citizen national, and therefore should be used with caution in appropriate circumstances. For example, before using these options, a provider might require the applicant to demonstrate why a document evidencing that he or she is a U.S. citizen or non-citizen national does not exist or cannot be readily obtained. Such a requirement must be imposed equally on all applicants, and cannot be applied in a discriminatory manner.

3. *Action Pending Verification.* In an applicant has satisfied the above requirements regarding submission of a sworn declaration and presentation of any other required evidence of status, you should refer to the legal requirements of your program and to any applicable guidance provided by the federal agency or department overseeing your program to determine if you should grant or withhold benefits during the period of time in which you are verifying the applicant's status. If your program has no such requirements or guidance and the applicant has submitted a written declaration, under penalty of perjury, that he or she is a U.S. citizen or non-citizen national, you should not delay, deny, reduce or terminate the applicant's eligibility for benefits under the program on the basis of an applicant's citizenship or nationality during the period of time it takes to verify his or her status.

4. *Take Action Based on Results of Verification.* If you verify that the applicant is a U.S. citizen or non-citizen nation, you are subject to no further verification requirements under Title IV of the Act and should grant the benefits requested if the applicant is otherwise eligible for them under the specific program's requirements. If you cannot verify that the applicant is a U.S. citizen or non-citizen national after exhausting the above-described methods (and the applicant is not a qualified alien—see below), you should deny the benefits requested, and notify the applicant pursuant to your regular procedures of his or her rights under the applicable program to appeal the denial of benefits. If the INS was involved in the provider's attempt to verify naturalized or derivative citizenship, the INS will, upon request of the agency or department handling the appeal, conduct a thorough review of its initial verification response and will provide the agency or department with information in its possession necessary to resolve the appeal.

B. Qualified Alien

1. *Ask for Declaration of Status.* If an applicant is not a U.S. citizen or U.S. non-citizen national, you may grant the applicant non-exempt federal public benefits only if the applicant submits a written declaration, under penalty of perjury, that he or she has an immigration status that makes him or her a "qualified alien" and you verify that status as set forth below.

A "qualified alien" is:

- An alien lawfully admitted for permanent residence under the Immigration and Nationality Act ("INA");
- An alien granted asylum under section 208 of the INA;
- A refugee admitted to the U.S. under section 207 of the INA;
- An alien paroled into the U.S. under section 212(d)(5) of the INA for at least one year;
- An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
- An alien granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- An alien who is a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
- An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act (see Exhibit B of Attachment 5).

2. *Request Documentation of Immigration Status.* Ask the applicant to provide documentation evidencing his or her status as a qualified alien. The documents that will demonstrate that an applicant is a "qualified alien" are described in Attachment 5. *Note that,* if the applicant is applying for federal means-tested public benefits covered by the Act, or possibly a program funded by a Social Services Block Grant, the applicant may well have to present additional documentation demonstrating eligibility under the Act—see Step 4 below—and you will also want to ask the applicant to provide any such additional documentation demonstrating eligibility.

3. *If Supported by Documents, Conclude that the Applicant is a Qualified Alien.* If the documentation reasonably appears on its face to be genuine (or, if your program already has existing guidance or procedures mandating a higher standard of proof for acceptance of documentary evidence of immigration status, the document satisfies that higher standard) and to relate to the individual presenting it, you should accept the documentation as conclusive evidence that the applicant *is* a qualified alien, you should *not* further verify immigration status with the INS (unless you are a SAVE user, in which case you should proceed to verify status according to SAVE procedures), and you should proceed to determine if the applicant satisfies the Act's other eligibility requirements for the particular benefits discussed in Step 4 below (addressing SSI, Food Stamps, TANF, Medicaid, programs funded by a Social Services Block Grant, and federal means-tested public benefits).

4. *If, Based on the Documents Presented, You Are Considering Concluding that the Applicant Is Not a Qualified Alien, Take the Following Steps.*

(a) *Verify Status.* If, based on your review of the documents presented, you are considering determining that an applicant is *not* a qualified alien and thus is *not* eligible for the benefits requested based on his or her immigration status—*e.g.,* because the document does not on its face reasonably appear to be genuine (or to satisfy a higher applicable standard) or to relate to the person presenting it—you should check with the INS to verify the information presented as set forth below. (You do not need to check with the INS if the applicant presents a document that is valid and demonstrates lawful immigration status but that simply does not qualify him or her for status as a qualified alien: *e.g.,* INS Form I–94 showing admission as a nonimmigrant visitor.) **Do not determine that an applicant is not a qualified alien, and do not conclusively deny benefits on that basis, without first verifying the applicant's status with the INS as follows.**

If you are connected to the INS SAVE system, check the applicant's immigration status using the standard procedures for use of the SAVE system, including both the electronic mechanism and, if necessary (*e.g.,* if information regarding the pertinent immigration status cannot be confirmed through the electronic SAVE database), the procedures for secondary verification. If you are not connected to the SAVE system and the applicant presents documents relating to such status, request verification of immigration status by filing INS Form G–845 and Supplement along with copies of the pertinent immigration documents provided by the applicant with the local INS office. In either instance, the INS will conduct a thorough review of its records to determine if the applicant is a qualified alien. If the applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local INS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, you may file INS Form G–845 and Supplement, along with the alien registration number a copy of any expired INS document presented, with the local INS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from INS pertains to the applicant whose identity you have verified.

(b) *Action Pending Verification.* You should refer to the legal requirements of your program and to any applicable guidance provided by the federal agency or department overseeing your program, if any, to determine whether you should grant or withhold benefits during the period of time in which you are verifying the applicant's immigration status. If your program has not such requirements or guidance and the applicant has submitted a written declaration, under penalty of perjury, that he or she is a qualified alien, you should not delay, deny, reduce or terminate the applicant's eligibility for benefits under the program on the basis of an applicant's immigration status during the period of time it takes to verify his or her immigration status. If you are to grant benefits pending verification, you should first determine if the applicant satisfies the Act's other eligibility requirements (if any) for the benefits requested as set forth in Step 4 below.

(c) *Take Action Based on Response to Verification Inquiry.* If the INS notifies you that the applicant has an immigration status that makes him or her a qualified alien within the meaning of the Act, you should accept the INS verification of and proceed to determine whether the applicant satisfies the Act's other eligibility requirements (if any) for the benefits requested as set forth in Step 4 below.

If the INS modifies you that it cannot verify that the applicant has an immigration status that makes him or her a qualified alien within the meaning of the Act, you should deny benefits and notify the applicant pursuant to your program's regular procedures of his or her rights under the applicable program to appeal the denial of benefits. Upon request of the agency or department handling the appeal, the INS will conduct a thorough review of its initial verification response and will provide the agency or department with information in its possession necessary to resolve the appeal.

Step 4: Verify Eligibility Under the Act

Title IV of the Act provides that all qualified aliens are eligible for some federal public benefits, while it imposes additional eligibility requirements for receipt of other benefits. If the qualified alien is applying for a benefit for which all qualified aliens are eligible, you should not engage in any further verification of immigration status. If he or she is applying for a program for which the Act imposes additional eligibility requirements, however, you should determine whether the applicant satisfies those requirements.

A. Federal Public Benefits With No Further Immigration Eligibility Requirements for Qualified Aliens

Except as set forth below, all qualified aliens are eligible for all federal public benefits. If the qualified alien is applying for a federal public benefit for which all qualified aliens are eligible, you should not engage in any further verification of immigration status.

With some exceptions, individuals receiving SSI as of August 22, 1996, continue to be eligible for such benefits until the Commissioner of Social Security, prior to September 30, 1998, redetermines their eligibility; if, as a result of that redetermination, an individual is found to be ineligible for SSI, the individual can nevertheless continue receiving benefits until September 30, 1998.

In the absence of a State's decision to restrict eligibility for programs funded by a Social Services Block Grant, all qualified aliens are eligible for Social Services Block Grant programs. In the absence of a State's decision to restrict eligibility for TANF and Medicaid, the Act does not restrict the availability of these benefits to qualified aliens who entered the United States prior to August 22, 1996, and who were continuously present in the United States until attaining qualified alien status; however, because the Department of Health and Human Services has determined that TANF and Medicaid are federal means-tested public benefits, *see* 62 FR 45,256 (August 26, 1997), aliens who entered the United States on or after August 22, 1996, are ineligible for those programs for five years from the date that they attain qualified alien status (see discussion of federal means-tested public benefits in Paragraph B below and Attachment 7). You should determine whether your State is continuing to provide TANF, Medicaid,

and programs funded by a Social Services Block Grant to all qualified aliens:

' If the State is continuing to provide programs funded by a Social Services Block Grant to all qualified aliens, you should not engage in any further verification of immigration status;

' If the State is continuing to provide TANF and Medicaid to all qualified aliens, you should refer to Paragraph B below and Attachment 7 for further guidance on additional eligibility requirements; and

' If the State has restricted qualified aliens' eligibility for TANF and Medicaid, you should determine whether the applicant is eligible for such benefits as set forth in Paragraph B below.

B. Federal Benefits With Additional Eligibility Requirements for Qualified Aliens SSI, Food Stamps, TANF, Medicaid, and Programs Funded by a Social Services Block Grant

The Act provides that only certain excepted categories of aliens are eligible for SSI and Food Stamps. A State may, however, choose to issue Food Stamp benefits to individuals that are otherwise ineligible for such benefits under sections 402 or 403 of the Act, provided that the State reimburses the federal government for the costs of such benefits and complies with certain administrative requirements. In addition, if a State has exercised its right to limit qualified aliens' eligibility for TANF, Medicaid, and programs funded by a Social Services Block Grant, certain excepted categories of aliens remain eligible for such programs. The excepted categories of aliens that remain eligible for SSI are somewhat broader than the excepted categories for Food Stamps, Medicaid, TANF and programs funded by a Social Services Block Grant. Consult Attachment 6 for a more specific description of these excepted categories and the documentation that will demonstrate that an alien falls within such an exception and thus remains eligible for these programs.

Federal Means-Tested Public Benefits. With certain exceptions discussed in greater detail in Attachment 7, qualified aliens are ineligible to receive federal means-tested public benefits for five years from the date that they attain qualified alien status. However, aliens who entered the United States prior to August 22, 1996, and who were continuously present in the United States until attaining qualified alien status are not subject to this restriction. In addition, exceptions are made for refugees, asylees, aliens whose deportation or removal has been withheld, Cuban/Haitian entrants, certain Amerasian immigrants, and aliens who are veterans honorably discharged or on non-training active duty and their families. This restriction, moreover, does not apply after the expiration of the five-year period. If a qualified alien is applying for such a benefit, you should determine, in accordance with Attachment 7, whether he or she arrived in the United States prior to August 22, 1996, whether he or she falls within one of the enumerated exceptions, or whether he or she has been a qualified alien for at least five years.

Attachment 1

LOCAL INS OFFICE ADDRESSES

State or territory	County	File control office	Address
Alabama		Atlanta, GA	77 Forsyth Street, S.W., Atlanta, GA 30303–3427.
Alaska		Anchorage, AK	620 East 10th Avenue, Suite 102, Anchorage, AK 99501.
Arizona		Phoenix, AZ	2035 North Central Avenue, Phoenix, AZ 85004–1548.
Arkansas		Memphis, TN	1341 Sycamore View, Suite 100, Memphis, TN 38134.
California	Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.	Los Angeles, CA	300 North Los Angeles Street, Los Angeles, CA 90012.
	Imperial and San Diego	San Diego, CA	880 Front Street, Suite 1234, San Diego, CA 92101–6834.
	Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solono, Sonoma, Stainislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.	San Francisco, CA	630 Sansome Street, Room 300, San Francisco, CA 94111–2280.
Colorado		Denver, CO	4730 Paris Street, Albrook Center, Denver, CO 80239–2804.
Connecticut		Hartford, CT	Ribicoff Federal Building, 450 Main Street, Hartford, CT 06103–3060.
Delaware		Philadelphia, PA	1600 Callowhill Street, Philadelphia, PA 19130–4112.
District of Columbia		Arlington, VA	4420 North Fairfax Drive, Arlington, VA 22203.

LOCAL INS OFFICE ADDRESSES—Continued

State or territory	County	File control office	Address
Florida		Miami, FL	7880 Biscayne Blvd. Miami, FL 33138–4797.
Georgia		Atlanta, GA	77 Forsyth Street, S.W., Atlanta, GA 30303–3427.
Guam		Agana, GU	Pacific News Bldg., Room 801, 238 Archbishop Flores Street, Agana, GU 96910.
Hawaii		Honolulu, HI	595 Ala Moana Blvd., Honolulu, HI 96813.
Idaho		Helena, MT	2800 Skyway Drive, Helena, MT 59601.
Illinois		Chicago, IL	10 West Jackson Blvd., Chicago, IL 60604.
Indiana		Indianapolis, IN	Gateway Plaza, 950 North Meridian Street, Room 400, Indianapolis, IN 46204.
Iowa		Omaha, NE	3736 132nd Street, Omaha, NE 68144.
Kansas		Kansas City, MO	9747 North Conant Avenue, Kansas City, MO 64153.
Kentucky		Memphis, TN	1341 Sycamore View, Suite 100, Memphis,TN 38134.
Louisiana		New Orleans,LA	Postal Services Building, 701 Loyola Avenue, Room T–8011, New Orleans, LA 70113–1912.
Maine		Portland, ME	739 Warren Avenue, Portland, ME 04103–1187.
Maryland		Baltimore, MD	Nations Bank Center, Tower One, 100 South Charles/ 12th Floor, Baltimore, MD 21201–2725.
Massachusetts		Boston, MA	John F. Kennedy Federal Bldg., Government Center, Room E–160, Boston, MA 02203–0701.
Michigan		Detroit, MI	Federal Building, 333 Mt. Elliott Street, Detroit, MI 48207–4381.
Minnesota		St. Paul, MN	2901 Metro Drive, Suite 100, Bloomington, MN 55425.
Mississippi	Alcron, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, DeSoto, Grenada, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha.	Memphis, TN	1341 Sycamore View, Suite 100, Memphis, TN 38134.
	Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Noxubee, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo.	New Orleans, LA	Postal Services Building, 701 Loyola Avenue, Room T–8011, New Orleans, LA 70113–1912.
Missouri	Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Oregon, Osage, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright.	Kansas City, MO	9747 North Conant Avenue, Kansas City, MO 64153.

LOCAL INS OFFICE ADDRESSES—Continued

State or territory	County	File control office	Address
	Adair, Audrain, Bollinger, Butler, Cape Girardeau, Carter, Chariton, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Madison, Maries, Marion, Mississippi, Monroe, Montgomery, New Madrid, Pemiscot, Perry, Phelps, Pike, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne.	St. Louis, MO	Robert A. Young Federal Bldg., 1222 Spruce Street, Room 1100, St. Louis, MO 63103–2815.
Montana		Helena, MT	2800 Skyway Drive, Helena, MT 59601.
Nebraska		Omaha, NE	3736 132nd Street, Omaha, NE 68144.
Nevada	Clark, Esmeralda, Lincoln, and Nye	Las Vegas, NV	3373 Pepper Lane, Las Vegas, NV 89120.
	Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe, and White Pine.	Reno, NV	1351 Corporate Boulevard, Reno, NV 89502.
New Hampshire		Boston, MA	John F. Kennedy Federal Bldg., Government Center, Room E–160, Boston, MA 02203–0701.
New Jersey		Newark, NJ	Peter Rodino Federal Building, 970 Broad Street, Newark, NJ 07102–2506.
New Mexico		El Paso, TX	1545 Hawkins, Suite 167, El Paso, TX 79925.
New York	Albany, Broome, Chenango, Columbia, Delaware, Fulton, Greene, Hamilton, Herkimer, Madison, Montgomery, Oneida, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, and Washington.	Albany, NY	James T. Foley Federal Courthouse, 445 Broadway, Room 227, Albany, NY 12207–2999.
	Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Clinton, Cortland, Erie, Essex, Franklin, Genesee, Jefferson, Lewis, Livingston, Monroe, Niagara, Onandaga, Ontario, Orleans, Oswego, St. Lawrence, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming, and Yates.	Buffalo, NY	130 Delaware Avenue, Buffalo, NY 14202–2404.
	Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester.	New York, NY	26 Federal Plaza, New York, NY 10278–0127.
North Carolina		Charlotte, NC	6 Woodlawn Green, Bldg. 6, Suite 138, Charlotte, NC 28217–2216.
North Dakota		St. Paul, MN	2901 Metro Drive, Suite 100, Bloomington, MN 55425.
Ohio	Adams, Athens, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Licking, Lawrence, Logan, Madison, Meigs, Miami, Montgomery, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union, Vinton, and Warren.	Cincinnati, OH	J.W. Peck Federal Building, 550 Main Street, Room 8525, Cincinnati, OH 45202.
	Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Portage, Putman, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Washington, Wayne, Williams, Wood, and Wyandot.	Cleveland, OH	Anthony J. Celebreeze Federal Bldg., 1240 E. 9th Street, Room 1917, Cleveland, OH 44199.

LOCAL INS OFFICE ADDRESSES—Continued

State or territory	County	File control office	Address
Oklahoma		Dallas, TX	8101 North Stemmons Freeway, Dallas, TX 75247.
Oregon		Portland, OR	511 N.W. Broadway, Portland, OR 97209.
Pennsylvania	Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monore, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union Wayne, Wyoming, and York.	Philadelphia, PA	1600 Callowhill Street, Philadelphia, PA 19130–4112.
	Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.	Pittsburgh, PA	Federal Building, Room 314, 1000 Liberty Avenue, Pittsburgh, PA 15222–4181.
Puerto Rico		San Juan, PR	P.O. Box 365068, San Juan, PR 00936–5068.
Rhode Island		Providence, RI	200 Dyer Street, Providence, RI 02903–3993.
South Carolina		Charlotte, NC	6 Woodlawn Green, Bldg. 6, Suite 138, Charlotte, NC 28217–2216.
South Dakota		St. Paul, MN	2901 Metro Drive, Suite 100, Bloomington, MN 55425.
Tennessee		Memphis, TN	1341 Sycamore View, Suite 100, Memphis, TN 38134.
Texas	Anderson, Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Bosque, Bowie, Briscoe, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Collin, Collingsworth, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Gaines, Garza, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Leon, Limestone, Lipscomb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Moore, Morris, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Red River, Roberts, Rockwall, Rusk, Scurry, Shackelford, Sherman, Smith, Somervell, Stephens, Stonewall, Swishers, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wheeler, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.	Dallas, TX	8101 North Stemmons Freeway, Dallas, TX 75247.
	Brewster, Crane, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.	El Paso, TX	1545 Hawkins Suite 167, El Paso, TX 79925.
	Brooks, Cameron, Hidalgo, Kenedy, Kleberg, Starr, and Willacy.	Harlingen, TX	2102 Teege Road, Harlingen, TX 78550.

LOCAL INS OFFICE ADDRESSES—Continued

State or territory	County	File control office	Address
	Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Walker, Waller, Washington, and Wharton.	Houston, TX	509 N. Sam Houston Parkway East, Houston, TX 77060.
	Aransas, Aascosa, Bandera, Bastrop, Bee, Bell, Bexar, Blanco, Brozos, Brown, Burleson, Burner, Caldwell, Calhoun, Coke, Coleman, Comal, Concho, Coryell, Crockett, De Witt, Dimmit, Duval, Edwards, Falls, Fayette, Frio, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Harp, Haynes, Irion, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Kimble, Kinney, Lampasas, La Salle, Lavaca, Lee, Live Oak, Llano, McCulloch, McLennan, McMullen, Mason, Maverick, Medina, Menard, Milam, Mills, Nueces, Reagan, Real, Refugio, Robertson, Runnels, San Patricio, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Williamson, Wilson, Zapata, and Zavala.	San Antonio, TX	8940 Four Winds Drive, Suite 2020, San Antonio, TX 78239.
Utah		Salt Lake City, UT	5272 South College Drive, Suite 100, Salt Lake, UT 84123.
Vermont		St. Albans, VT	Federal Building, P.O. Box 328, 50 South Maine Street, St. Albans, VT 05478–0238.
Virginia	Accomack, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Colonial Heights, Dinwiddie, Essex, Fredericksburg, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northampton, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Southhampton, Spotsylvania, Surry, Sussex, Westmoreland, and York.	Norfolk, VA	Norfolk Commerce Park, 5280 Hennenman Drive, Norfolk, VA 23513.
	Albemarle, Alleghany, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Culpepper, Cumberland, Dickenson, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, King George, Lee, Loudoun, Madison, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Stafford, Tazewell, Warren, Warwick, Washington, Wise, and Wythe.	Arlington, VA	4420 North Fairfax Drive, Arlington, VA 22203.
Virgin Islands		St. Thomas, VI	P.C. Box 610, Federal Building, Suite 117, Veterans Drive, Charlotte Amalie, St. Thomas, U.S. Virgin Islands, 00801.
Washington		Seattle, WA	815 Airport Way South, Seattle, WA 98134.
West Virginia		Pittsburgh, PA	Federal Building, Room 314, 1000 Liberty Avenue, Pittsburgh, PA 15222–4181.

LOCAL INS OFFICE ADDRESSES—Continued

State or territory	County	File control office	Address
Wisconsin		Milwaukee, WI	Federal Building, 517 East Wisconsin Avenue, Room 188, Milwaukee, WI 53202.
Wyoming		Denver, CO	4730 Paris Street, Albrook Center, Denver, CO 80239–2804.

Submitting Verification Requests to INS

A copy of INS Form G–845 is attached, along with a supplemental form that should be used to obtain more detailed information on immigration status, citizenship, and sponsorship. (The supplemental form may only be used in conjunction with Form G–845, not separately.) Requests for verification on Form G–845 may be mailed to the Immigration and Naturalization Service at the addresses listed on the following pages. To speed processing, please indicate "Attention: Immigration Status Verifier" on the envelope.

The attached form G–845 may be copied for submission to the INS; it should be reproduced as a two-sided document. Additional copies may be obtained in three ways:

1. Request Form G–845 from the INS Forms Distribution Center serving your region:

Eastern Forms Center, P.O. Box 567, Williston, VT 05497 (east of the Mississippi River)

Forms Center West, 5600 Rickenbacker Road, Building 701A, Bell, CA 90201 (west of the Mississippi River)

2. Download Form G–845 from the Internet: www.usdoj.gov/ins/forms.

3. Call the INS Forms Request Line: 1–800–870–3676. (Due to the high volume of calls to this line, the best time to call is early on weekday mornings.)

INS formerly required that Form G–845 be printed on blue paper stock to distinguish it from Form G–845S, which is printed on white paper. Form G–845 may now be submitted on white stock, and existing copies on blue stock may also be submitted during this transition period. As a result of this change, *it is particularly important that copies of the forms include the form number at the bottom of the page to allow INS to distinguish between them.*

When submitting copies of documents with Form G–845, please send copies made from the originals, if possible, in order to enhance the quality of the reproduction.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0122

Document Verification Request

To: Immigration and Naturalization Service

6. Verification Number

7. ☐ Photocopy of Document Attached.
(If printed on both sides, attach a copy of the front and of the back.)
☐ Other Information Attached *(Specify documents)*.

From: Typed or Stamped Name and Address of Submitting Agency

8. Organization (specify)

Attn: Status Verifier

1. Alien Registration or I-94 Number
2. Applicant's Name *(Last, First, Middle)*
3. Nationality
4. Date of Birth *(Month/Day/Year)*
5. Social Security Number

9. Name of Submitting Official
10. Title of Submitting Official
11. Date
12. Telephone Number

INS RESPONSE: From the documents or information submitted and/or a review of our records we find that:

1. ☐ This document appears valid and relates to a Lawful Permanent Resident alien of the United States.
2. ☐ This document appears valid and relates to a Conditional Resident alien of the United States.
3. ☐ This document appears valid and relates to an alien authorized employment as indicated below:
   a. ☐ Full-Time
   b. ☐ Part-Time
   c. ☐ No Expiration (Indefinite)
   d. ☐ Expires on *(specify Month/Day/Year, below)*
4. ☐ This document appears valid and relates to an alien who has an application pending for *(specify INS benefit below)*
5. ☐ This document relates to an alien having been granted asylum/refugee status in the United States.
6. ☐ This document appears valid and relates to an alien paroled into the United States pursuant to Section 212 of the I&N Act.
7. ☐ This document appears valid and relates to an alien who is a Cuban/Haitian entrant.
8. ☐ This document appears valid and relates to an alien who is a conditional entrant.
9. ☐ This document appears valid and relates to an alien who is a nonimmigrant *(specify type or class below)*
10. ☐ This document appears valid and relates to an alien not authorized employment in the United States.
11. ☐ Continue to process as legal alien. INS is searching indices for further information.
12. ☐ This document is not valid because it appears to be *(check all that apply)*
    a. ☐ Expired
    b. ☐ Altered
    c. ☐ Counterfeit

INS Stamp

☐ Please see reverse for additional comments.

Form G-845 (Rev. 06/02/90) Y

Comments

13. ☐ No determination can be made from the information submitted. Please obtain a copy of the original alien registration documentation and resubmit.
14. ☐ No determination can be made without seeing both sides of the document submitted *(please resubmit request)*.
15. ☐ Copy of document is not readable *(please resubmit request)*.

"PRUCOL"

For Purposes Of Determining If Alien Is Permanently Residing Under Color Of Law Only!

16. ☐ INS actively pursues the expulsion of an alien in this class/category.
17. ☐ INS is not actively pursuing the expulsion of an alien in this class/category, at this time.
18. ☐ Other

Instructions

- Submit copies of both *front and back* of alien's original documentation.
- Make certain a *complete return address* has been entered in the "From" portion of the form.
- The Alien Registration Number ("A" Number) is the letter "A" followed by a series of (7) or (8) digits. Also in this block may be recorded the number found on Form I-94. (Check the front and back of the I-94 document and if the "A" Number appears, record that number when requesting information instead of the longer admission number as the "A" Number refers to the most integral record available.)
- If Form G-845 is submitted without copies of applicant's original documentation, it will be returned to the submitting agency without any action taken.
- Address this verification request to the local office of the Immigration and Naturalization Service.

U.S. Department of Justice
Immigration and Naturalization Service

Document Verification Request Supplement

[redacted]

To: Immigration and Naturalization Service Date _____

Applicant's Name *(Last, First, Middle)*

Social Security Number

Alien Registration Number or I-94 Number

From: Typed or Stamped Name and Address of Submitting Agency Telephone (___) _____

Complete the following items: ☐ #1 ☐ #2 ☐ #3 ☐ #4 ☐ #5 ☐ #6 ☐ #7

[redacted]

1. IMMIGRATION STATUS (check all that apply):
From the document or information submitted and/or a review of our records we find that the person identified is a/an:

- ☐ a. Lawful Permanent Resident alien of the United States. (Complete b,c,d,g,h,or i if alien adjusted to LPR status from one of those statuses in the past 7 years.)
- ☐ b. Refugee admitted to the United States under Section 207 of the INA. (Complete Item 3 below.)
- ☐ c. Asylee under Section 208 of the INA. (Complete Item 3 below.)
- ☐ d. Alien whose deportation has been withheld under section 243(h) of the INA (as in effect prior to April 1, 1997) or whose removal has been withheld under section 241(b)(3). Date deportation or removal ordered withheld: _____
- ☐ e. Alien paroled into the United States under Section 212(d) (5) of the INA for a period of at least 1 year. (Complete Items 3 and 4 below.)
- ☐ f. Conditional Entrant pursuant to Section 203(a)(7) of the INA in effect prior to April 1, 1980.
- ☐ g. American Indian born in Canada to whom the provisions of Section 289 of the INA apply.
- ☐ h. Cuban/Haitian Entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980. (Complete Item 3 below.)
- ☐ i. Amerasian immigrant, pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988. (Complete Item 2 below.)
- ☐ j. Other (indicate status): _____

2. Date alien entered the United States: _____
3. Date status was granted: _____
4. Date status expires: _____

5. CITIZEN STATUS:

- ☐ This document appears valid and relates to a United States citizen.

6. SPECIAL BENEFIT PROVISIONS FOR CERTAIN VICTIMS OF ABUSE:

- ☐ a. This alien obtained Lawful Permanent (or Conditional) Resident Status as the spouse, child, or widow(er) of a U.S. citizen.
- ☐ b. This alien obtained Lawful Permanent (or Conditional) Resident Status as the spouse, child, or unmarried son or daughter of a lawful permanent resident alien.
- ☐ c. This alien did not obtain status as described in (a) or (b).

[redacted]

7. AFFIDAVIT OF SUPPORT:

- ☐ a. This alien was sponsored on Form I-864, Affidavit of Support under Section 213A of the INA. Service receipt date _____. (Complete Item 3 on page 1.)
- ☐ b. This alien was not sponsored on Form I-864.

Name of Sponsor

_____

Sponsor's Social Security Number

___ ___ ___-___ ___-___ ___ ___ ___

Sponsor's Address

_____
_____
_____
_____

Name of Joint Sponsor(s) *(if any)*

_____

Joint Sponsor's Social Security Number

___ ___ ___-___ ___-___ ___ ___ ___

Joint Sponsor's Address

_____
_____
_____
_____

☐ See reverse for information on additional joint sponsor(s).

INS Stamp

- *This supplement may be used in conjunction with Form G-845 to request verification; it cannot be used alone. It reflects information that may be relevant to eligibility for Federal, State, and local public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

BILLING CODE 4410-10-C

Attachment 2—Nondiscrimination Advisory

Various federal civil rights laws, regulations and executive orders prohibit discrimination by governmental and private entities on the basis of race, national origin, gender, religion, age and disability. These laws, of course, apply to entities' implementation of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"). Because of the particular potential for national origin and race discrimination under the Act and its verification requirements, and because persons with disabilities are more likely to need benefits under various public benefit programs, this Advisory focuses on the laws relating to discrimination based on national origin, race and/or disability. Emphasizing these particular laws, however, is in no way meant to minimize the importance of guarding against all forms of illegal discrimination, and you should comply with all nondiscrimination requirements applicable to your program.

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")

Because Title IV of the Act imposes new and significant restrictions on the ability of noncitizens to receive federal, state or local public benefits, there is particular potential for discrimination on the basis of national origin. It is important to remember that, although the Act limits the benefits available to some aliens, many aliens will continue to be entitled to receive public benefits. If improperly applied, the Act's restrictions may result in national origin discrimination against applicants who are eligible to receive benefits. It is therefore important to understand which aliens are eligible for which benefits.

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity, whether operated by a state, local or private entity, that receives federal funds or other federal financial assistance. When operating or participating in a federally assisted program, a benefit provider cannot, on the basis of race, color or national origin, either directly or indirectly, including through contractual means, distinguish among individuals in the types, quantity, quality or timeliness of program services, aids or benefits that it provides or the manner in which it provides them. This prohibition applies to disparate treatment, as well as to the utilization of facility neutral procedures, criteria or methods of administration that have the effect of discriminating against individuals because of their race, color, or national origin. Policies and practices that are neutral in design and operation but have a disparate impact based on race, color or national origin must be eliminated unless they are necessary to the program's operation and there is no less discriminatory alternative.

Violations of Title VI may be obvious or subtle. A benefit provider that denies benefits or delays determinations of eligibility on the basis of an individual's race, color or national origin may violate Title VI. A benefit provider may violate Title VI if it concludes that applicants are ineligible for benefits because they have ethnic surnames or origins outside the United States, or because they look or sound foreign. It also may violate Title VI if it acts upon the assumption that applicants with these characteristics are illegal aliens, or if it imposes additional eligibility requirements on ethnic or racial minorities because of their ethnicity or race.

When confirming immigration status for purposes of determining eligibility for public benefits, benefit providers should be aware that there is no single immigration document that will establish all aliens' qualifications to receive benefits under the Act. The types of documents that an alien will be able to present to establish immigration status will vary depending upon the status in which the alien entered the U.S. and his or her individual circumstances. Demanding that an alien present one specific type of document to the exclusion of all other legally valid documents establishing immigration status, or demanding more or different documentation based on assumptions about the applicant's citizenship or national origin rather than knowledge of such status obtained in a non-discriminatory fashion, may constitute a violation of Title VI. For example, it may be discriminatory to demand that a specific applicant present three documents to establish her identity merely because she speaks Spanish or looks Asian, while allowing English-speaking persons and non-Asians to present only one identity document. It may also violate Title VI to assume, based on an applicant's national origin, that his or her documents are fraudulent.

B. Civil Rights Laws Applicable to Persons With Disabilities

Sections 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 ("Section 504"), and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, prohibit discrimination on the basis of disability by public entities and recipients of federal funds. Public service providers are required to offer their services in locations that are accessible to applicants with disabilities, including people who use wheelchairs. In addition, service providers must ensure effective communication with applicants who have impaired hearing, vision, or speech, and service providers must make reasonable modifications to their policies and practices to ensure that eligible people with disabilities are not excluded from participation in a program as a result of their disability. Appropriate auxiliary aids may include sign language interpreters for applicants who have hearing impairments or readers or audiotaped materials for applicants who have vision impairments. Applicants who have impaired manual skills may require assistance in completing forms. Citizens, non-citizen nationals and qualified aliens with disabilities may find it difficult to provide the information needed to establish their citizenship, nationality or immigration status. Therefore, if an applicant has a disability that limits the applicant's ability to provide the required evidence of status (*e.g.*, mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence.

You should work with the applicant or his or her representative to obtain leads for possible sources of evidence. In many cases, a current or prior employer will have employment records for the individual that will identify his or her immigration status and provide other relevant information. You should also seek cooperation from local agencies, the INS and other organizations (*e.g.*, rehabilitation programs, advocacy groups and homeless shelters) to assist the individual in obtaining evidence from existing records. If the applicant has been granted another benefit that is contingent upon being a U.S. citizen, U.S. non-citizen national or qualified alien, contact that benefit-granting agency to determine what evidence it relied upon to establish eligibility. When conducting a search for documentation, use all possible spelling variations of the applicant's name.

C. Other Applicable Federal Civil Rights Laws

There are a number of other federal civil rights laws that prohibit discrimination based on other characteristics. They include the following:

- The Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. There are specific exceptions to the general prohibition against age discrimination, however, and you should consult the statute, 42 U.S.C. 6101 *et seq.*, as well as the regulations published by the Department of Health and Human Services, 45 CFR part 90, for further information

- The Fair Housing Act, 42 U.S.C. 3601 *et seq.*

The Fair Housing Act prohibits discrimination in the provision of housing based on race, color, religion, sex, familial status, national origin or handicap.

D. Contact Numbers

Benefit providers with questions may call the following numbers for information on the various federal civil rights laws:

Title VI—U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, 1–888–TITLE–06 (1–888–848–5306).

ADA—U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1–800–514–0301 (voice) or 1–800–514–0383 (TDD).

Age Discrimination Act—U.S. Department of Health and Human Services, 1–800–368–1019.

Fair Housing Act—U.S. Department of Housing and Urban Development, 1–800–669–9777 (voice) or 1–800–927–9275 (TDD).

Questions regarding discrimination in immigration status verification procedures or other benefit-granting procedures can be referred to the civil rights office of the pertinent benefit-granting agency. Such questions can also be referred to the Office of Special Counsel for Immigration Related Unfair Employment Practices in the Civil Rights Division of the U.S. Department of Justice, 1–800–255–8155 (voice) or 1–800–237–2515 (TDD).

Attachment 3—Federal Public Benefits

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act") applies only to non-exempted "federal public benefits" as defined by the Act, rather than to all federally funded programs. (It also applies to certain state and local public benefits, which are not the subject of this Attachment.) Under the Act, benefit providers are only required to verify the immigration status of applicants for benefits that fall within the Act's definition of "federal public benefits" and are not specifically exempted from the Act's requirements. (If the program independently requires benefit providers to verify the citizenship, nationality and/or immigration status of an applicant, however, you should continue to comply with such requirements even if the program does not provide a "federal public benefit" covered by the Act.) Set forth below is preliminary guidance on the meaning of "federal public benefit," as well as a summary of the benefits specifically exempted from the Act's verification requirements. If you have any questions as to whether a particular program provides a federal public benefit covered by the Act or a benefit that is exempted from the Act's requirements, you should consult with the federal agency or department that oversees the program.

Federal Public Benefit: A "federal public benefit" is:

(a) Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; or

(b) Any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

Subject to the list of exceptions set forth below, Title IV of the Act precludes all aliens who are not "qualified aliens" from receiving any "federal public benefit." In determining whether a program provides a "federal public benefit," you should first consider whether the program provides one of the benefits expressly enumerated in either (a) or (b) above. Under (a), if your program provides a "grant," "contract," "loan," "professional license," or "commercial license" to an individual, either through a U.S. agency or with U.S. appropriated funds, then you provide a "federal public benefit." If you do not provide a benefit of the type enumerated in (a), you should then go on to consider whether your program provides a benefit covered by (b).

To fall within (b), the benefit provided by your program must be one of the types of benefits described ("retirement," "welfare," "health," "disability," "public or assisted housing," "post-secondary education," "food assistance," "unemployment benefit," or "any other similar benefit"), it must be "provided by an agency of the United States or by appropriated funds of the United States," and it must be provided to one of the enumerated categories of recipients (an "individual household, or family eligibility unit"). Thus, for example, if you provide an "unemployment benefit" to an "individual, household, or family eligibility unit" using "appropriated funds of the United States," the definition is satisfied. In contrast, if you provide generally available services such as fire or ambulance services, or do not provide benefits to an "individual, household, or family eligibility unit," or do not provide benefits through an "agency of the United States" or with "appropriated funds of the United States," the definition does not apply.

If your program provides payments or assistance to an individual, household or family eligibility unit through a U.S. agency or by U.S. appropriated funds, but the benefits are not expressly enumerated above, you should consider whether the benefits are "similiar" to one of the benefits enumerated in (b). If you believe that the benefit is arguably similar to an enumerated benefit, you should consult with the federal agency or department that oversees your program to confirm that the benefit constitutes a federal public benefit covered by the Act.

Finally, you should consider who is actually receiving the benefits that you provide. Although the Act prohibits certain aliens from receiving non-exempted "federal public benefits," it does not prohibit governmental or private entities from receiving federal public benefits that they might then use to provide assistance to aliens, *so long as the benefit ultimately provided to the non-qualified aliens does not itself constitute a "federal public benefit."* Thus, if a local agency were to receive a "grant" (which is expressly identified as a federal public benefit), but the agency uses it to provide police services, fire protection or crime victim counseling (which are not federal public benefits under the Act's definition because they are not similar to an enumerated benefit), the prohibition would not apply. Similarly, if you provide a "grant" to a community organization (which is not an "individual, household or family eligibility unit") that uses the funds to build a library or renovate a park (which are not federal public benefits under the Act's definition), the prohibition would not apply. In contrast, if the agency uses the "grant" to provide a "federal public benefit"—*e.g.*, a "loan" or "welfare"

payment to a poor "individual, household or family eligibility unit"—then the prohibition would apply and non-qualified aliens would be ineligible for such benefits.

Exceptions: The Act's verification requirements do not apply to all "federal public benefits," as the Act specifically exempts certain types of benefits. If a program provides "federal public benefits" that fall within one of the following exceptions, the program provider is not required by this Act to, and should not attempt to, verify an applicant's immigration status, unless otherwise required or authorized to do so by federal law, except to the extent necessary to determine whether the exemption applies:

- Benefits covered by Attorney General Order No. 2049, 61 FR 45985 (1996), or any subsequent order, re: government-funded community programs, services or assistance that are necessary for protection of life or safety;
- Any wages, pensions, annuities, or other earned payments to which an alien is entitled as a result of federal, state, or local government employment, provided that the alien is not residing or present in the United States and provided that the employment was not prohibited under the immigration laws;
- Any veterans benefits to which an alien is entitled, provided that the alien is not residing or present in the United States;
- Any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the U.S.;
- Any contract, professional license, or commercial license for a citizen of a freely associated state (Palau, the Federated States of Micronesia, and the Marshall Islands), if section 141 of the applicable compact of free association is in effect;
- Any benefits that the U.S. is required to pay under the reciprocal treaty agreements listed in the forthcoming Attorney General Order to a work authorized nonimmigrant or alien lawfully admitted for permanent residence qualified for such benefits;
- Medical assistance under Title XIX of the Social Security Act (or any successor program to such Title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act) of the alien involved and that are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the state plan approved under such Title (other than the requirement of the receipt of aid or assistance under Title IV of such Act, SSI benefits under Title XVI of such Act, or a state supplementary payment);
- Short-term, non-cash, in-kind emergency disaster relief;
- Public health assistance (not including any assistance under Title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- Programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development ("HUD"), any program under Title V of the Housing Act of 1949, or any assistance under section 306C of the Consolidated Farm and Rural Development Act, to the extent that the alien is receiving such a benefit on August 22, 1996;
- Any benefit payable under Title II of the Social Security Act to which entitlement is based on an application filed on or before August 31, 1996, and any benefit covered by Attorney General Order No. 2054, 61 FR 47039 (1996), re: benefits payable under Title II of the Social Security Act to an alien who is lawfully present in the U.S.;
- Any benefit the nonpayment of which would contravene an international agreement described in section 233 of the Social Security Act (an agreement establishing totalization arrangements between the social security system of the U.S. and that of any foreign country which establishes entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on an individual's coverage under both systems);
- Any benefit the nonpayment of which would be contrary to section 202(t) of the Social Security Act;
- Any benefit under the school lunch program under the National School Lunch Act, 42 U.S.C. 1751 *et seq.*, or the school breakfast program under section 4 of the Child Nutrition Act of 1966, 42 U.S.C. 1773, provided to an individual who is eligible to receive free public education benefits under state or local law;
- Any benefit payable under Title XVIII of the Social Security Act (relating to the Medicare program) to an alien who is lawfully present in the U.S., as determined by the Attorney General, provided that, with respect to the attribution of the alien's wages for purposes of eligibility for benefits payable under Part A of such program, the alien was authorized to be employed; *and*
- Any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present in the U.S., as determined by the Attorney General, or to an alien residing outside the U.S.

State Option: Each State may, but is not required to, provide benefits under programs established under the laws listed below to individuals who are not U.S. citizens, U.S. non-citizen nationals or qualified aliens. You should determine whether your State is providing such benefits to all persons, regardless of citizenship, alienage or immigration status, or whether it is providing them only to U.S. citizens, U.S. non-citizen nationals and qualified aliens. If your State is providing such benefits to all persons, you should *not* verify citizenship or immigration status; if it is limiting such benefits to citizens, non-citizen nationals and qualified aliens, you may want to use the Interim Guidance, in consultation with state and local authorities, to verify citizenship and immigration status.

- Programs (other than the school lunch program and the school breakfast program) under the National School Lunch Act, 42 U.S.C. 1751 *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.*;
- Section 4 of the Agriculture and Consumer Protection Act of 1973, 7 U.S.C. 612c note;
- The Emergency Food Assistance Act of 1983, 7 U.S.C. 7501 *et seq.; and*
- The food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977, 7 U.S.C. 2013(b).

Attachment 4—Interim Guidance Documentary Evidence of Status as a U.S. Non-Citizen National

Copies of the following documents will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), demonstrate that a person is a U.S. citizen or non-citizen national for purposes of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (To the extent citizenship or nationality of a child is relevant to a benefit eligibility determination, the documents should demonstrate the child's status rather than that of the parent.) The lists set forth in Paragraphs A and B below are drawn from existing guidance published by the Social Security Administration ("SSA") and regulations issued by the Immigration and Naturalization Service ("INS") regarding determination of U.S. citizenship and nationality; the lists in Paragraphs C through F are drawn solely from the SSA guidance. These lists are not exhaustive; you should refer to guidance issued by the agency or department overseeing your program to determine if it accepts documents or other evidence of citizenship not listed below.

A. Primary Evidence

- A birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in the U.S.

Note: If the document shows that the individual was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen—see Paragraph C below.

- United States passport (except limited passports, which are issued for periods of less than five years);
- Report of birth abroad of a U.S. citizen (FS–240) (issued by the Department of State to U.S. citizens);
- Certificate of birth (FS–545) (issued by a foreign service post) or Certification of Report of Birth (DS–1350) (issued by the Department of State), copies of which are available from the Department of State;
- Certificate of Naturalization (N–550 or N–570) (issued by the INS through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N–570 is a replacement certificate issued when the N–550 has been lost or mutilated or the individual's name has been changed);
- Certificate of Citizenship (N–560 or N–561) (issued by the INS to individuals who derive U.S. citizenship through a parent; the N–561 is a replacement certificate issued when the N–560 has been lost or mutilated or the individual's name has been changed);
- United States Citizen Identification Card (I–197) (issued by the INS until April 7, 1983 to U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings) (formerly Form I–179, last issued in February 1974);
- Northern Mariana Identification Card (issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986);
- Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U.S. who derives citizenship through a parent but does not have an FS–240, FS–545 or DS–1350); or
- American Indian Card with a classification code "KIC" and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

B. Secondary Evidence

If the applicant cannot present one of the documents listed in A above, the following may be relied upon to establish U.S. citizenship or nationality:

- Religious record recorded in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917)), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdication) within three months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;
- Evidence of civil service employment by the U.S. government before June 1, 1976;
- Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);
- Census record showing name, U.S. citizenship or a U.S. place of birth, and date of birth or age of applicant;
- Adoption Finalization Papers showing the child's name and place of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) *or*, where or adoption is not finalized and the State or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or
- Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction).

C. Collective Naturalization

If the applicant cannot present one of the documents listed in A or B above, the following will establish U.S. citizenship for collectively naturalized individuals:

Puerto Rico:

- Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
- Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

U.S. Virgin Islands:

- Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927;
- The applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or
- Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932.

Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

- Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);
- Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or
- Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

D. Derivative Citizenship

If the applicant cannot present one of the documents listed in A or B above, you should make a determination of derivative U.S. citizenship in the following situations:

Applicant born abroad to two U.S. citizen parents:

- Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the applicant's birth.

Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent:

- Evidence that one parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of the relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth.

Applicant born out of wedlock abroad to a U.S. citizen mother:

- Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or a U.S. possession for a period of one year.

Applicant born in the Canal Zone or the Republic of Panama:

- A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth; or
- A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

All other situations where an applicant claims to have a U.S. citizen parent and an alien parent, or claims to fall within one of the above categories but is unable to present the listed documentation:

- If the applicant is in the U.S., refer him or her to the local INS office for determination of U.S. citizenship;
- If the applicant is outside the U.S., refer him or her to the State Department for a U.S. citizenship determination.

E. Adoption of Foreign-Born Child by U.S. Citizen

- If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of U.S. citizenship;
- Since foreign-born adopted children do not automatically acquire U.S. citizenship by virtue of adoption by U.S. citizens, refer the applicant to the local INS district office for a determination of U.S. citizenship if the applicant provides no evidence of U.S. citizenship.

F. U.S. Citizenship By Marriage

A woman acquired U.S. citizenship through marriage to a U.S. citizen before September 22, 1922. Ask for: Evidence of U.S. citizenship of the husband, and evidence showing the marriage occurred before September 22, 1922.

Note: If the husband was an alien at the time of the marriage, and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her U.S. citizenship if she was residing in the U.S. at that time and continued to reside in the U.S.

G. Applicants With Disabilities and Nondiscrimination

If an applicant has a disability that limits the applicant's ability to provide the required evidence of citizenship or nationality (*e.g.*, mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.

Attachment 5—Interim Guidance—Documentary Evidence of Status as A "Qualified Alien" Eligible for Federal Public Benefits

The documents listed below (descriptions of which are provided in Exhibit A) will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within one of the categories of "qualified alien" for purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Under the Immigration and Nationality Act (the "INA"), all aliens over the age of 14 who remain in the United States for longer than 30 days are required to register with the Immigration and Naturalization Service (the "INS") and obtain an alien registration document. All aliens over the age of 18 who receive a registration document are required to carry it with them at all times. With certain exceptions (*e.g.*, Canadian visitors), aliens entering the U.S. are normally issued a registration document (*e.g.*, an INS Form I–94) at the time of entry. The documents listed below that are registration documents are indicated with an asterisk ("*").

Each of the documents listed below will demonstrate lawful status, and you should not require presentation of a registration document if the applicant presents one of the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status, so long as the request is not made for a discriminatory reason (see Nondiscrimination Advisory, Attachment 2 to Interim Guidance). Presentation of a registration document listed below that reasonably appears on its face to be genuine and to relate to the person presenting it (or to satisfy a higher applicable standard) will often obviate the need to verify the applicant's immigration status with the INS; if the applicant presents a registration document that does not meet this standard, sending the INS a copy of the document will assist it in verifying the applicant's status quickly and accurately.

Alien Lawfully Admitted for Permanent Residence

- *INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card"); or
- Unexpired Temporary I–551 stamp in foreign passport or on *INS Form I–94.

Asylee

- *INS Form I–94 annotated with stamp showing grant of asylum under section 208 of the INA;

- *INS Form I–688B (Employment Authorization Card) annotated "274a.12(a)(5)";
- *INS Form I–766 (Employment Authorization Document) annotated "A5";
- Grant letter from the Asylum Office of INS;or
- Order of an immigration judge granting asylum.

Refugee

- *INS Form I–94 annotated with stamp showing admission under § 207 of the INA;
- *INS Form I–688B (Employment Authorization Card) annotated "274a.12(a)(3)";
- *INS Form I–766 (Employment Authorization Document) annotated "A3"; or
- INS Form I–571 (Refugee Travel Document).

Alien Paroled Into the U.S. for a Least One Year

- *INS Form I–94 with stamp showing admission for at least one year under section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement.)

Alien Whose Deportation or Removal Was Withheld

- *INS Form I–688B (Employment Authorization Card) annotated "274a.12(a)(10)";
- *INS Form I–766 (Employment Authorization Document) annotated "A10"; or
- Order from an immigration judge showing deportation withheld under § 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under § 241(b)(3) of the INA.

Alien Granted Conditional Entry

- *INS Form I–94 with stamp showing admission under § 203(a)(7) of the INA;
- *INS Form I–688B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
- *INS Form I–766 (Employment Authorization Document) annotated "A3."

Cuban/Haitian Entrant

- *INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, or CH6;
- Unexpired temporary I–551 stamp in foreign passport or on *INS Form I–94 with the code CU6 or CU7; or
- INS Form I–94 with stamp showing parole as "Cuba/Haitian Entrant" under Section 212(d)(5) of the INA.

Alien Who Has Been Battered or Subjected to Extreme Cruelty

Guidance as to the requirements that must be met for an alien to fall within this category of qualified alien is set forth in Exhibit B. Note that Title IV, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, contains provisions requiring that, upon the effective date of the new affidavit of support (required under section 213A of the Act), when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien is entitled, the income and resources of the alien be deemed to include those of any person executing an affidavit of support on behalf of the alien and that person's spouse. Certain exceptions are made for indigent qualified aliens and for qualified aliens who (or whose children) have been battered or subjected to extreme cruelty in the U.S. by a spouse, parent or member of the spouse or parent's family and for qualified alien children whose parents have been subjected to such abuse. *See* Attachment 5, Exhibit B, Section II.

Expired or Absent Documentation

If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local INS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, you may file INS Form G–845 and Supplement, along with the alien registration number and a copy of any expired INS document presented, with the local INS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from INS pertains to the applicant whose identity you have verified.

Receipt for Replacement Document

If an applicant presents a receipt indicating that he or she has applied to the INS for a replacement document for one of the documents identified above, file INS Form G–845 and Supplement along with a copy of the receipt with the local INS office to verify status. Upon return receipt of information from INS, confirm that it pertains to the applicant whose identity you have verified. You should ask to see the replacement document at a later date.

Applicants with Disabilities and Nondiscrimination

If an applicant has a disability that limits the applicant's ability to provide the required evidence of immigration status (*e.g.*, mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.

Local INS Offices

A list of local INS offices and their addresses is set forth in Attachment 1 to the Interim Guidance. Attachment 1 also includes a copy of INS Form G–845 and the Supplement thereto to be used to verify immigration status pursuant to the Interim Guidance.

EXHIBIT A TO ATTACHMENT 5

"PINK" I–551 "RESIDENT ALIEN" CARD

FRONT: Pink background (blue header bar); blue INS seal overlaps photo area. Repeating "I–551" becomes visible when card is tilted under normal light. Expiration date on front of card: Moth, day, and year.

BACK: Color gradually changes from pink to blue, with map of U.S. in white. Three lines of machine readable printing at bottom on white background. Immigrant classification and admission/adjustment date on back of card. First set of code is immigrant classification, beginning with letter(s) followed by numbers(s). Third set of code is admission/adjustment date, beginning with year, month, and day.

"WHITE" I–551 "RESIDENT ALIEN" CARD

FRONT: White background (blue header bar); salmon lines cover the photo in an unbroken pattern. Printing "detail" in eagle is excellent. Immigrant classification is on front of card in lower right corner, beginning with letter(s) followed by number(s).

BACK: Pale greenish background, map of U.S. in white. Three lines of machine readable codes. Admission/adjustment date is at bottom, left corner on back of card, beginning with year, month, and day.

UNEXPIRED FOREIGN PASSPORT WITH I–551 STAMP

An I–551 stamp may be present in a foreign passport, with a handwritten "Valid Until" date. A proof of entry and inspection stamp will also present in the passport, similar to the stamp for an I–94. Date of entry is stamped. Immigrant visa classification (letter and number) is printed or stamped on "Admitted" line. Valid status expires on date enumerated at "Until" section of I–551 stamp. The alien number may be printed beginning with letter A.

I–94 ARRIVAL/DEPARTURE RECORD

Proof of entry is signified by U.S. immigration stamp. Date of entry is stamped. *Non-immigrant visa classification* (letter or letter and number) is printed or stamped on "Admitted" line. Valid status expires on date enumerated at "Until" section of stamp.

Refugees and asylees each receive a separate INS stamp. Asylum seekers have "valid to" date, while refugees have a date of admission.

"RED" I–688B "EMPLOYMENT AUTHORIZATION"

FRONT: White background, read header bar and yellow interlocking wavy lines, gold INS seal becomes visible when tilted under normal light. Expiration date is on front, month, day, and year.

BACK: Red outline of U.S., Alaska, and Hawaii. The word "Void" is capitalized and underlined.

"RED" I–766 "EMPLOYMENT AUTHORIZATION"

FRONT: White background, red header bar. Statue of Liberty, USA, and Immigration and Naturalization Service symbols become visible when tilted under normal light. Expiration date is at bottom, right corner. Non-immigrant category listed over justice seal by a letter and number abbreviation of the 274A.12 immigration law citation.

BACK: White background, black magnetic strip and bar code.

DECISION GRANTING ASYLUM

Documents issued to aliens, granted asylum vary.

REFUGEE TRAVEL DOCUMENT FORM I–571

Form I–571 is issued by the INS to aliens who have been granted refugee status.

ORDER GRANTING WITHHOLDING OF DEPORTATION

The documents used by immigration judges to grant withholding of deportation vary.

EXHIBIT B TO ATTACHMENT 5—ALIENS WHO HAVE BEEN BATTERED OR SUBJECTED TO EXTREME CRUELTY WITHIN THE MEANING OF SECTION 431 OF THE ACT

INTRODUCTION

Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"), as amended by section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the "Immigration Act") and sections 5571–72 and 5581 of the Balanced Budget Act of 1997 ("the Budget Act"), provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States by a family member with whom they resided are "qualified aliens" eligible for public benefits under the Act. An alien whose child or an alien child whose parent has been abused is also a "qualified alien." Additionally, section 421 of the Act, as amended by section 552 of the Immigration Act and section 5571 of the Budget Act, exempts this group of battered aliens from the Act's new deeming requirements for a period of one year, and for longer if the battery or cruelty has been recognized in an order of a judicial officer or an administrative law judge or in an Immigration and Naturalization Service ("INS") determination.

CONSIDERATIONS AFFECTING ALL APPLICANTS

Benfit providers should observe the following protocol with regard to all applicants who seek qualified alien status under section 431(c) of the Act:

(1) This Exhibit should be interpreted consistently with the principles set forth in the Interim Guidance, including, but not limited to, its standards for acceptance of documents demonstrating status; its nondiscrimination advisory and its provisions regarding whether to grant or withhold benefits pending verification of qualified alien status. In addition, as specified in the Interim Guidance, a provider should determine whether an applicant otherwise meets specific program requirements for benefit eligibility before initiating the verification process described below, unless determining program eligibility would be considerably more complex and time-consuming than verifying immigration status. (In the case of providers who are considering referring individual applicants to the Social Security Administration for issuance of a Social Security number, the provider should first determine that the applicant is otherwise eligible for program benefits.)

(2) Many of the applicants seeking assistance pursuant to this provision will need assistance on various matters relating to both their immigration status and their domestic violence-related concerns. You should therefore direct applicants to the INS forms request line (1–800–870–3676) so that applicants who are eligible to self-petition under the Violence Against Women Act, 8 U.S.C. 1154(a)(1), but have yet to do so, may request an INS Form I–360 and filing instructions. You should also refer them to the National Domestic Violence Hotline (1–800–799–7233) so that applicants may obtain assistance from a local domestic violence service provider and referrals to immigration attorneys. (A copy of INS Form I–360 is attached to this Exhibit).

(3) Except where this attachment directs otherwise, when asking the INS or the Executive Office for Immigration Review ("EOIR") to verify an applicant's immigration status, a benefit provider should submit a verification request form. Sample INS and EOIR verification forms (hereinafter "the INS Request Form" and "the EOIR Request Form" respectively) are attached hereto. These samples must be replicated and submitted on your agency's letterhead in order for INS or EOIR to provide verification information. The INS Request Form should be faxed to the INS Vermont Service Center (fax: (802) 527–3159; tel: (802) 527–3160); the EOIR Request Form should be faxed to the office of the appropriate immigration court (a list of the immigration courts and their addresses, fax numbers and telephone numbers is also attached to this Exhibit). In certain limited circumstances described below, the benefit provider should submit its verification request by filing INS Form G–845 and the G–845 Supplement with the local INS office. Attachment 1 to the Interim Guidance includes a copy of INS Form G–845 and the G–845 Supplement to be used as indicated below, as well as a list of local INS offices.

(4) You should not share any information that you receive from or regarding the applicant with any member of his or her family or any other third party, without the express written permission of the applicant.

I. PROCEDURES FOR DETERMINING QUALIFIED ALIEN STATUS

An alien is a "qualified alien" eligible for public benefits under section 431(c) of the Act if he or she meets the following four requirements:

(1) the INS or the EOIR has granted a petition or application filed by or on behalf of the alien, the alien's child, or the alien child's parent under one of several subsections of the Immigration and Nationality Act ("INA") described below or has found that a pending petition sets forth a prima facie case;

(2) the alien, the alien's child, or the alien child's parent has been abused in the United States [1] as detailed below:

(a) in the case of the abused alien: the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien, if the spouse or parent consents to or acquiesces in such battery or cruelty;

(b) in the case of an alien whose child is abused: the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty, and the alien did not actively participate in the batter or cruelty;

(c) in the case of an alien child whose parent is abused: the alien child's parent has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent, if the spouse consents to or acquiesces in such battery or cruelty;

(3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought; and

(4) the battered alien, child, or parent no longer resides in the same household as the abuser.

Each of these four requirements, and processes for assuring that an applicant meets these requirements, are discussed in detail below. (In addition to these four requirements, the alien must of course meet the eligibility criteria of the particular program from which benefits are sought.) A benefit provider must determine that an applicant satisfies all four requirements. If an applicant presents documentation indicating that an INS I–130 petition has been filed on the applicant's behalf under the INA provisions listed in subparagraph (a) of requirement one below, or that the applicant has filed an INS I–360 petition under the INA provisions listed in subparagraph (b) of requirement one below, the benefit provider should determine whether the applicant meets the other three requirements for qualified alien status (including battery or extreme cruelty) before verifying his or her immigration status with the INS. If an applicant presents documentation indicating that he or she has filed an INS I–360 petition based on one of the INA provisions listed in subparagraph (c) or (d) of requirement one below, or has sought suspension of deportation or cancellation of removal from the EOIR under one of the INA provisions listed in subparagraph (e) of requirement one below, INS or EOIR will make the determination as to battery or extreme cruelty. In such cases, the benefit provider may contact the INS or the EOIR as applicable to initiate the verification process prior to determining if the applicant meets the other two requirements for qualified alien status. After contacting the INS or the EOIR, the benefit provider should continue reviewing the applicant's eligibility for qualified alien status under requirements three and four below, and should not delay this evaluation while awaiting a response from the INS or the EOIR.

Requirement 1: *Appropriate INS Status.* You must determine that the INS or the EOIR, as applicable, has approved an applicant's petition or application or has found that the applicant's pending petition or application sets forth a prima facie case, under one of the following provisions of the INA:

(a) Section 204(a)(1)(A)(i) and 204(a)(1)(B)(i) of the INA (governing eligibility to receive law permanent resident ("LPR") status as a spouse or child of a U.S. citizen, or as a spouse, child or unmarried son or daughter of an LPR, based on the petition of a spouse or parent);

(b) Section 204(a)(1)(A)(ii) of the INA (governing eligibility to apply for LPR status as an alien who is the widow or widower of a U.S. citizen to whom the alien had been married for at least two years at the time of such citizen's death);

(c) Sections 204(a)(1)(A)(iii) and 204(a)(1)(B)(ii) of the INA (governing eligibility to apply for LPR status as an alien who is the spouse of a U.S. citizen or LPR, who has resided with the spouse in the United States, and who (or whose child) has been subjected to battery or cruelty in the United States by his or her spouse);

(d) Sections 204(a)(1)(A)(iv) and 204(a)(1)(B)(iii) of the INA (governing eligibility to apply LPR status as an alien who is the child of a U.S. citizen or LPR, and who has resided with that parent in the United States and been subjected to battery or cruelty in the United States by his or her citizen or LPR parent); or

Section 244(a)(3) of the INA as in effect prior to April 1, 1997, or section 204A(b)(2) of the INA (governing the Attorney General's authority to suspend deportation or cancel the removal and adjust the status of an alien if the alien or the alien's child has been subjected to battery or extreme cruelty in the United States by a spouse or parent who is a U.S. citizen or LPR).[2] Note: Only this provision of the INA allows the alien parent of a battered child to obtain relief from deportation or removal even if he or she is not married to the U.S. citizen or LPR parent. This includes aliens who were never married to the U.S. citizen or LPR parent, aliens who are divorced from the U.S. citizen or LPR. Under the provisions described in (a)–(d) above, the alien must have been married to the U.S. citizen or LPR spouse at the time the petition was filed. Unmarried children of U.S. citizen or LPRs less than 21 years of age may petition for admission as a battered child under the provision described in (a) or (d) at any time, regardless of their parents' marital status.

Documentation

As set forth in Step 3 of the Interim Guidance regarding verification of qualified alien status, you should ask the alien to present documentation demonstrating his or her immigration status. As described in the Interim Guidance, if the documentation indicates that the applicant fall into one of the categories listed in (a)–(e) above and reasonably appears on its face to be genuine (or, if your program already has existing guidance or procedures mandating a higher standard of proof for acceptance of documentary evidence of immigration status, the document satisfies that higher standard) and to relate to the individual presenting it, you should accept the documentation as conclusive evidence that the applicant satisfies requirement one and should not verify immigration status with the INS or the EOIR. If, based on your review of the documents presented, you are considering determining that an applicant does not have the requisite immigration status and thus is not eligible for the benefits requested based on his or her immigration status—*e.g.*, because the documents does not on its face reasonably appear to be genuine (or to satisfy a higher applicable standard), to demonstrate that the applicant falls into any of the categories listed in (a)–(e) above, or to relate to the person presenting it—you should check with the INS or the EOIR as applicable to verify the information presented by the applicant. To verify status with the INS, in most cases, your should fax the INS Request Form, on your agency letterhead, as well as a copy of the document(s) provided by the applicant, to the INS Vermont Service Center. In some cases, as detailed in footnote three below, request for INS verification should be submitted to the local INS office using from G–845 and its supplement. To verify status with the EOIR, you should fax the EOIR Request Form on your agency letterhead, as well as a copy of the document(s) provided by the applicant, to the court administrator of the appropriate immigration court.

Applicants who have filed a petition or application or had a petition or application filed on their behalf, as applicable, under any of the above-described provisions of the INA will apply to a benefit provider in one of seven possible situations described below.

(1) With documentation evidencing an approved petition or application under one of the provisions listed in (a)–(e) above:

(a) INS Form I–551 ("Resident Alien Card" or "Alien Registration Receipt Card", commonly known as a "green card") with one of the following INS class of admission ("COA") codes printed on the front of a white card or the back of a pink card demonstrates approval of a petition under paragraphs (a)–(b) above: [3] AR1, AR6, C20 through C29, CF1, CF2, CR1, CR2, CR6, CR7, CX1 through CX3, CX6 through CX8, F20 through F29, FX1 through FX3, FX6 through FX8, IF1, IF2, IR1 through IR4, IR6 through IR9, IW1, IW2, IW6, IW7, MR6, MR7, P21 through P23, or P26 through P28;

(b) INS Form I–551 with one of the following COA codes stamped on the lower left side of the back of a pink card demonstrates approval of a petition under paragraphs (c)–(d) above: IB1 through IB3, IB6 through IB8, B11, B12, B16, B17, B20 through B29, B31 through B33, B36 through B38, BX1 through BX3, or BX6 through BX8;

(c) INS Form I–551 with COA code Z13 *may* demonstrate approval of a petition under paragraph (e) above; if an alien claiming approved status presents a card bearing the code Z13, determine where the card was issued by asking the alien where he or she received the grant of suspension of deportation, and then fax the EOIR Request Form on your agency letterhead, as well as a copy of the card and any other document(s) presented by the alien, to the EOIR court that granted the alien's suspension. If the alien does not recall where the grant of suspension of deportation was received, compare the city code on the card to the list of city codes attached to this Exhibit, and fax the EOIR Request Form on your agency letterhead, as well as a copy of the card and any other document(s) presented by the alien, to the Court Administrator of the EOIR court closest to the city where the green card was issued;

(d) Unexpired Temporary I–551 stamp in foreign passport or on INS Form I–94 with one of the COA codes specified in the preceding three paragraphs (if the temporary stamp or the INS Form I–94 bears the code

[1] Some applicants may possess documents demonstrating that they have been admitted to the United States because of battery or extreme cruelty that occurred *outside* of the United States, but this is insufficient by itself to make them eligible for benefits under section 431(c). Section 431(c) does not apply unless some battery or extreme cruelty occurred in the United States.

[2] While this provision includes unabused alien parents of battered children, it does not include unabused alien children of battered parents. This rule stands in contrast to the self-petitioning provisions described in (c) above, which battered spouses of U.S. citizen or LPRs can include their alien children in their petitions for status.

[3] The green card codes, green card types, and stamps in foreign passports or on INS Form I–94 that demonstrate an approved petition or application under one of the provisions listed in (a)–(b) above are too numerous to describe here. If an alien claiming approved status presents a code different than those enumerated, or if you cannot determine the class of admission from the I–551 stamp, you should file INS Form G–845, and the G–845 Supplement (mark item six on the Supplement) along with a copy of the document(s) presented, with the local INS office in order to determine whether the applicant gained his or her status because he or she was the spouse, widow, or child of a U.S. citizen or the spouse, child, or unmarried son or daughter of an LPR. (See Attachment 1 to Interim Guidance.)

Z13, follow the process described immediately above); if it bears another code or you cannot determine what the COA code is, follow the process outlined in footnote three;[4]

(e) INS Form I–797 indicating approval of an INS I–130 petition (only I–130 petitions describing the following relationships may be accepted: husbands or wives of U.S. citizens or LPRs, unmarried children under 21 years old of U.S. citizens or LPRs, or unmarried children 21 or older of LPRs), or approval of an I–360 petition (only I–360 approvals based on status as a widow/widower of a U.S. citizen or as a self-petitioning spouse or child of an abusive U.S. citizen or LPR may be accepted);[5] or

(f) A final order of an Immigration Judge or the Board of Immigration Appeals granting suspension of deportation under section 244(a)(3) of the INA as in effect prior to April 1, 1997, or cancellation of removal under section 240A(b)(2) of the INA. If the court or Board order does not indicate that suspension of deportation or cancellation of removal was granted under section 244(a)(3) or 240A(b)(2), you should fax the EOIR Request Form on your agency letterhead, as well as a copy of the order, to the court administrator of the EOIR court issuing the order, and ask the court to notify you of the INA provision under which the applicant was granted relief.

(2) With documentation demonstrating that the applicant has established a prima facie case[6] under one of the provisions described in (c), (d) or (e) above:

(a) INS Form I–797 indicating that the applicant has established a prima facie case; or

(b) An immigration court or Board of Immigration Appeals order indicating that the applicant has established a prima facie case for suspension of deportation under INA section 244(a)(3) as in effect prior to April 1, 1997, or cancellation of removal under section 240A(b)(2) of the INA.

(3) With documentation indicating that the applicant has filed a petition or that a petition has been filed on the applicant's behalf, as applicable, under one of the provisions listed in (c) or (d) above, but with no evidence of approval of the petition or establishment of a prima facie case, in which case the benefit provider should determine from the documentation when the petition was filed and take the actions set forth below:

(a) Applicants with petitions filed before June 7, 1997 should have an INS Form I–797 indicating filing of the I–360 petition by "self-petitioning spouse [or child] of abusive U.S.C. or LPR," a file-stamped copy of the petition, or another document demonstrating filing (including a cash register or computer-generated receipt indicating filing of Form I–360), but the INS will not have determined whether the applicant's petition sets forth a prima facie case. (If the applicant has no proof of filing, you should follow the instructions in paragraph 6.) You should request that the INS expedite adjudication of the petition or that a prima facie determination be made by faxing the INS Request Form on your agency letterhead, to the INS Vermont Service Center. Inquires about these cases may also be submitted in the same manner to the INS Vermont Service Center.

(b) Applicants with petitions filed after June 7, 1997 should have an INS Form I–797 indicating filing of the I–360 petition, but may have only a copy of the petition and proof of mailing. Within three weeks of filing, INS will send to the applicant either an approval notice, a notice of prima facie case, or a request for additional documentation. In some cases, the applicant will receive both a notice of prima facie case and a request for additional documentation. Upon publication of an interim prima facie rule, INS will begin the process of determining whether an applicant's petition sets forth a prima facie case. If three weeks have elapsed since the filing of the petition, you may determine the status of the case by faxing the INS Request Form, on your letterhead, to the Vermont Service Center.

Please not that the prima facie determination is an interim determination. An INS notice of prima facie case will expire upon issuance of a final decision by the INS or 150 days after issuance, whichever is earlier. An EOIR prima facie determination will expire upon the date of the applicant's hearing on the merits of his or her case, or if made by the Board of Immigration Appeals, upon issuance of the Board's decision on the appeal. In order to remain eligible for benefits after the expiration of a notice of prima facie case an applicant must either request and obtain a renewal of the prima facie determination from the INS or the EOIR, as applicable, or must present the benefit provider with a copy of one of the documents listed in paragraph one above indicating that his or her petition or application has been approved.

(4) With documentation indicating that the applicant has filed a petition or that a petition was filed on his or her behalf, as applicable, under one of the provisions listed in (a) or (b) above (the documentation must indicate that the applicant is the widow/widower of a U.S. citizen, the husband or wife of a U.S. Citizen or LPR, the unmarried child under age 21 of a U.S. citizen or LPR, or the unmarried child age 21 or older of an LPR):

- For aliens on whose behalf a petition has been filed: INS Form I–797 indicating filing of an INS I–130 petition, a file-stamped copy of the petition, or another document demonstrating filing (including a cash register or computer-generated receipt indicating filing of Form I–130) (a sample copy of Form I–130 is attached to this Exhibit).
- For self-petitioning widows or widowers: a file-stamped copy of the INS I–360 petition, or another document demonstrating filing (including a cash register or computer-generated receipt indicating filing of Form I–360).

A prima facie determination will not have been made with regard to these petitions. You should request that the INS expedite adjudication of the petition or that a prima facie determination be made by faxing the INS Request Form on your agency letterhead, to the INS Vermont Service Center. Inquires about these cases may also be submitted in the same manner to the INS Vermont Service Center.

Applicants who are beneficiaries of I–130 petitions will have had a petition filed on their behalf. The petition process gives the spouse or parent of the applicant ultimate control over the disposition of the petition. If the spouse or parent is the abuser, he or she can nullify the petition either by withdrawing it or by divorcing the alien before the alien is able to obtain a green card. Because the most current information regarding the status of a pending I–130 petition will reside with the batterer until an applicant has received his or her green card, you should query INS regarding the applicant's continued eligibility each time you recertify the applicant for eleigiblity under general program guidelines. For these reasons, and because a self-petitioning applicant may be able to obtain employment authorization, an alien who is eligible to self-petition under the Violence Against Women Act should be strongly encouraged to do so. (Note: The alien must be the spouse or child of the abuser and, in the case of a spousal petition, still be married to the abuser when the petition is filed.) The applicant should also be directed to the INS forms request line and the National Domestic Violence Hotline as set forth on page one.

(5) Documentation indicating that the INS has initiated deportation or removal proceedings in which relief under the provision(s) listed in section (e) above may be available (copies of the documents listed below are attached to this Exhibit):

- an "Order to Show Cause";
- a "Notice to Appear"; or
- a "Notice of Hearing in Deportation Proceedings."

You should inform the applicant that, if the applicant or the applicant's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a U.S. citizen or LPR, and the applicant has been present in the United States for at least three years, he or she may file an application with the EOIR requesting suspension of deportation or cancellation of removal as applicable. You should also notify the applicant that, upon filing the application, he or she may ask the court to make a prima facie evaluation of the application and that, if the court indicates that the applicant has set forth a prima facie case for relief, he or she should return to your agency to complete the benefit eligibility evaluation process (see also footnote six). You should also refer the applicant to the National Domestic Violence Hotline as set forth on page one so that he or she may obtain assistance from a local domestic violence service provider and referrals to immigration attorneys. (Some of these applicants will also have sought the relief described in (a)–(d) above. Thus the applicant may have an I–797 indicating that his or her petition has been granted or that the petition sets forth a prima facie case, or an I–797 receipt indicating that a petition has recently been filed. You should only follow the procedures described in this paragraph if the applicant does not have such a petition pending with the INS.)

(6) With minimal or no documentation regarding the claimed filing: Because of the nature of abusive relationships, applicants may not have copies of the documents that have been filed by them or on their behalf. If the applicant has some documentation, but it is insufficient to demonstrate filing, establishment of prima facie case or approval of a petition, you should fax the INS Request Form on your agency letterhead, as well as a copy of any document(s) provided by the applicant, to the INS Vermont Service Center in order to determine the applicant's status. If the applicant has no documentation, but is certain that a petition has been filed by his or her spouse or parent, you should fax the INS Request Form to the INS Vermont Service Center. If the applicant has no documentation and is uncertain whether a petition has been filed on his or her behalf, you should refer the applicant to the National Domestic Violence Hotline as set forth on page one.

(7) Without having filed one of the above petitions, but with facts indicating a basis to file such a petition: You should refer such applicants to the INS forms request line and to the National Domestic Violence Hotline as set forth on page one.

Requirement 2: *Battered or Subjected to Extreme Cruelty.* You must also determine whether an applicant, his or her child, or, in the case of an alien child, his or her parent, has been battered or subjected to extreme cruelty (as defined below) as follows:

- in the case of an abused alien: the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty;
- in the case of an alien whose child is abused: the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty, and the alien did not actively participate in the battery or cruelty;
- in the case of an alien child whose parent is abused: the alien child's parent has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent if the spouse consents to or acquiesces in such battery or cruelty.

(a) *Definitions of Battery, Extreme Cruelty and Family Member*

For purposes of this Guidance, the phrase "battered or subjected to extreme cruelty" has the meaning set forth below. This definition is drawn, with slight modification, from the INS interim rule, "Petition to Classify Alien as Immediate Relative of a United States Citizen or as Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children," 61 Fed. Reg. 13,061, 13074 (1996) (8 C.F.R. 204.2(c)(vi)).

The phrase "battered or subjected to extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatneded acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence.

This is a broad, flexible definition that encompasses all types of battery and extreme cruelty. The acts mentioned in the above definition should be regarded by benefit providers as acts of violence whenever they occur, so long as one or more of the acts takes place in the United States and while the family relationship between the abuser and the victim exists. It is not possible, however, to identify all behaviors that could be acts of violence under certain circumstances, and this definition does not contain an exhaustive list of the acts of violence that will constitute battery or extreme cruelty. Many other nonenumerated abusive actions will also constitute an act or threatened act of violence under this definition.

For purposes of this Guidance, the phrase "member of the spouse or parent's family" means any person related by blood, marriage, or adoption to the spouse or parent of the alien, or any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country where the alien resides, or the state or Indian country in which the alien, the alien's child, or the alien child's parent received a protection order.

(b) *Applicant With EOIR Order or Approved INS Petition or Other Court Order Based on Battery*

Applicants with approved petitions or orders granted under one of the provisions enumerated in paragraphs (c), (d) or (e) of requirement one above have already met the requirement of demonstrating battery or extreme cruelty pursuant to the INS rule. Thus, the benefit provider should not make a new determination of battery or cruelty, and should instead proceed directly to the determination of substantial connection under requirement three. Similarly, a protection order or record of criminal conviction satisfies the battery or extreme cruelty requirement for applicants in the following situations:

- any applicant who has or has had a protection order issued against his or her spouse, parent, or family member of the spouse or parent with whom the applicant was living;
- any applicant whose child has or has had a protection order issued against the applicant's spouse, parent, or family member of the spouse or parent with whom the applicant was living (including protection orders issued to the applicant on behalf of the applicant's abused minor child);
- any applicant who is an alien child and whose parent has or has had a protection order issued against the parent's spouse, or family member of the spouse with whom his or her parent was living;
- any applicant who has a record of criminal conviction of his or her spouse, parent, or family member of the spouse or parent with whom the applicant was living, for committing an act of violence against the applicant or his or her child; or
- any applicant who is an alien child and who has a record of criminal conviction of his or her parent's spouse, or family member of the spouse with whom the parent was living , for committing an act of violence against the applicant's parent.

In the above situations, the applicant has established battery or extreme cruelty for purposes of this Guidance, and you should immediately proceed to requirement three.[7]

(c) *All Other Applicants*

Except for applicants addressed in (b) immediately above, an applicant must provide evidence of abuse. The benefit provider should consider *any credible evidence proffered by the applicant.* Evidence of battery or extreme cruelty (and in the case of a petition on behalf of a child, evidence that the applicant did not actively participate in the abuse) includes, but is not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel; legal documentation, such as an order of protection against the abuser or an order convicting the abuser of committing an act of domestic violence that chronicles the existence of abuse; evidence that indicates

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[4] If an applicant possesses the documents listed in items (a) through (d), the applicant has established that he or she is a lawful permanent resident and therefore is a qualified alien. You should nonetheless proceed with the analysis of requirements 2 through 4 to determine if the applicant qualifies for the battered exception to the deeming provisions (see Part IIA below).

[5] INS Form I–797 is used for numerous categories of petitions, and is used to indicate both receipt of a petition *and* approval or denial of a petition. It will also be used to indicate that an applicant has set forth a prima facie case. Thus, it is important to read the language on the Form I–797 presented by an applicant to ensure that it is more than a receipt, and specifically that it (a) denotes filing under one of the provisions specified above, and (b) denotes approval of the petition or a finding that a prima facie case has been demonstrated. Sample copies of Form I–797 are attached to this Exhibit.

[6] Because the INS has not previously been required to conduct prima facie assessments, it is implementing procedures (which will become effective upon publication of an interim rule) to expedite the review of I–360 petitions under the provisions described in (c) and (d) above and to notify the applicant within three weeks of INS' receipt of the petition if he or she has set forth a prima facie case. Similarly, the EOIR has not previously been required to conduct the prima facie assessment which is required under the provisions described in (e) above. The EOIR is currently working to implement a process for determining whether an applicant has set forth a prima facie case. Applicants in deportation or removal proceedings who are in need of a prima facie determination should contact the appropriate immigration court.

[7] In cases where INS is making the determination regarding battery and extreme cruelty, INS will follow its regulations as set forth in 8 C.F.R. 204.2(c)(2). Under these regulations, INS will consider protection orders and criminal convictions along with any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence rests within the sole discretion of INS. See 8 C.F.R. 204(c)(2)(i).

that the applicant sought safe-haven in a battered women's shelter or similar refuge because of the battery against the applicant or his or her child; or photographs of the visibly injured applicant, child, or (in the case of an alien child) parent supported by affidavits. An applicant may also submit sworn affidavits from family members, friends or other third parties who have personal knowledge of the battery or cruelty. Additionally, an applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse, and the benefit provider has the discretion to conclude that the affidavit is credible, and, by itself or in conjunction with other evidence, provides relevant evidence of sufficient weight to demonstrate battery or extreme cruelty. The benefit provider should keep a copy of all evidence presented by the applicant.

The benefit provider should bear in mind that, due to the nature of the control and fear dynamics inherent in domestic violence, some applicants will lack the best evidence to support their allegations (*e.g.*, a civil protection order or a police report). Thus, the benefit provider will need to be flexible in working with the applicant as he or she attempts to assemble adequate documentation. In determining the existence of battery or cruelty, it is important that the benefit provider understand both the experience of intimate violence and the applicant's cultural context. The dynamics of domestic violence may have inhibited the applicant from seeking public or professional responses to the abuse prior to applying for benefits needed to enable the applicant to leave the abuser. For many cultural groups, going to outsiders for help is viewed as disloyalty to the community and an embarrassment to the family. In some cultures, for example, women have been conditioned to accept the authority and control of their husbands. Thus, there may be little independent documentary evidence of the abuse; the benefit provider should be sensitive to the needs and situation of the abused applicant when reviewing allegations and evidence of abuse.

Many applicants will have had an I–130 petition filed on their behalf by their spouse or parent, in which case the spouse or parent will have ultimate control over the disposition of the petition. If the spouse or parent is the abuser, he or she can nullify the petition either by withdrawing it or by divorcing the alien before the alien is able to obtain a green card. For these reasons, and because a self-petitioning applicant may be able to obtain employment authorization, an alien who is eligible to self-petition (the alien must be married to the abuser when the petition is filed) should be strongly encouraged to do so. The applicant should also be directed to the INS forms request line and the National Domestic Violence Hotline as set forth on page one.

Requirement 3: *Substantial Connection Between Battery and the Need for Benefits.* You must determine whether there is a substantial connection between the battery or extreme cruelty to which the applicant, his or her child, or (in the case of an alien child) his or her parent has been subjected and the need for the benefits sought. This requirement will not be satisfied simply by a determination that an applicant has been subjected to battery or extreme cruelty. To assist benefit providers in making substantial connection determinations, and as required by the Budget Act, the Attorney General has developed a list of circumstances, set forth below, that demonstrate a substantial connection between the battery or extreme cruelty suffered by an applicant, the applicant's child, or (in the case of an alien child) the applicant's parent, and the need for the benefit sought. You may refer to this list as a guide in making substantial connection determinations.

Note: The Attorney General's Order No. 2097–97, Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 FR 39874 (July 24, 1997), has been superseded by amendments in the Budget Act. Revised substantial connection guidance will be issued shortly. In the meantime, benefit providers should look to the information contained in this document for guidance in making substantial connection determinations.

- Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child), the applicant's parent to become self-sufficient following separation from the abuser;
- Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent from the abuser;
- Where the benefits are needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or (in the case of an alien child) his or her parent's separation from the abuser;
- Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to lose his or her job or to earn less or to require the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to leave his or her job for safety reasons;
- Where the benefits are needed because the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty;
- Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's or (in the case of an alien child) the parent's ability to care for his or her children (*e.g.*, inability to house, feed, or clothe children or to put children into a day care for fear of being found by the abuser);
- Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;
- Where the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent and/or to care for any resulting children; or
- Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent had when living with the abuser.

Requirement 4: *Battered Applicant No Longer Resides in the Same Household with Batterer.* Before providing benefits, you must determine that the battered applicant, child or parent no longer resides in the same household or family eligibility unit as the batterer. Although an applicant is not a qualified alien eligible for benefits until the battered applicant or child, or parent ceases residing with the batterer, applicants will generally need the assurance of the availability of benefits in order to be able to leave their batterer and survive independently. Wherever possible in this situation, the benefit provider should complete the eligibility determination process and approve the applicant for receipt of benefits pending the applicant's demonstration that the applicant, his or her child, and/or (in the case of an alien child) his or her parent have separated from the batterer. The applicant can then make arrangements to leave the batterer's residence secure in the knowledge that benefits will be provided as soon as he or she leaves.

You should consider any relevant credible evidence supporting the claim of non-residency with the batterer, including, but not limited to, any of the following: A civil protection order requiring the batterer to stay away from the applicant or the applicant's children or parent, or evicting the batterer from the applicant's residence; employment records; utility receipts; school records; hospital or medical records; rental records or records from a building or property manager; an affidavit from a staff member at a shelter for battered women or homeless persons, family members, friends or other third parties with personal knowledge, or from the battered applicant himself or herself; or any other records establishing that the applicant or his or her child or parent no longer resides with the abusive spouse, parent, or family member.

Note: While qualified alien status will make the battered applicant, the battered applicant's children, or the parent of a battered child eligible for certain federal public benefits, it will not make them eligible for all federal public benefits. See Interim Guidance and Attachments 6 and 7 thereto for the factors that determine a qualified alien's eligibility for particular benefits.

II. EXEMPTION FROM DEEMING REQUIREMENTS

A. *Battered Aliens*

Section 421 of the Act (as amended by the Immigration Act and the Budget Act) requires that, upon the effective date of the newly required affidavit of support and subject to the exceptions described below, when determining eligibility for federal means-tested public benefits and the amount of such benefits to which an alien applicant is entitled, agencies must include as income and resources of the alien, the income and resources of the spouse of the alien and any other person executing an affidavit of support on behalf of the alien. An alien is exempt from these "deeming" requirements for a period of one year, however, if

(1) in the case of an abused alien,

(a) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty; (b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and (c) the battered alien no longer resides in the same household as the abuser;

(2) in the case of an alien whose child is abused:

(a) the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien, or by a member of the spouse or parent's family residing in the same household as the alien if the spouse or parent consents to or acquiesces in such battery or cruelty; (b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and (c) the battered child no longer resides in the same household as the abuser;

(3) in the case of an alien child whose parent is abused:

(a) the alien child's parent has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent if the spouse consents to or acquiesces in such battery or cruelty; (b) there is, in the opinion of the agency providing such benefits, a substantial connection between the battery or extreme cruelty and the need for the benefit sought; and (c) the battered parent no longer resides in the same household as the abuser.

See Part I, requirements two and four, above, for the definition and proof of battery/extreme cruelty and non-residency with the abuser; the agency may also want to consult the Attorney General's guidance regarding substantial connection (see part I, requirement three above) when making its own substantial connection determination.

After expiration of the one year period, alien applicants continue to be exempt from the deeming requirements with regard to the resources and income of the *batterer only*, if (a) the applicant demonstrates that the battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the INS, and (b) in the opinion of the agency, there is a substantial connection between the abuse or battery suffered by the applicant, the applicant's child, or (in the case of an alien child) the applicant's parent and the need for the benefit sought.

B. *Indigent Aliens*

In addition to the exemption for battered aliens, the Act's deeming provision contains a separate exemption for indigent aliens. If, after taking into account the alien's own income plus any cash, food, housing or other assistance provided by other individuals (including the sponsor), an agency determines that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, the amount of income and resources of the sponsor or the sponsor's spouse that shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period of one year after the date such agency determination is made.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0117

Petition for Amerasian, Widow or Special Immigrant

START HERE - Please Type or Print

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner/ Applicant Interviewed	
☐ Beneficiary Interviewed	
☐ I-485 Filed Concurrently	
☐ Bene "A" File Reviewed	
Classification	
Consulate	
Priority Date	
Remarks:	
Action Block:	

To Be Completed by Attorney or Representative, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG #
ATTY State License #

Part 1. Information about person or organization filing this petition. (Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want INS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name | Given Name | Middle Initial

Company or Organization Name

Address - C/O

Street Number and Name | Apt. #

City | State or Province

Country | ZIP/Postal Code

U.S. Social Security # | A # | IRS Tax # (if any)

Part 2. Classification Requested (check one):

a. ☐ Amerasian
b. ☐ Widow(er) of a U.S. citizen who died within the past 2 years
c. ☐ Special Immigrant Juvenile
d. ☐ Special Immigrant Religious Worker
e. ☐ Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
f. ☐ Special Immigrant Physician
g. ☐ Special Immigrant International Organization Employee or family member
h. ☐ Special Immigrant Armed Forces Member
i. ☐ Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
j. ☐ Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
k. ☐ Other, explain: _____

Part 3. Information about the person this petition is for.

Family Name | Given Name | Middle Initial

Address - C/O

Street Number and Name | Apt. #

City | State or Province

Country | ZIP/Postal Code

Date of Birth (Month/Day/Year) | Country of Birth

U.S. Social Security # (if any) | A # (if any)

Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed

Complete the items below if this person is in the United States:

Date of Arrival (Month/Day/Year) | I-94 #

Current Nonimmigrant Status | Expires on (Month/Day/Year)

Continued on back.

Part 4. Processing Information.

Below give the United States Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City | Country

If you gave a United States address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name | Address

Sex of the person this petition is for. ☐ Male ☐ Female
Are you filing any other petitions or applications with this one? ☐ No ☐ Yes (How many? _____)
Is the person this petition is for in exclusion or deportation proceedings? ☐ No ☐ Yes (Explain on a separate sheet of paper)
Has the person this petition is for ever worked in the U.S. without permission? ☐ No ☐ Yes (Explain on a separate sheet of paper)
Is an application for adjustment of status attached to this petition? ☐ No ☐ Yes

Part 5. Complete only if filing for an Amerasian.

Section A. Information about the mother of the Amerasian

Family Name | Given Name | Middle Initial

Living? ☐ No (Give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Address

Section B. Information about the father of the Amerasian: If possible, attach a notarized statement from the father regarding parentage. Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name | Given Name | Middle Initial

Date of Birth (Month/Day/Year) | Country of Birth

Living? ☐ No (give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Home Address

Home Phone # | Work Phone #

At the time the Amerasian was conceived:

☐ The father was in the military (indicate branch of service below - and give service number here): _____
☐ Army ☐ Air Force ☐ Navy ☐ Marine Corps ☐ Coast Guard
☐ The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.
☐ The father was not in the military, and was not a civilian employed abroad. *(Attach a full explanation of the circumstances.)*

Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.

Section A. Information about the Juvenile

List any other names used.

Answer the following questions regarding the person this petition is for. If you answer "no" explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state? ☐ No ☐ Yes
Does he/she continue to be eligible for long term foster care? ☐ No ☐ Yes

Continued on next page.

Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.

Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.

Family Name	Given Name	Middle Initial

Date of Birth (Month/Day/Year)	Country of Birth	Date of Death (Month/Day/Year)

He or she is now, or was at time of death a *(check one)*:

- ☐ U.S. Citizen born in the United States.
- ☐ U.S. Citizen born abroad to U.S. citizen parents.
- ☐ U.S. Citizen through Naturalization *(Show A #)* _____
- ☐ U.S. lawful permanent resident *(Show A #)* _____
- ☐ Other, explain _____

Section B. Additional information about you.

How many times have you been married?	How many times was the person in Section A married?	Give the date and place you and the person in Section A were married. *(If you are a self-petitioning child, write: "N/A")*

When did you live with the person named in Section A? From *(Month/Year)*_____until *(Month/Year)*_____.

If you are filing as a widow/widower, were you legally separated at the time of the U.S. citizens's death? ☐ No ☐ Yes, *(attach explanation)*.

Give the last address at which you lived together with the person named in Section A, and show the last date that you lived together with that person at that address:

If you are filing as a self-petitioning spouse, have any of your children filed separate self-petitions? ☐ No ☐ Yes *(show child(ren)'s full names)*:

Part 8. Information about the spouse and children of the person this petition is for. A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Spouse ☐ Child		A #
B.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
C.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
D.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
E.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #
F.	Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
	Country of Birth	Relationship ☐ Child		A #

G. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship ☐ Child		A #
H. Family Name	Given Name	Middle Initial	Date of Birth (Month/Day/Year)
Country of Birth	Relationship ☐ Child		A #

Part 9. Signature.

Read the information on penalties in the instructions before completing this part. If you are going to file this petition at an INS office in the United States, sign below. If you are going to file it at a U.S. consulate or INS office overseas, sign in front of a U.S. INS or consular official.

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature	Date

Signature of INS or Consular Official	Print Name	Date

Please Note: If you do not completely fill out this form, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for a requested benefit, and it may have to be denied.

Part 10. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date

Firm Name and Address

U.S. Department of Justice
Immigration and Naturalization Service

OMB# 1115-0117

Petition for Amerasian, Widow(er), or Special Immigrant

INSTRUCTIONS

Purpose of This Form.
This petition is used to classify an alien as:
- an Amerasian;
- a Widow or Widower;
- a Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident;
- a Special Immigrant (Religious Worker; Panama Canal Company Employee, Canal Zone Government Employee, U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member; Juvenile Court Dependent; or Armed Forces Member).

Initial Evidence Requirements.
If these instructions state that a copy of a document may be filed with this petition, and you choose to send us the original, we may keep that original for our records. Any foreign language document must be accompanied by an English translation certified by the translator that he/she is competent to translate from the foreign language into English and that the translation is accurate.

Amerasian. Any person who is 18 or older, an emancipated minor, or a U.S. corporation may file this petition for an alien who was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a U.S. citizen.

The petition must be filed with:
- copies of evidence the person this petition is for was born in one of the above countries between those dates. If he/she was born in Vietnam, you must also submit a copy of his/her Vietnamese I.D. card, or an affidavit explaining why it is not available;
- copies of evidence establishing the parentage of the person, and of evidence establishing that the biological father was a U.S. citizen. Examples of documents that may be submitted are birth or baptismal records or other religious documents; local civil records; an affidavit, correspondence or evidence of financial support from the father; photographs of the father (especially with the child); or, absent other documents, affidavits from knowledgeable witnesses which detail the parentage of the child and how they know such facts;
- a photograph of the person;
- if the person is married, submit a copy of the marriage certificate, and proof of the termination of any prior marriages; and
- if the person is under 18 years old, submit a written statement from his/her mother or legal guardian which:
  - irrevocably releases him/her for emigration and authorizes the placing agencies to make necessary decisions for his/her immediate care until a sponsor receives custody;
  - shows an understanding of the effects of the release, and states whether any money was paid or coercion used prior to obtaining the release; and
  - includes the full name, date and place of birth, and present or permanent address of the mother or guardian, and with the signature of the mother or guardian on the release authenticated by a local registrar, court of minors, or a U.S. immigration or consular officer.

The following sponsorship documents are also required. You may file these documents with the petition, or wait until we review the petition and request them. However, not filing them with the petition will add to the overall processing time.
- An Affidavit of Financial Support, executed by the sponsor, with the evidence of financial ability required by that form. Please note that the original sponsor remains financially responsible for the Amerasian if any subsequent sponsor fails in this area;
- Copies of evidence showing that the sponsor is at least 21 years old and is a U.S. citizen or permanent resident;
- Fingerprints of the sponsor on Form FD-258; and
- If this petition is for a person under 18 years old, the following documents issued by a placement agency must be submitted:
  - a copy of the private, public or state agency's license to place children in the U.S., proof of the agency's recent experience in the intercountry placement of children and of the agency's financial ability to arrange the placement;
  - a favorable home study of the sponsor conducted by a legally authorized agency;
  - a pre-placement report from the agency, including information regarding any family separation or dislocation abroad that would result from the placement;
  - a written description of the orientation given to the sponsor and to the parent or guardian on the legal and cultural aspects of the placement;
  - a statement from the agency showing that the sponsor has been given a report on the pre-placement screening and evaluation of the child; and
  - a written plan from the agency to provide follow-up services, including mediation and counseling, and describing the contingency plans to place the person this petition is for in another suitable home if the initial placement fails.

Widow/Widower of a United States Citizen. You may file this petition for yourself if:
- you were married for at least two years to a U.S. citizen who is now deceased and who was a U.S. citizen at the time of death;
- your citizen spouse's death was less than two years ago;
- you were not legally separated from your citizen spouse at the time of death; and
- you have not remarried.

The petition must be filed with:
- a copy of your marriage certificate to the U.S. citizen and proof of termination of any prior marriages of either of you;
- copies of evidence that your spouse was a U.S. citizen, such as a birth certificate if born in the U.S.; Naturalization Certificate or Certificate of Citizenship issued by this Service; Form FS-240, Report of Birth Abroad of a Citizen of the United States; or a U.S. passport which was valid at the time of the citizen's death; and
- a copy of the death certificate of your U.S. citizen spouse.

Self-Petitioning Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident. You may self-petition for immediate relative or family-sponsored immigrant classification if you:
- are now the spouse or child of an abusive U.S. citizen or lawful permanent resident;
- are eligible for immigrant classification based on that relationship;
- are now residing in the United States;
- have resided in the United States with the U.S. citizen or lawful permanent resident abuser in the past;
- have been battered by, or have been the subject of extreme cruelty perpetrated by:
  - your U.S. citizen or lawful permanent resident spouse during the marriage; or are the parent of a child who has been battered by or has been the subject of extreme cruelty perpetrated by, your abusive citizen or lawful permanent resident spouse during your marriage; or
  - your citizen or lawful permanent resident parent while residing with that parent;
- are a person of good moral character;
- are a person whose deportation would result in extreme hardship to yourself, or to your child if you are a spouse; and
- if you are a spouse, entered into the marriage to the citizen or lawful permanent resident abuser in good faith.

NOTE: Divorce or other legal termination of the marriage to the abuser AFTER the self-petition is properly filed with INS will not be the sole basis for denial or revocation of an approved self-petition. If you remarry before you become a lawful permanent resident, however, your self-petition will be denied or the approval revoked.

Your self-petition may be filed with any credible relevant evidence of eligibility. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the INS; therefore, you are encouraged to provide the following evidence:
- evidence of the abuser's U.S. citizenship or lawful permanent resident status;
- marriage and divorce decrees, birth certificates, or other evidence of your legal relationship to the abuser;

- one or more documents showing that you and the abuser have resided together in the United States in the past, such as employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, or affidavits;
- one or more documents showing that you are now residing in the United States, such as the documents listed above;
- evidence of the abuse, such as reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. If you have an order of protection or have taken other legal steps to end the abuse, you should submit copies of those court documents;
- if you are more than 14 years of age, your affidavit of good moral character accompanied by a local police clearance, state-issued criminal background check, or similar report from each locality or state in the United States or abroad in which you have resided for six or more months during the 3-year period immediately preceding the filing of your self-petition;
- affidavits, birth certificates of children, medical reports and other relevant credible evidence of the extreme hardship that would result if you were to be deported; and
- if you are a spouse, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding your courtship, wedding ceremony, shared residence and experiences showing that your marriage was entered into in good faith.

Special Immigrant Juvenile. Any person, including the alien, may file this petition for an alien who:
- is unmarried and less than 21 years old;
- has been declared dependent upon a juvenile court in the United States or who such a court has legally committed to, or placed under the custody of, an agency or department of a state and who has been found eligible for long-term foster care; and
- has been the subject of administrative or judicial proceedings in which it was determined that it would not be in the juvenile's best interests to be returned to the juvenile's or his/her parent's country of nationality or last habitual residence.

NOTE: After a special immigrant juvenile becomes a permanent resident, his or her parent(s) may not receive any immigration benefit based on the relationship to the juvenile.

The petition must be filed with:
- a copy of the juvenile's birth certificate or other evidence of his or her age;
- copies of the court or administrative document(s) upon which the claim to eligibility is based.

Special Immigrant Religious Worker. Any person, including the alien, may file this petition for an alien who for the past 2 years has been a member of a religious denomination which has a bona fide nonprofit, religious organization in the U.S.; and who has been carrying on the vocation, professional work, or other work described below, continuously for the past 2 years; and seeks to enter the U.S. to work solely:
- as a minister of that denomination; or
- in a professional capacity in a religious vocation or occupation for that organization; or
- in a religious vocation or occupation for the organization or its nonprofit affiliate.

NOTE: A petition for a special immigrant for a person who is not a minister may only be filed until October 1, 1997.

The petition must be filed with:
- a letter from the authorized official of the religious organization establishing that the proposed services and alien qualify as above;
- a letter from the authorized official of the religious organization attesting to the alien's membership in the religious denomination and explaining, in detail, the person's religious work and all employment during the past 2 years and the proposed employment; and
- evidence establishing that the religious organization, and any affiliate which will employ the person, is a bona fide nonprofit religious organization in the U.S. and is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. government in the Canal Zone. Any person may file this petition for an alien who, at the time the Panama Canal Treaty of 1977 entered into force, either:
- was resident in the Canal Zone and had been employed by the Panama Canal Company or Canal Zone Government for at least 1 year; or
- was a Panamanian national and either honorably retired from U.S. Government employment in the Canal Zone with a total of 15 or more years of faithful service or so employed for 15 years and since honorably retired; or
- was an employee of the Panama Canal Company or Canal Zone government, had performed faithful service for 5 years or more as an employee, and whose personal safety, or the personal safety of his/her spouse or child, is in danger as a direct result of the special nature of his/her employment and as a direct result of the Treaty.

The petition must be filed with:
- a letter from the Panama Canal Company, Canal Zone government or U.S. government agency employing the person in the Canal Zone, indicating the length and circumstances of employment and any retirement or termination; and
- copies of evidence to establish any claim of danger to personal safety.

Special Immigrant Physician. Any person may file this petition for an alien who:
- graduated from a medical school or qualified to practice medicine in a foreign state;
- was fully and permanently licensed to practice medicine in a State of the U.S. on January 9, 1978, and was practicing medicine in a State on that date;
- entered the U.S. as an "H" or "J" nonimmigrant before January 9, 1978; and
- has been continuously present in the U.S. and continuously engaged in the practice or study of medicine since the date of such entry.

The petition must be filed with:
- letters from the person's employers, detailing his/her employment since January 9, 1978, including the current employment; and
- copies of relevant documents that demonstrate that the person filed for meets all the above criteria.

Special Immigrant International Organization Employee or family member. Certain long-term "G" and "N" nonimmigrant employees of a qualifying international organization entitled to enjoy privileges, exemptions and immunities under the International Organizations Immunities Act, and certain relatives of such an employee, may be eligible to apply for classification as a Special Immigrant. To determine eligibility, contact the qualifying international organization or your local INS office.
The petition must be filed with:
- a letter from the international organization demonstrating that it is a qualifying organization and explaining the circumstances of qualifying employment and the immigration status held by the person the petition is for; and
- copies of evidence documenting the relationship between the person this petition is for and the employee.

Armed Forces Member. You may file this petition for yourself, if:
- you have served honorably on active duty in the Armed Forces of the United States after October 15, 1978;
- you originally lawfully enlisted outside the United States under a treaty or agreement in effect on October 1, 1991, for a period or periods aggregating:
  - twelve years, and were never separated from such service except under honorable conditions; or
  - six years, are now on active duty, and have reenlisted to incur a total active duty service obligation of at least 12 years;
- you are a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and
- the executive department under which you have served or are serving has recommended you for this special immigrant status.

The petition must be filed with:
- certified proof issued by the authorizing official of the executive department in which you are serving or have served which certifies that you have the required honorable active duty service and/or commitment; and
- your birth certificate.

General Filing Instructions.
Please answer all questions by typing or clearly printing in black ink only. Indicate that an item is not applicable with "N/A". If an answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item the answer refers to. Every petition must be properly signed, and accompanied by the proper fee. If you are under 14 years of age, your parent or guardian may sign the petition.

Where to File.
If you are filing for a Special Immigrant Juvenile, file the petition at the local INS office having jurisdiction over the place he/she lives.

If you are filing for Amerasian classification and the person you are filing for is outside the United States, you may file this petition at the INS office that has jurisdiction over the place he/she lives or the office that has jurisdiction over the place he/she will live.

If you are in the United States and filing as a Widow/Widower or as the Self-petitioning Spouse or Child of an Abusive U.S. Citizen, you may file this petition together with your application for adjustment of status. If you are in the United States, filing as the self-petitioning spouse or child of abusive lawful permanent resident, and have an immediately available immigrant visa number, you may also file this petition together with your application for adjustment of status. See the adjustment of status instructions for information about where to file.

If this petition is for an Amerasian, a Widow/Widower, or a Special Immigrant Armed Forces Member, and that person lives outside the United States, you may file this petition at the INS office overseas or the U.S. consulate or Embassy abroad having jurisdiction over the area in which he or she lives.

In all other instances file this petition at an INS Service Center, as follows:

If you live in Connecticut, Deleware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail this petition to USINS, Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479-0001.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Caroline, Oklahoma, South Caroline, Tennessee, or Texas, mail this petition to USINS, Texas Service Center, P.O. Box 152122, Dept. A, Irving, TX 75015-2122.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail this petition to USINS, California Service Center, P.O. Box 10380, Laguna Niguel, CA 92907-0360

If you live elsewhere in the U.S., mail this petition to USINS, Nebraska Service Center, 850 S Street, Lincoln, NE 68501-2521

Fee.
The fee for this petition is $80.00, except that there is no fee if you are filing for an Amerasian. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

BILLING CODE 4410-10-C

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by the Service.

Initial processing. Once the petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your petition.

NOTE: A Self-Petitioning Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident may submit any relevant credible evidence in place of the suggested evidence.

Requests for additional information or interview. We may request additional information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. If you establish that the person this petition is for is eligible for the requested classification, we will approve the petition. We will send it to the U.S. Embassy/Consulate for visa issuance unless he or she is in the U.S. and appears eligible and intends to apply for adjustment to permanent resident status while here. If you do not establish eligibility, we will deny the petition. We will notify you in writing of our decision.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1154. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 15 minutes; (2) completing the form, 20 minutes; and (3) assembling and filing the application, 85 minutes for an estimated average of 2 hours per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, (1115-0117) 425 I Street, N.W., Room 5307, Washington, D.C. 20536.

Paperwork Reduction Act Notice

The information collection requirements contained in the following two forms have been approved for use by the Office of Management and Budget under the Paperwork Reduction Act. The OMB control number for these collections is 1115–0219, with the expiration date 5/31/98. Persons are not required to provide this information unless the form contains a currently valid OMB control number. We estimate that it will take an average of 20 minutes per response to collect this information, including time for reviewing, instruction, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspects of this collection, send them to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536.

BILLING CODE 4410–10–M

[sample only -- request to be submitted on letterhead of requesting agency]
Fax Request Form -- from Benefit Agency to EOIR

To: Executive Office for Immigration Review
Immigration Court, _____ (insert name of city/state)
Attn: Court Administrator

This fax consists of ___ pages.
Fax number: _____

This request is being submitted by:

Name (printed): _____ Title: _____

Agency name and address: _____

_____

Fax number: _____ Phone number: _____

Agency case tracking number (optional): _____

Item 1: That above-referenced agency requests that EOIR (please check one):

___ Verify that the individual referred to on the attached green card (a copy is attached) was granted relief under section 244(a)(3) (as in effect prior to April 1, 1997) or 240A(b)(2) of the Immigration and Nationality Act.

___ Verify that the attached order grants relief under section 244(a)(3) or 240A(b)(2) of the Immigration and Nationality Act.

___ Verify that EOIR has determined that the alien has demonstrated a prima facie case for suspension of deportation or cancellation of removal under section 244(a)(3) or 240A(b)(2) of the Immigration and Nationality Act.

Item 2: If you checked the last item above, please fill out the following information. If the applicant has a copy of a receipt notice or other documentation indicating that he or she filed an application for suspension of deportation or cancellation of removal, please attach a copy.

Benefit Applicant's full name: _____

Benefit Applicant's date of birth: _____

Benefit Applicant's best guess as to when application was filed: _____ (mo/yr)

Benefit Applicant's best guess as to with which immigration court petition was filed: _____

Benefit Applicant's address at time of filing petition: _____

(street address, city, state, zip code) _____

Date: _____ Agency Signature: _____

[sample only -- request to be submitted on letterhead of requesting agency]

Fax Request Form -- from Benefit Agency to INS

To: INS Vermont Service Center, fax 802/527-3159
Attn: Battered Alien Review Unit

This fax consists of ___ pages.

This request is being submitted by:

Name (printed): _____ Title: _____

Agency name and address: _____

_____

Fax number: _____ Phone number: _____

Agency case tracking number: _____ (optional)

Item 1: An alien applicant is seeking [illegible] benefit from the agency identified above, pursuant to recent welfare reform legislation. This applicant falls into one of two categories:

___ a) believes an INS Form I-360, Petition for Amerasian, Widow or Special Immigrant status, was filed on the applicant's behalf by his/her spouse/parent/or he/she self-petitioned as a widow(er) using INS Form I-360, Petition for Amerasian, Widow or Special Immigrant (complete Part A, below);

___ b) has self-petitioned as a battered spouse or child using INS Form I-360, Petition for Amerasian, Widow or Special Immigrant (complete Part B, below).

Item 2: The above-referenced agency requests that INS: (please check only one)

- ☐ Verify that the attached document is valid. (A copy of the I-797 approval notice, prima facie determination or receipt notice is attached.)
- ☐ Make a prima facie determination or expedite adjudication of the petition and notify the requesting agency.
- ☐ Update the status of the petitioning agency's _____ (insert date) request for a prima facie determination or expedited adjudication. (Requesting agency should allow three weeks from the request for a prima facie determination or filing of a petition before making this request.)
- ☐ Determine whether the applicant has filed a petition or whether a petition has been filed on his or her behalf under (a) or (b), as indicated above. If so, please make a prima facie determination or expedited adjudication of the applicant's petition and notify the requesting agency of the outcome.

Date: _____ Agency Signature: _____

Sample

[sample only -- request to be submitted on letterhead of requesting agency]
Fax Request Form -- from Benefit Agency to EOIR

To: Executive Office for Immigration Review This fax consists of ___ pages.
Immigration Court, _____ (insert name of city/state)
Attn: Court Administrator Fax number: _____

This request is being submitted by:
Name (printed): _____ Title: _____
Agency name and address: _____
_____
Fax number: _____ Phone number: _____
Agency case tracking number (optional): _____

Item 1: That above-referenced agency requests that EOIR: (please check only one)

___ Verify that the individual referred to on the attached green card (a copy is attached) was granted relief under section 244(a)(3) (as in effect prior to April 1, 1997) or 240A(b)(2) of the Immigration and Nationality Act.

___ Verify that the attached order grants relief under section 244(a)(3) or 240A(b)(2) of the Immigration and Nationality Act.

___ Verify that EOIR has determined that the alien has demonstrated a prima facie case for suspension of deportation or cancellation of removal under section 244(a)(3) or 240A(b)(2) of the Immigration and Nationality Act.

Item 2: If you checked the last item above, please fill out the following information. If the applicant has a copy of a receipt notice or other documentation indicating that he or she filed an application for suspension of deportation or cancellation of removal, please attach a copy.

Benefit Applicant's full name: _____
Benefit Applicant's date of birth: _____
Benefit Applicant's best guess as to when application was filed: _____ (mo/yr)
Benefit Applicant's best guess as to with which immigration court petition was filed: _____
Benefit Applicant's address at time of filing petition: _____
(street address, city, state, zip code) _____

Date: _____ Agency Signature: _____

[sample only -- request to be submitted on letterhead of requesting agency]

Fax Request Form -- from Benefit Agency to INS

To: INS Vermont Service Center, fax 802/527-3159
Attn: Battered Alien Review Unit This fax consists of ____ pages.

This request is being submitted by:
Name (printed): _____ Title: _____
Agency name and address: _____
_____
Fax number: _____ Phone number: _____
Agency case tracking number: _____ (optional)

Item 1: An alien applicant is seeking public benefits from the agency identified above, pursuant to recent welfare reform legislation. This applicant falls into one of two categories:

___ a) believes an INS Form I-130, Petition for Immigrant Status, was filed on the applicant's behalf by his/her spouse or parent, or has self-petitioned as a widow(er) using INS Form I-360, Petition for Amerasian, Widow or Special Immigrant (complete Part A, below);
OR
___b) has self-petitioned as a battered spouse or child using INS Form I-360, Petition for Amerasian, Widow, or Special Immigrant (complete Part B, below).

Item 2: The above-referenced agency requests that INS: (please check only one)

☐ Verify that the attached document is valid. (A copy of the I-797 approval notice, prima facie determination or receipt notice is attached.
☐ Make a prima facie determination or expedite adjudication of the petition and notify the requesting agency of the outcome.
☐ Update the status of the requesting agency's _____ (insert date) request for a prima facie determination or expedited adjudication. (Requesting agency should allow three weeks from the request for a prima facie determination or filing of a petition before making this request.)
☐ Determine whether the applicant has filed a petition or whether a petition has been filed on his or her behalf under (a) or (b), as indicated above. If so, please make a prima facie determination or expedited adjudication of the applicant's petition and notify the requesting agency of the outcome.

Date: _____ Agency Signature: _____

PART A: For an Applicant Who Is the Beneficiary of a Petition Filed by Spouse or Parent, or Who Has Self-Petitioned as a Widow(er)

Step 1: Does the alien applicant have a copy of an INS Form I-797 indicating that an I-130 was filed on his/her behalf? [If applicant has self-petitioned as a widow(er), check "No" and proceed to Step 2.]

Yes _____ ➔ Attach a copy of the I-797 to this fax (you need not complete Step 2)

No _____ ➔ If the applicant has no documentation or has documentation other than a Form I-797, proceed to Step 2.

Step 2: If the applicant does not have a Form I-797, please fill out the following information. All blanks, except that noted "if available", must be completed.

Benefit Applicant's full name: _____

Benefit Applicant's date of birth: _____

Benefit Applicant's best guess as to when petition was filed: _____ (mo/yr)

Benefit Applicant's best guess as to with which INS office petition was filed: _____

Petitioner's full name: _____

Petitioner is Applicant's ___ spouse, or ___ parent, or ___ self [widow(er)] (check one)

Petitioner is a ___ U.S. citizen, or ___ lawful permanent resident ("green card holder")

Petitioner's date of birth: _____

Petitioner's Alien Registration Number, if available: A_____

Petitioner's address at time of filing petition: _____

(street address, city, state, zip code) _____

PART B: For an Applicant Who Has Self-Petitioned as a Battered Spouse or Child

Step 1: Attach a copy of the receipt notice or other documentation evidencing that a Form I-360 has been filed with the INS. If that documentation does not include the following information, please complete the blanks:

Applicant/self-petitioner's full name: _____

Applicant/self-petitioner's date of birth: _____

Date I-360 was filed: _____

Location (city) of INS office where filed: _____

Sample

BILLING CODE 4410-10-C

PART A: For an Applicant Who Is the Beneficiary of a Petition Filed by Spouse or Parent, or Who Has Self-Petitioned as a Widow(er)

Step 1: Does the alien applicant have a copy of an INS Form I-797 indicating that an I-130 was filed on his/her behalf? [If applicant has self-petitioned as a widow(er), check "No" and proceed to Step 2.]

Yes _____ ➔ Attach a copy of the I-797 to this fax (you need not complete Step 2)

No _____ ➔ If the applicant has documentation other than a Form I-797, proceed to Step 2

Step 2: If the applicant does not have a Form I-797, please fill in the following information. All blanks, except that noted "if available", must be completed.

Benefit Applicant's full name: _____

Benefit Applicant's date of birth: _____

Benefit Applicant's best guess as to when petition was filed: _____ (mo/yr)

Benefit Applicant's best guess as to the office with which INS petition was filed: _____

Petitioner's full name: _____

Petitioner is Applicant's spouse ____, parent ____, self [widow(er)] (check one)

Petitioner is a U.S. citizen ____ or lawful permanent resident ("green card holder") ____

Petitioner's date of birth: _____

Petitioner's Alien Registration Number, if available: A_____

Petitioner's address at time of filing petition: _____

(street address, city, state, zip code) _____

PART B: For an Applicant Who Has Self-Petitioned as a Battered Spouse or Child

Step 1: Attach a copy of the receipt notice or other documentation evidencing that a Form I-360 has been filed with the INS. If that documentation does not include the following information, please complete the blanks:

Applicant/self-petitioner's full name: _____

Applicant/self-petitioner's date of birth: _____

Date I-360 was filed: _____

Location (city) of INS office where filed: _____

Sample

BILLING CODE 4410-10-C

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW—IMMIGRATION COURTS

State/City/App. Code	Judges	Court administrator	Phone Nos.
ARIZONA			
Eloy—85231, 1705 E. Hanna Rd., Suite 366, App. Code—7D05030234.	William Lee Abbott, Isabel A. Bronzina, Dean A. Levay, Sean Keenan.	John A. Meehan	(520) 466–3671, (520) 466–7795 (fax).
Florence—85232, 3260 N. Pinal Parkway Ave., App. Code—7D05030229.	Lamonte S. Freerks, Scott Jefferies	Jack B. Odom	(520) 868–3341, (520) 868–4962 (fax).
Phoenix—85025, Federal Building, Room 3114, 230 N. First Avenue, App. Code—7D05030226.	John W. Richardson, John T. Zastrow	Jack B. Odom	(602) 514–7356, (602) 514–7387 (fax).
CALIFORNIA			
Imperial—92251, 2409 La Brucherie Road, App. Code—7D05030222.	Michael H. Bennett, Dennis R. James, Richard N. Knuck, Jack W. Staton, Jack H. Weil.	M. Graciela Sosa	(619) 355–0070, (619) 355–8692 (fax).
Los Angeles—90012, 300 N. Los Angeles St., Room 2001, App. Code—7A05030223, Mailing Address: P.O. Box 53711, Los Angeles, CA 90053–0711.	Roy J. Daniel, Bruce J. Einhorn, Thomas Y.K. Fong, Harry L. Gastley, Gilbert T. Gembacz, Nathan W. Gordon, Ingrid K. Hrycenko, Henry P. Iperna, Jr., Jan D. Latimore, William J. Martin, Jr., Ronald N. Ohata, Margaret Reichenberg, Jay Segal, Darlene R. Seligman, Stephen L. Sholomson, Eleazar Tovar, Richard D. Walton.	Evelyn Diaz Brown	(213) 894–2811, (213) 894–5196 (fax).
Los Angeles—90012, Roybal Federal Office Building and Courthouse, 255 E. Temple Street, Rm. 577, App. Code—7D05030223.			(213) 894–5159, (213) 894–2632 (fax).
San Diego—92101–7904, 401 West A Street, Suite 800, App. Code—7D05030225.	Anthony Atenaide, Kenneth A. Bagley, Robert J. Barrett, Richard J. Bartolomei, Jr., Gaylyn Boone, C. Zsa Zsa De Paolo, Ignacio Fernandez Valdes, Joseph Ragusa, John C. Williams.	Brent L. Perkins	(619) 557–6052, (619) 557–6405 (fax).
San Diego—92188, 880 Front Street, Room 800, App. Code—7D05030225.			(619) 557–7647, (619) 557–7655 (fax).
San Francisco—94108, 550 Kearny Street, Suite 800, App. Code—7D05030224, Mailing Address: P.O. Box 2326, San Francisco, CA 94126–2326.	Lawrence N. DiCostanzo, Alberto E. Gonzalez, Bernard J. Hornbach, Dana Marks Keener, Carol A. King, Tue Phan Quang, Beverly M. Phillips, Mimi Y. Schooley, Brian H. Simpson, Bette K. Stockton, Polly A. Webber.	Stephen P. Perkins	(415) 705–4415, (415) 705–4418 (fax).
San Pedro-90731, INS San Pedro Service Proc. Center, 2001 Seaside Avenue, Room 136, App. Code—7D05030233.	Rose Collantes Peters, D.D. Sligraves	Evelyn Diaz Brown	(310) 732–0753, (310) 732–0757 (fax).
COLORADO			
Denver—80294, Byron G. Rogers Fed. Building, 1961 Stout Street, Room 1403, App. Code—7D05030220.	David J. Cordova, James P. Vandello	Alec Revelle	(303) 844–5815, (303) 844–4578 (fax).
Aurora—80010, Wackenhut Security, Inc., 11901 E. 30th Avenue, App. Code—7D05030220.	David J. Cordova, James P. Vandello	Alec Revelle	(303) 361–0488, (303) 361–0688 (fax).
CONNECTICUT			
Hartford-06103, AA Ribicoff Building and Courthouse, 450 Main Street, Room 509, App. Code—7D05030277.	Harriet B. Marple	Sandra V. Mejia (acting)	(860) 240–3919, (860) 240–3921 (fax).
FLORIDA			
Bradenton—4205, 515 11th Street, West, Building A, Room 300, App. Code—7D05030244.	R. Kevin McHugh	George A. Spreyne	(941) 749–1044, (941) 749–0992 (fax).
Miami—33130, 155 S. Miami Ave., Room 800, App. Code—7D05030217.	Teofilo Chapa, J. Daniel Dowell, Rex J. Ford, Mahlon F. Hanson, Michael C. Horn, Denise Marks Lane, Stephen E. Mander, Nancy R. McCormack, Pedro A. Miranda, Philip J. Montante, Jr., Anthony J. Randall, Charles J. Sanders, Ira Sandron, Denise N. Slavin, Bruce W. Solow, Ronald G. Sonom, Elisa M. Sukkar, Lilliana Torreh-Bayouth, Ketih C. Williams.	Michael T. Ringstad	(305) 530–6455, (305) 530–7001 (fax).
Miami Federal Building, 51 S.W. First Ave., Room 224, Miami, FL 33130.	Suzan C. Brauwerman Seymour R. Kleinfeld, Roberto Moreno, William K. Zimmer.		(305), 530–6451, No fax.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW—IMMIGRATION COURTS—Continued

State/City/App. Code	Judges	Court administrator	Phone Nos.
Miami—33194, Krome North Processing Center, 18201 S.W. 12th Street, App. Code—7D05030231.	Neal S. Foster, Kenneth S. Hurewitz	George A. Spreyne	(305) 530–7196, (305) 530–7040 (fax).
GEORGIA			
Atlanta—30303, 101 Marietta Street, Suite 2702, App. Code—7D05030228.	William A. Cassidy, G. Mackenzie Rast	John J. Topp	(404) 331–7647, (404) 331–4555 (fax).
ILLINOIS			
Chicago—60605–1521, Federal Building, Room 646, 536 S. Clark Street, App. Code—7D05030218.	O. John Brahos, Carlos Cuevas, James R. Fujimoto, Anthony D. Petrone, Jr., Renetta Smith, Robert D. Vinikoor, Craig M. Zerbe.	Peter P. Pauli, IV	(312) 353–7313, (312) 353–9894 (fax).
LOUISIANA			
New Orleans—70130, One Canal Place, 365 Canal Street, Suite 2450.	Jeffrey Zlatow	Lizbeth L. Wilson	(504) 589–3992, (504) 589–3990 (fax).
Oakdale—71463, 1900 E. Whatley Road, App. Code—7D05030230. Mailing Address: P.O. Box 750, Oakdale, LA 71463.	John A. Duck, Jr., Charles A. Wiegand, III.	Lizbeth L. Wilson	(318) 335–0365, (318) 335–9187 (fax).
MARYLAND			
Baltimore—21202, U.S. Appraisers Building, 103 S. Gay Street, Room 702, App. Code—7D05030201.	Bruce M. Barrett, Lisa Dornell, John F. Gossart, Jr., William P. Greene, Jr.	Brenda L. Cook	(410) 962–3092, (410) 962–9021 (fax).
MASSACHUSETTS			
Boston—02203, JFK Federal Building, 15 New Sudbury St., Room 320, App. Code—7D05030202.	Billino W. D'Ambrosio, Eliza C. Klein, Thomas M. Ragno, Leonard I. Shapiro, Patricia M.B. Sheppard.	Sandra V. Mejia (acting)	(617) 565–3080, (617) 565–4495 (fax).
MICHIGAN			
Detroit—48207, Brewery Park II, 1155 Brewery Park Blvd., Suite 450, App. Code—7D05030219.	Elizabeth Hacker	Sandra Roberts	(313) 226–2603, (313) 226–3053 (fax).
NEVADA			
Las Vegas—79101, Alan Bible Federal Building, 600 Las Vegas Blvd. South, Room 410, App. Code—7A05030240.	Irene Weiss	Jack B. Odom	(702) 388–5837, (702) 388–5844 (fax).
NEW JERSEY			
Elizabeth—625 Evans St., Rm. 148A, App. Code—7D05030236.	Esmeralda Cabrera	Fletcher Graves	(201) 693–4113, (201) 645–4121 (fax).
Newark—07102, 970 Broad Street, Room 1135, App. Code—7D05030204.	Henry S. Dogin, Annie Sue Garcy, Nicole Yae Kyoung Kim, Daniel A. Meisner, Eugene Pugliese, Alberto Riefkohl, William Strasser.	Star B. Pacitto	(201) 645–3524, (201) 645–3432 (fax).
NEW YORK			
Buffalo—14202, 130 Delaware Ave., Suite 410 App. Code—7D05030203.	Walter A. Durling, Jr., Michaelangelo Rocco.	Gary M. Somerville	(716) 551–3442, (716) 551–3452 (fax).
Fishkill—12524, c/o Downstate Correctional Facility, Red Schoolhouse Road, App. Code—7D05030206.	Mitchell Levinksky	Thomas J. Bonita, III	(914) 831–3657, (914) 831–5452 (fax).
Napanoch—12458, Ulster Correctional Facility, Berne Road, App. Code—7D05030235.	Joe D. Miller	Thomas J. Bonita, III	(914) 647–5506, (914) 647–5641 (fax).
New York—10278, 26 Federal Plaza, Room 10–1000, App. Code—7D5030205.	Matthew T. Adrian, Terry A. Bain, Joanna M. Bukszpan, Sarah M. Burr, Jeffrey Chase, George T. Chew, Annette S. Elstein, Noel Anne Ferris, Victoria Ghartey, Sandy K. Hom, Charles M. Honeyman, William F. Jankun, Elizabeth A. Lamb, Margaret McManus, Philip L. Morace, Barabara A. Nelson, Patricia A. Rohan, John K. Speer, Jr., Mirlande Tadal, Gabriel C. Videla, Robert D. Weisel, Phillip T. Williams, Jeffrey Chase.	John D. Hannah, Jr.	(212) 264,5958, (202) 264–1070 (fax).
New York—10014, 201 Varick Street, Room 1140, App. Code—7D05030232.	Donn L. Livingston, Alan L. Page, Alan A. Vomacka.	Thomas J. Bonita, III	(212) 620–6279, (212) 620–6357 (fax).
PENNSYLVANIA			
Philadelphia—19103, 1600 Callowhill Street, Suite 400, App. Code—7D05030207.	Donald V. Ferlise, Craig DeBernardis	R. Elliott Edwards	(215) 656–7000, (215) 656–7013 (fax).
York—17402, 3434 Concord Road, App. Code—7D05030209.	William Van Wyke	Brenda L. Cook	(717) 755–7555, (717) 757–0132 (fax).

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW—IMMIGRATION COURTS—Continued

State/City/App. Code	Judges	Court administrator	Phone Nos.
PUERTO RICO			
Guaynabo (San Juan)—00965, GSA Center, 651 Federal Drive, Suite 111–14, App. Code—7D05030208.	Rafael B. Ortiz-Segura	George A. Spreyne	(787) 749–4386, (787) 749–4393 (fax).
TEXAS			
Dallas—75202, 1200 Main Street, Suite 700, App. Code—7D05030211.	Edwin R. Hughes, D. Anthony Rogers, Cary Copeland.	Barbara T. Baker	(214) 767–1814, (214) 767–6410 (fax).
El Paso—79925, 1545 Hawkins Boulevard, Suite 205, App. Code—7D05030212.	Gary D. Burkholder, Penny M. Smith, Bertha A. Zuniga.	Theresa N. Baeza	(915) 540–1910, (915) 540–1922 (fax).
El Paso—79925, El Paso Service Processing Center, 8915 Montana Avenue, App. Code—7D05030212.	Visiting IJ	Theresa N. Baeza	(915) 540–7854, No fax.
Harlingen—78550, 201 E. Jackson Street, App. Code—7D05030213.	Howard E. Achtsam, David Ayala, Margaret D. Burkhart, M. Edwin Prudhomme.	Celeste Garza	(210)427–8580, (210) 427–8905 (fax).
Los Fresnos—78566, Port Isabel Processing Center, Route 3, Box 341, Building 37, App. Code—7D05030213. Mailing Address: 201 E. Jackson St., Harlingen, TX 78550.	Visiting IJ	Celeste Garza	(210) 233–4467, (210) 233–5316 (fax).
Houston—77004, 2320 La Branch Street, Room 2235, App. Code—7D05030214.	Robert Brown, Claresse M. Rankin, Michael K. Suarez, Joseph Vail.	Dina P. Sherman	(713) 718–3870, (713) 718–3879 (fax).
Houston—77032, Houston Service Processing Center, 15850 Export Plaza Drive, App. Code—7D05030214.	Susan L. Yarbrough	Dina P. Sherman	(713) 987–0290, (713) 987–3142 (fax).
Huntsville—77340, Goree INS Facility, 30000A Highway 75 South, App. Code—7D05030232. Mailing Address: P.O. Box 1538, Huntsville, TX 77342–1538.	Jimmie L. Benton	Dina P. Sherman	(409) 295–1353, (409) 295–6510 (fax).
Laredo—78041, 4702 E. Saunders, App. Code—7D05030215. Mailing Address: Laredo Service Processing Center, P.O. Box 440110, Laredo, TX 78044–0110.	Visiting IJ	J. Thomas Davis	(210) 727–4772, (210) 726–2320 (fax).
San Antonio-78205-2040, 615 E. Houston Street, Room 598, App. Code-7D05030215.	Richard F. Brodsky, Susan E. Conley-Castro, Glenn P. McPhaul.	J. Thomas Davis	(210) 472–6637, (210) 472–4282 (fax).
VIRGINIA			
Arlington-22203, 901 N. Stuart St., Suite 1300, App. Code-7D05030210.	John M. Bryant, Joan V. Churchill, Christopher M. Grant, Wayne R. Iskra, Paul A. Nejaiski.	Beverly Swihart Holmes	(703) 235–2307, (703) 235–2372 (fax).
WASHINGTON			
Seattle-98104, Key Tower Building, 1000 Second Avenue, Suite 2500, App. Code-7D05030221.	Anna Ho, Kenneth Josephson, Kendall B. Warren.	Joseph Neifert	(206) 553–5953, (206) 553–0622 (fax).
Seattle-98134, Seattle Det. Center, c/o U.S. INS, 815 Airport Way, App. Code-7D05030221.	Anna Ho, Kenneth Josephson, Kendall B. Warren.	Joseph Neifert	call Seattle office: (206) 553–5953, (206) 553–0622 (fax).

BILLING CODE 4310–GG–M

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

Receipt No. EAC-97-000-00000		Case Type I-360 PETITION FOR AMERASIAN, WIDOW(ER) OR SPECIAL IMMIGRANT
Notice Date June 1, 1997	Page 1	Petitioner DOE, Jane
Priority Date June 2, 1997		Beneficiary DOE, Jane

Susan SMITH, Esq.
200 Main St.
Anywhere VT 05480

Action Type: Approval Notice
Section: Self-petitioning Spouse of Abusive U.S.C. or LPR
Class: E21

Re: Enclosed Notice of Deferred Action

The above petition has been approved.

The petition indicates you, the self-petitioner, [illegible] United States and will apply for adjustment of status. The information submitted with the petition shows you are [illegible] status application at this time.

Additional information about eligibility for adjustment [illegible] may be obtained from the local INS office serving the area where you live.

Until you file an adjustment application, or apply for [illegible] your visa, this approved petition will be stored in this office. If you become eligible to adjust status based on [illegible] petition, you should submit a copy of this notice with Form I-485, Application to Register Permanent Residence or to Adjust Status.

If you decide to apply for an immigrant visa outside [illegible] based on this petition, you should file Form I-824, Application for Action on an Approved Application/[illegible] with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immediate visa [illegible] petition action. The NVC also determines which consular post is the appropriate one to [illegible] handling. It will then forward the approved petition to that consulate.

Please read the back of this form carefully [illegible] information.

THIS FORM IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA.

DEFERRED ACTION

Deferred Action has been approved for this case. Deferred Action is an administrative choice used to give some cases low priority for removal. The Service does not anticipate instituting action for removal, in this case, at this time. Pursuant to 8 CFR § 274a.12(c)(14), any alien who has been granted deferred action, is eligible to submit an application for employment authorization, if you plan on establishing an economic necessity for employment. This application, on Form I-765, should be filed with this office. The alien must provide information regarding his or her status, finances, and expenses in accordance with the instructions on the Form I-765.

The approval of deferred action will expire one (1) year from the date of this notice. Request for the continuation of deferred action should be submitted, in writing, to this office, sixty (60) days before the expiration of the current approval. The request for continuation may be accompanied by an application, on Form I-765, for continuation of employment authorization.

THIS FORM IS NOT AN EMPLOYMENT AUTHORIZATION AND MAY NOT BE USED IN PLACE OF AN EMPLOYMENT AUTHORIZATION

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-3168

Form I-797C (Rev. 05/01/95)N

BILLING CODE 4410–10–M

• Please save this notice for your records. Please enclose a copy if you have to write us or a U.S. Consulate about this case, or if you file another application based on this decision.

• You will be notified separately about any other applications or petitions you have filed.

Additional Information

General

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

Inquiries

You should contact the office listed on the reverse of this notice if you have questions about the notice, or questions about the status of your application or petition. We recommend you call. However, if you write us, please enclose a copy of this notice with your letter.

Approval of Nonimmigrant Petition

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

Approval of an Immigrant Petition

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I–485, Application to Register Permanent Residence or Adjust Status.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

Receipt No.		Case Type: I-360 PETITION FOR AMERASIAN, WIDOW(ER) OR SPECIAL IMMIGRANT
EAC-97-000-00000		
Received: June 1, 1997	Notice Date: June 1, 1997	Beneficiary: DOE, Jane
Priority Date: July 8, 1997	Page: 1	Beneficiary: DOE, Jane

Susan SMITH, Esq.
100 Main St.
Anywhere VT 05480

Notice Type: Approval Notice
Section: Self-Petitioning Spouse of Abusive U.S.C. or LPR
Class: EG1

The above petition has been approved.

The petition indicates you, the self-petitioner, are [illegible] United States and will apply for adjustment of status. The information submitted with the petition shows you [illegible] adjustment of status application at this time.

Additional information about eligibility for adjustment of status may be obtained from the local INS office serving the area where you live.

Until you file an adjustment application, or apply for [illegible] visa, this approved petition will be stored in this office. If you become eligible to adjust status based on [illegible] petition, you should submit a copy of this notice with Form I-485, Application for Permanent Residence or to the Appropriate [illegible]

If you decide to apply for an immigrant visa outside the United States based on this petition, you should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immigrant visa petitions that require consular action. The NVC then determines which consular post is the appropriate jurisdiction to complete processing. It will then forward the approved petition to that consulate.

Please read the back of this form carefully for additional information.

This form is not a visa nor may it be used in place of a visa.

Please see the additional information on the back. You will be notified separately about any other cases you filed.
IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-3160

Form I-797C (Rev. 09/07/93)N

BILLING CODE 4410-10-M

• Please save this notice for your records. Please enclose a copy if you have to write us or a U.S. Consulate about this case, or if you file another application based on this decision.

• You will be notified separately about any other applications or petitions you have filed.

Additional Information

General

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

Inquiries

You should contact the office listed on the reverse of this notice if you have questions about the notice, or questions about the status of your application or petition. We recommend you call. However, if you write us, please enclose a copy of this notice with your letter.

Approval of Nonimmigrant Petition

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

Approval of an Immigrant Petition

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

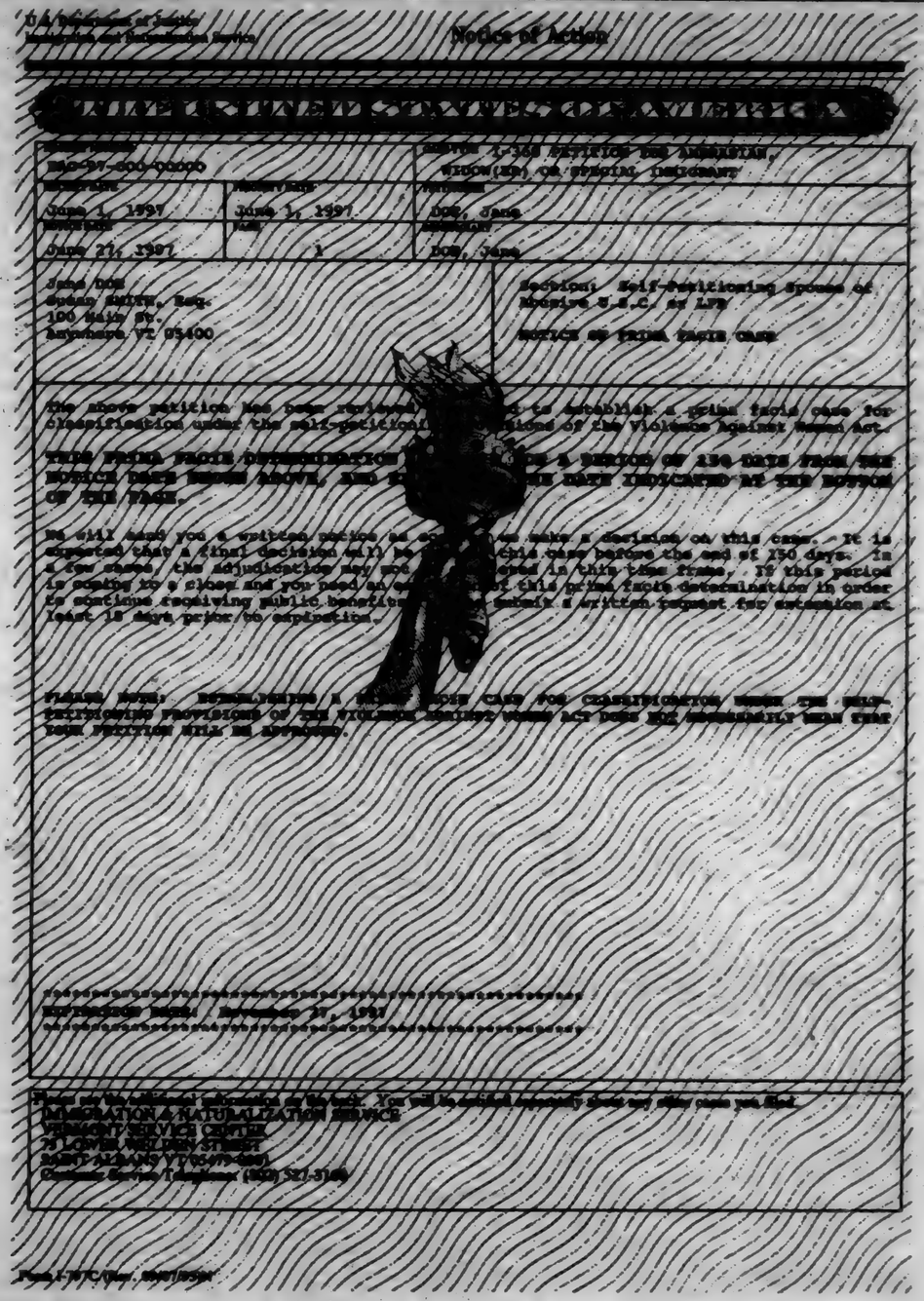
A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I–485, Application to Register Permanent Residence or Adjust Status.

BILLING CODE 4410-10-M



BILLING CODE 4410-10-M

• Please save this notice for your records. Please enclose a copy if you have to write us or a U.S. Consulate about this case, or if you file another application based on this decision.

• You will be notified separately about any other applications or petitions you have filed.

Additional Information

General

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

Inquiries

You should contact the office listed on the reverse of this notice if you have questions about the notice, or questions about the status of your application or petition. We recommend you call. However, if you write us, please enclose a copy of this notice with your letter.

Approval of Nonimmigrant Petition

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

Approval of an Immigrant Petition

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status.

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If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

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BILLING CODE 4410-10-M

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

THE UNITED STATES OF AMERICA

Receipt EAC-97-094-50417	Status I360, PETITION FOR AMERASIAN, WIDOWED, OR SPECIAL IMMIGRANT
Receipt Date February 24, 1997	Priority Date February 24, 1997
Notice Date February 24, 1997	Page 1 of 1

GRACE E. CARDWELL
75 LOWER WELDEN ST
SAINT ALBANS VT 05479

Notice Type: Receipt Notice

Fee Waived

Section: Self-Petitioning Spouse of Abusive U.S.C. or LPR



Please see the additional information on the back. You will be notified separately about any other cases you filed.
IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-3160

Form I-797C (Rev. 04/01/97)N

BILLING CODE 4410-10-M

• Please save this notice for your records. Please enclose a copy if you have to write us or a U.S. Consulate about this case, or if you file another application based on this decision.

• You will be notified separately about any other applications or petitions you have filed.

Additional Information

General

The filing of an application or petition does not in itself allow a person to enter the United States and does not confer any other right or benefit.

Inquiries

You should contact the office listed on the reverse of this notice if you have questions about the notice, or questions about the status of your application or petition. We recommend you call. However, if you write us, please enclose a copy of this notice with your letter.

Approval of Nonimmigrant Petition

Approval of a nonimmigrant petition means that the person for whom it was filed has been found eligible for the requested classification. If this notice indicated we are notifying a U.S. Consulate about the approval for the purpose of visa issuance, and you or the person you filed for have questions about visa issuance, please contact the appropriate U.S. Consulate directly.

Approval of an Immigrant Petition

Approval of an immigrant petition does not convey any right or status. The approved petition simply establishes a basis upon which the person you filed for can apply for an immigrant or fiance(e) visa or for adjustment of status. A person is not guaranteed issuance of a visa or a grant of adjustment simply because this petition is approved. Those processes look at additional criteria.

If this notice indicates we have approved the immigrant petition you filed, and have forwarded it to the Department of State Immigrant Visa Processing Center, that office will contact the person you filed the petition for directly with information about visa issuance.

In addition to the information on the reverse of this notice, the instructions for the petition you filed provide additional information about processing after approval of the petition.

For more information about whether a person who is already in the U.S. can apply for adjustment of status, please see Form I–485, Application to Register Permanent Residence or Adjust Status.

BILLING CODE 441-10-M

RECEIPT NUMBER LIN-96-170-50006		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN
RECEIVED DATE March 25, 19	PRIORITY DATE	PETITIONER A12 123 431 AAA, VV
NOTICE DATE March 25, 1997	PAGE 1 of 1	BENEFICIARY SFDF, DD

VV AAA
343 I ST NW
WASHINGTON DC 20536

Notice Type: Receipt Notice

Amount received: $ 80.00

Section: Sister or brother of U.S. Citizen, 203(a)(4) INA

The above application or petition has been received. It usually takes 30 to 90 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect.. Our customer service phone number is listed below.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number below to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
LIN TEST PLATFORM
4313 INS HQ
LINCOLN NA 55479
Customer Service Telephone: (802)527-3112

BILLING CODE 4410-10-M

DISTRICT CODES

Districts–36	Org type
2—Boston, MA	DAF BOS
3—New York, NY	DAF NYC
4—Philadelphia, PA	DAF PHI
5—Baltimore, MD	DAF BAL
6—Miami, FL	DAF MIA
7—Buffalo, NY	DAF BUF
8—Detroit, MI	DAF DET
9—Chicago, IL	DAF CHI
10—St. Paul, MN	DAF SPM
11—Kansas City, MO	DF KAN
12—Seattle, WA	DAF SEA
13—San Francisco, CA	DAF SFR
14—San Antonio, TX	DAF SNA
15—El Paso, TX	DAF ELP
16—Los Angeles, CA	DAF LOS
17—Honolulu, HI	DAF HHW
18—Phoenix, AZ	DAF PHO
19—Denver, CO	DAF DEN
20—Dallas, TX	DAF DAL
21—Newark, NJ	DAF NEW
22—Portland, ME	DAF POM
24—Cleveland, OH	DAF CLE
25—Washington, DC	DAF WAS
26—Atlanta, GA	DAF ATL
27—San Juan, PR	DAF SAJ
28—New Orleans, LA	DAF NOL
29—Omaha, NE	DF OMA
30—Helena, MT	DF HEL
31—Portland, OR	DAF POO
32—Anchorage, AK	DAF ANC
33—Bangkok, Thailand	OD BKK
35—Mexico City, MX	OD MEX
37—Rome, Italy	OD RIT
38—Houston, TX	DAF HOU
39—San Diego, CA	DAF SND
40—Harlingen, TX	DAF HLG
EASTERN REGION:	
DISTRICT 2—BOSTON, MA	
Providence, RI	SAF PRO
*Hartford, CT	SAF HAR
*Lebanon, MA	A LEB
Boston Proc. Ctr	P BPC
DISTRICT 3—New York, NY	
*NY Seaport combined w/ quarantine unit, NY.	U NYS
JFK Airport, NY	A ZJK
Hamilton, Bermuda	I HAM
Varick Proc. Ctr	P VRK
*Brookland Proc. Ctr	P BKN
DISTRICT 4—Philadelphia, PA	
*Altoona, PA	U ALT
Pittsburgh, PA	SF PIT
*Dover AFB, DL	A DVD
DISTRICT 5—Baltimore, MD	
DISTRICT 6—Miami, FL	
Jacksonville, FL	SA JAC
Key West, FL	SA KEY
Port Everglades, FL	SA PEV
*Port Canaveral, FL	A PCF
Tampa, FL	SA TAM
West Palm Beach, FL	SA WPB
Orlando Airport, FL	A ORL
Krome Proc. Ctr	P KRO
Fort Pierce, FL	A FTP
Jacksonville Seaport, FL	U JAS
Miami Seaport, FL	U MSE
*Panama City, FL	A PAN
*Sanford, FL	A SFB
DISTRICT 7—Buffalo, NY	
Thousand Island Bridge, NY	SA THO
Trout River, NY	SA TRO

DISTRICT CODES—Continued

Districts–36	Org type
*Rooseveltown, NY	A RSV
Albany, NY	SAF ALB
Champlain, NY	SA CHM
Chateauguay, NY	SA CHT
Fort Covington, NY	SA FTC
*Lewiston, NY	A LEW
Massena, NY	SA MAS
Mooers, NY	SA MOO
Niagara Falls, NY	SA NIA
Ogdensburg, NY	SA OGD
Peace Bridge, NY	SA PBB
Rouses Point, NY	SA ROU
DISTRICT 8—Detroit, MI	
Algonac, MI	SA AGN
Marine City, MI	SA MRC
Port Huron, MI	SA PHU
Roberts Landing, MI	SA RBT
Sault Ste. Marie, MI	SA SSM
*Detroit Michigan Bridge, MI	A DCB
*Detroit Michigan Tunnel, MI	A DCT
DISTRICT 21—Newark, NJ	
*Camden, NJ	A CNJ
McGuire AFB, NJ	A MAG
Alburg, VT	SA ABG
Alburg Springs, VT	SA ABS
Bangor, ME	SA BGM
Beebe Plains, VT	SA BEB
Beecher Falls, VT	SA BEE
Bridgewater, ME	SA BWM
*Burlington, VT	A BRG
Calais, ME	SA CLS
*Eastport, ME	A EPM
Canann, VT	SA CNA
Coburn Gore, ME	SA COB
Derby Line, VT	SA DER
*Derby Line RT5 POE	P DVL
East Richford, VT	SA ERC
Fort Fairfield, ME	SA FTF
Fort Kent, ME	SA FTK
*Eastcourt, ME	A EST
*St. Pamphile, ME	A SPA
Hamlin, ME	SA HML
Highgate Springs, VT	SA HIG
Houlton, ME	A HTM
*Easton, ME	A EAS
*Forest City, ME	A FOR
*Monticello, ME	A MTC
*Orient, ME	A ORI
Jackman, ME	SA JKM
*St. Aurelie	SA SRL
Limestone, ME	SA LIM
Lubec, ME	SA LUB
Madawaska, ME	SA MAD
*Morses Line, VT	A MOR
North Troy, VT	SA NRT
Norton, VT	SA NRN
Pinnacle Rd., VT	A PIV
*Pittsburgh, NH	A PNH
Richford, VT	SA RIF
*St. Albans, VT	SA STA
Van Buren, ME	SA VNB
Vanceboro, ME	SA VCB
West Berkshire, VT	SA WBE
DISTRICT 24—Cleveland, OH	
Cincinnati, OH	SAF CIN
Sandusky, OH	SA SDY
Toledo, OH	SA TOL
Columbus, OH	A CLM
DISTRICT 25—Washington, D.C.	
Norfolk, VA	
Norfolk Seaport, VA	U NOS

DISTRICT CODES—Continued

Districts–36	Org type
DISTRICT 26—Atlanta, GA	
Charleston, SC	SA CHL
Charlotte, NC	SF CLT
*Greer, SC	SA GRR
Mobile, AL	SA MOB
*Raleigh-Durham, NC	SA RDU
Savannah, GA	SA SAV
Wilmington, NC	SA WIL
DISTRICT 27—San Juan, PR	
Aguadilla Proc. Ctr.	P AGC
Charlotte Amalie, St. Thomas, VI.	SA CHA
Christiansted, St. Croix, VI	SA CHR
Cruz, Bay, St. John, VI	SA CRU
Mayaguez, PR	A MAY
Ponce, PR	SA PON
DISTRICT 28—New Orleans, LA	
*Baton Rouge, LA	A BTN
*Gulfport, MS	A GUL
*Lake Charles, LA	A LKC
Louisville, KY	S LOU
Memphis, TN	SF MEM
*Nashville, TN	A NSV
*Oakdale, LA	P OAK
CENTRAL REGION:	
DISTRICT 9—Chicago, IL	
Milwaukee, WI	SAF MIL
*Indianapolis, IN	S INP
DISTRICT 10—St. Paul, MN	
Baudette, MN	SA BAU
Duluth, MN	SA DUL
Grand Portage, MN	SA GPM
International Falls, MN	SA INT
Lancaster, MN	SA LAN
Noyes, MN	SA NOY
*Pembina, ND	A PEM
Pine Creek, MN	SA PIN
Roseau, MN	SA ROS
Warroad, MN	SA WAR
Ambrose, ND	SA AMB
Antler, ND	SA ANT
Carbury, ND	SA CRY
Dunseith, ND	SA DNS
Fargo, ND	SA FAR
Fortuna, ND	SA FRT
Minot, ND	A MND
Hannah, ND	SA HNN
Hansboro, ND	SA HNS
Maida, ND	SA MAI
Neche, ND	SA NEC
Noonan, ND	SA NOO
Northgate, ND	SA NRG
Portal, ND	SA POR
St. John, ND	SA SJO
Sarles, ND	SA SAR
Sherwood, ND	SA SHR
Walhalla, ND	SA WAL
Westhope, ND	SA WHO
Wilton, ND	A WND
DISTRICT 11—Kansas CITY, MO	
St. Louis, MO	SF STL
DISTRICT 14—San Antonio, TX	
Austin, TX	SA AUS
Amistad Dam, TX	A ADT
*Corpus Christi, TX	SA CRP
Del Rio, TX	SA DLR
Eagle Pass, TX	SA EGP
Laredo, TX	SA LAR
Juarez-Lincoln Bridge, TX	A LLB

DISTRICT CODES—Continued

Districts–36	Org type
Laredo Proc. Ctr.	P LRD
Laredo Columbia Bridge, TX	A LCB
DISTRICT 15—El Paso, TX	
Columbus, NM	SA COL
Fabens, TX	SA FAB
Presidio, TX	SA PRE
*Port of El Paso	A POE
*Paso del Norte Bridge, TX	A PDN
*Bridge of the Americas, TX	A BOA
*Ysleta, TX	SA YSL
Santa Teresa, NM	A STR
Albuquerque, NM	S ABQ
El Paso Processing Center, TX.	P EPC
*Fort Hancock, TX	P FTH
DISTRICT 19—Denver, CO	
Salt Lake City, UT	SAF SLC
DISTRICT 20—Dallas, TX	
Oklahoma City, OK	SF OKC
DISTRICT 29—Omaha, NE	OMA
DISTRICT 30—Helena, MT	HEL
Boise, ID	S BOI
Chief Mountain, MT	A CHF
Del Bonita, MT	A DLB
Great Falls, MT	A GRE
Morgan, MT	SA MGM
Opheim, MT	SA OPH
Piegan, MT	SA PIE
Raymond, MT	SA RAY
Roosville, MT	SA ROO

DISTRICT CODES—Continued

Districts–36	Org type
Scobey, MT	SA SCO
Sweetgrass, MT	SA SWE
Turner, MT	SA TUR
Whitetail, MT	SA WHI
Wild Horse, MT	SA WHM
Willow Creek, MT	SA WCM
Missoula, MT	SA MIS
DISTRICT 38—Houston, TX	
Galveston, TX	SA GAL
Port Arthur, TX	SA PAR
DISTRICT 40—Harlington, TX	
*Brownsville, TX	A BRO
*Brownsville/Gateway, Bridge, TX.	A BRO
*Brownsville Matamoros Bridge, TX.	A BBM
Falcon Heights, TX	SA FAL
Hidalgo, TX	SA HID
Los Ebanos, TX	SA LSE
*Los Indios, TX	A LOI
Port Isabel Proc. Ctr.	P PIC
Progreso, TX	SA PGR
Rio Grande, TX	SA RIO
Roma, TX	SA ROM
Pharr, TX	SA PHR
Nogales, AZ	SA NOG
Sasabe, AZ	SA SAS
San Luis, AZ	SA SLU
Tucson, AZ	S TUC
*Las Vegas, NV	SF LVG

DISTRICT CODES—Continued

Districts–36	Org type
*Reno, NV	SF REN
*Mariposa, AZ	A MAP
*Eloy Proc. Cr., AZ	P EAZ
DISTRICT 31—Portland, OR	
Astoria, AK	SA AST
Coos Bay, OR	A COO
New Port, OR	P NPT
DISTRICT 32—Anchorage, AK	
Alcan, AK	SA ALC
Dalton Cache, AK	SA DAC
Ketchikan, AK	SA KET
Skagway, AK	A SKA
*Dutch Harbor, AK	A DTH
Poker Creek, AK	A PKC
Nome, AK	A NOM
Fairbanks, AK	A FRB
DISTRICT 39—San Diego	
Andrade, CA	SA AND
Calexico, CA	SA CAL
Calexico East Port	P IVP
El Centro Proc. Ctr., CA	P ECC
*San Diego Port-of-Entry, CA	A SDP
*Otay Mesa, CA	A OTM
*San Ysidro, CA	SA SYS
*Tecate, CA	SA TEC

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service (INS)

OMB #1115-0054

Petition for Alien Relative

DO NOT WRITE IN THIS BLOCK - FOR EXAMINING OFFICE ONLY

Case ID#	Action Stamp	Fee Stamp
A#		
G-28 or Volag #		
Section of Law: ☐ 201 (b) spouse ☐ 201 (b) child ☐ 201 (b) parent ☐ 203 (a)(1) ☐ 203 (a)(2) ☐ 203 (a)(4) ☐ 203 (a)(5) AM CON: _____		Petition was filed on: _____ (priority date) ☐ Personal Interview ☐ Pet. ☐ Ben. "A" File Reviewed ☐ Field Investigations ☐ 204 (a)(2)(A) Resolved ☐ Previously Forwarded ☐ Suitable Criteria ☐ I-485 Simultaneously ☐ 204 (h) Resolved
Remarks:		

A. Relationship

1. The alien relative is my ☐ Husband/Wife ☐ Parent ☐ Brother/Sister ☐ Child
2. Are you related by adoption? ☐ Yes ☐ No
3. Did you gain permanent residence through adoption? ☐ Yes ☐ No

B. Information about you

1. Name (Family name in CAPS) (First) (Middle)
2. Address (Number and Street) (Apartment Number)
(Town or City) (State/Country) (ZIP/Postal Code)
3. Place of Birth (Town or City) (State/Country)
4. Date of Birth (Mo/Day/Yr)
5. Sex ☐ Male ☐ Female
6. Marital Status ☐ Married ☐ Widowed ☐ Single ☐ Divorced
7. Other Names Used (including maiden name)
8. Date and Place of Present Marriage (if married)
9. Social Security Number
10. Alien Registration Number (if any)
11. Names of Prior Husbands/Wives
12. Date(s) Marriage(s) Ended
12. If you are a U.S. citizen, complete the following:
My citizenship was acquired through (check one)
☐ Birth in the U.S.
☐ Naturalization (Give number of certificate, date and place it was issued)
☐ Parents
Have you obtained a certificate of citizenship in your own name?
☐ Yes ☐ No
If "Yes", give number of certificate, date and place it was issued
14a. If you are a lawful permanent resident alien, complete the following:
Date and place of admission for, or adjustment to, lawful permanent residence, and class of admission:
14b. Did you gain permanent resident status through marriage to a United States citizen or lawful permanent resident? ☐ Yes ☐ No

C. Information about your alien relative

1. Name (Family name in CAPS) (First) (Middle)
2. Address (Number and Street) (Apartment Number)
(Town or City) (State/Country) (ZIP/Postal Code)
3. Place of Birth (Town or City) (State/Country)
4. Date of Birth (Mo/Day/Yr)
5. Sex ☐ Male ☐ Female
6. Marital Status ☐ Married ☐ Widowed ☐ Single ☐ Divorced
7. Other Names Used (including maiden name)
8. Date and Place of Present Marriage (if married)
9. Social Security Number
10. Alien Registration Number (if any)
11. Names of Prior Husbands/Wives
12. Date(s) Marriage(s) Ended
13. Has your relative ever been in the U.S.? ☐ Yes ☐ No
14. If your relative is currently in the U.S., complete the following: He or she last arrived as a (visitor, student, stowaway, without inspection, etc.)
Arrival/Departure Record (I-94) Number
Date arrived (Month/Day/Year)
Date authorized stay expired, or will expire, as shown on Form I-94 or I-95
15. Name and address of present employer (if any)
Date this employment began (Month/Day/Year)
16. Has you relative ever been under immigration proceedings? ☐ Yes ☐ No Where _____ When _____
☐ Exclusion ☐ Deportation ☐ Recission ☐ Judicial Proceedings

INITIAL RECEIPT	RESUBMITTED	RELOCATED		COMPLETED		
		Rec'd	Sent	Approved	Denied	Returned

Form I-130 (Rev. 4/11/91) N

C. (continued) Information about your alien relative

16. List husband/wife and all children of your relative (if your relative is your husband/wife, list only his or her children).
(Name) (Relationship) (Date of Birth) (Country of Birth)
17. Address in the United States where your relative intends to live
(Number and Street) (Town or City) (State)
18. Your relative's address abroad
(Number and Street) (Town or City) (Province) (Country) (Phone Number)
19. If your relative's native alphabet is other than Roman letters, write his or her name and address abroad in the native alphabet:
(Name) (Number and Street) (Town or City) (Province) (Country)
20. If filing for your husband/wife, give last address at which you both lived together:
(Name) (Number and Street) (Town or City) (Province) (Country) From (Month) (Year) To (Month) (Year)
21. Check the appropriate box below and give the information required for the box you checked:
☐ Your relative will apply for a visa abroad at the American Consulate in _____ (City) (Country)
☐ Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at _____ (City) (State). If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American Consulate in _____ (City) (Country).
(Designation of a consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that consulate. Acceptance is at the discretion of the designated consulate.)

D. Other Information

1. If separate petitions are also being submitted for other relatives, give names of each and relationship.
2. Have you ever filed a petition for this or any other alien before? ☐ Yes ☐ No
If "Yes," give name, place and date of filing, and result.

Warning: The INS investigates claimed relationships and verifies the validity of documents. The INS seeks criminal prosecutions when family relationships are falsified to obtain visas.

Penalties: You may, by law be imprisoned for not more than five years, or fined $250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws and you may be fined up to $10,000 or imprisoned up to five years or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit that I am seeking.

Signature _____ Date _____ Phone Number _____

Signature of Person Preparing Form if Other than Above

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name _____ (Address) _____ (Signature) _____ (Date) _____

G-28 ID Number _____

Volag Number _____

NOTICE TO PERSONS FILING FOR SPOUSES IF MARRIED LESS THAN TWO YEARS

Pursuant to section 216 of the Immigration and Nationality Act, your alien spouse may be granted conditional permanent resident status in the United States as of the date he or she is admitted or adjusted to conditional status by an officer of the Immigration and Naturalization Service. Both you and your conditional permanent resident spouse are required to file a petition, Form I-751, Joint Petition to Remove Conditional Basis of Alien's Permanent Resident Status, during the ninety day period immediately before the second anniversary of the date your alien spouse was granted conditional permanent residence.

Otherwise, the rights, privileges, responsibilities and duties which apply to all other permanent residents apply equally to a conditional permanent resident. A conditional permanent resident is not limited to the right to apply for naturalization, to file petitions in behalf of qualifying relatives, or to reside permanently in the United States as an immigrant in accordance with the immigration laws.

Failure to file Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, will result in termination of permanent residence status and initiation of deportation proceedings.

NOTE: You must complete items 1 through 6 to assure that petition approval is recorded. Do not write in the section below item 6.

1. Name of relative (Family name in CAPS) (First) (Middle)

2. Other names used by relative (including maiden name)

3. Country of relative's birth 4. Date of relative's birth (Month/Day/Year)

5. Your name (Last name in CAPS) (First) (Middle) 6. Your phone number

Action Stamp

SECTION
- ☐ 201 (b)(spouse)
- ☐ 201 (b)(child)
- ☐ 201 (b)(parent)
- ☐ 203 (a)(1)
- ☐ 203 (a)(2)
- ☐ 203 (a)(4)
- ☐ 203 (a)(5)

DATE PETITION FILED

☐ STATESIDE CRITERIA GRANTED

SENT TO CONSUL AT:

Relative Petition Card
Form I-130A (Rev. 4/11/91) N

CHECKLIST

Have you answered each question?
Have you signed the petition?
Have you enclosed:

- ☐ The filing fee for each petition?
- ☐ Proof of your citizenship or lawful permanent residence?
- ☐ All required supporting documents for each petition?

If you are filing for your husband or wife have you included:

- ☐ Your picture?
- ☐ His or her picture?
- ☐ Your G-325A?
- ☐ His or her G-325A?

U.S. Department of Justice
Immigration and Naturalization Service (INS)

Petition for Alien Relative

Instructions

Read the instructions carefully. If you do not follow the instructions, we may have to return your petition, which may delay final action. If more space is needed to complete an answer continue on separate sheet of paper.

1. Who can file?
A citizen or lawful permanent resident of the United States can file this form to establish the relationship of certain alien relatives who may wish to immigrate to the United States. You must file a separate form for each eligible relative.

2. For whom can you file?
A. If you are a citizen, you may file this form for:
   1) your husband, wife, or unmarried child under 21 years old
   2) your unmarried child over 21, or married child of any age
   3) your brother or sister if you are at least 21 years old
   4) your parent if you are at least 21 years old.
B. If you are a lawful permanent resident you may file this form for:
   1) your husband or wife
   2) your unmarried child

Note: If your relative qualifies under instruction A(2) or A(3) above, separate petitions are not required for his or her husband or wife or unmarried children under 21 years old. If your relative qualifies under instruction B(2) above, separate petitions are not required for his or her unmarried children under 21 years old. These persons will be able to apply for the same type of immigrant visa as your relative.

3. For whom can you not file?
Your cannot file for people in the following categories:
A. An adoptive parent or adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least two years.
B. A natural parent if the United States citizen son or daughter gained permanent residence through adoption.
C. A stepparent or stepchild, if the marriage that created this relationship took place after the child became 18 years old.
D. A husband or wife, if your were not both physically present at the marriage ceremony, and the marriage was not consummated.
E. A husband or wife if you gained lawful permanent resident status by virtue of a prior marriage to a United States citizen or lawful permanent resident unless:
   1) a period of five years has elapsed since you became a lawful permanent resident; OR
   2) you can establish by clear and convincing evidence that the prior marriage (through which you gained your immigrant status) was not entered into for the purpose of evading any provision of the immigration laws; OR
   3) your prior marriage (through which you gained your immigrant status) was terminated by the death of your former spouse.
F. A husband or wife if he or she was in exclusion, deportation, rescission, or judicial proceedings regarding his or her right to remain in the United States when the marriage took place, unless such spouse has resided outside the United States for a two-year period after the date of the marriage.
G. A husband or wife if the Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.
H. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

4. What documents do your need?
You must give INS certain documents with this form to prove you are eligible to file. You must also give the INS certain documents to prove the family relationship between you and your relative.
A. For each document needed, give INS the original and one copy. However, because it is against the law to copy a Certificate of Naturalization, a Certificate of Citizenship or an Alien Registration Receipt Card (Form I-151 or I-551) give INS the original only. Originals will be returned to you.
B. If you do not wish to give INS the original document, you may give INS a copy. The copy must be certified by:
   1) an INS or U.S. consular officer, or
   2) an attorney admitted to practice law in the United States, or
   3) an INS accredited representative (INS may still require originals).
C. Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate.

5. What documents do you need to show you are a United States citizen?
A. If you were born in the United States, give INS your birth certificate.
B. If you were naturalized, give INS your original Certificate of Naturalization.
C. If you were born outside the United States, and you are a U.S. citizen through your parents, give INS:
   1) your original Certificate of Citizenship, or
   2) your Form FS-240 (Report of Birth Abroad of a United States Citizen).
D. In place of any of the above, you may give INS your valid unexpired U.S. passport that was initially issued for at least 5 years.
E. If you do not have any of the above and were born in the United States, see instruction under 8 below. *"What if a document is not available?"*

6. What documents do you need to show you are a permanent resident?
You must give INS your alien registration receipt card (Form I-151 or Form I-551). Do not give INS a photocopy of the card.

7. What documents do you need to prove family relationship?
You have to prove that there is a family relationship between your relative and yourself.

In any case where a marriage certificate is required, if either the husband or wife was married before, you must give INS documents to show that all previous marriages were legally ended. In cases where the names shown on the supporting documents have changed, give INS legal documents to show how the name change occurred (for example a marriage certificate, adoption decree, court order, etc.)

Find the paragraph in the following list that applies to the relative for whom you are filing.

If you are filing for your:

A. husband or wife, give INS
   1) your marriage certificate
   2) a color photo of you and one of your husband or wife, taken within 30 days of the date of this petition. These photos must have a white background. They must be glossy, unretouched, and not mounted. The dimension of the facial image should be about 1 inch from chin to top of hair in 3/4 frontal view, showing the right side of the face with the right ear visible. Using pencil or felt pen, lightly print name (and Alien Registration Number, if known) on the back of each photograph.
   3) a completed and signed G-325A (Biographic Information) for you and one for your husband or wife. Except for name and signature, you do not have to repeat on the G-325A the information given on your I-130 petition.

B. child and you are the mother, give the child's birth certificate showing your name and the name of your child.

C. child and you are the father or stepparent, give the child's birth certificate showing both parents' names and your marriage certificate. Child born out of wedlock and you are the father, give proof that a parent/child relationship exists or existed. For example, the child's birth certificate showing your name and evidence that you have financially supported the child. (A blood test may be necessary).

D. brother or sister, your birth certificate and the birth certificate of your brother or sister showing both parents' names. If you do not have the same mother, you must also give the marriage certificates of your father to both mothers.

E. mother, give your birth certificate showing your name and the name of your mother.

F. father, give your birth certificate showing the names of both parents and your parents' marriage certificate.

G. stepparent, give your birth certificate showing the names of both natural parents and the marriage certificate of your parent to your stepparent.

H. adoptive parent or adopted child, give a certified copy of the adoption decree, the legal custody decree if you obtained custody of the child before adoption, and a statement showing the dates and places you have lived together with the child.

8. What if a document is not available?
If the documents needed above are not available, you can give INS the following instead. (INS may require a statement from the appropriate civil authority certifying that the needed document is not available.)

A. Church record: A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of child's birth, date of the religious ceremony, and the names of the child's parents.

B. School record: A letter from the authorities of the school attended (preferably the first school), showing the date of admission to the school, child's date and place of birth, and the names and places of birth parents, if shown in the school records.

C. Census record: State or federal census record showing the names, place of birth, and date of birth or the age of the person listed.

D. Affidavits: Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove; for example, the date and place of birth, marriage, or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth, and his or her relationship to you, if any; full information concerning the event; and complete details concerning how the person acquired knowledge of the event.

9. How should you prepare this form?
   A. Type or print legibly in ink.
   B. If you need extra space to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
   C. Answer all questions fully and accurately. If any item does not apply, please write "N/A".

10. Where should you file this form?
   A. If you live in the United States, send or take the form to the INS office that has jurisdiction over where you live.
   B. If you live outside the United States, contact the nearest American Consulate to find out where to send or take the completed form.

11. What is the fee?
You must pay seventy five dollars ($75.00) to file this form. The fee will not be refunded, whether the petition is approved or not. DO NOT MAIL CASH. All checks or money orders, whether U.S. or foreign, must be payable in U.S. currency at a financial institution in the United States. When a check is drawn on the account of a person other than yourself, write your name on the face of the check. If the check is not honored, INS will charge you $6.00.

Pay by check or money order in the exact amount. Make the check or money order payable to "Immigration and Naturalization Service". However,
   A. If you live in Guam: Make the check or money order payable to "Treasurer, Guam", or
   B. If you live in the U.S. Virgin Islands: Make the check or money order payable to "Commissioner of Finance of the Virgin Islands".

12. When will a visa become available?
When a petition is approved for the husband, wife, parent, or unmarried minor child of a United States citizen, these relatives do not have to wait for a visa number, as they are not subject to the immigrant visa limit. However, for a child to qualify for this category, all processing must be completed and the child must enter the United States before his or her 21st birthday.

For all other alien relatives there are only a limited number of immigrant visas each year. The visas are given out in the order in which INS receives properly filed petitions. To be considered properly filed, a petition must be completed accurately and signed, the required documents must be attached, and the fee must be paid.

For a monthly update on the dates for which immigrant visas are available, you may call (202) 647-6508.

13. What are the penalties for committing marriage fraud or submitting false information or both?
Title 8, United States Code, Section 1325 states that any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than $250,000.00 or both.

Title 18, United States Code, Section 1001 states that whoever willfully and knowingly falsifies a material fact, makes a false statement, or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

14. What is our authority for collecting this information?
We request the information on the form to carry out the immigration laws contained in Title 8, United States Code, Section 1154(a). We need this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by this Service. You do not have to give this information. However, if you refuse to give some or all of it, your petition may be denied.

15. Reporting Burden.
Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service (Room 5304), Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0054, Washington, D.C. 20503.

It is not possible to cover all the conditions for eligibility or to give instructions for every situation. If you have carefully read all the instructions and still have questions, please contact your nearest INS office.

U.S. Department of Justice
Immigration and Naturalization Service — Order to Show Cause and Notice of Hearing

ORDER TO SHOW CAUSE AND NOTICE OF HEARING
(ORDEN DE PRESENTAR MOTIVOS JUSTIFICANTES Y AVISO DE AUDIENCIA)

In Deportation Proceedings under section 242 of the Immigration and Nationality Act.
(En los trámites de deportación a tenor de la sección 242 de la Ley de Inmigración y Nacionalidad.)

United States of America:
(Estados Unidos de América:)

File No. _____
(No. de registro)

Dated _____
(Fechada)

In the matter of _____ (Respondent)
(En el asunto de) *(Demandado)*
Address _____
(Dirección)

Telephone No. (Area Code) _____
(No. de teléfono y código de área)

Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that:
(Según las indagaciones realizadas por el Servicio de Inmigración y Naturalización, se alega que:)

1) You are not a citizen or national of the United States;
(Ud. no es ciudadano o nacional de los Estados Unidos)

2) You are a native of _____ and a citizen of _____ ;
(Ud. es nativo de) *(y ciudadano de)*

3) You entered the United States at or near _____ on or about _____ ;
(Ud. entró a los Estados Unidos en o cerca de) *(el día o hacia esa fecha)*

U.S. Department of Justice
Immigration and Naturalization Service — Order to Show Cause and Notice of Hearing

NOTICE OF RIGHTS AND CONSEQUENCES

The Immigration and Naturalization Service believes that you are an alien not lawfully entitled to be in or to remain in the United States. Read this notice carefully and ask questions about anything in this notice you do not understand. This notice identifies your rights as an alien in deportation proceedings, and your obligations and the conditions with which you must comply in order to protect your eligibility to be considered for certain benefits.

Any statement you make before an Immigration Officer may be used against you in any immigration or administrative proceeding.

You may be represented, at no expense to the United States government, by an attorney or other individual who is authorized and qualified to represent persons in these proceedings. You will be given a list of organizations, attorneys and other persons who have indicated their availability to represent aliens in these proceedings. Some of these persons may represent you free of charge or for a nominal fee. You may also be represented by a friend, relative, or other person having a pre-existing relationship with you, provided his or her appearance is permitted by the immigration judge.

You will have a hearing before an immigration judge, scheduled no sooner than 14 days from the date you are served with this Order to Show Cause (unless you request in writing an earlier hearing date). The fourteen-day period is to allow you to seek an attorney or representative, if you desire to be represented. At your hearing, you will be given the opportunity to admit or deny any or all of the allegations in this Order to Show Cause, and whether you are deportable on the charges set forth herein. You will have an opportunity to present evidence and/or witnesses on your own behalf, to examine evidence presented by the government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the government. Any document that you present that is in a foreign language must be accompanied by a certified English translation. It is your responsibility to ensure that any witnesses you wish to present on your own behalf be present at the hearing.

The immigration judge will advise you regarding relief from deportation for which you may be eligible. You will be given a reasonable opportunity to make an application for any such relief. If you are not satisfied with the decision of the immigration judge, you have the right to appeal. The immigration judge will provide you with your appeal rights.

AVISO DE DERECHOS Y CONSECUENCIAS

El Servicio de Inmigración y Naturalización opina que Ud. es un extranjero sin derecho legal a estar o permanecer en los Estados Unidos. Lea este aviso cuidadosamente y pregunte acerca de cualquier parte del mismo que no entienda. Este aviso le explica los derechos que tiene como extranjero en los trámites de deportación, y las obligaciones y condiciones que debe cumplir con el fin de proteger su derecho a que se le considere para recibir ciertos beneficios.

Las declaraciones que haga ante un funcionario del Servicio de Inmigración podrán usarse en su contra en cualquier trámite administrativo o de inmigración.

Ud. puede ser representado, sin costo alguno para el gobierno de los Estados Unidos, por un abogado o otra persona autorizada y calificada para representar personas en estos trámites. Ud. recibirá una lista de las entidades, abogados y demás personas dispuestas a representar a extranjeros en estos trámites. Algunas de esas personas pueden representarle gratuitamente o por honorarios nominales. También puede representarle un amigo, familiar o otra persona con la que tenga una relación establecida, siempre que el juez de inmigración permita su comparecencia.

Ud. tendrá una audiencia ante un juez de inmigración, fijada con un mínimo de 14 días a partir de la fecha que se le expidió esta Orden (a menos que Ud. solicite por escrito una audiencia en plazo aún menor). El plazo de catorce días le permitirá conseguir los servicios de un abogado o representante, si lo desea. En la audiencia se le dará la oportunidad de admitir o negar cualquiera de los alegatos de esta Orden o todos ellos, y se le informará si está sujeto a deportación por los cargos expresados en la misma. Ud. tendrá la oportunidad de presentar pruebas y testigos a favor suyo, de examinar las pruebas presentadas por el gobierno, de oponerse, con base en los razonamientos legales pertinentes, a la admisión de pruebas y de interrogar a cualquier testigo del gobierno. Todo documento que presente en un idioma extranjero debe ir acompañado de una traducción certificada al inglés. Será responsabilidad suya asegurarse de que cualquier testigo suyo comparezca a la audiencia.

El juez de inmigración le informará sobre los recursos de deportación a los que tenga derecho y se le dará una oportunidad adecuada para solicitarlos. Si no está de acuerdo con la decisión del juez, puede apelarla. El juez de inmigración le informará acerca de sus derechos de apelación.

U.S. Department of Justice
Immigration and Naturalization Service — Order to Show Cause and Notice of Hearing

Dated _____
(Fechada)

Respondent _____
(Demandado)

File No. _____
(No. de registro)

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:
(Y según los alegatos anteriores, se le acusa de estar sujeto a deportación de acuerdo con la(s) siguiente(s) disposicion(es) de la ley:)

WHEREFORE, YOU ARE ORDERED to appear for a hearing before an Immigration Judge of the Executive Office for Immigration Review of the United States Department of Justice at:
(POR LO CUAL, SE LE ORDENA comparecer ante un juez de inmigración de la Oficina Ejecutiva de Revisión de Inmigración del Departamento de Justicia de los Estados Unidos en:)

Address _____
(Dirección)

On _____ At _____ .m.
(Fecha) *(Hora)*

and show cause why you should not be deported from the United States on the charge(s) set forth above.
(y mostrar motivos justificantes por cual no debería ser deportado de los Estados Unidos por los cargos expresados anteriormente.)

Dated _____
(Fechada)

Signature of Issuing Officer _____
(Firma del funcionario que la expide)

City and State of Issuance _____
(Ciudad y Estado donde se expide)

Title of Issuing Officer _____
(Título del funcionario que la expide)

You are required to be present at your deportation hearing prepared to proceed. If you fail to appear at any hearing after having been given written notice of the date, time and location of your hearing, you will be ordered deported *in your absence*, if it is established that you are deportable and you have been provided the appropriate notice of the hearing.

You are required by law to provide immediately in writing an address (and telephone number, if any) where you can be contacted. You are required to provide written notice, within five (5) days, of any change in your address or telephone number to the office of the Immigration Judge listed in this notice. Any notices will be mailed only to the last address provided by you. If you are represented, notice will be sent to your representative. If you fail to appear at the scheduled deportation hearing, you will be ordered deported *in your absence* if it is established that you are deportable and you have been provided the appropriate notice of the hearing.

If you are ordered deported *in your absence*, you cannot seek to have that order rescinded except that: (a) you may file a motion to reopen the hearing within 180 days after the date of the order if you are able to show that your failure to appear was because of exceptional circumstances, or (b) you may file a motion to reopen at any time after the date of the order if you can show that you did not receive written notice of your hearing and you had provided your address and telephone number (or any changes of your address or telephone number) as required, or that you were incarcerated and did not appear at your hearing through no fault of your own. If you choose to seek judicial review of a deportation order entered *in your absence*, you must file the petition for review within 60 days (30 days if you are convicted of an aggravated felony) after the date of the final order, and the review shall be confined to the issues of validity of the notice provided to you, the reasons for your failure to appear at your hearing, and whether the government established that you are deportable.

In addition to the above, if you are ordered deported *in your absence*, you are ineligible for five (5) years from the date of the final order for the following relief from deportation: voluntary departure under section 242 (b) of the Immigration and Nationality Act (INA); suspension of deportation or voluntary departure under section 244 of the INA; and adjustment of status under sections 245, 248, and 249 of the INA.

The copy of this Order to Show Cause served upon you is evidence of your alien registration while you are under deportation proceedings. The law requires that you carry it with you at all times.

Está obligado a asistir a la audiencia de deportación y de estar preparado para ella. Si no asiste a cualquiera de las audiencias después de haber sido notificado por escrito de la fecha, hora y lugar de la audiencia, se ordenará su deportación en su ausencia, si se establece que puede ser deportado y que recibió los avisos correspondientes.

La ley le obliga a informar inmediatamente por escrito de su domicilio (y número de teléfono, de haberlo) donde pueda ser localizado. Tiene la obligación de notificar por escrito, en el plazo de cinco (5) días, cualquier cambio de domicilio o de teléfono a la oficina del juez de inmigración que aparece en este aviso. Los avisos se enviarán solamente a la última dirección facilitada por Ud. Si he decidido tener un representante, se enviarán los avisos a dicha persona. Si no asiste a cualquiera de las audiencias después de haber sido notificado por escrito de la fecha, hora y lugar de las mismas, se ordenará su deportación en su ausencia, si se establece que puede ser deportado y que recibió el aviso de la audiencia.

Si se ordena su deportación en su ausencia, no podrá solicitar la anulación de esa orden salvo que: a) pueda presentar un pedimento para tener otra audiencia en el plazo de 180 días después de la fecha de la orden si puede demostrar que no compareció debido a circunstancias excepcionales, o b) puede presentar un pedimento para tener otra audiencia en cualquier momento después de la fecha de la orden si puede demostrar que no recibió el aviso de la audiencia por escrito y que había facilitado su dirección y número de teléfono (o notificado los cambios de dirección o número de teléfono) según lo previsto, o que estaba encarcelado y no compareció a la audiencia por motivos ajenos a su voluntad. Si decide solicitar una revisión judicial de la orden de deportación en su ausencia, debe presentar la solicitud de revisión en el plazo de 60 días (30 días si ha sido condenado por un delito grave con agravantes) a partir de la fecha de la orden definitiva, y la revisión se limitará a decidir si el aviso que recibió es válido, las razones por las cuales no compareció a la audiencia y si el gobierno demostró que puede ser deportado.

Además de lo anterior, si se ordena su deportación en su ausencia, no podrá, en el plazo de cinco años después de la fecha de la orden definitiva, tener derecho a los siguientes recursos: salida voluntaria según la sección 242 (b) de la ley de Inmigración y Nacionalidad (INA); suspensión de la deportación o de la salida voluntaria según la sección 244 de la INA, y ajuste de condición según las secciones 245, 248, y 249 de la INA.

Esta copia de la Orden de Presentar Motivos Justificantes que le ha sido notificada constituye la prueba de su registro de extranjero mientras se lleven a cabo los trámites para su deportación. La ley le exige que la lleve consigo en todo momento.

This Order to Show Cause shall be filed with the Immigration Judge of the Executive Office for Immigration Review at the address provided below. You must report any changes of your address or telephone number in writing to this office:

Esta Orden de Presentar Motivos Justificantes será registrada con la Oficina Ejecutiva de Revisión de Inmigración en la siguiente dirección. Debe notificar cualquier cambio de su domicilio o número de teléfono por escrito a:

The Office of the Immigration Judge

_____

_____

_____

Certificate of Translation and Oral Notice

This Order to Show Cause ☐ was ☐ was not read to the named alien in the _____ language, which is his/her native language or a language which he/she understands.

Date Signature Printed Name and Title of Translator

Address of Translator (if other than INS employee) or office location and division (if INS employee)

(If oral notice was not provided please explain)

Manner of Service	Alien's Right Thumb Print
☐ Personal Service to Alien ☐ Certified Mail - Return Receipt Requested ☐ Alien ☐ Counsel of Record	

Certificate of Service

This Order to Show Cause was served by me at _____ on _____ 19 __ at _____ m.

Officer's Signature Printed Name Title Office

Alien's Signature (acknowledgment/receipt of this form)
(Firma de extranjero/acuse de recibo)

Request for Prompt Hearing and Waiver of 14-Day Minimum Period
(Solicitud de audiencia inmediata y renuncia al plazo mínimo de 14 días)

To expedite determination of my case, I request an immediate hearing, and waive my right to the 14 day notice.
(Para agilizar la decisión sobre mi caso, solicito una audiencia inmediata y renuncio a mi derecho a un plazo mínimo de 14 días.)

Signature of Respondent
(Firma de demandado)

Date
(Fecha)

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: _____

In the Matter of:

Respondent: _____ currently residing at:

_____ _____
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____

_____
(Complete Address of Immigration Court, Including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

_____
(Signature and Title of Issuing Officer)

Date: _____ _____
(City and State)

See reverse for important information

Form I-862 (Rev. 4-1-97)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____
(Signature of Respondent)

Before:

_____ Date: _____
(Signature and Title of INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on _____ (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☐ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☐ Attached is a list of organizations and attorneys which provide free legal services.

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____ _____
(Signature of Respondent if Personally Served) (Signature and Title of Officer)

Form I-862 (Rev. 4-1-97)

BILLING CODE 4410-10-M

Attachment 6—Interim Guidance—Documentary Evidence for Excepted Categories of Aliens Eligible for SSI, Food Stamps, TANF, Medicaid, and Programs Funded by a Social Services Block Grant

Under Section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"), only certain excepted categories of aliens remain eligible for SSI and Food Stamps. States may also limit eligibility for TANF, Medicaid and programs funded by a Social Services Block Grant to certain excepted categories of aliens. Some of the excepted categories enjoy unqualified exemptions from the restrictions in section 402, while others are exempted for limited time periods. The exceptions for each program, and the documents that may be used to determine eligibility under these exceptions, are set forth below:

Exceptions

A. *SSI*

Certain categories of aliens are excepted from the restrictions on SSI eligibility imposed by Section 402. If an alien falls within one of the categories listed below, he or she remains eligible for SSI:

- Lawfully admitted permanent resident aliens who have worked or can be credited with 40 qualifying quarters (any quarter after December 31, 1996 cannot be counted if the alien received any federal means-tested public benefit during that quarter);
- Qualified aliens lawfully residing in any State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfies the requirements of 38 U.S.C. 1304 (see DOD/VA Guidance attached as Exhibit B hereto);
- Qualified aliens lawfully residing in the United States who were receiving SSI on August 22, 1996;
- Qualified aliens who were lawfully residing in the United States on August 22, 1996, and who are blind or disabled;
- American Indians born in Canada and to whom the provisions of section 289 of the INA apply;
- Members of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act); or
- Qualified aliens receiving SSI benefits after July 1996 on the basis of an application filed before January 1, 1979, if the Commissioner of Social Security lacks clear and convincing evidence that such individuals are otherwise ineligible under section 402.

Other categories of aliens remain eligible for SSI for only a limited time period:

- Asylees, for a period of seven years after obtaining such status;
- Aliens whose deportation or removal has been withheld, for a period of seven years after obtaining such status;
- Refugees, for a period of seven years after the date they entered the U.S. as refugees;
- Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of seven years after they obtain such status; and
- Amerasian immigrants admitted to the U.S. pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of seven years after their admission.

B. *Medicaid*

Regardless of whether a State chooses to impose additional restrictions on the eligibility of aliens to receive Medicaid, the following categories of aliens are eligible:

- Lawfully admitted permanent resident aliens who have worked or can be credited with 40 qualifying quarters (any quarter after December 31, 1996 cannot be counted if the alien received any federal means-tested public benefit during that quarter);
- Qualified aliens lawfully residing in any State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfies the requirements of 38 U.S.C. 1304 (see DOD/VA Guidance attached as Exhibit B hereto);
- American Indians born in Canada and to whom the provisions of section 289 of the INA apply; and
- Members of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Act).

Time-limited exceptions apply to the following categories:

- Asylees, for a period of seven years after obtaining such status;
- Aliens whose deportation or removal has been withheld, for a period of seven years after obtaining such status;
- Refugees, for a period of seven years after the date they entered the U.S. as refugees;
- Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistant Act of 1980, for a period of seven years after the date they entered the U.S. as refugees;
- Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of seven years after they obtain such status; and
- Amerasian immigrants admitted to the U.S. pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of seven years after their admission.

Also, any alien receiving SSI benefits retains derivative eligibility for Medicaid, regardless of whether he or she is otherwise ineligible for Medicaid under the Act.

C. Food Stamps, TANF, and Social Services Block Grant Programs

With respect to TANF and programs funded by a Social Services Block Grant, states have the option of limiting aliens' eligibility for such programs. As an initial matter, then, you should determine whether your State has imposed additional eligibility requirements. Even if your State has chosen to impose such restrictions, the following categories of aliens would remain eligible for Food Stamps, TANF, and programs funded by a Social Services Block Grant, without any time limitation:

- Lawfully admitted permanent resident aliens who have worked or can be credited with 40 qualifying quarters (any quarter after December 31, 1996 cannot be counted if the alien received any federal means-tested public benefit during that quarter);
- Qualified aliens lawfully residing in any State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfies the requirements of 38 U.S.C. § 1304 (see DOD/VA Guidance attached as Exhibit B hereto).

Time-limited exceptions apply to the following categories:

- Asylees, for a period of five years after obtaining such status;
- Aliens whose deportation of removal has been withheld, for a period of five years after obtaining such status;
- Refugees, for a period of five years after the date they entered the U.S. as refugees;
- Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistant Act of 1980, for a period of five years after they obtain such status; and
- Amerasian immigrants admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.

Unlike the derivative eligibility provision for Medicaid, aliens receiving SSI benefits for *not* entitled to derivative eligibility for Food Stamps if they are otherwise ineligible for Food Stamp benefits under the Act.

Documentation of Exceptions

The documents listed below (examples of which are attached to Attachment 5 of the Interim Guidance) establish that an applicant falls within one of the excepted categories of aliens.

Under the INA, all aliens over the age of 14 who remain in the United States for longer than 30 days are required to register with the Immigration and Naturalization Service (the "INS") and obtain an alien registration document; all aliens over the age of 18 who receive a registration document are required to carry it with them at all times. With certain exceptions (*e.g.*, Canadian visitors), aliens entering the U.S. are normally issued a registration document (*e.g.*, an INS Form I–94) at the time of entry. The documents listed below that are registration documents are indicated with an asterisk ("*").

Each of the documents listed below will demonstrate lawful status, and you should not require presentation of a registration document if the applicant presents one for the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status, so long as the request is not made for a discriminatory reason (see Nondiscrimination Advisory, Attachment 2 to Interim Guidance). Presentation of a registration document listed below that reasonably appears on its face to be genuine and to relate to the person presenting it (or to satisfy a higher applicable standard) will often obviate the need to verify the applicant's immigration status with the INS; if the applicant presents a registration document that does not meet this standard, sending the INS a copy of the document will assist it in verifying the applicant's status quickly and accurately.

Alien Lawfully Admitted for Permanent Resident ("LPR") under the INA Who Has Worked or Can Be Credited With 40 Qualifying Quarters or Who is Otherwise Eligible

LPR:

- *INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card"); or
- Unexpired temporary I–551 stamp in foreign passport or on *INS Form I–94.

40 Qualifying Quarters: Until you have access to SSA's automated system for verifying qualifying quarters, refer to the SSA Guidance attached as Exhibit A for guidance on how to verify 40 qualifying quarters. NOTE: Any quarter after December 31, 1996, cannot be counted if the alien received any federal means-tested public benefit during that quarter.

LPR Who is Otherwise Eligible: An LPR who does not have 40 qualifying quarters will still be eligible if he or she:

- entered the U.S. as a refugee within the previous five years, was granted asylum during the previous five years, or had his or her deportation or removal withheld within the previous five years:

If an applicant attests to having been admitted as a refugee within the previous five years, review the applicant's INS Form I–551 (green card) for code RE–6, RE–7, RE–8 or RE–9, and derive the date of admission from the date on the card.

If an applicant attests to having been granted asylum or having had deportation or removal withheld within the previous five years, file INS Form G–845 and Supplement along with a copy of the I–551 with the local INS office to verify status.

or

- is an honorably discharged veteran who fulfilled minimum active-duty service requirements, or is a person on none-training active duty or is the spouse, dependent child, or unremarried surviving spouse of such a person:

Referer to DOD Guidance attached as Exhibit B for guidance on how to verify such status.

Qualified Alien Lawfully Residing in State Who Is an Honorably Discharged Veteran, On Non-Training Active Duty in the U.S. Armed Forces, or the Spouse, Unmarried Dependent Child, or Unremarried Surviving Spouse of Such a Veteran or Active-Duty Personnel

- Refer to Attachment 5 to the Interim Guidance for documentation of qualified alien status; and
- Refer to DOD/VA Guidance attached as Exhibit B for guidance on how to verify veteran and active duty status.

Qualified Alien Lawfully Residing in the U.S. Who Was Receiving SSI on August 22, 1996.

- Contact SSA for guidance on appropriate documentation.

Qualified Alien Lawfully Residing the U.S. on August 22, 1996 Who Is Blind or Disabled

- Contact SSA for guidance on appropriate documentation.

Qualified Alien Receiving SSI Benefits After July 1996 on the Basis of An Application Filed Before January 1, 1979:

- Contact SSA for guidance on appropriate documentation.

American Indians Born in Canada and Covered By Section 289 of the INA

- *INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card") with the code S13;

Unexpired temporary I–551 stamp in Canadian passport or on *INS Form I–94 with the code S13; or

- A letter or other tribal document certifying at least 50 per centum American Indian blood, as required by INA Section 289, combined with a birth certificate or other satisfactory evidence of birth in Canada.

Members of an Indian Tribe

- Membership card or other tribal document demonstrating membership in a federally-recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act. Contact Soo Song, Deputy Director, Office of Tribal Justice, United States Department of Justice, (202) 415–8812, for a list of federally-recognized tribes under section 4(e).
- If the individual has no document evidencing tribal membership, contact the tribal government for confirmation of the individual's membership. Tribal government contact lists are available from Soo Song, Deputy Director, Office of Tribal Justice, Department of Justice, (202) 514–8812.

Asylee

- *INS Form I–94 annotated with stamp showing grant of asylum under § 208 of the INA;
- *INS Form I–688B (Employment Authorization Card) annotated "274a12(a)(5)";
- INS Form I–766 (Employment Authorization Document) annotated "A5";

• Grant letter from the Asylum Office of INS; or

• Order of an immigration judge granting asylum.

Seven or Five-Year Limit: Where eligibility is limited to asylees who obtained asylee status within the previous seven or five years, INS Form I–94, the INS grant letter and the court order will each include the date asylee status was granted; if the applicant cannot provide any of these documents, file INS Form G–845 and Supplement along with a copy of the documents indicating asylee status with the local INS office to verify the date the status was granted.

Refugee

• *INS Form I–94 annotated with stamp showing admission under section 207 of the INA;

• INS Form I–688B (Employment Authorization Card) annotated "274a12(a)(3)";

• *INS Form I–766 (Employment Authorization Document) annotated "A3"; or

• INS Form I–571 (Refugee Travel Document).

Seven or Five-Year Limit: Where eligibility is limited to aliens who were admitted as refugees within the previous seven or five years, the date of inspection on the refugee stamp on INS Form I–94 will indicate the date of admission as a refugee; if the date is missing or if the applicant cannot present an I–94, file INS Form G–845 and Supplement along with a copy of the pertinent documents with the local INS office to verify the date of admission as a refugee.

Alien Whose Deportation or Removal Was Withheld

• *INS Form I–688B (Employment Authorization Card) annotated "274a12(a)(10)";

• INS Form I–766 (Employment Authorization Document) annotated "A10"; or

• Order from an immigration judge showing deportation withheld under § 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under § 241(b)(3) of the INA.

Seven or Five-Year Limited: Where eligibility is limited to aliens whose deportation was withheld within the previous seven or five years, the court order will include the date deportation was withheld; if the applicant does not present a court order, file INS Form G–845 and Supplement along with a copy of the pertinent documents with the local INS office to verify the date deportation was withheld.

Cuban/Haitian Entrants

• *INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, and CH6;

• Unexpired temporary I–551 stamp in foreign passport or on *INS Form I–94 with the code CU6 or CU7; or

• INS Form *I–94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.

Seven or Five-Year Limit: Where eligibility is limited to aliens who were granted status as a Cuban/Haitian entrant within the previous seven or five years, the date on the INS Form I–551 or the date of inspection on the stamp on INS Form I–94 will indicate the date status was granted; if the date is missing on Form I–94, file INS Form G–845 and Supplement along with a copy of the pertinent documents with the local INS office to verify the date status was granted.

Amerasian Immigrants

• *INS Form I–551 (Alien Registration Receipt Card, commonly known as a "green card") with the code AM6, AM7, or AM8; or

• Unexpired temporary I–551 stamp in foreign passport or on *INS Form I–94 with the code AM1, AM2, or AM3.

Seven or Five-Year Limit: Where eligibility is limited to aliens who were admitted as Amerasian immigrants within the previous seven or five years, the date on the INS Form I–551 or the date of inspection on the stamp on INS Form I–94 will indicate the date of admission; if the date is missing on Form I–94, file INS Form G–845 and Supplement along with a copy of the pertinent documents with the local INS office to verify the date of admission.

Expired or Absent Documentation: If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local INS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide an alien registration number, you may file INS Form G–845 and Supplement, along with the alien registration number and a copy of any expired INS document presented, with the local INS office to verify status. As with any documentation of immigration status, you should confirm that the status information you receive back from INS pertains to the applicant whose identity you have verified.

Receipt for Replacement Document: If an applicant presents a receipt indicating that he or she has applied to the INS for a replacement document for one of the documents identified above, file INS Form G–845 and Supplement, along with a copy of the receipt and a copy of any expired INS document presented, with the local INS office to verify status. Upon return receipt of information from INS, confirm that it pertains to the applicant whose identify you have verified. You should ask to see the replacement document at a later date.

Applicants with Disabilities and Nondiscrimination: If an applicant has a disability that limits the applicant's ability to provide the required evidence of immigration status (*e.g.*, mental retardation, amnesia, or other cognitive or mental impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Nondiscrimination Advisory, Attachment 2 to Interim Guidance.

Local INS Offices: A list of local INS offices and their addresses is set forth in Attachment 1 to the Interim Guidance. Attachment 1 also includes a copy of INS Form G–845 and the Supplement thereto to be used to verify immigration status pursuant to the Guidance.

EXHIBIT A TO ATTACHMENT 8—SSA GUIDANCE ON CERTIFICATION OF 40 QUALIFYING QUARTERS

Section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act") generally limits the eligibility of legal immigrants for certain federal public benefits, but sections 402(a)(2)(B) and (b)(2)(B) provide an exception for aliens lawfully admitted for permanent residence who have worked or can be credited with 40 quarters of qualified work. The law provides that the worker's own quarters and quarters worked by a parent while the alien was under age 18 or by a spouse during the marriage if the alien remains married to the spouse or the marriage ended by the death of the spouse may also be credited to the individual in determining the number of qualifying quarters.

Implementing this requirement will be challenging for the individual immigrants, program administrators, and the Social Security Administration ("SSA"), which is the primary source of qualifying quarters information. SSA has developed an automated system to provide, on an overnight basis, information on qualifying quarters for work covered under the Social Security Act and certain, but not all, work not covered under the Social Security Act. Verification of quarters of coverage for most applicants and current recipients will be accomplished primarily through this automated system.

SSA's automated system is being revised to include additional available information on qualifying quarters from noncovered work. The following interim procedures for determining whether the 40 quarters of qualified work exception is met should be followed until you have access to the SSA automated system. This interim process authorizes certification of eligibility pending verification through the automated system. (This guidance does not supersede program requirements; programs should refer to statutes, regulations, and agency guidance governing certification of eligibility.)

Under these interim procedures, the individual's attestation to 40 quarters is sufficient provided the immigrant, alone or in combination with his parents and/or spouse, has spent sufficient time in this country to have acquired 40 quarters of qualified work. The individual need only state that he or she, alone or in combination with his or her parents and/or spouse, has met the work requirement. No further documentation of earnings is required at application. These interim procedures should be used when the legal immigrant does not qualify under other exemptions of the Act (*e.g.*, refugees, asylees, or deportees with five years of limited eligibility, or applicants with a claim to eligibility based on military service).

Although the automated system is now available, each state must approve an addendum to the current Computer Matching and Privacy Protection Act agreement they maintain with SSA before access to the system can be approved. When you sign the agreement, SSA will provide further guidance defining covered/noncovered qualifying quarters, how to use the system when making determinations, and how to resolve problems arising from discrepancies.

After the agreement addendum is signed and access to the system approved, you should contact SSA to schedule a quarters of coverage verification for each individual you conclude has met the 40 quarters exemption using these interim instructions. SSA will report back a qualifying quarters of coverage history for each individual and applicable family member requested. SSA will provide additional guidance and the name of the contact for scheduling verification.

Interim Procedures

To determine eligibility based on 40 qualifying quarters, the State agency/benefit provider should ascertain the applicant's understanding as to the following:

1. How many years has the applicant, the applicant's spouse (during their marriage if they are still married or the marriage ended by the death of the spouse), or the applicant's parents (before the applicant turned 18) lived and/or worked in this country.

(If the answer to 1 is a total of less than 10 years, the applicant cannot meet the 40 qualifying quarter requirement. Stop at this point.)

(If the total equals 10 years or the applicant alleges they commuted to work in the U.S., then proceed to question 2.)

2. In how many of the years reported in answer to question 1, did the applicant, the applicant's spouse, or the applicant's parent earn money through work.

(If the state agency/benefit provider or the applicant needs further information about what constitutes a "quarter of coverage" in those years, they may wish to refer to the attached chart.)

Verify, from INS documents, the date of entry into the country of the applicant, spouse and/or parent. If the dates are consistent with having 10 or more years of work, no further documentation is required at this time; the state agency/benefit provider should conclude that the immigrant meets the 40 qualifying quarters of work exception pending verification from SSA. Inform the applicant (subject to each program's requirements and due process considerations) that he/she may have to repay any benefits to which he/she is not found to be entitled after verification. Keep a record of each individual certified pending verification from SSA.

If the dates of entry are inconsistent with having 10 or more years of work, deny benefits and notify the applicant of his/her right to appeal the denial of benefits.

The applicant shall also provide, for purposes of future verification, the full name, social security number, date of birth, and sex of each individual (self, parent or spouse) whose work history is relevant to the determination of eligibility. In addition, obtain a release form signed by each such individual (copy attached) giving SSA permission to release information concerning that individual's entire quarters of coverage history to the state agency/benefit provider and/or the applicant. This form shall be retained in the case file to document the individual's consent.

As noted earlier, these are temporary instructions and you should schedule verification of all cases processed under these guidelines with SSA. In its response, SSA will provide available information about qualifying quarters of work. Consult the SSA guidelines for using the system if the immigrant believes the information from SSA is inaccurate or incomplete. If SSA action is required, SSA will give the individual a document indicating that the number of quarters is under review. Refer to the requirements of your program to determine whether an immigrant may receive benefits during the period of SSA's review.

Establishing Qualifying Quarters

The term "quarter" means the three calendar month period ending on March 31, June 30, September 30, or December 31 of any year.

Social Security credits called "quarters of coverage" ("QCs") are earned by working at a job or as a self-employed individual. Each earner can be credited with a maximum of four quarters each year.

For 1978 and later, credits are based solely on the total yearly amount of earnings. All types of earnings follow this rule. The number of creditable QCs are obtained by dividing the individual's total yearly earned income by the increment amount for the year up to a yearly maximum of four. The amount of earnings needed to earn a credit increases and is different for each year. For 1978 through 1997, the amount of earnings needed for each credit is:

1978	$250
1979	$260
1980	$290
1981	$310
1982	$340
1983	$370
1984	$390
1985	$410
1986	$440
1987	$460
1988	$470
1989	$500
1990	$520
1991	$540
1992	$570
1993	$590
1994	$620
1995	$630
1996	$640
1997	$670

A current year quarter may be included in the 40 quarter computation. Use the yearly amount shown in the chart as the divisor to determine the number of quarters available up to a yearly maximum of four. FOLLOW YOUR AGENCY GUIDELINES REGARDING COUNTING A QUARTER THAT HAS NOT ENDED.

If you need to use quarters before 1978:

• A credit was earned for each calendar quarter in which an individual was paid $50 or more in wages (including agricultural wages for 1951–1954);

• Four credits were earned for each taxable year in which an individual's net earnings from self-employment were $400 or more; and/or

• A credit was earned for each $100 (limit to a total of four) of agricultural wages paid during the year for years 1955 through 1977.

QUALIFYING QUARTER FROM NONCOVERED EARNINGS WILL ALSO BE DETERMINED USING THE ABOVE GUIDELINES.

EXHIBIT B TO ATTACHMENT 8—DOD GUIDANCE ON IMPLEMENTATION OF VETERAN AND ACTIVE DUTY EXCEPTION

This fact sheet provides guidance for implementing certain sections of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act") concerning exemptions for active duty service members and veterans and their family members. The Act limits the eligibility of certain aliens to receive public benefits. Under various provisions of the Act, a qualified alien who is lawfully residing in a state and is (1) a veteran (per 38 U.S.C. 101(2), 107, 1101, or 1301) with an Honorable Discharge (not on account of alienage) and who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d); (2) on active duty (other than active duty for training) in the United States Armed Forces; or (3) a spouse, unmarried dependent child, or unremarried surviving spouse of such an individual, is eligible for particular programs.

Honorably Discharged Veterans

• A discharge certificate, DD Form 214 or equivalent, that shows active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard and character of discharge "Honorable" is acceptable to qualify for the veteran exemption without further inquiry, unless the certificate appears to have been altered or is otherwise irregular. A discharge certificate that shows character of discharge as anything but "Honorable" is not acceptable for purposes of this exemption and need not be referred to the VA. (Note: A character of discharge "Under Honorable Conditions" is NOT an "Honorable" discharge for these purposes.) A discharge certificate that shows "Honorable" and any other branch of service or any other type of duty (e.g., "Active Duty for Training," "Inactive Duty for Training," etc.) should be referred to the local VA regional office for determination as to veteran status.

• If veteran status is claimed but the individual has no papers showing service or discharge, refer the inquiry to the local VA regional office to determine veteran status.

• If a discharge certificate, DD Form 214 or equivalent, shows an original enlistment in the Army, Navy, Air Force, Coast Guard, or Maine Corps before September 7, 1980, there is no minimum active-duty service requirement. If a discharge certificate, DD Form 214 or equivalent, shows two or more years of continuous active duty in the Army, Navy, Air Force, Coast Guard, or Marine Corps, the individual meets the minimum active-duty service requirement. If such a discharge certificate is not available, or if it shows active-duty service of less than two years with an original enlistment after September 7, 1980, refer the inquiry to the local VA regional office to determine satisfaction of the minimum active-duty service requirement.

• Applications for exemption based on status as a spouse, unmarried dependent child, or unremarried surviving spouse of an honorably discharged veteran require a determination of the veteran's status and a determination that the applicant is a spouse or child. Status of the veteran may be established by possession of a discharge certificate showing an "Honorable" discharge. If the applicant is not in possession of a discharge certificate, refer the question of veteran status to the VA for a determination. The determination as to whether the individual is a spouse or an unmarried dependent child should be made based on your agency guidance for marital and dependency status. VA will not make spousal or dependency findings in these cases.

• Applications for exception based on status as an unremarried surviving spouse of a veteran or active-duty personnel further require the following findings (set forth in 38 U.S.C. 1304), in addition to a determination that the surviving spouse has not remarried:

—that the surviving spouse was married to the veteran or active-duty personnel within fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated;

—that the surviving spouse was married to the veteran or active-duty personnel for one year or more; or

—that a child was born of the relationship between the surviving spouse and the veteran or active-duty personnel, either during or before the marriage.

Members on Active Duty

• Active duty as a member of the Armed Forces means the individual is on full time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard. It does not include full-time National Guard duty.

• Service members on active duty shall establish their status by presenting a current Military Identification Card (DD Form 2 (Active)) that lists an expiration date of more than one year from the date of determination.

• If the Military Identification Card is due to expire within one year from the date of the determination, the service member shall verify active duty by showing a copy of his or her current military orders. If the service member is unable to furnish a copy of his or her military orders, active duty may be verified through the nearest RAPIDS (Real Time Automated Personnel Identification System) (located at many military installations) or by notifying the following office in writing (which can be transmitted by facsimile): DEERS Support Office, ATTN: Research and Analysis, 400 Gigling Road, Seaside, California 93955–6771, Fax Number: (408) 655–8317.

Reserve Members (not on active duty for training)

• Active duty for training is temporary full-time duty in the Armed Forces performed by members of the Reserves, Army National Guard, or Air National Guard for training purposes. Active duty for training does not establish eligible status. However, a discharge from active duty for training may establish veteran status and should be referred to VA for a determination.

• A Member of a Reserve Component shall establish status by showing a current DD Form 2 (Reserve) (red) and military active duty orders showing such person is on active duty, but not on active duty for training. No other method for verifying this status is currently available.

Spouse, Children, or Unremarried Surviving Spouse of Active Duty Members or Veterans

Step 1. Establish that the individual is a spouse, dependent child, or unremarried surviving spouse of an active duty member or veteran.

• The determination as to whether an individual is a spouse of an active duty member or veteran should be made based on your agency guidance. Possession of a current Military Identification Card showing that the individual is married to a veteran or active duty member may be considered as evidence of marriage to the member.

• The determination as to whether an individual is an unremarried surviving spouse of an active-duty member or veteran should be made based on agency guidance, in accordance with the following requirements (set forth in 38 U.S.C. § 1304), in addition to a determination that the surviving spouse has not remarried:

—the surviving spouse was married to the veteran or active-duty personnel within fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated;

—the surviving spouse was married to the veteran or active-duty personnel for one year or more; or

—that a child was born of the relationship between the surviving spouse and the veteran or active-duty personnel, either during or before the marriage.

• The determination as to whether an individual is an unmarried legally adopted or biological dependent child of an honorably discharged veteran or active duty member of the Armed Forces should be made based on your agency guidance. Possession of a Military Identification Card may be considered as evidence that a child is dependent on the veteran or on the active duty member of the Armed Forces for his or her support and is under the age of 18 or if a full time student, under age 22.

Step 2. Determine that the member is on active duty or is a veteran.

• A spouse or child in possession of a Military Identification Card with an expiration date of more than one year from the date of its presentation presumptively meets the active duty requirement for his or her spouse or parent respectively.

• If the Identification Card is due to expire within one year, the spouse or child must provide a copy of the military orders for his or her spouse or parent as applicable to establish the active duty status of the service member. If married to a reserve member or if an unmarried child of a reserve member, the orders must show that the service member is on active duty and not on active duty for training.

• For dependents not possessing military orders but possessing an Identification Card with an expiration date less than one year from the date of presentation, active duty status can be verified by contacting RAPIDS or the DEERS Support Office.

• If a dependent child does not possess a Dependent Military Identification Card, status may be ascertained through the nearest RAPIDS station or by contacting the DEERS Office at the address provided above.

• A spouse or child showing a discharge certificate, DD Form 214 or equivalent, that shows active duty in the Army, Navy, Air Force, Marine Corps or Coast Guard and character of discharge "Honorable" is acceptable to establish the veteran status of his or her spouse or parent respectively without further inquiry, unless the certificate appears to be altered or irregular. If veteran status is claimed, but the spouse or child does not have papers showing service or discharge, refer the inquiring to the local VA regional office for determination.

Attachment 7—Interim Guidance; Federal Means-Tested Public Benefits

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act") provides that qualified aliens entering the United States on or after August 22, 1996, are ineligible for federal means-tested public benefits during the first five years they are qualified aliens, unless they fall within a specific exception. (With limited exceptions, non-qualified aliens are ineligible for such benefits regardless of when they entered the United States.) All qualified aliens are eligible for federal means-tested public benefits after the expiration of such five-year period, unless the State in which the alien seeks benefits has imposed additional restrictions on eligibility.

The Department of Health and Human Services and the Social Security Administration have interpreted the limitations on eligibility for federal means-tested public benefits to apply only to mandatory spending programs of the federal government in which eligibility for benefits, or the amount of such benefits, or both, are determined on the basis of income, resources, or financial need of the individual, household, or family. See 62 FR 45,256 (August 26, 1997); 62 FR 45,284 (August 26, 1997). Under the HHS and SSA interpretations, TANF, Medicaid, and SSI are federal means-tested public benefits that are not otherwise exempted under the Act. You should consult with the appropriate federal agency overseeing the benefit program you administer to determine whether the program is a federal means-tested public benefit program.

The eligibility of qualified aliens for federal means-tested public benefits turns on whether they entered the U.S. before August 22, 1996, the number of years since they obtained qualified alien status, their particular immigration status, and the specific benefits they are seeking.

1. Determine whether the qualified alien entered the United States before August 22, 1996, by reviewing the documents evidencing his or her immigration status or, if the documents do not indicate whether the alien entered before August 22, 1996, by reviewing additional documentation pursuant to guidance provided by the agency or department overseeing your program. Further determine whether the qualified alien obtained qualified alien status prior to August 22, 1996. See Attachment 6 for a list of documents evidencing qualified alien status and guidance on how to derive relevant dates from those documents. In addition to the documents listed in Attachment 6, an alien who was in the United States before August 22, 1996, in a nonimmigrant or other lawful status, but who subsequently obtained qualified alien status, may present INS Form I–94, which is stamped with the date of entry, to demonstrate entry prior to August 22, 1996.

• If the applicant entered the United States before August 22, 1996, and obtained qualified alien status before that date, he or she is eligible for all federal means-tested public benefits for which he or she satisfies all programmatic eligibility requirements. You should not engage in any further verification of immigration status for these persons.

• If the applicant entered the United States before August 22, 1996, but obtained qualified alien status after that date, you must verify that the alien was continuously present in the United States from the latest date of entry prior to August 22, 1996, until the date he or she obtained qualified alien status. In general, any single absence from the United States of more than 30 days, or a total of aggregated absences of more than 90 days, should be considered to interrupt "continuous presence." To verify continuous presence, you should follow guidance provided by the agency or department overseeing your program, which may call for an applicant to present additional documentation such as tax returns, bills, rent receipts, or a letter from an employer. If the applicant can demonstrate continuous presence, he or she is eligible for all federal means-tested public benefits for which he or she satisfies all programmatic eligibility requirements.

• If the applicant entered the United States before August 22, 1996, and obtained qualified alien status after that date but was not continuously present in the United States from the latest date of entry prior to August 22, 1996, until obtaining such status, determine if he or she is eligible under Paragraphs 2 and 3 below.

• If the applicant entered the United States on or after August 22, 1996, and is a qualified alien, determine if he or she is eligible under Paragraphs 2 and 3 below.

2. With certain exceptions listed below, an applicant who entered the United States on or after August 22, 1996, and has attained qualified alien status, or who entered the United States before August 22, 1996, and obtained qualified alien status after that date but did not remain continuously present in the United States from the latest date of entry prior to August 22, 1996, until obtaining such status, is ineligible for all federal means-tested public benefits during the first five years after he or she obtained qualified alien status. Thus, unless the applicant falls within one of the excepted categories listed below, such an applicant is only eligible for federal means-tested public benefits for which he or she satisfies all programmatic eligibility requirements if five years have passed from the date the applicant attained qualified alien status. Determine the date on which the applicant attained qualified alien status by reviewing the documents evidencing his or her status or, if the documents do not indicate the date he or she obtained such status, by filing INS Form G–845 and Supplement along with a copy of the document with the local INS office.

As noted above, the following categories of aliens are exempt from this five-year ban:

a. Refugees, asylees and aliens whose deportation or removal has been withheld—*see* Attachment 5 to Interim Guidance for definition and documentation;

b. Qualified aliens lawfully residing in any state who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unmarried surviving spouse of such a veteran or active service member, provided that, in the latter case, the marriage satisfies the requirements of 38 U.S.C. 1304—*see* Attachment 6 and Exhibit B thereto to Interim Guidance for definition and documentation;

c. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980;

d. Amerasian immigrants admitted to the U.S. pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988; and

e. With respect to SSI and Medicaid benefits, American Indians born in Canada and to whom the provisions of section 289 of the INA apply or members of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act).

3. Under the terms of the Act, the five-year ban does not apply to the following benefits or assistance:

• Medical assistance under Title XIX of the Social Security Act (or any successor program to such Title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in § 1903(v)(3) of such Act) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the state plan approved under such Title (other than the requirement of the receipt of aid or assistance under Title IV of such Act, SSI benefits under

Title XVI of such Act, or a state supplementary payment);

- Short-term, non-cash, in-kind emergency disaster relief;
- Assistance or benefits under the National School Lunch Act;
- Assistance or benefits under the Child Nutrition Act of 1966;
- Public health assistance (not including any assistance under Title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- Payments for foster care and adoption assistance under parts B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the Act's prohibition on payment of federal means-tested public benefits to qualified aliens during the first five years after entry into the U.S. with qualified alien status, be eligible to have such payments made on the child's behalf under such part, but only if the foster or adoptive parent(s) of such child is a qualified alien;
- Benefits covered by Attorney General Order No. 2049, 61 F.R. 45985 (Aug. 30, 1996), re: government-funded community programs, services or assistance that are necessary for protection of life or safety;
- Programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Service Act;
- Means-tested programs under the Elementary and Secondary Education Act of 1965;
- Benefits under the Head Start Act; and
- Benefits under the Job Training Partnership Act.

[FR Doc. 97–29851 Filed 11–14–97; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Revision of existing collection; generic clearance of customer service surveys.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the **Federal Register** on September 2, 1997, at 62 FR 46375, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 17, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection: (1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Generic Clearance of Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information will be used to access individual and agency needs, identify problems, and plan for programmatic improvements in the delivery of immigration services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150,000 responses at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments may be submitted to INS via facsimile to (202) 305–0143.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center 1001 G Street, NW, Washington, DC 20530.

Dated: November 11, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30091 Filed 11–14–97; 8:45 am]
BILLING CODE 4410–18–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Monday, November 24, 1997 and Tuesday, November 25, 1997, at the Sheraton City Centre, 1143 New Hampshire Avenue, NW, Washington, D.C., in the New Hampshire I and II room. The meetings are tentatively scheduled to begin at 9:00 a.m. on November 24 and at 9:00 a.m. on November 25.

Among the topics the Commission will discuss are: patient classification systems for post acute care payment, urban critical access hospitals, disproportionate share payment policy, risk adjustment, adjusted community rate, quality of care, impact of the Balanced Budget Act on acute care hospitals, payment policy options affecting Medicare+Choice, other policy issues concerning Medicare+Choice, outpatient hospital payment policy, and policy goals for payment under Medicare fee for service.

Final agendas will be mailed on November 21, 1997 and will be available on the Commission's web sites (WWW.PPRC.GOV and WWW.PROPAC.GOV) at that time.

ADDRESSES: 2120 L Street, N.W.; Suite 200; Washington, D.C. 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Ann Johnson, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after November 21, 1997.

Lauren LeRoy,

Executive Director.

[FR Doc. 97–30150 Filed 11–14–97; 8:45 am]
BILLING CODE 6820–BE–M

NATIONAL COMMUNICATION SYSTEM

Notice of Publication of Federal Telecommunication Recommendation

AGENCY: National Communications System (NCS).

ACTION: Notice of publication.

SUMMARY: Federal Telecommunications Recommendation (FTR) 1080–1997, "Video Teleconferencing Services at 56 to 1,920 kbit/s" was approved for publication on October 30, 1997. This recommendation defines the specifications for video teleconferencing and video telephony systems.

FOR FURTHER INFORMATION CONTACT: Contact Stephen Perschau at telephone (703) 607–6198 or write to the National Communications System, Attn: N6, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards Division.

[FR Doc. 97–30124 Filed 11–14–97; 8:45 am]
BILLING CODE 5000–00–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Literature Section (Creation & Presentation/Planning & Stabilization Categories) to the National Council on the Arts will be held on December 3–5, 1997. The panel will meet from 9:00 a.m. to 6:30 p.m. on December 3 and December 4, and from 9:00 a.m. to 4:00 p.m. on December 5, in Room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on December 5, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on December 3 and December 4, and 11:00 a.m. to 4:00 p.m. on December 5, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: November 12, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–30142 Filed 11–14–97; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—1115.

Date and Time: December 03, 1997; 8:30 a.m. to 5:00 p.m., December 04, 1997; 8:30 a.m. to 2:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Yvonne Summers, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda

(1) Review status of Implementation of CISE Reorganization
(2) Provide assessment of CISE Results and Future Plans in the context of Government Performance and Results Act (GPRA)
(3) Discuss special activities, e.g., Knowledge Distributed Intelligence (KDI, Partnership for Advanced Computational Infrastructure (PACI), Next Generation Internet, Digital Libraries II, etc.

Dated: November 10, 1997.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30115 Filed 11–14–97; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: December 1–2, 1997: 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alexandra King, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Comprehensive Partnerships for Mathematics and Science Achievement proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30116 Filed 11–14–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Subcommittee on Nuclear Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and Time: December 3, 1997, 8 a.m.–5 p.m.

Place: Rm. 360, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, Physics Division, Room 1015, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1894.

Purpose of Meeting: To provide advice and recommendations concerning experiments involving international collaborations.

Agenda: Discussion of Nuclear Physics collaborations.

Dated: November 10, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30114 Filed 11–14–97; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request; Review of An Information Collection Federal Contractor Welfare to Work Success Stories

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of an information collection. The questions are intended to elicit from Federal contractors descriptions of successes in hiring workers directly off the welfare rolls. The submissions are entirely voluntary.

We estimate that 10,000 responses will be submitted annually, and that each response will take an average of two hours to prepare. The annual estimated burden is 20,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or e-mail to *jmfarron@opm.gov.*

DATES: Comments on this proposal should be received on or before December 17, 1997.

ADDRESSES: Send or deliver comments to:

Donna Beecher, Director, Office of Contracting and Administrative Services, U.S. Office of Personnel Management, 1900 E St., NW, Room 1340, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION, CONTACT: Kent Bailey, Publications Services Division, (202) 606–2260.

U.S. Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–30039 Filed 11–14–97; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38313; File No. SR–Amex–97–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Institutional Index Options

November 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase both position and exercise limits for its Institutional Index Options ("XII"). In addition, the Exchange proposes to increase the firm facilitation exemption for XII. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to increase XII position and exercise limits to 100,000 contracts on the same side of the market. Existing Exchange rules provide for XII position and exercise [3] limits of 45,000 contracts of the same side of the market of which no more than 25,000 contracts may be used for purposes of realizing any differential in price between XII and the securities underlying XII. In July of 1992, the Exchange increased position and exercise limits for XII to their current levels.[4] Since that time, options on XII continue to be traded primarily by institutional and professional investors and member firms, each often needing to hedge large asset quantities. However, institutional use of XII options to hedge large asset quantities has been limited as a result of existing XII position limits causing XII users to use other less restrictive products and over-the-counter products in order to meet their hedging needs.

[3] The exercise limit for XII, which is equal to XII's position limit, is determined under Exchange Rules 908C and 905.

[4] See Exchange Act Release No. 31330 (Oct. 16, 1992) 57 FR 30516 (Oct. 23, 1992).

The Exchange believes that increasing the position and exercise limits for XII options to 100,000 contracts will allow increased institutional use of XII and allow it to be more competitive with alternative products. In addition, an increase in XII position and exercise limits will benefit not only the beneficiaries of assets managed by various institutions, but also the marketplace in general through increased liquidity.

Increasing the XII firm facilitation exemption from 100,000 contracts to 400,000 contracts in necessary to accommodate the needs of investors as well as market participants and should not substantially increase concerns regarding the potential for manipulation and other trading abuses.[5] In addition, the proposed ruled change will further enhance the potential depth and liquidity of the options market as well as the underlying markets by providing Exchange members greater flexibility in executing large customer orders, while the Exchange's existing safeguards applicable to current facilitation exemptions continue to serve to minimize any potential disruption or manipulation concerns.

These proposed changes are intended to result in little or no attendant risk to the marketplace as XII is composed of seventy-five of the most widely-held stocks in institutional portfolios that have a market value of more than one hundred million in investment funds.[6] Thus the component issues are extremely liquid and the overall index less volatile than individual stocks. Lastly, XII options are European-style and therefore can only be exercised at expiration.

To enhance its ability to monitor unhedged positions, the Amex will add a reporting requirement (new Commentary .03 to Exchange Rule 904C) for accounts having a position in excess of 45,000 a.m.-settled, European-style XII option contracts on the same-side of the market. Specifically, new Commentary .03 to Exchange Rule 904C states that if a member or member organization, other than an Exchange Specialist or Registered Options Trader, maintains a position in excess of 45,000 a.m.-settled, European-style XII option contracts on the same-side of the market on behalf of its own account or for the account of a customer, it must report information as to whether those positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Exchange. In addition, to address the Commission's concerns with respect to the ability of the Exchange to monitor customer accounts that maintain large unhedged positions, the Amex will add a margin and clearing firm requirement. Pursuant to new Commentary .04 to Exchange Rule 904C, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged option position in excess of 45,000 contracts, the Exchange may impose additional margin upon the account maintaining such under-hedged position, or assess capital charges upon the clearing firm carrying the account to the extent of any margin deficiency resulting from the higher margin requirement.

[5] The Exchange notes that the XII firm facilitation exemption is in addition to the standard limit and other exemptions under Exchange rules, commentaries and policies.

[6] To qualify for inclusion in XII, stocks must be held by a minimum of 200 of the reporting institutions filing Section 23(f) reports and must have traded at least 7 million shares in each of the two preceding calendar quarters.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act [7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35-days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[7] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–44 and should be submitted by December 8, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30131 Filed 11–14–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39308; File No. SR–CBOE–97–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the "Terms and Conditions of an Order" for Purposes of the Exchange's Rules on Solicited Trades and Crossed Trades

November 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[8] 17 CFR 200.30–3(a)(12).

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 31, 1997, the Exchange submitted Amendment No. 1 to the Proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing solicited orders and "crossing" orders by adding to each rule an interpretation which will define and clarify the phrase "terms and conditions" as used in each rule. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to define and clarify the meaning of the phrases "terms and conditions" of an order as used in Exchange Rules 6.9 and 6.74. Pursuant to Rule 6.9, *Solicited Transactions*, a member or member organization representing an order respecting an option traded on the Exchange (an "original order"), including a spread, combination, or straddle order as defined in Rule 6.53 and a stock-option order as defined in Rule 1.1(ii), may solicit a member or member organization or a non-member customer or broker-dealer (the "solicited person") to transact in-person or by order (a "solicited order") with the original order.

Pursuant to Rule 6.74(b), a floor broker may effect a cross of a customer order and a facilitation order subject to satisfaction of certain conditions including disclosure on an order ticket for the public customer order which is subject to facilitation, all of the terms of such order, including any contingency involving, and all related transactions in, either options or underlying or related securities. A facilitation order is defined in Rule 6.53(m) as an order which is only to be executed in whole or in part in a cross transaction with an order for a public customer of the member organization and which is clearly designated as a facilitation order.

The rules relating to both facilitation "solicited" and "crossing" transactions are designed to ensure that all market participants have an equal opportunity to participate in trades, fostering the objective of open outcry in a competitive market. The proposed rule amendment defines what is meant by the phrase "terms and conditions" as used in these two rules: the volume; the price; any contingencies; and any components related to the order. Components are related stock, options, futures or any other instruments or interests. A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. Contingent orders include: Market-if-touched orders; market-on-close orders; stop (stop-loss) orders; and stop-limit orders.

The Exchange believes that the proposed Interpretations will enable those who solicit and those who wish to effect "facilitation" crosses to understand and abide by their disclosure obligations. In addition, the proposed change will aid in achieving uniformity with regard to trading crowd expectations, as well as to the type and amount of information disclosed on crossed and solicited orders.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–CBOE–97–40 and should be submitted by December 8, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Stephanie Mullins, Attorney, CBOE to David S. Sieradzki, Attorney, SEC dated October 31, 1997 ("Amendment No. 1"). Amendment No. 1 changes the item to be defined from the word "terms" to the phrase "terms and conditions." In addition, Amendment No. 1 makes several non-substantive changes that clarify the proposal.

[4] 15 U.S.C. 78f(b).

[5] 17 C.F.R. 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97–30054 Filed 11–14–97; 8:45 am]
BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company; Intercontinental Capital Funding Corp.

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated September 17, 1997, the United States Small Business Administration hereby revokes the license of Intercontinental Capital Funding Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5421 issued to Intercontinental Capital Funding Corporation on September 30, 1981 and said license is hereby declared null and void as of November 5, 1997.

United States Small Business Administration.

Dated: November 5, 1997.

Don A. Christensen,
Associate Administrator for Investment.
[FR Doc. 97–30087 Filed 11–14–97; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company; New England MESBIC, Inc.

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of New Hampshire, dated September 10, 1997, the United States Small Business Administration hereby revokes the license of New England MESBIC, Inc., a Massachusetts, to function as a small business investment company under the Small Business Investment Company License No. 01/01–5318 issued to New England MESBIC, Inc. on October 26, 1982 and said license is hereby declared null and void as of November 5, 1997.

United States Small Business Administration.

Dated: November 5, 1997.

Don A. Christensen,
Associate Administrator for Investment.
[FR Doc. 97–30088 Filed 11–14–97; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–5386]

Pan Pac Capital Corporation; Notice of License Surrender

Notice is hereby given that *Pan Pac Capital Corporation ("Pan Pac"), 121 East Industry Court, Deer Park, New York 11729*, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). *Pan Pac* was licensed by the Small Business Administration on *June 12, 1980.*

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 30, 1997, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 5, 1997.

Don A. Christensen,
Associate Administrator for Investment.
[FR Doc. 97–30089 Filed 11–14–97; 8:45 am]
BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Southeastern States Regional Fairness Board Public Hearing

The Southeastern States Regional Fairness Board will hold a public meeting on Monday, November 17, 1997, at 1:00 p.m., at the Charlotte Chamber of Commerce, 330 S. Tryon Street, Charlotte, North Carolina 28202, to inform the small business community of the existence of a regulatory enforcement oversight process and of SBA's desire to collect information regarding businesses' experience with regulatory enforcement actions, and to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please contact Gary P. Peele at (312) 353–0880.

Dated: November 7, 1997.

Eugene Carlson,
Associate Administrator, Office of Communications and Public Liaison.
[FR Doc. 97–30090 Filed 11–14–97; 8:45 am]
BILLING CODE 8025–01–P–M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice No. 2824]

Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. § 2778).

EFFECTIVE DATE: As shown on each letter.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: October 30, 1997.

William J. Lowell,
Director, Office of Defense Trade Controls.

United States Department of State

Washington, D.C. 20520

October 21, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the export of 40 Solid Strap-on Boosters for integration into Mitsubishi's H–IIA launch Vehicle for use in the Japanese space program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though, unclassified, contains business information submitted to the Department of State by the applicant, publication of which cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–121–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 21, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the sale of five FPS–117 long-range radar systems to the Government of Romania.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–104–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 21, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of 651 LAV–25 turrets for end use by the Canadian Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–103–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 21, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with the United Kingdom.

The transaction described in the attached certification involves the transfer of hardware and software for the Defensive Aids Subsystem for the NIMROD 2000 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–93–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 24, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance relating to the development of the AIM–9X Sidewinder Missile for end use by the U.S. Navy and U.S. Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though, unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–89–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 24, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed Technical Assistance Agreement with Russia.

The transaction in the attached certification is for the preliminary design and development for equipment to be used in a solid rocket motor destruction facility.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–68–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of technical data and services related to the development of the GP–1 secure radio network system for the United Kingdom Ministry of Defense.

The United States Government is prepared to export these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–123–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of maintenance training and software development for the Iceland Air Defense System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–122–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the export to Australia of eleven (11) Kaman SH–2G(NZ) helicopters, spare parts, support equipment, an operational flight trainer, and technical data for the Royal Australian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–120—97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction described in the attached notification involves the export to Japan of one Landing Craft Air Cushion (LCAC) and related equipment, and spare parts for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though, unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–119–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the export to New Zealand of four (4) Kaman SH–2G(NZ) helicopters and technical data for the Royal New Zealand Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–118–97
The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of 312 21TP04 turbine engines for end use by the United Kingdom Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclose: Transmittal No. DTC–117–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

October 29, 1997.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles and defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of 70 Pandur 8x8 Light Armored Vehicles to Kuwait.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC–114–97

The Honorable Newt Gingrich, Speaker of the House of Representatives.

[FR Doc. 97–30164 Filed 11–14–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues.

DATES: The meeting will be held on December 5, 1997, from 9:00 a.m. to 1:00 p.m. Arrange for presentations by November 24, 1997.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carolina E. Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9690; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on December 5, 1997, from 9:00 a.m. to 1:00 p.m. at the Helicopter Association International, 1635 Prince Street, Alexandria, VA 22314. The agenda will include:

1. Opening remarks;
2. Committee Administration;
3. Status reports from the Maintenance Recordkeeping Requirements Working Group;
4. Status reports from the Clarification of Major/Minor Repairs or Alterations Working Group;
5. A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 24, 1997, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on November 12, 1997.

Benjamin J. Burton,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–30143 Filed 11–14–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33498]

Grand Trunk Western Railroad Incorporated; Trackage Rights Exemption; Elgin, Joliet & Eastern Railway Company

Elgin, Joliet & Eastern Railway Company (EJ&E) has agreed to grant non-exclusive overhead trackage rights to Grand Trunk Western Railroad Incorporated (GTW) over 60.1 miles of EJ&E's main line track between the EJ&E/GTW connection at Griffith, IN (milepost 36.1 on EJ&E's Eastern Subdivision), and a point 7,500 feet west of the west switch of Eola Yard, at Eola, IL (milepost 24.0 on EJ&E's Western Subdivision).

The transaction is scheduled to be consummated on or after November 10, 1997, the effective date of the exemption.

The purpose of the trackage rights is to enable GTW to improve service and transit times between Griffith and Eola.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33498, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

Decided: November 10, 1997.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30129 Filed 11–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 3, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0042.
Form Number: ATF F 7 (5310.12).
Type of Review: Extension.
Title: Application for License under 18 U.S.C. Chapter 44, Firearms.
Description: This form is used by the public when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license. The form is also used when responsible persons are added to an existing license in item 20.
Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents: 10,000.
Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 12,500 hours.

OMB Number: 1512–0045.
Form Number: ATF F 5130.10, Brewer's Notice.
Recordkeeping Requirements ID Number: ATF REC 5130/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Filed by Brewers.
Description: The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. ATF Form 5130.10 is similar to a permit and when approved is a brewer's authorization to operate. Letterhead applications and notices are necessary to identify activities that brewers engage in to insure that proposed operations will not jeopardize Federal revenues.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,400.
Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 9,100 hours.

OMB Number: 1512–0130.
Form Number: ATF F 4473 (5300.9) Part II.
Type of Review: Extension.
Title: Firearms Transaction Record, Part II Non-Over-The-Counter.
Description: The form is used to determine the eligibility of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is also used in law enforcement investigations to trace firearms or to confirm criminal activity.
Respondents: Individuals or households, Business of other for-profit.
Estimated Number of Recordkeepers: 20,900.
Estimated Burden Hours Per Recordkeeper: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 9,057 hours.

OMB Number: 1512–0510.
Form Number: None.
Type of Review: Extension.
Title: Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing and Evaluation.
Description: This information collection is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3 hours.

OMB Number: 1512–0541.
Form Number: ATF F 3312.1.
Type of Review: Extension.
Title: Crime Gun Information Referral/Request Form.
Description: This form is used by Federal, State and local law enforcement to request that ATF trace firearms used, or suspected to have been used, in crimes. The Form is also used by the national law enforcement community to refer information regarding stolen firearms, obliterated serial numbers, or suspect guns to the ATF National Tracing Center.
Respondents: State, Local or Tribal Government, Federal Government.
Estimated Number of Respondents: 23,000.
Estimated Burden Hours Per Respondents: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 12,166 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–30052 Filed 11–14–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 3, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0019.
Form Number: FMS–1133.
Type of Review: Extension.
Title: Claim Against the United States for the Proceeds of a Government Check.
Description: If a payee claims non-receipt of a Treasury check, the FMS–1133 Claim Form and a copy of the negotiated check are sent to the payee. If the payee wishes to claim forgery he or she answers questions on the form, and signs and returns it to the Financial Processing Division. Claims Analysts review the claim to determine final action on the case.
Respondents: Individuals or households.
Estimated Number of Respondents: 98,500.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Other (as needed).
Estimated Total Reporting Burden: 18,695 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–30053 Filed 11–14–97; 8:45 am]

BILLING CODE 4810–35–P

Corrections

Federal Register
Vol. 62, No. 221
Monday, November 17, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-6-010]

Trunkline Gas Company; Notice of Compliance Filing

Correction

In notice document 97–29546 appearing on page 60498, in the issue of Monday, November 10, 1997, make the following correction:

On page 60498, in the second column, the Docket No. should be as set forth above.

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-402]

Certain Integrated Circuits and Products Containing Same; Notice of Investigation

Correction

In notice document 97–29269 beginning on page 59880, in the issue of Wednesday, November 5, 1997, make the following correction:

On page 59881, in the first column, in the fourth line "September 29, 1997" should read "October 29, 1997".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–23]

Amendment of Class E Airspace; Flagstaff, AZ

Correction

In rule document 97–28103, beginning on page 55157, in the issue of Thursday, October 23, 1997, make the following correction:

§71.1 [Corrected]

On page 55158, in the third column, under **AWP AZ E5 Flagstaff, AZ [Revised]**, in the 11th line from the bottom of the paragraph, "111°2533W" should read "111°3533W".

BILLING CODE 1505-01-D

federal register

Monday
November 17, 1997

Part II

Department of Education

34 CFR Part 701
Office of Educational Research and Improvement (OERI) Conduct and Activities Evaluation Standards; Designation of Exemplary and Promising Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 701

RIN 1850–AA52

Standards for Conduct and Evaluation of Activities Carried out by the Office of Educational Research and Improvement (OERI)—Designation of Exemplary and Promising Programs

AGENCY: Department of Education.

ACTION: Final regulation.

SUMMARY: The Assistant Secretary for Educational Research and Improvement (OERI) is establishing final regulations pursuant to the "Educational Research, Development, Dissemination, and Improvement Act of 1994." The regulations are intended to provide quality assurance that programs designated by the Department of Education as either exemplary or promising have met criteria that will allow educators, professional organizations, and others to use these programs with confidence.

DATES: These regulations take effect December 17, 1997. However, affected parties do not have to comply with the information collection requirement in § 701.4 until the Department of Education publishes in the **Federal Register** notification of the compliance date and the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Stephen O'Brien, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 502B, Washington, D.C. Telephone: (202) 219–2141. Internet: (Steve_O'Brien@ed.gov). Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On March 31, 1994, President Clinton signed Public Law 103–227, which includes Title IX, the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Act restructured OERI and provided it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students.

The Act directed the Assistant Secretary to develop, in consultation with the National Educational Research Policy and Priorities Board (the Board), the highest standards of professional excellence necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the OERI. The legislation requires that the standards be developed in three phases.

In the first phase, standards were promulgated to establish the peer review process and evaluation criteria to be used for reviewing applications for grants and cooperative agreements and proposals for contracts. The Department published final regulations setting out these standards on September 14, 1995 (60 FR 47808). The regulations in this announcement address the second phase of development by establishing the criteria for panels to use in reviewing potentially exemplary and promising educational programs. The Assistant Secretary will later publish proposed regulations for phase three of the standards, which will govern how OERI evaluates performance of its recipients of grants, contracts, and cooperative agreements.

The OERI legislation requires that expert panels be established to review educational programs submitted by individuals or organizations. The legislation also provides that the Secretary may identify educational programs for the panels to review. The statute requires the panels to recommend to the Secretary those programs that should be designated as exemplary or promising and disseminated through the Department's National Education Dissemination System. The law requires that each panel consist of appropriately qualified experts and practitioners and requires the Secretary to develop standards that describe the procedures the panels will use in reviewing the educational programs. Section 941(a)(3) of the law broadly defines educational programs to include educational polices, research findings, practices, and products. Educational programs may range in size and complexity from an individual instructional program—such as an elementary school science program—to a comprehensive reform initiative involving multiple goals and participants. Programs at all levels of education—preschool, elementary, secondary, and postsecondary—are eligible for consideration.

In determining whether an educational program should be recommended as exemplary or promising, each panel is required by the Act to consider: (a) Whether, based on empirical data, the program is effective and should be designated as exemplary or (b) whether there is sufficient evidence to demonstrate that the program shows promise for improving student achievement and should be designated as promising. The Act expressly states that a panel shall not eliminate a program from consideration based on the lack of one type of supporting data such as test scores.

The evaluation process set forth in the final regulations will ensure that programs disseminated by the Department are high-quality, research-based programs that have provided evidence indicating they have improved teaching, learning, or both, or has demonstrated other worthy educational performance outcomes. The Department's dissemination system is designed to make information about these promising and exemplary programs available to the public as quickly as possible. The system will enable the Department to respond to all forms of requests for information and assistance, and to support the applications of research and best practice. The system will use electronic networking and the capabilities of:

—National Research Institutes;
—Educational Resources Information Center (ERIC);
—Regional Educational Laboratories;
—Department-supported dissemination and technical assistance providers;
—National Library of Education;
—Eisenhower Regional Consortia and Clearinghouse, and
—Other public and private nonprofit entities, including education associations and networks.

Until recently, the Department validated exemplary programs through its Program Effectiveness Panel (PEP) and disseminated them through the National Diffusion Network (NDN). Since this program no longer exists, with the adoption of these standards the Department will evaluate and disseminate promising educational programs in addition to exemplary programs. The Department will also work in partnership with constituency groups who have expertise in the specific topic areas represented by the expert panels to develop coordinated procedures to maximize their involvement in this work.

On June 3, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the

Federal Register (61 FR 27990–27993). These final regulations contain three major changes from the NPRM. These changes are fully explained in the "Analysis of Comments and Changes" elsewhere in this preamble. The changes pertain to the standing panel; the distinction between "promising" and "exemplary"; and the factors listed under the criteria expert panels will use to evaluate programs.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, seven parties submitted comments on the proposed regulations. This included comments from individual members of two pilot panels (math/science and gender equity) that were appointed by the Secretary to field test the expert panel process. In addition to the public comment, comments from the Board's Subcommittee on Standards are addressed as required by the legislation. The full Board approved the final regulations at a meeting on September 26, 1997. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Eligibility (§ 701.3)

Comments: One commenter asked for clarification on who is eligible to submit educational programs for designation as promising or exemplary. Specifically, this commenter asked whether federally-funded entities, such as the Regional Laboratories, will be required to go through this process; whether local agencies that receive Federal funding through states, such as under Title I of the Elementary and Secondary Education Act (ESEA), may submit programs on their own; whether sponsors need to be invited to submit or may submit on their own initiative; and whether for-profit entities may submit.

Discussion: The law provides that "individuals" or "organizations" may submit educational programs for review. Since the law is silent on the specific nature of the organizations, the Secretary believes that for-profit agencies would be eligible to submit programs for review. With respect to the OERI-funded Regional Educational Laboratories, the law provides that the Secretary may identify those programs for panel review. In addition, the Secretary believes that the Laboratories could submit one or more of their programs on their own initiative. The question of whether local agencies that receive Federal funding through a State or Federal entity, such as under Title I of the ESEA, can submit on their own or must go through their funding agency, will be addressed in administrative guidance.

Changes: None.

Content of Submissions (§ 701.4)

Comments: Three commenters made suggestions about this section. Two commenters believed that requiring funding and staffing information was burdensome and not germane to the designation of a program as promising or exemplary. One commenter believed that this section should require program sponsors to submit specific materials related to content and methods. Another commenter believed that this section should include the requirement that the program include evidence of sustainability of improvement with targeted student populations.

Discussion: The Secretary believes that funding and staffing information should be included to help determine whether an educational program should be recommended as either exemplary or promising. The Secretary agrees that sponsors should be required to submit information or materials specific to content and methods, as available and appropriate. The Secretary believes that the evidence of sustainability of student improvement should be evaluated by peer reviewers in accordance with § 701.22.

Changes: Section 701.4(b)(7) has been renumbered as § 701.4(b)(8) and a new § 701.4(b)(7) has been added to include a provision for specific materials relevant to content and methods.

Procedures for Submitting Educational Programs (New § 701.5)

Comments: One commenter believed that the regulations should contain more specificity about the procedure for submitting programs to the expert panels. This commenter requested specifics on who receives the submissions and whether they may be submitted at any time or only on specific dates.

Discussion: The Secretary agrees that the general submission procedures should be included in regulations. A sponsor seeking the exemplary or promising designation for its educational program may submit its program at any time for consideration to the Assistant Secretary, who will assign the submitted program to the appropriate panel for review. The individual expert panels will set appropriate timelines for program submissions. In addition, the Assistant Secretary will periodically establish and announce in the **Federal Register** specific topic areas of high priority. Sponsors of educational programs in these areas will be invited to submit them for consideration.

Changes: A new § 701.5 has been added to include general procedures for submitting educational programs for review by an expert panel.

Establishment of Panels (§ 701.10)

Comments: The Board's Subcommittee on Standards recommended a change to the expert panel system. The Subcommittee thought that the structure of having members of the expert panels drawn from a separate standing panel of educational experts was an unwieldy, overly-complicated structure. The Board recommended that the expert panels be formed separately from a standing panel, which would instead provide an administrative oversight and monitoring function for the expert panels.

Discussion: The Secretary agrees that the expert panel should be formed separately from a standing panel. The Secretary will determine the feasibility of establishing a separate standing panel for the oversight and monitoring functions referred to by the Board—functions which are administrative in nature and could also be performed by OERI staff. Elimination of a reference to a standing panel in the regulations would not alter the composition and function of the expert panels as outlined in the NPRM.

Changes: Section 701.10(a) has been removed, § 701.10(b) has been revised, § 701.11 has been removed, § 701.12(a) has been revised, and § 701.12 has also been renumbered as § 701.11.

Panel Membership (§§ 701.11 and 701.12)

Comments: One commenter observed that §§ 701.11 and 701.12 in the NPRM did not explicitly state that those serving on the panels would represent both the community of practice and that of research. One commenter believed that each panel should include one or more members with evaluation expertise in order to help evaluate evidence of effectiveness.

Discussion: The Secretary agrees with these comments.

Changes: A sentence has been added at the end of the renumbered § 701.11(a) (formerly § 701.12(a)) stating that the membership of the expert panels will represent both the community of practice and the community of research. Additionally, §§ 701.11(b)(3) and

701.11(b)(4) have been renumbered as §§ 701.11(b)(4) and 701.11(b)(5), respectively; and a new provision for § 701.11(b)(3) has been added to include the selection of at least one individual with expertise in evaluating educational programs.

Difference Between Promising and Exemplary Programs (§ 701.21)

Comments: Five comments were received on the distinction between promising and exemplary programs. As proposed in § 701.21, the distinction was based upon the generalizability of the educational programs. Promising programs had to meet each of the criteria of educational effectiveness in § 701.22 (success, quality, educational significance, and usefulness to others) with respect to only one "context or population." Exemplary programs had to meet each of the criteria "with respect to multiple contexts or multiple populations."

Two commenters believed that the distinction should stay the way it was in the NPRM, although one of those suggested some clarifying language. However, three commenters questioned the distinction on the basis that it was too narrowly and artificially drawn and did not reflect the commonly understood meaning of the words "promising" and "exemplary." In this regard, one commenter believed that promising programs should not have to meet every criterion in § 701.22 at the same level as exemplary programs. Two commenters believed that promising programs should have to meet the criteria at the same level as exemplary, but that the evidence required of promising programs should be less stringent and that exemplary programs should be held to a higher standard of evidence.

Discussion: The Secretary agrees with those commenters who questioned the proposed distinction and advised OERI to give a more common sense meaning to the terms "promising" and "exemplary." The Secretary believes that the distinction between promising and exemplary programs specified in legislation is sufficient to cover these concerns. The Secretary relies upon the expert judgment of the expert panel reviewers in determining the nature and weight of evidence necessary to designate a program as either promising or exemplary, and in applying the criteria listed in § 701.22 in making this determination.

Changes: A revision has been made to the distinction between "promising" and "exemplary."

Criteria (§ 701.22)

Comments: Five commenters provided comments on this section and suggested revisions to either the wording of the criteria or to the content of the factors listed under each criterion or both. These comments included comments from one member of the math/science pilot panel and three members of the gender equity pilot panel. Although the math/science panel member did provide comments specific to the proposed criteria and factors, the consensus of this panel was that the expert panel process would be better served if each panel developed its own factors specific to the content or discipline or both under review by the individual panel. One commenter suggested that the word "replicability" would better capture the concept for the criterion entitled "usefulness to others." In addition, OERI's Board (The Subcommittee on Standards) thought that the regulations should be as simple as possible and should give the expert panels as much discretion as possible in evaluating programs submitted for review.

Discussion: In addition to the math/science and gender equity panels, the Secretary will establish pilot panels in technology and early reading in the next year. The Secretary has determined that until the work of all four pilot panels is concluded, the regulation should retain only the four criteria outlined in the NPRM in § 701.22 and allow each panel the flexibility to establish its own individual factors under each criterion that are specific to its content or discipline. The fact that the comments from the public suggested various changes to the factors underscores the desirability of this approach. While the final regulations will therefore no longer require the expert panels to apply the factors listed in the NPRM, the Secretary encourages each panel to look at these factors as suggested examples. The Secretary will review the factors developed by all of the panels to see if the criteria set forth in the final regulations need to be modified.

Changes: The factors specified under each of the four criteria have been eliminated and the criterion, "usefulness to others" has been changed to "replicability."

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 701

Education, Educational research, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: November 11, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

The Secretary amends chapter VII of title 34 of the Code of Federal Regulations by adding a new part 701 to read as follows:

PART 701—STANDARDS FOR CONDUCT AND EVALUATION OF ACTIVITIES CARRIED OUT BY THE OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT (OERI)—DESIGNATION OF EXEMPLARY AND PROMISING PROGRAMS

Subpart A—General

Sec.

701.1 What is the purpose of these standards?
701.2 What definitions apply?
701.3 Who is eligible to submit an educational program for review?
701.4 What must a program sponsor submit for review?
701.5 What are the procedures for submitting an educational program for review by an expert panel?

Subpart B—Selection of Panel Members

701.10 How are panels established?
701.11 How is the membership of expert panels determined?

Subpart C—The Expert Panel Review Process

701.20 How does an expert panel evaluate programs?
701.21 What is the difference between an exemplary and a promising program?
701.22 What criteria are used to evaluate programs for exemplary or promising designation?

Authority: 20 U.S.C. 6011(i), unless otherwise noted.

Subpart A—General

§ 701.1 What is the purpose of these standards?

(a) The standards in this part implement section 941(d) of the Educational Research, Development, Dissemination, and Improvement Act of 1994.

(b) These standards are intended to provide quality assurance that educational programs designated by the U.S. Department of Education as either exemplary or promising have met criteria that will allow educators, professional organizations, and others to use these programs with confidence.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.2 What definitions apply?

The following definitions apply to this part:

Assistant Secretary means the Assistant Secretary for the Office of Educational Research and Improvement.

Educational programs mean educational policies, research findings, practices, and products.

Program sponsor means a party submitting an educational program for designation by the Secretary as either promising or exemplary.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.3 Who is eligible to submit an educational program for review?

Any public or private agency, organization or institution, or an individual may submit an educational program for review.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.4 What must a program sponsor submit for review?

(a) To have an educational program considered for designation as exemplary or promising, a sponsor must submit to the Secretary a description of the program, program materials, and a discussion of the program that is responsive to the criteria in § 701.22.

(b) Information submitted must include, to the extent relevant to the particular program,—

(1) A program abstract of 250 words or less;

(2) A description of the salient features of the program;

(3) A description of the program's philosophy and history;

(4) Site information, including demographics;

(5) A description of evaluation results;

(6) Funding and staffing information;

(7) Specific materials relevant to content and methods, as appropriate; and

(8) Organization name, address, telephone and fax numbers, e-mail address (if available), and contact person.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.5 What are the procedures for submitting an educational program for review by an expert panel?

(a) An applicant seeking the exemplary or promising designation for its educational program may submit its program at any time for consideration to the Assistant Secretary, who will assign the submitted program to the appropriate expert panel for review.

(b) The Assistant Secretary will periodically establish and announce in the **Federal Register** specific topic areas of high priority. Sponsors of educational programs in these areas will be invited to submit their programs for consideration.

(c) The individual expert panels will set appropriate timelines for reviewing program submissions.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

Subpart B—Selection of Panel Members

§ 701.10 How are panels established?

The Assistant Secretary selects individuals, based on their areas of expertise, to serve on expert panels in specific topic areas for the purpose of reviewing and evaluating educational programs and recommending, to the Secretary, those programs that should be designated as exemplary or promising.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.11 How is the membership of expert panels determined?

(a) For the review of each program or group of programs, the Assistant Secretary establishes an expert panel. The membership of the expert panels will represent both the community of practice and the community of research.

(b) In establishing the membership of each expert panel, the Assistant Secretary—

(1) Selects individuals who have in-depth knowledge of the subject area or content of the program or group of programs to be evaluated;

(2) Selects at least one current teacher, principal, or other school-based or community-based professional;

(3) Selects at least one individual with expertise in evaluating educational programs;

(4) Ensures that no more than one-third of the panel members are employees of the Federal Government; and

(5) Ensures that each panel member does not have a conflict of interest, as determined in accordance with paragraph (c) of this section, with respect to any educational program the panel member is asked to review.

(c) Panel members are considered employees of the U.S. Department for the purposes of conflicts of interest analysis and are subject to the provisions of 18 U.S.C. 208, 5 CFR 2635.502, and the Department's policies used to implement those provisions.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

Subpart C—The Expert Panel Review Process

§ 701.20 How does an expert panel evaluate programs?

(a) Each panel member shall—

(1) Independently review each program based on the criteria in § 701.22;

(2) Provide written comments based on an analysis of the strengths and weaknesses of the program according to the criteria;

(3) Participate in site visits or other verification activities, if appropriate; and

(4) Participate in a meeting of the expert panel, if appropriate, to discuss the reviews.

(b) A panel may not eliminate an educational program from consideration based solely on the fact that the program does not have one specific type of supporting data, such as test scores.

(c) Each expert panel shall make a recommendation to the Secretary as to

whether the program is exemplary, promising, or neither.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.21 What is the difference between an exemplary and a promising program?

(a) In determining whether an educational program should be recommended as exemplary or promising, the panel shall consider—

(1) Whether, based on empirical data, the program is effective and should be designated as exemplary; or

(2) Whether there is sufficient evidence to demonstrate that the program shows promise for improving student achievement and should be designated as promising.

(b) The Secretary relies upon the judgment and expertise of peer reviewers, as established in § 701.11, to determine the nature and extent of evidence required to distinguish between promising and exemplary programs and to apply the four criteria established in § 701.22, and their own individual factors under each criterion in making this determination.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

§ 701.22 What criteria are used to evaluate programs for exemplary or promising designation?

The Secretary establishes the following evaluation criteria for expert panels to use in determining whether an educational program should be recommended as exemplary, promising, or neither:

(a) Evidence of success.
(b) Quality of the program.
(c) Educational significance.
(d) Replicability.

(Authority: 20 U.S.C. 6011(i)(2)(B)(iii) and (E), 6041(d))

[FR Doc. 97–30051 Filed 11–14–97; 8:45 am]
BILLING CODE 4000–01–P

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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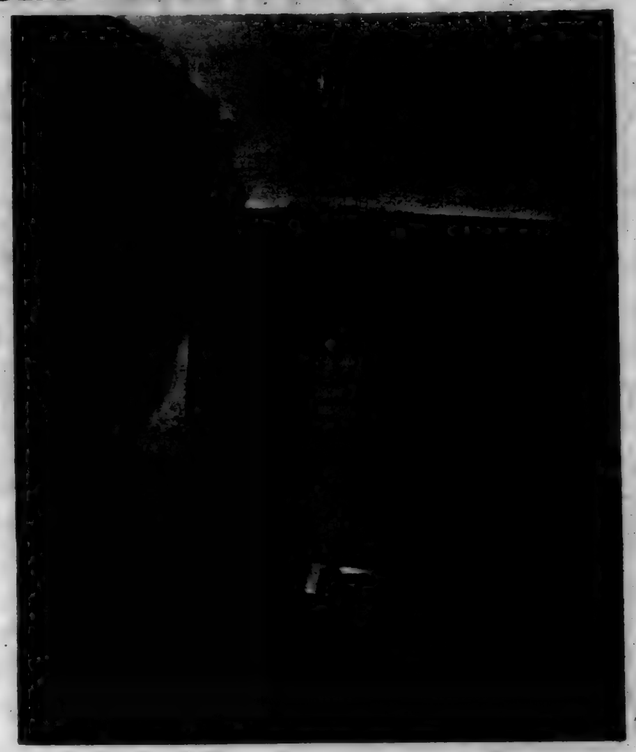
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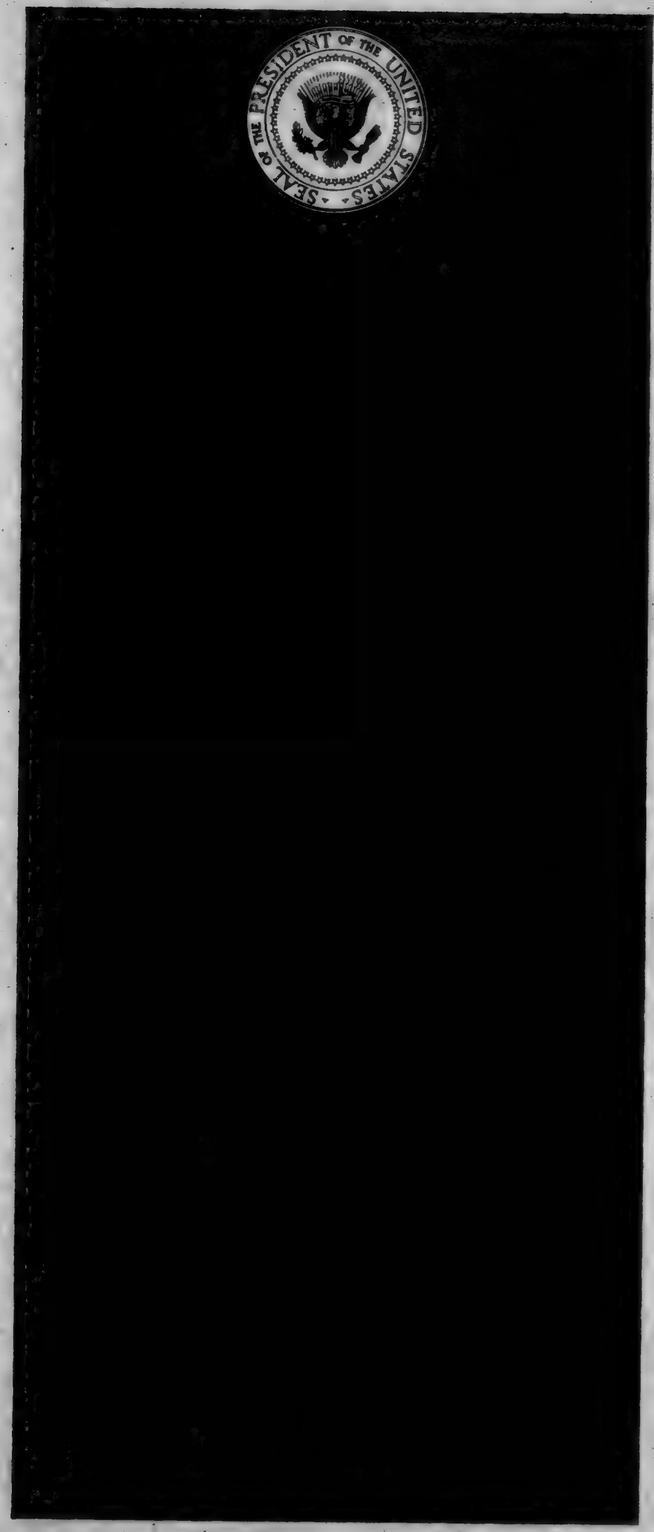
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–115–1]

Change in Disease Status of Belgium Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Belgium to the list of countries where bovine spongiform encephalopathy (BSE) exists because the disease has been detected in a cow in that country. The effect of this action is to prohibit or restrict the importation of ruminants which have been in Belgium and certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Belgium. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: Interim rule effective October 31, 1997. Consideration will be given only to comments received on or before January 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–115–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–115–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 92, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in countries in which BSE exists, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from countries in which BSE exists are imported.

Sections 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in countries in which BSE exists. These countries are listed in § 94.18 of the regulations. Furthermore, § 92.404(a)(3) states that the Animal and Plant Health Inspection Service may deny the importation of ruminants from countries where a communicable disease such as BSE exists.

Belgium's Ministry of Agriculture has reported a case of BSE in Belgium. BSE was confirmed by histopathological examination according to standardized procedures for the diagnosis of BSE. Belgium's Ministry of Agriculture confirmed that BSE was in a cow born in Belgium. The exposure of this animal to the BSE agent could only have occurred in Belgium. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding Belgium to the list of countries where BSE is known to exist. Thus, we are prohibiting or restricting the importation into the United States of ruminants which have been in Belgium, and certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Belgium.

We are making this action effective retroactively to October 31, 1997, as that was the day on which the case of BSE was reported by Belgium's Ministry of Agriculture. This effective date is necessary to ensure that the prohibitions and restrictions established by this rule apply to ruminants, as well as fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants that have been shipped to the United States from Belgium on or after October 31, 1997.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of BSE into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective on October 31, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action adds Belgium to the list of countries where BSE exists. We are

taking this action based on reports we have received from Belgium's Ministry of Agriculture, which confirmed that a case of BSE has occurred in Belgium.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule will have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to October 31, 1997; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.18 [Amended]

2. In § 94.18, paragraph (a) is amended by adding the word "Belgium," immediately before "France,".

Done in Washington, DC, this 12th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30230 Filed 11–17–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–284–AD; Amendment 39–10208; AD 97–24–01]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This action requires repetitive inspections to detect migration or damage of the bushings of the main landing gear (MLG) trailing arm, and replacement of any damaged or displaced bushing. This amendment is prompted by reports indicating that damagedor displaced bushings have been found on several MLG trailing arms of Dornier Model 328–100 series airplanes. The actions specified in this AD are intended to prevent failure of the bushings of the MLG trailing arm, which could result in collapse of the MLG during landing.

DATES: Effective December 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that fatigue damaged or displaced bushings have been found on several main landing gear (MLG) trailing arms. This condition, if not corrected, could result in collapse of the MLG during landing.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–32–019, dated September 17, 1997, which describes procedures for repetitive visual inspections to detect damage or migration of the bushings of the MLG trailing arm, and replacement of any damaged or displaced bushing. The LBA advises that it considers this alert service bulletin to be mandatory, and that it is in the process of issuing a German airworthiness directive to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between This AD and the Related Service Bulletin

Operators should note that, unlike the procedures described in Dornier Alert Service Bulletin ASB–328–32–019, dated September 17, 1997, this AD does not permit further flight if damage or migration of the bushings is found. The FAA has determined that, because of the safety implications and consequences associated with such damage, any bushing that is found to be damaged or displaced must be replaced prior to further flight.

Interim Action

This AD is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–284–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–01 DORNIER: Amendment 39–10208. Docket 97–NM–284–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bushings of the main landing gear (MLG) trailing arm, which could result in collapse of the MLG during landing, accomplish the following:

(a) For airplanes that have accumulated 3,000 total flight hours or more as of the effective date of this AD: Within 7 days after the effective date of this AD, conduct an external visual inspection to detect damage or migration of the bushings of each MLG trailing arm, in accordance with Section 2.B(1) of Dornier Alert Service Bulletin ASB–328–32–019, dated September 17, 1997.

(b) For airplanes that have accumulated less than 3,000 total flight hours as of the effective date of this AD: Prior to accumulation of 3,000 total flight hours, or within 300 flight hours after the effective date of this AD, whichever occurs later, conduct a detailed visual inspection to detect damage of the bushings of each MLG trailing arm, in accordance with Section 2.B(2) of Dornier Alert Service Bulletin ASB–328–32–019, dated September 17, 1997.

(c) If no damage or migration is detected during the inspection required by paragraph (a) or (b) of this AD within 300 flight hours after the inspection, and thereafter at intervals not to exceed 300 flight hours, conduct a detailed visual inspection to detect damage of the bushings of each MLG trailing arm, in accordance with Section 2.B(2) of Dornier Alert Service Bulletin ASB–328–32–019, dated September 17, 1997.

(d) If any damage or migration is detected during any inspection required by paragraph (a), (b), or (c) of this AD, prior to further flight, replace any affected bushing in accordance with Section 2.B(2) of Dornier Alert Service Bulletin ASB–328–32–019, dated September 17, 1997. Thereafter, except as provided by paragraph (e) of this AD, continue to inspect the bushings in accordance with paragraph (c) of this AD.

(e) For airplanes on which all bushings of both MLG trailing arms have been replaced in accordance with Dornier Alert Service Bulletin ASB–328–32–019, dated September

17, 1997: Within 3,000 flight hours after replacement of the bushings, and thereafter at intervals not to exceed 300 flight hours, inspect the new bushings in accordance with paragraph (c) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspection and replacement shall be done in accordance with Dornier Alert Service Bulletin ASB–328–32–019, dated September 17, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 3, 1997.

Issued in Renton, Washington, on November 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30103 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–285–AD; Amendment 39–10209; AD 97–24–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11, –2A12, and –2B16 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11, –2A12, and –2B16 series airplanes. This action requires repetitive inspections to detect cracks of a certain bulkhead web of the fuselage at certain locations, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct cracking in the pressure bulkhead at frame station (FS) 409.00, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage.

DATES: Effective December 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–285–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11, –2A12, and –2B16 series airplanes. TCA advises that the structural configuration of these airplanes at frame station (FS) 409.00 is similar to that of Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) series airplanes, which was shown to have a pressurization problem caused by fatigue cracking in the underfloor pressure bulkhead of the fuselage. TCA has received several reports of cracking at this same location on Bombardier Model CL–600–1A11, –2A12, and –2B16 series airplanes. This condition, if not corrected, could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage.

Other Relevant Rules

The FAA previously issued AD 97–14–11, amendment 39–10082 (62 FR 38206, July 17, 1997), which requires repetitive inspections to detect cracks of a certain bulkhead web of the fuselage at certain locations, and repair, if necessary. That AD applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) series airplanes.

Explanation of Relevant Service Information

The manufacturer has issued Canadair Challenger Service Bulletin 601–0501, dated September 12, 1997 [for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A/–3R) series airplanes]; Service Bulletin 604–53–007, dated September 30, 1997 [for Model CL–600–2B16 (CL–604) series airplanes]; and Service Bulletin 600–0679, dated September 12, 1997 [for Model CL–600–1A11 (CL–600) series airplanes]. These service bulletins describe procedures for repetitive detailed visual inspections to detect fatigue cracking of the underfloor pressure bulkhead at FS 409.60, and repair, if necessary. TCA classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–97–16, dated September 25, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the inspections specified in the service bulletins described previously. In addition, this AD requires repair, if necessary, in accordance with a method approved by the FAA.

Operators should note that, while it is not the FAA's normal policy to allow flight with known cracks, this AD does permit further flight with cracking within certain limits. The results of a review, conducted by the manufacturer, revealed that cracking in the underfloor pressure bulkhead of the fuselage will not result in rapid decompression of the airplane. Therefore, according to the review, if the crack size limits are strictly observed and if repetitive inspections are performed at the required intervals, cracks that grow beyond the limits will be detected, and corrective action taken, before they can grow to a size that would create an unacceptable risk of structural failure. Transport Canada Aviation concurs with the findings of this review. In consideration of these findings and based on the FAA's criteria for flight with known cracking, the FAA has determined that further flight with cracking within certain limits in the center pressure bulkhead is permissible for an interim period.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 15 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–285–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–02 Bombardier, Inc.: Amendment 39–10209. Docket 97–NM–285–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1085 inclusive; Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3066 inclusive; Model CL–600–2B16 (CL–601–3A/–3R) series airplanes, serial numbers 5001 through 5194 inclusive; Model CL–600–2B16 (CL–604) series airplanes, serial numbers 5301 through 5352 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the underfloor pressure bulkhead of the fuselage, which could result in uncontrolled depressurization of the airplane and/or reduced structural integrity of the fuselage, accomplish the following:

(a) For Model CL–600–1A11 (CL–600) airplanes: Prior to the accumulation of 1,900 total landings, or within 100 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks at frame station (FS) 409 of the bulkhead web [part number (P/N) 600–32014–71/–95/–105], in accordance with Canadair Challenger Service

Bulletin 600–0679, dated September 12, 1997.

(1) If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 600 landings.

(2) If any crack is detected and if all three of the conditions specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD are met, within 600 landings or 12 months after the crack is detected, whichever occurs first, repair the cracking in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Until the repair is accomplished, repeat the detailed visual inspection at intervals not to exceed 100 landings.

(i) No more than one crack exists at each corner radius, as specified in the service bulletin; and

(ii) No crack extends under the angles having P/N 600–32014–13 and P/N 600–32014–15 on the aft side of the bulkhead web; and

(iii) No crack exists in angles having P/N 600–32014–13 and P/N 600–32014–15 on the aft side of the bulkhead web.

(3) If any cracking other than that identified in paragraph (a)(2) of this AD is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York ACO.

(b) For Model CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A/–3R), and CL–600–2B16 (CL–604) series airplanes: Prior to the accumulation of 1,100 total landings, or within 100 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks at FS 409 of the bulkhead web (P/N 600–32014–105/–137), in accordance with Canadair Challenger Service Bulletin 601–0501, dated September 12, 1997 [for Model CL–600–2A12 (CL–601) and CL–600–2B16 (CL–601–3A/–3R) series airplanes); or Canadair Challenger Service Bulletin 604–53–007, dated September 30, 1997 [for Model CL–600–2B16 (CL–604) series airplanes]; as applicable.

(1) If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 600 landings.

(2) If any crack is detected and if all three of the conditions specified in paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD are met, within 600 landings or 12 months after the crack is detected, whichever occurs first, repair the cracking in accordance with a method approved by the Manager, New York ACO. Until the repair is accomplished, repeat the detailed visual inspection at intervals not to exceed 100 landings.

(i) No more than one crack exists at each corner radius, as specified in the service bulletin; and

(ii) No crack extends under the angles having P/N 600–32014–113 and P/N 600–32014–115 on the aft side of the bulkhead web; and

(iii) No crack exists in angles having P/N 600–32014–113 and P/N 600–32014–115 on the aft side of the bulkhead web.

(3) If any cracking other than that identified in paragraph (b)(2) of this AD is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York ACO.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with Canadair Challenger Service Bulletin 600–0679, dated September 12, 1997; Canadair Challenger Service Bulletin 601–0501, dated September 12, 1997; or Canadair Challenger Service Bulletin 604–53–007, dated September 30, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–16, dated September 25, 1997.

(f) This amendment becomes effective on December 3, 1997.

Issued in Renton, Washington, on November 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30104 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–40–AD; Amendment 39–10162; AD 97–21–09]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company Model 250–C47B Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes existing airworthiness directive (AD) 96–24–09, applicable to Allison Engine Company Model 250–C47B turboshaft engines, that currently requires replacing the engine main electrical harness assembly with an improved assembly, disabling the overspeed solenoid, inspecting the engine control unit (ECU) internal PW10 voltage to determine electrical noise characteristics, and replacing units not considered serviceable. In addition, the existing AD requires adding a placard to the helicopter instrument panel notifying the pilot that the overspeed protection system is disabled and removes a placard which was required by priority letter AD 96–21–12; revises the Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 Rotorcraft Flight Manual (RFM); and requires maintenance actions to clear the ECU of faults prior to each flight. This amendment continues to require replacing the engine main electrical harness assembly with an improved assembly, but adds the requirements to install a new hydromechanical unit (HMU) and ECU, removing the placard notifying the pilot that the overspeed protection system is disabled, and revises the BHTC Model 407 RFM. This amendment is prompted by the development of overspeed protection system modifications to reactivate the overspeed solenoid in conjunction with raising the power turbine overspeed trip point and revising the overspeed system to default to a minimum fuel flow in the event of its activation. The actions specified by this AD are intended to prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

DATES: Effective December 3, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1997.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov".

Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P–40A, Indianapolis, IN 46206–0420; telephone (317) 230–2720, fax (317) 230–3381. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Bonnen, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7134, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 96–21–12, applicable to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters, which prohibited further flight. That action was prompted by reports of uncommanded inflight engine shutdowns on Allison Engine Company Model 250–C47B turboshaft engines installed in those helicopters. In each case, the harness failed and caused the electronic control unit (ECU) to go into a fail fixed fuel flow condition. Subsequent pilot action (reduction in collective), caused the engine to reach the overspeed trip point, with resultant default to zero fuel flow and engine shutdown. That condition, if not corrected, could result in uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter.

Following issuance of priority letter AD 96–21–12, the investigation revealed that the cause of the uncommanded inflight engine shutdowns was an ECU fault to a fail fixed fuel flow condition, and subsequent main rotor and power turbine overspeed limit exceedances coincident with pilot collective input. These overspeed conditions activated the analog overspeed trip, which resulted in a command to zero fuel flow and engine flameout. The ECU fault resulted from a manufacturing defect in the engine main electrical harness assembly.

Additionally, in a related incident involving another Allison Engine Company engine model, an ECU fault to fail fixed fuel flow was attributed to the electrical noise characteristics of the ECU internal PW10 voltage, as affected by certain ECU power modulator subcomponents. This same power modulator Part Number (P/N) was in use on the Allison Engine Company Model 250–C47B engine application. The noted ECU power modulator problem could have also led to the overspeed condition and uncommanded engine shutdown described above, and was therefore addressed in the following AD action.

On November 15, 1996, the FAA issued AD 96–24–09, Amendment 39–9834 (61 FR 59828, November 25, 1996), applicable to Allison Engine Company Model 250-C47B turboshaft engines, to require replacing the engine main electrical harness assembly with an improved assembly, disabling the overspeed solenoid (thereby deactivating the engine overspeed protection system), inspecting the ECU internal PW10 voltage to determine electrical noise characteristics, and replacing units not considered serviceable due to excessive electrical noise. In addition, AD 96–24–09 requires adding a helicopter instrument panel placard notifying the pilot that the overspeed protection system is disabled; removes the placard required by AD 96–21–12 which prohibited further flight; and revises the BHTC Model 407 Rotorcraft Flight Manual (RFM) to clarify emergency flight procedures and to require maintenance actions to clear Full Authority Digital Engine Control (FADEC) fault annunciations prior to each flight. That action was prompted by investigation into the causes of the inflight engine shutdowns.

The original decision to disconnect the overspeed protection system was arrived at by comparing the safety of operating with the system enabled to the safety of operating with the system disabled. By operating with the system enabled, there was a likely consequence of other FADEC failures leading to an overspeed trip and resulting in an engine shutdown as had happened previously. Disabling the overspeed protection system eliminated the possibility of inadvertent activation and engine shutdown, but introduced new risks associated with engine power turbine shaft failure or rotorcraft drive train failure leading to uncontained blade shedding and hazards to the aircraft. Based on service data for comparable applications, and the estimated length of time for a final fix to be designed and tested, the FAA considered operations with the overspeed protection disabled acceptable. The redesign of the system has taken longer than estimated, which now puts in question the original analysis concerning operations with the overspeed protection disabled. The FAA has determined that immediate action is necessary to prevent possible turbine shaft failure, or rotorcraft drive train failure, from leading to an uncontained blade shedding due to the lack of overspeed protection. For these reasons, the FAA has determined that implementation of the redesigned overspeed system must proceed without further delay.

Since the issuance of AD 96–24–09, Allison Engine Company has developed certain modifications that raise the power turbine overspeed trip point, and revise the overspeed system to default to a minimum fuel flow in the event of its activation. With these changes incorporated, the overspeed solenoid can be reactivated. Additionally, a capacitor was added to the ECU PW10 circuit thereby eliminating the problematic electrical noise characteristic.

The FAA has reviewed and approved the technical contents of: Allison Engine Company Alert Commercial Engine Bulletin (CEB) A–73–6015, Revision 1, dated July 30, 1997, and Revision 2, dated October 31, 1997, that describe procedures for installing a new hydromechanical unit (HMU) and ECU; Allison Engine Company Alert CEB–A–73–6010, dated October 15, 1996, that describes replacing the engine main electrical harness assembly with an improved assembly; and BHTC RFM BHT–407-FM–1, Revision 5, dated June 24, 1997, that adds new instructions for the revised overspeed system.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 96–24–09 to continue to require replacing the engine main electrical harness assembly with an improved assembly, and adds the requirements to install a new HMU and ECU, to remove the placard notifying the pilot that the overspeed protection system is disabled, and to revise the BHTC Model 407 RFM. Installation of the new HMU and ECU will reactivate the overspeed solenoid in conjunction with raising the power turbine overspeed trip point and revising the overspeed system to default to a minimum fuel flow in the event of its activation. These actions must be completed by January 31, 1998. This calendar end-date was determined based upon parts availability. The requirements of paragraph (c) of this AD have been coordinated with the Rotorcraft Directorate. The actions are required to be accomplished in accordance with the service information described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–40–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9834, (61 FR 59828, November 25, 1996), and by adding a new airworthiness directive, Amendment 39–10162, to read as follows:

97–21–09 Allison Engine Company: Amendment 39–10162. Docket 97–ANE–40–AD. Supersedes AD 96–24–09, Amendment 39–9834.

Applicability: Allison Engine Company Model 250-C47B turboshaft engines, installed on but not limited to Bell Helicopter Textron, A Division of Textron Canada Ltd. (BHTC) Model 407 helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded inflight engine shutdowns, which can result in autorotation, forced landing, and possible loss of the helicopter, accomplish the following:

(a) Prior to further flight, replace the engine main electrical harness assembly, Part Number (P/N) 23062796, with an improved assembly, P/N 23065805, in accordance with Allison Engine Company Alert Commercial Engine Bulletin (CEB) CEB–A–73–6010, dated October 15, 1996.

(b) Prior to January 31, 1998, install a new hydromechanical unit (HMU) and engine control unit (ECU) in accordance with Allison Engine Company Alert CEB–A–73–6015, Revision 1, dated July 30, 1997, or Revision 2, dated October 31, 1997.

(c) After completing the requirements of paragraph (b) of this AD, and then prior to further flight:

(1) Remove the "OVRSPD SYSTEM INOP" placard required by paragraph (d) of AD 96–24–09, and

(2) Revise the FAA-approved Rotorcraft Flight Manual (RFM) by removing the pages added by paragraph (f) of AD 96–24–09, and incorporate BHTC Flight Manual BHT–407–FM–1, Revision 5, dated June 24, 1997.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
Allison Engine Company Alert, CEB–A–73–6010	1–7	Original	Oct. 15, 1996.
Total Pages: 7			
Allison Engine Company Alert, CEB–A–73–6015	1–4	1	July 30, 1997.

Document No.	Pages	Revision	Date
Total Pages: 4			
Allison Engine Company Alert, CEB–A–73–6015	1–4	2	Oct. 31, 1997.
Total pages: 4			
BHTC Flight Manual BHT–407–FM–1	Cover	5	June 24, 1997.
	NP	3	July 30, 1996.
	A,B	5	June 24, 1997.
	C/D	5	June 24, 1997.
	1–3	5	June 24, 1997.
	1–4	4	Nov. 4, 1996.
	1–7, 1–8	5	June 24, 1997.
	1–13	4	Nov. 4, 1996.
	1–14	5	June 24, 1997.
	1–14A/14B	5	June 24, 1997.
	1–19/1–20	5	June 24, 1997.
	2–3	5	June 24, 1997.
	2–4	1	Mar. 8, 1996.
	2–7—2–10	5	June 24, 1997.
	2–13, 2–14	5	June 24, 1997.
	3–3—3–5	5	June 24, 1997.
	3–6	2	May 9, 1996.
	3–7, 3–8	5	June 24, 1997.
	3–15	5	June 24, 1997.
	3–16	2	May 9, 1996.
	3–17—3–22	5	June 24, 1997.
	4–5, 4–6	5	June 24, 1997.
	4–9	Original	Feb. 9, 1996.
	4–10—4–12	5	June 24, 1997.
Total pages: 40			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Engine Company, P.O. Box 420, Speed Code P–40A, Indianapolis, IN 46206–0420; telephone (317) 230–2720, fax (317) 230–3381. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 3, 1997.

Issued in Burlington, Massachusetts, on November 10, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–30201 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300559; FRL 5753–5]

RIN 2070–AB78

Fenarimol; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fenarimol in or on filberts. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on filberts. This regulation establishes a maximum permissible level for residues of fenarimol in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

DATES: This regulation is effective November 18, 1997. Objections and requests for hearings must be received by EPA on or before January 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300559], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300559], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300559]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 268, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9363; e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide fenarimol, in or on filberts at 0.02 part per million (ppm). This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL 5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fenarimol on Filberts and FFDCA Tolerances

The state of Oregon availed itself of the authority to declare a crisis exemption to use fenarimol for control of the Eastern filbert blight *Anisogramma anomala* in hazelnuts filberts. A. *Anomala* is a fungus with a long life cycle. A major infection center was discovered east of Portland, Oregon in 1986, and recent surveys have detected the disease scattered through the northern production areas of the Willamette Valley. Without controls the disease renders an orchard unproductive within 4 years of infection. Since Oregon produces 98% of the hazelnuts in the United States the entire U.S. production is at risk. EPA has authorized under FIFRA section 18 the use of fenarimol on filberts for control of the Eastern filbert blight in Oregon. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenarimol in or on filberts. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on filberts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fenarimol meets EPA's registration requirements for use on filberts or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fenarimol by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fenarimol, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup non-nursing infants < 1 year old was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of fenarimol and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fenarimol on filberts at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenarimol are discussed below.

1. *Acute toxicity.* The Agency determined that the NOEL of 13 mg/kg/day, based on hydronephrosis at the lowest effect level (LEL) of 35 mg/kg/day, from a developmental study in rats should be used to assess acute dietary risks from residues of fenarimol. This risk assessment will evaluate risk to females 13+ years old, the population subgroup of concern.

2. *Short - and intermediate - term toxicity.* The Agency determined that the NOEL of 13 mg/kg/day from the rat developmental study should be used to assess risks from short- and intermediate-term exposures to residues of fenarimol. At the LEL of 35 mg/kg/day, there was hydronephrosis.

3. *Chronic toxicity.* EPA has established the RfD for fenarimol at 0.065 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2–year rat feeding study with a NOEL of 6.5 mg/kg/day and an uncertainty factor of 100 based on fatty change in the liver at the LEL of 13 mg/kg/day.

4. *Carcinogenicity.* The Agency's Carcinogenicity Peer Review Committee (CPRC) has classified fenarimol as a Group E (non-carcinogenic in humans) chemical.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.421) for the residues of fenarimol (alpha-(2 chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol), in or on a variety of raw agricultural commodities at levels ranging from 0.003 ppm in milk to 0.1 ppm in apples, pears and pecans. Tolerances have also been established for residues of fenarimol and its metabolites (alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol, and 5-[2-chlorophenyl)-(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidine (calculated as fenarimol)) ranging from 1.0 ppm for cherries to 0.02 ppm for grapes. For this Section 18 only, the Agency determined that the residue of concern in filberts is parent fenarimol. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenarimol as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment used TMRC estimates. The resulting high-end exposure estimate of 0.01 mg/kg/day results in a dietary (food only) MOE of 1300 for females 13+ years. This MOE should be viewed as a conservative risk estimate. Refinement of the risk assessment using anticipated residue values and percent crop-treated data would result in a lower acute dietary risk estimate.

ii. *Chronic exposure and risk.* For the chronic dietary (food only) risk assessment, the Agency assumed that 100% of filberts and all other commodities having fenarimol tolerances will contain fenarimol residues and those residues would be at the tolerance level. These assumptions result in an over estimate of human dietary exposure. Thus, in making a safety determination for this tolerance, HED is taking into account this conservative exposure assessment. The existing fenarimol tolerances (published and pending, and including the necessary Section 18 tolerance) result in a TMRC that is equivalent to percentages of the RfD that range from 1% for the U.S. population to 3% for non-nursing infants < 1 year old.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, fenarimol is not expected to leach to groundwater. Information on its persistence is inconclusive. There is no information on the persistence/mobility of fenarimol metabolites/degradates. There are no established Maximum Contaminant Levels for residues of fenarimol in drinking water and no Health Advisory Levels for this active ingredient in drinking water have been issued.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause fenarimol to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with fenarimol in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Fenarimol is currently registered for use on the following residential non-food sites: ornamentals, turf and lawns. There are no indoor residential uses for fenarimol. Based on the nature of the outdoor residential uses, the EPA concludes that chronic residential exposure scenarios do not exist for fenarimol. Short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including fenarimol.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific

policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether fenarimol has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that fenarimol has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population subgroup of concern, females 13+ years, the Agency estimated an MOE value of 1300 for the acute aggregate dietary (food only) risk from exposures to fenarimol residues. Despite the potential for exposure to fenarimol in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed the Agency's level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to fenarimol from food will utilize 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenarimol in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenarimol residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Based on the registered uses of fenarimol short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including fenarimol.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenarimol, EPA considered data from developmental toxicity studies in the rat and rabbit and a 3-generation reproduction study in the rat and reproduction studies in mice and guinea pigs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor and not the additional ten-fold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

b. *Developmental toxicity studies—Rats.* The maternal (systemic) NOEL was 13 mg/kg/day, based on decreased weight gain at the LOEL of 35 mg/kg/day. The developmental (fetal) NOEL was 13 mg/kg/day based on hydronephrosis at the LOEL of 35 mg/kg/day. Rabbits: The maternal (systemic) NOEL was 35 mg/kg/day, the highest dose tested (HDT). The developmental (fetal) NOEL was 35 mg/kg/day (HDT).

c. *Reproductive toxicity study—Rats.* In a 3-generation rat reproduction study, the maternal (systemic) NOEL was 5.0 mg/kg/day, based on increased gestation time, and delayed onset of parturition at the LOEL of 17.5 mg/kg/day. The developmental (pup) NOEL was 5.0 mg/kg/day, based on decreased pup survival and hydronephrosis at the LOEL of 17.5 mg/kg/day. The reproductive NOEL was 2.5 mg/kg/day, based on anti-fertility effects in males, and dystocia in females at the LEL of 5.0 mg/kg/day.

d. *Pre- and post-natal sensitivity.* Based on the developmental toxicity studies discussed above, for fenarimol there does not appear to be a special sensitivity for pre-natal effects. However based on the developmental finding of hydronephrosis in the rat study, an acute dietary risk assessment was performed for females 13+ years of age.

Based on the reproductive toxicity studies discussed above and other reviewed data for fenarimol, there does not appear to be a special sensitivity for post-natal effects. The major reproductive findings in the rat (post-natal male infertility and dystocia and related effects in females) were concluded to be species-specific findings by the Agency. Reproduction studies in mice, rabbits, and guinea pigs did not demonstrate the reproductive concerns. Mechanistic data also substantiate the species-specific conclusion.

e. *Conclusion.* The EPA concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional

margin/factor is not needed to protect infants and children.

2. *Acute risk.* The acute dietary MOE (food only) was calculated to be 1300 for females 13+ years (accounts for both maternal and fetal exposure). These MOE calculations were based on the developmental NOEL in rats of 13 mg/kg/day. This risk assessment assumed 100% crop-treatment with tolerance level residues on all treated crops consumed, resulting in an over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years provides assurance that there is a reasonable certainty of no harm for females 13+ years. Despite the potential for exposure to fenarimol in drinking water, the Agency does not expect the aggregate exposure (food plus water) to exceed the Agency's level of concern for acute dietary exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to fenarimol from food will utilize a percentage of the RfD that ranges from 1% percent for children (1–6 yrs.), up to 3% percent for non-nursing infants <1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenarimol in drinking water EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to fenarimol residues.

4. *Short- or intermediate-term risk.* Based on the registered uses of fenarimol short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including fenarimol.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue of fenarimol in filberts has not been directly determined. Metabolism studies with fenarimol in apples and cherries indicate that the parent compound is the only significant residue. For the purpose of this tolerance, EPA will translate these data to filberts. For this tolerance only, EPA concludes that the residue of concern in filberts is parent fenarimol. There are no livestock feedstuffs derived from filberts. Thus, the livestock metabolism and magnitude of residues in meat, milk, poultry and eggs are not a concern for this section 18.

B. Analytical Enforcement Methodology

Analytical methodology exists for the enforcement of currently established tolerances for fenarimol.

C. Magnitude of Residues

Residues of fenarimol are not expected to exceed 0.02 ppm in/on filberts as a result of this section 18 use.

D. International Residue Limits

There are no Codex, Mexican or Canadian Maximum Residue Limits (MRL) for fenarimol in/on filberts. Thus, harmonization with Mexico and Canada are not an issue for this section 18.

VI. Conclusion

Therefore, the tolerance is established for residues of fenarimol in filberts at 0.02 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300559] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 30, 1997.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.421, by alphabetically adding "Filberts" to the table in paragraph (b) to read as follows:

§180.421 Fenarimol; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/Revocation Date
Filberts	0.02	12/31/98

* * * * *

[FR Doc. 97–30252 Filed 11–17–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 97

[ET Docket No. 93–62; FCC 97–303]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On September 12, 1997 (62 FR 47960), the Commission published final rules in the *Second Memorandum Opinion and Order*, which deals with the transition period for implementing new guidelines for human exposure to radiofrequency (RF) electromagnetic fields; and the criteria for determining whether amateur radio stations must perform routine environmental evaluations for human exposure to RF fields. The Commission is correcting the amendatory language and table to ensure that the amendments are properly incorporated in the 1998 revision of the Code of Federal Regulations.

EFFECTIVE DATE: October 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert F. Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 418–2464.

SUPPLEMENTARY INFORMATION:

Background

The Commission is correcting § 1.1307(b)(4) and § 97.13(c)(1) of the Commission's rules, 47 CFR 1.1307(b)(4) and 47 CFR 97.13(c)(1), as modified in *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Second Memorandum Opinion and Order*, published in **Federal Register** 62 FR 47960, September 12, 1997, and 62 FR 49557, September 22, 1997. The first rule deals with the transition period for implementing new guidelines for human exposure to radiofrequency (RF) electromagnetic fields. This rule, as published, omits language that was needed to clarify the Commission's policy on implementation of the new guidelines. The second rule deals with criteria for determining whether amateur radio stations must perform routine environmental evaluations for human exposure to RF fields.

Need for Correction

The rule, as published, contained misleading language and an entry was missing from a table that is necessary for

defining the criteria under which certain stations are subject to evaluation.

List of Subjects in 47 CFR Parts 1 and 97

Radio, Reporting and recordkeeping requirements.

Accordingly, 47 CFR parts 1 and 97 are corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303 and 309(j), unless otherwise noted, and Section 704 of the Telecommunications Act of 1996.

§ 1.1307 [Corrected]

2. Section 1.1307(b)(4) introductory text is corrected to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(4) *Transition Provisions.* Applications filed with the Commission prior to October 15, 1997 (or January 1, 1998, for the Amateur Radio Service only), for construction permits, licenses to transmit or renewals thereof, modifications in existing facilities or other authorizations or renewals thereof require the preparation of an Environmental Assessment if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation that are in excess of the requirements contained in paragraphs (b)(4)(i) through (b)(4)(iii) of this section. In accordance with § 1.1312, if no new application or Commission action is required for a licensee to construct a new facility or physically modify an existing facility, *e.g.*, geographic area licensees, and construction begins on or after October 15, 1997, the licensee will be required to prepare an Environmental Assessment if construction or modification of the facility would not comply with the provisions of paragraph (b)(1) of this section. These transition provisions do not apply to applications for equipment authorization or use for mobile, portable and unlicensed devices as specified in paragraph (b)(2) of this section.

* * * * *

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609, unless otherwise noted.

§ 97.13 [Corrected]

2. Section 97.13(c)(1) and the table contained therein are corrected to read as follows:

§ 97.13 Restrictions on station location.

* * * * *

(c) * * *

(1) The licensee must perform the routine RF environmental evaluation prescribed by § 1.1307(b) of this chapter, if the power of the licensee's station exceeds the limits given in the following table:

Wavelength band	Evaluation required if power[1] (watts) exceeds
MF	
160 m	500
HF	
80 m	500
75 m	500
40 m	500
30 m	425
20 m	225
17 m	125
15 m	100
12 m	75
10 m	50
VHF (all bands)	50
UHF	
70 cm	70
33 cm	150
23 cm	200
13 cm	250
SHF (all bands)	250
EHF (all bands)	250
Repeater stations (all bands).	*non-building-mounted antennas:* height above ground level to lowest point of antenna <10 m *and* power >500 W ERP *building-mounted antennas:* power >500 W ERP

[1] Power = PEP input to antenna except, for repeater stations only, power exclusion is based on ERP (effective radiated power).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30174 Filed 11–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 92–297; FCC 97–378]

Ka-Band Satellite Application and Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule with request for comments.

SUMMARY: With this *Report and Order*, the Commission adopts licensing qualification requirements and service rules for a new generation of fixed-satellite service ("FSS") systems in the Ka-band.[1] These systems have the potential to provide a wide variety of broadband interactive digital services in the United States and around the world including: voice, data, and video; videoconferencing; facsimile; computer access and telemedicine. The systems can provide direct-to-home services, potentially allowing customers to participate in activities from distance learning to interactive home shopping. The rules established here provide guidelines for the new Ka-band satellite systems to commence operation.

DATES: The adopted rule changes will become effective January 20, 1998, except § 25.145(g), which will become effective upon OMB approval. The Commission will publish a document announcing the effective date of § 25.145(g) following approval of the information collection request by OMB. Comments are requested on the information collection concerning Section 25.145(g) and may be filed on or before January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jennifer Gilsenan, International Bureau, Satellite Policy Branch, (202) 418–0757; Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418–0753. For additional information concerning the information collection contained in this Report and Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket No. 92–297; FCC 97–378, adopted October 9, 1997, and released October 15, 1997. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

[1] The term *Ka-band* generally refers to the space-to-earth (downlink) frequencies at 17.7–20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5–30.0 GHz, or the "28 GHz band." This *Report and Order* pertains only to U.S. commercial satellite systems in the Ka-band.

Paperwork Reduction Act

Section 25.143(g) contains an information collection which requires OMB approval. In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.* (PRA)), the Commission is planning to submit an information collection request to the Office of Management and Budget for review and approval and is soliciting comments on the information collection. The PRA requires the Commission to seek comment on new or modified information collections for a sixty day period. Therefore, the Commission is soliciting comment on the information collection described below. Comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval No.: 3060–XXXX.

Title: Section 25.145(g)—*Reporting Requirements.*

Form No.: N/A.

Type of Review: New.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 20.

Estimated Time Per Response: The Commission estimates all respondents will hire an attorney or legal assistant to complete the form. The time to retain these services is 2 hours per respondent.

Total Annual Burden: 40 hours.

Estimated Costs Per Respondent: $300. This includes the charges for hiring an attorney, legal assistant, or engineer at $150 an hour to complete the submissions.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission to insure that licensees are in compliance with the Commission's rules and policies and will assist the Commission in determining whether operations are in the public interest.

Summary of Report and Order

1. The Ka-band is allocated for fixed service, FSS, and mobile service.[2] In July 1995, the Commission adopted a *Third Notice of Proposed Rulemaking* proposing, among other things, a band segmentation plan that was designed to accommodate both terrestrial and satellite communication systems.[3] Specifically, we proposed discrete band segments for the operation of terrestrial Local Multipoint Distribution Service ("LMDS"), GSO FSS, NGSO FSS, and feeder links for certain "Big LEO" mobile-satellite service ("MSS") satellite systems. We also proposed to apply the existing rules for GSO FSS systems in part 25 of the Commission's rules[4] to GSO FSS systems that will use the 28 GHz band. We requested comment, however, on whether specific rules, such as financial qualification requirements, should be altered for Ka-band satellite systems and whether any additional rules should be created for either GSO FSS systems or NGSO FSS systems operating at Ka-band.

2. In July 1996, the Commission issued a *First Report and Order and Fourth Notice of Proposed Rulemaking* adopting, among other things, a final band plan for the Ka-band.[5] This plan was the culmination of months of discussions with interested parties and filings in the proceeding since the release of the *Third NPRM*. The band plan adopted provides a framework that accommodates all commercial proposed services in discrete band segments and provides the opportunity to offer innovative communications services to the public. The plan designates 1000 MHz of primary and co-primary uplink spectrum and 1600 MHz of primary and co-primary downlink spectrum to GSO FSS systems; 500 MHz of primary uplink and 500 MHz of primary downlink spectrum to NGSO FSS systems; and 1000 MHz of primary and co-primary spectrum to LMDS. The *Fourth NPRM* proposing an additional 300 MHz for LMDS at 31.0–31.3 GHz was also adopted.[6]

3. The provisions set forth in part 25 of the Commission's rules, in general, govern the licensing of the fixed-satellite service systems. This includes commercial FSS systems in the Ka-band. The rules impose fairly rigorous financial and technical requirements on commercial FSS applicants. In this *Report and Order*, we modify these rules to incorporate technical operations at the Ka-band. Further, the part 25 FSS rules were developed in an environment where we regularly receive more applications than we can accommodate. Here the GSO FSS licensees have agreed to an orbital assignment arrangement that will support them all, and we were able to accommodate one NGSO FSS system with room for future entry. Accordingly, as discussed below, we believe it is in the public interest to waive the financial qualification rule sections in processing this round of Ka-band applications in order to allow for maximum entry.

Financial Qualifications

4. Historically, the Commission has fashioned financial requirements for satellite services on the basis of entry opportunities in the particular service being licensed. In cases where we can accommodate all pending applications and future entry is possible, we have not looked to current financial ability as a prerequisite to a license grant. This is because the grant of an authorization to one applicant will not prevent another qualified applicant from advancing with a proposal for the same service.[7] We ensure that licensees timely build their systems by requiring them to meet specified implementation milestones. In contrast, where applications for satellites exceed the number of satellites

[2] *See* 47 CFR 2.106. The 29.5–30.0 GHz band is also allocated on a primary basis to the Mobile-Satellite Service (MSS); however, in accordance with the International Telecommunication Union (ITU) Radio Regulation S5.529, use of the 29.5–30.0 GHz band by the MSS in Region 2 is limited to satellite networks which are both in the FSS and MSS.

[3] *See* Rulemaking to Amend parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Notice of Proposed Rulemaking*, 11 FCC Rcd 53 (1995), 60 FR 43470 (August 23, 1995) (*Third NPRM*).

[4] *See* 47 CFR 25.114, 124.140, and 25.210.

[5] *See* In the Matter of Rulemaking to Amend parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *First Report and Order and Fourth Notice of Proposed Rulemaking*, 11 FCC Rcd 19005 (1996), 61 FR 39425 (July 29, 1996) (Fourth Notice), 61 FR 44177 (August 28, 1996) (Final Rule), (*28 GHz First Report and Order*). This decision is subject to petitions for reconsideration. The band plan is depicted graphically and discussed in more detail in ¶¶ 39–49, *infra*.

[6] *See 28 GHz First Report and Order* at ¶¶ 95–104.

[7] *See, e.g.*, Radiodetermination Satellite Service, 104 FCC 2d 650 (1986), 51 FR 18444 (May 20, 1986), as corrected, 51 FR 20975 (June 10, 1986) (Because all pending RDSS applicants could be accommodated and future entry was possible, the Commission required applicants to provide only a detailed business plan). *See generally* Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626/2483.5–2500 MHz Frequency Bands, *Report and Order*, at ¶ 28, 9 FCC Rcd 5936 (1994), 59 FR 53294 (October 21, 1994) (*Big LEO Report and Order*).

we can accommodate, we have adopted a standard that requires applicants to demonstrate evidence of internal assets or committed financing sufficient to cover construction, launch, and first year operating costs of its entire system.[8] This is based on our experience that under-financed applicants have significant difficulty in the capital markets in raising hundreds of millions of dollars needed to construct and launch a satellite system, even with a license in hand.[9] Requiring evidence of full financing therefore prevents a licensee from holding spectrum while it attempts to procure financing, to the detriment of qualified applicants that can immediately go forward with systems and provide service to the public. We require FSS operators to meet this strict standard because the number of applications we receive in the traditional C- and Ku-band FSS frequencies regularly exceeds the number we can authorize.[10]

5. When we proposed to apply the existing FSS financial requirement to 28 GHz FSS systems, the GSO applicants had not yet agreed to an orbital assignment arrangement that would accommodate them all. In light of their plan, we can grant all of the first round GSO FSS applications, with other "clear" orbit locations remaining available for additional GSO FSS satellites. Further, granting Teledesic's NGSO FSS system application does not preclude future Ka-band NGSO FSS systems. Thus, authorizing all proposed first-round systems does not preclude use of this band by other applicants for FSS systems. We therefore will waive the FSS financial requirement for first-round applicants, as reflected in their individual licenses. We intend to enforce system milestone schedules strictly to ensure that any licensees who are not able to proceed do not continue to hold valuable orbit and spectrum resources. Further, we emphasize that this waiver applies to this processing group only, and that the application of our financial requirements to any future Ka-band processing round will be addressed in the context of that processing round.

Technical Qualifications

6. Applicants for satellite systems must also meet certain technical qualification standards. The Ka-band offers several technical advantages that allow for the implementation of broadband, high capacity FSS applications that otherwise could not be provided in the C- or Ku-bands. For example, the shorter wavelengths in this higher frequency band support the use of transmit-receive earth station antennas significantly smaller than those now in use. They also support significantly smaller satellite spot beams that facilitate frequency reuse, and wider bandwidth and high data rate services.[11] However, operations at the Ka-band frequencies are also very susceptible to rain fade and other atmospheric attenuations.

7. Many commenters urge the Commission to confirm that the Commission's existing FSS technical requirements and policies apply to satellite systems in the Ka-band.[12] As indicated previously, we will, in general, apply existing FSS rules, including technical qualifications requirements, to commercial satellite systems in the Ka-band. In the following text, we discuss modifications or clarifications to several rules that we adopt to accommodate efficient and state-of-the art use of the Ka-band.

GSO Specific Requirements

8. The Commission's rules currently require that an applicant for a GSO FSS space station authorization demonstrate how the proposed space station complies with 2 degree orbital spacing requirements. 47 CFR 25.140. In the *Third NPRM*, we proposed to apply 2 degree spacing to the Ka-band and requested comment on this proposal. This proposal was supported by several commenters.[13] GE, in fact, suggested that the Commission explore the possibility of 1 degree spacing in the Ka-band.[14] NetSat28, in contrast, argued that the characteristics of this higher frequency band and the innovative technology proposed for this band support a different approach to orbital spacing, specifically, 8 degree spacing.[15] However, the orbit assignment plan submitted by the GSO applicants, including NetSat28, spaces their satellites at 2 degree intervals.

9. We believe it is in the public interest, as we establish the Ka-band satellite service, to continue our policy of maximizing the number of satellites that can be accommodated in orbit. If we were to move to GSO orbital arc spacing greater than 2 degrees at this time, we would not be able to accommodate all potential service providers in this first processing round. By submitting a plan using 2 degree spacing, the GSO satellite applicants suggest they can implement viable systems with these spacings. Further, there is nothing in the record to support a finding that one degree spacing, with its increased potential for interference, is feasible at this time. Consequently, we will apply the existing 2 degree spacing policy to U.S. licensed non-Government Ka-band orbital assignments.

10. To accommodate maximum entry while facilitating efficient use of in-orbit resources, we limit, in part 25, the number of orbit locations a qualified FSS applicant may be initially assigned.[16] Historically, this limitation pertained to the provision of domestic FSS in the United States, the objectives being to avoid prematurely assigning an excessive number of orbital locations to an existing licensee for expansion of its domestic system and to promote entry opportunity in the bands.[17] Many of the systems proposed in the Ka-band propose to serve geographic areas around the world. In addition, the applicants have also agreed to an arrangement that accommodates all proposed satellites. We also licensed thirteen different GSO FSS system providers in the band and expect that there will be a mix of competitors for services in the band. We believe it is in the public interest to allow these systems, especially those proposing to serve different geographic areas, to proceed as proposed at this point. Therefore, we will waive, for this processing round only, any rules that limit the number of orbit locations that may be assigned to any applicant.

11. We have long recognized the cost benefits in implementing several service bands on a single space platform. Consequently, as we do with C- and Ku-band satellites, we will permit Ka-band licensees to build hybrid satellites where they are assigned to corresponding C- and Ka-band, or Ku-band and Ka-band orbit locations, provided all other technical and service requirements for the particular band are met. Any licensee that wishes to consolidate co-located satellites into a hybrid satellite must file an application to modify its underlying licenses.

NGSO Specific Requirements

12. In the *Third NPRM*, we asked whether spectrum efficiency or service availability standards should be adopted for NGSO FSS systems in the Ka-band. Teledesic was the only party who filed timely comments regarding NGSO FSS service rule issues.

13. Teledesic suggests that the Commission consider adopting some minimum domestic and international geographic coverage requirements to ensure that NGSO FSS satellite systems, which are inherently global in nature, provide universal access throughout the U.S. and the world.[18] We agree that NGSO FSS systems are capable of fostering a seamless global communications network and we believe that it serves the public interest to adopt a coverage area requirement for these systems. Consequently, we are adopting the same coverage requirements for 28 GHz systems that we apply to "Big LEO" systems operating in the 1610–1626.5 / 2483.5–2500 MHz bands.[19] Specifically, we will require 28 GHz NGSO FSS systems to be capable of serving locations as far north as 70 degrees latitude and as far south as 55 degrees latitude for at least 75% of every 24-hour period. We will also require 28 GHz NGSO FSS systems to be capable of providing FSS on a continuous basis throughout the fifty states, Puerto Rico, and the U.S. Virgin Islands.

14. As always, we seek to foster a climate that maximizes competition and promotes multiple entry of systems. Resolution 118 (WRC–95) requests that the ITU–R study, among other things, the sharing between NGSO FSS networks in the Ka-band. ITU–R Working party-4A studies have identified, and the Commission recognizes, two sharing scenarios: (1) sharing between or among "homogeneous" NGSO FSS systems, and (2) sharing between or among "non-homogeneous" NGSO FSS systems. "Homogeneous" NGSO FSS systems are assumed to have orbits with approximately the same altitude and high inclination angle. Similar technical parameters are not assumed for "non-homogeneous" NGSO FSS systems. Under scenario (1), sharing between multiple "homogeneous" NGSO FSS systems is feasible by interleaving the orbital planes of different NGSO FSS constellations. It may also be possible to interleave satellites from different constellations within the same orbital plane. Because each constellation's satellites are separated spatially under scenario (1), there is no "in-line" interference between NGSO FSS systems, except near the polar regions. This particular sharing scenario requires minimum interaction between the different NGSO FSS systems. ITU–R studies assert that multiple "homogeneous" NGSO FSS systems can be accommodated using these methods. However, it is important to note that sharing between or among "homogeneous" systems imposes similar uniform design constraints on subsequent NGSO FSS systems implemented in the same frequency bands.[20]

15. A second sharing scenario exists between or among "non-homogeneous" NGSO FSS systems. Because of the inherently large number of orbital plane crossings, it is not possible to maintain spatial separation between satellites in multiple NGSO FSS constellations.[21] Consequently, other types of mitigation techniques (*e.g.*, exclusion zones, satellite diversity, or high gain antennas) would need to be employed by each NGSO FSS system. The Commission also recognizes that further division of the spectrum, which would result in a reduction of each system's capacity, is also a feasible alternative if sharing proves to be unacceptable to any particular NGSO FSS system.

16. We are not now in a position to determine exactly how many non-Government NGSO FSS systems, and in particular, how many "non-homogeneous" type systems, will be able to operate in the 18.8–19.3/28.6–29.1 GHz bands. Further, we note that many satellites undergo design changes during implementation that could facilitate sharing among systems. Additionally, second generation systems usually become more efficient, further facilitating the operation of multiple systems. Consequently, we will not now mandate any specific sharing principles or mitigation techniques to be used in coordination between or among non-Government NGSO FSS systems. However, we expect all non-Government NGSO FSS systems to be responsible for some portion of the burden-sharing. Specifically, we expect all NGSO FSS licensees to bear some portion of the technical and operational constraints necessary to accommodate multiple "non-homogeneous" NGSO FSS systems. In apportioning burden, it may be appropriate to consider factors such as whether a particular NGSO FSS satellite is already in-orbit and operational. If NGSO FSS non-Government systems are unable to share spectrum, another feasible alternative is to further divide the spectrum designated in the United States for non-Government NGSO FSS systems, between or among licensed operators. We will evaluate all applications for NGSO FSS systems on a case-by-case basis, revisiting the multiple entry issue, as necessary, as we gain more experience with NGSO FSS systems.

Implementing the Band Plan Domestically

17. The 28 GHz band plan designates domestic licensing priority for certain non-Government services or systems in specific band segments. We designated co-frequency sharing between services or systems only in band segments where the Commission and the parties concluded it is technically feasible. In the *28 GHz Band First Report and Order* we further designated domestic licensing priority for certain types of fixed-satellite services with respect to other types of fixed-satellite services in specific band segments. For example, in the 28.35–28.60 GHz band segments, GSO FSS systems have licensing priority over NGSO FSS systems, and in the 28.6–29.1 GHz segment, NGSO FSS systems have licensing priority over GSO FSS systems. This licensing priority between systems in the same service has a similar interpretation as a "secondary" service with respect to a "primary" service.[22] Accordingly, we will require any service provider proposing to operate in a band segment in which it does not have licensing priority, to operate on an unprotected non-interference basis to the priority service. To ensure non-interfering operations, we will require all secondary operators to submit to the

[8] *See* 47 CFR 25.140(b)–(e).

[9] *See, e.g.*, National Exchange Satellite, Inc., 7 FCC Rcd 1990 (Com. Car. Bur. 1992); Rainbow Satellite, Inc., Mimeo No. 2584 (Com.Car. Bur., released Feb. 14, 1985); United States Satellite Systems, Inc., Mimeo No. 2583 (Com.Car. Bur., released Feb. 14, 1985) (domestic satellite licenses declared null and void for failure to begin implementation as required by license). In addition, Cecstar Corporation, a start-up company licensed in the radiodetermination satellite service, declared bankruptcy nearly five years after its licenses were issued. It had not built any of its dedicated satellites.

[10] Licensing Space Stations in the Domestic Fixed-Satellite Service, FCC 85–395, CC Docket No. 85–135 (released August 29, 1985), 50 FR 36071 (September 5, 1985).

[11] *See, e.g.*, Comments of Hughes at 7.

[12] *See, e.g.*, Comments of GE at 20–21 and Hughes at 35–36.

[13] *See, e.g.*, Comments of Hughes at 35–36; GE Americom at 20.

[14] Comments of GE at 20.

[15] Reply Comments of NetSat28 at 2.

[16] *See* 47 CFR 25.140(f).

[17] *See* Licensing Space Stations in the Domestic Fixed-Satellite Service, 50 FR 36071 (September 5, 1985).

[18] Comments of Teledesic at 28.

[19] *See Big LEO Report and Order* at ¶ 24; 47 CFR 25.143(b)(2)(ii); (b)(2)(iii).

[20] Design constraints include limitations on the number of orbital planes, orbital plane inclination, orbit altitude, and earth station antenna patterns.

[21] "In-line" interference occurs when satellites from separate NGSO FSS systems operate in the region where each system's orbital planes cross.

[22] "Secondary" generally refers to a category of service with respect to other radio services. Stations of a secondary service shall not cause harmful interference to stations of primary or permitted services; cannot claim protection from harmful interference from stations of a primary or permitted service, but can claim protection from harmful interference from stations of the same or other secondary service(s) to which frequencies may be assigned at a later date. *See* 47 CFR 2.104(d); 47 CFR 2.105(c)(3). As a general matter, the Commission does not coordinate secondary operations with respect to primary or permitted services.

Commission a technical demonstration that it can operate on a non-harmful interference basis to the type of satellite system with licensing priority. This technical demonstration will be subject to public comment before we authorize any secondary operations in the bands. In addition, we will require secondary users to immediately cease operations upon notification of harmful interference into any service or system that has superior status or licensing priority in a particular band segment.

18. Further, all licensees must coordinate with the U.S. Government systems authorized in the 17.80–20.20 GHz band, in accordance with U.S. footnote 334 in the Table of Frequency Allocations. U.S. footnote 334 reads as follows: "In the band 17.80–20.20 GHz, Government space stations and associated earth stations in the fixed-satellite (space-to-Earth) service may be authorized on a primary basis. For a Government geo-stationary satellite network to operate on a primary basis, the space station shall be located outside the arc measured from East to West, 70° W to 120° W. Coordination between Government fixed-satellite systems and non-Government systems operating in accordance with the United States Table of Frequency Allocations is required."[23]

19. The 18.8–19.3 GHz band is designated for non-Government NGSO FSS use on a co-primary basis with the fixed service and with Government services. We require NGSO FSS systems to coordinate with any existing and future point-to-point fixed systems in the band.[24] We also designated NGSO FSS on a secondary priority basis in the 17.7–18.8 and 19.7–20.2 GHz band segments. As a secondary user, NGSO FSS operators shall not cause harmful interference to stations of a primary service, or higher priority FSS system, nor can they claim protection from harmful interference from stations of a primary service, or higher priority FSS system. NGSO FSS systems must also coordinate with the Government systems operating in the band 18.8–19.3 GHz in accordance with U.S. footnote 334.

[23] *See* 47 CFR 2.106 U.S. footnote 334.

[24] We note, however, that in a separate proceeding we have relocated a fixed service, the Digital Electronic Message Service ("DEMS") from the 18.82–18.92 and 19.16–19.26 GHz bands to the 24.25–24.45 and 25.05–25.25 GHz bands. *See* Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz band to the 24 GHz band and To Allocate Band For Fixed Service, 12 FCC Rcd 3471 (1997), 62 FR 24570 (May 6, 1997). This Order is subject to petitions for reconsideration.

Earth Station Licensing

20. We anticipate making changes to our existing part 25 requirements for earth stations in the C- and Ku-bands to take into account operations at Ka-band. In fact, four GSO satellite applicants have submitted a petition for rulemaking to the Commission.[25] The Petitioners request that the Commission institute a rulemaking proceeding to revise part 25 of the Commission's rules, 47 CFR § 25.101, in order to provide for the routine licensing of large numbers of small antenna earth stations operating in the 19.7–20.2/29.5–30.0 GHz bands for GSO FSS. Teledesic supports the Petition and further suggests the scope of the rulemaking be expanded to include the entire available Ka-band frequencies.[26]

Inter-Satellite Service

21. Many system proponents in the Ka-band propose to use inter-satellite service (ISS) frequencies to interconnect satellites within their respective networks.[27] These proposed bands include the 22.55–23.55 GHz/32.0–33.0 GHz/54.25–58.2 GHz and 59–64 GHz bands.

22. One licensee, Hughes, proposes to use the 22.55–23.55 GHz and 32.0–33.0 GHz bands for some of its inter-satellite links. These bands are shared on a co-equal basis with U.S. Government operations. In addition, one of the "Big LEO" systems is licensed to operate inter-satellite links in the 22.55–23.55 GHz band. Any 28 GHz systems licensed to operate inter-satellite links in these bands would be required to coordinate with U.S. Government systems through the Frequency Assignment Subcommittee (FAS) of the Inter-Governmental Radio Advisory Committee (IRAC) and with other non-Government licensees in the band. At this time, we defer action on any authorizations in the 22.55–23.55 and 32.0–33.0 GHz bands until we receive more information on the specific frequencies Hughes needs for its system and we have coordinated with the Government.

23. The Commission and the National Telecommunications and Information Administration (NTIA), which has primary jurisdiction over Government use of spectrum, have had discussions regarding the potential for interference that would be associated with non-Government GSO or NGSO FSS operations in the 54.25–58.2 GHz and 59–64 GHz bands. The 54.25–58.25 GHz band appears more promising for the inter-satellite service to support non-Government GSO FSS operations. We are also working with NTIA to develop a U.S. proposal to WRC–97 for an allocation in the 65–71 GHz band for inter-satellite service links for both GSO and NGSO FSS systems.[28] We are optimistic that we will obtain sufficient spectrum internationally to support Ka-band system inter-satellite link operations. Nevertheless, we did not delay issuing licenses pending the allocation of suitable spectrum for inter-satellite links. Once suitable spectrum is available, we will require licensees to apply for operating authority on specific operating frequencies. Further, because licensees will not be able to proceed beyond the initial phases of construction until the inter-satellite link issues are resolved, we did not impose any system implementation milestones until we grant authority to launch and operate individual systems using specific inter-satellite link spectrum. We will hold all licensees to the strict milestone schedule discussed above, once the respective inter-satellite frequencies are authorized. In the interim, all licensees are free to begin construction at their own risk. We recently waived the construction permit requirement for space stations. This decision, effective April 21, 1997, means that applicants no longer need Commission authorization in order to build their proposed satellites. Any construction prior to obtaining an operating license is, however, solely at the applicant's own risk and will not predispose the Commission to grant it launch and operating authority.[29]

Service Rules

24. In our *DISCO I Order*, we determined that all fixed-satellite operators in the C-band and Ku-band could elect to operate on a common carrier or non-common carrier basis.[30] We see no reason to treat satellite

[25] *See* Routine Licensing of Large Numbers of Small Antenna Earth Stations Operating in the Ka-Band, Petition for Rulemaking, RM–9005, submitted December 20, 1996, by: GE, Loral, Lockheed Martin and Hughes.

[26] *See* Comments of Teledesic at 3.

[27] *See* Applications of EchoStar, Ka-Star, Lockheed Martin, Hughes, Loral, Comm. Inc., and Teledesic.

[28] *See* "United States Proposals No. 209 and No. 210 for the Work of the Conference" (August 1997).

[29] *See* Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Report and Order*, 11 FCC Rcd 21581 (1996), 62 FR 5924 (February 14, 1997) (*Part 25 Streamlining*).

[30] *See* In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide international DBS Service, 11 FCC Rcd 2429, 2436 (1996), 61 FR 9946 (March 12, 1996) (*DISCO I Order*).

operators in the Ka-band any differently. The Commission traditionally has evaluated requests to operate on a non-common carrier basis using the analysis set forth in *National Association of Regulatory Utility Commissioners* v. *FCC*,[31] (*NARUC I*). Under *NARUC I*, we may regulate an entity as a private carrier unless: (1) there is or should be any legal compulsion to serve the public indifferently; or (2) there are reasons implicit in the nature of the service to expect that the entity will in fact hold itself out indifferently to all eligible users.

25. Several of the Ka-band FSS applicants propose to operate all services on a non-common carrier basis.[32] Regarding the first prong of *NARUC I*, we do not see any legal compulsion to require any space station licensee in the Ka-band to operate on a non-common carrier basis. We have already determined there is sufficient competitive capacity available in the C- and Ku-bands to assure the U.S. public ample access to fixed-satellite services.[33] In addition, we have licensed thirteen GSO FSS systems and one NGSO FSS system in the Ka-band which propose to offer a wide variety of broadband voice, data and video services to the U.S. domestic consumer.

26. Regarding the second prong of *NARUC I*, we find there is little likelihood that such Ka-band licensees will hold themselves out indifferently to serve the public. New Ka-band offerings can be tailored to provide a broad array of specialized communications services ranging from videoconferencing to telemedicine; and these services may be styled to accommodate highly individualized methods of operation and demands of potential customers. We believe permitting Ka-band licensees to offer services on a non-common carrier basis is in the public interest.

Implementation Milestones

27. We will require each GSO FSS licensee to begin construction of its first satellite within one year of grant, to begin construction of the remainder within two years of grant, to launch at least one satellite into each of its assigned orbit locations within five years of grant, and to launch the remainder of its satellites by the date required by the International Telecommunication Union to assure international recognition and protection of these satellites.[34] For NGSO FSS systems, we adopt the same implementation schedule as we did for the Big LEOs.[35] Specifically, we will require NGSO FSS licensees to begin construction of its first two satellites within one year of the unconditional grant of its authorization, and complete construction of those first two satellites within four years of that grant. Construction for the remaining authorized operating satellites in the constellation must begin within three years of the initial authorization, and the entire authorized system must be operational within six years.

Reporting Requirements

28. We will also follow the new part 25 rules for reporting requirements for FSS systems.[36] Specifically, a licensee will be required to file an annual report with the Commission describing: the status of satellite construction and anticipated launch dates, including any major problems or delays encountered; a listing of any non-scheduled transponder (GSO FSS) or satellite (NGSO FSS) outages for more than 30 minutes; and the cause(s) of such outages; and a detailed description of the utilization made of each transponder (GSO FSS) or satellite (NGSO FSS) on each of the in-orbit satellites.[37]

International Operations

29. The United States is under a treaty obligation, in connection with its membership in the ITU, to coordinate all U.S. authorized services internationally. The ITU's coordination procedures are intended to ensure that the operations of one country's satellites do not cause or receive harmful interference to or from the operations of another country's satellites. The procedure for effecting coordination of a satellite system is a three-step process consisting of (1) advance publication, where a country makes known its plans to implement a satellite system at particular frequencies and orbital parameters (*e.g.*, location), (2) coordination, where technical agreements are negotiated and reached among countries to ensure interference-free operations of the planned satellites, and (3) notification, where the frequency assignment is recorded in the ITU's Master International Frequency Register. Once these processes have been completed, a satellite system is entitled to international recognition and is protected against interference from all existing and future satellites.

30. We have advance published GSO and NGSO FSS systems and have initiated coordination with the ITU. We have also submitted notification information for a NGSO FSS system.[38] To facilitate these processes, we will continue to require licensees to provide us with all of the information required to complete the coordination and notification process.

31. The NTIA may authorize Government GSO FSS and NGSO FSS operations on a primary basis in the band 17.8–20.2 GHz in accordance with US footnote 334. Where international coordination is required for these Government systems, the NTIA will separately coordinate the Government GSO and NGSO operations in accordance with the appropriate ITU regulations.

32. Because the 28 GHz band is allocated and used worldwide for a variety of technically incompatible terrestrial and satellite services, we expect that international coordination of our 28 GHz band non-Government systems will be complex. Specifically, the 27.5–30.0/17.7–20.2 GHz bands are allocated domestically and internationally to the fixed service, which includes LMDS, and to the FSS, which includes both GSO and NGSO operations. MSS system feeder link operations may also be provided under FSS allocations. As we discussed previously in paragraph 6, we have determined the only way to address these conflicting allocations and proposed usage was to adopt a band plan that, in essence, divides the 27.5–30.0/17.7–20.2 GHz band into several band segments, each of which is to be used primarily for LMDS, GSO FSS, NGSO FSS, or MSS feeder link operations.[39] As explained below, we believe it is in the public interest to use this plan as the basis for coordinating U.S. licensed 28 GHz band satellite systems internationally. We outline herein the procedures we intend to

[31] National Ass'n of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976); 47 U.S.C. § 153(44).

[32] *But see* EchoStar Satellite Corporation Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, DA 97–969, (released May 9, 1997). EchoStar proposes to operate its system on a common carrier basis.

[33] *See* DISCO I Order at ¶ 40.

[34] ITU Regulations require that all satellites must be brought into use no later than six years from the date on which the Appendix 4 information for that satellite was filed. However, a request for a three-year extension of time may be granted. The Appendix 4 information for 28 GHz GSO systems was filed in November 1995. Therefore, all satellites we have authorized to operate in the 28 GHz spectrum must be launched by November 2004.

[35] *See Big LEO Report and Order* at ¶ 199.

[36] *See Part 25 Streamlining*, *supra*, n. 29.

[37] *See* 47 CFR § 25.210(j)(1)(2)(3).

[38] Because coordination procedures were not in place for NGSO FSS satellite systems at the time the Appendix 3 information was filed, it was possible for certain NGSO FSS and NGSO MSS feeder link systems to move from the advance publication (step 1) process to the notification (step 3) process.

[39] *See Report and Order*, ¶¶ 39–49.

follow for coordinating U.S.-licensed non-Government satellite systems with each other in other parts of the world. In addition, we outline the procedures we will generally follow when coordinating U.S.-licensed non-Government 28 GHz satellite systems with both satellite and terrestrial systems licensed by other countries. At the same time, we recognize that other countries are able to implement their systems in accordance with their domestic requirements and the International Radio Regulations.

33. Because we have licensed multiple non-Government 28 GHz satellite systems and several of these systems are designed to operate on a global basis, we will likely be faced with the responsibility of coordinating the international operations of two or more non-Government satellite systems with each other.[40] The record in this proceeding does not support a finding that sharing between ubiquitous non-Government GSO and NGSO FSS systems is technically feasible at this time without mitigation.[41] This was the impetus for adopting a band sharing plan at 28 GHz that designated separate band segments for primary GSO FSS, NGSO FSS and feeder link operations. Due to the potential coordination difficulties that may lead to delay of services, we believe it is in the public interest to require U.S. non-Government licensees to operate in accordance with our 28 GHz band plan throughout the world, with certain exceptions as described below. Without such a requirement, we believe we would jeopardize the successful operation of these systems outside of the United States.

34. In the Big LEO proceeding, where we also adopted service rules for U.S. global satellite systems, we did not require non-Government licensees to operate in accordance with the domestic band plan outside the United States.[42] This approach resulted in significant delay in the implementation of their systems, however. Eventually, the Big LEO licensees determined that in order for each system to operate on a global basis without coordination conflicts amongst themselves, the best way was to conform their international operations to the domestic band plan set out in the *Big LEO Report and Order*. Our experience in the Big LEO proceeding leads us to believe that it is in the public interest to adopt a policy now for coordination of these U.S. licensed global non-Government systems in the 28 GHz band to ensure that coordination can proceed and services can be provided to the public in a timely manner.[43]

35. While we envision coordinating U.S. licensed non-Government systems in accordance with the 28 GHz band segmentation plan throughout the world, we recognize that there will be some exceptions. For example, due to the need to accommodate non-U.S. satellite systems that had entered into the ITU advance publication, coordination and notification processes before the U.S. systems, the United States has negotiated agreements with other administrations to permit operation of specific satellite systems in certain geographic areas in frequency bands that are not entirely in conformance with the U.S. 28 GHz band plan. Accordingly, we will adhere to any coordination or consultation agreements that were initiated before the 28 GHz band plan was adopted in July 1996. In addition, these non-conforming arrangements could potentially impact how we decide to coordinate U.S. non-Government satellite systems in other portions of the 28 GHz band. For example, we may seek to make up for some of the spectrum "lost" to these systems in the agreement in other portions of the band. We anticipate that these deviations from our band plan will be the rare exception for the implementation of the U.S. band plan by U.S. non-Government satellite system licensees worldwide.

36. Last, the U.S. band plan does not distinguish between GSO and NGSO FSS systems as secondary users to LMDS in the 27.5 to 28.35 GHz uplink band. Rather, generic FSS is designated as the secondary service in the U.S. We envision only limited FSS uplink operations, such as gateway operations, will be able to operate on a non-interference basis to LMDS in the United States. In those cases where other countries use the 27.5–28.35 GHz band segment for FSS, we intend to provide U.S. non-Government GSO FSS systems with coordination priority over U.S. non-Government NGSO FSS systems in this band. This is because the U.S. band plan designates the corresponding downlink frequency band at 17.7–18.8 GHz on a priority basis to the GSO FSS, with NGSO FSS operations on a non-interference basis only to any service or system that has superior status or licensing priority. If the uplink frequencies are not treated in a similar manner, the downlink designation would be meaningless. We do not believe this to be the intended result of the band plan. We will therefore give priority to U.S. GSO systems vis-a-vis U.S. NGSO systems at 27.5–28.35 GHz.

37. Therefore, as the coordinating administration for these systems, we will require any U.S. non-Government satellite system operating inconsistently with the U.S. 28 GHz band plan—and, by definition, its coordinated parameters—to cease operations if it causes harmful interference to any U.S. non-Government system operating in conformance with the U.S. band plan for non-Government systems, or to any U.S. Government system operating in accordance with US footnote 334. (The non-Government band plan is not applicable for GSO and NGSO Government operations which are authorized on a primary basis across the 17.8–20.2 GHz band.)

38. In coordinating U.S.-licensed non-Government systems with systems of other Administrations, we will, as always, follow the applicable coordination procedures set out in the ITU Radio Regulations for the particular band segment being coordinated. For example, satellite system coordination may implicate ITU Radio Regulation No. S22.2 (2613) for instances where NGSO FSS systems and GSO FSS systems are proposed. This regulation applies in certain segments of the 28 GHz band and requires, in those bands, that NGSO FSS systems cease or reduce to a negligible level their operations whenever there is unacceptable interference caused to a GSO FSS system. Consequently, in coordinating and consulting U.S. non-Government FSS systems with other countries' FSS systems in bands where this provision applies, we expect that consultations or coordinations between administrations will result in operational or technical considerations which will prevent unacceptable interference to GSO FSS systems. In bands where there is a primary allocation to the fixed service and FSS, we will coordinate U.S. satellite system operations on an equal basis to the fixed stations, consistent with established ITU Radio Regulations and Recommendations.

[40] This does not include the coordination of earth stations accessing U.S.-licensed systems, since these earth stations belong to the administration where the earth station is located.

[41] However, satisfactory ways of co-frequency sharing by NGSO FSS and GSO FSS networks can be found where the burden is placed on either the GSO or NGSO network. Mitigation techniques to reduce interference can be evaluated through the coordination process.

[42] *See Big LEO Report and Order* at ¶ 231.

[43] *See ex parte* filing of Lockheed Martin filed (May 7, 1997) at 8, supporting this policy: "Now that the 28 GHz band plan has been adopted in the United States, the Commission staff is considering applying the same frequency plan, including specific licensing priorities (*i.e.*, "primary" and "secondary" designation), to the operation of U.S. licensed satellites abroad. Lockheed Martin supports the adoption of such measures."

39. The Commission can authorize operations of satellite systems in the United States only. Operation and use of these systems in geographic areas outside the United States requires appropriate authorizations from other countries in which the U.S. licensee wishes to operate earth stations. In order to ensure that Ka-band satellite service is truly global, we adopt limitations on Ka-band licensees' ability to enter into exclusive arrangements with other countries concerning communications to or from the United States similar to those in place for Big LEO systems.[44] An exclusive agreement may foreclose other FSS licensees from serving a foreign market, preventing that licensee from providing global service. Further, such an arrangement may be inconsistent with our band plan. We intend to construe the restrictions on exclusionary arrangements bearing in mind that spectrum coordination and availability in particular countries may limit the number of systems that can provide service to that country. Nevertheless, our intent will be to further the implementation and use of multiple satellite systems in other administrations.

Other Requirements

40. To discourage speculators and to prevent unjust enrichment of those who do not implement their proposed systems, we adopt a rule that prohibits any Ka-band licensee from selling a bare license for a profit. This provision is not intended to prevent the infusion of capital by either debt or equity financing. Nevertheless, any such transaction will be monitored to ensure that it does not constitute an evasion of the anti-trafficking provision.[45]

Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act, (RFA),[46] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *Third NPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA), concerning the *Third Report and Order*, conforms to the RFA.[47]

I. Need for and Objectives of the Third Report and Order

42. In this decision, the Commission, adopts licensing qualification rules and service rules for fixed-satellite service systems in the Ka-band. The purpose of this action is to help launch a new broadband satellite service well-suited to compete in the domestic and global marketplace. In order to ensure the rapid and successful implementation of new FSS systems in the Ka-band, the Commission has used the existing FSS system rules as a foundation and has modified these rules to the extent necessary to reflect the nature of operations at Ka-band. The decision promotes efficiency in licensing and use of the electromagnetic spectrum. In addition we expect that the licensing framework we have set out for the Ka-band will aid in the development of competitive and innovative satellite systems.

II. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

43. No comments were received specifically in response to the IRFA. However, in order to minimize any barriers for entry into this new satellite market for small entities, Commission staff spent months encouraging and working with all of the commercial GSO FSS applicants to reach agreement on an orbital assignment plan to accommodate all first-round applicants. As discussed in the *Third Report and Order*, the applicants did reach agreement regarding orbit locations. Therefore we are able to waive our financial qualification requirement and not look to current financial ability as a prerequisite to a license grant. By licensing all current commercial system applicants, we enable small entities and start-up companies the opportunity to compete in the capital intensive satellite industry.

III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

44. The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services "Not Elsewhere Classified." This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[48] According to the Census Bureau data, there were a total of 848 communications services in operation in 1992 that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $9,999 million or less and qualify as small entities.[49] The census report does not provide more precise data.

45. Describing and estimating the number of small entities these rules will impact is made difficult by a number of factors. First of all, information from the Satellite Industry Association and financial analysts who specialize in this market indicate there are few firms that could be traditionally thought of as small businesses. They point to the fact that this is a capital intensive industry that requires "significant partner funding and/or contract commitments prior to approaching commercial financing sources."[50] In addition, estimates of employment in the commercial satellite service industry, another measure of small business status, can vary widely.[51]

46. Space Stations (Geostationary). Commission records reveal that there are 37 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

47. Space Stations (Non-Geostationary). There are six Non-Geostationary Space Station licensees, of which only one system is operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

48. We have also recently authorized thirteen commercial GSO FSS satellite systems in the Ka-band and one

[44] *See* Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz frequency band, *Memorandum Opinion and Order*, 11 FCC Rcd 12861 (1996) at ¶¶ 54–55, 61 FR 9044 (March 12, 1996); 47 CFR 25.143(h) (prohibiting Big LEO licensees from entering into exclusive arrangements to serve particular countries).

[45] *See Big Leo Report and Order* at ¶ 203; 47 CFR § 25.143(h) (prohibits Big LEO licensees from selling a bare license for profit).

[46] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[47] *See* 5 U.S.C. § 604.

[48] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

[49] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D; SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[50] *See* "Financing the Final Frontier: Funding Commercial Space Activities" Bear Stearns, Global Space & Satellite Finance Report.

[51] For example, American Mobile Satellite Corp is reported to have 45 employees by the Satellite Industry Association; 317 employees by Satellite Industry Analyst "BZW."

commercial NGSO FSS system to construct, launch, and operate in the Ka-band, conditioned on compliance with the licensing and service rules we adopt in this *Third Report and Order*. Therefore there are no small businesses currently providing these types of broadband interactive services in the Ka-band.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

49. The Commission's existing rules in part 25 on FSS operations contain reporting requirements for FSS systems. In this *Third Report and Order*, we adopt no new reporting requirements for FSS operations in the Ka-band and state that we will follow the new part 25 rules for reporting requirements for FSS systems.[52] These requirements are specifically stated in paragraph 60 of the *Third Report and Order*. It is likely that the entities filing the reports will require no professional skills for the preparation of such requests.

V. Steps Taken To Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

50. As part of our licensing qualifications standard for the FSS, the Commission has in the past applied rigorous financial qualification standards when the authorization of one applicant will not prevent another qualified applicant from going forward with a proposal in the same service. In the *Third NPRM* we proposed to apply the existing FSS rules to the Ka-band, including this strict financial standard. Several of the experienced and well financed satellite service providers such as Hughes Communications, GE Americom and Loral supported this proposal as a way to get service to the public in an efficient manner.

51. In order to minimize any barriers for entry into this new satellite market for small entities, Commission staff spent months encouraging and working with all of the commercial GSO FSS applicants to reach agreement on an orbital assignment plan to accommodate all first-round applicants. As discussed in the *Third Report and Order*, the applicants did reach agreement regarding orbit locations. Therefore we are able to waive our financial qualification requirement and not look to current financial ability as a prerequisite to a license grant. By licensing all current commercial system applicants, we enable small entities and start-up companies the opportunity to compete in the capital intensive satellite industry.

[52] *See Part 25 Streamlining*, n. 29, *supra*.

VI. Report to Congress

52. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Third Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the **Federal Register**.

Ordering Clauses

53. Accordingly, *It is ordered* that part 25 of the Commission's rules are amended as set forth below and will become effective January 20, 1998, with the exception of § 25.145(g), which will become effective upon OMB approval. This action is taken pursuant to Sections 4 and 303 (r) of the Communications Act of 1934, as amended 47 U.S.C. §§ 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. § 721(c).

List of Subjects in 47 CFR 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

PART—25 SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.145 is added to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.

(a) Except as provided in § 25.210(b), in general all rules contained in this part apply to Fixed-Satellite Service in the 20/30 GHz bands.

(b) *System License.* Applicants authorized to construct and launch a system of technically identical non-geostationary satellite orbit satellites will be awarded a single "blanket" license covering a specified number of space stations to operate in a specified number of orbital planes.

(c) In addition to providing the information specified in § 25.114, each non-geostationary satellite orbit applicant shall demonstrate the following:

(1) That the proposed system be capable of providing fixed-satellite services to all locations as far north as 70 deg. latitude and as far south as 55 deg. latitude for at least 75% of every 24-hour period; and

(2) That the proposed system is capable of providing fixed-satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, U.S.

(d) *Considerations involving transfer or assignment applications.* (1) "Trafficking" in bare licenses issued pursuant to paragraph (b) of this section is prohibited, except with respect to licenses obtained through a competitive bidding procedure.

(2) The Commission will review a proposed transaction to determine if the circumstances indicate trafficking in licenses whenever applications (except those involving *pro forma* assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities licensed pursuant to paragraph (b) of this section. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that no trafficking has occurred.

(3) If a proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests, any showing requested under paragraph (d)(2) of this section shall include an additional exhibit which:

(i) Discloses complete details as to the sale of facilities or merger of interests;

(ii) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interest; and

(iii) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(e) *Prohibition of certain agreements.* No license shall be granted to any applicant for a space station in the fixed-satellite service operating in the 20/30 GHz band if that applicant, or any persons or companies controlling or controlled by the applicant, shall acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possession, to construct or operate space segment or earth stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons or companies controlling or controlled by the Licensee are parties.

(f) *Implementation milestone schedule.* Each GSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first satellite within one year of grant, to begin construction of the remainder within two years of grant, to launch at least one satellite into each of its assigned orbit locations within five years of grant, and to launch the remainder of its satellites by the date required by the International Telecommunications Union to assure international recognition and protection of those satellites. Each NGSO FSS licensee in the 20/30 GHz band will be required to begin construction of its first two satellites within one year of the unconditional grant of its authorization, and complete construction of those first two satellites within four years of that grant. Construction of the remaining authorized operating satellites in the constellation must begin within three years of the initial authorization, and the entire authorized system must be operational within six years.

(g) *Reporting Requirements.* All licensees in the 20/30 GHz band shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center, 9200 Farm House Lane, Columbia, MD 21046 containing the following information:

(1) Status of space station construction and anticipated launch date, including any major problems or delay encountered;

(2) A listing of any non-scheduled space station outages for more than thirty minutes and the cause(s) of such outages; and

(3) Identification of any space station(s) not available for service or otherwise not performing to specifications, the cause(s) of these difficulties, and the date any space station was taken out of service or the malfunction identified.

3. Section 25.210 is amended by redesignating paragraphs (c) through (j) as paragraphs (e) through (l); redesignating paragraph (b) as paragraph (c); and adding new paragraphs (b) and (d) to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(b) All space stations in the Fixed-Satellite Service in the 20/30 GHz band shall use either orthogonal linear or orthogonal circular polarization. Those space stations utilizing orthogonal linear polarization shall also comply with paragraph (a) of this section.

* * * * *

(d) All space stations in the Fixed Satellite Service in the 20/30 GHz band shall employ state-of-the-art full frequency reuse either through the use of orthogonal polarizations within the same beam and/or through the use of spatially independent beams.

* * * * *

4. Section 25.204(g) is added to read as follows:

§ 25.204 Power limits.

* * * * *

(g) All earth stations in the Fixed Satellite Service in the 20/30 GHz band shall employ uplink adaptive power control or other methods of fade compensation such that the earth station transmissions shall be conducted at the power level required to meet the desired link performance while reducing the level of mutual interference between networks.

[FR Doc. 97–30205 Filed 11–17–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 092297C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska Modification of a Closure; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to a modification of a closure.

SUMMARY: This document contains a correction to a cross reference incorrectly stated in a closure notification (I.D. 092297C), which was published September 29, 1997.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1997, NMFS published a notification in the **Federal Register** that opened directed fishing for Pacific cod, by vessels catching Pacific cod for processing by the offshore component, in the Central Regulatory Area of the Gulf of Alaska (GOA) effective on October 1, 1997, A.l.t. This action was necessary to fully utilize the total allowable catch (TAC) of Pacific cod in the GOA Central Regulatory Area.

Need for Correction

This action corrects an erroneous cross reference that gives the authority that establishes the inshore/offshore apportionments (applicable through December 31, 1998) of Pacific cod in all GOA regulatory areas.

Correction of Publication

Accordingly, the publication on September 29, 1997, of the modification of a closure (I.D. 092297C), which was the subject of FR Doc. 97–25777, is corrected as follows:

On page 50888, in the third column, the second paragraph, the first sentence, the cross reference "679.20(d)(1)(iii)(A)" is corrected to read "679.20(a)(6)(iii)."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30256 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 222
Tuesday, November 18, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–16]

Proposed Modification to the Atlantic High Offshore Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Atlantic High Offshore Airspace Area. The southeast boundary of the Atlantic High Offshore Airspace Area would be extended to coincide with the boundary of the San Juan Enroute Domestic Airspace Area. This proposal would facilitate the use of domestic air traffic control (ATC) procedures within that airspace, and thereby expedite the flow of air traffic and enhance the utilization of that airspace.

DATES: Comments must be received on or before January 2, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 97–ASO–16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Air traffic activity in the Bahamas and Caribbean airspace area continues to increase as the number of ground based navigational aids continues to decrease. Consequently, a project to implement a non-Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Area Navigation (RNAV) route system to supplement the current airway system is warranted. Extending the southeast boundary of the Atlantic High Offshore Airspace Area to coincide with the San Juan Enroute Domestic Airspace Area would support the development of a more efficient route system in the Bahamas and Caribbean area.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Atlantic High Offshore Airspace Area. The Atlantic High Offshore Airspace Area would be extended southeast to coincide with the boundary of the San Juan Enroute Domestic Airspace Area.

The Atlantic High Offshore Airspace Area is designated as Class A airspace, and the San Juan Enroute Domestic Airspace Area is designated as Class E airspace; domestic ATC standards apply in these areas. At present, a gap of approximately 80 Nautical Miles (NM) exists between the boundaries of the Atlantic High Offshore Airspace Area and the San Juan Enroute Domestic Airspace Area. The airspace within this gap is part of the San Juan Oceanic Control Area/Flight Information Region (CTA/FIR). International Civil Aviation Organization (ICAO) ATC standards apply within the San Juan Oceanic CTA/FIR. Consequently, air traffic controllers must apply two different sets of ATC standards to aircraft transitioning from the Atlantic High Offshore Airspace Area to the San Juan Enroute Domestic Airspace Area, or vice-versa, (i.e., flight operations on the routes between south Florida and Puerto Rico).

Modifying the Atlantic High Offshore Airspace Area as proposed would permit air traffic controllers to apply domestic ATC standards along the entire length of the affected routes, thereby enhancing the flow of air traffic, increasing capacity, and allowing for more efficient use of the airspace.

Offshore Airspace Area designations are published in paragraph 2003 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document would be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of the document is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2003 Offshore Airspace Areas

* * * * *

Atlantic High [Revised]

That airspace extending upward from 18,000 feet MSL to and including FL 600 within the area bounded on the east from north to south by the Moncton FIR, New York Oceanic CTA/FIR, and the San Juan Oceanic CTA/FIR; to the point where the San Juan Oceanic CTA/FIR boundary turns southwest at lat. 21°06'00"N., long. 67°45'00" W., thence from that point southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°47'28" N., long. 67°09'37" W., thence counter-clockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°53'05" N., long. 67°47'43" W., thence from that point northwest via a straight line to intersect the point where the Santo Domingo FIR turns northwest at lat. 19°39'00" N., long. 69°09'00" W., thence from that point the area is bounded on the south from east to west by the Santo Domingo FIR, Port-Au-Prince CTA/FIR, and the Havana CTA/FIR; bounded on the west from south to north by the Houston Oceanic CTA/FIR, southern boundary of the Jacksonville Air Route Traffic Control Center and a line 12 miles offshore and parallel to the U.S. shoreline.

* * * * *

Issued in Washington, DC, on November 6, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–30215 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–007; Order No. 587–F]

Standards for Business Practices of Interstate Natural Gas Pipelines

November 12, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking (NOPR).

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines by incorporating by reference the most recent version of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also is proposing to adopt regulations, not developed by GISB, governing intra-day nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders. In addition, the Commission is providing policy guidance on other issues related to business practices of interstate natural gas pipelines to assist GISB in developing implementation standards that could be adopted by the Commission in future regulations. These business practices standards supplement standards adopted by the Commission in Order Nos. 587, 587–B, and 587–C.

DATES: Comments are due December 18, 1997.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:
Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–3294
Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283
Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

Notice of Proposed Rulemaking and Statement of Policy; Order No. 587–F

November 12, 1997.

The Federal Energy Regulatory Commission (Commission) is proposing to amend § 284.10 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines by incorporating by reference the most recent version of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also is proposing to adopt regulations, not developed by GISB, in new § 284.10(b)(2) of its regulations. These regulations would govern intra-day nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders. In addition, the Commission is providing policy guidance on other issues to eliminate disputes within GISB over these issues and thereby assist GISB in developing implementation standards in these areas.

I. Background

A. Prior Commission Action

In Order Nos. 587, 587–B, and 587–C[1] the Commission began the process of standardizing the business practices and communication methodologies of interstate pipelines to create a more integrated and efficient pipeline grid. The Commission incorporated by reference consensus standards developed by GISB,[2] covering certain industry business practices—Nominations, Flowing Gas, Invoicing, and Capacity Release—as well as standards and electronic datasets that detailed the data requirements needed to conduct these business transactions electronically. The Commission also adopted standards providing that these business transactions would be conducted over the Internet as well as standards requiring the posting of additional information on Internet Web pages.

During the process of adopting these standards, there were areas that had been left unresolved which are relevant to the Commission's proposed actions in this Notice of Proposed Rulemaking (NOPR). First, in Order No. 587–C, the Commission declined to adopt standards in four areas—intra-day nominations, operational balancing agreements, netting of imbalances, and downloading documents from pipeline Internet Web sites—and requested that GISB and the industry propose clarifications or revisions to the standards by September 1, 1997. In addition, in Order No. 587–E, the Commission noted that GISB had committed itself to completing the standardization of all functions and information now provided on pipeline Electronic Bulletin Boards (EBBs) and requested a report, by September 1, 1997, on the extent of GISB's progress and the contemplated completion date.[3]

Second, in its November 13, 1996 NOPR,[4] the Commission identified several disputed standards where four industry segments supported the standards, but the pipeline segment prevented a consensus from being reached.[5] To review these issues, the Commission staff held a technical conference on December 12 and 13, 1996, and comments on the conference were filed on February 21, 1997.[6]

B. GISB's September 2, 1997 Filing

On September 2, 1997, GISB filed with the Commission revisions to its standards (Version 1.2), a report on the issues raised by the Commission in Order No. 587–C regarding intra-day nominations, the unclear OBA and imbalance standards, and the standard covering formats for file downloads, and a report on the progress of its title transfer tracking task force.

Version 1.2 replaces Versions 1.0 and 1.1. Version 1.2 contains several new and revised business practices standards, covering exchange of volume audit statements, statements of account, changes to Internet protocols, formats for posting information on pipeline web sites, and the confirmation and validation process for pre-arranged capacity release transactions.[7] The Version 1.2 standards also contain both new and revised standards applicable to the datasets used for electronically conducting business transactions relating to nominations, flowing gas, invoices and capacity release data.[8] Finally, the Version 1.2 standards include GISB's interpretations of standards.[9]

GISB reports that it established a task force to evaluate the intra-day nomination process, but the task force has not yet completed standards to better synchronize this process across pipelines. GISB states that the completion of the intra-day nomination process was delayed because the members of the task force came to the realization that, in order to make the intra-day process work efficiently, a fundamental review of the entire confirmation process was necessary. GISB concludes that the task force remains cautiously optimistic that it will successfully report a recommendation out of the task force to the Executive Committee before the end of 1997.

GISB reports that it has not completed the clarification of the OBA and imbalance standards as requested by the Commission in Order No. 587-C. GISB states that the standards are pending before its Business Practices subcommittee, which intends to review them when its normal rotation deals with contract and flowing gas issues. GISB anticipates consideration of these issues before the end of 1997.

On electronic communication issues, GISB explained that it has approved Electronic Delivery Mechanism Standard 4.3.16 which provides that files can be downloaded from pipeline web sites in two formats: hyper-text mark-up language (HTML) or rich-text-format (RTF). However, GISB did not file a progress report on its efforts to complete the process of standardizing information currently provided on pipeline EBBs, as requested in Order No. 587–E.

GISB included a report by its title transfer tracking task force on its progress. The task force has not yet completed its work, and GISB comments that this is "one of the most challenging and time consuming issues facing the industry."

Comments on the topics addressed by GISB's report were filed by Natural Gas Clearinghouse (NGC), Koch Gateway Pipeline Company (Koch), and TransCapacity Limited Partnership (TransCapacity). NGC contends that GISB is stymied and that the time has come for the Commission to resolve the issues which the Commission set for consideration in Order No. 587–C. NGC further states that the title transfer tracking task force has not addressed the underlying issue of whether the pipeline should perform this service, and argues that this is an issue the Commission must resolve. TransCapacity suggests the GISB process be given more time, within defined limits, to resolve these issues.

Koch, on the other hand, contends the Commission should resist further standardization, because standardization will impede the pipelines' ability to provide creative or dynamic new services. Koch is particularly concerned that further standardization of intra-day nominations along the lines being considered by GISB's task force could result in depriving shippers on its pipeline of service options they value. Koch also is concerned about the possibility that the Commission will replace pipelines' proprietary EBBs with a requirement for standardized communication modalities.

II. Discussion

The Commission proposes to incorporate by reference the Version 1.2 standards passed by GISB to substitute for the Version 1.0 and 1.1 standards currently incorporated in the regulations. In the Commission's earlier orders, the Commission adopted standards only when all segments of the industry concurred that the standard was needed to improve efficiency. However, the Commission has recognized that policy disputes between the segments may prevent the development of standards that are necessary to the development of an integrated pipeline grid.[10]

After having reviewed the transcript of the December 12–13, 1996 technical conference, the February 21, 1997 comments submitted on the technical conference, and the GISB report, the Commission has concluded that it needs to resolve policy disputes so that GISB can focus its efforts on resolving the technical details of implementation. On some issues, the Commission is proposing new regulations when uniform standards appear necessary to increase the overall efficiency of the pipeline grid or when the standard reflects a fundamental service right to which similarly situated shippers should be entitled on all pipelines. On other issues, the Commission is providing policy guidance in this NOPR so that GISB and the industry can develop the most efficient standards to implement those policy choices.

Specifically, the Commission is proposing to incorporate the Version 1.2 standards in section 284.10(b)(1)(i) and is further proposing in section 284.10(b)(2) to adopt additional regulations that would: require pipelines to give firm intra-day nominations priority over already nominated and scheduled interruptible transportation;[11] require pipelines to enter into operational balancing agreements at all pipeline to pipeline interconnects;[12] require pipelines to permit shippers to offset imbalances accruing on their different contracts with a pipeline and trade imbalances when such imbalances have similar operational impact on the pipeline's systems;[13] require pipelines to post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999;[14] require pipelines to adhere to specific standards in posting information on pipeline web sites and in maintaining electronic records;[15] and require pipelines to provide shippers with notice of operational flow orders by posting the notices on the pipelines' Internet web sites as well as by notifying shippers through Internet E-Mail or through notification to the shipper's Internet (URL) address.[16] The Commission is proposing that pipelines comply with these regulations within 60 days of the issuance of final rule, with the exception, as noted above, of section 284.10(b)(2)(iii)(A) (requiring pipelines to conduct business using the Internet), for which compliance would be expected by June 1, 1999.

The Commission is providing policy guidance in the following areas: the extent of notice interruptible shippers should be given of rescheduled capacity allocations, as well as the pipelines' responsibilities to support title transfer tracking, to permit gas package ranking across contracts, and to support the use of third-parties to provide reimbursement for compressor fuel.

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[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

[2] GISB is a private, consensus standards developer composed of members from all segments of the natural gas industry.

[3] GISB Electronic Delivery Mechanism Related Standards 4.3.6 states that "within a reasonable amount of time, all EBB information, functions and transactions should be achieved via one mode of communications."

[4] *See* Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking and Staff Technical Conference, 61 FR 58790 (Nov. 19, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,521 (Nov. 13, 1996). The disputed issues involve pooling, title transfer tracking, ranking of gas packages, predetermined allocations, intra-day nominations, operational flow orders, fuel sales, and imbalance trading.

[5] For a standard to issue, it must be approved by 17 out of the 25 members of the GISB Executive Committee with at least two affirmative votes from each of the five segments.

[6] Appendix A lists those filing comment on the conference. Appendix B lists the disputed standards.

[7] Flowing Gas Related Standard 2.1.4, Invoicing Related Standard 3.3.21, Electronic Delivery Mechanism Standards 4.3.1 and 4.3.16, and Capacity Release Related Standard 5.3.30.

[8] The new standards are Nominations Related Standard 1.4.6 and Flowing Gas Related Standard 2.4.8. The revised standards are Nominations Related Standards 1.4.1 through 1.4.5, Flowing Gas Related Standards 2.4.1 through 2.4.5, Invoicing Related Standards, 3.4.1 through 3.4.3, Capacity Release Related Standards 5.4.1. through 5.4.4, 5.4.6 through 5.4.13, and 5.4.15, through 5.4.17.

[9] Interpretations of Standards 7.3.1 through 7.3.18.

[10] Order No. 587, 61 FR at 39060, III FERC Stats. & Regs. Regulations Preambles, at 30,065; Order No. 587-C, 62 FR at 10686, III FERC Stats. & Regs. Regulations Preambles ¶ 31,050, at 30,583.

[11] Proposed regulation 284.10(b)(2)(i).

[12] Proposed regulation 284.10(b)(2)(ii)(A).

[13] Proposed regulation 284.10(b)(2)(ii)(B).

[14] Proposed regulation 284.10(b)(2)(iii)(A).

[15] Proposed regulation 284.10(b)(2)(iii) (B) through (D).

[16] Proposed regulation 284.10(b)(2)(iii)(E).

With respect to other issues in dispute, pipeline tracking of multi-tiered allocations, provision of paper pools, and penalty calculations, the Commission does not find that a sufficient case has been made to justify its intervention at this time.

With the Commission's resolution of the fundamental policy issues, GISB should be able to formulate the standards necessary for implementing the policies addressed in this NOPR. Although GISB had anticipated being able to complete standards in some areas by the end of calendar 1997, the Commission recognizes that it may need additional time to consider these standards in the light of the Commission's policy guidance given here. The Commission finds that a March 31, 1998 deadline should provide sufficient time, and the Commission, therefore, solicits the submission of final standards from GISB and others in the industry by that date.

In stepping-in to resolve the disputed issues, the Commission is in no way seeking to derogate GISB's role or its accomplishments. GISB's ability to develop a consensus on the large number of standards it has adopted is a signal achievement and testament to the industry's ability to work together to solve mutual problems. However, it would ignore reality to assume that all factions will be able to agree on every issue, particularly when those issues involve regulatory policy issues. By resolving these issues, the Commission is not seeking to replace GISB, but rather to work together with GISB and the industry to develop policies and standards necessary to increase the efficiency of the pipeline grid.[17] Indeed, the resolution of these policy questions may permit GISB to focus its resources on developing the necessary standards to implement these policies in the most efficient manner possible.

The Commission's proposed standards and its policy guidance in all these areas are discussed below.

A. Proposed Adoption of the Version 1.2 Standards

Version 1.2 of the standards principally revises the data elements used to conduct business transactions with the pipelines. The Commission recognizes the difficulty, on the first shot, of developing a comprehensive set of data elements that will accommodate business transactions across all pipelines. Inevitably, experience with the Version 1.1 standards would reveal areas where refinements and improvements were needed. Adoption of the Version 1.2 revisions, therefore, should improve the standards so that they better accommodate pipeline business practices. In addition to incorporating the standards by reference, the Commission also is proposing to incorporate the GISB interpretations. While the interpretations will not necessarily be determinative in the event of a dispute, they, like the GISB principles adopted previously, will help to provide reliable guides as to the industry's understanding of the standards should disputes or complaints arise.

The Commission appreciates that the Version 1.1 standards have been implemented unevenly across the pipeline grid. Some pipelines have received waivers which permit them to use non-standardized data elements, while they sought changes or revisions from GISB.[18] Other pipelines have implemented the Version 1.2 standards early.[19] When implementation is not uniform, burdens are created for shippers who have to have several different sets of data elements to match the differing requirements of the different pipelines. The Commission, therefore, requests comments on whether in the interests of providing certainty, it should decline to extend its waivers of the dataset compliance any further and require all pipelines to follow the Version 1.2 standards even if certain issues are still unresolved.

A related question is how quickly to issue revisions to the standards. There clearly is going to be a need to revise these standards. Indeed, in this NOPR, the Commission has requested the submission of additional data elements for certain transactions. On the other hand, if the standards are modified too frequently, shippers incur time and expense in having to reprogram their computers to meet the new changes. Thus, the Commission requests comment on whether it should grant a hiatus of a year or more before the Commission adopts any subsequent revision of the datasets so that shippers will be able to implement them without a risk that they subsequently will have to remap their computers. A possible alternative to be considered in the comments is whether additions to the datasets could be permitted, so long as these additions do not affect the ability of shippers to use the Version 1.2 standards. One of the advantages of EDI is that it does permit the addition of data elements without affecting the ability of shippers to use an earlier version. Under this approach, shippers that want to avail themselves of the new features could do so, while other shippers could still use the Version 1.2 datasets.

B. Proposed Regulations and Policy Guidance on Intra-day Nomination Issues

1. The Issues

Under the GISB standards,[20] the initial nomination for the next day of gas flow (which starts at 9 a.m.) must be transmitted to the pipeline by 11:45 a.m. central clock time (CCT).[21] This nomination is confirmed by 4:30 p.m. CCT. An intra-day nomination is any nomination sent after the initial nomination deadline.[22] An intra-day nomination may be made either on the day prior to gas flow (after 11:30 a.m.) or on the day of gas flow.[23] Intra-day nominations are for a daily quantity; changes in hourly gas flows are determined by the interconnecting parties.[24]

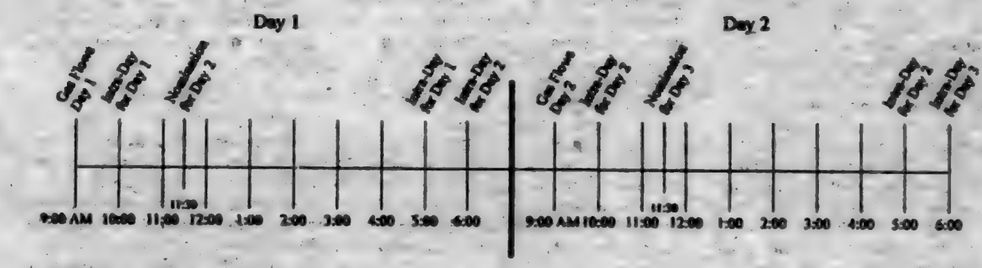
The current standards require a pipeline to permit one intra-day nomination four hours prior to gas flow.[25] In Order No. 587–C, the Commission pointed out that pipelines chose to implement this standard in divergent ways. Some pipelines process intra-day nominations using a "rolling" system permitting the shipper to choose the time at which it submits the intra-day nomination, while others chose a "batch process" in which the pipeline sets a specified time for processing intra-day nominations and all intra-day nominations submitted before that time are accumulated and processed together. The batch process also differs from pipeline to pipeline, with pipelines choosing different batch times. In addition, on some pipelines intra-day nominations for firm service "bump" or interrupt scheduled or flowing interruptible gas, while on others they do not. The Commission commented that this plethora of approaches prevented shippers from coordinating their intra-day nominations across multiple pipelines, and requested that GISB provide recommendations by September 1, 1997 on standards to provide the necessary coordination.

According to GISB's September 2, 1997 filing, the task force it assembled to consider this issue has not completed its work, because its members came to the realization that, in order to make the intra-day nomination process work efficiently, a fundamental review of the entire confirmation process was necessary. GISB included with its filing the current test model its task force has developed to deal with this issue.

Under this model, pipelines would establish three times during which shippers could synchronize their intra-day nominations across multiple pipelines. The synchronization times are 6 p.m. (to take effect on the next gas day) and 10 a.m. and 5 p.m. to take effect on the same gas day.

BILLING CODE 6717-01-P

The GISB Task Force's Model Intra-day Nomination Timeline



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In the report, the task force summarizes the outstanding policy disputes that it has been unable to resolve. First, the task force did not address the "bumping" issue—whether firm intra-day nominations can interrupt or displace scheduled interruptible service. The timeline proposed by the task force attempts to accommodate both bumping and non-bumping pipelines.

Second, the task force is unclear as to the amount of notice and opportunity to reschedule which Commission policy accords to interruptible shippers. For instance, under the test model, an intra-day nomination submitted at 6 p.m. on the day before gas flow will not take effect until 5 p.m. on the day of gas flow if it bumps an interruptible shipper. If the intra-day nomination does not bump, it will take effect at 9 a.m., rather than 5 p.m. The time line also provides that the last intra-day opportunity of the day, at 5 p.m., does not bump.

The report states that some on the task force contend that bumping an interruptible shipper's scheduled gas is unfair unless the shipper has the opportunity to reschedule. Firm shippers, on the other hand, contend that since they pay reservation charges, they are entitled to scheduling priority and, therefore, their intra-day nomination should take effect at 9 a.m. even if the firm intra-day nomination bumps scheduled interruptible service.

Third, the task force states that some believe that the synchronized time line can coexist with those pipelines that use a rolling intra-day process, because shippers can choose whether to submit their nominations at the synchronized times. Others, however, are concerned that if a bump occurs, the coexistence of the two methods seems to unravel.[26] They maintain that, if the Commission requires that firm intra-day nominations bump scheduled interruptible service, pipelines may have to switch from the rolling to the batching process, which would be a degradation of service to shippers.

In addition, there was one disputed standard (Standard No. 77A) dealing with intra-day nominations. This standard would have required pipelines to permit intra-day nominations at all nominatable receipt and delivery points.[27]

2. Commission Resolution of the Issues

The Commission agrees that having three synchronization times, as proposed by the task force, would be a significant improvement on the current system. As GISB itself has recognized, however, the adoption of these nomination timelines is only an interim step, with the ultimate goal being the development of a continuous and contiguous scheduling system.[28]

The Commission will resolve the policy disputes highlighted by the GISB task force to enable GISB to focus on the implementation details of the standards, such as ensuring that the intra-day confirmation procedures are in place so that nominations will be accepted when capacity is available. GISB and others in the industry should submit an intra-day timeline and scheduling standards in accordance with these policies by March 31, 1998.

a. Priorities of Firm and Interruptible Intra-day Nominations

(1) Commission's Policy on Service Priority

The Commission's policy since Order No. 636 has been that firm shippers, who pay reservation charges, are entitled to service superior to that of interruptible shippers. Interruptible shippers, by definition, take the risk that their service will be interrupted if firm shippers choose to use their capacity.

In Order No. 636, the Commission did not require pipelines to provide intra-day nomination opportunities, but some pipelines did so, and the Commission permitted those pipelines to include provisions in their tariffs under which scheduled interruptible nominations would not be bumped by firm intra-day

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[17] See Michael E. Porter & Class van der Linde, Green and Competitive: Ending the Stalemate, Harvard Business Review 120, 124, 127 (Sept/Oct 1995); Malcolm Gladwell, Just Ask For It, The New Yorker, 45 (April 7, 1997) (governmental regulation is sometimes needed to motivate industries to adopt policies that enhance competition and foster greater efficiency, but government needs to focus on outcomes and should work with industry in setting relevant standards).

[18] See Texas Eastern Transmission Corporation, 79 FERC ¶ 61,223 (1997).

[19] Tennessee Gas Pipeline Company, 80 FERC ¶ 61,311 (1997).

[20] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.1 and 1.3.2.

[21] Central clock time is central time taking into account changes for daylight savings time.

[22] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.2.4.

[23] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.2.7.

[24] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.9.

[25] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.10.

[26] In its September 2, 1997 comments, Koch, which states it uses a rolling process without bumping, contends that if an interconnected pipeline supports bumping and uses the batch process, a bump on that pipeline can wreak havoc on Koch's system since a bump will ripple down and disrupt flow.

[27] See Appendix B.

[28] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.1.2.

nominations. However, as intra-day nominations became more prevalent, the Commission's policy was to apply its general scheduling priorities to intra-day nominations. Thus, the Commission found that firm intra-day nominations should be entitled to bump scheduled interruptible service.[29] The Commission, however, concluded that interruptible shippers should receive notice of their rescheduled quantities and an opportunity to renominate.[30] The Commission also determined that bumped interruptible shippers should not be subject to penalties directly related to the bump on the day on which the bump takes place.[31]

When Order No. 587 required all pipelines to implement intra-day nominations, the Commission determined that those pipelines filing to institute intra-day nominations on their systems had to follow the general policy and permit firm intra-day nominations to bump scheduled interruptible service upon reasonable notice.[32] On those pipelines with no-bump provisions that existed prior to Order No. 587, the Commission permitted the no-bump provisions to stand, because the pipeline filings were strictly compliance filings, and the Order No. 587 standards did not address the priority issue for intra-day nominations.[33]

(2) Proposed Regulation Giving Firm Intra-Day Nominations Priority Over Scheduled Interruptible Service

The Commission is proposing to require that the remaining no-bump pipelines follow its general policy that firm intra-day nominations should have scheduling priority over scheduled interruptible service. This regulation would ensure that all firm shippers will receive the same rights on all pipelines.

INGAA and Koch[34] contend that the Commission should not seek to standardize this element of intra-day service. They maintain that the diversity in approach is the product of individual pipeline settlements and customer preferences which should not be upset.

Not only would a continuation of a bifurcated intra-day nomination system deprive firm shippers on some pipelines with the legitimate priority rights to which they are entitled, a bifurcated system also appears to be at odds with the goal of creating an integrated pipeline grid. A firm shipper nominating gas across multiple pipelines needs to be able to coordinate its intra-day nominations. Under the present system, if even one pipeline in its nomination chain has a no-bump rule, the shipper may be unable to have its entire chain of intra-day nominations confirmed. Thus, a single approach to bumping appears necessary to integrate the pipeline grid.

The Commission, however, does agree with the GISB task force that, if a firm shipper has had a reasonable opportunity to reschedule its gas, a pipeline may provide a final intra-day nomination opportunity where scheduled interruptible service will be protected from bumping. Under the GISB task force's model, firm intra-day nominations submitted at the third intra-day opportunity at 5 p.m. on the day of gas flow would not bump previously scheduled interruptible service. Eliminating bumping at this stage would provide a final opportunity for all shippers to renominate supply and provide stability.

The Commission, therefore, is proposing to require pipelines to give nominations by firm shippers scheduling priority over nominated and scheduled volumes for interruptible service. The pipelines also would have to provide interruptible shippers with notice that their volumes will be reduced.[35] Pipelines would be required to file to implement this provision within 60 days from the date of a final rule in this proceeding. Pipelines would be expected to implement this regulation based on their current intra-day schedule until such time as GISB completes, and/or the Commission adopts, a revised intra-day schedule. In accordance with the previous discussion, those pipelines that permit at least three intra-day nomination opportunities each gas day may file a request to permit scheduled interruptible service to have a scheduling priority higher than a firm intra-day nomination submitted at the final intra-day nomination opportunity of the gas day. Pipelines filing to comply with this provision also need to consider whether bumped interruptible shippers should be exempt from certain penalties.

(3) Policy Regarding Notice to Interruptible Shippers

The next question raised by the GISB task force report is over the extent of notice, and the opportunity to renominate, to which an interruptible shipper should be entitled if a firm intra-day nomination bumps interruptible service. For instance, under the task force's model, a firm intra-day nomination may be submitted at 6 p.m. on the day before gas flow. If that nomination does not bump interruptible service, it would become effective at 9 a.m. on the day of gas flow. If it bumped interruptible service, one segment of the task force wants the nomination to become effective at 5 p.m. on the day of gas flow in order to permit the interruptible shipper to attempt to reschedule gas at the 10 a.m. intra-day nomination. Under this approach, the firm shipper would have 16 hours of gas flow (5 p.m. until 9 a.m. the next day) while the interruptible shipper would have 8 hours of flow (9 a.m. until 5 p.m.) under the initial nomination before the bump occurs. Another segment contends that firm shippers, paying reservation charges, should have the right to commence gas flow at 9 a.m. regardless of whether it would bump interruptible shippers.

As described above, the Commission's policy is that firm shippers have scheduling priority over interruptible shippers. Thus, in the situation posited by the GISB task force, firm shippers should have the right to submit an intra-day nomination on the day prior to gas flow and have that nomination become effective at the start of the gas day, rather than eight hours later. While interruptible shippers are entitled to notice that their scheduled volumes will be reduced, they are not necessarily entitled to an opportunity to reschedule prior to their volumes being reduced if such a renomination would interfere with the ability of a firm shipper to have its nomination become effective at the earliest possible time after confirmation.

In the situation posed by the GISB task force, the interruptible shippers are provided with at least 11 hours notice prior to the start of gas flow for the next day.[36] Thus, even if bumped, they would not be required to reduce flowing volumes. Second, the interruptible shippers would still have the opportunity at 10 a.m. to reschedule its entire quantity of gas for the day, subject to available capacity.

Moreover, interruptible shippers that wish to avoid the risk of being bumped can enter into short-term capacity release transactions to obtain firm service. Once scheduled, firm nominations to secondary points have the same priority as service to primary points so that a shipper obtaining released capacity could not be bumped even by a firm intra-day nomination to a primary point.[37]

The Commission has considered whether, in the situation posited, pipelines should be required to provide bumped interruptible shippers with a further opportunity to reschedule their gas prior to the 9 a.m. start of the gas day. However, given the 11 hour advance notice, and the interruptible shippers' ability to reschedule gas at 10 a.m., the Commission does not think that pipelines need to provide interruptible shippers with an overnight opportunity to reschedule their gas prior to the start of the gas day. Pipelines wishing to provide more certainty for interruptible shippers, however, may provide such a later right if they choose.

According to the task force report, some parties contend that allowing a firm intra-day nomination, which bumps scheduled interruptible service, to take effect at 9 a.m. does not provide an adequate incentive for firm shippers to submit timely and reasonably reliable nominations at 11:30 a.m. These parties contend that firm shippers may delay their nomination, because they can always rely upon their intra-day right to make a nomination change effective at the start of gas flow. The Commission does not find this hypothetical concern sufficient to deny firm shippers the right to renominate their supplies to take into account changes in weather or other circumstances. First, firm shippers do not appear to have an obvious incentive to purposefully delay their initial nominations or to submit nominations not based on their best assessment of their needs, at the time, for the next day.[38] Second, firm shippers still run a risk if they delay their nominations, because a firm shipper's nomination to a primary point will not bump already scheduled secondary firm service to that point. Thus, a firm shipper that delays its nomination risks losing its ability to acquire gas at its primary point.

b. Guidance Regarding the Effect of an Intra-Day Schedule on Pipelines Using Rolling or Continuous Processing of Intra-Day Nominations

Some members of the GISB task force and some of the comments have raised the question of whether the move to batch processing of intra-day nominations at certain specific times may result in a degradation of service on pipelines that currently process intra-day nominations on a rolling or continuous basis. Koch, for instance, maintains that, if bumping is permitted according to the GISB task force's model, it would be forced to reconsider whether to move to a batch process.[39]

As the GISB task force points out, the identification of synchronization times is not necessarily inconsistent with a rolling or continuous process. Shippers that want to avail themselves of synchronization can time their nominations identically on all pipelines. However, if a pipeline and its customers find that the synchronization times along with the requirement that firm intra-day nominations can bump scheduled interruptible service creates too much disruption on a rolling or continuous system, the pipeline may move to conform to the standardized schedule. The efficiency gained by the entire industry in being able to coordinate nominations across the pipeline grid outweighs any potential diminution of service on the pipeline using a continuous intra-day nomination process. Indeed, it is not clear how valuable the continuous process is on a single pipeline, since even if a shipper on that pipeline is permitted an intra-day change, the shipper will not know whether similar coordinating changes will be permitted on interconnecting pipelines.

c. Submission of Intra-Day Nominations at All Nomination Points

Disputed Standard No. 77A would require pipelines to allow intra-day nominations at all nominatable receipt and delivery points. The Commission's policy is that those intra-day nominations required by the Commission must be made available to all regular open access services, apply to each contract between the shipper and the pipeline, and permit the shipper to request changes at all receipt and delivery points.[40] Pipelines, however, may impose restrictions on intra-day nomination opportunities that go beyond those required by the Commission.[41] Thus, the Commission will clarify that the three intra-day opportunities under the GISB task force's model would be available at all points where nominations are permitted.

C. Proposed Regulations Concerning Operational Balancing Agreements and netting and Trading of Imbalances

1. Background

In Order No. 587-C, the Commission did not adopt two GISB flowing gas standards relating to operational balancing agreements (OBAs) (Standard 2.3.29) and netting of imbalances across contracts (Standard 2.3.30), because the pipelines' obligations under the standards were not clearly defined. GISB Standard 2.3.29 states:

> At a minimum, transportation service providers should enter into Operational Balancing Agreements at all pipeline-to-pipeline (interstate and intrastate) interconnects, where economically and operationally feasible.

GISB Standard 2.3.30 states:

> All transportation service providers should allow service requesters (in this instance, service requester excludes agents) to net similarly situated imbalances on and across contracts with the service requester. In this context, "similarly situated imbalances" includes contracts with the substantially similar financial and operational implications to the transportation service provider.

The Commission found that standards requiring OBAs and netting of

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[29] *See* Tennessee Gas Pipeline Company, 73 FERC ¶ 61,158, at 61,456 (1995).

[30] *Id.*

[31] *Id.* (daily variance charge waived, but only for the day on which the bump takes place).

[32] *See* El Paso Natural Gas Company, 77 FERC ¶ 61,176 (1996); Alabama-Tennessee Natural Gas Company, 79 FERC ¶ 61,117 (1997); Algonquin Gas Transmission Company, 78 FERC ¶ 61,281 (1997); ANR Pipeline Company, 78 FERC ¶ 61,142 (1997); Arkansas-Western Pipeline Company, 78 FERC ¶ 61,250 (1997); Canyon Creek Compression Company, 78 FERC ¶ 61,003 (1997); CNG Transmission Corporation, 78FERC ¶ 61,131 (1997); Great Lakes Gas Transmission Limited Partnership, 79 FERC ¶ 61,194 (1997); Iroquois Gas Transmission System, L.P., 79 FERC ¶ 61,196 (1997); K N Interstate Gas Transmission Company, 79 FERC ¶ 61,208 (1997); Mojave Pipeline Company, 78 FERC ¶ 61,153 (1997); National Fuel Gas Supply Corporation, 78 FERC ¶ 61,332 (1997); NorAm Gas Transmission Company, 79 FERC ¶ 61,069 (1997); Overthrust Pipeline Company, 78 FERC ¶ 61,285 (1997); Questar Pipeline Company, 78 FERC ¶ 61,305 (1997); Southern Natural Gas Company, 78 FERC ¶ 61,125 (1997); Texas Gas Transmission Corporation, 79 FERC ¶ 61,175 (1997); Trailblazer Pipeline Company, 77 FERC— ¶ 61,328 (1996); Viking Gas Transmission Company, 78 FERC ¶ 61,243 (1997); Young Gas Storage Company, Ltd., 79 FERC ¶ 61,030 (1997).

[33] *See* Transwestern Pipeline Company, 78 FERC ¶ 61,146 (1997); Florida Gas Transmission Company, 78 FERC ¶ 61,177 (1996).

[34] Comments of the Interstate Natural Gas Association of America, at 33 (February 21, 1997); Koch Gateway Pipeline Company, at 11 (February 21, 1997). *See also* Comments of Enron Interstate Pipelines, at 12 (February 21, 1997) (setting intra-day schedules is not appropriate for a standard-setting forum).

[35] Proposed regulation 284.10(b)(2)(i).

[36] Under the test model, scheduled quantities for the 6 p.m. intra-day nomination would be no later than 10 p.m., for gas that does not begin to flow until 9 a.m. the next morning. *Compare* Tennessee Gas Pipeline Company, 73 FERC ¶ 61,158, at 61,456 (1995) (four hours notice).

[37] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272, at 62,013.

[38] Indeed, under the current standards firm shippers have an incentive to overnominate at the 11:30 deadline, because they can always reduce their nomination through the intra-day nomination process, but may not be able to increase it.

[39] Comments of Koch Gateway Pipeline Company, at 3–4 (Sept. 2, 1997).

[40] *See* Tennessee Gas Pipeline Company, 78 FERC ¶ 61,007, at 61,019–20 (1997); Canyon Creek Compression Company, 78 FERC ¶ 61,003 (1997) (cannot restrict intra-day nominations to telemetered points); Trailblazer Pipeline Company, 77 FERC ¶ 61,328 (1996) (cannot restrict intra-day nominations to telemetered points). Standard 1.3.11 states that intra-day nominations can be used to request changes to receipt points or delivery points. 18 CFR 284.10(b)(1)(i). Nominations Related Standards 1.3.11.

[41] *See* Tennessee, note 40, *supra* (permitting intra-day nominations beyond the minimum required under certain rate schedules).

imbalances were important, but that the use of the terms "economically and operationally feasible" and "similarly situated financial and operational implications" did not define precisely enough the pipelines obligations under the standards. Rather than attempting to deal with the meaning of these terms in individual pipeline compliance filings, the Commission gave GISB until September 1, 1997 to clarify the standards.

According to the GISB report, it initially sent the standards to the interpretations subcommittee which determined that interpretation would not be sufficient and that new standards would have to be developed. The standards were then referred to the business practices subcommittee that, according to GISB, will not review these issues until its normal rotation deals with contract and flowing gas issues, perhaps by the end of 1997.

2. Proposed Regulations

The Commission has reviewed these standards in light of Commission priorities and policies and has determined that the Commission needs to propose its own standards in these areas. In certain respects, the Commission's proposals go beyond the standards being considered by GISB.

a. OBAs

An OBA is a contract between two parties that specifies the procedures that will be used to manage operating variances at an interconnect.[42] The OBA specifies how imbalances [43] or differences in hourly flow rates will be handled by the two parties. An OBA increases the efficiency of the grid, because a shipper, which has properly nominated and had its gas confirmed, will not be held responsible for imbalances, resulting from the transfer of gas between the pipelines. Accordingly, the Commission is proposing to require interstate pipelines to enter into OBAs at all interconnecting points with other interstate and intrastate pipelines.[44] These agreements must be maintained by the pipelines and provided upon request to the Commission and any other requesting party. If two interstate pipelines are unable to negotiate an acceptable agreement, they can file a request for the Commission to resolve the disputed terms. If a pipeline finds itself unable to enter into an OBA with an entity not regulated by the Commission, it can file for a waiver of this requirement setting out any operational or other issues that have prevented an agreement from being consummated.

b. Netting and Trading Imbalances

Netting of imbalances refers to the ability of shippers to offset a positive imbalance on one contract with a negative imbalance on another contract. While GISB standard 2.3.30 would permit some netting of imbalances by shippers across contracts, it would not permit shippers' agents to net imbalances. As discussed above, the standard also was unclear as to which contacts could be offset against each other. In addition to this standard, one of the disputed standards before the Commission is whether to permit shippers to trade imbalances amongst themselves.[45]

The Commission is proposing to require pipelines to permit shippers and their agents to both offset imbalances accruing on different contracts held by the shippers and to trade imbalances with other shippers when the imbalances have similar operational impact on the pipeline.[46] Permitting shippers to offset and trade imbalances in the same operational area allows shippers to avoid imbalance charges without jeopardizing system reliability. If one shipper, for instance, incurs an overrun and another shipper an underrun of the same amount, the pipeline is physically in balance between those shippers. Moreover, permitting shippers to trade imbalances with each other may improve system reliability because a shipper may be willing, for a fee, to put gas on a system or take gas off in order to offset imbalances incurred by other shippers.[47] Since all shippers would be permitted to trade imbalances under this proposal, there would be no reason why shippers' agents should not be able to trade imbalances among the contracts they manage.

The regulation permits offsets and imbalance trades when the imbalances have similar operational impact on the pipeline operations. The GISB standard (2.3.30) also included similar financial implications to the pipelines. The Commission cannot discern how pipelines' legitimate financial interests are implicated, since the offsets and trades involve only physical imbalances and the penalties associated with those imbalances, not charges for transportation service.

Under this requirement, the pipelines would be required to provide shippers with timely notice of their imbalances and sufficient time to permit shippers to execute trades. To facilitate trading, pipelines should post a shipper's imbalances if the shipper requests. The pipelines would then have to accept and process trades provided to them by the shippers or shippers' agents, including third-party firms that would conduct imbalance trading for shippers. Pipelines further would be expected to designate in their compliance filings the largest possible areas on their systems in which imbalances have similar operational effects and explain, in detail, why imbalances crossing these areas are not sufficiently similar in operational effect.

Pipelines would not be required to establish a computerized system on which trading would take place. Pipelines, however, are free to establish such a system and to assess a separate fee for using that system. If a pipeline does establish its own trading system, it must provide equal and non-discriminatory access for shippers trading their own imbalances or those using third-party services.

D. Proposed Regulations for Electronic Communication

1. Background

For many years, pipelines have communicated with their customers using direct dial up connections to pipeline Electronic Bulletin Boards (EBBs). Each pipeline EBB is a proprietary system, with unique software, log-on, and other procedures. The uniqueness of each pipeline's EBB raises costs to shippers across multiple pipelines, since redundant computers and communication software may have to be maintained and staff must be trained in the idiosyncracies of each pipeline's system. Beginning in 1993, the Commission has sought to create greater standardization in communication so that shippers could reap the efficiencies of using one standardized method to transact business with all pipelines.

The standards developed by GISB so far, however, do not standardize all the information pipelines are currently providing electronically. Pipelines are continuing to post information and conduct many transactions on their proprietary EBBs. For instance, GISB has not developed standards for communicating offers to release capacity and bids for capacity over the

[42] 18 CFR 284.10(b)(1)(ii), Flowing Gas Related Standards 2.2.1.

[43] An imbalance is a discrepancy between the quantity of gas a shipper tenders to the pipeline at a receipt point and the amount of gas the shipper takes at a delivery point.

[44] Proposed regulation 284.10(b)(2)(ii)(A).

[45] Appendix B, Disputed Standard No. 85A.

[46] Proposed regulation 284.10(b)(2)(ii)(B).

[47] The fee most likely would not exceed the imbalance penalty or other costs that the out-of-balance shipper would incur if the imbalance was not offset.

Internet and has not provided standards to enable shippers to download the Index of Customers in the format specified by the Commission.

2. Proposed Regulations

a. Proposed Requirement That Pipelines Provide all Information on the Internet Using Internet Tools

The Commission remains committed to standardizing all communications with the pipelines. For shippers to be able to use the interstate natural gas grid efficiently, they need to be able to transact business across multiple pipelines without having to incur the added costs and delay attendant to having to train personnel to use the pipelines' proprietary EBBs. While the current standards cover some of the more important transactions with the pipelines, they still do not remove the necessity for shippers to deal with pipeline EBBs.

In Standard 4.3.6, GISB had stated that "all EBB information, functions and transactions should be achieved via one mode of communications." [48] In Order No. 587–E, the Commission requested a report from GISB by September 1, 1997 on its progress in completing the standardization of communications, but GISB did not file the requested report. In its comments, Koch contends the Commission should not mandate the exclusive use of Internet technologies, because shippers on single pipelines may prefer to use the existing EBBs and it may be difficult or costly for them to convert to using the Internet technologies. Koch points out that third-party service providers can assist those shippers wanting to conduct business with the pipelines in a standardized manner.[49]

To prevent such disputes from slowing the standardization of communications further, the Commission is proposing to require pipelines to provide all electronic information and conduct all electronic transactions with their customers over the public Internet using only internet protocols and procedures. Pipelines will be expected to comply with this regulation by June 1, 1999.[50]

GISB has considered the security issues affecting the use of the public Internet and concluded that security concerns can be adequately addressed through commercially available software and techniques.[51] However, pipelines also would be required to provide third party, private communication networks with equal, but not preferential, access to the same information and transactions for a reasonable connection fee.[52] Shippers with concerns about the Internet could pay to use these private networks.[53]

This timetable should give the pipelines sufficient time to develop the needed infrastructure and also gives GISB and the rest of the industry the opportunity to further standardize the provision of this information. With the policy question resolved by the Commission, GISB can focus exclusively on developing the needed standards without debate over the extent of the pipelines' responsibilities. By March 31, 1998, the Commission requests a report from GISB and the industry on their progress in developing needed standards and whether the Commission needs to establish procedures to assist in standards development. Regardless of whether standards are developed, however, pipelines should begin preparing to make the transition to the public Internet. Even without standards, the ability to conduct transactions using one communication method without the need for different log-on and access procedures and different software for each pipeline will increase efficiency. Standards can still be developed after implementation of the system.

The Commission disagrees with Koch that there is no harm to the retention of dual systems. Maintenance of dual systems not only drains resources and talent from developing an efficient standardized system, it creates an understandable competitive incentive for pipelines to favor their proprietary systems over the standardized system. Overall efficiency will be enhanced if rather than working independently to develop their own systems, the pipelines work together with the industry to develop an efficient, user-friendly, standardized system that all shippers can use. Indeed, as Koch points out, shippers that do not want to invest in developing their own internal communication system can turn to the competitive market for third-party services to obtain whatever services they require.

b. Proposed Regulations Regarding Presentation of Information on Pipeline Web Sites

In Order No. 587–C, the Commission adopted GISB standard 4.3.6 requiring pipelines to post information for viewing in HTML format on pipeline Internet web sites. The Commission, however, did not adopt GISB standard 4.3.5, stating that in addition to posting the information for viewing on a web site, the information should be downloadable in a GISB specified electronic structure, because GISB had not developed the electronic structure. In Version 1.2 of its standards, GISB has included standard 4.3.16 which gives the pipelines the choice of providing downloadable files either in hyper-text mark-up language (HTML) or rich-text-format (RTF). The Commission is proposing to adopt the previously rejected standard 4.3.5 and new standard 4.3.16.

The Commission, however, is concerned that merely specifying the document format for downloading does not go far enough. There are no standards regarding the use of passwords for obtaining access to the public information on the web site or the methods by which information will be posted and downloaded from the web site. For instance, the standards do not require that the information be searchable on line. A pipeline, therefore, conceivably could post each tariff page as an individual HTML document without giving users the opportunity to search the entire tariff online for individual words or phrases. Therefore, the Commission is proposing a regulation that would require pipelines to adhere to standards regarding accessibility to public information, searching and copying of documentation, and downloading capability.[54] The Commission also requests comments on other possible standards to improve users' ability to access and use this information.

There is a further issue regarding the comparability of information between various sources. Pipelines currently provide the names of shippers in the capacity release information posted on their EBBs. However, in the current datasets for downloading capacity release information, shippers are identified only by their assigned Dun & Bradstreet numbers and there is no

[48] 18 CFR 284.10(b)(1)(iv), Electronic Delivery Mechanism Related Standards 4.3.6.

[49] See comments of Koch Gateway Pipeline Company, at 4–7 (September 2, 1997) (arguing EBBs should not be eliminated).

[50] Proposed regulation 284.10(b)(2)(iii)(A).

[51] See Order No. 587, 61 FR at 39065, III FERC Stats. & Regs. Regulations Preambles at 30,074 (report of GISB's Future Technology Task Force); 18 CFR 284.10(b)(1)(iv), Electronic Delivery Mechanism Related Standards 4.3.15.

[52] Altra Energy Technologies, L.L.C. refers to these private networks using internet protocols as extranets.

[53] The Commission has adopted similar requirements for the electronic OASIS system in the electric industry. Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 31,035, at 31,616–19 (Apr. 24, 1996).

[54] Proposed regulation 284.10(b)(2)(iii)(B).

available cross-reference table. The use of a numeric designation for shipper name is valuable only if it is accompanied by a means for users of the information to translate the numeric designation into the company name, so the user can determine who is receiving capacity.[55] The easiest solution for this problem would be for the pipelines to provide a cross-reference table between the Dun & Bradstreet numbers and the names of releasing and replacement shippers consummating capacity release transactions on their systems. If, for any reason, pipelines are unable to provide a cross-reference table using DUNS numbers, the industry should either develop their own numeric designations for shippers or include shipper names in the capacity release datasets.

In addition, pipelines need to ensure that the content of any information that is provided on multiple formats (on EBBs, pipeline web sites, or through EDI formatted files) must be the same regardless of the format. For instance, the operationally available capacity information available from EBBs, pipeline web sites, and EDI downloads should have the same content. Moreover, when the Commission has specified a download format for EBB information, the same format should be used for downloads from pipeline web sites. For example, the Commission has specified a download format for the Index of Customers and that format should also be available from the pipelines' web site.[56]

The Commission, therefore, is proposing a regulation requiring that the content of all information provided electronically must be the same regardless of the electronic form used to display the data. It also is proposing that, if a pipeline uses numerical designations to represent information, such as shipper names, a cross-reference between the numeric designation and the represented information must be available to users, at a cost no higher than what is necessary to cover reasonable shipping and handling.[57]

The generic standards proposed here should not be the end of the process. GISB's future technology task force recognizes that as additional categories of information are posted on web sites, separate standards may need to be developed for each category of information. GISB also reports that, at the instance of its Board of Directors, it has established a "Look and Feel" team to develop a consistent and uniform presentation of information on the Internet. The Commission urges GISB to continue to work on these standards, and looks forward to seeing the resulting proposals.

As an additional matter, the Commission is proposing to modify the data retention requirements related to transactions and information provided over the Internet. GISB Standard 4.3.4 provides that transactional data should be maintained for at least 24 months for audit purposes, but states further that this requirement should not otherwise modify statutory, regulatory, or contractual record retention requirements. GISB did not pass a standard for retention of information displayed on Internet web pages. The Commission regulations currently require pipelines to maintain electronic data on EBBs for three years and make that information available to users in electronic form at a reasonable fee.[58] However, the Commission is concerned that three years may not be a sufficient retention period for the Commission to adequately monitor industry practices. Accordingly, the Commission is proposing to replace Standard 4.3.4, with a requirement that pipelines maintain electronic information displayed or transmitted using the Internet for five years and make that information available in electronic form for a reasonable fee.[59] This regulation would require public disclosure only of archived information originally displayed publicly. Access to archived confidential business information would be provided only to the customer involved in the transaction, the Commission, or as part of discovery procedures.[60]

c. Proposed Requirement for Notification of OFOs and Critical Notices Using Internet Posting Along With E-Mail or Notice to URL Addresses

A standard that has been in dispute concerns the method by which pipelines communicate operational flow orders (OFOs) and other critical notices to shippers.[61] OFOs are orders by a pipeline requiring shippers to take certain actions to alleviate emergency operational conditions on the pipeline's system. The four segments, other than the pipelines, supported a standard to require pipelines to notify affected parties of OFOs and critical notices according to the medium chosen by the shipper, 24 hour phone, fax, or pager. The pipelines, on the other hand, support only electronic notification using a general posting on their EBB or Internet web sites.

The pipelines contend requiring individual notice, particularly for system-wide OFOs or critical notices is far too burdensome and may be unfair.[62] Given the pipelines' limited resources to provide individual notice, some shippers will receive notice far earlier than others. Moreover, the pipelines maintain that if a shipper fails to receive a telephone or fax transmission, the pipelines have no electronic record that it was sent. The shippers maintain that purely electronic posting on an EBB is insufficient actual notice, particularly for notices issued after normal business hours. In addition, at the conference and in comments,[63] some parties suggested that posting on the pipeline's web site be supplemented by the use of Internet E-mail or notification to a shipper's Internet web address as alternatives for providing telephonic or fax notice to shippers.

The Commission concludes this last approach has the most merit. Internet E-mail and notification to a shipper's Internet address provides the shipper with direct notice without the need to monitor the pipeline's Internet site. Such notice can be automated by the pipeline so sending the message should not create the burdens of individual telephonic or fax notification. Automated notice also permits simultaneous notice to all shippers, thereby eliminating any potential for discrimination as to when a shipper receives notification. Moreover, if a shipper receives notice through Internet E-Mail or to a web address, the shipper can, if it wants, obtain telephonic or pager notice by purchasing commercially available software packages and services that permit Internet notification to trigger a phone or a pager.[64] Thus, the Commission is proposing to require pipelines to post OFOs and critical notices on their Internet web sites and to provide individual notice to shippers, at the shipper's option, either through Internet E-mail or by a direct notice to a shipper's Internet address.[65]

At the conference, there also was discussion about the difference between requiring telephone or fax notice for system-wide or large-scale OFO situations and attempting to reach a small number of shippers by whatever means is necessary in localized and critical situations.[66] The Commission continues to expect that for extremely critical OFOs limited to only a few shippers, the pipelines will continue to make every effort to ensure that the affected shippers are informed.

E. Policies Regarding Title Transfer Tracking

1. Background

Title transfer tracking refers to the accounting for transfers of title to gas at a nomination point when no transportation is involved. Under the Commission's policy, shippers must have title to gas in order to transport the gas on a pipeline. Pipelines, therefore, have always had to perform some title transfer tracking to ensure that shippers have title to gas. For example, if shipper A on an upstream pipeline transports gas to an interconnect with a downstream pipeline and transfers the gas to shipper B on the downstream pipeline, the pipelines would have to match those transactions as part of the process of confirming the nominations.

However, with unbundling and the development of a more fluid gas market, transactions at nomination points are increasing to a much greater extent. Thus, at an interconnect point, there may be multiple transfers of title before the gas is nominated on the downstream pipeline.[67] In order for pipelines to confirm the gas nominated on the upstream and downstream pipelines, there is a need to convey information about which shipper(s) are delivering the gas to the shipper on the downstream pipeline.

GISB established a title transfer tracking task force to evaluate these issues and attempt to develop standards for how title transfer tracking would be conducted, with a report due by September of 1997. In its September 2, 1997 filing, GISB included an interim report by its title transfer tracking task force summarizing its progress. According to the report, the task force has distilled 13 initially proposed methods for handling title transfers to five, which it is still considering. It also has identified 13 remaining issues relating to title transfer tracking, such as how title transfers are related to invoicing, pre-determined allocations (PDAs), and multi-tiered allocations, whether title transfers can have imbalances, and how title transfers fit in with intra-day scheduling.

NGC in its September 2, 1997 comments states that while the title transfer tracking task force is evaluating and defining the process, the task force is not addressing the underlying issue of whether the pipelines should be required to perform the service. NGC claims the extent of the pipelines' responsibility to perform title transfer tracking is an intractable policy dispute that only the Commission can resolve.

In reviewing the comments filed on this issue, it is evident that there is a split between the segments on whether the pipelines should be responsible for performing title transfer tracking service. The pipelines contend that tracking title exchanges, when no physical transportation is occurring, is unrelated to transportation service.[68] They maintain that they should not be responsible for performing an accounting service for marketers and others that are seeking to arbitrage in the volatile gas market. If the Commission were to require them to perform title transfer tracking, the pipelines maintain that they should be able to collect a separate charge for the service, rather than having it included in their general transportation rates. LDCs similarly contend that shippers using title transfer services should be required to pay a separate charge.[69] Charging a separate fee, they maintain, is consistent with the GISB principle that the users of title transfer services should bear the cost of the service.[70]

Marketers and others[71] contend that title transfer tracking is related to the confirmation process and that pipelines are in the best position to perform this service because they already process nominations and confirmations electronically. The marketers further contend that if the pipelines do not perform title transfer tracking, the pipelines may seek to require shippers to disclose the string ("daisy chain") of title transfers, so that interconnecting pipelines can confirm the nomination. Disclosure of the daisy chain, marketers assert, is anticompetitive because marketers would have to disclose to the ultimate purchaser the marketer's raison d'etre—the source of the marketer's reasonably priced gas.[72] They allege that the purchaser could appropriate this information for its own benefit in succeeding months by eliminating the marketer and buying gas directly from the source.

2. Pipeline Obligations With Respect to Title Transfer Tracking

To assist GISB, the Commission will resolve this policy dispute regarding the pipelines' responsibilities to perform title transfer tracking. Pipelines must continue to ensure that shippers on their systems have title to the gas they intend to ship. To perform this function, the Commission sees no reason to require pipelines to establish a computerized title transfer tracking service to account for the purchase and sale of gas between shippers independent of transportation. It is the shipper's responsibility to furnish the transporter with the information needed to establish title to gas and its right to nominate that gas on the pipeline. GISB should continue its efforts to develop standards defining the minimum information needed for nominations and confirmations.

While the Commission is not proposing that the pipelines be required to perform title transfer tracking, the Commission recognizes that some shippers have a need for this service. Pipelines, therefore, may perform title transfer tracking service and may assess a reasonable, independent fee for the service.[73] Charging a separate fee for

[55] The user would have to accumulate its own database of numbers and then attempt to obtain the names from Dun & Bradstreet, at a cost.

[56] The Commission recognizes, however, that while the pipeline web sites must contain the same information as that posted on an EBB or in the EDI datasets, the downloads from the web site should not be in EDI format.

[57] Proposed regulation 284.10(b)(2)(iii)(C). This is the same principle that applies to the acquisition of the cross-reference table between the common transaction point codes and the pipelines' individual nomenclature for referring to those points. Standards For Electronic Bulletin Boards Required Under Part 284 Of The Commission's Regulations, Order No. 563–A, 59 FR 23624 (May 9, 1994), III FERC Stats. & Regs. Regulations Preambles ¶ 30,994, at 31,044–45 (May 2, 1994).

[58] 18 CFR 284.10(a)(2); Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), III FERC Stats. & Regs. Regulations Preambles ¶ 30,950, at 30,549 (Aug. 3, 1992).

[59] Proposed regulation 284.10(b)(2)(iii)(D).

[60] 18 CFR Part 385, Subpart D.

[61] Appendix B, Disputed Standard No. 23.

[62] For example, one pipeline representative stated that even calling in all available personnel, about 24 people, it took them six hours to contact all affected parties. Transcript of December 13, 1996 technical conference at 37.

[63] Comments of American Gas Association, at 11 (February 21, 1997); Brooklyn Union Gas Company, at 1 (February 21, 1997).

[64] *See* National Fuel Gas Supply Corporation, 80 FERC ¶ 61,403 (1997) (finding Internet notification sufficient and noting customers' ability to use such notifications to trigger pagers).

[65] Proposed regulation 284.10(b)(2)(iii)(E).

[66] Transcript of December 13, 1996 technical conference, at 17, 34–36.

[67] Enron Interstate Pipelines refers to these transactions as "title transfer only" transactions to differentiate them from transactions involving title exchange and transportation.

[68] *See* Comments of NorAm Gas Transmission Company and Mississippi River Transmission Company, at 4 (February 21, 1997).

[69] Comments of American Gas Association, at 16 (February 21, 1997).

[70] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.1.11.

[71] Comments of Natural Gas Clearinghouse, at 14 (February 24, 1997); Energy Managers Association, at 9 (February 21, 1997).

[72] Transcript of December 12, 1997 technical conference, at 104.

[73] *See* Trunkline Gas Company, 75 FERC ¶ 61,003 (1996) (approving a separate flat charge for tracking

Continued

such service will help to ensure that shippers will use the service only to the point at which the shippers value the service more than the price charged.

Further, shippers should have the opportunity to develop their own competitive systems for tracking title and have the pipeline recognize those title transfers in determining whether a shipper has title to the gas it seeks to transport. Title transfer services already are beginning to be offered both by pipelines and by storage and hub operators and, if the demand exists, such services should increase.[74] Enron Interstate Pipelines contend that third-parties in the competitive market can provide title transfer tracking services, although Enron recognizes that pipelines may need to perform a coordinating role by accepting confirmations from these third-parties.[75]

The Commission agrees with Enron that pipelines must accept title transfer confirmations from point operators and third-party service providers, acting as agents for shippers, on a non-discriminatory basis.[76] Requiring pipelines to accept such confirmations from third-parties is consistent with the Commission's policy in Order No. 636 that pipelines need not create market centers, but must not take actions which will inhibit the development of such centers.[77] The development of third-party title transfer tracking services also will place competitive pressure on pipelines that choose to offer a title transfer tracking service and thus help to ensure the pipelines' rates are reasonable.

With the clarification of the pipelines' role in title transfer tracking, the Commission expects that GISB should be able to develop the business practices and electronic communication standards relating to the confirmation process for title transfers. The Commission will provide GISB until March 31, 1998 to submit such standards. Other members of the industry also may propose standards at that time as well.

service) *But cf.*, Williams Natural Gas Company, 79 FERC ¶ 61096 (1997) (rejecting a volumetric, per Dth, fee for title transfer service).

[74] *See* Moss Bluff Hub Partners, L.P., 80 FERC ¶ 61,181, at 61,475 (1997); Trunkline Gas Company, 75 FERC ¶ 61,003 (1996).

[75] Comments of Enron Interstate Pipelines, at 18 (February 21, 1997).

[76] Title transfer tracking is part of the confirmation process, because it involves the confirmation that gas nominated by a shipper will be injected into the pipeline's system. It is no different than a confirmation provided by a producer or point operator, who, in fact, may be offering a title transfer tracking service of its own.

[77] 18 CFR 284.8(b)(4), 284.9(b)(4) (1997).

F. Commission Policies Regarding the Disputed Issues Remaining From the December 12–13, 1996 Technical Conference

During the standardization process, disputes developed in a number of areas in which the GISB membership was unable to reach consensus. A number of standards were supported by four segments of the industry, but were not passed by GISB due principally to the opposition of the pipeline segment.[78] The pipelines contended that these standards are not warranted or that they represented an attempt by the other members of the industry to shift costs onto the pipelines, as the only regulated entities.[79] In the November 13, 1996 NOPR,[80] the Commission announced that in order to exercise its oversight role, Commission staff would hold a technical conference on December 12–13, 1996 to consider these issues. The technical conference was to provide further information on those disputed standards so that the Commission could determine whether these standards were of sufficient importance to the maintenance of an integrated pipeline grid that the pipelines should be required to abide by them. Comments on the technical conference were filed on February 21, 1997.

Three of the disputed standards were discussed earlier;[81] the remainder will be discussed below.

1. Ranking Across Contracts (Disputed Standard No. 28B)

Disputed Standard No. 28B states that pipelines should permit rankings across contracts for the same service requester and location, when not in conflict with tariff-based rules. Gas package ranking refers to the ability of shippers to designate the amount of gas that will be allocated to particular markets or customers in the event the shipper's full nomination is not accepted. The standards adopted by the Commission already require pipelines to honor shipper "rankings when making reductions during the scheduling process when this does not conflict with tariff-based rules."[82] For example, if a shipper nominates 1,000 MMBtus under one contract, it can specify how that 1,000 will be divided if the full 1,000 MMBtus is not confirmed. The disputed standard would specifically extend the pipelines' obligation to support ranking across contracts.

Shippers contend this standard is needed to give them the flexibility to manage their own gas supplies.[83] They point out that shippers may be shipping under a variety of contracts, including their own firm and interruptible contracts as well as capacity release contracts which have their own specific terms and conditions. They further note that a capacity release contract may contain a take-or-pay clause in which a shipper is required to pay a certain rate whether it moves gas or not. To maximize their use of transportation, shippers contend they should be able to determine how their transportation is allocated among their contracts.

The pipelines are not unified in their position on this standard. Columbia Gas/Columbia Gulf support allowing shippers to use rankings across contracts.[84] Enron Interstate Pipelines, however, is concerned about how such a provision would impact pipelines' tariff provisions establishing scheduling priority.[85] They ask, for instance, whether a shipper would be able to rank an interruptible contract as having a higher priority than a firm contract.

The Commission's general policy is to allow shippers to manage their gas supplies and contracts in ways that are the most favorable to them as long as such management does not affect the operational integrity of the pipeline. The pipelines, therefore, should provide shippers with the ability to rank gas supplies across their contracts so long as the ranking does not adversely affect the operational integrity of the system. There are two potential scenarios identified by the comments: problems with the shipper's gas supply resulting in a reduction in a shipper's nomination; and transportation constraints resulting in the reduction.

If the reduction is related to a loss of supply, the Commission sees no reason why shippers should not be able to specify the contract under which the gas should flow. Such a determination is unrelated to any transportation issues on the pipeline, since there have been no cuts in transportation.

Even when the reduction is a result of transportation problems, allowing the shipper to rank its contracts does not appear to interfere with pipeline scheduling priorities. Suppose a shipper has nominated 100 MMBtus each on three contracts, firm primary, capacity release secondary, and interruptible, from the same receipt to the same delivery point, but the pipeline can schedule only the firm primary contract. Under normal priority rules, the shipper could receive only the 100 MMBtus of transportation represented by the firm primary contract. However, permitting the shipper to choose how to assign those 100 MMBtus among its contracts does not upset the transportation priority rules. The shipper still would receive only the 100 MMBtus represented by its firm primary contract even if it allocated gas to its secondary capacity release contract. If the shipper had nominated no primary firm transportation in this example, it would receive no transportation.

Since the business practices standards already require the pipelines to honor shipper rankings, no new standards are necessary. GISB and the industry should work on dataset changes, if necessary, to permit cross-contract ranking. Such standards should be filed by March 31, 1998 along with the title transfer tracking standards.

2. Multi-Tiered Allocations (Disputed Standard No. 29)

Disputed Standard No. 28 would require pipelines to permit all owners of gas to submit a pre-determined allocation. A pre-determined allocation is a set of instructions by owners of gas as to how gas should be allocated among amongst them when the actual volumes do not match with the scheduled volumes. A pre-determined allocation is not necessary if the pipeline has an OBA in effect at a transfer point.[86] The standards currently require pipelines to accept one tier of allocations from the upstream or downstream custody transfer party.[87] The standard data elements accommodate multi-tiered allocations, but pipelines are not required to accept or support such allocations.[88] The dispute is whether pipelines should be required to support multi-tiered allocations from all owners of gas, including the wellhead operator and each producer owner.

Those supporting multi-tiered allocations contend that they fit well with title transfers occurring at the wellhead.[89] The pipelines generally maintain that multi-tiered allocations are merely another aspect of title transfer tracking and contend that they should not be required to perform such accounting for transactions not occurring on their systems.[90]

The current regulations give those parties connecting with a pipeline the right to determine how gas is to be allocated at the interconnection with the pipeline system. The Commission fails to see why this right needs to be extended so that pipelines become responsible for maintaining the accounting records for allocations occurring at the well-head or at interconnections not affecting the pipeline. The request for pipelines to accept multi-tiered allocations appears to be just another aspect of the request for the pipelines to track all title transfers, and, as discussed above, the Commission does not view title transfer tracking as the responsibility of the pipelines. The GISB task force has recognized that accounting for multi-tiered allocations is another aspect of title transfer tracking,[91] and GISB should continue to work on standards that will allow such allocations to be performed by third-parties.

3. *Paper Pooling (Disputed Standard Nos. 38A, 38B, 40B)*

The disputed standards would require pipelines to establish so-called "paper pools" in zones, segments, or rate areas where shippers can deliver gas without an additional transportation charge. The disputed standards also would require allocation of imbalances to the pooler or the pooling agreement.

Pooling refers to the aggregation of gas from multiple physical or logical points to a single physical or logical point.[92] The current standards require that shippers be able to both deliver gas from receipt points into at least one pool and receive quantities at a delivery point from at least one pool.[93]

Those supporting paper pooling contend that aggregation of gas supplies is necessary for the gas market to work efficiently, although they do not explain why paper pooling is absolutely necessary to achieve this efficiency.[94] The further contend that pooling is necessary to permit pool to pool transfers. The pipelines maintain that the requests for additional pooling standards are another aspect of the request that pipelines provide title transfer tracking services.[95]

The existing standards recognize the benefits of pooling and the pipelines are required to provide at least one pool for both receipt and deliveries of gas. Those advocating paper pooling standards have not provided a sufficient rationale for these standards at this time. Some pipelines currently offer paper pools, while others offer physical pooling in which shippers may have to pay a transportation charge to move gas into the pool. When a pool exists in a rate zone, the charge for shipment in that zone must be incurred either for shipment to the pool or shipment out of the pool. The marketers and producers advocating paper pooling do not provide sufficient justification for imposing the transportation charge on the outbound transportation in all situations. Moreover, to some extent, the argument for paper pooling is connected to title transfer tracking, because those proposing the use of paper pools want to use pool to pool transfers as a way of transferring title. But, as discussed above, the Commission is not requiring pipelines to offer title transfer tracking service, so there is little reason to require all pipelines to permit paper pooling at this time.

4. *Fuel Reimbursement Standards (Disputed Standard Nos. 44, 49A, 50A, 51A, 54B, 55, 56B, 57B, 58, 59B, 60–65, 66B, 67, 95A)*

The current standards have simplified and made more uniform the process of providing in-kind fuel reimbursement for compressor fuel.[96] These standards provide, in part, that pipelines must adhere to a standard method for calculating fuel, provide fuel reimbursement percentages at the beginning of the month, not reject nominations for fuel due to differences of less than 5 Dth, and provide a fuel

[78] *See* Appendix B.

[79] *See* comments of Interstate Natural Gas Association of America, at 13–18 (February 21, 1997).

[80] *See* Standards For Business Practices of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 58760 (Nov. 19, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,521 (Nov. 13, 1996).

[81] Disputed Standard No. 77A relating to intra-day nominations, Disputed Standard 85A relating to imbalance trading, and Disputed Standard No. 23 relating to notice of OFO's. *See* text accompanying notes 40, 46, and 61, *supra*.

[82] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.23.

[83] Comments of Natural Gas Clearinghouse, at 23 (February 24, 1997); Energy Managers Association, at 15 (February 21, 1997).

[84] Comments of Columbia Gas Transmission Corporation and Columbia Gulf Gas Transmission Corporation, at 4 (February 21, 1997).

[85] Comments of Enron Interstate Pipelines, at 19 (February 21, 1997).

[86] 18 CFR 284.10(b)(1)(ii), Flowing Gas Related Standards 2.2.3.

[87] 18 CFR 284.10(b)(1)(ii), Flowing Gas Related Standards 2.3.19.

[88] 18 CFR 284.10(b)(1)(ii), Flowing Gas Related Standards 2.3.25.

[89] Comments of Natural Gas Clearinghouse, Docket No. RM96–1–000, filed October 1, 1996, at 14.

[90] Comments of Enron Interstate Pipelines, at 18 (February 21, 1997); Interstate Natural Gas Association of America, at 33 (February 21, 1997).

[91] GISB September 2, 1997 filing at Appendix A, part 4.

[92] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.2.3.

[93] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.17 and 1.3.18.

[94] *See* comments of Natural Gas Clearinghouse, at 11 (February 24, 1997); Energy Managers Association, at 10–13 (February 21, 1997).

[95] Comments of Enron Interstate Pipelines, at 18 (February 21, 1997); Interstate Natural Gas Association of America, at 33 (February 21, 1997).

[96] In-kind fuel reimbursement refers to a requirement that a customer nominate and put into the system extra gas to compensate the pipeline for the gas used by its compressors.

matrix for receipt and delivery point combinations.[97]

The disputed standards would further standardize in-kind fuel reimbursement by requiring that pipelines make fuel rate changes prospectively only, that pipelines can change fuel rates only on six month intervals, and that pipelines will have to true-up fuel rates to actuals periodically and on a prospective basis. The disputed standards also cover a number of alternatives to in-kind fuel reimbursement, such as fuel cash-out, negotiated sales, and cost of service. At the December 12–13, 1996 technical conference, it was not clear whether shippers wanted to mandate that pipelines provide an alternative to in-kind fuel reimbursement or whether they simply wanted standards for these alternatives so that if pipelines choose to offer an alternative, the shippers would not be faced with different implementation methods.[98] Some marketers, such as NGC, also want to ensure that they are able to compete with pipelines in providing fuel service.

Pipelines oppose additional standardization of fuel reimbursement.[99] The pipelines maintain that they should not be required to reenter the merchant function to buy gas in order to provide an alternative to in-kind fuel reimbursement. Such a requirement, they assert, reverses the unbundling mandate of Order No. 636. They further contend that alternatives to in-kind fuel reimbursement are not yet in widespread use and that standardization of a new service will prevent innovation and creativity in the early stages of development.

In the Commission's view, the case for including these additional fuel reimbursement standards has not been made at this time. With respect to in-kind fuel reimbursement, there appears to be no need to limit pipelines to two fuel reimbursement changes per year, as the disputed standard would provide. Pipelines may have a need to file for further changes, and can file to implement such changes when necessary under section 4 of the Natural Gas Act. The current standard requiring pipelines to provide fuel reimbursement percentages at the beginning of the month provides sufficient notice for shippers to obtain the correct fuel percentages and update their computers for all pipelines on a set schedule.

The Commission also agrees with the pipelines that standardizing alternatives to in-kind fuel reimbursement is premature at this point, since such alternatives are not in widespread use. Nor is it clear why creating standards for cash out mechanisms is more important for fuel reimbursement than for the other areas, such as penalties, in which cash outs also are employed. It may be worthwhile for the Commission to reexamine standardization of cashout mechanisms as part of a more comprehensive examination of penalty structures, but that is beyond the scope of this proceeding.

The Commission, however, finds that pipelines, whether or not they provide fuel service, should permit shippers that do not want to calculate fuel to contract with third-party agents to provide the required fuel at the necessary points. The pipelines must accept fuel nominations from these third-party providers. For those pipelines that do provide fuel service, they must allow third-parties to provide fuel on a non-discriminatory basis.

5. *Penalty Determination (Disputed Standard No. 88A)*

Disputed Standard No. 88A would provide that imbalance penalties would be based on the lesser of operationally provided data or actual data. There is some dispute over the meaning of the standard. While the standard seems to contemplate that imbalance penalties would be calculated based on the lower of the two figures, Natural Gas Clearinghouse contended at the technical conference that the standard only applied to the determination of the penalty category, not to the volumes against which the penalty would be applied.[100] For instance, under Natural Gas Clearinghouse's reading of the standard, if the reported imbalance put the shipper in the 10% penalty category, the shipper would pay the penalty associated with that category on the actual imbalance amount, even if the actual imbalance would have placed the shipper in a higher penalty category.

Pipelines contend cash-outs for imbalances need to be dealt with on a case specific basis. Enron Interstate Pipelines, for instance, argues that the standard is too broad and fails to recognize that in many cases, the shipper or point operator, and not the pipeline, is the party with better access to the data. It maintains, for instance, that pipelines and shippers may agree in settlements to forgo the expense of installing electronic flow measurement devices, which would limit the accuracy of the pipeline's operational measurements.

As a general principle, the Commission's policy is to determine the penalty category by the data provided to the shipper, particularly when the pipeline is doing the measurement.[101] A shipper should be responsible only for penalty category it reasonably could have anticipated based on the information provided by the pipeline. The cash out price, however, should be based on the actual imbalance incurred.[102]

The Commission does not find that a generic standard is necessary on this issue. There appears no compelling reason to insist on uniformity across all pipelines on this issue. As the pipelines point, there may be some circumstances in which the policy is not reasonable and those issues are best handled on a case-by-case basis.

III. Information Collection Statement

The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs of complying with GISB's Version 1.2 standards and the Commission's proposed regulations regarding intra-day nominations, the use of OBAs at pipeline interconnects, the trading of imbalances, and communications using the Internet. The proposed requirements regarding communication over the Internet build upon the computer infrastructure pipelines have already created to comply with Order No. 587. The burden estimates are primarily related to start-up and will not be on-going costs except for the recordkeeping requirement.

[97] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.16, 13.3.28 through 1.3.30.

[98] *See* transcript of December 13, 1996 technical conference at 58.

[99] *See* Comments of Columbia Gas/Columbia Gulf, at 7 (February 21, 1997); INGAA, at 27 (February 21, 1997); Enron Interstate Pipelines, at 23 (February 21, 1997); Koch, at 17 (February 21, 1997); Viking, at 4 (February 21, 1997); Williston Basin, at 5 (February 21, 1997).

[100] Transcript of December 12, 1996 technical conference at 243.

[101] *See* Algonquin Gas Transmission Company, 63 FERC ¶ 61,188, at 62,374 (1993); Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,486 (1993); Transcontinental Gas Pipe Line Corporation, 55 FERC ¶ 61,446, at 62,369 (1991).

[102] *See* Texas Eastern, *supra* note 101, *supra*.

ESTIMATED ANNUAL BURDEN

Data collection	No. of respondents	No. of responses per respondent	Hours per response	Total annual hours
FERC–545	93	1	58	5,394
FERC–549C	93	1	4,483	416,919

Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate)) = 422,313.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for the total of 93 respondents to be the following:

	FERC–545	FERC–549C	Totals
Annualized Capital/Startup Costs	$284,303	$21,641,327	$21,192,630
Annualized Costs (Operations & Maintenance)	0	333,321	333,321
Total Annualized Costs	284,303	21,974,648	22,258,951

The Office of Management and Budget's (OMB) regulations[103] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (interstate natural gas pipelines; (Not applicable to small business)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the information: This rule, if implemented, proposes to revise the requirements contained in 18 CFR 284.10. These requirements would further the process of standardizing business practices and electronic communications with interstate pipelines begun by the Commission in Order No. 587. Through the adoption of the regulations proposed in this NOPR, the Commission is seeking to continue to the process of establishing a more efficient and integrated interstate pipeline grid. By requiring adherence to these regulations on an industry-wide basis, the Commission seeks to reduce variations in pipeline business practices and communication protocols, permitting pipelines and their customers to more efficiently obtain information from and transact business across multiple pipelines.

The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of industry's operations. The Commission's Office of Pipeline Regulation will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

Internal Review: The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 88 First Street, N.E., Washington, D.C. 20426, (Attention: Michael Miller, Division of Information Services, Phone: (202) 208–1415, fax: (202) 273–0873, email:mmiller@ferc.fed.us)

Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285]

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[104] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[105] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[106] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[107] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty

[103] 5 CFR 1320.11.

[104] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (1987).

[105] 18 CFR 380.4.

[106] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[107] 5 U.S.C. 601–612.

of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments must be filed with the Commission no later than [insert date 30 days after publication in the **Federal Register**]. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM96–1–007. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

Additionally, comments should be submitted electronically. Commenters are encouraged to file comments using Internet E-Mail. Comments should be submitted through the Internet by E-Mail to comment.rm@ferc.fed.us in the following format: on the subject line, specify Docket No. RM96–1–007; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number and E-Mail address of a contact person; and attach the comment in WordPerfect" 6.1 or lower format or in ASCII format as an attachment to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions or comments on electronic filing using Internet E-Mail should be directed to Marvin Rosenberg at 202-208–1283, E-Mail address marvin.rosenberg@ferc.fed.us.

Commenters also can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM96–1–007 on the outside of the diskette.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements; Incorporation by reference.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. In section 284.10, paragraph (a)(6) is added and paragraph (b) is revised to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

(a) * * *

(6) A pipeline's obligation to provide information pursuant to this paragraph will terminate when all relevant information is provided pursuant to paragraph (b)(2)(iii)(A) of this section.

(b) *Business Practices and Electronic Communication Standards.* (1)(i) An interstate pipeline that transports gas under subparts B or G of this part must comply with the following business practice and electronic communication standards promulgated by the Gas Industry Standards Board, which are incorporated herein by reference:

(A) Nominations Related Standards (Version 1.2, July 31, 1997), with the exception of Standard 1.3.32;

(B) Flowing Gas Related Standards (Version 1.2, July 31, 1997), with the exception of Standards 2.3.29 and 2.3.30;

(C) Invoicing Related Standards (Version 1.2, July 31, 1997);

(D) Electronic Delivery Mechanism Related Standards (Version 1.2, July 31, 1997), with the exception of Standard 4.3.4; and

(E) Capacity Release Related Standards (Version 1.2, July 31, 1997).

(ii) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these standards may be obtained from the Gas Industry Standards Board, 1100 Louisiana, Suite 4925, Houston, TX 77002. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426 and at the Office of the Federal Register, 800 North Capitol St. NW., Suite 700, Washington, DC.

(2) An interstate pipeline that transports gas under subparts B or G of this part must comply with the following requirements.

(i) Nominations. A pipeline must accord an intra-day nomination submitted by a firm shipper scheduling priority over nominated and scheduled volumes for interruptible shippers. An interruptible shipper must be provided with notice that its scheduled volumes are to be reduced.

(ii) Flowing Gas. (A) Operational Balancing Agreements. A pipeline must enter into Operational Balancing Agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline.

(B) Netting and Trading of Imbalances. A pipeline must establish provisions permitting shippers and their agents to offset imbalances accruing on different contracts held by the shipper with the pipeline and to trade imbalances with other shippers where such imbalances have similar operational impact on the pipeline's system.

(iii) Communication Protocols. (A)(*1*) All electronic information provided and electronic transactions conducted by a pipeline must be provided on the public Internet. A pipeline must provide, upon request, private network connections using internet tools, internet directory services, and internet communication protocols and must provide these networks with non-discriminatory access to all electronic information. A pipeline may charge a reasonable fee to recover the costs of providing such an interconnection.

(*2*) A pipeline must implement this requirement no later than June 1, 1999.

(B) A pipeline must comply with the following requirements for documents constituting public information posted on the pipeline web site:

(*1*) The documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement;

(*2*) Users must be able to search an entire document online for selected words and users must be able to copy selected portions of the documents; and

(*3*) Documents on the web site should be directly downloadable without the need for users to first view the documents on the web site.

(C) A pipeline must provide the same content for all information regardless of the electronic format in which it is provided. If a pipeline uses a numeric or other designation to represent information, an electronic cross-reference table between the numeric or other designation and the information represented must be available to users, at a cost not to exceed reasonable shipping and handling.

(D) A pipeline must maintain for a period of five years electronic records of the information displayed and transactions conducted electronically under this section. The pipeline must make this archived information available in electronic form for a reasonable fee.

(E) A pipeline must post operational flow orders, critical periods, and critical notices on their Internet web site and must notify affected parties of such notices in either of the following ways to be chosen by the affected party: Internet E-Mail or direct notification to the parties' Internet URL address.

Note—The following appendices will not appear in the Code of Federal Regulations.

APPENDIX A.—COMMENTS ON DECEMBER 12–13, 1996, TECHNICAL CONFERENCE

Commenter	Abbreviation
Altra Energy Technologies, L.L.C.	Altra.
American Gas Association	AGA.
ANR Pipeline Company and Colorado Interstate Gas Company	ANR/CIG.
Arizona Public Service Company and Salt River Project Agricultural Improvement and Power District	APS/SRP.
The Brooklyn Union Gas Company	Brooklyn Union.
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Corporation	Columbia Gas/Columbia Gulf.
El Paso Natural Gas Company	El Paso.
Energy Managers Association	EMA.
Enron Capital & Trade Resources Corporation	Enron Capital and Trade.
Enron Interstate Pipelines (Northern Natural Gas Company, Transwestern Pipeline Company, Florida Gas Transmission Company, and Black Marlin Pipeline Company).	Enron Interstate Pipelines.
Florida Power & Light Company	FPL.
Interstate Natural Gas Association of America	INGAA.
Koch Gateway Pipeline Company	Koch.
National Fuel Gas Distribution Corporation	National Fuel Distribution.
Natural Gas Clearinghouse	NGC.
Natural Gas Pipeline Company of America	NGPL.
Natural Gas Supply Association	NGSA.
NorAm Gas Transmission Company and Mississippi River Transmission Corporation	NGT/MRT.
Northwest Industrial Gas Users	NWIGU.
NrG Information Services Inc.	NrG.
Pacific Gas and Electric Company	PG&E.
The Peoples Gas Light and Coke Company and North Shore Gas Company	Peoples/North Shore.
Producers Energy Marketing, LLC and Independent Petroleum Association of America	ProEnergy/IPAA.
TransCapacity Limited Partnership	TransCapacity.
Viking Gas Transmission Company	Viking.
Williston Basin Interstate Pipeline Company	Williston.

Appendix B.—Proposed GISB Standards Defeated By One Industry Segment

Operational Flow Orders

Proposed Standard No. 23 Declaration of operational flow orders, critical periods, and/or critical notices should be transmitted to the affected trading parties. Trading parties should keep the transportation service providers apprised of the specific locations for this transmittal. These locations are 24 hour phone, fax, and/or pager. The communication should contain, by reference, specific tariff provision(s) that is (are) applicable to each situation being declared.

Gas Package Rankings

Proposed Standard No. 28B Applicable rankings should be permitted across contracts for the same service requester and location, when not in conflict with tariff-based rules.

Multi-Tiered Allocations

Proposed Standard No. 29 All owners of gas submitting nominations or confirmations should be able to submit a predetermined allocation (PDA). Gas should be allocated based on the PDA submitted by the owner. If a PDA is not submitted, the service provider's default should be used.

Pooling

Proposed Standard No. 38A To the extent operationally compatible with Transportation Service Provider operations and not to their economic detriment, paper pool(s) should be created on each pipeline. Pools should be created so that gas which is already in the zone, segment or rate area (as applicable) where the pool is located can be placed in the pool without transportation.

Proposed Standard No. 38B To the extent operationally compatible with Transportation Service Provider operations and not to their economic detriment, logical pool(s) should be created on each pipeline.

Proposed Standard No. 40B Any differences between a Aggregator's (pooler's) scheduled quantities and allocated quantities at locations for its pool should be allocated to the pooler, or the pooling agreement. Aggregators (poolers) should be responsible for managing the imbalances created by variances with their scheduled quantities.

Fuel Reimbursement

Proposed Standard No. 44 Defining standards for administering the following fuel reimbursement options: in-kind, fuel cash-out, negotiated sales and cost of service does not preclude service providers from offering other options. The choice of fuel reimbursement method(s) is subject to regulatory procedures, where applicable.

Proposed Standard No. 49A For in-kind fuel reimbursement methods, fuel rates can change on six month intervals, on April 1 and October 1.

Proposed Standard No. 50A For in-kind fuel reimbursement and except where pre-September 30, 1996 settlements provide otherwise, fuel rates will have a true-up to actual fuel periodically on a prospective basis.

Proposed Standard No. 51A For in-kind fuel reimbursement methods, fuel rates changes should be made prospectively.

Proposed Standard No. 54B Other than situations where regulatory agencies require cost of service to be the only option provided, the rate for cost of service provided fuel should be stated separately.

Proposed Standard No. 55 For cost of service as the fuel reimbursement method, the rate for cost of service provided fuel should be collected as a variable charge.

Proposed Standard No. 56B No party should be advantaged or disadvantaged in the offering or use of a service by virtue of any costs to provide that service being administered via regulatory proceedings for unassociated services.

Proposed Standard No. 57B Fuel encompasses, but is not limited to, the energy consumed in providing the transportation service (i.e. natural gas, fuel oil, propane, electricity) and lost and unaccounted for gas.

Proposed Standard No. 58 For cash-out as the fuel reimbursement method, Service Requester should notify Service Provider of its election to exercise the cash-out option for fuel one day prior to the close of the NYMEX natural gas futures trading for the next calendar month.

Proposed Standard No. 59B Where cash-out, as a fuel reimbursement method, is offered as an option by a Service Provider, the Service Requester should notify Service Provider of its election to exercise the cash-out option for fuel one day prior to the close of the NYMEX natural gas futures trading for the next calendar month.

Proposed Standard No. 60 Fuel Cash-out options should be exercised for a minimum of one calendar month.

Proposed Standard No. 61 Fuel Cash-out quantities should be determined by multiplying allocated receipts by fuel percentages as stated in the tariff or applicable contract(s).

Proposed Standard No. 62 Fuel Cash-out price should be an established commodity market price (i.e. index or competitive bid) in rate area, zone or segment of the activity, or be based on the same fuel cash-out index used for imbalances.

Proposed Standard No. 63 The fuel cash-out value (fuel quantities times fuel cash-out price) should be separately stated on the invoice for the related activity.

Proposed Standard No. 64 If fuel cash-out price is index-based, the determination of the applicable indices should based on the approved tariff provisions or applicable contract(s).

Proposed Standard No. 65 If fuel cash-out price is other than index-based, the Service Provider should post that price three days prior to the close of the NYMEX natural gas futures trading for the next calendar month.

Proposed Standard No. 66B There should be no cross-subsidization by Service Providers of fuel provision service(s) by transportation service(s) when both fuel provision services and transportation services are provided by the service provider.

Proposed Standard No. 67 Negotiated fuel gas sales are sales of gas by the service provider for the use of the service requester as fuel for its transportation transaction. The price and terms and conditions applicable to the sales transaction should be negotiated between the transportation service provider and the service requester.

Proposed Standard No. 95A If negotiated fuel gas sales are offered, all transportation terms, conditions applicable to fuel sales service should be specified in the transportation service providers tariff, if applicable.

Intraday Nominations

Proposed Standard No. 77A Intraday nominations should be allowed at all nominatable receipt and delivery points and at pooling points.

OBAs and Imbalances

Proposed Standard No. 85A All transportation service providers who have sufficient system storage should allow service requesters (in this instance, service requester excludes agents) to net similarly situated imbalances on and across contracts with the transportation service provider among themselves. In this context, "similarly situated imbalances" includes contracts with the substantially similar financial and operational implications to the transportation service provider.

Proposed Standard No. 88A Imbalance penalties should be based on the lesser of the imbalance penalties based on operationally provided measurement/allocated data and actual measurement/allocated data.

[FR Doc. 97–30233 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94P–0240]

Food Labeling; Serving Sizes; Reference Amount for Baking Powder, Baking Soda, Pectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category "baking powder, baking soda, pectin" from 1 gram (g) to 0.6 g to more accurately reflect the amount of these products that is customarily consumed. The agency is also proposing to include 1/8 teaspoon (tsp) as an additional allowable household measure because it is a common household measure available to consumers. The agency is proposing this action in response to a petition filed by Arm & Hammer.

DATES: Submit written comments by February 2, 1998. See section IV of this document for the proposed effective date of a final rule based on this document. Submit written comments on the collection of information requirements by December 18, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 19, 1990 (55 FR 29517), FDA proposed standard serving sizes for 159 food product categories based on the amount of food commonly consumed per eating occasion by infants, toddlers (children under 4 years of age), and the general population (persons 4 years of age or older). FDA did not suggest any specific serving size for baking soda, baking powder, or pectin at that time.

On November 8, 1990, before FDA issued a final rule on serving sizes, Congress passed the Nutrition Labeling and Education Act of 1990 (hereinafter referred to as "the 1990 amendments"). Section 2a of the 1990 amendments added section 403(q)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)(1)(A)(i)) to require that virtually all foods under FDA's jurisdiction bear nutrition information that is based on a serving size which reflects the amount of food that is customarily consumed and which is expressed in a common household measure that is appropriate to the food. Section 2(b)(1)(B) of the 1990 amendments also directed FDA to adopt regulations that establish standards for defining serving sizes.

In response to the 1990 amendments, among other actions, FDA issued a reproposal on serving sizes (56 FR 60394, November 27, 1991) and asked for comments on all proposed reference amounts. In response to a notice of public meeting, the agency received suggestions recommending a serving size of "1 tablespoon" for baking powder, "1 teaspoon" for pectin, and no recommendation for baking soda. No consumption data were provided for any of the three products (Ref. 1)[1]. In the reproposal, FDA proposed a reference amount customarily consumed per eating occasion (hereinafter referred to as "reference amount") of 1 g for "Baking powder, baking soda, pectin" (56 FR 60394 at 60419), stating that, although no appropriate food consumption data were available, the agency tentatively concluded that 1 g was reasonable for the product category (Ref. 1).

The agency received no comments on the proposed reference amount for baking powder, baking soda, and pectin. In the absence of data supporting a different reference amount, FDA concluded, in its final rule on serving sizes, that 1 g was the appropriate reference amount for all products within this category (58 FR 2229 at 2296, January 6, 1993).

II. The Petition

FDA received a petition dated June 23, 1994, from Church Dwight Co., Inc., on behalf of Arm & Hammer (94P–0240), requesting that the agency amend § 101.12, in Table 2, in paragraph (b), under "Miscellaneous Category: Baking powder, baking soda, pectin" to: (1) Create a separate subcategory for baking soda; (2) establish a reference amount of "500 mg" for baking soda; and (3) permit a corresponding serving size of "1/8 tsp (500 mg)."

The company provided an estimate of the average consumption of baking soda based upon the amount of baking soda used in nine recipes. Two of the recipes contained baking soda. For these two recipes, the company calculated the amount of baking soda based on the reference amount of the finished product. For the seven other recipes that involved the use of baking powder, the company noted that approximately 30 percent of baking powder is baking soda and calculated the amount of baking soda as 1/3 of the amount of baking powder, based on the reference amount of the finished product. The company reported that the average amount of baking soda consumed per reference amount was 261 milligrams (mg), with a range of 54 to 484 mg.

The company also provided documentation to support that 1/8 tsp measuring spoons are common household measures that are available to consumers.

Based on information provided in the petition and on FDA calculations for products containing baking soda, baking powder, and pectin, FDA is proposing to: (1) Include 1/8 tsp as an allowable household measure; and (2) amend the reference amount for baking powder, baking soda, and pectin from "1 gram" to "0.6 grams." A discussion of the basis for the agency's action on the petition and for the proposed changes follows:

III. Basis for the Proposed Action

A. Consideration of an Additional Household Measure

Based on information provided in the petition and on an informal survey of the marketplace (Ref. 1), FDA agrees with the petitioner that 1/8-tsp measuring spoons are now available to consumers. FDA located a set of measuring spoons that included a 1/8-tsp measure and an adjustable measuring spoon that could be varied to measure volumes from 1/8 to 1 tsp (Ref. 1). Therefore, for products that can be measured in fractions of a teaspoon, the agency is proposing to amend § 101.9(b)(5)(i) (21 CFR 101.9(b)(5)(i)) to include 1/8 tsp as an additional allowable household measure. FDA is also proposing to reorganize this section to simplify the options for teaspoon and tablespoon measures and to improve clarity.

B. Consideration of Revised Reference Amounts

1. Evaluation of the Appropriateness of the Data Supplied for Baking Soda

FDA has two concerns with the approach to determining a reference amount for baking soda taken in the petition. First, for the recipes containing baking powder, the petitioner calculated the amount of baking soda as a fraction of the amount of baking powder in the recipe. However, baking soda and baking powder are distinct products. The reference amount for baking soda must be based on the major intended use of baking soda (§ 101.12(a)(7) (21 CFR 101.12(a)(7))), not a fraction of the reference amount of baking powder.

The major consumer use of baking soda is as an ingredient in baked goods, as evidenced by the number of recipes that provide for the use of baking soda as an ingredient that are included in both the petition (e.g., cookies, muffins) and in the 1987 to 1988 U.S. Department of Agriculture (USDA) Recipe File (e.g., cornbread, quick breads, cakes, cookies) (Ref. 1), when baking powder is unavailable, baking soda mixed with cream of tartar may be substituted for baking powder (Ref. 1). However, consumers do not commonly use baking soda to make baking powder because: (1) Baking powder is a commonly available ingredient, (2) substitution may not work in all cases (Ref. 1), and (3) some recipes include both baking soda and baking powder as ingredients, e.g., cake and cookie recipes, included in the petition, and quick bread, cake, and cookie recipes, included in the 1987 to 1988 USDA Recipe File (Ref. 1). Therefore, the consumption of baking soda cannot be based upon the amount of baking soda contained in baking powder.

Second, the reference amounts provided for baked goods (e.g., biscuits, cornbread, muffins, quick breads, cakes, and cookies) are for the finished product (i.e., "baked") (§ 101.12(b), footnote 2 in Tables 1 and 2) and thus take into account changes in weight during baking. To determine the amount of baking soda contained in one reference amount of finished product, it is necessary to consider the weight of the ingredient (i.e., baking soda) as a proportion of the weight of the finished product (e.g., cake) rather than as a proportion of the weight of the raw ingredients (e.g., cake batter) because the reference amounts of baked goods are for the finished products (e.g., on a ready-to-serve or almost ready-to-serve basis) (§ 101.12(b), footnote 2 in Table 2). To account for losses during cooking (e.g., moisture), the finished product weight is determined by applying a yield factor to the sum of the weights of the raw ingredients. Yield factors were provided by USDA as part of the Recipe File (Ref. 1) and represent the final weight of the cooked recipe expressed as a percentage of the uncooked weight (Ref. 1). The calculations used in the petition were based on the weights of the ingredients before baking, not on the weight of the finished product. Therefore, although the difference in weight before and after baking would be expected to be small, it is not appropriate to rely on the calculations provided by the petitioner.

The petitioner only supplied information on the amounts of baking soda contained in two recipes (0.142 g baking soda in one reference amount of chocolate chip cookies, 0.326 g baking soda in one reference amount of buttermilk muffins). As described previously, these values contain minor calculation errors because they were based on the sum of the weights of the ingredients rather than on the finished, cooked weights of the cookies and muffins. FDA cannot calculate the correct amounts of baking soda contained in these two products because the finished weights were not provided. The correct values would be expected to vary only slightly from those provided, however. Therefore, the limited data provided suggest that the customary consumption of baking soda is less than the reference amount of "1 gram."

[1] In this document, the agency is citing relevant material to baking powder, soda, and pectin that originally appeared in Ref. 2 to the reproposal on serving sizes that appeared in the **Federal Register** of November 27, 1991 (56 FR 60394), and Ref. 66 to the final rule on serving sizes that appeared in the **Federal Register** of January 6, 1993 (58 FR 2229 at 2296). (See Docket No. 90N–0165.) For the convenience of the reader the materials are contained in "Ref. 1" of this document.

2. Calculation of an Estimated Amount of Baking Powder and Baking Soda Customarily Consumed Per Eating Occasion

Although the information provided by the petition is suggestive, two recipes are insufficient to support a change in the reference amount for baking soda. To determine whether a change in the reference amount for baking soda is warranted, FDA independently evaluated data for additional products containing baking soda. The agency also evaluated data for baking powder, which currently has the same reference amount as baking soda.

There are no direct consumption data available on baking soda and baking powder because these products are consumed as part of baked goods. Therefore, to estimate an appropriate reference amount, the agency used a procedure similar to the one it used to develop a reference amount for flour, and which it described in the reproposed rule on serving sizes (Ref. 1). Because the major use of flour is to make bread, FDA based the reference amount for flour on the amount contained in one reference amount of white bread. The agency rounded the calculated value down based on estimates of the amount of flour required to make one reference amount of other common products containing flour (e.g., cakes and cookies), which are somewhat lower than the amount used to make bread.

For baking soda and baking powder, FDA reviewed recipes included in the 1987 to 1988 USDA Recipe File (Ref. 1) and determined that there is no one major use of baking soda or baking powder. Therefore, the agency selected 20 baked products that are representative of the variety of products containing baking powder, baking soda, or both (e.g., muffins, cakes, cookies) (Ref. 1). Baking soda is an ingredient in 11 of the recipes, and baking powder is an ingredient in 15 of the recipes.

FDA adjusted for moisture losses during baking and calculated the amounts of baking powder and baking soda contained in a reference amount of the various finished, cooked products (Ref. 1). FDA considers that these calculated amounts indirectly reflect the amounts of baking soda and baking powder customarily consumed when a reference amount of one of these finished products is consumed. For example, the reference amount for banana cake without icing is 125 g. This amount represents the amount of banana cake customarily consumed per eating occasion. FDA determined that 0.41 g of baking soda is contained in 125 g of banana cake. Thus, 0.41 g of baking soda is customarily consumed as part of the 125 g of banana cake.

The amounts of baking powder per reference amount in the 15 products that contain baking powder ranged from 0.13 g to 1.28 g (Ref. 1). For the 11 products containing baking soda, the amount of baking soda contained ranged from 0.08 g to 1.05 g (Ref. 1). There is considerable overlap in the amounts of baking soda and baking powder customarily consumed as part of these baked good products.

The petitioner requested a subcategory for baking soda, separate from baking powder and pectin. To support the creation of a separate subcategory for baking soda, the data must demonstrate that the new subcategory of food will be consumed in amounts that differ enough from the reference amount for the parent category to warrant a separate reference amount (§ 101.12(h)(11)(i)). The previous recipes demonstrate that baking soda is not consumed in amounts that differ enough from the amounts in which baking powder is consumed to warrant a separate subcategory. Therefore, the agency is denying this aspect of the petition.

Because the serving size is expressed in common household measures (§ 101.9(b)(7)), FDA calculated the weights of baking soda and baking powder that correspond to 1/4 tsp, the smallest household measure currently permitted (§ 101.9(b)(5)(i)), and to 1/8 tsp, the household measure suggested by the petitioner. The agency used a standard value of 4.6 g/tsp reported by USDA for the density of baking soda and baking powder (Ref. 1).

To determine whether the current reference amount of 1 g accurately reflects the amounts of baking soda and baking powder customarily consumed, FDA reviewed the calculated amounts of baking soda and baking powder in the 20 representative baked good products. FDA found that, among the 11 recipes that contained baking soda, the great majority (10) of the values for baking soda clustered around 0.6 g (the weight of 1/8 tsp), and that for only 1 product was the value for baking soda closer to 1.2 g (the weight of 1/4 tsp) than to 0.6 g (Ref. 1). Of the 15 recipes containing baking powder, the agency again found that the great majority of values (12) clustered around 0.6 g (the weight of 1/8 tsp), and that only 3 values for baking powder were closer to 1.2 g (the weight of 1/4 tsp) than to 0.6 g (Ref. 1).

These data provide significant evidence that the current 1 g reference amount, which approximates the weight of 1/4 tsp, is too large for both baking soda and baking powder. They support that a "0.6 g" reference amount, which would result in a serving size declaration of "1/8 tsp," would more accurately reflect the amount of baking soda and of baking powder contained in a reference amount of the prepared products that contain these foods.

3. Consideration of a Different Reference Amount for Pectin

In the final rule on serving sizes (58 FR 2229 at 2296), FDA included pectin in the same product category as baking soda and baking powder. Because the agency is considering a different reference amount for baking soda and baking powder (discussed in sections III.B.1 and B.2 of this document), FDA also reevaluated the appropriateness of the 1 g reference amount for pectin.

Pectin is an ingredient that is used as a thickener in the preparation of jams and jellies. The agency located one jam recipe (Ref. 1) that gives the yield in a volume measure (cups), making it possible to calculate the amount of pectin per reference amount of prepared jam (1 tbsp) (Ref. 1). The agency's calculation reveals that 1 tbsp of jam contains 0.52 g of pectin (Ref. 1). The 1987 to 1988 USDA Recipe File (Ref. 1) does not contain any recipes for jams or jellies, and FDA does not have any other information on pectin. Though limited, this one recipe supports a reference amount for pectin closer to 0.6 g than to the current "1 gram" reference amount. FDA requests that interested persons submit information on the appropriateness of this reference amount for pectin.

C. Proposed Action

After reviewing the data on baking soda and baking powder use as ingredients in various baked goods, and after considering the amount of pectin in a reference amount of jam, the agency is proposing to change the reference amount in § 101.12(b), Table 2 for the "Miscellaneous Category: Baking powder, baking soda, pectin" from "1 g" to "0.6 g" to better reflect the amounts customarily consumed for these products.

IV. Effective Date

The agency periodically establishes by final rule in the **Federal Register** uniform effective dates for compliance with food labeling requirements (see, e.g., the **Federal Register** of December 27, 1996 (61 FR 68145)). FDA proposes that any final rule that may issue based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements, which is established by final rule in the **Federal Register** and which is no sooner than 1 year following publication of any final rule based upon this proposal.

The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce on or after its effective date. However, FDA notes that it generally encourages industry to comply with new labeling regulations as quickly as feasible. Thus, when industry members voluntarily change their labels, it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time. On the other hand, if any industry members can foresee that the proposed effective date will create particular problems, they should bring these problems to the agency's attention in comments on this proposal.

V. Environmental Impact

The agency has determined under 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Executive Order 12866 Analysis

FDA has examined the economic implications of the proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866.

This proposed rule will cause the labels of baking powder, baking soda, and pectin to be revised. FDA estimates that there are 29 firms producing baking powder, baking soda, or pectin. There are 23 baking powder labels, 18 baking soda labels, and 25 fruit pectin labels for a total of 66 labels affected by this rule. On average, the administrative, redesign, and inventory disposal costs for a labeling change of this type, with a 1-year compliance period are $600 per product, or a total of $39,600.

The benefit of this proposed regulation is that because manufacturers will provide information on a serving size that is more appropriate for baking soda, baking powder, and pectin, product labels will provide more accurate information to consumers.

VII. Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this proposed rule will have a significant impact on a substantial number of small entities.

A. Estimate and Description of the Small Entities

According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration has set size standards for most business categories through use of four-digit Standard Industrial Classification codes. For baking powder, baking soda, and pectin, a business is considered small if it has fewer than 500 employees.

FDA estimates that four of the firms producing baking powder, baking soda, or pectin are small. FDA also estimates that each small firm produces two products which might be relabeled as a result of this rule.

B. Description of the Impacts

The cost of this rule per small firm will be $1,200 ($600 x two products). The 95th percentile firm has annual sales of $275,000 and one employee. The costs of the rule as a percentage of annual sales is 0.4 percent. Return on sales for this industry is 8.3 percent for the upper quartile, 2.9 percent for the median, and 0.9 percent for the lower quartile. FDA is uncertain to which quartile this firm belongs because the number of employees and annual sales do not imply anything about the profitability of a firm. The costs of this rule will be 4.8 percent of profits if this firm falls into the upper quartile for the industry, 13.8 percent of profits if this is a median firm, and 44.4 percent of profits if this firm falls into the lower quartile. Therefore, the smallest 5 percent of affected firms will be adversely affected by this rule. Under the Regulatory Flexibility Act (5 U.S.C. 605), the agency concludes that this proposed rule will have a significant impact on a substantial number of small entities.

C. Compliance Requirements and Necessary Skills

The Regulatory Flexibility Act also requires agencies to describe the projected reporting, recordkeeping, and other compliance requirements of the rule and the type of professional skills necessary for preparation of the report or record. Manufacturers of baking soda, baking powder, and pectin will be required to amend their labels to reflect the new serving sizes. Manufacturers must recalculate the reported levels of nutrients in the foods based on the new serving sizes. No further analyses are required, only that the reported amounts are based on the correct serving size.

D. Alternatives

FDA has examined the following alternatives to the rule that may minimize the significant economic impact on small entities consistent with stated objectives.

1. Exempt Small Entities

The agency has adopted an exemption from mandatory nutrition labeling for low-volume food products of small businesses in § 101.9(j)(18) (59 FR 11872, March 14, 1994). As of May 1997, proposed § 101.9(j)(18) applies to manufacturers, packers, distributors, or retailers of low volume products, defined as fewer than 100,000 units, produced by firms with fewer than 100 employees. To the extent that baking powder, baking soda, or pectin products are eligible for this exemption, they might not require relabeling as a result of this rule. However, if the products are currently nutritionally labelled either because the label contains nutrient content claims or because the manufacturer has voluntarily labeled the product, then the nutrition facts panel must be correct and the label must be changed. FDA is uncertain how many firms, if any, can or will take advantage of this option.

2. Lengthen the Compliance Period

FDA also considered the option of providing small entities with a longer compliance period. If finalized, labels must be changed by the appropriate Uniform Compliance Date. Depending on when the final rule publishes, firms will have as little as 1 year or as much as 2 years to complete labeling changes. Longer compliance periods typically result in lower costs because firms can

combine mandated label changes with planned changes and because firms have more opportunity to use up existing labels. A 2-year compliance period would reduce costs to $200 per firm.

VIII. The Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title: Serving Sizes; Reference Amount for Baking Powder, Baking Soda, Pectin.

Description: Section 403(q)(1)(A) and (q)(1)(B) of the act requires that the label or labeling of a food bear information that provides the serving size that is appropriate to the food and the number of servings per container. FDA has issued regulations in § 101.9(d)(3) that require the nutrition facts panel on the label of a food product disclose information on serving size and on servings per container. FDA has also issued regulations in § 101.9(b) that provide that the serving size declared on a product label shall be determined from the "Reference Amounts Customarily Consumed Per Eating Occasion" that appear in § 101.12(b).

The regulations set forth in this proposed rule would revise the reference amount that is used for determining the serving sizes for packages of baking powder, baking soda, and pectin. As a result, manufacturers and other producers of these products would be required to change the serving sizes and the number of servings per container that they disclose in the nutrition facts panel for their products. The proposed regulations would also provide for the use of 1/8 tsp as an additional household measure for the disclosure of serving sizes for food products.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Total No. of Responses	Hours per Response	Total Hours	Operating Costs
101.12(b)	29	66	1	66	$39,600

[1] There are no capital or maintenance costs associated with this collection.

FDA believes that the burden associated with the disclosure on the label of serving size and number of servings that would be required by this proposed rule will be a one-time burden created by the need for firms to have to change the statement of serving size and number of servings on the labels for their products. As noted previously, FDA estimates that there are 29 firms producing baking powder (23 labels), baking soda (18 labels), and pectin (25 labels). FDA estimates that these firms will require an average of 1 hour per product to comply with the requirements of a final rule based on this proposal. Further, as noted previously, the proposed rule would result in a one-time operating cost of $39,600.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection requirements of the proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by December 18, 1997, to the Office of Information and Regulatory Affairs, OMB (address above), ATTN: Desk Officer for FDA.

IX. Comments

Interested persons may, on or before February 2, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

X. References

The following reference has been placed on public display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. LeGault, Lori A., Susan K. Brecher, and Ellen M. Anderson, memorandum to file, August 20, 1997.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.9 is amended by revising paragraph (b)(5)(i) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(b) * * *

(5) * * *

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate except for beverages. For beverages, a manufacturer may use fluid ounces. Cups shall be expressed in 1/4- or 1/3-cup increments. Tablespoons shall be expressed as 1, 1 1/3, 1 1/2, 1 2/3, 2, or 3 tablespoons. Teaspoons shall be expressed as 1/8, 1/4, 1/2, 3/4, 1, or 2 teaspoons.

* * * * *

3. Section 101.12 is amended in paragraph (b), in Table 2, under the "Product category" column, under the "Miscellaneous Category" by revising the entry for "Baking powder, baking soda, pectin" to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY [1, 2, 3, 4]

Product category	Reference amount	Label statement[5]
* * *	* *	* *
Miscellaneous Category:		
Baking powder, baking soda, pectin	0.6 g	___ tsp (___ g).
* * *	* *	* *

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e, heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; fresh and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

* * * * *

Dated: October 29, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30272 Filed 11–17–97; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Service Property

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend United States Postal Service property regulations to: prohibit smoking in postal buildings; prohibit soliciting of signatures on petitions, polls, or surveys on postal property except as otherwise authorized by Postal Service regulations; prohibit impeding ingress to or egress from post offices; add regulations for voter registration activities on postal property to reflect current postal policy; prohibit leafleting, picketing, demonstrating, public assembly, and public address in lobbies and other interior areas of postal buildings open to the pubic; prohibit placement of tables, chairs, freestanding signs or posters, structures, or furniture of any type on postal property except as part of postal activities or as otherwise permitted by these regulations; permit, in addition to seeing eye dogs, other animals used to assist persons with disabilities on postal property; prohibit the storage of weapons and explosives on postal pr party except for official purposes; clarify the meaning of terms; change references to other postal directives; and provide that persons designated by the Chief Postal Inspector may also enforce Postal Service property regulations.

DATES: Comments must be received on or before December 18, 1997.

ADDRESSES: Written comments should be mailed or delivered to the Independent Counsel, Postal Inspection Service, 475 L'Enfant Plaza SW, Room 3411, Washington, DC 20260–2181.

FOR FURTHER INFORMATION CONTACT: Henry J. Bauman, Independent Counsel, Postal Inspection Service, (202) 268–4415.

SUPPLEMENTARY INFORMATION: Postal Service regulations on the conduct of persons on postal property are published in title 39 of the Code of Federal Regulations (CFR) as part 232. These regulations describe the actions that are either permitted or proscribed, the enforcement of these regulations, and the penalties for violations. The purpose of this proposed rule is to amend these regulations to add new prohibitions, to add regulations for voter registration activities on postal property, to permit animals used to assist persons with disabilities to be brought onto postal property, and to clarify certain terms and references in the regulations.

A new prohibition on smoking in postal lobbies and offices is proposed to address the health concerns of postal customers and employees. The reasons for this prohibition are that the Surgeon General has reported on the dangers to human health from smoking and second-hand smoke, the sale of tobacco products is prohibited in other federal buildings, the Postal Service has already banned smoking in postal buildings by postal employees, and many post offices have banned smoking in lobbies and other interior areas open to the public.

A new prohibition on the soliciting of signatures on petitions, polls, or surveys on postal property, except as otherwise authorized by Postal Service regulations, is proposed. The purpose of this restriction is to minimize the disruption of postal business and to provide unimpeded ingress and egress of customers and employees to and from post offices. Portions of the existing Postal Service conduct regulations have been upheld by the Supreme Court in *United States* v. *Kokinda*, 497 U.S. 720 (1990). The United States Postal Service was created in order to ensure prompt, reliable, and efficient postal services to the public in a businesslike manner. It is the Postal Service's experience that the activities described above are generally disruptive to postal business. Thus, the Postal Service is prohibiting

activities that create significant interference with its statutory mandate.

A new prohibition on leafleting, picketing, demonstrating, public assembly, and public address in lobbies and other interior areas of postal buildings open to the public is proposed. Such activities are not prohibited outside postal buildings, as long as they do not otherwise violate these regulations. It is the Postal Service's experience, however, that such activities conducted inside postal buildings are generally disruptive to postal operations and impede customers and employees from conducting postal transactions.

A new prohibition on the placement of tables, chairs, freestanding signs or posters, structures, or furniture of any type anywhere on postal premises, except as part of postal activities or as otherwise permitted under these regulations, is proposed. It is the Postal Service's experience that such activities are generally disruptive to postal business and impede customers from conducting postal transactions.

List of Subjects in 39 CFR Part 232

Federal buildings and facilities, Penalties, Postal Service.

Accordingly, 39 CFR Part 232 is proposed to be amended as set forth below.

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 is revised to read as follows:

Authority: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; Pub. L. 104–208, 110 Stat. 1060.

2. Section 232.1(b) is amended by revising the phrase "section 115 of the Domestic Mail Manual" to read "section 274 of the Administrative Support Manual".

3. Section 232.1 is amended by revising the heading of paragraph (g) and designating its existing text as (g)(1), revising the first sentence of (g)(1) and adding paragraph (g)(2) to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(g) *Alcoholic beverages, drugs, and smoking.*

(1) A person under the influence of an alcoholic beverage or any drug that has been defined as a "controlled substance" may not enter postal property or operate a motor vehicle on postal property. * * *

(2) Smoking (defined as having a lighted cigar, cigarette, pipe, or other smoking material) is prohibited in all postal buildings and office space, including service lobbies.

* * * * *

Section 232.1(h)(1) introductory text is revised to read as follows:

(h) * * *

(1) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications), displaying or distributing commercial advertising, soliciting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations), and impeding ingress to or egress from post offices are prohibited. These prohibitions do not apply to:

* * * * *

5. Section 232.1(h)(1)(i) is amended by adding the phrase "or nonprofit" after the word "Commercial".

6. Section 232.1(h) (3), (4) and (5) are added to read as follows:

(h) * * *

(3) Leafleting and distributing literature, picketing, demonstrating, public assembly, and public address, which are not otherwise prohibited by Postal Service regulations, are prohibited in lobbies and other interior areas of postal buildings open to the public.

(4) *Voter registration.* Voter registration may be conducted on postal premises only with the approval of the postmaster or installation head provided that all of the following conditions are met:

(i) The registration must be conducted by government agencies or nonprofit civic league or organizations that operate for the promotion of social welfare but do not participate or intervene in any political campaign on behalf of any candidate or political party for any public office.

(ii) Absolutely no partisan or political literature may be available, displayed, or distributed. This includes photographs, cartoons, and other likenesses of elected officials and candidates for public office.

(iii) The registration is permitted only in those areas of the postal premises regularly open to the public.

(iv) The registration must not interfere with the conduct of postal business, postal customers, or postal operations.

(v) The organization conducting the voter registration must provide and be responsible for any equipment and supplies.

(vi) Contributions may not be solicited.

(vii) Access to the workroom floor is prohibited.

(viii) The registration activities are limited to an appropriate period before an election.

(5) Except as part of postal activities or activities associated with those permitted under paragraph (h)(4) of this section, no tables, chairs, freestanding signs or posters, structures, or furniture of any type may be placed in postal lobbies or on postal walkways, steps, plazas, lawns or landscaped areas, driveways, parking lots, or other exterior spaces.

* * * * *

7. Section 232.1(j) is revised to read as follows:

(j) *Dogs and other animals.* Dogs and other animals, except those used to assist persons with disabilities, must not be brought upon postal property for other than official purposes.

* * * * *

8. Section 232.1(1) is revised to read as follows:

(1) *Weapons and explosives.* No person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes.

* * * * *

9. Section 232.1(q)(3) is revised to read as follows:

(q) * * *

(3) Postal Inspectors and others designated by the Chief Postal Inspector may likewise enforce regulations in this section.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30009 Filed 11–17–97; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 86, and 89

[AMS–FRL–5923–3]

RIN 2060–AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency is extending the comment period on the Notice of Proposed Rulemaking (NPRM) which proposes new emission standards for nonroad diesel engines. The NPRM appeared in the **Federal Register** on September 24, 1997 (62 FR 50152). The public comment period was to end on November 24, 1997. The purpose of this notice is to extend the comment period an additional 4 weeks, to end on December 22, 1997. This extension of the comment period is provided to allow commenters additional time to respond to the NPRM.

DATES: EPA will accept public comments on the Notice of Proposed Rulemaking until December 22, 1997.

ADDRESSES: Materials relevant to this proposal, including the Draft Regulatory Impact Analysis, are contained in Public Docket A–96–40, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket materials.

Comments on this proposal should be sent to Public Docket A–96–40 at the above address. EPA requests that a copy of comments also be sent to Alan Stout, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Alan Stout, U.S. EPA, Engine Programs and Compliance Division, (313) 741–7805; (313) 741–7816 (fax); stout.alan@epamail.epa.gov.

Dated: November 10, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–30244 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5922–8]

Acid Rain Program; Notice of Public Workshop on an Emissions Trading Program for Oxides of Nitrogen (NO_X)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshops on a NO_X emissions trading program. The second workshop will be held on December 11, from 9 a.m. to 5 p.m., at the Washington National Airport Hilton Hotel.

SUMMARY: EPA recently issued a Notice of Proposed Rulemaking to reduce regional transport of ozone. As part of this rulemaking, EPA is developing a multi-state cap and trade program for large stationary sources. As a way to increase flexibility and maximize cost savings, EPA is offering to administer such a program. States are encouraged to participate in the trading program as a simple and cost-effective strategy for meeting their state-wide emission budget requirements. It is anticipated that a model trading rule will be included in a supplemental document of proposed rulemaking for the transport rule in early 1998 and will be finalized along with the transport rule in September 1998.

In order to provide a forum for input on the framework of a model NO_X cap and trade program, EPA decided to hold two public workshops. The first workshop was held in early November; a variety of comments from States and interested participants were received on the trading program framework. The second workshop will be held on December 11, from 9 a.m. to 5 p.m., at the Washington National Airport Hilton Hotel located at 2399 Jefferson Davis Highway, Arlington Virginia. EPA will use input from these workshops in developing the model trading rule.

FOR FURTHER INFORMATION CONTACT: Stephanie Benkovic in EPA's Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 233–9142.

Dated: November 10, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30245 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–5923–7]

RIN 2060–AG21

Amendments for Testing and Monitoring Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: This action reopens the public comment period for the action entitled "Amendments for Testing and Monitoring Provisions" that was proposed in the **Federal Register** on August 27, 1997 (62 FR 45369). The 60-day comment period in the proposal ends October 27, 1997. The comment period is being reopened until January 5, 1998. A public commenter requested that the comment period be reopened because of the volume of material that was proposed. The intended effect of this action is to allow the affected public sufficient time to review and comment on the proposed action.

DATES: *Comments.* The comment period is reopened to January 5, 1998. Comments must be received on or before January 5, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–97–12 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The Agency requests that a separate copy also be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT SECTION BELOW.**

Docket. Docket No. A–97–12, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Foston Curtis, Emission Measurement Center (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1063 or at fax number (919) 541–1039.

List of Subjects

40 CFR Part 60

Environmental protection, New sources, Test methods and procedures, Performance specifications, Continuous emission monitors.

40 CFR Part 61

Environmental protection, Test methods and procedures.

40 CFR Part 63

Environmental protection, Hazardous air pollutants, Test methods and procedures.

Dated: November 10, 1997.
Richard D. Wilson,
Acting Assistant Administrator.
[FR Doc. 97–30241 Filed 11–17–97; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 222
Tuesday, November 18, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS) and Farm Service Agency (FSA), USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agencies' intention to request an extension for a currently approved information collection in support of the Form RD 1940–59, "Settlement Statement."

DATES: Comments on this notice must be received by January 20, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Betsy Fletcher, Loan Specialist, Single Family Housing Processing Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave. SW., Washington, DC 20250, telephone (202) 720–1486.

SUPPLEMENTARY INFORMATION:

Title: Form RD 1940–59, "Settlement Statement."

OMB Number: 0575–0088.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of currently approved information collection.

Abstract: The Agencies are requesting an extension of the OMB clearance for Form RD 1940–59, "Settlement Statement." The Real Estate Settlement Procedures Act (RESPA), as amended, requires the disclosure of real estate settlement costs to home buyers and sellers. The Secretary of the Department of Housing and Urban Development (HUD) was instructed by the RESPA to develop a standard form for the statement of settlement costs to be used for all federally related transactions. Form RD 1940–59 is similar to the HUD–1 Settlement Statement used by HUD, the Veterans Administration, and the private mortgage industry, with some minor adaptations acceptable under RESPA.

Form RD 1940–59 is completed by Settlement Agents, closing attorneys, and title insurance companies performing the closing of RHS loans and credit sales used to purchase or refinance Section 502 Housing, Rural Rental Housing and Farm Labor Housing. It is also completed by the same parties performing the closing FSA Farm Ownership loans and credit sales. The information is collected to provide the buyer and seller with a statement detailing the actual costs of the settlement services involved in certain Agency financed real estate transactions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Settlement Agents, Closing Attorneys, and Title Insurance Companies performing the closing of Agency loans and credit sales.

Estimated Number of Respondents: 17,000.

Estimated Number of Responses per Respondent: 2.41.

Estimated Total Annual Burden on Respondents: 20,500 hours.

Copies of this information collection can be obtained from Tracy Gillin, egulations and Paperwork Management Branch, at (202) 690–1065.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 12, 1997.
Jan Shadburn,
Administrator, Rural Housing Service.
Dated: November 10, 1997.
Keith Kelly,
Administrator, Farm Service Agency.
[FR Doc. 97–30232 Filed 11–17–97; 8:45 am]
BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after November 15, 1997. The list of newspapers will remain in effect until another notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kristine M. Lee; Regional Appeals and Litigation Coordinator, Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.
Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.
Regional Forester decisions in North Dakota: Bismarck Tribune.
Regional Forester decisions in South Dakota: Rapid City Journal.
Beaverhead/Deerlodge—Montana Standard.
Bitterroot—Ravalli Republic.
Clearwater—Lewiston Morning Tribune.
Custer—Billings Gazette (Montana), Bismarck Tribune (North Dakota), Rapid City Journal (South Dakota).
Flathead—Daily Interlake.
Gallatin—Bozeman Chronicle.
Helena—Independent Record.
Idaho Panhandle—Spokesman Review.
Kootenai—Daily Interlake.
Lewis & Clark—Great Falls Tribune.
Lolo—Missoulian.
Nez Perce—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: November 7, 1997.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 97–30199 Filed 11–17–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, and Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notices of decisions is in addition to direct notice of decisions to those known to be interested in or affected by a specific decision. The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published on April 29, 1997, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR part 215. The list of newspapers to be used for part 215 notice and decision is corrected.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions

Bankhead Ranger District: *Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL
Conecuh Ranger District: *The Andalusia Star*, published daily (Tuesday through Saturday) in Andalusia, AL
Oakmulgee Ranger District, *The Tuscaloosa News*, published daily in Tuscaloosa, AL
Shoal Creek Ranger District: *The Anniston Star*, published daily in Anniston, AL
Talladega Ranger District: *The Daily Home*, published daily in Talladega, AL
Tuskegee Ranger District: *Tuskegee News*, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR
San Juan Star, published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: *Walker Country Messenger*, published bi-weekly (Wednesday & Friday) in Lafayette, GA
Toccoa Ranger District: *The News Observer* published weekly (Wednesday) in Bule Ridge, GA
Brasstown Ranger District: *North Georgia News*, published weekly (Wednesday) in Blairsville, GA
Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA
Chattooga Ranger District: *Northeast Georgian*, published weekly (Tuesday) in Cornelia, GA

Chieftain & Toccoa Record, published weekly (Thursday) in Toccoa, GA
White County News & Telegraph, published weekly (Thursday) in Cleveland, GA
Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA
Oconee Ranger District: *Monticello News*, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)
Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions

Ocoee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
Hiwassee Ranger District: *Daily Post-Athenian*, published daily (Monday–Friday) in Athens, TN
Tellico Ranger District: *Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN
Nolichucky Ranger District: *Greensville Sun*, published daily (Monday–Saturday) in Greeneville, TN
Unaka Ranger District: *Johnson City Press*, published daily in Johnson City, TN
Watauga Ranger District: *Elizabethton Star*, published daily (Sunday–Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions

Morehead Ranger District: *Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY
Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
Berea Ranger District: *Jackson County Sun*, published weekly (Thursday) in McKee, KY
London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions

Apalachicola Ranger District: *The Liberty Journal*, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL
Osceola Ranger District: *The Lake City Reporter*, published daily (Monday–Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Ranger Decisions

Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: *Seneca Journal and Tribune*, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: *The Augusta Chronicle*, published daily in Augusta, GA
Wambaw Ranger District: *News and Courier*, published daily in Charleston, SC
Witherbee Ranger District: *News and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District: *Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: *The Recorder*, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: *News-Gazette*, published weekly (Wednesday) in Lexington, VA
James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA
Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA
Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
Blacksburg Ranger District: *Roanoke Times*, published daily in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman.)*
Glenwood Ranger District: *Roanoke Times*, published daily in Roanoke, VA
New Castle Ranger District: *Roanoke Times*, published in Roanoke, VA
Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Times* and *Monroe Watchman.)*
Mount Rogers National Recreation Area: *Bristol Herald Courier*, published daily in Bristol, VA
Clinch Ranger District: *Kingsport-Times News*, published daily in Kingsport, TN
Wythe Ranger District: *Southwest Virginia Enterprise*, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: *Minden Press Herald*, published daily in Minden, LA
Homer Guardian Journal, published weekly (Wednesday) in Homer, LA
Catahoula Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Colfax Chronicle, published weekly (Wednesday) in Colfax, LA
Evangeline Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times*, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA
Vernon Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA
Winn Ranger District: *Winn Parish Enterprise*, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Chicasawhay Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
De Soto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger*, published daily in Jackson, MS
Ashe-Erambert Project: *Clarion-Ledger*, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Cheoah Ranger District: *Graham Star*, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal*, published weekly (Sunday through Friday) in New Bern, NC
Grandfather Ranger District: *McDowell News*, published daily in Marion, NC
Highlands Ranger District: *The Highlander*, published weekly (May–Oct Tues & Fri; Oct–April Tues only) in Highlands, NC
The Crossroads Chronicle, published weekly (May–Oct Tues & Fri; Oct–April Tues only) in Cashiers, NC
The Sylva Herald, published weekly on Thursday in Sylva, NC
Pisgah Ranger District: *The Asheville Citizen-Times*, published daily in Asheville, NC
Tusquitee Ranger District: *Cherokee Scout*, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press*, published bi-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Jessieville Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Mena Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Poteau Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR
Choctaw Ranger District: *Tulsa World*, published daily in Tulsa, OK
Kiamichi Ranger District: *Tulsa World*, published daily in Tulsa, OK
Tiak Ranger District: *Tulsa World*, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: *Stone County Leader*, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: *Harrison Daily Times*, published daily in Harrison, AR
Bayou Ranger District: *The Courrier*, published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR
St. Francis Ranger District: *The Daily World*, published daily (Sunday through Friday) in Helena, AR

Natonal Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX
Sam Houston National Forest: *The Courier*, published daily in Conroe, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX

The Responsible Official under 36 CFR part 215 gave annual notice in the **Federal Register** published in April 29, 1997, of principal newspapers to be utilized for publishing notices of proposed actions and of decisions subject to appeal under 36 CFR 215. The list of newspapers to be used for 215 notice and decision is corrected as follows:

Kisatchie National Forest, Louisiana

District Ranger Decisions

Newspaper Changed
Vernon Ranger District: *Alexandria Daily Town Talk*, published daily in Alexandria, LA

Ozark-St. Francis National Forest: Arkansas

District Ranger Decisions

Newspaper Changed
Buffalo Ranger District: *Harrison Daily Times*, published daily in Harrison, AR

Dated: November 7, 1997.

Bruce L. Jewell,

Acting Deputy Regional Forester for Natural Resources.

[FR Doc. 97–30197 Filed 11–17–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

XCS–56 Plowed Terrace Demonstration Project, Cameron and Calcasieu Parishes, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Plowed Terrace Demonstration Project, Cameron and Calcasieu Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT:

Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This is a demonstration project and will evaluate potential impacts attributed to plowed terraces and vegetative plantings to be installed in shallow open water areas. The project area includes approximately 3,250 acres of open water and fragmented marsh. Project features include the construction of approximately 54,000 linear feet of earthen terraces followed by the planting of vegetation on the side slopes of the terraces.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 97–30186 Filed 11–17–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 1944, subpart L, "Tenant Grievance and Appeals Procedure."

DATES: Comments on this notice must be received by January 20, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Senior Loan Specialist, USDA, Rural Housing Service, STOP 0782, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0782, Telephone: (202) 720–1613.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1944, Subpart L, "Tenant Grievance and Appeals Procedure."
OMB Number: 0575–0046.
Expiration Date of Approval: March 31, 1998.
Type of Request: Extension of the currently approved information collection.
Abstract: The regulation promulgates the procedure by which tenants, cooperative members, and applicants for occupancy may appeal adverse actions by owner/managers of multi-family housing projects financed by RHS. Such adverse actions include cases whereby which tenants, cooperative members, or applicants have received written notice that assistance provided by RHS is being denied, substantially reduced or terminated.
Estimate of Burden: Public reporting burden for this information collection is estimated to average .41 hours per response.
Respondents: Individuals or households, state or local governments, small businesses or other for-profit.
Estimated Number of Respondents: 200.
Estimated Number of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 83 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, at (202) 720–9734.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of the Rural Housing Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Avenue, S.W., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 6, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–30176 Filed 11–17–97; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: Minority Business Development Agency.
Title: Competitive Application Packages for Funding to Operate Technical Assistance Projects (SF–424 and the Evaluation Criteria).
Agency Form Number: None.
OMB Approval Number: 0640–0006.
Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired—Emergency Review.
Burden: 12,000 hours annually.
Number of Respondents: 180.

Avg. Hours per Response: Ranges between 40 and 80 hours.

Needs and Uses: This collection of information is required as it is the vehicle through which the Agency presents detailed application requirements for financial assistance awards to operate its Business Development Centers. These centers provide business development services, such as financial planning and marketing advice, to minority entrepreneurs. The collection of this information is essential to the mission of the Agency, as defined in Executive Order 11625, to provide management and technical assistance to minority businesses.

Affective Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer or Pat Boyd (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Baecher-Wassmer or Pat Boyd, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. An emergency approval has been requested by November 19, 1997.

Dated: November 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30223 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

[Docket No. 970411089–7089–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of Amendment of Privacy Act System of Records; COMMERCE/DEPT System 2.

SUMMARY: The Department of Commerce gives notice of an amendment to the system of records under Commerce Department System 2. The amendments adds a routine use for disclosure of information in this system to other agencies as needed for the purpose of effecting administrative offsets in cases where debts are owed by individuals or organizations to the U.S. Government. This action has been taken to comply with the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: This notice will be adopted without further publication in the Federal Register, on December 18, 1997, unless modified by a subsequent notice to incorporate comments received from the public. Any interested party may submit written comments about the revision to the system of records to the contact person listed below on or before December 18, 1997.

ADDRESSES: Department of Commerce, Office of Financial Management, 14th Street & Constitution Avenue, NW, Room 6827, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Charles Yaple at 202–482–1207.

SUPPLEMENTARY INFORMATION: The Department of Commerce is amending Commerce Department System 2: Accounts Receivable to add that records may be disclosed to any other federal agency.

—Added under "Routine use:"

Disclosure of information in this system of records to any other Federal agency as necessary for the purpose of effecting administrative offset against the debtor to recoup a delinquent debt owed to the U.S. Government by the debtor.

This change is being made to implement the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001, *et seq.*). This statutes requires Federal agencies to minimize the costs of collection of debt owed to the agencies by consolidating debt collection functions and activities and utilizing interagency teams, and to reduce losses arising from debt management by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information with and among agencies. The Department of Commerce intends to participate in an initiative sponsored by the U.S. Department of Treasury whereby the latter agency will serve as a central collection point for information from several Federal agencies concerning individuals who owe debts to the Government. This routine use permits disclosure of information from this system of records to the Department of Treasury, or any other agency that may conduct this activity.

Other editorial changes have also been incorporated to change an outdated reference to the National Bureau of Standards (NBS) to the National Institute of Standards and Technology (NIST), to add a reference to records of the Technology Administration, and the Bureau of Export Administration (BXA), and to delete references to the United States Travel and Tourism Administration (USTTA), which has been abolished.

The system of records is hereby republished as follows:

COMMERCE/DEPT–2

SYSTEM NAME:

Accounts Receivable—COMMERCE/DEPT–2.

SYSTEM LOCATION:

a. For Departmental offices, BEA, ITA, and MBDA: Office of Financial Operations and Travel Management, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

b. For NIST (including the Technology Administration) and NTIA: National Institute of Standards and Technology, Office of the Comptroller, Administration Building, Gaithersburg, Maryland 20899.

c. For NOAA and BXA: Office of Budget and Finance, National Oceanic and Atmospheric Administration, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

d. For PTO: Office of Finance, U.S. Patent and Trademark Office, 2021 Jefferson Davis Highway, Arlington, Virginia 22202.

e. For CENSUS: Finance Division, Bureau of the Census Federal Building 3, Washington, DC 20233.

f. For NTIS: Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

g. For EDA: Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to organizational components identified in a through g above, including employees, former employees, business firms, the general public, and institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address; amount owed; service to which the amount is owed; overpayment or other accounting therefor; and invoice number, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–09; 31 U.S.C. 951–953, 4 CFR 102.4, FPMR 101–7; Treasury Fiscal Requirements Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—Billing debtors, reporting delinquent debts to credit bureaus.

—Reporting to Office of Personnel Management for liquidating debts from retirement and other benefits.

—Disclosure of information from this system of records may also be made to commercial contractors (debt collection agencies) for the purpose of collecting delinquent debts as authorized by the Debt Collection Act (31 U.S.C. 3718).

—Disclosure of information in this system of records to any other Federal agency as necessary for the purpose of effecting administrative offset against the debtor to recoup a delinquent debt owed to the U.S. Government by the debtor.

—Disclosures to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

—Also, see routine uses 1–5 and 8–13 of the Prefatory Statement, found at 46 FR 63502, December 31, 1981.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Both manual and machine-readable records.

RETRIEVABILITY:

By name, and invoice number as appropriate.

SAFEGUARDS:

Physical security, handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment is received and account is audited, then disposed of in accordance with Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

For records at location a: Director, Office of Financial Operations and Travel Management, U.S. Department of Commerce, Washington, DC 20230.

For records at location b: Comptroller, Office of the Comptroller, National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

For records at location c: Director, Office of Budget and Finance, NOAA, Room 6811, Herbert C. Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

For records at location d: Director, Office of Finance, U.S. Patent and Trademark Office, Washington, DC 20231.

For records at location e: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, DC 20233.

For records at location f: Chief, Accounting Division, National Technical Information Service, Springfield, Virginia 22161.

For records at location g: Chief, Accounting Division, Economic Development Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

NOTIFICATION PROCEDURE:

For ITA records at location a, information may be obtained from Director, Office of Management and Systems, ITA, U.S. Department of Commerce, Washington, DC 20230.

For all others at location a, information may be obtained from: Chief, Information Management Division, Office of Information Resources Management, U.S. Department of Commerce, Washington, DC 20230.

For records at location b, information may be obtained from: Deputy Director of Administration, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

For records at location c, information may be obtained from: Director, Administrative and Technical Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

For PTO records at location d, information may be obtained from: Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, DC 20231.

For records at location e, information may be obtained from: Associate Director for Administration, Bureau of the Census, Federal Building 3, Washington, DC 20233.

For NTIS records at location f, information may be obtained from: Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, Virginia 22161.

For records at location g, information may be obtained from: Director, Office of Public Affairs, EDA, U.S. Department of Commerce, Washington, DC 20230.

Requester should provide name and address, and invoice number as appropriate, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the Notification procedure section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned appear in 15 CFR part 4b. Same address as stated in the Notification procedure section above.

RECORD SOURCE CATEGORIES:

Subject individual, those authorized by the individual to furnish information, contracting officer as appropriate, accounting records.

Dated: November 12, 1997.

Brenda S. Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 97–30221 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–FA–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Economic Impact Assessment of NIST Near-Field Scanning Measurements of Antennas Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce both paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Andrew Repjar, National Institute of Standards and Technology, Electrical and Electronics Engineering Laboratory, Mailcode

813.08, 325 Broadway, Boulder, Colorado 20899. He can be reached by phone at (303) 497–5703 or by e-mail at repjar@boulder.nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST seeks to assess economic impacts of its program for near-field measurements of antennas. The respondents will be U.S. suppliers and users of microwave antennas used in satellites, earth terminals, radar and communications systems. The results will be applied by NIST for program evaluation purposes.

NIST conducts economic impact studies to (1) provide management with information on the nature and magnitude of NIST research projects, (2) to convey to the policy and budget processes the rates of return to society for expenditures by NIST, and (3) to provide data necessary to comply with the Government Performance and Results Act requirements. The resulting information is used both for evaluation of completed and ongoing research and related projects and for strategic planning.

The range of technology infrastructure developed in NIST laboratories and through cooperative projects with industry leverage the productivity of all stages of U.S. domestic economic activity (R&D, production, and marketing) and thereby increase economic growth and economic well being.

II. Method of Collection

Personnel of organizations in the U.S. microwave industry may respond to questionnaires by mail, fax, E-mail, or telephone.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission for a new requirement.
Affected Public: Personnel of organizations in the U.S. microwave industry and their customers.
Estimated Number of Respondents: 50.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 25 hours.
Estimated Total Annual Cost: $2,500 (25 hours × $100 per hour for a senior level technical manager to respond). No equipment or maintenance costs are associated with this data collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30222 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Tuesday, December 9, Wednesday, December 10, and Thursday, December 11, 1997 from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on December 9, 10, and 11, 1997, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland in the Administration Building, in Lecture room A on December 9 and 10 and in Lecture Room D on December 11.

Agenda

- Welcome and Overview
- Issues Update and Briefings
- Federal Security Impact—Pending Legislation Updates
- NIST Program Updates
- CIO Federal Briefings
- Discussion
- Pending Business
- Public Participation
- Agenda Development for January Meeting
- Work Plan for 1998
- Wrap-Up

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if fifteen copies of written material were submitted for distribution to the Board by December 2, 1997. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone (301) 975–3696.

Dated: November 12, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–30263 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111297B]

Magnuson-Stevens Act Provisions; Essential Fish Habitat; Public meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meeting.

SUMMARY: NMFS is convening a meeting of the west coast salmon essential fish habitat (EFH) technical team to review EFH descriptions for salmon and adverse affects on salmon EFH. The meeting is open to the public.

DATES: The technical team meeting is on November 18, 1997, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be at the Lloyd Center Doubletree Hotel, 1000 NE Multnomah, Portland, OR.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, NMFS, 206/526–6143.

SUPPLEMENTARY INFORMATION: NMFS is in the process of developing recommendations on EFH for west coast salmon in accordance with recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act. EFH recommendations to be presented to the Pacific Fishery Management Council for an amendment to the salmon fishery management plan include a description of EFH for coho salmon, chinook salmon, pink salmon and sockeye salmon; a description of adverse effects to EFH, including fishing and nonfishing threats; and a description of measures to ensure the conservation and enhancement of EFH.

NMFS has formed a technical team consisting of fishing industry, state, tribal, university, and Federal individuals to provide technical input and advice on the development of the NMFS recommendations. The technical team will meet 2 to 3 times between November and March to review draft EFH documents as they are prepared. The first meeting of the technical team is scheduled for November 18, 1997. The meetings will be open to the public, and the public will have an opportunity to comment. EFH documents will be available at the meeting. EFH background material can also be found on the Pacific States Marine Fisheries Commission website at www.psmfc.org/efh.html.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be requested at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30158 Filed 11–12–97; 3:13 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111097B]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK.

DATES: The meetings will be held during the week of December 7, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public with the exception of a Council executive session tentatively scheduled for noon on Wednesday, December 10, to discuss personnel, international issues, or litigation, as necessary.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Ecosystems Committee will meet Sunday, December 7, beginning at 8:00 a.m. and ending at 4:00 p.m.

The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Sunday, December 7, continuing through Tuesday, December 9.

The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, December 8, and continue through Thursday, December 11.

The Council's regular plenary session will begin at 8:00 a.m. on Tuesday, December 9, and continue through Sunday, December 14.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports from NMFS and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and NMFS and U.S. Coast Guard reports on enforcement;
2. Initial review of a draft analysis for a third-party arrangement (joint project agreement) for observer procurement services;
3. Receive report on the 1997 Halibut and Sablefish individual fishing quota (IFQ) fisheries;
4. Review proposals received for changes to the Halibut and Sablefish IFQ fisheries and give direction to staff for analyses;
5. Initial review of research priorities;
6. Review and consider releasing to public review draft environmental assessment/regulatory impact review for the Bering Sea/Aleutian Islands (BSAI) pollock Community Development Quota program for 1999 and beyond;
7. Appointments to the SSC and AP for 1998, and to the Pacific Northwest Crab Industry Advisory Committee through 1999;
8. Review and give final approval to Amendment 3 to the Scallop Fishery Management Plan. Amendment 3 would delegate authority to the State of Alaska to manage the scallop fishery off Alaska;
9. The Council will receive and approve the final 1998 Stock Assessment and Fishery Evaluation reports for Gulf of Alaska and BSAI groundfish and approve final 1998 harvest allocations, including vessel incentive program rate standards, bycatch allowances, and halibut discard mortality rates; and
10. Other groundfish issues to be addressed include:

a. Initial review of an amendment for stand-down and/or preregistration requirements in the Western and Central Gulf of Alaska. Direction to staff to release for public review and/or revise;.

b. Initial review of options to streamline the setting of total allowable catches; directions to staff to release for public review and/or revise;

c. Initial review of an amendment to allocate shortraker/rougheye quota to fixed gear; directions to staff to release for public review and/or revise;

d. Discussion of limited processing for catcher vessels; direction to staff;

e. Discussion of overfishing amendments; direction to staff;

f. Discussion of catch reporting accuracy;

g. Discussion of gear storage and preemption issues in the BSAI; direction to staff;

h. Discussion of salmon retention revisions for the BSAI; direction to staff; and

i. Discussion of pollock "B" Season adjustments in the BSAI; direction to staff.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance

with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 12, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30254 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111297C]

Marine Mammals (File No. 758–1431)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 758–1431.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, is hereby authorized to conduct research on two captive, adult Northern fur seals (*Callinorinus ursinus*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150);

Regional Administrator, Alaska Region, NMFS, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On September 29, 1997, notice was published in the **Federal Register** (62 FR 50907) that the above-named applicant had submitted a request for a scientific research permit to blood sample and vaccinate two captive, adult Northern fur seals with a benign antigen, Fort Dodge tetanus toxoid, for the purpose of scientific research at a U.S. facility that is holding captive Northern fur seals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR Part 216).

Dated: November 12, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–30255 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102497A]

Marine Mammals, Endangered or Threatened Species, Scientific Research Permit (File No. 473–1433); Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application; correction.

SUMMARY: The National Marine Fisheries Service published a document in the **Federal Register** of October 31, 1997, concerning an application to take several species of cetaceans for purposes of scientific research. The document inadvertently omitted that the proposed takes are to be conducted on an annual basis.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13824, Silver Spring, MD 20910 (301/713–2289).

Correction

In the **Federal Register** issue of October 31, 1997, in FR Doc. 97–28833, on page 58943, in the first column, correct the second paragraph under the **SUPPLEMENTARY INFORMATION** caption by inserting the word "annually" before the word "from" in line four and the word "annually" between the words "*physalus*" and "may" in line 17.

Dated: November 12, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–30159 Filed 11–17–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of extension of cancer treatment clinical trails demonstration project.

SUMMARY: This notice is to advise interested parties of a one-year extension of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Institutes of Health, National Cancer Institute (NCI) clinical trails. Participation in these clinical trails will improve access to promising cancer therapies for CHAMPUS eligible beneficiaries when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trail goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trails. Extending the demonstration for an additional year will show sufficient time for patient accrual to clinical trials and collection of data which allows for comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project is under the authority of 10 U.S.C., section 1092.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of the Assistant Secretary of Defense (Health Affairs), (703) 697–8975.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an extension of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network and includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department expanded its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities. While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer therapies will occur at a cost comparable to that which the Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

Dated: November 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30173 Filed 11–17–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prevents military recruiter access to the campus or students or maintains a policy against ROTC. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR part 216. The institutions of higher education so identified are:

Washington College of Law of American University, Washington, DC

William Mitchell College of Law, St. Paul, Minnesota

Recently, the following institution of higher education reported modifications to school policies sufficient to merit removal from the list of ineligible schools.

Asnuntuck Community-Technical College, Enfield, Connecticut

Capital Community-Technical College, Hartford, Connecticut

Central Connecticut State University, New Britain, Connecticut

Charter Oak State College, Newington, Connecticut

Connecticut Community-Technical College, Winsted, Connecticut

Eastern Connecticut State University, Willimantic, Connecticut

Gateway Community-Technical College, North Haven, Connecticut

Housatonic Community-Technical College, Bridgeport, Connecticut

Manchester Community-Technical College, Manchester, Connecticut

Middlesex Community-Technical College, Middletown, Connecticut

Naugatuck Community-Technical College, Waterbury, Connecticut

Norwalk Community-Technical College, Norwalk, Connecticut

Quinebaug Valley Community-Technical College, Danielson, Connecticut

Southern Connecticut State University, New Haven, Connecticut

Three Rivers Community-Technical College, Norwich, Connecticut

Tunxis Community-Technical College, Farmington, Connecticut

Western Connecticut State University, Danbury, Connecticut

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On April 8, 1997 (62 FR 16694), the Department of Defense published 32 CFR part 216 as an interim rule. This rule and the Omnibus Consolidated Appropriations Act of 1997 require the Department of Defense semi-annually to publish a list of the institutions of higher education ineligible for Federal funds due to a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy. On October 6, 1997 (62 FR 52091), the Department of Defense published a list of the institutions of higher education ineligible for Federal Funding; this listing updates and supersedes that listing.

Dated: November 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30172 Filed 11–17–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of an altered record system.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The alteration will be effective on December 18, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Rollins at (703) 697–8674 or DSN 227–8674.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on November 3, 1997, to the House

Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: November 10, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG K

SYSTEM NAME:

Medical Professional Staffing Records *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'Records concerning civilian consultants or contractors who engage in direct patient care may be released to civilian organizations employing said civilian consultants or contractors providing direct patient care to eligible beneficiaries if such records are necessary to evaluate the civilian consultant or contractor in accordance with 10 U.S.C. 1102(c)(E).'

* * * * *

F044 AF SG K

SYSTEM NAME:

Medical Professional Staffing Records.

SYSTEM LOCATION:

At Air Force medical centers, hospitals, and clinics; all health facilities where graduate health education programs are conducted; reserve NAFs/Surgeon's Office; reserve tactical hospitals/clinics, reserve MSES, and reserve AAG medical elements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Practitioners, who are, or have been, members of the USAF Medical Service, Civil Service Employees (including civilian consultants who engage in direct patient care), or contractors who are assigned to, employed by, or practice in the Air Force medical facility for the purpose of providing health services for eligible beneficiaries; United States Air Force Medical Service personnel pursuing graduate health education programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Credential review files: Contains curriculum vitae, list of approved privileges, copies of diplomas and certificates, records of continuing health education training, letters of evaluation, summaries of special activities or other information, including malpractice claims reports, furnished or solicited in order to fully evaluate the professional qualifications of individuals, and the records of any actions taken on the individual's credentials.

(2) Health education records: Applications for training, training reports, Faculty Board reports, photograph or negative, and personnel documents related to training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 55, Medical and Dental Care; medical specialists, as implemented by Air Force Instruction 44–119, Quality Assurance in the Air Force Medical Service.

PURPOSE(S):

The information contained in credential review files is used to award, limit, suspend, restrict or revoke the inpatient and ambulatory clinical privileges to all categories of health practitioners.

Health education records are used to permit evaluations of individuals in training, by program directors, in managing the individual in training; by the record maintenance personnel, to document changes to the individual's personnel record maintained by the servicing Consolidated Base Personnel Office (CBPO).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may also be released to a governmental board or agency or health care professional society or organization if such record of document is needed to perform licensing or professional standards monitoring related to health care practitioners who are or were formerly members, employees of the Armed Forces, or contractors, and to medical institutions or organizations wherein such member, employee or contractor has applied for or been granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member or employee.

Records concerning civilian consultants or contractors who engage in direct patient care may be released to civilian organizations employing said civilian consultants or contractors providing direct patient care to eligible beneficiaries if such records are necessary to evaluate the civilian consultant or contractor in accordance with 10 U.S.C. 1102(c)(E).

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties; by commanders of USAF medical centers hospitals and clinics (credential review files); by program directors, trainees and personnel managers with the need-to-know (health education records).

RETENTION AND DISPOSAL:

(1) Credential review files are retained in the office files of the medical facility where the practitioner is assigned, employed, or practicing. Following separation, resignation, or retirement, the files are retained at the location of the last duty assignment for a period of 3 years and then are destroyed.

(2) Health education files are retained by the director of health education until training is completed, files are then kept by the health facility for 30 years and then destroyed by tearing into pieces, shredding, pulping, macerating, or burning; if facility is deactivated, the records are retired to the Washington National Records Center, Washington, DC 20409 to be retained until the 30–year period has expired at which time they will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, United States Air Force; Commanders of medical centers, hospitals, clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For health education records, individuals should give full name, military status, Social Security Number, when they entered training and completed training, and what corps within the medical service they are a member. Individuals may visit either the health facility maintaining the records or the Office of the Surgeon, Air Force Manpower and Personnel Center, Randolph Air Force Base, TX to learn if the record system contains their records. When visiting either of these locations, the individual must provide a valid drivers license or equivalent identification containing a photograph to establish identity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the system manager.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the system manager. For health education records, individual may obtain assistance by writing or presenting themselves in person to the health facility where the records are maintained. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Credential review files: Basic information submitted by the practitioner. Additional information may be solicited from other sources in order to permit the credentials committee to best judge the capabilities of the practitioner. Health education records: Previous employer, educational institutions, master personnel record, information provided by the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–30171 Filed 11–17–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Privacy Act of 1974; Deletion of Privacy Act Systems of Records

AGENCY: Department of Energy.

ACTION: Notification of deletion of Department of Energy Privacy Act systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Energy is deleting from the agency's inventory of systems of records, record systems that are either duplicative of government-wide or departmental records systems; obsolete and the information is no longer maintained; or not retrieved by name or personal identifier, and therefore not Privacy Act record systems.

EFFECTIVE DATE: November 18, 1997.

FOR FURTHER INFORMATION CONTACT: GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, HR–73, Independence Avenue, SW, Washington, DC 20585, (202) 586–5955.

SUPPLEMENTARY INFORMATION: After reviewing the Department's Privacy Act Systems of Records, 14 record systems were identified for deletion. Six record systems are obsolete, seven record systems duplicate other governmental or departmental record systems, and one is not a Privacy Act system of records. These are listed as follows:

I. Obsolete

- DOE–6
  System name: Report of Consultants to DOE Contractors.
- DOE–7
  System name: Applications and Reference Checks for Overseas Employment with the International Atomic Energy Agency (IAEA).
- DOE–17
  System name: Certificates of Eligibility for FHA Insured Loans.
- DOE–29
  System name: Technology Training Program—Skill Training at Technician Level.
- DOE–64
  System name: Low-Income Weatherization Program Home Report Records.
- DOE–68
  System name: Minority Energy Technical Assistance Program (METAP) Records.

II. Duplicate Other Systems of Records

The following systems of records supplement other record systems and no longer need to be maintained.

- DOE–3
  System name: DOE Personnel: Appraisal and Development Records (Duplicates Office of Personnel Management OPM/GOVT–2).
- DOE–4
  System name: Applications for DOE employment (Duplicates Office of Personnel Management OPM/GOVT–5).
- DOE–16
  System name: Reports of Financial Interest (Duplicates Office of Government Ethics OGE/GOVT–1 and OGE/GOVT–2).
- DOE–36
  System name: Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study) (Duplicates DOE–88, "Epidemiologic and Other Health Studies, Surveys and Surveillances").
- DOE–37
  System name: Equal Employment Opportunity Complaint Files (Duplicates Equal Employment Opportunity Commission EEOC/GOVT–1).
- DOE–69
  System name: Residential Solar Water Heating Workshops Pilot Program Records (Duplicates DOE–74, "Bonneville Power Administration Conservation Program").
- DOE–70
  System name: Electricity Use and Conservation Analysis Records (Duplicates DOE–74, "Bonneville Power Administration Conservation Program").

III. Not Retrieved by Name or Personal Identifier

- DOE–20
  System name: Imprest Fund Cashiers.

Issued in Washington, DC on November 3, 1997.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

[FR Doc. 97–30216 Filed 11–17–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417; 1835]

Central Nebraska Public Power and Irrigation District; Nebraska Public Power District; Notice of Informal Settlement Conference

November 12, 1997.

An informal settlement conference will be convened on Monday, November

24, 1997, at 8:30 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The purpose of this off-the-record meeting is to explore the possible settlement of any contested issue. If necessary, the conference will continue to Tuesday, November 25, 1997. Any person appearing at the conference in a representative capacity must be authorized to negotiate and, to the extent authorized by law, settle matters addressed at the conference.

Any party, as defined by 18 CFR 385.102(c), is invited to send a representative to the conference. Any party wishing to make a presentation or needing additional information should contact Merrill F. Hathaway at (202) 208–0825, or John A. Schnagl at (202) 219–2661.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30184 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–167–009]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

November 12, 1997.

Take notice that on November 6, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet with a proposed effective date of November 1, 1997:

Substitute Fourth Revised Sheet No. 456

Columbia states that the revised tariff sheet is being filed to comply with the Federal Energy Regulatory Commission's Letter Order issued October 27, 1997, in Docket No. RP97–167–008. The Order directed Columbia to file a revised tariff Sheet No. 456 to (1) incorporate by reference GISB standards 1.3.24, 1.3.25, 1.3.27, 1.3.31 and 2.3.31, and (2) to reflect Version 1.1 as the effective version for all GISB standards, with the exception of the Electronic Delivery Mechanism Standards (4.x.x) effective November 1, 1997 pursuant to Order 587–C. Columbia states that Substitute Fourth Revised Sheet No. 456 also reflects the inclusion of GISB standard 2.3.9 that was included on the pro forma tariff sheet filed April 30, 1997, but was inadvertently omitted from Columbia's September 29, 1997 filing.

Columbia states that copies of its filings have been mailed to all of its customers, affected State Regulatory Commissions, and all parties to this proceeding.

Any person desiring to protest this filing, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be made as provided in Section 154.210 of the Commission's Regulations. Protests will be consider by the Commission in determining the appropriate action to be taken, but such protests will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–30189 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–166–000]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 12, 1997.

Take notice that on November 6, 1997, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with the proposed effective date of November 1, 1997:

Fourth Revised Sheet No. 130
Substitute Sixth Revised Sheet No. 154
Substitute First Revised Sheet No. 286

Columbia Gulf states that the revised tariff sheets are being filed to comply with the Commission's Letter Order (Order) issued October 27, 1997, in Docket No. RP97–166–008. The Order directed Columbia Gulf to file revised Sheet Nos. 154 and 286, from its September 29, 1997, filing to include certain omitted items and to more fully comply with Order 587–C. Columbia Gulf states that Substitute Sixth Revised Sheet No. 154 reflects the pro forma language for tariff sections 6.2 (a) and (b) as approved in the June 11, 1997, order in these proceedings. Columbia Gulf further states that Substitute First Revised Sheet No. 286 incorporates GISB standards 2.3.31, and to reflect Version 1.1 as the November 1, 1997, effective version for all GISB standards, with the exception of the Electronic Delivery Mechanism Standards (4.x.x). Fourth Revised Sheet No. 130 has been revised to reflect the proper continued number sequencing from Fifth Revised Sheet No. 129.

Columbia Gulf states that copies of its filings have been mailed to all of its customers, affected State Regulatory commissions, and all parties to this proceeding.

Any person desiring to protest this filing, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be made as provided in Section 154.210 of the Commission's Regulations. Protests will be consider by the Commission in determining the appropriate action to be taken, but such protests will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30188 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–162–005]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

November 12, 1997.

Take notice that on November 6, 1997, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1997:

Substitute Second Revised Sheet No. 99
Substitute Second Revised Sheet No. 136

Cove Point states that these tariff sheets are being filed to comply with the Commission's Office of Pipeline Regulation's letter order of October 27, 1997, requiring: (1) GISB standards being incorporated by reference to reflect Version 1.1 of GISB's standards; and (2) Cove Point to incorporate GISB Standard 1.3.28 by reference or through verbatim incorporation of this standard into Cove Point's tariff, but not by both means.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30185 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

November 12, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on November 20, 1997 at 9:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Donald Williams at (202) 208–0743.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30191 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–178–007]

Kern River Gas Transmission Company; Notice of Compliance Filing

November 12, 1997.

Take notice that on November 6, 1997, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective as indicated:

Tariff Sheets To Be Effective June 1, 1997

Fourth Revised Sheet No. 127
Original Sheet No. 127B
2nd Substitute Original Sheet No. 136

Tariff Sheets To Be Effective August 1, 1997

First Revised Sheet No. 127B
Substitute First Revised Sheet No. 128
Substitute First Revised Sheet No. 139

Tariff Sheets To Be Effective November 1, 1997

Substitute Second Revised Sheet No. 128
Substitute Second Revised Sheet No. 130
Substitute Second Revised Sheet No. 139

Kern River states that the purpose of this filing is to comply with the Commission's GISB-related orders issued October 1, 1997 in Docket No. RP97–178–004 and October 22, 1997 in Docket No. RP97–178–006.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30190 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–40–000]

K N Wattenberg Transmission LLC; Notice of Site Visit

November 12, 1997.

On November 19, 1997, the Office of Pipeline Regulation (OPR) staff will conduct an inspection of the route proposed by K N Wattenberg Transmission Limited Liability Company (KNW) for its Front Runner Pipeline. The proposed route, crossing portions of Weld and Adams Counties, Colorado, will be inspected from a helicopter and/or an automobile. The aerial inspection will begin at Centennial Airport in south Denver, at 8:00 a.m. If weather conditions preclude an aerial inspection, a ground inspection will be conducted using an automobile originating at a location to be determined. Representatives of KNW will accompany the OPR staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at 202–208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 97–30234 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–67–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 12, 1997.

Take notice that on November 4, 1997, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas 77251, filed in Docket No. CP98–67–000, a request, pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 18 CFR 157.216), for authorization to abandon by removal an inactive 1-inch delivery tap, under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the

Commission and open to public inspection.

Koch Gateway proposes to abandon by removal a 1-inch tap that formerly served the David Monteleone Duck Hunting Club on behalf of Louisiana Gas Services (LGS), a local distribution company, in St. Charles Parish, Louisiana. Koch Gateway states that the duck club has converted to electricity and no longer requires natural gas service. Koch Gateway describes the tap as a farm tap, originally certificated in FPC Docket No. G–232, and located on Koch Gateway's transmission pipeline designated as Index 276. Koch Gateway has included in the filing a copy of a facsimile communication from LGS indicating that it has no objection to the proposed abandonment. Koch Gateway indicates that the Louisiana Public Service Commission has been notified of this filing.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30182 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–72–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 12, 1997.

Take notice that on November 5, 1997, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–72–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 18 CFR 157.211) for authorization to construct and operate delivery taps and regulators, located in Arkansas County, Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to operate under Subpart G of Part 284 of the Commission's Regulations a 1-inch tap and first-cut regulator, previously constructed under Section 311 of the Natural Gas Policy Act and Subpart B, Part 284 of the Commission's Regulations. NGT declares these facilities, previously constructed in August, 1997, will provide gas to ARKLA, a division of NorAm Energy Corporation (ARKLA), on NGT's Line TM–10, located in Arkansas County, Arkansas. NGT states the tap was constructed at a cost of approximately $2,556 and ARKLA will reimburse NGT $1,750 of this cost. NGT submits the estimated volumes to be delivered through these facilities are 1,000 Dth annually and 100 Dth on a peak day.

In addition, NGT proposes to construct, own, and operate up to sixteen 1-inch delivery taps and first-cut regulators currently being negotiated, all to serve ARKLA, on NGT's Line TM–10, located in Arkansas County, Arkansas, at a cost of $2,556, with ARKLA reimbursing NGT $1,750 of this cost.

NGT states that for each of these proposed taps ARKLA will construct, at its own cost, and donate to NGT, either a 1-inch or 2-inch meter station, and NGT will construct and install the 1-inch tap and first-cut regulator. NGT asserts they will own and operate all of the facilities. NGT declares the estimated annual and peak day volumes for each tap ranges from 1,000 to 6,000 Dth and 50 to 200 Dth, respectively.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30183 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–164–005]

Texas-Ohio Pipeline, Inc.; Notice of Compliance Filing

November 12, 1997.

Take notice that November 6, 1997, Texas-Ohio Pipeline, Inc. (TOP), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 78, with a proposed effective date of November 1, 1997.

TOP states that this tariff sheet is being filed to comply with the Letter Order issued on October 27, 1997, by the Director of the Office of Pipeline Regulation (Director) in Docket No. RP97–164–004. In that Letter Order, the Director accepted tariffs sheets filed by TOP on October 2, 1997 in compliance with the Commission's June 30, 1997 Letter Order, subject to TOP refiling sheet No. 78 to reflect certain minor modifications. TOP states that the proposed substitute tariff sheet incorporates the modifications as directed in the October 27, 1997 Letter Order.

TOP further states that copies of this filing have been served on TOP's jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file wit the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 97–30186 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–163–007]

Westgas Interstate, Inc.; Notice of Compliance Filing

November 12, 1997.

Take notice that November 6, 1997, WestGas InterState, Inc. (WGI), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Tariff Sheet No. 29A and Substitute First Revised Sheet No. 92, with a proposed effective date of November 1, 1997.

WGI states that these tariff sheets are being filed to comply with the Letter Order issued on October 22, 1997, by the Director, Office of Pipeline Regulation, in Docket No. RP97–163–005. In that Letter Order, the Director accepted WGI's tariff sheets filed October 2, 1997, to comply with the Commission's September 22, 1997 "Order on Compliance Filing," subject to WGI refiling tariff sheets to reflect certain minor modifcations. WGI states that the above tariff sheets incorporate the modifications as directed in the October 22, 1997 Letter Order.

WGI further states that copies of this filing have been served on WGI's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30187 Filed 11–17–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5824–1]

Acid Rain Program: Draft Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit modifications.

SUMMARY: The Environmental Protection Agency (EPA) is issuing for comment draft Phase I Acid Rain permit modifications including nitrogen oxides (NO_x) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permit modifications are also being issued as a direct final action in the notice of permit modifications published elsewhere in today's **Federal Register**.

DATES: Comments on the draft permit modifications must be received by December 18, 1997, or the date of publication of a similar notice in a local newspaper.

ADDRESSES: Administrative Records. The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Maryland, Pennsylvania, or West Virginia, EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107; for plants in Florida, Georgia, Kentucky, and Mississippi, EPA Region 4, 100 Alabama Street, SW, Atlanta, GA, 30303.

Comments. Send comments, requests for public hearings, and requests to receive notices of future actions to: for plants in Maryland, Pennsylvania, or West Viriginia, EPA Region 3, Air, Radiation, and Toxics Division, Attn: Linda Miller (address above); for plants in Florida, Georgia, Kentucky, and Mississippi, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Scott Davis (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_x compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in Maryland, Pennsylvania, or West Viriginia, call Linda Miller, (215) 566–2068; for plants in Florida, Georgia, Kentucky, and Mississippi, call Scott Davis, (404) 562–9127.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft permit modifications and the permit modifications issued as a direct final action in the notice of permit modifications published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any permit modification, that permit modification in the notice of permit modifications will be withdrawn and public comment received on that permit modification based on this notice of draft permit modifications will be addressed in a subsequent notice of permit modification. Because the Agency will not institute a second comment period on this notice of draft permit modifications, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permit modifications, see the information provided in the notice of permit modifications elsewhere in today's **Federal Register**.

Dated: November 12, 1997.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30238 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5823–9]

Acid Rain Program: Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permit modifications.

SUMMARY: The Environmental Protection Agency (EPA) is issuing, as a direct final action, Phase I Acid Rain permit modifications including nitrogen oxides (NO_x) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: The permit modifications issued in this direct final action will be final on December 29, 1997 or 40 days after publication of a similar notice in a local publication, whichever is later, unless significant, adverse comments are

received by December 18, 1997 or 30 days after publication of a similar notice in a local publication, whichever is later. If significant, adverse comments are timely received on any permit modification in this direct final action, that permit modification will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: Administrative Records. The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in Maryland, Pennsylvania, or West Virginia, EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107; for plants in Florida, Georgia, Kentucky, or Mississippi, EPA Region 4, 100 Alabama Street, SW, Atlanta, GA, 30303.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for plants in Maryland, Pennsylvania, or West Virginia, EPA Region 3, Air, Radiation, and Toxics Division, Attn: Linda Miller (address above); for plants in Florida, Georgia, Kentucky, or Mississippi, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Scott Davis (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in Maryland, Pennsylvania, or West Virginia, call Linda Miller, (215) 566–2068; for plants in Florida, Georgia, Kentucky, or Mississippi, call Scott Davis, (404) 562–9127.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is approving permit modifications that include approval of emissions averaging plans for NO_X. Under each year in each plan, the actual Btu-weighted annual average emission rate for the units in the plan shall be less than or equal to the Btu-weighted annual average rate for the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitation in 40 CFR 76.5. For each unit in the plan, each plan also includes emission limits and/or annual heat input limits, with which the units must comply if the requirement concerning the Btu-weighted average emission rate for the units as a group is not met. The following plans are being approved:

R P Smith units 9 and 11 in Maryland, Armstrong units 1 and 2, and Mitchell unit 33 in Pennsylvania, and Albright units 1, 2, and 3, Fort Martin unit 1, Harrison units 1, 2, and 3, and Pleasants units 1 and 2 in West Virginia will each comply with three identical NO_X averaging plans, one for each year, 1997–1999. The designated representative is Donald R. Feenstra.

Bowen units 1BLR, 2BLR, 3BLR, and 4BLR, Hammond units 1, 2, 3, and 4, Jack McDonough units MB1 and MB2, Wansley units 1 and 2, Yates units Y1BR, Y2BR, Y3BR, Y4BR, Y5BR, Y6BR, and Y7BR, Arkwright units 1, 2, 3, and 4, Harllee Branch unit 2, Mitchell unit 3, Scherer unit 3, Kraft units 1, 2, and 3, and McIntosh unit 1 in Georgia will each comply with a NO_X averaging plan for 1997–1999. The designated representative is R. H. Haubein, Jr.

Crist units 4, 5, 6, and 7, and Scholz units 1 and 2 in Florida, and Jack Watson units 4 and 5 and Victor J. Daniel units 1 and 2 in Mississippi will each comply with a NO_X averaging plan for 1997–1999. The designated representative is Robert G. Moore.

E W Brown units 1, 2, and 3, Ghent unit 1, and Green River unit 5 in Kentucky will each comply with three identical NO_X averaging plans, one for each year, 1997–1999. The designated representative is Wayne T. Lucas.

Dated: November 12, 1997.

Janice K. Wagner,

Acting Director, Acid Rain Division. Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30239 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5922–9]

Acid Rain Program: Notice of Draft Phase II Acid Rain Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft Phase II acid rain permits.

SUMMARY: The U.S. Environmental Protection Agency is issuing draft Phase II acid rain permits to 3 affected sources in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the draft permits are also being issued as a direct final action in the notice of final acid rain permits published elsewhere in today's **Federal Register**.

DATES: Comments on the draft permits proposed by this action must be received on or before December 18, 1997 or 30 days after publication of a similar notice in a local newspaper.

ADDRESSES: *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For Deseret Bonanza in Utah: U.S. EPA Region 8, Air Program, 999 18th St., Suite 500, Denver, CO 80202–2466;

For Navajo in Arizona and Four Corners in New Mexico: U.S. EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to:

For Deseret Bonanza in Utah: Richard Long, Air Program Director, Office of Pollution Prevention, State and Tribal Assistance, (8P2–A) (address above);

For Navajo in Arizona and Four Corners in New Mexico: David Howekamp, Director, Air and Toxics Division, (A–5–2) (address above).

Submit all comments in duplicate and identify the draft permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the draft permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the draft permit.

Hearings. To request a public hearing on a draft permit, submit a written request stating the issues proposed to be raised in the hearing and explaining how a hearing will contribute to the decision-making process. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: For Deseret Bonanza in Utah: Mike Owens, U.S. EPA Region 8, (303) 312–6440; for Navajo in Arizona and Four Corners in New Mexico: Robert Baker, U.S. EPA Region 9, (415) 744–1258.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft permits and the permits issued as a direct final action in the notice of final acid rain permits published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any draft permit, that permit in the notice of final acid rain permits will be withdrawn. Because the Agency will not institute a second comment period on this notice of draft acid rain permits, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permits, see the information provided in the notice of final acid rain permits elsewhere in today's **Federal Register**.

Dated: November 12, 1997.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30246 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5923–1]

Acid Rain Program: Notice of Direct Final Phase II Acid Rain Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final acid rain permits.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, Phase II acid rain permits to 3 affected sources in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the permits are being issued as a direct final action.

DATES: Each of the permits issued in this direct final action will be final on December 29, 1997 or 40 days after publication of a similar notice in a local newspaper, whichever is later, unless significant, adverse comments are received by December 18, 1997 or 30 days after publication of a similar document in a local newspaper, whichever is later. If significant, adverse comments are timely received on any permit in this direct final action, that permit will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For Deseret Bonanza in Utah: U.S. EPA Region 8, Air Program, 999 18th St., Suite 500, Denver, CO 80202–2466;

For Navajo in Arizona and Four Corners in New Mexico: U.S. EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: For Deseret Bonanza in Utah: Mike Owens, U.S. EPA Region 8, (303) 312–6440; for Navajo in Arizona and Four Corners in New Mexico: Robert Baker, U.S. EPA Region 9, (415) 744–1258.

SUPPLEMENTARY INFORMATION: Public comments received on any permit in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of an acid rain permit based on the relevant draft permit in the notice of draft acid rain permits that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

U.S. EPA is issuing, under 40 CFR 72.74, Phase II acid rain permits that specify the following annual sulfur dioxide emission allowances and compliance plans for the following affected sources:

Region 8

Bonanza in Utah: 10,709 allowances for unit 1–1. The designated representative is F. Elgin Ward.

Region 9

Navajo in Arizona: 26,009 allowances for unit 1, 24,062 allowances for unit 2, and 24,840 allowances for unit 3. The designated representative is Nils I. Larson.

Four Corners in New Mexico: 3,565 allowances for unit 1, 3,561 allowances for unit 2, 4,443 allowances for unit 3, 12,406 allowances for unit 4, and 13,170 allowances for unit 5. The designated representative is John R. Denman.

The number of allowances allocated to these units by U.S. EPA may change in a 1998 revision to 40 CFR part 73 Tables 2, 3, and 4. Such a change will not necessitate a revision to the unit SO_2 allowance allocations identified in the permits for these affected sources (*See* 40 CFR 72.84).

Dated: November 12, 1997.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30247 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5923–4]

Acid Rain Program: Notice of a Direct Final Opt-in Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a direct final opt-in permit.

SUMMARY: The U.S. Environmental Protection Agency is issuing, as a direct final action, an opt-in permit to Dairyland Power Cooperative's Alma facility in Wisconsin in accordance with the Acid Rain Permits and Opt-in regulations (40 CFR parts 72 and 74, respectively). Because the Agency does not anticipate receiving adverse comments, the permit is being issued as a direct final action.

DATES: The permit issued in this direct final action will be final on December 29, 1997 or 40 days after publication of a similar notice in a local newspaper, whichever is later, unless significant, adverse comments are received by December 18, 1997 or 30 days after publication of a similar document in a local newspaper, whichever is later. If significant, adverse comments are timely received on the permit in this direct final action, the permit will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Record.* The administrative record for the draft permit, except information protected as confidential, may be viewed during normal operating hours at the following location: U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, U.S. EPA Region 5, (312) 886–2703.

SUPPLEMENTARY INFORMATION: Public comments received on the permit in this direct final action in which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of an opt-in permit based on the draft opt-in permit in the notice of a draft opt-in permit that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

The Opt-in Program, as part of the Acid Rain Program, is designed to allow

certain non-utility units that are otherwise not obligated to participate in the Acid Rain Program ("unaffected" units) to voluntarily elect to become affected and subject to the requirements of the Acid Rain Program. As such, opt-in units must hold allowances to account for sulfur dioxide emissions, monitor emissions in the same way that other affected sources do, and apply for and obtain an opt-in permit. The U.S. Environmental Protection Agency is issuing an opt-in permit for the Alma facility in accordance with the Acid Rain Permits and Opt-in regulations (40 CFR parts 72 and 74, respectively). The opt-in permit for Alma specifies the following allowances to be allocated annually by EPA to each boiler (unit) at Alma: 537 for each year 1998 through 2002 to unit B1; 518 for each year 1998 through 2002 to unit B2; 455 for each year 1998 through 2002 to unit B3.

This opt-in permit does not affect the responsibility of units at Alma to meet all other existing local, state, and federal requirements related to sulfur dioxide. The designated representative is John P. Leifer.

Dated: November 12, 1997.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30249 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5923–5]

Acid Rain Program: Notice of a Draft Opt-in Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft opt-in permit.

SUMMARY: The U.S. Environmental Protection Agency is issuing a draft opt-in permit to Dairyland Power Cooperative's Alma facility in Wisconsin in accordance with the Acid Rain Permits and Opt-in regulations (40 CFR parts 72 and 74, respectively). Because the Agency does not anticipate receiving adverse comments, the draft permit is also being issued as a direct final action in the notice of a final opt-in permit published elsewhere in today's **Federal Register**.

DATES: Comments on the draft permit proposed by this action must be received on or before December 18, 1997 or 30 days after publication of a similar document in a local newspaper.

ADDRESSES: *Administrative Record.* The administrative record for the draft permit, except information protected as confidential, may be viewed during normal operating hours at the following location: U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to: David Kee, Director, Air and Radiation Division (AT18J) (address above).

Submit all comments in duplicate and identify the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the draft permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the draft permit.

Hearings. To request a public hearing on the draft permit, submit a written request stating the issues proposed to be raised in the hearing and explaining how a hearing will contribute to the decision-making process. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, U.S. EPA Region 5, (312) 886–2703.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to the draft permit and the permit issued as a direct final action in the notice of a final opt-in permit published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on the draft permit, that permit in the notice of a final opt-in permit will be withdrawn. Because the Agency will not institute a second comment period on this notice of a draft opt-in permit, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permit, see the information provided in the notice of a final opt-in permit elsewhere in today's **Federal Register**.

Dated: November 12, 1997.

Janice K. Wagner,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–30250 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5922–6]

Smith's Farm Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, 42 U.S.C. 9601 *et. seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs as the Smith's Farm Site, Shepardsville, Bullitt County, Kentucky, with the following twenty (20) parties: (1.) AC&S, (2.), American Air Filter Company, Inc., (3.), Beazer East , Inc., (4.) Chevron U.S.A., Inc., (5.) Conco, Inc., (6.) Double Envelope Corporation, (7.) Dover Resources, Inc. (C. Lee Cook Division), (8.) Dow Chemical Company, (9.), E.I. du Pont de Nemours & Company, (10.) Elf Atochem North America, Inc. (M & T Chemicals, Inc., and Pennwalt, Inc.), (11.) Flexible Materials, (12.) Grow Group, Inc., (13.) Louisville Gas and Electric Company, (14.) Louisville/Jefferson County Metropolitan Sewer District, (15.), Monsanto Company, (16.) Morton International, Inc., (17.) Philip Morris, (18.) Specialty Systems of Ohio Construction, Inc., (19.) Tuscarora, Inc. (formerly Tuscarora Plastics, Inc.), (20.) Whayne Supply Company.

EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. *Copies of the settlements are available from:* Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Program Services Branch, Cost Recovery Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104, 404–562–8887.

Written comments must be submitted to Mr. Ray Strickland at the above address within thirty (30) days from the date of publication.

Dated: October 30, 1997.

Jewell A. Harper,

Acting Director, Waste Management Division.

[FR Doc. 97–30248 Filed 11–17–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 12, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 20, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0444.

Title: Station Construction/ Operational Status Inquiry.

Form No.: FCC 800–A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; businesses or other for profit; small businesses or organizations.

Number of Respondents: 11,500.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 11,500 hours.

Needs and Uses: The Commission requests this collection of information as a method for licensees to provide information to verify a station has been placed into operation and to notify the Commission of the actual number of mobile units placed in operation after license grant. From this data, the Commission is able to determine full capacity channel loading, making frequencies available for assignment and modifying or cancelling licenses. The data collected ensures licensees are not authorized for more mobiles than they are actually using. The revision is being submitted to clarify the types of uses of the form and frequency of use. We believe that this use is already cleared through OMB but in response to recent public comment, we are submitting this clarification. Except under limited circumstances, certain Part 90 licenses may not be transferred or assigned unless the underlying facility is constructed. This form will also be used to determine compliance with the Commission's construction rules when this information is not available from either a previous submission, manual records, or currently in the licensing database.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30193 Filed 11–17–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1190–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1190–DR), dated November 1, 1997, and related determinations.

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 1, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe snow storms, rain, and strong winds on October 24–26, 1997, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide reimbursement for debris removal and emergency protective measures under the Public Assistance program, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Reimbursement for debris removal and emergency protective measures under the Public Assistance program will be provided for the counties of Adams, Banner, Buffalo, Butler, Cass, Cheyenne, Clay, Custer, Dawson, Douglas, Fillmore, Franklin, Furnas, Frontier, Gosper, Hall, Hamilton, Hitchcock, Harlan, Hayes, Kearney, Kimball, Lancaster, Lincoln, Nuckolls, Otoe, Phelps, Polk, Red Willow, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Thayer, Washington, Webster, and York.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–30236 Filed 11–17–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Meetings; Radiological Emergency Preparedness (REP) Program Strategic Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of public meetings.

SUMMARY: FEMA announces the following public meetings:

Name: REP Program Strategic Review At-Large Stakeholder Meetings.

Dates: The public meetings will be held in San Francisco, California, on December 2, 1997; St. Louis, Missouri, on December 4, 1997; and Washington, DC on December 5, 1997. Any individuals or organizations interested in attending one of the public meetings or making oral presentations must so indicate by 5:00 PM, November 26, 1997.

Time of Meetings: 9:00 am–4:00 pm.

Locations: Post Theatre, Building 99, Presidio of San Francisco, California 94129; St. Louis University, Bush Memorial Center, St. Louis Room, 210 N. Grand, St. Louis, Missouri 63101; and the University of the District of Columbia, Main University Auditorium, 4200 Connecticut Avenue, NW, Washington , DC.

Proposed Agenda: The public meetings will begin at 9:00 am with a presentation by the Strategic Review Steering Committee (SRSC) on the background of the REP Program Strategic Review, including concept papers developed during the review. The meeting will then turn to attendees who have indicated that they want to make oral presentations, and the SRSC will respond to any questions that may be asked. The meeting will adjourn after the attendees have completed their presentations and any interaction on the subject matter, but in any event, no later than 4 pm.

SUPPLEMENTARY INFORMATION: The REP Program Strategic Review was announced in the Federal Register on July 8, 1996. Comments from 60 entities were received and reviewed by the SRSC. Concept papers developed by the SRSC were reviewed by Government Stakeholders in September and will be reviewed by Federal Stakeholders in November. These documents are available in the U.S. Nuclear Regulatory Commission's Public Docket Rooms and the commercial nuclear power plants utilities' Public Docket Rooms and on FEMA's website (www.fema.gov). All three meetings will be open to the public.

Individuals or representatives of organizations who plan to attend the meeting or make oral presentations should call 1–800–814–0338 on or before 5:00 PM, November 26, 1997. Please leave your name and telephone number, which meeting you wish to attend, and whether you will make a presentation. We ask that you limit your presentations to five minutes.

Written comments are also invited and may be sent to Nancy H. Goldstein, Federal Emergency Management Agency, 500 C Street, SW; room 514, Washington, DC 20472.

Dated: November 12, 1997.

Kay C. Goss,

Associate Director for Preparedness, Training and Exercises.

[FR Doc. 97–30235 Filed 11–17–97; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Federal Register *Citation of Previous Announcement:* 62 FR 60510, November 10, 1997.

Previously Announced Time and Date of the Meeting: 10:00 a.m. Wednesday, November 12, 1997.

Change in the Meeting: The following topic was added to the open portion of the meeting:

- Discussion of Federal Home Loan Banks Salary Caps for 1998

The Board determined that agency business required its consideration of this matter on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 97–30385 Filed 11–14–97; 1:24 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-29641) published on pages 60511 and 60512 of the issue for Monday, November 10, 1997.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Angeline R. Mixner, Worthington, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Angeline R. Mixner, Worthington, Minnesota; to acquire additional voting shares of Madison Agency, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire First Security Bank - Sanborn, Sanborn, New Mexico.

Comments on this application must be received by November 26, 1997.

Board of Governors of the Federal Reserve System, November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30156 Filed 11–17–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Morgantown Bancshares, Inc., Morgantown, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Morgantown, Morgantown, West Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Rockhold BanCorp., Kirksville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Kirksville, Kirksville, Missouri.

2. Unity Bancshares, L.L.C., St. Louis, Missouri; to become a bank holding company by acquiring 54.3 percent of the voting shares of St. Johns Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire St. Johns Bank and Trust Company, St. Louis, Missouri.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 86.49 percent of the voting shares of Community Bank of Arizona, Wickenburg, Arizona.

2. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of Conrad Company, Minneapolis, Minnesota, which owns 98.84 percent of the voting shares of The Bank of Santa Fe, Santa Fe, New Mexico, and 100 percent of the voting shares of Farmers State Bank of Montana, Conrad, Montana, and 36.60 percent of the voting shares of National Mercantile Bancorp, Los Angeles, California, which owns 100 percent of the voting shares of Mercantile National Bank, Los Angeles, California.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Urban Bank, Makati City, Philippines; to become a bank holding company by acquiring 100 percent of the voting shares of Redwood Bancorp, San Francisco, California, and thereby indirectly acquire Redwood Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30157 Filed 11–17–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Bancshares Corporation, Atlanta, Georgia; to acquire FSB Mortgage Services, Inc., Decatur, Georgia, and thereby engage in providing residential mortgage lending and mortgage brokering services, pursuant to §§ 225.28(b)(1) & (2) of the Board's Regulation Y. This activity will be conducted throughout the state of Georgia.

Board of Governors of the Federal Reserve System, November 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30155 Filed 11–17–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 24, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the schematic design and costs of a Federal Reserve Bank's new building project.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30429 Filed 11–14–97; 3:40 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade

Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 10–13–97 AND 10–24–97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Edward P. Fitts, Jr., Temple-Inland, Inc., Temple-Inland Food Service Corporation	97–3532	10/14/97
The Estee Lauder Companies, Inc., Sassaby, Inc., Sassaby, Inc	97–3678	10/14/97
Philip Services Corporation, Southern Foundry Supply, Inc., Southern Foundry Supply, Inc	97–3469	10/15/97
Philip Services Corporation, Noah Liff, Steiner-Liff Iron & Metal Company; McKinley Iron, Inc	97–3475	10/15/97
Philip Services Corporation, Robert H. Wilson, Shredders, Inc	97–3476	10/15/97
Philip Services Corporation (a Canadian company), Albert A. Baisley, Southern Alloys and Metals Corporation	97–3477	10/15/97
PhyCor, West Florida Medical Center Clinic, P.A., West Florida Medical Center Clinic, P.A	97–3595	10/15/97
Laidlaw, Inc., Spectrum Healthcare Services, Inc., Spectrum Emergency Care, Inc	97–3598	10/15/97
Mr. Sumner M. Redstone, Raymond B. Bottom, Jr., Centennial Communications, Inc	97–3613	10/15/97
ALZA Corporation, Hoechst AG (a German company), Hoechst Marion Russel, Inc	97–3621	10/15/97
Pioneer Companies, Inc., Imperial Chemical Industries PLC, a British company, ICI Americas, Inc., ICI Canada, Inc	97–3657	10/15/97
AAR Corp., William R. Higgins, ATR International, Inc	97–3667	10/15/97
Samuel H. Howard, Baptist Hospital, Inc., Health Net TNCARE HMO, Inc. & Health Net Management	97–3671	10/15/97
Illinois Tool Works Inc., Jack E. and Margaret C. Caveney, Panduit Corp	97–3674	10/15/97
Paul G. Desmarais, Partners Limited, London Insurance Group Inc	97–3677	10/15/97
Philips Electronics N.V., Mr. T. Russell Shields, Shields Enterprises, Inc	97–3679	10/15/97
Mr. T. Russell Shields, Philips Electronics N.V., Navigation Technologies Corporation	97–3680	10/15/97
Bandag, Inc., James R. Pickel, Jr., Universal Tire, Inc	97–3683	10/15/97
Great Lakes Chemical Corporation, Great Lakes Chemical Corporation, Octel Associates (an English Partnership)	97–3687	10/15/97
Vlad Corp, Game Financial Corporation, Game Financial Corporation	97–3703	10/15/97
General Electric Company, Dale Larson, LTC, Inc	98–0011	10/15/97
Jeffrey J. Prosser, Atlantic Tele-Network, Inc., Emerging Communications, Inc	98–0013	10/15/97
Booth Creek Partners Limited II, LLP, Loon Mountain Recreation Corporation, Loon Mountain Recreation Corporation	98–0018	10/15/97
AMF Bowling, Inc., C. Dwight Mitchum, Jr., Mitchum Interest & Holdings, Inc	98–0023	10/15/97
Anderson News Corporation, ARAMARK Corporation, ARAMARK Magazine & Book Services, Inc	98–0028	10/15/97
General Electric Company, The Greenbrier Companies, Greenbrier Capital Corporation	98–0033	10/15/97
BASF AG, Olin Corporation, Olin Corporation	98–0037	10/15/97
Triarc Companies, Inc., Cable Car Beverage Corporation, Cable Car Beverage Corporation	98–0044	10/15/97
Western Resources Inc., Centennial Security Holdings, Inc., Centennial Security Holdings, Inc	98–0054	10/15/97
Fremont Partners, LP, Kinetic Concepts, Inc., Kinetic Concepts, Inc	98–0056	10/15/97
The Carpenters Pension Trust for Southern California, Kinetic Concepts, Inc., Kinetic Concepts, Inc	98–0057	10/15/97
Siebe plc, Eaton Corporation, Eaton Corporation	97–3659	10/16/97
TA Advent VII, LP, Eight In One Pet Products, Inc., Eight In One Pet Products, Inc	98–0053	10/16/97
Discovery Communications, Inc., Lowell W. Paxson, Paxson Communications Corporation	97–3686	10/17/97
The Seagram Company Ltd (a Canadian company), Sumner M. Redstone, USA Networks; Sci-Fi Channel Europe, LLC	97–3699	10/17/97
Standard Management Corporation, Savers Life Insurance Company, Savers Life Insurance Company	97–3536	10/18/97
Rochling Industrie Verwaltung GmbH, Kolbenschmidt AG, Kolbenschmidt AG	97–3516	10/20/97
Travelers Group, Inc., Morgan Stanley, Dean Witter, Discover & Co., Van Kampen American Capital, Inc	97–3554	10/20/97
Credit Suisse Group, Winterthur Swiss Insurance Group, Winterthur Swiss Insurance Group	97–3658	10/20/97
United Payors & United Providers, Inc., Principal Mutual Life Insurance Company, UP & UP, Inc. (f/k/a America's Health Plan)	97–3673	10/20/97
General Electric Company, Cameron Truesdell, LTC, Inc	98–0016	10/20/97
Promus Hotel Corporation, Doubletree Corporation, Doubletree Corporation	98–0039	10/20/97
Doubletree Corporation, Promus Hotel Corporation, Promus Hotel Corporation	98–0040	10/20/97
Suiza Foods Corporation, The Spencer Companies Incorporated, The Midsouth Ince Company	98–0045	10/20/97
William M. Lewis, Staffing Resources, Inc., Staffing Resources, Inc	98–0046	10/20/97
Staffing Resources, Inc., William M. Lewis, Career Personnel Services, Inc.; Career Blazers Learnin	98–0047	10/20/97
Halter Marine Group, Inc., Wallace K. Fisk, Jr., AmClyde Engineered Products, Inc	98–0067	10/20/97
Jupiter Partners LP, George W. Perry, West Ark Garment Manufacturing Inc., West Ark Garment	98–0070	10/20/97
I.G. Design, Inc., William E. Ott, Brookhurst, Inc	98–0077	10/20/97
Saratoga Partners III, L.P., Koppers Industries, Inc., Koppers Industries, Inc	98–0080	10/20/97
I.G. Design, Inc., I.G. Design, Inc., I.C. Isaacs & Company, L.P	98–0082	10/20/97
Carlisle Companies Incorporated, Tilden Corporation, Tilden Corporation	98–0091	10/20/97
Robert M. McClory, Trustee for R.M. McClory Jr. Trust, U.S. Office Products Company, U.S. Office Products Company	98–0092	10/20/97
U.S. Office Products Company, Robert M. McClory, Trustee for R.M. McClory, Jr. Trust, Compel Corp	98–0093	10/20/97
U.S. Office Products Company, Daniel Lee Davis Trustee for the Daniel Lee Davis Trus, Compel Corp	98–0094	10/20/97
Triumph Group, Inc., Stolper-Fabralloy Company, LLC, Stolper-Fabralloy Company, LLC	98–0096	10/20/97
Building Materials Holding Corporation, Lone Star Plywood & Door Corp., Lone Star Plywood & Door Corp	98–0097	10/20/97
Thiokol Corporation, Carlyle-Blade Acquisition Partners, LP, Howmet International Inc	98–0105	10/20/97
The B.F. Goodrich Company, Rohr, Inc., Rohr, Inc	98–0106	10/20/97
Superfos a/s (a Danish company), J.B. Coxwell Contracting, Inc., J.B. Coxwell Contracting, Inc	98–0108	10/20/97
MicroAge, Inc., Microretailing, Inc., Microretailing, Inc	98–0114	10/20/97
Insignia Financial Group, Inc., Apollo Real Estate Investment Fund II, L.P., First Winthrop Corporation	98–0117	10/20/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 10–13–97 AND 10–24–97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
U.S. Products Company, Jack and Frances Meehan, Aztec International Inc	98–0130	10/20/97
Jack and Frances Meehan, U.S. Office Products Company, U.S. Office Products Company	98–0131	10/20/97
Sinclair Broadcast Group, Inc., Edmund J. Muniz, Phase II Broadcasting, Inc	97–3228	10/21/97
LCI International, Inc., USLD Communications Corp., USLD Communications Corp	98–0066	10/21/97
UPM-Kymmene Oy, Fletcher Challenge Limited, Blandin Paper Company	98–0068	10/21/97
Evergreen Media Corporation, Katz Media Group, Inc., Katz Media Group, Inc	97–2910	10/22/97
Tyler Capital Fund, L.P., American Pad & Paper Company, American Pad & Paper Company	98–0024	10/22/97
REMEC, Inc., Q-bit Corporation, Q-bit Corporation	98–0076	10/22/97
Cincinnati Bell Inc., Maritz Inc., Maritz Inc	98–0111	10/22/97
American Oncology Resources, Inc., Florida Community Cancer Centers, Florida Community Cancer Centers	98–0126	10/22/97
Jonathan O. Lee, Fesil ASA, Fesil ASA	98–0127	10/22/97
United States Filter Corporation, Memtec Limited, Memtec Limited	97–3589	10/23/97
Big Flower Press Holdings, Inc., Columbine BIAS, Ltd., Columbine JDS Systems, Inc	97–3640	10/24/97
Morrison Knudsen Corporation, Dennis R. Washington, Montana Resources, Inc	97–3689	10/24/97
Mark Torrance, Getty Investments L.L.C., Getty Images	97–3691	10/24/97
Getty Investments L.L.C., Mark Torrance, PhotoDisc, Inc	97–3692	10/24/97
SmithKline Beecham PLC, Aradigm Corporation, Aradigm Corporation	98–0010	10/24/97
Republic Industries, Inc., Wm. Fletcher Belcher, Jim Quinlan Chevrolet, Inc	98–0020	10/24/97
Republic Industries, Inc., James G. Quinlan, Quinlan Motors, Inc	98–0021	10/24/97
Glenayre Technologies, Inc., Wireless Access, Inc., Wireless Access, Inc	98–0048	10/24/97
American Financial Group, Inc., General Accident p.l.c. (a Scottish corporation), General Accident Life Assurance of Puerto Rico	98–0052	10/24/97
International Paper Company, Taussig's Graphic Supply, Inc., Taussig's Graphic Supply, Inc	98–0059	10/24/97
PP&L Resources, Inc., Marilyn Ware Lewis, Penn Fuel Gas, Inc	98–0071	10/24/97
TA/Advent VIII, LP, Frank Deverse, International Microcircuits, Inc	98–0088	10/24/97
Jewish Hospital Healthcare, Inc., Humana Inc., Lexington Hospital and Eagle Creek Medical Plaza	98–0089	10/24/97
Apollo Investment Fund III, L.P., Apollo LCA Acquisition Corporation, Apollo LCA Acquisition Corporation	98–0103	10/24/97
CMT Associates, L.P., Patricia E. Rodeheaver, Custom Design Telephone Systems, Inc	98–0112	10/24/97
FS Equity Partners III, L.P., New York Times Company (The), New York Times Company (The)	98–0113	10/24/97
Indiana Farm Bureau, Inc., United Homes Life Ins. Co., United Homes Life Ins. Co	98–0116	10/24/97
BW Provisions, Inc., Vowles, Inc., Vowles, Inc	98–0118	10/24/97
General Motors Corporation, General Electric Company, GE Capital Asset Management Corporation and/or Newco	98–0121	10/24/97
Hilton Hotels Corporation, Hilton Hotels Corporation, Bally's Olympia Limited Partnership	98–0138	10/24/97
AMF Bowling, Inc., Family Gold Centers, Inc., Lake Grove Family Grove Centers, Inc	98–0144	10/24/97
M. Francois Pinault, Taylor Electric Supply, Inc., Taylor Electric Supply, Inc	98–0146	10/24/97
Thomas H. Lee Equity Fund III, LP, The South African Breweries Limited (a S. Africa Co.), Vistar, Inc	98–0153	10/24/97
The South African Breweries Limited (a S. Africa Co.), Thomas H. Lee Equity Fund, III, LP, Safelite Glass Corp	98–0154	10/24/97
Bandag, Incorporated, Kim Lorenz, Sound Tire, Inc	98–0155	10/24/97
Reed International P.L.C., Anasazi, Inc., Anasazi, Inc	98–0156	10/24/97
Elsevier, NV, Anasazi, Inc., Anasazi, Inc	98–0157	10/24/97
The Chase Manhattan Corporation, Apollo LCA Acquisition Corporation, Apollo LCA Acquisition Corporation	98–0159	10/24/97
Bandag, Incorporated, John Winkes, Sound Tire, Inc	98–0163	10/24/97
Eastern Environmental Services, Inc., Ambrose Hamm, Hamms's Sanitation, Inc.; H.S.S	98–0175	10/24/97
Eos Partners, L.P., Allen E. Steiner, Interstate Consolidation, Inc./Interstate Consolidation	98–0180	10/24/97
Eos Partners, L.P., Gary I. Goldfein, Interstate Consolidation, Inc./Interstate Consolidation	98–0181	10/24/97
Warburg, Pincus Capital, L.P., Transkaryotic Therapies, Inc., Transkaryotic Therapies, Inc	98–0185	10/24/97
Richard B. Cohen, Merrill Lynch Capital Appreciation Partnership No. IX, Pathmark Stores, Inc. and Plainbridge, Inc	98–0188	10/24/97
DRAKA Holding, Mr. William H. Combs, III, Tamaqua Cable Products Corp	98–0189	10/24/97
CGW Southeast Partners III, L.P., J. Russell Flowers, Central States Diversified, Inc	98–0195	10/24/97
Saratoga Partners III, L.P., KSCO Management, L.P., KSCO Acquisition Corporation	98–0198	10/24/97
Hancock Fabrics, Inc., Silas Creek Retail, Inc., (Debtor-in-Possession), Silas Creek Retail, Inc	98–0206	10/24/97
Jordan Industries, Inc., E.D. and C. Company, Inc., E.D. and C. Company, Inc	98–0213	10/24/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–30257 Filed 11–17–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers

or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10–01–97 AND 10–10–97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Times Mirror Company, Stanley Henry, This Week Publications, Inc	97–3387	10/01/97
Ontario Teachers' Pension Board, Beneficial Corporation, Beneficial Corporation	97–3492	10/01/97
Parity, plc, Jonathan Gross, Telecommunications Technology Corporation/Personnel	97–3565	10/01/97
Zurich Insurance Company, Scudder, Steven & Clark, Inc., Scudder, Steven & Clark, Inc	97–3582	10/01/97
Wausau Paper Mills Company, Mosinee Paper Corporation, Mosinee Paper Corporation	97–3453	10/02/97
Fairview Hospital and Healthcare Services, Board of Social Ministry, Board of Social Ministry	97–3481	10/02/97
McLaren Health Care Corporation, Michigan Affiliated Healthcare System, Inc., Michigan Affiliated Healthcare System, Inc	97–3501	10/02/97
Mariner Health Group, Inc., Prism Health Group, Inc., Prism Health Group, Inc	97–3509	10/02/97
American International Group, Inc., Eli Lilly and Company, PCS Holding Corporation	97–3568	10/02/97
Leslie B. Otten, Kamori Kanko Co., Ltd., Steamboat Ski & Resort Corporation, Steamboat	97–3505	10/03/97
Masayoshi Son, GlobalCenter, Inc., GlobalCenter, Inc	97–3561	10/03/97
Lincolnshire Equity Fund, L.P., CGF Industries, Inc., CGF Industries, Inc	97–3572	10/03/97
Timothy J. Buchanan, Alternative Living Services, Inc., Alternative Living Services, Inc	97–3584	10/03/97
D. Ray Cook, Alternative Living Services, Inc., Alternative Living Services, Inc	97–3585	10/03/97
Steven L. and Susan C. Vick, Alternative Living Services, Inc., Alternative Living Services, Inc	97–3586	10/03/97
Pacificorp, GTE Corporation, GTE North Incorporated	97–3587	10/03/97
The Walt Disney Company, Cinergi Pictures Entertainment, Inc. Cinergi Pictures Entertainment, Inc	97–3596	10/03/97
Texas Utilities Company, Lufkin-Conroe Communications Co., Lufkin-Conroe Communications Co	97–3597	10/03/97
Walter Industries, Inc., Charles P. Gallagher, Applied Industrial Materials Corporation	97–3600	10/03/97
Transamerica Corporation, Whirlpool Corporation, Whirlpool Financial Corporation	97–3602	10/03/97
Champion International Corporation, Fort James Corporation, Diamond Occidental Forest Inc	97–3609	10/03/97
Adventist Health System/West, South Coast Medical Center, South Coast Medical Center	97–3612	10/03/97
Allied Waste Industries, Inc., N.R. Hamm Quarry, Inc., N.R. Hamm Quarry, Inc	97–3616	10/03/97
Allied Waste Industries, Inc., N.R. Hamm Contractor, Inc., N.R. Hamm Contractor, Inc	97–3617	10/03/97
Mr. Jean-Charles Naouri, Casino Guichard-Perrachon, Casino Guichard-Perrachon	97–3618	10/03/97
Ameritech Corporation, Republic Industries, Inc., Republic Security Companies Holding Co	97–3620	10/03/97
Big Flower Press Holdings, Inc., Reinhard Mohn, (Mr.), Gruner + Jahr Printing & Publishing Co	97–3622	10/03/97
Serge Godin, Teleglobe Inc., ISI Systems, Inc	97–3623	10/03/97
MoneyGram Payment Systems, Inc., Mid-America Bancorp, Mid-America Money Order Company	97–3625	10/03/97
Ameritech Corporation, Rollins, Inc., Rollins, Inc. (Rollins Protective Services Division)	97–3626	10/03/97
Allergan, Inc. Ligand Pharmaceuticals Incorporated, Ligand Pharmaceuticals Incorporated	97–3629	10/03/97
James Q. Crowe, Peter Kiewit Sons', Inc., Peter Kiewit Sons', Inc	97–3631	10/03/97
Komatsu Ltd., Robert G. Thomson, Furnival Machinery Company	97–3633	10/03/97
GCIH, Inc., Auburn Hosiery Mills, Inc., Auburn Hosiery Mills, Inc	97–3634	10/03/97
Grey Wolf, Inc., Justiss Oil Company, Inc., Justiss Oil Company, Inc	97–3635	10/03/97
Bandag, Inc., Joe W. Esco, Joe Esco Tire Co	97–3636	10/03/97
Hadi B. Lashkajani, Richard E. Becker, Indian River Foods, Inc	97–3638	10/03/97
A.M. Todd Group, Inc., Richard E. Becker, Indian River Foods, Inc	97–3639	10/03/97
EIS, Inc., Com-Kyl, Inc., Com-Kyl, Inc	97–3645	10/03/97
Blackstone Capital Partners II Merchant Banking Fund LP, Park Corporation, American Axle & Manufacturing of Michigan, Inc	97–3647	10/03/97
Metal Management, Inc., Betty Albert, Superior Forge, Inc	97–3648	10/03/97
Blackstone Offshore Capital Partners, II, L.P., Park Corporation, American Axle & Manufacturing of Michigan, Inc	97–3649	10/03/97
Adecco, S.A., Estate of David J. McGrath, Jr., TAD Companies, TAD Technical, L.P. & TAD Temporaries	97–3650	10/03/97
Bandag, Incorporated, J.W. Brewer Tire Co., Inc., J.W. Brewer Tire Co., Inc	97–3655	10/03/97
Becton Dickinson and Company, SoloPak Pharmaceuticals, Inc., SoloPak Pharmaceuticals, Inc	97–3656	10/03/97
New Rio, L.L.C. The Warnaco Group, Inc., The Warnaco Group, Inc	97–3662	10/03/97
The Warnaco Group, Inc., New Rio, L.L.C., Designer Holdings	97–3663	10/03/97
Einar Wilhelm Sissener, Cultor Corporation, Cultor Food Science, Inc	97–3685	10/03/97
Paradigm Geophysical Ltd., Tech-Sym Corporation, CogniSeis Development, Inc	97–3507	10/06/97
ALZA Corporation, IVAX Corporation, Baker Norton Pharmaceuticals, Inc	97–3570	10/06/97
D.S.I. Distributing, Inc., C. Michael Schroeder, Consumer Satellite Systems, Inc	97–3653	10/06/97
Misys plc, Medic Computer Systems, Inc., Medic Computer Systems, Inc	97–3462	10/07/97
Watson Pharmaceuticals, Inc., Monsanto Company, G.D. Searle & Co	97–3503	10/07/97
Airgas, Inc., James P. Lyons, JWS Technologies, Inc. & Ridgewood Avenue Company, L.P.	97–3547	10/07/97
SmarTalk TeleServices, Inc., ConQuest Telecommunications Services Corporation, ConQuest Telecommunications Services Corporation	97–3610	10/07/97
Metropolitan Life Insurance Company, Partners Limited, Security First Group, Inc	97–3646	10/07/97
Extendicare Inc., Arbor Health Care Company, Arbor Health Care Company	97–3697	10/07/97
Weyerhaeuser Company, Union Camp Corporation, Union Camp Corporation	97–3527	10/08/97
Union Bank of Switzerland, Xpedite Systems, Inc. Xpedite Systems, Inc	97–3641	10/08/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10–01–97 AND 10–10–97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Fenway Partners Capital Fund, L.P., Xpedite Systems, Inc., Xpedite Systems, Inc.,	97–3642	10/08/97
The Virginia Insurance Reciprocal, Compensation Hospital Association Trust, Compensation Hospital Association Trust	97–3665	10/08/97
The Virginia Insurance Reciprocal, Kentucky Hospital Association Trust, Kentucky Hospital Association Trust	97–3668	10/08/97
Royal & Sun Alliance Insurance Group plc, Michael H. Polaski, Specialty Underwriters, Inc	97–3669	10/08/97
N.V. Verenigd Bezit VNU, Cordient plc, The National Research Group, Inc	97–3676	10/08/97
Craig Sloan, David Manufacturing Co., David Manufacturing Co	97–3681	10/08/97
Fedeal Express Corporation, AMR Corporation, American Airlines, Inc	97–3682	10/08/97
Insight Communications Company, L.P., Cablevision Systems Corporation, A–R Cable Services, Inc	97–3643	10/09/97
Jonathan A. Nicholson, JP Foodservice, Inc., JP Foodservice, Inc	97–3456	10/10/97
Jacor Communications, Inc., John M. Shanahan, MultiVerse Networks, LLC; Syergy Broadcast Investment	97–3619	10/10/97
Siebe plc, Dow Chemical Company (The), Dow Chemical Company (The)	97–3624	10/10/97
Catholic Health Initiatives, Quorum Health Group, Inc., Midlands Medical Associates, L.P	97–3666	10/10/97
Craig O. McCaw, Caroline Hunt Trust Estate, Start Technologies Corporation	97–3670	10/10/97
Bandag, Incorporated, Ernest R. Duff, Southern Tire Mart, Inc	97–3672	10/10/97
TCW Special Placements Fund III, Kert Rabe, GHP Holdings, Inc	97–3684	10/10/97
Jefferson Health System, Magee Rehabilitation Hospital, Magee Rehabilitation Hospital	97–3690	10/10/97
Creative Computers, Inc., Elek-Tek, Inc. (Debtor-in-Possession), Elek-Tek, Inc. (Debtor-in-Possession)	97–3695	10/10/97
Ripplewood Partners, L.P., Don M. Wheeler, ACM Equipment Sales & Rentals and ICM Sales & Rentals	97–3701	10/10/97
Bridgestone Corporation, Rene Charvillat, Thompson Aerospace Corp. and Thompson Aerospace, Inc	97–3702	10/10/97
Premier Parks Inc., Kentucky Kingdom, Inc., Kentucky Kingdom, Inc	98–0001	10/10/97
IMCO Recycling, Inc., William and Louise Warshauer (Husband and Wife), Alchem Aluminum, Inc	98–0004	10/10/97
William and Louise Warshauer (Husband and Wife), IMCO Recycling Inc., IMCO Recycling Inc	98–0005	10/10/97
Bentley Pharmaceuticals, Inc., Schwarz Pharma AG (a German Entity), Schwarz Pharma, Inc	98–0006	10/10/97
Tabacalera, S.A. (a Spanish company), Havatampa, Inc., Havatampa, Inc	98–0007	10/10/97
Suez-Lyonnaise des Eaux, Kamitche Company, Simpson Paper Company	98–0009	10/10/97
Tyco International Ltd., Jason International, Inc., Jason International, Inc	98–0017	10/10/97
Richard L. Duchossois, Richard Greenthal, Sentex Systems, Inc	98–0025	10/10/97
Richard L. Duchossois, William Davis, Sentex Systems, Inc	98–0026	10/10/97
WinStar Communications, Inc., US One Communications, Corp. (Debtor in Possession), US One Communications Services Corp. & US One Communica	98–0027	10/10/97
Air Products and Chemical, Inc., Industrial Gas & Supply Co., Industrial Gas & Supply Co	98–0032	10/10/97
Richard Rolzen (a French national), Code, Hennessy & Simmons II, L.P., Disguise Holding Corporation	98–0034	10/10/97
Aviation Sales Company, Thomas J. Bach, Kratz-Wilde Machine Company	98–0041	10/10/97
Aviation Sales Company, Jerome G. Bach, Kratz-Wilde Machine Company	98–0042	10/10/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–30258 Filed 11–17–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9280]

Jenny Craig, Inc.; Jenny Craig International, Inc.

AGENCY: Federal Trade Commission.

ACTION: Reopening of public comment period for proposed consent agreement.

SUMMARY: This document provides interested members of the public an additional fifteen days to submit written comments regarding the proposed consent agreement with Jenny Craig, Inc., and Jenny Craig International, Inc.

DATES: Comments must be received on or before December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Matthew D. Gold, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: On June 5, 1997, the Federal Trade Commission ("Commission") published a proposed consent agreement (62 FR 30857) and solicited comments from interested members of the public. The 60-day public comment period expired on August 4, 1997.

In light of the recent acceptance for public comment of a proposed consent agreement with Weight Watchers International, Inc. (62 FR 52340), the Commission has now decided to reopen the public comment period for fifteen days. The Commission will, after the close of the new public comment period, give consideration to all comments already received during or after the original comment period as well as all comments received during the new public comment period. Accordingly, there is no need to re-submit copies of any comments previously submitted to the Commission on this matter.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–30259 Filed 11–17–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

General Reorganization; Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Health Care Policy and Research), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955, April 10, 1996) is amended to reflect organizational

changes within the Agency for Health Care Policy and Research (AHCPR). Specifically, AHCPR is aligning functions so that the Agency can more efficiently and effectively meet the needs of other organizations for scientific information on which they can base clinical guidelines, performance measures, technology assessments, and other quality improvement tools. The Agency is establishing a new Center for Practice and Technology Assessment, in which will be located the Office of the Forum for Quality and Effectiveness in Health Care as well as the functions of the previous Center for Health Care Technology.

Under *Section E–10, Organization,* following *E. Office of Scientific Affairs, delete F. through N.* and insert the following:

F. Center for Cost and Financing Studies.

G. Center for Health Information Dissemination.

H. Center for Information Technology.

I. Center for Organization and Delivery Studies.

J. Center for Outcomes and Effectiveness Research.

K. Center for Primary Care Research.

L. Center for Quality Measurement and Improvement.

M. Center for Practice and Technology Assessment.

Under heading *Section E–20, Functions,* delete the titles and statements for the *Office of the Forum for Quality and Effectiveness in Health Care (EB)* and the *Center for Health Care Technology (EE),* and following the statement for the *Center for Quality Measurement and Improvement (EL),* insert the following title and statement:

Center for Practice and Technology Assessment (EM). Conducts and supports systematic assessments of clinical practices and health care technologies as well as methodologic and implementation research. Specifically: (1) Conducts and supports the development of evidence reports and technology assessments on health care treatments, conditions, procedures, and technologies, including alternative and complementary therapies; (2) conducts and supports research focusing on methodologies used in systematic reviews and implementation of evidence-based recommendations, materials, and technologies assessments into the health care system; (3) facilitates the development and operations of a National Guideline Clearinghouse; (4) facilitates the work of the U.S. Preventive Services Task Force; (5) represents the Agency in meetings with experts and organizations in the areas of evidence-based assessments of practice and technologies, and convenes conferences on these topics; and (6) is the focus of the Office of the Forum for Quality and Effectiveness in Health Care.

All delegations and redelegations of authority to officers and employees of the Agency for Health Care Policy and Research which were in effect immediately prior to the effective date of this reorganization shall continue in effect pending further redelegation, provided they are consistent with this reorganization.

These changes are effective upon date of signature.

Dated: October 31, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–30209 Filed 11–17–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission For OMB Review; Comment Request

Title: Order/Notice to Withhold Income for Child Support.

OMB No.: 0970–0154.

Description: The child support enforcement agency needs the information to process court/tribunal administered direct income withholding orders to collect support. The form will provide employers with the required amounts to deduct child support payment from an employee's/obligor's income.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Order/Notice	54	1,620	.1666	14,579

Estimated Total Burden Hours: 14,579.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: November 12, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–30219 Filed 11–17–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission For OMB Review; Comment Request

Title: Required Data Elements for Paternity Establishment Affidavits.

OMB No.: New Collection.

Description: Public Law 104–193 requires the Secretary of the Department of Health and Human Services to specify the minimum data requirements of an affidavit to be used for the voluntary acknowledgment of paternity. Public Law 104–193 also requires States to enact laws requiring the development and use of an affidavit which met the minimum requirements specified by the Secretary and to give full faith and credit to such an affidavit signed in any other State according to its procedures. The Department established a task group composed of Federal and State staff to recommend minimum data elements for all State paternity acknowledgment affidavits. The minimum data elements were crafted to balance the need for a tool for collecting information necessary to the establishment of a child support order and the need for a user-friendly form that addresses only the data necessary to establish legal paternity. *The minimum data elements are:* The current full name, social security number and date of birth of mother, father, and child; address of mother and father, birthplace of child; an explanation of the legal consequences of signing the affidavit; a statement indicating both parents understand their rights, responsibilities, alternatives and the consequences of signing the affidavit; the place the affidavit was completed; and signature lines for mother, father and witnesses or notaries.

Respondents: Individuals and Households; Not-for-Profit Institutions; and State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Affidavits	2,000,000	.2243	.166	74,468

Estimated Total Annual Burden Hours: 74,468.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 12, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–30220 Filed 11–17–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0444]

International Conference on Harmonisation; Draft Guidance on the Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guidance entitled "S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance is intended to provide guidance on the duration of chronic toxicity testing in rodents and nonrodents as part of the safety evaluation of a drug product.

DATES: Written comments by January 20, 1998.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In July 1997, the ICH Steering Committee agreed that a draft guidance entitled "S4A Duration of Chronic

Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)" should be made available for public comment. The draft guidance is the product of the Safety Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Safety Expert Working Group.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The draft document provides guidance on the duration of chronic toxicity testing in rodents and nonrodents as part of the safety evaluation of a drug product. The draft guidance is intended to help eliminate or reduce the need for pharmaceutical companies to duplicate testing during the development of new drug products.

FDA has proposed draft guidance before on chronic toxicity testing. In the **Federal Register** of April 15, 1992 (57 FR 13105), FDA announced the availability of a proposed approach to toxicity testing, including long-term toxicity studies. The new ICH draft guidance published here reflects a change in recommended testing in nonrodents based on an evaluation of findings from chronic toxicity studies. The evaluation report is available in Docket No. 97D-0444. The agency requests comments on the draft guidance and on specific classes of pharmaceuticals for which either shorter or longer durations of testing in nonrodents should be considered as general exceptions to the duration recommended in the draft guidance. It would be helpful if the scientific basis for comments addressing "general exceptions" were also provided. Once this guidance is finalized, it will supersede the 1992 proposed guidance (57 FR 13105).

Other portions of the proposed approach to toxicity testing announced in the **Federal Register** of April 15, 1992, have been superseded by draft and finalized FDA and ICH guidances as follows:

TABLE 1.—1992 DRAFT PROPOSED GUIDANCE

Topic	Superseded by
Single Dose (Acute) Toxicity Studies	Guidance for Industry on Single Dose Acute Toxicity Testing for Pharmaceuticals, PT 1, (61 FR 43934, August 26, 1996)
Reproductive and Developmental Studies	Detection of Toxicity to Reproduction for Medicinal Products, ICH S5A, (59 FR 48746, September 22, 1994) Detection of Toxicity to Reproduction for Medicinal Products: Addendum on Toxicity to Male Fertility, ICH S5B (61 FR 15360, April 5, 1996)
Carcinogenicity Studies (Dose Selection)	Dose Selection for Carcinogenicity Studies of Pharmaceuticals, ICH S1C, (60 FR 11278, March 1, 1995) Dose Selection for Carcinogenicity Studies of Pharmaceuticals—Addition of the Limit Dose and Related Notes, Draft ICH S1C(R) (62 FR 15715, April 2, 1997)
Timing and Duration	Nonclinical Studies for the Conduct of Human Clinical Trials for Pharmaceuticals, Draft ICH M3 (62 FR 24320, May 2, 1997)

This draft guidance represents the agency's current thinking on the duration of chronic toxicity testing in animals (rodent and nonrodent toxicity testing). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before January 20, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet using the World Wide Web (WWW) "http://www.fda.gov/cder/guidance.htm".

The text of the draft guidance follows:

S4A Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)

Objective:

The objective of this guidance is to set out the considerations that apply to chronic toxicity testing in rodents and nonrodents as part of the safety evaluation of a medicinal product. Since guidance is not legally binding, an applicant may submit justification for an alternative approach.

Scope:

This guidance has been prepared for the development of medicinal products with the exception of those already covered by "Safety Studies for Biotechnological Products," e.g., monoclonal antibodies, recombinant DNA proteins.

Background:

During the first International Conference on Harmonisation in 1991, the practices for the testing of chronic toxicity in the three regions (the European Union, Japan, and the United States) were reviewed. Arising from this, it emerged that there was a scientific consensus on the approach for chronic testing in rodents, supporting the harmonized duration of testing of 6 months. However, for chronic toxicity testing in nonrodents, there were different approaches to the duration of testing.

The lack of harmonized duration led to the need for pharmaceutical companies to perform partially duplicative studies for both 6 and 12 months duration when developing new medicinal products. As the objective of ICH is to reduce or eliminate the need to duplicate testing during development of medicinal products and to ensure a more economical use of material, animal, and human resources, while at the same time maintaining safeguards to protect public health, further scientific evaluation was undertaken.

Each of the regulatory authorities in the European Union, Japan, and the United States undertook a review to determine whether a single duration for chronic toxicity testing in nonrodents could be identified. From this analysis, it emerged that in 16 cases, a more detailed evaluation of 6 versus 12 months data should be undertaken.

This evaluation was conducted as a joint exercise by the competent authorities in the three regions.

In some of the cases analyzed at the tripartite meetings, there were no additional findings at 12 months. For some other cases, there was not complete agreement among the regulators with respect to the comparability in study design and conduct to allow assessment of whether there were differences in the findings at 6 and 12 months due to duration of treatment alone.

In a number of cases there were findings observed by 12 months, but not by 6 months. It was concluded that these would, or could, have been detected in a study of 9 months duration. Varying degrees of concern for the differences in findings detected between the studies of different durations were expressed. An agreement on the clinical relevance of these findings could not be reached.

Studies of 12 months duration are usually not necessary and studies of shorter than 9 months duration may be sufficient.

In the European Union, studies of 6 months duration in nonrodents are acceptable according to Council Directive 75/318/EEC, as amended. To avoid duplication, where studies with a longer duration have been conducted, it would not be necessary to conduct a study of 6 months.

Guidance on duration of chronic toxicity testing for tripartite development plan:

Arising from the extensive analysis and review of the above mentioned data in nonrodents and based upon the achievements of ICH 1 for testing in rodents, and so as to avoid duplication and to follow a single development plan for chronic toxicity testing of new medicinal products, the following studies are considered acceptable for submission in the three regions:

(1) *Rodents*: a study of 6 months duration;
(2) *Nonrodents*: a study of 9 months duration.

Dated: November 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97-30273 Filed 11-17-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D-0113]

International Conference on Harmonisation; Guidance on Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance is intended to provide general principles for designing scientifically acceptable preclinical safety evaluation programs for biopharmaceuticals.

DATES: Effective November 18, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4573. Single copies of the draft guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1-800-835-4709 or 301-827-1800. Copies may be obtained from CBER's Fax Information System at 1-888-CBER-FAX or 301-827-3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM-5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0379.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of April 4, 1997 (62 FR 16438), FDA published a draft tripartite guideline entitled "Preclinical Testing of Biotechnology-Derived Pharmaceuticals" (S6). The notice gave interested persons an opportunity to submit comments by June 3, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 16, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance recommends a basic framework for the preclinical safety evaluation of biotechnology-derived pharmaceuticals. Adherence to the principles presented in the guidance will allow for improvement in the quality and consistency of preclinical safety data supporting the development of biopharmaceuticals.

This guidance represents the agency's current thinking on preclinical safety evaluation of biotechnology-derived pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at "http://www.fda.gov/cder/guidance.htm" or at CBER's World Wide Web site at "http://www.fda.gov/cber/publications.htm".

The text of the guidance follows:

S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals [1]

1. Introduction

1.1. Background

Biotechnology-derived pharmaceuticals (biopharmaceuticals) were initially developed in the early 1980's. The first marketing authorizations were granted later in the decade. Several guidelines and points-to-consider documents have been issued by various regulatory agencies regarding safety assessment of these products. Review of such documents, which are available from regulatory authorities, may provide useful background in developing new biopharmaceuticals.

Considerable experience has now been gathered with submission of applications for biopharmaceuticals. Critical review of this experience has been the basis for development of this guidance, which is intended to provide general principles for designing scientifically acceptable preclinical safety evaluation programs.

1.2 Objectives

Regulatory standards for biotechnology-derived pharmaceuticals have generally been comparable among the European Union, Japan, and the United States. All three regions have adopted a flexible, case-by-case, science-based approach to preclinical safety evaluation needed to support clinical development and marketing authorization. In this rapidly evolving scientific area, there is a need for common understanding and continuing dialogue among the regions.

The primary goals of preclinical safety evaluation are: (1) To identify an initial safe dose and subsequent dose escalation schemes in humans; (2) to identify potential target organs for toxicity and for the study of whether such toxicity is reversible; and (3) to identify safety parameters for clinical monitoring. Adherence to the principles presented in this document should improve the quality and consistency of the preclinical safety data supporting the development of biopharmaceuticals.

1.3 Scope

This guidance is intended primarily to recommend a basic framework for the preclinical safety evaluation of biotechnology-derived pharmaceuticals. It applies to products derived from characterized cells through the use of a variety of expression systems including bacteria, yeast, insect, plant, and mammalian cells. The intended indications may include in vivo diagnostic, therapeutic, or prophylactic uses. The active substances include proteins and peptides, their derivatives, and products of which they are components; they could be derived from cell cultures or produced using recombinant deoxyribonucleic acid (DNA) technology, including production by transgenic plants and animals. Examples include but are not limited to: Cytokines, plasminogen activators, recombinant plasma factors, growth factors, fusion proteins, enzymes, receptors, hormones, and monoclonal antibodies.

The principles outlined in this guidance may also be applicable to recombinant DNA protein vaccines, chemically synthesized peptides, plasma derived products, endogenous proteins extracted from human tissue, and oligonucleotide drugs.

This document does not cover antibiotics, allergenic extracts, heparin, vitamins, cellular blood components, conventional bacterial or viral vaccines, DNA vaccines, or cellular and gene therapies.

2. Specification of the Test Material

Safety concerns may arise from the presence of impurities or contaminants. It is preferable to rely on purification processes to remove impurities and contaminants rather than to establish a preclinical testing program for their qualification. In all cases, the product should be sufficiently characterized to allow an appropriate design of preclinical safety studies.

There are potential risks associated with host cell contaminants derived from bacteria, yeast, insect, plants, and mammalian cells. The presence of cellular host contaminants can result in allergic reactions and other immunopathological effects. The adverse effects associated with nucleic acid contaminants are theoretical but include potential integration into the host genome. For products derived from insect, plant, and mammalian cells, or transgenic plants and animals, there may be an additional risk of viral infections.

In general, the product that is used in the definitive pharmacology and toxicology studies should be comparable to the product proposed for the initial clinical studies. However, it is appreciated that during the course of development programs, changes normally occur in the manufacturing process in order to improve product quality and yields. The potential impact of such changes for extrapolation of the animal findings to humans should be considered.

The comparability of the test material during a development program should be demonstrated when a new or modified manufacturing process is developed or other significant changes in the product or formulation are made in an ongoing development program. Comparability can be evaluated on the basis of biochemical and biological characterization (i.e., identity, purity, stability, and potency). In some cases, additional studies may be needed (i.e., pharmacokinetics, pharmacodynamics and/or safety). The scientific rationale for the approach taken should be provided.

3. Preclinical Safety Testing

3.1 General Principles

The objectives of the preclinical safety studies are to define pharmacological and toxicological effects not only prior to initiation of human studies but throughout clinical development. Both in vitro and in vivo studies can contribute to this characterization. Biopharmaceuticals that are structurally and pharmacologically comparable to a product for which there is wide experience in clinical practice may need less extensive toxicity testing.

Preclinical safety testing should consider: (1) Selection of the relevant animal species; (2) age; (3) physiological state; (4) the manner of delivery, including dose, route of administration, and treatment regimen; and (5) stability of the test material under the conditions of use.

Toxicity studies are expected to be performed in compliance with Good Laboratory Practice (GLP); however, it is recognized that some studies employing specialized test systems, which are often needed for biopharmaceuticals, may not be able to comply fully with GLP. Areas of noncompliance should be identified and their significance evaluated relative to the overall safety assessment. In some cases, lack of full GLP compliance does not necessarily mean that the data from these studies cannot be used to support clinical trials and marketing authorizations.

Conventional approaches to toxicity testing of pharmaceuticals may not be appropriate for biopharmaceuticals due to the unique and diverse structural and biological properties of the latter that may include species specificity, immunogenicity, and unpredicted pleiotropic activities.

3.2 Biological Activity/Pharmacodynamics

Biological activity may be evaluated using in vitro assays to determine which effects of the product may be related to clinical activity. The use of cell lines and/or primary cell cultures can be useful to examine the direct effects on cellular phenotype and proliferation. Due to the species specificity of many biotechnology-derived pharmaceuticals, it is important to select relevant animal species for toxicity testing. In vitro cell lines derived from mammalian cells can be used to predict specific aspects of in vivo activity and to assess quantitatively the relative sensitivity of various species (including human) to the biopharmaceutical. Such studies may be designed to determine, for example, receptor occupancy, receptor affinity, and/or pharmacological effects, and to assist in the selection of an appropriate animal species for further in vivo

[1] This guidance represents the agency's current thinking on preclinical safety evaluation of biotechnology-derived pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

pharmacology and toxicology studies. The combined results from in vitro and in vivo studies assist in the extrapolation of the findings to humans. In vivo studies to assess pharmacological activity, including defining mechanism(s) of action, are often used to support the rationale of the proposed use of the product in clinical studies.

For monoclonal antibodies, the immunological properties of the antibody should be described in detail, including its antigenic specificity, complement binding, and any unintentional reactivity and/or cytotoxicity towards human tissues distinct from the intended target. Such cross-reactivity studies should be carried out by appropriate immunohistochemical procedures using a range of human tissues.

3.3 Animal Species/Model Selection

The biological activity together with species and/or tissue specificity of many biotechnology-derived pharmaceuticals often preclude standard toxicity testing designs in commonly used species (e.g., rats and dogs). Safety evaluation programs should include the use of relevant species. A relevant species is one in which the test material is pharmacologically active due to the expression of the receptor or an epitope (in the case of monoclonal antibodies). A variety of techniques (e.g., immunochemical or functional tests) can be used to identify a relevant species. Knowledge of receptor/epitope distribution can provide greater understanding of potential in vivo toxicity.

Relevant animal species for testing of monoclonal antibodies are those that express the desired epitope and demonstrate a similar tissue cross-reactivity profile as for human tissues. This would optimize the ability to evaluate toxicity arising from the binding to the epitope and any unintentional tissue cross-reactivity. An animal species that does not express the desired epitope may still be of some relevance for assessing toxicity if comparable unintentional tissue cross-reactivity to humans is demonstrated.

Safety evaluation programs should normally include two relevant species. However, in certain justified cases one relevant species may suffice (e.g., when only one relevant species can be identified or where the biological activity of the biopharmaceutical is well understood). In addition, even where two species may be necessary to characterize toxicity in short term studies, it may be possible to justify the use of only one species for subsequent long-term toxicity studies (e.g., if the toxicity profile in the two species is comparable in the short term).

Toxicity studies in nonrelevant species may be misleading and are discouraged. When no relevant species exists, the use of relevant transgenic animals expressing the human receptor or the use of homologous proteins should be considered. The information gained from use of a transgenic animal model expressing the human receptor is optimized when the interaction of the product and the humanized receptor has similar physiological consequences to those expected in humans. While useful information may also be gained from the use of homologous proteins, it should be noted that the production process, range of impurities/contaminants, pharmacokinetics, and exact pharmacological mechanism(s) may differ between the homologous form and the product intended for clinical use. Where it is not possible to use transgenic animal models or homologous proteins, it may still be prudent to assess some aspects of potential toxicity in a limited toxicity evaluation in a single species, e.g., a repeated dose toxicity study of < 14 days duration that includes an evaluation of important functional endpoints (e.g., cardiovascular and respiratory).

In recent years, there has been much progress in the development of animal models that are thought to be similar to the human disease. These animal models include induced and spontaneous models of disease, gene knockout(s), and transgenic animals. These models may provide further insight, not only in determining the pharmacological action of the product, pharmacokinetics, and dosimetry, but may also be useful in the determination of safety (e.g., evaluation of undesirable promotion of disease progression). In certain cases, studies performed in animal models of disease may be used as an acceptable alternative to toxicity studies in normal animals (Note 1). The scientific justification for the use of these animal models of disease to support safety should be provided.

3.4 Number/Gender of Animals

The number of animals used per dose has a direct bearing on the ability to detect toxicity. A small sample size may lead to failure to observe toxic events due to observed frequency alone regardless of severity. The limitations that are imposed by sample size, as often is the case for nonhuman primate studies, may be in part compensated by increasing the frequency and duration of monitoring. Both genders should generally be used or justification given for specific omissions.

3.5 Administration/Dose Selection

The route and frequency of administration should be as close as possible to that proposed for clinical use. Consideration should be given to pharmacokinetics and bioavailability of the product in the species being used and to the volume which can be safely and humanely administered to the test animals. For example, the frequency of administration in laboratory animals may be increased compared to the proposed schedule for the human clinical studies in order to compensate for faster clearance rates or low solubility of the active ingredient. In these cases, the level of exposure of the test animal relative to the clinical exposure should be defined. Consideration should also be given to the effects of volume, concentration, formulation, and site of administration. The use of routes of administration other than those used clinically may be acceptable if the route must be modified due to limited bioavailability, limitations due to the route of administration, or to size/physiology of the animal species.

Dosage levels should be selected to provide information on a dose-response relationship, including a toxic dose and a no observed adverse effect level (NOAEL). For some classes of products with little to no toxicity, it may not be possible to define a specific maximum dose. In these cases, a scientific justification of the rationale for the dose selection and projected multiples of human exposure should be provided. To justify high dose selection, consideration should be given to the expected pharmacological/physiological effects, availability of suitable test material, and the intended clinical use. Where a product has a lower affinity to or potency in the cells of the selected species than in human cells, testing of higher doses may be important. The multiples of the human dose that are needed to determine adequate safety margins may vary with each class of biotechnology-derived pharmaceutical and its clinical indication(s).

3.6 Immunogenicity

Many biotechnology-derived pharmaceuticals intended for humans are immunogenic in animals. Therefore, measurement of antibodies associated with administration of these types of products should be performed when conducting repeated dose toxicity studies in order to aid in the interpretation of these studies. Antibody responses should be characterized (e.g., titer, number of responding animals, neutralizing or non-neutralizing) and their appearance should be correlated with any pharmacological and/or toxicological changes. Specifically, the effects of antibody formation on pharmacokinetic/pharmacodynamic parameters, incidence and/or severity of adverse effects, complement activation, or the emergence of new toxic effects should be considered when interpreting the data. Attention should also be paid to the evaluation of possible pathological changes related to immune complex formation and deposition.

The detection of antibodies should not be the sole criterion for the early termination of a preclinical safety study or modification in the duration of the study design unless the immune response neutralizes the pharmacological and/or toxicological effects of the biopharmaceutical in a large proportion of the animals. In most cases, the immune response to biopharmaceuticals is variable, like that observed in humans. If the interpretation of the data from the safety study is not compromised by these issues, then no special significance should be ascribed to the antibody response.

The induction of antibody formation in animals is not predictive of a potential for antibody formation in humans. Humans may develop serum antibodies against humanized proteins, and frequently the therapeutic response persists in their presence. The occurrence of severe anaphylactic responses to recombinant proteins is rare in humans. In this regard, the results of guinea pig anaphylaxis tests, which are generally positive for protein products, are not predictive for reactions in humans; therefore, such studies are considered of little value for the routine evaluation of these types of products.

4. Specific Considerations

4.1 Safety Pharmacology

It is important to investigate the potential for undesirable pharmacological activity in appropriate animal models and, where necessary, to incorporate particular monitoring for these activities in the toxicity studies and/or clinical studies. Safety pharmacology studies measure functional indices of potential toxicity. These functional indices may be investigated in separate studies or incorporated in the design of toxicity studies. The aim of the safety pharmacology studies should be to reveal any functional effects on the major physiological systems (e.g., cardiovascular, respiratory, renal, and central nervous systems). Investigations may also include the use of isolated organs or other test systems not involving intact animals. All of these studies may allow for a mechanistically-based explanation of specific organ toxicities, which should be considered carefully with respect to human use and indication(s).

4.2 Exposure assessment

4.2.1 Pharmacokinetics and Toxicokinetics

It is difficult to establish uniform guidances for pharmacokinetic studies for biotechnology-derived pharmaceuticals. Single and multiple dose pharmacokinetics, toxicokinetics, and tissue distribution studies in relevant species are useful; however, routine studies that attempt to assess mass balance are not useful. Differences in pharmacokinetics among animal species may have a significant impact on the predictiveness of animal studies or on the assessment of dose-response relationships in toxicity studies. Alterations in the pharmacokinetic profile due to immune-mediated clearance mechanisms may affect the kinetic profiles and the interpretation of the toxicity data. For some products, there may also be inherent, significant delays in the expression of pharmacodynamic effects relative to the pharmacokinetic profile (e.g., cytokines) or there may be prolonged expression of pharmacodynamic effects relative to plasma levels.

Pharmacokinetic studies should, whenever possible, utilize preparations that are representative of those intended for toxicity testing and clinical use and employ a route of administration that is relevant to the anticipated clinical studies. Patterns of absorption may be influenced by formulation, concentration, site, and/or volume. Whenever possible, systemic exposure should be monitored during the toxicity studies.

When using radiolabeled proteins, it is important to show that the radiolabeled test material maintains activity and biological properties equivalent to that of the unlabeled material. Tissue concentrations of radioactivity and/or autoradiography data using radiolabeled proteins may be difficult to interpret due to rapid in vivo metabolism or unstable radiolabeled linkage. Care should be taken in the interpretation of studies using radioactive tracers incorporated into specific amino acids because of recycling of amino acids into nondrug related proteins/peptides.

Some information on absorption, disposition, and clearance in relevant animal models should be available prior to clinical studies in order to predict margins of safety based upon exposure and dose.

4.2.2 Assays

The use of one or more assay methods should be addressed on a case-by-case basis and the scientific rationale should be provided. One validated method is usually considered sufficient. For example, quantitation of TCA-precipitable radioactivity following administration of a radiolabeled protein may provide adequate information, but a specific assay for the analyte is preferred. Ideally, the assay methods should be the same for animals and humans. The possible influence of plasma binding proteins and/or antibodies in plasma/serum on the assay performance should be determined.

4.2.3 Metabolism

The expected consequence of metabolism of biotechnology-derived pharmaceuticals is the degradation to small peptides and individual amino acids. Therefore, the metabolic pathways are generally understood. Classical biotransformation studies as performed for pharmaceuticals are not needed.

Understanding the behavior of the biopharmaceutical in the biologic matrix (e.g., plasma, serum, cerebral spinal fluid) and the possible influence of binding proteins is important for understanding the pharmacodynamic effect.

4.3 Single Dose Toxicity Studies

Single dose studies may generate useful data to describe the relationship of dose to systemic and/or local toxicity. These data can be used to select doses for repeated dose toxicity studies. Information on dose-response relationships may be gathered through the conduct of a single dose toxicity study or as a component of pharmacology or animal model efficacy studies. The incorporation of safety pharmacology parameters in the design of these studies should be considered.

4.4 Repeated Dose Toxicity Studies

For consideration of the selection of animal species for repeated dose studies, see section 3.3. The route and dosing regimen (e.g., daily versus intermittent dosing) should reflect the intended clinical use or exposure. When feasible, these studies should include toxicokinetics.

A recovery period should generally be included in study designs to determine the reversal or potential worsening of pharmacological/toxicological effects, and/or potential delayed toxic effects. For biopharmaceuticals that induce prolonged pharmacological/toxicological effects, recovery group animals should be monitored until reversibility is demonstrated. The duration of repeated dose studies should be based on the intended duration of clinical exposure and disease indication. This duration of animal dosing has generally been 1-3 months for most biotechnology-derived pharmaceuticals. For biopharmaceuticals intended for short-term use (e.g., < to 7 days) and for acute life-threatening diseases, repeated dose studies up to 2 weeks duration have been considered adequate to support clinical studies as well as marketing authorization. For those biopharmaceuticals intended for chronic indications, studies of 6 months duration have generally been appropriate, although in some cases shorter or longer durations have supported marketing authorizations. For biopharmaceuticals intended for chronic use, the duration of long-term toxicity studies should be scientifically justified.

4.5 Immunotoxicity Studies

One aspect of immunotoxicological evaluation includes assessment of potential immunogenicity (see section 3.6). Many biotechnology-derived pharmaceuticals are intended to stimulate or suppress the immune system and, therefore, may affect not only humoral but also cell-mediated immunity. Inflammatory reactions at the injection site may be indicative of a stimulatory response. It is important, however, to recognize that simple injection trauma and/or specific toxic effects caused by the formulation vehicle may also result in toxic changes at the injection site. In addition, the expression of surface antigens on target cells may be altered, which has implications for autoimmune potential. Immunotoxicological testing strategies may require screening studies followed by mechanistic studies to clarify such issues. Routine tiered testing approaches or standard testing batteries, however, are not recommended for biotechnology-derived pharmaceuticals.

4.6 Reproductive Performance and Developmental Toxicity Studies

The need for reproductive/developmental toxicity studies is dependent upon the product, clinical indication and intended patient population (Note 2). The specific study design and dosing schedule may be modified based on issues related to species specificity, immunogenicity, biological activity, and/or a long elimination half-life. For example, concerns regarding potential developmental immunotoxicity, which may apply particularly to certain monoclonal antibodies with prolonged immunological effects, could be addressed in a study design modified to assess immune function of the neonate.

4.7 Genotoxicity Studies

The range and type of genotoxicity studies routinely conducted for pharmaceuticals are not applicable to biotechnology-derived pharmaceuticals and therefore are not needed. Moreover, the administration of large quantities of peptides/proteins may yield uninterpretable results. It is not expected that these substances would interact directly with DNA or other chromosomal material (Note 3).

Studies in available and relevant systems, including newly developed systems, should be performed in those cases where there is cause for concern about the product (e.g., because of the presence of an organic linker molecule in a conjugated protein product). The use of standard genotoxicity studies for assessing the genotoxic potential of process contaminants is not considered appropriate. If performed for this purpose, however, the rationale should be provided.

4.8 Carcinogenicity Studies

Standard carcinogenicity bioassays are generally inappropriate for biotechnology-derived pharmaceuticals. However, product-specific assessment of carcinogenic potential may still be needed depending upon duration of clinical dosing, patient population, and/or biological activity of the product (e.g., growth factors, immunosuppressive agents, etc.). When there is a concern about carcinogenic potential, a variety of approaches may be considered to evaluate risk.

Products that may have the potential to support or induce proliferation of transformed cells and clonal expansion possibly leading to neoplasia should be evaluated with respect to receptor expression in various malignant and normal human cells that are potentially relevant to the patient population under study. The ability of the product to stimulate growth of normal or malignant cells expressing the receptor should be determined. When in vitro data give cause for concern about carcinogenic potential, further studies in relevant animal models may be needed. Incorporation of sensitive indices of cellular proliferation in long-term repeated dose toxicity studies may provide useful information.

In those cases where the product is biologically active and nonimmunogenic in rodents and other studies have not provided sufficient information to allow an assessment of carcinogenic potential, then the utility of a single rodent species should be considered. Careful consideration should be given to the selection of doses. The use of a combination of pharmacokinetic and pharmacodynamic endpoints with consideration of comparative receptor characteristics and intended human exposures represents the most scientifically based approach for defining the appropriate doses. The rationale for the selection of doses should be provided.

4.9 Local Tolerance Studies

Local tolerance should be evaluated. The formulation intended for marketing should be tested; however, in certain justified cases, the testing of representative formulations may be acceptable. In some cases, the potential adverse effects of the product can be evaluated in single or repeated dose toxicity studies, thus obviating the need for separate local tolerance studies.

Notes

Note 1

Animal models of disease may be useful in defining toxicity endpoints, selection of clinical indications, and determination of appropriate formulations, route of administration, and treatment regimen. It should be noted that with these models of disease there is often a paucity of historical data for use as a reference when evaluating study results. Therefore, the collection of concurrent control and baseline data is critical to optimize study design.

Note 2

There may be extensive public information available regarding potential reproductive and/or developmental effects of a particular class of compounds (e.g., interferons) where the only relevant species is the nonhuman primate. In such cases, mechanistic studies indicating that similar effects are likely to be caused by a new but related molecule may obviate the need for formal reproductive/developmental toxicity studies. In each case, the scientific basis for assessing the potential for possible effects on reproduction/development should be provided.

Note 3

With some biopharmaceuticals, there is a potential concern about accumulation of spontaneously mutated cells (e.g., via facilitating a selective advantage of proliferation) leading to carcinogenicity. The standard battery of genotoxicity tests is not designed to detect these conditions. Alternative in vitro or in vivo models to address such concerns may have to be developed and evaluated.

Dated: November 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30274 Filed 11–17–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Mechano Transduction in Bone.

Date: December 18, 1997.

Time: 8:00 a.m.–5:00 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Tommy L. Broadwater, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892–6500, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a research grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individual associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Disease Research], National Institutes of Health, HHS)

Dated: November 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30204 Filed 11–17–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Immunodampening Technology

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Number 5,585,250 and pending U.S. Patent Application Serial No. 08/764,575 both entitled "Dampening of an Immunodominant Epitope of an Antigen for Use in Plant, Animal and Human Compositions and Immunotherapies" and related foreign patent applications to Biological Memetics, Inc., of Frederick, Maryland. The patent rights in this invention have been assigned to the United States of America.

It is anticipated that this license will be limited to the field of vaccines for the treatment and prevention of infectious diseases in animals and humans.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 17, 1998 will be considered.

ADDRESSES: Requests for a copy of the patent and/or patent application, inquires, comments and other materials relating to the contemplated license should be directed to: Robert Benson, Patent Advisor, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, x267; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The patent and pending patent application describe a broadly applicable method of redirecting the immune response to an antigen from an immunodominant epitope to another epitope by altering the immunogenicity of the immunodominant epitope. The method is most useful for those pathogens with a highly variable immunodominant epitope, such as HIV, HCV or gonorrhea.

By immunodampening the dominant epitope the immune system then reacts to other more conserved epitopes.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within 90 days from the date of this published notice, NIH receives written evidence and argument that established that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contempleted license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. § 552.

Dated: November 5, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–30202 Filed 11–17–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program (NTP), Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on December 9 and 10, 1997, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 1:30 p.m. on December 9, and at 8:30 a.m. on December 10, and is open to the public. The agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Additionally, there will be a presentation made concerning data obtained from transgenic mouse models on several of the chemicals being reviewed.

Tentatively scheduled to be peer reviewed on December 9–10 are draft Technical Reports of 10 two-year studies, listed alphabetically, along with supporting information in the attached table. All studies were done using Fischer 344 rats and B6C3F$_1$ mice. The order of review is given in the far right column of the table. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAX (919/541–3687), email: CDM@niehs.nih.gov.

Public comment on any of the Technical Reports is welcome. Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone, by FAX, by mail, or by email no later than December 4, 1997, and provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members, *ad hoc* expert consultants, and staff, and made available at the meeting for attendees. Written statements should supplement and may expand on the oral presentation. *Oral presentations should be limited to no more than five minutes.*

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others, as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3971; FAX 919/541–0295; email hart@niehs.nih.gov) will furnish agenda and a roster of Subcommittee members and expert consultants prior to the meeting. Summary minutes subsequent to the meeting will be available upon request to Central Data Management.

Attachment.

Charles E. Leasure, Jr.,

Acting Director, National Toxicology Program.

SUMMARY DATA FOR TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELOR'S TECHNICAL REPORTS REVIEW SUBCOMMITTEE

[December 9–10, 1997]

Chemical CAS No.	Technical route/report number	Primary uses	Exposure levels	Review order
1-Chloro-2-Propanol, Technical, 127–00–4.	TR–477	Chemical intermediate for propylene oxide & other organic compounds.	Dosed-Water (deionized water): Rats: 0, 150, 325, or 650 ppm; Mice: 0, 250, 500, or 1000 ppm (50/sex/group).	10
Coconut Oil Acid, Diethanolamine Condensate, 68603–42–9.	TR–479	Foam stabilizer in shampoos and dishwashing liquids; dyeing assistant in textile processing.	Topical (95% ethanol): Rats: 0, 50, or 100 mg/kg; Mice: 0, 100, or 200 mg/kg (50 sex/species/group).	2
Diethanolamine, 111–42–2	TR–478	Production of textile lubricants. Rubber chemicals intermediate; emulsifier in agricultural chemicals, cosmetics, and pharmaceuticals; gas conditioning agent.	Topical (ethanol): Male Rats: 0, 16, 32, or 64 mg/kg; Female Rats: 0, 8, 16, or 32 mg/kg; Mice: 0, 40, 80, or 160 mg/kg (50/sex/species/group).	1

SUMMARY DATA FOR TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELOR'S TECHNICAL REPORTS REVIEW SUBCOMMITTEE—Continued

[December 9–10, 1997]

Chemical CAS No.	Technical route/report number	Primary uses	Exposure levels	Review order
Furfuryl Alcohol, 098–00–0	TR–482	Solvent for ethers and esters; in manufacture of phenolic and furan resins. chemical intermediate. wetting agent; liquid propellant; flavoring agent, obtained from processing comcobs, coffee beans.	Inhalation (air): Rats & Mice: 0, 2, 8, or 32 ppm (50/sex/species/group).	8
Isobutene, 115–11–7	TR–487	Production of diisobutylene, trimers, butyl rubber, antioxidants for foods, packaging, food supplements & plastics, isooctane, high-octane aviation gasoline, polyisobutene resins. (NTP Executive Summary).	Inhalation (air): Rats & Mice: 0, 500, 2000, or 8000 ppm 50/sex/species/group).	6
Isoprene 78–79–5	TR–486	Monomer and comonomer for elastomers, prepared from turpentine, petroleum products (Merck 1989).	Inhalation (air): Rats: 0, 220, 700, or 7000 ppm; 50/sex/group).	7
Lauric Acid, Diethanolamine Condensate, 120–40–1.	TR–480	Foam stabilizer for liquid household detergents and shampoos.	Topical (95% ethanol): Rats: 0, 50, or 100 mg/kg; Mice: 0, 100, or 200 mg/kg (50/sex/species/group.	3
Oleic Acid, Diethanolamine Condensate, 93–83–4.	TR–481	Surfactant in wax emulsion; to increae shampoo viscosity.	Topical (95% ethanol): Rats: 0, 50, or 100 mg/kg; 50/sex/group; Mice: 0, 15, or 30 mg/kg; 55/sex/group.	4
Pentachlorophenol, Purified, 87–86–5	TR–483	Wood preservative, fungicide, soil fumigant for termites, preharvest defoliant, seed treatment for beans, preservative for paint, leather, textiles, inks, antibacterial agent in disinfectants & cleaners (HSDB 1990).	Dosed-Feed (NIH–07); Rats: 0, 200, 400, or 600 ppm; 50/sex/group—1000 ppm Stop Study (60/sex).	5
Pyridine 110–86–1	TR–470	Solvent, organic synthesis, flavoring ingredient, manufacture of fungicides, pharmaceuticals, dyestuff, explosives, mfr. of vitamins, sulfa drugs; intermediate in manufacture of diquat & paraquat, waterproofing textiles (HSDB 1990).	Dosed-Water (deionized water): Rats: 0, 100, 200, or 400 ppm; Male Mice: 0, 250, 500, or 1000 ppm; Female Mice: 125, 250 or 500 ppm; Male Wistar Rats: 0, 100, 200, or 400 ppm (50/sex/group).	9

[FR Doc. 97–30203 Filed 11–17–97; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Mark Hartman, Nashville, Tennessee PRT–836121.

The applicant requests authorization to take (salvage dead shells, and harass during surveys) the dwarf wedge mussel, *Alasmidonta heterodon*, throughout the species range in North Carolina, for the purpose of enhancement of survival of the species.

Applicant: David L. Leonard, Sebring, Florida PRT–836133.

The applicant requests authorization to take (harass during installation of cavity inserts) the red-cockaded woodpecker, *Picoides borealis*, at St. Sebastian River State Buffer Preserve, Brevard County, Florida, for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Biologist, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by December 18, 1997.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: November 3, 1997.

Sam D. Hamilton,

Regional Director.

[FR Doc. 97–30196 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Residential Development Proposal Called Phoenix VIII, in the City of Orange Beach, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Brett Real Estate, Robinson Development Company, Inc. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse, *Peromyscus polionotus ammobates* (ABM). The Applicant made the decision to assume ABM are present based on surveys on adjacent property. The project would be called Phoenix VIII and consists of a single fourteen-story condominium tower with 81 residential units, parking areas, and a swimming pool on 5.06 acres. Associated landscaped grounds and a dune walkover structure would also be constructed. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP) and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 18, 1997.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Drawer 1190, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT–834795 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne, Alabama, Field Office (see **ADDRESSES** above), telephone: 334/441–5181.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse, *Peromyscus polionotus*, and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicant's property did not reveal habitat occupied by ABM; however, the Applicant is seeking compliance with the Act in an abundance of caution. The Applicant's property does not contain designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the Project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include conserving almost 86 percent of the Project's best ABM habitat conserved (essentially primary and secondary dunes), establishment of one walkover structure across primary and secondary dune features, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems, the creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment of $20,865 to acquire ABM habitat offsite or otherwise perform some other conservation measure for the ABM. The HCP provides a funding source for these mitigation measures, as well as monitoring of the HCP, should an ITP be issued by the Service. Another alternative is consideration of a different project design that might result in more impacts to the ABM and its habitat. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the effected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 4, 1997.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 97–30198 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Wildwash Sand and Gravel Mine, San Bernardino County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: E. L. Yeager Construction Company, Incorporated, of Riverside, California, has applied to the Fish and Wildlife Service for a 20-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The Service proposes to issue an incidental take permit for the federally-listed threatened desert tortoise (*Gopherus agassizii*) at the proposed mine site, located in San Bernardino County, California. The permit also would include the state-listed threatened Mojave ground squirrel (*Spermophilus mohavensis*) and the unlisted loggerhead shrike (*Lanius ludovicianus*), should these species be listed during the life of the permit. This notice announces the availability of the permit application and the environmental assessment. The permit application includes the habitat conservation plan for the Wildwash Sand and Gravel Mine and an implementing agreement. The Service requests comments on these documents, including the appropriateness of the "No Surprises" assurances contained in section 12.3.a of the implementing agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before December 18, 1997.

ADDRESSES: Comments should be addressed to Ms. Diane Noda, Field Supervisor, Ventura Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION, CONTACT: Mr. Ray Bransfield, Fish and Wildlife Biologist, at the above address or call (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or telephone. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

The permit applicant proposes phased mining of up to 100 acres of desert habitat adjacent to Interstate 15. Portions of the site are occupied by the desert tortoise. One loggerhead shrike was observed on site during biological surveys. The site is considered potentially suitable habitat for the Mojave ground squirrel, although surveys were not conducted for this species. During the initial mining phase, lasting 5 years, the applicant would mine sand and gravel on up to 35 acres of land. During the subsequent phase(s), lasting 15 years, the applicant would mine up to an additional 65 acres.

The applicant needs an incidental take permit from the Service because endangered and threatened wildlife species are protected against "take" pursuant to section 9 of the ESA. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22 and 17.32.

As part of the permit application, the applicant prepared a habitat conservation plan that addresses the desert tortoise, Mojave ground squirrel, and loggerhead shrike. Pursuant to section 10(a)(1)(B) of the Federal ESA, the Service proposes to issue a permit to the applicant for incidental take of the threatened desert tortoise, and for the Mojave ground squirrel and loggerhead shrike should Federal take authorization for these latter two species be necessary during the life of the permit. The ground squirrel and shrike would be named on the permit; however, incidental take authorization for these species would become effective only if they become listed under the Federal ESA.

The proposed sand and gravel mine would result in the loss of habitat for the desert tortoise, Mojave ground squirrel, and loggerhead shrike as the ground is disturbed and the vegetation communities are removed during mining activities. This mining could directly and indirectly affect these species.

The proposed action would authorize the incidental take of all desert tortoises on the 100 acre site in the form of harassment from being moved out of harm's way. Additionally, two desert tortoises may be taken in the form of direct mortality associated with mining activities and vehicle travel on the mine access road. If Mojave ground squirrels are present on site, they would likely be killed during the initial grading of the mining areas. Loggerhead shrikes are unlikely to be killed or injured by the proposed action.

The applicant's habitat conservation plan contains measures to minimize and/or mitigate the effects of the mining on the three species. Before mining begins, an amount of desert tortoise habitat equal to that being destroyed would be purchased and placed under management for recovery of the desert tortoise. A fence to prevent desert tortoises from entering the mine would be constructed under the supervision of

a biologist and the area enclosed by the fence would be systematically searched. All desert tortoises found would be relocated to adjacent habitat in a manner consistent with current handling procedures and guidelines. Workers at the mine site would be educated about the status of the desert tortoise and what to do if desert tortoises are found on access roads or during work activities. The applicant would ensure that trash is handled in a way that does not lure predators of the desert tortoise into the area.

The phasing of mining would reduce the numbers of Mojave ground squirrels killed at any given time. The acquisition and management of off-site habitat would be the primary means of compensating for the loss of this habitat and individual Mojave ground squirrels. Nest tree buffers and grading season restrictions would protect any loggerhead shrikes nesting on site. During reclamation of the site, trees would be planted that provide nesting habitat for the loggerhead shrike.

Environmental Assessment

The environmental assessment considers the environmental consequences of the proposed action and no action alternatives. A no take alternative was not feasible due to the size of the proposed mine and the unpredictable distribution of desert tortoises in the project area. Under the no action alternative, the Service would not issue an incidental take permit to the applicant and a habitat conservation plan would not be implemented. The applicant would not be able to proceed legally with mining as planned due to the presence of listed animal species in the area.

Authority

This notice is provided pursuant to section 10(c) of the ESA and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, its associated documents, and comments submitted thereon to determine whether the application meets the requirements of the ESA. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the listed species. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: November 12, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–30200 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Utilities Data Content Standard

ACTION: Notice; request for comments.

SUMMARY: The FGDC is conducting a public review of the Utilities Data Content Standard. The purpose of this public review is to provide data users and producers with an opportunity to comment on this standard in order to ensure that it meets their needs. Specifically, the FGDC request responses in three areas: (1) Identify any "ad hoc" or "defacto" standards being used that address data content for utilities systems; (2) identify additional feature classes, feature types, attributes, and domains not contained in this standard that are necessary to meet a user's requirements; (3) identify any issues that a user may have in implementing the information contained in the utilities standard into a system's feature schema.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft utilities standard. All participants who make comments during the public review period will receive an acknowledgment of the receipt of their comment. After comments have been considered, participants will receive notification of how their comments were addressed. After the formal adoption of the standard by the FGDC, the revised standard and a summary analysis of the changes will be made available.

DATES: Comments must be received on or before March 6, 1998.

FOR FURTHER INFORMATION CONTACT: The standard can be downloaded from the following Internet address: http://www.fgdc.gov/Standards/Documents/Standards/Utility.

Requests for written copies of the standard should be addressed to "Utilities Data Content Standard", FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; or telephone 703–648–5514; facsimile 703–648–5755; or Internet "gdc@usgs.gov."

Reviewer's comments may be sent to the FGDC via Internet mail to: gdc.util@www.fgdc.gov. Reviewer comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a soft copy version, preferably on a 3.5×3.5 diskette in WordPerfect 5.0 or 6.0/6.1 format.

For answers to questions related to the content of the standard please contact the Federal Geographic Data Committee (FGDC) Facilities Working Group, U.S. Army Corps of Engineers, General Engineering Branch 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; voice telephone numbers: Kevin Backe (703) 428–6505, Nancy Blyler facsimile telephone number: (703) 428–6991.

Dated: October 10, 1997.

John Fischer,

Acting Chief, National Mapping Division, U.S. Geological Survey.

[FR Doc. 97–30167 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

National Park Service

Homestead National Monument of America, NE

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, the National Park Service, Department of the Interior will prepare an Environmental Impact Statement (EIS) to assess the impact of alternative management concepts in a revised General Management Plan (GMP) for Homestead National Monument of America. The purpose of revising the GMP is to set forth the basic management philosophy for the next 10 to 15 years, and provide the strategies for addressing issues and achieving identified management objectives. Some of the issues needing addressing are: flooding threats to the park's developed infrastructure and operations much of which resides or occurs in a floodplain; the restored tallgrass prairie's relationship to the park's purpose; cultural landscape alterations misrepresenting the historic scene and integrity; adequacy of domestic water and sewerage infrastructure; Highway 4 and traffic safety; Freeman School's interpretive relationship and safe public access thereto; unfulfilled legislative mandates to serve as a repository for literature applying to settlement and agricultural implements; interpretive themes as identified in the park's enabling legislation; and existing physical facilities limitations. The GMP/EIS will investigate alternatives ranging from no-action to a variety of development proposals and management approaches designed to guide visitor use and provide for resource protection.

To facilitate sound planning and environmental assessment, the National Park Service intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in the scoping process are invited.

A series of public meetings and open houses will be held during the development of the GMP and the preparation of the EIS. Notices of the dates, times, and locations of these public sessions will be advertised in local media outlets prior to the events. Information about public sessions and about the GMP and EIS will also be provided through periodic newsletters.

The draft GMP/EIS is expected to be completed and available for public review by May 15, 1998.

DATES: Public open houses to collect information and opinions about the scope of issues to be addressed in the GMP will be held on January 13 and 14, 1998. The January 13 open house will be held between 7:30 p.m. and 9:00 p.m. at the Beatrice Public Library; 100 North 16th Street, Beatrice, Nebraska. The January 14 open house will be held between 2:00 p.m. and 6:00 p.m. on the 4th floor of the Federal Building, 100 Centennial Mall North, Lincoln, Nebraska.

ADDRESSES: Written comments and information concerning preparation should be directed to: Superintendent, Homestead National Monument of America, Route 3, Box 47, Beatrice, Nebraska 68310–9116. Comments should be received by January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Superintendent, Homestead National Monument of America, at the above address or at telephone number 402–223–3514.

Dated: November 10, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–30253 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 8, 1997. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 3, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Phillips County

Mayo House, 302 Elm St., Marvell, 97001513

FLORIDA

Washington County

Woman's Club of Chipley (Clubhouses of Florida's Womens Clubs MPS), 607 Fifth St., Chipley, 97001514

LOUISIANA

Cameron Parish

Hebert House (Louisiana's French Creole Architecture MPS), Roughly jct. of Greenhouse Ln. and LA 3056, Lake Arthur vicinity, 97001516

East Feliciana Parish

Taylor House, 5000 LA 10, Jackson vicinity, 97001518

Pointe Coupee Parish

Samson House (Louisiana's French Creole Architecture MPS), 405 Richey St., New Roads, 97001515

St. Tammany Parish

Sardy House (Louisiana's French Creole Architecture MPS), 810 Main St., Madisonville, 97001517

Webster Parish

Watkins House, 109 N. College, Minden, 97001519

NEBRASKA

Gage County

Institution for Feeble Minded Youth Farm, 1 mi. E of Beatrice State Home and 1 mi. N of NE 3, Beatrice vicinity, 97001521

Jefferson County

District No. 1 School of Jefferson County, Jct. of N. Second and Curtis Sts., Steele City, 97001520

NEW HAMPSHIRE

Grafton County

Samual Morey Memorial Bridge, The, NH 25A over the Connecticut R., Orford, 97001523

Hillsborough County

Goffstown High School, 12 Reed St., Goffstown, 97001524

NEW YORK

Ontario County

South Bristol Grange Hall 1107, 6457 NY 64, Bristol Springs, 97001528

Schuyler County

Chapman, A.E., House, 115 S. Monroe St., Watkins Glen, 97001526

Wayne County

Red Brick Church, Jct. of Brick Church Rd. and S. Geneva Rd., Sodus Center, 97001527

Yates County

Larzelere Tavern, 3858 County House Rd., Branchport vicinity, 97001525

NORTH CAROLINA

Halifax County

Whitaker's Chapel, NC 1003;0.4 mi. E of jct. of NC 1100 and NC 1003, Enfield vicinity, 97001522

TENNESSEE

Campbell County

Perkins, A.E., House, 130 Valley St., Jacksboro, 97001529

TEXAS

Austin County

Witte—Schmid House, Off Schoensau, near jct. with Eckermann, Shelby vicinity, 97001531

Bexar County

GoaD Motor Company Building, 317 Lexington Ave., San Antonio, 97001530

Randall County

Amarillo Globe Dream House, 3104 S. Harrison, Amarillo, 97001532

WYOMING

Sheridan County

Mount View, 610 S. Jefferson St., Sheridan, 97001534

Sheridan Flouring Mills, Inc., 2161 Coffeen Ave., Sheridan, 97001533

Sweetwater County

US Post Office—Green River (Wyoming Post Offices MPS), 3 W. Flaming Gorge Way, Green River, 97001535

[FR Doc. 97–30194 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and an Associated Funerary Object From Park County, MT in the Possession of the Buffalo Bill Historical Center, Cody, WY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and an associated funerary object in the possession of the Buffalo Bill Historical Center, Cody, WY.

A detailed assessment of the human remains was made by Buffalo Bill Historical Center professional staff in consultation with representatives of the Crow Tribe of Montana.

In 1974, human remains representing one individual were removed from the Fricker Ranch by Federal Bureau of Investigation personnel following notification by the Park County Coroner that human remains had been discovered. In 1974, these human remains were donated to Buffalo Bill Historical Center by Mr. and Mrs. Eugene Gardner of the Fricker Ranch. No known individuals were identified. The associated funerary object is a nickel pendant with a date of 1835.

Based on posterior cradle deformation, shovel incisors, and dental wear patterns, this individual has been identified as Native American, specifically from the Northern Plains. Based on the date of the pendant, this burial is estimated to date to circa the mid-nineteenth century. Historical documents indicate that Park County was well within the Crow territory of the nineteenth century.

Based on the above mentioned information, officials of the Buffalo Bill Historical Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Buffalo Bill Historical Center have also determined that, pursuant to 25 U.S.C. 3001(3)(A), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Buffalo Bill Historical Center have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary object and the Crow Tribe of Montana.

This notice has been sent to officials of the Crow Tribe of Montana, the Blackfoot Tribe of the Blackfoot Indian Reservation, and the Shoshone Tribe of the Wind River Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Emma I. Hansen, Curator, Buffalo Bill Historical Center, 720 Sheridan Avenue, Cody, WY 82414; telephone: (307) 587–4771, before December 18, 1997. Repatriation of the human remains and associated funerary objects to the Crow Tribe of Montana may begin after that date if no additional claimants come forward.

Dated: November 5, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–30231 Filed 11–17–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of existing collection. Application for asylum and withholding of removal.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 14, 1997 at 62 FR 37604, allowing for an emergency extension with 60-day public comment period. The INS received 11 comments on the information collection from members of the general public, immigration practitioner, various components of the Executive Office for Immigration Review and non-governmental organizations. The comments have been reconciled and the collection revised as appropriate.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 18, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments, and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Asylum and Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–589. Office of International Affairs, Asylum Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is used by the INS and EOIR to access eligibility of persons applying for asylum and withholding of deportation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at three and one half (3.16) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 252,800 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

BILLING CODE 4410–18–M

U.S. Department of Justice
Immigration and Naturalization Service OMB NO. 1115-0086

Instructions for Form I-589
Application for Asylum and for Withholding of Removal

Purpose of This Form.

This form is used to apply for asylum in the United States (U.S.), and for withholding of removal (formerly called "withholding of deportation"). You may file for asylum if you are physically present in the United States and you are not a United States citizen.

NOTE: You must submit an application for asylum within one (1) year of arriving in the United States, unless there are changed circumstances that materially affect your eligibility for asylum or extraordinary circumstances relating to a delay in filing for asylum. (See filing Instruction, Section V, Part D, for further explanation.)

You may include in your application your spouse and your unmarried children who are under 21 years of age and physically present in the United States. Married children and children 21 years of age or older must file a separate Form I-589 application. If your spouse and/or unmarried children under the age of 21 are outside the United States, you may file a petition for them to gain similar benefits, if you are granted asylum.

This instruction pamphlet is divided into two (2) sections. The first section has filing instructions. It discusses eligibility and will guide you through filling out and filing the application. The second section describes how your application will be processed. This section also describes potential interim benefits while your application is pending. You will not be authorized to work based on filing this application.

Please read these instructions carefully. The instructions will help you complete your application and understand how it will be processed.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an Immigration Judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings, even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. See INA Section 208(d)(6) and 8 CFR 208.18.

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FILING INSTRUCTIONS

I. Who May Apply and Filing Deadlines

You may apply for asylum irrespective of your immigration status, and even if you are in the United States unlawfully.

You MUST file this application within one (1) year after you arrived in the United States, unless you can show that there are changed circumstances that affect your eligibility for asylum or extraordinary circumstances that prevented you from filing within one (1) year. (See Filing Instructions, Section V, Completing the Form, Part D, for further explanations of this requirement.)

If you have previously been denied asylum by an Immigration Judge or the Board of Immigration Appeals, you must show that there are changed circumstances that affect your eligibility for asylum.

The determination of whether you are permitted to apply for asylum will be made once you have had an asylum interview with an asylum officer or a hearing before an Immigration Judge. Even if you are not eligible to apply for asylum because of the reasons stated above, you may still be eligible to apply for withholding of removal.

II. Basis of Eligibility

A. Asylum

In order to qualify for asylum, you must establish that you are a refugee. A refugee is a person who is unable or unwilling to return to his or her country of nationality or last habitual residence, because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

If you are granted asylum, you and any eligible dependents included in your application will be permitted to remain and work in the United States and may eventually adjust to lawful permanent residence status. If you are not granted asylum, the Immigration and Naturalization Service (INS) may use the information you provide in this application to establish that you are removable from the United States.

B. Withholding of Removal

Your asylum application is also considered to be an application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (INA), as amended. If asylum is not granted, you may still be eligible for withholding of removal.

In order to qualify for withholding of removal, you must establish that it is more likely than not that you would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, in the country to which you do not wish to be removed.

If you obtain an order withholding your removal, you cannot be returned to that country in which your life or freedom would be threatened. Withholding of removal does not apply to any spouse or child included in the application. They would have to apply for such protection on their own. If you are granted withholding of removal, this would not give you the right to bring dependents to the United States. It also would not give you the right to become a permanent resident of the United States.

C. Legal Sources Relating to Eligibility

The documents listed below are some of the legal sources used in determining asylum eligibility. These sources are provided for reference only. You do not need to refer to them in order to complete your application.

- Section 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. 1101 (defining "refugee");
- Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158 (regarding eligibility for asylum);
- Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1251 (regarding eligibility for withholding of removal);
- Title 8 of the Code of Federal Regulations, section 208, et. seq.;
- The 1967 United Nations Protocol Relating to the Status of Refugees;
- The 1951 Convention Relating to the Status of Refugees;
- Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1992).

III. Confidentiality

The information collected will be used to make a determination on your application. It may also be provided to other government agencies (federal, state, local and/or foreign). All applicants are subject to a check of criminal and other information databases in order to determine eligibility. However, no information regarding this application will be provided to any government or country from which you claim a fear of persecution. There are regulations protecting the confidentiality of asylum claims.

IV. Right to Counsel

Although we have tried to make this form easy to use, immigration law concerning asylum is complex. You have a right to provide your own legal representation at an asylum interview and during removal proceedings before the Immigration Court, at no cost to the United States Government. If you need, or would like, help in completing this form and preparing your written statements, assistance from pro bono attorneys and/or voluntary agencies may be available. They may help you at no cost or for a reduced fee. If you have not already received from INS a list of attorneys and accredited representatives, you may obtain a list by calling 1-800-870-FORM (3676).

Representatives of the United Nations High Commissioner for Refugees (UNHCR) may be able to assist you in identifying persons to help you complete the application. You may, if you wish, forward a copy of your application and other supporting documents to the UNHCR. (For instructions on where to file the original, please see Filing Instructions, Section XI. "Where to File." The current address of the UNHCR is:

United Nations High Commissioner for Refugees
1775 K Street, NW, Third Floor
Washington, DC 20006
Telephone: (202) 296-5191

V. Completing the Form

Type or print all of your answers in black ink on the Form I-589. Your answers must be completed in English. Forms completed in a language other than English will be returned to you.

Provide the specific information requested about you and your family. Answer ALL of the questions asked. If any question does not apply to you, answer "none" or "not applicable." Provide detailed information and answer the questions as completely as possible. If you need more space, attach an additional sheet(s) indicating the question number(s) you are answering. You are strongly urged to attach additional written statements and documents that support your claim. Your written statements should include details of your experiences, events, and dates that relate to your claim for asylum.

NOTE: Please put your A# (if any), name (exactly as it appears in Part A of the form), signature and date on each supplemental sheet and on the cover page of any supporting documents.

You will be permitted to correct or supplement your application at the time of your asylum interview before an asylum officer and at your hearing in Immigration Court by providing additional information and explanations about your asylum claim.

Part A. Information About You

This part asks for basic information about you. Alien Registration Number (A#) refers to your INS file number. If you do not already have an A#, the INS will assign one to you. You must provide your residential street address in the United States in Part A, Question 7, of the asylum application. You may also provide a mailing address if different from the address where you reside. In Question 12, use the current name of the country. Do not use historical, ethnic, province, or other local names.

The I-94#, referred to in Question 18e, is the number on Form I-94, Departure Record, given to you when you entered the United States. In Question 18f, enter the date as it appears on the Form I-94. If you did not receive a Form I-94, write "None". If you entered without being inspected by an immigration officer, write "No Inspection" in Question 18d.

Part B. Spouse and Children

You should list your spouse and all your children in this application regardless of whether they are in the United States when you file your asylum application.

You may ask to have included in your asylum application your spouse and/or any children who are unmarried, if they are in the United States. Children who are married and/or children who are 21 years of age or older must file separately for asylum by submitting their own asylum applications (Form I-589).

If you apply for asylum while in proceedings before the Immigration Court, the Immigration Judge may not have authority to grant asylum to any spouse or child included in your application who is not also in proceedings.

When including family members in your asylum application, for each family member you MUST submit an additional copy of your completed asylum application and the documentary evidence establishing your family relationship, as described below.

- If you are including your spouse in your application, submit three (3) copies of your marriage certificate.
- If you are including any unmarried children under 21 in your application, submit three (3) copies of each child's birth certificate.

If you do not have, or are unable to obtain these documents, you may submit an affidavit from at least one (1) person for each event you are trying to prove. Affidavits may be provided by relatives or others. Persons providing affidavits need not be United States citizens or lawful permanent residents. Affidavits must:

- fully describe the circumstances or event in question and fully explain how the person acquired knowledge of the event(s);
- be sworn to, or affirmed by, persons who were alive at the time of the event(s) and have personal knowledge of the event(s) (date and place of birth, marriage, etc.) that you are trying to prove; and
- show the full name, address, date, and place of birth of each person giving the affidavit, and indicate any relationship between you and the person giving the affidavit.

If you have more than two (2) children, complete the Supplemental Form A, as needed, or attach additional pages and documentation providing the same information asked in Part B of the Form I-589.

Part C. Information About Your Claim for Asylum

This part asks specific questions relevant to eligibility for asylum and for withholding of removal. Check "yes" or "no" in the box provided for each question. If you answer "yes" to any question, explain in detail using the Supplemental Form continuation sheets as needed. You should clearly describe any of your experiences, or those of family members or others who have had similar experiences, that may show that you are a refugee.

If you have experienced harm that is difficult for you to write down and express, you should be aware that these experiences may be very important to the decision-making process regarding your request to remain in the United States. At your interview with an asylum officer or hearing with an Immigration Judge, you will need to be prepared to discuss the harm you have suffered. If you are having trouble remembering or talking about past events, it is suggested that you talk to a lawyer, a representative or health professional who may be able to help you explain your experiences and current situation.

Part D. Additional Information about Your Application for Asylum

Check "yes" or "no" in the box provided for each question. If you answer "yes" to any question, explain in detail using the Supplemental Form continuation sheets as needed.

If you answer "yes" to question 6, you must explain why you did not apply for asylum within the first year after you arrived in the United States. The government will accept as an explanation certain changes in the conditions in your country, certain changes in your own circumstances, and certain other events that may have prevented you from applying earlier. For example, some of the events the government might consider as valid explanations include, but are not limited to, the following:

- You have learned that human rights conditions in your country have worsened since you left;
- Because of your health, you were not able to submit this application within a year after you arrived;
- You submitted an application, but it was returned to you because it was not complete, and you submitted a complete application within a reasonable amount of time.

Federal regulations specify some of the other types of events that may also qualify as valid explanations for why you filed late. These regulations are found at Title 8, Section 208.4 of the Code of Federal Regulations. The list in the Code of Federal Regulations is not all-inclusive, and the government recognizes that there are many other circumstances that might be acceptable reasons for filing after one year of arrival.

If you are unable to explain why you did not apply for asylum within the first year after you arrived in the United States, or your explanation is not accepted by the government, you may not be eligible to apply for asylum, but you could still be eligible for withholding of removal.

Part E. Your Signature

You must sign your application in Part E and provide the information requested. Sign after you have completed and reviewed the application.

If it is determined that you have knowingly made a frivolous application for asylum you can be permanently ineligible for any benefits under the Immigration and Nationality Act. According to Title 8, Section 208.18 of the Code of Federal Regulations, an application is frivolous if any of its material elements is deliberately fabricated. (See Filing Instructions, Section IV, "Right to Counsel," in the event that you have any questions.)

Part F. Signature of Person Preparing Form if Other than You

Any person, other than an immediate family member (your spouse, parent(s), or children) who helped prepare your application must sign the application and provide the information requested.

Penalty for Perjury. All statements contained in response to questions contained in this application are declared to be true and correct under penalty of perjury. You and anyone, other than an immediate family member, who assists you in preparing the application must sign the application under penalty for perjury. Your signature is evidence that you are aware of the contents of this application. Any person assisting you in preparing this form, other than an immediate family member, must include his or her name and address and sign the application where indicated in Part F. Failure of the preparer to sign will result in the application being returned to you as an incomplete application. If the INS later learns that you received assistance from someone other than an immediate family member, and the person who assisted you failed to sign the application, this may result in an adverse ruling against you.

Title 18, United States Code, Section 1546, provides in part:

> Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement shall be fined in accordance with this title or imprisoned not more than five years, or both.

If you knowingly provide false information on this application, you or the preparer of this application may be subject to criminal penalties under Title 18 of the United States Code and to civil penalties under Section 274C of the Immigration and Nationality Act, 8 U.S.C. 1324c.

Part G. To Be Completed at Interview

Do not sign your application in Part G before filing this form. You will be asked to sign your application in this space at the conclusion of the interview regarding your claim.

NOTE: You must, however, sign Part E of the application.

VI. Required Documents and Required Number of Copies that You Must Submit with Your Application

You must submit the following documents to apply for asylum and withholding of removal:

- **The completed, signed original and two (2) copies of your completed application, Form I-589,** and the original and two (2) copies of any supplementary sheets and supplementary statements. You must submit a total of three (3) copies of any other documentation such as supporting documentation. In addition, you should make and keep one (1) additional copy of the completed application for your own records.
- **An additional copy of your completed application, Form I-589,** with supplementary sheets and supplementary statements, for each family member listed in Part B who you want to have included in your application.
- **Three (3) copies of any documentary evidence** of relationship, such as birth records of your children, marriage certificate, or proof of termination of marriage, for each family member listed in Part B who you want to have included in your application. NOTE: If you do not have, and are unable to obtain, these forms of documentary evidence, you must submit an original and two (2) copies of an affidavit from a third person who knows of the relationship. (For affidavit requirements, see Filing Instructions, Section V, Completing the Form, Part B.)
- **One (1) Fingerprint Card, FD-258,** for you and each family member listed in Part B who is 14 years of age or older and who is included in your application. The FD-258 MUST be properly filled out and the fingerprints must be clear with no smudges. You must complete the information on the top of the card and write your A# (if any) in the space marked "Your No. OCA" or "Miscellaneous No. MNU." Do not sign the card until you have been fingerprinted, or are told to sign by the person who takes your fingerprints. The person who takes your fingerprints must also sign the card and write his or her title and the date you are fingerprinted in the space provided. Do not bend, fold, or crease the fingerprint card. You may obtain a fingerprint card, FD-258, by calling 1-800-870-FORM (3676).
- **One (1) passport-style photograph** of you and each family member listed in Part B who is included in your application. The photos must have been taken no more than 30 days before you file your application. Print the person's complete name and A# (if any) on the back of his or her photo with a pencil.

- A copy of all passports or other travel documents (cover to cover) in your possession, and a copy of any U.S. Immigration documents, such as an I-94 Departure Record, for you and each family member who you want included in your application, if you have such documents.

- If you have other identification documents (for example, birth certificate, military or national identification card, drivers license, etc.), it is recommended that you submit a copy with your application and bring the original(s) with you to the interview.

Original documents may be retained if submitted. If these instructions state that a copy of a document may be filed with this application and you choose to send the original, the INS or Immigration Court may keep that original for its records.

Translation of documents not in English is required. Any document in a language other than English must be accompanied by an adequate English translation that the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate into English the language used in the document.

VII. Additional Documents that You May Submit

You may also submit any supporting documents, such as newspaper articles, affidavits of witnesses or experts, medical and or psychological records, doctors statements, periodicals, journals, books, photographs, official documents, or personal statements. If you have difficulty discussing harm you have suffered in the past, you may wish to submit a doctor's report explaining this difficulty.

VIII. Fee

There is no fee for filing this application.

IX. Organizing Your Application

Put your application together in the following order (if possible, secure with binder clips and rubber bands so that material may be easily separated):

- Your original Form I-589, with all questions completed, and the application signed by you, in Part E, and signed by any preparer, in Part F; and

- One (1) passport-style photo of you stapled to the form at Part E.

Behind your original Form I-589, attach in the following order:

- One (1) Form G-28, if represented by an attorney or other representative, signed by you and the attorney/ representative;

- The original of all supplemental sheets and supplementary statements submitted with your application;

- One (1) copy of the evidence of your relationship to your spouse and unmarried children under 21 who you want included in your application, if any;

- One (1) completed Fingerprint Card (FD-258), if you are 14 years of age or older (do not bend, fold or crease this card); and

- Two (2) copies of the items in your original package, except photograph and fingerprints.

If you are including family members in your application, attach one (1) additional package for each family member. Arrange each family member's package as follows:

- One (1) copy of your completed, signed Form I-589 and supplemental sheets submitted with the original application. In Part B, staple in the upper right hand corner one (1) passport-style photo of the family member to be included;

- One (1) copy of Form G-28, if any; and

- One (1) completed Fingerprint Card (FD-258) if the dependent is 14 years of age or older (do not bend, fold or crease this card).

For example, if you include your spouse and two (2) children, you should submit your original package, plus two (2) duplicates for you, plus one (1) package for your spouse, plus one (1) package for each child, for a total of 6 (six) packages. Be sure each has the appropriate documentation.

NOTE: Any additional pages submitted should include the applicant's printed name (exactly as it appears in Part A of the form), A# (if any), signature and date. Fingerprints do NOT require additional copies.

X. Incomplete Asylum Applications

An asylum application that is incomplete shall be returned to you by mail within thirty (30) days of receipt of the application by the INS. An application that has not been returned to you within thirty (30) days of having been received by the INS shall be considered complete.

The filing of a complete application starts the 150-day period you must wait before you may apply for employment authorization. If your application is not complete and is returned to you, the 150-day period will not begin until you complete the application and resubmit it. (See Other Information, Section V, Employment Authorization, for further information regarding eligibility for employment authorization.)

An application will be considered incomplete in each of the following cases:

- The application does not include a response to each of the questions contained in the Form I-589;

- The application is unsigned;

- You do not submit one (1) completed Form FD-258 (Fingerprint Card) for you and for every family member who is 14 years of age or older and who is included in your application, or if the FD-258(s) submitted is/are not properly filled out or the fingerprints are smudged or otherwise not readable;

- The application is sent without the appropriate number of copies for any supporting materials submitted;

- You indicated in Part E that the application was prepared by someone other than yourself or an immediate family member and the preparer failed to complete Part F of the asylum application.

XI. Where to File

Although the INS will confirm in writing its receipt of your application, you may wish to send the completed forms by registered mail (return receipt requested).

If you are in proceedings in Immigration Court:

If you are currently in proceedings in Immigration Court (that is, if you have been served with Form I-221, Order to Show Cause; Form I-122, Notice to Applicant for Admission Detained for Hearing; Form I-862, Notice to Appear; or Form I-863, Notice of Referral to Immigration Judge), you are required to file your application, Form I-589, with the Immigration Court having jurisdiction over your case.

If you are NOT in proceedings in Immigration Court:

You are to mail your completed application for asylum and withholding of removal, Form I-589, and any other additional information, to the INS Service Center as indicated below.

If you live in Alabama, Arkansas, Colorado, Commonwealth of Puerto Rico, District of Columbia, Florida, Georgia, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, western Pennsylvania, South Carolina, Tennessee, Texas, United States Virgin Islands, Utah, Virginia, West Virginia, or Wyoming, mail your application to:

USINS Southern Service Center
P.O. Box 152122
Department A
Irving, TX 75015-2122

If you live in Alaska, northern California, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, northern Nevada, North Dakota, Ohio, Oregon, South Dakota, Territory of Guam, Washington, or Wisconsin, mail your application to:

USINS Northern Service Center
P.O. Box 87589
Lincoln, NE 68501-7589

If you live in Arizona, southern California, or southern Nevada, mail your application to:

USINS Western Service Center
P.O. Box 10589
Laguna Niguel, CA 92607-0589

If you live in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, eastern Pennsylvania, Rhode Island, or Vermont, mail your application to:

USINS Eastern Service Center
P.O. Box 9589
St. Albans, VT 05479-9589

OTHER INFORMATION

I. Notification Requirements when Address Changes

If you change your address you must inform the INS in writing within ten (10) days of moving.

While your asylum application is pending before the asylum office, you must notify the asylum office on Form AR-11 (Change of Address Form) or by a signed and dated letter of any changes of address within ten (10) days after you change your address. The address that you provide on the application, or the last change of address notification you submitted, will be used by the INS for mailing. Any notices mailed to that address shall constitute adequate service of all notices. These notices include an interview notice, or other documents, except a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122), and an Order to Show Cause (Form I-221), and a Notice and Order of Expedited Removal (Form I-860), in which personal service may be required.

If you are already in proceedings in Immigration Court, you MUST notify the Immigration Court on Form EOIR 33 (Change of Address Form) or in writing of any changes of address within five (5) days of the change in address. You must send the notification to the Immigration Court with juriadiction over your case.

II. Asylum Interview Process

If you are not in proceedings in Immigration Court, you will be notified by the INS asylum office of the date, time and place (address) of a scheduled interview. The INS suggests that you bring a copy of your application with you when you have your asylum interview. An asylum officer will interview you under oath, make an assessment of your claim

and make a determination concerning your claim. In most cases, you will not be notified of the decision in your case until a date after your interview. You have the right to representation at your interview, at no cost to the United States government. You also may bring witnesses to testify on your behalf.

If you are unable to proceed with the asylum interview in fluent English, you must provide at no expense to the INS, a competent interpreter fluent in both English and a language that you speak fluently. Your interpreter must be at least 18 years of age. The following persons cannot serve as your interpreter: your attorney or representative of record, or a witness testifying on your behalf at the interview. Quality interpretation may be crucial to your claim. Such assistance must be obtained, at your expense, prior to the interview.

Failure without good cause to bring a competent interpreter to your interview may be considered an unexcused failure to appear for the interview. Any unexcused failure to appear for an interview may prevent you from receiving work authorization, and your asylum application may be dismissed or referred directly to the Immigration Court.

If available, you must bring some form of identification to your interview, including any passport(s), other travel or identification documents, or Form I-94 Departure Record. You may bring to the interview any additional available items documenting your claim that you have not already submitted with your application.

If members of your family are included in your application for asylum, they must also appear for the interview and bring any identity or travel documents they have in their possession.

III. Status While Your Claim is Pending

While your case is pending, you will be permitted to remain in the United States. After your asylum interview, if you have not been granted asylum and appear to be deportable under Section 237 of the INA, 8 U.S.C. 1227, or inadmissible under Section 212 of the INA, 8 U.S.C. 1182, your application will be filed with the Immigration Court upon referral by the asylum office.

IV. Travel Outside the United States

If you leave the United States without first obtaining advance parole, it will be presumed that you have abandoned your application. If you obtain advance parole and return to the country of claimed persecution, it will be presumed that you abandoned your application, unless you can show that there were compelling reasons for your return.

V. Employment Authorization while Your Application is Pending

You will be granted permission to work if your asylum application is granted.

You may request permission to work if your asylum application is pending and 150 days have lapsed since your application was accepted by the INS. See 8 CFR. 208.7(a)(1). If your asylum application has not been denied within 180 days from the date of filing a complete asylum application, you may be granted employment authorization. You may request permission to work by filing an Application for Employment Authorization, Form I-765. Follow the instructions on that application and submit it with a copy of evidence that you have a pending asylum application. Each family member you have asked to have included in your application who also wants permission to work must submit a separate Form I-765. You may obtain a Form I-765 by calling 1-800-870-FORM (3676).

You may NOT apply for employment authorization until your application for asylum or withholding of removal has been pending for at least 150 days since acceptance by the INS or the Immigration Court. If you file an application for employment authorization before 150 days has expired, that application will be denied. Any delay in the processing of your asylum application that you request or cause shall not be counted as part of the 150-day time period.

VI. Privacy Act Notice.

The authority to collect this information is contained in Title 8 of the United States Code. Furnishing the information on this form is voluntary; however, failure to provide all of the requested information may result in the delay of a final decision or denial of your request.

VII. Paperwork Reduction Act Notice.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 30 minutes to learn about the form; (2) 55 minutes to complete the form; and (3) 105 minutes to assemble and file the application; for a total estimated average burden hours of 3 hours and 10 minutes per application. The estimated time to complete the form will vary dependent on the complexity of your individual circumstances. If you have comments regarding the accuracy of this estimate or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, Policy Directives and Instructions Branch, 425 I Street, NW., Room 5307, Washington, DC 20536, OMB No. 1115-0086. Do not mail your completed application to this address.

U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0086

Application for Asylum and for Withholding of Removal

Start Here - Please Type or Print. USE BLACK INK. SEE THE SEPARATE INSTRUCTION PAMPHLET FOR INFORMATION ABOUT ELIGIBILITY AND HOW TO COMPLETE AND FILE THIS APPLICATION.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Action: Interview Date:	
Asylum: ☐ Granted ☐ Denied ☐ Referred ☐ Recommended Approval Date	
Date A.O. final decision or referral issued	
Total number of persons granted asylum	
For EOIR Use Only	

PART A. INFORMATION ABOUT YOU.

1. Alien Registration Number(s), if any (A#'s)
2. Social Security Number
3. Complete Last Name
4. First Name
5. Middle Name
6. What Other Names Have You Used? *(include maiden name and aliases.)*
7. Mailing Address in the U.S. C/O — Telephone Number
   Street Number and Name — Apt. No.
   City — State — ZIP Code
8. Residence if Other than Above — Telephone Number
   Street Number and Name — Apt. No.
   City — State — ZIP Code
9. Sex: ☐ Male ☐ Female
10. Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed
11. Date of Birth *(Mo/Day/Yr)*
12. City and Country of Birth
13. Present Nationality *(Citizenship)*
14. Nationality at Birth
15. Race, Ethnic or Tribal Group
16. Religion
17. *Check each box that applies.*
    ☐ I am not now in removal, deportation or exclusion proceedings.
    ☐ I am now in removal, deportation or exclusion proceedings.
    ☐ I was previously in removal, deportation or exclusion proceedings.
    ☐ I have never been in removal, deportation or exclusion proceedings.
18. *Complete 18a through 18g.*
    a. When did you last leave your country? *(Mo/Day/Yr)*
    d. What was your status when you last entered the U.S.? *(What type of visa did you have, if any)?*
    b. When did you last enter the U.S.? *(Mo/Day/Yr)*
    e. What is your I-94 Number?
    c. Where did you last enter the U.S.?
    f. What is the expiration date of your authorized stay, if any?
    g. Have you previously entered the U.S.? ☐ No ☐ Yes. If YES, list place, date, and your status for each entry. *(Attach additional sheets as needed.)*
    Date _____ Place _____ Status _____
    Date _____ Place _____ Status _____
    Date _____ Place _____ Status _____

To Be Completed by Attorney or Representative, if any

☐ Check if G-28/EOIR-28 is attached showing you represent the applicant.

INS VOLAG or PIN #

ATTY State License # _____

Information About You - Continued.

19. What is your native language?
20. Are you fluent in English? ☐ Yes ☐ No
21. What other languages do you speak fluently?
22. Have you ever applied to the United States government or to any other government(s) for refugee status, asylum, withholding of deportation, or withholding of removal?
    ☐ No.
    ☐ I was included in a pending application of my parent(s). However, I am now 21 years' old or married so I am filing my own application.
    ☐ I was included in my spouses application, but now I wish to file my own application.
    ☐ Yes. (In what country and what was the decision? Also specify the date of the decision.) *Country* _____ *Date* _____
24. What country issued your last passport or travel document?
25. Passport # / Travel Document #
26. Expiration Date
27. Prior address in last country of residence or country in which you fear persecution. *(List Address, City/Town, Province, and Country)*
28. Provide the following information about your education, beginning with the most recent.

Name of School	Type of School	Location	Attended From *(Mo/Yr)*	Attended To *(Mo/Yr)*

29. Provide the following information about your residences during the last five years. List your present address first. *(Use additional sheets of paper if necessary.)*

Number and Street	City	Province or State	Country	Dates From *(Mo/Yr)*	Dates To *(Mo/Yr)*

30. Provide the following information about your employment during the last five years. List your present employment first. *(Use additional sheets of paper if necessary.)*

Name and Address of Employer	Your Occupation	Dates From *(Mo/Yr)*	Dates To *(Mo/Yr)*

31. Provide the following information about your parents.

Name	Country and City of Birth	Location

PART B. INFORMATION ABOUT YOUR SPOUSE AND CHILDREN.

Your Spouse. ☐ I am not married. *(Skip to Part B, Your Children.)*

1. Alien Registration Number (A#)		2. Passport/ID Card, etc. #	
3. Complete Last Name	4. First Name	5. Middle Name	6. Date of Birth *(Mo/Day/Yr)*
7. Date of Marriage *(Mo/Day/Yr)*	8. Place of Marriage	9. City and Country of Birth	
10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Sex ☐ Male ☐ Female	
13. Is this person in the U.S.? ☐ Yes. *(Complete blocks 13 to 24.)* ☐ No. *(Specify Location)*		14. Social Security #	
15. Place of Last Entry in the U.S.?	16. Date of Last Entry in the U.S.? *(Mo/Day/Yr)*	17. I-94 #	18. Status when Last Admitted *(Visa type, if any)*
19. Expiration of Status *(Mo/Day/Yr)*	20. Is your spouse in removal, deportation or exclusion proceedings? ☐ Yes ☐ No	21. If previously in the U.S., Date of Previous Arrival *(Mo/Day/Yr)*	
22. Place of Previous Arrival		23. Status at Time of Previous Arrival	

24. If in the U.S., is this person to be included in this application? *(Check the appropriate box.)*

☐ Yes. *(Attach one (1) photograph of your spouse in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)*
☐ No, because my spouse is/has:
- ☐ Filing separately.
- ☐ Separate application pending.
- ☐ Other reasons.

All of Your Children, Regardless of Age or Marital Status. *(Attach additional pages and documentation if you have more than two (2) children.)*

1. Alien Registration Number (A#)		2. Passport/ID Card, etc. #	
3. Complete Last Name	4. First Name	5. Middle Name	6. Date of Birth *(Mo/Day/Yr)*
7. City and Country of Birth	8. Nationality *(Citizenship)*	9. Race, Ethnic or Tribal Group	10. Sex ☐ Male ☐ Female
11. Is this child in the U.S.? ☐ Yes. *(Complete blocks 13 to 23.)* ☐ No. *(Specify Location)*		12. Social Security #	
13. Place of Last Entry in the U.S.?	14. Date of Last Entry in the U.S.? *(Mo/Day/Yr)*	15. I-94 #	16. Status when Last Admitted *(Visa type, if any)*
17. Expiration of Status *(Mo/Day/Yr)*	18. Is your spouse in removal, deportation or exclusion proceedings? ☐ Yes ☐ No	19. If previously in the U.S., Date of Previous Arrival *(Mo/Day/Yr)*	
20. Place of Previous Arrival		21. Status at Time of Previous Arrival	

22. If in the U.S., is this person to be included in this application? *(Check the appropriate box.)*

☐ Yes. *(Attach one (1) photograph of your child in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)*
☐ No, because child is/has:
- ☐ Filing separately.
- ☐ Separate application pending.
- ☐ Over 21 years of age.
- ☐ Married.
- ☐ Other reasons.

Information About Your Spouse and Children - Continued.

All of Your Children, Regardless of Age or Marital Status.

1. Alien Registration Number (A#):		2. Passport/ID Card, etc. #	
3. Complete Last Name	4. First Name	5. Middle Name	6. Date of Birth *(Mo/Day/Yr)*
7. City and Country of Birth	8. Nationality *(Citizenship)*	9. Race, Ethnic or Tribal Group	10. Sex ☐ Male ☐ Female
11. Is this person in the U.S.? ☐ Yes. *(Complete blocks 11 to 22.)* ☐ No. *(Specify Location)*			12. Social Security #
13. Place of Last Entry in the U.S.?	14. Date of Last Entry in the U.S.? *(Mo/Day/Yr)*	15. I-94 #	16. Status when Last Admitted *(Visa type, if any)*
17. Expiration of Status *(Mo/Day/Yr)*	18. Is this child in removal, deportation or exclusion proceedings? ☐ Yes ☐ No		20. If previously in the U.S., Date of Previous Arrival *(Mo/Day/Yr)*
21. Place of Previous Arrival			22. Status at Time of Previous Arrival

23. If in the U.S., is this person to be included in this application? *(Check the appropriate box.)*

☐ Yes. *(Attach one (1) photograph of your child in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)*
☐ No, because spouse is/has:
- ☐ Filing separately.
- ☐ Separate application pending.
- ☐ Over 21 years of age.
- ☐ Married.
- ☐ Other reasons.

PART C. INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

1. Why are you seeking asylum? Explain in detail what the basis is for your claim. *(Attach additional sheets of paper as needed.)*

Information About Your Claim to Asylum - Continued.

2. What do you think would happen to you if you returned to the country from which you claim you would be subjected to persecution? Explain in detail and provide information or documentation to support your statement, if available. *(Attach additional sheets of paper as needed.)*

3. Have you or any member of your family ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No. ☐ Yes. If yes, provide a detailed explanation of your or your relatives' involvement with each group and include the name of each organization or group; the dates of membership or affiliation; the purpose of the organization; your duties or your relatives' duties or responsibilities in the group or organization; and whether you or your relatives are still active in the group(s). *(Attach additional sheets of paper as needed.)*

4. Have you or any member of your family ever been mistreated or threatened by the authorities of your home country or any other country or by a group or groups that are controlled by the government, or that the government of the country is unable or unwilling to control?

☐ No. ☐ Yes. If YES, was it because of any of the following reasons? *(Check each of the following boxes that apply.)*

☐ Race ☐ Religion ☐ Nationality ☐ Membership in a particular social group ☐ Political Opinion

On a separate sheet of paper, specify for each instance, what occurred and the circumstances; the relationship to you of the person involved; the date; the exact location; who it was who took such action against you or your family member; his/her position in the government or group; the reason why the incident occurred. Attach documents referring to these incidents, if they are available. *(Attach additional sheets of paper as needed.)*

Information About Your Claim to Asylum - Continued.

5. Have you or any member of your family ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in your country, any other country, including the United States?

☐ No. ☐ Yes. If YES, for each instance, specify what occurred and the circumstances; dates; location; the duration of the detention or imprisonment; the reason(s) for the detention or conviction; the treatment received during the detention or imprisonment; any formal charges that were lodged against you or your relatives; the reason for release; treatment after release. Attach documents referring to these incidents if they are available. *(Attach additional sheets of paper as needed.)*

6. Describe in detail your trip to the United States from your home country. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren), who are now in the United States, travel through or reside in any other country before entering the United States?

☐ No. ☐ Yes. If YES, for each person, identify each country and indicate the length of stay; the person's status while there; the reasons for leaving; whether the person is entitled to return for residence purposes; and if the person applied for refugee status or for asylum while there; or why he or she did not do so. *(Attach additional sheets of paper as needed.)*

7. Do you fear being subjected to torture (severe physical or mental pain or suffering, including rape or other sexual abuse) in your home country or any other country if you return?

☐ No. ☐ Yes. If YES, please explain why. *(Attach additional sheets of paper as needed.)*

PART D. ADDITIONAL INFORMATION ABOUT YOUR APPLICATION FOR ASYLUM.

1. Do you, your spouse, or your child(ren) now hold, or have you ever held, permanent residence, other permanent status, or citizenship, in any country other than the one from which you are now claiming asylum?

☐ No. ☐ Yes. If YES, please explain. *(Attach additional sheets of paper as needed).*

2. Have you, your spouse, your child(ren), your parents ever filed for, been processed for, or been granted or denied refugee status or asylum by the United States Government?

☐ No. ☐ Yes. If YES, please explain the decision and what happened to any status you received as a result of that decision. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, please describe any change in country conditions or your own circumstances since the date of the denial that may affect your eligibility for asylum. *(Attach supplemental sheets of paper as needed.)*

3. Have you, your spouse, your child(ren), or your parents ever filed for, been processed for, or been granted or denied refugee status or asylum by any other country?

☐ No. ☐ Yes. If YES, please explain the decision and what happened to any status you received as a result of that decision. *(Attach supplemental sheets of paper as needed.)*

4. Have you, your spouse, or child(ren) ever caused harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion, or ever ordered, assisted, or otherwise participated in such acts?

☐ No. ☐ Yes. If YES, describe, in detail, each such incident and your own or your spouse's or child(ren)'s involvement. *(Attach supplemental sheets of paper as needed.)*

5. After you left your country of claimed persecution for the reasons you have described, did you return to that country?

☐ No. ☐ Yes. If YES, describe, in detail, the circumstances of your visit, for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s). *(Attach supplemental sheets of paper as needed.)*

6. Are you filing the application more than one year after your last arrival in the United States?

☐ No. ☐ Yes. If YES, please explain why you did not file within the first year after you arrived. For guidance in answering this question see Filing Instructions, V. Completing the Form, Part D.

PART E. SIGNATURE.

After reading the information on penalties in the instructions, complete and sign below. If someone helped you prepare this application, he or she must complete Part F.

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. Title 18, United States Code, Section 1546, provides in part: "Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact -- shall be fined in accordance with this title or imprisoned not more than five years, or both". I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Staple your photograph here.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. See INA 208(d)(6) and 8 CFR 208.18.

Signature of Applicant *(The person named in Part A)*

[_____] _____

Sign your name so it all appears within the brackets. Date *(Mo/Day/Yr)*

Print Name	Write your name in your native alphabet

Did your spouse, parent or child(ren) assist you in completing this application? ☐ No ☐ Yes *(If YES, please list their name(s) and relationship.)*

(Name) _____ *(Relationship)* _____ *(Name)* _____ *(Relationship)* _____

Did someone other than you or your spouse, parent or child(ren) prepare this application? ☐ No ☐ Yes *(Complete Part F)*

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? ☐ No ☐ Yes

PART F. SIGNATURE OF PERSON PREPARING FORM IF OTHER THAN ABOVE. *Sign below.*

I declare that I have prepared this application at the request of the person named in Part F, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant and that the completed application was read to the applicant in his or her native language for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information of the Form I-589 may also subject me to civil penalties under 8 U.S.C. Section 1324(c).

Signature of Preparer	Print Name	Date *(Mo/Day/Yr)*
Daytime Telephone Number ( )	Address of Preparer: Street Number and Name	

Apt. No.	City	State	ZIP Code

PART G. TO BE COMPLETED AT INTERVIEW.

You will be asked to complete this Part when you appear before an asylum officer of the Immigration and Naturalization Service (INS), or an immigration judge of the Executive Office for Immigration Review (EOIR) for examination.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that corrections numbered _____ to _____ were made by me or at my request.

Signed and sworn to before me by the above-name applicant on:

_____ _____

Signature of Applicant Date *(Mo/Day/Yr)*

_____ _____

Write your Name in your Native Alphabet Signature of Asylum Officer or Immigration Judge

SUPPLEMENT A FORM I-589

A# (If available)	Date
Applicant's Name	Applicant's Signature

ALL OF YOUR CHILDREN, REGARDLESS OF AGE OR MARITAL STATUS. (Attach additional pages and documentation if you have more than two (2) children.)

1. Alien Registration Receipt Number (A#):		2. Passport/ID Card, etc. #	
3. Complete Last Name	4. First Name	5. Middle Name	6. Date of Birth (Mo/Day/Yr)
7. City and Country of Birth	8. Nationality (Citizenship)	9. Race, Ethnic or Tribal Group	10. Sex ☐ Male ☐ Female
11. Is this child in the U.S.? ☐ Yes. (Complete blocks 12 to 22.) ☐ No. (Specify Location)			12. Social Security #
13. Place of Last Entry in the U.S.?	14. Date of Last Entry in the U.S.? (Mo/Day/Yr)	15. I-94 #	16. Status when Last Admitted (Visa type if any.)
17. Expiration of Status (Mo/Day/Yr)	18. Is this child in removal, deportation or exclusion proceedings? ☐ Yes ☐ No	19. If previously in the U.S., Date of Previous Arrival (Mo/Day/Yr)	
20. Place of Previous Arrival		21. Status at Time of Previous Arrival	

22. If in the U.S., is this person to be included in this application? (Check the appropriate box.)

☐ Yes. (Attach one (1) photograph of your child in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)
☐ No, because child is/has:
- ☐ Filing separately.
- ☐ Separate application pending.
- ☐ Over 21 years of age.
- ☐ Married.
- ☐ Other reasons.

1. Alien Registration Receipt Number (A#):		2. Passport/ID Card, etc. #	
3. Complete Last Name	4. First Name	5. Middle Name	6. Date of Birth (Mo/Day/Yr)
7. City and Country of Birth	8. Nationality (Citizenship)	9. Race, Ethnic or Tribal Group	10. Sex ☐ Male ☐ Female
11. Is this child in the U.S.? ☐ Yes. (Complete blocks 12 to 22.) ☐ No. (Specify Location)			12. Social Security #
13. Place of Last Entry in the U.S.?	14. Date of Last Entry in the U.S.? (Mo/Day/Yr)	15. I-94 #	16. Status when Last Admitted (Visa, type if any.)
17. Expiration of Status (Mo/Day/Yr)	18. Is this child in removal, deportation or exclusion proceedings? ☐ Yes ☐ No	19. If previously in the U.S., Date of Previous Arrival (Mo/Day/Yr)	
20. Place of Previous Arrival		21. Status at Time of Previous Arrival	

22. If in the U.S., is this person to be included in this application? (Check the appropriate box.)

☐ Yes. (Attach one (1) photograph of your child in the upper right hand corner of Page 3 on the extra copy of the application submitted for this person.)
☐ No, because child is/has:
- ☐ Filing separately.
- ☐ Separate application pending.
- ☐ Over 21 years of age.
- ☐ Married.
- ☐ Other reasons.

SUPPLEMENT B FORM I-589

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A# (If available)	Date
Applicant's Name	Applicant's Signature

Use attached blank response sheet to supplement any information requested. Please copy and complete as needed.

PART ___

QUESTION ___

SUPPLEMENT B FORM I-589

ADDITIONAL INFORMATION ABOUT YOUR CLAIM TO ASYLUM.

A# *(If available)*	Date
Applicant's Name	Applicant's Signature

Use attached blank response sheet to supplement any information requested. Please copy and complete as needed.

PART ___

QUESTION ___

[FR Doc. 97–30192 Filed 11–17–97; 8:45 am]
BILLING CODE 4410–18–C

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Hate Crime Statistics Improvement Program

[OJP (BJS)–1144]

RIN 1121–ZA90

AGENCY: Bureau of Justice Statistics (BJS), Office of Justice Programs (OJP), Justice.

ACTION: Solicitation for award of cooperative agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for services related to improving the accuracy and geographic coverage of hate crime statistics, developing trend data with regard to hate crime statistics and identifying "best practices" regarding the collection of hate crime statistics.

DATES: Proposals must be postmarked on or before December 30, 1997.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, 810 7th Street, NW, Suite 2400, Washington, DC 20531, (202) 616–3500.

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489.

SUPPLEMENTARY INFORMATION:

Background

Crimes motivated by bias are devastating because of their impact on the victims and the polarizing effect that such crimes have on a community. Although many people believe that the hate crime problem is increasing, the statistical evidence for an increase is very weak. More specifically, the available statistical evidence understates the incidence of hate crime and does not provide valid indications of trends. Obtaining accurate information on the incidence of hate crime is crucial to understanding the full scope of the problem and effectively deploying resources to combat it.

Currently, hate crime statistics are compiled by the Federal Bureau of Investigation (FBI) under the Uniform Crime Reporting (UCR) program, which itself relies on voluntarily reported data. Little more than half the nation's 16,000 UCR-participating law enforcement agencies report hate crime data, and a majority of those that do participate in the FBI's hate crime reporting program indicate that each year their jurisdiction experienced no hate crimes at all.

There are four points at which failures in reporting can occur: victims reporting to their local law enforcement agencies, law enforcement officers recording the fact that the reported incident is a hate or bias crime, official determination that the reported crime was indeed bias-motivated, and transmitting the information from local law enforcement agencies to the FBI's UCR program. These factors complicate the Attorney General's efforts to publish a meaningful annual report on hate crimes under the Hate Crime Statistics Act (HCSA). While the HCSA does not specify any particular method of data collection, the Attorney General delegated the duty of collecting hate crime statistics to the Director of the FBI who, in turn, assigned this responsibility to the FBI's UCR program. The FBI assembles the information provided by state and local agencies and annually publishes a national hate crime statistics report which is available from the FBI in printed form on its website (http://www.fbi.gov/ucr/hatecm.htm).

The FBI is gradually phasing in a replacement for the summary UCR program which is called the National Incident-Based Reporting System (NIBRS). Every incident reported in the NIBRS program allows for an indicator of whether or not it is a hate crime, so widespread implementation of NIBRS by law enforcement agencies is currently viewed as an important mechanism for enhancing hate crime reporting.

Consistent with its role as the statistical arm of the Justice Department and its longstanding interest in hate crime statistics, the Bureau of Justice Statistics (BJS) is adding hate crime questions to the National Crime Victimization Survey (NCVS) to provide a national estimate of the overall extent of hate crimes. In addition, BJS has developed this solicitation to learn more about the impediments to local jurisdictions' participation in the collection of hate crime statistics and transmission of the statistics to the FBI for compilation at the national level. The work to be carried out under this solicitation will be closely coordinated with the FBI.

Objectives

The purpose of this award is to develop and/or recommend methodologies and procedures that will improve the quality and accuracy of hate crime statistics, to improve the geographic coverage of hate crime statistics, and to recommend procedures that will result in reliable trend data. Profiles of jurisdictions that currently collect accurate hate crime statistics will be developed that will result in "best practices" models.

Type of Assistance

It is anticipated that assistance, in the form of one cooperative agreement of up to $100,000, will be awarded for a one-year period of study.

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate as set forth in 42 U.S.C. 3732.

Eligibility Requirements

Consistent with fiscal requirements of the Department of Justice's Office of Justice Programs, both profit-making and nonprofit organizations may apply for funds. However, no fees may be charged against the project by profit-making organizations.

Scope of Work

The object of this solicitation is to obtain a cost-effective research study that will assist the federal government in identifying activities to be undertaken in the future towards the goal of improving the accuracy and reporting of hate crime statistics, producing accurate trend data on hate crime, and developing "best practices" models.

The applicant must specify a detailed timetable for each task involved in the project. The successful applicant's timetable will be reviewed by the BJS grant monitor; after agreement on a final timetable, all work must be completed as scheduled.

The successful applicant must convene an advisory group comprised of representatives from a cross section of the community (to include a representative of victim advocates, victims, law enforcement agencies, government, business, education, legislators). This group will meet periodically throughout the course of the project to review progress, give advice, make recommendations for follow-up and implementation of research recommendations, and to review the final report. Both BJS and the FBI will provide key input to the selection of membership on the group. Staff work (including both administrative support for meetings, payment, and substantive drafting tasks) for the group will be provided by the recipient organization.

In addition, the applicant must choose from the following tasks and propose activities to accomplish the tasks (not all listed tasks need be included in the application):

1. Through the evaluation of current hate crimes training programs, recommend how they might be utilized

or modified to improve the accuracy, reliability, and geographic coverage of hate crime statistics.

2. Evaluate the effectiveness of existing training curricula or materials that help law enforcement officers recognize and report hate or bias-motivated crimes, and produce a synthesized model incorporating the best features of them based on evaluations and other criteria stated in the proposal.

3. Improve national estimates of the incidence, type, and trends of hate crimes, based on the UCR program as a model (data to be aggregated from law enforcement jurisdictions).

4. Evaluate the impact of incident-based crime reporting systems (that include a check box or similar item for identifying each incident as bias-motivated or not) on the quality of hate crime statistics.

5. Assess the status of hate crime reporting in a stratified sample of law enforcement agencies throughout the country (the strata could include the following: degree of urbanization, geographic region, size of agency, and hate crime reporting history). From this assessment:

—Discuss and recommend steps to be taken by law enforcement agencies to produce quality hate crime statistics.
—Identify effective "screening" and "verification" procedures for first identifying and then confirming the bias motivation.
—Determine factors associated with disparities in hate crime statistics reporting.
—Identify impediments to hate crime reporting at both the agency and the individual officer levels.

6. Convene a focus group made up of representatives of groups vulnerable to hate crimes, relevant advocacy groups, and hate crime victims who did not report the crime to police, to ascertain methods of improving hate crime reporting.

7. Examine the relationship between the characteristics of jurisdictions and agencies (population size, regional location, UCR crime rate, racial/ethnic mix, age distribution, median income, presence or absence of community policing, etc.) and the level of reporting of hate crime statistics.

8. Assess the circumstances that led law enforcement agencies to develop effective hate crimes programs, such as whether there was a significant event, or other factors, that resulted in jurisdictions collecting accurate hate crime statistics; or in what ways was the adoption of such hate crime statistics collection methods related to instituting proactive efforts by the police to prevent hate crime?

The recipient must produce a final report for submission to the Bureau of Justice Statistics which details the study, and suggests methods of improving the accuracy and geographic coverage of hate crime statistics, producing accurate trend data on hate crime, and developing "best practices" models.

Suggested References

Bishop, Eric and Jeff Slowikowski. "Hate Crime." Fact Sheet 29. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. August, 1995.

Bureau of Justice Assistance. "A Policymaker's Guide to Hate Crimes." Washington, D.C.: U.S. Department of Justice. 1996.

Community Relations Service. "Hate Crime: The Violence of Intolerance." Washington, D.C.: U.S. Department of Justice. 1997.

Federal Bureau of Investigation. "Hate Crime Data Collection Guidelines." Washington, D.C.: U.S. Department of Justice. 1996.

Federal Bureau of Investigation. "Training Guide for Hate Crime Data Collection." Washington, D.C.: U.S. Department of Justice. 1997.

Federal Bureau of Investigation. "Hate Crime Statistics, 1995." Washington, D.C.: U.S. Department of Justice. 1996.

"Hate Crime Statistics Act of 1990," Pub. L. 100–275 (104 Stat. 140). 1990.

Jacobs, James B. and Barry Eisler. "The Hate Crime Statistics Act of 1990"; Criminal Law Bulletin. Warren Gorham and Lamont. Boston, Massachusetts. 1993, p. 99–123.

Klanwatch, a Project of the Southern Poverty Law Center. "The Dynamics of Youth, Hate and Violence." Klanwatch Intelligence Report. Montgomery, Alabama. October, 1995.

Levin, Jack and Jack McDevitt. "Hate Crimes: The Rising Tide of Bigotry and Bloodshed." New York. Plenum Press. 1993.

Lieberman, Michael. "Federal Action to Confront Hate Crimes: Preventing Violence and Improving Police Response." New Challenges: The Civil Rights Record of the Clinton Administration Mid-Term. Washington, D.C.: Citizens' Commission on Civil Rights. 1995. p. 217–229.

McLaughlin, Karen A. and Kelly J. Brilliant. "Healing the Hate: A National Bias Crime Prevention Curriculum for Middle Schools." Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. 1997.

NGLTF Policy Institute. "Anti-Gay and Lesbian Violence in 1994: National Trends, Analysis, and Incident Summaries." Washington, D.C. 1991.

Nolan, J. & Y. Akiyama. "Assessing the Factors That Affect Law Enforcement Participation In Hate Crime Reporting." Washington, D.C.: Federal Bureau of Investigation. 1997.

Office for Victims of Crime. "National Bias Crimes Training for Law Enforcement and Victim Assistance Professionals: A Guide for Training Instructors." Washington, D.C.: U.S. Department of Justice. 1995.

Award Procedures

Proposals should describe in detail the procedures to be undertaken in furtherance of each of the activities described under Scope of Work. State by number (as listed above) which tasks are being included in the proposal and provide a brief (several paragraphs) introductory justification as to why these tasks were chosen in furtherance of the goals. Information on staffing levels and qualifications should be included for each task, and descriptions of experience relevant to the project should be included. Resumes of the proposed project director and key staff should be enclosed with the proposal.

Applications will be reviewed competitively by a panel comprised of members selected by BJS. The panel will make recommendations to the Director of BJS. Final authority to enter into a cooperative agreement is reserved for the Director of BJS or his designee.

Applications will be evaluated on the overall extent to which selected tasks, and the work performed on them, meet the objectives of the solicitation; respond to the priorities and technical complexities of the issue of hate crime reporting; specify work activities likely to produce useful results; conform to standards of high quality data analysis; and are fiscally feasible and efficient. Applicants will be evaluated on the basis of:

—Knowledge of issues related to hate crime data collection.
—Knowledge of issues related to the Uniform Crime Reports (UCR) and the National Incident Based Reporting System (NIBRS).
—Experience in organizing meetings of Federal, state, or local professionals related to criminal justice issues.
—Research expertise and experience in data gathering and report writing.
—Availability of qualified professional and support staff and suitable equipment for project activities.
—Demonstrated fiscal, management and organizational capability and experience suitable for providing sound data within budget and time constraints.
—Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Awards Process

An original and two (2) copies of a full proposal must be submitted with SF 424 (Rev. 1988), "Application for Federal Assistance," as the cover sheet. Proposals must be accompanied by a Budget Detail Worksheet (replaced the SF 424A, Budget Information); OJP Form 4000/3 (Rev. 1–93), Program Narrative and Assurances' OJP Form 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and OJP Form 7120–1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not recently received Federal funds from the Office of Justice Programs and are not state or local units of government). If appropriate, applicants must complete and submit Standard Form LLL, Disclosure of Lobbying Activities. All applicants must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity the receives Federal funds. To obtain appropriate forms, contact Getha Hilario, BJS Management Assistant, at (202) 616–3500.

The application should cover a one-year period with information provided for completion of the entire project. Proposals must include a program narrative, detailed budget, and budget narrative. The program narrative shall describe activities as stated in the scope of work and address the evaluation criteria. The detailed budget must provide costs including salaries of staff involved in the project and portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs, and supplies required to complete the project. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to the project activities and should provide a justification and explanation for the budgeted items. Refer to the aforementioned timetable when developing the program narrative and budget information.

This award will not be used to procure equipment for the conduct of the study.

Dated: November 13, 1997.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 97–30271 Filed 11–17–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Request OMB approval; The Second National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children (NISMART 2).

The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 29, 1997 at 62 FR 40545, allowing for a 60-day public comment period. No comments were received by the Office of Juvenile Justice and Delinquency Prevention. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 18, 1997. This process is conducted in accordance with 5 CFR 1320.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Room 10202, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, N.W., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Overview of this information collection:

(1) *Type of information Collection:* New Collection.

(2) *Title of the Form/Collection:* The Second National Incidence Studies of Missing, Abducted, Runaways and Thrownaway Children (NISMART 2).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None; Applicable component of the Department of Justice sponsoring the collection: Department of Justice (DOJ), Office of Justice Programs (OJP), Office of Juvenile Justice Delinquency Prevention (OJJDP).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households, Other: State, local, tribal governments; Not for profit.

Abstract: Pursuant to the Missing Children's Assistance Act, Title IV, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act 1974, as amended 42 U.S.C. 5773(b)(3), OJJDP is required to conduct periodic studies of the incidence of missing children. The purpose of these studies is to develop reliable and valid statistics on the incidence of children who are missing, abducted, runaways, or thrownaway in the course of a given year, as well as the number of these children who are recovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 respondents at 2.5 minutes per response; 22,000 respondents at 20 minutes per response; 9500 respondents at 10 minutes per response; 2500 respondents at 45 minutes per response; 50 respondents at 16 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,716 burden hours.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of

Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30154 Filed 11–17–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice of Request for Comment

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: Article 10(1)(a) of the North American Agreement on Labor Cooperation (NAALC) calls for the Council for the Commission for Labor Cooperation to review the operation and effectiveness of the NAALC within four years of its entry into force. In order to undertake the review, the Council agreed to a process which includes seeking public input on the operation and effectiveness of the NAALC. Written comments are requested.

DATES: Written comments on the operation and effectiveness of the NAALC should be submitted by December 18, 1997.

ADDRESSES: Send written comments to the U.S. National Administrative Office, U.S. Department of Labor, Room C–4327, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or the Secretariat, Commission for Labor Cooperation, 350 North St. Paul, Suite 2424, Dallas, Texas 75201–4240.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The North American Agreement on Labor Cooperation (NAALC) was signed by the Presidents of the United States of America and of the United Mexican States, and the Prime Minister of Canada in September 1993 and entered into force on January 1, 1994. Article 10(1)(a) of the NAALC provides that the Council shall "oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in light of experience * * *." The Council agreed to a process of review that includes issuing an invitation for written public comments on the operation and effectiveness of the NAALC. Written comments may be made to the National Administrative Offices of any Party or to the international Secretariat. Any comment received by the U.S. National Administrative Office will be transmitted verbatim to the Secretariat, which has been delegated responsibility by the Council to oversee the review process.

Signed at Washington, D.C. on November 12, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–30282 Filed 11–17–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Labor Organization Adjustment Assistance; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Correction.

SUMMARY: In notice document FR Doc. 97–28830 Filed 10–30–97; 8:45 a.m. beginning on page 58984 in the issue of Friday, October 31, 1997, make the following correction:

On page 58985, in the second column, Part II., (A) Eligible Applicants (1) reads: "Provide exclusive representation to the target population to be served through collective bargaining agreements in effect at the time of the effective date of worker layoff or termination." This should be replaced with: "(1) Act as the exclusive bargaining agent for the target population to be served;"

On page 58986, in the third column, Part III. Statement of Work, (A) Target Population, second paragraph reads: "Indicate the beginning and the end dates of the collective bargaining agreement(s) under which the target population was covered at the time of the workers' layoff or termination and the labor organization(s) and company(ies) who were the parties to the agreements(s)." This paragraph should be replaced with: "Provide documentation showing that you have been designated as the exclusive agent to represent the target population."

Dated: November 4, 1997.

Janice E. Perry,

Grant Officer, Employment and Training Administration.

[FR Doc. 97–30281 Filed 11–17–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OHSA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of open meeting.

SUMMARY: The Occupational Safety and Health Administration announces a meeting of the Metalworking Fluids Standards Advisory Committee (MWFSAC). OSHA invites all interested persons to attend. The Secretary of Labor established MWFSAC to advise the Assistant Secretary for OSHA on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids.

DATES: The meeting dates are Wednesday, December 10, 1997, from 10 a.m. to approximately 5 p.m.; Thursday, December 11, 1997, from 9 a.m. to approximately 5 p.m.; and Friday, December 12, 1997, from 9 a.m. to approximately 3 p.m. Please submit comments, requests to make oral presentations, and requests for special disability accommodations by November 28, 1997.

ADDRESSES: On Wednesday and Thursday, December 10 and 11, 1997, the meeting will take place in Room N–5437 (C and D) of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. On Friday, December 12, 1997 the meeting will be held in Room S–3215 (A and B) of the Department of Labor at the above address. Mail comments and requests for oral presentations to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, 202–219–8151. For special disability accommodations, contact Theresa Berry (phone: 202–219–8615 ext. 106; FAX: 202–219–5986).

SUPPLEMENTARY INFORMATION: OSHA invites all interested persons to attend this meeting. Seating will be available on a first-come, first-served basis.

Meeting Agenda

At this meeting the following will be presented: An overview of the National Institute for Occupational Safety and Health (NIOSH) criteria document ("Criteria for a Recommended Standard: Occupational Exposures to Metalworking Fluids"), which will include a discussion of the respiratory studies and dermatological studies reported on in the criteria document; an overview of epidemiology, respiratory disease and dermatology related to metalworking fluids; machining in small business; and overview to using a systems approach to controlling metalworking fluids; the scope of fluids to be considered in the advisory committee inquiries. Informal work groups will be established. In addition, OSHA will discuss with the committee its current data collection activities with respect to the use of metalworking fluids in small business establishments and some agenda items for future meetings.

Public Participation

Interested persons may file written comments, data, views or statements for consideration by MWFSAC by submitting them to Dr. Peter Infante. Interested persons may also address the committee on items that are on the meeting agenda. Any person wishing to make such an oral presentation must provide Dr. Infante with a summary of the proposed presentation, an estimate of the time desired, and a statement of the interest that the person represents. Presentation time will be allotted to speakers based on the amount of time available. In addition, public attendees may be allowed to participate in committee discussions, in the Chair's discretion and subject to time available.

Authority: This notice is issued under the authority of section 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 666), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR Part 1912.

Signed at Washington, DC., this 12th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 97–30175 Filed 11–17–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on December 9, 1997, in Room N3437 A-D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9:00 a.m. lasting until approximately 4:30 p.m.

Agenda items will include: a brief overview of current activities in the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH); a dialogue with OSHA's new Assistant Secretary, Charles N. Jeffress; regulatory and legislative updates; updates on OSHA's 11(c) and cooperative compliance programs, and NIOSH's National Occupational Research Agenda (NORA); as well as reports from NACOSH's workgroups.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is often insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202–219–8615, extension 106; FAX: 202–219–5986) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500). For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW, Washington, DC, 20210 (phone: 202–219–8021, extension 107; FAX: 202–219–4383; e-mail joanne.goodell@osha-no.osha.gov).

Signed at Washington, D.C. this 13th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 97–30280 Filed 11–17–97; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20586, License No. 49–21384–01 EA 97–457]

In the Matter of Frontier Production Logging, Inc. Cody, WY; Confirmatory Order Modifying License (Effective Immediately)

I

Frontier Production Logging, Inc., (Licensee) is the holder of NRC License No. 49–21384–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 39. The license authorizes the Licensee to conduct well logging activities related to the use of licensed material. The license was first issued on July 14, 1983, was most recently amended on April 17, 1997, and was due to expire on June 30, 1994, but remains in effect in a timely renewal status.

II

During a routine inspection conducted on March 19–20, 1997, an investigation completed by the NRC's Office of Investigations on June 13, 1997, and subsequent in-office reviews which were completed on July 9, 1997, the NRC identified six apparent violations which were considered for escalated enforcement. NRC Inspection Report 030–20586/97–01 dated July 22, 1997, documented the findings of the inspection. As a result, the NRC

conducted a predecisional enforcement conference on August 4, 1997, in which the licensee's president participated by telephone. Based on the information obtained during the inspection and the information that the licensee's president presented at the August 4 conference, the NRC concluded that violations of NRC requirements occurred. The violations are cited in the Notice of Violation and Proposed Imposition of Civil Penalty dated November 7, 1997. The violations involve failures to: (1) File the appropriate documentation to receive NRC approval prior to vacating an authorized radioactive material storage location, (2) conduct operations so that the dose in any unrestricted area from external sources does not exceed 2 millirem in any 1 hour, (3) make adequate surveys of radiation levels in unrestricted areas to demonstrate compliance with the dose limits for individual members of the public, (4) utilize authorized shipping containers while transporting radioactive material, (5) monitor, upon receipt, the external surfaces of Department of Transportation (DOT) labeled packages for radioactive contamination, and (6) properly post areas in which licensed materials are stored.

The NRC concluded that the Licensee's failure to seek NRC approval prior to vacating an authorized radioactive material storage location demonstrated at least careless disregard for regulatory requirements. Specifically, the Licensee's president was aware of the requirements to obtain prior authorization and did not to comply with this requirement so as to delay payment of the applicable fees. As indicated in the November 7, 1997 Notice, a $2,750 civil penalty was proposed for this willful violation.

The remaining five violations, which were not willful, were also discussed during the conference. Based on the information available, it appears that these violations resulted from a lack of understanding of the regulations by the company's radiation safety officer (who is also the company president). In fact, during the conference, the Licensee's radiation safety officer committed to attending appropriate radiation safety training as corrective action for the remainder of the violations.

Subsequently, on August 8 and October 20, 1997, staff members from NRC Region IV discussed with the Licensee specific commitments that the NRC believed were necessary. Specifically, the NRC believed that, in addition to the training, two independent audits were warranted. The licensee agreed to the commitments during the August 8 and October 20 telephone discussions, and to confirming the commitments through an Order.

On October 20, 1997, the NRC sent the Licensee a letter listing the specific commitments and formally seeking the Licensee's consent to confirming the commitments through an Order, thereby waiving its right to a hearing. On October 29, 1997, the Licensee signed and returned its consent to this Order.

III

I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary, and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above, and on the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 110, *It Is Hereby Ordered*, effective immediately, that License No. 49–21384–01 is modified as follows:

A. The Licensee's Radiation Safety Officer shall attend a Radiation Safety training course designed to meet the requirements necessary to serve as a radiation safety officer and to implement and manage a radiation safety program specifically designed for well logging and tracer study operations.

B. The Licensee shall retain the services of an independent individual or organization (consultant) to perform two audits of the Licensee's radiation safety program. The consultant is to be independent of the Licensee's organization and is to be experienced in, or be capable of, evaluating the effectiveness of the management and implementation of a radiation safety program for well logging and tracer study operations. At a minimum, each audit will: (1) Evaluate the effectiveness of the Licensee's radiation safety program and compliance with all NRC requirements; (2) evaluate the understanding of the Licensee's radiation safety officer of radiation safety and NRC requirements; (3) evaluate the adequacy of the Licensee's corrective actions for any violations or audit findings previously identified by the NRC or consultant; (4) make recommendations as necessary for improvements in management oversight of licensed activities; and (5) physically observe well logging and/or tracer study operations in the field.

C. Within 30 days of the date of this Order, the Licensee shall submit to the Regional Administrator, NRC Region IV, for NRC review and approval, the following:

i. The name, location, dates and syllabus of the course the Licensee proposes to use in meeting the requirements of this Order.

ii. The name and qualifications of the consultant the Licensee proposes to use in conducting the audits.

D. Within 60 days of the date of the NRC's approval of the consultant, the first audit shall be completed and the Licensee shall ensure that the consultant submit to NRC Region IV the results of the audit and the review, including the deficiencies identified, at the same time the consultant provides the results to the Licensee.

E. Within 6 months of the date of completion of the first audit, the second audit shall be completed and the Licensee shall ensure that the consultant submit to NRC Region IV the results of the audit and the review, including the deficiencies identified, at the same time the consultant provides the results to the Licensee.

F. Within 30 days of the date of completion of each audit, the Licensee shall submit to NRC Region IV its corrective actions for any identified deficiencies in the audit reports. Alternatively, if the Licensee does not believe that corrective actions should be taken, the Licensee shall provide justification for its position to the NRC.

G. For the purpose of the Order, the Licensee shall send the qualifications of the consultant and the results of the audits to the Director, Division of Nuclear Material Safety, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

Any person adversely affected by this Confirmatory Order, other than the Licensee may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also

shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Frontier Production Logging, Inc. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An Answer Or a Request for Hearing Shall Not Stay the Immediate Effectiveness of This Order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of November 1997.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–30207 Filed 11–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

In the Matter of Pacific Gas and Electric Company (Diablo Canyon Power Plant, Units 1 and 2); Exemption

I

The Pacific Gas and Electric Company, et al. (the licensee) is the holder of Facility Operating License Nos. DPR–80 and DPR–82, which authorize operation of the Diablo Canyon Power Plant (DCPP), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in San Luis Obispo County, California.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at DCPP, Units 1 and 2, is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at DCPP, Units 1 and 2, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only one fuel assembly is allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5.0 weight percent.

By letter dated April 3, 1997, and supplemental letter dated August 4, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that DCPP, Units 1 and 2, meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at DCPP, Units 1 and 2.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has

determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (62 FR 59907).

This exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of November 1997.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–30210 Filed 11–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968]

Hydro Resources, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of issuance of errata.

SUMMARY: The U. S. Nuclear Regulatory Commission has issued an Errata to the "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crown Point, New Mexico" (NUREG–1508). It should be noted that none of these errata change the conclusions of the Final Environmental Impact Statement.

ADDRESSES: A copy of the Errata is available for public inspection and/or copying at the NRC Public Document Room, 2120 L. Street (Lower Level), NW, Washington, DC 20555–0001. Copies of NUREG–1508 and the accompanying Errata may be purchased from the Superintendent of Documents, U. S. Government Printing Office, PO Box 37082, Washington, DC. 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, Uranium Recovery Branch, Mail Stop TWFN 7–J8, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–8165.

Dated at Rockville, Md, this 15th day of November 1997.

For The Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

The following information is provided as errata to the "Final Environmental Impact Statement to Construct and Operate the Crownpoint Uranium Solution Mining Project, Crownpoint, New Mexico" (NUREG–1508), dated February 1997.

Errata

1. Page 1–5, 1st paragraph: replace the term "* * * Safe Water Drinking Act (SWDA)" with "* * * Safe Drinking Water Act (SDWA)."

2. Page 2–6, Table 2.2, equation (2a): replace the term "* * * $+4Na+H_2O$" with "* * * $+4Na^{+}+H_2O$."

3. Page 2–19, 1st complete paragraph, 5th sentence: change sentence to read: "NRC would require HRI to decontaminate areas if radionuclide accumulation exceeds decommissioning standards, if HRI uses land application to dispose of process waters."

4. Page 2–19, 1st complete paragraph, 4th sentence; Page 4–81, last paragraph, last sentence: delete the following phrase from the existing text "* * * generally using a zero-release NPDES permit."

5. Page 2–28, 4th paragraph, last sentence: delete the word "preestablished."

6. Page 3–56, 1st paragraph, 1st sentence: revise existing text to read, "* * * known as the "checkerboard" for its mixed private, tribal, and government property rights."

7. Page 3–5, Table 3.4; Page 3–7, Table 3.5; and Page 4–3, Table 4.3: replace the term "fg/m^3" with "$\mu g/m^3$."

8. Page 4–20, last paragraph, #1: replace the term "alkalinity" with the term "bicarbonate."

9. Page 4–28, Table 4.6; and Page 4–30, Table 4.7: replace the parameter "Radium-226" with "Radium" (i.e., radium is inclusive of radium-226 and radium-228).

10. Page 4–61, 5th bullet, #(4): replace the phrase "one production/ injection well per 1.6 ha (4 acres) in each well field" with the phrase "one production/ injection well per acre in each well field."

11. Page 4–63, #8: replace entire text with the following, "All casing strings shall be pressure tested to 125% of actual wellfield operating pressure, not to exceed 70% of the minimum burst strength (measured on surface usually using water and the rig pump). If pressure declines more than 10% in 30 minutes, corrective action shall be taken."

12. Page 4–71, last paragraph: delete last sentence beginning with, "However, to further minimize transportation risk, * * *"

13. Page 4–72, top of page: delete entire proposed license condition (entire bullet beginning with, "Yellowcake and 11e(2) by-product waste material, * * *"), and subsequent phrase, "In addition to this license condition,".

14. Page xx of the Summary and Conclusions, 2nd complete paragraph; Page 2–20, 1st paragraph; Page 4–27, 1st complete paragraph; Page 4–45, 1st complete paragraph; Page 4–47, top of page; and Page A–21, 3rd complete paragraph: change the term "300 pCi/mL" to "300 pCi/L."

15. Page 3–27, Table 3.13: replace the existing table with the following (values in italic have been changed):

REVISED TABLE 3.13.—CROWNPOINT SITE WATER QUALITY DATA,[a] WESTWATER CANYON AQUIFER

Parameter	Mean (mg/L)	Maximum (mg/L)	Minimum (mg/L)	EPA (and NNEPA) drinking water standard
Calcium	*2.73*	7.8	0.07	----
Magnesium	*0.48*	2.5	0.00000	----
Sodium	*127.7*	184.0	97.0	----
Potassium	*13.0*	56.0	1.5	----
Carbonate	*27.9*	127.0	0.00000	----
Bicarbonate	*203.0*	260.0	54.0	----
Sulfate	*62.2*	177.0	19.0	250.0
Chloride	*15.8*	54.0	1.8	250.0
Nitrate	0.05	0.26	0.00000	10.0
Fluoride	0.35	*0.62*	0.23	4.0 or 2.0
Silica	*16.3*	20.0	1.0	
TDS	*394.0*	666.0	*281.0*	500.0
Conductivity[b]	*602.3*	1040.0	*418.0*	
Alkalinity[c]	*213.0*	256.0	*191.0*	
pH[c]	9.0	10.4	8.26	6.5–8.5
Arsenic	0.00000	*0.002*	0.00000	0.05
Barium	*0.13*	1.0	*0.01*	2.0
Cadmium	0.00000	0.0008	0.00000	0.01
Chromium	0.00000	0.00000	0.00000	0.05
Copper	0.00000	*0.02*	0.00000	1.0
Iron	*0.11*	*0.92*	0.00000	0.3
Lead	0.00000	*0.078*	0.00000	0.05
Manganese	*0.035*	0.029	0.00000	0.05
Mercury	0.00000	0.00000	0.00000	0.002
Molybdenum	0.00000	0.02	0.00000	
Nickel	0.00000	0.00000	0.00000	0.1
Selenium	0.00000	0.00000	0.00000	0.05
Silver	0.00000	0.00000	0.00000	0.1
Uranium	*0.005*	0.021	0.00000	
Vanadium	0.00000	0.00000	0.00000	
Zinc	0.00000	0.03	0.00000	5.0
Boron	*0.05*	0.11	0.00000	
Ammonia	*0.05*	0.31		
Radium-226[d]	*58.7*	606.0	0.1	5.0

[a] Values obtained from Wells CP–3, CP–5, CP–6, CP–7, CP–9, and well CP–2 (for parameters from arsenic to radium-226). (*Source:* HRI 1992b).
[b] μmhoe/cm.
[c] Units.
[d] pCi/L.

[FR Doc. 97–30208 Filed 11–17–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 17, 24, December 1 and 8, 1997.

PLACE: Comissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 17

Friday, November 21

11:30 a.m. Affirmation Session (Public Meeting). A. Final Rule—Deliberate Misconduct by Unlicensed Persons (Tentative) (Contact: Ken Hart, 301–415–1659)

Week of November 24—Tentative

There are no meetings the week of November 24.

Week of December 1—Tentative

There are no meetings the week of December 1.

Week of December 8—Tentative

Thursday, December 11

2:00 p.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)

3:00 p.m. Affirmation Session (Public Meeting) (if needed)

Friday, December 12

9:00 a.m. Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 14, 1997.
William M. Hill, Jr.,
Secy Tracking Officer, Office of the Secretary.
[FR Doc. 97–30403 Filed 11–14–97; 2:33 pm]
BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

1998 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 1997, is $83,062,894.58;
2. The September 30, 1997, balance of any new loans to the RUI Account, including accrued interest, is zero;
3. The system compensation base is $2,754,953,781.58 as of June 30, 1997;
4. The cumulative system unallocated charge balance is ($194,812,974.38) as of June 30, 1997;
5. The pooled credit ratio for calendar year 1998 is zero;
6. The pooled charged ratio for calendar year 1998 is zero;
7. The surcharge rate for calendar year 1998 is 1.5 percent;
8. The monthly compensation base under section 1(i) of the Act is $925 for months in calendar year 1998;
9. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $2,312.50 for base year (calendar year) 1998;
10. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $1,195 for months in calendar year 1998;
11. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $2,312.50 for base year (calendar year) 1998;
12. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $2,312.50 with respect to disqualifications ending in calendar year 1998;
13. The maximum daily benefit rate under section 2(a)(3) of the Act is $44 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1998.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1997. The balance in notice (2) is based on data as of September 30, 1997. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1998. The determinations made in notices (8) through (12) are effective January 1, 1998. The determination made in notice (13) is effective for registration periods beginning after June 30, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Pub. L. 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 1997, the computation of the calendar year 1998 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 1998, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1998.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account is less than $100 million on the preceding June 30. If the RUI Account balance is less than $100 million, but at least $50 million, the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million, but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The Account balance on June 30, 1997, was $83,062,894.58. Accordingly, the surcharge rate for calendar year 1998 is 1.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 1998 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1998 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1998 tier 1 tax base is $68,400. Subtracting $37,800 from $68,400 produces $30,600. Dividing $30,600 by $56,700 yields a ratio of 0.53968254. Adding one gives 1.53968254. Multiplying $600 by the amount 1.53968254 produces the amount of $923.81, which must then be rounded to $925. Accordingly, the monthly compensation base is determined to be $925 for months in calendar year 1998.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1998 monthly compensation base of $925 produces $2,312.50. Accordingly, the amount determined under section 1(k) is $2,312.50 for calendar year 1998.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account. The calendar year 1998 monthly compensation base is $925. The ratio of $925 to $600 is 1.54166667. Multiplying 1.54166667 by $775 produces $1,195. Accordingly, the amount determined under section 2(c) is $1,195 for months in calendar year 1998.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1998 monthly compensation base of $925 produces $2,312.50. Accordingly, the amount determined under section 3 is $2,312.50 for calendar year 1998.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1998 monthly compensation base of $925 produces $2,312.50. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,312.50 for calendar year 1998.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 1998, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 1997 monthly compensation base is $890. Multiplying $890 by 0.05 yields $44.50, which must then be rounded down to $44. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 1998, is determined to be $44.

Dated: November 10, 1997.

By authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 97–30168 Filed 11–17–97; 8:45 am]
BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 10b–10, SEC File No. 270–389, OMB Control No. 3235–0444
Rule 11Ac1–3, SEC File No. 270–382, OMB Control No. 3235–0435
Rule 15c2–12, SEC File No. 270–330, OMB Control No. 3235–0372

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 10b–10, Confirmation of Transactions, applies to all securities transactions, other than transactions in municipal securities or U.S. savings bonds, it would potentially apply to all of the approximately 5,400 firms registered with the Securities and Exchange Commission that effect transactions on behalf of customers.

Rule 10b–10 requires broker-dealers convey to customers basic trade information regarding their securities transactions. This information includes the date and time of the transaction; the identity and number of shares bought or sold; and the trading capacity of the broker-dealer. Depending on the trading capacity of the broker-dealer, the rule requires the disclosure of commissions and, under specified circumstances, mark-up and mark-down information. For transactions in debt securities, the rule requires the disclosure of redemption and yield information.

The confirmation process is automated, and it takes about one minute to generate and send a confirmation. The cost per confirmation generally stays the same. Per year, it is estimated that broker-dealers spend 10.8 million hours complying with Rule 10b–10.

It is important to note, however, that the confirmation is a customary document used by the industry. The staff estimates the costs of producing and sending a confirmation to be approximately 89 cents, although the amount of confirmations sent and the cost of sending each confirmation will vary from firm to firm. Smaller firms will send fewer confirmations because they will have fewer transactions. As a result, the total cost to the industry is approximately $578 million per year (650 million confirmations at 89 cents per confirmation).

Rule 11Ac1–3, Customer Account Statements, requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in the national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

It is estimated that there are 5,308 registered broker-dealers with customer accounts. The staff estimates that the average number of hours necessary for each broker-dealer to comply with the Rule 11Ac1–3 is fourteen hours annually. Thus, the total burden is 74,312 hours annually. The average cost per hour is approximately $40. Therefore, the total cost of compliance for broker-dealers is $297,248.

Rule 15c2–12, Municipal Securities Disclosure, requires underwriters of municipal securities: (1) To obtain and review a copy of an official statement deemed final by an issuer of the securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the Municipal Securities Rulemaking Board; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to a nationally recognized municipal securities information repository; and (6) to review the information the issuer

of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

These disclosure and recordkeeping requirements will ensure that investors have adequate access to official disclosure documents that contain details about the value and risks of particular municipal securities at the time of issuance while the existence of compulsory repositories will ensure that investors have continued access to terms and provisions relating to certain static features of those municipal securities. The provisions of Rule 15c2–12 regarding an issuer's continuing disclosure requirements assist investors by ensuring that information about an issue or issuer remains available after the issuance.

Municipal offerings of less than $1 million are exempt from the rule, as are offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors, have short-term maturities, or have short-term tender or put features. It is estimated that approximately 12,000 brokers, dealers, municipal securities dealers, issues of municipal securities, and nationally recognized municipal securities information repositories will spend a total of 123,850 hours per year complying with Rule 15c2–12. Based on average cost per hour of $50, the total cost of compliance with Rule 15c2–12 is $6,192,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30177 Filed 11–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22862/812–10060]

The Benchmark Funds, et al.; Notice of Application

November 12, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c), 10(f) and 17(b) of the Act for an exemption from the provisions of sections 10(f) and 17(a) of the Act. The order would permit principal transactions effected in the ordinary course of business between the Benchmark Funds, The Commerce Funds, and Goldman, Sachs & Co.

APPLICANTS: The Benchmark Funds, The Commerce Funds (collectively, the "Funds"), and Goldman, Sachs & Co. ("Goldman Sachs").

FILING DATES: The application was filed on March 19, 1996 and amended on October 15, 1996, and September 18, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Benchmark Funds, 4900 Sears Tower, Chicago, Illinois 60606–6303, The Commerce Funds, PO Box 16391, St. Louis, Missouri 63105, Goldman, Sachs & Co., 85 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mary Kay Frech, Branch Chief at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Benchmark Funds is a Massachusetts business trust that is registered under the Act as an open-end management investment company. The Benchmark Funds currently offers to institutional investors 17 equity, fixed income and money market Portfolios.[1] The Benchmark Funds is the proprietary fund of the Northern Trust Company ("Northern"), which serves as investment adviser, transfer agent and custodian for each of the Benchmark Funds' Portfolios. Northern, a member of the Federal Reserve System, is an Illinois state-chartered commercial bank and the principal subsidiary of Northern Trust Corporation, a bank holding company.

2. The Commerce Funds is a Delaware business trust that is registered under the Act of an open-end management investment company. The Commerce Funds currently consists of nine Portfolios, which are offered to both individual and institutional investors. The Commerce Funds is the proprietary fund of the Commerce Bank, N.A. (St. Louis) and Commerce Bank, N.A. (Kansas City), which serve as the investment advisers to the Commerce Funds. Each of these banks is a subsidiary of Commerce Bancshares, Inc., a registered multi-bank holding company (collectively, "Commerce Bank" and together with Northern, the "Banks").

3. At present, federal banking laws and regulations are interpreted to restrict the ability of banks and bank holding companies, directly or through affiliated persons, to act as distributors for mutual funds or to provide personnel to act as officers and employees of the funds. Consistent with these requirements, bank proprietary funds must find a third party, independent of the bank, to act as the nominal "distributor," and retain officers who are not affiliated with the bank to perform certain administrative functions not associated with the selection of investments or broker-dealers through which trades may be effected.

4. Goldman Sachs is a registered broker-dealer that was founded in 1869. It is one of the oldest and largest international investment banking and brokerage firms, with offices in New York and other financial capitals of the world.

5. Goldman Sachs has acted as principal underwriter/distributor and administrator for the Funds since their inception. The primary consideration for using Goldman Sachs is its capacity as an administrator. Goldman Sachs is entitled to a fee from each Portfolio of the Funds for its administrative services, but generally receives no fee for its distribution activities.[2]

6. It its capacity as administrator, Goldman Sachs supplies each Fund with administrative officers, including an employee who serves as president of one of the Funds, who are responsible for performing administrative functions on behalf of the Funds. These officers are also officers and/or employees of Goldman Sachs. No administrative officer of a Fund who is an affiliated person of Goldman Sachs serves as a director of the Fund, sets fund policies, or currently is affiliated with any investment adviser to any Portfolio of a Fund. Such administrative officers have no involvement in, or influence over, the selection of any investment for the Fund or any broker or dealer through whom transactions may be effected.

7. The Funds rely upon Goldman Sachs to perform the distribution tasks that the federal banking regulators presently may restrict them from undertaking. These tasks include: Entering into distribution agreements with the Funds; being named as the distributor in Fund prospectuses and sales literature; at the direction of the Banks, entering into agreements with broker-dealers selling the Funds; acting as broker-of record for unsolicited direct sales of shares of the Funds; paying the costs of printing and distributing the Funds' prospectuses to potential investors; providing sales compliance training; consulting with the Funds' investment advisers about new market and product opportunities; and monitoring advertising and sales literature compliance. Goldman Sachs does not solicit any trades or provide any telemarketing services, and has no sales personnel dedicated to the Funds. Shares of each Fund are made available through a bank or its affiliated persons to their customers, or through other intermediaries that are not affiliated with Goldman Sachs. If investors are permitted to purchase shares by contacting the Funds' distributor, Goldman Sachs acts as the broker of record for unsolicited trades, and takes phone orders and redemption requests. Goldman Sachs does not locate customers for the Funds, does not instruct its clients to purchase shares from the Funds, and does not accompany Fund salespersons in meetings with potential investors.

8. Applicants request an order under sections 6(c), 10(f), and 17(b) of the Act that would exempt applicants from sections 10(f) and 17(a). The order would permit principal transactions in the ordinary course of business between any Portfolio and Goldman Sachs or any entity controlled by, controlling, or under common control with Goldman Sachs. Applicants request that the order also apply to any registered open-end management investment company (i) for which officers or employees of Goldman Sachs in the future act as officers as described in the application, or (ii) for which Goldman Sachs in the future provides distribution services as described in the application.

Applicants' Legal Analysis

1. Sections 17(a) of the Act generally prohibits any affiliated person or principal underwriter for a registered investment company, or any affiliated person of such affiliated person or principal underwriter (a "second-tier affiliate"), acting as principal, from knowingly selling any security or other property to such registered investment company and from knowingly purchasing any security or other property from the registered investment company. Goldman Sachs may not knowingly engage in principal transactions with a Fund absent an exemptive order, because Goldman Sachs is the principal underwriter for the Funds.

2. Section 17(b) of the Act authorizes the SEC to issue an order of exemption from one or more of the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to allow the above transactions.[3]

4. Applicants state that Congress enacted section 17(a) of the Act to address the problems associated with transactions of affiliated persons and underwriters or distributors that are able to control or influence the investment decisions of investment companies. Applicants assert that the prohibitions of section 17(a) were applied to distributors of investment company shares because, at the time of the enactment of the Act, distributors possessed enormous control over investment companies.

5. Applicants argue that the prohibitions of section 17(a) apply to distributors of the shares of open-end investment companies in recognition of the extent of control and influence a distributor in many circumstances is in a position to assert over an open-end investment company. Applicants note that when a distributor serves as the focal point for the purchase and sale of shares of an open-end investment company, an investment company may be pressured to enter into arrangements with the distributor that may not be beneficial to the company in order to secure the continued sale of the company's securities. Applicants also note that the provisions of section 17(a) relating to distributors of shares of open-end companies reflect a recognition that an open-end company's distributor is often affiliated with the company's investment adviser.

6. Applicants contend that Goldman Sachs' role as distributor of the Funds does not raise the types of problems that section 17(a) is designed to address. Applicants argue that the Funds are not captives of Goldman Sachs as a matter of either contract of *de facto* influence. Applicants state that Goldman Sachs has been chosen as the Funds' distributor primarily because federal banking laws and regulations have been interpreted to prohibit the Banks from

[1] As used in this release, the term "Portfolio" refers to any series of a registered open-end management investment company relying on any order granting the application or, if the company relying on any such order has a single investment portfolio, the company itself.

[2] The Commerce Funds is forming a class of shares that is expected to bear a distribution fee pursuant to rule 12b–1 under the Act at a rate of 0.35% of the class' net asset value. Although Goldman Sachs would be the initial recipient of the fee because it is the Funds' distributor, the fee is expected to be used primarily to make "trail commissions" or shareholder service payments to third parties. If unsolicited trades are effected for which Goldman Sachs is broker of record, Goldman Sachs may retain the trail commissions attributable to those trades to help defray the cost of Fund advertisements and other distribution expenses. In the future, the Funds may create classes of shares that bear different distribution fees or may change the distribution fees attributable to their existing classes.

[3] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. Keystone Custodian Funds, 21 S.E.C. 295, 300–09 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

distributing Fund shares. Applicants note that although banks are permitted to engage in most distribution activities, interpretations of the federal banking regulations prevent full participation by banks in the underwriting process.[4] Applicants assert that the Banks retain the services of an entity such as Goldman Sachs to provide administrative and nominal distribution services consistent with these interpretations.[5]

7. Applicants assert that Goldman Sachs does not serve as the focal point for the purchase and sale of Fund shares. Applicants state that Goldman Sachs plays no role in promoting the Funds to retail or institutional customers. Sales of investment company shares are instead conducted by each of the respective Banks and/or bank holding company organizations with which the Funds are affiliated and have advisory relationships or broker-dealers identified by those Banks. Applicants state that all sales of the Funds since inception have resulted from the institutional and retail relationships of the Banks. Applicants emphasize that it is these institutions, and not Goldman Sachs, that provide the organizational structures that actively promote the Funds. Applicants state that if Goldman Sachs was replaced as principal underwriter, the Banks and broker-dealers would merely enter into agreements with a new underwriter, because the broker-dealers' substantive relationship is with the Banks and/or bank holding company organizations with which the Funds are affiliated and not with Goldman Sachs.

8. Applicants state that investment decisions for each of the Portfolios are made exclusively by the Banks or other investment advisers that are not affiliated with Goldman Sachs. Applicants assert that it has always been the intent of the Banks and their parent banks and/or bank holding companies to retain control over the investment decisions of the Funds which they advise, except to the extent that third parties are to act as investment advisers or sub-advisers to the Portfolios. Applicants also state that although not presently intended, Goldman Sachs could become a sub-adviser or adviser to a Portfolio of a Fund in the future. If Goldman Sachs became a sub-adviser or adviser to any Portfolio, it would engage in principal transactions in reliance on any order granting the application only with Portfolios advised by parties other than Goldman Sachs or its affiliated persons, and would do so only in conformity with applicable exemptive orders[6] or no-action letters.[7] Applicants assert that the section 17(a) concern regarding affiliated distributors would not arise in applicants' case because in no instance will Goldman Sachs engage in principal transactions with portfolios for which it acts as adviser or sub-adviser except as permitted under condition 1.

9. Applicants state that although Goldman Sachs' officers or employees serve as officers of the Funds, none of such persons are responsible for the formulation or establishment of the Portfolios' investment objectives, policies or restrictions. The officers and employees function only as administrative officers of the Funds, handling administrative tasks necessary to maintain the Funds as going concerns. Applicants contend that the performance of these functions by Goldman Sachs' personnel does not result in any opportunity for control of the Funds. The policy-making functions of each Fund rest with its respective independent board of directors, which have been and will continue to be responsible for the selection and review of the major contractors to the Funds, including the advisers and the distributor. Goldman Sachs' officers and employees do not and will not serve as members of the Funds' boards of directors and, consequently, will not be engaged in considering and approving the Funds' advisory and distribution arrangements.

10. Applicants contend that since the proposed principal transactions would not implicate the principal concerns reflected in section 17(a), the inability of the Portfolios to engage in these transactions with a major financial institution imposes opportunity and execution costs on the investment company. Applicants contend that the prohibitions of section 17(a) and the resulting costs to the Portfolios are neither required nor appropriate because an independent third party, with a vested interest in each Portfolio's performance, is making all investment decisions for the Portfolio and the Funds are in no way dependent on the distribution services of Goldman Sachs.

11. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring any security, during its underwriting or syndication, the principal underwriter of which is a person who is an officer or employee of the investment company or is a person affiliated with an officer or employee of the investment company. Section 10(f) authorizes the SEC to exempt any transactions or classes of transactions from the prohibitions of section 10(f) if the exemption is consistent with the protection of investors.

12. Under section 10(f), the Portfolios are restricted from acquiring securities from Goldman Sachs during the securities' underwriting or syndication period when Goldman Sachs serves as underwriter of the securities. Applicants note that the only reason that section 10(f) applies is because officers and employees of Goldman Sachs serve as officers of the Funds. Applicants argue that the reason for applying this prohibition to officers of the Funds—the control and influence that an officer may have over the investment decisions of a Portfolio—does not apply for the same reasons described above in connection with section 17(a). Applicants contend that the Portfolios presently are deprived of full access to the many securities (especially in the fixed-income arena) of which Goldman Sachs is an underwriter. Applicants assert that the terms and conditions set forth in the proposed relief are reasonable and fair and do not involve overreaching on the part of any person; they are consistent with the general purposes of the Act, in general, and sections 17(a) and 10(f), in particular, and the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Neither Goldman Sachs nor its affiliated persons will engage in principal transactions with a Portfolio for which Goldman Sachs or any of its affiliated persons act as investment adviser except to the extent permitted by the Act, the rules under the Act, no-action letter, or any exemptive order granted after the date of an order granting this application, provided that the application requesting the subsequent order refers specifically to this application.

2. Goldman Sachs and its affiliated persons will engage in principal transactions with a Portfolio in reliance on any order granting this application only if (i) Goldman Sachs is not affiliated with any investment adviser to the Portfolio, (ii) neither Goldman Sachs nor any affiliated person of Goldman Sachs is responsible for the selection of particular securities to be acquired for the Portfolio, and (iii) neither Goldman Sachs nor any affiliated person of Goldman Sachs is responsible for the selection of any particular broker-dealer or other counterparty for transactions effected by the Portfolio.

3. Goldman Sachs and its affiliated persons will engage in principal transactions with a Portfolio in reliance on any order granting this application only if no affiliated person of Goldman Sachs is serving as a director of the Fund of which the Portfolio is a part.

4. Transactions between Goldman Sachs or its affiliated persons and any Portfolio made in reliance on any order granting this application will be effected only pursuant to arm's length negotiations with the Portfolio, acting through its investment adviser or other person unaffiliated with Goldman Sachs, and will be consistent with the policy of the Portfolio.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30178 Filed 11–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27077]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 4, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc. and GPU International, Inc. (70–7727)

GPU, Inc. ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and GPU International, Inc. ("GPU International"), One Upper Pond Road, Parsippany, New Jersey 07054, a nonutility subsidiary of GPU, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45, 53 and 54 under the Act to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and rules 45, 50, 51, 90 and 91 under the Act.

By orders dated November 16, 1995, June 14, 1995, December 28, 1994, September 12, 1994, December 18, 1992, and June 26, 1990 (HCAR Nos. 26409, 26307, 26205, 26123, 25715, and 25108) ("Prior Orders"), GPU International [1] was authorized to engage in preliminary project development and administrative activities ("Project Activities") for its investments in: (i) Qualifying facilities ("QFs"), as defined in the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"); (ii) exempt wholesale generators ("EWGs"), as defined in section 32 of the Act; and (iii) foreign utility companies ("FUCOs"), as defined in section 33 of the Act.

The Prior Orders also authorized GPU from time to time through December 31, 1997 to: (i) Enter into guarantees, support instruments, and bank letters of credit reimbursement agreements or similar financial instruments or undertakings ("Guarantees") to secure GPU International's agreement with any person (including without limitation project lenders) in connection with GPU International's Project Activities and the acquisition of ownership or participation interests in QF, EWG, or FUCO projects; (ii) guarantee the securities or other obligations of EWGs and FUCOs; and (iii) assume liabilities of EWGs and FUCOs, in an amount of up to $500 million. The Prior Orders also authorized GPU International to enter into guarantees, and to assume liabilities of EWGs and FUCOs, in an aggregate amount of up to $50 million from time to time through December 31, 1997.

GPU and GPU International ("Applicants") propose to: (i) Expand the purposes for which GPU may enter into Guarantees on behalf of GPU International to include Guarantees of any security or other obligation of GPU International or a subsidiary of GPU International ("GPUI Subsidiary"), provided the issuance and sale of any such security is exempt from the requirement of prior Commission approval under section 6(a) of the Act or has been otherwise authorized by the Commission; (ii) to increase to $150 million the aggregate principal amount of Guarantees which GPU International may have outstanding hereunder and to expand the purposes for which GPU International may enter into Guarantees to include guarantees of the securities or other obligations of GPUI Subsidiaries, provided the issuance and sale of any such security is exempt from the requirement of prior Commission approval under section 6(a) of the Act or has been otherwise authorized by the Commission; (iii) to extend until December 31, 2000 the period during which Applicants may enter into Guarantees; and (iv) to permit any GPUI Subsidiary which is not an EWG or FUCO to guarantee the securities or other obligations of their direct or indirect subsidiaries from time to time through December 31, 2000 in an aggregate amount not to exceed, together with the aggregate amount of GPU International Guarantees outstanding, $150 million; provided the issue and sale of any such security is exempt from the requirement of prior Commission approval under section 6(a) of the Act or has been otherwise authorized by the Commission.

The term of each Guarantee and any letter of credit ("L/C") reimbursement agreement, would not exceed 35 years. L/C fees would not exceed 1% annually of the face amount of the L/C. Drawings under each L/C would bear interest at not more than 5% above the prime rate

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[4] Applicants cite OCC Interpretive Letter No. 648 (May 4, 1994) and Melanie L. Fein, *Securities Activities of Banks* § 9.07 (1995).

[5] Although Goldman represents that it provides nominal distribution services to the Funds, Goldman acknowledges that it continues to retain responsibility as principal underwriter for all purposes under the federal securities laws.

[6] *See North American Security Trust*, Investment Company Act Release Nos. 16860 (July 22, 1992) (notice) and 16899 (Aug. 18, 1992) (order); *The One Group*, Investment Company Act Release Nos. 19410 (Apr. 15, 1993) (notice) and 19478 (May 11, 1993) (order) (the "*Sub-Adviser Orders*"). Under these orders, Goldman Sachs is permitted to engage in principal transactions with portfolios of any registered investment company of which Goldman Sachs may be deemed to be an affiliated person of an affiliated person solely because of its sub-advisory relationship with other portfolios of that investment company. Goldman Sachs intends to rely on these orders in conjunction with the exemptive order requested by this application.

[7] *Salomon Brothers Inc.*, SEC No-Act. Letter (pub. avail. May 26, 1995).

[1] The Prior Orders were issued for Energy Initiatives, Inc. ("EII"). GPU International is the entity which succeeded EII.

as in effect from time to time. The interest rate on GPU International debt guaranteed by GPU, and fees payable, would not exceed rates and fees which are generally obtainable for debt bearing similar terms, conditions and features and which is issued by companies of the same or reasonably comparable credit quality.

GPU agrees that it will not enter into any Guarantee which: (i) Guarantees the securities or obligations of an EWG or FUCO; or (ii) guarantees the performance of a Guarantee executed by GPU International or a GPUI Subsidiary of the securities or other obligations of an EWG or FUCO, unless in any such case the conditions set forth in the Commission's supplemental order dated November 5, 1997 (HCAR No. 26773) have been satisfied. Furthermore, any such Guarantee by GPU would be included in GPU's "aggregate investment" as defined in rule 53(a).

Allegheny Power System, Inc., et al. (70–7888)

Allegheny Power System, Inc. ("Allegheny"), 10435 Downsville Pike, Hagerstown, Maryland 21740, a registered holding company, Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, Allegheny's service company subsidiary, three electric utility subsidiary companies of Allegheny—(i) Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, (ii) The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown, Maryland 21740, and (iii) West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, and Allegheny Generating Company ("AGC"), 10435 Downsville Pike, Hagerstown, Maryland 21740, an electric utility subsidiary of Monongahela, Potomac Edison and West Penn (collectively, "Applicants") have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45, 53 and 54 under the Act.

By orders dated January 29, 1992, February 28, 1992, July 14, 1992, November 5, 1993, November 28, 1995, and April 18, 1996 (HCAR Nos. 25462, 25481, 25581, 25919, 26418, and 26506) ("Prior Orders"), Applicants were authorized to engage in certain short-term financing programs and operation of the Allegheny System Money Pool ("Money Pool"). Applicants now propose, from December 31, 1997 through December 31, 2002, to continue certain short-term financing programs and operation of the Money Pool, described below.

Allegheny, Monongahela, Potomac Edison, West Penn, and AGC (the "Companies") request that, from December 31, 1997 to December 31, 2002, they be authorized to engage in short-term financing, including notes to banks ("Notes"), commercial paper ("CP"), and Money Pool borrowings, in aggregate amounts not to exceed the following amounts outstanding at any one time for each of the following Applicants: Allegheny—$400 million; Monongahela—$106 million; Potomac Edison—$130 million; West Penn—$182 million; AGC—$100 million.

The Companies have established bank lines of credit ranging from $10 million to $40 million for an aggregate total of $295 million available for short-term borrowings. The Companies have agreed to pay for each of these lines of credit an annual cash fee no greater than 10 basis points on all or the balance of the line of credit.

Each Note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, will bear interest at a mutually agreed upon rate, provided that the effective rate for any 30-day period, on an annualized basis, will not exceed prime plus 2 percentage points and may or may not have prepayment privileges, as set forth in the Prior Orders. It is estimated that the maximum aggregate amount of any short-term borrowings on behalf of Applicants at any one time outstanding, when taken together with any CP then outstanding and funds borrowed by such affiliates under the Money Pool, will not be in excess of $918 million.

The CP will be in the form of promissory notes and will be of varying maturities, with no maturity more than 270 days after the date of issue. The CP will have the other terms and conditions as authorized by the Prior Orders. Applicants state that no Notes or CP will mature after June 30, 2003.

Applicants also propose to continue the Allegheny Power System Money Pool from December 31, 1997 to December 31, 2002. Allegheny is a participant in the Money Pool only to the extent it has funds available for lending through the Money Pool. Allegheny may not borrow from the Money Pool. AGC will be allowed to borrow from, but not invest in, the Money Pool.

The calculation of interest income and expense have been revised in the Money Pool agreement ("Agreement"). Interest income and expense are now calculated using the previous day's Fed Funds Effective Interest Rate as quoted by the Federal Reserve Bank of New York as long as this rate is at least four basis points lower than the previous day's seven-day commercial paper rate as quoted by the same source. Whenever the Fed Funds rate is not at least four basis points lower than the seven-day commercial paper rate, the Agreement provides that the seven-day commercial paper rate minus four basis points should be used.

The Agreement has been revised in the following additional ways. The interest income resulting from the external investments will be accrued daily instead of booked upon receipt. In addition, interest income will be allocated to members of the Money Pool on a basis equal to their pro rata share of net contributions in the Money Pool throughout the month, instead of on the net contributions on the day the investment was placed. Also, a sentence was added to the Agreement providing that the allocation of interest income will be settled on a cash basis on the last business day of each month.

Allegheny proposes to use the proceeds from the proposed borrowings to: (1) Acquire common stock of subsidiaries; (2) make capital contributions to subsidiaries (which, in turn, may use the proceeds for investments in exempt wholesale generators or foreign utility companies); and (3) purchase shares of Allegheny common stock in order to fund its Dividend Reinvestment and Stock Purchase Plan and Employee Stock Option and Stock Purchase Plan in lieu of issuing additional new shares of common stock pursuant to such plans.

Northeast Utilities, et al. (70–8507)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned subsidiaries, Northeast Utilities Service Company ("Service"), PO Box 270, Hartford, Connecticut 06141–0270, Charter Oak Energy, Inc. ("Charter Oak") and COE Development Corporation ("COE Development"), both located at 107 Seldon Street, Berlin, Connecticut 06037, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a) 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and rules 45, 46, 53, 54, 83, 86, 87(b)(1), 90 and 91 under the Act.

By orders dated December 30, 1994 (HCAR No. 26213), as amended on August 7, 1995 (HCAR No. 26345), December 12, 1996 (HCAR No. 26623), and March 25, 1997 (HCAR No. 26691) (collectively, "Prior Orders"), the Commission generally authorized, among other things, Charter Oak and COE Development to invest in, and finance the acquisition of, exempt wholesale generators within the meaning of section 32 of the Act ("EWGs") and foreign utility companies within the meaning of section 33 of the Act ("FUCOs," and together with EWGs, "Exempt Projects"), subject to certain limitations. Specifically, the Prior Orders authorized: (1) The formation of intermediate subsidiary companies ("Intermediate Companies") to acquire an interest in, finance the acquisition and hold the securities of Exempt Projects, through the issuance by the Intermediate Companies of up to $600 million of equity securities and debt securities to third parties, of which $150 million would be recourse; (2) Intermediate Companies to make partial sales of certain projects; (3) participation in joint ventures with nonassociate companies; (4) 1% of the total NU system employees and no more than 2% of the total of NU Service Company employees to provide services to Intermediate Companies, EWGs and FUCOs; and (5) certain Intermediate Companies, EWGs and FUCOs to pay dividends to their parent companies, from time to time out of capital or unearned surplus, and for Charter Oak to use such funds to pay dividends to NU, to the extent permitted by applicable corporate law.

The Prior Orders authorized Charter Oak and COE Development to invest and hold interests in qualifying cogeneration and small power production facilities as defined in the Public Utility Regulatory Policies Act of 1978 ("QF"), throughout the United States; independent power production facilities that would constitute a part of NU's "integrated public utility system" within the meaning of section 2(a)(29)(A) of the Act ("Qualified IPPs"); and Exempt Projects. Charter Oak and COE Development were also authorized to provide consulting services to the projects. In addition, the Applicants have authority to issue guarantees and assume the liabilities of subsidiary companies for pre-development activities, and for both pre-development and contingent liabilities subsequent to operation with regard to Exempt Projects, subject to certain restrictions.

To date, NU has invested approximately $115 million in Charter Oak and expects to invest an additional $5 million through December 31, 1997. NU has $80 million remaining from its previous authorization to engage in power development activities ("Remaining Amount"). Charter Oak and COE Development may invest in QF and Qualified IPPs after obtaining Commission approval.

NU has announced its intention to sell its interest in Charter Oak and the majority of its subsidiaries to an unaffiliated third party ("Sale"). Charter Oak may sell the voting stock of some or all of its subsidiaries to third parties prior to NU's sale of the voting securities of Charter Oak. NU may retain an indirect interest in one or more of Charter Oak's Exempt Projects by transferring the stock of that Exempt Project or its Intermediate Company parent to another NU subsidiary.

As a result of the proposed Sale, the Applicants are requesting authorization to extend NU's period of authorization to invest directly in Charter Oak and indirectly, in COE Development, the Remaining Amount, and engage in the related transactions, pursuant to the terms and conditions set forth in the Prior Orders, through December 31, 1998.

The Applicants also request modification of the Prior Orders to authorize: (1) Charter Oak and its subsidiaries to pay dividends to their parent companies out of capital or unearned surplus, in compliance with rule 46 and relevant corporate law, to ensure that the NU system receives the full amount of funds available to it in connection with the sale or transfer of these entities; (2) Service employees (which include the current employees of Charter Oak) to continue to provide services [2] to Exempt Projects and Intermediate Companies after they have been sold to unaffiliated buyers, subject to the *de minimis* amount limitation established under the Prior Orders; and (3) NU to invest a maximum of $75 million to fund the acquisition by an NU subsidiary of any Exempt Project or Intermediate Company currently owned by Charter Oak.[3]

Service company employees may continue to provide services at market rates to any Exempt Project or Intermediate Company retained by the system subject to the terms and conditions set forth in the Prior Orders.

GPU, Inc. et al. (70–8593)

GPU, Inc. ("GPU"), of 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and two of its nonutility subsidiaries, GPU International, Inc. and EI Services, Inc., both of One Upper Pond Road, Parsippany, New Jersey 07054, its operating companies, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, each of P.O. Box 16001, Reading, Pennsylvania 19640, and its service company, GPU Service, Inc., of 100 Interpace Parkway, Parsippany, New Jersey 07054, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 43, 45, 53 and 54 thereunder, to their application-declaration, under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 45, 52, 53 and 54 thereunder, in the above file.

By orders of the Commission dated November 5, 1997, January 19, 1996 and July 6, 1995 (HCAR Nos. 26773, 26457 and 26326, respectively) ("Orders"), among other things, GPU is authorized to acquire and own interests in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs" and EWGs, "Exempt Entities") through GPU subsidiaries ("Project Parents") that are not Exempt Entities, but are engaged, directly or indirectly, and exclusively, in the business of owning and holding the interests and securities of one or more Exempt Entities and related project development activities. GPU is authorized to make equity investments in Project Parents in the form of capital stock or shares, trust certificates, partnership interests or other equity or participation interests. GPU is also authorized, through December 31, 1997, to make investments in one or more Project Parents in the form of: Loans evidenced by promissory notes; guarantees by GPU of the principal of, or interest on, any promissory notes or other evidences of indebtedness or obligations of any Project Parent or an undertaking by GPU to contribute equity; assumption of liabilities of a Project Parent; and reimbursement agreements with banks which support letters of credit delivered as security for GPU's obligations to contribute equity to a Project Parent or otherwise in connection with the project development activities of a Project Parent.

GPU is also authorized to make investments in Exempt Entities, through December 31, 1997, in the form of:

[2] The services that may be rendered will include: management, administrative, legal, tax and financing advice, accounting, engineering consulting, language skills and software development, provided that, such software development will not involve proprietary software owned by Service.

[3] The investment may take the form of acquisitions of common stock, capital contributions, open account advances, and/or subordinated loans. Open account advances or subordinated loans will either bear no interest or bear interest at a rate based on NU's cost of funds in effect on the date of issue, but in no case in excess of the prime rate at a bank designated by NU. Any investment by NU in the equity securities of a subsidiary that have a stated par value will be in an amount equal or greater to that value.

Guarantees of the indebtedness or other obligations of one or more Exempt Entities; assumption of liabilities of one or more Exempt Entities; and guarantees and letter of credit reimbursement agreements in support of equity contribution obligations or otherwise in connection with project development activities for one or more Exempt Entities.

Under the Orders, GPU's "aggregate investment" (as defined in rule 53(a)(1)(i)) in Project Parent and Exempt Entities cannot exceed 100% of GPU's "consolidated retained earnings" (as defined in rule 53(a)(1)(ii)).

Applicants now propose to extend the authorizations under the Orders through December 31, 2000. In addition, applicants request authorization for Project Parent to guarantee or assume liabilities of the securities issued by, or other obligations of, their direct or indirect subsidiaries in an aggregate amount not to exceed $1 billion, through December 31, 2000.[4]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30160 Filed 11–17–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting; Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 17, 1997.

A closed meeting will be held on Thursday, November 20, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, November 20, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 14, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–30338 Filed 11–14–97; 11:03 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39315; File No. SR–AMEX–97–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Reduction in Minimum Size for Closing Transactions in FLEX Equity Options

November 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19n–4 thereunder,[2] notice is hereby given that on November 4, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 903G to decrease from 100 contracts to 25 contracts the minimum value size of closing transactions and quotes for Flex Equity Options. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

Currently, Rule 903G(a)(4)(iii) imposes a 100 contract minimum on all transactions in FLEX Equity Options unless the transaction is for the entire remaining position in the account. The Exchange believes that the current minimum value size of closing and exercise transactions in FLEX Equity Options is too large to accommodate the needs of certain member firms and their customers. These firms may purchase 100 or more FLEX Equity Options in an opening transaction for a single firm account in which more than one of the firm's clients have an interest.[3] If one of these clients wants to redeem its investment in the account, the firm likely will want to engage in a closing or exercise transaction in order to reduce the account's position in those FLEX Equity Options by the number being redeemed. Thus, if the redeeming client's interest is less than 100 FLEX Equity Options and does not represent the total remaining position in the account, Rule 903G(a)(4)(iii), as it stands presently, prevents the firm from closing or exercising positions of this size.

The Exchange believes that the proposed rule change would remedy the situation described above, by permitting an order to close or exercise as few as 25 FLEX Equity Option contracts. The corresponding change to Rule 903G(a)(4)(iv), which governs the minimum size for FLEX Equity Quotes that may be entered in response to Request for Quotes, is necessary in order to provide the liquidity needed to facilitate the execution of closing orders between 25 and 99 FLEX Equity Option contracts that would be permitted by the proposed amendment to Rule 903G(a)(4)(iii).

The Exchange represents that it will issue a circular that (1) describes the new rule; and (2) reminds all members and member firms of their continuing responsibility to ensure that FLEX Equity Options are utilized only by sophisticated investors with the necessary financial resources to sustain the possible losses arising from transactions in the requisite FLEX Equity Options class size.[4]

2. Statutory Basis

The Exchange believes that by providing firms and their customers greater flexibility to trade FLEX Equity Options by lowering from 100 to 25 the minimum number of contracts required for a closing transaction, for exercises, and for FLEX Quotes responsive to a Request for Quotes, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[5] by removing impediments to and perfecting the mechanism of a free and open market in securities and otherwise serving to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from November 4, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(e)(6)[7] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–43 and should be submitted by December 9, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30178 Filed 11–17–97; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2987]

State of Florida

Volusia County and the contiguous Counties of Brevard, Flagler, Lake, Orange, Putnam, and Seminole in the State of Florida constitute a disaster area as a result of damages caused by heavy rains, strong thunderstorms, and tornadoes which occurred on November 2, 1997. Applications for loans for physical damage may be filed until the close of business on January 5, 1998 and for economic injury until the close of business on August 6, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 298706 and for economic injury the number is 983600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 6, 1997.

Ginger Law,

Acting Administrator.

[FR Doc. 97–30285 Filed 11–17–97; 8:45 am]

BILLING CODE 8025–01–P

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[4] Applicants represent that these guarantees will support only securities issuances authorized by the Commission or exempt from the requirement of prior Commission approval under section 6(a) of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the minimum size for an opening transaction in a Request for Quotes is 250 contracts for any FLEX series in which there is no open interest, and 100 contracts in any currently opened FLEX series. *See* Amex Rule 903G(a)(4)(ii) and (iii).

[4] The Commission's staff has reviewed the Amex's surveillance program and believes it provides a reasonable framework in which to monitor investor open interest to ensure that only such sophisticated investors are utilizing this product. Nonetheless, the Commission requests that the Exchange provide a report to the Commission's Division of Market Regulation describing the nature of investor participation in FLEX Equity Options for one year from the implementation date for the rule change. The report is due on December 31, 1998. If the Exchange determines in the interim that the proposed rule change has resulted in a pattern of inappropriate investor participation in FLEX Equity Options, it should notify the Commission's Division of Market Regulation to determine if the minimum closing transaction sizes should be modified.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(6).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2985]

State of Florida

Pinellas County and the contiguous Counties of Hillsborough and Pasco in the State of Florida constitute a disaster area as a result of damages caused by tornadoes, wind burst, and thunderstorms which occurred on October 27, 1997. Applications for loans for physical damage may be filed until the close of business on January 5, 1998 and for economic injury until the close of business on August 4, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 298511 and for economic injury the number is 9636.400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 4, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97-30266 Filed 11-17-97; 8:45 am]

BILLING CODE 8025-01-P-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2986]

State of Florida

Manatee County and the contiguous Counties of DeSoto, Hardee, Hillsborough, Polk, and Sarasota in the State of Florida constitute a disaster area as a result of damages caused by extensive flash flooding as a result of severe rains which occurred on October 31, 1997. Applications for loans for physical damage may be filed until the close of business on January 5, 1998 and for economic injury until the close of business on August 4, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 298606 and for economic injury the number is 983500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 4, 1997.

Ginger Lew,

Acting Administrator.

[FR Doc. 97-30268 Filed 11-17-97; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2988]

Louisiana; (and Contiguous County in Texas)

Beauregard Parish and the contiguous parishes of Allen, Calcasieu, Jefferson Davis, and Vernon State of Louisiana; and Newton County in Texas constitute a disaster area as a result of damages caused by severe thunderstorms, rain, and tornadoes which occurred on October 23–24, 1997. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 12, 1998 and for economic injury until the close of business on August 10, 1998 at the address listed below U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage is 298812 and for Louisiana; and 298912 for Texas. For economic injury the numbers are 966900 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97-30267 Filed 11-17-97; 8:45 am]

BILLING CODE 8025-01-P-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 2828]

New International Bridge, Brownsville, Texas: Finding of No Significant Impact and Summary Environmental Assessment

SUMMARY: On October 9, 1997 the Department of State made a finding that two new international bridges sponsored by the Brownsville Navigation District (hereafter, BND), Brownsville, Texas, would have no significant impact on the environment. Accordingly, the Department of State is announcing issuance of a finding of no significant impact. A draft environmental assessment of the proposed Port of Brownsville International Crossings was prepared for the BND, under the guidance and supervision of the State Department, by Parsons Brinckerhoff Quade & Douglas, Inc., of Austin, Texas; St. John-Villarreal Associates of Fairfax, Virginia; Mariah Associates of Austin, Texas; Gonzalez Engineers and Surveyors of Brownsville, Texas; and Dr. Michael Tewes of Kingsville, Texas. The Department of State placed a notice in the Federal Register (56 FR 223 November 19, 1991) regarding the availability for inspection of the Brownsville Navigation District's Permit application and the draft environmental assessment; one public comment was received, from the Texas Center for Policy Studies. In August 1995, Hicks & Company, of Austin, Texas and Brown & Root, Inc. of Houston, Texas, submitted an addendum to the environmental assessment. In March 1997, Hicks & Company submitted a document summarizing mitigation efforts associated with the permit application.

Eighteen Federal and state agencies reviewed the draft environmental assessment. They were: the Immigration and Naturalization Service, the United States Customs Service, the Food and Drug Administration, the Animal and Plant Health Inspection Service (of the Department of Agriculture), the General Services Administration, the International Boundary and Water Commission-United States Section, the Department of Defense, the Department of Transportation (Federal Highway Administration and the United States Coast Guard), the Federal Emergency Management Agency, the Department of the Interior (United States Fish and Wildlife Service), the Department of Commerce, the Environmental Protection Agency, the Interstate Commerce Commission (now part of the Department of Transportation), the Department of State, the Texas Parks and Wildlife Department, the Texas Department of Transportation, the Texas Historical Commission, and the Texas Natural Resource Conservation Commission (formerly the Texas Water Commission). All comments received from these agencies were either responded to directly or resulted in further analysis being conducted and incorporated into this assessment, including consideration of mitigation measures. Additionally, the BND met and corresponded with agencies to discuss ways of meeting their particular concerns and, where appropriate, to discuss mitigation measures; these contacts were most frequent with the U.S. Fish and Wildlife Service (USFWS).

The results of the BND's meetings and other contacts with agencies involved in the application review were recorded in correspondence and in the August, 1995 and March, 1997 addenda to the 1991 BND application. This summary environmental assessment, the comments submitted by the agencies, the responses to these comments, and all correspondence between the agencies and the Permit applicant addressing the agencies' concerns, together constitute the final environmental assessment.

Based on the final environmental assessment, including mitigation measures, and information developed during the review of the BND's application, the Department of State has concluded that issuance of the Presidential Permit authorizing construction of the Port of Brownsville International Crossings will not have a significant impact on the quality of the human environment within the United States. In accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13, and with Department of State Regulations, 22 CFR 161.8(c), an environmental impact statement, therefore, will not be prepared.

A finding of no significant impact was made on October 9, 1997.

ADDRESSES: Copies of the Finding of No Significant Impact may be obtained from M. Elizabeth Swope, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, D.C. 20520 (202–647–8529).

SUPPLEMENTARY INFORMATION: The Department of State (the Department) is charged with issuance of Presidential Permits for the construction of international bridges between the United States and Mexico under the International Bridge Act of 1972, 86 Stat. 731; 33 U.S.C. § 535 *et seq.*, and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 98 (1993).

The Brownsville Navigation District, Texas, has applied to the Department for a Presidential Permit to build two bridges, one for commercial-cargo vehicular traffic and the other for commercial-cargo rail traffic, across the Rio Grande River from River Mile 24, eight miles east of downtown Brownsville, Cameron County, Texas, and three miles south of the Brownsville Ship Channel, to Matamoros, Tamaulipas, México. The site is 13.5 miles west of the mouth of the Rio Grande, which empties into the Gulf of Mexico. There are no bridges between the site and the Gulf of Mexico.

The two bridges will be built adjacent to each other at the terminus of an undeveloped 1,000-foot wide, BND-owned corridor extending three miles northward from the site to the Brownsville Ship Channel. The bridges will be connected to the Ship Channel by a roadway and a railway built through the center of the corridor. Texas State Highway 4 (SH 4) bisects the corridor approximately 3,000 feet north of the bridge site. The General Services Administration (GSA) inspection facility and BND toll-installation will be located on 40 acres of land immediately south of SH 4.

The new bridges will:

- Provide the Port of Brownsville with additional direct rail and road links with Mexico, thereby enhancing its competitiveness;
- Create an alternative route for commercial traffic destined for the Port, most of which is obliged to use bridges located in downtown Brownsville (the Los Tomates bridge, scheduled to open in March, 1999, is also located in the metropolitan Brownsville area).
- Divert traffic away from downtown Brownsville bridges and thereby reduce noise, vehicle congestion, air pollution, and deterioration of roadways in the downtown area caused by commercial traffic.
- Reduce the traffic of hazardous materials carriers through populated areas in Brownsville; and
- Accommodate anticipated economic growth in the Brownsville area.

Summary Environmental Assessment

The Department evaluated possible environmental impacts of the project. The Lower Rio Grande Valley of Texas is the primary zone of occupation within the United States for two species of Federally-protected cat, the ocelot and the jaguarundi. The project area constitutes a potential travel corridor for the cats. Additionally, there is potential that a Federally-protected bird, the northern aplomado falcon, may nest in or near the area. The project corridor contains 93 acres of wetlands, 12.77 acres of which would be lost, and lies entirely within the 100-year floodplain.

The BND worked closely with all agencies involved in the review process, especially the USFWS, to address their concerns about the possible environmental impacts of this project. The project has been extensively redesigned to avoid and mitigate potential impacts. Specifically, the BND has agreed, *inter alia*, to elevate the bridges inland 430 feet and revegetate the area underneath the bridge structures to reestablish a wildlife travel corridor; construct a minimum of ten culverts in the elevated approach structure leading to the bridges that will allow wildlife to pass through; conduct a breeding-season nest survey to gather information about the northern aplomado falcon, conduct a three-year public education and information campaign focusing on three Federally-protected species; and enhance or create 99.6 acres of wetlands adjacent to Little San Martin Lake, located north of the

Ship Channel, about five miles from the impact site.

The Department considered cumulative environmental impacts resulting from the project. Mitigation of wetlands impacts, preservation of the riparian vegetation corridor, and establishment of travel corridors for endangered cats will minimize the project's contribution to potential environmental impacts caused by existing and reasonably foreseeable international crossings in the Lower Rio Grande Valley. The reduction in vehicle waiting times and the deviation of a significant portion of commercial traffic from downtown Brownsville bridges will positively impact air quality for the population of the region. The removal of hazardous cargoes from downtown Brownsville will have a positive impact on public safety. The commercial-cargo-only nature of the bridges and constraints to secondary development in the project area will limit urban and commercial sprawl.

On April 30, 1992, a programmatic agreement was executed among the Department of State, the Texas State Historic Preservation Officer (SHPO), the Texas Department of Transportation, the Advisory Council on Historic Preservation, and the Brownsville Navigation District, in which the BND agreed, *inter alia*, to:

- Conduct a cultural resources survey within the Area of Potential Effect prior to initiating construction;
- Consult with the SHPO to avoid, minimize, or mitigate adverse effects on any standing structures or archaeological properties within the Area of Potential Effect eligible for inclusion in the National Register of Historic Places; and
- Consult with the SHPO to develop a plan for recovery of any archaeological data within the Area of Potential Effect that cannot be avoided or preserved in place.

Dated: November 4, 1997.

M. Elizabeth Swope,

Coordinator, U.S.-Mexico Border Affairs.

[FR Doc. 97–30162 Filed 11–17–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 2629]

New International Bridge, Brownsville, Texas: Issuance of Presidential Permit

SUMMARY: The Department of State is announcing the issuance to the Brownsville Navigation District of a Presidential Permit for two new international bridges between Brownsville, Texas, and Matamoros, Tamaulipas, Mexico. The Department determined that issuance of the Permit would serve the national interest and the Permit was signed on October 12, 1997 and issued on November 3, 1997 pursuant to the International Bridge Act (33 U.S.C. 555 *et seq.*) and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 96 (1993). No notifications of disagreement were received within the 15-day period prescribed in Section 1(f) of Executive Order 11423.

ADDRESSES: Copies of the Presidential Permit may be obtained from M. Elizabeth Swope, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, D.C. 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION: Notice of the application by the Brownsville Navigation District for a Permit to build two new international bridges across the Rio Grande between Brownsville, Texas, and Matamoros, Tamaulipas, Mexico, was placed in the **Federal Register** on November 19, 1991, 56 FR 223. The new bridges will be located parallel to each other about eight miles east of downtown Brownsville, Cameron County, Texas at River Mile 24. One bridge will be for commercial-cargo vehicular traffic and the other will be for commercial-cargo rail traffic. The bridges are intended to remove commercial tariff bound for the Port of Brownsville from downtown Brownsville. Eighteen Federal and state agencies reviewed the draft environmental assessment. They were: the Immigration and Naturalization Service, the United States Customs Service, the Food and Drug Administration, the Animal and Plant Health Inspection Service (of the Department of Agriculture), the General Service Administration, the International Boundary and Water Commission—United States Section, the Department of Defense, the Department of Transportation (Federal Highway Administration and the United States Coast Guard), the Federal Emergency Management Agency, the Department of the Interior (United States Fish and Wildlife Service), the Department of Commerce, the Environmental Protection Agency, the Interstate Commerce Commission (now part of the Department of Transportation), the Department of State, the Texas Parks and Wildlife Department, the Texas Department of Transportation, the Texas Historical Commission, and the Texas Natural Resource Conservation Commission (formerly the Texas Water Commission).

Dated: November 4, 1997.

M. Elizabeth Swope,

Coordinator, U.S.-Mexico Border Affairs.

[FR Doc. 97–30163 Filed 11–17–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice 2630]

Privacy Act of 1974; Creation of a New System of Records

Notice is hereby given that the Department of State proposes to create a new system of records, STATE–23, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on November 5, 1997.

This system of records is being implemented by the Department of State pursuant to the Debt Collection Improvement Act of 1996 to support its responsibilities with regard to the accounting and collection of debts incurred by employees of the Department of State, employees of other federal agencies, private U.S. citizens and other individuals with the Department of State or the U.S. Government. The information included is directly related to the accounting and collection of these debts.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Kenneth F. Rossman, Acting Chief; Programs and Policies Division, Office of Information Resources Management Programs and Services, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1512.

This system of records will be effective 40 days from the date of publication (December 29, 1997) unless we receive comments which will result in a contrary determination.

The new system description, "Records of the Domestic Accounts Receivable Tracking System, STATE–23" will read as set forth below.

Dated: November 5, 1997.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

STATE–23

SYSTEM NAME:

Records of the Domestic Accounts Receivable Tracking System.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, Annex 15; 1800 N. Kent Street; Arlington, VA 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of State, employees of other federal agencies, private U.S. citizens, and other individuals who have incurred a debt to the Department of State or the U.S. Government. Examples may include but are not limited to repatriation loans, emergency medical/dietary assistance loans, employee medical services, salary advances, and travel advances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3921 (Management of service); 5 U.S.C. 301 (Management of the Department of State); 31 U.S.C. 3701–3720A (Claims of the United States Government).

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation and related correspondence regarding the incurrence of a debt, which may include, but are not limited to the following: Fiscal irregularity accounts, installment and promissory agreements, repatriation loan applications, emergency medical/dietary assistance loan applications, transmittals from the Office of Medical Services regarding employee medical services and insurance reimbursement to the Department, salary advances, travel advances, unused tickets, and other debtor accounts submitted to the Department of State by other federal agencies for collection action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used for aging, reviewing, collecting and updating the individual accounts of debts owed to the Department of State or the U.S. Government, in accordance with the Debt Collection Improvement Act of 1996. The principal user of this information outside the Department of State is the Department of Treasury for administrative offset collection. Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name, Social Security Number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Access to Annex 15 has security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Resources Management Programs and Services, Room 1239, Department of State; 2201 C Street, NW, Washington, DC 20520–1512.

SYSTEM MANAGER AND ADDRESS:

Managing Director, Domestic Financial Services Directorate, Room 6604D, Department of State, Annex 15, 1800 N. Kent Street, Arlington, VA 22209.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Domestic Financial Services Directorate might have records pertaining to themselves should write to the Director; Office of Information Resources Management Programs and Services, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1512. The individual must specify that he/she wishes the Records of the Domestic Accounts Receivable Tracking System to be checked. At a minimum, the individual should include: Name; date and place of birth; Social Security Number; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record, (including the city and/or country); and the approximate dates which give the individual cause to believe that the Domestic Financial Services Directorate has records pertaining to him/her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Resources Management Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–30161 Filed 11–17–97; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected costs and burden hours. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published in FR 62 46400, September 2, 1997.

DATES: Comments must be submitted on or before December 18, 1997.

FOR FURTHER INFORMATION CONTACT: David Mednick, Environmental Specialist, K–20, Bureau of Transportation Statistics, 400 Seventh

Street, SW., Washington, DC 20590, (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

1. Title: Quarterly Report of Class I Motor Carriers of Property.

OMB Control No: 2139–0002.

Type of Request: Extension of a currently approved information collection.

Form Number: BTS Form QFR.

Affected Public: Class I Motor Carriers of Property.

Abstract: These data collection forms were transferred from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) on January 1, 1996, by the ICC Termination Act of 1995. The OMB Control numbers while under the ICC were 3120–0002, 3120–0032, and 3120–0138. Pursuant to 14 U.S.C. § 14123, DOT is required to collect annual financial reports from Class I and Class II motor carriers. DOT may also require motor carriers to file quarterly reports. In determining the matters to be covered by the reports, DOT must consider (1) safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. BTS wishes to continue to provide periodic information on the health of the motor carrier of property industry, its impact on the economy, and industry changes that may affect national transportation policy.

Estimated Annual Burden: The total estimated annual burden is 7,200 hours.

2. Title: Annual Report of Class I Motor Carriers of Property.

OMB Control No. 2139–0004.

Form No.: BTS Form M–1.

Type of Review: Extension of a currently approved collection.

Affected Public: Class I Motor Carriers of Property.

Abstract: These data collection forms were transferred from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) on January 1, 1996, by the ICC Termination Act of 1995. The OMB Control numbers while under the ICC were 3120–0002, 3120–0032, and 3120–0138. Pursuant to 14 U.S.C. § 14123, DOT is required to collect annual financial reports from Class I and Class II motor carriers. DOT may also require motor carriers to file quarterly reports. In determining the matters to be covered by the reports, DOT must consider (1) safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. BTS wishes to continue to provide periodic information on the health of the motor carrier of property industry, its impact on the economy, and industry changes that may affect national transportation policy.

Annual Burden Hours Estimate: 22,500.

3. Title: Annual Report of Class II Motor Carriers of Property.

OMB Control No. 2139–0005.

Form No.: BTS Form M–2.

Type of Review: Extension of a currently approved collection.

Affected Public: Class II Motor Carriers of Property.

Abstract: These data collection forms were transferred from the Interstate Commerce Commission (ICC) to the Department of Transportation (DOT) on January 1, 1996, by the ICC Termination Act of 1995. The OMB Control numbers while under the ICC were 3120–0002, 3120–0032, and 3120–0138. Pursuant to 14 U.S.C. § 14123, DOT is required to collect annual financial reports from Class I and Class II motor carriers. DOT may also require motor carriers to file quarterly reports. In determining the matters to be covered by the reports, DOT must consider (1) safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. BTS wishes to continue to provide periodic information on the health of the motor carrier of property industry, its impact on the economy, and industry changes that may affect national transportation policy.

Annual Burden Hours Estimate: 19,000.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 12, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–30224 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published in 62 FR 38339, July 17, 1997.

DATES: Comments must be submitted on or before December 18, 1997.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Overflight Billing and Collection Customer Information Form.

OMB Control Number: 2120–0618.

Type of Request: Extension of currently approved collection.

Affected Public: Approximately 600 business or other for-profit organizations.

Abstract: The customer information form is needed in order to request and obtain proper billing information from carriers as well as properly identify Tail numbers as commercial or general aviation in order that carriers are charged the correct rate.

Annual Estimated Burden Hours: 50 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on November 12, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–30225 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of November 7, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3080

Date Filed: November 3, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC23 EUR–JK 0017

Europe—Japan/Korea Expedited Resos

r–1—002s r–3—074i

r–2—071ee r–4—250j

Intended effective date: December 15, 1997

Docket Number: OST–97–3081

Date Filed: November 3, 1997

Parties: Members of the International Air Transport Association

Subject:

PTC12 Telex Mail Vote 897

Portugal-Canada Fares r1–4

r–1—044j r–3—070gg

r–2—064j r–4—076kk

Intended effective date: January 1, 1998.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–30226 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 7, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3089.

Date Filed: November 5, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 3, 1997.

Description: Application of Federal Express Corporation, pursuant to 49 U.S.C. Section 41110 and Subpart Q of the Regulations, applies for amendment of its existing certificate authority to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in China, on the other hand, as contained in Federal Express' certificate of public convenience and necessity for Route 638.

Docket Number: OST–97–3076.

Date Filed: November 3, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 1, 1997.

Description: Application of Servicios Aereos Profesionales S.A., pursuant to 49 U.S.C. Section 41110 and Subpart Q of the Regulations, applies for a foreign air carrier permit to provide service between the Dominican Republic and the United States under a wet lease agreement with a U.S. Carrier.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–30227 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Winair, Inc. for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, (OCT).

ACTION: Notice of Order to Show Cause (Order 97–11–21); Dockets OST–97–2936 and OST–97–2937.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding WINAIR, Inc., fit, willing, and able, and (2) awarding it a certificates to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than November 19, 1997.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–97–2936 and OST–97–2937 and addressed to Department of Transportation Dockets (SVC 121.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: November 12, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–30211 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–62–P–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–97–044]

Houston/Galveston Navigation Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of full committee meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) will hold a special meeting to discuss the proposal by the Army Corps of Engineers (ACOE) to dredge the Houston Ship Channel through Galveston Bay along the east side only. As part of the approved, multi-year project to deepen and widen the Houston Ship Channel, this proposed east-side-only dredging will occur between Bolivar Roads and Five Mile Cut. The meeting will be open to the public.

DATES: The meeting of HOGANSAC will be held on Wednesday, November 19,

1997 at 9:00 a.m. Members of the public may present written or oral statements at the meeting.

ADDRESSES: The HOGANSAC meeting will be held in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Captain Kevin Eldridge, Executive Director of HOGANSAC, telephone (713) 671–5199, or Commander Paula Carroll, Executive Secretary of HOGANSAC, telephone (713) 671–5164.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of the Meeting

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Executive Director (CAPT Eldridge) and chairman (Tim Leitzell).

(2) Discussion on the ACOE proposal and comments from the floor.

Procedural

All meetings are open to the public. Members of the public may make oral presentations during the meetings.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: October 29, 1997.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 97–30366 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program: Naples Municipal Airport, Naples, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Naples under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On April 2, 1997, the FAA determined that the noise exposure maps submitted by the City of Naples under Part 150 were in compliance with applicable requirements. On September 29, 1997, the Administrator approved the Naples Municipal Airport noise compatibility program. Most of the program measures were fully approved. Four (4) measures was partially approved and one (1) measure was disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Naples Municipal Airport noise compatibility program is September 29, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Naples Municipal Airport, effective September 29, 1997.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses ardund the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The City of Naples submitted to the FAA on March 24, 1997, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from April 3, 1995 through March 21, 1997. The Naples Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 2, 1997. Notice of this determination was published in the **Federal Register**.

The Naples Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 2, 1997, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen (15) proposal actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 29, 1997.

Outright approval was granted for ten (10) of the fifteen (15) specific program measures. Four (4) measures were partially approved and one (1) measure was disapproved. The approval action was for the following program controls:

Noise abatement measure	Description	NCP pages
	OPERATIONAL MEASURES	
7.2.1 Preferential Runway	It is recommended that the existing preferential runway measure to maximize the use of Runway 4 for departures and Runway 22 for arrivals for aircraft with departure noise levels exceeding 76.4 EPNdB to continued in order to take advantage of the low sensitivity to noise of the commercial/industrial development located northeast of the airport. Implementation is based on pilot education and preferential runway assignment by the air traffic controllers when the tower is open. FAA Action: Approved.	Pages 3–3 to 3–8 and 7–1; Tables 3–1 to 3–3, 3–16, 7–1 and 7–2; and Figures 3–1 and 3–2.
7.2.2 Flight Procedures	This measure recommends elimination of the existing restriction to initial climb altitudes on departure from Naples Municipal Airport (APF) to 2,000' above sea level (ASL). FAA Action: Disapproved. This measure will not have a significant noise reduction. In addition, it could interfere with air traffic safety and efficiency because the altitude limit is initially necessary to ensure separation from other traffic in the area and is removed by the controller when the aircraft is radar identified and separation is assured.	Pages 3–12, 3–13, and 7–3; Figure 3–4; and Tables 3–6, 3–16 and 7–2.
7.2.3 Flight Paths	Revised Visual Flight Rules (VFR) noise abatement departure flight paths have been proposed for each runway at the airport to reduce noise by moving traffic away from developed areas. Runway 4—early left turn. Aircraft would fly just to the east of Airport-Pulling Road and would avoid the residential communities in the area. Runway 22—right turn. Aircraft would move away from the majority of the residential dwellings which are located southwest of the airport. Runway 13—early left turn. This track turns aircraft just north of Davis Boulevard, away from the residential development south of Davis. Runway 31—the existing departure, with a right turn, would impact the least number of people due to the fact that the aircraft do not overfly the coastline with its densely packed residential units. The FAA must also develop procedures which allow the pilots to fly these preferred flight paths. This is typically accomplished through SIDs or STARs, which are departure or arrival paths defined by radio navigation aids. Current systems such as the VOR, located on and off the airport, already provide this capability, but newer technology has even greater promise. Two newer systems, the Global Positioning System (GPS) and Transponder Landin System (TLS) could be used to define complex curved approach or departure paths which could be used to keep aircraft away from densely populated residential areas. The NAA has applied for state grants to install the TLS system by the end of the fiscal year 1997. FAA Action: Approved in part as a voluntary measure. The recommended noise abatement departure flight paths are approved as voluntary. The measure is disapproved in part, for purposes of Part 150, for that portion of the proposal which recommends use of the GPS and TLS to define complex curved approach and departure paths, pending submission of additional information describing the noise benefits of these techniques when technology becomes available.	Pages 3–16 to 3–31, 7–3 and 7–4; Tables 3–8 to 3–11, 3–16 and 7–2; and Figures 3–5 to 315.
7.2.4 Helicopters	It is recommended that the existing noise abatement measures for helicopters be continued including modification of take-off areas to implement common centralized departure areas and education of helicopter pilots. Helicopter pilots have agreed to depart from midfield, rather than runway ends, in order to obtain as much altitude as possible before departing the airport and helicopters will follow the fixed wing routes on the crosswind runway. The Naples Airport Authority (NAA) will maintain contact with pilot operators to modify these procedures, if necessary, and work out additional issues as they arise. FAA Action: Approved as a voluntary measure.	Pages 3–31, 3–32 and 7–4; and Tables 3–7, 3–16, 7–1 and 7–2.

Noise abatement measure	Description	NCP pages
7.2.5 Use Restrictions	This following measures were adopted by ordinance effective May 15, 1996, and are proposed for FAA approval in this Part 150 document. The measures include: a. nighttime elimination of Stage 1 aircraft use of the airport; b. voluntary curfew of Stage 2 and 3 jets during nighttime hours; c. future nighttime elimination of Stage 2 aircraft after the beginning of the year 2000, which is the target for the federal phase-out of Stage 2 aircraft weighing greater than 75,000 pounds. These restrictions would not apply to emergency flights, medical or government flights, or other flights which are for the benefit of public health, safety, and welfare. A Part 161 study may be appropriate or required. FAA Action: a. Approved, with respect to the Stage 1 ban. The airport operator has submitted supplemental information by letter dated July 31, 1997, which has been made part of this ROA, to support that Stage 1 operators have been successfully able to comply with this measure. The NCP states that this measure would reduce the population impacted within the DNL 65dB noise contour from 158 to 0 for the 5-year time frame. This measure has been in effect since May 1996 with no apparent concern by affected operators regarding undue burden on interstate or foreign commerce (see supplemental information submitted by airport operator). However, should impacts on air commerce occur which cannot be foreseen at the time of this approval, the FAA will reevaluate this determination in view of new factual information to ascertain whether it still meets the standards for Part 150 approcal or whether approval should be withdrawn in accordance with section 105.35(d)(6). b. Disapproved for purposes of Part 150 pending submission of sufficient information to make an informed analysis with respect to the voluntary curfew of Stage 2 and Stage 3 jets during nighttime hours. Although noise benefits of the voluntary curfew may be "intuitive", the NCP does not provide noise benefits for this measure. Truly voluntary operational measures affecting Stage 2 and Stage 3 aircraft are not subject to 14 CFR Part 161. However, any changes to the method of implementation which may affect whether this measure is voluntary would be subject to applicable procedures contained in 14 CFR Part 161. c. Disapproved with regard to the mandatory Stage 2 phaseout to begin the year 2000, pending satisfactory compliance with 14 CFR Part 161, and pending submittal of additional information to make an informed analysis. The Federal phaseout applies to aircraft weighing greater than 75,000 pounds. The NCP states that "Significantly less than 1 percent of all corporate jet operations at APF are in aircraft with maximum gross takeoff weights over 75,000 pounds." Part 161 requires separate analysis of restrictions on Stage 2 aircraft weighing less than 75,000 pounds; in addition, the burden on commerce has not been presented nor are the noise impacts versus the benefits of this measure presented.	Pages 3–32 to 3–42 and 7–4; Tables 3–12 to 3–14, 3–16 and 7–4; and Figures 3–16 and 3–17); supplemental information submitted from NAA by letter dated July 31, 1997.
7.2.6 Ground Noise	It is recommended that the existing ban on nighttime (between 10:00 p.m. and 7:00 a.m.) maintenance runups, effective May 15, 1996, and the designated locations and orientations recommended for maintenance and preflight runupe for turboprop aircraft be continued. Operators may request permission from airport management to conduct a maintenance runup during the restricted hours under exceptional circumstances. For example, an operator may require the aircraft for an early morning departure, which would have to incur a substantial delay if the runup could not be conducted until after 7:00 a.m. For such approval, management may set limits on exactly when and where the runup would be conducted, and limit duration of the runup and the power settings used. Maintenance or pre-flight runupe for turboprop aircraft should be conducted at one of the locations shown on Figure 3–19 in the NCP document and, as wind conditions permit, should be oriented to the north or northeast. This will abate ground noise levels in the community, especially at times when background noise levels are very low. FAA Action: Approved. FAA approval is given in consideration of the exceptions available to aircraft operators. This measure has been in effect since May 1995. New information which may become available to the FAA which demonstrates that this measure could impact total number or hours of Stage 2 or Stage 3 aircraft operations may make this measure subject to applicable requirements of 14 CFR Part 161.	Pages 3–43 to–3 45; Tables 3–16, 7–1 and 7–2; and Figures 3–18 and 3–17.

Noise abatement measure	Description	NCP pages
LAND USE MEASURES		
7.3.1 Land Acquisition	This measure recommends land acquisition in Rock Creek Campground and residential or vacant uses in the Naples Villas area to develop a compatible buffer when no other land use strategy is appropriate. FAA Action: Approved under 14 CFR Part 150 with respect to noncompatible land uses within the noise contours of the official noise exposure maps as provided in the Aviation Safety and Noise Abatement Act and 14 CFR Part 150. Some of these areas may be outside of the noise contours, in which case they would be outside the parameters of this Part 150 approval. However, the FAA would encourage local government to exercise its prerogative to establish noise buffers that meet locally determined needs. Vacant land is deemed compatible under 14 CFR Part 150 unless it is demonstrated that there is imminent danger of it being developed noncompatibly.	Pages 5–2 to 5–6 and 7–5; Tables 5–2 and 7–3; and Figures 4–2 and 5–1.
7.3.2 Easements	This measure recommends the purchase of easements for homes in the Naples Villas area and the consideration of easements for Rock Creek Campground to provide an adequate buffer of compatible uses around the airport. FAA Action: Approved under 14 CFR Part 150 with respect to noncompatible land uses within the noise contours of the official noise exposure maps as provided in the Aviation Safety and Noise Abatement Act and 14 CFR Part 150. Some of these areas may be outside of the noise contours, in which case they would be outside the parameters of this Part 150 approval. However, the FAA would encourage local government to exercise its prerogative to establish noise buffers that meet locally determined needs. Vacant land is deemed compatible under 14 CFR Part 150 unless it is demonstrated that there is imminent danger of it being developed noncompatibly.	Pages 5–7, 5–8 and 7–5; Tables 5–2 and 7–3; and Figures 4–2 and 5–1.
7.3.3 Zoning/Land Use Planning.	The NAA has adopted the DNL 65dB noise contour as the threshold of incompatibility for residential areas, but for zoning and land use planning this measure recommends that the area within the DNL 60dB noise contour apply the same standard as Part 150 recommends for the DNL 65dB noise contour as a buffer to ensure that residential and noise sensitive uses are not developed too close to the Airport. FAA Action: Approved. This is within the authority of the local land use planning jurisdictions.	Pages 5–10 to 5–12 and 7–5; Tables 5–2 and 7–3; and Figure 5–2.
7.3.4 Fair Disclosure	It is recommended that a Fair Disclosure Program be developed to educate potential home buyers of the airport and its flight paths through voluntary cooperation from realtors, lenders, property managers, and local government staff so all potential residents who would be located along the flight paths for the runways would be aware of their location. This measure includes the development, publication and distribution of information regarding airport noise and operations. FAA Action: Approved.	Pages 5–13, 5–14 and 7–5; and Tables 5–2 and 7–3.
CONTINUING PROGRAMS MEASURES		
7.4.1 Noise Abatement Officer	It is recommended that the Noise Abatement Officer position currently being filed by staff with additional responsibilities at the Airport be continued. This person's responsibilities include oversight of the implementation of all noise abatement/land use compatibility programs as well as investigation of noise complaints FAA Action: Approved.	Pages 2–3, 6–1 and 7–6; and Table 7–4.
7.4.2 Noise Compatibility Advisory Committee.	This measure recommends the implementation of a noise compatibility advisory committee with membership consisting of representatives of airport users and tenants, local officials, area businesses, area residents, and Airport management. This will be an advisory committee to provide feedback regarding noise issues and represent all interests on and around the airport FAA Action: Approved.	Pages 6–1 and 7–6; and Table 7–4.
7.4.3 Noise Monitoring Program.	This measure recommends the implementation of a noise monitoring program and the purchase (or rental) of a portable noise monitor and associated computer software and hardware. Residents surrounding the Airport can assist the noise abatement officer by providing sites for noise monitoring FAA Action: Approved.	Pages 6–2 and 7–6; and Table 7–4.
7.4.4 Public Information Program.	The development and implementation of a public information program is recommended to provide the public with information which makes them aware of the efforts of the Airport management to address their concerns. One measure which would continue is the newsletter which is routinely published by the NAA. FAA Action: Approved.	Pages 6–2 and 7–6; and Table 7–4.
7.4.5 NCP Review, Evaluation, and Revision.	This measure recommends that the Noise Compatibility Program be reviewed and evaluated on a regular basis to measure performance against goals. The Part 150 will be updated every five years or sooner if applicable. FAA Action: Approved.	Pages 6–2 and 7–6; and Table 7–4.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 29, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Naples.

Issued in Orlando, Florida on October 22, 1997.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 97–30228 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Termination of Environmental Impact Statement; Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of termination.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advertise to the public that the environmental impact statement for the proposed extension of Runway 9L–27R to 10,000 feet at Palm Beach International Airport has been terminated. The FAA will continue the environmental process for the proposed extension of Runway 9L–27R to 10,000 feet as an environmental assessment (EA). This is consistent with the previous Notice of Intent which was published in the Federal Register on March 12, 1990, as well as within the information presented during scoping.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 27.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA will terminate the Environmental Impact Statement and continue the environmental process as an Environmental Assessment for a proposed project to lengthen Runway 9L–27R at the Palm Beach International Airport (PBI) to 10,000 feet for air carrier aircraft use. The decision to terminate the EIS and continue the environmental process as an EA was based on the preliminary environmental analysis which depicted no significant impact in any environmental impact category. The Palm Beach County Department of Airports will prepare the draft EA document, make the draft EA document available to the public and governmental agencies for comment, offer the opportunity for a public hearing and submit the EA document to the FAA for the appropriate environmental decision.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 7, 1997.

W. Dean Stringer,

Acting Manager, Orlando Airports District Office.

[FR Doc. 97–30214 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air traffic issues.

DATES: The meeting will be held on December 8, 1997, at 10:00 a.m.

ADDRESSES: The meeting will be held at the Air Traffic Control Association Headquarters, 2300 Clarendon Blvd., Suite 711, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Thorson, Transportation Regulations Analyst, Airmen and Airspace Rules Division, Office of Rulemaking (ARM–107), 800 Independence Avenue, SW, Washington, DC 20591. Telephone: (202) 267–7470; FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee. This meeting will be held on December 8, 1997, at 10:00 a.m., at the Air Traffic Control Association Headquarters, 2300 Clarendon Blvd., Suite 711, Arlington, VA.

The agenda for this meeting will include an update and discussion on Special Visual Flight Rules (VFR) tasking.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on November 10, 1997.

Reginald C. Matthews,

Assistant Executive Director for Air Traffic Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–30213 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application #97–02–I–00–SPW To Impose a Passenger Facility Charge (PFC) at Spencer Municipal Airport, Spencer, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Spencer Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 18, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Donna M. Fisher, City Clerk, Spencer, Iowa, at the following address: City of Spencer, 418 2nd Avenue West, Spencer, Iowa 51301.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Spencer under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Spencer Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 4, 1997, the FAA determined that the application to impose a PFC submitted by the City of Spencer, Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 14, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January, 2003.

Proposed charge expiration date: September, 2011.

Total estimated PFC revenue: $128,500.

Brief description of proposed project: Purchase snow removal equipment and construct equipment storage building.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Spencer, Iowa.

Issued in Kansas City, Missouri on November 5, 1997.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 97–30229 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Proposed Central Light Rail Transit Line Between North Seattle (Northgate) and SeaTac, WA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Central Puget Sound Regional Transit Authority (RTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). The RTA will also ensure that the EIS satisfies the requirements of the Washington State Environmental Policy Act (SEPA). The FTA will be the NEPA lead agency. The RTA will be the SEPA lead agency. Corridor alternatives were evaluated in a SEPA plan-level EIS (1993) and in a Major Investment Study (1997).

The EIS will evaluate the Central Light Rail Transit (LRT) Project and alignment alternatives in the 23-mile long corridor between North Seattle (Northgate) and SeaTac, Washington. The proposed Central LRT Project is intended to provide light rail transit service between key activity centers along the corridor, including the region's three largest employment centers, many major institutions, dense residential neighborhoods, and regional destinations, such as Sea-Tac International Airport.

The study area also includes several sites for a proposed LRT vehicle storage and maintenance facility. In addition, the EIS will evaluate the no-build alternative and any new, reasonable alternatives within the corridor generated through the scoping process.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, regional, and local agencies. Six public scoping meetings will be held, as well as one inter-agency scoping meeting. See **DATES** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the RTA by January 5, 1998. See **ADDRESSES** below. Oral comments should be made at one of the six public scoping meetings scheduled below.

Scoping Meetings: Public scoping meetings will be held on the following days and locations:

Tuesday, December 9, 1997, from 4:00 p.m. to 9:00 p.m., Kane Hall, Walker Ames Room, University of Washington Campus, Seattle, WA

Wednesday, December 10, 1997, from 4:00 p.m. to 9:00 p.m., Union Station, 401 S. Jackson Street, Seattle, WA

Thursday, December 11, 1997, from 4:00 p.m. to 9:00 p.m., Rainier Community Center, 4600 36th Avenue South, Seattle, WA

Saturday, December 13, 1997, from 9:00 a.m. to 12:00 noon, Seattle Central Community College, 1701 Broadway, Room 1110, Seattle, WA

Saturday, December 13, 1997, from 1:30 p.m. to 5:00 p.m.† Foster High School Commons, 4242 S. 144th Street, Tukwila, WA

Wednesday, December 17, 1997, from 4:00 p.m. to 9:00 p.m., Tyee High School Auditorium, 4424 South 188th Street, SeaTac, WA

A scoping meeting for governmental agencies will be held on Monday, December 8, 1997, between 1:00 p.m. and 4:00 p.m. at the RTA, 1100 2nd Avenue, Suite 500, Seattle, WA 98101–3423. All the locations for the scoping meetings are accessible to people with disabilities. People with special needs should contact the RTA at the address below or by calling (206) 684–6776. A TDD number is also available: (206) 684–1394.

Scoping meetings will be held in an "open-house" format. Project representatives will be available to discuss the project throughout the entire meeting. Informational displays and written materials will also be available throughout the entire meeting. In addition to written comments, which may be made at the meeting or as described below, a stenographer will be available at the meeting to record oral comments.

ADDRESSES: *Written comments on the project scope should be sent to:* Perry Weinberg, Environmental Compliance Manager, Regional Transit Authority, 1100 Second Avenue, Suite 500, Seattle, WA 98101–3423; *fax number:* (206) 689–3525.

FOR FURTHER INFORMATION CONTACT: Mr. F. William Fort, Transportation Program Specialist, Federal Transit Administration, Region X, 915 Second Avenue, Room 3142, Seattle, WA 98174; *phone number:* (206) 220–4461.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and the RTA invite interested individuals, organizations, and federal, state, regional and local agencies to participate in defining the alternatives within the corridor to be evaluated in the EIS and identifying any significant, social, economic, or environmental issues related to the alternatives. An Environmental Scoping Information Report describing the project, the proposed alternatives, the impact areas to be evaluated, the public involvement program and the preliminary project schedule has been prepared. You may request a copy of the report by contacting the person identified above in the section **FOR FURTHER INFORMATION CONTACT.** Scoping comments may be made orally at the public scoping meetings or in writing. See **DATES** above for locations and times, and see the **ADDRESSES** section above for written comments. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated

and suggesting alternatives that are more cost-effective or have fewer environmental impacts while achieving similar transit objectives.

Scoping materials will be available at the meeting or in advance of the meeting by contacting the RTA at (206) 684–6776. If you wish to be placed on the mailing list to receive further information as the project proceeds, please contact the following at the *RTA:* Ron Endlich, LRT North Corridor Manager (206) 684–1634 or Jonathan Jackson, LRT South Corridor Manager (206) 684–6773.

II. Description of Study Area and Project Need

The Central LRT Project study area is a north-south corridor, approximately 23 miles long between the Northgate area in north Seattle and SeaTac, Washington. The Central LRT Project will include a partially grade-separated, double-track light rail line on new right-of-way. Conventional LRT low-floor vehicles are expected to be used. Service is expected to operate every 6 minutes in peak periods and every 8 minutes in off-peak times, 18 to 20 hours a day, seven days a week.

A total of 21 LRT stations are proposed to serve the major transit markets of Northgate, the University District, Capitol Hill, First Hill, downtown Seattle, Southeast Seattle, and the cities of Tukwila and SeaTac. Light rail service will operate through downtown Seattle in the existing transit tunnel. Bus transfer facilities will be provided at each LRT station. Transfers to planned commuter rail service will take place at several selected stations.

III. Alternatives

The alternatives proposed for evaluation include a variety of alignment alternatives for different segments of the corridor. In addition, various track profiles will be evaluated throughout the study area. Profiles include tunnel, surface and aerial sections.

Beginning from the south, in the SeaTac segment two route alignment alternatives will be evaluated. One route follows International Blvd. (State Route 99) from S. 200th Street, north past SeaTac Airport to the intersection with SR–518. The other alignment starts from the same location at the south end of the City and follows 28th Street, using SeaTac Airport property traveling north to connect with the SR–99 route.

In the Tukwila segment, two alternative alignments will be evaluated. One alignment would use Pacific Highway South (State Route 99) between the SeaTac city limits and Boeing Access Road. The second alignment would travel east from State Route 99 along State Route 518 and continue east past Southcenter Mall. The line would proceed north along Interurban Avenue to I–5 at Boeing Access Road.

In the southeast Seattle (Rainier Valley) segment, two alignment alternatives will be considered. One follows Martin Luther King, Jr. Way from Henderson Street north to McClellan Street. The other follows Rainier Avenue South between the same locations. Various combinations of these alignments may also be considered.

Between South McClellan Street and the Downtown Seattle Transit Tunnel, two general alignments will be evaluated. One alignment would run north along Rainier Avenue past I–90, before heading west to connect with the existing International District tunnel station. The second alignment would explore the feasibility of tunneling under Beacon Hill, beginning just west of the intersection of Rainier Avenue and Martin Luther King, Jr. Way. The route would connect with the existing E–3 busway at South Lander Street and would travel north to the International District tunnel station.

From the north end of the Downtown Seattle Transit Tunnel to the University District, two alignments will be evaluated. One alignment is a tunnel beginning under I–5 east of the existing Convention Place tunnel station. The tunnel would loop south to serve First Hill, then continue north under Broadway Avenue and 10th Avenue East. The tunnel would continue under Portage Bay and 15th Avenue Northeast in the University District. Another alignment would run north from the Downtown Seattle Transit Tunnel at the Westlake Station underground through the Denny Regrade and the Seattle Center areas. The route would continue northeast through south Lake Union and the Eastlake/Fairview area, adjacent to I–5. The route would leave the tunnel north of SR–520 and would cross the Ship Canal on a new high-level bridge parallel to the existing I–5 bridge. The route would continue east along Campus Parkway and reenter a tunnel under the University District.

In the University District to Northgate segment, several alternative alignments will be considered for the segment between Ravenna Boulevard and N.E. 75th Street. These alternatives include alignments along 8th Avenue N.E., Roosevelt Way, and 12th Avenue N.E.

The proposed Central LRT Project also includes construction of an LRT vehicle storage and maintenance facility. Alternative locations for the facility will be evaluated in the City of Tukwila, near Boeing Access Road and East Marginal Way South, and in Southeast Seattle, between Boeing Access Road and Henderson Street.

The No-Build alternative, which involves no change to transportation services or facilities in the corridor beyond those currently programmed, will also be evaluated in the EIS.

IV. Probable Effects/Potential Impacts for Analysis

The FTA and RTA plan to evaluate in the EIS all significant, social, economic, and environmental impacts of the alternatives. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, traffic circulation, visual impacts, health and safety impacts, impacts on cultural and archaeological resources, impacts on wetland and parkland areas, and noise and vibration impacts. The impacts on natural areas, rare and endangered species, and earth, air and water quality, will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operations. Reasonable measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The Environmental Impact Statement (EIS) and the Preliminary Engineering (PE) for the Central Light Rail Transit Project will be conducted simultaneously. The locally preferred light rail transit mode and its general alignment were selected previously on the basis of the evaluation in the Major Investment Study (1997). The EIS/PE process will assess the social, economic and environmental impacts of alternative specific alignments, station locations and designs, and maintenance facility locations and designs to minimize and mitigate adverse impacts. A draft EIS will be published and made available for public and agency review and comment, and public hearings will be held. On the basis of the draft EIS and the comments received, the RTA will refine the project design and complete preliminary engineering and the final EIS.

Issued: November 12, 1997.

Helen M. Knoll,

Regional Administrator.

[FR Doc. 97–30212 Filed 11–17–97; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 18, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 12, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulations(s) affected	Nature of exemption thereof
11986–N	RSPA–97–2661	Russell-Stanley Corp., Red Bank, NJ.	49 CFR 178.601(a)(b)(c)	To authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test. (Modes 1, 2, 3.)
11980–N	RSPA–97–3093	American Type Culture Collection (ATCC), Rockville, MD.	49 CFR 173.196, 178.609	To authorize the transportation in commerce of infectious substances in small quantities in glass, plastic vials and ampules in mechanical freezers. (Mode 1.)
11981–N	RSPA–97–3094	The Dexter Corporation, Electric Materials, Division Londonderry, NH.	49 CFR 173.28(b)(2)	To authorize the one-time reuse of 1H1 plastic drums without performing the leakproofness test and marking the drums as would otherwise be required by Sec. 173.28(b)(2). (Mode 1.)
11982–N	RSPA–97–3095	Webasto Thermosystems, Inc., Madison Heights, MI.	49 CFR 177.834 (1)(2)(i)	To authorize the manufacture, mark and sale of cargo heaters for use in transporting Class 3 or Division 2.1 hazardous materials in enclosed trucks or trailers on highway vehicles. (Mode 1.)
11983–N	RSPA–97–3096	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 172.101, T–37	To authorize the transportation in commerce of hydrogen peroxide, stabilized, Division 5.1, in concentrations of 92% which exceeds the authorized 72%, in IM portable tanks. (Modes 1, 3.)
11987–N	RSPA–97–3097	Exceed, Inc., Oklahoma City, OK	49 CFR 173.196(c), 173.24a(a)(1), 173.24a(a)(3).	To authorize the manufacture, marking and sale of a specially designed combination packaging for use in transporting infectious substances, Division 6.2 in vials (Modes 1, 2, 3, 4.)
11990–N	RSPA–97–3098	Taylor-Wharton Coyne, Huntsville, AL.	49 CFR 173.201(c), 173.202(c), 173.302(a)(1), 173.304(a)(1), 175.3, 178.35–(e), 178.35–(f), 178.36–(a)(1), 178.36(b), 178.36–(g), 178.36–(j), 178.36–(m).	To authorize the manufacture, mark and sale of non-DOT specification cylinders for transportation in commerce of gas and oil well samplings containing certain Division 2.1, 2.2 and Class 3 material. (Modes 1, 2, 3, 4.)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulations(s) affected	Nature of exemption thereof
11993–N	RSPA–97–3100	Breed Technologies, Inc., Lakeland, FL.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the manufacture, mark and sale of non-DOT specification cylinders for use as components of automobile vehicle safety systems. (Modes 1, 2, 3, 4.)

[FR Doc. 97–30169 Filed 11–17–97; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 3, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M		E.I. DuPont de Nemours, Wilmington, DE (See Footnote 1)	3216
6971–M		Chem Service, West Chester, PA (See Footnote 2)	6971
7277–M		Structural Composites Industries, Pomona, CA (See Footnote 3)	7277
8757–M		YZ Industries, Inc., Snyder, TX (See Footnote 4)	8757
9791–M		Pressed Steel Tank Co., Inc., Milwaukee, WI (See Footnote 5)	9791
11054–M		Walker Engineering Co., Sugar land, TX (See Footnote 6)	11054
11344–M		E.I. DuPont, Wilmington, DE (See Footnote 7)	11344
11375–M		Oceaneering Space Systems, Houston, TX (See Footnote 8)	11375
11489–M		TRW Vehicle Safety Systems, Queen Creek, AZ (See Footnote 9)	11489
11952–M	RPSA–97–3101	Department of Defense, Falls Church, VA (See Footnote 10)	11952
11955–M	RPSA–97–2657	Scott Aviation, Lancaster, NY (See Footnote 11)	11955
11988–M	RPSA–97–3102	COFAP of America, Inc., Dayton, OH (See Footnote 12)	11988

(1) To modify the exemption to provide for rail transportation as an additional mode.

(2) To modify exemption to provide for transportation by passenger aircraft as an additional mode for use in transporting small quantities of chemicals inside glass bottles packaged in metal boxes overpacked in strong wooden or fiberboard boxes.

(3) To modify the exemption to provide for an alternative testing of non-DOT specification fiber reinforced plastic full composite cylinders used as part of a ground support system for aircraft maintenance.

(4) To modify the exemption to provide for additional service pressure of 2,250 psi, alternative hydrostatic test of 4,500 psi and alternative markings.

(5) To modify the exemption to provide for cargo aircraft as an additional mode of transportation for use in transporting non-specification cylinders, conforming in part with the DOT–3AA specification for transportation of certain nonflammable, nonliquefied compressed gases.

(6) To modify the exemption to authorize a series of piston cylinders with a 3600 psi service pressure for use in transporting various hazardous materials classed in Class 3, Division 2.1 and 2.3.

(7) To modify the exemption to provide for tank cars, containing chlorine, Division 2.3, to remain standing with unloading connections attached without the physical presence of an unloader.

(8) To modify the exemption to provide for several design changes to non-specification cylinder built to DOT-Specification 4L containing Division 2.2 material.

(9) To modify the exemption to provide for cargo only aircraft and cargo vessel as additional modes of transportation for use in transporting Division 1.4C explosive articles.

(10) To reissue the exemption originally issued on an emergency basis for use in transporting specially designed packaging consisting of a cylinder containing less than 7.22 cubic inches of nitrogen, compressed, Division 2.2.

(11) To reissue the exemption originally issued on an emergency basis for transportation in commerce of oxygen generators which utilize special inegrs as secondary means of preventing actuation.

(12) To reissue the exemption originally issued on an emergency basis to manufacture, mark and sale shock absorbers and struts containing non-flammable gas, Division 2.2, as accumulators.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 6, 1997.

J. Suzanne Hedgspeth,
Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 97–30170 Filed 11–17–97; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–536X and STB Docket No. AB–536X]

West Central Ohio Port Authority—Abandonment Exemption—In Clark County, OH; The Indiana and Ohio Central Railroad Company, Inc.—Discontinuance of Service Exemption—In Clark County, OH

West Central Ohio Port Authority (Westco) and The Indiana and Ohio Central Railroad Company, Inc. (IOCR), have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* for Westco to abandon and IOCR to discontinue service over a 5.6-mile line of railroad between milepost 123.86 at or near Glen Echo and milepost 129.46 at the north edge of Warder Street in Springfield, Clark County, OH. The line traverses United States Postal Zip Code 45502.[1]

Westco and IOCR have certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 18, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 28, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 8, 1997, with: Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Westco and IOCR have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 21, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Westco shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Westco's filing of a notice of consummation by November 18, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 12, 1997.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 97–30303 Filed 11–17–97; 8:45 am]
BILLING CODE 4915–00–P

[1] Westco acquired the involved line from Consolidated Rail Corporation in *West Central Ohio Port Authority—Acquisition Exemption—Consolidated Rail Corporation*, Finance Docket No. 32443 (ICC served Jan. 28, 1994).

IOCR's lease and operation of the involved line was approved in *The Indiana & Ohio Central Railroad Company, Inc.—Lease and Operation—West Central Ohio Port Authority*, Finance Docket No. 32802 (ICC served Mar. 15, 1995).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center: Advisory Committee of the National Center for State, Local, and International Law Enforcement Training, Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, as amended), and with the approval of the Secretary of the Treasury and the concurrence of the Office of Management and Budget, the Federal Law Enforcement Training Center (FLETC) announces the renewal of the following Advisory Committee:

Title: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

Purpose: The primary purpose of the Advisory Committee is to provide a forum for discussion and interchange between a broad cross-section of representatives for the law enforcement community and related training institutions on training issues and needs. Considering that there are over 40,000 individual police departments throughout the country,the advice emanating from this exchange is very important to the Director of the FLETC and the Director of the National Center for State, Local, and International Law Enforcement Training (National Center). The Committee's advice is critical to ensuring that programs developed and offered by the National Center are meeting the unique and specialized needs of the State and local law enforcement community and enhancing

the networking between Federal, State, and local agencies. This networking is essential to an efficient and effective overall system.

Although FLETC representatives participate in the training committee activities of the major police membership associates, no forum exists which provides the broad representation required to meet the needs of the National Center. The uniqueness of the program requires an appropriately selected and specifically dedicated group.

The Committee advises the Director of the FLETC and the Director of the National Center on policy formulation, training needs, curriculum and course content, student admission and evaluation. There is no question that the Committee's input has been very instrumental in the successes enjoyed to this point. Resources have been committed only to those programs which meet unique needs of the State, local, and international law enforcement community. All programs have been well attended, and critiques and evaluations are quite positive. In addition, State, local, and international agencies have actively participated in the development and delivery of the programs by providing personnel as subject matter experts, course developers, and instructors. The programs offered have been developed only after a thorough screening process to ensure that the limited resources available are being committed most productively. The Committee's input has been invaluable on this decision process.

The Committee does not duplicate functions being performed within Treasury or elsewhere in the Federal Government.

Termination Date: The services of the Committee are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date the Advisory Committee's Charter is approved. The Advisory Committee's Charter is approved by signature of the Assistant Secretary of the Treasury for Management.

John C. Dooher,

Associate Director.

[FR Doc. 97–30208 Filed 11–17–97; 8:45 am]

BILLING CODE 4810–30–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–33: OTS No. 3485]

Newport Federal Savings Bank, Newport, AR; Approval of Conversion Application

Notice is hereby given that on November 7, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Newport Federal Savings Bank, Newport, Arkansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: November 13, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–30269 Filed 11–17–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–32: OTS No. 3786]

Wyman Park Federal Savings and Loan Association, Lutherville, MD; Approval of Conversion Application

Notice is hereby given that on October 9, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Wyman Park Federal Savings and Loan Association, Lutherville, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: November 13, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–30270 Filed 11–17–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–34: OTS No. 1010]

Ninth Ward Savings Bank, FSB, Wilmington, DE; Approval of Conversion Application

Notice is hereby given that on November 10, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Ninth Ward Savings Bank, FSB, Wilmington, Delaware, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 13, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–30271 Filed 11–17–97; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 62, No. 222
Tuesday, November 18, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–024–5440–A015; AZA 25618; AZA 17969; AZA 18089]

Notice of Termination of Classification and Airport Application

Correction

In notice document 97–28089 beginning on page 55275 in the issue of Thursday, October 23, 1997, the subject heading is corrected to read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029–AB83

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

Correction

In proposed rule document 97–23958, beginning on page 47617, in the issue of Wednesday, September 10, 1997, make the following correction:

On page 47618, in the second column, under the heading **Discussion of Proposed Rule**, in the first line "not" and "move" should read "now" and "remove", respectively.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

[CGD 94–055]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels

Correction

In proposed rule document 97–28409, beginning on page 55548, in the issue of Monday, October 27, 1997 make the following correction:

§ 10.466 [Corrected]

On page 55560, in the third column, in § 10.466(b)(3), "the" should read "a limited".

BILLING CODE 1505–01–D

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federal register

Tuesday
November 18, 1997

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 645
Welfare-to-Work (WtW) Grants; Interim Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 645

RIN 1205–AB15

Welfare-to-Work (WtW) Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration hereby issues an Interim Final Rule implementing the Welfare-to-Work (WtW) grant provisions of Title IV, Part A of the Social Security Act as amended by the recent enactment of the Balanced Budget Act of 1997. The Interim Final Rule provides an administrative framework for the WtW program which is being coordinated with the closely-related Temporary Assistance for Needy Families (TANF) program administered by the Department of Health and Human Services (DHHS). While the use of WtW funds should occur within the larger framework of the TANF program in each State, these funds have a purpose that is distinct from that of the TANF program. The purpose of WtW is to provide transitional assistance which moves hard-to-employ welfare recipients living in high poverty areas into unsubsidized employment and economic self-sufficiency.

DATES: *Effective Dates:* This Interim Final Rule shall become effective on November 18, 1997. However, affected parties do not have to comply with the information collection requirements in § 645.240 (reporting requirements for WtW programs) until DOL publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

Comment Period: Comments must be submitted by January 20, 1998. The Department will not consider comments received after this date. Comments that are less than 10 pages in length may be transmitted via facsimile at (202) 219–0376, provided that submission of written text follows.

ADDRESSES: Submit written comments to the Employment and Training Administration, Welfare-to-Work Office, 200 Constitution Avenue, NW, Room S5513, Washington, D.C. 20210, *Attention:* Peter E. Rell.

All comments shall be available for public inspection and copying during normal business hours at the Employment and Training Administration, Office of Employment and Training Programs, 200 Constitution Avenue, NW, Room N4459, Washington, D.C. 20210. Copies of the Interim Final Rule are available in the alternate formats of large print and electronic file on computer disk which may be obtained at the above-stated address. The Interim Final Rule is also available on the WtW web site at http://wtw.doleta.gov. Comments may be submitted electronically to that web address.

In compliance with 28 U.S.C. 2112(a), the Employment and Training Administration designates the Associate Solicitor for Employment and Training Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2101, Washington, D.C. 20210, as the recipient of petitions to review this Interim Final Rule.

FOR FURTHER INFORMATION CONTACT: Mr. Peter E. Rell, Welfare-to-Work Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S5513, Washington, D.C. 20210, Telephone: (202) 219–0181 (voice) (This is not a toll-free number.) or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, information collection requirements which would be imposed as a result of the Interim Rule are being submitted separately to the Office of Management and Budget.

I. Background

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), a comprehensive welfare reform bill, under which the TANF program was established to supersede the Aid to Families with Dependent Children (AFDC) welfare program, the Job Opportunities and Basic Skills (JOBS) Training program and the Emergency Assistance (EA) Program. The TANF program at section 401(a) of the Social Security Act (Act) established the following objectives:

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.

The TANF provisions substantially changed the nation's welfare system from one in which cash assistance was provided on an entitlement basis to a system in which the primary focus is on moving welfare recipients to work and promoting family responsibility, accountability and self-sufficiency. In general, adult welfare recipients are expected to become self-sufficient within a 60-month period of time. In support of this "work-first" objective, the TANF provisions established an overall work participation rate for all households and a work participation rate for two-parent families that must be met by each State starting in fiscal year (FY) 97 and in each fiscal year thereafter through FY 2002. States that do not meet the TANF-established work participation rates face significant financial penalties.

The reference to "work-first" refers to the TANF concept that the primary focus is on placing individuals in employment activities. Nevertheless, the work-first approach also recognizes that individuals may be provided, as appropriate, education and skills training related to the job, as well as other services to ensure lasting employment and the achievement of self-sufficiency. Since the enactment of PRWORA, the Administration and Congress have been concerned that those welfare recipients who have the least skills, education, employment experience and who live within high poverty areas may need additional assistance to obtain lasting jobs and become self-sufficient.

On August 5, 1997, the President signed the Balanced Budget Act of 1997. This legislation amended certain TANF provisions of the Social Security Act and authorized the Secretary of Labor to provide WtW grants to States and local communities for transitional employment assistance to move the hard-to-employ TANF welfare recipients into unsubsidized jobs and economic self-sufficiency. Approximately 75 percent of the funds in each fiscal year will be distributed as formula grants to the States, with 85 percent to be passed through to local service delivery areas (SDAs) (generally, one or more units of local government with a population of 200,000 or more) in the States to be administered by the Private Industry Council (PIC) for the SDA, or an alternate administering entity approved by the Secretary of Labor according to the statutory requirements. The funds distributed through the WtW grant program will assist States and PICs to meet their welfare reform objectives by providing additional resources targeted to hard-to-employ welfare recipients residing in high poverty areas within the State.

WtW activities should be coordinated with those undertaken through TANF, as hard-to-employ welfare recipients constitute a significant portion of the TANF eligible population. Therefore, the ability of State/County TANF agencies, the PICs under the Job Training Partnership Act (JTPA), local governments and a variety of other entities (e.g., One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population) to implement WtW programs that move these individuals into employment and self-sufficiency will be a major factor in the success of the national initiative to reform the welfare system.

The Interim Final Rule provides a framework for the administration of WtW programs, in coordination with the closely-related TANF program. The Employment and Training Administration (ETA) has coordinated its WtW regulatory efforts with the rulemaking being initiated by the Department of Health and Human Services (DHHS) for the TANF program. The Interim Final Rule supplements TANF's emphasis on moving welfare recipients into work, and on improving program evaluation and performance.

Section 403(a)(5)(A)(ii)(I) of the Act indicates that the States' WtW formula plans are an "addendum" to the State TANF plans. In keeping with the Congressional intent to allow States maximum flexibility in implementing TANF requirements, the WtW regulations provide States and local governments with broad discretion to design and implement WtW programs that meet the needs of the hard-to-employ population in the individual States. This approach is consistent with PRWORA's statutory intent to provide States with maximum discretion. The PRWORA Conference Report, H.R. Conf. Rep. No. 725 104th Cong. 2nd Sess. (1996), states that the legislation establishes "broad cash welfare and child care block grants providing maximum flexibility so that States can reform welfare in ways that are appropriate for them, and can move families into jobs."

The WtW statute contains several provisions designed to encourage creative and effective use of grant funds. In particular, section 403(a)(5)(B) provides that approximately 25 percent of WtW funds shall be distributed through a competitive grant process which are designed, in part, to expand the base of knowledge about programs to successfully move hard-to-employ recipients to unsubsidized employment and self-sufficiency. In addition, section 403(a)(5)(E) sets aside $100 million as a successful performance bonus, to be distributed in FY 2000 among States who most effectively place hard-to-employ individuals in lasting employment at increased earnings.

The format, as well as the substance, of the Interim Final Rule reflects the Administration's commitment to regulatory reform. The current Federal Register *Document Drafting Handbook* encourages Federal agencies to produce regulations that are reader-friendly. The Department has made every effort to make these regulations clear and easy to understand, as well as to anticipate issues that may arise and to provide appropriate direction. To this end, the Part 645 regulatory text is presented in a "question and answer" format.

Section 403(a)(5)(C)(viii) of the Act requires the Secretary of Labor to prescribe regulations implementing the WtW program within 90 days of enactment, after consultation with the Secretaries of DHHS and Housing and Urban Development (HUD). Pursuant to Secretary of Labor's Order No. 4–75, the Assistant Secretary for Employment and Training has been delegated the responsibility to carry out WtW policies, programs, and activities for the Secretary of Labor.

Given the short time frame imposed on the Department, the Employment and Training Administration (ETA) has moved quickly to initiate coordination with the other Federal agencies that have related concerns. In particular, the Department established a Federal Policy Committee composed of officials from the Departments of HHS, HUD, Transportation and Labor. The Policy Committee reviewed and provided policy recommendations to the Department on issues that arose during the development of the Interim Final Rule.

In addition, ETA requested and received input from a broad range of interested parties regarding guidance to be provided by the Agency on how to comply with a number of WtW statutory provisions, e.g., allowable matching funds, expenditure time limits, reallocation policy, Governors' authority to select the State administrative agency, conditions under which the Governor may select an alternate administrative agency (other than the Private Industry Council) at the local level, eligible grant applicants for competitive WtW grants, allowable activities, post-employment and job retention services, job creation through public or private sector employment wage subsidies, community services and work experience programs, limits on administration costs, and performance standards and bonuses.

The Agency has determined that this Interim Final Rule, as promulgated, complies with the WtW statutory mandate and will provide effective direction for the implementation of WtW programs. ETA will review all comments received in response to the Interim Final Rule, as well as program experience, in considering what further action is necessary and promulgating a Final Rule.

II. Summary and Explanation

This section describes and explains the individual provisions of the Interim Final Rule. The explanatory text, in general, adheres closely to the corresponding WtW statutory language. The supporting rationale is provided for those instances where the rule provides direction not prescribed by the WtW statute.

ETA has set regulations only where they are necessary to clarify or to explain how the Agency intends to interpret the WtW statute. Consistent with the Act, the Interim Final Rule provides the States and local governments with the primary responsibility to initiate and develop program implementation procedures and policy guidance regarding WtW administration. For example, while 20 CFR 645.230 indicates that the OMB Circular A–102 "Common Rule" requirements apply to WtW programs, the Department has not defined what constitutes WtW "allowable activities" which are used under section 403(a)(5)(C) of the Act.

Pursuant to Section 411(a)(1) of the Social Security Act, DHHS has the responsibility to issue WtW participant and program data reporting requirements, after consultation with other appropriate parties. Accordingly, this Interim Final Rule does not address such reporting requirements in detail. Consistent with the purpose of WtW, which is to move welfare recipients into

unsubsidized employment and economic self-sufficiency, the statute anticipates reporting on these measures: placements in unsubsidized employment; placements in unsubsidized employment that last at least six months; placements in the private and public sectors; earnings of individuals who obtain employment; and average expenditures per placement.

Subpart A—Scope and Purpose

What Does This Part Cover? (§ 645.100)

This section of the Interim Final Rule indicates that Part 645 provides regulatory provisions applicable to WtW formula grant funds that are to be used to carry out State-level programs and programs conducted by the PICs at the Service Delivery Area (SDA) level. This part of the regulations also provides general guidance on WtW competitive grants, but it should be clear the Department intends to publish specific Solicitations for Grant Applications (SGAs) in the future. The SGAs to be published will be disseminated widely and will contain specific information about purpose, application requirements, funding amounts, and submission instructions for competitive grant awards.

What Are the Purposes of the Welfare-to-Work Program? (§ 645.110)

This section of the Interim Final Rule describes what the Department believes to be the statutory objective of the WtW program, which complements the overall objectives of the TANF program. For example, the WtW statutory provisions indicate that the ultimate objective to be achieved through the various allowable activities is to "* * * move individuals into and keep individuals in lasting unsubsidized employment * * *". In this regard, the WtW program complements the TANF objective to "* * * end the dependence of needy parents by promoting job preparation, work * * *". The WtW Program focuses on assistance on hard-to-employ welfare recipients living in high poverty areas.

Although the section requires only that WtW grant funds be coordinated with the State TANF expenditures, the Department also intends that WtW grant funds be coordinated with available resources from the Job Training Partnership Act (JTPA), the Employment Service, the Child Care and Development Block Grant, One-Stop systems, private sector employers, labor organizations, business and trade associations, vocational rehabilitation and other education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities and other sources that provide assistance to the WtW targeted individuals.

What Definitions Apply to This Part? (§ 645.120)

This section of the Interim Final Rule includes a limited number of definitions of terms, acronyms and phrases important to the implementation of the WtW programs. This section is not intended to be an all-inclusive listing of definitions provided within the WtW legislation and WtW regulations.

This section includes definitions for the terms "adult", "minor", and "TANF MOE" found in the TANF statute. The Department also relied on the definitions provided in the JTPA regulations at 20 CFR Part 626 for the terms "PIC" and "SDA." The definition for "Chief Elected Official" comes from Section 103(c) of the Job Training Partnership Act, as amended.

States and PICs (and alternate agencies) should keep in mind that additional definitions applicable to the WtW program, but not listed in this section for the sake of brevity, can be found in the definitions section(s) of the pertinent OMB Circulars on Uniform Administrative Requirements and the OMB Cost Principles Circulars. For example, 29 CFR 97.3 contains definitions for terms and acronyms relating to administration of the WtW programs operated by State, local and Indian tribal organizations, unless otherwise specified. Similarly, 29 CFR Part 96 contains other administrative definitions relating to non-profit organizations.

Subpart B—General Program and Administrative Requirements

What Does This Part Cover? (§ 645.200)

This subpart provides general program and administrative requirements for WtW formula grant funds, including Governors' funds for long-term recipients of assistance, and for competitive grant funding.

Of the total amount of WtW funds available for allotment (after reserving an amount for Indian tribes, evaluation, and performance bonuses), 75 percent is allotted to the States on a formula basis. Generally, the States are required to distribute at least 85 percent of this amount, pursuant to a statutory formula, to service delivery areas. The Governor of a State may reserve up to 15 percent of the State's allotment for projects to help long-term recipients of assistance. The roughly 25 percent of the funds that is not allotted to the States by formula is available for the Secretary to award through a competitive grant process. The regulations which appear in this subpart apply to these funds.

What Is Meant by the Terms "Entity" and "Project" in the Statutory Phrase "An Entity that Operates a Project" With Welfare-to-Work Funds? (§ 645.210)

This section defines the terms "entity" and "project" in the phrase "an entity that operates a project" with WtW funds, as used in section 403(a)(5)(C)(ii) of the Act.

For WtW substate formula funds, "entity" means the PIC (or the alternate agency designated by the Governor and approved by the Secretary) which administers the WtW formula funds in a service delivery area(s). This entity is referred to in §§ 645.211 through 645.225 as the "operating entity". The term "entity" does not refer to subrecipients, contractors, vendors, or other parties to which the PIC or alternate agency may choose to distribute WtW formula funds to provide specific services. The term "project" means all activities, administrative and programmatic, supported by the total amount of the WtW formula funds allotted to an entity as described above. Therefore, the requirement relating to the expenditure of 70 percent WtW funds on hard-to-employ individuals, as described in § 645.211, applies to all of the funds allotted to the PIC/alternate administering agency. The entity need not impose these expenditure requirements on each individual subrecipient, contractor, vendor or other party to whom it may choose to distribute WtW funds. However, the entity must ensure that, in the aggregate, it complies with the 70 percent expenditure requirement.

For Governors' funds for long-term recipients of assistance, "entity" means the agency, group, or organization to which the Governor has distributed such funds, as described in § 645.410 (b) and (c). This entity is referred to in §§ 645.211 through 645.225 as the "operating entity". The term "project" means all activities, administrative and programmatic, supported by the total amount of any one award of Governor's funds made to an entity as described above. Therefore, should the entity receive more than one award from the Governor, the 70 percent expenditure requirement, as described in § 645.211, applies individually to each award. The entity need not impose the expenditure requirement on each individual subrecipient, contractor, vendor or other party to whom it may choose to distribute WtW funds. However, the entity must ensure that in the aggregate it complies with the 70 percent expenditure requirement.

For competitive WtW grants, "entity" means an eligible applicant, as described in § 645.500, which is awarded a competitive WtW grant by the Secretary. This entity is referred to in §§ 645.211 through 645.225 as the "operating entity". The term "entity" does not refer to subrecipients, contractors, vendors, or other parties to which the competitive grant recipient may choose to distribute WtW funds. The term "project" means all activities, administrative and programmatic, supported by the total amount of any one competitive grant award. Therefore, should the same entity receive more than one competitive grant, the 70 percent expenditure requirement, as described in § 645.211, applies individually to each competitive grant. The entity need not impose the expenditure requirements on each individual subrecipient, contractor, vendor or other party to whom it may choose to distribute WtW funds. However, the entity must ensure that in the aggregate it complies with the 70 percent expenditure requirement.

How Must Welfare-to-Work Funds Be Spent by the Operating Entity? (§ 645.211)

This section restates the statutory provisions, at section 403(a)(5)(C)(ii) and (iii) of the Act, which require that an operating entity, as described in § 645.210 of this part, expend not less than 70 percent of the WtW funds allotted or awarded to it for the benefit of hard-to-employ individuals, as described in § 645.212, and which provide that up to 30 percent of the funds may be spent to assist individuals with characteristics associated with long-term welfare dependence, as described in § 645.213. If less than 30 percent of the funds are spent to assist individuals with long-term welfare dependence characteristics, as described in § 645.213, the remaining funds shall be spent to benefit hard-to-employ individuals, as described in § 645.212. This requirement applies to all WtW funds, i.e., to substate formula funds, Governors' funds for long-term recipients of assistance, and competitive funds. It should be noted that the requirement does not apply to the proportion of WtW participants served; rather, as noted above, it applies to the percentage of WtW funds expended on the participants in each category of eligibility.

Who May be Served as a Hard-to-Employ Individual Under the 70 Percent Provision? (§ 645.212)

The WtW legislation targets those welfare recipients who will have the most difficulty transitioning into employment. Specifically, the Act, at sections 403(a)(5)(C)(ii) and (iv), establishes three different categories of individuals who may be served under the 70 percent provision. An individual is eligible if (s)he meets the criteria of any one of the following three eligibility categories. (1) To be eligible under the first category, individuals: (a) must be recipients of TANF assistance; *and* (b) must have two of the three specified barriers to employment; *and* (c) must be long-term recipients of TANF assistance or will become ineligible for TANF assistance within twelve months. (2) To be eligible under the second category, an individual must be a noncustodial parent of a minor whose custodial parent meets the three criteria of the first eligibility category. (3) To be eligible under the third category, an individual must have the specified barriers to employment *and* no longer be receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit. The regulations paraphrase the statutory language.

Eligibility: Category One. To be eligible to be served under category one of the 70 percent provision, an individual must meet each of the following three eligibility criteria:

Criterion a: Recipients of TANF Assistance. The individual must be a current recipient of TANF assistance. The Act, at section 403(a)(5)(C)(ii), uses the term "recipients of assistance under the program funded under this part." In order to facilitate coordination at the local level, the Department has consulted with DHHS regarding interpretations for "the program funded under this part" and "assistance". Provisions in the statute which use the term "the program funded under this part" refer to the State's program of family assistance that is operated in accordance with the TANF statute, regardless of its funding source. Thus, any individual receiving TANF assistance under the State TANF program (whether funded with State or Federal funds) is deemed to meet this criterion of eligibility under the 70 percent provision.

"Assistance" means every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: (a) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support, and employment services that do not involve subsidies or other forms of income support; and (b) one-time, short-term assistance (i.e., assistance which is paid no more than once in any 12 month period, is paid within a 30 day period, and covers needs that do not extend beyond a 90-day period, such as automobile repair to obtain employment and avoid welfare receipt, and appliance repair to maintain living arrangements). The Secretary notes that she may issue further rules to conform this provision to similar provisions in forthcoming final regulations governing the TANF program.

Criterion b: Barriers to Employment. The Act, at section 403(a)(5)(C)(ii)(I), states that as the second criterion of eligibility under category one of the 70 percent provision, an individual must face at least two of the three following barriers to employment: (1) the individual has not completed secondary school or obtained a certificate of general equivalency, *and* has low skills in reading or mathematics; (2) the individual requires substance abuse treatment for employment; or (3) the individual has a poor work history.

We are defining the phrase "has low skills in reading or mathematics", which is used in the first barrier in criterion b, to mean having reading or mathematics skills at or below grade level 8.9. This definition is consistent with the definition which is used in the Job Training Partnership (JTPA) program. We are also defining the phrase "has a poor work history" to mean having worked no more than three consecutive months in the last 12 calendar months. In this way individuals who have taken the initiative to try employment but have not been successful for more than a brief period of time, are eligible for assistance. These definitions reinforce the intent of the WtW legislation to focus assistance on hard-to-employ individuals. However, we provide PICs flexibility for each of these definitions for up to 10 percent of participants to recognize individual circumstances, specialized needs, including individuals with disabilities, and local labor market conditions.

TANF agencies are required to perform an initial assessment of the skills, prior work experience and employability of each TANF recipient who is at least 16 years old, or who has not completed high school (or equivalent) and is not attending

secondary school. It is likely that this assessment may identify the above-noted barriers, and we do not want to require further assessment for the purposes of establishing eligibility where it is not needed. Additionally, in relation to the criterion "requires substance abuse treatment for employment," we note that DHHS is suggesting that the optional individual responsibility plan which the TANF agency develops based on the initial assessment may require the individual to undergo appropriate substance abuse treatment. We do not want to impose an additional Federal definition which would cause a local WtW program operator to "second-guess" this determination.

Criterion c: Long-Term/Duration-Impacted TANF Recipients. The third eligibility criterion under category one of the 70 percent provision requires that individuals be long-term recipients of TANF assistance or will become ineligible for TANF assistance within 12 months. The regulations paraphrase the statutory requirements, at section 403(a)(5)(C)(ii)(II), which states that an individual: (1) must have received assistance under a State TANF program, and/or its predecessor program, for at least 30 months, whether consecutive or not; or (2) will become ineligible for assistance within 12 months due to Federal or State-imposed durational time limits on receipt of TANF assistance. This includes individuals who have been exempted from the durational limits due to hardship pursuant to section 408(a)(7)(C) of the Act, but would have faced termination within 12 months without the exemption.

Eligibility: Category Two: Noncustodial Parents. The regulations paraphrase the statutory requirement at section 403(a)(5)(C)(ii). A noncustodial parent of a minor child whose custodial parent meets the eligibility criteria of category one, as specified in § 645.212(a) of this part, is eligible under the 70 percent provision. In order to facilitate coordination at the local level, we are not defining the term "noncustodial" any further. We are allowing States to develop and employ their own definition of the term, which we understand States generally use to mean a parent who is absent from the child's household. Under TANF, States can extend employment services to noncustodial parents by including them in their definition of "eligible family". In these cases, the States are already using their own non-Federal definition of "noncustodial." Further, States are required by statute to report to DHHS on the number of noncustodial parents participating in work activities. We do not want to impose a definition which would be at odds with those already existing in the States. If a State does not have a definition for "noncustodial" parent for TANF purposes, it should develop one in order to serve noncustodial parents in WtW projects.

Eligibility: Category Three: Exceeding Durational Time Limits. The regulations interpret the statutory provision at section 403(a)(5)(C)(iv) to apply to individuals who have reached State-imposed time limits on receipt of TANF assistance in addition to individuals who have reached the five-year Federal limit on receipt of Federal assistance. This interpretation is consistent with the purpose of the WtW funds to assist those who have the most difficulty making the transition from welfare to work. Therefore, an individual who has barriers to employment, as specified in § 645.212(a)(2) of this part, and who would otherwise be eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible.

Who May be Served as an Individual With Long-Term Welfare Dependence Characteristics Under the 30 Percent Provision? (§ 645.213)

The Act, at sections 403 (a)(5)(C)(iii) and (iv), establishes three different categories of individuals who may be served as individuals with characteristics associated with long-term welfare dependence under the 30 percent provision. An individual is eligible if (s)he meets any one of the following three eligibility categories: (1) To be eligible under the first category, individuals must be recipients of TANF assistance *and* have characteristics associated with, or predictive of, long-term welfare dependence. (2) To be eligible under the second category, an individual must be a noncustodial parent of a minor whose custodial parent is receiving TANF assistance, and the noncustodial parent must have characteristics associated with, or predictive of, long-term welfare dependence. (3) To be eligible under the third category, an individual must have characteristics associated with, or predictive of, long-term welfare dependence, be otherwise eligible to receive TANF assistance, but no longer be receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit.

Eligibility: Category One. To be eligible under category one of the 30 percent provision, an individual must meet both of the following criteria:

Criterion a: Recipients of TANF Assistance. The individual must be a current recipient of TANF assistance. The Act states, at section 403 (a)(5)(C)(iii)(I), that individuals with long-term welfare dependence characteristics under the 30 percent provision must be "recipients of assistance under the program funded under this part". The regulations paraphrase the statutory requirement. In order to facilitate coordination at the local level, the Department has consulted with DHHS regarding interpretations for "the program funded under this part" and "assistance". For a fuller discussion of this approach, refer to the discussion regarding recipients of TANF assistance in the preamble for § 645.212.

Criterion b: Characteristics Associated With Long-Term Welfare Dependence. The Act states, at section 403 (a)(5)(C)(iii)(I), that an individual must have characteristics associated with long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. We are interpreting "associated with" to include characteristics "predictive of" long-term welfare dependence. In order to facilitate coordination at the local level, we will not further define the characteristics associated with long-term welfare dependence. It is likely that the TANF assessment may identify the above-noted characteristics, and we do not want to require further assessment for the purposes of establishing eligibility where it is not needed. Moreover, the regulations interpret the statutory phrase "such as" to mean that, in addition to the characteristics listed in the statute, States and PICs may designate other characteristics associated with, or predictive of, long-term welfare dependence, including having a disability. In order to provide the State and local areas with flexibility to design the WtW program to support the goals and objectives of their overall program of assistance for welfare recipients, we are not imposing any further restrictions in this area. Starting with the FY98 State WtW formula plans, States will be asked to include examples of characteristics which the State and PICs consider to be predictive of long-term welfare dependency.

Eligibility: Category Two: Noncustodial Parents. The Act states, at section 403(a)(5)(C)(iii)(II), that noncustodial parents of minors who have the characteristics associated with, or predictive of, long-term welfare dependence, as described under category one, are eligible to participate under the 30 percent provision if the custodial parent is receiving TANF assistance. In order to facilitate coordination at the local level, we are not defining the term "noncustodial" any further. For a fuller discussion of this approach, refer to the discussion regarding noncustodial parents in the preamble for § 645.212.

Eligibility: Category Three: Exceeding Durational Time Limits. The regulations interpret the statutory provision at section 403(a)(5)(C)(iv) to apply to individuals who have reached State-imposed time limits on receipt of TANF assistance in addition to individuals who have reached the five-year Federal limit on receipt of Federal assistance. This interpretation is consistent with the purpose of the WtW funds to assist those who have the most difficulty making the transition from welfare to work. Therefore, an individual who has characteristics associated with, or predictive of, long-term welfare dependence, as specified in § 645.213(a)(2) of this part, and who would otherwise be eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible to participate under the 30 percent provision.

How Will Welfare-to-Work Participant Eligibility be Determined? (§ 645.214)

The regulations state that the operating entity is accountable for ensuring that WtW funds are spent on individuals who are eligible for WtW projects. The regulations acknowledge, however, that the operating entity may not be in the best position to determine all aspects of WtW eligibility, particularly those associated with receipt of TANF assistance. Therefore, the regulations ensure that there are mechanisms in place to establish WtW eligibility based on the criteria in §§ 645.212 and 645.213. We urge that the mechanisms for determining WtW eligibility address how the PIC or other WtW operating entity and the TANF agency will work together to facilitate the exchange of eligibility information. The actual scope of the mechanisms, operating procedures, and roles and responsibilities of the cooperating parties are best left to local determination given the myriad of circumstances that exist in local areas.

Since receipt of TANF assistance will be the single most critical WtW eligibility criterion in the majority of cases, it is critical that the TANF agency be the source of information about whether an individual is receiving TANF assistance, the length of such receipt, and applicable time limits on such receipt. At a minimum, therefore, for TANF recipients, WtW eligibility determination mechanisms must include arrangements with the TANF agency to ensure that such a determination is based on information, current at the time of the WtW eligibility determination, for the factors specified in § 645.214(b)(1) of this part.

In establishing WtW eligibility for the criteria of barriers to employment, pursuant to § 645.212(a)(2), and characteristics associated with long term-welfare dependency, pursuant to § 645.213(a)(2) of this part, the regulations seek to minimize duplication of effort and encourage coordination of TANF and WtW resources. Specifically, the regulations state that for TANF recipients, the operating entity may base a determination of WtW eligibility for these factors on information that was collected up to six months prior to the WtW eligibility determination, by or through the operating entity for JTPA or for other purposes, or by the TANF agency for the TANF assessment or individual responsibility plan (IRP). This mechanism provides an efficient method to minimize duplication of effort and utilize existing, reliable information while ensuring that a WtW eligibility determination will not be made on the basis of outdated information. This six-month window is intended to provide flexibility to the operating entity to customize its mechanisms for determining WtW eligibility to address the unique circumstances of its local area. In some cases, the operating entity may determine that a shorter time period is preferable. In others, the operating entity may determine that for some characteristics, such as the possession of a high school diploma, the individual's status immediately prior to determination of eligibility should be used in the determination. We recognize that the information previously collected by the operating entity or in the TANF assessment and IRP: (1) may be sufficiently comprehensive to allow for making the WtW eligibility determination; or (2) may not necessarily provide sufficient information to determine WtW eligibility in all categories. In either case, we urge close coordination between the TANF agency and the operating entity to develop a coordinated mechanism for eligibility determination.

The operating entity must also have mechanisms in place to determine WtW eligibility for individuals who are not receiving TANF assistance (i.e., noncustodial parents and individuals who have reached the time limit on receipt of TANF). Mechanisms may include approaches such as: (1) using staff from the operating entity to determine WtW eligibility (utilizing information from TANF and other appropriate agencies); (2) entering into agreements with local agencies, such as the TANF agency, and other appropriate entities, such as One-Stop systems and substance abuse treatment providers, which foster coordination and facilitate the exchange of eligibility information among parties at the local level; and/or (3) performing joint WtW eligibility determination with other appropriate agencies, including the TANF agency. The TANF agency should be able to provide information about assistance received by the custodial parent of minors or by exhaustees to permit the PIC to determine whether an individual qualifies as a noncustodial parent or about individuals who are no longer receiving TANF assistance.

In determining whether someone requires substance abuse treatment for employment, the operating entity can benefit from coordinating with the local recipients of funds from the Substance Abuse Prevention and Treatment (SAPT) Block Grant. In some States, SAPT funds substance abuse awareness and identification programs for TANF case workers. In others, substance abuse counselors supported by SAPT funds are co-located in TANF offices. We urge close coordination by the operating entity with efforts of SAPT and other agencies to identify and address substance abuse among the TANF population.

The regulations also state that once an individual begins to receive WtW services, the operating entity is not required to redetermine WtW eligibility. For instance, if someone ceases to receive TANF assistance due to increased earnings, that individual may continue to participate in appropriate WtW services (such as occupational training offered as a post-employment service or job retention services, if such services are not otherwise available).

What Activities Are Allowable Under This Part? (§ 645.220)

The ultimate objective for each welfare recipient is placement into an unsubsidized job which provides the potential for achieving economic self-sufficiency. Activities conducted with

WtW grant funds must be grounded in the "work first" philosophy which is a fundamental tenet of the Act. Although a variety of activities are authorized under WtW, these activities should be viewed as employment-based developmental steps for helping individuals secure and retain unsubsidized employment.

Section 403(a)(5)(C)(i) specifies the allowable activities which can be funded under WtW grants. The statute prescribes the following as allowable activities: job readiness, placement, and post-employment services financed through job vouchers or through contracts with public or private providers; community service or work experience programs; job creation through public or private sector employment wage subsidies; on-the-job training; and job retention or support services if such services are not otherwise available. Congress did not define these activities further. Some activities have commonly understood meanings from their use over time or from operational definitions adopted by other employment and training programs, but others may not.

We consulted with a variety of groups to determine what others thought about how these activities should be defined. A major theme they expressed is the need for maximum State and local flexibility to design programs to successfully move the hardest to employ welfare recipients into unsubsidized employment leading to economic self-sufficiency.

Another major theme expressed by those with whom we consulted is the need for flexibility to provide to the WtW eligible population, training in basic educational and occupational skills, English as a second language training, and referral to vocational rehabilitation services. Indeed, one of the eligibility factors is the lack of a high school or secondary school diploma or a certificate of general equivalency, coupled with low skills in math or reading. In order to make it possible for these educationally disadvantaged individuals to begin to achieve economic self-sufficiency, they need access to tools for developing the skills necessary for achieving their employment goal.

The regulations address these concerns. They provide maximum flexibility to provide transitional assistance which moves welfare recipients into unsubsidized employment providing good career potential for achieving economic self-sufficiency. They also encourage effective linkages of welfare agencies, other agencies serving people with disabilities, adult education, and the workforce development system at the State and local operational levels to maximize the use of all available resources and to focus resources on direct assistance to recipients. Additionally, they encourage the use of training interventions only after an individual begins to work to help participants retain their jobs and move toward economic self-sufficiency.

Specifically, in order to facilitate coordination between WtW and TANF activities at the State and local level, the regulations do not define or describe the activities which are common to both WtW allowable activities and TANF work activities. That is, the regulations provide no definitions or description for community service, work experience, job creation through public or private sector employment wage subsidies, on-the-job training, or job readiness activities. Job readiness may, however, include training for WtW participants starting their own businesses. It is expected that operating definitions for these activities will be arrived at through partnership between the State and local administering agencies, taking into consideration applicable statutory and regulatory provisions.

The regulations do provide examples of post-employment services. Whether an individual is working in a subsidized or unsubsidized job, including self-employment or participation in a registered apprenticeship program, that individual may be allowed to receive post-employment services, which may include basic education, English as a second language, occupational skills training, and mentoring. While the legislation does not permit stand-alone training activities independent of a job, allowing them as post-employment activities only while the participant is working in a subsidized or unsubsidized job reflects the basic "work first" thrust of the legislation, while recognizing the critical importance of continuous skills acquisition and lifelong learning to economic self-sufficiency. These examples of post-employment services are not intended to imply that only educational, training, or mentoring services are allowable as post-employment services.

The regulations incorporate the statutory requirement that job readiness, placement, and post-employment services be provided through job vouchers or contracts with public or private providers. Additionally, the requirement, at § 645.230(a)(3), that contracts or vouchers for job placement must include a provision to require that at least one-half of the payment occur after an eligible individual has been placed into the workforce for six months, is referenced.

Given the needs of the target group for this assistance, the provision of adequate job retention and support services will be critical. Each participant engaged in a job readiness activity, an employment activity, or in any other subsidized or unsubsidized job, including participation in a registered apprenticeship program, will also be allowed to receive appropriate job retention and support services, if such services are not otherwise available. These could include transportation assistance, substance abuse treatment, child care, emergency or short-term housing assistance, disability-related services, or other supportive services. However, these services can be provided with WtW funds *only* where they are not otherwise available to the participant. For instance, in the area of child care, the operating entity should ensure that WtW funds are not substituted for child care services available from the Child Care and Development Block Grant, TANF funds, and other State and local funds.

The availability of transportation services, to get welfare recipients to work, training, and child care, is a significant factor in obtaining and retaining employment. Historically, DHHS and DOL programs have defined transportation in terms of the individual client, and allowed reimbursement for services used rather than for service availability. However, client reimbursement will not work where services do not exist. WtW funds may be used for both purposes. For instance, WtW funds may be used to reimburse individual participants for transportation costs, to enable an administering agency to purchase additional needed services from transportation providers, or alternatively to support, in combination with other funding sources, the development of new transportation services that may be needed in order to connect individuals to jobs. Such services could include: late night and other off peak hour services, shuttle service, guaranteed ride home, van pooling and ridesharing, and specialized transportation services provided by non-profit agencies. WtW funds cannot be substituted for services available or already provided through other sources. However, this is not meant to preclude funding of an individual's access to existing sources. For example, although a transit service may exist, an individual may need financial assistance to afford such transportation.

Substance abuse treatment is specifically provided as an example of a job retention service because one of the eligibility factors under the hard-to-employ criteria is the need for substance abuse treatment for employment. In arranging for substance abuse treatment, States and localities should coordinate with the Single State Authority (SSA) (and its subcontractors) designated by the Governor to receive and administer the Substance Abuse Prevention and Treatment (SAPT) Block Grant administered by the Substance Abuse and Mental Health Services Administration, DHHS. This grant, totaling $1.23 billion in FY 1998, accounts for approximately 40 percent of all substance abuse treatment provided through State agencies. The SSA and its county or regional subcontractors also coordinate with, or actually provide, substance abuse treatment funded through other sources. It is imperative that use of WtW funds for substance abuse treatment be coordinated with other funding sources to provide only services not otherwise available. It is equally important that the expertise of SAPT block grant recipients be utilized in developing a strategy to provide WtW participants with substance abuse treatment services.

Regarding substance abuse treatment, States and localities need to be aware that section 408(a)(6) of the Act, which bars the use of Federal TANF funds for medical services, also applies to WtW funds. In many, but not all, instances the treatment of alcohol and drug abuse involves not just "medical services," but other kinds of social and support services as well. Allowing States to use Federal WtW funds for substance abuse treatment is programmatically sound since it addresses the need of a particular target group and may help clients make successful transitions to work. Therefore, WtW funds can be used for drug and alcohol abuse treatment services to the extent that such services are not medical and not otherwise available to the participant. States and localities will have to look at the range of services offered and differentiate between those that are medical and those that are not. For instance, an evaluation of a substance abuser, to determine the appropriate level of care, performed by a member of the medical profession is considered a medical service, as is a medically supervised detoxification program. However, services performed by those not in the medical profession, such as counselors, technicians, social workers, and psychologists, and services not provided in a hospital or clinic, including 24 hour care programs, may be considered non-medical. In short, as in TANF, States and localities cannot use Federal WtW funds for services that the State identifies as medical; they may only use Federal WtW funds for services that are non-medical. States may, however, use their own funds or other funds to provide these services as long as they do not commingle State and Federal funds. Medicare and Medicaid funds may provide another source of funding for medical substance abuse treatment.

Individual development accounts (IDAs) are authorized by section 403(a)(5)(C)(v)(I) of the Act. They are described in detail at section 404(h) of the Act, which gives States the option to fund IDAs with TANF, and by extension, WtW funds, for WtW participants. An IDA is an account established by or for an individual to allow the individual to accumulate funds for specific purposes enumerated in the Act, i.e., postsecondary educational expenses, first home purchase, and business capitalization. The Secretary of DHHS is authorized to establish regulations regarding IDAs. Therefore, we are not regulating or providing further guidance in this area. An entity that funds IDAs with WtW grant funds must comply with Section 404(h) of the Act and the applicable DHHS regulations.

Lastly, the regulations state that intake, assessment, eligibility determination, the development of an individualized service strategy, and case management are allowable and may be incorporated in the program design of any of the allowable activities.

How Do Welfare-to-Work Activities Relate to Activities Provided Under TANF and Other Related Programs? (§ 645.225)

The regulations require that activities provided through WtW be coordinated effectively with activities being provided through the TANF grant and other related programs. The WtW grants provide a critical tool to help States and local governments achieve their own welfare reform goals and to meet their responsibilities under the Act to reduce welfare caseloads and move welfare recipients into permanent employment and off welfare. WtW must be an integral part of the States' and local governments' overall program of assistance to move welfare recipients into unsubsidized employment. WtW formula grants are intended to work through the operating entity to supplement and enhance their overall capacity for assisting welfare recipients find work and progress toward self-sufficiency.

Coordination of resources should include not only those available through WtW and TANF grant funds, and the Child Care and Development Block Grant, but also those available through other related activities and programs, such as the JTPA programs, the State employment service, One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population.

The regulations require that an assessment of skills, prior work experience, employability, and other relevant information be in place for each WtW participant. This is consistant with the TANF requirement, at section 408(b)(1) of the Act, that an assessment be developed for each recipient of TANF assistance who has attained 18 years of age or has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school. In order to maximize coordination and minimize duplication of effort, we urge the use of the TANF assessment to meet this requirement where feasible in order to avoid duplicative assessments and unnecessary use of WtW resources.

The regulations require that an individualized strategy for transition to unsubsidized employment should be in place for each participant. This requirement is similar to the TANF provision, at section 408(b)(2) of the Act, regarding an individual responsibility plan (IRP). This strategy should take into account the individual's circumstances reflected in the TANF assessment, JTPA individual service strategy or any participant assessment which may have been performed by the operating entity or its agent. The individualized strategy should also include information regarding disabilities since the characteristics associated with long-term welfare dependence can be caused, or contributed to, by a physical, emotional or cognitive disability. The strategy should assure that activities funded through WtW are effectively coordinated with similar activities (e.g., assessment, case management, supportive services, work activities) being funded through TANF and other related programs to address the

individual's needs so that (s)he can obtain and retain unsubsidized employment. In order to maximize coordination and minimize duplication of effort, the regulations also state that, where appropriate, the TANF IRP may be used for this purpose. It is our understanding that most, if not all, States have exercised their option under TANF of implementing an IRP requirement. The statutory guidelines for the content of an IRP, at section 408(b)(2) of the Act, include an employment goal for the individual and a plan for moving the individual into unsubsidized employment as quickly as possible, and for increasing the responsibility and amount of work the individual is to handle over time. The statutory guidelines also include a description of the obligations of the individual and the services to be provided so that the individual will be able obtain and retain employment. In order to avoid duplicative strategies and unnecessary use of staff resources, we urge the use of the TANF IRP as the WtW individualized service strategy where feasible.

What General Fiscal and Administrative Rules Apply to the Use of Federal Funds? (§ 645.230)

This regulation identifies the appropriate DOL regulations which specify the rules applicable to WtW grants in the areas of fiscal and administrative requirements, audit requirements, allowable cost/cost principles, debarment and suspension, drug-free workplace, restrictions on lobbying, and nondiscrimination. In addition, paragraph (a)(3) of this section specifically indicates that the provision at section 403(a)(5)(C)(i) of the Act is a requirement that is imposed in addition to the procurement provisions applicable to an entity awarding a contract or voucher for job placement services. That provision requires that contracts or vouchers for job placement services must include a provision to require that at least one-half of the payment occur after an eligible individual placed into the workforce has been in the workforce for at least 6 months. Consistent with the purpose of the Act, we have interpreted this provision to apply to placement in unsubsidized jobs. We have done this to avoid the unintended consequence of having all subsidized employment last a minimum of six months.

Paragraph (a)(4) of this section adds a provision to address PIC conflict of interest which is not addressed by the uniform requirements. Paragraph (a)(5) of this section specifies the requirement that the addition method will be required for the use of program income and that the cost of generating any program income may be deducted in determining the amount of program income earned. In paragraph (c) of this section, the authority to grant or deny prior approval for those selected items of cost which require such approval has been delegated to the Governor. Paragraph (g) of this section sets forth restrictions on nepotism related to individuals being hired into WtW subsidized employment, work experience, on-the-job training positions and the like.

What Are the Time Limitations on the Expenditure of Welfare-to-Work Grant Funds? (§ 645.233)

The regulation specifies the time limitation rules for expenditure of the two types of Federal WtW grant funds:

(a) Formula funds—The general rule is that these funds will be available for expenditure for a "maximum" period of three years which commences with the effective date of the grant to a State. The grant period will be specified in the Department's formula grant document for each fiscal year of funds provided to the State.

(b) Competitive funds—The general rule is that these funds have the potential for being granted for the "maximum" three-year period from the effective date of the grant award but are subject to the terms and conditions of the specific grant.

For both types of grant funds, any remaining funds unexpended at the end of the approved grant period must be returned to the Department in accordance with the applicable closeout rules and procedures. For purposes of determining the time limitations for expenditure of "performance bonus" grants, the provisions applicable to formula funds (excluding match) will apply.

What Types of Activities Are Subject to the Administrative Cost Limit on Welfare-to-Work Grants? (§ 645.235)

Paragraph (a) of the regulation restates the fact that the statute imposes a 15 percent limitation on administrative costs for formula grants to States. For competitive grants, the regulation permits a different limitation, up to a maximum of 15 percent, to be specified in the grant agreement. If no limitation is specified, then the 15 percent limitation on administrative costs will also apply to competitive grants.

Paragraphs (b) & (c) spell out the definition of administrative costs for these WtW grants and provide some additional cost classification guidance. Because the local JTPA system is the presumed delivery system for these grants, the regulation uses the JTPA definition of "administrative costs" except that paragraph (c)(3) of the regulation incorporates an exception specified at Section 404(b)(2) of the Act. The exception specifically excludes from the administrative cost category the costs of computer hardware and software that is used for tracking and monitoring under a WtW grant. It is only the cost of the assets, however, and not the salaries or wages of staff who use the computers, that is excluded. The regulation also requires that all information technology purchased for WtW grants must be "year 2000 compliant." To meet this requirement, information technology must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations.

These Interim Final WtW regulations adopt the JTPA definition of the term "Administrative Costs" to minimize the burden on PICs. The Secretary notes that she may issue further rules to conform this provision to similar provisions in forthcoming final regulations governing the TANF program. Comments on this subject are invited and would be helpful in assessing the advantages and disadvantages of such a change.

What Are the Reporting Requirements for Welfare-to-Work Grants? (§ 645.240)

This regulation indicates that DOL will issue instructions and formats for financial reporting, that DHHS will issue the instructions for participant reporting, and that DOL will issue supplemental participant reporting requirements for competitive grants.

With respect to participant reporting, DOL will, as an interim measure, revise the Standard Program Information Report (SPIR) to incorporate identification of WtW enrollees and WtW activity categories to facilitate the use of a SPIR-based management information system by PICs who choose to use it to manage their WtW funded activities. However, DOL will not require the use or submission of SPIR for WtW.

Who is Responsible for Oversight and Monitoring of Welfare-to-Work Grants? (§ 645.245)

The Secretary of Labor is authorized to provide WtW grants to States and local entities through formula allocations and a competitive process, respectively. To ensure that Federal funds are accounted for and used in a permissible manner, the Secretary is responsible for oversight of grant activities and expenditure of grant funds, and may monitor any WtW grant recipient or subrecipient. The regulations provide for Federal and State oversight responsibilities.

For formula grants, the Department's monitoring of the States will include a sample of subrecipients. States funded under this program shall develop a statewide monitoring plan and shall make the monitoring plan available for Federal review. In the event that the Secretary determines that a State grant recipient is not in compliance with Federal statutory or regulatory requirements, the Department may provide technical assistance as part of the corrective action process.

The Governor is responsible for oversight of formula grants at the substate level. The State monitoring plan shall provide for adequate oversight and should include State policies and procedures for the implementation, operation and management of the program, as well as State monitoring of reporting requirements for WtW substate grants. The State shall ensure compliance with statutory and regulatory requirements of WtW at the substate level. The State monitoring plan should include an annual monitoring schedule and should describe its process for providing technical assistance to substate grantees that are not in compliance with State or Federal requirements.

What Procedures Apply to the Resolution of Findings Arising From Audits, Investigations, Monitoring and Oversight Reviews? (§ 645.250)

The regulation assigns to the Governor the responsibility to resolve subrecipient findings that arise from audits, investigations, monitoring reviews, and the like. If the States have procedures in place that are used for audit resolution, debt collection and appeal for other grant programs, then the existing processes may be used. Otherwise the State must develop and implement such procedures.

The regulation reserves to the Secretary the authority for resolution of findings that arise from Federal audits, investigations, incident reports, and monitoring reviews, as well as recipient level OMB Circular A–133 audits. The process that will be used is the grant officer initial and final determination process used for other grant programs which is codified at 29 CFR 96.503. Appeals of grant officer final determinations are to be made to the Department's Office of Administrative Law Judges in accordance with the procedures found at 29 CFR 96.603(b).

So as to avoid confusion about which procedures apply to nondiscrimination findings, paragraph (c) specifies that findings arising from investigations or reviews conducted under nondiscrimination laws are to be resolved in accordance with those nondiscrimination laws and the applicable implementing regulations.

What Nondiscrimination Protections Apply to Participants in Welfare-to-Work Programs? (§ 645.255)

Section 645.255 of the regulations provides that participants in WtW programs have such rights as are available under any applicable Federal, State or local law prohibiting discrimination, including, but not limited to: the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*); Section 504 of the Rehabilitation Act of 1975 (Section 504)(29 U.S.C. 794); the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 *et seq.*) and Title VI of the Civil Rights Act of 1964 (Title VI)(42 U.S.C. 2000d *et seq.*). ETA is not responsible for administering any civil rights laws. Rather, it is the Civil Rights Center (CRC), formerly the Directorate of Civil Rights, within the Office of the Assistant Secretary for Administration and Management, that has the responsibility to enforce such laws as the Age Discrimination Act of 1975, Section 504 and Title VI, with respect to recipients of federal financial assistance from the Department. Additionally, the CRC is responsible for processing complaints alleging violations of the ADA by all State and local government programs, services, and regulatory activities relating to labor and the workforce.

Section 645.255 of the regulations further provides that complaints alleging discrimination, except for those alleging gender discrimination in violation of § 645.255(d), shall be processed in accordance with applicable regulations. For example, WtW recipients who are not also JTPA grant recipients should process complaints that allege discrimination based on race, color or national origin in violation of Title VI of the Civil Rights Act of 1964 in accordance with the Department's Title VI regulation at 29 CFR part 31 by forwarding all such complaints to the CRC (Address at the end of this paragraph.). Similarly, WtW recipients who are not also JTPA grant recipients should process complaints that allege discrimination based upon disability in violation of Section 504 in accordance with 29 CFR 32.45(b), i.e., using the complaint procedures established pursuant to that section. WtW recipients who are also JTPA grant recipients should process complaints of discrimination under procedures established pursuant to 29 CFR 34.42.

29 CFR 34.42 establishes the procedures under which JTPA grant recipients shall process complaints involving violations of the JTPA nondiscrimination and equal opportunity provisions. Since many WtW grant recipients will be PICs and other entities with experience operating programs under JTPA, the Department has determined that, in order to avoid administrative burdens, such entities shall process WtW discrimination complaints under these procedures rather than require that they comply with two different sets of procedures. (Recipients of financial assistance from the Department should be aware that the DOL regulations, at 29 CFR Parts 31, 32, and 34, also require that programs and activities meet certain administrative obligations. Among those is the responsibility to notify participants of their rights under nondiscrimination laws (e.g., Title VI, Section 504 and the Age Discrimination Act), including the right to file a complaint with the CRC. Individuals with questions about the requirements of these nondiscrimination laws, or concerns about compliance by individual WtW programs with these laws, should address their comments or concerns to the Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N4123, Washington, D.C. 20210.)

Both Section 408(d) of the PRWORA and its legislative history, as reflected in H.R. Conf. Rep. No. 725, 104 Cong., 2nd Sess. 293 (1996), clarify that recipients are subject to Federal enforcement mechanisms. The Balanced Budget Act of 1997 amended the PRWORA. It provides for, among other things, a new civil rights protection against gender discrimination. This provision ensures that participants who may not be covered under either Title VII of the Civil Rights Act of 1964 or Title IX of the Education Amendments of 1972, are protected against gender discrimination. The PRWORA, as amended, requires States to have grievance procedures to process complaints alleging gender discrimination. The legislative history makes clear that gender-based discrimination is the only civil rights matter that the legislation required to be resolved through a State grievance procedure. See H.R. Conf. Rep. No. 217, 105th Cong., 1st Sess. 935–937 (1997). Other civil rights matters are to be resolved in accordance with the

applicable statutes and regulations listed in the preceding paragraph.

What Health and Safety Provisions Apply to Participants in Welfare-to-Work Programs? (§ 645.260)

The regulation restates the health and safety provisions which are found in section 403(a)(5)(J)(ii) of the Act and specifies that participants alleging a violation of these standards may file a complaint using the State's legislatively mandated grievance system. The Department interprets the statutory phrase "work activity" to refer to the allowable employment activities provided for at § 645.220(b) of this part.

What Safeguards Are There to Ensure That Participants in Welfare-to-Work Employment Activities do not Displace Other Employees? (§ 645.265)

Section 403(a)(5)(J) of the Act provides protections to ensure that employees are not displaced by WtW participants engaged in a work activity. The Department interprets the phrase "work activity" to refer to the allowable employment activities provided for at § 645.220(b) of this part.

The regulation incorporates the statutory prohibition, in section 403(a)(5)(J)(i) of the Act, against allowing WtW participants to be enrolled in employment activities which violate existing contracts for services or collective bargaining agreements. Where an employment activity would violate a collective bargaining agreement, the regulations provide that the appropriate affected labor organization and employer must provide written concurrence before the employment activity can be undertaken.

The regulations also incorporate the statutory prohibition against allowing an individual participating in employment activities under the WtW program from displacing another employee. Employment activities shall not result in the employment or assignment of a WtW participant or the filling of a position when any other person is on layoff from the same or substantially equivalent job within the same organizational unit. The use of the phrase "within the same organizational unit" further clarifies the parameters for the concept of "a substantially equivalent job". The employment or assignment of a WtW participant or the filling of a position is prohibited when an employer has terminated any regular, unsubsidized employee or otherwise reduced its workforce with the intent of filling the vacancy with a WtW program participant. In addition, a WtW participant may not be employed or assigned to a position where the employer has caused an involuntary reduction to less than full time in hours of an employee in the same or substantially equivalent job.

Consistent with the goal of this program, which is to place participants in employment which will eventually lead to their economic self-sufficiency, we encourage the States to safeguard the current workforce, while aggressively promoting the creation of employment opportunities for welfare recipients. The State's goal should be the expansion of its workforce through the creation of additional new jobs.

The regulations also specify that grievances regarding displacement may be filed using the State's legislatively mandated grievance system.

What Procedures Are There To Ensure That Currently Employed Workers May File Grievances Regarding Displacement and That Welfare-to-Work Participants in Employment Activities May File Grievances Regarding Displacement, Health and Safety Standards and Gender Discrimination? (§ 645.270)

The regulations reflect the statutory language concerning the requirement that a State must establish a grievance system for regular, unsubsidized employees regarding displacement and for participants in the WtW program regarding displacement, health and safety standards and gender discrimination.

The statute requires that the grievance system must provide an opportunity for a hearing, an appeal, and a final determination within 120 days of the original filing date of the complaint. The regulations give the State the option of including in the grievance system an opportunity for informal resolution prior to the formal hearing. The regulations also provide that in developing its grievance system, the State must specify the time period and format for the hearing and the appeal portions of the procedure. The informal resolution and hearing steps in the grievance procedure may occur at either the State or SDA level. This section of the regulations also restates the statutory provision concerning the designation of a State agency, independent of the State or local agency responsible for administering or supervising the administration of State TANF and WtW programs, to hear appeals.

Subpart C—Additional Formula Grant Administrative Requirements and Procedures

What Constitutes an Allowable Match? (§ 645.300)

A State will be awarded a total of $2 in WtW formula grant funds for each $1 in State matching expenditures up to the maximum amount that the State is entitled to receive under the WtW allotment formula. If the State chooses to propose a lesser amount of match than would be required in order for it to receive the full allotment, it may do so. In such cases, the amount of the Federal WtW grant will be reduced accordingly.

The regulation authorizes the States to use the uniform financial and administrative requirements, codified at 29 CFR 97.24 (the Common Rule), regarding match allowability and documentation, except that no more than one-half of the match may be in the form of in-kind contributions. We will allow 50 percent of the required match to be in-kind contributions in order to encourage the participation of private non-profit and faith-based organizations in efforts to assist individuals transition from welfare to unsubsidized employment and economic self-sufficiency. These organizations can offer significant resources, especially in-kind services, to assist WtW program participants.

Cash donations from non-Federal third parties that are used to pay for allowable costs of the WtW grant program will be considered as cash match, and not counted as in-kind contributions. Matching funds include those State and local dollars in excess of funds spent to meet the TANF MOE requirement when those funds are spent on WtW eligible individuals and activities. Matching requirements may not be met by the use of employers' share of participant wage payments, e.g., the employer's share of OJT. The planning guidance issued for FY98 reiterated the legislative provision requiring that the total matching funds must be expended during the FY in which the WtW grant is awarded. A legislative amendment eliminating this requirement and permitting the expenditure of matching funds over the same three-year period as Federal funds is being considered by Congress. The final rule will reflect the action taken by the Congress with respect to this amendment. If match expenditures do not satisfy the requirement for the full level of Federal funds, the grant amount will be reduced by an appropriate corresponding amount.

Paragraph (c)(7) of the regulation indicates that the burden-of-proof for substantiating match expenditures is to be borne by the recipient of a WtW grant based on its own records and/or those of its subrecipients.

What Assurances Must a State Provide That It Will Make the Required Matching Expenditures? (§ 645.310)

This regulation restates the planning guidance which requires a State to provide a written estimate of planned matching expenditures in its State plan and to describe the process by which the funds will be tracked and reported to ensure that the State meets its projected match.

What Actions Are To Be Taken if a State Fails To Make the Required Matching Expenditures? (§ 645.315)

This regulation requires the Department to implement an annual reconciliation and grant adjustment process for WtW grants. The reconciliation will be based on reported match expenditures made through the end of the FY, as specified in the required report due 45 days after the end of each fiscal year. If the end-of-fiscal-year report has not been received by December 1 of that year, then the reconciliation will be based on the most current report received.

In addition, each FY the Department will evaluate second quarter matching expenditures to determine the status of each State's expenditures compared with planned match. DOL will alert and consult with States that appear to be underexpending matching funds concerning the possibility of reducing the grant to reallot funds if match requirements are not met.

When Will Formula funds be Reallotted and What Reallotment Procedures Will the Secretary Use? (§ 645.320)

This section describes the reconciliation process that the Department will use for determining whether or not a State has expended the required level of matching funds and the process for reallotment of funds that become available as a result of underexpenditure of the required match or failure to fully obligate funds by either States or substate entities. Funds are fully obligated by States when they are awarded to the substate entities.

Subpart D—State Formula Grants Administration

Under What Conditions May the Governor Request an Alternate Administering Agency at the Local Level? (§ 645.400)

The regulations reflect the WtW legislative intent to assign PICs, in cooperation with Chief Elected Officials (CEOs), a presumptive role as the administering agencies for the WtW program at the local level. The Act also provides the Governor authority to select an alternate administrative agency and to request from the Secretary a waiver of the statutory provision that PICs have the sole authority to expend funds for the program at the local level. The Governor may request such a waiver in the State's annual plan and must provide information indicating how the selection of the alternate agency will improve the effectiveness or efficiency of the program in each substate area. In presenting the rationale, pursuant to section 403(a)(5)(A)(vii)(III) of the Act, the Governor shall provide such information as (s)he deems is necessary to establish that the designated alternate agency would improve the effectiveness or efficiency of the administration of the funds in each SDA.

The Department intends for the Governors to have maximum flexibility on what should be included in their presentation(s) of the reason(s) for the selection of an alternate administering agency at the local level. While no specific format is provided, it is suggested the Governor include, as part of the rationale for the selection of an alternate administering agency, information regarding the PIC's performance, administrative capacity, or whether the PIC has turned down the WtW role; and information on the alternate agency's capacity and fiscal integrity. In addition, the Governor is to provide copies of any comments from the CEOs regarding the Governor's selection of the alternate agency.

In addition, the Governor must request a waiver if, during the operation of the local WtW program, s(he) determined that the PIC, or alternate agency, which is administering WtW has not coordinated its expenditures with expenditure of funds provided to the State under TANF. Whenever the Governor requests a waiver, the Governor is to provide a copy of such request to the PIC and CEO of the affected SDA.

The Governor shall bear the burden of proving that the proposed designated alternate agency, rather than the PIC, would improve the effectiveness or efficiency of the administration of WtW funds in the SDA. The Secretary shall assess the information provided by the Governor, as well as any input from the affected CEOs, in reaching a decision on the granting of the waiver requested. The regulations provide the PIC and CEO 15 days in which to respond to the Governor's waiver request and submit written comments to the Department. The Secretary's decision on the Governor's request constitutes final agency action and is not subject to further administrative review.

It is the Department's position, consistent with section 403(a)(5)(A)(vii)(I) of the Act, that in WtW programs the PICs have the same policy guidance and oversight functions as the PICs have under the JTPA. In service delivery areas where, pursuant to the PIC/CEO agreement, the PIC is not the "administrative entity" or the "grant recipient" (see JTPA sections 4(2) and 103(b)(1)(B)), the PICs will exercise the authority specified in the WtW legislation. In such situations, consistent with section 403(a)(5)(A)(vii)(I) of the Act, the PIC can use the current JTPA administering agency or grant recipient to disburse WtW funds and manage the program. Finally, in situations where the alternate administering agency selected and approved by the Secretary is neither the SDA's administrative entity nor the SDA's grant recipient entity, the Department intends for the alternate agency to take steps to ensure the CEO(s) continues to be consulted on WtW service strategies and activities planned for the SDA.

What Elements Will the State Use in Distributing Funds Within the State? (§ 645.410)

The regulations follow closely the statutory provisions concerning the Governor's responsibility to distribute funds to the SDAs in the State. The Act requires the Governors to establish a formula to distribute funds to the SDAs in the State and specifies the use of up to three formula factors described at section 403(a)(5)(A)(vi)(I) of the Act. The Governor's formula cannot contain any additional formula factors.

In developing the Governor's formula, the statute requires that a weight of no less than 50 percent be given to the following factor: the number by which the population of the area with an income less than the poverty line exceeds 7.5 percent of the total population of the area, compared to all such numbers for all SDAs in the State. This means that at least 50 percent of the funds must be distributed to SDAs based on this factor. If the Governor

chooses not to use this factor in distributing the rest of the funds, these funds may be distributed to an SDA based on one or both of the following factors: an SDA's share of the number of adults receiving assistance under TANF, or the predecessor program, in the SDA for at least 30 months (whether consecutive or not), relative to the number of such adults residing in the State; or an SDA's share of the number of unemployed individuals residing in the SDA, relative to the number of such individuals residing State. If the Governor chooses to use one or both of these additional factors, s(he) may not distribute more that 50 percent of the funds on the basis of these factors. In circumstances where the Governor's formula allocation to an SDA is less than $100,000, those amounts are added to the funds retained at the State level, thereby increasing the amount of funds which may be retained at the State above the 15 percent level. However, in cases where the distribution formula would allocate at least $100,000 to an SDA, those amounts must be allocated to the SDA within 30 days of the date the State receives its Federal allotment.

For guidance in determining the number of individuals with income less than the poverty line, the regulations point the States to section 403(a)(5)(D) of the Act. This section instructs States to use the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for States and counties. The Department is aware that the Bureau of the Census in March of 1997 produced an intercensal report containing State and county data estimates of the number of individuals in poverty and poverty rates for 1993. States should use this data, or comparable more recent data published by the Bureau, to determine the number of individuals below the poverty line who exceed 7.5 percent of the total population of the area. For areas for which 1993 intercensal data is not produced and published by the Bureau of the Census, Governors may use 1990 Census poverty data, in conjunction with the intercensal poverty data for related jurisdictions, where appropriate, as a basis for determining the poverty data for those areas. The Governor is to use the most recent year for which poverty data is available when determining the number of individuals below the poverty line and should use data for the most recent 12-month period when determining the number of adults receiving assistance for at least 30 months.

This section also sets forth the statutory authority of the PICs (or alternate administering agency) to determine, within their respective service delivery areas, the eligible individuals and the allowable activities upon which to expend their within-State fund allocation. The Department expects that a PIC's targeting of eligible individuals and the selection of service strategies will reflect the needs of the target population and the local employment opportunities, and are coordinated with State TANF expenditures.

Up to 15 percent of the funds allotted to the State may be retained by the State for projects to transition long-term recipients into unsubsidized jobs. For a full discussion of what other requirements are applicable to funds retained by the State, please refer to the preamble discussions of §§ 645.210 through 645.225. The regulations clarify that the Governor may utilize PICs, as well other entities, such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities, to operate projects for long-term recipients to enter unsubsidized jobs. The Department intends for the Governors to develop guidelines on such matters as project application criteria, project design criteria, project outcome goals, project placement expectations, project duration, etc. The Department intends for the Governors to have maximum flexibility in the management and operation of the funds retained by the State, consistent with statutory requirements, to enable the Governors to fund projects that support and complement the Governors' and the PICs' strategies to transition welfare recipients into unsubsidized jobs and economic self-sufficiency.

What Planning Information Must a State Submit in Order to Receive a Formula Grant? (§ 645.415)

The regulation follows section 403(a)(5)(ii) of the Act and specifies that a State must provide an annual plan to the Secretary for each fiscal year it wishes to receive funding. The format of the State plan, as well as the date for submission, will be established by the Secretary and provided to the States. The plan will be an addendum to the TANF plan and will be submitted to the Secretaries of Labor and Health and Human Services.

The Department will review the State plan and will accept it as complete if the plan demonstrates compliance with the WtW legislation. Once the plan is accepted, the Department will provide funding to the State. Where a State includes in its plan a request to use an agency other than the PIC to administer the program locally, the Secretary will carefully assess waiver requests for each local jurisdiction and will grant a waiver if the Secretary determines that the designated alternate agency will more effectively or efficiently administer the WtW grant funds for that area. The Secretary will use the information submitted by the Governor as well as input from the affected PICs and CEOs in the decision-making process. The Secretary's decision whether to grant a waiver shall be considered final agency administrative action.

What Factors Will Be Used in Measuring State Performance? (§ 645.420)

This regulation advises that the Secretary will develop and issue a formula that will be used to measure State performance and to serve as the basis for the award of performance grants in FY 2000. The formula will be developed in consultation with DHHS, the National Governors Association (NGA), and the American Public Welfare Association (APWA), and will be published in mid-1998. As required by section 403(a)(5)(E), the formula will be the basis used to measure the success of States in placing individuals in private sector employment or any kind of employment, the duration of such placements, any increase in earnings of such individuals, and other additional factors that the Secretary of Labor deems to be appropriate.

What Are the Roles and Responsibilities of the State(s) and PIC(s)? (§ 645.425)

This section of the regulations enumerates a number of State and PIC roles and responsibilities embedded in the WtW statute. During the consultation process conducted by the Department to gather input on WtW policy development, there were a number of requests for the Department to explain and clarify the State and PIC roles. The Department believes this section of the regulation is responsive to those requests and highlights the key responsibilities at the State and local level. It does not attempt to create arbitrary divisions since it is our view that coordination among State agencies and programs (e.g., TANF, employment service, One-Stop centers), and local agencies and programs (e.g., PICs, JTPA Title IIA) is essential to meeting the goals of the WtW legislation and that the methods and mechanisms established to combine resources and mount a coordinated effort to serve WtW participants will necessarily vary according to State/local needs and established relationships. In general, it is our view that, under the Act, the State has the primary responsibility for ensuring that WtW programs are consistent with and well coordinated with services under TANF, and that local entities are in the best position to decide the participants to be targeted and the service mix most appropriate for the participants. Consistent with statutory provisions, the State may not restrict PICs from exercising their authority to expend funds on the statutorily eligible populations. PICs, therefore, have authority to determine the individuals to be served in the service delivery areas.

Subpart E—Welfare-To-Work Competitive Grants

Who Are Eligible Applicants for Competitive Grant Funds? (§ 645.500)

According to the Act, in order to be eligible to apply for competitive grant funds, an organization must be a PIC for an SDA in a State, a political subdivision of a State (e.g., cities, counties), or a private entity applying in conjunction with the PIC or political subdivision. The proposal must be developed in consultation with the Governor. The Department defines the term "in conjunction with" to mean that the application submitted by a private entity must include a signed certification by both the applicant and either the applicable PIC or political subdivision that the relevant PIC/political subdivision has been consulted during the development of the application and that the activities proposed in the application are consistent with, and will be coordinated with, the WtW efforts of the PIC/political subdivision.

We believe that this definition of "in conjunction with" provides sufficient flexibility for private nonprofit entities, such as community development corporations, community-based and faith-based organizations, disability community organizations, community action agencies, and public and private colleges and universities, to apply for funds, while ensuring that adequate coordination with the ongoing WtW formula program occurs. Our requirement for consultation and certification reiterates the Department's emphasis on collaboration and integration of resources at the local level.

We are also interpreting "private entity" to be any qualified organization, public or private, which is neither a PIC nor a political subdivision of a State. The legislative intent, however, is that competitive grants are for projects which are community based and responsive to the circumstances in a local community. Therefore, an application for competitive grant funds will be judged for its connection and responsiveness to a local community.

Although the Department considers local collaboration to be critical to the development of a WtW proposal, in some limited cases, providing evidence of such a collaborative effort may not be possible. In these cases, where a private entity cannot obtain certification from the PIC/political subdivision, the applicant must certify, and provide information indicating, that the PIC/political subdivision has been provided a sufficient opportunity to cooperate in the development of the application and has not acted within a reasonable period of time. The Department believes that 30 days is a sufficient period of time in which a private entity can expect a response from the PIC or political subdivision.

This requirement applies to all PICs or political subdivisions included in the area to be served by the proposed project.

What Is the Required Consultation With the Governor? (§ 645.510)

All applicants for competitive grants, including PICs and political subdivisions, must submit their application to the Governor or the designated State administrative entity for the WtW program for review and comment prior to submission of the application to the Secretary. We have defined sufficient time for review and comment at the State level to be at least 15 days. For applications from private entities, the 15 day comment period must be consecutive to the 30 day period for obtaining evidence of collaboration and support from the PIC or political subdivision.

What Are the Program and Administrative Requirements That Apply to Both the Formula Grants and Competitive Grants? (§ 645.515)

The regulations indicate that all of the general program and administrative requirements that apply to the WtW formula grants also apply to the competitive grants. Competitive grants will be subject to additional reporting and monitoring requirements, however, which will be tailored to the scope of work of the specific grants.

What Are the Application Procedures and Timeframes for Competitive Grant Funds? (§ 645.520)

The Secretary shall establish appropriate application procedures, selection criteria and an approval process to ensure that grant awards accomplish the statutory purposes of the competitive grant funds and that available funds are used in an effective manner. We anticipate that more than one application and award process will occur in each fiscal year of the WtW program. Grant application procedures will be published in the **Federal Register** for each round of competitive grants.

What Special Consideration Will Be Given to Rural Areas and Cities With Large Concentrations of Poverty? (§ 645.525)

Competitive grant awards will be targeted to areas of significant need, especially rural areas and cities with large concentrations of residents living in poverty.

Subpart F—Administrative Appeal Process

What Administrative Remedies Are Available Under This Part? (§ 645.800)

The WtW statute contains provisions (e.g., those addressing the allowable use of funds) which contemplate the exercise of discretion by ETA. It is reasonable to anticipate that there will be instances where parties will seek to overturn decisions made by the Agency.

This section sets the administrative procedures available where a party seeks review of a Grant Officer determination that imposes a sanction or corrective action, pursuant to § 645.250(b) of this part. Paragraph (a) provides that an adverse decision by a Grant Officer may be appealed, within 21 days of the Grant Officer's final determination, to the Department of Labor's Office of Administrative Law Judges. The parties present their cases before an Administrative Law Judge (ALJ) who develops the record for the proceeding, making findings of fact and of law. Such proceedings are relatively informal, utilizing relaxed rules of evidence. For example, a Notice of Appeal functions simply as the invocation of a party's right to administrative review of an Agency decision, rather than as a formal complaint.

Paragraph (b) of this section provides that the ALJ's decision regarding a case arising under this section constitutes final agency action for the purpose of judicial review, unless, within 20 days of the ALJ's decision, a dissatisfied

party petitions the Administrative Review Board (ARB) for review. Review by the ARB is discretionary, so paragraph (b) of this section provides that the ALJ's decision constitutes final Agency action unless the ARB notifies the parties, within 30 days of the filing of the petition for review, that the case has been accepted for review. Further, the ALJ's decision constitutes final Agency action if the ARB has not decided the case arising under this section within 120 days of acceptance for review.

III. Regulatory Flexibility and Executive Order

The Regulatory Flexibility Act of 1980, as amended in 1996 (5 U.S.C. Chapter 6), requires the Federal government to anticipate and minimize the impact of rules and paperwork requirements on small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided), small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). ETA has assessed the potential impact of the draft Interim Final Rule, consulting with a wide range of small entities, in order to identify any areas of concern. Based on that assessment, the Agency certifies that the Interim Final Rule, as promulgated, will not have a significant impact on a substantial number of small entities.

As indicated in the Background Section (Section I, above), the WtW Interim Final Rule implements grant programs that enhance the resources available to States and PICs or the additional WtW financial resources targeted to hard-to-employ welfare recipients and which will assist in efforts to move these individuals into lasting unsubsidized jobs.

ETA has minimized any potential burdens for grant applicants and recipients in order to maximize the resources that will be applied to achieve the purposes of the WtW program. The Agency has further ameliorated any foreseeable burdens by providing (at § 645.235 of the Interim Final Rule) that a grantee can allocate up to 15 percent of a grant award for management and administration of the grant, rather than for the direct provision of services to participants. The Agency has determined that the incremental costs of applying for or administering WtW grants will be minimal, because applicants and grantees will, in general, already be familiar with the grant process due to involvement in existing TANF and JTPA programs. Further, ETA has concluded that any such costs will not place small entities at a disadvantage in relation to larger entities, with regard to obtaining formula grants or competitive grants. Therefore, it is unnecessary to set alternative requirements for small entities.

In addition, pursuant to the Small Business Regulatory Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Agency has screened the Interim Final Rule and has determined that it is not a "major rule," as defined in 5 U.S.C. 804(2).

IV. Executive Order 12866

Pursuant to Executive Order 12866, the Agency has evaluated the Interim Final Rule and has determined its provisions are consistent with the statement of regulatory philosophy and principles promulgated by the Executive Order. The Department of Labor is required to prescribe regulations for the WtW program within 90 days of the enactment of the Balanced Budget Act of 1997. Within this limited time frame, the Department has made every reasonable effort to obtain input in a purposeful manner from a variety of interested parties (State and local government officials, community-based organizations, and the general public). The WtW grant program increases the resources available to the public and private organizations that promote long-term employment and family self-sufficiency. The Agency has determined the Interim Final Rule will not have an adverse effect in a material way on the nation's economy.

ETA has developed the Interim Final Rule in close consultation with the Departments of HHS, HUD, and Transportation, and with other responsible Federal agencies. Based on that consultation, the Agency has determined the Interim Final Rule will not create a serious inconsistency or otherwise interfere with any action taken or planned by another agency.

The Agency has also assessed the impact of the WtW State match requirement and has determined it will not materially alter the budgetary impact of entitlements and grants. States will receive $2 dollars in WtW grant funds for each $1 in State matching expenditures up to the State WtW fund allotment. Further, ETA has determined that up to 50 percent of the State matching effort can be "in kind" (goods and services provided in lieu of cash), allowing the States additional flexibility in qualifying for formula funds.

Overall, as discussed above, the Department has determined that the Interim Final Rule is not unduly burdensome and that the impacts and consequences are non-material for States, local governmental entities and other potentially interested parties.

The Agency finds that this Interim Final Rule raises novel policy issues and thus constitutes a significant regulatory action which has been reviewed by the Office of Management and Budget for the purposes of Executive Order 12866.

V. Unfunded Mandates

The Interim Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. Section 202 of UMRA requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 of UMRA further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 of UMRA requires a plan for informing and advising any small government that may be significantly or uniquely impacted.

ETA has determined that the WtW Interim Final Rule will not regulate the expenditure by the State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (Tribal governments are covered by a separate Interim Final Rule for which a separate Unfunded Mandates statement has been prepared). Accordingly, the Agency has not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significant or uniquely impacted small government.

VI. Effective Date and Absence of Notice and Comment

The Employment and Training Administration has determined, pursuant to 5 U.S.C. 553(b)(B), that the statutory mandate to promulgate regulations within 90 days of the enactment of the statute constitutes good cause for waiving notice and comment proceedings. In addition, the Agency has determined, pursuant to 5 U.S.C. 553(d)(3), that the WtW statutory mandate provides good cause for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. The short statutory duration of the WtW program underscores the importance of beginning the disbursement of WtW funds at the earliest possible date. Accordingly, the issuance of a proposed rule, rather than an interim final rule, (or delaying the effective date for 30 days) would be contrary to the public interest. The Interim Final Rule sets a comment period to elicit any concerns raised by the Rule. ETA has limited the comment period to 60 days so that any input is received in time for the Agency to review it in considering any revisions to Part 645 while the WtW program is still in its early steps of operation.

VII. Catalog of Federal Domestic Assistance Number

The program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.253, "Employment and Training Assistance—Welfare-to-Work Grants to States & Local Entities for Hard-to-Employ Welfare Recipient Programs."

List of Subjects in 20 CFR Part 645

Employment programs, Grant programs—labor, Welfare-to-Work programs.

Signed at Washington, D.C., this 10th day of November 1997.

Alexis M. Herman,

Secretary of Labor.

Raymond J. Uhalde,

Acting Assistant Secretary, Employment and Training Administration.

For the reasons set forth in the preamble, 20 CFR Ch. V is amended by adding Part 645 to read as follows:

PART 645—PROVISIONS GOVERNING WELFARE-TO-WORK GRANTS

Subpart A—Scope and Purpose

Sec.

645.100 What does this subpart cover?
645.110 What are the purposes of the Welfare-to-Work program?
645.120 What definitions apply to this part?

Subpart B—General Program and Administrative Requirements

645.200 What does this part cover?
645.210 What is meant by the terms "entity" and "project" in the statutory phrase "an entity that operates a project" with Welfare-to-Work funds?
645.211 How must Welfare-to-Work funds be spent by the operating entity?
645.212 Who may be served as a hard-to-employ individual under the 70 percent provision?
645.213 Who may be served as an individual with long-term welfare dependence characteristics under the 30 percent provision?
645.214 How will Welfare-to-Work participant eligibility be determined?
645.220 What activities are allowable under this part?
645.225 How do Welfare-to-Work activities relate to activities provided through TANF and other related programs?
645.230 What general fiscal and administrative rules apply to the use of Federal funds?
645.235 What are the time limitations on the expenditure of Welfare-to-Work grant funds?
645.235 What types of activities are subject to the administrative cost limit on Welfare-to-Work grants?
645.240 What are the reporting requirements for Welfare-to-Work programs?
645.245 Who is responsible for oversight and monitoring of Welfare-to-Work grants?
645.250 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?
645.255 What nondiscrimination protections apply to participants in Welfare-to-Work programs?
645.260 What health and safety provisions apply to participants in Welfare-to-Work programs?
645.265 What safeguards are there to ensure that participants in Welfare-to-Work employment activities do not displace other employees?
645.270 What procedures are there to ensure that currently employed workers may file grievances regarding displacement and that Welfare-to-Work participants in employment activities may file grievances regarding displacement, health and safety standards and gender discrimination?

Subpart C—Additional Formula Grant Administrative Standards and Procedures

645.300 What constitutes an allowable match?
645.310 What assurances must a State provide that it will make the required matching expenditures?
645.315 What actions are to be taken if a State fails to make the required matching expenditures?
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Subpart D—State Formula Grants Administration

645.400 Under what conditions may the Governor request a waiver to designate an alternate local administering agency?
645.410 What elements will the State use in distributing funds within the State?
645.415 What planning information must a State submit in order to receive a formula grant?
645.420 What factors will be used in measuring State performance?
645.425 What are the roles and responsibilities of the State(s) and PIC(s)?

Subpart E—Welfare-to-Work Competitive Grants

645.500 Who are eligible applicants for competitive grants?
645.510 What is the required consultation with the Governor?
645.515 What are the program and administrative requirements that apply to both the formula grants and competitive grants?
645.520 What are the application procedures and timeframes for competitive grant funds?
645.525 What special consideration will be given to rural areas and cities with large concentrations of poverty?

Subpart F—Administrative Appeal Process

645.800 What administrative remedies are available under this part?

Authority: 42 U.S.C. 608(a)(5)(C)(viii).

Subpart A—Scope and Purpose

§ 645.100 What does this subpart cover?

(a) Subpart A establishes regulatory provisions that apply to the Welfare-to-Work (WtW) programs conducted at the State and at the Service Delivery Area (SDA) levels.

(b) Subpart B provides general program requirements applicable to all WtW formula funds. The provisions of this subpart govern how WtW funds must be spent, who is eligible to participate in the program, allowable activities and their relationship to TANF, Governor's projects for long-term recipients, administrative and fiscal provisions, and program oversight requirements. This subpart also addresses worker protections and the establishment of a State grievance system.

(c) Subpart C sets forth additional administrative standards and procedures for WtW Formula Grants, such as matching requirements and reallotment procedures.

(d) Subpart D sets forth the conditions under which the Governor may request a waiver to designate an alternate administering agency, sets forth the formula elements that must be included in the within-State distribution formula, the submission of a State annual plan, the factors for measuring State performance, and the roles and responsibilities of the States and the Private Industry Councils (PICs).

(e) Subpart E outlines general conditions and requirements for the WtW Competitive Grants.

(f) Regulatory provisions applicable to the Indian and Native American Welfare-to-Work Program (INA WtW) are found at 20 CFR part 646.

§ 645.110 What are the purposes of the Welfare-to-Work Program?

The purposes of the WtW program are:

(a) To facilitate the placement of hard-to-employ welfare recipients into transitional employment opportunities which will lead to lasting unsubsidized employment and self-sufficiency;

(b) To provide a variety of activities, grounded in TANF's "work first" philosophy, to prepare individuals for, and to place them in, lasting unsubsidized employment;

(c) To provide for a variety of post-employment and job retention services which will assist the hard-to-employ welfare recipient to secure lasting unsubsidized employment;

(d) To provide targeted WtW funds to high poverty areas with large numbers of hard-to-employ welfare recipients.

§ 645.120 What definitions apply to this part?

The following definitions apply under this part:

Act means Title IV, Part A of the Social Security Act, 42 U.S.C. 601–619.

Adult means an individual who is not a minor child.

Chief Elected Official(s) (CEOs) means:

(1) The chief elected official of the sole unit of general local government in the service delivery area,

(2) The individual or individuals selected by the chief elected officials of all units of general local government in such area as their authorized representative, or

(3) In the case of a service delivery area designated under section 101(a)(4)(A)(iii) of JTPA, the representative of the chief elected official for such area (as defined in section 4(4)(C) of JTPA).

Competitive Grants means those WtW funds awarded by the Department under a competitive application process to local governments, PICs, and private entities (such as community development corporations, community-based and faith-based organizations, disability community organizations, and community action agencies) who apply in conjunction with a PIC or local government.

Department or *DOL* means the U.S. Department of Labor.

Employment activities means the activities enumerated at § 645.220(b).

ETA means the Employment and Training Administration of the U.S. Department of Labor.

Fiscal year (FY) means any 12-month period ending on September 30 of a calendar year.

Formula grants means the WtW funds allotted to each Welfare-to-Work State, based on a formula prescribed by the Act, which equally considers States' shares of the national number of poor individuals and of adult recipients of assistance under TANF. The State is required to distribute not less than 85 percent of the allotted formula grant funds to service delivery areas in the State; and the State may retain not more than 15 percent for projects to help long-term recipients of assistance enter unsubsidized employment. Unless otherwise specified, the term "formula grant" refers to the 85 percent and 15 percent funds.

Governor means the Chief Executive Officer of a State.

Job Training Partnership Act or *JTPA* means Public Law (Pub. L.) 97–300, as amended, 29 U.S.C. 1501, *et seq.*

Minor child means an individual who has not attained 18 years of age; or has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance of effort. Under TANF, States are required to maintain a certain level of spending on welfare based on "historic" FY 1994 expenditure levels (Section 409 (a)(7) of the Act).

PIC means a Private Industry Council established under Section 102 of the Job Training Partnership Act, which performs the functions authorized at Section 103 of the JTPA.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (Pub. L.) 104–193, which established the TANF program.

SDA means a service delivery area designated by the Governor pursuant to section 101(a)(4) of the Job Training Partnership Act.

Secretary means the Secretary of Labor.

Separate State program means a program operated outside of TANF in which the expenditures of State funds may count for TANF MOE purposes.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the US Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State TANF Program means those funds expended under the State Family Assistance Grant (SFAG), the basic block grant allocated to the States under Section 403(a)(1) of the Act.

TANF means Temporary Assistance for Needy Families Program established under PRWORA.

TANF MOE means the expenditure of State funds that must be made in order to meet the Temporary Assistance for Needy Families Maintenance of Effort requirement.

WtW means Welfare-to-Work.

WtW State means those States that the Secretary of Labor determines have met the five conditions established at Section 403(a)(5)(A)(ii) of the Act. Only States that are determined to be WtW States can receive WtW grant funds.

WtW statute means those provisions of the Balanced Budget Act of 1997 containing certain amendments to PRWORA and establishing the new Welfare-to-Work program, amending Title IV of the Social Security Act, (codified at 42 U.S.C. 601–619).

Subpart B—General Program and Administrative Requirements

§ 645.200 What does this subpart cover?

This subpart provides general program and administrative requirements for WtW formula funds, including Governors' funds for long-term recipients of assistance, and for competitive grant funding (section 403(a)(5) of the Act).

§ 645.210 What is meant by the terms "entity" and "project" in the statutory phrase "an entity that operates a project" with Welfare-to-Work funds?

The terms "entity" and "project", in the statutory phrase "an entity that operates a project", means:

(a) For WtW substate formula funds:

(1) "Entity" means the PIC (or the alternate agency designated by the Governor and approved by the Secretary pursuant to § 645.400 of this part) which administers the WtW substate formula funds in a service delivery area(s). This entity is referred to in §§ 645.211 through 645.225 of this part as the "operating entity."

(2) "Project" means all activities, administrative and programmatic, supported by the total amount of the WtW substate formula funds allotted to the entity described in paragraph (a)(1) of this section.

(b) For WtW Governors' funds for long-term recipients of assistance:

(1) "Entity" means the agency, group, or organization to which the Governor has distributed any of the funds for long-term recipients of assistance, as described in § 645.410 (b) and (c) of this part. This entity is referred to in §§ 645.211 through 645.225 of this part as the "operating entity."

(2) "Project" means all activities, administrative and programmatic, supported by the total amount of one discrete award of WtW Governors' funds for long-term recipients of assistance awarded to the entity described in paragraph (b)(1) of this section.

(c) For competitive WtW funds:

(1) "Entity" means an eligible applicant, as described in § 645.500 of this part, which is awarded a competitive WtW grant. This entity is referred to in §§ 645.211 through 645.225 of this part as the "operating entity."

(2) "Project" means all of the activities, administrative and programmatic, supported by the total amount of one discrete WtW competitive grant awarded to the entity described in paragraph (c)(1) of this section (section 403(a)(5)(C) of the Act).

§ 645.211 How must Welfare-to-Work funds be spent by the operating entity?

(a) At least 70 percent of the WtW funds allotted to or awarded to an operating entity, as described in § 645.210 of this part, must be spent to benefit hard-to-employ individuals, as described in § 645.212 of this part.

(b) Not more than 30 percent of the WtW funds allotted to or awarded to an operating entity, as described in § 645.210 of this part, may be spent to assist individuals with long-term welfare dependence characteristics, as described in § 645.213 of this part. If less than 30 percent of the funds is spent to assist individuals with long-term welfare dependence characteristics, the remaining funds shall be spent to benefit hard-to-employ individuals pursuant to paragraph (a) of this section (section 403(a)(5)(C)of the Act).

§ 645.212 Who may be served as a hard-to-employ individual under the 70 percent provision?

(a) An individual is eligible to be served under the 70 percent provision if (s)he meets all three of the criteria listed in paragraphs (a)(1), (2), and (3) of this section:

(1) The individual is receiving TANF assistance; and

(2) Barriers to employment—at least two of the three following barriers to employment must apply to the individual:

(i) Has not completed secondary school or obtained a certificate of general equivalency, and has low skills in reading or mathematics. At least 90 percent of individuals determined to have low skills in reading or mathematics must be proficient at the 8.9 grade level or below.

(ii) Requires substance abuse treatment for employment.

(iii) Has a poor work history. At least 90 percent of individuals determined to have a poor work history must have worked no more than 3 consecutive months in the past 12 calendar months; and

(3) Length of receipt of TANF assistance—the individual must be a long-term recipient, meeting one of the following two criteria:

(i) Has received assistance under a State TANF program, and/or its predecessor program, for at least 30 months. The months do not have to be consecutive; or

(ii) Will become ineligible for assistance within 12 months due to either Federal or State-imposed durational time limits on receipt of TANF assistance. This includes individuals who have been exempted from the durational limits due to hardship pursuant to section 408(a)(7)(C) of the Act, but would face termination within 12 months without the exemption.

(b) A noncustodial parent of a minor is eligible to participate under the 70 percent provision if the custodial parent meets the eligibility requirements of paragraph (a) of this section.

(c) An individual who has barriers to employment, as specified in paragraph (a)(2) of this section, and who would be otherwise eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible to participate under the 70 percent provision (section 403(a)(5)(C) of the Act).

§ 645.213 Who may be served as an individual with long-term welfare dependence characteristics under the 30 percent provision?

(a) An individual is eligible to be served under the 30 percent provision if (s)he meets both criteria listed in paragraphs (a)(1) and (2) of this section:

(1) The individual is receiving TANF assistance; and

(2) The individual has characteristics associated with, or predictive of, long-term welfare dependence, such as having dropped out of school, teenage pregnancy, or having a poor work history. States, in consultation with the operating entity, may designate additional characteristics associated with, or predictive of, long-term welfare dependence.

(b) A noncustodial parent of a minor child is eligible to participate under the 30 percent provision if the noncustodial parent has the characteristics specified in paragraph (a)(2) of this section, and the custodial parent is receiving TANF assistance.

(c) An individual who has characteristics associated with, or predictive of, long-term welfare dependence, as specified in paragraph (a)(2) of this section, and who would be otherwise eligible to receive TANF assistance but is no longer receiving TANF assistance because (s)he has reached either the Federal five-year lifetime limit on receipt of assistance, or a State-imposed lifetime limit, is eligible to participate under the 30 percent provision (section 403(a)(5)(C) of the Act).

§ 645.214 How will Welfare-to-Work participant eligibility be determined?

(a) The operating entity, as described in §§ 645.210(a)(1), (b)(1), and (c)(1) of this part, is accountable for ensuring that WtW funds are spent only on individuals eligible for WtW projects.

(b) The operating entity must ensure that there are mechanisms in place to determine WtW eligibility for individuals who are receiving TANF assistance. These mechanisms:

(1) Must include arrangements with the TANF agency to ensure that a WtW eligibility determination is based on information, current at the time of the WtW eligibility determination, about whether an individual is receiving TANF assistance, pursuant to §§ 645.212(a)(1) and 645.213(a)(1) of this part, the length of receipt of TANF assistance, pursuant to § 645.212(a)(3)(i) of this part, and when an individual may become ineligible for assistance pursuant to § 645.212(a)(3)(ii) of this part (section 403(a)(5)(A)(ii)(dd) of the Act).

(2) May include a determination of WtW eligibility for barriers to employment, pursuant to § 645.212(a)(2) of this part, and for characteristics of long-term welfare dependence, pursuant to § 645.213(a)(2) of this part, based on information collected by the operating entity or the TANF agency up to six months prior to the WtW eligibility determination.

(c) The operating entity must ensure that there are mechanisms in place to determine WtW eligibility for individuals who are not receiving TANF assistance (i.e., noncustodial parents, pursuant to §§ 645.212(b) and 645.213(b) of this part, and individuals who have reached the time limit on receipt of TANF, pursuant to §§ 645.212(c) and 645.213(c) of this part). Mechanisms may include, but are not limited to:

(1) Using staff from the operating entity to determine eligibility;

(2) Entering into agreements with local agencies such as the TANF agency and other appropriate agencies which foster coordination and facilitate the exchange of eligibility information among parties at the local level; and/or

(3) Performing joint eligibility determination with other appropriate agencies, including the TANF agency.

(d) Eligibility for WtW need not be redetermined for an individual after the individual begins to receive WtW services (section 403(a)(5)(C) of the Act).

§ 645.220 What activities are allowable under this part?

Entities operating WtW projects may use WtW funds for the following:

(a) Job readiness activities financed through job vouchers or through contracts with public or private providers.

(b) Employment activities which consist of any of the following:

(1) Community service programs;

(2) Work experience programs;

(3) Job creation through public or private sector employment wage subsidies; and

(4) On-the-job training.

(c) Job placement services financed through job vouchers or through contracts with public or private providers, subject to the payment requirements at § 645.230(a)(3).

(d) Post-employment services financed through job vouchers or through contracts with public or private providers, which are provided after an individual is placed in one of the employment activities listed in paragraph (b) of this section, or in any other subsidized or unsubsidized job. Post-employment services include, but are not limited to, such services as:

(1) Basic educational skills training;

(2) Occupational skills training;

(3) English as a second language training; and

(4) Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, as specified in paragraph (a) of this section, in one of the employment activities, as specified in paragraph (b) of this section, or in any other subsidized or unsubsidized job. These services can be provided with WtW funds only if they are not otherwise available to the participant. Job retention and support services include, but are not limited to, such services as:

(1) Transportation assistance;

(2) Substance abuse treatment (except that WtW funds may not be used to provide medical treatment);

(3) Child care assistance;

(4) Emergency or short term housing assistance; and

(5) Other supportive services.

(f) Individual development accounts which are established in accordance with section 404 (h) of the Act.

(g) Intake, assessment, eligibility determination, development of an individualized service strategy, and case management may be incorporated in the design of any of the allowable activities listed in paragraphs (a) through (f) of this section (section 403(a)(5)(C) of the Act).

§ 645.225 How do Welfare-to-Work activities relate to activities provided through TANF and other related programs?

(a) Activities provided through WtW must be coordinated effectively at the State and local levels with activities being provided through TANF (section 403(a)(5)(A)(vii)(II) of the Act).

(b) The operating entity must ensure that there is an assessment of skills, prior work experience, employability, and other relevant information in place for each WtW participant. Where appropriate, the assessment performed by the TANF agency or JTPA should be used for this purpose.

(c) The operating entity must ensure that there is an individualized strategy for transition to unsubsidized employment in place for each participant which takes into account participant assessments, including the TANF assessment and any JTPA assessment. Where appropriate, the TANF individual responsibility plan (IRP) or JTPA individual service strategy should be used for this purpose.

(d) Coordination of resources should include not only those available through WtW and TANF grant funds, and the Child Care and Development Block Grant, but also those available through other related activities and programs such as the JTPA programs, the State employment service, One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population (section 402(a)(5)(A) of the Act).

§ 645.230 What general fiscal and administrative rules apply to the use of Federal funds?

(a) *Uniform fiscal and administrative requirements.* (1) State, local, and Indian tribal government organizations are required to follow the common rule *"Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"* which is codified in the DOL regulations at 29 CFR part 97.

(2) Institutions of higher education, hospitals, and other non-profit organizations are required to follow OMB Circular A–110 which is codified in the DOL regulations at 29 CFR part 95.

(3) In addition to the requirements at 29 CFR 95.48 and 29 CFR 97.36(i), contracts or vouchers for job placement services supported by funds provided for this program must include a provision to require that at least one-half (½) of the payment occur after an eligible individual placed into the workforce has been in the workforce for six (6) months. This provision applies only to placement in unsubsidized jobs (section 403(a)(5)(C)(i) of the Act).

(4) In addition to the requirements at 29 CFR 95.42 and 29 CFR 97.36(b)(3) which address codes of conduct and conflict of interest issues related to employees, it is also required that:

(i) A PIC member shall neither cast a vote on, nor participate in, any decision making capacity on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or a member of his immediate family.

(ii) Neither membership on the PIC nor the receipt of WtW funds to provide training and related services shall be construed, by itself, to violate these conflict of interest provisions.

(5) The addition method shall be required for the use of all program income earned under WtW grants. The cost of generating program income shall be subtracted from the amount earned to establish the amount of program income available for use under the grants.

(b) *Audit requirements.* All governmental and non-profit organizations are required to follow the audit requirements of OMB Circular A–133.[1] This requirement is imposed at 29 CFR 97.26 for governmental organizations and at 29 CFR 95.26 for institutions of higher education, hospitals, and other non-profit organizations.

(c) *Allowable costs/cost principles.* The DOL regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs which each kind of recipient and subrecipient must follow. For those selected items of cost requiring prior approval, the authority to grant or deny approval is delegated to the Governor.

(1) State, local, and Indian tribal government organizations must determine allowability of costs in

[1] OMB Circulars are available from: Executive Office of the President Publications Service, 725 17th Street NW, Suite G–2200, Washington, DC 20503; 202–395–7332.

accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments."

(2) Non-profit organizations must determine allowability of costs in accordance with OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(3) Institutions of higher education must determine allowability of costs in accordance with OMB Circular A–21, "Cost Principles for Education Institutions."

(4) Hospitals must determine allowability of costs in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(5) Commercial organizations and those non-profit organizations listed in Attachment C to OMB Circular A–122 must determine allowability of costs in accordance with the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WtW grant recipients and subrecipients are required to comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace which are codified in the DOL regulations at 29 CFR part 98.

(e) *Restrictions on lobbying.* All WtW grant recipients and subrecipients are required to comply with the restrictions on lobbying which are codified in the DOL regulations at 29 CFR part 93.

(f) *Nondiscrimination.* All WtW grant recipients and subrecipients are required to comply with the nondiscrimination provisions which are codified in the DOL regulations at 29 CFR parts 31 and 32. In addition, recipients of WtW grants who are also recipients under JTPA are required to comply with 20 CFR part 34. For purposes of this paragraph, the term "recipient" has the same meaning as the term is defined in 29 CFR parts 31, 32, and 34. Participant rights related to nondiscrimination may be found at § 645.255 of this part.

(g) *Nepotism.* (1) No individual may be placed in a WtW employment activity if a member of that person's immediate family is engaged in an administrative capacity for the employing agency.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement shall be followed.

§ 645.233 What are the time limitations on the expenditure of Welfare-to-Work grant funds?

(a) *Formula grant funds.* The maximum time limit for the expenditure of a given fiscal year allotment is three years from the effective date of the Federal grant award to the State. The maximum time limit will be allowed and will be specified in the Department's formula grant document for each fiscal year of funds provided to the State. Any remaining funds that have not been expended at the end of the expenditure period must be returned to the Department in accordance with the applicable closeout procedures for formula grants.

(b) *Competitive grant funds.* The maximum time limit for the expenditure of these funds is three years from the effective date of award, but will, in all cases, be determined by the grant period and the terms and conditions specified in the Federal grant award agreement (including any applicable grant modification documents). Any remaining funds that have not been expended at the end of the approved grant period must be returned to the Department in accordance with the applicable closeout procedures for competitive grants (section 503(a)(5)(C)(vii) of the Act).

§ 645.236 What types of activities are subject to the administrative cost limit on Welfare-to-Work grants?

(a) *Administrative cost limitation (section 404(b)(1)).* (1) *Formula grants to States.* Expenditures for administrative purposes under WtW formula grants to States are limited to fifteen percent (15%) of the grant award.

(2) *Competitive grants.* The limitation on expenditures for administrative purposes under WtW competitive grants will be specified in the grant agreement but in no case shall the limitation be more than fifteen percent (15%) of the grant award.

(b) The costs of administration are that allocable portion of necessary and allowable costs associated with the overall management and administration of the WtW program and which are not directly related to the provision of services to participants. These costs can be both personnel and non-personnel and both direct and indirect. Costs of administration shall include:

(1) Except as provided in paragraph (c)(1) of this section, costs of salaries, wages, and related costs of the recipient's, subrecipient's or PIC's staff engaged in:

(i) Overall program management, program coordination, and general administrative functions, including the salaries and related costs of the executive director, WtW director, project director, personnel officer, fiscal officer/bookkeeper, purchasing officer, secretary, payroll/insurance/property clerk and other costs associated with carrying out administrative functions;

(ii) Preparing program plans, budgets, schedules, and amendments thereto;

(iii) Monitoring of programs, projects, subrecipients, and related systems and processes;

(iv) Procurement activities, including the award of specific subgrants, contracts, and purchase orders;

(v) Providing State or local officials and the general public with information about the program (public relations);

(vi) Developing systems and procedures, including management information systems (except as provided in paragraph (c)(3) of this section), for assuring compliance with program requirements;

(vii) Preparing reports and other documents related to the program requirements;

(viii) Coordinating the resolution of audit findings;

(ix) Evaluating program results against stated objectives; and

(x) Performing administrative services, including such services as general legal services, accounting services, audit services; and managing purchasing, property, payroll, and personnel;

(2) Except as provided at paragraph (c)(3) of this section, costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(3) The costs of organization-wide management functions; and

(4) Travel costs incurred for official business in carrying out program management or administrative activities.

(5) These Interim Final WtW regulations adopt the description of the term "Administrative Costs" found in the JTPA regulations at 29 CFR 627.440 to minimize the burden on PICs. The Secretary reserves the right to change the definition to be consistent with the TANF definition when final TANF regulations are issued.

(c) *Other cost classification guidance.* (1) Personnel and related non-personnel costs of the recipient's or subrecipient's staff, including project directors, who perform both administrative and programmatic services or activities may be allocated to the benefitting cost objectives/categories based on documented distributions of actual time

worked or other equitable cost allocation methods.

(2) Indirect or overhead costs normally shall be charged to administration, except that specific costs charged to an overhead or indirect cost pool that can be identified directly with a cost objective/category other than administration may be charged to the cost objective/category directly benefitted. Documentation of such charges shall be maintained.

(3) The costs of information technology—computer hardware and software—needed for tracking or monitoring under a WtW grant shall not be charged to the administration of the grant (section 404(b)(2) of the Act).

Only the costs of information technology that is "year 2000 compliant" shall be allowable under WtW grants. To meet this requirement, information technology must be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000. The information technology must also be able to make leap year calculations. Furthermore, "year 2000 compliant" information technology when used in combination with other information technology shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

§ 645.240 What are the reporting requirements for Welfare-to-Work programs?

(a) *General.* All States and other direct grant recipients shall report pursuant to instructions issued by DOL (financial data) and by DHHS (participant data only). Reports shall be submitted no more frequently than quarterly within a time period specified in the reporting instructions. In addition, DOL will establish supplemental reporting requirements for competitive grant recipients through the grant agreements pursuant to § 645.515 of this part.

(b) *Subrecipient reporting.* A State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient is required to meet the reporting requirements imposed by DOL and DHHS.

(c) *Financial reports.* Financial reports shall be submitted to DOL by each grant recipient. Reported expenditures and program income must be on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient shall develop accrual information through an analysis of the documentation on hand.

(d) *Due date.* Financial reports will be due no later than 45 days after the end of each quarter. A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

(e) Optional SPIR Reporting. DOL may also provide instructions for an optional modified SPIR for internal program management (section 411(a) of the Act).

§ 645.245 Who is responsible for oversight and monitoring of Welfare-to-Work grants?

(a) The Secretary may monitor all recipients and subrecipients of all grants awarded and funds expended under WtW. Federal oversight will be conducted primarily at the State level for formula grants and at the recipient level for competitive grants.

(b) The Governor shall monitor PICs (or other approved administrative entities) funded under the State's formula allocated grants on a periodic basis for compliance with applicable laws and regulations. The Governor shall develop and make available for review a State monitoring plan.

§ 645.250 What procedures apply to the resolution of findings arising from audits, investigations, monitoring and oversight reviews?

(a) *Resolution of subrecipient level findings.* (1) The Governor is responsible for the resolution of findings that arise from the State's monitoring reviews, investigations and audits (including OMB Circular A–133 audits) of subrecipients.

(2) A State shall utilize the audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(3) If a State does not have such procedures, it shall prescribe standards and procedures to be used for this grant program.

(b) *Resolution of State level findings.* (1) The Secretary is responsible for the resolution of findings that arise from federal audits, monitoring reviews, investigations, incident reports, and recipient level OMB Circular A–133 audits.

(2) The Secretary will use the DOL audit resolution process, consistent with the Single Audit Act of 1996 and OMB Circular A–133.

(3) A final determination issued by a grant officer pursuant to this process may be appealed to the DOL Office of Administrative Law Judges under the procedures at § 645.800.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws shall be resolved in accordance with those laws and the applicable implementing regulations.

§ 645.255 What nondiscrimination protections apply to participants in Welfare-to-Work programs?

(a) All participants in WtW programs under this part shall have such rights as are available under all applicable Federal, State and local laws prohibiting discrimination including:

(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*);

(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); and

(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Complaints alleging discrimination in violation of any applicable Federal, State or local law, including those listed in paragraph (a) of this section, shall be processed in accordance with those laws and the implementing regulations.

(c) Questions about or complaints alleging a violation of the nondiscrimination laws in paragraph (a) of this section may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210 for processing.

(d) Participants in job readiness and employment activities operated with WtW funds, as defined in § 645.220 of this part, shall not be discriminated against because of gender. Participants alleging gender discrimination may file a complaint using the State's grievance system procedures as described in § 645.270 of this part (section 403(a)(5)(J)(iii) of the Act).

§ 645.260 What health and safety provisions apply to participants in Welfare-to-Work programs?

(a) Participants in an employment activity operated with WtW funds, as defined in § 645.220 of this part, are subject to the same health and safety standards established under State and Federal law which are applicable to similarly employed employees, of the same employer, who are not participants in programs under WtW.

(b) Participants alleging a violation of these health and safety standards may file a complaint pursuant to the procedures contained in § 645.270 of this part (section 403(a)(5)(J)(ii) of the Act).

§ 645.265 What safeguards are there to ensure that participants in Welfare-to-Work employment activities do not displace other employees?

(a) An adult participating in an employment activity operated with WtW funds, as described in § 645.220 of this part, may fill an established position vacancy subject to the limitations in paragraph (c) of this section.

(b) An employment activity operated with WtW funds, as described in § 645.220 of this part, shall not violate existing contracts for services or collective bargaining agreements. Where such an employment activity would violate a collective bargaining agreement, the appropriate labor organization and employer shall provide written concurrence before the employment activity is undertaken.

(c) An adult participating in an employment activity operated with WtW funds, as described in § 645.220 of this part, shall not be employed or assigned:

(1) When any other individual is on layoff from the same or any substantially equivalent job within the same organizational unit;

(2) If the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WtW participant; and,

(3) If the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or substantially equivalent job within the same organizational unit.

(d) Regular employees and program participants alleging displacement may file a complaint pursuant to § 645.270 of this part (section 403(a)(5)(J)(i) of the Act).

§ 645.270 What procedures are there to ensure that currently employed workers may file grievances regarding displacement and that Welfare-to-Work participants in employment activities may file grievances regarding displacement, health and safety standards and gender discrimination?

(a) The State shall establish and maintain a grievance procedure for resolving complaints from:

(1) Regular employees that the placement of a participant in an employment activity operated with WtW funds, as described in § 645.220 of this part, violates any of the prohibitions described in § 645.265 of this part; and

(2) Program participants in an employment activity operated with WtW funds, as described in § 645.220 of this part, that any employment activity violates any of the prohibitions described in §§ 645.255(d), 645.260, or 645.265 of this part.

(b) Such grievance procedure should include an opportunity for informal resolution.

(c) If no informal resolution can be reached within the specified time as established by the State as part of its grievance procedure, such procedure shall provide an opportunity for the dissatisfied party to receive a hearing upon request.

(d) The State shall specify the time period and format for the hearing portion of the grievance procedure, as well as the time period by which the complainant will be provided the written decision by the State.

(e) A decision by the State under paragraph (d) of this section may be appealed by any dissatisfied party within 30 days of the receipt of the State's written decision, according to the time period and format for the appeals portion of the grievance procedure as specified by the State.

(f) The State shall designate the State agency which will be responsible for hearing appeals. This agency shall be independent of the State or local agency which is administering, or supervising the administration of the State TANF and WtW programs.

(g) No later than 120 days of receipt of an individual's original grievance, the State agency, as designated in paragraph (f) of this section, shall provide a written final determination of the individual's appeal.

(h) The grievance procedure shall include remedies for violations of §§ 645.255(d), 645.260, and 645.265 of this part which may continue during the grievance process and which may include:

(1) Suspension or termination of payments from funds provided under this part;

(2) Prohibition of placement of a WtW participant with an employer that has violated §§ 645.255(d), 645.260, and 645.265 of this part;

(3) Where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions, and privileges of employment; and

(4) Where appropriate, other equitable relief (section 403(a)(5)(J)(iv) of the Act).

Subpart C—Additional Formula Grant Administrative Standards and Procedures

§ 645.300 What constitutes an allowable match?

(a) A State is entitled to receive two (2) dollars of Federal funds for every one (1) dollar of State match expenditures, up to the amount available for allotment to the State based on the State's percentage for WtW formula grant for the fiscal year. The State is not required to provide a level of match necessary to support the total amount available to it based on the State's percentage for WtW formula grant. However, if the proposed match is less than the amount required to support the full level of federal funds, the grant amount will be reduced accordingly (section 403(a)(5)(A)(i)(I) of the Act).

(b) States shall follow the match or cost-sharing requirements of the "Common Rule" *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* (codified for DOL at 29 CFR 97.24). Paragraphs (b)(1)(i) and (ii), (b)(3), (b)(4) and (c)(1) of this section are in addition to the common rule requirements. Also, paragraphs included in the common rule which relate to the use of donated buildings and other real property as match have been excluded from this provision.

(1) Only costs that would be allowable if paid for with WtW grant funds will be accepted as match.

(i) Because the use of Federal funds is prohibited for construction or purchase of facilities or buildings except where there is explicit statutory authority permitting it, costs incurred for the construction or purchase of facilities or buildings shall not be acceptable as match for a WtW grant.

(ii) Because the costs of construction or purchase of facilities or buildings are unallowable as match, the donation of a building or property as a third party in-kind contribution is also unallowable as a match for a WtW grant.

(2) A match or cost-sharing requirement may be satisfied by either or both of the following:

(i) Allowable costs incurred by the grantee, subgrantee or a cost type contractor under the assistance agreement. This includes allowable cost borne by non-Federal grants or by others and cash donations from non-Federal third parties.

(ii) The value of third party in-kind contributions applicable to the FY period to which the cost-sharing or matching requirement apply.

(3) No more than one-half (½) of the total match expenditures may be in the form of third party in-kind contributions.

(4) Match expenditures must be recorded in the books of account of the entity that incurred the cost or received the contribution. These amounts may be

rolled up and reported as aggregate State level match.

(c) *Qualifications and exceptions.* (1) The matching requirements may not be met by the use of an employer's share of participant wage payments (e.g., employer share of OJT wages).

(2) *Costs borne by other Federal grant agreements.* A cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(3) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(4) *Cost or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(5) *Costs financed by program income.* Costs financed by program income, as defined in 29 CFR 97.25, shall not count towards satisfying a cost-sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 97.25(g)).

(6) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost-sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(7) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(8) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Cost sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost-sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost-sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(d) *Valuation of donated services.* (1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (d)(1) of this section applies.

(e) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

§ 645.310 What assurance must a State provide that it will make the required matching expenditures?

In its State plan, a State must provide a written estimate of planned matching expenditures and describe the process by which the funds will be tracked and reported to ensure that the State meets its projected match (section 403(a)(5)(A)(i)(I) of the Act).

§ 645.315 What actions are to be taken if a State fails to make the required matching expenditures?

(a) The Department will implement an annual reconciliation and grant adjustment for WtW grants.

(1) The reconciliation will be based on reported match expenditures through the end of the FY report, which is due 45 days after the end of the fiscal year.

(2) If the end of FY report has not been received by December 1 of that year, then the reconciliation will be based on the most current report received.

(b) If match expenditures do not satisfy the requirement of the FY grant, the subsequent FY grant amount will be reduced by the appropriate corresponding amount (i.e., the grant will reduced by two (2) dollars for each one (1) dollar shortfall in State matching funds).

§ 645.320 When will formula funds be reallotted, and what reallotment procedures will the Secretary use?

(a) No reallotment of funds among States will occur during FY 98;

(b) For subsequent fiscal years, a reconciliation will be made during the first quarter of the fiscal year under § 645.315 of this part to determine whether or not a State has satisfied its required level of matching funds for the prior year.

(c) If a State has failed to expend the required level of matching funds, the required reduction in the State grant will be made during the second quarter of the fiscal year.

(d) Also, any funds which become available as a result of underexpenditures of required match, or failure to obligate 100 percent of the funds by either States or substate entities by the end of the fiscal year of the grant, will be reallotted among qualifying States (i.e., those which have committed a sufficient match to qualify for additional funds). The reallotment will occur during the second quarter of the following fiscal year (section 403(a)(5)(A)(i)(I) of the Act).

Subpart D—State Formula Grants Administration

§ 645.400 Under what conditions may the Governor request a waiver to designate an alternate local administering agency?

(a)(1) The Governor may include in the State's WtW Plan a waiver request to select an agency other than the PIC to administer the program for one or more SDAs in a State; or

(2) When the Governor determines the PIC, or alternative agency, has not coordinated its expenditures with the expenditure of funds provided to the State under TANF, pursuant to section 403(a)(5)(A)(vii)(II) of the Act, the Governor shall request a waiver.

(b) The Governor shall bear the burden of proving that the designated alternative agency, rather than the PIC or other administering agency, would improve the effectiveness or efficiency of the administration of WtW funds in the SDA. The Governor's waiver request shall include information to meet that burden. The Governor shall provide a copy of the waiver request and any supporting information submitted to the Secretary to the PIC and CEO of the SDA for which an alternative administering agency is requested.

(c) The PIC and CEO shall have fifteen (15) days in which to submit his or her written response to the Department. The PIC and CEO shall provide a copy of such response to the Governor.

(d) The Secretary will assess the waiver information submitted by the Governor, including input from the PIC and CEO in reaching the decision whether to permit the use of an alternate administrative agency.

(e) The Secretary shall approve a waiver request if she determines that the Governor has established that the designated alternative administering agency, rather than the PIC or other administering agency, will improve the effectiveness or efficiency of the administration of WtW funds provided for the benefit of the SDA.

(f) Where an alternate administering agency is approved by the Secretary, such administrative entity shall coordinate with the CEO for the applicable SDA(s) regarding the expenditure of WtW grant funds in the SDA(s).

(g) The decision of the Secretary to approve or deny a waiver request will be issued promptly and shall constitute final agency action.

§ 645.410 What elements will the State use in distributing funds within the State?

(a) Of the WtW funds allotted to the State, not less than 85 percent of the State allotment must be distributed to the SDAs in the State.

(1) The State shall prescribe a formula for determining the amount of funds to be distributed to each SDA in the State using no factors other than the three factors described in paragraphs (a)(2) and (3) of this section;

(2) The formula prescribed by the Governor must include as one of the formula factors for distributing funds the provision at section 403(a)(5)(A)(vi)(I)(aa) of the Act. The Governor is to distribute funds to an SDA based on the number by which the population of the area with an income that is less than the poverty line exceeds 7.5 percent of the total population of the area, compared to all such numbers in all such areas in the State. The Governor must assign a weight of not less than 50 percent to this factor;

(3) The Governor shall distribute the remaining funds, if any, to the SDAs utilizing only one or both of the following factors:

(i) The SDA's share of the number of adults receiving assistance under TANF or the predecessor program in the SDA for 30 months or more (whether consecutive or not), relative to the number of such adults residing in the State;

(ii) The SDA's share of the number of unemployed individuals residing in the SDA, relative to the number of such individuals residing in the State.

(4) If the amount to be distributed to a service delivery area by the Governor's formula is less than $100,000, the funds shall be available to be used by the Governor to fund projects described at paragraph (b) of this section.

(5) States shall use the guidance provided at section 403(a)(5)(D) of the Act in determining the number of individuals with an income that is less than the poverty line.

(6) PICs (or alternate administering agency) shall determine, pursuant to section 403(a)(5)(A)(vii)(I) of the Act, on which individual(s) and on which allowable activities to expend its WtW fund allocation.

(7) The State shall distribute the SDAs' allocations in a timely manner, but not later than 30 days from receipt of the State's fund allotment.

(b) Of the funds allocated to the State, up to 15 percent of the funds may be retained at the State level to fund projects that appear likely to help long-term recipients of assistance enter unsubsidized employment. Any additional funds available as a result of the process described at paragraph (a)(4)of this section, shall also be available to be used to fund projects to help long-term recipients of assistance enter unsubsidized jobs.

(c) The Governors may distribute the funds retained pursuant to paragraph (b) of this section to a variety of workforce organizations, in addition to PICs, and other entities such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population.

§ 645.415 What planning information must a State submit in order to receive a formula grant?

(a) Each State seeking financial assistance under the formula grant portion of the WtW legislation must submit an annual plan meeting the requirements prescribed by the Secretary. This plan shall be in the form of an addendum to the TANF State plan and shall be submitted to the Secretaries of Labor and Health and Human Services.

(b) The Secretary shall review the State plan for compliance with the statutory and regulatory provisions of the WtW program. The Secretary's decision whether to accept a State plan as in compliance with the Act shall constitute final agency action.

(c) If the Governor has requested a waiver to permit the selection of an alternative administering agency in the State plan, the provisions of § 645.400 of this part shall apply (section 403(a)(5)(A)(ii) of the Act).

§ 645.420 What factors will be used in measuring State performance?

(a) State performance will be measured by a formula issued by the Secretary after consultation with DHHS, the National Governors Association (NGA) and the American Public Welfare Association (APWA).

(b) The formula shall be the basis for measuring the success of States in placing individuals in private sector employment or any kind of employment, the duration of such placements, any increase in earnings of such individuals and other additional factors that the Secretary of Labor deems to be appropriate. The formula will provide for adjustments due to general economic conditions on a State-by-State basis.

(c) The formula shall serve as the basis for the award of FY 2000 bonus grants based on successful performance (section 403(a)(5)(E) of the Act).

§ 645.425 What are the roles and responsibilities of the State(s) and PIC(s)?

(a) *State roles and responsibilities.* A State:

(1) Designates State WtW administering agency;

(2) Provides overall administration of WtW funds, consistent with the WtW statute, WtW regulations and the State's WtW Plan;

(3) Develops the State WtW Plan in consultation and coordination with appropriate entities in substate areas, such as One-Stop systems, private sector employers, labor organizations, business and trade associations, education agencies, housing agencies, community development corporations, transportation agencies, community-based and faith-based organizations, disability community organizations, community action agencies, and colleges and universities which provide some of the assistance needed by the targeted population (section 403(a)(5)(A)(ii)(I)(cc) of the Act);

(4) Distributes funds to SDAs, consistent with the provisions described at § 645.410(a) (section 403(a)(5)(A)(ii)(I)(bb));

(5) Conducts oversight and monitoring of WtW activities and fund expenditures at the State and local levels for compliance with applicable laws and regulations, consistent with the provisions at § 645.245 and provides technical assistance as appropriate;

(6) Ensures coordination of PIC fund expenditures with the State TANF expenditures and other programs (section 403(a)(5)(A)(ii)(I)(dd));

(7) Determines whether to request waivers to select an alternate administering agency consistent with the provisions described at § 645.400 of this part (sections 403(a)(5)(A)(ii)(I)(ee) and 403(a)(5)(A)(vii)(III));

(8) Manages and distributes State level WtW funds (15 percent), consistent with the provisions at §§ 645.410(b) and (c) (section 403(a)(5)(A)(vi)(III));

(9) Ensures that the 15 percent administration limitation and the match requirement are met;

(10) Ensures that worker protections provisions are observed and establishes an appropriate grievance process, consistent with §§ 645.255 through 645.270 of this part (section 403(a)(5)(J));

(11) Provides comments on Competitive Grant Application(s) from eligible entities within the State, consistent with § 645.510 of this part (section 403(a)(5)(B)(ii));

(12) Cooperates with the Department of Health and Human Services on the evaluation of WtW programs (section 403(a)(5)(A)(ii)(III));

(13) Provides technical assistance to PICs or alternate administering agencies; and

(14) Establishes internal reporting requirements to ensure Federal reports are accurate, complete and are submitted on a timely basis, consistant with § 645.240 of this part.

(b) *Private Industry Council (or alternate administering agency) roles and responsibilities.* A PIC:

(1) Has sole authority, in coordination with CEOs, to expend formula funds (section 403(a)(5)(A)(vii)(I) of the Act);

(2) Has authority to determine the individuals to be served in the SDA (section 403(a)(5)(A)(vii)(I));

(3) Has authority to determine the services to be provided in the SDA (section 403(a)(5)(A)(vii)(I));

(4) Ensures funds are expended on eligible recipients and on allowable activities, consistent with § 645.410(a)(5) of this part;

(5) Coordinates WtW fund expenditures with State TANF expenditures and other programs (section 403(a)(5)(A)(ii)(dd));

(6) Ensures that there is an assessment and an individual service strategy in place for each WtW participant, consistent with §§ 645.225(a) and (b) of this part;

(7) Conducts oversight and monitoring of subrecipients, consistent with the provisions at § 645.245 of this part;

(8) Ensures worker protection provisions and grievance process are observed, consistent with State guidelines (section 403(a)(5)(J)); and

(9) Consults with and provides comments on private entity Competitive Grant Application(s), consistent with the provisions at § 645.500(b)(1)(i) of this part.

Subpart E—Welfare-To-Work Competitive Grants

§ 645.500 Who are eligible applicants for competitive grants?

(a) Eligible applicants for competitive grants are:

(1) PICs;

(2) Political subdivisions of a State; and

(3) Private entities including nonprofit organizations such as community development corporations, community-based and faith-based organizations, disability community organizations, community action agencies, and public and private colleges and universities, and other qualified private organizations.

(b) Entities other than a PIC or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the applicable PIC or political subdivision.

(1) The term "in conjunction with" shall mean that the application submitted by such an entity must include a signed certification by both the applicant and either the applicable PIC or political subdivision that:

(i) The applicant has consulted with the applicable PIC/political subdivision during the development of the application; and

(ii) The activities proposed in the application are consistent with, and will be coordinated with, WtW efforts of the PIC/political subdivision.

(2) If the applicant is unable to include such a certification in its application, the applicant will be required to certify, and provide information indicating that efforts were undertaken to consult with the PIC/political subdivision and that the PIC/political subdivision was provided a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Secretary. "Sufficient opportunity for PIC/political subdivision review and comment" shall mean at least 30 calendar days.

(3) The certification described in paragraph (b)(1) of this section, or the evidence of efforts to consult described in paragraph (b)(2), must be with each PIC or political subdivision included in the geographic area in which the project proposed in the application is to operate (section 403(a)(5)(B)(ii) of the Act).

§ 645.510 What is the required consultation with the Governor?

(a) All applicants for competitive grants, including PICs and political subdivisions, must consult with the Governor by submitting their application to the Governor or the designated State administrative entity for the WtW program for review and comment prior to submission of the application to the Secretary. The application submitted to the Secretary must include:

(1) Comments on the application from the State; or

(2) Information indicating that the State was provided a sufficient opportunity for review and comment prior to submission to the Secretary. "Sufficient opportunity for State review and comment" shall mean at least 15 calendar days.

(b) For private entity applicants, the submission of the application for State review and comment must follow the 30 day period provided for PIC/political subdivision review. Evidence of PIC/political subdivision review should be included in the submission to the State (section 403(a)(5)(B)(ii) of the Act).

§ 645.515 What are the program and administrative requirements that apply to both the formula grants and competitive grants?

(a) All of the general program requirements and administrative standards set by 29 CFR part 645 subpart B apply (section 403(a)(5)(C) and section 404(b) of the Act).

(b) In addition, competitive grants will be subject to:

(1) Supplemental reporting requirements; and

(2) Additional monitoring and oversight requirements based on the negotiated scope-of-work of individual grant awards (section 403(a)(5)(B)(iii) and (v)).

§ 645.520 What are the application procedures and timeframes for competitive grant funds?

(a) The Secretary shall establish appropriate application procedures, selection criteria and an approval process to ensure that grant awards accomplish the purpose of the competitive grant funds and that available funds are used in an effective manner.

(b) The Secretary shall publish such procedures in the Federal Register and establish submission timeframes in a manner that allows eligible applicants sufficient time to develop and submit quality project plans (section 403(a)(5)(B)(i) and (iii) of the Act).

§ 645.525 What special consideration will be given to rural areas and cities with large concentrations of poverty?

(a) Competitive grant awards will be targeted to geographic areas of significant need. In developing application procedures, special consideration will be given to rural areas and cities with large concentrations of residents living in poverty.

(b) Grant application guidelines will clarify specific requirements for documenting need in the local area (section 403(a)(5)(B)(iv) of the Act).

Subpart F—Administrative Appeal Process

§ 645.600 What administrative remedies are available under this part?

(a) Within 21 days of receipt of a final determination that has directly imposed a sanction or corrective action pursuant to § 645.250(b) of this part, a recipient, subrecipient, or a vendor directly against which the Grant Officer has imposed a sanction or corrective action, may request a hearing before the Department of Labor Office of Administrative Law Judges, pursuant to the provisions of 29 CFR part 96 subpart 96.6.

(b) In accordance with 29 CFR 96.603(b)(2), the rules of practice and procedure published at 29 CFR part 18 shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency is required. Technical rules of evidence shall not apply to a hearing conducted pursuant to this part; however, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall apply.

(c) The decision of the Administrative Law Judge (ALJ) shall constitute final agency action unless, within 20 days of the decision, a party dissatisfied with the decision of the ALJ has filed a petition for review with the Administrative Review Board (ARB) (established pursuant to the provisions of Secretary's Order No. 2–96, published at 61 Fed. Reg. 19977 (May 3, 1996)), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ shall constitute final agency action unless the ARB, within 30 days of the filing of the petition for review, has notified the parties that the case has been accepted for review. Any case accepted by the ARB shall be decided within 120 days of such acceptance. If not so decided, the decision of the ALJ shall constitute final agency action.

[FR Doc. 97–29966 Filed 11–17–97; 8:45 am]
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Tuesday
November 18, 1997

Part III

Department of Housing and Urban Development

24 CFR Part 5, et al.

Adoption of Revised OMB Circular A–133; Administrative Requirements for Grantees to Reflect the Single Audit Act Amendments of 1996; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 44, 45, 84, and 85

[Docket No. FR–4258–I–01]

RIN 2501–AC40

Adoption of Revised OMB Circular A–133; Administrative Requirements for Grantees to Reflect the Single Audit Act Amendments of 1996

AGENCY: Office of the Chief Financial Officer, HUD.

ACTION: Interim rule.

SUMMARY: On June 30, 1997, OMB published revised Circular A–133 to implement the Single Audit Act Amendments of 1996. The Act sets forth requirements for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards. This rule adopts the revised requirements.

DATES: Effective date: December 18, 1997.

Comment Due Date: January 20, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: William E. Dobrzykowski, Deputy Chief Financial Officer for Finance, (202) 708–0650. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal Information Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 30, 1997, the Office of Management and Budget (OMB) published revised Circular No. A–133, re-titled "Audits of States, Local Governments, and Non-Profit Organizations," which established uniform audit requirements for non-Federal entities that administer Federal awards and implemented the Single Audit Act Amendments of 1996 (Pub.L. 104–156, enacted July 5, 1996). OMB Circular No. A–128, "Audits of States and Local Governments," which was issued in 1985, was rescinded as a result of the consolidation of audit requirements under Circular A–133.

One of the more significant revisions is that the threshold for when an entity is required to have an audit is raised from $25,000 to $300,000. Other significant changes are: a report submission due date which is shortened from 13 to 9 months and a report submission process that includes a data collection form and streamlined filing requirements; a new risk-based approach for major program determination; and additional guidance for program-specific audits, audit findings, and audit findings follow-up.

Through this interim rule the Department of Housing and Urban Development (HUD) adopts these requirements. In addition, HUD is adding a provision to set forth a clarification regarding the uniform audit requirements for non-profit organizations participating in HUD programs whose regulations are set forth in 24 CFR in the part 200 and 800 series, such as parts 207, 213, 220, 221, 231, 232, 234, 236, 241, 242, 244, 266, 880, 881, 882, 883, 884, 886, and 891. The clarification provides that non-profit organizations subject to regulations in the part 200 and part 800 series of 24 CFR shall comply with the audit requirements of revised OMB Circular A–133. Audits of non-profit organizations under these programs were previously subject to the requirements of the Consolidated Audit Guide for Audits of HUD Programs (HUD Handbook 2000.04). This audit guide no longer applies to audits of non-profit organizations. For HUD programs, a non-profit organization is the mortgagor or owner and not a related or affiliated organization or entity. The terms "mortgagor" or "owner" are defined in the regulations in the part 200 and part 800 series, such as §§ 207.251, 891.205 and 891.305.

HUD is also removing and reserving 24 CFR parts 44 and 45 since these parts are no longer applicable because of the revised circular. A number of conforming technical revisions are needed throughout HUD's regulations in title 24 of the CFR as a result of HUD's adoption of the uniform audit requirements. Those revisions will be set forth in a subsequent separate rulemaking.

Findings and Certifications

Environmental Impact

This amendment is excluded from the environmental review requirements of the National Environmental Policy Act (42 U.S.C. 4321–4347) and the other related Federal environmental laws and authorities, as set forth in 24 CFR part 50. In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not "direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy."

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This interim rule merely adopts government-wide requirements related to auditing. The interim rule does not affect the amount of funds provided in the covered programs, but rather increases the threshold for non-Federal entities subject to audit, thereby reducing burden on some small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs-Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 44

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 45

Accounting, Colleges and universities, Grant programs, Loan programs, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 84

Accounting, Audit requirements, Colleges and universities, Grant programs—housing and community development, Loan programs—housing and community development, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 85

Accounting, Audit requirements, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, parts 5, 44, 45, 84, and 85 of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Subpart A is amended to add a new § 5.107 to read as follows:

§ 5.107 Audit requirements for non-profit organizations

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" (see 24 CFR 34.26). For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

PARTS 44 AND 45—[REMOVED AND RESERVED]

3. Parts 44 and 45 are removed and reserved.

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

4. The authority citation for part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

5. Section 84.26 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 84.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organization (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(1) Non-profit organizations subject to regulations in the part 200 and part 800 series of this title which receive awards subject to part 84 shall comply with the audit requirements of revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

(2) Reserved.

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

* * * * *

6. Section 84.82 is amended by revising paragraphs (e)(1), (2), and (3) to read as follows:

§ 84.82 Provisions applicable only to lump sum grants.

* * * * *

(e) *Non-Federal audits.* (1) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(i) Non-profit organizations subject to regulations in the part 200 and part 800 series of this title which receive awards subject to part 84 shall comply with the audit requirements of revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

(ii) [Reserved].

(2) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(3) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

* * * * *

PART 85—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

7. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

8. Section 85.26 is amended by revising paragraphs (a), (b) introductory text, and (b)(1), to read as follows:

§ 85.26 Non-Federal audits.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit

requirements of the Act and whether subgrantees covered by OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act.

Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

* * * * *

Dated: October 22, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97–30181 Filed 11–17–97; 8:45 am]

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H.R. 79/P.L. 105–78

Hoopa Valley Reservation South Boundary Adjustment Act (Nov. 13, 1997; 111 Stat. 1527)

H.R. 672/P.L. 105–80

To make technical amendments to certain provisions of title 17, United States Code. (Nov. 13, 1997; 111 Stat. 1529)

H.R. 708/P.L. 105–81

To require the Secretary of the Interior to conduct a study concerning grazing use and open space within and adjacent to Grand Teton National Park, Wyoming, and to extend temporarily certain grazing privileges. (Nov. 13, 1997; 111 Stat. 1537)

S. 931/P.L. 105–82

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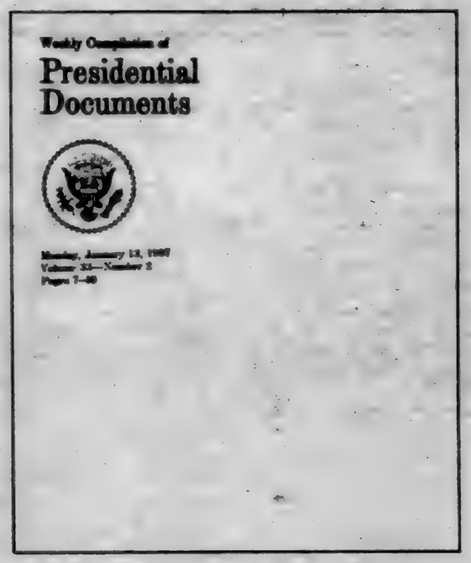
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 62, No. 223
Wednesday, November 19, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 96–014DF]

RIN 0583–AC16

Carrageenan, Locust Bean Gum and Xanthan Gum Blend Used as a Binder in Certain Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of a blend of carrageenan, locust bean gum, and xanthan gum as a binder in cured pork products labeled "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients." FSIS currently permits the use of other specified binders in these cured pork products. The maximum use level of 0.5 percent will prevent purging of the pumped brine solution from the products, thereby retaining product moisture and enhancing texture.

DATES: This rule will be effective January 20, 1998 unless FSIS receives written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking on or before December 19, 1997. If written adverse comments or notice of intent to submit adverse comments is received, FSIS will publish timely notice of the withdrawal of this rule in the **Federal Register**.

ADDRESS: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #96–014DF, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Reference materials cited in this document will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Post, Labeling and Compounds Review Division, Office of Policy, Program Development and Evaluation; (202) 418–8900.

SUPPLEMENTARY INFORMATION: On July 18, 1995, FSIS was petitioned by Vedeqsa, S.A., to approve the use of a blend of carrageenan, locust bean gum, and xanthan gum as a binder in cured pork products labeled "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients," in an amount not exceeding 0.5 percent of product formulation, to prevent purging of the brine solution. During manufacturing, these ham products are pumped with a brine solution, the ultimate level of which is controlled by a protein-fat-free (PFF) standard described in 9 CFR 319.104. PFF is the minimum meat protein which is indigenous to the raw, unprocessed pork, expressed as a percent of the nonfat portion of the finished product. These products are normally packaged in clear plastic and enclosed by a vacuum seal. Subsequent to the curing process, the brine purges from the products, settling in the products' packages, reducing the moisture content of the products and negatively affecting their appearance and quality.

FSIS currently permits the use of carrageenan as an extender and stabilizer in breading mixes and sauces for use in meat products at a level sufficient for that purpose, and in "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients" up to 1.5 percent of product formulation to prevent purging of brine solution. FSIS also permits the use of xanthan gum as an emulsifier, stabilizer, or thickener in meat sauces, gravies, canned or frozen meat salads or stews, canned chili, pizza topping mixes, and batter and breading mixes, at a level sufficient for that purpose.

The Food and Drug Administration (FDA) lists locust (carob) bean gum as generally recognized as safe as a stabilizer and thickener with a maximum usage level of 0.5 percent when used in meat products (21 CFR 184.1343). FDA has provided FSIS with a letter dated October 13, 1995, concurring with FSIS's determination that the petitioned use of a blend of carrageenan, locust bean gum, and xanthan gum in combination is acceptable for use as a binder matrix (blend) to prevent purging of added brine solution in certain cured pork products.

The petitioner submitted data to show that at a use level of 0.5 percent, a blend consisting of 70 percent carrageenan, 15 percent locust bean gum and 15 percent xanthan gum reduces the purge of brine in water-added hams as well as carrageenan alone. After reviewing this, and the petitioner's other technical data and information, FSIS has determined that 9 CFR 318.7(c)(4) should be amended to permit the use of any blend of carrageenan, locust bean gum, and xanthan gum in "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients" products at a level not to exceed 0.5 percent of the product formulation weight. Such use will reduce the amount of purge from the ham products during storage. This binder is not permitted to be used in combination with any other binder approved for use in cured pork products. This binder shall be designated in the ingredients statement, as provided in 9 CFR 319.104(d).

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless the Agency receives adverse comments within the scope of the rulemaking, or notice of intent to submit adverse comments within the scope of the rulemaking within 30 days, the action will become final 60 days after publication in the **Federal Register**. If adverse comments within the scope of the rulemaking are received, the direct final rulemaking notice will be withdrawn and a proposed rulemaking notice will establish a comment period.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this direct final rule is adopted: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be

required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been determined to be not significant and, therefore, has not been reviewed by OMB.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This direct final rule permits the use of an additional binder matrix, a blend of carrageenan, locust bean gum, and xanthan gum, in "Ham Water Added" and "Ham and Water Product—X% of Weight is Added Ingredients." Manufacturers opting to use the binder blend would incur labeling expenses in revising the ingredients statements of their labels to show the presence of the blend. Decisions by individual manufacturers on whether to use the binder blend in these cured pork products would be based on their conclusions that the benefits outweigh the implementation costs.

Paperwork Requirements

Manufacturers opting to use a blend of carrageenan, locust bean gum, and xanthan gum as a binder in specific pork products must revise their product labels. Such labeling changes will be generically approved in accordance with 9 CFR 317.5. Any burden associated with labeling changes are approved under OMB number 0583–0092.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 318 is amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. In section 318.7(c)(4), under the Class of substance "Binders and extenders," a new entry for the substance "Carrageenan, Locust Gum Bean, and Xanthan Gum Blend" is added at the end to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of Substance	Substance	Purpose	Products	Amount
•	•	•	•	•
Binders and extenders	Carrageenan, Locust bean gum, and Xanthan gum blend.	To prevent purging of brine solution.	Cured pork products as provided in 9 CFR 319.104(d).	In combination, not to exceed 0.5 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 172.620, 172.623, 172.626, 184.1343, and 172.695
•	•	•	•	•

Done at Washington, DC, on November 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30324 Filed 11–18–97; 8:45 am]

BILLING CODE 3410-DM-P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0945]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $49.3 million to $47.8 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $4.4 million to $4.7 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $75.0 million to $78.9 million for nonexempt depository institutions and from $48.2 million to $50.7 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements ($4.7 million) while exempt institutions are those with total reservable liabilities not exceeding the amount exempted from reserve requirements.) Thus, beginning in September 1998, nonexempt institutions with total deposits of $78.9 million or more will be required to report weekly while nonexempt institutions with total deposits less than $78.9 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $50.7 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $50.7 million may report annually on form FR 2910a.

DATES: *Effective date:* December 16, 1997.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 30, 1997, and the corresponding reserve maintenance period that begins Thursday, January 1, 1998. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 16, 1997, and the corresponding reserve maintenance period that begins Thursday, January 15, 1998. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1998 to determine the reporting frequency for the twelve month period that begins in September 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452–3544); Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $49.3 million. Net transaction accounts of all depository institutions decreased by 3.7 percent (from $740.1 billion to $712.8 billion) from June 30, 1996, to June 30, 1997. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1998 by $1.5 million to $47.8 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(11)(B)) provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 7.7 percent (from $1,695.1 billion to $1,824.8 billion) from June 30, 1996, to June 30, 1997. Consequently, the reservable liabilities exemption amount for 1998 under section 19(b)(11)(B) will be increased by $0.3 million to $4.7 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1996, to June 30, 1997, is to decrease the low reserve tranche to $47.8 million, to apply a zero percent reserve requirement on the first $4.7 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective for the reserve computation period beginning Tuesday, December 30, 1997, and for the corresponding reserve maintenance period beginning Thursday, January 1, 1998. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the computation period beginning Tuesday, December 16, 1997, and for the reserve maintenance period beginning Thursday, January 15, 1998. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1980 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels, increasing the cutoff level for nonexempt institutions, and in September 1997 further increased the cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was thereby raised to $75.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of $48.2 million.

From June 30, 1996, to June 30, 1997, total deposits increased 6.6 percent, from $4,168.2 billion to $4,442.2 billion.

Accordingly, the nonexempt deposit cutoff level will increase by $3.9 million to $78.9 million and the exempt deposit cutoff level will increase by $2.5 million to $50.7 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.4 million to $4.7 million. Institutions with total deposits below $4.7 million will be excused from reporting if their deposits can be estimated from other data sources. The $78.9 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $50.7 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.7 million level threshold for reporting will be used in the second quarter 1998 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1998.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1998, all other institutions that have reservable liabilities in excess of the exemption level of $4.7 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the nonexempt deposit cutoff level ($78.9 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve month period starting September 1998. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($78.9 million), will be able to file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.7 million) (known as exempt institutions) will be required to file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($50.7 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($50.7 million) but at least equal to the exemption amount ($4.7 million) will be able to file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.7 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $47.8 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $47.8 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. *See* "Notice and Public Participation" above.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement[1]
Net transaction accounts:	
$0 to $47.8 million	3 percent of amount.
over $47.8 million	$1,434,000 plus 10 percent of amount over $47.8 million
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $4.7 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, November 13, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–30237 Filed 11–18–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–14]

Revocation of Class E Airspace; Marietta Dobbins ARB (NAS Atlanta), GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes Class E surface area airspace at Marietta Dobbins Air Reserve Base (ARB) (Naval Air Station [NAS] Atlanta). The required weather observations are no longer being taken after the control tower closes; therefore, the airport no longer meets the criteria for Class E surface area airspace.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5491.

SUPPLEMENTARY INFORMATION: Weather observations are a requirement for Class E surface area airspace. Since weather observations are no longer taken at Marietta Dobbins ARB (NAS Atlanta) after the control tower closes, the requirement for Class E surface area airspace is no longer being met; therefore, the Class E surface area airspace is no longer being met; therefore, the Class E surface area airspace must be revoked. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action revokes the Class E surface area airspace, and as a result, eliminates the impact of Class E airspace on users of the airspace in the vicinity of Marietta Dobbins ARB (NAS Atlanta), notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Designations for Class E airspace areas designated as a surface area for an airport are published in FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO GA E2 Marietta Dobbins ARB (NAS Atlanta), GA [Removed]

* * * * *

Issued in College Park, Georgia, on November 3, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–30355 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket 97–ASO–13]

Establishment of Class E Airspace; Guntersville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace area at Guntersville, AL. A Global Positioning System (GPS)-A Standard Instrument Approach Procedure (SIAP) has been developed for Guntersville Municipal Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Guntersville Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5576.

SUPPLEMENTARY INFORMATION:

History

On September 12, 1997, the FAA proposed to amend 14 CFR part 71 by establishing Class E airspace at Guntersville, AL (62 FR 48025). This action would provide adequate Class E airspace for IFR operations at Guntersville Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Guntersville, AL. Additionally, this rule makes a technical amendment to the legal description of the airspace area by adding words that exclude an adjacent Class E airspace area. A GPS–A SIAP has been developed for Guntersville Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Guntersville Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * *

ASO FL E5 Guntersville, AL [New]

Guntersville Municipal Airport, AL
(lat. 34°23'57" N, long. 86°16'12" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Guntersville Municipal Airport, excluding that airspace within the Albertville, AL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 3, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–30357 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for 61 approved new animal drug applications (NADA's) from Mallinckrodt Veterinary, Inc., to Schering-Plough Animal Health Corp.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Mallinckrodt Veterinary, Inc., Mundelein, IL 60060, has informed FDA that it has transferred the ownership of, and all rights and interests in the approved NADA's to Schering-Plough Animal Health Corp. The agency is amending 21 CFR 510, 520, 522, 524, and 558 to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Mallinckrodt Veterinary Inc."; and in the table in paragraph (c)(2) by removing the entry for "011716".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.82a [Amended]

4. Section 520.82a *Aminopropazine fumarate tablets* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.82b [Amended]

5. Section 520.82b *Aminopropazine fumarate, neomycin sulfate tablets* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.222 [Amended]

6. Section 520.222 *Bunamidine hydrochloride* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.580 [Amended]

7. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing "011716" and adding in its place "000061".

§ 520.622c [Amended]

8. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(5) by removing "011716" and adding in its place "000061".

§ 520.784 [Amended]

9. Section 520.784 *Doxylamine succinate tablets* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.863 [Amended]

10. Section 520.863 *Ethylisobutrazine hydrochloride tablets* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.1120a [Amended]

11. Section 520.1120a *Haloxon drench* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.1120b [Amended]

12. Section 520.1120b *Haloxon boluses* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.1242a [Amended]

13. Section 520.1242a *Levamisole hydrochloride drench and drinking water* is amended in paragraph (c)(2) by removing "011716" and adding in its place "000061".

§ 520.1242b [Amended]

14. Section 520.1242b *Levamisole hydrochloride tablet or oblet (bolus)* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.1242g [Amended]

15. Section 520.1242g *Levamisole resinate and famphur paste* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.1320 [Amended]

16. Section 520.1320 *Mebendazole oral* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.1326a [Amended]

17. Section 520.1326a *Mebendazole and trichlorfon powder* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.1326b [Amended]

18. Section 520.1326b *Mebendazole and trichlorfon paste* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.1720a [Amended]

19. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(1) by removing "011716" and adding in its place "000061".

§ 520.1720b [Amended]

20. Section 520.1720b *Phenylbutazone granules* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.1720c [Amended]

21. Section 520.1720c *Phenylbutazone paste* is amended in paragraph (b) by removing "010797 and 011716" and adding in its place "000061 and 010797".

§ 520.1805 [Amended]

22. Section 520.1805 *Piperazine phosphate with thenium closylate tablets* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.2220b [Amended]

23. Section 520.2220b *Sulfadimethoxine tablets and boluses* is amended in paragraph (b)(3) by removing "011716" and adding in its place "000061".

§ 520.2220c [Amended]

24. Section 520.2220c *Sulfadimethoxine oral suspension* is amended in paragraph (c) by removing "000069 and 011716" and adding in its place "000061 and 000069".

§ 520.2362 [Amended]

25. Section 520.2362 *Thenium closylate tablets* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 520.2610 [Amended]

26. Section 520.2610 *Trimethoprim and sulfadiazine tablets* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.2611 [Amended]

27. Section 520.2611 *Trimethoprim and sulfadiazine oral paste* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 520.2612 [Amended]

28. Section 520.2612 *Trimethoprim and sulfadiazine oral suspension* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

29. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.82 [Amended]

30. Section 522.82 *Aminopropazine fumarate sterile solution injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.150 [Amended]

31. Section 522.150 *Azaperone injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.784 [Amended]

32. Section 522.784 *Doxylamine succinate injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.863 [Amended]

33. Section 522.863 *Ethylisobutrazine hydrochloride injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.1155 [Amended]

34. Section 522.1155 *Imidocarb dipropionate sterile powder* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.1244 [Amended]

35. Section 522.1244 *Levamisole phosphate injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.1503 [Amended]

36. Section 522.1503 *Neostigmine methylsulfate injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.1704 [Amended]

37. Section 522.1704 *Sodium pentobarbital injection* is amended in paragraph (a)(2) by removing "011716" and adding in its place "000061".

§ 522.1720 [Amended]

38. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing "011716" and adding in its place "000061".

§ 522.2005 [Amended]

39. Section 522.2005 *Propofol injection* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 522.2610 [Amended]

40. Section 522.2610 *Trimethoprim and sulfadiazine sterile suspension* is amended in paragraph (a)(2) by removing "000856 and 011716" and adding in its place "000061 and 000856".

§ 522.2680 [Amended]

41. Section 522.2680 *Zeranol* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

42. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.154 [Amended]

43. Section 524.154 *Bacitracin or bacitracin zinc-neomycin sulfate-polymyxin B sulfate ophthalmic ointment* is amended in paragraph (a)(2) by removing "011716" and adding in its place "000061".

§ 524.155 [Amended]

44. Section 524.155 *Bacitracin zinc-polymyxin B sulfate-neomycin sulfate-hydrocortisone or hydrocortisone acetate ophthalmic ointment* is amended in paragraph (a)(1) by removing "011716" and adding in its place "000061".

§ 524.900 [Amended]

45. Section 524.900 *Famphur* is amended in paragraph (c) by removing "011716" and adding in its place "000061".

§ 524.1240 [Amended]

46. Section 524.1240 *Levamisole* is amended in paragraph (b) by removing "010042 and 011716" and adding in its place "000061 and 010042".

§ 524.1443 [Amended]

47. Section 524.1443 *Miconazole nitrate cream; miconazole nitrate lotion; miconazole nitrate spray* is amended in paragraph (b) by removing "011716" and adding in its place "000061".

§ 524.1742 [Amended]

48. Section 524.1742 *N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing "011536 and 011716" and adding in its place "000061 and 011536".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

49. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.175 [Amended]

50. Section 558.175 *Clopidol* is amended in paragraph (c)(1)(iii)(*b*) and (c)(1)(iv)(*b*) by removing "011716" and adding in its place "000061".

§ 558.195 [Amended]

51. Section 558.195 *Decoquinate* is amended in the table in paragraph (d), under the "Limitations" column by removing "011716" wherever it appears and adding in its place "000061".

§ 558.254 [Amended]

52. Section 558.254 *Famphur* is amended in paragraph (a) by removing "011716" and adding in its place "000061".

§ 558.311 [Amended]

53. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1)(ii), under the "Limitations" column, 5th paragraph, by removing "011716" and adding in its place "000061".

§ 558.515 [Amended]

54. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(vi)(*b*) by removing "011716" and adding in its place "000061".

Dated: November 3, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–30337 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Orbifloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health. The supplemental NADA provides for veterinary prescription use of orbifloxacin tablets for management of diseases in cats associated with bacteria susceptible to orbifloxacin.

EFFECTIVE DATE: NOVEMBER 19, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph J. Bertone, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1692.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, is sponsor of NADA 141–081 Orbax™ (orbifloxacin) tablets that provide for veterinary prescription use in dogs for management of diseases associated with bacteria susceptible to orbifloxacin. The sponsor filed a supplemental NADA providing for veterinary prescription use of orbifloxacin tablets for management of diseases in cats associated with bacteria susceptible to orbifloxacin. The supplemental NADA is approved as of September 18, 1997, and the regulations are amended in 21 CFR 520.1616 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Furthermore, certain limitations, although required in the labeling, are not required in the regulation. Those limitations are removed from the regulation at this time.

Also, the sponsor's address has been changed. At this time, the address in the list of sponsors of approved applications in 21 CFR 510.600(c)(1) and (c)(2) is amended to reflect the new address.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning September 18, 1997, because the supplemental application contains substantial evidence of the effectiveness of the drug involved or studies of target animal safety required for approval and conducted or sponsored by the applicant. Three years marketing exclusivity is limited to use of orbifloxacin tablets for cats.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Schering-Plough Animal Health" and in paragraph (c)(2) in the entry for "000061" by removing the current address and adding in its place the address "1095 Morris Ave., Union, NJ 07083".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1616 [Amended]

2. Section 520.1616 *Orbifloxacin tablets* is amended in the heading of paragraph (d)(1) and in paragraph (d)(1)(iii) by adding after the word "dogs" the phrase "and cats", and in paragraph (d)(1)(iii) by removing the phrase "2.5 milligrams per kilogram of body weight" and the second, third, and fourth sentences.

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30411 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Amprolium Plus Ethopabate With Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved amprolium plus ethopabate and bacitracin zinc Type A medicated articles to make Type C medicated feeds used for prevention of coccidiosis in broiler and replacement chickens and improved feed efficiency in broiler chickens.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–205 that provides for combining approved amprolium plus ethopabate and bacitracin zinc Type A medicated articles to make Type C medicated feeds for broilers containing amprolium 113.5 grams per ton (g/t) plus ethopabate 36.3 g/t and bacitracin zinc 4 to 50 g/t. The Type C medicated feed is used: (1) As an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina*, *E. maxima*, and *E. brunetti* is likely to occur in broiler chickens and replacement chickens where immunity to coccidiosis is not desired, and for increased rate of weight gain in broiler chickens raised in floor pens; (2) as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina*, *E. maxima*, and *E. brunetti* is likely to occur; and (3) for improved feed efficiency in broiler chickens.

Alpharma Inc.'s ANADA 200–205 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 114–794. The ANADA is approved as of September 19, 1997, and the regulations are amended in the table in 21 CFR 558.58(d)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.58 [Amended]

2. Section 558.58 *Amprolium and ethopabate* is amended in paragraph (d)(1)(iii) in the table in the entry for "Bacitracin 4 to 50" in the columns "Limitations" and "Sponsor" by removing "000004" and adding in its place "000004 and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30409 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for changing the withdrawal time to zero following certain uses of chlortetracycline (CTC) in Type C cattle feeds (including free-choice feeds).

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199, filed supplemental NADA 48–761 that provides for decreasing the withdrawal times for all National Academy of Sciences/National Research Council drug efficacy study implementation (NAS/NRC DESI) approved uses of CTC Type C medicated feeds (including free-choice feeds) for beef and nonlactating dairy cattle and for control of anaplasmosis and other claims to a zero withdrawal time. The supplemental NADA is approved as of September 23, 1997, and the regulations are amended in § 558.128(d)(1) and (d)(2) (21 CFR 558.128(d)(1) and (d)(2)) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, in the revision of § 558.128 published in the Federal Register of

July 9, 1996 (61 FR 35949), FDA provided for approval of five supplemental NADA's to reflect compliance with the results of the NAS/NRC DESI review of the products and FDA's conclusions based on that study. In that document, FDA failed to reflect that Hoffmann-La Roche is the sponsor of the product codified in § 558.128(d)(2) (see 53 FR 31316, August 18, 1988). The sponsor was the subject of a change of sponsor from American Cyanamid published in the **Federal Register** of April 24, 1996 (61 FR 18081). At this time, the paragraph is amended to reflect the correct sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of human food safety data and information submitted to support approval of this supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended in the table in paragraph (d)(1) in entry (xi) in the column "Limitations" by adding after the existing text the sentence "For sponsor 000004 zero withdrawal time.", in entry (xii) for indication 1., in the column "Limitations" by adding after the phrase "for sponsor 048573;" the phrase "zero withdrawal for sponsor 000004;", in entry (xvii) for indication 1., in the column "Limitations" by adding after the existing text the sentence "For sponsor 000004 zero withdrawal time.", and in paragraph (d)(2) by adding after the number "(2)" the phrase "For sponsor 000004:" and removing the phrase "discontinue use 4 days prior to slaughter".

Dated: November 3, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–30405 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 50

[OJP–1078]

RIN 1121–AA37

Young American Medals Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice, Office of Justice Programs (OJP), is publishing this final rule to implement the regulations for the Young American Medals Program as authorized by the Youth Medals Act. The final rule provides an outline of the program and criteria for the awarding of the Young American Medals for Bravery and Service.

DATES: This regulation is effective as of November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Ellen Wesley at (202) 616–3558.

SUPPLEMENTARY INFORMATION: Congress authorized the Department of Justice to promulgate rules and regulations establishing medals under the Youth Medals Act, codified at 42 U.S.C. § 1921, *et seq.* The Act establishes two medals to be awarded under different criteria to persons eighteen years of age or younger at the time of the occurrence. The first, the Young American Medal for Bravery, 42 U.S.C. § 1921, is awarded to a person who has exhibited exceptional courage, extraordinary decisiveness, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety. The second medal, the Young American Medal for Service, 42 U.S.C. § 1922, is awarded to a person who has displayed outstanding character and service.

The final rule sets forth eligibility criteria and application and presentation procedures for the medals. The Young American Medals Committee, part of the Office of the Attorney General, is authorized to issue regulations for the establishment of the two medals, and pursuant to that authority is issuing this final rule.

The interim rule with request for comments was published on September 19, 1996. No comments were received before November 18, 1996, the end of the comment period. Accordingly, the interim rule amending 28 CFR part 50 which was published at 61 FR 49259 on September 19, 1996, is adopted as a final rule without change.

Regulatory Flexibility Act

The Assistant Attorney General, Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this final rule and, by approving it, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Assistant Attorney General, Office of Justice Program determined that the: (1) Final rule provides the outline of a program governing the award of medals to individuals for bravery or service; and (2) the award of such medals imposes no requirements on small businesses or on small entities.

Paperwork Reduction Act

No information requirements are contained in this final rule.

Executive Order 12866

This final rule has been reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Justice Programs has determined that this Final Rule is not a "significant regulatory action" under Executive Order 12866 § 3(f), Regulatory Planning and Review, and accordingly this Final Rule has not been reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 50

Medals.

PART 50—STATEMENTS OF POLICY

Accordingly, the Interim Rule amending 28 CFR part 50 which was published at 61 FR 49259 on September 19, 1996, is adopted as a final rule without change.

Dated: November 14, 1997.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 97–30402 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–064]

RIN 2115–AE46

Special Local Regulations: City of Pompano Annual Christmas Boat Parade, Pompano Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the City of Pompano Annual Christmas Boat Parade. This event will be held Sunday, December 14, 1997, between 5 p.m. and 10 p.m. Eastern Standard Time (EST). There will be approximately 150 participants and 75 spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters. These regulations are necessary to provide for the safety of life of navigable waters during the event.

DATES: These regulations become effective on December 14, 1997, from 5 p.m. to 10 p.m. EST.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado, Coast Guard Group Miami, FL at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The City of Pompano Annual Christmas Boat Parade is a nighttime parade of approximately 150 pleasure and fishing boats ranging in length from 23 feet to 125 feet decorated with holiday lights. There will be approximately 75 spectator craft. The parade will form in the staging area at Lake Santa Barbara then proceed north up the Intracoastal Waterway (ICW) to the Hillsboro Boulevard Bridge where the parade will disband.

The regulated area will include the Intracoastal Waterway from Pompano Beach daybeacon 74 LLNR 47230 to State Road 810 Bridge (ICW mile marker 1050). While the parade is transiting, these regulations will prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the patrol commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public, as the Coast Guard was only given notice of the date of the parade less than five weeks before the event.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only five hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately five hours in a limited area of the intracoastal waterway.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A new temporary section 100.35T–07–054 is added to read as follows:

§ 100.35T–07–054 City of Pompano Annual Christmas Boat Parade, Pompano Beach Florida

(a) *Regulated Area.* The regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipant vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade as the parade transit north in the Intracoastal Waterway (ICW) from Lake Santa Barbara, the staging area of the parade, to the Hillsboro Boulevard Bridge, where the parade will disband. The regulated area will include the Intracoastal Waterway from Pompano Beach daybeacon 74 LLNR 47230 to State Road 810 bridge (ICW mile marker 1050).

(b) *Special Local Regulations.*

(1) While the parade is transiting, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the Patrol Commander. Anchoring in the viewing area is prohibited unless authorized by the Patrol Commander. Entry or anchoring in the staging area is prohibited, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels may resume normal operations.

(2) A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Dates.* These regulations become effective on December 14, 1997, from 5 p.m. to 10 p.m. EST.

Dated: November 6, 1997.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 97–30291 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 97–007]

RIN 2115–AA97

Safety Zone: Los Angeles Harbor-San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is revising the two safety zones associated with the dredging and landfill activities for stage II of the Pier 400 project. The Coast Guard is also adding a new moving safety zone surrounding the Dredge FLORIDA when it is in the waters of Los Angeles Harbor and San Pedro Bay, CA, and engaged in dredging operations associated with the Pier 400 project.

DATES: This regulation will be in effect from 6 a.m. PDT on July 22, 1997 until 11:59 p.m. PST on December 31, 1999. Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying within the Port Safety Division at Marine Safety Office Los Angeles-Long Beach. Normal office hours are 8 a.m. to 4 p.m., PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Keith Whitsman, Chief, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the sequence of construction activities, location of work, selection of a contractor, and the issuance of a notice to proceed for Stage II of the Pier 400 project were not finalized until a date fewer than 30 days prior to the anticipated start of work.

Although this regulation is published as an interim rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 97–007) for the regulation and also include their name, address, and reason(s) for each comment presented. persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Based upon the comments received, the scope of the regulation may be changed.

The Coast Guard plans no public meetings. Persons may request a public meeting by writing to Marine Safety Office Los Angeles-Long Beach at the address listed under **ADDRESSES** in this preamble.

Background and Purpose

Construction associated with the Pier 400 project referenced in 33 CFR part 165.1110 has progressed to stage II. Consequently, the dredging and landfill activities necessary to complete the project have been expanded, and the existing safety zones no longer provide an appropriate level of safety. This rule expands those safety zones, and adds a new, moving safety zone surrounding the Dredge FLORIDA whenever it is engaged in dredging activities associated with the Pier 400 project.

The Dredge FLORIDA was not utilized during stage I of the Pier 400 project. Consequently, the moving safety zone surrounding the Dredge FLORIDA was not necessary during stage I of the Pier 400 project, but it is now essential given the expanded scope of stage II of the Pier 400 project.

This regulation is needed to restrict vessel traffic in the regulated areas to prevent collisions, groundings, or other navigational mishaps. Entry into, transit through, or anchoring within any of the safety zones is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Discussion of Regulation

This rulemaking accomplishes three things with respect to the Pier 400 project. It expands the two existing safety zones referenced in 33 CFR part 165.1110, and it adds a third, moving safety zone surrounding the Dredge FLORIDA. This rulemaking is necessary because the construction activities associated with the Pier 400 project have progressed from stage I to stage II. Consequently, the geographic scope of the construction area is now larger, and the services of the Dredge FLORIDA must now be employed.

These safety zones are necessary to safeguard recreational and commercial vessels from the dangers of the dredging and landfill activities in the project area and to prevent interference with vessels engaged in these operations. All persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Regulatory Assessment

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Only minor delays to mariners are foreseen as vessel traffic can be directed around the area of the safety zones.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This regulation is expected to have no significant effect on the environment. A Categorical Exclusion Determination and Environmental Analysis Checklist is available for inspection and copying in the docket to be maintained at the address under **ADDRESSES** in this preamble.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.1110 is revised to read as follows:

§ 165.1110 Safety Zone: Los Angeles Harbor—San Pedro Bay, CA.

(a) *Location.* All waters within the following boundaries are established as safety zones:

(1) Pier 400: Those waters of Los Angeles Harbor and San Pedro Bay in the vicinity of Pier 400 as defined by the lines connecting the following coordinates:

Latitude	*Longitude*
33°–44′–29.06″ N	118°–14′–17.25″ W; thence to
33°–43′–48.06″ N	118°–13′–59.25″ W; thence to
33°–43′–48.50″ N	118°–14′–11.72″ W; thence to
33°–42′–46.17″ N	118°–15′–04.78″ W; thence to
33°–43′–00.00″ N	118°–15′–29.90″ W; thence to
33°–43′–21.94″ N	118°–15′–41.51″ W; thence to
33°–43′–45.04″ N	118°–15′–30.81″ W; thence to
33°–43′–58.55″ N	118°–14′–44.38″ W; thence to
33°–44′–03.70″ N	118°–14′–26.65″ W.

and thence to the point of origin. All coordinates referred use Datum: NAD 83.

(2) Shallow Water Habitat: Those waters of Los Angeles Harbor and San Pedro Bay as defined by the lines connecting the following coordinates.

Latitude	*Longitude*
33°–42′–32.10″ N	118°–15′–00.00″ W; thence to
33°–42′–49.84″ N	118°–15′–41.51″ W; thence to
33°–42′–47.06″ N	118°–15′–58.26″ W; thence to
33°–42′–24.99″ N	118°–15′–23.59″ W.

and thence to the point of origin. All coordinate referred use Datum: NAD 83.

(3) Moving Safety Zone: Dredge FLORIDA. All waters within 50 yards on all sides of the Dredge FLORIDA when it is in the waters of Los Angeles Harbor and San Pedro Bay, CA, and engaged in dredging operations associated with the Pier 400 project.

(b) *Effective Date.* This section is effective from 6 A.M. PDT on July 22, 1997 until 11:59 P.M. PST on December 31, 1999, unless canceled earlier by the Captain of the Port.

(c) Regulations. In accordance with the general regulations in § 165.23 of the part, entry into, transit through, or anchoring within any of these safety zones is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Dated: July 21, 1997.

G.F. Wright,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 97–30292 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

RIN 1024–AC83

Safety Belt Use Within the NPS System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending its regulations concerning seatbelt use within units of the NPS. Currently, the NPS has regulations requiring seatbelt use by the operator and each front seat passenger. On April 16, 1997, President Clinton signed Executive Order 13043 directing NPS and other Federal agencies to promulgate regulations that require all occupants of motor vehicles to use safety belts or child restraint devices at all times within units of the NPS when the vehicle is in motion.

EFFECTIVE DATE: This rule becomes effective on December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, at (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

NPS administers 375 areas throughout the country under the statutory mandate to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Although the nearly 300 million annual visitors to the National Park System use a variety of access methods, the vast majority rely on motor vehicles and roadways to reach park areas and to circulate within them.

Consequently, NPS is involved in road construction and maintenance, traffic safety and traffic law enforcement.

NPS currently administers over 8,000 miles of roads within the National Park System that are open to the public. These 8,000 miles compare in magnitude to the State of Arizona's state road system, except that they are scattered throughout the United States and its territories. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several States, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain State and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

On December 13, 1989, the NPS promulgated a final rule (36 CFR 4.15) concerning the use of safety belts (54 FR 51199). That rule requires the operator of a motor vehicle and each front seat passenger to wear a safety belt at all times when the vehicle is in motion, unless (1) the vehicle was not originally equipped by the manufacturer with a safety belt or (2) the operator or front seat passenger has a medical condition that prevents the use of a safety belt. The regulation is applicable in park areas located within States that do not have a mandatory seatbelt law in effect and can be enforced only when another traffic violation had occurred. The regulation is implemented primarily through signing, text in brochures and incidental public contact.

Executive Order 13043, signed by President Clinton on April 16, 1997 (62 FR 19217, April 18, 1997), directed NPS to propose rules and take other appropriate measures to further the use of safety belts in the national parks. This initiative includes, but is not limited to, conducting education, awareness and other appropriate programs about the importance of wearing safety belts and the consequences of not wearing them. In addition, NPS was directed to consider implementing regulations to enhance safety belt use requirements and begin primary enforcement of such requirements in park areas. The order also required NPS to consider publicizing and actively enforcing such regulations. Under the final rule as adopted after consideration of public comment, each operator and passenger occupying any seating position of a motor vehicle in a park area, whose seat is equipped with a seatbelt or child restraint system, shall have the seatbelt or child restraint system properly fastened at all times when the vehicle is in motion. Primary enforcement means that a motor vehicle may be stopped and seatbelt regulations enforced when the operator or any occupant is not wearing their seatbelt. The rule would not require another traffic violation to occur before the vehicle may be stopped. The seatbelt regulation in this rulemaking is intended to apply in all NPS areas.

The President, the Department of the Interior and NPS strongly support the use of appropriate restraint systems by all motor vehicle occupants and view the potential reduction in personal injuries and fatalities that may result from the promulgation of this regulation as highly desirable. The benefits of wearing seatbelts have been documented extensively.

Summary of Comments

During the public review period for the proposed regulation (62 FR 40317, July 28, 1997), two written comments were received. Both commenters supported the regulation from a safety perspective, but had other concerns about the proposed rule.

One commenter, who operates a tour bus equipped with seatbelts, was concerned about the difficulty in getting passengers to buckle-up and whether the driver would be responsible, and therefore liable, if passengers do not buckle-up.

NPS believes that the responsibility of the bus driver is to announce to all passengers that the use of seatbelts is required whenever the bus is in motion. After that, it is the responsibility of each passenger, and not the driver, to ensure that they keep their seatbelts fastened. NPS does not intend this rule to be overly cumbersome, but rather to encourage the use of seatbelts.

The other commenter had several points to address. First, the commenter was concerned about the penalty for not using a seatbelt. Under Title 36 of the Code of Federal Regulations (36 CFR), § 1.3, penalties for "all" violations of 36 CFR shall be punished as provided by law, which means a fine up to $5,000, or by imprisonment not exceeding 6 months, or both. This maximum penalty is in accordance with the Criminal Fine Improvements Act of 1987 (18 U.S.C. 3571). However, every unit of the NPS is located within a U.S. Judicial District that has established fines for seatbelt and child restraint regulations for that specific District. These fines range from $10 to $100 Servicewide, depending on the Judicial District in which the park is located. The most common fine is $50. These fines will not change with the new regulation.

Second, the commenter was concerned that the seatbelt rule would create confusion and a new layer of regulation in those States where there is already a seatbelt rule in effect. The commenter requested that the NPS post this new regulation at the entrance to all park areas. NPS agrees with the comment that prior notice is best course of action to ensure compliance with this regulation. NPS will therefore encourage all park areas to post, or otherwise make this information readily available to this visiting public. The commenter's concerns about the additional layer of regulations is understandable, but E.O. 13043 is clear that the rule apply to all occupants of motor vehicles in motion in all NPS units.

Drafting information: The primary author of this rule is Dennis Burnett, Ranger Activities Division, National Park Service, Washington, D.C. 20240.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are negligible.

NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 8–4(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 4.15 is revised to read as follows:

§ 4.15 Safety belts.

(a) Each operator and passenger occupying any seating position of a motor vehicle in a park area will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

Dated: November 6, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–30135 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–33–1–7357; FRL–5924–6]

Approval and Promulgation of State Implementation Plans (SIP) for Louisiana: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final disapproval.

SUMMARY: This EPA rulemaking addresses comments received in response to the proposed disapproval of the SIP revision submitted by Louisiana for establishing and operating a motor vehicle Inspection and Maintenance (I/M) Program, and finalizes disapproval of the plan. An enhanced I/M program is required in the Baton Rouge serious ozone nonattainment area under the Clean Air Act (the Act) as amended in 1990. The State lacks the legal authority to establish and operate an I/M program in the ozone nonattainment area. This action is being taken under section 110 of the Act.

DATES: This final rule is effective December 19, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana. Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 1997 (62 FR 41002), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Louisiana. The NPR withdrew the previous conditional approval proposed June 9, 1997 (62 FR 31388), and proposed disapproval of the State's I/M program SIP submitted to satisfy requirements of section 182(c)(3) of the Act concerning serious ozone nonattainment areas.

The proposed conditional approval was withdrawn and disapproval proposed because the State Legislature did not reauthorize and provide continuous authorization for an I/M program during the 1997 Regular Legislative Session. Bills to reauthorize the I/M program for two more years, and to fund the program, were introduced, but neither was enacted. The I/M program start date, as stated in the SIP, is January 1, 1999. Program reauthorization was needed to develop the program in time to meet the January 1999 start date. Continuous program authorization is needed to satisfy I/M Rule 40 CFR 51.372 that requires states to provide legal authority for the I/M program until such time as it is no longer necessary. Legal authority in the revised Louisiana SIP is limited to reauthorization by the State Legislature in odd-numbered years starting in 1997. The EPA considered this a major deficiency in the SIP.

Other specific requirements of the Louisiana I/M SIP and the rationale for EPA's proposed action are explained in the NPRs and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the Federal comment period for the notice of proposed rulemaking published in the July 31, 1997, **Federal Register** (FR), and provides EPA's response to those comments. The comment period closed September 2, 1997. One comment was received by the Region. The comment was from the Louisiana Department of Environmental Quality (LDEQ).

Comment—Transportation Conformity Rule

The LDEQ commented that the inclusion of transportation conformity sanctions in the proposed rulemaking is an error. The stated sanctions were in the form of a Transportation Improvement Plan lapse or freeze following final disapproval. The transportation conformity rule (58 FR 62216, November 24, 1993), clearly defines control strategy implementation plan. The Louisiana I/M SIP is not a control strategy implementation plan. Therefore, the State's I/M SIP should not include transportation conformity sanctions.

Response to Comment

The EPA agrees with LDEQ's comment adding the following explanation: When the previous NPR was being developed, and at the time of its publication, the transportation conformity rule was undergoing revision. The Region chose to include transportation conformity sanctions at that time as a precautionary measure, pending the publication of the revised transportation conformity rule. Subsequently, the revised transportation conformity rule was published (August 15, 1997, 62 FR 43779). Since the I/M

program is not part of Louisiana's 15% Rate-of-Progress Plan or its Post-1996 Rate of Progress/ Attainment Dgmonstration Plan, it is not considered a control strategy under the definition in the transportation conformity rule. The EPA agrees that the transportation conformity sanctions stated in the proposed disapproval notice do not apply to Louisiana in this case.

III. Final Rulemaking

The EPA is finalizing disapproval of the Louisiana I/M SIP under sections 110(k)(3) and 182 of the Act. During the last regular session ending June 23, 1997, the State Legislature did not provide either program reauthorization or continuous program authority for the I/M program as required in the Federal I/M Rule. The Legislature is not scheduled to meet in regular session until the Spring of 1999, which is after the January 1, 1999, start date designated in the SIP.

Under section 179(a)(2), if the EPA Administrator takes final disapproval action on a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, and the deficiency is not corrected within 18 months of the effective date of the final disapproval action, the Administrator must apply one of the sanctions set forth in section 179(b) of the Act. Section 179(b) provides two sanctions: Imposition of 2:1 emission offset requirements and revocation of highway funding. If the Administrator imposes the first requirement of 2:1 offsets and the deficiency is not corrected within six months, then the second sanction pertaining to highway funding shall apply. The sanctions shall apply until the Administrator determines that the State has corrected the legislative deficiency, and EPA has issued final approval. This sanctions process is set forth in 40 CFR 52.31. Today's action constitutes final agency action and will be effective 30 days after publication. The 18-month sanction clock time frame for the State to correct the deficiency begins upon the effective date of this final disapproval action. This disapproval initiates the sanctions process of 179(a) of the Act.

Nothing in today's action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's final disapproval of the State request under sections 110 and 301, and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this final disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this final disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements, nor does it impose any new Federal requirements.

C. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandate Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in aggregate; or to the private sector of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the final disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not impose new requirements. Accordingly, no additional costs to State, local, or tribal governments, or private sector, result from this action.

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: November 6, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.984 is added to read as follows:

§ 52.984 Disapprovals.

The State of Louisiana motor vehicle Inspection and Maintenance (I/M) program SIP submittal of August 18, 1995, with later editions, is disapproved based on the failure of the State Legislature to grant legal authority to reauthorize and continuously operate the program until the program is no longer necessary. The Baton Rouge serious ozone nonattainment area is required to have an enhanced I/M program under section 182 of the Clean Air Act (the Act) as amended in 1990. This disapproval initiates the sanction process of section 179(a) of the Act.

[FR Doc. 97–30376 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300557; FRL–5748–1]

Methyl Salicylate; Establishment of an Exemption from Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide methyl salicylate in or on food, when used as an insect repellent in food packaging and animal feed packaging at an application rate that does not exceed 0.2 mg of methyl salicylate per square inch of packaging materials.

EFFECTIVE DATE: NOVEMBER 19, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300557/PP 7F4818], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number [OPP–300557] and submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300557]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sheryl K. Reilly, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Room CS15-W31, 2800 Jefferson Davis Hwy., Arlington, VA, (703/308-8265); e-mail: reilly.sheryl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Tenneco Packaging, 1603 Orrington Ave., Evanston, IL, 60201, requested in pesticide petition PP 7F4818 the establishment of an exemption from the requirement of a tolerance for residues of the insecticide methyl salicylate on food, when used as a insect repellent in food packaging and animal feed packaging materials alone or in conjunction with inert components which conform to the requirements of regulations issued by the Food and Drug Administration under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA). A notice of filing (FRL–5721–6) was published in the **Federal Register** (62 FR 32331) on June 13, 1997, and the notice announced that the comment period would end on July 13, 1997; no comments were received.

The data submitted in the petition and all other relevant material have been evaluated. Following is a summary of EPA's findings regarding this petition as required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe". Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water an in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue... ," EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Additionally, section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Methyl salicylate (CAS Registry Number 119–36–8) is the primary chemical component of a naturally occurring fragrant oil, oil of wintergreen. If present at all, residues of methyl salicylate that may be found in foods in contact with treated packaging materials is expected to be minimal and considerably below the levels expected in existing GRAS uses of the active ingredient as a direct food flavoring ingredient.

The toxicity of methyl salicylate has been extensively studied in animal bioassays of acute, subchronic, and chronic duration. Studies include assessments of the mutagenicity, developmental toxicity, and reproductive effects of methyl salicylate. The petitioner submitted data from the scientific literature to support all toxicology studies typically required for registration of biochemical pesticides.

1. *Acute toxicity*. The acute oral LD_{50} for methyl salicylate in the rat ranges

from 887-1,250 mg/kg. Acute dermal toxicity (LD_{50}) has been reported to be > 5 g/kg in the rabbit.

2. *Skin and eye irritation.* Methyl salicylate has been reported to be a severe eye irritant. Methyl salicylate has been reported to produce mild dermal irritation in rabbits at a concentration of 1%. Moderate to severe irritation is produced in rabbits and guinea pigs at concentrations above 1%. Applied full strength to intact or abraded rabbit skin for 24 hours under occlusion, methyl salicylate was moderately irritating. However, tested at 8% in petrolatum, it produced no irritation after a 48 hour closed-patch test on human subjects.

3. *Mutagenicity.* No evidence for genotoxicity was observed in two studies with prokaryotic test systems; no data on genotoxicity in mammalian test systems are available.

4. *Subchronic toxicity.* Studies of subchronic duration with administration by the oral route have been conducted in both rats and dogs. In rats, no adverse effects were seen at a dose of 50 mg/kg/day in the diet. In dogs, doses ≤250 mg/kg/day did not result in any adverse effects, however, the liver appeared to be the target organ of toxicity at doses above this level. No toxicity was observed when rats were exposed to methyl salicylate via inhalation of saturated air (approx. 700 mg/m3) after twenty 7-hour exposures.

5. *Developmental toxicity.* Methyl salicylate has been tested for developmental effects in hamsters, rats and mice by the oral and dermal routes. In hamsters, oral or dermal doses of methyl salicylate at doses of 1,750 mg/kg/day induced maternal toxicity and increased the incidence of neural tube defects. In rats given methyl salicylate at up to 6,000 mg/kg/day in petroleum based grease by the dermal route, no developmental effects were observed. However, undiluted methyl salicylate applied to the skin of pregnant rats caused total litter resorptions at 1,000 mg/kg/day (a dose that was reduced from 2,000 mg/kg/day because of excessive maternal toxicity). The results of a continuous breeding study in mice were consistent with findings in the developmental studies because of the decreased numbers of litters per pair, reduced average number of pups per litter, decreased proportion of pups born alive in each litter, and reduced mean pup weights in mice given 500 mg/kg/day. The no-observed-adverse-effect level (NOAEL) for these effects was 250 mg/kg/day.

6. *Chronic toxicity.* Toxicity resulting from chronic exposure has been evaluated in studies of two-years' duration as well as studies initially intended to evaluate multi-generational reproductive and developmental effects. In mice, the NOAEL for reproductive parameters and the other toxic endpoints examined has been reported as 250 mg/kg/day. When rats were exposed to methyl salicylate in the diet for two years, no adverse effects were noted at levels of 0.1% (approx. 50 mg/kg/day); pituitary lesions were increased in animals exposed to 0.5% (approx. 250 mg/kg/day). In dogs orally exposed to methyl salicylate for two years, no adverse effects were observed at 50 mg/kg/day; the LOAEL (liver effects) was reported as 150 mg/kg/day.

7. *Carcinogenicity.* No studies have been performed with the primary purpose of determining the oncogenicity of methyl salicylate; however, chronic exposure studies with two-year exposure durations that included extensive pathology did not indicate any increases in incidences of benign or malignant tumors.

8. *Toxicology data waivers.* Waivers for acute inhalation toxicity, dermal sensitization, and immune response studies were accepted by the Agency, based on the long history of use of methyl salicylate by humans without any indication of deleterious effects. Besides its use as a flavoring agent in foods (see GRAS Assessment, below), methyl salicylate has been used in mouthwash, suntan lotions, and in U.S. Pharmocopeia (U.S.P.) preparations as a counterirritant and analgesic for painful muscles or joints, in liniments, ointments, and other preparations. In addition, the manufacturing use product is a liquid, which is not expected to result in the release of appreciable quantities of inhalable methyl salicylate during the manufacturing process, and worker exposure via the dermal route will be minimized through the use of rubber gloves and splash proof goggles and/or face shields. In the end-use formulation, methyl salicylate will be incorporated into a solid matrix in the packaging materials, and the release of vapors at a very low rate over extended periods of time will not result in significant worker or consumer dermal and inhalation exposure.

9. *GRAS assessment.* The Flavoring Extract Manufacturer's Association (FEMA) has determined GRAS levels of methyl salicylate and oil of wintergreen in foods and beverages as indicated in the table below.

TABLE 1- FEMA GRAS LEVELS IN FOOD (PPM)

Food	Methyl Salicylate	Oil of Wintergreen
Beverages	59	56
Ice cream	27	44
Candy	840	260
Baked goods	54	1,500
Chewing gum	8,400	3,900
Syrups	200	—

GRAS food levels in Table 1 are above both the maximum food residue concentration (approx. 16 ppm) and the maximum dietary exposure concentration (approx. 4.7 ppm) estimated by the Petitioner for the proposed use pattern for methyl salicylate. These estimates used highly conservative assumptions for migration of methyl salicylate from packaging and food consumption. Petitioner has shown that even under worst-case exposure conditions (i.e., assuming 30% of all food consumed is in contact with packaging containing methyl salicylate, and 100% of the methyl salicylate migrates to food) exposure to methyl salicylate from use in packaging materials would be less than that received by chewing one stick of chewing gum at the GRAS-approved level. Residue data requirements were thus waived by the Agency.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

There is no established Maximum Contaminant Level (MCL) for residues of methyl salicylate in drinking water under the Safe Drinking Water Act.

There are five currently registered pesticide products that contain methyl salicylate as an active ingredient. These products include impregnated materials and pellets to be used as vertebrate repellents, and disinfectants/germicides registered for use in household, institutional, hospital, and eating establishment premises. In addition, methyl salicylate has many non-pesticidal uses, such as liniments, lotions, and other products listed above.

With regard to dietary exposure, as noted above in Table 1, methyl salicylate is used as a flavoring in many food products.

Aggregate exposure to methyl salicylate from all these sources is difficult to determine, largely because of its use in a wide variety of food products. While it is difficult to develop a precise estimate of total human exposure to methyl salicylate, EPA believes that its history of safe use as a flavoring additive and its low toxicity at relatively high doses indicate that current exposures are likely to be significantly below levels that may result in adverse health effects. The likely dietary exposures from the pesticidal use in food packaging would be indirect (i.e., resulting from food contact with a treated surface) and therefore unlikely to add significantly to existing exposures. However, because studies evaluated by the Agency indicate that methyl salicylate is toxic to humans at certain high levels, EPA believes it is appropriate to place some limitation on the amount of methyl salicylate that may be applied to packaging material for the purposes of repelling insects to ensure that large quantities of the substance are not used in food packaging. The limitation of 0.2 mg per square inch of packaging materials established by this regulation is based on the lowest GRAS level (27 ppm for ice cream) and a worst-case scenario, which assumes 100% transfer of the active ingredient from the packaging material to food contained within, without consideration of the physical and chemical barriers between the chemical and the food. Using the lowest GRAS level is a conservative step that ties the potential exposure to what is already likely to be in the food supply. The limit, therefore, ensures that any increased human exposure resulting from the pesticidal use of methyl salicylate in packaging material would add very little to the existing exposures -- exposures which EPA believes to be safe. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate dietary exposure under this exemption.

A. Dietary Exposure

Dietary exposure of methyl salicylate via food or water is difficult to estimate due to the use of methyl salicylate as a flavoring in many food products. However, based upon its long history of safe use as an additive in food and beverages and its low toxicity at relatively high doses, the Agency believes that current dietary exposure is likely to be significantly below levels that may cause adverse health effects. The likely dietary exposures from the registered products would be indirect (i.e., resulting from food contact with a treated surface) and therefore add very little to existing exposures. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate dietary exposure under this exemption.

B. Non-dietary, Non-occupational Exposure

There are five currently registered pesticide products that contain methyl salicylate as an active ingredient. These products include impregnated materials and pellets to be used as vertebrate repellents, and disinfectants/germicides registered for use in household, institutional, hospital, and eating establishment premises. In addition, methyl salicylate is already widely used in liniments, lotions, and other products listed above. The Agency considers the toxicology data base available to support non-pesticidal uses and exposures adequate to support a conclusion of insignificant increase in non-dietary, non-occupational exposure and toxicity from the pesticidal use in food and feed packaging materials.

IV. Cumulative Exposure

The Agency has considered the potential for cumulative toxicity effects of pesticidal uses of methyl salicylate and other substances that may have a common mechanism of toxicity. The Agency concluded that consideration of a common mechanism of toxicity is not appropriate because there is no information in the publicly available literature that indicates there are other substances that share a common mechanism of toxicity with methyl salicylate. Thus, only the potential risks of methyl salicylate were considered in this exemption from the requirement of a tolerance.

V. Safety Factors

A. U.S. Population

Methyl salicylate is the major component of a naturally occurring fragrant oil. FEMA has listed methyl salicylate on its GRAS list for use as a flavoring ingredient in foods and beverages. An FDA Advisory Review Panel has concluded that methyl salicylate is safe for use up to a concentration of 0.4% in the form of a rinse or mouthwash. The compound is extensively used in foods, beverages, pharmaceuticals, lotions and perfumes and has wide distribution in commerce with no reports of adverse outcomes associated with intended uses. The toxicity of methyl salicylate has been adequately and reliably characterized; it is summarized in this submission.

Based on this information, EPA concludes that there is reasonable certainty of no harm from aggregate exposures to pesticidal uses of methyl salicylate over a lifetime, and that no significant human health risks will result from such exposures.

B. Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of this compound, EPA has not used a safety factor analysis in assessing the risk of these compounds. For the same reasons the additional safety factor is unnecessary.

VI. Determination of Safety for U.S. Population, Infants and Children

Based on its long history of use by humans without any indication of deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the United States population, including infants and children, to residues of methyl salicylate. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As a result, EPA establishes an exemption from the requirement of a tolerance pursuant to FFDCA section 408(j)(3) for methyl salicylate, on the condition that Methyl salicylate be used in accordance with the following provisions:

Tenneco Packaging must immediately notify the EPA of any findings that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This exemption from the requirement of a tolerance may be revoked if any experience with or scientific data on this pesticide indicate that the tolerance is not safe.

VII. Other Considerations

A. Endocrine Disrupters

Methyl salicylate has been studied in several tests of reproductive and developmental effects, including multigenerational studies. In addition,

the pathology of endocrine-sensitive tissues and organs has been evaluated following repeated (i.e., subchronic) and long-term (i.e., chronic) exposures. No such effects were reported in any of these studies. The Agency has no information to suggest that methyl salicylate will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biochemical pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

B. Analytical Method

The Agency proposes to establish an exemption from the requirement of a tolerance with a numerical limitation. Therefore, for enforcement purposes, quantitative analysis of the active ingredient methyl salicylate may be performed by a gas chromatographic method using flame ionization detection as described by the Association of Official Analytical Chemists (Method 969.13, AOAC Official Methods of Analysis, 1990, pages 754–755).

VIII. Codex Maximum Residue Level

No known maximum residue limits (MRLs) have been established for methyl salicylate by the Codex Alimentarius Commission.

IX. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, January 20, 1998, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25) Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

X. Public Docket

A record has been established for this rulemaking under the docket number [OPP–300557]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

XI. Regulatory Assessment Requirements

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

This action does not impose any enforceable duty or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950) (May 4, 1981).

XII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accou ting Office prior to publication in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(a).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests, Reporting and record keeping requirements.

Dated: November 5, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1189 is added to read as follows:

§ 180.1189 Methyl salicylate; exemption from the requirement of a tolerance.

The biochemical pesticide methyl salicylate is exempt from the requirement of a tolerance for residues in or on food or feed when used as an insect repellent in food packaging and animal feed packaging at an application rate that does not exceed 0.2 mg of methyl salicylate per square inch of packaging materials.

[FR Doc. 97–30251 Filed 11–18–97; 8:45am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300571; FRL–5752–6]

RIN 2070–AB78

Fomesafen; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fomesafen in or on dry beans. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry beans. This regulation establishes a maximum permissible level for residues of fomesafen in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective November 19, 1997. Objections and requests for hearings must be received by EPA on or before January 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300571], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300571], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300571]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8356, e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide fomesafen, in or on dry beans at 0.05 part per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fomesafen on Dry Beans and FFDCA Tolerances

Requests were received from a number of states for use of fomesafen on dry beans for control of broadleaf weeds. The Applicants state that since the loss of the herbicides dinoseb and chloramben, weed contamination in U.S. bean fields has increased and significant crop losses have occurred. The Applicants state that available alternative pesticides and control techniques have produced unreliable results, and that without this use of fomesafen, significant economic losses will occur. EPA has authorized under FIFRA section 18 the use of fomesafen on dry beans for control of broadleaf weeds in Maine, Michigan, and New York. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fomesafen in or on dry beans. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on October 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry beans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fomesafen meets EPA's registration requirements for use on dry beans or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fomesafen by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Maine, Michigan, and New York to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fomesafen, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effectlevel" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (Non-Nursing Infants <1 Year Old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fomesafen and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fomesafen on dry beans at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fomesafen are discussed below.

1. *Acute toxicity.* EPA has selected the developmental NOEL of 7.5 mg/kg/day from the oral rat developmental toxicity study for the acute dietary endpoint; at the developmental LOEL of 50 mg/kg/day, fetuses had delayed or partial ossification and extra ribs. Since the effect of concern is developmental, the risk assessment will evaluate acute dietary risk to the population subgroup of concern, Females 13+ Years Old.

2. *Short - and intermediate - term toxicity.* EPA has selected the NOEL of 10 mg/kg/day from the oral rabbit developmental toxicity study for calculation of short- and intermediate-term margins of exposure (MOEs). At the LOEL of 40 mg/kg/day, maternal toxicity included stomach mucosal erosion and death.

3. *Chronic toxicity.* EPA has not established the RfD for fomesafen. For the purposes of this tolerance, based upon available chronic toxicity data, the RfD of 0.0025 mg/kg/day was used. This RfD is based on the NOEL of 0.25 mg/kg/day from the rat carcinogenicity study. A 100-fold uncertainty factor was used to calculate this RfD. At the LOEL of 5.0 mg/kg/day there was liver toxicity and decreased body weight.

4. *Carcinogenicity.* Fomesafen is classified as a Group C carcinogen with a Q^* of 1.9×10^{-1} $(mg/kg/day)^{-1}$. This classification was based on: (i) Increases in both adenomas and carcinomas at several dose levels in both sexes of mice; (ii) some evidence of reduced latency for the time of tumor appearance; (iii) limited evidence of mutagenic effects; and, (iv) the structural similarity of fomesafen to other biphenyl ether herbicides which have been shown to be carcinogenic.

B. Exposures and Risks

1. *From food and feed uses.* A permanent tolerance has been established (40 CFR 180.433) for the residues of fomesafen, in or on soybeans at 0.05 ppm. A time-limited tolerance was also established on snap beans at 0.05 ppm recently, in connection with use under several emergency exemptions. Risk assessments were conducted by EPA to assess dietary exposures and risks from fomesafen as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary risk assessment used tolerance level residue values and assumed 100 percent of crop treated. The resulting high-end exposure estimate of 0.0002 mg/kg/day translates to a dietary MOE

of 37,500 for the population subgroup of concern, Females 13+ Years Old. This MOE is a conservative risk assessment; refinement using anticipated residue values and percent crop treated data in conjunction with Monte Carlo analysis would result in a lower acute dietary exposure estimate.

ii. *Chronic exposure and risk.* For assessing chronic exposure and risks, anticipated residue values for all commodities were used; and percent of crop treated information for soybeans only; it was assumed that 100 percent of the snap bean crop in the eastern United States (the region where exemptions were issued, equivalent to 75 percent of the domestic snap bean crop), and 100 percent of the dry bean crops were treated. Based upon this, the existing uses on soybeans, snap beans, and dry beans result in an ARC that is equivalent to the following percentages of the RfD: U.S. population, 0.3%; Nursing Infants, 0.3%; Non-nursing Infants (<1 year old), 0.8%; Children (1-6 years old), 0.7%; and Children (7-12 years old), 0.5%. Additional refinement using percent of crop treated information for all commodities would result in lower dietary exposure estimates.

iii. *Cancer risk.* A dietary (food only) cancer risk assessment using anticipated residues and percent crop treated information, as described above, was performed for the U.S. population. The calculated food cancer risk from the established tolerances (excludes this action) is 8.5×10^{-7}. This is an overestimate, as not all of the snap bean crop in the eastern United States will be treated with fomesafen. The incremental contribution to the dietary cancer risk posed by this use on dry beans, amortized over 5 years (the average duration of a section 18 exemption, including repeat uses), is 0.5×10^{-7}. Therefore, the total of the fomesafen dietary cancer risk for the U.S. population from all commodity contributions, including this new tolerance on dry beans, is 9.0×10^{-7}. It should be noted that this is an overestimation of risk, because not all of the snap bean crops in the eastern United States, nor all of the dry bean crops in the United States, will be treated with fomesafen.

2. *From drinking water.* Fomesafen was not included in EPA's National Survey of Pesticides in Drinking Water Wells. There are no entries for fomesafen in the Pesticides in Ground Water Database. The Agency has not established Maximum Contaminant Levels or Health Advisory Levels for residues of fomesafen in drinking water.

Based on available data, EPA concludes that fomesafen could leach to ground water and may reach levels of 1.0 microgram (µg)/Liter (L). The level of 1.0 µg/L was based on a small scale prospective groundwater monitoring study conducted on soybeans at a vulnerable site in North Carolina. Fomesafen residues were detected in ground water (in 4 of 9 wells) sampled between 17 and 33 months after application. Fomesafen concentrations measured 1.0 µg/L (equal to the limit of determination of the analytical method).

Exposures and risks from residues of fomesafen in drinking water were calculated, as follows:

Adult Exposure = (chemical concentration in µg/L) × (10^{-3} mg/µg) × (2 L/day consumed) divided by (70 kg body weight).

Child Exposure = (chemical concentration in µg/L) × (10^{-3} mg/µg) × (1 L/day consumed) divided by (10 kg body weight).

Adult exposure is thus calculated to be 2.9×10^{-5} mg/kg/day and exposure of children is calculated to be 1.0×10^{-4} mg/kg/day.

i. *Acute exposure and risk.* For the population subgroup of concern for acute exposure (Females 13+ Years Old), the MOE is calculated at 260,000.

ii. *Chronic exposure and risk.* Exposure to residues of fomesafen in water utilizes 1.2% of the RfD for adults and 4.0% of the RfD for children.

iii. *Cancer risk.* Based on exposure levels for drinking water, as given above, the estimate of cancer risk is 2.7×10^{-6}. This figure is an overestimate, as it was arrived at based on several very conservative assumptions. Estimates used were calculated based on data from only one small scale study conducted in NC, for use of fomesafen on soybeans at a vulnerable site. This represents a worst case scenario, so is not representative of the "average" conditions of use. Additionally, there is language on the product label warning of the potential of fomesafen to leach to ground water in vulnerable areas. Vulnerable areas in this case refers to areas where soils are permeable (sand and silt loams) and the water table is shallow. The majority of areas of soybean production, and potential use of fomesafen, will not likely be vulnerable sites, thus the data used from the one small scale study greatly overestimates levels which could actually occur. Further, it is assumed that this exaggerated level will occur in all drinking water throughout the US, and that each individual consumes 2 liters of drinking water per day.

3. *From non-dietary exposure.* Fomesafen is not currently registered for use on sites that would be expected to result in non-dietary (residential) exposure. A non-dietary risk assessment is thus not appropriate for existing uses of fomesafen.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

When considering structural similarities with other chemicals, fomesafen falls into the class of "biphenyl ether" chemical compounds; this means that this group of chemicals have structural similarities, including a biphenyl ether group, in common. This is used as a piece of supporting evidence for the classification of fomesafen as a Group C carcinogen, since other chemicals of this group (with similar structure) have been found to be carcinogens. However, other indications of the carcinogenicity of fomesafen (i.e., increases of adenomas and carcinomas in a mouse study, limited evidence of mutagenic effects) were also used in deciding this cancer classification. At this time, the Agency does not have sufficient understanding of the structural relationship to the mechanism of toxicity of these chemicals to conclude that they may be combined for the purposes of conducting a risk assessment. Although fomesafen contains some chemical structures in common with other chemicals that have been found to be carcinogens, EPA does not yet fully understand the implications of such a relationship, nor how, or if, these structures relate to the toxicological activity of the chemical. For the purposes of this tolerance action, therefore, EPA has not assumed that fomesafen has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population of concern (Females 13+ Years Old), the calculated aggregate MOE value is 23,000. The aggregate MOE is the reciprocal of the sum of the reciprocal of the MOEs for food (25,000) and water (260,000). This aggregate MOE does not exceed EPA's level of concern for acute dietary exposure.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to fomesafen from food will utilize 1.5% (0.3% for food and 1.2% for water) of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is Non-Nursing Infants, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fomesafen in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fomesafen residues.

D. Aggregate Cancer Risk for U.S. Population

Using the conservative exposure assumptions described above, the total dietary (food only) cancer risk is estimated at 9×10^{-7}. This is an overestimate, as not all of the snap and dry bean crop in the eastern United States will be treated with fomesafen. For drinking water, the estimate of cancer risk is 2.7×10^{-6}. As stated above, this figure was based on extremely conservative assumptions, and thus is an overestimate; taking this into consideration, EPA scientists believe that the actual aggregate cancer risk will not exceed levels of concern.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.* i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fomesafen, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* In the rat developmental toxicity study, the maternal (systemic) NOEL was established at 100 mg/kg/day, based on stained fur at the LOEL of 200 mg/kg/day. The fetal (developmental) NOEL was 7.5 mg/kg/day, based on extra ribs and delayed ossification at the LOEL of 50 mg/kg/day.

In the rabbit developmental toxicity study, the maternal (systemic) NOEL was established at 10 mg/kg/day, based on mortality and stomach lesions at the LOEL of 40 mg/kg/day. The fetal (developmental) NOEL was established at 40 mg/kg/day (highest dose tested, no effects seen).

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 12.5 mg/kg/day, based on decreased body weight and liver necrosis at the LOEL of 50 mg/kg/day. The reproductive and developmental (pup) NOELs were 2.5 mg/kg/day, based on decreased pup body weight and reduced litter size at the LOEL of 12.5 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* There were no developmental effects in rabbits at the highest dose tested, even in the presence of maternal toxicity. However, based on the developmental toxicity study in rats, developmental toxicity (alterations and delays in skeletal ossification) occurred at a dose level which was not maternally toxic, suggesting a special sensitivity to the fetus following in-utero exposure. Based on the results of the rat developmental toxicity study, an acute dietary risk assessment was conducted for Females 13+ Years Old. The MOE of 23,000 obtained for this risk assessment demonstrates that acute developmental (pre-natal) risks are low.

v. *Conclusion.* Based on the rat reproductive toxicity study discussed above, the pup LOEL (decreased body weight and reduced litter size) occurred at levels below the maternal NOEL and demonstrates post-natal pup toxicity unrelated to maternal effects. These results are suggestive of a special sensitivity for infants and children following post-natal exposure. Therefore, EPA recommends applying an extra 10-fold uncertainty (safety) factor in the chronic risk analysis. The low percentage of the RfD occupied by the most highly exposed child subgroup (4.8% of the RfD; 48% using the extra 10-fold factor) demonstrates that post-natal risks to infants and children are low.

2. *Acute risk.* The acute, aggregate dietary MOE of 33,000 which was calculated for females 13+ years old, accounts for both maternal and fetal

exposure. The large aggregate MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm to infants and children.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to fomesafen from food and water utilizes from 4.3% of the RfD for nursing infants up to 4.8% of the RfD for non-nursing infants. As stated previously, the results from the developmental rat study suggest a special sensitivity to the fetus following in-utero exposure; and results from the reproductive rat study suggest a special sensitivity for infants and children following post-natal exposure. Therefore, EPA recommends applying an extra 10-fold uncertainty (safety) factor, which would bring the exposures given above to 43% and 48% of the RfD, for nursing and non-nursing infants, respectively. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The low percentage of the RfD occupied by estimates for the most highly exposed child population subgroup demonstrates that risks to infants and children are below EPA's level of concern, Use the following paragraph or delete and insert applicable text. and EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fomesafen residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues in plants and animals is adequately understood. The residue of concern is fomesafen per se. Secondary residues in meat, milk, poultry, and eggs are not expected, since dry beans are not considered a livestock feed commodity.

B. Analytical Enforcement Methodology

An adequate enforcement method (Method GAM-RM-001/86) is available to enforce fomesafen tolerances.

C. Magnitude of Residues

Residues of fomesafen are not likely to exceed 0.05 ppm in or on dry beans as a result of this use. No animal feed items are associated with this use, and therefore, no secondary residues in livestock commodities are expected to result.

D. International Residue Limits

There are no CODEX or Canadian maximum residue levels established for residues of fomesafen in or on dry beans. A Mexican tolerance of 0.01 ppm is established for fomesafen residues in or on "beans."

E. Rotational Crop Restrictions

The federally registered label for the fomesafen product requested under these exemptions carries the following rotational crop restrictions: 4 months for small grains; 10 months for corn, cotton, peanuts, and rice; and 18 months for all other crops, particularly sunflowers, sugar beets, and sorghum. Part of the use restrictions for these exemptions includes that all applicable restrictions on the federal label must be followed; this includes these rotational crop restrictions.

VI. Conclusion

Therefore, the tolerance is established for residues of fomesafen in dry beans at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300571] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.433, by alphabetically inserting the following item into the table in paragraph (b) to read as follows:

§ 180.433 Sodium salt of fomesafen; tolerance for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * * *	
Beans, dry	0.05	10/31/98

* * * * *

[FR Doc. 97–30383 Filed 11–18–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300475A; FRL–5748–5]

RIN 2070–AC78

Hydroprene Biochemical Pest Control Agent; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule expands the tolerance for residues of hydroprene, [(*S*)-(Ethyl (2*E*,4*E*,7*S*)-3,7,11-trimethyl-2,4-odecadienoate)], an insect growth regulator, on all food items in food-handling establishments to include perimeters and pantries, and warehouses to the list of permissible food storage sites and ultra low volume (ULV) fogging as a permissible treatment method under certain precautions and conditions. This rule also permits the use of point source device treatments providing those devices do not come into direct contact with food preparation surfaces and are kept a minimum distance of 3 feet from exposed foods. This rule also restricts the tolerance expression to residues of [(*S*)-(Ethyl(2*E*,4*E*,7*S*)-3,7,11-trimethyl 2,4-dodecadienoate)], the *S*-racemer of hydroprene since the *R*-racemer is no longer being supported in reregistration.

DATES: This regulation is effective November 19, 1997. Objections and requests for hearings must be received by EPA on or before January 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300475A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300475A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of

electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300475A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Diana Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511W) Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location, telephone number and e-mail address: Room 5-W42, 5th Floor, CS#1, 2800 Crystal Drive, Arlington, VA (703) 308–8367; horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1997 (62 FR 30549)(FRL–5600–6) EPA issued a proposal to amend 40 CFR parts 180 and 185 by removing § 185.3625 and adding § 180.501, and by adding perimeters, pantries and warehouses to the list of permissible food storage sites and ultra low volume (ULV) fogging as a permissible treatment method under certain precautions and conditions. The Agency is also permitting the use of point source device treatments providing those devices do not come into direct contact with food preparation surfaces and must be kept a minimum distance of 3 feet from exposed foods. The Agency also proposed restricting the tolerance expression to residues of [(*S*)-(Ethyl (2*E*,4*E*,7*S*)-3,7,11-trimethyl-2,4-dodecadienoate)], the *S*-racemer of hydroprene. The *R*-racemer is being removed from the tolerance expression since Sandoz Agro Inc., the manufacturer, is supporting only the reregistration of (*S*)-hydroprene and no longer manufacturers the *R/S* hydroprene racemic mixture.

There were no comments in response to this proposed rule. The data submitted in the petition and other material have been evaluated.

Based on the reasoning and findings set forth in the preamble to the proposed rule, 40 CFR part 180 is amended as set forth below.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the hearing clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket number [OPP–300475A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

This action finalizes an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additive, Pesticides and pests, Reporting and record keeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests

Dated: October 31, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. Section 180.501 is added to read as follows:

§ 180.501 Hydroprene; tolerances for residues.

(a) *General.* A tolerance of 0.2 part per million is established for residues of hydroprene [(*S*)-(Ethyl (2*E*,4*E*,7*S*)-3,7,11-trimethyl-2,4-dodecadienoate)], (CAS Reg. No. 65733–18–8) on all food items in food-handing establishments in accordance with the following prescribed conditions:

(1) Application shall be limited to spot, crack and crevice, perimeter and ultra low volume (ULV) fogging treatment in food storage or food-handling establishments, including warehouses, food service, manufacturing, and processing establishments such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries where food and food products are held, processed, and served: Provided that the food is removed or covered prior to such use, and food-processing surfaces are covered during treatment or thoroughly cleaned before using, or in the case of point-source device treatments, devices must not come into direct contact with food preparation surfaces and must be in a minimum distance of 3 feet from exposed foods.

(2) To assure safe use of the insect growth regulator, the label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3625 [Removed]

b. Section 185.3625 is removed.

[FR Doc. 97–30382 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 383

[Docket No R–156]

RIN 2133–AB16

Determination of Fair and Reasonable Guideline Rates for the Carriage of Less-Than-Shipload Lots of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Liner Vessels; Removal of Part

AGENCY: Maritime Administration, DOT.

ACTION: Final Rule.

SUMMARY: In connection with the President's Regulatory Reinvention Initiative, the Maritime Administration (MARAD), after having initiated a rulemaking with a notice of proposed rule-making (NPRM), has reviewed the subject regulations at 46 CFR part 383 and has determined to withdraw that rulemaking and remove the entire part. Part 383 has become unnecessary in view of the decline in the volume of U.S.-flag vessel liner service.

DATES: This rule is effective November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Telephone: (202) 366–2324.

SUPPLEMENTARY INFORMATION: In administering the cargo preference program pursuant to the Cargo Preference Act of 1954, incorporated in section 901(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1241(b)), MARAD provides guideline rates for the carriage of agricultural preference cargoes to the U.S. Department of Agriculture (USDA) and the Agency for International Development (AID) ("sponsoring agencies") for bagged and packaged agricultural commodities carried on bulk vessels. The methodology for calculating guideline rates is stated in regulations at 46 CFR part 382. Those sponsoring agencies requested that MARAD extend the scope of its regulations at 46 CFR part 383 to provide them with guideline rates for bagged and packaged agricultural commodities carried on liner vessels in less-than-shipload lots. Accordingly, MARAD published a NPRM (60 FR 20069; April 24, 1995) proposing to amend its regulations in part 383 to provide guideline rates for bagged or packaged agricultural commodities in parcels of 5,000 tons and greater on vessels in liner services.

After careful review of the methodology that was proposed in the NPRM and the comments received in response to that methodology, MARAD has concluded that the current rule, as well as the amendments that it proposed to that rule, cannot adequately apply to liner vessels the methodology used in determining guideline rates for bulk vessels due to the fundamental difference between bulk and liner vessels. MARAD's basic assumption that large liner cargo parcels take on significant aspects of bulk shipment was not supported by the comments. Several commenters pointed out that even when large parcels are carried to the same country or area, the cargo discharging is typically done at numerous ports in the region, subjecting the liner operators to much greater risk of delays than bulk operators, which typically unload in one or two ports. In addition, voyages in the liner preference trades typically involve multiple shippers and receivers, each with their own shipment terms. MARAD believes that expansion of the scope of part 383, which addresses less-than-shipload lots of bulk preference cargo on liner vessels, is not appropriate at this time and that it would be more fitting to remove the entire part. This conclusion is supported by the fact that the rule has not been utilized since 1995, and that, with the sharp decline in the number of U.S.-flag general cargo vessels operating in liner services, it is very unlikely that any future preference cargoes will fall within the purview of the regulations contained therein. In the absence of a regulation, MARAD can make an ad hoc determination, if such a shipment is made in the future, under its general authority to administer the cargo preference laws of the United States.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review); Department of Transportation (DOT) Regulatory Policies Procedures; Pub. L. 104–121.

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It is not considered to be a significant rule under the Department's Regulatory Policies and Procedures.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it is merely removing a rule that is obsolete, the retention of which could serve no useful purpose. Accordingly, pursuant to 5 U.S.C. 553 (c) and (d), the Administrative Procedure Act, MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective in less than thirty days after the date of publication.

This rule has not been reviewed by the Office Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities since MARAD has historically calculated guidline rates for only three operators in the liner trade.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule does not impose any unfunded mandates or requirements that will have an impact on the quality of the human environment.

List of Subjects in 46 CFR part 383

Agricultural commodities, Cargo vessels, Government procurement, Grant programs—foreign relations, Loan programs—foreign relations, Water transportation.

Accordingly, 46 CFR part 383 is hereby removed and reserved.

By Order of the Acting Maritime Administrator.

Dated: November 14, 1997.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97–30370 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: The Federal Maritime Commission is suspending the effectiveness of its final rule assessing fees on liner vessels operated by Japanese carriers, in light of agreements reached between the United States Government and the Government of Japan, and among affected commercial parties and the Government of Japan, addressing restrictive and unfavorable conditions affecting U.S. shipping in Japanese ports.

DATES: Effective November 13, 1997, 46 CFR 586.2 as published at 62 FR 9696, March 4, 1997, and amended at 62 FR 18532, April 16, 1997, is suspended.

ADDRESSES: Filings and requests for publicly available information should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On February 26, 1997 (62 FR 9696, March 4, 1997), the Commission issued a final rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), to assess per-voyage fees on Japanese liner carriers, in response to unfavorable conditions facing U.S. shipping in Japanese ports. On April 13, 1997 (62 FR 18533, April 16, 1997), the Commission postponed the effective date of the final rule (originally set for April 14, 1997) until September 4, 1997, to allow the Government of Japan and affected parties further opportunity to craft appropriate plans for addressing the unfavorable conditions identified in the final rule. On September 4, 1997, the Commission, having been presented with no evidence of meaningful reforms to Japanese port conditions, took no action to prevent the rule from becoming effective.

Over the last several months, and particularly in recent weeks, U.S. and Japanese Government negotiators have worked assiduously to craft agreements and reform plans to remedy the unfavorable conditions that prompted the Commission's final rule. On October 27, 1997, it came to the Commission's attention that these negotiators had come to terms on certain documents which, upon ratification, would constitute a comprehensive agreement to reform Japanese port practices. Based on this positive development, the Commission entered into a consent order with the Japanese shipping lines, accepting a compromise payment of $1.5 million in full satisfaction of the $4 million owed (and overdue) for the month of September, and agreed to take no further action in this matter while the ratification of the agreements were pending.

On November 10, 1997, Chairman Creel received a letter from Under Secretary of State for Economic, Business, and Agricultural Affairs Stuart E. Eizenstat and Acting Maritime Administrator John Graykowski, conveying final signed copies of correspondence between Secretary of State Madeleine K. Albright and Ambassador Kunihiko Saito reflecting the arrangements reached by the U.S. and Japan delegations during the talks. Mr. Eizenstat and Mr. Graykowski stated that "this package represents a reasonable basis to recommend that the Commission compromise all the remaining assessments under Docket No. 96–20 for October and November and suspend further assessments and the requirement for Japanese carriers to report further vessel calls." Attached to Ambassador Saito's letter were copies of two agreements among the Government of Japan and commercial interests regarding the system of prior consultation.

The Commission is persuaded that the arrangements reflected in these documents represent a significant step in the process of remedying unfavorable Japanese port conditions. While the Commission's ultimate concern is the improvement of actual shoreside practices and policies, in this case—where the issues are complex and the affected interests are several—the crafting and achievement of consensus on workable reform plans is a vital and commendable part of the process. The agreed-upon plans address in substance all of the unfavorable conditions identified in the Commission's final rule, covering both the issues of licensing of port transportation business operations and the system of prior consultation. With regard to the latter, relevant parties have agreed on reform of the existing system and the creation of an alternative process of prior consultations. We expect that these changes, when fully implemented, will remedy those unfavorable conditions identified in the final rule.

Accordingly, the Commission is now suspending the effectiveness of the final rule. This action has the effect of ceasing both the assessment of fees on Japanese carriers and the requirement that they report vessel calls.

The Commission expects that it will collect information periodically in the normal course to remain apprised of changes in port conditions resulting from implementation of the Agreements. However, we would note that the arrangements reached by U.S. and Japanese negotiators include provisions for consultation. It is our hope that, should any disputes or problems arise in the implementation of these agreements, they can appropriately be addressed through diplomatic and consultative mechanisms. To encourage such a process, if a complaint relating to matters contained in this docket is lodged with the Commission at any time by interested persons, the Commission immediately will notify the Secretary of State of such complaint, and will request the Secretary of State to seek resolution of the outstanding matters through diplomatic channels. At the same time, however, the Commission retains its authority to take further action, should it become necessary to do so.

Therefore, it is ordered, That 46 CFR 586.2 as published March 4, 1997 (62 FR 9696), and amended by the Commission April 16, 1997 (62 FR 18532) is hereby suspended.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30277 Filed 11–18–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 96–28; FCC 97–270]

Connection of Customer-Provided Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On August 22, 1997, the Commission released a report and order adopting final rules to amend the Commissions rules, which govern the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network without causing harm to the public switched network. As a result of the amendments, manufacturers will be able to test terminal equipment for compliance with a single, consistent set of technical standards accepted in both the United States and Canada. The harmonization of terminal attachment rules in the United States and Canada will be a model for our harmonization efforts with other countries.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT:

Technical Information: William VonAlven, (202) 418–2342 or email at wvonalen@fcc.gov.

Legal Information: Marian Gordon, (202) 418–2320 or email at mgordon@fcc.gov. The address for both is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is; (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. In this *Report and Order* ("*Order*"), we adopt final rules to amend part 68 of the Commission's rules, which governs the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network without causing harm to the network.[1] The amendments we adopt herein are designed to harmonize United States and Canadian requirements governing connection of terminal equipment to the public switched network ("PSN") and to promote barrier-free trade between Canada and the United States, in keeping with the spirit of the North American Free Trade Agreement

[1] *See* 47 CFR part 68. For a history of part 68, *see* Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service ("MTS") and Wide Area Telephone Service ("WATS"); Revision of part 68 of the Commission's rules to Specify Standard Plugs and Jacks for the Connection of Telephone Equipment to the Nationwide Telephone Network; and Amendment of Part 68 of the Commission's rules (Telephone Equipment Registration) to Specify Standards for and Means of Connection of Telephone Equipment to Lamp and/or Annunciator Functions of Systems, *Memorandum Opinion and Order*, 70 FCC 2d 1800 (1979), 45 FR 20841, Mar. 31, 1980.

("NAFTA").[2] As a result of these amendments to part 68, manufacturers in one country will be able to design and test terminal equipment to comply with a single, consistent set of technical standards accepted in both the United States and Canada.

II. Background

1. On March 9, 1995, the Telecommunications Industry Association ("TIA") filed a Petition for Rulemaking ("Petition") to amend §§ 68.300–68.318 and portions of § 68.2 of the Commission's rules to harmonize United States network protection standards and corresponding Canadian CS–03 certification regulations. Subpart D of part 68, which includes §§ 68.300 through 68.318, addresses "Conditions for Registration," including requirements for environmental simulation (simulation "mimics" stresses that terminal equipment undergoes in shipment and handling that could potentially damage it), leakage current limitations, hazardous voltage limitation, signal power limitations, longitudinal balance limitations, on hook impedance limitations, billing protection, and hearing aid compatibility. Section 68.2 addresses the scope of the Commission's rules for terminal attachment.

2. TIA is a national trade association with more than 570 member companies engaged in the manufacture, sale and distribution of telecommunications equipment including terminal equipment. TIA's Petition is the culmination of four years of technical effort by United States and Canadian industry. In September, 1990, TIA's Engineering Subcommittee TR–41, sponsored by its User Premises Equipment Division, proposed a project to "address differences" between Canadian and United States terminal attachment rules.[3] The Subcommittee created a joint working group co-chaired by representatives from the United States and Canada to develop a harmonized set of rules to comply with both countries' requirements for terminal attachment.[4]

3. In February 1996, in response to TIA's Petition and comments received on the petition, the Commission issued a *Notice of Proposed Rulemaking* (*NPRM*) proposing to amend Part 68 to harmonize United States and Canadian requirements for connection to the PSN.[5] In the *NPRM*, the Commission tentatively concluded that the amended rules would promote barrier-free trade between the United States and Canada by eliminating unnecessary differences in terminal attachment requirements.[6] We tentatively concluded that the amended rules would be consistent with the spirit of NAFTA, and might become a guide for harmonization efforts with other countries.[7] Furthermore, we tentatively concluded that the amended rules would create a more competitive equipment marketplace, resulting in lower costs for equipment, thereby benefitting United States and Canadian consumers. We also stated that the proposed rules were consistent with our commitment to ensure that customers and manufacturers can connect terminal equipment to the telephone network without causing harm to the network.[8] Finally, we tentatively concluded that the Commission must retain ultimate responsibility for part 68 functions, but should rely on standards bodies whenever possible to resolve complex technical matters. We sought comment on these tentative conclusions.[9]

III. Discussion

A. Technical Amendments

4. *Positions of the Parties.* There is unanimity of opinion among commenters that harmonization of part 68 and CS–03 will benefit terminal equipment manufacturers as well as the telecommunications industry. There were no oppositions to any of the proposed rules. Northern Telecom ("Nortel"), for example, supports the Commission's proposal and suggests that harmonization of technical requirements for attachment of terminal equipment to the PSN will facilitate trade between the United States and Canada because manufacturers will need to design and test to only one set of common standards.[10] Lucent agrees that the amendment of part 68 will result in commercial advantages.[11] NYNEX argues that, under the proposed rules, a *de facto* barrier to trade that was inconsistent with NAFTA will be eliminated.[12] Ameritech says that the proposed rules are an example of how "the government and industry can achieve agreement without the need for additional regulation."[13]

5. TIA and Sprint propose editorial corrections to the part 68 rules in attachments to each of their comments.[14] Additionally, Sprint argues that the Commission should add any tariffed data rates, *i.e.*, all speeds of data communications that telephone companies agree to provide to the public for a requested service, to the amendments to part 68.[15] More specifically, Sprint states that 38.4 kbps is an existing T1 subrate service and as such "qualifies for protection in accordance with the purpose of the part 68 rules."[16]

6. *Discussion.* Based on the record, we amend part 68 to harmonize it with Canada's CS–03 and summarize our amendments as follows. Section 68.302 is designed to protect the network from harm by ensuring that, despite being subject to environmental stresses, terminal equipment will continue to comply with part 68 and not harm the network. Amended § 68.302 deletes vibration, temperature, and humidity stresses from part 68, and applies mechanical shock stresses only to equipment that might be affected by such stress. We delete these stresses because experience has shown, and the record supports, that they are unnecessary given the technological evolution in telecom equipment from an arrangement of discrete electronic components to solid state circuitry. Over the past ten years, failures during part 68 registration testing involving these stresses is negligible. The benefits of streamlining our regulations in this regard far outweigh any possible harm to the network created by these stresses. In addition, as the result of industry coordination, we are including a new Type B surge test to better assure operability of customer premises equipment during lightning storms.

7. Section 68.304 leakage current limitations ensure that telephone connections are adequately insulated against hazards to telephone company personnel caused by voltages within the equipment itself or as a result of accidental contact with commercial power sources. Previously, § 68.304 required testing using a 60 Hertz test voltage. Amended § 68.304 changes the 60 Hertz standard to either 50 or 60 Hertz to harmonize with international frequencies used for this purpose and with Underwriters Laboratories and Canadian Standards Association insulation standards.

8. Section 68.306 imposes "fail safe" requirements on hazardous voltage. These limits are generally used throughout the telephone industry as voltage limitations below which special protection of telephone craft personnel is not required. Equipment must be designed to avoid creating voltages exceeding these limits under normal operation. We amend this section to delete hazardous voltage requirements for Message Registration ("MR") and Automatic Identification of Outward Dialing ("AIOD") because these types of technology are no longer in use.[17] In addition, this *Order* changes the current voltage limitation from 80 to 60 volts to harmonize it with international safety standards.

9. The signal power limitations of § 68.308 are designed to protect the network from interference caused by excessive signal power. We update this section by revising the "Through Gain" Table to reflect services such as Integrated Services Digital Network ("ISDN") and to delete references to the 4-wire Conventional Termination Set interface.[18] We also expand subrate digital channel rates to include all rates presently used by industry, and adopt the ANSI T1 standard to replace the standard in the previous rules.[19] Section 68.308 also protects the network from harm by addressing crosstalk interference. We reword this section for clarity and rename this section "Transverse Balance Limitations" to harmonize it with internationally recognized Institute of Electrical and Electronic Engineers' ("IEEE") terminology.

10. Section 68.312 addresses the impedance (*i.e.*, the resistance a circuit offers to alternating current) that must be maintained on a telephone line. The amended rules reorganize and reword this section for clarity. Specifically, the amended rules reduce the categories of ringer types. We also delete those sections addressing message registration because this technology is no longer in use.

11. Section 68.314 ensures that transmission of signals in the network does not interfere with proper operation of network billing equipment. The amendments to this section include rewording the section for clarity and deleting operating requirements for AIOD because the technology has been replaced. We also add a new section to clarify reverse battery billing (a type of loop signaling) requirements. Section 68.316 Hearing Aid Compatibility requirements are not amended by this *Order*. Furthermore, we delete reference to 1.544 Mbps digital "keep-alive" requirements from § 68.318 because they are no longer in effect.[20] Finally, we amend definitions in § 68.3. For example, we delete references to MR and AIOD equipment, but clarify that any MR and AIOD equipment that remains connected to the network may continue to be used under the provisions of § 68.2.

12. The record supports our tentative conclusion that amendment of part 68 as described above should lower the price consumers pay for terminal equipment by facilitating greater efficiencies in the manufacturing and testing of terminal equipment. Under the amended rules, the technical requirements of part 68 and CS–03 would be harmonized so that a manufacturer in one country can design and test terminal equipment to a single, consistent set of technical standards accepted in both the United States or Canada. We conclude that these efficiencies will lead to an even more competitive market for terminal equipment than currently exists, resulting in lower costs for equipment, thus benefitting United States and Canadian consumers.

13. Moreover, as commenters recognize, the amendments to part 68 reconcile differences in standards and testing consistent with NAFTA. Currently, terminal equipment manufactured for use in the United States must meet the technical requirements of part 68. Similarly, terminal equipment manufactured for use in Canada must comply with the technical requirements contained in CS–03. Each country's respective technical requirements have differed sufficiently that terminal equipment complying with one set of regulations would not necessarily comply with the technical requirements of the other country. These differences, as NYNEX correctly states, have created unreasonable burdens on manufacturers and are a *de facto* barrier to trade inconsistent with the goals of NAFTA. By reconciling differences in standards and testing, harmonization promotes the goals of NAFTA.[21] Furthermore, the record supports our tentative conclusion that, as amended, the rules remain consistent with the Commission's longstanding commitment to ensure that no public harm results from attachment of private equipment to the PSN. The record is unanimous that the amended

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[2] In Canada, certification means the right to attach terminal equipment to the PSN. Certification requires submission of an application that includes a technical description of the equipment and a measurement report showing compliance with CS–03, the Canadian terminal attachment standard. Canadian requirements for terminal attachment are issued by Industry Canada ("IC"). Under the direction of IC, the Terminal Attachment Program Advisory Committee ("TAPAC"), a government and industry advisory committee, reviews and recommends changes to equipment certification programs. Canada amended its terminal attachment rules (CS–03 standards) to harmonize Canadian standards for terminal equipment with those set forth in part 68 on August 14, 1996. *Canada Gazette*, part I, June 15, 1996, Notice No. SMSE–063–96.

[3] TIA's technical work is conducted through its Engineering Committees, which develop, maintain, and publish voluntary standards and technical reports. TIA encourages these committees to work cooperatively with members of the American National Standards Institute ("ANSI"), as well as international standards bodies outside the United States, to harmonize telecommunications equipment standards to avoid duplicating standardization work already successfully completed. TIA's stated trade policy goals include "removal of barriers to market access, full participation of United States government and industry in the standards-setting process worldwide, and achievement of a minimum level of standards required to ensure interoperability and proper function of the international network." *See* TIA Petition at 2.

[4] According to TIA, a wide range of interest groups in the United States and Canada were represented including carriers, manufacturers, laboratories, consultants and government personnel.

[5] *See* Public Notice, "Pleading Cycle Established for Comments on TIA's Petition for Rulemaking to Amend part 68, Subpart D", 10 FCC Rcd 4548 (March 27, 1995); Amendment of Part 68 of the Commission's Rules, *Notice of Proposed Rulemaking*, 11 FCC Rcd 13282 (1996), 61 FR 15441, Apr. 8, 1996, *Erratum*, (Mar. 29, 1996) ("NPRM"). Seven parties filed comments in response to the *NPRM*. On April 16, 1996, one party filed reply comments.

[6] *NPRM* 11 FCC Rcd at 13286.

[7] *Id.* The rules are consistent with the aims of the World Trade Organization, which like NAFTA, seek to reduce trade barriers in order to promote competition.

[8] *Id.*

[9] *Id.*

[10] Nortel Comments at 1; *see also* VariFone Comments at 1.

[11] Lucent Comments at 2.

[12] NYNEX Comments at 2.

[13] Ameritech Comments at 1; *see also* Verifone Comments at 1.

[14] Sprint Comments at 1; TIA Comments at 2.

[15] Sprint Comments at 3.

[16] Sprint requests that the valid tariffed data rate of 38.4 kbps be included in § 68.308(h)(1)(i), Table 68.308(c), and Table 68.310(b). *NPRM*, 11 FCC Rcd at 13241–42, 13431, 61 FR 15441, Apr. 8, 1996.

[17] Message Registration ("MR") was a specific traffic recording system provided by certain older types of telephone systems. Automatic Identification of Outward Dialing ("AIOD") was a private branch exchange (PBX) service feature that identified the calling line on calls directed to a public switched telephone network for automatic message accounting recording purposes.

[18] The Through Gain Table shows the maximum net amplification permitted in multiport systems between ports. The 4-wire Conventional Terminating Set interface was an older technology used for connection of customer provided equipment to analog voiceband private line services.

[19] Subrate digital channel rates previously used by the industry ranged from 2.4 to 64 kilobits/second (kbps).

[20] *Keep-alive* refers to constantly present direct current voltage formally provided from the central office. Section 68.318 previously stated that "(u)ntil December 16, 1990, terminal equipment connecting to 1.544 Mbps services shall contain circuitry that assures continuity of output signal."

[21] At a February 1997 meeting of the Telecommunications Standards Subcommittee ("TSSC"), Mexico agreed to a "Minimal" set of network protection standards pursuant to NAFTA Article 1304–1 (with minor exceptions to accommodate national deviations in networks) consistent with our initiative here to harmonize United States and Canadian network protection standards. The TSSC was established under NAFTA (Article 913) to creat a work plan for "making compatible the standards-related measures for authorized equipment." It is comprised of officials from NAFTA member countries.

rules in no way diminish network protection.

14. Finally, we have reviewed the editorial corrections proposed by TIA and Sprint and find that they clarify our rules. For this reason, our final rules incorporate these suggested changes. In addition, we have added the tariffed data rate that Sprint suggests to our rules. While we decline to require that all tariffed rates be included, we agree that the specific tariffed rate Sprint suggests should be included to cover its currently available service.

B. Grandfathering Provision

15. *Positions of the Parties.* Lucent argues that the Commission should amend § 68.2(j) to "provide grandfathering for existing equipment, in order to avoid any requirement to re-register all the equipment that has already been registered under current rules."[22] Lucent argues that a grandfathering provision is necessary to avoid re-registration of products that are already registered under current rules, are in use, and do not cause harm to the network. Several of the commenters add that re-registration of these products would impose substantial expense without yielding any benefits. We note that no party has objected to a grandfathering provision.

16. *Discussion.* We are persuaded by commenters that there would be no benefit to requiring the re-registration of equipment already in use and shown not to cause harm to the network. We therefore adopt a grandfathering provision.[23] The new rule 68.2(j) reads as follows:

> Terminal equipment and systems registered prior to April 20, 1998, do not have to be re-registered unless subsequently modified. All new equipment and systems manufactured after May 19, 1999, must conform to the requirements.

C. Regulatory Process

17. *Background.* In the *NPRM*, we stated that although harmonization of technical requirements for attachment of terminal equipment satisfies NAFTA requirements in a manner consistent with the interests of United States industry in facilitating greater efficiencies in manufacturing terminal equipment, we recognized that the usefulness of a harmonized standard is jeopardized if our regulatory process does not allow the standard to evolve at the same pace as technology.[24] Consequently, we tentatively concluded that the Commission should rely, whenever possible, on standards bodies to resolve complex technical issues. We stated our reluctance, however, to substitute industry consensus for our part 68 rulemaking function as such consensus may not always promote the public interest.[25] We noted that standards bodies often lack the Commission's authority to ensure compliance with fair rules supporting safe and direct electrical connection of subscriber's terminal equipment to the PSN.[26]

18. *Positions of the Parties.* TIA and NYNEX urge the Commission to adopt a rule requiring manufacturers to comply with the technical recommendations of industry standards bodies with appropriate Commission oversight. NYNEX states that "(i)nstead of specifying technical interfaces and requirements for terminal equipment in the rules, the Commission should simply adopt a rule that requires manufacturers of such equipment to comply with the technical requirements and technical recommendations developed by appropriate industry standards bodies under the Commission's auspices * * *."[27] NYNEX contends that through its oversight of industry standards bodies, the Commission should be satisfied as to the "reasonableness" of any resulting technical recommendations. TIA argues that the current regulatory rulemaking process lags behind changes in technology and supports NYNEX's proposal.[28] Moreover, TIA states that NYNEX's suggested approach would be consistent with recent congressional directives.[29] VeriFone contends that industry standards bodies should remain responsible for technical issues, but concurs with the Commission's decision to retain ultimate responsibility in matters pertaining to part 68 rulemaking authority.

19. *Discussion.* We acknowledge that efforts to harmonize our terminal attachment rules with those of other countries will be impeded if the regulatory rulemaking process fails to keep pace with technological changes. Therefore, we conclude that the Commission should rely, whenever possible, on standards bodies composed of industry experts to resolve complex technical matters. As we stated in the *NPRM*, the Consultative Committee on Telecommunications ("CCT") has substantially assisted various harmonization activities.[30] Additionally, we recently sought comment on whether standards for enhanced wire quality and for determining gold equivalence should be permanent standards and, if so, what industry body or bodies shall determine an appropriate voluntary standard.[31] We decline, however, to substitute industry consensus completely for our part 68 rulemaking function. While they often may most expeditiously resolve complex technical matters, standards bodies lack the Commission's authority to ensure compliance with fair rules supporting safe and direct electrical connection of subscribers' telephone terminal equipment to the PSN. We note, for example, that new section 273(d)(4) of the Communications Act of 1934, as amended, seeks to ensure that voluntary standards do not become *de facto* standards that operate to exclude legitimate parties. Similarly, while it in this proceeding has strived to incorporate the advice and assistance of standards bodies to resolve complex technical matters, the Commission must continue to ensure through its rulemaking function that fair rules are developed.

IV. Conclusion

20. We conclude that the rules we adopt herein will eliminate unnecessary differences in terminal attachment requirements, and thereby promote barrier-free trade, between the United States and Canada. We find this to be consistent with the spirit and letter of NAFTA, which mandates elimination of trade barriers through reconciliation of differences in standards and testing procedures. These rules may become a model for our harmonization efforts with countries around the world and should benefit consumers by creating a more competitive equipment marketplace, thereby lowering the prices they pay for equipment. We conclude that these rules are consistent with the Commission's long-standing commitment to ensure that no public harm results from attachment of private equipment to the public switched network.

[22] Lucent Comments at 2; *see also* TIA Comments at 2–3.

[23] We note, however, that based on past experience, the vast majority of equipment covered by the grandfathering rule will be phased out of production and replaced by models that will be subject to the new rules.

[24] *NPRM*, 11 FCC Rcd at 13294.

[25] *Id.* at 13295.

[26] *Id.*

[27] NYNEX Comments at 3.

[28] TIA Comments at 3; TIA Reply Comments at 3–5.

[29] *See, e.g.*, National Technology Transfer and Advancement Act of 1996, Pub. L. 104–113, sec. 12, 110 Stat. 775, 782–83 (1996).

[30] *NPRM*, 11 FCC Rcd at 13294.

[31] Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 88–57, FCC 97–200 (June 17, 1997), at paras. 54–55, 62 FR 36463, Jul. 8, 1997.

V. Regulatory Flexibility Analysis

21. *Final Regulatory Analysis:* As required by the Regulatory Flexibility Act ("RFA"),[32] an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* in this proceeding, 11 FCC Rcd 13282 (1996); *Erratum*, (released March 29, 1996) ("*NPRM*"). The Commission sought written public comments on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") in this *Report and Order* ("*Order*") conforms to the RFA.

Need for, and Objectives of, This Order and the Rules Adopted Herein

22. Consistent with the intent of the North American Free Trade Agreement ("NAFTA"), this *Order* amends part 68 of the Commission's rules to promote barrier-free trade between the United States and Canada. Part 68 governs the terms and conditions under which customer provided terminal equipment may be connected to the telephone network. As a result of the amendments to part 68, manufacturers will be able to test terminal equipment for compliance with a single, consistent set of technical standards accepted in both the United States and Canada. The harmonization of terminal attachment rules in the United States and Canada will be a model for our harmonization efforts with other countries. We adopt a grandfathering provision to cover equipment already registered under current rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

23. No comments were submitted specifically in response to the IRFA. We have reviewed the general comments to identify issues that may have a significant economic impact on small businesses. All commenters addressing the proposed amendments to part 68 of our Rules supported the amendments.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply

24. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act.[33] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[34] SBA has defined a small business for Standard Industrial Classification ("SIC") category 4813 (Telephone Communications), Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.[35]

25. Consistent with our prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of *small entity* and *small business concern*. While such a company may have 1500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term "small incumbent LECs" to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

26. *Manufacturers of Telecommunications Equipment:* The Commission has not developed a definition of small manufacturers of terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1000 or fewer employees.[36] According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and 7 had between 1000 and 1499 employees.[37] Consequently, we estimate that there are fewer than 443 small manufacturers of terminal equipment that may be affected by the decision and rules adopted in this *Order*.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

27. There are no reporting or recordkeeping requirements. Manufacturers will be required to test terminal equipment to a single, consistent set of technical standards accepted in both the United States and Canada.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. We are adopting § 68.2(j), which states that equipment already registered under the current rules does not need to be re-registered under the new rules. We believe that such a provision will save manufacturers, some of which may be small businesses, the expenses incurred in re-registering equipment that is already in use and has been shown not to cause harm to the network.[38] No alternative to this beneficial action was suggested.

Report to Congress

29. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). A copy of the *Order* and this FRFA (or summary thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to sections 1, 4, 201–205, 218, 220, 226, 227, 255, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 220, 226, 227, 255, and 610, and 5 U.S.C. 552 and 553, this Report and Order *is adopted*, and part 68 of the

[32] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[33] *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[34] 15 U.S.C. 632.

[35] *See* 13 CFR 121.201.

[36] 13 CFR 121.201, SIC 3661.

[37] 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (data prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration).

[38] The rule changes ameliorate potential technical barriers to entry in both the U.S. and Canada markets, thereby allowing manufacturers and suppliers, including small manufacturers and suppliers, a reasonable opportunity to conduct business in both markets. This result in consistent with the general purposes of section 257 of the 1996 Telecommunications Act, 47 U.S.C. 257. That section requires, among other things, that the Commission eliminate market entry barriers for small businesses who may provide parts or services to providers of telecommunications services and information services. *Id.* at section 257(a). The Commission recently issued a report in GN Docket No. 96–113 regarding its implementation of Section 257. *See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, Report No. 97–8, 1997 WL 232120 (1997).

Commission's rules *are amended* as set forth below.

31. *It is further ordered*, that the rule amendments *set forth below shall be effective* April 20, 1997.

32. *It is further ordered*, that the Commission *shall send* a copy of this *Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

47 CFR part 68 is amended as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for part 68 continues to read as follows:

Authority: Sec. 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

2. Section 68.2 is amended by revising paragraphs (a)(3); (d), introductory text, and paragraph (j) and adding new paragraph (d)(4) to read as follows:

§ 68.2 Scope.

(a) * * *

(3) Of all PBX (or similar) systems to private line services for tie trunk type interfaces and off premises station lines. Services may only be added to this section as a result of rulemaking proceedings and equipment connected to such added services is afforded a reasonable transition period.

* * * * *

(d) Grandfathered private branch exchange (or similar) systems for connection to private line type services (tie trunk type services, off-premises station lines automatic identified outward dialing, and message registration):

* * * * *

(4) PBX (or similar) systems connected with automatic identified outward dialing or message registration private line services of a type that complies with paragraphs (d)(l) and (d)(2) of this section may remain connected for life without registration unless subsequently modified.

* * * * *

(j) Terminal equipment including premises wiring and protective apparatus (if any) directly connected to the network on April 20, 1997, may remain connected and be reconnected for life without registration, unless subsequently modified. New installations of terminal equipment, including premises wiring and protective apparatus (if any) may be installed (including additions to existing systems) up to May 19, 1999, without registration of any terminal equipment involved, provided that the terminal equipment is of a type directly connected to the network as of April 20, 1998. This terminal equipment may remain connected and be reconnected to the network for life without registration, unless subsequently modified.

* * * * *

3. Section 68.3 is amended by adding the following definitions for Capture Level, Dual Tone Multi Frequency (DTMF), Overload Point, and Voiceband in alphabetical order; by revising the definition for "Zero Level Decoder"; removing the definitions for AOID Data Channel Simulator, AIOD Leads, Message Register Leads, Message Register Signaling Channel Simulator; in the definition for Tie Trunk Transmission Interfaces, by removing paragraph (c) 4-wire Conventional Terminating Set (CTS); removing figures 68.3(a), 68.3(f), 68.3(g), 68.3(h), 68.3(i), 68.3(j), 68.3(k), 68.3(l) and 68.3(m) and adding in their place Figures 68.3(a), 68.3(f), 68.3(g), 68.3(h), 68.3(i), 68.3(j) and 68.3(k). Figure references are corrected in the following definitions: In Local Area Data Channel Simulator, Figure 68.3(k) is revised to read Figure 68.3(i), and in Loop Simulator Circuit, Figure 68.3(i) is revised to read Figure 68.3(g) and Figure 68.3(j) is revised to read Figure 68.3(h).

§ 68.3 Definitions.

* * * * *

Capture Level: Equipment with AGC (Automatic Gain Control) signal power limiting has virtually no output signal for input levels below a certain value. At some input signal power, the output level will become significant (usually corresponding to the expected output level) for the service application. The input level at which this occurs is defined as the "capture level."

* * * * *

Dual Tone Multi Frequency (DTMF) network control signalling is a method of signalling using the voice transmission path. The method employs sixteen (16) distinct signals each composed of two (2) voiceband frequencies, one from each of two (2) geometrically spaced groups designated "low group" and "high group." The selected spacing assures that no two frequencies of any group combination are harmonically related.

* * * * *

Overload Point: (1) For signal power limiting circuits incorporating automatic gain control method, the "overload point" is the value of the input signal that is 15 dB greater than the capture level.

(2) For signal power limiting circuits incorporating peak limiting method, the "overload point" is defined as the input level at which the equipment's through gain decreases by 0.4 dB from its nominal constant gain.

* * * * *

Voiceband: The voiceband for analog interfaces is the frequency band from 200 Hz to 3995 Hz.

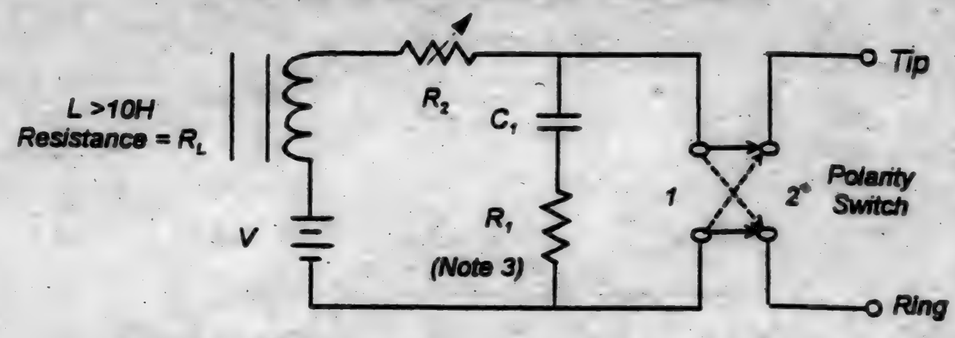
* * * * *

Zero Level Decoder: The zero level decoder shall comply with the u=255 PCM encoding law as specified in ITU–TSS (CCITT) Rec. G.711 for voiceband encoding and decoding. See also Fig. 68.3(j).

* * * * *

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LOOP SIMULATOR FOR LOOP START AND GROUND START CIRCUITS



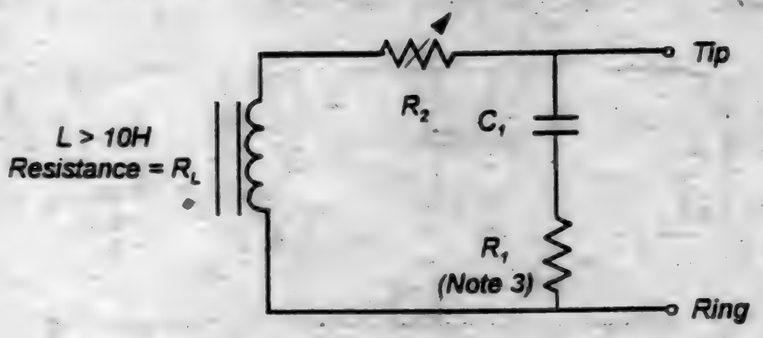
C_1 = 500 mfd -10% + 50% R_1 = 600 ohms ± 1%

Condition	V - Volts	Switch Position for Test	R2 + RL
1	Min 42.5 Max 56.5	Both	Continuously variable over 400 to 1740 ohms
2	105	2	2000 ohms

1. Means shall be used to generate, at the point of tip and ring connections to the terminal equipment or protective circuitry, the paramenters of dc line current and ac impedance which are generated by the illustrative circuit depicted above (as appropriate for the equipment under test).
2. In the Transverse Balance Limitations, Section 68.310, the use of the "dc portion of the loop simulator circuit" is specified. In such case components of R_1 and C_1 should be removed.
3. Tests for compliance may be made with either R_1 = 600 ohms or R_1 replaced by the alternative configuration shown in Figure 68.3(g).

Figure 68.3(a)

Loop Simulator for Reverse Battery Circuits



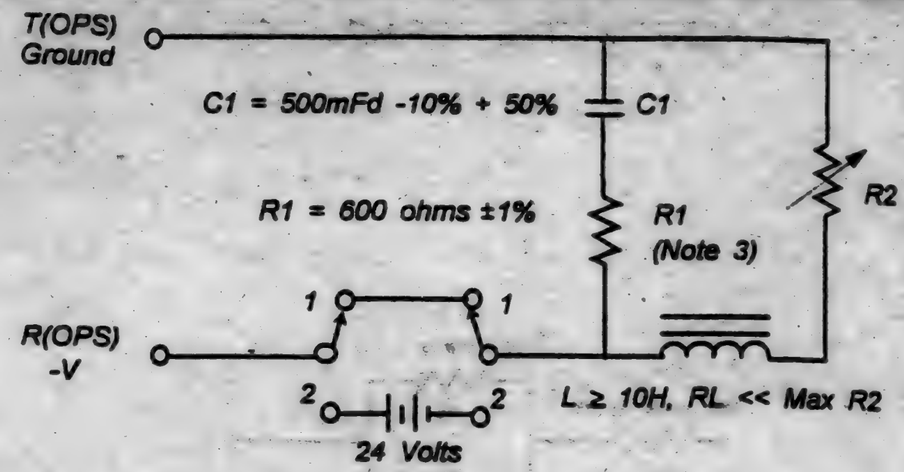
C_1 = 500 mFd -10% + 50%

R_1 = 600 ohms ± 1%

Notes for Figure 68.3(a) apply also to this drawing

R_2 + R_L
Continuously variable over 400 to 2450 ohms

Figure 68.3(b)



Condition	Switch Position for Test	R2 + RL Continuously Variable Over the Following Range		
		Class A RL	Class B RL	Class C RL
1	1	to 200 ohms	to 800 ohms	to 1800 ohms
2	2	N.A.	200 to 2300 ohms	900 to 3300 ohms

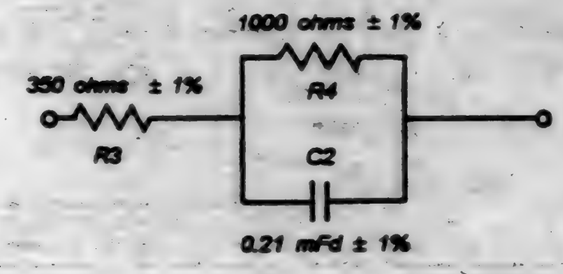
The minimum current for all resistance ranges shall be 16 mA.

Notes: (1) Means shall be used to generate, at the point of tip (T OPS) and ring (R OPS) connections to the PBX,the range of resistance and impedance which are employed by the illustrative circuit depicted above.
(2) In the transverse balance limitations, Section 68.310, the use of the "dc portion of the line simulator" is specified. In such case, components R1 and C1 above shall be removed.
(3) Tests for compliance may be made with either R1 = 600 ohms or R1 replaced by the alternative termination specified in Figure 68.3(g).

OFF PREMISES LOOP SIMULATOR

Figure 68.3(f)

ALTERNATIVE TERMINATION

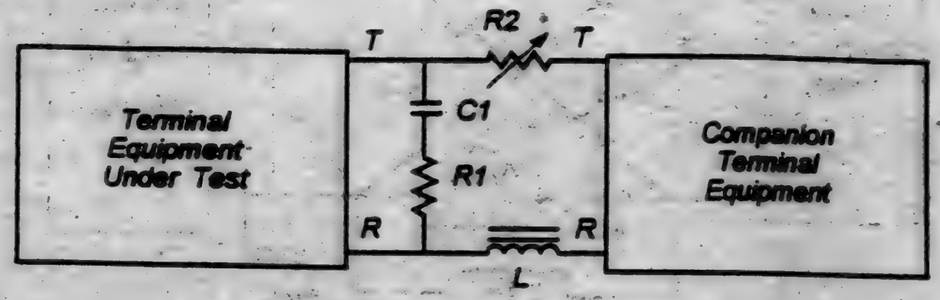


Note: When this alternative termination is used during signal power compliance testing, it replaces R1 (600 ohms) in the loop simulator circuit.

Figure 68.3(g)

LOOP SIMULATOR CIRCUIT

VOICEBAND METALLIC CHANNELS



C1 = 500mFd -10%, +5%

R1 = 600 ohms ± 1%

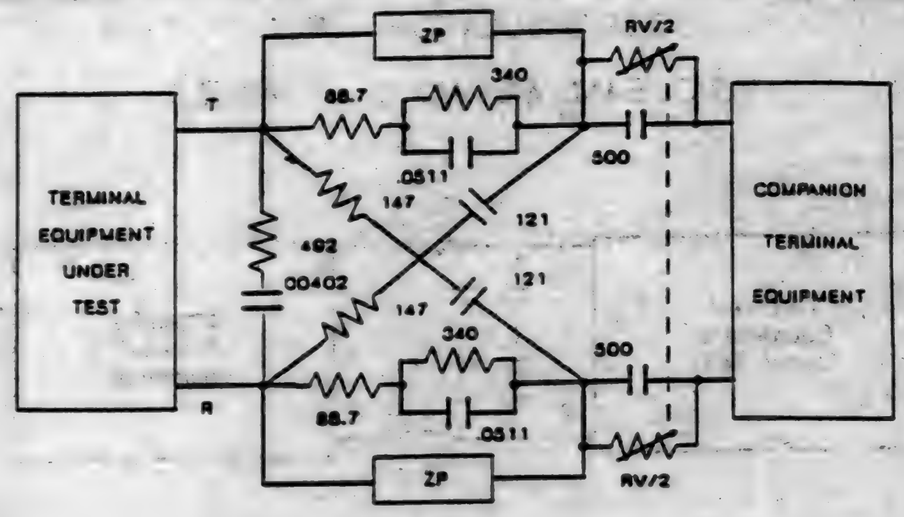
L = 10H, Resistance = RL

R2 + RL are continuously variable from RL to RX;

Where RX = Signaling range of Equipment Under Test, and RL << RX

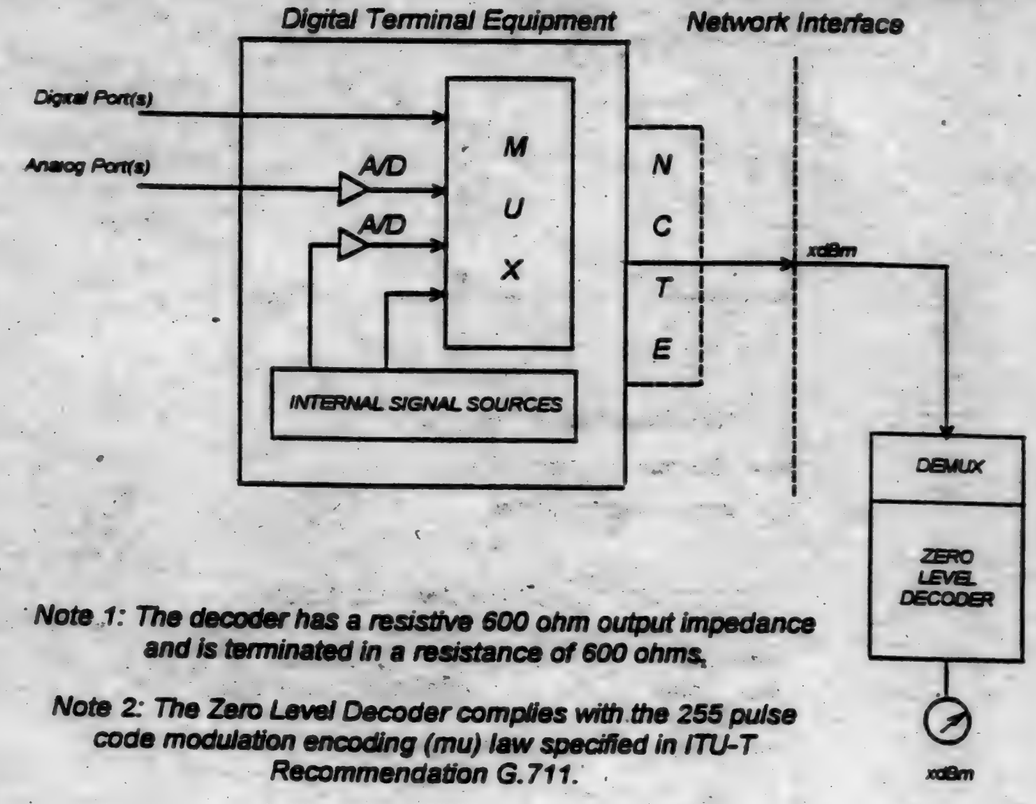
Notes: For Transverse Balance Measurements, Section 68.310, the DC portion of the loop simulator should be provided by removing R1 and C1. Companion Terminal Equipment grounds (including power supplies) must be isolated from Transverse Balance circuit grounds.

Figure 68.3(h)



Resistances (Ohms), Capacitances (uF), Tolerances ± 2%.
RV + RP = 50 thru 3000 Ohms.
ZP is the magnitude of the lowpass filter impedance which is (25 Ohm dc;) 3 Kohm from 10 Hz to 6 Khz.
RP/2 = dc resistance of lowpass filter, ZP in parallel with 428.7 Ohm.

Figure 68.3(i) LADC Impedance Simulator for Metallic Voltage Tests

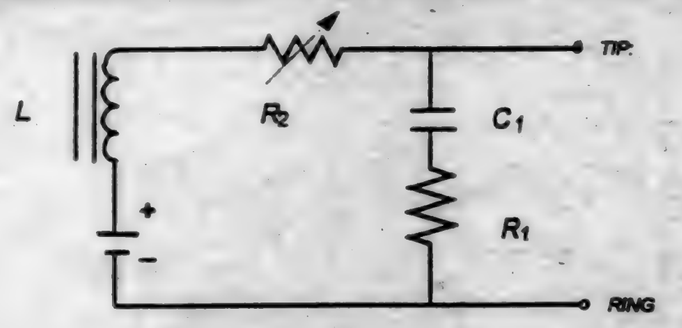


Note 1: The decoder has a resistive 600 ohm output impedance and is terminated in a resistance of 600 ohms.

Note 2: The Zero Level Decoder complies with the 255 pulse code modulation encoding (mu) law specified in ITU-T Recommendation G.711.

ZERO-LEVEL DECODER TEST CONFIGURATION FOR SUBRATE AND 1.544 MBPS DIGITAL CHANNELS

Figure 68.3 (j)



$L \geq 10H$ (Resistance = R_L)

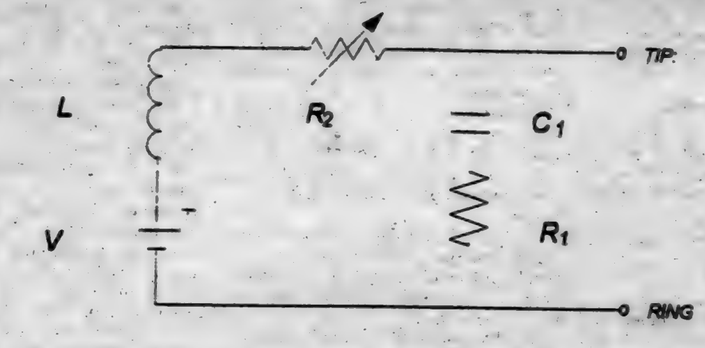
R_1 = 600 ohms ± 1%

C_1 = 500mF, -10%, +50%

TEST CONDITIONS FOR ANALOG MODE

V (volts) Min	Max	R2 + RL (ohms) continuously variable
36	46	610 to 1510

SIMULATOR CIRCUIT FOR PSDS IN ANALOG MODE
Fig 68.3(k)



L = or > 10H (Resistance = R_L)

R_1 = 600 ohms +/- 1%

C_1 = 500mF, -10%, +50%

TEST CONDITIONS FOR ANALOG MODE

V (volts) Min	Max	R2 + RL (ohms) continuously variable
36	46	610 to 1510

SIMULATOR CIRCUIT FOR PSDS IN ANALOG MODE
Fig 68.3(m)

BILLING CODE 6712-01-C

§ 68.222 [Removed]

4. Section 68.222 is removed.

5. Section 68.300 is revised to read as follows:

§ 68.300 Labeling requirements.

(a) Registered terminal equipment and registered protective circuitry shall have prominently displayed on an outside surface the following information in the following format:

Complies With Part 68, FCC Rules

FCC Registration Number: _____

Ringer Equivalence: _____

(b) Registered terminal equipment and registered protective circuitry shall also have the following identifying information permanently affixed to it.

(1) Grantee's name.

(2) Model number, as specified in the registration application.

(3) Serial number or date of manufacture.

(4) Country of origin of the equipment: "Made in _____." Required if the equipment is not manufactured in the United States. (Country of origin shall be determined in accordance with 19 U.S.C. 1304 and regulations promulgated thereunder.)

(5) As used herein, *permanently affixed* means that the required nameplate data is etched, engraved, stamped, indelibly printed or otherwise permanently marked. Alternatively, the required information may be permanently marked on a nameplate of metal, plastic, or other material fastened to the enclosure by welding, riveting, or with a permanent adhesive. Such a nameplate must be able to last for the expected lifetime of the equipment and must not be readily detachable.

(6) When the device is so small or for such use that it is not practical to place the statements specified in this section on it, the information required by paragraphs (a) and (b) of this section shall be placed in a prominent location in the instruction manual or pamphlet supplied to the user. The FCC Registration Number and the Model Number shall be displayed on the device.

6. Section 68.302 is revised to read as follows:

§ 68.302 Environmental simulation.

Unpackaged Registered Terminal Equipment and Registered Protective Circuitry shall comply with all the rules specified in this subpart, both prior to and after the application of the mechanical and electrical stresses specified in this section, notwithstanding that certain of these stresses may result in partial or total destruction of the equipment. Both telephone line surges, Type A and Type B, shall be applied as specified in paragraphs (b) and (c) of this section. Different failure criteria apply for each surge type.

(a) *Mechanical shock.* (1) Hand-Held Items Normally Used at Head Height: 18 random drops from a height of 1.5 meters onto concrete covered with 3 millimeters asphalt tile or similar surface.

(2) Table (Desk) Top Equipment 0–5 kilograms: Six random drops from a height of 750 millimeters onto concrete covered with 3 millimeters asphalt tile or similar surface.

(3) The drop tests specified in the mechanical shock conditioning stresses shall be performed as follows: The unit should be positioned prior to release to ensure as nearly as possible that for every six drops there is one impact on each of the major surfaces and that the surface to be struck is approximately parallel to the impact surface.

(b) *Telephone Line Surge—Type A.*—(1) *Metallic.* Apply two metallic voltage surges (one of each polarity) between any pair of connections on which lightning surges may occur; this includes:

(i) Tip to ring;

(ii) Tip 1 to ring 1; and

(iii) For a 4-wire connection that uses simplexed pairs for signalling, tip to ring 1 and ring to tip 1.

Note to paragraph (b)(1). The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_r)) of 10 μs maximum and a decay time (t_d) of 560 μs minimum, and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_r) of 10 ms maximum and a decay time (t_d) of 560 μs minimum. The peak voltage shall be at least 800 volts and the peak short circuit current shall be at least 100 amperes. Surges are applied:

(A) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially;

(B) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use;

(C) Under reasonably foreseeable disconnection of primary power sources, with primary power cords plugged and unplugged, if so configured.

(2) *Longitudinal.* Apply two longitudinal voltage surges (one of each polarity) from any pair of connections on which lightning surges may occur. This includes the tip-ring pair and the tip 1—ring 1 pair, to earth grounding connections, and to all leads intended for connection to non-registered equipment, connected together. Surges are applied as follows:

(i) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially;

(ii) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use;

(iii) Under reasonably foreseeable disconnection of primary power sources, as for example, with primary power cords plugged and unplugged.

Note to paragraph (b)(2): The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) with a front time (t_{r1}) of 10 ms (μseconds) maximum and a decay time (t_d) of 160 ms minimum, and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_r) of 10 ms maximum and a decay time (t_d) of 160 ms minimum. The peak voltage shall be at least 1500 volts and the peak short circuit current shall be at least 200 amperes.

(3) Failure Modes resulting from application of Type A telephone line surges. Regardless of operating state, equipment and circuitry are allowed to be in violation of the longitudinal balance requirements of § 68.310(b) and (c) and, for terminal equipment connected to Local Area Data Channels, the longitudinal signal power requirements of § 68.308(f)(3), if:

(i) Such failure results from an intentional, designed failure mode that has the effect of connecting telephone or auxiliary connections with earth ground; and,

(ii) If such a failure mode state is reached, the equipment is designed so that it would become substantially and noticeably unusable by the user, or an indication is given (*e.g.*, an alarm), in order that such equipment can be immediately disconnected or repaired.

Note to paragraph (b)(3)(ii): The objective of paragraph (b)(3)(ii) is to allow for safety circuitry to either open-circuit, which would cause a permanent on-hook condition, or to short-circuit to ground, as a result of an energetic lightning surge. Off-hook tests would be unwarranted if the off-hook state cannot be achieved. A short to ground has the potential for causing interference resulting from longitudinal imbalance, and therefore designs must be adopted which will cause the equipment either to be disconnected or repaired rapidly after such a state is reached, should it occur in service.

(c) *Telephone Line Surge—Type B.*—(1) *Metallic.* Apply two metallic voltage surges (one of each polarity) to equipment between any pair of

connections on which lightning surges may occur; this includes:

(i) Tip to ring;

(ii) Tip 1 to ring 1; and

(iii) For a 4-wire connection that uses simplexed pairs for signalling, tip to ring 1 and ring to tip 1.

Note to paragraph (c)(1): The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_r) of 9 ms (±30%) and a decay time (t_d) of 720 μs (±20%) and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_r) of 5 ms (±30%) and a decay time (t_d) of 320 μs (±20%). The peak voltage shall be at least 1000 volts and the peak short circuit current shall be at least 25 amperes. The wave shapes are based on the use of ideal components in Figure 68.302(a) with S_2 in Position M. Surges are applied:

(A) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially.

(B) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use.

(C) Under reasonably foreseeable disconnection of primary power sources, as for example, with primary power cords plugged and unplugged.

(2) *Longitudinal.* Apply two longitudinal voltage surges (one of each polarity) from any pair of connections on which lightning surges may occur. This includes the tip-ring pair and the tip 1—ring 1 pair to earth grounding connections and to all leads intended for connection to non-registered equipment, connected together. Surges are applied as follows:

(i) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially.

(ii) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use.

(iii) Under reasonably foreseeable disconnection of primary power sources, with primary power cords plugged and unplugged, if so configured.

Note to paragraph (c)(2): For each output lead of the surge generator, with the other lead open, the surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_r) of 9 μs (±30%) and a decay time (t_d) of 720 μs (±20%) and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_r) of 5 μs (±30%) and a decay time (t_d) of 320 μs (±20%). The peak voltage shall be at least 1500 volts and the peak short circuit current shall be at least 37.5 amperes. The wave shapes are based on the use of ideal components in Figure 68.302(a) with S_2 in Position L.

(3) *Failure Modes resulting from application of Type B telephone line surges.* Registered terminal equipment and registered protective circuitry shall be capable of withstanding the energy of Surge Type B without causing permanent opening or shorting of the interface circuit and without sustaining damage that will affect compliance with these rules.

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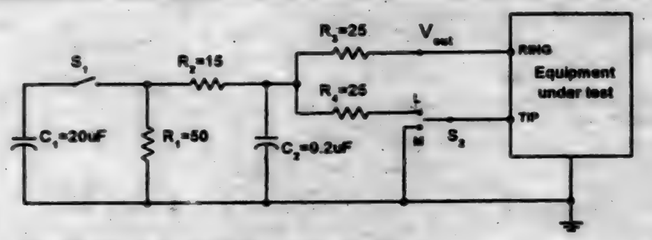


Fig. 68.302 (Xa) - Simplified Surge Generator

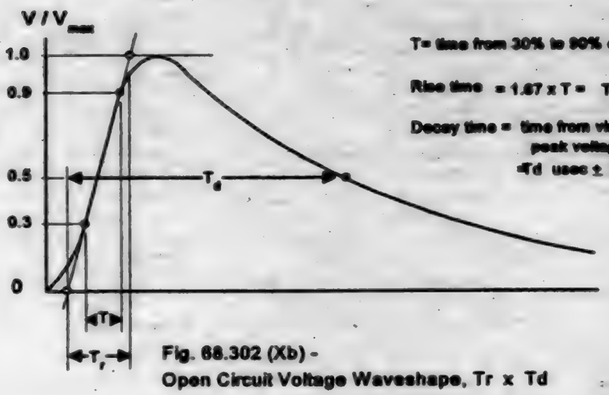


Fig. 68.302 (Xb) -
Open Circuit Voltage Waveshape, Tr x Td

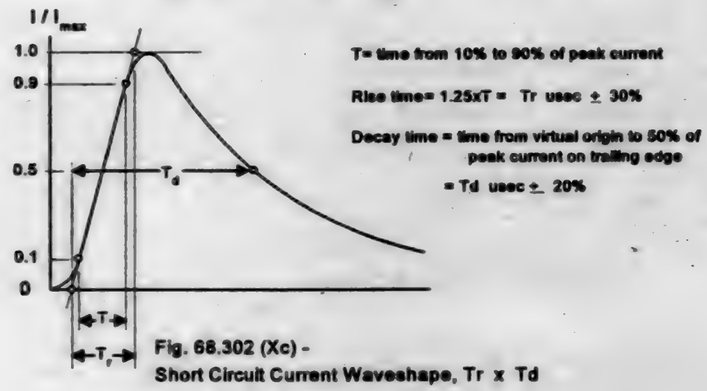


Fig. 68.302 (Xc) -
Short Circuit Current Waveshape, Tr x Td

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(d) *Power Line Surge.* (1) Apply six power line surges (three of each polarity) between the phase and neutral terminals of the ac power line while the equipment is being powered. The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_r) of 2 μs maximum and a decay time (t_d) of 10 μs minimum and shall have a short circuit current waveshape in accordance with Figure 68.302(c) with a front time (t_r) of 2 μs maximum and a decay time (t_d) of 10 μs minimum. The peak voltage shall be at least 2500 volts and the peak short circuit current shall be at least 1000 amperes. Surges are applied:

(i) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially;

(ii) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered/non-certified equipment) terminated in a manner which occurs in normal use.

(2) Failure Modes resulting from application of power line surge. Registered terminal equipment and registered protective circuitry shall comply with all the criteria contained in the rules and regulations in this subpart, both prior to and after the application of the power line surge specified in paragraph (d)of this section, not withstanding that this surge may result in partial or total destruction of the equipment under test.

8. Section 68.304 is revised to read as follows:

§ 68.304 Leakage current limitations.

Registered terminal equipment and registered protective circuitry shall have a voltage applied to the combination of points listed in the table below. The test voltage shall be ac of 50 or 60 Hz rms.

(a) All telephone connections;

(b) All power connections;

(c) All possible combinations of exposed conductive surfaces on the exterior of such equipment or circuitry including grounding connection points, but excluding terminals for connection to other terminal equipment;

(d) All terminals for connection to registered protective circuitry or non-registered equipment;

(e) All auxiliary lead terminals;

(f) All E&M lead terminals, and

(g) All PR, PC, CY1 and CY2 leads.

TABLE 68.304(a).—VOLTAGE APPLIED FOR VARIOUS COMBINATIONS OF ELECTRICAL CONNECTIONS

Voltage source connected between:	ac value[1]
(a) and (b) (see NOTES 1, 2, 3)	1500
(a) and (c) (see NOTES 1, 2)	1000
(a) and (d) (see NOTES 1, 2)	1000
(a) and (e) (see NOTES 1, 2)	1000
(a) and (f) (see NOTES 1, 2)	1000
(a) and (g) (see NOTES 1, 2)	1000
(b) and (c) (see NOTE 3)	1500
(b) and (d) (see NOTE 3)	1500
(b) and (e) (see NOTE 3)	1500
(b) and (f) (see NOTE 3)	1500
(b) and (g) (see NOTE 3)	1500
(c) and (e) (see NOTES 1, 2)	1000
(c) and (f) (see NOTES 1, 2)	1000
(d) and (e) (see NOTE 2)	1000
(d) and (f) (see NOTE 2)	1000
(e) and (f) (see NOTE 2)	1000

[1] Value to which test voltage is gradually increased.

Notes to Table 68.304(a):

(1) Gradually increase the voltage from zero to the values listed in Table 68.304(a) over a 30-second time period, then maintain the voltage for one minute. The current in the mesh formed by the voltage source and these points shall not exceed 10 mA peak at any time during this 90-second interval.

(2) Equipment states necessary for compliance with the requirements of this section that cannot be achieved by normal means of power shall be achieved artificially by appropriate means.

(3) A telephone connection, auxiliary lead, or E&M lead that has an intentional dc conducting path to earth ground at operational voltages (such as a ground start lead), may be excluded from the leakage current test in that operational state. Leads or connections excluded for this reason shall comply with the requirements of § 68.308(e)(1).

(4) A telephone connection, auxiliary lead, or E&M lead that has an intentional dc conducting path to earth ground for protection purposes at the leakage current test voltage (such as through a surge suppressor), may have the component providing the conducting path removed from the equipment for the leakage current test in that operational state. Components removed for this reason shall comply with the requirements of § 68.308(e)(2).

(5) Filter paths, such as capacitors used in RMI filters, are left in place during leakage current testing, since these components can be a path for excessive leakage.

(6) For multi-unit equipment interconnected by cables, that is evaluated and registered as an interconnected combination or assembly, the specified 10 mA peak maximum leakage current limitation other than between power connection points and other points, may be increased as described here to accommodate cable capacitance. The leakage current limitation maybe increased to (10N+0.13L) mA peak where L is the length of interconnecting cable in the leakage path in meters and N is the number of equipment units that the combination or assembly will place in parallel across a telephone connection.

(7) RF filters and surge protectors on the line side of power supplies may be disconnected before making § 68.304 leakage measurements. As an alternative to disconnecting these filters and surge protectors, this measurement may be made using a dc voltage equal to the peak ac test voltage.

9. Section 68.306 is revised to read as follows:

§ 68.306 Hazardous voltage limitations.

(a) *General.* Under no condition of failure of registered terminal equipment or registered protective circuitry that can be conceived to occur in the handling, operation or repair of such equipment or circuitry, shall the open circuit voltage on telephone connections exceed 70 volts peak after one second, except for voltages for network control signalling, alerting and supervision.

(1) *Type I E&M Leads.* Registered terminal equipment shall comply with the following requirements for terminal equipment on the "A" or "B" side of the interface as shown in Figures 68.3(e)(i):

(i) The dc current on the E lead shall not exceed 100 mA.

(ii) The maximum dc potentials to ground shall not exceed the following when measured across a resistor of 20 kohms ±10%:

TABLE 68.306(a).—TYPE I E&M, DC POTENTIALS

	E lead	M lead
TE on "B" side originates signals to network on E lead.	±5 V	±5 V.
TE on "A" side originates signals to network on M lead.	−56.5 V; no positive potential with respect to ground.	−56.5 V; no positive potential with respect to ground.

(iii) The maximum ac potential between E&M leads and ground reference shall not exceed 5V peak.

(iv) M lead protection shall be provided so that voltages to ground do not exceed 60 volts. For relay contact implementation, a power dissipation capability of 0.5 watt shall be provided in the shunt path.

(v) If the registered terminal equipment contains an inductive component in the E lead, it must assure that the transient voltage across the contact as a result of a relay contact opening does not exceed the following voltage and duration limitations:

(A) 300 volts peak,

(B) A rate of change of one volt per microsecond, and

(C) A 60-volt level after 20 milliseconds.

(2) *Type II E&M Leads.* Registered terminal equipment shall comply with the following requirements:

(i) For terminal equipment on the "A" side of the interface, the dc current in the E lead shall not exceed 100 mA. The maximum ac potential between the E lead and ground shall not exceed 5 V peak.

(ii) For terminal equipment on the "B" side of the interface, the dc current in the SB lead shall not exceed 100 mA. The maximum ac potential between the SB lead and ground shall not exceed 5 V peak.

(iii) The maximum dc potentials to ground shall not exceed the following when measured across a resistor of 20 kohms ±10%:

TABLE 68.306(b).—TYPE II E&M, DC POTENTIALS

	E lead	M lead	SB lead	SG lead
TE on "B" side of the interface originates signals to network on E lead.	±5 V	±5 V	−56.5 V; no positive potential with respect to ground.	±5 V.
TE on "A" side of the interface originates signals to network on M lead.	−56.5 V; no positive potential with respect to ground.	±5 V	±5 V	±5 V.

(iv) The maximum ac potential to ground shall not exceed 5V peak on the following leads, from sources in the terminal equipment:

(A) M, SG and SB leads for terminal equipment on the "A" side of the interface.

(B) E, SG and M leads for terminal equipment on the "B" side of the interface.

(v) If the registered terminal equipment contains an inductive component in the (E) or (M) lead, it must assure that the transient voltage across the contact as a result of a relay contact opening does not exceed the following voltage and duration limitations:

(A) 300 volts peak,

(B) A rate of change of one volt per microsecond, and

(C) A 60-volt level after 20 milliseconds.

(3) *Off premises station voltages.* (i) Talking battery or voltages applied by the PBX (or similar systems) to all classes of OPS interface leads for supervisory purposes must be negative with respect to ground, shall not be more than −56.5 volts dc with respect to ground, and shall not have a significant ac component.[1]

(ii) Ringing signals applied by the PBX (or similar systems) to all classes of OPS interface leads shall comply with requirements in paragraph (d) of this section. Ringing voltages shall be applied between the ring conductor and ground.

(4) *Direct Inward Dialing (DID).* Voltages applied by the PBX (or similar systems) to DID interface leads for supervisory purposes must be negative with respect to ground, shall not be more than −56.5 volts dc with respect to ground, and shall not have a significant ac component.[2]

(5) *Local Area Data Channel Interfaces.* For Local Area Data Channel interfaces, during normal operating modes including terminal equipment initiated maintenance signals, registered terminal equipment shall ensure, except during the application of ringing (limitations specified in paragraph (d) of this section), with respect to telephone connections (tip, ring, tip 1, ring 1) that:

(i) Under normal operating conditions, the rms current per conductor between short-circuit conductors, including dc and ac components, does not exceed 350 milliamperes. For other than normal operating conditions, the rms current between any conductor and ground or between short-circuited conductors, including dc and ac components, may exceed 350 milliamperes for no more than 1.5 minutes;

(ii) The dc voltage between any conductor and ground does not exceed 60 volts. Under normal operating conditions it shall not be positive with respect to ground (though positive voltages up to 60 volts may be allowed during brief maintenance states);

(iii) AC voltages are less than 42.4 volts peak between any conductor and ground, (terminal equipment shall comply while other interface leads are both):

(A) Unterminated, and

(B) Individually terminated to ground); and,

(iv) Combined ac and dc voltages between any conductor and ground are less than 42.4 volt peak when the absolute value of the dc component is less than 21.2 volts, and less than (32.8 + 0.454 × Vdc) when the absolute value of the dc component is between 21.2 and 60 volts.

(6) *Ringdown Voiceband Private Line and Voiceband Metallic Channel Interface.* During normal operation, registered terminal equipment for connection to ringdown voiceband private line interfaces or voiceband metallic channel interfaces shall ensure that:

(i) Ringing voltage does not exceed the voltage and current limits specified in paragraph (d) of this section, and is:

(A) Applied to the ring conductor with the tip conductor grounded for 2-wire interfaces, or

(B) Simplexed on the tip and ring conductors with ground simplexed on the tip 1 and ring 1 conductors for 4-wire interfaces.

(ii) Except during the signaling mode or for monitoring voltage, there is no significant positive dc voltage (not over +5 volts) with respect to ground:

(A) For 2-wire ports between the tip lead and ground and the ring lead and ground and

(B) For 4-wire ports between the tip lead and ground, the ring lead and ground, the tip 1 lead and ground, and the ring 1 lead and ground.

(iii) The dc current per lead, under short circuit conditions shall not exceed 140 milliamperes.

(b) *Connection of non-registered equipment to registered terminal equipment or registered protective circuitry.—General.* Leads to, or any elements having a conducting path to

[1] The ac component should not exceed 5 volts peak, when not otherwise controlled by § 68.308.

[2] The ac component shall not exceed 5 volts peak, where not otherwise controlled by § 68.308.

telephone connections, auxiliary leads or E&M leads shall:

(1) Be reasonably physically separated and restrained from and be neither routed in the same cable as nor use the same connector as leads or metallic paths connecting power connections;

(2) Be reasonably physically separated and restrained from and be neither routed in the same cable as nor use adjacent pins on the same connector as metallic paths to lead to nonregistered equipment, when specification details provided to the Commission, pursuant to, § 68.200(g), do not show that interface voltages are less than non-hazardous voltage source limits in paragraph (c) of this section.

(c) *Non-Hazardous Voltage Source.* A voltage source is considered a non-hazardous voltage source if it conforms with the requirements of § 68.302, § 68.304 and paragraph (b) of this section, with all connections to the source other than primary power connections treated as "telephone connections," and if such source supplies voltages no greater than the following under all modes of operation and of failure:

(1) AC voltages less than 42.4 volts peak;

(2) DC voltages less than 60 volts; and

(3) Combined ac and dc voltages less than 42.4 volts peak when the absolute value of the dc component is less than 21.2 volts and less than (32.8 + 0.454 × V dc) when the absolute value of the dc component is between 21.2 and 60 volts.

(d) *Ringing Sources.* Except for class A OPS interfaces, ringing sources shall meet all of the following restrictions:

(1) *Ringing Signal Frequency.* The ringing signal shall use only frequencies whose fundamental component is equal to or below 70 Hz.

(2) *Ringing Signal Voltage.* The ringing voltage shall be less than 300 V peak-to-peak and less than 200 V peak-to-ground across a resistive termination of at least 1 megohm.

(3) *Ringing Signal Interruption Rate.* The ringing voltage shall be interrupted to create quiet intervals of at least one second (continuous) duration each separated by no more than 5 seconds. During the quiet intervals, the voltage to ground shall not exceed the voltage limits given in paragraph (a)(3)(i) of this section.

(4) *Ringing Signal Sources.* Ringing voltage sources shall comply with the following requirements:

(i) If the ringing current through a 500 ohm(s) (and greater) resistor does not exceed 100 mA peak-to-peak, neither a ring trip device nor a monitoring voltage are required.

(ii) If the ringing current through a 1500 ohm (and greater) resistor exceeds 100 mA peak-to-peak, the ringing source shall include a current-sensitive ring trip device in series with the ring lead that will trip ringing as specified in Figure 68.306(a) in accordance with the following conditions:

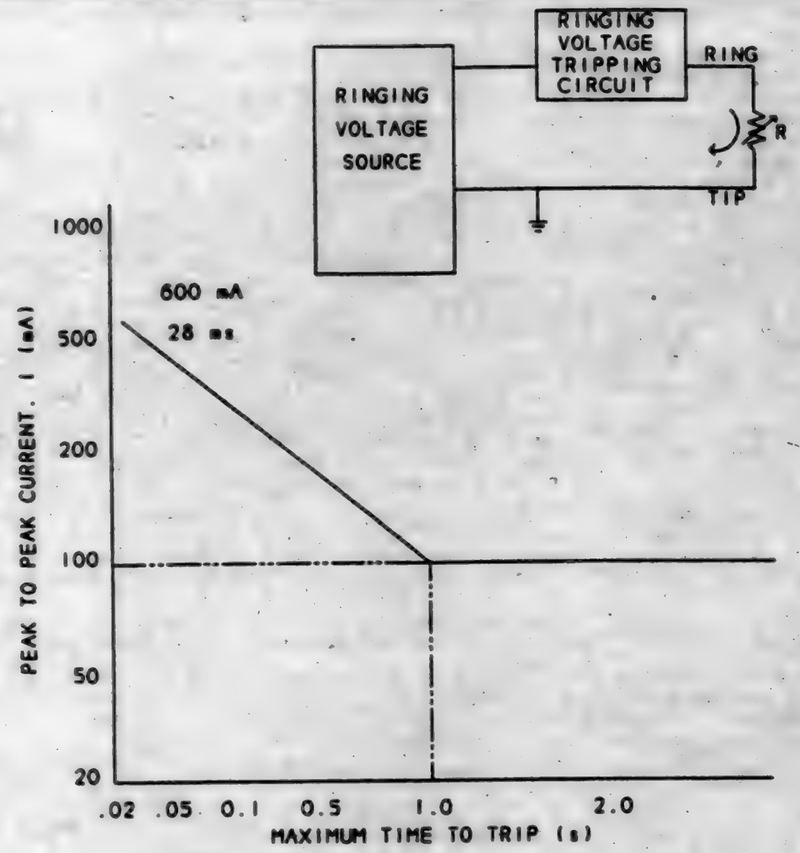
(A) If the ring trip device operates as specified in Figure 68.306(a) with R=500 ohm (and greater) no monitoring voltage is required;

(B) If, however, the ring trip device only operates as specified in Figure 68.306(a) with R=1500 ohm (and greater) then the ringing voltage source shall also provide a monitoring voltage between 19 V dc and 56.5 V dc, negative with respect to ground, on the tip or ring conductor.

(iii) If the ringing current through a 500-ohm (and greater) resistor exceeds 100 mA (peak-to-peak) but does not exceed 100 mA peak-to-peak with 1500-ohm (and greater) termination, the ringing voltage source shall include either a ring trip device that meets the operating characteristics specified in Figure 68.306(a) with 500-ohm (and greater) resistor, or a monitoring voltage as specified in paragraph (d)(4)(ii)(B) of this section.

Note to paragraph (d)(4)(iii): If the operating characteristics specified in Figure 68.306(a) are not met with both the 500-ohm and 1500-ohm terminations, then the terminal equipment under test fails (See Table 68.306(c)).

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TABLE 68.306(C).—SUMMARY OF RING TRIP REQUIREMENTS

Section 68.306 (d)(4).	Ringing current (mA p.p)		Function required		Ring trip device operates per figure 68.306(a)
	R=500 ohms and greater	R=1500 ohms and greater	Ring trip	Monitor voltage	
(i)	<100	<100	Optional	Optional	Optional.
(ii)(A)	N/A	>100	Yes	Optional	Yes for both resistances.
(ii)(B)	N/A	>100	Yes	Yes	Yes for R=1500 ohms and greater. No for R=500 ohms and greater.
(iii)	>100	<100	Either Ring-Trip device or Monitor Voltage required		Yes for R=500 ohms and greater, N Ring Trip Device is used.

(e) *Intentional paths to ground (as required by § 68.304).* (1) Connections with operational paths to ground. Registered terminal equipment and registered protective circuitry having an intentional dc conducting path to earth ground at operational voltages that was excluded during the leakage current test of § 68.304 shall have a dc current source applied between the following points:

(i) Telephone connections, including tip, ring, tip 1, ring 1, E&M leads and auxiliary leads, and

(ii) Earth grounding connections.

Note to paragraphs (e)(1)(i) and (e)(1)(ii): For each test point, gradually increase the current from zero to 1 ampere, then maintain the current for one minute. The voltage between (e)(2)(i) and (e)(2)(ii) of this section shall not exceed 0.1 volt at any time.

Note to paragraphs (e)(2)(i) and (e)(2)(ii):

(1) In the event there is a component or circuit in the path to ground, the requirement shall be met between the grounded side of the component or circuit and the earth grounding connection.

(2) Connections with protection paths to ground. Registered terminal equipment and protective circuitry having an intentional dc conducting path to earth ground for protection purposes at the leakage current test voltage that was removed [1] during the leakage current test of § 68.304 shall, upon its replacement, have a 50 or 60 Hz voltage source applied between the following points:

(i) Simplexed telephone connections, including tip and ring, tip 1 and ring 1, E&M leads and auxiliary leads, and

(ii) Earth grounding connections.

(3) Gradually increase the voltage from zero to 120 volts rms for registered terminal equipment, or 300 volts rms for protective circuitry, then maintain the voltage for one minute. The current between §§ 68.306(d)(4)(i) and 68.306(d)(4)(ii) shall not exceed 10 mA peak at any time. As an alternative to carrying out this test on the complete equipment or device, the test may be carried out separately on components, subassemblies, and simulated circuits, outside the unit, provided that the test results would be representative of the results of testing the complete unit.

[1] The path to ground is reestablished when the leads are replaced.

10. Section 68.308 is revised to read as follows:

§ 68.308 Signal power limitations.

(a) *General.* Limits on signal power shall be met at the interface for all 2-wire network ports and, where applicable to offered services, both transmit and receive pairs of all 4-wire network ports. Signal power measurements shall be made using terminations as specified in each of the following limitations. The transmit and receive pairs for 4-wire network ports shall be measured with the pair not under test connected to a termination equivalent to that specified for the pair under test. Through gain limitations apply only in the direction of transmission toward the network.

(b) *Voiceband metallic signal power.* (1) Limitations at the interface on internal signal sources not intended for network control signaling:

(i) The power of all signal energy, in the 200–3995 Hz voiceband, delivered by registered terminal equipment or registered protective circuitry to the appropriate loop simulator—other than non-permissive data equipment or data protective circuitry shall not exceed −9 dBm when averaged over any 3 second interval.

(ii) For 2-wire and 4-wire lossless tie trunk type interfaces, the maximum power of other than live voice signals delivered to a 600-ohm termination shall not exceed −15 dBm when averaged over any three second interval.

(iii) For OPS lines, the maximum power of other than live voice delivered to an OPS line simulator circuit shall not exceed −9 dB with respect to one milliwatt, when averaged over any 3-second interval.

(iv) For registered test equipment or registered test circuitry the maximum signal power delivered to a loop simulator circuit shall not exceed 0 dBm when averaged over any 3-second interval.

(v) For voiceband private lines using ringdown or inband signaling the maximum power of other than live voice signals delivered to a 600 ohm termination shall not exceed −13 dBm when averaged over any 3-second interval.

(vi) For voiceband private lines using inband signaling in the band 2600 ± 150 Hz, the maximum power delivered to a 600 ohm termination shall not exceed −8 dBm during the signaling mode. The maximum power delivered to a 600 ohm termination in the on-hook steady state supervisory condition shall not exceed −20 dBm. The maximum power of other than live voice signals delivered to a 600 ohm termination during the non-signaling mode and for other inband systems shall not exceed −13 dBm when averaged over any 3-second interval.

(2) Limitations on internal signal sources primarily intended for network control signaling, contained in voice and data equipment.

(i) For all operating conditions of registered terminal equipment and registered protective circuitry, the maximum power in the frequency band below 3995 Hz delivered to a loop simulator circuit shall not exceed the following when averaged over any 3-second interval:

(A) 0 dBm when used for network control (DTMF);

(B) 0 dBm when DTMF is used for manual entry end-to-end signaling. When the device is used for this purpose it shall not generate more than 40 DTMF digits per manual key stroke.

(C) −9 dBm in all other cases.

(ii) For tie trunk applications, the maximum power delivered to a 600 ohm termination for registered terminal equipment and registered protective circuitry under all operating conditions shall not exceed −4 dBm over any 3 second interval.

(3) Registered one port and multiport terminal equipment and protective circuitry with provision for through transmission from other terminal equipment, excluding data equipment and data protective circuitry that are registered in accordance with § 68.308(b)(4).

(i) Where through-transmission equipment provides a dc electrical signal to equipment connected therewith (*e.g.*, for powering of electro-acoustic transducers), dc conditions shall be provided which fall within the range of conditions provided by a loop simulator circuit unless the combination of the through-transmission equipment and equipment connected therewith is registered as a combination which conforms to paragraphs (b)(1) and (b)(2) of this section.

(ii) Through-transmission equipment to which remotely connected data terminal equipment may be connected shall not be equipped with or connected to either a Universal or Programmed Data Jack used in data configurations. (*See* paragraph (b)(4) of this section and § 68.502(e)).

(4) Registered data circuit terminal equipment shall be capable of operation in at least one of the states discussed in paragraphs (b)(1)(i), (b)(1)(ii) or (b)(1)(iii) of this section. The output power level of the data circuit terminal equipment shall not be alterable, by the customer, to levels which exceed the signal power limits specified herein.

(i) Data circuit terminal equipment intended to operate with a programming resistor for signal level control shall not exceed the programmed levels given in Table 68.308(a).

(ii) Data circuit terminal equipment intended to operate in the fixed loss loop (FLL) state shall not transmit signal power that exceeds −4 dBm, in the 200—3995 Hz voiceband, when averaged over any and all 3 second intervals.

(iii) Data circuit terminal equipment shall not transmit signals from 200 to 3995 Hz that exceed −9 dBm, when averaged over any and all 3 second intervals.

TABLE 68.308(a)

Programming resistor (Rp)* (ohms)	Programmed data equipment signal power output
Short	0 dBm.
150	−1 dBm.
336	−2 dBm.
569	−3 dBm.
866	−4 dBm.
1240	−5 dBm.
1780	−6 dBm.
2520	−7 dBm.
3610	−8 dBm.
5490	−9 dBm.

*Tolerance) 1%.

(5) Registered one-port and multiport terminal equipment and protective circuitry with provision for through-transmission from ports to other equipment which is separately registered for the public switched network, or ports to other network interfaces.

(i) Registered terminal equipment and registered protective circuitry shall have no adjustments that will allow net amplification to occur in either direction of transmission in the through-transmission path within the 200–3995 Hz voiceband that will exceed the following:

TABLE 68.308(b).—ALLOWABLE NET AMPLIFICATION BETWEEN PORTS (A)(C)(D)(E)

To / From (E)	Tie trunk type ports: ¾-wire	Tie trunk type ports: Subrate 1.544 Mbps satellite 4W	Tie trunk type ports: Subrate 1.544 Mbps tandem 4W	Integrated services trunk	OPS ports (2-wire) (B)	Public switched network ports (2-wire)	HCC digital PBX–CO 4-wire
¾-Wire Tie	0 dB	3 dB	3 dB	3 dB	6 dB		
Subrate 1.544 Mbps Satellite 4W Tie	0 dB		3 dB	3 dB	6 dB		
Subrate 1.544 Mbps Tandem 4W Tie	−3 dB	0 dB	0 dB	0 dB	3 dB		
Integrated Services Trunk	−3 dB	0 dB	0 dB	0 dB	3 dB		
RTE Digital	0 dB	0 dB	0 dB	0 dB	3 dB	3 dB	0 dB.
RTE (B) PSTN/OPS	−3 dB	−3 dB	−3 dB	−3 dB	0 dB	0 dB	−3 dB
OPS (B) (2-Wire)	−2 dB	1 dB	1 dB	1 dB	4 dB	4 dB	1 dB.
Public Switched Network (2-Wire)					3 dB	3 dB	
HCC Digital PBX–CO (4-Wire)					3 dB		

(A) The source impedance for all measurements shall be 600 ohms. All ports shall be terminated in appropriate loop or private line channel simulator circuits or 600 ohm terminations.

(B) These ports are for 2-wire on-premises station ports to separately registered terminal equipment.

(C) These through gain limitations are applicable to multiport systems where channels are not derived by time or frequency compression methods. Terminal equipment employing such compression techniques shall assure that equivalent compensation for through gain parameters is demonstrated in the registration application.

(D) Registered terminal equipment and registered protective circuitry may have net amplification exceeding the limitations of this subsection provided that, for each network interface type to be connected, the absolute signal power levels specified in this section are not exceeded.

(E) The indicated gain is in the direction that results when moving from the horizontal entry toward the vertical entry.

(F) Registered terminal equipment or protective circuitry with the capability for through transmission from voiceband private line channels or voiceband metallic channels to other telephone network interfaces shall ensure that the absolute signal power levels specified in this section, for each telephone network interface type to be connected, are not exceeded.

(G) Registered terminal equipment or protective circuitry with the capability for through transmission from voiceband private line channels or voiceband metallic private line channels to other telephone network interfaces shall assure, for each telephone network interface type to be connected, that signals with energy in the 2450 to 2750 Hz band are not through transmitted unless there is at least an equal amount of energy in the 800 to 2450 Hz band within 20 milliseconds of application of signal.

(ii) The insertion loss in through connection paths for any frequency in the 800 to 2450 Hz band shall not exceed the loss at any frequency in the 2450 to 2750 Hz band by more than 1 dB (maximum loss in the 800 to 2450 Hz band minus minimum loss in the 2450 to 2750 Hz band plus 1 dB).

(6) For tie trunk interfaces—Limitation on idle circuit stability parameters. For idle state operating conditions of registered terminal equipment and registered protective circuitry, the following limitations shall be met:

(i) For the two-wire interface:

$$RL \geq \begin{cases} 9 - 3^{\frac{\log(f/200)}{\log(2.5)}} \text{ dB; for } 200 \text{ Hz} \leq f \leq 500 \text{ Hz} \\ 6 \text{ dB} \quad \text{; for } 500 \text{ Hz} \leq f \leq 3200 \text{ Hz} \end{cases}$$

(ii) For the four-wire lossless interface:

$$tl_f \geq \begin{cases} 10 - 4^{\frac{\log(f/200)}{\log(2.5)}} \text{ dB; for } 200 \text{ Hz} \leq f \leq 500 \text{ Hz} \\ 6 \text{ dB} \quad \text{; for } 500 \text{ Hz} \leq f \leq 3200 \text{ Hz} \end{cases}$$

$tl_r > 40$ dB

$RL_i, RL_o \geq 3$ dB

Note: The following definitions apply to return loss requirements:

RL the return loss of 2-wire terminal equipment at the interface with respect to 600 ohms+2.16 μF (*i.e.*, Z_{ref}=600 ohms+2.16 μF).

$$RL \triangleq 20 \log_{10} \frac{Z_{PBX} + Z_{ref}}{Z_{PBX} - Z_{ref}}$$

RL_i the terminal equipment input (receive) port return loss with respect to 600 ohms (*i.e.*, Z_{ref}=600 ohms).

$$RL_i \triangleq 20 \log_{10} \frac{Z_{PBX(input)} + Z_{ref}}{Z_{PBX(input)} - Z_{ref}}$$

RL_o the terminal equipment output (transmit) port return loss with respect to 600 ohms (*i.e.*, Z_{ref}=600 ohms).

$$RL_o \triangleq 20 \log_{10} \frac{Z_{PBX(output)} + Z_{ref}}{Z_{PBX(output)} - Z_{ref}}$$

tl the transducer loss between the receive and transmit ports of the 4-wire PBX. tl_f is the transducer loss in the *forward* direction from the *receive* port to the *transmit* port of the PBX.

$$tl_f \triangleq 20 \log_{10} \frac{I_i}{I_r}$$

Where I_i is the current sent into the *receive* port and I_r is the current received at the *transmit* port terminated at 600 ohms.

tl_r is the transducer loss in the *reverse* direction, from the *transmit* port to the *receive* port of the PBX.

$$tl_r \triangleq 20 \log_{10} \frac{I_i}{I_r}$$

Where I_i is the current sent into the *transmit* port and I_r is the current received at the *receive* port terminated at 600 ohms. Note, the source impedance of I_i is 600 ohms.

(7) Registered terminal equipment and registered protective circuitry shall provide the following range of dc conditions to off-premises station (OPS) lines.

(i) DC voltages applied to the OPS interface for supervisory purposes and during network control signaling shall meet the limits specified in § 68.306(a)(3)(i).

(ii) DC voltages applied to the OPS interface during the talking state shall meet the following requirements:

(A) The maximum open circuit voltage across the tip (T(OPS)) and ring (R(OPS)) leads for all classes shall not exceed 56.5 volts, and

(B) Except for class A OPS interfaces, the maximum dc current into a short circuit across tip (T(OPS)) and ring (R(OPS)) leads shall not exceed 140 mA.

(8) For connections to 1.544 Mbps digital services, the permissible code words for unequipped Mu-255 encoded subrate channels are limited to those corresponding to signals of either polarity, of magnitude equal to or less than X48, where code word, XN is derived by:

XN = (255 − N) base 2

−XN = (127 − N) base 2

(c) Signal power in the 3995–4005 Hz frequency band.

(1) Power resulting from internal signal sources contained in registered protective circuitry and registered terminal equipment (voice and data), not intended for network control signaling. For all operating conditions of registered terminal equipment and registered protective circuitry that incorporate signal sources other than sources intended for network control signaling, the maximum power delivered by such sources in the 3995–4005 Hz band to an appropriate simulator circuit, shall be 18 dB below maximum permitted power specified in paragraph (b) of this section for the voiceband.

(2) Terminal equipment with provision of through-transmission from other equipment. The loss in any through-transmission path of registered terminal equipment and registered protective circuitry at any frequency in the 600 to 4000 Hz band shall not exceed, by more than 3 dB, the loss at any frequency in the 3995 to 4005 Hz band, when measured into an appropriate simulator circuit from a source that appears as 600 ohms across tip and ring.

(d) Longitudinal voltage at frequencies below 4 kHz. The weighted rms voltage[3] averaged over 100 milliseconds that is resultant of all of the component longitudinal voltages in the 100 Hz to 4 kHz band after weighting according to the transfer

[3] Average magnitudes may be used for signals that have peak-to-rms ratios of 20 dB and less. The rms limitations must be used instead of average values if the peak-to-rms ratio of the interfering signal exceeds this value.

function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated under the conditions stated in paragraph (g) of this section.

Frequency range	Maximum weighted rms voltage	Impedance
100 Hz to 4 kHz	−30 dBV	500 ohms.

(e) Voltage in the 4 kHz to 6 MHZ frequency range-general case—2-wire and 4-wire lossless interface (except LADC). Except as noted, rms voltage as averaged over 100 milliseconds at the telephone connections of registered terminal equipment and registered protective circuitry in all of the possible 8 kHz bands within the indicated frequency range and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below. For paragraphs(e)(1) and (e)(2)(i) of this section, "f' is the center frequency in kHz of each of the possible 8-kHz bands beginning at 8 kHz.

(1) Metallic Voltage. 4 kHz to 270 kHz:

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Metallic terminating impedance
8 kHz to 12 khz	−(6.4 + 12.6 log f) dBV	300 ohms.
12 kHz to 90 kHz		135 ohms.
90 kHz to 266 kHz	(23–40 log f) dBV −55	135 ohms.

(2) Longitudinal voltage.

(i) 4 kHz to 270 kHz.

(ii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ, shall not exceed −30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 kHz to 12 kHz	−(18.4 + 20 log f) dBV	500 ohms
12 kHz to 42 kHz		90 ohms
42 kHz to 266 kHz (2−40 log f) dBV −62 dBV		90 ohms

(f) *LADC interface.* The metallic voltage shall comply with the general requirements in paragraph (f)(1) of this section as well as the additional requirements specified in paragraphs (f)(2) and (f)(3) of this section. The requirements apply under the conditions specified in paragraph (g) of this section. Terminal equipment for which the magnitude of the source and/or terminating impedance exceeds 300 ohms, at any frequency in the range of 100 kHz to 6 MHz, at which the signal (transmitted and/or received) has significant power, shall be deemed not to comply with these requirements. A signal is considered to have "significant power" at a given frequency if that frequency is contained in a designated set of frequency bands that collectively have the property that the rms voltage of the signal components in those bands is at least 90% of the rms voltage of the total signal. The designated set of frequency bands must be used in testing all frequencies.

(1) Metallic voltages—frequencies below 4 kHz.

(i) Weighted rms voltage in the 10 Hz to 4 kHz frequency band. The weighted rms metallic voltage in the frequency band from 10 Hz to 4 kHz, averaged over 100 milliseconds that is the resultant of all the component metallic voltages in the band after weighting according to the transfer function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g) of this section.

Frequency range	Maximum voltage
10 Hz to 4 kHz	+3 dBV.

(ii) RMS Voltage in 100 Hz bands in the frequency range 0.7 kHz to 4 kHz. The rms metallic voltage averaged over 100 milliseconds in the 100-Hz bands having center frequencies between 750 Hz and 3950 Hz shall not exceed the maximum indicated below.

Center freq (f) of 100-Hz bands	Max voltage in all 100-Hz bands
750 to 3950 Hz	−6 dBV.

(2) Metallic Voltages—frequencies above 4 kHz—LADC interface.

(i) 100-Hz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all possible 100-Hz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below:

Center freq (f) of all 100-Hz bands	Max voltage in all 100-Hz bands
4.05 kHz to 4.6 kHz	0.5 dBV.
4.60 kHz to 5.45 kHz	(59.2—90 log f) dBV.
5.45 kHz to 59.12 kHz	(7.6—20 log f) dBV.
59.12 kHz to 266.00 kHz	(43.1—40 log f) dBV.

Where f = center frequency in kHz of each of the possible 100 Hz bands.

(ii) 8-kHz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all of the possible 8-kHz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below:

Center freq (f) of 8-kHz bands	Max voltage in all 8-kHz bands
8 kHz to 120 kHz	(17.6—20 log f) dBV.
120 kHz to 266 kHz	(59.2—40 log f) dBV.

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) RMS Voltage at frequencies above 270 kHz. The rms value of the metallic voltage components in the frequency range of 270 kHz to 6 MHZ, averaged over 2 microseconds, shall not exceed -15 dBV. This limitation applies with a metallic termination having an impedance of 135 ohms.

(iv) Peak Voltage. The total peak voltage for all frequency components in the 4 kHz to 6 MHZ band shall not exceed 4.0 volts.

(3) Longitudinal voltage. Frequencies below 4kHz: The weighted rms voltage in the frequency band from 10 Hz to 4 kHz,averaged over 100 milliseconds is the resultant of all the component longitudinal voltages in the band after weighing according to the transfer function of f/4000, where f is the frequency in Hz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g) of this section.

Frequency range	Maximum RMS voltage
10 Hz–4 kHz	−37 dBV.

(ii) 4 kHz to 270 kHz.

Ctr freq (f) of 8 kHz bands	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 to 12 kHz	−(18.4+20 log f) dBV	500 ohms.
12 to 42 kHz	(3–40 log f) dBV	90 ohms
42 to 266 kHz	−62 dBV	90 ohms.

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ shall, averaged over 2 microseconds, not exceed −30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

(d) Longitudinal voltage at frequencies below 4 kHz. The weighted rms voltage[4] averaged over 100 milliseconds that is resultant of all of the component longitudinal voltages in the 100 Hz to 4 kHz band after weighting according to the transfer function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated under the conditions stated in § 68.308(g).

Frequency range	Maximum weighted rms voltage	Impedance
100 Hz to 4 kHz	−30 dBV	500 ohms.

(e) *Voltage in the 4 kHz to 6 MHZ frequency range—general case—2-wire and 4-wire lossless interface (except LADC).* Except as noted, rms voltage as averaged over 100 milliseconds at the telephone connections of registered terminal equipment and registered protective circuitry in all of the possible 8 kHz bands within the indicated frequency range and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below. For paragraph (e)(1) and paragraph (e)(2)(i) of this section, "f" is the center frequency in kHz of each of the possible 8-kHz bands beginning at 8 kHz.

(1) Metallic Voltage. 4 kHz to 270 kHz:

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Metallic terminating impedance
8 kHz to 12 kHz	−(6.4 + 12.6 log f) dBV	300 ohms.
12 kHz to 90 kHz	(23–40 log f) dBV	135 ohms.
90 kHz to 266 kHz	−55 dBV	135 ohms.

(2) Longitudinal voltage

(i) 4 kHz to 270 kHz.

(ii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ, shall not exceed −30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

Center frequency (f) of 8kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 kHz to 12 kHz	−(18.4 + 20 log f) dBV	500 ohms.
12 kHz to 42 kHz	(2–40 log f) dBV	90 ohms.

[4] Average magnitudes may be used for signals that have peak-to-rms ratios of 20 dB and less. The rms limitations must be used instead of average values if the peak-to-rms ratio of the interfering signal exceeds this value.

Center frequency (f) of 8kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
42 kHz to 266 kHz	−62 dBV	90 ohms.

(f) *LADC interface.* The metallic voltage shall comply with the general requirements in paragraph (f)(1) of this section as well as the additional requirements specified in paragraphs (f)(2) and (3) of this section as stated. The requirements apply under the conditions specified in § 68.308(g). Terminal equipment for which the magnitude of the source and/or terminating impedance exceeds 300 Ohms, at any frequency in the range of 100 kHz to 6 MHz, at which the signal (transmitted and/or received) has significant power, shall be deemed not to comply with these requirements. A signal is considered to have "significant power" at a given frequency if that frequency is contained in a designated set of frequency bands that collectively have the property that the rms voltage of the signal components in those bands is at least 90% of the rms voltage of the total signal. The designated set of frequency bands must be used in testing all frequencies.

(1) Metallic voltages—frequencies below 4 kHz.

(i) Weighted rms voltage in the 10 Hz to 4 kHz frequency band. The weighted rms metallic voltage in the frequency band from 10 Hz to 4 kHz, averaged over 100 milliseconds that is the resultant of all the component metallic voltages in the band after weighting according to the transfer function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g).

Frequency range	Maximum voltage
10 Hz to 4 kHz	+3 dBV.

(ii) RMS Voltage in 100 Hz bands in the frequency range 0.7 kHz to 4 kHz. The rms metallic voltage averaged over 100 milliseconds in the 100-Hz bands having center frequencies between 750 Hz and 3950 Hz shall not exceed the maximum indicated below.

Center freq (f) of 100-Hz bands	Max voltage in all 100-Hz bands
750 to 3950 Hz	−6 dBV.

(2) Metallic Voltages—frequencies above 4 kHz—LADC interface.

(i) 100-Hz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all possible 100-Hz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in § 68.308(g) shall not exceed the maximum indicated below:

Center freq (f) of all 100-Hz bands	Max voltage in all 100-Hz bands
4.05 kHz to 4.6 kHz	0.5 dBV.
4.60 kHz to 5.45 kHz	(59.2–90 log f) dBV.
5.45 kHz to 59.12 kHz	(7.6–20 log f) dBV.
59.12 kHz to 266.00 kHz	(43.1–40 log f) dBV.

Where f = center frequency in kHz of each of the possible 100 Hz bands.

(ii) 8-kHz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all of the possible 8-kHz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in § 68.308(g) shall not exceed the maximum indicated below:

Center freq (f) of 8-kHz bands	Max voltage in all 8-kHz bands
8 kHz to 120 kHz	(17.6–20 log f) dBV.
120 kHz to 266 kHz	(59.2–40 log f) dBV.

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) RMS Voltage at frequencies above 270 kHz. The rms value of the metallic voltage components in the frequency range of 270 kHz to 6 MHZ, averaged over 2 microseconds, shall not exceed −15 dBV. This limitation applies with a metallic termination having an impedance of 135 ohms.

(iv) Peak Voltage. The total peak voltage for all frequency components in the 4 kHz to 6 MHZ band shall not exceed 4.0 volts.

(3) Longitudinal voltage.

(i) Frequencies below 4kHz. The weighted rms voltage in the frequency band from 10 Hz to 4kHz, averaged over 100 milliseconds is the resultant of all the component longitudinal voltages in the band after weighing according to the transfer function of f/4000, where f is the frequency in Hz, shall not exceed the maximum indicated below under the conditions stated in § 68.308(g).

Frequency range	Maximum RMS voltage
10 Hz–4 kHz	−37 dBV.

(ii) 4 kHz to 270 kHz

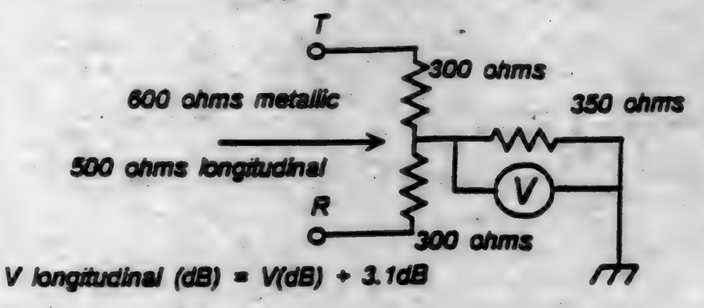
Center freq (f) of 8-kHz bands	Max voltage in all 8-kHz bands	Longitudinal terminating Voltage
8 kHz to 12 kHz	−(18.4 + 20 log f) dBV	500 ohms.
12 kHz to 42 kHz	(3–20 log f) dBV	90 ohms.
42 kHz to 266 kHz	−62 dBV	90 ohms

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ shall, averaged over 2 microseconds, not exceed -30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

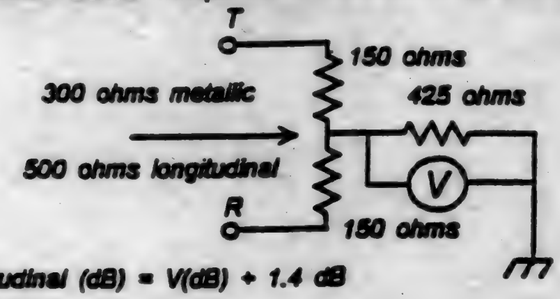
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Frequencies below 4 kHz



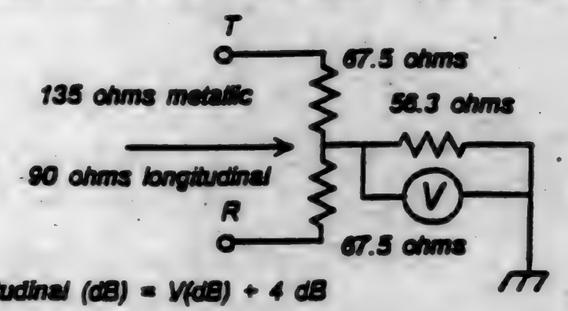
V longitudinal (dB) = V(dB) + 3.1dB

8 kHz Band Center Frequencies between 4 and 12 kHz



V longitudinal (dB) = V(dB) + 1.4 dB

8 kHz Band Center Frequencies above 12 kHz and up to 6 MHz



V longitudinal (dB) = V(dB) + 4 dB

RESISTIVE TERMINATIONS
METALLIC RETURN

Figure 68.308(a)

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(g) *Requirements in paragraphs (d), (e) and (f) of this section apply under the following conditions:* (1) All registered terminal equipment, except equipment to be used on LADC, and all registered protective circuitry must comply with the limitations when connected to a termination equivalent to the circuit depicted in Figure 68.308(a) and when placed in all operating states of the equipment except during network control signaling. LADC registered terminal equipment must comply with the metallic voltage limitations when connected to circuits of § 68.3(i) and must comply with the longitudinal limitations when connected to circuits of Figure 68.308(a), as indicated.

(2) All registered terminal equipment and registered protective circuitry must comply with the limitations in the off-hook state over the range of loop currents that would flow with the equipment *connected* to an appropriate simulator circuit.

(3) Registered terminal equipment and registered protective circuitry with provision for through-transmission from other equipments shall comply with the limitations with a 1000 Hz tone applied from a 600-ohm source (or, if appropriate a source which reflects a 600-ohm impedance across tip and ring) at the maximum level that would be applied during normal operation. Registered protective circuitry for data shall also comply with the tone level 10 dB higher than the overload point.

(4) For registered terminal equipment or registered protective circuitry with non-registered signal source input, such as music on hold, the out of band signal power requirements shall be met using an input signal with a frequency range of 200 Hz to 20 kHz and the level set at the overload point.

(5) Except during the transmission of ringing (§ 68.306(d)) and Dual Tone Multi-frequency (DTMF) signals, LADC registered terminal equipment shall comply with all requirements in all operating states and with loop current that may be drawn for such purposes as loop back signaling. The requirements in paragraph (f)(1) of this section except in paragraphs (f)(1)(i) and (f)(1)(ii) of this section also apply during the application of ringing. The requirement in paragraph (d) and the requirements in paragraphs (f)(1)(i) and (f)(1)(ii) of this section apply during ringing for frequencies above 300 Hz and with the maximum voltage limits raised by 10 dB. DTMF signals which are used for the transmission of alphanumeric information and which comply with the requirements in paragraph (f)(1)(i) and in paragraphs (f)(2) or (f)(3) of this section as applicable, shall be deemed to comply with the requirements in paragraph (f)(1)(ii) of this section provided that, for automatically originated DTMF signals, the duty cycle is less than 50 percent.

(6) LADC registered terminal equipment shall comply with all applicable requirements, except those specified in paragraphs (f)(1) (i) and (ii) of this section, during the transmission of each possible data signal sequence of any length. For compliance with paragraph (f)(3)(i) of this section, the limitation applies to the rms voltage averaged as follows:

(i) For digital signals, baseband or modulated on a carrier, for which there are defined signal element intervals, the rms voltage is averaged over each such interval. Where multiple carriers are involved, the voltage is the power sum of the rms voltages for the signal element intervals for each carrier.

(ii) For baseband analog signals, the rms voltage is averaged over each period (cycle) of the highest frequency of the signal (3 dB point on the spectrum). For analog signals that are modulated on a carrier (whether or not the carrier is suppressed), it is averaged over each period (cycle) of the carrier. Where multiple carriers are involved, the voltage is the power sum of the rms voltage for each carrier.

(iii) For signals other than the types defined in paragraphs (g)(6)(i) and (ii) of this section, the peak amplitude of the signal must not exceed +1 dBV.

(7) Equipment shall comply with the requirements in paragraphs (f)(1)(i) and (ii) of this section, during any data sequence that may be transmitted during normal use with a probability greater than 0.001. If the sequences transmitted by the equipment are application dependent, the user instruction material shall include a statement of any limitations assumed in demonstrating compliance of the equipment.

(8) In addition to the conditions specified in paragraph (g)(5) of this section, LADC registered terminal equipment which operates in one or more modes as a receiver, shall comply with requirements in paragraph (f)(3) of this section with a tone at all frequencies in the range of potential received signals and at the maximum power which may be received.

(h) *Interference limitations for transmission of bipolar signals over digital services.*—(1) *Limitations on Terminal Equipment Connection to Subrate Digital Services*—(i) *Pulse repetition rate.* The pulse repetition rate shall be synchronous with 2.4, 3.2, 4.8, 6.4, 9.6, 12.8, 19.2, 25.6, 38.4, 56.0, or 72 kbps per second.

(ii) *Template for maximum output pulse.* When applied to a 135 Ohm resistor, the instantaneous amplitude of the largest isolated output pulse obtainable from the registered terminal equipment shall not exceed by more than 10% the instantaneous voltage defined by a template obtained as follows: The limiting pulse template shall be determined by passing an ideal 50% duty cycle rectangular pulse with the amplitude/pulse rate characteristics defined in Table 68.308(c) through a single real pole low pass filter having a cutoff frequency in Hertz equal to 1.3 times the bit rate. For bit rates of 2.4, 3.2, 4.8, 6.4, 9.6 and 12.8 kbps, the filtered pulses shall also be passed through a filter providing the additional attenuation in Table 68.308(d).

TABLE 68.308(c).—DRIVING PULSE AMPLITUDE

Line rate (kbps)	User data rate (R) (kbps)	Amplitude (A) (volts)
2.4	2.4	1.66
3.2	2.4 with SC[1]	1.66
4.8	4.8	1.66
6.4	4.8 with SC[1]	1.66
9.6	9.6	0.83
12.8	9.6 with SC[1]	0.83
19.2	19.2	1.66
25.6	19.2 with SC[1]	1.66
38.4	38.4	1.66
51.2	38.4 with SC[1]	1.66
56	56	1.66
72	56 with SC[1]	1.66
72	64	1.66

[1] SC: Secondary Channel.

TABLE 68.308(d).—MINIMUM ADDITIONAL ATTENUATION

Line rate (R) (kbps)	Attenuation in frequency band 24–32 kHz (dB)	Attenuation in frequency band 72–80 kHz (dB)
2.4	5	1
3.2	5	1
4.8	13	9
6.4	13	9
9.6	17	8
12.8	17	8

Note: The attenuation indicated may be reduced at any frequency within the band by the weighting curve of Table 68.308(e). Minimum rejection is never less than 0 dB; i.e., the weight does not justify gain over the system without added attenuation.

TABLE 68.308(e).—ATTENUATION CURVE

24–32 kHz band	72–80 kHz band	Attenuation factor dB
24	72	−18

TABLE 68.308(e).—ATTENUATION CURVE—Continued

24–32 kHz band	72–80 kHz band	Attenuation factor dB
25	73	−3
26	74	−1
27	75	0
28	76	0
29	77	0
30	78	−1
31	79	−3
32	80	−18

(iii) *Average power.* The average output power when a random signal sequence, (0) or (1) equiprobable in each pulse interval, is being produced as measured across a 135 ohm resistance shall not exceed 0 dBm for 9.6 and 12.8 kbps or +6 dBm for all other rates shown in Table 68.308(b).

(iv) *Encoded analog content.* If registered terminal equipment connecting to subrate services contains an analog-to-digital converter, or generates signals directly in digital form that are intended for eventual conversion into voiceband analog signals, the encoded analog content of the digital signal must be limited. The maximum equivalent power of encoded analog signals for other than live voice as derived by a zero level decoder test configuration shall not exceed −12 dBm when averaged over any 3-second time interval. The maximum equivalent power of encoded analog signals as derived by a zero level decoder test configuration for signals intended for network control signaling shall not exceed −3 dBm when averaged over any 3-second interval.

(2) *Limitations on Terminal Equipment Connecting to 1.544 Mbps Digital Services.*—(i) *Pulse repetition rate:* The free running line rate of the transmit signal shall be 1.544 Mbps with a tolerance of ±32 ppm., *i.e.*, ±50 bps.

(ii) *Output pulse templates.* The registered terminal equipment shall be capable of optionally delivering three sizes of output pulses. The output pulse option shall be selectable at the time of installation.

(A) *Option A output pulse.* When applied to a 100 ohm resistor, the instantaneous amplitude of the largest output pulse obtainable from the registered terminal equipment shall fall within the pulse template illustrated in Figure 68.308b). The mask may be positioned horizontally as needed to encompass the pulse, and the amplitude of the normalized mask may be uniformity scaled to encompass the pulse. The baseline of the mask shall coincide with the pulse baseline.

(B) *Option B output pulse.* When applied to a 100-ohm resistor, the instantaneous amplitude of the output from the registered terminal equipment obtained when Option B is implemented shall fall within the pulse template obtained by passing the bounding pulses permitted by Figure 68.308(b) through the following transfer function.

$$\frac{V_{out}}{V_{in}} = \frac{n_2S^2 + n_1S + n_0}{d_3S^3 + d_2S^2 + d_1S + d_0}$$

where:

$n_0 = 1.6049 \times 10^{6}$

$n_1 = 7.9861 \times 10^{-1}$

$n_2 = 9.2404 \times 10^{-8}$

$d_0 = 2.1612 \times 10^{6}$

$d_1 = 1.7223$

$d_2 = 4.575 \times 10^{-7}$

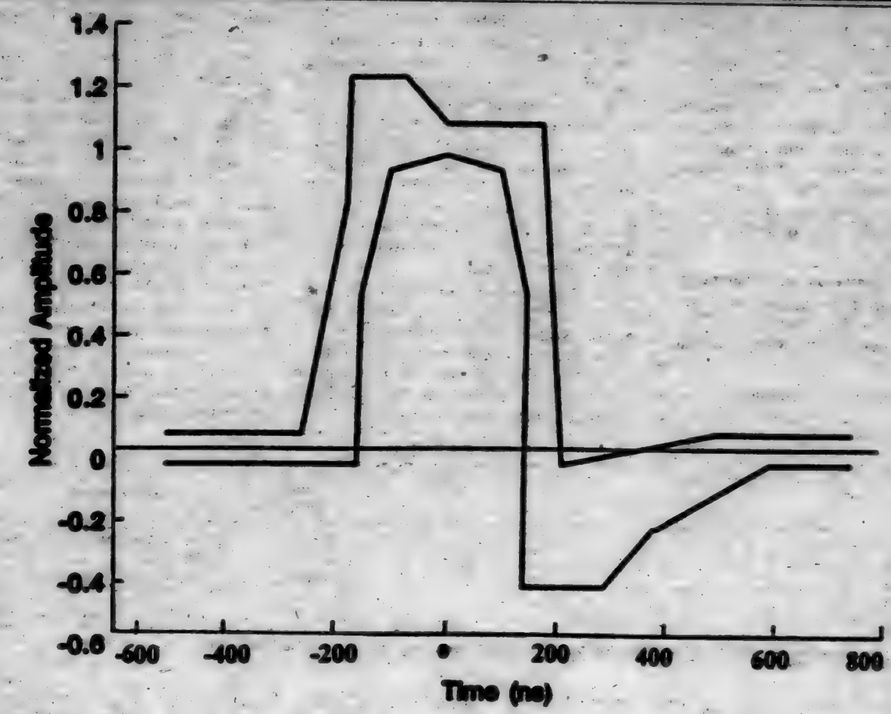
$d_3 = 3.8307 \times 10^{-14}$

$S = j\,2\,\Pi\,f$

f=frequency (Hertz)

(C) *Option C output pulse.* When applied to a 100-ohm resistor, the instantaneous amplitude of the output from the registered terminal equipment obtained when Option C is implemented shall fall within the pulse template obtained by passing the pulses obtained in Option B through the transfer function in Option B a second time.

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BILLING CODE 6712–01–C

MAXIMUM CURVE

Nano-seconds	−500	−250	−175	−175	−75	0	175	220	500	750
Normalized Amplitude	.05	.05	.8	1.2	1.2	1.05	1.06	−.05	.05	.05

MINIMUM CURVE

Nano-seconds	−500	−150	−150	−100	0	100	150	150	300	396	600	750
Normalized Amplitude	−.05	−.05	.5	.9	.95	.9	.5	−.45	−.45	−.26	−.05	−.05

Figure 68.308(b) (Ref. EIA/TIA 547–1989)—Isolated Pulse Template and Corner Points for 1.544 Mbps Equipment

Note to Figure 68.308(b): The pulse amplitude is 2.4 to 3.6 V. (Use constant scaling factor to fit normalized template.)

(iii) *Adjustment of signal voltage.* The signal voltage at the network interface must be limited so that the range of pulse amplitudes received at the first telephone company repeater is controlled to ±4 dB. This limitation is achieved by implementing the appropriate output pulse option as a function of telephone company cable loss as specified at time of installation.

Cable loss at 772 kHz (dBV)	Terminal equipment	
	Output pulse	Loss at 772 kHz
15 to 22	Option A	0
7.5 to 15	Option B	7.5
0 to 7.5	Option C	15

(iv) *Output power.* The output power in a 3 kHz band about 772 kHz when an all ones signal sequence is being produced as measured across a 100 ohm terminating resistance shall not exceed +19 dBm. The power in a 3 kHz band about 1.544 MHz shall be at least 25 dB below that in a 3 kHz band about 772 kHz.

(v) *Encoded Analog Content.* If registered terminal equipment connected to 1.544 Mbps digital service contains an analog-to-digital converter, or generates signals directly in digital form that are intended for eventual conversion into voiceband analog signals, the encoded analog content of the subrate channels within the 1.544 Mbps signal must be limited. The maximum equivalent power of encoded analog signals for other than live voice that are not intended for network

control signaling as derived by a zero level decoder test configuration shall not exceed −12 dBm when averaged over any 3-second time interval. The maximum equivalent power of encoded analog signals as derived by a zero level decoder test configuration for signals intended for network control signaling shall not exceed −3 dBm when averaged over any 3-second interval.

11. Section 68.310 is revised to read as follows:

§ 68.310 Transverse balance limitations.

(a) *Technical description and application.* The Transverse $Balance_{m-1}$, coefficient is expressed as

$$BALANCE_{m-1} = 20 \log_{10} \frac{e_M}{e_L}$$

(1) Where e_L is the longitudinal voltage produced across a longitudinal termination Z_1 and e_M is the metallic voltage across the tip-ring or tip 1 and ring 1 interface of the input port when a voltage (at any frequency between f_1 and $<f_2$, see Table 68.310(a) is applied from a balanced source with a metallic impedance Z_0 (see Table 68.310(a). The source voltage should be set such that e_M = E volts (see Table 68.310(a) when a termination of Z_0 is substituted for the terminal equipment.

(2) The minimum transverse balance coefficient specified in this section (as appropriate) shall be equalled or exceeded for all 2-wire network ports, OPS line ports and the transmit pair (tip and ring) and receive pair (tip 1 and ring 1) of all 4-wire network ports at all values of dc loop current that the port under test is capable of drawing when attached to the appropriate loop simulator circuit (See § 68.3). An illustrative test circuit that satisfies the above conditions is shown in Figure 68.310–1(a) for analog and 68.310–1(b) for digital and subrate; other means may be used to determine the transverse balance coefficient specified herein, provided that adequate documentation of the appropriateness, precision, and accuracy of the alternative means is provided by the applicant.

(3) The minimum transverse balance requirements specified below shall be equalled or exceeded under all reasonable conditions of the application of earth ground to the equipment or protective circuitry under test.

TABLE 68.310(a)

	Analog voiceband	Subrate digital	1.544 Mbps digital
Longitudinal Termination—Z_1	500 ohms	See Table 310(b)	90 ohms.
Metallic Source Impedance—Z_0	600 ohms	135 ohms	100 ohms.
Lower Frequency—f_1	200 Hz	200 Hz	10 kHz.
Upper Frequency—f_2	4 kHz	(1)	1.544 MHz.
Metallic Voltage for Test—E	0.775 V	0.367 V	0.316 V.

[1] The upper frequency equals the digital line rate for the subrate service under test (See Table 68.310(b)).

(b) *Analog voiceband equipment.* All registered analog voiceband equipment shall be tested in the off-hook state. The minimum transverse balance requirement in the off-hook state shall be 40 dB, throughout the range of frequencies specified in Table 68.310(a). For some categories of equipment, additional requirements also apply to the on-hook state. When both off-hook and on-hook requirements apply, they are:

State	Frequency (f)	Balance
Off-hook	200 Hz : f : 4000 Hz	40 dB.
On-hook	200 Hz : f : 1000 Hz	60 dB.
On-hook	1000 Hz : f : 4000 Hz.	40 dB.

(1) For analog one-port 2-wire terminal equipment with loop-start, ringdown, or inband signaling or for voiceband metallic channel applications, both off-hook and on-hook requirements apply.

(2) For analog one port equipment with ground-start and reverse-battery signaling only off-hook requirements apply.

(3) For analog registered protective circuitry for 2-wire applications with loop-start, ringdown, or inband signaling; or for voiceband metallic channel applications, both off-hook and on-hook requirements apply. Criteria shall be met with either terminal of the interface to other equipment connected to earth ground. The interface to other equipment shall be terminated in an impedance that will be reflected to the telephone connection as 600 Ohms in the off-hook state of the registered protective circuit, and the interface should not be terminated in the on-hook state. Figure 68.310(b) shows the interface of the protective circuitry being tested and the required arrangement at the interface to other equipment.

(4) For analog registered protective circuitry with ground-start and reverse-battery signaling only off-hook requirements apply. Criteria shall be met with either terminal of the interface to other equipment connected to earth ground. The interface to other equipment shall be terminated in an impedance that will be reflected to the telephone connection as 600 ohms in the off-hook state of the registered protective circuit. Figure 68.310(b) shows the interface of the protective circuitry under test and the required arrangement at the interface to the other equipment.

(5) For analog multi-port equipment with loop-start signaling both off-hook and on-hook requirements apply. Criteria shall be satisfied for all ports when all the ports not under test are terminated in their appropriate networks, as will be identified below, and when interface connections other than the ports are terminated in circuits appropriate to that interface. The minimum transverse balance coefficients shall also be satisfied for all values of dc loop current that the registered equipment is capable of drawing through each of its ports when these ports are attached to the loop simulator circuit specified in these rules. The termination for all ports other than the particular one whose transverse balance coefficient is being measured shall have a metallic impedance of 600 ohms.

(6) For analog multi-port equipment with ground-start and reverse-battery signaling, only off-hook requirements apply. Criteria shall be satisfied for all ports when all ports not under test are terminated in their appropriate networks as will be identified below, and when interface connections other than the ports are terminated in circuits appropriate to that interface. The minimum transverse balance coefficients shall be satisfied for all values of dc loop current that the registered equipment is capable of drawing through each of its ports when these ports are attached to the loop simulator circuit specified in these rules. The terminations for all ports other than the particular one whose transverse balance coefficient is being measured shall have a metallic impedance of 600 ohms and a longitudinal impedance of 500 ohms. Figure 68.310(c) shows this termination.

(7) For analog registered terminal equipment and protective circuitry for 4-wire network ports, both the off-hook and on-hook requirements apply. The pair not under test shall be terminated in a metallic impedance of 600 ohms. Other conditions are as follows:

(i) For analog registered protective circuitry with loop-start, ground-start, reverse battery, ringdown, or inband signaling; or for voiceband metallic channel applications. Criteria shall be met with either terminal of the interface to other equipment connected to earth ground. The interface to other equipment shall be terminated in an impedance that will result in 600 ohms at each of the transmit and receive pairs of the 4-wire telephone connection in the off-hook state of the registered protective circuit, and the interface should not be terminated in the on-hook state. Figure 68.310(d) shows the interface of the protective circuitry being tested and the required arrangement at the interface to other equipment.

(ii) For analog multiport equipment with loop start, ground start, and reverse battery, ringdown, or inband signaling; or for voiceband metallic channel applications. Criteria shall be satisfied for all network ports when all the ports not under test are terminated as defined below, and when interface connections other than the network ports are terminated in circuits appropriate to the interface. The criteria shall also be satisfied for all values of dc loop current that when the port is connected to the appropriate 4-wire loop simulator circuit. The terminations for both pairs of all network ports not under test shall have a metallic impedance of 600 ohms and a longitudinal impedance of 500 ohms. Figure 68.310(c) shows this termination.

(8) For analog PBX equipment (or similar systems) with class B or class C off-premises interfaces, only off-hook requirements apply. Criteria shall be satisfied for all off-premises station interface ports when these ports are terminated in their appropriate networks for their off-hook state; and when all other interface connections are terminated in circuits appropriate to that interface. The minimum transverse balance coefficients shall also be satisfied for all values of dc loop current that the registered PBX is capable of providing through off-premises station ports when these ports are attached to the off-premises line simulator circuit specified in these rules.

(9) For Type Z equipment with loop-start signaling, both off-hook and on-hook requirements apply. Equipment that has on-hook impedance characteristics which that do not conform to the requirements of § 68.312 (*e.g.*, Type Z), shall comply with minimum transverse balance requirements of 40 dB in the voiceband. *See* § 68.312(k) for conditions upon registration of "Type Z" equipment.

(c) *Digital equipment.* The minimum transverse balance requirements for registered terminal equipment connected to digital services shall be equalled or exceeded for the range of frequencies applicable for the equipment under test and under all reasonable conditions of the application of earth ground to the equipment. All such terminal equipment shall have a transverse balance in the acceptable region of Figure 68.310(e) for the range of frequencies shown in Table 68.310(b) for the specified digital service in question. The metallic impedance used for the transverse balance measurements for all subrate services shall be 135 ohms and for 1.544 Mbps shall be 100 ohms. The longitudinal termination for 1.544 Mbps and subrate services shall be as defined in Table 68.310(b).

FREQUENCY RANGES OF TRANSVERSE BALANCE REQUIREMENTS FOR DIGITAL SERVICES

Digital service	Frequency range	Longitudinal termination (ohms)	Metallic termination (ohms)
2.4	200 to 2.4 kHz	500	135
3.2	200 to 3.2 kHz	500	135
4.8	200 to 4.8 kHz	500	135
6.4	200 to 6.4 kHz	500	135
9.6	200 to 9.6 kHz	500	135
12.8[1]	200 to 12.8 kHz	500/90	135
19.2[1]	200 to 19.2 kHz	500/90	135
25.6[1]	200 to 25.6 kHz	500/90	135
38.4[1]	200 to 38.4 kHz	500/90	135
56[1]	200 to 56 kHz	500/90	135
72[1]	200 to 72 kHz	500/90	135
1.544	10 kHz to 1.544 MHz	90	100

[1] For 200 to 12 kHz the longitudinal termination shall be 500 ohms and above 12 kHz the longitudinal termination shall be 90 ohms.

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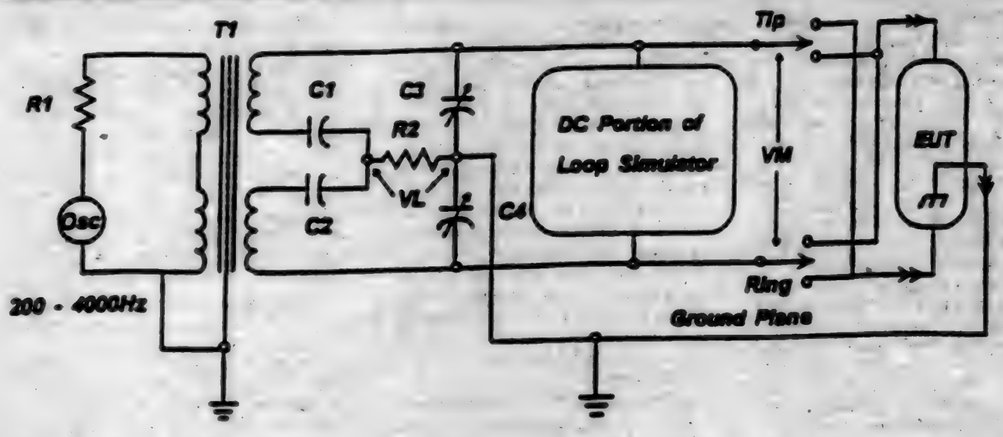
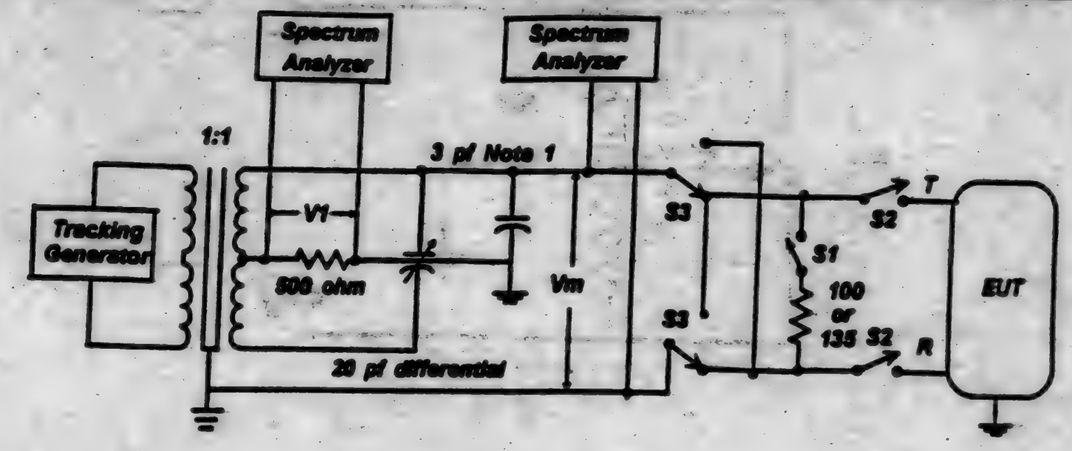


Figure 68.310-1(a)
Illustrative Test Circuit for Transverse Balance (Analog)

T_1 600 ohms:600 ohms split audio transformer
C_1, C_2 8 mF, 400 V dc, matched to within 0.1 %
C_3, C_4 100 to 500 pF adjustable trimmer capacitors
Osc. Audio oscillator with source resistance R_1 less than or equal to 600 ohms
R_1 Selected such that $Z_{osc} + R_1 = 600$ ohms
R_2 500 ohms

NOTES:
1. V_M should not be measured at the same time as V_L
2. Use trimmer capacitors C_3 and C_4 to balance the test circuit to 20 dB greater balance than the equipment standard for all frequencies specified, with a 600 ohm resistor substituted for the equipment under test.
3. Exposed conductive surfaces on the exterior of the equipment under test should be connected to the ground plane for this test.
4. When the Terminal Equipment makes provision for an external connection to ground (G), the Terminal Equipment shall be connected to ground. When the Terminal Equipment makes no provision for an external ground, the Terminal Equipment shall be placed on a ground plane which is connected to ground and has overall dimensions at least 50 % greater than the corresponding dimensions of the Terminal Equipment. The Terminal Equipment shall be centrally located on the ground plane without any additional connection to ground.

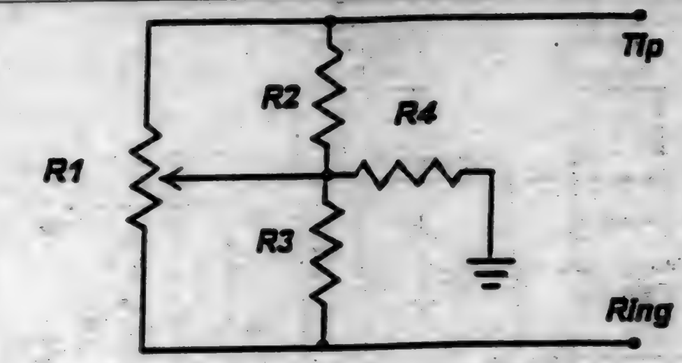


Notes:

1. The 3 pF capacitor may be placed on either line of the test set, as required, to obtain proper balancing of the bridge.
2. Use an R_{CAL} value of 100 ohms for 1.544 Mbps devices and 135 ohms for subrate devices.
3. The effective output impedance of the tracking generator should match the appropriate test impedance. See Note 2.The spectrum analyzer's input must be differentially balanced to measure V_m.
4. R_2 should be chosen according to Table 68.310(b).

T_1: 100 ohms:100 ohms C.T. wide band transformer
12.4 to 24.5 pF differential trimmer
R_2 - Z_t from Table 68.310(a)
R_{CAL} Z_o from Table 68.310(a)
R_1 - Selected so that $R_1 + 50$ ohms = Z_o from Table 68.310(a)

Figure 68.310-1(b)
Illustrative Test Circuit for Transverse Balance (Digital)



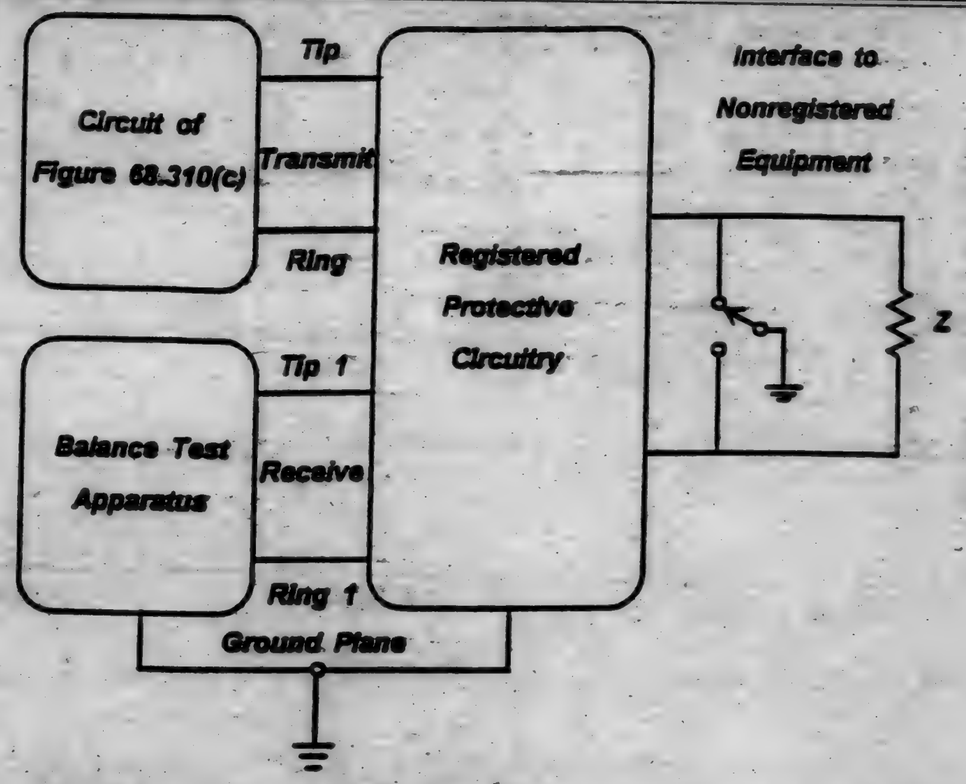
Where: $R_2 = R_3 = 300$ ohms, $R_4 = 350$ ohms, $R_1 = 300$ k ohms, for analog voiceband

$R_2 = R_3 = 67.5$ ohms, $R_4 = 56.3$ ohms, $R_1 = 100$ kohms, for subrate digital

$R_2 = R_3 = 50$ ohms, $R_4 = 65$ ohms, $R_1 = 100$ k ohms, for 1.544 Mbps

R_1 is used to adjust termination balance. Balance of this termination shall be adjusted to at least 60 dB between 200 and 1000 Hz, and at least 40 dB between 1000 and 4000 Hz, and to at least 35 dB at 1.544 MHZ.

Figure 68.310(C)
Off-Hook Termination of Multiport Equipment for Ports Not under Test



Z *Selected so that the reflected impedance at tip 1 and ring 1 is 600 Ω, 135 Ω, or 100 Ω depending on service type of EUT.*

Configuration shown is for measurement of receive pair.

Figure 68.310(d)
Required Termination for Connections to Non-Registered Equipment

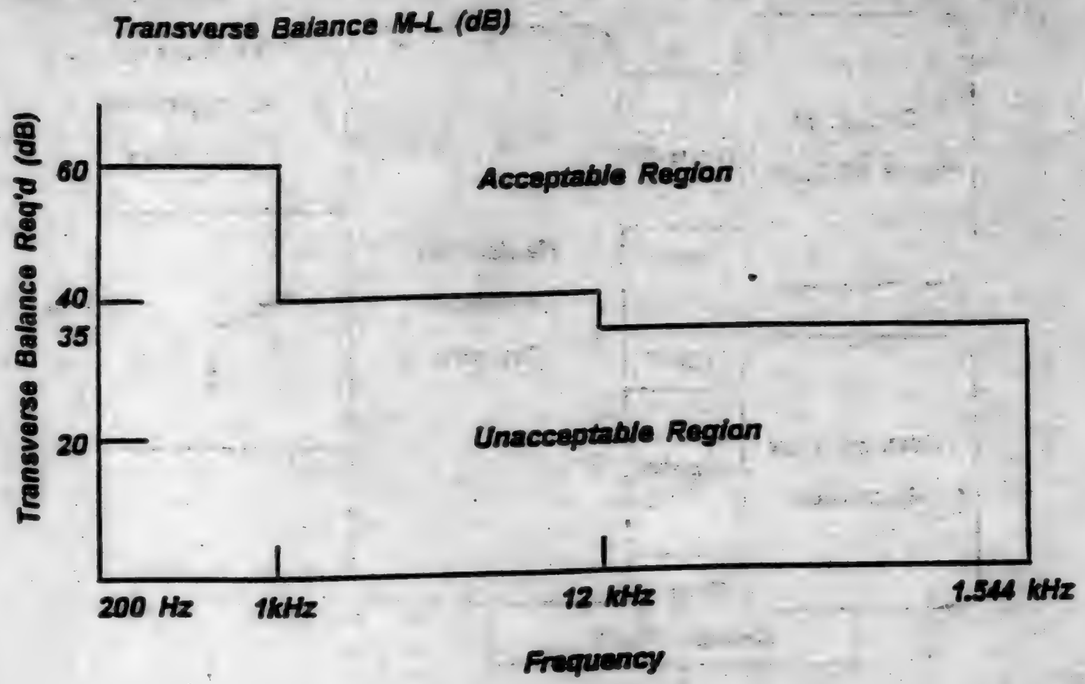


Figure 68.310(e)
Transverse Balance Requirements for Digital Services

BILLING CODE 6712-01-C

12. Section 68.312 is revised to read as follows:

§ 68.312 On-hook impedance limitations.

(a) *General.* Requirements in this section apply to the tip and ring conductors of 2-wire interfaces. These requirements also apply to 4-wire loop-start or ground-start interfaces, in the following configuration:

(1) The tip and ring conductors are connected together and treated as one of the conductors of a tip and ring pair.

(2) The tip 1 and ring 1 conductors are connected together and treated as the other conductor of a tip and ring pair.

Note to § 68.312: Throughout this section, references will be made to simulated ringing. Ringing voltages to be used and impedance limitations associated with simulated ringing are shown in Table 68.312(a).

TABLE 68.312(a)

Ringing type	Range of compatible ringing frequencies (Hz)	Simulated ringing voltage superimposed on 56.5 volts dc	Impedance limitations (ohms)
A	20±3	40 to 130 volts rms	1400
	30±3	40 to 130 volts rms	1000
B	15.3 to 34	40 to 130 volts rms	1600
	>34 to 49	62 to 130 volts rms	1600
	>49 to 68	62 to 150 volts rms	1600

(b) *Limitations on individual equipment intended for operation on loop-start telephone facilities.* Registered terminal equipment and registered protective circuitry shall conform to the following limitations:

(1) *On-hook resistance, metallic and longitudinal (up to 100 Vdc).* The on-hook dc resistance between the tip and ring conductors of a loop start interface, and between each of the tip and ring conductors and earth ground, shall be greater than 5 megohms for all dc voltages up to and including 100 volts.

(2) *On-hook resistance, metallic and longitudinal (100 V to 200 Vdc).* The on-hook dc resistance between tip and ring conductors of a loop start interface, and between each of the tip and ring conductors and earth ground shall be greater than 30 kOhms for all dc voltages between 100 and 200 volts.

(3) *DC current during ringing.* During the application of simulated ringing, as listed in Table 68.312(a), to a loop start interface, the total dc current shall not exceed 3.0 milliamperes. The equipment must comply for each ringing type which is listed as part of the ringer equivalence.

(4) *Ringing frequency impedance (metallic).* During the application of simulated ringing, as listed in Table 68.312(a), to a loop start interface, the impedance between the tip and ring conductors (defined as the quotient of applied ac voltage divided by resulting true rms current) shall be greater than or equal to the value specified in Table 68.312(a). The equipment must comply for each ringing type which is listed as part of the ringer equivalence.

(5) *Ringing Frequency Impedance (longitudinal).* During the application of simulated ringing, as listed in Table 68.312(a), to a loop start interface, the impedance between each of the tip and ring conductors and ground shall be greater than 100 kohms. The equipment must comply with each ringing type listed in the ringer equivalence.

(c) *Limitations on individual equipment intended for operation on ground start telephone facilities.* Registered terminal equipment and registered protective circuitry shall conform to the following limitations:

(1) *DC current during ringing.* During the application of simulated ringing, as listed in Table 68.312(a), to a ground start interface, the total dc current flowing between tip and ring conductors shall not exceed 3.0 milliamperes. The equipment must comply for each ringing type listed as part of the ringer equivalence.

(2) *Ringing frequency impedance (metallic).* During the application of simulated ringing, as listed in Table 68.312(a), to a ground start interface, the total impedance of the parallel combination of the ac impedance across tip and ring conductors and the ac impedance from the ring conductor to ground (with ground on the tip conductor) shall be greater than the value specified in Table 68.312(a). The equipment must comply for each ringing type listed as part of the ringer equivalence.

(d) *Ringer Equivalence Definition.* The ringer equivalence number is defined to be the value determined in paragraphs (d)(1) or (d)(2) of this section, as appropriate, followed by the ringer type letter indicator representing the frequency range for which the number is valid. If Ringer Equivalence is to be stated for more than one Ringing Type, testing shall be performed at each frequency range to which Ringer Equivalence is to be determined in accordance with the above, and the largest resulting Ringer Equivalence Number so determined will be associated with each Ringing Type letter designation for which it is valid.

(1) For individual equipment intended for operation on loop-start telephone facilities, the ringer equivalence is five times the impedance limitation listed in Table 68.312(a), divided by the minimum measured ac impedance, as defined in paragraph (b)(1)(iv) of this section, during the application of simulated ringing as listed in Table 68.312(a).

(2) For individual equipment intended for operation on ground-start telephone facilities, the ringer equivalence is five times the impedance limitation listed in Table 68.312(a), divided by the minimum measured ac impedance, defined in paragraph (c)(2) of this section, during the application of simulated ringing as listed in Table 68.312(a).

(e) *Ringer equivalence number labeling.* Registered terminal equipment and registered protective circuitry shall have at least one Ringer Equivalence Number shown on the registration label. Where options that will vary the Ringer Equivalence are involved, either each option that results in a Ringer Equivalence Number greater than 0.1 and its corresponding Ringer Equivalence shall be listed on the registration label, or the largest Ringer Equivalence Number that can result from such options shall be stated on the label. A trained, authorized agent of the Grantee may disconnect ringers, bridge ringers to another line, or execute options affecting Ringer Equivalence after the telephone company has been notified in accordance with § 68.106.

(f) *Maximum ringer equivalence.* All registered terminal equipment and registered protective circuitry that can affect the ringing frequency impedance shall be assigned a Ringer Equivalence. The sum of all such Ringer Equivalences

on a given telephone line or loop shall not exceed 5. In some cases, a system that has a total Ringer Equivalence of 5 or less may not be usable on a given telephone line or loop.

(g) *OPS interfaces for PBX with DID (Ring trip requirement).* PBX ringing supplies whose output appears on the off-premises interface leads shall not trip when connected to the following tip-to-ring impedance that terminates the off-premises station loop: A terminating impedance composed of the parallel combination of a 15 kohms resistor and an RC series circuit (resistor and capacitor) whose ac impedance is as specified in Table 68.312(b) below.

TABLE 68.312(b)

Ringing freq Hz	ac impedance ohms	
	Class B or C	Class A
20 ± 3	7000/N	1400
30 ± 3	5000/N	1000

N—Number of ringer equivalences, as specified by the manufacturer, which can be connected to the off-premises station loop.

(h) *Type Z Ringers.* Equipment that has on-hook impedance characteristics which do not conform to the requirements of this section may be conditionally registered, notwithstanding the requirements of this section, provided that it is labeled with a Ringing Type designation "Z". It should be noted that registration of equipment bearing the designation "Z" does not necessarily confer any right of connection to the telephone network under these rules. Any equipment registered with the type Z designation may only be used with the consent of the local telephone company, provided that the local telephone company does not discriminate in its treatment of equipment bearing the type Z designation.

(i) *Transitioning to the Off-Hook State.* Registered terminal equipment and registered protective circuitry shall not by design leave the on-hook state by operations performed on tip and ring leads for any other purpose than to request service or answer an incoming call, except that terminal equipment that the user places in the off-hook state for the purpose of manually placing telephone numbers in internal memory for subsequent automatic or repertory dialing shall be registerable. Make-busy indications shall be transmitted by the use of make-busy leads only as defined in § 68.3 and § 68.200(j).

13. Section 68.314 is revised to read as follows:

§ 68.314 Billing protection.

(a) *Call duration requirements on data equipment connected to the public switched network, or to tie trunks, or to private lines that access the public switched network.* Registered data terminal equipment and registered protective circuitry shall comply with the following requirements when answering an incoming call, except in off-hook states in which the signals are transmitted and/or received by electroacoustic transducers only.

Note to paragraph (a) of this section: This paragraph is applicable to terminal equipment and registered protective circuitry employed with digital services where such digital services are interconnected with the analog telephone network.

(1) *Registered protective circuitry.* Registered protective circuitry connected to associated data equipment shall assure that the following signal power limitations are met for at least the first 2 seconds after the off-hook condition is presented to the telephone network in response to an incoming call:

(i) Signals that appear at the protective circuitry/telephone network interface for delivery to the telephone network shall be limited to -55 dBm, (at any frequency in the range of 200 to 3200 Hertz), as such signals are delivered into a loop simulator circuit or a 600 ohm termination, as appropriate; and

(ii) Signals that appear at the protective circuitry-associated data equipment interface for delivery to associated data equipment shall be limited as follows: for any received signal power (appearing at the protective circuitry-telephone network interface) up to 0 dB with respect to one milliwatt (at any frequency in the range of 200 to 3200 Hertz), the power of signals delivered to associated data equipment shall be no greater than the signal power that would be delivered as a result of received signal power of -55 dBm.

(2) *Registered terminal equipment.* Registered terminal equipment for data applications shall assure that, when an incoming telephone call is answered, the answering terminal equipment prevents both transmission and reception of data for at least the first two seconds after the answering terminal equipment transfers to the off-hook condition. For the purpose of this requirement, a fixed sequence of signals that is transmitted (and originated within) and/or received by the registered terminal equipment each time it answers an incoming call shall not be considered data, provided that such signals are for one or more of the following purposes:

(i) Disabling echo control devices,

(ii) Adjusting automatic equalizers and gain controls,

(iii) Establishing synchronization, or

(iv) Signaling the presence and if required, the mode of operation, of the data terminal at the remote end of a connection.

(b) *Voice and data equipment on-hook signal requirements for equipment connected to the public switched network, or to tie trunks, or to private lines that access the public switched network.* Registered protective circuitry and registered terminal equipment shall comply with the following:

(1) The power delivered into a 2-wire loop simulator circuit or into the transmit and receive pairs of a 4-wire loop simulator or into a 600 ohm termination (where appropriate) in the on-hook state, by loop-start or ground-start equipment shall not exceed −55 dBm within the voiceband. Registered protective circuitry shall also assure that for any input level up to 10 dB above the overload point, the power to a 2-wire loop simulator circuit or the transmit and receive pairs of a 4-wire loop simulator circuit or into a 600 ohm termination (where appropriate) does not exceed the above limits.

(2) The power delivered into a 2-wire loop simulator circuit or into the transmit and receive pairs of a 4-wire loop simulator circuit, in the on-hook state, by reverse battery equipment shall not exceed −55 dBm, unless the equipment is arranged to inhibit incoming signals.

(c) *Voice and data equipment loop current requirements for equipment connected to the public switched network.* The loop current through registered terminal equipment or registered protective circuitry, when connected to a 2-wire or 4-wire loop simulator circuit with the 600 ohm resistor and 500 microfarad capacitor of the 2-wire loop simulator circuit or both pairs of the 4-wire loop simulator circuit disconnected shall, for at least 5 seconds after the equipment goes to the off-hook state that would occur when answering an incoming call:

(1) Be at least as great as the current obtained in the same loop simulator circuit with minimum battery voltage and a maximum loop resistance when a 200 ohm resistance is connected across the tip and ring of the 2-wire loop simulator circuit or connected across the tip/ring and tip 1/ring 1 conductors (tip and ring connected together and tip 1 and ring 1 connected together) of the 4-wire loop simulator circuit in place of the registered terminal equipment or registered protective circuitry; or

(2) Not decreased by more than 25 percent from its maximum value attained during this 5-second interval; unless the equipment is returned to the on-hook state during the above 5 second interval.

(3) The above requirements also apply in the hold state and any off-hook state.

(d) *Signaling interference requirements.* (1) The signal power delivered to the network interface by the registered terminal equipment and from signal sources internal to registered protective circuitry in the 2450 Hz to 2750 Hz band shall be less than or equal to the power present simultaneously in the 800 Hz to 2450 Hz band for the first 2 seconds after going to the off-hook state.

(2) Registered terminal equipment for connection to subrate or 1.544 Mbps digital services shall not deliver digital signals to the telephone network with encoded analog content energy in the 2450 to 2750 Hertz band unless at least an equal amount of encoded analog energy is present in the 800 to 2450 Hertz band for the first two seconds after going to the off-hook state.

(e) *On-hook requirements for registered terminal equipment for connection to subrate and 1.544 Mbps digital services.* Registered terminal equipment and registered protective circuitry shall comply with the following:

(1) The power delivered to the telephone network in the on-hook state as derived by a zero level decoder shall not exceed −55 dBm equivalent power for digital signals within the voiceband.

(2) Registered protective circuitry shall also assure that the power to a zero level decoder does not exceed the above limits for any input level up to 10 dB above the overload point.

(3) Reverse battery interface. The power derived by a zero level decoder, in the on-hook state, by reverse battery equipment, shall not exceed −55 dBm, unless the equipment is arranged to inhibit incoming signals.

(f) *Off hook requirements.* Off-hook signal requirements for registered terminal equipment connecting to 1.544 Mbps digital services. Upon entering the normal off-hook state, in response to alerting, for subrate channels, registered terminal equipment shall continue to transmit the signaling bit sequence representing the off-hook state for 5 seconds, unless the equipment is returned to the on-hook state during the above 5-second interval.

(g) *Operating requirements for direct inward dialing.* (1) For registered terminal equipment, the off-hook state shall be applied within 0.5 seconds of the time that:

(i) The terminal equipment permits the acceptance of further digits that may be used to route the incoming call to another destination.

(ii) The terminal equipment transmits signals towards the calling party, except for the call progress tones, *i.e.*, busy, reorder and audible ring, and the call is:

(A) Answered by the called, or another station;

(B) Answered by the attendant;

(C) Routed to a customer controlled or defined recorded announcement, except for "number invalid," "not in service" or "not assigned;"

(D) Routed to a dial prompt; or

(E) Routed back to the public switched telephone network or other destination and the call is answered. If the status of the answered call cannot be reliably determined by the terminal equipment through means such as, detection of answer supervision or voice energy, removal of audible ring, etc., the off-hook state shall be applied after an interval of not more than 20 seconds from the time of such routing. The off-hook state shall be maintained for the duration of the call.

(2) For registered protective circuitry:

(i) Registered protective circuitry shall block transmission incoming from the network until an off-hook signal is received from the terminal equipment.

(ii) Registered protective circuitry shall provide an off-hook signal within 0.5s following the receipt of an off-hook signal from the terminal equipment and shall maintain this off-hook signal for the duration of the call.

14. Section 68.316 is amended by revising the section heading to read as follows:

§ 68.316 Hearing aid compatibility; Technical requirements.

* * * * *

15. Section 68.317 is amended by revising the section heading to read as follows:

§ 68.317 Hearing aid compatibility volume control; technical standards.

* * * * *

16. Section 68.318 is revised to read as follows:

§ 68.318 Additional limitations.

(a) *General.* Registered terminal equipment for connection to those services discussed below must incorporate the specified features.

(b) *Registered terminal equipment with automatic dialing capability.* (1) Automatic dialing to any individual number is limited to two successive attempts. Automatic dialing equipment which employ means for detecting both busy and reorder signals shall be permitted an additional 18 attempts if a busy or reorder signal is encountered on each attempt. The dialer shall be unable to re-attempt a call to the same number for at least 60 minutes following either the second or fifteenth successive attempt, whichever applies, unless the dialer is reactivated by either manual or external means. This rule does not apply to manually activated dialers that dial a number once following each activation.

Note to paragraph (b)(1): Emergency alarm dialers and dialers under external computer control are exempt from these requirements.

(2) If means are employed for detecting both busy and reorder signals, the automatic dialing equipment shall return to its on-hook state within 15 seconds after detection of a busy or reorder signal.

(3) If the called party does not answer, the automatic dialer shall return to the on-hook state within 60 seconds of completion of dialing.

(4) If the called party answers, and the calling equipment does not detect a compatible terminal equipment at the called end, then the automatic dialing equipment shall be limited to one additional call which is answered. The automatic dialing equipment shall comply with paragraphs (b)(1), (b)(2), and (b)(3) of this section for additional call attempts that are not answered.

(5) Sequential dialers shall dial only once to any individual number before proceeding to dial another number.

(6) Network addressing signals shall be transmitted no earlier than:

(i) 70 ms after receipt of dial tone at the network demarcation point; or

(ii) 600 ms after automatically going off-hook (for single line equipment that does not use dial tone detectors); or

(iii) 70 ms after receipt of CO ground start at the network demarcation point.

(c) *Line seizure by automatic telephone dialing systems.* Automatic telephone dialing systems which deliver a recorded message to the called party must release the called party's telephone line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(d) *Telephone facsimile machines; Identification of the sender of the message.* It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the

message and the telephone number of the sending machine or of such business, other entity, or individual. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted message.

(c) *Requirement that registered equipment allow access to common carriers.* Any equipment or software manufactured or imported on or after April 17, 1992, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes. The terms used in this paragraph shall have meanings defined in § 64.708 of this chapter (47 CFR 64.708).

[FR Doc. 97–29925 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–97, RM–9047]

Radio Broadcasting Services; Mt. Juliet and Belle Meade, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by the Cromwell Group, Inc. directed to the *Report and Order* in this proceeding which reallotted Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and modified the Station WNPL construction permit to specify Belle Meade as the community of license. *See* 62 FR 40949, July 31, 1997. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted October 22, 1997, and released October 31, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30281 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192 and 195

[Docket No. RSPA 97–2096; Amdt Nos. 191–12; 192–81; 195–59]

RIN 2137–AC89

Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule (DFR) would implement a provision of a December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) pipelines by redesignating the point at which an OCS pipeline is subject to RSPA regulations. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator.

DATES: This direct final rule takes effect March 19, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by January 20, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by February 17, 1998, after the close of the comment period, to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and to withdraw the DFR in whole or in part. RSPA may then incorporate the adverse comment into a subsequent DFR or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments on the subject of this DFR may be submitted to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590–0001. Comments should identify the docket number of this DFR, RSPA–97–2096. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to le.herrick@rspa.dot.gov. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523 or e-mail le.herrick@rspa.dot.gov regarding the subject matter of this DFR, or the Dockets Facility, (202) 366–5046, regarding copies of this DFR or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Under an MOU dated May 6, 1976, RSPA regulated hazardous liquid, carbon dioxide, and natural gas pipelines located downstream of the outlet flange of each facility where hydrocarbons are first produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. DOI regulated those pipelines located upstream of this point. The Departments agreed to change this regulatory boundary with the signing of the December 10, 1996, MOU. The 1996 MOU was the result of negotiations that began in the summer of 1993, which included a high degree of participation from the regulated industry. RSPA and DOI's Minerals Management Service (MMS) solicited public comments on a draft MOU through a joint **Federal Register** notice (60 FR 27546; May 24, 1995). The notice also announced a public meeting at the MMS Gulf of Mexico regional office in New Orleans, Louisiana, on August 1, 1995, to discuss the proposal. Over 70 people attended the meeting, which generated over 100 pages of comments from natural gas and petroleum trade organizations; natural gas and oil exploration and production companies; transmission companies; offshore construction companies; and industry consultants. Twenty-three individuals and organizations submitted written comments on the **Federal Register** notice. A transcript of this meeting and copies of the comments are available in Docket No. RSPA–97–2096.

In May 1996, RSPA and MMS met with an industry workgroup representing OCS oil and natural gas producers and transmission pipeline operators. The workgroup proposed that the agencies allow individual operators of production and transportation facilities to define the boundaries of their respective facilities. They suggested that producers and transporters can best make such decisions based on the unique operating characteristics of each facility. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all OCS transportation pipelines beginning downstream of the point at which operating responsibility transfers from a producing operator to a transporting operator. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons.

Intent of the Rule

The intent of this rule is to require OCS production and transportation pipeline operators to designate the specific points on their pipelines where operating responsibility transfers from a producing operator to an adjoining transporting operator. The rule would amend 49 CFR parts 191, 192 and 195. Generally, operators will have 60 days after the date the rule becomes final to durably mark the specific points at which operating responsibility transfers. In most cases, the specific transfer points will be easily identifiable because of specific valves or flanges where the adjoining operations connect, or because of differences in paint used by adjoining operators to protect and maintain pipeline coatings or surfaces. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have 180 days after the final rule becomes effective to identify the transfer points on a schematic. The 180-day period will give operators time to identify the transfer points during routine maintenance. If it is not practicable to durably mark a transfer point, and the transfer point is located above water, then the operator must depict the transfer point on a schematic maintained near the transfer point. Some transfer points may be located underwater. In such cases, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request.

For those instances in which adjoining operators do not or can not agree on a transfer point, RSPA's Office of Pipeline Safety (OPS) and MMS will make a joint determination of the boundary.

The OPS and MMS may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to the general boundary description (operations transfer point) on a facility-by-facility or area-by-area basis. Operators may also petition OPS and MMS for exceptions to the general boundary description.

Conversion to service: A pipeline previously used in service and not subject to DOT regulations which comes under these regulations as a result of this rulemaking qualifies for use under the DOT regulations if the operator prepares and follows a written procedure to carry out the requirements of 49 CFR 192.14 or 195.5 (Conversion to service subject to this part). Pipeline segments designed and constructed under DOT regulations before March 19, 1998 may continue to operate under DOT design and construction requirements until significant modifications or repairs are made to those segments. After March 19, 1998 DOI operational and maintenance requirements will apply to those segments.

Rulemaking Analysis

The December 1996 MOU redefined the DOT/DOI regulatory boundary definition from the OCS facility where hydrocarbons are "first produced, separated, dehydrated, or otherwise processed" to the point at which "operating responsibility for the pipelines transfers from a producing operator to a transporting operator". The MOU places, to the greatest extent practicable, producer-operated pipelines under DOI regulation and transporter-operated pipelines under DOT regulation. The changes in this rule would substantially reduce the regulatory burdens currently caused by the overlapping Federal regulatory responsibilities and the inconsistencies between the requirements. The changes will substantially increase the efficiency of governmental resources on the OCS without compromising safety.

Executive Order (E.O.) 12866

RSPA reviewed this rule under E.O. 12866 and determined that this is not an economically significant rule. The Office of Management and Budget (OMB) has not asked to review this rule under E.O. 12866.

Regulatory Flexibility Act

Oil and gas and production and transportation companies are classified under Standard Industrial Codes (SIC's) by the Census Bureau. The Small Business Administration further classifies "small businesses" in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees, (2) liquid pipeline companies than have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of $25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of $5 million or less. There are many companies on the OCS that are "small businesses" by these definitions. However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have considerable financial resources well beyond what would normally be considered "small business." These entities customarily conduct their operations by contracting with offshore drilling or service companies and therefore tend to have relatively few employees compared to the considerable financial resources of their operations.

This rule would affect a substantial number of "small entities;" however, the economic effects of the rule would not be significant. The economic effects on the oil and gas production and transportation companies directly affected by the rule would be insignificant because of the minimal costs that operators incur during the first year that the rule is implemented. (In that year, offshore producers would have to identify all points on their pipelines at which operating responsibility transfers from a producer to a transporter. In succeeding years there would be virtually no economic impact resulting from the rule.) The offshore service companies would be indirectly affected by the rule through their contractual relationships with the primary producing and transporting companies—they would not be directly regulated in any way. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change. To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and manufacturers.

Paperwork Reduction Act

This rule contains a collection of information which RSPA is submitting

to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of RSPA's continuing effort to reduce paperwork and respondent burdens, RSPA invites the public and other Federal agencies to comment on any aspect of the reporting burden in 49 CFR 192 and 195 as amended by this DFR. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of Transportation (Docket No. RSPA 97–2096); Washington, D.C. 20503. Send a copy of your comments to L.E. Herrick, Room 2335, 400 Seventh Street, Washington, DC 20590-0001. You may obtain a copy of the supporting statement for the collection of information by contacting the Dockets Facility.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, RSPA will consider all comments received during the comment period for this direct final rule.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of this collection of information is "49 CFR 191, 192 and 195 Pipeline Safety: Regulations Implementing Memorandum of Understanding with the Department of the Interior."

The collection of information in the DFR and for each transporter operating a pipeline consists of: (1) Reviewing existing pipeline maps, (2) conferring and agreeing with operators of adjoining production pipeline segments concerning the locations of specific transfer points, and (3) either marking directly on each pipeline or depicting on a schematic the specific point on each pipeline where operating responsibility transfers from the producing operator to a transporting operator. As stated above under the "Intent of the Rule" section, specific transfer points will be easily identifiable in most cases, either because of specific valves or flanges where the adjoining operations connect, or because of differences in paint that adjoining operators use to protect and maintain pipeline coatings or surfaces.

Generally operators will have until 60 days after the date the rule becomes final to durably mark the points at which operating responsibility transfers. For those relatively few instances where the transfer points are not identifiable by durable marking, operators will have 180 days after the date the rule becomes final to identify, on a schematic, the transfer points. The requirement to identify the boundary is mandatory. The RSPA will use the information to determine the demarcation where DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents, as distinguished from MMS responsibilities.

In calculating the burden, RSPA assumed that respondents perform most of the requirements and maintain records in the normal course of their activities, such as painting their pipelines and maintaining valves and flanges. RSPA considers these to be usual and customary practices and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell RSPA what are the burden hours and costs imposed by this collection of information (i.e., marking of transfer points).

The regulated community consists of approximately 160 Federal OCS oil and gas producers and 70 transportation pipeline operators. There are approximately 3,000 points where operating responsibility for pipelines transfers from a producer to a transporter. The RSPA assumes from discussions with MMS and the operators that about 2,400 (representing 80 percent) of these transfer points are already marked. Therefore, this rulemaking would require a one-time identification and marking of about 600 points where operating responsibility for pipelines transfers from a producer to a transporter. For the 2,400 transfer points that are clearly marked, there would be no information burden. The 600 unmarked transfer points, on the other hand, would require widely-varying times for identification depending on whether a painted line or a schematic was used to identify the transfer point.

The public reporting burden for this information collection requirement is estimated to average 5 hours per response for each transfer point. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the required marking. Based on 600 unmarked transfer points, RSPA estimates that the total one-time burden of this collection of information to be 3,000 hours total. The average annualized burden over a 3-year period would be 1,000 hours. Based on $35 per hour, the total burden hour cost to respondents is estimated to be $35,000 annually.

Takings Implication Assessment

The DOT certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the $100 million annual threshold that was established by the Unfunded Mandates Reform Act.

E.O. 12988

The DOT has certified to OMB that this regulation meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

The DOT has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects

49 CFR Part 191

Gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, RSPA amends 49 CFR parts 191, 192 and 195 as follows:

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.1 is amended by adding paragraph (b)(3) to read as follows:

§ 191.1 Scope.

* * * * *

(b) * * *

(3) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 191.3 is amended by adding a definition in alphabetical order to read as follows:

§ 191.3 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(5) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(5) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 192.3 is amended by adding a definition in alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

4. Section 192.10 is added to read as follows:

§ 192.10 Outer continental shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf (as defined in the Outer Continental Shelf Lands Act; 43 U.S.C. 1331) must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic located near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1 is amended by adding a new paragraph (b)(6) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

* * * * *

3. Section 195.2 is amended by adding a definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

4. Section 195.9 is added to read as follows:

§ 195.9 Outer continental shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

Issued in Washington D.C. on November 12, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–30216 Filed 11–18–97; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–101A, Amdt. 192–82, 195–60]

RIN 2137–AC 57

Mandatory Participation in Qualified One-Call Systems by Pipeline Operators

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires that operators of onshore gas, hazardous liquid, and carbon dioxide pipelines participate in qualified one-call systems as part of the required excavation damage prevention programs. The rule also limits the current exclusion of certain small gas systems from compliance with the damage prevention program requirements. This final rule is intended to reduce excavation damage, the largest single cause of pipeline failures.

EFFECTIVE DATE: This final rule takes effect May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Christina Sames by telephone at (202) 366–4561 or through the Internet at christina.sames@rspa.dot.gov, about this document, or the Dockets Unit at (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the public to call to notify participating members of their intent to excavate. The one-call systems receive the excavation notices and transmit them to operators of underground pipeline facilities and other underground facilities that participate in the system.

Upon receipt of the excavation notices, participating operators that have underground facilities in the vicinity of the excavation arrange for the timely identification and temporary marking of underground facilities. In addition, underground operators may inspect the site during the excavation activities to ensure the safety of their underground facilities.

National One-Call Campaign and the Damage Prevention Quality Action Team

There are now 75 one-call systems operating in 49 states and the District of Columbia. Not all of the operating one-call systems meet the qualifications for a "one-call notification system," as defined in 49 CFR 198.39. Hawaii and Puerto Rico are currently without a one-call system.

Forty-seven states and the District of Columbia have damage prevention laws that, to varying degrees, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, "State one-call damage prevention program."

To address the problem of incomplete national one-call coverage and the deficiencies in some existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign targets states for concentrated outreach to assist their efforts to upgrade current one-call systems. The campaign focuses on mandatory operator participation, mandatory excavator participation, State-wide coverage, and civil penalty enforcement. The national campaign also works with selected states currently without one-call legislation or those which need to strengthen existing legislation.

RSPA has also formed a Damage Prevention Quality Action Team to address third party damage to underground facilities including pipelines. The Team includes representatives from RSPA, the natural gas and hazardous liquid pipeline industry, the telecommunications industry, States, one-call centers, and the insurance and contracting industries. The Team is evaluating existing damage prevention education campaigns and will design and implement a national public education campaign to reduce third party damage.

Rulemaking Proposal (Docket No. PS–101A)

On March 20, 1995, RSPA issued a notice of proposed rulemaking (NPRM) titled "Mandatory Participation in Qualified One-Call Systems by Pipeline Operators" (60 FR 14714). The NPRM proposed to remove the option in §§ 192.614(a) and 195.442(a) that permits a pipeline operator to receive and record notification of planned excavation activities rather than to participate in a qualified one-call system covering the area where the operator's pipeline is located.

The NPRM proposed to require that pipeline operators only participate in qualified one-call systems. A one-call system would be considered qualified if the state had adopted a one-call damage prevention program in compliance with § 198.37. A one-call system would also be considered qualified if it operates in accordance with § 198.39, provides a pipeline operator the same opportunity to participate in one-call system management that is offered to other owners of underground facilities, and assesses a participating pipeline operator a fee that is proportionate to the service provided by the one-call system.

The NPRM also proposed to extend the excavation damage prevention program requirements to petroleum gas systems subject to § 192.11 and to small gas systems whose primary activity includes the transportation of gas.

The NPRM proposed to limit the current exemption for operators of gas systems, including operators of master meter systems, whose primary activity does not include the transportation of gas. RSPA is sensitive to the minimum resources of these small operators and proposed that small operators be exempted from identifying excavators in the vicinity of the pipeline. RSPA also proposed that small operators be exempted from notifying excavators of the damage prevention program's existence and purpose and on how to learn the location of underground pipelines before excavation activities begin. In addition, RSPA proposed that these small operators be exempted from the requirement for a written damage prevention program. These operators would still be required to provide a means of receiving and recording notification of planned excavation activities, to provide for notification of persons who give notice of an intent to excavate of the type of temporary marking to be used and how to identify the markings, to provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins, and to provide for the inspection of pipelines that the operator has reason to believe could be damaged by excavation activities.

Under the proposed regulation, pipeline operators would continue to receive and record the notification of planned excavation activities using their own personnel in areas where one-call systems are not yet established, or where a qualified one-call system is not yet in place. However, operators would be required to join a qualified one-call system once it was established.

Comments to the NPRM

RSPA received sixteen comments in response to the NPRM. These commenters represented natural gas and hazardous liquid pipeline operators, industry trade associations, and government agencies.

All sixteen commenters voiced general support for the NPRM. Among those in support, a state pipeline safety agency commented that many states have already instituted mandatory one-call membership for regulated intrastate underground facility operators.

The majority of the commenters also voiced a general opinion that all underground facility operators and all excavators should be required to participate in a qualified one-call system. Commenters recognized that RSPA can only require regulated pipeline operators to participate in qualified one-call systems and supported RSPA's current initiative to encourage all underground facility operators and all excavators to participate in a qualified one-call system. One commenter also supported RSPA's reduction of state grants to states that do not establish mandatory

participation for all underground utilities and excavators.

One commenter recommended clarification of the proposed language in § 192.614(e) to ensure that municipal gas systems are included in the damage prevention regulations. The commenter stated that the proposed wording could be interpreted to exclude municipal gas systems from certain damage prevention regulations. Municipal gas systems are currently required to have a damage prevention program, and RSPA has clarified the language in this final rule to prevent misinterpretation.

Another commenter suggested that RSPA clarify that operators are not precluded from receiving calls directly from individuals on activities near a pipeline. Certain pipelines are required to be marked with line markers that show the location of that pipeline. These line markers list the operator and a telephone number for individuals to call to receive or transmit information on the pipeline. RSPA agrees that a pipeline operator should be allowed to receive information directly from individuals on activities near the operator's pipeline. This final rule does not preclude that from occurring.

Other recommended changes to the NPRM focused on the problem of overlapping one-call service areas, and the terms "disproportionate cost" and "coverage." These recommended changes are discussed below.

Comments on Overlapping One-Call Service Areas

There are limited areas of the United States, primarily in the northwest and in the state of Texas, where more than one one-call system covers the same service area. In areas of overlapping one-call coverage, excavators may need to call several one-call systems to ensure that all underground utilities are informed of excavation activities. In addition, underground utility operators may need to join several one-call systems to ensure that they are informed of all excavation activities near the pipeline. These problems are alleviated if the state has a central telephone number for excavators to call for excavation activities, or if the one-call systems in the areas of overlapping coverage communicate with one another.

Three commenters and an industry trade association stated that operators should not be required to join more than a single qualified one-call system for a given area. One commenter stated that if an excavator is required to make more than one call, there is no true one-call system. Two commenters thought the NPRM might prolong the problem by providing captive participation and funding for redundant systems. In addition, the commenters thought that captive participation and funding might create an incentive for the establishment of multiple qualified one-call systems in a given area, thus reducing the one-call system effectiveness.

RSPA does not agree that multiple one-calls will be created for the same coverage area, or that the current problem of overlapping coverage will be prolonged, if an operator is required to join all qualified one-call centers that cover the operator's pipeline system. RSPA bases this on the fact that the number of states mandating one-call membership has been increasing while the problem of overlapping coverage has been decreasing. If the problem of overlapping one-call coverage were to increase with mandatory participation, as the commenters suggested, it should have already occurred in the states mandating one-call participation. This has not happened.

RSPA does not see the need for an operator to join more than one qualified one-call system in overlapping coverage areas, if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. A central telephone number can forward an intent to excavate to multiple one-call systems. This allows an operator to join a single one-call system and still receive all notices of intent to excavate that may affect the operator's pipeline. One-call systems that communicate notices of intent to excavate to other one-call systems also allow an operator to join a single one-call system and still receive all notices of intent to excavate that may affect the pipeline. Both situations end the need for an operator to join several one-call systems in areas of overlapping coverage.

States that have overlapping one-call coverage are actively working to alleviate the problem. As an example, Texas has recently passed legislation that will create a central number for excavators to call. In addition, several of the states in the northwest that have small areas of overlapping coverage are currently referring excavators to a central number. Both alleviate the need for an operator to join more than a single one-call system covering its pipeline.

Disproportionate Cost and Coverage

The NPRM proposed that pipeline operators join a one-call system that "assesses a participating pipeline operator a fee that is not disproportionate to the costs of the one-call system's coverage of the operator's pipeline." Two commenters recommended modifying the proposed section to read "Assesses a participating pipeline operator a fee that is proportionate to the operator's utilization of the one-call service." RSPA has modified the proposed regulation in response to these recommendations.

Additional Concerns on State Jurisdiction

A state pipeline safety agency raised concern about a state's ability to impose one-call requirements on interstate pipeline operators. This rule should allay any concern about an interstate operator's required compliance with one-call damage prevention notification and marking requirements. Although a state cannot impose pipeline safety standards on an interstate operator, RSPA urges interstate operators to comply with any other requirements a one-call system imposes as a condition of membership.

Presentation to Advisory Committees

On November 8 and 9, 1995, RSPA presented the NPRM and the comments received on the NPRM to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

On November 8, 1995, the THLPSSC discussed and unanimously supported mandating pipeline operator participation in qualified one-call systems with one minor modification to the wording used in the NPRM. The THLPSSC recommended that RSPA modify § 195.442(b)(2)(iii) to remove the double negative. The suggested wording reads "Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline."

The THLPSSC also discussed the problem of overlapping one-call coverage and the possible actions that could be taken in these areas. The THLPSSC discussed requiring a pipeline operator to only join one qualified one-call system in areas of overlapping one-call coverage, on the condition that the operator's entire system in the overlapping area be covered by the single one-call system.

RSPA has studied the possible consequences of this action and believes there is a safety issue. If an operator joins a single one-call system in an overlapping coverage area, an excavator could call the one-call system the operator has not joined. The excavator may not understand that another call has to be made to obtain the location of

additional underground facilities covered by the other one-call system. The excavator may believe it is safe to dig in the area when, in fact, there is a pipeline or other underground utility in the area. This could lead to a hazardous liquid release, explosion, or possible death. Therefore, RSPA will not pursue this action.

On November 9, 1995, the TPSSC voted six to five in favor of the proposed regulation and several modifications. Those opposed were concerned with the recommendation to modify § 198.39, made by other committee members, and not with the overall intent of the NPRM. This recommendation is discussed below in further detail.

The TPSSC recommended that pipeline operators only participate in one qualified one-call system in areas of overlapping one-call coverage. In conjunction with that recommendation, the TPSSC proposed that RSPA modify, through a new NPRM, § 198.39, "Qualifications for operation of one-call notification system." The proposed modification would require a one-call system to communicate with all other one-call systems in areas of overlapping coverage before that one-call system could be considered qualified.

The TPSSC recommended that the modification to § 198.39 be done in conjunction with the requirement that pipeline operators need only join one qualified one-call system in areas of overlapping jurisdiction. The TPSSC recognized that RSPA could not modify part 198 in this final rule and some members were concerned that implementing the actions at different times would cause undue problems. Their six to five vote reflects these concerns.

The TPSSC also followed the THLPSSC's recommended modification of § 195.442(b)(2)(iii) by unanimously concurring that § 192.614(b)(2)(iii) be modified to remove the double negative. The recommended wording would read "Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline."

Amendments

RSPA has adopted the TPSSC's and THLPSSC's recommended wording of §§ 192.614(b)(2)(iii) and 195.442(b)(2)(iii) and has removed the double negative. RSPA has also clarified § 192.614(a) to ensure that municipal gas systems are included in the damage prevention regulations.

RSPA has not adopted the recommendation to require pipeline operators to participate in only one qualified one-call system in areas of overlapping one-call coverage. RSPA has not adopted this recommendation due to the possible safety issues. However, RSPA does not see the need for a pipeline operator to join more than a single one-call system if there is a central telephone number for excavators to call, or if the one-call systems in the overlapping coverage area communicate with each other. RSPA is taking into consideration the TPSSC's recommendation to modify § 198.37 to require one-call systems to communicate with one another in areas of overlapping one-call coverage before they are considered a qualified one-call system. A new NPRM will be issued if RSPA pursues the recommendation.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The final rule is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The final rule requires that operators of interstate and intrastate pipelines participate in qualified one-call systems. It requires less stringent standards for participation of small entities, including master meter operators, whose primary activity does not include the transportation of gas.

Presently, approximately 75 one-call systems operate in 49 states and the District of Columbia. These one-call systems perform many of the duties required under parts 192 and 195 for an excavation damage prevention program. Many pipeline operators already participate in these one-call systems on a voluntary or state-mandated basis.

Forty-seven states and the District of Columbia have damage prevention laws that, to varying degrees, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. Twenty-eight states and the District of Columbia mandate one-call participation by most commercial underground facility owners and operators. Therefore, many of the operators that this final rule covers already have some form of an excavation damage prevention program and should incur little or no additional cost as a result of this final rule.

Based on available data and discussions with the American Gas Association, the American Public Works Association, and One-Call Systems International, the cost for a pipeline operator to participate in a qualified one-call system should be approximately the same or slightly less than if the operator performed the excavation damage prevention duties independently. Therefore, operators that are required to meet the current damage prevention program requirements, but who have not joined a qualified one-call system, should incur little or no additional cost.

Operators in areas with no qualified one-call systems would continue to receive and record notifications of planned excavation activities with their own personnel and would incur no additional cost. However, operators would be required to join a qualified one-call system once one was established.

49 U.S.C. 60102(b)(3) requires RSPA's technical advisory committees to serve as peer review panels for the cost/benefit analysis that accompanies each rulemaking. The THLPSSC and the TPSSC have reviewed the cost/benefit information contained in this final rule and three-fourths of the members have voted to forego a formal analysis and report on the merits of the data, the methods used in the cost/benefit analysis, and any recommended options relating to the cost/benefit analysis.

Based on the above, this rule is not considered to be significant under Executive Order 12866. A complete text of the regulatory evaluation is available for review in this docket.

Executive Order 12612

The final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs or $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective to the rule.

Regulatory Flexibility Act

This final rule extends the excavation damage prevention program requirements to petroleum gas systems subject to § 192.11 and to small gas systems whose primary activity includes the transportation of gas. It also limits the current exemption for operators of gas systems whose primary activity does not include the transportation of gas. However, the final rule is sensitive to the minimum resources of these small operators.

Operators whose primary activity does not include the transportation of gas, such as master meter operators, are exempted from the requirement that the damage prevention program be written. This is one of the most costly parts of this regulation. These operators are exempted from the requirements to identify persons who normally engage in excavation activities in the area in which the pipeline is located, and to provide actual notification to those identified persons on the damage prevention program's existence and purpose and on how to learn the location of underground pipelines before excavation activities begin. Because little excavation activity occurs in areas where master meter operators operate, the cost of joining a one-call system for these small operators should be minimal.

Based on these facts, I certify that this final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this final rule.

Paperwork Reduction Act

This final rule will require no additional increase in the current information collection burden requirements for gas pipeline operators and hazardous liquid and carbon dioxide operators. Twenty-eight states and the District of Columbia mandate one-call participation by most commercial underground facility owners and operators. In addition, many operators already voluntarily participate in qualified one-call systems. Therefore, many of the operators that this final rule covers already participate in qualified one-call systems and should incur no additional paperwork burden as a result of this final rule.

Based on available data and discussions with One-Call Systems International, the paperwork burden for a pipeline operator to participate in a qualified one-call system should be less than if the operator performed the excavation damage prevention duties independently. Therefore, operators that are required to meet the current damage prevention program requirements, but who have not joined a qualified one-call system, should incur little or no additional paperwork burden.

Operators in areas with no qualified one-call systems would continue to receive and record notifications of planned excavation activities with their own personnel and would incur no additional paperwork burden as a result of this final rule.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5102, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. Section 192.614 is amended by revising paragraph (a), by removing paragraph (c)(4), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and by adding paragraphs (b) and (e) as follows:

§ 192.614 Damage prevention program.

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term "excavation activities" includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of this section, a one-call system is considered a "qualified one-call system" if it meets the requirements of section (b)(1) or (b)(2) of this section.

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system:

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

* * * * *

(e) Pipelines operated by persons other than municipalities (including operators of master meters) whose primary activity does not include the transportation of gas need not comply with the following:

(1) The requirement of paragraph (a) of this section that the damage prevention program be written; and

(2) The requirements of paragraphs (c)(1) and (c)(2) of this section.

PART 195—[AMENDED]

3. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; 49 CFR 1.53.

4. Section 195.442 is amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and adding paragraph (b) to read as follows:

§ 195.442 Damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term "excavation activities" includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purposes of this section, a one-call system is considered a "qualified one-call system" if it meets the requirements of section (b)(1) or (b)(2) or this section.

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system:

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

* * * * *

Issued in Washington, D.C. on November 13, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–30290 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970730185–7208–02; I.D. 111297D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Recreational Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the annual recreational quota for red snapper will have been reached by November 26, 1997. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective 12:01 a.m., local time, November 27, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the recreational quota for red snapper in the Gulf of Mexico at 4.47 million lb (2.03 million kg) for the current fishing year, January 1 through December 31, 1997.

Under 50 CFR 622.43(a), NMFS is required to close the recreational fishery for red snapper when its quota is reached, or is projected to be reached, by publishing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the recreational quota for red snapper will have been reached by November 26, 1997. Accordingly, the recreational fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, November 27, 1997, through December 31, 1997.

During the closure, the bag and possession limits for red snapper in or from the EEZ in the Gulf of Mexico are zero. In addition, in the Gulf of Mexico on board a vessel for which a commercial vessel permit for Gulf reef fish has been issued, the bag and possession limits for red snapper are zero, without regard to where the red snapper were harvested.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30294 Filed 11–14–97; 10:41 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 111297A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Changes

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces further routine management measures adjusting the Pacific Coast groundfish limited entry fisheries for the *Sebastes* complex and its components, canary and yellowtail rockfish, and the Dover sole, thornyhead, trawl-caught sablefish (DTS) complex and all its components. These actions are authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. These changes are intended to keep landings close to the 1997 harvest guidelines and allocations for these species.

DATES: Effective from 0001 hours (local time) November 16, 1997, including trawl vessels operating in the B platoon. These changes remain in effect, unless modified, superseded or rescinded, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through December 4, 1997.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Acting Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140 or Rodney McInnis at 562–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to current management measures are based on the best available information, and were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California at its November 4–7, 1997, meeting in Portland, OR.

The Sebastes Complex. The *Sebastes* complex consists of all rockfish managed by the FMP except Pacific ocean perch (POP), widow rockfish, shortbelly rockfish, and thornyheads. On January 1, 1997 (62 FR 700, January 6, 1997), the limited entry fishery for the *Sebastes* complex was managed under a 2-month cumulative trip limit of 30,000 lb (13,608 kg) north of Cape Mendocino (40°30' N. lat.) and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these 2-month cumulative limits for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) could be yellowtail rockfish north of Cape Mendocino, no more than 12,000 lb (5,443 kg) could be bocaccio south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) could be canary rockfish coastwide. On May 1, 1997 (62 FR 24845, May 7, 1997), the 2-month cumulative trip limit for bocaccio was reduced to 10,000 lb (4,536 kg), so that its harvest guideline would not be exceeded. However, landings were lower than expected, and on October 1, 1997 (62 FR 51814, October 3, 1997), the 2-month cumulative trip limits were converted to 1-month limits and increased to 5,000 lb (2,268 kg) per month for yellowtail rockfish and 10,000 lb (4,534 kg) per month for canary rockfish. This increased the *Sebastes* complex limits to 20,000 lb (9,072 kg) per month north of Cape Mendocino and 75,000 lb (34,020 kg) per month south of Cape Mendocino.

The best available information at the November 1997 Council meeting indicated that landings still were lower than expected, most likely due to poor weather and reduced fishing effort in October. If rates do not change, landings of yellowtail rockfish would be 22 percent below its harvest guideline, and canary rockfish would be 14 percent below its harvest guideline at the end of the year. Therefore, the Council recommended increasing the 1-month cumulative trip limits for yellowtail and canary rockfish at the earliest date so that the industry would have an opportunity to achieve the harvest guidelines for these species. The trip limit for bocaccio is not changed.

The new 1-month cumulative trip limits for the *Sebastes* complex are: 40,000 lb (18,144 kg) north of Cape Mendocino and 80,000 lb (36,287 kg) south of Cape Mendocino. Within these 1-month cumulative limits, no more than 20,000 lb (9,072 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 5,000 lb (2,268 kg) may be bocaccio south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish coastwide.

Dover Sole, Thornyheads, and Trawl-Caught Sablefish (the DTS Complex). In January 1997 (62 FR 700, January 6, 1997), the 2-month cumulative trip limit for the DTS complex was 70,000 lb (31,752 kg) north of Cape Mendocino and 100,000 lb (45,359 kg) south of Cape Mendocino. Within this 2-month cumulative limit, no more than 38,000 lb (17,236 kg) could be Dover sole north of Cape Mendocino, and coastwide no more than 12,000 lb (5,443 kg) could be trawl-caught sablefish and no more than 20,000 lb (9,072 kg) could be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads could be shortspine thornyheads.

On May 1, 1997 (62 FR 24845, May 7, 1997), the 2-month cumulative trip limits were reduced for Dover sole north of Cape Mendocino to 30,000 lb (13,608 kg)), and for thornyheads coastwide to 15,000 lb (6,804 kg), of which only 3,000 lb (1,361 kg) could be shortspine thornyheads. The 2-month cumulative limit for the DTS complex north of Cape Mendocino increased by the same amount to 57,000 lb (25,855 kg), while remaining at 100,000 lb (45,359 kg) south of Cape Mendocino. The coastwide 2-month cumulative trip limit for sablefish remained at 12,000 lb (5,443 kg).

On September 1 (62 FR 36228, July 7, 1997) the 2-month cumulative trip limits for the DTS complex and its components were converted to 1-month cumulative limits: For the DTS complex, 28,500 lb (12,927 kg) north of Cape Mendocino and 50,000 lb (22,680 kg) south of Cape Mendocino; for sablefish coastwide, 8,000 lb (2,722 kg); for Dover sole north of Cape Mendocino, 15,000 lb (6,804 kg); and for thornyheads coastwide, 7,500 lb (3,402 kg), of which no more than 1,500 lb (680 kg) could be shortspine thornyheads.

The 1-month cumulative trip limit for sablefish was reduced on October 1, 1997 (62 FR 51814, October 3, 1997), and a 1-month cumulative trip limit was set for Dover sole south of Cape Mendocino; previously Dover sole could comprise the amount of DTS limit that was left over after taking sablefish and thornyheads. As a result, the limited entry fishery for the DTS complex and its components is currently managed under a 1-month cumulative trip limit of 11,000 lb (4,990 kg) north of Cape Mendocino. Within these 1-month cumulative limits, no more than 1,500 lb (680 kg) may be Dover sole north of Cape Mendocino, no more than 2,000 lb (907 kg) may be sablefish coastwide, and no more than 7,500 lb (3,402 kg) may be thornyheads coastwide. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads. The same limits for sablefish and thornyheads apply south of Cape Mendocino, but the limit for Dover sole is 30,000 lb (13,608 kg), which changes the DTS limit in that area to 39,500 lb (17,917 kg). As of October 1, 1997, the cumulative limit for the DTS complex is the sum of the cumulative limits of its components.

Reduced effort in October, likely due to bad weather and extremely low cumulative trip limits, resulted in much lower landings than expected. The best available information at the November 1997 Council meeting indicated that the harvest guidelines for all three species would not be reached in 1998 if current landing rates continued. Dover sole is expected to be 12 percent below its coastwide harvest guideline, and trawl-caught sablefish is projected to be 7 percent below its trawl allocation. Landings of longspine and shortspine thornyheads are projected to be 35 and 19 percent below their harvest guidelines, respectively, by the end of the year. Consequently, the Council recommended increasing the 1-month cumulative trip limits for these species to the end of the year to keep landings of the DTS complex and its components within the 1997 harvest guidelines and allocations without increasing discards. Current trip limits are so low that it is felt that these increases will enable fishermen to land fish that otherwise may have been caught and discarded.

The new monthly limits for the DTS complex are 16,000 lb (7,257 kg) north of Cape Mendocino, and 43,000 lb (19,504 kg) south of Cape Mendocino.

Within these limits, no more than 3,000 lb (1,361 kg) may be Dover sole north of Cape Mendocino and 30,000 lb (13,608 kg) south of Cape Mendocino (no change to southern Dover sole); no more than 3,000 lb (1,361 kg) coastwide may be trawl-caught sablefish; and no more than 10,000 lb (4,536 kg) coastwide may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

Implementation. These changes are implemented in the middle of a 1-month cumulative trip limit period for the "A" platoon (whose cumulative trip limits begin at the beginning of a month). The new limits are the total amount that may be landed in November. Therefore, the "A" platoon will have the opportunity to harvest the new limits in both November and December. Two-month cumulative trip limits and the 60 percent monthly limits remain in effect only for POP, widow rockfish, and lingcod.

For vessels in the "B" platoon (whose cumulative trip limits begin on November 16, 1997) the final 2-month cumulative trip limits for POP, widow rockfish, and lingcod apply to the 6-week period from November 16, 1997, through December 31, 1997, and there is no 60 percent monthly limit for this period. In addition, the equivalent of two 1-month cumulative trip limits for the *Sebastes* complex and its components and for the DTS complex and its components may be landed during the 6-week period from November 16, 1997 through December 31, 1997. (In the previous **Federal Register** notice (62 FR 51814, October 3, 1997), reference to lingcod describing the final cumulative period for the "B" platoon was inadvertently deleted.)

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and makes the following changes to the 1997 annual management measures (62 FR 700, January 6, 1997, as modified at 62 FR 51815, October 3, 1997).

1. For yellowtail rockfish, canary rockfish, and the *Sebastes* complex, paragraphs C.(2)(a)(i) and (ii) of section IV. (regarding cumulative trip limits in the limited entry fishery) are amended, to read as follows:

C. *Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish)*

* * * * *

(2) * * *

(a) * * *

(i) *North of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Mendocino is 40,000 lb (18,144 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 20,000 lb (9,072 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 80,000 lb (36,287 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 5,000 lb (2,268 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish.

* * * * *

2. For the DTS complex, paragraph E.(2)(b) of section IV. (regarding limited entry trip and size limits) is revised, to read as follows:

E. *Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)*

* * * * *

(2) * * *

(b) * * *

(i) *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 16,000 lb (7,257 kg) per vessel per 1-month period. Within this cumulative trip limit, no more than 3,000 lb (1,361 kg) may be sablefish, no more than 3,000 lb (1,361 kg) may be Dover sole, and no more than 10,000 lb (4,536 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 43,000 lb (19,504 kg) per vessel per 1-month period. Within this cumulative trip limit, no more than 3,000 lb (1,361 kg) may be sablefish, no more than 30,000 lb (13,608 kg) may be Dover sole, and no more than 10,000 lb (4,536 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because this action relieves a burden and must be implemented swiftly to relieve the burden, and because the public had an opportunity to comment on the action at the November 1997 Council meeting, NMFS has determined that good cause exists for this document to be published without affording additional prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 14, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 97-30386 Filed 11-14-97; 4:37 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register
Vol. 62, No. 223
Wednesday, November 19, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-118-AD]

RIN 2120-AA64

Airworthiness Directives; Short Brothers Model SD3-60 SHERPA and SD3 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3-60 SHERPA and SD3 SHERPA series airplanes. This proposal would require removing the aluminum alloy oxygen pipe assembly and replacing it with a stainless steel assembly. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent aluminum oxygen tubing from bursting and releasing a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight.

DATES: Comments must be received by December 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-118-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-118-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-118-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3-60 SHERPA and SD3 SHERPA series airplanes. The CAA advises that incorrect material had been specified on a detail drawing of the oxygen system. This problem was discovered during manufacturing. The drawing incorrectly specified that the tubing to be installed should be made from aluminum rather than stainless steel. This condition, if not corrected, could result in bursting of the aluminum alloy tubing and releasing of a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight.

Explanation of Relevant Service Information

Short Brothers has issued Service Bulletins SD3-60 SHERPA-35-1 and SD3 SHERPA-35-2, both dated April 8, 1997, which describe a procedure for removing the existing aluminum alloy oxygen pipe assembly and replacing it with a stainless steel assembly. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 9 Short Brothers Model SD3–60 SHERPA and SD3 SHERPA series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost $60 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,700, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 97–NM–118–AD.

Applicability: All Model SD3–60 SHERPA and SD3 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent aluminum oxygen tubing from bursting and releasing a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight; accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the aluminum oxygen tubing pipe assembly and replace it with a stainless steel tubing pipe assembly in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD3–60 SHERPA–35–1 or SD3 SHERPA–35–2, both dated April 8, 1997, as applicable.

(b) As of the effective date of this AD, no person shall install an aluminum alloy oxygen tubing pipe assembly, part number SD3–71–20052–401, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 13, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30329 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes. This proposal would require repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action, if necessary. This proposal would also provide for an optional terminating modification for the repetitive inspection requirements. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel.

DATES: Comments must be received by December 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, and –231 series airplanes. The DGAC advises that, during a full-scale fatigue test on a Model A320 test article, cracking was found on the transition and pick-up angles between frames 35 and 36. Such cracking is attributed to fatigue-related stress as a result of fastener movement during vibration and loading. Fatigue-related cracking in the pick-up and transition angles in the lower part of the center fuselage, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1028, dated March 1, 1994, which describes procedures for performing repetitive visual inspections of the transition angle between frames 35 and 36, just below left- and right-hand stringer 30; and repetitive rotating probe inspections of the fastener holes of the left- and right-hand pick-up angles.

For structure that is free of cracking, Airbus has also issued Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; and Revision 2, dated June 8, 1995. The service bulletin describes procedures for modification of the center fuselage. The modification involves the installation of additional washers between the transition angle and fasteners, and the cold-expansion of the most fatigue-sensitive fastener holes. Accomplishment of this modification would eliminate the need for the repetitive inspections for structure that was free of cracking.

The DGAC classified Airbus Service Bulletin A300–53–1028 as mandatory and issued French airworthiness directive 95–097–065(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France. The DGAC also approved Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously; except where cracking is detected and it is 1.9 mm or greater in length, in which case the repair would be required to be accomplished in accordance with a method approved by the FAA.

Differences Between the Proposal and the Related French AD

The proposed AD would differ from the parallel French airworthiness directive in that the proposed AD would not permit further flight with cracking detected in the transition or pick-up angles of the wing-fuselage support. The FAA has determined that, due to safety implications and consequences associated with such cracking, the subject transition and pick-up angles that are found to be cracked must be repaired prior to further flight.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 9 work hours per airplane to accomplish the proposed inspections at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $12,960, or $540 per airplane, per inspection cycle.

It would take approximately 10 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,895 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $83,880, or $3,495 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–184–AD.

Applicability: Model A320–111, –211, and –231 series airplanes, manufacturer's serial numbers 002 through 006 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, and 080 through 107 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the wing-fuselage support and fuselage pressure vessel resulting from structural fatigue cracking in the transition and pick-up angles, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1026, dated March 1, 1994.

(1) Perform a visual inspection to detect cracks of the transition angle, in accordance with the service bulletin.

(i) If no crack is detected during the visual inspection required by paragraph (a)(1) of this AD, accomplish either paragraph (a)(1)(i)(A) or paragraph (a)(1)(i)(B) of this AD.

(A) Repeat the visual inspection thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; or Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i)(A) of this AD.

(ii) If any crack is detected during the visual inspection required by paragraph (a)(1) of this AD, prior to further flight, replace the transition angle with a new transition angle, in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; or Revision 2, dated June 8, 1995.

(2) Perform a rotating probe inspection to detect cracks of the pick-up angle, in accordance with the service bulletin.

(i) If no crack is detected during the rotating probe inspection required by paragraph (a)(2) of this AD, accomplish either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this AD.

(A) Repeat the visual and rotating probe inspections thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; or Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2)(i)(A) of this AD.

(ii) If any crack is detected and it is less than 1.9 mm in length, prior to further flight, accomplish the applicable corrective actions specified in the service bulletin. For holes that have not been modified in accordance with the service bulletin, repeat the rotating probe inspection thereafter at intervals not to exceed 12,000 landings.

(iii) If any crack is detected and it is 1.9 mm or greater in length, prior to further flight, repair it in accordance with the method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 95–097–065(B), dated May 24, 1995.

Issued in Renton, Washington, on November 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30330 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 and CL–600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes. This proposal would require replacement of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent electrical arcing between the internal wiring and casing of the anti-noise filter on the standby and APU fuel pump assemblies, and consequent increased risk of fuel tank explosion or fire.

DATES: Comments must be received by December 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–256–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes. TCA advises it has received a report of an auxiliary power unit (APU) stopping while the airplane was on the ground. Investigation revealed that the problem was caused by a failure of the anti-noise (electromagnetic interference) filter on the APU fuel pump assembly. The filter had a hole through the metal casing caused by electrical arcing between the internal wiring and the casing of the filter. This condition, if not corrected, could result in fuel tank explosion or fire.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995 (for Model CL–600–1A11 series airplanes), and Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995 (for Model CL–600–2A12 series airplanes). These service bulletins describe procedures for replacement of the anti-noise filter on the standby and APU fuel pump assemblies with a new filter. Accomplishment of the actions specified in the alert service bulletins is intended to adequately address the identified unsafe condition.

TCA classified these alert service bulletins as mandatory and issued Canadian airworthiness directive CF–97–02, dated February 25, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Cost Impact

The FAA estimates that 84 Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,689 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $578,676, or $6,889 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier Inc. (Formerly Canadair): Docket 97–NM–256–AD.

Applicability: Model CL–600–1A11 series airplanes, as listed in Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995; and Model CL–600–2A12 series airplanes, as listed in Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the internal wiring and casing of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies, and consequent increased risk of fuel tank explosion or fire, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, replace the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter, in accordance with Part B of Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995 (for Model CL–600–1A11 series airplanes), or Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995 (for Model CL–600–2A12 series airplanes); as applicable.

(b) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number (P/N) 600–62966–25 or 600–62966–27 with an anti-noise filter having P/N 160–151501 (prior to revision H stamped on the part) installed, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–02, dated February 25, 1997.

Issued in Renton, Washington, on November 13, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30328 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–13]

Proposed Establishment of Class C Airspace; Hayden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would establish Class E Airspace at Hayden, CO. The development of two new Standard Instrument Approach Procedures (SIAP's) at the Yampa Valley Airport, Hayden, CO, utilizing the Global Positioning System (GPS) has made this proposition necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate these SIAP's and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ANM–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Hayden, CO. This amendment would provide airspace necessary to fully encompass the GPS–A and the GPS–B SIAP's to the Yampa Valley Airport, Hayden, CO. This proposal would make a 700-foot Class E area with a 6.9 mile radius around the Yampa Valley Airport with an extension to the northwest and an extension to the southeast to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Yampa Valley Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 6, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Hayden, CO [New]

Yampa Valley Airport, CO
(Lat. 40°28'52" N, long. 107°13'04" W)
Hayden VOR/DME
Lat. 40°31'12" N, long. 107°18'18" W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Yampa Valley Airport, and within 4 miles each side of the Hayden VOR/DME 301° radial extending from the 6.9-mile radius to 10.1 miles northwest of the VOR/DME, and within 4 miles each side of the Hayden VOR/DME 118° radial extending from the 6.9-mile radius to 18.1 miles southeast of the VOR/DME; excluding the Craig, CO Class E airspace area.

* * * * *

Issued in Seattle, Washington, on October 31, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–30364 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–25]

Proposed Amendment to Class E Airspace; Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace areas at Owensboro, KY. A VOR Runway (RWY) 5 Standard Instrument Approach Procedure (SIAP) has been developed for Owensboro-Daviess County Airport. Additional controlled airspace is needed to accommodate the SIAP and for IFR operations at the airport. This proposal would provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth.

DATES: Comments must be received on or before December 19, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–25, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASO–25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace areas at Owensboro, KY. A VOR RWY 5 SIAP has been developed for Owensboro-Daviess County Airport. Additional controlled airspace is needed to accommodate the SIAP and for IFR operations at the airport. This proposal would provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth. Class E airspace areas designated as an extension to a Class D or Class E surface area, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6004 and 6005, respectively, of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ASO KY E4 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
(Lat. 37°44'25" N, long. 87°10'23" W)
Owensboro VOR/DME
(Lat. 37°44'37" N, long. 87°09'57" W)

That airspace extending upward from the surface within 3 miles each side of Owensboro VOR/DME 351°, 177°, and 223° radials, extending from the 4.1-mile radius of Owensboro-Daviess County Airport to 7 miles north, south and southwest of the Owensboro VOR/DME. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
(Lat. 37°44'25" N, long. 87°10'23" W)

That airspace extending upward from 700 feet or more above the surface within a 7.2-mile radius of Owensboro-Daviess County Airport.

* * * * *

Issued in College Park, Georgia, on November 7, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–30356 Filed 11–18–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333, 347, and 348

[Docket Nos. 80N–0476, 78N–0301, 78N–0021, and 75N–0183]

RIN 0910–AA01

Antifungal Drug Products for Over-the-Counter Human Use; External Analgesic Drug Products for Over-the-Counter Human Use; Skin Protectant Drug Products for Over-the-Counter Human Use; and Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Reopening of Administrative Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of administrative records.

SUMMARY: The Food and Drug Administration (FDA) is announcing the reopening of the administrative records for four rulemakings to include safety and effectiveness data on over-the-counter (OTC) vaginal douche drug product ingredients that were previously considered in the advance notice of proposed rulemaking for OTC vaginal drug products. The agency is reopening the following rulemakings for consideration of data on vaginal douche drug products: (1) Antifungal drug products, (2) OTC external analgesic drug products (3) OTC skin protectant drug products and (4) OTC topical antimicrobial drug products. This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by February 17, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen Cothran, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 13, 1983 (48 FR 46694), FDA published under 21 CFR 330.10(a)(6), an advance notice of proposed rulemaking to establish a monograph for OTC vaginal drug products, together with the recommendations of the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in OTC vaginal drug products. In its report, the Panel recommended Category I (i.e., safe and effective) status for 1 to 3 percent potassium sorbate and 0.15 to 0.3 percent povidone-iodine as a douche for the relief of minor vaginal itching, irritation, and soreness (48 FR 46694 at 46704 to 46706). The Panel also recommended the following ingredients as Category I in a douche formulation to remove vaginal discharge and vaginal secretions, for a mild detergent action, and to thin out vaginal mucus discharge: 0.002 percent dioctyl sodium sulfosuccinate (docusate sodium), 0.0176 percent nonoxynol 9, 0.088 percent octoxynol 9, and 0.01 to 0.02 percent sodium lauryl sulfate (48 FR 46706 to 46707). In the preamble to the Panel's report (48 FR 46694 to 46695), the agency did not allow the marketing of potassium sorbate for relief of minor vaginal irritation because it was considered a new drug (had not been marketed for a material time and extent).

In the **Federal Register** of February 3, 1994 (59 FR 5226), the agency issued a notice to withdraw the advance notice of proposed rulemaking of October 13, 1983. This action was taken in part because the agency determined that some of the Panel's recommended labeling indications related to cosmetic claims and not drug claims. The agency also stated that the intended use of a product will be considered in determining whether it is a cosmetic, a drug, or both (59 FR 5226 at 5231). In addition, recommended labeling indications and ingredients used for minor irritation, itching, or soreness are not unique to the vaginal area and are already being considered in other OTC drug rulemakings (e.g., antifungal, antimicrobial, and external analgesic). Therefore, the agency stated that those ingredients and claims would be considered in those other rulemakings, as appropriate.

II. Recent Developments

In the **Federal Register** of March 27, 1997 (62 FR 14683), the agency announced that its Nonprescription Drugs Advisory Committee (NDAC) would hold a public meeting on April 15, 1997, to discuss a possible association between vaginal douching and adverse consequences. The notice stated that FDA is aware of a number of case-control epidemiologic studies in the literature that suggest a possible association between vaginal douching and several conditions, such as pelvic inflammatory disease, ectopic pregnancy, and cervical cancer (Ref. 1). At the April 15, 1997, meeting, NDAC members were joined by representatives from two other FDA advisory committees, Reproductive Health Drugs and Anti-infective Drugs, as well as representatives from the Center for Food Safety and Applied Nutrition and the Center for Devices and Radiological Health. The Committees discussed issues relating to behavioral, epidemiological, and microbiological aspects of vaginal douching. Committee members felt that there was a suggestive association between vaginal douching and ectopic pregnancy and pelvic inflammatory disease, but that more data and further research were needed to support such an association. Some members stated that a possible association between douching and tubal infertility also needed more investigation. The Committees did not find any evidence of a relationship between vaginal douching and cervical carcinoma. Some members expressed concern that certain individuals who douche, e.g., those with sexually transmitted diseases or multiple sexual partners, may be at increased risk for ectopic pregnancy, tubal disease, or tubal infertility. The Committees were also concerned about the risks and benefits/efficacy of vaginal douche products. The Committee members stressed that labeling for these products should be easy to read and understand, and should provide consistent information across the broad product class. The Committees encouraged the use of educational programs for both consumers and health care providers as a way to expand the public's knowledge about use of these products (Ref. 2).

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from D. Bowen, FDA, to R.W. Soller, Nonprescription Drug Manufacturers Association, coded LET 105, Docket No. 75N–0183, Dockets Management Branch.
2. Comment No. TR1, Docket No. 80N–0476, Dockets Management Branch.

IV. Reopening of the Administrative Records

Because the issues concerning the safety of vaginal douching also have an impact on the agency's review of the safety and effectiveness of all OTC vaginal douche drug products, the agency is reopening the administrative records for the rulemakings for OTC antifungal drug products (Docket No. 80N–0476), (2) OTC external analgesic drug products (Docket No. 78N–0301), (3) OTC skin protectant drug products (Docket No. 78N–0021), and (4) OTC topical antimicrobial drug products (Docket No. 75N–0183). This action is to specifically allow for submission of data on the issues raised at the April 15, 1997, meeting. The agency also requests safety and effectiveness data on the vaginal douche drug product ingredients that were discussed at that meeting.

Interested persons may submit comments on OTC vaginal douche drug products to the applicable docket number(s) based on the ingredient's labeling claim(s), intended use, or mechanism/mode of action. For example, data on povidone-iodine for the relief of minor vaginal itching and irritation may be submitted to the external analgesic rulemaking, but if relief of itching is due to an antifungal effect, i.e., killing the fungus, data should be submitted to the antifungal rulemaking. Likewise, if data support the use of nonoxynol 9 for the relief of minor vaginal itching and irritation because of an antimicrobial action, data should be submitted to the antimicrobial rulemaking. Interested

persons should determine the appropriate rulemaking to which data should be submitted. Comments on other vaginal drug products or issues should not be submitted at this time.

Submit written comments on or before February 17, 1998 to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. If comments could be submitted to several dockets, they may be submitted to one docket and cross-referenced in the other docket(s). All comments are to be identified with the appropriate docket number(s) found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30410 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–017–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Louisiana regulatory program (hererinfafter the "Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of regulations pertaining to definitions, request for hearing, permitting requirements, small operator assistance program, bond release requirements, performance standards, and enforcement procedures/civil penalties. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Louisiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., December 19, 1997. If requested, a public hearing on the proposed amendment will be held on December 15, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on December 4, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Louisiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone (918) 581–6430.

Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804, Telephone: (504) 342–5540.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning the Louisiana program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Description of the Proposed Amendment

By letter dated October 24, 1997 (Administrative Record No. LA–362), Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. LA–361) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposes to amend the Louisiana Surface Mining Regulations. The full text of the proposed program amendment submitted by Louisiana is available for public inspection at the locations listed above under **ADDRESSES**. A brief discussion of the proposed amendment is presented below.

A. Section 105. Definitions

1. Louisiana proposes to revise its definition for "other treatment facilities."

2. Louisiana proposes to add a definition for "previously mined area."

3. Louisiana proposes to add a definition for "qualified laboratory."

B. Section 2537. Cross-Sections, Maps and Plans

Louisiana proposes to delete paragraph 2537.11. that requires cross-sections, maps and plans in the permit applications to show sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.

C. Section 2725. Reclamation Plan: Ponds, Impoundments, Banks, Dams and Embankments

1. Louisiana proposes to revise paragraph 2725.A. by adding "siltation structure" to the types of ponds, impoundments, banks, dams and embankments requiring a general reclamation plan, and by adding a provision that requires each application to include a detailed reclamation plan for each proposed containment structure.

2. At paragraph 2725.A.2., Louisiana proposes to delete the existing language and to replace it with language that adds specific references to the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 criteria for dam classification and requires compliance with this technical release if structures meet or exceed the size or other criteria of the Mine Safety and Health Administration.

3. Louisiana proposes to revise paragraph 2725.A.3. to refer to structures that are not included in paragraph 2725.A.2.

4. At paragraph 2725.A.3.a., Louisiana proposes to require qualified, registered, professional engineers to certify all coal processing waste dams and embankments covered by sections 5375 through 5395.

5. At section 2725, Louisiana proposes to add new paragraph C.1. that specifies that for impoundments not included in paragraph 2725.A.2., engineering design standards shall ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in section 5333.

6. Louisiana proposes to revise paragraph 2725.F. by deleting the phrase, "If the structure is 20 feet or higher or impounds more than 20 acre-feet," and replacing it with the phrase, "If the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a)."

D. Section 2907. Prime Farmland

At section 2907, Louisiana proposes to add new paragraph C.5. to read as follows:

The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

E. Section 3705. Eligibility for Assistance

1. At paragraph 3705.A.2., Louisiana proposes to change from 100,000 to 300,000 tons the probable total actual and attributed production of coal that an applicant for small operator assistance cannot exceed during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter.

2. Currently at paragraph 3705.A.2.a., applicants for small operator assistance, with an ownership interest in other coal production operations, have a pro rata share of coal produced by those operations attributed to their total coal production in any consecutive 12-month period if they have more than a five percent ownership interest in those other coal production operations. Louisiana proposes to change the percentage of ownership interest from more than five percent to more than ten percent.

3. Currently at paragraph 3705.A.2.b., applicants for small operator assistance have a pro rata share of coal produced by other coal production operations attributed to their total coal production in any consecutive 12-month period if the coal operators of the other coal production operations have more than a five percent ownership interest in the applicant for small operator assistance. Louisiana proposes to change the percentage of ownership interest from more than five percent to more than ten percent.

F. Section 3711. Program Services and Data Requirements

1. Louisiana proposes to revise paragraph 3711.A. by adding the phrase, "and provide other services," to closely follow the Federal regulation at 30 CFR 795.9(a).

2. Louisiana proposes to revise paragraph 3711.B.1. by adding the phrase, "including the engineering analyses and designs necessary for the determination," to closely follow the Federal regulation at 30 CFR 795.9(b)(1).

3. Louisiana proposes to revise paragraph 3711.B.2. by adding the phrase, "the drilling and," to closely follow the Federal regulation at 30 CFR 795.9(b)(2).

4. Louisiana proposes to add new paragraph 3711.B.3., "the development of cross-section maps and plans required by § 2537," to closely follow the Federal regulation at 30 CFR 795.9(b)(3).

5. Louisiana proposes to add new paragraph 3711.B.4, "the collection of archaeological and historic information and related plans required by §§ 2505.A.2. and 2731 and any other archaeological and historic information required by the office," to closely follow the Federal regulation at 30 CFR 795.9(b)(4).

6. Louisiana proposes to add new paragraph 3711.B.5., "pre-blast surveys required by § 2707; and" to closely follow the Federal regulation at 30 CFR 795.9(b)(5).

7. Louisiana proposes to add new paragraph 3711.B.6, "the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by § 2713, and information and plans for any other environmental values required by the office under the act." to closely follow the Federal regulation at 30 CFR 795.9(b)(6).

G. Section 3717. Applicant Liability.

1. At paragraph 3717.A., Louisiana proposes to revise this paragraph by adding the phrase, "A coal operator," and by deleting the words "laboratory" and "performed" to closely follow the Federal regulation at 30 CFR 795.12(a).

2. Louisiana proposes to revise paragraph 3717.A.2. by replacing the "applicant's" actual and attributed annual production of coal for all locations with the "operator's" actual and attributed annual production of coal for all locations. Also, Louisiana proposes to change the actual and attributed annual production of coal for all locations from 100,000 to 300,000 tons during the 12 months immediately following the date on which the permit was originally issued.

3. Louisiana proposes to revise paragraph 3717.A.3. concerning permits that are sold, transferred, or assigned by changing the transferee's total actual and attributed annual production of coal from 100,000 to 300,000 tons during the 12 months immediately following the date on which the permit was originally issued.

H. Section 4501. Procedures for Seeking Release of Performance Bond

1. Louisiana proposes to add new paragraph 4501.A.3. to read as follows:

The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

2. With the addition of this new paragraph, Louisiana proposes to re-number existing paragraph A.3. as A.4.

I. Section 5333. Hydrologic Balance: Impoundments

1. Louisiana proposes to add new paragraph 5333.A.1 that requires impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, October 1985), "Earth Dams and Reservoirs," 1985 to comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60. Louisiana also proposes to incorporate by reference the above technical release.

2. Louisiana proposes to redesignate existing paragraphs 5333.A.1. through 5333.A.12. as paragraphs 5333.A.2 through 5933.A.13.

3. Louisiana proposes to revise redesignated paragraph 5333.A.4. (previously paragraph 5333.A.3.) by deleting all of its language except for the word "Stability." The State also proposes to add new paragraphs a. and b. containing the following language:

a. An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

b. Impoundments not included in § 5333.A.4.a. except for a coal mine waste

impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 2725.C.1.

4. At redesignated paragraph 5333.A.6. (previously paragraph 5333.A.5.),

Louisiana proposes to revise this paragraph by adding the following language:

For an impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

5. At redesignated paragraph 5333.A.9. (previously paragraph 5333.A.8.), Louisiana proposes to revise this paragraph by deleting the existing language and replacing it, and by adding new paragraphs A.9.a., a.i., and a.ii., and A.9.b., b.i., b.ii., and b.iii. The new language pertains to the types of spillways that shall be designed and constructed for impoundments: (a.) meeting the Class B or C criteria for dams in TR–60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or greater event as specified by the State; (b.) meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the State; and (c.) not included in § 5333.A.9.b.i. and ii., 25-year 6-hour or greater event as specified by the State.

6. At redesignated paragraph 5333.A.12 (previously paragraph 5333.A.11.), Louisiana proposes to revise this paragraph by deleting the existing language and replacing it with language pertaining to impoundments "meeting" and "not meeting" the SCS Class B or C criteria for dams in TR–60, or the size or other criteria in 30 CFR 77.216. The State also proposes how often and by whom these impoundments must be examined and what must be looked for during the examinations.

7. Louisiana proposes to revise paragraph 5333.C.2. by deleting the existing language and replacing it with new language and by adding new paragraphs C.2.a. and C.2.b. The new language pertains to the State's option to approve temporary impoundments that are constructed to control runoff, from the design precipitation event, primarily through storage of the runoff.

J. Section 5411. Backfilling and Grading: Thin Overburden

Louisiana proposes to revise paragraph 5411.A. by deleting the existing language and replacing it with new language, and by adding new paragraphs A.1. and A.2. The proposed new language for these paragraphs contains the definition for and explanations pertaining to "thin overburden."

K. Section 5413. Backfilling and Grading: Thick Overburden

Louisiana proposes to revise paragraph 5413.A. by deleting the existing language and replacing it with new language, and by adding new paragraphs A.1. and A.2. The proposed new language for these paragraphs contains the definition for and explanations pertaining to "thick overburden."

L. Section 5503. Prime Farmland: Soil Removal

Louisiana proposes to revise paragraph 5503.A.2. by adding language to require coal operators:

to separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material to provide the thickness of suitable soil required by paragraph 5507.A.1. that will create a reconstructed soil of equal or greater productivity capacity than that which existed before mining, except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained;

M. Section 5507. Prime Farmland: Soil Replacement

Louisiana proposes to revise paragraph 5507.A.4. by deleting the existing language and replacing it with the following language:

The operator shall replace the B horizon, C horizon, or other suitable material specified in § 5503.A.2. to the thickness needed to meet the requirements of § 5507.A.1. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

N. Section 6507. Service of Notices of Violation and Cessation Orders

Louisiana proposes to revise paragraph 6507.A.2. by adding language to its regulation regarding how notices of violations and cessation orders are to be served. The added language allows the State to serve the person to whom the notice or order was issued by any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure.

O. Section 6913. Procedures for Assessment of Civil Penalties

Louisiana proposes to revise paragraph 6913.B by adding language to its regulation regarding how copies of the proposed assessment and the worksheet showing the computation of the proposed assessment are to be served. The added language allows the State to serve the person to whom the notice or order was issued by any alternative means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure.

P. Section 6915. Procedures for Assessment Conference

Louisiana proposes to revise paragraph 6915.B.1 by changing the time when the assessment conference is to be held from "within 60 days from the date of the issuance of the proposed assessment or the end of the abatement period, whichever is later" to "within 60 days from the date the conference request is received or the end of the abatement period, whichever is later." Louisiana also proposes to add that failure by the State to hold the conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

Q. Section 6917. Request for Hearing

Louisiana proposes to change from 15 days to 30 days the amount of time a person has to submit a petition for requesting a hearing after the date of service of the conference office's action.

R. Section 7105. Procedure for Assessment of Individual Civil Penalty

Louisiana proposes to revise paragraph 7105.C. by adding language to its regulation regarding when service of a notice of proposed assessment and included information shall be deemed complete. The added language states that service is complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Louisiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tuscaloosa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on December 4, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environment Policy Act

No environment impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data an assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–30304 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5825–2]

National Oil and Hazardous Substances; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Coalinga Asbestos Mine Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Coalinga Asbestos Mine Site from the National Priorities list (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California Department of Toxic Substances Control have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site from the

NPL may be submitted by December 19, 1997.

ADDRESSES: Comments may be mailed to: Keith Takata, Director, Superfund Programs, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Comprehensive information on this site is available through the EPA Region 9 public docket which is located at EPA Region 9's Superfund Records Center, at the address above, and is available for viewing between 8 a.m. and 5 p.m., Monday through Friday, excluding holidays. Additional information on the Coalinga Asbestos Mine Site is also available for viewing at the site repository located at: City of Coalinga Public Library, 305 North Fourth Street, Coalinga, CA 93210, (209) 935–1676.

FOR FURTHER INFORMATION CONTACT: Richard Procunier, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2219.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Coalinga Asbestos Mine Site (EPA ID# CAD980817217), Coalinga, California, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Coalinga Asbestos Mine Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on, the NPL when no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate response under CERCLA has been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. The Coalinga Asbestos Mine Site has two operable units: the City of Coalinga Operable Unit (City Unit) and the Coalinga Mine Site/ Johns-Manville Mill Operable Unit (JM Unit). The first five-year review for the City Unit was completed in April 1996. The first five-year review for the JM Unit is expected to be completed in late 1997. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Wherever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the proposed deletion of this Site: (1) EPA Region 9 has recommended deletion and has prepared the relevant documents; (2) the State of California has concurred with the proposed deletion decision; (3) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available for public review in the local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if one is prepared, will be made available to interested parties by the Regional Office.

IV. Basis for Intended Site Deletion

A. Unit Background

City Unit

The City of Coalinga Unit is privately owned and consists of approximately 107 acres of land situated between 4th Street and the intersection of Lucille Avenue and Highway 198 at the southwestern end of the City of Coalinga, Fresno County, California. The nearest population center is Coalinga (approximate population of 9850), located immediately to the northeast. The surrounding area is mixed use, consisting of industrial, agricultural, commercial and residential properties.

JM Unit

The JM Unit is a privately owned, 120-acre tract of land located in upper Pine Canyon on the southern flank of the Joaquin Ridge in the Diablo Range, western Fresno County, California. It is located approximately ½ mile down slope from the New Idria Formation, a 48-square mile outcrop margin of naturally occurring chrysotile asbestos. The nearest population center is Coalinga located about 16 miles to the southeast. Areas adjacent to the JM Unit are rural; land uses include mining, ranching, farming and recreation (camping, hunting, hiking, mineral collecting, and riding off-highway vehicles).

B. Site History

City Unit

The Southern Pacific Railroad property within the original 107-acre City Unit consisted partly of a portion of the original operating right-of-way acquired by Southern Pacific Railroad Company (a predecessor of Southern Pacific Transportation Company) pursuant to the July 27, 1866 Act of Congress, and partly of ancillary lands acquired pursuant to the same Act patented July 10, 1894. During Southern Pacific's ownership, several properties were leased to various entities which were active in the milling, manufacture, storage and/or transportation of asbestos materials from the mid-1950's until approximately 1980.

JM Unit

The Southern Pacific Railroad acquired the property on which the JM Unit is located as part of a land grant under the 1871 Railway Act. In the mid-1950's researchers discovered that chrysotile asbestos from the New Idria Formation could be milled to yield a marketable short-fiber asbestos product. The Southern Pacific Land Company (SPLC) leased the JM Unit for a period of 25 years to the Coalinga Asbestos Company beginning about 1956. This joint venture, which was comprised of the Johns-Manville Corporation, Kern County Land Company, and private investors, operated an asbestos ore processing mill at the JM Unit from approximately 1962 through mid-1974. During this period, ore was processed from several nearby open pit mines, including the Jensen Mine and the Christy Pit. In November 1975, the Coalinga Asbestos Company assigned the lease to the Marmac Resource Company/Mareco, which used the property to conduct a chromite milling operation. Although all milling operations were believed to have ceased in October 1977, Marmac retained the lease until July 31, 1981. The current owner of the JM Unit is Pine Canyon Land Company, successor-in-interest to SPLC.

C. Site Discovery

In 1980, the Metropolitan Water District (MWD) of Southern California detected asbestos in water samples from the California Aqueduct. An extensive sampling program conducted along the Aqueduct in August and September of 1980 suggested that the area in which the JM Unit was located was, in part, a possible source of asbestos into the California Aqueduct. In addition, EPA sampled mill tailings at the JM Unit; analytical results obtained from using polarized light microscopy showed the tailings contained 20% to 40% asbestos.

During investigation of the Coalinga Asbestos Mine site and the nearby Atlas Mine site, EPA conducted an airborne asbestos sampling program in which high asbestos readings were measured in the City of Coalinga. Further investigation revealed that asbestos had been transported from the mines and mills to storage areas within the City of Coalinga for handling and shipment. Soil sampling confirmed the presence of uncontrolled hot spots of asbestos and nickel contamination over a 107-acre area in the City of Coalinga.

The Site became the City of Coalinga Operable Unit of the Atlas Mine Site and the Johns-Manville Coalinga Asbestos Mill Site. It was divided into four areas: the Marmac Warehouse, the Storage Yard, the Atlas Shipping Yard, and the U.S. Asbestos Company. The northern end of the 107-acre site was connected to the Atlas Mine Site, while the southern end was connected to the Johns-Manville Mill Site. Although the cleanup could have proceeded as two separate Operable Units, EPA decided to combine it into one site cleanup, designated an operable unit for each of the two NPL Sites.

Risks posed by the JM Unit were evaluated using the Hazard Ranking System on June 14, 1983 and the JM Unit (designated the Coalinga Asbestos Mine Site) was proposed for placement on the National Priorities List on September 8, 1983. It was finalized on the NPL on September 21, 1984.

D. Remedial Investigation/Feasibility Study

City Unit

In August 1987, EPA issued an administrative order pursuant to CERCLA section 106 (Order 87–04) to Southern Pacific Transportation Company (SPTC) requiring it to conduct a Remedial Investigation at the City of Coalinga site. Soil sampling confirmed the presence of uncontrolled hot spots of asbestos and nickel contamination over a 107-acre area in the City of Coalinga. EPA ordered SPTC to prepare an Operable Unit Feasibility Study (OUFS) to develop and evaluate remedial alternatives for the site, which became the City of Coalinga Operable Unit of both the Coalinga Asbestos Mine Site and the Atlas Mine Site.

At the City of Coalinga Unit, Remedial Investigation/Feasibility Study (RI/FS) activities commenced in 1987 with the implementation of the Hazardous Substance Containment Plan and were completed in December 1988 with the completion of the FS. Implementation of the Hazardous Substance Containment Plan provided measures to initially stabilize the areas where asbestos had been documented by EPA. These measures included fencing and posting, dust suppression, and stabilization of building structures. Subsequently, a site sampling program was undertaken to characterize the extent of asbestos present in soils in the area. In addition to soil sampling, air samples and groundwater samples were collected.

Upon completion of the site characterization, the FS was performed to evaluate remedial alternatives for the site. The FS evaluated a number of remedial alternatives for handling contaminated soils including no action, fencing, capping, soil stabilization, on-site disposal, chemical fixation, and off-site disposal. Onsite disposal of soils containing asbestos in an engineered waste management unit was the selected alternative.

JM Unit

At the JM Unit, RI/FS activities were initiated in 1985 and completed in 1990. The RI described site characterization activities and technical analyses, which included soil and surface water sampling, hydrologic and sediment transport modeling, geologic mapping, an ecological assessment and a cultural resources investigation. The location and configuration of asbestos-containing materials at the JM Unit were assessed using aerial photographs, field observations, and the collection and analysis of samples obtained from surface materials, exploratory borings, pits, and trenches. Geotechnical investigation activities included slope stability analyses, seismic engineering evaluations, and testing of site materials for permeability, moisture content, density, shear strength, and Atterberg Limits. A detailed off-site source characterization study was also performed.

E. ROD Findings and Remedial Activities

City Unit

After consideration of public comments, EPA issued a Record of Decision (ROD) for the City Unit on July 19, 1989. The ROD required the collection and on-site disposal of all asbestos ore waste and other mining waste material; decontamination of all buildings, structures and other equipment; regrading of excavated areas with clean material (containing less than or equal to one percent asbestos by Phased Light Microscopy (PLM)); a deed restriction on the area where the waste management unit would be constructed and maintained; and a long term operation and maintenance program to maintain the integrity of the waste management unit. Southern Pacific agreed to implement the selected remedy as defined in the ROD by entering into a Consent Decree with the EPA on July 27, 1989. The design report

presenting the technical specifications for the construction of the on-site asbestos waste management unit was approved by EPA on October 5, 1989.

Remedial action consisted of excavation of soils in areas where the site characterization study indicated the presence of asbestos greater than 1% by PLM. The soils were consolidated in an on-site waste management unit with a final capacity of 26,200 cubic yards. In addition, asbestos-containing materials within building structures such as transite panels, mining ore, and other debris were removed to the waste management unit. The building structures were then pressure washed. Excavated areas and buildings were sampled to verify that the action levels had been met. The excavated areas were regraded for proper drainage. The remedy was certified to be operational and functional as specified in the ROD and Consent Decree by the resident engineer supervising the work. The areas previously defined as contaminated were certified to be below the EPA cleanup level. Remedial construction activities commenced in June of 1990 and were completed in January 1992. EPA issued its certificate of completion in April 1992. Homes and a large retail store have been built on formerly contaminated land.

JM Unit

After consideration of public comments, EPA issued a Record of Decision (ROD) for the JM Unit on September 21, 1990. The remedial action selected in the ROD addressed the problem of the asbestos ore and asbestos mill tailings at the JM Unit in the context of a remote and largely rural area that is close to large amounts of naturally occurring asbestos. The ROD required grading of asbestos tailings; construction of a stream diversion to channel surface water away from the tailings pile; improvements to an existing sediment trapping dam; restricted access to disturbed areas within the mill area; a revegetation pilot study and revegetation if technically feasible; dismantling of an abandoned mill; improvements to the road through the Mill Area to suppress dust; a deed restriction to ensure preservation of the remedy; and visual inspections of the remedy. The responsible parties for the JM Unit agreed to implement the selected remedy as defined in the ROD by entering into a Consent Decree with the EPA on August 11, 1992.

A Remedial Design Work Plan (RDWP) for the JM Unit was submitted to EPA on February 25, 1993, which provided the overall management strategy for performing the design, construction, operation and maintenance, and monitoring of the remedial action. The RDWP was approved by EPA on April 1, 1993. Other submittals approved by EPA included the 30% Design Package, the 90% Design Package, and the Final Design Package.

Remedial action at the JM Unit consisted of mill dismantling; regrading the tailings pile; cross-canyon stream diversion; improvements to an existing sediment trapping dam; access restrictions; deed restrictions; revegetation pilot study; revegetation and paving the access road. The remedy has been certified to be operational by the Supervising Engineer and is in compliance with the Consent Decree, the ROD, the approved final Remedial Design, the NCP, and ARARs. At the JM Unit, remedial action was started on May 17, 1993 and was completed prior to the pre-final inspection on April 28, 1994.

F. Community Relations Activities

Commencing in June 1987, EPA personnel met periodically with members of the Coalinga City Council. Several different persons designated by the City to be the Council's contact with EPA were kept informed about the investigation status. The Operable Unit Feasibility Study (OUFS) report was released for public comment on February 9, 1989. This document along with other site reports and the administrative record were made available to the public at an information repository established at the City of Coalinga Public Library.

The public comment period commenced on February 9, 1989 and closed on March 24, 1989. A public meeting was held on February 22, 1989 at the City Council Chambers, Prior to the beginning of the public comment period, EPA published a notice in the Fresno Bee and the Coalinga Weekly Courier. The notice briefly described the proposed plan and announced the public comment period and the public meeting. The notice also announced the availability of the proposed plan and the OUFS for review at the information repository. A fact sheet describing the proposed plan was delivered to the information repository. Copies of the fact sheet were mailed to the EPA general mailing list for the Atlas Mine and Johns-Manville Coalinga Mill Sites, which included approximately 300 members of the general public, elected officials and media representatives.

In July 1992 EPA issued Fact Sheets which were mailed to the general mailing list giving an update on clean-up activities in the Coalinga Area, including the Atlas and Coalinga Asbestos Mines and the City of Coalinga Superfund sites. In June 1993, a newspaper advertisement was placed in the Coalinga Record to notify nearby residents of the initiation of remedial activities at the JM Unit and to collect names and addresses of parties interested in being placed on a mailing list for future information. Postage-paid, pre-addressed response cards were also sent to residents near the JM Unit to determine if the residents wished to be placed on the mailing list. In March 1997, EPA issued another Fact Sheet to the general mailing list.

G. Summary of Operation and Maintenance

Long-term operation and maintenance at each Unit is being performed under the direction of the relevant responsible party and oversight by the California Department of Toxic Substances Control. O&M activities for the City Unit currently include annual inspections for cap integrity, surface water ponding, fence integrity and repairs as necessary. There is also a provision for specific monitoring in the event of a natural disaster (100 year flood, catastrophic earthquake). The Operations and Maintenance Plan for the JM Unit is Appendix G of the Remedial Action Completion Report, dated January 10, 1995. O&M activities for the JM Unit include inspection of engineering systems, sediment removal, gate control, repairs, and reporting. There is also a provision for specific monitoring in the event of heavy rainfall or seismic activity of magnitude 5 or greater within 50 miles of the Site and a site caretaker. O&M activities for both Units are being conducted in accordance with the O&M Plans.

H. Protectiveness

The implemented remedies achieved the degree of cleanup and protection as described in the RODs for all pathways of exposure and no further Superfund response is needed to protect human health and the environment. Both units at the Site meet all the site completion requirements as specified in OSWER Directive 9320.2–09, Close-Out Procedures for National Priorities List Sites (Interim Final), August 1995. Long term operation and maintenance will be required to insure the integrity of controls constructed during the remedial actions. The remediation implemented at each Unit does not require any operational activities because of its permanent nature. Inspection activities, however, will be conducted. For the City Unit, maintenance activities may be required for the cap and fence; for the JM Unit, maintenance activities may be required for stream diversions and sediment retention structures. For the City Unit, a deed restriction was recorded with the Recorder's Office, Fresno County, California, on June 22, 1990 which prohibited anyone in possession of the property from taking any actions that would interfere with the maintenance and operation of the waste management unit to be constructed pursuant to the Consent Decree. This deed restriction was amended upon completion of the remedial action to illustrate the exact placement and dimensions of the constructed waste management unit. For the JM Unit, a deed restriction recorded with the Recorder's Office, Fresno County, California, on July 2, 1993, prohibits anyone in possession of the property from taking actions that would interfere with the implementation of the remedy. Pursuant to CERCLA 121[c] and as provided in OSWER Directive 9355.7–02, Structure and Components of Five-Year Reviews, May 23, 1991, OSWER Directive 9355.702A, Supplemental Five-Year Review Guidance, July 26, 1994, and Second Supplemental Five-Year Review Guidance, December 21, 1996, EPA must conduct a statutory five-year review.

One of the three criteria for deletion specified that EPA may delete a site from the NPL if "responsible parties or other parties have implemented all appropriate response actions required." EPA, with the concurrence of the California Department of Toxic Substances Control, believes that this criterion for deletion has been met. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available at the EPA Region 9 NPL docket.

Dated: November 11, 1997.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 97–30360 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–227, RM–9156]

Radio Broadcasting Services; Wasilla, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of KMBQ Corporation, requesting the allotment of Channel 273C2 to Wasilla, Alaska, as that community's second local FM transmission service. Coordinates used for this proposal are 61–37–32 and 149–24–05.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: John Wells King and Amelia Brown, Esqs., Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, VA 22203–1633.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–227, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30286 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–224, RM–9177]

Radio Broadcasting Services; Monroe, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Charles D. Hall requesting the allotment of Channel 257C2 to Monroe, Utah, as the community's first local aural transmission service. Channel 257C2 can be allotted to Monroe in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (0.8 miles) south in order to avoid a short-spacing conflict with vacant Channel 256A at Levan, Utah. The coordinates for Channel 257C2 at Monroe are 38–37–21 NL and 112–07–29 WL.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James K. Edmundson; Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–224, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30285 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–225, RM–9173]

Radio Broadcasting Services; Olney and Archer City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Texas Grace Communications proposing the reallotment of Channel 248C2 from Olney to Archer City, Texas; the modification of Station KRZB(FM)'s authorization to specify Archer City as its community of license; and, the allotment of Channel 270C2 at Olney, Texas, as a replacement channel. Both channels can be allotted to Archer City and Olney, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 248C2 can be allotted to Archer City with a site restriction of 0.2 kilometer (0.1 mile) southeast of the community. The coordinates for Channel 248C2 at Archer City are 33–35–36 NL and 98–37–31 WL. Channel 270C2 can be allotted to Olney with a site restriction of 5.2 kilometers (3.2 miles) west of the city. The coordinates for Channel 270C2 at Olney are 33–21–39 NL and 98–48–42 WL. In accordance with Section 1.420(i), we will not accept competing expressions of interest in the use of Channel 248C2 at Archer City or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M Pelkey, Esq., Haley, Bade & Potts P.L.C., 4350 North Fairfax Drive, Arlington, Virginia 22203–1633 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–225, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30284 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–226, RM–9184]

Radio Broadcasting Services; Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Michael Mattson and Kenneth Lewetag seeking the allotment of Channel 254C3 to Prineville, OR, as the community's second local FM and third local aural service. Channel 254C3 can be allotted to Prineville in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) southeast, at coordinates 44–13–30 NL; 120–46–30 WL, to avoid a short-spacing to Station KUPL-FM, Channel 254C1, Portland, OR.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael L. Mattson, 15740 May Road, Dallas, OR 97338 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–226, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30283 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–229; RM–9165]

Radio Broadcasting Services; Pima, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of R.A. Montierth Enterprises, L.L.C., seeking the allotment of Channel 296A to Pima, Arizona, as that community's first local aural transmission service. Coordinates used for this proposal are 32–53–36 and 109–49–42. Pima, Arizona, is located within 320 kilometers (199 miles) of the Mexico border, and therefore, the Commission must obtain the concurrence of the Mexican government in this proposal.

DATES: Comments must be filed on or before December 29, 1997, and reply comments on or before January 13, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregory L. Masters, Esq., Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–228, adopted October 29, 1997, and released November 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30288 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–230, RM–9186]

Radio Broadcasting Services; New Albany, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by George G. Callicut requesting the allotment of Channel 268A to New Albany, Mississippi, as the community's third FM service. Channel 268A can be allotted to New Albany in compliance with the Commission's minimum distance separation requirements with a site restriction 5.5 kilometers (3.4 miles) northwest in order to avoid a short-spacing conflict with the licensed operation of Station WFTA–FM, Channel 270C2, Fulton, Mississippi. The coordinates for Channel 268A at New Albany are 34–31–14 NL and 89–03–03 WL.

DATES: Comments must be filed on or before December 29, 1997, and reply comments on or before January 13, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: George G. Callicut, 505 West End Drive, New Albany, Mississippi 38652 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–230, adopted October 29, 1997, and released November 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30289 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–226, RM–9160]

Radio Broadcasting Services; Warrenton, NC, La Crosse, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by MainQuad, Inc., seeking the reallotment of Channel 297C2 from Warrenton, NC, to La Crosse, VA, as the community's first local aural service, and the modification of Station WXNC's construction permit to specify La Crosse as its community of license. Channel 297C2 can be allotted to La Crosse in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.9 kilometers (9.9 miles) east, at coordinates 36–45–07 NL; 77–55–36 WL, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before December 29, 1997, and reply comments on or before January 13, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Pelkey, Haley Bader & Potts P.L.C., Suite 900, 4350 North Fairfax Drive, Arlington, VA 22203–1633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–229, adopted October 29, 1997, and released November 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30287 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 62, No. 223

Wednesday, November 19, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, recertification and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Human Resources Management, Executive Resources and Services Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahl, Alwynelle S.
Aldaya, George W.
Allen, Richard Dean
Amontree, Thomas S.
Anand, Rajen S.
Anderson, Margot H.
Andre, Pamela Q.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Arthur, John B.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett Jr., Fred S.
Bartuska, Ann M.
Bateman, Victoria L.
Bay, Donald M.
Beauchamp, Craig L.
Beck, Richard H.
Bensey Jr., Roger L.
Berg, Joel S.
Betschart, Antoinette A.
Billy, Thomas J.
Blackburn, Wilbert H.
Beseeker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breaze, Roger
Bryant, Arthur Ray
Buisch, William W.
Buntain, Bonnie J.
Burke, Brian E.
Burns, Denver P.
Burse Sr., Luther
Burt, John P.
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carpenter, Barry L.
Cartwright Jr., Charles W.
Chambliss, Mary T.
Cherry, John P.
Cielo, Angel B.
Clark, Lawrence E.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Cookaie, Carolyn B.
Cooper, George E.
Coulter, Kyle Jane
David, Irwin T.
Dewhurts, Stephen B.
Dittrich, Suzette M.
Dombeck, Michael P.
Dooms, Elnora C.
Douglas Jr., Frederick C.
Drazek, Paul A.
Duncan, Charles N.
Duncan III, John P.
Dunkle, Richard L.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fishman, Michael E.
Fleischman, Joyce N.
Fowler, Jerry L.
Franco, Robert
Franks Jr., William Jesse
Frazier, Gregory
Frost, Alberta C.
Gadt, Larry O.
Galvin, Timothy J.
Gardner Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gillam, Bertha C.
Gippert, Michael J.
Gipson, Chester A.
Glavin, Margaret Agnes
Golden, John
Golodner, Adam M.
Graybeal, Nancy
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Guldin, Richard W.
Hadlock, Earl C.
Hagy III, William F.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Hardy Jr., Leonard
Harrington Jr., Rube
Harris, Sharron L.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Herbert, Thomas R.
Hefferan, Colien J.
Hellickson Key, Sandra
Hennesberry, Thomas J.
Hernandez, Humberto
Hessel, David L.
Hewings, Adrianna D.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Hollingsworth, Jill M.
Holman, Pred Dwight
Horn, Floyd P.
Horner, Withers G.
House, Carol C.
Hudnall Jr., William J.
Jackson, Ruthie F.
Jackson, Yvette S.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Philip J.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Paul Wesley
Johnson, Phyllis E.
Jordan, John P.
Joslin, Robert C.
Jung, Christine M.
Kaiser Jr, Harold F.
Kaplan, Dennis L.
Keeffe, Mary Ann
Keener, Mary Lou
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Keith
Kelly, Michael W.

Kennedy, Eileen T.
King, Janet C.
King, R. Alan
King Jr., Edgar G.
Knipling, Edward B.
Koopman, Robert B.
Kronenberger Jr., Donald R.
Kuhn, Betsey A.
Laster, Danny B.
Laverty Jr., Robert L.
Lavin, Mary Jo
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Lewis, David N.
Lewis Jr., Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Little, James R.
Long, Richard D.
Lugo, Ariel E.
Luken, Bonnie L.
Macias, Cheryl L.
Maloney, Kathryn P.
Manning, Gloria
Margheim, Gary A.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
Maupin, Gary T.
Mazie, Sara M.
McCutcheon, John W.
McDougle, Janice H.
Mckee, Richard M.
Medley, Terry L.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Murrell, Kenneth D.
Nervig, Robert M.
Newman, Richard Odell
Nordstrom, Gary R.
Novak, Jon E.
O Brien, Patrick Michael
Oberlander, Herbert
Offutt, Susan E.
Ohler, Barry A.
Olsen, Eric N.
Oneil, Barbara T.
Onstad, Charles A.
Ortego, John R.
Osgood, Barbara T.
Otto, Ralph A.
Parry Jr., Richard M.
Pearson, James E.
Peer, Wilbur T.
Perry, James P.
Peters, Robert
Potts, Janet S.
Powers, Judy M.
Prchal, Robert J.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Radloff, David L.
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F T.
Reed, Craig A.
Reed, Pearlie S.
Reginato, Robert J.
Reilly, Susan B.
Rexroad Jr., Caird E.
Reynolds, James R.
Rhoades, James D.
Riemenschneider, Robert A.
Risbrudt, Christopher D.
Robinson, Bobby H.
Rockey, Sarah J.
Roussopoulos, Peter J.
Salwasser, Harold James
Satterfield, Steven E.
Scarbrough, Frank E.
Schipper Jr., Arthur L.
Schroeder, James W.
Schwalbe, Charles P.
Seaco, Jerry A.
Sexton, Thomas J.
Seymour, Carol M.
Shackelford, Parks D.
Shadburn, Jan E.
Shands, Henry L.
Sheikh, Patricia R.
Shipman, David R.
Simmons, Robert M.
Skeen, David
Smith, Dallas R.
Smith, Horace
Smith, Katherine R.
Smith, Peter Francis
Smulkstys, Inge P.
Smythe, Richard V.
Sommers, William T.
Soper Jr., Richard S.
Spance, Joseph
Spory, Gene P.
Sprague, G. Lynn
St. John, Judith B.
Steele, W. Scott
Stencel III, John
Stewart, Ronald E.
Stockton Jr., Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Stuber, Charles W.
Tanner, Steven N.
Tharrington, Ronnie O.
Thomas, Irving W.
Thompson, Clyde
Thompson, Paul E.
Thornton, Samuel E.
Torgerson, Randall E.
Torres, Alfonso
Towns, Eleanor R.
Tuchmann, E. Thomas
Twining, Hollace L.
Vail, Kenneth H.
Valsing, D. Charles
Van Klaveren, Richard W.
Van Schilfgaarde, Jan
Vasquez Jr., Victor
Verbic, Sedelta D.
Vogel, Frederic A.
Vogel, Richard J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wachsmuth, Ina K.
Wagner, Lynnett M.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Dayton J.
Weber, Barbara C.
Weber, Bruce R.
Weber, Thomas A.
West, William L.
Whillock, Carl S.
White, Barbara A.
White Jr., T. Kelley
Whiteman, Glenn D.
Whiting, Robert W.
Whitmore, Charles
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Wilson, Edward M.
Witt, Timonthy Blaine
Wright, Lloyd E.
Wu, Jeremy S.
York, Phyllis B.
Young Jr., Robert W.
Zellers, Phillip
Zorn, Frances E.

Dated: November 12, 1997.

Richard E. Rominger

Deputy Secretary.

[FR Doc. 97-30318 Filed 11-18-97; 8:45 am]

BILLING CODE 3410-09-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97-086N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package regarding exportation, transportation, and importation of meat and poultry products.

DATES: Comments on this notice must be received on or before January 20, 1998.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lee Puricelli, Paperwork Specialist, (202) 720-0346.

SUPPLEMENTARY INFORMATION:

Title: Exportation, Transportation, and Importation of Meat and Poultry Products.

OMB Number: 0583-0094.

Expiration Date of Approval: December 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding exportation, transportation, and importation of meat and poultry products. FSIS requires that meat and poultry establishments exporting product to foreign countries complete an export certificate. Establishments must supply the type, amount, and destination of product being exported. The information required by on this form does not duplicate any information required by other Federal agencies. The form is necessary to certify to the importing countries that FSIS inspectors have inspected the product and have found it sound and wholesome. Additionally, FSIS uses the information from the form in its annual Report to Congress as required by sections 301(c)(4) and 20(e) of the FMIA and sections 27 and 5(c)(4) of the PPIA.

Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product from entering into commerce. To track product shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product.

A foreign country exporting meat or poultry products to the U.S. must establish eligibility for importation of product into the U.S. and annually certify that its inspection systems are "at least equal to" the U.S. inspection system. To maintain eligibility, a written report must be prepared monthly by a representative of the foreign inspection system for each establishment listed in the certification. Additionally, meat and poultry products intended for import into the U.S. must be accompanied by a health certificate, signed by an official of the foreign government, stating that the products have been produced by certified foreign establishments. Establishments or brokers wishing to import product into the United States must complete a form that specifies the type, amount, originating country and destination of the meat and poultry product. The amount of meat and poultry product imported into the United States is included in FSIS's annual Report to Congress. Additionally, FSIS has established procedures allowing establishments importing product to stamp such product with the inspection legend prior to FSIS inspection, if they receive FSIS prior approval.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .0773501 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374.

Estimated Number of Responses per Respondent: 295.88866.

Estimated Total Annual Burden on Respondents: 168,769 hours.

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250-3700, (202) 720-0346.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97-30319 Filed 11-18-97; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97-085N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package regarding official marking devices, labeling, and packaging material.

DATES: Comments on this notice must be received on or before January 20, 1998.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lee Puricelli, Paperwork Specialist, (202) 720-0346.

SUPPLEMENTARY INFORMATION:

Title: Official Marking Devices, Labeling, and Packaging Material.

OMB Number: 0583-0092.

Expiration Date of Approval: December 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding official marking devices, labeling, and packaging material. To control the manufacture of marking devices bearing official marks, FSIS requires that official meat and poultry establishments and manufacturers of such marking devices complete a form. The establishment completes the first part of the form requesting that certain brands or other devices be manufactured. The manufacturer of the brands then provides its business name and address, and serial numbers of brands or devices. Such certification is necessary to help prevent the manufacture and use of counterfeit marks of inspection. To ensure that meat and poultry products are accurately labeled, FSIS approves meat and poultry product labelings. To ensure that packaging material does not render meat and poultry products adulterated, FSIS requires a statement of assurance from packaging manufacturers when such packaging is intended for use in meat and poultry establishments. The statement is a guaranty that the packaging material conforms with Federal Food, Drug and Cosmetic Act (FFDCA) regulations for food contact materials.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .2596531 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374.

Estimated Number of Responses per Respondent: 62.153919.

Estimated Total Annual Burden on Respondents: 119,005 hours.

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250–3700, (202) 720–0346.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30320 Filed 11–18–97; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement for the Expansion of the Bill Williams Ski Area

AGENCY: Forest Service, United States Department of Agriculture.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Expansion of the Bill Williams Mountain Ski Area.

SUMMARY: The United States Department of Agriculture Forest Service (USDA, FS), Region 3, Kaibab National Forest, announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to Sec. 102(2)(c) of the National Environmental Quality requestions for implementing NEPA. This Environmental Impact Statement will evaluate potential impacts from expanding the Bill Williams Mountain Ski area, Coconino County, Arizona. The USDA, FS invites the general public, local governments, Indian tribes, other Federal agencies, and states to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts and cultural impacts to be addressed in the Draft Environmental Impact Statement (DEIS). The public is invited to participate in scoping activities including an open house in which comments and suggestions will be received. Oral and written comments will be considered equally in preparation of the DEIS.

DATES: All comments must be received or postmarked by December 22, 1997, to be considered in the preparation of the DEIS. To the extent practicable, the USDA, FS will consider comments received or postmarked after the deadline. An open house will be conducted at the Williams Holiday Inn (950 N. Grand Canyon Blvd., Williams, AZ) on December 4, 1997, between 4:30 and 8:00 P.M. The date, time, and specific location of the scoping meeting will be announced at least 15 days before the meeting in the local media.

FOR FURTHER INFORMATION CONTACT: Please direct written comments/ suggestions on the scope of the DEIS or questions concerning the project to: Teri Cleeland at USDA, FS Williams/ Chalendar Ranger District, 501 W. Route 66, Williams, AZ 86046, 520/635–2676 or Dave Brewer at Kaibab National Forest, 800 S. 6th St., Williams, AZ 86046, 520/635–8331.

SUPPLEMENTARY INFORMATION:

Purpose and Need: The proposed ski expansion area is located in the Kaibab National Forest approximately four miles south of Williams, Arizona on Bill Williams Mountain. A comparison of the existing and desired conditions for this management area outlined in the Kaibab National Forest Land and Resource Management Plan indicates a need to improve not only the existing ski facilities but also expand on the 16 acres of the skiable terrain to promote a quality alpine skiing experience. The current vertical drop, ski run length, and ski run configuration do not provide for a good cross-section for the various experience levels of skiers. Provision of higher elevation runs and snowmaking will increase the season of use through enhanced snow cover on runs.

The proposed expansion of the Bill Williams Ski Area will satisfy the following needs:

—improve the quality of recreation experience in the Williams area,
—diversify the local economic base for the City of Williams
—increase skier capacity to accommodate unmet skier demand in the region,
—provide better and more consistent skiing conditions by increasing reliability of skiable snow cover, particularly at the beginning of the season when skiing is frequently delayed,
—encourage efficient use of facilities by expanding use into the summer months,
—satisfy Forest Service management objective (see below).

The expansion of the Bill Williams Ski Area will meet the following Forest Service management objectives:

—It is Forest Service policy to provide, under special-use authorization, suitable facilities and services that supplement or complement those provided by the private sector on private lands on National Forest System land to meet public needs. In addition, it is Forest Service policy to facilitate the use, enjoyment, and appreciation of the National Forests in a natural resource setting (FSM 2340.2).
—Update and modify the previous approved Environmental Impact Statement which authorized a new ski area on the north slopes of Bill Williams Mountain (USDA-Kaibab National Forest 1986).
—To provide a diversity of recreation activities that emphasize the forest setting and rustic, natural resource based recreation opportunities (FSM 2343.02).

Decision to be Made: Based on public response to the DEIS, a decision will be made regarding expansion of the Bill Williams Ski Area. Possible decisions include the following: 1.) implement the proposed action as defined; 2.) take no action at all; or 3.) take action to some other degree, based on issues generated through public scoping.

Proposed Action: The USDA—Kaibab National Forest, proposes to authorize Alpine Recreation Company LLC., to incorporate the existing Bill Williams ski area and construct, operate, and maintain an expansion of current facilities. Under the proposed action, the skiable terrain would increase from 16.4 acres to 62.6 acres. The total number of skiers that could be accommodated at one time would increase from 250 to 1,130.

Specific expansions proposed by Alpine Recreation include the following: additional ski runs (43 acres); a triple chair lift (approximately 5,600 feet in length); three new handle tows (ranging from 400 to 600 feet in length); a maintenance building (2,400 square feet); construction of a new Top Vista Lodge with composting restrooms (800 square feet); new parking facilities (75,000 square feet); construction of a new bases lodge (4,600 square feet) with additional outside deck seating (2,500 square feet); three new water impoundments (capacity of 24 acre-feet); infrastructure for snowmaking (2,000 subsurface distribution system for snowmaking on 7 acres); a new septic system; a summer trail which would generally follow runs 18, 18A, 12 and 7; a picnic area along the edge of run 12; implementation of a sky ride program during the summer recreation period; and expansion of the permit area from the current 37 acres to approximately 200 acres.

Preliminary Identification of Environmental and Cultural Issues: The USDA, FS has identified the following preliminary issues for analysis for alternative actions in the DEIS. Additional issues may be identified as a result of the scoping process. Issues include impacts of the action alternatives on:

—Water quality and quantity,
—Water rights,
—Soil erosion and disturbance,
—Threatened, endangered, and sensitive species and their habitat,
—Visual quality,
—Fire occurrence,
—Cultural resources,
—Traditional uses of the area by American Indians,
—Rights of American Indians for which the area has religious and cultural significance,
—Socioeconomic resources of local communities,
—Demand for additional skiing facilities in Northern Arizona.

Cooperating Agencies and Groups Involved in the Preparation of the DEIS: United States Department of Agriculture Forest Service, Region 3, Kaibab National Forest; Alpine Research Company, LLC., and SWCA, Inc., Environmental Consultants.

Dated: November 12, 1997.

Bruce J. Higgins,

Acting Forest Supervisor.

[FR Doc. 97–30326 Filed 11–18–97; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS) intention to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing site and other development work.

DATES: Comments on this notice must be received by January 20, 1998 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave., S.W., Washington, DC 20250–0761, Telephone (202) 720-9653.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1924 Subpart C, "Planning and Performing Site Development Work."

OMB Number: 0575–0164.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables RHS to effectively administer the policies, methods and responsibilities in planning and performing site development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, repair, replace or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe and sanitary living conditions and adequate farm buildings and other structures in rural areas.

The Agency makes direct and guaranteed loans to applicants of up to 100 percent of the appraised value of the property, therefore, the site and its development are an integral part of the building construction and related facilities being financed. The information collection required by this regulation is necessary to assure orderly development of rural areas leading to economically stable communities that consider the impact of the environment and protection of the borrower and Government security interests.

Other information collection is required to conform to numerous Public Laws applying to all federal agencies, such as: Civil Rights Acts of 1964 and 1968, Historic Preservation Act, Environmental Policy Act; and to conform to Executive Orders governing use of federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agency provides forms and/or guidelines to assist in the collection and submission of information. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agency to determine whether a loan can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and site development work and to determine that the requirements of the applicable Acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agency loans and to monitor the prudent use of federal funds.

If the information were not collected and submitted, the Agency would not have control over the type and quality of construction and site development work planned and performed with federal funds. The Agency would not be assured that the security provided for loans is adequate, nor would the Agency be certain that decent, safe and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different Acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.138 hours per response.

Respondents: Individuals or households, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 30,000.

Estimated Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents: 6210 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 690–1766.

Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the function of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Ave., S.W., Washington, DC 20250–0753. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 6, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–30372 Filed 11–18–97; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: National Voluntary Laboratory Accreditation Program (NVLAP), NVLAP Information Collection System.

Agency Form Number: None.

OMB Approval Number: 0693–0003.

Type of Request: Extension of a currently approved collection.

Burden: 2,750 hours.

Number of Respondents: 1,000.

Avg. Hours Per Response: 3 hours annually (reporting and recordkeeping).

Needs and Uses: NVLAP provides accreditation to testing and calibration laboratories world wide. Accreditation means that a laboratory has been judged to be technically competent to perform calibration and other testing services. To be considered for NVLAP accreditation, a laboratory must make application. The information provided, as well as the on site review, is used to evaluate the competency of the laboratory. If the criteria are met, then NVLAP accreditation is granted.

Affected Public: Businesses or other for-profit organizations, not-for profit institutions, federal government, state, tribal, local governments.

Frequency: Annually, on occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30342 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Ocean Freight Revenues and Expenses of United States, Carriers—BE–30, Survey of U.S. Airline Operators' Foreign Revenues and Expenses—BE–37.

Form Number(s): BE–30/BE–37.

OMB Approval Number: 0608–0011

Type of Request: Extension—regular submission.

Burden: 800/320.

Number of Respondents: 40/20.

Avg Hours Per Response: 5 hours/4 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in these surveys are an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in these surveys, an integral component of the transportation account would be omitted. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and expenses or U.S. airline operators' foreign revenues and expenses.

Affected Public: U.S. ocean and air carriers.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 13, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30343 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1996 Panel Wave 7.

Form Number(s): SIPP/CAPI Automated Instrument; SIPP 16705(L) Director's Letter.

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 117,800 hours.

Number of Respondents: 77,700.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed 12 times at 4 month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of a panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 7 of the 1996 Panel. The core questions have already been cleared. Topical modules for waves 8 through 12 will be cleared later. The topical modules for Wave 7 are: (1) Annual Income & Retirement Accounts, (2) Taxes, (3) Retirement and Pension Plan Coverage; and (4) Home Health Care. Wave 7 interviews will be conducted from April through July 1998.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 14, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30344 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850]

Notice of Antidumping Duty Order: Collated Roofing Nails From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Everett D. Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR 353, as codified on April 1, 1997.

Scope of Order

The product covered by this investigation is collated roofing nails ("CRN") made of steel, having a length of $^{25}/_{16}$ inch to $1^{13}/_{16}$ inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CRN within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, on September 24, 1997, the Department made its final determination that CRN from the PRC are being sold at less than fair value (62 FR 51410–419, October 1, 1997). On November 12, 1997, the International Trade Commission ("ITC") notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from the PRC and Taiwan. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding under section 735 (b)(4)(B) of the Act, the "Special Rule" provision of section 736(b)(2) applies. Therefore, only unliquidated entries of CRN from the PRC, entered or withdrawn from warehouse, for consumption *on or after* the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties. Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of CRN from the PRC entered, or withdrawn from warehouse, for consumption *before the date* on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of merchandise for all relevant entries of CRN from the PRC except for imports manufactured and exported by Shenzhen Top United Steel Co., Ltd. ("Top United") or Qingdao Zongxun Nail Products Co., Ltd. ("Zongxun"). All bonds may be released and entries of Top United and Zongxun may be liquidated without regard to antidumping duties. For all other manufacturers/exporters, antidumping duties will be assessed on all

unliquidated entries of CRN from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its final affirmative determination notice in the **Federal Register**. On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

The *ad valorem* weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
PRC-wide Rate	118.41

Allegations of ministerial errors were made with respect to the Department's final determination for CRN from the PRC. Upon review, the Department determined that these allegations were without merit. Therefore, no amendments to the final determination were necessary.

This notice constitutes the antidumping duty order with respect to CRN from the PRC. The Department is excluding from the application of the order products from the PRC that are manufactured *and* sold to the United States by Top United or Zongxun.

Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 14, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–30399 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Everett D. Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 353, as codified on April 1, 1997.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, on September 24, 1997, the Department made its final determination that collated roofing nails ("CRN") from Taiwan are being, or are likely to be, sold in the United States at less than fair value (62 FR 51427–51437 (October 1, 1997)). Subsequent to the final determination, on October 10 and 14, 1997, we received submissions, timely filed pursuant to 19 CFR 353.28(b), from Unicatch Industrial Co. Ltd. ("Unicatch"), Lei Chu Enterprises Co., Ltd ("Lei Chu"), and S&J Wire Products Company, Ltd. ("S&J"), alleging ministerial errors in the Department's final determination for those respondents. We also received submissions from Paslode Division Of Illinois Tool Works Inc. ("the petitioner") alleging ministerial errors in the Department's final determination for S&J and Lei Chu.

We determine that ministerial errors were made in our final margin calculations for Lei Chu with respect to calculation of SG&A and profit, for Unicatch with respect to calculation of constructed export price, and for S&J with respect to exclusion of certain sales, calculation of normal value and exclusion of non-subject merchandise. For a detailed discussion of the above-cited ministerial errors and the Department's analysis, see Memorandum from Case Analysts to Louis Apple, dated October 22, 1997. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of CRN from Taiwan to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percentage	Revised margin percentage
Unicatch Industrial Co. Ltd.	0.00	0.00
Lei Chu Enterprises Co., Ltd, S&J Wire Products Company, Ltd./.	0.07 (De Minimis)	0.00
New Lan Lung	5.36	2.98
Romp Coil Nail Industries.	40.28	40.28
K. Ticho	40.28	40.28
All Others	5.36	2.98

Scope of Order

The product covered by this investigation is CRN made of steel, having a length of 13/16 inch to 1–13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CRN within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that CRN from Taiwan are being sold at less than fair value. On November 12, 1997, the International Trade Commission ("ITC") notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Taiwan. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding under section 735 (b)(4)(B) of the Act, the "Special Rule" provision of section 736(b)(2) applies. Therefore, only unliquidated entries of collated roofing nails from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties. Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of collated roofing nails imported from Taiwan entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of merchandise for all relevant entries of CRN from Taiwan except for imports manufactured and exported by Unicatch or Lei Chu. All bonds may be released and entries of Unicatch and Lei Chu may be liquidated without regard to antidumping duties. For all other manufacturers/exporters antidumping duties will be assessed on all unliquidated entries of CRN from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its final affirmative determination notice in the **Federal Register**. On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Revised weighted-average margin percentage
S&J Wire Products Company, Ltd./ New Lan Lung	2.98
Romp Coil Nail Industries	40.28
K. Ticho	40.28
All Others	2.98

This notice constitutes the antidumping duty order with respect to CRN from Taiwan, pursuant to section 736 (a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736 (a) of the Act (19 USC 1673e (a)) and 19 CFR 353.21.

Dated: November 17, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–30400 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration A–791–804

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, Nancy Decker, or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, (202) 482–0196, and (202) 482–3833, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR Part 353, as they existed on April 1, 1996.

Final Determination

We determine that certain cut-to-length carbon steel plate (CTL plate) from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 31963 (June 11, 1997)), the following events have occurred:

In July and August 1997, we verified the respondents' questionnaire responses. On August 22, 1997 and September 3, 1997, the Department issued its reports on verification findings for Iscor Ltd. (Iscor). On August 25, 1997 and September 15, 1997, the Department issued its reports on verification findings for Highveld Steel and Vanadium Corporation Ltd. (Highveld). On September 22, 1997, respondents submitted new computer sales listings which included data corrections identified through verification. Petitioners and respondents submitted case briefs on September 15, 1997, and rebuttal briefs on September 22, 1997. A public hearing was not held.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject

merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1995, through September 30, 1996.

Fair Value Comparisons

To determine whether sales of the subject merchandise by respondents to the United States were made at less than fair value, we compared the Export Price (EP) or Constructed Export Price (CEP), where appropriate, to the Normal Value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the weighted average EPs or CEPs to weighted-average NVs during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics and level of trade.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "Scope of Investigation" section of this notice, produced in South Africa by the respondents and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. It is our practice where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight) to convert all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons. (See Final Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from Finland, 58 FR 37122 (July 9, 1993) and Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992).) For Iscor, we found that it did not properly report a weight conversion factor. In order that all price comparisons be made on the same weight basis, we converted Iscor's reported home market and U.S. prices, quantities and costs, as appropriate, based on information on the record (see Comment 10 of the "Interested Party Comments" section of this notice).

(ii) Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade we compare U.S. sales to home market (or, if appropriate third country) sales at a different level of trade. For both EP and CEP, the relevant transaction for level of trade is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the EP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer expenses and the profit associated with those expenses under section 772(d) of the Act. These expenses represent activities undertaken by, or on behalf of, the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale which is used for the starting price. Movement charges, and duties and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer and we do not remove them to obtain the CEP level of trade. The NV level of trade is that of the starting price of sales in the home market. When NV is based on constructed value, the level of trade is that of the sales from which we derive SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The final user could be an individual consumer or an industrial user, but the marketing process for all goods starts with a producer and ends with a user. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are useful as they are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed customer classifications based on levels of trade. If the claimed levels are different, the selling functions performed in selling to those levels should also be different. Conversely, if levels of trade are nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Different levels of trade are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in level of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use net prices because any difference will be due to differences in level of trade rather than other factors. We use the average difference in net prices to adjust the NV when it is based on a level of trade different from that of the export sale. If there is a pattern of no price differences, then the difference in level of trade does not have a price effect, and no adjustment is necessary.

In terms of granting a CEP offset, the statute also provides for an adjustment to NV if NV is established at a level of trade that is different from that of the CEP, provided the NV level is more remote from the factory and we are unable to determine whether the difference in levels of trade affects the price comparability between the CEP and NV. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level, but the data are insufficient to support a conclusion on price effect. The CEP offset is the lower of: (1) the indirect selling expenses on the home market sale; or (2) the indirect selling expenses deducted from the starting price in calculating CEP. The CEP offset is not automatic each time export price is constructed. It is only applicable when the level of trade of the home market sales used for NV are more advanced than the level of trade of the CEP and there is not an appropriate basis for determining whether there is an affect on price comparability.

Iscor did not claim a difference in level of trade. Consistent with our findings in the preliminary determination, for this final determination we have treated all of Iscor's home market and U.S. sales as being at a single level of trade and we have made no level of trade adjustment when matching its U.S. sales to home market sales.

Highveld claimed for the preliminary determination of this investigation, that its sales in the home market were made at two different levels of trade, and that all of its U.S. sales (both EP and CEP) were made at one level of trade. Based on our analysis of selling functions performed by Highveld, we found that a single level of trade existed in each market.

For this final determination Highveld argued that its sales in the home market were at a different, more remote, level of trade that its sales to the United States. Highveld has asserted that its sales in the home market were at a different stage in the marketing process than its CEP sales in the United States because they were to a different class of customer, and that the selling functions performed by Highveld were both qualitatively and quantitatively different between its home market and U.S. sales. Accordingly, because its home market sales are at a different, more remote, LOT than its sales to the United States, and because the Department cannot quantify whether the different LOTs affect price comparability, Highveld claims it should be granted a CEP offset.

Petitioners dispute Highveld's arguments that sales in the home market are more remote than its U.S. sales and that steel service centers and distributors are at different stages in the marketing process. Petitioners also argue that many of the selling functions described by Highveld are intangible, and because there is neither a quantitative or qualitative difference in selling functions performed in the two markets, Highveld should not be granted a CEP offset.

In determining whether separate levels of trade actually existed between the U.S. and home markets, we examined Highveld's marketing stages. In reviewing the chains of distribution and customer categories reported in the home market and in the United States, we are unable to make clear distinctions between different stages of the marketing process claimed by Highveld. Based on our review of the selling functions in the U.S. and home markets, the distinctions are not sufficient to constitute a difference in level of trade between sales in the two markets. As a result, we have not granted Highveld a CEP offset. See Comment 23 for a more complete discussion of this issue.

Export Price

We calculated the price of U.S. sales based on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation. In certain instances, however, we determined that CEP as defined in section 772(b) of the Act was a more appropriate basis for the price of the U.S. sales. These instances involved sales made by Highveld to its U.S. affiliate, Newco Steel Trading (NST or Newco), which negotiates prices and quantities with its U.S. customers, and sells the subject merchandise to the U.S. customers. Newco operates as Highveld's exclusive distributor for sales of the subject merchandise in the United States, and as such, undertakes selling activities exceeding those of processing sales-related documentation. Specifically, Newco negotiates prices for particular products with its customers on a case-by-case basis, pays Highveld for the product order based on a price agreement, and takes title to the merchandise which is physically transferred to U.S. customers by common carriers.

For both respondents, we calculated EP sales based on packed prices to unaffiliated customers in the United States. Where appropriate, and pursuant to sections 772 (a) and (c) of the Act, we made deductions from the starting price for foreign inland freight, international freight, foreign brokerage and handling, marine insurance, early payment discounts, pre-sale warehousing expenses, and U.S. Customs duties.

We calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, and pursuant to sections 772(b) and (c) of the Act, we made deductions for the starting price for the foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. Customs duties, survey expenses, stevedoring and wharfage, commissions, inventory carrying expenses, credit expenses, and indirect selling expenses. We also made an adjustment for the amount of profit allocated to these expenses, in accordance with section 772(d)(3) of the Act.

We corrected the respondents' data for certain errors and omissions found at verification and submitted to the Department. Specifically, for Iscor we corrected for certain errors and omissions found at verification as submitted by the company on September 22, 1997, and we made adjustments to U.S. and home market credit expenses, certain rebates, ocean freight, and Iscor's weight conversion factors based on findings from verification. See "Interested Party Comments" section of this notice. For Highveld, we corrected for certain errors and omissions found at verification as submitted by the company on September 22, 1997, and we made adjustments to U.S. and home market credit expenses, marine insurance, brokerage and handling charges, certain rebates, survey expenses, stevedoring and wharfage, inland freight, packing, U.S. warranty expenses, and certain direct selling expenses and unreported U.S. sales. See "Interested Party Comments" section of this notice.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. Where appropriate, we deducted rebates, discounts, credit, inland freight, pre-sale warehousing, and packing. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons. In comparisons to EP and CEP sales, we increased NV by U.S. packing costs in accordance with

section 773(a)(6)(A) of the Act. We also made adjustments to NV for physical differences in merchandise ("difmer").

Cost of Production Analysis

As discussed in the preliminary determination, the Department conducted an investigation to determine whether Iscor and Highveld made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act.

A. Calculation of COP

We compared sales of the foreign like product in the home market with the model-specific cost of production figures for the POI. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition ready for shipment. Based on our verification of the cost responses for Highveld, we adjusted the company's COP to reflect dimensional cost differences, correct for overstated fabrication costs, include the effect of yield loss on fixed overhead, calculate interest expense using the company's consolidated financial results and correct for errors in the SG&A rate calculation. For Iscor we adjusted the COP to reflect the reclassification variance on a more product-specific basis, include certain year-end adjustments and minor corrections, account for the difference between reported costs and those recorded in its normal accounting records, include headquarters cost in SG&A, and allocate G&A over cost of sales.

B. Test of Home Market Prices

In order to test Iscor's and Highveld's home market prices, we compared their weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act). Where all sales of a specific product were at prices below the COP, in accordance with section 773(b)(1) of the Act, we disregarded all sales of that product, and calculated NV based on constructed value (CV) in accordance with section 773(e) of the Act.

D. Calculation of Constructed Value (CV)

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, interest expenses, and profit. In accordance with sections 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market. For selling expenses, we used the weighted-average home market selling expenses. Based on our verification of the cost responses submitted by Iscor, we adjusted the reported CV for the same items noted in the COP section above. Based on our verification of the cost responses submitted by Highveld, we adjusted the reported CV for the same items noted in the COP section above.

Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

In this case, the Department has applied partial facts available for various expenses and adjustments. (See "Interested Party Comments" section of this notice, comments 9, 10, 22, 31, 33, and 37.) We have also applied facts available to account for unreported sales. (See "Interested Party Comments" section of this notice, comment 28.)

Currency Conversion

For purposes of the preliminary determination, we made currency conversions using the official daily exchange rate in effect on the date of the U.S. sale. These exchange rates were derived from actual daily exchange rates certified by the Federal Reserve Bank of New York. (See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 6, 1996).) Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. (See Change in Policy Regarding Currency Conversions, 61 FR 9434, 9435 (March 8, 1996).) The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar and was not applicable in this case.

In this investigation, there were certain days of the POI for which we substituted the benchmark for the daily rate because the daily rate involved a fluctuation. Consistent with our findings in the preliminary determination, for the final determination we saw no reason in this case to deviate from established practice, since South Africa is not a high-inflation economy, and the decline in the rand was not so precipitous and large as to reasonably preclude the occurrence of a fluctuation. (See Comment 14 of the "Interested Party Comments" section of this notice.)

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Iscor and Highveld for use in our final determination. We used standard verification procedures, including examination of relevant accounting and sales/production records and original source documents provided by respondents.

Interest Party Comments

Comment 1

Petitioners state that the Department should correct for the errors Iscor reported on the first day of verification. Iscor reported that the submission contained an error in the calculation of the tonnage allocation factor that it used to calculate the variable and fixed cost adjustments and the company's total variance. According to the petitioners, these corrections are necessary because Iscor's errors effect the differences in merchandise adjustments and the 20% test for product matching. In addition, petitioners state that Iscor omitted year-end cost adjustments from its reported costs. According to the petitioners, these year-end adjustments are costs that relate to the whole period. Thus, the Department should also correct for this omission for the final determination.

Iscor concurs with the petitioners in that the Department should adjust the company's submitted COP and CV figures for this error and omission. Moreover, Iscor states that it gave the Department the appropriate information to adjust its submitted costs for the final determination.

DOC Position

We agree with both Iscor and petitioners. The Department's normal practice is to capture production costs for the specific product sold during the period of investigation. Therefore, we have adjusted Iscor's reported costs to account for the omission of the company's year-end adjustments from costs and to correct the reported values for the minor errors pointed out by Iscor on the first day of verification.

Comment 2

Petitioners assert that Iscor's reported costs are based on a distortive methodology and that we should reject its reported COP and CV data. Petitioners claim that the submitted costs are based on estimates and not actual costs. Specifically, petitioners claim that Iscor assigns labor costs and hours on a budgeted basis and that production costs are based on approximate production quantities. According to petitioners, Iscor's product groupings are being aggregated in contravention of the statue. In addition, petitioners argue that Iscor grouped costs for various products with different physical characteristics into a single control number.

Iscor states that it acted to the best of its ability in responding to the Department's questionnaires and has reasonably determined the production cost for each control number based on the company's existing data. Contrary to the petitioners' assertion, Iscor claims that it based its submitted costs on actual production quantities. As for the petitioners' specific concerns on product groupings, Iscor contends that this issue only arose in one control number sampled by the Department during verification. Therefore, Iscor argues that this does not make its home market sales data unusable nor does it warrant a determination of facts available as suggested by the petitioners. Iscor then elaborates that the reason it grouped internal product codes with variations in costs was that this control number consists of physically similar reclassified product codes (*i.e.*, reserve stock, flange material, and scrap) and prime product codes. Iscor further points out that a variation in costs exists between these internal product codes because it values reclassified product codes in a different manner than prime product codes.

DOC Position

We disagree with the petitioners' claim that we cannot rely on Iscor's submitted costs. Although the reported COP and CV amounts were calculated based on estimated labor costs and hours, Iscor adjusted all estimated or standard amounts to actual costs by calculating and applying production variances. (See cost verification exhibit 14). In addition, we disagree with petitioners' claim that we cannot rely on Iscor's submitted costs because they are based on approximate production mix tonnages. Although the reported production mix tonnages for each CONNUM were based on estimates, we believe that Iscor's method of estimating these tonnages resulted in a reasonable measure of the actual production tonnages by CONNUM. In the ordinary course of business Iscor does not retain production information on a model specific basis as defined by a CONNUM. Iscor does, however, maintain information on its sales mix which, because the company produces largely to order, resembles its production mix. Thus, Iscor used its sales dispatches to identify the quantity sold of each model. Iscor then used this information to determine the POI sales mix which was used as a surrogate for its production mix. Iscor adjusted this surrogate production mix tonnage to equal its actual total production tonnage. To show that this methodology was reasonable, Iscor provided a POI inventory movement report for the merchandise under investigation. (See verification exhibit 21.) According to this movement report, Iscor's production tonnages and sales tonnages were essentially the same amounts during the POI.

As Iscor has pointed out, the product codes it grouped together for the one commercial plate specification control number sampled by the Department during verification consisted of prime products and reclassified prime products (*i.e.*, reserve stock, flange material, and scrap) that had similar physical characteristics. To calculate a weighted-average cost for this control number, Iscor assigned manufacturing costs to the reclassified products based on the product code under which it sold the product rather than the actual costs based on what it intended to produce. (See cost verification exhibit 13.) While we do not disapprove of Iscor grouping prime products of similar physical characteristics within the same control number, we do consider the methodology used by Iscor to account for the cost of reclassified products inappropriate. Rather, in this instance, we consider it appropriate to use the actual cost incurred to manufacture the product rather than the cost assigned to the product by Iscor based on the product's classification for sale. We note that despite the fact that Iscor captured the difference between the cost of producing the intended merchandise and that which it ultimately sold through its reclassification variance, Iscor's reclassification variance approach spreads product-specific costs from models with commercial plate specifications to other product groupings.

For the final determination, we have adjusted the submitted cost of manufacturing for control numbers with commercial plate specifications by disallowing the assigning of lower costs to reclassified products. This adjustment is limited to models with commercial plate specifications because testing of Iscor's other product groupings at verification did not indicate the same problem. To avoid double counting costs, we have reduced the reclassification and reserve stock variances by the aggregate amount in

which we increased reported costs for models with commercial plate specifications.

As for our position concerning Iscor's methodology of grouping product codes with different physical characteristics, see comment 7 for further details.

Comment 3

Iscor maintains that the Department should not adjust its reported costs for the slight deviation reported on the reconciliation worksheet that it submitted as part of its cost verification exhibit 8. Iscor claims that this deviation only shows that its reported costs based on simulated production mixes are reasonable. Iscor suggests that the Department should expect some difference because its reported production mixes are based on what it sold during the POI and not what it produced. According to Iscor, using sales quantities was necessary because the company does not maintain model-specific production information. As for the cause of the deviation, Iscor provides the following explanations. Iscor first points out that the specific product mixes it manufactured during the POI was not necessarily the same as that sold during the POI. According to Iscor, this difference will statistically equal out over time because it only produces against orders. Iscor's second explanation is that its internal product codes consist of various similar products that have a similar cost make-up. However, these product codes have different physical characteristics and dimensions which made it necessary for the company to use them more than once when compiling the reported CONNUMs. The final reason stated by Iscor is that it can attribute the difference to the fact that it has historically used a standard cost system and not an actual costing system. Thus, Iscor had to adjust its standard costs to calculate the reported costs.

Petitioners contend that the Department must adjust Iscor's reported costs to account for the discrepancy between reported costs and costs recorded in the financial accounting system. According to petitioners, Iscor's explanation for the discrepancy does not mitigate the difference. If there is indeed a different product mix between the financial and cost accounting data that results in a difference in costs that have been calculated, then it is evidence that Iscor's reported costs are unreliable. Petitioners point out that one would not expect a difference between Iscor's reported and recorded costs because it actually derived the reported section D costs from the cost of sales recorded in the financial accounting system. Moreover, the petitioners state that Iscor provided its costs on this basis specifically because it assumed that it produces products in the same ratio as sold over a representative period. If the difference in the reported costs and financial system costs disproves this assumption, then the Department should reject Iscor's costs. Otherwise, the Department should increase Iscor's reported costs by the verification finding.

DOC Position

We agree with petitioners that we should increase Iscor's reported production costs to account for the difference between the reported costs and those recorded in its accounting system. As part of verification, Iscor prepared a reconciliation worksheet that shows its reported costs are less than the costs recorded in its accounting records. Although Iscor speculated as to the cause of the reconciling difference, the company could neither document nor quantify the specific reasons why its reported costs differed from those recorded normally in its records. With respect to Iscor's explanations for the difference, the fact that the company had to use relative sales quantities to determine product specific production quantities, or that it had to include sales of different models within a product code in different CONNUMs does not justify it not capturing all costs as recorded in its financial accounting system in accordance with its home country GAAP. In addition, Iscor having to adjust its standard costs to actual for the submission should cause the reported costs to agree with the actual costs recorded in its accounting system, not cause a reconciling item. Absent support for each of the reconciling assumptions noted by Iscor, we consider it appropriate to adjust the company's reported costs to include all costs as captured by its normal accounting system.

Comment 4

Petitioners argue that the Department must adjust Iscor's reported G&A expense for methodological errors. The petitioners cite the Department's cost verification report which states that Iscor omitted headquarters' costs from G&A and allocated G&A against fixed costs rather than cost of sales. Thus, the petitioners contend that the Department should correct these figures for the final determination.

Iscor claims that it is appropriate for it to allocate general expenses as a percentage of the fixed costs incurred to manufacture each specific product code. Iscor argues that it uses this methodology in the normal course of business and that the methodology appropriately applies the G&A percentage to each product code's reported fixed cost amount. Moreover, Iscor claims that the effect of expressing the percentage in terms of fixed cost instead of total cost has little effect on the reported costs because it is basically the same amount.

DOC Position

We agree with the petitioners that Iscor should allocate its G&A expense based on cost of sales rather than fixed costs. As set forth in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38150 (July 23, 1996), our normal methodology for allocating G&A expenses to merchandise is based on cost of sales. Our methodology recognizes the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, head counts, fixed costs) is purely speculative. The Department's normal method for allocating G&A costs based on cost of sales takes into account all production factors (*i.e.*, materials, labor, and overhead) rather than a single arbitrarily chosen factor. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we allocated such costs for the final determination based on cost of sales.

In addition to allocating Iscor's G&A expenses based on the company's cost of sales, we increased Iscor's reported G&A expenses to account for headquarters costs incurred during the first half of the POI. Iscor indicated that this expense is a cost of production and that it should have included it in COP and CV. (See Iscor's cost verification report, at page 2.) Furthermore, Iscor included similar costs incurred during the second half of the POI in the submitted COP and CV.

Comment 5

Petitioners argue that ABS Grade A shipbuilding plate should not be matched to ASTM A36 plate because the majority of the shipbuilding plate was dual-certified to the A36 specification and is sold as structural plate. According to petitioners, the Department's plate specification hierarchy dictates that the more appropriate match is to the most stringent standard to which the product is produced: the ABS grade. This grade, they allege, exhibits the closest physical characteristics.

Iscor argues that ABS Grade A shipbuilding plate is sold as structural steel and is intended to be used primarily as ASTM A36 material. Iscor claims that the Department verified Iscor's plate specification model match hierarchy.

Petitioners counter that the fact that shipbuilding plate may be used as structural plate or sold to structural plate customers is irrelevant to the Department's plate specification model match hierarchy, which focuses on physical characteristics. In petitioners' view, the fact that this steel is dual-certified to both the ABS and ASTM A36 specification does not mean that A36 is the best match. Petitioners state that because this material meets the more stringent ABS shipbuilding standard, it should be matched to a product with similar characteristics.

Iscor responds that the dual certified ABS and A36 plate was sold in the United States as a structural steel and not as shipbuilding plate. Iscor acknowledges that its customers requested the dual certification to enable them to sell this material as shipbuilding plate, but argues that the vast majority of this material was sold as A36 material. Iscor claims that matching this steel to Lloyds shipbuilding plate Grade A would ignore the first intent for the material sold in the United States, which is structural steel. Iscor likens matching the two shipbuilding steels under these circumstances to matching a pressure vessel steel to a structural steel. Iscor notes that it gives dual certified ABS and A36 material the same internal quality code as it gives to single certified A36 material, while single certified ABS plate has a different quality code. Iscor cites this as evidence that the company treats the dual certified material as equivalent to A36 and that this is the best home market match for dual certified material sold in the United States.

DOC Position

We agree with petitioners. As petitioners correctly note, the fact that shipbuilding plate may be used as structural plate or sold to structural plate customers is irrelevant to the Department's plate specification model match hierarchy, which focuses on physical characteristics of the most stringent specification to which a product is made. In this case the ABS Grade A specification is the more stringent specification and this is the specification that is controlling in selecting a home market product. As Iscor acknowledges, the reason the product sold in the United States is dual certified is that its customers requested the dual certification to enable them to sell this material as shipbuilding plate. Regardless of how this product is ultimately used by the customer, this remains the most stringent specification to which this product is made. For this final determination we are continuing to consider the best match specification for dual certified ABS/A36 plate sold in the United States to be Lloyds Grade A plate sold in the home market.

Comment 6

Petitioners allege that Iscor seemed to have difficulty reporting the correct chemical requirements of the certain plate specifications examined at verification, which may distort the appropriate product matching of grades. They state that the Department should ensure that the correct chemical requirements are reviewed when matching grades and creating product control numbers. Petitioners note that a large and divergent number of products were included in one product control number. Petitioners state that Iscor was unable to determine the actual characteristics of much of the plate in this product control number, and that therefore the Department should reject Iscor's product control numbers and base the final determination on facts available.

Iscor maintains that it correctly constructed each product control number using information that pertained to the order on which the invoice was issued. Iscor notes that petitioners' claims relate to information submitted in response to Part D of the Department's antidumping duty questionnaire, the cost portion of this review. Iscor references its response to Comment 2 above and alleges that because the effect and cost deviations were declared and explained in the costing system, the deductions made from the variances in cost are accounted for.

DOC Position

We agree with both respondent and petitioners, in part. During our review of the product characteristics for numerous sample sales, we did not identify any discrepancies in reported product characteristics between mill certificates and product specifications. That is, each product we examined met its stated product specification. This was also true of the commercial quality plate that we examined. We note that with respect to the one product control number referenced by petitioners, the relevant specification covers a broad range of steels. Again, all of the products we examined for this specification were within the stated specifications of this product. While the specifications of the product that Iscor intended to make, as opposed to the specifications that the product actually met and were sold to, are relevant in terms of analyzing costs of production, they are not relevant for this portion of our analysis.

While we agree with petitioners that at verification we found some minor inconsistencies between the product characteristics noted on Iscor's plate specification model match hierarchy tables and the actual specifications themselves, we did not find any inconsistencies which were significant enough to change the model match hierarchy. Therefore, we have not modified Iscor's plate specification model match hierarchy from the one used in the preliminary determination.

Comment 7

Petitioners allege that Iscor improperly constructed its product control numbers. They claim that material such as flange material, which is described by Iscor as the "lowest of the low" in the market, has generally been downgraded from other specification products, and Iscor admits that it cannot determine what the original specification might be. Petitioners assert that flange products cannot be said to be like other prime commercial products. See 19 U.S.C. 1677(16)(B)(ii). Petitioners also argue that like other non-prime products, flange material is not equal in commercial value to prime commercial products. See 19 U.S.C. 1677(16)(B)(iii). In petitioners view, flange material should not be compared to prime commercial grade or structural material sold in the United States.

Petitioners argue that certain downgraded products may also be sold outside the ordinary course of trade. Petitioners cite the factors in Laclede v. United States: the price of the merchandise compared to other home market sales, the profitability of the merchandise compared to other home market sales, the number of customers purchasing the product, quality assurances provided for the product, differences in how the product is sold, the end use of the product, the average size of the sale compared to other sales, and whether the product is distinguished by the seller from other merchandise of the same type. See Laclede Steel Co. v. United States, Slip Op. 95–144 (CIT August 11, 1995). Petitioners claim that many of these factors apply to this case. Petitioners

argue that the Department verified that certain products (such as flange material) are sold at a discount and are less profitable than prime products. Petitioners also state that these products are downgraded to more limited uses than originally intended when produced, and that they are sold as is without mill certificates. Unlike most products, according to petitioners, these products are inventoried and given a different designation, and these products are sold to a more limited group of customers.

Petitioners state that Iscor has configured its database in such a way that it has distorted product matching, calculation of difference-in-merchandise adjustments, and calculation of normal value. For these reasons, they claim that the final determination should be based on the facts available.

Respondent maintains that its home market database is usable and has been verified. Iscor notes that it has distinguished between prime and non-prime products. Iscor notes that it was instructed by the Department in its March 19, 1997, Supplemental Questionnaire to reclassify non-prime products to prime products if these products meet any specification (even if not the one originally intended). Iscor claims that it followed the Department's instructions and that it would be unjust to penalize Iscor for following these directions.

Iscor argues that its reclassified products are not sold outside the ordinary course of trade. Iscor states that in determining whether products are outside the ordinary course of trade the Department does not evaluate just one factor in isolation but all the circumstances particular to the sales in question. See Murata Mfg. Co. v. United States, 820 F. Supp. 603, 607 (CIT 1993) and Portland Cement and Clinker from Mexico, 62 FR 47626 (September 10, 1997). Iscor claims that its reclassified products are not sold for unusual reasons or under unusual circumstances, and urges the Department not to find these sales outside the ordinary course of trade.

DOC Position

We agree with respondent. At verification we found that Iscor produces and sells certain products as commercial quality products for general engineering applications where moderate bending, forming and drawing are involved. These products are not produced to specific mechanical property requirements and, as a result, they do not meet the same stringent specifications that may be characteristic of other Iscor products. Although Iscor's family of commercial products is sold to certain customers in the local market absent test certificates, this material is accompanied by analysis certificates which attest to its meeting certain chemical specifications.

During our review of Iscor's commercial quality products, we found that some of these products are comprised of steel which has been downgraded and reclassified during production from its originally intended specification. This material, like the commercial quality material intended as prime commercial quality material, meets the limited characteristics and specifications of Iscor's family of commercial quality products. We note that for purposes of a price-to-price comparison, the fact that some commercial quality material may originally not have been intended as commercial quality material is irrelevant. What is important is that the material sold and valued as commercial quality material meets the specifications for which it is valued and sold; and our analysis of sample sales at verification involving these products demonstrated that they conformed to the limited specifications and guidelines of commercial quality plate products. We acknowledge that the Department instructed Iscor to reclassify certain non-prime products classified as "seconds" as prime products if they met any specification (even if not the one originally intended).

Regarding petitioners' claim that Iscor's reclassified and downgraded products may be sold outside the ordinary course of trade, petitioners appear to be primarily concerned with flange material, the "lowest of the low." We agree that several of the factors cited as criteria used in making such a determination with respect to sales outside the ordinary course of trade appear to apply in this case. For example, certain flange material is sold on a tender basis, and not per specific orders. As a result, these products may be sold at prices lower than other prime commercial grade steel products. The profitability of downgraded commercial material is also less than the profitability of an intended commercial grade material. There is limited information on the record with respect to the other criteria. However, we note that a very significant portion of the commercial grade home market sales that match to U.S. sales fail the cost test. Because the steel in question is the "lowest of the low," these prices are presumably lower than those of as intended commercial quality steel. To the extent that certain sales in the relevant product control number are more properly designated as seconds than prime (and therefore should be in a separate control number and not matched to prime U.S. sales (see Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands, 62 FR 18476, 18482 (April 15, 1997)), we believe that these sales are most likely to be the ones that failed the cost test and are, therefore, already not being used in our matching analysis. Therefore, no further adjustment is required. See Analysis Memo, dated October 24, 1997.

Comment 8

According to petitioners, Iscor has improperly calculated its home market rebate adjustments. Petitioners note that two of the rebates, REBATE2H and REBATE8H, were allocated by calculating the total rebates paid on all direct and indirect sales and dividing that amount by the direct sales tonnage. This amount was allocated only to direct sales, which petitioners allege unfairly skews the price-to-price comparisons. Petitioners argue that the Department should not grant Iscor's reported REBATE2H or REBATE8H as adjustments to normal value; but for purposes of the cost/price test, the full rebates should be granted. Petitioners state that the amounts of two other rebates, REBATE3H and REBATE5H were skewed. Petitioners urge the Department to use facts available for this final determination, as the gross unit price not of rebates cannot be accurately determined for any sale receiving any of these rebates.

Iscor claims that it used a reasonable methodology in reporting rebates and that the Department verified these rebates. Iscor notes that customers were entitled to a rebate on both direct and indirect tonnage, that is irrespective of whether the material was bought directly from Iscor or through a merchant. Iscor argues that it correctly allocated the full rebate to direct sales because it was requested to state the rebates on a sales-specific basis and it only stated direct sales tonnage in Part B of its questionnaire response.

DOC Position

We agree, in part, with both petitioners and respondents. With respect to REBATE2H and REBATE8H, we agree with petitioners that the methodology employed by Iscor which calculates these rebates on the basis of both direct and indirect tons purchased (rather than on direct tons purchased) skews the treatment of these rebates. This methodology was not explained to the Department prior to verification. Indeed, Iscor's most detailed submission on this issue indicated that the rebates were calculated using total customer tonnage (see response of June 27, 1997). Iscor's allocation methodology greatly overstates the rebate amounts for REBATE8H and REBATE2H for certain sales, and understates these amounts for other sales. Because these rebates are allocated across all direct sales to a particular customer, and customers may buy more than one type of steel, these distortions can significantly affect our analysis. We note, however, that Iscor's reported amounts for REBATE8H do not apply to home market sales that are matched to U.S. sales. Consequently, this portion of the comment is moot. Regarding REBATE2H, we are disallowing this rebate for the final determination with the exception noted below. For certain sales, we found at verification that essentially all sales were direct rather than a combination of direct and indirect. For these sales, we are continuing to use the reported rebate amount as an adjustment to normal value. (We note that certain sales for which this rebate was reported do not match to U.S. sales and although we are disallowing this rebate, for these sales this issue is moot.) With respect to REBATE3H and REBATE5H, the Department found at verification that Iscor's allocation methodology understated the actual amounts for the rebates had they been calculated on a transaction-specific basis. For the final determination, therefore, we are using the reported rebate amounts as adjustments to NV. See Analysis Memo, dated October 24, 1997.

Comment 9

Petitioners state that various errors in Iscor's U.S. sales database render it unreliable as a basis for the final determination. For example, petitioners identify certain discrepancies relating to ocean freight rates and early payment discounts. Petitioners argue that U.S. credit expenses were not verified as no documentation of payment dates was provided.

Iscor claims that the U.S. sales database has been verified. With respect to ocean freight, Iscor notes that the discrepancy arose because the reported amount was an estimate calculated prior to the actual shipment. Iscor states that the Department has the actual expense and that an estimated freight rate will always differ from the actual freight rate as estimated rates are negotiated prior to fixing sales price. With respect to early payment discounts, Iscor alleges that it employed a reasonable methodology.

DOC Position

We agree with petitioners in part. While the Department identified certain discrepancies relating to ocean freight rates, early payment discounts, and U.S. credit at verification, we disagree that these errors render Iscor's overall U.S. sales database unreliable. The Department considers these mistakes to have been relatively minor and not to call into question the integrity of the entire database. As a result, we are using Iscor's submitted data, with the revisions noted in these comments, and not using total facts available in this final determination.

With respect to ocean freight expenses reported by Iscor for certain sales, we found at verification that the reported amounts misstated the actual amounts for certain shipments. For the final determination, we have corrected ocean freight charges for these specific sales. For all other ocean freight expenses, where such charges are applicable, we are applying as facts available the highest reported amount for any U.S. sale. By not providing verifiable information for ocean freight expenses when such information was available to Iscor, we have determined that Iscor failed to cooperate by not acting to the best of its ability to comply with a request for information. See Certain Pasta From Turkey, 61 FR 30309, 30312 (June 14, 1996) (Pasta). Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. Additionally, we did not convert ocean freight from rand to dollars as we did in the preliminary determination, as this amount was in fact reported in dollars.

With respect to U.S. credit expenses, we were unable to verify date of payment, since Iscor did not provide documentation of proof of payment for its U.S. sales during verification. As facts available for U.S. credit expenses, we are applying the highest reported U.S. credit expense to all U.S. sales. By not providing verifiable information for U.S. date of payment when such information was available to Iscor, we have determined that Iscor failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

We are allowing Iscor's reported early payment discounts. Our review of Iscor's allocation methodology, which calculated a discount amount based on all early payment discounts and tons shipped to the customer was determined to be reasonable. The allocated amount reported is an average for all sales—including sales which received the discount and sales which did not receive the discount. Consequently, this amount will always differ from the discount amount specified by contract on individual sales, as the discount was not in fact paid on all sales. For the final determination we are continuing to use Iscor's reported U.S. early payment discount amounts.

Comment 10

Petitioners note that many U.S. sales were made on a theoretical weight basis and that because Iscor rolls larger than the nominal dimensions, customers who purchase on a theoretical weight basis actually receive more tons than ordered. Therefore, if the gross price is divided by the actual weight, it will result in a lower unit price than the theoretical weight based unit price. Petitioners argue that all price comparisons should be made on the same weight basis, and that all prices and expenses should be converted to actual weights. Respondent did not comment on this issue.

DOC Position

We agree with petitioners that all price comparisons should be made on the same weight basis. In its original and supplemental questionnaire responses, and as we found at verification, Iscor failed to report properly an actual to theoretical weight conversion factor for both its U.S. and home market sales, thereby prohibiting price comparisons to be made on the same weight basis. As facts available, we are applying the average of the verified U.S. ratio of theoretical to actual weights to all U.S. quantities and prices reported on an actual weight basis. We are applying the same conversion factor to CV. With respect to the home market, as facts available we are applying the verified ratio of theoretical to actual weights to all home market quantities and prices reported on an actual weight basis. We are applying this same conversion factor to the reported COP. See Analysis Memo, dated October 24, 1997. We are applying facts available to these adjustments under section 776(a)(2) because Iscor did not provide information requested by the Department in its submitted database.

Comment 11

According to petitioners, Iscor did not document its home market payment dates at verification. Therefore, they claim that the Department should not grant Iscor a downward adjustment to normal value for home market credit expenses due to the fact that the payment time could not be verified.

Iscor argues that the Department incorrectly rejected Iscor's proof of payment. Iscor notes that verification is a long process and it is often necessary

to work long hours to complete verification. Iscor explains that because the verification continued past normal business hours on the last day of verification it lost access to the office that had proof of payment records. Iscor states that it forwarded this information to the Department representatives after verification, but the Department rejected these records. Iscor urges the Department to consider proof of payment to be verified because it made a good faith effort to provide the information to the verification team.

In responding to petitioners, Iscor noted that its data system does not provide transaction specific payment dates because local sales are paid by statement, not by individual invoice. Iscor claims that it devised a reasonable methodology as the most accurate way to determine payment dates based on the information that it did have.

DOC Position

We agree with petitioners that we were unable to verify Iscor's home market payment dates. While Iscor may have devised a reasonable date of payment methodology, we were not able to verify this methodology on site. The Department appropriately rejected Iscor's post-verification date of payment submission as untimely. Date of payment information and source documentation was clearly requested in the Department's verification outline, which was provided to Iscor in advance of verification. This information should have been prepared in advance of the start of verification and should have been part of the sales trace packages at the time they were presented to the Department. After verification had ended, the verification team was not in a position to tie date of sale information to original company records or otherwise verify any information regarding payment date. Therefore, we are denying home market credit expenses as an adjustment to normal value.

Comment 12

According to petitioners, no offset to normal value for pre-sale warehousing should be granted as the Department was unable to verify pre-sale warehousing expenses. Respondent did not comment on this issue.

DOC Position

We disagree with petitioners. The Department is not required to verify every item in a respondent's questionnaire response. Rather, in conducting verification, the Department must prioritize its examination of a respondent's reported data according to factors such as time availability, a respondent's general level of compliance, and the relative dollar value of the reported amounts. "[V]erfication is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe." Bomont Indus. v. United States, 733 F. Supp. 1507, 1508 (CIT 1990). In this case, time did not permit us to verify Iscor's reported pre-sale warehousing expenses. Because we have no evidence that would lead us to disregard respondent's reported pre-sale warehousing expenses, we are granting this adjustment for the final determination.

Comment 13

Petitioners argue that the scope of the investigation should be clarified to include: (a) purported "alloy" plate, sold as ASTM A36 or another carbon plate specification, to which trace amounts of inexpensive alloying agents have been added ("low-alloy plate") and (b) subject merchandise sold as having a 3/16" nominal thickness but "rolled light" to an actual thickness of just under 4.75mm (the boundary of the tariff classifications set forth in the scope description of the preliminary determination) ("light-rolled 3/16" plate"). Petitioners state that the Department routinely makes minor changes to its scope descriptions, both during investigations and after an order is issued, particularly where this is thought necessary to prevent circumvention. See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, line and Pressure pipe from Italy, 60 FR 31981, 31983–85 (June 19, 1995) and Freshwater Crawfish Tail Meat from the People's Republic of China, 62 FR 41347, 41357–58 (August 1, 1997).

Petitioners claim that any argument that the International Trade Commission (ITC) preliminary determination precludes this scope clarification is based on a fundamental misunderstanding of the interrelationship between the scope of investigation, the industry examined by the ITC (defined as producers of the like product), and the requirement for industry support. Petitioners note that although the Department frequently modifies the scope of an investigation during its course, the Department is expressly prohibited by statute from reconsidering the issue of industry support. Petitioners claim that the Department has explicitly rejected the theory that the Department cannot include merchandise within the scope of an investigation unless precisely the same merchandise was include in the ITC's injury determination. See Hot-Rolled Lead and Bismiuth Carbon Steel Products from the United Kingdom and Germany, 62 FR 34213, 34215 (June 25, 1997) (initiation of anticircumvention inquiry). Petitioners add that none of the anticircumvention provisions require a new injury determination.

According to petitioners, they have demonstrated in their July 3, 1997, submission that, using the five factors traditionally employed by the Department to decide whether particular products are within the same class or kind covered by the order, low-alloy plate and light-rolled 3/16" plate share the same general physical characteristics as other subject plate; that ultimate purchasers have the same expectations of low-alloy plate and light-rolled 3/16" plate as of other subject plate; and that low-alloy plate and light-rolled 3/16" plate are sold in the same channels of trade, for the same ultimate uses, and at the same cost, as other subject plate.

Petitioners assert that all 3/16" nominal thickness plate is within the scope of the investigation regardless of whether its actual thickness is less than 4.75mm. They state that because 3/16" plate is an important part of the market for thin gauge plates, the scope should be clarified to state that it covers plate 4.75mm in thickness or more in nominal or actual thickness. According to petitioners, any customer ordering a 3/16" A36 plate, for example, would be willing to accept any thickness within the tolerance for that size plate. Thus, any plate within the tolerance for 4.75mm nominal thickness plate will compete directly with any other plate within the tolerance.

Petitioners argue that all cut-to-length plate that meets common non-alloy plate specifications is within the scope of the investigation, regardless of the presence of alloys in excess of those specified in the Harmonized Tariff Schedule of the United States ("HTSUS") categories for non-alloy steel. They state that the addition of such alloys does not change the specification, grade, physical characteristics or applications of the plate. Petitioners believe the published description of the scope of the investigation should be amended to make clear that it covers all cut-to-length plate made to common non-alloy plate specifications. This includes, but is not limited to, ASTM A36, A572, A709, A588, A283, PVQ A516, A573, A455, and ABS grades, as well as chemical or proprietary equivalents to

those specifications, regardless of the alloy content or tariff classification.

Petitioners allege that certain producers in the countries subject to these investigations on cut-to-length carbon steel plate have begun to vary the alloy content slightly so that these products no longer meet the tariff definition of non-alloy steel. In particular, petitioners believe that certain producers may be adding boron to their chemistries, because boron is relatively inexpensive. Petitioners believe such products are being used in identical applications as other subject merchandise. In petitioners' view, in any instance where the added alloy does not change the performance characteristics of the plate or affect the product's classification within the industry specification the product should remain within the scope of the investigation.

Iscor urges the Department to reject petitioners' scope clarification because this is not a routine minor change nor have petitioners submitted any information on the record that Iscor or any other South African producer is circumventing or trying to circumvent the preliminary determination in this investigation.

DOC Position

We disagree with petitioners. See memorandum on Scope of Investigations on Carbon Steel Plate, Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Comment 14

Iscor and Highveld urge the Department to correct its exchange rate methodology.

Highveld argues that the Department should use without exception the actual daily exchange rate certified by the Federal Reserve Bank of New York to convert the South African currency into U.S. dollars instead of a benchmark rate. According to Highveld, both the law and Department practice direct the Department to use actual unadjusted daily exchange rates. See Section 773A(a) of the Act and the Statement of Administrative Action, H.R. Doc. No. 103–316, at 841–842 (1994). See also Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067, 69071 (December 31, 1996). Highveld notes that Certain Welded Carbon Steel Pipe and Tube from Turkey states that the actual daily exchange rates were used rather than the benchmark rate because the foreign currency depreciated substantially against the U.S. dollar of the period of review. Highveld also claims that the Department is reviewing the application of the benchmark in situations where the foreign currency depreciates substantially against the U.S. dollar over the period of investigation or review, situations in which it may be appropriate to use daily rates. See Department of Commerce Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, 61 FR 9434, 9435 n.2 (March 8, 1996). Highveld claims that the South African currency steadily and substantially depreciated against the U.S. dollar during the period of investigation. It cites the sales verification report where verifiers noted a "sharp devaluation during the POI."

Highveld also states that there need not be a determination of significant inflation or hyperinflation. Highveld cites Certain Welded Carbon Steel Pipe and Tube from Turkey and states that Department practice does not require a claim of significant inflation in order to use daily exchange rates and that daily exchange rates may be used on two separate occasions: (a) if the foreign currency has undergone a substantial depreciation against the dollar or (b) if domestic price inflation is significant. Highveld claims that the first scenario occurred for this case and urges the Department to use daily exchange rates.

Iscor argues that the Department incorrectly used a benchmark rate to convert South African rand into U.S. dollars instead of the daily rate on certain days of the POI because of currency fluctuations. Iscor maintains that the use of the benchmark rate is contrary to section 773A(a) of the law and Commerce practice (Certain Welded Carbon Steel Pipe and Tube from Turkey). Iscor takes issue with the Department's statement in the preliminary determination regarding the decline in the South African rand. Iscor argues that it is not a requirement in the law, regulations or Policy Bulletin (see above) that South Africa be a high-inflation economy in order not to use a benchmark. Like Highveld, Iscor urges the Department to correct its exchange rate methodology in the final determination and use the actual unadjusted daily exchange rates instead of the benchmark rates for all dates.

Petitioners argue that the currency conversion methodology used in the preliminary determination was correct. In petitioners' view, the Department's methodology was both lawful and consistent with past practice. Petitioners cite section 773A of the Act and the SAA as stating that in converting foreign currencies into U.S. dollars fluctuations in exchange rates shall be ignored. Petitioners argue that the Department's preliminary determination in this case is entirely consistent with the Policy Bulletin on Currency Conversions. (See Department of Commerce Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, 61 FR 9434, 9435 n.2 (March 8, 1996).)

Petitioners explain that the reason the methodology used in the preliminary determination differs from that in Certain Welded Carbon Steel Pipe and Tube from Turkey is that the Turkish case involved a hyperinflationary economy in which the currency was undergoing a dramatic depreciation. Petitioners state that this case does not involve dramatic currency depreciation driven by hyperinflation, and cite the Department's finding in the preliminary determination that the decline in the rand was not so precipitous and large as to reasonably preclude the occurrence of fluctuations. Petitioners argue that Highveld's statements that the rand underwent a sharp devaluation quoted in the verification report is not evidence of a precipitous and large depreciation in the rand and the fact that the benchmark was used only for certain days also argues against the existence of a precipitous and large depreciation in the rand.

DOC Position

We agree with petitioners. This case is distinguished from Certain Welded Carbon Steel Pipe and Tube from Turkey as that case involved a hyperinflationary economy in which the currency was undergoing a dramatic depreciation. There is no evidence in the present case of either a precipitous and large depreciation in the rand relative to the dollar or of hyperinflation in the South African market. As petitioners correctly note, section 773A of the Act and the SAA both state that in converting foreign currencies into U.S. dollars fluctuations in exchange rates shall be ignored. The Department's use of benchmark exchange rates in place of daily exchange rates in instances when a foreign currency is considered fluctuating is consistent with these statutory requirements. We are continuing to use benchmark rates in place of daily exchange rates in instances when a foreign currency is considered fluctuating for the final determination. For further discussion of this issue, see the "Currency Conversion" section of this notice.

Comment 15

Petitioners argue that Highveld's per-unit COP data do not properly account for differences in physical characteristics. Petitioners further contend that Highveld's methodology

ignores cost differences due to differences in each product's processing time per ton. Petitioners support these arguments by citing that (1) Highveld allocated the same per-ton conversion costs to slabs, billets, and blooms although they have different production processes, and (2) Highveld allocated conversion costs for the flat-products plant based on the tonnage of slab inputs compared to the tonnage of slab inputs used for other non-subject products produced in the plant. The petitioners reason that all products produced by the flat products plant require different machine times per ton and, therefore, should have different per-unit conversion costs according to their thickness, width, length, and other extras. Petitioners argue that Highveld should have at least allocated the conversion costs for as-rolled products over the output of finished products instead of over the input.

Highveld asserts that it properly adjusted its normal accounting records, which calculates a single cost for all products, in order to capture the cost differences due to the physical characteristics on which the Department based its analysis. Highveld notes that it adjusted costs for differences in chemical components, additional labor and overhead costs associated with normalizing, and labor and variable overhead costs based on yield factors to account for different rolling costs for different dimensions of merchandise.

DOC Position

We agree with the petitioners in part that Highveld's reporting methodology failed to fully account for cost differences associated with differences in certain physical characteristics of the subject merchandise. Highveld's reported COP and CV data does account for (1) chemical input differences for differing quality and types of steel produced, (2) the additional costs related to producing normalized products, and (3) yield loss differences between differing dimensions of merchandise. Highveld's reported cost data, however, failed to account for cost differences associated with processing time differences between varying dimensions of finished product. Our verification of Highveld's reported cost data showed that the variable cost of manufacturing the subject merchandise differs depending on the dimensions of the product produced. We therefore adjusted Highveld's reported costs to reflect these dimensional cost differences.

Comment 16

Highveld claims that, in its cost verification report, the Department miscalculates the difference between the COM in Highveld's accounting system and the COM submitted by the company. Highveld agrees with two of the adjustments to the reconciliation identified by the Department in its cost verification report. Highveld objects, however, to the Department's proposed adjustment to value the cost of the October 1995 to December 1995 sales from 1995 standard per-unit costs to 1996 standard per-unit costs. Highveld contends that the Department should use the average of the per-unit costs reported to the Department in its Section D response, which results in an insignificant difference between the COM submitted to the Department and the COM in Highveld's accounting system. Highveld maintains that its reconciliation of submitted COM to that contained in its cost accounting system shows only a small difference. Any adjustment to the submitted costs for such a small difference, according to Highveld, is completely unjustifiable.

The petitioners urge the Department to base Highveld's COM on total facts available because Highveld was unable to reconcile its reported COM with its cost accounting system. If the Department does not base the final determination on total facts available, petitioners contend that the Department should at least adjust COM by the overall difference between Highveld's reported COM and its cost accounting system. The petitioners contend that the flaws in Highveld's submitted COM reconciliation identified by the Department should be accounted for when comparing the total submitted COM with that contained in Highveld's cost accounting system for the same time period. In particular, the petitioners claim that Highveld incorrectly valued the cost of its 1995 sales using 1995 standard costs rather than 1996 standard costs which were the basis of its cost response.

DOC Position

We agree with Highveld that the cost verification report miscalculated the difference between its submitted COM and that recorded in its accounting system. We reviewed the revised reconciliation calculation as contained in the cost verification report and noted that G&A was erroneously computed. In the normal course of business, Highveld allocates G&A expenses to its steel making cost centers, including these expenses as a cost of manufacturing, and ultimately in the cost of sales for financial statement purposes. Because Highveld's total COM per its accounting records included G&A expenses while the submitted COM did not, we need to adjust the submitted COM for the total amount of G&A expenses reported to the Department for subject merchandise. In addition, since Highveld's response is based on its actual cost of manufacturing during 1996 and not its 1996 standard cost of manufacturing, we agree with Highveld that the October through December 1995 sales should be valued based on the average cost of manufacturing as contained in its response for purposes of the cost reconciliation. We are satisfied that the reconciliation provided by Highveld in its September 15, 1997, case brief establishes that the reported costs reasonably agree with Highveld's accounting records. Therefore, we did not adjust Highveld's submitted costs for this difference.

Comment 17

Petitioners contend that the Department should increase Highveld's COP because Highveld did not include in the submitted costs the full G&A and interest expense on materials purchased from other divisions within Highveld.

Highveld argues that G&A and interest for materials transferred from other divisions are already included in the calculation of G&A and interest for the subject merchandise. Highveld reasons that if the Department were to include these costs as a part of material costs, it would be double counting G&A and interest.

DOC Position

We agree with Highveld. The Department normally treats the cost of inputs obtained from other divisions within the same company as a cost incurred by that company (i.e., it is not an input obtained from an affiliate, it is an input produced by the respondent). In this instance we use the cost incurred by the company to produce the input. See e.g., Final Results of Antidumping Duty Administration Review: Certain Forged Steel Crankshafts from the United Kingdom, 61 FR 54613, 54614 (October 21, 1996) ("Crankshafts"). We state in Crankshafts that although respondent describes companies as "related" in various sections of their questionnaire response, the weight of record evidence (e.g., corporate structure charts and audited financial statements) indicate that they are divisions of the same corporation. Thus, in Crankshafts the Department used the division's actual verified cost of producing the input.

Highveld's record evidence indicates that the inputs it identified as obtained from "related" parties were obtained from other divisions within the company. While the Department's normal practice is to value inputs from divisions at actual cost, Highveld elected to value these inputs at its transfer prices for submission purposes. Our verification of Highveld's reported cost data showed that the transfer prices for these inputs were higher than the COM. Since the transfer price was higher than the cost of manufacturing each input, Highveld did not understate input costs in its reported COP and CV data. We, therefore, agree with Highveld that to include G&A and interest as part of material costs would lead to double counting of G&A and interest.

Comment 18

Petitioners claim that Highveld improperly allocated labor costs between fixed and variable production costs by treating virtually all labor costs as fixed. Petitioners allege that Highveld's allocation of variable and fixed costs distorts the Department's difference-in-merchandise comparison and product-matching.

Highveld maintains that it properly reported total direct labor for the subject merchandise and that variable labor costs are not under-reported for the Department's differences-in-merchandise adjustment.

DOC Position

We agree with Highveld that it properly allocated labor costs between variable and fixed costs using percentages based on the historical experience of its plant management. Because Highveld reported in its Section D response both variable and fixed per-unit labor costs as direct labor, we reclassified Highveld's reported fixed labor costs as fixed overhead costs to compute the difference-in-merchandise adjustment.

Comment 19

Petitioners recommend that, if accepted, Highveld's Section D costs be used as the basis for difference-in-merchandise adjustments and product matching.

Highveld agrees that its Section D costs should be used to calculate the differences-in-merchandise adjustment.

DOC Position

We agree with both petitioners and Highveld. The Department used Highveld's Section D costs to calculate the differences-in-merchandise adjustments for the final determination.

Comment 20

Petitioners note that Highveld incorrectly calculated G&A expenses by using different divisional levels in the numerator and denominator for the calculation. Petitioners suggest that the Department apply the recalculated G&A expenses to Highveld's COP and CV.

Highveld agrees that the G&A expense rate recalculated at verification should be used for the final determination.

DOC Position

We agree with both petitioners and Highveld. The Department used Highveld's recalculated G&A expense to calculate COP and CV for the final determination.

Comment 21

Highveld maintains that it received net interest income and that it incurred no interest expense associated with the production of the subject merchandise. Therefore, Highveld contends that COP and CV interest expense should be zero. Highveld argues that the Department's consolidated interest expense calculation should exclude the entire amount of interest expense associated with Columbus Joint Venture, an entity in which Highveld has only a 33 percent equity interest. Highveld contends that having a 33 percent equity interest fails to meet the requirements for consolidation. Highveld cites Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18445 (April 15, 1997) and Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, 57 FR 21065, 21069 (May 18, 1992), to support its position that the Department should exclude the Columbus Joint Venture from Highveld's consolidated interest expense computation since there is no parent-subsidiary corporate relationship or parental control between these two companies. To support its claim, Highveld notes that the Department did not consolidate a joint venture in which the respondent had 50 percent equity ownership in Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23688 (May 6, 1994), because the Department determined that parental control did not exist. Highveld notes that it is not a parent to Columbus Joint Venture and it does not exercise parental control.

Petitioners assert that Highveld's corporate consolidated financial expenses must be used to calculate interest expense for COP and CV. Petitioners state that the cases cited by Highveld show that the Department calculates a consolidated interest factor where the parent exercises control over the subsidiary. Since Highveld Steel Works is controlled by the corporate parent, Highveld Steel and Vanadium Corporation Limited, the use of the consolidated interest expense rate is appropriate. Petitioners further argue that since Highveld includes interest expenses for the Columbus Joint Venture in its consolidated corporate financial statement and that the statute at 19 U.S.C. 1677b(f)(1)(A) provides that costs shall normally be calculated based on the exporter's or producer's records if they are kept in accordance with the generally accepted accounting principles ("GAAP") of the exporting country, the Department should include all interest expenses consolidated by Highveld in its financial statement in calculating a corporate interest expense rate.

DOC Position

We agree with petitioners. The Department normally calculates interest expense based on the respondent's audited consolidated financial statements for the year that most closely corresponds to the POI. Highveld consolidated the financial results of the Columbus Joint Venture in its 1996 annual audited financial statements. Since Highveld's audited financial statements were found to be fairly presented and in conformity with the GAAP of South Africa, we have no reason to believe that the financial results for the Columbus Joint Venture should not have been included in the consolidated financial statements for Highveld.

We disagree with Highveld that the cases it cited support its argument. In Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18445 (April 15, 1997), there were several companies which met the requirements for consolidation but because Korean GAAP did not require companies to prepare consolidated financial statements, no audited consolidation was prepared. We therefore combined the separate audited financial statements of the companies to calculate a group-level interest expense factor. In Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23688 (May 6, 1994) and in Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel

Butt-Weld Pipe Fittings from Thailand, 57 FR 21065, 21069 (May 18, 1992), the respondents were not included in the audited consolidated financial statements of the parent because they did not meet the consolidation requirements of their home country GAAP. In this case, however, the Columbus Joint Venture is included in the audited consolidated financial statements of Highveld, in accordance with its home country GAAP. Therefore, none of these circumstances apply to Highveld, as Highveld included Columbus Joint Venture in its consolidated financial statements.

Comment 22

Petitioners argue that the final determination for Highveld should be based on total facts available. Petitioners state that it has documented in previous comments that Highveld's cost and price responses are completely unreliable and unusable in their present form. Petitioners note that the number of changes that the Department would need to make to use Highveld's sales data are substantial, to the extent the data is usable at all. Petitioners argue that Highveld's COP and CV data are completely unusable (see comments above). In petitioners' view, as the cost data are unusable, it is impossible to perform the below-cost sales analysis, use the CV data, or calculate difference in merchandise adjustments. Indeed, petitioners claim that Highveld's entire submission is unreliable and unverified and that the Department should base the final determination on facts available. As facts available, petitioners propose that the Department use the higher of the highest rate alleged in the petition or the highest rate found for another producer.

Highveld argues that the final determination should be based on its submitted data, not facts available. Highveld acknowledges that the Department found several errors in its reported information, but claims that this data was substantially verified and that any errors were invariably minor and not sufficient for the Department to resort to facts available. See Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan, 62 FR 2648, 2650 (January 17, 1997) and Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review, 61 FR 13834 (March 28, 1996). To the extent the Department finds errors or gaps in Highveld's information, respondent argues, it should revise the data using non-adverse facts available.

Highveld also objects to petitioners' claim that the Department should draw adverse inferences. In Highveld's view, the minor errors that were found are not sufficient to cause the Department to resort to adverse inferences. Highveld states that it did not fail to submit a questionnaire response, provide a response which was wholly unverifiable, or refuse to provide information to the Department. See Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38167 (July 23, 1996); Antifriction Bearings, 61 FR 35713, 35715–6 (June 8, 1996); Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 30309, 30312 (June 14, 1996). Highveld also cites other cases in which the Department did not apply adverse inferences, and states that in comparison with these cases, the application of adverse inferences is not appropriate in this case. See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271 (May 14, 1996) (Circular Welded Non-Alloy Steel Pipe From South Africa).

Highveld claims that the information it presented is not completely unreliable as suggested by petitioners, and the Department should not use total facts available or use adverse inferences in its final determination.

Petitioners counter that due to time and resource constraints, verification cannot be more than a spot-check of information provided by respondent. In petitioners' view, the sheer volume and pervasiveness of the errors discovered during verification call into question the accuracy and complement of the whole response. See Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271, 24274. Petitioners note that the statute allows the Department to use adverse facts available whenever an interested party has failed to cooperate by not acting to the best of its ability. Petitioners claim that the extensive pattern of inaccuracies and omissions is evidence of Highveld's failure to cooperate. Petitioners argue that given the extensive deficiencies found with respect to nearly every major cost and price adjustment, the Department should assign Highveld an adverse facts available margin based on the highest margin found for another producer or the highest rate in the petition.

DOC Position

We agree with respondent that the final determination in this investigation should not be based on total facts available. While the Department agrees with petitioners that there are errors and omissions in Highveld's responses, we do not believe that the scope and impact of the errors in question are sufficient to warrant the application of facts available in the case as a whole. See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 37014, 37015 (July 10, 1997). We note that the magnitude of the errors in this investigation are substantially less than those noted in Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271, 24272–3 (May 14, 1996). With appropriate corrections, the Department has determined that Highveld's responses are usable for purposes for the purpose of margin calculations. Pursuant to sections 776 and 782(e) of the Act, the Department has used the facts otherwise available when necessary.

Comment 23

Highveld argues that the Department incorrectly determined there to be one level of trade in the preliminary determination. Highveld claims that sales in the home market and sales in the U.S. are at different levels of trade and that the Department should grant it a CEP offset. Highveld does not contest the Department's determination that there was only a single level of trade in the home market, but does disagree with the Department's finding that home market and U.S. sales are at the same level of trade.

Highveld notes that the Department determines normal value for sales at the same level of trade as the U.S. sales and that the starting price for CEP is the first sale to an unaffiliated buyer from which profit and expenses are deducted under section 772(d) of the Act. Highveld cites the preliminary determination which states that this deduction "will normally yield a different level of trade for the CEP than for the later resale which is used for the starting price." Highveld states that to determine whether sales are at different levels of trade, the Department considers the stage in the marketing process, taking into account the class of customer, selling functions and expenses associated with these functions. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2107 (January 15, 1997) (Antifriction Bearings).) Highveld then cites the statute at 19 U.S.C. 1677b(a)(7)(A), which provides for a CEP offset if there is a difference in level of trade between CEP versus EP, but the data available do not provide an appropriate basis to determine a level of trade adjustment.

Highveld argues that record information demonstrates Highveld's home market sales are at a different, more remote, level of trade than its U.S. sales. Highveld claims its home market and U.S. sales are to a different class of customer and that the selling functions performed are qualitatively and quantitatively different (see Highveld's sales verification report, at pages 13, 23–25).

Highveld posits the existence of four marketing stages for the subject merchandise: (1) Production; (2) Sale to Distributor; (3) Sale to Steel Service Center (SSC); and, (4) Sale to End-User. Highveld claims that its home market sales are at stage 3—to SCCs. Highveld states that its U.S. CEP sales to Newco are at stage 2—to distributors. Highveld argues that since the selling functions of the U.S. importer (Newco) are accounted for by a deduction under provision of the law, they cannot be included in the level of trade analysis. (See 62 FR 27295, 27370 (May 19, 1997) and Antifriction Bearings.)

Highveld alleges that it has an additional layer of selling activity in the home market which is qualitatively and quantitatively different and amounts to a different selling function. Highveld claims that in the home market, it performs the following sales activities—rolling planning, order status feedback, pricing support, extensive post-sale service, market research, technical advice, advertising, freight and delivery arrangements, quality control, quality assurance, organizations and memberships and customer relations. Highveld states that in the U.S. sales functions are limited to moderate post-sales service, market discussions and meetings, freight and delivery arrangement, quality control and quality assurance. Highveld cites the Preliminary Results, 62 FR at 31965–31966 where the Department notes several differences in selling functions for U.S. and home market sales. Highveld cites the Department's Final Rules, 62 FR 27295, 27371, where it states, "[S]ubstantial differences in the amount of selling expenses associated with two groups of sales also demonstrates that the two groups are at different levels of trade."

Highveld states that since the Department cannot quantify whether Highveld's different levels of trade affect price comparability, the Department should grant Highveld a CEP offset.

Petitioners support the Department's determination in the preliminary determination that a single level trade exists in both the home market and the U.S. market, and urges the Department to reach the same conclusion for the final determination. Petitioners state that neither difference in selling functions or customer descriptions are alone sufficient to establish different levels of trade. See Certain Welded Steel Pipe and Tube from Turkey, 61 FR 69067, 69068. Petitioners claim that the record in this review does not contain sufficient evidence of differentiated selling functions to justify more than one level of trade. Petitioners point to Highveld's sales verification report, at page 23, where the verifiers stated that selling functions were handled the same by Highveld, regardless of their classification and that Highveld differentiated selling functions based on the quantity of the sale rather than the level of trade. Petitioners claim that market research, technical advice, product development research, freight and delivery, quality assurance programs, and production planning were all performed in both markets. Petitioners noted that the only selling function that appeared to be different was personnel training, but that verifiers found this function to be very limited in scope (see Highveld's sales verification report). Petitioners acknowledge other small differences (i.e., just-in-time delivery and advertising) (Preliminary Results at 62 FR 31966). Petitioners state that none of these differences are sufficient enough to justify differing levels of trade, and that the Department should not grant a CEP offset.

In response to petitioners' comments Highveld continues to maintain that its home market sales are at a different, more remote level of trade from its U.S. sales, and that the Department should grant a CEP offset. Highveld claims that petitioners do not dispute the fact that its home market and U.S. sales are at a different stage of the marketing process. Highveld disputes petitioners' claim that selling functions are the same in both markets.

Highveld notes that market research is focused primarily on the home market, and that any comparable functions performed by Newco would be excluded from the level of trade analysis. With respect to technical advice and product development research, Highveld claims that there are qualitative and quantitative differences in the advice provided. Highveld states that U.S. production planning involves shipments planned well in advance, whereas home market planning entails more short-term demands and requests. Highveld notes petitioners' acknowledgment of differences between personnel training, and states that this difference should not be ignored because it is limited in scope. Highveld reiterates the additional differences in selling functions cited in the preliminary determination, and again asks the Department to grant it a CEP offset.

Petitioners counter that Highveld's U.S. and home market sales are at the same level of trade and no CEP offset is warranted. Petitioners dispute Highveld's claim that its home market sales are more remote than its U.S. sales. Petitioners note that steel service centers and distributors are not necessarily at different stages in the marketing process. Petitioners state that service centers are often themselves distributors and that no recorded evidence indicates a clear distinction between service centers and other distributors. According to petitioners, both distributors and service centers may sell to other distributors and service centers or directly to end-users.

Petitioners claim that many of Highveld's home market selling activities do not appear to be tangible. Petitioners note that Highveld must do rolling planning on all sales, in order to maximize the efficient use of its mill. Petitioners state that there is no record evidence that just-in-time delivery plays any significant role in Highveld's sales as it generally produces all sales to order. Petitioners note that pricing supports are simply discounts and rebates which are already taken into account in the Department's analysis, along with warranty expenses. Petitioners argue that the record does not demonstrate that customer care visits, market share research or liaison meetings result in any significant costs or effort on Highveld's part. Petitioners note that Highveld acknowledges that it has after-sales service, freight and delivery arrangements, market discussion and liaison meetings, and quality control and assurance for sales in both markets. In petitioners view, there is not a quantitative or qualitative difference in the selling functions performed in the two markets and no CEP offset should be granted.

DOC Position

We agree in part with petitioners and with Highveld. In determining whether separate levels of trade actually existed between the U.S. and home markets, we examined Highveld's marketing stages, reviewing the chains of distribution and customer categories reported in the home market and in the United States. Highveld argues that its sales in the

home market are more remote and at a different stage of the marketing process from its sales in the United States. While we agree with petitioners that Highveld's distinction between SSCs and distributors is questionable, we do agree with Highveld that after Newco's selling functions are accounted for by a deduction under section 772 (d) of the Act, they cannot be included in the level of trade analysis.

With respect to the selling activities described by Highveld as representative of the greater quantitative and qualitative selling functions associated with home market sales compared to U.S. sales, many home market selling functions, although greater in number, appear to be activities similar in nature to the selling functions associated with U.S. sales. In addition, some of the home market selling functions detailed by Highveld do not characterize services provided to customers.

In some instances the activities characterized by Highveld as selling functions are more appropriately characterized as activities and functions associated with production and manufacturing processes. Rolling planning, for example, is something Highveld conducts in order to maintain efficiency during production, and it is required for products sold in all markets. Nor do we consider order status feedback and the conveyance to customers of the progress of particular orders to be a selling function. In any case, these services are provided to customers in both markets.

With respect to pricing supports, such as discounts and rebates, these are already accounted for in the calculation of NV, and we do not consider them to be distinct selling functions which are relevant to our level of trade analysis. Neither do various home market organizations and memberships to which Highveld belongs and makes contributions and payments to relate to services provided to customers *per se*.

A number of other selling functions are provided to customers in both markets. These include efforts to meet customer delivery schedules, freight arrangement and delivery services, and quality assurance and control (including line inspection and material testing and certification). Highveld performs functions relating to market discussions and research, and customer liaison meetings in both markets. Although Highveld officials have less opportunity to physically meet with U.S. customers than with those in the home market, they nonetheless do so regularly during each year. While Newco is responsible for conducting initial U.S. market research concerning market conditions in preparation for visits from Highveld officials, joint customer calls made by Highveld and Newco officials evaluate further these conditions and findings.

We agree with petitioners that because most of Highveld's sales involve merchandise produced to order and not sold from inventory, just-in-time delivery is not a significant selling function attributable to sales in one market versus another. Regarding technical advise, although Newco is responsible for providing initial support to U.S. customers, Highveld provides any necessary back-up, if requested.

We do acknowledge that there are some minimal differences in selling functions between the two markets. These differences have not changed from the ones noted in our preliminary determination, although as petitioners note these services appear to be relatively minimal and in our judgment are not sufficient to warrant a difference in LOT. For this final determination, we are finding that Highveld has a single level of trade in both markets. Accordingly, we have not granted Highveld a CEP offset for this final determination.

Comment 24

Highveld argues that the Department inappropriately matched U.S. specification A 515/516 Grade 70 to a less similar home market product. Highveld notes the Department's model matching program did not match the U.S. product with the home market product deemed by Highveld to be the closest match (SABS 1431 300WA). Highveld states that even though the SABS 1431 300WA is the best match with the U.S. model, in terms of physical properties such as mechanical properties and chemical composition, the model match program automatically discounted that model because it is classified as structural quality. Instead, according to Highveld, the Department's model match scenario chose a home market specification of BS 1501 151 430A as a best match because this specification is classified as the same pressure vessel quality as the U.S. model. Highveld cites the Sales Verification Exhibit 9 where evidence is submitted that states that 300WA and A515/516 tend to be higher strength with regard to ultimate tensile strength and yield strength. Highveld claims that the 430A is a much softer steel than the U.S. model; that 300WA and A515/516 may be rolled from the same plate but 430A may not; and that the mechanical and chemical similarities between the 300WA and the A515/516 translate into cost and value similarities. Highveld states that since the 430A requires a different chemical composition and mechanical properties, it requires different costs of production. In conclusion, Highveld reiterates that the better model match is U.S. model A515/516 to the home market model 300WA. Petitioners did not comment on this issue.

DOC Position

We disagree with respondents. In the "Fair Value Comparisons" section of this notice we note that when making product comparisons the Department uses the following criteria listed in order of preference: paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. Based on the Department's model matching hierarchy, products of the same quality will be matched to one another before being matched on the basis of similar product specifications. Consequently, this comment is moot, as changing the plate specification weighting as advocated by respondents will not effect the results of the Department's model match program.

Comment 25

With regard to U.S. warranty expense, Highveld urges the Department to utilize the more precise percentage calculated during the Sales Verification at Newco. According to respondent, at the start of verification, Highveld presented a percentage that it had calculated as the cost of "returns" (the cost to Newco of remedying defective merchandise, similar to warranty claims). However, Highveld observes that verifiers decided that this calculation was not specific enough and spent considerable time and effort to recalculate a more specific percentage (see Highveld's sales verification report, at page 59). It is this more specific rate that Highveld asks the Department to use to calculate the U.S. warranty expense for the final determination.

Petitioners state that previously unreported returns of merchandise should be deducted from CEP as a warranty expense. Petitioners separately argue that another previously unreported warranty expense should be subtracted from CEP.

In response to petitioners' comments, Highveld reiterates that the more precise warranty allocation calculated at verification should be used in the final determination.

DOC Position

We disagree with respondents. Although Highveld provided documentation at verification which it indicated was a more precise determination of U.S. warranty expenses (see Highveld's sales verification report, at pages 58–59), the Department also found certain unreported claims and credits relating to sales of subject merchandise. Because we are not confident that the amount Highveld contends is the more precise amount includes all claims which should have been reported to the Department as U.S. warranty expenses, we are continuing to use the percentage presented to us at the start of verification as the cost of "returns" for this expense in the final determination. (See Analysis Memo, dated October 24, 1997.)

Comment 26

Petitioners note that the Department found unreported port of entry and exit survey charges at the U.S. verification of Newco. Petitioners state that these charges are paid by Newco and passed on to the customers and they should be deducted from U.S. price as a direct selling expense. Petitioners argue that since these charges have not been included in the computer sales listing, the Department should apply facts available to this adjustment. See 19 U.S.C. 1677e and 1677m. Petitioners argue that the Department should use the highest survey rates found for any sale as identified in the Highveld's sales verification report.

Highveld notes that it has submitted a revised database including these charges and that these charges apply to CEP sales. Highveld states that these charges do not apply to EP sales. Highveld argues that the Department requested this data and the use of facts available for these charges is not appropriate.

DOC Position

We agree with respondent. It is true that the Department found unreported port of entry and exit survey charges at the U.S. verification of Newco. These charges are paid by Newco and passed on to the customers and they should be deducted from U.S. price as a direct selling expense. These charges have been included in Highveld's latest submission and we have used Highveld's submitted port of exit and entry survey charges for the final determination.

Comment 27

Petitioners claim that Highveld failed to report stevedoring and wharfage charges in its sales listing, but reported them separately. Petitioners argue that these fees must be subtracted from the CEP for the final determination, taking into account the fees that were verified (see Highveld's sales verification report).

Highveld states that it has included this information in its revised database, and that these charges should be deducted from CEP.

DOC Position

We agree with both parties and have made this change for the final determination.

Comment 28

Petitioners state that Highveld failed to report certain U.S. sales of subject merchandise (see Highveld's sales verification report, at page 31). Petitioners note that the Court of International Trade has found that the "capture of all U.S. sales at their actual prices is at the heart of the Department's investigation," and that the omission of even one U.S. sales is a "serious error." See Florex v. United States, 705 F. Supp. 582, 588 (CIT 1988) and Persico Pizzamiglio v. United States, 16 CIT 299 (1994). Petitioners state that these missing sales must be included in the final determination, and that if the Department does not have detailed sales data for these missing sales on the record, it must resort to facts available.

Highveld notes that there was no significant failure to report U.S. sales. Highveld states that Newco manually identified sales of subject merchandise and missed several small sales. Highveld argues that this error is minor (less than one percent of Highveld's U.S. sales) and will not distort the antidumping calculation. Highveld further argues that with one minor exception these sales are the same merchandise at the same prices as other sales analyzed by the Department and urges the Department to exclude these sales from its antidumping analysis.

DOC Position

We agree with petitioners and have included these unreported sales in our analysis for the final determination. As the Department does not have detailed, verified sales data for these missing sales on the record, it is using facts available for this portion of the final determination. We fully agree with the finding of the Court of International Trade that the "capture of all U.S. sales at their actual prices is at the heart of the Department's investigation." See Florex v. United States, 705 F. Supp. 582, 588 (CIT 1988) and Persico Pizzamiglio v. United States, 16 CIT 299 (1994). It is essential that respondents fully report this information to the Department. By not providing complete information for U.S. sales when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. As adverse facts available, we are using the highest calculated non-aberational margin for individual sales of respondent in this investigation. See Analysis Memo, dated October 24, 1997.

Comment 29

Petitioners state that marine insurance on U.S. sales was incorrectly reported (see Highveld's sales verification report, at page 38). Petitioners claim that since it is not possible to understand whether this miscalculation occurred in all sales or just those verified, the Department should increase all reported marine insurance by the percentage verified as facts available.

Highveld counters that the deduction for marine insurance should not be based on facts available as the Department only found that the reported amount of marine insurance for one shipment had been under-reported by a very small amount and marine insurance was correctly reported for other transactions. Highveld states that the Department should add the corrected amount (36 cents) to marine insurance for all invoices affected by the one misreported shipment, but otherwise use Highveld's reported data.

DOC Position

We agree with Highveld and have made this correction for our final determination.

Comment 30

Petitioners claim that Highveld did not correctly report the merchandise processing fee portion of U.S. import duties. They state that the processing fees should be changed to the correct amount as verified, and the corrected USDTYU factors of 5.7359 percent and 5.135 percent should be applied to 1995 and 1996 sales respectively.

Highveld agrees that the Department should correct this error. However, Highveld states that the correct factor for 1995 is 5.735 percent.

DOC Position

We agree with both parties and have included the corrected U.S. duty amounts submitted by Highveld in its revised sales listing for the final determination.

Comment 31

Petitioners claim that the interest rate used to calculate credit expense on CEP sales through Newco is incorrect.

Petitioners state that Newco used a simple average of the applicable interest rates rather than a weighted average interest rate, and used initial rates of interest for a particular loan, regardless of whether or not the rates fluctuated (see Highveld's sales verification report, at pages 38–40). For these reasons, petitioners believe that the Department should use the highest rate reported for any loan as the interest rate applied to the credit expense calculation for all CEP sales.

Highveld claims that the Department exhaustively verified the interest rate used to calculate CEP interest expenses. While Highveld continues to argue that its methodology is reasonable, it notes that based on information on the record, the Department could construct a weighted average interest rate.

DOC Position

We agree with petitioners. The methodology used by respondent does not accurately reflect Newco's cost of borrowing. Nor does the Department have complete documentation on all interest rates where these rates fluctuated. Even if the Department did have complete information, it is not the Department's responsibility to make extensive revisions to submitted information. By not providing verifiable information for U.S. interest rates when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. As facts available the Department is recalculating Highveld's credit expenses using the highest interest rate reported for any loan for all CEP sales.

Comment 32

Petitioners state that the Department should not subtract the Regional Services Council (RSC) levy from normal value as this tax is not solely rebated or not collected on exports. (See 19 U.S.C. 1677(a)(6)(B)(iii).) Highveld indicates, according to petitioners, that this levy is placed on net sales of the company, whether or not the merchandise was sold domestically or exported to another country. Petitioners argue that if the Department continues to regard this levy as a direct selling expense, then the Department should make a circumstance of sale adjustment to add back the amount of tax collected on the U.S. sales.

Highveld responds that the deduction from normal value for the RSC levy is appropriate. Highveld argues that if the Department changes its treatment of this expense in the final determination it must ensure that this expense is treated in a neutral manner to reflect the fact that it is an expense incurred for both home market and U.S. sales.

DOC Position

We agree with petitioners. We have reviewed the RSC levy since our preliminary determination and found, as Highveld itself indicated in its April 7, 1997, submission, that this levy represents a turnover tax applied to net sales, regardless of whether the merchandise was sold for the export or local market. Since the levy is not rebated and it is collected on export sales, it does not qualify as a deduction from NV under section 773(a)(6)(B) of the Act. Therefore, for the final determination we have not adjusted NV or U.S. price for the RSC levy.

Comment 33

Petitioners state that Highveld overstated home market credit expenses (see Highveld's sales verification report, at pages 43–44). Petitioners note that Highveld reported payment dates as the last day of the month, irrespective of the actual date of payment. Petitioners state that since the Department is unable to verify the accuracy of the home market credit expense and has found inaccuracies in the reported amounts using Highveld's methodology, the Department should not adjust normal value for such a credit expense. Petitioners further state that if the Department decides to make the adjustment, it should recalculate the adjustment correctly and reduce the payment period by 30 days for all home market sales before performing the credit expense calculation.

Highveld claims that it properly reported home market credit expenses. Highveld notes that the Department found a single calculation error which was attributable to the calculation of credit expense on the invoice amount due, not including a subsequently paid rebate. Highveld states that payment can be received before or after the reported payment date. Highveld explains that customers tend to pay as late as possible, making Highveld's methodology a conservative one. Highveld reiterates that it has reported the only payment date recorded in its accounting system, and urges the Department to use its reported home market credit expense, with the single exception noted above.

DOC Position

We agree in part with petitioners. Highveld did not demonstrate at verification that its payment methodology is reflective of actual dates of payment. There is no evidence on the record to suggest that payment is only made at the end of the month. Additionally, the Department notes that even using Highveld's reported methodology there are disprepancies with Highveld's reported credit expenses and those calculated by the Department. A single example of this was described in the verification report. However, a review of verification exhibits and other reported observations in Highveld's database indicates that there were in fact pervasive discrepancies, some of which were minor. For this final determination, as facts available, the Department has calculated the actual home market credit expense for the limited number of observations for which actual date of payment information was supplied. This expense was compared to the reported expense and we calculated an average percentage difference. We have adjusted all reported home market credit expenses downward by this percentage difference.

Highveld should have developed a verifiable methodology for reporting date of payment or alternatively chosen a conservative methodology for reporting these dates. See Certain Cut-To-Length Carbon Steel Plate From Germany, 61 FR 13834, 13841 (March 28, 1996). By not providing verifiable information for home market credit expenses when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

Comment 34

Petitioners stated that errors in the reported inland freight were discovered at verification (Highveld's sales verification report, at pages 44, 53). Petitioners explain that these errors included miscalculations and freight markups by Highveld. Petitioners contend that the Department should not adjust normal value for home market freight expenses since there are obvious flaws in the reported data. Petitioners state that if the Department does adjust normal value, it should first reduce reported freight expenses on home market sales by multiplying the correction value to account for calculation inaccuracies, as well as multiply by the correction value to account for the markup of freight charges.

Highveld counters that inland freight was not misreported. Highveld states that the Department discovered a single error in home market inland freight. With respect to markup charges, Highveld notes that these charges only apply to road haulage, not to all sales. Highveld claims that this percentage is an element of its accounting system, designed to capture actual expenses (such as miscellaneous shipping fees like waiting charges) and was not created for this investigation. Highveld urges the Department to correct the single error and otherwise use its reported home market inland foreign expenses.

DOC Position

We agree with respondents. Although petitioners are correct in noting that during verification we found an error in one of the calculated inland freight expenses, we also found instances where the expense was reported correctly. Upon review of the verification exhibits and the markup charges referred to petitioners, we agree with Highveld that these charges only apply to road haulage, and not to all sales, and that it is captured as an actual expense in its normal course of business. As a result, we are correcting the error referred to above and allowing all other home market inland freight charges as reported.

Comment 35

Petitioners note that Highveld was unable to exclude returns from its home market data. However, Highveld was able to report the refunded amount for such sales in REBATE2H field. At verification, the Department discovered that in several instances the amount reported in REBATE2H field did not comply with those of the company's record keeping system. Therefore, petitioners contend that the Department should not reduce the home market price by REBATE2H when calculating normal value. Additionally, petitioners state that for cases where the REBATE2H field approximates gross unit price, the sale should be thrown out of the data pool since a rebate that large would signify that most, if not all, of the sale had been returned or canceled.

Highveld argues that REBATE2H should be granted in the calculation of normal value. Highveld states that where the amounts of the rebate approximate gross unit price, the amounts were reported as negatives and the sale was effectively netted out. With respect to petitioners' claim that this rebate was misreported, Highveld acknowledges that there were a few discrepancies related to canceled sales, but states that the Department verified that the amounts otherwise reported for this rebate were accurate. Highveld urges the Department to use Highveld's reported data for this variable for the final determination, but agrees that the Department may exclude those sales where the amounts of REBATE2H approximate gross unit price.

DOC Position

We agree with both parties that we should exclude for the final determination those home market sales where the amounts of REBATE2H approximate gross unit price. We note that the discrepancies found by the Department at verification pertain to these sales that we are excluding. Consequently, we do not agree with petitioners' argument that this rebate should be disallowed for other home market sales.

Comment 36

Petitioners note that the Department found errors in the tonnages used to calculate the data reported in the REBATE8H field (Highveld's sales verification report, at page 51). Petitioners state that since the Department could not verify the accuracy of REBATE8H, it should not be used as an adjustment to normal value. However, petitioners state that the Department should use the reported REBATE8H as a deduction to price when doing the cost/price comparison.

Highveld argues that the Department should not deny it an adjustment for this rebate. Highveld claims that the tonnage discrepancy was insignificant. Highveld explains that the reason for this difference was that the tonnage used in the calculation of this rebate was based on the original sales submission, prior to the exclusion of certain sales at the request of the Department.

DOC Position

We agree with respondent. We determined that the methodology used to calculate the per customer amounts of the rebate was reasonable. As described in the sales verification report, the discrepancy identified was small, and there is no evidence that it affected the calculation of this rebate. Therefore, for the final determination we are allowing the reported amounts for REBATE8H as adjustments to NV.

Comment 37

Petitioners contend that the Department should use facts available for all handling and brokerage charges on U.S. sales. Petitioners note that verifiers found that stevedoring and total handling and brokerage was understated. Petitioners explain that verifiers also discovered that the shipping rates reported by Highveld were inaccurate (Highveld's sales verification report, at page 54). Petitioners state that the highest reported rate for any sale for each charge should be used to calculate the adjustment as facts available.

Highveld maintains that handling and brokerage charges on U.S. sales were properly calculated. Highveld claims that the discrepancies identified at verification apply only to specific shipments, not to all shipments. Highveld notes that the discrepancy amounts to less than a rand per ton and that argues that the Department should make the corrections described in the verification report, and otherwise use Highveld's reported handling and brokerage charges.

DOC Position

We agree with both petitioners and respondent in part. For the final determination we are using the reported and brokerage and handling expenses for one shipment involving certain sales which we found at verification to be correct. For a second shipment, we are correcting the expenses reported for certain sales which we found at verification involved only minor corrections (see Highveld's sales verification report, at pages 53–54). For a third shipment we examined, we found extensive inaccuracies. Because we are unable to determine the full extent of the other inaccuracies found for other shipments, we are applying the highest reported brokerage and handling expense for any U.S. sale to this third shipment and the remaining U.S. shipments. See Analysis Memo, dated October 24, 1997. By not providing verifiable information for brokerage and handling expenses when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

Comment 38

Petitioners contend that the Department should use facts available for U.S. credit expenses because verifiers found that the U.S. sales trace's credit expense was understated (Highveld's sales verification report, at page 57).

Highveld claims that its U.S. credit expenses were properly calculated.

Highveld acknowledges that credit expenses were understated for one U.S. EP sale, but argues that there is no evidence that credit expenses for other U.S. sales were misreported. Highveld states that the Department should correct the single error discovered at verification, but otherwise use Highveld's reported data.

DOC Position

We disagree with both petitioners and respondent. For the two EP sales examined at verification, one overstated U.S. credit expense and the other sale understated this expense; on average Highveld has overstated these expenses. Consequently, for this final determination we are revising reported credit expense for these two sales and are otherwise using the reported credit expenses.

Comment 39

Petitioners claim that Highveld did not report accurate data for its home market and U.S. packing expenses (Highveld's sales verification report, at pages 62–63). According to petitioners, packing materials costs were not quantified, no accurate information on labor and overhead was supplied, and all figures were based on estimates provided by management of the company. Petitioners cite 19 U.S.C. 1677m(i) and state that the estimates of the management cannot be empirically tested and thus, the data is unverified. Petitioners also cite 19 U.S.C. 1677e that states that since the necessary information is not on the record or cannot be verified, the Department should use facts available. Petitioners suggest that as facts available, the Department did not adjust the normal value for home market packing and create a U.S. packing expense by inflating the packing material cost reported for U.S. sales by the average ratio of all transformation and overhead costs to all material costs.

Highveld claims that its packing expenses were calculated in a reasonable manner. Highveld states that its accounting system does not account for separate expense categories under packaging material. Highveld states that it provided a reasonable estimate of packing materials cost and the Department should use this information rather than resort to facts available for the final determination.

DOC Position

We agree with petitioners. At verification we found that Highveld was unable to provide an explanation for the estimated and average costs used to calculate home market and U.S. packing expenses. Neither was it able to provide any documentation to support its claimed expenses. Because we were unable to verify this estimated information, we are denying home market packing expenses as an adjustment to NV.

Comment 40

Petitioners argue that Highveld is not entitled to a deduction from normal value for the RSPCC levy. In petitioners' view, this payment is essentially a payment of dues to a voluntary organization. Petitioners argue that this levy is not a tax, and that the only provision under which this adjustment could be made would be as a circumstances of sale adjustment. However, petitioners claim, it would not be appropriate to make a circumstances of sale adjustment for this levy as adjustments under this provision are limited to expenses that are *bona fide* circumstances of sale and bear a direct relationship to the sale. Petitioners note that with respect to credit, warranties or technical assistance the seller is conveying to the purchase something of value. See Certain Welded Carbon Steel Pipe and Tubes from India, 56 FR 64753, 64757 (December 12, 1991); see also Mantex v. United States, 841 F. Supp 1290, 1302–3 (CIT 1993). Petitioners argue that the RSPCC levy does not convey any value to the purchaser of the steel product, and that the levy is not a function of the buyer-seller relationship at all, but is a function of the relationship between the seller and the South African Steel Association. Petitioners claim that the levy is neither a circumstance of the sale nor directly related to the sale, and question the existence of any evidence of a causal link between the levy and home market prices.

Highveld maintains that it is entitled to a deduction from normal value for the RSPCC payment as a direct selling expense. Highveld argues that this payment is directly related to sales as the amount of the payment is calculated based on the value of local sales. While admitting that payment of the RSPCC is voluntary, Highveld states that it benefits from the RSPCC payment in the form of increased home market steel sales and that steel purchasers also receive benefits from RSPCC programs. Highveld claims that this payment does bear a causal relationship to the sale as Highveld would not make the payment in the absence of home market sales. Highveld maintains that it is not necessary to demonstrate a causal effect on prices for the Department to accept a direct selling expense and that there is a presumption that the customer is absorbing the cost of the payment as part of the total price of the steel.

DOC Position

We agree with petitioners. As Highveld's sales verification report and exhibit 24 indicate, the RSPCC levy is assessed as a fee based on the quantity of sales. The amount of the levy is paid monthly to a fund to which Highveld voluntarily is a member. The purpose of the fund is to promote the export sales of steel produced in the local market. Highveld claims that it gains benefits from belonging to the fund by way of increased home market sales. However, even if these claims are true, we do not consider this evidence of the value gained by purchasers of products subject to this investigation. As petitioners correctly point out, the RSCPP levy appears to represent a function of the relationship between Highveld and the organization to which the levy payments are made, rather than of the relationship between Highveld and purchasers of subject merchandise. We do not believe this to be a characteristic of a direct selling expense. Therefore, for purposes of the final determination, we have not deducted Highveld's home market payments of the levy from NV.

Comment 41

Petitioners claim that the Department made a clerical error in the preliminary determination regarding the calculation of CEP. According to petitioners, the Department intended to deduct indirect selling expenses incurred in South Africa converted from rand to U.S. dollars, but did not do so.

Highveld takes issue with petitioners suggestion. Highveld rejects the argument that the Department should deduct expenses from normal value after conversion into a dollar amount. Highveld also rejects the argument that indirect selling expenses incurred in the home market should be deducted from CEP. Highveld notes that the Department only deducts from CEP those indirect selling expenses associated with a sale to an unaffiliated customer in the United States. Highveld states that the expenses at issue were incurred for activities performed exclusively in South Africa, are general in nature, and are incurred for all export sales. Because these expenses do not specifically relate to U.S. commercial activity, Highveld claims they were properly not deducted. See Calcium Aluminate Flux From France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 40396, 40397 (August 2, 1996). Highveld adds that to the extent that some portion of these general expenses might be broadly attributable to U.S. sales, they would only relate to the sale by Highveld to Newco and are, therefore, not expenses attributable to the sale to the unaffiliated purchaser.

DOC Position

We agree with respondents. The Department only deducts indirect selling expenses incurred in the country of manufacture which are specifically related to commercial activity in the United States. (See Calcium Aluminate Flux From France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 40396, 40397 (August 2, 1996).) At verification, we found that the expenses at issue were general in nature and did not relate specifically to U.S. commercial activity. Therefore, consistent with our preliminary determination, we did not deduct these expenses from CEP for the final determination.

Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with Iscor and Highveld suspending this investigation. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from South Africa. Any cash deposits of entries of cut-to-length carbon steel plate from South Africa shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received a separate request for continuation from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act on October 15, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average margin percentage
Highveld	26.01
Iscor	50.87
All Other	38.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30389 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–791–804]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from South Africa. The basis for this action is an agreement between the Department and Iscor Ltd. (Iscor) and Highveld Steel and Vanadium Corporation Ltd. (Highveld) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, Nancy Decker, or Linda Ludwig, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–5811, (202) 482–0196, or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from South Africa are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 2, 1996, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31967 (June 11, 1997)).

The Department and Iscor and Highveld initialed a proposed agreement suspending this investigation on September 25, 1997. On September 26, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Iscor and Highveld.

The Department and Iscor and Highveld signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, signed October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734(b) of the Act, we have determined that the agreement will completely eliminate sales at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See Public Interest Memorandum, October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from South Africa entered or withdrawn from warehouse, for consumption, as directed in our Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From South Africa is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that

we continue the investigation. We received separate requests from the United Steelworkers of America, Bethlehem Steel Corp., and U.S. Steel Corp. (a unit of USX Corporation), interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*see* section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (*see* section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix 1—Suspension Agreement Cut-to-Length Carbon Steel Plate From the Republic South Africa

Under section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)) (the Act), and 19 CFR 353.18, the U.S. Department of Commerce (the Department) and the signatory producers/exporters of cut-to-length carbon steel plate from the Republic of South Africa enter into this suspension agreement (the Agreement). On the basis of this suspension agreement, the Department shall suspend its antidumping investigation initiated on December 3, 1996 (61 FR 64051), with respect to cut-to-length carbon steel plate from the Republic of South Africa, subject to the terms and provisions forth below.

(A) Product Coverage

The merchandise subject to this Agreement is the following merchandise which has the Republic of South Africa as its origin:

(1) For purposes of the Agreement, cut-to-length carbon steel plate includes hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness.

(2) Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from subject merchandise within the scope of this agreement is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this Agreement is dispositive.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in the Republic of South Africa that, during the antidumping investigation on the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at any time during the period of the Agreement require additional producers/exporters in the Republic of South Africa to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring on and after the effective date of the Agreement through March 31, 1998 (interim period), each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement to unaffiliated purchasers in the United States at prices that are less than its NV, as determined by the Department, and provided to parties not later than November 7, 1997; and

(2) For all sales occurring on and after April 1, 1998, each producer/exporter agrees not to sell its merchandise subject to the Agreement to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of the Agreement and provided to parties not later than December 10, March 10, June 10, and September 10 of each year. This NV shall apply to sales occurring during the fiscal quarter beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than January 31, 1998, and shall contain the specified sales information covering the period October 24, 1997, to December 31, 1997. Subsequent reports of sales data shall be submitted to the Department not later than January 31, April 30, July 31, and October 31 of each year, and each report shall contain the specified sales information for the quarterly period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

Producer/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. As indicated in Appendix B, profit will be reported by the producers/exporters on a quarterly basis. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data for the post-interim period shall be submitted to the Department not later than January 20, 1998, and shall contain the specified cost data covering the period October 1, 1997, through December 31, 1997. Each subsequent report shall be submitted to the Department not later than January 20, April 20, July 20, and October 20 of each year, and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the date set forth in Section D(1) of the Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) the amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with Section D(3), or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate normal value, NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that Section F applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during reporting period as well as the results of its analysis under section 773 of the Act.

(2) Not later than February 20, May 20, August 20, and November 20 of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(3) Not later than 7 days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations. In the event that the Department determines that the investigation shall be resumed, it will be resumed on the basis of the original administrative record, and the statutes, regulations, policies, and practices in effect on the effective date of the Agreement.

(G) Other Provision

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to the Agreement have been made at less then fair value.

(H) Termination

The Department will not consider requests for termination of this suspended investigation prior to October 2002. Termination will be conducted in accordance with section 351.222 of the Department's regulations.

Any producer/exporter may terminate the Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. PRICE—means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) NORMAL VALUE—means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix A to this Agreement.

(3) PRODUCER/EXPORTER—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) DATE OF SALE—means normally the date of the invoice as recorded in the exporter or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of the Agreement is October 24, 1997.

For the Republic of South African Producers/Exporters

Iscor Ltd.

Marcela B. Stras, Esq., Adduci, Mastriani & Schaumberg, LLP

Date

Highveld Steel and Vanadium Corp. Ltd.

Jeff Chegwidden, Director & General Manager Marketing

Date

For U.S. Department of Commerce

Robert S. LaRussa, Assistant Secretary for Import Administration

Date

Appendix A—Cut-to-Length Carbon Steel Plate From the Republic of South Africa Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be:

- Comprehensive in nature and based on a reliable accounting system (i.e., a system based on well-established standards that can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a quarterly weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;

- Valued in accordance with generally accepted accounting principles;
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
- Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

commission expenses—payments to unaffiliated parties for sales in the HM.
credit expenses—expenses incurred for the extension of credit to HM customers.
movement expenses—freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses—include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

FOR EP TRANSACTIONS

+	direct materials
+	direct labor
+	*factory overhead*
=	Cost of Manufacturing
+	*home market SG&A*
=	Cost of Production
+	U.S. packing
+	*Profit*
=	Constructed Value
+	U.S. direct selling expense
+	U.S. commission expense
+	U.S. movement expense
+	U.S. credit expense
–	HM direct selling expense
–	HM commission expense [1]
–	*HM credit expense*
=	NV for EP sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

FOR CEP TRANSACTIONS

+	direct materials
+	direct labor
+	*factory overhead*
=	Cost of Manufacturing
+	*home market SG&A*
=	Cost of Production
+	U.S. packing
+	*profit*
=	Constructed Value
+	U.S. direct selling expense
+	U.S. indirect selling expense
+	U.S. commission expense
+	U.S. movement expense
+	U.S. credit expense
+	U.S. further manufacturing expenses (if any)
+	CEP profit
–	HM direct selling expense
–	HM commission expense
–	*HM credit expense*
=	NV for CEP sales

[FR Doc. 97–30390 Filed 11–18–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Final Determination: We determine that certain cut-to-length steel plate (CTL plate) from Ukraine is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 31958 (June 11, 1997), the following events have occurred:

In June 1997, we verified the respondent's questionnaire responses. On July 23, 1997, the Department issued its report on verification findings. Petitioners and Respondent submitted case briefs on August 22, 1997, and rebuttal briefs on August 29, 1997. A public hearing was neither requested nor held.

On July 28, 1997, the Department provided interested parties the opportunity to submit additional publicly-available information (PAI) from surrogate countries to value certain factors of production. The Department received responses on August 18, 1997, and comments on August 25, 1997.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive. *See* memorandum on *Scope of Investigations on Carbon Steel Plate*, from Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Period of Investigation (POI)

The POI is April 1, 1996 through September 30, 1996.

Nonmarket Economy Status

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate normal value when the country involved is an NME country and the Department determines that it cannot determine normal value based on the respondent's prices or costs. In this investigation, the Government of Ukraine claims that economic conditions now prevalent throughout Ukraine warrant revocation of Ukraine's NME-country status.

Regarding the revocation of NME status, the Department's analysis centers around the government's role in economic activity. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland* (58 FR 37205, July 9, 1993). In accordance with section 771(18)(B) of the Act, in considering a country's status, the Department analyzes the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, the Department cannot conclude that home market prices or costs should be used to calculate normal value.

As discussed in detail in our Memorandum on Separate Rates (dated June 3, 1997), since 1991 the Government of Ukraine has undertaken significant market reforms and passed extensive legislation toward the development of an economy which can operate based upon free market principles. However, in applying the factors required under section 771(18)(B) of the Act, we have found that Ukraine's economy, while in transition, does not yet qualify as a market economy under the antidumping law. Therefore, we have determined that Ukraine remains an NME within the meaning of the antidumping statute.

Section 771(18)(B)(i) of the Act instructs the Department to take into account the extent to which the currency of Ukraine is convertible into the currencies of other countries. Ukraine introduced a new currency, the hryvnia, in August of 1996, which has remained quite stable against the dollar and other currencies. While the hyrvnia is traded with the Newly Independent States, it is not yet convertible elsewhere. Additionally, the Government of Ukraine retains control over the influx of foreign currency into its domestic economy by requiring that 50% of foreign export earnings be converted to hryvnias through an Interbank Currency Exchange set up by the Government of Ukraine for this purpose. *See Law On A System of Currency Regulation* (August 1993).

Pursuant to section 771(18)(B)(ii) of the Act, the Department also considers the extent to which wage rates in the foreign country are determined by free bargaining between labor and management. Although under the *Law on Enterprises in Ukraine* a collective bargaining agreement between management and workers is obligatory, it appears that with regard to wage rates and employment the government continues to be heavily involved. For example, Ukraine's Tariff Rate System grades all jobs and sets salaries based upon the level of complexity and workers' qualifications, and the Ministry of Labor establishes job position criteria through job evaluation catalogs. *See Law On Remuneration on Labor* (March 1995). All state-owned enterprises must base their wage and hiring decisions on this system. Non-state-owned enterprises must compile their own job classification and wage rates to reflect the government's system. The government also regulates where and in what manner workers are paid and provides for criminal penalties for violations by employers. *Id.*

Section 771(18)(B)(iii) directs the Department to examine the extent to

which joint ventures or other investments by foreign firms are permitted in Ukraine. As a general matter, Ukraine is open to foreign investment and the necessary supporting legislation is in place. Under Ukraine's Foreign Investment Law of 1996, its fourth foreign investment law, registered foreign investors are guaranteed equal treatment with local companies. The law also provides certain protections, including general guarantees against expropriation, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect these basic protections. In 1996, Ukraine also added new laws and regulations on energy and mining investment and taxation of goods and services imported by foreign investors. The U.S.-Ukraine Bilateral Investment Treaty, which took effect on November 16, 1996, provides further protection for U.S. investors; other such treaties exist with, among others, Canada, France, Germany, and Italy. Finally, Ukraine is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, and has enacted an international commercial arbitration law. However, areas of concern remain for foreign investors, in particular the reportedly burdensome and unpredictable arbitration and enforcement system, and the prohibition, contained in the Land Code of 1992, on foreigners owning land in Ukraine.

With regard to the extent of government ownership or control of the means of production, a factor considered under section 771(18)(B)(iv), record evidence demonstrates that the Government of Ukraine has made significant progress in privatizing state-owned business enterprises. However, privatization has proceeded unevenly thus far, with relatively rapid results in small-scale privatization and a slower pace for large-scale privatization, and much of the economy remains in the hands of the government. Notably, Ukraine has designated thousands of companies in sectors such as energy, communications, metallurgy, defense industries, and chemicals as "strategic" enterprises and therefore not eligible for privatization. These firms include most of Ukraine's largest companies and those with the greatest export potential. In addition, foreign investors can participate in the privatization process only through financial intermediaries (i.e., foreigners cannot acquire privatization certificates directly).

Finally, in the case of the respondents in this investigation, their status as privately-held companies is incomplete. Although respondents both qualify as "joint stock companies," the majority of their shares are still owned by the government, which has yet to sell its shares in either company, either through auction, public tender, or other market mechanisms. Therefore, even though the Government of Ukraine's submissions indicate that in 1995 and 1996, 34% and 44% respectively of state-owned enterprises were privatized, it is unclear whether those figures reflect 100 percent privatization of the enterprises in question, or some continued level of government ownership, as is the case with Azovstal and Ilyich.

Pursuant to section 771(18)(v), the Department must also address the extent of government control over the allocation of resources and over output and pricing decisions of enterprises. Even with the process of privatization continuing, the Government of Ukraine still retains significant control over the means of production and in allocating resources regarding all state-owned business enterprises, as well as those enterprises leasing state-owned enterprises. Under Ukraine's *Law on Enterprises*, state-owned enterprises, or enterprises leasing state-owned enterprises, are required to fill state orders at the request of the government. Moreover, enterprises which the Government of Ukraine deems monopolies are also required to fulfill state orders, regardless of their form of ownership. *See Law On Supply of Production For State Needs.*

The government also continues to set domestic prices in some areas of the economy. According to the *Law on Prices*, the government has authority to set prices on products which affect the entire economy, to set domestic prices of monopolies, and to render to the government any monopoly profits deemed excessive. Generally, the government will deem an enterprise a monopoly where its commodity has 35 percent of the domestic market share. *See On Restricting Monopoly and Preventing Unfair Competition.*

As the above analysis indicates, the Ukrainian government has put into action a serious program of economic reform, particularly since July 1994. While significant progress has been made in Ukraine's transformation to a market economy, under the analysis required by section 771(18)(B) of the Act, we cannot conclude that Ukraine should be treated as a market economy for purposes of the antidumping duty law. While many of the state controls have been abandoned, functioning markets have not completely replaced government controls. Because the evidence does not demonstrate that prices and costs in Ukraine adequately reflect market considerations, we cannot at this time alter Ukraine's designation as a nonmarket economy under the antidumping law.

Fair Value Comparisons

To determine whether certain carbon steel plate from Ukraine sold to the United States by the Ukrainian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the "Export Price" and "Normal Value" sections of this notice.

Export Price

For Azovstal and Ilyich, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We corrected the respondent's data for errors and minor omissions submitted to the Department and found at verification. We calculated EP in accordance with our preliminary calculations.

Normal Value

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Brazil as our surrogate country. Brazil is an appropriate country for the reasons set forth in our preliminary determination. *See* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Ukraine (*Policy Memo*). Since we find no compelling reason to change this selection (see below for comments and further analysis), we have continued to base FMV on the values of the factors of production as valued in Brazil.

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. To calculate NV, the verified amounts for the factors of production were multiplied by the appropriate surrogate value for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of overhead, SG&A, and profit. For the final determination we based the percentages for overhead, SG&A and profit on the detailed public version of CST's and Usiminas' financial statements that was placed on the record of this investigation by Respondents. *See* Comment 7, below.

Critical Circumstances

The Department has continued to find that critical circumstances exist for cut-to-length carbon steel plate by all Ukrainian exporters.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Respondents.

Separate Rates

Comment 1: Separate Rates

Petitioners oppose the Department's granting of separate rates to Respondents. Petitioners argue that the Department should calculate and apply a single country-wide rate because Respondents' exports of subject merchandise from Ukraine were subject to *de jure* and *de facto* government controls, including minimum price and registration requirements, during the POI. At verification, Petitioners argue, the Department found that the companies were required to register contracts in order to control prices to avoid dumping. Also, Petitioners state that the Department found that export contracts over $3.5 million are subject to government approval and that minimum pricing is mandatory.

Petitioners argue that the inconsistencies between the governmental Decrees requiring registration and a government official's representation that registration is unnecessary until antidumping proceedings have been initiated led the Department to conclude that registration is for monitoring purposes only. However, Petitioners claim that based on a straight reading of the laws, registration is necessary for purposes of administering the minimum price requirements and other actions controlling exports. Petitioners argue that this requirement is part of a larger Ukrainian regime controlling export activities, including the setting of minimum prices.

Petitioners stress that the Government of Ukraine publishes "indicative prices" pursuant to a February 10, 1996 Presidential Decree but that the Department inappropriately concluded that the decree did not apply to subject merchandise exported during the POI. Petitioners contend that the categories are not exhaustive and include goods where "special regimes" are applied. Petitioners argue that this appears to give the government very broad legal control over setting prices since the term is not defined or explained. Petitioners contend that the Department should imply that investigations of subject merchandise fit within the category of "special regime".

Furthermore, Petitioners interpret the February 24, 1996 Ministry of Foreign Economic Relations and Trade (MFERT) Order to mean that the export controls are applied not only after an antidumping investigation has been initiated, but also to prevent the initiation of such an investigation. Petitioners point out that the MFERT Order provides a list of commodities aimed at preventing antidumping and that the subject merchandise is on this list. Therefore the preventive nature of this order indicates that special export requirements can, and did, apply to subject merchandise prior to the initiation of the antidumping investigation. Petitioners also point to statements as described in the verification report by both Azovstal and Ilyich that pricing controls have applied to their exports of steel plate since 1995. In addition, Petitioners argue that the government-published price lists are convincing evidence that minimum price restrictions were applied to subject merchandise during the POI. Thus, the Department should not find that Azovstal and Ilyich are entitled to separate rates in the final determination.

Finally, Petitioners state that it is undisputed that upon initiation of this investigation, at the very least, the minimum price and registration requirements became applicable to Respondents' exports of subject merchandise. Petitioners argue that the policy behind applying a country-wide dumping margin, to avoid government circumvention of antidumping orders, is prospective in nature. Accordingly, Petitioners argue, even if the government controls had not been in effect during the POI, the prospective nature of the country-wide margin policy warrants application of a single-country-wide rate. Lastly, Petitioners argue that the recent government decree ordering the two respondents to merge makes clear that the government exercises direct control. Petitioners argue that the government is the alter ego of the companies and that this, combined with the registration and minimum price requirements, is the type of government control that warrants application of a single country-wide rate.

Respondents counter that the law and regulation issued on February 10, 1996 authorize the government to establish price guidelines for monitoring purposes, in certain circumstances, but only under the following conditions: (a) the prices are merely "indicative" and not mandatory; (b) they may be issued only for certain goods subject to antidumping procedures, import procedures, quotas, licenses, or other special regimes; and (c) these indicative prices may be established only to the extent that these goods may be exported free from state control, as provided in Article 20 of Ukraine's Law "On Foreign Economic Activity." Respondents argue that Article 20, which discusses antimonopoly must be read together with the February 10, 1996 Presidential Decree. Respondents argue that Article 20 provides for state control of the export and import of weapons and certain other items (not including the subject merchandise) and specifically provides that any organizations, including state-owned ones, have no right to prevent other subjects of foreign economic activity from the free exercise of such activity. Respondents claim that this interpretation is consistent with statements by a MFERT official that no pricing controls were observed during the POI, and that the indicative prices did not apply to the subject merchandise during the POI.

Respondents further argue that Petitioners' theory that a system of indicative prices instituted after the POI retroactively translates into a system of price controls is neither factually correct nor in accordance with Department practice. Respondents argue that the intent of the law and the Department's practice has been to permit the calculation of separate rates where export prices, during the POI, were set by respondents rather than the government. Respondents argue that not only have all of the conditions for separate rates have been met, as evidenced at verification, but the unilateral actions of both Respondents to change their legal status from leaseholding societies to that of stock companies, and the right to pursue litigation against the government prove Respondents' independence from government control. Respondents further argue that Petitioners' assertion that registration requirements are part of the larger Ukrainian regime controlling

export activities is nonsense and that goods subject to export controls, as defined in the February 10, 1996 Resolution, does not include the subject merchandise.

Department Position

Based on evidence on the record and our verification findings, we have determined that Azovstal and Ilyich are entitled to separate rates in the final determination.

The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and therefore do not make independent business decisions. This presumption can only be overcome by a respondent's affirmative showing that it conducts its exporting activities without government control. Evidence on the record supports a finding that Azovstal and Ilyich have met their affirmative evidentiary burden.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under the test set forth in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 2285 (May 2, 1994) (*Silicon Carbide*). The Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

The Department considers three factors which support, though do not require, a finding of *de jure* absence of government control. These factors include: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices ("EP") are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*.

1. Absence of *De Jure* Control

As described in our Preliminary Determination and *Memorandum on Separate Rates*, dated June 3, 1997, Respondents have placed on the administrative record a number of submissions to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the Government of Ukraine which deregulate Ukrainian state-owned enterprises and Ukrainian export trade. Moreover, Respondents provided laws and regulations specifically governing their enterprises, which provide these companies with legal autonomy to make their own operational and managerial decisions during the POI and are evidence of the good faith effort on the part of the Government of Ukraine to decentralize control of state-owned companies. For a more detailed description of these laws, see *Separate Rates Memorandum*, dated June 3, 1997.

Because the government has now created a right of ownership of business enterprises for private persons and collectives, leaseholding societies, such as Azovstal and Ilyich, formerly state-owned and operated, are now distinct legal entities. In general, this ownership right allows business enterprises to freely engage in economic activity, negotiate and sign contracts, and independently develop business plans. Collectives, like the leaseholding societies of Azovstal and Ilyich, may independently select management through elections by the workers collective and may exercise control and direction over the general director through a contract between the enterprise and the general director. Enterprises, including collectives, may have their own bank account, and, after taxes, may keep the profits from their sales, and engage in foreign economic activity, generally, without government interference.

Although there is no longer a general export licensing regime in place, the Ukrainian Government continues to retain *de jure* control over exports for certain categories of goods, including goods subject to antidumping duty investigations and antidumping duty orders. Mandatory controls are in place regarding: (1) the registration of contracts for export of these goods and (2) the setting of "indicative prices" for these goods by the government.

With regard to registration, foreign economic agreements (contracts) are registered with MFERT pursuant to the 1994 Order of the President, *On Registration of Certain Types of Foreign Economic Agreements (Contracts) in Ukraine Order of the President of Ukraine*, November 7, 1994. Under the February 24, 1996 MFERT Order, during the POI, it was necessary to register a contract for export of subject merchandise to the United States because under this Order, the United States is one of the listed countries and the subject merchandise is one of the listed goods. Therefore, contrary to the Ukrainian Government's assertions, contracts for export of the subject merchandise to the United States during the POI were legally required to be registered. However, we find that in this instance, registration is for statistical and tax collection purposes, and for monitoring compliance by exporters with international trading rules and agreements. There was no evidence at verification to indicate that through registration the Government of Ukraine did anything other than monitor foreign economic activity of exports of certain goods in order to prevent dumping by exporters subject to antidumping measures in other countries and thereby ensure compliance with international trading rules.

Moreover, even though MFERT must approve export contracts of over $3.5 million, we find that the purpose of this exercise is to monitor such activity for tax collection and to ensure that large volume exports of goods subject to antidumping measures or other international trade agreements are not being dumped and are in compliance with the government's international agreements (*e.g.*, suspension agreements with the European Union). Therefore, we find no evidence to support Petitioners' claim that by registering contracts for sales of subject merchandise during the POI the government was controlling export pricing, per se.

With regard to the setting of prices, since 1994 the government has set minimum export prices for certain categories of goods. While some minimum export prices are obligatory, others are more in the nature of guidelines to assist Ukrainian exporters in pricing their goods competitively in various export markets. During the POI, pursuant to the *Decree of the President of Ukraine On Measures Regarding the Improvement of Price Policy Configuration in Foreign Economic Activity*, February 10, 1996, the Government of Ukraine published these so-called "indicative prices" on a monthly basis. According to the 1996 Decree, minimum prices are mandatory where the exporter of Ukrainian goods is subject to antidumping measures applied by other countries, including the initiation of antidumping investigations. The export of the subject merchandise during the POI was not subject to the mandatory pricing controls described. However, as Petitioners correctly point out, under this 1996 Decree, merchandise covered by this investigation was subject to mandatory pricing after the initiation of our antidumping investigation. However, there is no evidence on the record to support Petitioners presumption that the subject merchandise falls within the "special regime" referred to in the February 1996 Decree. Therefore, we cannot find that subject merchandise is included in a special export pricing regime.

In a somewhat analogous situation, the Department preliminarily determined that mandatory minimum export prices set by the Chinese government, intended to control worldwide prices of exported honey and to increase such prices through macro-economic means, did not preclude the respondent companies from receiving separate rates. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995) (*Honey*). In *Honey*, the Department found that, among other things, the companies were free to independently negotiate export prices with their customers above the floor price. In other words, when considering the totality of all circumstances, the Department found in *Honey* that the companies had sufficient independence in their export pricing decisions from government control to qualify for separate rates. This is also the case with Azovstal and Ilyich, both of which the Department verified to have independently negotiated export prices above the minimum prices set by the Government of Ukraine. *See de facto* section below and the *Verification Report*, dated July 25, 1997.

Based on evidence on the record, we find that during the POI there was no *de jure* control of export prices of subject merchandise. Moreover, we find that, even though there was de jure control of export prices for subject merchandise after the initiation of our antidumping investigation, because the stated purpose of these minimum prices was to avoid dumping by Ukrainian exporters, such measures do not, in and of themselves, indicate that the Government of Ukraine controls export activities of companies. Rather, we have concluded that, similar to our determination in *Honey*, such government action is not contrary to a finding of separate rates, because its only purpose is to avoid dumping measures applied by other countries and because it demonstrates an effort on behalf of the government to comply with international trading rules as it enters the world marketplace.

The purpose of applying one country-wide rate in an NME context is to prevent an NME government from later circumventing an antidumping order by controlling the flow of subject merchandise through exporters which have the lowest margin. Here, the requirement of registration and the setting of floor prices do not demonstrate that the government can control exporters in such a manner. To the contrary, it is evidence of the government's good faith attempt to monitor exports of certain goods to ensure that such goods are not traded unfairly.

2. Absence of *De Facto* Control

Each respondent exporter has asserted, and we have verified, the following: (1) each sets its own export prices subject to indicative prices, as discussed below; (2) each negotiates contracts without guidance from any governmental bodies; (3) each makes its own personnel decisions with regard to selection of management through elections by the members of the leaseholding societies, and the General Director and his appointed Deputies have authority to negotiate and enter into contracts on behalf of the enterprise; and (4) each has separate bank accounts and retains the proceeds of its export sales (although 50 percent of foreign currency earnings must be converted into Ukrainian currency), uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. *See Verification Report*, dated July 25, 1997. In addition, there is no record evidence indicating that company-specific pricing during the POI was coordinated among exporters.

Both Azovstal and Ilyich stated that prices are negotiated with their customers and are not subject to approval or review by the government. However, both companies also told the Department's verifiers that prior to, and during the POI they were required by Ukrainian Customs officials to sell subject merchandise at the minimum price published monthly by MFERT for all sales to the U.S. market. *See Verification Report*, dated July 25, 1997. Thus, as discussed above, while there was no *de jure* control of export prices for subject merchandise during the POI, there was *de facto* control of such pricing by the Government of Ukraine. Nevertheless, as discussed above, we do not find that setting of minimum prices to eliminate dumping by exporters creates sufficient government control over exporting activities to disqualify Azovstal and Ilyich from receiving separate rates.

Furthermore, at verification additional information and documentation was provided which demonstrates that Azovstal and Ilyich were not controlled by the government, but were separate legal entities that were in control of their business operations and planning during the POI. *See Verification Report* at 3–6. For example, during the POI, both companies paid rent to the Ukraine State Property Fund, the government entity owning the steel plants leased by both companies, and entered into negotiations regarding an increase in rent due to hyperinflation. *Verification Report* at 6. Additionally, during the POI, a Cabinet of Ministers Decree was issued which attempted to merge the two respondents. *Verification Report*, Exhibit SR–3. However, during that time both companies continued the privatization process for state-owned companies, as was their legal right under the reforms instituted by the Government of Ukraine, discussed above. The merger did not transpire and shortly after the POI both companies became public joint stock companies. *Verification Report* at 6.

Additionally, when a decree was issued during the POI by the Ukraine State Property Fund appointing another General Director in place of the elected general director of Azovstal, the company went to the Ukrainian Arbitration Court. *Verification Report*, Exhibit SR–3. Azovstal claimed that by law the Ukraine State Property Fund had no authority to issue a decree which directly conflicted with legal reforms regarding a lease-holding society's right to elect its own management. *Id.* As a result, the Ukraine State Property Fund issued a second decree voiding the earlier decree, and Azovstal continues to have the same duly elected General Director. *Id.* Taken together, these findings provide further proof that Azovstal and Ilyich were not controlled by the government but were independent during the POI.

Based on the record evidence, we find that various legal reforms did provide Azovstal and Ilyich the ability to protect their rights to autonomy in their day to day business operations, including their exporting activities. *See Separate Rates*

Memorandum, dated June 3, 1997; *Verification Report*, dated July 25, 1997.

Consequently, we determine that there is, legally and factually, absence of governmental control of export functions during the POI. Contrary to Petitioners' arguments, the Department does not examine the period after the POI to determine separate rates. However, we will continue to closely examine the effect, in fact and in law, of actions of the Government of Ukraine with respect to any reassertion of government control over the export activities of these companies. However, based on the evidence on the record, we have granted separate rates for this final determination.

Ukraine-Wide Rate

As stated above, we have granted separate rates for Azovstal and Ilyich. However, all other Ukrainian companies will be subject to the Ukraine-wide rate.

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain cut-to-length carbon steel plate from Ukraine is greater than the total quantity and value of steel plate reported by all Ukrainian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Ukrainian certain cut-to-length carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Ukraine-wide rate—to all exporters in Ukraine (other than the two named as receiving separate rates), based on our presumption that those respondents who failed to respond constitute a single enterprise, and are under common control by the Ukraine government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996).

This Ukraine-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority . . . shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including the information drawn from the petition.

As discussed above, we have treated all Ukrainian exporters that did not qualify for a separate rate as a single enterprise owned and controlled by the Government of Ukraine. Because some exporters of the single enterprise failed to respond to the Department's requests for information, the single enterprise is considered to be uncooperative. (*See Concurrence Memorandum*, dated October 24, 1997, for the list of exporters.) In such situations, consistent with section 776(b)(1) of the Act, the Department generally selects as adverse total facts available the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. *See also, Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 96 FR 27222 (May 19, 1997). In the present case, the average margin in the petition is higher than any calculated rate. Accordingly, the Department has based the Ukraine-wide rate on the average petition rate of 237.91 percent.

Section 776(c) of the Act provides that where the Department relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA (H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)), clarifies that the petition is "secondary information" and that "corroborate" requires that the information relied upon have probative value.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition indicates that petitioners calculated export price based on: (1) the import values declared to the U.S. Customs Service, and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioners, less the importer mark-ups, to prices derived from contemporaneous U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its company-specific margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioners in the production of steel plate. Petitioners submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. To account for differences between the production processes of petitioners and potential respondents, Petitioners submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods.

The margins in the petition, which ranged from 201.61 to 274.82 percent, were obtained by Petitioners by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted-average of the two. See Corroboration Memorandum, dated June 3, 1997.

Comment 2: Pirated Sales

Petitioners contend that certain "pirated" sales of steel plate produced by Ilyich should be included in the margin calculation because there is a strong likelihood that a large volume of similar sales may have ultimately entered the United States. In addition, Petitioners argue that there is a very high likelihood that these sales have gone unreported and the Department should apply an overall facts available rate for Ilyich because they did not properly respond to the Department's questionnaires.

Ilyich argues that the Department properly excluded pirated sales from the preliminary margin calculations and should continue to do so for the final determination. Ilyich argues that it made these sales believing they were destined to third countries and had no knowledge that these sales were ultimately destined for the United States. Ilyich argues that at verification the Department examined two of these pirated sales and concluded that Ilyich had no prior knowledge that the shipments were to be delivered to the United States. Ilyich further claims that it is the Department's practice not to include such sales in its determinations under these circumstances and cited several cases as precedent.

Department Position

We agree with Respondent. It is the Department's practice to include as U.S. sales only those sales known by the producer/exporter to be destined for the United States at the time of sale and delivery. *See, e.g., Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China*, 60 FR 52155, 52158 (October 5, 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440, 16445 (March 30, 1995). Based on findings at verification, the Department has determined that these originally non-U.S. bound shipments were delivered to the U.S. without prior knowledge of Ilyich. Therefore, consistent with our preliminary determination and Department practice, we have not included the pirated sales in the final margin calculation for Ilyich.

Comment 3: Surrogate Country Selection

Respondents argue that Brazil is an inappropriate surrogate for Ukraine for several reasons. Respondents state that, because Ukraine's economy has undergone radical transformations in recent years, the Department should reconsider its choice of a surrogate country based upon changed economic conditions and/or possible industrial incomparability. Respondents claim that the Department has shown its willingness to reconsider its choice of a surrogate country if a given country is no longer comparable and cite *Certain Helical Spring Lock Washers from the People's Republic of China:* Memorandum to David Binder from David Mueller, Office of Policy re: *AD Investigation of Sebacic Acid from the PRC:* Non-market Economy Status and Surrogate Country Selection (9/23/93), among others, to support their argument.

Next, Respondents argue that it is the Department's preference to select the country closest to the NME country under investigation in terms of the GDP when faced with multiple potential surrogates and cite several cases to support this position. For instance, Respondents compare the instant case to *Final Determination of Sales at Less Than Fair Value: Beryllium Metal from Kazakstan*, 62 FR 2648 (June 11, 1997), where the Department rejected Brazil as a surrogate because Brazil's GDP was far in excess of Kazakstan's. Respondents argue that the variance between Ukraine's GDP and Brazil's GDP is similarly excessive. Respondents contend that Brazil's Gross Domestic Product (GDP) is now more than double that of Ukraine and the World Bank classifies Brazil within a different tier of countries than Ukraine. Furthermore, Respondents claim that Brazil's industrial data is maintained via an accounting system which deviates from generally accepted accounting principles because it requires producers to maintain two separate sets of financial records, one to report historical costs of corporate activities and another to report the effects of inflation and currency fluctuations on those corporate costs and revenues. Respondents further argue that the Department's use of Brazilian labor rates also illustrates the inappropriateness of using Brazil as a surrogate. However, if Brazil is chosen as a surrogate, Respondents argue that surrogate prices from other countries should be used where the use of Brazilian prices will produce distorted results and cite *Certain Cased Pencils from the People's Republic of China*, 59 FR 55625 (Nov. 8, 1994) (*Pencils*), as precedent.

Respondents submit that Poland is a preferable surrogate choice because it is the only country which satisfies both statutory criteria of comparable economic development and significant production of CTL plate. Respondents argue that in practice the Department will change its choice of surrogate where it finds a compelling reason to make the change and cite *Notice of Final Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995) (*Pure Magnesium from Russia*) and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine*, 60 FR 16432 (March 30, 1995) (*Pure Magnesium From Ukraine*). Respondents argue that Poland is an appropriate surrogate in terms of the similarity of its history of economic development, industrial infrastructure and distribution of labor and production. In addition, Respondents submit that the quality of data publicly available from Polish companies compares to that of Brazil.

Petitioners counter that there is no basis nor compelling reason for changing surrogate countries in the final determination and further emphasize that the cases Respondents cite, *Pure Magnesium from Russia* and *Pure Magnesium from Ukraine*, did not affirmatively state that the Department will change surrogate countries where "compelling reasons" exist. The Department did not change surrogate countries in either case.

Furthermore, Petitioners argue that Brazil is comparable to Ukraine in terms of economic development, as recognized in this case and in other cases involving Ukraine. Petitioners claim that the World Bank's classification for Ukraine is preliminary and moreover, that this category contains countries whose per capita GNPs vary widely, including some that differ more widely from Ukraine's GNP than does Brazil's. Furthermore, Petitioners add that when the Department issued its surrogate country selection memorandum, it was aware of the GNP levels of Brazil, Poland, and Ukraine and stated that all countries are equally comparable to Ukraine in terms of economic development. Petitioners argue that even if Poland's GNP is closer, the Department has already determined that any such difference is insignificant. Petitioners argue that per capita GNP is only one of several measures the Department considers in determining the most appropriate surrogate country and cite *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Romania*, 62 FR 31075 (June 6, 1997). Petitioners further argue that Poland's rate of per capita GNP growth was positive, while that of both Brazil and Ukraine was negative. Additionally, the purchasing power parity GNP for Brazil and Poland are virtually the same. Moreover, citing *Technoimportexport* v. *United States*, 15 CIT 250, 255, 766 F. Supp 1169, 1175 (1991) (*Technoimportexport*), Petitioners argue that the Department does not have to choose the most comparable surrogate country and cite petitioners claim that Brazil also satisfies the Department's other criteria for selection of a surrogate country.

For example, Petitioners contend, Brazil is a significant producer of subject merchandise and there is a wealth of publicly available information on factor prices in Brazil. Furthermore, Petitioners claim that use of Brazil as the surrogate country will not produce aberrational results in this investigation and argue that in the case cited by Respondents, *Pencils*, the Department rejected certain surrogate data because it pertained to a type of material not used to produce the subject merchandise. Moreover, Petitioners claim that the alleged inconsistencies between Brazilian accounting methods and GAAP are not sufficient grounds to deem financial ratios aberrational since the Department has extensive experience dealing with Brazilian financial statements.

Petitioners argue that the Department has obtained reliable Brazilian surrogate values for virtually all factors of production and stress that the record does not contain complete surrogate values for Poland. Moreover, Petitioners argue that the data available for Poland is of lesser quality. For example, Petitioners claim that the format used in the Polish financial statements renders them virtually impossible to use for purposes of calculating surrogate financial ratios. Petitioners therefore argue that Poland does not satisfy the information-availability criterion that the Department uses to assess the appropriateness of a potential surrogate country.

Finally, Petitioners argue that the Department should rely only on Brazil for all surrogate values in the final determination based on its preference for using only one surrogate country.

Department Position

We agree with Petitioners and have continued to use Brazil as the surrogate country in the final determination. Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME and (2) are significant producers of comparable merchandise. As discussed in the preliminary determination, Brazil is at a level of economic development comparable to Ukraine in terms of per-capita GNP levels and distribution of the labor force in the varying sectors of the economy. Furthermore, Petitioners are correct in stating that even if Poland's GDP is closer to that of Ukraine's than is Brazil's, per capita GNP is only one of the measures that the Department considers in determining the most appropriate surrogate country. Furthermore, Brazil is a significant producer of comparable merchandise. Thus, Brazil fulfills both statutory criteria and qualifies as an acceptable surrogate for Ukraine under section 773(c)(4) of the Act. *See also* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Ukraine (*Policy Memo*).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. *See* 19 U.S.C. 773(c)(1)(B) (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); *see also, Lasko Metals* v. *United States*, 43 F3d. 1442, 1443 n.3 (Fed. Cir. 1994). As stated above, Brazil qualifies as an appropriate surrogate because it satisfies the statutory criteria listed. Furthermore, we were able to obtain publicly available contemporaneous information on all factor inputs required. Thus, the selection of Brazil also achieves the Department's goals of providing transparency and reasonable accuracy in valuing factors. Moreover, our choice of Brazil provides predictability for Ukrainian exporters as the Department has used Brazil as a surrogate for Ukraine in past antidumping proceedings. *See Initiation of Antidumping Duty Investigation: Pure and Alloy Magnesium for the people's Republic of China, the Russian Federation, and Ukraine*, 80 FR 21748 (April 26, 1994).

While we have used surrogate prices for selected surrogate values from countries other than the selected surrogate country in previous cases, to the extent possible it is the Department's preference and practice to rely on information from the first choice surrogate country to value all factors for which such information is available. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058 (May 18, 1992).

Thus, because acceptable public information from Brazil is available for all material input factors, it is unnecessary for us to use data from other countries. Therefore, the Department has continued to use only Brazil as the most appropriate surrogate country for purposes of this final determination. *See generally, Policy Memo.*

Comment 4: Commissions

Azovstal argues that commissions were properly excluded from its database because the company receiving commissions was not an affiliated reseller in the United States. Azovstal further argues that, because the payment of a commission on a U.S. sale in a non-market economy (NME) investigation is not offset by direct selling expenses on home market sales, the Department ignores home market sales and relies solely on surrogate SG&A expenses in calculating normal value. Azovstal cites several cases where the Department has rejected similar adjustments in prior NME proceedings, including *Final Determination of Sales at Less than Fair Value: Coumarin from the People's Republic of China*, 59 FR 66895 (December 28, 1994); *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991); and *Final Notice of Sales at Less than Fair Value: Pure Magnesium from Ukraine*, 60 FR 16432 (March 30, 1995).

Petitioners argue that, because these commissions have been verified and there is no evidence to indicate that the rate of the commission was other than arm's length, the Department must deduct these commissions from U.S. price pursuant to 19 CFR section 353.41(e)(1). Furthermore, Petitioners claim that the cases cited by Azovstal do not support its argument and that in this case, the commissions paid to AST, Avostal's reseller in London, have not been taken into account in the U.S. or the foreign market price.

Department Position

In accordance with section 772(d)(1)(A), in CEP circumstances, the Department's normal practice is to deduct commissions from U.S. sales price as direct selling expenses if the commissions were incurred when making the sale to the United States. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996). In the present case, we do not have CEP sales and have not deducted commissions in calculating EP. Azovstal did not incur any commissions directly on U.S. sales, as all sales were made through trading companies not located in the United States, which incurred the selling expenses associated with the individual transactions. Therefore, we have continued to utilize the methodology from our preliminary determination and have not adjusted for commission expenses on U.S. sales for this final determination.

Comment 5: Movement Charges

Petitioners argue that the Department should use facts available to determine the surrogate value of movement and storage charges incurred but not reported by both respondents. Petitioners argue that Azovstal had unreported movement charges for which there are no surrogate values on the record and that Ilyich did not report the costs for storage for which there are also no surrogate values on the record. Therefore, the Department should apply facts available.

Azovstal claims that it reported the appropriate movement charges in its April 11, 1997 and August 22, 1997, responses as requested by the Department. In regards to Petitioners allegations regarding storage charges, Azovstal and Ilyich argue that these charges are not movement expenses but are direct selling expenses. Respondents cite the Department's Antidumping Manual which indicates that expenses are directly related to the sales under consideration and assert that it is the Department's practice to make a circumstance of sale adjustment for such expenses. Moreover, both Azovstal and Ilyich claim that the Department does not make these adjustments in NME cases because there is no offset for home market sales. Both Respondents argue that consistent with this methodology, the Department did not even include a field for warehousing or storage in its U.S. Sales file. Under the circumstances, Azovstal argues that the Department should use its reported charges rather than facts available. Therefore, both Azovstal and Ilyich argue that the Department should make no adjustments for storage charges for either company.

Department's Position

Pursuant to section 773(a)(B), the Department adjusts normal value for movement expenses which are incident to bringing the subject merchandise in condition packed ready for shipment to the United States. We verified that Respondents reported movement expenses to our satisfaction. Moreover, the surrogate value that we applied in our preliminary determination included all movement and handling charges to ship subject merchandise from the factory to the port, which also takes into account storage/warehousing expenses. Therefore, any additional deductions for movement expenses would, in effect, result in double-counting.

Additionally, we agree with Respondents' claim that the Department does not adjust EP sales for warehousing expenses under section 772(c)(2)(A). In an NME case, it is the Department's policy to not deduct warehousing expenses from EP because there is no comparable adjustment on the home market side.

Comment 6: Packing Expenses

Petitioners argue that, because there is no evidence to suggest that the prices on Respondents' sales invoices do not include packing costs, the Department incorrectly added packing expenses to Respondents' reported U.S. prices for purposes of the preliminary determination.

Respondents did not comment on this issue.

Department Position

We agree with Petitioners. We incorrectly added packing expenses to export price in the preliminary determination. Accordingly, for the final determination we have adjusted for packing expenses in the calculation of normal value.

Comment 7: Factory Overhead, SG&A, and Profit

Petitioners claim that the Department's preliminary results did not include all factory overhead costs and that a dumping margin cannot accurately be calculated without the inclusion of non-depreciation overhead costs. Although Petitioners have been unable to find publicly available information in Brazil, they provided one integrated Korean steel producer's public financial statement (Pohang Iron & Steel Co., Ltd. ("POSCO")) which provided a detailed list of the types of non-depreciation expenses incurred as manufacturing costs. Petitioners urge the Department to either use the percentages from POSCO's financial statement as facts available to approximate the proper amount of factory overhead costs, or use the Department's resources to find additional information on the surrogate value.

Respondents argue that Petitioners' claim that surrogate value information from Brazil on factory overhead must be adjusted based upon the experience of a Korean steel producer underscores the flawed nature of this information and of the surrogate value information from Brazil for SG&A and profit. Respondents argue that the Department should reject information from Brazil, because it is insufficient and use information from Poland in calculating normal value.

Respondents further argue that if the Department should continue to use Brazil as the surrogate, it should recalculate the surrogate overhead, SG&A, and profit rates in accordance with generally accepted accounting principles as the Department did in *Titanium Sponge from the Russian Federation*, 61 FR 3938 (July 29, 1996) (*Titanium Sponge*) (see below). Furthermore, Respondents argue that the Department was incorrect to use data from the Brazilian steel producers' financial statements that was for the POI. Respondents argue that, consistent with its prior practice, the Department should use financial data contemporaneous with the POI and assert that the use of a "constant of currency" accounting system is inappropriate now that Brazil's inflation rate is only at 18 percent. Respondents provided the 1996 public financial statements of two Brazilian companies and provided recalculated ratios for overhead, SG&A, and profit.

Respondents argue that in *Titanium Sponge from the Russian Federation*, 61 FR 3938 (July 29, 1996) (*Titanium Sponge*), the Department used only the line item expenses which corresponded directly to the factor values which were calculated. Respondents argue that the Department should make adjustments to the reported net income data and further asserts that, when calculating the SG&A factor the Department incorrectly included profit sharing expenses. Respondents state that profit sharing expenses do not represent actual expenses incurred by the companies but reflect the value of profits shared with employees and management, dividend distributions to employees, and annual taxes on net income.

Petitioners rebut by stating that the Polish financial statements are substantially less reliable than the Brazilian financial statements. Petitioners claim that, because the Polish financial statements fail to separately account for costs of sales and SG&A costs, any ratios calculated from the financial statements would be distorted. Also, Petitioners state that one of the Polish financial statements contains no specific information on factory overhead costs. Petitioners additionally argue that the Department's preliminary calculations are consistent with Brazilian GAAP and the Department's normal methodology for calculating costs. The Petitioners maintain that, while the methodology used in *Titanium Sponge* was required by the insignificance of the operating costs in that case, in this case, the other general expenses are not insignificant and were properly included in the calculated ratios. Petitioners argue that it is the Department's practice to include all non-extraordinary cost items in its calculations. Thus, Petitioners argue because SG&A normally includes other costs like non-operating costs, the Department should disregard Respondents' claim that only those items nominally identified as SG&A should be included. Petitioners further argue that the Department appropriately included social contributions and profit sharing costs in its SG&A calculation. Petitioners additionally assert that constant currency financial statements provide the most reasonable measure of the overhead, SG&A, and profit ratios because it is the Department's preference to base its calculations on such statements and because the ratios would be calculated on values that are on the same basis. Petitioners argue that the Department should use the 1996 financial statements of CSN previously submitted by Petitioners.

Finally, Petitioners argue that, if the Department does use the financial statements prepared under the corporate legislative method of accounting or

historical cost method, it should revise the calculations submitted by Respondents. Petitioners argue that Respondents have understated the SG&A costs by excluding certain non-operating costs and have artificially reduced net income by ignoring income actually earned by the companies while at the same time failing to account for the increase in net income that results from not taking certain expenses into account.

Department Position

We disagree with Petitioners' suggestion to use the data from a Korean steel producer's financial statement to calculate factory overhead and we also disagree with Respondents' suggestion to use Polish data. It is the Department's practice to only use data from those countries listed as potential surrogates identified in the *Policy Memo* (see cases cited above.) Korea was never identified as a potential surrogate for the Ukrainian economy. Although Poland was identified as a potential surrogate, it is the Department's preference to use a single surrogate country as the source of data in a NME investigation unless such value is aberrational or otherwise inappropriate. *See* Comment 3. Therefore, the Department will continue to use Brazilian data for the final determination.

We agree with Respondents that the Department should use the financial data of producers in the surrogate country which are contemporaneous with the POI, and we have done so for this final determination. In general, the Department will not seek information from particular producers in the surrogate country to value material inputs or electricity. The exception to this rule is for overhead, SG&A, and profit. For these categories of costs, the Department will seek product-specific information from producers in the surrogate country, where possible. *See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China*, 62 FR 1708 (January 13, 1997). Based on the submitted information and the Department's own research, we agree with Respondents that the financial data from the 1996 income statements of the two Brazilian steel companies we used in the preliminary determination, CST and Usiminas, are the most appropriate surrogate information available to calculate the percentages for overhead, SG&A, and profit for our final determination. In the preliminary determination the Department determined that both CST and Usiminas were significant producers of merchandise similar to that under investigation and both had public financial statements available for the Department's calculations.

When using Brazil as a surrogate country in the past, including in our preliminary determination, the Department used constant currency financial statements because they adjust costs for the effects of inflation. Brazil, in the past, has experienced significant inflation and significant changes in the value of its currency. However, in 1996, the Brazilian economy was no longer in a state of hyperinflation as its inflation rate dropped to 18 percent and its currency stabilized. In non-hyperinflation situations, it is the Department's practice to calculate ratios based upon historical cost financial statements. *See generally*, SAA at 164. The corporate legislative method of accounting is the primary source for GAAP in Brazil. Therefore, we have used the 1996 income statements of CST and Usiminas, prepared under the corporate legislative method of accounting in our final determination.

In contrast to our preliminary determination, for this final determination, in order to ensure that all costs are properly accounted for, we revised the overhead ratio to include employee profit sharing in accordance with our practice. Despite the manner in which labor costs are packaged (*i.e.*, either through straight salary, profit sharing, etc.), total labor costs remain the same to the employer. This includes all profit sharing expenses. *See Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 25908 (May 12, 1997), where the Department determined that profit sharing expenses relate to the compensation of direct labor. Labor is captured in the cost of manufacturing which is part of the cost of sales. Thus, we have included profit sharing in overhead. However, if a company broke out profit sharing between employees and management, as CST has done, we included management profit sharing in the SG&A calculation and employee profit sharing in the overhead calculation. *See Final Determination Calculation Memorandum*, dated October 24, 1997.

Consistent with prior Department practice, we have continued to include social contributions in SG&A for the final determination. *See Final Determination Calculation Memorandum*, dated October 24, 1997. *See also, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil*, 58 FR 7080 (February 4, 1993).

Comment 8: Usage Factors

In the preliminary determination, the Petitioners argue that the Department did not calculate the dumping margin for all of Respondents' U.S. sales. Petitioners argue that the Department's inability to calculate dumping margins results directly from Respondents' failure to provide the factor usage data required to determine normal value and that, as a result, the Department should use adverse facts available to determine the dumping margins for all U.S. sales for which Respondents failed to provide the usage factor information.

Respondents argue that the Department should not use adverse facts available to determine dumping margins for any U.S. sales by Azovstal and Ilyich because the absence of normal value matches for these sales was not due to the companies' failure to report factor usage for those sales. Rather, it was the result of typographical errors which resulted in incorrect CONNUMU designations. Respondents argue that factor usage was provided by both companies for all sales and should be used to determine dumping margins. Azovstal argues that its missing matches were the result of a typographical error in the field "PLCHECK" and an error in the related portion of the CONNUMU which described the product as such. Azovstal argues that for all of Azovstal's products, the field "PLCHECK" should be categorized the same way because Azovstal only produces merchandise with that characteristic. Azovstal claims that a review of those CONNUMUs described by Petitioners as not having matching normal values in relation to other CONNUMUs in Azovstal's U.S. Sale Listing and Azovstal's Section D computer response clearly shows that the absence of corresponding factor usages for the CONNUMUs in question is the result of an inadvertent error.

Ilyich argues that its two CONNUMUs without corresponding factor usages are for products identical to those listed under two other CONNUMUs. Ilyich argues that when preparing its Section C Response it inadvertently used two CONNUMUs for the same products in two instances. Ilyich argues that, as such, there is no need to use facts available. Rather, the Department has all necessary data and should treat each pair of corresponding CONNUMUs as a single CONNUMU.

Department Position

Petitioners are correct that we did not calculate the dumping margin for all U.S. sales because of the absence of some normal value matches, as described above. However, while the Department is always concerned with such discrepancies, we did not identify any attempt by Respondents to mislead the Department or to distort information on the record, nor does the record indicate that Respondents were uncooperative. Rather, the record indicates that, while the Respondents inadvertently misreported their CONNUM listings, they nevertheless complied with all Department requests to the best of their ability under the circumstances. Therefore, we have determined that such inadvertent errors do not warrant an overall application of adverse facts available. Accordingly, for this final determination we have corrected all such errors using an overall average of the final dumping margins for each Respondent's U.S. sales. The details of these errors and steps we have taken to correct them are set forth in the *Final Determination Calculation Memorandum*, dated October 24, 1997. *See also, Concurrence Memorandum*, dated October 24, 1997.

Comment 9: Surrogate Value for Labor

Respondents argue that the Department's calculation of a surrogate value for labor illustrates the distorted effects which result from using Brazil as a surrogate for Ukraine. Respondents argue that the Department's BISNIS report indicates that Ukraine's hourly labor rate is less than $1.00. Therefore, Respondents argue, Poland is a preferable surrogate because, when compared to Brazil it is more comparable in terms of its labor rates. Furthermore, Respondents claim that Poland is also more comparable to Ukraine in terms of the makeup of its workforce and the percentage of the workforce engaged in industrial activity.

Petitioners argue that Respondents are comparing general employment data for Ukraine to inadmissible new information regarding Poland. Petitioners further argue that even if the Polish information was admissible, it does not support Respondents' challenge to the use of Brazil as a surrogate country because the information does not provide surrogate values related to labor costs for making steel or the costs of providing housing for workers.

Department Position

As discussed in Comment 3, we have determined that Brazil is the appropriate surrogate country for this investigation. Furthermore, the Department has determined, that Brazilian wage rates are not aberrational but provide a reasonable surrogate value for the cost of labor for producing steel and thus, do not warrant an attempt to find more comparable values. Therefore, we have continued to use the same labor calculation used in the preliminary determination in the final determination.

Comment 10: Labor Usage Rates

Petitioners argue that, because the Department examined Azovstal's reported labor usage rates at verification and determined that they were inaccurate, the Department should revise Azovstal's reported labor usage rates to reflect its verification findings.

Respondents did not comment on this issue.

Department Position

We agree with Petitioners. We verified the correct labor rates and have incorporated those figures for the purpose of our final determination.

Comment 11: Siliconmanganese Slag

Respondents claim that slag is a by-product that has relatively little value in relation to the primary product produced, with the slag's market value depending on its use. Respondents argue that the Department should not value siliconmanganese slag using the full value of ferroalloys since to do so would produce an aberrational surrogate factor that is far greater in value than the slag at issue. Respondents argue that siliconmanganese slag is a substitute for manganese ore and is valued in the market based on its manganese content. Respondents assert that the proper valuation for Ukrainian siliconmanganese slag is a percentage of the surrogate value of manganese ore, rather than 100 percent of the value of ferroalloys.

Petitioners argue that the value of siliconmanganese should be based on the value of ferroalloys because Respondents claim that the input is used only as a substitute for manganese ore is unsupported. Furthermore, Petitioners argue that the figures quoted by Respondents regarding the alleged percentage of manganese content in siliconmanganese slag and the alleged value of siliconmanganese as a percentage of manganese ore are based on an unverified, untimely submitted letter. However, Petitioners argue that if the Department does decide to use the information provided by Respondents, as facts available, the value of siliconmanganese slag should be calculated at a higher percentage of the value of manganese ore.

Department Position

We agree with Respondents in part. Based on the Department's knowledge of the steel production process and independent research (including 15 Encyclopedia of Chemical Technology (4th Ed. 1995) at 963–980 and Velichko, et al., 1 Stal' (1993), a Ukrainian article which explains the typical composition of siliconmanganese for a specific Ukrainian plant), we have determined that the chemical makeup of siliconmanganese is primarily manganese. Therefore, we have valued siliconmanganese slag at 100 percent the value of manganese ore.

Comment 12: Limestone, Dolomite

Respondents claim that the Department should not value limestone and dolomite based upon the full value of lime. Respondents argue that, not only is limestone probably the least expensive of all raw materials used in the industry, but, based on information from the U.S. Geological Survey, in the United States limestone and dolomite are valued at 8.39 percent and 8.68 percent of lime, respectively. Respondents claim that the Department should, therefore, value limestone and dolomite using the Survey's percentages.

Petitioners argue that the Department's valuation of limestone and dolomite is correct. Petitioners claim that a single value was applied to both products as information available because Respondents failed to provide separate information on each factor. Petitioners claim that Respondents are now attempting to file new information which is untimely, and assert that, even if this information were admissible, it is unusable because the alleged values are based on U.S. statistics. Petitioners further argue that nothing in the record supports Respondents' implication that the relative value of lime to limestone in the United States is equivalent to that in Brazil and that there is no information regarding the value of dolomite to limestone in any country.

Department Position

We agree with Petitioners. Moreover, the Department's research indicates that both limestone and dolomite are equivalent to lime. *See* Making, Shaping and Treating of Steel (10th ed. 1985). We have, therefore, continued to value limestone and dolomite at the full value of lime for the final determination.

Comment 13: Wood

Respondents claim that the wood it utilizes in packing/loading was verified through invoices provided to the Department.

Petitioners argue that the Department should use its PAI information and conversion factor to value wood.

Department Position

Based on both Petitioners' and Respondents' submissions and briefs, we have used Respondents' value for softwood and applied Petitioners' conversion methodology to calculate a factor for wood packing. *See Final Determination Calculation Memorandum*, dated October 24, 1997.

Comment 14: Publicly Available Information (PAI)

Petitioners argue that the Department should use the factor value information contained in it submissions because this information is the only reliable PAI on the surrogate values of the factors, and because the information submitted by Respondents is based on an inappropriate surrogate country and is fraught with errors.

Respondents argue that the Department should not use Petitioners' PAI. Respondents argue that the Department should change its surrogate from Brazil to Poland (Comment 3). Respondents argue that much of the information on the record concerning material factors for Poland are UN statistics corresponding to the statistics submitted by Petitioners themselves for Brazil, as well as to statistics used by the Department in its preliminary determination.

Department Position

We do not agree with Petitioners' contention that its own publicly available information is the only reliable information for valuing factors. However, as stated throughout this notice, the Department has continued to use Brazil as the surrogate for the final determination. Therefore, whether the information on Poland is reliable is irrelevant, as we have only used PAI from Brazil to value factors in this investigation.

Continuation of Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Government of Ukraine (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from Ukraine. Any cash deposits of entries of cut-to-length carbon steel plate from Ukraine shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from Petitioners requesting that we continue the investigation. We received a separate request from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act, on October 14, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average percentage margin
Azovstal	61.43
Ilyich	155.00
Ukraine-Wide Rate	237.91

The Ukraine-wide rate applies to all entries of subject merchandise except for entries from Azovstal and Ilyich.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (1) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30391 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–806]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from Ukraine. The basis for this action is an agreement between the Department and the Government of Ukraine wherein the Government of Ukraine has agreed to restrict the volume of direct or indirect exports to the United States of CTL plate from all Ukrainian producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, or Eugenia Chu, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–1324, or (202) 482–3964 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from Ukraine are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 11, 1997, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31958, (June 11, 1997)).

The Department and the Government of Ukraine initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Bethlehem Steel Corp., U.S. Steel Group, United Steel Workers of America, and the Government of Ukraine.

The Department and the Government of Ukraine signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine, signed on October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734 (l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation, that the agreement is in the public interest, and that the agreement can be monitored effectively. See Public Interest Memorandum, dated October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from Ukraine entered or withdrawn from warehouse, for consumption, as directed in our notice of "Preliminary Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from Ukraine" and "Postponement of the Final Determination: Cut-to-Length Carbon Steel Plate from Ukraine" is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from Ukraine pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that we continue the investigation. We received separate requests for continuation from Bethlehem Steel Corp., U.S. Steel Corp. (A Unit of USX Corporation), and the United Steelworkers of America, interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Agreement Suspending the Antidumping Investigation on Certain Cut-To-Length Carbon Steel Plate From Ukraine

For purposes of encouraging free and fair trade in certain cut-to-length carbon steel plate (CTL plate), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic products by imports of the merchandise subject to this Agreement, the United States Department of Commerce ("the Department") and the Government of Ukraine enter into this suspension agreement ("the Agreement").

Pursuant to this Agreement, the Government of Ukraine will restrict the volume of direct and indirect exports to the United States of CTL plate from all Ukrainian producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Section 734(1) of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act, as effective on January 1, 1995 ("the Act") (19 U.S.C. 1673c(1)), the Department shall suspend its antidumping investigation with respect to CTL plate produced in Ukraine, subject to the terms and provisions set forth below. Further the Department will instruct the U.S. Customs Service ("Customs") to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, CTL plate covered by this Agreement as of the effective date of this Agreement.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. "Date of Export" for imports of subject merchandise into the United States shall be considered the date the export license was issued.

B. "Parties to the Proceeding" means any interested party, within the meaning of section 353.2(k) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. "Indirect Exports" means arrangements as defined in Section III.E of this Agreement and exports from Ukraine through one or more third countries, whether or not such exports are further processed, insofar as they remain within the scope of the Agreement, and includes further processing which results in minor alterations, or under certain limited circumstances, as described in Section VII. G., further processing which results in substantial transformation as a result of an attempt to circumvent the Agreement, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Ukrainian producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, "United States" shall comprise the customs territory of the United States of America (the 50 States, the District of Colombia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. "For Consumption" means all CTL plate sold to customers, such as, trading companies, distributors, resellers. end-users, or service centers.

F. Customer means an entity, such as a steel service center, reseller, trading company, end-user, etc., which consumes CTL plate as defined in Section I.E.

G. "Date of Sale" is defined as the date on which price and quantity become firm, e.g.* the specification date or, in the case of a long-term contract, the date of contract, as recorded in the company's records kept in the ordinary course of business.

H. "Export License" is the document issued by the Ministry of Foreign Economic Relations ("MINFER") which must accompany all shipments of CTL plate from Ukraine to the United States, and must contain all of the information enumerated in the Appendix to this Agreement, except that Date of Entry and Final Destination may be omitted if unknown to the MINFER and the licensee. It shall be required for customs clearance into the United States.

I. "Reference Price" means the price calculated by the Department, as described in Section IV, on a quarterly basis to be used as a floor price for sales of Ukrainian CTL plate into the United States.

J. "Relevant Period" for the export limits of the Agreement means the period November 1, through October 31 of each year that the Agreement is in effect.

II. Product Coverage

The products covered by this Agreement include hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

III. Export Limits

A. The export limit for CTL plate for the first Relevant Period shall be 158,000 metric tons. Of this export limit not more than 20,000 metric tons may be utilized in selling CTL plate which is 0.375 inches or less in actual or nominal thickness. The parties also agree that an increase in the export limit for each subsequent Relevant Period shall be made under the following circumstances: (1) The Government of Ukraine shall receive a 5 percent increase in the export limit for each subsequent Relevant Period if the weighted-average F.O.B. sales price for A36 plate over 0.375 inches exceeds the reference price by more than 5 percent during the most recently completed Relevant Period; (2) this increase in the export limit may be used only for exports of A36 plate which is over 0.375 inches in thickness; (3) the determination to increase the export limit for each subsequent Relevant Period will be made by the Department based on the Government of Ukraine's compliance with all relevant data reporting requirements.

B. No later than 60 days prior to the end of the first Relevant Period, the Department shall calculate an upward or downward adjustment to the next Relevant Period's export limit based upon changes in U.S. apparent consumption for steel plate. U.S. apparent consumption will be calculated using official statistics from the U.S. Census Bureau and data from the American Iron and Steel Institute regarding domestic shipments. The maximum adjustment will be plus or minus no more than 6 percent per Relevant Period, and will be calculated by comparing the most recent twelve months of data for U.S. apparent consumption available to the Department at the time of the calculation to the level of the previous corresponding twelve months of data. The Department will then apply the adjustment to the Relevant Period's export limit. The Department will similarly adjust the export limit every Relevant Period, and the effects of the adjustment will be cumulative. Deductions from the export limits shall be made based on the "Date of Export", as defined in Section I. MINFER will not issue Export Licenses accounting for more than sixty percent of the export limit for any Relevant Period during either semi-annual period within such Relevant Period.

C. On and after the effective date of this Agreement, the Government of Ukraine will restrict the volume of direct and indirect exports of CTL plate to the United States, and the transfer and withdrawal from inventory of CTL plate (consistent with the provisions of Section III.E), in accordance with the export limits then in effect.

D. Any export of CTL plate shall not when cumulated with all prior exports in such Relevant Period exceed the export limit for that Relevant Period.

E. Any inventories of CTL plate currently held in the United States by a Ukrainian legal entity and imported into the United States between November 5, 1996 and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License issued by MINFER. Any such transfers or withdrawals from inventory shall be deducted from the export limits in effect at the time the Export License is issued.

2. A request for an Export License under this provision shall be accompanied by a report containing the information set forth in the Appendix to this Agreement.

F. Any arrangement involving the exchange, sale, or delivery of CTL plate products from Ukraine, whether or not further processed, to the degree it results in the sale or delivery in the United States of CTL plate from a country other than Ukraine, is subject to the requirements of Section V and will be counted toward the export limits. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limits pursuant to Section VII.

G. Where CTL plate is imported into the United States and is subsequently re-exported or re-packaged and re-exported, the export limits shall be increased by the quantity of product re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

H. Export Licenses for a given Relevant Period may not be issued after the expiration of the Relevant Period, except that Export Licenses not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such "carried-over" quota shall be counted against the export limits applicable to the previous Relevant Period.

Export Licenses for up to 15 percent of the export limits for a subsequent Relevant Period may be issued as early as 45 days prior to the beginning of the subsequent Relevant Period. Such "carried-back" quota shall be counted against the export limits applicable to the following Relevant Period.

IV. Reference Price

A. CTL plate will not be sold below the reference price. Each grade of CTL plate shall have its own reference price, and all such reference prices shall be calculated in the same manner.

B. The reference price issued quarterly by the Department shall be released by October 1, January 1, April 1, and July 1 of each year and shall be effective on November 1, February 1, May 1, and August 1, respectively. The reference price for the first Relevant Period is set forth in Section IV.C. of this Agreement and shall remain effective until revised by the Department pursuant to this paragraph IV:B. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price for the first Relevant Period shall be as follows:

Grade of CTL plate	Reference price
A36	$359.00 per metric ton.
A572	387.00 per metric ton.
A516	390.00 per metric ton.
API–2H	530.00 per metric ton.

The reference price for API–2Y will be determined at a later date.

Until such time as the Department and MINFER agree upon references prices for other grades of CTL plate, only grades A36, A572, A516, and API–2H may be exported to the United States.

Best efforts will be made by the Department and MINFER to consult for the purpose of establishing references prices for other grades of CTL plate by November 30, 1997.

D. For each subsequent Relevant Period the reference price will be adjusted on a quarterly basis to reflect the change in the BLS Producer Price Index for carbon steel plate for the most recent three months for which data is available preceding the date on which the reference price is issued.

If the last month of BLS PPI for the three-month period preceding the date on which the reference price is issued has fallen by more than 2.8 percent from the average of the first two months of the period the reference price will be adjusted on the basis of the PPI for the last month of the three-month period.

E. MINFER will ensure that with respect to merchandise covered by each Export License, the Ukrainian unit values of imports of CTL plate into the United States will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be at a level in the transaction chain as far upstream as possible (i.e., F.O.B.). MINFER will ensure that contracts and all relevant documentation will be available to the Department and will be subject to verification.

V. Export License

A. The Government of Ukraine will restrict the volume of direct and indirect exports of CTL plate to the United States by means of Export Licenses. Export Licenses shall be issued by MINFER for all direct and indirect exports of CTL plate to the United States in accordance with the export limits in section III and the reference price in section IV.

B. MINFER shall issue Export Licenses on a first-come-first-serve basis for all Ukrainian producers.

C. Before it issues an Export License, MINFER will ensure that the Relevant Period's export limit is not exceeded and that the price for the CTL plate is at or above the reference price.

D. MINFER shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the price restrictions, export limits, and Export Licenses. MINFER will inform the Department, in writing, of any violations concerning the price restrictions, export limits, or Export Licenses which come to its attention and the action taken with respect thereto.

The Department will inform MINFER in writing of violations concerning the price restrictions, export limits or Export Licenses which come to its attention and the action taken with respect thereto.

E. Export Licenses will be issued sequentially, endorsed against the export limit for the Relevant Period, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Export Licenses must contain an English language translation.

G. On and after the effective date of this Agreement, the United States shall require presentation of an Export License as a condition for entry of CTL plate into the United States. The United States will prohibit the entry of any CTL plate not accompanied by an Export License.

H. The validity of Export License shall be six (6) months, except that no more than 90 days shall elapse between the date of issuance of the Export License and the date on which the merchandise is cleared through Ukrainian customs for export.

VI. Implementation

In order to effectively restrict the volume of exports of CTL plate to the United States, the Government of Ukraine agrees to implement the following procedures no later than 90 days after the effective date of this Agreement, except as provided for in VI.A.:

A. Establish, through MINFER, an export licensing program for all exports of CTL plate to, or destined directly or indirectly for consumption in, the United States, as of the effective date of the Agreement.

B. Ensure compliance by any official Ukrainian institution, chamber, or other entities authorized by the Government of Ukraine, all producers, exporters, brokers, and traders of CTL plate, and their affiliated parties, as well as independent trading companies/resellers utilized by the Ukrainian producer to make sales to the United States, with all procedures established in order to effectuate this Agreement.

C. Collect information from all producers, exporters, brokers, and traders of the CTL plate to the United States, and their affiliated parties; as well as independent trading companies/resellers utilized by the Ukrainian producer, on the sale of the CTL plate, and report such information pursuant to Section VIII (A) of this Agreement.

D. The Government of Ukraine, by law, will prohibit direct and indirect exports to the United States of CTL plate except under Export Licenses issued pursuant to Section V.A and impose strict sanctions, such as penalties or prohibition from participation in the export limits allowed by the Agreement, in the event that any Ukrainian or Ukrainian-affiliated party does not comply in full with all terms of the Agreement.

E. Require that purchasers agree: Not to circumvent this Agreement; to report to MINFER any subsequent arrangement entered into for the sale, exchange, or loan to a person or entity in the United States of CTL plate purchased from Ukraine; and to include these same provisions in any subsequent contracts involving CTL plate purchased from Ukraine.

F. Prohibit direct and indirect exports to the United States of CTL plate which is not die-stamped with the mark of the producing mill and which is not marked with Ukraine as the country of origin.

VII. Anticircumvention

A. MINFER will take all appropriate measures under Ukrainian law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a

timely manner (normally within 45 days). MINFER shall notify the Department, in writing, of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, MINFER shall share with the Department all information received or collected by MINFER regarding its inquiries, its analysis of such information and the results of such inquiries. MINFER will require all exporters of CTL plate to include a provision in their contracts for sales to countries other than the United States that the CTL plate sold through such contracts cannot be re-exported, transhipped, or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. MINFER will also establish appropriate mechanisms to enforce this requirement.

B. MINFER of Ukraine shall advise within one month after the effective date of this Agreement that all contracts for sales of CTL plate to third countries by Ukrainian producers/exporters shall include a clause which stipulates the following: that in the event that their customer sells the merchandise to another trading company it must provide the identity of the subsequent trading company to MINFER.

Given the critical need to prevent circumvention, both Governments agree to share information to the greatest extent their national legislation will allow. Therefore, MINFER agrees to use its maximum efforts to provide transaction specific data for all third country sales to the final end-user.

C. If, in an inquiry pursuant to paragraph A, MINFER determines that a Ukrainian company has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then MINFER shall impose penalties on such company including, but not limited to, denial of access to the CTL plate quota. Additionally, MINFER shall deduct an amount of CTL plate equivalent to the amount involved in such circumvention from the export limit and shall immediately notify the Department, in writing, of the amount deducted. If sufficient tonnage is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

D. If MINFER determines that a company from a third country has circumvented the Agreement and the parties agree that no Ukrainian entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as MINFER prohibiting sales of Ukrainian CTL plate to the company responsible or reducing CTL plate exports to the country in question. If the parties are unable to reach a mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify MINFER of the facts and the reasons constituting the basis for the Department's intended action and will afford MINFER ten days in which to comment.

E. If the Department determines that a Ukrainian/ or third country entity participated in circumvention, the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify MINFER of the facts and reasons constituting the basis for the Department's intended action and will afford MINFER ten days in which to comment.

F. The Department shall direct the U.S. Customs Service to require all importers of CTL plate into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the CTL plate being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to U.S. Customs or the U.S. Department of Justice for further action.

G. Given the fungibility of the world steel market, the Department will take the following factors into account in distinguishing normal steel market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;

2. Existence of any arrangement as defined in Section III.E that was not reported to the Department pursuant to Section VIII.A;

3. Existence and function of any subsidiaries or affiliates of the parties involved;

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel producing facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, of any payments to one party for merchandise delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

H. "Swaps" include, but are not limited to:

Ownership swaps—involve the exchange of ownership of any type of CTL plate product(s),without physical transfer. These may include exchange of ownership of CTL plate products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of CTL plate products produced in different countries so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of CTL plate products without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of steel product(s) from Ukraine to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced CTL plate products of any type, regardless of the sequence of the transaction.

I. The Department will enter its determinations regarding circumvention into the record of the Agreement.

VIII. Monitoring

MINFER will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department shall provide semi-annual reports to MINFER indicating the volume of imports of the CTL plate to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on the effective date of this Agreement, MINFER shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix to this Agreement. All such information will be provided to the Department by the 15th of each month for exports to the United States occurring during the previous month. For exports to countries other than the United States and for home market sales, all such information will be provided to the Department by May 30 of each year for exports and home market sales during the period November 1 through April 30, and by November 30 of each year for exports and sales during May 1 through October 31, or within 90 days of a request made by the Department. All information will be subject to the verification provision identified in Section VIII.C of this Agreement. MINFER agrees to allow sales of CTL plate only through those brokers and trading companies which permit verification and full reporting of data. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of exports by HTS category to each third country will be provided to the Department by July 30 of each year for exports during the period November 1 through April 30 and by January 31 of each for exports during period May 1 through October 31.

Transaction-specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that transaction-specific data is not necessary for a given period, it will notify MINFER at least 90 days before the reporting deadline that transaction-specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, MINFER will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

MINFER will also report transaction-specific data for home market sales as specified in the Appendix to this Agreement.

Both governments recognize that effective monitoring of this Agreement may require that MINFER provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement. The Department shall provide notice to MINFER of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

B. Other Sources for Monitoring

The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other financial import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the CTL plate during the period this Agreement is in effect.

C. Verification

MINFER will permit full verification of all information affiliated to the administration of this Agreement, including verification of the Ukrainian producer and the trading companies/ brokers utilized in making sales/ shipments to the United States, on an annual basis or more frequently, as the Department deems necessary to ensure that the Government of Ukraine is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding under appropriately-drawn administrative protective orders consistent with the Department's Regulations business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

X. Consultations

MINFER and the Department shall hold consultations regarding matters concerning the implementation, operation, including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either MINFER or the Department.

XI. Violations of the Agreement

A. Violation

"Violation" means noncompliance with the terms of this Agreement caused by an act or omission, in accordance with Section 353.19 of the Department's Regulations. Each party will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide MINFER 20 days within which to provide comments. The Department will make a determination within 30 days of the date established for submission of comments by MINFER.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated the Department will take such action as it determines is appropriate under 734(i) of the Act and Section 353.19 of the Department's Regulations.

XII. Duration

The export limit provided for in Section III of this Agreement shall remain in force from the effective date of this Agreement through November 1, 2002.

The Department will, upon receiving a proper request no later than November 1, 2001, conduct an administrative review under Section 751 of the Act. The Department expects to terminate this Agreement and the underlying investigation no later than November 1, 2002, provided that Ukraine has not been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted consistent with Section 353.25 of the Department's Regulations.

The Government of Ukraine may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of MINFER, the provisions of Section 734(i) of the Act shall apply.

XIII. Conditions

The Department recognizes that it may determine during the life of this Agreement that the Ukrainian CTL plate industry is a market-oriented industry, or that Ukraine is a market economy country. In either event, the Department may:

(a) Enter into a new suspension agreement under section 734(b) or 734(c) of the Act: or

(b) If the investigation was not completed under section 353.18(i) of the Department's regulations, afford MINFER a full opportunity to submit new information, and take such information into account in reaching its final determination—provided that all parties to the proceeding are given a full opportunity to submit factual information and argument in rebuttal; or

(c) If the investigation was completed under section 353.18(i), consider a request made no later than 30 days after termination of the Agreement to conduct a changed circumstances review under section 751 (b).

XIV. Other Provisions

A. In entering into this Agreement, MINFER does not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value or that such sales have materially injured or threatened material injury to, an industry or industries in the United States.

B. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United states is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic CTL plate products by imports of the merchandise subject to this Agreement.

C. The Department does not consider any of the obligations concerning exports of CTL plate to the United States undertaken by MINFER pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

D. The English language version of this Agreement shall be controlling.

E. For all purposes hereunder, the Department and the signatory Government of Ukraine shall be represented by, an all communications and notices shall be given and addressed to:

Department of Commerce

U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, DC 20230

Government of Ukraine

Ministry of Foreign Economic Relations and Trade of Ukraine, 8 Livivska Square, Kiev, GSP. 655,254655, Ukraine

XV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on CTL plate from Ukraine shall be October 24, 1997.

Signed on this 24 day of October, 1997.

For the U.S. Department of Commerce.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the Government of Ukraine.

Sergei Gryshchenko,

Deputy Minister for Ministry of Industrial Policy.

Appendix

In accordance with the established format, MINFER shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

MINFER will collect and maintain data on exports to the United States and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

MINFER will report home market sales for those companies which represent substantially all of domestic production of CTL plate. For these companies, MINFER will report all home market sales of CTL plate for those grades listed in Section IV. C. Of the Agreement.

MINFER will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

A. Report of Inventories

Report by location, the inventories of CTL plate held by an Ukrainian legal entity in the United States and imported into the United States during the period November 5, 1996, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure (metric tons).
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has beneficial title to the merchandise.
4. Contract Registration Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Export License Number: Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the Export License is issued.
7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address
10. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.

B. Exports to the United States

MINFER will provide all Export Licenses issued to Ukrainian entities which shall contain the following information with the exception that information requested in item #9, date of entry, item 10, importer of record, and item #18, final destination may be omitted if unknown to MINFER and the licensee.

1. Export License Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, and the ASTM or equivalent grade.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate currency used.
5. Unit Price: Indicate per metric ton.
6. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
7. Sales Order Number (s): Indicate the specification number/order number relating to each sale and/or shipment.
8. Date of Export: Date the export license is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Ukrainian producer/exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Ukrainian producer/exporter.
14. Remaining Export Limit: Indicate the remaining export limit available to the Ukrainian producers during the Relevant Period.
15. Final Destination: The complete name and address of the end-user.

Customer Certification

MINFER shall ensure that all customers of the CTL plate shall certify that the merchandise imported into the United States pursuant to this Agreement shall not be loaned or swapped.

Mill Certification

MINFER shall ensure that all shipments of CTL plate exported to the United States pursuant to this Agreement, shall be accompanied by a copy of the original mill certification, which includes the heat number(s).

C. Sales to Countries Other Than the United States

Pursuant to Section VIII, paragraph A, MINFER will provide country-specific volume and value information for all exports of CTL plate to third countries.

1. Customs Export Declaration Number: Indicates the number(s) related to each shipment.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date of Export Certification is issued.
6. Importer of Record: Name and address.
7. Customer: Name and address of the first unaffiliated party purchasing from the Ukrainian producer/exporter.
8. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
9. Name of Vessel: Identity of the name of vessel for each shipment to third countries.
10. Other: The identity of any subsequent trading company in the transaction chain pursuant to Section VII.B.
11. Estimated Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.

D. Home Market Sales

Pursuant to Section VIII.A., MINFER will provide home market sales data for those companies which represent substantially all of domestic production of CTL plate. For these companies, the MINFER will report all home market sales of CTL plate for those grades listed in Section IV. C. Of the Agreement.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of the order (i.e., price and quantity become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale.
4. Customer: Name and address of the first unaffiliated party purchasing from the Ukrainian producer.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.

[FR Doc. 97–30392 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping investigation on cut-to-length carbon steel plate from the People's Republic of China (PRC). The basis for the suspension is an agreement by the Government of the PRC to restrict the volume of direct and indirect exports to the United States of cut-to-length carbon steel plate from all PRC producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Yang, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3910.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from the People's Republic of China are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary threat of injury determination (see ITC Investigation Nos. 731–TA–756). On June 11, 1997, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31958, (June 11, 1997)).

The Department and the People's Republic of China initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Bethlehem Steel Corp., U.S. Steel Group, United Steel Workers of America, Liaoning, Anshan, Bao Steel, Shanghai Pudong and WISCO.

The Department and the Government of the People's Republic of China signed the final suspension agreement on October 24, 1997.

Scope of the Investigation

See Notice of *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, signed on October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734 (l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation, that the agreement is in the public interest, and that the agreement can be monitored effectively. *See Public Interest Memorandum*, dated October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this Agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from the People's Republic of China entered or withdrawn from warehouse, for consumption, as directed in our notice of "Preliminary Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from the People's Republic of China" and "Postponement of the Final Determination: Cut-to-Length Carbon Steel Plate from the People's Republic of China" is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from the People's Republic of China pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received separate requests for continuation from Bethlehem Steel Corp., U.S. Steel Corp. (A Unit of USX Corporation), and the United Steelworkers of America, interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have

completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*See* section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (*See* section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Annex 1—Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

For purposes of encouraging free and fair trade in certain cut-to-length carbon steel plate (CTL plate), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic products by imports of the merchandise subject to this Agreement, the United States Department of Commerce ("the Department") and the Government of the People's Republic of China enter into this suspension agreement ("the Agreement").

Pursuant to this Agreement, the Government of the People's Republic of China will restrict the volume of direct and indirect exports to the United States of CTL plate from all Chinese producers/exporters, subject to the terms and provisions set forth below. For any of the deadlines mentioned in this Agreement, the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") may request an extension which will be considered by the Department if it is received in writing prior to the deadline in question and includes reasons for the extension.

On the basis of this Agreement, pursuant to the provisions of Section 734(1) of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act, as effective on January 1, 1995 ("the Act") (19 U.S.C. 1673c(1)), the Department shall suspend its antidumping investigation with respect to CTL plate produced in the People's Republic of China, subject to the terms and provisions set forth below. Further, the Department will instruct the U.S. Customs Service ("Customs") to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, CTL plate covered by this Agreement as of the effective date of this Agreement.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. "Date of Export" for imports of CTL plate into the United States shall be considered the date the export license was issued.

B. "Parties to the Proceeding" means any interested party, within the meaning of section 353.2(k) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. "Indirect Exports" means arrangements as defined in Section III.E of this Agreement and exports from the People's Republic of China through one or more third countries, whether or not such exports are further processed, insofar as they remain within the scope of the Agreement, and includes further processing which results in minor alterations, or under certain limited circumstances, as described in Section VII. G., further processing which results in substantial transformation as a result of an attempt to circumvent the Agreement, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Chinese producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, "United States" shall comprise the customs territory of the United States of America (the 50 States, the District of Colombia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. "For Consumption" means all CTL plate sold to customers, such as, trading companies, distributors, resellers, end-users, or service centers.

F. Customer means an entity, such as a steel service center, reseller, trading company, end-user, etc., which consumes CTL plate as defined in Section I.E.

G. "Date of Sale" is defined as the date on which price and quantity become firm, e.g., the specification date or, in the case of a long-term contract, the date of contract, as recorded in the company's records kept in the ordinary course of business.

H. "Export License" is the document issued by the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") which must accompany all shipments of CTL plate from the People's Republic of China to the United States, and must contain all of the information enumerated in the Appendix to this Agreement, except that the categories Date of Entry, Importer of Record, Final Destination, and Other may be omitted if unknown to the MOFTEC and the licensee. An export license shall be required for customs clearance into the United States.

I. "Reference Price" means the price calculated by the Department, as described in Section IV, on a quarterly basis to be used as a floor price for sales of Chinese CTL plate into the United States.

J. "Relevant Period" for the export limits of the Agreement means the period November 1, through October 31 of each year that the Agreement is in effect.

II. Product Coverage

The products covered by this Agreement include hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

III. Export Limit

A. The export limit for CTL plate for the first Relevant Period shall be 150,000 metric tons. Until such time as reference prices are agreed to for other grades, only grade A36 may be exported. Of this export limit, not more than 25,000 metric tons may be utilized in selling CTL plate which is 0.375 inches or less in actual or nominal thickness, and not more than 25,000 metric tons may be utilized in selling CTL plate which is three inches or more in actual or nominal thickness. No later than 60 days prior to the end of the first Relevant Period, the Department shall calculate an upward or downward adjustment to the next Relevant Period's quota based upon changes in U.S. apparent consumption for steel plate. U.S. apparent consumption will be calculated using official statistics from the U.S. Census Bureau and data from the American Iron and Steel Institute regarding domestic shipments. The maximum adjustment will be plus or minus no more than 6 percent per Relevant Period, and will be calculated by comparing the most recent twelve months of data for U.S. apparent consumption available to the Department at the time of the calculation to the level of the previous corresponding twelve months of data. The Department will then apply the adjustment to the Relevant Period's export limit. The Department will similarly adjust the export limit every Relevant Period, and the effects of the adjustment will be cumulative. Deductions from the export limits shall be made based on the "Date of Export", as defined in Section I. No more than sixty percent of the export limit for any Relevant Period may be licensed during each half (six-month period) within a given Relevant Period.

B. On and after the effective date of this Agreement, the Government of the People's Republic of China will restrict the volume of direct and indirect exports of CTL plate to the United States, and the transfer and withdrawal from inventory of CTL plate (consistent with the provisions of Section III.D), in accordance with the export limits then in effect.

C. Export licenses may not be issued for more than the entire amount of quota allocated in any given Relevant Period. Any CTL plate exported during a Relevant Period shall not when cumulated with all prior exports in such Relevant Period exceed the export limit for that Relevant Period.

D. Any inventories of CTL plate currently held in the United States by a Chinese legal entity and imported into the United States between November 5, 1996 and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License issued by MOFTEC. Any such transfers or withdrawals from inventory shall be deducted from the export limits in effect at the time the Export License is issued.

2. A request for an Export License under this provision shall be accompanied by a report containing the information set forth in the Appendix to this Agreement.

E. Any arrangement involving the exchange, sale, or delivery of CTL plate products from the People's Republic of China, whether or not further processed, to the degree it results in the sale or delivery in the United States of CTL plate from a country other than the People's Republic of China, is subject to the requirements of Section V and will be counted toward the export limits. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limits pursuant to Section VII.

F. Where CTL plate is imported into the United States and is subsequently re-exported or re-packaged and re-exported, the export limits shall be increased by the quantity of product re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

G. Export Licenses for a given Relevant Period may not be issued after the expiration of the Relevant Period, except that Export Licenses not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such "carried-over" quota shall be counted against the export limits applicable to the previous Relevant Period.

Export Licenses for up to 15 percent of the export limits for a subsequent Relevant Period may be issued as early as 45 days prior to the beginning of the subsequent Relevant Period. Such "carried-back" quota shall be counted against the export limits applicable to the following Relevant Period.

H. For the first 90 days after the effective date of this Agreement, CTL plate shall be admitted into the United States with a temporary Export License.

The volume of any such imports will be deducted from the export limits applicable to the first Relevant Period. A full reporting of any such imports, which must correspond to the United States sales information detailed in the Appendix to this Agreement, must be submitted to the Department no later than 30 days after the conclusion of the 90 day period. This data must be sorted on the basis of date of export and must be set forth on a transaction-specific basis.

IV. Reference Price

A. CTL plate will not be sold below the reference price on the date of sale. Each grade of CTL plate shall have its own reference price, and all such reference prices shall be calculated in the same manner.

B. The reference price issued quarterly by the Department shall be released by October 1, January 1, April 1, and July 1 of each year and shall be effective on November 1, February 1, May 1, and August 1, respectively. The reference price for the first Relevant Period is set forth in Section IV.C. of this Agreement and shall remain effective until revised by the Department pursuant to this paragraph IV.B. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price for the first Relevant Period shall be as follows:

Grade of CTL plate	Reference price
A36	$350.00 per metric ton.

D. For each subsequent Relevant Period, the reference price will be adjusted on a quarterly basis to reflect the change in the BLS Producer Price Index for carbon steel plate for the most recent three months for which data is available preceding the date on which the reference price is issued. If the last month of the BLS PPI for carbon steel plate for the three-month period preceding the date on which the reference price is issued has fallen by more than 2.6 percent from the average of the first two months of the quarter, the reference price will be adjusted on the basis of the BLS PPI for carbon steel plate for the last month of the three-month period.

E. MOFTEC will ensure that, with respect to merchandise covered by each

Export License, the Chinese unit values of imports of CTL plate into the United States will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be at a level in the transaction chain as far upstream as possible (i.e., F.O.B Chinese ocean port, (excluding Hong Kong)). MOFTEC will ensure that contracts and all relevant documentation will be available to the Department and will be subject to verification.

F. CTL plate imported after the effective date of the Agreement, exported from the People's Republic of China prior to October 24, 1997 and sold pursuant to a contract in effect on or before August 31, 1997, in which the price to the first unrelated purchaser in the United States is fixed at a specific and definite amount with respect to the import at issue, shall not be subject to reference price restrictions. Consistent with Section III.H, the volume of such imports shall be deducted from the export limits.

V. Export License

A. MOFTEC will restrict the volume of direct and indirect exports of CTL plate to the United States by means of annual quota allocations and Export Licenses. Export Licenses shall be issued by MOFTEC for all direct and indirect exports of CTL plate to the United States in accordance with the export limits in section III and the reference price in section IV.

B. Thirty days following the annual allocation of quota rights for any Relevant Period, MOFTEC shall provide to the Department a written report identifying each quota recipient and the volume of quota which each recipient has been accorded ("report of quota allocation results"). MOFTEC may reallocate the volume of quota among quota recipients without prior approval from the Department, but must inform the Department in writing within thirty days of such reallocation.

C. Before it issues an Export License, MOFTEC will ensure that the Relevant Period's export limit is not exceeded and that the price for the CTL plate is at or above the reference price on the date of sale. The quantity specified on each export license may vary up to ten percent above or below the quantity actually shipped under that license. MOFTEC, however, will ensure that the total amount of CTL plate shipped under such licenses does not exceed the export limit for the Relevant Period.

D. MOFTEC shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the price restrictions, export limits, and Export Licenses. MOFTEC will inform the Department, in writing, of any violations concerning the price restrictions, export limits, or Export Licenses which come to its attention and the action taken with respect thereto.

The Department will inform MOFTEC in writing of violations concerning the price restrictions, export limits, and/or Export Licenses which come to its attention and the action taken with respect thereto.

E. Export Licenses will be issued sequentially, endorsed against the export limit for the Relevant Period, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Export Licenses must be issued no earlier than 90 days before the day on which the merchandise is accepted by a transportation company, as indicated in the bill-of-lading or a comparable transportation document, for export. Export Licenses must contain an English language translation.

G. On and after the effective date of this Agreement, the United States shall require presentation of an Export License as a condition for entry of CTL plate into the United States. The United States will prohibit the entry of any CTL plate not accompanied by an Export License.

H. For purposes of this Agreement, the duration of the validity of the Export License will be a period of 180 days.

VI. Implementation

In order to effectively restrict the volume of exports of CTL plate to the United States, MOFTEC agrees to implement the following procedures no later than 90 days after the effective date of this Agreement.

A. Establish, through MOFTEC, an export licensing program for all exports of CTL plate to, or destined directly or indirectly for consumption in, the United States.

B. Ensure compliance by any official Chinese institution, chamber, or other entities authorized by the Government of the People's Republic of China, all producers, exporters, brokers, and traders of CTL plate, and their affiliated parties, as well as independent trading companies/resellers utilized by the Chinese producer to make sales to the United States, with all procedures established in order to effectuate this Agreement.

C. Collect information from all producers, exporters, brokers, and traders of the CTL plate to the United States, and their affiliated parties; as well as independent trading companies/resellers utilized by the Chinese producer, on the sale of the CTL plate, and report such information pursuant to Section VIII(A) of this Agreement.

D. Prohibit, by law, direct and indirect exports to the United States of CTL plate except under Export Licenses issued pursuant to Section V.A and impose strict sanctions, such as penalties or prohibition from participation in the export limits allowed by the Agreement, in the event that any Chinese or Chinese-affiliated party does not comply in full with all terms of the Agreement.

E. Require that purchasers agree: not to circumvent this Agreement; to report to MOFTEC any subsequent arrangement(s) entered into for the sale, exchange, or loan to a person or entity in the United States of CTL plate purchased from the People's Republic of China; and to ensure that these same provisions are included in any subsequent contracts involving CTL plate purchased from the People's Republic of China.

F. Prohibit direct and indirect exports to the United States of CTL plate which is not die-stamped with the mark of the producing mill and which is not marked with the People's Republic of China as the country of origin.

VII. Anticircumvention

A. MOFTEC will take all appropriate measures under Chinese law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a timely manner (normally within 45 days). MOFTEC shall notify the Department, in writing, of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, MOFTEC shall share with the Department all information received or collected by MOFTEC regarding its inquiries, its analysis of such information and the results of such inquiries. MOFTEC will require all exporters of CTL plate to include a provision in their contracts for sales to countries other than the United States that the CTL plate sold through such contracts cannot be re-exported, transhipped, or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. MOFTEC will also establish appropriate mechanisms to enforce this requirement.

B. MOFTEC shall advise within one month after the effective date of this Agreement that all contracts for sales of CTL plate to third countries by Chinese producers/exporters shall include a clause which stipulates the following: that in the event that their customer sells the merchandise to another trading company it must provide the identity of the subsequent trading company to the Government of the People's Republic of China.

Given the critical need to prevent circumvention, both Governments agree to share information to the greatest extent their national legislation will allow. Therefore, MOFTEC agrees to use its maximum efforts to provide transaction specific data for all third country sales to the final end-user.

C. If, in an inquiry pursuant to paragraph A, MOFTEC determines that a Chinese company has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then MOFTEC shall impose penalties on such company including, but not limited to, denial of access to the CTL plate quota. Additionally, MOFTEC shall deduct an amount of CTL plate equivalent to the amount involved in such circumvention from the export limit and shall immediately notify the Department, in writing, of the amount deducted. If sufficient tonnage is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

D. If MOFTEC determines that a company from a third country has circumvented the Agreement and the parties agree that no Chinese entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as MOFTEC prohibiting sales of Chinese CTL plate to the company responsible or reducing CTL plate exports to the country in question. If the parties are unable to reach a mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement, taking into account all relevant factors. Before taking such action, the Department will notify MOFTEC of the facts and the reasons constituting the basis for the Department's intended action and will afford MOFTEC ten days in which to comment.

E. If the Department determines that a Chinese or third country entity participated in circumvention, the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify MOFTEC of the facts and reasons constituting the basis for the Department's intended action and will afford MOFTEC ten days in which to comment.

F. The Department shall direct the U.S. Customs Service to require all importers of CTL plate into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the CTL plate being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to Customs or the Department of Justice for further action.

G. Given the fungibility of the world steel market, the Department will take the following factors into account in distinguishing normal steel market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;

2. Existence of any arrangement as defined in Section III.E that was not reported to the Department pursuant to Section VIII.A;

3. Existence and function of any subsidiaries or affiliates of the parties involved;

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel producing facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for merchandise delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

H. "Swaps" include, but are not limited to:

Ownership swaps—involve the exchange of ownership of any type of CTL plate product(s), without physical transfer. These may include exchange of ownership of CTL plate products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of CTL plate products produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of CTL plate products, without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of steel product(s) from the People's Republic of China to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced CTL plate products of any type, regardless of the sequence of the transaction. Two years after the effective date of this Agreement, this provision with regard to displacement swaps will cease to exist unless the Department determines that there has been evidence of displacement swaps during the preceding two years.

I. The Department will enter its determinations regarding circumvention into the record of the Agreement.

VIII. Monitoring

MOFTEC will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department shall provide semi-annual reports to MOFTEC indicating the volume of imports of the CTL plate to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on the effective date of this Agreement, MOFTEC shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix to this Agreement. All such information will be provided to the Department by May 30 of each year for exports and aggregate home market sales during the period November 1 through April 30, and by November 30 of each year for exports during the period May 1 through October 31, or within 90 days of a

request made by the Department. MOFTEC agrees to provide transaction-specific information for home market sales upon demand, within 30 days of a request made by the Department. Such information will be subject to the verification provision identified in Section VIII.C of this Agreement. MOFTEC agrees to allow sales of CTL plate only through those brokers and trading companies which permit verification and full reporting of data. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of exports by HTS category to each third country will be provided to the Department by July 30 of each year for exports during the period November 1 through April 30 and by January 31 of each year for exports during period May 1 through October 31.

Transaction-specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that transaction-specific data is not necessary for a given period, it will notify MOFTEC at least 90 days before the reporting deadline that transaction-specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, MOFTEC will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

Both governments recognize that effective monitoring of this Agreement may require that MOFTEC provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement. The Department shall provide notice to MOFTEC of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

B. Other Sources for Monitoring

The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the CTL plate during the period this Agreement is in effect.

C. Verification

MOFTEC will permit full verification of all information affiliated to the administration of this Agreement, including verification of the Chinese producer and the trading companies/brokers utilized in making sales/shipments to the United States, on an annual basis or more frequently, as the Department deems necessary to ensure that the Government of the People's Republic of China is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with the Department's Regulations, business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

X. Consultations

MOFTEC and the Department shall hold consultations regarding matters concerning the implementation, operation, including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either MOFTEC or the Department.

XI. Violations of the Agreement

A. Violation

"Violation" means noncompliance with the terms of this Agreement caused by an act or omission, in accordance with Section 353.19 of the Department's Regulations.

Each party will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Exports in excess of the export limits set out in this Agreement shall not be considered a violation of the Agreement or an indication that the Agreement no longer meets the requirements of U.S. laws and regulations where such exports are inconsequential, inadvertent, and are applied against the export limits of the following Relevant Period.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide MOFTEC 20 days within which to provide comments. The Department will make a determination within 30 days of the date established for submission of comments by MOFTEC.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated, the Department will take such action as it determines is appropriate under 734(i) of the Act and Section 353.19 of the Department's Regulations.

XII. Duration

The export limits provided for in Section III of this Agreement shall remain in force from the effective date of this Agreement through November 1, 2002.

The Department will, upon receiving a proper request no later than November 1, 2001, conduct an administrative review under Section 751 of the Act. The Department expects to terminate this Agreement and the underlying investigation no later than November 1, 2002, provided that the People's Republic of China has not been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted consistent with section 353.25 of the Department's Regulations.

The Government of the People's Republic of China may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of MOFTEC, the provisions of Section 734(i) of the Act shall apply.

XIII. Conditions

The Department recognizes that it may determine during the life of this Agreement that the Chinese CTL plate industry is a market-oriented industry, or that the People's Republic of China is a market economy country. In either event, the Department may:

(a) Enter into a new suspension agreement under Section 734(b) or 734(c) of the Act; or

(b) If the investigation was not completed under section 353.18(i) of the Department's regulations, afford MOFTEC a full opportunity to submit new information, and take such information into account in reaching its final determination—provided that all parties to the proceeding are given a full opportunity to submit factual information and argument in rebuttal; or

(c) If the investigation was completed under section 353.18(i), consider a request made no later than 30 days after termination of the Agreement to conduct a changed circumstances review under Section 751(b).

XIV. Other Provisions

A. In entering into this Agreement, MOFTEC does not admit that any sales of CTL plate subject to this Agreement have been made at less than fair value or that such sales have materially injured, or threatened material injury to, an industry or industries in the United States.

B. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United States is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic CTL plate products by imports of the merchandise subject to this Agreement.

C. The Department does not consider any of the obligations concerning exports of CTL plate to the United States undertaken by MOFTEC pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

D. The English language version of this Agreement shall be controlling.

E. For all purposes hereunder, the Department and the signatory Government of the People's Republic of China shall be represented by, and all communications and notices shall be given and addressed to:

U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

Government of the People's Republic of China, Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Beijing 100731

XV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on CTL plate from the People's Republic of China shall be October 24, 1997.

Signed on this 24th day of October, 1997.

For the U.S. Department of Commerce.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the Government of the People's Republic of China.

Shi Jianxin,

Minister Counsellor, Embassy of the People's Republic of China.

Appendix

In accordance with the established format, MOFTEC shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

MOFTEC will collect and maintain data on exports to the United States, and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

MOFTEC will report the aggregate volume and value of home market sales of CTL plate for those companies which exported to the United States in the same reporting period as specified in Section VIII.A. For these companies, MOFTEC will report the aggregate home market sales of CTL plate for the grade listed in Section IV. C. of the Agreement. Upon demand, MOFTEC will provide the information requested in the "Home Market Sales" section.

MOFTEC will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

Report of Inventories

Report, by location, the inventories of CTL plate held by a Chinese legal entity in the United States and imported into the United States during the period November 5, 1996, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure (metric tons).

2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.

3. Titled Party: Name and address of party who legally has beneficial title to the merchandise.

4. Contract Registration Number: Indicate the number(s) relating to each entry now being held in inventory.

5. Export License Number: Indicate the number(s) relating to each sale or entry.

6. Date of Original Export: Date the Export License is issued.

7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.

8. Original Importer: Name and address.

9. Original Exporter: Name and address.

10. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.

Exports to the United States

MOFTEC will provide all Export Licenses issued to Chinese entities which shall contain the following information with the exception that information requested in item #9, date of entry, item #10, Importer of Record; item #16, final destination, item #17, other, may be omitted if unknown to MOFTEC and the licensee.

1. Export License number(s): Indicate the number(s) relating to each sale and/or entry.

2. Complete Description of Merchandise: Include the 10 digit HTS category, and the ASTM or equivalent grade.

3. Quantity: Indicate in metric tons.

4. F.O.B. Sales Value: Indicate currency used.

5. Unit Price: Indicate per metric ton.

6. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.

7. Sales Order Number (s): Indicate the specification number/order number relating to each sale and/or shipment.

8. Date of Export: Date the export license is issued.

9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.

10. Importer of Record: Name and address.

11. Trading Company: Name and address of trading company involved in sale.

12. Customer: Name and address of the first unaffiliated party purchasing from the Chinese producer/exporter.

13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated with the Chinese producer/exporter.

14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual Chinese producer/exporter during the Relevant Period.

15. Quota Remaining: Indicate the remaining quota available to the individual Chinese producer/exporter during the Relevant Period.

16. Final Destination: Indicate the complete name and address of the end-user.

17. Other: Indicate the identity of any party(ies) in the transaction chain between the customer and the final destination/end user.

Customer Certification

MOFTEC shall ensure that all customers of the CTL plate shall certify that the

merchandise imported into the United States pursuant to this Agreement shall not be loaned or swapped.

Mill Certification

MOFTEC shall ensure that all shipments of CTL plate exported to the United States pursuant to this Agreement shall be accompanied by a copy of the original mill certification, which includes the heat number(s).

Sales to Countries Other Than the United States

Pursuant to Section VIII, paragraph A, MOFTEC will provide country-specific volume and value information for all exports of CTL plate to third countries. The following information shall be provided except that information requested in item #6, importer of record, and item #10, other, may be omitted if unknown to MOFTEC and the licensee.

1. Customs Export Declaration Number: Indicate the number(s) related to each shipment.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date of Export Certification is issued.
6. Importer of Record: Name and address.
7. Customer: Name and address of the first unaffiliated party purchasing from the Chinese producer/exporter.
8. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
9. Name of Vessel: Identify the name of vessel for each shipment to third countries.
10. Other: The identity of any subsequent trading company in the transaction chain pursuant to Section VII.B.
11. Estimated Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.

Home Market Sales

Pursuant to Section VIII.A., MOFTEC will provide transaction-specific home market information for sales of subject merchandise, upon demand. The following information shall be provided, except that information requested in item #6 may be omitted if unknown to MOFTEC and the licensee.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of the order (i.e., price and quantity become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first affiliated party purchasing from the Chinese exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

[FR Doc. 97–30394 Filed 11–18–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–806]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation. The basis for this action is an agreement between the Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation (MINFER) wherein MINFER has agreed to restrict the volume of direct or indirect exports to the United States of CTL plate from all Russian producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, or Eugenia Chu, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–1324, or (202) 482–3964 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from the Russian Federation are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 11, 1997, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31967, (June 11, 1997)).

The Department and MINFER initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Bethlehem Steel Corp., U.S. Steel Group, United Steel Workers of America, and the Government of the Russian Federation.

The Department and MINFER signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, signed on October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734 (l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation, that the agreement is in the public interest, and that the agreement can be monitored effectively. See October 24, 1997, Public Interest Memorandum. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from the Russian Federation entered or withdrawn from warehouse, for consumption, as directed in our notice of "Preliminary Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from the Russian Federation" and "Postponement of the Final Determination: Cut-to-Length Carbon Steel Plate from the Russian Federation" is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from the Russian Federation pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that we continue the investigation. We received separate requests for continuation from Bethlehem Steel Corp., U.S. Steel Corp. (A Unit of USX Corporation), and the United Steelworkers of America, interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Agreement Suspending the Antidumping Investigation on Cut-To-Length Carbon Steel Plate From the Russian Federation

For the purpose of encouraging free and fair trade in cut-to-length carbon steel plate ("steel plate"), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic product, the United States Department of Commerce ("U.S. DOC") and the Ministry of Foreign Economic Relations and Trade of the Russian Federation ("MINFER of Russia") enter into this suspension agreement ("the Agreement").

Pursuant to this Agreement, MINFER of Russia will restrict the volume of direct and indirect exports to the United States of steel plate from all Russian producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Section 734(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(1)), (see Appendix II), U.S. DOC shall suspend its antidumping investigation with respect to steel plate produced in Russia, subject to the terms and provisions set forth below. Further, U.S. DOC will instruct the U.S. Customs Service to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, the steel plate covered by this Agreement as of the effective date of this Agreement.

I. Definitions

For purposes of this Agreement, the following definitions apply.

A. "Date of Export" for imports of steel plate to the United States shall be considered the date on which the Export License/Temporary Document was issued.

B. "Parties to the Proceeding" means any interested party, within the meaning of section 353.2(k) of the Department's Regulations, which actively participates through written submission of factual information or written argument.

C. "Indirect Exports" means arrangements as defined in Section III.E of this Agreement and exports from Russia through one or more third countries, whether or not such exports are further processed, insofar as they remain within the scope of the Agreement, and includes further processing which results in minor alterations, or under certain limited circumstances, as described in Section VII. G., further processing which results in substantial transformation as a result of an attempt to circumvent the Agreement, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Russian producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, "United States" shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States.

E. "For Consumption" means all steel plate sold to customers, such as, trading companies, distributors, resellers, end-users, or service centers.

F. "End-User" means an entity, such as a steel service center, reseller, trading company, end-user. etc. which consumes steel plate as defined in Section I.E.

G. "Date of Sale" is defined as the date on which price and quantity become firm, e.g., the specification date or, the date of the contract if the contract fixes the price and quantity for more than one year. as recorded in the company s records kept in the ordinary course of business.

H. "Export License/Temporary Document" is the document issued by ("MINFER") of Russia which serves also as both a quota certificate and a certificate of origin. An Export License/Temporary Document must accompany all shipments of steel plate from Russia to the United States, and must contain all of the information enumerated in the Appendix I to this Agreement, except that Date of Entry, Importer of Record, Final Destination, and Other, may be omitted if unknown to MTNFFR of Russia and the licensee.

I. Reference Price" means the price calculated by U.S. DOC, as described in Section IV, on a quarterly basis to be used as a floor price for sales of steel plate to the United States.

J. "Relevant Period" for the export limit of this Agreement means the period from January I through December 31 of each year that the Agreement is in effect, except that the First Relevant Period shall be the period from October 24, 1997 through December 31, 1998. The Final Relevant Period shall be the period from January 1, 2002 through October 23, 2002.

II. Product Coverage

The products covered by this Agreement include hot-rolled iron and non-alloy steel universal mill steel plates (i.e., flat-rolled products rolled on four faces or in a closed box pass. of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm; not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other non-metallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape. hot-rolled, neither clad, plated, nor coated with metal. whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as steel plate in this Agreement are flatrolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") for example. products which have been beveled or rounded at the edges. This merchandise is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7208.40.3030, 7208.40.3060. 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from steel plate within the scope of this Agreement is grade X–70 steel plate. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

The products covered by the above definition shall be referred to hereinafter as "steel plate".

III. Export Limits

A. The export limit for each Relevant Period shall be 100,000 metric tons of steel plate, except that for the First Relevant Period the export limit shall be 118,630 metric tons of steel plate and for the Final Relevant Period the export limit shall be 81,370 metric tons of steel plate. No later than 60 days prior to the end of the First Relevant Period, U.S. DOC shall calculate an upward or downward adjustment to the next Relevant Period's export limit based upon the changes in U.S. apparent consumption for steel plate. U.S. apparent consumption will be calculated using of financial statistics of the U.S. Census Bureau and data from the American Iron and Steel Institute regarding domestic shipments. The maximum adjustment will be plus or minus no more than 6 percent per Relevant Period, and will be calculated by comparing the most recent twelve months of data for U.S. apparent consumption available to U.S. DOC at the time of the calculation, to the level of the previous corresponding twelve months of data. U.S. DOC will then apply the adjustment to the Relevant Period's export limit. U.S. DOC will similarly adjust the export limit every Relevant Period, and the effects of the adjustments shall be cumulative.

Deductions from the export limit shall be made based on the "Date of Export", as defined in Section I. MINFER of Russia will not issue Export Licenses/ Temporary Documents accounting for more than sixty percent of the export limits for any Relevant Period during either semi-annual period within such Relevant Period. The two semi-annual periods within the Relevant Period are defined as: (1) January 1 through June 30; and (2) July 1 through December 31 and except that for the First Relevant Period, the two semi-annual periods are defined as: (1) the period beginning on October 24, 1997 through May 31 1998; and (2) the period June 17 1998 through December 31, 1998. and for the Final Relevant Period, the semi-annual periods are defined as: (1) January 1, 2002 through May 31, 2002; and (2) June 1, 2001 through October 23, 2002.

B. On and after October 24, 1997, MINFER of Russia will restrict the volume of direct or indirect exports of steel plate to the United States, and the transfer and withdrawal from inventory of steel plate (consistent with the provisions of Section III.D) in accordance with the export limit then in effect.

C. Any amount delivered during a Relevant Period shall not when cumulated with all prior deliveries in such Relevant Period, exceed the export limit for that Relevant Period except as provided for in Section III.G.

D. Any inventories of steel plate currently held in the United States by a Russian entity and imported into the United States between November 5, 1996, and October 24 1997. will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License/Temporary Document issued by MINFER of Russia. Any such transfers or withdrawals from inventory shall be deducted from the export limit in effect at the time the Export License/ Temporary Document is issued.

2. A request for an Export License/ Temporary Document under this provision shall be accompanied by a report specifying the data pursuant to the provisions of Russian legislation, in particular, the identity of the original exporter and importer, the customer, if known, the original date of export and entry into the United States, if known, the quantity expressed in metric tons, and a complete description of the steel plate (including heat numbers and other available identifying documentation).

E. Any arrangement involving the exchange, sale, or delivery of steel plate products from Russia whether or not further processed within the meaning of I.C., to the degree it can be shown to have resulted in the sale or delivery in the United States of steel plate products from a country other than Russia, will be counted toward the export limit under this Agreement. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limit pursuant to Section VII.

F. When steel plate is imported into the United States and is subsequently re-exported, or re-packaged and re-exported or further processed within the meaning of I.C. and re-exported, the export limit shall be increased by the quantity re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after U.S. DOC receives, and has the opportunity to verify, evidence demonstrating original importation. any repackaging or further processing, and subsequent exportation.

G. Export Licenses/Temporary Documents issued for a given Relevant Period may not be used after the expiration of that Relevant Period, except that Export Licenses/Temporary Documents not used during the Relevant Period may be used during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such "carried-over" quota shall be counted against the export limit applicable to the previous Relevant Period.

Export Licenses/Temporary Documents for up to 15 percent of the export limit for a subsequent Relevant Period may be issued as early as 45 days prior to the beginning of the subsequent Relevant Period. Such "carried-back" quota shall be counted against the export limit applicable to the following Relevant Period.

H. For the first 120 days after October 24, 1997, steel plate shall be admitted into the United States with a "Temporary Document."

The volume of any such imports will be deducted from the export limit applicable to the First Relevant Period. A full reporting of any such imports, which must correspond to the information detailed in Appendix I.B. to this Agreement, must be submitted to U.S. DOC no later than 45 days after the conclusion of the 120 day period. This data must be sorted on the basis of date of export and must be set forth on a transaction-specific basis.

IV. Reference Price

A. Steel plate will not be sold below the reference price in effect on the date of sale.

B. The reference price issued quarterly by U.S. DOC shall be released by September 1, December 1, March 1, and June 1 of each year and shall be effective on October 1, January 1, April 1, and July 1, respectively. The reference price for the First Relevant Period shall be issued and effective on October 24. 1997. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price for the First Relevant Period shall be as follows:

A36—$300.00 per metric ton
A572—$325.00 per metric ton

Until such time as U.S. DOC and MINFER of Russia agree, after consultations, upon reference prices for other grades of steel plate, only grades A36 and A572 may be exported to the United States. Consultations regarding reference prices for other grades of steel plate shall be held within 30 days of a request and shall be completed within 15 days.

D. For each subsequent Relevant Period, the reference price will be adjusted on a quarterly basis to reflect the change in the BLS Producer Price Index (PPI) for carbon steel plate over the three months for which data is available preceding the date on which the reference price is issued.

If the last month of BLS PPI for the three-month period preceding the date on which the reference price is issued has fallen by more than 2.6 percent from the average of the first two months of the period, the reference price will be adjusted on the basis of the PPI for the last month of the three-month period.

E. MINFER of Russia will ensure that, with respect to merchandise covered by each Export License/Temporary Document, the Russian unit values of steel plate exports will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be F.O.B. port. MINFER of Russia will ensure that contracts and all relevant documentation will be available to U.S. DOC and will be subject to verification.

V. Export License/Temporary Document

A. MINFER of Russia shall restrict the volume of direct or indirect exports of steel plate to the United States by means of annual quota allocations and Export Licenses/Temporary Documents. Export Licenses/Temporary Documents shall be issued by MINFER of Russia for all direct or indirect exports of steel plate to the United States in accordance with the export limit in Section III and the reference price in Section IV.

B. Thirty days following the allocation of quota rights for any Relevant Period.

MINFER of Russia shall provide to U.S. DOC a notice identifying each quota recipient and the volume of quota which each recipient has been accorded ("notice of quota allocation results"). MINFER of Russia shall not be required to seek the approval of U.S. DOC for changing the volume of quota assigned to individual quota recipients. MINFER of Russia shall inform U.S. DOC of any changes in the volume of quota assigned to individual quota recipients within 60 days of the date on which such changes become effective.

C. Before it issues an Export License/ Temporary Document, MINFER of Russia will ensure that the Relevant Period's export limit is not exceeded and that the price for the steel plate is at or above the reference price.

D. MINFER of Russia shall take measures, as may be necessary, to make effective the obligations resulting from the reference price, export limits and Export Licenses/Temporary Documents. MINFER of Russia will inform U.S. DOC of any violations concerning reference price, export limits and/or Export Licenses/Temporary Documents which come to its attention and the measures taken with respect thereto.

U.S. DOC will inform MINFER of Russia of violations concerning the reference price, export limits, and/or Export Licenses/Temporary Documents which come to its attention and the actions taken with respect thereto.

E. Export Licenses/Temporary Documents will be issued sequentially, endorsed against the export limit for the Relevant Period, and will reference the notice of quota allocation results for the appropriate Relevant Period.

F. Export License/Temporary Document must be issued no earlier than 90 days before the day on which the steel plate is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export. Export License/Temporary Document must be also issued in English.

G. On and after October 24, 1997, the United States shall require presentation of an original stamped Export License/ Temporary Document as a condition for entry of steel plate into the United States. The United States will prohibit the entry of any steel plate not accompanied by an original stamped Export License/Temporary Document.[1]

VI. Implementation

In order to effectively restrict the volume of exports of steel plate to the United States, MINFER of Russia agrees to implement the following procedures no later than 90 days after October 24 1997, except as noted in Section VI.A.:

A. Establish a quota and licensing program for all exports of steel plate to, or destined directly or indirectly for consumption in, the United States no later than 120 days after October 24, 1997.

B. Ensure compliance by any official Russian institution, chamber, or other entities authorized by the Government of Russia all Russian producers, exporters, brokers. and traders of the steel plate, and their relevant affiliated parties; as well as relevant trading companies/resellers utilized by the Russian producer to make sales to the United States. with all procedures established in order to effectuate this Agreement.

C. Collect information from all Russian producers, exporters, brokers, and traders of steel plate, and their relevant affiliated parties, as well as relevant trading companies/resellers utilized by the Russian producer, on the sale of the steel plate, and report such information pursuant to Article VIII.A of this Agreement

D. Issue Export Licenses/Temporary Documents to Russian producers and exporters of steel plate for the duration of this Agreement in accordance with Russian legislation.

E. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement. in the event that any Russian entity does not comply in full with the terms of the Agreement.

F. Require that purchasers agree not to circumvent this Agreement, report to MINFER of Russia subsequent arrangement entered into for the sale, exchange, or loan to the United States of steel plate purchased from Russia, and include these same provisions in any subsequent contracts involving steel plate purchased from Russia.

G. For purposes of this Agreement the duration of validity of Export Licenses/ Temporary Documents will be six (6) months. U.S. D.O.C. and MINFER of Russia may agree to an extension of the validity of the Export License/ Temporary Document in cases of force majeure.

VII. Anticircumvention

A. MINFER of Russia will take all appropriate measures under Russian law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into allegations of circumvention, including allegations raised by U.S. DOC, and shall complete such inquiries in a timely manner (normally within 45 days). MINFER of Russia shall notify U.S. DOC of the results of its inquiries within 15 days of the conclusion of such inquiries. Within 15 days of a request from U.S. DOC, MINFER of Russia shall share with U.S. DOC all information received or collected by MINFER of Russia regarding its inquiries, its analysis of such information, and the results of such inquiries. MINFER of Russia will require all Russian exporters of steel plate to include a provision in their contracts for sales to countries other than the United States that the steel plate sold through such contracts cannot be re-exported, transshipped, or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. This requirement does not apply to exports to the United States through a third country which are accompanied by a valid Export License/Temporary Document. MINFER of Russia will also establish appropriate mechanisms to enforce this requirement.

B. If, in an inquiry pursuant to Section VI.A, MINFER of Russia determines that a Russian entity has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then MINFER

[1] The validity of an Export License/Temporary Document will not be affected by a subsequent change of an HTS number.

of Russia shall impose measures on such company including, but not limited to, denial of access to a quota for the steel plate. Additionally, MINFER of Russia shall deduct an amount of steel plate equivalent to the amount involved in such circumvention from the export limit and shall immediately notify U.S. DOC of the amount deducted. If sufficient tonnage is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

C. If MINFER of Russia determines that a company from a third country has circumvented the Agreement and the parties agree that no Russian entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the parties are unable to reach mutual agreement within 45 days, then U.S. DOC may take appropriate measures, such as deducting the amount of steel plate involved in such circumvention from the export limit, or instructing U.S. Customs to deny entry to any steel plate sold by the entity found to be circumventing the Agreement, taking into account all relevant factors. Before taking such measures U.S. DOC will notify MINFER of Russia of the facts and reasons constituting the basis for U.S. DOC's intended action and will afford MINFER of Russia 15 days in which to comment.

D. If U.S. DOC determines that a Russian entity participated in circumvention the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 60 days, U.S. DOC may take appropriate measures, such as deducting the amount of steel plate involved in such circumvention from the export limit or instructing U.S. Customs to deny entry to any steel plate sold by the entity found to be circumventing the Agreement. Before taking such measures, U.S. DOC will notify MINFER of Russia of the facts and reasons constituting the basis for U.S. DOC's intended action and will afford MINFER of Russia 30 days in which to comment.

E. U.S. DOC shall direct the U.S. Customs Service to require all importers of steel plate into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the steel plate being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where U.S. DOC has reason to believe that such a certification has been made falsely, U.S. DOC will refer the matter to the U.S. Customs Service or U.S. Department of Justice for further action.

F. U.S. DOC will take the following factors into account in distinguishing normal steel plate market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;

2. Existence of any arrangement as defined in Section III.E that was not reported to U.S. DOC pursuant to Section VIII;

3. Existence and function of any subsidiaries or affiliates of the parties involved;

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel plate facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for steel plate delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

G. "Swaps" include, but are not limited to:

Ownership swaps—involve the exchange of ownership of steel plate without physical transfer. These may include exchange of ownership of steel plate in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of steel plate produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of steel plate, without any exchange of ownership.

Displacement swaps—involve the sale or delivery of steel plate from Russia to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced steel plate, regardless of the sequence of the transaction.

H. U.S. DOC will enter its determinations regarding circumvention into the record of the Agreement.

I. MINFER of Russia may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

VIII. Monitoring

MINFER of Russia will provide to U.S. DOC such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. U.S. DOC shall provide semi-annual reports to MINFER of Russia indicating the volume of imports of the steel plate to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on October 24, 1997, MINFER of Russia shall collect and provide to U.S. DOC information for exports to the United States set forth in the agreed format in the Appendix I to this Agreement. All such information will be provided to U.S. DOC by March 31st of each year for exports to the United States during the period from July 1st through December 31st. In addition, such information will be provided to U.S. DOC by September 30th for exports from January 1st through June 30th, or within 90 days of a request made by U.S. DOC. Such information will be subject to the verification provision identified in Section VIII.C of this Agreement. MINFER of Russia agrees to provide Export Licenses/Temporary Documents to only those Russian producers/exporters which permit verification and full reporting of data. U.S. DOC may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of exports of steel plate to each third country will be provided to U.S. DOC by March 31st of each year for exports during the period from July 1st through December 31st. In addition, such information will be provided to U.S. DOC by September 30th for exports from January 1st through June 30th.

Upon request by the U.S. DOC, transaction-specific data for exports of steel plate to third country(ies) and home market sales of steel plate will also be reported in the format provided in the Appendix I. This information shall be provided within 45 days of the request. However, MINFER of Russia may request an extension of up to 30 days.

Both Parties recognize that the effective monitoring of this Agreement may require that MINFER of Russia provide information additional to that which is identified above. Accordingly, U.S. DOC may establish additional reporting requirements, as appropriate, during the course of this Agreement.

U.S. DOC shall provide notice to MINFER of Russia of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

MINFER of Russia may request an extension of up to 30 days for any of the deadlines mentioned in this Section.

B. Other Sources for Monitoring

U.S. DOC will review publicly available data as well as U.S. Customs entry summaries and other of financial import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

U.S. DOC will monitor Bureau of the Census computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, U.S. DOC may request the U.S. Customs Service to provide such information. U.S. DOC may request other additional documentation from the U.S. Customs Service.

U.S. DOC may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the steel plate during the period this Agreement is in effect.

C. Verification

MINFER of Russia will permit full verification of all information related to the administration of this Agreement, on an annual basis or more frequently, as the U.S. D.O.C. deems necessary to ensure that MINFER of Russia is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. U.S. DOC shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to U.S. DOC semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure under Section VIII.A, the parties to the proceeding may submit written comments to U.S. DOC, not to exceed 30 pages.

C. During the anniversary month of this Agreement each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

X. Consultations

MINFER of Russia and U.S. DOC shall hold consultations regarding matters concerning the implementation operation including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either MINFER of Russia or U.S. DOC.

XI. Violations of the Agreement

A. Violation

"Violation" means noncompliance with the terms of this Agreement caused by an act or omission, in accordance with U.S. Laws and regulations.

MINFER of Russia and U.S. DOC will inform the other Party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Exports in excess of the export limits set out in this Agreement shall not be considered a violation of this Agreement or an indication the Agreement no longer meets the requirements of U.S. laws and regulations where such exports are inconsequential, inadvertent, and are applied against the export limits of the following Relevant Period.

Prior to making a determination of an alleged violation, U.S. DOC will engage in emergency consultations. Such consultations shall begin no later than 21 days from the day of request and shall provide for full review, but in no event will exceed 40 days. After consultations, U.S. DOC will provide MINFER of Russia 28 days within which to provide comments. U.S. DOC will make a determination within 30 days after the date established for submission of comments by MINFER of Russia.

B. Appropriate Action

If U.S. DOC determines that this Agreement is being or has been violated, U.S. DOC will take such action as it determines is appropriate under the U.S. laws and regulations.

C. MINFER of Russia may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

XII. Duration

The export limit provided for in Section III of this Agreement shall remain in force from October 24, 1997 through October 23, 2002.

U.S. DOC will, upon receiving a proper request made by MINFER of Russia, conduct an administrative review under the U.S. laws and regulations. U.S. DOC expects to terminate this Agreement and the underlying investigation no later than 5 years from October 24, 1997, provided that no Russian entity has been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted with U.S. laws and regulations.

MINFER of Russia may terminate this Agreement at any time upon notice to U.S. DOC. Termination shall be effective 60 days after such notice is given to U.S. DOC. Upon termination at the request of MINFER of Russia, the provisions of U.S. laws and regulations shall apply.

XIII. Other Provisions

A. U.S. DOC finds that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic steel plate products by imports of the steel plate subject to this Agreement.

B. U.S. DOC does not consider any of the obligations concerning exports of steel plate to the United States undertaken by MINFER of Russia pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

C. The English and Russian language versions of this Agreement shall be authentic and equally binding, with the English version being controlling.

D. All provisions of this Agreement, including the provisions of the Preamble, shall have equal force.

E. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

Department: U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

Ministry: Head of Department for the Regulation of External Economic Activities of the Ministry for Foreign Economic Relations and Trade of the Russian Federation, 18/1 Ovchinnikovskaya naberezhnaya, Moscow– 1 13324, Russia

XIV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on cut-to-length carbon steel plate from Russia shall be October 24, 1997.

Signed on this 24th day of October, 1997.

For U.S. DOC.

Robert LaRussa,

Assistant Secretary for Import Administration.

For MINFER of Russia.

Vladimir M. Chibirov,

Acting Trade Representative of the Russian Federation to the United States.

Appendix I

In accordance with the established format, MINFER of Russia shall collect and provide to U.S. DOC all information necessary to ensure compliance with this Agreement. This information will be provided-to U.S. DOC on a semi-annual basis.

MINFER of Russia will collect and maintain data on exports to the United States on a continuous basis. Sales data for the home market, and data for exports to countries other than the United States. will be reported upon request.

MINFER of Russia will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

A. Report of Inventories

Report by location, the inventories held by Russian entities in the United States and imported into the United States during the period November 5, 1996 through October 24, 1997.

1. Quantity: Indicate original units of measure and in metric tons.
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has title to the steel plate.
4. Export License/Temporary Document Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the Export License/Temporary Document is issued.
7. Date of Entry: Date the steel plate entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address.
10. Complete Description of Merchandise: Include heat numbers, HTS numbers, physical description. ASTM specification, and other available information.

B. Exports to The United States

MINFER of Russia will provide all Export License/Temporary Document, which shall contain the following information except that information requested in item #9, date of entry, item #10, importer of record, item #16, final destination, and item #17 other, may be omitted if unknown to MINFFR of Russia and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, and the ASTM or equivalent grade.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate currency used.
5. Unit Price: Indicate currency used per metric ton.
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License/ Temporary Document is Issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Russian exporter.
14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Quota Remaining: Indicate the remaining quota available to the individual exporter during the Relevant Period.
16. Final Destination: The complete name and address of the end-user.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/end-user.

Mill Certification

MINFER of Russia shall ensure that all shipments of steel plate exported to the United States pursuant to this Agreement, shall be accompanied by a copy of the original mill certification, which includes the heat number(s).

C. Exports Other Than to The United States

Pursuant to Section VIII, paragraph A, MINFER of Russia will provide country-specific volume and value information for exports of steel plate to third countries, upon request, regardless of whether MINFER of Russia licenses exports of steel plate to such country(ies). The following information shall be provided except that information requested in item #6, date of entry, #7, importer of record, and item #10, may be omitted if unknown to MINFER of Russia and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and/or entry, if any.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date Export License/ Temporary Document is issued, if any.
6. Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
9. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
10. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

D. Home Market Sales

Pursuant to Section VIII, paragraph A, the MINFER of Russia will provide home market volume and value information for sales of steel plate, upon request. The following information shall be provided with the exception of item #6, if unknown to MINFER of Russia and the Russian producer/exporter.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons. .
2. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

Appendix II

Section 734 (1) of the Tariff Act of 1930 as amended:

(1) Special Rule for Non-Market Economy Countries

(I) In General.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that:

(A) such agreement satisfies the requirements of subsection (d), and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of Agreements.—If the administering authority determines that the agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

[FR Doc. 97–30395 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–806]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 C.F.R. part 353 (1997).

Final Determination: We determine that certain cut-to-length steel plate (CTL plate) from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the Russian Federation*, 62 FR 31967 (June 11, 1997)), the following events have occurred:

In June 1997, we verified the Severstal's questionnaire responses. On July 23, 1997, the Department issued its report on verification findings. Petitioners and Respondent, Severstal, submitted case briefs on July 31, 1997, and rebuttal briefs on August 5, 1997. A public hearing was not requested nor held.

On August 8, 1997, the Department provided interested parties the opportunity to submit additional publicly-available information (PAI) from surrogate countries to value certain factors of production. The Department received responses on August 15, 1997, and comments on August 22, 1997.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive. *See* memorandum on *Scope of Investigations on Carbon Steel Plate*, from Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Period of Investigation (POI)

The POI is April 1, 1996 through September 30, 1996.

Separate Rates

Severstal has requested a separate, company-specific rate. The claimed ownership structure of Severstal during the POI is that of a publicly owned joint stock company, where the state owned 20% of the shares.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

An individual company may be considered for a separate rate if it meets the following *de jure* criteria: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Severstal has placed on the administrative record a number of documents demonstrating absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the government of the Russian Federation, describing the deregulation of Russian enterprises as well as the deregulation of the Russian export trade (except for a list of products that may be subject to government export constraints which Severstal claims, and the Department verified, do not include subject merchandise). Specifically, Severstal provided English translations of the laws and regulations governing their enterprises. These laws and regulations authorized Severstal to make its own operational and managerial decisions during the POI. *See Separate Rates Memorandum*, dated June 3, 1997.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices ("EP") are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the

respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Severstal asserted, and we verified, the following: (1) it establishes its own EPs; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it selects its own management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. In addition, Severstal's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that, during the POI, there was a *de facto* absence of governmental control of export functions. In addition, we determined that Severstal had autonomy from the government in making decisions regarding the selection of management during the POI. Therefore, we have concluded that Severstal is entitled to a separate rate. *See Separate Rates Memorandum*, dated June 3, 1997.

The Russia-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain carbon steel plate from the Russian Federation is greater than the total quantity and value of steel plate reported by all Russian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Russian carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Russia-wide rate—to all exporters in the Russian Federation (other than Severstal), based on our presumption that those respondents who failed to respond constitute a single enterprise and are under common control by the Russian Federation government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996).

This Russia-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including the information drawn from the petition.

As discussed above, all Russian exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total facts available either the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China*, 96 FR 27222 (May 19, 1997). In the present case, the average margin in the petition is higher than the one calculated rate. Accordingly, the Department has based the Russia-wide rate on information in the petition. In this case, the average petition rate is 185.00 percent.

Section 776(c) of the Act provides that where the Department relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonable at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA (H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)), clarifies that the petition is "secondary information" and that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition shows that petitioners calculated export price based on two methods: (1) the import values declared to the U.S. Customs Service; and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioner less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioner in the production of steel plate. Petitioner submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. To account for differences between the production processes of petitioners and potential respondents, Petitioner submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods.

The margins in the petition, which ranged from 139.97 to 230.38 percent, were obtained by Petitioners by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted-average of the two. *See* Corroboration Memorandum, dated June 3, 1997.

Fair Value Comparisons

To determine whether the sale of certain carbon steel plate from the Russian Federation sold to the United States by the Russian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the "Export Price" and "Normal Value" sections of this notice.

Export Price

For Severstal, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We corrected Severstal's data for errors and minor omissions found at verification and submitted to the Department. We calculated EP in accordance with our preliminary calculations, except that we: (1) corrected for the errors found at verification as submitted by Severstal on July 18, 1997, and (2) corrected input freight factors for limestone and ferroalloy purchases based on findings from verification, *see* Comments below.

Normal Value

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Brazil as our surrogate country. Brazil is an appropriate country for the reasons set forth in our preliminary determination. *See* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Russia (*Policy Memo*). Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the factors of production as valued in Brazil.

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. *See Final Determination Calculation Memorandum*, dated October 24, 1997. To calculate NV, we multiplied the verified amounts for the factors of production by the appropriate surrogate value for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of overhead, SG&A, and profit. For the final determination we based the percentages for overhead, SG&A and profit on the detailed public version of Companhia Siderurgica de Tubarao's (CST) and Usinas Siderurgicas de Minas Gerais' (Usiminas) financial statements that were placed on the record of this investigation by Severstal. *See* Comment 3, below.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Severstal for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Severstal.

Comment 1: Input Freight Factors for Limestone and Ferroalloy Purchases.

Petitioners claim that Severstal falsely reported no transportation costs incurred in connection with its purchases of limestone and ferroalloys for use as raw material inputs. Petitioners state that at verification the Department determined that one of Severstal's two limestone suppliers is located near Severstal's Cherepovets facility, and the other is located a fair distance away. Additionally, Petitioners assert that Severstal has numerous suppliers of ferroalloys located at varying distances from Severstal's facility. Petitioners argue that the failure to report these facts was not an "inadvertent" error and the information does not constitute a "minor" correction. Therefore, Petitioners argue that the Department should treat Severstal's withholding of this information as a failure to provide requested information in a timely fashion and an impediment to this proceeding. Petitioners rely on *Titanium Sponge from the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review*, 61 FR 58525 (Nov. 15, 1996) (*Titanium Sponge from Russia*) to argue that the Department may not accept this new information at verification, stating that "the Department accepts new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record." Furthermore, Petitioners argue that, because Severstal did not act to the best of its ability in responding to the Department's requests, the Department should apply adverse facts available by calculating freight for both limestone and ferroalloys as originating from the most distant suppliers of each input.

Severstal argues that the use of "facts available" is not appropriate in this situation as Severstal, who has never before been involved in a U.S. antidumping proceeding and has never before faced data-gathering demands of such intensity, submitted a massive amount of data, the overwhelming bulk of which was verified. Severstal argues that in the limited amount of time to prepare its responses it focused on the major inputs. Furthermore, Severstal asserts, because one of the major sources of limestone is located in the immediate vicinity of Severstal's steel mill, it is not surprising that it overlooked the more distant source in preparing its response. Additionally, Severstal argues that it is the Department's standard to accept such corrected data.

Department Position

We agree with Petitioner that the Department must resort to facts available to calculate freight for ferroalloys. Section 776(b) of the Act provides that adverse inferences may be used if a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. Severstal reported no transportation costs for its purchase of ferroalloys despite the fact that none of the suppliers of ferroalloys are located in the vicinity of Severstal's steel mill. Therefore, for the final determination, we have used the greatest reported distance to calculate freight for ferroalloys as adverse facts available.

However, based on the fact that a major source of limestone is located in the immediate vicinity of Severstal's steel mill, we agree with Severstal that the other source was a mere oversight and constitutes an inadvertent error. Therefore, we did not use the greatest distance to calculate freight for limestone. Instead, we have used, as adverse facts available, a simple average of the two verified distances to calculate transportation costs incurred with Severstal's purchase of limestone.

The submission of these corrections is not the same as the submission of data, rejected by the Department in *Titanium Sponge from Russia*, where a party claimed a by-product deduction at verification. Severstal's information, contrary to Petitioners' assertions, constitutes a minor correction to the information placed on the record by Severstal and it has a negligible impact on the weighted-average margin calculation. Therefore, we have accepted this information. However, as stated above, we have used facts available to calculate freight for both limestone and ferroalloys in the final determination because Severstal failed to provide the requested information in timely fashion.

Comment 2: Non-Metallic Waste at the BOF and Recycled Materials at the Open Hearth Furnace.

Petitioners argue that the information first submitted at verification that allegedly corrects "minor errors" in Severstal's reported non-metallic waste offset at the basic oxygen furnace (BOF) and recycled materials offset for the open hearth furnaces should be rejected because it does not correct clerical or minor errors in Severstal's original submission and it is untimely, unclear, and incorrect. In addition, Petitioners argue that Severstal's corrected

information changes the reported volume of recycled materials at the open hearth.

Severstal does not insist that the offset for non-metallic waste at the BOF be adopted because Severstal has come to the conclusion that it erred in including this information in its correction letter provided to the verifiers. Severstal has since determined that the non-metallic waste amounts reported in its BOF ledger are not included as offsets by the company when calculating its cost of production of products for which that shop is utilized. However, Severstal argues that the Department should make the requested correction for the offset for recycled materials at the open hearth furnace. Severstal explains that it simply made an error when manually preparing the database for submission, which it corrected in its June 16, 1997 letter of verification corrections. Severstal argues that it is the Department's well-established practice to accept the correction of such errors, especially in a case where the overwhelming volume of submitted data was verified as accurate.

Department Position

We agree with Petitioners that the new information claiming an offset for non-metallic waste at BOF should be rejected since the non-metallic waste amounts are not included as offsets by Severstal. Therefore, we did not make an adjustment in calculating normal value.

Based on the results of verification, we agree with Severstal regarding the correction of the recycled materials at the open hearth. The revision corrects an error that arose from the manual extraction of data from the open hearth's records which we verified (*see* Verification Report, dated July 23, 1997). We have corrected for this error in the final determination.

Comment 3: Factory Overhead, SG&A, and Profit.

Petitioners claim that the Department's preliminary results did not include all factory overhead costs and that a dumping margin cannot accurately be calculated without the inclusion of non-depreciation overhead costs. Although Petitioners have not been able to find this information, they provided one integrated producer's financial statement (Pohang Iron & Steel Co., Ltd. ("POSCO")) which provides a detailed list of the types of expenses incurred as manufacturing costs. Petitioners urge the Department to either use the percentages from POSCO's financial statement as facts available to approximate the proper amount of factory overhead costs, or use its resources to find this additional information.

Severstal argues that the Department should reject Petitioners' proposal to use factory overhead values obtained from the financial reports of a steel company in Korea. Respondents contend that Korea is not an appropriate surrogate country for Russia, and it was never considered by the Department or the parties in this (or any other) investigation as a potential surrogate. Severstal cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360 (June 24, 1992) (*Antifriction Bearings*) where the Department refused to use a surrogate overhead rate from another country because it was not among the surrogate countries cited for that review. Additionally, Severstal claims that to stray from Brazil to Korea would violate the Department's preference for consistency in the calculation of factor values, which is referenced through its reliance on data in a single surrogate country if possible. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR 21058 (May 18, 1992) (*Carbon Steel Butt-Weld Pipe Fittings*). Severstal further argues that while only depreciation is identified in the financial reports of the Brazilian steel producers whose financial information the Department used in the Preliminary Results, the Department merely accepted Petitioners' own proposal in using this data as the basis for calculating the factory overhead ratio.

Furthermore, Severstal argues that the Department incorrectly utilized the data from surrogate country steel producers' financial statements for periods outside the period of investigation (POI). Severstal argues that, consistent with the Department's prior practice, the Department should use financial data contemporaneous with the POI. Severstal cites several cases where the Department has noted its policy to use contemporaneous surrogate values.

Severstal also provided the 1996 financial statements of the surrogate country companies and provided recalculated ratios. Severstal additionally alleges that the Department made two clerical errors in calculating the SG&A and profit ratios. Severstal states that, when calculating the SG&A factor, the Department incorrectly included profit sharing expenses. Severstal states that these expenses do not represent actual expenses incurred by the companies but, rather, reflect the value of profits shared with employees and management, dividend distributions to employees, and annual taxes on net income. Additionally, Severstal states that the Department made a mathematical error in calculating the average profit ratio. Severstal requests that, if the Department chose not to utilize the contemporaneous data, the Department should at least utilize the correct ratio of 25.56 percent as opposed to the 26.65 value utilized in the preliminary determination.

Department Position

We agree with Petitioner that our preliminary results did not include all factory overhead costs; however, we disagree with Petitioner's suggestion to use the data from a Korean steel producer's financial statement to calculate a factory overhead ratio. It is the Department's preference to use a single surrogate country as the source of data in an NME investigation. *See Carbon Steel Butt-Weld Pipe Fittings*. Furthermore, it is the Department's practice to only use data of those countries listed as potential surrogates identified in the *Policy Memo*. *See Antifriction Bearings*. Korea was never identified as a potential surrogate for the Russian economy. Therefore, we have continued to use Brazilian data for the final determination.

We agree with Severstal that the Department should use financial data contemporaneous with the POI. Based on the submitted information and the Department's own research, we agree with Severstal that the financial data from the 1996 income statements of the two Brazilian companies used in the preliminary determination, CST and Usiminas, are the most appropriate surrogate information available to calculate the percentages for overhead, SG&A, and profit for our final determination.

In contrast to our preliminary determination, for this final determination, in order to ensure that all costs are properly accounted for, in accordance with our practice we revised the overhead ratio to include employee profit sharing. Despite the manner in which labor costs are packaged (i.e., either through straight salary, profit sharing, etc.), total labor costs remain the same to the employer. This includes all profit sharing expenses. *See Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FR 25908 (May 12, 1997), where the Department determined that profit sharing expense relates to the compensation of direct labor. Labor is captured in the cost of manufacturing which is part of the cost of sales. Thus, we have included profit sharing in overhead. However, if a company broke out profit sharing between employees and management, as CST has done, we included management profit sharing in the SG&A calculation and employee profit sharing in the overhead calculation. *See Final Determination Calculation Memorandum*, dated October 24, 1997.

Consistent with prior Department practice, we have continued to include social contributions in SG&A for the final determination. *See Final Determination Calculation Memorandum*, dated October 24, 1997; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil*, 58 FR 7080 (February 4, 1993).

Comment 4: Energy.

In our preliminary determination, we used a "theoretical fuel" ratio submitted by Severstal to derive values for various energy inputs. Petitioners allege that this approach is flawed for several reasons, particularly with respect to inputs of energy gases. First, Petitioners assert that the Department used numbers that represent the amount of energy or fuel theoretically necessary to create the energy instead of the energy generated (caloric output) by the particular type of fuel. Petitioners argue that the calculations should be based on caloric yield because the heat requirements of the steelmaking process demand a certain caloric yield regardless of the amount of energy that may have been used to create the fuel before it was purchased by the steel producer. Second, Petitioners argue that it is not clear what Respondents' reported figures represent because Severstal did not provide a citation or supporting documentation for its table. Third, Petitioners claim that the table used by the Department is flawed because the ratios representing the energy needed to create each fuel are the same as the ratios representing the energy yield of the resulting product. In other words, Petitioners conclude it appears as though every fuel listed has exactly the same energy efficiency.

Severstal agrees that the Department may use the "theoretical fuel" ratios to derive the values for energy sources. Furthermore, Severstal claims that, because the "theoretical fuel" data in the first table to which Petitioners object was based on a scientific study and made available for the Department at verification, there is no reason to doubt its accuracy. However, Severstal does not object to the proposal to use the second table (showing the quantity of energy (in calories) generated by each type of fuel) to convert to an equivalent consumption value in terms of natural gas usage.

Department Position

Based on our findings at verification, all gas input factors are reported in cubic meters needed to produce one ton of plate. Usage rates were adjusted to account for yields and waste. In obtaining surrogate value information, we were able to find values for natural gas in cubic meters based on Brazilian import statistics, but were unable to obtain surrogate values for other input energy sources on the same basis. Therefore, in order to ensure that the value of energy was consistent across all energy sources in calculating normal value, we chose to convert the other energy sources into natural gas equivalents.

In response to Petitioners' argument that the Department should use the caloric output of fuels to determine the value of these fuels, we have used factor inputs as reported on a caloric output basis. We simply converted the surrogate value for natural gas into other gas equivalents using public conversion rates. Therefore, we have continued to use the methodology from our preliminary determination as this methodology is an accurate means of valuing energy usage.

Comment 5: Reported Factor Usage Data.

Petitioners allege that the production factor data submitted by Severstal are distorted in that they report the same factors of production for multiple CONNUMs. Petitioners claim that Severstal did not submit its factor usage data at the CONNUM-specific level of detail requested by the Department and that Severstal reported the same factor input values for multiple CONNUMs. Petitioners are primarily concerned with Severstal's failure to distinguish the different costs. Petitioners argue that the Department should adjust Severstal's submitted factor usage data to account for differences in production costs. Petitioners argue that in the past, the Department has adjusted information to correct for data which did not conform to the level of specificity required and cite *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404 (April 15, 1997) (*Carbon Steel Flat Products from Korea*) as an example where the Department adjusted the respondent's reported costs because its reporting method did not account for certain differences in physical characteristics. Petitioners argue that some products cost more to produce and that the Department should assign certain products the highest total calculated cost for any Severstal product.

Severstal argues that it explained the calculations to the Department and the data was verified. Severstal asserts that it does not maintain its books in the normal course of business according to the product definitions established by the Department in creating CONNUMs, and that it submitted its factor data on the basis of the company books and records. Severstal claims that it reported its costs to the degree of specificity allowed by its records, and that in situations where a respondent reported its costs in as much detail as its normal accounting system would allow, the Department has repeatedly held that "adjustment" of the reported data would be inappropriate. Severstal further argues that *Carbon Steel Flat Products from Korea* does not support Petitioners' point. In that case, Severstal argues, the Department adjusted the respondents's cost data only where the respondent had weight-averaged cost data for all products that contained certain product characteristics. For costs associated with other physical characteristics, Severstal contends, the Department concluded that the respondent reported costs in as much detail as its accounting system allowed and that any costs associated with other physical characteristics were captured and allocated to all products. Severstal references several other cases to support this interpretation.

Finally, Severstal argues that if the Department were to inflate the reported factors for one of the products sold, it must somehow compensate by reducing the factors for other subject merchandise because the total quantity of factors consumed in the production of the subject merchandise shipped to the United states is fixed and verified. Severstal alleges that any other response by the Department would not be an "adjustment," but would rather constitute a punitive inflation of Severstal's reported factors.

Department Position

We agree with Severstal. The Department has in the past, as Petitioners correctly point out, adjusted information to correct for data which did not appropriately account for physical characteristics. However, even in cases where a company has been unable to provide information at the

level of detail requested by the Department, we still accepted the reported costs where we were satisfied that these costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POI.

For the same reasons outlined in *Carbon Steel Flat Products from Korea and in Final Results of Antidumping Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 13815 (March 28, 1996), we agree with Severstal that its reported costs were reasonable. In these cases, we concluded that the respondent's methodology was reasonable given the nature of its cost accounting system, its verified inability to determine specific costs, and the conservative method in which the costs were reported.

In this case, Severstal has reported product-specific costs from its normal cost accounting system, which we verified reasonably reflect the actual usage of materials to produce the merchandise under investigation. Furthermore, given the nature of Severstal's cost accounting system, our verification findings confirmed Severstal's inability to determine specific costs. The instant situation is very different from that in *Carbon Steel Flat Products from Korea* where we determined that the respondent did not appropriately account for two characteristics where the respondent derived a general weighted-average cost and applied it to all merchandise that contained the two certain physical characteristics. This weight-averaged cost was contrary to the respondent's normal cost accounting system, resulted in a distortion of the cost of manufacturing, and differentiations were lost through averaging. For these reasons we calculated adjustment factors in that case. However, this clearly is not the case here.

In regards to the other physical characteristics in *Carbon Steel Flat Products from Korea*, the Department found that costs were captured and allocated to all products because the respondent reported costs in as much detail as its normal accounting system provided, as Severstal has in this case. Furthermore, Severstal submitted its factor usage ratios as recorded in the company books and records. As stated above, based on our findings at verification, we have determined that Severstal's reported costs reflect the actual costs as recorded in its normal accounting system and reasonably reflect the cost of producing the merchandise. Therefore, we did not make any adjustments in this final determination.

Comment 6: Indirect Materials and Energy in Factory Overhead.

Petitioners argue that the Department should utilize the value of U.S. exports to Brazil for certain energy and indirect materials which were not valued for the preliminary determination. Petitioners provided the Department with publicly available information taken from U.S. Census statistics for exports to Brazil for 1996 and claim that in the absence of alternative data, the Department should use data on U.S. exports of certain indirect inputs to Brazil to determine the appropriate surrogate value.

Severstal states that because these materials and types of energy are not directly related to the production of the merchandise under investigation, the Department properly treated these inputs as overhead expenses. Severstal cited several cases including *Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China*, 61 FR 53190 (Oct. 10, 1996) (*Brake Drums and Rotors from the PRC*); *Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 53711 (Oct. 15, 1996) (*Sulfanilic Acid from the PRC*); and *Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 4979 (Feb. 3, 1997) (*Porcelain-on-Steel Cooking Ware from the PRC*), as cases where the Department stated that its general policy is not to calculate surrogate values of indirect inputs separately, but instead is to include these inputs as part of the overhead expenses.

Department Position

We agree with Severstal that these inputs are not materials directly incorporated in the production of steel and thus are not part of materials consumed. Therefore, consistent with our preliminary determination, we have treated these inputs as part of factory overhead in the final determination.

Comment 7: Critical Circumstances.

Severstal alleges that the Department acted unlawfully in finding critical circumstances in the preliminary determination. They base their argument on the fact that the 1994 URAA added a new element to the critical circumstances analysis that the importer "knew or should have known" that "there was likely to be material injury by reason of" the LTFV sales of the subject merchandise. Severstal states that because the ITC preliminarily found only a threat of material injury rather than actual injury, the Department may not impute that the importers had knowledge that these sales would cause material injury to a U.S. domestic industry. Severstal alleges that the Department's preliminary decision is unlawful and contrary to its determination in *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9162 (Feb. 28, 1997) (*Brake Drums and Rotors*) where the Department stated that "when the ITC has preliminarily found no reasonable indication that a U.S. industry is experiencing present material injury by reason of the dumped subject merchandise, but only a threat of such injury, the Department has determined that it is not reasonable to conclude that an importer knew or should have known that its imports would cause material injury * * *."

Severstal further argues that the Department's reliance on the increase in the volume of imports and the magnitude of the margins is not only contrary to the Department's previous practice but also redundant because these factors are also reviewed when determining whether there has been massive imports during a short period of time and whether the importer had knowledge of LTFV sales. Therefore, Respondents asset, the Department has collapsed the first prong of its analysis of the issue with the second and third prongs of the analysis to incorrectly conclude that critical circumstances existed in the preliminary determination.

Petitioners rebut Severstal's argument that the Department improperly found critical circumstances for the preliminary determination. Petitioners note that it is a well established practice for the Department to impute knowledge of material injury based on dumping margins of greater than 25 percent.

Petitioners argue that the Department's negative finding in *Brake Drums and Rotors from the PRC-Final* does not preclude it from making an affirmative finding in the current case because (1) the SAA and the URAA are silent as to how the Department is to make a finding of importer knowledge of material injury and, (2) it is within the Department's discretion to select a reasonable and administrable approach. Petitioners also argue that an ITC threat determination does not mean that an importer of Russian CTL plate cannot have known that there was likely to be material injury by reason of dumped imports during the critical circumstances period. Petitioners argue that the basis for an affirmative threat determination by the ITC is "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted".

Department Position

We agree with Petitioner and continue to find critical circumstances in the final determination.

Section 735(a)(3) of the Act provides that if the final determination is affirmative, then that determination shall also contain a finding of whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Because there is no history of dumping and material injury by reason of dumped imports for cut-to-length steel plate, we conducted our analysis under section 735(a)(3)(A)(ii) of the Act (importer knowledge of dumping and material injury).

1. Importer Knowledge of Dumping

In determining whether an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC)*, 60 FR 29824 (June 6, 1995) (*Honey*). Since the company-specific margins for EP sales in our preliminary determination for CTL plate are greater than 25 percent for Severstal, we have imputed knowledge of dumping.

2. Massive Imports

To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the initiation of the proceeding. *See* 19 C.F.R. 353.16(g). Pursuant to 19 C.F.R. 353.16(f)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. As noted, because imports of the subject merchandise increased 145 percent during the relevant period, we have determined that imports have been massive.

3. Importer Knowledge of Material Injury

The statute and the Statement of Administrative Action which accompanies the Uruguay Round Agreements Act (SAA) are silent as to how we are to make a finding that there was knowledge that there would be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether an importer knew or should have known that there would be material injury by reason of dumped imports, we normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, we will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation (*see* 19 C.F.R. 353.16(g)). If the ITC preliminarily finds threat of material injury, we would normally not find knowledge of injury. However, in this case, the magnitude of the margins and increase in imports are so great that we have concluded that the importer knew or should have known that these sales of subject merchandise to the U.S. would cause material injury.

In this case, imports of Russian plate increased 145 percent in the three months following the initiation of the investigation when compared to the three months immediately preceding initiation, or almost ten times the level of increase needed to find "massive imports" during the same period (*see* below). Furthermore, we preliminarily determined that margins of 53.81 percent exist for Severstal. Based on the ITC's preliminary determination of threat of injury, the massive increase in imports noted above, and the high preliminary margins, we have determined that the importer knew or should have known that there would be material injury by reason of sales of the subject merchandise at less than fair value.

In response to Severstal's allegation, we did not collapse the first prong of our analysis with the second and third prongs. Importer knowledge of sales at less than fair value, importer knowledge of injury, and massive imports are the three separate criteria considered in determining whether critical circumstances exist. However, some of the factors we examine to determine whether each of these criteria are met may be relevant to more than one of the criteria. For example, the magnitude of the margins is relevant to the importer's knowledge of sales at less than fair value and the increase in import volumes is likewise relevant to the massive imports criterion. However, both of these factors are also relevant to the knowledge of injury criterion. If the margins and the increase in imports are very large, it is reasonable for us to assume that the importer knew that such an increase in imports at such low prices would injure the U.S. domestic industry.

In response to Severstal's argument regarding *Brake Drums and Rotors*, the Department, in deciding the issue of importer knowledge of material injury in *Brake Drums and Rotors* was faced with very different facts and circumstances. In that case, the company specific margins were all under 15% for Rotors, except for one company with a margin of 16.35%. Moreover, for that one company, the increase of its imports to the U.S. was under 15%. Thus, the circumstances in *Brake Drums and Rotors*, where the ITC finding of threat of injury was coupled with comparatively minimal company-specific margins and absence of massive imports, are very different from those in the present investigation.

Thus, because we have determined in this case that the importer knew or should have known that Russian exporters were selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and because there have been massive imports of the subject merchandise over a relatively short time period, we have determined that critical circumstances exist for Severstal.

4. Unexamined Respondents/Russia-Wide Entity

As stated above, in a nonmarket economy case, the Department presumes that those respondents who failed to respond to the Department's questionnaire constitute a single enterprise and are under common control by the Russian government. Therefore, for companies subject to the Russia-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire), as facts available, we are imputing knowledge based on the Russia-wide rate.

As noted above, we have determined, based on facts available, that importers knew or should have known that there would be material injury to the U.S. cut-to-length steel plate industry based on the ITC's preliminary determination of a reasonable indication of present material injury. In the absence of shipment data for the Russia-wide entity, we have determined based on facts available and making the adverse inference permitted under section 776(b) of the Act, that because this entity did not provide an adequate response to our questionnaire, there were massive imports of subject merchandise. We further note that the record indicates a post-filing surge in U.S. cut-to-length steel plate imports from Russia which is not accounted for by the cooperating respondent, Severstal. Finally, the Russia-wide margin of 185 percent exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. Therefore, for the Russia-wide entity, critical circumstances exist with respect to imports of subject merchandise.

Therefore, we find that critical circumstances exist for cut-to-length carbon steel plate sales by all Russian exporters.

Continuation of Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Ministry of Foreign Economic Relations and Trade of the Russian Federation (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from the Russian Federation. Any cash deposits of entries of cut-to-length carbon steel plate from the Russian Federation shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from Petitioners requesting that we continue the investigation. We received a separate request from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act, on October 14, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average margin percentage
Severstal	53.81
Russia-Wide Rate	185.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the Agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (1) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30396 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) in the **Federal Register** on July 11, 1997 (62 FR 37192). This review covers sales of this merchandise to the United States during the period October 1, 1995 through September 30, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based upon analysis of the comments received, we changed the results from those presented in the preliminary results of the review.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

Background

The Department published the preliminary results of this review of the antidumping duty order on HSLWs from the PRC in the **Federal Register** on July 11, 1997 (62 FR 37192). On August 11, 1997, petitioner, Shakeproof Industrial Products Division of Illinois Tool Works (SIP), and respondent, Zhejiang Wanxin Group, Co., Ltd. (ZWG), submitted comments on the Department's preliminary results. On August 18, 1997, petitioner and respondent submitted rebuttal comments. The Department rejected respondent's August 11, 1997 submission because it contained new information. Respondent resubmitted comments on August 22, 1997. We held a hearing on September 22, 1997. On October 28, 1997, the Department placed new information on the record and gave interested parties an opportunity to comment pursuant to 19 U.S.C. section 1677m(g). The respondent submitted comments on October 31, 1997. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round of Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 353 (1996).

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over the larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheading is provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers one exporter of HSLWs from the PRC, ZWG, and the period October 1, 1995 through September 30, 1996.

Analysis of Comments Received

Comment 1: Use of Import Prices to Value Steel Inputs.

Petitioner, SIP, asserts that the Department should limit the use of imported steel prices to valuing the imported steel actually used. Petitioner argues that, in accordance with section 1677b(c)(1) of the Act, the Department must determine normal value (NV) "on the basis of the value of the factors of production utilized in producing the merchandise." Petitioner contends that, although the Department used non-surrogate, market-economy actual prices in *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991)(*Fans*), and affirmed in *Lasko Metal Products* v. *United States*, 43 F .3d 1442 (Fed. Cir. 1994)(*Lasko*), the Department only applied these values to the actual imports. Petitioner states that the Department relied on surrogate values to value all non-imported inputs. Petitioner claims that the use of import prices to cover non-imported factor inputs is an arbitrary extension of the Department's authority.

Petitioner contends that the import quantities of steel are not the same as the domestically-sourced quantities of steel and that the Department should value these quantities as two separate factors of production. Petitioner states that the Act defines "factors of production" to include the "quantities of raw materials employed." Petitioner contends that, although the Act and *Lasko* affirm that the Department can consider non-surrogate, market-economy actual prices to be the best information and use those prices, neither the Act nor *Lasko* provides justification for the Department's use of values for one factor as the value for another factor, even if both factors are steel.

Petitioner asserts that accuracy is not enhanced by using import prices for valuing all steel inputs. Petitioner states that the goal of the Act is to approximate the costs where non-market economy (NME) costs do not reflect market-determined prices. Petitioner claims that the Department cannot use import prices to accurately and fairly reflect the value of the domestically-sourced steel. Petitioner takes issue with the proposed antidumping duty regulations on this point (*Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking* (61 FR 7309, 7345, February 27, 1996)), and contends that it is not enough to provide that the market-economy price may be disregarded "where the amount purchased from a market economy supplier is insignificant." Petitioner suggests that it should be the other way around: at most, only if the amount purchased within the NME is insignificant, should the Department use the non-surrogate, market-economy actual price to value all steel. Petitioner cites the Department's practice of valuing inputs based on the weighted average of prices paid in constructed value (CV) market economy cases. Petitioner cites *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Korea* (62 FR 25895, 25897, May 12, 1997) as an example of this practice.

Petitioner also asserts that, if the Department values all steel at the import price, it can drastically distort the NME producer's costs when, for example, the NME producer uses imported steel to fulfill half of its steel requirements and domestic steel to fulfill the remainder of its steel requirements. Petitioner adds that the major defect in the Department's approach is that it fails to recognize that an NME producer will import factors at prices which are less than the prices it would otherwise pay for the input. Petitioner concludes that the Department's methodology does not promote either accuracy or fairness.

Respondent asserts that the Department correctly used the imported steel price to value all of its steel inputs in the preliminary results and should continue to do so in the final results. Respondent states that the imported steel meets all criteria established by the Department for using market-economy prices and that the Department is obliged to use the price paid for that input to value all of the respondent's consumption of that input. Respondent argues that the Department's methodology in the preliminary results is fully supported by the Department's prior practice, the proposed and final regulations, the court decisions, and the statute. Respondent maintains that the Department's established practice of valuing all of the production input using the NME producer's actual import prices for that input is legitimate and does enhance accuracy, as affirmed in *Lasko*: "Where we can determine that an NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices. Therefore, using surrogate values when market-based values are available would, in fact be contrary to the intent of the law." 43 F.3d 1442, 1446 (Fed. Cir. 1994). Respondent maintains that the decision in *Lasko* confirms that surrogate values are merely the best approximation of what the NME producer might pay if the NME producer were operating in a market economy. Respondent also adds that the court stated in *Lasko* that the Department's practice is a "legitimate policy choice . . . in interpreting and applying the statute." 43 F.3d at 1446. Respondent claims that *Lasko* upheld the Department's market-economy input methodology as consistent with the statute. Respondent also cites the Department's position in the *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China* (62 FR 1798, 1710, January 13, 1997)(*Melamine*), which states that "the market economy price is the most appropriate basis for determining the value of the [input] purchased from the PRC suppliers." Respondent concludes that when the NME producer actually purchases a market-economy input and pays in market economy currency, there is no need to use the best approximation.

Respondent asserts that the CV calculation methodology referenced by petitioner is irrelevant to NME cases. Respondent states that, pursuant to 19 U.S.C. § 1677b(a)(2), CV applies to market-economy cases and not to NME cases. Respondent claims that, pursuant to 19 U.S.C. § 1677b(c), the Department is required to use a selected import price or a surrogate price to value an NME producer's production costs. Respondent asserts that petitioner's argument that the Department's practice distorts the NME producer's costs ignores commercial reality and is contrary to the court rulings and the basic principles underlying NME cases. Respondent argues that, contrary to petitioner's argument, NME producers will purchase domestic materials when the domestic price is less than the import price. Respondent claims that in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997) (*Sigma*), the court suggested that the Department may not assume that the NME producers purchase domestic materials at a higher delivered price than that for imported materials.

Department's Position

We disagree with petitioner. In general, the purpose of the antidumping statute is to "determine margins as accurately as possible." *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1991). Section 773 (c)(4) of the Act, the provision for factors of production methodology, was intended to be used when NME prices and costs are unreliable, *i.e.*, not market-based. *See, e.g.*, S. Rep. No. 93–1298, 93d Cong., 2d Sess. 174 (1974). The purpose of section 773(c) is to determine what the firm's prices or costs would be if such prices or costs were determined by market forces.

Because the statute does not explicitly address the situation in which an NME producer imports some inputs from market economies, *cf.* 19 U.S.C. § 1677b(c), the Department has determined that if an NME producer reports prices that are based on inputs from market-economy suppliers, it is appropriate to use those prices instead of a surrogate value, if the amounts purchased are meaningful, *i.e.*, they are not insignificant. The Department has applied this practice consistently in recent years, *See Melamine*, 62 FR at 1710, and has received affirmation of this practice in court decisions, *See, e.g., Lasko*, 43 F.3d at 1446, as cited by respondents. The Department subsequently codified this practice in Section 351.408(c)(1) of the *Antidumping Duties; Countervailing Duties; Final Rule*, published in the **Federal Register** on May 19, 1997 (62 FR 27296, 27413) (*Final Rule*). As explained in the background section of the those regulations, the only situation in which we would not rely on the price paid by an NME producer to a market economy supplier is where the quantity of the input purchased was insignificant. *See Final Rule*, 62 FR at 27366.

In factor valuation, the Department has developed practices which emphasize accuracy, fairness, and predictability. The Department stated that "the simplest example of a value based on market principles in a proceeding involving an NME is a price paid in convertible or market economy currency for an input sourced from a market economy country." (*See Fans*, Comment 1.) In this instant case, the amount of steel imported is approximately equal to one-third of the amount used to produce the subject merchandise during the period of review. We consider this to be a meaningful amount, *i.e.*, it is not insignificant, for purposes of using the market-economy input price to value all of the steel used to produce the subject merchandise. In this respect, the Department's determination to value all steel inputs using the market-economy input prices respondent actually paid is consistent with these goals and practices.

Petitioner's contention that imported steel and domestically-produced steel constitute separate factors of production is, in effect, just another way of arguing that we should value them separately. There is no evidence that the imported steel is physically different from the domestically-sourced steel, such that the imported steel should be considered a different factor of production from the domestically-sourced steel.

Therefore, in accordance with the Department's established practice, we continue to use the actual imported steel prices to value steel inputs because these prices represent the actual market-based prices incurred by the respondent in producing the subject merchandise and, as such, are the most accurate and appropriate values for this particular factor for the purpose of calculating NV.

Comment 2: Adjusting Imported Steel Prices for Inflation.

Petitioner asserts that if the Department uses import prices for the final results, the Department should adjust the import prices to reflect the period of review (POR) where those import prices are used to value non-imported steel used to produce HSLWs. Petitioner recognizes that the Department has not made adjustments in the past to values based on market-economy prices, but argues that the Department's approach does not apply to the facts of this case.

Respondent asserts that the prices for imported steel already reflect the POR price levels because ZWG imported the steel during the POR and, therefore, the prices do not need adjustment.

Department's Position: We agree with respondent. Because the prices for the steel imports used to value the steel factor are POR prices, there is no need for any further adjustment to account for inflation.

Comment 3: Movement Expenses for Imported Steel.

Petitioner asserts that the Department should value imported steel by including all costs, such as brokerage and handling fees and transportation from the port to the factory, and adjust these costs for inflation. Petitioner cites *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review* (62 FR 10530, March 7, 1997) (*Sebacic Acid*), where the Department added PRC brokerage and freight from the port to the factory for market-economy inputs. Petitioner states that, although the preliminary results mention that the Department "made further adjustments to account for the freight costs incurred between the port and ZWG," a review of the calculations reveals that this adjustment may have not be included.

Department's Position: We agree with petitioner in part. While we agree that the Department should value the non-surrogate, market-economy actual prices by including all expenses such as brokerage and handling and transportation from the port to the factory, the facts of this case make changes to the preliminary results unnecessary. *See* the proprietary version of "Memo to the File: Analysis for the Final Results of the Third Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China," dated November 10, 1997 (Final Analysis Memo), for a discussion on movement adjustments.

Comment 4: Steel Scrap.

Petitioner asserts that the Department grossly distorted the net cost of the steel input to the Chinese producer by using a non-surrogate import price for steel and a surrogate value for steel scrap. Petitioner claims that scrap value is based on a relationship between steel (from which the scrap steel generated) and scrap which can be recycled. Petitioner maintains that the steel scrap value in India (the surrogate country) is different from the scrap value in the United Kingdom (the non-surrogate country from which ZWG purchased the steel).

Petitioner suggests that the Department correct this distortion by using the scrap value in the United Kingdom or applying the ratio of scrap value-to-steel value in India to the imported (U.K.) steel value in order to value the Chinese producer's scrap.

Respondent states that the Department correctly valued steel scrap in the preliminary results. Respondent argues that petitioner failed to provide any supporting evidence for its arguments. Respondent maintains that petitioner failed to provide any factual evidence showing that Indian import prices of steel scrap are not appropriate to value the steel scrap generated by ZWG from the consumption of steel wire rod from the United Kingdom. Respondent contends that petitioner further failed to provide any links between steel wire rod prices and steel scrap prices.

Respondent also asserts that the Department must use a surrogate value for steel scrap because respondent sold the steel scrap in the PRC in PRC currency. Respondent adds that petitioner failed to provide any surrogate information on the value of steel scrap.

Department's Position: We disagree with petitioner's assertions that we distorted the cost of the steel input by valuing steel using actual prices respondent paid for U.K. steel and valuing scrap using surrogate prices from India. Petitioner did not provide any evidence to support its claim of a clear relationship between the prices of steel and scrap. Even if petitioner had established that such a relationship exists, there are no data on the price of scrap imported from the United Kingdom into the PRC.

Moreover, we compared the prices of steel scrap imported into India, Indonesia, Canada, the European Community, the United Kingdom, and the United States during a period contemporaneous with the POR. We were unable to obtain statistics on prices of steel scrap imported into Pakistan, Sri Lanka, and Egypt, which were potential surrogate countries. Our analysis of the Indian imports of steel scrap from the *Monthly Statistics of the Foreign Trade of India* (*MFTI*) show that the price of steel scrap imports into India are not aberrational. (*See* "Memo to the File: Comparison of Steel Scrap Values for the Final Results of the Third Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China" (Steel Scrap Price Comparison Memo), November 7, 1997,) Therefore, in accordance with our established practice of valuing factors of production using surrogate values that are demonstrated to be a reliable reflection of prices during the POR, we are continuing to use Indian import price from *MFTI* to value steel scrap for the final results.

Comment 5: Hydrochloric Acid.

Petitioner argues that the Department included three aberrational values for determining the average hydrochloric acid (HCL) value. Petitioner claims that, because the Department has consistently avoided using aberrational values, these aberrational values should be omitted in the final results.

Respondent asserts that the Department correctly valued HCL using *Chemical Weekly*'s FOB prices, except for freight costs associated with the HCL. Respondent argues that because petitioner failed to identify any specific data as aberrational and failed to provide any supporting evidence for its argument, the Department should reject petitioner's argument.

Department's Position: We agree with petitioner. We analyzed the HCL values published in each of the *Chemical Weekly* issues used for this review and found that two issues, February 14–20, 1996, and April 15–20, 1996, contained values at least 12 times the average value. The values of these two issues seem to be related to exceptionally low quantities of HCL exports. We excluded these values from the final calculations. We found a clerical error in the transcription of one HCL price from the July 27–31, 1996, issue, used to calculate a surrogate value in the preliminary results. Therefore, in the final calculations, we have corrected this price. (*See* Final Analysis Memo.)

Comment 6: Adjustments for Chemical Purity.

Respondent asserts that the Department should calculate the ratio of the purity of chemical inputs consumed to the purity of the chemicals as sold commercially and apply this ratio to the Indian import data. Respondent argues that the Department adopted this methodology in past NME cases and refers to the calculation memoranda for several proceedings, including *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China* (62 FR 25899, May 12, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value: Beryllium and High Beryllium Alloys from the Republic of Kazakstan* (62 FR 44293, January 17, 1997).

Petitioner asserts that there is insufficient information on the record for the Department to adjust values for chemical concentration. Petitioner argues that to adjust chemical concentrations, the Department must ascertain the actual chemical concentration from which the value was derived and must determine which additional chemicals were used to dilute or alter the concentration of the chemical. Petitioner argues that the Department must value the additional chemicals. Petitioner adds that even this suggested methodology may result in underreporting the value of the diluted chemical because of the additional costs of performing the dilution, such as labor, equipment, and energy.

Department's Position: We agree, in part, with respondent's assertions that we should make adjustments for chemical purity, as we have done in previous cases. For inputs where the chemical concentration levels of the HTS categories are defined in the Indian import statistics, and where respondent reported chemical concentration levels used, we have made adjustments accordingly.

However, there is no evidence on the record with regard to the chemical concentration levels associated with all chemical inputs in the *MFTI*. Absent any evidence that they do not reflect standard concentrations commonly sold, an adjustment is unwarranted. Where the information regarding the level of chemical concentration is insufficient, we have not made any adjustment. (*See* Final Analysis Memo.)

Comment 7: HCL Concentration.

Petitioner asserts that the Department erred in adjusting HCL concentration. Petitioner argues that the Department purportedly adjusted HCL surrogate values to match the reported concentration although the surrogate data did not indicate concentration level.

Petitioner also asserts that, because the HCL used to make HSLWs is already diluted, the Department must, in calculating the value of the diluted HCL, include the value of the diluting water or chemical.

Respondent contends that the Department will double-count water if it values the water for diluting HCL separately from factory overhead and electricity values, as suggested by petitioner. Respondent claims that the water inputs were included in factory overhead for the production factory and were included and valued in electricity inputs for the plating factory in the preliminary calculations.

Department's Position

We agree, in part, with petitioner regarding an adjustment to the value of HCL based on concentration level. As we mentioned in Comment 6, for inputs where the chemical concentration levels are defined in the surrogate value source, and where respondent reported chemical concentration levels used, we have made adjustments. However, there is no evidence on the record with regard to the HCL concentration level associated with the HCL prices in *Chemical Weekly*. Absent any evidence that they do not reflect standard concentrations commonly sold, an adjustment is unwarranted. Therefore, we have not adjusted the surrogate value for HCL for concentration level in the final results. (*See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818, Comment 4, November 15, 1994 (*Saccharin*).)

We disagree with petitioner's assertions that the diluting agent, water or another chemical, should be included in calculating the value of the HCL. We have no basis to conclude that respondent did not report all input amounts required to produce HSLWs, regardless of the manner in which the input enters the production process.

Therefore, the value of the diluting agent is accounted for in the values for water and other chemical inputs.

Comment 8: Freight Costs.

Respondent disputes the Department's addition of freight costs to the imported steel prices and to the input prices obtained from *MFTI* because these prices include foreign inland freight and ocean freight costs. Respondent asserts that, by adding the freight costs to these prices, the Department double-counted the freight costs. Respondent argues that, in *Sigma*, the court prohibited the Department from such double-counting. Respondent suggests that the Department value the freight cost of PRC-sourced material based on the reported distance and method of transportation from the importing seaport to the factory, where that cost is lower than the calculated freight costs based on actual distance and method of transportation from the domestic supplier. Respondent contends that these adjustments are in accordance with the *Sigma* ruling.

Petitioner asserts that a change to the Department's adjustment to material inputs for domestic freight costs is not warranted. Petitioner argues that respondent has not indicated why or to what extent any inland freight expense should be adjusted to accord with *Sigma*.

Department's Position: We agree with respondent that the Department should adjust freight costs of the inputs in accordance with *Sigma*. In *Sigma*, the court ruled that the Department overvalued freight when it added to the surrogate value for a material input, which was obtained from the import statistics of the surrogate country, an amount for freight from the NME supplier factory to the NME factory. The court reasoned that a manufacturer would minimize its material and freight costs by purchasing imported material if the cost of transportation from the port to the factory were less than the cost of transportation from the domestic supplier to the factory. For the final results, we adjusted the CIF surrogate values by revaluing freight expenses based on the shorter of two distances: the distance from the port of import to the factory or the distance from the actual supplier to the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China* (62 FR 51410, 51414, October 1, 1997) (*Roofing Nails*).) In situations where an input is purchased from several suppliers, we adjusted the value for inland freight by comparing the distance from the port of import to the factory to the distance from each supplier to the factory. We then multiplied the shorter of the distances for each supplier by the proportion of the input purchased from each supplier to calculate the weighted average inland freight expense for each input.

Comment 9: HCL Freight Expense.

Respondent asserts that the Department should not add freight costs for transporting HCl from PRC suppliers to respondent's factories to the *Chemical Weekly* price because the *Chemical Weekly* price is an FOB Indian export price. Respondent argues that because the price is an FOB Indian seaport price, it includes both the ex-factory price of HCl and the transportation costs thereof from an Indian factory to an Indian seaport. Respondent maintains that the Department double-counted freight costs for HCl by adding PRC domestic freight costs to the domestic transportation costs included in the surrogate value.

Respondent adds that the Department did not include the domestic freight costs in the respondent's country when the Department used *Chemical Weekly's* FOB Indian seaport price in past NME cases. Respondent cites the April 22, 1996 Factors Valuation Memorandum for the *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (*Bicycles*) and the October 22, 1995 Valuation Memorandum for the *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China* (61 FR 14057, March 29, 1996) (Polyvinyl Alcohol), in which the Department did not add freight to the surrogate value.

Petitioner asserts that the Department should continue to add domestic PRC freight costs to the value for HCL because specific distance and transportation modes for moving the HCL from the supplier to respondent's factory, and for moving the HCL in the surrogate country from supplier to port of export, are not identified on the record. Petitioner argues that respondent reported the HCL transportation distance as short and the mode as truck, while transportation distance and mode are unknown for the Indian HCL surrogate value.

Department's Position

We agree with respondent that freight costs for transporting HCL from the PRC suppliers to the factory should not be added to the surrogate value. When we use, as a surrogate for respondent's materials costs, the cost of the material in a surrogate country, this cost should include the cost of transporting the merchandise to the consumer in the surrogate country. In the preliminary results, we relied on *Chemical Weekly* for a surrogate value for HCL. The HCL prices in *Chemical Weekly* are based upon FOB export prices from the surrogate country, India. FOB export prices by definition include the cost of transporting the merchandise from the Indian supplier to the Indian port. We consider this cost to be equivalent to the cost of transporting the merchandise from the Indian supplier to the Indian consumer. *See* the factor valuation memos for *Bicycles* and *Polyvinyl Alchohol*. Therefore, for these final results we have not added any additional freight to the FOB value.

Petitioner's assertions that the record does not provide specific information from which the Department can calculate freight costs is moot because there is no need to calculate such costs.

Comment 10: Wood Pallets.

Respondent asserts that the Department should value the wood pallet input by using HTS 4403.2000, "sawlogs and veneerlogs in rough w/n striped of bark or merely rough down," instead of HTS 4415.1000, "cases, boxes, crate, drum and similar packings—cable drums of wood," because respondent produces finished pallets itself. Respondent states that because it uses the same wood to produce wood brackets and wood pallets, the Department should value wood for pallets using the same HTS number it used to value wood brackets, HTS 4403.2000. Respondent argues that, during the investigation, the Department verified that respondent produces finished pallets. Respondent contends that because the Department added the value for finished wood pallets, using HTS 4415.1000, and the values for wood, nails, and packing labor in the NV calculation, the Department double-counted the costs of wood, nails, and packing labor.

Respondent also asserts that, even if the Department determines not to use input values under HTS 4403.2000, the Department should use HTS 4415.2000 to minimize double-counting. Respondent argues that MFTI classifies wood pallets under HTS 4415.2000, which states "pallet box, pallets, and other load boards of wood." Respondent maintains that in comparison to the MFTI definition of HTS 4415.1000, "cases, boxes, crates, drums, and similar packing cable drums of wood," it is clear that MFTI includes a wood pallet in HTS 4415.2000.

Petitioner asserts that the Department correctly valued pallets using the surrogate value for the finished pallet. Petitioner states that the Department can choose to value the finished pallets or construct the value of the pallet from labor, material (including scrap), tools, energy, transportation, and overhead. Petitioner argues that, if all the inputs are not available, the Department must use surrogate values. Petitioner adds that the Department should include the cost of brackets and labor, etc., to account for additional packing expense in addition to using surrogate values for pallets.

Department's Position: We agree with respondent that we should value pallets using HTS 4403.2000, a surrogate value for the wood used to construct the wood pallets, because respondent constructs the pallets, instead of HTS 4415.100, a surrogate value for the finished pallet, as used in the preliminary results. In the preliminary results, because we valued finished pallets, as well as materials used to construct the pallets, such as nails and wood brackets, we overstated the value of pallets. This change in methodology is in accordance with the Department's determination in the *Final Results of Antidumping Administrative Review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China* (61 FR 15028, Comment 3, April 4, 1996) (*Hand Tools*). In *Hand Tools*, the Department determined that "we should value the pallets using the factor and surrogate values for wood, nails, and packing labor, separately, rather than for the complete pallet. The information on the record at the time of the preliminary results indicates that the factories make the pallets from wood and nails rather than purchase the completed pallet."

We agree with petitioner's assertions that the Department should include the cost of labor, material, tools, energy, transportation, and overhead in constructing the value for the pallet. Respondent separately reported consumption amounts for wood, depending upon its application, and for nails; thus, respondent reported materials used to construct the finished pallet. (*See* Respondent's January 21, 1997 and February 21, 1997 submissions.) We have no basis in the record to conclude that the packing labor amounts required to construct the pallets is not included in the reported input amounts for packing labor, or that the energy amounts required to construct the pallets are not included in the reported amounts for energy. We also consider, in this instant case, that expenses for tools and transportation of pallet materials are included in overhead. Therefore, because the expenses for labor, tools, energy, transportation, and overhead incurred in the construction of wood pallets have been valued as mentioned above, we find that further adjustments are not warranted.

Comment 11: Error in Valuing Wood Pallets and Coal.

In the preliminary results, the Department used data from the February 1995 (April 1994 to February 1995) and August 1996 (April 1995 to August 1996) issues of *MFTI* to value wood pallets and coal inputs. Respondent asserts that the Department should value inputs using data most contemporaneous with the POR when determining the final results. Specifically, respondent requests that the Department use data from the March 1996 (April 1995 to March 1996) issue of *MFTI*, rather than the April 1994 to February 1995 data, to value wood pallets. Respondent argues that the April 1995 to March 1996 data are most contemporaneous with the POR.

Petitioner asserts that the Department should use only the April 1995 to August 1995 data from *MFTI* to value coal and wood pallets. Petitioner argues that these values for a five-month period most closely reflect the values for the POR.

Petitioner also asserts that the Department included the wholesale price index (WPI) for March 1995 when inflating the value, although March 1995 was not included in either data source used in the preliminary results. Petitioner argues that if the Department uses both data sources, the Department should not include the WPI for March 1995 in the inflator calculation.

Department's Position: We agree with both respondent's and petitioner's premise that the Department should use data most contemporaneous with the POR to value inputs for the final results. For the final results, we obtained and used Indian import statistics from *MFTI* for the period September 1995 through June 1996 to value wood for pallets and coal for the final results. Therefore, we have used values for a ten-month period that most closely reflects the POR.

We agree with petitioner's assertion that the Department should not have included the WPI for March 1995 in the calculation of the inflator for coal and wood. However, because we have not used the March 1995 data in the final results, we have not included the March 1995 WPI in the calculation of the inflator.

Comment 12: Labor.

Petitioner asserts that the Department should use a different category for valuing plating labor if the Department bases labor values from the *1995 Yearbook of Labour Statistics* (*YLS*). Petitioner argues that the plating labor should be valued using categories 351, "manufacture of industrial chemicals," and 352, "manufacture of other chemical products," instead of using category 381, "manufacture of fabricated metal products."

Petitioner also asserts that the Department should use different values for skilled and unskilled labor. Petitioner argues that the use of one average labor value does not accurately reflect the cost of labor mix used to produce HSLWs. Petitioner references *Sulfanilic Acid from China; Preliminary Results of Antidumping Duty Administrative Review* (62 FR 25917, May 12, 1997) (*Sulfanilic Acid*), where the Department selected surrogate values broken out into skilled labor and unskilled labor from the Economist Intelligence Unit's *Investing, Licensing and Trading Conditions Abroad* (*ILT*).

Petitioner further asserts that the Department should reject labor values used in the preliminary results because these values do not include fringe benefits and bonuses. Petitioner suggests that the Department use *ILT* because it was used in other cases covering the same POR and does include those benefits.

Respondent states that the Department correctly selected category 381 in the *YLS* as the labor category equivalent to ZWG's plating labor. Respondent argues that categories 351 and 352, suggested by petitioner, only include labor information related to the manufacture of industrial chemicals and other chemical products. Respondent states that its plating factory did not manufacture any chemicals or chemical products. Rather, respondent argues, the plating factory consumes chemicals and chemical products in plating HSLWs, which are metal products. Respondent contends that the plating factory is engaged in the manufacture of metal products, which is classified as category 381 in *YLS*.

Respondent agrees with the Department's use of one labor value. Respondent asserts that petitioner did not provide any information showing separate values for skilled and unskilled labor and that no such data are available to the Department.

Respondent agrees with the Department's use of *YLS* to value labor inputs. Respondent argues that the Department should not use *ILT* because the Department has consistently rejected it as a source for surrogate labor values because the data are not based on actual data.

Finally, respondent requests that the Department value labor for the final results using updated labor rates.

Department's Position: We disagree with petitioner's suggestion that the Department should use categories 351 and 352 for valuing plating labor. The labor used in plating HSLWs represents labor used in the manufacture of fabricated metal products. Though the labor used in plating utilizes chemicals, it is not used to manufacture chemicals. We have continued to value all labor using category 381.

We disagree with petitioner's assertion that the Department should use *ILT* to value labor because it provides different values for skilled and unskilled labor and includes fringe benefits and bonuses. The Department has routinely used *YLS* to value labor because the *ILT* reports labor rate estimates based on rates stipulated in various Indian laws and not based upon actual wage rates.

Additionally, we disagree with petitioner's assertion that the *YLS* data used in the preliminary results does not include fringe benefits and bonuses. The Department considers the ILO statistics, such as the *YLS* data, to be fully loaded with respect to all labor expenses. (*See Polyvinyl Alcohol*, 61 FR at 14061.) Accordingly, because the use of *YLS* is consistent with the Department's established practice, the *YLS* has been determined to include all expenses associated with labor, and the *ILT* data have been determined to be an inappropriate source for wage rates, we have continued to use *YLS* for the final results. (*See Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Administrative Review*, 61 FR 66255, 66259, December 17, 1996, *Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 58519, 58522, November 15, 1996.)

Comment 13: Water.

Respondent requested that the Department calculate ZWG's production cost without valuing water. Respondent asserts that the Department double-counted the water input by valuing water in addition to valuing factory overhead for ZWG. Respondent contends that the reported water input for ZWG represents water used at the HSLW production factory, not at the plating factory. Respondent claims that because the HSLW factory's water was supplied by a public utility during the POR, was not physically incorporated into the HSLWs, and was not a major indirect material input which could be separately valued, ZWG's water consumption meets the criteria established in *Saccharin* for inclusion in factory overhead. Respondent argues that the Department has established the practice of including the value of water inputs in the value of factory overhead where water is supplied by a public utility or by a nearby body of water and refers to *Saccharin*, *Sebacic Acid*, *Sulfanilic Acid from the People's Republic of China* (61 FR 53711, October 15, 1996), *Polyvinyl Alcohol*, *Disposable Lighters from the People's Republic of China* (60 FR 22359, May 5, 1995), *Silicon Carbide from the PRC* (59 FR 22585, May 2, 1994), and *Coumarin*. Respondent adds that in *Sebacic Acid*, the Department stated that it presumes factory overhead values obtained from the *Reserve Bank of India Bulletin*, the factory overhead source used in the instant review, to include values for water.

Petitioner asserts that the Department correctly valued water in the preliminary determination. Petitioner states that respondent correctly cited *Saccharin* where the Department considered water an overhead item. Petitioner argues that respondent failed to mention that the Department also stated in *Saccharin* that water required for a particular segment of the production process may "be more typical of items that are accounted for as direct material inputs, rather than as overhead item, and as such, valued separately." Petitioner asserts that the Department should value water as a separate input factor in plating because water is directly incorporated into the final product.

Department's Position: We disagree with respondent and have continued to include the water inputs as material inputs in the calculations of production cost of ZWG's factory. Following the Department's criteria in *Saccharin*, we value water if it is required for a particular segment of the production process. (*See Saccharin*, 59 FR 58818, Comment 7, November 15, 1994.) Based upon respondent's description of the production process, we consider respondent's use of water in the acid treatment as required for that particular segment, because the steel wire rod must be rinsed with water after an acid bath. (*See* Exhibit 5 of respondent's January 21, 1997 submission.) Because the water for ZWG's HSLW production factory is a required input for a particular segment of the HSLW production process, the Department's practice is to value it separately like other direct material inputs required in the production process. Moreover, in determining whether an input should be valued separately or considered valued in overhead, the Department stated in *Bicycles* that, the input in question should be valued separately if it is "* * * essential for producing the finished product * * *." and if this input appears "* * * to be [a] significant input[s] into the manufacturing process rather than miscellaneous or occasionally used materials, i.e., cleaning supplies which might normally be included in consumables." Based upon respondent's submission, water is a significant input into the manufacturing process. (*See* Exhibit 9 of the proprietary versions of respondent's January 21, 1997 submission and Final Analysis Memo.)

Unlike the instant case, in *Sulfanilic Acid*, the Department included the water value in the factory overhead value because respondents pumped water from their own wells for use in the production process and recirculated the water. (*See Sulfanilic Acid*, 61 FR at 53716.) However, in *Saccharin*, the Department valued water purchased by respondent separately, because it was considered to be a direct input in the production of the finished product. (*See Saccharin*, Comment 7.) Also, in *Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 32757, 32759, 32762, June 17, 1997, the Department considered water consumed in the production process as a direct material input and valued it as such. Although respondent's HSLW factory purchased water from a public utility, that alone is not dispositive as to how it should be valued. Here, as in *Saccharin* and *Porcelain-on-Steel*, the water was also a required input in a particular segment of the production process. Therefore, we have valued it as a separate input.

Disposable Pocket Lighters and the other cases on which respondent relies, do not indicate whether respondent purchased the water, consumed the water as a direct input, or required the water for producing the finished product. Moreover, with regard to considering the *Reserve Bank of India Bulletin* (*RBIB*) factory overhead values as inclusive of water values, the Department stated in *Disposable Pocket Lighters* that, "the *RBIB* data did not indicate to the contrary." (*See Disposable Pocket Lighters*, 60 FR at 22367.)

In the instant case, as we have explained, water purchased from the public utility is not an incidental input into the production process. Rather, it is a direct input required for a particular segment of the production process. Additionally, there is no basis for determining whether water is included in the factory overhead value in the *RBIB*, and thus no basis for an adjustment. Therefore, in the final results, we are continuing to value water for ZWG's factory in accordance with the Department's practice in the previous segments of this case, as well as its position in previous cases.

Comment 14: Aberrational Factor Values.

Respondent asserts that the Department should not use data from the June 1996 *MFTI* to value trisodium phosphate (HTS 2835.23.00), cases, boxes, crates, and drums (HTS 4415.10.00), and pallets and load boards (HTS 4415.20.00), because respondent claims that the data are aberrational.

Department's Position: We agree with respondent's assertion that the value in the June 1996 *MFTI* for trisodium phosphate, HTS 2835.23.00, is aberrational, apparently due to the extraordinarily low quantity reported. Because we could not obtain more contemporaneous data to value trisodium phosphate, we have continued to use the March 1996 issue of *MFTI*, covering the period April 1995 through March 1996.

Respondent's comments regarding the issue of the valuation of pallets using data in the June 1996 *MFTI* for cases, boxes, crates, and drums (HTS 4415.10.00), and pallets and load boards (HTS 4415.20.00), are moot because we did not value pallets using HTS 4415.10.00 or HTS 4415.20.00 in the final results. (*See* Comment 10.)

Additional Changes for the Final Results

For the final results of this review, we have updated most surrogate values based on *MFTI*. Additionally, we have updated the labor surrogate value using the *1996 YLS*. (*See* Final Analysis Memo.)

Final Results of the Review

As a result of the comments received, we have changed the results from those presented in the preliminary results of the review:

Manufacturer/exporter	Time period	Margin (percent)
Zhejiang Wanxin Group Co., Ltd	10/01/95–09/30/96	14.15

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries.

Individual differences between Untied States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for ZWG, which has a separate rate, and all ZWG exports through market-economy trading companies, the cash deposit rate will be the company-specific rate established in these final results of review; (2) for all other PRC exporters, the cash deposit rate will be 128.63 percent, the PRC rate established in the less-than-fair-value investigation of this case; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34.(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30397 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea (56 FR 25669 (June 5, 1991)). On July 5, 1996, Cheil Synthetics, Inc. (Cheil) was revoked from the order based on three consecutive years of no dumping. (*See Polyethtylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part*, 61 FR 35177 (July 5, 1996).) Based on information provided in its September 29, 1997 letter, we preliminarily determine that Saehan Industries, Inc. (Saehan) is the successor firm to Cheil, and therefore, the Department's revocation of Cheil applies to Saehan.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 or Linda Ludwig at (202) 482–3833, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay

Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1997, Saehan requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether Saehan should properly be considered the successor firm to Cheil and if, as such, the revocation issued for Cheil should apply to Saehan. Saehan also requested the Department to publish the preliminary results concurrently with this notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, Saehan notified the Department that on February 28, 1997, Cheil officially changed its corporate name to Saehan, and despite this change in corporate name, the management, production facilities, supplier relationships, and customer base of Saehan are virtually identical to those of the former Cheil. In support of its claim, Saehan submitted documentary evidence demonstrating that Saehan maintained essentially the same management, production facilities, supplier, and customer relationships as Cheil. Citing the Department's determinations in *Sugars and Syrups from Canada; Initiation and Preliminary Results of Changed Circumstances Review*, 61 FR 48885 (Sept. 17, 1996) and *Industrial Phosphoric Acid from Israel; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 58 FR 59010 (Nov. 5, 1993), Saehan claimed that the Department should determine that it is the successor-in-interest to Cheil.

Scope of the Review

The merchandise subject to this antidumping duty order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate, film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films, and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States subheading 3920.62.00.00. The HTS subheading is provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

This changed circumstances administrative review covers Saehan.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

In accordance with section 751(b) of the Tariff Act, as amended (the Act), the Department is initiating a changed circumstances administrative review to determine whether Saehan is the successor company to Cheil. In making such a determination, the Department examines several factors including, but not limited to, changes in (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base, *See e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See e.g., Industrial Phosphoric Acid from Israel, Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for purposes of antidumping liability, e.g., assign the same cash deposit rate, revocation, etc.

We have examined the information provided by Saehan in its September 29, 1997 letter and determined that Saehan has established a *prima facie* case that it is the successor-in-interest to Cheil. The management and organizational structure of the former Cheil has remained intact under Saehan, and there have been no changes in the production facilities, supplier relationships, or customer base. Therefore, we preliminarily determine that Saehan has maintained the same management, production facilities, supplier relationships, and customer bases as did Cheil.

Based upon the foregoing, we preliminarily determine that the July 5, 1996 revocation issued for Cheil applies to Saehan. Because Saehan has presented evidence to establish a *prima facie* case of its successorship status, we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments.

This initiation of review and notice are in accordance with sections 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: November 12, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30388 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review for the antidumping order on certain welded carbon steel pipes and tubes from Thailand, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–1398 or 482–3362, respectively.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit (see *Memorandum to Robert S. LaRussa from Joseph A. Spetrini*, November 12, 1997).

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date*
Certain Welded Carbon Steel Pipes and Tubes (A–549–502).	Thailand	03/01/96–02/28/97	04/24/97	03/31/98	08/05/98

*The Department shall issue the final determination 120 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

Dated: November 12, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–30396 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–337–802]

Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells or Todd Hansen, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1278, 482–6309 or 482–1276, respectively.

Preliminary Determination

The Department of Commerce (the "Department") preliminarily determines that countervailable subsidies are not being provided to producers or exporters of fresh Atlantic salmon ("salmon") in Chile.

Petitioners

The petition in this investigation was filed by the Coalition for Fair Atlantic Salmon Trade ("FAST") and the following individual members of FAST: Atlantic Salmon of Maine; Cooke Aquaculture U.S., Inc.; DE Salmon, Inc.; Global Aqua—USA, llc; Island Aquaculture Corp.; Maine Coast Nordic, Inc.; ScanAm Fish Farms; and Treats Island Fisheries (collectively referred to hereinafter as "petitioners").

Case History

Since the publication of the notice of initiation in the **Federal Register** (62 FR 36772 (July 9, 1997) ("*Initiation Notice*"), the following events have occurred.

We deemed this case to be extraordinarily complicated and on July 28, 1997, we postponed the preliminary determination until November 10, 1997 (62 FR 40335).

On July 23, 1997, we issued a countervailing duty questionnaire to the Government of Chile ("GOC"). Due to the large number of producers and exporters of fresh Atlantic salmon in Chile, and with the GOC's assurance that it could provide aggregate data for most programs, we solicited information from the GOC on an aggregate or industry-wide basis, rather than from the individual producers and exporters. On August 1, 1997, the GOC notified us that it lacked usage information for the following programs: Chilean Production Development Corporation ("CORFO") Export Credits and Long-Term Export Financing, Law 18,439 Export Credit Limits, Law 18,449 (Stamp Tax Exemption), and Article 59 of Decree Law 824. Therefore, on August 7, 1997, we issued an additional questionnaire to four producers/exporters of the subject merchandise concerning the above four programs as well as Chapter XVIII and Chapter XIX. The questionnaire was sent to the following companies: Pesquera Mares Australes Ltda., Marine Harvest Chile, Aguas Claras S.A., and Pesquera Eicosal Ltda.

On August 1, 1997, petitioners submitted comments arguing that the Law No. 18,480 program should have been included in the initiation. In the *Initiation Notice*, the Department declined to initiate on Law No. 18,480, partly based on information provided during consultations with the GOC. Upon further review of information on the record, we determined that our initial rejection of petitioners' allegation was unwarranted. On August 21, 1997, we decided to include certain benefits allegedly provided under Law No. 18,480 in our investigation (see Memorandum from team to Richard W. Moreland, Acting Deputy Assistant Secretary for Import Administration). On August 25, 1997, the Department requested that the GOC provide information regarding rebates for exports using domestically produced inputs provided under Law No. 18,480.

The Department received the GOC and company questionnaire responses on September 15, 1997 and September 22, 1997. The Department issued supplemental questionnaires to the GOC and the four companies, and their affiliates, on September 30, 1997, and received the supplemental responses on October 14, 1997. On October 21, 1997, the Department issued a second supplemental questionnaire to the GOC. The GOC responded to this questionnaire on October 27 and October 29, 1997.

On November 6, 1997, we received a request from petitioners, pursuant to 19 CFR 355.20(c), to postpone the final determination in this investigation to coincide with the final determination in the antidumping duty investigation of the fresh Atlantic salmon from Chile. Accordingly, we are aligning the final determination in this investigation with the date of the final determination in the antidumping duty investigation of the fresh Atlantic salmon from Chile.

Scope of Investigation

The scope of this investigation covers fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigation. Examples of cuts include, but are not limited to: crosswise cuts

(steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are: (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subjected to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable at statistical reporting numbers 0302.12.0003 and 0304.10.4091 of the Harmonized Tariff Schedule (HTS) of the United States. Although the HTS numbers are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Comment on Scope

As discussed in the *Initiation Notice* at 36773, we invited comments on the scope of this proceeding. On August 8, 1997, we received a comment from the National Restaurant Association, an interested party, regarding product coverage. Specifically, the National Restaurant Association argued that "dressed" whole Atlantic salmon and "cut" salmon are not "like products." Most of the National Restaurant Association's arguments have already been addressed in the *Initiation Notice*, where the Department adopted the single domestic like product definition set forth in the petition. In addition, the fact that "dressed" salmon and "cut" salmon are classified under separate HTS categories is irrelevant. Like products can and often do comprise several HTS categories or a subset of merchandise covered by a single HTS number. Finally, the specific exclusion of "cut" salmon from the scope of the *Salmon from Norway* proceeding was a result of the fact that the petition in that case did not include cut salmon, whereas, due to changing market conditions, the petition in this case specifically did. *See, e.g., Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway*, 56 Fed. Reg. 14920 (1991).

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the "Act").

Injury Test

Because Chile is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry. On August 6, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Chile of the subject merchandise (62 FR 42262).

Period of Investigation ("POI")

The period for which we are measuring subsidies is calendar year 1996.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates

To calculate the countervailable benefit from loans and nonrecurring grants, we have used the average rates for U.S. dollar lending in Chile, as calculated by the Superintendencia de Bancos e Instituciones Financieras ("SBIF"), the Chilean bank supervisory agency. The U.S. dollar interest rates were used because the loans in question were denominated in U.S. dollars and the grant that was allocated over time was made in U.S. dollars.

Allocation Period

Based on information provided by the GOC, we have used nine years, the weighted-average useful life of productive assets for the Chilean salmon industry, as the allocation period in this investigation.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. ProChile Export Promotion Assistance

ProChile, the Export Promotion Bureau of the Chilean Ministry of Foreign Affairs, aims to promote and diversify Chile's exports by providing grants to private companies or industries for export promotional activities. Each ProChile project is designed and developed through a joint participation of ProChile and the private sector. The projects are aimed at the "internationalization" of the private sector participant. "Internationalization" refers to the extension of a company's commercial operations to the external markets, which can be achieved through exportation, mixed-ownership (foreign and domestic), joint ventures, and international subsidiaries. Typical ProChile projects include advertising and promotional campaigns, creation of catalogs and brochures, and organization of trade fairs. These projects are co-financed by ProChile and the private sector participants.

The producers and exporters of salmon in Chile received funding under this program for several salmon-related projects targeted to the U.S. and other export markets.

In the past, the Department has recognized that general export promotion programs which provide only general informational services, do not constitute a countervailable benefit. *See, e.g., Fresh Cut Flowers from Mexico*, 49 FR 15007 (1984). However, where such activities promoted a specific product, or provided financial assistance to a firm, we have found the programs to be countervailable. *See, e.g., Fresh Atlantic Groundfish from Canada*, 51 FR 10041 (1986) (government funding of attendance at trade fair which targeted the exports of specific product to the U.S. market found to be countervailable); and *Fresh Cut Flowers from Israel*, 52 FR 3316 (1987) (government reimbursements of up to 50 percent of actual expenses incurred by the firm for promotional activities found to be countervailable). Based on the information on the record, we find that ProChile's projects went beyond what we normally consider to be *general* export promotional activities. The projects were aimed at the promotion of specific products to targeted export markets and also provided direct financial assistance to the participating firms.

Accordingly, we preliminarily determine that the ProChile grants provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOC providing a benefit in the amount of the grant. The grants are also specific within the meaning of section 771(5A)(B) of the Act because their receipt is tied to the anticipated exportation of the subject merchandise to the United States and other export markets.

We are treating these grants as "non-recurring" based on the analysis set forth in the Allocation section of the *General Issues Appendix* because they are exceptional rather than ongoing events. Each project funded by a grant requires a separate application and approval, and the projects represent one-time events.

To calculate the countervailable subsidy, we used our standard grant methodology. In accordance with our past practice, we allocated over time grants from those years in which the benefits from this program exceeded 0.5 percent of the value of appropriate exports in the year of receipt. We divided the benefit attributable to the POI by the value of appropriate exports in the POI. On this basis, we determine the countervailable subsidy rate for this program to be 0.05 percent *ad valorem*. For a discussion of the denominators used in the calculation of the subsidy rate for this program, *see* November 10, 1997 Calculation Memorandum to file from team.

B. CORFO Export Credit Insurance Premium Assistance

In 1995, CORFO established a program entitled "Export Credit Insurance Premium Assistance For Small and Medium-Sized Companies." This program provides a grant of up to 50 percent of the value of the export credit insurance premium, subject to a cap of one percent of the particular export invoice, for export insurance purchased by small and medium-sized Chilean exporting companies from private insurance companies. Only those Chilean exporters with annual sales of up to US $10,000,000 are eligible for this program. CORFO's liability to the insurers is limited to the payment of a portion of the insurance premium for the eligible company. Once the exporter is approved, the agreed portion of the insurance premium is paid directly to the insurance company by CORFO. CORFO made payments to insurance companies on behalf of eligible salmon-exporters under this program.

We preliminarily determine that CORFO's payments of the insurance premiums constitute countervailable grants within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOC that confer a benefit in the amount of the grant. These grants are specific within the meaning of section 771(5A)(B) of the Act because their receipt is contingent upon export performance. Because these grants are made on an ongoing basis, we have treated the benefits as recurring in accordance with the analysis set forth in the *General Issues Appendix*.

To calculate the subsidy rate, we divided the benefit attributable to the POI by the value of all exports of fresh Atlantic salmon by producers and exporters of salmon during the POI. On this basis, we determine the countervailable subsidy for this program to be 0.01 percent *ad valorem*.

C. Law No. 18,634 (Deferred and Waived Import Duties on Capital Goods)

Law Number 18,634 of August 5, 1987, established a program whereby customs duties may be deferred and subsequently waived on imported capital goods used in the production of exports. Under this program, both exporters and non-exporters are allowed to defer paying duties on certain capital goods. During the deferral period, the amount of duties owed is treated as a loan on which the producer is required to pay interest. If the capital goods are ultimately used for the production of exported goods, the outstanding balance and interest on the loan are waived.

The Law 18,634 deferral program is available to exporters as well as non-exporters. The usage data provided by the GOC indicates that the fishing and aquaculture sector is neither a predominant nor disproportionate user of the program. Moreover, many sectors not normally considered to be exporters, such as the construction, electric, gas and water industries, participated in the duty deferral program. Accordingly, we preliminarily determine that the benefit, if any, under the deferral program is not specific within the meaning of section 771(5A) of the Act.

Under the Law 18,634 waiver program, the waiver of duties is allowed, in whole or in part, if imported capital goods are used in the production of merchandise that is later exported. We preliminarily determine that the waiver program provides countervailable subsidies within the meaning of section 771(5) of the Act. The waiver of import duties represents revenue foregone by the GOC, providing a benefit in the amount of the waiver. Because the waiver program is contingent on export performance, we preliminarily determine that it is specific within the meaning of section 771(5A)(B) of the Act.

The GOC has provided the amounts of customs duties waived during the POI for exporters of subject merchandise. Because these waivers are automatic when exportation is demonstrated, we determine that the benefits under this program are recurring. To calculate the countervailable subsidy from this program, we divided the total amount of waivers granted during the POI by the value of all exports of producers and exporters of salmon. On this basis, we determine the countervailable subsidy from this program to be 0.23 percent.

D. Import Substitution of Capital Goods

In addition to the duty deferral and waiver program discussed above, Law 18,634 also contains a provision related to the purchase of domestically sourced capital goods. According to the GOC, this program is intended to encourage capital investment in Chile and to avoid a preference for imported capital goods resulting from the import duty deferral and waiver provisions of the same law. Under this provision, companies purchasing capital equipment domestically can borrow up to 73 percent of the amount of customs duties that would have been paid on the capital goods if they had been imported. If the capital goods are ultimately used in the production of exports, the loan balances and any unpaid interest are waived and the producer is not required to repay the loan. The GOC has provided the amounts of loans and waivers received under this program by exporters of subject merchandise for the POI.

Because the receipt of loans under this program is contingent upon the purchase of domestically produced capital equipment, we determine that these loans are specific in accordance with section 771(5A)(C) of the Act. Based on a comparison of the benchmark interest rates (*see Subsidies Valuation* section of this notice) to the rates charged on the loans, we preliminarily determine that certain loans confer benefits within the meaning of section 771(5)(E)(ii) of the Act because the rate charged is less than the benchmark rate. We calculated the benefit from these loans by subtracting the interest charged during the POI under the program from interest under the benchmark rate and dividing this difference by the value of all sales of producers and exporters of salmon. On this basis, we determine the countervailable subsidy from this program to be 0.02 percent *ad valorem*.

Regarding the waivers provided under the program, we preliminarily determine that the waivers are countervailable subsidies within the meaning of section 771(5) of the Act. The waiver of the loan balances represents a direct transfer of funds from the GOC, providing a benefit in the amount of the balance and any unpaid interest waived. Further, the waivers are specific within the meaning of section 771(5A)(B) of the Act because their receipt is contingent upon export performance.

Because these waivers are automatic when exportation occurs, we determine that the benefit from this program is recurring. To calculate the

countervailable subsidy from the waiver portion of this program, we divided the total amount of waivers granted during the POI by the value of all exports of producers and exporters of salmon from Chile. On this basis, we determine the countervailable subsidy from this program to be 0.25 percent *ad valorem*.

E. Promotion and Development Fund

The Promotion and Development Fund for Extreme Regions was established pursuant to Decree Law No. 3,529, published on December 6, 1980. Article 38 of this law established the fund to aid in the development of remote regions of Chile. These regions are Tarapaca, Aysen del Presidente Carlos Ibanez del Campo, Magallanes and Antartica Chilena and the provinces of Chiloe and Palena. The fund was established to assist small and medium-sized investors who make investments or reinvestments in these regions. Decree 15 of Decree Law 3,529 (published April 20, 1981) established the regulations pertaining to the fund. These investments must be directly linked to the production process and involve capital assets relating to the company's regular business activities. The program provides grants in the amount of 15 percent of the cost of new investments or reinvestments made between January 1 and December 31, 1981, and 20 percent of the cost of investments and reinvestments made between January 1, 1982 and December 31, 1999. The GOC has provided information on the amount of grants received under this program by the producers and exporters of the fresh Atlantic salmon.

We preliminarily determine that Promotion and Development Fund grants provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOC providing a benefit in the amount of the grant. The grants are specific within the meaning of section 771(5A)(D)(iv) because they are limited to firms located in a designated geographical region.

We have treated these grants as non-recurring based on the analysis set forth in the Allocation section of the *General Issues Appendix*. In accordance with our practice, we allocated over time, the grants from those years in which the benefits from this program exceeded 0.5 percent of the value of all sales of producer and exporters of salmon in the year of receipt. To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POI by the value of all sales of producers and exporters of salmon during the POI. On this basis, we determine the countervailable subsidy for this program to be 0.01 percent *ad valorem*.

F. Law No. 18,480

Law 18,480 of December 19, 1985, established a simplified duty drawback system for inputs used in small volume exports. In addition to the duty drawback provision for imported inputs, the law also contains a provision whereby exporters using domestically produced inputs in their export operations are entitled to the amount of the duty drawback that the exporter would otherwise have realized if they had imported the inputs. Because fresh Atlantic salmon is excluded from the duty drawback portion of the program, our investigation of Law No. 18,480 is limited to the payments for using domestically sourced inputs in the production of exported goods.

The maximum export values for which the rates are applicable and the list of eligible inputs are updated each year. For an input to be eligible as a domestic input, the CIF value of its imported raw materials and inputs may not exceed 50 percent of its net value.

We preliminarily determine that Law 18,480 is a countervailable subsidy within the meaning of section 771(5) of the Act. It is specific within the meaning of section 771(5A)(B) of the Act because the receipt of the payment is contingent upon export performance. The program provides a financial contribution because it is a direct transfer of funds from the GOC to the exporters and producers of salmon.

Because the payment is automatic for eligible products, we have treated these grants as recurring. To calculate the countervailable subsidy from this program, we divided the total amount of grants received during the POI by the value of all exports of producers and exporters of salmon during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.05 percent ad valorem.

II. Programs Preliminarily Determined Not to Be Countervailable

A. Fundación Chile Assistance

Fundación Chile ("FCH") is a private, non-profit organization established in 1976 through an agreement between the GOC and the International Telephone and Telegraph Corporation ("ITT") with an original endowment fund of US $50 million. This agreement (Decree No. 1528) stemmed from an earlier agreement (Decree No. 801) in which the GOC agreed to compensate ITT for the value of certain ITT property that a former Chilean government had previously expropriated from ITT. Under the terms of the agreement, ITT agreed to contribute its $25 million compensation to FCH's endowment, and the GOC matched this amount.

FCH's mission is to carry out scientific and technological research and apply the research to industrial production and service areas of Chile. To meet these objectives, FCH forms companies to pursue technologies of interest, which are later sold to private investors, and also provides technical assistance, consulting services, and training to companies for a fee. In 1996, a major portion of FCH's operating budget came from fees for services and profit from the sale of its companies with the remaining amount from the original endowment.

Under section 771(5)(B) of the Act, a countervailable subsidy exists where the government provides a financial contribution or "makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."

The GOC has argued that FCH should not be viewed as the government, nor was FCH entrusted or directed by the GOC to take actions that would normally be vested in the government. We have not addressed these claims because, as explained below, we have preliminarily determined that the financial contributions provided by FCH do not confer a benefit.

With respect to the company start-up ventures, FCH created or co-invested in three salmon-related companies. The first venture was Salmones Antartica ("Antartica"), created in 1982, which became the first company to successfully demonstrate the technical and economic viability of salmon farming in Chile. FCH made three separate equity infusions in Antartica, the last of which was disbursed in 1988. Antartica was sold to private investors in 1989. Although Antartica produced the subject merchandise during the POI, it did not do so during the time FCH had ownership interest. The second venture was in 1988 when FCH, together with three other private companies, formed Salmones Huillinco (25 percent equity participation by FCH) which produces and commercializes smolts. Finally, Salmotec S.A. (Salmotec) was created by FCH and Antartica in 1988. Salmotec was sold to a private company in 1995. FCH made equity infusions in Salmotec in 1988 and 1990.

Section 771(5)(E)(i) of the Act provides that in the case of an equity infusion, a benefit is conferred if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the county in which the equity infusion is made.

In making this determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition;
2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;
3. Rates of return on equity in the three years prior to the equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in world markets for the product under consideration.

In start up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise. (For a more detailed discussion of the Department's equityworthiness criteria see the *General Issues Appendix* at 37244.)

With respect to FCH's investments in Antartica, the decision to invest was made in 1981. FCH provided the Department with three separate feasibility studies that it considered at that time. The factors evaluated in the studies included the environmental conditions of Chile, world market conditions, and projected costs and profits. One of the studies in particular projected an internal rate of return, in U.S. dollar terms, of over 30 percent on investment. Based on these factors, the studies conclude that the conditions in Chile were such that salmon farming would be profitable. In light of the studies, we preliminarily determine that FCH's 1982 decision to invest in Antartica was consistent with the usual investment practice of private investors in Chile.

The decision to invest in Salmotec was approved by FCH in 1988. The GOC claims that at the time, the Chilean salmon industry was well-established and profitable. The GOC points to the fact that by 1988, there were 20 producers and/or exporters of salmon in operation in Chile and more private companies were investing in the salmon industry. Moreover, the Chilean salmon industry had been growing at an extraordinary rate, as evidenced by the dramatic increase in volume and value of salmon production. The growth was projected to continue at an even greater rate (see Concurrence Memorandum to Richard W. Moreland, Deputy Assistant Secretary, Import Administration from team dated November 10, 1997). Based on the growth projections and the health of the Chilean salmon industry in 1988 and the entry into that industry by private investors in the same year, we preliminarily determine that FCH's decision to invest in Salmotec was consistent with the usual investment practice of private investors in Chile.

We have not analyzed nor investigated FCH's investment in Salmones Huillinco because this company is not a producer or exporter of the subject merchandise.

The GOC reported that FCH did not provide any aquaculture infrastructure to the salmon industry during the AUL period, and there can be no residual benefits from the provision of infrastructure prior to the AUL period. Therefore, we did not examine this program further.

Finally, regarding the technical assistance provided by FCH, this assistance included research and development, consultations, seminars and inspection services. For each type of service provided, FCH charged a fee. Pursuant to section 771(5)(E)(iv) of the Act, a countervailable benefit exists in this situation if the services are provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the service.

We have examined the fees charged by private companies which are FCH's major competitors and have found that the fees charged by FCH are in line with those charged by the private service providers. Accordingly, we preliminarily determine that FCH's fees provided adequate remuneration for the services it provided.

For the foregoing reasons, we preliminarily determine that the Chilean salmon industry has not received a benefit from financial contributions provided by FCH.

B. Fund for Technological and Productive Development (FONTEC)

FONTEC was established in 1991 by CORFO to promote, guide, finance, and assist the execution of technological research and development projects in Chile. FONTEC is a committee composed of eight members from the public and private sectors with significant experience and reputation in technological fields. This program provides grants and loans for research and development projects that are aimed at innovations in technology and for investment projects in technological infrastructure.

The amount of FONTEC financing was subject to a ceiling dependent on the line of financing: (1) the first line was for "technology innovation" projects involving financing requests lower than US $100,000; (2) the second line was for projects involving financing requests larger than US $100,000; and (3) the third line was for technological infrastructure projects. Any private company or entity in the production sector is eligible for FONTEC funding, provided that the company demonstrates that it has the proper technical, administrative and financial capacity to execute and implement the proposed project and that the project is aimed at technological innovation in products or processes. In addition, the third line of financing is only available to entities which: (1) are formed by at least five companies; (2) organized as a corporation or a foundation whose main line of business is technological transfer; and (3) can show stable projections of the project over time. Applicants, regardless of the line of financing under which they are applying, must demonstrate the eligibility of the project and the applicant company as well as the economic benefits of the project. In particular, the evaluation guidelines for the second line of financing (projects over US $100,000) specifies that the economic benefit criterion may be satisfied by factors such as "cost savings, production increases, *export increases*, etc." (Emphasis added). The guidelines for the other two lines of financing do not enumerate specific factors to measure the economic benefit. Chilean salmon producers received grants under all three lines of financing of this program.

We analyzed whether the program is specific "in law or fact" within the meaning of section 771(5A) of the Act. We preliminarily determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on use of domestically goods over imported goods nor are the benefits limited to an enterprise, industry or region. As stated above, we note that anticipated exportation could have been a factor in the approval process of projects under the second line of financing. Nevertheless, we have no evidence that the GOC approved the salmon project under the second line of financing based on the export factor. In other words, although the applicant may have fulfilled the economic benefits criterion by demonstrating anticipated increases

in exports, it is also possible that the criterion was met by other factors such as savings in cost and production increases. At verification, we will closely examine the actual application and approval documents of the project under the second line of financing to determine whether the GOC's approval of the project was actually contingent on the company's export performance.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof, which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action ("SAA") (H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Session (1994) at 931), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

During the period 1991 through 1996, assistance under this program was distributed to a large number and wide variety of users in the majority of regions of Chile. Therefore, the program is not limited based on the number of users. The evidence also indicates that neither the salmon nor the fishing and aquaculture industry received a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the salmon industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we preliminarily determine that the funding of projects by FONTEC is not specific and has not conferred countervailable subsidies to the Chilean salmon industry within the meaning of section 771(5) of the Act.

Of the several salmon-related projects funded by FONTEC, the GOC has argued in the alternative that the funding provided to the Instituto Tecnológico del Salmón, S.A. ("INTESAL") falls within the definition of a non-actionable subsidy under Article 8 of the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). Because we have preliminarily determined that the project funding provided by FONTEC does not constitute countervailable subsidies, we do not reach the issue of whether FONTEC's grants to INTESAL constituted a non-actionable subsidy.

C. Central Bank Chapter XIX

Chapter XIX of the Central Bank's Compendium of International Exchange Rules was designed to reduce the strain on Chile's foreign currency reserves following the country's external debt crisis at the beginning of the 1980s. Chapter XIX permitted non-resident investors who bought Chilean external debt to trade that debt in Chile for local currency to be used in carrying out investment projects in Chile. The debt swap and subsequent investment had to be authorized by the Executive Council of the Central Bank. Chapter XIX came into effect on May 14, 1985, and was abolished on August 3, 1995. No operations were carried out after 1991, however, because Chile's external debt appreciated in international markets, reducing the attractiveness of the debt swap operations.

Petitioners alleged that the Central Bank used its authority in approving the debt swaps to promote export-oriented industries and import substitution. Based on the evidence provided by the GOC, we have determined that the benefit, if any, of these debt swaps and equity investments is not specific.

Neither the laws nor the regulations concerning Chapter XIX debt for equity swaps contained any formal provision favoring exports or import substitution at the time the investments at issue were approved. Moreover, based on information provided by the GOC, nearly 30 percent of the operations carried out under Chapter XIX were for sectors producing non-traded goods. While certain anecdotal evidence exists regarding a bias towards export industries, other anecdotal evidence indicates that the Central Bank did not favor exporters in its authorizations. The GOC has claimed that the Central Bank's purpose in authorizing these transactions was to ensure that the parties were legally eligible to participate and that the investment was not fraudulent.

We note that the Central Bank rejected a large number of proposed operations. Because it was not obligated to publish its reasons for accepting or rejecting an application, we are unable to determine whether the Central Bank directed operations under Chapter XIX to export-oriented or import substituting industries. At verification, we intend to review closely the rejected proposals to determine if the Central Bank used discriminatory criteria to favor orientation towards specific sectors of the economy.

The GOC provided information on the amount of debt renegotiated and invested in each industry and region for each of the years in which Chapter XIX operations occurred. Only 4.4 percent of the operations were in the fishing and aquaculture sector; other sectors represented in Chapter XIX operations included mining, forestry, communications, and financial institutions, among others. Manufacture of paper and printing was the industry sector with the highest representation at nearly 20 percent of operations. Accordingly, we preliminarily determine that the farmed salmon industry was neither a predominant nor a disproportionate user of this program.

D. Export Credit Limits

Law Number 18,576 of 1986 governs lending limits for Chilean banks. Under this law, Chilean banks are prohibited from extending more than five percent of their paid-in-capital in non-guaranteed loans to any single borrower. (For guaranteed loans, the limit is 25 percent.) However, this law also allows Chilean banks to lend an additional five percent of their paid-in-capital to exporters for their foreign currency loans.

While this program allows a Chilean bank to lend a greater percentage of its paid-in capital to an exporter than to a customer that does not export, we have preliminarily determined that this does not confer a benefit on exporters. Based on the information submitted, it does not appear that non-exporting borrowers have less access to credit because, if their borrowings will exceed the lending limit at one bank, they can simply borrow from another commercial bank at equivalent rates and terms. We intend to examine the information closely at verification. Therefore, we preliminarily determine that the export credit limits do not constitute a countervailable subsidy within the meaning of section 771(5)(E)(ii) of the Act because there is no benefit conferred on exporters.

E. Law No. 18,449 (Stamp Tax Exemption)

Under Decree Law 3,475 of 1980, a stamp tax is levied on checks, letters of exchange, money orders, promissory notes and loan documents in Chile. The tax is levied on checks at the flat rate of 109 pesos, and on other types of documents at the rate of 0.1 percent of the capital amount per month, to a maximum of 1.2 percent *per annum*, or 0.5 percent on obligations payable on demand or with no specified maturity date. The stamp tax is paid at the time a loan is disbursed, as the issuing bank withholds the amount of the stamp tax from the gross amount of the loan. Law 18,449 exempts documents relating to the financing of exports from this tax.

In the *Final Affirmative Countervailing Duty Determination: Standard Carnations from Chile*, 52 FR 3313, 3314 (February 3, 1987), the Department found the stamp tax exemption countervailable, stating: "Neither the Government of Chile nor the respondent companies gave us clear explanations as to what is meant by 'export credit operations.'" In this proceeding, the GOC has placed on the record the copies and translations of regulations relating to this program which describe the types of operations and instruments eligible for the exemption. We have previously determined that the non-excessive rebate or exemption of indirect taxes levied at the final stage is not considered a subsidy (*see, e.g., Final Negative Countervailing Determination: Welded Carbon Steel Line Pipe from Taiwan*, 50 FR 53384 (December 31, 1985)). Because the amount of the exemption is not greater than the amount of the stamp tax due, we preliminarily determine that this program does not confer countervailable benefits within the meaning of section 771(5)(E) of the Act.

F. Article 59 of Decree Law 824

Under Article 59 of Decree Law 824, effective January 1, 1994, all foreign service providers doing business in Chile are required to pay income tax at the rate of 35 percent. This tax is withheld by the Chilean company to which the service is provided and then paid to the government. The law exempts the foreign service providers from paying the tax if the income was for certain services related to exportable goods and services produced in Chile. If the services are eligible for the exemption, the Chilean company (*i.e.*, the purchaser of the services) is also exempt from the withholding requirement.

We found no evidence that the benefit, if any, resulting from the exemption from the tax and the withholding requirement accrues to the subject merchandise. Therefore, we preliminarily determine that this program does not constitute a countervailable subsidy.

III. Programs Preliminarily Determined To Be Not Used

The following programs were not used:

A. Institute for Technological Research (INTEC)
B. Central Bank Chapter XVIII
C. Export Promotion Fund
D. CORFO Export Credits and Long-Term Export Financing
E. Law No. 18,392 (Tax Exemptions)

IV. Programs Preliminarily Determined Not To Exist

Based on information provided by the GOC, we preliminarily determine that the following programs do not exist:

A. GOC Guarantee of Private Bank Loans
B. Import Substitution Subsidy for New Industries
C. Tax Deductions Available to Exporters

Summary

The total estimated preliminary net countervailable subsidy rate for all producers or exporters of fresh Atlantic salmon in Chile is 0.62 percent, AD VALOREM, which is *de minimis*. Therefore, we preliminarily determine that countervailable subsidies are not being provided to producers, or exporters of fresh Atlantic salmon in Chile.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department make its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on March 6, 1998, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than February 24, 1998. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 3, 1998. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act.

Dated: November 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97-30387 Filed 11-18-97; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including: A new type kinetic energy projectile; a new ceramic nanocomposite; a device to locate the position of impact of a projectile on a

target and an impact absorbing sole for parachutists.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Kinetic Energy Projectile with Fin Leading Edge Protection mechanisms.
Inventor: Ameer G. Mikhail.
Patent Number: 5,668,347.
Issue Date: September 16, 1997.

Title: Device for Locating the Position of Impact of a Projectile.
Inventors: George M. Thomson, Thomas W. Kottke and Paul R. Berning.
Patent Number: 5,669,608.
Issue Date: September 23, 1997.

Title: Sion Low Dielectric Constant Ceramic Nanocomposite.
Inventors: Gary Gilde, Parimal Patel, Clifford Hubbard, Brain Pothier, Thomas Hynes, William Croft and Joe Wells.
Patent Number: 5,677,252.
Issue Date: October 14, 1997.

Title: Impact Absorbing Soles for Parachutist.
Inventors: Jim Faughn and Harrison P. Crowell, III.
Patent Number: 5,675,915.
Issue Date: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rausa, Technology Transfer Office, AMSRL–CS–TT/Bldg 434, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5425, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–30293 Filed 11–18–97; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 13, 1997.

Gloria Parker,
Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: Final Performance Report for the Business and International Education Program (BIE).
Frequency: At the Completion of the Project Period.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 30
Burden Hours: 150
Abstract: The data collected through the final performance report will enable ED officials to determine the impact of the BIE federal funds on its recipients. US/ED will use the information collected to meet Government Performance and Results Act requirements and to provide budget justifications.

Office of Postsecondary Education

Type of Review: Extension.
Title: Guaranty Agency Quarterly/Annual Report.
Frequency: Annually.
Affected Public: Business or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 37
Burden Hours: 2,941
Abstract: The Guaranty Agency Quarterly/Annual Report is submitted by 37 agencies operating a student loan insurance Program under agreement with the Department of Education. These reports are used to evaluate agency operations, make payments to agencies as authorized by law, and to make reports to Congress.

[FR Doc. 97–30317 Filed 11–18–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Petroleum Council; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: National Petroleum Council (NPC).

DATE AND TIME: Thursday, December 11, 1997, 9:00 am.

ADDRESS: ANA Hotel, Grand Ballroom, 2401 M Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, FE–5, Washington, D.C. 20585, Telephone: (202) 586–3867.

SUPPLEMENTARY INFORMATION:

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order and introductory remarks by Joe B. Foster, Chair of the NPC.
—Remarks by the Honorable Federico F. Peña, Secretary of Energy.
—Status report from NPC Committee on Product Supply.
—Presentation on monograph of NPC's first 50 years.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 13, 1997.

Althea T. Vanzego,
Acting Deputy Committee Advisory, Management Officer.

[FR Doc. 97–30345 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–48–NG]

Office of Fossil Energy; Engage Energy US, L.P.; Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an Order granting Engage Energy US, L.P. authority to import from Canada up to 30.5 MMCF per day of natural gas for a ten-year period beginning on November 1, 1998. This natural gas will be purchased from six Canadian producers and may be imported near Emerson, Manitoba/Noyes, Minnesota, or at alternative border points where transportation facilities are accessible to Engage.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585–0350, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 6, 1997.

Wayne E. Peters,
Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30349 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 97–70–NG et al;]

Office of Fossil Energy, Plum Street Energy Marketing, Inc. et al, Orders Granting, Transferring and Vacating Blanket Authorizations to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing, transferring and/or vacating various imports and/or exports of natural gas. These Orders are summarized in the attached appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 6, 1997.

Wayne E. Peters
Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

Attachment

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1303	10/01/97	Plum Street Energy Marketing, Inc., 97–70–NG.	75 Bcf		Import and export up to a combined total from and to Canada.
1304	10/03/97	CNG Energy Services Corporation, 97–71–NG.	200 Bcf	200 Bcf	Import and export from and to Canada.
			200 Bcf	200 Bcf	Import and export from and to Mexico.
1305	10/03/97	Pacific Gas and Electric Company Core Procurement Department (Formerly Gas Supply Business Unit), 97–69–NG.	600 Bcf		Import from Canada.
1306	10/03/97	DEK Energy Company, 97–63–NG	73 Bcf		Import from Canada.
1307	10/10/97	Inland pacific Energy Services Ltd., 97–73–NG.	50 Bcf	50 Bcf	Import and export from and to Canada.

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED—Continued

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1308	10/16/97	Tenaska Marketing Ventures, 97–72–NG	200 Bcf		Import and export up to a combined total from and to Canada and Mexico.
1309	10/16/97	San Diego gas & Electric Company, 97–67–NG.	73 Bcf		Import from Canada.
1310	10/16/97	Avista Energy, Inc., 97–64–NG	219 Bcf		Import from Canada.
1311	10/16/97	Centra Gas Ontario, Inc., 97–74–NG		16 Bcf	Export to Canada.
1312	10/22/97	North Atlantic Pipeline Partners, L.P., 97–82–NG.	500 Bcf		Import from Canada.
1313	10/24/97	Murphy Gas Gathering Company, 97–83–NG.	75 Bcf		Import from Canada.
1314	10/24/97	Northern Utilities, Inc., 97–91–NG	15 Bcf		Import from Canada.
1315	10/24/97	Suncor Energy Inc. (Formerly Suncor Inc.), 97–85–NG.	127.66 Bcf		Import from Canada.
1316	10/24/97	Natural Gas Clearinghouse, 97–78–NG	600 Bcf	330 Bcf	Import up to a combined total from Canada and Mexico. Export up to a combined total to Canada and Mexico.
1317	10/24/97	Paramount Resources U.S. Inc., 97–84–NG	300 Bcf		Import from Canada.
1318	10/27/97	Williams Energy Services Company, 97–79–NG.	200 Bcf		Import from Canada.
1319	10/27/97	Jonan Gas Marketing Inc., 97–77–NG	100 Bcf		Import and export up to a combined total from and to Canada.
1320	10/27/97	Victoria International, Ltd., 97–86–NG	10 Bcf		Import and export up to a combined total from and to Canada.
1321	10/27/97	Ocean State Power 97–92–NG	36.5 Bcf		Import and export up to a combined total from and to Canada.
1322	10/27/97	Enron Capital & Trade Resources Corporation, 97–75–NG.	400 Bcf	400 Bcf	Import and export from and to Mexico.
1323	10/27/97	Enron Capital & Trade Resources Corporation, 97–76–NG.	1,000 Bcf	1,000 Bcf	Import and export from and to Canada.
1324	10/31/97	United States Gypsum Company, 97–93–NG.	7.3 Bcf		Impoit from Canada.
1325	10/31/97	Corpus Christi Gas Marketing, L.P., 97–90–NG.	8 Bcf	290 Bcf	Import up to a combined total from Canada and Mexico. Export up to a combined total to Canada and Mexico.
1325	10/31/97	Corpus Christi Gas Marketing, L.P., 90–79–NG.			Vacated.
1325	10/31/97	Corpus Christi Gas Marketing, L.P., 96–04–NG.			Vacated.

[FR Doc. 97–30350 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–87–NG]

Office of Fossil Energy; PROGAS U.S.A., Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas U.S.A., Inc. authority to import from Canada up to 26,500 Mcf per day of natural gas for the period of November 1, 1998, through October 31, 2008. This natural gas will be purchased from ProGas Limited and imported near Noyes, Minnesota.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0350, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30346 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–88–NG]

Office of Fossil Energy; Progas U.S.A., Inc. Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas U.S.A., Inc. authority to import from Canada up to 7,850 Mcf per day of natural gas for the period of November 1, 1997, through March 1, 2007. This natural gas will be purchased from ProGas Limited and imported near Eastport, Idaho.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30347 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–89–NG]

Office of Fossil Energy; ProGas U.S.A., Inc. Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas U.S.A., Inc. authority to import from Canada up to 30,000 Mcf per day of natural gas for the period of November 1, 1998, through March 1, 2008. This natural gas will be purchased from ProGas Limited and imported near Port of Morgan, Montana.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0350, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30348 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–91–NG]

Office of Fossil Energy; Sierra Pacific Power Company, Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sierra Pacific Power Company authority to import from Canada up to 15,000 MMBtu per day of natural gas for the period of April 1, 1997, through March 31, 2000. This natural gas will be purchased from Amoco Canada Petroleum Company Ltd. and may be imported near Eastport, Idaho/Kingsgate, British Columbia.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0350, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 7, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30351 Filed 11–18–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–71–000]

ANR Pipeline Company; Notice of Application

November 13, 1997.

Take notice that on November 5, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, MI 48243, filed in Docket No. CP98–71–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer 11.74 miles of 10-inch pipeline located in Wheeler County, TX and Beckham County, OK, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to transfer to its affiliate, ANR Field Services Company at net book value, its Mayfield Lateral located in Beckham County, OK and Wheeler County, TX.

The facilities, it is said, consists of 11.74 miles of 10-inch pipeline and extent from the Mayfield Gathering System to an intersection with ANR's 16-inch trunkline 496–1602.

ANR requests that the Commission declare that the facilities are gathering facilities exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before December 4, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30309 Filed 11–18–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–769–000]

Colorado Interstate Gas Company; Notice of Site Visits

November 13, 1997.

The Office of Pipeline Regulation (OPR) will conduct a site visit with representatives of Colorado Interstate Gas Company, of its proposed Campo Lateral in Las Animas and Baca Counties, Colorado. The site visit will

take place on November 19 and 20, 1997.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30371 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–68–000]

Natural Gas Pipeline Company of America; Notice of Request under Blanket Authorization

November 13, 1997.

Take notice that on November 5, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP98–68–000 a request pursuant to Sections 157.205, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate facilities in Lonoke County, Arkansas, under Natural's blanket certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural proposes to install a 2-inch meter and 3-inch side tap facilities for an interconnection with Arkla, a Division of Noram Energy Corporation (Arkla). These facilities will be constructed to deliver approximately 1,000 MMBtu per day of natural gas to Arkla in Cabot, Arkansas. They are estimated to cost $55,000. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capacity.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no request is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30307 Filed 11–18–08; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–73–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

November 13, 1997.

Take notice that on November 6, 1997, Texas Gas Tranamission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–73–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate an existing delivery point under Texas Gas's blanket certificate issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to operate an existing 3-inch delivery meter and related facilities that was originally constructed under the authority of Section 311 of the Natural Gas Policy Act of 1978 to transport gas for Natural Gas of Kentucky, Inc. (NGKY). The facilities are located at mile 3+2750 on Texas Gas's Russellville Bowling Green 8-inch line in Logan County, Kentucky. Texas Gas states that because only interruptible transportation service is proposed to be provided to NGKY at this point, the proposal will have no significant effect on Texas Gas's peak day and annual deliveries, and service to NGKY through this point can be accomplished without detriment to Texas Gas's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30310 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–50–001]

Union Electric Company; Notice of Filing

November 13, 1997.

Take notice that on July 9, 1996, Union Electric Company tendered for filing its non-rate terms and conditions in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30316 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–70–000]

The Union Light, Heat and Power Company; Notice of Application

November 13, 1997.

Take notice that on November 5, 1997, The Union Light, Heat and Power Company (Union Light), 139 East Fourth Street, Cincinnati, Ohio 45202, filed in Docket No. CP98–70–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to modify the service currently provided under Rate Schedule X–4, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that under Rate Schedule X–4, Union Light provides for the transportation of gas to The Cincinnati Gas & Electric Company (Cincinnati) for the account of Columbia Gas Transmission Corporation (Columbia). It is further stated that for such service, Union Light bills Columbia and then Cincinnati reimburses Columbia. Union Light states that Columbia's involvement in the transportation service is no longer necessary due to changed delivery points. Therefore, Union Light states that it proposes to modify the service currently provided under Rate Schedule X–4 to reflect that the service rendered by Union Light to Cincinnati no longer requires Columbia's involvement and that the gas transported by Union Light on behalf of Cincinnati may include customer-owned gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 4, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Union Light to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30308 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–53–000 *et al.*]

NE Hub Partners, L.P.; Notice of Availability of the Environmental Assessment for the Proposed NE Hub Partners, L.P. Tioga Storage Project

November 13, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on both the natural gas storage field and pipeline facilities proposed by NE Hub Partners, L.P. (NE Hub) in the above-referenced docket and the related brine evaporation/salt plant proposed by United Salt Northeast, L.L.C. (USN).

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of NE Hub's proposed underground gas storage facility and related pipeline facilities, including:

- A freshwater intake pumping station at the Cowanesque Reservoir;
- 3.9 miles of 12-inch-diameter freshwater pipeline to transport water to the leaching operation;
- Two cavern leaching/natural gas storage wells;
- Two gas storage caverns with a capacity of 3 billion cubic feet each;
- A leaching plant facility including electrical substation, emergency generator, warehouse, office/control room, four 300,000 barrel storage tanks, six 4,000 barrel storage tanks, and other appurtenant facilities;
- A gas system facility, including a compression facility (18,750 horsepower total) with exhaust mufflers and aftercoolers for gas injection to and withdrawal from *et al.*
- The storage caverns, meter station, electrical substation, emergency generator, and other appurtenant facilities;
- Four segments of 26-inch-diameter transmission pipeline totaling 12.3 miles;
- 7.7 miles of 12-inch-diameter brine and freshwater pipelines;
- 5.0 miles of 4-inch-diameter fuel gas and residual/mineral salt purge pipelines;
- 1.4 miles of 12-inch-diameter freshwater, mid-brine return, mid-brine, and saturated brine pipelines;
- 3.7 miles of 24-inch-diameter gas storage pipeline; and
- Two meter stations.

In conjunction with these facilities, USN proposes to construct and operate the following:

- A railroad siding turnout and truck/hopper railcar bulk loading station to ship commercial salt products; and
- A brine evaporation/salt plant to dispose of the brine by production of commercial salt products, and other facilities to the extent needed for salt production, storage, and transportation.

The purpose of the proposed facilities would be to provide two high deliverability natural gas storage caverns with a capacity of up to 3 billion cubic feet per cavern. The storage facility near tioga, Pennsylvania would be interconnected with certain interstate and intrastate pipelines. The gas injection/withdrawal facilities would be designed to allow the gas storage facility to withdraw natural gas from various existing pipelines during periods of low gas demand and inject the gas under high pressure into the storage caverns. During periods of high gas demand, the natural gas would be withdrawn from the caverns and released into the various pipelines at the appropriate pressure. The injection/withdrawal facilities would be designed to inject 250 million cubic feet of gas a day and withdraw 500 million cubic feet of gas a day. The injection/withdrawal cycle would be 20 days/10 days.

In conjunction with the storage facilities, USN, would receive the brine from NE Hub via pipeline and develop a commercial salt business at a site about 1.5 miles northeast of Tioga, Pennsylvania.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance

Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send *two* copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label *one* of those copies for the attention of the Environmental Review and Compliance Branch II, PR–11.2;

• Reference Docket No. *CP96–53–000;* and

• Mail your comments so that they will be received in Washington, DC on or before December 15, 1997.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived.

Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30306 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 11393–001 Alaska

City of Saxman; Notice of Availability of Final Environmental Assessment

November 13, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the major, unconstructed, Mahoney Lake Hydroelectric Project. The project would be located on Upper Mahoney lake and Upper Mahoney Creek near Ketchikan in Southeast Alaska.

On July 14, 1997, the Commission staff issued and distributed to all parties a Draft Environmental Assessment (DEA) on the project, and requested that comments be filed with the Commission within 30 days. Comments were filed and are addressed in the Final Environmental Assessment (FEA).

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30315 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project Use of Project Lands and Waters.

b. *Project No.:* 1494–146.

c. *Date Filed:* September 4, 1997.

d.. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The proposed facilities would be located on Monkey Island on Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mary Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Jon Confrancesco, (202) 219–0079.

j. *Comment Date:* December 16, 1997.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to permit Glenn Tucker, d/b/a Newport Village (permittee) to install five new floating, covered boat docks, containing a total of 57 slips and 7 additional slips to an existing, covered, floating, boat dock with 9 slips. The existing and proposed dock facilities contain a total of 73 slips. The proposed docks would be used by the local homeowner's association.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title, "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30311 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Notice That the Application Is Not Ready for Environmental Analysis; Notice of Solicitation of Interventions and Protests; Notice of Intent To Conduct Public Scoping Meetings and Site Visit; and Notice of Solicitation of Written Scoping Comments

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Major License.

b. *Project No.*: 2017–011.

c. *Date Filed*: February 26, 1997.

d. *Applicant*: Southern California Edison Company.

e. *Name of Project*: Big Creek No. 4 Hydropower Project.

f. *Location*: On the San Joequin River near the town of Auberry in Madera, Tulare, and Fresno Counties.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r) and 18 CFR sections 4.51 and 16.9.

h. *Applicant Contact*: Mr. C. Edward Miller, Manager of Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact*: John Ramer, (202) 219–2833.

j. *Deadline Date*: January 16, 1998.

k. *Status of Application and Environmental Analysis*: This application has been accepted for filing, but it is not ready for environmental analysis—see attached paragraph E1.

l. *Invitation for Written Scoping Comments*: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the environmental analysis once the application is determined ready for environmental analysis by submitting written scoping comments. To help focus these comments, a scoping document outlining subject areas which could be addressed in an environmental analysis will be mailed to all agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from the staff.

Persons who have views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, by the deadline date shown in item (j) above. All written correspondence should clearly show the following caption on the first page: Big Creek No. 4 Hydropower Project, FERC No. 2017–011.

m. *Invitation to Participate in Public Scoping Meetings and Site Visit*: A scoping meeting oriented towards the public will be conducted on December 15, 1997, beginning at 6:00 PM, at Sierra National Forest, Minaret District Office in North Fork, California. A scoping meeting oriented towards the agencies will be conducted on December 16, 1997, beginning at 8:00 AM, at the Sierra National Forest Supervisor's Office at 1600 Tollhouse Road, in Clovis, California.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist staff in identifying the scope of environmental issues that should be analyzed in any environmental analysis the Commission's staff undertakes.

Objectives

At the scoping meetings the FERC staff will: (1) outline preliminary environmental issues they believe are related to the proposed project and need to be evaluated; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in an environmental analysis; (4) solicit from meeting participants all available information relevant to the identified resource issues; and (5) request that the meeting participants provide comments on staff's preliminary assessment of the issues and alternatives that should be evaluated in an environmental analysis, including any suggestions for additional issues and alternatives which should be evaluated.

Procedures

The meetings will be recorded by a court recorder and all statements thereby become a part of the record of the Commission proceedings on the Big Creek No. 4 Project. Individuals presenting statements at the meeting will be asked to identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying issues to be addressed in any environmental analysis.

Persons choosing not to speak at the meetings, but who have views on the issues or relevant information related to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, until January 16, 1998.

All written correspondence should show the following caption on the first page: Big Creek No. 4 Hydropower Project, FERC Project No. 2017–011.

Site Visit

A site visit to the Big Creek No. 4 Hydropower Project is planned for December 15, 1997. Those who wish to attend should plan to meet at the Auberry Post Office, in Auberry, California at 1:00 PM.

Any questions regarding this notice should be directed to John Ramer (environmental coordinator), at (202) 219–2833.

n. *Invitation to Intervene or Protest*: Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. See attached paragraph B1.

o. *Description of the Project:* The proposed project would consist of: (1) an existing 875-foot-long, 250-foot-high concrete dam, impounding a 35,033-acre-foot reservoir; (2) a combination penstock/pressure tunnel about 11,770 feet long; (3) one powerhouse with a total installed capacity of 98,822 kilowatts; (4) two, 220-kilovolt transmission lines totaling about 87 miles in length; (5) a bypassed river reach totaling about 6.3 river miles; and (6) appurtenant facilities.

p. This notice contains the standard paragraphs B1 and E1.

q. *Locations of the Application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference and

Files Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at C.E. Miller, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California, 91770, at (818) 302–1584.

B1. *Protest or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 C.F.R. sections 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. *Filing and Service of Responsive Documents*—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, and prescriptions.

All filings must: (1) bear in all capital letters the title "PROTESTS" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 62–15, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30312 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of License Term

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Extension of License Term.

b. *Project No.:* 3030–012.

c. *Licensee:* Antrim County, Michigan.

d. *Name of Project:* Elk Rapids.

e. *Location:* Elk River, Antrim County, Michigan.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. §§ 792–828c.

g. *Licensee Contact:* Peter Garwood, Office of Coordinator/Planner, P.O. Box 187, Bellaire, MI 49615, (616) 533–6265.

h. *FERC Contact:* Dean C. Wight, (202) 219–2675.

i. *Comment Date:* December 2, 1997.

j. *Description of Proposed Action:* The licensee requests an extension of the 20-year term of the project license. The current term expires February 28, 2001. The requested extension would cause the license to expire on December 31, 2014.

The licensee states that, in setting the license term for 20 years, the Commission erroneously relied on precedent for projects which operated prior to receiving licenses. The licensee further states that the project will not support the cost of relicensing (the licensee must file a relicense application in February 1999) and that the present 20-year term is insufficient for it to recover the cost of developing the project.

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30313 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License.

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 11077–018.

c. *Date Filed:* October 1, 1997.

d. *Applicants:* Alaska Power & Telephone Company Goat Lake Hydro, Inc.

e. *Name of Project:* Goat Lake.

f. *Location:* Pitchfork Falls, near the town of Skagway, in the First Judicial District in Southeast Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Robert S. Grimm, Alaska Power & Telephone Company, P.O. Box 222, Port Townsend, WA 98368, (360) 385–1733. Alan D. See, Goat Lake Hydro, Inc., P.O. Box 459, Skagway, AK 99840, (907) 983–2902.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* December 26, 1997.

k. *Description of the Request:* The purpose of the transfer to Goat Lake Hydro, Inc. is to facilitate the development and financing of the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protects, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30314 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS (Subpart GG) for Stationary Gas Turbines; OMB Control Number 2060–0028; expiring 1/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 19, 1997.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1071.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS (Subpart GG) for Stationary Gas Turbines; OMB Control Number 2060–0028; EPA ICR No. 1071.06; expiring 1/31/98. This is a request for extension of a currently approved collection.

Abstract: NSPS for stationary gas turbines (GG) were promulgated on September 10, 1979 to regulate the emissions of Nitrogen Oxide (NO_X) and Sulfur Dioxide (SO_2) into the ambient air supply. The EPA is charged under section 111 of the Clean Air Act of 1990, as amended, to establish these standards for new stationary sources that reflect application of the best demonstrated technology. In addition, section 114(a) of the Clean Air Act provides for monitoring, recordkeeping, and reporting requirements for these standards.

Owner/operators of affected facilities must make one-time only reports which include the following notifications: date of construction/reconstruction; anticipated and actual dates of start-up; any physical or operational change which may increase the SO_2 or NO_X emission rates; commencement date for the continuous monitoring system performance demonstration; and date and results of the initial performance test. Plant owner/operators must also provide semi-annual reports of excess emissions, as promulgated in the December 13, 1990 **Federal Register** (55 FR 51378).

Owner/operators must maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in operations, or any periods during which the monitoring system is inoperative. Recordkeeping is also required to document process information regarding the: sulfur and nitrogen content of the fuel; fuel:water ratio; rate of fuel consumption; and ambient conditions. This latter recordkeeping function involves daily measurements from the continuous monitoring system to monitor ambient conditions, and to record the fuel consumption and the ratio of water to fuel being fired in the turbine only for plants which use water or steam injection to control NO_X emissions. There is generally no additional burden on the owner/operator to provide this information because adequate recordkeeping is required of plant operations.

It is important to note that if these data and reports are not collected, the Agency has no means for ensuring that compliance with the standards is being achieved and/or maintained by the new, modified, or reconstructed sources which are subject to regulation. In the absence of information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, or the inability to ensure compliance with the standards. In addition to the purposes mentioned above, this kind of information is used for targeting plants for inspections and as evidence when compliance cases are taken to court.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Any information submitted to the Agency for which a claim of confidentiality is requested will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B: Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; FR

42251, September 28, 1978; 44 FR 17674, March 23, 1979). The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/20/97; No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Plant owner/operators of stationary gas turbines.

Estimated Number of Respondents: 825

Frequency of Response: Annual notification reports, and semi-annual emission reports.

Estimated Total Annual Hour Burden: 76,681.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1071.06 and OMB Control No. 2060–0028 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 13, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–30377 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–4]

New York State Prohibition on Marine Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region II has affirmatively determined, pursuant to section 312(f) of Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 100–4, (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Mamaroneck Harbor, Village of Mamaroneck, County of Westchester, State of New York.

A petition was made by the New York State Department of Environmental Conservation (NYSDEC) in cooperation with the Village of Mamaroneck. Upon receipt of this affirmative determination in response to this petition, NYSDEC will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Mamaroneck Harbor in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on July 16, 1997. Comments on the tentative determination were accepted during a 30-day period which closed on August 15, 1997. No comments were received.

The Village of Mamaroneck is located on Long Island Sound. Mamaroneck Harbor encompasses numerous wetlands, marshes and mud flats including Guion Creek, Otter Creek, Salt Creek and Van Amringe Mill Pond. The No-Discharge Zone includes waters not indexed lying northerly of a line drawn in a northeasterly direction from the southern tip of the sea wall at Orienta Point near the Orienta Yacht Club at the foot of Rushmore Avenue in Mamaroneck, to a point on the mainland immediately north of Spike Island at the intersection of the shoreline and the extension of the line to the center gable of large stone and stucco residence at No. 6 Shore Road in the Greenhaven section within the City of Rye.

Information submitted by the State of New York and the Village of Mamaroneck states that there are three existing pump-out facilities available to service vessels which use Mamaroneck Harbor, and one additional facility proposed for construction. One facility is owned and operated by the Mamaroneck Municipal Marina. This facility is open continuously and charges no fee for pump-out services. It can service vessels up to 80 feet in length with up to a 8 foot draft based on the mean low water depth. A second unit is planned at this facility with the same operating schedule.

The other facilities are privately owned and charge no fee for pump-out services to patrons. They are located at Nichols Boat Yard and Boston Post Road Boat Yard. Operating hours for Nichols Boat Yard pump-out are 0900 to 1700 hours, Monday through Friday and by appointment on the weekend. It can service vessels up to 40 feet in length with up to a 6 foot draft based on the mean low water depth. The other facility is located at the Boston Post Road Boat Yard and operates from 0830 to 1630 Monday through Friday. Length and draft restrictions are 50 feet and 5.1 feet based on mean low water depth. Within seven nautical miles of Mamaroneck Harbor are five other locations that provide pump-out facilities.

Vessel waste generated from the pump-out facilities in Mamaroneck Harbor is disposed of in the Village of Mamaroneck Waste Water Treatment Plant. This plant operates under a State Pollutant Discharge Elimination System (SPDES) permit issued by the New York State Department of Environmental Conservation.

According to the State's petition, the maximum daily vessel population for the waters of Mamaroneck Harbor is approximately 1160 vessels. This estimate is based on summer weekend/holiday levels of usage and includes 1040 vessels berthed in marinas of Mamaroneck Harbor and less than 120 transient vessels in Mamaroneck Harbor.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Mamaroneck Harbor in the Village of Mamaroneck, New York. A final determination on this matter has been made and will result in a New York State prohibition of any sewage discharges from vessels in Mamaroneck Harbor.

Dated: November 4, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–30379 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting; December 1997

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will hold a public meeting beginning on Thursday, December 4, 1997 beginning at 9:00 a.m. and ending not later than 5:00 p.m. (Eastern Time) on December 5, 1997. The meeting will be held in Room 2103-Mall of the EPA Headquarters Building, 401 M Street, S.W., Washington, DC 20460.

The purpose of the meeting is to discuss a number of issues that are of importance to the Agency's future activities under the recently amended Safe Drinking Water Act. The Drinking Water Committee will receive briefings on: (a) A notice of data availability relevant to the Stage I Disinfection Byproducts Rule and the Interim Enhanced Surface Water Treatment Rule, (b) the EPA's Draft Drinking Water Contaminant Candidate List, (c) prioritization process for future disinfection byproduct research, (d) a pilot project for the Integrated Risk Information System (IRIS), (e) the status of a number of risk assessment research projects conducted jointly between EPA and the International Life Sciences Institute (ILSI), (f) probabilistic risk assessment techniques, and (g) the EPA cumulative risk policy.

FOR FURTHER INFORMATION CONTACT: Single copies of the background information for this review, or the meeting agenda, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer for the Drinking Water Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202)260–5886; by fax at (202) 260–7118 or via the INTERNET at: miller.tom@epamail.epa.gov, or by contacting Ms. Mary L. Winston at (202) 260–8414, by fax at (202) 260–7118, and by INTERNET at: winston.mary@epamail.epa.gov.

Providing Oral or Written Comments at SAB Meetings

Anyone wishing to make an oral presentation to the Committee must contact Mr. Miller, in writing (by letter, fax, or INTERNET—at the INTERNET address) no later than 12 noon (Eastern Standard Time) Monday, November 28, 1997, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public.

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: November 13, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–30378 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44644; FRL–5753–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of environmental release data on cyclohexane (CAS No. 110–827). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, D.C. 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Environmental release data for cyclohexane were submitted by the Cyclohexane Panel of the Chemical Manufacturers Association (CMA). The seven Panel companies include: Chevron Chemical Company; CITGO Refining Chemicals Co., LP; E.I. du Pont de Nemours Company; Huntsman Corporation; Koch Industries Inc.; Phillips Petroleum Company; and Sun Company, Inc. The data was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and represents the last study report required under the enforceable consent agreement. EPA received the data on September 19, 1997. The consent agreement signed by the cyclohexane producers stipulated that within 3 months following submission of the last study report required under the agreement, the companies would submit a final report to EPA summarizing the then current data on environmental releases of cyclohexane from facilities that manufacture, process or use cyclohexane. The purpose of this product stewardship program was to reduce cyclohexane emissions. As reported by the Panel companies, cyclohexane environmental emissions were decreased by 52.5% during a 5 year period from 1991 to 1995 and 57% as compared to the total cyclohexane emissions reported in the 1989 Toxic Release Inventory database. Cyclohexane is found in a number of consumer products including spray paint and spray adhesives. It is also available as a laboratory solvent.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44644). This record includes a copy of the report indicated in this notice. The record is available for inspection from 12 noon to 4:00 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental

Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260-5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: November 4, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97-30384 Filed 11-18-97; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Internaitonal Shipping Management USA, Inc., 1630 Bath Avenue, Brooklyn, NY 11214, Officer: Gary Solovey, President

U.S. SIGO INC., 8016 N.W. 66th Street, Miami, FL 33160, Officer: Roman Martinez, President

Express Shipping Service, Inc., 1075 Edward Street, Linden, N.J. 07036, Officers: Leonid Ivanutenko, President; Mikhail Dyakovetsky, Vice President

Atlas Freight Systems, Inc., 525 North Sam Houston Parkway East, Suite 655, Houston, TX 77060, Officers: James P. Middleton, President; Lisa A. Barragan, Vice President

Scott Container Services, Inc., 9607 South Dearborn, Detroit, MI 48209, Officers: Charles H. Scott, President, Sheila Pullen, Vice President

Logisticon, Incorporated, 305 E. Poplar Avenue, Carrboro, NC 27510, Officer: John Marshall, III, President

Cargo Transport Inc., 18000 International Blvd., Suite 400, Seattle, WA 98188, Officers: Sonny Joe Sanders, President; Larry K. Stauffer, Vice President

DAMAK Leasing & Financial, Inc., 20 Commerce Street, Suite 14-15, Flemington, NJ 08822, Officers: Daniel Di Sisto, President; Ann Marie Di Sisto, Secretary.

Dated: November 14, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97-30404 Filed 11-18-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Leo A. and Louis A. Altier, both of Corning, Ohio; William H. Altier, Zanesville, Ohio; John F. Altier, Crooksville, Ohio; Paul W. Altier, Corning, Ohio; Christina M. Altier, Columbus, Ohio; Mary Ann Flowers, Lancaster, Ohio; Pamela R. Compston, New Lexington, Ohio; Donald M. Altier, Somerset, Ohio; and Angela L. Hopkins, Cedar Hill, Texas; to retain voting shares of The Bank of Corning Company, Corning, Ohio.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Jack C. Vanderburg, Scot A. Renick, and Philip B. Davis, all of Dalhart, Texas, acting in concert; to retain voting shares of First Dalhart Bancshares, Inc., Dalhart, Texas, and thereby indirectly retain First National Bank in Dalhart, Dalhart, Texas.

Board of Governors of the Federal Reserve System, November 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-30375 Filed 11-18-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Koss-Winn Bancshares, Inc. Employee Stock Ownership Plan with 401(k) Provisions, Buffalo Center, Iowa; to become a bank holding company by acquiring 30.09 percent of the voting shares of Koss-Winn Bancshares, Inc., Buffalo Center, Iowa, and thereby indirectly acquire Farmers Trust and Savings Bank, Buffalo Center, Iowa.

2. RW Bancorp., Ltd., Reeseville, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Reeseville, Reeseville, Wisconsin.

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Community West Bancshares, Goleta, California; to become a bank holding company by acquiring 100 percent of the voting shares of Goleta National Bank, Goleta, California.

Board of Governors of the Federal Reserve System, November 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-30280 Filed 11-18-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., and Compass Banks of Texas, Inc., both of Birmingham, Alabama, and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to merge with Fidelity Resources Company, University Park, Texas, and Fidelity Resources Company of Delaware, Wilmington, Delaware, and thereby indirectly acquire Fidelity Bank, National Association, University Park, Texas.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Richmond Mutual Bancorporation, Inc., and First Mutual of Richmond, Inc., both of Richmond, Indiana; to become bank holding companies by acquiring 100 percent of the voting shares of First Bank of Richmond, Richmond, Indiana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Sundance Bankshares, Inc., Sundance, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Sundance State Bank, Sundance, Wyoming.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., and Castle Creek Capital LLC, Castle Creek Capital Partners Fund - I, LP, all of La Jolla, California; to acquire up to 24.9 percent of the voting shares of Regency Bancorp, Fresno, California, and thereby indirectly acquire Regency Bank, Fresno, California.

In connection with this application, Applicants have also applied to acquire Regency Investment Advisors, Fresno, California, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

2. InterWest Bancorp, Inc., Oak Harbor, Washington; to merge with Puget Sound Bancorp, Inc., Port Orchard, Washington, and thereby indirectly acquire First National Bank of Port Orchard, Port Orchard, Washington.

Board of Governors of the Federal Reserve System, November 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-30374 Filed 11-18-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97C-0468]

Archer Daniels Midland Co.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Archer Daniels Midland Co. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of astaxanthin from *Phaffia rhodozyma* as a color additive in salmonid fish feeds.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0252) has been filed by Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525. The petition proposes to amend the color additive regulations to provide for the safe use of astaxanthin from *P. rhodozyma* as a color additive in salmonid fish feeds.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 31, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97-30336 Filed 11-18-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F-0467]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: NOTICE.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of benzenesulfonic acid, 4-chloro-5-methyl-2-[[4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazo-4-yl]azo], ammonium salt (C.I. Pigment Yellow 191:1) as a colorant in polymers intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by December 19, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4586) has been filed by Ciba Specialty Chemicals Corp., 335 Water St., Newport, DE 19804. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of benzenesulfonic acid, 4-chloro-5-methyl-2-[[4,5-dihydro-3-methyl-5-oxo-1-(3-sulfophenyl)-1H-pyrazo-4-yl]azo], ammonium salt (C.I. Pigment Yellow 191:1) as a colorant in polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 3, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97-30406 Filed 11-18-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M-0460]

Ventritex, Inc.; Premarket Approval of the TVL® Lead System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Ventritex, Inc., Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the TVL® Lead System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 10, 1996, of the approval of the application.

DATES: Petitions for administrative review by December 19, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris J. Terry, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-443-8609.

SUPPLEMENTARY INFORMATION: On June 30, 1995, Ventritex, Inc., Sunnyvale, CA 94086-0527, submitted to CDRH an application for premarket approval of the TVL® Lead System. The TVL® Lead System is indicated for use with commercially available pulse generators with which it has been tested. The TVL® Lead System is a transvenous defibrillation lead system and is indicated for use in patients with a history of hemodynamically compromising ventricular tachyarrhythmias. These patients may have experienced a cardiac arrest not associated with an acute myocardial infarction or have ventricular tacharrhythmias. In addition, the TVL® Lead System can be used in patients whose primary therapy for homodynamically significant, sustained ventricular tachycardia is antitachycardia pacing; the defibrillation capabilities of the connected pulse generator provide therapy backup in the event that the arrhythmia accelerates.

In accordance with the provisions of section 515(c)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Advisory Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On May 10, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 19, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97-30333 Filed 11-18-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA-R-94

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Sterilization Regulations 45 CFR 96.73, 42 CFR 441 subpart F and Consent Form; *Form No.:* HCFA-R-94 OMB 0938-0481; *Use:* All Medicaid-eligible individuals seeking sterilization are required to sign the federally mandated consent form, acknowledging that they understand the benefits and risks of sterilization, and have received oral information concerning the sterilization operation from the provider. *Frequency:* Other (each time sterilization is sought); *Affected Public:* Individuals or Households; *Number of Respondents:* 112,526; *Total Annual Responses:* 112,526; *Total Annual Hours:* 140,658.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 6, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97-30368 Filed 11-18-97; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-R-200]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Revision of a currently approved collection; *Title of Information Collection:* HEDIS 3.0 (Health Plan Data and Information Set), including the Health of Seniors and Consumer Assessment of Health Plans Study (CAHPS) surveys and supporting regulations 42 CFR 417.470, and 42 CFR 417.126; *Form Number:* HCFA-R-200 (OMB #0938-0701); Use: HEDIS and CAHPS will be used for 3 purposes: (1) To provide summary comparative data to the Medicare beneficiary to assist them in choosing among health plans; (2) to provide information to health plans for internal quality improvement activity; and (3) to provide HCFA, as purchaser, information useful for monitoring quality of and access to care provided by the plans; *Frequency:* Annually; *Affected Public:* Individuals or Households, non-profit and for profit HMOs which contract with HCFA to provide managed health care to Medicare beneficiaries; *Number of Respondents:* 293,834; *Total Annual Responses:* 293,834; *Total Annual Hours Requested:* 181,520.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 21, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97-30369 Filed 11-18-97; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Drug Accountability Record; Submission of OMB Review; Comment Request

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 10, 1997, page 37069 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30-days for public comment. The National Institutes

of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Drug Accountability Record (NIH form 2564) and Transfer Investigational Drug Record (NIH form 2564–1). *Type of Information Collection Request:* Revision of a currently approved collection, OMB No. 0925–0240, Expiration Date 1/31/98. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require investigators to establish a record of the receipt, use and disposition of all investigational agents. The National Cancer Institute, NCI, as a sponsor of investigational drug trails, has the responsibility to assure the FDA that investigators in its clinical trials program are maintaining systems for drug accountability. In order to fulfill these requirements, a standard Investigational Drug Accountability Report Form (NIH 2564) was designed to account for drug inventories and usage by protocols. The Transfer Investigational Drug Form (NIH 2564–1) permits intra-institutional transfer of drugs to other approved investigators for other approved protocols. The data obtained from the drug accountability record will be used to keep track of the dispensing of investigational anticancer agents to patients. It is used by NCI management to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The information is also compared to patient flow sheets (protocol reporting forms) during site visits conducted for each investigator once every three years. All comparison are done with the intention of ensuring protocol, patient and drug compliance for patient safety and protections. *Frequency of Response:* Daily. *Affected Public:* state or local governments, businesses, or other for-profit, Federal agencies or employees, non-profit institutions, and small business or organizations. *Type of Respondents:* Investigators, pharmacist; nurses, pharmacy technicians, data managers. The annual reporting burden is as follows: The annualized burden estimate for record keeping is estimated to require 3,650 hours for drug accountability and 120 hours for drug transfer. The annualized cost to the respondents is estimated at $94,500. The reporting burden is the average time (4 minutes or 0.0666 hour) required to complete the transfer investigational drug form multiplied by the number of forms completed annually. The record keeping burden represents an average time required for multiple entries (4 minutes or 0.0666 hour per entry) on the drug accountability form, the average number of forms maintained by each record keeper and the number of record keepers. These estimates are based on the 36,500 items shipped by PMB and the 1,200 items transfer approvals in calendar year 1996. Cost estimates are based upon burden hours at an average cost of $25.00 per hour.

Drug Accountability Form:
No. Of Respondents—4560
No. Of responses per respondent—8
Average Burden per response—0.0666
Annual Burden hours—2430

Drug Transfer Form:
No. Of respondents—1200
No. Of responses per respondent—1
Average burden per response—0.0666
Annual Burden hours—80

Total Annualized Burden For Record Keeping and Reporting: 2,510.

There are no Capital Costs, Operating Costs, and/or Maintenance Cost to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected: and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joseph High, Head, Drug Management and Authorization Section, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division Cancer Therapy, Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 707, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number (301) 496–5725 or E-mail your request, including your address to: JoeHigh@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 19, 1997.

Dated: November 12, 1997.

Nancie L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 97–30323 Filed 11–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 5, 1997, in Building 31, Room 2A52.

This meeting will be open to the public from 8:00 a.m. to 12 noon on December 5 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 5 from 1:00 p.m. to adjournment of the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892–2425, 301–496–2133, will provide a summary of the meeting, a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: November 12, 1997.

LaVeen Ponds,

Acting, Committee Management Officer, NIH.

[FR Doc. 97–30322 Filed 11–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–08–1110–00; 6780; 1782]

Arizona: Availability of the Final Lechuguilla-Mohawk Habitat Management Plan (HMP), Yuma Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final Lechuguilla-Mohawk Habitat Management Plan (HMP) and environmental assessment, Yuma Field Office.

SUMMARY: The Lechuguilla-Mohawk Habitat Management Plan covers wildlife habitat improvement projects and monitoring on approximately 930,000 acres of public land and military-withdrawn public land in southwestern Arizona. The plan will be implemented in cooperation with Arizona Game and Fish Department under the Sikes Act. Most of the land included in the plan is part of the Barry M. Goldwater Air Force Range which is administered by the Luke Air Force Base in Glendale, Arizona. The western portion of the Goldwater Range is used primarily by the Marine Corps Air Station, Yuma for training.

Objectives of the plan include maintenance and enhancement of habitat for Sonoran pronghorn, desert tortoise, flat-tailed horned lizard, mule deer, desert bighorn sheep, upland game, nongame, and other sensitive wildlife habitat. It is projected that the plan objectives will be achieved within 20 years.

ADDRESSES: A limited number of copies of the Plan and Environmental Assessment are available upon request to: Field Manager, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona 85365. There are also copies available for review at the above location.

FOR FURTHER INFORMATION CONTACT: Wildlife Biologist Susanna Henry, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3211.

Dated: November 10, 1997.

Carlin Gunn,

Program Manager, Resources, Lands, and Minerals/Acting Field Manager.

[FR Doc. 97–30299 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting, Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated below. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES: Date is December 8, 1997, from 1:00 p.m. to approximately 4 p.m. and will reconvene on December 9, 1997 and meet from 8 a.m. to 4:40 p.m. The public comment period will begin at 2 p.m. on December 8, 1997 at 2:00 p.m.

ADDRESSES: The council will meet at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, District Minerals Specialist, Ely, telephone: (702) 289–1872.

Dated: November 10, 1997.

Gene A. Kelleam,

Ely District Manager.

[FR Doc. 97–30300 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–060–1420–00] ES–49231, Group 34, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the survey of the Kaskaskia Lock and Dam acquisition boundary, Township 6 South, Range 8 West, Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on December 22, 1997.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., December 22, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: November 7, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–30298 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issued including: consideration and discussion of preliminary draft alternatives being developed for the programmatic EIS/EIR, a report on the findings and recommendations of the Ecosystem Restoration Program Plan Scientific Review Panel, reports from the BDAC Work Groups, and other policy issues pertaining to the CALFED Bay-Delta Program. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 am to 5:00 pm on Friday, December 12, 1997.

ADDRESSES: The Bay-Delta Advisory Council meeting will meet at the Radison Hotel, 500 Leisure Lane, Sacramento, California 95815, (916) 922–2020.

CONTACT PERSON FOR MORE INFORMATION: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 13, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–30327 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the exemption of coal extraction incidental to the extraction of other minerals at 30 CFR part 702.

DATES: Comments on the proposed information collection must be received by January 20, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR part 702.

OMB Control Number: 1029–0089.

Summary: This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals.

Total Annual Responses: 78.

Total Annual Burden Hours: 733.

Dated: November 12, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–30305 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA Number 170N]

Task Force on Suspicious Orders

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of establishment of Task Force on Suspicious Orders.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1972), and 41 CFR 101–6.1001–6.1035 (1992), the Administrator of the Drug Enforcement Administration (DEA), with the concurrence of the Attorney General, is establishing a Task Force on Suspicious Orders for the purpose of developing proposals to define suspicious orders of listed chemicals which can be used by registrants in determining if an order is a suspicious order which must be reported to the DEA.

The Task Force is authorized by Public Law 104–237, Section 504 of Subtitle V, Education and Research, the Comprehensive Methamphetamine Control Act of 1996 (the MCA). The specific provisions of the Act state that:

The Task Force shall be responsible for providing the Attorney General with recommendations, advice, and proposals for the establishment of such guidelines that will adequately define suspicious orders of listed chemicals. The Task Force shall limit its area of consideration to domestic issues regarding suspicious orders.

DATES: This Task Force is effective September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Leser, Program Analyst, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–4028 or Facsimile (202) 307–8570.

SUPPLEMENTARY INFORMATION:

Scope: Regulated persons are required to report suspicious regulated transactions to DEA pursuant to 21 CFR 1310.05(a)(1) and 21 U.S.C. 830(b)(1)(A). In the past, DEA has had general guidelines which were published in the Chemical Handlers' Manual as to what constituted a suspicious chemical order. The Comprehensive Methamphetamine Control Act of 1996 (MCA) mandated the establishment of the Suspicious Orders Task Force with the express purpose of developing proposals that further define a suspicious order. The scope of discussion of this Task Force shall be limited to enhancements and clarifications of what constitutes a suspicious chemical order that needs to be reported to DEA.

Membership: In accordance with the provisions of the MCA, this Task Force will be composed of appropriate personnel with experience in investigating and prosecuting illegal transactions of listed chemicals and supplies, and representatives from the chemical and pharmaceutical industries.

The Task Force will consist of 20 members nominated by the chairman of the Task Force from relevant industry/trade associations and state and local law enforcement agencies. The composition of the Task Force shall be:

Two members from the DEA investigative workforce
One member from the U.S. Attorney's Office, Southern District of California
One member from the International Association of Chiefs of Police
One member from The National Association of Diversion Investigators
One member from the California Bureau of Narcotics Enforcement
One member from the Missouri State Highway Patrol
One member from the Missouri Attorney General's Office
One member from the National Association of Boards of Pharmacy
One member from the National Association of State Controlled Substances Authorities
Two members from the Chemical Manufacturers Association
Two members from the National Association of Chemical Distributors
One member from the national Non-Prescription Drug Manufacturers' Association
Four members from the wholesale and retail pharmaceutical marketing associations

The chairman of the Task Force shall reserve the right to add up to two additional members to the Task Force as appropriate.

In accordance with the Federal Advisory Committee Act, all meetings of the Task Force shall be open to the public with notice of times and locations appearing in the Federal Register. Interested parties shall be permitted to attend meetings, appear before the Task Force and present limited verbal statements, and file written statements with Task Force members. Written statements will be taken at any time during the meeting and distributed to the Task Force as soon as feasible. Presenters of written statements are requested to provide 25 copies of the statement to expedite distribution to the Task Force members. If the presenter does not/can not provide the requested copies, the Designated Federal Official (DFO) will make the copies and the Task Force will consider the statement when the copies are available. Verbal comments may be limited in time by the DFO to insure adequate opportunity for testimony by as many presenters as possible.

The Task Force will be advisory only and will provide its report to the Attorney General.

Dated: November 10, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–30275 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA NUMBER 171N]

Task Force on Suspicious Orders Meeting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Suspicious Orders Task Force will be held on December 16–17, 1997. The panel will meet from 9:00 a.m. to 5:00 p.m. both days at The Marriot Residence Inn, 550 Army Navy Drive, Arlington, Virginia 22202.

This meeting will be open to the public on a space available basis. Any interested person may observe meetings or portions thereof and shall be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Designated Federal Official (DFO) in attendance.

In addition to presenting limited verbal statements, interested parties shall be permitted to file written statements with Task Force members. Written statements will be taken at any time during the meeting and distributed to the Task Force as soon as feasible. Presenters of written statements are requested to provide 25 copies of the statement to expedite distribution to the Task Force members. If the presenter does not/can not provide the requested copies, the DFO will make the copies and the Task Force will consider the statement when the copies are available. Verbal comments may be limited in time by the DFO to insure adequate opportunity for testimony by as many presenters as possible.

DATES: December 16, 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Leser, Program Analyst, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, 20537, Telephone (202) 307–4026, Facsimile (202) 307–8570.

SUPPLEMENTARY INFORMATION: If you need special accommodations due to a disability, please contact the Office of Diversion Control, Drug Enforcement Administration, 600 Army Navy Drive, Arlington, Virginia, 22202, (202) 307–4026 at least seven (7) days prior to the meeting.

Dated: November 10, 1997.

John H. King,

Deputy Assistant Administrator Office of Diversion Control.

[FR Doc. 97–30270 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Revision of Existing Collection; Generic Clearance of Customer Service Surveys.

On September 2, 1997, the Immigration and Naturalization Service (Service) published a notice in the **Federal Register** at 62 FR 46375, revising Generic Clearance of Customer Service Surveys. On page 46376, first column, first paragraph, last sentence, the Service encouraged public comments from November 3, 1997. That sentence should have read "Comments are encouraged and will be accepted for "sixty days *until* November 3, 1997."

Office of Management and Budget approval is being south for the information collection listed below. This proposed collection was previously published in the **Federal Register** on September 2, 1997, at 62 FR 46375. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 19, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Generic Clearance of Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information will be used to assess individual and agency needs, identify problems, and plan for programmatic improvements in the delivery of immigration services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150,000 responses at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments may be submitted to INS via facsimile to (202) 305–0143.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30302 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Standards for the Registration of Apprenticeship Programs—Equal Employment Opportunity in Apprenticeship and Training; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of the collection of the information regarding registered apprenticeship programs under Title 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) and the extension of the collection of the information under CFR part 30 (Equal Employment Opportunity in Apprenticeship and Training).

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 20, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Anthony Swoope, Director, Bureau of Apprenticeship and Training, 200 Constitution Ave., N.W., Room 4649, Washington, DC 20210; E-mail Internet address: Swoope@doleta.gov; Telephone number: (202) 219–5921 (this is not a toll-free number); Fax number: (202)219–5011(this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor "to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *. "Section 2 of the Act authorizes the Secretary of Labor to "publish information relating to existing and proposed labor standards of apprenticeship," and to "appoint national advisory committees * * *." (29 U.S.C. 50a).

Title 29 CFR part 29 sets forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR parts 29 and 30. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program. As requested by the Office of Management and Budget, a revision is being made to the Apprenticeship Agreement Form, ETA 671, to include a statement regarding the voluntary disclosure of the social security number by the apprentice. Also, as requested by the Solicitor's Office of the U.S. Department of Labor, another revision to the form includes a statement informing the apprentice that the information contained on the Apprenticeship Agreement Form, is included in the Apprenticeship Management System. The information on this form is protected in accordance with the Privacy Act.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs.

OMB Number: 1205–0223 for 29 CFR part 29.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship and Training.

OMB Number: 1205–0224 for 29 CFR part 30.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on the qualifications of each applicant pertaining to determination of compliance with these regulations. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Section	Total respondents	Frequency	Total responses	Average time per response	Burden
Summary of Burden for 29 CFR Part 29					
Sec. 29.3	94,041	1-time	94,041	¼ hour	23,510
Sec. 29.6	62,940	1-time	62,940	⅛ hour	5,245
Sec. 29.5	1,906	1-time	3,600	2 hours	3,812
Sec. 29.7	40	1-time	40	1/12 hour	3
Sec. 29.12	30	1-time	30	2 hours	60
Sec. 29.13					
Total			160,651		32,630
Summary of Burden for 30 CFR Part 29					
Sec. 30.3	1,024	1-time	1,024	½ hour	512
Sec. 30.4	247	1-time	247	1 hour	247
Sec. 30.5	3,662	1-time/applicant	3,662	½ hour	1,1834
Sec. 30.6	50	1-time	50	5 hours	250
Sec. 30.8	35,848	1-time	35,848	1 minute	597
Sec. 30.8	30	1-time/program	17,924	5 minutes	1,494
Sec. 30.11	35,848	1-time	35,848	Hand-out	
ETA 9039	50	1-time	50	½ hour	25
Sec. 30.15	30	1-time	(1)		
Sec. 30.19	30	varies			
Total			94,653		4,950

[1] Completed.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 14, 1997.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training.

[FR Doc. 97–30360 Filed 11–18–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–162)]

Notice of Prospect Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Mr. Richard Hular, doing business as Fast Track Management Consulting, of San Carlos, CA 94070, has applied for a partially exclusive patent license to practice the invention described and claimed in NASA Case No. ARC 14172–ICU, entitled "ROBOTICS SYSTEM WITH MULTIMODALITY INSTRUMENT FOR TISSUE IDENTIFICATION," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Warsh, Patent Attorney, NASA Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035, telephone (650) 604–5104.

Dated: November 12, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–30373 Filed 11–18–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 19, 1997 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection(s) and supporting statement(s) should be directed to Diana Bentley at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published notices of proposed collections for these information collections on August 5 (62 FR 42144) and September 3, 1997 (62 FR 46514 and 46515). There were no comments received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection(s) is/are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate(s) of the burden(s) of the proposed information collection(s); (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden(s) of the collection(s) of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Customer Comment Form.
OMB number: 3095–0007.
Agency form number: NA Form 14045.
Type of review: Regular.
Affected public: Individuals.
Estimated number of respondents: 3,200.
Estimated time per response: 5 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 267 hours.
Abstract: The information collection is a customer comment form made available to persons who use NARA services or visit NARA museums. The form is voluntary and is used to record comments, complaints, and suggestions from NARA customers. NARA uses the information to correct problems and improve service.

2. *Title:* National Historical Publications and Records Commission (NHPRC) Subvention Grant Guidelines and Application.
OMB number: 3095–0021.
Agency form number: N/A.
Type of review: Regular.
Affected public: Universities and non-profit presses.
Estimated number of respondents: 18.
Estimated time per response: 3.75 hours.
Frequency of response: On occasion. On the average, nonprofit presses submit two subvention grant applications per year.
Estimated total annual burden hours: 135 hours.
Abstract: The information collection is prescribed by 36 CFR 1206. The application is submitted by university and other non-profit presses applying to the NHPRC grant program for subvention of part of the costs of manufacturing and distributing volumes published by NHPRC-supported editorial projects.

3. *Title:* NHPRC Annual Sales Report for Subvention Grants.
OMB number: 3095–0022.
Agency form number: None.
Type of review: Regular.
Affected public: Non-profit presses that have received an NHPRC subvention grant.
Estimated number of respondents: 18.
Estimated time per response: 1 hour.
Frequency of response: One time only. On the average, nonprofit presses have two on-going subvention grants and therefore would submit two sales reports per year.
Estimated total annual burden hours: 36 hours.
Abstract: The information collection is prescribed by 36 CFR 1206. The sales information provided by non-profit presses is used by NHPRC to gauge interest among scholars and the general public in documentary editions supported by NHPRC grants.

Dated: November 10, 1997.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 97–30282 Filed 11–18–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Information Collections Under Review

DATES: November 19, 1997.

The National Credit Union Administration (NCUA) intends to submit the following new public information collection requests to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. Public comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Betty May, (703–518–6414). Comments and/or suggestions regarding the information collection requests should be directed to Mrs. May at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433; e-mail address: bettym@ncua.gov within 60 days from the date of this publication in the **Federal Register**.

National Credit Union Administration

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Year 2000 Quarterly Credit Union Report.
Description: To obtain information to track credit unions' progress toward "Year 2000" compliance in order to ensure the safety and soundness of individual credit unions and the industry and to provide specifically required monitoring reports to respond to ongoing congressional and other inquiries.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/Recordkeepers: 11,335.
Estimated Burden Hours Per Response: 3.5.
Frequency of Response: Quarterly.
Estimated Total Annual Burden Hours: 39,673.
Estimated Total Annual Cost: N/A.

OMB Number: New.
Form Number: None.
Type of Review: New.
Title: Survey—Sampled Credit Unions.
Description: National Credit Union Administration is considering policy changes that may allow more than one credit union to serve the same group of potential members. As part of the consideration, NCUA is concerned with the potential impact of those changes on credit unions. The proposed survey will gather information to be used in the policy writing process.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/Recordkeepers: 1,137.
Estimated Burden Hours Per Response: .5.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 1,137.
Estimated Total Annual Cost: N/A.

OMB Number: New.
Form Number: None.
Type of Review: New.
Title: Survey—Selected Overlapped Credit Unions.
Description: National Credit Union Administration is considering policy changes that may allow more than one credit union to serve the same group of potential members. As part of the consideration, NCUA is concerned with the potential financial impact. The proposed survey will gather information from credit unions with actual experience in this area.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/Recordkeepers: 200.
Estimated Burden Hours Per Response: .5.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 100.
Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 10, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30325 Filed 11–18–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).
Date and Time: December 11–12, 1997.
Place: Rooms, 360, and 370, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. George Rubottom, Program Director, Organic and Macromolecular Chemistry, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1851.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals for Sites for Research Experiences for Undergraduates in Chemistry as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30365 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).
Date and Time: December 8, 9, and 10, 1997, 8:00 a.m.–5:30 p.m.
Place: Rooms 330, 340, 365, 390, 530, 580, 630, 680, and 920, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Delcie Durham, Program Director, Materials Processing and Manufacturing Program, Dr. George Hazelrigg, Program Director, Design and Integration Program, Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment Program, Dr. Lawrence Seiford, Program Director, Operations Research and Production Systems, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30364 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).
Date and Time: December 19, 1997; 8:30 a.m.–5:00 p.m.
Place: Room #770, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate REU Sites Panel proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c),(4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30362 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).
Date and Time: December 4–6, 1997; 8:30 a.m. until 5:00 p.m.
Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Mr. Lloyd Douglas, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals concerning REU Sites as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal informaiton concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30361 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).
Date and Time: December 15–17, 1997; 8:30 a.m. until 5:00 p.m.
Place: Rooms 310, 320 & 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Drs. Keith N. Crank, James Gentle, James Davenport, and Javier Rojo Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.
Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals for the Statistics and Probability Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30363 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Gulf States, Inc. and Cajun Electric Power Cooperative, Inc.; River Bend Station, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF–47, to the extent now held by Cajun Electric Power Cooperative, Inc. (Cajun), to Entergy Gulf States, Inc. (EGSI, the licensee) with respect to the River Bend Station, Unit No. 1 (RBS), located in West Feliciana Parish, Louisiana, and issuance of a conforming amendment under 10 CFR 50.90.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent, by the issuance of an order, to the transfer of the 30% minority ownership interest in the facilities for RBS from Cajun to EGSI and approve the issuance of a conforming amendment to the license.

The proposed action is in accordance with the application, endorsed and consented to by EGSI, dated October 15, 1997, filed by Ralph R. Mabey, Trustee for Cajun.

The Need for the Proposed Action

The proposed action is required to obtain the necessary consent to the transfer of the license, to the extent now held by Cajun, and approval of the amendment discussed above. Cajun is a minority owner of RBS with an ownership share of 30%. In 1994, after a two-year rate investigation, the Louisiana Public Service Commission disallowed from rate recovery Cajun's $1.8 billion investment in River Bend. This action precipitated Cajun's decision on December 21, 1994, to file a voluntary petition with the United States Bankruptcy Court for the Middle District of Louisiana (the "Bankruptcy Court") for protection under Chapter 11 of the Bankruptcy Code. Cajun had borrowed the majority of the $1.8 billion to invest in RBS from the Rural Utilities Service ("RUS") of the United States Department of Agriculture. On August 28, 1996, the Bankruptcy Court approved the terms of a settlement agreement between Cajun, EGSI, and the RUS which allows the Trustee to seek authority to transfer Cajun's 30% undivided ownership interest in RBS. The application dated October 15, 1997, seeks consent to transfer Cajun's 30% interest to EGSI and an amendment to the license to reflect that transfer.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or its operation as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not affect nonradiological plant effluents and will have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on November 13, 1997, the staff consulted with the Louisiana State official, Mr. William Spell of the Department of Environmental Quality, Radiation Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding Of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for proposed action.

For further details with respect to the proposed action, see the application dated October 15, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 13th day of November 1997.

For the Nuclear Regulatory Commission.

James W. Clifford,

Acting Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–30331 Filed 11–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Assurance of Equipment Operability and Containment Integrity During Design-Basis Accident Conditions; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 96–06, Supplement 1 to inform all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, about ongoing efforts and new developments associated with GL 96–06, and to provide additional guidance that addressees may find useful in planning and scheduling future actions associated with GL 96–06. This generic letter is for information

only; no specific action or written response is required. Conformance with the guidance provided in the generic letter is voluntary.

The generic letter is available in the NRC Public Document Room under accession number 9711050091.

DATES: The generic letter was issued on November 13, 1997.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Beth A. Wetzel at (301) 415–1355.

SUPPLEMENTARY INFORMATION: Addressees of GL 96–06 have experienced difficulty in determining and implementing corrective actions for resolving the issues identified in the generic letter. Additionally, questions have been raised regarding (1) the risk implications of installing relief valves to deal with the thermal overpressurization issue; (2) the use of the ASME Code, Section III, Appendix F, criteria for permanent resolution of the thermal overpressurization issue; and (3) the NRC staff's closure of Generic Safety Issue 150, "Overpressurization of Containment Penetrations." Given these considerations, risk insights, and industry initiatives that are being considered or that may be proposed, addressees may require additional time to fully evaluate and resolve the GL 96–06 issues. Therefore, addressees who find it necessary to revise their corrective actions or schedular commitments for resolving GL 96–06 issues may submit a revised response to the generic letter. Nevertheless, specific corrective actions that have been defined and are clearly needed should not be delayed without suitable justification.

Dated at Rockville, Maryland, this 13th day of November 1997.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–30332 Filed 11–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of November 17, 24, December 1 and 8, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 17

Friday, November 21

11:30 a.m. Affirmation Session (Public Meeting)

A. Final Rule—Deliberate Misconduct by Unlicensed Persons (Tentative)

B. Louisiana Energy Services—Financial Qualifications Aspects of Petitions for Review of LBP–96–25 (Contact: Ken Hart, 301–415–1659)

Week of November 24—Tentative

There are no meetings the week of November 24.

Week of December 1—Tentative

There are no meetings the week of December 1.

Week of December 8—Tentative

Thursday, December 11

2:00 p.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)

3:00 p.m. Affirmation Session (Public meeting) (if needed)

Friday, December 12

9:00 a.m. Meeting with Northeast Nuclear on Millstone (Public meeting) (Contact: Bill Travers, 301–415–1200)

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmb@nrc.gov or dkw@nrc.gov.

Dated: November 14, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–30527 Filed 11–17–97; 12:32 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 27, 1997, through November 6, 1997. The last biweekly notice was published on November 5, 1997 (62 FR 59912).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 19, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: October 22, 1997

Description of amendments request: The proposed amendment incorporates both steady state and transient degraded voltage setpoints into Technical Specifications, as opposed to the current single degraded voltage setpoint. The proposed changes ensure adequate terminal voltage to all safety-related equipment during steady state and transient voltage conditions. Additionally, the 4 kV voltage range required during testing of the emergency diesel generators (EDGs) will be decreased to ensure the new steady state degraded voltage relays are not actuated during testing and to ensure the 4 kV motors are operated within their voltage rating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the current degraded voltage setpoint and adds an additional steady state undervoltage requirement to Unit 1 and 2 Technical Specifications. The current degraded voltage relays will be referred to as

2transient degraded voltage relays." The new settings allow for calibration tolerances, potential transformer correction factors, test equipment uncertainties, and relay drift. The nominal settings account for the above factors, plus additional margin to the analytical limit. The acceptable voltage range during EDG surveillance testing is also being decreased. The setpoint and time delay associated with the 4 kV bus loss of voltage relays is unaffected by this amendment request.

The accident analyses credit the loading of the EDGs based on loss of offsite power. The 4 kV emergency bus loss of voltage and degraded voltage relays initiate starting and loading of the emergency diesel generators (EDGs) when the preferred power source voltage is lost or drops below a predetermined value. The relays also initiate disconnection of the preferred power source from the 4 kV emergency busses. These actions ensure adequate terminal voltage to all safety-related electrical equipment required to support accident mitigation. The required voltage necessary to ensure safety-related motors are capable of starting is 75 percent of nominal rated equipment voltage. The required voltage necessary to ensure these motors continue running for extended periods is 90 percent of nominal rated equipment voltage.

The degraded (transient) voltage setpoint is being changed from 3628 [plus or minus] 25 Volts to 3710 [plus or minus] 80 Volts. Based on the most recent calculations, a minimum voltage of 3630 Volts is required to ensure at least 75 percent of the nominal voltage is available to No. 13 Charging Pump, which is the most limiting electrical load.

The new steady state degraded voltage relay setpoint will be established at 3900 [plus or minus] 80 Volts. The setpoint ensures that there is at least 90 percent of nominal voltage available to No. 13 Charging Pump. The time delay associated with this actuation is 101 [plus or minus] 3.5 seconds. The time delay provides adequate time for the voltage regulator to recover bus voltage following a voltage swing on the 500 kV system and time for the EDG voltage regulator to stabilize. The steady state degraded voltage relays will be tested in the same manner, and at the same frequency, as the loss of voltage and transient degraded voltage relays.

The required voltage range during EDG surveillance testing is being revised from 4160 [plus or minus] 420 Volts to 4160 +240, -100 Volts. The surveillance requirement verifies that the EDG voltage regulator is maintaining an acceptable voltage. The

new value ensures the 4 kV motors are operated within their rated voltage and prevents actuation of the steady state degraded voltage relay during surveillance testing.

The degraded voltage relays are not initiators in any previously evaluated accidents. Additionally, decreasing the acceptable voltage range during EDG testing does not affect the initiation of any previously analyzed accidents. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously analyzed.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The license amendment request revises the current degraded voltage setpoint and adds an additional steady state degraded voltage requirement. Additionally, the acceptable voltage range during EDG surveillance testing is being decreased. The proposed changes ensure adequate starting and running terminal voltage to all safety-related electrical equipment during steady state and transient degraded voltage conditions. The addition of the steady state degraded voltage relays provide an extra scheme of protection against sustained degraded voltage conditions. The facility currently relies upon degraded voltage relays to start and load the EDGs and to disconnect the preferred power source from the 4 kV emergency busses. Therefore, revising the relay setpoint, adding additional steady state degraded voltage protection, and decreasing the acceptable voltage range during EDG testing does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the degraded voltage relays is to ensure that the preferred power source is disconnected from the 4 kV emergency busses during loss of voltage or degraded voltage conditions. The relays also ensure the EDGs are started and loaded. Ultimately, these actions ensure the minimal terminal voltage necessary to start and run all safety-related electrical equipment is maintained. The proposed changes revise the current degraded voltage setpoint and adds an additional steady state undervoltage requirement. Additionally, the acceptable voltage range during EDG surveillance testing is being decreased to ensure actuation of the steady state degraded voltage relays does not occur during

EDG testing, and to ensure the 4 kV motors are operated within their rated voltage range.

Because the proposed changes ultimately ensure adequate terminal voltage to all safety-related electrical equipment during transient and steady state undervoltage conditions, the safety function of the degraded voltage relays, as well as the margin of safety afforded by these relays is unchanged.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: S. Singh Bajwa, Director

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 2, 1997

Description of amendment request: The proposed amendment would address an unreviewed safety question associated with the analysis of a fuel handling accident in the Fuel Storage Building as described in Section 15.7.4, "Design Basis Fuel Handling Accidents," of the H.B. Robinson Steam Electric Plant (HBR) Updated Final Safety Analysis Report (UFSAR). Carolina Power & Light Company (the licensee) determined that an assumption used in the accident analysis for depth of water above the top of irradiated fuel in the spent fuel pit was non-conservative. The accident analysis assumed a depth of 23 feet instead of the correct value of 21 feet. The licensee has submitted a revised accident analysis using the correct assumption and has proposed that the UFSAR be

changed to incorporate the results of the revised analysis.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant incease in the probability or consequences of an accident previously evaluated?

The proposed change to the UFSAR is to change assumptions associated with the evaluation of a fuel handling accident in the Fuel Storage Building. The change in assumptions is to reduce the decontamination factor associated with the removal of elemental iodine from the spent fuel pool water. Because the decontamination factor for elemental iodine is reduced, the consequences of a fuel handling accident in the Fuel Storage Building is [sic] increased. However, because the radiological consequences remain well within the exposure guideline values of 10 CFR 100, paragraph 11 (i.e., 25% or less of the values), the increase in consequences is not significant. The change in assumptions for the fuel handling accident in the Fuel Storage Building do [sic] not affect operation, maintenance, or design of equipment associated with the handling of fuel in the Fuel Storage Building, therefore, the probability of a fuel handling accident as previously evaluated is not changed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not introduce a new mode of operation or changes in the method of normal plant operation. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change to the UFSAR to change the assumptions associated with a fuel handling accident in the Fuel Storage Building is to change the assumption for the decontamination factor for elemental iodine to a smaller value. The new assumption for elemental iodine decontamination factor preserves the approximate factor of 24 margin between experimental data for elemental iodine decontamination factor and the assumed value provided in NRC Safety Guide 25. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: James E. LyonsCommonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois Date of application for amendment request: September 30, 1997

Description of amendment request: This request changes the Technical Specifications (TS) by adding a new Section 3/4.12.C, "Inservice Leak and Hydrostatic Testing Operation," to allow certain reactor coolant pressure tests to be performed in MODE 4 when the metallurgical characteristics of the reactor pressure vessel require the pressure testing at or approaching temperatures ≤212°F, which normally correspond with MODE 3.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: 1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed amendment represents the addition of a Special Test Exception to perform Pressure Testing Operations consistent with the requirements of Section 3.10.1 of the Improved Standard Technical Specifications (NUREG-1433). The proposed changes are consistent with the current plant safety analyses. Implementation of these changes will provide continued assurance that specified parameters associated with Pressure Testing Operations will remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

The proposed changes are based on requirements specified by Section 3.10.1 of NUREG-1433. Any such changes are consistent with the current plant safety analyses and have been determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters associated with Pressure Testing Operations remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems affecting Pressure Testing Operations related to this proposed amendment are not assumed in any analyses to initiate any accident sequence; therefore, the probability of any accident previously evaluated is not increased by this proposed amendment which incorporates the requirements of Section 3.10.1 of NUREG-1433. In addition, the proposed limiting conditions for operation and surveillance requirements for the proposed amendment ensure a level of equipment operability sufficient to mitigate any operational occurrences which could occur while operating under this Special Test Exception. Furthermore, any operational occurrence postulated during operation under this Special Test Exception is bounded by the Design Basis Accidents. Therefore, the proposed amendment does not increase the consequences of nay accident previously evaluated.

There is no change to the consequences of an accident previously evaluated because Pressure Testing Operations does not adversely affect either the on-site or off-site does consequences resulting from an accident. In addition, Pressure Testing Operations is not an accident initiator. As such, there is no adverse impact on the probability of accident initiators. Thus, there is no significant increase in the probability of any previously analyzed accident.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified in Section 3.10.1 of NUREG-1433. The proposed changes are consistent with the current plant safety analyses. These proposed changes do not involve revisions to the design of the station. In addition, the proposed limiting conditions for operation and surveillance requirements for the proposed amendment ensure a level of equipment operability sufficient to mitigate any operational occurrences which could occur while operating under the Special Test Exception. Some of the changes may involve revision in the testing of components at the station; however, these are in accordance with the current plant safety analyses. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current plant safety analyses.

The associated systems that affect Pressure Testing Operations related to the proposed amendment, are not assumed in any plant safety analysis to initiate any accident sequence. In addition, the proposed surveillance requirements for any such affected systems are consistent with the requirements of Section 3.10.1 of NUREG-1433. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3) Involve a significant reduction in the margin of safety because:

ComEd proposes to revise the Technical Specifications to be consistent with those provisions specified in Section 3.10.1 of NUREG-1433. The proposed changes are consistent with the current plant safety analyses. In addition, these proposed changes do not involve revisions to the design of the station. As such, the proposed individual changes will maintain the same level of

reliability of the equipment associated with Pressure Testing Operations, assumed to operate in the plant safety analysis, or provide continued assurance that specified parameters affecting, will remain within their acceptance limits. Therefore, the proposed changes provide continued assurance of Pressure Testing Operations without adversely affecting the public health and safety and as such, will not significantly reduce existing plant safety margins.

The proposed amendment to the Technical Specifications implements present requirements, or the requirements in accordance with the guidelines set forth in Section 3.10.1 of NUREG-1433. The proposed changes have been evaluated and found to be acceptable for use at the stations based on system design, safety analysis requirements, and operational performance. Since the proposed changes are based on NRC accepted provisions that are applicable at the stations and maintain necessary levels of system or component reliability affecting Pressure Testing Operations, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidle and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: September 26, 1997

Description of amendment request: The proposed amendments would revise the Technical Specifications to (1) prohibit the simultaneous opening of the drywell and suppression chamber purge system isolation valves, (2) upgrade the ventilation filter testing program to the latest industry standards, and (3) specify that the auxiliary electric equipment room is required to be habitable during design bases accidents.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Drywell and Suppression Chamber Purge System

The purpose of the drywell and suppression chamber purge system isolation valves is to mitigate the consequences of a design bases accident. Operation of these valves will have no effect on the probability of a design bases accident occurring.

The current TS 3.6.1.8 allows for the drywell and suppression chamber purge system isolation valves to be open simultaneously. In this condition, containment pressure and offsite dose during design bases accidents would be greater than previously evaluated. The proposed revision to TS 3.6.1.8 would prevent the simultaneous opening of the drywell and suppression chamber purge system isolation valves thus assuring that the consequences of design bases accidents previously evaluated are still bounding.

b. Ventilation Filter Testing Program

The SBGTS [Standby Gas Treatment System] and Control Room and AEER [Auxiliary Electric Equipment Room] Emergency Filtration Systems are designed to mitigate the radiological consequences of previously evaluated design bases accidents. Operation and testing of these systems will have no effect on the probability of a design bases accident occurring.

The proposed revisions associated with this change relocate the requirements for SBGTS and Control Room and AEER Emergency Filtration System filter testing from the current TS SRs to a new TS administrative control program. The testing requirements are being upgraded to the latest industry standards. Filter testing in accordance with the proposed program will ensure that Title 10, Code of Federal Regulations, Part 50 (10 CFR 50), Appendix A, General Design Criteria (GDC) 19 and 10 CFR 100 limits are not exceeded.

c. Other Control Room and Auxiliary Electric Equipment Room Emergency Filtration System Changes

The SBGTS and Control Room and AEER Emergency Filtration System are designed to mitigate the radiological consequences of previously evaluated design bases accidents. Operation and testing of these systems will have no effect on the probability of a design bases accident occurring.

The proposed revisions associated with this change acknowledge that the AEERs are required to be habitable during design bases accidents. This is consistent with the plant—s design bases.

d. Editorial Changes

The proposed revisions to TS 6.2.F.7 reformat the requirement to establish consistency with the remainder of TS 6.2.F. There are no technical changes being proposed.

Based upon the above, the proposed amendment will not increase the probability or consequences of any accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. Drywell and Suppression Chamber Purge System

No new plant equipment is being installed, and use of currently installed plant equipment is not affected by this proposed change. The proposed revision to TS 3.6.1.8 provides additional limitations on the opening of the drywell and suppression chamber purge system isolation valves.

b. Ventilation Filter Testing Program

No new plant equipment is being installed, and use of currently installed plant equipment is not affected by this proposed change. These proposed revisions will demonstrate operability of the Control Room and AEER Emergency Filtration System using the latest industry standards.

c. Other Control Room and Auxiliary Electric Equipment Room Emergency Filtration System Changes

No new plant equipment is being installed, and use of currently installed plant equipment is not affected by this proposed change. These proposed revisions will demonstrate habitability of the AEER by imposing operability requirements on the AEER recirculation filter units.

d. Editorial Changes

The proposed revisions to TS 6.2.F.7 reformat the requirement to establish consistency with the remainder of TS 6.2.F. There are no technical changes being proposed.

Based upon the above, the proposed change will not create the possibility of a new or different kind of accident or transient previously evaluated.

3) Involve a significant reduction in the margin of safety because:

a. Drywell and Suppression Chamber Purge System

The current TS 3.6.1.8 requirements are non-conservative with respect to the assumptions used when evaluating steam bypass of the suppression chamber; specifically, a maximum allowable leakage area of 0.03 square feet with the only credible leakage path was assumed to be suppression chamber vacuum breaker valve seat leakage. This proposed revision to TS 3.6.1.8 will make the TS requirements consistent with those assumptions.

b. Ventilation Filter Testing Program

These proposed revisions will ensure operability of the Control Room and Auxiliary Electric Equipment Room (AEER) Emergency Filtration system using the latest industry standards. Filter testing in accordance with the proposed program will ensure that GDC 19 and 10 CFR 100 limits are not exceeded.

c. Other Control Room and Auxiliary Electric Equipment Room Emergency Filtration System Changes

These proposed revisions will ensure operably of the control room and AEER Emergency Filtration System by demonstrating system performance with the control room and AEER recirculation filter units to ensure GDC 19 limits are not exceeded.

d. Editorial Changes

The proposed revisions to TS 6.2.F.7 reformat the requirement to establish consistency with the remainder of TS 6.2.F. There are no technical changes being proposed.

Based on the above, the proposed TS change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 15, 1997

Description of amendment request: The proposed amendments would revise Technical Specification Table 4.3.7.5-1, Accident Monitoring Instrumentation Surveillance Requirements, by deleting a footnote that provides details concerning the calibration requirements for the drywell hydrogen concentration analyzer and monitor.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The drywell hydrogen concentration analyzer and monitors are required to be operable by TS 3/4.7.5, Accident Monitoring Instrumentation. Table 4.3.7.5-1, Accident Monitoring Instrumentation Surveillance Requirements, includes a footnote providing unnecessary details related to the calibration of this specific analyzer and monitors. The footnote provides information that was determined to put the hydrogen analyzers and monitors outside of the design basis by limiting the range of the indication to 0% to 4% hydrogen in the drywell. The calibration method is being corrected to provide the correct range of 0% to 10%, and requires this note in the TS to be changed or deleted. The footnote is proposed to be deleted from the TS, because it provides unnecessary detail.

Deletion of the footnote will not cause an increase in the probability of an accident, because this instrumentation is only for accident monitoring instrumentation and thus does not affect accident initiators or assumptions.

Deletion of the footnote will not change the consequences of an accident previously evaluated, because this detail in the TS does not change the requirement of performing a channel calibration at the specified frequency. In addition, the ability to monitor hydrogen during an accident will not be affected by deletion of the footnote.

Therefore, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This is monitoring instrumentation only. Deletion of the footnote concerning specifics on how to calibrate this instrumentation will not affect the reliability or failure modes of the drywell hydrogen concentration analyzer and monitors. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety because:

This is monitoring instrumentation only. Deletion of the footnote concerning specifics on how to calibrate this instrumentation will not change the requirement to perform Channel Calibrations at the frequency specified in the TS. The details of how to perform a Channel Calibration on the drywell hydrogen concentration analyzer and monitors are located in plant procedures and are in accordance with vendor recommendations. The TS requirements for redundancy of the instrumentation and the actions to be taken for inoperable instrumentation are also not affected by the deletion of this footnote.

This change to the level of information regarding this calibration is consistent with the detail for this and other instrumentation in NUREG-1434, Revision 1, Standard Technical Specifications, General Electric Plants, BWR/6.

Therefore, deletion of footnote * from TS Table 4.3.7.5-1 will not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 6, 1997

Description of amendment request: The proposed amendments would delete all references to the steam line low pressure safety injection function.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Answer

Probability

Accident initiators can affect the probability of a previously evaluated accident. The addition of a new device or piece of equipment to the plant may introduce a new accident initiator. No new equipment is added to the plant as a result of this change. The proposed removal of the low steam line steam pressure will involve removing the steam line pressure safety injection function. This results in a reduction in the likelihood of spurious safety injections. Spurious safety injections can result in inadvertent ECCS [emergency core cooling system] actuations. Inadvertent ECCS Actuation is a UFSAR [updated Final Safety Analysis Report] accident (UFSAR 15.5.1). Therefore, this change will result in a reduction in the probability of an accident previously evaluated.

Routine plant operating practices and conditions will not be altered by the removal of the safety injection function. Therefore, there is no operating practice or condition change that could increase the probability of occurrence of a previously evaluated accident.

There is no significant increase in the probability of an accident previously evaluated.

Consequences

Accidents previously evaluated that could be adversely affected are the steam line break and the feedwater line break. These accidents will result in secondary side depressurization with pressure reaching the current actuation setpoint. The review of these accidents found that the consequences of the previous accident analysis acceptance criteria remain satisfied. The specifics of the accident analysis is discussed below.

The steam line break accident was analyzed to demonstrate short term cooling capability. A spectrum of break sizes were evaluated to determine the limiting break size. For smaller breaks (including the limiting break size), the safety injection actuation on low pressurizer pressure occurs prior to low steam line pressure safety injection. However, for larger steam line breaks the setpoint for low steam line pressure safety injection is reached prior to low pressurizer pressure safety injection. The larger spectrum of breaks were analyzed without credit for the low steam line pressure safety injection. The results of this analysis found that there would be a slight increase in time required for safety injection to actuate. The low pressurizer safety injection would actuate in these accidents due to the cooldown and depressurization of the reactor coolant system in response to the secondary side energy removal. The Departure from

Nucleate Boiling Ratios (DNBRs) were analyzed with this time delay in safety injection. The DNBRs for these cases were found to be less limiting than those calculated for the limiting break size. Therefore, the removal of steam line low pressure safety injection does not adversely affect the DNBR, fuel failure or dose consequences of the main steam line break accident. Other acceptance criteria would not be expected to be affected by the small change in timing of the safety injection signal.

In addition, to the Chapter 15 accident analysis, the Chapter 6 containment response to mass and energy releases was evaluated without credit for steam line low pressure safety injection. The evaluation demonstrated that for steam line breaks inside of containment, the high containment pressure safety injection set point is reached prior to the pressure associated with steam line low pressure safety injection. Therefore the existing containment response evaluation is not adversely affected by the removal of the low steam pressure safety injection. This also assures that the existing environmental qualification envelope for McGuire is not affected by this change. For steam line breaks outside of containment the maximum required breaksize is 1.0 ft2, which results in transients with safety injection caused by low pressurizer pressure prior to low steam line pressure safety injection.

The feedwater line break accidents were analyzed to demonstrate long term core cooling capability. During a feedwater line break, the secondary system will depressurize if the break occurs between the main feedwater check valve and the steam generator. However, breaks are only required to occur at the terminal ends of feedwater piping (i.e., at the feedwater pump or at the steam generator). For a feedwater line break at the main feedwater pump, the main feed check valve will prevent depressurization of the steam generator. For a feedwater line break at the steam generator, a safety injection on high containment pressure will occur prior to safety injection on steam pressure. Therefore, the elimination of the steam line low pressure safety injection does not adversely impact the feedwater line break accident.

In summary, a review was conducted of all design basis accidents to identify those which result in a low steam pressure safety injection. These accidents were then evaluated to verify that the accident analysis were within acceptance criteria. This review revealed that all accident analysis results were within current analysis acceptance criteria.

Therefore, there is no significant increase in the consequences of a previously evaluated accident.

Conclusion

Elimination of the low steam line pressure safety injection results in no significant increase in the probability or consequences of an accident previously evaluated.

(OR)

2. Create the possibility of a new or different kind of accident from any accident previously evaluated[?]

Answer

There is no introduction of new equipment or operating practices that could result in a new operating condition. The plant will continue to operate in the same method with the same complement of equipment with the exception of the actuation logic associated with the steam line low pressure safety injection. Therefore, there is no new operating condition that would be expected to generate a new sequence of events which could generate a new or different accident. There is no new equipment that could interact with other plant structures, systems or components.

The low pressure safety injection equipment is the only plant equipment affected by this change. There are no new equipment failure modes which might result in a new or different accident.

Affected accidents were evaluated to validate that the accident sequence would not deviate in a fashion which would create a new or different accident. The analysis of the feedwater line break and steam line break did not reveal any new or different type of accident.

Removal of the low steam line pressure safety injection will not create the possibility of a new or different kind of accident from any accident previously evaluated;

(OR)

3. Involve a significant reduction in the margin of safety?

Answer

The margin of safety relevant to this change is represented by the margin of physical protection provided by fuel cladding and the reactor containment. Effects of this change on the safety analysis was described under question 1 above. The results of the analysis demonstrate that DNBR, fuel clad integrity and containment response were not significantly affected by the removal of low steam line pressure safety injection. Therefore, the physical protection provide[d] by the fuel cladding and reactor containment were not affected by this change. Accident acceptance criteria continued to be met without credit for the safety function. The radiological consequences of accidents was not affected by the change.

The removal of the low steam line pressure safety injection did not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: October 15, 1997

Description of amendment request: The proposed amendment would affect nominal trip setpoints and allowable values for Reactor Trip System (RTS) Instrumentation Trip Setpoints Table 2.2-1, and Engineered Safety Features Actuation System (ESFAS) Instrumentation Trip Setpoints Table 3.3-4. In addition, the proposed amendment would (1) decrease the reactor trip setpoint for the reactor coolant pump (RCP) low shaft speed (underspeed trip setpoint) from 95.8 percent to 92.4 percent of rated speed, (2) make editorial changes, and (3) change the Bases to reflect the new methodology.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes to Tables 2.2-1 and 3.3-4 involve changes from a five column format to a two column format. The RTS trip setpoints and ESFAS trip setpoints remain unchanged with the exception of the RCP low shaft speed trip setpoint discussed below. Detailed operability criteria will be moved to surveillance procedures and analysis has demonstrated that an adequate margin for normal trip setpoints exist and safety analysis limits are preserved in all RTS/ESFAS functions.

Changing the RCP low shaft speed trip setpoint will not change the probability of occurrence of the event. The existing accident analysis (Millstone Unit No. 3 FSAR [final safety analysis report] section 15.3.2) of the complete loss of forced reactor coolant flow remains valid for the proposed change. Therefore, the change to the RCP low shaft speed trip setpoint does not increase the probability or consequence of any previously analyzed accident.

In addition, the proposed changes to Tables 2.2-1 and 3.3-4 do not alter the intent or method by which the surveillances are conducted. Therefore, the scope of evaluation performed gives reasonable assurance that there will not be an adverse impact on the consequences or the probability of any previously analyzed accident.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The existing design basis adequately covers the plant response with the proposed change to the RCP low shaft speed trip setpoint. The change does not introduce new failure modes.

The proposed changes to Tables 2.2-1 and 3.3-4 do not modify the design or operation of any plant system. The proposed changes do not alter the intent or method by which the surveillances are conducted, other than adjusting the allowable values to reflect historical instrument performance data. Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to Tables 2.2-1 and 3.3-4 modify the existing five column format to a two column format to show the RTS and ESFAS nominal trip setpoints and the process rack bistable allowable values for individual functions. Detailed operability criteria will be moved to the surveillance procedures. With the exception of the low shaft speed trip discussed below, the RTS and ESFAS setpoints remain unchanged and analysis has demonstrated that an adequate margin for normal trip setpoints exist and safety analysis limits are preserved in all RTS/ESFAS functions.

Since the safety limits of the design are still met, the proposed change to the RCP low shaft speed trip setpoint does not reduce the margin of safety.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut

NRC Deputy Director: Phillip F. McKee

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: March 10, 1997, as supplemented by letter dated May 20, 1997

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3/4.4.5 and 3.4.6.2, including associated Bases 3/4.4.5 and 3/4.4.6.2, to allow the implementation of steam generator (SG) tube alternate repair criteria for axial indications in the Westinghouse explosive tube expansion (WEXTEX) region below the top of the tubesheet and below the bottom of the WEXTEX transition that may exceed the current TS depth-based plugging limit. The allowed primary-to-secondary operational leakage from any one SG would be reduced from 500 gpd to 150 gpd.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Probability

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Series 51 steam generators has shown that axial loading of the tubes is negligible during an SSE.

For the SGTR event, the required structural margins of the steam generator tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the Westinghouse explosive tube expansion (WEXTEX) region due to the constraint provided by the tubesheet. Therefore, Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," margins against burst are maintained for both normal and postulated accident conditions.

The W* length supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the WEXTEX expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Therefore, the proposed change results in no significant increase in the probability of the occurrence of an SGTR or SLB accident. 1

The proposed changes do not affect other systems, structures, components or operational features. Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Consequences

The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the WEXTEX expansion by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and collapse is strengthened by the tubesheet in that region. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) in the W* length is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The total leakage, that is, the combined leakage for all such tubes, plus the combined leakage developed by any other ARC, must be below the maximum allowable SLB leak rate limit, such that off-site doses are maintained less than 10 CFR 100 guideline values.

Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the proposed steam generator alternate tube plugging criteria.

WCAP-14797, Revision 1, "Generic W* Tube Plugging Criteria for 51 Series Steam Generator Tubesheet Region WEXTEX Expansions," requires that any tubes with indications identified using the bobbin coil probe during the bobbin sampling plan also be inspected with the RPC coil throughout the W* length of the tubes. The use of the RPC will: (a) identify any new or non-expected degradation mode that may not be identified using the bobbin coil probe, and (b) confirm and characterize the bobbin coil indication.

These changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes maintain the required structural margins of the steam

generator tubes for both normal and accident conditions. RG 1.121 is used as the basis in the development of the W* alternate tube plugging criteria for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of an SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For primarily axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. WCAP-14797 defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Application of the W* criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the W* criteria.

Plugging of the steam generator tubes reduces the reactor coolant flow margin for core cooling. Implementation of the proposed changes are expected to result in plugging of fewer tubes than with the current criteria. Thus, implementation of the proposed changes will maintain the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the FSAR Update or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: October 24, 1997

Description of amendment request: The proposed Technical Specifications (TS) changes would revise TS Section 3/4.1.3.6 to exempt control rod 50-27 from the coupling test for the remainder of Cycle 7.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of occurrence of the analyzed Control Rod Drop Accident (CRDA) is not increased by operating with the subject control blade in a condition not known to be coupled since the compensatory measures will assure that the blade will remain fully inserted below 10% rated thermal power where the CRDA is a concern. Monitoring of nuclear instrumentation responses in the vicinity of the blade when the drive is withdrawn above 10% power will assure the blade is tracking with the drive with no potential to stick and then drop. Scram impact forces from an uncoupled control rod are of insufficient energy to dislodge the fuel support (or fuel) or to cause a threat to the pressure boundary integrity. No reduction of system or equipment redundancy is involved.

The CRDA analyzed in the Safety Analysis Report (SAR) remains the limiting rod drop accident, and its consequences are unaffected by operation of the subject blade in the proposed manner. Operation of the control blade as described, i.e., withdrawn no further than the 46 position and in a condition not known to be coupled, has no adverse effect on scram performance in response to any other postulated accident. The scram insert motion of the rod is not affected by the potentially uncoupled condition, and since the rod is already partially inserted at position 46, it should have a slightly better negative reactivity insertion characteristic. Therefore, no potential to increase onsite or offsite radiological consequences beyond those previously analyzed in the SAR is created.

Operating the subject control blade in a condition not known to be coupled does not result in any onsite or offsite radiological consequences different from those previously analyzed in the SAR. The subject control blade will be fully inserted below 10% thermal power where the CRDA is a concern and will be monitored during drive withdrawal above 10% thermal power to assure it is tracking with the drive. Scram performance is not adversely affected by operation from the near full-out position of 46. Hence, no new failure modes are created and consequences of any postulated failures are not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Safety Analysis Report (SAR) analyzed Control Rod Drop Accident (CRDA) remains the only type of accident initiated (or contributed to) by the control rod drive/control blade interface. The compensatory actions to be taken when operating the subject blade in a condition not verified to be coupled assure that no new types of accidents can occur. The subject control blade will be fully inserted below 10% thermal power where the CRDA is a concern and will be monitored during drive withdrawal above 10% thermal power to assure it is tracking with the drive. Scram performance is not adversely affected by operation from the near full-out position of 46. Since no adverse effect on insertion or scram performance is expected, the previously analyzed accidents encompass any potential consequence of operating with an uncoupled control blade.

The compensatory actions to be taken when operating the subject blade in a condition not verified to be coupled assure that no new failure modes are created, and, therefore, no new type of equipment malfunction is introduced by operating the subject control blade in the proposed manner.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

Operation with the subject control blade in a condition not known to be coupled for the remainder of Cycle 7 at LGS [Limerick Generating Station] Unit 1, but with the compensatory actions described below, does not reduce the existing margin of safety determined by the analysis of the Control Rod Drop Accident (CRDA). The CRDA analyzed in the Safety Analysis Report (SAR) remains bounding in that the subject rod will be fully inserted below 10% rated thermal power where the CRDA is a concern. Above 10% power, when the associated drive is withdrawn, the nuclear instrumentation in the vicinity of the blade will be monitored to assure the blade tracks with the drive, providing assurance that the position of the blade can be ascertained by the drive position. If the control blade can not be verified to have followed the drive, then the rod shall be completely inserted and the control rod directional valves disarmed in accordance with existing TS requirements. To minimize any scram impact loadings, the blade will be operated at the near full-out position of 46 except for intermediate positions temporarily occupied during standard rod withdrawal sequences. Operating the subject control blade in the proposed manner will have no adverse effect on insertion or scram performance of the blade and will preserve the margin of safety.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: October 6, 1997

Description of amendment request: The amendment to the Technical Specifications would increase the allowable band for control and shutdown rod demanded position versus indicated position from plus or minus 12 steps to plus or minus 18 steps when the power level is not greater than 85% rated thermal power. The amendment is identical to Amendment 183 for Salem Unit 2, which was issued September 10, 1997, as an exigent amendment.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the rod misalignment criteria of [plus or minus] 18 steps for core powers equal to or below 85% of RATED THERMAL POWER (RTP) does not increase the probability of previously evaluated accidents. Increasing the magnitude of the allowed control rod misalignment is not a contributor to the mechanistic cause of an accident evaluated in any accident analysis. The magnitude of control rod indicated misalignment is a parameter used to establish the initial conditions for accident evaluation.

The proposed increase in the allowable rod misalignment from the current [plus or minus] 12 steps for reactor powers equal to or less than 85% RTP does not involve a significant increase in the consequence of any previously evaluated accident. Rod misalignment affects power distribution, shutdown margin and the ejected rod accident. An extension of the allowable rod misalignment above and below 85% RTP has been analyzed in Westinghouse WCAP-14672. As provided in WCAP-14672, above 85% the allowable misalignment is governed by the available peaking factor margins as determined by flux maps.

[Public Service Electric & Gas] PSE&G is simplifying the proposed change by keeping the currently allowed [plus or minus] 12 step misalignment in Technical Specifications 3.1.3.1 and 3.1.3.2.1 for reactor power greater than 85% RTP.

The PSE&G proposed change is to allow [plus or minus] 18 steps misalignments in Technical Specifications 3.1.3.1 and 3.1.3.2.1 for reactor power less than or equal to 85% RTP. As demonstrated in WCAP-14672, for reactor powers less than 85% RTP, the available peaking factor margin increases faster than any penalty associated with a [plus or minus] 18 step misalignment.

As described in Section 4.0 of the Westinghouse WCAP, a conservative penalty factor has been applied to the rod insertion allowance (RIA) of the shutdown margin calculation to account for rods misaligned an additional [plus or minus] 6 steps (for a total of [plus or minus] 18 steps). This conservative penalty factor is applied as part of the reload analysis in order to satisfy Technical Specification 3.1.1.1.

In addition to the normal, or Condition 1, operational transients, the impacts of increased rod misalignment on Condition II, III and IV accident analysis have also been evaluated. The proposed increase in rod misalignment does not have a significant effect on any moderator or Doppler reactivity coefficients or defects, boron worth or reactor kinetics parameters.

To account for the potential increase in ejected rod parameters, conservative penalty factors have been applied to the reload safety evaluation to cover the additional [plus or minus] 6 step misalignment. Margin is available in the reload safety analysis to accommodate this impact.

Therefore, the proposed amendment does not increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

ONo new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change to the rod misalignment criteria of [plus or minus] 18 steps below 85% RTP. The implementation of the proposed rod misalignment criteria will have no adverse effect on the performance of any other safety related system. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. The Technical Specifications allowed increase in peaking factors as power is reduced accommodates the peaking factor penalty associated with the additional [plus or minus] 6 step misalignment for core powers equal to or less than 85% RTP. Therefore, there is no change to the peaking factors assumed in the safety analysis. In addition to peaking factors, there is no change in any other current limit input into the safety analysis. As the input, or initial conditions, of the safety analysis have not changed, there is no reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: October 14, 1997

Description of amendment request: The proposed amendment will modify the Salem Unit 1 Technical Specification (TS) 3.4.6.3, "Primary Coolant System Pressure Isolation Valves Limiting Condition for Operation," to be consistent with Salem Unit 2 TSs.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The majority of the proposed changes, as described above, are editorial in nature. Rewording, and reformatting the Limiting Condition for Operation, including the surveillance requirements do not involve a significant increase to the probability or consequences of an accident.

Those substantive changes involving the addition of (1) new reactor coolant system pressure isolation valves, (2) providing for a shorter test frequency upon entry into Mode 4, and (3) adding a new surveillance test requirement, do not increase the probability or consequences of an accident. These changes ensure that the system and components needed to prevent and minimize the effects of inter-system loss of coolant are properly identified in the Technical Specifications.

Although pressure isolation valves are being added to the Technical Specification table, these valves were already included in the IST [inservice testing] program as pressure isolation valves and were being tested as such. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change, as described above, does not physically alter the facility or the operation of the facility. The majority of the changes are editorial in nature and provide for improvement in the human factors of the Technical Specifications, while properly identifying all the pressure isolation valves in the Technical Specifications. The addition of valves into the Technical Specification is an administrative change that improves the quality of the LCO [limiting condition for operation], but does not add components to the facility.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety, as defined in the bases for any technical specifications, depend upon proper identification of equipment and performance of the proper surveillance requirements to demonstrate equipment operability. The proposed change will ensure that the proper valves are identified and tested in accordance with the Technical Specification requirements.

The proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 21, 1997

Description of amendment request: The proposed amendment revises Technical Specification Tables 3.3-1 and 4.3-1 to require that Functional Unit, ≥2. Power Range, Neutron Flux," be operable in Mode 3, as well as in Modes 1 and 2. The change is being proposed because the licensee has determined that the power range nuclear instrumentation should be operable in Mode 3 whenever the reactor trip system breakers are in the closed position and the control rods are capable of being withdrawn.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requirement for operability of a trip and the surveillance requirements to ensure the functionality of the trip are independent of the probability of an accident previously evaluated. The accident that this trip is intended to mitigate is the Rod Withdrawal from Subcriticality event. The surveillance procedure and the requirement for the trip to be operational when the Control Rod Drive System is capable of rod movement mitigate the consequences of this event, and do not increase the probability of a rod withdrawal from subcritical.

Therefore, the probability and consequences of an accident previously evaluated are not significantly increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any modifications to existing plant equipment, do not alter the function of any plant systems, do not introduce any new operating configurations or new modes of plant operation, or change the safety analyses. The proposed change is intended to ensure that the trip function is available and will perform as designed in the event of a previously evaluated event.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not reduce the margin of safety, because assurance of the operability of the trip function is increased by the proposed change.

Based on the above, PSE&G [Public Service Electric & Gas Company] has determined that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: August 28, 1997

Description of amendment request: The proposed change would revise Technical Specification 3.4.11, "Reactor Coolant System (RCS) Pressure and Temperature (P/T) Limits," to incorporate the new P/T curves, which were provided by General Electric Nuclear Energy in report number GE-NE-B1301793-01, "Perry Unit 1 RPV Surveillance Materials Testing and Analysis."

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will provide for approved P/T limit curves which are valid through 9 effective full-power years (EFPY) and 16 EFPY. This change will not affect any Safety Limits, Power Distribution Limits, or Limiting Conditions for Operation. The proposed changes incorporate operating limits which provide margin to brittle failure of the reactor vessel based on testing of the irradiated reactor vessel materials (base metal, weld material, and heat affected zone material). The limits ensure that adequate safety margins against nonductile or rapidly propagating failure exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The specimens have been tested and analyzed in accordance with 10 CFR 50, Appendices G and H, using the methods described in Generic Letter 88-11 and Regulatory Guide 1.99 Revision 2. The predicted lowest upper shelf energy at 32 EFPY was greater than the minimum required by 10 CFR 50, Appendix G. The adjusted reference temperature for the limiting material was lower than the 200 degree Fahrenheit limit required by Regulatory Guide 1.99 Revision 2. As such, the integrity of the reactor pressure coolant boundary is maintained. The changes will result in equivalent or more conservative limits on reactor vessel pressure as a function of temperature for all operational conditions (hydrostatic and leak testing, non-nuclear heatup/cooldown, and core critical operations). The methodology used to derive these values produces limits which continue to ensure that sufficient margin is maintained to meet the criteria of GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary." There are no plant modifications associated with this change and no new or revised system interfaces. The proposed changes do not increase the probability of occurrence or consequences previously evaluated because the temperature shifts are well within equipment operating ranges. As such, there is no increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not involve any new modes of operation. The only change will be operation of the plant within operating pressure limits which are determined in a more conservative manner. Therefore, no new failure mode or accident sequence is introduced by this change.

The testing and analysis meets 10 CFR 50, Appendices G and H, requirements; therefore, no new accident types, such as brittle fracture of a reactor pressure coolant boundary component is postulated. The adjusted reference temperature and upper shelf energy predicted at 32 EFPY are well within the limits of 10 CFR 50, Appendices G and H. Therefore, the possibility of an accident of a new or different type than any previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The P/T limits are established to provide acceptable margins for the operation of the reactor coolant system during heat up and cool down, criticality, and hydrotest conditions. Technical Specification 3.4.11 limits the rates of change of temperature and pressure to values consistent with the fracture toughness requirements of 10 CFR 50, Appendices G and H, and ASME Boiler and Pressure Vessel Code Section III Appendix G. The bases section for Technical Specification 3.4.11 refers to 10 CFR 50, Appendices G and H, and ASME Code Section III Appendix G. Changes in these limits are necessary because the fracture toughness properties of ferritic materials in the reactor vessel change as a function of reactor operating time. The specific requirements for fracture toughness and reactor vessel material surveillance that must be considered in developing the P/T limits are defined by 10 CFR 50, Appendices G and H. The specific limits defined by 10 CFR 50, Appendices G and H, set the margin of safety for the reactor pressure vessel coolant boundary. Since the testing and analysis of the vessel specimens meet the requirements and limits defined in 10 CFR 50, Appendices G and H, the margin of safety as defined in the basis for Technical Specification 3.4.11 is not reduced. The revised curves are based on the latest NRC guidelines along with actual neutron fluence data for Perry. The new limits conservatively account for irradiation embrittlement effects, thereby maintaining the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 8, 1997

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.2.2.e, "Organization - Unit Staff," by removing the reference to the NRC Policy Statement on working hours. Administrative procedures will be developed to limit the working hours of unit staff who perform safety-related functions.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours. Overtime will remain controlled by plant administrative procedures. Changes to the relocated overtime limits and working hours will be subject to review and evaluation under 10 CFR 50.59, "Changes, Tests and Experiments." There is not an increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

There is not an increase in the radiological consequences of an accident previously evaluated because the proposed change does not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed change does not alter the source term, containment isolation, or allowable radiological releases. Therefore, there is no increase in the radiological consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed change. No new or different types of failures or accident initiators are introduced by the proposed change.

The proposed change to TS 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours. Therefore, there is no possibility created for a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a reduction in a margin of safety because unit staff overtime is not an input in the calculation of a safety margin with regard to Technical Specification Safety Limits, Limiting Safety System Settings, other Technical Specification Limiting Conditions for Operation, the Operational Requirements Manual, or other previously defined margins for any structure, system, or component important to safety. The proposed change to TS 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 24, 1997

Brief description of amendments: Change to the core safety limit curves and overtemperature N-16 reactor trip function setpoints to support operation with Unit 1, cycle 7 core configuration.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Revision to the Unit 1 Core Safety Limits

Analyses of reactor core safety limits are required as part of reload calculations for each cycle. TU Electric has performed the analyses of the Unit 1, Cycle 7 core configuration to determine the reactor core safety limits. The methodologies and safety analysis values result in new operating curves which, in general, permit plant operation over a similar range of acceptable conditions. This change means that if a transient were to occur with the plant operating at the limits of the new curve, a different temperature and power level might be attained than if the plant were operating within the bounds of the old curves.

However, since the new curves were developed using NRC approved methodologies which are wholly consistent with and do not represent a change in the Technical Specification BASES for safety limits, all applicable postulated transients will continue to be properly mitigated. As a result, there will be no significant increase in the consequences, as determined by accident analyses, of any accident previously evaluated.

B. Revision to Unit 1 Overtemperature N-16 Reactor Trip Setpoints

As a result of changes discussed, the Overtemperature reactor trip setpoint has been recalculated. These trip setpoints help ensure that the core safety limits are protected and that all applicable limits of the safety analysis are met.

Based on the calculations performed, no significant changes to the safety analysis values for Overtemperature reactor trip setpoint were required. The f(deltaI) trip reset function was revised due to more top-skewed axial power distributions predicted for this cycle. The analyses performed show that, using the TU Electric methodologies, all applicable limits of the safety analysis are met. This setpoint provides a trip function which allows the mitigation of postulated accidents and has no impact on accident initiation. Therefore, the changes in safety analysis values do not involve an increase in the probability of an accident and, based on satisfying all applicable safety analysis limits, there is no significant increase in the consequences of any accident previously evaluated.

In addition, sufficient operating margin has been maintained in the overtemperature setpoint such that the risk of turbine runbacks or reactor trips due to upper plenum flow anomalies or other operational transients will be minimized, thereby, reducing potential challenges to the plant safety systems.

SUMMARY

The changes in the amendment request applies NRC approved methodologies to changes in safety analysis values, new core safety limits and new N-16 setpoint and parameter values to assure that all applicable safety analysis limits have been met. The potential for an operational transient to occur has not been affected and there has been no significant impact on the consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve the calculation of new reactor core safety limits and overtemperature reactor trip setpoint resets. As such, the changes play an important role in the analysis of postulated accidents but none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

In reviewing and approving the methods used for safety analyses and calculations, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. While the actual impact on safety is discussed in response to question 1, the impact on margin of safety is discussed below:

A. Revision to the Unit 1 Reactor Core Safety Limits

The NRC-approved TU Electric reload analysis methods have been used to determine new reactor core safety limits. All applicable safety analysis limits have been met. The methods used are wholly consistent with Technical Specification BASES 2.1 which is the bases for the safety limits. In particular, the curves assure that for Unit 1, Cycle 7, the calculated DNBR is no less than the safety analysis limit and the average enthalpy at the vessel exit is less than the enthalpy of saturated liquid. The acceptance criteria remains valid and continues to be satisfied; therefore, no change in a margin of safety occurs.

B. Revision to Unit 1 Overtemperature N-16 Reactor Trip Setpoints

Because the reactor core safety limits for CPSES Unit 1, Cycle 7 are recalculated, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint which protect the reactor core safety limits must also be recalculated. The Overtemperature N-16 reactor trip setpoint helps prevent the core and Reactor Coolant System from exceeding their safety limits during normal operation and design basis anticipated operational occurrences. The most relevant design basis analysis in Chapter 15 of the CPSES Final Safety Analysis Report (FSAR) which is affected by the Overtemperature reactor trip setpoint is the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal at Power (FSAR Section 15.4.2). This event has been analyzed with the new safety analysis value for the Overtemperature reactor trip setpoint to demonstrate compliance with event specific acceptance criteria. Because all event acceptance criteria are satisfied, there is no degradation in a margin of safety.

The nominal Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint (Technical Specification Table 2.2-1) are determined based on a statistical combination of all of the uncertainties in the channels to arrive at a total uncertainty. The total uncertainty plus additional margin is applied in a conservative direction to the safety analysis trip setpoint value to arrive at the nominal and allowable values presented in Technical Specification Table 2.2-1. Meeting the requirements of Technical Specification Table 2.2-1 assures that the Overtemperature reactor trip setpoint assumed in the safety analyses remains valid. The CPSES Unit 1, Cycle 7 Overtemperature reactor trip setpoint is not significantly different from the previous cycle, and thus provides operational flexibility to withstand mild transients without initiating automatic protective actions. Although the value of the f(deltaI) trip reset function setpoint is different, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint are consistent with the safety analysis assumptions which have been analytically demonstrated to be adequate to meet the applicable event acceptance criteria. Thus, there is no reduction in a margin of safety.

Using the NRC approved TU Electric methods, the reactor core safety limits are determined such that all applicable limits of the safety analyses are met. Because the applicable event acceptance criteria continue to be met, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: James W. Clifford, Acting

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 13, 1997

Description of amendment request: The proposed amendments would support replacement of the three safety-related wide range level instruments. The engineered safety features trip setpoint for the refueling water automatic switchover to recirculation would be revised to account for the difference in instrument uncertainty associated with wide range level instruments and provide additional response time margin.

Date of publication of individual notice in Federal Register: October 22, 1997 (62 FR 54859)

Expiration date of individual notice: November 21, 1997

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 20, 1997

Description of amendment request: The proposed amendments would allow use of a rerolling process as an additional repair method for tube degradation found in the tubesheet region. The rerolling method is designed to ensure that the area of degradation will not serve as a pressure boundary once the repair roll is installed, thus permitting the tube to remain in service.

Date of publication of individual notice in Federal Register: October 28, 1997 (62 FR 55835)

Expiration date of individual notice: Comment period ends November 12, 1997; Notice period ends November 28, 1997

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: October 4, 1997

Brief description of amendments: These amendments revise the surveillance requirements in Technical Specifications (TSs) 4.1.2.3.1, 4.1.2.4.1, 4.5.2.b, and 4.6.2.1.b and associated Bases. The subject surveillance requirements are applicable to the charging/high-head safety injection pumps, low-head safety injection pumps, and the containment quench spray pumps. The proposed changes replace the current specific test acceptance criteria contained in these surveillance requirements with requirements to verify pump performance in accordance with the inservice testing program, the emergency core cooling system flow analysis, or the containment integrity safety analysis, as applicable. The proposed changes also make minor editorial changes in these TSs and make conforming changes in the TS Index pages.

Date of issuance: October 28, 1997

Effective date: Both units, as of date of issuance, to be implemented within 60 days.

Amendment Nos.: 207, 86

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 18, 1996 (61 FR 66706) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 27, 1997, supplemented by October 6, 1997

Brief description of amendment: The amendment eliminated selected response time testing (RTT) surveillance requirements (SRs) from the Technical Specifications (TSs) for certain components of the following systems: reactor protection system (SR 3.3.1.1.15), primary containment and drywell isolation instrumentation (SR 3.3.6.1.8), and emergency core cooling system (SRs 3.5.1.8 and 3.5.2.7).

Date of issuance: November 5, 1997

Effective date: November 5, 1997

Amendment No.: 133

Facility Operating License No. NPF-29: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: June 18, 1997 (62 FR 33122) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 17, 1996, as supplemented October 14, 1997

Brief description of amendment: The amendment revises

Facility Operating License No. NPF-38 to reflect the name change from Louisiana Power & Light Company to Entergy Louisiana, Inc.

Date of issuance: November 3, 1997

Effective date: November 3, 1997, to be implemented within 60 days.

Amendment No.: 134

Facility Operating License No. NPF-38: Amendment revised

Facility Operating License No. NPF-38.

Date of initial notice in **Federal Register:** April 9, 1997 (62 FR 29749) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1997. The letter dated October 14, 1997, provided clarifying information which did not alter the initial no significant hazards determination. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 27, as supplemented April 3, May 1, and August 20, 1997.

Brief description of amendment: Change Technical Specifications (TS) to permanently establish a primary-to-secondary leak rate of 150 gallons per day through any one steam generator and specify the steam generator tube inservice inspection requirements for pit-like intergranular attack degradation in the "B" Once-Through-Steam-Generator.

Date of issuance: October 28, 1997

Effective date: October 28, 1997

Amendment No.: 158

Facility Operating License No. DPR-72: Amendment revised the TS.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30632) The August 20, 1997, letter provided clarifying information that did not affect the initial no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: August 27, 1997

Brief description of amendments: The admendments change the Administrative Section of the Technical Specifications (TS) to allow the use of 12-hour shifts.

Date of issuance: October 27, 1997

Effective date: October 27, 1997

Amendment Nos: 194 and 188Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the TS.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50006) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: March 26, 1997.

Brief description of amendments: The amendments modify surveillance 4.7.5.1.e.2 which requires verification of the control room ventilation system autostart function.

Date of issuance: October 28, 1997

Effective date: October 28, 1997, with full implementation within 45 days.

Amendment Nos.: 218 and 202

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1997 (62 FR 27796) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: May 15, 1997

Brief description of amendment: The amendment revises Technical Specification Sections 3.1 and 4.1, "Reactor Protection System," and the associated Bases to remove run mode intermediate range monitor high flux/inoperative with the associated average power range monitor downscale scram trip function. The amendment also makes other editorial revisions.

Date of issuance: October 27, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 103

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33127) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 2, 1997

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by modifying the maximum allowed primary containment internal pressure during normal operation from 2.1 pounds per square inch gauge (psig) to 1.0 psig. The TS Bases, Section 3/4.6.1.4, is also updated to reflect the new maximum allowed primary containment internal pressure during normal operation.

Date of issuance: October 27, 1997

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 209

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50007) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: November 25, 1996, as supplemented December 12, 1996, April 23, May 8, July 1, August 21, and September 29, 1997

Brief description of amendment: The amendment modifies the Technical Specification requirements associated with the Minimum Critical Power Ratio (MCPR) safety limits for Cycle 18 based on the cycle-specific analysis of the current mixed core of GE11/GE10 fuel parameters.

Date of issuance: October 29, 1997

Effective date: October 29, 1997

Amendment No.: 99

Facility Operating License No. DPR-22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1997 (62 FR 17236) The December 12, 1996, letter provided an affidavit for the original application dated November 25, 1996. The April 23, May 8, August 21, and September 29, 1997, letters provided clarifying information in response to the staff's request for additional information during a teleconference on March 18, 1997. The July 1, 1997, letter provided a nonproprietary version of the April 23, 1997, submittal. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 27, 1996, as supplemented August 15, September 2, and October 3, 1997

Brief description of amendments: The amendments incorporate Combustion Engineering steam generator tube sleeve designs and installation and examination techniques into the plant Technical Specifications (TS). Specifically, the amendments make changes to TS 4.12, "Steam Generator Tube Surveillance," and its associated Bases Section B.4.12, "Steam Generator Tube Surveillance."

Date of issuance: November 4, 1997

Effective date: November 4, 1997, with full implementation within 30 days

Amendment Nos.: 132 and 124

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43370) The August 15, September 2, and October 3, 1997, letters provided clarifying information and updated TS pages. This information was within the scope of the original application and did not change the staff's initial no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1997.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 4, 1997

Brief description of amendments: The proposed change revises the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, Technical Specifications to eliminate an inconsistency between emergency core cooling system (ECCS) operability requirements and the auto-start and protective trip bypass of the emergency diesel generators on an ECCS initiation signal during certain plant configurations.

Date of issuance: October 24, 1997

Effective date: Both units, as of date of issuance, to be implemented within 30.

Amendments Nos.: 221 and 226

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43373) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 19, 1997, as supplemented by letter dated August 25, 1997

Brief description of amendment: This amendment changes the Hope Creek Technical Specification (TS) 3.7.1.3, "Ultimate Heat Sink," to raise the minimum allowable ulimate heat sink (UHS) water level from 76 feet to 80 feet, lower the maximum allowable UHS temperature from 88.6°F to 85°F, and reflect that continued plant operation to a UHS temperature of 87°F depends upon the association of UHS temperature and safety system availability. The associated Surveillance Requirement, TS 4.7.1.3, is changed to decrease the river water temperature, at which increasing temperature surveillance is required, from 85°F to 82°F. The requirements of TS 3.7.1.1, "Safety Auxiliaries Cooling System (SACS)," TS 3.7.1.2, "Station Service Water System (SSWS)," and TS 3.8.1.1, "Electrical Power Systems," are revised to reflect the revised TS 3.7.1.3. In addition, the Bases for 3/4.7.1, "Service Water Systems," are appropriately revised.

Date of issuance: October 28, 1997

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 106

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33132) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 31, 1997, as supplemented by letters dated July 16, August 26, and October 3, 1997

Brief description of amendment: This amendment changes Technical Specification (TS) 2.1.2, "THERMAL POWER, High Pressure and High Flow,"

ACTION a.1.c for TS 3.4.1.1, "Recirculation Loops," and the Bases for TS 2.1, "Safety Limits." These changes are being made to implement an appropriately conservative Safety Limit Minimum Critical Power Ratio to include Cycle 8 specific analyses for all Hope Creek core and fuel designs.

Date of issuance: November 4, 1997

Effective date: The license amendment is effective as of its date of issuance and shall be implemented within 60 days.

Amendment No.: 107

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43374) The August 26 and October 3, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 29, 1997

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.11.1, "Liquid Effluent - Concentration." The change adds a requirement to perform weekly sampling and monthly and quarterly composite analyses of the Station Service Water System when the Reactor Auxiliaries Cooling System is contaminated. The licensee has also proposed an editorial change to TS Table 4.11.1.1.1-1. In Liquid Release Type B, the licensee is proposing that the acronym for Station Service Water System be changed from GSW to SSWS. This proposed change will be addressed in a future license amendment.

Date of issuance: November 6, 1997

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 108

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 6, 1997 (62 FR 52161) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 24, 1997

Brief description of amendment: This amendment adds a Surveillance Requirement to Technical Specification 3/4.5.1, "Emergency Core Cooling Systems", to perform a monthly valve position verification for the four residual heat removal cross-tie valves.

Date of issuance: November 6, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 109

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 6, 1997 (62 FR 52162) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 20, 1997

Brief description of amendment: This amendment changes the Technical Specifications (TSs) to provide for: 1) the relocation of suppression chamber volume references in Limiting Condition for Operation (LCO) 3.5.3 to the Hope Creek (HC) Updated Final Safety Analysis Report (UFSAR) and TS Bases as appropriate; 2) the revision of the suppression chamber volume currently listed in LCO 3.5.3.b; 3) the relocation of the suppression chamber volume references in LCO 3.6.2.1.a.1 to the UFSAR and TS Bases; and 4) the revision to the suppression chamber volume reference in TS 5.2.1 to reference the TS Bases section where this information will reside.

Date of issuance: November 6, 1997

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 110

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50010) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 19, 1997, as supplemented September 29, 1997.

Brief description of amendment: The proposed amendment revises the Ginna Station Improved Technical Specifications by adding a note to the Containment Spray (CS) Limiting Condition for Operation 3.6.6 which allows the CS pumps in MODE 4 to be placed in pull-stop, and motor-operated valves 896A and 896B to have their DC control power restored with the valves placed in the closed position in order to perform interlock and valve testing of MOVs 857A, 857B, and 857C. A time limit of 2 hours is placed on this configuration for each test.

Date of issuance: October 29, 1997

Effective date: October 29, 1997

Amendment No.: 68

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50011) The September 29, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 17, 1997

Brief description of amendments: The amendments change Technical Specification 3/4.4.9, "Specific Activity," and the associated Bases to reduce the limit associated with dose equivalent iodine-131. The steady-state dose equivalent iodine-131 limit would be reduced by 50 percent from 0.3 mu Curie/gram to 0.15 mu Curie/gram and the maximum instantaneous value would be reduced by 50 percent from 18 mu Curie/gram to 9 mu Curie/gram.

Date of issuance: October 29, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: Unit 1 - 132; Unit 2 - 124

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 49998) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: August 14, 1997, as supplemented September 26 and October 1, 1997.

Brief description of amendment: This amendment changes the design basis as described in the Updated Safety Analysis Report by adding a description of the methodology utilized for determining the systems and components that are considered to require protection from tornado missiles.

Date of issuance: November 4, 1997

Effective date: November 4, 1997

Amendment No.: 30

Facility Operating License No. NPF-58: This amendment revised the license.

Date of initial notice in **Federal Register:** September 16, 1997 (62 FR 48674). The September 26 and October 1, 1997, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 16, 1997 (TXX-97119)

Brief description of amendments: The amendments revised core safety limit curves and Overtemperature N-16 reactor trip setpoints based on analyses of the core configuration for CPSES Unit 2, Cycle 4. These changes apply equally to CPSES Units 1 and 2 licenses since the Technical Specifications are combined.

Date of issuance: October 30, 1997

Effective date: October 30, 1997

Amendment Nos.: Unit 1 - Amendment No. 55; Unit 2 - Amendment No. 41

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1997 (62 FR 38140) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment

under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 19, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 24, 1997

Brief description of amendment: The amendment adds a footnote to Technical Specification 3.7.A.5, "Primary Containment." The footnote provides a one time exception to the reverse flow testing requirement for containment isolation check valve 30-CK-432.

Date of issuance: October 30, 1997

Effective date: As of date of issuance and shall be implemented by November 2, 1997.

Amendment No.: 174

Facility Operating License No. DPR-35: This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Massachusetts, and final no significant hazards consideration determination are contained in a Safety Evaluation dated October 30, 1997.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

NRC Project Director: Ronald B. Eaton, Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 17, 1997

Brief description of amendment: The amendment revised Technical Specification 4.5.2b and associated Bases to eliminate the requirement to vent the centrifugal charging pump casings.

Date of issuance: November 3, 1997

Effective date: November 3, 1997

Amendment No.: 114

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications. Press release issued requesting comments as to proposed no significant hazards consideration: Yes. October 24, 1997. Coffey County Today Newspaper (Kansas). Comments received: Yes. Comments were submitted by Mr. Dave Lochbaum of the Union of Concerned Scientists by letter dated October 29, 1997. Verbal comments were received from Larry Myers on October 28, 1997. The staff responded to these comments in the safety evaluation attached to the November 3, 1997, amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Kansas and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 3, 1997.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Dated at Rockville, Maryland, this 12th day of November 1997.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97-30217 Filed 11-18-97; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22883/812-10536]

EQ Advisors Trust; Notice of Application

November 12, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act; and (ii) section 17(d) of the Act and rule 17d-1 to permit certain joint transactions.

Summary of Application: Applicants request an order to permit EQ Advisors Trust to implement a deferred compensation plan for certain of its trustees.

Applicants: HQ Advisors Trust (the "Trust") and EQ Financial Consultants, Inc. (the "Manager").

FILING DATES: The application was filed on April 7, 1997, and amendments were filed on July 14, 1997 and November 10, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. EQ Advisors Trust, 1290 Avenue of the Americas, New York, New York 10104.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. The Trust is currently composed of several, separately managed series ("Portfolios"). The Trust offers shares in each of its Portfolios only to insurance companies and their separate accounts that fund variable annuity and variable life insurance contracts ("Variable Contracts"). The Trust is currently serving as the underlying investment medium for Variable Contracts issued by the Equitable Life Assurance Society of the United States ("Equitable"). The Trust may in the future offer its shares to separate accounts funding Variable Contracts of insurance companies unaffiliated with Equitable or directly to tax qualified pension and retirement plans outside the separate account context.

2. The Manager, an indirect wholly-owned subsidiary of Equitable, has overall responsibility for the investment management and administration of the Trust and its Portfolios. Rowe Price-Fleming International, Inc., T. Rowe Price Associates, Inc., Putnam Investment Management, Inc., Massachusetts Financial Services Company, Morgan Stanley Asset Management, Inc., Warburg Pincus Counsellors, Inc., and Merrill Lynch Asset Management, L.P. serve as the sub-advisers (each an "Adviser") to one or more Portfolios. Applicants request that the relief apply to the Trust and any registered open-end management investment company that in the future is advised by the Manager or any entity controlled by the Manager.[1]

3. The Trust's board of trustees ("Trustees") currently consists of six members, two of whom are "interested persons" of the Trust within the meaning of Section 2(a)(19) of the Act. The four non-interested Trustees ("Eligible Trustees") will receive an annual retainer fee, a fee for each board meeting and committee meeting attended, and an additional fee for performing special services for the Trust.

4. The deferred compensation plan for Eligible Trustees (the "Plan") was ratified by the Trustees on March 31, 1997. The purpose of the Plan is to permit Eligible Trustees to defer receipt of all or a portion of their fees to enable them to defer payment of income taxes, to avoid a loss or reduction of Social Security benefits, or for other reasons. Applicants believe that the Plan will better enable the Trust to attract and retain high caliber trustees. The Plan may be amended from time to time, provided that, any amendments are not inconsistent with the relief granted pursuant to this application.

5. Under the Plan, each Eligible Trustee who elects to defer receipt of

[1] The Manager is an investment adviser to the Trust and serves in such capacity pursuant to a contract subject to section 15 of the Act. All registered open-end investment companies that currently intend to rely on the order have been named as applicants. Any other existing or future investment company that relies on the order will comply with the terms and conditions of the order.

fees will enter into an agreement with the Trust ("Agreement"). The election will continue in effect unless the Eligible Trustee delivers to the Trust a written modification of such election at least 60 days prior to January 1 in any given year. Pursuant to the Agreement, a bookkeeping account will be established by the Trust for each Eligible Trustee that elects to defer compensation ("Deferral Account"), and the amount of fees deferred will be credited to the Deferral Account. Although the Trust expects the Plan to remain in effect indefinitely, the Trust has reserved the right to unilaterally modify or terminate the Plan at any time. However, any modification or termination would not affect amounts already credited to an Eligible Trustee's Deferral Account.

6. In addition to deferred fees, the Trust will periodically credit to the Deferral Account interest in an amount equal to the interest rate credited to fixed income accounts under the Equitable Investment Plan for Employees, Managers, and Agents[2] (the "Equitable Rate"). The Equitable Rate is a blended rate based on a weighted average of the separate interest rates payable under the Fixed Income Fund's various investments.[3] The Equitable Rate is adjusted periodically as GICs in the Fixed Income Fund mature and are reinvested at current rates and as the returns on the Fixed Income Fund's variable rate investments change. The amounts to be paid under the Plan will not depend upon, or in any way reflect, the investment performance of any Portfolio. In that regard, the Equitable Rate will merely be used as a reference the Trust believes to be fair in crediting interest to the Deferral Account.

7. The Trust has reserved the right to change the rate of interest credited to a Deferral Account ("Account Rate") in accordance with changes that may be made periodically to the Equitable Rate.[4] The Trust need not change the Account Rate each time the Equitable Rate changes but it is the present intention of the Trust to do so only in accordance with the Equitable Rate. Instances when the Account rate would not be in accordance with the Equitable Rate would be (i) in any interim period between a change in the Equitable Rate and the time it takes to effectuate any change in the Account Rate, or (ii) if the Trustees determine that it is not in the best interests of the Trust's shareholders to change the Account Rate to the Equitable Rate.

8. An Eligible Trustee will specify a date for the initial disbursement of payments from the Deferral Account. The disbursement date may not be sooner than five years following the election of deferral, or the Eligible Trustee's anticipated retirement from the board. Payments will be made in a lump sum or in annual or semiannual installments for the number of years elected by the Eligible Trustee, or until the Deferral Account is exhausted. The Deferral Account will continue to be credited with interest during the payout period. Notwithstanding any elections, an Eligible Trustee's Deferral Account will be distributed (i) in the event of a Trustee's death, or (ii) upon the dissolution, liquidation, or transfer of all or substantially all of the Trust's assets. In the event of an Eligible Trustee's death, the amount of the Deferral Account will be paid to the Eligible Trustee's executors or administrators in a single lump sum distribution. In the event of a discontinuance of deferment or an Eligible Trustee's retirement, the Deferred Account will continue to be paid out in installments. The Trustees in their sole discretion may accelerate payments out of a Deferral Account at any time after termination of the Eligible Trustee's service, provided that the Eligible Trustee does not participate in the Trustees' determination.

9. The administrator of the Plan will maintain the Deferral Accounts. The amounts credited to an Eligible Trustee's Deferral Account will be payable solely from the Trust's general assets and will represent an unsecured obligation of the Trust. Eligible Trustees will have the status of general creditors. The Trust will not purchase any of its shares for any Deferral Account, nor will it create any specified fund or segregate any of its assets for purposes of the Plan. The Trust's liabilities for deferred fees are expected to be *de minimis* in relation to the Trust's net assets.

Applicants' Legal Analysis

1. Applicants request an order pursuant to (i) section 6(c) of the Act to exempt the Trust from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) to the extent necessary to permit the Trust to enter into deferred fee arrangements with the Eligible Trustees; and (ii) section 17(d) of the Act and rule 17d–1 thereunder to permit the Trust and the Eligible Trustees to effect certain transactions incident to the deferred fee arrangements.

2. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

3. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing senior securities. In addition, section 13(a)(2) of the Act requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan does not give rise to any of the concerns that prompted the enactment of sections 13(a)(2) and 18(f)(1). Applicants state that the Trust will not be borrowing from its Eligible Trustees, and all liabilities for deferred fees are expected to be *de minimis* in relation to the Trust's net assets. Applicants assert that the Plan will not induce speculative investments by the Trust or provide opportunity for manipulation of expenses and profits. In addition, applicants assert that the control of the Trust will not be affected, and the Plan will not confuse investors.

4. Section 22(f) prohibits restrictions on the transferability or negotiability of redeemable securities issued by an open-end investment company unless the restrictions are disclosed in its registration statement and do not contravene SEC rules and regulations. Applicants state that the Plan will plainly set forth the applicable restrictions against the assignment, commutation, and encumbrance of any amounts credited to a Deferral Account. Applicants assert that these restrictions are designed to benefit the Eligible Trustees and would not adversely affect the interests of the Eligible Trustees or the Trust's shareholders.

5. Section 22(g) generally prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. Applicants assert that the legislative history of section 22(g) was primarily concerned with the dilutive effect on the equity and voting power of common stock of, or units of beneficial interest in, an investment company if the company's securities are issued for consideration not readily valued. Applicants contend that the Plan does not raise these concerns because any rights issued under the Plan to Eligible Trustees will not be issued for services but in consideration for the Trust not being required to pay the fees on a current basis. In addition, applicants state that the Eligible Trustees' compensation arrangements, including the right to defer fees, will be described in the Trust's proxy statements.

6. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17–d provides that the SEC will consider whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants acknowledge that the Plan may be deemed to constitute a joint arrangement within the meaning of rule 17d–1. Applicants state that the Eligible Trustees will not share in any increase or decrease in the value of amounts retained by the Trust or otherwise participate in that investment experience. Except for accrued interest to be paid on Deferral Accounts, Eligible Trustees will receive the same fixed amounts that would have been received if fees were paid on a current basis. Therefore, applicants assert that the Trust's obligation to make payments to Trustees under the Plan will not be based upon a level of the Trust's income, its realized gains or losses on investments, or the unrealized appreciation or depreciation of its assets. Applicants believe that the selection of the Equitable Rate is inherently no different from the selection of a prime rate, the interest rate on U.S. Treasury Bills, or other assumed interest rates for fixed retirement type obligations. Thus, Applicants contend that the selection of the Equitable Rate as a convenient reference point does not represent a participation in the Equitable Investment Plan or in the performance of the Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30297 Filed 11–18–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The Equitable Investment Plan for Employees, Managers, and Agents (the "Equitable Investment Plan") is a tax-qualified profit-sharing plan that contains a cash-or-deferred arrangement. As administrator of the Equitable Investment Plan, Equitable's Officers Committee on Benefit Plans has authority to control and manage the Plan's operation and administration.

[3] The Fixed Income Fund is one of seven investment funds available to participants in the Equitable Investment Plan, and invests primarily in guaranteed investment contracts ("GICs") issued by insurance companies and synthetic GICs managed by investment management firms. The Fixed Income Fund also invests in short-term securities to ensure the availability of adequate funds to cover participant transfers, withdrawals, and distributions.

[4] In addition, the Trust has reserved the right to use a different index for crediting interest.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

HealthTech International, Inc.; Order of Suspension of Trading

November 17, 1997

It appears to the Securities and Exchange Commission that questions have been raised about the adequacy and accuracy of publicly-disseminated information about HealthTech International, Inc. concerning, among other things, its financial condition and acquisitions made by the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, November 17, 1997, through 11:59 p.m. EST, on December 1, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–30490 Filed 11–17–97; 11:37 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39320; File No. SR–MSRB–97–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board to Revise the Study Outline for the Board's Municipal Securities Principal Qualification Examination (Test Series 53)

November 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1997, the Municipal Securities Rulemaking Board ("Board or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–97–7). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this Notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of The Terms of Substance of The Proposed Rule Change

The MSRB is filing herewith a proposed rule change to revise the study outline for the Board's Municipal Securities Principal Qualification Examination, Test Series 53 ("Examination"). The Board requests that the Commission delay the effectiveness of the revised study outline until January 1, 1998, in order to provide time to modify the Examination to reflect the changes in the study outline and for information concerning the revised outline to be circulated to the industry.

II. Self-Regulatory Organization's Statement of The Terms of Substance of The Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Examination is the only examination a candidate may take to qualify as a municipal securities principal. A municipal securities principal manages, directs or supervises the municipal securities activities of a broker, dealer or municipal securities dealer. Specific subjects and questions have been updated from time to time in the Examination to reflect changes in Board rules or applicable federal regulation. The Board's Professional Qualification Advisory Committee ("PQAC")[1] determined that the content

[1] PQAC is composed of the Representative Examination Subcommittee and the Principal

Continued

of the study outline should be revised to reflect additions to and changes in Board rules since the outline was last revised. The revised outline also provides for the inclusion of new Board rules as they are promulgated.

Treatment of the following existing Board rules has changed in the revised study outline:

- Rule G–3 on professional qualifications.
- Rule G–8 on books and records.
- Rule G–23 on activities of financial advisors.
- Rule G–34 on CUSIP numbers and new issue requirements.
- Rule G–37 on political contributions and prohibitions on municipal securities business.
- Rule G–38 on consultants.
- Rule G–39 on telemarketing.

The test specifications for the Examination have not been changed, and it will remain a three-hour 100 question examination administered by National Association of Securities Dealers Regulation, Inc. ("NASDR") using the PROCTOR system.

Examinations administered after January 1, 1998 will include an exhibits book, which is a compilation of materials (*e.g.*, syndicate agreement, trade blotter) that a principal might employ in the conduct of his job responsibilities, and will be used to answer certain questions.

2. Statutory Basis

It is the Board's responsibility under Section 15B(b)(2)(A) of the Act, to propose and adopt rules which

provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

Examination Subcommittee. The subcommittees are composed of individuals with extensive experience in the securities industry. The committee members are employed by securities firms and bank dealers and come from diverse geographic locations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for thirty (30) days from the date of its filing on October 16, 1997, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposed rule change qualifies as a "non-controversial filing" in that the proposed Standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–7 and should be submitted by December 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30340 Filed 11–18–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 27–1A, Certification of Normal Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance and availability.

SUMMARY: Advisory Circular (AC) 27–1A, Certification of Normal Category Rotorcraft, is a total revision of AC 27–1 dated August 29, 1985, with changes 1, 2, 3, and 4 dated September 16, 1987, April 24, 1989, September 12, 1991, and August 18, 1995, respectively, incorporated. In addition, new material plus changes to existing paragraphs have been incorporated to bring the AC up-to-date with various rule changes to 14 CFR Part 27. As part of the FAA effort to achieve national standardization in rotorcraft certification, the AC serves as a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots and has been harmonized with the Joint Aviation Authority (JAA) to establish common guidance for the U.S. and for JAA member nations. The AC material has no legally binding status and must be treated as advisory only.

DATES: AC 27–1A was issued by the Rotorcraft Directorate, Aircraft Certification Service, on July 30, 1997.

How to Order: A copy of AC 27–1A may be purchased from the Superintendent of Documents, Mail Stop: SSOP, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Offices located in major cities throughout the United States. Identify the publication as AC 27–1A, Certification of Normal Category Rotorcraft, Stock Number 050–007–01186–5. The cost is $57.00 per copy for orders mailed within the U.S. and $71.25 for orders mailed outside of the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. Requests may also be made by calling the Government Printing Office at 202–512–1800. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Jones, FAA, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5359, fax (817) 222–5961.

Issued in Fort Worth, Texas, on November 7, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30359 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–2B, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance and availability.

SUMMARY: Advisory Circular (AC) 29–2B, Certification of Transport Category Rotorcraft, is a total revision of AC 29–2A dated September 16, 1987, with changes 1, 2, and 3, dated April 24, 1989, September 24, 1991, and June 1, 1995, respectively, incorporated. In addition, new material plus changes to existing paragraphs have been incorporated to bring the AC up-to-date with various rule changes to 14 CFR Part 29. As part of the FAA effort to achieve national standardization in rotorcraft certification, the AC serves as a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots and has been harmonized with the Joint Aviation Authority (JAA) to establish common guidance for the U.S. and for JAA member nations. The AC material has no legally binding status and must be treated as advisory only.

DATES: AC 29–2B was issued by the Rotorcraft Directorate, Aircraft Certification Service, on July 30, 1997.

How to Order: A copy of AC 29–2B may be purchased from the Superintendent of Documents, Mail Stop: SSOP, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Offices located in major cities throughout the United States. Identify the publication as AC 29–2B, Certification of Transport Category Rotorcraft, Stock Number 050–007–01187–3. The cost if $63.00 per copy for orders mailed within the U.S. and $78.75 for orders mailed outside of the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. Requests may also be made by calling the Government Printing Office at 202–512–1800. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Jones, FAA, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5359, fax (817) 222–5961.

Issued in Fort Worth, Texas, on November 7, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30358 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97–12]

Information Collection Activities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before January 20, 1998.

ADDRESSES: Address written comments to the Dockets Unit (DHM–30), Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590–0001. Comments may also be submitted by e-mail to: rules @ rspa.dot.gov, or faxed to (202) 366–3753. Comments should identify the Notice number (97–12) and the appropriate Office of Management and Budget (OMB) Control Number(s). Mailed written comments should be submitted in two copies. Persons wishing to receive confirmation of receipt of their mailed written comments should include a self-addressed, stamped postcard showing the Notice number. Public information may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for renewal and extension. These collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collections:

Title: Hazardous Materials Shipping Papers and Emergency Response Information (Former Title: Hazardous Materials Shipping Papers).

OMB Control Number: 2137–0034.

Summary: Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN identification number, packing group, and quantity of each hazardous material

being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed. This information collection renewal includes new requirements for: shippers and carriers to retain shipping papers for one year as mandated by Section 5110(e) under the Federal hazardous material transportation law; compliance with the HMR by intrastate shippers and carriers, published under Docket HM–200, "Hazardous Materials in Intrastate Commerce; Final Rule", on January 8, 1997 (62 FR 1108); and the President's initiative to reduce the regulatory burdens imposed by the Federal government.

Affected Public: Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

Annual Reporting and Recordkeeping: Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,500,000.

Frequency of collection: On occasion.

Title: Radioactive Materials (RAM)Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: The requirements for transportation of RAM are provided in 49 CFR parts 171–180. Information collection requirements for RAM include shipper notification to consignees of the dates of shipment of RAM, expected arrival, special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported, external radiation levels do not exceed prescribed limits, packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers and emergency responders. This information collection has been adjusted to reflect program changes regarding responsibility for the routing of highway controlled quantities of radioactive materials.

Affected Public: Shippers and carriers of radioactive materials.

Annual Reporting and Recordkeeping: Number of Respondents: 3,807.

Total Annual Responses: 21,319.2.

Total Annual Burden Hours: 14,480.

Frequency of collection: On occasion.

Issued in Washington, DC on November 14, 1997.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 97–30352 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–35; OTS No. 00770]

First Federal Savings and Loan Association of Cheraw, Cheraw, South Carolina, Approval of Conversion Application

Notice is hereby given that on November 12, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Cheraw, Cheraw, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: November 14, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–30381 Filed 11–18–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Expert Scientific Advisory Committee, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Pub. L. 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Gulf War Expert Scientific Advisory Committee (formerly named Persian Gulf Expert Scientific Committee) has been renewed for a 2-year period beginning November 10, 1997, through November 10, 1999.

Dated: November 12, 1997.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–30401 Filed 11–18–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
November 19, 1997

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on December 15–16, 1997, along with the proposed actions published in the **Federal Register** on October 16, 1997 (62 FR 53908). After consideration of these proposals and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

DATES: Interested parties are invited to submit comments concerning the proposed actions. Comments received by December 8, 1997, will be reproduced and distributed to the RAC for consideration at its December 15–16, 1997, meeting. After consideration of this proposal and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

ADDRESSES: Written comments and recommendations should be submitted to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

All comments received in response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The Office of Recombinant DNA Activities web site is located at http://www.nih.gov/od/orda for further information about the office.

I. Proposed Actions Regarding Amendments to the NIH Guidelines

The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines):

I–A. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines Regarding Deadline for Submission for RAC Review

On November 12, 1997, Dr. Scott McIvor, a member of the Recombinant DNA Advisory Committee (RAC), requested a proposed action regarding the deadline for submission of human gene transfer protocols that will require public discussion at the RAC meetings.

To give the RAC sufficient time to review the protocols and the investigators to respond to primary reviewer's written comments, Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines, is proposed to be amended to include a statement regarding the submission deadline. Submission material will be accepted by NIH/ORDA at any time. However, if a protocol is recommended for full RAC review, the submission material must be received in NIH/ORDA a minimum of eight weeks prior to the next scheduled RAC meeting.

Appendix M–I is proposed to read:

"Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838 (see exemption in Appendix M–VIII–A, Footnotes of Appendix M). Proposals shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol (Institutional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application)); (4) Responses to Appendix M–II through M–V. Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (5) clinical protocol (as approved by the local Institutional Biosafety Committee and Institutional Review Board); (6) Informed Consent Document—approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (7) appendices (including tables, figures, and manuscripts); and (8) curricula vitae—2 pages for each key professional person in biographical sketch format. Investigational New Drug (IND) applications shall be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

"Note: Submission material will be accepted by NIH/ORDA at any time. However, if a protocol is recommended for full RAC review, the submission material must be received in NIH/ORDA a minimum of eight weeks prior to the next scheduled RAC meeting."

I–B. Amendment to Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, of the NIH Guidelines

In a letter dated November 5, 1997, Gerard J. McGarrity, Ph.D., Senior Vice President for Development, Genetic Therapy, Inc., Gaithersburg, Maryland, requested amendments to Appendix K, Physical Containment for Large Scale of Uses of Organisms Containing Recombinant DNA Molecules, of the NIH Guidelines to clarify the containment requirements for large scale production of viral vectors for gene therapy. The letter states that:

"The purpose of this correspondence is to point out a section of Appendix K of the NIH Guidelines (January 1997) that requires clarification for large scale production of viral vectors for gene therapy.

"Appendix K specifies containment guidelines for research or production material that exceed 10 liters in volume. Each of the large scale (LS) biosafety levels (BL): Good Large Scale Production (GLSP), BL1/LS (Appendix K–III–C), BL2/LS (Appendix K–IV–C) and BL3/LS (Appendix K–V–C) specify the requirements that:

'Culture fluids (except as allowed by Appendix K–III–D, K–IV–D, K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure.'

"Related language addresses the primary containment equipment:

'A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure.' (Sections K–III–F, K–IV–F and K–V–F)

"As its title (Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules) indicates, Appendix K was written to deal with prokaryotic and eukaryotic cells that elaborate proteins expressed by recombinant DNA molecules. It was not intended for the production of viral vectors used in gene therapy. If fact, adherence to sections K–III–C, K–IV–C, or K–V–C is incompatible with the production and harvest of viral vectors in volumes larger than 10 liters as active viral vectors must be removed from the equipment. Clearly, this was not the purpose of Appendix K.

"Several possible solutions exist. First, Section III–D–6 of the Guidelines, 'Experiments Involving More Than 10 Liters Of Culture,' states:

'The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used.'

"We interpret this to mean that for production of viral vectors, the IBC has the authority to establish the specifics of large scale containment, using the principles described in Appendix K. For harvesting of supernatant fluids that contain the viral vector product, the IBC can establish practices and facilities which are consistant with the objectives and spirit of the NIH Guidelines.

"In this regard, Genetic Therapy, Inc., has adhered to Section III–D–6 in the establishment of facilities and practices for large scale production of retroviral vectors to the extent that Sections can be applied to viral vectors. These have included the practices for the appropriate large scale biosafety level except for the requirement to inactivate the culture fluids and to sterilize the primary containment equipment prior to opening the primary containment equipment and removing the culture fluids. These practices have been approved by our IBC.

"A second possible solution is to limit volumes to less than 10 liters. However, this will be impractical for commercial purposes. Third, the Guidelines can be modified to address the requirements for large scale production of viral vectors for gene therapy.

"For the longer term, we believe it is most appropriate to revise the relevant portions of Appendix K to enable application of large scale to viral vectors. We request that RAC address this issue and propose the following language be added to the end of Section K–III–C, K–IV–C and K–V–C of Appendix K:

'Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill.'

"We propose the following language be added to the end of the first sentence of Sections K–III–F, K–IV–F and K–V–F:

"* * * except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–III–C (or K–IV–C or K–V–C respectively) above.'

"We believe these additions maintain the original concept of Appendix K while addressing the needs of specific product types."

Appendix K–III–C is proposed to read:

"Appendix K–III. Biosafety Level (BL1)—Large Scale

"Appendix K–III–C. Culture fluids (except as allowed in Appendix K–III–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill."

Appendix K–III–F is proposed to read:

"Appendix K–III–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purpose unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–III–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules."

Appendix K–IV–C is proposed to read:

"Appendix K–IV. Biosafety Level 2 (BL2)—Large Scale

"Appendix K–IV–C. Culture fluids (except as allowed in Appendix K–IV–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill."

Appendix K–IV–F is proposed to read:

"Appendix K–IV–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–IV–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules."

Appendix K–V–C is proposed to read:

"Appendix K–V. Biosafety Level 3 (BL3)—Large Scale

"Appendix K–V–C. Culture fluids (except as allowed in Appendix K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill."

Appendix K–V–F is proposed to read:

"Appendix K–V–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–V–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules."

I–C. Amendment to Section III–D–6, Experiments Involving More Than 10 Liters of Culture, of the NIH Guidelines

In a letter dated November 6, 1997, Richard A. Knazek, Medical Officer, Clinical Research, National Center for Research Resources, NIH, requested an amendment to Section III–D–6, Experiments Involving More Than 10 Liters of Culture, of the NIH Guidelines. Dr. Knazek proposed an addition of a statement, "When more than 10 Liters of culture media is to be produced within a GMP-accredited facility for subsequent clinical use, the level of appropriate containment shall be determined by the Institutional Biosafety Committee (IBC) affiliated with the institution where the investigator will perform the clinical manipulation of the vector." Dr. Knazek stated the rationale of his request as follows:

"The purpose of this amendment is to prevent an additional layer of bureaucracy from impeding the implementation of an appropriately reviewed and approved gene therapy protocol.

"The risks due to exposure to a gene vector will be greatest at the time when the final media product is either incubated with the target cells (ex vivo transduction) and/or

infused into the recipient (in vivo transduction). The IBC at that clinical institution bears the responsibility of being knowledgeable about attendant risks to the investigator, laboratory and medical personnel, patient and the environment.

"While being produced within a qualified GMP facility, the vector is, by definition, both protected from the environment and prevented from escaping into the environment.

"Clearly, the vector and its proposed use must be scrutinized by an IBC. However, the IBC review of the vector and its protocol is most appropriately performed at the clinical site rather than at the GMP facility. Review by more than one IBC would be redundant."

Section III–D–6 is proposed to read:

"Section III–D. Experiments That Require Institutional Biosafety Committee Approval Before Initiation

"Section III–D–6. Experiments Involving More than 10 Liters of Culture. The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used. Appendix K describes containment conditions Good Large Scale Practice through BL3–Large Scale. When more than 10 Liters of culture media is to be produced within a GMP-accredited facility for subsequent clinical use, the level of appropriate containment shall be determined by the IBC affiliated with the institution where the investigator will perform the clinical manipulation of the vector."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 12, 1997.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 97–30321 Filed 11–18–97; 8:45 am]

BILLING CODE 4140–01–M

federal register

Wednesday
November 19, 1997

Part III

Securities and Exchange Commission

17 CFR Parts 275 and 279

Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Proposed Rule

17 CFR Part 275

Exemption to Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1681, File No. S7–28–97]

RIN 3235–AH22

Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment under the Investment Advisers Act of 1940 rule amendments to exempt multi-state investment advisers from the prohibition on Commission registration and two alternative amendments to revise the definition of the term "investment adviser representative." The Commission is proposing these amendments to refine the rules implementing the Investment Advisers Supervision Coordination Act.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–28–97; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Carolyn-Gail Gilheany, Attorney, or Jennifer S. Choi, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 203A–2 [17 CFR 275.203A–2], rule 203A–3 [17 CFR 275.203A–3], rule 206(4)–3 [17 CFR 275.206(4)–3] and Schedule I to Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] ("Advisers Act"). The Commission also is proposing to withdraw rule 203A–5 [17 CFR 275.203A–5] and Form ADV–T [17 CFR 279.3] under the Advisers Act.

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Executive Summary

Section 203A of the Advisers Act generally prohibits an investment adviser from registering with the Commission unless it has more than $25 million of assets under management or is an adviser to a registered investment company. Section 203A also preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons except for certain "investment adviser representatives." The Commission is proposing an exemption from the prohibition on Commission registration for advisers required to register as an investment adviser in 30 or more states. The Commission also is proposing two alternative amendments to the definition of investment adviser representative. Under the current definition, supervised persons of Commission-registered investment advisers will not be subject to state qualification requirements if no more than ten percent of their clients are natural persons ("ten percent allowance"). The Commission is proposing either (1) to add a provision that would permit supervised persons to have the greater of five natural person clients or the number of natural person clients permitted under the ten percent allowance, or (2) to eliminate the ten percent allowance and permit supervised persons to have an unlimited number of accommodation clients who have certain business or familial relationships with the supervised person or the supervised person's business or institutional clients.

I. Background

Last year, Congress enacted the National Securities Markets Improvement Act of 1996 ("1996 Act").[1] Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act ("Coordination Act"), amended the Advisers Act by reallocating federal and state responsibilities for regulation of investment advisers. By limiting federal registration and preempting certain state laws, the Coordination Act divided regulatory responsibilities for the approximately 23,350 investment advisers that were registered with the Commission.[2] The Coordination Act became effective on July 8, 1997.

Under new section 203A(a) of the Advisers Act,[3] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the investment adviser (i) has at least $25 million of assets under management, or (ii) is an investment adviser to an investment company registered under the Investment Company Act of 1940 ("Investment Company Act").[4] Section 203A(b) of the Advisers Act generally preempts state law with respect to Commission-registered investment advisers.[5]

On May 15, 1997, the Commission adopted new rules and rule amendments to implement the Coordination Act.[6] These implementing rules included rules that exempt four types of investment advisers from the statutory prohibition on Commission registration and define certain terms used in the Coordination Act.[7] In adopting these rules, the Commission anticipated that experience with the new regulatory scheme might reveal the need for additional rules or further refinement of existing rules. Based on its experience, the Commission is proposing to exempt multi-state investment advisers from the prohibition on Commission registration, to amend the definition of investment adviser representative, and to clarify certain other implementing rules.

[1] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] Other amendments made by the 1996 Act to the Advisers Act include revisions to (i) section 205 [15 U.S.C. 80b–5] to create additional exceptions to the Advisers Act's limitations on performance fee arrangements, (ii) section 222 [15 U.S.C. 80b–18a] to impose certain uniformity requirements on state investment adviser laws, (iii) section 203(e) [15 U.S.C. 80b–3(e)] to permit the Commission to deny or revoke the registration of any person convicted of any felony (or any person associated with such investment adviser), and (iv) section 203(b) [15 U.S.C. 80b–3(b)] to exempt from registration certain advisers to church employee pension plans. *See* sections 210, 304, 305(a), and 508(d) of the 1996 Act.

[3] 15 U.S.C. 80b–3a(a).

[4] The Commission has authority to deny registration to any applicant that does not meet the criteria for Commission registration and to cancel the registration of any adviser that no longer meets the registration criteria. Section 203(c) and (h) of the Advisers Act [15 U.S.C. 80b–3(c) and (h)].

[5] 15 U.S.C. 80b–3a(b). In addition, state law is preempted with respect to advisers that are excepted from the definition of investment adviser under section 202(a)(11) of the Advisers Act [15 U.S.C. 80b–2(a)(11)].

[6] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] ("Adopting Release").

[7] *Id.* The Commission also amended several rules under the Advisers Act to reflect the changes made by the 1996 Act.

[8] Section 203A(a) and (b). Notwithstanding section 203A(b), states retain authority over Commission-registered advisers under state investment adviser statutes to: (1) investigate and bring enforcement actions with respect to fraud or deceit against an investment adviser or a person associated with an investment adviser; (2) require filings, for notice purposes only, of documents filed with the Commission; and (3) require payment of state filing, registration, and licensing fees. Moreover, section 203A(b) specifically preserves state law with respect to investment adviser representatives of Commission-registered advisers who have a place of business in the state. *See infra* section II.B of this Release.

[9] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 3–5 (1996) [hereinafter Senate Report].

[10] *Id.* at 5.

II. Discussion

A. Multi-State Investment Adviser Exemption from Prohibition on Registration with the Commission

As discussed above, section 203A of the Advisers Act limits registration with the Commission, in most cases, to investment advisers with at least $25 million of assets under management and preempts state law with respect to these investment advisers.[8] The $25 million threshold was designed to allocate regulatory responsibility to the Commission for larger investment advisers whose activities are likely to affect national markets and to relieve them of the burdens imposed by multiple state regulation.[9] Congress recognized, however, that there may be investment advisers with less than $25 million of assets under management that have national businesses and for which multiple state registration would be burdensome.[10] Therefore, the Commission was given authority in section 203A(c) of the Advisers Act to exempt investment advisers, by rule or order, from the prohibition on Commission registration if the prohibition would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes" of section 203A.[11]

Pursuant to its authority, the Commission adopted rule 203A–2, which permits Commission registration for nationally recognized statistical rating organizations and certain pension consultants, affiliated investment advisers, and newly formed investment advisers with reasonable expectations that they would soon become eligible for Commission registration.[12] The Commission also, by order, has granted exemptive relief to investment advisers that do not have $25 million of assets under management but have a national or multi-state practice and conduct advisory activities that require them to register as investment advisers in 30 or more states.[13] The Commission is proposing to amend rule 203A–2 to codify the exemptions provided by individual orders to investment advisers required to be registered in multiple states.

Under the proposed exemption, an investment adviser required to be registered as an investment adviser with 30 or more state securities authorities would be permitted to register with the Commission.[14] The Commission believes that an investment adviser whose activities trigger registration requirements in 30 states is a national firm and that the multiple state registration requirements for such a firm would constitute a burden on interstate commerce. For that reason, the Commission believes that such an investment adviser would be the type of firm for which Congress expected the Commission to exercise its section 203A(c) exemptive authority and, as a result, would have a single, national regulator.[15]

Under the proposed rule amendments, an adviser applying for registration relying on the exemption would be required to submit a representation that the investment adviser has reviewed its obligations under state law and concluded that it is required to register as an investment adviser with the securities authorities of at least 30 states.[16] Once registered with the Commission, the investment adviser would continue to be eligible for the exemption as long as it is annually able to provide a representation that the investment adviser has determined that, but for the exemption, it would be obligated to register in at least 25 states, five fewer states than when it initially registered.[17] The Commission is proposing this five-state difference to prevent an investment adviser registered with the Commission from losing the exemption simply because, for example, it lost a few clients in a small number of states.[18]

Like other exemptions in rule 203A–2, the proposed multi-state exemption

[11] Section 203A(c) [15 U.S.C. 80b–3a(c)].

[12] 17 CFR 275.203A–2.

[13] *See* Arthur Andersen Financial Advisers, Investment Advisers Act Release Nos. 1637 (June 16, 1997), 62 FR 33669 (Notice of Application), 1642 (July 8, 1997), 64 SEC Docket 2417 (Order); Ernst & Young Investment Advisers LLP, Investment Advisers Act Release Nos. 1638 (June 16, 1997), 62 FR 33662 (Notice of Application), and 1641 (July 8, 1997), 64 SEC Docket 2416 (Order); and KPMG Investment Advisors, Investment Advisers Act Release Nos. 1639,(June 17, 1997), 62 FR 33945 (Notice of Application), and 1643 (July 8, 1997), 64 SEC Docket 2418 (Order).

[14] In tallying the number of states in which an adviser is required to register, the investment adviser would be required to exclude those states in which it is not required to register because of applicable state laws or the national de minimis standard of section 222(d) of the Advisers Act. [15 U.S.C. 80b–18a] The Commission believes such an exclusion is appropriate because it is the obligation to register in a state, rather than the business decision to register voluntarily, that demonstrates that the adviser is subject to the type of burden contemplated by the exemption.

[15] *See* Senate Report at 5 (Congress recognized that the "definition of 'assets under management' * * * may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC").

[16] Proposed paragraph (e)(2) of rule 203A–2. At the time of its application for registration with the Commission, the investment adviser would be required to include on Schedule E to Form ADV an undertaking to withdraw from registration with the Commission if it would no longer be required to register in at least 25 states at the time of filing Schedule I. The exemption would require an investment adviser that indicates that it is no longer required to register in at least 25 states to withdraw from Commission registration by filing Form ADV-W within 90 days of filing Schedule I. Proposed paragraph (e)(3) of rule 203A–2.

[17] This representation must be attached to the investment adviser's annual amendment to Form ADV revising Schedule I. Proposed paragraph (e)(2) of rule 203A–2. Under the proposed multi-state exemption, the investment adviser also would be required to maintain a record of the states that the adviser believes it would, but for the exemption, be required to register. Proposed paragraph (e)(4) of rule 203A–2.

[18] This "five-state difference" is similar to the "$5 million window," which makes Commission registration optional for an adviser having between $25 and $30 million of assets under management. *See* rule 203A–1(a), (b) [17 CFR 275.203A–1(a), (b)]. The Commission adopted the $5 million window to avoid transient registration problems that could occur because of a small decrease in the value of client assets (as a result of a market decline) or the departure of one or a few clients. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 20, 1996) [61 FR 66480 (Dec. 27, 1996)] ("Proposing Release"). Under the proposed five-state difference, an investment adviser registered with the Commission in reliance upon the multi-state exemption would not be required to de-register and then re-register with the Commission frequently as a result of a change in registration obligation in one or a few states.

could be used by a newly formed investment adviser in conjunction with the "start-up adviser" exemption in paragraph (d) of the rule.[19] A newly formed investment adviser not registered in any state could register with the Commission if it reasonably expected that it would be required to register in 30 or more states within 120 days. After the 120-day period, the investment adviser would be required to file an amendment to Form ADV revising Schedule I and attach a representation that, but for the proposed multi-state exemption, the investment adviser would be required to register in at least 25 states.[20]

Comment is requested whether the 30 state threshold should be increased or decreased and whether the five-state difference is sufficient to prevent transient registration problems. Because determining the obligations to register under state law requires a legal analysis, should the Commission require investment advisers to represent that counsel has reviewed the applicable state and federal laws and has concluded that the investment adviser qualifies for the proposed multi-state exemption? Should the Commission prohibit a newly formed investment adviser from using this exemption in conjunction with the reasonable expectation exemption?

B. Definition of Investment Adviser Representative

The Coordination Act preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons,[21] but permits states to continue to license, register, or otherwise qualify an "investment adviser representative" who has a place of business in the state.[22] In rule 203A–3(a), the Commission defined investment adviser representative as a supervised person more than ten percent of whose clients are natural persons other than excepted persons.[23]

1. Accommodation Clients

The "ten percent allowance" in the definition of investment adviser representative was designed to permit supervised persons who provide advisory services principally to clients other than natural persons to continue to accept so-called "accommodation clients" without being subject to state qualification requirements.[24] In adopting the ten percent allowance, the Commission acknowledged that the allowance may pose a problem for supervised persons with one or a few institutional clients who would not be able to have any accommodation clients.[25] To have one accommodation client, a supervised person would need to have at least ten clients that are not natural persons. Therefore, the Commission directed the staff to work with investment advisers whose supervised persons would be affected by the definition to develop a workable method of addressing this concern and indicated that it may propose revisions to the definition.[26] The Commission staff has consulted with members of the industry for their views and has recommended proposals to the Commission to resolve this issue.

The Commission is now proposing two alternative amendments to the definition of investment adviser representative to allow supervised persons who provide services to one or a few institutional or business client accounts to continue to have accommodation clients without being subject to state qualification requirements. Under the first alternative, the Commission proposes to retain the ten percent allowance and add a provision that would permit supervised persons to have up to five natural person clients. Supervised persons could have under the first alternative the greater of five natural person clients or the number of natural person clients permitted under the ten percent allowance without being subject to state qualification requirements.

The first alternative would allow supervised persons with one or a few institutional or business clients to accept at least five natural person clients and would address the problem with the current rule. Moreover, this alternative would provide a simple, bright-line test for supervised persons to determine when they are subject to state qualification requirements. The disadvantage of this alternative, however, is that the five clients may not necessarily be limited to those clients who the supervised person advises on an accommodation basis; the proposed five natural person minimum could include natural persons who have no relationship to an investment adviser's institutional or business clients. Furthermore, the five natural person minimum would permit supervised persons who have only retail clients (*i.e.*, natural person clients) to avoid state qualification requirements until they obtained their sixth client. The provision, however, likely would have a small effect on the number of supervised persons who would not be subject to state qualification requirements because many states do not require supervised persons to register in the state until they have more than five clients in their respective state.[27]

Under the second alternative, supervised persons who have natural person clients would be excluded from the definition of investment adviser representative if the natural person clients either are "high net worth" clients or have a familial or business relationship with the supervised person or his business or institutional clients.[28] Under this alternative, the Commission would eliminate the current ten percent allowance, and a supervised person could have an unrestricted number of clients who are natural persons without being subject to state qualification requirements. These clients would be limited, however, to either (i) high net worth clients (as currently permitted by the rule), or (ii) persons who are (A) partners, officers, or directors of the investment adviser for whom the supervised person works or of a business or institutional client of the investment adviser for whom the supervised person works, (B) relatives, spouses, or relatives of spouses of such partners, officers or directors, or (C) relatives or spouses, or relatives of spouses of the supervised person.

The advantage of this approach is that it extends the provision of the rule for accommodation clients to supervised persons with one or a few clients while more closely tying the accommodation client exception to the purpose for which it was adopted. Instead of presuming that the natural person clients of a supervised person having primarily business clients are accommodation clients, the rule would (with the exception of high net worth clients) require there be the type of relationship between the supervised person and the client that customarily results in the client being considered an accommodation client. This approach, however, could greatly increase or decrease the number of natural person clients supervised persons are permitted to have by the rule before they are subject to state qualification requirements. Moreover, it would make the rule somewhat more complex and, perhaps, the status of a supervised person as an investment adviser representative less transparent to a state securities commissioner seeking to enforce state law. Comment is requested on the scope of the accommodation client exception under this alternative. Are there additional relationships between the investment adviser, supervised person, and client that suggest the client is an accommodation client?

Comment is requested on the advantages and disadvantages of the two approaches. Comment is requested on whether additional approaches could be used to permit a supervised person with one or a few institutional or business clients to accept a small number of natural person clients on an accommodation basis without being subject to state qualification requirements. Commenters suggesting an additional approach should address whether the approach limits the scope of the exception to its original purpose (*i.e.*, to permit accommodation clients), any additional complexity it adds to the rule, and the ease with which supervised persons can determine whether they are subject to state qualification requirements.

2. "High Net Worth" Clients

Under the current rule, certain "high net worth" individuals are excepted persons for purposes of the definition of investment adviser representative and are not counted towards the ten percent allowance. The criteria for determining high net worth individuals are based on the criteria in rule 205–3 under the Advisers Act for determining those clients with whom investment advisers may enter into a performance fee contract under that exemptive rule.[29] The Commission excluded these high net worth individuals from the definition of investment adviser representative because the Commission presumed that these individuals, who are less dependent on the protections of the performance fee prohibition, do not need the protections of state qualification requirements.[30]

In a companion release, the Commission is proposing to revise the high net worth criteria in rule 205–3 to reflect, among other things, the effects of inflation since the standards were adopted in 1985.[31] The criteria for determining which individuals qualify as high net worth individuals in the definition of investment adviser representative would be revised to reflect the changes being proposed in the companion release. Therefore, the threshold levels for high net worth individuals would increase from $500,000 under management and $1,000,000 net worth to $750,000 and $1,500,000, respectively.

C. Other Amendments

1. Pension Consultants—Determining the Value of Assets of Plans

The Commission adopted rule 203A–2(b) to exempt certain pension consultants from the prohibition on Commission registration. Under the rule, pension consultants that provide investment advice to employee benefit plans with respect to assets having an aggregate value of at least $50 million are required to register with the Commission even if they do not otherwise meet the criteria for Commission registration.[32] Rule 203A–2(b)(3) requires investment advisers relying on the exemption to value plan assets as of the date during the investment adviser's most recent fiscal year that the investment adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets.[33] Because of the fiscal year requirement, an investment adviser could not rely on the pension consultant exemption when, in fact, it provides investment advice to over $50 million of assets of employee benefit plans if the amount of assets grew to more than $50 million after the end of the investment adviser's fiscal year, but before it filed Schedule I.[34] The Commission, therefore, is proposing to amend the rule to permit investment advisers to determine the aggregate value of plan assets during a 12-month period ending within 90 days before the investment adviser files Schedule I.[35]

2. Rule 206(4)–3—Cash Payments for Client Solicitations

The Coordination Act amended section 203(e) of the Advisers Act by adding new section 203(e)(3), which provided the Commission with the authority to deny or revoke the registration of any investment adviser if the investment adviser (or any person

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[19] 17 CFR 275.203A–2(d).

[20] These requirements would be the result of the conditions for the exemptions provided by rule 203A–2(d) and proposed paragraph (e) of rule 203A–2.

[21] The term supervised person is defined in the Advisers Act as any "partner, officer, director . . . or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser." Section 202(a)(25) of the Advisers Act [15 U.S.C. 80b–2(a)(25)].

[22] Section 203A(b).

[23] 17 CFR 275.203A–3(a). The rule defines "excepted persons" as natural persons who have $500,000 or more under management with the representative's investment advisory firm immediately after entering into the advisory contract with the firm, or who the advisory firm reasonably believes immediately prior to entering into the advisory contract have a net worth in excess of $1 million (collectively "high net worth individuals"). Rule 203A–3(a)(3)(i) [17 CFR 275.203A–3(a)(3)(i)]. (The Commission is proposing changes to the criteria for determining high net worth individuals. *See infra* section II.B.2 of this Release.) The Commission also excluded from the term "investment adviser representative" those supervised persons who do not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser or who provide only impersonal investment advice. Rule 203A–3(a)(2) [17 CFR 275.203A–3(a)(2)].

[24] Adopting Release, *supra* note 6, at nn.113–117 and accompanying text.

[25] As originally proposed, the ten percent allowance would have been measured either by reference to the assets under management attributable to the supervised person or by reference to clients of the supervised person. The Commission adopted only the client test because there did not appear to be any workable method of attributing client assets to supervised persons. *See* Adopting Release, *supra* note 6, at n.115 and accompanying text.

[26] *Id.*

[27] *See, e.g.*, Unif. Sec. Act section 201(c) (1997); Burns Ind. Code Ann. section 23–2–1–9(c)(3) (1997); Md. Code Ann. section 11–401(b)(3)(ii) (1997); Utah Code Ann. section 61–1–3(3)(c) (1997). The first alternative is narrower than these state exemptions because it would permit supervised persons to have a total of five natural person clients nationwide, rather than five natural person clients per state as permitted by these states.

[28] The Investment Company Institute ("ICI") suggested that the Commission retain the ten percent allowance *and* exclude from the term natural persons certain clients who are "affiliated with non-natural person clients." *See* Letter from Craig S. Tyle, Vice-President and Senior Counsel, ICI, dated August 12, 1997 (available in File No. S7–28–97). Under the current rule, the ten percent allowance is designed as a proxy for accommodation clients and assumes that a supervised person who has a small number of natural person clients does so on the basis of an accommodation to her institutional clients. The ICI proposal would permit the supervised person to have a defined group of accommodation clients in addition to a group of natural persons (up to ten percent of the supervised person's clients) who are unrelated to her institutional clients without being subject to the state qualification requirements. The Commission is proposing a narrower version of the ICI's recommendation to limit the rule's exception to clients who are or may reasonably be presumed to be accommodation clients.

[29] 17 CFR 275.205–3.

[30] *See* Adopting Release, *supra* note 6, at nn. 110–112 and accompanying text.

[31] *See* Investment Advisers Release No. 1682 (November 13, 1997). In the companion release, the Commission also is proposing to add a third alternative test of sophistication.

[32] *See* rule 203A–2(b) [17 CFR 275.203A–2(b)]; Adopting Release, *supra* note 6, at nn. 58–61 and accompanying text.

[33] 17 CFR 275.203A–2(b)(3).

[34] Conversely, if the value of the assets of plans was above $50 million as of the adviser's last fiscal year, but decreased to below $50 million before Schedule I is filed, under the current rule, the adviser would be eligible to rely on the pension consultant exemption.

[35] An adviser seeking to rely on the pension consultant exemption would be required to aggregate: (i) the value of plan assets for which it provided advisory services at the end of the 12-month period, and (ii) the value of any other plan assets for which it provided advisory services at the end of its employment or contract (if terminated before the end of the 12-month period).

During the interim period before the proposed rule is adopted, the Commission would not object if pension consultants chose to value plan assets under the method being proposed rather than under the method provided by the current rule.

associated with the investment adviser) is convicted of any felony, and redesignating section 203(e)(3) as section 203(e)(4).[36] The Commission proposes to conform a cross-reference in rule 206(4)–3(a)(1)(ii)(D) to the redesignated section.[37]

3. Schedule I to Form ADV

Instructions to Schedule I provide guidance on how an investment adviser should determine the amount of its assets under management for purposes of section 203A of the Advisers Act. The Commission is proposing to amend Instruction 7 to Schedule I to clarify that, in determining the total amount of assets under management, investment advisers may include only those securities portfolios for which they provide continuous and regular supervisory or management services as of the date of filing Schedule I. In valuing these securities portfolios, however, investment advisers may use market values as determined within 90 days prior to the filing of Schedule I. The Commission also is proposing several other miscellaneous conforming amendments to Schedule I.[38]

4. Transition Rule 203A–5 and Form ADV–T

The Commission is proposing to withdraw transition rule 203A–5 and Form ADV–T. The rule and form are unnecessary because the transition under the Coordination Act is now complete.

D. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule amendments and form changes that are the subject of this Release, to suggest additional changes (including changes to the provisions of the rules that the Commission is not proposing to amend), or to submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit their proposed rule text.

[36] *See* section 305 of the 1996 Act.

[37] Rule 206(4)–3 prohibits cash payments for client solicitation under certain circumstances.

[38] Instruction 5 would be revised to eliminate an unnecessary reference to July 8, 1997, amend the instruction with respect to the pension consultant exemption consistent with the revision proposed in this Release, and add an instruction with respect to the proposed multi-state adviser exemption. In addition, the Commission is proposing to delete Instruction 8 and the unnecessary reference to the date of the valuation of the assets under management in Schedule I, Part II.

III. Cost-Benefit Analysis

As discussed above, the proposed multi-state investment adviser exemption would permit investment advisers required to register with 30 or more states to register with the Commission even though they do not otherwise meet the criteria for Commission registration.[39] The Commission has limited data on the number of investment advisers that would qualify for the proposed multi-state investment adviser exemption.[40] Because investment advisers must be required to register in a large number of states to qualify for the proposed multi-state investment adviser exemption, the Commission expects that only a few investment advisers would be eligible. For Paperwork Reduction Act purposes, the Commission estimates that there may be ten investment advisers that would qualify each year.[41] Comment is requested on whether there may be more than ten investment advisers eligible for this proposed multi-state investment adviser exemption annually. Investment advisers that believe they would qualify for this exemption are requested to notify the Commission.

The proposed multi-state investment adviser exemption would benefit investment advisers by permitting them to save costs they otherwise would incur if they were required to comply with 30 separate sets of state regulations, especially where state regulations may be duplicative or conflicting. These benefits would include cost savings for complying with state registration requirements, which the Commission estimates may be as much as $300,000 annually.[42] Although these annual costs may vary from adviser to adviser, the Commission assumes, for purposes of this analysis, that it would cost each adviser $30,000 to comply with state-law registration requirements.[43] Based on that figure, the Commission estimates that the annual benefit from the proposed multi-state investment adviser exemption, in the form of the foregone costs of state registration, would be approximately $300,000 for all ten investment advisers expected to be eligible for the proposed multi-state investment adviser exemption. Comment is requested on the reasonableness of this cost estimate. Commenters are requested to provide factual support or assumptions underlying any alternative cost estimate.

The benefits also would include savings for investment advisers from the cost of being examined by 30 different state regulators. State regulators would save the expense of examining these investment advisers.[44] The Commission does not have information to estimate the costs of state examinations for investment advisers because the Commission has no data on the frequency with which these investment advisers would be examined by a particular state or the number of states that would examine these investment advisers each year. The Commission requests comment on the state examination costs saved by investment advisers that are regulated only by the Commission. Finally, the proposed multi-state investment adviser exemption would produce certain unquantifiable regulatory benefits in allowing qualifying investment advisers to be regulated by one entity rather than 30 separate state regulators.

The proposed multi-state investment adviser exemption would impose certain costs on investment advisers relying on the proposed exemption. Under the proposed multi-state investment adviser exemption, an investment adviser would be required to attach a representation to Schedule I

[39] *See supra* section II.A of this Release.

[40] Every investment adviser applying for registration with the Commission is required to file Form ADV with the Commission and to file an amended Form ADV when information on the form has changed. Form ADV requires information about the states in which an investment adviser is registered, but does not distinguish between states where the registration is mandatory and where registration is voluntary. Moreover, the Commission no longer receives Form ADV information for state-registered advisers.

[41] According to information obtained from the one-time form, Form ADV–T, there are approximately 21 advisers that are registered with 30 or more states and no longer registered with the Commission. Although approximately 11 investment advisers are registered in more than 30 states, the Commission estimates that only about half of these advisers are required to register in 30 or more states. Therefore, the Commission estimates that there may be ten investment advisers that would qualify for the proposed multi-state exemption each year.

[42] The Coordination Act expressly preserved the authority of the states to require Commission-registered investment advisers to pay state filing, registration, and licensing fees. Section 307(b) of the Coordination Act.

[43] In the Cost-Benefit Analysis of Rules Implementing Amendments to the Investment Advisers Act of 1940, the Commission estimated that the cost for a mid-size adviser to comply with state-law registration requirements could be as much as $20,000. *See* Cost-Benefit Memorandum (available in File No. S7–31–96) ("Implementing Amendments Cost-Benefit Analysis"). The Commission believes that, because advisers eligible for the proposed multi-state exemption would typically be required to register in more states than the average adviser registered with the Commission (*i.e.*, at least 30 states), the cost would be at least $30,000 per adviser. These dollar estimates were based on discussions with law firms that provide these kinds of services to investment advisers.

[44] The Commission requests comment from the states on the costs of investment adviser examinations and the frequency of such examinations.

initially, when registering, and annually, when amending Form ADV, about the number of states in which the investment adviser would be required to register. The investment adviser also would be required to maintain a record of the states in which it believes it would, but for the exemption, be required to register that was the basis of its representation included on the attachment to Schedule I.

The Commission estimates that the total cost to each eligible investment adviser to comply with the requirements of the proposed multi-state investment adviser exemption would be approximately $24,000.[45] Thus, the Commission estimates that the total cost for the ten investment advisers expected to be eligible for the proposed multi-state investment adviser exemption would be approximately $240,000. There also may be incidental costs to the Commission of registering investment advisers that qualify for this proposed multi-state investment adviser exemption and costs associated with examining those investment advisers.

Overall, the Commission believes that the proposed rule amendments would not impose significant additional costs on investment advisers, but rather would result in a net savings when compared with the costs of complying with state registration requirements. Comment is requested concerning the savings for complying with state registration requirements and any benefit to multi-state advisers in having one regulator. Comment is also requested concerning the costs associated with the requirements of the proposed multi-state investment adviser exemption.

As discussed in more detail above, the Commission is proposing two alternative amendments to the definition of investment adviser representative.[46] Although the Commission has never registered investment adviser representatives, the Commission estimates that Commission-registered advisers employ a total of approximately 153,000 investment adviser representatives.[47] The Commission, however, does not have data on the number of representatives who may be affected by the proposed amendments. The Commission, therefore, is unable to quantify the total benefits and costs that may result from these proposed amendments. The Commission believes, nonetheless, that the proposed amendments could provide benefits to Commission-registered investment advisers and their supervised persons because the proposed amendments would reduce their regulatory burdens by permitting supervised persons who provide services to a few institutional clients to have a small number of natural persons as accommodation clients without being subject to state qualification requirements. The Commission requests comment on the percentage of all investment adviser representatives who would be exempt from state qualification requirements under each of the alternatives being proposed.

The first proposed alternative amendment to the definition of investment adviser representative would retain the present ten percent allowance and also permit a supervised person to have up to five natural person clients. The first alternative definition would benefit supervised persons who provide advice to five natural person clients because they would no longer be subject to state qualification requirements even if they are not able to take advantage of the ten percent allowance. Under the current rule, a supervised person would need to have ten institutional clients to have one accommodation client. The first proposed alternative amendment would provide a bright line test that would allow supervised persons and their firms to determine easily when supervised persons must register with the states.

The first alternative would increase the number of supervised persons of Commission-registered advisers who would no longer be subject to state qualification requirements. This proposal would benefit affected supervised persons by permitting them to save the expense associated with investment adviser representative qualification examinations, such as the costs of monitoring state registration requirements and preparing and registering for state exams.[48] The Commission is unable to quantify the total savings because the Commission does not have data on the number of representatives who would be affected by this proposed amendment. Because the Coordination Act preserved the authority of states to require the payment of state filing, registration, and licensing fees, there would be no loss to the states of fees collected.

Costs associated with the first proposed amendment include the foregone fees collected by the National Association of Securities Dealers Regulation ("NASDR") and the North American Securities Administrators Association, Inc. ("NASAA") for state examinations for investment adviser representatives.[49] The Commission is unable to quantify the total costs because the Commission does not have data on the number of representatives who would be affected by this proposed amendment. Comment is requested on the effect this provision will have on the costs incurred or avoided by investment advisers and their supervised persons and on the exam fees collected by the NASDR and NASAA.

As detailed above, the second alternative proposed amendment to the definition of investment adviser representative would replace the ten percent allowance and allow supervised persons to have accommodation clients who have a familial or business relationship with the supervised persons or their institutional clients without limitation on the number of accommodation clients. This alternative proposal might have the effect of either increasing or decreasing the number of supervised persons subject to state qualification requirements, and comment is requested on which outcome is more likely.

To the extent that the second alternative increases the number of supervised persons who are no longer subject to state qualification requirements, affected supervised persons would save state examination and examination preparation fees.[50] The costs associated with such an increase would be the foregone fees collected by the NASDR and NASAA for the state examinations.[51]

If the second alternative decreases the number of supervised persons who are not subject to state qualification requirements, the alternative would

[45] The Commission estimated this figure by multiplying the aggregate burden hours required to attach a representation to Schedule I to Form ADV (240 hours) by an average hourly compensation rate of $100. The estimation of the aggregate burden hours for complying with the requirements of the proposed multi-state exemption is based on the Commission's Paperwork Reduction Act Submission. *See infra* section IV of this Release.

[46] *See supra* section II.B of this Release.

[47] This estimate of the number of investment adviser representatives employed by Commission-registered advisers was made for purposes of the Implementing Amendments Cost-Benefit Analysis. *See* Cost-Benefit Memorandum, *supra* note .

[48] In the Implementing Amendments Cost-Benefit Analysis, the Commission estimated the following costs: $96 to take an exam, $850 for exam preparation, and $150 annually per investment adviser representative to monitor state registration requirements. *See* Cost-Benefit Memorandum, *supra* note .

[49] In the Implementing Amendments Cost-Benefit Analysis, the Commission estimated that foregone revenue from the exam fees would $32 per exam. *Id.*

[50] *See supra* note and accompanying text.

[51] *See supra* note and accompanying text. The Commission does not believe that there are any substantial costs to investor protection that would be associated with this proposed amendment.

produce unquantifiable benefits by tying the accommodation client exception more closely to the purpose for which it was adopted. The second alternative would permit supervised persons to accept clients who have a relationship with the supervised person or his institutional clients that would result in the individual client being considered an accommodation client. The costs of the second alternative, if it decreases the number of supervised persons not subject to state qualification requirements, would be the expense associated with state investment adviser representative examinations.[52] Comment is requested on the effect of the second alternative amendment on the costs incurred or avoided by investment advisers and their supervised persons.

The other proposed rule amendments would revise the time period for determining the value of assets of plans for pension consultants, clarify the instructions in Schedule I to Form ADV, and provide an additional instruction in Schedule I to Form ADV. The benefits of these proposed amendments would be to eliminate any confusion that the language of the rules or instructions may have created. The Commission believes that these amendments would not impose any additional costs to investment advisers.

Comment is requested on this cost-benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rule amendments.

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is requesting information regarding the potential effect of the proposed rule amendments on the economy on an annual basis. Commenters should provide data to support their views.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[53] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are "Form ADV" and "Schedule I to Form ADV," both under the Advisers Act. Form ADV and Schedule I to Form ADV, which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0049 and 3235–0490, respectively. The proposed rule amendments are necessary to clarify previously-adopted rules that implemented changes to the Advisers Act. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Form ADV

Form ADV is required by rule 203–1 [17 CFR 275.203–1] to be filed by every adviser that applies for registration with the Commission as an investment adviser. Rule 204–1 [17 CFR 275.204–1] sets forth the circumstances requiring the filing of an amendment to Form ADV. Registrants must file an amended Form ADV when information on the initial Form ADV has changed, either at the end of the fiscal year or promptly for certain material changes. In addition, rule 204–1 also requires an investment adviser to file the cover page of Form ADV (along with a Schedule I) annually within 90 days after the end of the investment adviser's fiscal year regardless of whether other changes have taken place during the year.

After 1997, the Commission estimates approximately 7,300 investment advisers would be registered with the Commission and required to amend Form ADV on an annual basis as required by rule 204–1.[54] The Commission previously estimated that there would be 750 new investment advisers registering with the Commission each year. The Commission estimates that an additional ten investment advisers each year would be eligible for Commission registration under the proposed multi-state exemption. Thus, the annual number of responses for filing an application for investment adviser registration is estimated to be approximately 760. The 760 new advisers each year also will be subject to the annual amendment requirement. The Commission estimates that there would be 8,060 total respondents to this collection of information on an annual basis.

The Commission estimates that each of the 7,300 investment advisers registered with the Commission will amend Form ADV, as required by rule 204–1, an average of 1.5 times annually. Of the 760 new advisers each year, 660 will amend Form ADV an average of once annually. The estimated 100 newly-formed investment advisers that will rely on rule 203A–2(d) will amend Form ADV an average of twice annually. Thus, the annual number of responses for completing amended Form ADV is estimated to be approximately 11,810.

The total number of annual responses for Form ADV (initial registration and amendments) is estimated to be 760 responses for new advisers (including ten responses for new advisers relying on the proposed multi-state exemption) and 11,810 responses for annual amendments. The average burden hours for completing Form ADV for initial registration is 9.0063 hours for each respondent (unchanged from previous estimate). The average burden hours for completing Form ADV as an annual amendment is 1.0672 hours (unchanged from previous estimate). The total burden hours imposed by Form ADV is estimated to be 19,448.42.

The collection of information required by Form ADV is mandatory, and responses are not kept confidential.

Schedule I

Schedule I requires an investment adviser to declare whether it is eligible for Commission registration. Schedule I, as part of Form ADV, is required to be filed with an investment adviser's initial application on Form ADV. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. Rule 204–1 [17 CFR 275.204–1] sets forth the circumstances requiring the filing of an amended Form ADV. Rule 204–1 requires an investment adviser registered with the Commission to file an amended Schedule I to Form ADV annually within 90 days after the end of the investment adviser's fiscal year.

The Commission estimates that 7,300 investment advisers registered with the Commission would respond to the information collection requirements of Schedule I to Form ADV an average of once a year. In addition, the Commission estimates that approximately 760 new advisers each year will file Schedule I of Form ADV. Of the 760 advisers, 660 will file Schedule I to Form ADV an average of once each year, and the remaining 100 that rely on the exemption provided by rule 203A–2(d) will file Schedule I to Form ADV an average of twice each year. It is estimated that the total number of responses would be 8,160.

For the 765 investment advisers that must calculate assets under management for the purpose of completing Schedule I (9.5% of respondents—excluding the ten investment advisers expected to rely on the proposed multi-state exemption), compliance with the requirement to file an amended Schedule I would impose a total annual burden for each investment adviser of approximately 2 hours (unchanged from previous estimate). For the 7,285 investment advisers that either do not need to calculate assets under management to complete Schedule I or calculate assets under management as part of their normal business operations (90.5% of respondents—excluding the ten investment advisers expected to rely on the proposed multi-state exemption) this burden would be 0.75 of an hour (unchanged from previous estimate).

The Commission estimates that an additional ten investment advisers would be eligible for the proposed multi-state exemption. For the ten investment advisers that would rely on the proposed multi-state exemption, the Commission estimates compliance with the requirement to file an amended Schedule I attaching a representation that the investment adviser is required to register as an investment adviser in 30 or more states would impose a total annual burden for each investment adviser of approximately 240 hours.[55]

The total burden hours imposed by Schedule I to Form ADV is estimated to be 9,480.313.

The collection of information required by Schedule I is mandatory, and responses are not kept confidential.

The Commission estimates that these collections of Form ADV and Schedule I together would impose a total hourly burden of 28,928.73 hours.

The total burdens associated with Form ADV and Schedule I to Form ADV would change from the filing of the last Paperwork Reduction Act Submission because of the proposed multi-state exemption and the tabulation of Form ADV–Ts.[56] The current total Form ADV burden is 18,127.88 hours. The new total Form ADV burden would be 19,448.42 hours. The total change in burden hours for Form ADV would be 1,320.54 hours. The current total burden for Schedule I is 6,418.94 hours. The new total burden for Schedule I would be 9,480.313 hours. The total change in burden for Schedule I of Form ADV would be 3,061.373 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549 with reference to File No. S7–28–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so that a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding amendments to rules 203A–2, 203A–3, 206(4)–3 and Schedule I to Form ADV, and the withdrawal of rule 203A–5 and Form ADV–T under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the Coordination Act, which became effective on July 8, 1997, amended the Advisers Act by reallocating federal and state responsibilities for regulation of investment advisers. On May 15, 1997, the Commission adopted new rules and rule amendments to implement the Coordination Act.[57] The Commission proposes to revise some of these implementing rules. The IRFA states that the proposed rule amendments would exempt multi-state investment advisers from the prohibition on Commission registration, amend the definition of investment adviser representative, and clarify certain other implementing rules.

The IRFA sets forth the statutory authority for the proposed rule amendments. The IRFA also discusses the effect of the proposed rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or nondiscretionary accounts, as of the end of its most recent fiscal year or (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[58]

The proposed multi-state exemption for investment advisers would be available to any investment adviser that is prohibited from registering with the Commission and is required to register in 30 or more states. The Commission estimates that there may be ten such investment advisers that would be eligible for the proposed multi-state exemption each year.[59] Therefore, the Commission believes that there would be a few small entities that would be affected by the proposed rule.

The proposed rule amendments minimize regulatory burdens on small-entity investment advisers that are eligible for the proposed multi-state exemption by permitting the investment adviser, once registered with the

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[52] *See supra* note and accompanying text.

[53] 44 U.S.C. 3501 *et seq.*

[54] Under rule 203A–6 of the Advisers Act, all investment advisers registered with the Commission were required to file a completed Form ADV–T with the Commission by July 8, 1997, indicating whether they remain eligible for Commission registration. Of the 23,350 Commission-registered investment advisers, approximately 7,200 advisers indicated that they remain eligible for Commission registration, 10,600 advisers withdrew their registrations, and 5,800 advisers did not file their Form ADV–T. The Commission believes that most of the investment advisers that did not file Form ADV–T are either no longer in the advisory business or no longer eligible to register with the Commission. The Commission expects to cancel the registrations of most of these investment advisers.

[55] Investment advisers also would be required to maintain a record of the states in which they believe they would, but for the exemption, be required to register that was the basis of their representation included on the attachment to Schedule I. The Commission believes that the requirement that the investment advisers maintain a record would impose a nominal burden on investment advisers because the information would have to be gathered for purposes of making the representation.

[56] The total hourly burdens for Form ADV and Schedule I would change because (1) the proposed multi-state exemption would permit a small number of additional advisers to register with the Commission, and (2) the tabulation of information from the completed Forms ADV–T has provided the Commission with a more accurate number of advisers it regulates after the July 8, 1997 division of regulatory responsibilities between the federal and state governments.

[57] *See* Adopting Release, supra note 6.

[58] Rule 275.0–7 [17 CFR 275.0–7]. In January 1997, the Commission proposed to revise this definition of "small entity." *See* Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Release Nos. 33–7383, 34–38190, IC–22478, and IA–1609 (Jan. 22, 1997) [62 FR 4106 (Jan. 28, 1997)]. The Commission expects to adopt a revised definition of small investment adviser for Regulatory Flexibility Act purposes to reflect the Coordination Act.

[59] *See supra* note 41.

Commission, to continue to be eligible for the proposed multi-state exemption until it is obligated to register in less than 25 states. This five-state difference prevents an investment adviser from being required to register and then de-register frequently with the Commission as a result of a change in its registration obligation in one state or few states.

The proposed amendments to the definition of investment adviser representative would permit supervised persons of Commission-registered investment advisers who only have a few business or institutional clients to accept accommodation clients. The Commission does not have information from which to estimate the number of Commission-registered investment advisers managing assets of $50 million or less or having less than $50,000 in assets relating to its advisory business whose supervised persons would be exempt from the definition of investment adviser representative under the proposed amendments.

The other proposed rule amendments affect only Commission-registered investment advisers. For purposes of these amendments, the Commission estimates that approximately 850 investment advisers are small entities.[60] These proposed amendments clarify the implementing rules and do not impose any additional burden on investment advisers. Therefore, the Commission believes that it is reasonable to estimate that these clarifying amendments would not have a significant economic effect on small entities. Comment is requested on the number of small entities that would be affected by these proposed amendments.

The proposed withdrawal of rule 203A–5 and Form ADV–T would have no effect on small entities because no investment advisers currently should be filing Form ADV–T.

The proposed rule amendments would impose certain new reporting and recordkeeping requirements and eliminate certain other requirements. Investment advisers relying on the proposed multi-state exemption would be required at initial registration to attach a representation to Schedule I that the investment adviser has determined that it must register in at least 30 states and a representation on Schedule E to Form ADV that it will withdraw from Commission registration when it is no longer required to register in at least 25 states.[61] Thereafter, in the annual amendment to Form ADV revising Schedule I, the investment adviser would be required to submit a representation that it has concluded that, but for the proposed multi-state exemption, it would be required to register in at least 25 states. If the amended Schedule I indicated that the investment adviser was no longer eligible for Commission registration, the proposed amendment would require the investment adviser to file a Form ADV–W within 90 days to withdraw its registration with the Commission.

The Commission estimates that it will take approximately 240 hours, annually on average, to comply with these requirements. This burden on investment advisers that use this proposed rule would be outweighed by the cost savings and benefits to the multi-state investment advisers relying on the proposed multi-state exemption.

The proposed withdrawal of Form ADV–T and rule 203A–5 would eliminate any incidental burden that may continue to be imposed by the transition rule. The proposed rule amendments to rule 206(4)–3 and Form ADV would not impose any new reporting, recordkeeping or other compliance requirements.

The Commission believes that there are no rules that duplicate, overlap, or conflict with, the proposed rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule amendments that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

As stated in the IRFA, after taking into account the resources available to small entities and the potential burden that could be placed on investment advisers that may no longer qualify for the proposed multi-state exemption because of a change in the registration obligations in a few states, the Commission proposes to permit an investment adviser, once registered with the Commission, to continue to be eligible for the proposed multi-state exemption as long as it would be obligated to register in at least 25 states, five fewer states than when it initially registered. Moreover, the burdens associated with complying with the requirements of the rule would affect only a very small number of investment advisers each year.

With respect to the other proposed rule amendments, the Commission believes that the establishment of different compliance or reporting requirements for small entities is neither necessary nor practicable. The information required by Form ADV and Schedule I is necessary for the Commission to determine whether the investment advisers are eligible for Commission registration. The proposed rule amendments will not change significantly any compliance costs. Further clarification, consolidation or simplification of the requirements for small entities does not seem feasible. The Commission believes that the rule amendments, as proposed, will not adversely affect small entities and, instead, include regulatory alternatives that minimize the effect on small entities.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule amendments. A copy of the IRFA may be obtained by contacting Carolyn-Gail Gilheany, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

VI. Statutory Authority

The Commission is proposing amendments to rule 203A–2 pursuant to the authority set forth in section 203A(c) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3a(c)].

The Commission is proposing amendments to rule 203A–3 pursuant to the authority set forth in sections 202(a)(17) and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(a)(17), 80b–11(a)].

The Commission is proposing amendments to rule 206(4)–3 pursuant to the authority set forth in sections 204, 206, and 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4, 80b–6, 80b–11].

The Commission is proposing to withdraw rule 203A–5 pursuant to the authority set forth in sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4, 80b–11(a)].

The Commission is proposing amendments to Schedule I to Form ADV pursuant to the authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1) and 80b–4].

The Commission is proposing to remove and reserve rule 279.3 and proposing to remove Form ADV–T pursuant to the authority set forth in sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4, 80b–11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b–3a.

Section 275.203A–2 is also issued under 15 U.S.C. 80b–3a.

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

Section 275.205–3 is also issued under 15 U.S.C. 80b–5(e).

2. Section 275.203A–2 is amended by revising the introductory text of § 275.203A–2 and paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) shall not apply to:

* * * * *

(b) * * *

(3) In determining the aggregate value of assets of plans, include only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the investment adviser was last employed or retained by contract to provide investment advice during the 12-month period ended within 90 days of filing Schedule I to Form ADV (17 CFR 279.1).

* * * * *

(e) *Multi-State Investment Advisers.* An investment adviser that:

(1) Upon submission of its application for registration with the Commission, is required by the laws of 30 or more States to register as an investment adviser with securities commissioners (or any agencies or officers performing like functions) in the respective States, and thereafter would, but for this section, be required by the laws of at least 25 States to register as an investment adviser with securities commissioners (or any agencies or officers performing like functions) in the respective States;

(2) Attaches a representation to Schedule I to Form ADV (17 CFR 279.1) that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States and, in the case of an amendment to Form ADV revising Schedule I to Form ADV, it would be required by the laws of at least 25 States to register with the securities commissioners (or any agencies or officers performing like functions) in the respective States within 90 days prior to the date of filing Schedule I;

(3) Includes on Schedule E to its Form ADV (17 CFR 279.1), an undertaking to withdraw from registration with the Commission if an amendment to Form ADV revising Schedule I to Form ADV indicates that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and, within 90 days after filing Schedule I to Form ADV, files a completed Form ADV–W (17 CFR 279.2) whereby the investment adviser withdraws from registration with the Commission if the amendment to Form ADV revising Schedule I indicates that the investment adviser would be prohibited by section 203A of the Act (15 U.S.C. 80b–3a) from registering with the Commission; and

(4) Maintains in an easily accessible place a record of the States that the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Schedule I to Form ADV that includes a representation that is based on such record.

3. In § 275.203A–3 the introductory text and paragraph (a) are revised to read as follows:

Proposal I

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3a) and the rules thereunder:

(a)(1) *Investment Adviser Representative. Investment adviser representative* of an investment adviser means a supervised person of the investment adviser:

(i) Who has more than five clients who are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section; or

(ii) More than ten percent of whose clients are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section.

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) *Excepted person* means a natural person who is a qualified client as defined in § 275.205–3(d)(1).

(ii) *Impersonal investment advice* means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of *client* in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

Proposal II

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3a) and the rules thereunder:

(a)(1) *Investment Adviser Representative. Investment adviser representative* of an investment adviser means a supervised person of the

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[60] This estimate of the number of small entities was made for purposes of the Final Regulatory Flexibility Analysis for the rules implementing the Coordination Act. *See* Adopting Release, *supra* note 8, at nn. 189–190 and accompanying text. Of the 23,350 Commission-registered investment advisers, 3,800 advisers have not filed their Form ADV–T, indicating their eligibility to remain registered with the Commission. *See supra* note 54. The Commission also expects to adopt a revised definition of small entity for purposes of the Regulatory Flexibility Act. *See supra* note 58. Therefore, the Commission plans to revise its estimate of the number of Commission-registered advisers that are small entities after the transition is complete so that the Commission would have more accurate information to estimate the number of small entities under the new definition of that term.

[61] The proposed multi-state investment adviser exemption also would require investment advisers to maintain a record of the states in which they would, but for the exemption, be required to register.

investment adviser whose clients are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section.

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) *Excepted person* means a natural person who is a:

(A) Qualified client as defined in § 275.205–3(d)(1);

(B) Partner, officer, director, (or other person occupying a similar status or performing similar functions), of the investment adviser for whom the supervised person works or of a client that is not a natural person of the investment adviser for whom the supervised person works;

(C) Relative, spouse, or relative of spouse of such partner, officer or director; or

(D) Relative, spouse or relative of spouse of the supervised person.

(ii) *Impersonal investment advice* means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of *client* in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

§ 275.203A–5 [Removed and Reserved]

4. Section 275.203A–5 is removed and reserved.

§ 275.206(4)–3 [Amended]

5. In § 275.206(4)–3, paragraph (a)(1)(ii)(D) is amended by revising the cite "203(e)(3)" to read "203(e)(4)".

§§ 275.203A–1 and 275.203A–2 [Amended]

6. In 17 CFR part 275 remove "[15 U.S.C. 80b–3A(a)]" and add, in its place, "(15 U.S.C. 80b–3a(a))" in the following places:

a. Section 275.203A–1 (b)(2), (c), and (d); and

b. Section 275.203A–2 (d)(2) and (d)(3).

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

8. By revising Schedule I to Form ADV (referenced in § 279.1) to read as follows:

Note: The text of Schedule I to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulation. Schedule I is attached as Appendix A.

§ 279.3 [Removed and Reserved]

9. Section 279,3 is removed and reserved.

10. Form ADV–T is removed.

Note: Form ADV–T does not appear in the Code of Federal Regulation.

Dated: November 13, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

BILLING CODE 8010–01–P

APPENDIX A [NOTE: The text of Schedule I does not appear in the Code of Federal Regulations.]

SCHEDULE I

Schedule for Declaring Eligibility for SEC Registration

OMB APPROVAL
OMB Number: 3235-0490
Expires:
Estimated average burden hours per response: 1.1618 minutes

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part I Eligibility for SEC Registration

Section 203(h) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to cancel or deny the registration of any investment adviser that does not meet the criteria for SEC registration set forth in section 203A of the Advisers Act. This Part I requires applicant to declare whether it is eligible, or continues to be eligible, for Commission registration.

Check either (a) or (b):

(a) ☐ **Applicant is eligible (or will remain eligible) for SEC registration.**

For an applicant to be eligible (or remain eligible) for SEC registration, applicant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (x) below:

Applicant:

(i) ☐ **has assets under management of $25 million (in U.S. dollars) or more;**

Report assets under management in Part II if "assets under management" is the sole basis of applicant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (x) below are checked).

(ii) ☐ **has its principal office and place of business in Colorado, Iowa, Ohio, or Wyoming (*See Instruction 3*);**

(iii) ☐ **has its principal office and place of business outside the United States (*See Instruction 3*);**

(iv) ☐ **is an investment adviser to an investment company registered under the Investment Company Act of 1940 (*See Instruction 4*);**

(v) ☐ **is a nationally recognized statistical rating organization;**

(vi) ☐ **is a pension consultant that qualifies for the exemption in rule 203A-2(b) (*See Instruction 5(a)*);**

(vii) ☐ **is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as the eligible investment adviser (*See Instruction 5(b)*);**

(viii) ☐ **is a newly formed investment adviser relying on rule 203A-2(d) (*See Instruction 5(c)*);**

(ix) ☐ **is a multi-state investment adviser relying on rule 203A-2(e) (*See Instruction 5(d)*);**

(x) ☐ **has received an order of the Commission exempting applicant from the prohibition on registration with the Commission.**
Application number: 803- _____
Date of Commission's order: _____

(b) ☐ **Registrant is no longer eligible for SEC registration. (*See Instruction 6*)**

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part II Assets Under Management

Report assets under management if required by Part I (*i.e.*, if Item I(a)(i) is checked yes "(x)" and is the sole basis for applicant's eligibility for SEC registration).

State the amount of applicant's assets under management (in U.S. dollars): (*See Instruction 7*)

$_____.00 (in U.S. dollars)

Applicants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated therein.

BILLING CODE 8010-01-C

Schedule Instructions

Instruction 1. General Instructions

(a) SEC's Collection of Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Schedule from applicants. *See* 15 U.S.C. §§ 80b–3(c)(1) and 80b–4. Filing of this Schedule is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission and to provide for the withdrawal from Commission registration for advisers that are no longer eligible. The Commission will maintain files of the information on this Schedule and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of this Schedule, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC–2, and the routine use of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(b) For Further Information: Additional information about the rules referred to in this Schedule is found in the Commission's adopting release, Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Rel. No. 1633 (May 15, 1997).

Instruction 2. Principal Place of Business

Applicant's principal place of business reported in Form ADV, Part I, Item 2.A. is the applicant's principal office and place of business, *i.e.*, the executive office from which the officers, partners, or managers of the applicant direct, control, and coordinate applicant's activities. *See* rule 203A–3(c).

Instruction 3. Advisers in Colorado, Iowa, Ohio, or Wyoming; Foreign Advisors

Under the Advisers Act, an applicant whose principal office and place of business (see Instruction 2) is in a State that does not register investment advisers is required to register with the Commission, even if none of the criteria for SEC registration (e.g., $25 million of assets under management) is met. Currently these States are Colorado, Iowa, Ohio, and Wyoming. Applicants that have their principal office and place of business in one of these States should check the box in item (a)(ii) of Part I.

An applicant whose principal office and place of business is located in a country other than the United States (*i.e.*, not in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States) also is required to register with the Commission. Such an applicant should check the box in item (a)(iii) of Part I.

Instruction 4. Advisers to Investment Companies

An applicant should not check item (a)(iv) of Part I unless applicant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, i.e., have assets and shareholders (other than just the organizing shareholders).

Instruction 5. Exemptions

(a) Pension Consultants. An applicant that provides investment advice to employee benefit plans with respect to assets having an aggregate value of more than $50 million during the 12-month period ended within 90 days of filing this Schedule may register with the Commission. An investment adviser seeking to rely on the pension consultant exemption must aggregate: (i) the value of assets for which it provided advisory services at the end of the 12-month period, and (ii) the value of any other assets for which it provided advisory services at the end of its employment or contract (if terminated before the end of the 12-month period). See rule 203A–2(b).

(b) Affiliated Advisers. An applicant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission ("eligible adviser") is itself eligible to maintain its registration with the Commission if the principal office and place of business of the applicant is the same as that of the eligible adviser. See rule 203A–2(c).

(c) Newly Formed Advisers. A newly formed investment adviser may register with the Commission at the time of its formation if the adviser has a reasonable expectation that within 120 days of registration it will become eligible for Commission registration. At the end of the 120-day period, the adviser is required to file an amended Schedule I. If the investment adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser is required to file a Form ADV–W concurrently with the Schedule I, thereby withdrawing from registration with the Commission. An applicant registering with the Commission in reliance on this exemption must include on Schedule E of Form ADV an undertaking to withdraw from registration if, at the end of the 120-day period, the investment adviser would be prohibited from Commission registration. See rule 203A–2(d).

(d) Multi-State Advisers. An investment adviser may register with the Commission if it is required to register as an investment adviser with the securities authorities of 30 or more states. To take advantage of this exemption, an applicant must (i) attach to this Schedule a representation that it has reviewed the state and federal laws and has concluded that it must register with the securities authorities of at least 30 states within 90 days prior to the date of filing this Schedule, and (ii) include on Schedule E to Form ADV an undertaking to withdraw from registration if it would no longer be required to register in at least 25 states when it files its annual amendment to Form ADV revising this Schedule. Each year (and for so long as the investment adviser continues to rely on the multi-state investment adviser exemption), when the adviser updates its Schedule I, it must attach a new representation that it has concluded that, but for the exemption, it would be required to register with the securities authorities of at least 25 states within 90 days prior to the date of filing Schedule I. Additionally, each time the adviser makes such a representation, the adviser must create and maintain a list of the states that, but for the exemption, it would be required to register. This list must be maintained in an easily accessible place for a period of not less than five years from the date each representation is filed as an attachment to this Schedule. See rule 203A–2(e).

Instruction 6. Part I, Item (b)

If item (b) of Part I is checked, registrant's investment registration with the SEC must be withdrawn within 90 days after the date this Schedule I was required by rule 204–1(a) to have been filed with the Commission. Thus, registrant's registration must be withdrawn no later than 180 days after the end of its fiscal year. If registrant's registration is not withdrawn within this time period, registrant will be subject to having its registration cancelled pursuant to section 203(h) of the Advisers Act. See rule 203A–1(c).

Instruction 7. Determining Assets Under Management

Not all applicants are required to provide the amount of their assets under management. An applicant must report its assets under management in Part II only if item I(a)(i) is check yes "(x)" and the amount of assets applicant has under management is the sole basis for applicant's eligibility for SEC registration (i.e., applicant has not checked any of items I(a)(ii) through (x)).

In determining the assets applicant has under management, include the "securities portfolios" (or portions thereof) for which applicant provides "continuous and regular supervisory or management services" as of the date of filing this Schedule.

(a) Securities Portfolios. An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, applicant may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Applicants may include securities portfolios that are: (i) Family or proprietary accounts of the applicant (unless applicant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which applicant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) Value of Portfolio. Include the entire value of each securities portfolio (or portion thereof) for which applicant provides "continuous and regular supervisory or management services." If applicant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

(1) under management by another person; or

(2) that consists of real estate or businesses the operations of which are "managed" on behalf of a client but not as an investment.

No deduction is required for securities purchased on margin.

(c) Continuous and Regular Supervisory or Management Services. General Criteria. An applicant provides continuous and regular supervisory or management services with respect to a securities portfolio if the applicant either—

(1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or

(2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.

Factors. Applicants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) Terms of the advisory contract. A provision in an advisory contract by which the applicant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management of the applicant, however, may rebut such a suggestion.

(2) Form of compensation. A form of compensation based on the average value of assets under management over a specified period of time would suggest that the applicant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the applicant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the applicant provides continuous and regular supervisory or management services.

(3) The management practice of the applicant. The extent to which the applicant is actively managing the assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (e.g., based on a "buy and hold" strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

Examples. To assist applicants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

Accounts that may receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the applicant allocates assets among other managers—but *only* under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

Accounts that do not receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the applicant provides only impersonal advice, e.g., market newsletters;

(3) Accounts for which the applicant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the applicant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market event, e.g., an account that is reviewed and adjusted on a quarterly basis.

(d) Value of Assets Under Management. Calculate the total amount of applicant's assets under management by including the value, as determined within 90 days prior to the date of filing this Schedule, of securities portfolios (or portions thereof) for which applicant provides continuous and regular supervisory or management services as of the date of filing this Schedule. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) Example. To assist applicants, the Commission is providing an example of the method of determining whether a client account may be included as "assets under management."

Example

A client's portfolio consists of the following:

$6,000,000	stocks and bonds
$1,000,000	cash and cash equivalents
$3,000,000	non-securities (collectibles, commodities, real estate, etc.)

$10,000,000	Total Assets

First, is the account a "securities portfolio?" The account is a securities portfolio because securities as well as cash and cash equivalents (which the applicant has chosen to include as securities) ($6,000,000+$1,000,000=$7,000,000) comprise at least 50% of the value of the account (here, 70%). (See instruction 7(a))

Second, does the account receive "continuous and regular supervisory or management services?" The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See instruction 7(c))

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the investment adviser's total assets under management.

[FR Doc. 97–30296 Filed 11–18–97; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–1682, File No. S7–29–97]

RIN 3235–AH25

Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge certain clients performance or incentive fees. The amendments would modify the rule's criteria for clients eligible to enter into a contract under which a performance fee is charged and eliminate provisions specifying required contract terms and disclosures. The amendments would provide investment advisers greater flexibility in structuring performance fee arrangements with clients who are financially sophisticated or have the resources to obtain sophisticated financial advice regarding the terms of these arrangements.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–97; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Kathy D. Ireland, Attorney, or Jennifer S. Choi, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 205–3 [17 CFR 275.205–3] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] ("Advisers Act").

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Executive Summary

Rule 205–3 under the Advisers Act permits investment advisers to charge performance fees to clients with at least $500,000 under the adviser's management or with a net worth of more than $1,000,000. The rule requires certain terms to be included in contracts providing for performance fees and specific disclosures to be made to clients entering into these contracts. The Commission is proposing to eliminate the provisions of the rule that prescribe contractual terms and require specific disclosures. In addition, the Commission is proposing to revise the threshold levels for determining client eligibility to reflect the effects of inflation on the levels set in 1985 when the rule was adopted and to add a third criterion for eligibility. Under the proposed amendments, eligible clients must have assets under management with the adviser of at least $750,000, net worth of more than $1,500,000, or be "qualified purchasers" under section 2(a)(51)(A) of the Investment Company Act of 1940 ("Investment Company Act").[1]

I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds or any portion of the funds of the client.[2] Congress enacted the prohibition against performance fees in 1940 to protect advisory clients from compensation arrangements that it believed might encourage advisers to take undue risks with client funds to increase advisory fees.[3]

In 1970, Congress provided an exception from the prohibition in section 205(a)(1) for advisory contracts relating to the investment of assets in excess of $1,000,000,[4] so long as an appropriate "fulcrum fee" is used.[5] This

[1] 15 U.S.C. 80a–2(a)(51)(A).

[2] 15 U.S.C. 80b–5(a)(1).

[3] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as "heads I win, tails you lose" arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. Rep. No. 1775, 76th Cong., 3d Sess. 22 (1940). *See also* SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 477, 76th Cong., 3d Sess. 30 (1939). Congress, however, recognized that performance fees may not be harmful in every context and initially excluded from the prohibition contracts between investment advisers and investment companies. Investment Advisers Act of 1940, ch. 686, § 205(1), 54 Stat. 847, 852 (1940) (amended 1970).

[4] Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act [15 U.S.C. 80a–3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act [15 U.S.C. 80b–5(b)(2)(B)].

[5] 15 U.S.C. 80b–5(b). A fulcrum fee generally involves averaging the adviser's fee over a specified period and increasing and decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. *See* Adoption of Rule 205–2 Under the Investment Advisers Act of 1940, as Amended, Defining "Specified Period" Over Which the Asset Value of the Company or Fund Under Management is Averaged, Investment Advisers Act Release No. 347 (Nov. 10, 1972) [37 FR 24895 (Nov. 23, 1972)]; Adoption of Rule 205–1 Under the Investment Advisers Act of 1940 Defining "Investment Performance" of an Investment Company and

statutory exception was the only provision under which advisers could enter into performance fee contracts with so-called "high net worth" clients until 1985 when the Commission adopted rule 205–3.[6]

Under rule 205–3, an adviser may charge performance fees to a client that has $500,000 under management with the adviser or has a net worth of $1,000,000. Because of their wealth, financial knowledge, and experience, the Commission presumed that these clients are less dependent on the protections provided by the Advisers Act's restrictions on performance fee arrangements.[7] The rule, however, imposes a number of required provisions on performance fee contracts and obligates the adviser to provide certain disclosures to clients. These provisions were included as "alternative safeguards to the statutory prohibition."[8]

In 1992, the Commission's Division of Investment Management issued a report concluding that the existing exemptions from the performance fee prohibition should be expanded to permit certain sophisticated clients of investment advisers to enter into arrangements without the restrictions in the statutory or administrative exemptions.[9] The Division expressed the view that "where a client appreciates the risk of performance fees and is in a position to protect itself from overreaching by the adviser, the determination of whether such fees provide value is best left to the client."[10] The Division recommended that Congress enact legislation specifically authorizing the Commission to provide exemptions from the performance fee prohibition for advisory contracts with any person whom the Commission determined did not need the protections of the prohibition.[11] Four years later, Congress included in the National Securities Markets Improvement Act of 1996 ("1996 Act")[12] two additional statutory exceptions from the performance fee prohibition[13] and new section 205(e) of the Advisers Act, which authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons that the Commission determines do not need its protections.[14]

II. Discussion

A. Elimination of Specific Contractual and Disclosure Requirements

As noted above, rule 205–3 contains several conditions on advisers entering into performance fee contracts in addition to those related to the eligibility of clients.[15] First, the compensation provided to the adviser under the contract must be based on the performance of securities that is calculated pursuant to two different methodologies specified in the rule, depending upon the nature of the securities under management.[16] In addition, the performance fee must be based on the gains less the losses in the client's account for a period of not less than one year.[17] Second, the investment adviser must disclose to the client, or to the client's independent agent, prior to entering into the contract, all material information concerning the proposed advisory arrangement, including: (1) the possibility that the arrangement may create an incentive for the adviser to make riskier or more speculative investments; (2) the fact (if applicable) that the adviser may receive increased compensation based on unrealized appreciation as well as realized gains; (3) the periods that will be used to measure investment performance and their significance in the computation of the fee; (4) the nature and significance of any index that will be used as a comparative measure of investment performance, and why the index is appropriate; and (5) if the fee is based on unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued and the extent to which the value will be determined independently.[18] Finally, the adviser must reasonably believe that the contract represents an arm's-length arrangement and that the client, alone or together with an independent agent, understands the proposed compensation arrangement and its risks.[19]

Whether these provisions are necessary to protect sophisticated clients of the type contemplated by rule 205–3 was examined by the Division of Investment Management in 1992. The Commission agrees with the Division's conclusion that if a client appreciates the risk of performance fees and is in a position to protect itself from overreaching by the adviser, then the terms of the arrangement are best left to

"Investment Record" of an Appropriate Index of Securities Prices, Investment Advisers Release No. 327 (Aug. 8, 1972) [37 FR 17467 (Aug. 29, 1972)].

In 1980, Congress added an exception for contracts involving business development companies under conditions set forth in section 205(b)(3) of the Advisers Act [15 U.S.C. 80b–5(b)(3)].

[6] Rule 205–3 was adopted under section 206A of the Advisers Act [15 U.S.C. 80b–6a], which grants the Commission general exemptive authority. In providing this authority, Congress noted that the Commission would be able to "exempt persons . . . from the bar on performance-based advisory compensation" in appropriate cases. H.R. Rep. No. 1382, 91st Cong., 2d Sess. 42 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 45 (1969).

[7] Exemption to Allow Registered Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)].

[8] *Id.* at Section I.C.

[9] *See* Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation 237–49 (1992) ("Protecting Investors").

[10] *Id.* at 245.

[11] *Id.* at 245, 247–48.

[12] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the U.S. Code).

[13] Section 210 of the 1996 Act added to section 205 of the Advisers Act exceptions for contracts with companies excepted from the definition of investment company by section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)] and contracts with persons who are not residents of the United States. The definition of "person" under section 202 of the Advisers Act includes companies, which in turn includes corporations, partnerships, associations, joint-stock companies, trusts and organized groups of persons [15 U.S.C. 80b–2(a)(5), (16)]; therefore, the exception for foreign residents includes foreign investment companies.

[14] 15 U.S.C. 80b–5(e). Section 205(e) provides that the Commission may determine that persons may not need the protections of section 205(a)(1) on the basis of such factors as "financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205]."

[15] Before the enactment of the 1996 Act, rule 205–3 was available only to Commission-registered investment advisers. Title III of the 1996 Act, the Coordination Act, which became effective on July 8, 1997, generally limited Commission registration to larger investment advisers but continued the application of the prohibition of section 205(a)(1) of the Advisers Act to all advisers (other than those exempt from registration pursuant to section 203(b) of the Act [15 U.S.C. 80b–3(b)]), regardless of whether they are prohibited from registering with the Commission pursuant to the Coordination Act. 1996 Act, *supra* note 12. In light of this provision, the Commission amended rule 205–3 earlier this year to permit all advisers to take advantage of the limited exemption in the rule. Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] ("Implementing Release"). The proposed amendments herein also include conforming changes to the May 1997 rule amendments.

[16] If market quotations for the securities involved are readily available, then the formula must include realized capital losses and unrealized capital depreciation of the securities. If market quotations are not readily available, then the formula still must include realized capital losses, but need not include unrealized capital depreciation unless it also includes unrealized capital appreciation. Rule 205–3(c)(1), (2) [17 CFR 275.205–3(c)(1), (2)].

[17] Rule 205–3(c)(3) [17 CFR 275.205–3(c)(3)].

[18] Rule 205–3(d) [17 CFR 275.205–3(d)].

[19] Rule 205–3(e) [17 CFR 275.205–3(e)]. The rule also contains a number of definitions of terms necessitated by these conditions, including "affiliated person," "client's independent agent," "interested person," "securities for which market quotations are readily available," and "securities for which market quotations are not readily available." Rule 205–3(g)(3)–(6) [17 CFR 275.205–3(g)(3)–(6)].

the client.[20] While the conditions of rule 205–3 are intended to protect clients, the Commission's experience with the rule suggests they also may inhibit flexibility of advisers and their clients in establishing performance fee arrangements beneficial to both parties. Moreover, in light of the other protections provided by the Advisers Act, the Commission believes that these clients may not need the protections of the rule.[21] Therefore, the Commission believes that the conditions may not be necessary to protect these types of clients and proposes, pursuant to its exemptive authority under new section 205(e) of the Advisers Act, to eliminate all of the contractual and disclosure provisions in rule 205–3 other than the client eligibility tests.

Under the proposed rule amendments, performance fee contracts would no longer be subject to the prescribed contract terms and disclosures. Thus, an adviser would be free to negotiate all of the terms of a performance fee contract with a client. The Commission emphasizes, however, that an adviser charging a performance fee would continue to be subject to the Advisers Act's prohibitions against fraud.[22] As a result, an adviser could not enter into a performance fee arrangement that was inconsistent with the adviser's fiduciary duties and could not fail to disclose material information about the performance fee to the client.[23]

Comment is requested on whether rule 205–3 should be amended to eliminate all of the contractual and disclosure requirements for sophisticated clients. Should the "arm's-length contract" or any of the other provisions be retained? Are certain conditions on performance fee contracts necessary to protect even clients the Commission presumes are able to protect themselves? Are there alternative conditions that should be considered?

B. Qualified Clients

As noted above, in adopting rule 205–3 in 1985, the Commission concluded that clients having a net worth in excess of $1,000,000, or assets under management of at least $500,000, do not need the full protections provided by the Advisers Act's restrictions on performance fee arrangements.[24] The Commission believes that a similar finding by the Commission would support the proposed expansion of the exemption under the new authority granted the Commission last year in section 205(e) of the Advisers Act.[25]

The Commission recognizes that, since 1985, the net worth and assets under management thresholds have been affected by inflation: $1,000,000 in 1985 dollars is now worth approximately $1,521,000; and $500,000 in 1985 dollars is now worth approximately $760,000. The Commission therefore proposes to increase the amounts of the net worth and assets under management tests from $1,000,000 and $500,000 to $1,500,000 and $750,000, respectively. This increase is not intended to reduce the number or to alter the types of clients with which an adviser may enter into a performance fee arrangement, but to reflect the effects of inflation on the rule.

The Commission also is proposing to permit advisers to enter into performance fee contracts with clients who are "qualified purchaser[s]" under section 2(a)(51)(A) of the Investment Company Act.[26] The 1996 Act amended the Investment Company Act, among other things, to add new section 3(c)(7), which exempts from regulation under the Investment Company Act certain investment pools whose interests are not offered to the public and whose shareholders consist primarily of "qualified purchasers," including individuals with at least $5,000,000 of investments.[27] Although, in most cases, persons who would be qualified purchasers under section 2(a)(51)(A) would be eligible to enter into a performance fee contract with advisers under rule 205–3, even as proposed to be amended, in some cases, such persons would not.[28] Therefore, the Commission proposes to add "qualified purchasers" as eligible clients under the rule so that an investor who meets the eligibility requirements of section 3(c)(7) also could enter into a performance fee arrangement outside the context of a section 3(c)(7) company.[29]

Under the proposed amendments, clients who satisfy the new eligibility criteria contained in rule 205–3 would be referred to as "qualified client[s]."[30] Comment is requested on the revised criteria for entering into a performance fee contract and whether the Commission should consider alternative criteria for qualified clients. Are the criteria sufficient for the Commission to make the required finding under section 205(e) that qualified clients do not need the protections of the statutory prohibition on performance fee arrangements? Rather than including the qualified purchaser as the third alternative criterion, should the Commission use the qualified purchaser threshold in lieu of the other two tests?

In addition to criteria such as financial sophistication and knowledge and experience in financial matters, section 205(e) permits the Commission to consider whether a client may not need the protections of the Advisers Act by virtue of its relationship with the adviser.[31] Should the Commission exempt advisers that have a pre-existing relationship with clients that suggests that the abuses Congress sought to prevent by prohibiting performance fee arrangements are unlikely to occur? If so, what should be the nature of those relationships?[32]

Should the Commission revise the criteria to prevent the net worth and assets under management criteria from becoming less meaningful as a result of inflation? Should the criteria be indexed to prevent future effective lowering of the amounts? Should the Commission adopt more detailed criteria to assure the financial sophistication of qualified clients if the objective thresholds are effectively decreased as result of inflation?

C. Identification of the Client[33]

Rule 205–3 provides that with respect to certain clients entering into performance fee contracts with an adviser—private investment companies,[34] registered investment companies, and business development companies—the adviser must "look through" the legal entity to determine whether each equity owner of the company would be a qualified client.[35] The proposed amendments would retain the "look through" provision[36] and clarify that any equity owners that are not charged a performance fee would not be required to meet the qualified client test.[37]

Comment is requested whether this "look through" provision should continue to be included in rule 205–3. The Commission also requests comment concerning whether the rule should specifically address the application of the "look through" provision to other entities.

D. Transition Rule

The proposed amendments would add a transition rule permitting investment advisers and their clients to maintain their existing performance fee arrangements notwithstanding the clients' failure to meet the eligibility criteria after the thresholds increase to $750,000 and $1,500,000.[38] Such arrangements could continue under the transition rule if they were entered into before the effective date of the amendments to the rule and they satisfied the requirements of the rule as in effect on the date that they were entered into. A new party to an existing arrangement, however, would be required to satisfy the new qualified client test.

E. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule amendments that are the subject of this Release, to suggest additional changes (including changes to the provisions of the rule that the Commission is not proposing to amend), or to submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit their proposed rule text.

III. Cost-benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission notes that the proposed rule amendments are pursuant to new authority granted to it by Congress in the 1996 Act.

The proposed amendments would benefit investment advisers and their qualified clients by providing more flexibility to enter into performance fee arrangements. Specifically, investment advisers and their qualified clients could enter into such arrangements without being subject to prescribed compensation calculations and client disclosures. Thus, the total number of performance fee arrangements may increase. On the other hand, the proposed increase in the thresholds for determining eligibility under the rule may cause the number of eligible clients to decrease,[39] and, as a result, reduce the total number of performance fee arrangements.[40] The Commission, however, does not have information from which to analyze the precise effect of the proposed amendments on the number of performance fee arrangements. Comment is requested on whether the proposed amendments would increase or decrease the number of performance fee arrangements.

To the extent that the proposed rule amendments increase the number of performance fee arrangements, advisers and clients may benefit overall.[41] For example, proponents of performance fees have argued that these arrangements may benefit both parties to the advisory contract because linking advisory compensation to performance may result in a closer alignment of the goals of the adviser and the client.[42] If the goals of both parties coincide, then

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[20] See Protecting Investors, *supra* note 9, at 245.

[21] Advisers are regarded as fiduciaries who are required to deal fairly with their clients and to make full and fair disclosure of, among other things, their compensation agreements. *See* SEC v. Capital Gains Research Bureau, 375 U.S. 180, 194 (1963). In addition, advisers registered with the Commission are required to provide their clients with a brochure describing their fee arrangements. *See* Part II of Form ADV.

[22] Section 206 of the Advisers Act [15 U.S.C. 80b-6].

[23] The proposed amendments also would eliminate paragraph (h) of the current rule, which states that "[a]n investment adviser entering into or performing an investment advisory contract under this rule is not relieved of any obligations under section 206 of the Advisers Act or of any other applicable provisions of the federal securities laws." The Commission believes that the proposed rule amendments by their terms provide an exemption only from section 205(a)(1), and that separate reference to section 206 and other provisions of the federal securities laws is unnecessary. By proposing to eliminate this reference, the Commission does not intend in any way to suggest that compliance with the amended rule would relieve advisers of any obligations under section 206 of the Advisers Act or of any other applicable provisions of the federal securities laws.

The Commission further notes that advisers entering into performance fee arrangements with employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA") are subject to the fiduciary responsibility and prohibited transaction provisions of ERISA. 29 U.S.C. 1001–1461. The proposed amendments to rule 205–3 would not affect an adviser's obligation to comply with ERISA. Issues involving performance fee arrangements under ERISA are within the jurisdiction of the Department of Labor, which is responsible for administering ERISA's fiduciary provisions and has addressed performance fee arrangements in a number of advisory opinions under ERISA. U.S. Department of Labor Advisory Opinion No. 86–28A (Sept. 25, 1986); U.S. Department of Labor Advisory Opinion 86–21A (Aug. 29, 1986); U.S. Department of Labor Advisory Opinion 86–20A (Aug. 29, 1986).

[24] *See supra* note 7 and accompanying text.

[25] *See supra* note 14 and accompanying text.

[26] *See supra* note 1.

[27] 15 U.S.C. 80a–3(c)(7).

[28] For example, in determining the amount of investments for purposes of the definition of qualified purchaser, only outstanding indebtedness incurred to acquire or for the purpose of acquiring the investments must be deducted. Rule 2a51–1(e) of the Investment Company Act (17 CFR 270.2a51–1(e)). *See also* Privately Offered Investment Companies, Investment Company Act Release No. 22597 (Apr. 3, 1997) (62 FR 17512 (Apr. 9, 1997)). Thus, a person with less than $750,000 in assets under management could have over $5,000,000 of investments, but a net worth of less than $1,500,000 because of other debt. Under the proposed rule amendments, such a person would be eligible to enter into a performance fee contract under rule 205–3.

[29] Under section 205(b)(4)] of the Advisers Act [15 U.S.C. 80b–5(b)(4)], section 3(c)(7) companies may enter into performance fee contracts without relying on rule 205–3. Each investor in a section 3(c)(7) company need not satisfy the eligibility criteria for an adviser to charge performance fees to the section 3(c)(7) company. *See infra* note 36.

[30] Proposed rule 205–3(d)(1).

[31] *See supra* note 14.

[32] In the context of the definition of investment adviser representative, the Commission has proposed that natural persons with certain business or familial relationships with the supervised person would not need the protection of state qualification requirements. Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1861 (Nov. 13, 1997).

[33] The following discussion of the identity of the "client" is relevant only for purposes of this rule and not for purposes of section 206 of the Advisers Act (15 U.S.C. 80b–6).

[34] The definition of "private investment company" included in paragraph (g)(1) of the current rule [17 CFR 275.205–3(g)(1)] would continue in the amended rule to refer solely to those companies excepted from the definition of investment company under section 3(c)(1) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)]. Reference to section 3(c)(7) is unnecessary because, as noted above, companies excepted from the definition of investment company under this provision also are excepted from the performance fee prohibition pursuant to section 205(b)(4) of the Advisers Act [15 U.S.C. 80b–5(b)(4)].

[35] Rule 205–3(b)(2) [17 CFR 275.205–3(b)(2)].

[36] Proposed rule 205–3(b). The Commission is not proposing to extend the "look through" provision of rule 205–3 to section 3(c)(7) companies. In the 1996 Act, Congress explicitly excepted section 3(c)(7) companies from the prohibition on performance fees having concluded that "investors in a qualified purchaser pool are sophisticated enough to be allowed to enter into a fee arrangement that is not a fulcrum fee." *See* S. REP. NO. 293, 104th Cong., 2d Sess. 11 (1996).

[37] Proposed rule 205–3(b). *See, e.g.*, Heilmold Associates, Inc. (pub. avail. Dec. 18, 1992) (adviser may receive performance fee from certain limited partners when the fee would be based solely on a limited partner's capital account and not based on the overall performance of the partnership). *See also* Compass Investors (pub. avail. Dec. 18, 1996).

The proposed amendments would retain the provision in rule 205–3 that an equity owner who is the investment adviser entering into the performance fee contract need not be a qualified client.

[38] Proposed rule 205–3(c).

[39] According to data from the 1995 Survey of Consumer Finances conducted by the Federal Reserve Board, approximately 1,100,000 households have net worth between $1,000,000 and $1,500,000. This figure, however, represents the net worth of households and not the individual persons who might be clients. Furthermore, the survey results do not address clients that are not natural persons.

[40] The Commission knows of no information concerning the incidence of performance fee arrangements in the United States, and requests the submission of data concerning such incidence. Performance fee arrangements, however, appear to be accepted practices in many other countries. *See* International Survey of Investment Adviser Regulation 15 (Marcia L. MacHarg & Roberta R. W. Kameda eds., 1994) (noting that performance fees generally are permitted in Australia, Brazil, Canada (Ontario, with client's written consent), France, Germany, Italy, Japan, Spain, Switzerland (up to 20% of net capital gain), the United Kingdom and Venezuela).

[41] The Commission's Division of Investment Management discussed the advantages and disadvantages of performance fees in more detail in its 1992 study. Protecting Investors, *supra* note , at 239–40.

[42] Richard Grinold & Andrew Rudd, *Incentive Fees: Who Wins? Who Loses?*, 43 Fin. Analysts J. 27, 37 (Jan.–Feb. 1987); Harvey E. Bines, The Law of Investment Management ¶ 5.03[2][b], at 5–43 (1978 & Supp. 1986) (observing that the principal justification for performance fees is that they permit the uncertainty in the quality of the product—the management of the portfolio—to be shared between the adviser and the client).

the benefits of performance fee arrangements would include fewer conflicts of interest in advisory relationships. Better alignment of the goals of the adviser and the client might also result in more efficient investing and allocation of capital.

Proponents also claim that performance fees may encourage better performance by rewarding good performance rather than linking compensation and assets under management as in more traditional arrangements.[43] Thus, such arrangements may produce more cost-effective results than arrangements with more traditional fee structures.

In addition, advocates of the increased use of performance fees assert that they may encourage the establishment of new advisory firms.[44] Performance fees could result in greater competition and produce a wider array of investment advisers and services and lower overall advisory costs. Proponents also state that performance fees provide an incentive for investment advisers to service smaller accounts that otherwise might be less attractive to the advisers.[45] Furthermore, supporters argue that performance fees permit advisers to focus on a smaller number of clients than they otherwise would under traditional compensation arrangements by allowing them to generate sufficient income without the necessity for a large asset base.[46] Such results also could increase the variety of services provided to a wider array of clients, and decrease advisory costs overall.

The increased use of performance fees, however, also may produce some costs to advisory clients and the economy in general. Opponents of advisory fees have cited the potential for the adviser under a performance fee arrangement to engage in excessive risk taking with respect to the client's account.[47] Excessive risk taking may result in unexpected losses to the clients, which may prompt investors to withdraw from the market and discourage capital formation. Critics also challenge whether there is any basis, theoretical or analytical, for believing that performance fees will improve performance.[48] In addition, some detractors have expressed concern that performance fees might result in discrimination against clients that do not pay performance fees. One form of such discrimination may be advisers devoting more of their time and resources to clients that pay such fees.[49] Such an argument relies on an assumption, which may not be necessarily correct, that an adviser cannot increase the amount of its advisory resources. Nonetheless, this argument notes the potential for an increase in conflicts of interest on the part of advisers.[50]

The arguments for and against performance fee arrangements provide no definitive answers concerning their effect on advisers, clients and the markets in general. The costs and benefits of performance fee arrangements in general are difficult to quantify because of their theoretical nature. Comment is requested on whether the benefits and costs could be quantified.

The Commission has determined to permit clients who are financially sophisticated or have the resources to obtain sophisticated financial advice to weigh the costs and benefits of entering into such arrangements and to determine for themselves whether to enter into such contracts. Although an increase in the use of performance fees may impose some overall costs, such costs could result from the existing rule 205–3 even if the Commission did not adopt the proposed amendments.

With respect to the rule amendments at issue, the Commission believes that the proposed amendments would not impose any additional costs on investment advisers or their clients. Once the adviser determines that a client is qualified, the rule does not prescribe detailed contractual requirements or require specific disclosures to clients. The Commission has observed over the years that the detailed conditions of the current rule raise numerous interpretive issues.[51] The proposed rule should reduce the costs of establishing and monitoring compliance with the current rule.

Comment is requested on this cost-benefit analysis. Commentators are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rules and performance fees in general.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential effect of the proposed rule amendments on the economy on an annual basis. Commentators should provide empirical data to support their views.

IV. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed amendments to rule 205–3 under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the 1996 Act added section 205(e) to the Advisers Act, which authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition contained in section 205(a)(1) of the Advisers Act advisory contracts with persons that the Commission determines do not need the protections of the prohibition. The IRFA states that the proposed rule amendments would liberalize rule 205–3, which permits performance fees to be charged to sophisticated clients by eliminating required contract terms and disclosures, update the current criteria for determining eligible clients to reflect the effects of inflation on the current assets under management and net worth tests, and add a new category of eligible clients based upon the definition of "qualified purchaser" in section 2(a)(51)(A) of the Investment Company Act.

The IRFA sets forth the statutory authority for the proposed rule amendments. The IRFA also discusses the effect of the proposed rule amendments on small entities. For the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year or (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[52] The Commission estimates that approximately 17,650 investment advisers are small entities.[53] The Commission does not have information, however, from which to estimate either the number of clients of small entities who would satisfy the tests of sophistication or the number of such clients who would enter into performance fee arrangements under the rule. The Commission, however, believes that it would be reasonable to estimate that the overall effect of the proposed amendments to the rule would be to increase the use of the exemption by small entities, and that the economic effect on small entities may be significant.

The IRFA states that the proposed rule amendments would not impose any new reporting, recordkeeping or compliance requirements, and that the Commission believes that no rules duplicate, overlap or conflict with the proposed rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule amendments that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule amendments for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any portion of the rule, for small entities. As discussed in more detail in the IRFA, the Commission believes that it would be inconsistent with the purposes of the Advisers Act to exempt small entities from the proposed rule amendments or to use performance standards to specify different requirements for small entities. Different compliance or reporting requirements for small entities are not necessary because the proposed rule amendments do not establish any new reporting, recordkeeping or compliance requirements. The Commission has determined that it is not feasible to further clarify, consolidate or simplify the proposed rule amendments for small entities.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule amendments. A copy of the IRFA may be obtained by contacting Kathy D. Ireland, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–6, Washington, DC 20549.

V. Statutory Authority

The Commission is proposing amendments to rule 205–3 pursuant to the authority set forth in section 205(e) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-5(e)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b-3a.

Section 275.203A–2 is also issued under 15 U.S.C. 80b-3a.

Section 275.204–2 is also issued under 15 U.S.C. 80b-6.

Section 275.205–3 is also issued under 15 U.S.C. 80b-5(e).

2. Section 275.205–3 is revised to read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b-5(a)(1)) will not be deemed to prohibit any investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That the client entering into the contract subject to this section is a qualified client, as defined in paragraph (d)(1) of this section.

(b) *Identification of the client.* In the case of a private investment company, as defined in paragraph (d)(3) of this section, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202(a)(22) of the Act (15 U.S.C. 80b-2(a)(22)), each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of paragraph (a) of this section.

(c) *Transition rule.* An investment adviser that entered into a contract before [insert the effective date of the final rule] and satisfied the conditions of this section as in effect on the date that the contract was entered into will be deemed to satisfy the conditions of this section; *Provided, however,* that this section will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after [insert the effective date of the final rule].

(d) *Definitions.* For the purposes of this section:

(1) The term *qualified client* means a natural person who or a company that:

(i) Immediately after entering into the contract has at least $750,000 under the management of the investment adviser; or

(ii) The investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

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[43] *See, e.g.*, Stephen Lofthouse, *A Fair Day's Wages for a Fair Day's Work*, 4 Journal of Investing 74, 76 (Winter 1995); Grinold & Rudd, *supra* note 42, at 37; Bines, *supra* note 42, at 5–36 to 5–37.

[44] Julie Rohrer, *The Great Debate Over Performance Fees*, 17 Institutional Investor 123, 124 (Nov. 1983) (stating that new firms can begin generating profits before attracting a large asset base).

[45] *See, e.g., id.*

[46] *See, e.g., id.*

[47] Lofthouse, *supra* note 43, at 77; Rohrer, *supra* note 44, at 127.

[48] Lofthouse, *supra* note 43, at 79 (citing the lack of empirical data); Rohrer, *supra* note 44, at 128 (noting that incentives for good performance already exist because advisers are compensated on the basis of account size and must perform well to retain their clients); Bines, *supra* note 42, at 5–36 (indicating that there is no demonstrable connection between performance fees and superior performance).

[49] *See, e.g.*, Lofthouse, *supra* note 43, at 77.

[50] *See* In re McKenzie Walker Investment Management, Inc., Investment Advisers Act Release No. 1571 (July 16, 1996) (investment adviser favoring its performance-fee clients in the allocation of hot initial public offerings).

[51] *See, e.g.*, Valuemark Capital Management, Inc. (pub. avail. June 4, 1997) (limited partners purchasing or redeeming mid-year immaterial if performance fee based on performance of partnership over a period of at least one year); Securities Industry Association (pub. avail. Nov. 18, 1986) (use of rolling one-year periods after initial one-year period); P.R. Becker, Inc. (pub. avail. July 21, 1986) (individual limited partners may be considered the "client" for purposes of the "arm's-length" negotiation requirement).

[52] Rule 275.0–7 [17 CFR 275.0–7]. In January 1997, the Commission proposed to revise this definition of "small entity." *See* Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Release Nos. 33–7383, 34–38190, IC–22476, and IA–1609 (Jan. 22, 1997) (62 FR 4106 (Jan. 28, 1997)). The Commission expects to adopt a revised definition of small investment adviser for Regulatory Flexibility Act purposes to reflect the Coordination Act.

[53] This estimate of the number of small entities was made for purposes of the Final Regulatory Flexibility Analysis for the rules implementing the Coordination Act. *See* Implementing Release, *supra* note 15, at nn.189–190 and accompanying text. Under rule 203A–5 of the Advisers Act, all investment advisers registered with the Commission were required to file a completed Form ADV–T with the Commission by July 8, 1997, indicating whether they remain eligible for Commission registration. Of the 23,350 Commission-registered investment advisers, approximately 7,200 advisers indicated that they remain eligible for Commission registration, 10,600 advisers withdrew their registrations, and 5,600 advisers did not file their Form ADV–T. The Commission believes that most of the investment advisers that did not file the Form ADV–T are either no longer in the advisory business or no longer eligible to register with the Commission. The Commission expects to cancel the registrations of most of these investment advisers. The Commission also expects to adopt a revised definition of small entity for purposes of the Regulatory Flexibility Act. *See supra* note 52. Therefore, the Commission plans to revise its estimate of the number of advisers that are small entities after the transition is complete so that the Commission would have more accurate information to determine the number of small entities under the new definition of that term.

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)(A)) at the time the contract is entered into.

(2) The term *company* has the same meaning as in section 202(a)(5) of the Act (15 U.S.C. 80b-2(a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(3) The term *private investment company* means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3(c)(1) of such Act (15 U.S.C. 80a-3(c)(1)).

Dated: November 13, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30295 Filed 11–18–97; 8:45 am]

BILLING CODE 8010-01-P

federal register

Wednesday
November 19, 1997

Part IV

Environmental Protection Agency

Termilind Limited; Notice and Order of Revocation of Registrations; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66017; FRL–5755–7]

Termilind Limited; Notice and Order of Revocation of Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Notice and Order of Revocation of Registrations and Final Determination Governing Sale and Use of Existing Stocks.

SUMMARY: In March of 1996, EPA issued registrations for two end use napthalenacetic acid (NAA) products, Alphaspra 200 (EPA Registration Number 67223-2) and Alphaspra 800 (EPA Registration Number 67223-1) to Termilind Limited (Termilind). On August 2, 1996, Amvac Chemical Corporation (Amvac) filed a petition to cancel the Termilind registrations based upon assertedly false certifications that Termilind would use Amvac-registered material to formulate its products. Amvac filed a second petition in October of 1996 asking EPA to deny Termilind's application for a technical NAA registration based upon an assertion that Termilind misappropriated data to support the application. EPA has determined that Termilind submitted misleading materials in support of its applications for end-use registrations, and that the registrations would not have been granted absent this misleading information. On August 6, 1997, EPA issued a Decision granting Amvac's petition in this regard and revoking the end-use registrations. In that same Decision, EPA denied Amvac's petition to deny Termilind's application for technical registration. The revocation Decision, and a subsequent determination concerning the sale and distribution of existing stocks of the revoked products, are published in this Notice.

DATES: The revocation Decision was effective as to Termilind on August 6, 1997. The Decision and existing stocks determination are effective as to all other persons on November 19, 1997. Any person interested in requesting an informal hearing should submit such a request by January 20, 1998.

ADDRESSES: Request for a formal hearing should be addressed to: Robert Perlis, Office of General Counsel (2333), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Jones, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5446, e-mail:jones.james@epamail.gov.

SUPPLEMENTARY INFORMATION: Unit I. of this document contains the Agency's August 6, 1997 decision on the petition to revoke the registrations, and Unit II. consists of the Agency's existing stocks determination.

I. Decision on Amvac's Petition to Revoke Termilind Limited's Registrations

Petitioner Amvac Chemical Corporation (Amvac) seeks immediate revocation of respondent Termilind Limited's (Termilind) registrations for two end use naphthalenacetic acid (NAA) registrations, Alphaspra 200 (EPA Registration No. 67223-2) and Alphaspra 800 (EPA Registration No. 67223-1). Amvac also seeks revocation of Termilind's technical NAA registration, (EPA Registration No. 67223-22). Amvac claims that the end use registrations were obtained through willful misrepresentation of the source of technical NAA, and that the technical registration was obtained through the submission of data "stolen" or "misappropriated" from Amvac. Amvac asserts, as well, that the willful nature of Termilind's acts authorizes summary revocation of the subject registrations without resort to the procedural requirements of section 6(b), the cancellation provision of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). We grant the petition with respect to the two end use registrations, and deny the petition with respect to the technical registration.

Legal Background

The sale, distribution and use of pesticides in the United States is regulated by the Federal Insecticide, Fungicide, and Rodenticide Act. 7 U.S.C. 136-136y. Under FIFRA, with certain limited exceptions, a pesticide may not be sold or distributed unless it is registered. *Id.* 136a(a), 136j(a)(1)(A). In order for a pesticide to qualify for registration, the Environmental Protection Agency (EPA) must determine that it will not cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice. *Id.* 136a(c)(5)(C)-(D). To make this finding, EPA reviews data on product chemistry, toxicology, and environmental fate, among other subjects. See 40 CFR part 158 (data requirements for registration). The data reviewed must be supplied by the registrant; it is not generated by the Agency. *Id.* Because the volume of data received and reviewed by the Agency is extremely large, EPA is unable to investigate each statement, study and item of data received for potential fraud or misrepresentation. Thus, to a great degree, the Agency must rely on the good faith and integrity of registrants if it is to fulfill its mandate of protecting human health and the environment from unreasonable risk.

A registrant can fulfill its obligation to submit much of the data required for registration by formulating its product with an existing registered pesticide purchased from another producer. See 7 U.S.C. 136a(c)(2)(D); 40 CFR 152.85 (Formulators' exemption).[1] The premise behind the formulators' exemption is that the purchase price of the registered material compensates the original registrant for the cost of data generation. See *id.*

In the case of certifying eligibility for the formulators' exemption, good faith on the part of applicants is critical. When an applicant certifies that it will formulate its product using a registered pesticide as the active ingredient, it is excused from the requirement of submitting data pertaining to the safety of that ingredient. See *id.* Instead, the Agency bases its risk analysis of that ingredient on the data received from the registrant of the original product. If the applicant does not then use the registered product cited, the risk assessment performed by the Agency, and any safety finding premised upon it, are unreliable--they may not reflect the nature or contents of the new product. Thus the Agency's ability to carry out its mandate of protecting human health and the environment is undermined.

Regulatory History

Termilind cited Amvac Chemical Corp. of Los Angeles California as the source of the technical NAA active ingredient in applications for two end use NAA registrations submitted to EPA in September 1995. Termilind also certified to EPA that it was eligible for the formulators' exemption. On the basis of that information, EPA granted the two registrations in March of 1996.

In July 1996, EPA Region X issued a Stop Sale, Use, or Removal Order (SSURO) prohibiting the sale or distribution of Termilind's two end use NAA products. Records obtained by EPA from an Oregon Department of Agriculture investigation revealed that technical NAA product had been shipped from Seoul, South Korea by Inchema Company, to Oregon California Chemicals Inc. (Or-Cal), a contractor for Termilind. EPA issued the SSURO on the grounds that the Agency believed that "the supplier of [NAA] for the [end use products] is different than what was listed in [Termilind's] confidential statement of formula [CSF] for these products" in violation of FIFRA section 12(a)(1)(C) (unlawful to distribute or sell pesticide composition of which differs at time of distribution from composition described in CSF). 7 U.S.C. 136j(a)(1)(C). The order remained in effect until September 23rd, when Termilind amended the CSFs of the two products to reflect the use of its own technical NAA, which was registered by EPA that same month. This matter was followed up with a Warning Letter, mailed to Termilind on December 16, 1996, in which Region X confirmed the Agency's conclusion that a violation of FIFRA section 12(a)(1)(C) had occurred. *Id.*

On August 2, 1996, Amvac submitted its first petition for revocation, which concerned the two Termilind end use registrations. In the petition, Amvac claimed that the registrations were issued based on "false certifications to EPA. . . that Termilind's two products would be formulated from Amvac's EPA-registered technical naphthalene acetic acid (NAA) and thus qualify for the formulators' exemption." Amvac stated that it was the only source of registered technical NAA, and that although Termilind cited Amvac as its source of technical NAA in the registration materials submitted for two end use products, neither Amvac nor any of its distributors had sold any technical NAA to Termilind. Amvac claimed, as well, that neither it nor its distributors had discussed sales of technical NAA with Termilind.

In early October, shortly after the SSURO was lifted, Amvac submitted a second petition for revocation, this one concerning the registration of Termilind's technical NAA product. In that petition Amvac asserted that "Termilind willfully misappropriated confidential business information (CBI) to obtain the Technical Registration," and requested that the registration be revoked on that basis.

Amvac asserts that in 1994 it entered into an arrangement with Shin Young C-Tech Co., Ltd. (C-Tech), a South Korean company, and its U.S. agent, Inchema, Inc., whereby C-Tech/Inchema would manufacture technical NAA for Amvac. In its second petition, Amvac stated that it supplied CBI to C-Tech/Inchema for the purposes of carrying out this business arrangement. The CBI was allegedly the subject of a confidentiality agreement, pursuant to which C-Tech/Inchema was forbidden to disclose it to third parties for any purpose. It is this CBI which Amvac claims Termilind "misappropriated" and submitted to EPA in support of a technical NAA registration.

Amvac failed to serve copies of either petition on Termilind, arguing in each that the willful nature of Termilind's conduct warranted summary revocation, without prior notice or an opportunity to be heard. Amvac cited section 558 of the Administrative Procedures Act (APA) as authority for this proposition.[2]

EPA forwarded copies of the two petitions to Robert Fisher, Termilind's regulatory agent. A copy of the first petition was mailed to Mr. Fisher on September 5, 1996; a copy of the second was sent on November 25. Termilind did not respond to either petition. On December 6, EPA formally invited Termilind to respond to the allegations contained in the two petitions and set a deadline of December 20 for receipt of a response.

After receiving and reviewing Termilind's response, EPA determined that further development of both legal and factual issues was warranted prior to issuing a decision. EPA sent an identical set of questions to each party and, again, invited them to respond. Via the same letter EPA established a series of procedures to govern communications between Agency personnel and representatives of Amvac or Termilind concerning the merits of the ongoing dispute.

In addition to petitioning EPA to revoke Termilind's registrations, Amvac has also initiated legal proceedings against Termilind in the United States District Court for the District of Oregon, seeking, among other things, a preliminary injunction to enjoin Termilind from maintaining any registrations for products containing NAA, and to prohibit Termilind from selling, marketing or distributing any product containing NAA. By order dated January 17, 1997, Amvac's motion was denied. The issue of whether Termilind misappropriated CBI owned by Amvac and submitted such in support of its technical NAA registration is still before the District Court.

Based on the materials submitted by both parties in response to the questions posed by the Agency, EPA makes the following findings of fact:

Findings of Fact

(1) Respondent Termilind Ltd. is a person and a registrant as defined by FIFRA. (7 U.S.C. 136(s), (y))

(2) Petitioner Amvac Chemical Corp. is a person and a registrant as defined by FIFRA. (7 U.S.C. 136(s), (y))

(3) Jerry Fitzsimmons is the president of Termilind, Ltd. (Affidavit of Jerry Fitzsimmons, November 6, 1996, at 1)

(4) J. R. Fisher is the principal of Fisher and Associates, a regulatory agent providing services to companies seeking registration of products with EPA. (Affidavit of J. R. Fisher, November 6, 1996, at 1)

(5) J. R. Fisher has been a regulatory agent providing services to companies seeking registration of products with the EPA since 1981. (Affidavit of J. R. Fisher, December 31, 1996, at 2)

(6) J. R. Fisher prepared and submitted the application materials for Termilind's end use registrations. (Affidavit of J. R. Fisher, December 31, 1996, at 4)

(7) Shin Young C-Tech Co., Ltd. (C-Tech) is a South Korean company. (Affidavit of Eric Wintemute at 4)

(8) Inchema, Inc. is the United States Agent for C-Tech. (Affidavit of Eric Wintemute at 5)

(9) In or about July 1995, J. R. Fisher and Jerry Fitzsimmons met with Hans Wessel and Steve Shim of Inchema regarding the purchase of technical NAA. (Affidavit of J. R. Fisher, December 31, 1996, at 2)

(10) Inchema had manufactured technical NAA for Amvac. (Affidavit of Eric Wintemute at 5)

(11) Amvac rejected the last batch of NAA produced by Inchema/C Tech. (Affidavit of J. R. Fisher, November 6, 1996, at 2)

(12) Termilind was aware that the technical NAA it purchased from Inchema/C-Tech had been rejected by Amvac. (Affidavit of J. R. Fisher, November 6, 1996, at 2)

(13) Termilind cited Amvac Chemical Corp. of Los Angeles California as the source of the technical NAA active ingredient in its applications for two end use NAA registrations, submitted to EPA in September 1995. (Affidavit of J. R. Fisher, November 6, 1996, at 2; Warning Letter issued to Termilind Ltd. by EPA Region 10, December 16, 1996) These registrations were granted in March of 1996. (Alphaspra 800, EPA Registration No. 67223-1 granted March 15, 1996; Alphaspra 200, EPA Registration No. 67223-2 granted March 26, 1996)

(14) Termilind certified that it was eligible for the formulators' exemption, 7 U.S.C. 136a(c)(2)(D); 40 CFR 152.85, (Formulators' exemption statement submitted by Termilind)

(15) Termilind cited Amvac's product labels and material safety data sheet in applications for end use NAA registrations submitted to EPA in September 1995. (Affidavit of J. R. Fisher, December 31, 1996, at 3)

(16) Termilind had Inchema/C-Tech formulate unregistered technical NAA into end use product for import into the United States. These products bore Termilind's EPA registration number for the end use NAA product Alphaspra 800. (Affidavit of J. R. Fisher, November 6, 1996, at 2; affidavit of J. R. Fisher, December 31, 1996, at 4)

(17) Termilind did not obtain samples of, or perform any tests upon, the technical NAA product used to formulate the Alphaspra 800. (Affidavit of J. R. Fisher, December 31, 1996, at 3).

(18) Under 19 CFR 12.112, "an importer desiring to import pesticide or devices into

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[1] 7 U.S.C. 136a(c)(2)(D) reads as follows:

Exemption--no applicant for registration who proposes to purchase a registered pesticide from another producer in order to formulate such purchased pesticide into the pesticide that is subject of the application shall be required to --

(i) submit or cite data pertaining to such purchased product; or

(ii) offer to pay reasonable compensation otherwise required by paragraph (1)(D) of this subsection for the use of any such data.

40 CFR 152.85 reads as follows:

(a) FIFRA section 3(c)(2)(D) excuses an applicant from the requirement to submit or cite data pertaining to the safety of any ingredient (or mixture of ingredients) contained in his product that is derived solely from one or more EPA-registered products which the applicant purchases from another producer.

(b) If the product contains one or more ingredients eligible for the formulators' exemption, the applicant need not comply with the requirements of §§ 152.80 through 152.98 with respect to any data requirements pertaining to the safety of any such ingredient, provided that he submits to the Agency a certification statement containing the following information . . .

(1) Identification of the applicant, and of the product by EPA registration number or file symbol;

(2) Identification of each ingredient in the pesticide that is eligible for the formulators' exemption, and the EPA registration number of the product that is the source of that ingredient;

(3) A statement that the listed ingredients meet the requirements for the formulators' exemption;

(4) A statement that the applicant has submitted (either previously or with the current application) a complete, accurate and current Statement of Formula; and

(5) The name, title and signature of the applicant or his authorized representative and the date of signature.

(c) An applicant for amended registration is not required to submit a new formulators' exemption statement, if the current statement in Agency files is complete and accurate.

[2] Section 558(c) of the APA reads in pertinent part:

Except in cases of willfulness or those in which public health, interest or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given--

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices . . . *prior* to the arrival of the shipment in the United States." (emphasis added). Termilind did not submit the required Notice of Arrival of Pesticides and Devices until 3 months after the shipment of NAA product had arrived in the United States from Korea. The Notice was filed only after EPA Region X discovered NAA product shipped from Korea in the possession of Or-Cal, a Termilind licensee. (Notice of Arrival submitted July 13, 1996)

(19) Termilind sold pesticide products formulated with unregistered Inchema/C-Tech NAA in the United States. (Stop Sale, Use, Or Removal Order issued to Termilind Ltd. by EPA Region 10, July 3, 1996; Warning Letter issued to Termilind Ltd. By EPA Region 10, December 16, 1996)

(20) Termilind never purchased or attempted to purchase Amvac's registered technical NAA from Amvac or any of its distributors. (Petition for revocation submitted to EPA by Amvac October 9, 1996 at 4)

Decision

I.

In its second petition, dated October 9, 1996, Amvac claims that Termilind's technical registration was obtained through the submission of data "stolen" or "misappropriated" from Amvac. On that basis, Amvac asserts that the Agency must revoke the technical registration. We deny this petition on jurisdictional grounds.

EPA does not have the powers of a court of general jurisdiction. Beyond the limited realm of data compensation, see 7 U.S.C. 136a(c)(1)(F); 40 CFR 152.99, the Agency has neither the expertise nor the authority to adjudicate conflicts regarding ownership of intellectual property. As noted above, this very matter is currently before the Federal District Court for the District of Oregon. A court of general jurisdiction is a more appropriate forum for the resolution of disputes of this nature. Accordingly, Amvac's second petition, seeking revocation of Termilind's technical registration, is denied.

II.

Amvac also seeks immediate revocation of Termilind's two end use registrations, claiming that they were obtained through willful misrepresentation of the source of the technical NAA used as the active ingredient in the products. But for the misrepresentation, Amvac contends, the registrations would not have been granted; thus they are void *ab initio*. Amvac also asserts that in light of Termilind's willful behavior, the Agency has inherent power to revoke these registrations without resort to section 6 of FIFRA. We agree.

As an initial matter, we must first address whether Termilind's conduct was willful. Willful misconduct had been defined as "an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof." *Hutto Stockyard, Inc. v. USDA*, 903 F.2d 299, 304 (4th Cir. 1990 (quoting *Capitol Packing Co. v. United States*, 350 F.2d 67, 78-79 (10th Cir. 1965)); see also *Capital Produce Co. v. United States*, 930 F.2d 1077, 1079 (4th Cir. 1991). Termilind has not claimed that the material it purchased bore an Amvac EPA approved label identifying it as a registered product. Termilind did not purchase the material from Amvac or an Amvac distributor. Moreover, Termilind conceded that it was aware that the material had been rejected by Amvac. Nevertheless, Termilind identified Amvac's registered technical NAA as its source of active ingredient. Furthermore, Termilind certified that it was eligible for the formulators' exemption. This behavior constitutes willful misrepresentation.

Termilind cannot plausibly claim that its conduct was innocent. Its regulatory agent, J. R. Fisher, had 15 years experience in providing services to clients seeking registration of products with the EPA; he cannot credibly argue ignorance of the law in Termilind's defense. Moreover, common sense dictates that material purchased from a party other than the registrant or its distributors, that is known to have been rejected by the registrant, is not that registrant's registered material. Termilind does not claim that the material it purchased bore Amvac's label or EPA registration number. Under no view of the facts was it reasonable for Termilind to represent the product purchased from Inchema/C-Tech as Amvac registered material. Nevertheless, Termilind cited Amvac's product labels and material safety data sheet in its applications for end use registrations. This conduct was consistent with an intent to deceive the Agency about the origin of its technical material, as was Termilind's failure to submit a timely Notice of Arrival of Pesticides and Devices when the NAA material arrived from Korea. If the Notice had been filed in a timely fashion it might have drawn attention to the fact that Termilind, though citing Amvac Chemical Corp. of Los Angeles, California as its source of registered technical material, was receiving shipments of NAA product from Korea. We conclude that Termilind's misrepresentation was willful.[3]

We next address the Agency's authority to revoke a registration summarily, without resort to section 6 of FIFRA, where the registration was procured through willful misrepresentation.[4] As a general rule, it is well accepted that "every tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately to modify its judgement, decree or error." *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 13 (2d Cir. 1981) (quoting K. Davis, Administrative Law Treatise section 18.09 at 606 (1958); *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972) (same); see also *Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir 1980) (Administrative agencies have inherent authority to reconsider their decisions since power to decide carries with it power to reconsider) (quoting *Albertson v. Federal Communications Comm'n.*, 182 F.2d 397, 399 (D.C. Cir. 1950)). Moreover, the Supreme Court and other courts have recognized that administrative agencies have implied authority to reconsider and correct errors, even where the applicable statue and regulations do not explicitly grant such powers. *Gun South Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989) (listing cases). Courts have relied on this implied power in holding that agencies have the authority to revoke licenses improperly granted. See, e.g. *Kudla v. Mode*, 537 F.Supp 87, 89-90 (E.D. Mich. 1982) (improperly granted license revoked where licensee had failed to pass qualifying examination; procedural protections afforded by statute do not attach unless requirements for obtaining license have been met).

More specifically, courts have recognized that agencies have the inherent authority to correct errors and reverse judgements induced by fraud or misrepresentation. *Alberta Gas*, 650 F.2d at 13 ("It is a well established principle that an administrative agency may reconsider its own decisions'. . . . It is hard to imagine a clearer case for exercising this inherent power than when a fraud has been perpetrated on the tribunal in its initial proceeding") (citations omitted); see also *Hand v. Matchett*, 957 F.2d 791, 794 (10th Cir. 1992) (self evident that university has inherent authority to revoke improperly awarded degree where fraud shown); *Colonial Penn Insurance Co. v. Coil*, 887 F.2d 1236, 1240 (revoking insurance settlement procured through fraud); In Re Berman, 97 S.E. 2d 232, 235 (N.C. 1957) (board has inherent power, independent of statutory authority, to revoke license improperly issued due to fraud or misrepresentation); *Schireson v. Shafer*, 47 A.2d 665, 667 (Pa 1946) (where license was procured by fraud licensing authority may revoke it regardless of fact that fraud is not specified as ground for revocation in statute); cf *Hazel-Atlas Glass Co. V. Hartford-Empire Co.*, 322 U.S. 238, 246 (1943) (reversing judgment in patent infringement suit where both Patent Office and Court of Appeals were influenced by fraudulent misrepresentations --"Public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.") (overruled on other grounds). In the instant case, this rule supports the proposition that EPA has inherent authority to revoke Termilind's end use registrations. Indeed, courts have recognized that administrative agencies, as guardians of the public interest, have a duty to make corrections where they have relied on erroneous information. *Green County Planning Bd. v. Fed. Power Comm'n*, 559 F.2d 1227, 1233 (2d Cir. 1976; *Hudson River Fishermen's Ass'n v Federal Power Comm'n*, 498 F.2d 827, 833 (1974); *Borlem S.A. Empreedimentos Indutriais v. U.S.*, 718 F. Supp 41, 47 (CIT 1989).

[3] As the above definition notes, "wilful" behavior encompasses conduct that is grossly negligent as well as conduct that is intentional. Thus, even if Termilind did not act with intent to deceive the Agency, but was merely grossly neglectful of its statutory duties, the outcome would be the same.

[4] Petitioner claims pursuant to section 558(c) of the Administrative Procedure Act that in light of Termilind's willful misrepresentation, the Agency can revoke the registrations summarily without providing notice or opportunity for comment. As this decision documents, the Agency has given Termilind an opportunity to respond to Petitioner's allegations and to submit supplemental briefing. Thus, the Agency has given Termilind more process than section 558(c) requires.

Termilind claims that revocation is the equivalent of cancellation and can only be accomplished through section 6 of FIFRA. In essence, Termilind asserts that a registrant that has submitted false or misleading application materials, and thereby induced the Agency to grant a registration erroneously, has the same interest in the wrongly obtained registration, and is entitled to the same procedural protections, as a registrant that acted in good faith to meet the requirements for registration. We find it implausible that Congress intended applicants who obtained registrations through fraud to receive the procedural protections of section 6.

Likewise, we find Termilind's argument that the Agency does not have the authority to revoke registrations obtained through fraud or misrepresentation, because FIFRA does not specifically describe such a procedure, equally unpersuasive. As the legal analysis above establishes, Agencies have inherent authority to redress fraud or misrepresentation. See also *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843. 844 (1984) ("Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency."). Moreover, this conclusion is consistent with the Agency's statutory duty under FIFRA to protect man and the environment from the unreasonable adverse effects of pesticide use. As noted above, Congress established a scheme in FIFRA that requires registrants to supply the data necessary to establish and maintain FIFRA registrations. The Agency, therefore, must be able to rely on applicants to act with goodwill and integrity in submitting the required data. In order to protect the integrity of the FIFRA process and the safety of pesticide users and the public, the Agency must have a swift and sure method of responding when the submission of fraudulent or misleading application materials is discovered. If unscrupulous applicants receive the same procedural protections as honest ones, there is little incentive to be honest. Instead, the dishonest applicants who obtain speedy registration through fraud or misrepresentation are rewarded for their deception. Such an interpretation of FIFRA is contrary to the EPA's mandate to protect public health and the environment.

We wish to emphasize that the quality of the evidence available to the Agency in this case was critical to the outcome. Sworn statements of the parties were included in the record, and based on these, the Agency was able to make the factual findings necessary to underpin a revocation action with confidence. The Agency is very unlikely to take similar actions in future cases unless allegations of misrepresentation are supported by reliable and persuasive evidence.

III.

As noted above, Amvac's petition to revoke Termilind's technical registration is denied on the basis that, beyond its role in resolving data compensation disputes, the Agency has neither the expertise nor the jurisdictional competence to adjudicate complicated issues regarding ownership of intellectual property rights. Nevertheless, the Agency does intend to go forward with a Notice of Intent to Cancel Termilind's technical registration, but on alternative grounds.

Although there is no explicit fitness criterion among the requirements for obtaining or holding a registration under FIFRA, as a general matter, determining the "fitness" of an applicant to hold a license or registration is recognized as a legitimate end of licensing schemes. See *Payne v. Fontenot*, 925 F. Supp. 414, 423 (M. D. La. 1995) (licensing body may require certain standards of applicant; qualifications to hold license must have rational connection to applicant's fitness). Furthermore, prior to granting a registration, the Agency is required to determine that a pesticide will not "generally cause unreasonable adverse effects on the environment" when used in accordance with widespread and commonly recognized practice. 7 U.S.C. 136a(c)(5). As a practical matter, in making such a determination the Agency must rely on data and certified statements submitted by the registrant. The Agency's ability to make an accurate finding is therefore directly related to the reliability of the material submitted. If the Agency knows that a registrant has a history of willful misrepresentation, the reliability of the materials submitted by that applicant is subject to question. The Agency's ability to make an accurate finding that the statutory standard for registration has been met is undermined under such circumstances. A "fitness" or "reliability" criterion can therefore properly be implied as a component of the "unreasonable adverse effects" standard. Cf. *Cooley v. Fed. Energy Regulatory Comm'n*, 843 F.2d 1464, 1471 (D.C. Cir. 1988) ("Nothing in [Federal Power Act] explicitly requires a finding of fitness." Commission is charged with considering all relevant public interest factors; fitness of licensee-applicant is public interest factor); see also *Delaware River Development Corp.*, 10 F.P.C. 540, 550 (1951) ("ethical and moral fitness" considered in public interest determination to grant permit); see generally *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843. 844 (1984) ("Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.").

Denial of a license on fitness grounds is not uncommon. See, e.g. *RKO General, Inc., v. Fed. Communication Comm'n*, 670 F.2d 215, 232 (D.C. Cir. 1981) (F.C.C. did not abuse its discretion in denying license renewal for lack of candor; "[T]he Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants, in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate."); see also *ALRA Laboratories, Inc., v. Drug Enforcement Agency*, 54 F.3d 450, 452 (7th. Cir 1995) (DEA did not abuse its discretion when it denied application for new license to manufacturer and distributor of controlled substances where manufacturer had not complied with recordkeeping requirements, had shipped contaminated products, had his inventory seized and was closed for 6 months, and was under indictment); *Dep't Transp. Fed. Highway Admin. v. Interstate Commerce Comm'n*, 733 F.2d 105, 113 (D.C. Cir. 1984) (I.C.C.'s order granting certificate vacated where evidence inadequate to establish applicant's fitness). The licensing body is in the best position to make determinations regarding applicant fitness, and its decisions are entitled to deference. *Ramanchar v. Sobol*, 838 F. Supp. 100, 108 (S.D.N.Y. 1993) (licensing authority entitled to deference in assessing risks posed by licensee). Furthermore, when making licensing decisions "an Agency rationally may conclude that past performance is the best predictor of future performance." *ALRA*, 54 F.3d at 452; *Matsun Gyogyo Co.*, 2 O.R.W. 349 (NOAA 1980) (past violations should be significant factor in determining whether to issue new permit); see also *Dep't Transp. Fed. Highway Admin.*, 733 F.2d at 112 (statements of good intentions in future of limited value in assessing what applicant's future conduct will be).

FIFRA itself does not limit the criteria that the Agency may consider in making a safety calculus. Instead, as described above, the statute dictates that the Agency must affirmatively find that a product will not cause unreasonable adverse effects before a registration may be granted. Common sense dictates that the Agency must be permitted to consider all relevant criteria when performing its analysis. As the discussion above illustrates, the integrity or reliability of a registrant is highly germane to the Agency's ability to make an accurate finding; if the Agency has reason to suspect that materials submitted by a registrant are untrustworthy, an affirmative safety finding cannot be made.

In this case the Agency has determined that Termilind has submitted misleading materials in support of its applications for registration. The Agency is therefore unable to rely on the veracity of unsubstantiated materials submitted by Termilind. Under these circumstances the Agency cannot affirmatively find that Termilind's technical product will not generally cause unreasonable adverse effects on the environment. Accordingly, it is the Agency's intention to undertake a section 6 cancellation of Termilind's technical NAA product in separate proceedings.

Order

For the reasons discussed above, EPA hereby revokes Termilind's registrations for Alphaspra 200 (EPA Registration No. 67233-2) and Alphaspra 800 (EPA Registration No. 67223-1). Existing stocks of these products must be used in a manner consistent with label directions.

Dated: August 6, 1997

/s/ Lynn R. Goldman

Assistant Administrator for Prevention, Pesticides and Toxic Substances

II. Existing Stocks Determination

On August 6, 1997, in response to a petition filed by Amvac Chemical

Corporation ("Amvac"), EPA revoked the registrations issued to Termilind Limited ("Termilind") for Alphaspra 200 (EPA Registration No. 67223–2) and Alphaspra 800 (EPA Registration No. 67223–1) after determining that Termilind had intentionally or willfully misidentified in its application materials the source material from which it intended to formulate the two products. In the Order attached to the Revocation Determination, the Agency allowed use of existing stocks of the revoked registrations, provided that such use is consistent with existing label directions. The Order was silent on the question of whether existing stocks could be sold or distributed.

EPA subsequently issued three clarifications addressing the existing stocks issue. On August 18, 1997, the Acting Associate General Counsel for Pesticides and Toxic Substances (Kevin Lee) explained in a letter to counsel for Amvac that inasmuch as the Order resulted in the termination of the registration of the products and did not authorize any sale or distribution of the products, such further sale or use was unlawful under section 3(a) of FIFRA (which generally prohibits the sale and distribution of unregistered pesticides). On August 20, 1997, the Agency issued a clarification to the Order which specifically provided that "no person may sell or distribute stocks of Alphaspra 200 and Alphaspra 800." This clarification was followed by a second clarification issued on August 22, 1997, which stated that the revocations "shall be effective for dealers and distributors upon publication in the **Federal Register**." Under the terms of this last clarification, the Agency would not consider sale or distribution of existing stocks by dealers and distributors to be unlawful until the Revocation Determination was published in the **Federal Register**.

On August 18, 1997, Termilind filed a request for Reconsideration and Stay of the Revocation Order. As part of that request, Termilind asserted that EPA should permit sale and distribution of existing stocks of the revoked products in a manner consistent with EPA's Statement of Policy related to existing stocks issued in the **Federal Register** of June 26, 1991 (56 FR 29362). Amvac filed a brief response to Termilind's request on August 26, 1997, arguing, without responding to any of the specific assertions made by Termilind, that reconsideration would not be appropriate.

On August 29, 1997, EPA indicated in a letter to counsel for Amvac and Termilind that the Agency intended to carefully consider and resolve finally the existing stocks issues raised by the Revocation Order. This Determination reflects the Agency's resolution of these existing stocks issues.

A. Legal Authority

Under section 6(a)(1) of FIFRA, the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under section 3, 4, or 6 of FIFRA, to such extent, under such conditions, and for such uses as the Administrator determines is not inconsistent with the purposes of FIFRA. As noted above, EPA issued a Policy Statement in 1991 outlining the policies that would generally be followed in making such existing stocks determinations. The legal issue presented is whether section 6(a)(1) and the Policy Statement apply to the situation addressed in the Revocation Determination.

The Agency concluded in its Revocation Determination that it has the inherent authority to correct an erroneous registration decision induced by fraud or willful misrepresentation, and that such authority is inherent in the authority to issue registrations in the first place. The Agency's authority to issue pesticide registrations stems from section 3 of FIFRA. It thus seems to follow that the inherent authority to revoke a registration induced by fraud or misconduct also stems from section 3 of FIFRA. The question then becomes: Is the revocation a "cancellation under section 3" for purposes of section 6(a)(1) of FIFRA?

The Agency has concluded that there is no meaningful distinction between a revocation and a cancellation, and that the revocation of Termilind's registration was a cancellation under section 3 giving the Agency authority over the sale and use of existing stocks. Whether the action is called a revocation or cancellation, the defining element of the action is the termination of a license (or in this case, pesticide registration) previously issued by the Agency. Cancellation is the term used in FIFRA for the termination of a registration; the word "revocation" does not appear in the statute in this context.

Moreover, in this particular case, the license issued by the Agency does not just confer something of value to the licensee (registrant); a pesticide registration allows a pesticide product to enter the stream of commerce where the interests of third parties come into play. When a pesticide registration terminates, for whatever reason, the termination can have immediate consequences for all these third parties. Unless the Agency has determined otherwise under section 6(a)(1) or has issued a regulation under section 3(a) of FIFRA, existing stocks of an unregistered pesticide may be used by any person with impunity, without regard to any conditions that would have applied to the use while the product was still registered.[5] Sale and distribution of an unregistered pesticide, on the other hand, is unlawful under FIFRA unless the Agency allows such sale or distribution pursuant to section 6(a)(1). Such a prohibition on sale or distribution would also apply to commercial "for-hire" applications of the unregistered product.[6] A determination that a revocation is not a cancellation under section 3 would leave the Agency essentially powerless to effectively condition the use of existing stocks (even if such conditions were necessary to prevent unreasonable adverse effects on the environment), and would also leave the Agency powerless to authorize the sale of existing stocks, even by third parties who had no involvement in the activities giving rise to the revocation and even where there are no health, safety, or environmental reasons to disallow continued sales and where a revocation may trigger the otherwise unnecessary disposal of existing stocks of the revoked product. The Agency is declining to interpret FIFRA in a manner that would suggest that Congress intended to give the Agency the authority to terminate registrations without giving the Agency authority to deal with the existing stocks consequences of such terminations. The Agency concludes that a revocation of a registration based upon misconduct in the inception of the registration is a cancellation under FIFRA section 3, and provides the Agency authority under section 6(a)(1) to regulate the sale, distribution, and use of existing stocks of a revoked product.

B. Provisions for Existing Stocks

For the reasons stated above, the Agency concludes that it has the authority under FIFRA section 6(a)(1) to issue an order regulating the sale, distribution, and use of existing stocks of revoked products. Under that section, such sale or use may be permitted to the extent, and under such conditions, as will make the sale and use consistent with the purposes of FIFRA.

[5] Such use need not be consistent with the terms of the previously-approved labeling of the product. Section 12(a)(2)(G) makes it a violation of FIFRA to use any registered pesticide in a manner inconsistent with its labeling; there is no similar provision making it unlawful to use an unregistered pesticide in a manner inconsistent with its labeling.

[6] FIFRA section 2(gg) exempts from the definition of sale or distribution only the commercial application of registered pesticides.

The Agency set forth in its Policy Statement on existing stocks the general policies it will apply when making decisions under section 6(a)(1). In particular, the Agency concluded that it will focus on two issues in making existing stocks determinations: whether the sale or use of existing stocks may pose unreasonable adverse effects on the environment, and whether the registrant (or conceivably some other party) has failed to comply with an obligation of registration. As a general matter, the Agency concluded in the Policy Statement that existing stocks determinations where the Agency has significant risk concerns will be made on a case-by-case basis, with sale and use generally allowed only if supported by a risk/benefit balancing. In situations where there are no significant risk concerns, the Policy would generally allow non-registrants to sell, distribute, and use existing stocks until such stocks are exhausted (provided that all existing label directions are met). The sale and distribution of existing stocks by registrants under the Policy generally hinges upon whether (and when) the registrant failed to comply with an obligation of registration. The Policy is silent on whether supplemental distributors (under 40 CFR 152.132) should be treated like registrants or like other distributors of pesticide products.[7]

The first issue of concern under the Policy Statement is whether the Agency has risk concerns with the existing stocks of the revoked products. This is an issue that has been discussed by both parties in various papers related to Amvac's Petition. The Agency expressed a concern in its Revocation Order related to Termilind's technical registration that the Agency has difficulty finding that a product will not result in unreasonable adverse effects on the environment if a registrant makes false statements to the Agency. In such circumstances, the Agency cannot rely on scientific data submitted by a registrant or on the registrant's compliance with its obligations under section 6(a)(2) to submit additional adverse effects information to the Agency. Where the Agency is unable to rely on material submitted by a registrant, the Agency cannot make the affirmative findings necessary to a determination that a product will not cause unreasonable adverse effects on the environment.

This particular concern with Termilind's registrations does not apply with much, if any, force to the existing stocks issue presented here. While the source used by Termilind to manufacture its end-use products was not the source originally identified by Termilind in its applications, the identity of the source is not in dispute. The papers filed with the Agency by both sides provide the Agency with ample confidence that the existing stocks were manufactured with NAA source material supplied by Inchema. The question then becomes whether the Agency has confidence that the material supplied by Inchema was NAA of sufficient quality to allow the Agency to conclude that the existing stocks of revoked material can be used without causing unreasonable adverse effects on the environment.

The Agency has concluded, based on a number of factors, that there is reasonable assurance that the Inchema material is of sufficient quality to resolve any possible concerns associated with the sale, distribution, or use of existing stocks. Sampling performed of Termilind material did not reveal any problems with the product. While Amvac declined to accept the Inchema NAA provided to Termilind, the Agency is unaware of any allegations by Amvac that Inchema NAA lacks sufficient quality to support a registration.[8] There has been no material presented by Amvac to challenge Termilind's assertion that Amvac's refusal to accept the Inchema NAA was based upon anything other than a dispute over price. The Agency previously accepted the quality of Inchema NAA as a source for Termilind's products when it approved amendments to Termilind's registrations to correctly reflect the source of NAA used in those products. Based on all these factors, the Agency has no reason to suspect that the NAA products made by Termilind differ meaningfully in quality from other NAA products on the market, and does not believe that sale or use of existing stocks of such products would result in unreasonable adverse effects on the environment.[9]

The only reason to disapprove the sale, distribution, or use of existing stock is to punish the misconduct that resulted in the registration of the products in the first place, and to deter future such misconduct. As noted earlier, this particular situation was not addressed in the Policy Statement, and the Agency has concluded that the Policy Statement does not provide significant guidance on how to deal with misconduct similar to Termilind's. It is clear that prohibiting sale, distribution, and/or use of existing stocks may result in hardships on relatively "innocent" third parties. On the other hand, allowing continued sale, distribution, or use of existing stocks would be "unfair" to registrants of competing registered products (such as Amvac in this case) that presumably are complying with the provisions of FIFRA, and would tend to minimize the repercussions to Termilind in this case and serve as less of a disincentive for others to include incorrect or false information in their applications for registration.

After considering carefully these issues, the Agency has determined that it is appropriate to prohibit all further sale or distribution by any person of the revoked products, except the application of existing stocks by for-hire applicators so long as the applicator does not deliver any unapplied pesticide to the person for whom the application is performed. The Agency reached this determination based primarily on the nature of the misconduct in this particular case and its conclusion that the use by pesticide registrants of source material different than the source material identified in the statement of formula submitted to the Agency is a very serious matter. In general, where the Agency revokes a registration because of misconduct involved in its inception, the Agency believes it inappropriate to allow the company involved in the misconduct to derive any benefit from its actions. The only way for the Agency to maximize the likelihood that Termilind will not profit at all from its actions is to prohibit all sale and distribution of the revoked products. In addition, the Agency believes it appropriate to send the strongest possible message to any company that may be considering the use of unregistered source material in its production of registered product notwithstanding the fact that the existing stocks would require that the stocks be disposed of. Legal or illegal disposal of existing stocks could have financial and/or environmental consequences that tip the risk/benefit balance even further towards allowance of the use of existing stocks.

[7] It should also be noted that the Policy Statement does not address the issue of what existing stocks provisions are appropriate for situations such as the one involving Termilind, where the Agency concludes that a registration would not have been issued in the first place in the absence of misconduct by the applicant for registration.

[8] Indeed, Amvac's allegations that Inchema has misappropriated Amvac proprietary technology, as well as Amvac's previous use of Inchema as a source of its own NAA and the absence of any submittals by Amvac under section 6(a)(2) of FIFRA discussing quality problems associated with Inchema's production of NAA, seem to suggest that Amvac has no dispute with the quality of material produced by Inchema.

[9] Indeed, the only difference between a risk/benefit balancing for NAA generally and a balancing for the existing stocks is that a ban on

registration is predicated on use of a registered source material. Put simply, the Agency generally does not intend to allow resale by any person of pesticide products that were not produced in compliance with FIFRA.

The Agency does intend to allow continued use of the revoked products, including use by for-hire applicators, provided that such use is consistent with the labeling of the products. The Agency does not believe that a prohibition on further use would be realistically enforceable in the absence of the devotion of significant resources to such enforcement, and given the conclusion reached on the likelihood of no unreasonable adverse effects on the environment, the Agency does not believe this issue merits the expenditure of such significant resources. The Agency is also concerned that a prohibition on use could lead to unnecessary and unsupervised disposal of revoked products by users.

The Agency recognizes that in data suspension cases under section 3(c)(2)(B) of FIFRA, adversely affected persons have a right to a hearing on existing stocks issue. While no such right is provided for revocations such as the one involved here, the Agency believes it appropriate in this particular case, given the novelty of the issues and the absence of any guidance for revocations in the existing stocks Policy Statement, to provide any person adversely affected by this existing stocks determination with an informal hearing opportunity before the Agency if such person wishes to seek reconsideration of this determination. If this opportunity for an informal hearing is pursued, the Agency will consider all issues raised relevant to the existing stocks determination. Any person interested in requesting an informal hearing should submit such a request within 60 days, in writing, to Robert Perlis, Office of General Counsel (2333), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Requests should include the nature of the person's objection to the determination, the nature of the proposed changes to the determination, and the bases for the objections and changes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 31, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–30140 Filed 11–18–97; 8:45 am]

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Wednesday, November 19, 1997

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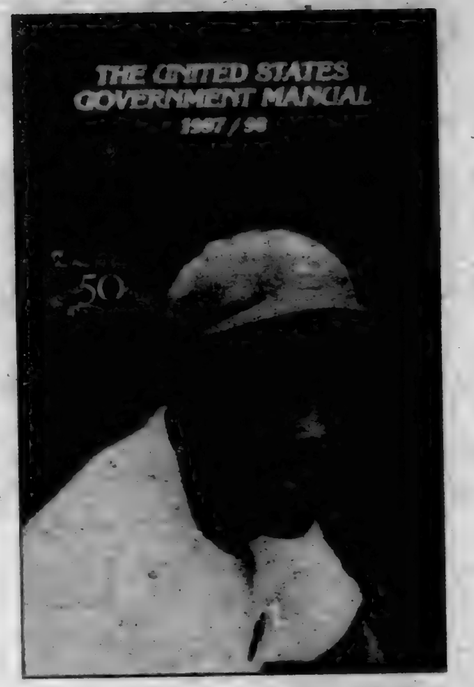
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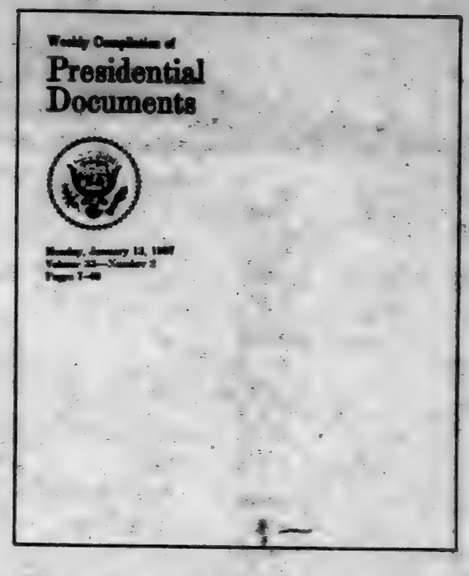
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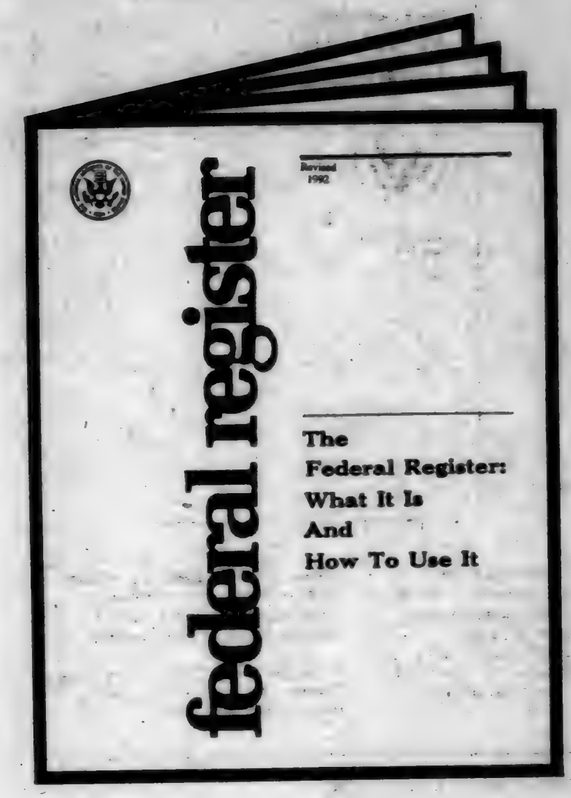
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Electronic Bulletin Board
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Federal Register
Vol. 62, No. 224
Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–8]

Mediterranean Fruit Fly; Removal of an Area From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing all of the quarantined area in Polk County, FL, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective November 14, 1997. Consideration will be given only to comments received on or before January 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–8, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–8. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 am. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in Hillsborough County, FL, in June 1997, quarantined areas have included all or portions of Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL.

In an interim rule effective on June 6, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas in Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, Fl, and an area in Sarasota County, FL. In a fifth interim rule effective on October 15, 1997, and published in the **Federal Register** on October 21, 1997 (62 FR 54571–54572, Docket No. 97–056–7), we removed all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and Florida State and county agency inspectors, that the Medfly has been eradicated from Polk County, FL. The last finding of the Medfly thought to be associated with the infestation in this area occurred on August 28, 1997. Since then, no evidence of infestation has been found in Polk County, FL. We are, therefore, removing Polk County, FL, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. A portion of Hillsborough County, FL, remains quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in Florida affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing an area in Polk County, FL, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. There are approximately 31 small entities that could be affected, including 7 fruit stands, 10 food stores, 1 transporter, 9 commercial growers, and 4 processing plants.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of Florida. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate movement, and the sale of these articles would not be affected by this interim rule.

Therefore, this action should have a minimal economic effect on the small entities operating in the area of Polk County that has been quarantined because of Medfly. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

Hillsborough County. That portion of Hillsborough County beginning at the intersection of I–75 and the Hillsborough/Pasco County line; then west along the Hillsborough/Pasco County line to the section line dividing sections 5 and 6, T. 27 S., R. 18 E.; then south along the section line dividing sections 5 and 6, T. 27 S., R. 18 E. to Veterans Expressway; then south along Veterans Expressway to Erhlich Road; then west along Erhlich Road to Gunn Highway; then north along Gunn Highway to Mobley Road; then west along Mobley Road to Racetrack Road; then southwest along Racetrack Road to the Pinellas/Hillsborough County line; then south along the Pinellas/Hillsborough County line to I–275; then east along I–275 to the western most land mass at the eastern end of the Howard Franklin Bridge; then along an imaginary line along the shoreline of the Old Tampa Bay, Tampa Bay, and Hillsborough Bay (including the Interbay Peninsula, Davis Island, Harbour Island, Hooker's Point, and Port Sutton) to the northern shoreline of the Alafia River's extension; then east along the northern shoreline of the Alafia River to I–75; then north along I–75 to the point of beginning.

Done in Washington, DC, this 14th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30508 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 416 and 457

Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Green Pea Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of green peas. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, separate green peas and dry peas into separate crop insurance provisions, include the current pea crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current pea crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATES: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reforms. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, May 1, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 23680 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.137, Green Pea Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring green peas found at 7 CFR part 416 (Pea Crop Insurance Regulations). FCIC also amends 7 CFR part 416 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 58 comments were received from an insurance service organization, a reinsured company, a crop insurance agent, and a food corporation. The comments received, and FCIC's responses are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions, which are currently in the regulatory review process, will include definitions of commonly used terms, and this rule will be revised to delete these definitions when the Basic Provisions are published as a final rule.

Comment: An insurance service organization recommended that the sentence in the definition of "bypassed acreage" that states "Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes" be deleted since it is addressed elsewhere and does not belong in the definition.

Response: FCIC has deleted the second sentence from, and revised, the definition of bypassed acreage. Provisions have been added in section 3 to explain bypassed acreage when determining approved yield.

Comment: An insurance service organization questioned whether dry pea varieties were shell type or pod type peas.

Response: The definition of green peas specifies that it may be shell or pod type. The definition of "dry peas" has been revised to clarify the distinction between green and dry peas.

Comment: An insurance service organization recommended that the definition of "final planting date" be revised to delete the phrase "for the full production guarantee" since the late planting provisions are not applicable.

Response: The proposed recommendation has not been made because late planting coverage will be available if allowed by the Special Provisions and the producer provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage.

Comment: An insurance service organization and a reinsured company expressed concern with the definition of "good farming practices" which makes reference to "cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenters questioned whether cultural practices that are not explicitly recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service might exist. The commenters indicated that the term "county" in the definition of "good farming practice" should be changed to "area." The insurance service organization also recommended adding the word "generally" before "recognized by the Cooperative State Research, Education, and Extension Service * * *."

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing green peas. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term "generally" will only create an ambiguity and make the definition more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. Therefore, no change has been made.

Comment: An insurance service organization questioned if the definition

of "peas" was intended to include both "dry" and "green" peas.

Response: The definition of "peas" includes both green and dry peas. The definition of "peas" has been revised to include green or dry peas.

Comment: An insurance service organization recommended that the definition of "replanting" be clarified by inserting "green pea" between the last two words ("successful" and "crop") of the sentence.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that "replanting" is performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Comment: An insurance service organization recommended that section 2(c) of the proposed rule clarify whether optional units are available if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC agrees and has amended section 2(a) to clarify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract, and optional units will not be established. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage based and production based processor contracts.

Comment: An insurance service organization, a reinsured company, an insurance agent, and a food corporation recommended that unit division by green pea type remain as an option. The commenters stated that: (1) Unit division by early, mid and late-season green peas is the only unit division option available in many areas other than share or farm serial number; (2) it would complicate loss adjustment if a claim on an early-season variety had to be deferred until the late-season variety was harvested; (3) productivity varies between types (as has been defined as requiring a specific amount of heat units for maturity during a normal growing season); and (4) growing early and late-season green peas are two separate operations. The early-season green peas are planted in April and early May and thrive on the cooler temperatures. They are harvested in June and avoid the heat of early summer. This early harvest allows the producer the option of planting a full season crop after the peas are harvested. The early-season peas are lower yielding and are priced less on processor contracts. Late-season green peas are full season, higher yielding, and priced much higher to allow the producer a return competitive with other full season crops.

Response: As new varieties of green peas have been developed and the original types intermixed, it has become more and more difficult to define the type of green pea into which a variety falls. Due to the need for consistency among regions and crops, FCIC has determined to delete units by type for early, mid, and late season green peas or by planting date.

Comment: An insurance service organization and a reinsured company questioned the distinction between "shell" and "pod" type peas and questioned what would be accomplished by providing optional units by shelf or pod type peas. The commenter also asked how shell and pod type peas will be identified.

Response: Shell type peas are defined as green peas that are shelled prior to eating, canning, or freezing. Pod type peas are defined as green peas intended to be eaten without shelling (*e.g.*, snap peas, snow peas, and Chinese peas). Pod type and shell type peas are grown for a different purpose and a different market. Because of the clear distinction between these types of peas, the provisions have been amended to allow optional unit division for shell type and pod type green peas.

Comment: An insurance service organization and a reinsured company expressed concern that FSA has consolidated all land under the same ownership into one Farm Serial Number wherever possible in the Northeast states, which serves as a deterrent to the purchase of buy-up coverage by the larger, successful producer.

Response: Depending on the processor contract terms, optional units are available by section, section equivalent, FSA Farm Serial Number, irrigated and non-irrigated practice, or by shell type and pod type green peas.

Comment: An insurance service organization recommended revising section 2(f)(1) of the proposed rule to read "You must have provided records by the production reporting date, which can be independently verified, * * *." They stated that this would eliminate the potential for misinterpretation that the policyholder qualifies for separate optional units simply by listing them on the acreage report and having records available at home.

Response: Producers do not have to provide records by the production reporting date. Producers report production and acreage information by the production reporting date and only provide records which can be independently verified when requested by the insurance provider. Therefore, no change has been made.

Comment: A reinsured company questioned whether verification of production from an optional unit using "measurement of stored production," as specified in section 2(f)(3) of the proposed rule applies to green peas.

Response: Green peas are not put into storage before processing. Therefore, FCIC has removed this provision.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(f)(4)(ii) of the proposed rule that states "In addition to, or instead of, establishing optional units by section, section equivalent or FSA Farm Serial Number, * * *" since section 2(f)(4) of the proposed rule specifies that "Each optional unit must meet one or more of the following criteria, * * *."

Response: FCIC agrees and has revised section 2(b)(5) of the final rule accordingly.

Comment: An insurance service organization questioned if the standard language in section 3(a) of the proposed rule which allows the producer to select only one price election for all the green peas in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case the producer may select one price election for each green pea type designated in the Special Provisions, refers to the current early, mid, and late-season types or to the shell and pod types specified in the proposed rule. They also emphasized that the price election for green peas is a percentage of the contract price. As some producers contract with more than one processor, the contract prices may be different, and it would not be possible to limit them to one "price" by type, only to one "percentage."

Response: FCIC agrees and has revised section 3(a) to specify percentages.

Comment: An insurance service organization recommended that the provision in section 3(b) of the proposed rule, that addressed the weight of the shelled peas as the basis for loss adjustment calculations, APH yields, and the guarantee, be moved to section 12(c)(2).

Response: FCIC believes that the provisions in section 3(b) of the proposed rule are being misinterpreted. The harvesting equipment removes the peas from the pods of shell type peas prior to delivery to the processor. In addition, the APH yield and guarantee

are based on the yield after the tenderometer reading, grade factor, or sieve size is taken into consideration. Therefore, section 3(b) of the proposed rule has been deleted.

Comment: An insurance service organization stated that February 15 seems early for the cancellation and termination dates for Delaware and Maryland. They stated that the date table has a March 15 sales closing date for these states and questioned if the 1998 date would be a month earlier and, if so, why.

Response: The sales closing date contained in the Special Provisions for these states was February 15 for the 1996 and 1997 crop years, not March 15. That date is set by statute. The cancellation and termination dates for all crops are being changed to correspond with the sales closing date. Therefore, no change has been made.

Comment: An insurance service organization stated that language in section 6 requiring the producer to provide a copy of the processor contract no later than the acreage reporting date could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Green pea producers usually have a processor contract in-force by the final planting date. The requirement to provide a copy of the processor contract with the acreage report is convenient for the producer. Therefore, no change has been made.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted green peas or green peas planted into an established grass or legume. The commenter further indicated that consideration should be given to inserting the language in section 7(a)(4) of the proposed rule into the Basic Provisions.

Response: FCIC agrees that processing green peas has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(3) of the final rule to accommodate such developments if they should occur. In addition, the interplanted language is not consistent among the crop policies and, therefore, will be retained in the crop provisions.

Comment: An insurance service organization indicated that language in section 7(b) that states "You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the green peas are grown, * * *" suggests that only a landlord would have a share in the insured crop. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a)(1) and (3) of the proposed rule.

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or own acreage. The word "possession" has been changed to "control" for clarification. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: An insurance service organization and a reinsured company questioned whether the provision in section 9(b), which states that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provision in section 12(a), that states "We will determine your loss on a unit basis." The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. The insurance service organization noted that the provisions in section 9(b) state "* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the green pea contract." However, the commenter questioned whether "delivered to" is the same as "accepted by" the processor.

Response: Section 9(b) does not conflict with section 12(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contract amount and the producer can only obtain basic units by processor contract. Therefore, once the contract is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there is still unharvested production, any insurable cause of loss is covered. With respect to the issue of production from appraised acreage, such production will not count toward fulfillment of the processor contract, although it may be used to determine production to count for the unit or the producer's approved yield if the acreage is not bypassed due to an insurable cause of loss that renders such production unacceptable to the processor. With respect to when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract was fulfilled. All production from the unit, including any excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. For the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised production that was not bypassed due to an insurable cause that rendered the production unacceptable to the processor, will be included as production to count. FCIC has revised section 9(b) to clarify that insurance ceases when the contract is fulfilled if the processor contract stipulates a specific amount of production.

Comment: An insurance service organization stated that September 15 is too early for the end of insurance coverage for dry peas and that the change to September 30 must be incorporated into the dry pea provisions as well.

Response: The dry pea and green pea provisions are now separate provisions with different dates. The insured crop under these provisions is green peas. If the green peas will be harvested as dry peas, insurance coverage will end on September 30 but only if notice was provided in accordance with section 11(d).

Comment: An insurance service organization stated that they received one comment stating that the provision in section 10(a)(1)(ii) of the proposed rule, which states that abnormally hot or cold temperatures that result in bypassed acreage because an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process, should be eliminated because it provides a loophole that can easily be abused when the processor has contracted too many acres.

Response: The comment does reveal an opportunity for an abuse. Therefore, the provision has been clarified.

Comment: An insurance service organization questioned the provision in section 10(a)(4), which states that insurance is provided against "Plant disease on acreage not planted to peas the previous crop year * * *." The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: This provision has been revised to specify that insurance coverage will be provided against plant disease on acreage not planted to the peas the previous crop year unless provided for in the Special Provisions or by written agreement, but not damage due to insufficient or improper application of disease control measures.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate the reference to 10(a)(1) through (7) and state "Failure of the irrigation water supply, if due to an insured cause of loss."

Response: Referencing 10(a)(1) through (7) makes it clear that failure of the irrigation water supply must be due to these specific causes of loss. Therefore, no change has been made.

Comment: An insurance service organization questioned how the provision in section 10(b)(1)(ii), which states that insurance coverage is not provided if acreage is bypassed based on the availability of a crop insurance payment, is to be enforced.

Response: The adjuster should be able to make this determination based on various factors such as if a harvest pattern exists that clearly indicates the processor is bypassing producers with crop insurance coverage in favor of producers without crop insurance even though the quality of the crop is similar. Language has been added to state that an indemnity will be denied or have to be repaid if it is determined that bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a discrepancy between section 9(b) of the proposed rule, which states that insurance ceases on "The date you harvested sufficient production to fulfill your processor contract," and section 10(b)(5) of the proposed rule which states that loss of production will not be insured if "Due to damage that occurs to unharvested production after you deliver the production required by the processor contract." The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC agrees with the insurance service organization and has deleted section 10(b)(5).

Comment: An insurance service organization stated that the language in section 11(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: FCIC has revised section 11(c) to clarify that an immediate notice of loss is required if damage is discovered within 15 days prior to harvest or during harvest.

Comment: An insurance service organization stated that section 12(b), which explains how a claim is settled, is too wordy and difficult to follow.

Response: This section has been revised to clarify the settlement of claims calculation, including the addition of an example.

Comment: An insurance service organization indicated that payments by the processor for bypassed acreage should be considered to have value to count as is done with salvaged grains.

Response: There is nothing in this policy which precludes a producer from obtaining any other form of insurance against losses as long as such insurance is not under the Federal Crop Insurance Act. Since the processor and producer contribute to the unharvested acreage pool, such payment will not be considered when determining production to count.

Comment: An insurance service organization stated that section 12(c)(1)(iii) of the proposed rule should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

Response: A later appraisal will only be necessary if the company and the insured do not agree on the appraisal or if the company believes that the crop needs to be carried further. The producer must continue to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization stated that section 12(c)(2) of the proposed rule which reads "The amount of such production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound;" is difficult to understand.

Response: This provision which specifies the "dollar amount as required by the contract for the quality and quantity of the peas delivered to the processor * * *" accounts for variations in the contract price for the tenderometer reading, grade factor, or sieve size of the delivered peas. The language has been clarified.

Comment: An insurance service organization and a reinsured company questioned if late and prevented planting provisions would be available for green peas. A crop insurance agent and a food corporation stated that late planting provisions should be available for green peas. Green pea producers plant according to heat units to provide a planting and harvesting schedule so that a processor can harvest uniformly during the growing season. Current varieties planted late can tolerate higher temperature extremes and do not pose unreasonable productivity risks nor does it impact the processor's ability to timely harvest and process the green peas. Producers need a good risk management program.

Response: A late planting period for green peas may be appropriate for some growing areas. Therefore, section 13 is revised to provide a late planting period if allowed by the Special Provisions and the insured provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Prevented planting provisions will also be added if available in the Basic Provisions.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement that written agreements be renewed each year if there are no significant changes to the farming operation. The insurance service organization stated that section 14(d) should perhaps refer to the date specified in the agreement instead of limiting the agreement for one year. An insurance service organization recommended that section 14 be put into the Basic Provisions.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made to the requirement that written agreements be renewed each year. FCIC has proposed that the Written Agreement provisions be included in the Basic Provisions.

In addition to the changes described above, FCIC has made minor editorial changes and has amended Green Pea Crop Insurance Provisions as follows:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Added a definition of "approved yield," and amended the definitions of "base contract price," "bypassed acreage," "pod type," "processor," "processor contract," "replanting," and "shell type" for clarity. The definition of "practical to replant" is amended to clarify that it will not be considered practical to replant unless the acreage can produce at least 75 percent of the approved yield and the processor agrees in writing that it will accept the production from the replanted acreage. The definition of "processor contract" is amended to clarify that multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of green peas.

3. Section 2—Removed the reference to "written agreement" in section 2(b) of the proposed rule and added "written agreement" in section 2(b)(5) of the final rule to clarify which provisions may be revised by written agreement.

4. Section 7—Removed section 7(a)(2) of the proposed rule. This provision is not necessary since section 7(a)(3) of the proposed rule stated that the green peas must be grown under, and in accordance with, the requirements of a processor contract. If grown under a processor contract, the green peas will be canned or frozen. Section 7(c) is amended for clarity.

5. Section 9(a)(2)—Clarified that the insurance period ends when the green peas should have been harvested but were not harvested.

6. Section 10—Amended section 10(a) for clarity. Section 10(b) is reformatted and amended for clarity. Also, removed section 10(b)(3) of the proposed rule which stated "Due to green peas not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;" because it is unnecessary.

7. Section 11—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started if the acreage will not be harvested. The insured must also provide documentation stating why the acreage was bypassed.

8. Section 12—A new section 12(c)(3) of the final rule is added to clarify that appraised production will include all harvested production from any other insurable units that have been used to fill the processor contract for a unit. Section 12(d) of the proposed rule is deleted because of duplication with section 12(c)(2).

9. Section 14—Clarified that only terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement if the listed conditions are met.

List of Subjects in 7 CFR Parts 416 and 457

Crop insurance, Green peas, Pea crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 416 and 457, as follows:

PART 416—PEA CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 416 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart-Regulations for the 1986 and Succeeding Crop Years" is removed.

4. Section 416.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 416.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Pea Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.137 is added to read as follows:

§ 457.137 Green pea crop insurance provisions.

The Green Pea Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies

Green Pea Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2), etc.

1. Definitions.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart G.

Base contract price. The price stipulated in the processor contract for the tenderometer reading, grade factor, or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Combining (vining). Separating pods from the vines and, in the case of shell peas, separating the peas from the pod for delivery to the processor.

Days. Calendar days.

Dry peas. Green peas that have matured to the dry form for use as food, feed, or seed.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the green pea processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Green peas. Shell type and pod type peas that are grown under a processor contract to be canned or frozen and sold for human consumption.

Harvest. Combining (vining) of the peas.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Peas. Green or dry peas.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the

correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Peas must initially be placed in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Pod type. Green peas genetically developed to be eaten without shelling (e.g., snap peas, snow peas, and Chinese peas).

Practical to replant. In lieu of the definition of "practical to replant" contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Price election. In lieu of the definition of "Price election" contained in section 1 of the Basic Provisions, price election is defined as the price per pound stated in the processor contract (contracted price) for the tenderometer reading, grade factor, or sieve size contained in the Special Provisions.

Processor. Any business enterprise regularly engaged in canning or freezing green peas for human consumption, that possesses all licenses and permits for processing green peas required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted green peas within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow green peas, and to deliver the green pea production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of green peas.

Production guarantee (per acre).—The number of pounds determined by multiplying the approved actual production history yield per acre by the coverage level percentage you elect. For shell type peas, the weight will be determined after shelling.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Shell type. Green peas genetically developed to be shelled prior to eating, canning or freezing.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Written Agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division.

For processor contracts that stipulate:

(a) The amount of production to be delivered:

(1) In lieu of the definition of unit in section 1 of the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract;

(2) There will be no more than one basic unit for each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) The number of acres to be planted:

(1) Unless limited by the Special Provisions, a unit as defined in section 1 of the Basic Provisions (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Basic units may not be divided into optional units on any basis other than as described in this section;

(2) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you;

(3) All optional units you selected for the crop year must be identified on the acreage report for that crop year;

(4) The following requirements must be met for each optional unit:

(i) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(ii) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit; and

(iii) You must maintain records of marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(5) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) Optional Units by Section, Section Equivalent, or FSA Farm Serial Number: Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, as the equivalent of sections for unit purposes. In areas that have not been surveyed using sections or their equivalent systems or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* Optional units may be based on irrigated acreage and non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

(iii) *Optional Units on Acreage Including Both Shell Type Green Peas and Pod Type Green Peas:* Optional units may be established based on shell type green peas and pod type green peas. To qualify as separate shell type and pod type optional units, the shell type acreage may not continue into the pod type acreage in the same rows or planting pattern.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the green peas in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy.

(b) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(c) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

CANCELLATION AND TERMINATION	
State	Dates
Delaware and Maryland	Feb. 15.
All other states	Mar. 15.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the shell type and pod type green peas in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the green peas are grown, you are at risk of loss, and the processor contract provides for delivery of green peas under specified conditions and at a stipulated base contract price.

(c) A commercial green pea producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period.

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the green peas:

(1) Were destroyed;

(2) Should have been harvested but were not harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) September 15 of the calendar year in which the insured green peas would normally be harvested; or

(e) September 30 of the calendar year in which the insured peas would normally be harvested if you provide notice to us that the insured crop will be harvested as dry peas (see section 11(d)).

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease but only on acreage not planted to peas the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to peas the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment or;

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties In The Event of Damage or Loss.

In addition to the notices required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the green peas on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us;

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest; and

(d) Prior to the time the green peas would normally be harvested if you intend to harvest the green peas as dry peas.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of shell type green peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are

only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;
(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;
(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count;
(6) $36,000.00 − $18,000.00 = $18,000.00 loss; and
(7) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of pod type green peas in the same unit, with a guarantee of 5,000 pounds per acre and a price election of $0.13 per pound. You are only able to harvest 450,000 pounds. Your total indemnity for both shell type and pod type green peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the shell type, and 100 acres × 5,000 pounds = 500,000 pounds guarantee for the pod type;
(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the shell type, and 500,000 pounds guarantee × $0.13 price election = $65,000.00 value of guarantee for the pod type;
(3) $36,000.00 + $65,000.00 = $101,000.00 total value of guarantee;
(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the shell type, and 450,000 pounds × $0.13 = $58,500.00 value of production to count for the pod type;
(5) $18,000.00 + $58,500.00 = $76,500.00 total value of production to count;
(6) $101,000.00 − $76,500.00 = $24,500.00 loss; and
(7) $24,500.00 loss × 100 percent = $24,500.00 indemnity payment.

(c) The total production to count, specified in pounds, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes or;

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes.

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested green pea production from the insurable acreage. The amount of such production will be determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound;

(3) All harvested green pea production from any of your other insurable units that have been used to fulfill your processor contract for this unit; and

(4) All dry pea production from the insurable acreage if you gave notice in accordance with section 11(d) for any acreage you intended to harvest as dry peas. The harvested or appraised dry pea production will be multiplied by 1.667 for shell types and 3.000 for pod types to determine the green pea production equivalent. No adjustment for quality deficiencies will be allowed for dry pea production.

13. Late and Prevented Planting.

Late planting provisions are not applicable to green peas unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest. Prevented planting coverage will be available if contained in the Basic Provisions.

14. Written Agreement.

Terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (if the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on October 23, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–30514 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 141CE, Special Condition 23–ACE–92]

Special Conditions; Cessna Model 525 Citation Jet Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Rockwell Collins, Inc., 400 Collins Road NE, Cedar Rapids, Iowa 52498 for a Supplemental Type Certificate (STC) on the Cessna Model 525 Citation Jet airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is November 20, 1997. Comments must be received on or before December 22, 1997.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 141CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 141CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 141CE." The postcard will be date stamped and returned to the commenter.

Background

On March 26, 1997, Rockwell Collins, Inc., 400 Collins Road NE, Cedar Rapids, Iowa 52498 made an application to the FAA for a Supplemental Type Certificate (STC) for the Cessna Model 525 Citation Jet airplane. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Cessna Model 525 Citation Jet airplane is given in Type Certification Data Sheet No. A1WI plus the following: 14 CFR Part 23, as amended by 23–1 through 23–38, and 23–40; 14 CFR Part 36, effective December 1, 1969, as amended by 36–1 through 36–18; 14 CFR Part 34 effective September 10, 1990; compliance with the Noise Control Act of 1972; Special Condition 23–ACE–55; and Exemption 5759 for type certification utilizing the directional damping criterion of 14 CFR Part 25, § 25.181, in lieu of the damping criterion of § 23.181(b).

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Rockwell Collins, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previously required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	30
200–400	70	70
400–700	700	80
700–1000	1700	240
1–2 GHz	5000	360
2–4	4500	380
4–6	7200	300
6–8	2000	330
8–12	3500	270
12–18	3500	330
18–40	780	20

or,

(2) The applicant may demonstrate by a system test and analysis that the

electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Cessna Model 525 Citation Jet airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions, for example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register**. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Cessna Model 525 Citation Jet airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on October 28, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30495 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–05–AD; Amendment 39–10207; AD 97–23–17]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 100, 200, and 300 Series Airplanes (Formerly Known as Beech Aircraft Corporation 90, 100, 200, and 300 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (Raytheon) 90, 100, 200, and 300 series airplanes. This action requires inspecting gray, blue, or clear Ethylene Vinyl Acetate (EVA) tubing near the co-pilot's foot warmer for collapse or deformity. If the tubing is collapsed or deformed, this action requires replacing and re-routing the tubing. This EVA tubing is used on the pneumatic de-ice indicator lines and the pressurization control system pneumatic lines that provide vacuum to the outflow safety valves that depressurize the airplane. This action is the result of several reports of collapsed EVA tubing. The actions specified by this AD are intended to prevent a loss of vacuum to depressurize the airplane cabin, which could result in personal injury to the door operator; and to prevent malfunction of the de-ice indicator system, which could cause the pilot to immediately exit icing conditions.

DATES: Effective December 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Imbler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1601 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon 90, 100, 200, and 300 series airplanes was published in the **Federal Register** on May 13, 1997, (62 FR 26261). The action proposed to require inspecting the condition and proper routing of the gray, blue, or clear pneumatic pressurization control system tubes and the de-ice indicator pneumatic tubing located forward of the co-pilot's right outboard rudder pedal. If either tube is deformed or collapsed, the proposed action would require replacing the damaged section of tube with new nylon tubing, then re-routing and securing the tubing using aluminum tubing and hose clamps. If there is no evidence of damage to the tubing, the proposed action would only require re-routing and securing the tubing to ensure that it is at least 8 inches away from the discharge opening of the co-pilot's foot warmer outlet. Accomplishment of the proposed action would be in accordance with Raytheon Aircraft Company Mandatory Service Bulletin No. 2676, Issued: January 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,515 airplanes in the U.S. registry will be affected by this AD; that it would take approximately 6 workhours per airplane to accomplish the inspection, repair, and re-routing of the tubing; and that the average labor rate is approximately $60 an hour. Parts would be covered under the manufacturer's warranty credit program. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $905,400 or $360 per airplane. The FAA has no way to determine the number of owners/operators of the affected airplanes who may have already accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–23–17.—Raytheon Aircraft Company: Amendment 39–10207; Docket No. 97–CE–05–AD.

Applicability: The following models and serial numbered airplanes, certificated in any category:

Models	Serial Nos.
C90 and C90A	LJ–663 through LJ–1463.
E90	LW–177 through LW–347.
F90	LA–1 through LA–236.
H90	LL–1 through LL–61.
A100	B–228 through B–247.
B100	BE–6 through BE–137.
200 and B200	BB–114 through BB–1553.
200C and B200C	BL–1 through BL–72 and BL–124 through BL–140.
200CT and B200CT	BN–1 through BN–4.
200T and B200T	BT–1 through BT–38.
300	FA–1 through FA–230 and FF–1 through FF–19.
B300	FL–1 through FL–154.
B300C	FM–1 through FM–9 and FN–1.
A200 (C–12C)	BC–19 through BC–75 and BD–15 through BD–30.
A200C (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D/F)	BP–1, BP–22, and BP–24 through BP–63.
A200CT (FWC–12D)	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (RC–12H)	GR–14 through GR–19.
A200CT (RC–12G)	FC–1 through FC–3.
A200CT (RC–12K)	FE–1 through FE–9.
A200CT (RC–12N)	FE–10 through FE–31.
A200CT (RC–12P)	FE–33 and FE–35.
A200CT (RC–12Q)	FE–32, FE–34, and FE–36.
B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
B200C (C–12R)	BW–1 through BW–29.
B200C (UC–12F)	BU–1 through BU–10.
B200C (RC–12F)	BU–11 and BU–12.
B200C (UC–12M)	BV–1 through BV–10.
B200C (RC–12M)	BV–11 and BV–12.
B200CT (FWC–12D)	FG–1 and FG–2.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent a loss of vacuum to depressurize the airplane cabin, which could result in personal injury to the door operator; and to prevent malfunction of the de-ice indicator system which could cause the pilot to unnecessarily exit icing conditions, accomplish the following:

(a) Inspect for collapse, deformation, and proper routing of the gray, blue, or clear pneumatic pressurization control system tubes and the de-ice indicator pneumatic tubing located forward of the co-pilot's right outboard rudder pedal in accordance with the ACCOMPLISHMENT INSTRUCTIONS section and Figure 1 of the Raytheon Aircraft Company (Raytheon) Mandatory Service Bulletin (SB) No. 2676, issued: January 1997.

(b) If any of this tubing is deformed or collapsed, prior to further flight, replace the damaged section of tube with new nylon tubing, then use aluminum tubing and hose clamps to secure and re-route the tubing at least 8 inches away from the discharge opening of the co-pilot's foot warmer outlet in accordance with the ACCOMPLISHMENT INSTRUCTIONS section and Figure 2 of the Raytheon Mandatory SB No. 2676, issued: January 1997.

(c) If there is no evidence of damage to the tubing, prior to further flight, re-route and secure the tubing as specified in paragraph (b) of this AD in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of the Raytheon Mandatory SB No. 2676, issued: January 1997.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Wichita Aircraft Certification Office.

(f) The inspections, modifications, and replacements required by this AD shall be done in accordance Raytheon Aircraft Company Mandatory Service Bulletin No. 2676, issued: January 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10207) becomes effective on December 29, 1997.

Issued in Kansas City, Missouri, on November 7, 1997.

Larry D. Maltr,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30057 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–196–AD; Amendment 39–10210; AD 97–24–03]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 2000 series airplanes, that requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to limit the allowed loads in the baggage compartment aft of the center baggage net. This AD also requires replacement of the center baggage net in the baggage compartment with a net having reinforced straps, which terminates the requirement for the AFM revision. This amendment is prompted by a report indicating that the center baggage net cannot sustain design loads in the event of an accident. The actions specified by this AD are intended to prevent injury to passengers, as a result of inadequate breaking strength of the baggage net, in the event of an accident.

DATES: Effective December 26, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes was published in the **Federal Register** on September 15, 1997 (62 FR 48187). That action proposed to require a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to limit the allowed loads in the baggage compartment aft of the center baggage net. The AD also proposed to require replacement of the center baggage net in the baggage compartment with a net having reinforced straps, which would terminate the requirement for the AFM revision.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 20 Model Falcon 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $520 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,600, or $580 per airplane.

It will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the AFM revision required by this AD is estimated to be $1,200, or $60 per airplane.

Based on the above figures, the total cost impact on U.S. operators of the replacement and AFM revision is estimated to be $12,800, or $640 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–03 Dassault Aviation: Amendment 39–10210. Docket 97–NM–196–AD.

Applicability: Model Falcon 2000 airplanes, serial numbers 2 through 31 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent injury to passengers as a result of inadequate breaking strength of the baggage net, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Falcon 2000 AFM Temporary Change No. 31 (undated).

Note 2: The revision of the AFM required by this paragraph may be accomplished by inserting a copy of Falcon 2000 AFM Temporary Change No. 31 in the AFM. When this temporary change has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided that the information contained in the general revisions is identical to that specified in Falcon 2000 AFM Temporary Change No. 31.

(b) Within 6 months after the effective date of this AD, replace the center baggage net in the baggage compartment with a net having reinforced straps, in accordance with Dassault Service Bulletin F2000–76 (F2000–25–2), dated December 11, 1996. After this replacement is accomplished, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Falcon 2000 Airplane Flight Manual Temporary Change No. 31 (undated), and Dassault Service Bulletin F2000–76 (F2000–25–2), dated December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed French airworthiness directive 96–291–002(B), dated December 4, 1996.

(f) This amendment becomes effective on December 26, 1997.

Issued in Renton, Washington, on November 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30301 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Clopidol and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved clopidol and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, improved feed efficiency, and increased rate of weight gain.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–218 that provides for combining approved clopidol and bacitracin zinc Type A medicated articles to make Type C medicated feeds for broilers containing clopidol 113.5 grams per ton (g/t) and bacitracin zinc 5 to 25 g/t. The Type C medicated feed is used as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.

Alpharma Inc.'s ANADA 200–218 is approved as a generic copy of Rhone-

Poulenc, Inc.'s NADA 49–934. The ANADA is approved as of November 20, 1997 and the regulations are amended in § 558.175 (21 CFR 558.175) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, § 558.175 is amended to reflect the approval by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by amending newly redesignated paragraph (d)(1)(iv)(*b*).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.175 [Amended]

2. Section 558.175 *Clopidol* is amended by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and in newly redesignated paragraph (d)(1)(iv)(*b*) by removing "No. 000061" and adding in its place "Nos. 000061 and 046573".

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30408 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Bacitracin Zinc With Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved monensin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis and increased rate of weight gain, or for prevention of coccidiosis and improved feed efficiency and improved pigmentation.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–211 that provides for combining approved monensin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler feeds containing: Monensin 90 to 110 grams per ton (g/t) and bacitracin zinc 10 g/t with roxarsone 15 g/t for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain, or; monensin 90 to 110 g/t and bacitracin zinc 4 to 50 g/t with roxarsone 15 to 45.4 g/t for prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for improved feed efficiency and improved pigmentation by enhancing carotenoid and xanthophyll utilization.

ANADA 200–211, sponsored by Alpharma Inc., is approved as a generic copy of Hoffmann-La Roche's NADA 123–154. The ANADA is approved as of November 20, 1997 and the regulations are amended in 21 CFR 558.355(f)(1) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraphs (f)(1)(xv)(*b*) and (f)(1)(xvi)(*b*) by removing "No. 000004" and adding in its place "Nos. 000004 and 046573".

Dated: November 7, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30483 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statutes

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Determination of substantially identical state statutes.

SUMMARY: The Department of the Treasury is announcing that it has reviewed the statutes of 13 states which have recently enacted laws adopting Revised Article 8 of the Uniform Commercial Code—Investment Securities ("Revised Article 8") and determined that they are substantially identical to the uniform version of Revised Article 8 for purposes of interpreting the rules in 31 CFR Part 357, Subpart B (the "TRADES" regulations). Therefore, that portion of the TRADES rule requiring application of Revised Article 8 if a state has not adopted Revised Article 8 will no longer be applicable for those 13 states.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisory, (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel, (202) 219–3320.

SUPPLEMENTARY INFORMATION: On August 23, 1996, the Department published a final rule to govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System ("TRADES") (61 FR 43626).

In the commentary to the final regulations, Treasury stated that for the 28 states that had by then adopted Revised Article 8, the versions enacted were "substantially identical" to the uniform version for purposes of the rule. Therefore, for those states, that portion of the TRADES rule requiring application of Revised Article 8 was not invoked. Treasury also indicated in the commentary that as additional states adopt Revised Article 8, notice would be provided in the **Federal Register** as to whether the enactments are substantially identical to the uniform version so that the federal application of Revised Article 8 would no longer be in effect for those states. Treasury adopted this approach in an attempt to provide certainty in application of the rule in response to public comments. Treasury published such notices with respect to California (62 FR 26, January 2, 1997) and the District of Columbia (62 FR 34010, June 18, 1997). 31 CFR Part 357, Appendix B, the TRADES Commentary also was amended by final rule (62 FR 43283, August 13, 1997) to update the list of states that have enacted Revised Article 8 statutes which Treasury determined to be substantially identical to the uniform version.

This notice addresses the recent adoption of Article 8 by the following 13 states: Delaware, Hawaii, Maine, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee and Puerto Rico. A "state" is defined in the regulations as including Puerto Rico.

Treasury has reviewed the 13 state enactments and has concluded all of them are substantially identical to the uniform version of Revised Article 8. Accordingly, if either § 357.10(b) or § 357.11(b) directs a person to Delaware, Hawaii, Maine, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee and Puerto Rico, the provisions of §§ 357.10(c) and 357.11(d) of the TRADES rule are not applicable. This means that a total of 43 states (including D.C. and Puerto Rico) have enacted Revised Article 8 that have been either: (1) the subject of notices by Treasury stating that the laws are "substantially identical" to the uniform version for purposes of the TRADES regulations; or (2) included in the list of states appearing in a footnote to the Commentary section in Appendix B of the TRADES regulations.

In addition, Treasury has reviewed the recent enactment of Revised Article 8 by Connecticut. Because we understand that Connecticut will likely be acting within the next year to amend the statute that was passed, we make no determination at this time with respect whether the statute passed is "substantially identical" to the uniform version for purposes of the rule.

Dated: November 12, 1997.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 97–30432 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Department of the Navy Privacy Program

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending a system of records notice identifier for an exempt system of records at 32 CFR part 701, subpart G. This action is needed because the system identifier for the notice was previously amended on July 22, 1997, at 62 FR 39225. The amendment changed the system of records notice identifier from N01000–4 to N01000–5. This rule ensures that the system identifier for the rule and the notice are the same.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy is amending a system of records notice identifier for an exempt system of records at 32 CFR part 701, subpart G. This action is needed because the system identifier for the notice was previously amended on July 22, 1997, at 62 FR 39225. The amendment changed the system of records notice identifier from N01000–4 to N01000–5. This rule ensures that the system identifier for the rule and the notice are the same.

List of Subjects in 32 CFR Part 701, Subpart G

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by revising paragraph (r) introductory text as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(r) *System Identifier and Name:* N01000–5, Naval Clemency and Parole Board Files.

* * * * *

Dated: November 14, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30418 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

POSTAL SERVICE

39 CFR Part 4

Board of Governors Bylaws

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved an amendment to its bylaws. The amendment adjusts provisions concerning the office of the Chief Postal Inspector in light of statutory amendments enacted by Public Law 100–504.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber, (202) 268–4800.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Postal Service has amended its bylaw provisions concerning the office of Chief Postal Inspector. Under former provisions of the Inspector General Act, the Chief Postal Inspector served as the Inspector General for the Postal Service. The law specifically required the concurrence of the Governors for a transfer or removal of the Chief Inspector. Public Law 100–504 created an independent Inspector General for the Postal Service, and revised the language governing the Chief Postal Inspector. As now codified in 39 U.S.C. 204, the law currently requires notice to the Governors and Congress but does not expressly require the Governors' concurrence. At its meeting on November 3, 1997, the Board revised sections 4.5 and 4.6 of its bylaws conforming them to the language of the statute. Section 4.6, dealing separately with the Chief Postal Inspector, is removed, and provisions concerning the appointment and removal of the Chief Inspector in line with 39 U.S.C. 204 are transferred to section 4.5.

List of Subjects in 39 CFR Part 4

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

Accordingly, 39 CFR Part 4 is amended as follows:

PART 4—OFFICERS (ARTICLE IV)

1. The authority citation for Part 4 is revised to read as follows:

Authority: 39 U.S.C. 202–205, 401(2), (10), 402, 1003, 3013.

2–3. Section 4.5 is revised to read as follows:

§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.

There are within the Postal Service a General Counsel, a Judicial Officer, a Chief Postal Inspector, and such number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution. These officers are appointed by, and serve at the pleasure of, the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify the Governors and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for such removal or transfer.

§ 4.6 [Removed]

4. Section 4.6 is removed.

§ 4.7 [Redesignated as § 4.6]

5. Section 4.7 is redesignated as § 4.6.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30412 Filed 11–19–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5925–4]

Final Determination To Extend Deadline for Promulgation of Action on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by a second one-month period the deadline for taking final action on petitions that eight States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to nonattainment problems in those States. Under the Clean Air Act (CAA or Act), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this notice, EPA is making that determination. The eight States that have submitted the petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

EFFECTIVE DATE: This action is effective as of November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Office of General Counsel, MC–2344, 401 M St. SW, Washington, D.C. 20460, (202) 260–5892.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action follows closely EPA's final action taken by notice dated October 22, 1997 (62 FR 54769). Familiarity with that document is assumed, and background information in that document will not be repeated here.

In the October 22, 1997 document, EPA extended by one month, pursuant to its authority under CAA section 307(d)(10), the time frame for taking final action on petitions submitted by eight states under CAA section 126. These eight states are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont. By these petitions, the eight states have asked EPA to make findings that major stationary sources in upwind states emit in violation of the prohibition of CAA section 110(a)(2)(D), by contributing significantly to nonattainment problems in the petitioning States.

EPA received the petitions on August 14–15, 1997. Under section 126(b), for each petition, EPA must make the requested finding, or deny the petition, within 60 days of receipt of the petition. As indicated in the October 22, 1997 document, EPA has the authority to extend the deadline for up to six months, under CAA section 307(d)(10). By the October 22, 1997 document, EPA extended the deadline for one month, to November 14, 1997, and further indicated that EPA was reserving its option to extend the period by all or part of the remaining five months of the six-month extension period.

EPA is today extending the deadline for an additional one month, to December 14, 1997. EPA's reasons are identical to those articulated in the October 22, 1997 document. In the October 22, 1997 document, EPA explained the basis for the first one-month extension as follows:

In accordance with section 307(d)(10), EPA is today determining that the 60-day period afforded by section 126(b) is not adequate to allow the public and the agency adequate opportunity to carry out the purposes of the section 307(d) procedures for developing an adequate proposal on whether the sources identified in the section 126 petitions contribute significantly to nonattainment problems downwind, and, further, to allow public input into the promulgation of any controls to mitigate or eliminate those contributions. The determination of whether upwind emissions contribute significantly to downwind nonattainment areas is highly complex. The NO_X SIP call, which proposes a somewhat comparable determination, relied on extensive computer modeling of air quality emissions and the ambient impacts therefrom in the large geographic region of the eastern half of the United States. This modeling was developed over a two-year period. It reflected the input of EPA, the 37 states east of the Rockies as well as numerous industry and citizen groups, all of whom participated in the OTAG. Moreover, EPA is allowing a 120-day comment period on the NO_X SIP call proposal, and expects to take final action on the NO_X SIP call in September 1998, some 11 months after the date of proposal.

In acting on the section 126 petitions, EPA must make determinations that, generally, are at least as complex as those required for the NO_X SIP call, and EPA must do so for sources throughout the eastern half of the United States. Moreover, if EPA determines that the petitions should be granted, EPA must promulgate appropriate controls for the affected sources.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petitions, in light of the complexity of the required determinations and the usefulness of coordinating generally with the procedural path for the NO_X SIP call. It is imperative that this schedule (i) afford EPA adequate time to prepare a document that clearly elucidates the issues so as to facilitate public comment, as well as (ii) afford the public adequate time to comment.

EPA is continning to discuss an appropriate schedule with the section 126 petitioners and other interested parties. Accordingly, EPA concludes today, as it did in the October 22, 1997 document, that extending the date for action on the section 126 petitions for another one month is necessary to determine the appropriate overall schedule for action, as well as to continue to develop the technical analysis needed to develop a proposal.

EPA's action of October 22, 1997, erroneously indicated that the extended deadline for six of the States—Connecticut, Maine, New Hampshire, New York, Pennsylvania, and Vermont—would be November 15, 1997. Because the initial 60-day period for EPA action on the 126 petitions submitted by these states expired on October 14, 1997, the first one-month extension would extend the deadline to November 14, 1997. EPA is today correcting that error, although today's action, which further extends the deadline, makes this error irrelevant.

As EPA indicated in the October 22, 1997 document, EPA, even with today's action, continues not to use the entire six months provided under section 307(d)(10) for the extension. EPA continues to reserve the right to apply the remaining four months, or a portion thereof, as an additional extension, if necessary, immediately following the conclusion of the one-month period, or to apply the remaining time to the period following EPA's proposed rulemaking.

II. Final Action

A. Rule

Today, EPA is determining, under CAA section 307(d)(10), that a second one-month period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment. Accordingly, EPA is granting a one-month extension to the time for rulemaking on the section 126 petitions. Under this extension, the date for action on each of the section 126 petitions is December 14, 1997.

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on November 14, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action—a deadline extension—must take effect immediately because its purpose is to move back by one month the November 14, 1997 deadlines for the section 126 petitions. Moreover, EPA intends to use immediately the one-month extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because this rulemaking (i) is not a Federal mandate—rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must propose a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such

requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), as amended.

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of November 20, 1997.

Dated: November 14, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–30520 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Clean Air Act Promulgation of Extension of Attainment Date for the Portland, Maine, Moderate Ozone Nonattainment Area

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 81 to 85, revised as of July 1, 1997, make the following correction:

On page 180, in § 81.320, in the table under the heading "Maine—Ozone", footnote 2 is corrected to read "Attainment date extended to November 15, 1997.".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD14

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Tidal Marsh Plants—Cirsium hydrophilum var. hydrophilum (Suisun Thistle) and Cordylanthus mollis ssp. mollis (Soft Bird's-Beak) From the San Francisco Bay Area of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two plants—*Cirsium hydrophilum* var. hydrophilum (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak). These species are restricted to salt and brackish tidal marshes within the San Francisco Bay area in northern California. Habitat conversion, water pollution, changes in salinity, indirect effects of urbanization, mosquito abatement activities (including off-road vehicle use), competition with non-native vegetation, insect predation, erosion, and other human-caused actions threaten these two species. This rule implements the Federal protection and recovery provisions afforded by the Act for these plants.

EFFECTIVE DATE: December 22, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp (telephone 916/979–2120) and Matthew D. Vandenberg (telephone 916/979–2752), staff biologists at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section); FAX 916/979–2723.

SUPPLEMENTARY INFORMATION:

Background

Cirsium hydrophilum var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) occur in salt and brackish tidal marshes fringing San Pablo and Suisun Bays in the San Francisco Bay area of northern California. Since 1850, this habitat has been drastically reduced. Approximately 15 percent, or 12,142 hectares (ha) (30,000 acres), of the historical tidal marshland habitat within the San Francisco Bay area remains (Dedrick 1989).

With the exception of the San Francisco Bay area, the mountainous coast of California and the narrow continental shelf provide few areas that are suitable for tidal marsh development (MacDonald 1990). Coastal salt marshes are found along sheltered margins of shallow bays, estuaries, or lagoons, in low lying areas that are subject to periodic inundation by salt water. Brackish marshes occur at the interior margins of coastal bays, estuaries, or lagoons where fresh water sources (streams and rivers) enter salt marshes. Brackish marshes are similar to salt marshes but differ in the degree of water and soil salinity. Brackish marshes are less saline than salt marshes. Salinity levels vary with time, tides, and the amount of freshwater inflow. Vegetation communities in salt and brackish marshes often occur in distinct zones, depending on the frequency and length of tidal flooding. *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are restricted to a narrow tidal band, typically in higher elevational zones within larger tidal marshes that have fully developed tidal channel networks. These plants usually do not occur in smaller fringe tidal marshes that are generally less than 100 meters (m) (300 feet (ft)) in width, or in non-tidal areas.

Discussion of the Two Species

Asa Gray (1868) originally described *Cirsium hydrophilum* var. *hydrophilum* as *Cnicus breweri* var. *vaseyi*. Subsequent authors treated the taxon as *Carduus hydrophilus* (Greene 1892), *Cirsium hydrophilum* (Jepson 1901), and *Cirsium vaseyi* var. *hydrophilum* (Jepson 1925). John Thomas Howell (1959) concluded that Jepson's *Cirsium hydrophilum* and *Cirsium vaseyi* of the Mt. Tamalpais area in Marin County, California are varieties of a single species, *Cirsium hydrophilum*. According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into intraspecific taxa, an autonym (automatically created name) is designated. In this case, the autonym is *Cirsium hydrophilum* var. *hydrophilum*.

Cirsium hydrophilum var. *hydrophilum* is a perennial herb in the aster family (Asteraceae). Slender, erect stems 1.0 to 1.5 m (3.0 to 4.5 ft) tall are well branched above. The spiny leaves are deeply lobed. The lower leaves have ear-like basal lobes; the upper leaves are

reduced to narrow strips with strongly spine-toothed margins. Pale lavender-rose flower heads, 2.0 to 2.5 centimeters (cm) (1 inch (in.)) long, occur singly or in loose groups. The bracts of the flower heads have a distinct green, glutinous ridge on the back that distinguishes *Cirsium hydrophilum* var. *hydrophilum* from other *Cirsium* species in the area. *Cirsium hydrophilum* var. *hydrophilum* flowers between July and September.

Cirsium hydrophilum var. *hydrophilum* is restricted to Suisun Marsh in Solano County. In 1975, the plant was reported as possibly extinct because it had not been collected for about 15 years. Extensive surveys found the thistle at two locations within Suisun Marsh (Brenda Grewell, California Department of Water Resources (CDWR), pers. comm. 1993), however, unoccupied suitable habitat for *Cirsium hydrophilum var. hydrophilum* exists outside these sites in the upper reaches of tidal marshes in Solano County. Collectively, the occurrences of *Cirsium hydrophilum* var. *hydrophilum* total a few thousand individuals (Brenda Grewell, pers. comm. 1993) occupying a total area of less than 1 acre. *Cirsium hydrophilum* var. *hydrophilum* grows in the upper reaches of tidal marshes associated with *Typha angustifolia* (narrow-leaf cattail), *Scirpus americanus* (Olney's bulrush), *Juncus balticus* (Baltic rush), and *Distichlis spicata* (saltgrass). One population is found on State land under the jurisdiction of the California Department of Fish and Game (CDFG) and another population is on Solano County Farmland and Open Space Foundation lands. No active management is occurring at either location (Neil Havlik, Solano County Farmland and Open Space Foundation, pers. comm. 1993; Ann Howald, CDFG, pers. comm. 1993). Habitat conversion and fragmentation, indirect effects from urban development, increased salinity, projects that alter the natural tidal regime, mosquito abatement activities, and competition with non-native plants, threaten this taxon. The highly restricted distribution of *Cirsium hydrophilum* var. *hydrophilum* increases its susceptibility to catastrophic events such as pest outbreaks, severe drought, oil spills, or other natural or human caused disasters.

Charles Wright collected the type specimen of *Cordylanthus mollis* ssp. *mollis* in November 1855, on Mare Island in San Francisco Bay. Asa Gray (1868) published the original description, using the name *Cordylanthus mollis*. Later botanists treated the taxon as *Adenostegia mollis* (Greene 1891) and *Chloropyron molle* (Heller 1907). Tsan-lang Chuang and Larry Heckard (1973) treated *Cordylanthus mollis* and *Cordylanthus hispidus* as subspecies of a single species (*Cordylanthus mollis*) with *Cordylanthus mollis* ssp. *mollis* recognized as the autonym.

Cordylanthus mollis ssp. *mollis* is an annual herb of the snapdragon family (Scrophulariaceae) that grows 25 to 40 cm (10 to 16 in.) tall. It is sparingly branched from the middle and above. *Cordylanthus mollis* ssp. *mollis* is a hemiparasite (i.e., partially parasitic) that extracts water and nutrients by attaching enlarged root structures to the roots of other plants (Chuang and Heckard 1971). The foliage is grayish-green (often tinged a deep red) and hairy. The oblong to lance-shaped leaves are 1.0 to 2.5 cm (0.4 to 1.0 in.) long, the lower leaves entire and the upper with one to three pairs of leaf lobes. The inflorescence consists of spikes 5 to 15 cm (2 to 6 in.) long. A floral bract with two to three pairs of lobes occurs immediately below each inconspicuous white or yellowish-white flower. The flowers have only two functional stamens. The narrow ovoid seed capsule is 6 to 10 millimeters (mm) (0.2 to 0.4 in.) long and bears 20 to 30 dark brown seeds. Flowering occurs between July and September. *Cordylanthus mollis* ssp. *mollis* is distinguished from another *Cordylanthus* found nearby (*C. maritimus* ssp. *palustris*) by its two functional stamens (*C. maritimus* ssp. *palustris* has four) and by its bracts with two to three pairs of lateral lobes (*C. maritimus* ssp. *palustris* has a pair of short teeth on the floral bracts). *Cordylanthus mollis* ssp. *mollis* is closely related to *Cordylanthus mollis* ssp. *hispidus* and can be differentiated most consistently from *Cordylanthus mollis* ssp. *hispidus* on spike length and seed size.

Cordylanthus mollis ssp. *mollis* is found predominantly in the upper reaches of salt grass-pickleweed marshes at or near the limits of tidal action (Stromberg 1986). It is associated with *Salicornia virginica* (Virginia glasswort), *Distichlis spicata*, *Jaumea carnosa* (fleshy jaumea), *Frankenia salina* (alkali heath), and *Triglochin maritima* (arrow-grass) (Stromberg 1986). There have been 21 reported locations of *Cordylanthus mollis* ssp. *mollis*. Two sites, Denverton and Berkeley, were erroneous locations. Five sites (Mare Island, Martinez, Burdell Station, Bentley Wharf, and Antioch Bridge) have been extirpated by habitat loss or modification. Five other sites surveyed in 1993 no longer had the plants, although some potential habitat still existed. Nine sites are presumed to still exist (California Natural Diversity Data Base (CNDDB) 1996; Jake Ruygt, California Native Plant Society (CNPS), *in litt.* 1996). The type locality at Mare Island for *Cordylanthus mollis* ssp. *mollis* was destroyed by development and is now a dredge disposal site (CNDDB 1994). A second occurrence, last seen in 1981 near Martinez in Contra Costa and Solano Counties, was dredged, filled, diked, and is now a marina (Stromberg 1986, CNDDB 1994).

The remaining nine occurrences are widely scattered throughout coastal salt or brackish tidal marshes fringing San Pablo and Suisun Bays, in Contra Costa, Napa, and Solano Counties (CNDDB 1994; Brenda Grewell, *in litt.* 1993; Jake Ruygt, *in. litt.* 1996). Three sites, Pt. Pinole, Rush Ranch, and Joice Island Bridge, have very limited habitat and cover less than 0.4 ha (1 acre) each. The population at Fagan Slough covers approximately 1.2 ha (3 acres). The two largest populations are located at Hill Slough and at Concord Naval Weapons Station, each covering approximately 4 ha (10 acres). The entire distribution of *Cordylanthus mollis* ssp. *mollis* currently is restricted to about 12 ha (31 acres) of occupied habitat (Jake Ruygt, 1994 and *in litt.* 1996). The total number of individuals reported among populations varies from 1 at the smallest site to 150,000 plants at the largest site. Of the remaining nine sites, one (McAvoy) has only 23 plants. Most sites have between 1,000 and 6,000 individuals (Jake Ruygt 1994; CNDDB 1996). Individual populations fluctuate in size from year to year, as is typical of annual plants. *Cordylanthus mollis* ssp. *mollis* occurs primarily on private or non-Federal land; the second largest occurrence is found on Department of Defense (U.S. Navy) land. Habitat conversion and fragmentation, water pollution, increases in salinity of tidal marshes due to upstream withdrawals of fresh water, projects that alter the natural tidal regime, indirect effects of urbanization, mosquito abatement activities (including off-road vehicle use), erosion, competition with non-native vegetation, insect predation, and other random events threaten the remaining occurrences of *Cordylanthus mollis* ssp. *mollis*.

The CDWR has conducted surveys for *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum*, and these surveys have not been limited to known historic populations. The CDWR has surveyed potential habitat throughout Suisun Marsh, searched portions of the potential habitat along the Contra Costa shoreline, has assisted with searches downstream of Suisun

Bay in the Carquinez Strait and Napa marshes, and has surveyed diked wetlands managed for waterfowl. Despite these surveys, the CDWR has found no new populations since their original data submittal in 1993 (Randall Brown *in. litt.* 1996).

Previous Federal Action

Federal government actions on the two plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and listed *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as possibly extinct. The Service published a notice on July 1, 1975 (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions now are found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above two taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included in the June 16, 1976, **Federal Register** proposal.

General comments received on the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Act's Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). The two plant taxa were listed as category 1 candidates for Federal listing in this document. Category 1 taxa were those that the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640); there were no changes to these taxa in this supplement.

The plant notice was revised again on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In these three notices *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included as category 1 candidate species. On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the use of candidate categories and considered the former category 1 candidates as simply "candidates" for listing purposes.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). The finding was reviewed annually from October 1983 through 1994, pursuant to section 4(b)(3)(C)(i) of the Act.

A proposal to list *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered was published on June 12, 1995. The proposal was based on information supplied by reports to the California Diversity Database, and observations and reports by numerous botanists.

The processing of this final listing rule conforms with the Service's final listing priority guidance published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6) and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996 following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats, and processing administrative findings on petitions. Tier 4 includes the processing of critical habitat designations. This final rule falls under Tier 2.

This rule has been updated to reflect any changes in distribution, status and threats since the effective date of the listing moratorium, and to incorporate information obtained through the public comment period. This additional information was not of a nature to alter the Service's decision to list the species.

Summary of Comments and Recommendations

In the proposed rule published June 12, 1995 in the **Federal Register** (60 FR 31000), all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period closed on August 21, 1995. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A public hearing request was received within 45 days of publication of the proposal from Paul Campos, General Counsel for the Building Industry Association. Because a Congressional moratorium on the Service's activities associated with final listing actions was in effect from April 1995 to April 1996, scheduling of the hearing was delayed. The Service subsequently scheduled and held the public hearing on Wednesday, October 2, 1996, from 6:00 p.m. to 8:00 p.m. at the Holiday Inn, 1350 Holiday Lane, Fairfield, California. To accommodate the hearing, the public comment period was reopened on September 6, 1996, and closed October 15, 1996. Notice of the public hearing and reopening of the public comment period was published in the **Federal Register** September 6, 1996 (61 FR 47105) and in newspapers including *The Napa Register* on September 18, 1996, *The San Francisco Chronicle* on September 18, 1996, *The Contra Costa Times* on September 18, 1996, and *The Fairfield Daily Republic* on September 19, 1996.

During the comment period, the Service received comments (letters and oral testimony) from a total of 14 people. Some people submitted more than one comment to the Service. Six commenters supported the listing, one commenter opposed the listing, and seven commenters are viewed as neutral. One commenter submitted comments late. Among the six commenters supporting the listing are the California Native Plant Society, the University of California at Davis, and the Napa-Solano Chapter of the Audubon Society. Three commenters provided detailed information on locations, population sizes, and threats to the species. These data have been incorporated into this rule. Two commenters stated that they were researching the threats to the species and hoped that the Service would be available to work with them in the creation of protection and/or mitigation plans as necessary. One commenter representing the Solano County Mosquito Abatement District stated they are willing to work with the Service to avoid actions that may be damaging to endangered plants and habitat. Opposing comments and other comments questioning the proposed rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows:

Issue 1: One commenter stated that the Service should make the precise locations of the two tidal plants available to landowners and the counties in which the species occur. This information would help the landowners ensure that activities they conduct would not harm the two species, if the species exist on their property.

Service Response: In the proposed rule, the Service stated that these plants are restricted to salt or brackish tidal marsh within Solano, Contra Costa, and Napa counties. Individuals owning land in these counties who believe that their actions or activities may result in harm to either of these two species should feel free to provide the Service with detailed maps of their lands prior to conducting these activities so that the Service can provide technical assistance on the exact locations of these species. The Service will make every effort to notify landowners and seek cooperation with surveys or other conservation efforts. The complete file for this rule is available for public inspection, and does contain general information about where the species occurs. The Service is always willing to assist the public in matters aimed at protecting sensitive species.

Issue 2: One commenter was concerned about the listing of *Cordylanthus mollis* ssp. *mollis*, although they did not formally object to the listing. Specifically, the commenter questioned what the legal protection means to the subspecies when it is similar in appearance to *Cordylanthus mollis* ssp. *hispidus* and the two cannot readily be distinguished in the field and there is the possible occurrence of hybridization.

Service Response: The taxonomy of the subspecies has been clarified by Chuang and Heckard (1971), with *Cordylanthus mollis* ssp. *mollis* and *Cordylanthus mollis* ssp. *hispidus* separated primarily by habitat, spike length, and seed size; and secondarily by branching patterns and hirsuteness (i.e., coarse stiff hairs). As with many subspecies, though material may be difficult to identify in the field, *Cordylanthus mollis* ssp. *mollis* and *Cordylanthus mollis* ssp. *hispidus* are recognized as distinct subspecies (Chuang and Heckard 1971, Chuang and Heckard 1993). As the term "species" is defined in the Act, the Service can apply the protections of the Act to any species or subspecies of fish, wildlife, or plants, that meets the definition of endangered or threatened. The Act does not attempt to define "species" in biological terms, and thus allows the term to be applied according to the best current biological information and understanding of evolution, speciation, and genetics.

Issue 3: One commenter questioned whether mosquito abatement activities had led to a decline in *Cordylanthus mollis* ssp. *mollis*.

Service Response: As documented in Factor "E" below, mosquito abatement activities, resulting from increased urbanization, have been observed to adversely impact individual *Cordylanthus mollis* ssp. *mollis* plants.

Issue 4: One commenter stated that there were considerably more populations of *Cordylanthus mollis* ssp. *mollis* in Contra Costa County than reported in the proposed rule, which according to the commenter included only the East Navy marsh and Swanton's or Hasting's Slough Marsh.

Service Response: Populations reported in the proposed rule as occurring in Contra Costa County included Pt. Pinole, McAvoy Boat Harbor, Hasting's Slough, and Concord Naval Weapons Station. As mentioned in the "Discussion of the Two Species" section, populations of annual plants tend to fluctuate from year to year. The Service views the additional "populations" of *Cordylanthus mollis* ssp. *mollis* located at East Navy South, Swanton's SW, Swanton's NW, and Pt. Pinole to be extensions of existing populations that were included in the proposed rule, and not an expansion of the overall range of this species.

Issue 5: One commenter questioned the adequacy of many aspects of the data used in the proposed rule. This commenter stated that listing at this time is premature and also was concerned that the best available knowledge, including information not yet in print, be used in the rule.

Service Response: In accordance with the "Interagency Cooperative Policy on Information Standards under the Endangered Species Act", published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Service impartially reviews all scientific and other information to ensure that any information used to promulgate a regulation to add a species to the list of threatened and endangered species is reliable, credible, and represents the best scientific and commercial data available. The Service used information received from the California Natural Diversity Data Base, knowledgeable botanists, and from studies specifically directed at gathering the information on distribution and threats. Information from botanical collections of these plants that, in some cases, dates from the 1880's, was utilized in the preparation of the proposed rule. The Service received information from Federal, State, and local agencies, and consulted professional botanists during the preparation of the proposed rule. Destruction and loss of habitat and extirpation of populations of these two plants from a variety of causes have been documented. The Service sought comments on the proposed rule from Federal, State, and county entities, species experts, and other individuals. All substantive new data received during the public comment period have been incorporated into the final rule. Specific justification for listing the two plant species is summarized in Factors "A" through "E."

Issue 6: One commenter stated that we do not know that full tidal action is needed for *Cordylanthus mollis* ssp. *mollis*.

Service Response: All known populations of *Cordylanthus mollis* ssp. *mollis* occur in higher elevational zones within larger tidal marshes that have fully developed tidal channel networks. In sites where this taxa has been extirpated, full tidal action has often been lost. Extensive surveys for *Cordylanthus mollis* ssp. *mollis* have been conducted in tidal and diked marsh lands, and it has not been located in any diked marshes.

Issue 7: One commenter stated that the plants occur in tidal marshes and not in diked areas and, therefore, their lands do not constitute critical habitat for the species.

Service Response: The designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus*

mollis ssp. *mollis* is not prudent. Refer to the Critical Habitat section of this final rule for a detailed discussion of the Service's decision.

Peer Review

In accordance with Service peer review policy (July 1, 1994; 59 FR 34270), the Service sent copies of the proposed rule to three independent botanists and tidal marsh specialists who are professors. The Service solicited their review of the proposed rule and pertinent scientific and commercial information substantive to the listing determination. The reviewers did not respond to the Service.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cirsium hydrophilum* (Greene) Jepson var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* Gray ssp. *mollis* (soft bird's-beak) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* has been severely reduced by past human activities. Hydraulic mining, diking and filling involved in agricultural land conversion and urbanization, waste disposal, port and industrial development, railroad construction, dredging, salt production, and sedimentation have drastically reduced the amount of tidal marsh in California (Atwater 1979, MacDonald 1990, Association of Bay Area Governments (ABAG) 1991). Changes in freshwater inflow, pollution, habitat conversion, habitat fragmentation, and alteration of the natural tidal regime continue to threaten the habitat of both species.

In San Pablo Bay, historical tidal wetlands have been diked and converted to agricultural lands that were farmed for oat hay. In addition, approximately 4,050 ha (10,000 acres) also were converted to salt ponds. In Suisun Bay, most of the 28,780 ha (71,100 acres) of tidal marshes that existed in 1850 were converted originally to agricultural land, and then to diked seasonal wetlands used for waterfowl management. Only 3,780 ha (9,340 acres) within Suisun Marsh remain as tidal marsh (Dedrick 1989). Most of the remaining tidal marshes are backed by steep levees, allowing for little or no transitional wetland habitat—the habitat required by *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

The change of freshwater inflow to the marsh has modified the habitat for these two taxa. Agricultural and municipal uses have diverted over 50 percent of the historical annual inflow of freshwater from the Suisun Marsh and Delta (ABAG 1991). During the past 40 years, significant portions of the tidally-influenced brackish marsh within Suisun Bay have become more saline due to decreased freshwater flows (Pavlik 1992). Increased salt levels within the Suisun Marsh may threaten *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum*. Salt stress causes decreased plant growth and lower reproduction. When salinity levels remain high during extended drought conditions, population viability of these species may be greatly impaired to the extent they lose their ability to maintain themselves as components of a healthy wetlands ecosystem (Pavlik 1992). When salinity increases in the root zone, salt stress reduces plant abundance and causes shifts in plant distribution. This has occurred even in common salt-tolerant plants (Pavlik 1992). *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum* may be especially vulnerable to increased salt levels due to the limited number of individuals and their restricted distribution. Additionally, decreased levels of salt within the Suisun Marsh may threaten *Cordylanthus mollis* ssp. *mollis* by affecting its host plants. *Cordylanthus mollis* ssp. *mollis* is a hemi-root parasite that completes its life cycle by parasitizing the roots of perennial halophytes. *Salicornia virginica* and *Distichlis spicata* are halophyte plant associates and likely hosts of *Cordylanthus mollis* ssp. *mollis*, although specifics of the host relationship have yet to be determined. During the wet and above normal water years of 1995 and 1996, these two plant associates have decreased in abundance in the areas where the *Cordylanthus mollis* ssp. *mollis* is found. Therefore, it is important to maintain the long term natural variability of hydrologic conditions in order to ensure the survival of *Cordylanthus mollis* ssp. *mollis* and the species upon which it may depend (R. Brown, *in. litt.* 1996).

The two plant species also face threats from habitat fragmentation associated with commercial and residential development, road construction, and ongoing effects of historical fragmentation by activities associated with clearing for agriculture, railroad construction, dredging, and conversion to salt ponds. These activities have split habitat into smaller, more isolated units. Habitat fragmentation may alter the physical environment, changing the microclimate, quantity of water, and nutrients required by remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of the area of these fragmented natural areas is subject to the influences from external factors (e.g., additional development, off-road vehicular use, numerous other human influences, and competition with non-native vegetation) that disrupt natural ecosystem processes. Further effects of habitat fragmentation on the two plant species are discussed in Factor "E."

Projects that convert habitat from tidal marsh to diked seasonal wetlands potentially threaten both *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, the conversion of tidal marsh to diked seasonal wetlands, a practice common in the development of waterfowl managements areas, is a potential threat for both species (Randall Brown, *in litt.* 1993). The CDFG's planned conversion of 40 ha (100 acres) of *Distichlis spicata* (an associated species for both *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*) in Hill Slough as enhancement of habitat for wildlife (CDWR, *in litt.* 1996), will further diminish the amount of suitable habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. mollis.

Habitat conversion for planned future urbanization threatens both species. In the Association of Bay Area Governments' analysis of the San Francisco Bay Estuary, over 4,856 ha (12,000 acres) of wetlands in the Bay will be subject to moderate to high development uses over the next 12 years (ABAG 1991). Highway projects within the San Francisco Bay Estuary during the next 20 years alone are expected to fill 146 ha (362 acres) of wetlands (ABAG 1991). Some of the highway projects will threaten *Cordylanthus mollis* ssp. *mollis* by eliminating habitat into which existing populations of this plant could expand. Widening of California Highway 37 will impact wetlands that occur along the Napa River (ABAG 1991) and may adversely affect habitat for *Cordylanthus mollis* ssp. *mollis*. Proposed widening of Highway 12 near the Suisun Marsh would threaten the habitats of *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum* (Brenda Grewell, pers. comm. 1993), either due to habitat fragmentation as discussed above or by runoff.

Projects that alter the natural tidal regime may also threaten both taxa. Although the California Department of Water Resources is no longer pursuing the Western Suisun Marsh Salinity Control Project, projects that may alter the salinity regime and flows, are being evaluated under the CalFed Bay-Delta Program. The goals of the program will be to contribute toward recovery of sensitive species rather than to recover the species. The alternatives of the CalFed program have not been identified yet, but could involve habitat modification associated with restoration activities and the construction of various storage and conveyance structures. These actions could subject tidal marsh to altered flows and changes in salinity that could be detrimental to *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. The restoration plans have not specifically addressed *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization currently is not known to be a factor for these two plants. Increased collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result, however, from increased publicity resulting from publication of this proposal.

C. Disease or Predation

The health of one of the largest occurrences of *Cordylanthus mollis* ssp. *mollis* is declining due to insect predation (Brenda Grewell, pers. comm. 1993). Intense insect seed predation has been observed in the population at Joice Island and Hill Slough within Suisun Marsh in Solano County (Randall Brown, *in litt.* 1993). The presence of a thistle weevil (*Rhinocyllus conicus*) in a portion of the *Cirsium hydrophilum* var. *hydrophilum* population was documented in June 1996 by CDWR. The CDWR has collected thistle weevil in *Cirsium hydrophilum* var. *hydrophilum* flower heads, and observed many flower heads with no seeds. The larval stage of this weevil feeds on the seed. *Phyciods mylitta* caterpillars were collected on a population of *Cirsium hydrophilum* var. *hydrophilum* in September 1996. These caterpillars have caused significant damage to the rosettes of plants that will flower next year (R. Brown, *in. litt.* 1996).

Disease is not known to be a factor for either *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis*.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 404 of the Clean Water Act represents the primary Federal law that affords some protection for these two plants since they occur in wetlands. However, the Clean Water Act, by itself does not provide adequate protection for either *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis*. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including oil spill cleanup, minor dredging, maintenance dredging of existing basins, some road crossings, and minor bank stabilization (December 13, 1996; 61 FR 65874–65922). However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized, regardless of the significance of the affected wetland resources. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual or regional general permit, which are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

The Service, as part of the section 404 review process, provides comments to the Corps on nationwide permits and individual permits. The Service's comments are only advisory, although procedures exist for elevating permit review within the agencies when disagreements between the Service and Corps arise concerning the issuance of a permit. In practice, the permitting process for wetland fills and other activity under section 404 are insufficient to protect rare species such as *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

CDFG has formally designated *Cordylanthus mollis* ssp. *mollis* as rare under the California Endangered Species Act (chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14, California Code of Regulations 670.2). This designation by the State of California requires individuals to obtain a permit or an agreement with the CDFG to possess or "take" a listed species. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and California Endangered Species Act, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the landowner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, the California Native Plant Protection Act requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (chapter 10 sec. 1913 of the California Fish and Game Code).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. CEQA also obligates disclosure of environmental resources within proposed project areas and may enhance opportunities for conservation efforts. However, CEQA does not guarantee that such conservation efforts will be implemented. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as resulting in the loss of sites supporting State-listed species. Mitigation plans usually involve the transplantation of the plant species to an existing habitat or an artificially created habitat. Following the development of the transplantation plan, the original site is destroyed. Therefore, if the mitigation effort fails, the resource has already been lost.

Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved. In addition, revisions to the CEQA guidelines have been proposed that, if made final, may weaken protections for threatened, endangered, and other sensitive species (U.S. Department of the Interior, *in. litt.* 1997). Final CEQA guidelines are forthcoming.

In 1977, the State of California enacted the Suisun Marsh Preservation Act (Preservation Act) to protect Suisun Marsh. This legislation established primary and secondary management areas. The secondary management areas were established to provide a buffer against development. In 1982, the Preservation Act was amended to exclude, in the primary management area, land proposed for the Lawlor Ranch development. Exclusion of this land has reduced the buffer between urbanization and Suisun Marsh. The indirect effects of urbanization are discussed further in Factors "A" and "E".

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Both populations of *Cirsium hydrophilum* var. *hydrophilum* are adversely affected by non-native plants. *Lepidium latifolium* (perennial peppergrass), a rated noxious weed (California Department of Food and Agriculture 1993), has "moved in especially in the last 5 years" (Brenda Grewell, pers. comm. 1993). *Cirsium hydrophilum* var. *hydrophilum* is outcompeted by *L. latifolium*.

Hybridization with *Cirsium vulgare* (bull thistle), a non-native, also is a potential threat. *Cirsium vulgare* hybridizes readily with other *Cirsium*. Hybridization with *Cirsium vulgare* was suggested as a possible explanation for the previously presumed extinction of *Cirsium hydrophilum* var. *hydrophilum* (Smith and Berg 1988). *Cordylanthus mollis* ssp. *hispidus* is a species generally associated with more alkaline habitats than tidal marshes where *Cordylanthus mollis* ssp. *mollis* is found. However, hybridization and mixing of traits may be occurring between these two taxa or subspecies as possibly indicated in some voucher species kept in the University of California (Berkeley) and Jepson herbarium reference collections.

Chronic pollution from petroleum products is an ongoing threat to the habitat of both plants within San Pablo Bay and southern Suisun Bay. Oil spills can result in severe and long lasting destruction of salt marsh vegetation. Studies on mangroves, seagrasses, salt marsh grasses, and algae have shown that petroleum causes death, reduced growth, and impaired reproduction in large plants (Albers 1992). The effects of a petroleum spill to plants depends on several factors including the time of year, the type of petroleum product (crude or refined), and the degree of coverage (Hershner and Moore 1977; Rob Ricker, CDFG, pers. comm. 1993). A plant entirely covered by oil will die. Oil that seeps into sediments can affect the roots or rhizomes of plants as well. Oil spills may also affect plants by decreasing the amount of plant biomass (either above or below ground), or by decreasing the reproductive capacity of the plant (Rob Ricker, pers. comm. 1993).

Four hundred to 800 oil spills occur annually within California (Rob Ricker, pers. comm. 1993). Within northern California, 309 reported spills affecting marine or estuarine habitats within the jurisdiction of the Service's Sacramento Fish and Wildlife Office occurred between March 1992 and March 1993 (Office of Environmental Services (OES) 1992 and 1993). Most of these spills occurred in the San Francisco Bay Estuary.

In 1988, an oil spill in Martinez, California, flowed as far as Suisun Bay. Although these plants are found within the northern part of the Suisun Marsh and may not be threatened directly by an oil spill in San Francisco Bay, the potential for oil spills exists from vessels operating within the marsh, as well as from an accidental spill from railroads that bisect the marsh. Oil spills also are an ever present threat to *Cordylanthus mollis* ssp. *mollis* occurring near Point Pinole (Pat O'Brien, General Manager, East Bay Regional Parks District, *in litt.* 1994).

A hazardous waste clean-up effort resulted in the removal of a portion of the Middle Point *Cordylanthus mollis* ssp. *mollis* population in 1994. This population is found on the Concord Naval Weapons Station Property (Ruygt 1994).

Chronic pollution from point and non-point sources, including heavy metals from industrial discharges, also may threaten the habitat of both plants. It is unknown, however, what effects heavy metals in industrial discharges have on these two taxa. In 1978, 52 municipal treatment facilities and 42 industrial facilities continuously discharged wastewater into San Francisco Bay (Western Ecological Services Company (WESCO) 1986). By 1982, over 200 permits for industrial discharges had been granted (WESCO 1986).

The amounts of heavy metals in the San Francisco Bay Estuary are projected to increase during the next 10 years. The San Francisco Bay Conservation and Development Commission, Center for Environmental Design Research, and the Greenbelt Alliance (1992) collectively modeled plausible land use changes and their impact to the health of the San Francisco Bay Estuary. Several methods were used to determine the effects of land use change including two future land use models. The model projecting the highest increase in heavy metal was based on a composite of the general plan maps for all of the counties in the estuary. Amounts of heavy metals including lead, nickel, and cadmium were projected to increase under both future land use models in all the watersheds that include habitat for these two plants.

As discussed in Factor "A", habitat fragmentation may alter the physical environment. In addition, habitat fragmentation increases the risks of extinction due to random events. The small, isolated nature of the two populations of *Cirsium hydrophilum* var. *hydrophilum* also makes extinction from random events more likely. Random events such as insect or pest outbreaks, extended drought, oil spills or a combination of several such events, could destroy part of a single population or entire populations. The risk of extirpation due to genetic and demographic problems associated with small populations is a threat to at least the two occurrences of *Cordylanthus mollis* ssp. *mollis* that have fewer than 25 individuals. Additionally, the ongoing harvesting, planting of seed, and attempts at artificially expanding one of the populations in Contra Costa County, that is occurring without proper permits from the State of California, potentially threatens the genetic diversity of *Cordylanthus mollis* ssp. *mollis* (Deborah L. Elliot-Fisk, University of California at Davis, *in. litt.* 1996; David Tibor, CNPS, *in. litt.* 1996).

Mosquito abatement will increase as a result of urbanization (Brenda Grewell, pers. comm. 1993). Mosquito abatement activities threaten *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, both species grow along or near first order channels and mosquito abatement drainage ditches. Ditch cleaning and dredging, and the chemical spraying of vegetation along these channels or ditches may adversely impact individual plants. Plant populations parallel to these channels have been subjected to damage by vehicles used off established roads during mosquito abatement activities (Randall Brown, *in. litt.* 1993).

Foot traffic is a threat to *Cordylanthus mollis* ssp. *mollis*. A trail runs through the occurrence located on East Bay Regional Park's Point Pinole Regional Seashore. Foot traffic also is a potential threat to the largest occurrence of *Cordylanthus mollis* ssp. *mollis* due to the increased urbanization occurring within 0.40 kilometer (0.25 mile). Foot traffic disturbance through *Cordylanthus mollis* ssp. *mollis* can easily damage the shallow and very brittle roots (Stromberg 1986).

Erosion is a threat to *Cordylanthus mollis* ssp. *mollis* located on the Point Pinole Regional Seashore. The main population of *Cordylanthus mollis* ssp. *mollis* is immediately adjacent to a slough that is undergoing bank slumping (Stromberg 1986). Individual plants are threatened by undercutting of the bank and subsequent slumping of the marsh soil into the slough.

Cattle grazing continues on both private and state owned tidal marsh lands adjacent to Hill Slough, and in the privately owned tidal marsh near McAvoy Harbor. Extensive areas of bare ground are now present within the *Cordylanthus mollis* ssp. *mollis* population, decreasing the size of the populations (R. Brown, *in. litt.* 1996).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to finalize this rule. *Cirsium hydrophilum* var. *hydrophilum*, limited to only two populations, is threatened across all of its current range by indirect effects of urbanization, projects that alter the natural tidal regime, vulnerability to extinction due to random events and environmental factors, and competition with non-native vegetation. Urbanization, industrial development, and agricultural land conversion have extirpated or potentially extirpated nearly 45 percent of known occurrences of *Cordylanthus mollis* ssp. *mollis*. *Cordylanthus mollis* ssp. *mollis* is restricted to about 12 ha (31 acres) of habitat. Indirect effects of urbanization including habitat fragmentation and conversion, projects that alter natural tidal regimes, alteration of salinity levels, water pollution, mosquito abatement activities (including off-highway vehicle use), insect predation, erosion, foot traffic, and extirpation due to genetic and demographic problems continue to threaten most occurrences of *Cordylanthus mollis* ssp. *mollis* across its remaining range. Because *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are in danger of extinction throughout all or a significant part of their respective ranges, they meet the definition of "endangered" as it is defined in the Act. The preferred action, therefore, is to list *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered.

Alternatives to this action were considered but not preferred. Not listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* or listing these taxa as threatened would not provide adequate protection and would not be consistent with the Act. The Service is not proposing to designate critical habitat for these plants at this time, as discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" as it is defined in section 3(3) of the Act means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* at this time.

Critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* is not prudent due to lack of benefit. *Cirsium hydrophilum* var. *hydrophilum* is a wetland species and alteration of its tidal marsh habitat may be regulated by the Corps under the Clean Water Act. The inadequacies of the permitting process for wetland fills and other activities in protecting rare species is discussed under Factor "D" of the "Summary of Factors Affecting the Species" section above. Although there may be a Federal nexus for *Cirsium hydrophilum* var. *hydrophilum* through the Clean Water Act, the designation of critical habitat for this species would provide little or no benefit to the protection of this species beyond that provided by listing. Because of the small size of the total population of this species (i.e., a few thousand individuals) and the small area of occupied habitat (i.e., less than 0.40 ha (1 ac)), any adverse modification of the occupied habitat would likely jeopardize the continued existance of *Cirsium hydrophilum* var. *hydrophilum*.

Critical habitat designation for *Cordylanthus mollis* ssp. *mollis* is not prudent due to lack of benefit. *Cordylanthus mollis* ssp. *mollis* is a wetland species and alteration of its tidal marsh habitat may be regulated by the Corps under the Clean Water Act. The inadequacies of the permitting process for wetland fills and other activities in protecting rare species is discussed under Factor "D" of the "Summary of Factors Affecting the Species" section above. Because of the small size of the total population of this species (i.e., several thousand individuals) and the small area of occupied habitat (i.e., about 12 ha (31 ac)), any adverse modification of the occupied habitat would likely jeopardize the continued existence of *Cordylanthus mollis* ssp. *mollis*. Moreover, any benefit that may be gained by designation of critical habitat is out weighed by the detriment of such a designation. The publication of maps depicting precise locations of critical habitat that is required for designation would contribute to the further decline of this species by facilitating trespassing, uncontrolled collecting, and hindering recovery efforts. Urban encroachment in the Suisun Marsh Protection Zone increases the threat of foot traffic in sensitive tidal marsh areas where these plants occur (R. L. Brown, California Department of Water Resources, *in. litt.* 1993), and these areas are easily accessed by foot from the public roads near the marsh. As discussed in Factor "E" above, the ongoing harvesting of seeds and attempts at artificially expanding one of the populations in Contra Costa County by seeding, that is occurring without proper permits from the State of California, potentially threatens the genetic diversity of *Cordylanthus mollis* ssp. *mollis* (Deborah L. Elliot-Fisk,

University of California at Davis, *in. litt.* 1996; David Tibor, CNPS, *in. litt.* 1996).

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation of critical habitat may affect non-Federal lands only where such a Federal nexus exists. Critical habitat designation requires Federal agencies to ensure that their actions do not result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which it is designated are extremely rare.

Most populations of the two taxa occur on private or State lands. The designation of critical habitat on private or State lands will afford no additional benefit for these species over that provided as a result of listing provided there is no Federal nexus. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

Protection of the habitat of these species will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. For the reasons discussed above, the Service finds that the designation of critical habitat for these plants is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. If a species is listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

One occurrence of *Cordylanthus mollis* ssp. *mollis* is on land that is managed by the U.S. Navy. Activities conducted by the U.S. Navy that may affect this species would be subject to review under section 7 of the Act. The U.S. Bureau of Reclamation and the Corps would become involved with these plants through their funding of projects that may directly impact the plants or support development of areas that contain suitable salt or brackish marsh habitat for these plants. The Corps also would be involved as an authorizing agency for permits to dredge or fill wetlands and navigable waters of the United States. The Corps regulates dredging and filling of jurisdictional wetlands and navigable waters, including salt marshes, under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species may be affected by the proposed project without first completing consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highway Administration) also would be subject to review under section 7 of the Act.

Listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. mollis as endangered provides for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the two species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected states for management actions aiding the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR parts 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181; telephone 503/231–2063 or FAX 503/231–6243).

The Act directs Federal agencies to protect and promote the recovery of listed species. Collection of listed plants on Federal lands is prohibited. Proposed Federal projects and actions including activities on private or non-Federal lands that involve Federal funding or permitting require review to ensure they will not jeopardize the survival of any listed species, including plants. The Act does not prohibit "take" of listed plants on private lands, but private landowners should be aware of State laws protecting imperiled plants.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Most occurrences of both plants are either on private or non-Federal lands. One population of *Cordylanthus mollis* ssp. *mollis* occurs on land managed by the Department of Defense (U.S. Navy). The Service believes that the following actions would result in a violation of section 9, although possible violations are not limited to these actions alone—collection, damage, or destruction of these species on Federal lands, except in certain cases described below; and activities on non-Federal lands conducted in knowing violation of California State law, which requires a ten day notice be given before taking of plants on private land. The Service believes that, based on the best available information at this time, the following actions will not result in a violation of section 9 on private land provided that they do not violate State trespass or other laws—waterfowl hunting, bird watching, and fishing. Activities that occur on Federal land, or on private land that receive Federal authorization, permits, or funding, and for which either a Federal endangered species permit is issued to allow collection for scientific or recovery purposes, or a consultation is conducted in accordance with section 7 of the Act, would also not result in a violation of section 9. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9. General prohibitions and exceptions that apply to all endangered plants in section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply as discussed earlier in this section. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are Kirsten Tarp and Matthew D. Vandenberg, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, Part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Cirsium hydrophilum var. *hydrophilum.*	Suisun thistle	U.S.A. (CA)	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	*
Cordylanthus mollis ssp. *mollis.*	Soft bird's-beak	U.S.A. (CA)	Scrophulariaceae	E		NA	NA
*	*	*	*	*	*	*	*

Dated: November 12, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–30552 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 224
Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 143CE, Notice No. SC–23–ACE–93]

Special Conditions; EXTRA Flugzeugbau GmbH EA–400 Airplane Design

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This document proposes special conditions for the EXTRA Flugzeugbau GmbH EA–400 airplane design. These designs will have novel and unusual design features when compared to the state of technology anticipated in the applicable airworthiness standards. These design features include performance characteristics for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This document contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 143CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 143CE. Comments may be inspected weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m., at the Rules Docket location.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting written data, views, or arguments. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address given above. All communications received on or before the closing date for comments given above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 143CE." The postcard will be date stamped and returned to the addressee. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available for examination by interested parties, both before and after the closing date for comments, at the Rules Docket. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On April 6, 1993, the EXTRA Flugzeugbau GmbH, Schwarze Heide 21, D–46569 Hünxe, Germany, made application for normal category type certification of the Model EA–400 airplane design. The EA–400 design is a two-place (side-by-side), all composite material, cantilevered high-wing, retractable gear, unpressurized, single reciprocating engine, airplane with a maximum design weight of 3,974 pounds (1800 kilograms). It is intended for 14 CFR Part 91 operation as a day-VFR normal category airplane.

Type Certification Basis

The type certification basis of the EXTRA Flugzeugbau GmbH EA–400 airplane design is the following: 14 CFR Part 23, effective February 1, 1965, through amendment 23–45, effective August 6, 1993; 14 CFR Part 36, effective December 1, 1969, through amendment 36–21 effective December 28, 1995; exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated under 14 CFR Part 21, § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued under 14 CFR Part 11, § 11.49 after public notice, as required by §§ 11.28 and 11.29, and become a part of the type certification basis, as provided by 14 CFR Part 21, § 21.17(a)(2).

The proposed type design of the EXTRA Flugzeugbau GmbH EA–400 airplane incorporates certain novel and unusual design features for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include certain performance characteristics necessary for this type of airplane design that were not foreseen by the existing regulations.

This special condition addresses the flight safety of the EA–400 in case of an engine compartment fire with resulting heat conduction through the engine-mounts to composite structure joints beyond the firewall. The type certificate applicant shall demonstrate that the airplane structure design, especially the engine-mount attachments to the structure beyond the firewall, is able to retain the engine while withstanding the following:

1. An engine compartment fire, the loss of the most highly loaded composite joint, and heating of the next most highly loaded composite joint from those that remain;
2. Maximum continuous power for 5 minutes; and
3. Combined airplane flight maneuver and gust limit loads for at least 15 minutes.

Note: The engine-mount attachments at the firewall are not the same as the engine-to-engine-mount attachments, which contain vibration dampers.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the EXTRA Flugzeugbau GmbH EA–400 airplane design.

Heat Capability of Engine Mount and Fuselage Connection Joint

(a) Modify the airworthiness standards given in 14 CFR part 23, POWERPLANT FIRE PROTECTION, *Nacelle areas behind firewalls* (§ 23.1182), by making the most critical composite engine-mount attachment ineffective (assumed destroyed by heat). Then, for 15 minutes, apply an additional flame test of 500°C (932°F) to the next most structurally critical engine-mount of those remaining. The flame shall encompass the whole engine-mount structural attach fitting. Conductive heat will affect the metallic and composite joint structural capability beyond the firewall. Test the joint structural capability with these simultaneous limit load conditions (under these conditions, the engine shall remain attached to the airplane):

(1) The combined thrust, torque and gyroscopic loads resulting from the engine and propeller at maximum continuous power for the first 5 minutes, and

(2) The airplane normal inertial limit loads that result from the following:

(i) A maneuver load factor equal to that obtained from a constant altitude 30° bank, combined with

(ii) The positive and negative vertical design gust load factors that occur at the design maneuvering speed and the minimum flying weight, and

(iii) A factor-of-safety equal to one.

Issued in Kansas City, Missouri on November 6, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30498 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–10]

Proposed Amendment of Class E Airspace; Tracy, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Tracy, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 11, a GPS SIAP to RWY 25, and a GPS SIAP to RWY 29 at Tracy Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the approach and departure procedures at Tracy Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tracy Municipal Airport, Tracy, CA.

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 97–AWP–10, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWP–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Tracy, CA. The establishment of a GPS RWY 11 SIAP, GPS RWY 25 SIAP, and GPS RWY 29 SIAP at Tracy Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departure procedures at Tracy Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 11

SIAP, GPS RWY 25 SIAP, and GPS RWY 29 SIAP and other IFR operations at Tracy Municipal Airport, Tracy, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only invovles an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Tracy, CA [Revised]

Tracy Municipal Airport, CA
(Lat. 37°41'15" N, long. 121°26'29" W)
Manteca VORTAC
(Lat. 37°50'01" N, long. 121°10'17" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tracy Municipal Airport and within 2.2 miles each side of the Manteca VORTAC 237° radial, extending from the 6.4-mile radius to 4.9 miles southwest of the Manteca VORTAC and within 1.8 miles each side of the 117° bearing from the Tracy Municipal Airport, extending from the 6.4-mile radius to 8.4 miles southeast of the Tracy Municipal Airport and within 1.8 miles each side of the 326° bearing from the Tracy Municipal Airport, extending from the 6.4-miles radius to 7.7 miles northwest of the Tracy Municipal Airport, excluding that portion within the Stockton, CA, Class E and Livermore, CA, Class E airspace areas, and excluding that airspace within Restricted Area R2531A.

* * * * *

Issued in Los Angeles, California, on November 7, 1997.

Michael Lammes,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–30353 Filed 11–19–97; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Household Products With More Than 50 mg of Elemental Fluoride and More Than 0.5 Percent Elemental Fluoride; and Modification of Exemption for Oral Prescription Drugs With Sodium Fluoride

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule to require child-resistant ("CR") packaging for household products containing more than the equivalent of 50 mg of elemental fluoride *and* more than the equivalent of 0.5 percent elemental fluoride (on a weight-to-volume ("w/v") or weight-to-weight ("w/w") basis). Examples of such products are some rust removers, toilet cleaners, metal cleaners and etching products. Dental products, such as toothpaste, contain lower levels of fluoride and would not be affected. For consistency, the Commission is also proposing to modify the oral prescription drug exemption for sodium fluoride preparations. Instead of allowing drugs with no more than 264 mg of sodium fluoride per package to be in non-CR packaging as the current rule does, the Commission proposes to allow such drugs with only 50 mg or less of the equivalent of elemental fluoride (110 mg or less of sodium fluoride) per package and no more than the equivalent of 0.5 percent elemental fluoride on a w/v or w/w basis. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or ingesting a toxic amount of elemental fluoride. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: Comments on the proposal should be submitted no later than February 3, 1998.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301)504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Division of Health Sciences, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504–0477 ext. 1199.

SUPPLEMENTARY INFORMATION:

A. Background

1. Household Products Containing Fluoride

Many types of household products may contain fluoride in one form or another. Fluorides are ingredients in cleaning products for metal, tile, brick, cement, wheels, radiators, siding, toilets, ovens and drains. Fluorides are also found in rust and water stain removers, silver solder and other welding fluxes, etching compounds, laundry sour, air conditioner coil cleaners and floor polishes. The fluorides that may be ingredients in these products and are potentially toxic are hydrofluoric acid ("HF"), ammonium bifluoride, ammonium fluoride, potassium bifluoride, sodium bifluoride, sodium fluoride and sodium fluosilicate.[1] [3][2]

Many dental products also contain fluorides, but at lower levels.

[1] The percentage of elemental fluoride in any compound is determined by dividing the molecular weight of fluoride (= 19 grams/mole) by the molecular weight of the compound (e.g., the molecular weight of sodium fluoride = 42 grams/mole). Sodium fluoride contains 45% elemental fluoride (19/42 × 100 = 45%).

[2] Numbers in brackets refer to documents listed at the end of this notice.

Prescription dental products are available with fluoride contents of 0.125–0.5 mg/ml for drops, 0.5–1 mg per tablet, 1 mg per lozenge, 0.1–0.9 mg/g for topical rinses (0.01–0.09 percent and 5 mg/g (0.5 percent) for topical gels. Prescription vitamin preparations are also available containing 0.25 to 1 mg elemental fluoride per ml. The highest concentration of elemental fluoride in any such dental product available over-the-counter ("OTC") is 0.15 percent for pastes and powders and 0.5 percent for liquids or gels. In contrast, some household products, particularly metal cleaners and rust removers containing hydrofluoric acid and/or soluble fluoride salts, can have as much as 57 percent elemental fluoride. In general, the concentrations of elemental fluoride in household cleaners and surface preparation agents are 10 to 1,000-fold higher than concentrations found in dental products.[2]

2. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as "child-resistant (CR) packaging," is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for "normal adults" to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a), 16 CFR 1700.5.

3. Existing Requirements for Fluoride-Containing Products

The Commission currently requires CR packaging for oral prescription drugs with fluoride, but it exempts those in liquid or tablet form that contain no more than 264 mg of sodium fluoride (equivalent to 120 mg fluoride) per package. 16 CFR 1700.14(10)(vii). In 1977, the Commission first exempted aqueous solutions of sodium fluoride at that level. In 1980, in response to a petition, the Commission extended the exemption to include liquid and tablet forms. When it issued the exemption, the Commission believed that drugs with sodium fluoride below that level would not cause serious personal injury or illness to children under 5 years of age. The Commission based this decision on the lack of serious adverse human experience associated with such drugs at that time. The level was also partly based on a recommendation by the American Dental Association that no more than 264 mg of sodium fluoride should be dispensed at one time. 45 FR 78630. Also at that time, the Food and Drug Administration ("FDA") had determined that an acutely toxic dose of sodium fluoride for a 25 pound (~ 11.4 kg) child was in the range of 50 to 250 mg/kg (equivalent to ~ 23 to 113 mg/kg of elemental fluoride) (42 FR 62363). As discussed below, the Commission is proposing a new level that is based on current information concerning the toxicity of fluoride and would be consistent with the proposed CR requirement for fluoride-containing household products.

The FDA limits OTC packages of toothpaste and tooth powder to no more than 276 mg total elemental fluoride per package. 21 CFR 310.545. However, preventative treatment rinses and gels sold OTC must contain no more than 120 mg total elemental fluoride per package. 21 CFR 355.10.

B. Toxicity of Fluoride

Most available toxicity information on fluoride relates to acute toxicity of hydrofluoric acid ("HF"). However, other water soluble fluoride-containing compounds can cause fluoride poisoning. The fluoride ion is systemically absorbed almost immediately. It is highly penetrating and reactive and can cause both systemic poisoning and tissue destruction. Fluoride ions, once separated from either HF of fluoride salts, penetrate deep into tissues, causing burning at sites deeper than the original exposure site. The process of tissue destruction can continue for days.[2]

Systemic fluoride poisoning after ingestion or inhalation occurs very rapidly as the fluoride is absorbed into the gastrointestinal ("GI") tract and lungs. Systemic fluoride poisoning can also result from dermal exposure if the exposure is massive or the skin barrier has been destroyed, as with severe burns. Fluoride absorption can produce hyperkalemia (elevated serum potassium), hypocalcemia (lowered serum calcium), hypomagnesemia (lowered serum magnesium), and metabolic and respiratory acidosis. These disturbances can then bring on cardiac arrhythmia, respiratory stimulation followed by respiratory depression, muscle spasms, convulsions, central nervous system ("CNS") depression, possible respiratory paralysis or cardiac failure, and death. Fluoride may also inhibit cellular respiration and glycolysis, alter membrane permeability and excitability, and cause neurotoxic and adverse GI effects.[2]

When exposure is through inhalation, fluorides can cause severe chemical burns to the respiratory system. Inhalation can result in difficulty breathing (dyspnea), bronchospasms, chemical pneumonitis, pulmonary edema, airway obstruction, and tracheobronchitis. The severity of burns from dermal absorption can vary depending on the concentration of fluoride available, duration of the exposure, the surface area exposed, and the penetrability of the exposed tissue. Dermal exposure to 6 to 10 percent HF is the lowest concentration range known to cause skin injury in humans. Destruction of tissue under the skin may occur, as may decalcification and erosion of bone. Death from systemic fluoride toxicity has resulted from dermal exposure to 70 percent HF over 2.5 percent of the body surface.[2]

Ocular exposure can result in serious eye injury. Exposure to concentrations of 0.5 percent can lead to mild conjunctivitis and greater concentrations can lead to progressively severe results such as immediate corneal necrosis (20 percent solution).

Ingestion of fluoride can result in mild to severe GI symptoms. Reports suggest that ingesting 3 to 5 milligrams per kilogram of fluoride causes vomiting, diarrhea, and abdominal pain. Ingestion of more than 5 mg/kg may produce systemic toxicity. A retrospective poison control center study of fluoride ingestions reported

that symptoms, primarily safely tolerated GI symptoms that tended to resolve within 24 hours, developed following ingestions of 4 to 8.4 mg/kg of fluoride.[2]

According to the medical literature, a safely tolerated dose ("STD") and a certainly lethal dose ("CLD") were determined from 600 fluoride poisoning deaths. The CLD was determined to be 32 to 64 mg/kg and the STD was estimated at one fourth that, or 8 to 16 mg/kg. These values were statistically determined and do not correspond to the actual lowest toxic or lethal levels of fluoride. The lowest documented lethal dose for fluoride is 16 mg/kg in a 3-year-old child. There were complicating factors in this death. The child may have taken other medications and he suffered from Crohn's disease (an inflammatory disorder of the GI tract) that may have contributed to his death.[2]

C. Injury Data

Medical Literature

There are many reports in the medical literature of deaths and injuries involving fluoride-containing products. A retrospective study conducted by the American Association of Poison Control Centers ("AAPCC") of hydrofluoric acid burns from rust stain removers applied to clothing found 619 such cases in 1990. Five of these required hospitalization. Some of the burns occurred even after the clothing had been washed.[2]

Other reports included that of a 14-month-old child who developed hypocalcemia and hyperfluoridemia (elevated blood fluoride level) and went into cardiac arrest after exposure to a rust remover containing HF. A 2½-year-old child developed respiratory failure and repeated episodes of ventricular tachycardia (rapid heart beat) and fibrillation after ingesting a laundry sour (used in laundry operations to neutralize alkalis or decompose hypochlorite bleach) with sodium fluosilicate. A 28-year-old man died after accidentally drinking floor polish that contained fluosilicate. A 56-year-old man died after ingesting a spoonful of glass etching cream (20% ammonium bifluoride and 13% sodium bifluoride). He had severe burns in his esophagus and stomach, and he suffered cardiac arrest 5 hours after the ingestion.[2]

CPSC Databases

CPSC has several databases for poison incidents. The staff reviewed cases from 1988 to May 1997 in the National Electronic Injury Surveillance System ("NEISS"), the Injury or Potential Injury Incident ("IIPI") files, Death Certificate ("DCRT") database, and In-Depth-Investigation ("INDP") files. From 1988 to 1996, NEISS had reports of 31 incidents involving products documented to contain fluoride. Two of these were accidental ingestions by children under 5 years old. Most other injuries involved chemical burns of the hands.[2]

The INDP files contain numerous injury reports. For example, a 50-year-old woman was using a water stain remover with 6 percent HF when it leaked through her rubber gloves and to her skin. She developed intense pain 4 hours later when the fluoride ion penetrated through to the bones of her forearm. Four months after the incident she had only partial use of her arm and hand. In another case, an 18-year-old man developed second and third degree burns on his hands after exposure to an automobile water spot remover with HF. His fingers became permanently flexed from damage to the muscle and connective tissue. A 20-year-old male died of cardiac arrest after ingesting one to two ounces of a wheel cleaner with fluoride.[2]

Three reports in the INDP files involve children under 5 years old who died after ingesting fluoride-containing products. A three-year-old child ingested an unknown product with HF. The second case involved a 2-year-old child who ingested a toilet bowl stain remover that contained 15.9 percent ammonium bifluoride. The most recent case was an 18-month-old child who ingested an unknown amount of air conditioner coil cleaner with 8 percent HF and 8 percent phosphoric acid.[2]

Since 1995, there have been six additional reports of fluoride poisoning in children under 5 years of age from the wheel cleaning product involved in the death of the 20-year-old man described above. The product contains ammonium bifluoride and ammonium fluoride salts, reportedly containing at least 15 percent fluoride. Before December, 1996, it was marketed for household use in non-CR packaging. Since that date it has been packaged in CR packaging, and in September 1997 it was recalled by the manufacturer.[2]

AAPCC Data

The staff reviewed AAPCC ingestion data involving children under 5 years old and products known to, or that may, contain fluoride. (The actual number of fluoride exposures cannot be determined because some products that contain fluoride are not identified as such and therefore may be coded to generic categories such as acidic cleaning products or other unknown cleaning products.) From 1993 to 1995, there were no reported fatalities in this age group. Out of a total of 499 exposures to products known to contain HF, there were 2 major[3] outcomes and 24 moderate[4] outcomes. The AAPCC data also show 23 major outcomes and 188 moderate outcomes for other acid household products. Some of these may have contained fluoride. The frequency of injury for dental treatments was much lower than that for household products containing HF. Of approximately 23,000 exposures to such dental products, there were 34 moderate outcomes, and the only documented major outcome was a miscoded incident where the child experienced an allergic reaction to the product rather than systemic toxicity from an overdose.[2]

The staff also compiled data from AAPCC annual reports for all ages and all routes of exposure for the years 1985 to 1995. During this time period, there were about 25,000 exposures to products containing HF. Of these, 2,881 resulted in moderate outcomes and 275 in major outcomes. There were also injuries from dental products, fluoride mineral/electrolyte products, and vitamins with fluoride. A total of 18 deaths were reported in the HF category. Two deaths involved children under 5 years old. One ingested an ammonium bifluoride toilet stain remover (described above) and the other child died after ingesting a toilet cleaner with HF. Generally, these AAPCC data suggest that household products with HF pose a more serious risk of injury than other classes of fluoride products. Moderate to serious outcomes developed in 12.8 percent of the exposures to HF compared to only 0.4 percent of the exposures to anticaries products.[2]

D. Level of Regulation for Household Products Containing Fluoride

The Commission is proposing a rule that requires special packaging for household products containing more than the equivalent of 50 mg of elemental fluoride and more than the equivalent of 0.5 percent elemental fluoride on a weight-to-volume ("w/v") basis for liquids or a weight-to-weight ("w/w") basis for non-liquids.[1&2] The Commission is especially interested in obtaining information and receiving

[3] Major outcome—The patient exhibited signs or symptoms which were life-threatening or resulted in significant residual disability or disfigurement.

[4] Moderate outcome—The patient exhibited signs and symptoms that were more pronounced, more prolonged, or more of a systemic nature. Usually some form of treatment was required. Symptoms were not life-threatening and the patient had no residual disability or disfigurement.

comments on the uses and marketing patterns of glass etching creams.

There is no well defined lethal dose for fluoride. In the medical literature, one source cites a minimum lethal dose in humans of 71 mg/kg and another specifies a lethal oral dose in the range of 70 to 140 mg/kg. The staff considers these values too high based on documented cases of fluoride toxicity. There is one documented death from ingestion of 16 mg/kg fluoride, but as discussed above, other medical factors may have contributed to that death. Most evidence suggests that the lower limit of the calculated certainly lethal dose (CLD) of 32 mg/kg is a reasonable estimate for a minimum lethal dose.[2]

Similarly, there is no established toxic dose for fluoride. Generally, greater than 6 percent HF can cause dermal burns and more than 0.5 percent can lead to serious eye injury. Several reports suggest ingestion of 3 to 5 mg/kg produces symptoms and that more than 5 mg/kg (50 mg in a 10 kg child) can produce systemic toxicity. Additionally, some medical professionals advise medical observation following ingestions of more than 5 to 8 mg/kg. Based on this information, the Commission proposes a level for regulation that would include all household products with more than 50 mg of elemental fluoride *and* more than 0.5 percent elemental fluoride on a w/v basis for liquids or a w/w basis for non-liquids. There is no evidence that 50 mg or less of elemental fluoride or concentrations less than 0.5 percent cause serious systemic toxicity or serious burns. [1&2]

E. Level of Regulation for Oral Prescription Drugs Containing Sodium Fluoride

Based on the toxicity information discussed above, the Commission believes that the current exemption for oral prescription drugs with no more than 264 mg of sodium fluoride should be modified. To be consistent with the proposed level for household products containing fluoride, the Commission is proposing that the level for the oral prescription drug exemption be changed to allow no more than the equivalent of 50 mg of elemental fluoride (110 mg sodium fluoride) per package and no more than a concentration of 0.5 percent elemental fluoride on a w/v basis for liquids or a w/w basis for non-liquids. The proposed level provides a safety factor to protect sensitive individuals.[1&2]

The Commission does not believe that changing the level of exemption for prescription drugs containing sodium fluoride will impact any of the currently exempted dental products with more than 50 mg of fluoride because these products have 0.5 percent or less fluoride. There is no evidence that any of these products have caused serious injury. The Commission proposes modifying the exemption level so that it is consistent with the regulated level proposed for household products containing fluoride.[1]

F. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of fluoride demonstrate that fluoride can cause serious illness and injury to children. Moreover, it is available to children in common household products. Although some products currently use CR packaging, others do not. The Commission preliminarily concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any current as well as new manufacturers.[1&2]

The same hazard posed to children by toxic amounts of fluoride in household products also exists from such levels of fluoride in oral prescription drugs. Therefore, the Commission is proposing to modify the existing exemption for such drugs with sodium fluoride to reflect current toxicity data and be consistent with the proposed level for fluoride-containing household products.[1&2]

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that the degree and nature of the hazard to children from handling or ingesting fluoride is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of these products, described above, and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.[4]

Some OTC fluoride-containing household products are packaged in containers with non-CR continuous threaded closures. The Commission also is aware of such products packaged in aerosols and mechanical pumps. Various types and designs of senior friendly CR packaging can be readily obtained that would be suitable for fluoride-containing products.[3&4]

Two manufacturers currently use senior-friendly continuous threaded CR packaging for their fluoride-containing household products. Another manufacturer uses a senior-friendly trigger mechanical pump mechanism for its product. This shows that these types of CR packages are technically feasible, practicable and appropriate for fluoride-containing products. The Commission knows of at least one fluoride product that uses a non-CR aerosol package. The manufacturer of another regulated product is currently using a senior-friendly CR aerosol overcap. Thus, this kind of CR packaging could be used for fluoride-containing products. Finally, various designs of senior-friendly snap type reclosable CR packaging that would be appropriate for non-liquid fluoride-containing products are available. Thus, appropriate senior-friendly CR packaging is available for products marketed in continuous threaded, snap, aerosols, and trigger spray packaging.[4] Therefore, the Commission concludes that CR packaging for fluoride-containing products is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and preliminarily finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

G. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such

final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Senior-friendly special packaging is currently commercially available for most types of CR packaging. Aerosol and mechanical pump packages should be commercially available in senior-friendly CR designs within nine months of a final rule.[1,4 & 5] Thus, the Commission proposes that a final rule would take effect nine months after publication of the final rule.

Currently available information indicates that full commercial availability for senior-friendly mechanical pump packages and aerosol overcap packages could take from 9 to 12 months from the date a final rule is issued. If comments on this proposal indicate that manufacturers using mechanical pump packages and aerosol overcap packages need more than 9 months to comply with the rule, the Commission may (1) specify a 1-year effective date for these types of packages only, or (2) provide that manufacturers may request a stay of enforcement so they can market their products in conventional packaging for the minimum period needed to obtain an adequate supply of senior-friendly packaging.

A final rule would apply to products that are packaged on or after the effective date.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for household products containing fluoride with more than 50 mg elemental fluoride and more than 0.5 percent elemental fluoride (w/v or w/w). The staff also considered the impact of a rule modifying the current exemption for oral prescription drugs containing sodium fluoride so that it would be consistent with the level proposed for household products.[3]

This assessment reports that the staff is aware of 25 suppliers of products that are in categories of products that may contain fluorides. Fourteen of these companies may be small businesses. It is unclear which of these products actually contain fluorides and are marketed directly to consumers rather than commercial markets. The staff is also aware of 40 suppliers of automotive and household cleaning chemicals and products. Some of these products may contain fluoride.[3] The Commission requests comments from companies that supply fluoride-containing household products. The Commission is particularly interested in comments and information on the likely effect of this proposed rule on small businesses.

Several consumer products containing fluoride are already in CR packaging. For example, senior friendly packaging is used by a small business marketer of a fluoride-containing rust remover packaged in a plastic container with a continuous turn closure. Another small business, marketing a fluoride-containing glass etching cream, also uses senior-friendly CR packaging. However, the small business marketer of another glass etching product is not currently using CR packaging. A variety of types of senior friendly CR packaging that would be suitable for such products are readily available at prices competitive with non-CR packaging. Similarly, of the three known marketers of fluoride-containing wheel cleaners, one (a large manufacturer) is using CR packaging, while another (a small business) is not. Senior-friendly trigger sprays like those used for this product are available. The incremental cost of a CR trigger is not likely to be large relative to the retail cost of the product.[3]

Based on this assessment, the Commission concludes that the proposed requirement for fluoride-containing household products would not have a significant impact on a substantial number of small businesses or other small entities.

Furthermore, the proposed modification in the level for exemption of oral prescription drugs containing sodium fluoride is not likely to affect any currently available prescription drugs, and if such drugs should become available in the future appropriate CR packaging is readily available at prices competitive with non-CR packaging. Therefore, the Commission concludes that the proposed modification to the exemption for oral prescription drugs containing sodium fluoride would not have a significant impact on a substantial number of small businesses or other small entities.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for fluoride-containing products.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR Part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule requiring CR packaging for household products containing fluoride above the regulated level and modifying the exemption level for oral prescription drugs with sodium fluoride would preempt non-identical state or local special packaging standards for such fluoride containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the proposed rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended to revise paragraph (a)(10)(vii) and to add paragraph (a)(27) to read as follows (although unchanged, the introductory text of paragraphs (a) and (10) are included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription or a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(vii) Sodium fluoride drug preparations including liquid and tablet forms, containing not more than 110 milligrams of sodium fluoride (the equivalent of 50 mg of elemental fluoride) per package and not more than a concentration of 0.5 percent elemental fluoride on a weight-to-volume basis for liquids or a weight-to-weight basis for non-liquids and containing no other substances subject to this § 1700.14(a)(10).

* * * * *

(27) *Fluoride.* Household substances containing more than the equivalent of 50 milligrams of elemental fluoride per package and more than the equivalent of 0.5 percent elemental fluoride on a weight-to-volume basis for liquids or a weight-to-weight basis for non-liquids shall be packaged in accordance with the provisions of § 1700.15 (a), (b) and (c).

Dated: November 17, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., EH, to the Commission, "Proposed Rule to Require Child-Resistant Packaging for Household Products with Fluoride," September 30, 1997.
2. Memorandum from Susan C. Aitken, Ph.D., EH, to Jacqueline Ferrante, Ph.D., EH, "Toxicity of Household Products Containing Fluoride," August 4, 1997.
3. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., EH, "Market Data, Economic Considerations and Environmental Effects of a Proposal to Require Child-Resistant Packaging for Household Products Containing Fluoride," June 20, 1997.
4. Memorandum from Charles Wilbur, EH, to Jacqueline Ferrante, Ph.D., EH, "Technical Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Child-Resistant Packaging for OTC Products Containing Fluoride," June 27, 1997.

[FR Doc. 97–30555 Filed 11–19–97; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33–7475, 34–39321, IC–22884; File No. S7–27–97]

RIN 3235–AG96

Delivery of Disclosure Documents to Households

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment a new rule under the Securities Act of 1933 to enable issuers and broker-dealers to satisfy the Act's prospectus delivery requirements, with respect to two or more investors sharing the same address, by sending a single prospectus, subject to certain conditions. The Commission is proposing similar amendments to the rules under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that govern the delivery of annual and (in the case of investment companies) semiannual reports to shareholders. The proposed rule and rule amendments seek to provide greater convenience for investors and cost savings for issuers by reducing the amount of duplicative information that investors receive.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–27–97; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Stop 10–2, or Elizabeth M. Murphy, Special Counsel, at (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Stop 6–2, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 154 under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act") and proposed amendments to rules 14a–3 (17 CFR 240.14a–3), 14c–3 (17 CFR 240.14c–3) and 14c–7 (17 CFR 240.14c–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a) (the "Exchange Act"), and rules 30d–1 (17 CFR 270.30d–1) and 30d–2 (17 CFR 270.30d–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act").

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I. Discussion

The Securities Act generally prohibits an issuer or underwriter from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security.[1] If several persons purchase the same security and share the same household, the prospectus delivery requirements may result in the mailing of multiple copies of the same prospectus to a household.

Although the proposed rule is not limited to investment company prospectuses, the problem of delivery of multiple prospectuses is particularly significant in the case of open-end management investment companies ("mutual funds"),[2] and has grown as the popularity of mutual funds as an investment vehicle for many families has increased.[3] The same mutual fund may be used by a family as a regular investment as well as for family members' individual retirement accounts, 401(k) or other tax-deferred retirement plans, and for trusts or accounts established for the benefit of minor children. Although one family member may make investment decisions on behalf of each family, a fund that delivers an updated prospectus to investors annually must deliver a copy to each family member in whose name shares are purchased.

Mutual funds, closed-end management investment companies (collectively, "funds") and certain unit investment trusts ("UITs") are required by Commission rules to send semiannual reports to their security holders.[4] The problem of delivery of duplicate documents to a household frequently arises with respect to these reports.[5] Public companies that are not investment companies also are required to furnish security holders an annual report that accompanies or precedes the delivery of a proxy or information statement.[6] Sending multiple copies of the same document to investors who share the same address often inundates households with extra mail, annoys investors, and results in higher printing and mailing costs for issuers, underwriters and other broker-dealers. In many cases, these costs are ultimately borne by investors.

To reduce the number of duplicative disclosure documents delivered to investors, the Commission is proposing rules to permit, under certain circumstances, delivery of a single prospectus or shareholder report to a household ("householding") to satisfy the applicable delivery requirements. Proposed rule 154 under the Securities Act, and proposed amendments to rules 30d–1 and 30d–2 under the Investment Company Act and to rules 14a–3, 14c–3 and 14c–7 under the Exchange Act, would provide that delivery of a disclosure document to one investor would be deemed to have occurred with respect to all other investors who share the same address, provided certain conditions are met. The conditions are designed to assure that every security holder in the household either receives or has convenient access to a copy of the prospectus or report delivered to a member of the household.

A. Delivery of Prospectuses to a Household

1. Scope of Rule and General Conditions

Under proposed rule 154, a prospectus would be deemed delivered, for purposes of sections 5(b) and 2(a)(10) of the Securities Act, to all investors at a shared address if the person relying on the rule delivers the prospectus to a natural person who shares that address and the other investors consent to delivery of a single prospectus.[7] The proposed rule would be available for all persons who have a prospectus delivery obligation under the Securities Act except when the prospectus is required to be delivered in connection with business combination transactions, exchange offers or reclassifications of securities.[8] Those prospectuses generally are accompanied by proxies or tender offer material that must be executed by each individual investor. Comment is requested whether companies should be permitted to rely on the rule for delivery of those types of prospectuses. Are there other types of prospectuses that rule 154 should not cover? Should the rule be limited to fund prospectuses?

[1] *See* Securities Act sections 2(a)(10), 4(1), 5(b) (15 U.S.C. 77b(a)(10), 77d(1), 77e(b)). In connection with secondary market transactions in certain securities, a dealer may also be required to deliver a prospectus for a specified period after the commencement of the offering. *See* Securities Act section 4(3) (15 U.S.C. 77d(3)); rule 174 (17 CFR 230.174). Dealers selling shares of open-end management investment companies or units of unit investment trusts ("UITs") are required to deliver a prospectus if the issuer (including the sponsor of a UIT) is currently offering shares or units for sale. Investment Company Act section 24(d) (15 U.S.C. 80a–24(d)); *see also* Form N–7 for Registration of Unit Investment Trusts Under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Release No. 13612 (Mar. 9, 1983) (52 FR 8268, 8269 (Mar. 17, 1987)) (because the sponsor of a UIT is considered to be an issuer of the UIT's units under section 2(a)(4) of the Securities Act, resales of units by the sponsor must be made pursuant to a prospectus).

[2] Mutual funds generally offer their shares on a continuous basis and, as a result, are required to file periodic "post-effective" amendments to their registration statements in order to maintain a "current" prospectus required by section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)). Post-effective amendments also satisfy the requirement that mutual funds amend their Investment Company Act registration statements annually. *See* 17 CFR 270.8b–16. The Securities Act requires mutual funds to send updated prospectuses only to those shareholders who make additional purchases. (A reinvestment through a dividend reinvestment plan generally does not trigger this obligation.) In practice, many mutual funds send an updated prospectus annually to all of their shareholders. Because closed-end funds do not offer their shares to the public on a continuous basis, they generally do not update their prospectuses periodically. *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 354 (1992) (discussing greater effect of Securities Act prospectus delivery requirements on mutual funds as compared to other issuers); *see also* Staff Interpretive Position Relating to Fiduciary Duty of Directors of a Registered Investment Company in Connection with Proposed Arrangement to Impose Sales Load on Reinvestment of Income Dividends and Continuously Offer Fund Shares Only in Connection with Dividend Reinvestments, Investment Company Act Release No. 6480 (May 10, 1971) (36 FR 9627 (May 27, 1971)).

[3] An estimated 63 million individuals, making up 36.8 million households, owned mutual funds either directly or through a retirement plan as of April 1996. Fund-owning households represented 37 percent of all U.S. households. Investment Company Institute, *Mutual Fund Ownership in the U.S.*, Fundamentals, Dec. 1996, at 1.

[4] *See* Investment Company Act section 30(e) (15 U.S.C. 80a–29(e)); rule 30d–1 (17 CFR 270.30d–1). UITs that invest substantially all of their assets in shares of a fund must send their unitholders annual and semiannual reports containing financial information on the underlying fund. *See* Investment Company Act section 30(e) (15 U.S.C. 80a–29(e)); rule 30d–2 (17 CFR 270.30d–2).

[5] The Commission staff has issued no-action letters permitting just one copy of a fund's shareholder report to be sent to shareholders who share the same address. *See* Oppenheimer Funds, SEC No-Action Letter (July 20, 1994); Scudder Group of Funds, SEC No-Action Letter (June 19, 1990); *see also* Allstate Enterprises Stock Fund, Inc., SEC No-Action Letter (July 22, 1973). The funds' letters requesting relief noted shareholder complaints about duplicate reports and sought to reduce printing and mailing expenses.

[6] The proxy rules currently include provisions that allow registrants to send a single annual report to security holders sharing the same address under certain conditions. Rule 14a–3(e) (17 CFR 240.14a–3(e)); Note 2 to rule 14c–7 (17 CFR 240.14c–7 note 2); see also 2 N.Y.S.E. Guide (CCH) ¶¶ 2451.90, 2451.95, 2465.20, 2465.25 (New York Stock Exchange rules permitting householding).

[7] Proposed rule 154(a).

[8] The proposed rule would not apply to the delivery of a prospectus filed as part of a registration statement on Form N–14, S–4 or F–4, or to the delivery of any other prospectus in connection with a business combination transaction, exchange offer or reclassification of securities. *See* 17 CFR 239.23, 239.25, 239.34; proposed rule 154(e).

For purposes of the rule, the term "address" would not be limited to a postal address and could include an electronic address.[9] Thus, investors who share an electronic mail address could consent to receive one prospectus at the shared address even if they had different postal addresses.[10] Conversely, investors who share a street address could consent to the delivery of one prospectus to the household, and an investor could receive the prospectus electronically, even if the other investors do not share that investor's electronic address.

An investor may give limited consent to the householding of prospectuses for a particular security only, or may give general consent concerning any prospectuses that an issuer, underwriter, or dealer has or will have an obligation to deliver.[11] So that an investor has the capacity to notify other members of the household that the prospectus is available, the proposed rule would require that the prospectus be addressed to a natural person.[12]

The notion of a household under the rule would not be limited to a family unit or a residence. Any group of persons who share the same address could be delivered a single prospectus as long as each investor provides written consent. The proposed rule, for example, would permit the delivery of a single prospectus for multiple investors at a shared business address, or for investors that include a business entity. The rule therefore should afford significant flexibility for persons that have a prospectus delivery obligation.

The rule also does not require that a prospectus be delivered to an investor at the address that is shared with the other investors. If two investors live in the same house and consent to householding, for example, a prospectus could be delivered to the address where one investor receives his or her mail, such as a business address or a post office box. Comment is requested whether the rule should require that the prospectus be delivered to the investors' shared address.

As explained above, delivery to a natural person would facilitate the sharing of the prospectus among the investors at the shared address. In order to allow for changing the investor who receives the prospectus (*e.g.*, if the investor moves to a different address), the investors at the shared address would consent to the manner of prospectus delivery specified in the rule without designating the specific person to whom the prospectus will be delivered. The Commission requests comment whether the rule should require the investors to specify the name of the investor who will receive the prospectus. Comment is also requested whether there should be any restrictions on who can receive a prospectus on behalf of the other investors. For example, should that investor be required to be an adult?

The proposed rule would not permit delivery of a prospectus to a group of persons (*e.g.*, "The Smith household," or "ABC Stock Fund Shareholders"). The Commission is concerned that the use of such general addressing may reduce the likelihood that a prospectus will be opened and read (because the person receiving it may assume it is "junk mail").[13] In addition, addressing the prospectus to a family-name household could increase the risk that someone other than an investor may receive it. The Commission requests comment on the advantages and disadvantages of addressing a document to a particular person in a household and whether the rule should permit the prospectus to be addressed to a group of persons in the household.

Comment also is requested on the proposed application of the rules when documents are delivered electronically. In order to satisfy delivery requirements, a person relying on the rule also may obtain consent, from an investor who receives a prospectus, concerning delivery through a specified electronic medium.[14] If the investor decides to receive the prospectus electronically, should the other investors in the household also have to consent to electronic delivery to that investor?

2. Householding Without Written Consent

Consent may be difficult to obtain, even from persons who presumably would wish to consent to the delivery of documents to another person in their household. Many investors may not respond to requests for consent, and thus many of the benefits of householding would not be realized. At the same time, householding without consent creates the risk that an investor who wishes to receive a prospectus will not receive one. Therefore, the Commission is proposing to permit householding without consent only under certain conditions *and* only if the investors have opened an account with the person relying on the rule before the effective date of the rule.

The conditions are designed to limit householding to circumstances that suggest that the investors not receiving the disclosure documents would wish to consent and that they will have access to the prospectus if delivered to another investor. Under the proposal, the investors in the household would have to be provided with notice, 60 days before initial reliance on the rule, that future prospectuses will be delivered to only one person who shares the address.[15] In addition, the investors in

[9] "Address" would be defined to include "a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section." Proposed rule 154(f). The Commission has issued two interpretive releases expressing its views on the electronic delivery of documents, including prospectuses and investment company annual and semiannual reports (the "Interpretive Releases"). Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] ("1995 Interpretive Release"); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)] ("1996 Interpretive Release"); *see also* Howard M. Friedman, Securities Regulation in Cyberspace (1997).

The Interpretive Releases discuss issues of notice and access that should be considered in determining whether the legal requirements pertaining to delivery of documents have been satisfied. The releases state that persons using electronic delivery of information should obtain informed consent from the intended recipient or otherwise have reason to believe that any electronic means so selected will result in satisfaction of the delivery requirements. *See* 1995 Interpretive Release, *supra*, at 53460–61; 1996 Interpretive Release, *supra*, at 24646–47. In the case of a passive delivery system such as an Internet web site, the proposed rule would permit delivery of a notice of the availability of the prospectus on the web site to a single investor at the shared address. The conditions of the proposed rule and the requirements for electronic delivery would both have to be satisfied. The National Association of Securities Dealers also has issued guidance on the use of electronic communications. *See, e.g.*, NASD Notice to Members 96–50 (July 1996).

[10] By contrast, certain rule provisions permitting delivery without written consent under the rule would require that the investors share a street address that meets certain requirements. *See* proposed rule 154(b)(5)(i), (iii); *see infra* part I.A.2.

[11] Thus, for example, the distributor for a family of mutual funds could obtain consent from persons that share an address with respect to all funds in the family of funds, including funds that may be created in the future. With respect to non-investment companies, a security holder could give limited consent to a broker-dealer concerning delivery of a particular security or general consent concerning any prospectuses that the broker-dealer has or will have an obligation to deliver.

[12] *See* proposed rule 154(a)(2).

[13] *See, e.g.*, Owen T. Cunningham (with George Wachtel), *Everything You Need to Know About Mailing Lists But Were Afraid to Ask!*, Bank Marketing, Mar. 1997, at 41, 44.

[14] *See* 1995 Interpretive Release, *supra* note 9, at 53460.

[15] The proposed rule would require the notice to be a separate written statement delivered to each investor in the household at least 60 days before

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the household must have the same last name or, if they have different last names, a person who relies on the rule must reasonably believe they are members of the same family.[16] Finally, the prospectus must be delivered to a street address that the person reasonably believes is a residence.[17] Alternatively, the prospectus could be delivered to a shared post office box, or to an electronic address if the investors are reasonably believed to share a residence.[18]

The Commission requests comment whether the proposed conditions for householding without written consent give reasonable assurance that the prospectus will be available to all persons in the household who wish to review it. Should there be any additional safeguards? Do any of the conditions impose unnecessary costs? Comment is requested on the requirement that notice be given 60 days before reliance on the rule. Would a shorter or longer time period be more appropriate? Should any additional disclosure about prospectus delivery to the household be required after householding begins (*e.g.*, in future account statements)?

As discussed above, householding without consent would be limited to persons who established accounts before the effective date of the rule. The Commission presumes that after the effective date of the rule, persons who rely on the rule can establish procedures to obtain the consent of investors who open new accounts. Mutual fund distributors and other broker-dealers typically require prospective investors to select various account options at that time, disclose information to assist in suitability determinations, and provide other information necessary to establish an account.[19] Thus it seems reasonable to expect that there will be an adequate opportunity to request consent at that time.

The Commission requests comment generally on the appropriateness of permitting householding for purposes of prospectus delivery when investors have not given written consent. Are investors likely to ignore requests for written consent if they have already established an account? Comment is also requested whether the Commission's assumptions discussed above are correct, and whether most investors are likely to give general consent concerning any prospectuses that a person may have an obligation to deliver in the future.[20] Should the Commission permit householding without consent for accounts opened after the effective date of the rule?

3. Revocation of Consent

The proposed rule would require that, if an investor requests resumption of delivery of prospectuses, the person relying on the rule must resume individual delivery of future documents after 30 days.[21] Comment is requested on the time period for resuming individual delivery. Is 30 days an appropriate time period to accommodate revision of mailing lists, or should a shorter or longer time period be permitted?

B. Delivery of Shareholder Reports to a Household

The Commission is proposing amendments to rules 30d–1 and 30d–2 under the Investment Company Act to permit investment companies to deliver one shareholder report per household. The conditions for using the proposed amendments would be substantially the same as those in proposed rule 154.[22] The Commission staff has issued no-action letters addressing householding with respect to delivery of shareholder reports to fund shareholders.[23] Unlike the no-action letters, the proposed amendments would not require prospectus disclosure of an investment company's householding policies. Instead, the advance notice or written consent requirements would serve to notify shareholders about householding. Comment is requested whether householding for purposes of delivering investment company shareholder reports should be subject to different conditions than householding for purposes of prospectus delivery.

The Commission also is proposing similar amendments to Exchange Act proxy rules 14a–3, 14c–3, and 14c–7. The proxy rules currently provide that, in connection with the delivery of a proxy or information statement, a company is not required to send an annual report to a security holder of record having the same address as another security holder, if the security holders do not hold the company's securities in street name, at least one report is sent to a security holder at the address, and the holders to whom a report is not sent have consented in writing.[24] Because the amended rules would include an implied consent provision, a company would not have to receive written consent to householding from an investor who became a security holder before the date the amendments become effective.[25]

The amendments also would eliminate the requirement that the security holders not hold the securities in street name. It is expected that the requirement to transmit the annual report to a natural person who shares an address with other investors would preclude registrants from householding reports to a street name intermediary.

Comment is requested whether householding for purposes of delivering annual reports of issuers other than investment companies should be subject to different conditions than householding for purposes of delivering investment company shareholder reports. Comment also is requested whether the conditions contained in the proposed amendments to rules 14a–3 and 14c–3 are appropriate. Should revised rules 14a–3 and 14c–3 require consent from investors who became security holders before the proposed rule amendments are effective?

C. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and rule amendments that are the subject of this Release, to suggest additional provisions or changes to the rules, or to submit comments on other matters that might have an effect on the proposals contained in this Release, are requested to do so. The Commission also requests comment whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. The Commission requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in compliance with its responsibilities under section 2(b) of the Securities Act,[26] section 2(c) of the Investment Company Act,[27] and sections 3(f) and 23(a) of the Exchange Act.[28] The Commission encourages commenters to provide empirical data or other facts to support their views.

II. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The proposed rules would permit issuers and broker-dealers to send fewer copies of disclosure documents than they currently must send, and therefore, as discussed below, should provide substantial benefits to persons who have an obligation under the securities laws to deliver disclosure documents. The rules also are voluntary on the part of persons that have a delivery obligation; therefore, to the extent that the rules would require the printing and delivery of additional information concerning householding, or would result in other costs of changing procedures, and the costs outweigh the benefits of householding, persons with a delivery obligation may decide not to rely on the rules. The Commission requests comment on the costs and benefits of the rules. Specific data also is requested concerning the anticipated costs and benefits.

Based on preliminary information provided by two large mutual fund complexes, the Commission estimates that a prospectus costs approximately 45 cents to print and deliver, and a shareholder report costs approximately 52 cents to print and deliver.[29] In addition, the Commission estimates that, if a mutual fund were to deliver one prospectus to each household, the average decline in the number of prospectuses delivered would be between 10 and 30 percent. Currently there are approximately 150 million shareholder accounts investing in mutual funds.[30] For the purpose of calculating benefits, the Commission assumes that 50 percent of mutual funds deliver an updated prospectus to every shareholder each year, resulting in the 150 million shareholder accounts receiving a total of approximately 75 million updated prospectuses each year. Based on these estimates and assumptions, the potential annual benefit in reduced delivery of mutual fund prospectuses as a result of the proposed rules would be between $3.4 million and $10.1 million.

With respect to the delivery of annual and semiannual reports to mutual fund shareholders,[31] the Commission estimates that the average decline in the number of reports delivered would be between 10 and 30 percent. As stated above, there are approximately 150 million shareholder accounts investing in mutual funds. Each shareholder receives two shareholder reports per year per fund and, as stated above, each report costs an estimated 52 cents to print and deliver. Based on these estimates, the benefit would be between $15.6 million and $46.8 million. The net benefit would be less, depending on the number of mutual funds that currently deliver one report to each household, in reliance on prior staff no-action relief.

With respect to the delivery of prospectuses of issuers other than investment companies, the benefits of the rules probably would be less than the benefits discussed above, because these companies will continue to mail confirmations of sale to individual purchasers. The final prospectus would accompany or precede the confirmation. If more than one confirmation is delivered to a household, a company should be able to send one prospectus to an investor in the household, and send each other investor a confirmation without a prospectus. Based on preliminary data, the Commission estimates that the printing cost of each prospectus is approximately 15 cents. The Commission is unable to estimate the percentage of non-investment companies that would rely on proposed rule 154. The Commission requests any information that would be helpful in making such an estimate.

There are not likely to be significant costs and benefits associated with the amendment of the proxy rule provisions[32] permitting the householding of annual reports in connection with the delivery of proxy and information statements because the amended rules would be substantively similar to as the current provisions. Although the proposed rules would permit householding for certain investors without written consent, the Commission currently is unable to predict the reduction in annual reports delivered to investors that might result from this change.

Persons who rely on the rules would incur costs in obtaining consents from and sending notices to investors. As discussed above in part I.A.2, the Commission anticipates that after the effective date of the rule, procedures will be established to obtain the consent of investors who open new accounts. A portion of a new account form, for example, could explain householding briefly and request consent. Comment is requested on the costs of these new procedures.

The proposed rules would require that the notice be a separate written statement and be accompanied by a reply form. The notice could be enclosed in the same envelope with other printed matter (*e.g.*, an account statement, prospectus or report). Therefore, the costs associated with sending the notice should be limited to printing costs and some increased postage costs that may result from enclosing the notice and reply form in an envelope with other documents.

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delivery of the first document delivered in reliance on the rule. The notice would explain that each investor at the address could request to continue to receive his or her own copy of the prospectus, and the notice would be accompanied by a reply form and a convenient means for returning it. *See* proposed rule 154(b)(3); *see also infra* Part I.A.3. The notice could be enclosed in the same envelope with other printed matter, or could be transmitted electronically if the guidelines for electronic delivery were met. *See* 1995 Interpretive Release, *supra* note 9, at 53460–61.

[16] *See* proposed rule 154(b)(2).

[17] *See* proposed rule 154(b)(5)(i). A reasonable belief may be based on the address supplied by the shareholder and the Zip Code assigned to the address. *See* proposed rule 154(c).

Zip Codes are assigned to addresses by the United States Postal Service (the "USPS"). The most complete Zip Code is a 9-digit number consisting of five numbers, a hyphen, and four numbers, which the USPS describes by its trademark "ZIP+4®." The first five digits represent the five-digit Zip Code; the final four digits identify geographic units such as a side of a street between intersections, both sides of a street between intersections, a building, a floor or group of floors in a building, or a business. Many apartment buildings and businesses are assigned one or more unique ZIP+4® Codes. Domestic Mail Manual, at A010.2.1, A010.2.3, A010.3.2 (Sept. 1, 1995) (incorporated by reference at 39 CFR 111.1). Information on Zip Codes for particular addresses may be obtained through address matching software. *See id.* at A950. In addition, software is available through which the number of duplicates in a mailing can be reduced. *See, e.g.*, Owen T. Cunningham, *supra* note , at 41, 44; Raymond F. Melisse, *How to Save Money on Printing and Postage*, Nonprofit World, Mar./Apr. 1996, at 23; *How to Mail More, Mail Smarter, and Spend Less*, Nonprofit World, May/June 1995, at 26; United States Postal Service, National Customer Support Center <http://www.usps.gov/ncsc>.

[18] *See* proposed rule 154(b)(5)(ii), (iii).

[19] *See, e.g.*, Michael T. Reddy, Securities Operations 336–41 (2d ed. 1995) (discussing new account forms and procedures for opening new accounts).

[20] Investors may instead decline to consent or may be willing to give only a limited consent concerning prospectuses for a particular security only. *See supra* note and accompanying text.

[21] *See* proposed rule 154(d).

[22] *See* proposed rules 30d–1(f), 30d–2(b).

[23] *See, e.g.*, Oppenheimer Funds, *supra* note 5 (permitting householding of shareholders with the same last name and record address provided there is initial notice, prospectus disclosure concerning the practice, and opportunity for shareholders to opt out of householding); Scudder Group of Funds, *supra* note 5 (permitting householding of shareholders with the same record address under the same conditions).

[24] *See* rule 14a–3(e)(1) [17 CFR 240.14a–3(e)(1)]; Note 2 to rule 14c–7 [17 CFR 240.14c–7 note 2]. Rule 14c–7 contains requirements concerning registrants' obligations to provide copies of information statements and annual reports to brokers, banks and other intermediaries for forwarding to beneficial owners. The Commission proposes to delete the note to rule 14c–7 and add a householding provision to rule 14c–3, because rule 14c–3 contains the requirement that registrants furnish an annual report to security holders and is analogous to the rule 14a–3 provision.

[25] *See* proposed rule 14a–3(e)(1)(ii).

[26] 15 U.S.C. 77b(b).

[27] 15 U.S.C. 80a–2(c).

[28] 15 U.S.C. 78c(f), 78w(a).

[29] One of these fund complexes stated that the printing, postage, and handling costs for each prospectus for a large money market fund was 47 cents. The other complex provided similar costs for 6 of its funds, which ranged from 41 to 49 cents for prospectuses and 45 to 59 cents for annual reports. The midpoints of these ranges are 45 cents and 52 cents.

[30] Investment Company Institute, 1997 Mutual Fund Fact Book 111.

[31] *See* rules 30d–1 and 30d–2 under the Investment Company Act.

[32] *See* rules 14a–3, 14c–3, and 14c–7 under the Exchange Act.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[33] the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Paperwork Reduction Act

Certain provisions of the proposed rule and rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[34] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: "Rule 154 under the Securities Act of 1933, Delivery of prospectuses to investors at the same address"; "Regulation 14A, Commission Rules 14a–1 through 14a–14 and Schedule 14A"; "Regulation 14C, Commission Rules 14c–1 through 14c–7 and Schedule 14C"; "Rule 30d–1 under the Investment Company Act of 1940, Reports to stockholders of management companies"; and "Rule 30d–2 under the Investment Company Act of 1940, Reports to shareholders of unit investment trusts." Rule 30d–1, Regulation 14A and Regulation 14C, which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0025, 3235–0059 and 3235–0057, respectively. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Proposed rule 154 would permit, under certain circumstances, delivery of a single prospectus to a household to satisfy the prospectus delivery requirements of the Securities Act with respect to two or more investors in the household. The rule would require a person that relies on the rule to obtain the written consent of investors who will not receive prospectuses. Alternatively, for investors who established accounts with the sender before the effective date of the rule, a person that relies on the rule could send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless they provide contrary instructions.

The purpose of the consent and notification requirements is to give reasonable assurance that all investors have access to the prospectus. Preparing and sending the notice is a collection of information. Because notices would only be sent to existing investors, companies that choose to rely on the rule would probably send them primarily in the first year after the rule is adopted. In addition, the Commission expects that, for cost reasons, the notice is likely to be a short, one-page statement that is enclosed with other written material sent to shareholders, such as account statements. Accordingly, the average annual number of burden hours spent preparing and arranging delivery of the notices is expected to be low. The Commission estimates 20 hours per respondent.

Although rule 154 is not limited to investment companies, the Commission believes that it would be used mainly by mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that would rely on the rule, and requests comment on this matter. There are approximately 2700 mutual funds, approximately 650 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct marketed mutual fund would spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 13,000 hours. The Commission estimates that there are approximately 750 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer also will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 15,000 hours. Therefore, the total number of respondents for rule 154 is 1400 (650 mutual funds plus 750 broker-dealers), and the estimated total hour burden is 28,000 hours (13,000 hours for mutual funds plus 15,000 hours for broker-dealers).

With respect to the amendments to rules 30d–1 and 30d–2 under the Investment Company Act, rule 30d–1 requires management investment companies to send annual and semiannual reports to their shareholders. Rule 30d–2 requires UITs that invest substantially all of their assets in shares of a management investment company to send their unitholders annual and semiannual reports containing financial information on the underlying company. The proposed amendments to rules 30d–1 and 30d–2 would permit householding for these shareholder reports under substantially the same conditions as those in rule 154.

Every registered management investment company is subject to the reporting requirements of rule 30d–1. As of August 1997, there were approximately 3220 registered management investment companies. The Commission currently estimates that the hour burden associated with rule 30d–1 is approximately 181 hours per company. As discussed above, the Commission estimates that the burden associated with the notice requirement of the amendments to rules 30d–1 and 30d–2 is approximately 20 hours per company. Therefore, the Commission estimates that the burden associated with rule 30d–1, including the burden of sending the notices, is 201 hours per company, or a total of 647,220 hours. In addition, the Commission estimates that the cost of contracting for outside services associated with the rule is $47,994 per respondent (421 hours times $114 per hour for independent auditor services), for a total cost of $154,540,680 ($47,994 times 3220 respondents).

Rule 30d–2 applies to approximately 500 UITs. The Commission estimates that the annual burden associated with rule 30d–2 is 120 hours per respondent, including the estimated 20 hours associated with the notice requirement contained in the proposed amendment to rule 30d–2. The total hourly burden is therefore approximately 60,000 hours. The Commission estimates that the annual financial cost of complying with rule 30d–2 (in addition to the hourly cost) is $9120 per respondent (80 hours times $114 per hour for independent auditor services), or a total of $4,560,000.

With respect to the amendments to rules 14a–3, 14c–3 and 14c–7, Regulations 14A and 14C are existing information collections that set forth proxy and information statement disclosure requirements. Companies that have a class of securities registered under section 12 of the Exchange Act are subject to these requirements. The Commission estimates that the time required to prepare and arrange delivery of the notice would be approximately 20 hours per respondent per year. The Commission estimates that 9321 respondents are subject to Regulation 14A and that approximately 932 of these would deliver the notice. The Commission estimates that the burden associated with Regulation 14A as revised per registrant delivering the notice would be approximately 105 hours, and 85 hours per registrant not delivering the notice, for a total annual burden of 810,925 hours. An estimated 150 respondents are subject to Regulation 14C and it is estimated that 15 of these would deliver the notice. The estimated burden associated with Regulation 14C as revised per registrant delivering the notice is 105 hours, and 85 hours for a registrant not delivering the notice, for a total annual burden of 13,050 hours.

The information collection requirements imposed by the rules are required for those issuers or broker-dealers that decide to rely on the rule to obtain the benefit of sending fewer documents to each household. Those issuers or broker-dealers that decide not to obtain that benefit are not required to rely on the rule. Responses to the collection of information will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop 6–9, Washington, D.C. 20549, with reference to File No. S7–27–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rule 154 and proposed amendments to rules 14a–3, 14c–3, 14c–7, 30d–1 and 30d–2. The following summarizes the IRFA.

When two or more investors in a household purchase the same security, the prospectus delivery requirements of the Securities Act and shareholder report delivery rules under the Investment Company Act and Exchange Act may result in the mailing of multiple copies of the same document to the household. Sending multiple copies of the same document to investors who share the same address often inundates them with extra mail and results in higher costs for the senders.

To reduce the number of duplicative disclosure documents delivered to investors, the Commission is proposing rules to permit, under certain circumstances, delivery of a single prospectus or shareholder report to a household to satisfy the applicable delivery requirements. The Commission is proposing rule 154 pursuant to section 19(a) of the Securities Act, the amendments to rules 14a–3, 14c–3, and 14c–7 pursuant to sections 12, 14 and 23(a) of the Exchange Act, and the amendments to rules 30d–1 and 30d–2 pursuant to sections 30(e) and 38(a) of the Investment Company Act.

An issuer, other than an investment company, generally is a small entity if, on the last day of its most recent fiscal year, it had total assets of $5,000,000 or less and is engaged or proposing to engage in small business financing.[35] An issuer is considered to be engaged or proposing to engage in small business financing if it is conducting or proposing to conduct an offering of securities that does not exceed $5,000,000.[36] Most of these small issuers can conduct their offerings under Regulation A, which exempts offerings from the registration requirements of the Securities Act if the sum of all cash and other consideration to be received for the securities does not exceed $5,000,000, subject to a number of conditions.[37] Thus, the Commission estimates that among issuers other than investment companies, very few small issuers will be affected by rule 154.

An investment company generally is a small entity if it has net assets of $50,000,000 or less as of the end of its most recent fiscal year.[38] The Commission estimates that there are approximately (i) 2700 active registered open-end investment companies, of which 620 are small entities, (ii) 520 active registered closed-end investment companies, of which 46 are small entities, and (iii) 629 UITs, about 50 of which are small entities. Closed-end investment companies and UITs will be affected by rule 154 only if they are currently offering their shares.

A broker-dealer generally is a small entity if it has total capital (i.e., net worth plus subordinated liabilities) of less than $500,000 in its prior audited financial statements or, if it is not required to file such statements, on the last business day of the preceding fiscal year.[39] The delivery of prospectuses and shareholder reports is likely to be handled only by broker-dealers that carry public customer accounts. As of December 31, 1996, broker-dealers carrying public customer accounts numbered approximately 750 firms, 125 of which were small businesses.

Rule 30d–1 applies to registered management investment companies. It is estimated that out of approximately 3,220 active management investment companies, approximately 666 are considered small entities.[40] Rule 30d–2 applies to registered UITs, substantially all the assets of which consist of securities issued by a management investment company. It is estimated that out of approximately 500 registered UITs that are subject to rule 30d–2, approximately 20 are considered small entities.

Rule 0–10 under the Exchange Act defines the term "small business" as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[41] There are approximately 1000 reporting companies that have assets of $5 million or less.

Persons who rely on the rules would be required to either obtain written consent of householded persons or provide them with advance notice as specified in the rules. Those persons also must determine whether certain householded investors are natural persons and, for investors householded in accordance with the advance notice (rather than written consent) provisions, must have certain information concerning each householded investor's address. These requirements are designed to provide reasonable assurance that the prospectus or report will be made readily available to all investors at the address.

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule and proposed

[33] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[34] 44 U.S.C. 3501–3520.

[35] See 17 CFR 230.157.

[36] *Id.*

[37] See 17 CFR 230.251—230.263.

[38] See 17 CFR 230.157.

[39] See 17 CFR 240.0–10(c)(1).

[40] See 17 CFR 270.0–10.

[41] Rule 0–10 [17 CFR 240.0–10].

amendments, the Commission considered: (i) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

The information persons would be required to have in order to rely on the rules without written consent is information that they already have or would be required to obtain in order to conduct mailings at reduced rates through the U.S. Postal Service. Other information, such as whether investors are natural persons, is readily available. Therefore, the Commission does not believe differing or simplified compliance or reporting requirements or timetables are necessary for small entities. In addition, differing requirements for small entities would not be consistent with investor protection and the purposes of section 5 of the Securities Act.

The proposed rules are designed to result in cost savings for all issuers and broker-dealers, while maintaining protections for investors. The Commission believes that small issuers and broker-dealers will generally rely on the rules in a particular instance only to the extent that cost savings can be achieved. The Commission also believes that the rules will not impose a burden on small entities. The rule, if relied upon, will lower burdens for small entities; thus, it is not appropriate or necessary to exempt small entities from the rule or any part of it.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed rule and rule amendments. Comment also is requested on the impact of the rule and rule amendments on issuers and broker-dealers that are small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public file as comments on the proposed rule and rule amendments themselves.

A copy of the IRFA may be obtained by contacting Marilyn Mann, Securities and Exchange Commission, 450 5th Street, N.W., Stop 10–2, Washington, D.C. 20549.

V. Statutory Authority

The Commission is proposing new rule 154 pursuant to the authority set forth in section 19(a) of the Securities Act [15 U.S.C. 77s(a)]. The Commission is proposing to amend rules 30d–1 and 30d–2 pursuant to the authority set forth in sections 30(e) and 38(a) of the Investment Company Act [15 U.S.C. 80a–29(e) and 80a–37(a)], and rules 14a–3, 14c–3, and 14c–7 pursuant to the authority set forth in sections 12, 14 and 23(a) of the Exchange Act [15 U.S.C. 78*l*, 78n and 78w(a)].

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77*l*, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 154 is added to read as follows:

§ 230.154 Delivery of prospectuses to investors at the same address.

(a) *Delivery of a single prospectus.* If you must deliver a prospectus under the federal securities laws, for purposes of sections 5(b) and 2(a)(10) of the Act (15 U.S.C. 77e(b) and 77b(a)(10)), you will be considered to have delivered a prospectus to investors who share an address if:

(1) You deliver the prospectus to at least one of the investors, at any address of that investor;

(2) You address the prospectus to a natural person; and

(3) The other investors consent in writing to this manner of delivery.

(b) *Implied consent.* You do not need to obtain written consent from an investor if the following conditions are all met.

(1) The investor established an account with you before [effective date of the rule].

(2) The investor has the same last name as the investor to whom you delivered the prospectus, or you reasonably believe that the investors are members of the same family.

(3) You have sent the investor a notice at least 60 days before you begin to rely on this section concerning delivery of prospectuses to that investor. The notice must be a separate written statement, and must state that prospectuses will be delivered to only one investor at the shared address unless you receive contrary instructions. The notice must include a reply form that is easy to return and that includes the name and, if applicable, account number of the investor.

(4) You have not received the reply form from the investor indicating the investor wishes to receive the prospectus, within 60 days after you sent the notice.

(5) You deliver the prospectus to:

(i) A shared street address that you reasonably believe is a residence;

(ii) A shared post office box; or

(iii) An electronic address of the investor to whom the prospectus is delivered, if the investors share a street address that you reasonably believe is a residence.

(c) *Reasonable belief.* For purposes of paragraph (b)(5) of this section, you can reasonably believe that an address is a residence unless the investor provides any information, or the U.S. Postal Service assigns a Zip Code, that indicates to the contrary.

(d) *Revocation of consent.* If you receive a request from an investor that prospectuses be delivered directly to the investor in the future, you may not continue to rely on this section, with respect to that investor, for more than 30 days after you receive the request.

(e) *Exclusion of some prospectuses.* This section does not apply to the delivery of a prospectus filed as part of a registration statement on Form N–14 (17 CFR 239.23), Form S–4 (17 CFR 239.25) or Form F–4 (17 CFR 239.34), or to the delivery of any other prospectus in connection with a business combination transaction, exchange offer or reclassification of securities.

(f) *Definition of address.* For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If you have reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, , 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 14a–3 is amended by revising paragraph (e)(1) and the introductory text of paragraph (e)(2) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders of record who share an address if:

(A) The registrant delivers the annual report to at least one of the security holders, at any address of that security holder;

(B) The registrant addresses the prospectus to a natural person; and

(C) The other security holders consent in writing to this manner of delivery.

(ii) The registrant need not obtain written consent from a security holder if the following conditions are all met.

(A) The security holder first purchased securities of the registrant before [effective date of the rule].

(B) The security holder has the same last name as the security holder to whom the registrant delivered the annual report, or the registrant reasonably believes that the security holders are members of the same family.

(C) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to that security holder. The notice must be a separate written statement, and must state that annual reports will be delivered to only one investor at the shared address unless the registrant receives contrary instructions. The notice must include a reply form that is easy to return and that includes the name and, if applicable, account number of the security holder.

(D) The registrant has not received the reply form from the security holder indicating the security holder wishes to receive the annual report, within 60 days after the registrant sent the notice.

(E) The registrant sends the report to:

(*1*) A shared street address that the registrant reasonably believes is a residence;

(*2*) A shared post office box; or

(*3*) An electronic address of the security holder to whom the report is sent, if the security holders share a street address that the registrant reasonably believes is a residence.

(iii) For purposes of paragraph (e)(1)(ii)(E) of this section, the registrant can reasonably believe that an address is a residence unless the security holder provides any information, or the U.S. Postal Service assigns any Zip Code, that indicates to the contrary.

(iv) If the registrant receives a request from a security holder that the annual report be sent directly to the security holder in the future, the registrant may not continue to rely on this section, with respect to that security holder, for more than 30 days after the registrant receives the request.

Note to paragraph(e)(1). For purposes of this section, the term *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the registrant has reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if:

* * * * *

5. In § 240.14c–3, paragraph (c) is added to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(c) A registrant will be considered to have delivered an annual report to security holders of record who share an address if the requirements set forth in § 240.14a–3(e)(1) are satisfied.

6. In § 240.14c–7, Note 2 is removed and Notes 3 and 4 are redesignated as Notes 2 and 3.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

7. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

8. Section 30d–1 is amended by adding paragraph (f) to read as follows:

§ 270.30d–1 Reports to stockholders of management companies.

* * * * *

(f)(1) A company will be considered to have transmitted a report to shareholders who share an address if:

(i) The company transmits the report to at least one of the shareholders, at any address of that shareholder;

(ii) The company addresses the report to a natural person; and

(iii) The other shareholders consent in writing to this manner of delivery.

(2) The company need not obtain written consent from a shareholder if the following conditions are all met.

(i) The shareholder first purchased securities of the company before [effective date of the rule].

(ii) The shareholder has the same last name as the shareholder to whom the company delivered the report, or the company reasonably believes that the shareholders are members of the same family.

(iii) The company has transmitted a notice to the shareholder at least 60 days before the company begins to rely on this section concerning transmission of reports to that shareholder. The notice must be a separate written statement, and must state that reports will be delivered to only one shareholder at the shared address unless the company receives contrary instructions. The notice must include a reply form that is easy to return and that includes the name and, if applicable, account number of the shareholder.

(iv) The company has not received the reply form from the shareholder indicating the shareholder wishes to receive the report, within 60 days after the company sent the notice.

(v) The company transmits the report to:

(A) A shared street address that the company reasonably believes is a residence;

(B) A shared post office box; or

(C) An electronic address of the shareholder to whom the report is transmitted, if the shareholders share a street address that the company reasonably believes is a residence.

(3) For purposes of paragraph (f)(2)(v) of this section, the company can reasonably believe that an address is a residence unless the shareholder provides any information, or the U.S. Postal Service assigns a Zip Code, that indicates to the contrary.

(4) If the company receives a request from a shareholder that reports be transmitted directly to the shareholder in the future, the company may not continue to rely on this section, with respect to that shareholder, for more than 30 days after the company receives the request.

(5) For purposes of this section, *address* means a street address, a post

office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

9. Section 30d–2 is revised to read as follows:

§ 270.30d–2 Reports to shareholders of unit investment trusts.

(a) At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company must transmit to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements or their equivalent, required by § 270.30d–1 to be included in reports of the management company for the same fiscal period. Each such report must be transmitted within the period allowed the management company by § 270.30d–1 for transmitting reports to its stockholders.

(b) Any report required by this section will be considered transmitted to a shareholder of record if the unit investment trust satisfies the conditions set forth in § 270.30d–1(f) with respect to that shareholder.

By the Commission.

Dated: November 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30430 Filed 11–19–97; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–MA–002–CGB; FRL–5925–6]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone and PM_{10} Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arizona on September 15, 1997, establishing Cleaner Burning Gasoline (CBG) fuel requirements for gasoline distributed in the Phoenix (Maricopa County) ozone nonattainment area. Arizona has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) and particulates (PM_{10}) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Arizona's fuel requirements into the Arizona SIP because either they are not preempted by federal fuels requirements or to the extent that they are or may be preempted, since EPA is proposing to find that the requirements are necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and particulates.

DATES: Comments on this proposed rule must be received in writing by December 22, 1997.

ADDRESSES: Written comments should be sent to the Region IX contact listed below. Copies of the SIP revision are available in the docket for this rulemaking, which is open for public inspection at the addresses below. A copy of this notice is also available on EPA Region IX's website at http://www.epa.gov/region09.

Air Planning Office (AIR–2), Air Division, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1247.

SUPPLEMENTARY INFORMATION:

I. Background

A. Arizona CBG

The State CBG fuel program for the Maricopa area establishes limits on gasoline properties and gasoline emission standards which will reduce emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), carbon monoxide (CO) and particulates (PM). Under the program, a variety of different fuels will be able to meet the fuel standards during different implementation periods (see Table 1). Starting June of 1996 through September 30, 1998, gasoline sold in Maricopa County must meet standards similar to EPA's Phase I reformulated gas (RFG) program or California's Phase II RFG program. Under the EPA Phase I RFG standards, the Arizona Department of Environmental Quality (ADEQ) estimates that VOC emissions will be reduced by 8.7 tons per summer day (tpsd), NO_X emissions by 0.2 tpsd, CO emissions by 118.6 tpsd and PM_{10} emissions by 0.27 tpsd. With California RFG, ADEQ estimates that VOC emissions will be reduced by 14.1 tpsd, NO_X emissions by 8.2 tpd, CO emission by 198 tpsd and PM_{10} by 0.76 tpsd.

California Phase II RFG can be used to comply with the Arizona fuel program during all implementation periods since, starting May 1, 1999, gasoline must meet standards similar to EPA's Phase II RFG program or California's RFG program. Under the CBG Type 1 standards, ADEQ estimates that VOC emissions will be reduced by 12.5 tpsd, NO_X emissions by 2.0 tpsd, CO emissions by 143.3 tpsd and PM_{10} by 0.4 tpsd.

TABLE 1.—FUEL TYPES MEETING ARIZONA CBG FUEL STANDARDS

Fuel type	Fuel designation	Implementation period
CBG Type 1	EPA's Phase II RFG	June 1999–Future.
CBG Type 2	California Phase II RFG	June 1998–Future.
CBG Type 3	EPA's Phase I RFG	June–September 30, 1998.

During both implementation periods, gasoline sold in the Maricopa area can comply with either of the two sets of specified standards included in the program. Therefore the actual emission reductions benefits during either period are difficult to estimate without specific knowledge of the market penetration of each of the two acceptable fuels. However, emission reductions should, at a minimum, reach the levels that would result from the specific performance standards associated with CBG Types 1 and 3 during both periods because the corresponding CBG Type 2 standards are, in all instances, more stringent. These emissions reductions will help the Maricopa area attain the NAAQS for both ozone and particulates.

B. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions addressing certain fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulation of a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve preempted state fuel standards in a SIP:

> * * * only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity even if the plan for the area does not contain an approved demonstration of timely attainment.

EPA's August 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPS" gives further guidance on what EPA is likely to consider in making a finding of necessity.

C. History of Related Actions

Under the Clean Air Act Amendments of 1990, the Phoenix area was classified as a moderate nonattainment area for both ozone and PM_{10}. The moderate ozone attainment deadline was November 15, 1996; the moderate PM_{10} attainment deadline was December 31, 1994. In 1997, the Phoenix area was reclassified as serious for ozone with an attainment deadline of no later than November 15, 1999. In 1996, the Phoenix area was reclassified as serious for PM_{10} with an attainment deadline of no later than December 31, 2001.[1]

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of ozone control measures including a summertime low Reid Vapor Pressure (RVP) limit of 7.0 psi for gasoline, an enhanced inspection and maintenance (I/M) program, stage II vapor recovery, an employer trip reduction program, many transportation control measures, and numerous stationary and area source VOC controls. On November 12, 1993, in support of one of these measures, the Arizona legislature passed section 13 of Arizona House Bill (HB) 2001 (1993 Special Session), originally codified in Arizona Revised Statutes (ARS) at section 41–2083(E).[2] This provision limited the maximum summer vapor pressure (or RVP) of gasoline fuel sold in the Maricopa area to 7.0 psi beginning May 31, 1995 through September 30, 1995, and applying from May 31 through September 30 of each year thereafter. Gasoline distributed in the Maricopa area by refineries, importers, carriers, retail stations and other end users who sell or dispense gasoline must meet the 7.0 psi limit during those periods.

On January 17, 1997, Governor Symington applied to EPA to include the Maricopa County ozone nonattainment area in the federal RFG program and the State submitted section 13 of HB 2001 to EPA as a SIP revision on April 29, 1997. Because this State fuel requirement established a control on RVP of 7.0 psi, not identical to the federal fuel RVP requirements applicable to the area (i.e., federal conventional gasoline RVP limit of 7.8 psi, federal phase I RFG RVP limit of 7.2 psi or federal phase II volatility limit of 7.8 psi), Arizona's fuel requirement was preempted under section 211(c)(4)(A) of the CAA. Pursuant to the Governor's letter and section 211(k)(6) of the CAA, EPA approved Governor Symington's request to opt in to the federal RFG program on June 3, 1997. 62 FR 30260. EPA also published a direct final approval of Arizona's low RVP SIP revision on June 11, 1997. 62 FR 31734. In approving the RVP SIP revision, EPA found under section 211(c)(4)(C) that the State's fuel requirement is necessary for the Maricopa area to attain the NAAQS for ozone.

The State also enacted HB 2307 which authorized the establishment of a more stringent State reformulated gasoline program.[3] HB 2307 was passed as an emergency measure, requiring ADEQ and the Arizona Department of Weights and Measures (ADWM) to adopt interim rules reflecting the fuel requirements included in the bill. The two agencies implemented a facilitated rulemaking process over the next three months which resulted in the publication of proposed rules on July 15, 1997 and a public hearing on August 15, 1997. ADEQ adopted these proposed rules as the Arizona CBG Interim Rule on September 12, 1997 following a public comment period.

C. State Submittal

In a September 12, 1997 letter, Russell Rhoades, Director, ADEQ, requested that EPA approve the CBG Interim Rule as a revision to the Arizona SIP and a CAA section 211(c)(4)(C) waiver. See "Arizona Cleaner Burning Gasoline Interim Rule SIP Revision and Clean Air Act 211(c)(4)(C) Waiver Request," September 1997. The SIP revision package includes: (1) Arizona laws providing the State authority for submittal of SIP revisions; (2) a SIP completeness checklist; (3) the CBG Interim Rule; (4) a request for a waiver from federal preemption pursuant to CAA section 211(c)(4)(C); (5) a letter from the Arizona Attorney General concerning the status of the States authority to enforce the rule out-of-state; and (6) HB 2307.

As additional supporting technical documentation for the section 211(c)(4)(C) waiver request, the States CBG SIP submittal includes: (1) An Assessment of Fuel Formulation Options for Maricopa (see Attachment 3, Exhibit 2, Appendix A); (2) Demonstration of CO impacts of the proposed fuel formulations (see Attachment 3, Exhibit 2, Appendix G and Appendix K); (3) Demonstrations of NO_X/PM impacts of the proposed fuel regulations (see Attachment 3, Exhibit 2, Appendix M); and (4) the Urban Airshed Model (UAM) modeling demonstration from the draft Voluntary Early Ozone Plan (VEOP)(see Attachment 3, Exhibit 6, Appendix B).

[1] See 56 FR 56694 (November 6, 1991), CAA Sections 181(a)(1) and 188(c)(1), 62 FR 60001 (November 6, 1997) and CAA Section 181(a)(1), 61 FR 21372 (May 10, 1996) and CAA Section 188(c)(2).

[2] This section is currently codified in the ARS as section 41–2083(F).

[3] The State reformulated gasoline rules are codified in the ARS as section 41–2124. Section 41–2123 of HB 2307 also contains wintertime oxygenate requirements for fuels. The bill changed the effective dates of the oxygenate requirements from October 15 to November 15 through March 31 of each year.

The modeling used 1996 as the base year and evaluated the effects of existing and future control measures. Arizona's CBG requirements are built into the 1996 base year inventory and modeled out to the 1999, and 2010 projected attainment years.

To allow the Arizona CBG program to substitute for the federal RFG program, on September 15, 1997 the State also submitted a separate letter to Administrator Browner, requesting to opt out of the federal RFG program, effective June 1, 1998, contingent upon EPA approval of the Arizona SIP revision and the associated waiver request. In response, Dick Wilson, Acting Assistant Administrator for Air and Radiation, EPA, sent a letter to Governor Hull on October 3, 1997, which states that upon Region IX publication of a final approval of a SIP revision incorporating the CBG Interim Rule, the Office of Mobile Sources will notify the State and publish a notice in the **Federal Register** approving Arizona's opt-out from the federal RFG program.

Arizona submitted a further addendum to the SIP revision on October 21, 1997, which contained additional technical materials supporting the State's waiver request.

II. EPA Evaluation of SIP Submittal

A. General SIP Requirements

As discussed below, EPA has evaluated the SIP revision and has determined that it is consistent with the requirements of the CAA and EPA regulations. On November 13, 1997, EPA found that the September 12, 1997 SIP revision conformed to EPA's completeness criteria in 40 CFR part 51, Appendix V.

Information regarding enforcement and compliance assurance for the SIP revision can be found in the ARS (specifically in Article 6, Chapter 15, Department of Weights and Measures, of Title 41) and the Arizona Administrative Code (AAC). The Arizona Department of Weights and Measures (ADWM) implements the CBG rule and has the necessary authority under ARS 41–2124.C, ARS 41–2124.01.B, ARS 41–2065.A.4, .14, and .16, and ARS 41–2065.D to obtain samples (AAC R20–2–721), test (AAC R20–2–759), and complete surveys (AAC R20–2–760). Any person violating the CBG rule is subject to prosecution pursuant to ARS 41–2113.B.4, civil penalties pursuant to ARS 41–2115 and stop-use, stop-sale, hold and removal orders pursuant to ARS 41–2066.A.2 (AAC R20–2–762). The SIP submittal also contains a letter from the Arizona Attorney Generals office regarding enforceability of the Arizona CBG rule outside of the Arizona State boundaries and a letter from the ADWM regarding gasoline sampling analysis timeframes. EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the CBG Interim Rule.

B. Section 211(c)(4)

1. Federal Preemption

The CBG Interim Rule establishes state gasoline standards. As discussed above, CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce "any control or prohibition respecting any characteristic or component of a fuel or fuel additive" for the purposes of motor vehicle emission control, if the Administrator has prescribed under section 211(c)(1), "a control or prohibition applicable to such characteristic or component of the fuel or fuel additive," unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

The CBG Interim Rule establishes three types of gasoline standards. For 1998, the requirements for CBG Types 2 and 3 gasoline apply. In addition, all Arizona CBG must meet specified fuel property limits for that year.[4] For 1999 and beyond, the requirements for CBG Types 1 and 2 gasoline would apply. In addition, all Arizona CBG would have to meet the fuel property limits specified for that time period.[5] These proposed types of gasoline include performance standards as well as requirements for specific fuel parameters. EPA's analysis of preemption addresses the following standards in the CBG Interim Rule: performance standards for NO_X and VOC (under gasoline Types 1 and 3); performance standards for NO_X and HC (under Type 2); and parameter specifications for oxygen, sulfur, olefins, aromatic HC, T50, and T90 (under gasoline Type 2).

To determine whether a state fuel requirement is preempted by a federal requirement, EPA compares the applicable federal fuel requirements in the area with the proposed state fuel requirements. For the purposes of this analysis, the federal fuel requirement in the Phoenix ozone nonattainment area is federal conventional gasoline. While Arizona has opted into the federal RFG program for the 1997 season, the State has requested to opt out of the program before the State CBG requirements would apply.[6] Once the State has opted out of the federal RFG program, the applicable federal requirements would be those for conventional gasoline. The federal requirements for conventional gasoline include a NO_X performance standard. CBG Types 1 and 3 also contain a NO_X performance standard, so the CBG NO_X performance standard is preempted. The CBG Interim Rule would allow refiners to meet the requirements for Type 2 gasoline in lieu of the requirements for CBG Type 1 or 3 gasoline. Whether the specifications for CBG Type 2 are preempted is less clear. The CBG Type 2 specifications include performance standards for NO_X and HC and requirements for the fuel parameters sulfur, olefins and aromatic HCs. The federal conventional gasoline standards do not include requirements for these specific parameters. However, refiners are required to use an emissions performance model that determines NO_X and HC performance based in part on these fuel parameters.

In this rulemaking, EPA does not need to determine whether these types of State fuel requirements are preempted under section 211(c)(4)(A) prior to acting on the proposed revision to the Arizona SIP. If the sulfur, olefins and aromatic HC requirements are not preempted, there is no bar to EPA approving them as a SIP revision. If they are preempted, EPA would be able to approve these requirements as necessary under section 211(c)(4)(C) if EPA could approve the NO_X performance standard as a SIP revision. Sulfur, olefins and aromatic HC requirements all reduce NO_X emissions. Under Type 1 or 3 CBG, refiners would obtain NO_X reductions through a NO_X performance standard, and under Type 2 CBG, refiners would obtain comparable NO_X reductions through sulfur, olefins and aromatic HC requirements. If EPA finds the NO_X reductions produced by the NO_X performance standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. Thus, based on EPA's finding, discussed below, that NO_X reductions are necessary under section 211(c)(4)(C), EPA is proposing to approve the sulfur, olefins and aromatic HC requirements as well.

The CBG Interim Rule also requires refiners to meet a VOC performance standard (under CBG Types 1 and 3 gasoline); or a HC performance standard or oxygen, T50 and T90 requirements (under CBG Type 2 gasoline). Federal conventional gasoline requirements do not include a VOC performance standard or controls on these specific parameters. However, refiners are required to meet summertime volatility limits, and are required to use an emissions performance model that determines NO_X performance based in part on the same fuel parameters as those used in the CBG Interim Rule. In this rulemaking, EPA does not need to determine whether these types of state fuel requirements are preempted under section 211(c)(4)(A) if EPA finds that these fuel requirements are necessary for the Phoenix nonattainment area to meet the ozone NAAQS. Of course, if these requirements are not preempted, there is no bar to approving them as a SIP revision.

Arizona has already demonstrated that its 7.0 psi RVP requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS in the Phoenix area.[7] Compliance with either the VOC performance standard or the HC performance standard or the oxygen, T50 and T90 requirements would produce some additional VOC reductions beyond those produced by the 7.0 psi RVP requirement. As with the NO_X performance standard and the alternative fuel parameter requirements discussed above, refiners would obtain comparable VOC reductions through either the VOC performance standard or the oxygen, T50 and T90 requirements. Thus, if EPA finds the VOC reductions produced by the NO_X performance standard under CBG Type 1 and 3 gasoline to be necessary, then the comparable emissions reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. EPA is proposing to approve the VOC performance standard and the oxygen, T50 and T90 requirements because either they are not preempted under section 211(c)(4)(C) or to the extent that they are or may be preempted, EPA is proposing, as discussed below, that they are necessary and hence approvable under section 211(c)(4)(C).

2. Finding of Necessity

As discussed below, EPA is proposing to find that the CBG NO_X performance standards are necessary for the Phoenix PM_{10} nonattainment area to meet the PM_{10} NAAQS, and that the CBG VOC and HC performance standards, and the oxygen, T50 and T90 requirements are necessary for the Phoenix ozone nonattainment area to meet the ozone NAAQS.

To make this determination, EPA must consider whether there are other reasonable and practicable measures available that would produce sufficient emissions reductions to attain the ozone and PM_{10} standards without implementation of the CBG requirements. In considering other measures for the purpose of demonstrating necessity under section 211(c)(4)(C), EPA agrees that Arizona need not submit an evaluation of alternative fuels measures. As discussed above, the State conducted an extensive public process to evaluate emissions control options, including fuels options. Arizona not only considered other fuels options, including opt-in to federal RFG, it has actually implemented this measure for a limited time. However, Arizona did not address retention of RFG or other fuels measures in its section 211(c)(4)(C) submission, and EPA concurs with this approach. EPA interprets the reference to "other measures" that must be evaluated as generally not encompassing other state fuels measures, including state opt-in to federal RFG. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that measures other than requiring CBG gasoline are unreasonable or impracticable, a state need not address the reasonableness or practicability of other state fuel measures.

To determine whether the State gasoline VOC performance standards are necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the needed emission reductions for ozone control. As mentioned previously, the State and local governments have adopted and implemented a broad range of ozone control measures. In addition, the ADEQ has developed a Voluntary Early Ozone Plan (VEOP) including air quality modeling and additional control measures.

EPA examined Urban Airshed Modeling (UAM) completed for the VEOP, which evaluated the effects of existing and future VOC control measures, to support the necessity finding for this rulemaking.[8] The fifteen control measures that were evaluated for 1999[9] are: (1) purge test in I/M (evaluated for 2010); (2) final I/M cutpoints; (3) I/M testing of constant 4-by-4 vehicles; (4) federal RFG (both Phase I and Phase II RFG at 7.2 psi RVP; (5) adoption of California standards for off-road mobile sources; (6) voluntary catalyst replacement program; (7) voluntary vehicle retirement program; (8) voluntary commercial lawn mower replacement; (9) new standards for the use of industrial cleaning solvents; (10) alternative fuels tax incentives; (11) Motor Vehicle Division registration enforcement and mandatory insurance; (12) pollution prevention; (13) temporary power at construction sites; (14) alternative-fuelled buses; and (15) traffic light synchronization. (See Appendix H, Exhibit 2, Attachment 3 of the SIP submittal.)

Results from the modeling demonstration showed that, using Arizona CBG gasoline (modeled as federal RFG or California RFP with an RVP of 7.0 psi) plus all other measures identified, the Maricopa area would still fail to attain the 0.12 ppm ozone NAAQS in 1999. The VEOP indicates that ozone control measures need to show a 13 percent reduction of ambient ozone to attain the standard in 1999. The percent reduction from Federal Phase II RFG and California Phase II RFG is 3.9 percent and 2.6 percent respectively. The total percent reduction available from the measures examined in the VEOP is less than 6 percent.

If the State's CBG VOC emissions performance standards were not implemented, the projected shortfall in emissions reductions would be larger. EPA recognizes that these estimates for reductions needed, reductions produced by various measures, and the scope of the measures available are all based on analysis that will be further refined and updated as the State's serious area plan is developed. Nevertheless, EPA is basing today's action on the information available to the Agency at this time, which does not indicate that there are other reasonable and practicable measures available to the State that would fill the projected emissions reduction shortfall. Hence, EPA proposes to find that the CBG VOC emissions performance standards are necessary for attainment of the ozone

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[4] AAC R20–2–751.01.A.

[5] AAC R20–2–751.A.

[6] The opt-out is contingent on the CBG requirements becoming effective upon EPA's approval of the regulations in the SIP.

[7] See 62 FR 31734 (June 11, 1997).

[8] The control measure analysis submitted for the VEOP should be considered a preliminary draft analysis. The Phoenix nonattainment area was originally classified as moderate but was reclassified to serious after the VEOP was completed. Arizona is currently developing a serious area plan. However, the plan has not been completed in time for inclusion in this SIP revision and therefore could not be examined to support the necessity finding.

[9] 1999 was chosen as the modeling year because it is the next ozone attainment date in the Clean Air Act after 1996. See CAA 181(a)(1).

NAAQS, and EPA proposes to approve them as a revision to the Arizona SIP for the Phoenix ozone nonattainment area.

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of particulate control measures and are currently considering additional controls in the course of developing the serious area PM_{10} plan for the Maricopa County nonattainment area. The State's submission in support of the necessity demonstration includes both measures that are currently being implemented or for which commitments are in place, and various additional measures being considered for implementation in the serious area plan.

The air quality modeling submitted by ADEQ shows that implementation of all of the PM_{10} control measures identified by the State would still result in an emissions shortfall and the area would need an additional 2.4 percent reduction in the ambient concentrations of PM_{10} to demonstrate attainment of the PM_{10} NAAQS. The State's analysis projects that two additional measures, paving 100% of unpaved roads and controlling 100% of shoulders and access points, would produce sufficient emissions reductions to eliminate this shortfall. However, Arizona has characterized these measures as unreasonable for purposes of section 211(c)(4)(C) and hence inappropriate to consider as available control measures in the necessity demonstration.

EPA agrees that, for purposes of section 211(c)(4)(C), both paving 100% of unpaved roads and controlling 100% of shoulders and access points would be unreasonable measures to implement in the Phoenix area in comparison to the CBG NO_X performance standard. In determining whether a control measure is unreasonable or impracticable for purposes of section 211(c)(4)(C), reasonableness and practicability should be determined taking into account a comparison with the fuel measure that the state is petitioning to adopt. EPA must assess whether it would be reasonable and practicable to require the other control measure in light of the potential availability of the preempted state fuel control. Finding another measure unreasonable or impracticable under this criterion does not necessarily imply that the measure would be unreasonable or impracticable for other areas, for the same area under different circumstances, or for the same area under an analysis outside of the section 211(c)(4)(C) context.[10] For further discussion of this criterion see "Guidance on Use of Opt-In to RFG and Low RVP Requirements in Ozone SIPs," U.S. EPA, Office of Mobile Sources, August 1997.

Controlling PM_{10} through paving 100% of unpaved roads and controlling 100% of shoulders and access points raises concerns regarding costs, feasibility, timing, administrative burdens, and burdens on individual citizens. ADEQ estimates the capital cost of paving 100% of unpaved roads to be $59.4 million, which is $54 million more than ADEQ's identified alternative of chemically controlling 100% of unpaved roads and would only reduce emissions by an additional 1.9%. To control 100% of shoulders and access points through installing curbs on 100% of paved road shoulders and paving 100% of access points to paved roads, ADEQ estimates a capital cost of $733.3 million, which is $366.65 million more than the estimated cost of its identified alternative measure which would be to control 50% of shoulders and access points. In addition, ADEQ has serious concerns about the feasibility of successfully paving all unpaved roads in the area with greater than 120 Average Daily Travel (ADT) miles and controlling all shoulders and access points before the attainment date of December 31, 2001. Besides the significant capital expenditure associated with these measures, implementation of these measures would impose a substantial administrative burden on local and state agencies and would require significant coordination of local and state agencies. In addition, motorists throughout the area would experience the inconveniences and delays associated with extensive road construction projects.

In comparison to the measures discussed above, the infrastructure for implementation of the fuel measure is already in place. This significantly reduces the burden on the implementing refineries, and would allow implementation of the measure to begin as early as the summer of 1998. Most of the compliance burden associated with the measures will be felt by a limited number of fuel suppliers. In addition, most of the compliance and implementation burdens associated with CBG have already been shown to be necessary for compliance with the ozone NAAQS. Therefore any additional burden for compliance with NO_X performance standards will be minimal. Finally, implementation of the measure would require only limited new coordination efforts between ADEQ and ADWM. Thus, in comparison to the CBG NO_X performance standard, for the purposes of section 211(c)(4)(C), it would be unreasonable to require paving 100% of unpaved roads and controlling 100% of shoulders and access points in the Phoenix area in the timeframe considered here.[11]

Because the State is currently working on the underlying analysis for the serious area PM_{10} plan for the Maricopa County nonattainment area, due December 10, 1997, EPA notes that the information relied on here is preliminary. The State may further refine its estimates of the emissions reductions needed, the emissions reductions produced by various control measures, and the scope of control measures available. Nevertheless, the information submitted by the State indicates that even with the implementation of all reasonable and practicable control measures known to be available at this time, including CBG,[12] additional emissions reductions will be needed for timely attainment of the PM_{10} standard. Therefore, EPA proposes to find that the NO_X performance standard in the CBG requirements is necessary for attainment of the PM_{10} standard, and EPA proposes to approve this requirement as a revision to the Arizona SIP for the Phoenix PM_{10} nonattainment area.[13]

C. Enforceability

The ADWM has developed requirements for every entity in the gasoline distribution system to ensure that Maricopa County will receive gasoline that meets the state CBG standards.[14] The requirements, which include registration of gasoline suppliers, testing and sampling, compliance surveys, and record keeping and reporting, apply to (1) service stations, (2) fleet owners, (3) third party terminals, (4) pipelines and fuel transporters, (5) oxygenate blenders, and (5) producers and importers of CBG. The requirements imposed by the CBG rule apply to activity occurring both within and outside of the State of Arizona. The State Attorney General's office has provided an analysis concluding that the State has full authority to enforce the rules and the associated requirements beyond the State borders.

Before any CBG suppliers may produce or import CBG, it must register with the ADWM.[15] These suppliers include any refiner, importer, oxygenate blender, pipeline or third party terminal who will produce, supply or have custody of Arizona CBG after June 1, 1998. These registered suppliers must certify that each batch of gas meets the CBG standards as described in the Interim Rule. They must retain records of the sampling for five years; supply these records to ADWM, if requested, within 20 days; and notify ADWM of transport methods other than pipelines. They must also maintain a quality assurance/quality control (QA/QC) program to verify the accuracy and effectiveness of fuel testing or use an independent laboratory to complete testing (unless computer-controlled in-line blending equipment is in operation which is supplying audit reports to EPA and ADWM under 40 CFR 80.65(f)(4)).[16]

Registered oxygenate blenders must follow the blending requirements submitted by the registered supplier and comply with additional blending requirements. For all terminal blending facilities, registered blenders must determine the oxygen content and volume of final blends before such blends leave the oxygen blending facility. Oxygenate blenders completing operations in gasoline delivery trucks must implement a quality assurance sampling and testing program. In-line blending operators using computer controlled blending must sample the fuel after the addition of oxygenate and prior to combining the batch with other gasoline, and they must notify the pipeline and ADWM of any batch which does not contain the specified type and amount of oxygenate. Oxygenate blenders must keep records of sampling and shipments for five years and make those records available within 20 days of a request.[17]

Registered pipelines and third party terminals may not accept Arizona CBG from a supplier that is not registered with ADWM and that cannot submit written verification that the gasoline meets CBG standards. These gasoline transporters must also complete sampling of all CBG batches, report non-compliance of any batches with CBG standards within 24-hours of sampling to ADWM, and develop a QA/QC program to demonstrate the accuracy and effectiveness of the laboratory testing. Pipelines must also submit a monthly report to ADWM summarizing the results of laboratory testing of all Arizona CBG that has entered a pipeline (including the present location of the fuel sample).[18]

Fleet owners and service stations do not have to sample gasoline. However, they must retain on-site records for their most recent four deliveries, which verify the quantity and identify of each grade of motor fuel delivered. Service stations and fleet owners may maintain these records for the remainder of the previous 12 months off-site if the records are made available within two working days from the time of a request. These records shall contain: the name and address of the transferor and transferee; the volume, minimum octane rating, VOC and NO_X reduction percentage standards, and origination point of the CBG; the date of transfer, proper identification of the gasoline as Arizona CBG or AZRBOB;[19] and the type and quantity of oxygenate contained in the Arizona CBG or identification of the product as AZRBOB, a statement that it does not comply with CBG standards without the addition of oxygenate, and the oxygenate types and amount needed to meet the properties claimed by the registered supplier.[20]

To maintain compliance with Arizona CBG standards, in addition to the ongoing registration, testing,[21] quality assurance and recordkeeping activities described above, ADWM will conduct compliance surveys throughout the year.[22] Each producer and importer of CBG must contribute to the costs of two surveys of CBG quality in Phoenix in the summer of 1998, followed by two surveys during the summer and winter seasons[23] for each following year, based on gasoline samples collected at retail outlets. Each compliance survey will be conducted by an independent surveyor who will develop a survey plan with committed funding for the season, to be submitted to ADWM by April 1 of each year. These surveys will cover compliance with VOC and NO_X reduction levels and average levels of RVP, T50, T90, aromatic hydrocarbons, olefins, sulfur and oxygen. The results of each survey will be submitted to ADWM within thirty days following completion of the survey. If the survey or other testing indicates that the gasoline does not meet CBG VOC or NO_X reduction averaging[24] percentage standards, the registered supplier must pay penalties and comply with more stringent applicable flat per gallon standards during a probationary period. For example, on each occasion that a sample fails a VOC emission reductions survey on or after May 1, 1999, the VOC emissions performance reduction and the minimum per gallon percentage reduction shall be increased by an absolute 1.0%, not to exceed the VOC percent emission reduction per gallon standard.[25]

D. Proposed Action

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the CAA and EPA regulations. EPA has also found that the various CBG requirements are either not preempted by federal fuel requirements or are necessary for the Phoenix nonattainment area to attain the ozone and PM_{10} NAAQS, pursuant to CAA. Therefore, EPA is proposing to approve the Arizona CBG Interim Rule into the Arizona SIP for the Phoenix ozone and PM_{10} nonattainment areas under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic,

[10] For example, given the different criterion for EPA's section 211(c)(4)(C) evaluation, today's proposed finding does not in any way prejudge the question of whether these same measures might be reasonable in the context of the requirements in section 189 (a) and (b) for reasonably available control (RACM) and best available control measure (BACM) for PM_{10} control.

[11] See footnote 10 and related discussion above for explanation of limited applicability of this proposed finding.

[12] Arizona CBG was included in the modeling analysis as Federal RFG, Phase II at 100% market share.

[13] In its September 12, 1997 letter, ADEQ submitted the CBG Interim Rule as a revision to the Arizona ozone SIP. In order for EPA to take final action approving the CBG rule into the Arizona PM_{10} SIP, the State will need to formally submit the rule as a revision to that SIP. ADEQ has informed EPA that it intends to do so in the near future.

[14] AAC R20–2–751. Area A Arizona CBG Requirements—1999 and AAC R20–2–751.01 Area A Arizona CBG Requirements—1998.

[15] AAC R20–2–750. Registration Pertaining to Arizona CBG or AZRBOB.

[16] AAC R20–2–752. General Requirements for Registered Suppliers.

[17] AAC R20–2–755. Additional Requirements Pertaining to AZRBOB and Downstream Oxygenate Blending.

[18] AAC R20–2–753. General Requirements for Pipelines and Third Party Terminals.

[19] AZBOB, as defined in the CBG Interim Rule (AAC R20–2–701.3) is "a petroleum-derived liquid which is intended to be or is represented as a product that will constitute Arizona CBG upon the addition of a specified type and percentage (or range of percentages) of oxygenate to the product after the product has been supplied from the production or import facility at which it was produced or imported."

[20] AAC R20–2–709. Records Retention Requirements for Service Stations and Fleet Owners.

[21] AAC R20–2–759. Testing Methodologies.

[22] AAC R20–2–760. Compliance Surveys.

[23] The summer season will last from May 1 through September 15 and the winter season will last from November 1 through March 15 of each year.

[24] Under the CBG rule, if they submit to compliance surveys, registered suppliers can initially elect to comply with an average VOC reduction standards of 29 percent with a minium per gallon reduction of 25 percent instead of a flat per gallon percent reduction standard of 27.5 percent. See AAC R20–2–751.01.

[25] AAC R20–2–751.01(F) Area A Arizona CGB Requirements—1999 and Later, Consequences of failure to comply with averages.

and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because this federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Therefore, because this proposed action does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in expenditures of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector in any one year. This proposed Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this proposed action.

Dated: November 14, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–30517 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ29–1–175; FRL–5825–5]

Approval and Promulgation of Implementation Plans; State of New Jersey; Clean Fuel Fleet Opt Out

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan revision submitted by the State of New Jersey for the purpose of meeting the requirement to submit the Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act (Act). EPA is proposing to approve the State's plan for implementing a substitute program to opt out of the CFFP.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: All comments should be addressed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires states containing areas designated as severe ozone nonattainment areas, including New Jersey, to submit for EPA approval a state implementation plan (SIP) revision that includes measures to implement the Clean Fuel Fleet program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. A CFFP meeting federal requirements would be a state-enforced program which requires covered fleets to assure that an annually increasing percentage of new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. In New Jersey, the program would apply in the State's portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and in New Jersey's portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

The federal CFFP is divided into two components. The first component is a light duty (LD) CFFP which applies to covered fleets of passenger cars and trucks of gross vehicle weight rating (GVWR) of 6,000 pounds and less, and trucks between 6,000 and 8,500 pounds GVWR. Covered fleets which fall under the LD CFFP are required to assure that 30 percent of new purchases are clean vehicles in the first year of the program, 50 percent in the second year and 70 percent in the third and subsequent years.

The second component is a heavy duty (HD) CFFP which applies to covered fleets of trucks over 8,500 pounds GVWR and below 26,000 pounds GVWR. The HD CFFP requires that 50 percent of covered fleets' new purchases be clean fueled vehicles in the first and subsequent years.

Under the federal CFFP, the vehicle exhaust emission standards for LD vehicles are equivalent to those established by the California Air Resources Board (CARB) as LD low emission vehicles (LEVs), for use in the California LEV program (discussed in more detail in section II. of this notice). In addition to LEVs, CARB certification exists for transitional LEVs (TLEVs), ultra LEVs (ULEVs) and zero emission vehicles (ZEVs). In addition, under the federal CFFP, clean vehicle emission standards are defined for inherently low emitting vehicles (ILEVs) and for medium and heavy duty vehicles (both of which are covered within the HD CFFP weight category). For further information regarding emission standards associated with all of the clean fuel vehicles which are applicable under the LEV program and the federal CFFP, the reader is referred to the CFFP final rule, published on March 1, 1993 at 58 FR 11888.

Section 182(c)(4)(B) of the Act allows states to "opt out" of the CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

New Jersey, in its 1992 SIP revision chose to preserve its right to opt out of the CFFP but did not indicate a specific substitute measure or measures which was to be used for that purpose. Prior to EPA action on this commitment, the Court of Appeals for the District of Columbia ruled that EPA's conditional approval policy with respect to state commitments was contrary to law. [*NRDC* v. *EPA*, 22 F.3d. 1125 (D.C. Cir. 1994)]. The court held that a bare commitment from a state was not sufficient to warrant conditional approval from EPA under section 110(k)(4) of the Act. Therefore, following this decision, EPA could not approve New Jersey's November 1992 commitment to opt out of the CFFP.

However, in fashioning a remedy for EPA's improper use of its conditional approval authority, the NRDC Appellate court did not want to penalize states for their reliance on EPA's actions.

EPA also does not believe that New Jersey should lose its opportunity to opt out of the CFFP with a substitute program that meets the requirements of section 182(c)(4)(B) because of EPA's inability to act on New Jersey's commitment, especially since New Jersey has since submitted such a substitute program for EPA approval.

Therefore, EPA is considering all relevant submissions made thus far by the State that are intended to substitute for the CFFP.

The Region received from New Jersey a proposed SIP revision dated May 15, 1994. The submittal, consisting of New Jersey's then proposed LEV program, was intended to fulfill the State's CFFP obligations. However, because the Clean Air Act requires SIP revisions to consist of adopted measures, and because the opt out measure was only in the proposal stage, EPA transmitted a finding of failure to submit the required SIP revision in a letter to the State on October 3, 1994. New Jersey then had 18 months from the date of the letter to submit the required SIP before sanctions were to take effect.

On February 15, 1996, in order to cure the finding of failure to submit, New Jersey submitted its New Jersey Clean Fleets (NJCF) program as a substitute for the federal CFFP. As described earlier, the federal CFFP is a state-enforced program which requires that operators of covered vehicle fleets assure that a percentage of their new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. By contrast, the NJCF program is an essentially voluntary mix of incentive-based programs which are intended to spur public and private fleets within New Jersey to purchase clean, alternatively fueled vehicles (AFVs) (discussed in more detail in section III. C. of this notice).

On March 29, 1996, New Jersey supplemented the CFFP SIP revision with a letter clarifying that the NJCF program substitution includes, to the extent necessary to meet SIP obligations, New Jersey's LEV program which had been adopted by that time. Because the emissions reductions relied upon in the NJCF program will largely result from voluntary measures, the State's LEV program essentially serves the role of a "backstop" to the NJCF program. This means that in the event the NJCF program fails to achieve the emissions reductions claimed by the State, emission reductions achieved with the separate LEV program will be used by the State to account for those reductions that would have originally been realized through the federal CFFP. In that event EPA would then recognize the State's LEV program as the effective opt out measure.

Unlike the federal CFFP, the LEV program imposes requirements on auto manufacturers and their yearly vehicle sales. New Jersey adopted a LEV regulation states that New Jersey's primary intention is to participate in the National LEV (NLEV) program (discussed in more detail in the section II. C.4. of this notice). However, EPA cannot require NLEV—it must be mutually agreed upon by the participating states and the auto manufacturers—and if NLEV fails to become effective (due to lack of such an agreement), New Jersey's regulation states that it will operate a State LEV or "California" LEV program (discussed in more detail in section II. of this notice), an option afforded states in the Clean Air Act (see Clean Air Act section 177). The NLEV and State LEV programs are similar in that where applicable, auto manufacturers must meet an average vehicle emission standard, based on the certified emission standards of all annual vehicle sales. The annual average vehicle emission standard (referred to as the non-methane organic gas (NMOG) average) increases in stringency on an annual basis. Quantitatively, NLEV or State LEV, whichever is ultimately implemented in New Jersey, will achieve long term vehicle emission reductions which are far greater than what the federal CFFP could have achieved.

Based on these provisions in the SIP revisions submitted by New Jersey on February 15, 1996 and March 29, 1996, EPA sent a letter to New Jersey on April 4, 1996 notifying the State that the finding of failure to submit had been withdrawn. New Jersey amended its NJCF SIP revision with a March 6, 1997 submittal, which included comments on the proposed SIP revision received by the State, including those received at a State-held public hearing on October 21, 1996.

The Clean Air Act requires states to observe certain procedural requirements in developing implementation plan revisions for submission to EPA. Sections 110(a)(2) and 172(c)(7) of the Act require states to provide reasonable notice and public hearing before adoption by the state and submission to EPA for approval. Section 110(l) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP revisions.

EPA must also determine whether a state's submittal is complete before taking further action on the submittal. See section 110(k)(1). EPA's completeness criteria for SIP submittals are set out in 40 CFR Part 51, Appendix

V (1993). New Jersey's SIP revision which EPA is proposing to approve in this notice meets all of the procedural requirements and completeness criteria.

II. State Submittal

New Jersey submitted SIP revisions on February 15, 1996, March 29, 1996 and March 6, 1997 which substituted the State's NJCF program, backstopped by New Jersey's adopted and enforceable LEV program, for the federal CFFP. The adopted LEV regulation requires the implementation of a program identical to the California LEV program or, if certain triggering events occur, participation in the National LEV program (discussed in more detail in section III. C.4. of this section). The LEV program operated in California requires that each model year of vehicles produced for sale, beginning with model year 1994, be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale, meet a yearly NMOG fleet average. The California LEV fleet-average NMOG standard was 0.25 grams per mile for model year 1994. The NMOG average becomes increasingly more stringent annually, and for model year 2003 and later the standard is 0.063 grams per mile.

New Jersey held a public hearing on October 21, 1996 to entertain public comment on its federal CFFP substitute SIP revision; this hearing included the State's proposal to opt out of the CFFP with its NJCF program and LEV backstop as a substitute program.

III. Analysis of State Submission

A. Opt Out Criteria and Requirements

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a CFFP to opt out of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program result in long term emission reductions equal to or greater than does the CFFP. Also, EPA can only approve such substitute programs that consist exclusively of provisions other than those required under the Clean Air Act for the area. New Jersey's backstopped NJCF program satisfies both of these requirements.

B. Equivalency of Substitute

The Clean Air Act requires that any substitute for the federal CFFP must provide equivalent long term emission reductions. In its SIP revision, the State estimated the emission reductions which would be attributable to operation of the federal CFFP in New Jersey. It is this amount of long term reduction, discussed below, which the State's substitute must achieve.

Light Duty Vehicle Analysis

New Jersey first analyzed the potential for emissions reductions to result from long term compliance with the LD vehicle portion of the federal CFFP in New Jersey. The LD vehicle purchase requirements of the federal CFFP are intended to ensure a gradual turnover of conventional LD fleet vehicles to clean LD vehicles in covered fleets. In the long term, a substantial portion of LD vehicles in covered fleets, where the program is operated, would meet the LEV (or cleaner) standard, where otherwise they would not have met those more stringent standards (*i.e.*, if the State was not also operating a LEV program as described above). In its SIP revision however, New Jersey pointed out that the LD vehicle portion of the federal CFFP, in the long term, would essentially duplicate the Statewide, more comprehensive New Jersey LEV program which has already been adopted [Adopted on November 22, 1995 at 27 N.J.R. 5016(a) (December 18, 1995), codified at N.J.A.C. 7:27–26].

In the SIP revision, New Jersey explained that its LEV program is more comprehensive than the LD portion of the federal CFFP, because it will require virtually all LD vehicles sold in New Jersey (including fleet and non-fleet vehicles) to meet, by model year 2000, the LEV standard when their total emissions are averaged. By contrast, the federal LD CFFP will only require 70 percent of new vehicle purchases in covered fleets to meet the LEV standard in the long term, a requirement which would be met through the State's LEV requirements, imposed on the vehicle manufacturers.

New Jersey also noted that its LEV program begins one year later (model year 1999) than the federal CFFP (model year 1998). The State offered the justification that in the long term however, the LEV program requirements would make up for any shortfall in LD vehicle emission reductions that might be caused by the difference in start dates. However, subsequent to the date that New Jersey made its opt out submission to EPA, EPA has determined that a one year delay of implementation of the CFFP is necessary and appropriate. The delay is needed due to a stated lack of availability of the requisite types and numbers of clean fueled vehicles in the majority of the areas which are required to implement and comply with the regulatory requirements of a CFFP. This guidance and policy decision, which was based on input from all of the program stakeholders, was transmitted in a May 22, 1997 memo from EPA Office of Mobile Sources Director Margo Oge to EPA's Regional Air Directors. EPA anticipates publishing a rulemaking in the **Federal Register** shortly, finalizing the delay. The fact of the delay further lends equivalency to the NJCF program as a CFFP opt out, since both programs will now start at the same time.

With further examination of the relative effects of these programs, New Jersey also noted that there will still exist certain aspects of the federal LD CFFP that could result in greater emission reductions than the NJCF program on an individual LD vehicle basis. As an example, the State discussed the requirement that LEVs operate on the fuels for which they were certified to operate on, and that the federal CFFP requires that covered fleets must ensure that a certain percentage of their new vehicle purchases (both light and heavy duty) are certified to meet LEV (or cleaner) standards. By contrast, the NJCF program is voluntary (with the exception of the Energy Policy Act (EPAct), discussed in further detail in section C.). The State again justified the equivalency claim of its opt out measure by explaining the reasons why these differences are not significant discrepancies. With respect to the loss of emission reduction benefits that would occur from gasoline-powered LEVs operating on federal reformulated gasoline (RFG) rather than the fuel that they were certified to operate on (*e.g.*, California RFG), New Jersey explained that such a loss would be relatively small in the long term. The State claims that this is true because the reductions from the federal CFFP would occur only on a per vehicle basis, and because of its anticipation that a substantial number of LEVs will be operating on alternative fuels, in the later years of the State LEV program, that are cleaner than California RFG. EPA agrees with this line of reasoning, as well as with New Jersey's assertion that the overall additional benefit of the federal CFFP's fuel requirement for LEVs would be relatively small and insignificant in the long term for those reasons.

EPA agrees with New Jersey that implementation of the federal LD CFFP, in addition to either the NLEV or the State LEV program (the State has made certain through its regulations that one or the other will be implemented), for any small incremental benefits in light of the additional administrative requirements of the federal CFFP, would be burdensome and impractical. Lastly, EPA has determined, for the reasons stated above, that the State does not need to account explicitly for the long term emission reductions which would have been associated with a LD CFFP since those reductions are negated by operation of a LEV program.

Heavy Duty Vehicle Analysis

The heavy duty vehicle portion of the federal CFFP requires that on an annual basis, 50 percent of heavy duty fleet vehicles purchased each year must meet clean fuel vehicle emission standards. Through appropriate modeling, New Jersey has determined that the estimated emission reduction benefit that would result from applying the federal CFFP's heavy duty vehicle requirements in New Jersey would be approximately 4.5 tons per day (tpd) of VOC and NO_x combined in 2010 (modeling techniques and assumptions used to arrive at this figure are described below). New Jersey assumes in its SIP, and EPA agrees with the assumption, that modeling emission reductions out to the year 2010 is adequate for the purpose of determining the long term reductions which could be expected of the heavy duty CFFP in New Jersey. The NJCF program must achieve that amount of emission reductions within the same time frame in order to be an acceptable substitute for the federal CFFP. If it does not, as will be verified through the program emission reduction tracking system that the State committed to implement (described in more detail below), the State has also committed to use emission reduction credit generated from either the NLEV program or the State LEV program to make up any emission reduction shortfall which may result.

Modeled Reductions from the CFFP

In order to determine the level of long term emissions reductions which needs to be provided by its opt out measures, the State employed the latest version of the mobile source emission model approved by EPA, MOBILE5a. Emission factors generated by the MOBILE model were used in conjunction with prescribed CFFP calculation guidelines in EPA's June 1994 CFFP Regulatory Impact Analysis (RIA). New Jersey determined through this modeling that the long term reductions associated with the federal CFFP would equal 4.5 tons per day of NO_x and VOC combined.

C. NJCF Program Details and Goals

NJDEP has estimated that, in order to meet the Clean Air Act requirement of an approvable CFFP substitute, the NJCF program must provide emission reductions equivalent to those from approximately 50,750 medium heavy duty certified clean fueled vehicles by 2010. NJDEP estimates that about 176 of these vehicles will come from the Clean Cities program, and the remainder from the efforts of the Incentive Development Workgroup (both of which are described below).

NJDEP has determined that in order to contribute towards the emission reductions needed for a substitute program, a medium or heavy duty vehicle must be certified by CARB to meet LEV (or cleaner) standards. For this reason New Jersey's SIP revision does not rely on emission reductions from alternative fuel vehicle (AFV) conversions to meet the target of 4.5 tons per day of NO_x and VOC combined by 2010. Furthermore, AFV conversions will comprise a relatively small percentage of total clean AFVs in use in New Jersey in the long term. EPA agrees with this conservative approach in today's proposed approval.

The NJCF program consists of the following four components: (1) Incentive Development program, (2) the Department of Energy's (DOE's) EPAct fleet requirements, (3) DOE's Clean Cities program, and 4) the Advanced Technology Vehicle (ATV) component of EPA's finalized NLEV program.

1. Incentive Development Program

The incentive development program was developed by a public/private workgroup which includes representatives of local and national fleet operators, municipalities, alternative and clean fuel providers, and government officials. The Workgroup's efforts are intended to spur use of clean alternative fuel vehicles. Major areas of focus for the Workgroup, as it implements its Action Plan, include development of a New Jersey alternative fuel mechanic training program and promotion of a State policy supporting the use of alternative fuels and AFVs.

2. EPAct Purchase Mandates

The second component of the NJCF program is the alternative fuel vehicle purchase requirements under the federal EPAct, 42 *U.S.C.* § 13201 *et seq.* Under EPAct, all state, federal, and fuel-provider fleets must ensure that a percentage of their new LD vehicle purchases operate on alternative fuels. In the long term, 75% of new state and federal purchases and 90% of fuel-provider purchases must be AFVs. To date, New Jersey reports that 61 State vehicles have been converted to run on clean alternative fuels as a result of EPAct compliance, and alternative fuel vehicles are available for purchase by public agencies through the State purchase contract.

3. New Jersey Clean Cities Program

Clean Cities is a voluntary federal program designed to accelerate and expand the use of clean AFVs and related refueling infrastructure in communities throughout the country. In 1995 the State's Division of Energy initiated Clean Cities programs in the metropolitan areas of Elizabeth, Jersey City, Newark and Trenton; New Jersey plans to expand these programs in other areas of the State as well. New Jersey expects the program to have a significant long term emission reduction benefit.

4. Advanced Technology Vehicle Program

The fourth component of the NJCF program is the Advanced Technology Vehicle (ATV) component of the NLEV program. NLEV is an alternative to the Ozone Transport Commission (OTC) LEV program, which the OTC petitioned EPA to require. EPA had made a determination requiring LEV to be adopted throughout the northeast ozone transport region (OTR); however a Federal Circuit Court has since remanded that requirement. *Virginia* v. *EPA*, No. 95–1163 (D.C. Cir. March 11, 1997). NLEV is a voluntary program wherein auto manufacturers would manufacture low emission vehicles nationwide instead of just for the OTR and California.

EPA proposed the NLEV program in October 1995, and issued the final NLEV rule in the June 6, 1997 **Federal Register** (62 FR 31192). EPA also issued an NLEV supplementary Notice of Proposed Rulemaking (SNPRM) on August 22, 1997. EPA intends to finalize the SNPRM by mid- to late-autumn, 1997. Auto manufacturer and OTC state opt-ins shortly thereafter will ensure program startup in time for model year 1999 LEVs in the OTR.

In EPA's June 6, 1997 NLEV final rulemaking, an ATV was defined as any vehicle certified by CARB or EPA that is either: (1) A dual-fuel, flexible-fuel, or dedicated alternatively fueled vehicle certified as a transitional low emission vehicle (TLEV), LEV, or ultra low emission vehicle (ULEV) when operated on the alternative fuel; (2) certified as a ULEV or Inherently Low Emission Vehicle (ILEV); or (3) a dedicated or hybrid electric vehicle. As discussed in that rulemaking, EPA acknowledges the suggestion that advancing motor vehicle pollution control technology is an important benefit of NLEV. Furthermore, it has been suggested by several parties, including New Jersey, that establishment of an ATV component should be a criterion for

determining whether NLEV is an acceptable LEV-equivalent program. Although EPA agrees that advancing technology is an important goal, and EPA believes that the NLEV program could be a part of an agreement that would provide important opportunities to promote ATVs, the regulatory portion of the NLEV program does not address ATVs, EPA does not believe that advancing technology is or should be a legally-required criterion for approval of a LEV-equivalent program, and given the court decision invalidating the OTC LEV SIP call, there is no longer any legal requirement for NLEV to be a LEV-equivalent program. Nevertheless, EPA recognizes that including some advanced technology component is important and could provide additional environmental benefits beyond emissions reduction equivalency. Furthermore, EPA agrees with New Jersey's intention to use the ATV component as part of its substitute (backstopped by the enforceable State LEV program) for the federal CFFP. The ATV program involves a cooperative effort among the states in the OTR, EPA, DOE, fuel providers, aftermarket converters, fleet operators, and the full range of motor vehicle manufacturers to develop ways to increase use of ATVs. The NJDEP expects to begin implementing the ATV program, in cooperation with other states, the auto manufacturers, and fuel providers, as soon as the NLEV program with an ATV component becomes effective.

In order to facilitate implementation of the NJCF program, New Jersey has stated in its latest SIP revision that it is relying on EPA to support the ATV initiative by approving emission reduction SIP credits, where appropriate, upon the introduction of ATVs into the fleet. EPA is prepared to assist the State in this manner (*i.e.* by allowing long term emission reductions generated by the ATV component of NLEV to be used in part as a substitute SIP measure for the CFFP), provided emissions reductions from the ATV provision, along with those generated from the other NJCF program components, can be documented by the State. It is for this purpose that New Jersey has incorporated a planned system to track NJCF program emissions reductions. This system, described below, will serve to identify the need, if any should exist in the future, to utilize the credit from the State's adopted LEV program (*i.e.*, the backstop) should the planned reductions not occur as intended with the voluntary NJCF program.

NJCF Program Backstop

New Jersey, in exercising its option under section 177 of the Clean Air Act, has adopted a LEV program which affects all new LD vehicles sold Statewide, specifically passenger cars and LD trucks under 6,000 lbs. gross vehicle weight rating (GVWR) for vehicle model years 1999 and later. The LEV program sets forth five different sets of emission standards, and vehicle manufacturers may market any combination of vehicles provided that the annual average emissions of each manufacturer's fleet complies with a fleet average limit that becomes more stringent each year.

New Jersey's LEV program will assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized through the LD portion of a CFFP; in the event that the NJCF failed to reduce long term emissions to the level which would have been achieved by the CFFP, LEV could make up the resultant shortfall.

Vehicle Tracking System

As part of its most recent NJCF SIP revision, New Jersey has committed to implement an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program (detailed above) throughout the State beginning in 1998. The State will periodically track the variety of clean NJCF vehicles purchased in New Jersey, but most notably CARB certified LEVs (and vehicles certified to more stringent standards, such as ULEVs). The information gathered from the automated tracking system would provide an accurate indication of the number of vehicles purchased in New Jersey that are certified to meet the applicable LEV, etc. standards. In this manner the State can accumulate a database with which it can calculate emission reduction benefits associated with certified clean vehicle purchases resulting from the NJCF program, and determine if necessary the need to employ the LEV backstop discussed above.

IV. Summary of Action

In this proposed rule, EPA is proposing to approve New Jersey's SIP revision submitted to fulfill the Clean Fuel Fleet requirements of the Clean Air Act. EPA believes New Jersey's Clean Fleet program, backstopped by the adopted New Jersey LEV program implementing the low emission vehicle program are an adequate substitute for the federal Clean Fuel Fleet program under section 182(c)(4).

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 6, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–30521 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–5923–6]

Notice of Public Meeting on the Ground Water Disinfection Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of meeting.

SUMMARY: Notice is hereby give that the Environmental Protection Agency (EPA) is holding a public meeting concerning the Ground Water Disinfection Rule (GWDR). The objective of this meeting is to provide the public with data summaries to support the GWDR development; ask for comments on the data; solicit further data if available; discuss the EPA's next steps for the rule development and data analysis; as well as to identify parties who may be interested in further meetings.

DATES: The meetings will be held on December 18 and 19, 1997.

ADDRESSES: The meetings will be held at the Ana Hotel at 2401 M street, NW, Washington, D.C. 20037. The hotel's phone number is (202) 429–2400.

FOR FURTHER INFORMATION CONTACT: EPA will provide a copy of the data summaries a few weeks prior to the meeting to anyone who requests it. To register for the meeting and for the data summaries please contact the Safe Drinking Water Hotline (800) 426-4791 or Marty Kucera at US EPA (202) 260–7773, kucera.martha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection "as necessary" for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. To determine if treatment is necessary, the rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

Dated: November 17, 1997.

William R. Diamond,

Acting Director for Office of Ground Water and Drinking Water.

[FR Doc. 97–30558 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–232, RM–9191]

Radio Broadcasting Services; Eureka, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William G. Brady d/b/a KHJ Radio proposing the allotment of Channel 228C3 at Eureka, Montana, as that community's first local FM broadcast service. The channel can be allotted to Eureka without a site restriction at coordinates 48–52–54 and 115–02–54. Although it is not necessary to site restrict the allotment, we will request concurrence from the Canadian Government for Channel 228C3 as a specially negotiated short-spaced allotment. Channel 228C3 at Eureka is short spaced to vacant Channel 226C, Cranbrook, British Columbia, Canada.

DATES: Comments must be filed on or before January 5, 1998, and reply comments on or before January 20, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William G. Brady d/b/a KHJ Radio, 746 Shadow Lane, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–232, adopted November 5, 1997, and released November 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30414 Filed 11–19–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE44

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Plagiobothrys Hirtus (Rough Popcornflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered

species status pursuant to the Endangered Species Act of 1973, as amended (Act) for the plant *Plagiobothrys hirtus* (rough popcornflower). This species is restricted to wet swales and meadows in Douglas County, Oregon, where only 10 occurrences are known. Most populations are small with few individuals. The total estimated number of plants is 3,000 within a combined area of about 4 hectares (ha) (10 acres (ac)). Threats to this species include destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction); spring and summer grazing by domestic cattle, horses, and sheep; roadside maintenance; and competition from native and alien plant species. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

DATES: Comments from all interested parties must be received by January 20, 1998. Public hearing requests must be received by January 5, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew Robinson, Botanist, at the above address or by telephone (503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Plagiobothrys hirtus was first collected by Thomas Howell in 1887 and described the following year as *Allocarya hirta* (Greene 1888). Subsequent taxonomic treatments included *A. scouleri* var. *hirta*, *P. scouleri* var. *hirtus*, *A. calycosa*, and *P. hirtus* (Gamon and Kagan 1985). Johnston recognized two varieties of the species, *P. hirtus* var. *hirtus* and *P. hirtus* var. *collaricarpus* (Gamon and Kagan 1985). Later, Chambers (1989) considered the material included in the variety *collaricarpus* to be a variety of *P. figuratus*, which elevated the material assigned to *P. hirtus* var. *hirtus* to a full species.

A member of the borage family (Boraginaceae), *Plagiobothrys hirtus* is an annual herb on drier sites or perennial herb on wetter sites (Amsberry and Meinke 1997). It reaches 30–70 centimeters (cm) (1–2 feet (ft)) in height and has a fairly stout stem with widely spreading, coarse, firm hairs on the upper part. The leaves of the main stem are opposite (paired) and the racemes are paired and without bracts. The individual flowers are 1–2 millimeters (0.4–0.6 inches (in)) wide, and white in color (Gamon and Kagan 1985). It grows in scattered groups and reproduces largely by insect-aided cross-pollination and partially by self-pollination. The species is distinguished from other *Plagiobothrys* species by coarse, sparse hairs on the stem and branches (Gamon and Kagan 1985).

Plagiobothrys hirtus grows in open, seasonal wetlands in poorly-drained clay or silty clay loam soils (Gamon and Kagan 1985). The taxon is considered dependent on seasonal flooding and/or fire to maintain open habitat and to limit competition with invasive native and alien plant species such as Himalayan blackberry (*Rubus discolor*), Oregon ash (*Fraxinus latifolia*), teasel (*Dipsacus fullonum*), and pennyroyal (*Mentha pulegium*) (Gamon and Kagan 1985, Almasi and Borgias 1996). *Plagiobothrys hirtus* occurs in open microsites within the one-sided sedge (*Carex unilateralis*)—meadow barley (*Hordeum brachyantherum*) community type within interior valley grasslands. Other frequently associated species include tufted hairgrass (*Deschampsia cespitosa*), American slough grass (*Beckmannia syzigachne*), great camas (*Camassia leichtlinii* var. *leichtlinii*), water foxtail (*Alopecurus geniculatus*), baltic rush (*Juncus balticus*), wild mint (*Mentha arvensis*), Willamette downingia (*Downingia yina*), and bentgrass (*Agrostis alba*) (Gamon and Kagan 1985).

Plagiobothrys hirtus is endemic to the interior valley of the Umpqua River in southwestern Oregon. The species was collected only four times between 1887 and 1961, all at sites within Douglas County (Gamon and Kagan 1985). The taxon was considered possibly extinct (Meinke 1982) until it was rediscovered in 1983 as a result of intensive field surveys (Jimmy Kagan, Oregon Natural Heritage Program (ONHP), pers. comm. 1997). The location of the first specimen, collected by Howell on June 25, 1887, was given only as the Umpqua Valley (Greene 1888). The sites of collections from 1932 and 1939, were from 16 kilometers (km) (10 miles (mi)) east of Sutherlin and 3 km (2 mi) north of Yoncalla, respectively (Siddall and Chambers 1978) . Both sites were surveyed in 1983, but no plants were found (Gamon and Kagan 1985). At the time, the sites were heavily grazed by sheep, which lead the botanists to speculate that grazing was the probable cause of extirpation at these sites (Gamon and Kagan 1985). In 1981, a collection was made adjacent to Interstate 5 south of Yoncalla, a site which remains extant today (J. Kagan, pers. comm. 1997).

Despite the few pre-1961 collections, *Plagiobothrys hirtus* was probably widespread historically on the floodplains of the interior valleys of the Umpqua River. Because *P. hirtus* occurs in low-lying areas, seeds were likely dispersed by flood waters, resulting in a patchy clumped distribution on the floodplains (Gamon and Kagan 1985). Natural processes such as flooding and fire maintained open, wetland habitat (Gamon and Kagan 1985). Draining of wetlands for urban and agricultural uses and road and reservoir construction, however, has altered the original hydrology of the valley to such an extent that the total area of suitable habitat for *P. hirtus* has been significantly reduced. In addition, fire suppression has allowed the invasion of woody and herbaceous species into formerly open wetland habitats (Gamon and Kagan 1985).

Plagiobothrys hirtus is now limited to 10 known occurrences in the vicinity of Sutherlin and Yoncalla, Oregon (ONHP 1996). All extant populations of this species are small (i.e., fewer than 500 individuals) and occur in disjunct habitat. The 10 occurrences are estimated to have a total of about 3,000 individuals and a combined area of less than 4 ha (10 ac) (Amsberry and Meinke 1997).

All extant populations are at risk of extirpation due to a variety of threats (Almasi and Borgias 1996; J. Kagan, pers. comm. 1997; R. Meinke, Oregon State University, pers. comm. 1997). In addition to the ongoing threat of direct loss of habitat from conversion to urban and agricultural uses, hydrological alterations, and fire suppression, other threats to the species include spring and summer livestock grazing, and roadside mowing, spraying and landscaping (Gamon and Kagan 1985, J. Kagan, pers. comm. 1995). Six of the 10 extant occurrences are adjacent to highways. The other four occurrences are in urban or agricultural areas.

Nine of the 10 known occurrences are on private land. The other population is on public land owned by the Oregon Department of Transportation (ODOT). One of the private parcels is owned and managed for the species by The Nature Conservancy (TNC). The other eight occurrences on private lands have no protective management for the species and are at risk of extirpation from development, incompatible grazing practices, and recreational activities (J. Kagan, pers. comm, 1997; R. Meinke, pers. comm., 1997)

Previous Federal Action

Federal action on *Plagiobothrys hirtus* began when the Secretary of the Smithsonian Institute prepared a report on plants considered to be endangered, threatened, or extinct, pursuant to section 12 of the Act. That report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act. The notice further indicated the Service's intention to review the status of the plant species named therein. As a result of this review, the Service published a proposed rule in the **Federal Register** on June 16, 1976, (41 FR 24523), to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. This list, which included *P. hirtus*, was assembled on the basis of comments and data received by the Smithsonian Institute and the Service in response to House Document No. 94–51 and the July 1, 1975 **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (50 FR 82480), including *Plagiobothrys hirtus* as a category 1 candidate species. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. This status was changed to category 2 in the November 28, 1983, supplement to the notice (48 FR 53657), and remained as such in the September 27, 1985, Notice of Review (50 FR 39527). Category 2 species were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. In the February 21, 1990, Notice of Review (55 FR 6185), this status was changed back to category 1. Upon publication of the February 28, 1996, Notice of Review in the **Federal Register** (61 FR 7596), the Service ceased using category designations and included *P. hirtus* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *P. hirtus* because of the acceptance of the 1975 Smithsonian Report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1995. Publication of this proposal constitutes the final 1-year finding for the petitioned action.

Plagiobothrys hirtus has a listing priority number of 2. Processing of this rule is a Tier 3 activity under the current listing priority guidance.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Plagiobothrys hirtus* Greene (rough popcornflower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* *Plagiobothrys hirtus* is threatened by destruction and modification of its wetland habitat (R. Meinke, pers. comm. 1997). Although the species is believed to have been more abundant in the past throughout the interior valleys of the Umpqua River, it is now limited to 10 small, isolated occurrences. Direct loss of habitat from hydrological alterations, wetland filling, or conversion to other uses pose a threat to all 10 extant occurrences.

Two sites occur on private land within the urban boundary of the town of Sutherlin. When first discovered in 1983, these sites were the largest known occurrences (ONHP 1996). One site, with approximately 200 individuals in 1983, has since been destroyed and only 1 plant was found in 1996; development of this site is imminent (J. Kagan, pers. comm. 1997). The other site, estimated to have 300–500 plants when discovered in 1983, has been declining since that time. In 1994, a portion of the wetland at the site was filled, and the remaining area was observed to be significantly impacted by mountain bike recreation; only about 50–100 plants were present (J. Kagan, pers. comm. 1995). Urban development of this site is considered likely (J. Kagan, pers. comm. 1997, R. Meinke, pers. comm. 1997).

Three sites are known on private land about 1.6 km (1 mi) east of Sutherlin. One of these, when discovered in 1983, had about 30–35 plants within an area of about 200 square meters (m^2) (2,200 square feet (ft^2)). The site lies within the Sutherlin urban growth boundary and is slated for development (ONHP 1996). The other two sites were discovered in 1996. One of these had 200 plants in 1996, but by 1998 had only 30–40 plants scattered over an area of 25 m^2 (275 ft^2). Habitat conditions on this site are described as marginal (ONHP 1996). The other site also had about 200 plants when first observed in 1996, but by 1998 had decreased to about 100 plants (ONHP 1996). During the most recent site survey in 1993, only 50–100 plants were seen (J. Kagan, pers. comm. 1997).

Four additional sites are known on private land several kilometers south of the town of Sutherlin. One of these, when discovered in 1983, consisted of about 150 plants growing in an area of about 50 m^2 (550 ft^2). In 1996, only about 50 plants remained. Two other sites were both discovered in 1984. One consisted of 50–60 plants in a 30 m^2 (330 ft^2) area, and the other had 200–300 plants (ONHP 1996). Both occurrences had generally decreasing numbers of individuals through the late 1980's. TNC acquired a portion of the larger of the two occurrences and began formal monitoring in 1995. Individuals were too numerous for a complete census in 1995 with the total population on the site estimated at over 16,000 individuals. In 1996, however, the population plummeted to only 394 plants, a drop attributed to an extensive period of standing water on the preserve that year due to a wet spring (Almasi and Borgias 1996). See Factor E discussion for further details on this population decline. The fourth site, when discovered in 1990, had fewer than 50 plants (J. Kagan, pers. comm. 1995).

The last site is on public land and private land about 22 km (14 mi) north of Sutherlin near the town of Yoncalla. This site is the locality of the 1961 collection that was relocated in 1983. About 200 plants were present in 1988, and the population size has continued to increase under management by ODOT. Although the population on public land appears vigorous, a portion of the population on the adjacent private land appears to have vanished (J. Kagan, pers. comm. 1997). Alterations in site hydrology pose the primary threat to the plants (R. Meinke, Oregon State University, pers. comm. 1997).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No evidence of overutilization of this taxon for any purpose exists at this time. However, the plants are easily accessible by road, and the small population sizes make them vulnerable to overcollection by botanical enthusiasts.

C. *Disease or predation.* Grazing has likely been a contributing factor in declining *Plagiobothrys hirtus* numbers throughout its historic range (Gamon and Kagan 1985). Livestock graze in pastures containing four of the occurrences (ONHP 1996). The timing and intensity of grazing, however, determine the effects of grazing on the plant. Grazing during spring and early summer likely threatens *P. hirtus*. When herbivores eat the flower or seed head of the plant, the reproductive output for the year for that individual is destroyed. This activity may be more significant at sites where the species functions as an annual (Gamon and Kagan 1985). However, where fires and flooding no longer occur, grazing may benefit the species. Fall grazing, in particular, may be of benefit because the plant is dormant during at this time and grazing can keep the habitat open by reducing the growth of competing species (Gamon and Kagan 1985). By reducing vegetative growth, fall grazing or mowing (see factor E discussion) may also lower the suitability of the habitat for voles and, thereby, reduce herbivory on the plant.

D. *Inadequacy of existing regulatory mechanisms.* Under the Oregon Endangered Species Act (ORS 564.100–564.135) and pursuant regulations (OAR 603, Division 73), the Oregon Department of Agriculture has listed *Plagiobothrys hirtus* as endangered (OAR 603–73–070). This statute prohibits the "take" of State-listed plants on State, county, and city owned or leased lands. Most occurrences of *P. hirtus* occur on private land and are not subject to any current regulations. One site is adjacent to State Route 99 on lands managed by ODOT and has been designated by the agency as a Special Management Area. Mowing and spraying practices have been modified to protect the species at this site where the plant appears to be stable or increasing (N. Testa, Oregon Department of Transportation, pers. comm. 1997).

E. *Other natural or manmade factors affecting its continued existence.* Nine of 10 extant sites of *Plagiobothrys hirtus* occur adjacent to major highways (Interstate 5 and/or State Route 99) or railroad beds. Herbicide spraying and highway landscaping has affected and reduced at least one *P. hirtus* population (J. Kagan, pers. comm. 1995). Mowing is also part of the routine maintenance of roadways. As with livestock grazing, mowing or pesticide spraying during the spring may reduce seed set and thereby negatively affect populations of the plant. Late season mowing has benefited the *P. hirtus* population at the ODOT site, probably by reducing competition from other plants and herbivory by voles (R. Meinke, pers. comm. 1997). With the exception of the *P. hirtus* populations in ODOT's Special Management Area and The Nature Conservancy's Popcorn Swale, none of the roadside occurrences are protected from herbicide spraying, landscaping or early season mowing. In addition, roadside occurrences are at risk of toxic chemical spills and runoff containing oil and grease (N. Testa, pers. comm. 1997). Vehicle accidents also increase the risk of fuel contamination or fire; such an accident recently occurred adjacent to the ODOT population, but the plant was not affected (N. Testa, pers. comm. 1997).

Encroachment by native and alien plant species increases when natural processes like fire or flooding are altered (J. Kagan, pers. comm. 1997; R. Meinke, pers. comm. 1997). After a 1985 fire at one of the sites in Sutherlin, the plants responded the following year with vigorous growth (J. Kagan, pers. comm. 1997). As with late season grazing or mowing, late season fire is likely to be of benefit, while fire which occurs prior to seed set may have negative consequences to *Plagiobothrys hirtus*. The encroachment of weedy, and especially woody, species may also alter site hydrology by capturing more of the available water, an alternative explanation for the dramatic collapse of the population at the TNC preserve between 1995 and 1996 (see Factor A; R. Meinke, pers. comm. 1997).

Because of the small, isolated nature of the occurrences and the few individuals present in most of them, *Plagiobothrys hirtus* is also more susceptible to random events, such as fires during the growing season, insect or disease outbreaks, or toxic chemical spills. The rapid, and as yet unexplained, collapse of the population at the TNC preserve argues for the protection of all extant sites to shield the species from random events that could cause its extinction. Small, isolated populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. The existence of both annual and perennial populations in *P. hirtus* suggests that some local genetic differentiation may already exist among populations of the species. Genetic drift within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Soulé *in* Lesica and Allendorf 1992).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Plagiobothrys hirtus* as endangered. Filling of its wetland habitat for development, livestock grazing during its growing season, invasion by competitive plant species as a result of hydrological alteration and fire suppression, and roadside spraying and mowing continue to reduce plant numbers and habitat. The small, isolated occurrences with few individuals make the species more vulnerable. In addition, continued decreases in the number of occurrences and individuals could result in decreased genetic variability. The varied and cumulative threats to *P. hirtus* indicate the species is in danger of extinction throughout its range. For these reasons, the Service believes that listing *P. hirtus* as endangered is the most appropriate action. Failure to list this species would likely result in extinction of the species. Threatened status is not appropriate because all of the extant occurrences of *P. hirtus* are small, and 8 of 10 occurrences have no protection from mowing, herbicide application, imminent urbanization, and grazing threats. In addition, one of the protected occurrences recently suffered a precipitous, and as yet unexplained, reduction in numbers. Not listing the taxon or listing it as threatened would not provide adequate protection and would not be consistent with the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *P. hirtus*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Although overutilization is not considered to be a threat to *Plagiobothrys hirtus* at this time, listing of this species as endangered would publicize its rarity and, thus, can make it more attractive to researchers or collectors of rare plants. Most occurrences are small enough that even limited collecting pressure could have adverse impacts. The Service is also aware of a report that, after the species was listed by the State of Oregon, a landowner contacted by State botanists to discuss protective measures for a population on his property allegedly responded by blading the site and destroying the population (J. Kagan, pers. comm. 1997). The publication of precise maps and descriptions of critical habitat in the Federal Register would make this plant more vulnerable to incidents of collection and/or vandalism and, therefore, contribute to the decline of this species and increase enforcement problems.

Further, designation of critical habitat for *Plagiobothrys hirtus* is not prudent for lack of benefit. This plant does not occur on Federal land, and it is not believed to have historically occurred on Federal land. Although a potential nexus for Federal action exists for all occurrences within section 404 of the Clean Water Act and for some occurrences in which the Federal Highway Administration may become involved (see "Available Conservation Measures" section below), any such Federal involvement would also require consultation under section 7 of the Act. Any action that would adversely modify critical habitat would also jeopardize the continued existence of the species. Most occurrences of this plants are of such small size that a wetland fill less than the 0.13 ha (0.34 ac) regulatory threshold (see "Available Conservation Measures" section below) would eliminate it. The designation of critical habitat would not provide additional benefits for this species beyond the protection afforded by listing.

The Service finds, therefore, that designation of critical habitat for this species is not prudent because such designation would likely increase the degree of threat to the species from vandalism and would provide no additional benefit to the species' protection. Protection of the species' habitat will be addressed primarily through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Because *Plagiobothrys hirtus* occurs in wetlands, regulatory mechanisms under the Clean Water Act apply to this species. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity that would result in the fill of wetlands under the Corps' jurisdiction (e.g., grading, discharge of soil or other fill material, etc.). Nationwide Permit Number 26 (33 CFR 330.5 and 33 CFR 330, App. A) has been issued to regulate the fill of wetlands that are not larger than 1.2 ha (3 ac), nor cause the loss of waters of the United States for a distance of more than 150 linear m (500 linear ft) of streambed (61 FR 65874). Where fill would occur in a wetland less than 0.13 ha (0.34 ac) in size, no requirement exists to notify the Corps prior to fill activities. Where fill would occur in a wetland of 0.13 ha (0.34 ac) to 1.2 ha (3 ac) in size, the Corps circulates for agency comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit 26. Individual permits are required for the discharge of fill into wetlands that are greater than 1.2 ha (3 ac) in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a Nationwide Permit, unless a federally threatened, endangered, or proposed species occurs on the site. If a federally threatened or endangered species or a proposed species may be affected by a proposed project, the Corps must ensure that it does not authorize, fund or carry out any action that is likely to jeopardize the species' continued existence, pursuant to section 7(a)(2) of the Endangered Species Act. Therefore, if an applicant's project site has one or more listed species on it, the Corps would be required to enter into

consultation with the Service. Should *P. hirtus* become listed, the species may be afforded increased protection through consultation on Corps permits.

In addition, the Federal Highway Administration would become involved with *Plagiobothrys hirtus* when highway maintenance is funded, even in part, by the Federal government. Any State highway activity being implemented by ODOT that is partly funded by the Federal government would be subject to review under the Act. In addition, Department of Housing and Urban Development projects and Natural Resources Conservation Service projects in areas that presently support *P. hirtus* would also be subject to review under section 7 of the Act.

Listing of this plant would provide for development of a recovery plan for the plant. Such a plan would bring together State, Federal and private efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities, note responsible parties, and estimate costs of various tasks necessary to accomplish them. It would also describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to Oregon for management actions promoting the protection and recovery of this species.

Two sites currently receive some protective management. The site owned and managed by ODOT has been designated as a Special Management Area. Mowing is restricted to late in the fall when *Plagiobothrys hirtus* is dormant (N. Testa, pers. comm. 1997). The other site in protective ownership is owned and managed by TNC. This site, which currently contains about 400 individual plants, is being actively managed for the protection and development of *P. hirtus* habitat (Almasi and Borgias 1996). Monitoring, life history studies, and transplantation experiments using field-collected seed have been initiated at these two sites. The objectives of these efforts are to increase population sizes, and establish protocols for seed collection, greenhouse propagation, and transplantation techniques (Amsberry and Meinke 1997).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that would constitute a violation of section 9 of the Act include removing, damaging or destroying *Plagiobothrys hirtus* in violation of State law. In addition, collection on Federal lands without a permit and other actions considered to be malicious damage to the species on Federal lands would be prohibited, although *P. hirtus* is not currently known to occur on Federal lands. Activities that are not likely to violate section 9 of the Act include routine landscape maintenance, clearing of vegetation for firebreaks, and livestock grazing on privately-owned land. Questions regarding whether specific activities may constitute a violation of section 9 should be addressed to the State Supervisor of the Service's Oregon State Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations concerning listed plants and animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (503/231–2063; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Plagiobothrys hirtus;*

(2) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Plagiobothrys hirtus.*

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register.** Such requests must be made in writing and addressed to the State Supervisor, Oregon State Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this designation was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995, and found it to contain no information collection requirements.

References Cited

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Authors: The primary authors of this proposed rule are Josh Millman and Cat Brown, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
FLOWERING PLANTS							
Plagiobothrys hirtus	Rough popcornflower.	U.S.A. (OR)	Boraginaceae/ borage.	E		NA	NA

Dated: October 22, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–30473 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 62, No. 224
Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–067–2]

Bejo Zaden BV; Availability of Determination of Nonregulated Status for Genetically Engineered Radicchio Rosso

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that Bejo Zaden BV's Radicchio rosso lines designated as RM3–3, RM3–4, and RM3–6, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Bejo Zaden BV in its petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: November 7, 1997.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and any written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnology Evaluation, BSS, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–6761. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–148–01p) from Bejo Zaden BV (Bejo) of Warmenhuizen, The Netherlands, seeking a determination that Radicchio rosso (red-hearted chicory) lines designated as RM3–3, RM3–4, and RM3–6, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker, do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On August 27, 1997, APHIS published a notice in the **Federal Register** (62 FR 45387–45388, Docket No. 97–067–1) announcing that the Bejo petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether these Radicchio rosso lines posed a plant pest risk. The comments were to have been received by APHIS on or before October 27, 1997. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

Radicchio rosso (*Chichorium intybus L.*) lines RM3–3, RM3–4, and RM3–6 have been genetically engineered with a *barnase* gene from *Bacillus amyloliquefaciens* encoding a ribonuclease which inhibits pollen formation and results in male sterility of the transformed plants. The subject Radicchio rosso lines also contain the *nptII* selectable marker gene and the *bar* gene isolated from the bacterium *Streptomyces hygroscopicus*. The *bar* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate. Linkage of the *barnase* gene, which induces male sterility, with the *bar* gene, a glufosinate tolerance gene used as a marker, enables identification of the male sterile line for the production of pure hybrid seed. The subject Radicchio rosso lines were transformed by the *Agrobacterium tumefaciens* method, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pathogen *A. tumefaciens*.

Radicchio rosso lines RM3–3, RM3–4, and RM3–6 have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain regulatory gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of the subject Radicchio rosso lines conducted in Europe since 1993 and under an APHIS permit since 1995, indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of these Radicchio rosso lines.

Determination

Based on its analysis of the data submitted by Bejo and a review of other scientific data and field tests of the subject Radicchio rosso lines, APHIS has determined that Radicchio rosso lines RM3–3, RM3–4, and RM3–6: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than Radicchio rosso lines developed by traditional breeding techniques; (3) are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and any progeny derived from hybrid crosses with other nontransformed Radicchio rosso varieties will not exhibit new plant pest properties, i.e., properties substantially different from any observed for the subject Radicchio rosso lines already field tested, or those observed for Radicchio rosso in traditional breeding programs.

The effect of this determination is that Bejo's Radicchio rosso lines designated as RM3–3, RM3–4, and RM3–6 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of Bejo's Radicchio rosso lines RM3–3, RM3–4, and RM3–6 or their progeny. However, the importation of the subject Radicchio rosso lines or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 14th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30507 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–094–1]

Monsanto Co.; Receipt of Petition for Determination of Nonregulated Status for Potato Lines Genetically Engineered for Insect and Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for certain potato lines genetically engineered for resistance to the Colorado potato beetle and potato leaf roll virus. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these potato lines present a plant pest risk.

DATES: Written comments must be received on or before January 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–094–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–094–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On July 23, 1997, APHIS received a petition (APHIS Petition No. 97–204–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for seven NewLeaf® Plus Russet Burbank potato lines (RBMT21–129, RBMT21–152, RBMT21–350, RBMT22–82, RBMT22–166, RBMT22–238, RBMT22–262), which have genetically engineered for resistance to the Colorado potato beetle (CPB) and potato leaf roll virus (PLRV). The Monsanto petition states that the subject potato lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, all seven of the subject Russet Burbank potato lines have been genetically engineered to contain the *cryIIIA* gene from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), which encodes an insecticidal protein that is effective against CPB, and the PLRV replicase gene (*PLRVrep*), which imparts resistance to PLRV. In addition to the *cryIIIA* gene and the *PLRVrep* gene, these potato lines contain either the *nptII* selectable marker gene (RBMT21–129, RBMT21–152, and RBMT21–350) or the *CP4 EPSPS* selectable marker gene (RBMT22–82, RBMT22–166, RBMT22–238, and RBMT22–262). The subject potato lines were developed through the use of the *Agrobacterium tumefaciens* transformation system, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pests *A. tumefaciens* and Figwort mosaic virus.

The subject potato lines have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from plant pests. These potato lines have been evaluated in field trials conducted since 1994 under APHIS permits. In the process of reviewing the applications for field trials of the subject potato lines, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic

plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. In this regard, EPA has issued a registration to Monsanto for full commercialization of the plant pesticide Btt Cry III(A) delta endotoxin and the genetic material necessary for its production in potato. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. In addition to the registration, EPA has issued exemptions from the requirement of a tolerance for residues of the subject plant pesticide CryIII(A) in potatoes, for the NPTII and CP4 EPSPS proteins as plant pesticide inert ingredients in all plants, and for the PLRV replicase protein in or on all raw agricultural commodities.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto has entered into consultation with FDA on the subject potato lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's NewLeaf™ Plus Russet Burbank potato lines RBMT21–129, RBMT21–152, RBMT21–350, RBMT22–82, RBMT22–186, RBMT22–238, RBMT22–262 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 14th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30508 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by P.L. 94–409, P.L. 96–523, and P.L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Advisory Committee. The meeting will convene on December 4–5, 1997, at the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037. The Committee will discuss work plans for the Census 2000 Dress Rehearsal, including the tabulation of data collected using the new questions that follow the revised standards for the classification of Federal data on race and ethnicity recently issued by the Office of Management and Budget.

The Committee is composed of a Chair, Vice-Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 census of population and housing and shall make recommendations for improving that census.

DATES: On Thursday, December 4, 1997, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, December 5, 1997, the meeting will begin at 8:30 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: A brief period will be set aside on Friday afternoon for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308, TDD 301–457–2540.

Dated: November 17, 1997.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 97–30661 Filed 11–18–97; 2:52 pm]

BILLING CODE 3510–BA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews

SUMMARY: On October 17, 1997, the Department of Commerce (the Department) published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The period of review is May 1, 1995, through April 30, 1996. Based on the correction of certain ministerial errors, we have changed the margins for BBs for seven companies, CRBs for three companies, and SPBs for one company.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jay Biggs or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 353 (1997).

Background

On October 17, 1997, the Department published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (62 FR 54043). The review covered 21 manufacturers/exporters and the period May 1, 1995, through April 30, 1996. After publication of our final results, we received timely allegations from the petitioner and several respondents that we had made ministerial errors in calculating the final results. We corrected our calculations, where we agree that we made ministerial errors, in accordance with section 751(A) of the Tariff Act. See company-specific analysis memoranda for a description of the changes that we made to correct the ministerial errors.

Amended Final Results of Reviews

As a result of the amended margin calculations, the following weighted-average percentage margins exist for the period May 1, 1995, through April 30, 1996:

Manufacturer/exporter and country	BBs rate (percent)	CRBs rate (percent)	SPBs rate (percent)
France: SKF	10.80		
Germany: FAG	[1] 12.40	[1] 19.49	[1] 10.32
Japan:			
NPBS	7.67		
NSK Ltd	6.65	7.16	
NTN	7.02	4.33	7.19
Romania: TIE	[1] 0.20		
Singapore NMB/Pelmec Ind	4.85		
United Kingdom:			
NSK/RHP	16.33	67.92	
Barden	3.99		

[1] This rate did not change as a result of the correction of ministerial errors.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we have calculated, wherever possible, an exporter/importer-specific assessment rate for each class or kind of AFBs. We will also direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (62 FR 54043) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) and (h) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28.

Dated: November 13, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30558 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski, Doreen Chen, Gregory Weber, N. Gerard Zapiain or Stephen Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1385, (202) 482–0413, (202) 482–1102, (202) 482–1395 or (202) 482–1391, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that certain cut-to-length carbon steel plate from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

The petitioners in this investigation are Geneva Steel Company and Gulf States Steel Company.

The respondents which are PRC firms unless otherwise indicated:

(1) China Metallurgical Import & Export Liaoning Company ("Liaoning"), an exporter of subject merchandise; Wuyang Iron and Steel Company ("Wuyang"), which produced the merchandise sold by Liaoning;

(2) Anshan Iron and Steel Complex ("AISCO"), a producer of subject merchandise; Angang International Trade Corporation ("Anshan International"), a wholly-owned AISCO subsidiary in China which exported subject merchandise made by AISCO, and Sincerely Asia, Limited ("SAL") a partially-owned Hong Kong affiliate of AISCO involved in sales of subject merchandise to the United States (collectively, "Anshan");

(3) Baoshan Iron & Steel Corporation ("Bao"), a producer of subject merchandise; Bao Steel International Trade Corporation ("Bao Steel ITC"), a wholly-owned subsidiary of Bao responsible for selling Bao material domestically and abroad; and Bao Steel Metals Trading Corporation ("B. M. International"), a partially-owned U.S. subsidiary involved in U.S. sales, (collectively "Baoshan");

(4) Wuhan Iron & Steel Company ("Wuhan") a producer of subject merchandise; International Economic and Trading Corporation ("IETC"), a wholly-owned subsidiary responsible for exporting Wuhan merchandise; Cheerwu Trader Ltd. ("Cheerwu") a partially-owned Hong Kong affiliate of Wuhan involved in sales of subject merchandise to the United States (collectively "WISCO");

(5) Shanghai Pudong Iron and Steel Company ("Shanghai Pudong") a producer and exporter of subject merchandise. During the investigation, we also requested information from and conducted verification of Shanghai No.1, a non-exporting producer of subject merchandise which Shanghai Pudong had earlier indicated shared a common trustee, Shanghai Metallurgical Holding (Group) Co. ("Shanghai Metallurgical").

We consider Liaoning, Anshan, Baoshan, WISCO and Shanghai Pudong to be sellers of the subject merchandise during the POI.

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR at 31972 (June 11, 1997)), the following events have occurred:

From June through July 1997, we verified the questionnaire responses of the respondents. Pursuant to section 782(d) of the Act, the Department rejected certain portions of submissions submitted by Anshan, Baoshan and WISCO one week prior to verification. On August 5, 1997 we issued our verification reports.

At the request of the Department, interested parties submitted additional information on surrogate values on August 5, 1997, for consideration in the final determination.

The petitioners and all of the respondents submitted case briefs on August 29, 1997, and rebuttal briefs on September 9, 1997. The Department held a public hearing for this investigation on September 16, 1997 at the requests of respondents and petitioners.

On October 24, 1997, the Department entered into an Agreement with the Government of the PRC suspending this investigation. Pursuant to Section 734(g) of the Act, petitioners, Liaoning and Wuyang have requested that this investigation be continued. If the ITC's final determination is negative, the Agreement shall have no force or effect and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an Antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* Section 734(f)(3)(B) of the Act.

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1996, through September 30, 1996.

Separate Rates

All of the respondents have requested separate, company-specific rates. In their questionnaire responses, respondents state that they are independent legal entities. Of the five respondents, Anshan, Baoshan, Liaoning and WISCO have reported that they are collectively-owned enterprises, registered as being "owned by all the people." Shanghai Pudong and Shanghai No. 1 are "owned by all the people"; Shanghai Pudong has also stated that these two firms are owned by Shanghai Metallurgical, which is in turn is also owned by "all the people." Shanghai Pudong stated that it does not have any corporate relationship with any level of the PRC Government.

As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR at 22585, 22586 (May 2, 1994) (*"Silicon Carbide"*) and in the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR at 22544 (May 8, 1995) (*"Furfuryl Alcohol"*), ownership of a company by "all the people" does not require the application of a single rate. Accordingly, each of these respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR. at 20588 (May 6, 1991) (*"Sparklers"*) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket-economy cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol*.

1. Absence of *De Jure* Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. Respondents submitted the "Law of the PRC on Industrial Enterprises Owned By the Whole People," adopted on April 13, 1988 (the Industrial Enterprises Law). The Department has previously determined that this Civil Law does not confer *de jure* independence on the branches of government-owned and controlled enterprises. *See Sigma Corp* v. *United States*, 890 F. Supp. 1077, 1080 (CIT 1995). However, the Industrial Enterprises Law has been analyzed by the Department in past cases and has been found to sufficiently establish an absence of *de jure* control of companies "owned by the whole people," such as those participating in this case. (*See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR at 14725, 14727 (June 5, 1995) (*"Drawer Slides"*); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 60 FR at 14725, 14727 (March 20, 1995); and *Furfuryl Alcohol*. The Industrial Enterprises Law provides that enterprises owned by "the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Regulations), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC, provide that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their business. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR at 56046 (November 6, 1995).

In sum, in prior cases, the Department has analyzed the Chinese laws and regulations on the record in this case, and found that they establish an absence of *de jure* control for the types of companies seeking separate rates in this investigation. We have no new information in these proceedings which would cause us to reconsider this determination.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, e.g., Silicon Carbide* and *Furfuryl Alcohol*. These factors are not necessarily exhaustive and other relevant indicia of government control may be considered.

Respondents have asserted, and we verified, the following: (1) they establish their own export prices independently of the government and without the approval of a government authority; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions including the selection of management; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During the verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of government control of the export functions of these companies. Consequently, we have determined that the five responding exporters have met the criteria for the application of separate rates. We determine, as facts available, that non-responsive exporters have not met the criteria for application of separate rates. *See also* Comments 1 and 55.

China-Wide Rate

The petition filed on November 5, 1996 identified 28 PRC steel producers with the capacity to produce cut-to-length carbon steel plate during the POI. We received adequate responses from the five respondents identified above. We received certification of non-

shipment with respect to seven companies from the China Chamber of Commerce for Metals and Chemicals (CCCMC) in a letter dated January 22, 1997. Additionally, we received a letter from one respondent factory indicating shipments through parties which have not responded to the questionnaire. *See* Non-Responsive Exporters section above. All other companies did not respond to our questionnaire. Further, U.S. import statistics indicate that the total quantity and value of U.S. imports of cut-to-length carbon steel plate from the PRC during the POI is greater that the total quantity and value of plate reported by all PRC companies that submitted questionnaire responses. Given these discrepancies, we conclude that not all exporters of PRC plate responded to our questionnaire. Accordingly, we are applying a single antidumping rate—the China-wide rate—to all exporters in the PRC other than those receiving an individual rate, based on our presumption that those respondents who failed to respond constitute a single enterprise under common control by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR at 19026 (April 30, 1996) (*Bicycles*).

Facts Available

This China-wide antidumping rate is based on facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

As discussed above, all PRC exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total adverse facts available, the highest margin calculated for a respondent in this proceeding. Based on our comparison of the calculated margins for the other respondents in this proceeding to the margins in the petition, we have concluded that the highest calculated margin is the most appropriate record information on which to form the basis for dumping calculations in this investigation since this rate is higher than the highest rate in the petition. Accordingly, the Department has based the China-wide rate on information from respondents. In this case, the highest calculated margin is 128.59 percent.

Fair Value Comparisons

To determine if the cut-to-length plate from the PRC sold to the United States by the PRC exporters receiving separate rates was sold at less than fair value, we compared the "United States Price" (USP) to NV, as specified in the "United States Price" and "Normal Value" sections of this notice.

United States Price

Export Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because constructed export price methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average export prices (EPs) to NV based on the factors of production. See Company Specific Calculation Memoranda, October 24, 1997.

For those exporters that responded to the Department's questionnaire, we calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and foreign brokerage. *See* "Factor Valuations" section of this notice.

Normal Value

A. Factors of Production

Because the Department has determined that China is a non-market economy ("NME") country, we calculated NV based on factors of production reported by respondents in accordance with section 773(c) of the Act. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the NV in accordance with our practice. *See Lasko Metal Products* v. *United States* ("*Lasko*"), 437 F. 3d 1442, 1443 (Fed. Cir. 1994). We valued the remaining factors using publicly available information from India where possible. Where appropriate Indian values were not available, we for the most part used publicly available information from Indonesia. In one case, when no appropriate value was available from a country at the same level of development, we used a U.S. value. *See* Comment 19 (slag).

B. Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. To the extent possible, we removed from the import data import prices from countries which the Department has previously determined to be NMEs. As appropriate, we converted import prices for inputs to delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices (WPI), or consumer price indices (CPI) published in the International Monetary Fund's *International Financial Statistics*. For a complete analysis of our selection of surrogate values, see each company's Factors Valuation Memorandum dated October 24, 1997. We have made the following changes to surrogate valuation since the preliminary determination:

To value coal, we used import prices for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). We also valued coal as two separate categories: coking coal and other coal. *See* Comment 16.

To value iron ore, for the final determination, we have, to the extent possible, treated different types of iron ore as separate factors of production (*i.e.*, we treated the different types of iron ore as separate inputs with separate surrogate values). When a producer has purchased any type of iron ore from one or more market economy suppliers, we have relied, to the fullest extent possible, on the market economy purchase prices which were verified by the Department. When a given producer sourced a particular type of iron ore only locally, or imported only an insignificant percentage of that type or iron ore, we valued that type of iron ore for that producer based on Indian *Monthly Statistics*. *See* Comment 16.

To value steel scrap, we used import prices for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics*. *See* Comment 17.

To value iron scrap, fluorite/fluospar, ferromanganese, magnesium ore, aluminum and coke, we used Indian import values for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics*. *See* Comment 18.

To value scale, we used the United States market price for slag, which is a similar product. *See* Comment 19.

To value dolomite, we used import prices for "agglomerated dolomite" from the *Monthly Statistics*. *See* Comment 15.

To value stones, we used data from the "Stone, Sand and Gravel" SITC 273 category from the *United Nations Commodity Trade Statistics*. *See* Comment 20.

To value silicon manganese, we used import prices from the *Monthly Statistics*. *See* Comment 21.

To value barge rates, we used a simple average of the rates used in the preliminary determination and river rates from the Inland Waterways Authority of India (part of the Ministry of Surface Transportation of the Government of India) submitted by respondents. *See* Comment 25.

To value factory overhead, SG&A and profit for all respondents and firms, we calculated a simple average using the financial reports of the TATA Iron and Steel Company ("TATA") and the Steel Authority of India Limited ("SAIL"). *See* Comment 3.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by the respondents.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. Importer Knowledge of Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC)*, 60 FR at 29824 (June 6, 1995) ("*Preliminary Honey*") and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China*, 62 FR 9160 (Feb. 28, 1997) ("*Brake Drums and Rotors*").

Since the company specific margins for EP sales in our final determination for carbon steel plate are equal to or greater than 25 percent for Anshan, Baoshan, Shanghai Pudong and WISCO, we have imputed knowledge of dumping to importers of subject merchandise from these exporters. We found that Liaoning had margins below 25 percent. Because we found these margins to be below 25 percent, we do not impute knowledge of dumping to importers of subject merchandise reported by Liaoning. Therefore for Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

2. Importer Knowledge of Material Injury

Pursuant to the URAA, and in conformance with the WTO Antidumping Agreement, the statute now includes a provision requiring the Department, when relying upon section 735(a)(3)(A)(ii), to determine whether the importer knew or should have known that there would be material injury by reason of the less than fair value sales. In this respect, the preliminary finding of the International Trade Commission (ITC) is instructive, especially because the general public, including importers, is deemed to have notice of that finding as published in the **Federal Register**. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation. *See* 19 CFR 351.16(g). If, as in this case, the ITC preliminarily finds threat of material injury (*see Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, U.S. International Trade Commission, December 1996), the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely. As noted below, the extent of the import increase is nearly double that needed to find "massive imports." Despite the fact that the ITC found only threat of injury, we find that the sheer volume of imports entering the U.S. from the PRC would have alerted importers to the fact that the U.S. industry would be injured by these dumped imports.

3. Massive Imports

When examining the volume and value of trade flow data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Pursuant to 19 CFR 353.16(f)(2), unless the imports in the comperison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive." In order to determine whether there have been massive imports of cut-to-length plate, we compared imports in the three months following the initiation of the investigation with imports in the three months preceding initiation.

In this case, imports of Chinese plate increased 29 percent in the three months following the initiation of the investigation when compared to the three months preceding initiation, or nearly two times the level of increase needed to find "massive imports" during the same period.

4. China-Wide Entity Results

With respect to companies subject to the China-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire), we are imputing importer knowledge of dumping based on the China-wide dumping rate which is greater than 25 percent. As noted above, we have also determined that importers knew or

should have known that there would be material injury to the U.S. industry due to dumping by the China-wide entity based on the ITC's preliminary determination and the fact that imports in the comparison period are nearly twice the level for finding "massive imports." In the absence of shipment data for the China-wide entity, we have determined based on the facts available, and making the adverse inference permitted under section 776(b) of the Act because this entity did not provide an adequate response to our questionnaire, that there were massive imports of certain cut-to-length carbon steel plate by companies that did not respond to the Department's questionnaire. Therefore, we determine that critical circumstances exist with regard to these companies.

5. Cooperating Respondents Results

Based on the ITC's preliminary determination of threat of injury, the massive increases in imports noted above, and the margins greater than 25 percent for Anshan, Baoshan, Shanghai Pudong and WISCO, the Department determines that critical circumstances exist for Anshan, Baoshan, Shanghai Pudong and WISCO. Because we found margins to be below 25 percent, we do not impute importer knowledge of dumping for Liaoning. Therefore for Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

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Interested Party Comments

Comment 1: Separate Rates

Petitioners contend that the Department's preliminary decision to assign separate rates to the five respondents who submitted questionnaire responses in this case—Anshan, Baoshan, Liaoning, WISCO and Shanghai Pudong—cannot be sustained in the final determination. Petitioners note that under the Department's policy, exporters in non-market economies are entitled to separate, company-specific margins only when they can demonstrate an absence of government control over export activities, both in law and in fact. *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20,588 (May 6, 1991) ("*Sparklers*"); *Silicon Carbide*. They assert that none of the PRC respondents has met this burden of proof, whether with respect to *de jure* or *de facto* control. Petitioners claim that the PRC government controls the steel industry.

Petitioners also claim that respondents did not fully cooperate with the Department. They note that Baoshan only submitted certain "excerpts" from its annual report to the Department at verification. In addition, they contend that Anshan did not provide certain reports and financial statements. Petitioners argue that this information would likely demonstrate that respondents are not entitled to a separate rate.

Respondents argue that petitioners' arguments regarding separate rates are factually and legally flawed and must be rejected.

Respondents note that in the preliminary determination, the Department determined, respondents were not subject to *de jure* or *de facto* government control. They assert that petitioners do not provide any valid arguments or evidence that would justify a reconsideration of this determination. Respondents also note the Department verified the accuracy of this information. Accordingly, they assert that the Department should affirm its finding of an absence of *de jure* and *de facto* control in the final determination and should continue to calculate a separate rate for each respondent in the final determination.

Department's Position: We agree with respondents. The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and do not merit separate rates. This presumption can be overcome by a respondent's affirmative showing that it operates without *de jure* or *de facto* government control.

We found that the respondents have met their affirmative evidentiary burden with respect to the Department's criterion of *de jure* control, because they have provided copies of business licences and the applicable government statute granting them the right to operate as independent companies.

We found that the respondents met the evidentiary burden with respect to *de facto* control as well. During verification, the Department examined the issue and found that information provided by respondents supported the contention that there is a *de facto* absence of government control of the export functions of the respondents. *See* Separate Rates Memorandum, October 24, 1997. Consequently, we have determined that the respondents have met the criteria for the application of separate rates.

We also disagree with petitioners' assertion that Baoshan failed to provide a complete annual report at verification. The Department examined the entire annual report at verification and included in the verification exhibits those segments applicable to the investigation. We also disagree with petitioners that Anshan did not cooperate regarding submission of certain documents; the Department never requested the documents petitioners claim Anshan refused to provide.

Comment 2: Reporting of Sales

Petitioners contend that the respondents do not appear to have reported all of their sales for export to the United States. They state that a review of the quantity and value of subject merchandise reported by the respondents during the six-month POI shows that sales of the subject merchandise were under-reported as compared to U.S. import statistics. Petitioners contend that should the Department find that any respondent that has failed to cooperate by not reporting sales of the subject merchandise for export in its questionnaire response should be deemed a non-responsive exporter and denied eligibility for consideration for a separate rate.

Respondents contend that as part of its investigation in this case, the Department has conducted a thorough examination of the sales made during the period of investigation by each of the respondents involved in this proceeding. Respondents assert that the Department's examination confirmed that the respondents have reported all of their sales properly.

Department's Position: We agree with respondents. The Department conducted verification of the sales quantity and value totals submitted by each of the respondents in the questionnaire responses and we found that all respondents properly reported sales during the POI.

Comment 3: Financial Data From Annual Reports of Indian Steel Companies

Petitioners argue that the Department should use financial data from annual reports of major steel producers in the principal surrogate country to calculate factor values for profit, SG&A and overhead. Petitioners claim that representative data that most accurately reflect the current earnings and expenditures of Indian cut-to-length plate ("CTLP") producers can be found in recent annual reports of the two largest Indian steel plate producers: the TATA Iron and Steel Company ("TATA") and the Steel Authority of India Limited ("SAIL"). Petitioners state that these reports closely correlate with the POI and the industry being investigated. Petitioners note that the Department used a very similar methodology in its selection of surrogate values in the concurrent investigation of imports of CTLP from the Ukraine. Petitioners state that, in its preliminary determination for both Azovstal and Ilyich, the Department calculated COM, SG&A, profit and overhead by averaging data from the annual reports of two companies in Brazil, the principal surrogate country in that case. See *Preliminary Determination of Sales at less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Ukraine, 62 FR at 31957, June 11, 1997.*

In contrast, petitioners claim the most recent data published in the *Reserve Bank of India Bulletin* (dated April 1995) are for 1992–1993. They argue there is no indication that any of this combined data is audited or follows Indian generally accepted accounting principles (GAAP). Finally, they state that the *Reserve Bank* data used in the preliminary determination are not specific to steel production and include an unknown number of other manufacturing and chemical companies.

Respondents agree that the use of information from Indian steel producers may be preferable to the rates obtained from the *Reserve Bank of India Bulletin*. However, respondents disagree with petitioners' suggestion that the Department should limit its analysis to SAIL and TATA when there is information on the record for six such companies: (1) TATA; (2) SAIL; (3) Pennar Steels, Inc. ("Pennar"); (4) Nippon Denro Ispat Ltd. ("Nippon Denro"); (5) Visvesvaraya Iron & Steel Ltd. ("Visvesvaraya"); and (6) Lloyds Metals and Engineers, Ltd. ("Lloyds"). Respondents agree that the Department's goal in selecting expense rates should be to use representative data that most accurately reflect the current earnings and expenditures of Indian cut-to-length plate producers. Respondents claim that ignoring two-thirds of the data that is on the record would be clearly inconsistent with the Department's goal of obtaining representative data, and would violate the Department's fundamental obligation to calculate dumping margins as fairly and accurately as possible. Respondents also dispute petitioners' claim that there is insufficient detail in SAIL's annual report to calculate an overhead rate.

Liaoning and Wuyang argue that the Department should calculate surrogate overhead costs, SG&A expenses, and profit using the actual data contained in the annual financial reports of the six Indian producers of flat-rolled steel products that are on the record in this investigation. They argue that the data contained in these six annual reports are more appropriate for calculating overhead, profit and SG&A ratios than the information from the *Reserve Bank of India Bulletin* used in the preliminary determination because the annual report financial information is specific to India's steel industry. They state that using factory-specific information also would be consistent with the approach taken by Commerce in a number of other investigations. *See Brake Drums and Rotors*, 62 FR 9160; *Melamine Institutional Dinnerware Products From the People's Republic of China*, 62 FR 1708 (January 13, 1997); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Hungarian People's Republic*, 52 FR 17428 (May 8, 1987); *Bicycles*, 61 FR 19026.

Liaoning and Wuyang also argue that the financial experience of these companies represents a broad spectrum of India's flat-rolled steel industry, and an analysis that omits certain companies (or uses only the large or only the small companies) would result in overhead, profit and SG&A ratios that are not representative of either India's or China's steel industry. For example, not all of the PRC respondents are large-scale producers like the Indian producers SAIL and TATA. Wuyang, in particular, is a small steel mill, whose annual sales are only ten percent of those of TATA, and whose size (in number of employees) is far more similar to Visvesvaraya or Nippon Denro. Moreover, they argue that Wuyang does not have a blast furnace or basic oxygen furnace. Wuyang's steelmaking relies entirely on electric arc furnaces, and Wuyang's overhead, profit and SG&A ratios are much more likely to be similar to those of Lloyds or Pennar than those of SAIL or TATA. They state that only an analysis that

includes all the Indian steel producers will result in surrogate overhead, profit and SG&A ratios that are equally representative of the surrogate experience.

Lisoning and Wuyang argue that, in calculating the ratios, Commerce should not calculate weighted-average ratios for the Indian steel producers. Rather, Commerce should calculate overall ratios using a straight average of the data contained in the six companies' financial statements. *See Bicycles from China*, 61 FR at 19039 (when using the Indian producers' annual reports to derive overhead, profit and SG&A, Commerce calculated "a simple average of the financial statements consistent with [its] normal practice").

Petitioners argue the Department should not rely on the data from Pennar, Nippon Denro, Visvesvaraya or Lloyds Metals at all, but instead use data from SAIL and TATA only. Petitioners state that the Department's preference is to derive its calculation of NME financial ratios from firms that are significant producers of merchandise that is identical or most similar to that produced by the respondents under investigation. *See Melamine Institutional Dinnerware Products from the People's Republic of China*, 62 FR 1708, 1712 (January 13, 1997); *Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160, 9167 (Feb. 28, 1997) (Final Determination) (financial data of two companies not used because there was no information indicating their production of subject merchandise during the POI); *Polyvinyl Alcohol from the People's Republic of China*, 61 FR 14057 at 14061 (March 29, 1996) (Final Determination) ("the Department seeks to base surrogate values on the industry experience closest to the product under investigation") . Petitioners claim that TATA and SAIL are companies that produce cut-to-length carbon steel plate. By contrast, petitioners claim Pennar Steels, Nippon Denro, Visvesvaraya, and Lloyds Metals do not produce subject merchandise. Therefore, petitioners argue that, because reliable financial data is available from Indian carbon steel plate producers, consistent with its standard practice, the Department should not rely on the data of other companies that do not produce subject merchandise.

Department's Position: We agree with petitioners. It is the Department's preference to base SG&A and profit ratios on data from actual producers of subject merchandise in the surrogate country. *See Brake Drums and Rotors*, 62 FR at 9168. Of the six companies whose annual reports were submitted on the record, only SAIL and TATA actually produce cut-to-length carbon steel plate. In addition, SAIL and TATA are the only two companies whose annual reports reflect the costs of producing steel and hot-rolled coils. This is relevant as all five Chinese respondents produce coils and steel that are manufactured into plate. The Department is not using the annual report of Visvesvaraya because it is a subsidiary of SAIL and, therefore, all its financial information is already incorporated into SAIL's annual report. In addition, Visvesvaraya produced alloy and specialty steel, not cut-to-length plate. The Department is not using Pennar's annual report because Pennar buys hot-rolled coils and processes the coils into cold-rolled strips. Thus, Pennar produces neither steel nor cut-to-length plate. The Department is not using the annual report of Lloyd's Metals or Nippon because both produce sponge iron and send the iron to an affiliate where it is processed into hot-rolled coils (the affiliates' costs are not incorporated into the annual reports). The coils are then sent back to Lloyd's and Nippon, where they are processed into cold-rolled products. Thus, like Pennar, neither Lloyd's Metal nor Nippon produces steel or cut-to-length plate.

In contrast, the annual reports of both SAIL and TATA list plate as products. In addition, *Iron and Steel Works of the World*, 12th edition lists both companies as producers of plate. There does appear to be a slight discrepancy in regard to TATA. Page 49 of TATA's annual report indicates that TATA has not produced any "plate" since 1993. However, the physical characteristics of the "plate" category for the production statistics are unclear. It is possible that products that the Department considers plate could be included in the category "sheets". Furthermore, TATA's annual report shows significant production of both steel and hot-rolled coils.

Consequently, for the final determination, we have calculated overhead, SG&A, and profit surrogate values by using a simple average of relevant data from the annual reports of TATA and SAIL.

Comment 4: Interest Expenses Offset for Short-Term Income

Lisoning and Wuyang argue that Commerce should, when possible, offset the interest and financial expenses of Indian steel producers with their corresponding operating income. That is, when calculating SG&A, Commerce should offset interest expenses by the amount of short-term interest income. *See Brake Drums and Rotors*, 62 FR at 9168 (Department reduced interest expenses by amounts for interest income and also allocated a portion of "other income" as short-term interest income for those companies that did not specify a breakdown of their non-operating income); *see also Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 55 FR 26721, Comment 8 (June 29, 1990). Lisoning and Wuyang state that merely adding financial expenses to SG&A without reducing those amounts by any corresponding operating income would overstate actual net financial expenses. They claim that offsetting financial expenses against financial gains reflects more accurately the Indian producers' actual financial cost of doing business.

Petitioners argue that Lisoning is incorrect in arguing that the Department should, when possible, offset interest and financial expenses of Indian steel producers with their corresponding operating income. Petitioners argue that neither *Brake Drums and Rotors* nor *Frozen Concentrated Orange Juice from Brazil* supports offsetting financial expenses by operating income other than short-term interest earned. Petitioners state that in *Brake Drums and Rotors*, where the respondents made the same claim based on the *Orange Juice* determination, the Department offset interest expenses by the amount of short-term interest income. Petitioners cite *Brake Drums and Rotors*, in which the Department "disagree{d} that operating income * * * should be in the offset." 62 FR at 9168. Petitioners claim that although the Department did offset the interest expense of certain producers by a portion of their "other income" or "miscellaneous receipts," this was done merely as a means of allocating short-term interest costs for those producers whose financial statements did not specify a breakdown of non-operating income. Petitioners argue that interest and financial expenses may be reduced by amounts for interest income only if the surrogate producers' financial reports note that the income was short-term in nature.

Department's Position: We agree with petitioners. The Department will offset interest expense by short-term interest income only where it is clear from the financial statements that the interest income was indeed short-term in nature. *See Brake Drums at Rotors*, 62 FR at 9168. For the annual report of SAIL, the Department considered the following items of the line item "Interest Earned" (page 31 of SAIL's annual report) as short-term interest income: (1) loans and advances to other companies, (2) loans and advances to employees, and (4) term deposits. Therefore, we offset SAIL's interest expense by these amounts for the final determination. For the annual report of TATA, we found that the interest expense reported (page 24 of TATA's annual report) was already net of all short-term interest income. Therefore, for the final determination, we did not further offset the interest expense.

Comment 5: Exclusion of Packing and Other Expenses From SG&A Expenses

Lisoning and Wuyang also argue that, when calculating SG&A, Commerce should exclude all expenses incurred by Indian steel producers that relate to packing, as well as all other direct selling expenses. They state that since packing and direct selling expenses are separately accounted for in the Department's dumping calculation, these expenses must be excluded to avoid double-counting. They argue that Commerce should ensure that packing and other direct selling expenses are not double-counted by excluding the categories "other expenses" and "miscellaneous expenses" in the Indian financials from the surrogate SG&A values. They cite the *Preliminary Determination of Sales at Less Than Fair Value; Brake Drums and Rotors from China*, 61 FR 53190. In that case, there was no indication from an Indian producer's financial statement used to calculate SG&A as to which line item expenses included a specific amount for packing expenses. Commerce considered packing expenses to be included in the line item labeled "miscellaneous expenses" since "there appears to be no other entry under which such an expense could be included." Commerce therefore removed the amount for "miscellaneous expenses" from the SG&A calculation. *See Factor Valuation Memorandum*, Attachment 9, Shivaji Analysis, at 2. Similarly, because there was no indication from the financial statement of another producer as to which line item expenses included a specific amount for packing expenses, Commerce considered this expense to be included in the line item labeled "other expenses," and removed the amount for "other expenses" from the SG&A calculation. *Id.*, Rico Analysis, at 2. Lisoning and Wuyang argue that in this investigation, where the Indian steel producers' financial statements do not indicate what amounts are related to packing, Commerce similarly should remove "other expenses" or "miscellaneous expenses" from the calculation of SG&A in order to avoid including an expense that is already deducted from U.S. price.

Lisoning and Wuyang also argue that Commerce should exclude from the calculation of SG&A all direct selling expenses incurred by the Indian steel producers that normally are deducted from export price and constructed export price transactions when calculating net U.S. price. They state that direct selling expenses, such as commissions, discounts, bank charges, royalties, etc., should not be included in normal value as part of the surrogate SG&A ratio because they are deducted from U.S. price. They claim that Commerce cannot make a fair comparison of normal value to export price and constructed export price if it includes direct selling expenses in SG&A in the normal value calculation, but deducts such expenses from EP and CEP. *See Torrington Co.* v. *United States*, 66 F.3d 1347, 1352 (Fed. Cir. 1995) (the antidumping statute requires an "apples to apples" comparison). They argue that to ensure a fair comparison, Commerce therefore should calculate an amount for SG&A that is net of all direct selling expenses.

Petitioners argue there is no basis for Lisoning's claim that costs related to packing would be included in either a "miscellaneous expense" of "other expense" category. To the contrary, petitioners argue that most steel companies pack their merchandise at the production site; thus, the labor and materials associated with packing, if there are any, will be included in cost of manufacturing, not in SG&A. Petitioners argue that for those companies that pack merchandise at a separate facility and assign the costs to SG&A, packing is usually specified as a discrete item.

Petitioners argue that even if some companies were to include packing in a miscellaneous or catch-all expense category, it is clear the packing would be just one of numerous expenses. Petitioners claim it would therefore be inappropriate—indeed distortive—to deduct the entire amount of the reported miscellaneous or other expense, as respondents suggests.

Petitioners suggest that respondents' reliance on the preliminary determination in *Brake Drums and Rotors* is misplaced. Petitioners claim for its preliminary determination, the Department removed the amount for "other expenses" for the Indian producer RICO to account for packing expenses. *Brake Drums and Rotors*, 61 FR 53190 at 53197 (October 10, 1996). Petitioners state that in the final determination, however, the Department reversed itself. Petitioners state that the Department expressly included RICO's "other expenses" in its SG&A calculations.

Petitioners argue that the Department should reject respondents' argument that all direct selling expenses should be excluded from its surrogate SG&A calculation. Petitioners argue that the purpose of the calculation of the SG&A of the Indian producer is to determine the ratio of selling, general and administrative expense to the cost of manufacture. Petitioners argue that all expenses incident to selling, general and administrative functions of the company should be part of the SG&A calculation.

Even if the Department should decide to exclude direct selling expenses, petitioners argue, respondents' classification of such expense is overly broad. Petitioners argue that there is no evidence that the suggested exclusions were directly related to specific sales. Petitioners argue that because the Department has no information on the specific amount of direct selling expenses incurred by surrogate country producers, the Department should decline to make an item-by-item evaluation of the Indian companies' SG&A components. *See Oscillating Fans and Ceiling Fans from the People's Republic of China* ("*Oscillating Fans*"), 56 FR 55271 at 55276 (Oct. 25, 1991) (Final Determination); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania*, 52 FR 17433, 17436 (May 8, 1987) (Final Determination). Petitioners argue that since there is no indication whether (or how much of) such purported expenses are directly related to specific sales, the Department should reject respondents' claim that "direct selling" expenses should be excluded from the surrogate SG&A ratios.

Department's Position: We agree with respondents that packing expenses should be excluded from the SG&A surrogate value to the extent possible. However, we disagree that all "other expenses" and "miscellaneous expense" categories should be excluded to prevent double-counting from occurring. If there is a line in an Indian producer's financial statement for packing expenses, then the Department should not include it in SG&A. However, for both SAIL and TATA there is no specific line item limited to packing expenses. As petitioners state, it would be unreasonable and distortive for the Department to exclude all "other" or "miscellaneous" expenses just because they might contain packing expenses. These categories are undoubtedly made up of many expenses and may not include packing expenses

at all. It is possible, as petitioners suggest, that these companies included packing expenses in their raw material costs.

We note that the fact pattern in this investigation differs from *Brake Drums and Rotors*. We found that the "other" and "miscellaneous" categories listed in SAIL's and TATA's annual reports are too large to throw out simply because they might contain packing. Our examination of TATA's other expenses (page 26 of TATA's annual report) shows that it includes items such as provision for proportionate premium on redemption of non-convertible debentures, expenses of issue of rights shares, loss on discarded assets, provision for diminution in value of investments and exchange differences. We find that there is no indication that the other expenses category includes packing. Our examination of SAIL's annual report indicates that there is no explanation of the miscellaneous category other than that it includes a donation (page 36 of SAIL's annual report).

In regard to direct selling expenses, we agree in part with respondents. We note that in this investigation, all U.S. sales were EP sales. Therefore, we have not included, in our calculation of SG&A and overhead, items for which we made adjustments to U.S. price (*i.e.*, movement expenses). However, we do not agree with respondents that items such as commissions, export sales expenses, insurance, and royalties should be excluded from our calculation of SG&A and overhead. All of these factors contribute to the SG&A and overhead ratios of Indian steel producers; therefore these items (*i.e.*, commissions, export sales expenses, insurance, and royalties) have been included in our SG&A calculations for the final determination. However, we have not included, in our calculations of SG&A and overhead values, items for which we made adjustments to U.S. price. To the extent possible, we only deducted from U.S. price such items such as movement expenses. For all five respondents, we deducted brokerage and handling from U.S. price. In addition, we deducted from U.S. price, insurance related to export sales for two respondents.

Respondents claim we should exclude commissions, export sales expense, insurance, and royalty and "cess" as direct selling expenses for SAIL. Likewise, they claim we should exclude royalty, insurance charges, and commission/discounts as direct selling expenses for TATA. We disagree with respondents' arguments. Because we did not exclude such expenses from U.S. price, we are including them in SG&A.

Comment 6: Exclusion of Taxes From Overhead and SG&A

Liaoning and Wuyang also argue that the Department should not include in its calculation of the overhead and SG&A ratios the expenses incurred by Indian producers of steel that relate to taxes paid to governmental authorities. They state that, in past cases, the Department's practice has been to construct a value for the subject merchandise as if it were manufactured by a producer in the surrogate country for export. *Pencils from the People's Republic of China*, 59 FR at 55625 (Nov. 8, 1994). Hence, they argue, in constructing values based on Indian domestic prices, the Department must eliminate excise duties, levies, and sales taxes from those prices, as these items are rebated upon export from India. *See Brake Drums and Rotors*, 62 FR at 9163. In addition, they state that the Department has expressed a clear preference for PAI that is tax exclusive. *See Disposable Lighters from the PRC*, 59 FR at 64191, 64914 (Dec. 13, 1994); *Sebacic Acid from the PRC*, 59 FR at 28053 (May 31, 1994). Therefore, they argue Commerce should remove from the surrogate overhead and SG&A calculation any excise duty listed in the financial reports. *Brake Drums and Rotors*, 62 FR at 9164.

Department's Position: We agree in part with respondents. We have deducted all excise duties from our calculation of SG&A. However, we have not excluded the line "rates and taxes" from our calculations. These taxes represent the taxes and licenses, property taxes and other miscellaneous taxes that Indian steel producers incur in the normal course of business and, thus, should be a part of our SG&A surrogate value.

Comment 7: Adjustment of Surrogate Overhead Rate

Respondents state that in the preliminary determination, the Department adjusted the surrogate overhead rate for all Chinese respondents who reported any workers as performing overhead or SG&A functions that were not specifically tied to the production of subject merchandise. Respondents argue that this adjustment was unnecessary because (1) the surrogate overhead rate used by the Department in the preliminary determination included overhead and SG&A labor and (2) the Chinese respondents in this investigation properly allocated labor between direct labor, indirect labor, factory overhead labor, and SG&A labor.

Respondents argue that the labor adjustment made in the preliminary determination arbitrarily and unfairly reclassified all workers working in plants involved in the production of subject merchandise as direct production workers, regardless of the tasks performed. Respondents claim this unfairly penalized Chinese respondents for following normal Departmental practice and excluding hours worked by overhead and SG&A workers from the hours reported for production of subject merchandise. Respondents argue that as a matter of principle and established practice, the Department recognizes (1) that some functions performed by workers are properly classifiable as factory overhead or SG&A functions and (2) that the Department's normal value calculations in non-market economy cases should include only workers involved in the production of subject merchandise—workers performing overhead and SG&A tasks are not to be included. *See Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China*, 57 FR at 21058, 21064 (May 18, 1992) (direct labor hours for factory level administrators and workshop level supervisors found to be factory overhead and SG&A, respectively); *Furfuryl Alcohol*, 60 FR at 22544, 22548 ("Since our surrogate value for factory overhead includes indirect labor and it is the Department's practice to only include the production labor related to the subject merchandise, we have revised our final calculations on labor to avoid double counting labor."). Respondents argue that the reason overhead workers and SG&A workers should not be included in the Department's calculations is that the costs of such workers are already reflected in the surrogate overhead and SG&A rates applied by the Department to the direct production costs incurred by the non-market economy producers.

Respondents claim that they undertook an analysis of the workers employed in the facilities involved in the production of subject merchandise and attempted to classify workers in a manner consistent with the Department's request for information and the Department's practice. Respondents state that in the questionnaires issued by the Department in this investigation, the Department required Chinese respondents to report labor hours for "direct, skilled workers," "direct, unskilled workers," and "indirect workers"—yet never provided specific (or even illustrative) instructions regarding how such workers should be identified. They also claim the Department never provided any guidance regarding how "indirect" workers were to be distinguished from "factory overhead" workers or SG&A workers. Respondents state that they disclosed in their responses the rules applied by each respondent for classifying workers, as well as a substantial amount of information regarding the tasks performed by workers in the production facilities. Respondents argue that, under these classification methodologies, the dominant characteristic of workers classified as "factory overhead" workers is that these workers were responsible for the maintenance of the facilities. They also argue the dominant characteristic of SG&A workers is that they performed relatively high-level, supervisory or administrative functions within the facilities and were not physically involved in the production process.

Respondents claim that neither the Department nor the petitioners have objected to the classification methodologies used by the Chinese respondents to distinguish between direct, indirect, factory overhead, and SG&A workers. They also claim that neither the Department nor the petitioners have proposed any modifications or alternatives to the methodologies used by the respondents to classify labor. Respondents claim that, in light of these circumstances, it is fair to conclude that the rules used by the respondents to classify labor are reasonable. Respondents claim, in other words, that they were correct in classifying maintenance workers as factory overhead workers and in classifying supervisors and administrators as SG&A workers and in excluding such workers from their reported labor hours, (*i.e.*, labor outside SG&A and overhead Therefore, respondents argue that any re-classification of workers is unnecessary.

In addition, respondents argue that the Indian surrogate values for factory overhead and SG&A rate reflect the labor cost of maintenance and administration. Accordingly, they claim there is no reasonable justification for "adjusting" (*i.e.*, inflating) such rates to account for maintenance workers and administrative personnel—since such an adjustment would double-count labor expenses.

Liaoning and Wuyang reiterate that the Department should not, in the final determination, make an adjustment to increase the surrogate overhead value for Wuyang to account for labor resources dedicated to overhead. They state that in its reported production expense factors, Wuyang excluded from its "labor" calculation certain workers because of the Department's policy for calculating overhead and SG&A in non-market economy investigations. They argue that these workers can be divided into three categories according to the relationship of their activities to the subject merchandise: (1) activities entirely unrelated to steel plate, in particular the activities of the automation research and development division, which performs research and development related to the company's consulting services in the field of industrial automation; (2) activities generally related to all products and services (for example, the personnel department); and (3) activities generally related to steelmaking, in particular the activities of the steel research and development division. They argue with respect to category (3), to Liaoning and Wuyang's knowledge the Department has never included R&D in the factors of production because doing so would almost certainly double-count R&D included in the surrogate values for factory overhead and SG&A. *See, e.g., Oscillating Fans*, 56 FR at 55271 (Commerce Department agreed with Respondent that product development and manufacturing liaison costs are not direct manufacturing costs to be included in the factors of production and that these costs are properly valued using surrogate country data for factory overhead). They state that because surrogate overhead and SG&A values already include R&D expenses, the overhead value would double-count R&D if the Department were to include Wuyang's R&D labor in the factors of production. They also argue that the Department has established an explicit policy in NME cases of not adjusting the surrogate values for R&D expenses under any circumstances. In *Chrome-Plated Lug Nuts from China*, for example, a respondent requested the Department to exclude R&D expenses from the surrogate value for factory overhead on the ground that the respondent did not actually incur R&D expenses. They claim that the Department refused to exclude the R&D, citing the Department's policy not to make an "item-by-item evaluation of overhead components." 61 FR at 58514, 58517 (November 15, 1996), *citing Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30, 1995) and *Tapered Roller Bearings from Hungary*, 52 FR at 17428 (May 8, 1987). They state that the Department reiterated this policy in *Heavy Forged Hand Tools from China*, 61 FR 46443 (September 3, 1996), when the Department refused to deduct R&D expenses from surrogate overhead values based on data published in the April 1995 *Bulletin of the Reserve Bank of India*, the same source upon which petitioners relied in their petition to calculate factory overhead.

Liaoning and Wuyang conclude that given the nature of the overhead and SG&A activities described above and the Department's established policy in NME cases, Commerce should not reallocate any of Wuyang's overhead labor to the labor valued directly based on factors of production. In the alternative, they argue that if Commerce does adjust the surrogate overhead value to account for "additional labor," however, then Commerce also should (1) make all necessary corresponding adjustments to Wuyang's energy consumption factors, because Wuyang allocated its energy consumption based on its reported labor hours; and (2) exclude "other manufacturing expenses," "other expenses," and "miscellaneous expenses" from the surrogate overhead and SG&A values to avoid double counting labor expenses.

Petitioners state that this issue is not relevant to the final determination unless the Department again chooses to rely on a source for the surrogate value for overhead that does not include labor, such as the *Bulletin of the Reserve Bank of India* data. However if this is the case, petitioners argue the Department should make an adjustment along the same lines as the one made in the preliminary determination because the Department's methodology is sound.

Petitioners claim that respondents' criticism of the Department's approach rests on several false premises: (a) that the values from the *Reserve Bank of India Bulletin* already included labor; (b) that overhead and SG&A workers are not to be included in the Department's calculations; (c) that the Department's labor adjustment to overhead arbitrarily and unfairly reclassified all workers working in plants involved in the production of subject merchandise as direct production workers, regardless of the tasks performed; and (d) that the Department would have acted differently had it understood that not all respondents had allocated a majority of their workers to overhead and SG&A.

Petitioners also argue that normal value in NME cases always includes a component for overhead and SG&A. Petitioners state that respondents do not seem to disagree in principle with the notion that the labor associated with overhead belongs in the surrogate value for overhead. Petitioners argue that it then becomes a factual question of

whether such labor is, or is not, included in the surrogate data. Petitioners argue that labor is not included in the surrogate overhead value calculated from the *Reserve Bank of India Bulletin*.

Finally, petitioners argue, respondents are wrong in focusing on the Department's statement in the preliminary determination that respondents allocated a majority of the labor employed in their facilities to overhead and selling and general administrative tasks. Petitioners argue it is plain from the preliminary calculation memoranda that the Department's decision to adjust overhead for labor was not dependent on a respondent allocating a "majority" of its workers to overhead and SG&A.

Petitioners argue that respondents have presented no cognizable basis for challenging the Department's practice of adjusting the surrogate overhead value for labor where such value does not already include overhead labor. Petitioners state that if, in the final determination, the Department uses a surrogate overhead value other than the value derived from the *Reserve Bank of India Bulletin*, and if that alternative value likewise does not include all overhead labor, a similar adjustment should be made.

Department's Position: Because the Department is now using a simple average of the annual reports of SAIL and TATA, rather than the *Reserve Bank of India Bulletin*, to calculate our surrogate overhead and SG&A values the question of whether or not the data in that publication included overhead labor is now moot. We agree with petitioners that to the extent that our new surrogates do not include overhead or SG&A labor, adjustments to these values are appropriate.

SAIL's annual report explicitly states that "employee remuneration and benefits" are not included in the overhead category "repairs and maintenance." Nor is there any indication that "employee remuneration and benefits" would be included in the following overhead categories: "stores and spares," "joint plant committee," "insurance," "rent," "royalty and cess," "cash discount," "conversion charges," or "water charges." However, "handling expenses," which is broken down into handling of raw materials, finished goods, and scrap recovery, would appear to consist entirely of overhead labor. In addition, there are SG&A categories that appear to account for SG&A labor, such as, "directors fee," "remuneration to auditors," "cost audit fee," and "miscellaneous." It is also likely that the following SG&A categories contain some labor: "export sales expense," "security expenses," "traveling expenses," "training expenses." Therefore it appears that the surrogate overhead and SG&A values calculated from SAIL's annual report contain overhead and SG&A labor.

TATA's annual report also explicitly states that overhead items "stores consumed," "repairs to buildings," "repairs to machinery," and "relining expenses" exclude amounts charged to wages and salaries. There is no indication that the other overhead categories, "rents," "royalty," "insurance charges," "joint plant committee funds," "conversion charges," and "depreciation" include overhead labor. TATA's material handling charges appear to be included with freight charges in the category "freight and handling charges" which we allocated to COM as they are part of TATA's cost. We have no way of determining how much of this figure should be allocated to handling charges, and thus, to overhead. Therefore, we are including the entire amount in COM. With regards to SG&A labor, the annual report indicates that managerial remuneration is included in the SG&A category "other expenses." Therefore, it appears that the surrogate overhead and SG&A values calculated from TATA's annual report contain SG&A labor, however, it is inconclusive whether or not it contains overhead labor.

As stated above, the Department's surrogate SG&A and overhead values are based on a simple average of the values calculated from the annual reports of TATA and SAIL. Therefore, since both the annual reports clearly contain SG&A labor, it is not necessary for the Department to make an adjustment to our SG&A surrogate value to account for SG&A labor.

As mentioned above, the overhead surrogate value calculated from SAIL's annual report does contain overhead labor, however it is inconclusive whether the overhead surrogate value calculated from TATA's annual report contains overhead labor. Therefore, our simple average of the two contains some overhead labor but it is not clear whether it contains sufficient overhead labor. To ensure that no double counting occurs, the Department is faced with the options of (1) excluding from its calculation of overhead all SAIL and TATA income statement line items that might include overhead labor and making a similar overhead adjustment as in the preliminary determination (in the preliminary determination, the Department adjusted the overhead surrogate value using ratios developed from respondents reported overhead and direct workers), or (2) leaving the overhead surrogate as calculated and not making the overhead labor adjustment. The Department considers it more reasonable to leave the overhead surrogate as calculated. The Department fears that excluding all categories that might include overhead labor would unfairly exclude many costs that should be included in our overhead surrogate. Therefore, given the Department's new surrogate values for SG&A and overhead, we did not make any adjustments for overhead or SG&A labor in the final determination.

Comment 8: Overhead Energy Adjustment

Respondents argue that the Department's overhead energy adjustment was unnecessary and improper in the context of this investigation, because (1) virtually all energy used by the Chinese respondents is already included in the Department's normal value calculation, and (2) the calculation used by the Department bears no relationship to any reasonable "overhead energy" costs incurred in the production of subject merchandise. Respondents state that the only energy inputs treated as overhead by the Department were water, compressed or forced air, and steam. Respondents claim that each of the overhead energy items is relatively inexpensive so the overall cost of "overhead energy" is negligible. They argue no adjustment is necessary in the final determination.

Respondents argue that the adjustment used by the Department in the preliminary determination was arbitrary and improper. They claim the costs calculated using this methodology bear no relationship to any reasonable cost of overhead energy. They contend that the purpose of the overhead energy adjustment made in the preliminary determination was to include a portion of overhead that was apparently missing from our selected surrogate. The *Reserve Bank of India Bulletin* overhead data does not contain any items that would lead the Department to believe that overhead energy was accounted for. They claim there is no reasonable basis to believe the adjustment used by the Department would provide a reasonable estimate of the costs of providing water, steam, and compressed air to the steel production facilities of the Chinese respondents and therefore should not be used in the final determination.

Petitioners argue that, had the Department not made some kind of adjustment for the omission of power and fuel from the overhead calculation, it would have improperly ignored respondents' overhead energy costs.

Petitioners argue there is no support on the record for respondents' belated claim that these costs are "negligible", because they have not been reported. Petitioners state that the point of the adjustment is to develop a reasonable estimate of the overhead energy costs of producers of plate in the surrogate country. Petitioners do agree that the methodology used by the Department is arbitrary, but the solution proposed by respondents (*i.e.*, ignoring the issue altogether) is not adequate. Instead, petitioners claim if the Department continues to use data from the *Reserve Bank of India Bulletin* for overhead, the energy adjustment should be accomplished by other means. Because the record data from Indian sources does not allow the Department to precisely distinguish overhead energy from direct energy inputs used in the steel industry, petitioners argue the Department should develop a ratio from the cost accounting data provided by Geneva Steel in the petition. Consistent with the usual cost accounting practices of the steel industry, petitioners argue the petition separately sets forth direct energy inputs and overhead energy consumption. From this information, petitioners suggest the Department can determine the ratio of Geneva's overhead energy costs to direct energy costs. Petitioners argue that the surrogate value for overhead should be increased by an amount equal to the above ratio times the individual respondent's total surrogate costs for direct inputs of fuels, utilities, and gases.

Petitioners point out that, like the adjustment to overhead for additional labor, the overhead energy adjustment is largely a function of the Department's choice of the source for the overhead surrogate value. Petitioners argue that regardless of the Department's choice of overhead surrogate value in the final determination, it should carefully examine whether overhead energy is included; if it is not, the Department should make an overhead energy adjustment similar to the one just described.

Department's Position: We agree with petitioners that this issue is tied to the Department's choice of the source for the overhead surrogate value. As discussed above, we have chosen a simple average of the annual reports of SAIL and TATA as the source for the overhead surrogate value. We then examined whether overhead energy was included in the overhead values reported in those reports. Using a methodology similar to that used in the preliminary determination, we excluded the categories "power and fuel," "fuel oil consumed," and "purchase of power" from our value for overhead since we are valuing these items as direct inputs. For SAIL, we included in our overhead calculation the item "water charges" since the Department normally treats water as an overhead expense. In addition, we consider it likely that additional overhead energy is included in the overhead item "stores and spares." We allocated the item "stores and spares" to overhead. For TATA, there is no item that is entirely comprised of overhead energy. However, we consider it likely that some overhead energy is included in the overhead item "stores and spares."

As with our calculation of overhead labor described in Comment 7, the simple average of SAIL's and TATA's calculated overhead values contains some overhead energy but it is not clear whether it contains sufficient overhead energy. To ensure that no double counting occurs, the Department is faced with the options of (1) excluding from its calculation of overhead all SAIL and TATA income statement line items that might contain overhead energy and making an appropriate overhead energy adjustment, or (2) leaving the surrogate overhead value as calculated and not making an adjustment for overhead energy. The Department considers it more reasonable to leave the overhead surrogate as calculated. As with labor, the Department fears that excluding all categories that might include overhead energy would unfairly exclude many costs that should be included in our overhead surrogate. Therefore, given the Department's new surrogate value for overhead, we did not make any adjustment for overhead energy in the final determination.

Comment 9: Credit for By-Products

Respondents argue the Department must credit respondents' cost of manufacture for by-products before applying the factory overhead rate in the final determination. They argue that in the preliminary determination, the Department treated costs and credits asymmetrically by deducting by-products from the cost of manufacture after applying the factory overhead rate and without including factory overhead in its calculations of by-product credits.

Department's Position: We agree with respondents. In calculating the cost of manufacture, the Department uses a net material amount that we derive by deducting the by-products from gross materials. Therefore, we credit by-products before we calculate the cost of manufacture and overhead.

Comment 10: Treatment of Gases

Respondents argue that the Department should treat industrial gases as overhead for the final results. Respondents argue that, in deciding whether to treat industrial gases as overhead or direct material inputs, the fundamental issue is how such materials are treated by Indian steel producers. Respondents state that if the standard practice for Indian firms is to treat industrial gases as overhead, then those values must already be included in the surrogate value for factory overhead that the Department is using. Respondents claim that, if this is the case, including industrial gases as a direct input as well as in overhead would result in double-counting.

Respondents argue that a review of the financial information of Indian steel producers on the record reveals that the standard practice for Indian steel companies is to include industrial gases as part of factory overhead. Respondents claim that none of the annual reports of Indian steel companies provided in this investigation treated industrial gases as either a material input or an energy source. Thus, respondents argue, including the cost of those gases as a direct input in the final calculations would double-count those costs.

Petitioners argue that industrial gases used in iron and steel making should be treated as direct energy inputs, and not as overhead. Petitioners state that unless a gas is used specifically for overhead energy (*e.g.*, to heat a facility) it should not be characterized as overhead. Petitioners argue that gases such as oxygen are important inputs in the steel making process, serving both as refining agents and as an energy source. Petitioners argue that valuing these gases as direct inputs would not result in double-counting as respondents claim. Petitioners state that worksheets provided by the Department in its Factor Valuation Memorandum show that these energy inputs are not included in factory overhead (Commerce specifically excluded "power and fuel" expenses before it calculated the overhead rate for the preliminary determination). Accordingly, petitioners argue there is no double counting.

Petitioners argue that the respondents' contention that the standard practice for Indian steel companies is to include these energy inputs as part of factory overhead is incorrect. Petitioners claim that respondents' statement that "none of the annual reports * * * treated industrial gases as either a material input or an energy source" is incorrect. Petitioners argue that the listing for

"Others" in the power and fuel cost of SAIL most likely includes industrial gases. Petitioners argue that neither SAIL's annual report nor TATA's provides any information which supports respondents' contention that industrial gas inputs should be included in factory overhead.

Petitioners state that Indian accounting practices actually require that energy inputs be treated as direct inputs. They argue that in *Brake Drums and Rotors*, the Department found that, under Indian GAAP, inputs may be treated as factory overhead only if they are not consumed in the production process. *See* 62 FR at 9160, 9169 (citing the *Compendium of Statements and Standards* published by the Institute of Chartered Accountants of India). Petitioners argue that in this case there can be no dispute that these energy inputs are consumed in the production process. Accordingly, petitioners argue that respondents' arguments regarding the inclusion of energy inputs in factory overhead should be rejected.

Department's Position: We agree with petitioners. There is no indication in the annual reports of SAIL and TATA that they treat industrial gases as overhead energy costs. We have therefore valued these gases as direct inputs and excluded the line items "power and fuel," "fuel oil consumed," and "purchase of power" from our overhead calculations to ensure that no double counting of these costs occurs.

Comment 11: Valuation of Self-Produced Inputs

Respondents argue the Department's primary goal and responsibility in selecting surrogate values in investigations involving producers in a non-market economy (NME) is to determine—as accurately, fairly, and predictably as possible—the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. *See Oscillating Fans*, 56 FR at 55271, 55275, cited with approval in *Lasko*, 43 F.3d at 1442. To do so, the Department requires respondents to report the actual inputs they use in the production of the subject merchandise, and then values those inputs at the price for those inputs in a comparable market economy. In this case, the Department is calculating a normal value for steel plate based on the actual inputs used by the Chinese producers to manufacture steel plate and the values for those inputs primarily in India.

Respondents claim that the same rationale that leads the Department to calculate normal value for steel plate based on the actual factors of production also requires that it use a similar methodology for self-produced inputs (such as oxygen, nitrogen, argon and similar gases) " at least when the necessary information is available on the record. In this case, respondents argue the Department does have verified information on the actual inputs used to produce the oxygen, nitrogen, argon and similar gases that are used in steel plate production by Anshan, Baoshan, Shanghai Pudong and WISCO. Respondents argue the Department should therefore calculate the value for those gases based on the actual inputs.

Respondents state that in the preliminary determination, the Department ignored the actual inputs used to make these gases, and instead valued these gases based on price quotations for such gases in India. Respondents claim such an approach would be appropriate only if the Department were to assume that it is more accurate to use the prices in India for those gases than to build up the values for those gases from the actual inputs used to produce them. Respondents claim that assumption is flatly inconsistent with the entire methodology used in non-market-economy cases, and cannot be correct. Respondents argue that, if previous assumption were correct, then it would follow that Commerce should value steel plate based on price quotations from Indian suppliers rather than to build up a normal value based on the actual factors of production used in manufacturing steel plate.

Petitioners argue that the values assigned to industrial gases used by respondents should be based on Indian surrogate values and not respondents' factors of production for these gases. Petitioners claim that the respondents' factors of production cannot be used by the Department because they are inherently unreliable. Petitioners argue that it is only where the Department can determine that a non-market economy producer's input prices are reliable that accuracy, fairness and predictability are enhanced by using those input prices. *See Oscillating Fans*, 56 FR at 55271 and 55274–75.

Petitioners claim that respondents used the Department's August 18, 1997 request for spreadsheets used in calculating the factors of production as a chance to cure existing deficits in the record regarding respondents' industrial gas production by submitting complete factor of production data for "certain" gases. Petitioners claim it would be unfair for the Department to use this mostly unverified data to calculate factors of production for industrial gases because petitioners have not been afforded the opportunity to comment on these data and the Department did not have ample opportunity to consider whether to verify the data pertaining to industrial gases.

Petitioners argue that respondents did not, as they contend, submit complete factor information for the industrial gases used in the steelmaking processes in their questionnaires or supplemental questionnaires. Petitioners claim that the cites to questionnaire and supplemental questionnaire responses did not adequately identify the data necessary to sustain respondents' contention that they produce all of the industrial gases they use. Petitioners also argue that the Department's findings at verification regarding gas usage and production by respondents further calls into question the reliability of respondents' industrial gas production factor information. In addition, petitioners argue that respondents have not put any information on the record regarding the ownership of their gas plants. For these reasons, petitioners argue that the respondents' factors of production for these gases are unreliable and should not be used for the final determination.

Department's Position: We agree that, for some respondents, the value of the subject merchandise in this case is more accurately measured if the self-produced gases are valued based on the actual inputs used to make these gases.

In NME cases, the Department selects the surrogate values that reflect best the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. It is the Department's practice to collect data on all direct inputs actually used to produce the subject merchandise, including any indirect inputs used in the in-house production of any direct input.

To accurately value all direct and indirect inputs, the Department requires sufficient time to analyze usage rates and select appropriate surrogate values. It is also important that interested parties have the opportunity to comment on the reported usage rate and surrogate value proposed by the Department. For these reasons, it is important that the Department receives the respondents in a timely manner. In the instant case, although WISCO claimed that the inputs for the production of this gas were reported in its April 14, 1997 submission, the actual information was not submitted until seven days before the verification. The later submission was untimely because the Department had specifically requested that information and provided a deadline which was more than two months earlier. The fact that this information was verified does not commit the Department to consider it timely in its final determination.

Similarly, Baoshan's April 14, 1997 supplemental response claimed to have reported the inputs used in self-producing a certain gas, but the actual data were absent from the specified appendix. Baoshan claims that data on this gas and its material inputs can be found in a different appendix and this information was verified. However, that appendix responds to the Department's question on energy consumption and contained a Baoshan Energy Department report for only the month of July. Furthermore, no labor factors involved in the self-production of oxygen are included on the worksheet. The Energy Department report was later verified for the integrity of the reported energy consumption rather than for production of this gas. Not until Baoshan's August 21, 1997 submission, which reached the Department after verification, did Baoshan provide, in a usable format, the complete factors for the gas it self-produces.

The Department is rejecting WISCO and Baoshan's production data for their self-produced gases due to untimeliness and lack of consistency. For WISCO and Baoshan, therefore, we are continuing to use the Indian surrogate values that were used for the preliminary determination for their self-produced gases.

Anshan reported gases which were self-produced and their production inputs. Shanghai Pudong reported three factors as being as self-produced and provided their inputs. For these two respondents, the Department used their reported production inputs for valuing the factors for producing the subject merchandise.

We disagree with the petitioner's claim that the verification of the self-produced gases showed them to be unreliable for Anshan and Shanghai Pudong. These data were submitted on the record in a timely fashion and were verified. The verification report contains no mention of discrepancies in these data.

Comment 12: Domestic Inland Freight Expenses

Liaoning and Wuyang maintain that if the Department uses Indian *Monthly Statistics* to derive surrogate values for raw material inputs, it should not add to these costs an extra amount for domestic inland freight expenses. Respondent argues that in *Sigma Corporation* v. the *United States*, 117 F.3d 1401 (Fed. Cir. July 7, 1997) ("*Sigma*"), the U.S. Court of Appeals for the Federal Circuit ("CAFC") ruled that to do so would overstate the value of the freight component of normal value. In making its decision, they argue, the Court determined that the Department's methodology of adding a constructive freight charge on top of the import prices double counted a substantial component of the total freight expense. These respondents conclude that the Court's holding in *Sigma* is applicable to this case, and if the Department uses Indian *Monthly Statistics* to derive surrogate values for raw material inputs, it should not add a constructive freight charge on top of these prices for the shipment of such raw materials from Chinese suppliers to the respondents in this investigation.

Petitioners argue that, in *Sigma*, the CAFC did not preclude the Department from making an adjustment to account for domestic freight. Petitioners argue that, to the contrary, the Court expressly determined that the Department must devise an appropriate methodology to account for the freight component without double counting. Petitioners add that it is obvious that, depending on distances and modes of transportation, the domestic freight expense to transport an input from a supplier in China to the producer of the subject merchandise can be considerably greater than the freight included in the Indian *Monthly Statistics*. Petitioners maintains that, as the *Sigma* Court recognized, the Department had a statutory duty to select a methodology that produces "reasonably accurately estimates of the true value of the factors of production." Petitioners conclude that this includes a proper accounting of the domestic inland freight and that, accordingly, the Department should devise an appropriate methodology to account for the freight charges from the Chinese suppliers of the input to Wuyang's factory without double counting.

Department's Position: We agree with petitioners and, in part, with respondents. The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are valued on CIF import values in the surrogate country. The *Sigma* decision states that the Department should not use a methodology that assumes import prices do not have freight included and thus values the freight cost based on the full distance from domestic supplier to producer in all cases. Accordingly, as in the *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China*, 62 FR at 51410 (October 1, 1997) ("*Nails*"), we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of export to the factory, or from the domestic supplier to the factory. Where the same input is sourced by the same producer from more than one source, we used the shorter of the reported distances for each supplier.

Comment 13: Regression Based Analysis

Some respondents argue that the Department should use its regression-based analysis to value labor. Respondents argue that the Department's current policy, as stated in its revised regulations, is to use a regression-based wage rate, in order to achieve a fairer, more accurate, and more predictable result. Respondents state that as the Department explained in the commentary accompanying its revised regulations: "[B]y combining data from more than one country, the regression-based approach will yield a more accurate result. It also is fairer, because the valuation of labor will not vary depending on which country the Department selects as the economically comparable surrogate economy. Finally, the results of the regression analysis are available to all parties, thus making the labor value in all NME cases entirely predictable." *See Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27367 (May 19, 1997) (final rule).

Respondents argue that the Department has stated that these revised regulations "serve as a restatement of the Department's interpretation of the requirements of the [Tariff] Act as amended by the URAA," even in cases which are not directly governed by the new regulations. *See* 19 CFR § 351.701. Thus, respondents argue the new wage rate methodology set forth in the revised regulations (and in the Department's June 2, 1997, Policy Memorandum) should be applied in this case.

Petitioners argue the Department should reject the suggestion that labor inputs should be valued using the new regression-based methodology described in the *Final Rule*. Petitioners claim that: (1) unless the regression model is limited to data from surrogate countries that are at a level of economic development similar to China's, the new labor valuation methodology set forth in 19 CFR § 351.701(c)(3) is contrary to section 773(c)(4) of the Act, 19 U.S.C. 1677b(c)(4), (2) it fails to account adequately for labor costs other than wages, (3) by its own terms, the new regulation does not apply to this investigation, (4) it has not been the

Department's practice to use the regression methodology in NME cases initiated prior to the effective date of the new regulations; and (5) the new regression model has not yet been published in accordance with the requirements of the Administrative Procedure Act.

Petitioners also urge the Department not to use the labor cost methodology used in the preliminary determination. Petitioners state that, in the preliminary determination, the Department applied a single labor rate for the three levels of labor (skilled, unskilled and indirect) that all respondents used in calculating their labor factors. They state that in this case, the Department used data from the *Ministry of Labour, Government of India Annual Report 1994–95* which contains 1990–91 data for the average labor cost in rupees per man-day worked for the "Basic Metals and Alloys Industries." Petitioners argue that the labor data found in the *Report* and used by the Department in its preliminary determination are aberrational. First, they note that these data are approximately six years old. Second, they point out that the *Report* does not provide any information as to which industry sectors or companies are included in the category "Basic Metal and Alloys Industries." Third, they argue that the methodology used by companies or industry associations to obtain the data submitted to the Ministry of Labour and compiled for its *Report* is unknown. As a result of the above, petitioners argue that it is not clear whether the labor rate provided in the *Report* closely reflects the average labor rate paid by a large integrated steel producer in India.

Instead of the regression-based model described in its new regulations or the approach used in the preliminary determination, petitioners argue that the Department should instead use a labor surrogate value methodology based on data provided in TATA and SAIL's 1995–1996 Annual Reports to calculate a surrogate labor value. Petitioners claim that a labor factor value based on the actual wages paid to the employees of a large integrated steel producer in the surrogate country is a more accurate means of calculating the labor value than either of the two approaches previously described. Furthermore, petitioners argue that use of a labor value calculated from SAIL and TATA financial information would be consistent with the use of COM, SG&A and profit values derived from annual reports of these companies.

Liaoning and Wuyang argue that, as a surrogate value for labor, Commerce should use the average labor cost per man-day worked for the Basic Metal and Alloys Industries as reported in the *Ministry of Labour Government of India Annual Report 1994–95*, which Commerce used in the preliminary determination. They claim Commerce should not calculate the surrogate labor value using data contained in the financial statements of Indian producers of steel as recommended by petitioners because such a methodology is both unreasonable and unreliable.

First, they argue that the salary and wage data listed in the Indian financial statements include high remuneration for company management personnel and other salaried workers, rather than being specific to line production workers, which is the group for which a surrogate labor valuation is sought. They claim the calculation of any surrogate labor rate based on such figures therefore would grossly inflate the Indian labor rate for production workers in the steel industry.

Second, they argue that any relationship between the annual expenditure of a company for wages, salaries, etc. and the absolute number of employees of any given day during the year is entirely speculative. They state that the Indian steel producer financial statements on the record provide information regarding yearly employee remuneration and benefit amounts, but none of the financial statements provides specific information regarding (1) the number of labor hours worked at each company during the year, (2) the number of different employees paid during the year, (3) whether such employees worked overtime, and (4) whether such employees were paid an additional amount for overtime worked.

Finally, they argue that the record evidence provides no support whatsoever for petitioners' assertion that the employee remuneration paid by SAIL in 1995–96 corresponds only to the 187,504 persons reported as employees on March 31, 1996. They state that the data provided by petitioners vis-à-vis TATA are even more tenuous, since there is no support for their assumption that the total number of employees reported in the 1997 *Iron and Steel Works of the World* publication is accurate or even related to TATA's 1995–96 fiscal year. These questions, they argue, render unusable petitioners' suppositions as to the number of workers employed by each company, and the possible number of hours worked each day by company employees.

In comparison, Liaoning and Wuyang argue that the *Report* used by Commerce in the preliminary determination includes figures that are representative of the entire Indian steel industry, including both large companies and small, and provides labor cost data specific to production line workers. In addition, they state that, as noted in the Commerce Department's factor valuation memoranda, the labor rate provided in the *Report* is inclusive of wages and salaries, all types of bonuses, money value of benefits in kind, old age benefits, maternity benefits, social security charges, family pension, retirement benefits, and other group benefits. They argue that unlike the unsubstantiated figures calculated by petitioners, the Ministry of Labour values are not distorted by conjecture regarding such factors as the number of employees, man days worked, the inclusion of overtime hours. Therefore, they claim Commerce should continue to value labor in the final determination using the average labor cost per man-day worked for the Basic Metal and Alloys Industries from the *Report*, which Commerce did in the preliminary determination.

Department's Position: We agree with Liaoning and Wuyang. Because the regulations applicable to this investigation do not dictate a particular approach to selecting surrogate value for labor, the Department has the discretion in choosing a method of valuing labor. However, it has not been our practice to use the regression-based labor rate developed in the new regulations initiated prior to issuing these new regulations. Because we have not elected to use the regression analysis approach, we need not address all of the arguments concerning this methodology. We also disagree with petitioners' proposal to use the financial statements of SAIL and TATA. These statements include high wages for company management personnel and other salaried workers, and thus are not specific to direct and other production labor. Also, the financial statements only report aggregate labor costs and do not provide information regarding the number of labor hours and thus we could not determine a labor rate for these companies.

Comment 14: Labor Factors

Anshan, Baoshan, Shanghai Pudong and WISCO state that, throughout this investigation, petitioners have contended that the data on labor usage submitted by the Chinese respondents must be compared to information in PaineWebber's *World Steel Dynamics*. Respondents state that petitioners claim that any differences between information reported by the respondents and the information contained in *World Steel Dynamics* is to be treated as evidence that the Chinese respondents are reporting their information inaccurately is without merit. Anshan, Baoshan, Shanghai Pudong and WISCO state that the labor hours reported are the result of a detailed analysis of the companies' labor forces, based on the Department's reporting requirements. Anshan, Baoshan, Shanghai Pudong and WISCO argue the source documents and methodology used to derive these figures were examined in detail by the Department during verification, and no significant discrepancies were found. Therefore, they argue, these data have been shown to be reliable.

By contrast, respondents argue, the source of the information in *World Steel Dynamics* is unknown, the methodology used by *World Steel Dynamics* to derive that information is not explained, and the figures reported in *World Steel Dynamics* have not been verified. Respondents claim that, in these circumstances, the labor usage figures reported in *World Steel Dynamics* have no probative value at all. Respondents argue that data from this service certainly do not provide a reasonable basis for disregarding the verified information reported by respondents.

Department's Position: We agree with respondents. We verified all of the respondents' reported labor factors and we noted no major discrepancies. In light of these facts, we have no reason to believe that the labor factors they provided in their questionnaire have been misreported.

Comment 15: Valuation of Limestone, Dolomite and Quicklime

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, in the final determination, the Department should value limestone and dolomite based on domestic Indian prices, rather than on Indian *Monthly Statistics*. Respondents argue that domestic Indian prices for limestone and dolomite are preferable because (1) it is Department policy to use domestic, tax-exclusive prices where possible; (2) due to the low market value of limestone, limestone is ordinarily obtained domestically; and (3) import values used for limestone and dolomite are aberrational when compared to the domestic prices submitted for these values. Respondents claim that the Department incorrectly used, as the surrogate value for dolomite, price information for "calcined" dolomite, although the dolomite inputs used by respondents are "uncalcined." Furthermore, the value for quicklime, respondents contend, should be the same as the value for limestone because the two products are comparable. They contend that petitioners' argument (see below) is internally inconsistent and should therefore be disregarded.

Liaoning and Wuyang argue that the Department should base the surrogate values for these raw material inputs on data contained in the financial statements of Indian producers. *See Brake Drums and Rotors*, 62 FR at 91631 (Feb. 28, 1997). They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes. *See Public Version of the Factor Valuation Memorandum* from *Brake Drums and Rotors*, at 2 (Feb. 21, 1997) (Commerce "adjusted the domestic average value to exclude the excise and sales tax" and "accepted the four-percent sales tax as a conservative estimate of Indian state sales tax and have deducted amounts for sales taxes" at that rate). They argue a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company.

In their case brief, petitioners maintain that the import values used in the preliminary determination are accurate surrogate values for limestone and dolomite sourced domestically by some of the respondents, because certain other Chinese steel producers imported limestone and dolomite for use in the production process. Petitioners agree with respondents that it is the responsibility of the Department to find surrogate values which reasonably reflect the economic conditions faced by Chinese producers of cut-to-length carbon steel plate. *See Oscillating Fans*, 56 FR at 55271, 55275. Therefore, petitioners contend that it is reasonable for the Department to use surrogate import raw material input sources when Chinese producers also import the same.

However, in their rebuttal brief, petitioners urge the Department to use adverse facts available in valuing limestone, claiming that respondents failed to provide complete and truthful answers to the Department's questionnaires with regard to the source of supply for these inputs. Should the Department agree to apply adverse facts available, petitioners suggest that it rely on the data of an Indian producer of subject merchandise, SAIL, because this data constitutes both the highest value on the record, as well as the most reliable and appropriate surrogate value under the Department's precedent.

Petitioners urge the Department to value dolomite with the same value that it assigned to limestone. Petitioners argue that respondents' claim that the proper surrogate value for dolomite is for "uncalcined" dolomite is without merit, because there is no evidence provided by the respondents or otherwise that their dolomite inputs are uncalcined. In addition, petitioners refute respondents' claim that dolomite and limestone should be valued as "crushed stones" (Respondents PAI Memorandum, August 5, 1997). According to petitioners, evidence on the record shows that crushed stones are not pure enough for use in metallurgy.

For quicklime, petitioners argue that the Department should separately value limestone and quicklime, as was done in the preliminary investigation. However, they maintain that should the Department decide to value the two products with the same surrogate value, the Department should use SAIL's value for limestone and quicklime.

Department's Position: We agree with the petitioners in part. The surrogate value for limestone in the preliminary determination was based on the Indian import price. We find that this value is the most representative of the prices for limestone during the POI because the domestic prices submitted by respondents appear to be significantly lower than both the *Monthly Statistics* and data from Indian steel producers that was submitted by petitioners. In addition, because we are unfamiliar with *India 1995: A Reference Annual*, we hesitate to give it greater weight as a source for limestone value than we give to the *Monthly Statistics*, which we have frequently used for valuation purposes and have no reason to believe is not reliable with respect to this input. We also agree with petitioners that some companies import limestone and that this provides support for the use of appropriate import data to value limestone. For the final determination, we are relying on the same surrogate value used in the preliminary determination. We reject petitioners' argument that we should apply adverse facts available for limestone based on what petitioners believe to be uncooperative behavior on the part of one company, because there is no evidence on the record to support their assertion that one company did not act to the best of its ability to provide certain information concerning limestone to the Department.

We agree with respondents that limestone and quicklime are comparable products, based on our review of the *Monthly Statistics*. However, we have decided that the difference between them is too significant to value quicklime based on the surrogate for limestone. We therefore agree with

petitioners that we should value the two products based on their individual values as reported in *Monthly Statistics*.

With respect to dolomite, we agree that limestone and dolomite, though separate products, are of comparable value. We have determined that the *Monthly Statistics* upon which we relied in the preliminary determination are obviously aberrational because the value from the source which we used in the preliminary determination (a value for "calcinated" dolomite) is approximately ten times the value of limestone. In contrast, based on our examination of Indian steel producers' data, we find that the value of the dolomite they use (which is not identified as either "calcinated" or nor "calcinated") is generally significantly lower than that of the limestone they use. Therefore, for the final determination, we determined that the value for "agglomerated" dolomite in the Indian *Monthly Statistics* is comparable to that for limestone in the same source. Therefore, we are using the *Monthly Statistics* value for "agglomerated" dolomite to value dolomite in the final determination.

Comment 16: Basket Categories—Coal and Iron Ore

Anshan, Baoshan, Shanghai Pudong and WISCO contend that the Department's decision to use a single surrogate value for all coal and iron ore inputs in the preliminary determination was faulty and suggest that the Department instead assign different values for each kind of coal and iron ore input used in the production process.

For coal, they argue that the Department's practice has traditionally been to base its surrogate values on the prices in the surrogate country for materials which most closely reflect the specific grade and chemical composition of the type of input used by the NME producer. See *Certain Helical Spring Lock Washers from the People's Republic of China*, 61 FR 41994, 41996–97 (August 13, 1996) ("*Helical Spring Lock Washers*"), and *Heavy Forged Hand Tools from the People's Republic of China*, 62 FR 11813, 11815 (March 13, 1997). Therefore, they contend that the Department should separately value the different kinds of coal used in the production process. Respondents also contend that coal should be valued and based on Indian, not Indonesian, values.

For iron ore, Anshan, Baoshan, Shanghai Pudong and WISCO assert that the Department should value different forms of this input based on the market prices paid for such ores. These market economy purchase prices and quantities, they maintain, were verified by the Department. Similarly, they urge the Department to calculate freight rates for the delivery of iron ore purchased from market economy suppliers using the actual rates paid by the Chinese respondents for such shipments during the POI. For domestically purchased iron ore, Anshan, Baoshan, Shanghai Pudong and WISCO suggest that the Department value all iron ore using one Indian domestic price from *India 1995: A Reference Manual*. They also maintain that, in valuing freight for domestic iron ore purchases, the Department should average the distances from each company's iron ore suppliers and apply surrogate freight rates to this average distance.

Petitioners maintain that it was appropriate to assign a single surrogate value for all coal used, because respondents reported various kinds of coal in a confusing manner. In addition, they assert that the value used in the preliminary determination is accurate and reasonable. Petitioners contend, however, that should the Department decide to value different kinds of coal separately, it should rely on surrogate values obtained from annual reports of certain Indian producers of subject merchandise.

With respect to iron ore, petitioners assert that domestically purchased iron ore could not be significantly cheaper than other forms purchased from market economy suppliers due to the fact that the imported iron ore is in the form of concentrate, which requires further processing before it can be used. As a result, they urge the Department to maintain the methodology it used in the preliminary determination.

Department's Position: COAL: We agree with respondents that the Department should value coal based on the surrogate country values for types of coal which most closely reflect the specific grades and chemical composition of coal types used by the Chinese producers. We have valued coking coal and other coal separately, relying on Indian *Monthly Statistics* to formulate appropriate surrogate values. We did not value thermal coal separately because the information submitted by respondents comes from countries not normally used as surrogates and we were unable to independently find values for this type of coal. For all coal other than coking coal, we based our surrogate value on the classifications "other," "anthracite" and "steam coal," which we averaged. We used Indian *Monthly Statistics* because we determined that the data were more appropriate and more specific than the data from the Indian steel producers.

Iron Ore: With respect to iron ore, we note that it has been the Department's position in the past that when a significant portion of an input used by a given producer is purchased from market economy suppliers, the Department relies entirely on the market economy purchase prices in valuing that input for that producer. Our methodology in the preliminary determination was to aggregate all iron ore whether sourced domestically or from market economy suppliers into a single basket which we valued at international prices from market economy suppliers. However, for the final determination, we have, to the extent possible, treated different types of iron ore as separate factors of production (*i.e.*, we have valued different types of iron ore as separate inputs). When a producer has purchased any type of iron ore from one or more market economy suppliers, we have relied to the fullest extent possible on the market economy purchase prices which were verified by the Department. When a given producer sourced a particular type of iron ore only locally, or imported only an insignificant percentage of that type of iron ore, we valued that type of iron ore for that producer based on Indian *Monthly Statistics*.

Freight For Coal and Iron Ore: Where we relied on the market economy purchase prices to value the input, we also relied, for freight cost from the market economy suppliers to the Chinese port, on the market economy freight rates which the Department verified. For Chinese inland freight on market economy purchased imports and for domestically sourced inputs, we relied on the Chinese domestic freight factors, valued using Indian surrogate data. We have not based domestic freight costs on an average of the distance between all suppliers and the relevant producers because a supplier-by-supplier calculation provides a more accurate estimate of the costs of a producer that sources different amounts of an input from multiple suppliers in different locations. See Comment 12 regarding the Department's current freight methodology.

Comment 17: Valuation of Steel Scrap and Pig Iron

Anshan, Baoshan, Shanghai Pudong, and WISCO argue that the Department should value steel scrap and pig iron based on domestic price information from India from the *Economic Times* because the prices reported in the *Economic Times* represents prevailing prices in the Indian market which are preferable to import prices in the Department's hierarchy of surrogate value sources, and the prices reported in the *Economic Times* are contemporaneous with the POI.

Liaoning and Wuyang argue that the Department should base the surrogate values for steel scrap and pig iron inputs on data contained in the financial statements of Indian producers, citing *Brake Drums and Rotors*, 62 FR at 9163. They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes. *See Factor Valuation Memorandum from Brake Drums and Rotors*, at 2 (Feb. 21, 1997), which Liaoning and Wuyang have placed on the record of this investigation (Commerce "adjusted the domestic average value to exclude the excise and sales tax" and "accepted the four-percent sales tax as a conservative estimate of Indian state sales tax and have deducted amounts for sales taxes" at that rate). Liaoning and Wuyang argue that a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company. *See Factor Valuation Memorandum from Brake Drums and Rotors*, at 4.

Petitioners contend that the Department should value steel scrap and pig iron based on *U.N. Trade Commodity Statistics*, or else continue to use the value used in the preliminary determination, which is based on Indonesian import data. They maintain that values that the four respondents submitted from the *Economic Times* represent a snapshot of prices that do not represent prevailing prices throughout the entire period of investigation.

Department's Position: For steel scrap, we are using contemporaneous import data from Indian *Monthly Statistics*. For pig iron, we were unable to use the Indian *Monthly Statistics* as we determined that the import price was aberrational because the Indian data was based on a very small quantity and was almost two times the price of the Indonesian pig iron. Consequently, we are continuing to use prices from Indonesian import statistics that we used in the preliminary determination. We did not use the data submitted by either petitioners or respondents for either pig iron and steel scrap because we found that these values were aberrational compared to the Indonesian import statistics. We did not use the values from the *Economic Times* because we determine that the information in the *Economic Times* submitted by respondents and in the *U.N. Trade Commodity Statistics* submitted by petitioners was aberrational. More detail on this issue may be found in the business proprietary version of the *Concurrence Memorandum*.

Comment 18: Valuation of Iron Scrap, Fluorite/Fluorspar, Coke, Aluminum, Magnesium Ore, Ferrosilicon, Ferromanganese and Magnesium Ore

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department should value iron scrap, fluorite/fluorspar, coke, aluminum, magnesium ore, ferrosilicon, ferromanganese, and magnesium ore based on Indian *Monthly Statistics* that correspond to the investigation period. In the preliminary determination, the Department valued some of these inputs based on import statistics which pre-dated the period of investigation. These respondents argue that petitioners' suggestion that the Department value some of these inputs based on data from *1994 U.N. Trade Commodity Trade Statistics* should be ignored, respondents argue because it is not contemporaneous and less specific to the inputs in question.

Liaoning and Wuyang argue that the Department should base the surrogate values for these inputs on data contained in the financial statements of Indian steel producers. *See Brake Drums and Rotors*, 62 FR at 9163. They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes, citing to *Factor Valuation Memorandum from Brake Drums and Rotors*, at 2 (Feb. 21, 1997) which they have added to the record of this case. They argue a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company. *See Factor Valuation Memorandum from Brake Drums and Rotors*, at 4.

Petitioners urge the Department to either value these inputs based on the *1994 U.N. Commodity Trade Statistics*, and argue that these statistics, although less contemporaneous, are more reliable.

Department's Position: We agree with the four respondents. To the extent possible, we have relied on contemporaneous data, as the Department normally prefers to use prices that are representative of prices in effect during the POI. For iron scrap, we used the same Indian *Monthly Statistics* value as we did in the preliminary determination because this is the most contemporaneous value on the record. For ferrosilicon, flourite/fluorspar, ferromanganese, magnesium ore, aluminum, and coke, we have adopted the values from the Indian *Monthly Statistics* for April through July of 1996, as submitted by the respondents as these values are more contemporaneous with the POI than the similar values used in the preliminary determination. We have rejected Liaoning and Wuyang's argument that we should value these factors based on Indian domestic data because we have found appropriate surrogate values that represent a larger sample of prices from Indian *Monthly Statistics*.

Comment 19: Scale and Slag

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department appropriately valued slag at the low U.S. market price of $6.91 per metric ton and that the Department should continue to value slag in the same manner for the final determination. Anshan, Baoshan, Shanghai Pudong and WISCO additionally contend, however, that the Indian import price of $483.91 per metric ton for scale is aberrational high and that the Department should apply the same surrogate value for scale as it applies to slag. Furthermore, these respondents argue that, because both slag and scale are self-generated by-products of the steelmaking process, the Department should not apply any freight expense to the surrogate prices for slag and scale in the final determination.

Petitioners agree that slag is essentially a mineral waste and has a relative low value. Scale, on the other hand, they argue, is processed steel, consisting of cuttings from actual steel slabs. Scale, reason petitioners, thus has a far greater value as an input in steelmaking than does slag. Petitioners continue that there is nothing on the record to substantiate respondents' claim that the Indian price for scale is "aberrational." Petitioners conclude that the Indian price the Department adopted in the preliminary determination is reliable and should be used for the final determination.

Department's Position: We agree with respondents in part. Scale is of little value in the steelmaking process. Because slag and scale are very similar, the Department used the same value for scale and slag ($6.91 per metric ton) in its final determination. Furthermore, we agree with respondent that a freight expense should not be added to the surrogate prices for slag and scale when no freight is incurred in China on these inputs, because they are self-generated.

Comment 20: Stones

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, to the extent that surrogate values for some types of "stones" have already been submitted on the record (*e.g.*, manganese, quicklime, limestone and dolomite), the Department should use that information for surrogate values for these inputs. To value types of stones for which no specific surrogate value has been provided to the Department (*e.g.*, serpentine, calcium carbon trioxide ($CaCO_3$), silicon sand/silicon dioxide), the Department should use the surrogate value for "stone, sand and gravel" proposed by the petitioners in their August 5, 1997 submission at Exhibit A—that is, $25.21 per metric ton.

Petitioners state that, with respect to silicon, the Department has already found an appropriate surrogate value. Petitioners contend that respondents have conceded that the category "stones" contains unreported "silicon sand" and silicon dioxide in unknown quantities. Therefore, petitioners state that the Department should use the value for silicon as facts available in valuing "stones" for which no specific surrogate value has been provided. In addition, regarding calcium carbonate (CaC_2) rocks, petitioners argue that the Department should recalculate consumption for each company.

Department's Position: We agree with respondents that the Department should use appropriate and specific surrogate values for all types of "stones." For the final determination, for Baoshan, Liaoning, Shanghai Pudong and WISCO, we have obtained appropriate separate values for all types of stones which were separately reported. For Anshan, we have obtained a value from the *U.N. Trade Commodity Statistics* for "stones, sand and gravel" and are valuing stones for which we do not have a surrogate value using this data. We disagree with petitioners' assertion that we should use silicon as facts available for silicon sand. Based on our understanding of the steel industry, silicon sand is more comparable to generic sand than it is to silicon, which is a comparatively expensive commodity.

Comment 21: Silicon Manganese

Respondents note that, in the preliminary determination, the Department valued silicon manganese at $578.68 per metric ton, based on information contained in the 1995–96 annual report of SAIL. Respondents argue that, if the Department continues to use this source in the final determination, the value should be adjusted not only for inflation, but also to remove Indian taxes reflected in the reported number.

Petitioners counter that nothing in the record supports respondents' claim that taxes are included in the surrogate value used by the Department for silicon manganese (based on SAIL data). Even if taxes were included, furthermore, there is no record information that would allow for a determination of the amount of taxes paid. Accordingly, petitioners contend that the SAIL data must be used as reported.

Department's Position: Although we consider the value for silicon manganese we used in the preliminary determination appropriate for use in our final determination calculations, we have located a more contemporaneous Indian *Monthly Statistic* for the period April 1996 through July 1996 which we believe to be more accurate and representative of a larger sample of the commodity. For the final determination, we are relying on this import price to value silicon manganese.

Comment 22: Electricity

Anshan, Baoshan, Shanghai Pudong and WISCO contend that, in the preliminary determination, the Department valued electricity at $0.06 per kilowatt hour, based on data reported in the July 1995 publication *Current Energy Scene in India*, published by the Center for Monitoring Indian Economy. These respondents contend that the Department should continue to use this value in the final determination.

Petitioners state that respondents' suggested rate for electricity reflects the simple average of the Indian state electricity rates for the "large industry" category as of January 1, 1995, adjusted to the POI. *See* Shanghai Pudong Factor Valuation Memorandum, June 3, 1997, at 4–5. Petitioners maintain that, in its final determination, the Department should use the electricity rates reported by Indian flat-rolled steel producers in their annual reports for the fiscal year ending March 1996. These reported rates are preferable, argue petitioners, because they are more contemporaneous with the POI and are specific to large steel manufacturers. *See Polyvinyl Alcohol from the People's Republic of China*, 61 FR 14067 at 14061 (March 29, 1996) (Final Determination). Petitioners calculate the weighted average electricity rate for Pennar Steels Ltd., Nippon Denro Ispat Ltd., Visvesveraya Iron & Steel Ltd., SAIL, and Tata Steel Ltd., at $0.0648 per kilowatt hour.

Department's Position: We agree with respondents. We consider the rate for electricity we used in the preliminary determination appropriate for use in our final determination calculations as it is publicly available and nothing on the record suggests that this value is aberrational.

Comment 23: Scope Issue

Petitioners argue that the scope should be clarified to state that it covers plate 4.75 mm in thickness or more, in nominal or actual thickness. They state that, due to thickness tolerances in the various common plate specifications, foreign producers may sell plate as 3/16 inch (4.75 mm) plate at thickness less than 3/16 inch and remain within the specification.

Petitioners allege that there is a significant U.S. market for 3/16-inch (4.75 mm) plate. They also argue that they always intended that the scope of the investigation would cover product of 4.75 mm in actual or nominal thickness because any plate within the tolerance for 4.75 mm nominal thickness plate will compete directly with any other plate within the tolerance. The customer knows that all plates within the tolerance meet the performance standards of the specification.

Petitioners argue that actual and nominal thickness products are produced on the same equipment, marketed in the same way to the same customers and generally priced identically. They allege that failure to include plate with a nominal thickness of at least 4.75 mm but an actual thickness of less than 4.75 mm would seriously undermine the scope of the investigation by allowing products that are considered identical in the market to be treated differently under the scope.

Anshan, Baoshan, Shanghai Pudong and WISCO point out that petitioners' request to change the scope was submitted more than five months after the filing of the petition. They argue that petitioners' proposal to change the scope so late in the proceeding is contrary to the requirements of the law. Respondents note that the statute does not permit the Department to amend the scope of the petition so late in this investigation.

Department's Position: We disagree with petitioners and have decided not to change the scope of products under investigation. For a more complete discussion of this issue, *See* Memorandum on Scope of Investigations on Carbon Steel Plate from Joseph Spetrini to Robert S. LaRussa.

Comment 24: Alloy/Non-Alloy Steel Issue

Petitioners allege that foreign producers are beginning to slightly vary the alloy content of their carbon plate in order to technically remove the product from the non-alloy steel tariff subcategories in the Harmonized Tariff Schedule of the United States ("HTSUS") and place the products within the "other alloy steel" HTSUS subcategories without changing the specification, grade, physical characteristics or applications of the CTLP. Petitioners contend that such low-alloy plates should be covered by the scope.

Petitioners argue that products classified as alloy steel under the HTS, but ordered and produced to "carbon" steel specifications, should be included within the scope of the investigation. They argue that the alloys being added to these products are not changing the performance characteristics of plate, and the alloy-added carbon products and other carbon products are the functional equivalents of one another. Petitioners further contend that the products are produced by the same manufacturers on the same equipment, are sold to the same customers for the same uses, and have nearly identical costs.

Petitioners assert that where the added alloy does not change the performance characteristics of the plate or affect the product's classification within the industry specification, the product should remain within the scope of the investigation. They argue that the addition of alloys that do not change the performance characteristics or specifications of the product will not change the purchasers' perception of the value, function or use of the product. Petitioners conclude by stating that the failure to include such completely substitutable products within the scope would undermine the efficacy of any order.

Anshan, Baoshan, Shanghai Pudong and WISCO again argue that petitioners' request to change the scope was untimely submitted and should be rejected by the Department, as it is contrary to the requirements of the law. Moreover, respondents contend that Department and classification practice demonstrate that carbon steel does not include products with alloying agents such as boron. Finally, respondents assert that the statute does not permit the Department to amend the scope of the petition proposed in the manner proposed by petitioners so late in this investigation.

Department's Position: We disagree with petitioners and have decided not to change the scope of products under investigation. For a more complete discussion of this issue, *See* Memorandum on Scope of Investigations on Carbon Steel Plate from Joseph Spetrini to Robert S. LaRussa.

Comment 25: River Freight

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, in the final determination, the Department should not value river freight costs for purchases of materials (and for the shipments of finished products by the Chinese producers) using the surrogate value relied upon for the preliminary determination, which was based on a 1993 embassy cable regarding river barge rates in India originally submitted for *Helical Spring Lock Washers*, 61 FR at 41994. In particular, Anshan, Baoshan, Shanghai Pudong and WISCO argue that this source should not be used in the final determination because (1) the rates do not in any way reflect the costs of shipping raw materials and merchandise on the Yangtze River on which their steel mill and export facilities are located, and (2) the rates do not even accurately reflect the costs of river shipping in India.

Respondents argue that the Department must, to the extent possible, select surrogate values for river rates which accurately and fairly reflect the costs of the shipping raw materials and steel products on the Yangtze River. Respondents maintain that the use of Indian river barge rates to establish surrogate values for Chinese shipments of raw materials and final steel products on the Yangtze River is inappropriate because there are no rivers in India that are comparable to the Yangtze River and river shipping rates are heavily dependent on the types of rivers used for shipping and the types of products being shipped.

As an alternative to the Indian barge rates in the 1993 cable, respondents urge that the Department use published Mississippi River shipping rates as surrogate values for the cost of shipping on the Yangtze River because, they claim, the Mississippi River is a "working river" that is comparable in size to the Yangtze River.

If the Department continues to use Indian shipping rates to value shipping on the Yangtze river, respondents recommend that the Department use current, actual shipping rates rather than the 1993 quotation used in the preliminary determination. Respondents argue that the 1996–97 rates collected and reported by the Ministry of Surface Transport of the Government of India, which they have submitted, are preferable because they are less aberrational, more contemporaneous, and based on a broader range or merchandise than the rates used in the preliminary determination, which do not identify the product for which these rates were quoted.

Petitioners argue that the data on river freight supplied by the respondents are unreliable; therefore, they urge, the Department should continue to use the same values as in the preliminary determination. Petitioners argue that respondents' claim that Indian rivers are generally not accessible to large vessels is baseless, stating that CIA reports indicate that a large percentage of inland waterways in India are navigable.

Petitioners object to the use of U.S. freight rates as surrogate values, arguing that the Department must calculate normal value based on, "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are * * * at a level of economic development comparable to that of the nonmarket economy country * * *." 19 U.S.C. 1677b(c)(4). Petitioners contend that United States is not an appropriate surrogate country because it is at a different level of economic development than the People's Republic of China and not one of the five countries identified by the Department as potentially suitable surrogates. *See* Memorandum to E. Yang from D. Mueller, January 29, 1997 ("DOC Surrogate Selection Memo").

Further, petitioners assert that the information on Indian river freight rates supplied by respondents is questionable with respect to its meaning, origin and reliability. Petitioners argue that respondents have not provided any credible evidence that the rates used by the Department in the preliminary determination are "aberrational."

Department's Position: We agree with both respondents and petitioners in part. For the final determination, we have decided to base the river rates freight on a simple average of the rates used in the preliminary determination and information submitted by respondents. We note that the river rates we used in the preliminary determination were significantly higher than rates for other forms of transportation. For example, to ship merchandise 1100 km. by river using the rates used in the preliminary determination would cost $68 per ton, whereas to ship the same distance by train would only cost approximately $15 per ton. We note that a respondent would usually use, in the normal course of business, the most cost effective and efficient mode of transportation. However, respondents did not ship by train. It is our own practice to value the factors of production actually used by respondents. Consequently, we have concluded that to only use the surrogate

value we used in the preliminary results would be inappropriate.

Respondents also submitted river rates from the Inland Waterways Authority of India, which is part of the Ministry of Surface Transportation of the Government of India. We disagree with petitioners' argument that the Department should reject this information because respondents used a consultant in obtaining this information. While it is true that a consultant was involved in obtaining this information, the fact remains that the source of the data is the Indian Government. In addition, we can find no evidence to support the conclusion that the river rates presented in that document are unreliable or distortive. The rates represent a wide variety of rivers, products and distances in India, including river rates to and from Calcutta, which is a major port. At the same time, we hesitate to use only the river rate information obtained by respondents for the final determination. As no evidence on the record indicates what instructions were given to the consultant or what questions the consultant asked the Indian Waterways Authority to obtain the data.

We also disagree with respondents' contention that we should use rates from the Mississippi River for the final determination. First, the United States is not one of the selected surrogate countries that the Department normally uses. The Department also searched for alternative sources of information from other surrogate countries. In particular, we attempted to obtain river rate information from Egypt (the Nile river) and Pakistan (the Indus river). However, we were unable to obtain publicly available information for river rates from these countries. Second, all rivers are to some degree unique, and the Department's ability to address the quantity and the types of differences noted by respondents is limited. Thus, it is not our practice to find a surrogate value for freight over a particular route, but rather to ascertain a reasonable value for river freight.

Comment 26: Ocean Freight Rates

Respondents argue that the Department should apply product- and port-specific ocean freight rates. Respondents maintain that, in the preliminary determination, the Department improperly applied the ocean freight rates for shipping steel plate to other types of products, which would necessarily have different shipping rates. Respondents urge that the Department should value raw materials purchased from market-economy suppliers using sale-specific shipping cost information from market economy ocean freight providers. Respondents recommend that product- and port-specific ocean-shipping rates published in Shipping Intelligence Weekly be used to value ocean freight shipments in the final determination.

Petitioners argue that the Department should continue using the ocean freight rates from U.S. import statistic reports (IM–145 reports) used in the preliminary determination. Petitioners assert that the Department should not value raw materials purchased from market-economy suppliers using sale-specific shipping cost information from market economy shippers unless there is sufficient evidence that the specific respondent purchased the input from a market economy supplier in market economy currency. Further, petitioners argue that the surrogate values based on shipping rates reported from Shipping Intelligence Weekly submitted by respondents are inadequate for several reasons. First, petitioners note that rates reported from the Shipping Intelligence Weekly are not actual freight rates paid by customers, but instead are described as "average earnings." Second, petitioners contend that respondents chose rates for the most efficient type of vessel for their surrogate value. Third, petitioners note that information from Shipping Intelligence Weekly was not accompanied by the certification of accuracy as required by 19 CFR § 353.31(i). Petitioners urge the Department to continue using import data in the preliminary determination, since the import data is representative of a large sample of shipments and relate specifically to the chosen surrogate country.

Department's Position: We agree with petitioners that rates reported from Shipping Intelligence Weekly are not actual freight rates paid by customers, but instead are described as "average earnings." Second, we agree that respondents appear to have provided rate data for the most efficient type of vessel, rather than the actual freight rates paid by customers. Consequently, we find that the value reported in the Shipping Intelligence Weekly are not appropriate for use as surrogate values for ocean freight. For the final determination, therefore, we have continued to use the IM–145 ocean rates used in the preliminary determination.

Comment 27: Brokerage and Handling

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the surrogate value for brokerage and handling charges used in the preliminary determination is aberrational. This value was based on ranged, public information from 1991–92 that was originally submitted in the Department's investigation of *Sulphur Vat Dyes from India*, 38 FR at 11835, 11841. These respondents recommend that the Department use, instead, as a surrogate value for brokerage and handling, prices they have submitted which are reported by Amrok Shipping Private Ltd., a shipper from India.

Liaoning and Wuyang argue that the Department should use a brokerage and handling value contained in the public version of the response of Isibars Limited in the antidumping review of *Stainless Steel Wire Rod from India*, which they have added to the record of this case to value foreign brokerage. They maintain that the value for brokerage and handling used in the preliminary determination is inappropriate because that value is for a product unrelated to the subject merchandise of this investigation. Liaoning and Wuyang contend that the brokerage and handling value from 1995–96 *Stainless Steel Wire Rod from India* is preferable because it is specific to steel, more contemporaneous, and more reliable, since it has been verified by the Department.

Petitioners argue that the Department should continue to use the surrogate value for brokerage and handling used in the preliminary determination. Petitioners find it significant that this surrogate value for foreign brokerage and handling was used by the Department in two other final investigations. Petitioners argue that information provided by the four respondents is an anecdotal and selective commentary by a private shipping company that may have been paid to act as a consultant by the respondents. Petitioners urge that the Department reject the information provided by the four respondents on the basis that it is likely to be biased and unreliable.

Department's Position: We agree with Liaoning and Wuyang. In the preliminary determination, we used brokerage and handling rates as reported in ranged, public information from 1991–92 that was originally submitted in the Department's investigation of *Sulphur Vat Dyes*. We are unfamiliar with the Amrok Shipping brokerage and handling information submitted by Anshan, Baoshan, Shanghai Pudong and WISCO and do not know what questions the four respondents asked to obtain the brokerage and handling rates. The brokerage and handling rates submitted constitute an individual's estimate and were not specific concerning certain charges. In addition, we have no background information on the period of time applicable to the brokerage and handling values submitted by these respondents. Since the brokerage and handling rates in used in the *Stainless Steel Wire Rod* are more contemporaneous than the information used in the preliminary determination, specific to steel and verified by the Department, we have used those rates for the final determination.

Comment 28: Rejection of Untimely Factual Information

The four respondents argue that the Department should not reject factual information submitted within the deadlines established by its regulations. Thus, respondents urge the Department to reconsider and reverse its earlier decision to reject submissions from Anshan, Baoshan and WISCO. Respondents maintain that the information at issue was submitted within the deadlines pursuant to the Department's regulations, which allow for the submission of factual information in an antidumping investigation up to one week prior to the start of verification, in accordance with 19 CFR § 353.31(a). Respondents maintain that the Department, in rejecting certain portions of the respondents' submission, misapplied the provision of 19 CFR § 353.31(b)(2), which states that, " in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination." Citing to the preamble of the relevant regulations, respondents argue that this provision applies only to questionnaire responses received from voluntary respondents and not to those from mandatory respondents. *See* Antidumping Duties, 54 FR at 12742, 12759–60 (Mar. 28, 1989) (final rule).

Further, respondents maintain that, in accordance with the provisions of its regulations, the Department has in the past allowed respondents to supplement their previous questionnaire responses prior to verification. *See Certain Iron Construction Casting from the People's Republic of China*, 50 FR at 43594 (Oct. 28, 1985); *Polyvinyl Alcohol from the People's Republic of China*, 60 FR at 32757 (June 17, 1997); *Collated Roofing Nails from the People's Republic of China*, 62 FR at 25895 (May 12, 1997) (preliminary determination). Moreover, respondents argue that the Department had sufficient time to analyze and verify the additional information submitted, and that the rejection of this information would unfairly penalize respondents for providing information that they claim the Department had not requested be provided in a questionnaire with an earlier due date.

For Anshan, the rejected information consisted of freight information for certain inputs. Anshan argues that this freight information should be accepted because Commerce had not requested this information in its supplemental questionnaires and thus this information was not untimely provided.

For Baoshan Steel, the Department had requested information on distances from suppliers for all inputs in its supplemental questionnaire, and Baoshan Steel neglected to include information on the distance for one category of inputs. Baoshan Steel submitted the omitted information one week prior to the start of verification.

For WISCO, the information rejected by the Department consisted of the factors of production for producing oxygen and similar gases. Respondents argue that the Department, in the supplemental questionnaire, gave WISCO the option of either providing these factors of production or explaining why these factors of production should not be used. Respondents allege that, due to an inadvertant error, the factor information they intended to provide was omitted from the supplemental questionnaire. Respondents submitted this information one week prior to verification.

Petitioners argue that respondents' challenge to the Department's decision to reject their untimely submission of information requested in the Department's questionnaires is both misleading and without merit. Petitioners refer to 19 CFR § 353.32(b), which provides that, in the Secretary's written request to an interested party for a response to a questionnaire, the Secretary will specify the time limit for response. "The Secretary will return to the submitter, with written reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department." 19 CFR § 353.31(b)(2). Petitioners maintain that the respondents' submissions were properly rejected by the Department in accordance with section 353.31(b)(2) because (1) the information that respondents claim was improperly rejected by the Department consists of information provided in response to supplemental questionnaires and (2) the information was submitted after the deadline for questionnaire responses. Petitioners add that, although the Department has allowed respondents to supplement their previous questionnaire responses even later than seven days prior to verification in past cases, regulations should still be enforced under the present circumstances. Petitioners also maintain that respondents have not adequately demonstrated that they were not given ample notice and opportunity to file said information in a timely fashion. With respect to Anshan, petitioners argue that Anshan's freight information was not submitted within the deadlines established by the Department's regulations. With respect to Baoshan, petitioners argue that the rejected information was requested both in the Department's December 10, 1996 and again in the Department's March 13, 1997 questionnaire. Petitioners argue that Baoshan had ample notice and opportunity to comply with the Department's requests and that, as noted in the Department's letter of June 16, 1997, there is no reason to believe that this information was 'inadvertently omitted.'" *See* letter from Edward C. Yang to Shearman & Sterling, June 16, 1997. With respect to WISCO, petitioners argue that the Department correctly rejected WISCO's submission of factors of production for oxygen and similar gases, because respondents failed to provide this information, which was requested by the Department in its questionnaire of March 12, 1997, in its April 14, 1997 supplemental questionnaire response. Petitioners argue that, in response to the Department's supplemental questionnaire, WISCO neither provided factors of production for oxygen and similar gases nor explained why it was inappropriate to revise its calculations to account for the production of oxygen and similar gases.

Department's Position: We agree with Anshan, but not with Baoshan and WISCO. For Anshan, we have reconsidered our prior decision to reject information on freight distances for certain inputs. Because, in its March 12, 1997 supplemental questionnaire, the Department did not specifically request that Anshan provide information concerning the means of transportation or distances for certain material inputs obtained from domestic sources, this information did not constitute an out-of-time reply to a questionnaire, and because the information was otherwise timely provided, we should reject this information. Therefore, for the final determination, we have accepted Anshan's information on distances between its plant and the sources of certain inputs, and have used this information in calculating freight expenses for those inputs.

With regard to Baoshan, the Department has determined, that it correctly rejected the information submitted by Baoshan on June 10, 1997 with respect to the shipping distances

for one category of input. Baoshan stated in that submission, which was received one week prior to verification, that they omitted such information in the supplemental questionnaire responses due to an alleged oversight. Because the Department specifically requested this information in its March 12, 1997 supplemental questionnaire to Baoshan, which required a complete response by April 14, 1997, Baoshan had ample notice and opportunity to comply with the Department's requests for this information. Therefore, we did not use the rejected information for the final determination.

For WISCO, the Department has determined that it correctly rejected information on factors of production for oxygen and similar gases. The Department requested this information in a supplemental questionnaire on March 12, 1997. WISCO has stated that it inadvertently omitted the information from its April 14, 1997 response due to a mis-communication and finally submitted the data in its June 10, 1997 submission. Since WISCO had ample notice and opportunity to comply with the Department's requests, we have not used the untimely submitted information on factors of production for oxygen and similar gases for the final determination.

Although the legislative history of the regulation cited by the four respondents indicates that, in "unusual circumstances," the Department may retain and consider "unsolicited questionnaire responses" (*i.e.*, initial responses from voluntary respondents), this provision does not revoke the rules of timeliness even for such respondents. Further, respondents' reliance on this passage is inapposite, because they are mandatory, not voluntary, respondents and the data at issue were "untimely" provided (based on the time limit specified by Commerce for response to the questionnaire), not "unsolicited." *See* 54 FR at 12759–60, 12781.

Comment 29: General Issues Regarding Selection of Surrogate Values

Anshan, Baoshan, Liaoning and WISCO argue that the Department should revise the methodology used to select surrogate values for material inputs. Respondents argue that, in the preliminary determination, the Department departed from its established "rules" for selecting surrogate values, which were developed to ensure "accuracy, fairness and predictability." *Oscillating Fans*, 56 FR at 55271, 55275, cited with approval in *Lasko*, 43 F.3d 1442.

These respondents claim that the Department made certain "methodological errors" in selecting the surrogate values used in the preliminary determination, and urge the following principles should guide the Department's selection of surrogate values. First, these respondents maintain that the Department should use surrogate values that conform to the specific materials used in production. Respondents argue that by assigning values from 'basket' categories to certain inputs which they reported at a more specific level, the Department departed from its established practice to base its surrogate values on the prices in the surrogate country for materials which most closely reflect the specific grade and chemical composition of the type of input used by the NME producer, whenever possible. *See Lock Washers*, 61 FR at 41994, 41996–97. Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department's reasoning for using "basket" categories for surrogate values is incorrect. For example, they contend that publicly available published information on domestic prices in India for each of the types of coal used by the Chinese respondents was available and provided in their March 4 and August 5, 1997 submissions, despite the Department's statement in the preliminary determination that the use of these "basket" categories was necessary because the Department did not have publicly available published information on the specific prices for specific inputs within the basket categories. *Preliminary Determination*, 62 FR at 31976. In addition, respondents note that each of them provided information on actual prices paid for each type of iron ore purchased from market economy suppliers in both the questionnaire and supplemental questionnaire responses.

Second, the four respondents maintain that the Department departed from its established practice of selecting, where possible, sources which provide domestic, tax-exclusive prices. *See Brake Drums and Rotors*, 62 FR at 9160, 9163. Instead, respondents maintain that the Department used import data to value a number of inputs for which publicly available published information on domestic prices was already on the record. Respondents argue that the Department should use domestic, tax-exclusive prices in preference to import values.

Third, they maintain, when the Department does use import data, it should, in accordance with its established practice, use the available import data that is most contemporaneous with the investigation period. Respondents argue that, in the final determination, when the Department uses import data, it should use Indian import data for the investigation period which have become available since the publication of the preliminary determination and have been submitted for the record of this investigation.

Fourth, they insist that the Department should not use surrogate values that are aberrational. *See Sulfanilic Acid from the Republic of Hungary*, 57 FR at 48203, 48206 (Oct. 22, 1992). These respondents contend that a number of surrogate values used in the preliminary determination were aberrational, resulting in the distortion of the results of the Department's preliminary calculations. They urge the Department to carefully review the surrogate values used in the final determination to avoid similar distortions. In addition, respondents advise that where the values obtained from the primary surrogate are aberrational or otherwise unreasonable, the Department should use sources other than the designated "primary" surrogate for surrogate values. *Heavy Forged Hand Tools from the People's Republic of China*, 60 FR at 49251, 49253 (Sept. 22, 1995).

Fifth, respondents argue that the Department should properly inflate any surrogate values that are not contemporaneous with the investigation period. In order to do so, respondents maintain that the Department should correct certain clerical errors involving both the selection of the appropriate data from the *International Financial Statistics* publication and the decision as to whether to use wholesale price index (WPI) or Consumer Price Index (CPI) inflators for certain surrogate values.

Petitioners argue that the Department properly selected surrogate values for material inputs in its preliminary investigation in accordance with previous practices and regulations. Petitioners refer to Section 773(c)(1) of the Act, which states that for the purposes of determining normal value in a non-market economy, "the valuation of the factors of production shall be based on the best available information regarding the values of such factors." 19 U.S. C. 1677b(c)(1). Petitioners assert that the statute does not require Commerce to follow any single approach in evaluating data. *Olympia Industrial, Inc.* v. *United States*, Slip Op. 97–44 (Ct. Int'l Trade 1997).

Petitioners state the following with regard to the "established rules" governing the Department's approach in selecting surrogate values: the Department has stated that its objective in selecting surrogate values in a non-market economy investigation is to value the inputs at prices that most closely reflect the type of product used by producers in the country under investigation. *See Helical Spring Lock Washers*, 61 FR at 11813, 11815 (March 13, 1997); the Department's clear preference is to use published information that is most closely concurrent to the specific period of investigation (POI) or period of review (POR). *See Drawer Slides*, 60 FR at 54472, 54476 (October 24, 1995); the Department has a longstanding practice of relying, to the extent possible on publicly available information. *See Sebacic Acid From the People's Republic of China*, 62 FR at 10530, 10534 (March 7, 1997); it is the Department's practice, in selecting the "best available data," to use data from a variety of sources and to use different sources to value different factors. *Sulfanilic Acid from the People's Republic of China*, 61 FR at 53703, 53704 (October 15, 1996).

Petitioners argue that in the preliminary determination, the Department clearly states that it maintained a preference for using publicly available tax-exclusive domestic prices and indicated that the Department evaluated a number of possible sources before choosing the most appropriate and reliable prices.

Petitioners rebut respondents' claim that the Department departed from its practice of using, whenever possible, surrogate values that conform to the specific materials used in production. Petitioners argue that it was appropriate for the Department to create a "basket" category and assign a single surrogate value for coal for all respondents, given that labels provided by respondents for forms of coal inputs and their respective uses were confusing and unclear.

Petitioners argue that the Department did not depart from its practice of using domestic, tax-exclusive prices in preference to import values. Petitioners maintain that the Department's stated preference for domestic, tax-exclusive prices is conditioned upon the finding of reliable publicly available information. In the present case, petitioners assert that the Department were unable to locate reliable domestic value at the time of the preliminary determination. Petitioners argue that the Department should use the same sources and values for inputs as it did in the preliminary investigation except where amended by material input suggestions made by petitioners in their August 5, 1997 PAI submission and their briefs.

Petitioners argue that the Department should use available import data most contemporaneous with the investigation period if they are otherwise reliable. *See Helical Spring Lock Washers*, 61 FR at 41994, 41996–7.

Petitioners argue that respondents' claims that certain surrogate values are aberrational are unwarranted.

Petitioners agree with respondents that the Department should properly inflate any surrogate values that are not contemporaneous with the period of investigation. Petitioners recommend that the Department use the wholesale price index (WPI) to derive inflators regardless of whether the associated values were reported in Rupees or U.S. dollars. However, petitioners object to the use of United States producer price index (PPI) for inflating dollar-denominated prices, which was used in the preliminary determination. Petitioners argue that since the inflation adjustments are intended to reflect price trends in the surrogate country and not monetary trends in United States, the Department should use inflation indices for the surrogate country, rather than those for the United States. *See e.g. Circular Welded Non-Alloy Steel Pipe from Romania*, 61 FR at 24274.

Department's Position: Both respondents and petitioners are correct in stating that certain general principles have guided the Department's practice in selecting surrogate values. We agree that surrogate values should be products which are as similar as possible to the input for which a surrogate value is needed. Likewise, we normally prefer a fully reliable domestic, tax-exclusive price to an equally reliable import price. We also prefer data (import and domestic) that are more contemporaneous to the POI/ POR to data that are less contemporaneous, and will normally update a value if more data covering additional months within the POI/POR become available to us between the preliminary and the final determination.

When we must use data that are not contemporaneous to the POI or POR, we agree that it should be indexed forward using an appropriate index. We also agree that the Department should not use values which it has found to be "aberrational," and that when the values obtained for the primary surrogate are aberrational, the Department should seek appropriate values in other economies, preferably in those at a similar level of economic development. We also have a long-standing practice of preferring publicly available information to other types of information.

It is important to emphasize, however, that our overarching mandate is to select the "best" available data (see 19 U.S.C. 1677b(c)(1)), which involves weighing all of the relevant characteristics of the data, rather than relying solely on one or two absolute "rules." Thus, for example, the most specific data may not be the most contemporaneous, the most reliable, or from the selected surrogate country. There is no set hierarchy for applying the above-stated principles, nor will parties always agree as to the reliability of certain data or the relevance of certain facts or assertions. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input. This we have done, to the best of our ability, in this case.

Concerning petitioners' comments regarding the proper inflation of any surrogate values that are not contemporaneous with the POI, we note that the Department agrees with their assertion that we should use WPI for those Indian values denominated in Rupees. However, we disagree with their objection to the use of PPI for inflating dollar-denominated prices, which was the methodology the Department used in the preliminary determination. We have determined that it is a reasonable methodology to use a U.S. index for those values denominated in U.S. dollars, because price indices in the United States would directly impact those prices denominated in the U.S. dollars.

Comment 30: Ministerial Error—Freight for Purchases of Certain Inputs

Petitioners argue that the Department should change the freight charges for purchases of certain inputs which travel by two modes of transportation for Baoshan, Shanghai Pudong and WISCO. Petitioners allege that, in the preliminary determination, the Department incorrectly weight-averaged the costs associated with the modes of transportation.

Respondents did not comment on this issue.

Department's Position: We agree with petitioners with respect to Baoshan and WISCO. For these companies, we have corrected the error for the final determination. However, we disagree with petitioners concerning Shanghai Pudong as we determine that this error is not applicable to Shanghai Pudong. Because this issue involves business proprietary information, please see Concurrence Memorandum for more information.

Company-Specific Comments

1. Anshan

Comment 31: Valuation of Certain Inputs

Anshan argues that the Department should revise the surrogate values for certain inputs (the identity of which constitutes business proprietary information) to reflect the translation corrections provided to the Department in its June 19, 1997 submission. Anshan asserts that the translation corrections accurately describe the value of the grades of the inputs at issue and that the Department confirmed their accuracy during verification.

Petitioners argue that the Department should not revise surrogate valuations to reflect the translation corrections contained in respondent's June 19, 1997 submission because the translation corrections constitute untimely and unsolicited information, and therefore should be rejected. If the Department accepts Anshan's representations, petitioners recommend that the Department continue to use the same value for the inputs as was used in the preliminary determination and make adjustments as necessary, according to their chemical descriptions. Petitioners refute respondents' claims that the results of verification sufficiently confirmed the accuracy of the translations. In addition, petitioners argue that the record information relating to the inputs (the identity of which constitutes business proprietary information) suggests that chemical content for certain inputs claimed by respondent are not accurate.

Department's Position: We agree with Anshan. We agree that the corrections concerning this input that Anshan submitted to the Department on June 19, 1997 (prior to the beginning of verification) were timely. Therefore, we disagree with petitioners' contention that the information was untimely and should be rejected. As we indicated in our verification report for Anshan, we found at verification that there were translation problems concerning both the exact name of the input and its chemical identity. However, we examined supporting documentation which indicated and confirmed the chemical composition of the input.

Comment 32: Valuation of Ocean Freight for Input(s) Imported From Market Economy Suppliers

Anshan argues that the Department should calculate ocean freight charges for its purchases of a certain input based on the actual shipping costs incurred.

Petitioners disagree, claiming that the documentation provided by Anshan did not demonstrate the payment was made in market economy currency. Accordingly, petitioners urge the Department to reject the freight rates proposed by Anshan.

Department's Position: We agree with Anshan that we should value ocean freight charges incurred in shipping market economy inputs based on the actual shipping costs incurred. This is consistent with the Department's practice of using the actual prices paid for inputs which were purchased from market economy suppliers and paid for in market economy currency. *See* 19 CFR 351.408(1). We also disagree with petitioners' contention that the documentation provided by Anshan did not demonstrate the payment for the input was in market economy currency. We note that Anshan included copies of invoices and bank statements denominated in U.S. dollars in their June 19, 1997 submission.

Comment 33: Factors for Sintering Plant

Petitioners argue that the Department should use facts available for material, energy, and labor factors for the material preparation workshop in Anshan's sintering plant. Petitioners argue that the verification reports state that Anshan failed to report these factors for the material preparation workshop in the general sintering plant. With respect to the labor component, petitioners recommend that the Department should use labor figures from the firing shop and the mineral concentration shop. For the omitted energy component of this workshop, petitioners urge that the Department should use the highest reported energy consumption (in terms of electricity, natural gas, and each other reported energy factor, per metric ton of plate) for any other shop.

Anshan objects to petitioners' claim that it failed to report factors of production for the general sintering plant. Anshan argues that omission of these factors from its response stems from a misunderstanding during verification about the functions of the materials preparation workshop. Anshan explained that market economy input is processed prior to importation, and does not require further processing by the material preparation workshop. Therefore, the inclusion of the factors for the materials preparation department in Anshan's factors of production would result in double-counting.

Department's Position: We agree with Anshan. As the market economy input is processed prior to importation, and does not require further processing by the material preparation workshop, we would be double-counting if we included in our calculation of normal value the factors of production for the material workshop.

Comment 34: Anshan's Reporting Methodology

Petitioners argue that Anshan's margin must be based entirely on facts available because its reporting methodology does not provide an adequate factual basis for a final determination. Petitioners contend that Anshan's questionnaire responses do not contain information with sufficient product-specificity because, they claim, Anshan's reporting methodology both lacks a meaningful product code system and fails to account for cost variations between products of different widths. Petitioners also identify as another anomaly in factor reporting the lack of CONNUM-specific electricity factors. If the Department chooses to accept Anshan's reporting methodology, petitioners request that any final calculations based thereon must take into account the errors, omissions and inconsistencies discovered at verification.

Anshan, citing *Steel Plate from Korea*, 58 FR at 37176, 37190 (July 9, 1993), argues that petitioners' challenge to Anshan's reporting methodology is unsubstantiated and should be disregarded. Anshan argues its records do not allow for the calculation of width-specific factors of production. Anshan contends its reporting methodology does sufficiently identify the source of production for plates of differing widths.

Further, Anshan charges that petitioners have provided no basis for rejecting the verified methodology used by Anshan to identify the source of the slabs for each type of plate. Anshan argues that it provided a detailed description of the methodology, along with supporting documentation which can trace the source of production of slabs and ingots. Anshan argues, further, that which items the Department examines at verification is something to be decided not by petitioners but by the Department. The Department, they note, does not have to examine every single issue at verification, as long as it is satisfied, that, on the whole, the verification indicates that the response was accurate. *See Silicon Metal from Argentina*, 58 FR at 65336, 65340 (Dec. 14, 1993).

Department's Position: We agree with Anshan. During verification, we noted that Anshan's reporting methodology was not based on width-specific data. Since Anshan did not use a width-specific methodology in the normal course of business, it would be inappropriate to use facts available because they reported data based on their usual system rather than a width-specific system, unless the system normally used is found to be distortive to the margin calculation. The Department has determined that Anshan reported its factor data using a non-distortive methodology that provided information of sufficient product specificity to support a final determination.

Comment 35: Freight Amounts on SAL Invoices

Petitioners argue that freight charges reported for U.S. sales should be the freight costs paid by the customer, rather than the freight costs incurred by Anshan's affiliate, Sincerely Asia Limited (SAL).

Anshan argues that sections 772(a) and (c) of the Tariff Act requires that freight costs incurred by the Anshan's affiliate, rather than the customer, should be deducted from export price.

Department's Position: We disagree with petitioners. Section 772(c)(2)(A) calls for the export price to be reduced by 'the amount, if any, *included in such price* (emphasis added), attributable to * * * expenses * * * incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." Because freight costs paid by the unrelated customer should not be "included in" the export price, there is no reason to deduct these from export price.

Comment 36: Labor for Plate Mill, Roughing Mill; Other Sintering Labor and Iron Making

Plate Mill: Petitioners argue that respondent should revise labor factors for plate mill labor to reflect the results of verification.

Anshan agrees that plate mill labor figures should be revised, based on their August 21, 1997 submission, which reflects the number of workers verified by the Department.

Roughing Mill: Petitioners argue that Anshan's labor database for the roughing mill should be rejected because labor figures for that facility could not be verified. Petitioners argue that certain labor for this facility identified by respondents as "unrelated" labor should be attributed to subject merchandise. For labor factors for the roughing mill, petitioners urge the Department to use as facts available the highest per-ton labor rate of any other Anshan shop involved in the production of subject merchandise.

Anshan states that roughing mill labor figures should be revised, based on their August 21, 1997 submission, which reflects the number of workers verified by the Department.

Other Sintering Labor: Petitioners argue that the Department should revise other sintering plant labor according to discoveries made at verification, and that the Department should assign sintering plant maintenance to the production of subject merchandise rather than overhead.

Anshan argues that it is not necessary to reclassify any of Anshan's workers. Respondent maintains that Anshan properly identified all of its labor expenses at each relevant production facility, and classified its workers according to the Department's questionnaire instructions; Anshan states, moreover, that the Department verified its reporting methodology.

Iron-Making: Petitioners argue that certain workers that Anshan identified as "unrelated workers" in the iron-making plant must be included in labor costs of producing subject merchandise.

Anshan argues that the Department examined its classification of workers at verification and noted the Department found no discrepancy in this regard.

Department's Position: We agree with both respondents and petitioners in part. Anshan provided a detailed description of the functions and job positions for all workers both directly and indirectly involved in the production of subject merchandise. In addition, we verified labor categories at verification.

For the plate mill, we agree with petitioners and Anshan, and have used revised plate mill figures that were based on the results of verification.

For the roughing mill, we found at verification that we were unable to verify the labor calculations submitted in the June 19, 1997 submission, as we could not tie these calculations to supporting summary worksheets examined at verification. Consequently, for the final determination, we have used the highest per-ton labor rate for a mill contained in Anshan's August 21, 1997 submission concerning labor calculations as facts available.

For other sintering labor, we have revised our calculations for the final determination to reflect the results of verification in this category. We disagree with petitioners that we should reclassify sintering plant maintenance to the production of subject merchandise rather than overhead. We examined the labor classifications at verification and found no evidence that Anshan improperly classified sintering plant maintenance workers.

Likewise, for iron-making, we examined Anshan's classification of workers at verification and found no evidence that these workers were improperly classified.

Comment 37: Material Inputs at No. 2 Steelmaking Plant

Petitioners argue that the Department should use facts available for certain "auxiliary materials" used at the No. 2 Steelmaking plant that were not reported to the Department, but discovered at verification. Petitioners urge that the Department use the highest consumption rate reported for the material (or similar material) by Anshan or any other respondent at any stage of production.

Anshan disagrees, arguing that the auxiliary materials not included in the reported factors for the No. 2 Steelmaking plant were either refractory materials used in the repair and maintenance of equipment or were used only for the production of non-subject merchandise. Anshan argues that the refractory materials should be considered overhead materials whose costs need not be reported individually because overhead materials are included in the surrogate value for overhead and thus do not require separate factor valuation.

As for other unreported material inputs, Anshan maintains that they were excluded because they were not used in the production of subject merchandise sold by Anshan in the United States during the investigation period.

Department's Position: We agree, in part, with both Anshan and petitioners. We agree with Anshan that some of their "auxiliary materials" are properly classified as refractory materials, and thus are part of overhead.

However, for certain other inputs, we agree with petitioners. There is no evidence on the record to confirm the accuracy of Anshan's contention that the five unreported inputs other than refractory materials were used only for the production of non-subject merchandise. We were unable to find supporting documentation either in the verification report, verification exhibits or questionnaire responses to confirm that these inputs were only used for the production of non-subject merchandise. Consequently, since Anshan did not report these factors, we have applied facts available for these certain inputs used in the Number 2 Steelmaking plant for the final determination.

We have information on consumption levels from Anshan concerning only one of the five unreported inputs. Consequently, as facts available, for three unreported inputs for which we have no information concerning

consumption levels for either the exact input or an input was substantially the same, we applied the consumption rate of the non-reported input for which we have information. We determined that a fourth unreported input was substantially the same as a reported input, and used the consumption value for the reported input. To value each of the five inputs, we used the surrogate value from the *Monthly Statistics* either for the input in question or if no such value was available, for a similar input. Because some of the information associated with this issue is business proprietary, please see the Concurrence Memorandum of October 24, 1997.

Comment 38: By-Product Credits

Petitioners maintain that energy used for additional processing in by-product production should be deducted from the by-product credit. Petitioners maintain that if the respondent is receiving a credit for a processed by-product, the energy used for additional processing must be reported so that its value can be deducted from the credit.

Anshan argues that if energy is deducted from the by-product credit, respondent should still receive a credit for its by-product production.

Department's Position: We agree with both petitioners and respondents. Because additional energy costs are incurred in processing the by-product, energy costs should be deducted from the by-product credits. Therefore, we will deduct energy used for additional processing from the by-product credit. *See* Comment 44.

Comment 39: Credit for a By-Product Produced in Coke Plant

Petitioners argue that Anshan should receive no credit for a by-product which was discovered at verification to have been misreported. If the Department grants a credit for the by-product at issue, petitioners urge that the surrogate value for the by-product be based on the correction made at verification. If the by-product undergoes additional processing, petitioners argue that the by-product credit must be reduced by the value of such additional processing.

Anshan objects to petitioners' claim that the Department should deny it a credit for the by-product at issue. Anshan argues that the Department verified the amount of this by-product generated at the coke plant; thus, Anshan is entitled to a credit for its production of this by-product.

Department's Position: We agree with Anshan. We have revised the by-product credit for the input which was correctly reported at verification.

Comment 40: Raw Materials for Sintering Shop

Petitioners argue that the Department should use facts available for certain raw material inputs in the sintering shop because Anshan failed to provide the Department with understandable, usable data with regard to these raw materials. Petitioners note that Anshan misidentified one gas input used by the sintering plant; therefore, petitioners urge that facts available should be used with regard to this gas input.

Anshan argues that although there was some confusion at verification regarding the correct translation of the input names, there is no justification for using facts available. Anshan notes that both petitioners and respondent appear to agree concerning the type of materials in question. Consequently, Anshan argues that these materials are already included in overhead and to include them again as raw materials would result in double counting.

Department's Position: We disagree with petitioners that the Department should use facts available for these raw materials. While it was true that we encountered difficulties at verification concerning the proper translation of these items, we were able to examine supporting documentation concerning the input. Consequently, we disagree with petitioners' assertion that Anshan did not provide understandable, usable data with regard to these raw materials. Because the details of this issue are business proprietary, please see the Concurrence Memorandum for a more complete discussion of this issue.

Comment 41: Moisture Content of a Certain Factor

Petitioners allege that it was inappropriate for Anshan to strip out moisture content of a certain input. Petitioners urge the Department to inflate the value to obtain a weight based equivalent to the weight basis used for the matching surrogate value.

Anshan argues that it would be improper and highly distortive for the Department to inflate the reported factor in the manner proposed by petitioners.

Department's Position: We agree with respondent. As the details underlying this comment are business proprietary, please see the Concurrence Memorandum.

Comment 42: Ministerial Errors

Petitioners argue that the Department should correct certain ministerial errors in its preliminary determination as to Anshan pertaining to ocean freight, transportation surrogate values, and foreign inland freight.

First, with respect to ocean freight, petitioners note that a ministerial error in the SAS program inadvertently truncated a data field used in the calculations of the actual ocean freight rate paid on an invoice-specific basis for a market economy carrier. Petitioners also note that the SAS program failed to deduct freight charges for certain invoices.

Second, with respect to transportation surrogate values for foreign inland freight, petitioners note that the inflator the Department used to develop the transportation surrogate value is incorrect. According to petitioners, the truck transportation rate for Anshan should be changed from $0.02km/MT to the $0.03/km/MT, which is the value cited in the cable that is the source of the surrogate value, and which is the value used for the other respondents.

Third, with respect to foreign inland freight, petitioners claim that the Department inadvertently applied the surrogate freight rate for truck to certain foreign inland freight factors for which the proper transportation freight rate should be that for train.

Fourth, with respect to the freight expense incurred for fuel oil, petitioners argue that the freight charge for fuel oil which is brought to Anshan by truck should be revised from $0.20/MT to $0.03/km/MT, to conform with the value cited in the cable which is the source of the surrogate value used.

Anshan had no comment with respect to the alleged ministerial errors identified by petitioners.

Department's Position: We agree with petitioners as to all of the above ministerial errors and have made appropriate corrections for the final determination.

2. BAOSHAN

Comment 43: Product Specificity

Petitioners argue that Baoshan's margin must be based on facts available because its reporting methodology, even if faithfully followed, does not provide an adequate factual basis for a final determination. Petitioners claim that the information reported by Baoshan, even if verified, does not provide an adequate basis for calculation of a dumping margin, largely because of a lack of product specificity. They argue that verification of an inadequate database does not transform it into an adequate database.

Petitioners argue that Baoshan's factor information cannot be used because it is not product-specific. Petitioners claim that Baoshan's cost models and reporting of U.S. sales do not make distinctions on a proper basis.

Petitioners claim that verification did not resolve these problems; instead, it only confirmed that Baoshan applied a flawed methodology. Petitioners argue that Baoshan's margin in the final determination should be based on neutral facts available. For a more detailed discussion of this issue, please see Baoshan's Factor Value Memorandum.

Baoshan argues that the information it reported was as product specific as possible. Moreover, Baoshan argues that this information was fully disclosed in Baoshan's February 14 and April 14, 1997 submissions as well as during verification. Baoshan states that the Department never asked it to revise its calculations to make them more product-specific than its records allowed. Accordingly, Baoshan argues, there is no basis for rejecting the information it has submitted.

Department's Position: We agree with Baoshan. The Department verified that Baoshan reported its factors of production in a manner as product-specific as possible. The Department has determined that using a database that conforms to Baoshan's records kept in the normal course of business is a more reasonable reporting methodology and produces less distortive results than would follow from the use of a constructed reporting methodology that deviates from Baoshan's records.

Comment 44: Further Processing of By-Products

Petitioners state that, in the verification report for Baoshan, the Department notes that one of the reported by-products was further refined to produce two other by-products. Petitioners argue that, as with all other by-products resulting from all other processes (regardless of the respondent involved), the Department must ensure that any surrogate value given as a credit for any by-product actually matches the by-product of the plate production process, rather than some further refined product. Petitioners claim that if the Department cannot match the actual by-product of the plate production process, but can only find a surrogate value for the further-processed material, then that surrogate value must be offset by the value of further processing. Petitioners argue that where the respondent has not provided sufficient information to calculate the offset in such circumstances, the by-product credit should be denied.

Baoshan did not comment on this issue.

Department's Position: We agree with petitioners. As the Department noted in its verification report for Baoshan, one of its by-products was further refined to produce two other by-products. The Department also noted that Baoshan did not report the factors involved in the further refinement. It is the Department's policy to only grant by-product credits for by-products actually produced directly as a result of the production process. A respondent must report the factors associated with the further refining of a by-product if it wishes to receive a credit for the further refined product. Because Baoshan failed to report these factors, therefore, we are only granting a credit for the one by-product directly produced in the production process.

Comment 45: Inconsistencies Discovered at Verification

Petitioners argue that the Department should correct all inconsistencies discovered at verification. Petitioners state that proper surrogate values should be matched to each input, in the proportions indicated in the verification report. Petitioners argue that, where the record does not contain a suitable surrogate value, the Department should use, as facts available, the most costly material for each respective process on the record.

Baoshan agrees that all data discovered at verification to be incorrect should be corrected for the final results. However, Baoshan disagrees with petitioners' suggestion that the Department must assign adverse facts available to value the factors affected by these changes. Baoshan claims that the Department has a statutory obligation to calculate margins as accurately and fairly as possible. Accordingly, Baoshan states, regardless of when the factors information was reported, the Department should assign representative surrogate values.

Department's Position: We agree with Baoshan. It is the Department's policy to assign surrogate values that most closely match the reported factor. We have surrogate values for all the inputs referenced by this comment. Consequently, there is no need for the Department to use facts available for these factors for the final determination. Because this comment involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 46: Freight Reporting

Petitioners argue that the Department found numerous discrepancies in the freight information supplied by Baoshan; therefore, Baoshan's reporting of freight factors is unreliable. Petitioners argue that, as facts available, the Department should use the distance to the most distant supplier for all freight factors. However, petitioners state if the Department does not use facts available for all freight, then it must correct certain ministerial errors relating to freight charges in the preliminary determination. Petitioners allege ministerial errors concerning two factors and the highest calculated freight rate.

Baoshan argues that petitioners misconstrued the Department's verification report. Baoshan argues that the report discusses the proper methodology for calculating freight distance for Baoshan's suppliers of one input. Baoshan claims that, at verification, the Department confirmed that its suppliers each supplied varying quantities of an input during the investigation period—not identical quantities as the Department had presumed in making the freight calculation in the preliminary determination. Baoshan claims that the Department's narrative in its verification report merely reiterates the information that was previously submitted. Baoshan argues that this is not a reason for calculating the freight costs for this input based on facts available.

Baoshan argues that, contrary to petitioners' allegation, Baoshan did provide distances and transportation mode for the input at issue. Baoshan claims the accuracy of this information was confirmed by the Department during verification. Accordingly, Baoshan argues, the Department should use this information for the final determination.

Finally, Baoshan claims that petitioners' explanation of the Department's ministerial errors with respect to freight does not provide the correct calculation of these values. Baoshan argues that the calculation which they submitted in their rebuttal brief should be used.

Department's Position: We agree in part with Baoshan. While there were errors discovered in Baoshan's reported freight factors, the errors were not significant enough to render the information unreliable. We have corrected all of the discovered inconsistencies for this final determination. We disagree, however, that the Department verified that Baoshan received different quantities of one input from different suppliers. Because proprietary information is involved, please see Analysis Memorandum for Baoshan for further discussion of this issue. Because we were unable to rely on Baoshan's freight factor data for one input (for reasons discussed in the Analysis

Memorandum), we have used facts available for freight distances in connection with that factor. As facts available, we will continue to use the same methodology used in the preliminary determination and take a simple average of all of Baoshan's suppliers of this input.

Comment 47: Valuation of a Certain Input

Baoshan argues that a certain input, the identity of which is business proprietary information, should be valued based on the input-specific surrogate value information that has already been submitted on the record.

Department's Position: We agree with Baoshan. Because of the proprietary nature of this issue, see the Concurrence Memorandum.

Comment 48: Packing

Baoshan argues that the Department's preliminary calculation of the cost of packing for Bao Steel's exports contain three errors. (1) The preliminary determination, Baoshan claims, incorrectly calculated packing costs based on reported information for loading materials. (2) The Department's preliminary packing cost calculations used an invented "estimate" of the weight of each piece of packing material used by Bao Steel. (3) In the preliminary determination, the Department added an amount for freight costs to the surrogate value for the packing materials used by Baoshan.

Department's Position: We agree in part with Baoshan. At verification, the Department was able to ascertain the actual weight of Baoshan's packing materials. Thus, in the final determination, we have used this value instead of the estimated weight used in the preliminary determination. In addition, we will not add freight to the surrogate value for the materials used for packing because the materials are self-produced. We disagree however, with Baoshan's claim that the Department used information reported for loading materials instead of that reported for packing materials. We used packing labor information from Exhibit D–6 of Baoshan's February 19, 1997 response. Thus, we used the same packing labor information for the final determination.

3. Liaoning/(Wuyang)

Comment 49: Verification of Labor Allocations

Petitioners assert that the document examined at verification "Corporate Announcement of Organizational Structure" was not collected as a verification exhibit and does not in itself attest to the accuracy of Wuyang's labor allocations. Petitioners allege that no attempt was made to verify Wuyang's labor allocations by examining company attendance records, payroll ledgers or other employment records. Thus, according to petitioners, those allocations have not been verified and cannot be considered reliable.

Department's Position: We disagree with petitioners. Wuyang's verification report states that, in order to tie together the A–36 allocation calculation for labor, the Department examined the original Ingot-Casting Cost Statement, the Finished Goods Inventory Ledger of the Steelmaking Plant, and the Production Accumulation Report of the Production Office. For steelmaking, the Department tied original payroll records to the total number of employees reported to the Department. The Department tied the total payroll expenses for these same employees to the August and June 1996 payroll ledgers. The Department noted no discrepancies. Thus, petitioners are in error when they state that the Department did not examine employment records and that therefore Wuyang's labor allocations were not verified. Furthermore, the Department is not required to collect particular documents as exhibits to attest that items have been verified to its satisfaction.

Comment 50: Standard Raw Material Factor Consumption Rates

Petitioners argue that Wuyang's raw material consumption rates ignore differences in chemical composition for different products. In addition, petitioners maintain that there is no supporting documentation to substantiate Wuyang's assertion that the material input factors reported are the quantities required to produce a ton of finished product sold on a theoretical weight basis. Petitioners claim that Wuyang's reported factor values are unreliable and unverified and that it failed to act to the best of its ability. Petitioners conclude that the Department should decline to consider Wuyang's raw material factor information and apply facts available.

Liaoning and Wuyang counter petitioners' claim by stating that they fail to recognize that Wuyang's carbon steel plate is produced using scrap steel and that although Wuyang's steel scrap factor inputs are, in fact, identical for each grade of subject merchandise that the company produces, the types of scrap steel used in production differ in chemistry for different grades of merchandise. Liaoning and Wuyang argue that Wuyang's reported material inputs thus account for the differences in inputs required to produce different products and reflect the actual material inputs for each product sold. Liaoning and Wuyang conclude that Wuyang has provided the Department with complete and accurate information, which has been verified without discrepancy. With respect to production on a theoretical weight basis, Wuyang explains that it has allocated actual consumption to theoretical production in a manner similar to the manner the way in which a company uses a standard cost system to allocate actual costs.

Department's Position: We agree with Liaoning and Wuyang. The verification report does not note any discrepancies between what it encountered at verification and what Wuyang reported. With respect to the petitioners' criticism as to Wuyang's use of theoretical weights, we note that Wuyang reported the actual amounts of material inputs required to produce one theoretical ton of finished product. Consequently, for the final determination, there was no need for the Department to make any adjustment to factor or sales amounts due to Wuyang's use of theoretical weight.

Comment 51: Reliability of Labor Allocations

Petitioners state that Wuyang's reported labor input rates are understated and must be rejected. Petitioners conclude that the Department must base the final results for Liaoning and Wuyang on the adverse best information available pursuant to 19 U.S.C. § 1677e(b) and (c). Failing that, the Department must revise Wuyang's data. In addition, petitioners argue that respondent made a clerical error in its labor hour calculations.

Department's Position: We agree with petitioners that Wuyang's reported labor input rates are understated, and we have therefore recalculated those rates. We also agree that there was a clerical error in the labor hours calculation, and have corrected that error for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a further discussion of this issue.

Comment 52: Treatment of Heavy Oil, Oxygen and Coal Gas

Petitioners, citing *Sebacic Acid from the People's Republic of China*, 62 FR at 10530 (March 7, 1997), state that, consistent with past practice, heavy oil, oxygen, and coal gas should be treated as direct energy inputs rather than as overhead expenses. Petitioners add that Wuyang has never provided evidence that heavy oil was not a fuel and that at no time has Wuyang explained how heavy oil was used in the production process.

Liaoning and Wuyang have expressed opposition to the Department's inclusion of heavy oil in energy costs. *See* Wuyang's submission of June 16, 1997. Liaoning and Wuyang state that in the event that the Department disagrees with Wuyang and includes heavy oil in energy costs, the Department should use the revised factor the Department verified. Liaoning and Wuyang add that the Department used facts available to determine Chinese inland freight for heavy oil. If the Department were to value heavy oil as a factor of production rather than including it in overhead, and thus were to require data for calculating freight, the Department should use the freight distance reported in its June 16, 1997 submission according to Liaoning and Wuyang.

Department's Position: We agree in part with both petitioners and respondents. At the preliminary determination we included electricity and coal gas as direct materials as well as heavy oil with freight added (see calculation memorandum from case analysts to the file, June 3, 1997). At verification, the Department learned that Wuyang had mistranslated the measure for heavy oil as kilograms when it should have been represented in *jin*, a Chinese unit of measure equivalent to half a kilogram. *See* Memorandum to Edward Yang, Director, Office of AD/CVD Enforcement Office 9, from Elizabeth Patience and Doreen Chen, Analysts, August 5, 1997. However, neither at verification nor at any other time did Wuyang provide evidence that heavy oil was not a fuel or explain how it was used in the production process. We therefore: (1) Used the revised usage factor for heavy oil described in the verification report, (2) included electricity, coal gas and heavy oil as direct energy inputs and (3) used the freight distance Wuyang reported in its June 16, 1997 submission.

Comment 53: Transportation From Factory to Port

Petitioners maintain that Wuyang knew that the subject merchandise it sold to Liaoning was destined for resale in the United States, and Liaoning never took physical possession of the subject merchandise. Accordingly, the surrogate value of the cost of transporting the subject merchandise from the factory to the port of exportation should be deducted from the U.S. price, conclude petitioners, in accordance with the practice described in *Brake Drums and Rotors*, 62 FR at 9160, 9170.

Liaoning and Wuyang state that foreign inland freight should not be deducted from Liaoning's export price because this expense was not incurred by Liaoning, but rather was incurred by its unaffiliated supplier. They further argue that, at verification, the Department ascertained that Wuyang's factory price included delivery of the merchandise to the seaport where it was shipped to the United States by Liaoning. Respondent argues that in *Titanium Sponge From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 61 FR at 58525 (November 15, 1996) ("*Titanium Sponge*"), the Department determined that "when a reseller, not the producer, is considered the exporter, the "original place of shipment" is the point from which the reseller shipped the merchandise." Respondent concludes that Liaoning's acquisition price thus included all inland freight expenses, and the cost of transporting the subject merchandise from the factory to the PRC seaport should hence be treated as a component of Wuyang's total costs instead of a deduction from the price to the U.S. customer.

Department's Position: We agree with petitioners. In *Brake Drums and Rotors* we explained that it is the Department's "normal methodology to strip all movement charges, including all foreign inland freight, from the U.S. price being compared to the NME normal value based on factors of production." While it is true that in *Titanium Sponge* the Department did not deduct factory-to-port movement charges from the U.S. starting price, and instead included "in normal value an amount for the inland freight," the circumstances in that case were different from those in the current investigation. Specifically, in *Titanium Sponge*, (1) the subject merchandise produced in an NME country was sold to an exporter located in a market economy without knowledge on the part of the producer that the United States was the ultimate destination for the merchandise, and (2) the exporter took physical possession of the subject merchandise. Liaoning is not located in a market economy; therefore the actual price it paid to Wuyang, which also is not a market economy firm, is not relevant. (Furthermore, Liaoning's supplemental section B questionnaire response states that "Liaoning does not hold any inventory of the subject merchandise prior to export"). The expense incurred to transport the steel to the port is part of the cost of the U.S. sale and the factory was the original place of shipment for the sale. Thus the Department has continued to deduct the surrogate value of the cost of transporting the subject merchandise from the factory to the port of exportation from the U.S. price in its final determination calculations.

4. Shanghai Pudong

Comment 54: Facts Available

Petitioners allege that the verification team's investigation of Shanghai Pudong revealed that the company had been repeatedly misstating and concealing information concerning many critical aspects of this investigation. *See, e.g.*, Verification Report at 1–2 (listing seven of the items that had been misreported by this respondent). Petitioners contend that the consistency and repetition of Shanghai Pudong's omissions and misrepresentations suggest that these were not innocent mistakes, but calculated to obtain results more favorable to Shanghai Pudong, demonstrating its repeated lack of cooperation in providing the requested information. Petitioners argue that Shanghai Pudong's actions in this regard have prejudiced the petitioners and warrant application of adverse facts available.

Shanghai Pudong argues that petitioners' accusation and request for adverse facts available is completely without merit. Shanghai Pudong asserts that the only evidence offered by petitioners of the alleged omissions were errors corrected by Shanghai Pudong at the start of verification. Shanghai Pudong asserts that it went to great lengths to ensure that the information provided to the Department was as accurate and complete as possible and that the Department verified the responses finding only minor errors.

Department's Position: We disagree with petitioners. The errors cited by petitioners were corrected by respondents prior to the start of the Department's verification. In addition, the Department examined the errors in question and determined that they were not large enough or sufficiently different from the previous responses to constitute a new questionnaire response. Consequently, the Department determines that there is no basis rejecting Shanghai Pudong's entire response for the use of total adverse facts available in this situation.

Comment 55: Shanghai Pudong and Shanghai No. 1

Petitioners contend that Shanghai Pudong and Shanghai No. 1, which did not respond to the Department's

questionnaire, should be collapsed by the Department and treated as a single entity because, they allege, both plants are controlled by Shanghai Metallurgical. Petitioners contend that Shanghai Metallurgical is involved in the business operations of Shanghai Pudong and Shanghai No.1. They note that the Department discovered at verification that Shanghai Metallurgical appoints the Chairman of the Board of both Shanghai Pudong and Shanghai No.1. Additionally, petitioners note that all large investments by Shanghai Pudong and Shanghai No. 1 must be approved directly by Shanghai Metallurgical. Petitioners claim that respondents characterization of Shanghai Pudong and Shanghai No. 1 as "competitors" is simply preposterous. Petitioners note that there is an annual meeting between Shanghai Metallurgical, Shanghai Pudong and Shanghai No. 1 which includes discussion of business targets, investment and productivity. Petitioners state that no such meetings or discussions pursuant to such meetings could possibly take place between true competitors.

Petitioners also contend that the production facilities of Shanghai Pudong and Shanghai No.1 are not substantially different, thus presenting the possibility of manipulation of price or production. Therefore, that the two companies should be treated as one entity for purposes of calculating an antidumping margin.

Shanghai Pudong asserts that under the provisions of Section 771(33) of the Tariff Act, Shanghai Pudong and Shanghai No. 1 are not affiliated. It states that the two companies are not siblings, spouses, or ancestors/lineal descendants. The two firms, Shanghai Pudong contends, are not officers, directors, partners or employers nor do they control each other or own stock in one another. Shanghai Pudong argues that Shanghai Metallurgical does not exercise control over either it or Shanghai No. 1. Accordingly, they argue, this is not a case of "[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person" under the terms of Section 1677(33)(f) of the statute. Consequently, Shanghai Pudong claims there is no basis for finding that Shanghai Pudong and Shanghai No. 1 are affiliated under the statute.

Shanghai Pudong states that it would also be improper to collapse the two companies because of significant differences in their production facilities and capabilities.

Shanghai Pudong further claims that there is no possibility of manipulation of price or production by Shanghai Pudong and Shanghai No.1. It asserts that the two companies are independent entities that do not share any managerial employees or board members. It notes that there are no joint ventures between the companies, and claims that they do not share marketing information—each company makes independent marketing and pricing decisions. They also do not share information regarding production or scheduling. Consequently, Shanghai Pudong asserts, there is absolutely no evidence of any potential for the manipulation of prices or production in the event that Shanghai Pudong and Shanghai No. 1 are not collapsed.

Shanghai Pudong also notes that collapsing it with Shanghai No. 1 for the purposes of calculating costs would directly contradict the Department's past decisions. It claims in the German *Large Newspaper Printing Press* case, the Department acknowledged that the related producers of identical subject merchandise satisfied the normal criteria for collapsing, but nevertheless refused to collapse the companies for the purpose of its cost calculations. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Germany ("LNPPs from Germany")*, 61 FR 38166, 38188 (July 23, 1996). The Department held that the criteria "relate to collapsing companies for sales purposes rather than cost." Shanghai Pudong claims there is clearly no basis for collapsing it with Shanghai No. 1—competitors who do not have any business dealings with one another—for the purposes of calculating costs.

Department's Position: Petitioners claim that the relationship which Shanghai Pudong and Shanghai #1 share with Shanghai Metallurgical requires that the Department "collapse" the two producers based on an analysis under the criteria set forth in *Nihon Cement. See Nihon Cement Co.* v. *United States*, 17 CIT 400 (1993).

We have construed petitioners' claim as a request to examine whether it is appropriate for Shanghai Pudong to be treated a separate entity for purposes of assigning a dumping margin.

The sole reason advanced by petitioners for arguing that Shanghai Pudong should not be given a separate rate is that this result is precluded by Shanghai Metallurgical's alleged control over Shanghai Pudong and Shanghai No. 1.

In NME cases we only assign separate rates to exporters and Shanghai No. 1 did not export to the United States.

As discussed above in Comment 1, we have determined that Shanghai Pudong has met the criteria for separate rates by demonstrating both a *de facto* and a *de jure* absence of government control over its export operations. Shanghai No. 1 has made no such demonstration and therefore is not entitled to a separate rate.

Furthermore, we note that, even if we had conducted a "collapsing" analysis, with respect to Shanghai Pudong and Shanghai No.1, the results would have been identical because substantial retooling would be required in order for Shanghai Pudong and Shanghai No. 1 to restructure manufacturing priorities. Finally, we determine that although there is some potential for manipulation of price or production, this potential is not "significant." Because business proprietary information is associated with these conclusions, please see the Concurrence Memorandum for details.

We also note that Shanghai Pudong incorrectly cites Comment 13 of *LNPPs from Germany* for the proposition that the Department will not "collapse" producing companies whose sales data it is not using. Because the comment cited involved a narrow issue of averaging the cost of manufacturing the subject merchandise with respect to the respondent company and its affiliate, the question of "collapsing" (*i.e.*, treating two firms as a single respondent) was not raised in that case. Therefore, what the Department meant by the last sentence of Comment 13 in *LNPPs from Germany* was that the five collapsing criteria cited by the *LNPPs* respondent referred to "collapsing companies," rather than to decisions solely involved cost averaging.

Comment 56: Unreported Consumption of an Input

Petitioners contend that Shanghai Pudong's consumption and conversion factors for a certain input are incorrect. Petitioners state that information obtained at verification was undocumented and inconsistent with information previously submitted by respondent. Petitioners note that two of Shanghai Pudong's facilities showed a different usage rate per ton of the input. Accordingly, they urge that the Department should base valuation of the input on adverse information available.

Shanghai Pudong argues that petitioners' arguments are flawed and should be disregarded. It notes that the usage per ton of the input varies by facility. In addition, it contends that it did not track the usage of the input in the normal course of business. Consequently, at the request of the Department, Shanghai Pudong calculated a conversion calculation that yielded the values reported to the Department.

Department's Position: We agree with Shanghai Pudong. We reviewed this issue at verification and found that the usage rate for the input does vary by facility. Consequently, we asked Shanghai Pudong to calculate the conversion factor and amount of the material necessary to produce the input which we examined at verification. Since Shanghai Pudong's methodology was reasonable, we have accepted these values for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 57: Transportation Charges for Certain Inputs

Petitioners contend that the Department should use adverse facts available to value transportation charges for a certain input. They argue that, at verification, the Department found that Shanghai Pudong's reported information for the largest suppliers of this input were incorrect. Petitioners argue that, as adverse facts available, the Department should calculate freight charges for this input based on the longest distance and highest volume reported.

Petitioners also urge the Department to use adverse facts available for the transportation distances for four other inputs. Petitioners note that the Department discovered errors at verification with respect to these inputs.

Shanghai Pudong asserts that it attempted to provide support for the input at verification but was not allowed to by the Department. Shanghai Pudong argues that despite the errors uncovered at verification, the information reported was basically accurate and can be used for the final determination.

Concerning the transportation distances for the four other inputs, Shanghai Pudong notes that the Department verified the information and found only minor errors. Shanghai Pudong claims that the Department should follow its established practice and use the verified information in the final determination, citing *Ferrosilicon from Brazil*, 59 FR at 732, 736 (January 6, 1994) and *Sulfur Dyes*, 58 FR at 7537, 7543.

Department's Position: We agree with petitioners in part. We found at verification that Shanghai Pudong incorrectly reported its top ten suppliers for a certain input. The Department examined Shanghai Pudong's documentation and methodology with the assistance of its staff and found it to be incorrect. Consequently, for the final determination, we calculated the freight distances for this input using the longest distance reported for the input.

However, we disagree with petitioners regarding the transportation information supplied for the other four inputs. The Department verified this information and found only minor errors. Consequently, we have determined that it is not necessary to use facts available for the distances for these inputs. Due to the proprietary nature of details concerning this issue, see the Concurrence Memorandum.

Comment 58: Unreported Inputs From Unaffiliated Company

Petitioners contend that, at verification, the Department asked for, but was unable to obtain from Shanghai Pudong, certain information concerning inputs from an unaffiliated company. They claim that certain information was not part of the record and, therefore, the Department should base its calculations on adverse facts available.

Shanghai Pudong argues that the petitioners misrepresent the facts regarding the opecations of the unaffiliated company. Shanghai Pudong contends that there is information on the record concerning certain inputs that it was able to obtain from the company. Shanghai Pudong states that for one input, it was unable to obtain the information from the unaffiliated entity. However, it notes that it attempted to fully cooperate with the Department. Further, it claims that petitioners' suggestion for using facts available for this situation is inappropriate because this is not a situation in which an interested party failed to cooperate.

Department's Position: We agree with respondents. Because of the proprietary nature of the details of this issue, see the Concurrence Memorandum.

Comment 59: Gas Inputs

Petitioners contend that Shanghai Pudong misled the Department by not correctly reporting gas inputs that were used in a certain production facility. Petitioners urge the Department to use adverse facts available for these gas inputs.

Shanghai Pudong argues that petitioners misunderstand the production process and have erroneously stated where the inputs are generated. Shanghai Pudong claims that the production facility accounted for the inputs in question in the "miscellaneous expenses" category. Shanghai Pudong also notes that, in the normal course of business, the facility only consumed trivial amounts of these inputs. Consequently, Shanghai Pudong did not track these inputs in its normal record keeping system. Therefore, respondents state, there is no need to use facts available in this situation.

Department's Position: We agree with respondent. We found at verification that Shanghai Pudong did use small amounts of certain inputs in a particular facility and that respondent included these inputs in the "miscellaneous expenses" of its monthly production report.

Comment 60: Adjustment of Labor Inputs

Petitioners argue that the Department should adjust Shanghai Pudong's reported labor inputs upward to account for the cost factors associated with transporting slabs between Shanghai Pudong's facilities. They contend that, because respondent did not report these factors, the Department should use adverse facts available to calculate labor costs incurred in the transportation process.

Shanghai Pudong asserts that the labor used to move materials between facilities is properly treated as an overhead expense. They further state that they notified the Department that they treated this expense as part of overhead in the supplemental questionnaire response. Shanghai Pudong further notes that the Department never notified Shanghai Pudong that this methodology was incorrect in any way. Shanghai Pudong argues that petitioners' arguments for the use of facts available are incorrect and should be rejected.

Department's Position: We agree with Shanghai Pudong that the labor used to move materials between facilities is properly treated as overhead. We verified and accepted Shanghai Pudong's methodology for reporting the workers involved and the unit with which they are associated.

Comment 61: Assignment of Appropriate Surrogate Values for a Certain Input

Respondents argue that the Department should assign appropriate surrogate values to the two different grades of a certain input used by Shanghai Pudong. They maintain that because the Department discussed usage of different grades at verification and because these two grades vary substantially in market value, the Department should assign appropriate surrogate values to each of the grades actually used in the production process.

Petitioners contend that there is no evidence on the record to support respondents' proposed methodology of

valuing the input by grade. According to petitioners, the Department never verified the quantity and value of the different grades produced or consumed. The new information submitted by respondents should be disregarded as it contains unverified information and unexplained calculations based on the unverified information. Petitioners suggest valuing this input as they suggested in their comment for the relevant surrogate values.

Department's Position: We agree with petitioners that this information was new at verification and represents a major change to the data which had been previously submitted. It has been the Department's practice that if this information constitutes a significant change, the Department may not use this information in the final determination. Failing to report inputs in a timely manner clearly constitutes a major impediment to the investigation. See 19 U.S.C. 1677e((a)(2)(c)). Moreover, by not reporting certain inputs until after the due date for such information, Shanghai Pudong has failed to act to the best of its ability to comply with the Department's requests for timely submissions of information.

However, the Department, in keeping with our position in comment 29 above, agrees that it is our responsibility to value each of the grades of the input separately, to the best of our ability. Therefore, we have valued the two grades reported before verification separately. We are valuing one grade of the input at the market economy price paid by the respondent and we are valuing the other grade of the same input with Indian *Monthly Statistics*. See Shanghai Pudong's factor valuation memorandum for more information on this issue.

Comment 62: Ministerial Errors

Petitioners allege that the Department made certain ministerial errors in the preliminary determination with respect to Shanghai Pudong.

Factor Costs for Certain Inputs: Petitioners argue that the Department should value two inputs based on the production factors submitted by Shanghai Pudong rather than Indian surrogate values. Respondents agree with petitioners that the Department should use its reported factors rather than the values from Indian *Monthly Statistics*.

Transportation Surrogate Values: Petitioners allege that the Department used an incorrect transportation surrogate value for truck freight in the preliminary determination.

Respondents had no comment on this issue.

Freight Error: Petitioners contend the Department incorrectly calculated the freight charges in the preliminary determination. Respondents did not comment on this issue.

Respondents had no comment on this issue.

Freight for a Certain Input: Petitioners argue that the Department should revise its calculation of the freight charges associated with a certain input. Respondents did not comment on this issue.

Department's Position: (a) Factor costs for certain inputs: We have used surrogate values from Indian *Monthly Statistics* for these inputs. (b) Transportation surrogate value: We agree with petitioners and have corrected the error for the final determination. (c) Freight error: We agree with petitioners and have corrected the error for the final determination. (d) Freight for a Certain Input: We agree with petitioners that we incorrectly calculated freight for a certain input in the preliminary determination. However, the ministerial error allegation is irrelevant to the final determination as Shanghai Pudong submitted revised transportation distances which correct for this error. Because of the proprietary nature of the details of these issues, see the Concurrence Memorandum for a more complete discussion.

5. WISCO

Comment 63: Facts Available: Certain Factors

Petitioners argue that, because certain factor inputs were misreported or withheld and only discovered at verification, the Department should apply adverse facts available for these inputs. In particular, they contend that WISCO did not report the inputs of certain factors at particular stages of production. Second, they argue that WISCO misreported the amount of by-product electricity generated at a certain stage of production. Additionally, they contend that WISCO misreported certain by-products. Finally, they argue that WISCO failed to report distances for certain material inputs. They contend that this misreporting constitutes a significant impediment to this investigation and as such, the Department should apply adverse facts available in making its final determination. See 19 U.S.C. 1677e ((a)(2)(c)), 19 U.S.C. 1677e (b), and 19 U.S.C. 1677m(e) (1996).

WISCO asserts that the errors discovered at verification were minor in nature and did not impede the investigation. It contends that the Department typically uses information to which minor correction have been made in its final determination.

Department's Position: We agree with WISCO in part. We found that five of the six errors that the Department discovered at verification were minor in nature and do not justify the use of adverse facts available. Our review of these five errors indicates that they were caused by oversight or clerical error on the part of WISCO. Consequently, we disagree with petitioners' assertion that these errors clearly constituted a significant impediment to this investigation or that they proved that WISCO failed to act to the best of its ability to comply with a request for information. We note that it has been the Department's position in the past to accept such changes for the final determination of an antidumping investigation. *See, e.g., Ferrosilicon from Brazil*, 59 FR at 736; *Sulfur Dyes*, 58 FR at 7543.

However, we agree with petitioners that one of the six errors indicated that WISCO did not report the inputs of certain factors at particular stages of production. Therefore, for these inputs we have applied facts available for the final determination. Because this involves proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 64: By-Product Credits

Petitioners contend that the Department should reject WISCO's claimed credits for by-products at a the coke-making facility. They allege that, at verification, the Department discovered that many of the agents used to further process a certain by-product into other by-products are listed on WISCO's production reports but were not reported to the Department. Additionally, they argue that the Department should not allow the offset because the claimed by-products require further processing. For this reason, they argue that the Department should apply facts available and deny any credit for these by-products, relying on 19 U.S.C. 1677e(a) and (b).

Respondents argue that petitioners' arguments appear to be based on a basic misunderstanding of WISCO's reporting of factors used and products produced at WISCO's coke-making facility. WISCO maintains that almost all of the factors used to process the by-products of the coke-making facility were included in the reported factors of production and that the minor reporting errors discovered during verification regarding factors used in the coke-making facility consisted of the omission of certain inputs used to process a by-product. It contends that it told the Department during verification that only a few inputs are consumed during processing. Therefore, WISCO argues that the only relevant omissions of factors in the particular facility were the quantities of certain inputs used in the processing of the by-product. Furthermore, they assert that the verification report indicates that these quantities were reported in the production records provided to the Department during verification and are included in the record in Verification Exhibit W–24. WISCO urges the Department to use this verified information to determine the quantity of inputs at the facility.

Department's Position: We agree with petitioners in part. The Department noted in its verification report that "WISCO did not report the factors used to further process [the inputs]. In fact, many of the agents used to refine [the inputs] are listed on the production reports, but were not reported by respondent." The Department only discovered these factors in examining the production reports at the beginning of verification, because WISCO did not submit this information prior to verification. It is the Department's general policy to only grant by-product credits for by-products actually produced directly as a result of the production process. A respondent must report the factors associated with the further refining of a by-product if they wish to receive a credit for the further refined product. Even though these factors were in the production reports, WISCO failed to report these factors to the Department. Therefore, we have denied any credit for these by-products for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for more information.

Comment 65: Facts Available

Petitioners contend that market economy purchases of certain inputs should be assigned adverse facts available because the company was unable, at verification, to provide invoices for the purchases. *See Parvico Pizzamiglio S.A.* v. *United States*, 18 CIT 299, 305 (1994), 19 U.S.C. 1677m(i), and 19 U.S.C. 1677e (1988). In addition, they argue that the domestically purchased input should be assigned facts available for this company due to the company's failure to report consumption of these inputs until after the questionnaire deadline. As facts available, they argue that the Department should assign the highest surrogate value on the record to each purchase.

Respondents maintain that, even though they were unable to provide invoices to substantiate their market economy purchases of certain inputs, they did provide the Department with copies of the relevant contracts, which contained the price and the terms of sale, and Chinese Government Customs (CCIB) forms showing the quantities imported. They contend that all relevant information regarding WISCO's market economy purchases of these inputs were verified by the Department and should be used in the final determination.

Department's Position: We agree with petitioners that we should assign adverse facts available to market economy purchases of inputs at issue. We found at verification that WISCO was unable to provide invoices for the purchases of these inputs. We did examine the terms of sale based on the contracts and the CCIB forms. The CCIB forms do not include prices, and while the contract show the original arrangements, they may not reflect the prices ultimately paid. This is why the Department relies on invoices reflecting the amount actually billed and the currency in which payment was required. These invoices should be available to WISCO, and WISCO's failure to produce them casts doubt on its assertion that the contract terms were final. For the final determination, we are using, as facts available, a single surrogate value from Indian *Monthly Statistics* for these inputs. Because this issue and our calculation of adverse facts available involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation of the issue and our methodology.

Comment 66: Financial Records

Petitioners, citing *Ansaldo Componenti, S.p.A.* v. *United States*, 628 F. Supp. 198, 204 (CIT 1986) argue that the Department should apply adverse facts available because WISCO failed to provide certain financial records requested by the Department in the supplemental questionnaire. *See also* 19 U.S.C. 1677e(a).

WISCO claims that, although it did decline to submit copies of these documents due to legitimate business concerns, this decision did not impede the course of the investigation. In addition, WISCO states that the Department did not inform it that its response was deficient in any way. WISCO maintains that, in non-market economy cases, issues regarding the actual profits earned by non-market economy producers and regarding its actual non-operating income and expenses are not relevant to the investigation. Instead, this information is subsumed in the SG&A expense rate and the profit rate that are obtained from a surrogate country for use in the Department's normal value calculations. Therefore, WISCO argues that adverse facts available is not warranted in this case.

Department's Position: We agree with respondents that, although WISCO did not provide the requested financial reports, it did provide a sufficient explanation of why this information is considered sensitive. We also determined that the information contained in the financial reports was not necessary to the investigation and, therefore, WISCO's failure to provide it did not impede the course of the investigation. Consequently, we disagree with petitioners claim that we should use adverse facts available for WISCO based on this issue. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 67: Product Specificity

Petitioners contend that the Department should reject WISCO's claim that it is unable to report certain input factors based on width and other characteristics. They argue that, in fact, other information WISCO submitted on the record suggests that WISCO could have reported these characteristics. Accordingly, petitioners urge the Department to apply adverse facts available.

WISCO maintains that it properly answered the Department's March 12, 1997 supplemental questionnaire on this issue and explained therein why width cannot be a distinguishing factor for WISCO in the assignment of control numbers. The Department, they argue, did not notify WISCO that its response was deficient in any way and at verification, the Department examined WISCO's production records and verified that its descriptions were correct.

Department's Position: We agree with WISCO that its response to the supplemental questionnaire was sufficient to explain why WISCO was unable to report input factors based on certain characteristics. At verification, we examined WISCO's records and found them to be consistent with the response. Therefore, we disagree with petitioners' claim that the Department should use facts available for this issue.

Comment 68: Adjustment of Labor Inputs

Petitioners argue that the Department should adjust WISCO's reported labor inputs upward to account for the significant materials handling costs associated with transporting materials and equipment between WISCO's facilities. They contend that, because labor may play a more significant role in the transportation process than is indicated by WISCO's current allocation methodology, the Department, using adverse facts available, should calculate labor and other costs incurred in the transportation process and use this information to adjust upward the labor factor usage rates. See 19 U.S.C. 1677b(c)(3).

WISCO asserts that the labor used to move materials between facilities is properly treated as an overhead expense. It further states that the Department verified that the bulk of the materials are transported between facilities using conveyor belts and pipelines and, therefore, petitioners' assertion that the labor costs associated with the transportation of material is significant is factually incorrect. Furthermore, WISCO maintains that it has a separate transport unit that is responsible for movement of materials and equipment and it is not possible to link specific inputs used in the transport unit to the production of only subject merchandise. WISCO argues that, even if the Department decided to adjust WISCO's labor factors to account for labor employed in the internal transport unit, the adjustment suggested by petitioners is inappropriate because petitioners suggest that the Department base its labor adjustment on the surrogate value for train transportation. WISCO argues that there is no explanation for why the Department should link a surrogate value for rail freight and labor costs associated with internal shipment of materials within WISCO's facilities. WISCO argues that petitioners' arguments should be rejected.

Department's Position: We agree with WISCO that the labor used to move materials between facilities is properly treated as overhead, based on our observations at verification. In addition, we verified and accepted WISCO's methodology for reporting workers involved in moving material between facilities and the unit with which they are associated.

Comment 69: Ministerial Error—River Freight

Petitioners contend that the Department made a ministerial error in valuing river freight in the preliminary determination and should correct it in the final determination. WISCO did not comment on this issue.

Department's Position: We agree with petitioners that there was a ministerial error in the portion of the SAS program used for valuing river freight in the preliminary determination. We have corrected this error for the final determination. See Comment 25 above.

Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Government of the PRC suspending this investigation. Therefore, we are instructing Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from the PRC. Any cash deposits of cut-to-length carbon steel plate from the PRC shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received a separate request for continuation from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act on October 15, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Weighted-average manufacturer/exporter	Margin (percent)
Anshan (AISCO/Anshan International/Sincerely Asia Ltd.)	30.68
Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.)	34.44
Liaoning	17.33
Shanghai Pudong	38.16
WISCO (Wuhan/International Economic and Trading Corp./Cheerwu Trader Ltd.)	128.59
China-wide Rate	128.59

China-Wide Rate

The China-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States.

On October 24, 1997, the Department entered into an Agreement with the Government of the PRC suspending this investigation. Pursuant to Section 734(g) of the Act, petitioners, Liaoning and Wuyang have requested that this investigation be continued. If the ITC's final determination is negative, the Agreement shall have no force or effect and the investigation shall be terminated. See Section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an Antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. See Section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30383 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of evaluation final findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Alabama, Louisiana, Mississippi, North Carolina, Washington, and American Samoa Coastal Management Programs, and the Apalachicola (Florida), and Rookery Bay (Florida) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approved coastal management programs and the operation and management of NERRs.

The States of Alabama, Louisiana, North Carolina, and Washington, and the Territory of American Samoa were found to be implementing and enforcing their Federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The State of Mississippi was found to be not fully adhering to its approved coastal zone program and is not implementing and enforcing the program in a satisfactory manner.

Apalachicola and Rookery Bay NERRs were found to be adhering to programmatic requirements of the NERR System. Copies of these final evaluation findings may be obtained upon written request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3087x126.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: November 14, 1997.

Nancy Foster,

Assistant Administrator.

[FR Doc. 97–30554 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting

November 20, 1997.

ACTION: Notice is hereby given of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration to provide secretariat services for the Committee.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Friday, December 5, 1997 from 9:00 a.m. until 5:30 p.m.

ADDRESSES: The meeting is scheduled to take place in the Lounge of the Export-Import Bank of the United States, 11th Floor, 811 Vermont Avenue, N.W., Washington, D.C. 20571. This location is subject to change. If the location changes, another **Federal Register** notice will be issued. Updates about the location of the meeting will also be available on the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4716; 14th Street and Constitution Avenue, N.W.; Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

Media Inquiries: Please contact Paige Darden at the Office of Public Affairs, at 202–482–7002.

Agenda

Friday, December 5

Opening remarks
Briefings on the perspectives and experiences of the public interest and broadcasting communities, and on digital technology
Public Comment
Committee Business
Closing Remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Public Participation: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards at least five (5) working days prior to the meeting at 202–482–8056 or at piac@ntia.doc.gov. Please bring a form of picture identification such as a driver's license or passport for clearance into the building on the day of the meeting.

Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to piac@ntia.doc.gov (please use "Public Comment" as the subject line) or by letter addressed to the Committee at the address listed below (please place "Public Comment" on the bottom left of the envelope).

Guidelines for Public Comment: The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments. In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at meetings. Written comments received from the public may be mailed (if at least thirty-five (35) paper copies are submitted) or forwarded by email to the committee members prior to the meeting date. However, comments received too close to the meeting date will normally be provided to committee members at the meeting. Written comments received shortly after a meeting will be compiled and sent as briefing material prior to the next meeting.

Obtaining Meeting Minutes: Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–501–8195, or by written request to Karen Edwards; Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4716; 14th Street and Constitution Avenue N.W.; Washington, DC 20230.

Shirl Kinney,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 97–30546 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Wool Textile Products Produced or Manufactured in Costa Rica

November 14, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Upon a request from the Government of Costa Rica, the U.S. Government has agreed to increase the current guaranteed access levels for Categories 347/348 and 447.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 69081, published on December 31, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 20, 1997, you are directed to increase the guaranteed access levels for the following categories:

Category	Guaranteed Access Level
347/348	2,800,000 dozen.
447	18,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30474 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Proposed Collection; Comment Request Entitled Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Professional Employee Compensation Plan. The clearance currently expires on March 31, 1998.

DATES: Comments may be submitted on or before January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 78–2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources; gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, *5,340;* responses per respondent, *1;* total annual responses, *5,340;* preparation hours per response, *.5;* and total response burden hours, *2,670*..

Obtaining Copies of Proposals

Requestor may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Compensation Plan, in all correspondence.

Dated: November 13, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–30425 Filed 11–19–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Proposed Collection; Comment Request Entitled Rights in Data and Copyrights

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0090).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights. The clearance currently expires on March 31, 1998.

DATES: Comments may be submitted on or before January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in Data is a regulation which concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories.

(a) A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1,100;* responses per respondent, *1;* total annual responses, *1,100;* preparation hours per response, *2.7;* and total response burden hours, *2,970.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *9,000;* hours per recordkeeper, *3;* and total recordkeeping burden hours, *27,000.*

Obtaining Copies of Proposals

Requestor may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: November 13, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–30426 Filed 11–19–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: December 9–10, 1997.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The Presidential Advisory Committee will

meet in open session from approximately 8:30 a.m. to noon and 1:00 p.m. to 5:30 p.m. on December 9, 1997, and from 1:00 p.m. to 3:30 p.m. on December 10, 1997. This meeting will include briefings on the budgets of the five CIC R&D Program Component Areas (High End Computing and Computation; Large Scale Networking; High Confidence Systems; Human Centered Systems; and Education, Training, and Human Resources) and briefings by Federal officials on R&D topics of interest to the Committee. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: *http://www.hpcc.gov;* it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: November 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30415 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD

ACTION: Notice to Add a System of Records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 22, 1997 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 5, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DCSI 01

SYSTEM NAME:

Joint Reserve Intelligence Planning Support System (JRIPSS).

SYSTEM LOCATION:

Mystech, Inc., 5205 Leesburg Pike, Suite 1200, Falls Church, VA 22041–8141.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Reserve Components having a military intelligence designator and/or who are proficient in speaking a foreign language.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service member's name, Social Security Number, pay grade, reserve component, primary military occupational specialty (MOS), duty MOS, third MOS, fourth MOS, security clearance, language identifier, proficiency level for language, tour experience, academic degree (civilian education), home address, civilian occupation, professional license, home telephone number, home email address, home fax number, business telephone number, business e-mail address, business fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 138(b)(3)(A); Deputy Secretary of Defense memo, Subject: Peacetime Use of Reserve Component Intelligence Elements, January 5, 1995; Secretary of Defense memo, Subject: Integration of the Reserve and Active Components, September 4, 1997; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the Joint Staff, Combatant Commands, DoD intelligence organizations, and the Reserve Components a means to more adequately assess the intelligence and language capabilities of Reserve Component personnel and to identify individuals possessing the requisite skills to fulfill operational requirements or missions. To provide individual reservists a means to interact via computer with the database for purposes of correcting and/or updating the recorded data entries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

STORAGE:

Electronic storage.

RETRIEVABILITY:

Records can be retrieved by the individual's Social Security Number, but only the system manager can retrieve using this personal identifier.

SAFEGUARDS:

Records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by locks and controlled access devices. Access to data base information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER AND ADDRESS:

Office of the Assistant Secretary of Defense (C3I) Intelligence Infrastructure, 6000 Defense Pentagon, Room 2C252, Washington, DC 20301–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Office of the Assistant Secretary of Defense (C3I) Intelligence Infrastructure, 6000 Defense Pentagon, Room 2C252, Washington, DC 20301–6000.

Requesting individual must submit full name, Social Security Number, date of birth, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Office of the Assistant Secretary of Defense (C3I) Intelligence Infrastructure, 6000 Defense Pentagon, Room 2C252, Washington, DC 20301–6000.

Requesting individual must submit full name, Social Security Number, date of birth, current address, and telephone number.

Individual reservists may access information pertaining to themselves using an alphanumeric password which is issued to the reservist when he/she registers on-line with JRIPPS for purposes of correcting and/or updating recorded data entries.

CONTESTING RECORDS AND PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reserve Component Common Personnel Data System (RCCPDS) and updated information provided by Reservist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–30416 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of The Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 18 November 1997.

Time of Meeting: 0830–1130.

Place: Huntsville, AL.

Agenda: The Army Science Board's (ASB) Issue Group Study on "Technical Maturity of the Assotst Demonstration Program" will meet for briefings and discussions on advanced JLENS sensor concepts. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–30451 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 November 1997.

Time of Meeting: 1200–1600.

Place: Building 1109B, Fort Knox, Kentucky.

Agenda: The Army Science Board (ASB) Issue Group Study on "Army After Next" will meet for briefings and discussions of survivability, mobility and lethality issues relevant to the study subject. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–30468 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 18 & 19 November 1997.

Time of Meeting: 0830–1830, 18 Nov 97; 0830–1430, 19 Nov 97.

Place: Patuxent River Naval Air Station, Maryland

Agenda: The Army Science Board (ASB) Issue Group Study on "Army Avionics Modernization Methodologies" will meet for briefings and discussions. The meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–30469 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of A Novel Multi-Layer Composite Material Manufacturing Process (Co-injection Resin Transfer Molding) for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel multi-layer composite material manufacturing process (co-injection resin transfer molding) as described in the U.S. Army Research Laboratory patent docket# ARL 97–17 and a subsequent patent application to the U.S. Patent and Trademark Office. A licensing meeting is scheduled for Thursday, 29 January 1998, at Aberdeen Proving Ground, MD. Visit http://www.fedlabs.org/ma/pl for technical and registration information. A non-disclosure agreement *MUST* be signed prior to attending the licensing meeting. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–30488 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Contract Audit Agency

ACTION: Notice to Amend Record Systems

SUMMARY: The Defense Contract Audit Agency is amending and deleting

systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on December 22, 1997 unless comments are received that would result in a contrary determination. The deletions will be effective on November 20, 1997.

ADDRESSES: Send comments to Defense Contract Audit Agency, Information and Privacy Advisor, CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767-1005.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: November 14, 1997.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS
RDCAA 152.22

SYSTEM NAME:

Classified Information Nondisclosure Agreement (NdA) *(February 22, 1993, 58 FR 10845).*

Reason: The records in this system are covered under the government-wide system of records notice OPM/GOVT–1, entitled General Personnel Records.

RDCAA 211.11

SYSTEM NAME:

Drug-Free Federal Workplace Records *(February 22, 1993, 58 FR 10846).*

Reason: The records in this system are covered under the government-wide system of records notice OPM/GOVT–5, entitled Recruiting, Examining, and Placement Records.

AMENDMENTS
RDCAA 152.1

SYSTEM NAME:

Security Information System (SIS) *(February 22, 1993, 58 FR 10840).*

* * * * *

PURPOSE(S):

Delete 'To submit data on a regular basis to the DoD Defense Central Index of Investigations (DCII),'.

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RDCAA 152.1

SYSTEM NAME:

Security Information System (SIS).

SYSTEM LOCATION:

Primary location: Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Decentralized locations: Defense Contract Audit Agency (DCAA) Regional Security Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, Social Security Number, date and place of birth, citizenship, position sensitivity, accession date, type and number of DCAA identification, position number, organizational assignment, security adjudication, clearance, eligibility, and investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employees, as amended; E.O. 12958, Classified National Security Information; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the DCAA Security Office with a ready reference of security information on DCAA personnel.

To submit data on a regular basis to the DoD Defense Central Index of Investigations (DCII).

To provide the DCAA Drug Program Coordinator with a listing of individuals who hold security clearances for the purpose of creating the drug testing pool, from which individuals are randomly chosen for drug testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by Social Security Number or name of employee.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records are retained in the active file until an employee separates from the agency. At that time, records are moved to the inactive file, retained for two years, and then deleted from the system. Hard copy listings and tapes produced by this system are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 or the Regional Security Offices whose official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Individuals must furnish name; Social Security Number; approximate date of their association with DCAA; and geographic area in which consideration was requested for record to be located and identified.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 or the Regional Security Offices whose official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Individuals must furnish name; Social Security Number; approximate date of their association with DCAA; and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information, other than data obtained directly from individual employees, is obtained by DCAA Headquarters and Regional Office Personnel and Security Divisions, and Federal Agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files *(January 19, 1994, 59 FR 2829).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In the second paragraph delete 'of Personnel' and insert 'Human Resources Management Division'.

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first paragraph, insert '(152.2)' between 'One' and 'contains'. Delete 'security investigative questionnaires' between 'applications' and 'requests' and delete 'investigation or' between 'for' and 'security'.

In the second paragraph, insert '(152.3)' between 'Two' and 'contains' and insert 'security investigative questionnaires and' between 'contains' and 'verification'.

In the third paragraph, insert '(152.4)' between 'Three' and 'contains'. Delete 'Federal Personnel Manual' between 'in the' and 'and in' and insert 'Code of Federal Regulations'. Delete 'DCAA Central Clearance Group to the Director, DCAA, and determination by the Director, DCAA' and insert 'WHS/CAF adjudication authority with related documents, former DCAA adjudicative authority documents, and determinations by the Director, DCAA'.

* * * * *

RETENTION AND DISPOSAL:

Add paragraph 'Section three is maintained after separation only if it contains a DCAA unfavorable personnel security determination, or a DCAA favorable personnel security determination, where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in Section 2–200 and Appendix I, DCAAM 5210.1. This information shall be maintained for five years from the date of determination.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'of Personnel' and insert 'Human Resources Management Division'.

* * * * *

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files.

SYSTEM LOCATION:

Primary location: Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Decentralized locations: Human Resources Management Division, Defense Contract Audit Agency; Human Resources Management Offices and Regional Security Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with Defense Contract Audit Agency (DCAA); all DCAA employees; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section One (152.2) contains copies of individual's employment applications, requests for, and approval or disapproval of, emergency appointment authority; requests for security clearance; interim and final security clearance certificates.

Section Two (152.3) contains security investigative questionnaires and verification of investigations conducted to determine suitability, eligibility or qualifications for Federal civilian employment, eligibility for assignment to sensitive duties, and access to classified information.

Section Three (152.4) contains summaries of reports of investigation, internal Agency memorandums and correspondence furnishing analysis of results of investigations in so far as their relationship to the criteria set forth in the E.O. 10450, in the Code of Federal Regulations and in Department of Defense and DCAA Directives and Regulations; comments and recommendations of the WHS/CAF adjudication authority with related documents, former DCAA adjudicative authority documents, and determinations by the Director, DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To provide a basis for requesting appropriate investigations; to permit determinations on employment or retention; to authorize and record access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All sections are on paper records stored in file folders.

RETRIEVABILITY:

Folders are filed by file series then by organizational element (DCAA Headquarters or DCAA field activities) and then alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are stored in locked filing cabinets after normal business hours. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records contained in Sections One and Two pertaining to Federal employees and persons furnishing services to DCAA on a contract basis are destroyed upon separation of employees, and upon termination of the contracts for contractor personnel. Records pertaining to applicants are

destroyed if an appointment to DCAA is not made.

Records contained in Section Three are maintained after separation only if it contains a DCAA unfavorable personnel security determination, or a DCAA favorable personnel security determination, where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in Section 2–200 and Appendix I, DCAAM 5210.1. This information shall be maintained for five years from the date of determination.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number and current business address.

Acceptable identification, that is, driver's license or employing offices' identification card. Visits are limited to those offices (Headquarters and Regional offices) listed in the official mailing addresses published as an appendix to DCAA's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Security Officer and the Director of Human Resources Management Division at Headquarters, DCAA; Chiefs of Human Resources Management Divisions, Regional Security Officers, Chiefs of Field Audit Offices at the DCAA Regional Offices and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.5

SYSTEM NAME:

Notification of Security Determinations *(February 22, 1993, 58 FR 10842)*.

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 133 and 50 U.S.C. 781'.

* * * * *

RDCAA 152.5

SYSTEM NAME:

Notification of Security Determinations.

SYSTEM LOCATION:

Primary System: Regional Security Offices, Defense Contract Audit Agency Regional Office and Security Control Offices, Defense Contract Audit Institute, 4075 Park Avenue, Memphis, TN 38111–7492. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Contract Audit Agency (DCAA) personnel and applicants for DCAA employment on whom specific security or suitability action must be taken.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain a summary of pertinent security or suitability information; the results of security determinations approved by the Director, DCAA; and directed or recommended actions to be taken at DCAA Regional Office, Field Audit Office or Defense Contract Audit Institute (DCAI) level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information.

PURPOSE(S):

To permit required actions of a suitability or security nature to be taken by appropriate DCAA officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Folders are filed by organizational element, then alphabetically by name of person concerned.

SAFEGUARDS:

Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties. Records are stored in locked filing cabinets after normal business hours.

RETENTION AND DISPOSAL:

Destruction is directed individually in each case upon completion of final security or suitability actions or automatically upon nonappointment of applicants or separation of employees, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits are limited to those offices (Headquarters and 6 regional offices) listed in the appendix to the agency's compilation of record system notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Results of investigations received from Federal agencies and recommendations for action from appropriate DCAA Headquarters staff elements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.6

SYSTEM NAME:

Regional and DCAI Security Clearance Request Files *(January 19, 1994, 59 FR 2830)*.

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 133 and 50 U.S.C. 781'.

* * * * *

RDCAA 152.6

SYSTEM NAME:

Regional and DCAI Security Clearance Request Files

SYSTEM LOCATION:

Primary System: Security Officers of Defense Contract Audit Agency Regional Offices and Security Control Officers, Defense Contract Audit Institute. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Decentralized Segment: Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with Defense Contract Audit Agency (DCAA); all DCAA employees; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel security data forms submitted by employees and applicants required in the processing of security investigations; requests for various types of security clearance actions; and requests for and approvals/disapprovals of appointments to sensitive positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To prepare necessary paperwork and documentation upon which to base requests to Headquarters, DCAA for appointments to sensitive positions, requests for security investigations, for security clearance and to retain support documents pending approval of appointment and/or granting clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are accessible only to those authorized personnel required to prepare, review, process, and type necessary documents. Records are stored in locked filing cabinets after normal business hours and are stored in locked rooms and buildings after normal business hours.

RETENTION AND DISPOSAL:

These are transitory files at DCAA Regional Offices and DCAI level and are maintained only during processing and pending final action on requests. Upon receipt of final action taken on request, files are destroyed.

Segments of the system held by the Security Officer, DCAA are destroyed upon separation of the employee or after non-appointment of an applicant.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Regional Security Officers, DCAA and Security Control Officers, Defense Contract Audit Institute. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made but are limited to those offices (Headquarters and 6 Regional Offices) listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of record system notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Chiefs of Personnel Divisions and Regional Security Officers at the DCAA Regional Offices; the Manager, Defense Contract Audit Institute and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.7

SYSTEM NAME:

Clearance Certification *(January 19, 1994, 59 FR 2831)*.

CHANGES:

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SYSTEM LOCATION:

In the second paragraph entitled Decentralized Segment, delete 'of Personnel' and insert 'Human Resources Management Division'.

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RDCAA 152.7

SYSTEM NAME:

Clearance Certification.

SYSTEM LOCATION:

Primary location: Regional Security Officers at Defense Contract Audit Agency (DCAA) Regional Offices; Security Control Officers at DCAA Field Audit Offices; Field Detachment and Defense Contract Audit Institute (DCAI). Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Decentralized locations: Security Officer and Director of Human Resources Management Division at Headquarters, DCAA and Chiefs of Human Resources Management Offices at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA personnel employed by the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain interim and final security clearance and eligibility certificates attesting to type of investigation conducted and degree of access to classified information which is authorized copies, of security acknowledgement certificates supervisor suitability/security statements and special access briefing statements executed by individuals upon being granted security clearances or access to special access information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To maintain a record of the security clearance and eligibility status of all DCAA personnel as well as certification of briefings for access to classified information and special access information.

To DoD contractors to furnish notice of security clearance and access authorization of DCAA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Retrieved by last name of individual concerned.

SAFEGUARDS:

Records are stored in locked filing cabinets after normal business hours and stored in locked rooms or buildings. Records are accessible only to those authorized personnel required to act upon a request for access to classified defense information.

RETENTION AND DISPOSAL:

Files pertaining to Federal employees and persons furnishing services to DCAA on a contract basis are destroyed upon separation or transfer of employees and upon termination of contractor personnel.

Files of individuals transferring within DCAA are transferred to security control office of gaining element for maintenance.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Regional Security Officers in DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made but are limited to those offices (Headquarters and Regional Offices) listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of systems of records notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Chiefs of Human Resources Management Offices and Regional Security Officers at the DCAA Regional Offices; Chiefs of DCAA Field Audit Offices; the Manager, Defense Contract Audit Institute and the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.17

SYSTEM NAME:

Security Status Master List *(January 19, 1994, 59 FR 2632)*.

CHANGES:

* * * * *

RECORD SOURCE CATEGORIES:

Replace 'of Personnel' with 'Human Resources Management Division'.

* * * * *

RDCAA 152.17

SYSTEM NAME:

Security Status Master List.

SYSTEM LOCATION:

Headquarters, Defense Contact Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of DCAA; all persons hired on a contractual basis by or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains type of investigation, date completed, file number, agency which conducted investigation, security clearance data information, name, Social Security Number, date and place of birth, organizational assignment, dates interim and final clearance issued, position sensitivity and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To maintain a ready reference of security clearances on DCAA personnel, to include investigative data and position sensitivity.

To provide security clearance data to DoD contractors and other Federal agencies on DCAA employees assigned to or visiting a contractor facility or visiting or applying for employment with another Federal agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a card file.

RETRIEVABILITY:

Cards are filed alphabetically by last name of individual concerned for all DCAA regional personnel. Separate file maintained alphabetically by last name of individual concerned for DCAA Headquarters elements.

SAFEGUARDS:

Cards are accessible only to those authorized personnel required to prepare, process, and type necessary documents; and answer authorized inquiries for information contained therein. Cards are stored in locked filing cabinets after normal business hours and are stored in a locked room and building which is protected by a guard force system after normal business hours.

RETENTION AND DISPOSAL:

These cards are destroyed two years after an individual is separated from DCAA.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits are limited to the Headquarters listed in the appendix to DCAA's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Security Officer, Headquarters, DCAA; Director of Human Resources Management Division, Headquarters, DCAA; Chiefs of Human Resources Management Offices, DCAA Regional offices; Regional Security Officers, DCAA Regional Offices; Manager, DCAI; the individual concerned; and reports of investigation conducted by Federal investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 160.5

SYSTEM NAME:

Travel Orders *(February 22, 1993, 58 FR 10845)*.

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 133' and add '5 U.S.C. 301, Departmental Regulations'.

* * * * *

RDCAA 160.5

SYSTEM NAME:

Travel Orders.

SYSTEM LOCATION:

Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219; DCAA Regional Offices; and field audit offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to the DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who performs official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's orders directing or authorizing official travel to include approval for transportation of automobiles, documents relating to dependents travel, bills of lading, vouchers, contracts, and any other documents pertinent to the individual's official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C., Chapter 57; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To document all entitlements, authorizations, and paperwork associated with an employee's official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By fiscal year and alphabetically by surname. May be filed in numerical sequence by travel order number.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Resources, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219; Regional Directors, DCAA; and Chiefs of Field Audit Offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made to those offices listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of systems of records notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Administrative offices; personnel offices; servicing payroll offices; employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 201.01

SYSTEM NAME:

Individual Access Files *(February 22, 1993, 58 FR 10846).*

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'Personnel and Security Division' and insert 'Human Resources Management Division'.

NOTIFICATION PROCEDURE:

Delete 'Personnel and Security Division' and insert 'Human Resources Management Division'.

RECORD ACCESS PROCEDURES:

Delete 'Personnel and Security Division' and insert 'Human Resources Management Division'.

* * * * *

RDCAA 201.01

SYSTEM NAME:

Individual Access Files.

SYSTEM LOCATION:

Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA personnel, contractor employees, and individuals granted or denied access to DCAA activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the request for authorization, issue, receipt, surrender, withdrawal and accountability pertaining to identification cards, to include application forms, photographs, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directives 5200.8 and 5105.36 which assign to the Director, DCAA the responsibility for protection of property and facilities under his control.

PURPOSE(S):

Information is maintained and used to adequately control access to and movement on DCAA activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, application cards, and index cards.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized DCAA personnel.

RETENTION AND DISPOSAL:

Records are destroyed one year after termination or transfer of person granted access, except that individual identification cards and photographs will be destroyed upon revocation, expiration or cancellation.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified with the file.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals applying for identification cards and security personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 240.2

SYSTEM NAME:

Legal Opinions *(February 22, 1993, 58 FR 10847).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'problems' between 'personnel' and 'that' and insert 'issues'.

* * * * *

RDCAA 240.2

SYSTEM NAME:

Legal Opinions.

SYSTEM LOCATION:

Office of Counsel, Headquarters, Defense Contact Audits Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who files a complaint, with regard to personnel issues, that requires a legal opinion for resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fraud files contain interoffice memorandums, citations used in determining legal opinion, in some cases copies of investigations (FBI), copies of Agency determinations.

EEO files contain initial appeal, copies of interoffice memorandums, testimony at EEO hearings, copy of Agency determinations. Citations used in determining legal opinions.

Grievance files contain correspondence relating to DCAA employees filing grievances regarding leave, removals, resignations, suspensions, disciplinary actions, travel, citations used in determining legal opinion, Agency determinations.

MSPB Appeal files contain interoffice memorandums, citations used in determining the legal position, statements of witnesses, pleadings, briefs, MSPB decisions, notices of judicial appeals, litigation reports and correspondence with the Department of Justice.

Award files contain correspondence relating to DCAA employee awards, suggestion evaluations, citations used for legal determinations, Agency determination.

Security Violation files contain interoffice correspondence relating to DCAA employee security violations, citations used in determinations, Agency determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapters 43, 51, and 75; 5 U.S.C. 301, Departmental Regulations; and the Civil Service Reform Act of 1978.

PURPOSE(S):

To maintain a historical reference for matters of legal precedence within DCAA to ensure consistency of action and the legal sufficiency of personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Primary filing system is by subject; within subjects, files are alphabetical by subject, corporation, name of individual.

SAFEGUARDS:

Under staff supervision during duty hours; security guards are provided during nonduty hours.

RETENTION AND DISPOSAL:

These files are for permanent retention. They are retained in active files for five years and retired to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number.

Personal visits are limited to those offices (Headquarters and Regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card and give some verbal information that could be verified with 'case' folder.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individual's supervisor, DCAA employees, former employers, between DCAA staff members, and between DCAA and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 240.5

SYSTEM NAME:

Standards of Conduct, Conflict of Interest *(February 22, 1993, 58 FR 10848).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add a new sentence 'Any DCAA employee who has requested an ethics opinion regarding the propriety of future actions on their part.'

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first sentence, insert 'or potential' between 'apparent' and 'conflict'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 5532; DoD 5500.7-R, Joint Ethics Regulation (JER); and E.O. 12731.'

* * * * *

RDCAA 240.5

SYSTEM NAME:

Standards of Conduct, Conflict of Interest.

SYSTEM LOCATION:

Office of Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who has accepted gratuities from contractors or who has business, professional or financial interests that would indicate a conflict between their private interests and those related to their duties and responsibilities as DCAA personnel. Any DCAA employee who is a member or officer of an organization that is incompatible with their official government position, using public office for private gain, or affecting adversely the confidence of the public in the integrity of the Government. Any DCAA employee who has requested an ethics opinion regarding the propriety of future actions on their part.

CATEGORIES OF RECORDS IN THE SYSTEM:

Office of Counsel-Files contain documents and background material on any apparent or potential conflict of interest or acceptance of gratuities by DCAA personnel. Correspondence may involve interoffice memorandums, correspondence between former DCAA employees and Headquarters staff members, citations used in legal determinations and Agency determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 5500.7-R, Joint Ethics Regulation (JER); and E.O. 12731.

PURPOSE(S):

To provide a historical reference file of cases that are of precedential value to ensure equality of treatment of individuals in like circumstances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in filo folders.

RETRIEVABILITY:

Primary filing system is by subject, within subject, files are alphabetical by subject, corporation, name of individual.

SAFEGUARDS:

Under staff supervision during duty hours; buildings have security guards during nonduty hours.

RETENTION AND DISPOSAL:

These files are for permanent retention. They are retained in active files for five years and then retired to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the above address. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card, and give some verbal information that can be verified with 'case' folder.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individual's supervisor, DCAA employees, former employees, between DCAA staff members, and between DCAA and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 368.3

SYSTEM NAME:

Grievance and Appeal Files *(August 9, 1993, 58 FR 42303).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete 'personnel' and insert 'Human Resources Management'.

* * * * *

SAFEGUARDS:

Delete 'personnel' and insert 'Human Resources Management' in the first and second sentences.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In the first sentence, delete 'personnel' and insert 'Human Resources Management'.

NOTIFICATION PROCEDURE:

In the first sentence of the first paragraph, delete 'personnel' and insert 'Human Resources Management'. In the first sentence of the third paragraph, delete 'personnel' and insert 'Human Resources Management'.

RECORD ACCESS PROCEDURE:

In the first sentence of the third paragraph, delete 'personnel' and insert 'Human Resources Management'.

* * * * *

RDCAA 368.3

SYSTEM NAME:

Grievance and Appeal Files.

SYSTEM LOCATION:

Grievant's servicing Human Resources Management Offices in Headquarters or DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who have filed formal grievances that may be adjudicated under either Chapter 58, DCAA Personnel Manual or a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The written grievance; assignment of examiner; or selection of an arbitrator or referee; statements of witnesses; written summary of interviews; written summary of group meetings; transcript of hearing if one held; correspondence relating to the grievance and conduct of the inquiry; exhibits; evidence; transmittal; memorandums and letters; decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To record the grievance, the nature and scope of inquiry into the matter being grieved, and the treatment accorded the matter by management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To arbitrators, referees, or other third party hearing officers selected by management and/or the parties to the grievance to serve as fact finders or deciders of the matter grieved.

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Grievance files are filed by subject matter, contract clause, or by name alphabetically.

SAFEGUARDS:

During nonduty hours the Human Resources Management Office and/or filing cabinet is locked. Grievance files are under the control of the Human Resources Management Office staff during duty hours.

RETENTION AND DISPOSAL:

Files are destroyed four years after the grievance has been decided or after the transfer or separation of the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Each servicing Human Resources Management Officer in Headquarters or DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Human Resources Management Office in the region in which the grievance originated. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Written requests should contain individual's full name, current address, telephone number and office of assignment.

Individuals may visit the Human Resources Management Office of the region in which the grievance was filed/originated. For personal visits, individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals may obtain information on access to records by communicating in writing or personally with the servicing Human Resources Management Officer in DCAA Headquarters or DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the servicing Human Resources Management Officer in Headquarters or DCAA Regional Offices or the system manager. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The grievant; witnesses; exhibits furnished in evidence by grievant and witnesses; grievance examiner; and persons interviewed by the grievance examiner; deciding official arbitrator, referee, or other third party fact finder or decider.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 367.5

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling Records *(February 22, 1993, 58 FR 10849).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace 'Personnel and Security Division' with 'Human Resources Management Division'.

NOTIFICATION PROCEDURE:

Replace 'Personnel and Security Division' with 'Human Resources Management Division'.

RECORD ACCESS PROCEDURE:

Replace 'Personnel and Security Division' with 'Human Resources Management Division'.

* * * * *

RDCAA 367.5

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling Records.

SYSTEM LOCATION:

Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

DCAA regional servicing Human Resources Management Offices; and offices of EAP contractors who perform employee assistance and counseling services. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA Federal employees assigned to DCAA activities who are referred by management for, or voluntarily request, employee assistance counseling, referral, and rehabilitation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to patients which are generated in the course of professional counselling, e.g., records on the patient's condition, status, progress and prognosis of personal, emotional, alcohol or drug dependency problems,

including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7301 and 7904; 42 U.S.C. 290dd–2; Pub. L. 100–71; E.O. 12564; and E.O. 9397 (SSN).

PURPOSE(S):

The system is established to maintain records relating to the counselor's observations concerning patient's condition, current status, progress, prognosis and other relevant treatment information regarding patients in an employee assistance treatment program facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Substance abuse records in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluating, or otherwise disclose patient identities in any manner; and

(c) Authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

The results of drug testing in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be pursuant to a court of competent jurisdiction where required by the U.S. Government to defend against any challenge against any adverse personnel action.

The DCAA 'Blanket Routine Uses' *do not* apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained and stored in automated data systems, secured filing cabinets, and electronic secured files. Extracts of treatment records are also entered into electronic database on microcomputers.

RETRIEVABILITY:

Records are retrieved manually and automatically by patient's last name, client's case number, Social Security Number, organization, office symbol and counseling area offices or any other combination of these identifiers.

SAFEGUARDS:

Records are stored in locked filing cabinets, and secured working environments. Automated records are protected by restricted access procedures, e.g., password-protected coding system. Access to records is strictly limited to Agency or contractor officials with a bona fide need for the records. Only individuals on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system. All patient records are maintained and used with the highest regard for patient privacy. Safeguarding procedures are in accordance with the Privacy Act and required in Employee Assistance Program contractual service agreements.

RETENTION AND DISPOSAL:

Patient records are destroyed three years after termination of counseling and then destroyed by shredding, burning, or pulping. Electronic records are purged of identifying data five years after termination of counseling. Aggregate data without personal identifiers is maintained for management/statistical reporting purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Employee Assistance Program Administrator, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, Identification Number (if known), approximate date of record, geographic area in which consideration was requested.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Employee Assistance Program Administrator, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, approximate date of record, geographic area in which consideration was requested.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The patient to whom the records pertain, Employee Assistance Program counselors, supervisory personnel, co-workers; other agency personnel, outside practitioners; or private individuals to include family members of the patient.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 371.5

SYSTEM NAME:

Locator Records *(February 22, 1993, 58 FR 10850).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace 'Personnel' with 'Human Resources Management'. Replace 'Civilian Personnel' with 'Human Resources Management'.

* * * * *

RDCAA 371.5

SYSTEM NAME:

Locator Records.

SYSTEM LOCATION:

Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

System is also maintained at DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, office room number, office telephone number, office symbol, home address, home telephone number, date prepared, spouse's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To provide a ready reference of employee home address and telephone number to facilitate emergency notification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3x5 cards stored in an index card box.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Retained until separation of employee, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Management Officer, Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Human Resources Management Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Manager of DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Human Resources Management Officer, Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Human Resources Management Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Managers of DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

Written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the offices identified above. Individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Human Resources Management Officer, Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Human Resources Management Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Managers of DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

Written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the offices identified above. Individual must furnish positive identification.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 440.2

SYSTEM NAME:

Time and Attendance Reports *(February 22, 1993, 58 FR 10851).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'These records are destroyed six years after the end of the pay period to which it is applicable.'

* * * * *

RDCAA 440.2

SYSTEM NAME:

Time and Attendance Reports.

SYSTEM LOCATION:

Primary System-Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Decentralized Segments-DCAA Regional Offices and Field Audit Offices. Official mailing addresses are published as an appendix to the DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of the Defense Contract Audit Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a copy of individual's time and attendance report and other papers necessary for the submission of time and attendance reports and collecting of pay from the non-DCAA payroll office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 5 U.S.C., Chapter 55.

PURPOSE(S):

To record the number of hours an employee works each day and the amount of sick and/or annual leave used. Supervisors review and certify accuracy of reports which are furnished to the appropriate Finance and Accounting office within the DoD for payroll purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of employee.

SAFEGUARDS:

Files are under staff supervision during duty hours; buildings are locked and/or guarded by security guards during non-duty hours.

RETENTION AND DISPOSAL:

These records are destroyed six years after the end of the pay period to which it is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Resources, Headquarters, DCAA and the Regional Directors, DCAA and Chiefs of Field Audit Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name, address, telephone number of the individual and the employee payroll number.

Personal visits are limited to those offices (Headquarters and 6 regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employee identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Time and attendance reports are completed by the time and attendance clerk based on information provided by the individual employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS) *(January 19, 1994, 59 FR 2833).*

CHANGES:

* * * * *

CONTESTING RECORD PROCEDURES:

Within entry change 'Instruction' to 'Regulation'.

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS).

SYSTEM LOCATION:

Primary system: Field Audit Office Management Information System (FMIS) is located at all DCAA Headquarters, regional and field audit offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Secondary system: Agency Management Information System (AMIS) is located at the Naval Computer and Telecommunications Station, Washington, (Code N23), Washington Navy Yard, Washington, DC 20374–1435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing contractor and contract information; records containing reimbursable billing information; name, Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained for two to five years and then destroyed by erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.9

SYSTEM NAME:

DCAA Automated Personnel Inventory System (APIS) *(February 22, 1993, 58 FR 10852).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace 'of Personnel' with 'Human Resources Management Division'.

* * * * *

RDCAA 590.9

SYSTEM NAME:

DCAA Automated Personnel Inventory System (APIS) *(February 22, 1993, 58 FR 10852).*

SYSTEM LOCATION:

Primary location: Office of the Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, and the Human Resources Management Office, DCAA Regional Offices. Official mailing addresses are published as an appendix to the DCAA compilation of systems of records notices.

Secondary location: Defense Construction Supply Center, Defense Electronics Supply Center, and the Defense Logistics Agency Administrative Support Center which maintain systems data under an inter-service support agreement with DCAA to provide payroll and report generating services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current civilian employees of DCAA and former employees who were on DCAA rolls any time after January 1, 1977.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current and historical data related to positions occupied by an employee of DCAA such as grade, occupational series, title, organizational location, salary and step, competitive area and level, geographical location, supervisory designation, financial reporting requirement, and bargaining unit status.

Current and historical data related to a DCAA employee's status and tenure in the Federal civil service including veterans preference, competitive status, service computation data, tenure group.

Current and historical data personal to an employee of DCAA such as birth date, physical and mental handicap code, minority group identifier code, and enrollment data for life, health, and retirement programs.

Current and historical education and training data on a DCAA employee such as educational level, professional certifications, training accomplishment and requirements.

Current and historical career management data on a DCAA employee such as performance level indicator codes, performance evaluation scores, and promotion assessment scores.

Current and historical data on awards and recognition received by an employee of DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To collect, store, and retrieve information to meet personnel and manpower management information requirements in support of program operations, evaluation, and analysis.

To satisfy external and internal reporting requirements.

To provide information to officials of DCAA for effective personnel management and administration.

To designated employees of the Defense Logistics Agency authorized under agreement with DCAA to maintain records necessary to provide payroll and report generation services.

To designated automated data processing vendors with whom DCAA may contract are authorized to maintain and enhance data and computer operating systems necessary for DCAA personnel to process data and produce required outputs. Vendors neither obtain output from the system nor access the stored data for other than validated, approved test procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Input paper documents are stored in file folders and/or file cabinets. Information converted to automated form for storage in the system is stored on magnetic tape and/or disks.

Output reports on computed printout paper are stored in file cabinets, specialized file containers, or library shelving.

Individual employee output reports are filed in folders retained within official personnel, performance, or medical records.

RETRIEVABILITY:

Information is retrieved by Social Security Number.

SAFEGUARDS:

Access to computerized data requires knowledge and use of a series of system identification codes and passwords which must be entered in proper sequence. Access to computerized data is limited to system analysts and programmers authorized to support the system, individuals authorized to provide payroll and report generating services, and DCAA personnel and EEO office employees.

Access to output reports is limited to individuals with a need-to-know.

RETENTION AND DISPOSAL:

Records in the automated data base, with the exception of non-SES performance appraisal data, are permanent.

Paper input documents and output printouts and reports, except for those required to be maintained in an employee's official personnel, performance, or medical file, are retained for reference purposes only until superseded or no longer required. When superseded or no longer required, these records will be destroyed by shredding or burning.

Copies of records authorized to be maintained by supervisors or other operating officials will be destroyed one year after transfer or separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and the Human Resources Management Officers at the DCAA Regional Offices for data in their data banks. Official mailing addresses are published as an appendix to the DCAA compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

For verification purposes, written request for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the Office identified above. Individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

For verification purposes, written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the office identified above. Individual must furnish positive identification.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous federal employees, U.S. Office of Personnel Management. Applications and forms completed by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–30419 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Environmental Impact Statement: Prado Basin, Riverside, CA; Water Supply Study

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare an EIS to support the proposed water supply study at Prado Basin, Riverside County, California. The purpose of the proposal is to increase the level of water conservation storage within Prado Basin, and allow Orange County Water District to harvest the water through their recharge facilities along the Santa Ana River downstream of Prado Basin. The proposed project alternatives would include increasing the level of water storage during the non-flood season from 505 feet to 508 feet, storage of water at elevation 505 year-round, as well as a no action alternative. The EIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Gary Gunther at (213) 452–3794 or Mr. Alex Watt either by telephone at (213) 452–3860, by fax at (213) 452–4204, or by mail at the address below.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with the proposed water supply study. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping

The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held in conjunction with the Orange County Water District in November, 1997. The location, date, and time of the public scoping meeting will be announced in the local news media. A separate notice of this meeting will be sent to all parties on the project mailing list.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting, or by mailing the information to Mr. Alex Watt at the address below prior to December 30, 1997. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053.

Availability of the Draft EIS

The Draft EIS is expected to be published and circulated in July 1998, and a public hearing to receive comments on the Draft EIS will be held after it is published.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–30487 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS), Skagit River Flood Damage Reduction Study, Skagit County Washington

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Seattle District, U.S. Army Corps of Engineers is proposing to prepare an Environmental Impact Statement (EIS) for the Skagit River Flood Damage Reduction Study. This study was requested by Skagit County, Washington because of significant flooding on the Skagit River. Skagit County will provide fifty percent of the funding for this study. An EIS is being prepared because of the potential for impacts on environmental resources, particularly salmonid habitat, and the intense public interest already demonstrated in addressing the flooding problems of the Skagit River. The study is expected to take approximately four years to complete.

DATES: Persons or organizations wishing to submit scoping comments should do so by December 30, 1997. Public comment may also be made at the scoping meeting (date and location to be announced later). Notification of scoping meetings times and locations will be sent to all agencies, organizations and individuals on the project mailing list.

ADDRESSES: Requests for inclusion on the mailing list, future documents, and all comments on the proposed project should be sent to: Michael Scuderi, NEPA Coordinator, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, Washington 98124–2255, ATTN: CENWS–EN–PL–ER, telephone (206) 764–3479, FAX (206) 764–4470, or e-mail Michael.R.Scuderi@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Contact General questions concerning the proposed action and the Draft EIS can be directed to: Michael Scuderi, Study Environmental Coordinator (see address above) or Forest Brooks, Project Manager, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, Washington 98124–2255, ATTN: CENWS–EN–PL–CP, telephone (206) 764–3456, FAX (206) 764–4470, or e-mail Forest.C.Brooks@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the Skagit River Feasibility Flood Control study is better identify the Skagit River flood problems and opportunities that exist to relieve flooding and reduce flood damages, and to develop a flood damage reduction plan that fits Federal law and policy, and is within the capability of the local sponsor to support their required share of the project costs. The Skagit River Basin is located in northwestern Washington state and encompasses 3,140 square miles. The major cities on the Skagit River delta, Mt. Vernon, Burlington, and Sedro Woolley, lie about 60 miles north of Seattle. The study area for the feasibility study will be the Skagit River floodplain downstream of Concrete (river mile 54), with prime emphasis on the Skagit River delta west of Sedro Woolley (river mile 22). Authority for this study is contained in Section 209 of the 1962 Flood Control Act, Pub. L. 87–874. That section authorized a comprehensive study of Puget Sound, Washington and adjacent Waters, including tributaries, in the interest of flood control, navigation, and other water uses and related land resources.

Alternatives

In the reconnaissance phase for the Skagit Study, the Corps identified two alternative courses of action for further analysis in the feasibility study:

(1) No Action. Allow the current levee system to remain in place without a major system wide upgrade. Individual diking districts would continue to operate, maintain, and repair the existing levee system.

(2) Construct a coordinated levee improvement project that would provide a higher level of flood protection (100-year or greater) for the Burlington and Mt. Vernon urban areas through a system of new and raised levees with overflow sections at critical locations in rural areas designed to overtop without failure (during 25-year or greater events). Sections of the rural levees would also be upgraded to provide a uniform level of protection in rural areas.

Variations to alternative 2 will be examined in detail during the feasibility study and additional alternatives may be created for comparison purposes.

The study could be expanded to include environmental restoration opportunities if a suitable non-Federal sponsor wished to provide funding for considering these elements as part of the Skagit Study.

Scoping

Public involvement will be sought during scoping, plan formulation, and preparation of the EIS in accordance with NEPA procedures. A public scoping process has been started: (1) to clarify which issues appear to be major public concerns, (2) to identify any information sources that might be available to analyze and evaluate impacts, and (3) to obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Indian Tribes, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning issues of concern, project alternatives, potential mitigation measures, probable significant environmental impacts, and permits or other approval that may be required by any project.

The following key areas have been identified so far to be analyzed in depth in the draft EIS:

(1) Flooding Characteristics (existing and with any project)
(2) Impacts to Fish Habitat
(3) Impacts to Riparian Habitat
(4) Impacts to Wetlands
(5) Impacts to Cultural Resources

Scoping Meeting

Opportunity to comment on the planned study will also be available at the study scoping meeting which has yet to be scheduled. Details of the meeting time and location will be announced in the local media. Notices will be sent to all agencies, organizations and individuals on the mailing list.

Availability of Draft EIS

The Corps expects to complete preparation of the draft EIS and have review copies of its available by May 2001.

James M. Rigsby,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–30489 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–EB–M

DEPARTMENT OF DEFENSE

Department of the Navy, DOD

Notice of Intent To Grant Exclusive Patent License; Prime Capital Group, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant

to the Prime Capital Group, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application Serial No. 08/670,909 entitled "Non-Thermal Process for Annealing Crystalline Materials," filed June 6, 1996, in the fields of all steps related to manufacture of semiconductors and related devices.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street Arlington, Virginia 22217–5660, telephone (703) 696–4001.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: November 13, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–30534 Filed 11–19–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy

ACTION: Notice to Alter a System of Records

SUMMARY: The Department of the Navy proposes to alter a record system in its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective without further notice on December 22, 1997 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 12, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

The specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety.

Dated: November 17, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06320–2

SYSTEM NAME:

Family Advocacy Program System *(May 3, 1996, 61 FR 19910).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N01752–1'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Case Files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

Marine Corps Family Advocacy Program Records: Marine Corps installations with a Family Service Center. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records notices.

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–8610.'

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete entry and replace with 'All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities.

All beneficiaries reported for abusing or neglecting such victims.

Victims/offenders not associated with the Department of the Navy and who are not generally entitled to care at Navy medical and dental facilities.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Navy Family Advocacy Case Files:

(a) Victim's file consists of risk assessment which includes the following forms: incident report, eligibility decision, demographics, safety assessment, safety response, risk focused assessment reports (DOMAINS I, II, IV, V, VI, VII), risk assessment matrix, risk assessment summary, risk assessment findings, intervention plan, and Case Review Committee presentation; video/audio tapes of contact with victim; case notes about victim; Family Advocacy Program generated correspondence regarding abuse or neglect of victim; Original copy of DD Form 2486; Privacy Act Statement signed by victim; contacts with children who are not victims of abuse or neglect, and other supporting data assembled relevant to the abuse or neglect and generated by FAP staff that are specific to the victim.

(b) Offender's file consists of assessment with offender; demographics; video-audio tapes of contacts with offender; case notes on contacts with offender; case notes about offender; risk focused assessment report Domain III (alleged offender characteristics); Family Advocacy Program (FAP) generated correspondence regarding offender; Privacy Act Statement signed by offender; and other supporting data assembled relevant to the abuse or neglect and generated by the FAP staff that are specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Marine Corps Program Family Advocacy Program Files:

(a) Victim's file consists of client's fact sheet (demographics); Privacy Act Statement signed by victim; Limits of Privacy Statement signed by victim; initial assessment; CRC Case Assessment with risk assessment; audio/video tapes of contact with victim; safety plan; notes on collateral contacts about victim; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; original copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the victim.

(b) Offender's file consists of client's fact sheet (demographics); Privacy Act Statement signed by offender; Limits of Privacy Statement signed by offender; initial assessment; CRC Case Assessment; audio/video tapes of contacts with offender; case notes on collateral contacts regarding offender; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Both the Navy and Marine Corps Central Registries contain data elements extracted from DD 2486, Child/Spouse Abuse Incident Report.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; DoD Directive 6400.1, 6400.1-M, 6400.2; Secretary of the Navy Instruction 1752.3A; OPNAVINST 1752.2A; BUMEDINST 6320.22; and MCO 1752.3B (FAP SOP); and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To provide headquarters centralized case management of child sexual abuse incidents (for Navy only).

To provide pertinent case-related information to DoD and DON officials, other than Commanding Officers, responsible for specific case interventions in abuse and/or neglect incidents (e.g., clinical counselors providing counseling/treatment to victims and/or offenders, medical personnel providing medical treatment to victims and/or offenders).

To provide specific data on assessed risk, safety needs, case status, and recommended actions to commanding officers of FAP involved service members.

To provide case specific information to headquarters personnel for necessary review and oversight.

Purposes of the Central Registries: To support local FAP case management to include tracking of individuals, identification of prior FAP involvement, and monitoring of caseloads.

To support FAP budget and staffing requirements and policy changes.

To support the BUPERS flagging and assignment control process for FAP involved service members.

To provide information in support of the 'Installation Records Check (IRC)' required by OPNAVINST 1700.9D for screening applicants for any position which involves the care and/or supervision of children.

To provide the Defense Manpower Data Center (DMDC) with non-identifying data from the Navy Central Registry data tapes.

To support FAP research efforts.

To respond to public and/or other government agencies' requests for aggregate data.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

Delete paragraph three and replace with 'To contractors, private and public individuals/organizations for authorized health research in the interest of the federal government and the public. When not considered necessary, client identification data shall be eliminated from records used for research studies.'

* * * * *

SAFEGUARDS:

Delete first paragraph and replace with 'These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Access to records or information or the central registry is limited to those officials who have been properly screened and trained and/or have a need to know consistent with the purpose for which the information was collected. The threshold for 'need to know' is strictly limited to those officials who are responsible for the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect. Also pertinent information is limited to DoD and DON officials responsible for intervening in abuse and/or neglect incidents.'

RETENTION AND DISPOSAL:

Delete paragraph two and replace with 'Navy Central Registry data base is retained permanently at the Naval Medical Information Management Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.'

Add the following new paragraph 'Marine Corps Central Registry data is retained permanently by the Commandant of the Marine Corps (MHF-20), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–8610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval and marine corps activities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete paragraph three and replace with 'Individuals seeking to determine

whether this system of records contains information in the Navy Central Registry about themselves shall address written inquiries for Navy case to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120.

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.'

RECORD ACCESS PROCEDURES:

Delete paragraph three and replace with 'Individuals seeking to access information from the Navy Central Registry about themselves shall address written inquiries for the Navy Central Registry to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120;

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Victim; offender; other DoD component Central Registries; medical and dental records; educational institutions; medical facilities; private practitioners; law enforcement agencies; public and private health and welfare agencies, and witnesses.'

* * * * *

N01752–1

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Navy Case Files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

Marine Corps Family Advocacy Program Records: Located at Marine Corps installations with a Family Service Center. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records notices.

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities.

All beneficiaries reported for abusing or neglecting such victims.

Victims not associated with the Department of the Navy and who are not generally entitled to care at Navy medical and dental facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy Family Advocacy Case Files: (a) Victim's file consists of initial assessment with victim; risk assessment which includes the following forms: incident report, eligibility decision, demographics, safety assessment, safety response, risk focused assessment reports (DOMAINS I, II, IV, V, VI, VII), risk assessment matrix, risk assessment summary, risk assessment findings, intervention plan, and Case Review Committee presentation; video/audio tapes of contact with victim; case notes on collateral contacts about victim; Family Advocacy Program generated correspondence regarding abuse or neglect of victim; Original copy of DD Form 2486; Privacy Act Statement signed by victim; contacts with children who are not victims of abuse or neglect, and other supporting data assembled relevant to the abuse or neglect and generated by FAP staff that are specific to the victim.

(b) Offender's file consists of initial assessment with offender; demographics; video-audio tapes of contacts with offender; case notes on contacts with offender; case notes on collateral contacts about offender; Family Advocacy Program (FAP) generated correspondence regarding offender; Privacy Act Statement signed by offender; and other supporting data assembled relevant to the abuse or neglect and generated by the FAP staff that are specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Marine Corps Program Family Advocacy Program Files: (a) Victim's file consists of client's fact sheet (demographics); Privacy Act Statement signed by victim; Limits of Privacy Statement signed by victim; initial assessment; CRC Case Assessment with risk assessment; audio/video tapes of contact with victim; safety plan; notes on collateral contacts about victim; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; original copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the victim.

(b) Offender's file consists of client's fact sheet (demographics); Privacy Act Statement signed by offender; Limits of Privacy Statement signed by offender; initial assessment; CRC Case Assessment; audio/video tapes of contacts with offender; case notes on collateral contacts regarding offender; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Both the Navy and Marine Corps Central Registries contain data elements extracted from DD 2486, Child/Spouse Abuse Incident Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 6400.1, 6400.1-M, 6400.2; Secretary of the Navy Instruction 1752.3A; OPNAVINST 1752.2A; BUMEDINST 6320.22; and MCO 1752.3B (FAP SOP); E.O. 9397 (SSN).

PURPOSE(S):

To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To provide headquarters centralized case management of child sexual abuse incidents (for Navy only).

To provide pertinent case-related information to DoD and DON officials, other than Commanding Officers, responsible for specific case interventions in abuse and/or neglect incidents (e.g., clinical counselors providing counseling/treatment to victims and/or offenders, medical personnel providing medical treatment to victims and/or offenders).

To provide specific data on assessed risk, safety needs, case status, and recommended actions to commanding officers of FAP involved service members.

To provide case specific information to headquarters personnel for necessary review and oversight.

Purposes of the Central Registries:

To support local FAP case management to include tracking of individuals, identification of prior FAP involvement, and monitoring of caseloads.

To support FAP budget and staffing requirements and policy changes.

To support the BUPERS flagging and assignment control process for FAP involved service members.

To provide information in support of the 'Installation Records Check (IRC)' required by OPNAVINST 1700.9D for screening applicants for any position which involves the care and/or supervision of children.

To provide the Defense Manpower Data Center (DMDC) with non-identifying data from the Navy Central Registry data tapes.

To support FAP research efforts.

To respond to public and/or other government agencies' requests for aggregate data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriated to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To contractors, private and public individuals/organizations for authorized health research in the interest of the federal government and the public. When not considered necessary, client identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

NOTE: Records of identity, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in 42 U.S.C. 290dd-2, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Victim's file is retrieved by name of victim, case number, their Social Security Number, and/or year of incident.

Alleged offender's file is retrieved by alleged offender's name, case number, their Social Security Number and/or year of incident.

Central registry data is retrieved by any identifying data element on the DD Form 2486.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Access to records or information or the central registry is limited to those officials who have been properly screened and trained and/or have a need to know consistent with the purpose for which the information was collected. The threshold for 'need to know' is strictly limited to those officials who are responsible for the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect. Also pertinent information is limited to DoD and DON officials responsible for intervening in abuse and/or neglect incidents.

Information maintained on a computer requires password protection. Computer terminals are located in supervised areas with access controlled system.

Family Advocacy Program Staff will ensure that the in-take assessment and clinical notes are not duplicated and placed in both the victim and alleged offender's files.

RETENTION AND DISPOSAL:

Family Advocacy Program case records are maintained at the activity 4 years after the last entry in the file. If there is no subsequent activity 4 years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis,

MO 63132–5100, where they are retained for 50 years and then destroyed.

Navy Central Registry data base is retained permanently at the Naval Medical Information Management Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry data is retained permanently by the Commandant of the Marine Corps (MHF-20), Headquarters. U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval and marine corps activities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information in the case files about themselves should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to determine whether this system of records contains information in the Navy Central Registry about themselves shall address written inquiries for Navy case to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120; for the Marine Corps Central Registry: Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to determine whether this system of records contains information in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Victim; offender; other DoD component Central Registries; medical and dental records; educational institutions; medical facilities; private practitioners; law enforcement agencies; public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 97–30486 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-to-Work Opportunities; Advisory Council For School-To-Work Opportunities; Notice of Open Meeting

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council assesses the progress of School-to-Work Opportunities systems development and program implementation; makes recommendations regarding progress and implementation of the School-to-Work initiative; advises on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems and acts as an advocate for implementing the School-to-Work framework on behalf of its stakeholders.

Time and Place: The Advisory Council for School-to-Work Opportunities will have an open meeting on Tuesday, December 2, 1997, from 8:30 a.m. to 4:30 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW, Washington, DC 20036.

Agenda: The agenda for the meeting will include opening remarks and an update on the status of School-to-Work implementation from 8:30 a.m. to 10:00 a.m. For the rest of the day, the Council will meet with representatives from the State School-to-Work Implementation Grantees in small groups to discuss and determine strategies for addressing State sustainability issues. The meeting will close with a summary of the day's meeting and a discussion of future actions.

Public Participation: The meeting on Tuesday, December 2, 1997, from 8:30 a.m. to 4:30 p.m. at the Renaissance Mayflower Hotel, will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: JD Hoye, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, S.W., Room 210, Washington, D.C. (202) 401–6222. (This is not a toll free number.)

Signed at Washington, D.C. this 17th day of November 1997.

Jan Weinstock,

Acting Assistant Secretary for Vocational and Adult Education, Department of Education.

Raymond J. Uhalde,

Acting Assistant Secretary, Employment and Training Administration, Department of Labor.

[FR Doc. 97–30462 Filed 11–19–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Advanced Mixed Waste Treatment Project at the Idaho National Engineering and Environmental Laboratory, Idaho Falls, ID

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) and conduct a public scoping process for a proposal to construct and operate a facility known as the Advanced Mixed Waste Treatment Project (AMWTP) at the Idaho National Engineering and Environmental Laboratory (INEEL). Under the terms of a 1995 Court Order/Settlement Agreement with the State of Idaho in the case of *Public Service Co. v. Batt*, Civil No. 91–0035–S–EJL (D. Idaho) (Lead case), DOE agreed to procure a treatment facility for mixed low-level waste, transuranic waste and alpha-contaminated mixed low-level waste, and to treat transuranic waste that requires treatment so as to permit disposal outside of the State of Idaho at the Waste Isolation Pilot Plant in New Mexico or other acceptable disposal facility. DOE also needs to manage DOE alpha-contaminated mixed low-level waste, transuranic waste, and mixed low-level waste in a manner that will comply with applicable laws and requirements, and protect the environment and the health and safety of the workers and the public in a cost-effective manner. The AMWTP EIS will assist the Department in making the necessary decisions to comply with the Settlement Agreement and other applicable requirements for these wastes.

DOE's proposed action is to implement a proposal from British Nuclear Fuels Limited, Inc. (BNFL) to construct and operate the AMWTP at the INEEL. The AMWTP, as proposed by BNFL, would retrieve, sort, characterize, and treat mixed low-level waste and approximately 65,000 cubic meters of alpha-contaminated mixed low-level waste and transuranic waste currently stored at the INEEL Radioactive Waste Management Complex, and package the treated waste for shipment off site for disposal. The AMWTP would employ thermal treatment processes (incineration and vitrification) and also treat similar wastes generated by ongoing INEEL activities and activities at other DOE sites.

This EIS will make use of previously developed information and analyses by "tiering" from other environmental impact statements, including: (1) the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final EIS (SNF & INEL EIS) (DOE/EIS–0203–F), issued April 1995; (2) the DOE Waste Management Programmatic Environmental Impact Statement (WM PEIS) (DOE/EIS–0200–F), issued May 1997; and (3) the Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (SEIS–II) (DOE/EIS–0026–S–2), issued September 1997. DOE will conduct two public scoping workshops and welcomes public comment on the scope of the proposed EIS.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register**. DOE invites other Federal agencies, Native American tribes, State and local governments and the general public to comment on the scope of this EIS. DOE must receive scoping comments by January 9, 1998, to ensure consideration, although DOE will consider comments received after that date to the extent practicable.

Two public workshops will be held during this scoping period:

December 4, 1997—Borah High School, 6001 Cassia, Boise, ID; 6:30 pm–9:00 pm

December 9, 1997—Taylorview Junior High School, 350 Castlerock Lane, Idaho Falls, ID; 6:30 pm–9:00 pm

These workshops will provide the public with information about the proposed project and an opportunity to comment on the scope of the EIS, including the reasonable alternatives and issues that the Department should consider. Written comments may be submitted to DOE at these workshops, sent by facsimile to (208) 526–0598, or mailed to the EIS Document Manager, Mr. John E. Medema, at the address listed below.

ADDRESSES: Written comments on this EIS should be sent to: Mr. John E. Medema, Document Manager, Advanced Mixed Waste Treatment Project EIS, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1117, Idaho Falls, ID 83402, Facsimile: (208) 526–0598.

FOR FURTHER INFORMATION CONTACT: To request information about this EIS, or to be placed on the EIS document distribution list, please call the 24-hour toll-free information line at 1–800–708–2680.

For general information about the DOE National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

SUPPLEMENTARY INFORMATION:

Background and Purpose and Need for Agency Action

Approximately 25,000 cubic meters of alpha-contaminated low-level waste and 40,000 cubic meters of transuranic waste are currently stored at the Radioactive Waste Management Complex at INEEL. Approximately 95% of this waste is contaminated with Resource Conservation and Recovery Act (RCRA) hazardous waste, classifying it as "mixed waste." INEEL also is storing mixed low-level waste (which refers herein to mixed low-level waste other than alpha-contaminated mixed

low-level waste). Additionally, some of these wastes are in containers that include asbestos and polychlorinated biphenyls, which are regulated under the Toxic Substances Control Act. Similar wastes are generated as a result of ongoing environmental restoration, decontamination and decommissioning, waste retrieval projects, and other activities at INEEL and other DOE sites. Depending on decisions resulting from the Federal Facilities Compliance Act process and the Waste Management Programmatic EIS, up to 120,000 cubic meters of such wastes from other DOE sites could be treated at the proposed AMWTP. To protect the environment and public health and meet existing regulatory requirements, including the RCRA Land Disposal Restrictions, these wastes must be treated and packaged appropriately for shipment to a disposal facility.

In May 1995, the Department issued its Record of Decision (ROD) (60 FR 28680, June 1, 1995) for the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final EIS (SNF & INEL EIS) (DOE/EIS–0203–F). One of the decisions announced in that ROD was to manage transuranic waste by building "treatment facilities necessary to comply with the Federal Facility Compliance Act. Treatment of transuranic waste at a minimum will be for the purpose of meeting waste acceptance criteria for disposal at the Waste Isolation Pilot Plant (near Carlsbad, New Mexico) and will occur on a schedule to be negotiated with the State of Idaho."

On October 17, 1995, the State of Idaho, the Department of the Navy, and the Department of Energy settled the case of *Public Service Co. of Colorado* v. *Batt*, Civil No. CV 91–0035–S–EJL (D. Idaho) (Lead case). Certain conditions of the Idaho Court Order/Settlement Agreement obligated the Department to:

- Commence procurement of a treatment facility at the INEEL for the treatment of mixed (low-level) waste, transuranic waste, and alpha-contaminated mixed low-level waste;
- Execute a procurement contract for the treatment facility by June 1, 1997, complete construction of the facility by December 31, 2002, and commence operation by March 31, 2003.
- Treat waste shipped to Idaho for treatment in the treatment facility within six months (with the exception of two cubic meters of mixed low-level waste from the Mare Island Naval Shipyard);
- Ship transuranic waste received from another DOE site for treatment at the INEEL outside the State of Idaho for storage or disposal within six months of treatment.

In accordance with the Settlement Agreement, DOE conducted a procurement for a facility to treat mixed low-level waste, transuranic waste, and alpha-contaminated mixed low-level waste at the INEEL. On December 20, 1996, DOE executed a phased contract with BNFL to construct and operate the proposed AMWTP. Phase 1, currently in progress, involves information-gathering by BNFL, DOE performing environmental analysis under the National Environmental Policy Act (NEPA), RCRA and other permitting activities by BNFL, and other planning activities needed to support the project if DOE decides to implement the proposed action. Contract phases 2 and 3 would involve the construction and operation of the AMWTP and would occur only after the issuance of a Record of Decision in which the Department indicated its decision to implement the proposed action.

To support the contractor selection process for the AMWTP, DOE undertook the following actions in accordance with DOE NEPA regulations (10 CFR Part 1021.216): (1) Required that offerors submit environmental data and analyses as part of their proposals; and (2) independently verified the accuracy of the environmental data and analyses, and prepared a confidential environmental critique of each offeror's proposal. (The critique included a discussion of the purpose of the procurement, the salient characteristics of each offeror's proposal, permits, licenses and approvals needed, and a comparative evaluation of the potential environmental impacts of the offers.) DOE is preparing an environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The environmental synopsis will be made publicly available and incorporated into this EIS.

The proposed action to be analyzed in the AMWTP EIS is consistent with the ROD for the SNF & INEL EIS and meets the requirements of the Court Order/Settlement Agreement. The Department of Energy must decide if it will implement Phases 2 and 3 of DOE's contract with BNFL to construct the facility and treat mixed low-level waste, transuranic waste, and alpha-contaminated mixed low-level waste at the INEEL.

The EIS Schedule

The Settlement Agreement requires DOE to ship alpha-contaminated mixed low-level waste and transuranic waste now located at the INEEL, currently estimated at 65,000 cubic meters in volume, to the Waste Isolation Pilot Plant or other disposal facility designated by DOE by a target date of December 31, 2015. If the target date cannot be met, the waste will be shipped no later than December 31, 2018. To comply with the Settlement Agreement, construction of the proposed AMWTP must begin in 1999. Therefore, DOE is planning to complete the EIS and issue a Record of Decision by November 1998.

Alternatives

Proposed Action

Under the proposed action, DOE would implement Phases 2 and 3 of the contract with BNFL to construct and operate a facility for thermally treating mixed low-level waste, transuranic waste, and alpha-contaminated mixed low-level waste according to the treatments required under the RCRA Land Disposal Restrictions, as necessary. The proposed waste treatment process consists of: retrieving wastes from above-ground storage, characterizing and separating wastes, thermally treating up to 25% of the waste using incineration and vitrification, and treating the remaining waste using the physical waste form modification processes of super-compaction and macro-encapsulation. Under the proposed action, the AMWTP may treat up to 120,000 cubic meters of DOE waste from other DOE sites.

Other Action Alternatives

During the procurement process, all of the qualified offerors proposed a similar combination of thermal and physical treatment processes. Nevertheless, DOE intends to consider in the EIS other treatment alternatives, including but not necessarily limited to non-thermal (*e.g.*, chemical treatment), other thermal technologies (*e.g.*, vitrification), and physical treatment processes (*e.g.*, repackaging), and will analyze a range of those treatment processes (or combinations of processes) that DOE determines are reasonable alternatives to the proposed action. DOE invites comments on these treatment options and suggestions for other alternatives that DOE should consider in the EIS.

No Action

The Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508) and the DOE NEPA Regulations (10 CFR part 1021) require the analysis of a no action alternative. Under the no action alternative, DOE would continue storing mixed low-level waste, alpha-contaminated mixed low-level waste and transuranic waste in the existing RCRA Type II storage modules and the earthen covered berm at the Radioactive Waste Management Complex. The waste stored in the earthen berm of the Transuranic Storage Area Retrieval Enclosure would not be retrieved. Under the no action alternative, all INEEL activities supporting the Waste Isolation Pilot Plant would cease once the current inventory of waste that is now ready for transport to the Waste Isolation Pilot Plant has been shipped. Waste currently stored in the RCRA Type II storage modules at the Radioactive Waste Management Complex that could not be shipped to the Waste Isolation Pilot Plant would remain in storage indefinitely. If DOE selects the no action alternative, the contract with BNFL would be terminated for convenience.

Related NEPA Decisions and Reviews

This tiered EIS will use, and supplement as necessary, the information and analyses contained in: (1) the SNF & INEL EIS, (DOE/EIS–0203–F); (2) the WM PEIS, (DOE/EIS–200–F) and (3) SEIS–II (DOE/EIS–0026–S–2).

Volume 2 of the SNF & INEL EIS, issued in April 1995, is a site-wide EIS for environmental restoration and waste management activites at the INEEL. Volume 2 includes analysis of the potential environmental impacts associated with treating alpha-contaminated and transuranic mixed wastes and packaging the waste for shipment to a DOE approved repository. The SNF & INEL EIS evaluated two proposed generic treatment facilities: the Private Sector Alpha Low-Level Waste Treatment Facility, and the Idaho Waste Processing Facility. The SNF & INEL EIS envisioned that these projects would be identical (except for how they would be funded and operated) and would involve thermal (incineration) and non-thermal treatment processes. The SNF & INEL EIS also envisioned that only one of these projects would ultimately be implemented, and that appropriate further NEPA review would be conducted before DOE would decide to implement one of the projects. In the SNF & INEL EIS, the potential environmental impacts of these facilities were analyzed sufficiently to assess their incremental contribution to the cumulative impacts of past, present and reasonably foreseeable future activities at the INEEL.

The WM PEIS, issued in May 1997, is a DOE complex-wide study examining the potential environmental impacts associated with managing five types of radioactive and hazardous wastes generated by past, present, and reasonably foreseeable future activities at 24 major sites located around the United States. The five types of waste examined by the WM PEIS are mixed low-level radioactive waste (including alpha-contaminated mixed low-level waste), low-level radioactive waste, transuranic waste, hazardous waste, and high-level radioactive waste. The WM PEIS preferred treatment alternative for mixed low-level waste is treatment at DOE facilities (including INEEL). The WM PEIS preferred alternative for transuranic waste involves treatment at DOE facilities that have significant quantities of transuranic waste, such as the INEEL. Based on the preferred alternative, treated transuranic waste would be stored where it is treated pending decisions on a final repository (see below). A WM PEIS Record of Decision has not yet been issued for any waste types.

The SEIS–II assesses whether to dispose of transuranic waste at the Waste Isolation Pilot Plant, and reasonable options for transportation and other activities associated with disposal, as well as reasonable alternatives concerning quantities, sources, and treatment of transuranic waste for disposal. The Department's preferred alternative in SEIS–II is to dispose of post-1970 defense transuranic waste at the Waste Isolation Pilot Plant, and to transport the waste to the Waste Isolation Pilot Plant by truck (although DOE would continue to explore the availability of safe and cost-effective commercial rail transportation). The preferred alternative is consistent with the proposed action that will be analyzed in the AMWTP EIS.

In addition to the programmatic EISs described above, the High-Level Waste and Facilities Disposition (HLWFD) EIS is an ongoing NEPA analysis that is potentially related to the AMWTP EIS. The HLWFD EIS will analyze the potential environmental impacts of treating INEEL's high-level waste and associated radioactive waste. The HLWFD EIS is potentially relevant to the proposed Advanced Mixed Waste Treatment Project EIS because a small portion of the radioactive waste (not high-level waste) considered in the former EIS is a candidate for treatment at the proposed AMWTP. A Notice of Intent to prepare the HLWFD EIS was issued on September 19, 1997 (62 FR 49209).

Preliminary Identification of EIS Issues

- Potential effects on the Snake River Plain Aquifer;
- Effects of emissions and discharges from the thermal treatment of mixed low-level waste, alpha-contaminated mixed low-level waste, and transuranic waste;
- Potential effects on the public and workers from exposure to radiological and hazardous materials, during normal operations and from reasonably foreseeable accidents;
- Potential effects on air, soil, and water quality, from normal operations and reasonably foreseeable accidents;
- Potential effects on members of the public, including minority and low income populations, from normal operations and reasonably foreseeable accidents;
- Pollution prevention, waste minimization, and energy and water use reduction technologies to eliminate or reduce use of energy, water, and hazardous substances, and to minimize environmental impacts;
- Potential socioeconomic impacts, including potential impacts associated with the number of workers needed for operations;
- Potential impacts on cultural and historic resources;
- Regulation of commercial operations on a DOE site;
- Compliance with applicable Federal, State, and local requirements and the Court Order/Settlement Agreement;
- Potential cumulative environmental impacts of all past, present, and reasonably foreseeable future operations at the INEEL;
- Potential irreversible and irretrievable commitment of resources and the ultimate use of INEEL land;
- Potential environmental impacts, including long term risks to humans, associated with constructing, operating, and decommissioning the AMWTP.

Issued in Washington, D.C. on November 17, 1997.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 97–30536 Filed 11–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Friday & Saturday, December 5–6, 1997: 8:30 a.m.–5:00 p.m.

ADDRESSES: The December 5–6, 1997 meetings will be held at: Ocean Plaza, Oceanfront at 15th Street, Savannah, Georgia 31328.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Friday, December 5, 1997

8:30 a.m.—Review applications of potential candidates for Board membership and select three qualified applicants per Board vacancy
5:00 p.m.—Adjourn

Saturday, December 6 1997

8:30 a.m.—Review applications of potential candidates for Board membership and select three qualified applicants per Board vacancy
5:00 p.m.—Adjourn.

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of each day.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by wrting to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on November 12, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–30510 Filed 11–19–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board.

Date and Time: Tuesday, December 9, 1997, 9:00 a.m.–3:30 p.m.

Place: Georgetown University Conference Center, Salon H, 3800 Reservoir Road, NW, Washington, DC 20057.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Tuesday, December 9, 1997

9:00–9:30 AM—Introductory Remarks
9:30–10:30 AM—Status Report on LOB Recommendations
10:30–10:45 AM—Break
10:45–11:30 AM—Report on Multiple Laboratory Projects
11:30–12:00 PM—Public Comment Period
12:00–1:00 PM—Lunch
1:00–1:30 PM—Progress Report on Ongoing Studies
1:30–2:00 PM—Report on New Activities
2:00–2:45 PM—Working Session
2:45–3:15 PM—Public Comment Period
3:15–3:30 PM—Closing Remarks
3:30 PM—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation

The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 17, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–30509 Filed 11–19–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Openness Advisory Panel.

Date and Time: Wednesday, December 3, 1997, 9:00 A.M.—4:00 P.M.

Address: Jefferson Hotel, Monticello Room, 1200 16th Street, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: Purpose of the Openness Advisory Panel: To provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

Wednesday, December 3, 1997

9:00–9:30 AM
Opening Remarks & Introductions—R. Meserve, Chairman
9:30–10:00 AM
Subgroup Report: Assessment of the Yucca Mountain Site's Electronic Records Management System—T. Wade & E. Willis, OAP Members
10:00–10:45 AM
Status Report: Records Management Implementation Strategy & Status—S.W. Hall, DOE Chief Information Officer
10:45–11:00 AM
Break
11:00–11:45 AM
Status Report: Declassification Implementation Strategy & Status—Brian Siebert, DOE Office of Declassification
11:45–12:00 PM
Public Comment
12:00–1:00 PM
Lunch
1:00–2:00 PM
Panel Discussion: Records Management "Best Practices": the Field Management Perspective—Guest Panelists & OAP Members
2:00–2:15 PM
Break
2:15–3:30 PM
Working Session: Discussion of the OAP Work Plan
3:30–4:00 PM
Public Comment
4:00 PM
Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation

The Chairman of the Panel is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes and Transcript

Available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Openness Advisory Panel may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 17, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–30537 Filed 11–19–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–8–000]

Algonquin Gas Transmission Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Sub Third Revised Sheet No. 714
Sub Original Sheet No. 715

Algonquin asserts that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Letter Order issued October 27, 1997, in Docket No. RP97–8–000, which required Algonquin to file substitute tariff sheets reflecting the correct version numbers for GISB standards incorporated by reference on Sheet Nos. 714 and 715.

Algonquin states that the above listed tariff sheets contain the modifications required by the October 27, 1997 letter order.

Algonquin states that copies of the filing were served on all effected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30459 Filed 11–19–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97-90-004 and RP97-99-005]

Algonquin LNG, Inc., Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub First Revised Sheet No. 83 to be effective November 1, 1997.

ALNG asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on October 30, 1997, in Docket Nos. RP97-90-002, 003 and RP97-99-003, 004 which required ALNG to reflect the proper version numbers for GISB standards incorporated by reference on Sheet No. 83.

ALNG states that Sub First Revised Sheet No. 83 contains the modifications required by the October 30, 1997 letter order.

ALNG states that copies of this filing were served on all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30454 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-43-000]

Anadarko Gathering Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, Anadarko Gathering Company (Anadarko) pursuant to the Commission's Order dated September 10, 1997, in Public Service Company of Colorado, *et al.*, Docket No. RP97-369-000, *et al.*, tendered for filing its statements which relate to the Cimarron River System, an asset acquired by the Anadarko's parent in 1994.

Anadarko states that copies of this filing have been served on the person or persons indicated in the letters and on Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30435 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-42-000]

ANR Pipeline Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, ANR Pipeline Company (ANR) tendered for filing its Statement of Refunds Due as a result of the Commission's September 10, 1997 Order issued in Docket Nos. RP97-369-000, GP97-3-000, GP97-4-000 and GP97-5-000.

The order directed first sellers of natural gas to refund, including interest, any revenues collected in excess of the maximum applicable lawful price established under the Natural Gas Policy Act of 1978 as a result of the reimbursement of the Kansas ad valorem tax during the period October 3, 1983 through June 28, 1988. Ordering paragraph (B) requires pipelines to furnish first sellers a Statement of Refunds Due by November 10, 1997 and to file a copy of such Statement with the Commission.

ANR states that refunds owed ANR from Kansas producers, who charged in excess of the applicable maximum lawful price established by the NGPA for the period October 4, 1983 through June 28, 1988, total $409,902.77 of principal and $777,829.16 of associated interest, for a total refund due ANR of $1,187,731.93.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30436 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-173-006]

ANR Storage Company, Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, ANR Storage Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

ANR states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on October 24, 1997 in the above captioned docket.

ANR states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30448 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-170-006]

Blue Lake Gas Storage Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Blue Lake states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on October 27, 1997 in the above captioned docket.

Blue Lake states that copies of the filing was served upon the company's Jurisdictional customer.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30449 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-13-001]

Boundary Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 7, 1997, Boundary Gas, Inc. (Boundary) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective November 1, 1997.

First Revised Sheet No. 12
First Revised Sheet No. 13

Boundary states that the purpose of this filing is to comply with the Commission's October 29, 1997 Order in this proceeding by revising its tariff to include a reference to the document which contains a protocol describing the implementation of a pipeline rate refund mechanism. Boundary also states that copies of this filing were served upon all persons designated by the Commission to receive service in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30441 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98-4-000]

Distrigas of Massachusetts; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective December 1, 1997:

Third Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record a change in DOMAC's index of customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30452 Filed 11-19-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-58-006]

East Tennessee Natural Gas Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

Third Revised Sheet No. 102
Sub Third Revised Sheet No. 176

East Tennessee states that these sheets are filed in compliance with the Commission's October 30, 1997 Letter Order in the above-referenced docket (October 30 Letter Order).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30457 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–44–000]

El Paso Natural Gas Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, El Paso Natural Gas Company (El Paso) tendered for filing its Statement of Refunds Due provided to Vastar Gas Marketing, Inc., successor-in-interest to Arco Oil & Gas Company, in accordance with the Commission's order issued September 10, 1997 at Docket No. RP97–369–000, et al.

The order directed first sellers of natural gas to refund, including interest, any revenues collected in excess of the maximum applicable lawful price established under the Natural Gas Policy Act of 1978 as a result of the reimbursement of the Kansas ad valorem tax during the period October 3, 1983 through June 28, 1988. Ordering paragraph (B) requires pipelines to furnish first sellers a Statement of Refunds Due by November 10, 1997 and to file a copy of such Statement with the Commission.

El Paso states that on November 10, 1997 it furnished Vastar Gas Marketing, Inc. the Statement of Refunds Due indicating a total refund due of $53,836.13, including interest through November 9, 1997.

El Paso states that copies of this filing have been served upon all parties of record in this proceeding and all shippers on El Paso's system and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30434 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–37–000]

El Paso Natural Gas Company; Notice of Revenue Credit Report

November 14, 1997.

Take notice that on November 6, 1997, El Paso Natural Gas Company (El Paso), tendered for filing its report detailing El Paso's crediting of revenues to eligible shippers for the calendar year 1996.

El Paso states that the report details El Paso's crediting of risk sharing revenues for the calendar year 1996 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30440 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–2–000]

El Paso Natural Gas Company; Notice of Tariff Filing

November 14, 1997.

Take notice that on November 10, 1997, El Paso Natural Gas Company (El Paso) tendered for filing a Transportation Service Agreement (TSA) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Fifth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains a payment provision which differs from El Paso's Volume No. 1–A Form of Transportation Service Agreements and General Terms and Conditions. The TSA and the tariff sheet, which references the TSA, are proposed to become effective on December 10, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30463 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–60–000]

Garden Banks Gas Pipeline, LLC, Notice of Request Under Blanket Authorization

November 14, 1997.

Take notice that on November 5, 1997, Garden Banks Gas Pipeline, LLC, (GBGP) 701 Poydras, New Orleans, Louisiana filed in the above docket an application, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205 and 157.212) for authorization to establish a new delivery point at Garden Banks Block 128 "A" Platform. GBGP states that it will construct and operate the new delivery point under the blanket certificate issued in Docket Nos. CP96–678–000 and CP96–679–000 , all as more fully set forth in the request which is file with the Commission and open to public inspection.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30464 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–005]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Michigan Gas Storage Company (MGSCO) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, three tariff sheets (Sheet Nos. 1, 41A, and 54A) with effective dates of June 1, 1997 and another revised tariff sheet (No. 54A) with an effective date of November 1, 1997.

MGSCO states that this filing is made in compliance with the letter order issued on October 27, 1997, in Docket Nos. RP97–152–003 and –004. MGSCO states that these tariff sheets reflect the correct pagination as required by the Commission, and the incorporation of GISB standards 1, 2, 3 and 5, Version 1.1 and GISB standard 4, Version 1.0.

MGSCO also notes that although these tariff sheets are being filed with effective dates of June 1, 1997 and November 1, 1997, the Commission has granted MGSCO an extension of time for implementation of certain of the GISB standards incorporated within these tariff sheets, to and including February 1, 1998.

MGSCO states that copies of this filing are being served on all customers and applicable state regulatory agencies and on all those on the official service list in Docket No. RP97–152–000. Any person desiring to protest this filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30450 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–59–010]

Midwestern Gas Transmission Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 54
Sub Third Revised Sheet No. 110A

Midwestern states that these sheets are filed in compliance with the Commission's October 24, 1997 Letter Order in the above-referenced docket (October 24 Letter Order). In accordance with the October 24 Letter Order, Midwestern requests an effective date of November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–41–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1997:

Eleventh Revised Sheet No. 1
Twenty-first Revised Sheet No. 20
Eighteenth Revised Sheet No. 21
Nineteenth Revised Sheet No. 22
Twenty-first Revised Sheet No. 24
Third Revised Sheet No. 1414
Fourth Revised Sheet No. 3200
Second Revised Sheet No. 3201

Koch states that this filing is being submitted to remove the GRI Surcharge from its rates and the GRI provisions contained in the General Terms and Conditions.

Koch also states that it has served copies of this filing upon each person designated on the official service list as compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30437 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30456 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–528–002]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 7, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing Second Substitute Third Revised Sheet No. 9 as part of its FERC Gas Tariff, Third Revised Volume No. 1 to be effective October 25, 1997.

MRT states that the purpose of this filing is to comply with the letter order issued in this docket on October 24, 1997.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protects must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30442 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–38–000]

Natural Gas Pipeline Company of America; Notice of Statements of Refunds Due and Request for Waiver

November 14, 1997.

Take notice that on November 10, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing its Statements of Refunds Due (Statements) with respect to the Kansas *ad valorem* tax relating to Natural's gas purchases for the period of October 3, 1983, through June 28, 1988. Natural states that each statement was served upon the affected First Seller. Filing of such Statements is required by Ordering Paragraph (B) of the Commission's Order issued in the referenced docket on September 10, 1997.

Natural states that in addition to submitting the Statements, Natural is requesting that the Commission grant to Natural a waiver of Ordering Paragraphs (D), (E) and (F) of the September 10 Order. Those provisions of the September 10 Order require that pipelines refund any amounts collected pursuant to such Statements.

Natural states that copies of this filing have been served on Natural's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30439 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–52–000]

New York State Electric & Gas Corporation; Notice of Filing

November 14, 1997.

Take notice that on November 7, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing a supplement to its application filed in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30465 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–39–000]

Northern Natural Gas Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, Northern Natural Gas Company (Northern) pursuant to the Commission's Order dated September 10, 1997, in Public Service Company of Colorado, *et al.*, Docket No. RP97–369–000, *et al.*, tendered for filing its Statements of Refunds Due with respect to First Sellers having a refund obligation related to Kansas *ad valorem* taxes for the period of October 4, 1983, through June 28, 1988. Northern states that Schedule No. 1 attached to the filing, listing the name of the First Sellers, the principal and interest amounts owed and the total refund obligation.

Northern states that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000 and GP97–5–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30438 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–224–011]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets, with an effective date of November 1, 1997:

Second Substitute Third Revised Sheet No. 95

Sea Robin states that the tariff sheet is being filed in compliance with the Commission's Order No. 587–C, the Commission's June 27, 1997 Order and the Commission's October 27, 1997, Letter Order in this docket, to become effective November 1, 1997.

On April 30, 1997, Sea Robin made a pro forma compliance filing in response to Commission Order No. 587–C in order to implement certain GISB standards. On June 27, 1997, the Commission issued an order accepting Sea Robin's filing subject to certain conditions. On October 1, 1997, Sea Robin made a compliance filing incorporating the Commission's directives and the Commission approved such compliance filing with one exception by letter order dated October 27, 1997. The Commission's October 27 letter order required Sea Robin correct the version designations of the GISB standards it incorporates by reference under Section 28 of the General Terms and Conditions. In response to the October 27 letter order, Sea Robin has filed the tariff sheet with the corrected GISB standard version designation.

In addition, Sea Robin has added to Sheet No. 95 the incorporation by reference of the Model Trading Partner Agreement which was approved by Commission Letter Order dated July 3, 1997, in Docket No. RP97–224–005. Sea Robin requests an effective date of November 1, 1997. Sea Robin states that such effective date is appropriate because it is consistent with Sea Robin's April 30 tariff filing, and the timeline established in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures.

All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30446 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–187–006]

Sea Robin Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 10, 1997 Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective as described below.

Second Revised Fourth Revised Sheet No. 7
Third Revised Fourth Revised Sheet No. 7
First Revised First Substitute Fifth Revised Sheet No. 7
First Revised First Substitute Sixth Revised Sheet No. 7
First Revised Fourth Revised Sheet No. 8
First Substitute Fifth Revised Sheet No. 8
First Revised First Substitute Sixth Revised Sheet No. 8
First Revised Fourth Revised Sheet No. 9
First Substitute Fifth Revised Sheet No. 9
First Revised First Substitute Sixth Revised Sheet No. 9

Sea Robin Asserts that the purpose of this filing is to comply with the Commission's order issued November 3, 1997 in Docket No. RP95–167–004 (November 3, Order).

On December 31, 1996, Sea Robin filed a Stipulation and Agreement (Stipulation) in Docket No. RP95–167 under which it intended to resolve all of the issues in the proceeding and to implement revised rates effective January 1, 1997. The Stipulation Lowered Sea Robin's interruptible transportation (IT) rate from $0.0842/Dth to $0.08/Dth and lowered its firm transportation (FT) demand rate from $2.39/Dth to $2.26/Dth and FT commodity rate from $0.0126/Dth to $0.004/Dth (Settlement Rates). On April 22, 1997, the Commission issued its "Order on Settlement, Establishing Just and Reasonable Rates" (April 22 Order), which required Sea Robin to reduce both its existing rates and Settlement Rates under Section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a) (1996). On rehearing of the April 22 Order, however, the Commission issued its November 3 Order, which accepted the Settlement Rates as just and reasonable. Under the November 3 Order, the Settlement Rates become effective for contesting parties on May 1, 1997 and for non-contesting parties on January 1, 1997.

As required by the November 3 Order, Sea Robin submits the revised Tariff sheets (1) to place Settlement Rates into effect for non-contesting parties as of January 1, 1997; (2) to maintain the pre-Stipulation rates for contesting parties through April 30, 1997; (3) to place Settlement Rates into effect for all parties as of May 1, 1997; and (4) to implement Gas Industry Standards Board standards and Annual Charge Adjustment surcharges, effective the dates these standards and revised surcharges were implemented, for the services to which these rates apply.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30461 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–177–007]

Steuben Gas Storage Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Steuben states that the tariff sheets are being filed in compliance with the Commission's Order issued on October 27, 1997 in the above Captioned docket.

Steuben states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30447 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–143–005]

TCP Gathering Co.; Notice of Tariff Filing

November 14, 1997.

Take notice that on November 10, 1997, TCP Gathering Co. (TCP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to be effective November 1, 1997:

Original Sheet No. 103A

TCP states that this tariff sheet is being filed to correct an error in pagination as noted in the Office of Pipeline Regulation letter order, issued on October 29, 1997, in Docket No. RP97–143–007.

TCP states that copies of the filing were served upon TCP's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30453 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–66–010]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 302
Fifth Revised Sheet No. 316
Second Revised Sheet No. 357
Sub Fourth Revised Sheet No. 412

Tennessee states that these sheets are filed in compliance with the Commission's October 28, 1997 Letter Order in the above-referenced docket (October 28 Letter Order). In accordance with the October 28 Letter Order, Tennessee requests an effective date of November 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30455 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–3–009]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective November 1, 1997:

Sub Third Revised Sheet No. 661.

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's Letter Order issued October 27, 1997, in Docket No. RP97–3–008, which required Texas Eastern to file a substitute tariff sheet reflecting the correct version numbers for GISB standards incorporated by reference on Sheet No. 661

Texas Eastern states that the above listed tariff sheet contains the modifications required by the October 27, 1997 letter order.

Texas Eastern states that copies of the filing were served on all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30460 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on August 25, 1997, Trailblazer Pipeline Company, (Trailblazer) tendered for filing recalculated rates and work papers as directed by the Commission in ordering paragraph C of the Commission's order issued July 31, 1997, in Docket No. RP97–408–000.

Trailblazer states that copies of its filing have been served upon all parties on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 29426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30444 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–18–010]

Transwestern Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 10, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to be effective November 1; 1997:

Substitute Fifth Revised Sheet No. 49

Transwestern states that the instant filing is made in compliance with the Commission's Letter Order issued October 27, 1997 in Docket No. RP97–18–009 directing Transwestern to include the unaddressed Gas Industry Standards Board ("GISB") standards in its Tariff.

Transwestern further states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30458 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–428–002]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective August 27, 1997:

2 Sub First Revised Sheet No. 85

Tuscarora states that the filing is being made in compliance with the GPR Letter Order dated October 27, 1997.

Tuscarora asserts that the purpose of this filing is to clarify that an existing shipper can retain capacity by either matching the best bid or by matching the rate contained in the best bid for a period of at least five years.

Tuscarora states that copies of this filing were mailed to all customers of Tuscarora, interested state regulatory agencies and the service list in Docket No. RP97–428–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30443 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–46–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Williams Natural Gas Company (WNG) tendered for filing a report made pursuant to Article 14.1 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

WNG states that Article 14.1 of the General Terms and Conditions of its FERC Gas Tariff requires WNG to file a report showing the total actual amounts billed to each customer to be filed at the end of the amortization period. WNG began billing unrecovered purchased gas costs, pursuant to Commission order issued July 20, 1994, in Docket No. RP94–296–000. The amortization period ended in September, 1997.

WNG states that a copy of its filing was served on all WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30433 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–002]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

November 14, 1997.

Take notice that on July 28, 1997, Wyoming Interstate Company, (WIC) tendered for filing recalculated rates and work papers as directed by the Commission in ordering paragraph C of the Commission's order issued June 27, 1997, in Docket No. RP97–375–000.

WIC states that copies of the filing have been served upon each of WIC customer and public bodies as set forth on the Official Service List.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20420, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30445 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–19–000, et al.]

Electric Rate and Corporate Regulation Filings; Entergy Arkansas, Inc., et al.

November 13, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Arkansas, Inc.

[Docket No. EC98–19–000]

Take notice that on November 6, 1997, Entergy Arkansas, Inc. (Entergy) filed an application under Section 203 of the Federal Power Act to transfer certain jurisdictional facilities to the Conway Corporation, an Arkansas not-for-profit corporation which operates the electric and water systems of the City of Conway, Arkansas.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. J. Makowski Company, Inc. and TransCanada OSP Holdings Ltd.

[Docket No. EC98–17–000]

Take notice that J. Makowski Company, Inc. (JMC) and TransCanada OSP Holdings Ltd. (TCOSP) on November 5, 1997, tendered for filing an Application requesting Commission approval for a disposition of facilities under Section 203 of the Federal Power Act (FPA) in connection with the sale of certain upstream ownership interests in Ocean State Power and Ocean State Power II, which are public utilities under Section 201 of the FPA.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. USGen New England, Inc., TransCanada OSP Holdings Ltd. and TransCanada Power Marketing Ltd.

[Docket No. EC98–18–000]

Take notice that USGen New England, Inc. (USGenNE), TransCanada OSP Holdings Ltd. (TCOSP) and TransCanada Power Marketing Ltd. (TCPM) on November 6, 1997, tendered for filing an Application requesting Commission approval for (1) a disposition of facilities under Section 203 of the Federal Power Act (FPA) in connection with the sale of certain upstream ownership interests in Ocean State Power and Ocean State Power II, which are public utilities under Section 201 of the FPA and (2) the sale of USGenNE's rights and obligations under various power sales agreements to TCPM.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Toledo Edison Company

[Docket No. ER97–2125–000]

Take notice that on November 5, 1997, The Toledo Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–321–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Pennsylvania Power & Light Co. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER98–322–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Bruin Energy Inc./Mack Services Group (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997 as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket No. ER98–323–000]

Take notice that on October 27, 1997, The Detroit Edison Company tendered for filing its report of transactions for the second calendar quarter of 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER98–324–000]

Take notice that on October 24, 1997, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and QST Energy Trading Inc. and USGen Power Services, L.P. under its Transmission Services (TS) Tariff and with QST Energy Trading Inc. and USGen Power Services, L.P. under its Power Services (PS) Tariff.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–325–000]

Take notice that on October 27, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of AEP Service Corporation, Allegheny Power, Cleveland Electric Illuminating Company, CNG Retail Services Corporation, Market Responsive Energy, Inc., and Woodruff Energy. PJM requests an effective date of October 28, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Louisiana Electric Company, Inc.

[Docket No. ER98–327–000]

Take notice that on October 27, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing CLECO's Market Based Rate Tariff MR–1, the quarterly report for transactions untaken by CLECO for the quarter ending September 30, 1997.

CLECO states that a copy of the filing has been served on the Louisiana Public Service Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–329–000]

Take notice that on October 27, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for GPU Energy and Williams Energy Services Company, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective dates under the Service Agreements are October 17, 1997 and November 1, 1997 respectively.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–330–000]

Take notice that on October 27, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Firm Point-to-Point Transmission Service for Carolina Power & Light Company and Williams Energy Services Company, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective dates under the Service Agreements are November 1, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Atlantic City Electric Company

[Docket No. ER98–331–000]

Take notice that on October 27, 1997, Atlantic City Electric Company (AE) tendered for filing its 3rd Quarter 1997, Summary Report of all AE transactions made pursuant to the market-based rate power service tariff.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Louisiana Electric Company, Inc.

[Docket No. ER98–332–000]

Take notice that on October 28, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with Arizona Public Service Company.

CLECO states that a copy of the filing has been served on Arizona Public Service Company.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–333–000]

Take notice that on October 28, 1997, PP&L, Inc., formerly known as Pennsylvania Power & Light Company, filed a Quarterly Transaction Report notifying the Commission that it did not engage in any transactions under its market-based rates tariff, FERC Electric Tariff, Original Volume No. 5, during the quarter ending September 30, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Louisiana Electric Company, Inc.

[Docket No. ER98–334–000]

Take notice that on October 28, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with Cinergy Services, Inc., as agent for the Cinergy Operating Companies.

CLECO states that a copy of the filing has been served on Cinergy Services, Inc.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Louisiana Electric Company, Inc.

[Docket No. ER98–335–000]

Take notice that on October 28, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Dayton Power and Light Company

[Docket No. ER98–337–000]

Take notice that on October 28, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing The Energy Authority, Inc., GPU Energy, New Energy Ventures LLC, PP&L, Inc., Southern Companies, QST Energy, Inc., Stand Energy Corp., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon The Energy Authority, Inc., GPU Energy, New Energy Ventures LLC, PP&L, Inc., Southern Companies, QST Energy, Inc., Stand Energy Corp., and the Public Utilities Commission of Ohio.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER98–338–000]

Take notice that on October 28, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing QST Energy Trading Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon establishing QST Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER98–339–000]

Take notice that on October 28, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 9, to its partial requirements service agreement with Manitowoc Public Utilities (MPU), Manitowoc County, Wisconsin. Supplement No. 9, provides MPU's contract demand nominations for January 1998—December 2003, under WPSC's W–2 partial requirements tariff and MPU's applicable service agreement.

The WPSC states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. ER98–340–000]

Take notice that on October 28, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with American Energy Solutions, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon American Energy Solutions, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER98–341–000]

Take notice that on October 28, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission two Non-Firm Transmission Service Agreements with Northern States Power Company (NSP) dated October 9, 1997 and Tennessee Valley Authority (TVA) dated October 14, 1997, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 9, 1997, for the Agreement with NSP and October 14, 1997, for the Agreement with TVA, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on NSP, TVA, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corporation

[Docket No. ER98–342–000]

Take notice that on October 28, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG may provide capacity and/or energy to Commonwealth Edison (Commonwealth), ConAgra Energy Services, Inc. (ConAgra), and Wisconsin Electric Power Company (WEPCo)(collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Commonwealth, ConAgra, and WEPCo become effective as of October 29, 1997.

The Service Agreements are subject to NYSEG's Application for Approval of Corporate Reorganization which was filed with the Commission on September 1, 1997, and was assigned Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, Commonwealth, ConAgra, and WEPCo.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Company

[Docket No. ER98–343–000]

Take notice that on October 28, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with PacifiCorp Power Marketing, Inc., under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to PacifiCorp Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective October 24, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER98–345–000]

Take notice that on October 28, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the PacifiCorp Power Marketing, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to PacifiCorp Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective October 24, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Power Corporation

[Docket No. ER98–347–000]

Take notice that on October 28, 1997, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, Original Volume No. 8) during the period July 1, 1997 through September 30, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–411–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997, tendered for filing an application for authority to sell power at market-based rates. Wolverine, which will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of January 1, 1998, also asks for approval of certain existing interconnection agreements that allow for sales of power and energy at negotiated prices.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Rochester Gas and Electric Corporation

[Docket No. ER98–326–000]

Take notice that on October 27, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the NP Energy, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Tariff, Original Volume 3 (Market-Based Rate Tariff) accepted by the Commission in Docket No. ER97–3553–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 21, 1997 for the NP Energy, Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Rochester Gas and Electric Corporation

[Docket No. ER98–328–000]

Take notice that on October 27, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Consolidated Edison Solutions, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Tariff, Original Volume 3 (Market-Based Rate Tariff) accepted by the Commission in Docket No. ER97–3553–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 21, 1997 for the Consolidated Edison Solutions, Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–413–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997 tendered for filing (1) an initial proposed tariff to be designated Wolverine's Rates for Wolverine Power Supply Cooperative to Members consisting of Rate Schedule A and riders and (2) an Amended and Consolidated Wholesale Power Contract with each of Wolverine's six member cooperatives. The proposed tariff adopts the existing rates of Wolverine, which will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of January 1, 1998.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30503 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–85–000, et al.]

Electric Rate and Corporate Regulation Filings; Entergy Power Generation Corporation, et al.

November 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Generation Corporation

[Docket No. EG97–85–000]

On November 10, 1997, Entergy Power Generation Corporation filed with the Federal Energy Regulatory Commission a supplement to its September 26, 1997, application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. The supplemental material included clarification sought by the Commission Staff.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. De Pere Energy L.L.C.

[Docket No. EG98–4–000]

On October 24, 1997, De Pere Energy L.L.C. (De Pere), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

De Pere is developing a gas-fired eligible facility with an initial capacity of approximately 180 megawatts (net) operating as a simple-cycle combustion turbine, and later as an approximate 255 megawatt (net) combined-cycle cogeneration plant producing both electricity and steam, to be located in the City of De Pere, Brown County, Wisconsin.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Enfield Energy Centre Limited

[Docket No. EG98–5–000]

Take notice that on November 10, 1997, Enfield Energy Centre Limited, a limited liability company incorporated and existing under the laws of the England and Wales, having its registered office at Cam Lea Offices, 975 Mollison Avenue, Enfield, Middlesex, EN3 7NN, England (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged directly in owning an eligible facility, the Enfield Energy power plant located in the Borough of Enfield, North London, England (the Plant). The Plant will consist of a 398 MW combined cycle power plant, fueled by natural gas with gas oil as backup fuel.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Kentucky Utilities Company

[Docket No. ER97–3378–000]

Take notice that on November 6, 1997, Kentucky Utilities Company (KU), tendered for filing an Amendment to the five (5) Supplements to FERC Rate Schedule 203, the Interconnection Agreement between KU and East Kentucky Power Cooperative.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–4006–000]

Take notice that on November 3, 1997, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2, for the quarter ending June 30, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Denver City Energy Associates, L.P.

[Docket No. ER97–4084–001]

Take notice that on November 3, 1997, Denver City Energy Associates, L.P. (DCE), tendered for filing a Code of Conduct in compliance with the Federal Energy Regulatory Commission (the Commission) Order on Proposed Market-Based Rates of GS Electric Generating Cooperative, Inc., and DCE issued October 17, 1997 in Docket Nos. ER97–3583–000 and ER97–4084–000.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cargill-IEC, L.L.C.

[Docket No. ER97–4273–001]

Take notice that on October 31, 1997, Cargill-IEC, L.L.C. (Cargill-IEC), tendered for filing, pursuant to the Commission's October 17, 1997, Order Conditionally Accepting Proposed Market-Based Rates, a Compliance Filing including a revised Statement of Policy and Standards of Conduct governing the relationship between the IEC Companies and their affiliated wholesale power marketer, Cargill-IEC.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. GEN–SYS Energy

[Docket No. ER97–4335–001]

On November 3, 1997, GEN–SYS Energy made its compliance filing as required under Ordering Paragraph (A) of the Commission's Order issued in this proceeding on October 17, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ER97–4435–001]

Take notice that on November 4, 1997, Idaho County Light & Power Cooperative Association, Inc. (Idaho County), advised the Commission that it retired its debt from the Rural Utilities Service on October 21, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Company

[Docket No. ER97–4815–000]

Take notice that on November 3, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing a request to withdraw its filing in Docket No. ER97–4815–000.

WP&L requests waiver of the Commission's notice requirements to permit the requested action. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Company

[Docket No. ER98–205–000]

Take notice that on October 15, 1997, the Detroit Edison Company (Detroit Edison) filed a revised Service Agreement in the above-referenced docket. Detroit Edison requests that the revised Service Agreement be made effective as of November 1, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER98–292–000]

Take notice that on October 27, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 3, 1997, with Northern Indiana Public Service Co. (NIPSC) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds NIPSC as an eligible customer under the tariff.

PP&L requests an effective date of October 27, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NIPSC and to the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–293–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Woodruff Oil Company d/b/a Woodruff Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–294–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Woodruff Oil Company d/b/a Woodruff Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–295–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and QST Energy Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–296–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and UGI Power Supply Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER98–297–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Duke Trading and Marketing L.L.C., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER98–298–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and NorAm Energy Management Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER98–299–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and QST Energy Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER98–300–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and West Penn Power Company dba Allegheny Power (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. PECO Energy Company

[Docket No. ER98–301–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Pennsylvania Power & Light Co., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER98–302–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Energis Resources Inc.,(hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000.

This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–344–000]

Take notice that on October 28, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Energis Resources Incorporated (ENR), dated October 22, 1997. This Service Agreement specifies that ENR has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and ENR to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 22, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. IES Utilities Inc.

[Docket No. ER98–346–000]

Take notice that on October 28, 1997, IES Utilities Inc. (IES), tendered for filing Form of Service Agreement for Firm Point-to-Point Transmission Service establishing Williams Energy Services Company as a point-to-point transmission customer under the terms of IES's transmission tariff.

IES requests an effective date of October 14, 1997, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Iowa Utilities Board.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER98–348–000]

Take notice that on October 28, 1997, PECO Energy Company (PECO) filed a summary of transactions made during the third quarter of calendar year 1997 under PECO's Electric Tariff Original Volume No. 1, accepted by the Commission in Docket No. ER95–770, as subsequently amended and accepted by the Commission in Docket No. ER97–316.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER98–349–000]

Take notice that on October 28, 1997, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) (collectively, the Companies) tendered for filing eight Service Agreements establishing Amoco Trading Corporation and Avista Energy, Inc., as new customers under the terms of each Company's CSRT–1 Tariff. The Companies also tendered for filing executed Service Agreements with Electric Clearinghouse, Inc., and Entergy Power Marketing Corp., to be substituted for the unexecuted agreements filed earlier.

The Companies request an effective date of October 1, 1997, for each of the new service agreements and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served on the four customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Interstate Power Company

[Docket No. ER98–350–000]

Take notice that on October 28, 1997, Interstate Power Company (IPW) tendered for filing two Transmission Service Agreements between IPW and Dairyland Power Cooperative (Dairyland). Under the Transmission Service Agreement, IPW will provide point-to-point transmission service to Dairyland.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER98–351–000]

Take notice that on October 28, 1997, Louisville Gas and Electric Company (LG&E) tendered for filing an unexecuted Firm Point-To-Point Transmission Service Agreement between Louisville Gas and Electric Company (LG&E) and itself under LG&E's Open Access Transmission Tariff.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Orange and Rockland Utilities, Inc.

[Docket No. ER98–352–000]

Take notice that on October 28, 1997, Orange and Rockland Utilities, Inc. (O&R) tendered for filing its Summary Report of O&R transactions during the calendar quarter ending September 30, 1997, pursuant to the market based rate power service tariff, made effective by the Commission on March 27, 1997 in Docket No. ER97–1400–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Orange and Rockland Utilities, Inc.

[Docket No. ER98–353–000]

Take notice that on October 28, 1997, Orange and Rockland Utilities, Inc., acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff which incorporates changes to its Energy Imbalance Service.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Electric and Gas Company

[Docket No. ER98–354–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Aquila Power Corporation (Aquila) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon Aquila and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Public Service Electric and Gas Company

[Docket No. ER98–355–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to NorAm Energy Services, Inc. (NorAm), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon NorAm and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Public Service Electric and Gas Company

[Docket No. ER98–356–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Eastern Power Distribution, Inc. (Eastern), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon Eastern and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Public Service Electric and Gas Company

[Docket No. ER98–357–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to New York Power Authority (NYPA) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon NYPA and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Public Service Electric and Gas Company

[Docket No. ER98–358–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to DuPont Power Marketing Inc. (DuPont), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon DuPont and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Jersey Central Power & Light Company, Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–359–000]

Take notice that on October 29, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Strategic Energy Ltd. (SEL), dated October 28, 1997. This Service Agreement specifies that SEL has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and SEL to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 28, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Duquesne Light Company

[Docket No. ER98–360–000]

Take notice that on October 29, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated October 23, 1997, with Delmarva Power & Light Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Delmarva Power & Light Co., as a customer under the Tariff. DLC requests an effective date of October 23, 1997, for the Service Agreement.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Duke Power, a division of Duke Energy Corporation

[Docket No. ER98–361–000]

Take notice that on October 29, 1997, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3, for the quarter ended September 30, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Southern California Edison Company

[Docket No. ER98–362–000]

Take notice that on October 29, 1997, Southern California Edison Company (Edison), tendered for filing executed umbrella Service Agreements (Service Agreements) with Morgan Stanley Capital Group Inc., and NP Energy Inc., for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted revised Sheet Nos. 165 and 166 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of October 30, 1997, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Louisville Gas and Electric Company

[Docket No. ER98–363–000]

Take notice that on October 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Company

[Docket No. ER98–364–000]

Take notice that on October 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and PP&L, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. New England Power Company

[Docket No. ER98–365–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreements and Certificates of Concurrence with PacifiCorp Power Marketing, Inc., under NEP's FERC Electric Tariff, Original Volumes No. 5 and 6.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–493–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997, tendered for filing the Municipal/Cooperative Coordinated Pool (MMCP) Agreement between the Michigan Public Power Agency and Wolverine Power Supply Cooperative, Inc., dated December 20, 1991. Wolverine will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of December 31, 1997.

Copies of this filing were served upon the Michigan Public Power Agency and the Public Utility Commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–494–000]

Take notice that Wolverine Power Supply Cooperative, Inc., (Wolverine), On October 30, 1997, tendered for filing the two existing agreements: (1) Lansing Board of Water and Light and (2) Traverse City Light and Power Board Maintenance and Operating Agreement, dated February 28, 1979. Wolverine does not propose any changes to these contracts. Wolverine will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of January 1, 1998.

Copies of this filing were served upon the Lansing board of Water and Light, the Traverse City Light and Power Board, and the Public Utility commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. GPU Advanced Resources, Inc.

[Docket No. ER98–500–000]

Take notice that GPU Advanced Resources, Inc., on October 30, 1997, tendered for filing proposed changes in its Rate Schedule FERC No. 1.

The proposed changes would allow GPU Advanced Resources, Inc., to sell electric energy at wholesale to certain affiliated public utilities for the limited purpose of reconciling energy deliveries to such public utilities with energy usage by certain retail customers of GPU Advanced Resources, Inc.

Copies of the filing were served upon the affiliated public utilities to which such wholesale sales will be made and upon the Pennsylvania Public Utilities Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30504 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–303–000, et al.]

Electric Rate and Corporate Regulation Filings; PECO Energy Company, et al.

November 12, 1997.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER98–303–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and UGI Power Supply Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER98–304–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Duke Trading and Marketing L.L.C. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER98–305–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and DuPont Power Marketing Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER98–306–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Bruin Energy Inc./Mack Services Group (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–307–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and DuPont Power Marketing Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER98–308–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and West Penn Power Company dba Allegheny Power (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER98–309–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Southern Energy Retail Trading & Marketing Inc., Southern Company Energy Marketing (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997, in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER98–310–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and New Energy Ventures—Mid Atlantic (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997, in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER98–311–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and Horizon Energy Company (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER98–312–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and New Energy Ventures—Mid Atlantic (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER98–313–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Energis Resources Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997, in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–314–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and GPU Advanced Resources Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–315–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and Cinergy Resources Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–316–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Cinergy Resources Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–317–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and Southern Energy Retail Trading & Marketing Inc., Southern Company Energy Marketing, (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternate supplier participating in PECO's Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–318–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Transmission Agency Agreement between PECO and NorAm Energy Management Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Transmission Agency Agreement" submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER98–319–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Horizon Energy Company (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER98–320–000]

Take notice that on October 27, 1997, PECO Energy Company ("PECO") filed an executed Installed Capacity Obligation Allocation Agreement between PECO and GPU Advanced Resources Inc. (hereinafter "Supplier"). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the "Form of Installed Capacity Allocation Agreement" filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30487 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–6–000, et al.]

Electric Rate and Corporate Regulation Filings; Transcanada OSP Holdings Ltd., et al.

November 10, 1997.

Take notice that the following filings have been made with the Commission:

1. TransCanada OSP Holdings Ltd.

[Docket No. EG98–6–000]

Take notice that on November 5, 1997, TransCanada OSP Holdings Ltd. (Applicant), with its principal office at 111–5th Avenue S.W. Calgary, Alberta, Canada T2P 3Y6, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged indirectly through affiliates in owning and operating the Ocean State Power project consisting of two approximately 250 megawatt electric generating facilities located in Burrillville, Rhode Island (the Facility). Electric energy produced by the Facility is sold exclusively at wholesale.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. National Gas & Electric L.P., Western Power Services, Inc., Western Power Services, Inc., WPS Energy Services, Inc., Avista Energy, Inc., CHI Power Marketing, Inc., and American National Power, Inc.

[Docket Nos. ER96–186–034, ER95–748–009, ER95–748–010, ER96–1088–012, ER96–2408–006, ER96–2640–004, and ER96–1195–005, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 20, 1997, National Gas & Electric L.P., filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–186–000.

On October 16, 1997, Western Power Services, Inc., filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 17, 1997, Western Power Services, Inc., filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 21, 1997, WPS Energy Services, Inc., filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

On October 29, 1997, Avista Energy, Inc., filed certain information as required by the Commission's September 12, 1996, order in Docket No. ER96–2408–000.

On October 29, 1997, CHI Power Marketing, Inc., filed certain information as required by the Commission's September 12, 1996, order in Docket No. ER96–2640–000.

On October 29, 1997, American National Power, Inc., filed certain information as required by the Commission's May 1, 1996, order in Docket No. ER96–1195–000.

3. New England Power Company, The Narragansett Electric Company, AllEnergy Marketing Company, L.L.C., and USGen New England, Inc.

[Docket Nos. ER96–6–000 and EC96–1–000]

Take notice that on November 5, 1997, New England Power Company (NEP), The Narragansett Electric Company (Narragansett), AllEnergy Marketing Company, L.L.C. (AllEnergy) and USGen New England, Inc. (USGenNE), submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's Regulations, amendments to applications filed on October 1, 1997, in the above-referenced dockets in connection with the divestiture by NEP and Narragansett of substantially all of their non-nuclear generation assets to USGenNE.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER98–271–000]

Take notice that on October 24, 1997, Northern Indiana Public Service

Company (Northern) filed a Service Agreement pursuant to its Power Sales Tariff with ProLiance Energy, LLC. Northern has requested that the Service Agreement be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to ProLiance Energy, LLC, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Indiana Public Service Company

[Docket No. ER98–272–000]

Take notice that on October 24, 1997, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Northeast Utilities Service Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Northeast Utilities Service Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to QST, pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER98–273–000]

Take notice that on October 24, 1997, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and QST Energy Trading Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to QST Energy Trading Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to QST, pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Solutions, Inc.

[Docket No. ER98–274–000]

On October 24, 1997, Consolidated Edison Solutions, Inc. (ConEdison Solutions), filed pursuant to Section 35.16 a Notice of Succession under which ConEdison Solutions will succeed to ProMark Energy, Inc's Rate Schedule No. 1. ConEdison Solutions requests that the succession be made effective September 24, 1997.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER98–275–000]

Take notice that on October 24, 1997, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of the following:

1. Seventh Revised Sheet No. 16, superseding Sixth Revised Sheet No. 16;
2. Fifth Revised Sheet Nos. 17 and 18, superseding Fourth Revised Sheet Nos. 17 and 18;
3. Fourth Revised Sheet Nos. 19 and 20, superseding Third Revised Sheet Nos. 19 and 20;
4. Third Revised Sheet No. 21, superseding Second Revised Sheet No. 21; and
5. Original Sheet Nos. 22 and 23.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in Southern Company Services, Inc., 75 FERC ¶ 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the Southern Company Services, Inc., order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER98–276–000]

Take notice that on October 24, 1997, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Quarterly Transaction Summary Report under Idaho Power Company's Market Rate Power Sale Tariff.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–278–000]

Take notice that on October 24, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Allegheny Power (ALP), dated October 23, 1997. This Service Agreement specifies that ALP has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and ALP to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 23, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–279–000]

Take notice that on October 24, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Dupont Power Marketing, Inc. (DPM), dated October 23, 1997. This Service Agreement specifies that DPM has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and DPM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 23, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER98–280–000]

Take notice that on October 24, 1997, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated October 1, 1997, between KCPL and Tenaska Power Services Co. KCPL proposes an effective date of October 10, 1997 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888-A, in Docket No. OA97–636–000.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER98–281–000]

Take notice that Northeast Utilities Service Company (NUSCO), on October 24, 1997, tendered for filing, a Service Agreement with the CNG Power Services Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the CNG Power Services Corporation.

NUSCO requests that the Service Agreement become effective October 20, 1997.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER98–282–000]

Take notice that PacifiCorp on October 24, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Cook Inlet Energy Supply L.P., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER98–283–000]

Take notice that on October 27, 1997, Union Electric Company (Union) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 161, dated July 21, 1995, (Docket No. ER96–925–000).

Union states that notice of the proposed cancellation has been served upon the Electric Clearinghouse, Inc.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER98–284–000]

Take notice that on October 27, 1997, Union Electric Company (Union) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 162, dated June 20, 1996, (Docket No. ER96–2298–000).

Union states that notice of the proposed cancellation has been served upon the Duke/Louis Dreyfus L.L.C.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Union Electric Company

[Docket No. ER98–286–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 164, dated March 26, 1996, (Docket No. ER96–1386–000).

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER98–287–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 158, dated August 23, 1995, (Docket No. ER95–1607–000).

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER98–288–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 159, dated September 29, 1995, (Docket No. ER95–1648–000).

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–289–000]

Take notice that on October 27, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 23, 1997, with Dupont Power Marketing, Inc., (Dupont) under PP&L's

FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Dupont as an eligible customer under the Tariff.

PP&L requests an effective date of October 27, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Dupont and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER98–290–000]

Take notice that on October 27, 1997, Dayton Power and Light Company (Dayton), submitted service agreements establishing Delmarva Power and Light Company, Entergy Power Marketing Corp., Ohio Power Valley Electric Corporation, QST Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of filing were served upon establishing Delmarva Power and Light Company, Entergy Power Marketing Corp., Ohio Power Valley Electric Corporation, QST Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L, Inc.

[Docket No. ER98–291–000]

Take Notice that on October 27, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 1, 1997, with Eastern Power Distribution Incorporated (EPDI), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds EPDI as an eligible customer under the Tariff.

PP&L requests an effective date of October 27, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to EPDI and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Fall River Rural Electric Cooperative, Inc.

[Docket No. OA98–1–000]

Take notice that on October 8, 1997, Fall River Rural Electric Cooperative, Inc., tendered for filing a petition for waiver of the requirements of Order No. 888 and Order No. 889.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Wolverine Power Supply Cooperative, Inc.

[Docket No. OA98–4–000]

Take notice that on October 30, 1997, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing a Request for Waiver, in accordance with Section 35.28(d) of the Commission's Regulations, 18 CFR 35.28(d).

In Wolverine's Request for Waiver, Wolverine seeks a waiver of the OASIS and standards of conduct requirements of Order Nos. 889 and 889-A.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30486 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: NOPEC Corporation has submitted to EPA a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. The notification describes equipment consisting of biodiesel fuel additive in combination with a particular exhaust system catalyst.

Pursuant to section 85.1407(a)(7), today's **Federal Register** document summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. EPA will review this notification of intent to certify, as well any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines as discussed below.

The candidate equipment is identical to equipment supplied by Twin Rivers Technologies, Limited Partnership, and which was previously certified as described in the **Federal Register** on October 22, 1996 (61 FR 54790).

The NOPEC notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XVIII of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address listed below.

Today's document initiates a 45-day period during which EPA will accept written comments, as discussed further below, relevant to whether or not the equipment described in the NOPEC notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XVIII, at the address below, and an identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before January 5, 1998.

ADDRESSES: Submit identical copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XVIII), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Engine Compliance Group, Engine Programs and Compliance Division (6403J), 401 "M" Street S.W., Washington, DC 20460.

The NOPEC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Program Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes PM emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced. Option 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by EPA. Emissions requirements under either of the two compliance programs depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Option 1, information on life cycle costs must be submitted in the notification of intent to certify if certification of the equipment is intended to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

As noted above, operators of affected buses must use equipment which has been certified by EPA. An important element of the certification process is input from the public based on review of notifications of intent to certify. It is expected that engine manufacturers, bus manufacturers, transit operators, and industry associations will be able to provide valuable information related to the installation and use of particular equipment by transit operators. Such information will be useful to the Engine Programs and Compliance Division in its role of determining whether any specific equipment can be certified.

II. Notification of Intent To Certify

By a notification of intent to certify signed February 6, 1997, NOPEC Corporation, with principal place of business at 1248 George Jenkins Boulevard, Lakeland, Florida 33815, applied for certification of equipment applicable to certain urban bus engines manufactured by Detroit Diesel Corporation (DDC).

The NOPEC notification of intent to certify is unique in that the NOPEC candidate equipment conforms to the specifications of equipment previously certified by EPA for use in the Urban Bus Retrofit/Rebuild program. The specifications for the previously-certified equipment, supplied by Twin Rivers Technologies, Limited Partnership, are public information and described in a **Federal Register** document dated October 22, 1996 (61 FR 54790). The October 1996 document provides complete equipment specifications, including specifications of the biodiesel component of the certified Twin Rivers' equipment. The NOPEC notification relies on the same emissions certification data that is the basis of the Twin Rivers' certification. Both the emissions test data and biodiesel specification referenced in the NOPEC notification, are public information. As just noted, the specifications for the biodiesel was published in the October 1996 document. The testing used to demonstrate the emissions performance of the Twin Rivers' equipment was conducted under the auspices of the National Biodiesel Board, which has indicated in a letter to EPA that the data is in the public domain. Additionally, as with the Twin Rivers' equipment, the NOPEC equipment utilizes the same Engelhard exhaust catalyst and, with some configurations, fuel injection retard.

Today's document will begin a 45-day period during which the public can review and comment on the candidate equipment and other aspects of the NOPEC notification. The following is a brief description of the candidate equipment.

III. Description of Previously-Certified Equipment and Identical Candidate Equipment

The equipment is applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-stroke/cycle engines originally equipped in urban buses from model year 1979 to model year 1993, excluding the 1990 model year DDC model 6L71TA engines. The two configurations of the equipment, described more fully below, are: (1) a biodiesel fuel additive used in conjunction with an exhaust system catalytic converter muffler; and, (2) the biodiesel additive and catalytic converter used in conjunction with a fuel injection timing retard.

The certification announced in the **Federal Register** document of October 22, 1996, applies to equipment configurations of B20, catalyst, and timing retard that comply with specifications described below. NOPEC intends to comply with identical specifications.

The key component of the equipment is a particular oxidation catalyst-muffler unit designed to replace the typical noise muffler in the exhaust system of applicable recipient engines. The particular catalyst is the CMX™ manufactured by the Engelhard Corporation and certified for use in the urban bus retrofit/rebuild program on May 31, 1995 (60 FR 28402). The NOPEC equipment must use CMX™ catalyst muffler units supplied by Engelhard and meeting the specifications covered by Engelhard's certification of May 31, 1995. EPA requires that use of catalysts of any other specification, or supplied by any other catalyst supplier, be the subject of a separate notification of intent to certify. In a letter to EPA dated February 17, 1997, Engelhard states that it will notify EPA and NOPEC if the specifications for its catalyst change. Engelhard's letter is in the public docket. The technical specifications for the CMX are confidential information available to EPA.

Another component of the equipment is use of biodiesel provided by NOPEC as an additive that complies with the specifications below. In general, biodiesel is an ester-based fuel oxygenate derived from biological

sources for use in compression-ignition (that is "diesel") engines. It is the alkyl ester product of the transesterification reaction of biological triglycerides, or biologically-derived oils. While many biological oil sources can produce esters through this reaction, the candidate equipment is limited to the identical specification of the certification announced in the **Federal Register** document of October 22, 1996. It will comply with the following specification.

The biodiesel component of the equipment is to be supplied by NOPEC and must be blended at a nominal 20 percent volume with federally-required low sulfur diesel fuel (with a maximum sulfur content of 0.05 weight percent). This blend is referred to as "B20". The B20 blend is no less than 19 percent and no more than 21 percent by volume biodiesel, with the specified diesel. The use of B20 alone (that is, without the catalyst) is not candidate for certification because emissions test data is not available which sufficiently demonstrate that it will reduce PM. The biodiesel component is limited to mono-alkyl methyl esters meeting the specifications of Table 1 below.

TABLE 1.—BIODIESEL COMPONENT SPECIFICATIONS

Feedstock: Original-use, plant oil sources only		
Composition: Methyl esters of the following carbon chain length:		
Sum of C16 + C18's	90.5 wt % min	Determined by GC.
Fraction < C16	2.0 wt % max	Determined by GC.
Fraction > C18	7.5 wt % max	Determined by GC.

Blend Ratio: minimum 19 percent and maximum 21 percent by volume biodiesel complying with the above specifications for feedstock and composition, and the balance federally required low sulfur diesel fuel complying with 40 CFR Section 80.29.

The biodiesel component of the candidate equipment must comply with the specifications of Table 1. The biodiesel component of the NOPEC notification is limited to a nominal B20 blend, and to biodiesel meeting the specified carbon chain-lengths and consisting of esters produced from methyl alcohol and feedstocks of original-use plant oil sources. Because the certification testing was conducted solely using soy methyl ester, EPA believes that compliance with the carbon chain-length specifications and the specified blend ratio of Table 1 are appropriate to provide assurance of the emissions performance. This specification, including the feedstock and alcohol limitations, is discussed further in the following section. Consistent with the previously certified Twin Rivers' equipment, blend ratios less than 19 percent or greater than 21 percent is not part of the NOPEC notification.

The candidate equipment includes a biodiesel component having a relatively limited specification. Biodiesel not complying with the specifications of Table 1, and biodiesel provided or produced by others, must be certified to be used in compliance with the urban bus program. Certification by other parties or involving other biodiesel specifications may be appropriate upon satisfactory compliance with the requirements of the urban bus program (40 CFR part 85, subpart O).

EPA understands that industry consensus-based fuel specifications of such physical and fuel properties for biodiesel is being developed by the American Society for Testing and Materials (ASTM), in cooperation with petroleum, engine, and biodiesel industry interests. NOPEC states that it will maintain compliance with ASTM specifications as they evolve.

For certain DDC engines equipped with MUI as indicated in Table 2, the candidate equipment includes fuel injection timing retard from zero to four (4) degrees from stock timing. The emission data indicate that PM is reduced 24.5 percent when timing is retarded four (4) degrees. While these data do not show 25 percent reduction, EPA believes the data support certification of retard from zero to three (3) degrees as providing PM reduction of at least 25 percent on MUI engines. Zero to three (3) degree range of retard, then, can be used by operators electing either compliance program 1 or 2 and otherwise in compliance with program requirements. MUI engines retarded four (4) degrees do not reduce PM emissions by at least 25 percent and, therefore, can be used only by operators electing compliance Option 2. Operators electing compliance program 2 and using any retard, must use the PM certification level specified in Table 3 for the applicable engine when calculating fleet emissions averages.

Injection retard on MUI engines is accomplished by adjusting fuel injector height (for four degrees retard, 0.028 inches is added to the stock injector timing height).

As discussed in the **Federal Register** document of October 22, 1996, analysis indicates that 1990 through 1993 model year Detroit Diesel Corporation 6V92TA DDEC engines (when using B20 with catalyst) will exceed applicable federal standards for NO_x, unless timing retard is used. Therefore, the only configuration for these engines requires retarding the injection timing one (1) degree. The NOPEC notification states that one (1) degree retard on these DDEC engines is accomplished by relocating the reference timing sensor.

IV. Emissions Test Data and Certification Levels

Reductions in PM emissions are demonstrated using engine dynamometer (transient) testing in accordance with the Federal Test Procedure for heavy-duty diesel engines. The engine dynamometer data, the same used previously by Twin Rivers, are shown below in Table 2, and are the bases for the PM reduction attributed to the candidate NOPEC equipment when used on applicable engines. The emissions test data are part of NOPEC's notification of intent to certify. A letter from the National Biodiesel Board (NBB) states that the emissions data are in the public domain. All testing was conducted using soy methyl ester (SME) additive blended with #2 low-sulfur diesel fuel. Hereinafter, the term *B20* is used to mean biodiesel blended at the ratio of 20 percent by volume with federally required low-sulfur diesel fuel (with a maximum sulfur content of 0.05 weight percent). The letter from NBB and NOPEC's notification are available in the public docket located at the above-mentioned address.

TABLE 2.—TEST ENGINE EMISSIONS (TRANSIENT TESTS)

	Gaseous and particulate					Smoke			Comment
	HC	CO	NO_x	PM	ΔPM	ACC	LUG	PEAK	
Engine:	g/bhp-hr				(percent)	Percent opacity			
	1.3	15.5	10.7	0.60	.....	20	15	50	1988 HDDE Standards.
Engine Dyno:									
1977 6V71N MUI [1]	0.86	3.18	11.72	0.282	.....	1.2	1.8	1.8	Baseline (2D).
Do	0.42	1.64	11.72	0.159	−43.6	1.4	2.1	2.1	2D + cat.
Do	0.38	0.86	12.11	0.166	−41.1	0.9	1.7	1.7	B20[3] + cat.[4]
Do	0.53	1.37	8.1	0.247	−12.4	4.6	5.4	5.6	2D, cat + 4° retard.
Do	0.42	0.94	8.47	0.213	−24.5	2.2	2.8	2.9	B20, cat + 4° retard.
	g/bhp-hr				ΔPM (percent)	Percent opacity			
1988 6V92TA DDEC[2] II	0.60	1.80	8.52	0.20	.....	6.0	5.3	8.7	Baseline (2D).
Do	0.21	0.95	9.06	0.11	−45.0	3.7	1.7	8.9	B20 + cat.
Do	0.29	1.21	8.18	0.14	−30.0	8.5	2.1	11.6	2D, cat + 1° retard.
Do	0.25	1.05	8.36	0.12	−40.0	5.1	2.5	8	B20, cat + 1° retard.

[1] MUI = Mechanical Unit Injector.
[2] DDEC = Detroit Diesel Electronic Control.
[3] The B20 used is SME blended 20 percent by volume with low-sulfur diesel fuel.
[4] The data include an invalid cold cycle. See the FEDERAL REGISTER document on October 22, 1996 (61 FR 54790) for discussion.

Table 3 below lists PM certification levels for the equipment. These levels are determined by applying the PM percentage reductions, predicted by the test data of Table 2, to the pre-rebuild PM levels provided in the program regulations (section 85.1403(c)). The test data indicate that PM is reduced by 41.1 percent on the MUI engines (24.5 percent with 4 degrees retard) and 45.0 percent on DDEC engines (40.0 percent with 1 degree retard). No configuration of the candidate equipment is certified for the 6L71TA MUI of model year 1990, because the MUI test engine was determined not to be a "worst-case" test engine as required by the program regulations at section 85.1406(a)(2).

TABLE 3.—EQUIPMENT CONFIGURATIONS AND PM EMISSIONS LEVELS

Engine model	Model year	Equipment configuration	
		B20, Cat + stock timing	B20, Cat + retard[1]
6V92TA MUI	79–87	0.29	0.38[2]
6V92TA MUI	88–89	0.18	0.23[2]
6V92TA DDEC I	88–87	0.18	0.18
6V92TA DDEC II	88–89	0.17	0.19
6V92TA DDEC II	90–91	Not certified	0.19
6V92TA DDEC II	92–93	Not certified	0.15
6V71N MUI	73–87	0.29	0.38[2]
6V71N MUI	88–89	0.29	0.38[2]
6V71T MUI	85–88	0.29	0.38[2]
6V71N MUI	73–84	0.29	0.38[2]
6L71TA MUI	90	Not certified	Not certified
6L71TA MUI	88–89	0.18	0.23[2]
6L71TA DDEC	90–91	0.16	0.18

[1] Up to and including four (4) degrees fuel injection retard for MUI engines, and one (1) degree retard for DDEC engines.
[2] Not certified for compliance program 1.

As discussed in the **Federal Register** document of October 22, 1996, the data support a net programmatic benefit from certifying B20 with the oxidation catalyst, basically because it shows PM reductions compared with the baseline of conventional (low sulfur) diesel fuel without an exhaust catalyst. EPA believes that most of the reduction in PM emissions from the kit is probably attributable to the exhaust catalyst, although some additional PM emissions reduction is expected to be realized from addition of biodiesel.

The **Federal Register** document of October 22, 1996, discussed limited data provided by Twin Rivers which indicate that engine-out emissions of unregulated aldehydes may increase when fuel injection timing is retarded. As stated in that document, it is uncertain whether there would be an increase in ambient levels of aldehydes or, if there is an increase, whether it would become irritating to exposed populations. Operators concerned with the possibility for increased irritation to exposed populations may want to minimize the potential for increased ambient levels through management practices. Additional discussion is provided in the **Federal Register** document of October 22, 1996.

As stated in the October 1996 **Federal Register**, EPA is, in general, concerned when unregulated emissions increase. While EPA has not conducted a formal health risk analysis associated with the

above-mentioned increase in unregulated aldehyde emissions, it is uncertain whether there is any potential for an increased health risk. In the judgement of the Director of the Engine Programs and Compliance Division, the increase in emissions does not appear to be significant. Additionally, EPA believes that certifying the Twin Rivers' configurations with retarded timing is beneficial, for several reasons. The configuration of B20, catalyst, and timing retard meet the program requirement to reduce PM emissions, when compared to the baseline of neat diesel fuel without catalyst, plus provide a benefit of reduced emissions of NO_x. The Twin Rivers' certification made those configurations available as options to interested operators.

In summary, while there are uncertainties, in EPA's judgement, the program benefits and above factors offset these uncertainties. Therefore, EPA certified the Twin Rivers configurations with retarded injection timing and proposes to certify the NOPEC equipment likewise.

While unregulated aldehyde emissions data from buses using the certified Twin Rivers' equipment and the candidate equipment described in today's **Federal Register** document are limited, the data indicate that the directional changes in emissions relative to conventional diesel are dependent upon the fuel injection timing employed with a catalyst. If stock timing is used, aldehyde emissions can be expected to decrease relative to a baseline of conventional diesel without a catalyst. However, if retarded timing is used, then aldehyde emissions can be expected to increase relative to the baseline. Transit operators should be aware that with configurations using retarded timing, there is a possibility for ambient levels of aldehydes to increase. An increase in ambient levels is most likely to occur in micro environments having topographic or construction features (e.g., without adequate ventilation) that limit ambient dispersion of pollutants, such as enclosed bus malls or maintenance bays. If there is an increase in ambient levels, then there may be increased respiratory irritation by exposed populations. In summary, it is uncertain whether there would be an increase in ambient levels or, if there is an increase, whether it would become irritating to exposed populations. Operators concerned with the possibility may want to minimize the potential for increased ambient levels through its management practices, such as bus routing, bus scheduling, and/or mix of emission reduction technologies.

In the October 1996 **Federal Register** document, EPA stated that it is interested in gathering additional information on unregulated aldehyde emissions, and requested the public and industry provide information with regard to the content of the exhaust of compression-ignition engines fueled with any blend of biodiesel. Additionally, we requested operators using the retarded configuration to provide EPA information on related public complaints or comments, and actions taken to avert or correct perceived problems. No new information has been received since that document.

All configurations, that is, the biodiesel additive and catalyst, are covered by emissions performance and defect warranties offered by NOPEC described by the urban bus regulations at section 85.1409.

Section 211 of the Clean Air Act establishes fuel and fuel additive prohibitions, and gives EPA authority to waive certain of those prohibitions. EPA, however, does not believe that NOPEC must obtain a fuel additive waiver under section 211(f)(4) of the Clean Air Act before certifying its additive system for the following reasons.

The Act prohibits the introduction into commerce of any fuel or fuel additive that is not substantially similar to a fuel or fuel additive used in the certification of any model year 1975 or later vehicle or engine under section 206. The Administrator may waive this prohibition, if she determines that certain criteria are met. EPA believes that certification of an urban bus retrofit system constitutes the certification of an engine under section 206 for the purposes of the urban bus retrofit/rebuild program, and, since the additive is used in the certification of the system, a waiver is not required to market the additive in the limited context of use with the certified retrofit system. This determination does not affect whether the additive is "substantially similar to any fuel or fuel additive" outside the context of the urban bus retrofit/rebuild program. EPA's position on this matter is discussed in additional detail as it relates to use of another fuel additive (Lubrizol Corporation) at 60 FR 36139 on July 13, 1995.

If EPA certifies the candidate NOPEC equipment, then operators may use it immediately, as discussed below. NOPEC's notification indicates that the candidate equipment is to be certified for compliance option 2; however, as discussed below, EPA believes that configurations utilizing the catalytic muffler and reducing PM by at least 25 percent may also be used in compliance with some option 1 requirements (that is, for those particular engines requiring equipment certified to reduce PM by at least 25 percent). It cannot be used for engines for which the 0.10 g/bhp-hr standard is triggered.

In a **Federal Register** document dated May 31, 1995 (60 FR 28402), EPA certified the CMX™ exhaust catalyst manufactured by the Engelhard Corporation, as a trigger of program requirements. Until the 0.10 g/bhp-hr PM standard is triggered, that certification means that rebuilds and replacements of applicable urban bus engines performed 6 months or more after that date of certification (that is, rebuilds or replacements after December 1, 1995), must be performed using equipment certified to reduce PM emissions by 25 percent or more. Under Option 1, operators could use the NOPEC equipment if certified to reduce PM by at least 25 percent, or other equipment certified to provide at least a 25 percent reduction, unless equipment is certified which triggers the 0.10 g/bhp-hr PM standard. The 0.10 g/bhp-hr standard has been triggered for 6V92TA MUI engines, such that rebuilds or replacements after September 14, 1997 must be performed using equipment certified to the 0.10 g/bhp-hr standard. The configuration of B20 blend, Engelhard catalyst, and injection retard has been demonstrated to comply with the standard to reduce PM by at least 25 percent, but only when used with the following engines: 6V92TA DDEC I and DDEC II, and 6L71TA DDEC.

Operators who choose to comply with Option 2 and install the NOPEC equipment, would use the PM emission level(s) established during the certification process, in their calculations for target or fleet level as specified in the program regulations.

In accordance with the program requirements of section 85.1404(a), operators using the candidate NOPEC equipment would have to maintain purchase records of the B20 blend if the operator purchases the premixed blend from a fuel supplier, or, of biodiesel and low-sulfur diesel fuel if the operator mixes the B20. Such records would be subject to review in the event of an audit of an urban bus operator by EPA. To be in compliance with program requirements, operators must be able to demonstrate that B20 is being used in the proper proportions required by the candidate equipment.

At a minimum, EPA expects to evaluate the NOPEC notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of section 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of section 85.1407 for a notification of intent to certify.

EPA requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this document initiates a 45-day period during which EPA will accept written comments relevant to whether or not the equipment described in the NOPEC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

Additionally, EPA is aware that the biodiesel industry is working to address other regulatory issues related to the EPA's fuel and fuel additive requirements under 40 CFR part 79. Today's **Federal Register** document applies to the limited context of the urban bus program, and is not intended to set precedent as a generic definition of "biodiesel."

EPA will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, EPA may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: November 13, 1997.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–30519 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 14, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 20, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0490.

Title: Section 74.902, Frequency assignments.

Form No.: FCC 330/FCC 327.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 5.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 2.5 hours.

Needs and Uses: Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, that the MDS applicant files the appropriate application for suitable alternative spectrum. The applications that would be used would be the FCC 327 (3060–0055) and the FCC 330 (3060–0062). The burdens for these involuntarily displaced ITFS are included in the estimates for the FCC 327 and 330. Additionally, Section 74.902(i) requires that a copy of this application be served on the ITFS licensee to be moved. The data will be used by the ITFS licensee to oppose the involuntary migration if the proposal would not provide comparable ITFS service and to ensure that the public interest is served.

OMB Control No.: 3060–0491.

Title: Section 74.991, Wireless Cable Application Procedures.

Form No.: FCC 330/FCC 304.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 100.

Estimated Time Per Response: 4.5 hours (0.5 hours respondent/4 hours attorney).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $116,240.

Total Annual Burden: 50 hours.

Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC 330 (3060–0062), Sections I and V, with a complete FCC 304 appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application give local public notice in a newspaper. The specific data that must be included in the newspaper publication is contained in Section 74.991(c). The notice must be published twice a week for two consecutive weeks. The data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become a Commission licensee and that proposals do not cause interference.

OMB Control No.: 3060–0206.

Title: Part 21, Multipoint Distribution Service.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 8,299.

Estimated Time Per Response: Ranges from 0.083 hours to 10 hours depending on rule section.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $481,800.

Total Annual Burden: 16,113.52 hours.

Needs and Uses: The information requested under part 21 is used by the Commission staff to fulfill its obligations as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the MDS services. The information is also used to determine whether grant of an application will service the public interest, convenience and necessity, as required by Section 309 of the Communications Act. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

On February 8, 1996, the Commission adopted a Report and Order in WT Docket No. 94–148, Terrestrial Microwave Fixed Radio Services. This Report and Order adopted a new part 101 and reorganized and amended part 21. With this action, part 21 contains only rules applicable to MDS. This action was approved by OMB on 9/8/96 with an OMB Control Number of 3060–0718.

The information is used by Commission staff in carrying out its above described duties under the Act. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30498 Filed 11–19–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974: Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of an altered system of records.

SUMMARY: This notice meets the requirements of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents changes to an FCC's system of records.

DATES: Written comments on the proposed altered system should be received by December 22, 1997. Office of Management and Budget, which has oversight responsibility under the Privacy Act to review the system may submit comments on or before December 30, 1997. The proposed system shall be effective without further notice on December 30, 1997 unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports on this altered system to both Houses of Congress.

ADDRESSES: Comments should be mailed to Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, N.W., Washington, D.C. 20554. Written comments will be available for inspection at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW., Washington, DC 20554, (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the existence and character of the system of records maintained by the FCC. This agency previously gave complete notice of its systems of records by publication in the **Federal Register** on May 18, 1992, 57 FR 21091. This notice is a summary of more detailed information which may be viewed at the location and hours given in the **ADDRESSES** section above.

The proposed changes are as follows.

FCC/OMD–4, "Security Office Control Files." This system is used by the FCC Security Officer and the Personnel Security Specialist of the Security Office for reference in connection with the control of position sensitivity and security clearances. We are proposing to expand the categories of records to include contractors. We are also proposing to include the Social Security number for retrieving, notification procedures and accessing information. The existing card files are also being eliminated and the proposed system will maintain the records in a computer database.

FCC/OMD–4

SYSTEM NAME:

Security Office Control Files.

SYSTEM LOCATION:

Federal Communications Commission (FCC), Office of Managing Director, Security Operations Staff, 1919 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a computer database, last, first, and middle name, filed alphabetically by last name, containing Social Security Number, date of birth, place of birth, classification as to position sensitivity, types and dates of investigations, investigative reports, dates and levels of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450 and 12065.

PURPOSE(S):

These records are used by FCC Security Officer and the Personnel Security Specialist of the Security Office for reference in connection with the control of position sensitivity and security clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. For disclosure to a Federal agency or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee/contractor, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

2. For disclosure to the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearances, of FCC employees/contractors to have access to classified data or areas where their official duties require such access.

3. Where there is an indication of a violation or potential violation of a statute, regulation, rule or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

4. A record from this system may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee/contractor, the issuance of a security clearance, the letter of a contract, or the issuance of a license, grant or other benefit.

5. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

6. A record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

7. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the stand alone computer database.

RETRIEVABILITY:

Records are retrieved by the name and social security numbers of individuals on whom they are maintained.

SAFEGUARDS:

The stand alone computer is stored within a secured area.

RETENTION AND DISPOSAL:

When an employee/contractor leaves the agency the file in the database is deleted. If there is an investigative file on an employee/contractor, the file is kept 5 years after the employee/contractor leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

FCC, Office of Managing Director, 1919 M Street, N.W., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.
b. Social Security Number.

An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.
b. Social Security Number.

An individual requesting amendment must also follow the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. Investigative files maintained by the OPM, Federal Investigations Processing Center.

c. Employment information maintained by the Personnel office of the FCC.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30413 Filed 11–19–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Premier Financial Bancorp, Inc., Georgetown, Kentucky; to acquire 100 percent of the voting shares of Ohio River Bank, Steubenville, Ohio.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F & M Bancorporation, Inc., and F & M Merger Corporation, Kaukauna, Wisconsin; to acquire Sentry Bancorp, Inc., Edina, Minnesota, and thereby indirectly acquire Cannon Valley Bank, Dundas, Minnesota. In addition, Sentry Bancorp, Inc., has also applied to merge with F & M Merger.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Pacific Bay Bank, San Pablo, California.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Montana Security, Inc., Havre, Montana; to acquire 100 percent of the voting shares of Northeast Montana Bank Shares, Inc., Poplar, Montana, and its subsidiary, Traders State Bank of Poplar, Poplar, Montana; and Veis Bankshares, Inc., Scobey, Montana, and its subsidiary, The Citizens State Bank of Scobey, Scobey, Montana.

Board of Governors of the Federal Reserve System, November 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30532 Filed 11–19–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Cooperative Agreement With the American Indian Higher Education Consortium

The Office of Minority Health (OMH), Office of Public Health and Science (OPHS) announces that it will enter into an umbrella cooperative agreement with the American Indian Higher Education Consortium (AIHEC). This cooperative agreement will establish the broad framework in which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist AIHEC in expanding and enhancing its activities relevant to the tribally controlled community colleges affected by executive order #13021. Further, this agreement establishes mechanisms for the 22 Operating and Staffing Divisions of the DHHS to comply with the mandates contained in the order. OMH, as the lead agency for implementing the executive order, will provide consultation, including administrative and technical assistance as needed for the execution and evaluation of all aspects of this cooperative agreement. OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange information, opinions or activities that will enhance the educational status of the American Indian/Alaska Native (AI/AN) students attending the Tribal Colleges. Further, OMH will coordinate the Inter/Intra departmental activities as directed in the executive order.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527.

Background

Assistance will be provided only to AIHEC. No other applications are solicited. AIHEC is the only organization capable of administering this cooperative agreement because:

- AIHEC is the only national organization that is comprised of and represents the Tribal Colleges and Universities. AIHEC signed or is in the process of signing several cooperative agreements and MOA's with other Federal Departments in compliance with the directives of Executive Order #13021. In order to assure continuity with other Federal Departments, a cross fertilization of efforts, and minimize any redundancy of activities, AIHEC should be the recipient of the cooperative agreement;
- AIHEC, founded in 1972, has been involved in the 20-year effort that resulted in the President signing the executive order. The organization's board of directors consists of Presidents of each of the Tribal Colleges. Also, the organization has well established linkages with AI/AN Tribes, national Indian organizations and other Federal Departments that are actively involved with the implementation of the executive order;
- AIHEC has highly qualified management staff with the background and experience to develop, guide, operate and evaluate the complex elements of this cooperative agreement. They have extensive experience in mediation with Federal Departments and tribal governments;
- AIHEC has demonstrated through past activities its ability to assist the Tribal Colleges in their development and expansion. In 1972, AIHEC was founded by the first six Tribally Controlled Community Colleges and began to develop and implement programs that are consistent with the inherent rights of tribal sovereignty and self-determination; and
- AIHEC has assisted the Tribal Colleges in the development and maintenance of the highest standards of quality education for AI/ANs by improving the accessibility of educational programs, significantly increasing student enrollments and assisting the tribal colleges in becoming fully accredited institutions of higher education.

This cooperative agreement will be awarded in FY 1998 for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

DATES: Comments must be received on or before December 5, 1997.

ADDRESSES: Comments shall be mailed to CDR Robert J. Carson, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852, telephone (301) 443–5084, fax (301) 594–0767, E-MAIL rcarson@osophs.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: CDR Robert J. Carson, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852, telephone (301) 443–5084, fax (301) 594–0767, E-MAIL rcarson@osophs.dhhs.gov.

Clay E. Simpson, Jr.,
Deputy Assistant Secretary Director for Minority Health.

[FR Doc. 97–30566 Filed 11–19–97; 8:45 am]
BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Defining Gulf War Illness; New

This study will characterize and compare alternative classifications for symptoms and functional disability which remain medically unexplained in Gulf War veterans. This will be accomplished in three phases. Phase I will assess persistence and stability of symptoms over time, as well as compare the performance of data-driven case definitions derived from two samples: (1) the New Jersey Center for Environmental Hazards Research sample of Gulf War veterans participating in the Department of Veterans Affairs Gulf War Registry; and (2) a cohort of Air Force members from a previous CDC study of Gulf War veterans and Gulf War-era controls from Pennsylvania and Florida. In addition to assessing data-driven case definitions for illness among Gulf War veterans, existing definitions for medically unexplained symptoms, such as chronic fatigue syndrome, multiple chemical sensitivity, and fibromyalgia will be evaluated. Phase II will attempt to assess the generalizability of both derived and existing case definitions in a random sample of deployed and non-deployed Gulf War era veterans. Phase III will consist of a standardized telephone interview for the assessment of psychiatric conditions. This will be administered to a sample of Phase I and Phase II participants who are identified through their responses to paper-and-pencil questionnaires as having high levels of psychologic distress. There is no cost to respondents.

Respondents	No. of Respondents	No. of Responses/ Respondent	Avg. Burden/ Response (in hrs.)	Total Burden (in hrs.)
Administer questionnaire to the New Jersey Center for Environmental Hazards Research sample of the Department of Veterans Affairs Gulf War Registry veterans and the previous CDC Air Force Cohort (Phase)	7,312	1	0.45	5,484
Administer questionnaire to new random sample of Gulf War veterans and era controls (Phase II)	3,000	1	.45	2,250
Telephone survey of Phase I and Phase II participants who screened positive for psychiatric conditions	600	1	2	1,200
Total				8,934

Dated: November 13, 1997.

Wilma G. Johnson,
Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30477 Filed 11–19–97; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory (INEEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5 p.m., December 11, 1997, 7 p.m.–9 p.m., December 11, 1997, 8:30 a.m.–4 p.m., December 12, 1997.

Place: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83402, telephone 208/523–8000, FAX 208/529–9810.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) regarding current activities, the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies, and working group discussions. On December 11, at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Arthur J. Robinson, Jr., or Sharona Woodley, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: November 13, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30475 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Times and Dates: 9 a.m.–5 p.m., December 8, 1997; 9 a.m.–12 noon, December 9, 1997.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, telephone 703/418–1234, FAX 703/418–1289.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Matters to be Discussed: Agenda items will include: presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR updates on the progress of current studies; a discussion of Work Group recommendations, and public involvement activities.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: November 13, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30476 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC); Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting: Workshop on Screening and Tracking Systems for Early Hearing Detection and Intervention (EHDI).

Federal Register Notice Citation of Previous Announcement: FR Doc. 17oc97–115. Published October 17, 1997 (Volume 62, Number 200, Page 54116).

Previously Announced Times and Dates: 8 a.m.–5 p.m. December 11, 1997. 8:30 a.m.–1 p.m. December 12, 1997.

Change in the Meeting: This meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: June Holstrum, Ph.D., Division of Birth Defects and Developmental Disabilities, CDC, NCEH, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341. E-mail ehdi@cdc.gov, telephone 770/488–7401, fax 770/488–7361.

Dated: November 13, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30480 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0428]

Amoco Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Amoco Corp. has filed a petition proposing that the food additive regulations be amended to include dimethyl-2,6-naphthalene dicarboxylate and 2,6-naphthalene dicarboxylic acid as polybasic acids intended for use as components of resinous and polymeric coatings that contact food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4555) has been filed by Amoco Corp., One Prudential Plaza, 130 East Randolph St., Chicago, IL 60601–6207. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to include dimethyl-2,6-naphthalene dicarboxylate and 2,6-naphthalene dicarboxylic acid as polybasic acids intended for use as components of resinous and polymeric coatings that contact food.

The agency has determined under 21 CFR 25.32(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 21, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–30481 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 97F–0469]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-tert-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer in high density polyethylene and high density olefin copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4567) has been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-tert-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer in high density polyethylene and high density olefin copolymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 3, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–30484 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0457]

Urologix, Inc.; Premarket Approval of the T3® Targeted Transurethral Thermoablation System: Model 4000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Urologix, Inc., Minneapolis, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the T3® Targeted Transurethral Thermoablation System: Model 4000. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 22, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 22, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicole L. Wolanski, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On February 24, 1997, Urologix, Inc., Minneapolis, MN 55447, submitted to CDRH an application for premarket approval of the T3® Targeted Transurethral Thermoablation System: Model 4000. The device is a transurethral microwave thermal therapy system and is indicated to relieve symptoms associated with benign prostatic hyperplasia (BPH) and is indicated for men with prostatic lengths of 30 to 50 millimeters.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 22, 1997, CDRH approved the application by a letter to the applicant from the Deputy Director, Clinical and Review Policy, the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 22, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30482 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–218]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper

performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Managed Care Demonstration Evaluation; *Form No.:* HCFA–R–219; *Use:* This demonstration is congressionally mandated under the Social Health Maintenance Organization (SHMO) requirements. This evaluation will demonstrate the effectiveness of integrating acute and chronic care patients with ESRD through expanded community care case management services, using innovative approaches to financing methodologies and benefit design. *Frequency:* Other 0,12, and 30 months; *Affected Public:* Business or other for-profit, Individuals or Households; *Number of Respondents:* 5,365; *Total Annual Responses:* 5,365; *Total Annual Hours:* 4,431.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, nformation Technology Investment Management Group, Division of HCFA Enterprise Standards, *Attention:* John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–30471 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–64]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program; *Form No.:* HCFA–64; *Use:* This form is used by State Medicaid agencies to report their actual program benefit costs and administrative expenses to the Health Care Financing Administration (HCFA). HCFA uses this information to compute the Federal financial participation (FFP) for the State's Medicaid Program costs. *Frequency:* Quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 11,984.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 14, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–30530 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–316]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid, Integrated Quality Control Review Worksheet and Supporting Regulations 42 CFR 431.800, 42 CFR 431.865; *Form No.:* HCFA–316 OMB # 0938–0094; *Use:* States use the Integrated Quality Control Review Worksheet to collect quality control (QC) data captured during the course of all Federally required State QC reviews of Food Stamp (FS) and Medicaid programs. The integrated worksheet is designed to be flexible for use in fully integrated, partially integrated, or separate QC program reviews. The primary objective of the QC system is to measure, identify, and reduce the level of misspent Medicaid funds as a result of erroneous eligibility determinations. HCFA uses this information to identify problem areas and plan corrective action initiatives to reduce erroneous expenditures. *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 19,141; *Total Annual Hours:* 262,072.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: November 14, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–30531 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–565]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has been expired; *Title of Information Collection:* Medicare Qualification Statement for Federal Employees and Supporting Regulations in 42 CFR 406.15; *Form No.:* HCFA–565 (OMB #0938–0501); *Use:* The HCFA–565 is completed by an individual filing for hospital insurance (HI) benefits (Part A) based upon their federal employment. This information is necessary to determine if HCFA/SSA can use federal employment prior to 1983 to qualify for free Part A. The data is passed to the HI master record, the Enrollment Data Base (EDB). An HI record showing appropriate entitlement is established an if applicable, a Medicare card is issued.; *Frequency:* Other (one time only); *Affected Public:* Individuals or Households, and Federal Government; *Number of Respondents:* 4,300; *Total Annual Responses:* 4,300; *Total Annual Hours:* 717.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–30472 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: AIDS Behavioral Research Subcommittee.

Date: December 2–3, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—"Quantitative Analysis of and Method Development for Cannabinoids, Endogenous Compounds, and Other Drugs of Abuse and Related Compounds by Radioimmunoassay or Related Methods").

Date: December 19, 1997.

Time: 10:30 a.m.

Place: Office of Extramural Program Review, National Institute on Drug Abuse, NIH, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857 (Telephone Conference).

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: November 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30421 Filed 11–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name Of SEP: ZDK1–GRB–7–(J1).
Date: December 5, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health

Dated: November 7, 1997.

LaVerne Y. Stringfield,
Committee Management Officer, NIH.

[FR Doc. 97–30422 Filed 11–19–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: November 24, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: November 25, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 2, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 4, 1997.
Time: 1 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 13, 1997.

Laverne Y. Stringfield,
Committee Management Officer, NIH.

[FR Doc. 97–30423 Filed 11–19–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting of the Board of Scientific Counselors, NIAMS

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the Board of Scientific Counselors, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), November 24–25, 1997. The meeting will be held at the National Institutes of Health, Building 31, Room 4C32, 9000 Rockville Pike, Bethesda, Maryland 20892–2425.

The Board meeting will be open to the public on November 24 from 8:00 a.m. until 3:00 p.m. and on November 25 from 8:00 a.m. to 10:00 a.m. The agenda includes reports by the Director, NIAMS, and the Scientific Director, Division of Intramural Research, NIAMS.

The meeting will be closed on November 24 from 3:00 p.m. to 5:00 p.m. and on November 25 from 10:00 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C. for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Substantive information regarding the meeting may be obtained from Ms. Linda Peterson, Board Secretary, NIAMS, Building 10, Room 9N228, National Institutes of Health, Bethesda, Maryland 20892–2425, Telephone: 301–496–3375.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitation imposed by the review cycle.

Dated: November 13, 1997.

LaVeen Pond,
Acting Committee Management Officer, NIH.

[FR Doc. 97–30424 Filed 11–19–97; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4142–N–03]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gloria S. Diggs, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Diggs.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 10, 1997.

David S. Cristy,
Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Floodplain Management and the Protection of Wetlands (FR–4142).

Office: Community Planning and Development.

OMB Approval Number: 2506–0151.

Description of the Need for the Information and its Proposed Use: This regulation prescribes decision making procedures that applicants and grantees in certain Housing programs must comply with before HUD assistance can be used for projects that may affect floodplains and wetlands. Documentation must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping, On Occasion, and Third Party Disclosure.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Third Party Disclosure	300		1		1		300
Recordkeeping	300		1		8		2,400

Total Estimated Burden Hours: 2,700.
Status: Revision.
Contact: Walter Prybyla, HUD, (202) 708–1201 x4466, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 10, 1997.

[FR Doc. 97–30499 Filed 11–19–97; 8:45 am]
BILLING CODE 4201–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–55]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting comments on the subject proposal.

DATES: Comments due date: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gloria S. Diggs, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Diggs.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 10, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection of OMB

Title of Proposal: Mortgagor's Certificate of Actual Cost.

Office: Housing.

OMB Approval Number: 2502–0112.

Description of the Need for the Information and its Proposed use: The mortgagor submits this report certifying actual development cost so that HUD can make a determination of mortgage insurance acceptability and prevent windfall profits. It is also used to provide a base for evaluating housing programs, labor costs, and physical improvements in connection with construction of multifamily housing.

Form Number: HUD–92330.

Respondents: Business or Other For-Profit and Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92330	800		1		8		6,400

Total Estimated Burden Hours: 6,400.

Status: Reinstatement, with changes.

Contact: Jane Curtis-Genevieve A. Tucker, HUD, (202) 708–0624 x2477 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 10, 1997.

[FR Doc. 97–30500 Filed 11–19–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–836342

Applicant: Virus Reference Laboratory, San Antonio, TX.

The applicant requests a permit to import from Canada serum samples taken from captive-held and captive-born western lowland gorilla (*Gorilla gorilla*) and mandrill (*Mandrillus sphinx*) for the purpose of scientific research consistent with the purposes of the Act.

PRT–836387

Applicant: Anthony Pizzella, Marrick, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–836457

Applicant: West Indian Iguana Specialist Group of the Species Survival Commission of the IUCN, San Diego, CA.

The applicant requests a permit for the import of multiple shipments of biological samples from captive-bred, captive-held and wild specimens of endangered *Cyclura* species, world wide. This notification covers activities conducted by the applicant over a period of 5 years.

PRT–836492

Applicant: USFWS Region-5, Migratory Bird Permit Office, Hadley, MA.

The applicant requests a permit to export captive held male and female Golden eagles (*Aquila chrysaetos*) to Fundacion ARA, Nuevo Leon, Mexico, for the purpose of enhancement through propogation.

PRT–836237

Applicant: Randy Miller, Acton, CA.

The applicant requests a permit to export and reimport two captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education.

This notificatation covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–836587

Applicant: Taylor Mills, Voorhees, NJ.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Gulf of Boothia polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 14, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–30452 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–834021

Applicant: Timothy Reeves, Farmington, New Mexico

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. PRT–834782

Applicant: James A. Tress, Jr., Tucson, Arizona.

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*), cactus ferruginous pygmy-owls (*Glaucidium brasilianum cactorum*), and Mexican spotted owls (*Strix occidentalis lucida*) within New Mexico and Arizona.

Permit No. PRT–835139

Applicant: Gail Garber Place, Hawks Aloft, Inc., Albuquerque, New Mexico.

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. PRT–835118

Applicant: Dr. Robert J. Frye, University of Arizona, Tucson, Arizona.

Applicant requests authorization to collect soil samples along riparian channels possibly containing endangered plant species of Huachuca water umbel (*Lilaeopsis schaffneriana ssp. recurva*) for lab monitoring and to collect live plants in the field.

Permit No. PRT–835414

Applicant: Joseph P. Shannon, Northern Arizona University, Flagstaff, Arizona.

Applicant requests authorization to survey for southwestern willow flycatchers (*Empidonax traillii extimus*), bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado squawfish (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*) and collect salvage material of these endangered species as part of a monitoring and research program for analysis during the first year to determine if enough taxa are collected to construct a food web.

Permit No. PRT–835678

Applicant: Michael J. Boyles, NPS/Lake Mead National Recreation Area, Boulder City, Nevada.

Applicant requests authorization to conduct presence/absence surveys for Mexican spotted owls (*Strix occidentalis lucida*) in the Lake Mead National Recreation Area.

Permit No. PRT–836198

Applicant: Jeff Williamson, The Phoenix Zoo, Phoenix, Arizona.

Applicant request authorization to obtain for educational display razorback sucker (*Xyrauchen texanus*), bonytail chub (*Gila elegans*), Gila topminnow (*Poeciliopsis occidentalis*), and desert pupfish (*Cyprinodon macularius*).

Permit No. PRT–821577

Applicant: Duane Shroufe, Arizona Department of Game and Fish, Phoenix, Arizona.

Applicant requests authorization to conduct activities for scientific research and recovery purposes for the jaguar (*Panthera onca*) in Arizona.

DATES: Written comments on these permit applications must be received on or before December 22, 1997.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–30478 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Walker River Irrigation Project, Nevada

ACTION: Notice of Proposed Irrigation Operation and Maintenance (O&M) Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Walker River Irrigation Project for 1998 and subsequent years. The following table illustrates the impact of the rate adjustment:

WALKER RIVER IRRIGATION PROJECT, IRRIGATION RATE PER ASSESSABLE ACRE

[N/A—Not Applicable]

Year	Present 1997	Proposed 1998
Non-Indian	$15.29	N/A
Indian	7.32	N/A
Rate (all)	N/A	$15.29

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Phoenix Area Office, One North First St., Phoenix, Arizona 85001, telephone number (602) 379–6600.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before December 22, 1997.

ADDRESSES: All comments concerning the proposed rate change must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn: Irrigation and Power, MS–4513–MIB, Code 210, 1849 "C" Street, NW, Washington, D.C. 20240, Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to Part 209 Departmental Manual, Chapter 8.1A, and memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of the Walker River Irrigation Project for Calendar Year 1998 and subsequent years.

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance mean the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses, and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water will be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8, Debt Collection Procedures. Beginning 30 days after the due date, interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt, and a penalty charge of six percent per year will be charged on delinquent debts more than 90 days old and will accrue from the date the debt became delinquent. No water will be delivered to any farm unit until all irrigation charges have been paid. After 180 days, a delinquent debt will be forwarded to the United States Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Dated: October 28, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–30427 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

[MT–060–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held January 12 & 13, 1998, at the C & L Cafe, 21 North Main Street, Bowman, North Dakota. The session will convene at noon on January 12th and resume at 8:00 a.m. on the 13th. Agenda items include updates on the South Dakota Land Exchange, Noxious Weed Control Projects, and the transfer of Inspection & Enforcement responsibilities to the states. Election of a Chairperson for 1998 will also be on the agenda.

The meeting is open to the public and a public comment period is set for 8:00 a.m. on January 13th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, District Manager, Dakotas District Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: November 10, 1997.

Douglas J. Burger,

District Manager.

[FR Doc. 97–30545 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; NVN–61315]

Partial Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed a request to delete 10 acres from their withdrawal application (N–61315) for flood control facilities in Clark County, Nevada. The original Notice of Proposed Withdrawal was published in the **Federal Register**, 61 FR 63858, December 2, 1996, and segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The Corps of Engineers has determined the 10 acres is not needed and can be made available for other uses.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

SUPPLEMENTARY INFORMATION: The Department of the Army, Los Angeles District, Corps Engineers, has determined that their withdrawal application (**Federal Register**, 61 FR 63858, December 2, 1996) can be canceled insofar as it affects the following described land:

Mount Diablo Meridian

T. 21 S., R. 60 E.,

Sec. 29, SE¼NW¼SE¼.

The area described contains 10 acres in Clark County.

The land described above is hereby made available to the Clark County School District under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The land will remain closed to mining due to an overlapping segregation.

Dated: November 14, 1997.

William K. Stowers,

Lands Team Lead.

[FR Doc. 97–30470 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–403]

Certain Acesulfame Potassium and Blends and Products Containing Same Notice of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 16, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Nutrinova Nutrition Specialties and Food Ingredients GmbH, D—65 926, Frankfurt am Main, Federal Republic of Germany, and Nutrinova Inc., 25 Worlds Fair Drive, Somerset, New Jersey 08873. Supplements to the complaint were filed on October 30 and November 10, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain acesulfame potassium and blends and products containing same that infringe claims 1, 2, 3, 4, and 5 of U.S. Letters Patent 4,695,629 and claims 1 and 2 of U.S. Letters Patent 4,158,068. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 13, 1997, ORDERED THAT

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain acesulfame potassium or blends or products containing same by reason of infringement of claims 1, 2, 3, 4, or 5 of U.S. Letters Patent 4,695,629 or claims 1 or 2 of U.S. Letters Patent 4,158,068, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Nutrinova Nutrition Specialties and Food Ingredients GmbH, D—65 926, Frankfurt am Main, Federal Republic of Germany

Nutrinova Inc., 25 Worlds Fair Drive, Somerset, New Jersey 08873

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hangzhou Senhe Food Company Ltd., 258 Qiutao Road, Hangzhou, Zhejiang, People's Republic of China

JRS International, Inc., 141 Lanza Avenue, Bldg. 12, Garfield, New Jersey 07026

Dingsheng, Inc., 5323 Tyler Avenue, Temple City, California 91780

WYZ Tech, Inc., 4570 Eucalyptus Ave. #B, Chino, California 91710

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–30547 Filed 11–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757 and 758 (Final)]

Collated Roofing Nails from China and Taiwan

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China and Taiwan of collated roofing nails ("CR nails"),[3] provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[4]

Background

The Commission instituted these investigations effective November 26, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the Paslode Division of Illinois Tool Works, Vernon Hills, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of CR nails from China and Taiwan were

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Carol T. Crawford dissenting.

[3] CR nails are roofing nails made of steel, having a length of 1¾6 inch to 1 13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

[4] The Commission further determines, pursuant to 19 USC § 1673(b)(4)(B), that it would not have found material injury by reason of subject imports but for the suspension of liquidation of the merchandise under investigation.

being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 27, 1997 (62 FR 28731). The hearing was held in Washington, DC, on September 30, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 12, 1997. The views of the Commission are contained in USITC Publication 3070 (November 1997), entitled "Collated Roofing Nails from China and Taiwan: Investigation No. 731–TA–757 and 759 (Final)."

Issued: November 12, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–30502 Filed 11–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–404]

Certain SDRAMs, DRAMs, ASICs, RAM-and-LOGIC Chips, Microprocessors, Microcontrollers, Processes for Manufacturing Same and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 16, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Samsung Electronics Co., Ltd. of Seoul, Korea and Samsung Austin Semiconductor, L.L.C. of Austin, Texas. A supplementary letter was filed on November 3, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain SDRAMs, DRAMs, ASICs, RAM-and-Logic chips, microprocessors, microcontrollers, and products containing same by reason of infringement of claims 1, 2, 3, 5, and 6 of U.S. Letters Patent 5,444,026, and claim 1 of U.S. Letters Patent 4,972,373. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 13, 1997, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain SDRAMs, DRAMs, ASICs, RAM-and-Logic chips, microprocessors, microcontrollers, and products containing same by reason of infringement of claims 1, 2, 3, 5, or 6 of U.S. Letters Patent 5,444,026, or claim 1 of U.S. Letters Patent 4,972,373, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Samsung Electronics Co., Ltd., Samsung Main Building 250, Taepyung Ro, 2GA, Chung Ku, Seoul, Korea 100–742

Samsung Austin Semiconductor, L.L.C., 12100 Samsung Boulevard, Austin, Texas 78754

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fujitsu, Ltd., 6–1 Marunouchi, 1-Chome, Chiyoda-ku, Tokyo 100, Japan

Fujitsu Microelectronics, Inc., 3545 North First Street, San Jose, California

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: November 14, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–30548 Filed 11–19–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Air Act ("CAA")

Consistent with the policy set forth in the Department of Justice regulations at 28 C.F.R. § 50.7, notice is hereby given that on October 30, 1997, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Indiana, New Albany Division, in *United States* v. *Essroc Cement Corporation* ("ESSROC"), Cause No. NA 97–130–C–H/G, settling claims asserted by the United States, on behalf of the United States Environmental Protection Agency, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 9613. The claims arose in connection with operation of ESSROC's portland cement manufacturing facility in Speed, Indiana.

The Consent Decree requires ESSROC to pay $300,000 in civil penalties for alleged violation of the particulate matter and opacity emission limitations and other provisions in the New Source Performance Standards ("NSPS") for Portland Cement Plants at 40 CFR Part 60, Subpart F and the NSPS General Provisions at 40 C.F.R. Part 60, Subpart A. The Decree also requires compliance with certain NSPS requirements for reporting excess emissions, found at 50 CFR §§ 60.13(h), 60.7(c)(1) and 60.63(d).

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Essroc Cement Corporation*, DOJ Reference # 90–5–2–1–2090.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Region V offices of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 97–30536 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR § 50.7, and with Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that a consent decree in *United States* v. *National Wood Preservers, Inc. et al.*, Civ. Action No. 96–CV–5269 (E.D. Pa.) was lodged on October 23, 1997 with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States under Sections 107(a), and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), for reimbursement of response costs incurred at the Havertown PCP Superfund Site located in Haverford Township, Delaware County, Pennsylvania and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The consent decree obligates Donald Goldstein to reimburse $32,000 of the United States' response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *National Wood Preservers, Inc. et al.*, DOJ Ref. # 90–11–3–1680.

The consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Philadelphia, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the CERCLA may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30539 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 30, 1997, a proposed partial consent decree in *United States* v. *North American Group Ltd., et al.*, Civil Action No. 3:97–CV–191–H was lodged with the United States District Court for the Western District of North Carolina.

The partial consent decree resolves claims under 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended, against The North American Group Ltd., North American Environmental Corp., Federal Environmental Services, Federal Services, M.D. Babcock, Speer Mabry IV and Mark Odum, for response costs that were incurred by the United States Environmental Protection Agency in connection with the release and threatened release of hazardous substances at the Cherokee Site ("Site") in Charlotte, North Carolina.

The proposed consent decree provides that the aforementioned settling defendants will pay $400,000 according to a payment schedule set forth in the partial consent decree. The proposed consent decree also requires the settling defendants to pay $15,000 as a civil penalty for violating Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), for failing to comply with two information requests issued by EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *North American Group Ltd., et. al.* D.J. Ref. 90–11–2–1173

The partial consent decree may be examined at the Office of the United States Attorney, Suite 1700 Carillon Building, 227 West Trade St., Charlotte,

North Carolina, at U.S. EPA Region IV, 61 Forsythe St., N.E., Atlanta, GA 30303, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30540 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Settlement Agreement in *In re: The Railway Reorganization Estate, Inc. F/K/A The Delaware and Hudson Railway Co.*, Case No. 88–342, was lodged on October 27, 1997 in the United States Bankruptcy Court for the District of Delaware.

The Settlement Agreement resolves the United States' claim, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607, for response costs incurred and to be incurred by EPA at the Quanta Resources Syracuse Superfund Site ("the Site") in Syracuse, New York. Under the Settlement Agreement, which remains subject to Bankruptcy Court approval, the United States will receive $15,000 in reimbursement of response costs incurred and to be incurred by EPA at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re: The Railway Reorganization Estate, Inc., F/K/A The Delaware and Hudson Railway Co., DOJ Ref.* #90–11–3–848E.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney in Wilmington, Delaware, the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $2.25 (25 cents per page reproduction costs).

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–30541 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on October 16, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amara Raja Batteries, Ltd., Tiiupati AP, INDIA, has made a commitment to the Consortium. C&D Charter Power Systems, Inc., Conshohocken, PA, has changed its name to C&D Technologies.

No other changes have been made in either the membership or planned activity of the Consortium. Membership in the Consortium remains open and ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992, 57 FR 33522. The last notification was filed with the Department on July 24, 1997. A notice was published in the **Federal Register** on September 10, 1997, 62 FR 47689.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–30535 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–13]

Vincent A. Piccone, M.D.; Revocation of Registration

On February 25, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Vincent A. Piccone, M.D., (Respondent), of Staten Island, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AP3110765, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of New York.

By letter dated March 14, 1997, Respondent, through counsel, timely filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On March 25, 1997, the Government filed a Motion for Summary Disposition, alleging that effective September 18, 1995, the Administrative Review Board of the State of New York, Department of Health, State Board for Professional Medical Conduct (Board), sustained the decision of the Board's Hearing Committee to revoke Respondent's license to practice medicine in the State of New York, and therefore, Respondent is not currently authorized to handle controlled substances in the State of New York.

On March 25, 1997, Judge Randall issued a Memorandum and Order providing Respondent with an opportunity to respond to the Government's motion and ordering that the filing of prehearing statements be held in abeyance until there is a resolution of the Government's motion. Respondent's counsel submitted a letter dated April 25, 1997, requesting a stay of the proceedings, "until I have had the opportunity to inspect the record in this case pursuant to 21 CFR 1301.46." Respondent's counsel further asserted

that, "[i]n preparing my response to the pending motion, it has become evident to me that I do not have certain documents." On April 30, 1997, the Government submitted its Response to Respondent's Request for a Stay, arguing that Respondent already has copies of all of the documents that make up the record in this proceeding, and that "neither the Administrative Procedures Act nor DEA regulations provide for Respondent's prehearing discovery or examination of DEA investigative materials." The Government requested that Respondent's request for a stay be denied. Thereafter, on May 1, 1997, Judge Randall issued her Memorandum and Order agreeing with the Government's position and denying Respondent's request for a stay of the proceedings. Respondent was given until May 9, 1997, to respond to the Government's Motion for Summary Disposition.

Subsequently, Respondent submitted its Opposition to Government's Motion for Summary Disposition dated May 10, 1997, arguing that "the issue of fact remains that the Respondent's licenses were NOT revoked in the States of Pennsylvania and New Jersey after recent hearings resulting from the New York revocation." Respondent contended that "[t]he government bears the burden of proof to address the status of the Respondent's medical licensure nationally and then apply the applicable DEA regulations and has failed to do so." Accordingly, Respondent requested that the Government's motion be denied.

On May 13, 1997, Judge Randall issued her Memorandum and Order denying the Government's Motion for Summary Disposition. Judge Randall found that there is no dispute that Respondent is not currently authorized to handle controlled substances in the State of New York. The Administrative Law Judge concluded that DEA does not have the statutory authority to maintain a registration, if the registrant is without authorization to handle controlled substances in the state in which he practices. However, Respondent does maintain state licensure in Pennsylvania and New Jersey, and there was nothing before the Administrative Law Judge that asserted the location on the DEA Certificate of Registration in dispute. Consequently, Judge Randall found that "there is a genuine issue of material fact, and this matter currently is not appropriate for summary disposition."

Judge Randall then issued an Order for Prehearing Statements, and on May 14, 1997, the Government filed its prehearing statement. Respondent was given until June 25, 1997, to file his prehearing statement. In her Order for Prehearing Statements, the Administrative Law Judge cautioned Respondent "that failure to file timely a prehearing statement as directed above may be considered a waiver of hearing and an implied withdrawal of a request for hearing." On August 4, 1997, Judge Randall issued an Order indicating that she had not yet received a prehearing statement from Respondent; reminding Respondent that failure to timely file a prehearing statement from Respondent; reminding Respondent that failure to timely file a prehearing statement may be deemed a waiver of hearing; and giving Respondent until August 20, 1997, to file such a statement along with a motion for late acceptance.

On August 27, 1997, the Administrative Law Judge issued an Order Terminating Proceedings, finding that Respondent has failed to file a prehearing statement, and therefore concluding that Respondent has waived his right to a hearing. Judge Randall noted that the record would be transmitted to the Acting Deputy Administrator for entry of a final order based upon the investigative file. Therefore, the Acting Deputy Administrator, finding that Respondent has waived his right to a hearing, hereby enters his final order without a hearing and based upon the investigative file, pursuant to 21 CFR 1301.43(e) and 1301.46.

The Acting Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration AP3110765 in Schedules II through V issued to him at an address in Staten Island, New York. One June 7, 1995, the Hearing Committee on the Board ordered the revocation of Respondent's license to practice medicine in the State of New York based upon a finding that Respondent practiced the medical profession while impaired by mental disability from approximately 1986 through 1994, and a finding that Respondent has a psychiatric condition which impairs his ability to practice the medical profession. In a Decision and Order effective September 18, 1995, the Board's Administrative Review Board sustained the Hearing Committee's findings and revocation of Respondent's New York medical license.

The Acting Deputy Administrator finds that in light of the fact that Respondent is not currently licensed to practice medicine in the State of New York, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. Respondent does not dispute that he is not currently authorized to practice medicine or handle controlled substances in the State of New York.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D. 62 Fed. Reg. 15,193 (1997); Demetris A. Green, M.D., 61 Fed. Reg. 60,728 (1996); Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of New York, the state where he is registered with DEA. Therefore, Respondent is not entitled to a DEA registration in that state.

Respondent has argued that he is licensed to practice medicine in Pennsylvania and New Jersey. However, the Acting Deputy Administrator concludes that the fact that Respondent is licensed to practice medicine in states other than New York is irrelevant since he is not authorized to practice in the state where he is registered with DEA and he has not sought to modify his current registration to another state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AP3110765, previously issued to Vincent A. Piccone, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective December 22, 1997.

Dated: November 13, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–30592 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs, U.S. National Administrative Office: North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submission #9702

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office (NAO) gives notice that on November 17, 1997, Submission #9702 was accepted for review. The submission was filed with the NAO on October 30, 1997, by the Support Committee for Maquiladora Workers (SCMW), the International Labor Rights Fund (ILRF), the National Association of Democratic Lawyers of Mexico (ANAD), and the Union of Metal, Steel, Iron, and Allied Workers (Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares—STIMAHCS) of Mexico and raises issues of freedom of association involving workers at an export processing (maquiladora) plant.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO. The objectives of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's compliance with the obligations set forth in Articles 3 and 5 of the NAALC.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 30, 1997, SCMW, ILRF, ANAD and STIMAHCS filed a submission with the NAO concerning allegations involving freedom of association among workers at an export processing (maquiladora) plant. The submission contains information alleging that workers at the Han Young maquiladora plant in Tijuana, Baja California, Mexico, were harassed and intimidated because of their support for an independent union. It is also alleged that several union supporters were fired and one was physically attacked by the plant manager. Finally, the submission alleges that the local Conciliation and Arbitration Board (CAB) failed to enforce the appropriate provisions of the Mexican labor law.

The submission maintains that Mexico is in violation of NAALC Article 5(4) in failing to ensure that its labor tribunal proceedings are impartial and independent and do not have a substantial interest in the outcome of the matter; Article 5(1) in failing to ensure that such proceedings are fair, equitable and transparent; Article 5(1)(d) in failing to ensure that such proceedings are not unnecessarily complicated and do not entail unwarranted delays; Article 5(2)(b) in failing to ensure that final decisions in labor proceedings are made available without undue delay; and 3(1)(g) in failing to enforce its labor laws protecting workers' rights through appropriate actions.

The submission asserts that Mexico has failed to enforce its labor laws regarding freedom of association, occupational safety and health, wages, payment of wages, seniority, and profit sharing as well as the Mexican Constitution which guarantees freedom of association. Finally, the submission alleges that Mexico is in violation of Convention 87 of the International Labor Organization (ILO) on freedom of association, which Mexico has ratified, and ILO Convention 98 on freedom of association and collective bargaining, which Mexico has not ratified but is nevertheless bound by as a member of the ILO.

Article 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the NAO.

The procedural guidelines for the NAO, published in the **Federal Register** on April 7, 1994, 59 Fed. Reg. 16660, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

Submission #9702 relates to labor law matters in Mexico. A review would appear to further the objectives of the NAALC, as set out in Article 1 of the NAALC, among them freedom of association; promoting compliance with and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, this submission has been accepted for review of the allegations raised therein. The NAO's decision is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission.

The objectives of the review will be to gather information to assist the NAO to better understand and publicly report on the right to organize and freedom of association raised in the submission, including the Government of Mexico's compliance with the obligations agreed to under Articles 3 and 5 of the NAALC. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the NAO.

Signed at Washington, D.C. on November 17, 1997.

Lewis Karesh,

Deputy Secretary, U.S. National Administrative Office.

[FR Doc. 97–30491 Filed 11–19–97; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL COUNCIL ON DISABILITY

Privacy Act; System of Records.

AGENCY: National Council on Disability.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the National Council on Disability is issuing notice of our intent to amend the system of records entitled the National Payroll Center to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by December 10, 1997.

ADDRESSES: Interested individuals may comment on this publication by writing to the National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004; 202–272–2022 (fax); ebriggs@ncd.gov (e-mail). All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Ethel D. Briggs, Executive Director, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107; 202–272–2004 (Voice); 202–272–2074 (TTY); 202–272–2022 (Fax); ebriggs@ncd.gov (e-mail).

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 104–93, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the National Council on Disability will disclose data from its National Payroll Center system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OSCE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Director of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Director of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the National Council on Disability, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each National Council on Disability employee, within one month of the end of the quarterly reporting period.

Information submitted by the National Council on Disability to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the National Council on Disability to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the National Council on Disability system notice is further amended by addition of the following routine use:

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

Signed in Washington, DC, on November 12, 1997.

Ethel D. Briggs,

Executive Director.

[FR Doc. 97–30470 Filed 11–19–97; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Monday, November 24, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to a Community Charter.
2. Request from a Federal Credit Union for a Charter and Insurance Conversion.
3. Requests from Two (2) Credit Unions to Merge and Convert Insurance.
4. Extension of Regulation Effective Date: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
5. Notice of Proposed Rule and Request for Comments: Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non-Credit Union Status.
6. Notice of Proposed Rule and Request for Comments: Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.
7. Proposed National Small Credit Union Development Program.
8. NCUA's 1998/1999 Operating Budget.

RECESS: 12:30 p.m.

TIME AND DATE: 1:00 p.m., Monday, November 24, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Sections 116, 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).
4. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
5. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).
6. Delegations of Authority. Closed pursuant to exemptions (2) and (6).
7. Final Rule: Amendments to Part 790.2(b)(7), NCUA's Rules and Regulations. Closed pursuant to exemptions (2) and (6).
8. Final Rule: Amendments to Part 791, including 791.4, 791.5, and 791.6, NCUA's Rules and Regulations. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30578 Filed 11–17–97; 4:31 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific computing (#1165).

Date and Time: December 12, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1105.17, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the new Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: November 17, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30515 Filed 11–19–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: December 11–12, 1997: 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. A. James Hicks, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1632.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Alliances for Minority Participation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 17, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30516 Filed 11–19–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 3–6, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, January 23, 1997 (62 FR 3539).

Wednesday, December 3, 1997

1:00 P.M.–1:15 P.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

1:15 P.M.–2:15 P.M.: Emergency Core Cooling System Strainer Blockage (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's Safety Evaluation Report on the BWR Owners Group Utility Resolution Guidance for emergency core cooling system suction strainer blockage, and related matters.

2:15 P.M.–3:15 P.M.: Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the ACRS concerns associated with the proposed final Generic Letter on Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps.

3:30 P.M.–4:30 P.M.: NRC Performance Plan (Open)—The Committee will hear presentations by and hold discussions with the Chief Financial Officer and a representative of the Office of the Executive Director for Operations regarding the NRC's Performance Plan.

4:30 P.M.–5:30 P.M.: ACRS Report to Congress on the NRC Safety Research Program (Open)—The Committee will hold discussions with the NRC staff, as needed, regarding the NRC Safety Research Program. The Committee will also discuss a proposed ACRS report to Congress on the NRC Safety Research Program.

5:30 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, December 4, 1997

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:15 A.M.: Proposed Revisions to 10 CFR 50.59, Changes, Tests, and Experiments (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to 10 CFR 50.59 and related matters.

10:30 A.M.–11:30 A.M.: Proposed Generic Letter on Interim Guidance for Updating Final Safety Analysis Reports (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Generic Letter on Interim Guidance for Updating Final Safety Analysis Reports.

1:00 P.M.–2:00 P.M.: Meeting with Commissioner Dicus (Open)—The Committee will meet with NRC Commissioner Dicus to discuss items of mutual interest, including NRC Safety Research Program, Use of PRA in the Regulatory Decisionmaking Process, Elevation of core damage frequency to a fundamental Safety Goal, and Health Effects of Low Levels of Ionizing Radiation.

2:00 P.M.–3:00 P.M.: Proposed Final Revision 1 to NUREG–1022, "Event Reporting Guidelines, 10 CFR 50.72 and 50.73" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed final revision to NUREG–1022.

3:15 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Friday, December 5, 1997

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Final Standard Review Plan (SRP) Chapter 19 and Regulatory Guide DG–1061 for Risk-Informed, Performance-Based Regulation, Including Use of Uncertainty Versus Point Values in the PRA-Related Decisionmaking Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed final SRP Chapter 19, Regulatory Guide DG–1061, and use of uncertainty versus point values in the PRA-related decisionmaking process.

10:15 A.M.–12:00 Noon: Operating Events at Oconee Nuclear Power Plant Units 1 and 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the investigation performed by an Augmented Inspection Team (AIT) of the June 20 and 23 event at Oconee Unit 1 involving failure of emergency electrical power supply, and of the April 22, 1997 event at Oconee Unit 2 that involved inoperability of the high pressure injection pump.

1:00 P.M.–3:00 P.M.: Capability and Application of the EPRI Checkworks Code (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Electric Power Research Institute (EPRI) regarding the capability and application of the EPRI Checkworks Code.

3:15 P.M.–3:45 P.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

3:45 P.M.–4:00 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response to the October 10, 1997 ACRS report related to the differing professional opinion pertaining to steam generator tube integrity.

4:00 P.M.–4:15 P.M.: Election of ACRS Officers For CY 1998 (Open)—The Committee will elect the Chairman and Vice Chairman for the ACRS, and Member-at-Large for the Planning and Procedures Subcommittee for CY 1998.

4:15 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, December 6, 1997

8:30 A.M.–9:00 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, qualifications of candidates nominated for appointment to the ACRS, agenda for the planning meeting, and organizational and personnel matters relating to the ACRS.

[Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:00 A.M.–4:00 P.M. (12:00–1:00 P.M. Lunch): Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

4:00 P.M.–4:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

The ACRS meeting dates for Calendar Year 1998 are provided below:

ACRS Meeting No.	1998 ACRS Meeting Date
	Jan.—No Meeting.
448	Feb. 5–7, 1998.
449	Mar. 2–4, 1998.
450	Mar. 5–7, 1998. (Safety Research Program)
451	Apr. 2–4, 1998.
452	Apr. 30–May 2, 1998.
453	June 3–5, 1998.
454	July 8–10, 1998.
	Aug.—No Meeting.
455	Sept. 2–4, 1998.
456	Oct. 1–3, 1998.
457	Nov. 5–7, 1998.
458	Dec. 3–5, 1998.

Dated: November 14, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–30528 Filed 11–19–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste

AGENCIES: Environmental Protection Agency and Nuclear Regulatory Commission.

ACTION: Publication of Final Joint Guidance on the Testing Requirements for Mixed Waste.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) are jointly publishing herein final guidance on the testing requirements for mixed radioactive and hazardous waste (mixed waste). NRC and EPA began development of this guidance in 1987 and a draft was completed in 1989. EPA's adoption of the Toxicity Characteristic Leaching Procedure (TCLP) in 1990 required the agencies to substantially revise the guidance. The agencies issued a draft for public comment on March 26, 1992. A public meeting was held on April 14, 1992, in Washington, D.C., to solicit oral comments on the draft guidance document. The comment period ended on May 26, 1992. NRC and EPA received more than 700 requests for copies of the draft guidance document and NRC received approximately 100 written comments from 20 individuals and groups, including comments resulting from a review of the guidance by the U.S. Department of Energy. NRC and EPA staffs have incorporated the appropriate comments into the final guidance.

The guidance emphasizes the use of process knowledge, whenever possible, to determine if a waste is hazardous as a way to avoid unnecessary exposures to radioactivity. The guidance also provides guidelines for generators wishing to rely on process knowledge as the basis for evaluating their waste.

The guidance offers two strategies for helping to maintain radiation exposures As Low As is Reasonably Achievable (ALARA) if testing is required. These strategies are the use of a sample size of less than 100 grams, as long as the resulting test is sufficiently sensitive to measure the constituents of interest at the regulatory levels prescribed in the TCLP, and the use of surrogate materials, as long as they are chemically identical to the mixed waste and faithfully represent the hazardous constituents in the waste mixture.

The guidance also discusses other allowable sampling and testing procedures, such as representative drum sampling, or sampling from drums containing lower concentrations of radioactive material, as long as the chemical contents are identical to those found in the drums with higher concentrations of radioactive material.

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Dated at Rockville, MD and Washington, DC this 7th day of November, 1997.

For the U.S. Nuclear Regulatory Commission.

Carl J. Paperiello,

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For the U.S. Environmental Protection Agency.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

SUPPLEMENTARY INFORMATION:

Clarification of RCRA Hazardous Waste Testing Requirements for Low-Level Radioactive Mixed Waste—Final Guidance

Disclaimer: The policies discussed in this document are not final Agency actions, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. The Environmental Protection Agency and Nuclear Regulatory Commission may follow the guidance, or act at variance with the guidance, based on an analysis of specific site circumstances. The agencies also reserve the right to change the guidance at any time, without public notice.

Acronyms/Abbreviations Used in This Guidance

Acronym/abbreviation	Definition
AEA	Atomic Energy Act.
ALARA	As Low As is Reasonably Achievable.
BDAT	Best Demonstrated Available Technology.
CFR	Code of Federal Regulations.
EP	Extraction Procedure (toxicity test).
EPA	Environmental Protection Agency.
FR	Federal Register.
HSWA	Hazardous and Solid Waste Amendments.
LDR	Land Disposal Restrictions.
NRC	Nuclear Regulatory Commission.
OSWER	Office of Solid Waste and Emergency Response.
RCRA	Resource Conservation and Recovery Act.
SW–846	Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods.
TC	Toxicity Characteristic.
TCLP	Toxicity Characteristic Leaching Procedure.
TSDF	Treatment, Storage or Disposal Facility.
WAP	Waste Analysis Plan.

I. Background

Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA).[1] This guidance addresses testing activities related to mixed low-level waste (LLW), which is a subset of mixed waste.[2] The term "mixed waste," for the purposes of this document, will refer to mixed LLW. Additional information on the testing of hazardous wastes, which could apply to both mixed LLW and other types of mixed waste (e.g., high-level and transuranic mixed waste), is found in Appendix A. The information below is intended for use by Nuclear Regulatory Commission (NRC) licensees that may not be familiar with the hazardous waste characterization and testing requirements that apply to mixed waste. The guidance assumes that the reader is familiar with the NRC's regulations and regulatory framework for the management of radioactive material and focuses on compliance with the Environmental Protection Agency's (EPA's) requirements for the management of hazardous waste. Although it is written for commercial mixed waste generators, the guidance may also be useful for Federal facilities that generate mixed waste.

Users of this guidance should have a good understanding of how mixed waste is defined (see above), and what authority, or authorities, regulate mixed waste testing activities. The hazardous component of mixed waste is regulated by EPA in those States where EPA implements the entire RCRA Subtitle C hazardous waste program (i.e., unauthorized States). Currently, EPA regulates mixed waste in Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, and American Samoa. In most instances mixed waste is regulated by State governments. Thirty-nine States and one territory (Guam) have been delegated authority by EPA to implement the base RCRA hazardous waste program and to regulate mixed waste activities (see 51 *FR* 24504, July 3, 1986, and Appendix B). These States are referred to as "mixed waste authorized States." Nine additional States are authorized for the RCRA base hazardous waste program but have not been delegated authority by EPA to regulate mixed waste.[3] In these States mixed waste is not regulated by EPA, but may be regulated by States under the authority of State law. It is important that licensees contact the State hazardous waste agencies in authorized States to determine the specific testing, analysis, and other hazardous waste requirements that may apply to mixed waste managed in their State, because their State may have more stringent requirements than the Federal requirements discussed in this guidance.

This guidance describes:

(1) The current regulatory requirements for determining if a waste is a RCRA hazardous waste;

(2) The role of waste knowledge for hazardous waste determinations;

(3) The waste analysis information necessary for proper treatment, storage, and disposal of mixed waste; and,

(4) The implications of the RCRA land disposal restrictions (LDRs) on the waste characterization and analysis requirements.

This information should be useful for: (1) radioactive waste generators, who must determine if their waste is a RCRA hazardous waste, and therefore a mixed waste; (2) for those generators storing mixed waste on-site in tanks, containers or containment buildings for longer than 90 days, that consequently become responsible for complying with RCRA and NRC storage requirements; and (3) those facilities that accept mixed waste for off-site treatment, storage, or disposal.

Generators and/or treatment, storage, and disposal facilities (TSDFs) handling wastes under RCRA must characterize their waste for several purposes:

(1) To determine if their waste is a hazardous waste (40 CFR 262.11);

(2) To comply with general waste analysis requirements for new or permitted TSDFs, for TSDFs operating under interim status, and for certain generators that treat land disposal prohibited wastes in 40 CFR 264.13, 265.13 and 268.7, respectively. These analysis requirements include:

(a) chemical/physical analysis of a representative sample (and/or, in some cases, use waste knowledge (see below); and,

(b) preparation of a waste analysis plan.

(3) To meet the waste analysis requirements that apply to the specific waste management methods in 40 CFR 264.17, 264.314, 264.341, 264.1034(d), and 268.7;

(4) To ensure, prior to land disposal, that the restricted waste meets the required treatment standard (40 CFR 268.7).[4]

This guidance addresses the need for chemical analysis of mixed wastes to meet these purposes. The guidance also emphasizes ways in which unnecessary testing of mixed waste may be avoided. This is important when handling mixed waste, since each sampling, workup, or analytical event may involve an incremental exposure to radiation. This guidance encourages mixed waste handlers to use waste knowledge, such as process knowledge, where possible, in making RCRA hazardous waste determinations involving mixed waste. It also encourages the elimination of redundant testing by off-site treatment and disposal facilities, where valid generator-supplied, and certified, data are available.

Because mixed waste testing may pose the possibility of increased radiation exposures, this guidance also describes methods by which individuals who analyze mixed waste samples may reduce their occupational radiation exposure and satisfy the intent of the RCRA testing requirements. Testing to determine whether wastes are hazardous under the RCRA toxicity characteristic may pose special concerns which are examined in Section III of this guidance.

All of the activities described in this guidance are subject to the requirements of both the AEA and RCRA. The focus of this guidance is the RCRA requirements. NRC and NRC Agreement State licensees are authorized to receive, possess, use (which includes storing, sampling, testing, and treating), and dispose of AEA-licensed materials. NRC licensees handling mixed waste should ensure that their RCRA hazardous waste testing activities are consistent with NRC, or Agreement State, regulations and license conditions. Flexibility in the RCRA requirements is emphasized so that the As Low As is Reasonably Achievable (ALARA) concept can be incorporated into the mixed waste testing activities.[5] If other AEA requirements, or RCRA requirements are difficult to meet in a specific mixed waste management situation, licensees should seek resolution by requesting license amendments, approval of modifications to their RCRA permits or interim status Part A applications, or resolution under both authorities.

Section 1006(a) of RCRA states "Nothing in this Act shall be construed to apply to (or authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to * * * the Atomic Energy Act of 1954 * * * except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts." If a resolution cannot be achieved through the flexibility provided by the two regulatory frameworks, then and only then, should licensees seek resolution under Section 1006(a) of RCRA. Licensees should note that, if an inconsistency exists, relief will be limited to that specific RCRA requirement, and that the determination of an inconsistency would not relieve the licensee from all other RCRA requirements. Section 1006(a) and radiological hazard considerations are addressed more fully in Sections III and IV of this guidance. NRC licensees should also include the necessary flexibility in their RCRA permit waste analysis plans to accommodate the sampling and testing required to meet AEA requirements.

II. Use of Waste Knowledge for Hazardous Waste Determinations

The use of waste knowledge by a generator and/or a TSDF to characterize mixed waste is recommended throughout this document to eliminate unnecessary or redundant waste testing. EPA interprets "waste knowledge" or "acceptable knowledge" of a waste broadly to include, where appropriate:

- "Process knowledge";
- Records of analyses performed by generator or TSDF prior to the effective date of RCRA regulations; or,
- A combination of the above information, supplemented with chemical analysis.

Process knowledge refers to detailed information on processes that generate wastes subject to characterization, or to detailed information (e.g., waste analysis data or studies) on wastes generated from processes similar to that which generated the original waste. Process knowledge includes, for example, waste analysis data obtained by TSDFs from the specific generators that sent the waste off-site, and waste analysis data obtained by generators or TSDFs from other generators, TSDFs or areas within a facility that test chemically identical wastes.[6]

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[1] See 42 U.S.C. § 6903 (41), added by the Federal Facility Compliance Act of 1992 (FFCA).

[2] See revised *Guidance on the Definition and Identification of Commercial Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions*, October 4, 1999.

[3] The RCRA base hazardous waste program is the RCRA program initially made available for final authorization and includes Federal regulations up to July 28, 1982. However, authorized States have revised their programs to keep pace with Federal program changes that have taken place after 1982 in accordance with EPA regulation.

[4] Refer to Appendix A for specific EPA regulations pertaining to (1)–(4).

[5] ALARA, codified in 10 CFR Part 20, refers to the practice of maintaining all radiation exposures, to workers and the general public, as low as is reasonably achievable.

[6] For a more detailed discussion on process knowledge, see Section 1.5 in "Waste Analysis at

Continued

Waste knowledge is allowed by RCRA regulations for the following hazardous waste characterization determinations:

- To determine if a waste is characteristically hazardous (40 CFR 262.11(c)(2)) or matches a RCRA listing in 40 CFR Part 261, Subpart D (40 CFR 262.11(a) and (b));
- To comply with the requirement to obtain a detailed chemical/physical analysis of a representative sample of the waste under 40 CFR 264.13(a);
- To determine whether a hazardous waste is restricted from land disposal (40 CFR 268.7(a)); and,
- To determine if a restricted waste the generator is managing can be land disposed without further treatment (see the generator certification in 40 CFR 268.7(a)(3) and information to support the waste knowledge determination in 40 CFR 268.7(a)(6)).

Hazardous waste, including mixed waste, may be characterized by waste knowledge alone, by sampling and laboratory analysis, or a combination of waste knowledge, and sampling and laboratory analysis. The use of waste knowledge alone is appropriate for wastes that have physical properties that are not conducive to taking a laboratory sample or performing laboratory analysis. As such, the use of waste knowledge alone may be the most appropriate method to characterize mixed waste streams where increased radiation exposures are a concern. Mixed waste generators should contact the appropriate EPA regional office to determine whether they possess adequate waste knowledge to characterize their mixed waste.

III. Determinations by Generators That a Waste Is Hazardous

A solid waste is a RCRA hazardous waste if it meets one of two conditions: (1) the waste is specifically "listed" in 40 CFR Part 261, Subpart D, or; (2) the waste exhibits one of the four "characteristics" identified in 40 CFR Part 261, Subpart C. These characteristics are:

- Ignitability;
- Corrosivity;
- Reactivity; or,
- Toxicity.

(a) Listed Hazardous Wastes

Generators of waste containing a radioactive and solid waste component must establish whether the solid waste component is a RCRA hazardous waste. Determinations of whether a waste is a listed hazardous waste can be made by comparing information on the waste stream origin with the RCRA listings set forth in 40 CFR Part 261, Subpart D. These listings are separated into three major categories or lists, and are identified by EPA hazardous waste numbers. Most hazardous waste numbers are associated with a specific waste description, specific processes that produce wastes, or certain chemical compounds. For example, K103 waste is defined as "process residues from aniline extraction from the production of aniline." A generator who produces such residues should know, without any sampling or analysis, that these wastes are "listed" RCRA hazardous wastes by examining the K103 hazardous waste description in the hazardous waste lists. Other hazardous waste numbers describe wastes generated from generic processes that are common to various industries and activities. These wastes are referred to as hazardous wastes from nonspecific sources. Radioactively contaminated spent solvents are the most likely mixed wastes to be nonspecific source listed wastes. For example, a generator using one of the F002 halogenated solvents (e.g., tetrachloroethylene, trichloroethylene, and chlorobenzene, etc.) to remove paint from a radiologically contaminated surface, can determine that this waste is a listed RCRA hazardous waste by examining the F002 waste definition for the solvent type, and for a solvent mixture/blend, the percent solvent by volume.

In addition to wastes that are specifically listed as hazardous, the "derived from" and "mixture" rules state that any solid waste derived from the treatment, storage, or disposal of a listed RCRA hazardous waste, or any solid waste mixed with a listed RCRA hazardous waste, respectively, is itself a listed RCRA hazardous waste until delisted (see 40 CFR 261.3).[7] (Note that soil and debris can be managed as hazardous wastes if they contain listed hazardous wastes or they exhibit one or more hazardous waste characteristics. See hazardous debris definition in 40 CFR 268.2.)

Exceptions to the "mixture rule" and "derived from" rules exist for certain solid wastes. For example, wastewater discharges subject to Clean Water Act permits, under certain circumstances, are not RCRA hazardous (see 40 CFR 261.3(a)(2)(iv)). Also, hazardous wastes which are listed solely for a characteristic identified in Subpart C of 40 CFR Part 261 (e.g., a F003 spent solvent which is listed only because it is ignitable) are not considered hazardous wastes when they are mixed with a solid waste and the resultant mixture no longer exhibits any characteristic of a hazardous waste (see 40 CFR 261.3(a)(2)(iii)). Likewise, waste pickle liquor sludge "derived from" the lime stabilization of spent pickle liquor (e.g., K062) is not a RCRA listed hazardous waste, if the sludge does not exhibit a hazardous waste characteristic (see discussion below on characteristic hazardous wastes). It should be noted, however, that wastes such as F003 and K062 *must* meet LDR treatment standards. Outside of the exceptions mentioned here and in the RCRA regulations, a hazardous waste that was generated via the "mixture rule" or the "derived from" rule must be delisted through a specific EPA petition process for the listed waste to be considered only a solid waste, and no longer managed as a listed hazardous waste under the RCRA Subtitle C system.

When applying the mixture rule to hazardous wastes, including mixed wastes, generators should be aware that EPA prohibits the dilution (i.e., mixing) of land disposal restricted waste or treatment residuals as a substitute for adequate treatment (see 40 CFR 268.3). An exception to the prohibition is the dilution of purely corrosive, and in some cases, reactive, or ignitable non-toxic wastes to eliminate the characteristic, or the aggregation of characteristic wastes in (pre)treatment systems regulated under the Clean Water Act (55 *FR* 22665).

(b) Characteristic Hazardous Wastes

Hazardous characteristics are based on the physical/chemical properties of wastes. Thus, physical/chemical testing of waste may be appropriate for determining whether a waste is a characteristic hazardous waste. *RCRA regulations, however, do not require testing. Rather, generators must determine whether the waste is a RCRA hazardous waste.* Such a determination may be made based on one's knowledge of the materials or chemical processes that were used. EPA's regulations are clear on this point. 40 CFR 262.11(c) states:

Facilities That Generate, Treat, Store, and Dispose of Hazardous Wastes" OSWER 9938.4–03, April 1994.

[7] The "mixture" and "derived-from" rules were vacated and remanded due to EPA's failure to provide adequate notice and opportunity for comment before their 1980 promulgation, in *Shell Oil* v. *EPA*, No. 80–1532 (D.C. Cir. Dec. 6, 1991). At the Court's suggestion, EPA reinstated the "mixture" and "derived-from" rules as interim final until the rules are revised through new EPA rulemaking. The "mixture" and "derived from" rules adopted by those States with authorized RCRA programs were not affected by the court case or the subsequent reinstatement by EPA. For further information, see 57 *FR* 49278, October 30, 1992, and 60 *FR* 66344, December 21, 1995.

"... if the waste is not listed (as hazardous waste) in Subpart D [of 40 CFR Part 261], the generator must then determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(2) Applying knowledge (emphasis added) of the hazardous characteristic of the waste in light of the materials or the processes used."

Therefore, where sufficient material or process knowledge exists, the generator need not test the waste to make a hazardous characteristic determination, although generators and subsequent handlers would be in violation of RCRA, if they managed hazardous waste erroneously classified as non-hazardous, outside of the RCRA hazardous waste system. For this reason, facilities wishing to minimize testing often assume a questionable waste is hazardous and handle it accordingly.

A generator must also comply with the land disposal restriction regulations in 40 CFR 268 which require the generator to determine whether the waste is prohibited from land disposal (refer to Section V for a detailed discussion of these requirements).[8] With respect to the hazardous characteristic, and the determination as to whether a waste is restricted from land disposal under 40 CFR 268.7(a), a generator may select the option of using waste knowledge. However, if the waste is determined to be land disposal restricted in 40 CFR 268.7(a), some testing will generally be required prior to land disposal, except where technologies are specified as the treatment standard. For mixed waste, EPA recommends that the frequency of such testing be held to a minimum, in order to avoid duplicative testing and repeated exposure to radiation.

In determining whether a radioactive waste is a RCRA hazardous waste, the generator may test a surrogate material (i.e., a chemically identical material with significantly less or no radioactivity) to determine the RCRA status of the radioactive waste. This substitution of a surrogate material may either partially or completely supplant the testing of the waste. A surrogate material, however, should only be used if the surrogate material faithfully represents the hazardous constituents of the mixed waste.[9] The following example discusses the use of surrogates. A generator is required to determine if a process waste stream containing lead (D008) exceeds the regulatory level of 5.0 milligrams per liter for the toxicity characteristic (40 CFR 261.24). If this determination cannot be made based on material and process knowledge only, the generator would need to test the hazardous material. Rather than testing the radioactive waste stream, the generator may opt to test a surrogate or chemically identical non-radioactive, or lower activity, radioactive waste stream generated by similar maintenance activities in another part of the plant. This substitution of materials is acceptable as long as the surrogate material faithfully represents the characteristics of the actual waste, and testing provides sufficient information for the generator to reasonably determine if the waste is hazardous under RCRA. Non-radioactive or lower activity quality control samples/species and spiked solutions, for instance, are acceptable to minimize exposure to radiation from duplicative mixed waste testing.

As part of the hazardous waste determination, a generator must document test results or other data and methods that it used. Specifically, 40 CFR 262.40(c) states that "a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 40 CFR 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal." Section V of this guidance contains information on record keeping requirements for land disposal restricted hazardous (and mixed) wastes.

In summary, testing listed wastes to make the hazardous waste determination is not necessary, because most RCRA hazardous waste codes or listings identify specific waste streams from specific processes or specific categories of wastes. Testing will most often occur to determine if a waste exhibits a hazardous characteristic. However, testing is not required if a generator has sufficient knowledge about the waste and its physical/chemical properties to determine that it is non-hazardous.[10] It is recognized that certain mixed waste streams, such as wastes from remediation activities or wastes produced many years ago, may have to be identified using laboratory analysis, because of a lack of waste or process information on these waste streams. Nonetheless, hazardous waste determinations based on generator knowledge can be used to reduce the sampling of mixed waste and prevent unnecessary exposure to radioactivity. The same principle holds for a generator's determination that a waste is subject to the RCRA land disposal restrictions in 40 CFR 268.7(a).

IV. Testing Protocols for Characteristics

When testing is conducted to determine whether a waste is a RCRA hazardous waste, there are acceptable test protocols or criteria for each of the four characteristics. Testing for characteristics must be done on a representative sample of the waste or using any applicable sampling methods specified in Appendix I of 40 CFR 261.[11]

Ignitability—For liquid wastes, other than aqueous solutions containing by volume less than 24 percent alcohol, the flash point is to be determined by a Pensky-Martens Closed Cup Tester, using the test method specified in American Society of Testing and Materials (ASTM) Standard D–93–79 or D–93–80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D–3278–78, or as determined by an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21 (see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 3rd Ed., as amended, EPA, OSWER, SW–846, Methods 1010 and 1020[12]). (Non-liquid

[8] Generators who also treat their waste are subject to the requirements for treatment facilities unless they treat waste in accumulation tanks, containers, or containment buildings, for 90 days or less in accordance with 40 CFR 262.34(a). Treatment facilities must periodically test the treated waste residue from prohibited wastes to determine whether it meets the best demonstrated available technology (BDAT) treatment standards and may not rely on materials and process knowledge to make this determination (40 CFR 268.7(b)). This testing must be conducted according to the frequency specified in the facility's waste analysis plan (refer to Section IV of this guidance for a detailed discussion of treatment, storage, and disposal facility requirements).

[9] This definition of surrogate should not be confused with the definition of surrogate for the purposes of sampling and analysis quality control in Section 1.1.8 of "*Evaluating Solid Waste—Volume IA: Laboratory Test Methods Manual Physical/Chemical Methods.*"

[10] Note that characteristic only wastes (which are neither wastewater mixtures or RCRA listed hazardous wastes when generated) may be treated so that they no longer exhibit any of the four characteristics of a hazardous waste. However, these wastes may still be subject to the requirements of 40 CFR Part 268, even if they no longer exhibit a hazardous characteristic at the point of land disposal. After treatment this waste must not exhibit any RCRA hazardous waste characteristic *and* must meet applicable treatment standards before it can be considered a non-hazardous waste (see 57 *FR* 37263, August 18, 1992, and 58 *FR* 29860, May 24, 1993).

[11] Note that hazardous and mixed waste samples analyzed for waste characteristics or composition, and samples undergoing treatability studies may be exempt from all or part of the RCRA regulations if they are managed in accordance with 40 CFR 261.4 (d), (e) or (f).

[12] EPA incorporated by reference into the RCRA regulations (56 *FR* 46040, August 31, 1993), a third edition (and its updates) of "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." The updates can be found in 60 *FR* 3089, January 13, 1995 (update II), 59 *FR* 455, January 4, 1994 (update IIA), 60 *FR* 17001, April 4, 1995.

Continued

wastes, compressed gases, and oxidizers may exhibit the characteristic of ignitability as described in 40 CFR 261.21 (a)(2–4).)

Corrosivity—For aqueous solutions, the pH is to be determined by a pH meter using either an EPA test method (i.e., SW–846, Method 9040 or an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21.) For liquids, steel corrosion is to be determined by the test method specified in National Association of Corrosion Engineers (NACE) Standard TM–01–69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 3rd Ed., as amended (EPA, OSWER, SW–846, Method 1110), or an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21.

Reactivity—There are no specified test protocols for reactivity. 40 CFR 261.23 defines reactive wastes to include wastes that have any of the following properties: (1) normally unstable and readily undergoes violent change without detonating; (2) reacts violently with water; (3) forms potentially explosive mixtures with water; (4) generates dangerous quantities of toxic fumes, gases, or vapors when mixed with water; (5) in the case of cyanide- or sulfide-bearing wastes, generates dangerous quantities of toxic fumes, gases, or vapors when exposed to acidic or alkaline conditions; (6) explodes when subjected to a strong initiating force or if heated under confinement; (7) explodes at standard temperature and pressure; or (8) fits within the Department of Transportation's forbidden explosives, Class A explosives, or Class B explosives classifications.[13]

EPA has elected to rely on a descriptive definition for these reactivity properties because of inherent deficiencies associated with available methodologies for measuring such a varied class of effects, with the exception of the properties discussed in No. 5, above. The method used, as guidance but not required, to quantify the reactive cyanide and sulfide bearing wastes is provided in Chapter 7 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 3rd Ed., as amended, EPA, OSWER, SW–846.

Toxicity Characteristic—The test method that may be used to determine whether a waste exhibits the toxicity characteristic (TC) is the Toxicity Characteristic Leaching Procedure (TCLP), as described in 40 CFR Part 261, Appendix II (SW–846, Method 1311). The TCLP was modified and revised in 55 *FR* 11798, March 29, 1990. Note that this revised TCLP is used (in most cases) for land disposal restriction compliance determinations as well. Differences between the TCLP and the previously required Extraction Procedure (EP) include improved analysis of the leaching of organic compounds, the elimination of constant pH adjustment, the addition of a milling or grinding requirement for solids (waste material solids must be milled to particles less than 9.5 mm in size), and other more detailed alterations.[14] Additionally, the TC rule added 25 organic compounds to the toxicity characteristic.

The TCLP (Method 1311) recommends the use of a minimum sample size of 100 grams (solid and liquid phases as described in Section 7.2). *For mixed waste testing, sample sizes of less than 100 grams can be used, if the analyst can demonstrate that the test is still sufficiently sensitive to measure the constituents of interest at the regulatory levels specified in the TCLP and representative of the waste stream being tested.* Other variances to the published testing protocols are permissible (under 40 CFR 260.20–21), but must be approved prior to implementation by EPA. Use of a sample size of less than 100 grams is highly recommended for mixed wastes with concentrations of radionuclides that may present serious radiation exposure hazards.

Additionally, Section 1.2 of the TCLP allows the option of performing a "total constituent analysis" on a hazardous waste or mixed waste sample, instead of the TCLP. Section 1.2 of Method 1311 states:

> If a total analysis of the waste demonstrated that the individual analytes are not present in the waste, or that they are present, but at such low concentrations that the appropriate regulatory levels could not possibly be exceeded, the TCLP need not be run.

For homogenous samples, the use of total constituent analysis in this manner eliminates the need to grind or mill solid waste samples. The grinding or milling step in the TCLP has raised ALARA concerns for individuals who test mixed waste. The use of total constituent analysis, instead of the TCLP, may also minimize the generation of secondary mixed or radioactive waste through the use of smaller sample sizes and reduction, or elimination, of high dilution volume leaching procedures.

Flexibility in Mixed Waste Testing

Flexibility exists in the hazardous waste regulations for generators, TSDFs, and mixed waste permit writers to tailor mixed waste sampling and analysis programs to address radiation hazards. For example, upon the request of a generator, a person preparing a RCRA permit for a TSDF has the flexibility to minimize the frequency of mixed waste testing by specifying a low testing frequency in a facility's waste analysis plan. EPA believes, as stated in 55 FR 22669, June 1, 1990, that "the frequency of testing is best determined on a case-by-case basis by the permit writer."

EPA's hazardous waste regulations also allow a mixed waste facility the latitude to change or replace EPA's test methods (i.e., *Test Methods for Evaluating Solid Waste* (SW–846)) to address radiation exposure concerns. There are only fourteen sections of the hazardous waste regulations that require the use of specific test methods or appropriate methods found in SW–846 which are outlined in Appendix A.[15] However, any person can request EPA for an equivalent testing or analytical method that would replace the required EPA method (see 40 CFR 260.21).

In a recent amendment to the testing requirements, EPA added language to SW–846 that describes fourteen citations in the RCRA program (listed in Appendix A) where the use of SW–846 methods is mandatory (Update II, 60 FR 3089, January 13, 1995). In all other cases, the RCRA program functions under what we call the Performance Based Measurement System (PBMS) approach to monitoring. Language clarifying this approach was included in the final FR Notice which promulgated Update III (62 FR 32542, June 13, 1997) and in appropriate sections (Disclaimer, Preface and Overview, and Chapter 2) of SW–846. Under PBMS, the regulation and/or permit focus is on the question(s) to be answered by the monitoring, the degree of confidence (otherwise known as the Data Quality Objective (DQO)) or the measurement quality objectives (MQO) that must be achieved by the permittee to have demonstrated compliance, and the specific data that must be gathered and documented by the permittee to demonstrate that the objectives were actually achieved. "Any reliable method" may be used to demonstrate that one can see the analytes of concern in the matrix of

(update IIB), and 62 *FR* 32452, June 13, 1996 (update III). Hazardous and mixed waste generators and management facilities should verify that the analytical method that they use to analyze hazardous waste has not been superseded in the third edition.

[13] When evaluating test protocols for explosive mixed waste, consideration should be given to the likelihood for dispersing radioactivity during detonation. Using process knowledge or a surrogate material would, in most instances, be appropriate for these wastes.

[14] Note that when using the TCLP, if any liquid fraction of the waste positively determines that hazardous constituents in the waste are above regulatory levels, then it is not necessary to analyze the remaining fractions of the waste. Extraction using the zero headspace extraction vessel (ZHE) is not required, furthermore, if the analysis of an extract obtained using a bottle extractor demonstrates that the concentration of a volatile compound exceeds the specified regulatory levels. The use of a bottle extractor, however, may not be used to demonstrate that the concentration of a volatile compound is below regulatory levels (40 CFR Part 261 Appendix II Sections 1.3 and .4).

[15] With the exception of the fourteen areas (see Appendix D) where test methods are required by hazardous waste regulation, use of EPA's *Test Methods for the Evaluation of Solid Waste* (SW–846) is not required, and should be viewed as guidance on acceptable sampling and analysis methods.

concern at the levels of concern. Additional reference documents on the characterization and testing methods are listed in Appendix C.

NRC regulations do not describe specific testing requirements for wastes to determine if a waste is radioactive. However, both NRC and Department of Transportation regulations contain requirements applicable to characterizing the radioactive content of the waste before shipment. For example, NRC's regulations in 10 CFR 20.2006 require that the waste manifest include, as completely as practicable, the radionuclide identity and quantity, and the total radioactivity. NRC regulations also require that generators determine the disposal Class of the radioactive waste, and outline waste form requirements that must be met before the waste is suitable for land disposal. These regulations are referenced in 10 CFR 20.2006, and are outlined in detail at 10 CFR 61.55 and 61.56. Mixed waste generators are reminded that both RCRA waste testing and NRC waste form requirements must be satisfied.

Generators may also be required to amend their NRC or Agreement State licenses in order to perform the tests required under RCRA. In addition, if an NRC licensee uses an outside laboratory to test his or her waste, that laboratory may be required to possess an NRC or Agreement State license. It is the responsibility of the generator to determine if the outside laboratory possesses the proper license(s) prior to transferring the waste to the laboratory for testing.

Where radioactive wastes (or wastes suspected of being radioactive) are involved in testing, it has been suggested that the testing requirements of RCRA may run counter to the aims of the AEA. The AEA requirements that have raised inconsistency concerns with respect to RCRA testing procedures include ALARA, criticality, and security. Neither EPA nor NRC is aware of any specific instances where RCRA compliance has been inconsistent with the AEA. However, both agencies acknowledge the potential for an inconsistency to occur.[16] A licensee or applicant who suspects that an inconsistency may exist should contact both the AEA and RCRA regulatory agencies. These regulatory agencies may deliberate and consult on whether there is an unresolvable inconsistency and, if one exists, they may attempt to fashion the necessary relief from the particular RCRA provision that gives rise to the inconsistency. However, all other RCRA regulatory requirements would apply. That is, such a conclusion does not relieve hazardous waste facility owner/operators of the responsibility to ensure that the mixed waste is managed in accordance with all other applicable RCRA regulatory requirements. Owner/operators of mixed waste facilities are encouraged to address and document this potential situation and its resolution in the RCRA facility waste analysis plan which must be submitted with the Part B permit application, or addressed in a permit modification.

Both agencies also believe that the potential for inconsistencies can be reduced significantly by a better understanding of the RCRA requirements, a greater reliance on materials and process knowledge, the use of surrogate materials when possible, and the use of controlled atmosphere apparatuses for mixed waste testing. Where testing is conducted, the use of glove boxes and other controlled atmosphere apparatuses during the testing of the radioactive waste material lessens radiation exposure concerns significantly. These protective measures may also help to reconcile the required testing requirements (including milling) with concerns about maintaining exposures to radiation ALARA and complying with other AEA protective standards. If such protective measures do not exist, or do not adequately reduce individual exposure to radiation or address other factors of concern, relief may be available under Section 1006 of RCRA.

V. Determinations by Treatment, Storage, or Disposal Facility Owner/Operators and Certain Generators to Ensure Proper Waste MaNagement

General Waste Analysis

Owner/operators of facilities that treat, store, or dispose of hazardous wastes must obtain a chemical and physical analysis of a representative sample of the waste (see 40 CFR 264.13 for permitted facilities, or 40 CFR 265.13 for interim status facilities).[17] The purpose of this analysis is to assure that owner/operators have sufficient information on the properties of the waste to be able to treat, store, or dispose of the waste in a safe and appropriate manner.

The waste analysis may include data developed by the generator, and existing, published, or documented data on the hazardous waste or on hazardous waste generated from similar processes. In some instances, however, information supplied by the generator may not fully satisfy the waste analysis requirement. For example, in order to treat a particular waste, one may need to know not only the chemical composition of the waste, but also its compatibility with the techniques and chemical reagents used at the treatment facility. Where such information is not otherwise available, the owner/operator will be responsible for gathering relevant data on the waste in order to ensure its proper management.

The analysis must be repeated only if the previous analyses are inaccurate or needs updating. EPA regulations at 40 CFR 264.13(a)(3) do require that, at a minimum, a waste must be re-analyzed if:

> (1) The owner/operator is notified, or has reason to believe, that the process or operation generating the waste has changed [in a way such that the hazardous property or characteristics of the waste would change]; and
>
> (2) For off-site facilities, when the results of the verification analysis indicate that the [composition or characteristics of the] waste does not match the accompanying manifest or shipping paper.

The requirements and frequency of waste analysis for a given facility are described in the facility's waste analysis plan. As required by 40 CFR 264.13(b), the waste analysis plan must specify the parameters for which each hazardous waste will be analyzed; the rationale for selecting these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties); and the test methods that will be used to test for these parameters. The waste analysis plan also must specify the sampling method that will be used to obtain a representative sample of the waste to be analyzed; the frequency with which the initial analysis of the waste will be reviewed or repeated, to ensure that the analysis is accurate and up to date; and, for off-site facilities, the waste analyses to be supplied by the hazardous waste generators. Finally, the waste analysis plan must note any additional waste analysis requirements specific to the waste management method employed, such as the analysis of the waste feed to be burned in an incinerator.

The appropriate parameters for each waste analysis plan are determined on an individual basis as part of the permit

[16] An inconsistency occurs when compliance with one statute or set of regulations would necessarily cause non-compliance with the other. It may stem from a variety of considerations, including those related to occupational exposure, criticality, and other safeguards.

[17] A representative sample is defined in 40 CFR 260.10 as "a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole." For further guidance see Chapter 9 of the EPA's testing guidance entitled *Test Methods for Evaluating Solid Waste* or SW–846.

application review process. To reduce the inherent hazards of sampling and analyzing radioactive material, and in particular, the potential risk to workers from exposure to radiation posed by duplicative testing of mixed wastes, redundant testing by the generator and off-site facilities should be avoided. In addition, waste analysis plans must include provisions to keep exposures to radiation ALARA, and incorporate relevant AEA-related requirements and regulations.

Analysis Required to Verify Off-site Shipments

The owner/operator of a facility that receives mixed waste from off-site must inspect and, *if necessary*, analyze each hazardous waste shipment received at the facility to verify that it matches the identity of the waste specified on the accompanying LDR notification or manifest (see 40 CFR 264.13 or 265.13(c)). This testing is known as verification testing. Such inspections and analysis will follow sampling and testing procedures set forth in the facility's waste analysis plan, which is kept at the facility.

It should also be emphasized that, where analysis is necessary, *RCRA regulations do not necessarily require the analysis of every movement of waste received at an off-site facility.* As explained above, the purpose of the waste analysis is to verify that the waste received at off-site facilities is correctly identified, and to provide enough information to ensure that it is properly managed by the facilities.

For example, if a facility receives a shipment of several sealed drums of mixed waste, a representative sample from only one drum may be adequate, if the owner/operator has reason to believe that the chemical composition of the waste is identical in every drum. In such a case, the drum containing the least amount of measurable radioactivity could be sampled to minimize radiation exposures (variations in radioactivity do not necessarily suggest different chemical composition). This procedure also would apply to a shipment of several types of waste. If the owner/operator has reason to believe that the drums in the shipment contain different wastes, then selecting a representative sample might involve drawing a sample from each drum or drawing a sample from one drum in each "set" of drums containing identical wastes. Once this waste analysis requirement has been satisfied, routine retesting of later shipments would not be required if the owner/operator can determine that the properties of the waste he or she manages will not change.

Fingerprint Analysis Versus Full Scale Analysis

Full scale analysis (i.e., detailed physical and chemical analysis) may be used to comply with the waste analysis plan, including verification of off-site shipments. However, for mixed waste, abbreviated analysis or "fingerprint analysis" may be more appropriate to meet general waste analysis requirements. The test procedure should be determined on a case-by-case basis.

Fingerprint analysis (which may involve monitoring pH, percent water, and cyanide content) is particularly recommended for mixed waste streams with high radiation levels that are received by an off-site TSDF for RCRA waste manifest verification purposes. It may be appropriate to use full scale analysis, instead of, or after, fingerprint analyses, if the facility suspects that the waste was not accurately characterized by the generator, information provided by a generator is incomplete, waste is received for the first time, or the generator changes a process or processes that produced the waste.

Generators Who Treat LDR Prohibited Waste In Tanks, Containers or Containment Buildings To Meet LDR Treatment Requirements

Hazardous waste generators may treat hazardous wastes in tanks or containers without obtaining a permit if the treatment is done in accordance with the accumulation timeframes and requirements in 40 CFR 262.34. However, generators who treat hazardous waste (including mixed wastes) to meet the EPA treatment standards for land disposal prohibited wastes must also prepare a waste analysis plan similar to that prepared by TSDFs. The plan must be based on a detailed analysis of a representative sample of the LDR prohibited waste that will be treated. In addition, the plan should include all the information that is necessary to treat the waste, including the testing frequency (See 40 CFR 268.7(a)(5)).

VI. Determinations Under the Land Disposal Restrictions

Generators, as well as treatment facilities and land disposal facilities, that handle mixed waste may have to obtain or amend their radioactive materials licenses if they test or treat mixed waste under the LDRs. The following discussion assumes that generators and treatment and disposal facilities have satisfied the requirement to obtain, or amend, their radioactive materials licenses, as appropriate.

Waste knowledge may also be used to satisfy certain waste characterization requirements imposed by the LDRs for mixed wastes. The Hazardous and Solid Waste Amendments (HSWA) to RCRA (P.L. 98–616), enacted on November 8, 1984, established the LDR program. This Congressionally mandated program set deadlines (RCRA Sections 3004(d)-(g)) for EPA to evaluate all hazardous wastes and required EPA to set levels, or methods, of treatment which would substantially diminish the toxicity of the waste, or minimize the likelihood of migration of hazardous constituents from any RCRA waste. Beyond specified dates, prohibited wastes that do not meet the treatment standards before they are disposed of, are banned from land disposal unless they are disposed of in a so-called "no-migration" unit (i.e., a unit where the EPA Administrator has granted a petition which successfully demonstrated to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit for as long as the wastes remain hazardous)(40 CFR 268.6). Certain categories of prohibited wastes also may be granted extensions of the effective dates of the land disposal prohibitions (i.e., case-by-case and national capacity variances (40 CFR 268.5 and Subpart C, respectively). However, these wastes are still restricted and, if disposed in landfills or surface impoundments, must be disposed of in units meeting the minimum technology requirements.[18]

The requirements of the LDR program apply to generators, transporters, and owner/operators of hazardous waste treatment, storage, and disposal facilities. Not all hazardous wastes are subject to 40 CFR Part 268. For instance, certain wastes that are identified or listed after November 8, 1984, such as newly identified mineral processing wastes for which land disposal prohibitions or treatment standards have not yet been promulgated, are not regulated under 40 CFR Part 268.[19]

[18] A prohibited waste may not be land disposed unless it meets the treatment standards established by EPA. These standards are usually based on the performance of the BDAT. A waste that is subject to an extension, such as a national capacity variance, does not need to comply with the BDAT treatment standards, but is "restricted" and if it is going to be disposed in a landfill or surface impoundment, it can only be disposed of in a unit that meets the minimum technology requirements (MTRs). An exception exists for interim status surface impoundments which may continue receiving newly identified and restricted wastes for four years from the date of promulgation of the listings or characteristics before being retrofitted to meet the MTRs (RCRA Section 3005(j)(6)), so long as the only hazardous wastes in the impoundment are newly identified or listed.

[19] The treatment standards for mineral-processing wastes and certain additional newly listed waste streams were proposed in 61 *FR* 2338, January 25, 1996, and a second supplemental proposed rule signed April 18, 1997.

Determinations by Generators

Under 40 CFR 268.7(a), generators must determine whether their waste is restricted from land disposal (or determine if they are subject to an exemption or variance from land disposal (40 CFR 268.1)) by testing their waste (or a leachate of the waste developed using the TCLP or, in certain cases, the Extraction Procedure Toxicity Test (EP), or by using waste or process knowledge). If the waste exhibits the characteristic of ignitability (and is not in the High Total Organic Constituents (TOC) Ignitable Liquids Subcategory or is not treated by the "CMBST" or "RORGS" treatment technology in 40 CFR 268.42, Table 1), corrosivity, reactivity and/or organic toxicity, the generator must also determine the underlying hazardous constituents (UHCs) in the waste. Two exceptions to this requirement are: (1) if these wastes are treated in wastewater treatment systems subject to the Clean Water Act (CWA) or CWA equivalent; or, (2) if they are injected into a Class I, non-hazardous Underground Injection Control well. A UHC is any constituent listed in 40 CFR 268.48, Table UTS-Universal Treatment Standards, with the exceptions of nickel, zinc and vanadium, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard. Determining the presence of the UHCs may be made based on testing or knowledge of the waste. The UHCs must meet the UTS before the waste may be land disposed.

If a generator chooses to test the waste rather than use waste or process knowledge for hazardous waste that is not listed and exhibits a characteristic only, the generator must use the TCLP. The only exception is TC metals.

Until the "Phase IV" LDR rule is promulgated in the spring of 1998, generators who characterize their wastes as TC toxic only for metals may use the EP instead of the TCLP result to determine if their waste is land disposal restricted, because the TC wastes do not have final EPA treatment standards whereas, at this time, the EP metals do. If the EP result is negative, the waste will still be considered hazardous, but is not prohibited from land disposal. The TCLP generally yields similar results as the EP. However, in certain matrices the TCLP yields higher lead and arsenic concentrations than the EP. The rationale for using the EP instead of the TCLP for characteristic wastes is explained in 55 FR 3865, January 31, 1991. For further guidance on using the EP for the land disposal restriction determination, refer to the Figures 1 and 2, of this guidance.

If a waste is found to be land disposal restricted, generators must determine if the waste can be land disposed without further treatment. A prohibited waste may be land disposed if it meets applicable treatment standards (whether through treatment or simply as generated), or is subject to a variance from the applicable standards. As explained above, this determination can be made either based on knowledge of the waste or by testing the waste, or waste leachate using the TCLP.

Generators who determine that their listed waste meets the applicable treatment standards must certify to this determination and notify the treatment, storage, or land disposal facility that receives the waste (40 CFR 268.7(a)(3)). Notification to the receiving facility must be made with the initial shipment of waste and must include the following information:

- EPA Hazardous Waste Number;
- Certification that the waste delivered to a disposal facility meets the treatment standard, and that the information included in the notice is true, accurate, and complete;
- Waste constituents that will be monitored for compliance if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043;
- Whether the waste is a non-wastewater or wastewater;
- The subcategory of the waste (e.g., "D003 reactive cyanide"), if applicable;
- Manifest number; and,
- Waste analysis data (if available).

If a generator determines that a waste that previously exhibited a characteristic is no longer hazardous, or is subject to an exclusion from the definition of hazardous waste, a one-time notification and certification must be place in the generator's files (40 CFR 268.7(a)(7) or 268.9).

Generators who determine that their waste does not meet the applicable treatment standards must ensure that this waste meets the applicable standards prior to disposal. These generators may treat (or store) their prohibited wastes on-site for 90 days or less in qualified tanks, containers (40 CFR 262.34), or containment buildings (40 CFR 268.50), and/or send their wastes off-site for treatment.[20] When prohibited listed wastes are sent off-site, generators must notify the treatment facility of the appropriate treatment standards (40 CFR 268.7(a)(2)). This notification must be made with the initial shipment of waste and must include the following information:

- EPA Hazardous Waste Number;
- Waste constituents that the treater will monitor if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043;
- Whether the waste is a non-wastewater or wastewater;
- The subcategory of the waste (e.g., "D003 reactive cyanide"), if applicable;
- Manifest number; and,
- Specified information for hazardous debris.

Generators whose wastes are subject to an exemption such as a case-by-case extension under 40 CFR 268.5, an exemption under 40 CFR 268.6 (a no-migration variance), or a nationwide capacity variance under 40 CFR 268, Subpart C must also notify the land disposal facility of the exemption. In addition, records of all notices, certifications, demonstrations, waste analysis data, process knowledge determinations, and other documentation produced pursuant to 40 CFR Part 268 must be maintained by the generator for at least three years from the date when the initial waste shipment was sent to on-site or off-site treatment, storage, or disposal (40 CFR 268.7(a)(8)).

Determinations by Treaters and Disposers

Owner/operators of treatment facilities that receive wastes that do not meet the treatment standards are responsible for treating the wastes to the applicable treatment standards or by the specified technology(ies). In addition, the owner/operators of treatment facilities must determine whether the wastes meet the applicable treatment standards or prohibition levels by testing:

(1) The treatment residues, or an extract of such residues using the TCLP, for wastes with treatment standards expressed as concentrations in the waste extract (40 CFR 268.40); and.

(2) The treated residues (not an extract of the treated residues) for wastes with

[20] Non-wastewater residues (e.g., slag) that result from high temperature metals recovery that are excluded from the definition of hazardous waste by meeting the conditions of 40 CFR 261.3(c)(2)(ii)(C), and hazardous debris that is excluded from the definition of hazardous waste in 40 CFR 261.3(f) have reduced LDR notification requirements. Specifically, these wastes, and characteristic hazardous wastes that are rendered non-hazardous, do not require a notification and certification accompanying each shipment. Instead, they may be sent to an AEA-licensed facility with a one-time notification and certification sent to the EPA Region or authorized State.

treatment standards expressed as concentrations in the waste extract (40 CFR 268.40).

This testing should be done at the frequency established in the facility's waste analysis plan. Owner/operators of treatment facilities, however, do not need to test the treated residues or an extract of the residues if the treatment standard is a specified-technology (i.e., a technology specified in 40 CFR 268.40 or 268.45, Table 1.—Alternative Treatment Standards for Hazardous Debris).

Owner/operators of land disposal facilities under the LDRs are responsible for ensuring that only waste meeting the treatment standards (i.e., wastes not prohibited from disposal or wastes that are subject to an exemption or variance) is land disposed. Like a treatment facility, a disposal facility must test a treatment residue or an extract of the treatment residue, except where the treatment standard is a specified technology.

Owner/operators must periodically test wastes received at the facility for disposal (i.e., independent corroborative testing) as specified in the waste analysis plan to ensure the treatment has been successful and the waste meets EPA treatment standards, except where the treatment standard is expressed as a technology.[21] The results of any waste analyses are placed in a TSDF's operating records along with a copy of all certifications and notices (40 CFR 264.73 or 40 CFR 265.73).[22]

Mixed Waste Under the LDRs

As clarified in the Land Disposal Restrictions rule published on June 1, 1990 (see EPA's "Third Third rule," 55 FR 22669, June 1, 1990), the frequency of testing, such as corroborative testing for treatment and disposal facilities, should be determined on a case-by-case basis and specified in the RCRA permit. This flexibility is necessary because of the variability of waste types that may be encountered. Mixed waste is unique for its radioactive/hazardous composition and dual management requirements. Each sampling or analytical event involving mixed waste may result in an incremental exposure to radiation, and EPA's responsibility to protect human health and the environment must show due regard for minimizing this unique risk. These are factors which should be considered in implementing the flexible approach to determining testing frequency spelled out in the Third Third Rule language. This flexible approach encourages reduction in testing where there is little or no variation in the process that generates the waste, or in the treatment process that treats the waste, and an initial analysis of the waste is available. Also, the approach may apply to mixed wastes shipped to off-site facilities, where redundant testing is minimized by placing greater reliance on the characterization developed and certified by earlier generators and treatment facilities. On the other hand, where waste composition is not well-known, testing frequency may be increased. Waste analysis plan conditions in the permits of mixed waste facilities should reflect these principles.

Revised Treatment Standards for Solvent Wastes

EPA promulgated revised treatment standards for wastewater and non-wastewater spent solvent wastes (F001–F005) in 57 FR 37194, August 18, 1992. The revision essentially converts the treatment standards for the organic spent solvent waste constituents (F001–F005) from TCLP based to total waste constituent concentration based. This conversion of the spent solvent treatment standards is particularly advantageous to mixed waste generators, since the entire waste stream or treatment residual must be analyzed (instead of a waste or treatment residual extract). This holds true for other mixed waste streams where the hazardous component is measured using a total waste analysis. As discussed in Section IV of this guidance, total constituent analysis has several advantages over the use of the TCLP for high activity waste streams.

EPA and NRC are aware of potential hazards attributable to testing hazardous waste. Moreover, EPA and NRC recognize that the radioactive component of mixed waste may pose additional hazards to laboratory personnel, inspectors, and others who may be exposed during sampling and analysis. All sampling should be conducted in accordance with procedures that minimize exposure to radiation and ensure personnel safety. Further, testing should be conducted in laboratories licensed by NRC or the appropriate NRC Agreement State authority. EPA and NRC believe that a combination of common sense, modified sampling procedures, and cooperation between State and Federal regulatory agencies will minimize any hazards associated with sampling and testing mixed waste.

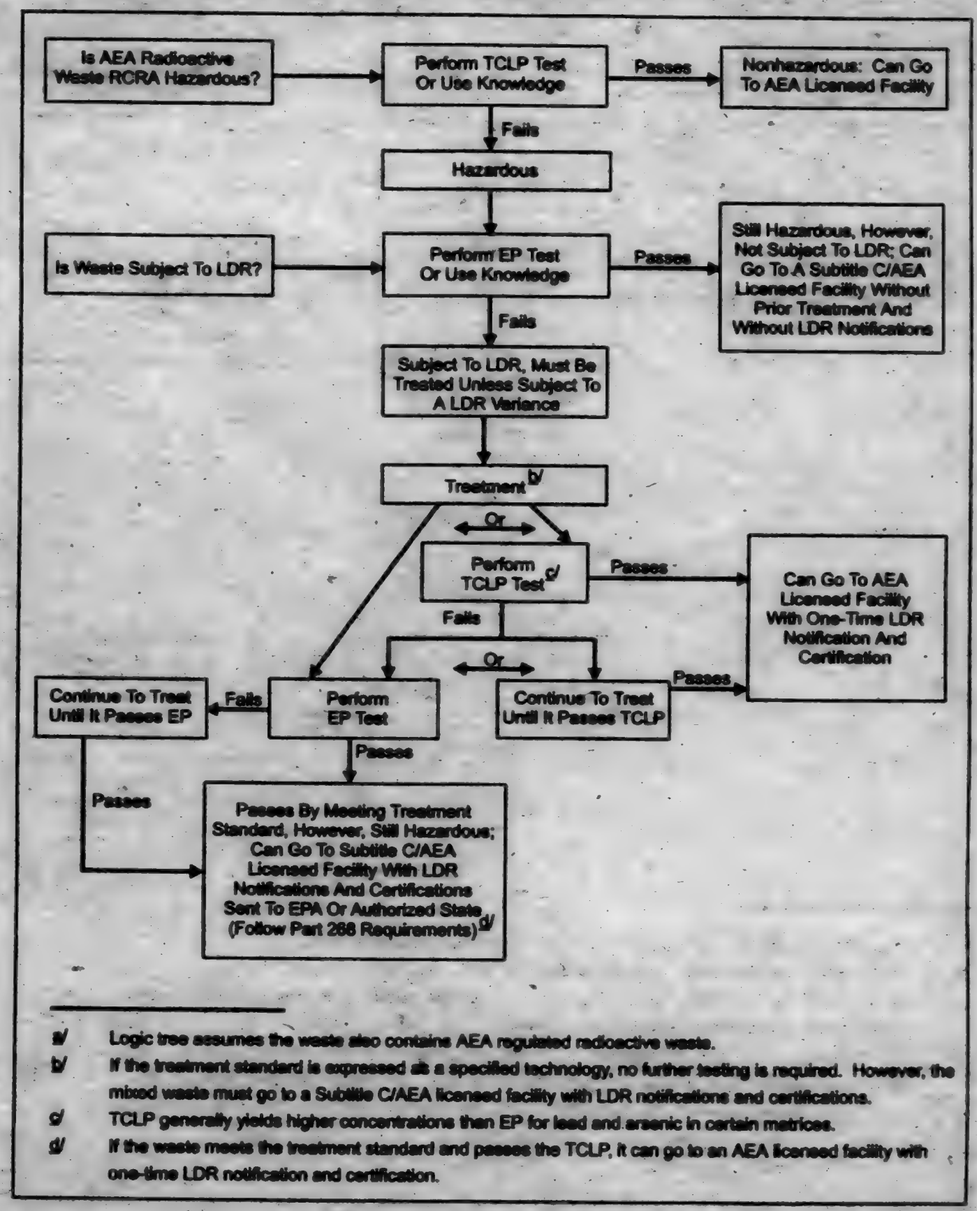
Note: Section V, "Determinations under the Land Disposal Restrictions (LDRs)" and the following flow charts represent a brief summary of the Land Disposal Restriction Regulations. They are not meant to be a complete or detailed description of all applicable LDR regulations. For more information concerning the specific requirements, consult the **Federal Register** cited in the document and the Code of Federal Regulations, Title 40 Parts 124, and 260 through 271.

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[21] Note that verification testing is a means to verify that the wastes received match the waste description on the manifest, which is required under 40 CFR 264.13 and 40 CFR 265.13(c). The main objective of corroborative testing is to provide an independent verification that a waste meets the LDR treatment standard.

[22] Land disposal facilities must maintain a copy of all LDR notices and certifications transmitted from generators and treaters (40 CFR 268.7(c)).

FIGURE ONE: TESTING REQUIREMENTS
FOR CHARACTERISTIC LEAD AND ARSENIC NONWASTEWATERS ONLY[a/]



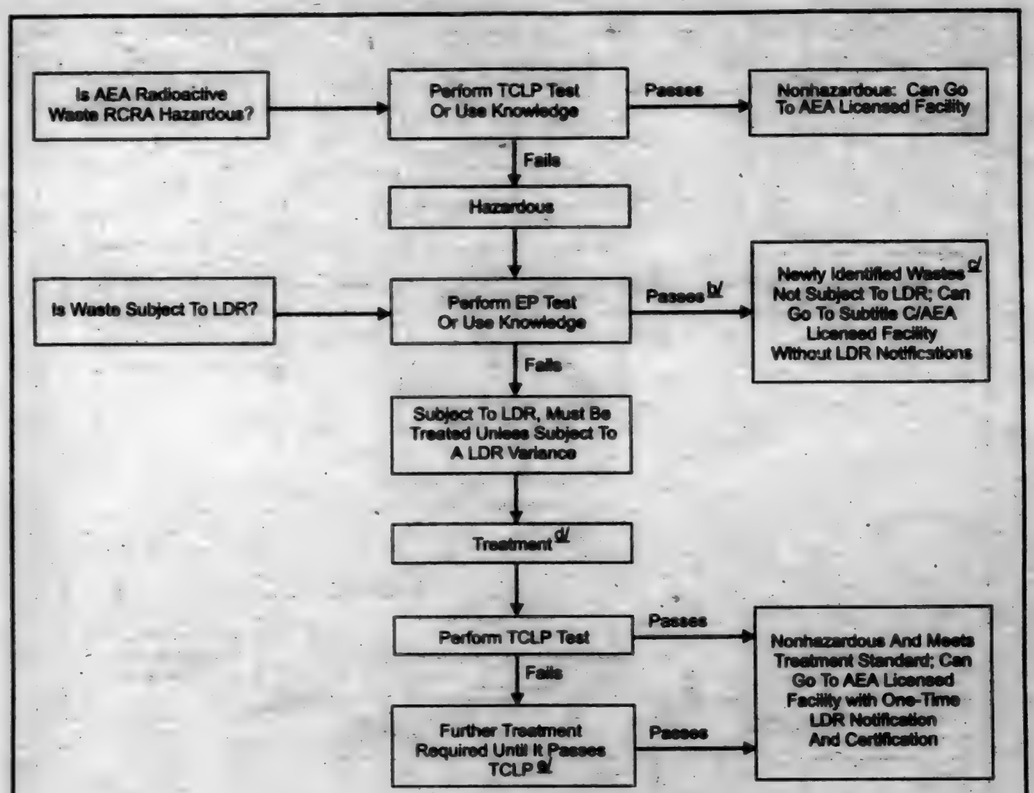
a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

b/ If the treatment standard is expressed as a specified technology, no further testing is required. However, the mixed waste must go to a Subtitle C/AEA licensed facility with LDR notifications and certifications.

c/ TCLP generally yields higher concentrations than EP for lead and arsenic in certain matrices.

d/ If the waste meets the treatment standard and passes the TCLP, it can go to an AEA licensed facility with one-time LDR notification and certification.

FIGURE TWO: TESTING REQUIREMENTS FOR ALL OTHER CHARACTERISTIC METALS[a/]



a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

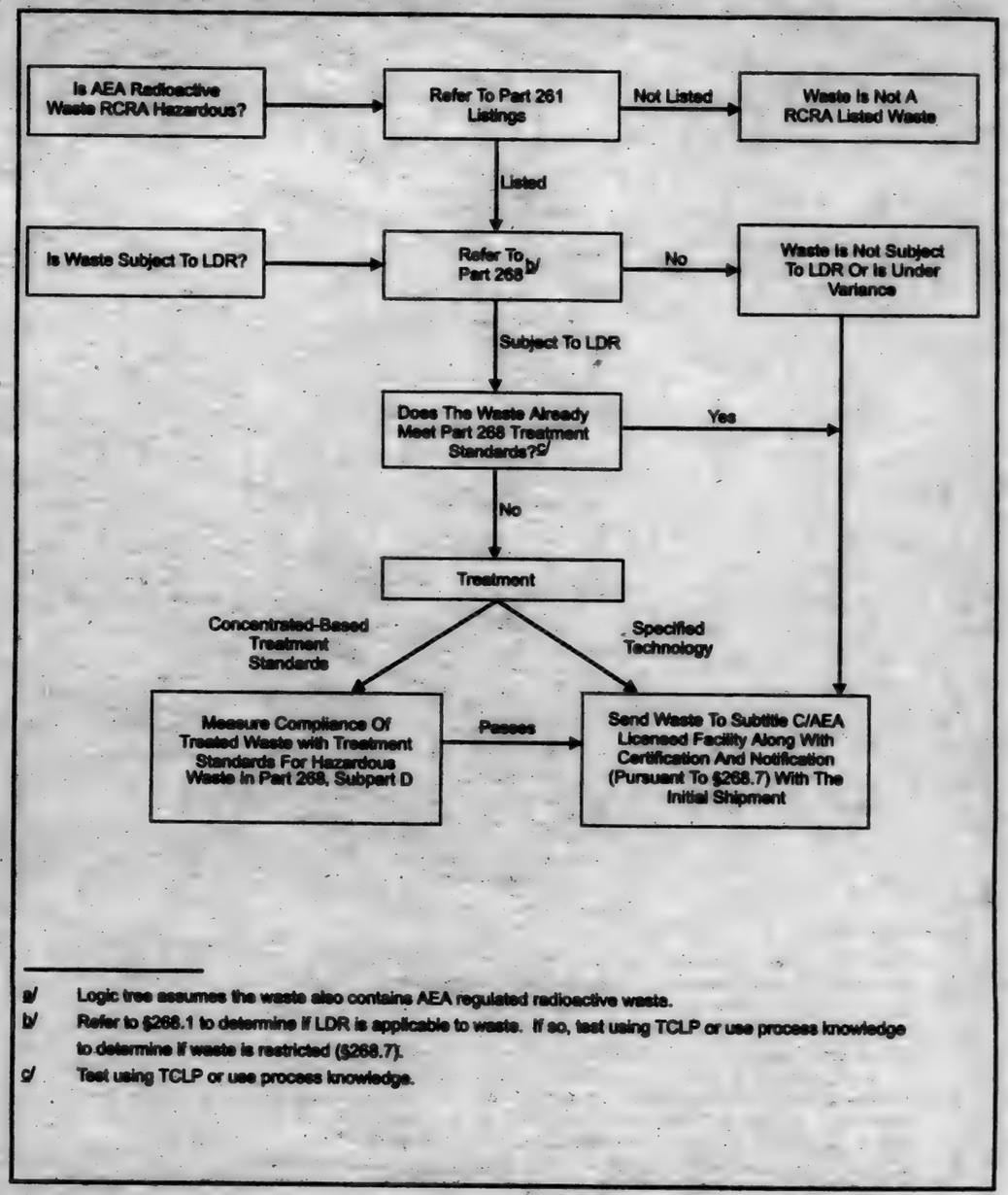
b/ This should be rare, since the two tests usually yield similar results.

c/ Wastes exhibiting the toxicity characteristic but not the EP are newly identified wastes and, therefore, are not subject to the land disposal restrictions at this time.

d/ If the treatment standard is expressed as a specified technology, no further testing is required. However, the mixed waste must go to a Subtitle C/AEA licensed facility with LDR notifications and certifications.

e/ Selenium is the one exception because it has a treatment standard slightly above the characteristic level.

FIGURE THREE: TESTING REQUIREMENTS FOR RCRA LISTED HAZARDOUS WASTES ONLY[a/]

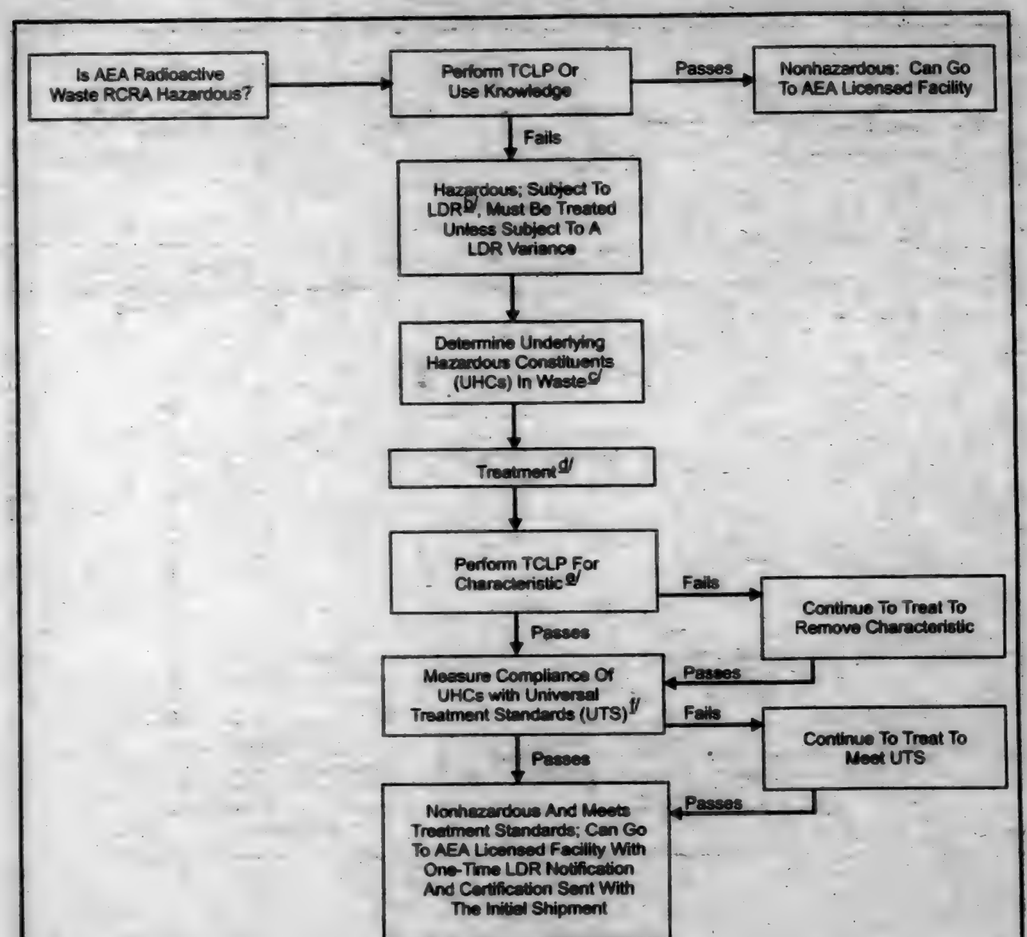


a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

b/ Refer to §268.1 to determine if LDR is applicable to waste. If so, test using TCLP or use process knowledge to determine if waste is restricted (§268.7).

c/ Test using TCLP or use process knowledge.

FIGURE FOUR: ORGANIC TOXICITY CHARACTERISTIC (TC) WASTES AND PESTICIDE WASTES[a/]



a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.
b/ Restriction applies to TC organic and pesticide wastes managed in non-CWA/non-CWA equivalent/ non-Class I SDWA systems only.
c/ Testing or knowledge of waste may be used. A UHC is any constituent listed in §268.48 Table UTS, except zinc, that can reasonable be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard.
d/ If the treatment standard is expressed as a specified technology, no further testing is required. However, the mixed waste must go to a Subtitle C/AEA facility with LDR notifications and certifications.
e/ Refer to the table "Treatment Standards for Hazardous Wastes" in 40 CFR Part 268, Subpart D.
f/ Compliance should be measured based on the appropriate testing protocols (see SW-846).

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Appendix A—RCRA Regulations That Require Specific EPA Test Methods

The use of an SW–846 method is mandatory for the following nine Resource Conservation and Recovery Act (RCRA) applications contained in 40 CFR Parts 260 through 270:

- Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (i.e., delisting petitions);
- Section 261.22(a)(1) and (2)—Evaluations of waste against the corrosivity characteristic;
- Section 261.24(a)—Leaching procedure for evaluation of waste against the toxicity characteristic;
- Section 261.35(b)(2)(iii)(A)—Evaluation of rinsates from wood preserving cleaning processes;
- Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of waste to determine if free liquid is a component of the waste;
- Sections 264.1034(d)(1)(iii) and 265.1034(d)(1)(iii)—Evaluation of organic emissions from process vents;
- Sections 264.1063(d)(2) and 265.1063(d)(2)—Evaluation of organic emissions from equipment leaks;
- Section 266.106(a)—Evaluation of metals from boilers and furnaces;
- Sections 266.112(b)(1) and (2)(i)—Certain analyses in support of exclusion from the definition of a hazardous waste for a residue which was derived from burning hazardous waste in boilers and industrial furnaces;
- Sections 268.7(a), 268.40(a), (b), and (f), 268.41(a), 268.43(a)—Leaching procedure for evaluation of waste to determine compliance with land disposal treatment standards;
- Sections § 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(i)(C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and
- Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(i) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantification conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

APPENDIX B.—STATES AND TERRITORIES WITH MIXED WASTE AUTHORIZATION

[As of June 30, 1997]

State/territory	FR date	Effective date	FR cite
Colorado	10/24/86	11/7/86	51 FR 37729.
Tennessee	6/12/87	6/11/87	52 FR 22443.
S. Carolina	7/15/87	9/13/87	52 FR 26478.
Washington	9/22/87	11/23/87	52 FR 35556
Georgia	7/28/88	9/26/86	53 FR 28383.
Nebraska	10/4/88	12/3/88	53 FR 38950.
Kentucky	10/20/88	12/19/88	53 FR 41164.
Utah	2/21/89	3/7/89	54 FR 7417.
Minnesota	4/24/89	6/23/89	54 FR 16361.
Ohio	6/28/89	6/30/89	54 FR 27170.
Guam	8/11/89	10/10/89	54 FR 32973.
N. Caroline	9/22/89	11/21/89	54 FR 38993.
Michigan	11/24/89	12/26/89	54 FR 48608.
Texas	3/1/90	3/15/90	55 FR 7318.
New York	3/8/90	5/7/90	55 FR 7896.
Idaho	3/26/90	4/9/90	55 FR 11015.
Illinois	3/1/90	4/30/90	55 FR 7320.
Arkansas	3/27/90	5/29/90	55 FR 11192.
Oregon	3/30/90	5/29/90	55 FR 11909.
Kansas	4/24/90	6/25/90	55 FR 17273.
N. Dakota	6/25/90	8/24/90	55 FR 25836.
New Mexico	7/11/90	7/25/90	55 FR 28397.
Oklahoma	9/26/90	11/27/90	55 FR 39274.
Connecticut	12/17/90	12/31/90	55 FR 51707.
Florida	12/14/90	2/12/91	55 FR 51416.
Mississippi	3/29/91	5/28/91	56 FR 13079.
S. Dakota	4/17/91	6/17/91	56 FR 15503.
Indiana	7/30/91	9/30/91	56 FR 41959.
Louisiana	8/26/91	10/28/91	56 FR 41959.
Wisconsin	4/24/92	4/24/92	57 FR 15092.
Nevada	4/29/92	6/29/92	57 FR 18083.
California	7/23/92	8/1/92	57 FR 32725.
Arizona	11/23/92	1/22/93	57 FR 54932.
Missouri	1/11/93	3/12/93	58 FR 3497.
Alabama	3/17/93	5/17/93	58 FR 14319.
Vermont	6/7/93	8/6/93	58 FR 31911.
Montana	1/19/94	3/21/94	59 FR 2752.
New Hampshire	11/14/94	1/13/95	59 FR 56397.
Wyoming	10/04/95	10/19/95	60 FR 51925.
Delaware	8/8/96	10/7/96	61 FR 41345.
Total: 39 States and 1 Territory.			

Appendix C: Testing Reference Documents

The following references provide information on approved methods for testing hazardous waste samples:

American Public Health Association, *Standard Methods for the Examination of Water and Wastewater, 17th Edition.* 1989. Available from the Water Pollution Control Federation, Washington, D.C., #S0037.

U.S. Environmental Protection Agency, *Design and Development of a Hazardous Waste Reactivity Testing Protocol.* EPA Document No. 600/2–84–057, February 1984.

U.S. Environmental Protection Agency, *Methods for Chemical Analysis of Water and Waste.* EPA–6001114–79–020. Washington, D.C., 1983.

U.S. Environmental Protection Agency, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.* SW–846. Third Edition (1986) as amended. Available from the Government Printing Office, by subscription, 955–001–00000–1, or from the National Technical Information Service, PB88–239–223. Washington, D.C., January, 1995.

U.S. Environmental Protection Agency, *The New Toxicity Characteristic Rule: Information and Tips for Generators.* Office of Solid Waste, 530/SW–90–026, April, 1990.

U.S. Environmental Protection Agency, ORD, and U.S. Department of Energy, *Characterizing Heterogenous Wastes: Methods and Recommendations.* EPA/600/R-92/033, February 1992.

U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response. "Joint EPA/NRC Guidance on the Definition and Identification of Commercial Mixed-Low-Level Radioactive and Hazardous Waste," Directive No. 9432–00–2, October 4, 1989.

Appendix D: List of Regulations

Environmental Protection Agency General Regulations for Hazardous Waste Management, 40 CFR Part 260.

Environmental Protection Agency Regulations for Identifying Hazardous Waste, 40 CFR Part 261.

Environmental Protection Agency Regulations for Hazardous Waste Generators, 40 CFR Part 262.

Environmental Protection Agency Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 40 CFR Part 264.

Environmental Protection Agency Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, 40 CFR Part 265.

Environmental Protection Agency Regulations on Land Disposal Restrictions, 40 CFR Part 268.

Nuclear Regulatory Commission Regulations—Standards for Protection Against Radiation, 10 CFR Part 20.

Nuclear Regulatory Commission Regulations—Rules of General Applicability to Domestic Licensing of Byproduct Material, 10 CFR Part 30.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Source Material, 10 CFR Part 40.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50.

Nuclear Regulatory Commission Regulations—Licensing Requirements for Land Disposal of Radioactive Waste, 10 CFR Part 61.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Special Nuclear Material, 10 CFR Part 70.

[FR Doc. 97–30528 Filed 11–19–97; 8:45 am]

BILLING CODE 7590–01–P

PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION TRANSITION OFFICE

Advisory Committee for the President's Commission on Critical Infrastructure Protection; Meeting

Time & Date: 9:00 a.m.–6:00 p.m., Wednesday, December 3, 1997.

Action: Notice of Meeting.

Summary: Pursuant to the provisions of the Federal Advisory Committee Act (Pub.L. 92–463, 86 Stat. 770), notice is hereby given for the second meeting of the Advisory Committee on the President's Commission on Critical Infrastructure Protection.

Address: The Madison Hotel, 15th and M St., NW, Washington, D.C. 20005. Public seating is limited and is available on a first-come, first-served basis. This facility is accessible to persons with disabilities.

For Further Information Contact: Carla Sims, Public Affairs Officer, (703) 696–9395, comments@pccip.gov. Hearing-impaired individuals are advised to contact the Virginia Relay Center (Text Telephone (800) 828–1120 or Voice (800) 828–1140), or their local relay system.

Supplementary Information: The Advisory Committee was established by the President to provide expert advice to the Commission as it developed a comprehensive national policy and implementation strategy for protecting the nation's critical infrastructures. The Committee is co-chaired by the Honorable Jamie Gorelick, Vice Chair of Fannie Mae, and the Honorable Sam Nunn, Partner with the law firm of King & Spaulding. The Committee currently consists of 14 members representing various industry sectors.

Purpose of the Meeting: This is the second advisory meeting of the Committee. The Committee will review and discuss the recommendations contained in the Commission's report to the President, "Critical Foundations: Protecting America's Infrastructure's."

Tentative Agenda: The Advisory Committee meeting will review and discuss the recommendations contained in the Commission's report. The unclassified report is available electronically from the Commission's site on the World Wide Web (http://www.pccip.gov/).

Public Participation: The morning session of the meeting will be open to the public. Written comments may be filed with the Commission after the meeting. Written comments may be given to the Designated Federal Officer after the conclusion of the open meeting; mailed to the Commission at P.O. Box 46258, Washington, D.C. 20050–6258; or emailed to comments@pccip.gov/.

Closed Meeting Deliberations: In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 [5 U.S.C. App II, (1982)], it has been determined that the afternoon session concerns matters listed in 5 U.S.C. 552b (c)(1)(1982). Therefore, the afternoon meeting will be closed to the public in order for the committee to discuss classified material.

Robert E. Giovagnoni,

General Counsel, President's Commission on Critical Infrastructure Protection Transition Office.

[FR Doc. 97–30501 Filed 11–19–97; 8:45 am]

BILLING CODE 3110–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the December 4, 1997, meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. and open to the public from 1:30 p.m. to 2:00 p.m.

SUMMARY: The Advisory Committee for Trade Policy and Negotiation will hold a meeting on December 4, 1997 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:30 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for December 4, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Madison Hotel in the Executive Chambers, located at 15th and M Streets, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Bill Daley, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–30559 Filed 11–19–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Invitation for Comment on APEC Multilateral Negotiations Regarding a Mutual Recognition Agreement for Telecommunications Equipment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is inviting interested persons to submit written comments with respect to the negotiation in the Asia-Pacific Economic Cooperation (APEC) of a Mutual Recognition Agreement (MRA) on telecommunications equipment, and, in particular, with respect to the potential for such an agreement to remove important non-tariff barriers affecting trade in telecommunications and information technology products. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives for negotiation of such an MRA, in particular as part of the effort by the APEC Telecom Working Group's MRA Task Force to conclude the text of such an agreement by the June 1998 meeting of APEC Telecommunications Ministers.

DATES: Comments are due by noon, December 15, 1997.

ADDRESSES: Comments should be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: APEC Telecom MRA Comments, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: William Corbett, Office of Industry Affairs, USTR, (202–395–9586); or William Busis, Office of General Counsel, USTR (202–395–3150).

SUPPLEMENTARY INFORMATION: APEC consists of eighteen member economies: Australia, Brunei, Canada, Chile, China, Chinese Taipei, Hong Kong China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Philippines, Singapore, Thailand and the United States. The APEC Telecommunications Working Group is a biannual forum in which telecommunications officials of APEC economies undertake cooperative endeavors to liberalize trade in telecommunications goods and services; to facilitate private sector interaction with telecommunications authorities on policy and business issues; to coordinate efforts to promote human resources development in the regional telecommunications industry; and to improve regional telecommunications infrastructure.

An MRA potentially would facilitate trade in a significant portion of telecommunications and information equipment goods among members of APEC, thereby enhancing the gains we can expect from the Information Technology Agreement. It would allow exporters to test ("phase one") and certify ("phase two") equipment to an importing economy's mandatory technical requirements. It is potentially a useful means to cope with ever-shortening product life cycles and to reduce the redundancy of steps necessary to satisfy importing countries' approval processes. The WTO Agreement on Technical Barriers to Trade encourages members to enter into Mutual Recognition Agreements that "give mutual satisfaction regarding their potential for facilitating trade in the products concerned." An MRA does not require harmonization of mandatory technical requirements, albeit a possible future result of MRA processes is harmonization of conformity assessment and technical requirements, along with greater voluntary reliance on manufacturer's self-declarations, where this is not already the case.

Background

At the 1995 Osaka APEC Leader's Meeting, Leaders agreed to develop and begin to implement, on a voluntary basis and by the end of 1997, a model mutual recognition arrangement for certification of telecommunications equipment to the mandatory technical regulations of importing economies. The APEC Telecommunications Working Group (the "TEL WG") in September 1997 reached agreement on a voluntary framework for such MRAs. The TEL WG also reached agreement on improvements to the existing APEC guidelines for regional harmonization of equipment certification, which are referenced by the framework document.

Based on this work, a Telecom MRA Task Force subsequently met to initiate work on a Mutual Recognition Agreement and annexed Phase Agreements, producing a bracketed text for further consideration. The Task Force agreed that its goal would be to complete work on the texts of an APEC Telecommunications Mutual Recognition Agreement and annexed Phase Agreements by the third meeting of the APEC Telecommunications Ministers, scheduled for June 1–5, 1998 in Singapore.

The Telecom MRA Task Force has agreed that an MRA should cover any equipment that is subject to member economies' regulatory requirements for terminal attachment (wired and wireless) or other telecommunications regulation. For such equipment, an MRA should cover member economies' regulatory requirements for electromagnetic compatibility and product safety. The framework, improved guidelines and bracketed MRA text are available for inspection at the USTR reading room.

Invitation for Comments

The interagency TPSC led by USTR is in the process of preparing negotiating positions for upcoming APEC Telecom MRA Task Force meetings. Interested U.S. persons are invited to submit comments, by noon, December 15, 1997, on what should be the U.S. goals and objectives for an APEC MRA on telecommunications equipment. We are requesting this advice pursuant to 19 U.S.C. 2155.

Persons submitting written comments should provide a statement, in twenty copies, by noon, December 15, 1997, to Gloria Blue, Executive Secretary, TPSC, ATTN: APEC Telecom MRA Comments, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20508. Non-confidential information received will be available for public inspection by appointment in the USTR Reading Room, Room 101, Monday through Friday, 9:30 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or cover page and

each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–30420 Filed 11–19–97; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3401 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an immediate emergency clearance in accordance with 5 CFR § 1320.13. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB and FAA by January 20, 1998.

SUPPLEMENTARY INFORMATION:

Title: Pilot Medical Certification Customer Service Survey.

Need: This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of pilot medical certification. The completion of this form is voluntary and the information collection will be conducted anonymously.

Respondents: 48,000 pilots.

Frequency: Annually.

Burden: 2400 hours based on a 30 per cent return rate of the 48,000 respondents at 10 minutes each.

FOR FURTHER INFORMATION: or to obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the: Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC on November 14, 1997.

Patricia W. Carter,

Acting Manager, Corporate Information Division, ABC–100.

[FR Doc. 97–30497 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held December 8–12, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows:

Specific Working Group (WG) Sessions: December 8–9: WG–4A, Precision Landing Guidance (LAAS CAT I/II/III); December 10: WG–4A, Precision Landing Guidance (LAAS CAT I/II/III); WG–3A, GPS/Inertial (Meeting will start at 1:00 p.m. to discuss the reformulation of WG–3A); December 11: WG–2, WAAS, and WG–2A, GPS/GLONASS; WG–4B, Airport Surface Surveillance.

Plenary Session, December 12: (1) Chairman's Introductory Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Review WG Progress and Identify Issues for Resolution: a. GPS/WAAS (WG–2); b. GPS/GLONASS (WG–2A); c. GPS/Precision Landing Guidance and Airport Surface Surveillance (WG–4); (4) Review of EUROCAE Activities; (5) Review Proposed Draft MASPS and LAAS CAT I/II/III and Interface Control Document for LAAS; (6) Assignment/Review of Future Work; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 1997.

Terry R. Hannah,

Designated Official.

[FR Doc. 97–30493 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose a Passenger Facility Charge (PFC) at Arcata/Eureka Airport (ACV), Eureka, CA and Use the Revenue at ACV, Rohnerville (FOT), Murray Field (EKA) and Kneeland Airports (019)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at ACV and use at ACV, FOT, EKA and 019 under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90621, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Don Raffaelli, Acting Public Works Director, County of Humboldt, at the following address: 1106 Second Street, Arcata, CA 95521. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Humboldt under section 158.23 of FAR part 158.

FOR FURTHER INFORMATION CONTACT: Maryls Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at ACV and use the revenue at ACV, FOT, EKA and 019 under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 24, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Humboldt was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 23, 1998. The following is a brief overview of the impose and use application number 97–04–C–00–ACV.

Level of proposed PFC: $3.00.

Charge effective date: March 1, 1998.

Estimated charge expiration date: June 30, 2004.

Total estimated PFC revenue: $1,782,300.

Brief description of impose and use projects at ACV: Emergency Safety Area Erosion Control, Fire Protection System Replacement, Taxiway "A" Overlay, Fire Truck Replacement, T-Hanger Taxiway Construction, Boarding Assistance Device, Property Purchase, Aircraft Rescue and Firefighting (ARFF) Building Improvements and Ramp Area Extension.

Brief description of use project at FOT: Pavement Rehabilitation of Taxiway, Runway and Aprons and Entrance Road Reconstruction and Perimeter Fencing.

Brief description of use project at 019: Airport Rehabilitation Including Reconstruction of Airport Runway, Overlay of Existing Aircraft Parking and Construction of Additional Parking Ramp.

Brief description of use project at EKA: Pavement Overlay of Runway 11–29, its Parallel Taxiway and the Main Aircraft Parking Apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd. Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt.

Issued in Hawthorne, California, on November 4, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–30494 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. 87–2, Notice. No. 5]

RIN 2130–AB20

Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed order of particular applicability.

SUMMARY: FRA is proposing to issue an order of particular applicability requiring all trains operating on the north end of the Northeast Corridor (NEC) between Boston, Massachusetts and New York, New York, to be controlled by locomotives equipped to respond to a new advanced civil speed enforcement system (ACSES) in addition to the automatic train control (ATC) system that is currently required on the NEC. The proposed order also contains performance standards for the cab signal/ATC and ACSES systems on the NEC. The order would authorize increases in certain maximum authorized train speeds and safety requirements supporting improved rail service.

DATES: Written comments must be received by January 20, 1998. Comments received after the comment period has closed will be considered to the extent possible without incurring additional delay. A request for a public hearing must be received by December 22, 1997.

ADDRESSES: Written comments should be submitted to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: W.E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C., 20590 (telephone (202) 632–3353), or Patricia V. Sun, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone (202) 632–3183).

SUPPLEMENTARY INFORMATION:

Statutory Authority

FRA has both discrete and plenary legal authority to require that all trains operating on the NEC be equipped with automatic train control devices. FRA has broad legal authority to "prescribe regulations, and issue orders for every area of railroad safety * * *." 49 U.S.C. 20103. Section 20502 of Title 49, United States Code specifically provides that "[w]hen the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install * * * a signal system that complies with the requirements of the Secretary." As originally enacted and prior to formal codification, this provision referred to "automatic train stop, train control, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation * * *." This authority has been previously invoked to require the installation of signal systems on 49 specific railroads and to require all railroads desiring to operate at high speeds to install signal systems of varying degrees of sophistication consonant with those higher speeds.

Background—Development of the NEC

The National Railroad Passenger Corporation (Amtrak) provides service over the NEC from Washington, D.C., to Boston, Massachusetts. Amtrak owns or dispatches most of the NEC, which it shares with several commuter authorities and freight railroads. Maximum track speeds on certain segments of the NEC south of New York City (the "South End") are limited to 125 miles per hour (mph) for Metroliner equipment. Current speeds north of New York City (the "North End") range up to 110 mph.

Amtrak is currently undertaking a major improvement project on the NEC, with particular emphasis on completion of electrification, installation of concrete ties and high-speed turnouts, elimination of some remaining highway-rail crossings, and other modifications concentrated between New Haven, Connecticut, and Boston. These improvements are designed to facilitate service utilizing high-speed trainsets (HST's) at speeds up to 150 (mph). Similar service would also be implemented on the south end of the NEC, with the initial increase in maximum speed expected to be from 125 mph to 135 mph. During 1999, Amtrak will begin taking delivery of HST's expected to qualify for operation through curves at higher levels of

unbalance (and thus higher speeds) than conventional trains.

Increases in operating speeds would be accomplished during a period of continued traffic growth. Commuter and intercity trains are expected to increase in number over the next 20 years. Local freight traffic is expected to increase on the North End, and recent proposals for the sale of Consolidated Rail Corporation have given rise to the possibility that freight operations on the South End, particularly in Maryland, might increase.

In its planning for implementation of high-speed service between New Haven and Boston, FRA recognized that a more secure train control system would be required to address the increased potential for collisions associated with increased traffic density. As planning for South End service growth matures, similar conclusions are likely. Although this proposed order does not address territory owned and dispatched by the MTA Metro-North Railroad between New Rochelle, New York, and New Haven similar concerns may arise in that territory as intercity service increases.

FRA is concerned that planning for high-speed service not occur in isolation from measures that can reasonably address increased traffic densities. Future increases in traffic is one factor that will drive future innovative technology.

Proposed Signal and Train Control Enhancements

Providing signalization for high-speed intercity service will require implementation of an enhanced cab signal/speed control system. The new system must allow for higher train speeds while providing sufficient gradations of intermediate speeds to allow efficient movement of other scheduled trains operating in the conventional speed range. Reasonable interoperability of existing and new on-board equipment is also desirable to provide for the continued use of existing on-board equipment which will be used only at conventional speeds.

Amtrak presently uses a four-aspect continuous cab signal/speed control system. Amtrak proposes to replace this system with a new nine-aspect continuous cab signal/speed control, referred to in this order as "cab signal/ATC," and an intermittent transponder civil speed enforcement system providing for train operations of up to 150 mph; intermediate speeds of 125, 100, 80, 60, 45, and 30 mph; and a positive stop feature. Amtrak calls the new transponder-based portion of this system, which would provide positive stop and civil speed enforcement capability, the "Advanced Civil Speed Enforcement System" (ACSES).

9-Aspect Cab Signal System

The cab signal/ATC portion of the new system will employ two carrier frequencies, 100 Hz, compatible with existing equipment, and 250 Hz. Both frequencies will be coded at standard rates of 75, 120, 180, and 270 cycles per minute. Upgraded equipment will be able to take advantage of the 150 mph code rate for maximum authorized speed, the 80 mph code rate for high speed diverging moves, and separate 45/40 and 30 mph speed commands for limited and medium speed turnouts.

Although existing four-aspect equipment will not be able to take advantage of these additional features, it can continue to operate as it does today. Instead of diverging through a high speed turnout at 80 mph, this equipment will diverge at 45 mph (passenger trains) or 40 mph (freight). In addition to the conventional diesel-electric and straight electric trains currently traveling on the NEC, FRA anticipates that new HST's will be used to minimize the run time between Boston, New York, and Washington. The first stage of the installation of the 9-aspect system involves conventional electronic coded track circuits. The next stage involves the conversion of these electronic track circuits for use in electrified territory. No civil speed restrictions will be reflected in this cab signal/ATC system. There will be no positive stop aspect or indication associated with the cab signal/ATC system other than a stop signal displayed at home signal locations. The cab signal/ATC system provides control based on track and route conditions ahead. It will operate as a stand alone system with an interface to the brake valve to enforce speed control.

ACSES

In contrast to the modified cab signal system, the ACSES will provide new safety functions that—with limited exceptions—are not currently provided. For purposes of civil speed control, permanent wayside transponders would be placed in sets (normally two to a set) at convenient, accessible locations in the center of the track approaching speed restriction zones. The transponders would be passive devices requiring no energy source other than that transmitted from a passing train. Each permanent transponder set would contain encoded information about speed restrictions ahead, including: (i) The distance to the beginning of the speed restriction; (ii) the target speed; (iii) the type of speed restriction; (iv) the average grade between the location where the speed reduction must begin and the location where the reduced speed must be reached; (v) the distance to the next permanent transponder set location; and (vi) necessary sync and check bytes to allow for message verification. Since the number of discrete codes available is large, it would be possible to provide speed and distance information for more than one speed restriction at a time.

The two transponders in a set are used to determine which message the train should accept, determined by the direction of the train as follows: the train would receive the appropriate message from the order in which the transponders in the set are read, e.g., if "A" is encountered first, the message for movement in the direction from "A" to "B" would be received; if "B" is encountered first, the message for the opposite direction, from "B" to "A," will be received.

At distant signals prior to interlocking home signals and control points in high-speed territory, dynamic transponders would be provided. These transponders would communicate the status of the home signal providing for positive stop enforcement.

Each locomotive, power car, and non-powered control car would be equipped with a transmitter/receiver, an antenna mounted under the vehicle, an axle generator (to measure speed and distance traveled), an on-board computer, and an aspect display unit. The vehicle would continuously transmit a signal which, when received by a wayside transponder, would cause the transponder to transmit back its encoded message. The on-board equipment would then decode this message and the on-board computer would calculate the braking distance based on the present speed of the train, the information received from the transponder set, and the standard Amtrak reduction braking curves with a 12.5% safety factor compensated for grade together with an 8-second reaction time. When the train reaches the calculated distance from the speed restriction, an audible alarm would sound and the new speed would be digitally displayed in the cab of the vehicle. The engineer must acknowledge the alarm. If the train is above the speed required by the profile generator inside the on-board computer, the engineer would be required to bring the train down to the required speed. Failure to do so would result in an automatic penalty application of the brakes which can only be released when the train is below the required speed.

The on-board computer would be programmed to calculate speed and braking distance based on the type of equipment it is mounted on. A high performance train, such as a tilt body train, would be allowed to run at a higher speed around a curve than conventional passenger equipment if consistent with allowed unbalance. A safe default speed would be provided in the railroad operating rules in the case of tilt body equipment failure or ACSES failure.

Temporary speed restrictions would be entered into the civil speed enforcement on-board computer at the beginning of the run. Normally the speed restrictions would be entered by a data radio located at strategic entrances and locations along the NEC. In the event that the data radio is inoperative, the engineer would be able to enter the information from the paper Form D he or she receives that lists all temporary speed restrictions.

In the fully deployed system, data radio transmitters would be provided at all interlockings in equipped territory, permitting updating of temporary restrictions and verification that on-board information is complete. Crews would continue to receive paper Form D's, and temporary speed boards would be provided. An alternative approach to enforcement of temporary restrictions has also been posited by Amtrak. Under this approach, portable speed restriction transponder sets would be utilized to enforce temporary speed restrictions. Temporary transponder sets would be placed at braking distance for the worst case trains. All trains operating at maximum authorized speed that encounter a temporary transponder set would immediately begin to reduce to the speed called for on the transponder so distance to go, ruling grade, or distance to the next transponder information will not be necessary. When a temporary transponder set is encountered, it would not reset the "next transponder location window" information in the on-board computer, and the on-board equipment would continue to look for the next permanent transponder set. All permanent transponder sets are "linked" in that each set identifies the location of the next set in the chain, but temporary transponders are not part of this linkage.

For the immediate future, only some Amtrak power units will respond to all of the new frequencies of the cab signal/ATC system. Those units would receive a maximum 125 mph speed indication where the signal system permits. Recently, Amtrak has indicated that some changes to on-board equipment would be required for other users where Amtrak introduces the high-speed cab signal/ATC array (in particular, use of the 270 pulses per minute at both 100 and 250 Hz as a new 100 mph code and use of 270 pulses per minute at 100 Hz as a code allowing movement over #26.5 turnouts at 60 mph). Although the changes in the cab signal code rates and carrier frequencies form an important backdrop for this proceeding, no approval for these changes is required or implied in this proposed order. At the same time, FRA is conscious that existing requirements for cab signal/ATC are implicated in Amtrak's migration strategy; accordingly, FRA holds open the possibility of resolving any necessary issues in the final order should it become apparent that they are so interrelated as to defy separate resolution. Further, to the extent the proposed changes in code rates and associated arrangements may otherwise be considered material modifications subject to approval under 49 CFR Part 235, FRA proposes to resolve any related issues in this proceeding. (See 49 CFR 235.7(c)(1).)

Improvements that Amtrak would gain with the new systems are:

—Train speeds of up to 150 mph;
—A high speed diverging aspect (80 mph);
—The efficient handling of both high speed and conventional trains;
—New intermediate speeds between 45 mph and 150 mph;
—The capability for headway improvement in congested commuter areas; and
—Practical staging from present wayside and on-board equipment.

Commuter and freight railroads would obviously benefit from enhanced safety of Amtrak operations, given the common operating environment. Amtrak's implementation of the 9-aspect cab signal system would provide increased flexibility to schedule high speed intercity service in a way that does not conflict with commuter operations. In addition, as the ACSES is implemented on commuter and freight trains, the safety of those operations would be enhanced, ensuring that those trains do not pass absolute stop signals or operate at excessive speed approaching stations or bridges. To the extent equipment design permits, commuter operators would also be able to take advantage of higher speeds on curves without diminished safety margins if flexibility for operation at higher cant deficiencies contained in FRA's proposed revisions to its Track Safety Standards in 49 CFR Part 213 (62 FR 31638; July 3, 1997) is adopted in the final rule.

Implementation

In order to obtain the maximum benefit from the positive stop and civil speed enforcement system prior to its installation on the entire NEC, Amtrak has developed a strategy to phase-in installation. The initial installations would protect entry to and operations along the high speed territory. During the initial phase, the transponders would not be installed on non-high speed tracks where flanking protection protects against possible encroachment into the adjacent high speed tracks. After all installations are in place on high speed tracks and on adjacent tracks where flanking protection does not exist, the transponder system would be extended to the balance of the NEC. This phased-in installation would also allow users of the NEC to defer installation of the ACSES system on some of their rolling stock while they obtain the necessary internal or external financing.

A specific application of this interim installation staging strategy being considered between New York and Washington, D.C. is to operate the new HST's up to 135 mph in specific areas where Metroliners currently operate at 125 mph and where signal spacing, catenary and track structure are adequate for 135 mph operation of HST's. For example, 135 mph operation is possible on Tracks 2 and 3 between "County" Interlocking (MP 32.8, west of New Brunswick, New Jersey) and MP 54.0 east of "Ham" Interlocking east of Trenton, New Jersey. Consideration is being given to initially installing the "ACSES" transponder based civil speed and positive stop enforcement system only on Tracks 2 and 3 between "County" (MP 32.8) and "Ham" (MP 55.7), depending on flanking protection at "Midway" (MP 41.3) to divert any possible stop signal "overruns" away from the path of an HST operating over 125 mph on Track 2 or 3.

In addition to the use of flanking and phased installation, freight trains that are not equipped with ACSES will be allowed to operate on the NEC at off-peak times when no high speed passenger trains are operating in the area. These operations would be within windows that have been verified and strictly adhered to. This exception would be created to allow the smaller entities to continue to operate prior to the equipping of all their equipment.

This strategy would allow Amtrak to take advantage of some of the new HST's capability before the ACSES system is fully installed and before all other vehicles can be equipped. These initial installations would also give

operating personnel some solid experience with the new system before it is extended throughout the entire NEC.

Other areas being considered for 135 mph operation with initial ACSES installation in this same manner are "Morris" (MP 58.4) to MP 74.0 east of "Holmes" (MP 77.2), "Ragan" (MP 29.9) to "Bacon" (MP 51.0) with No. 3 track only extended on through "Bacon" to MP 56.7 north of "Prince" (MP 57.3), and "Grove" (MP 112.6) to "Landover" (MP 128.8). Taken together as an initial installation in the New York to Washington portion of the NEC, 171 track miles of ACSES could provide up to 80 route miles of 135 mph operation on the 225 mile run. This strategy would provide initial valuable operating benefits and experience without sacrificing any of the higher level of safety required for trains operating over 125 mph, and without (initially) equipping any vehicles other than those trains operating over 125 mph.

Between New York City and Washington, D.C., Amtrak proposes for the present to install the ACSES system only in territory where train speeds will exceed 125 mph. Since freight trains do not operate on the NEC at speeds over 50 mph, and none of the existing commuter equipment operating on the NEC can operate at speeds exceeding 125 mph, Amtrak does not view installation of ACSES on freight and commuter equipment operating between New York City and Washington, D.C. to be necessary during the initial phase. The installation of ACSES between New York and Washington, D.C. would provide transponder-based positive stop enforcement on all main tracks where speeds exceed 125 mph, and on all tracks leading to high-speed tracks where flanking protection is not provided.

Between New Haven and Boston, the ACSES would be installed on all main tracks where speeds exceed 110 mph. Ultimately, plans call for installation of this system on all main tracks along the NEC where speeds currently exceed the 60–80 mph range except for New Rochelle to New Haven, a segment controlled by the MTA Metro-North Railroad where speeds will not exceed 110 mph.

Another interim installation concerns the use of #26.5 straight-frog turnouts. These turnouts are only good for diverging moves at 60 mph. Amtrak intends to install these turnouts at limited locations where there is insufficient space to install the #32.7 turnouts needed for diverging moves at 80 mph. Using the 60 mph aspect in the 9-aspect cab signal/ATC system requires all equipment to be able to receive and decode 270 code.

To allow for the installation of these 60 mph turnouts in territory where all users have not yet upgraded to the full 9-aspect system, Amtrak proposes an interim procedure. Until all users have been equipped, Amtrak proposes that the cab signal/ATC system will display an 80 mph aspect for diverging moves over these turnouts. The ACSES passive transponder sets approaching this location and at this location would enforce a 60 mph civil speed restriction for all routes through the interlocking where the #26.5 turnout is located. An active transponder would be located at the distant signal prior to the locations where trains must begin to reduce to 60 mph. This active transponder would override the 60 mph civil speed command when the signal system logic determines that the interlocking is cleared for a non-diverging move at a higher speed than 60 mph.

This scheme requires that all vehicles equipped with the 9-aspect cab signal/ATC system also be equipped with ACSES. Existing 4-aspect cab signal/ATC systems would enforce 45 mph for passenger trains and 30 mph for freight trains. This interim arrangement would also be backed up by a site specific instruction and an appropriate reflectorized sign on the distant signal requiring 60 mph with the display of the "Cab Speed" aspect. When all vehicles operating in the area are equipped, the active transponder can be removed and the 270 code for 60 mph installed.

Under Amtrak's design, the ACSES system would be required to have a minimal database for the entire NEC which would enable a train to always know where it is within the NEC, which track it is on, what permanent speed restrictions apply, and where the next temporary speed order would need to be executed. With this capability, the ACSES system would be able to perform certain auxiliary functions required by HST's.

Regulatory Approvals Required

In general, new signal and train control systems must comply with FRA's Rules, Standards and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances (49 CFR Part 236). FRA will implement any exceptions on a case-by-case basis through the waiver process as provided by 49 CFR Part 235. Train operations in excess of 110 miles per hour must be authorized by FRA after examination of pertinent safety considerations in accordance with 49 CFR 213.9(c). Metroliner service on the NEC is conducted in accordance with such an authorization.

In addition, NEC operations are subject to special requirements of the Rail Safety Improvement Act of 1988, which mandated that all NEC trains be equipped with "automatic train control systems designed to slow or stop a train in response to external signals." Sec. 9, Public Law 100–342, implemented at 52 FR 44510 (Nov. 19, 1987), 53 FR 1433 (Jan. 19, 1988), and 53 FR 39834 (Oct. 12, 1988).

Safety Performance Standards

On May 29, 1992, Amtrak informed FRA of its intention to implement a proposed 9-aspect cab signal/speed control system supplemented with an intermittent transponder civil speed enforcement system on the NEC. On June 23, 1992, FRA notified Amtrak that the proposed system would have to comply with Part 236. FRA also suggested the following specific performance standards for the ACSES components:

1. The system must enforce permanent and temporary civil speed restrictions (e.g., track curvature, bridges, and slow orders).

2. All trains operating over the trackage of the proposed system must be equipped to respond to the continuous cab signal/speed control system and intermittent transponder civil speed enforcement system.

3. Conflicting aspects or indications may not be displayed in the locomotive cab.

4. The system must enforce the most restrictive speed at any location associated with either the civil restriction or cab signal aspect.

5. The system shall include a restricted speed command or code rate to permit the train to continue at restricted speed only if this command is received. The system shall be arranged so that if the speed command is not received the train will be brought to a stop and cannot be moved again until some type of apparatus interconnected with the train control system and controlled by the dispatcher is used. The train may then only travel at restricted speed until a valid speed command is received by the on-board train equipment.

In a September 17, 1992 letter, Amtrak responded to technical issues raised at an earlier meeting between Amtrak and FRA. Amtrak agreed with performance standards 1, 3, and 4, but had reservations concerning performance standard 2 because of the funding needed to upgrade commuter and freight corridor users' train control systems. Amtrak also questioned the need to equip certain user vehicles with a full microprocessor scanning system if the user trains did not operate at speeds in excess of 100 mph, civil speed reductions in the territory operated were relatively few, and civil speeds could be controlled by the continuous cab signal enforcement system without adversely impacting train schedules or on-time performance.

Amtrak also requested relief from performance standard 5, which requires an enforced stop at interlocking signals with an advance track configuration that would not establish high speed track fouling, where the maximum authorized speed does not exceed 45 mph through an interlocking arrangement or terminal. The system would still contain a recurring 15 second audible warning and a 20 second acknowledge requirement while operating at restricted speed.

At a meeting on September 20, 1994, the Northeast Corridor Safety Committee, a federal advisory committee chartered pursuant to the Rail Safety Enforcement and Review Act of 1992, considered the issue of an enhanced NEC train control system and agreed with draft performance specifications similar to those set forth above. The draft performance standards placed before the Committee included equipping of all movements in high-speed territory. However, the issue of increased speeds south of New York City was not discussed, since Amtrak had not proposed to increase speeds on the South End at that time. The Committee was in general agreement that the current cab signal/ATC system should be supplemented, as proposed by Amtrak, in connection with NEC improvements.

Discussion

Safety Need

Increases in train speed, in the traffic density planned for both intercity and commuter service, and in the potential for increased freight operations over a portion of the NEC territory would increase the risk of a severe accident on the NEC unless compensating measures are taken. These risks fall into four general categories requiring separate analysis, three of which are pertinent here.

The first risk is of a train-to-train collision. Although the existing cab signal/ATC system on the NEC provides a very high level of safety, some risks remain. The cab signal/ATC system currently in use on the NEC does not enforce a positive stop at signals displaying a stop aspect, nor does it require acknowledgment of the restricting aspect every 20 seconds. Instead, the engineer receives one warning that must be acknowledged when a "zero" code rate is experienced. Thus, the principal hazard is not that a train operating under a restricted speed code could strike another train. Rather, it is that a slower train could move through the control point into the path of a high-speed train. This could happen if the engineer of the train subject to the stop signal experienced an incident of micro sleep, accompanied by a conditioned response of acknowledging the warning, was distracted, or was impaired. Less likely to occur, but still possible, is a scenario where an engineer or a third party acts recklessly. This scenario must be taken seriously in light of recent acts of domestic terrorism.

Clearly, equipping only high-speed trains with on-board equipment responsive to the ACSES system is insufficient by itself to prevent collisions at key control points. Only by equipping all trains can the safe movement of high-speed trains be reasonably ensured. Amtrak's observation that positive stop capability need only be provided at locations providing access to high-speed track appears to have merit, however.

The second risk is of an overspeed derailment which may result in direct harm or harm flowing from a resulting impact with other trains or fixed objects. Currently, locations on the NEC where signal speed restrictions are higher than the overturning speed of the curve are protected by special speed control features specific to those locations. As speeds rise for both intercity and commuter trains, the number of track segments requiring special control will increase. Allowances for higher levels of unbalance (implicit in the flexibilities proposed in the July 3 Track Safety Standards Notice of Proposed Rulemaking (NPRM)) would also create potential exposure that does not currently exist. The speed control features of the ACSES will deal effectively and economically with this potential safety exposure, while providing all passenger operators on the corridor with the potential for reduced trip times.

The third risk is of an impact with track forces or their equipment. This risk is endemic to all rail operations, but increased speed drives up potential severity and reduces the warning time of a train's approach. Unlike revenue rolling stock, many pieces of maintenance-of-way equipment will not reliably shunt or activate a signal system. Further, although great care is taken to ensure that workers and their equipment are protected from train movements, human error in issuing or executing such authorities can occur.

Although the recently-published final rule for Roadway Worker Safety will help to control this risk (61 FR 65959; December 16, 1996), a train control system with the capability to provide automatic warning to the train of the presence of workers or equipment prior to visual sighting could significantly drive down the risk of harm to both roadway workers and train occupants. This is of particular concern on a high-speed railroad with very dense operations and close track centers, conditions that prevail on much of the NEC.

The ACSES system incorporates portable transponder technology that can provide a second layer of safety for roadway workers and their equipment. Further, temporary speed restrictions would be entered into the on-board ACSES computer, providing for automatic enforcement even if temporary transponders are misplaced or vandalized. These features should increase the safety of those conventional and high-speed trains that are equipped with on-board computers.

A fourth risk accentuated by higher speeds is increased severity of an accident resulting from an undetected incursion into the right of way or clearance envelope, including possible displacement or undermining of track structure. This fourth risk is not addressed in this proceeding since the Northeast Corridor Safety Committee will evaluate this issue in a separate "system safety" proceeding to be held at a later date. However, the data radio element of the ACSES system provides a possible communication path for hazard detection information (in addition to the cab signal system).

Technical Issues

In Amtrak's proposed system, the brake and propulsion interface between the ACSES and the locomotive would be similar to that utilized in conventional cab signal/ATC systems. The interface would be separate and distinct from the interface used by the cab signal/ATC system. The failure of either the cab signal/ATC system or the ACSES would not prevent the remaining functioning system from performing its intended operation and displaying the proper on-board aspect. Both the signal speed and the civil speed would be displayed with the lower of the two speeds to be enforced.

FRA questions the need or prudance of displaying both speeds and continues to gather information on this design. Comment is requested regarding the

appropriate means of displaying system information to the locomotive engineer.

The new transponder-based system would provide for enforcement of permanent civil speed restrictions (curves, bridges, etc.) and temporary speed restrictions (slow orders) in five MPH increments, as well as enforcement of stop aspects at interlocking home signals. Once the train is stopped, current plans call for the system to require the train to remain stopped for 30 seconds at which time the engineer will operate a stop override button and allow movement of the train, with the audible alarm requiring acknowledgment every 20 seconds. FRA is aware that some locomotive engineers may find repetitive acknowledgment of this feature distracting during low-speed movements through terminal areas and requests comments regarding possible alternative arrangements.

FRA discussed with Amtrak a feature under which a controlled release would be encrypted into the on-board computer at the time of departure to ensure that movement could not be made past stop aspects at home signals without a secure means of authorization. Amtrak opposed this approach, arguing that the train should remain under the control of the engineer, who may have a more complete and current understanding of considerations pertinent to the safety of the train movement. For instance, if a structure or vehicle adjacent to the wayside was on fire, it would be necessary to move the train to avoid a hazard to the passengers and crew. Nevertheless, FRA believes operation of a train where a positive stop is required should occur only after the engineer cuts out or overrides the ACSES through a mechanism located away from the engineer's console, the location and/or operation of which would require special knowledge available only to a person authorized to operate the override. Amtrak has endeavored to respond to this concern in designing the ACSES.

Text and Analysis of Proposed Orders

For purposes of clarity and convenience, the text of the proposed order is interspersed with explanations and analysis. The text of the proposed order is printed in italics. FRA reserves the right to revise and augment the proposed order upon final issuance and invites comments on all issues relevant to the subject matter of the order.

Proposed Effective Date

As discussed above, Amtrak anticipates beginning receipt of the new HST's in 1999. FRA proposes to make this Order effective on October 1, 1999, to enable Amtrak to rapidly utilize the new system's improvements while allowing other users of the NEC to phase-in installation.

Scope and Applicability

This order supplements existing regulations at 49 CFR Part 236 and existing orders for automatic train control on the Northeast Corridor (NEC). This order applies in territory where Amtrak has installed wayside elements of the Advanced Civil Speed Enforcement System (ACSES), permitting high-speed operations under the conditions set forth below. All railroads operating on high-speed tracks in such equipped territory, or on tracks providing access to such high-speed tracks, shall be subject to this order, including the following entities operating or contracting for the operation of rail service—

Connecticut Department of Transportation;
Consolidated Rail Corporation;
Massachusetts Bay Transportation Authority;
National Railroad Passenger Corporation (Amtrak); and
Providence and Worcester Railroad Co.

Explanation and Analysis. Amtrak has undertaken the planning and installation of the ACSES as part of its capital program for intercity service on the NEC, consistent with legislation providing for improved rail service in the region. The proposed order would require all carriers operating in ACSES territory to equip their controlling locomotives with operative on-board equipment. This equipment would consist of a transponder scanner, an on-board computer, a display unit for the locomotive engineer, and appropriate interface with the cab signal/train control apparatus.

The exception would be trackage on the South End where access is barred to non-ACSES-equipped trainsets and where increases in the maximum speed will be from 125 mph to 135 mph. In this instance, only Amtrak trains would be required to be equipped.

FRA views the distinctions between required signal and train control features on the north and south portions of the NEC to be temporary. The proposed order would allow increases in train speeds without any reduction in safety. Over time, the ACSES system should be completed and used by all operators throughout the NEC for routes where speeds exceed 110 mph on any segment, enhancing safety throughout the NEC. In fact, New Jersey Transit Rail Operations (NJT) has indicated its intention to equip its controlling locomotives with an Advanced Speed Enforcement System (ASES), deriving safety advantages both on the NEC and on certain of its lines where the ASES system can be used as an intermittent train stop system. As Amtrak, North End operators and NJT demonstrate the benefits and reliability of the system, progress toward universal upgrading of the NEC signal and train control system will be fostered. At a later date, FRA may amend this order to require more extensive use of this new safety technology. This will be determined by increases in traffic and types of equipment used on the NEC.

Definitions. For Purposes of This Order—

"High-speed track" means (1) a track on the main line of the Northeast Corridor (NEC) between New Haven, Connecticut, and Boston, Massachusetts ("North End") where the maximum authorized train speed for any class of train is in excess of 110 miles per hour or (2) a track on the main line of NEC between Washington, D.C., and New York City, New York ("South End"), where the authorized train speed for any class of train exceeds 125 mph.

Explanation and Analysis. Operations on the North End are conducted on two main tracks, while additional main tracks are available on portions of the South End. Operations are already highly dense on the North End, and projections for the future indicate significant increases in traffic, both freight and passenger. Track curvature on the North End exceeds the average curvature on the South End, resulting in greater potential concern for compliance with civil speed restrictions. Accordingly, FRA proposes to distinguish between the two operations for purposes of determining applicability of new performance requirements.

"Signal and train control system" refers to the automatic cab signal/automatic train control system (cab signal/ATC) in effect on the NEC at the date of issuance of this order, as supplemented by "ACSES," together with such modifications as Amtrak shall make consistent with this order.

Performance Standards

The following performance standards and special requirements apply:

1. Except as provided in paragraph 10(b), the signal and train control system shall enforce both permanent and temporary civil speed restrictions (e.g., track curvature, bridges, and slow orders) on all high-speed tracks and immediately adjacent tracks.

Explanation and analysis. The ACSES system can prevent derailments and collisions with fixed structures or on-track personnel or equipment that might result from overspeed operation. Accordingly, permanent civil speed enforcement and temporary speed enforcement are proposed.

Existing features of the cab signal/ATC system on the NEC provide intermittent civil speed enforcement at key locations where signal speeds exceed overturning speeds or where station operations require special protection. However, as speeds are increased, civil speed enforcement will become an issue at additional locations. The ACSES would permit higher operating speeds while maintaining a high level of safety.

The existing signal system would not enforce temporary speed restrictions, such as slow orders over defective track or protections for roadway workers. By using temporarily placed transponders, and by entering restrictions into the on-board computer by milepost, the ACSES could provide excellent protection for train movements and workers and equipment on or adjacent to live tracks. All trains equipped with on-board ACSES units would benefit from this feature.

The proposed order suggests that this requirement should be extended to tracks adjacent to high-speed tracks. The effective operating envelope for high-speed tracks includes immediately adjacent tracks. Derailments on those tracks could endanger high-speed operations.

2. Except as provided in paragraph 10(b), all trains operating on high-speed track, immediately adjacent track, or track providing access to high-speed track shall be equipped to respond to the continuous cab signal/speed control system and intermittent transponder civil speed enforcement/positive stop system. Freight trains that are not equipped with ACSES will be allowed to operate on the NEC at off-peak times when no high-speed passenger trains are operating in the area.

Explanation and analysis. As noted above, the ACSES system could provide potential benefits for all users of the NEC. However, this proposed order would only require equipping trains on the North End, where trains are operated on high-speed tracks, or on immediately adjacent tracks providing access to high-speed tracks.

The benefits of equipping high-speed trains are obvious. The benefits of equipping conventional speed trains that operate on high-speed tracks include enforcement of civil speed restrictions, temporary speed restrictions, and positive stop features. The benefits of equipping conventional speed trains that operate on immediately adjacent tracks providing access to high-speed tracks may derive primarily from enforcement of positive stop features. If a train is prevented from inappropriately proceeding through a junction and onto a high-speed track, the safety of the subject train and the safety of the oncoming high-speed train are equally assured. As a practical matter, FRA believes that few trains required to be equipped under this proposal would not make use of high-speed tracks. Again, comment is specifically requested regarding whether any circumstances exist under which trains would be required to be equipped exclusively because they operate on adjacent tracks or on tracks providing access to high-speed tracks. (See, also, paragraph 10(b), below.)

3. No conflicting aspects or indications shall be displayed in the locomotive cab.

Explanation and analysis. The proposed order would require that consistent information be displayed to the locomotive engineer. Amtrak plans to implement this principle, while providing information from both the cab signal/ATC system and the ACSES, by displaying both of the resulting maximum speeds. The controlling (most restrictive) limit would be displayed at twice the brightness of the other speed. The cab signal aspect would also be displayed.

FRA believes that Amtrak's proposed display (details of which are contained in the program description placed in the docket of this proposed order) is appropriate for a hybrid system such as this. However, it should be noted that the amount of apparently conflicting information provided to the locomotive engineer may be substantial. In particular, the engineer (who may operate non-equipped trains on certain days and equipped trains on other days) will have to contend with 9-aspect cab signal information that differs from the wayside signal and potentially the wayside or overhead speed boards, ACSES information, and at least two systems requiring acknowledgment of audible warnings (the alerting device and the combined cab signal/ATC/ACSES unit). Is this information excessive? Should a simpler display of the most safety critical information be provided as the default condition?

4. The system must enforce the most restrictive speed at any location associated with either the civil/temporary restriction or cab signal aspect.

Explanation and analysis. This requirement states the obvious requirement that the most restrictive of the limitations indicated by the cab signal/ATC or ACSES system must be enforced.

5. At interlocking home signals and control points on high-speed tracks or protecting switches providing access to high-speed tracks, the signal and train control system shall enforce a positive stop short of the signal or fouling point when the signal displays an absolute stop. The system shall function such that the train will be brought to a complete stop and cannot be moved again until the first of the following events shall occur: (1) The signal displays a more permissive aspect; or (2) in the event of a system malfunction, or system penalty, at least 30 seconds shall have elapsed since the train came to a complete stop, the engineer has received verbal authority to proceed from the dispatcher, and the engineer has activated an override or reset device that is located where it cannot be activated from the engineer's accustomed position in the cab. The train may then only travel at restricted speed until a valid speed command is received by the on-board train equipment.

Explanation and analysis. Providing for normal and extraordinary movements past a signal that previously required an absolute stop using a hybrid cab signal/ATC/ACSES arrangement has proven to be one of the most challenging issues in the design of the new system. As originally conceived by Amtrak, in the normal case ACSES would enforce a positive stop by use of an active transponder near the distant signal that would read the cab signal code ("0"), recognize that the home signal is capable of displaying an absolute stop, and enforce a positive stop even if the home signal actually displayed a restricting indication (permitting movement through the location at up to 15 mph), unless a greater than zero code rate was detected upon reaching the "cut section" in which the home signal was located. This arrangement appeared to have several disadvantages. First, stops would be required where presently none are required. This could be a significant issue in freight

operations, since enforcement of unnecessary stop commands could in some cases result in unacceptable in-train forces. Second, movements past a stop signal that became restricting after the stop would have to be made by overriding the positive stop. Third, these arrangements would inevitably lead to demands for release of the positive stop from the engineer's position in the cab, potentially defeating the concept intended to be implemented by FRA when conversations with Amtrak were initiated on this subject in 1992.

To avoid distracting or fatiguing the engineer, and to ensure that the override function is not regarded as a feature to be casually employed, it appears to be more appropriate to restrict the use of the reset or override button to that of instances of system failures, on-board or wayside. Efficiency also suggests permitting the train to proceed when a train receives an indication more favorable than absolute stop (a consideration of interest particularly to those commuter authorities that would be subject to the proposed order). Accordingly, FRA proposed that the train control system function in greater harmony with the wayside signals. This could be accomplished in a number of ways.

First, it should be possible to place one or more additional transponders that derive information directly from the circuits controlling the home signal. Amtrak indicates that this approach could be complicated by the varying stopping distances of trains using the NEC, but in principle the approach seems feasible. If this approach were to be employed, these transponders should be placed to control speed approaching the signal while providing information concerning more favorable aspects as a means of releasing the absolute stop automatically. Second, it should be possible to use a steady 250 Hz to release the stop when the signal upgrades to restricting. This would require modifications to the signal system at each home signal and control point. Third, data radio could be used on the wayside to provide precise signal status (notwithstanding the zero code read by the cab signal system) when the signal is at "Stop and Proceed," or "Restricting." Any of these options would allow the movement past a restricting signal without the use of a reset or override button by the engineer.

Amtrak agreed, at a June 4, 1997 meeting, to accelerate the development of the ACSES data radio feature to reduce the need to operate the "Stop Override" button to only those instances in which some sort of system failure has occurred and the train must be moved. The data radio feature located at the interlocking and known as a Mobile Communication Package (MCP) would broadcast a message to the approaching train that is track specific, direction specific, and location specific that would automatically release the stop-override feature without the engineer having to operate the "Stop Override" button when the home signal displays "Stop and Proceed." The message would only be transmitted and only be effective when the train is between the distant signal and the home signal of the interlocking. If the signal displays "Restricting," the MCP data radio would broadcast a similar message to the approaching train that would relieve the train from actually having to stop. While the additional time frame and cost to develop the data radio encoder and to install these encoders along with the MCP radios at all interlockings in ACSES territory is not yet known, it is clear that this is the only method, among those that have been proposed, with long-range potential to truly enhance the future operation of ACSES on the Northeast Corridor. As the additional time frame to develop the data radio/encoder override release feature is not yet known, and as the schedule to begin high speed rail operations in 1999 is very tight, FRA recognizes that some relief concerning operation of the "Stop Override" button may be required, particularly should Amtrak seek approval for limited operations to 135 mph on the south end during 1998. FRA feels that a clear plan for migration with timetables should be submitted prior to the granting of increased speeds.

6. Failure modes of the system will allow for train movements at reduced speeds, as follows:

a. Failure of Cab Signal/ATC System: In the event of failure of the cab signal/ATC system on board a train, the cab signal/ATC system will be cut out; however, the ACSES system shall remain operative and enforce the 79 mph speed limit. If intermediate wayside signals are provided, the train will continue to operate at speeds not exceeding 79 mph subject to indications of the wayside signal system. In territory without fixed automatic block signals, trains will run on special "Clear to Next Interlocking" signals. When failure occurs after a train has entered such a block, it will proceed at restricted speed to the next interlocking and may not pass the home signal, regardless of the aspect displayed, until the flashing lunar "Clear to Next Interlocking" signal is displayed. The train may then pass the signal and proceed at 79 mph. The speed limit shall be enforced by the Advanced Civil Speed Enforcement System (ACSES). At the next distant signal the train must begin braking, preparing to stop at the next home signal unless a flashing lunar signal with the letter "N" is displayed indicating that the "Clear to Next Interlocking" signal is already displayed ahead.

Explanation and analysis. The cab signal/ATC portion of the system would be cut out under operating rules which meet § 236.567 requirements. The operation of trains when the cab signal/ATC portion of the system was failed and/or cut out would be enhanced by the ACSES still being in operation. The ACSES central processing unit (CPU) would receive a message from the cab signal/ATC CPU through a vital link that the cab signal/ATC is cut in and not failed. If the ACSES does not receive this message, a speed of 79 mph is locked in and the display is dark, other than the 79 mph displayed in the civil speed portion, which is enforced. Temporary and permanent speed restrictions and positive stop at home signal locations would continue to be enforced by the ACSES system.

b. ACSES failure. If the on-board ACSES fails en route, it must be cut out in a similar manner to the cab signal/ATC system. The engineer will be required to notify the dispatcher that the civil speed/positive stop enforcement system has been cut out. When given permission to proceed, the train must not exceed 125 mph (South End) or 110 mph (North End). All trains with a cut out ACSES system will operate at conventional train speeds.

Explanation and analysis. After considering how to proceed when the ACSES must be cut out on a train, the proposed order specifies minimal requirements, which would require that trains fall back to existing maximum speeds in the territories. However, this approach cannot provide positive stop capability or compensate for higher curving speeds that may be allowed using tilt HST's. All trains with a cut out ACSES would operate at conventional train speeds whether they are tilt train equipment or conventional equipment. The vital link between CPUs mentioned in 6.(a) above would inform the signal CPU that the civil speed CPU was cut out or failed. FRA inquired whether a default speed limit could be "enforced" through the signal speed enforcement system when the ACSES is failed and/or cut out, and Amtrak responded that this could be accomplished. The maximum speed to be enforced by the cab signal system if ACSES is cut out is 125 mph. This places a premium on compliance with operating rules developed specifically for this purpose (copies of which are available in the public docket). Comment is requested regarding appropriate measures, recognizing that electronic failures and damage to scanners from refuse on the track structure will result in ACSES failures.

c. Cab signals/ATC & ACSES failure. If the cab signal/ATC system and the ACSES both fail en route, the systems shall be cut out and the train shall proceed as provided in 49 CFR § 236.567.

Explanation and analysis. When the signal and train control system fails and/or is cut out en route, § 236.567 sets forth the procedures and restrictions that shall be followed.

Where an automatic train stop, train control, or cab signal device fails and/or is cut out enroute, train may proceed at restricted speed or if an automatic block signal system is in operation according to signal indication but not to exceed medium speed, to the next available point of communication where report must be made to a designated officer. Where no automatic block signal system is in use train shall be permitted to proceed at restricted speed or where automatic block signal system is in operation according to signal indication but not to exceed medium speed to a point where absolute block can be established. Where an absolute block is established in advance of the train on which the device is inoperative train may proceed at not to exceed 79 miles per hour.

These procedures are used with present train control systems, both on the NEC and throughout the Nation and have proven to be a reliable and safe method when the signal and train control system fails and/or is cut out.

d. Wayside signal system failure. If the wayside signal system fails, train operation will be at restricted speed to a point where absolute block can be established in advance of the train. Where absolute block is established in advance of the train, the train may proceed at speeds not to exceed 79 mph.

Explanation and analysis. The carrier's operating rules shall effect wayside signal system failure the ACSES would still be functioning, giving trains an added portion of safety, but it would still be necessary to establish an absolute block and proceed not to exceed 79 mph. The ACSES would enforce the 79 mph speed, as well as civil and temporary speed restrictions and positive stops.

e. Missing transponder. If a transponder is not detected where the equipment expected to find the next transponder, the train must not exceed 125 mph (North End) or 110 mph (South End) until the next valid transponder is encountered. The 125/110 mph speed restriction will be enforced by the system and "—" will be displayed to indicate that the civil speed is unknown. The audible alarm for civil speeds will sound and must be acknowledged. Speed restrictions previously entered into the system, whether temporary or permanent, will be displayed at the proper time and continue to be enforced. If the missing transponder is a positive stop enforcement transponder at the distant signal to an interlocking, then the system will treat the missing transponder as if it were present and a stop will be required. Since the previous transponder will have transmitted the distance to the stop location, the stop shall be enforced unless a cab signal is received that indicates the interlocking signal is displaying an aspect more favorable than "Stop," "Stop & Proceed," and "Restricting." The 125/110 mph speed restriction will also be enforced regardless of whether the cab signal aspect is being received.

Explanation and analysis. Permanent transponders would be programmed with information that includes distance to the next transponder. Wheel rotations would be logged to determine train position between transponders. If a transponder is missing (or is not successfully read), speeds would be slowed to 125 or 110 mph, depending upon the territory involved, until the next valid transponder is detected.

8. When it becomes necessary to cut out the cab signal/ATC system, the ACSES, or both, these systems shall be considered inoperative until the engine has been repaired, tested and found to be functioning properly. Repairs shall be made before dispatching the unit on any subsequent trip.

9. Other requirements applicable to the system are as follows:

a. Aspects in the cab shall have only one indication and one name and will be shown in such a way as to be understood by the engine crew. These aspects shall be shown by lights and/or illuminated letters or numbers.

b. Entrances to the main line can be protected by electrically locked derails if the speed limit is 15 mph or less. A transponder set shall cut in the ACSES prior to movement through the derail and onto the main line. If the speed limit is greater than 15 mph, a positive stop will be required. At entrances from a signaled track, the ACSES shall be cut in prior to the distant signal and a positive stop enforced at the home signal.

c. An on-board event recorder shall record, in addition to the required functions of § 229.5(g) [of FRA's Railroad Locomotive Safety Standards (49 CFR Part 229)], the time at which each transponder is encountered, the information associated with that transponder, and each use of the positive stop override. These functions may be incorporated within the on-board computer, or as a stand alone device, but shall continue to record speeds and related cab signal/ATC data, even if ACSES has failed and/or is cut out. The event recorder shall meet all requirements of § 229.135.

Explanation and analysis. FRA has determined that event recorders enhance railroad safety. Whether they are used to aid accident analysis, to monitor locomotive engineers' performance, or to monitor equipment performance, event recorders provide data that are free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. There has been no question of the cab signal/ATC events being recorded; what FRA is ensuring is that the ACSES portion of the system is recorded and made available as well.

10. The following maximum speeds apply on the NEC in territory subject to this order:

a. In ACSES territory where all trains operating on high-speed tracks, adjacent tracks, and tracks providing access to high-speed tracks are equipped with cab signal/ATC and ACSES, qualified and ACSES-equipped trainsets otherwise so authorized may operate at maximum speeds not exceeding 150 mph. The maximum speed over any highway-rail crossing shall not exceed 80 mph.

b. In ACSES territory between Washington, D.C., and New York City, New York, where access to any high-speed track is barred by switches locked in the normal position and a parallel route to the high-speed track is provided, at crossovers from adjacent tracks, and where no junctions providing direct access exist, qualified and ACSES-equipped trainsets otherwise so authorized may operate to a maximum speed not exceeding 135 mph on such track; and provisions of this order requiring other tracks and trains to be equipped with the ACSES do not apply.

Explanation and analysis. Currently maximum speeds for trains on the general rail system are limited to 110 miles per hour. Under a waiver, Amtrak operates Metroliner service between New York and Washington at speeds up to 125 miles per hour. This proposed order would allow Amtrak to increase its speeds on the South End of the NEC to 135 miles per hour by installing the ACSES transponders on the wayside and equipping new high-speed trainsets with on-board scanners and computers. Other users of Amtrak's South End high-speed tracks would not be required to be equipped for the present, but would benefit from the higher level of safety associated with Amtrak operations. As noted above, other users have already begun to recognize the value of the ACSES technology, and eventual equipping of all NEC users is expected (but would not be required under this order).

On the North End, maximum speeds top out at 110 mph. No waiver exists for high-speed service. This order would authorize operation of qualified trainsets at up to 150 miles per hour in territory where Amtrak has installed ACSES on the wayside, provided Amtrak and other users are equipped. This authority would apply equally to the North and South Ends provided the specified conditions are met.

Speeds over highway-rail crossings would be limited to 80 mph, the maximum speed planned under the NEC program until very recently. This limit is lower than the 110 mph cap included in current guidelines for high-speed corridors (absent barrier and presence detection systems tied into the signal system). Density of NEC operations and the increased possibility that a collision with a motor vehicle might cause a secondary collision between trains operating at combined very high closing speeds suggests the need for appropriate caution. FRA reserves the right to allow higher speeds over individual highway-rail crossings after demonstration by Amtrak that appropriate safety measures have been implemented.

The phrase "otherwise authorized," as applied to trains, refers to equipment qualified for higher speeds in track/vehicle interaction limits proposed in FRA's Track Safety Standards NPRM. Metroliner equipment is currently authorized to operate up to 125 miles per hour. FRA anticipates that the new American Flyer trainsets will be qualified to operate up to 150 miles per hour. It is possible that other equipment presently operating on the NEC might be qualified to operate at higher than conventional speeds under the procedures of the proposed Track Safety Standards revisions.

At present, specific regulatory action applicable only to the NEC includes conditional waiver authority for operation of Metroliner equipment to 125 miles per hour and requirements for use of the cab signal/ATC system by all operators. FRA reserves the right to merge some or all of these provisions in the final order. Comment is requested regarding the appropriateness of doing so.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this proposed order would not have a significant economic impact on a substantial number of small entities. As explained below in the Regulatory Impact Analysis, the proposed order would limit its hours of application to minimize impact on the only small entity affected, the Providence and Worcester Railroad.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, the Office of Management and Budget (OMB) does not need to approve information collection requirements that affect nine or fewer respondents. FRA has determined that information collection requirements in this proposed order would affect only five railroads, and that therefore OMB approval is not required.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is believed that the rule will be determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FRA has analyzed the benefits and costs of upgrading the signal systems in the NEC to the ACSES system. The NEC has many unique aspects, and many of the economic issues arising in analysis of this proposal are extremely complicated. It appears that there would be significant safety costs were FRA not to order significant upgrades to the signal systems in the NEC.

Amtrak and NJT have sound business reasons for adopting the proposed transponder-based system, but safety benefits will also accrue in large measure to society. FRA estimates that societal direct safety benefits will be more than $200,000,000. The system will cost approximately $95,000,000 (an amount which will accrue over several years, approximately $36,000,000 of which will be imposed directly by this order, implementing the first phase) so the net benefit will be approximately $105,000,000. There will also be benefits beyond the direct safety benefits, such as the ability to improve traffic flow and to divert traffic from modes with greater societal costs. There will also be benefits from the improvement and demonstration of advanced signal technology.

This proposed order would facilitate the orderly introduction of enhanced passenger rail service on the NEC, consistent with Congress' statutory direction. The order would recognize Amtrak's investment in development and deployment of advanced technology that will enforce civil speed restrictions and positive stops at key locations along the railroad. Amtrak is also making significant investments in a new 9-aspect signal system and improvements in track and structures that will benefit all NEC users through more efficient operations and improved safety.

The proposed order would require that controlling locomotives (including electrical multiple-unit vehicles and cab cars) on the NEC be equipped with on-board ACSES equipment. This burden would fall on commuter railroads, freight railroads, and Amtrak, in proportion to the number of trains those entities operate on the NEC. A risk assessment study conducted for Amtrak and discussed with other NEC interests in the Northeast Corridor Safety Committee illustrated the importance of a more secure train control system in avoiding any increase in system risk as train movements and speeds increase on the North End over the coming decades.

One on-board ACSES unit is expected to cost approximately $40,000. North End users exclusive of Amtrak are expected to require approximately 450 units, for a total cost of about $18,000,000. Each of these users will experience direct benefits in safety and liability avoidance. Potential benefits could result from higher average train speeds if the proposed higher levels of unbalance in the Track Safety Standards NPRM are adopted.

FRA has considered the proposed system's effect on small entities. Only one small entity, the Providence and Worcester Railroad (PW), will be affected. To minimize the impact on this small freight railroad, FRA will limit the hours of application of the proposed order to allow the PW to continue operations without equipping most of its fleet with new ACSES units.

Proceedings on This Proposed Order

FRA seeks public comment on this proposed order and related matters, including any authorization that may be required for Amtrak to implement a modified cab signal system on the NEC. FRA has placed in the docket of this proceeding copies of Amtrak's program description for the ACSES system, proposed operating rules for use in conjunction with the system, and other related information, including current Amtrak projections for operating speeds over highway-rail crossings on the North End.

No public hearing is presently planned in this proceeding. However, FRA will convene such a hearing if a request is received within 45 days from publication of this notice. FRA does intend to convene the Northeast Corridor Safety Committee following the close of the comment period to consider public comments received and provide advice for resolving remaining issues. FRA will provide notice of this meeting, which will be open to the public, and will include the minutes of the meeting in the docket of this proceeding.

Authority: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49 (f), (g), and (m).

Issued in Washington, D.C. on November 17, 1997.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 97–30505 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 35) et al.]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation; et al.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 54; Notice of acceptance of responsive applications and related filing.

SUMMARY: The Board is accepting for consideration the responsive applications filed: by New York State Electric and Gas Corporation (NYSEG) in STB Finance Docket No. 33388 (Sub-No. 35); jointly by Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I & M Rail Link, LLC, in STB Finance Docket No. 33388 (Sub-No. 36);[1] by Livonia, Avon & Lakeville Railroad Corporation (LAL) in STB Finance Docket No. 33388 (Sub-No. 39); by Wisconsin Central Ltd. (WCL) in STB Finance Docket No. 33388 (Sub-No. 59); by Bessemer and Lake Erie Railroad Company (BLE) in STB Finance Docket No. 33388 (Sub-No. 61); by Illinois Central Railroad Company (IC) in STB Finance Docket No. 33388 (Sub-No. 62); by R.J. Corman Railroad Company/Western Ohio Line (RJCW) in STB Finance Docket No. 33388 (Sub-No. 63); jointly by (i) the State of New York, acting by and through its Department of Transportation (NYDOT), and (ii) the New York City Economic Development Corporation (NYCEDC) in STB Finance Docket No. 33388 (Sub-No. 69);[2] jointly by the Belvidere & Delaware River Railway (BDRV) and the Black River & Western Railroad (BRW) in STB Finance Docket No. 33388 (Sub-No. 72); by New England Central Railroad, Inc. (NECR), in STB Finance Docket No. 33388 (Sub-No. 75); by Indiana Southern Railroad, Inc. (ISRR), in STB Finance Docket No. 33388 (Sub-No. 76); by Indiana & Ohio Railway Company (IORY) in STB Finance Docket No. 33388 (Sub-No. 77); by Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad (AA), in STB Finance Docket No. 33388 (Sub-No. 78); by Wheeling & Lake Erie Railway Company (W&LE) in STB Finance Docket No. 33388 (Sub-No. 80); and jointly by Canadian National Railway Company (CN) and Grand Trunk Western Railroad Incorporated (GTW) in STB Finance Docket No. 33388 (Sub-No. 81). The Board is also accepting for consideration the notice of exemption filed by GTW in STB Finance Docket No. 33388 (Sub-No. 83). The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) are responsive to the primary application filed June 23, 1997, in STB Finance Docket No. 33388 by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).[3] The notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) is related to the responsive application filed in STB Finance Docket No. 33388 (Sub-No. 81).[4]

DATES: The effective date of this decision is November 20, 1997. Comments regarding the responsive filings must be filed with the Board by December 15, 1997. Rebuttal in support of these responsive filings must be filed with the Board by January 14, 1998. Briefs (not to exceed 50 pages) must be

[1] Elgin, Joliet & Eastern Railway Company and Transtar, Inc. are referred to collectively as EJE. I & M Rail Link, LLC is referred to as IMRL.

[2] The responsive application filed jointly by NYDOT and NYCEDC purports to be filed both in STB Finance Docket No. 33388 (Sub-No. 69) (this being the sub-number docket reserved by NYDOT) and in STB Finance Docket No. 33388 (Sub-No. 54) (this being the sub-number docket reserved by NYCEDC). Although there are two responsive applicants there is only one responsive application, and we will treat this single application as if it had been filed in STB Finance Docket No. 33388 (Sub-No. 69) only.

[3] CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as the primary applicants.

[4] The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) and the notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) are hereinafter referred to collectively as the "responsive filings."

filed with the Board by February 23, 1998.

ADDRESSES: An original and 25 copies of all comments referring to STB Finance Docket No. 33388 (Sub-No. 35), STB Finance Docket No. 33388 (Sub-No. 36), STB Finance Docket No. 33388 (Sub-No. 39), STB Finance Docket No. 33388 (Sub-No. 59), STB Finance Docket No. 33388 (Sub-No. 61), STB Finance Docket No. 33388 (Sub-No. 62), STB Finance Docket No. 33388 (Sub-No. 63), STB Finance Docket No. 33388 (Sub-No. 69), STB Finance Docket No. 33388 (Sub-No. 72), STB Finance Docket No. 33388 (Sub-No. 75), STB Finance Docket No. 33388 (Sub-No. 76), STB Finance Docket No. 33388 (Sub-No. 77), STB Finance Docket No. 33388 (Sub-No. 78), STB Finance Docket No. 33388 (Sub-No. 80), STB Finance Docket No. 33388 (Sub-No. 81), and/or STB Finance Docket No. 33388 (Sub-No. 83) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423–0001.[3]

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, D.C. 20426; Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004–1202 (representing primary applicants CSXC and CSXT); Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, Suite 600, 888 Seventeenth Street, N.W., Washington, D.C. 20006–3939 (representing primary applicants NSC and NSR); and Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, D.C. 20036 (representing primary applicants CRR and CRC).

In addition, one copy of all comments filed in these proceedings must be served on the appropriate responsive applicant's representative: William A. Mullins, Esq., Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005–3314 (representing NYSEG); Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710 (representing EJE, IMRL, BLE, IC, and WCL); Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, D.C. 20036–6200 (representing LAL and RJCW); William L. Slover, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036–3003 (representing NYDOT); Charles A. Spitulnik, Esq., Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, D.C. 20006 (representing NYCEDC); Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, D.C. 20036 (representing BDRV and BRW); Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005 (representing NECR, ISRR, IORY, and AA); Charles H. White, Jr., Esq., Galland, Kharasch & Garfinkle, P.C., 1054 Thirty-First Street, N.W., Washington, D.C. 20007–4492 (representing W&LE); and L. John Osborn, Sonnenschein Nath & Rosenthal, 1301 K Street, N.W., Suite 600 East, Washington, D.C. 20005 (representing CN and GTW).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33388. *See* the service list attached to Decision No. 21 (served August 19, 1997), as modified in Decision No. 27 (served September 8, 1997), and as further modified in Decision No. 43 (served October 7, 1997).[4]

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In the primary application filed with the Board on June 23, 1997, primary applicants CSXC, CSXT, NSC, NSR, CRR, and CRC seek approval and authorization under 49 U.S.C. 11321–25 for: (1) The acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. In various related filings also filed June 23, 1997, the primary applicants seek related relief contingent upon approval of the primary application. In Decision No. 12, the Board accepted for consideration the primary application and the various related filings, and directed that responsive applications be filed by October 21, 1997.

Responsive Filings: Conditions Requested.

In STB Finance Docket No. 33388 (Sub-No. 35), NYSEG seeks: (1) on behalf of NSR,[7] or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Kintigh Station; specifically, from the Niagara Branch MP 19.0 (CP–21)[8] to the Tuscarora Wye, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP–69) to the connection with Somerset Railroad Corporation at Lockport Branch MP 58.8 (CP–59) (a total distance of approximately 11.2 miles);[9] or (2) on behalf of CSXT, or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Milliken, Goudey, and Greenidge plants; specifically, from Chicago Line MP 1.7 (CP–DRAW) over the Bison Running Track to Southern Tier Line MP 419.8 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to: Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2, Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to the end of line at Milliken Station MP 321.0; connections to Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning Secondary from MP 70.6 (CP–Glass) and MP 70.9 (CP–Gibson/CP–Corning) to MP 0 (CP–335), including sidings, runarounds, and passing tracks (a total distance of approximately 333.4 miles).

In STB Finance Docket No. 33388 (Sub-No. 36), EJE and IMRL seek to acquire, and thereafter to divide into two equal parts, CRC's 51% stock ownership of the Indiana Harbor Belt Railroad Company (IHB).

In STB Finance Docket No. 33388 (Sub-No. 39), LAL seeks to acquire ownership of or trackage rights on approximately 1.0 route mile of trackage constituting CRC's Genesee Junction yard in Chili, NY.

In STB Finance Docket No. 33388 (Sub-No. 59), WCL seeks to acquire from The Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSX subsidiary) a portion of B&OCT's Altenheim Subdivision, including rail line, side track, yard trackage, and associated right-of-way and appurtenances, beginning at a connection between WCL and B&OCT trackage at B&OCT MP 37.4 at Madison Street, Forest Park, IL, and extending to a point of connection with Union Pacific Railroad Company (UPRR) and Conrail's Panhandle Line in the vicinity of Rockwell Street, Chicago, IL.

In STB Finance Docket No. 33388 (Sub-No. 61), BLE seeks overhead trackage rights over: (1) CRC's Mon Line between the connection with BLE (Union Railroad Company, a BLE affiliate) at Pittsburgh (Duquesne), PA, and CRC's Shire Oaks Yard in Shire Oaks, PA (a distance of approximately 14 miles); and/or (2) CSXT's line (formerly the Pittsburgh & Lake Erie Railroad Company) between the connection with BLE (Union Railroad Company) at Bessemer (Pittsburgh), PA, and CSXT's Newell Interchange Yard near Brownsville, PA (a distance of approximately 40 miles). The overhead trackage rights sought by BLE would be restricted to the transportation of coal originating at current or future mines on the former Monongahela Railway Company lines and destined to the P&C Dock at Conneaut, OH, for movement beyond.

In STB Finance Docket No. 33388 (Sub-No. 62), IC seeks to acquire CSXT's Leewood-Aulon Line in Memphis, TN, which extends between CSXT MP F–371.4 (IC MP 387.9) at Leewood and CSXT MP F–373.4 (IC MP 390.0) at Aulon, a distance of approximately 2 miles.

In STB Finance Docket No. 33388 (Sub-No. 63), RJCW seeks to acquire ownership of or trackage rights on Conrail's line of railroad between approximately MP 54.4 and approximately MP 52.1 in Lima, OH.

In STB Finance Docket No. 33388 (Sub-No. 69), NYDOT and NYCEDC seek: (1) Full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between points of connection with the Delaware & Hudson Railway (D&H) at CP–160 near Schenectady, NY, and Selkirk Yard near Selkirk, NY, on the one hand, and, on the other, CP–75 near Poughkeepsie, NY, together with sufficient rights on tracks within Selkirk Yard to permit the efficient interchange of freight with D&H; (2) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction ("MO"), NY, and the point of connection with the lines of the Long Island Railroad near Fresh Pond ("MONT"), NY, via the Harlem River Yard; and (3) to the extent necessary to permit uninterrupted rail freight transportation between CP–160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, a declaration that, pursuant to 49 U.S.C. 11321(a), Metro-North Commuter Railroad Company, a subsidiary of the Metropolitan Transportation Authority of the State of New York, may grant unrestricted trackage rights over the lines between CP–75 and Mott Haven Junction to a rail carrier other than Conrail or CSX, notwithstanding any provisions of any agreements which purport to limit or prohibit such a grant.

In STB Finance Docket No. 33388 (Sub-No. 72), BDRV and BRW seek: (1) Removal of the restriction on certain D&H trackage rights that prevents interchange between D&H and BDRV at Phillipsburg, NJ, and between D&H and BRW at Three Bridges, NJ; (2) a grant of overhead trackage rights to BDRV over lines to be acquired by NS from Phillipsburg, NJ, to Manville, NJ (a distance of 40 miles), or to some other operationally feasible point at which BDRV and CSXT can interchange traffic; (3) a grant of overhead trackage rights to BRW over lines to be acquired by NS from Three Bridges, NJ, to Manville, NJ (a distance of 13 miles), or to some other operationally feasible point at which BRW and CSXT can interchange traffic; and (4) a grant of overhead trackage rights to BDRV and BRW over lines to be acquired by NS between the BDRV–NS connection at Phillipsburg, NJ, and the BRW–NS connection at Three Bridges, NJ (a distance of 29 miles).

In STB Finance Docket No. 33388 (Sub-No. 75), NECR seeks "limited trackage rights": (1) Between Palmer, MA, and West Springfield, MA, a distance of 18 miles, over the CRC line to be acquired by CSXT; (2) between West Springfield, MA, on the one hand, and, on the other, Albany, Selkirk, and Mechanicville, NY, a distance of 98 miles, over the CRC line to be acquired by CSXT; and (3) between Albany, NY, and the New Jersey/New York Shared Assets Area,[10] a distance of 140 miles, over the CRC line located on the west side of the Hudson River that is to be acquired by CSXT.[11]

In STB Finance Docket No. 33388 (Sub-No. 76), ISRR seeks: (1) Overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Perry K facility, over the CRC line to be acquired by CSXT; (2) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Stout facility located on the line of the Indiana Rail Road Company (INRD), over a segment of the CRC line to be acquired by CSXT and a segment of the INRD line; (3) local trackage rights over CRC's lines in Indianapolis, IN, including the Indianapolis Belt Line, to be acquired by CSXT (ISRR seeks trackage rights over all CRC lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis); (4) local trackage rights between Indianapolis and Shelbyville, IN, a distance of 27 miles, over the CRC line to be acquired by CSXT; (5) local trackage rights between Indianapolis and Crawfordsville, IN, a distance of 44 miles, over the CRC line to be acquired by CSXT; and (6) local trackage rights between Indianapolis and Muncie, IN, a distance of 55 miles, over the CRC line to be acquired by CSXT.[12]

In STB Finance Docket No. 33388 (Sub-No. 77), IORY seeks: (1) Overhead trackage rights over CSXT between East Norwood, OH, and Washington Court House, OH, a distance of 65 miles, with the right to connect at Midland City with IORY's Greenfield branch; (2) local

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[3] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served on all other parties of record. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what has already become a voluminous record.

[4] Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. *See* Decision No. 12 (served July 23, 1997, and published that day in the **Federal Register** at 62 FR 39577), slip op. at 19, 62 FR at 39588.

[7] If exercised by NSR, modification of NSR's trackage rights over CSXT and New York Central Lines LLC (NYC), as shown on pp. 220–52 and 329–35 of Volume 4B of the primary application, would also be required to eliminate any restrictions contained therein that would prevent transportation to NYSEG's Kintigh Station, including, but not confined to, limitations against interchanging with, or operating over, property of Somerset Railroad Corporation.

[8] Milepost is abbreviated MP. Control point is abbreviated CP.

[9] If exercised by a third-party carrier, these rights would include full access over The Chicago Line between CP–3 and FW Tower (CP–437) and the Belt Line Branch owned by NYC and operated by CSX between the connection at FW Tower (CP–437), Buffalo, NY, at or near MP 0.0, and the connection with the Niagara Branch (CP–1) at or near MP 7.2, and the Niagara Branch operated by CSX between the connection with the Belt Line Branch, at or near MP 7.5, "and to" Tuscarora Wye to CP–69 at MP 69.6 of the Lockport Branch to MP 58.8 (CP–59) and connection track to MP 0.0 of the Somerset Railroad Corporation. This would cover a total distance of approximately 33.2 miles.

[10] The "New Jersey/New York Shared Assets Area" is apparently the area that applicants refer to as the North Jersey Shared Assets Area.

[11] NECR's use of the term "limited trackage rights" is intended to include: (a) The right to operate trains over the lines described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described.

[12] ISRR's use of the term "local trackage rights" is intended to include: (a) The right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

trackage rights between Monroe, OH, and Middletown, OH, a distance of 5 miles, over the CRC line to be acquired by NSR (with the right to connect at Middletown with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati); (3) local trackage rights between Sidney, OH, and Quincy, OH, a distance of 10 miles, over the CRC line to be acquired by CSXT; (4) local trackage rights between Sharronville, OH, and Columbus, OH, a distance of 125 miles, over the CRC line to be acquired by NSR; (5) local trackage rights between Quincy, OH, and Marion, OH, a distance of 52 miles, over the CRC line to be acquired by CSXT; (6) local trackage rights between Lima, OH, and Fort Wayne, IN, a distance of 59 miles, over the CRC line to be acquired by CSXT; (7) local trackage rights over CRC's Erie track in Lima, OH; and (8) local trackage rights between Quincy, OH, and Marysville, OH, over the CRC line to be acquired by CSXT.[13]

In STB Finance Docket No. 33388 (Sub-No. 78), AA seeks: (1) "Limited trackage rights" between Toledo, OH, and Chicago, IL, via Elkhart, IN, a distance of 230 miles, over the CRC line to be acquired by NS; and (2) a condition permitting AA to interchange traffic with CP Rail System at Ann Arbor, MI.[14]

In STB Finance Docket No. 33388 (Sub-No. 80), W&LE seeks: (1) Haulage and trackage rights to Chicago, IL, including access to Belt Railway of Chicago and rights for interchange with all carriers, specifically including WCL;[15] (2) haulage and trackage rights from Bellevue, OH, to Toledo, OH, a distance of 54 miles, for an interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad (also including access to British Petroleum for movement of coke to Cressup, WV); (3) haulage and trackage rights to Erie, PA, with the right to interchange with other railroads; (4) the right "to lease to own" CRC's Randall Secondary from Cleveland, MP 2.5, to Mantua, MP 27.5; (5) the right "to lease to own" the Huron Branch (Shinrock to Huron) and Huron dock on Lake Erie; (6) haulage and trackage rights on CSX from Benwood to Brooklyn Junction and its yard facilities for commercial access to PPG and Bayer; (7) access on the Conrail Fort Wayne Line to the National Stone quarry near Bucyrus, via the Spore Industrial Track, a distance of 6.2 miles from CP Colsan, MP 200.5, on the Fort Wayne Line (access to the Fort Wayne line would be from the W&LE at CP Orr, MP 124, and from a point near Fairhope at MP 97.8); (8) trackage rights on the NS Sandusky District from Chatfield, OH, to Colsan, OH (for a junction with the Conrail Fort Wayne Line and access to the Spore Industrial Track); (9) access (apparently via trackage rights) to a stone quarry located on the Northern Ohio Railway at Maple Grove, via a junction on the NS Fostoria District at MP 269.4; (10) access (apparently via trackage rights over, among other lines, the former Conrail Akron Secondary) to the stone terminals in the Macedonia, Twinsburg, and Ravenna areas; (11) access, via haulage and trackage rights, to Wheeling Pittsburgh Steel at Allenport, PA; and (12) access, via haulage and trackage rights on the CSX New Castle Subdivision, to the Ohio Edison Power plant at Niles, OH, and to Erie, PA, for interchange to the Buffalo & Pittsburgh. W&LE also requests that provision be made for an inclusion proceeding in the event that W&LE fails during a post-merger oversight period.[16]

In STB Finance Docket No. 33388 (Sub-No. 81), CN and GTW seek trackage rights over the Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.

In STB Finance Docket No. 33388 (Sub-No. 83), GTW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Trenton, MI, a connection between the Conrail northbound mainline and the GTW Shoreline Subdivision.

Responsive Filings Accepted

Because the responsive applications filed by NYSEG, EJE/IMRL, LAL, WCL, BLE, IC, RJCW, NYDOT/NYCEDC, BDRV/BRW, NECR, ISRR, IORY, AA, W&LE, and CN/GTW, and also the notice of exemption filed by GTW, are in substantial compliance with the applicable regulations, we are accepting for consideration such responsive applications and such notice of exemption.[17]

Public Inspection

The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filing made by any particular responsive applicant may also be obtained upon request from that applicant's representative named above.

Proceedings Consolidated

The responsive filings in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, 81, and 83) are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

Comments May Be Submitted

Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule, *see* Decision No. 12, slip op. at 26, 62 FR at 39591) must be filed with the Board by December 15, 1997. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

Requests for Affirmative Relief Will Not Be Accepted

Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33388, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

[13] IORY's use of the term "local trackage rights" is intended to include: (a) The right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

[14] AA's use of the term "limited trackage rights" is intended to include: (a) The right to operate trains over the line described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the line thus described.

[15] These rights would apparently run between Chicago, on the west, and Carey and/or Bellevue, OH, on the east.

[16] Various additional W&LE condition requests are scattered throughout the verified statements submitted by W&LE witnesses in the WLE–4 pleading filed October 21, 1997.

[17] We reserve the right to require the filing of supplemental information from any responsive applicant or any other party or individual, if necessary to complete the record in this matter. *See* Decision No. 12, slip op. at 18 n.20, 62 FR at 39587 n.20.

Pleadings Not Treated as Responsive Applications

A pleading styled as a "responsive application" was filed on October 21, 1997, in a sub-number docket (Sub-No. 74) under the STB Finance Docket No. 33388 lead docket by Congressman Dennis J. Kucinich. While titled as a responsive application, this pleading does not address the criteria for such applications as required under 49 CFR part 1180. Rather, this pleading constitutes a comment on, and a request for conditions with respect to, the CSX/NS/CR primary application, and we will treat it as such and will docket this pleading in the STB Finance Docket No. 33388 lead docket.

Certain additional pleadings styled as "responsive applications" were filed in the STB Finance Docket No. 33388 lead docket on or about October 21, 1997, by: Jacobs Industries Ltd.; the State of Delaware Department of Transportation; ASHTA Chemicals Inc.; Southern Tier West Regional Planning and Development Board; and Resources Warehousing & Consolidation Services, Inc. Because these pleadings also do not satisfy the 49 CFR part 1180 requirements applicable to responsive applications, we will treat these pleadings as comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application.

Additional Pleadings Treated as Filed in Lead Docket

Certain additional pleadings filed on or about October 21, 1997, though not labeled "responsive applications," were filed in various sub-number dockets under the STB Finance Docket No. 33388 lead docket by: Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (in Sub-No. 37); New Jersey Department of Transportation and New Jersey Transit Corporation (in Sub-No. 38); the Rhode Island Department of Transportation (in Sub-No. 42); Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester & Southern Railroad, Inc., and Pittsburgh & Shawmut Railroad, Inc. (in Sub-Nos. 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 56); the Eastern Shore Railroad, Inc. (in Sub-No. 57); Louisville & Indiana Railroad Company (in Sub-No. 64); Housatonic Railroad Company, Inc. (in Sub-No. 70); the Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (in Sub-No. 85); and the Commonwealth of Massachusetts (in Sub-No. 88). Because these pleadings contain comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application, they will be docketed in, and they will be treated as having been filed in, the STB Finance Docket No. 33388 lead docket.

Electronic Submissions

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or be convertible by and into, WordPerfect 7.0. Spreadsheets must be in, or be convertible by and into, Lotus 1–2–3 Version 7.[18] Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order applicable to this proceeding,[19] and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[20]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The responsive applications in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81), and the notice of exemption in STB Finance Docket No. 33388 (Sub-No. 83), are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on November 20, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Decided: November 12, 1997.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30543 Filed 11–19–97; 8:45 am]

BILLING CODE 4915–00–P

[18] Parties intending to submit spreadsheets in formats other than Lotus 1–2–3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible by and into Lotus 1–2–3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565–1613.

[19] The protective order governing this proceeding was entered in Decision No. 1 (served April 16, 1997), and has been modified, in minor respects, in Decision Nos. 4, 15, 22, and 46 (served May 1, 1997, August 1, 1997, August 21, 1997, and October 17, 1997, respectively).

[20] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 10, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0089.

Form Number: None.

Type of Review: Extension.

Title: Implementing Regulations: Government Securities Act of 1986, As Amended.

Description: The regulations require government securities broker/dealers to make and keep certain records concerning government securities activities, to submit financial reports and make certain disclosures to investors. The regulations also require financial depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and financial responsibility.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 35,506.

Frequency of Response: On occasion, Monthly, Quarterly, Annually, Other (one-time file).

Estimated Total Recordkeeping Burden: 393,667 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–30511 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 13, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, D.C. 20220.

Correction

This is a correction to FR Doc. 97–29313, Filed 11–05–97; 8:45 a.m., for a Department of the Treasury, Internal Revenue Service information collection. The corrected information is as follows:

OMB Number: 1545–0946.

Form Number: IRS Form 8554.

Type of Review: Revision.

Title: Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

The OMB Number was incorrectly typed as 1545–0794.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–30512 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in December 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 26, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–028–G.

Type of Review: Revision.

Title: Atlanta District Office Research and Analysis (DORA) Automated Collection Branch (ACS)—Conflict Management Initiative (CMI) Telephone Survey.

Description: The goal is to use this strategy to help IRS meet its business objectives and improve the quality of work life for its employees.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,280.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 64 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–30513 Filed 11–19–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: Notice of additional comment period.

SUMMARY: A notice published in the **Federal Register** on September 30, 1997, announced changes to Customs prototype test of Reconciliation. Public comments were requested by November 14, 1997. This document sets an additional comment period for submitting comments on that notice.

DATES: Written comments regarding the notice of September 30 , 1997, are now being accepted through December 15, 1997.

ADDRESSES: Comments should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Mailstop 5.2A, Washington, D.C. 20229–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann at (202) 927–1106 or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** (62 FR 51181) on September 30, 1997, notified the trade community of changes to the prototype National Customs Automation Program test of reconciliation, set forth the policy which makes the NCAP prototype the exclusive means to reconcile entries pursuant to 19 U.S.C. 1484(b) and announced that the prototype will henceforth be referred to as the Automated Commercial System (ACS) Reconciliation Prototype. That notice invited public comments concerning any aspect of the planned test, informed interested members of the public of the requirements for voluntary participation, and established the process for developing evaluation criteria.

Public comments were requested by November 14, 1997. Due to a public meeting (see notice published in the **Federal Register** (62 FR 58769) published on October 30, 1997) which included discussions of the Prototype, an additional comment period is being granted to allow persons to comment with these discussions in mind. Comments are now being requested by December 15, 1997.

Dated: November 17, 1997.

John Durant,

Director, Mod Act Task Force.

[FR Doc. 97–30357 Filed 11–19–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–64

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97–64, Temporary regulations to be issued under section 1(h) of the Internal Revenue Code (applying section 1(h) to capital gain dividends of RICs and REITs).

DATES: Written comments should be received on or before January 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Temporary regulations to be issued under section 1(h) of the Internal Revenue Code (applying section 1(h) to capital gain dividends of RICs and REITs).

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Abstract: Notice 97–64 provides notice of forthcoming temporary regulations that will permit Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–30551 Filed 11–19–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds, the Office of Academic Programs, Academic Exchange Programs Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to administer the recruitment, selection, placement, monitoring, evaluation, and follow-on activities for the FY 1999 Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

The Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs (herein to be referred to as the Muskie/FSA Programs) select outstanding citizens of the New Independent States (NIS) and the Baltics to receive scholarships for Master's level study and professional development in the United States in the fields of business administration, economics, education administration, law with a new subfocus in law pedagogy, library and information science, mass communication/journalism, public administration with specialized programs in public health and environmental management, and public policy. Fellowships are awarded to qualified young and mid-career individuals who are citizens of Armenia, Azerbaijan,* Belarus, Estonia, Georgia, Kazakstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan. Edmund S. Muskie fellows enroll in graduate degree, certificate, and non-degree programs lasting one-to-two academic years. It is estimated that approximately 245–255 Fellows will participate in the 1999 program. Interested organizations should read the complete **Federal Register** announcement and request a Solicitation Package from the USIA prior to preparing a proposal.

* **Please note:** Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the

Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEE–98–02.

Deadline For Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, March 26, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, European Programs Branch of the U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, (P) 202–205–0525 (F) 202–260–7985 (E-Mail) treed@usia.gov to request a Solicitation Package containing more detailed. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax On Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Senior Program Manager Ted Kniker on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 14 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEE–98–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the Proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. *Diversity* should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of education and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Muskie/FSA Fellowship Programs are designed to foster democratization and the transition to market economies in the former soviet Union and Baltic States through intensive academic and professional training. Since the programs' inceptions in fiscal years 1992 and 1993, over 900 Fellowships have been awarded. The academic component of the program begins in the fall semester of the year of the award and follows the normal one-to two-year academic cycle in which Fellows may take a nine, twelve, eighteen, or twenty-four month academic program. Fellows take part in a eight- to twelve-week internship during the summer following the first academic year. While fellows are closely assisted in their internship search by host institutions, sponsoring organizations, and USIA, the primary responsibility for securing appropriate internships remains with the Fellows. Fellows placed in one-year graduate programs return home at the conclusion of their internship. Fellows placed in two year graduate programs return to their academic placement following the internship. The Muskie/FSA Programs are not intended as a precursor to doctoral studies, extended professional training, or employment in the United States. At the end of their designated academic and internship programs, Fellows are required to immediately return to their home countries.

In the past, the Muskie/FSA Programs have been administered by up to four organizations working in close partnership for all phases of the program. In order to maintain efficient administration of the program the number of organizations administering the Muskie/FSA Programs may remain at two or three. Should an applicant organization prefer to work with other organizations in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals from two or more organizations for joint program management, but the proposals must demonstrate a value-added relationship, and must clearly delineate responsibilities so as not to duplicate efforts.

Proposing organizations must demonstrate the ability to administer all aspects of the Muskie/FSA Programs—advertisement, recruitment, selection, placement, orientation, Fellow monitoring and support, financial management, evaluation, follow-on, and alumni tracking and programing. Applicant organizations must demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions in the NIS and Baltics. Additionally, organizations will be asked to assist in the recruitment and selection of appropriate host institutions from throughout the United States for pre-academic, ESL, and academic programs. Administering organizations will act as the principle liaison with Muskie/FSA host institutions. Additionally, organizations should demonstrate the ability to work with private sector organizations in the United States, NIS and Baltics to facilitate Fellows' professional development and post-program re-entry. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI) Statement which is part of the formal Solicitation Package available from the USIA.

Awards will begin on or about October 1, 1998 and will be approximately three years in duration. Initial recruitment and selection activities may be performed in conjunction with the current administering organizations.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

The level of funding for fiscal year 1999 is uncertain, but is anticipated to be a total of $13 million.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Organizations whose proposals include an administrative budget that is less than 20% of the grant amount requested from the USIA will be given preference. Detailed guidance on budget preparation is included in the Project Objectives, Goals and Implementation (POGI) and PSI. Please refer to the complete Solicitation package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of Eastern Europe and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officers.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program plan: Proposed programs should include academic rigor, thorough conception of project, demonstration of meeting participants needs, contributions to understanding the partner country, proposed alumni activities, specific details of recruitment, selection and monitoring processes, a thorough evaluation plan, proposed follow-on, and relevance to USIA's mission.

2. Program planning and institutional capacity: A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Proposals should clearly demonstrate how the institution and its staff will meet the program objectives and plan.

3. Track record: Relevant USIA and outside assessments of the organization's experience with international exchanges.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value of U.S.-Partner Country relations: The assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner countries.

6. Cost-effectiveness: A key measure of cost effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of Fellow months (number of Fellows multiplied by the number of program months). The overhead and administration components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

7. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

8. Support of diversity: Preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions. The Agency will seek to achieve maximum geographic diversity in recruitment, selection, and placement of participants through its award of grants.

9. Follow-on activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events. Proposals should include a plan for alumni tracking and coordination that demonstrates the willingness to provide data to and coordinate tracking with USIA and USIS Posts overseas. Due to the reduction in available funds, preference will be given to applicant organizations who can fund alumni activities, with minimal grant funded contributions from the USIA.

10. Project evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Options for Renewals

Subject to the availability of funding for FY 2000 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards for two fiscal year cycles.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 14, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30522 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs Host Institution Competition

ACTION: Notice announcements.

SUMMARY: Subject to the availability of funds, the Office of Academic Programs, European Branch, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces opportunities for regionally and professionally accredited U.S. institutions offering degree programs at the master's level in business administration, education administration, economics, journalism/mass communications, law, library and information science, public administration, public health, and public policy to host graduate students from Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakstan, Krygystan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan for one- to two-year degree programs under the auspices of the 1998 Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs.

Application Information

The Edmund S. Muskie and Freedom Support Act (FSA) Graduate Fellowship Programs are comprised of one- to two-year Master's-level academic programs and a three-month internship program. Pending available funding, the 1998 Muskie and FSA Graduate Fellowship Programs will be administered with USIA through cooperative agreements with the American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study (ACTR/ACCELS) and the Open Society Institute (OSI). Under these agreements ACTR and Soros/OSI will be responsible for recruitment, selection, academic placement, and monitoring of Fellows. Interested institutions should contact these organizations for additional program and application information:

For programs in Business Administration, Economics, Library and Information Science, Public Administration, and Public Policy: Susan Frarie, ACTR/ACCELS, 1776 Massachusetts Avenue, N.W., Suite 700, Washington, DC 20036, *Tel:* (202) 833–7522, *Fax:* (202) 833–7523, *E-Mail:* frarie@actr.org.

For programs in Law, Education Administration, Journalism/Mass Communications, and Public Health: Sofia Skindrud, Scholarships Department, The Open Society Institute, 400 West 59th Street, New York, NY 10019, *Tel:* (212) 548–0600, *Fax:* (212) 548–4679, *Email:* sskindrud@sorosny.org.

Current host institutions should contact the above organizations for renewal applications.

All organizations must be received at the appropriate organization by 5 p.m. Washington, D.C. time on Friday, February 20, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Additional Information

Increases in program expenses with reduced overall government funding for exchange programs make cost sharing arrangements with those institutions a critical part of the Muskie and FSA Graduate Fellowship Programs. Preference will be given to institutions that can provide cost-sharing toward tuition, fees, and/or room and board expenses. Cost-sharing may also be in the form of other direct program and participant costs.

The Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs are not intended as precursors to doctoral studies in the United States. At the end of their designated academic and internship programs, Fellows are required to return to their home countries to fulfill the two-year home residency requirement as specified in the Exchange Visitor (J-Visa) regulations and the Muskie and the FSA Graduate Fellowship Programs Terms and Conditions.

ACTR/ACCELS and OSI will not approve the transfer of visa sponsorship to universities or the extensions of visas for the purpose of Ph.D. Programs, extended practical training, or other additional academic study. Universities that do not comply with the policies of the Muskie and FSA Graduate Fellowship Programs and the J-Visa regulations will be removed from the pool of host institutions.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principal both in programs administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extend deemed feasible.

* **Please Note:** Programs with Azerbaijan are subject to restrictions of section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

Dated: November 14, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30524 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Freedom Support Act Undergraduate Program

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds, the Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a program to recruit in an open, multinational competition and provide 225 to 250 students from the New Independent States of the former Soviet Union with full scholarships for one year of non-degree, undergraduate study at regionally and professionally accredited two- and four-year institutions throughout the United States in the fields of agriculture, business, computer science, criminal justice studies, economics, education, environmental management, EFL/TEFL, journalism and mass communication, library and information science, political science, public health, and sociology.

USIA anticipates awarding one grant for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals for joint program management, and the proposals must demonstrate a value-added relationship, and must clearly delineate responsibilities so as not to duplicate efforts.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world." The funding authority for the program cited above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number *E/AEE–99–01*.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on *Friday, March 6, 1998*. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin October 1998.

FOR FURTHER INFORMATION, CONTACT: The Academic Exchange Division, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 205–0525 and fax (202) 260–7985, treed@usia.gov to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer *Jill Jarvi* on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and *nine* copies of the application should be sent to: U.S. Information Agency, Ref.: *E/AEE–99–01*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 56 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representive of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The purpose of the program is to support the economic and democratic development of the New Independent States of the former Soviet Union through exposing undergraduate students from the NIS to key transition fields and enhancing their academic education with practical training and involvement in a U.S. community.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Drafts of all printed materials developed for this program should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The USIA requests that it receive the copyright use and be allowed to distribute the material as it sees fit.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. Awards may not exceed *$3.75 million*, and preference will be given to organizations whose requested administrative and indirect costs are below 20% of the total grant award. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting

both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) U.S.-based administrative costs.
(2) NIS-based administrative costs.
(3) Program costs.
(4) Start up recruitment costs for FY 2000.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of and Eastern Europe and NIS Affairs the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Education and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Development and Management

Proposals should exhibit originality, substance, precision, innovation, and relevance to Agency mission. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve students in their U.S. communities.

3. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and should include a strategy for achieving diverse applicant pools for both students and host institutions.

4. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Follow-on and Alumni Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

6. Project Evaluation

Proposals should include a plan to evaluate the program's success, both during and after the program. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. Cost-Effectiveness and Cost Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Option for Renewals

Subject to the availability of funding for FY 2000 and FY 2001, and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: November 14, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30523 Filed 11–19–97; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

NIS College and University Partnerships Program

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with (a) foreign institution(s) of higher education from the New Independent States in specified fields.

Proposed projects must be eligible in terms of countries/localities and disciplines as described in the section entitled "Eligibility" below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are consistent with the goals and activities of the NIS College and University Partnerships Program.

Please note that USIA's NIS College and University Partnership Program (NISCUPP) is intended exclusively for college and university partnerships throughout the NIS in the following fields: law, business/economics, education, public administration/public policy/government/urban and regional economic development, journalism/communications. The United States Agency for International Development (USAID) and the International Research and Exchanges Board (IREX) have issued a request for proposals to strengthen existing partnerships between U.S. and Russian organizations—the Sustaining Partnerships into the Next Century (SPAN) program.

In order to effectively distribute assistance funding and avoid duplication of efforts, colleges and universities interested in applying for partnerships in the fields listed above should apply for funding under USIA's NISCUPP program. Colleges and universities interested in other fields, and all other relevant partnerships, should apply to the SPAN program administered by USAID and IREX. USIA and USAID missions will jointly review proposals from colleges and universities.

The program awards up to $300,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number

All communications with USIA concerning this RFP should refer to the NIS College and University Partnerships Program and reference number E/ASU–98–07.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, February 23, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Approximate program dates: Grants should begin on or about June 30, 1998.

Duration: June 30, 1998–May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising Teaching, and Specialized Programs Division; Specialized Programs Unit, (E/ASU) room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4126, fax: (202) 401–1433, internet: jcebra@usia.gov to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jonathan Cebra on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this completion in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–98–07, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Guidelines

The NIS College and University Partnership Program is limited to the following specific academic disciplines:

(1) Law;
(2) Business/economic/trade;
(3) Education/continuing education/civic education/educational reform;

(4) Government/public policy/public administration/urban and regional economic development; and

(5) Journalism/communications.

Proposals must focus on curriculum, faculty, and staff development in one or more of these eligible disciplines. Administrative reform at the foreign partner should also be a project component. Proposals in the field of economic development should focus on utilizing university resources to conduct educational outreach which will promote trade and investment in the region.

Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting. At least once, one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with USIA E/ASU staff in Washington, D.C. Preference will be given to proposals which demonstrate evidence of previous relations with the foreign partner institution(s).

Guidelines

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, staff, or advanced graduate students from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participating Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, staff or advanced students of the partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign partners from the following countries are eligible:

Armenia.

Azerbaijan—foreign partners must be independent institutions; state universities are not eligible.

Belarus—foreign partners must be independent institutions; state universities are not eligible.

Georgia.

Kazakstan.

Kyrgyzstan.

Moldova.

Russia—preference will be given to proposals which: (1) designate partner institutions outside of Moscow and St. Petersburg; (2) designate partner institutions in regions which have been identified by the U.S.-Russian Joint Commission on Economic and Technical Cooperation for Regional Investment Initiatives. Khaberovsk kraj and Sakhalin oblast have been designated for a Regional Investment Initiative. Samara oblast has also been designated for a Regional Investment Initiative.

Tajikistan.

Turkmenistan.

Ukraine.

Uzbekistan.

Partnerships including a secondary foreign partner from a non-NIS country in Europe are eligible; however, with the exception noted below, USIA will not cover overseas non-NIS partner institution costs.

In order to promote regional cooperation, limited funds may be budgeted for the exchange, as part of this partnership agreement, of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Poland, Romnai, Serbia and Montenegro, Slovakia, Slovenia).

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of USIA exceeds $300,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 14, 1997.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30525 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 224

Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39232; File No. SR–DTC–97–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Participant Exchange Service

Correction

In notice document 97–27758 beginning on page 54866 in the issue of Tuesday, October 21, 1997, the docket line is corrected to read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2988 (PDA–17(R))]

Application by William E. Comley, Inc. and TWC Transportation Corporation for a Preemption Determination as to Public Utilities Commission of Ohio Requirements for Cargo Tanks

Correction

In notice document 97–26918 beginning on page 53049, in the issue of Friday, October 10, 1997, make the following correction:

On page 53049, in the third column, in the DATES section, in the fourth line, "December 9, 1997" should read "January 8, 1998".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039(f)

Correction

In notice document 97–29085, beginning on page 59758, in the issue of Tuesday, November 4, 1997, make the following correction:

On page 59782, in the first column, in the FR Doc. line, "10-31-97" should read "11-3-97".

BILLING CODE 1505–01–D

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federal register

Thursday
November 20, 1997

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 270, et al.
Temporary Assistance for Needy Families Program (TANF); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 270, 271, 272, 273, 274, 275

RIN 0970–AB64, 0970–AB76, and 0970–AB77

Temporary Assistance for Needy Families Program (TANF)

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) proposes to issue regulations governing key provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program. It replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

The proposed rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. The proposed rules also reflect the Administration's commitment to regulatory reform.

DATES: You must submit comments by February 18, 1998.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Family Assistance, 5th Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare/ and follow any instructions provided.

We will make all comments available for public inspection on the 5th Floor East, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. For additional information, see Supplementary Information section of the preamble.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, ACF, at 202–401–0289, or Robert Shelbourne, Chief, Program Development Branch, at 202–401–5150.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Comment Procedures

We will not consider comments received beyond the 90-day comment period in developing the final rule. Because of the large number of comments we anticipate, we will only accept written comments. In addition, all your comments should:

- Be specific;
- Address only issues raised by the proposed rule, not the law itself;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the comments we receive. However, we will review and consider all that are germane and received during the comment period.

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I. The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996"—or PRWORA—into law. The first title of this new law (Pub. L. 104–193) establishes a comprehensive welfare reform program designed to change the nation's welfare system dramatically. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance. Other key features of TANF include its provisions to reward States for high performance and to encourage continued State expenditures on assistance to needy families.

PRWORA repeals the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repeals the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be "one size fits all." The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.
- The Federal government should focus less attention on payment accuracy and program procedures and place more emphasis on program results.

This landmark welfare reform legislation dramatically affects not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local governments to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes. It transforms the way agencies do business, requiring that they engage in genuine partnerships with each other, with businesses, community organizations and needy families.

The new law provides an unparalleled opportunity to achieve true welfare reform. It also presents very significant challenges for families and State and Tribal entities in light of the changing program structure, loss of Federal entitlements, creation of time-limited assistance, and new penalty and bonus provisions.

Most of the resources in the AFDC program went to support mothers raising their children alone. In the early years, the expectation was that these mothers would stay home and care for their children; in fact, in a number of ways, program rules discouraged work. Over time, as social and economic conditions changed, and more women entered the work force, the expectations changed. In 1988, Congress enacted the new JOBS program to provide education, training and employment that would help needy families avoid long-term welfare dependence. By 1994, 20 percent of the non-exempt adult AFDC recipients nationwide were participating in the JOBS program.

In spite of these changes, national sentiment supported more drastic change. Policy-makers, agency officials and the public expressed frustration about the slow progress being made in moving welfare recipients into work and the continuing decline in family stability. States were clamoring for more flexibility to reform their programs.

While the Clinton Administration had supported individual reform efforts in almost every State, approving 80 waivers in its first five years, the waiver process was not an ideal way to achieve systemic change. It required separate Federal approval of each individual reform plan, limited the types of reforms that could be implemented, and enabled reforms to take place only one State at a time. Governors joined Congress and the President in declaring that the welfare system was "broken."

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. On July 31, 1996, President Clinton issued a statement indicating that the pending bill had the potential "to transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence, to give people on welfare a chance to draw a paycheck, not a welfare check. It gives us a better chance to give those on welfare what we want for all families in America, the opportunity to succeed at home and at work."

The law that was enacted three weeks later gives States, and federally recognized Indian tribes, the authority to use Federal welfare funds "in any manner that is reasonably calculated to accomplish the purposes" of the new program.

It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. It also enables States to implement their new programs without getting the "approval" of the Federal government. In short, it offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

PRWORA redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and approval authority, but gives the Federal government new responsibilities for tracking State performance. In a select number of areas, it calls for penalties when States fail to comply with program requirements, and it provides bonuses for States that perform well in meeting new program goals.

Under the new statute, program funding and assistance for families both come with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves before their time-limited assistance runs out. States and Tribes are expected to assist recipients making the transition to employment. They are also expected to meet work participation rates and other critical program requirements in order to maintain their Federal funding and avoid penalties.

Some important indicators of the change in expectations are: time limits; higher participation rates; the elimination of numerous exemptions from participation requirements that existed under prior law; and the addition of a statutory option for States to require individual responsibility plans. Taken together, these provisions signal an expectation that we must broaden participation beyond the "job-ready."

In meeting these expectations, States need to examine their caseloads, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. In some cases, States may need to provide intervention services for families in crisis or may need to adapt program models to accommodate individuals with disabilities or other special needs. TANF gives States the flexibility they need to respond to such individual family needs, but, in return, it expects States to move towards a strategy that provides appropriate services for all needy families.

II. Regulatory Framework

A. Consultations

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to the drafting of this Notice of Proposed Rulemaking (NPRM). In Washington, we set up numerous meetings with outside parties to gain information on the major issues underlying the work, penalty, and data collection provisions of the new law. In our ten regional offices, we used a variety of mechanisms—including meetings, conference calls, and written solicitations—to garner views from "beyond the Beltway."

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We spoke with a number of different audiences, including: representatives of State, Tribal and local governments; nonprofit and community organizations; business and labor groups; and experts from the academic, foundation, and advocacy communities. We solicited both written and oral comments, and we worked to ensure that information and concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

These consultations were very useful in helping us identify key issues and evaluate policy options. However, we would like to emphasize that we are publishing these regulations as a proposed rule. Thus, all interested parties have the opportunity to voice their concerns and react to specific policy proposals. We will review comments we receive during the comment period and take them into consideration before issuing a final rule.

B. Related Regulations Under Development

This NPRM addresses the work, accountability, and data collection and reporting provisions of the new TANF program. Over the next several months, we expect to issue a number of other related proposed rules, covering: child poverty rates; high performance bonuses; illegitimacy reduction bonuses; and Tribal TANF and work programs.

We will also be issuing a number of NPRMs on the child support

enforcement provisions found in title III of PRWORA.

This NPRM does not include the provisions for the new Welfare-to-Work (WTW) provisions at section 403(a)(5) of the Act, as created by section 5001(a)(1) of Pub. L. 105–33. The Secretary of Labor is responsible for issuing regulations on these provisions and the provisions at section 5001(c), regarding WTW grants for Tribes. Information about this program is available on the Web at http://wtw.doleta.gov.

This NPRM does include the conforming amendment to the definition of "qualified State expenditures" required by section 5001(a)(2) of Pub. L. 105–33, as well as the amendments to the TANF provisions at sections 5001(d), 5001(g)(1), and 5001(h). Section 5001(d) addresses treatment of assistance under WTW under the TANF time limits. Section 5001(g)(1) provides a new penalty that takes away WTW funds when a State fails to meet the TANF MOE requirements. Section 5001(h) addresses the relationship between an individual penalty and work requirements.

This NPRM does not include the provision at section 5001(g)(2), which requires repayment of WTW funds to the Secretary of Labor following a finding by the Secretary of Labor of misuse of funds. Since the Department of Labor is responsible for administering this penalty and receives any repaid funds, it would not be appropriate for us to issue rules on this provision.

Under section 5001(e) of Pub. L. 105–33, we have responsibility for regulating the WTW data reporting requirements, under section 411(a) of the Act, as amended.

We will issue a rulemaking that addresses these requirements at a later date, following consultation with the Department of Labor, State agencies, Private Industry Councils, and other affected parties.

We encourage States and others who are interested in these areas to review and comment on these proposed rules when they are published in the **Federal Register**.

You should be aware of the important relationships between this regulatory package and the other packages that will be following. In particular, we would like to point out that section 412 of the Social Security Act (as amended by PRWORA) provides that federally recognized Tribes may elect to operate their own TANF programs, and Tribes that operated their own JOBS programs may continue to receive those funds to operate Tribal work programs.

The choice Tribes make on TANF will depend on a number of factors, including the nature of services and benefits available under the State program. Thus, Tribes have a direct interest in the regulations governing State programs.

Tribes also have an interest in these regulations because some of the rules we develop for State programs could eventually apply to the Tribal programs. In particular, we urge Tribes to note the data collection and reporting requirements at part 275. While the statute allows Tribes to negotiate certain program requirements, it subjects Tribal programs to the same data collection and reporting requirements as States.

We would also like to direct the Tribes to the maintenance-of-effort (MOE) policies discussed at § 273.1. In that section, we propose that State contributions to a Tribal program could count toward a State's MOE. Tribes should be aware that this proposal could have important implications for the funding of Tribal programs and State-Tribal relations.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to implement their own programs.

Likewise, Tribes should cooperate with States in identifying Tribal members and tracking receipt of assistance.

We are also issuing separate final rules to make conforming changes to our existing rules in chapter II of title 45.

In the first, we will be repealing the obsolete regulations for the EA, JOBS, and the IV–A child care programs, and some rules covering administrative requirements of the AFDC programs. This rulemaking will be a final rule, effective upon publication. We expect to eliminate about 82 pages from the Code of Federal Regulations.

Later on, we will be issuing a final rule that deletes or replaces obsolete AFDC and title IV–A references throughout chapter II. This second rulemaking will take additional time because the AFDC provisions are intertwined with provisions for other programs that are not repealed. Also, it is not clear that we should repeal all the AFDC provisions because Medicaid, foster care and other programs depend on the AFDC rules in effect under prior law. Because of these complexities and the non-urgent nature of the conforming changes, the second rule is on a slower schedule.

PRWORA also makes changes to other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State's success in implementing welfare reform. For example, title VI of PRWORA repeals the child care programs that were previously authorized under title IV–A of the Social Security Act (the Act). In their place, it provides two new sources of child care funding for the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts to be self-sufficient. We issued proposed rules covering this new funding and amendments to the Child Care and Development Block Grant program on July 23, 1997. Comments were due within 60 days of that date.

We encourage you to look in the **Federal Register** for rulemaking actions on related programs and to take the opportunity to comment.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and amended by Pub. L. 104–327 and Pub. L. 105–33.

The changes made by Pub. L. 104–237 are fairly limited in scope; we discuss them in the preamble on contingency fund MOE requirements at §§ 274.71, 274.72, and 274.77.

Pub. L. 105–33 created the new Welfare-to-Work (WTW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. Throughout the preamble discussion and the appendices, you will note references to the amendments made by this legislation. However, as we previously mentioned, this NPRM includes only a limited number of changes related to the new WTW provisions. The Department of Labor has primary responsibility for administering the program and issuing the WTW regulations. We have responsibility for issuing rules on the WTW data collection requirements, but will be doing that at a subsequent date.

D. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In drafting this proposed rule, we have paid close attention to this guidance. Individuals who are familiar with our

existing welfare regulations should notice that this package incorporates a more readable style. This rulemaking effort gave us a unique opportunity to change our approach because we were starting from scratch rather than amending an existing rule.

In the spirit of facilitating understanding, we have included some preamble discussion and regulatory text to give you a broader context for other parts of the rulemaking document. Examples include the provisions in subparts A and G of part 271 (which address work provisions other than participation rates and penalties) and § 270.20 (which includes the statutory goals of the program). These sections are primarily explanatory or restatements of the statutory requirements. The language used and the surrounding discussion should indicate the nature of the provision.

In the same spirit, we have included draft data collection and reporting forms as appendices to the proposed rules even though we do not intend to publish the forms as part of the final rule. We thought that the inclusion of the draft forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

E. Scope of This Rulemaking

Our initial regulatory plan for TANF included three separate TANF regulations—one each on work, penalties, and data collection and reporting. However, we decided it would be better to incorporate these into a single regulatory package. While this decision resulted in a much larger document, it should facilitate your understanding of the entire regulatory framework of the TANF program, as well as your review and comment.

F. Applicability of the Rules

As we indicated in previous policy guidance to the States, a State may operate its program under a reasonable interpretation of the statute prior to our issuance of final rules. Thus, in determining whether a State is subject to a penalty, we will not apply regulatory interpretations retroactively. You can find a statement of this policy at § 270.40(b) of the proposed rules.

III. Principles Governing Regulatory Development

A. Regulatory Restraint

Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the philosophy of State flexibility and the general State and Congressional interest in shifting more responsibility for program policy and procedures to the States.

We are interpreting this provision to allow us to regulate in two different kinds of situations: (1) where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged HHS with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

Throughout the proposed rule, we have endeavored to regulate in a manner that does not impinge on a State's ability to design an effective and responsive program.

You will also note that this rulemaking does not cover the non-discrimination provisions at section 408(c). This subsection specifies that any program or activity receiving TANF funds is subject to the: (1) Age Discrimination Act of 1975; (2) section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990; and (4) title VI of the Civil Rights Act of 1964. Since ACF is not responsible for administering these provisions of law, and they are not TANF provisions, this rulemaking does not include them.

Individuals with questions about the requirements of the non-discrimination laws, or concerns about compliance of individual TANF programs with them, should address their comments or concerns to the Director, Office of Civil Rights, Department of Health and Human Services, 200 Independence Ave, SW, Room 522A, Washington, DC 20201.

B. State Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation creates a broad block grant to each State to reform welfare in ways that work best. It gives States the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Under the law and under these proposed rules, States may implement innovative and creative strategies for supporting the critical goals of work and responsibility. For example, they may choose to expend funds on earned income tax credits or transportation assistance that would help low-wage workers keep their jobs. They could also extend employment services to non-custodial parents, by including them within the definition of "eligible families."

To ensure that our rules support the legislative goals of PRWORA, we are committed to gathering information on how States are responding to the new opportunities available to them. We reserve the right to revisit some issues, either through legislative or regulatory proposals, if we identify situations where State actions are not furthering the objectives of the Act.

C. Accountability for Meeting Program Requirements and Goals

The new law gives States enormous flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, it reflects a bipartisan commitment to ensuring that State programs support the goals of welfare reform. To this end, the statutory provisions on data collection, bonuses, and penalties are crucial because they allow us to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

Work

We believe the central goal of the new law is to move welfare recipients into work. The law reflects this important goal in a number of ways:

- Work receives prominent mention in the statutory goals at section 401 and the plan provisions in section 402;
- Section 407 establishes specific work participation rates each State must achieve;
- Section 409 provides significant financial penalties against any State that fails to achieve the required participation rates;
- Section 411 provides specific authority for the Secretary to establish data reporting requirements to capture necessary data on work participation rates; and
- Section 413 calls for ranking of States based on the effectiveness of their work programs.

These proposed rules reflect a similar, special focus on promoting the work objectives of the Act. We are proposing

specific rules under sections 407, 409, and 411 designed to ensure that States meet the statutory requirements. You should look at the proposed rules in part 271, and the related preamble discussion, for specific details.

This Administration has already shown its commitment to promoting the work objectives of this new law in several ways. Before the legislation was passed, we worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports.

Since enactment, the President has announced a number of additional welfare-to-work initiatives designed to promote work. These include implementation of a new "Work Opportunity Tax Credit" that provides incentives for employers to hire welfare recipients and proposals to:

- Extend and expand this credit;
- Increase investments in distressed communities; and
- Provide $3 billion in additional funding to help communities move hard-to-serve recipients into jobs.

As part of budget reconciliation, Congress increased the Work Opportunity Tax Credit, available to employers who hire long-term welfare recipients, and funded a new Welfare-to-Work (WTW) program. States, localities, and Indian Tribes will receive the additional $3 billion in WTW funds in FYs 1998 and 1999.

The President has also challenged America's businesses, its large non-profit sector and the executive branch of the Federal government to make job opportunities available to welfare recipients. On March 8, 1997, he directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. In response to this directive, Federal agencies identified more than 10,000 jobs that would be available for welfare recipients over the next four years. (You can find additional information on this initiative on the Web at http://w2w.fed.gov.)

Meeting the Needs of Low-Income Families and Children

In a number of different ways, the new law works to ensure that the needs of low-income children and families are met. First, it provides a guaranteed base level of Federal funding for the TANF programs. Then, in times of special financial need, it makes additional funding available through a $2 billion Contingency Fund and through a Federal loan fund. It also authorizes several studies to monitor changes in the situations of needy children and families that occur after enactment. For example, it requires us to report on how certain children are affected by the provisions of the new law, and to track State child poverty rates, and initiate corrective actions by States when such rates rise.

Domestic Violence

We wish to bring one particular provision—known as the Family Violence Option (FVO)—to your attention. This provision, at section 402(a)(7), gives States the option to waive certain program requirements for certain victims of domestic violence. It thus provides a valuable framework for identifying victims of domestic violence and developing appropriate service strategies for them.

This Administration is strongly committed to reducing domestic violence, and we encourage all States to consider adopting the Family Violence Option. In working with domestic violence cases, we also encourage States to pay special attention to the need for maintaining the confidentiality of case-record information and the victims' own assessments of their safety needs and their abilities to meet program requirements.

During our consultations, we heard numerous questions about the relationship between State policies on domestic violence and the determination of State work and time-limit penalties. Congress considered this issue in its budget resolution, but decided to study the issue further rather than to amend the statute during budget reconciliation. Our regulations seek to implement the statute in a way that is consistent with both the language of the statute and our national interest in fostering appropriate State responses to domestic violence.

The FVO provides States with a specific vehicle for addressing domestic violence among recipients of TANF assistance. The provision envisions that States would screen and identify victims of violence, conduct individual assessments, and develop temporary safety and service plans that would protect victims from any immediate dangers, stabilize their living situations, and explore avenues for overcoming dependency.

The family's individual circumstances or service plans may require that certain program requirements (e.g., regarding time limits and child support cooperation) be temporarily waived in cases where compliance with such requirements would make it difficult for individuals to escape domestic violence, unfairly penalize victims, or put individuals at further risk of domestic violence. In these cases, the FVO allows States to grant such waivers.

Under TANF, States must meet numerical standards for work participation and the percentage of families that may receive federally-funded assistance for more than five years. The statutory language on calculating work participation rates makes no reference to domestic violence cases or to a State's good cause waivers of work requirements under the Family Violence Option. Thus, we think that the clearest reading of this statutory provision includes victims of domestic violence in the calculation of the work participation rates.

The statutory language on time limits refers to victims of domestic violence, but not to the good cause waivers provided under the Family Violence Option. The statutory language suggests that victims of domestic violence would be included in the 20 percent limit on exceptions to the time limit.

However, there is legitimate concern among States and others that election of the FVO might put States at special risk of incurring financial penalties. In granting good cause waivers of program requirements under the FVO, they may make it more difficult for themselves to meet the numerical requirements on time limits and the work participation rates.

Our proposed rules attempt to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO is an authentic choice for States. In deciding to address these waiver cases under "reasonable cause" rather than through direct changes in the penalty calculations, we are reflecting the statutory language and maintaining the focus on moving families to self-sufficiency. At the same time, we are giving States some protection from penalties when their failures to meet the standard rates are attributable to the granting of good cause domestic violence waivers that are based on individual assessments, are temporary, and include individualized service and safety plans. We hope our proposal will alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

Our proposed rules recognize that, through the FVO, Congress gave unique status to victims of domestic violence under the TANF program. Likewise, under our proposed rules, this group of recipients receives special recognition under the "reasonable cause" provisions for the work and time-limit penalties.

At § 270.30, the proposed rules reflect our expectation that good cause waivers will be bona fide waivers provided within the framework of the FVO. Under this framework: (1) State policies would provide for individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements would be temporary in nature (e.g., would not be granted for longer than six months); and (3) in lieu of program requirements, victims of domestic violence would be served in alternative ways, consistent with their individualized safety and service plans.

In specifying that good cause waivers should not exceed six months in length, we have attempted to balance two distinct objectives: (1) giving States the flexibility they need to respond appropriately to the individual circumstances of domestic violence victims; and (2) assuring that the work objectives of the Act are not undermined.

We do not intend that all good cause waivers should last six months. The length of the waiver should reflect the State's individualized determination of what length of time a client needs. We expect that the length of the waiver could be substantially shorter in some cases. Also, we expect that, in some cases, States might have to renew a waiver or issue a second waiver (i.e., because a victim of domestic violence suffered from continued abuse that required further protection and response).

We welcome comments on whether our proposed approach and language achieve the balance we are seeking.

We want to ensure that our rules work to foster, not undermine, the objectives of the Act. Our goal is to promote the provision of appropriate alternative services for victims of domestic violence that foster both safety and self-sufficiency.

To ensure that these policies have the desired effect, we limit the availability of "reasonable cause" to States that have adopted the FVO. In addition, in the definitions section of the proposed rule (at § 270.30), we specify criteria that will apply in deciding whether a good cause domestic violence waiver exists. Also, we reserve the right to audit States claiming "reasonable cause" to ensure that good cause domestic violence waivers that States include in their "reasonable cause" documentation meet the specified criteria.

In addition, we intend to monitor the number of good cause waivers granted by States and their effect on work and time limits. We want to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than exempted and denied services that lead to independence. We also want to ensure that the provision of good cause waivers does not affect a State's overall effort in moving families towards self-sufficiency. Thus, we will be looking at information on program expenditures and participation levels to see if States granting good cause domestic violence waivers are making commitments to assist all families in moving toward work.

If we find that good cause waivers are not having the desired effects, we may propose regulatory or legislative remedies to address the problems we identify.

For additional discussion of our proposals, see §§ 270.30, 271.52 and 274.3 of the preamble and proposed rule.

Use of Funds

The new law imposes several restrictions on the use of both Federal and State funds to help ensure that program expenditures serve program goals. More specifically, the statute: (1) places a cap on the percentage of funds spent on administrative costs; (2) authorizes audits and penalties to protect against the misuse of funds; (3) establishes a number of limitations on the use of Federal funds; and (4) defines the conditions under which expenditures of State funds may count for MOE purposes. In general, States must expend both their Federal funds and their own State monies on activities that are consistent with the purposes of the TANF program. (For additional information on allowable uses of Federal TANF and State MOE funds, see ACF's guidance, TANF–ACF–PA–97–1, dated January 31, 1997, and the preamble discussion for part 273.)

Maintenance-of-Effort (MOE)

One of the most important provisions in the new law designed to protect needy families and children is the TANF maintenance-of-effort (MOE) requirement. This provision requires States to maintain a certain level of spending on welfare, based on historic (i.e., fiscal year (FY) 1994) expenditure levels. Because this provision is critical to the successful implementation of the law, Congress gave us the authority to enforce State compliance in meeting this requirement, and it receives significant attention in this proposed rule.

Under the data collection, work, and penalty provisions of the proposed rule, at parts 271–275, we took care to propose rules that: (1) ensure that States continue to make the required investments in meeting the needs of low-income children and families; (2) prevent States from either supplanting State funds with Federal funds or using their MOE funds to meet extraneous program or fiscal needs; (3) give us adequate information to meet our statutory responsibility to determine what is happening in State programs; and (4) take a broad view of work effort, caseload reduction, and program performance.

We recognize that States have more flexibility in spending State MOE funds than Federal funds, especially when they expend their MOE funds in separate State programs. However, the proposed rules also recognize and try to protect against actions that might undermine important goals of welfare reform. This is the same concern that we voiced in policy guidance we issued on MOE in January (TANF–ACF–PA–97–1). In particular, we noted that States could design their programs so as to avoid the work requirements of the new law or to avoid returning a share of their child support collections to the Federal government.

To mitigate these potential negative consequences, we indicated our intent to both take administrative actions and seek legislative remedies. As part of our commitment to taking administrative action, we are proposing to require States, under certain circumstances, to report information about the families served by States under separate State programs. Only through this additional reporting will we be able to determine the full nature and scope of State efforts to move needy families into work and the actual caseload reductions States are achieving. (See the preamble discussion and regulation under part 272, subpart D, and part 275.)

In TANF–ACF–PA–97–1, we indicated that States not making a good-faith effort on work in their separate State programs would not be eligible for a reasonable cause exception from the penalty for failing to achieve their work rate. The proposed rule incorporates and expands that proposal.

More specifically, it indicates that States would not be eligible for a reasonable cause exception from the time-limit penalty or any of the three work-related penalties if we detect a significant pattern of diversion of families to separate State programs that has the effect of undermining the work participation requirements of the Act. In general, diverting States would not be eligible for reductions in the work penalty amounts. Finally, they would be ineligible for a penalty reduction under corrective compliance if they did not correct the diversion and meet the other

conditions for reduction specified in these proposed rules.

In the January guidance we expressed similar concerns about the effect of separate State programs on the Federal share of child support collections. Therefore, our proposal in this area is similar to our proposal to prevent undermining of the work participation provisions. More specifically, we would deny States reasonable cause for the time-limit, work participation, child support cooperation, and work sanction penalties if we detect a significant pattern of diversion of families into separate State programs that results in the diversion of the Federal share of child support collections to State coffers. States undertaking such diversions would also be ineligible for reductions in the amounts of any of these four penalties under corrective compliance unless they also corrected the diversion during the corrective compliance process.

In making these proposals, we note that the Secretary has considerable discretion in determining whether to reduce penalties or grant a good cause exception.

Getting recipients to work is the most critical component to achieving the purposes of TANF—making welfare a program of temporary assistance for families moving to self-sufficiency. The Secretary has determined that, to prevent circumvention of this purpose, it is appropriate to limit the availability of the reasonable cause exception and penalty reduction if a State attempts to avoid the work participation requirements. Congress has reinforced the importance of appropriate work for recipients in four of the established penalties in section 409 of the Act—work participation rates, continuing assistance when child care is not available, sanctioning families that fail to participate in work, and continuation of assistance beyond 60 months. To carry out the intent of Congress that work be a central part of the TANF program, if we detect that a State is avoiding the work requirements by diverting a significant number of families to separate State programs, we will not grant this State a reasonable cause exception from any of the four penalties most closely tied to the work requirements, either in the form of a reduction in its work penalty based on degree of non-compliance or as a reduction in any of the four penalties as the result of achieving substantial (but not full) compliance.

The other key component to achieving self-sufficiency is implementation of the child support enforcement provisions. The Federal government has a major role to play in such enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service). It also has a continuing interest in the effectiveness of these programs and, under TANF, maintains its commitment to the funding of needy families whose children have been deprived of parental support and care.

We are concerned that a State's diverting cases to separate State programs would not only have unintended, negative consequences for the Federal budget and the Federal government's ability to ensure an effective child support program; it would also diminish the State's accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. The Secretary has determined that, in the interest of protecting the key goals of TANF, it is appropriate to exercise her discretion to set penalty amounts and forgive penalties in a manner that will ensure that States do not divert cases inappropriately. Thus, if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections, we will not grant a reasonable cause exception or reduced penalty through corrective compliance for the following four penalties: work participation, time limits, failure to cooperate with paternity establishment and child support enforcement requirements, or failure to impose work sanctions.

We plan to monitor States' actions to determine if they constitute a significant pattern of diversion. For example, if, based on an examination of statistical or other evidence, we came to the conclusion that a State was assigning people to a separate State program in order to divert the Federal share of child support collections, or in order to evade the work requirements, we would conclude that this is a significant pattern of diversion and would deny the State certain types of penalty relief.

A State would be permitted the opportunity to prove that this pattern was actually the result of State policies and objectives that were entirely unrelated to the goal of diversion, but we would make the final judgment as to what constitutes a significant pattern of diversion.

For the specific regulatory changes associated with these policies, see §§ 271.51, 272.5 (c) and (d), and 272.6(i)(2).

We will also propose to require States seeking to receive high performance bonuses to report on families served by separate State programs. We will address this issue more fully in the coming NPRM on high performance bonuses.

In the policy announcement, we advised States to think carefully about the risks to the long-term viability of their TANF programs if they rely too extensively on separate State MOE programs. In general, States cannot receive contingency funds unless their expenditures within the TANF program are at 100 percent of historic State expenditures. Thus, excessive State reliance on expenditures outside the TANF program to meet MOE requirements could make access to contingency funds difficult during economic downturns.

Child-Only Cases

Since the January guidance came out, we have also become concerned that States might be able to avoid the work participation rates and time limits by excluding adults (particularly parents) from their eligible cases. Given the flexibility available to States under the statute and regulations, it appears possible that States could protect themselves from the requirement and the associated penalty risk by converting regular welfare cases into child-only cases. Such conversions would seriously undermine these critical provisions of welfare reform.

To protect against these negative consequences, in the work and time-limit sections of this proposed rule, we would prohibit States from converting cases to child-only cases for the purpose of avoiding penalties and require annual reporting of any such exclusions (with explanations). We are also proposing to recalculate a State's work participation rates and time limit exemptions if we determine that a State has excluded cases from its calculations for the purpose of avoiding penalties in these areas. See §§ 271.22, 271.24, and 274.1 for the specific proposals.

IV. Discussion of Individual Regulatory Provisions

Following is a discussion of all the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

A. Part 270—General Temporary Assistance for Needy Families (TANF) Provisions

This part of the proposed rules helps set the framework for the rest of the proposed rule. For the convenience of the reader, it reiterates the goals stated in the new section 401. It also includes a set of definitions that are common to the different parts of the proposed rule.

What does this part cover? (§ 270.10)

This section of the proposed rules indicates that part 270 includes provisions that are applicable across all the TANF regulations in this rulemaking.

What is the purpose of the TANF program? (§ 270.20)

This section of the proposed rules repeats the statutory goals of the TANF program. In brief, they include reducing dependency and out-of-wedlock pregnancies; developing employment opportunities and more effective work programs; and promoting family stability.

While we do not elaborate on the statutory language, we would like to point out that, in a number of ways, the new law speaks to the need to protect needy and vulnerable children. States should keep this implicit goal in mind as they implement their new programs.

What definitions apply under the TANF regulations? (§ 270.30)

This section of the proposed rule includes definitions of the terms used in parts 270 through 275. It does not include definitions that pertain only to individual provisions. You should look to the appropriate individual parts of the proposed rules for definitions that are provision-specific.

In drafting this section of the proposed rule, we defined only a limited number of terms used in the statute and regulations. We understood that excessive definition of terms could unduly and unintentionally limit State flexibility in designing programs that best serve their needs. For example, we did not define "family" or "head-of-household." States are thus free to define what types of families would be eligible for TANF assistance. (However, we suggest that you look at the sections of this rule covering work participation rates (§§ 271.22 and 271.24), MOE requirements (subpart A of part 273), time limits (§ 274.1), and data collection definitions (§ 275.2); none of these sections creates a definition of family, but all address the definition of the term "family" in describing key requirements on States.)

We also decided not to define the individual work activities that count for the purpose of calculating a State's participation rates. You should look to the preamble discussion for § 273.13 and subpart C of part 271, respectively, for additional discussion of these decisions.

You will note that we use the term "we" throughout the regulatory text and preamble. The term "we" means the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on her behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Likewise, you should note that we use the term "Act" to refer to the Social Security Act, as amended by the new welfare law. We use the term "PRWORA" when we refer to the new law itself. A section reference is a Social Security Act reference if we use neither term.

Some of the definitions in this section incorporate the statutory definitions in PRWORA. We included these definitions largely for the reader's convenience. These statutory definitions include: "adult," "minor child," "eligible State," "Indian, Indian Tribe and Tribal organization," "State," and "Territories."

We also propose some clarifying definitions. These include explanations of commonly used acronyms (such as ACF, AFDC, EA, IEVS, JOBS, MOE, PRWORA and TANF, as well as the new WTW) and commonly used terms and phrases (such as the Act and the Secretary). While the meaning of many of these is generally understood, we included them to ensure a common understanding.

We are also proposing a number of definitions that have substantial policy significance, for clarification purposes. For example, the definitions distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements vary depending on the source of funds for the expenditures. In particular, it is important to distinguish between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs).

Federal expenditures. This is shorthand for the State expenditure of Federal TANF funds.

Qualified State Expenditures. This term refers to expenditures that count for TANF MOE purposes (at section 409(a)(7)). By regulation, we are proposing that most of the requirements that apply for countable TANF MOE expenditures also apply for Contingency Fund MOE purposes.

TANF MOE. This term refers to the expenditure of State funds that a State must make in order to meet the MOE requirement at section 409(a)(7).

Contingency Fund MOE. This term refers to expenditures of State funds that a State must make in order to meet the Contingency Fund MOE requirements under sections 403(b) and 409(a)(10). States must meet this MOE level in order to retain contingency funds made available to them for the fiscal year. Note that this term is more limited in scope than the term "TANF MOE." See discussion at subpart B of part 274 for additional details.

State MOE expenditures. This term refers to any expenditure of State funds that may count for TANF MOE or Contingency Fund purposes. It includes both State TANF expenditures and expenditures under separate State programs.

State TANF expenditures. This term encompasses the expenditure of State funds within the State's TANF program. It identifies the only expenditures that can be counted toward the Contingency Fund MOE, except for expenditures made under the Child Care and Development Fund. It includes both commingled and segregated State TANF expenditures.

Commingled State TANF expenditures. This term identifies the expenditure of State funds, within the TANF program, that are commingled with Federal funds. Such expenditures may count toward both the State's TANF MOE and Contingency Fund MOE. To the extent that expended State funds are commingled with Federal funds, they are subject to the Federal rules.

Segregated State TANF expenditures. This term identifies State funds expended within the TANF program that are not commingled with Federal funds. Such expenditures count for both TANF MOE and Contingency Fund MOE purposes. They are not subject to many of the TANF requirements that apply only to Federal funds (including time limits).

Separate State program. This term identifies programs operated outside of TANF in which the expenditure of State funds count toward TANF MOE, but generally does not count for Contingency Fund MOE. With one exception (for CCDF expenditures), expenditure of State funds must be made within the TANF program in order to count as MOE for Contingency Fund purposes.

The definitions also distinguish among different categories and amounts of TANF grant funds. These distinctions are important because they affect the size of grant adjustments and total funding available to the State. In some

cases, different spending rules apply to different categories of funds.

State Family Assistance Grant (or SFAG). This term refers to the annual allocation of Federal funds to a State under the formula at section 403(a)(1).

Adjusted State Family Assistance Grant, or "Adjusted SFAG." This term refers to the grant awarded to a State through the formula and annual allocation at section 403(a)(1), minus any reductions due to the implementation of a Tribal TANF program to serve Indians residing in the State. You should note the distinction between this term and the "SFAG," because of their significance in determining spending limitations and the amount of penalties that might be assessed against a State under parts 271–275.

TANF funds. This term includes not just amounts made available to a State through the SFAG, but also other amounts available under section 403, including bonuses, supplemental grants, and contingency funds.

Federal funds. This has the same meaning as "TANF funds." In expending Federal funds, States are subject to more restrictions than they are in expending State MOE as discussed in this NPRM under subpart B of part 273.

You should also note the definition of "assistance" proposed in this section.

Assistance. The terms "assistance" and "families receiving assistance" are used in the PRWORA in many critical places, including: (1) in most of the prohibitions and requirements at section 408, which limit the provision of assistance; (2) in the numerator and denominator of the work participation rates in section 407(b); and (3) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, it is important that States have a definition of "assistance." At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was in the past.

Because PRWORA is a block grant, and it incorporates three different programs, a State may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that was previously provided under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We are proposing to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicates that Congress meant that this term encompass more than cash assistance; beyond that, it is not very informative (H.R. Rep. No. 725, 104 Cong., 2d Sess (1996)). Our consultations did not produce clear guidance in this area either. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects. For example, it could extend child support assignment to cases where it would not be appropriate.

If States expanded their definitions of assistance, they would have to apply that same definition under all provisions of the regulations. Thus, if something fell within the definition of assistance, the family receiving that type of benefit would be subject to data collection and reporting, child support assignment and cooperation requirements, work requirements, and Federal time limits. In response to the policy announcement, we have also received a number of questions about the treatment of TANF assistance under the child support enforcement program. The Office of Child Support Enforcement will be issuing guidance on the distribution of child collections under PRWORA; this guidance will explain the treatment of TANF assistance under the new distribution rules.

For those concerned about the inclusion of child care in the definition of assistance, we would point out the child care expenditures made under the CCDBG program are not subject to TANF requirements, and States have the authority to transfer up to 30 percent of their TANF grant to the CCDBG program.

We are proposing to collect data on how much of the program expenditures are being spent on different kinds of "assistance" and "non-assistance." See the discussion of the TANF Financial Report at part 275 for additional details.

If the data show that large portions of the program resources are being spent on "non-assistance," we would have concerns that the flexibility in our definition of "assistance" is undermining the goals of the legislation. We would then look more closely at the "non-assistance" being provided and try to assess whether work requirements, time limits, case-record data and child support assignment would be appropriate for those cases. If necessary, we would consider a change to the definition of "assistance" or other remedies.

In our January proposal, we took the view that the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition. In brief, the two exclusions were: (1) services that had no direct monetary value and did not involve direct or indirect income support; and (2) one-time, short-term assistance.

In the proposed rule, we are clarifying that child care, work subsidies, and allowances that cover living expenses for individuals in education or training are included within the definition of assistance. For this purpose, child care includes payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It does not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies includes payments to employers to help cover the costs of employment or on-the-job training.

We are also proposing to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we received a number of questions about what the term "one-time, short-term" meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that States might try to define as "short-term" or "one-time" many situations where assistance was of a significant and ongoing nature. We hope our proposal will give States the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcome comments on whether the proposed policy achieves this end.

Under the policy announcement and proposed rule, we define the minimum types of services and benefits that must be included. Based on comments we received, we considered allowing States to include additional kinds of benefits and services, at their option. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects. For example, it could extend child support assignment to cases where it would not be appropriate.

You should also note the definitions of "waiver" and "inconsistency" in this part.

Waiver and *Inconsistency.* Under the new section 415, States that received approval for welfare reform waivers under section 1115 before July 1, 1997, have the option to operate their cash assistance programs under some or all of these waivers. For States electing this option, provisions of the new law that are inconsistent with the waivers do not take effect until the expiration of the applicable waivers. States have raised numerous questions about how we will interpret this provision, particularly with regard to what is a waiver and an inconsistency.

Since a waiver extension might affect the application of certain of the penalty provisions within a State, we are defining both terms. Part of our responsibility in administering the penalty provisions is to provide notice concerning the rules we will utilize in applying the penalties.

The issue in defining waiver concerns the scope of the provision, specifically how much of the current or underlying law (i.e., the provisions of title IV–A as in effect on August 21, 1996) are properly considered to be part of the waiver. Three possible interpretations were suggested. The first is a very limited definition in which a waiver is only the specific change to the AFDC statute as articulated in the waiver list that was included in the terms and conditions for each demonstration project. The second possible interpretation is that a waiver includes all the underlying law; that, in effect, the AFDC statute, as modified by the waiver terms and conditions, would continue to apply in a State continuing a demonstration project. The third interpretation is that the waiver includes only some parts of the unwaived underlying law.

We believe the third option is the best. It seems most consistent with the Congressional intent to allow States to finish testing the welfare reform policies they had initiated through waivers by allowing sufficient flexibility to continue relevant aspects of those policies. It recognizes that, although some requirements may not have specifically been part of the waiver (as there was no need for a waiver under AFDC), the requirements are an integral part of the demonstration embodied in the waiver.

The first interpretation option is too narrow to allow continuation of many demonstration objectives; thus, it seems inconsistent with the Congressional intent. Similarly, to allow a State to continue the AFDC program in its entirety, even when a particular AFDC provision was not necessary to the demonstration, would seem to frustrate the intent of Congress in enacting TANF. Rather, we believe section 415 was intended to allow States to continue their reform policies, but not the AFDC program in its entirety.

The definition of "waiver" we are proposing allows a State the flexibility to include applicable provisions of prior law, but only if their inclusion were necessary to achieve the objective of the approved waiver.

At § 271.60, we provide an example of the application of the definitions of waiver and inconsistent to the work requirements and explain their implications. We also discuss the application of the definitions to control and experimental groups.

After extensive deliberations, we have also defined what makes the new law "inconsistent" with a waiver. We propose that a provision of TANF is inconsistent with a waiver only if the State must change its waiver policy in order to comply with the TANF requirement. A TANF provision is not inconsistent if it is possible for the TANF requirement and the waiver policy to operate concurrently.

For example, if the State has a time limit that runs for two years and then has extensions if the recipient is "playing by the rules," that time limit can run in tandem with the Federal time limit until the five-year limit on Federal assistance is reached. At that point, the TANF restriction would be inconsistent with providing further assistance under the demonstration's extension. However, since there is an inconsistency at that point, section 415 would allow a State to continue such assistance until the demonstration ended.

We considered two alternative definitions of inconsistency. The first was that just having a waiver that differs in any respect from the TANF requirement creates an immediate inconsistency. For example, under this definition, the State time limit and the Federal time limit would run sequentially. However, this definition seems to create an artificial inconsistency where one does not exist in fact; thus, it seems contrary to the statute.

The second alternative was to find that a waiver was not inconsistent with the TANF provisions of the law if TANF restrictions related only to the expenditure of Federal funds and did not prohibit States from continuing their waiver policies with their own funds. However, application of this theory could lead to a finding of no inconsistency for all waiver provisions, including those in the major areas of work and time limits. It would thus render section 415 meaningless.

At § 274.1, we provide additional discussion regarding the implications of our definition of inconsistency.

You should also note the definitions of "Family Violence Option," "good cause domestic violence waiver," and "victim of domestic violence."

Family Violence Option, Good Cause Domestic Violence Waivers, and *Victims of Domestic Violence.* These definitions are relevant to State claims of "reasonable cause" for failing to meet the work participation rate and time-limit requirements of the Act. Under parts 271 and 274, a State's decision to implement the Family Violence Option and its provision of good cause waivers to victims of domestic violence under that provision create a special-case situation that may affect a State's eligibility for a reasonable cause exception from these two penalties.

Finally, we would like you to note that § 273.0(b) contains a definition of "administrative costs." This definition is important because States are subject to 15 percent caps on the amount of Federal TANF and State MOE funds they may spend on administrative activities.

When are these provisions in effect? (§ 270.40)

This section of the proposed rules provides only the general time frames for the effective dates of the TANF provisions. Many of the penalty and funding provisions have delayed effective dates. For example, most penalties would not be assessed against States in the first year of the program, and reductions in grants due to penalties would not occur before FY 1998 because reductions take place in the year following the failure. You should look to the discussion on the individual regulatory sections for specific information on effective dates.

This section also makes the important point that we will not retroactively apply rules against States. With respect to any actions or behavior that occurs before we issue final rules, we will judge State actions and behavior only against a reasonable interpretation of the statute.

B. Part 271—Ensuring That Recipients Work

What does this part cover? (§ 271.1)

This section identifies the scope of part 271: the mandatory work requirements of TANF.

What definitions apply to this part? (§ 271.2)

This section cross-references the general definitions for the TANF regulations established under part 270.

Supart A—Individual Responsibility

During our extensive consultations, a number of groups and individuals asked how the requirements on individuals relate to the State participation requirements and penalties. To help clarify what the law expects of individuals as opposed to the requirements it places on States, we have decided to outline a recipient's statutory responsibilities as part of the proposed rules. In so doing, we only paraphrase the statute, without interpreting these provisions. Inclusion of these provisions in the regulation does not indicate our intent to enforce these statutory provisions, but our expectation is that States will meet these requirements. We have included the requirements in the regulation for informational and contextual reasons.

What work requirements must an individual meet? (§ 271.10)

PRWORA promotes self-sufficiency and independence by expanding work opportunities for welfare recipients while holding individuals to a higher standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988. It espouses the view that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As States and communities assume new responsibilities for helping adults get work and earn paychecks quickly, parents face new, tougher work requirements.

Readers should understand that the law imposes a requirement on each parent or caretaker to work (see section 402(a)(1)(A)(ii)). That requirement applies when the State determines the individual is ready to work, or after (s)he has received assistance for 24 months, whichever happens first. For this requirement, the State defines what work activities meet the requirement.

In addition, there is a requirement that each parent or caretaker participate in community service employment if s(he) has received assistance for two months and is not either engaged in work in accordance with section 407(c) or exempt from work requirements. The State must establish minimum hours of work and the tasks involved. A State may opt out of this provision if it chooses. A State may impose other work requirements on individuals, but there is no further Federal requirement to work.

These individual requirements are different from the work requirements described at section 407. Section 407 applies a requirement on each State to engage a certain percentage of its total caseload and a certain percentage of its two-parent caseload in specified work activities. For the State requirement, the law lists what activities meet the requirement. A State could chose to use this statutory list for the first requirement on individuals, but is not required to do so. Subpart B below explains more fully what the required work participation rates are for States and how they are calculated. Subpart C explains the work activities and when an individual is considered "engaged in work" for those rates.

Which recipients must have an assessment under TANF? (§ 271.11)

Each State must make an initial assessment of the skills, prior work experience and employability of each recipient who is at least 18 years old, or has not completed high school (or equivalent) and is not attending secondary school.

With respect to the timing of assessments, within 90 days of the effective date of the State's TANF program (or up to 180 days, at State option), the State may assess an individual who is already receiving benefits as of that date. For any other recipient, the State may make the assessment within 30 days of the date on which the individual is determined to be eligible for assistance, but may increase this period to as much as 90 days. For example, if a State begins operating its TANF program on July 1, 1997, it may assess all individuals in its existing caseload by September 30, 1997 (or, at State option, December 31, 1997). For any individual applying after July 1, 1997, the State may do an assessment within 30 days (or 90 days, at State option).

What is an individual responsibility plan? (§ 271.12)

A State may require individuals to adhere to the requirements of an individual responsibility plan. Developed in consultation with the individual on the basis of the initial assessment described above, the plan should set forth the obligations of both the individual and the State. It should include an employment goal for the individual and a plan to move him/her into private-sector employment as quickly as possible. The proposed regulation includes more detailed suggestions for the content of an individual responsibility plan.

May an individual be penalized for not following an individual responsibility plan? (§ 271.13)

If the individual does not have good cause, (s)he may be penalized for not following the individual responsibility plan that (s)he signed. The State has the flexibility to establish good cause criteria, as well as to determine what is an appropriate penalty to impose on the family. This penalty is in addition to any other penalties the individual may have incurred.

What is the penalty if an individual refuses to engage in work? (§ 271.14)

If an individual refuses to engage in work in accordance with section 407, the State must reduce the amount of assistance otherwise payable to the family pro rata (or more, at State option) for the period during the month in which the individual refused, subject to good cause and other exceptions determined by the State. The State also has the option to terminate the case.

Each State may establish its own criteria for determining when not to impose a penalty on an individual. States may also establish other rules governing penalties as needed.

Under the Family Violence Option, a State may waive work requirements in cases where compliance would make it difficult for an individual to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence or individuals who are at risk of further domestic violence. The State must determine that the individual receiving the program waiver has good cause for failing to comply with the standard work requirements.

Can a family be penalized if a parent refuses to work because (s)he cannot find child care? (§ 271.15)

A State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the individual's home or work site is unavailable;
- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

This penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the lack of appropriate, affordable child care can create unacceptable hardships on children and families. To keep families moving toward self-sufficiency, and to assess the State's compliance with this penalty exception, we have described in the preamble to § 274.20 our expectation that States will have a process or procedure that: (1) Enables a family to demonstrate its inability to obtain needed child care; (2) informs parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of child care for a child under the age of six; and (3) advises parents that the time during which they are excepted from the penalty will still count toward the time limit on benefits at section 408(a)(7).

Because the State has the authority to determine whether the individual has demonstrated adequately an inability to obtain needed child care, as the regulations indicate, we expect the State to define the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements." The State should also provide families with the criteria, including the definitions, that it will use to implement the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

The proposed regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by requiring the child care Lead Agency, as part of its consumer education efforts, to inform parents about: (1) The penalty exception to the TANF work requirement; (2) the State's process or procedure for determining a family's inability to obtain needed child care; and (3) the fact that the exception does not extend the time limit for receiving assistance. The information must also include the definitions or criteria that the State employs to implement the State's determination process.

Under the proposed CCDF rule, we would require the Lead Agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions (listed above) and criteria in the CCDF plan.

Thus, the proposed CCDF rule requires that the Lead Agency would submit the definitions and criteria used by the State in determining whether child care is available. We took this child care proposal into consideration in drafting our proposed rule. Under § 271.15, we would require that the definitions and criteria be submitted, but would not require that the TANF agency submit them directly. Our goal is to ensure that these items are made available for audit and penalty purposes and that they be part of the public record.

If, based on the child care final rule, we would not expect to receive the criteria and definitions from the Lead Agency, we would add a data element to one of the proposed TANF reporting forms (such as the annual addendum) to incorporate them.

Does the imposition of a penalty affect an individual's work requirement? (§ 271.16)

Section 408(c) of the Act, as amended by section 5001(h) of Pub. L. 105–33, clarifies that sanctions against recipients under TANF "shall not be construed to be a reduction in any wage paid to the individual." This means that imposition of such penalties would not result in a reduction in the number of hours of work required.

Subpart B—State Accountability

How will we hold a State accountable for achieving the work objectives of TANF? (§ 271.20)

Work is the cornerstone of welfare reform. Research has demonstrated that early connection to the labor force helps welfare recipients make important steps toward self-sufficiency. The rigorous work participation requirements embodied in the legislation provide strong incentives to States to concentrate their resources in this crucial area. This summary section makes the legislation's focus on work and the requirements for work clear, while other sections address each of these areas in more detail.

This section of the proposed regulations describes what a State must do to meet the overall and two-parent work participation rates. It explains that a State must submit data to allow us to measure each State's success with the work participation rates. It notes that a State meeting the minimum rates will have a reduced MOE requirement but that a State failing to meet them risks a financial penalty.

What overall work rate must a State meet? (§ 271.21)

Section 407(a) establishes two minimum participation rates that a State must meet for FYs 1997 through 2002 and thereafter. The first, the overall work rate, is the percentage of all families receiving assistance who must participate in work activities by fiscal year. This section lists the statutory overall participation rate by fiscal year. The second is the work rate for two-parent families, addressed below at §§ 271.23 and 271.24.

How will we determine a State's overall work rate? (§ 271.22)

This section of the proposed regulation restates in clear terms the participation rate calculation specified in the statute. In particular, without changing its meaning, we have phrased the denominator in a way that we think is easier to understand than the statutory language.

We received many requests for guidance concerning how, for purposes of the participation rates, a State should treat a family that it exempts from work requirements. A State has the flexibility to establish any exemptions it chooses; however, with two exceptions (discussed below), the legislation offers no room to remove categories of recipients from the denominator. PRWORA embodies the views that: (1) Work is the best way to achieve independence; and (2) each individual should participate to his or her greatest ability. As waiver projects have demonstrated, innovative State programs can often find meaningful ways for nearly every recipient to participate in work-related activities. Therefore, the statute and the proposed regulation require nearly all families to be included in the calculation of the participation rates.

The proposed regulation makes clear that a State may count as a month of participation any partial months of assistance, if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. These families are already included in the denominator since they are recipients of assistance in that month.

This provision ensures that a State receives credit for its efforts in the first and last months that a family receives assistance. Without it, a State would have an inadvertent incentive to start and end assistance as close as possible to the beginning of the month, rather than as families need it. We think that measuring work in full weeks of

assistance during a partial month is consistent with the spirit of PRWORA. We have proposed the same policy for partial months of assistance under the two-parent rate at § 271.24.

During the development of the proposed regulation and in consultation with stakeholders, one important topic of discussion was how to treat victims of domestic violence whom the State is helping under the Family Violence Option (FVO), under section 402(a)(7). We recognize that there are circumstances in which a State should and will temporarily waive work requirements for some domestic violence victims. One question we considered was how such waivers would affect the calculation of the participation rates.

Many commenters urged us to remove all victims of domestic violence from the denominator of a State's participation rate so that the State would not be penalized for choosing to develop appropriate responses to their problems. Instead of changing the basic calculation of the work participation rates, we chose to address this situation under the definition of "reasonable cause" for States failing to meet their rates. Our approach is targeted, so as not to provide blanket exemptions for those who have ever suffered domestic violence, but instead to provide appropriate protections and supports for TANF recipients who need them.

We believe that keeping recipients who are being assisted under the FVO in the calculation is the better reading of the statute. In the calculation of work participation rates, the statute provides only two exemptions from the denominator: one for a single custodial parent of a child under 12 months old; the other for a recipient who is being sanctioned but has not been so for more than three of the last 12 months. The law is very specific concerning these exemptions and does not provide for others.

We believe victims of domestic violence and the objectives of the Act will be best served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. Service providers who work closely with victims of domestic violence attest that work is often a key part of the solution to domestic violence problems; it may provide both emotional support and a path to financial independence. Thus, we do not want to create an incentive for States to waive work requirements routinely for a recipient who does not need such a waiver.

However, we also hear that, in some cases, going to work may aggravate tensions with a batterer and place the victim at risk of further danger. Under our proposed rules, States should feel free to provide temporary waivers of work requirements in such cases.

Given the pressure States are under to meet the work participation rates, and the individualized circumstances that domestic violence victims face, we have concerns that automatically removing victims of domestic violence from the calculations could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. We also have concerns that it could result in diversion of resources away from these families to other categories of recipients. We believe our "reasonable cause" proposal and our strategy for monitoring the effect of these provisions will protect against these possible negative effects.

You will also note that this section of the regulation addresses our concern that States could use the flexibility inherent in the statute and these regulations to avoid the work participation rates for certain families in the TANF program. Because the participation rates include only those families receiving assistance that include an adult, the possibility exists that States could try to keep cases out of the calculation by converting them to child-only cases. Under our proposal, States would continue to have discretion in defining "families receiving assistance" and deciding the circumstances under which adults and children receive assistance in the State. However, we would reserve the right to add cases back into the calculation if we determine that a State was defining families solely for the purpose of avoiding a work penalty. Also, we are proposing to require that States submit annual reports to us specifying how many families were excluded from the overall work participation rate, together with the basis for any exclusions.

Please see § 271.52 of the proposed regulations for further discussion of the reasonable cause criteria.

What two-parent work rate must a State meet? (§ 271.23)

As with § 271.21, this section restates the minimum work participation rates for two-parent families established in the statute.

States should note the sharp increases in the two-parent participation rate. Congress has high expectations that States will help the vast majority of adults in two-parent families find jobs or participate in other work activities. We note that most States had difficulty meeting the less ambitious JOBS participation rates for unemployed parent families (UPs), the primary two-parent cases under AFDC. For several reasons, the new rates under TANF are much more demanding than they were under JOBS. First, the TANF rate is a "two-parent" rate, not a rate just for UPs. Secondly, the denominator includes much more of the caseload; it recognizes many fewer exemptions. Finally, PRWORA lifted the restrictions on providing assistance to two-parent families. Thus, in some States, many more two-parent families could be eligible for assistance and subject to the work requirements than under prior law.

We strongly encourage each State to consider carefully what it must do to get two-parent families working. In some cases, States may need to make substantial changes to their program designs over time. In the first few years of operating TANF, the participation rates are at their lowest and pro rata reductions may significantly reduce the minimum required rates. We think it is important for States to capitalize on this initial period to invest in program designs that will allow them to achieve the higher participation rates in effect in later years. We intend to assist States in this endeavor through technical assistance and by sharing promising models as they emerge.

Finally, we would like to make it clear that providing a non-custodial parent with TANF services need not cause a State to consider the family a two-parent family for the purposes of the participation rate. States could define two-parent families as those with two parents living in the same household.

How will we determine a State's two-parent work rate? (§ 271.24)

The proposed regulations express the two-parent work participation rate in terms very similar to those we used for the overall rate. States should note that any family that includes a disabled parent is not considered a two-parent family for purposes of the participation rate and, thus, is not included in the numerator or denominator of the two-parent rate. They should also note the prohibition against defining families receiving assistance for the purpose of excluding cases from two-parent participation rate. (See § 271.22 for additional discussion.)

It is important to note that, in accordance with the statute, we calculate both participation rates in terms of families, not individuals. Whether we include the family in the numerator depends on the actions of individuals, but an entire family either

counts toward the rate or does not. In the case of a two-parent family, whether a family counts may depend on the actions of both parents.

Section 408(a)(7) limits the receipt of Federal TANF assistance to 60 months for any family, unless the family qualifies for a hardship exception or disregard of a month of assistance. (In our discussion of § 274.1, we explain that months of receipt are disregarded when the assistance was received either: (1) by a minor child who was not the head of a household or married to the head of a household; or (2) while an adult lived in Indian country or in an Alaska Native Village with 50 percent or greater unemployment.) We have received inquiries concerning the effect of a time-limit exception or disregard on the participation rates. In fact, the time limit does not have a bearing on the calculation of the participation rate. All families must be included in the participation rate, unless they have been removed from the rate for one of the two work-related exemptions (i.e., the family is subject to a penalty but has not been sanctioned for more than three of the last 12 months, or the parent is a single custodial parent of a child under one year of age and the State has opted to remove the family from the rate).

Does a State include Tribal families in calculating these rates? (§ 271.25)

States have the option of including in the participation rates families in the State that are receiving assistance under an approved Tribal family assistance plan or under a tribal work program. If the State opts to include such families, they must be included in the denominator, as well as the numerator where appropriate. We are particularly interested in receiving comments relating to the implementation of this option, such as Tribal reporting of participation information to the State.

Subpart C—Work Activities and How To Count Them

What are "work activities?" (§ 271.30)

Section 407(d) specifies the twelve work, training, and education activities in which individuals may participate in order to be "engaged in work" for the purpose of counting toward the work participation rate requirements. Congress did not define these activities further. Some have commonly understood meanings from their use over time or from operational definitions adopted by prior employment and training programs. But several of the permissible activities, such as "vocational educational training" and "job readiness assistance," do not have commonly understood meanings and are subject to interpretation. Because these terms lack a common definition or understanding, we began receiving questions soon after the enactment of PRWORA about whether we would define them in the rules.

To address this problem, we first examined legislative intent. In enacting TANF, Congress wanted to give States significant flexibility in administering TANF and limit Federal authority to regulate. At the same time, Congress wanted to create a work-focused program of time-limited assistance. In addition, it established significant data reporting requirements for States, including information about the activities in which individuals participate. As discussed below, these three purposes do not clearly point in the direction of more or less definition. Thus, the statute itself did not clearly resolve the matter.

Secondly, we engaged in wide and extensive consultation with a variety of groups to determine what others thought about the definition issue. Most groups, particularly States and their organizational representatives, overwhelmingly urged us not to define the work activities further and recommended that definitions be left to States. They suggested that we could use this preamble to underscore the flexibility and latitude intended by the statute, especially in vocational education. A few individuals asked whether a State would be subject to a penalty if it did not define activities in a way we thought appropriate. They suggested providing illustrative examples or including guidance in the preamble on activities that could not count as work. Several participants thought that we should offer general guidance on the definition of activities to ensure uniform data reporting across States.

Representatives of the education community and some from the labor community expressed concerns about how work-focused activities will affect programs that have been operating under the Job Opportunities and Basic Skills Training (JOBS) program. They emphasized the positive correlation between educational attainment and job acquisition and advancement, as well as the importance of parental education levels and involvement in the education of their children. They also expressed concern that, without additional education and training, many families will find it difficult to hold meaningful employment, much less to advance. They wanted us to take this opportunity to define work activities in ways that fostered education while promoting work.

In this regulation, we are proposing not to define the individual work activities. In making our decision, we considered the following.

Congress did not define the terms and clearly gave States overall flexibility to design their programs. Certainly, one element of that flexibility could be to allow each State to define the work activities in order to address its unique needs and circumstances.

We recognize that definitions of terms could help clarify the parameters of a work-focused program design. For example, without Federal definitions, States could conceivably include a range of activities that may not enhance work skills or might not be considered "work experience" by potential employers. However, in light of the five-year time limit, we expect that States will be very careful to establish programs that do not work to prolong a family's use of assistance.

After considering the extensive input we received, we think that the goals and objectives of the legislation will be better served by having each State define the work activities. We believe States will use the flexibility of the statute to formulate a variety of reasonable interpretations leading to greater innovation, experimentation, and success in helping families become self-sufficient quickly.

Because the flexibility could also be used in ways that do not further Congressional intent, we are requiring each State to provide us with its definitions of work activities for both TANF and separate State programs under the data collection requirements at §§ 275.9 and 273.7. We are concerned that different TANF definitions could affect the vulnerability of States to penalties for failure to meet the participation rate. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States. Over the next several years, we will carefully assess the types of programs and activities States develop and will actively publicize and share the results of our findings. If necessary at some time in the future, we will initiate further regulatory action.

Before leaving the subject of work activities and program design, we would like to remind States about some key research findings from prior welfare-to-work programs. According to the Manpower Demonstration Research Corporation's publication, *Work First:*

The most successful work first programs have shared some characteristics: a mixed

strategy including job search, education and training, and other activities and services; an emphasis on employment in all activities; a strong, consistent message; a commitment of adequate resources to serve the full mandatory population; enforcement of participation requirements; and a cost-conscious management style.

While the most successful programs consistently and strongly emphasize work, the actual program designs recognize and address the critical role education plays in preparing adults for work. As more and more recipients engage in work, State caseloads may reflect higher proportions of the educationally disadvantaged. In combination with other work activities, education may become more important in improving basic communication, analytical and work-readiness skills of recipients. Thus, States may need to integrate adult basic skills, secondary education, and language training within high-quality vocational education programs. Such program designs encourage recipients to continue acquiring necessary educational skills and foster programs that prepare recipients for higher-skill, higher-wage jobs.

In his most recent "State of the Union" address, President Clinton identified education as his number one priority. He issued a call to action for American education based on principles necessary to prepare people for the 21st century. One principle was to make sure that learning is available for a lifetime.

We encourage States to adopt program designs that take advantage of existing educational opportunities. States may use the statutory flexibility to design programs that promote educational principles by:

- Actively encouraging adults and children to finish high school or its equivalent;
- Expecting family members to attain basic levels of literacy and to supplement their education in order to enhance employment opportunities;
- Encouraging family literacy; and
- Promoting community-based work-related vocational education classes, created in collaboration with employers.

States could also make it easier for individuals to combine school and work. For example, they could develop on-campus community work experience program positions, where child care is also available. They could also encourage schools to use work-study funds for students on welfare and then count the hours worked in those programs toward work requirements.

While we have not regulated the definition of work activities, we want to ensure that recipients and children both experience positive outcomes. This is a particularly significant issue when child care is the work activity. For this to happen, child care arrangements should be well developed, implemented and supported.

Research has found that quality child care is critical to the healthy development of children and that providers who choose to care for children create more nurturing environments than those who feel they have no choice and are providing care only out of necessity. Thus, States should assess whether recipients have an interest in providing child care before assigning them to this activity.

In addition, States should provide training, supervision and other supports to enhance caregiving skills if they wish recipients to attain self-sufficiency. Such supports would assist the development of both the caregivers and the children in care.

A State that assesses the individual's commitment to child care and provides opportunities for training in health and safety (*e.g.*, first aid and CPR), nutrition, and child development, should see successful outcomes for both the adults and children in care.

Finally, the stability of child care arrangements affects outcomes for both parents and the children in care. When parents feel comfortable with their child care arrangements, their own participation in the work force becomes more stable. Stability fosters emotional security for children. Thus, stability should be one of the factors States take into account when assigning participants to child care as a work activity.

How many hours must an individual participate to count in the numerator of the overall rate? (§ 271.31)

Section 407(c) specifies the minimum hours an individual must participate to count in the State's participation rate calculation. There are two related requirements. First, there is a minimum average number of hours per week for which a recipient must be engaged in work activities. The average weekly hours are reflected in the following table:

If the fiscal year is:	All families	
	Then the participation rate is: (percent)	and the average weekly hours of work are:
1997	25	20
1998	30	20
1999	35	25
2000	40	30
2001	45	30
2002	50	30

Second, the law requires that at least an average of 20 hours per week of the minimum average must be attributable to certain specific activities. These activities are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training not to exceed 12 months;
- Provision of child care services to an individual who is participating in a community service program.

Note: The limitation that at least 20 hours come from certain activities does not apply to teen heads of households; however, there are other limitations related to teen heads of households. Please refer to § 271.33 below.

After an individual meets the basic level of participation, the following activities may count toward the total work requirement hours of work:

- Job skills training directly related to employment;
- Education directly related to employment for those without a high school diploma or equivalent;
- Satisfactory attendance at a secondary school or GED course for those without a high school diploma or equivalent.

In our consultations, several people asked whether a State may average the hours of participation of different recipients to reach the minimum average hours required by the work participation rate, as they could in the JOBS program. PRWORA does not permit combining and averaging the hours of work of different individuals. However, we have clarified in the rules that a State may average an individual's weekly work hours over the month to reach the minimum average number of hours per week that the individual must engage in work.

Our consultations uniformly suggested that we did not need to provide any further regulatory guidance or clarification in this area. Thus, in the regulatory text, we have paraphrased the statute in simple, understandable terms.

How many hours must an individual participate to count in the numerator of the two-parent rate? (§ 271.32)

For two-parent families, section 407(c) specifies that the parents must be participating in work activities for a total of at least 35 hours per week and that a specified number of hours be attributable to specific work activities. A State may have one parent participate for all 35 hours, or both parents may share in the work activities. If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the parents must be participating for a total of at least 55 hours per week. As before, a specified number of hours must be attributable to certain activities (listed below). We summarize the requirements for two-parent families in the table below:

If the fiscal year is:	Two-parent families	
	then the participation rate is: (percent)	and the weekly hours of work (without/with federal child care) are:
1997	75	35/55
1998	75	35/55
1999	90	35/55
2000	90	35/55
2001	90	35/55
2002	90	35/55

In the first situation (where the weekly total must be at least 35 hours), at least 30 hours must be attributable to the same specific activities as in the overall rate. In the second situation (where the weekly total must be at least 55 hours), 50 hours must be attributable to these activities. Again, these are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training (for not more than 12 months);
- The provision of child care services to an individual who is participating in a community service program.

Therefore, no more than five of the appropriate minimum hours may be attributable to education related to employment, high school (or equivalent), or job skills training activities.

During our consultations, many thought it was unclear whether the 35-hour requirement is a minimum for each week or whether it is a minimum weekly average, as is the case in the overall rate. For example, if a parent participated 40 hours one week and 30 hours the next, the question arises whether (s)he would meet the minimum requirement for both weeks. To provide maximum flexibility for States to meet the program goals, we have clarified in the proposed rule that, as long as the parents' average total hours equal at least 35 hours per week, the individual meets the participation requirement.

Other than this clarification, we have mirrored the statute in simple, understandable terms.

What are the special requirements concerning educational activities in determining monthly participation rates? (§ 271.33)

Section 407(c)(2)(C) provides that a teen who is married or the single head-of-household is deemed to be engaged in work for a month if (s)he maintains satisfactory attendance at a secondary school or the equivalent or participates in education directly related to employment for an average of at least 20 hours per week. Since we have heard few comments about this provision, our proposed rule paraphrases the statutory language.

To reinforce the emphasis on work, section 407 limits educational activities in two ways:

(1) An individual's participation in vocational educational training may count for participation rate purposes for a maximum of 12 months; and

(2) For each participation rate, not more than 30 percent of individuals determined to be engaged in work for a month may count by reason of participation in vocational educational training or, for teens who are married or single heads of households, either by reason of maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment. Teen parents are only included in the 30 percent limitation in fiscal year 2000 and thereafter.

When PRWORA was enacted, there was substantial controversy about precisely how the second limitation would apply. However, Pub. L. 105–33 modified this provision, making the limitation much clearer. The description above and the regulation at § 271.33 reflect the new provision, as amended by Pub. L. 105–33.

Are there any limitations in counting job search and job readiness assistance toward the participation rates? (§ 271.34)

Section 407(c)(2)(A)(i) limits job search and job readiness assistance in several ways.

First, an individual generally may not be counted as engaged in work by virtue of participation in job search and job readiness assistance for more than six weeks. No more than four of these weeks may be consecutive. During our consultations, we were asked whether these limitations apply for the lifetime of the individual, per spell of assistance, or per fiscal year.

Many people recommended treating it as a fiscal-year limit for two policy reasons. First, since the participation rate itself is tied to the fiscal year, it makes sense to have the limitation apply to the same time frame. Second, a different policy could force States to place individuals in other, less appropriate activities just to meet the participation rate. Moreover, research indicates that job search activities are an instrumental component in effective work program designs.

The statutory language supports the fiscal-year interpretation. The job search language at 407(c)(2)(A)(i) limiting the weeks of participation states that the limit is "notwithstanding paragraph (1)." Paragraph (1) refers to the determination of whether a recipient is engaged in work for a month "in a fiscal year." Thus the reference to paragraph (1) puts the job search limitation in the context of a calculating whether an individual is engaged in work in the fiscal year. Based on these considerations, we have clarified in the proposed rules that the six-week limitation applies to each fiscal year.

The legislation and our proposed rules allow the six-week limit on job search and job readiness assistance to extend to 12 weeks if the unemployment rate of a State exceeds the national unemployment rate by at least 50 percent, or if the State could qualify as a needy State for the Contingency Fund.

Finally, our rules paraphrase the statute (at section 407(c)(2)(A)(ii)) in allowing a State to count three or four days of job search and job readiness assistance during a week as a full week of participation on one occasion for the individual.

Are there any special work provisions for single custodial parents? (§ 271.35)

Section 407(c)(2)(B) provides a special participation rule for single parents or caretakers with young children. A single

parent or caretaker with a child under the age of six will be deemed to be engaged in work for a month if s(he) participates in work activities for an average of at least 20 hours per week.

This provision has little relevance in FYs 1997 and 1998, when, for the overall rate, the required number of hours for all individuals is 20 hours per week. But, when the required number of hours rises to 25 hours per week in FY 1999 and to 30 hours per week thereafter, this provision allows single parents or caretakers to spend time with younger children. It also may enable those with young children to fulfill their work obligations while their children are in preschool activities.

Because our consultations yielded few comments regarding this provision, the proposed regulations paraphrase the statute.

Do welfare reform waivers affect what activities count as engaged in work? (§ 271.36)

This section is simply a cross-reference to § 271.60, which addresses welfare reform demonstration waivers. We thought it would be helpful to include it so that readers would know to refer to this important exception to the work activities and hours specified in subpart C.

Subpart D—Caseload Reduction Factor for Minimum Participation Rates

Is there a way for a State to reduce the work participation rates? (§ 271.40)

Section 407(b)(3) requires us to issue regulations to reduce a State's minimum participation rate based on reductions in its welfare caseload. Under this provision, a State's participation rate for any fiscal year will be reduced by the same number of percentage points as the reduction in the State's average monthly caseload since 1995. The reduction reflects the difference between the State's caseload under the IV–A State plan in effect in FY 1995 and the average number of cases receiving assistance, including assistance under a separate State program, in the prior year.

The statute specifies that the reduction must not reflect any caseload changes that resulted from either Federal requirements or State changes in eligibility between the previous and current IV–A programs.

States have an inherent interest in achieving caseload reductions; this provision increases that interest. If a State were to reduce its caseload, under the caseload reduction provision it could qualify for lower participation rate requirements, reduce the risk of a penalty for failing to meet the work participation rates, and increase its chance of qualifying for a lower TANF MOE requirement. It could also free up resources to serve recipients in alternative ways.

How will we determine the caseload reduction factor? (§ 271.41)

We found it difficult to develop an appropriate methodology that could quantify different types of caseload reductions. In our extensive consultations, we found no straightforward methodology for estimating the reduction factor.

We considered and rejected two alternative approaches for calculating the caseload reduction factor.

The first alternative was to use Medicaid records to estimate the effect of eligibility changes. Initially, we thought this might be a viable solution because, under section 114 of PRWORA, States continue to determine Medicaid eligibility on the basis of the AFDC eligibility rules in effect as of July, 1996. Thus, in theory, this provision might give us a count of how many individuals would have been eligible for benefits in the absence of Title IV–A eligibility changes. However, this option proved not to be feasible because Medicaid data are not collected in a manner that is useful for this purpose. In addition, the statute allows States to modify AFDC rules for Medicaid eligibility purposes; adjusting for such changes would greatly complicate any estimations.

Our second alternative was to estimate the caseload reduction factor for each State based on a computer model. The hope was that we might estimate the caseload effects of State and Federal policy changes using State-reported information on policy changes and Current Population Survey household data. However, this option also was not feasible due to the difficulty of developing computer models that could accurately estimate the effects on State caseloads. In particular, using Census data would make it difficult to estimate the effects of certain policy changes in small States. Finally, we were concerned that this approach would run counter to our intention of creating a simple, understandable methodology.

Because of the difficulty we had in establishing a uniform methodology, we are proposing to determine the appropriate caseload reductions that apply to each State based on information and estimates reported to us by the State. The statute specifies that the responsibility for establishing the caseload reduction factors lies with us. We will analyze the information and estimates provided, determine whether we think they are reasonable (based in part on State-by-State comparisons), and conduct periodic, on-site reviews to validate the accuracy of the information. This approach involves States in the process of assessing the causes of caseload changes. It also tries to ensure program accountability and preserve the focus on work.

As the first step in the process, we will be using the caseload data reported to us by the State. To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases reported on ACF–3697, Statistical Report on Recipients Under Public Assistance. For fiscal years 1996–1998, we will be using data from this same report, supplemented by caseload information from the TANF Data Report and the TANF MOE Data Report, beginning with the fourth quarter of fiscal year 1997, where appropriate. For fiscal years 1999 and beyond, we will only be using caseload information from the TANF Data Report and the TANF MOE Data Report to compare against the fiscal year 1995 base year information. Therefore, in order to qualify for a caseload reduction, a State must have reported information on monthly caseloads for the previous year (including cases in separate State programs), based on the definition of a case receiving assistance, as defined at § 271.43.

Next, to receive a reduction in the participation rates, a State must provide us with sufficient data and information to calculate the reduction. To facilitate such reporting, a State must submit the Caseload Reduction Report to us containing the following information:

(1) A complete listing of and implementation dates for all eligibility changes, including those mandated by Federal law, made by the State since the beginning of FY 1995, and a listing of the reasons (such as found employment) for case closures;

(2) A numerical estimate of the impact on the caseload of each eligibility change or case closure reason;

(3) Descriptions of its estimating methodologies, with supporting documentation; and

(4) A certification from the Governor that it has taken into account all reductions resulting from changes in Federal and State eligibility.

States should note that the information required here to make a determination about the reduction factors is distinct from the case-record information proposed as an optional reporting requirement at § 275.3(d).

We will determine whether the methodology and resulting estimates are reasonable. We will compare each State's methodology, estimates and impact against that of other States. We will also review the quality and completeness of data and the adequacy of the documentation. We may discuss the estimates and methodologies with State staff and may request additional information or documentation to make adjustments in the estimates. We will also conduct periodic, on-site visits and examine case-record information in order to validate the information, data and estimates provided.

The proposed regulation requires States to provide us with any additional information within two weeks of our requesting it. We realize that this is a short time period, but we have proposed this deadline because a State's MOE requirement for the fiscal year may hinge upon the caseload reduction calculations. A State that achieves the participation rates must only reach 75 percent of its historic expenditures for the MOE requirement, rather than 80 percent. The reduction factor may play a significant part in whether States meet the participation rates. We have given ourselves a limited timeframe of 90 days in which to evaluate, make any necessary modifications, and establish caseload reduction factors. We must acquire and evaluate any additional information we need within that period. In light of these constraints, we think that the two-week timeframe is reasonable.

Many of the eligibility changes States have made have a differential effect on two-parent cases (compared to the impact on cases overall). We did a State-by-State comparison of the overall caseload reductions and the two-parent caseload reduction between fiscal years 1995 and 1996 and noted dramatic differences for almost all States. Therefore, we are requiring States to calculate two separate sets of caseload reduction estimates, one for the overall caseload and another for two-parent cases. States must base their overall caseload reduction estimates on decreases in cases receiving assistance in the prior year compared to the AFDC caseload in FY 1995. States must base their caseload reduction estimates for two-parent families on decreases in their two-parent caseload compared to the AFDC Unemployed Parent caseload in FY 1995.

Which reductions count in determining the caseload reduction factor? (§ 271.42)

In drafting this provision, Congress recognized that some, but not all, caseload reductions in a State should be allowed to reduce work participation rates. Allowing States too much credit could mean that they could avoid accountability for meeting the law's tough new work requirements; they could simply deny families assistance and face much lower requirements. Allowing States too little credit would mean that the States that are most successful in moving families into employment and off their caseloads would not get the intended reward for their efforts.

In implementing this provision, therefore, our primary goals were to: (1) reinforce strongly the work participation requirements of the Act; (2) give States full credit for caseload reductions that result from moving people into work; and (3) avoid categorizations of eligibility changes that would create inadvertent incentives for changes in State policy that were unrelated to work and harmful to vulnerable families. Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations, time limits, grant reductions, changes in requirements based on residency, age or other demographic or categorical factors). A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (such as fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

In short, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

Likewise, a State can argue that some or all of the families in separate State programs should not be included in this calculation, based on the type of family served or the nature of benefits provided, but it must substantiate such a claim with specific data on the family. Case-record information on the characteristics of families served in separate State programs and data on the services provided in those programs will contribute to this discussion. Under part 275 and § 271.41(e), we propose that States wishing to claim a caseload reduction factor must report these data.

What is the definition of a "case receiving assistance" in calculating the caseload reduction factor? (§ 271.43)

To determine the caseload reduction factor, we will look at caseloads in both TANF and separate State programs. Using the definition of assistance proposed under part 270, we propose to base the calculation on all cases in the State receiving IV–A assistance, except those receiving one-time, short-term assistance or services with no monetary value.

When must a State report the required data on the caseload reduction factor? (§ 271.44)

The caseload reduction factors reflect the caseloads in the previous year compared to FY 1995. For each fiscal year, a State must report its data by November 15th. We will approve or reject a State's proposed reduction within 90 days of that date, or by February 15th.

Subpart E—State Work Penalties

While PRWORA embodies State flexibility in program design and decision-making, it also embodies the principle of accountability. Where a State does not live up to the minimum standards of performance, it faces serious financial penalties. One of the principal areas of accountability is in the State's provision of work and work-related activities that recipients need to leave the system and become self-sufficient. The work participation rates are demanding, but designed to ensure that recipients move as quickly as possible into work and towards independence. This is especially important given the time-limited nature of Federal TANF benefits.

Almost all of the groups with which we consulted were interested in the penalty related to the work participation rates. Most had strong views about what should be a reasonable cause exception to the penalty. They stressed that the criteria should be flexible, leaving room to respond to circumstances in different States. They also urged us to examine a State's good-faith efforts in determining the severity of a penalty.

In structuring this part of the proposed regulations, we have attempted to balance the imperative of State accountability in the work participation rates with the knowledge that each State enters TANF from a different standpoint and with different plans for helping its recipients.

What happens if a State fails to meet the participation rates? (§ 271.50)

In accordance with section 409(a)(3), as amended by Pub. L. 105–33, if we

determine that a State has not achieved either or both of the minimum participation rates in a fiscal year, we must reduce the SFAG payable for the following fiscal year. The initial penalty is five percent of the adjusted SFAG and increases by two percentage points for each successive year that the State does not achieve the participation rates. We may reduce the penalty amount based on the degree of noncompliance, as discussed at § 271.51. The total work participation penalty can never exceed 21 percent of the adjusted SFAG. (Please refer to § 272.1(d) for a discussion of the total penalty limit under TANF.)

If a State fails to provide complete and accurate data on work participation, as required under section 411(a) of the Act and part 275 of the proposed rules, we will determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2)). However, in this case, we thought it would be more appropriate to penalize the State for failure to meet its work rate. First, this policy is consistent with the approach we are taking when States fail to report information related to other penalty determinations. Also, we did not want to create a situation where non-reporting States would face lesser penalties than reporting States, and we did not believe duplicate penalties were warranted.

Under what circumstances will we reduce the amount of the penalty below the maximum? (§ 271.51)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the required participation rate. However, it specifies neither the measures of noncompliance nor the extent of reduction. The proposed rule uses three criteria to measure the degree of noncompliance. The statute also gives us the discretion to reduce the penalty if the State's noncompliance resulted from certain specific causes; we address this latter issue separately, in the section entitled "Discretionary Reductions."

We are proposing that, a State will not receive a penalty reduction based on the severity of the failure or our discretionary authority, if a State has diverted cases to a separate State program for the purpose of avoiding the work participation rates. We want to ensure that each State makes a serious effort to provide work and work-related activities in any State-only funded programs. As we indicated in program announcement TANF–ACF–PA–97–1, we do not believe Congress intended a State to use separate State welfare programs to avoid TANF's focus on work.

Required Reduction

In part, we will measure noncompliance on the basis of whether the State failed one or both rates for the fiscal year and which participation rate it failed, if only one. First, we believe that a State that fails the two-parent rate should be subject to a smaller penalty than a State that fails the overall rate or both. Second, we believe it is appropriate to consider the size of the two-parent caseload in deciding how much weight to give a failure of the two-parent rate only.

In looking at the data for FY 1996, we noted that the two-parent participation rate on average affects a very small percentage of a State's entire caseload; the mean State percentage was about 6.6 percent, but the median was only about 2.4 percent.

Under our proposal, the maximum penalty a State would face for failure to meet the two-parent rate would depend directly on how much of the total caseload in the State was comprised of two-parent families.

The State would not get a similar reduction if it failed the overall rate because all cases, including two-parent cases, are reflected in the overall rate.

We believe a State that failed with respect to only a small percentage of its cases should not face a huge penalty. At the same time, we want to ensure that States make adequate commitments to achieving the two-parent participation rates and that our policies support State efforts to extend benefits to two-parent families. We would like comments as to whether our proposal properly balances these objectives.

Finally, we will measure noncompliance on the basis of the severity of a State's failure to achieve the required rate. We are proposing to reduce the penalty in direct proportion to the State's level of achievement above a threshold of 90 percent. We would compute a ratio whose numerator is the difference between the participation rate a State actually achieved and the applicable threshold rate and whose denominator is the difference between the applicable required participation rate and the applicable threshold rate.

For example, assume a State achieved 95 percent of the required rate, or 5 percentage points above the threshold. These 5 percentage points represent 50 percent of the difference between the required rate and the threshold. Therefore, we would reduce by 50 percent that portion of the penalty (either 90 percent or 10 percent) allocated to the rate the State failed.

In drafting the regulation, we wanted to strike the right balance between the importance of work and the requirement to reduce the penalty based on the degree of noncompliance. Although our first inclination was to make reductions in proportion to the State's achievement toward the required rate, our experience in the JOBS program led us to consider creating a threshold below which we would grant no reduced penalty. We were concerned that, as in the JOBS Unemployed Parent participation rates, there would be States whose level of achievement was negligible, particularly with the two-parent caseload, and thus did not merit a reduced penalty. Given that experience, we thought it was essential to have a threshold.

We considered basing the threshold on the past performance of the States, for example at the 50th or 75th percentile of participation the previous year. However, the data we had from the JOBS program did not prove sufficient to determine where we should set such a State performance threshold. Instead, we chose to establish a threshold as a percentage of the required participation rate. We set the participation threshold at 90 percent because of the emphasis in the statute on making the work penalty meaningful. In particular, Pub. L. 105–33 amended the work penalty provision so that the amount was fixed, removing the discretion we had under PRWORA to set a lesser penalty amount. We think this shows Congressional intent that the work penalty should be meaningful. To avoid undercutting this intent, we believe that a State should make substantial progress in meeting the target rates before we should consider a reduction.

Moreover, the threshold works in conjunction with the penalty allocation we are proposing for failing to meet just one rate. Given their combined effects, we think it is appropriate to set the threshold at 90 percent.

We are particularly interested in any comments readers have concerning the measures of noncompliance we have proposed.

Discretionary Reductions

The proposed regulation also reflects the discretion that we have to reduce the amount of the penalty if the State could qualify as a needy State for the Contingency Fund. The definition of "needy State" is based on especially high unemployment or large numbers of Food Stamp recipients in the State. Please see § 270.2 for more discussion of how a State qualifies for the Contingency Fund.

Pub. L. 105–33 gave us the added discretion to reduce the penalty if the State failed to meet the participation rate due to extraordinary circumstances such as a natural disaster or regional recession. To ensure that we take any such circumstances into consideration, States should submit information describing the circumstances and their effects on the ability of the State to meet the participation rates. We must provide a written report to Congress to justify any penalty reductions we provide States on this basis.

Readers will note the similarity between this criterion for reducing the amount of the penalty and the criterion at § 272.5(a)(1) for granting a reasonable cause exception to a penalty due to a natural disaster. We will evaluate any information a State submits concerning the effects of a natural disaster on its ability to achieve the participation rates. If the material does not support granting a reasonable cause exception, we will consider whether it is appropriate to reduce the penalty. For example, if the disaster caused a failure in only one area of the State, we might reduce the penalty in proportion to the TANF caseload in that area. We intend to use a similar approach to evaluating the effects of a regional recession.

Finally, this section of the proposed regulation indicates that States may dispute our findings that they are subject to a penalty.

Is there a way to waive the State's penalty for failing to achieve either of the participation rates? (§ 271.52)

Section 409(b) creates a reasonable cause exception to the requirement for certain penalties, including failure to meet the minimum participation rates. If we determine that a State has reasonable cause for failing to meet one of the rates, we cannot impose a penalty.

We have included general reasonable cause criteria at § 272.5, which may apply to any of the penalties for which there are reasonable cause exceptions. The preamble to § 272.5 discusses how we arrived at these criteria as well as our general thinking about the reasonable cause exception. For the work participation rate penalty, two additional, specific reasonable cause exceptions apply. Under the proposed rule at § 271.52, a State may demonstrate that its failure can be attributed to its granting of good cause domestic violence waivers under the Family Violence Option. In this case, the State must show that it would have achieved the required work rates if cases with good cause waivers were removed from both parts of the calculation (i.e., from the numerators described in §§ 271.22(b)(1) and 271.24(b)(1) and the denominators described in §§ 271.22(b)(2) and 271.24(b)(2)). A State must grant the good cause domestic violence waivers in accordance with criteria in the regulation to be eligible to receive a reasonable cause exemption on these grounds.

The regulation also provides that a State may receive a good cause exemption if it demonstrates that its failure to achieve the work participation rates can be attributed to the provision of assistance to refugees in federally-approved alternative project.

In either of these two situations, as well as in the general reasonable cause criteria, a State must demonstrate that it did not divert cases to a separate State program for the purpose of avoiding the work participation rates before we will grant a reasonable cause exemption.

Can a State correct the problem before incurring a penalty? (§ 271.53)

The process for developing a corrective compliance plan does not differ from one penalty to the next, although the content of the plan naturally would. Thus, the proposed regulation refers to § 272.6, the general section on submittal of a corrective compliance plan for any penalty.

However, in this section, we establish a specific threshold that States must achieve in order to be considered for a reduced work penalty under § 272.6(i)(1). More specifically, we indicate that the State must increase its participation rate during the compliance period enough to reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the minimum participation rate it must achieve in the year of the corrective compliance plan by 50 percent. (In other words, if you divided the difference between the rate achieved during the compliance period and the rate achieved during the penalty year by the difference between the target rate during the compliance period and the rate achieved during the penalty year, the result must be 0.50 or greater.)

We believe that showing more progress than not indicates significant compliance. Thus, if the State achieves this amount of progress towards coming into compliance, we may reduce its work penalty under the corrective compliance provision.

This proposal is similar in approach to the approach taken in § 271.51, with respect to potential reductions in work penalties based on degree of noncompliance. In both cases, we are expecting a State to come into significant compliance in order to get a reduced penalty.

Is a State subject to any other penalty relating to its work program? (§ 271.54)

In accordance with section 409(a)(14), as amended by Pub. L. 105–33, if we determine that a State has violated 407(e) of the Act in a fiscal year, which relates to when a State must impose penalties on individuals who refuse to engage in required work, we must reduce the SFAG payable for the following fiscal year by between one and five percent of the adjusted SFAG.

We propose to require each State to provide us with a description of how it will carry out a pro reduction for individuals under both TANF and separate State programs. This requirement appears in the data collection requirements at § 275.9. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States.

Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals? (§ 271.55)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the section 407(e) of the Act.

In determining the size of any reduction, we propose to consider two factors. First, we will examine whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work. Second, we will consider the percentage of grants that the State has failed to reduce in accordance with the statute. We are particularly interested in any comments readers have concerning what criteria to use in this area. We would like readers' views on the proposal to link the penalty amount to the percentage of cases for which grants have not been appropriately reduced.

Subpart F—Waivers

How do existing welfare waivers affect the participation rate? (§ 271.60)

Section 415 permits a State to continue operating any welfare reform demonstration waiver (i.e., section 1115 waiver) affecting work activities granted prior to the date of enactment of PRWORA, to the extent that PRWORA is inconsistent with the waiver.

In considering how this provision affects the work rules applicable in a State, we wanted to draft a regulation

that would balance the legislative emphasis on helping recipients find work quickly with the intent to allow States to continue reform activities they had already undertaken. Under prior law, this Administration encouraged States to use the waiver mechanism to its fullest capacity and to act as the "laboratories of change" for the nation. Our intent is to help States capitalize on the promising initiatives they began under those waivers, but in a way that is consistent with the overall purpose of PRWORA. We are also cognizant of the importance Congress placed on ensuring that States are accountable for promoting work.

The proposed regulation requires a waiver to meet the definition included in § 270.30. This definition allows a State the flexibility to include applicable provisions of prior law, but only if their inclusion were necessary to achieve the objective of the approved waiver. For example, a State might have had a waiver requiring single parents with children under one year of age and pregnant recipients to participate in JOBS, while maintaining the JOBS exemptions for the disabled and the elderly. In this example, the objective of the waiver, as reflected in the application and terms and conditions, was to expand the group of recipients who were required to participate in work activities. Maintaining the other statutory exemptions would not be necessary to achieve this objective and, in fact, would be inconsistent with the fundamental purpose of the waiver. Therefore, the prior law exemptions would not be included as part of the waiver; the waiver would include only the expanded participation requirements for single parents of young children and pregnant recipients. Moreover, because those two groups can also be required to participate under TANF, there is no inconsistency. Thus, in this example, the prior law exemptions would not be included in the waiver, and the waiver itself would not be inconsistent with TANF.

The proposed definition recognizes two kinds of waiver inconsistencies with respect to the work requirements. The first is in the area of what activities a State may count toward the participation rate. As part of the waiver demonstrations, a number of States expanded the JOBS work activities. Those States believed that a broader range of activities would be most effective in helping the recipients in their States find and retain work and achieve self-sufficiency. In creating this package of activities, States generally kept some of the prior law activities, changed others, and added new ones. While only the changed and new activities required waivers, we would include the prior law activities under the waiver because they are necessary for the State to carry out the objectives of the approved waiver. Some of these activities are inconsistent with the definition of work activities in section 407(d), so States could use the activities defined under the waivers instead of the TANF list of work activities. Thus, States could count participation in a broader range of activities as participation in work.

The other area in which the proposed definition recognizes waiver inconsistencies relates to hours of participation. In approving waivers of required hours of participation, we allowed States to implement two kinds of policies.

First, States expanded the number of required hours of participation for a class or classes of recipients. Because those classes of recipients are already required to participate for a greater number of hours under TANF than under prior law, there is no inconsistency. Those waivers would not continue under this proposed regulation.

Second, we approved waivers that allowed a State to set the number of hours an individual must participate in accordance with an individualized plan for achieving self-sufficiency. This gave States additional freedom to tailor work requirements to the circumstances of the individual. For example, some States removed the JOBS exemption for the disabled. The intent of such a waiver was to find an appropriate level of participation based on the particular circumstances and abilities of the individual. Because continuing these policies could be inconsistent with TANF, due to requiring a lesser number of hours of participation than TANF, we will recognize such waivers as allowable inconsistencies.

The definition does not recognize prior law exemptions from the denominators of the participation rates as part of the waiver, except for research group cases. We believe this is appropriate for two reasons. First, although we have allowed new or modified activities to count for participation, we have never granted a waiver of a participation rate itself. Second, we have never granted a waiver that added new exemptions from the work requirements, which would have reduced the number of recipients counted in the denominator. We think that States need to try to provide work-related services for the entire caseload, because almost all families will be facing the time limit on benefits. By not adjusting the number of families who would otherwise be counted in the denominators, States have a greater incentive to provide work-related services for everyone.

Finally, we would like to explain the policy in the proposed regulations with respect to control and experimental treatment groups. As part of the demonstrations, States divided the AFDC population in the demonstration into three groups. The first, the control group, received benefits under the regular, statutory AFDC program. The second, the experimental treatment group, received benefits under AFDC with the demonstration changes and is used to evaluate the impacts of the new program. The third, the non-experimental treatment group, also received benefits under AFDC with the demonstration changes, but is not used to evaluate the impacts of the new program. The control and experimental treatment groups together comprise the research group and contain a fairly small number of the AFDC recipients. Except in States with small caseloads, the research group represents a very small proportion of the welfare caseload. The non-experimental treatment group includes the vast majority of the welfare population.

Information on the research group is the sole basis for impact and cost-benefit analyses of the effects of the demonstration provisions and is essential to all the major components of the evaluation. Because evaluation is one of the goals of the demonstration, and the maintenance of different requirements for the three groups of recipients is necessary to avoid compromising the evaluation, we believe all of the underlying law for the research group continues to apply in those States continuing demonstration evaluations and is uniquely necessary to achieve that evaluation goal. Thus, the research group—both the control and experimental treatment groups—should not be included in either the numerator or the denominator of the participation rates.

Subpart C—Non-displacement

What safeguards are there to ensure that participants in work activities do not displace other workers? (§ 271.70)

The proposed regulations incorporate the statutory prohibition against allowing an individual participating in TANF work activities from displacing another employee. A participant in a work activity may not fill a vacancy that exists because another individual is on layoff from the same or equivalent job. Also, a participant may not fill a vacancy created by an involuntary reduction in work force or by the termination of another employee for the purpose of filling a vacancy with a participant.

We encourage States to take aggressive steps to ensure that the current work force is not harmed or their employment jeopardized in any way by a State's efforts to place welfare recipients in employment or work-related positions. Our ultimate goal, and that of States, is to increase the ranks of the employed, not to substitute one group of job-seekers for another. Displacing current workers is counter-productive and damages the overall stability of the labor force. We are confident that States will develop procedures for working with employers to protect against displacing other employees.

C. Part 272—Accountability Provisions—General

It is clear that, in enacting the penalties at section 409(a), Congress intended for State flexibility to be balanced with State accountability. To assure that States fulfilled their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409(a). The penalty areas indicate the areas of State performance that Congress found most significant and for which it gave us clear enforcement authority.

What definitions apply to this part? (§ 272.0)

This section cross-references the general TANF regulatory definitions established under part 270.

What penalties will apply to States? (§ 272.1)

Section 409 includes 15 penalties that may be imposed on States. This proposed rule covers 14 of the 15. We have not included the specific penalty dealing with substantial noncompliance with requirements under title IV–D (section 409(a)(8)) in this proposed rule. Our Office of Child Support Enforcement will address this penalty in a separate proposed rule to be published at a future time.

The penalties for which we are proposing regulations are:

(1) a penalty for using the grant in violation of title IV–A of the Act, as determined by findings from a single State audit and equal to the amount of the misused funds;

(2) a penalty of five percent of the adjusted SFAG, based on audit findings that show that a State intentionally violated a provision of the Act;

(3) a penalty of four percent of the adjusted SFAG for the failure to submit an accurate, complete and timely required report;

(4) a penalty of up to 21 percent of the adjusted SFAG for the failure to satisfy the minimum participation rates;

(5) a penalty of no more than two percent of the adjusted SFAG for the failure to participate in the Income and Eligibility Verification System (IEVS);

(6) a penalty of no more than five percent of the adjusted SFAG for the failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement Agency;

(7) a penalty equal to the outstanding loan amount plus interest for the failure to repay a Federal loan provided for under section 406;

(8) a penalty equal to the amount by which qualified State expenditures fail to meet the appropriate level of historic effort in the operation of the TANF program;

(9) a penalty of five percent of the adjusted SFAG for the failure to comply with the five-year limit on Federal funding of assistance;

(10) a penalty equal to the amount of contingency funds unremitted by a State for a fiscal year;

(11) a penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) a penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in § 272.1 in the year of the reduction;

(13) a penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to maintain the historic effort during a year in which this formula grant is received; and

(14) a penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to reduce assistance for recipients refusing without good cause to work.

In calculating the amount of the penalty, we will take into consideration the extent to which a State's SFAG has been reduced to fund Tribal TANF grants. This is particularly applicable for penalties based on percentage reductions. These regulations use the term "adjusted SFAG" to refer to States whose SFAG allocations are reduced for this purpose. For States without Tribal grantees, "adjusted SFAG" will be the same as SFAG.

Except for the penalty at § 272.1(a)(12), all penalties are either a percentage of the adjusted SFAG or a fixed amount. In calculating the amount of these penalties, we will add all applicable penalty percentages together, and we will apply the total percentage reduction to the amount of the adjusted SFAG that would have been payable if no penalties were assessed against the State. As a final step, we will subtract other (fixed) penalty amounts.

The penalty at § 272.1(a)(12) requires that we reduce a State's adjusted SFAG if, after one of the penalties under this section has been taken, a State does not expend its own funds on the State's TANF program in the amount of the penalty, i.e., the amount by which the adjusted SFAG is reduced. Unlike the other penalties, this penalty represents a percentage of the adjusted SFAG (up to two percent) and a fixed amount, i.e., the amount of the reduction a State has failed to expend under the TANF program with its own funds. We believe it is appropriate to calculate the amount of this penalty by including the amount of the penalty based on a percentage with other applicable penalty percentages. The fixed amount of this penalty will be subtracted with other fixed-amount penalties. Then we will add the amount based on the percentage for this penalty and the fixed amount for this penalty to determine the cumulative amount of this penalty.

The total reduction in a State's grant must not exceed 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a State during a fiscal year, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding fiscal year. If it is not possible to take the full penalty in the next succeeding year, we will defer taking the penalty to subsequent years until it is finally taken in full.

When do the TANF penalty provisions apply? (§ 272.2)

States may implement the TANF program at different times, but no later than July 1, 1997. The Territories, i.e., Guam, the Virgin Islands, Puerto Rico, and American Samoa, may not implement until July 1, 1997.

Congress recognized that, in certain circumstances, States should face the consequences for failing to meet the requirements of the penalty provisions from the first day the State operates the TANF program. It also recognized, however, that States needed some lead time in implementing other TANF requirements.

Section 116(a)(2) of PRWORA delays the effective date of some of the penalty provisions in title IV–A. For those provisions where the effective date is

not delayed, we believe that Congress intended that a State would be subject to these penalties from the first day it began to operate TANF.

Before we issue final rules, States must implement the TANF provisions in accordance with their own reasonable interpretation of the statute. If we find that a State's actions are inconsistent with the final regulations, but consistent with a reasonable interpretation of the statute, we will not impose a penalty. However, if we find that a State has operated its TANF program in a manner that is not based on a reasonable interpretation of the statute, we may penalize the State.

How will we determine if a State is subject to a penalty? (§ 272.3)

We have concluded that no one method can be used for monitoring State performance. The following discussion explains the different methods we will use to determine State compliance with the requirements with which noncompliance may lead to penalties.

Using the Single Audit to Determine Misuse of Funds and the Applicability of Certain Other Penalties

We will determine whether a State has used funds under section 403 in violation of title IV–A through an audit conducted under the Single Audit Act. (See § 273.10 on Misuse of Funds.) This is the only penalty for which Congress identified a method for determining a penalty.

Under the requirements of the Single Audit Act, States operating Federal grant programs meeting a monetary threshold (currently $100,000, but soon to be $300,000) must conduct an audit under the Act. Most States must audit annually; a few may audit biennially. Because of the substantial funding under TANF, all TANF States meet the audit threshold.

The single audit is an organization-wide audit that reviews State performance in many program areas. We will implement the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations." OMB recently revised the Circular, merging former Circulars A–128 and A–133, because of amendments to the Act in 1996. The new Circular was published in the **Federal Register** on June 30, 1997, at 62 FR 35277.

In conducting their audits, auditors use a variety of tools, including the statute and regulations for each program and a compliance supplement issued by OMB that focuses on certain areas of primary concern to that program. Upon issuance of final regulations, we will prepare a TANF program compliance supplement, for OMB to issue, which will focus on those penalties for which the single audit will be our primary compliance instrument.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting additional audits or reviews. In fact, there is specific authority to conduct such additional audits or reviews. In particular, 31 U.S.C. 7503(b) states:

(b) Notwithstanding subsection (a), a Federal agency may conduct, or arrange for additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or subrecipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

States should note, therefore, that the State-conducted single audit will be our primary means for determining if a State has misused funds. We may, however, through our own audits and reviews, or through OIG and its contractors, conduct audits or reviews of the TANF program that will not be duplicative of single organization-wide audit activities. We may identify a need to conduct such audits as the result of complaints from individuals and organizations, requests by the Congress to review particular areas of interest, or other indications of problems in State compliance with TANF program requirements.

We are proposing that the single audit be the primary means for determining certain other penalties as well.

Where we determine that a State is subject to a penalty for the misuse of funds, we may apply a second penalty if we determine that the State intentionally misused Federal TANF funds. The criteria for determining "intentional misuse" are found at § 273.12. The single audit will be the primary vehicle for this penalty because of its link to the determination of misuse of funds.

The single audit will also be the primary means that we use to determine State compliance with the following three penalties: (1) failure to participate in the Income and Eligibility Verification System (see § 274.11); (2) failure to comply with paternity establishment and child support enforcement requirements under title IV–D of the Act (see § 274.31); and (3) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six (see § 274.20). For these process-focused penalties, we determined that we could make appropriate use of the single audit to monitor State compliance.

The audit compliance supplement will include guidance to auditors on how to monitor these areas. As in the case of the misuse-of-funds penalty, we may conduct other reviews and audits, if necessary. For example, the penalty for a State's failure to maintain assistance to an adult single custodial parent who cannot obtain child care is an area where we anticipate that we could receive complaints from individuals and organizations. A number of substantiated complaints may indicate that an additional review may be warranted.

Use of Data Collection and Reporting for Determining Applicability of Certain Penalties

We will monitor State compliance with the penalties for failure to satisfy minimum participation rates (see § 271.21) and failure to comply with the five-year limit on Federal assistance primarily through the information required to be reported by section 411(a) (i.e., State reporting of disaggregate case record information). (See part 275 of the proposed rule for the proposed data collection and reporting requirements.)

We believe that Congress intended that the data elements in section 411(a) be used to gather information for these two penalty areas. Thus, we concluded that the section 411(a) data collection tools would be our primary means for determining these penalties. We may also need to conduct reviews in the future to verify the data submitted by States, particularly in these two areas where a fiscal penalty is applicable. States should maintain records to adequately support any report in accordance with 45 CFR 92.42. States may not revise the sampling frames or program designations for cases in the quarterly TANF and TANF MOE Data Reports retroactively (i.e., after submission).

Accurate data are essential if we are to apply penalties fairly. If the State submits insufficient data to verify its compliance with the requirements, or if we determine that a State can not adequately document data it has submitted showing that it has met its participation rates or the five-year time limit, we will enforce the participation rate penalty or five-year time limit penalty.

In our consultations, some participants recommended that the single audit be the means for determining all the penalties. However, since States must otherwise report the data that directly speak to their compliance in these two areas, and timely determination of State compliance is necessary, we did not accept that recommendation and have proposed to rely on the quarterly reports required under part 275 of the proposed rule.

TANF MOE and Contingency Fund MOE Penalties, and Failure to Replace Grant Reductions Penalty

All States are subject to the TANF MOE penalty for failure to maintain a certain level (i.e., 75 or 80 percent) of historic effort. Those States that choose to receive contingency funds under section 403(b) are subject to a separate maintenance-of-effort penalty for failure to maintain 100 percent of historic effort.

We have developed a proposed TANF Financial Report (see Appendix D of part 275). We designed this report to gather information required under sections 403(b)(4), 405(c)(1), 409(a)(1), 409(a)(7), 411(a)(2), 411(a)(3), 411(a)(5), including data on administrative costs, types of State expenditures, and transitional services for families no longer receiving assistance. It will also gather financial information to enable us to award grant funds, close out accounts, and manage other financial aspects of the TANF program. In addition, we will be using this report to monitor State compliance with the TANF and Contingency Fund MOE requirements and to aid us in determining if Federal TANF funds have been used properly.

Consistent with section 5506(a) of Pub. L. 105–33, the TANF Financial Report is due 45 days after the end of each quarter. Upon receipt of the report for the fourth quarter, i.e., by November 14, we will have State-reported information indicating whether or not the State met its MOE requirements.

On the TANF Financial Report, States will inform us of the amount of expenditures they have made for TANF and Contingency Fund MOE purposes. For the TANF MOE, States must inform us of the amount of expenditures made in the State TANF program and in separate State programs. (See part 274, subpart B, for more information on the Contingency Fund MOE requirement.)

For the TANF MOE, we are proposing to require a supplemental report that must accompany the fourth quarter TANF Financial Report. The supplemental report (or addendum) will include a description of the TANF MOE expenditures that States have made under separate programs, i.e., not as part of their State TANF programs. (See §§ 273.7 and 275.9(a) for more information on the contents of this supplemental report.)

If we reduce a State's SFAG as the result of a penalty, the State is required to expend an equal amount of its own funds for the fiscal year in which the reduction is made. If the State fails to replace the funds through these State-only expenditures, as required, the State is subject to the penalty at § 272.(1)(a)(12), i.e., an amount of up to two percent of the adjusted SFAG and the amount not expended to replace the reduction to the SFAG due to the penalty.

We will use the TANF Financial Report (or Territorial Financial Report) to determine if a State has complied with these provisions. Instructions to the TANF Financial Report in Appendix D require States to include amounts that they are required to contribute as a result of a penalties taken against the State. (A similar requirement will be included in the Territorial Financial Report.)

As in the case of the penalties for failure to meet the participation rates or comply with the five-year limit on assistance, our program management responsibilities may require us to verify the data submitted by States on the TANF Financial Report, particularly data on MOE expenditures and "replacement funds." States should maintain records in accordance with 45 CFR 92.42. As we have stated, accurate data are essential if we are to determine State compliance. If the State submits insufficient MOE data to verify its compliance or if we determine that the State can not adequately document data it has submitted showing that it has met its MOE requirements, we will apply the penalties for failure to meet the TANF and Contingency Fund MOE requirements. For the TANF MOE, we may have to estimate the actual level of qualifying MOE expenditures. We would then base the amount of the penalty on the degree to which we believe the data are inaccurate.

Federal Loan Repayment

We will penalize States for failing to repay a loan provided under section 406 (see § 274.40). A specific vehicle for determining a State's compliance with this requirements is unnecessary. In our loan agreements with States, we will specify due dates for the repayment of the loans and will know if payments are not made.

Penalty for Reporting Late

We will penalize States for failing to submit a report required under section 411(a) by the established due dates (see §§ 275.4 and 275.7). As noted before, we are requiring that the reports must not only be timely, but they must also be complete and accurate. Thus, we may take actions to review the accuracy of data reporting if appropriate. If we determine that the data required under section 411(a) are incomplete or inaccurate, we may apply the penalty for failing to submit a report. As discussed above, if the data that are inaccurate or incomplete pertain to other penalties (i.e., the participation rate, the five-year time limit on assistance, or the TANF MOE and Contingency Fund MOE requirements), we will apply the penalties associated with these requirements.

Additional Single Audit Discussion

Although we are proposing that the single audit be the primary means to determine certain specific penalties, if a single audit detects the lack of State compliance in other penalty areas, e.g., the five-year limit on Federal assistance, we cannot ignore those findings. Therefore, we will also impose a penalty based on the single audit findings in such other penalty areas.

For most programs, other than TANF, the Single Audit Act procedures provide for disallowance in cases of substantiated monetary findings. However, in accordance with section 409(a), we will be taking penalties, rather than disallowances, under TANF. When the single audit determines a specific penalty, the penalty amount that we will apply is the penalty amount associated with the specific penalty provision or provisions, for example, misuse of funds and failure to end federal assistance after 60 months of receipt. Likewise, where we, or OIG, conduct an audit or review, the penalty amount that will apply is the penalty amount associated with the specific penalty or penalties under section 409.

Regardless of how we determine that a State is subject to a penalty, the determination of whether a State may invoke the reasonable cause exception or enter into a corrective compliance plan depends on the specific penalty provision. States cannot avoid all penalties through the reasonable cause exception or a corrective compliance plan (see § 272.4).

What happens if we determine that a State is subject to a penalty? (§ 272.4)

Notification to the State

If we determine that a State is subject to a penalty, we will send the State a notice that it has failed to meet a requirement under section 409(a). This notice will: (1) specify the penalty provision at issue, including the applicable penalty amount; (2) specify the source and reasons for our decision; (3) explain how and when the State may submit a reasonable cause justification under 409(b) and/or corrective compliance plan under 409(c); and (4) invite the State to present its arguments if it believes that the data or method we used were in error or were insufficient, or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

Process When Both Reasonable Cause and Corrective Compliance Plan Provisions Apply

For penalties where the reasonable cause and the corrective compliance plan provisions both apply, we are proposing that a State submit to us both its justification for reasonable cause and corrective compliance plan within 60 days of receipt of our notice of failure to comply with a requirement. The objective of this proposal is to expedite the resolution of State failure to meet a requirement.

A State may choose to submit a reasonable cause justification without a corrective compliance plan. In this case, we will notify the State if we do not accept the State's justification of reasonable cause. Our notification will also inform the State that it has an opportunity to submit a corrective compliance plan. The State will then have 60 days from the date it receives the notification to submit a corrective compliance plan. (Under this scenario, we will send the State two notices—the first will inform the State that it may be subject to a penalty, and the second will inform the State that we determined that it did not have reasonable cause.)

A State may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply in a particular case.

Process When the Reasonable Cause and/or Corrective Compliance Plan Provisions Do Not Apply

The reasonable cause and corrective compliance plan provisions in the statute do not apply to five penalties: (1) failure to repay a Federal loan on a timely basis; (2) failure to maintain the applicable percentage of historic State expenditures for the TANF MOE requirement; (3) failure to maintain 100 percent of historic State expenditures for States receiving Contingency Funds; (4) failure to expend additional state funds to replace grant reductions due to the imposition of one or more penalties listed in § 272.1; and (5) failure to maintain 80, or 75 percent, as appropriate, of historic State expenditures during a year in which a Welfare-to-Work grant is received.

Due Dates

States must postmark their responses to our notification within 60 days of their receipt of our notification.

If, upon review of the State's submittal(s), we find that we need additional information, the State must provide the information within two weeks of the date of our request. This is to make sure we are able to respond timely.

Under what general circumstances will we determine that a State has reasonable cause? (§ 272.5)

Two provisions in section 409, the reasonable cause and corrective compliance provisions, could result in our decision to excuse or reduce a penalty. After reviewing these provisions, we decided that we should not consider the reasonable cause exception in isolation. Rather, we view it in conjunction with the provision for developing corrective compliance plans. In drafting this proposed regulation, we have acknowledged the new Federal and State roles under TANF and worked to minimize adversarial Federal-State issues. Our primary task is to help each State operate the most effective program it can to meet the needs of its caseload and the goals of the law. Through these rules, we hope to focus States on positive steps that they should take to correct situations that resulted in a determination that they are subject to a penalty rather than let them simply avoid the penalty. As such, we consider it more appropriate to emphasize the use of the corrective compliance plan process over the reasonable cause exception. Consequently, we have drafted a more limited list of reasonable cause criteria than some suggested during our consultations.

PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in deciding whether to grant a reasonable cause exception for a penalty. During our deliberations on reasonable cause factors, we considered the diverse opinions expressed during our consultation process, as well as the need to support the commitment of Congress, the Administration, and States to the work and other objectives of the TANF program. In keeping with these objectives, we are proposing a limited number of reasonable cause factors for circumstances that are beyond a State's control, and placing a greater emphasis on corrective solutions for those circumstances a State can control. We strongly believe that States must correct problems that detract from moving families from welfare to self-sufficiency.

In the discussion that follows, we will describe: (1) the factors that we will consider in deciding whether or not to excuse a penalty based on a State's claim of reasonable cause; (2) the contents of an acceptable corrective compliance plan; and (3) the process for applying these provisions. Our proposal attempts to treat these two provisions as part of an integrated process.

We are proposing factors that would be applicable to all penalties for which the reasonable cause provision applies. We generally limit reasonable cause to the following: (1) natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant as to cause the State's failure to meet a requirement; (2) formally issued Federal guidance that provided incorrect information resulting in the State's failure; and (3) isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem (e.g., although a State's policies and procedures, including a computerized kick-out system, require that Federal TANF assistance be time-limited to five years, ten families somehow slip through and receive assistance for longer than five years).

We are also proposing a separate factor that would apply in cases when the State fails to satisfy the minimum participation rates, and another specific factor that would apply to cases when the State fails to meet the five-year limit. We discuss specific factors in our preamble discussion of §§ 271.52 and 274.3.

We will not grant a State reasonable cause to avoid the time-limit penalty or any of the three penalties related to work if we detect a significant pattern of diversion of families to separate State programs that achieves the effect of avoiding the work participation rates. As we indicated in program announcement TANF–ACF–PA–97–1, we do not believe Congress intended a State to use separate State welfare programs to avoid TANF's focus on work.

Likewise, as discussed previously, we will not grant a State reasonable cause to avoid the penalty on work participation, failure to enforce child support cooperation, time limits or failure to impose work sanctions if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections.

In determining reasonable cause, we will consider the efforts the State made to meet the requirement. We will also take into consideration the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

The burden of proof rests with the State to explain fully what circumstances, events, or other occurrences constitute reasonable cause with reference to its failure to meet a particular requirement. The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause. If we find that the State has reasonable cause, we will not impose the penalty.

What if a State does not demonstrate reasonable cause? (§ 272.6)

As noted, section 409(c), as amended by section 5506 of Pub. L. 105–33, provides that, prior to imposing a penalty against a State, we will notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan. The State will have 60 days from the date it receives our notice of a violation to submit a corrective compliance plan if it does not claim reasonable cause or if it claims reasonable cause simultaneously with its corrective compliance plan. If, in response to our notice of a violation, the State initially submits only a claim of reasonable cause, and if we deny this claim, the State has 60 days from the date it receives our (second) notice denying the claim to submit a corrective compliance plan. If an acceptable corrective compliance plan is not submitted on time, we will assess the penalty immediately. Outside of the notice(s) we will not remind the State that the corrective compliance plan is due.

The corrective compliance plan must identify the milestones, including interim process and outcome goals, the State will achieve to assure that it will fully correct or discontinue the violation within the time period specified in the plan. In order to highlight the importance of the plan, it must also include a certification by the Governor that the State is committed to correcting or discontinuing the violation in accordance with the plan.

We recognize that each plan will be specific to the violation (or penalty) and that each State operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. Our determination to accept a plan will be guided by the extent to which the State's plan indicates that it will completely correct or discontinue, as appropriate, the situation leading to the penalty.

The steps a State takes to correct or discontinue a violation may vary. For example, where a State is penalized for misusing Federal TANF funds, we will expect it to remove this expenditure from its TANF accounting records (charging it to State funds, as allowable) and provide steps to assure that such a problem does not recur. Where a State has reduced or denied assistance improperly to a single custodial parent who could not find child care for a child under six, correcting the violation may require that the State reimburse a parent retroactively for the assistance that was improperly denied. The State's corrective compliance plan would also have to describe the steps to be taken to prevent such problems in the future.

Section 409(c)(3) requires that a violation be corrected or discontinued, as appropriate, "in a timely manner." A State's timely correction of the problem or discontinuance of an improper action is critical to assure that the State is not subject to a subsequent penalty. At the same time, we recognize that the causes of violations will vary and we cannot expect all violations to be rectified in the same time frame. Thus, we do not want to unduly restrict the duration of corrective compliance plans. At the same time, we do not want to allow States to prolong the corrective compliance process indefinitely and leave problems unresolved into another fiscal year. Therefore, we are proposing that the period covered by a corrective compliance plan end no later than six months after the date we accept a State's corrective compliance plan.

We believe that, for most violations, States will have some prior indication that a problem exists and will be able to begin addressing its problems during the period before the deadline for submitting its corrective compliance plan. Therefore, we think it fair that the corrective compliance plan period extend no more than six months from the date when we accept the State's plan; this period should provide the State sufficient time in which to correct or discontinue violations.

We would like to hear comments from States and other interested parties on this proposal to restrict the time period for a corrective compliance plan. We will consider all comments and suggestions we receive on this matter.

Corrective Compliance Plan Review

We propose to consult with States on any modifications to the corrective compliance plan and seek mutual agreement on a final plan. Such consultation will occur only during the 60-day period specified in the law. Any modifications to the State's corrective compliance plan resulting from such consultation will constitute the State's final corrective compliance plan and will obligate the State to take such corrective actions as specified in the plan.

We may either accept or reject the State's corrective compliance plan within the 60-day period that begins on the date that we receive the plan. If a State does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately notify the State that the penalty is imposed. The State may appeal our decision to impose the penalty in accordance with the provisions of section 410 of the Act and the proposed regulations at § 272.7. If we have not taken an action to reject a plan by the end of the 60-day period, the plan is accepted, as required by section 409(c)(1)(D).

If a State corrects or discontinues, as appropriate, the violations in accordance with its corrective compliance plan, we will not impose the penalty. The statute permits us to collect some or all of the penalty if the State has failed to correct or discontinue the violation. Therefore, under limited circumstances, we may reduce the amount of the penalty if the violation has not been fully rectified, based on one or more of the following situations: (1) the State made substantial progress in correcting or discontinuing the violation; or (2) a natural disaster or regional recession prevented the State from coming into full compliance.

As discussed previously, we are proposing that, for certain penalties, we would not grant a State a reduced penalty through corrective compliance if we detect a significant pattern of diversion of cases to separate State programs that result in avoidance of the work requirements or diversion of the Federal share of child support collections unless the State discontinues the diversion during the corrective compliance period. A State wishing to receive one of these reductions should address its plans to discontinue the diversion during the corrective compliance period and provide evidence of the discontinuation.

How can a State appeal our decision to take a penalty? (§ 272.7)

Once we make a final decision to impose a full or partial penalty, we will notify the State that we will reduce the State's SFAG payable for the quarter or the fiscal year and inform the State of its right to appeal to the Departmental Appeals Board (the Board).

Section 410 provides that the Secretary will notify the chief executive officer of the State of the adverse action within five days. This provision covers any adverse actions with respect to the State TANF plan or the imposition of a penalty under section 409.

Within 60 days after the date a State receives this notice, the State may file an appeal of the action, in whole or in part, to the Board. As Congress only allowed 60 days for the Board to reach a decision following the appeal, it is evident they intended a very streamlined procedure. Therefore, the State's appeal must include all briefs and supporting documentation for its case when it files its appeal. A copy of the appeal should be sent to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201. ACF must file its reply brief and supporting documentation within 30 days after a State files its appeal. Further briefing and argument will be at the discretion of the Board. A State's appeal to the Board will also be subject to the following regulations at part 16 of title 45: §§ 16.2, 16.9, 16.10, and 16.13–16.22.

Section 410(b)(2) provides that the Board will consider an appeal on the basis of documentation the State submits, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed. The filing date will be the date that materials are received by the Board in a form acceptable to it. The 60 days may be tolled by the Board, for a reasonable period, if it determines it needs additional documentation to reach a decision.

Finally, a State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision. States may file either with the district court of the United States in the judicial district where the State Agency is located or in the United States District Court for the District of Columbia. The district courts will review the final decision of the Board on the record established in the administrative proceeding, to determine if it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence. The court's review will be on the basis of the documents and supporting data submitted to the Board.

What is the relationship of continuing waivers on the penalty process for work participation and time limits? (§ 272.8)

States that, in accordance with section 415 of the Act, continue waivers may operate under a different set of requirements in determining the calculation of work participation rates and/or applicability of time limits. Providing this flexibility is an important aspect of encouraging States who have been innovative in implementing welfare reform to continue those endeavors and test their results. However, this flexibility must also be balanced with accountability to the purposes of TANF, particularly those of encouraging work and focusing TANF on the provision of temporary support to families as they move to self-sufficiency. To address this balance, we will: (1) require Governors to certify waiver inconsistencies a State believes apply; (2) treat a State's failure to meet work participation rates or time limit requirements in a modified manner for States continuing waivers that are inconsistent with TANF; and (3) publish information related to a State's success in meeting work participation rates and time-limit restrictions, as measured against both TANF and waiver requirements. Further, if this information indicates that States continuing waivers inconsistent with TANF perform significantly below States operating fully under TANF we will consider seeking legislative changes regarding State authority to continue waivers policies inconsistent with TANF.

Governor's Certification

Because the inconsistent waiver will constitute an alternative requirement, it is important to establish the specific extent of applicability of waiver inconsistencies and their related purpose. Consequently, § 272.8 requires Governors to certify to the Secretary, up-front and in writing, the specific inconsistencies that the State chooses to continue and the reasons for continuing the alternative waiver requirements, including how their continuation is consistent with the purposes of the waiver. As indicated in our definitions of waiver and inconsistency at § 270.30, we will not recognize inconsistencies related to continuation of alternative waiver requirements for the explicit purpose of avoiding penalties for failing to meet the work participation rate or implement the time limit as these were not part of the original purpose of the waiver. The Governor's certification of waiver inconsistencies must, consistent with the approved waivers, describe the standards the State will use in: (1) assigning individuals to alternative waiver work activities or to an alternative number of hours of work; and (2) determining exemptions from or extensions to the time limit.

For additional discussion of what are waiver inconsistencies in work participation and time limits, see §§ 270.30, 271.60 and 274.1(e).

Penalty Process for States Continuing Waivers

States operating under alternative waiver requirements are at an advantage compared to other States in being able to meet participation rates and comply with time limit requirements. For example, a State with a waiver allowing unlimited job search has more options in how it can assign work and training activities to meet work participation requirements. Similarly, a State continuing waiver policies that exempt a portion of its cases which include an adult recipient from the time limit will have a lower percentage of families reaching the 60-month time limit and therefore less difficult decisions in granting applicable hardship extensions.

We have taken this advantage into consideration and determined that States continuing waivers in either of these areas will not be eligible for a reasonable cause exception from a related work participation or time-limit penalty. Nor will they be eligible for a work participation rate penalty reduction based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c). Given the State's advantage compared to States operating fully under TANF rules, neither a reasonable cause exception nor a reduction in the penalty is warranted.

Further, in developing a corrective compliance plan to address failure to meet work participation requirements or adhere to the restriction on the percentage of families receiving TANF benefits in excess of 60 months, we will require that States consider modification of its alternative waiver requirements as part of the plan. In making this consideration, we will expect States to assess whether continuing any of their waiver policies hinders their ability to achieve compliance. If the State continues waivers related to the failure to achieve compliance with the work requirements described in subparts B and C of part 271 or the time limits described in §§ 274.1 and 274.2 and still fails to correct the violation, it will not be eligible for a reduced penalty for such related noncompliance regardless of whether the State made substantial progress towards achieving compliance or if the State's failure to comply was attributable to natural disaster or regional recession.

Calculating/Publishing Results

In publishing information concerning State performance related to work participation rates, it is necessary to measure compliance based on waiver rules. Similarly, reports on the percentage of cases with an adult recipient receiving Federal TANF benefits in excess of 60 months should reflect the percentage of cases receiving benefits in excess of 60 months under alternative waiver rules, an amount which may exceed the TANF 20 percent limit. However, these differential rules do not provide a comparable basis for reporting on State performance related to work, nor an accurate picture of the extent to which Federal TANF benefits are provided for more than 60 months. Therefore, we will publish reports which provide information, where applicable, concerning the percentage of cases meeting work participation requirements under both TANF and waiver rules. Similarly, we will provide information indicating the percentages of cases with an adult recipient that receive more than 60 months of Federal TANF benefits in accordance with TANF hardship exemptions and in accordance with alternative rules under waivers. The requirements specified under the TANF data collection regulations will facilitate reporting results under both sets of rules.

D. Part 273—State TANF Expenditures

Subpart A—What Rules Apply to a State's Maintenance of Effort?

What definitions apply to this part? (§ 273.0)

This section cross-references the general TANF regulatory definitions established under part 270. It also adds a definition of "administrative costs" that is applicable in determining whether States have exceeded the caps on "administrative costs" that apply separately to their Federal TANF funds and State MOE funds.

We consulted with State and local representatives and other parties and organizations on whether and how we should define the types of costs that should be considered administrative costs.

We considered not proposing a Federal definition (but requiring States to develop their own definitions and provide them to us as part of the annual addendum). That option had appeal because: (1) it is consistent with the philosophy of a block grant; (2) we took a similar approach in some other areas (i.e., in not defining individual work activities); (3) we support the idea that we should focus on outcomes, rather than process; and (4) the same definition might not work for each State. Also, we were concerned we could exacerbate consistency problems if we created a Federal definition. Because of the wide variety of definitions in other related Federal programs, adoption of a single national definition could create new inconsistencies in operational procedures within State agencies and add to the complexities administrators would face in operating these programs.

At the same time, we were hesitant to defer totally to State definitions. The philosophy underlying this provision is very important; in the interest of protecting needy families and children, it is critical that the substantial majority of Federal TANF funds and State MOE funds go towards helping needy families. If we did not provide some definition, it would be impossible to assure that the cap had meaning. Also, we felt that it would be better to give general guidance to States than to get into disputes with individual States about whether their definitions represented a "reasonable interpretation of the statute."

We thought that it was very important that any definition be flexible enough not to unnecessarily constrain State choices on how they deliver services. As numerous commenters have pointed out, a traditional definition of administrative costs would be inappropriate because the TANF program is unique, and we expect TANF to evolve into something significantly different from its predecessors and from other welfare-related programs. Specifically, we expect TANF to be a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

You will note that the definition we have proposed does not directly address case management or eligibility determination. We understand that, in many instances, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities will be treated as administrative costs, along with any associated indirect (or overhead) costs. However, to the extent that a worker's time is essentially spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs, along with associated indirect (or overhead) costs.

We believe that the definition we have proposed will not create a significant new administrative burden on States. We hope that it is flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among State TANF programs. It also has the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the TANF agency and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available "off-the-shelf" to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcome comments on how to deal with this latter dilemma, as well as comments on our overall approach to the definition of administrative costs. We discussed this issue thoroughly

during our consultations, but this is a policy area where no single, clear solution emerged.

How much State money must a State expend annually to meet the TANF MOE requirement? (§ 273.1)

To ensure that States would continue to contribute their own money towards meeting the needs of low-income families, the new section 409(a)(7) requires States to maintain a certain level of spending on programs on behalf of eligible families. If a State does not meet the "TANF MOE" requirements in any fiscal year, then it faces a penalty for a following fiscal year. The penalty consists of a dollar-for-dollar reduction in a State's adjusted SFAG.

In order for States to know their specific TANF MOE requirements, they must understand the terms used in amended section 409(a)(7). Therefore, we address each of these terms in this proposed rule.

Historic State Expenditures

Each State's TANF MOE requirement reflects its historic spending on welfare programs. Section 409(a)(7)(B)(iii) provides two ways to calculate a State's FY 1994 expenditures. It then establishes that the lesser amount be used for determining a State's MOE requirement.

The first calculation, at section 409(a)(7)(B)(iii)(I), defines historic State expenditures as the State's FY 1994 share of expenditures for the AFDC, EA, AFDC-related child care, transitional child care, at-risk child care and JOBS programs (including expenditures for administration and systems operations). An alternative calculation appears in section 409(a)(7)(B)(iii)(II).

After examining the formula for the alternative method, we determined that the amounts resulting from this calculation would always equal or exceed the amount calculated under the first, simpler method. Therefore, we calculated the historic State expenditures based on the first method.

Adjusting A State's TANF MOE Level

The statute authorizes an adjustment to a State's TANF MOE level. If a Tribe or a consortium of Tribes residing in the State submits a plan to operate its own TANF program, and we approve this plan, then that State's MOE requirement will be reduced beginning with the effective date of the approved Tribal plan. Section 409(a)(7)(B)(iii) excludes from the TANF MOE calculation any IV–A expenditures made by the State for FY 1994 on behalf of individuals covered by an approved Tribal TANF plan. Because TANF funding for Tribes may also reflect a State's IV–F (JOBS) expenditures, we believe that it is appropriate that State TANF MOE levels be reduced for IV–A and IV–F expenditures.

Under our proposed rules, we will determine the percentage reduction in the SFAG due to Tribal programs and apply the same percentage reduction to the State's TANF MOE requirement. The State's revised TANF MOE level applies for each fiscal year covered by the approved Tribal TANF plan(s).

For example, if the amount of the Tribal Family Assistance Grant represents ten percent of the State's SFAG, then the State's MOE requirement will be reduced by ten percent. This approach provides a consistent method for determining both the reduction in the State's SFAG and required MOE level.

Applicable Percentage

The TANF MOE rules do not require that a State spend the same annual amount as it did in FY 1994. (States must spend 100 percent of the amount spent in FY 1994 to access the Contingency Fund under section 403(b). See part 274, subpart B, for a discussion of the Contingency Fund requirements.) Rather, States must maintain the "applicable percentage" of their FY 1994 expenditures.

Under section 409(a)(7)(B)(ii), if any State fails to meet the minimum work program participation rate requirements in the fiscal year, then it must spend at least 80 percent of its FY 1994 spending level. If a State meets the minimum work participation rate requirements, then the "applicable percentage" is 75 percent of its FY 1994 spending level for the year. The dollar amount representing 75 and 80 percent of the FY 1994 State expenditures is known as the TANF MOE level.

States must know the amount of their FY 1994 total expenditures and calculate the figures that represent 75 and 80 percent of those expenditures.

Data

Section 5506(f) of Pub. L. 105–33 clarifies the source and date of data to use to calculate FY 1994 State expenditures. We used the same data sources. We calculated each State's total FY 1994 expenditures and TANF MOE levels by using data on the State share of expenditures for AFDC benefits and administration, EA, FAMIS, AFDC/JOBS Child Care, and Transitional and At-Risk Child Care programs reported by States on form ACF–231 as of April 28, 1995, as well as the State share of JOBS expenditures reported by each State on form ACF–331 as of April 28, 1995. These are the same State expenditure data sources that we used to calculate the SFAGs under TANF.

We transmitted tables showing FY 1994 spending amounts and MOE levels to the States via Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. This Program Instruction, as well as a separate MOE table listing FY 1994 State expenditures and MOE levels for each of the 50 States and the District of Columbia, are available on the world wide web at http://www.acf.dhhs.gov/.

We also determined FY 1994 spending and MOE levels for each of the Territories. We transmitted this information to the Territories via our Regional Administrators in San Francisco and New York.

For IV–A expenditures for Puerto Rico, we used the Financial Report Form ACF–231 as of April 28, 995. However, for Guam and the Virgin Islands, we did not use the Territories' share of expenditures as submitted on the ACF–231 because their share of expenditures exceeded the amounts for which Federal reimbursement was available (due to the statutory ceiling on funding for each, under section 1108). If we used the expenditures reported on form ACF–231, then the MOE levels for both Guam and the Virgin Islands would be inordinately high. We believe that Congress' intent in establishing the historic spending level was to assure that States and Territories contribute to the specified programs at least 80 percent (or 75 percent) of the amounts they were required to expend to match Federal funds in FY 1994. Thus, for Guam and the Virgin Islands, we used the share of expenditures that corresponded to the amount on the Federal grant awards for FY 1994, i.e., the Territories' share of AFDC benefit payments (25 percent), EA (50 percent), administration (50 percent), and Child Care (25 percent).

The Territories' funds for the JOBS program were not subject to the ceiling amounts given in section 1108. They are subject to an appropriation limit, but the Territorial expenditures did not exceed this amount. Therefore, for JOBS, the Territories' MOE levels reflect expenditures reported on the ACF–331 as of April 28, 1995.

In addition, for both IV–A (AFDC, EA, and child care) and JOBS, Guam and the Virgin Islands (but not Puerto Rico) benefit from Pub. L. 96–205, as amended (48 U.S.C. 1469a). This law permits waiver of the first $200,000 of the Territories' share of expenditures. Therefore, for Guam and the Virgin Islands, we reduced the share they were required to contribute, and thus their MOE amount, by $200,000.

FY 1997 MOE Level

Finally, we considered whether to require all States to meet the full MOE level in FY 1997, the first year for the requirement. Because States have until July 1, 1997, to implement the TANF program, many States are not operating a TANF program for all of FY 1997.

We examined two alternative adjustments to FY 1997 TANF requirements. First, we could require that all States meet 80 percent (or 75 percent) of their full FY 1994 spending level, but count the State portion of expenditures from AFDC, EA, and JOBS made in FY 1997 toward the State's MOE expenditures. Alternatively, we could prorate a State's FY 1997 MOE level based on the date of TANF implementation. Under this latter option, none of the expenditures from AFDC, EA, and JOBS made in FY 1997 prior to implementation of the State's TANF program count toward meeting the State's prorated MOE level. We determined that the former option is less acceptable because it fails to recognize the distinction between TANF and the AFDC and JOBS programs. Therefore, we decided that proration of the FY 1997 MOE level presented the most consistent and equitable approach.

Under the proposed rules, the State may prorate its TANF MOE level for FY 1997 by taking the total FY 1994 State expenditures provided to the State in Program Instruction Number TANF–ACF–PI–96–2, multiplying that number by the number of days during FY 1997 that the State operated a TANF program and dividing by 365. The State's TANF implementation date is the date given in the Department's completion letter to the State. The State must meet 80 percent (or 75 percent) of the resulting amount.

What kinds of State expenditures count toward meeting a State's annual MOE expenditure requirement? (§ 273.2)

Qualified State Expenditures

Section 409(a)(7)(B)(i) establishes the criteria for the expenditure of State funds to count toward a State's TANF MOE level. This critical provision has already engendered a number of inquiries as States and organizations strive to meet the challenge of welfare reform. While we are unable to discuss every potential use of State funds, we do discuss the specific requirements that must be met and address some of the examples that have come to our attention.

Congress wanted States to be active partners in the welfare reform process. Thus, States must spend a substantial amount of their own money on aid to needy families. While Congress gave States significant flexibility in this area, it did establish a number of important statutory restrictions on which State expenditures qualify as MOE.

Section 409(a)(7)(B)(i) defines "qualified State expenditures" to include certain expenditures by the State under all State programs. We interpret "all State programs" to mean the State's family assistance (TANF) program plus any other separate State program that assists "eligible families" and provides appropriate services or benefits.

Thus, States could structure the use of State expenditures for MOE purposes in three ways. The first would be a TANF program funded by expenditures of commingled State funds and Federal grant funds. The second would be a TANF program in which a State segregates its Federal grant from its State funds.

A State might choose to operate a "segregated" TANF program because certain limitations apply to the program funded with Federal funds that would not apply to a TANF program funded wholly with State funds, e.g., time limitations and certain alien restrictions.

Third, States could use State funds in a State program, separate from TANF, but for the types of activities listed in the statute, e.g., cash assistance, child care assistance and education activities.

In order for the expenditure of State funds under State programs to count toward meeting the State's TANF MOE, the expenditures must: (1) be made to or on behalf of an eligible family; (2) provide assistance to eligible families in one or more of the forms listed in the statute under section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations set forth in this part of the proposed regulations, including those set forth in §§ 273.5 and 273.6.

Eligible Families

Section 409(a)(7)(B)(i)(I) provides that State funds under all State programs must be spent on behalf of eligible families to count toward the State's MOE. Section 409(a)(7)(B)(i)(IV) further clarifies that an eligible family means a family eligible for assistance "under the State program funded under this part." We have interpreted "under the State program funded under this part" to mean the State's TANF program.

Thus, we propose that, in order to be considered an "eligible family" for MOE purposes, a family must have a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual) and be financially needy under the TANF income and resource standards established by the State under its TANF plan. This definition would include all families funded under TANF, including certain alien families or time-limited families who cannot be served with Federal funds, but who are being served in a segregated State TANF program. (We discuss this alien limitation in detail further on in this section.)

If a family meets these criteria, then the family may be considered an "eligible family" for purpose of counting State-funded assistance for any of the forms listed in section 409(a)(7)(B)(i)(I) as MOE. The family does not have to be receiving TANF, but instead could be receiving assistance from a non-TANF State program. The expenditures to provide these services under all State programs may count toward the MOE requirement, provided the expenditures also meet all other requirements and limitations set forth in part 273.

A State is free to define who is a member of the family for TANF purposes and may use this same definition for MOE purposes. For example, it could choose to assist other family members, such as non-custodial parents, who might significantly enhance the family's ability to achieve economic self-support and self-sufficiency. By including such individuals within its definitions of "eligible family," a State could provide them with services through TANF or a separate State program. Non-custodial parents could then engage in activities such as work or educational activities, counseling, or parenting and money management classes.

We expect States to define "child" consistent either with the "minor child" definition given in section 419 or some other definition applicable under State law.

The definition of "eligible family" expressly includes families that "would be eligible for such assistance but for the application of section 406(a)(7) of this Act and families of aliens lawfully present in the U.S. that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

Under section 408(a)(7), States may not use Federal funds to provide TANF assistance to a family that includes an adult who has received federally-funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still

meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes.

Title IV of PRWORA prohibits certain aliens from receiving certain Federal assistance. Section 401 of PRWORA prohibits all aliens who are not qualified aliens from receiving Federal public benefits, with exceptions. The definition of "qualified aliens," at § 270.30, refers to section 431 of PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). It includes, among other alien categories, permanent residents, refugees and asylees. Section 403 of PRWORA prohibits qualified aliens (with exceptions) who arrive on or after August 22, 1996, i.e., "newly-arrived aliens," from receiving, for five years after entry, Federal means-tested public benefits, which would include the federally-funded TANF program benefits, during their first five years in the country. Section 402(b) of PRWORA allows States to determine whether to provide TANF assistance at all to certain qualified aliens, while other categories of qualified aliens cannot be denied benefits on the basis of their immigration status. Given these limitations, a State could choose to provide Federal TANF assistance to qualified aliens who enter before August 22, 1996, and, for those who enter on or after enactment, after the expiration of the five-year time-bar. The State, however, would still be precluded from providing Federal TANF assistance to non-qualified aliens and to newly-arrived qualified aliens who have been in the country less than five years, except for those who are exempted from the limitations.

Under certain circumstances, however, State expenditures for aliens who are precluded from receiving Federal TANF assistance may count towards the State's TANF MOE. The family must have a child living with a parent or other adult relative (or must be a pregnant individual), and the family must be financially needy under the State's TANF income and resource standards. The expenditures must be made on one of the statutorily permitted activities enumerated in section 409(a)(7)(B)(i)(I) and meet all other requirements and limitations set forth in subpart A of this part.

Section 5506(d) of Pub. L. 105–33 clarifies that an eligible family, for TANF MOE purposes, includes legal aliens who are no longer eligible for Federal assistance due to title IV of PRWORA. The alien restrictions that apply to State-funded programs are found at title IV, section 411 of PRWORA.

Section 411(d) addresses the treatment of illegal aliens. It permits a State to provide State or local benefits to illegal aliens if the State enacted a law after August 22, 1996, which affirmatively provides for such eligibility. Thus, we conclude that if a State decides to provide assistance to illegal aliens "in a State program funded under this Part," per title IV, section 411(d), such assistance may count toward the State's TANF MOE.

There is another complication in this policy area. Section 411(a) of PRWORA prohibits States from providing State or local public benefits, with exceptions, to aliens who are not qualified aliens, non-immigrants, or aliens who are paroled into the U.S. for less than one year. There are a handful of categories of legal aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with temporary protected status, and aliens in deferred action status, who are prohibited from receiving State or local public benefits under this provision. Thus, expenditures on assistance for legal aliens who are not qualified aliens, non-immigrants, or aliens paroled in for less than one year may not count towards a State's TANF MOE.

In addition, States may transfer funds to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not be countable as MOE. Only expenditures used to assist an "eligible family" under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)–(ee) specifies that State expenditures on eligible families for the following types of assistance are "qualified expenditures" for MOE purposes:

- Cash assistance (see subsequent discussion on this);
- Child care assistance (see the discussion at § 273.3);
- Education activities designed to increase self-sufficiency, job training, and work (note the specific exception at § 273.4);
- Any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and
- Associated administrative costs (subject to a 15 percent cap, as discussed subsequently).

For MOE purposes, "assistance" may take the form of cash, certificates, vouchers or other forms of disbursement, as determined by the State. Assistance may also be ongoing, short-term, or one-time only. The definition of assistance at § 270.30 does not limit the nature of State-funded aid provided to eligible families under TANF or separate State programs. We proposed that definition of "assistance" for the sole purpose of establishing when critical provisions in the statute using this term apply to States providing support to families under TANF.

Thus, State expenditures for activities such as pre-pregnancy family planning services, teen parenting programs, youth and family counseling or support services, job training or employment services, or forms of crisis assistance that meet the purposes of the program may also count toward meeting a State's MOE requirement. However, we remind States that such expenditures are subject to other limitations and restrictions under §§ 273.5 and 273.6.

We address the additional limitations and restrictions in the discussion that follows. We also discuss some specific case situations that have come to our attention. We invite comment on these and other examples of aid for eligible families that States believe could qualify.

Cash Assistance

This category includes cash payments, including electronic benefit transfers, to meet basic needs; assistance with work-related transportation costs; clothing allowances; and any child support collected on behalf of an eligible child that the State passes through to the eligible family. Section 5506(b) of Pub. L. 105–33 amended section 409(a)(7)(B)(i)(I)(aa) to expressly allow assigned child support collected by the State and distributed to the family to count toward a State's TANF MOE so long as the amount sent to the family is disregarded in determining the family's eligibility and amount of assistance.

Cash assistance also includes State expenditures on behalf of eligible families as part of a State's Earned Income Tax Credit (EITC) program. Under a State EITC program, we have determined that only the EITC cash payments actually sent to eligible families are countable as MOE. Also, in a fiscal year, States that had EITC programs in FY 1995 may count total cash payments sent to eligible families only to the extent that these payments exceed the cash payments sent in FY 1995 (see § 273.5).

Any Other Use Of Funds Allowable Under Section 404(a)(1)

Section 404(a)(1) provides that TANF funds may be used "in any manner that is reasonably calculated to accomplish the purpose of the TANF program, including to provide low income households with assistance in meeting home heating and cooling costs." Section 270.20 of these proposed rules lists the purposes of the TANF program.

Medical and Substance Abuse Services

The statute does not prohibit the expenditure of State MOE funds on medical expenditures. Therefore, States may use their own funds to provide treatment services to individuals seeking to overcome drug and/or alcohol abuse when these services assist in accomplishing the purposes of the program. This policy would also comport with both the Administration's support for drug rehabilitation services and the Congressional call for State flexibility in the operation of welfare programs.

We remind States that such expenditures must be consistent with the purposes of the program and made to or on behalf of eligible families. We also remind States that section 408(a)(6) bars the use of Federal TANF funds for medical services. Therefore, States using MOE funds to provide medical treatment services may not commingle State and Federal funds. In addition, any State expenditures on medical services that are used to obtain Federal matching funds under the Medicaid program would not count as MOE. (Refer to the discussion under § 273.6.) Finally, State expenditures on medical and substance abuse services may only count as MOE subject to the limitations set forth in § 273.5.

Juvenile Justice

State funds used to pay the costs of benefits or services provided to children in the juvenile justice system and previously matched under the EA program do not count toward MOE. More specifically, as juvenile justice services do not meet any of the purposes of the TANF program, they are not an allowable use of funds under section 404(a)(1).

While some States may expend their Federal TANF funds for this purpose, under section 404(a)(2), the definition of "qualified State expenditures," for MOE purposes, does not include the reference to section 404(a)(2). Therefore, we conclude that Congress did not intend to automatically qualify all previously authorized IV–A expenditures to count as MOE. States that expend Federal funds for this purpose, under section 404(a)(2), must not commingle State funds with Federal funds if they wish the State funds to count as MOE.

State "Rainy Day" Funds

Finally, some States have inquired whether State funds allocated or set aside during a fiscal year as a "rainy day" fund, to act as a hedge against any economic downturn, could count as MOE. While we understand State intent, these allocations or set-asides do not qualify as expenditures. States must actually expend funds on behalf of eligible families during the fiscal year for expenditures to count toward the State's MOE for that fiscal year. (However, under section 404(e), States may reserve Federal TANF funds from any fiscal year for use in any other fiscal year.)

Administrative Costs

Administrative expenditures may count toward a State's MOE, but only to the extent that they do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year. This limitation is the same as the limit for TANF administrative expenditures. Therefore, we propose that the State apply the same definition of administrative costs for MOE purposes as for TANF. Section 404(b)(2) states that expenditures of Federal funds with respect to information technology and computerization needed for tracking or monitoring activities are not subject to the 15 percent TANF limit. We are providing the same flexibility with respect to the administrative cost cap on MOE expenditures. Thus, the proposed rules do not count information technology and computerization expenditures under the administrative cost cap and allows such expenditures to count toward meeting a State's MOE requirement without being limited by the 15 percent cap on administrative expenditures.

When do child care expenditures count? (§ 273.3)

There are certain restrictions on the child care expenditures that may count for TANF MOE purposes. First, only child care expenditures used to assist eligible families under the State's TANF criteria count toward the State's TANF MOE. As explained earlier, eligible families means families that have a child living with a parent or other adult caretaker relative (or consisting of a pregnant woman) and that are financially needy per the TANF income and resource standards established by the state under its TANF plan. Thus, not all State expenditures to provide child care services would necessarily qualify for TANF MOE purposes, particularly if the eligibility criteria for the child care services are broader than the State's TANF criteria, e.g., under the Child Care Development Fund (CCDF).

Second, section 409(a)(7)(B)(iv) establishes four general restrictions on State expenditures. (These restrictions are listed in § 273.6.) Two of the restrictions apply to child care expenditures: subsections 409(a)(7)(B)(iv)(IV) and 409(a)(7)(B)(iv)(I).

Subsection 409(a)(7)(B)(iv)(IV) excludes any State funds expended as a condition of receiving Federal funds under other Federal programs from counting toward a State's TANF MOE. However, this subsection also provides an exception to this restriction. The exception applies to the CCDF Matching Fund (i.e., the State's CCDF MOE and the State's share of matching funds). State child care expenditures used to meet the child care MOE requirement or to receive Federal matching funds may also count toward meeting the State's TANF MOE requirement if the expenditures were made on behalf of members of an eligible family.

But, subsection IV limits the amount of the above-mentioned State child care expenditures that may count for TANF MOE purposes to the State's share of expenditures in FY 1994 or FY 1995, whichever is greater, for the programs described in section 418(a)(1)(A). These are the former title IV-A child care programs, i.e., the AFDC/JOBS child care, transitional child care, and at-risk child care programs. A State's child care MOE amount (for purposes of qualifying for child care matching funds) is also based on its expenditures for title IV-A child care in FY 1994 or FY 1995, whichever is greater. Hence, the amount of State child care expenditures used to meet the child care MOE requirement and to receive Federal Matching Funds that may count for TANF MOE purposes is limited to the amount of the child care MOE requirement for the State under section 418(a)(2)(C).

If a State has additional State child care expenditures, i.e., expenditures which have not been used toward meeting the child care MOE requirement or to receive Federal matching funds, these expenditures may count toward the State's TANF MOE provided the expenditures meet all other requirements and limitations set forth in subpart A of this part. We concluded that subsection IV does not limit the amount of such additional

child care expenditures which may count for TANF MOE purposes.

Subsection 409(a)(7)(B)(iv)(I) excludes any expenditures that come from amounts made available by the Federal government. Therefore, Federal funds transferred from the TANF program to the Child Care and Development Block Grant (also known as the Discretionary Fund) would not count toward MOE, nor would Federal funds received under CCDF.

When do educational expenditures count? (§ 273.4)

Only expenditures on educational services or activities that are targeted to eligible families to increase self-sufficiency, job training, and work may count toward a State's MOE. The statute excludes educational services or activities that are generally available, including through the public education system. The conference report confirms this exclusion. In H. Rept. 104–725, page 277, the conferees agreed to exclude "any expenditure for public education in the State other than expenditures for services or assistance to a member of an eligible family that is not generally available to other persons."

Expenditures on special services that are targeted to an "eligible family" and are not generally available to other residents of the State may count. These could include contracted educational services or activities, such as special classes for teen parents in high schools or other settings; special classes in English as a second language for legal immigrants; special classes in remedial education to achieve basic literacy; special classes that lead to a certificate of high school equivalency (GED); or pre-employment or job-readiness activities.

We also note that expenditures on supportive services, such as transportation, to assist a member of an eligible family in accessing educational activities may also count toward a State's MOE, either as cash assistance or another type of aid consistent with the purposes of the Act. (See §§ 273.5 and 273.6 for other general restrictions on these expenditures.)

When do expenditures in separate State programs count? (§ 273.5)

Section 409(a)(7)(B)(i)(II) establishes limits on the amount of expenditures that may count when the MOE expenditures are for activities under separate State or local programs. The heading for the provisions under this section indicates that "transfers from other State and local programs" must be excluded from consideration toward a State's MOE. We received numerous questions about this language. We do not believe that the language intended to convey merely a literal or physical transfer of funds. Instead, we believe that Congress wanted to prevent States from substituting existing expenditures in these outside programs for cash welfare and related assistance to needy families and claiming them as expenditures for MOE purposes. Therefore, section 409(a)(7)(B)(i)(II)(aa) provides that the money spent under State or local programs may count as MOE only to the extent that the expenditures exceed the amount expended under such programs in the fiscal year most recently ending before the date of enactment (August 22, 1996). Thus, States may count only additional or new expenditures, i.e., expenditures above FY 1995 levels.

Section 409(a)(7)(B)(i)(II)(bb) provides what may appear to be an alternative limitation. We believe that this provision was intended as an exception to the limitation under (aa). Under provision (bb), State expenditures under any State or local program during a fiscal year may count toward a State's MOE to the extent that the State is entitled to a payment under former section 403 as in effect before the date of enactment with respect to the expenditures. We interpret this to mean that State funds expended under separate State/local programs that had been previously authorized and allowable under the former AFDC/EA/JOBS programs in effect as of August 21, 1996, may have all such expenditures count toward the State's MOE. In other words, the limit under (aa) does not apply; there is no requirement that these expenditures be additional or new expenditures, above FY 1995 levels.

What kinds of expenditures do not count? (§ 273.6)

As previously discussed, expenditures under State programs (TANF and separate State programs) do not count if they are not made on behalf of eligible families.

There are also specific statutory requirements that affect the use of State funds under a State's TANF program. The specific requirements that apply depend on whether the expenditures meet the definition of assistance under § 270.30; the language used in each TANF provision or in a related provision elsewhere in the statute; and the manner in which a State structures its TANF program and accounts. (None of the TANF program requirements directly apply to eligible families served in separate State programs.)

Provisions in the statute that use the terms "under the program," "under the program funded under this part," and "under the State program funded under this part" apply to the State's TANF program, regardless of the funding source. That is, they apply to segregated Federal programs, commingled State/Federal programs, and segregated State programs. Thus, all families receiving TANF assistance (whether funded with State or Federal funds) must meet work participation and child support requirements.

Provisions pertaining solely to the use of Federal funds would not apply to families assisted under TANF with State-only funds. Consequently, if State funds are segregated from Federal funds, State expenditures on "assistance" must comply with all the rules pertaining generally to the State's TANF program, e.g., work and child support requirements. However, they are not subject to requirements that pertain only to the use of Federal funds.

These requirements are found in the provisions in the statute using the term "grant," or "amounts attributable to funds provided by the Federal government." This language refers to the Federal funds provided to the State under section 403. Therefore, those provisions affect only the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If commingled, Federal and State funds become subject to the same rules. Thus, commingling of State and Federal funds can reduce the total amount of flexibility available to the State in its use of both Federal and State funds.

The provisions governing the use of Federal TANF funds are generally found in sections 404 and 408 of the Act and section 115 of PRWORA. The proposed regulations at § 273.11 provide additional requirements regarding allowable uses of Federal TANF funds.

The statute also provides several general restrictions on MOE expenditures. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures do not count: (1) expenditures of funds that originated with the Federal government; (2) State funds expended for the Medicaid program under title XIX of the Act; (3) any State funds used to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act, as amended by sections 5001(a) (1) and (2) of Pub. L. 105–33; or (4) expenditures that States make as a condition of receiving Federal funds under other programs. See discussion of § 273.3 for additional information.

Section 5506(c) of Pub. L. 105–33 amends section 409(a)(7)(B)(i) by adding another restriction under section 409(a)(7)(B)(i)(III). Pursuant to section 409(a)(12), States must expend State funds equal to the total reduction in the State's SFAG due to any penalties incurred. Section 409(a)(7)(B)(i)(III) provides that such expenditures may not count toward a State's TANF MOE. (See § 274.50.)

TANF funds transferred to the Social Service Block Grant Program under title XX of the Act or transferred to the Child Care and Development Block Grant program (also known as the Discretionary Fund within the Child Care and Development Fund) do not count toward meeting a State's MOE requirement because of the first restriction under 409(a)(7)(b)(iv) that prohibits funds that originated from the Federal government from being used for MOE purposes.

Finally, it is important to note that only State expenditures made in the fiscal year for which TANF funds are awarded count toward meeting the MOE requirement for that year. Therefore, expenditures made in prior fiscal years or, in the case of FY 1997, expenditures made prior to the date the State starts its TANF program do not count as TANF MOE.

How will we determine the level of State expenditures? (§ 273.7)

Congress recognized that State contributions would play an important role in making welfare reform a success. We are interested in learning about the ways in which States help families move toward economic self-support and self-sufficiency. We are particularly interested in the types of services eligible families are receiving through separate State programs or activities. We propose to use the administrative avenues available to us to learn about expenditures under separate State programs.

To help determine if States are meeting MOE requirements, we have created a TANF Financial Report. The report will require the State to specify expenditures under its TANF program and other separate State programs that serve eligible families. Please refer to the description of the TANF Financial Report under part 275 for additional information.

We are also proposing an annual addendum to the report for the fourth quarter. The addendum will supplement information on separate State programs that is captured only in a general fashion in the quarterly report.

Thus, we propose that the annual addendum contain: (1) a description of the specific State-funded program activities provided to eligible families; (2) the program's statement of purpose (how the program serves eligible families); (3) the definitions of each work activity in which families in the program are participating; (4) a statement whether the program/activity had been previously authorized and allowable as of August 21, 1996 under former section 403; (5) the FY 1995 State expenditures for each program/activity not so authorized; (6) the total number of eligible families served by each program/activity as of the end of the fiscal year; (7) the eligibility criteria for families served under each program or activity; and (8) a certification that each of the families served met the State's criteria for "eligible family." This information will enable us to understand how separate State programs are serving needy families outside of the TANF program and to report on those services to Congress.

What happens if a State fails to meet the TANF MOE requirement? (§ 273.8)

Under section 409(a)(7)(A), if a State does not meet the TANF MOE requirement, we will reduce the amount of the SFAG payable for the following fiscal year on a dollar-for-dollar basis.

Section 5001(g) of Pub. L. 105–33 adds another penalty to section 409(a) for a State that receives a Welfare-to-Work formula grant pursuant to section 403(a)(5)(A), as amended by section 5001(a)(1), but fails to meet the TANF MOE requirement for the fiscal year. Under section 409(a)(13), the amount of the State's SFAG will be reduced for the following fiscal year by the amount of the Welfare-to-Work formula grant paid to the State.

May a State avoid a TANF MOE penalty because of reasonable cause or through corrective compliance? (§ 273.9)

Under section 409(b)(2), a State may not avoid a penalty for failure to meet its TANF MOE requirement based on reasonable cause. In addition, section 5506(m) of Pub. L. 105–33 amended section 409(c)(4) to provide that a State may not avoid the penalty through a corrective compliance plan.

Congress' decision not to provide for a reasonable cause exception or corrective compliance in TANF MOE penalty cases indicates that Congress viewed this requirement as critical. In short, the MOE requirement is crucial to meeting the work and other objectives of the Act.

Subpart B—What rules apply to the use of Federal funds?

What actions are to be taken against a State if it uses Federal TANF funds in violation of the Act? (§ 273.10)

Section 409(a)(1) contains two penalties related to use of Federal TANF funds (i.e., all Federal funds under section 403) in violation of TANF program requirements. The first is a penalty in the amount of funds that are used improperly, as found under the Single Audit Act. We would reduce the SFAG payable to the State for the immediately succeeding fiscal year quarter by the amount misused.

In addition, we would take a second penalty, equal to five percent of the adjusted SFAG, if we find that a State has intentionally misused funds. The criteria for "intentional misuse" is found at § 273.12.

For both of these penalties, States may request that we consider reasonable causes for not taking the penalty and may submit a corrective compliance plan for correcting the violation.

What uses of Federal TANF funds are improper? (§ 273.11)

The statute contains many prohibitions and restrictions on the use of Federal TANF funds. In determining if funds have been used "in violation of this part," States should particularly note the prohibitions in section 408 of the Act and section 115 of PRWORA. These sections provide that States must not use Federal TANF funds to provide assistance to:

- A family with an adult who has received assistance funded with Federal TANF funds for 60 months (except for a family included in the 20 percent hardship exemption);
- A family without a minor child (or pregnant individual);
- A family not assigning support rights;
- An unmarried parent under 18, without a high school diploma, who does not attend high school or equivalent training;
- An unmarried parent under 18 not living in an adult-supervised setting;
- A fugitive felon and probation and parole violator;
- A minor child absent from the home 45 days (or at State option, 30–180 days);
- For ten years, a person found to have fraudulently misrepresented residence to obtain assistance; and
- An individual convicted of certain drug-related offenses unless the State has enacted a law to exempt such individuals from the prohibition (refer to section 115 of PRWORA).

Also, States must not use Federal TANF funds for medical services, except for pre-pregnancy family planning services. This prohibition raised a number of concerns among States and advocates that are discussed below as one of the clarifications on the use of Federal TANF funds.

Section 404 also limits the use of Federal TANF funds. More specifically, section 404(a)(1) provides that TANF funds may be used ". . . in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs. . . ." Conversely, TANF funds cannot be used in a manner not reasonably calculated to serve the purpoies of the program.

In determining if an activity may be funded with TANF funds under this provision, you should refer to the purposes described in section 401 and reiterated at § 270.20. Also, you should be aware that the specific prohibitions or restrictions in the statute (e.g., the prohibitions in section 408) apply even if an activity seems otherwise consistent with the purposes in section 404(a)(1).

In addition, section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used "in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996." We interpret this provision to cover activities that are not permissible under section 404(a)(1), but were included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan as of September 30, 1995, or, at State option, August 21, 1996. An example of such an activity is Emergency Assistance juvenile justice activities that were included in many State plans. Under this provision, only those States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996, may use Federal TANF funds for those activities. Further, as with section 404(a)(1), this provision does not permit Federal TANF funds to be used for any activity that is otherwise prohibited or restricted under the statute.

States should also note that if they exceed the 15 percent limit on administrative costs under section 404(b), we will consider any amount of funds exceeding the limit to be misused funds. Likewise, we would consider unauthorized or inappropriate transfers of TANF funds to be a misuse of funds. We would consider any of the following transfers to be inappropriate or unauthorized: transfers to any program except the Child Care and Development Block Grant (also known as the Discretionary Fund within the Child Care and Development Fund) or the Social Services and Block Grant Program under title XX of the Social Security Act; transfers to those two programs in excess of the 30 percent cap; and transfers to SSBG in excess of the 10 percent cap.

OMB Circulars A–102 and A–87 also include restrictions and prohibitions that limit the use of Federal TANF funds. The Department previously promulgated A–102 (the common rule) in its regulations at part 92 of title 45, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

All provisions in part 92 are applicable to the TANF program. TANF is not one of the Block Grant programs exempt from the requirements of part 92, as OMB has not taken action to exempt it. Rather, OMB has determined that TANF should be subject to part 92. Section 417 does not prevent us from applying the part 92 regulations to TANF because the referenced requirements are not developed to enforce substantive provisions under this part. We believe that Congress understood that TANF, like other Federal grant programs, was subject to existing appropriations, statutory and regulatory requirements regarding the general administration of grants, notwithstanding section 417. Section 417 was not meant to invalidate other requirements that Congress and Federal agencies, primarily OMB, have put in place to assure that Federal grant funds are properly administered or to inhibit Federal agencies from fulfilling their financial management responsibilities in managing their programs.

By reference, part 92 also includes A–87, the "Cost Principles for State, Local and Indian Tribal Governments," the basic guidelines for Federal awards. These guidelines provide, in part, that an allowable cost must be necessary and reasonable for the proper and efficient administration of a Federal grant program, and authorized or not prohibited under State or local laws or regulations.

A–87 also includes some specific prohibitions on the use of Federal funds generally that apply to Federal TANF funds. For example, A–87 prohibits the use of Federal funds for alcoholic beverages, bad debts, and the salaries and expenses of the Office of the Governor.

Clarifications of Use of Federal TANF Funds—Substance Abuse Services

In our consultations, we received several inquiries regarding the use of Federal TANF funds for substance abuse treatment, i.e., treatment for alcohol and drug abuse. In light of the prohibition on the use of Federal TANF funds for "medical services, except for pre-pregnancy family planning activities," we held discussions with other Federal agencies and learned that in many, but not all instances, the treatment of alcohol and drug abuse involves not just "medical services," but other kinds of social and support services as well.

Allowing States to use Federal TANF funds for substance abuse treatment is programmatically sound since it may help clients make successful transitions to work and provide for a stable home environment for TANF children. Accordingly, we are proposing a policy that permits States to use Federal TANF funds for drug and alcohol abuse treatment services to the extent that such services are not medical. States will have to look at the range of services offered and differentiate between those that are medical and those that are not. In short, States cannot use Federal TANF funds for services that the State identifies as medical; they may only use Federal funds used for services that are non-medical.

Clarification of the Use of Federal TANF Funds for Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting Federal grant funds to be used for this purpose. Since the statute is silent on this, States must not use Federal TANF funds for construction or the purchase of facilities or buildings.

Clarification of the Use of Federal TANF Funds as State Match for Other Federal Grant Programs

Federal TANF funds under section 403(a) may be used to match other Federal grant programs if authorized under the statute of the grant program. However, these funds are still subject to the TANF program requirements and must be used in accordance with the purposes of the TANF program and with these proposed regulations.

Clarification of the Use of Federal TANF Funds to Add to Program Income

We have received a number of inquiries about whether or not TANF funds may be used to generate program income. An example of program income is the income a State earns if it sells another State a training curricula that it has developed, in whole or mostly, with Federal TANF funds.

States may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how this program income may be treated. For the TANF program, in order to give States flexibility in their use of TANF funds, we are proposing to permit States to add to their TANF grant program income that has been earned by the State. States must use such program income for the purposes of the TANF program and for allowable TANF activities. We will not require States to report on the amount of program income earned, but they must keep on file financial records on program income earned and the purposes for which it is used in the event of an audit or review.

How will we determine if a State intentionally misused Federal TANF funds? (§ 273.12)

To determine if funds have been intentionally misused, we will require the State to demonstrate to our satisfaction that TANF funds were spent for purposes that a reasonable person would consider to be within the purposes of the TANF program. Funds will also be considered intentionally misused if there is documentation, such as Federal guidance or policy instructions, that provides that funds must not be used for such purposes, or if the State misuses the funds after receiving notification from us that such use is not allowable.

What types of activities are subject to the administrative cost limit on Federal TANF grants? (§ 273.13)

Section 404 of the Act sets forth the various ways in which a State may expend its Federal TANF grant under section 403. As a general rule, under section 404(b)(1), only 15 percent of a State's Federal fiscal year grant may consist of administrative expenditures. This limit is reached in the quarter in which a State's administrative expenditures, which may be made over one or more fiscal years for each fiscal year grant, equal 15 percent of the fiscal year grant.

For the purpose of the 15 percent limit, State expenditures on information technology and computerization necessary for tracking or monitoring cases covered by the TANF program do not count. But remaining of particular interest to our State partners and other interested parties is the definition of the costs that are included as administrative costs. This information is critical to State planning for welfare reform.

In this proposed rule, the term "administrative costs" will include only those expenditures that are subject to the 15 percent limit in section 404(b). Expenditures for information technology and computerization necessary for tracking and monitoring and other expenditures, that have traditionally been considered "administrative costs" but that are outside of the 15 percent limit, are referred to as "administrative costs outside of the 15 percent limit."

We include our proposed definition of "administrative costs" at § 273.0(b). In the preamble for § 273.0, we include a detailed explanation of the proposal.

Pursuant to section 404(d), States may transfer up to 30 percent of each fiscal year's SFAG to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and the Social Services Block Grant Program under title XX of the Act. All 30 percent may be transferred to CCDBG, but no more than ten percent can be transferred to SSBG. As transferred funds must then be treated as if they were funds appropriated to CCDBG and title XX, and not as TANF funds, we will reduce the total amount of TANF funds available for administrative costs by the total amount of any such transfers. The 15 percent ceiling applies to each fiscal year's adjusted SFAG.

If a State's administrative costs exceed the 15 percent limit, the penalty for misuse of funds will apply. The penalty will be in the amount spent on administrative costs in excess of 15 percent. We will take an additional penalty in the amount of five percent of the adjusted SFAG if we find that a State has intentionally exceeded the 15 percent limit.

States must allocate costs to proper programs. Under the Federal Appropriations Law, grantees must use funds in accordance with the purpose for which they were appropriated. In addition, as stated previously, the grants administration regulations at part 92, and OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments" apply to the TANF program. A–87, in particular, establishes the procedures and rules applicable to the allocation of costs among programs and the allowability of costs under Federal grant programs such as TANF.

Subpart C—What Rules Apply to Individual Development Accounts?

What definitions apply to Individual Development Accounts (IDAs)? (§ 273.20)

An IDA is defined as an account established by or for an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes. A number of other terms used in discussing IDAs are also defined.

May a State use the TANF grant to fund IDAs? (§ 273.21)

Section 404(h) of PRWORA gives States the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance.

Are there any restrictions on IDA funds? (§ 273.22)

IDAs are similar to savings accounts and enable recipients to save earned income for certain, specified, significant items. Individuals may spend IDA funds only to purchase a home, pay for a college education, or start a business.

How does a State prevent a recipient from using the IDA account for unqualified purposes? (§ 273.23)

Money in an IDA account will not affect a recipient's eligibility for assistance. Withdrawals from the IDA should be paid directly to a college or university, to a bank, savings and loan institution, or to an individual selling a home or to a special account if the recipient is starting a business. Thus, IDAs may provide an incentive for recipients to find jobs and use their earned income to save for the future.

Section 404(h) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the above qualified purposes.

In our research, we found several States had established Individual Development Accounts under their Welfare Reform Demonstration Projects and subsequently transferred those provisions to their TANF programs. Each State had designed its own procedures for preventing withdrawals or penalizing recipients who withdrew funds from their IDAs for unauthorized purposes. For example, several States count a withdrawal for a non-qualified purpose as earned income in the month of withdrawal unless the funds were already counted as earned income. Other States treat such withdrawals against a family's resource limit. Still another State calculates a period of ineligibility using a complex formula.

With this in mind, we did not feel that it was necessary to be overly prescriptive in mandating how States ensure that individuals do not make unauthorized withdrawals from IDA accounts. In keeping with the intent of PRWORA, we have tried to give States maximum flexibility to establish procedures that ensure that only qualified withdrawals are made.

In addition, section 404(h)(5)(D) gives the Secretary the authority to determine whether or not a business contravenes law or public policy. We have decided that we should base our determination on the business's compliance with State law or policies. Our proposal will allow States maximum flexibility in setting up these programs, while assuring that a business established by a needy family meets State requirements.

We have incorporated statutory provisions in the regulations for the reader's convenience.

E. Part 274—Other Accountability Provisions

Subpart A—What Specific Rules Apply for Other Program Penalties?

What definitions apply to this part? (§ 274.0)

This section cross-references the general TANF regulatory definitions established under part 270.

What restrictions apply to the length of time Federal TANF assistance may be provided? (§ 274.1)

Under the former AFDC program, families could receive assistance as long as necessary, if they continued to meet program eligibility rules. Under the TANF program, Congress established a maximum length of time in which a family may receive assistance funded by Federal funds.

Sections 408(a)(1)(B) and 408(a)(7) stipulate that States may not use Federal funds to provide assistance to a family that includes an adult who has received assistance for more than five years. Therefore, when a parent or other adult caretaker relative of a minor child applies for and receives federally-funded assistance under the State's TANF program on behalf of him/herself and his/her family, Federal funding of that assistance may not last longer than five years. (Certain exceptions are covered later in the discussion of this section.)

As discussed earlier in this preamble (e.g., at § 271.22), we are concerned that States might define eligibility in such a way as to avoid the time limits (i.e., by converting cases to be child-only cases). Thus, under this section, we would prohibit States from excluding adults from their definition of families for the purpose of avoiding this penalty, and we would require annual reporting of the number of such families excluded (along with the basis for excluding them). Further, if we determine that States were defining "families that include an adult" so as to avoid a time-limit penalty, we would add the child-only cases back and recalculate the number of cases over the limit. We would determine whether a State was subject to a penalty based on this recalculation.

The five-year limit on Federal funding is calculated as a cumulative total of 60 months. Section 408(a)(7)(B) clarifies that the State must disregard any month for which assistance has been provided to an individual who is a minor child who is not the head of a household or married to the head of a household. However, any month when a pregnant minor or minor parent is the head-of-household or married to the head-of-household does count toward the five-year limit. The five-year limitation on Federal funding also disregards any months that an adult received assistance while living in Indian country (as defined by section 1151 of title 18, United States Code) or in an Alaska Native Village where at least 50 percent of the adults are not employed (see § 274.1(b)(2)).

Section 5001(d) of Pub. L. 105–33 added subsection (G) to section 408(a)(7). This subsection provides for special treatment of assistance provided to a family with Welfare-to-Work grant funds (formula or competitive) under the time-limit provision. First, months in which a family receives cash assistance funded with Welfare-to-Work grant funds (under section 403(a)(5) of the Act) do count towards the five-year limit; however, months in which a family receives only non-cash assistance under WTW do not count towards the five-year limit. Secondly, families may receive assistance funded with Welfare-to-Work grant funds even though they are precluded from receiving other TANF assistance because of the five-year limit.

Some families may receive assistance from Federal funds for more than five years based on hardship or if the family includes an individual who has been battered or subjected to extreme cruelty as defined in section 408(a)(7)(C)(iii). Under section 408(a)(7)(C), the average monthly number of such families may not exceed 20 percent of the State's average monthly caseload during either the fiscal year or the immediately preceding fiscal year, whichever the State elects.

The Act does not specifically prescribe whether a family can be excepted from the time limit before they have received 60 cumulative months of Federal assistance or whether it can only be applied after the limit is reached. As the purpose of the provision is to provide an extension to the 60-month limit, we propose that it would only apply after that limit is reached. No determination of whether a State has exceeded the cap will be made until some families in the TANF program have received at least 60 cumulative months of federally-funded assistance. We believe that this approach is the most straightforward and comports with Congressional intent that TANF assistance be provided on a temporary basis while a family becomes self-sufficient. Thus, unless the minor child or Native American statutory disregard applies, Federal support would cease once any adult in the family has been assisted for 60 total months with Federal funds unless the State chooses at that time to include the family in its 20 percent exception. However, the State may elect to use State funds to continue to pay eligible families.

The provision is a time limit on Federal funding, and does not set an upper or lower bound on the amount of time a State could provide assistance to an individual family with State funds. States are free to impose shorter time limits on the receipt of assistance under their programs. They are also free to allow receipt for longer periods if the assistance is paid from State funds or if the family meets the criteria the State has chosen for extension and fits with the 20 percent limit.

We are very interested in comments on our approach to clarifying the time limit on assistance. We will also be paying close attention to learn what is happening to families as they begin to reach time limits under waiver and TANF rules. In this regard, tracking the number of months that each family has received TANF assistance is very important, both to the State and to the family. We urge States to regularly provide families with information on how close they are to reaching the time limit. This information should help strengthen the family's focus on achieving self-sufficiency.

We have received numerous inquiries regarding the relationship between good cause waivers of the time limit permitted under the Family Violence Option at section 402(a)(7) and the limit on the exceptions to the Federal time limit at section 408(a)(7)(C)(ii). The key issue is whether the 20 percent limit on hardship exceptions includes families of domestic violence victims.

Section 402(a)(7)(B) expressly refers to section 408(a)(7)(C)(iii) in applying the meaning of the term "domestic violence" to the Family Violence Option at section 402(a)(7)(A). Section 408(a)(7)(C)(iii) defines "battered" or "subjected to extreme cruelty" for purposes of describing families who may qualify for a hardship exemption at section 408(a)(7)(C)(i), and section 408(a)(7)(C)(ii) specifies a 20 percent limit on the exceptions to the time limit due to hardship. Consequently, we conclude that the statutory language includes the number of families waived from the five-year time limit per section 402(a)(7) within the 20 percent ceiling established under section 408(a)(7)(C)(ii).

We further note that Congress chose not to amend the statute as part of budget reconciliation. Thus, our proposed policy includes these cases within the 20 percent limitation. However, our policy would enable a State to claim "reasonable cause" when its failure to meet the five-year limit could be attributed to its provision of bona fide good cause domestic violence waivers. See § 274.3 for additional information.

As previously discussed, section 408(a)(7)(D) provides an exemption to the time limit on receipt of federally-funded TANF assistance for families living in Indian country or in an Alaskan Native village. The months a family, that includes an adult, lives in Indian country or in an Alaskan Native village, where at least 50 percent of the adults are not employed, do not count when determining whether the adult has received federally-funded assistance for 60 cumulative months. In accordance with section 408(a)(7)(D), as amended by section 5505(d)(2) of Pub. L. 105–33, the percentage of adults who are not employed in a month will be determined by the State using the most reliable data available for the month, or for a period including the month.

This exception does not include families receiving assistance under an approved Tribal family assistance plan because these families are covered by the requirements at section 412.

In our consultations on the regulations, questions were raised about the relationship of section 415, the application of waivers inconsistent with PRWORA, and the time limit on Federal assistance. Some waivers include provisions for time limiting assistance.

As discussed in the preamble to § 270.30, we define what it means for a provision of the Act to be inconsistent with provision(s) in a waiver. We believe it is crucial to define what "inconsistent" means because: (1) the Act does not define it; (2) States need to know whether any time-limit policies in their waivers are inconsistent with the provisions in sections 408(a)(1)(B) and 408(a)(7); and (3) if there is an inconsistency, States need to know how the time-limit restrictions under 408(a)(1)(B) and 408(a)(7) apply in relation to the State's policy. We must define the term to implement the time limit penalty provision at section 409(a)(9), and States must understand what it means when it is applied to the five-year limit, in order to avoid that penalty.

Under our proposed definition of inconsistency, the five-year limit on Federal assistance is inconsistent with a State's waiver only: (1) if the State has an approved waiver (a) that provides for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time specified by the approved waiver(s), and (b) under which the State would have to change its waiver policies (including policies regarding exemptions and extensions) in order to comply with the five-year limit on Federal assistance; or (2) for a control or experimental treatment group where a State chooses to maintain prior law policies applicable to research group cases for the purpose of completing an impact evaluation using an experimental design.

We believe that this proposed regulation is consistent with the language in the conference report, H. Rept. 104–725 at 311, indicating agreement by the conferees that:

> * * * such waivers may only apply * * * to the specific program features for which the waiver was granted. All * * * program features of the State program not specifically covered by the waiver must conform to this part (i.e., to TANF).

Except for control and experimental treatment group cases maintained for the purpose of completing an impact evaluation of the waiver policies, a State that does not have an approved time-limit provision in its waiver that meets the above criteria must adhere to the provisions set forth in sections 408(a)(1)(B) and 408(a)(7). A State that does have an approved time-limit provision in its waiver that meets the above criteria does not have to follow the provisions of the five-year limit, to the extent they are inconsistent, until the waiver expires. Several examples of the application of the proposed policy follow.

A State has an approved seven-year waiver that terminates a family's cash benefits after 18 months of benefits if the adult fails to participate in a work program. Assistance does not end because of the passage of time, but because of the adult's failure to participate in a required work activity. The waiver policy does not meet the first prong of the test for time limit inconsistency, as it is a work policy. Therefore, it is not inconsistent with the Federal time-limit provision. The State will have to adhere to the five-year limit under sections 408(a)(1)(B) and 408(a)(7).

Even if a State has an approved time-limit waiver policy, we believe that the waiver policy and the Federal five-year limit can operate concurrently. In most cases, the State would not have to change waiver policy because of the Federal limit, and, thus, there would not be an inconsistency. As a general rule, individuals subject to a State time limit under an approved waiver will concurrently be subject to the Federal time limit.

For example, a State has been granted an eleven-year waiver to operate a demonstration that limits the receipt of assistance by a family to two years (with extensions under certain circumstances). Because the Federal time limit can run concurrently, a family receiving assistance for two years under the State's time limit is also receiving two years of assistance under the Federal five-year limit. Once the demonstration ends, if the family has received just two years of TANF assistance, then the family can receive three more years of federally-funded assistance under the five-year limit (assuming all other eligibility criteria are met per the State's TANF plan). Alternatively, should the family move to another State, that State can provide three more years of federally-funded assistance (assuming the State provides five years of TANF assistance).

Under this policy, there will be circumstances under which the State may use Federal funds for longer than five years to provide assistance to a family that includes an adult. For example, under the terms of the waiver, assistance is extended so long as the eligible adult in the family complies with his/her personal responsibility plan. In such situations, we propose that a State may apply extensions of its time limit in accordance with the terms of the approved waiver in lieu of the provision under section 408(a)(7)(C)(ii).

We believe that this approach comports with the intent of section 415. Section 408(a)(7)(C) permits Federal funds to be used to continue to assist families beyond the five-year limit based on hardship. Under section 408(a)(7)(C)(ii), a State may apply this extension for up to only 20 percent of

its average monthly caseload during the fiscal year or the immediately preceding fiscal year, whichever the State elects. A State's approved waiver may very well include a provision for extending assistance as needed to cases meeting the waiver requirements, without limit. Under the above proposal, a State may apply extensions of its time limit, without caseload limits, in accordance with the terms of its approved waiver.

Another State might have waivers approved for a nine-year period that apply a three-year time limit on receipt of assistance to adults in the family (with extensions under certain circumstances). The children in the family continue to receive assistance even after assistance ends for the adults. If the adults receive no extension, there is no inconsistency and the children may continue to receive benefits. If the adults receive extensions under the demonstration, and thus more than five years of assistance, there would be an inconsistency because the State would need to change its waiver policy and terminate assistance. Therefore, the family can continue to receive assistance as long as the adults have an extension and the children can receive assistance even if the adult is terminated. (Note that once the adults are removed from the State-defined family, the Federal time limit clock does not advance.) When the waiver authority ends, the State will need to determine if the adults in demonstration families received five years of federally-funded TANF assistance. If not, the families will be eligible to receive assistance with Federal TANF funds for up to a total of 60 cumulative months (assuming all other eligibility criteria are met per the State's TANF plan).

We recognize that there will be situations, although limited, in which, as a result of a waiver policy, a family will not accrue months towards the Federal time limit even though it receives assistance with Federal (or commingled) funds. For months when a family is exempt from the State time limit (e.g., when the adult in the family is aged or disabled), the family is also exempt from the Federal time limit during the duration of the waiver authority. To subject such families to a time limit would be inconsistent with the State's approved waiver policy. Therefore, for the period of the waiver authority, the number of months the family receives assistance do not accrue against the Federal five-year time limit as long as the family remains exempt under the State time limit. These exemptions cease once the waiver authority ends or if the family moves to another State.

A family that is in the control or experimental treatment group maintained for the purpose of completing an impact evaluation of a waiver demonstration program would not be subject to a time limit. Therefore, it would not begin to accrue months towards the Federal time limit until the end of the waiver demonstration (or sooner if the evaluation is discontinued) and would not count towards the 20 percent limit on extensions.

What happens if a State does not comply with the five-year limit? (§ 274.2)

Congress created a penalty under section 409(a)(9) to ensure that States comply with the five-year restriction on the receipt of federally-funded TANF assistance. If we determine that a State has not complied with the five-year time limit during a fiscal year, then we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

Five years is the maximum period of time permitted under the statute for families to receive federally-funded TANF assistance. Therefore, the penalty under this section does not apply if the State exceeds any shorter time limits on the receipt of federally-funded assistance that it may choose to impose. It also does not apply to any time limits on receipt of State-funded assistance or the receipt of non-cash assistance through participation in an allowable activity financed through Federal Welfare-to-Work grant funds.

In defining the requirement, section 409(a)(9) refers to section 408(a)(7). This section provides the circumstances under which assistance may be extended. It provides exceptions to the time limit requirement for minors, hardship, or families living in Indian country or in an Alaskan Native village. Therefore, we will take into account the exceptions described under paragraphs (B), (C), or (D) of section 408(a)(7) when deciding whether the State complied with the five-year time limitation.

We do not intend to hold States immediately accountable for knowing about and verifying all months of assistance received in other States, since we are aware that, in general, States' data processing systems generally are not currently capable of accomplishing interstate tracking of the number of months an individual has received TANF assistance. We will use the information required to be reported by the proposed rules in part 275 to learn whether a State is complying with the five-year time restriction on the receipt of federally-funded assistance.

How can a State avoid a penalty for failure to comply with the five-year limit? (§ 274.3)

In § 272.5, we have proposed general circumstances under which we would find reasonable cause to waive potential penalties. We also propose to consider an additional factor in determining whether there is reasonable cause for failure to meet the five-year limit. The additional factor relates to a State's implementation of the Family Violence Option (FVO) and its provision of temporary waivers of time limits, when necessary, for victims of domestic violence.

We want to encourage States to adopt this amendment and to provide appropriate assistance that reflects the safety and employment-related needs of these families. In adding this reasonable cause factor, we recognize that some of these individuals may need special assistance, at least over the short term. However, we also want to ensure that States make timely, good-faith efforts to help victims of domestic violence become independent. To ensure that States make such efforts, we would limit this reasonable cause provision to States that have implemented the FVO; we reference the criteria we included at § 270.30 to define what qualifies as a good cause domestic violence waiver; and we have set forth a strategy for monitoring the implementation of these provisions.

Under our proposal, as under the work participation penalty, States would have to grant good cause domestic violence waivers appropriately. In the case of time limits, we would only allow States to exclude from their calculations families that had good cause domestic violence waivers and service plans in effect at the time of, or after, the family had reached the 60-month limit on federally-funded assistance. We would not stop the Federal clock for families that receive good cause domestic violence waivers during the five-year period, and we would only recognize waivers that reflected a State assessment that the individual's or family's situation was temporarily preventing them from work.

There are several reasons why we have taken a restrictive approach on this reasonable cause provision.

The most important is that the 20 percent hardship exemption already provides considerable flexibility for States—for example, it only applies to federally-funded assistance, and it excludes certain types of families.

A related reason is that we think the time-limit provision gives States added incentive to work vigorously with families in making the transition from welfare to work. We want States to have similar motivation to assist victims of domestic violence in becoming independent. If we are too generous in granting reasonable cause for domestic violence cases, we believe there will be a risk that States will divert resources and attention from these cases and unnecessarily prolong their dependence.

We tie the availability of reasonable cause to the family's ability to work because that factor is the most critical in determining whether a family could support itself or would continue to need assistance. Families facing the most serious domestic violence situations are likely to have waivers of work requirements because their lives will be too unstable to expect ongoing work. These same families will be the ones whose situations may take more time to resolve and will have the most trouble becoming self-sufficient within the time limits. Thus, it makes sense to address these cases through reasonable cause. Other cases can be served under the 20 percent hardship exemption or a State-funded program, if they fail to become self-sufficient within five years.

We do not expect that victims of domestic violence will routinely need more than five years of assistance before becoming self-sufficient. However, our proposal recognizes that there may be special circumstances when that is not possible. For example, a woman could suffer recurrent episodes of domestic violence, including one at the end of the five-year period, that prevent her from securing or maintaining a stable work situation. The reasonable cause provision in this section of the proposed rule would give special consideration to States if such situations arose.

Under our proposed rules, a State must substantiate its case for all claims of reasonable cause. We will examine each situation on its own merits and determine whether to assess a penalty on a case-by-case basis.

Must States do computer matching of data records under IEVS to verify recipient information? (§ 274.10)

The Income and Eligibility Verification System (IEVS) was originally established on July 18, 1984 under section 1137. PRWORA created a penalty at section 409(a)(4) requiring the reduction of a State's SFAG for the immediately succeeding fiscal year by up to two percent if the State is not participating in IEVS.

This IEVS provision was intended to improve the accuracy of eligibility determinations and grant computations for the public assistance (AFDC, Medicaid, Food Stamp and SSI) programs. It achieves this goal by expanding access to, and exchanges of, available computer files to verify client-reported earned and unearned income. Specifically, it makes the following files available to the State public assistance agencies: (1) IRS unearned income; (2) State Wage Information Collection Agencies (SWICA) employer quarterly reports of income and unemployment insurance benefit payments; (3) IRS earned income maintained by the Social Security Administration (SSA); and (4) with the passage of the Immigration Control and Reform Act of 1986, immigration status information maintained by the Immigration and Naturalization Service (INS).

Currently, regulations at §§ 205.51 through 205.62 and section 1137(d) describe what is meant by "participating * * * in the income and eligibility verification system required by section 1137." The regulation at § 205.60(a) requires each State to maintain statistics on its use of IEVS. In general, "participation" means that a State agency submits electronic requests to IRS, SWICA, SSA and INS for information listed in the preceding paragraph, for all TANF applicants and recipients. IRS, SWICA, SSA and INS provide the State agencies with an electronic response regarding the information requested. The frequency of the request and the timeliness of the response is a function of the agency (IRS, SWICA, SSA and INS) data processing systems design. The State agency worker compares the information provided by IRS, SWICA, SSA and INS to determine the accuracy of client reporting of case circumstances.

How much is the penalty for not participating in IEVS? (§ 274.11)

We are proposing to use an audit pursuant to the Single Audit Act as the primary means of monitoring a State's IEVS participation. Statistics maintained by the State, as required by § 205.60(a), will be one of the sources of information that will be reviewed during the audit. However, we may conduct additional Federal reviews or audits as needed.

Since IEVS has been in existence for more than 12 years, we believe that States have had significant time to become full participants in IEVS. Therefore, we believe it is appropriate to impose the maximum two-percent penalty upon all findings that a State is not participating in IEVS.

What happens if a State sanctions a single parent of a child under six who cannot get needed child care? (§ 274.20)

To support the intent of the statute to move people to work, section 407(e) requires that States reduce or terminate assistance to individuals who refuse to engage in work as required by section 402(a)(1)(A)(ii), as amended by section 5501(b) of Pub. L. 105–33, and section 407. However, section 407(e)(2) gives an exception for single custodial parents with a child under six if the State determines they have a demonstrated inability to obtain needed child care. Parents refusing to participate in work must demonstrate that they could not obtain child care for one or more of the following three reasons: (1) appropriate child care was not available within a reasonable distance from the parent's home or work site; (2) informal child care, by a relative or under other arrangements, was unavailable or unsuitable; and (3) appropriate and affordable formal child care arrangements were unavailable.

Section 409(a)(11)(A) directs the Secretary to reduce by no more than five percent of the adjusted SFAG, the SFAG payable to the State that reduces or terminates assistance to parents who refuse to work because they cannot obtain needed child care for a child under six years of age. The determination that a State is liable for a penalty would be dependent on a finding that the State reduced or terminated assistance to a parent who qualified for an exception under the definitions or criteria that the State developed regarding a parent's "demonstrated inability" to obtain needed child care.

We expect that, because of the interrelationship between TANF and CCDF, the TANF staff would work in close coordination with the Lead Agency for child care. Our expectation is that the TANF staff will provide families information about the penalty exception. Under the CCDF proposed rule, ACF would also require that the Lead Agency for the CCDF program inform parents in the CCDF system about the penalty exception to the TANF work requirement and the process or procedures developed by the State by which they can demonstrate their inability to obtain needed child care. ACF would also require the Lead Agency for child care to include the TANF agency's definitions in the CCDF plan for "appropriate child care," "reasonable distance," "unsuitability of informal care," "affordable," and "child care arrangements." Thus, we would expect the TANF agency to share its

definitions of these items with the child care agency. Both agencies would then be able to share them with families whom they may be assisting with child care arrangements.

Following are the factors that ACF would consider in determining if a State violated the exception to the penalty provided at section 407(e)(2):

- Whether the State informs families about the exception to the penalty for refusing to work, including the fact that the exception does not extend the time limit on benefits;
- Whether the State informs families about the process or procedures by which they can demonstrate an inability to obtain needed child care;
- Whether the State has defined and informed parents of its definitions of "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements";
- Whether the State notifies the parent of its decision to accept or reject the parent's demonstration in a timely manner;
- Whether the State has developed alternative strategies to minimize the amount of time parents are excepted from work requirements due to their inability to obtain needed child care.

For example, a State that uses the services of a child care resource and referral (CCR&R) office might accept a statement from that office noting the unavailability of appropriate or affordable child care. Or, if the refusal to work is due to difficulty in arranging transportation, the State could refer to bus and rail rates and schedules to determine if the appropriateness and/or reasonable distance criteria had been met.

We are not specifying the process or procedures that States should develop, or the documents, if any, States should require. However, we suggest that if States plan to require documents, they select ones that are readily available to families. We recommend that the process or procedures be simple and straight forward. In addition, we recommend frequent contact with parents since the penalty exception does not stay the time limits and there may be fluctuations in the availability of child care services.

We propose to impose the maximum penalty if States do not have a process or procedure in place that enables families, who refuse to work because they are unable to find needed child care, to demonstrate that they have met the guidelines provided by the State. Additionally, we will impose the maximum penalty if there is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of the requirement at section 409(a)(11). We will impose a reduced penalty if the State demonstrates that the incidents were isolated or that a minimal number of families were affected. States faced with a penalty under this requirement can claim reasonable cause and/or submit a corrective compliance plan as described in part 272.

What procedures exist to ensure cooperation with child support enforcement requirements? (§ 274.30)

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals.

The law has long recognized that paternity establishment is an important first step toward self-sufficiency in cases where a child is born out of wedlock. The earlier paternity is established, the sooner the child may have a relationship with the father and access to child support, the father's medical benefits, information on his medical history, and other benefits resulting from paternity establishment.

Establishment of paternity may also help establish entitlement to other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and rights of inheritance. Accordingly, establishing paternity and obtaining child support from the non-custodial parent are critical components of achieving independence.

To ensure that a legal relationship protecting the interests of the children is established quickly and in accordance with State law, the State agency (the IV–A agency) must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the Child Support Enforcement Agency (the IV–D agency). Those individuals must cooperate in establishing paternity and in establishing, modifying or enforcing a support order with respect to the child.

The IV–D agency will determine whether the individual is cooperating with the State as required. If the IV–D agency determines that an individual has not cooperated, and the individual does not qualify for any good cause or other exception established by the State, the IV–D agency will notify the IV–A agency promptly. The IV–A agency must then take appropriate action. The IV–A agency may either reduce the family's assistance by an amount equal to not less than 25 percent of the amount that the family would otherwise receive or deny the family assistance under TANF.

What happens if a State does not comply with the IV–D sanction requirement? (§ 274.31)

As stated in section 409(a)(5) of the Act and § 272.1 of these proposed rules, we will impose a penalty of up to five percent of the adjusted SFAG if the IV–A agency fails to enforce penalties requested by the IV–D agency against individuals who fail to cooperate without good cause. We propose to monitor State adherence to this requirement primarily through the single audit process. We further propose that the amount of the penalty will be equal to one percent of the adjusted SFAG for the first year there is such a finding. For the second year, the amount of the penalty will equal two percent of the adjusted SFAG. We will apply the maximum penalty of five percent only if there is such a finding in a third, or subsequent year.

In determining the appropriate penalty for this provision, we took into account the comments made during our consultations with States and other organizations. Although States have been required to establish paternity and enforce other child support provisions for several years, and States already have systems and procedures in place for dealing with these requirements, the division of responsibility between the IV–A and IV–D agencies is now slightly different. Accordingly, the proposal that we gradually increase the amount of the penalty was made to give States the opportunity to make procedural adjustments before they are subject to the full impact of the penalty. We believe that the suggestion has merit and, therefore, are proposing an incremental approach, with reduced penalties for the first two violations, i.e., one percent for the first and two percent for the second. However, since this is not an entirely new requirement, we are proposing to apply the full five percent penalty beginning with the third violation of the provision.

What happens if a State does not repay a Federal loan? (§ 274.40)

Section 406 permits States to borrow funds to operate their TANF programs. States must use these loan funds for the same purposes as apply to other Federal TANF funds. In addition, the statute also specifically provides that States may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of an Indian Tribe operating a Tribal TANF program. States have three years to repay loans and must pay interest on any loans received. We will be issuing a program instruction notifying States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for States that do not repay loans provided under section 406. If the State fails to repay its loan in accordance with its agreement with ACF, we will reduce the adjusted SFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed.

Sections 409(b)(2) and 409(c)(3) provide that States cannot avoid this penalty either through reasonable cause or corrective compliance.

What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty? (§ 274.50)

Section 409(a)(12), as amended by PRWORA, requires States to expend under the TANF program an amount equal to the reduction made to its adjusted SFAG as a result of one or more of the TANF penalties. States are thus required to maintain a level of TANF spending that is equivalent to the funding provided through the SFAG even though Federal funding was reduced as a result of penalties. However, PRWORA did not establish a penalty for a State's failure to meet this requirement. Section 5506(j) of Pub. L. 105–33 further amended section 409(a)(12) to create such a penalty. If a State fails to expend its own funds to pay for State TANF expenditures in an amount equal to the reduction made to its adjusted SFAG for a penalty under § 272.1, the State's SFAG for the next fiscal year will be reduced by an amount equal to not more than two percent of its adjusted SFAG plus the amount that should have been expended (reduced for any portion of the required amount actually expended by the State in the fiscal year).

As discussed in § 272.3, we will monitor closely a State's efforts to replace the reduced SFAG with its own expenditures. A State's investment in its TANF program must not be diminished as a result of actions violative of the TANF requirements. Therefore, if a State fails to make any expenditures in the TANF program to compensate for penalty reductions, we will penalize the State in the maximum amount, i.e., two percent of the adjusted SFAG plus the amount it was required to expend. The penalty will be reduced based on the percentage of any expenditures that are made by the State. For example, if a State were required to replace an SFAG reduction by $1,000,000, but its increase in expenditures equalled only $500,900, its penalty would be equal to two percent of the adjusted SFAG times 50 percent (because $500,000 is 50 percent of $1,000,000), plus the $500,000 it failed to expend as required.

States should note that if they do not expend State-only funds as required, the effect will be that the amounts to be deducted from the SFAG will compound yearly, as the penalty for failure to replace SFAG funds with State expenditures also applies to the penalty at § 272.1(a)(12). We believe that this is appropriate because full resources must be available to ensure that the goals of the TANF program are met.

State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be expenditures made under the State TANF program, not under "separate State programs." This requirement is stated in section 409(a)(12). However, as noted in § 273.6, regarding the limits on MOE expenditures, State expenditures made to replace reductions to the SFAG as a result of penalties cannot be counted as TANF MOE expenditures.

In addition, sections 5508(k) and (m) of Pub. L. 105–33 provide that the reasonable cause and corrective compliance plan provisions at §§ 272.4, 272.5, and 272.6 do not apply to the penalty for failure to replace SFAG reductions due to penalties with State expenditures.

Subpart B—What are the Funding Requirements for the Contingency Fund?

Optional Use of the Contingency Fund

In addition to the funding they receive under section 403(a), States may receive funding from the Contingency Fund under section 403(b). The purpose of the Fund is to make additional funds available to States, at their request, for periods when unfavorable economic conditions threaten their ability to operate their TANF programs. For each month of the fiscal year that they meet the eligibility criteria, States may receive up to 1/12th of 20 percent of their SFAG annual allocation. The actual amount of funds a State may realize from the Contingency Fund will vary depending on the level of State expenditures and the number of months that a State is eligible. States eligible in one month may automatically receive a payment for the following month. We have issued a program instruction to States on the Contingency Fund, which provides guidance on the requirements of the Fund as well as the associated MOE requirement.

As noted in the definitions at § 270.30, the term "Contingency Funds," when used in these proposed rules, refers to the Federal funds a State may receive under section 403(b). It does not refer to any required State expenditures.

Unless otherwise indicated, the terms "MOE requirement" and "MOE level," when used in this Subpart, refer to the Contingency Fund MOE requirement.

For funding from the Contingency Fund, a State must: (1) be a "needy State," i.e., meet one of two eligibility triggers—unemployment or Food Stamp caseload; (2) submit a request for these funds; (3) meet a maintenance-of-effort level based on 100 percent of historic State expenditures for FY 1994; (4) complete an annual reconciliation after the end of the fiscal year to ensure that contingency funds are matched by the expenditure of State funds above a certain level; and (5) provide State matching funds.

To be eligible for contingency funds under the unemployment trigger, the State's unemployment rate for the most recent three-month period must be at least 6.5 percent and at least equal to 110 percent of the State's rate for the corresponding three-month period in either of the two preceding calendar years. To be eligible for contingency funds under the Food Stamp trigger, a State's monthly average of individuals (as of the last day of each month) participating in the Food Stamp program for the most recent three-month period must exceed by at least ten percent its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995 had the immigrant provisions under title IV and the Food Stamp provisions under title VIII of PRWORA been in effect in those years.

In general, contingency funds may be used for the same purposes as other Federal TANF funds. However, the Contingency Fund provisions contain several unique requirements that are discussed below.

Unlike the TANF funds provided under section 403(a), contingency funds (provided under section 403(b)) cannot be transferred to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and/or the Social Services Block Grant Program under title XX of the Act. Section 404(d) permits the transfer of funds received pursuant to section 403(a) only.

Territories and Tribal TANF grantees are not eligible to participate in the Contingency Fund. Section 403(a)(7) provides that only the 50 States and the District of Columbia are eligible.

The TANF MOE requirement is 80 percent (or 75 percent if a State meets its participation rate) of historic State expenditures. The Contingency Fund MOE requirement is 100 percent of historic State expenditures. However, meeting the Contingency Fund MOE requirement is not accomplished by increasing State expenditures by 20 (or 25) percent. The calculation is more complicated because the MOE is calculated differently for purposes of determining compliance with the TANF MOE requirements and determining eligibility for the Contingency Fund. For example, Contingency Fund MOE expenditures must be the expenditure of State funds within TANF and not expenditures made under "separate State programs." Therefore, TANF MOE "separate program" expenditures under separate State programs cannot count toward the Contingency Fund MOE requirement. However, TANF MOE expenditures may also count as Contingency Fund MOE expenditures.

Contingency funds are available only for expenditures made in the fiscal year for which the funds were received. Unlike TANF funds under section 403(a), contingency funds are not available until expended.

Section 403(b)(4) provides that the funds are to be used to match State funds for expenditures above a specified MOE level and requires an annual reconciliation to determine if the State is entitled to the amount of funds it has received for the fiscal year. We will use the term "matching expenditures" to mean State and Contingency Fund expenditures that exceed the MOE level specified in this section.

"Qualifying State expenditures" refers to matching expenditures, excluding Contingency Fund expenditures, and the expenditure of State funds made to meet the Contingency Fund MOE requirement.

In this part of the proposed rule, we explain the reconciliation and MOE requirements and the actions that we will take if the State does not remit its contingency funds under the annual reconciliation requirement.

What funding restrictions apply to the use of contingency funds? (§ 274.70)

Annual Reconciliation

Annual reconciliation involves first computing the amount, if any, by which countable State expenditures, in a fiscal year, exceed the State's section 403(b)(6) MOE requirement. If the countable expenditures exceed 100 percent of that level, then the State is entitled to all or a portion of the contingency funds paid to it.

If the State has met its requirement, the amount of contingency funds it may retain is the lesser of two amounts. The first amount is the amount of contingency funds paid to it for the fiscal year. The second amount is its expenditures above its MOE level, multiplied by (1) the State's Federal Medical Assistance Percentage (FMAP) applicable for the fiscal year for which funds were awarded and (2) 1/12 times the number of months during the fiscal year that the State received contingency funds. (Note that if the State was eligible for, and received contingency funds for fewer than 12 months during the fiscal year, the effective rate for contingency funds will be less than its FY FMAP.)

The annual reconciliation provision of section 403(b)(6) is clear that contingency funds are available only to match expenditures that exceed a State's MOE level.

How will we determine 100 percent of historic State expenditures, the MOE level, for the annual reconciliation? (§ 274.71)

Pub. L. 105–33 amended section 403(b), by deleting an alternative MOE requirement.

For the Contingency Fund, historic State expenditures, or MOE level, (i.e., expenditures for FY 1994) include the State share of AFDC benefit payments, administration, FAMIS, EA, and JOBS expenditures. They do not include the State share of AFDC/JOBS, Transitional and At-Risk child care expenditures.

We will use the same data sources and date, i.e., pril 28, 1995, to determine each State's historic State expenditures as we used to determine the TANF MOE requirement. However, we will exclude the State share of child care expenditures for FY 1994. States must meet 100 percent of this MOE level.

Reduction to MOE Level

States should note that we will reduce the MOE level for the Contingency Fund if a Tribe within the State receives a Tribal Family Assistance Grant under section 412. This reduction is provided for in the last paragraph of section 409(a)(7)(B)(iii). For the TANF MOE requirement, we have provided that we will reduce the State's TANF MOE level by the same percentage as a State's SFAG annual allocation is reduced for Tribal Family Assistance Grants in the State for a fiscal year. For example, if a State's SFAG amount is $1,000 and Tribes receive $100 of that amount, the State's TANF MOE requirement is reduced by ten percent. If the same State also receives contingency funds in the same fiscal year, the Contingency Fund MOE level will also be reduced by ten percent.

For the annual reconciliation requirement, what restrictions apply in determining qualifying State expenditures? (§ 274.72)

Section 403(b)(6)(B)(ii)(I) provides that the expenditure of State funds counted toward the Contingency Fund MOE must only be expenditures made under the State program funded under this part. Thus, the State expenditures that the State makes to meet this Contingency Fund MOE level and its "matching expenditures" include the expenditure of State funds within TANF only; they do not include expenditures made under "separate State programs." In addition, the provision specifies that the State's expenditures for child care cannot be used to meet the requirement.

What other requirements apply to qualifying State expenditures? (§ 274.73)

Section 403(b)(6)(B)(ii) defines the amounts required to meet the MOE level and "matching expenditures" as "countable" expenditures under the TANF program. Since these expenditures are covered under title IV-A and are supplemental to the TANF MOE, we believe the same requirements that apply to the TANF MOE should also apply to these expenditures. Therefore, except where they conflict with section 403(b)(6)(B)(ii), we propose that the TANF MOE provisions at section 409(a)(4)(7)(B) apply to State expenditures under the Contingency Fund provision. Thus, to be qualifying State expenditures for Contingency Fund purposes, expenditures would be subject to the following proposed regulations: (1) § 273.2, which discusses types of expenditures (except for paragraph 273.2(a)(2), which pertains to child care); (2) § 273.4, which discusses educational expenditures; and (3) § 273.6, which describes the kinds of expenditures that cannot count as MOE.

When must a State remit contingency funds under the annual reconciliation? (§ 274.74)

After reconciliation, if a State fails to meet the section 403(a)(6) MOE level, it must remit all the contingency funds we paid to it for the fiscal year. If the State does not have sufficient matching expenditures above its MOE level to retain all the funds paid to it, then it must remit a portion of the funds paid to it. The amount the State must remit in this instance is the difference between the amount it received and the amount determined by multiplying: (1) the matching expenditures it made above the MOE level; by (2) the State's FMAP rate for the fiscal year; and (3) 1/12 times the number of months during the fiscal year that the State received contingency funds.

Below we provide an example requiring the remittance of funds.

Assume State expenditures are $103 million (which includes $2.5 million in contingency funds for the six months that the State met the Unemployment or Food Stamp trigger and excludes $2 million in child care expenditures). The required expenditure of State funds to meet the 100 percent MOE level would be $95 million, i.e., $100 million minus $5 million for child care expenditures. Assume the State's FMAP is 50 percent.

In determining if any funds must be remitted, we must subtract from the expenditures made by the State, the MOE level, i.e., $103 million minus $95 million. This difference of $8 million must then be multiplied by the State's FMAP rate for FY 1997. In this example, the FMAP is 50 percent. Thus, $8 million multiplied by 50 percent is $4 million. Next, we must multiply the $4 million by 1/12 times the number of months the State received funding for the Contingency Fund, in this case, six months. The result is $2 million, i.e., the amount of contingency funds the State is entitled to for the fiscal year. However, if a State has received $2.5 million, then it must remit $500,000. A simplified formula is presented below:

$103M − 95M = $8M
$8M x 50% = $4M
$4M x 1/12 x 6 mos. = $2M
$2.5M (Received)—$2M = $500,000 (Amount that must be remitted.)

Under section 5502(e) of Pub. L. 105–33, a State is not required to remit contingency funds until one year after it has failed to meet either the Food Stamp trigger or the unemployment trigger for three consecutive months. Thus, States may retain these funds for at least 14 months after the fiscal year has ended.

For example, FY 1997 ends September 30, 1997. The State fails to meet either trigger for the months of October, November, and December, 1997. The State has until December 31, 1998, to remit the funds.

It is possible that a State will have used the contingency funds it received for expenditures meeting the requirements included in this proposed rule, but still have to return a part of the funds used to make these expenditures because of the formula that determines how much a State may retain. This is evident in the example above where the State had to remit $500,000 of the $2.5 million received even though it had made expenditures above the MOE level. We will not consider use of funds which later must be returned under the reconciliation formula as an improper use of contingency funds since the statute specifies a separate consequence in this situation.

Contingency funds are for use in the fiscal year only; States may not use funds for a fiscal year for expenditures made in either the subsequent fiscal year or a prior fiscal year.

What action will we take if a State fails to remit funds as required? (§ 274.75)

PRWORA established a penalty at section 409(a)(10) for this failure. As amended by Pub. L. 105–33, section 409(a)(10) provides that if a State does not remit funds as required, then the State's SFAG payable for the next fiscal year will be reduced by the amount of funds not remitted. Other amendments in Pub. L. 105–33 eliminated the Secretary's ability to waive this penalty for reasonable cause or corrective compliance. However, the State may appeal our decision to reduce the State's SFAG pursuant to the proposed regulations at § 272.7.

How will we determine if a State has met its Contingency Fund reconciliation MOE level requirement and made expenditures that exceed its MOE requirement? (§ 274.76)

ACF has created a TANF Financial Report, the ACF-196. States will use the ACF–196 to report on their use of Federal TANF funds, including the contingency funds. For the Contingency Fund, States will report "matching expenditures" and expenditures also required to meet their MOE level. We will use this report to complete the annual reconciliation after the end of the fiscal year. We will review it to ensure that expenditures reported are consistent with the statute and these proposed rules. Please see the discussion of part 275 for additional information.

Are contingency funds subject to the same restrictions that apply to other Federal TANF Funds? (§ 274.77)

In general, as Federal TANF funds, the same requirements that apply to other Federal TANF funds apply to the Contingency Fund. For example, Federal assistance cannot be paid to a family with contingency funds if the family has already received Federal assistance for 60 months. (See the discussion in § 273.21 on "Misuse of Federal TANF Funds" for additional information.) However, contingency funds may not be transferred to the Social Services Block Grant or the Discretionary Fund of the Child Care Development Fund, as section 404(d) authorizes these transfers only for those Federal funds provided under section 403(a).

Meeting FY 1997 MOE Requirements

Unlike the TANF MOE level, the Contingency Fund MOE level for FY 1997 will not be prorated based on the fraction of the year the State was under TANF. Pub. L. 104–327 amended section 116(b)(1)(B)(ii)(II)(aa) and (b) of PRWORA to provide that we will increase the SFAG of any State for FY 1997 in an amount "that the State would have been eligible to be paid under the Contingency Fund . . . during the period beginning October 1, 1996, and ending on the date the Secretary of Health and Human Services" deems that the State plan is complete, if the State otherwise would have been eligible for contingency funds but for the fact that it was not under TANF. That is, for all States regardless of the TANF implementation date, the SFAG for FY 1997 may be increased in any month by the amount of contingency funds for which a State would qualify had it been under TANF requirements. The Program Instruction mentioned previously provides additional guidance to States on how their SFAG amounts can be increased for FY 1997. As the increase to the FY 1997 SFAG is a one-time occurrence, we are not regulating on this matter.

In order to compute the amount of this increase for a State meeting this criteria, and to ensure equity among all States, regardless of the dates they elected to come under TANF, we must use the MOE level for all of FY 1997. (For this limited purpose, amounts expended by a State in FY 1997 prior to the date the State came under TANF, i.e., to fulfill a State's matching requirement for AFDC, EA and JOBS, will count toward meeting the State's FY 1997 Contingency Fund MOE requirement.)

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

Section 103(b) of PRWORA amended section 1108. Section 1108 establishes a funding ceiling for Guam, the Virgin Islands, American Samoa and Puerto Rico. Prior to PRWORA, the following programs authorized in the Act were subject to this ceiling: AFDC and EA under title IV–A; Transitional and At-Risk Child Care programs under title IV–A; the adult assistance programs under titles I, X, XIV, and XVI; and the Foster Care, Adoption Assistance, and Independent Living programs under title IV–E. Funding for the JOBS program, which covered AFDC/JOBS child care, was excluded from the ceiling.

Under the amendments in PRWORA, the funding ceiling at section 1108 applies to the TANF program under title IV–A, the adult programs, and title IV–E programs. Section 1108(b) provides a separate appropriation for a Matching Grant, which is also subject to a ceiling. The Matching Grant is not a new program; rather it is a funding mechanism that Territories can use to fund expenditures under the TANF and title IV–E programs.

We had not previously regulated the provisions of section 1108. However, in light of this new MOE requirement within section 1108, as discussed later, we believe that we need to regulate to clarify the requirements and the consequences if a Territory fails to meet the new section 1108 requirements. We have authority to issue rules on this provision under section 1102, which permits us to regulate where necessary for the proper and efficient administration of the program, but not inconsistent with the Act. (The limit at section 417 does not apply.) In addition, we have prepared a program instruction for the Territories to provide additional guidance on receiving funds under section 1108.

In February 1997, we provided to the Territories: (1) their FAG annual allocations; (2) their TANF MOE levels under section 409(a)(7); (3) their Matching Grant MOE levels; (4) their section 1108(a) MOE levels (which were created by PRWORA, and were subsequently eliminated by Pub. L. 105–33); and (5) a detailed explanation of the methodology and expenditures we used to determine each of these amounts.

If a Territory receives a Matching Grant, what funds must it expend? (§ 274.80)

Section 1108(b) provides that Matching Grant funds are available: (1) to cover 75 percent of expenditures for the TANF program and the Foster Care, Adoption Assistance and Independent Living programs under title IV–E of the Act; and (2) for transfer to the Social Services block Grant program under title XX of the Act or the Child Care and Development Grant (CCDBG) program (also known as the Discretionary Fund) pursuant to section 404(d), as amended by PRWORA and Pub. L. 105–33. However, Matching Grant funds used for these purposes must exceed the sum of: (a) the amount of the FAG without regard to the penalties at section 409; and (b) the total amount expended by the Territories during FY 1995 pursuant to parts A and F of title IV (as so in effect), other than for child care.

Under the first requirement, the Territory must spend an amount up to its Family Assistance Grant annual allocation using Federal TANF or Federal title IV–E funds or funds of its own for TANF or title IV–E programs.

The second requirement establishes an MOE requirement at 100 percent of historic expenditures, based on FY 1995, separate from the TANF MOE requirement, and applicable only if a Territory requests and receives a Matching Grant. Historic expenditures include 100 percent of State expenditures made for the AFDC program (including administrative costs and FAMIS), EA, and the JOBS program. Territorial expenditures made to meet this requirement include Territorial, not Federal, expenditures made under the TANF program or title IV–E programs.

Territorial expenditures used to meet the FAG amount requirement, the MOE requirement and the matching requirement, can only be used for one of these purposes. We believe this is appropriate because our interpretation of the statute is that Congress intended that the provisions on spending up to the FAG amount, meeting the MOE requirement, and meeting the matching requirement be separate requirements.

What expenditures qualify for Territories to meet the Matching Grant MOE requirement? (§ 274.81)

For the TANF MOE, section 409(a)(7) includes specific provisions on what States and Territories may count as "qualifying State expenditures" (i.e., expenditures that may count towards the TANF MOE requirement).

However, the statute provides little guidance on what expenditures a Territory may count toward the Matching Grant MOE for IV–A expenditures. Because the Matching Grant is intended to be used for the TANF program, we will apply many of the TANF MOE requirements in part 273, subpart A, to the Matching Grant MOE. These sections are: 273.2 (What kinds of State expenditures count toward meeting a State's annual spending requirement?); 273.3 (When do child care expenditures count?); 273.4 (When do educational expenditures count?); and, 273.6 (What kinds of expenditures do not count?). Section 273.5 (When do expenditures in separate State programs count?) does not apply because section 1108(b)(1)(B)(ii) requires that these MOE expenditures must be expenditures made under the TANF program. Thus, TANF expenditures that are made to meet the Matching Grant MOE requirement must be expenditures made under TANF, not expenditures made under separate State programs. (Because Territories do not receive Matching Child Care funds, the limit on child care expenditures in § 273.3 does not apply.)

Also, Territorial expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the State share of IV–E expenditures and expenditures funded with the State's own funds that meet Federal title IV–E program requirements.

Territories may also count toward their Matching Grant MOE requirement expenditures made under the TANF program that meet the TANF MOE requirement.

What expenditures qualify for meeting the Matching Grant FAG amount requirement? (§ 274.82)

The statute intends that expenditures made to meet this requirement must be TANF or title IV–E expenditures. For TANF expenditures, allowable expenditures made with Federal TANF funds may be used to meet this requirement. These include amounts that have been transferred from TANF to title XX and the Discretionary Fund in accordance with section 404(d). (See § 273.11, which describes the proper uses of Federal TANF funds.) Also, the Territory's own funds, when used for the TANF program, may be used for this purpose. Because IV–A expenditures made with the Territories' own funds must be for the TANF program, it is reasonable that we apply to these TANF expenditures the MOE requirements applicable for the Matching Grant to this FAG amount requirement.

For IV–E expenditures, as with the Matching Grant MOE, expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the Federal share and the Territories' share of IV–E expenditures and expenditures funded with the Territories' own funds that meet Federal IV–E program requirements.

How will we know if a Territory failed to meet the Matching Grant funding requirements at § 274.80? (§ 274.83)

We are currently developing a separate Territorial Financial Report for the Territories. We will require this report to be filed quarterly; it will apply to all programs subject to section 1108. This report will cover TANF MOE and Matching Grant MOE requirements. For the Matching Grant, Territories will report expenditures claimed under title IV–E and IV–A and the total expenditures (including Federal) made to meet the requirement that they spend up to their Family Assistance Grant annual allocations.

We would not require Territories to file the TANF Financial Report; however, they must report comparable information on the Territorial Financial Report. Furthermore, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, it would be treated like a State that fails to file its TANF Financial Report and subject to the penalty for failure to report at § 272.1(a)(3).

What will we do if a Territory fails to meet the Matching Grant funding requirements at § 274.80? (§ 274.84)

The statute does not address the consequences for a Territory if it fails to meet the Matching Grant MOE and the FAG amount requirements. The proposed rule provides that we disallow the entire amount of a fiscal year's Matching Grant if the Territory fails to meet either requirement. This is because the statute provides that the Matching Grant funds are only allowable if both requirements are met. Thus, if the Territory does not meet either one or both of the requirements, it must return the funds to us. We will get the funds back by taking a disallowance action.

A disallowance represents a debt to the Federal government. Therefore, we will apply our existing regulations at 45 CFR part 30. Once we issue a disallowance notice, we can require a Territory to pay interest on the unpaid amount.

What rights of appeal are available to the Territories? (§ 274.85)

The Territory may appeal a disallowance decision in accordance with 45 CFR part 16. As these are not penalties, the reasonable cause and corrective compliance provisions of section 409 do not apply. Section 410, covering the appeals process in TANF, also does not apply.

F. Part 275—Data Collection and Reporting Requirements

General Approach

There are a substantial number of specific data reporting requirements on States under the TANF program. Some of these reporting requirements are explicit, primarily in section 411(a); others are implicit, e.g., States represent the source of information for reports that the Secretary must submit to Congress and for the determination of penalties.

These data requirements support two complementary purposes: (1) they enable determinations about the success of TANF programs in meeting the purposes described in section 401; and (2) they assure State accountability for key programmatic requirements. In particular, they ensure accurate measurement of State performance in achieving the work participation rates in section 407 and other objectives of the Act.

These purposes can only be achieved if data are comparable across States and over time. At section 411(a)(6), the TANF statute provides that, to the extent necessary, the Secretary shall provide definitions of the data elements required in the reports mandated by section 411(a). That this is one of the few places in which the law authorizes regulation by the Secretary reflects the importance of collecting comparable data.

With respect to the first purpose, measuring the success of TANF programs, the data requirements of section 411(a) reflect particular features of the TANF program. States have collected and reported similar data on the characteristics, financial circumstances, and assistance received by families served by the AFDC and JOBS programs for many years. By requiring the collection of similar data under TANF, the statute enables the Congress, the public, and States to observe how welfare reform changes the demographic characteristics and the financial circumstances of, and the self-sufficiency services received by, needy families. In so doing, it facilitates comparisons across States and over time and promotes better understanding of what is happening nationwide—how States are assisting needy families; how they are promoting job preparation, work, and marriage; what is happening to the number of out-of-wedlock births among assisted families; and what kinds of support two-parent families are receiving.

With respect to ensuring accurate measurement of work participation, section 411(a)(1)(A)(xii) specifically requires States to report on the "information necessary to calculate participation rates under section 407." Given the significance of the work rates for achieving the objectives of TANF and for determining whether States face penalties, this is an area where accurate and timely measurement is particularly important.

Our goal in implementing the data collection and reporting requirements of the Act is to collect the data required and necessary to monitor program performance. A secondary goal is to give States clear guidance about what these requirements entail and the consequences of failing to meet the requirements.

At the same time, however, we are sensitive to the issue of paperwork burden and committed to minimizing the reporting burden on States, consistent with the TANF statutory framework. In this context, where applicable, we have considered the comments we received when we proposed the draft Emergency TANF Data Report. (OMB subsequently approved this reporting form, and we issued it on September 30 as TANF–ACF–PI–97–6, Form ACF–196.) However, we welcome additional comments on whether these proposed rules, and appendices, are consistent with our interest in both minimizing reporting burdens and meeting TANF requirements.

External Consultation

Data collection and reporting issues were a critical part of the agenda for the external consultations ACF held during the past fall and winter. We also engaged in consultations when we issued a draft Emergency TANF Data Report for public comment this past summer.

In general, States expressed the view that the statutory provisions on data collection are too onerous. They recommended that ACF limit the burden on States and issue minimum regulatory requirements. However, some State officials acknowledged that they were currently collecting and reporting most of the case-specific data required by the Act as a part of the previous AFDC/JOBS program and the Quality Control reporting system.

Advocates and researchers generally recommended more data collection in order to track program effects on employment and child and family well-being.

Other Federal agencies (e.g., Census Bureau, Bureau of Economic Analysis of the Department of Commerce, Congressional Research Service) have been major users of our past program

data and strongly recommended the continuation of a number of current data elements or collection instruments, e.g., the monthly Caseload Data (or FLASH) Report.

Overview of Part 275

Under this NPRM, States must submit two quarterly reports (the TANF Data Report and the TANF Financial Report) and two annual reports (a program and performance report for the annual report to Congress and, as an addendum to the fourth quarter Financial Report, State definitions and other information).

Most of the information we propose to collect is required by section 411(a). We do not have the authority to permit States to report only some of the data required in section 411(a), and our authority to require expanded data reporting is limited. We are, however, proposing to require some additional data elements necessary to: ensure accountability under section 409(a) (penalties); meet other statutory requirements, e.g., under section 403 (grants to States) and section 405 (administrative provisions); and assess State achievement of program goals, e.g., rankings of State programs under section 413(e).

Before we discuss each of the quarterly and annual reports in detail, we present an overview of the major provisions of this part.

1. We are proposing that each State, in the TANF Data Report—

• Collect and report the case record information on individuals and families and other data, as required in section 411(a).

• Collect and report information to monitor State compliance with the work requirements in section 407, as authorized by section 411(a)(1)(A)(xii).

• Collect and report information to implement the penalty provisions in section 409(a)(9). This penalty applies to time limits on receipt of assistance.

• Collect and report a minimum number of items as break-outs of the data elements specified in section 411(a), such as citizenship status, educational level, and earned and unearned income; and a few additional items necessary to the operation of a data collection system, including Social Security Numbers.

• Collect and report a minimum number of data elements related to child care.

2. We are proposing that each State, in the TANF Financial Report (or, as applicable, the Territorial Financial Report)—

• Collect and report information necessary to estimate the amounts to be paid to a State each quarter pursuant to section 405(c)(1).

• Collect and report information on Federal, State, and MOE expenditures under sections 411 (a)(2), (a)(3), and (a)(5); information for the purpose of implementing section 409(a)(1) (penalty for misuse of funds), section 409(a)(7) (maintenance of effort), section 409(a)(10) (Contingency Fund MOE requirements), section 409(a)(12) (replacement of funds requirement), section 403(b)(4) (Contingency Fund reconciliation); and data to carry out our financial management responsibilities for Federal grant programs under 45 CFR part 92.

3. We are proposing that each State—

• At State option, collect and report data on individuals and families served by separate State MOE programs if a State wishes to receive a high performance bonus, qualify for work participation caseload reduction credit, or be considered for a reduction in the amount of the penalty for failing to meet the work participation requirements.

4. We also propose to—

• Define "TANF family" for data collection and reporting purposes only.

• Define "a complete and accurate report." This definition will serve as a compliance standard for implementing the penalty in section 409(a)(2) for failure to submit quarterly reports required under section 411(a).

• Define "scientifically acceptable sampling method" as a basis for State sampling systems and reporting disaggregated data in the TANF Data Report.

• Require States to file quarterly reports electronically.

5. We propose to minimize reporting burden by—

• Limiting required reports to a quarterly TANF Data Report, a quarterly TANF Financial Report (or Territorial Financial Report), an annual program and performance report, and an annual addendum to the fourth quarter Financial Report.

• Requiring States to report information only on the demographic and financial characteristics of families applying for assistance whose applications are approved. We will conduct special studies to obtain information on families who apply but are not approved, e.g., families denied, diverted, or otherwise referred. These data are required for purposes of section 411(b).

• Consolidating all aggregate financial and expenditure data into a single financial report. States had to submit three separate financial reports for the prior programs.

• Using the data collected under section 411(a) to conduct annual reviews and rankings of successful State work programs under section 413(d) and adding two data elements in order to conduct rankings of State efforts to reduce out-of-wedlock births, as required under section 413(e).

• Clarifying how States may use sampling to collect and report data as specified in section 411(a)(1)(B).

As an additional aid to States, we will develop a pc-based software package. This package will facilitate data entry and create transmission files for each report. We also plan to provide some edits in the system to ensure data consistency, and we invite States to comment on what sort of edit capability they would like to see in the system. The transmission files created by the system will use a standard file format for electronic submission to ACF.

Finally, in order to provide an opportunity for maximum review and public comment on the reporting requirements, we have attached the proposed quarterly reports (including the specific data elements and instructions) as Appendices A through G to part 275. We will revise these instruments following the comment period on the NPRM and will issue them to States through the ACF policy issuance system. We will not re-publish these appendices as a part of the final rule. However, we will make appropriate changes in the data collection instruments in the Appendices as a result of comments received.

We have submitted copies of this proposed rule and the proposed data reporting requirements to OMB for its review of the information collection requirements. We encourage States, organizations, individuals, and others to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Desk Officer for ACF.

Section-by-Section Discussion of this Part

The following discussion provides additional background information on, and a discussion of, each section in part 275. We discuss the specific data elements we are proposing, the statutory authority and other bases for their inclusion, the issues and options considered in developing the proposals in this part, and our rationale for taking a particular approach.

What does this part cover? (§ 275.1)

This section provides an overview of the scope and content of part 275. Paragraph (a) specifies the statutory provisions on which our data collection proposals are based. We will reference these statutory citations throughout our discussion of the specific reports, data collection instruments, and data elements in subsequent sections of this preamble.

Paragraph (b) describes the two quarterly reports and the two annual reports we propose to require. We discuss each of these reports and the specific data elements in the reports more fully in § 275.3 and § 275.9 below.

Paragraph (c) describes the optional reporting of case-record data for separate State MOE programs. We discuss our rationale for this proposal more fully in the discussion on § 275.3(d) below so that States may understand how we will evaluate certain benefits and options in deciding whether to report MOE case-record data.

Paragraph (d) describes the other provisions we propose to cover in part 275. These are the use of sampling to meet the data collection and reporting requirements, electronic submission of reports, due dates, and our plan to implement the penalty for failure to submit a timely report, as required by section 409(a)(2). You can find a more complete discussion of these matters in §§ 275.4–10.

Paragraph (e) calls attention to the eleven Appendices at the end of part 275. These Appendices contain the proposed data collection instruments and instructions for all of the quarterly reports. The Appendices also contain a summary of sampling specifications and three reference charts that link each data element in the three sections of the TANF Data Report to its specific statutory authority and our rationale for collecting these data. We have included these materials in order to obtain more informed comment on the proposed reporting requirements.

Although the Act requires that the reporting requirements for States under section 411 also apply to Indian tribal grantees, we will address data collection and reporting by Tribes in a separate NPRM that will deal with the full range of Tribal issues.

We will also address additional data collection requirements, if any, to implement the high performance bonus in a separate NPRM scheduled to be published later this year.

What definitions apply to this part? (§ 275.2)

The data collection and reporting regulations rely on the general TANF definitions at part 270.

In this part, we are proposing one additional definition—for data collection and reporting purposes only—a definition of "TANF family." This definition will apply to data collection for both the TANF program and any separate State programs.

The law uses various terms to describe persons being served under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under the TANF program. Therefore, each State will develop its own definition of "eligible family," to meet its unique program design and circumstances; similarly, each State will have its own definition of "eligible family" for State MOE programs.

We do not expect coverage and family eligibility definitions to be comparable across States. Therefore, we have proposed a definition that will enable us to better understand the different State programs and their effects. We are proposing that the definition of "TANF family" start with the persons in the family who are actually receiving assistance under the State program. (Any non-custodial parents participating in work activities will be included as a person receiving assistance in an "eligible family" since States may only serve non-custodial parents on that basis.) We, then, would include three additional categories of persons living in the household, if they are not already receiving assistance. These three additional categories are:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income and resources would be counted in determining the family's eligibility for or amount of assistance.

We believe information on these additional individuals is critical to understanding the effects of TANF on families and the variability among State caseloads, e.g., to what extent are differences due to, or artifacts of, State eligibility rules.

• We need information on the parent(s) or caretaker relative(s) (i.e., an adult relative, living in the household but not receiving assistance, and caring for a minor child) to understand the circumstances that exist in no-parent (e.g., child-only) cases not covered by key program requirements, such as time limits and work requirements.

• We need information on minor siblings in order to understand the impact of "family cap" provisions.

• We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependence.

We considered alternative terms on which to base TANF data collection such as the "TANF assistance unit" or "TANF reporting unit." However, as participants in the external consultation process pointed out, these terms no longer have a commonly understood meaning, particularly as States re-design their assistance and service programs.

For research and other purposes, there was interest in collecting data on a broader range of persons in the household, e.g., any other person living in the household such a grandmother or a non-marital partner of the mother.

We determined that we should limit reporting to those categories of persons on whom the States will gather data for their own purposes and for which information will be directly relevant to administration of the TANF program.

In the interest of greater comparability of data, we also considered defining terms such as "parent," "caretaker relative," and "sibling." We chose not to define these terms because we were concerned that our data collection policies could inadvertently constrain State flexibility in designing their programs. We believe that variation among State definitions in these areas will not be significant and will not decrease the usefulness of the data.

We believe this definition of family will not create an undue burden on States since these additional persons are either all individuals who are a part of an aided child's immediate family or whose income or resources the State already considers in determining eligibility.

We offer one clarifying note regarding data collection in relation to non-custodial parents. As we indicated in the discussion of part 271, the provision of work activities to a non-custodial parent need not cause a State to consider the family a two-parent family for the purposes of the work participation rate. States could define two-parent families as those with two parents living in the same household.

Finally, we want to emphasize that we have proposed this definition of "TANF family" for reporting purposes only. Our aim is to obtain data that will be as comparable as possible under the statute, and, to the extent possible, over time. Some comparability in data collection is necessary for assessing program performance; understanding

the impact of program changes on families and children; and informing the States, the Congress, and the public of the progress of welfare reform.

What reports must the State file on a quarterly basis? (§ 275.3)

We are proposing in paragraph (a) to require that each State must file two reports on a quarterly basis—the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report). We are also establishing the circumstances under which a State may opt to submit a quarterly TANF–MOE Data Report.

The TANF Data Report consists of three sections whose contents are discussed below. You will find these proposed sections in their entirety in Appendices A–C to this part. You will find the proposed TANF Financial Report in Appendix D and the three sections of the proposed TANF–MOE Report in Appendices E–G. (The Territorial Financial Report is under development.)

By publishing these data collection instruments in the NPRM, we are providing the public with an opportunity for a thorough review of the specific data elements proposed to be collected. We anticipate that this opportunity for an in-depth public review of these instruments will result in more useful and informed suggestions and recommendations.

Section 411(a)(1)(A)(i)–(xvii) authorizes monthly collection and quarterly reporting of a specified list of more than 30 data elements. Sections 411(a)(2)–(5) also authorize quarterly reports on administrative costs, program expenditures for needy families, non-custodial parents' participation in work activities, and transitional services to families who no longer receive assistance due to employment.

The data elements specified in section 411(a) represent the overwhelming majority of the data elements we are proposing to collect in the TANF Data Report and the TANF–MOE Report. Some section 411(a) data elements are also included in the TANF Financial Report in addition to information required by section 403(b)(4) (Contingency Fund reconciliation requirements), section 405(c)(1) (computation of payments to States), section 409(a)(10) (Contingency Fund MOE requirements), section 409(a)(12) (failure to expend additional State funds to replace grant reductions), and information to carry out our financial management and oversight responsibilities.

Where we have added data elements beyond those explicitly stated in section 411(a), we explain our rationale for their inclusion.

As a further aid to public analysis and comment, we have attached three statutory reference tables that correspond to the three sections in the TANF Data Report. These tables list each data element we are proposing to collect and the applicable statutory citation or other rationale for its collection. See Appendices I–K.

TANF Data Report: Disaggregated Data—Sections One and Two (§ 275.3(b)(1))

Paragraph (b)(1) of this section proposes to require that each State must file the disaggregated case record information, as specified in section 411(a), on: (1) families receiving TANF assistance (Section One); and (2) families no longer receiving TANF assistance (Section Two). (See Appendices A and B respectively for the specific data elements.)

The information we propose to be collected includes identifying and demographic information; data on the types and amount of assistance received under the TANF program; the reasons for and amount of any reductions in assistance; data on adults, including the Social Security Number, educational level, citizenship status, work participation activities, employment status, and earned and unearned income; and data on children, including the Social Security Number, educational level, and child care information.

The statute requires that, in her Annual Report to Congress, the Secretary must report on the financial and demographic characteristics of families leaving assistance. However, it does not directly specify the data elements that States must submit. In specifying the data elements in Section Two of the TANF Data Report (for families no longer eligible), we borrowed heavily from the data elements specified for families receiving TANF assistance. We have assumed that States will not have a great deal of difficulty collecting these data because: (1) they are reporting similar data for TANF cases; (2) we only expect States to collect these data at the time the families are leaving the rolls; and (3) we substantially reduced the total number of elements States must report. However, we invite comments on whether the value of the data required in this section (e.g., in terms of preparing the Annual Report, conducting research, and tracking the impacts of State policies) justifies the burden on States. We encourage commenters to be specific about the value and burden of individual data elements.

Appendix A contains 99 data elements, most of which are required to be reported by section 411(a)(1)(A). As indicated above, we have prepared, at Appendix I, a list of each data element in section one of the TANF Data Report (Appendix A) and its statutory basis or other rationale for its inclusion. The data elements not specified in section 411(a) are discussed more fully below.

a. *Administration of a data collection system.* The following items are not required by statute, but they are necessary to, and implicit in, the administration of a data collection system:

1. State FIPS Code
2. Reporting Month
3. Sampling Stratum
4. Family Case Number
5. Sample Case Disposition

Other proposed data elements necessary for the administration of the data collection system and our rationale for their inclusion are as follows:

6. *ZIP Code*—This information is readily available and is needed for geographic coding and rural/urban analyses.

7. *Family Affiliation*—We need this information to identify which persons in the family are receiving assistance in order to monitor work participation, receipt of assistance, and time limits. We also need this information to understand the relationship between the members of the household.

8. *Social Security Number*—This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS. (See sections 409(a)(4) and 1137.) This element will enable us to track recipients who move or become part of a different family. We also need this information for research on the circumstances of children and families as required in section 413(g).

9. *Gender*—This is a standard demographic data element. The information could be collected under a relationship element (e.g., father, mother, brother). However, by using this single element, the coding is simpler; it is easier to report; and, thus, is less burdensome.

b. *Break-outs.* We are proposing to collect additional information as break-outs of certain single data elements in section 411(a). Some break-outs are required by section 411(a). See "Amount and Type of Assistance" (10 items), "Reason for and Amount of Reduction in Assistance" (11 items), "Adult Work Participation Activities" (14 items), and "Educational Level" (two items).

Other specific break-outs not specified in section 411(a) but that we believe States have available and that are necessary for comparability of data are:

1. *Earned income.* Two break-outs ask for the dollar amount of wages, salaries and other earnings and the amount of EITC.

2. *Unearned income.* Five break-outs ask for the amount of Social Security benefits, SSI benefits, Worker's Compensation benefits, child support, and other.

3. *Subsidized housing.* Data element #13 asks for an indication of the source of the subsidy, e.g., public housing, HUD rent subsidy, or other.

4. *Food Stamps.* Data element #15 asks for the type of Food Stamps assistance, i.e., allotment, cash, or subsidy.

On these last two items, in particular, we are interested in receiving comments on whether the value of the break-out information (e.g., in terms of enabling comparisons with historical information, conducting research, and assessing dependency) justifies the additional reporting burden on States.

One final break-out area is *Citizenship.* We propose to require nine break-outs of the data element "citizenship" in section 411(a)(1)(A)(xv). We believe it is necessary to track the proper use of TANF funds in terms of the types of aliens served to ensure that TANF benefits are going to eligible aliens. Section 409(a)(1) provides for a penalty if funds are used in violation of the requirements of the law. PRWORA created complex and potentially confusing eligibility criteria for different types of qualified aliens; the requirements are made even more confusing by the imposition of certain time limits in terms of United States residency for certain groups of qualified aliens, such as refugees, and by the time limit on receipt of TANF assistance for everyone. We also believe States will need the information in the break-outs to carry out their eligibility determinations.

c. *Data elements necessary to implement other sections of the Act.* The following items are not required by section 411(a) but are necessary to implement other statutory requirements:

1. *Cooperation with child support*—Section 409(a)(5). (Data element #94)

2. *Time limits for receipt of assistance*—Section 409(a)(9). (Data elements #44 and #62–65)

3. *New Applicants*—Section 411(b). (Data element #10)

4. *Amount of the family's cash resources*—Section 411(b). (Data element #21)

d. *Child Care.* Five data elements are identical to the child care information required to be reported on families served by the Child Care Development Fund (CCDF). The purpose of this collection of information is to track child care provided under TANF in relation to a State's provision of CCDF child care. (Child care provided under CCDBG with funds transferred from TANF is captured through the CCDF program, not TANF data collection.) It is also necessary for assessing program performance and the total financial commitment a State is making to achieve the work objectives of the Act.

The second section of the TANF Data Report, Appendix B, contains 46 elements applicable to families no longer receiving assistance. The data elements in Appendix B are identical to those in Appendix A except that some elements are omitted as not applicable and others consist of a single data element with no break-outs. See Appendix J for the statutory reference table applicable to Appendix B.

TANF Data Report: Aggregated Data—Section Three (§ 275.3(b)(2))

Paragraph (b)(2) of this section proposes that each State must file quarterly aggregated information. (See Appendix C for the list of data elements.)

The data elements in this section of the TANF Data Report cover families receiving, applying for, and no longer receiving TANF assistance. They include total figures on the number of approved and denied applications; the number of no-parent (e.g., child-only), one-parent, and two-parent families; the number of child and adult recipients; the number of minor child heads-of-households; the number of out-of-wedlock births; the number of births; the number of non-custodial parents participating in work activities; the number of closed cases; and the total amount of TANF assistance provided.

This third section of the TANF Data Report contains 19 data elements. Ten of the 19 are specified in, or are break-outs of data elements in, section 411(a).

Technical amendments to PRWORA under section 5507 of Pub. L. 105–33 added a new section 411(a)(6) to the TANF data collection and reporting requirements. This new paragraph (6) requires reports on "the number of families and individuals receiving assistance . . . (including the number of 2-parent and 1-parent families)." It also asks for the total dollar value of such assistance received by all families.

We propose two break-outs for these new data elements in section 411(a)(6). As a break-out under the "number of families," we are proposing to collect data on the number of no-parent families and the number of minor-child heads-of-household. As a break-out under "number of individuals," we are proposing to require data on the number of adult recipients and the number of child recipients.

In addition to the statutorily-based data elements, we have added nine data elements. We are proposing to require three data elements (#1–3) as necessary to administer a data collection system and two data elements (#5 and #19) as necessary to verify and validate the quality and consistency of the disaggregated data. Because we allow States to report disaggregated data on a sample basis, we need certain aggregated data to test the reliability of estimates and the representativeness of the disaggregated sample data.

Finally, two data elements (#4 and #6) are required by section 411(b) for the report to Congress, and two elements (#17–18) are required by section 413(e) for the annual rankings of States related to their efforts to prevent out-of-wedlock births. See Appendix K for the Statutory Reference Table for Appendix C.

This section of the TANF Data Report is made up of aggregate data almost all of which was previously reported under the AFDC and JOBS programs. We have: consolidated the data elements in the previously required monthly FLASH Report and two quarterly aggregated data reports—the 3637 Report and the 3800 Report—into a single quarterly report; eliminated the monthly report; and greatly reduced the number of data elements. We believe the States will welcome the reduced burden in this area.

In addition, we have further minimized the reporting burden on States by how we propose to collect "demographic and financial characteristics of families applying for assistance." In interpreting this requirement in section 411(b), we propose to collect information, not on all families who apply, but only on those whose applications are newly approved. We propose to collect any additional information that is needed on applicants who are not approved through a special study or studies.

We adopted this approach because the question of "what is an application" and "what is a denied application" (as opposed to a referral or a diverted family, for example) is often very difficult to determine. If we were to require data on all applications, we believe that considerable portions of the

demographic and financial data would be incomplete or entirely missing. We also believe that there would be extraordinary variability in the information provided across States. This variability would have an adverse impact on the quality of any estimates based on these data and on our ability to interpret the data.

Also, data collection on all applicants could be very burdensome on States as they would need to create an additional sample frame to select samples for all applications and to collect data on families who are not receiving assistance. These families may be difficult to locate and unwilling to cooperate.

As noted earlier, in our external consultation, users of these data expressed strong support for continued collection of this information.

We received recommendations that additional data elements should be added. In many instances, we agreed with the importance of the data, but we could not justify its necessity for the administration of the program, given our limited regulatory authority.

We also considered various options in how to design a data collection system to minimize the burden on States. The statutory requirements include monthly collection, quarterly reports, annual reports, and other periodic activities (e.g., annual rankings of States, application of penalties). We have tried to simplify these requirements in our proposal to include all data collection in the quarterly TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report), including a fourth quarter addendum, and one annual program and performance report. Since the data being collected apply to individuals and families, it is easier for a State to modify its current data collection system than to set up new systems with different periodicities. We believe that: (1) States will be able to accommodate to this proposed system of quarterly reports, one annual addendum to the quarterly reports, and one annual report; and (2) by this simplification of data collection and reporting, we will have come a long way to increasing the completeness and accuracy of the data.

TANF Financial Report (§ 275.3(c))

We propose in paragraph (c) to require each State to file a TANF Financial Report quarterly. See Appendix D for the content of the TANF Financial Report and the content of the addendum that must be filed with the fourth quarter TANF Financial Report as described in § 275.9.

We will be issuing a separate Territorial Financial Report for the Territories because they have different funding sources and different MOE requirements. The Territorial Financial Report will incorporate the requirements of the TANF Financial Report—including the data elements, fourth quarter addendum, and filing deadlines. Also, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, it would be treated like a State that fails to file its TANF Financial Report and subject to the penalty for failure to report at § 272.1(a)(3).

We propose that States report information in two broad categories—"Expenditures on Assistance" and "Expenditures on Non-Assistance"—because we need to track the reasonableness of the definition of assistance for Federal funding and State MOE purposes. These data will assist us in understanding the extent to which recipients of benefits and services are covered by program requirements. As we indicated in the discussion of the definition of "assistance" in § 270.30, we want to make sure that our definition does not have the effect of undermining the objectives of the Act. The data will also be important in helping us validate the data received on disaggregated cases.

The TANF Financial Report is designed to serve multiple purposes:

(1) To gather data required under section 411 (a)(2), (a)(3), and (a)(4), i.e., data on administrative costs, State expenditures on programs for needy families, and transitional services for families no longer receiving assistance due to employment;

(2) To gather quarterly estimates for Federal TANF grants as authorized by section 405(c)(1);

(3) To monitor expenditures and closeout TANF grants for a fiscal year, in accordance with standard financial reporting requirements for federal grant programs;

(4) To determine if a State has met its TANF MOE requirement under section 409(a)(7);

(5) To determine compliance with the limitations on administrative costs as specified in section 409(a)(7)(B)(i)(I)(dd);

(6) To accomplish the annual reconciliation for the Contingency Fund under section 403(b);

(7) To assure compliance with section 409(a)(1) (misuse of funds), section 409(a)(10) (Contingency Fund MOE requirements), and section 409(a)(14) (State reduction of assistance for recipients refusing without good cause to work; and

(8) To monitor the expenditure of additional State funds to replace grant reductions.

With respect to MOE and Contingency funds, TANF MOE and Contingency Fund reporting for a fiscal year culminate with the submission of the fourth quarter financial report for the fiscal year. However, because Federal TANF funds granted for a fiscal year are available until expended, States must continue reporting on State expenditures of Federal funds each quarter until they have expended all their funds.

Paragraph (c)(4) proposes to require that if a State is expending funds received in a prior fiscal year, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on how that fiscal year's funds were expended.

For example, if a State reserves FY 1997 funds through the second quarter of FY 1999, the State must submit quarterly reports on FY 1997 funds with the final report covering the second quarter of FY 1999. During this same period, a State must submit its reports for FYs 1998 and 1999.

The MOE expenditure information in the TANF Financial Report is not an optional reporting requirement, as is the information on families served by separate State programs in the TANF Data Report. States must report such expenditure data as a part of the evidence required to assure that State MOE expenditures are "qualified."

OMB has approved the use of an interim financial reporting form (#0970–0165) on an emergency basis until it approves the TANF Financial Report.

We have not attached a statutory reference chart for Appendix D. With a few exceptions, the data elements in the TANF Financial Report are required by section 411, are needed to determine if a State has met the TANF MOE requirements under section 409(a)(7), and are necessary to carry out our financial management responsibilities under 45 CFR part 92.

The exceptions and our rationale for their inclusion are as follows:

1. *Expenditure data on cash assistance, work subsidies and activities, and child care.* These expenditure categories provide information to assess a State's use of funds (see penalty sections 409(a)(1) and 409(a)(7)) and are a basis for determining a State's total commitment to work (see sections 409(a)(3) and 409(a)(9)).

2. *Expenditures on systems.* For Federal TANF funds, the statute excludes systems costs from the 15 percent limit on administrative costs. The statute is silent as to whether such costs are within the 15 percent limit on administrative costs for State MOE expenditures. We are proposing that systems costs may also be excluded from the State calculation. Attaching information on State systems expenditures will enable us to judge the implications of our proposal to exclude such costs from the administrative cost cap applicable to State funding.

3. *Fourth Quarter Addendum.*

• *State reporting of families excluded from work rates and time-limit calculations under the State definition of families receiving assistance.*

States must annually report the number of families excluded from the overall work participation rate (at § 271.22), the two-parent rate (at § 271.24), and the time-limit calculations (at § 274.1), together with a description of the family circumstances that explains why they were excluded. The purpose of this information is to provide a national perspective as to whether States are avoiding critical provisions of the law by creating child-only cases.

• *State definition of work activities.*

This State definition must also be reported annually. We need this information to monitor the work participation requirements in section 407. See also our preamble discussion in § 271.30, "What are work activities?"

• *Description of transitional services.*

This description of transitional services provided to families that are not receiving TANF assistance because of employment implements section 411(a)(5).

• *Description of how a State will reduce the amount of assistance payable to a family when the individual refuses to engage in work.*

This description of how a State carries out pro rata (or more) reductions provides information that is necessary to implement section 409(a)(14). See also § 271.54 and 55.

• *Descriptive and expenditure-related information on the State's separate MOE program.*

This information is necessary to carry out requirements of section 409(a)(7). See the discussion of § 273.7 for additional details.

TANF–MOE Data Report (§ 275.3(d))

Paragraph (d) proposes to require that a State must report case record data on separate MOE programs if it wishes to be considered for certain benefits and options under the Act.

The data elements we are proposing to collect on separate State programs are identical in content to but fewer in number than the demographic and work activity data we have proposed in paragraphs (b) and (c) of this section. (See Appendices E, F, and G.)

We are proposing to collect information on separate State programs in order to help ensure that State decisions to establish such programs do not undermine the work provisions of the new law, undercut Congressional intent to share child support collections between the Federal and State governments, or have other negative consequences.

We believe that it is not possible to judge the impacts and accomplishments of the State's TANF program by looking only at how a part of the State's program is operating. We need information on the separate State programs so that we can better identify which States are truly successful in serving needy families, promoting work, and meeting other legislative goals.

For example, a State could score well on a measure of its TANF performance by relegating the most-difficult-to-serve families to a separate State program in which they received no self-sufficiency services. In reality, this State would be performing more poorly than a State that achieved the same level of success with its TANF population, but served all families through its TANF program. Similarly, a State that "reduced" its TANF caseload by simply splitting its program into a TANF program and a separate State program should not get credit for caseload reduction in determining its work participation rate.

Thus, collection of data on separate State programs would give us the capacity to look broadly at issues of work effort, caseload reductions, family structure, and other measures of performance.

We plan to look at overall participation levels, including participation by families receiving assistance under separate State programs, to assess how well States are meeting their responsibilities to help families toward self-sufficiency. These overall participation levels could affect the size of a State's penalty if it does not meet the rates at section 407. However, we base our initial determination that a State is subject to a penalty under section 407 on the work participation rates of families receiving TANF assistance, not these overall participation levels.

The differences between the TANF Data Report and the TANF–MOE Data Report are minor. Appendix A contains six data elements not included in Appendix E. They are: Tribal Code, Amount of Monthly Child Care Co-Payment, Is the TANF Family Exempt from the Federal Time Limit Provision, Type of Child Care, Total Monthly Cost of Child Care, and Total Monthly Hours of Child Care Provided During the Reporting Month.

Appendix B contains one data element not in Appendix F—Tribal Code Number. Appendix C contains four data elements that do not appear in Appendix G. They are: Tribal Code, Total Number of Applications, Total Number of Approved Applications, and Total Number of Denied Applications.

The statutory authority and rationale for these data elements are found in Appendices I–K.

When are quarterly reports due? (§ 275.4)

Paragraph (a) of this section implements section 409(a)(2), as amended by Pub. L. 105–33, which requires that States file quarterly reports within 45 days following the end of the fiscal quarter or be subject to a penalty.

Paragraph (c) implements section 116 of PRWORA in defining the effective date of the reporting requirements for individual States, depending on the date they began implementation of the TANF program. Section 116 states that the reporting requirements shall take effect on the later of July 1, 1997, or six months after the Secretary receives a TANF Plan from the State. For operational purposes, we interpret this to mean that the reporting period begins six months after the State implements the program.

For example—

If a State implements TANF	Reporting period	Reports due
March 1, 1997	September 1, 1997–September 30, 1997	11/14/97
April 10, 1997	October 10, 1997–December 31, 1997	02/14/98
July 1, 1997	January I, 1998–March 31, 1998	05/15/98

These effective dates apply to the TANF Data Report and the TANF Financial Report, including the annual addendum to the fourth quarter TANF Financial Report.

Paragraph (b) proposes that a State may collect and submit its quarterly TANF–MOE Data Reports at the same time as it submits TANF Data Reports, or it may submit them at the time it seeks to be considered for a high performance bonus, a caseload reduction credit, or a reduction in the penalty for failing to meet work participation requirements, as long as the data submitted are for the full period on which these decisions will be based.

Although we believe that it will be easier for States (and State data collection systems) to file all data reports at the same time, this additional flexibility may be useful for some States.

May States use sampling? (§ 275.5)

This section implements section 411(a)(1)(B) in permitting the States to meet the disaggregated data collection and reporting requirements by submitting data based on the use of a scientifically acceptable sampling method approved by us. States may not submit aggregated data based on a sample, e.g., the TANF Financial Report.

We have proposed a definition of "scientifically acceptable sampling method" in paragraph (b) of this section. This definition reflects generally acceptable statistical standards for selecting samples and is consistent with existing AFDC/JOBS statistical policy. (See Appendix H for a summary of the sampling specifications.)

At a later date we will issue the TANF Sampling and Statistical Manual that will contain instructions on the approved procedures and more detailed specifications for sampling methods.

Must States file reports electronically? (§ 275.6)

We are proposing to require that States must submit all quarterly reports—the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the TANF–MOE Data Report—electronically.

We are proposing electronic submission for several reasons. For each collection of information, OMB regulations at 5 CFR 1320.8 require Federal agencies to evaluate whether the burden on respondents can be reduced by use of automatic, electronic, mechanical, or other technological collection techniques. This Department has for many years encouraged programs and grantees to use such non-paperwork approaches to meet data collection requirements.

All States submitted data reports electronically under the prior AFDC, JOBS, and the Quality Control data reporting systems. In external consultation meetings, State representatives supported electronic submission of both data and financial reports. Therefore, we conclude that continuing electronic submission of data reports will not be a burden on States and that requiring electronic submission of all data and financial reports will reduce paperwork and administrative costs, be less expensive and time-consuming, and be more efficient for both States and the Federal government.

As noted earlier, we will develop and provide for State use a pc-based software package to facilitate data entry and create transmission files for each quarterly report.

We are considering developing, when feasible, an electronic reporting format for the annual addendum to the TANF Financial Report and the annual program and performance report as required in § 275.9. We would appreciate comments and suggestions on the desirability and usefulness of this approach.

How will we determine if the State is meeting the quarterly reporting requirements? (§ 275.7)

In order to set a standard of compliance for monitoring and penalty purposes, we have proposed definitions of what will constitute "a complete and accurate report" for disaggregated data reports, for aggregated data reports, and for the TANF Financial Report (and, as applicable, the Territorial Financial Report). We will use these definitions in determining if the State is subject to any of the penalties for which we are collecting data. (See § 275.8 of this part for the specific circumstances under which we will impose the penalty for failure to report complete, accurate, and timely data under section 409(a)(2).)

We will also use these definitions for monitoring the completeness and accuracy of the data and financial reports under our authority in section 411(a)(1)(B) to verify the quality of data submitted.

We believe these definitions are necessary to ensure that we receive data reports that are in good order. We considered not providing a definition or a standard of compliance, but rejected that option because the data reports are so critical to our ability to provide information to Congress, States, and the public on how welfare reform is proceeding as well as to assess and hold States accountable for program performance.

In the past, we have had problems obtaining complete and accurate data. Errors have been common, thus creating substantial burdens for ACF (in conducting edit checks) and for States (in revising and correcting their reports). Because of errors and omissions, we have also experienced significant delays in reporting national program data to States, Congress, and the public. We welcome suggestions and recommendations on ways to help assure more accurate data reporting without creating undue burden on States.

We are concerned about complete, accurate, and timely data for another reason. We are considering posting information from the quarterly TANF Data Reports on the Internet for access by other Federal agencies, legislators, researchers, the public, and others for a variety of analytic and evaluation purposes. Posted data would allow States and others to make comparisons among State programs, accomplishments, outcomes, and levels of performance. If we put these data in the public domain, the need for completeness and accuracy is much greater because the likelihood increases that the numbers would be used or published without appropriate caveats or consideration of their limitations. In addition, posting data that could not be relied upon defeats the purpose of making the data more accessible.

The standards for "completeness and accuracy" that we are proposing for the TANF Financial Report (and Territorial Financial Report) in paragraph (d) apply to all expenditures reported; i.e., Federal TANF, State TANF, Contingency Fund, and State MOE expenditures. We propose that these expenditures be made in accordance with the requirements at 45 CFR 92.20(a). Under this provision, all expenditures must be traceable, so that we can determine if funds have been used properly, and made in accordance with Federal and State laws and procedures. For the "completeness" standard, we expect that States will report expenditures for all data elements for which expenditures are made in the quarter.

Also in paragraph (b), the proposed definition of "a complete and accurate report" includes the statement that "where estimates are necessary, the State uses reasonable methods to develop these estimates." We plan to review each State's methods and procedures for developing these estimates through on-site verifications or technical assistance visits.

Finally, regarding verification of data, the Secretary has the authority under section 411(a)(1)(B) to verify the quality of the data submitted by States. We will be exploring several approaches to verification of data, including audits and reviews. We also remind States, in paragraph (f), that backup documents need to be retained to support the information in any report and for verification purposes.

Under what circumstances will a State be subject to a reporting penalty for failure to submit quarterly reports? (§ 275.8)

In order to ensure that States file required reports, section 409(a)(2)(A) requires us to impose a penalty on a State if the State has not filed the required report within 45 days following the last month of a fiscal quarter. However, section 409(a)(2)(B) allows us to rescind the penalty if the State files the report before the end of the quarter immediately following the quarter for which the report was required. These provisions are reflected in paragraphs (c) and (d) of this section.

In paragraph (a), we propose to impose the penalty only with respect to the two quarterly reports—the TANF Data Report and the TANF Financial Report (or Territorial Financial Report), including the fourth quarter annual addendum—and only under one or more of the following five circumstances:

- The State fails to file the TANF Data Report or the TANF Financial Report (or Territorial Financial Report) on a timely basis.
- The disaggregated data in the TANF Data Report is not accurate or does not include all of the data elements required by section 411(a) (other than section 411(a)(1)(A)(xii) regarding work participation requirements) or the nine additional data elements necessary to carry out the data collection system requirements.
- The aggregated data in the TANF Data Report does not include complete and accurate information on the ten data elements required by section 411(a) and the five data elements necessary to carry out the data collection system requirements and verify and validate disaggregated data.
- The TANF Financial Report (or Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services, as required by section 411(a).
- The annual addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report) does not contain the required information on families excluded from the work participation and time-limit calculations, the State's definition of work activities, and the descriptive information on transitional services in the TANF program as required by section 411(a).

This means that:

(1) For the disaggregated data in section one of the TANF Data Report (Appendix A), we will impose a penalty if the section 411(a)-based data elements are not complete and accurate and if the items identified as necessary to carry out the data collection system requirements are also not complete and accurate;

(2) For the disaggregated information in section two of the TANF Data Report (Appendix B), the information required by section 411(a) must be complete and accurate;

(3) For the aggregated data in section three of the TANF Data Report (Appendix C), the section 411(a)-based data elements, and the data elements necessary to meet the data collection systems requirements and verify and validate the disaggregated data, must be complete and accurate; and

(4) For the TANF Financial Report (or Territorial Financial Report), a State must file complete and accurate information on its definition of work activities, any families excluded from the work participation or time-limit calculations because of the State's definition of families receiving assistance, total program expenditures and expenditures on administrative costs and transitional services as specified in section 411(a).

The Statutory Reference Tables at Appendices I–K identify the specific statutory bases for the data elements and those that are necessary to carry out the data collection system requirements.

Paragraph (b) specifies that we will not apply the penalty to the TANF–MOE Data Report, the annual program and performance report proposed in § 275.9, or the other information on individuals and families required based on section 411(b).

We took this approach because the penalty for failure to submit a timely report at section 409(a)(2) applies to the data collection requirements in section 411(a). We considered applying the penalty to all of the data elements in the disaggregated sections of the TANF Data Report (Appendices A and B) as the overwhelming majority of the data elements in these two instruments are specified in section 411(a). In addition to the importance of the information, we thought that this approach would be simpler and easier to administer.

We concluded, however, that we do not have the authority to impose a penalty for failure to report on additional elements (other than those relating to section 411(a)) in the TANF Data Report or the TANF Financial Report. Nor do we have authority to impose a penalty for failure to file the TANF-MOE Data Report or the annual report on program and performance.

This means we will not impose a penalty under this part for failure to file data elements necessary to carry out other statutory provisions. However, the failure to file data elements based on other statutory provisions will subject the State to any penalty relating to those provisions. For example, the TANF Data Report includes five elements based on section 409(a)(9) (time limits on receipt of assistance). The penalty for failure to file the section 409(a)(9) data elements is tied to the penalty provisions in section 409. If a State does not file the complete and accurate information necessary to administer section 409(a)(9) in the TANF Data Report, we will determine that the State has not met this requirement, and we will impose the penalty specified under section 409(a)(9).

We cannot over-emphasize how seriously we look upon the matter of complete, accurate, and timely reporting. As noted earlier, the data collected will serve many functions—for States, the Congress, the public, and for us. Adequate data will be critical to many policy and administrative implementation activities.

For example, a State's failure to file complete, accurate, and timely TANF Financial Reports may jeopardize the timely payment of TANF grants to the State and will raise questions as to whether a State is subject to a penalty for misuse of funds, intentional misuse of funds, or failure to make sufficient "qualified State expenditures" for TANF MOE or Contingency Fund MOE purposes.

We propose in paragraph (c) that, when a State meets one or more of the conditions set forth in paragraph (a), we will notify the State that we intend to impose a penalty and reduce the SFAG for the immediately succeeding fiscal year by four percent.

However, paragraph (d) specifies that, if the State meets the requirements by the end of the next fiscal quarter that immediately follows the quarter for which the report was due, we will not impose the penalty. For example, if a State fails to file a complete and accurate report for the first quarter of the fiscal year by February 14, but does file the report by March 31, we will not penalize the State.

If a State does not meet the reporting requirements, we intend to impose the penalty. Before we do so, paragraph (e) provides that States will have an opportunity to submit "reasonable cause" justifications and/or corrective compliance plans in accordance with §§ 272.4–272.6.

If we find that a penalty is appropriate, we propose, in paragraph (f), that we will reduce, by four percent, the State's family assistance grant for the next fiscal year as specified in section 409(a)(2) unless we determine that a reduction is not appropriate pursuant to sections 409(c) (2) and (3).

What information must the State file annually? (§ 275.9)

We propose in this section that States must submit two reports annually. Paragraphs (a) and (b) refer to the State's definitions and other information that must be submitted as an addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report). See Section 3 of Appendix D for details. Paragraph (c) proposes that an annual program and performance report must be submitted to meet the requirements of section 411(b), the report to Congress.

In paragraph (a), we propose to require four items of information on the State's TANF program: the number of families excluded from the two work participation rates and time-limit calculations under the State's definition of families receiving assistance (with the basis for the exclusions); the State's definition of each work activity; a description of the transitional services provided to families no longer receiving assistance due to employment, as specified in sections 411(a)(1)(A)(xi), (a)(2) and (a)(5); and a description of how the State carries out pro rata (or more) reductions in assistance for recipients refusing without good cause to work. This last item would provide information necessary to implement section 409(a)(14).

In paragraph (b), we propose to require the eight items of descriptive and expenditure-related information on the State's separate MOE program, as specified in § 273.7.

States must submit the information in both paragraphs (a) and (b) at the same time as the fourth quarter TANF Financial Report.

We believe the information in paragraphs (a) and (b) is readily available, will be easy to report annually, and will not be burdensome for States. The information related to the State's separate MOE program is important to our ability to track and monitor the MOE expenditures and program effects. (See also our discussion of the importance of MOE program information in § 273.7.)

In order to reflect the most current and accurate information about State TANF programs in the Secretary's annual report to Congress, we propose in paragraph (c) that each State must file an annual program and performance report. The content of this report, as described in paragraph (c), will address the provisions of section 411(b) and the concerns of Congress and others about the implementation of the TANF program.

At a later date, following public comment on this NPRM, we will develop and obtain further public comment on, and OMB approval for, a reporting form that includes both the specific content of the report and instructions for filing.

In order to minimize the reporting burden on States, we will collect some information for our report to Congress from the quarterly Data and Financial Reports, State Plans, annual rankings and reviews, and/or other special studies. We also plan to take advantage of, and work in conjunction with other efforts to acquire information on the TANF program, including research agencies and organizations currently gathering information on program design and implementation.

To the extent that we may be able to build on existing collaborations, we can avoid duplication of effort and produce a better, more complete national picture of the TANF program.

When are annual reports due? (§ 275.10)

Paragraph (a) proposes that the information in the addendum to the fourth quarter TANF Financial Report, specified in § 275.9 (a) and (b), must be filed at the same time as the fourth quarter TANF Financial Report. This means that this information is due one month following the end of the fourth quarter.

Paragraph (b) proposes that States must file the annual program and performance report to meet the provisions of section 411(b) within 90 days after the close of the fiscal year. This means that the annual report describing State activities carried out in FY 1997 will be due December 30, 1997.

This annual report requirement in section 411(b) is not covered by the statutory effective date for reporting in section 116 of PRWORA. The proposed deadline is consistent, however, with the deadline for most annual reports under DHHS grant programs as specified in 45 CFR 92.40(b)(1).

V. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers and others to obtain their views.

We discuss the input received during the consultation process in the "supplementary information" section of the preamble and in discussions of individual regulatory provisions. To a considerable degree, these proposed rules reflect the discussion and concerns of the groups with whom we consulted.

These proposed rules reflect the intent of PRWORA to achieve a balance between granting States the flexibility they need to develop and operate effective and responsive programs and ensuring that the objectives of the program are met. Under the new law, State flexibility is achieved by converting the welfare program into a block grant and limiting Federal rules; ensuring that program goals are accomplished is achieved through a number of penalty and bonus provisions and extensive data collection.

We support State flexibility in numerous ways—such as by exercising regulatory restraint; giving States the ability to define key program terms; and clarifying that States have the ability to continue their welfare reform demonstrations and serve victims of domestic violence, non-custodial parents, and immigrants (with State funds).

We support the achievement of program goals by ensuring that we capture key information on what is happening under the State TANF programs and maintaining the integrity of the work and other penalty provisions. We take care, in provisions such as the proposed MOE data collection and caseload reduction factor approval process, to protect against negative impacts on needy families. (Subsequent rules on the high performance bonus, illegitimacy bonus, child poverty rates and Tribal TANF programs will reinforce these objectives.)

One of our key goals in drafting the penalty rules was to ensure State performance in all key areas provided under statute—including work participation, time limits, State maintenance-of-effort, proper use of Federal funds and data reporting. The law specified that we should enforce State actions in these areas and specified the penalty for each failure. Through the "reasonable cause" and "corrective compliance" provisions in the proposed rules we give some consideration to special circumstances within a State to help ensure that neither the State nor needy families within the State will be unfairly penalized for circumstances beyond their control.

In the work and penalty areas, this rulemaking provides information to the States that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on States, but the basic expectations on States are statutory, and the effect of these rules is non-material.

The financial impacts of these proposed rules should be minimal because of the fixed level of funding provided through the block grant. (We expect Federal outlays for State Family Assistance Grants, exclusive of any bonuses, to amount to nearly $15.6 billion in FY 1998.) A State's Federal grant could be affected by the penalty decisions made under the law and these rules, and State expenditures on needy families could be affected by the proposed rules on the caseload reduction. Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

In the area of data collection, the statutory requirements are very specific and extensive—especially with respect to case-record or disaggregated data. These proposed rules include additional data reporting with respect to program expenditures and MOE cases. They expand upon the expenditure data explicitly mentioned by the statute in order to ensure that: needy families continue to receive assistance and services; monies go for the intended purposes; and the financial integrity of the program is maintained. They also include additional, optional data collection for MOE cases. We included this additional MOE data collection in order to assess the overall impact of the program and ensure that the creation of separate State programs does not undermine the objectives of the Act.

The impacts of these rules on needy individuals and families will depend on the choices the State makes in implementing the new law. We expect our proposed data collection to enable tracking of these effects over time and across States. Overall, our assessment of these proposed rules indicates that they represent the least burdensome approach and that the impacts and consequences are non-material for individuals, States, and other entities.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This proposed rule contains information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the Paperwork Reduction Act, we have submitted the proposed data collection requirements to OMB for review and approval. We are concurrently using this NPRM as a vehicle for seeking comment from the public on these information collection activities.

The proposed rules contain provisions covering three quarterly reports and one annual report. In addition, we are proposing that States provide documentation for caseload reduction credit and the reasonable cause/corrective action process and that they file certain program definitions and descriptions annually. In order to provide an opportunity for maximum review and public comment on the reporting requirements, we have attached the proposed quarterly reports (including the specific data elements) and the annual addendum as Appendices to part 275. We will revise these instruments following the comment period on the NPRM and will issue them to States through the ACF policy issuance system. We will not republish these appendices as a part of the final rule.

The three quarterly reports are the TANF Data Report (Appendices A through C), the TANF MOE Data Report (Appendices E through G), and the TANF Financial Report (Appendix D) (or, as applicable, the Territorial Financial Report). The TANF Data Report and the TANF MOE Data Report consist of three sections each. Two of these three sections consist of disaggregated case-record data elements, and one consists of aggregated data elements.

We need this proposed information collection to meet the requirements of section 411(a) and to implement other sections, including sections 407 (work participation requirements), 409 (penalties), 413 (annual rankings), and 411(b) (Annual report to Congress).

Reporting on the separate State MOE program(s) is optional. However, if a State claims MOE expenditures under a separate State program and wishes to receive a high performance bonus, qualify for work participation caseload reduction credit, or be considered for a reduction in the penalty for failing to meet the work participation requirements, it must file disaggregated and aggregated information on the separate State program(s) that is similar to that reported for the TANF program. (See Appendices E, F, and G for the proposed data elements.)

The TANF Financial Report consists of one form with an annual addendum to be submitted at the same time as the TANF Financial Report for the fourth quarter. (See Appendix D.)

We need this report to meet the requirements of sections 405(c)(2), 411(a)(2), 411(a)(3), and 411(a)(5), and to carry out our other financial management and oversight responsibilities. These include providing information that could be used in determining whether States are subject to penalties under section 409(a)(1), 409(a)(3), 409(a)(7), 409(a)(9), or 409(a)(14), tracking the reasonableness of our definition of "assistance," learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF and MOE cases.

We are also proposing an annual report in order to collect the data required by section 411(b). This report requires the submission of information about the characteristics of each State program; the design and operation of the program; the services, benefits, and assistance provided; the State's

eligibility criteria; and the State's definition of work activities. At its option, each State may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for inclusion in the Department's annual report to the Congress.

We will work with representatives of States and others to identify the specific form that will be used for this report, building on the information currently being collected on the TANF program by research organizations and others. Before we issue a reporting form to gather this information and instructions for filing the report, we will give the public another opportunity to comment on its content and the burden imposed.

Besides the data collection instruments discussed above, there are two other circumstances in the proposed rules that will create a reporting burden. The first circumstance would be in cases where a State wants to qualify for caseload reduction credit. The second would be in cases where a State is subject to a penalty under section 409 and wishes to avoid the penalty or receive a reduced penalty.

If a State elects to request a decrease in its participation rates based on caseload reduction, we are proposing in § 271.41 that it must file certain data. In addition, if a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty based on "reasonable cause" or corrective compliance, we are proposing in § 272.4 that the State would provide us with information. We are proposing that a State would use a similar process if it is seeking a reduced penalty for failure to meet the work participation rates, as discussed at § 271.51. Therefore, we also address the burden issues related to these processes below.

The respondents for the TANF Financial Report are the 50 States of the United States and the District of Columbia. The respondents for the TANF Data Report, the TANF MOE Data Report, the TANF Annual Report, the Caseload Reduction Credit documentation process, and the Reasonable Cause/Corrective Action documentation process are the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. American Samoa is eligible for the TANF program and could use funds that it receives under section 1108 to operate the TANF program. However, it did not elect to operate an AFDC program, and we assumed that it would elect not to operate a TANF program.

While the statute requires Tribal organizations with TANF programs to submit some of the same data as States, we have not calculated the burden for the Tribal organizations in this NPRM because a separate NPRM will address Tribal TANF programs.

Tribal TANF programs will not be required to submit all of the data required for State TANF programs because some provisions for which data are being collected apply only to States. In addition, because Tribal organizations have not previously operated AFDC programs, the burden imposed on them by reporting will be substantially different than it is for the States. In light of these special considerations, we considered it more appropriate to address the burden on Tribes in that separate NPRM.

In providing these estimates of reporting burden, we would like to point out that some of the reporting burden that used to exist in the AFDC program has disappeared, including the "FLASH Report" and several other reports. Nevertheless, most of the data elements required under the TANF Data Report are similar to previous data elements required in the AFDC or JOBS program. Therefore, the existence of these data elements should reduce the systems development and modification that the States will undertake. In calculating the estimates of the reporting burden, we assumed that all States would collect the data by means of a review sample. We believe that a number of States will eventually choose to undertake the one-time burden and cost of developing or modifying their systems to provide the required data directly from their automated systems, thus substantially reducing or eliminating the ongoing annual burden and cost reflected in these estimates.

In a very limited number of cases, we have proposed collecting information quarterly where the statute only requires annual reporting, or we have added elements not directly specified in the statute. We did this because one of our goals was to limit the number of reporting forms and systems modifications that States would be required to make.

Specifically, we believe that adding a data element like gender, that had been developed for other purposes such as Quality Control, would be useful to understanding the impact of the program and would not impose an additional burden. Similarly, while the reporting of the demographic and financial characteristics of families that become ineligible to receive assistance is only required annually, these data can be collected and reported more efficiently and without creating another form by inclusion in the quarterly TANF Data Report.

Overall, the proposed reporting burden represents a substantial decrease from the burden imposed by the reporting requirements of the prior programs that TANF has replaced. Nevertheless, we encourage States and members of the public to comment and provide suggestions on how the burden can be further reduced and whether we have taken the right course regarding frequency of reporting. The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Because of the constraints of the Administrative Procedure Act (APA), we were unable to consult with the States directly on the development of the specific data collection instruments. However, prior to the development of the data collection instruments, we conducted extensive consultations on general data collection issues with representative groups such as the American Public Welfare Association (APWA), the National Governors' Association (NGA), and the National Conference of State Legislatures (NCSL). We also researched the burden estimates for similar OMB-approved data collections in our inventory and consulted with knowledgeable Federal officials.

The annual burden estimates for these data collections are:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report-§ 275.3(b)	[1]54	4	526.5	113,724
TANF MOE Data Report-§ 275.3(d)	[2]54	4	523.5	113,076
TANF Financial Report-§ 275.3(c) & § 275.9(a)-(b)	[3]51	4	12	2,448
TANF Annual Report-§ 275.9(c)	[1]54	1	20	1,080
Caseload Reduction Documentation Process-§ 271.41 & § 271.44	[4]54	1	40	2,160

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reasonable Cause/Corrective Action Documentation Process-§§ 272.4, 272.6, & 272.7; § 271.51	[4]54	1	160	8,640

[1] We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents.
[2] We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents, though not necessarily all 54 of these States and Territories will elect to have MOE programs and respond the first year.
[3] We estimate that the 50 States and the District of Columbia will be respondents.
[4] We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents, though not necessarily all 54 States and Territories will elect to respond the first year.

Estimated Total Annual Burden Hours: 241,128.

We encourage States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 725 17th Street, Washington, DC 20503, ATTN: Desk Officer for ACF.

To ensure that public comments have maximum effect in developing the final regulations and the data collection forms, we urge that each comment clearly identify the specific section or sections of the proposed rule or data collection form that the comment addresses and follow the same order as the regulations and forms.

We will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed rules between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is assured of having its full effect if OMB receives it within 30 days of publication. This OMB review schedule does not affect the deadline for the public to comment to ACF on the proposed rules. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20502, Attn: Ms. Laura Oliven.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

List of Subjects in 45 CFR Parts 270 through 275

Administrative practice and procedure, Day care, Employment, Grant programs—Social programs, Loan programs—Social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.560—Loan Fund; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: August 14, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

Approved: September 2, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR chapter II by adding parts 270 through 275 to read as follows:

PART 270—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

Sec.

270.10 What does this part cover?
270.20 What is the purpose of the TANF program?
270.30 What definitions apply under the TANF regulations?
270.40 When are these provisions in effect?

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

§ 270.10 What does this part cover?

This part includes regulatory provisions that generally apply to the Temporary Assistance for Needy Families (TANF) program.

§ 270.20 What is the purpose of the TANF program?

The TANF program has the following four purposes:

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(d) Encourage the formation and maintenance of two-parent families.

§ 270.30 What definitions apply under the TANF regulations?

The following definitions apply under parts 270 through 275 of this chapter:

ACF means the Administration for Children and Families.

Act means Social Security Act, unless otherwise specified.

Adjusted State Family Assistance Grant, or adjusted SFAG, means the SFAG amount, minus any reductions for Tribal Family Assistance Grants paid to Tribal grantees on behalf of Indian families residing in the State.

Adult means an individual who is not a "minor child," as defined elsewhere in this section.

AFDC means Aid to Families with Dependent Children.

Aid to Families with Dependent Children means the welfare program in effect under title IV-A of prior law.

Assistance means every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: Services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support, and employment services that do not involve subsidies or other forms of income support; and one-time, short-term assistance (i.e., assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements). This definition does not apply to the use of the term assistance at part 273, subpart A, of this chapter.

CCDF means the Child Care and Development Fund, or those child care programs and services funded either under section 418(a) of the Act or the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9801.

Commingled State TANF expenditures means expenditure of State funds that are made within the TANF program and commingled with Federal funds.

Contingency Fund means Federal funds available at section 403(b) of the Act, and *contingency funds* means the Federal monies made available to States under that section. It does not include any State funds expended as a requirement of that section.

Contingency Fund MOE means the MOE expenditures that a State must make in order to: Meet the MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act and subpart B of part 274 of this chapter; and retain contingency funds made available to the State. The only expenditures that qualify for Contingency Fund MOE are State TANF expenditures and, in certain cases, child care expenditures made under the Child Care and Development Fund (CCDF).

EA means Emergency Assistance.

Eligible State means a State that, during the 2-year period immediately preceding the fiscal year, has submitted a TANF plan that we have determined is complete.

Emergency Assistance means the program option available to States under sections 403(a)(5) and 406(e) of prior law to provide short-term assistance to needy families with children.

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act under which States may elect to implement comprehensive strategies for identifying and serving victims of domestic violence.

FAMIS means the automated statewide management information system under sections 402(a)(30), 402(e), and 403 of prior law.

Federal expenditures means expenditures by a State of Federal TANF funds.

Federal funds and *Federal TANF funds* have the same meaning as TANF funds, as defined in this section.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the Family Violence Option that is:

(1) Granted appropriately, based on need, as determined by an individualized assessment;

(2) Temporary, for a period not to exceed six months; and

(3) Accompanied by an appropriate services plan designed to provide safety and lead to work.

IEVS means the Income and Eligibility Verification System operated pursuant to the provisions in section 1137 of the Act.

Inconsistent means that complying with a TANF requirement would necessitate that a State change a policy reflected in an approved waiver.

Indian, Indian Tribe and Tribal Organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term "Indian tribe" means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;
(2) Kawerak, Inc.;
(3) Maniilaq Association;
(4) Association of Village Council Presidents;
(5) Tanana Chiefs Council;
(6) Cook Inlet Tribal Council;
(7) Bristol Bay Native Association;
(8) Aleutian and Pribilof Island Association;
(9) Chugachmuit;
(10) Tlingit Haida Central Council;
(11) Kodiak Area Native Association; and
(12) Copper River Native Association.

Job Opportunities and Basic Skills Training Program means the program under title IV–F of prior law to provide education, training and employment services to welfare recipients.

JOBS means the Job Opportunities and Basic Skills Training Program.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance-of-effort.

Needy State is a term that pertains to the provisions on the Contingency Fund and the penalty for failure to meet participation rates. It means, for a month, a State where:

(1)(i) The average rate of total unemployment (seasonally adjusted) for the most recent 3-month period for which data are published for all States equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment (seasonally adjusted) for such 3-month period equals or exceeds 110 percent of the average rate for either (or both) of the corresponding 3-month periods in the two preceding calendar years; or

(2) The Secretary of Agriculture has determined that the average number of individuals participating in the Food Stamp program in the State has grown at least ten percent in the most recent three-month period for which data are available.

Prior law means the provisions of title IV–A and IV–F of the Act in effect as of August 21, 1996. They include provisions related to Aid to Families with Dependent Children (or AFDC), Emergency Assistance (or EA), Job Opportunities and Basic Skills Training (or JOBS), and FAMIS.

PRWORA means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or Pub. L. 104–193, 42 U.S.C. 1305.

Qualified Aliens has the meaning prescribed under section 431 of PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, or Pub. L. 104–208, 8 U.S.C. 1101.

Qualified State Expenditures means the total amount of State funds expended during the fiscal year that count for TANF MOE purposes. It includes expenditures, under any State program, for any of the following with respect to eligible families:

(1) Cash assistance;
(2) Child care assistance;
(3) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance of an eligible family that is not generally available to persons who are not members of an eligible family;
(4) Any other use of funds allowable under subpart A of part 273 of this chapter; and
(5) Administrative costs in connection with the matters described in paragraphs (1), (2), (3) and (4) of this definition, but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

Secretary means Secretary of the Department of Health and Human Services or any other Department official duly authorized to act on the Secretary's behalf.

Segregated State TANF expenditures means the expenditure of State funds within the TANF program that are not commingled with Federal funds.

Separate State program means a program operated outside of TANF in which the expenditures of State funds may count for TANF MOE purposes.

SFAG means State Family Assistance Grant, as defined in this section.

SFAG payable means the SFAG amount, reduced, as appropriate, for any Tribal Family Assistance Grants made on behalf of Indian families residing in the State and any penalties imposed on a State under this chapter.

Single audit means an audit or supplementary review conducted under the authority of the Single Audit Act at 31 U.S.C. chapter 75.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State Family Assistance Grant means the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act.

State MOE expenditures means the expenditure of State funds that may count for purposes of the TANF MOE requirements at section 409(a)(7) of the Act and the Contingency Fund MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act.

State TANF expenditures means the expenditure of State funds within the TANF program.

TANF means The Temporary Assistance for Needy Families Program.

TANF funds means all funds provided to the State under section 403 of the Act, including the SFAG, any bonuses, supplemental grants, or contingency funds.

TANF MOE means the expenditure of State funds that must be made in order to meet the MOE requirement at section 409(a)(7) of the Act.

TANF program means a State program of family assistance operated by an "eligible State" under its State TANF plan.

Territories means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Title IV–A refers to the title and part of the Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Tribal Family Assistance Grant means a grant paid to a Tribe that has an approved Tribal family assistance plan under section 412(a)(1) of the Act.

Tribal grantee means a Tribe that receives Federal funds to operate a Tribal TANF program under section 412(a) of the Act.

Tribal TANF program means a TANF program developed by an eligible Tribe, Tribal organization, or consortium and approved by us under section 412 of the Act.

Tribe means Indian Tribe or Tribal organization, as defined elsewhere in this section. The definition may include Tribal consortia (i.e., groups of federally recognized Tribes or Alaska Native entities that have banded together in a formal arrangement to develop and administer a Tribal TANF program).

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(B)(iii) of the Act.

Waiver refers to a specific action taken by the Secretary under the authority of section 1115 of the Act to allow a State to operate a program that does not follow specific requirements of prior law. For the purpose of parts 270 through 275 of this chapter and section 415 of the Act, it consists of provisions necessary to achieve the State's policy objective. It includes the approved revised AFDC requirements, articulated in the State's waiver list. It also includes those provisions of prior law that:

(1) Did not need to be waived as part of the waiver package; and

(2) Were integral and necessary to achieve the State's policy objective for the approved waiver.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Welfare-to-Work means the new program for funding work activities at section 403(a)(5) of the Act.

WTW means Welfare-to-Work.

§ 270.40 When are these provisions in effect?

(a) The TANF statutory requirements go into effect no sooner than a State's implementation of its TANF program. Each State must implement its TANF program no later than July 1, 1997.

(b) In determining whether a State is subject to a penalty under parts 271 through 275 of this chapter, we will not apply the regulatory provisions in parts 270 through 275 of this chapter retroactively. We will judge State behavior and actions that occur prior to [effective date of final rules] only against a reasonable interpretation of the statutory provision in title IV–A of the Act.

PART 271—ENSURING THAT RECIPIENTS WORK

Sec.

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Authority: 42 U.S.C. 601, 602, 607, and 609.

§ 271.1 What does this part cover?

This part includes the regulatory provisions relating to the mandatory work requirements of TANF.

§ 271.2 What definitions apply to this part?

The general TANF definitions at § 270.30 of this chapter apply to this part.

Subpart A—Individual Responsibility

§ 271.10 What work requirements must an individual meet?

(a) A parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when (s)he has received assistance for a total of 24 months, whichever is earlier. The State must define what it means to engage in work for this requirement, which can include participation in work activities in accordance with section 407 of the Act.

(b) If a parent or caretaker has received assistance for two months, (s)he must participate in community service employment, unless the State has exempted the individual from work requirements or (s)he is already engaged in work activities as described at § 271.30. The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment. This requirement takes effect no later than August 22, 1997, unless the governor of the State opts out of this provision by notifying HHS.

§ 271.11 Which recipients must have an assessment under TANF?

(a) The State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

(b) The State may make any required assessments within 90 days (180 days, at State option) of the date it implements the TANF program for anyone receiving assistance as of that date. For anyone else who must have an assessment, the State may assess an individual within 30 days (90 days, at State option) of the date (s)he becomes eligible for assistance.

§ 271.12 What is an individual responsibility plan?

An individual responsibility plan is a plan developed at State option, in consultation with the individual, on the basis of the assessment made under § 271.11. The plan:

(a) Should set an employment goal for the individual and a plan for moving immediately into private sector employment;

(b) Should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-age children in school, immunizing children, going to parenting or money management classes, or doing other things that will help the individual become and remain employed in the private sector;

(c) Should be designed to move the individual into whatever private sector employment (s)he is capable of handling as quickly as possible, and to increase over time the responsibility and the amount of work the individual handles;

(d) Should describe the services the State will provide the individual; and

(e) May require the individual to undergo appropriate substance abuse treatment.

§ 271.13 May an individual be penalized for not following an individual responsibility plan?

Yes. If an individual fails without good cause to comply with an individual responsibility plan that (s)he has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate. This penalty is in addition to any other penalties under the State's TANF program.

§ 271.14 What is the penalty if an individual refuses to engage in work?

If an individual refuses to engage in work required under section 407 of the Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. A grant reduction must be at least prorated, based on the portion of the month in which the individual refuses to work, but could be greater.

§ 271.15 Can a family be penalized if a parent refuses to work because (s)he cannot find child care?

(a) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance for the parent's refusal to engage in required work if (s)he demonstrates an inability to obtain needed child care for one or more of the following reasons:

(1) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(2) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(3) Appropriate and affordable formal child care arrangements are unavailable.

(b)(1) The State will determine when the individual has demonstrated that (s)he cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements"; and

(iii) Be submitted to us.

§ 271.16 Does the imposition of a penalty affect an individual's work requirement?

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under TANF shall not be construed to be a reduction in any wage paid to the individual, and shall not result in a reduction in the number of hours of work required.

Subpart B—State Accountability

§ 271.20 How will we hold a State accountable for achieving the work objectives of TANF?

(a) Each State must meet two separate work participation rates, one based on how well it succeeds in helping adults in two-parent families find work activities described at § 271.30 (the two-parent rate), the other based on how well it succeeds in finding those activities for adults in all families it serves (the overall rate).

(b) Each State must submit data to allow us to measure its success in requiring adults to participate in work activities, as specified at § 275.3 of this chapter.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to § 273.1 of this chapter, decreases from 80 to 75 percent for that fiscal year. This is also known as the State's "maintenance of effort" requirement.

(d) If the data show that a State did not meet either minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§ 272.5 and 272.6 of this chapter.

§ 271.21 What overall work rate must a State meet?

Each State must achieve the following minimum overall participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 and thereafter	50

§ 271.22 How will we determine a State's overall work rate?

(a) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(b)(1) We determine a State's overall participation rate for a month as follows:

(i) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is engaged in work for the month (the numerator); divided by

(ii) The number of families receiving TANF assistance during the month that include an adult or a minor head-of-household minus the number of families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not deduct it from the denominator.

(2) States may define families receiving TANF assistance . . . that include an adult or a minor child head-of household, but may not exclude families from the definition solely for the purpose of avoiding penalties under § 271.50.

(i) States shall report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion.

(ii) Where we find that a State has excluded families for the purpose of avoiding a penalty for work participation, we shall include those families in the calculation in paragraph (b)(1) of this section in determining whether a State is subject to the penalty described in § 271.50.

(c) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work. If the State adopts this option, it may disregard such a family in the participation rate calculation for a maximum of 12 months.

(d) If a family receives assistance for only part of a month, the State may count it as a month of participation if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

§ 271.23 What two-parent work rate must a State meet?

A State receiving a TANF grant for a fiscal year must achieve the following minimum two-parent participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	75
1998	75
1999 and thereafter	90

§ 271.24 How will we determine a State's two-parent work rate?

(a) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(b)(1) We determine a State's two-parent participation rate for a month as follows:

(i) The number of two-parent families receiving TANF assistance that include an adult (or minor child head-of-household) and other parent who meet the requirements set forth in § 271.32 for the month (the numerator); divided by

(ii) The number of two-parent families receiving TANF assistance during the month minus the number of two-parent families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not deduct it from the denominator.

(2) States may define families receiving TANF assistance . . . that include an adult or a minor child head-of-household, but may not exclude families from the definition solely for the purpose of avoiding penalties under § 271.50.

(i) States shall report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion.

(ii) Where we find that a State has excluded families for the purpose of avoiding a penalty for work participation, we shall include those families in the calculation in paragraph (b)(1) of this section in determining whether a State is subject to the penalty described in § 271.50.

(c) If a family receives assistance for only part of a month, the State may count it as a month of participation if an adult in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(d) If a family includes a disabled parent, the family is not considered a two-parent family for the participation rate. Such a family is not included in either the numerator or denominator of the two-parent rate.

§ 271.25 Does a State include Tribal families in calculating these rates?

A State has the option of including families that are receiving assistance under an approved tribal family assistance plan or under a tribal work program in calculating the State's participation rates under §§ 271.22 and 271.24.

Subpart C—Work Activities and How to Count Them

§ 271.30 What are "work activities"?

Work activities include:

(a) Unsubsidized employment;

(b) Subsidized private sector employment;

(c) Subsidized public sector employment;

(d) Work experience;

(e) On-the-job training (OJT);

(f) Job search and job readiness assistance;

(g) Community service programs;

(h) Vocational educational training;

(i) Job skills training directly related to employment;

(j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalency, if a recipient has not completed secondary school or received such a certificate; and

(l) Providing child care services to an individual who is participating in a community service program.

§ 271.31 How many hours must an individual participate to count in the numerator of the overall rate?

(a) An individual counts as engaged in work for a month for the overall rate if (s)he participates in work activities during the month for at least the minimum average number of hours per week listed in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

(b)(1) In addition, for the individual to count as engaged in work, at least 20 per week of the above hours must come from participation in certain of the activities listed in § 271.30. The following nine activities count for the first 20 hours of participation: Unsubsidized employment; subsidized private sector employment; subsidized public sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(2) Above 20 hours per week, the following three activities may also count for participation: Job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(c) The following chart below lists when each activity counts, for both the overall and the two-parent rates:

Activity	When does the activity count?			
	Overall rate		2-parent rate	
	20 hours	hours above 20	30/50 hours (without/with Fed child care)	Hours above 30/50
(a) unsubsidized employment	✔	✔	✔	✔
(b) subsidized private sector employment	✔	✔	✔	✔
(c) subsidized public sector employment	✔	✔	✔	✔
(d) work experience	✔	✔	✔	✔
(e) OJT	✔	✔	✔	✔
(f) job search & job readiness	✔	✔	✔	✔
(g) community service programs	✔	✔	✔	✔
(h) vocational educational training	✔	✔	✔	✔
(i) job skills training	No	✔	No	✔
(j) education directly related to employment	No[1]	✔	No[1]	✔
(k) high school or GED	No[1]	✔	No[1]	✔
(l) providing child care services to a community service participant	✔	✔	✔	✔

[1] Teen parents may count due to participation in these activities. Refer to § 271.33.

§ 271.32 How many hours must an individual participate to count in the numerator of the two-parent rate?

(a) If an individual and the other parent in the family are participating in work activities for an average of at least 35 hours per week during the month, then (s)he counts as engaged in work for a two-parent family for the month, subject to paragraph (c) of this section.

(b)(1) In addition, at least 30 of the 35 hours per week must come from participation in certain of the activities listed in § 271.30 for the individual to count as engaged in work. The following nine activities count for the first 30 hours of participation: Unsubsidized employment; subsidized private sector employment; subsidized public sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(2) Above 30 hours per week, the following three activities may also count for participation: Job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(c)(1) If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the individual and the other parent must be participating in work activities for an average of at least 55 hours per week for the individual to count as engaged in work for a two-parent family for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b)(1) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (b)(2) of this section may also count for participation.

(d) The chart in § 271.31 lists when each activity counts in the two-parent rate.

§ 271.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.

(b) A married or single head-of-household under 20 years old counts as engaged in work in a month if (s)he:

(1) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(2) Participates in education directly related to employment for an average of at least 20 hours per week during the month.

(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work may be included because they are participating:

(1) In vocational educational training; or

(2) In fiscal year 2000 or thereafter, as a teen parent in educational activities described in paragraph (b) of this section.

§ 271.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?

Yes. There are four limitations concerning job search and job readiness.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search or job readiness assistance counts for only six weeks in any fiscal year.

(b) If the State's total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or if the State meets the definition of a needy State, specified at § 270.30 of this chapter, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) An individual's participation in job search and job readiness assistance counts for no more than four consecutive weeks in a fiscal year.

(d) Not more than once for any individual in a fiscal year, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation.

§ 271.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if (s)he participates for at least an average of 20 hours per week.

§ 271.36 Do welfare reform waivers affect what activities count as engaged in work?

A welfare reform waiver could affect what activities count as engaged in work, if it meets the requirements at § 271.60.

Subpart D—Caseload Reduction Factor for Minimum Participation Rates

§ 271.40 Is there a way for a State to reduce the work participation rates?

(a) If the average monthly number of cases receiving assistance, including assistance under a separate State program, in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance in FY 1995, the minimum participation rate the State must meet for the fiscal year will decrease by the number of percentage points the caseload fell in comparison to the FY 1995 caseload. The number of percentage points by which the caseload falls is referred to as the caseload reduction factor.

(b) The calculation in paragraph (a) of this section must disregard any caseload reductions due either to requirements of Federal law or to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 1995.

(c) To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases reported on ACF–3697, Statistical Report on Recipients Under Public Assistance. For subsequent years, we will use AFDC data from this same report, supplemented by caseload information from the TANF Data Report and the TANF MOE Data Report for appropriate States beginning with the fourth quarter of fiscal year 1997. To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for the preceding year for cases receiving assistance as defined at § 271.43.

§ 271.41 How will we determine the caseload reduction factor?

(a) We will determine the appropriate caseload reduction that applies to each State based on reliable, validated information and estimates reported to us by the State. We will determine whether the information and estimates provided are acceptable, based on the criteria listed in paragraph (d) of this section. We will also conduct periodic, on-site reviews and inspect administrative records on applications and terminations to validate the accuracy of the State estimates.

(b) In order to receive a reduction in the overall participation rate, a State must submit the Caseload Reduction Report to us containing the following information:

(1) A complete listing of and implementation dates for all eligibility changes, as defined at § 271.42, made by the State since the beginning of FY 1995, all changes in Federal requirements and implementation dates for each change since FY 1995, and a listing of the reasons (such as found employment) for case closures;

(2) A numerical estimate of the impact on the caseload of each eligibility change or case closure reason;

(3) A description of the methodology and the supporting data that it used to calculate its caseload reduction estimates; and

(4) A certification from the Governor that it has taken into account all reductions resulting from changes in Federal and State eligibility.

(c) A State requesting a caseload reduction shall provide separate estimates and information for the overall and two-parent family rates.

(1) The State must base its estimate for the overall case rate on decreases in its overall caseload compared to the AFDC caseload in FY 1995.

(2) The State must base its estimate for two-parent cases on decreases in its two-parent caseload compared to the AFDC Unemployed Parent caseload in FY 1995.

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: Methodology, estimates and impact

compared to other States; quality of data; and completeness and adequacy of the documentation.

(2) If we request additional information, the State must provide the information within two weeks of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not consider a caseload reduction factor for approval unless the State reports case-record data on individuals and families served by any separate State program, as required under § 275.3(d) of this chapter.

(f) A State may only apply the caseload reduction factor that we have determined to its participation rate. If a State disagrees with our caseload reduction factor, then the determination may be considered an adverse action; therefore, a State has the right to appeal such a decision, as specified at § 272.7 of this chapter.

§ 271.42 Which reductions count in determining the caseload reduction factor?

(a)(1) Each State's estimate must factor out any caseload decreases due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affect a family's eligibility for assistance (e.g., more stringent income and resource limitations, time limits).

(2) A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

(b) States must include cases receiving assistance in separate State programs as part of its caseload. However, we will consider excluding cases in the separate State program under the following circumstances, if adequately documented:

(1) The cases overlap with or duplicate cases in the TANF caseload;

(2) They are cases made ineligible for Federal benefits by Pub. L. 104–193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits; or

(3) They are cases that are receiving only State earned income tax credits, child care, transportation subsidies or benefits for working families that are not directed at their basic needs.

§ 271.43 What is the definition of a "case receiving assistance" in calculating the caseload reduction factor?

(a) The caseload reduction factor is based on decreases in caseload (other than those excluded pursuant to § 271.42) in both a State's TANF program and in any separate State programs that are used to meet the maintenance-of-effort requirement.

(b)(1) For fiscal year 1995, we will use AFDC caseload data.

(2) For all other fiscal years, we will determine the caseload based on all cases in a State receiving assistance (according to the definition of assistance at § 270.30).

§ 271.44 When must a State report the required data on the caseload reduction factor?

(a) A State must report the necessary documentation on the caseload reduction factor for the preceding fiscal year by November 15.

(b) We will notify the State of whether we approve or reject the proposed reduction factor by the following February 15.

Subpart E—State Work Penalties

§ 271.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at § 272.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 271.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) In order to qualify for a penalty reduction under paragraphs (b)(3) and (c) of this section, the State must demonstrate that it has not diverted cases to a separate State program for the purpose of avoiding the work participation requirements.

(b) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at § 271.23, its maximum penalty will be a percentage of the penalty specified at § 271.50. This percentage will equal the percentage of the State's two-parent cases.

(2) If the State fails the overall participation rate specified at § 271.21, or both rates, its maximum penalty will be the penalty specified at § 271.50.

(3)(i) In order to receive a reduction of the penalty amounts determined under paragraphs (b)(1) or (b)(2) of this section, the State must achieve participation rates equal to a threshold level defined as 90 percent of the applicable minimum participation rate, at § 271.23 or § 271.21. If a State met this threshold, we would base its reduction on the severity of the failure.

(ii) For this purpose, we will calculate the severity of the State's failure as the ratio of:

(A) The difference between the participation rate achieved by the State and the 90 percent "threshold" level; and

(B) The difference between the minimum applicable participation rate and the threshold level.

(c)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at § 270.30 of this chapter, or

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession.

(2) In determining noncompliance under paragraph (c)(1)(ii) of this section, we will consider objective evidence of extraordinary circumstances if the State chooses to submit it.

§ 271.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at § 272.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations, if it demonstrates that it has not diverted cases to a separate State program for the purpose of avoiding the work participation rates.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of good cause domestic violence waivers as follows:

(i) To demonstrate reasonable cause, a State must provide evidence that it achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (i.e., when cases with good cause waivers are removed from the calculations in §§ 271.22(b) and 271.24(b)); and

(ii) A State must grant good cause domestic violence waivers appropriately, in accordance with the criteria specified at § 270.30 of this chapter. If a State fails to meet the criteria for "good cause domestic violence waivers" specified at § 270.30 of this chapter, the Secretary will not grant reasonable cause under this paragraph (b).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally-approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at § 272.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 271.53 Can a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at § 272.6 of this chapter.

(b) To qualify for a penalty reduction under § 272.6(i)(1) of this chapter, based on significant progress in discontinuing a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year by 50 percent.

§ 271.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§ 271.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

(c) Neither the reasonable cause provisions at § 272.5 of this chapter nor the corrective compliance plan provisions at § 272.6 of this chapter applies to this penalty.

Subpart F—Waivers

§ 271.60 How do existing welfare waivers affect the participation rate?

(a) If a State is implementing policies in accordance with an approved waiver that meets the provisions of section 415(a)(1)(A) of the Act and the definition of a waiver at § 270.30 of this chapter, the provisions of section 407 of the Act do not apply, to the extent that they are inconsistent with the waiver.

(b)(1) In the case of waivers addressing activities in which an individual may participate in order to be "engaged in work" and count toward the minimum participation rates (as specified at § 271.30):

(i) We will include provisions of prior law as part of such waivers; and

(ii) We will recognize such waivers as inconsistent.

(2) In the case of waivers addressing minimum average hours of work per week necessary to be "engaged in work" for a month (as specified at §§ 271.31 and 271.32):

(i) We will recognize the waiver as inconsistent if it specifies an individual's mandated hours of participation in accordance with his/her particular circumstances, either as specified by criteria described in the waiver or under an individualized plan or similar agreement for achieving self-sufficiency; and

(ii) We will not recognize as inconsistent any waiver designed to increase the mandatory work hours for a class of recipients under the former JOBS program.

(c) Except as applicable to research cases in paragraph (d) of this section, we will not recognize any prior law exemptions as part of the waiver with respect to the denominator of the participation rates, found at §§ 271.21 and 271.23.

(d) If a State is continuing research group policies in order to complete an impact evaluation of a waiver demonstration, the demonstration's control group may be subject to prior law and its experimental treatment group may be also subject to prior law, except as modified by the waiver.

(e) The additional requirements at § 272.8 of this chapter apply to the use of continuing waiver alternative work requirements in the calculation of the work participation penalty.

Subpart G—Non-displacement

§ 271.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined in § 271.30 may not fill a vacant employment position if:

(1) Another individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(b) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(c) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

PART 272—ACCOUNTABILITY PROVISIONS—GENERAL

Sec.

272.0 What definitions apply to this part?
272.1 What penalties will apply to States?
272.2 When do the TANF penalty provisions apply?
272.3 How will we determine if a State is subject to a penalty?
272.4 What happens if we determine that a State is subject to a penalty?
272.5 Under what general circumstances will we determine that a State has reasonable cause?
272.6 What if a State does not demonstrate reasonable cause?
272.7 How can a State appeal our decision to take a penalty?
272.8 What is the relationship of continuing waivers on the penalty process for work participation and time limits?

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 606, 609, and 610.

§ 272.0 What definitions apply to this part?

The general TANF definitions at § 270.30 of this chapter apply to this part.

§ 272.1 What penalties will apply to States?

(a) We will assess fiscal penalties against States under circumstances defined in parts 271 through 275 of this chapter. The penalties are:

(1) A penalty of the amount by which a State misused its TANF funds;

(2) A penalty of five percent of the adjusted SFAG for intentional misuse of such funds;

(3) A penalty of four percent of the adjusted SFAG for failure to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for failure to participate in IEVS;

(6) A penalty of no more than five percent of the adjusted SFAG for failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement (IV–D) Agency;

(7) A penalty equal to the outstanding loan amount, plus interest, for failure to repay a Federal loan;

(8) A penalty equal to the amount by which a State fails to meet its TANF MOE requirement;

(9) A penalty of five percent of the adjusted SFAG for failure to comply with the five-year limit on Federal assistance;

(10) A penalty equal to the amount of contingency funds unremitted by a State for a fiscal year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in this section in the year of the reduction;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to meet its TANF MOE requirement during a year in which the formula grant is received; and

(14) A penalty equal to not less than one percent and not more than five percent of the adjusted SFAG for failure to reduce assistance for recipients refusing without good cause to work.

(b) In the event of multiple penalties for a fiscal year, we will add all applicable penalty percentages together. We will then assess the penalty amount against the adjusted SFAG that would have been payable to the State if no penalties were assessed. As a final step, we will subtract other (fixed) penalty amounts from the adjusted SFAG.

(c)(1) We will take the penalties specified in paragraphs (a)(1), (a)(2) and (a)(6) of this section by reducing the SFAG payable for the quarter that immediately follows our final decision.

(2) We will take the penalties specified in paragraphs (a)(3), (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), and (a)(14) of this section by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

(d) When imposing the penalties in paragraph (a) of this section, the total reduction in an affected State's grant must not exceed 25 percent. If this 25 percent limit prevents the recovery of the full penalty amount imposed on a State during a fiscal year, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding fiscal year.

(e)(1) In the same fiscal year, a State must expend additional State funds to replace any reduction in the SFAG resulting from penalties.

(2) The State must document compliance with this provision on its TANF Financial Report (or Territorial Financial Report).

§ 272.2 When do the TANF penalty provisions apply?

(a) A State will be subject to the penalties specified in §§ 272.1(a)(1), (2), (7), (8), (9), (10), (11), (12), (13), and (14) for conduct occurring on and after the first day the State operates the TANF program.

(b) A State will be subject to the penalties specified in §§ 272.1(a)(3), (4), (5), and (6) for conduct occurring on and after July 1, 1997, or the date that is six months after the first day the State operates the TANF program, whichever is later.

(c) For the period of time prior to [effective date of final rules], we will assess State conduct as specified in § 270.40(b) of this chapter.

§ 272.3 How will we determine if a State is subject to a penalty?

(a) We will use the single audit, as implemented through OMB Circular A–133, to determine if a State is subject to a penalty for misusing Federal TANF funds (§ 273.10 of this chapter), intentionally misusing Federal TANF funds (§ 273.12 of this chapter), failing to participate in IEVS (§ 274.10 of this chapter), failing to comply with paternity establishment and child support requirements (§ 274.31 of this chapter), failing to maintain assistance to an adult single custodial parent who cannot obtain child care for child under six (§ 274.20 of this chapter), and failing to reduce assistance to a recipient who refuses without good cause to work (§ 271.14 of this chapter).

(b) We will use data reports required under part 275 of this chapter to determine if a State failed to meet participation rates (§ 271.21 of this chapter) or failed to comply with the five-year limit on Federal assistance (§ 274.1 of this chapter).

(1) Data in these reports are subject to our verification in accordance with § 275.7 of this chapter.

(2) States may not revise the sampling frames or program designations for cases in the quarterly TANF and TANF MOE Data Reports retroactively (i.e., after submission).

(c) We will use the TANF Financial Report (or, as applicable, the Territorial Financial Report) to determine if a State should be penalized for failure to meet the TANF MOE requirement (§ 273.7 of this chapter), the Contingency Fund MOE requirement (§ 274.76 of this chapter), and to replace SFAG reductions with State-only funds (§ 274.50 of this chapter). Data in these reports are subject to our verification in accordance with § 275.6 of this chapter.

(d) We will determine that a State is subject to the specific penalties for failure to perform, if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient or if we determine that the State has not adequately documented actions verifying that it has met the participation rates.

(e) To determine if a State has met its TANF MOE requirement, we will use the additional information listed at § 273.7 of this chapter.

(f) States should maintain records in accordance with § 92.42 of this title.

§ 272.4 What happens if we determine that a State is subject to a penalty?

(a) If we determine that a State is subject to a penalty, we will notify the State in writing, specifying which penalty we will impose and the reasons for the penalty.

(b) Within 60 days of when it receives our notification, the State may submit to ACF, a written response that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the State acted, prior to [effective date of final regulations], on a reasonable interpretation of the statute;

(2) Demonstrates that the State had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan, pursuant to § 272.6.

(c) If we find that we determined the penalty erroneously, or that the State has adequately demonstrated that it had reasonable cause for failing to meet one or more requirements, we will not impose the penalty.

(d) Reasonable cause and a corrective compliance plan are not available for failing to repay a Federal loan; failing to meet the TANF MOE requirement; failing to maintain 100 percent TANF MOE after receiving Contingency Funds; failing to expend additional State funds to replace adjusted SFAG reductions due to the imposition of one or more penalties listed in § 272.1; or failing to maintain 80, or 75, percent, as appropriate, TANF MOE during a year in which a Welfare-to-Work grant is received.

(e) We will notify the State in writing of our findings regarding its response.

(f) If we request additional information from a State, it must provide the information within two weeks of the date of our request.

§ 272.5 Under what general circumstances will we determine that a State has reasonable cause?

(a) We will not impose a penalty against a State if we determine that the State had reasonable cause for its failure. The general factors a State may use to claim reasonable cause are limited to the following:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure;

(2) Formally issued Federal guidance that provided incorrect information resulting in the State's failure; or

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(b) A State may also use the additional factors for claiming reasonable cause for failure to satisfy the five-year limit at § 274.3 of this chapter and to meet the minimum participation rates at § 271.52 of this chapter.

(c) We will not forgive a State penalty under §§ 272.1(a)(4), (a)(9), (a)(11), or (a)(14) based on reasonable cause if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding the work participation rates at §§ 271.22 or 271.24.

(d) We will not forgive a State penalty under §§ 272.1(a)(4), (a)(6), (a)(9), or (a)(14) based on reasonable cause if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of diverting the Federal share of child support collections.

§ 272.6 What if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation within six months in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in § 272.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause will have 60 days from the date it received our second notice, described in § 272.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) A complete analysis of why the State did not meet the requirements;

(2) A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

(3) The milestones, including interim process and outcome goals, the State will achieve to assure it comes into compliance within the specified time period; and

(4) A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.

(e) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(f) If an acceptable corrective compliance plan is not submitted on time, we will assess the penalty immediately.

(g) A corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(h) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan. This period must be no longer than six months from the date we accept a State's compliance plan.

(i)(1) Under limited circumstances, and subject to paragraph (i)(2) of this section, we may reduce the penalty if the State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner. To receive a reduced penalty, the State must demonstrate that it met one or both of the following conditions:

(i) Although it did not achieve full compliance, the State made substantial progress towards correcting or discontinuing the violation; or

(ii) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

(2) We will not reduce a State's penalty:

(i) Under §§ 272.1(a)(4), (a)(9), (a)(11), or (a)(14) if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding the work participation rates and the State fails to correct the diversion; or

(ii) Under §§ 272.1(a)(4), (a)(6), (a)(9), or (a)(11) if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of diverting the Federal share of child support collections and the State fails to correct the diversion.

§ 272.7 How can a State appeal our decision to take a penalty?

(a) We will formally notify the chief executive officer of the State of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 271 through 275 of this chapter.

(b) The State may file an appeal of the action, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must include the brief and all supporting documents with its appeal when it is filed. The State must send a copy of the appeal to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

(c) ACF must file its reply brief and supporting documentation within 30 days after the State files its appeal.

(d) The appeal to the Board must follow the provisions of the rules under this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title.

(e) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed.

(f)(1) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(2) If the Board requires additional documentation to reach its decision, the 60 days shall be tolled for a reasonable period, specified by the Board, to allow production of the documentation.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

§ 272.8 What is the relationship of continuing waivers on the penalty process for work participation and time limits?

(a) In order for the State's alternative waiver requirements to be considered in the calculation of the work participation rate and the time limit requirement, the Governor must certify in writing to the Secretary:

(1) The specific inconsistencies (i.e., alternative waiver requirements) that the State chooses to continue;

(2) The reasons for continuing the alternative waiver requirements, including how their continuation is consistent with the purposes of the waiver; and

(3) Consistent with the waiver and its purpose, the standards that the State will use to:

(i) Assign individuals to the alternative waiver work activities or to an alternative number of hours; and

(ii) Determine exemptions from or extensions to the time limit.

(b) If a State using the alternative waiver requirements fails to meet the work participation rate or the time limit requirement:

(1) The State is not eligible for a reasonable cause exception from the applicable penalty under §§ 272.2 (a)(4) or (a)(9), nor for any reduction of the work penalty under §§ 271.51 (b)(3) or (c) of this chapter;

(2) The State must consider modification of its alternative waiver requirements as part of its corrective compliance plan; and

(3) If the State continues waivers related to the failure to achieve compliance with the work requirements described in subparts B and C of part 271 of this chapter or the time limits described in §§ 274.1 and 274.2 of this chapter and still fails to correct the violation, it will not be eligible for a reduced penalty for related noncompliance under § 272.6(i)(1).

(c) The Secretary will use the data submitted by the States pursuant to § 275.3 of this chapter to calculate and make public the work participation rates and the percentage of families with an adult that received Federal TANF benefits for more than 60 months under both the TANF requirement and the State's alternative waiver requirement.

PART 273—STATE TANF EXPENDITURES

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Sec.

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Authority: 42 U.S.C. 604, 607, 609, and 862a.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

§ 273.0 What definitions apply to this part?

(a) Except as noted in § 273.2(d), the general TANF definitions at § 270.30 of this chapter apply to this part.

(b) *Administrative costs* means costs necessary for the proper administration of the TANF program or separate State programs. It includes the costs for general administration and coordination of these programs, including indirect (or overhead) costs. Examples of administrative costs include:

(1) Salaries and benefits and all other indirect (or overhead) costs not associated with providing program services (such as diversion, assessment, development of employability plans, work activities and post-employment services, and supports) to individuals;

(2) Preparation of program plans, budgets, and schedules;

(3) Monitoring of programs and projects;

(4) Fraud and abuse units;

(5) Procurement activities;

(6) Public relations;

(7) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(8) Costs for goods and services required for administration of the program such as rental and purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(9) Travel costs incurred for official business;

(10) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and

(11) Preparing reports and other documents related to program requirements.

§ 273.1 How much State money must a State expend annually to meet the TANF MOE requirement?

(a)(1) The minimum TANF MOE for a fiscal year is 80 percent of a State's historic State expenditures.

(2) However, if a State meets the minimum work participation rate requirements in a fiscal year, as required under §§ 271.21 and 271.23 of this chapter, then for that fiscal year, the minimum TANF MOE is 75 percent of the State's historic State expenditures.

(b) The TANF MOE level also depends on whether a Tribe or consortium of Tribes residing in a State has received approval to operate its own TANF program. The State's TANF MOE level for a fiscal year will be reduced the same percentage as the SFAG was reduced as the result of any Tribal Family Assistance Grants awarded to Tribal grantees in the State for that year.

§ 273.2 What kinds of State expenditures count toward meeting a State's annual MOE expenditure requirement?

(a) Expenditures of State funds in TANF or separate State programs may count if they were made for the following types of services:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 273.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 273.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act and consistent with the goals at § 270.20 of this chapter; and

(5) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, if these costs do not exceed 15 percent of the total amount of countable expenditures. Information technology and computerization needed for tracking or monitoring services are excluded from this determination. "Administrative costs" has the meaning specified at § 273.0(b).

(b) The services listed under paragraph (a) of this section may be counted only if they have been provided to or on behalf of eligible families. An "eligible family," as defined by the State, must:

(1) Be comprised of citizens, qualified aliens (as defined in § 270.30 of this chapter), non-immigrants under the Immigration and Nationality Act, aliens paroled into the U.S. for less than one year, or, in the case of aliens not lawfully present in the U.S., provided that the State enacted a law after August 22, 1996, that "affirmatively provides" for such services; and

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the TANF income and resource standards established by the State under its TANF plan.

(c) Services listed under paragraph (a) of this section may also be provided to a family that meets the criteria under paragraphs (b) (1) and (2) of this section, but which became ineligible solely due to the time limitation given under § 274.1 of this chapter.

(d) Assistance does not have the meaning given in § 270.30 of this chapter, but for MOE purposes can be ongoing, short-term or one-time only and may include services.

(e) The expenditures for services in separate State programs listed under paragraph (a) of this section only count if they also meet the requirements of § 273.5. Expenditures that fall within the prohibitions in § 273.6 do not count.

§ 273.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the Matching Fund of the Child Care and Development Fund (i.e., match and MOE amounts) that also count as TANF MOE expenditures are limited to the State's child care MOE amount pursuant to section 418(a)(2)(C) of the Act.

(b) The child care expenditures must be made to or on behalf of eligible families, as defined in § 273.2(b).

§ 273.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are targeted to eligible families (as defined in § 273.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 273.5 When do expenditures in separate State programs count?

(a) If the expenditures in the separate State program(s) were previously authorized and were allowable under section 403 of prior law, then they may count in their entirety.

(b) If the expenditures under the separate State program(s) had not been previously authorized and allowable under section 403 of prior law, then only the amount expended in excess of money expended on such program(s) in FY 1995 may count.

§ 273.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

(b) State funds that are used to match Federal funds (or expenditures of State funds that support claims for Federal matching funds), including State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that States make as a condition of receiving Federal funds under other programs except as provided under § 273.3;

(d) Expenditures made in a prior fiscal year;

(e) Expenditures used to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures made in the TANF program to replace the reductions in the SFAG as a result of penalties pursuant to § 274.50 of this chapter.

§ 273.7 How will we determine the level of State expenditures?

(a) Each State must report its expenditures quarterly to us as required under part 275 of this chapter.

(b) Each State must also submit an annual addendum to its TANF Financial Report (or, as applicable, its Territorial Financial Report) on separate State programs for the fourth quarter containing:

(1) A description of the specific State-funded program activities provided to eligible families;

(2) Each program's statement of purpose (how the program serves eligible families);

(3) The definitions of each work activity in which families in the program are participating;

(4) A statement whether the program/activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(5) The FY 1995 State expenditures for each program/activity not authorized and allowable as of August 21, 1996 (see § 273.5(b));

(6) The total number of eligible families served by each program as of the end of the fiscal year;

(7) The eligibility criteria for the families served under each program/activity; and

(8) A certification that those families served met the State's criteria for "eligible families."

§ 273.8 What happens if a State fails to meet the TANF MOE requirement?

(a) If any State fails to meet its TANF MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its TANF MOE requirement for any fiscal year, and the State received a Welfare-to-Work formula grant provided under section 403(a)(5)(A) of the Act for the same fiscal year, we will reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the Welfare-to-Work formula grant paid to the State.

§ 273.9 May a State avoid a TANF MOE penalty because of reasonable cause or through corrective compliance?

The reasonable cause and corrective compliance provisions at §§ 272.4, 272.5, and 272.6 of this chapter do not apply.

Subpart B—What Rules Apply to the Use of Federal Funds?

§ 273.10 What actions are to be taken against a State if it uses Federal TANF funds in violation of the Act?

(a) If a State misuses such funds, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the amount misused.

(b) If we determine that the misuse was intentional, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter in an amount equal to five percent of the adjusted SFAG.

(c) The reasonable cause and corrective compliance provisions of §§ 272.4 through 272.6 of this chapter apply to penalties under paragraphs (a) and (b) of this section.

§ 273.11 What uses of Federal TANF funds are improper?

(a) States may use Federal TANF funds for expenditures that:

(1) Are reasonably related to the purposes of TANF, as specified at § 270.20 of this chapter; or

(2) The State was authorized to use IV–A or IV–F funds under prior law, as in effect on September 30, 1995, or (at the option of the State) August 21, 1996.

(b) We will consider use of funds in violation of paragraph (a) of this section, the provisions of the Act, section 115 of PRWORA, the provisions of part 92 of this title, or OMB Circular A–87 to be misuse of funds.

§ 273.12 How will we determine if a State intentionally misused Federal TANF funds?

(a) The State must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 270.20 of this chapter) and the provisions listed in § 273.11.

(b) We will consider funds to be misused intentionally if there is supporting documentation, such as Federal guidance or policy instructions, indicating that Federal TANF funds could not be used for that purpose.

(c) We will also consider funds to be misused intentionally if, after notification that we have determined such use to be improper, the State continues to use the funds in the same or similarly improper manner.

§ 273.13 What types of activities are subject to the administrative cost limit on Federal TANF grants?

(a) Activities that fall within the definition of "administrative costs" at § 273.0(b) are subject to this limit.

(b) Information technology and computerization for tracking and monitoring are not administrative costs for this purpose.

Subpart C—What Rules Apply to Individual Development Accounts?

§ 273.20 What definitions apply to Individual Development Accounts (IDAs)?

The following definitions apply with respect to IDAs:

Date of acquisition means the date on which a binding contract to obtain, construct, or reconstruct the new principal residence is entered into.

Eligible educational institution means an institution described in section 481(a)(1) or section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections were in effect on August 21, 996. Also, an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) that is in any State (as defined in section 521(33) of such Act), as such sections were in effect on August 22, 1996.

Individual Development Account (IDA) means an account established by or for an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes.

Post-secondary educational expenses means a student's tuition and fees required for the enrollment or attendance at an eligible educational institution, and required course fees, books, supplies, and equipment required at an eligible educational institution.

Qualified acquisition costs means the cost of obtaining, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

Qualified business means any business that does not contravene State law or public policy.

Qualified business capitalization expenses means business expenses pursuant to a qualified plan.

Qualified entity means a non-profit, tax-exempt organization, or a State or local government agency that works cooperatively with a non-profit, tax-exempt organization.

Qualified expenditures means expenses entailed in a qualified plan, including capital, plant equipment, working capital, and inventory expenses.

Qualified first-time home buyer means a taxpayer (and, if married, the taxpayer's spouse) who has not owned a principal residence during the three-year period ending on the date of acquisition of the new principal residence.

Qualified plan means a business plan that is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity. It includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and it may require the eligible recipient to obtain the assistance of an experienced entrepreneurial advisor.

Qualified principal residence means the place a qualified first-time home buyer will reside in in accordance with the meaning of section 1034 of the Internal Revenue Code of 1986 (26 U.S.C. 1034). The qualified acquisition cost of the residence cannot exceed the average purchase price of similar residences in the area.

§ 273.21 May a State use the TANF grant to fund IDAs?

States may use TANF grants to fund IDAs for individuals who are eligible for TANF assistance.

§ 273.22 Are there any restrictions on IDA funds?

(a) A recipient may deposit only earned income into an IDA.

(b) A recipient's contributions to an IDA may be matched only by a qualified entity.

(c) A recipient may withdraw funds only for the following reasons:

(1) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(2) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time home buyer; or

(3) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally-insured financial institution and used for a qualified business capitalization expense.

§ 273.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

To prevent recipients from using the IDA account improperly, States may do the following:

(a) Count withdrawals as earned income in the month of withdrawal (unless already counted as income);

(b) Count withdrawals as resources in determining eligibility; or

(c) Take such other steps as the State has established in its State plan or written State policies to deter inappropriate use.

PART 274—OTHER ACCOUNTABILITY PROVISIONS

Subpart A—What Specific Rules Apply for Other Program Penalties?

Sec.

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Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 609, 654, 1302, 1308, and 1337.

Subpart A—What Specific Rules Apply for Other Program Penalties?

§ 274.0 What definitions apply to this part?

The general TANF definitions at § 270.30 of this chapter apply to this part.

§ 274.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a)(1) Subject to the exceptions in this section, no State may use any of its Federal TANF funds to provide assistance (as defined in § 270.30 of this chapter) to a family that includes an adult who has received assistance for a total of five years (60 cumulative months, whether or not consecutive).

(2) Assistance provided under section 403(a)(5) of the Act (WTW) is not subject to the time limit in paragraph (a)(1) of this section.

(3) States may define "a family that includes an adult," but may not exclude families from their definition solely for the purpose of avoiding penalties under § 274.2.

(i) States shall report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion.

(ii) Where we find that a State has excluded families for the purpose of avoiding a penalty for the five-year time limit, we shall include those families in the calculation under paragraph (c) of this section in determining whether a State has complied with time-limit extension rules and is subject to the penalty described in § 274.2.

(b) States must not count towards the five-year limit:

(1) Any month of receipt of assistance by an individual when she was a minor who was not the head-of-household or married to the head-of-household;

(2) Any month in which an adult lived in Indian country (as defined in section 1151 of title 18, United States Code) or Native Alaskan Village and at least 50 percent of the adults were not employed; and

(3) Non-cash assistance provided under section 403(a)(5) of the Act (WTW).

(c) States have the option to extend assistance from Federal TANF funds beyond the five-year limit for up to 20 percent of their cases. This provision requires computation of an average monthly percentage for each fiscal year, with the numerator for each month equal to the number of families that includes an adult receiving assistance beyond the five-year limit and the denominator equal to the average monthly number of families that includes an adult receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to a family only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it only determines whether or not the extension applies to a specific family once an adult in the family has received 60 cumulative months of assistance.

(e) If the five-year limit is inconsistent with a State's waiver granted under section 1115 of the Act, which was submitted before August 22, 1996, and was approved by July 1, 1997, the State need not comply with the inconsistent provisions of the five-year limit until the waiver expires.

(1) The five-year limit would be inconsistent with the State's waiver:

(i) If the State has an approved waiver that provides for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time, specified by the approved waiver; and

(ii) The State would have to change its waiver policy in order to comply with the five-year limit.

(2)(i) Generally, under an approved waiver, a State will count, toward the five-year limit, all months for which the adult subject to a State waiver time limit receives assistance with Federal TANF

funds, just as it would if it did not have an approved waiver.

(ii) The State need not count, toward the five-year limit, any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit under the terms of the State's approved waiver.

(3) The State may continue to provide assistance with Federal TANF funds for more than 60 cumulative months, without a numerical limit, to families provided extensions to the time limit, under the provisions of the terms and conditions of its approved waiver, as long as the State's waiver authority has not expired.

(4) The five-year limit would also be inconsistent with a State's waiver to the extent that the State needs to maintain prior law policies for control group or experimental treatment cases in order to continue an experimental research design for the purpose of completing an impact evaluation of the waiver policies.

(5) The additional requirements at § 272.8 of this chapter apply to the use of continuing waivers with alternative time-limit requirements in the calculation of the time limit penalty.

§ 274.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of § 274.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan.

§ 274.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to meet the five-year limit or it completes a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

(b)(1) In addition, we will determine a State has reasonable cause if it demonstrates that it exceeded the 20 percent limitation on exceptions to the time limit because of good cause waivers provided to victims of domestic violence.

(2)(i) To demonstrate reasonable cause under paragraph (b)(1) of this section, a State must provide evidence that, when individuals with active good cause waivers and their families are excluded from the calculation, the percentage of families receiving federally-funded assistance for more than 60 months did not exceed 20 percent of the total.

(ii) To qualify for exclusion, such families must have good cause domestic violence waivers that:

(A) Reflect the State's assessment that an individual in the family was, at the time the waiver was granted, temporarily unable to work because of domestic violence;

(B) Were in effect after the family had received a hardship exemption from the limit on receiving federally-funded assistance for 60 or more months; and

(C) Were granted appropriately, in accordance with the criteria specified at § 270.30 of this chapter.

(iii) If a State fails to meet the criteria specified for "good cause domestic violence waivers" at § 270.30 of this chapter or any of the other conditions in paragraph (b)(2)(ii) of this section, the Secretary will not grant reasonable cause under paragraph (b)(1) of this section.

§ 274.10 Must States do computer matching of data records under IEVS to verify recipient information?

(a) States must meet the requirements of IEVS pursuant to section 1137 of the Act and request the following information from the Internal Revenue Service (IRS), the State Wage Information Collections Agencies (SWICA), the Social Security Administration (SSA), and the Immigration and Naturalization Service (INS):

(1) IRS unearned income;

(2) SWICA employer quarterly reports of income and unemployment insurance benefit payments;

(3) IRS earned income maintained by SSA; and

(4) Immigration status information maintained by the INS. (States may request a waiver of this match under the authority of 42 U.S.C. 1320–1327, note.)

(b) The requirements at §§ 205.51 through 205.62 of this chapter also apply to the TANF IEVS requirement.

§ 274.11 How much is the penalty for not participating in IEVS?

If we determine that the State has not complied with the requirements of § 274.10, we will reduce the SFAG payable for the immediately succeeding fiscal year by two percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

§ 274.20 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of § 271.15 of this chapter, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding fiscal year unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective action plan pursuant to §§ 272.5 and 272.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a statewide process in place that enables families to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We will impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

§ 274.30 What procedures exist to ensure cooperation with the child support enforcement requirements?

(a) The State (the IV–A agency) must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the child support enforcement agency (the IV–D agency). Those individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.

(b) If the IV–D agency determines that an individual is not cooperating, and the individual does not qualify for a good cause or other exception established by the State in accordance with section 454(29) of the Act, then the IV–D agency must notify the IV–A agency promptly.

(c) The IV–A agency must then take appropriate action by:

(1) Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25 percent of the amount of such assistance; or

(2) Denying the family any assistance under the program.

§ 274.31 What happens if a State does not comply with the IV–D sanction requirement?

(a)(1) If we find, for a fiscal year, that the State IV–A agency did not enforce the penalties against recipients required under § 274.30(c), we will reduce the SFAG payable for the next fiscal year by one percent of the adjusted SFAG.

(2) Upon a finding for a second fiscal year, we will reduce the SFAG by two percent of the adjusted SFAG for the following year.

(3) A third or subsequent finding will result in the maximum penalty of five percent.

(b) We will not impose a penalty if the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

§ 274.40 What happens if a State does not repay a Federal loan?

(a) If a State fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 272.5 of this chapter nor the corrective compliance plan provisions at § 272.6 of this chapter apply when a State fails to repay a Federal loan.

§ 274.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

(a) We will assess a penalty of no more than two percent of the adjusted SFAG plus the amount equal to the difference between the amount the State was required to expend and the amount it actually expended in the fiscal year.

(1) We will take the full two percent of the adjusted SFAG plus the amount the State was required to expend if the State made no additional expenditures to compensate for reductions to its adjusted SFAG resulting from penalties.

(2) We will reduce the percentage portion of the penalty if the State has expended some of the amount required. In such case, we will calculate the applicable percent by multiplying the percentage of the required expenditures actually made in the fiscal year by two percent.

(b) The reasonable cause and corrective compliance plan provisions at §§ 272.4, 272.5, and 272.6 of this chapter do not apply to this penalty.

(c) State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be used for expenditures made under the State TANF program, not under "separate State programs."

Subpart B—What are the Funding Requirements for the Contingency Fund?

§ 274.70 What funding restrictions apply to the use of contingency funds?

(a) Contingency funds are available to a State only if expenditures by the State, excluding all Federal funds but the contingency funds, exceed the State's historic State expenditures.

(b) The maximum amount payable to a State in a fiscal year may not exceed an amount equal to 1/12 times 20 percent of that State's SFAG for that fiscal year, multiplied by the number of eligible months for which the State has requested contingency funds.

§ 274.71 How will we determine 100 percent of historic State expenditures, the MOE level, for the annual reconciliation?

(a)(1) The State historic State expenditures, the MOE level, include the State share of expenditures for AFDC benefit payments, administration, FAMIS, EA, and the JOBS programs for FY 1994.

(2) We will use the same data sources and date, i.e., April 28, 1995, that we used to determine the TANF MOE levels for FY 1994. We will exclude the State share of expenditures from the former IV-A child care programs (AFDC/JOBS, Transitional and At-Risk child care) in the calculation.

(b) We will reduce a State's MOE level for the Contingency Fund by the same percentage that we reduce the TANF MOE level for any fiscal year in which the State's SFAG annual allocation is reduced to provide funding to Tribal grantees operating a Tribal TANF program.

§ 274.72 For the annual reconciliation requirement, what restrictions apply in determining qualifying State expenditures?

Qualifying State expenditures are expenditures of State funds made in the State TANF program, excluding child care expenditures.

§ 274.73 What other requirements apply to qualifying State expenditures?

The regulations at §§ 273.2 (except for § 273.2(a)(2)), 273.4, and 273.6 of this chapter apply.

§ 274.74 When must a State remit contingency funds under the annual reconciliation?

(a) A State may retain its contingency funds only if it matches them with the expenditure of State funds above a specified MOE level. If the amount of contingency funds paid to a State for a fiscal year exceeds the amount equal to qualifying State expenditures (as defined at § 274.72), plus contingency funds, minus the MOE level, multiplied by the Federal Medical Assistance Percentage (FMAP), then multiplied by 1/12 times the number of months the State received contingency funds, then such excess amount must be remitted.

(b) If a State does not meet its MOE requirement, all contingency funds paid to a State for a fiscal year must be remitted.

(c) If required to remit funds, the State must remit all (or a portion) of the funds paid to it for a fiscal year within one year after it has failed to meet either the Food Stamp trigger or the Unemployment trigger for three consecutive months.

§ 274.75 What action will we take if a State fails to remit funds as required?

(a) If a State fails to remit funds as required, we will reduce the SFAG payable for the next fiscal year by the amount of funds not remitted.

(b) A State may appeal this decision as provided in § 272.7 of this chapter.

(c) The reasonable cause exceptions and corrective compliance regulations at §§ 272.5 and 272.6 of this chapter do not apply to this penalty.

§ 274.76 How will we determine if a State has met its Contingency Fund reconciliation MOE level requirement and made expenditures that exceed its MOE requirement?

(a) States receiving contingency funds for a fiscal year must complete the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report). As part of the fourth quarter's report, a State must complete its annual reconciliation.

(b) The TANF Financial Report and State reporting on expenditures are subject to our review.

§ 274.77 Are contingency funds subject to the same restrictions that apply to other Federal TANF funds?

As Federal TANF funds, contingency funds are subject to the restrictions and prohibitions in effect for Federal TANF funds. The provisions of § 273.11 of this chapter apply.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

§ 274.80 If a Territory receives Matching Grant funds, what funds must it expend?

(a) If a Territory receives Matching Grant funds under section 1108(b) of the Act, it must:

(1) Contribute 25 percent of expenditures funded under the Matching Grant for title IV–A or title IV–E expenditures;

(2) Expend up to 100 percent of the amount of historic expenditures for FY

1995 for the AFDC program (including administrative costs and FAMIS), the EA program, and the JOBS program; and

(3) Expend up to 100 percent of the amount of the Family Assistance Grant annual allocation using Federal TANF, title IV–E funds and/or Territory-only funds.

(b) Territories may not use the same Territorial expenditures to satisfy the requirements of paragraph (a) of this section.

§ 274.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?

To meet the Matching Grant MOE requirements, Territories may count:

(a) Territorial expenditures made pursuant to §§ 273.2, 273.3, 273.4, and 273.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program; and

(b) Territorial expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 274.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?

To meet the Matching Grant FAG amount requirement, Territories may count:

(a) Expenditures made with Federal TANF funds pursuant to § 273.11 of this chapter;

(b) Expenditures made pursuant to §§ 273.2, 273.3, 273.4, and 273.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program;

(c) Amounts transferred from TANF funds pursuant to section 404(d) of the Act; and

(d) The Federal and Territorial shares of expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 274.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 274.80?

We will require the Territories to report the expenditures required by § 274.80 (a)(2) and (a)(3) on the quarterly Territorial Financial Report.

§ 274.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 274.80?

If a Territory does not meet the requirements at either or both of § 274.80 (a)(2) and (a)(3), we will disallow all Matching Grant funds received for the fiscal year.

§ 274.85 What rights of appeal are available to the Territories?

The Territories may appeal our decisions to the Departmental Appeals Board in accordance with our regulations at part 16 of this title if we decide to take disallowances under 1108(b).

PART 275—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec.

275.1 What does this part cover?
275.2 What definitions apply to this part?
275.3 What reports must the State file on a quarterly basis?
275.4 When are quarterly reports due?
275.5 May States use sampling?
275.6 Must States file reports electronically?
275.7 How will we determine if the State is meeting the quarterly reporting requirements?
275.8 Under what circumstances will a State be subject to a reporting penalty for failure to submit quarterly reports?
275.9 What information must the State file annually?
275.10 When are annual reports due?

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

§ 275.1 What does this part cover?

(a) This part explains how we will collect the information required by section 411(a) of the Act (data collection and reporting); the information required to implement section 407 of the Act (work participation requirements), as authorized by section 411(a)(1)(A)(xii); the information required to implement section 409 (penalties), section 403 (grants to States), section 405 (administrative provisions), section 411(b) (report to Congress), and section 413 (research and annual rankings); and the data necessary to carry out our financial management and oversight responsibilities.

(b) This part describes the information in the quarterly and annual reports that each State must file, as follows:

(1) The case record information (disaggregated and aggregated) on individuals and families in the quarterly TANF Data Report;

(2) The expenditure data in the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report);

(3) The annual information related to definitions and expenditures that must be filed with the fourth quarter Financial Report; and

(4) The annual information on State programs and performance for the report to Congress.

(c) If a State claims MOE expenditures under a separate State program, this part specifies the circumstances under which the State must collect and report case-record information on individuals and families served by the separate State program.

(d) This part describes when reports are due, how we will determine if reporting requirements have been met, and how we will apply the statutory penalty for failure to file a timely report. It also specifies electronic filing and sampling requirements.[1]

§ 275.2 What definitions apply to this part?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at § 270.30 of this chapter apply to this part.

(b) For data collection and reporting purposes only, *TANF family* means:

(1) All individuals receiving assistance as part of a family under the State's TANF or separate State program; and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 275.3 What reports must the State file on a quarterly basis?

(a) *Quarterly reports.* Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report). Under the circumstances described in paragraph (d)(1) of this section, the State must collect and file the data specified in the TANF-MOE Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each State must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section two).[2] These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each State must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance.[3] This section of the Report asks for aggregate figures in the following areas: the total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The TANF Financial Report (or Territorial Financial Report).* (1) Each State must file quarterly expenditure data on the State's use of Federal TANF funds, State TANF expenditures, and State expenditures of MOE funds in separate State programs.[4]

(2) In addition, each State must file annually with the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report) definitions and descriptive information on the TANF program and descriptive and expenditure-related information on the State's separate MOE program as specified in § 275.9.

(3) If a State makes a substantive change in its definition of work activities, its description of transitional services provided to families no longer receiving assistance due to employment under the TANF program, or how it reduces the amount of assistance when an individual refuses to engage in work, as specified in § 275.9, it must file a copy of the changed definition or description with the next quarterly report. The State must also indicate the effective date of the change.

(4) If a State is expending TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on the expenditures of that year's TANF funds.

(5) Territories must report their expenditure and other fiscal data on the Territorial Financial Report, as provided at § 274.85 of this chapter, in lieu of the TANF Financial Report.

(d) *TANF—MOE Data Report.* (1) If a State claims MOE expenditures under a separate State program, it must collect and file similar disaggregated and aggregated information on families receiving and families no longer receiving assistance under the separate State program if it wishes to:

(i) Receive a high performance bonus;

(ii) Qualify for work participation caseload reduction credit; or

(iii) Be considered for a reduction in the penalty for failing to meet the work participation requirements.

(2) The TANF–MOE Data Report consists of three sections. Two sections contain disaggregated data elements and one contains aggregated data elements.[5] Except for data elements that do not apply to individuals and families under the MOE program, such as time limits, the data elements in the TANF–MOE Data Report are the same as those in the TANF Data Report as described in paragraph (b) of this section.

§ 275.4 When are quarterly reports due?

(a) Each State must file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report), including the addendum to the fourth quarter Financial Report, within 45 days following the end of the quarter.

(b) The State may collect and submit its TANF–MOE Data Report quarterly at the same time as it submits its TANF Data Report, or the State may submit this report at the time it seeks to be considered for a high performance bonus, a caseload reduction credit, or a reduction in the work participation rate penalty as long as the data submitted are for the full period for which these decisions will be made.

(c) The effective date for filing these reports depends on when the State implemented the TANF program as follows:

(1) If a State implemented the TANF program by January 1, 1997, the first reports cover the July–September 1997 quarter and are due November 14, 1997.

(2) If a State implemented its TANF program between January 1, 1997, and July 1, 1997, the first reports cover the period that begins six months after the date of implementation and are due 45 days following the end of the applicable quarter.

§ 275.5 May States use sampling?

(a) Each State may report the disaggregated data in the TANF Data Report and in the TANF–MOE Data Report on all recipient families or on a sample of families selected through the use of a scientifically acceptable sampling method that we have approved. States may not use a sample to generate the aggregated data.[6]

(b) "Scientifically acceptable sampling method" means a probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample and our sample size requirements are met.

§ 275.6 Must States file reports electronically?

Each State must file all quarterly reports (i.e., the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the TANF–MOE Data Report) electronically, based on format specifications that we will provide.

§ 275.7 How will we determine if the State is meeting the quarterly reporting requirements?

(a) Each State's quarterly reports (the TANF Data Report, the TANF Financial Report (or Territorial Financial Report), and the TANF–MOE Data Report) must be complete and accurate and filed by the due date.

(b) For a disaggregated data report, "a complete and accurate report" means that:

(1) The reported data accurately reflect information available to the State in its case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The data are reported for all elements (i.e., no data are missing);

(4)(i) The data are provided for all families; or

(ii) If the State opts to use sampling, the data are provided for all families selected in a sample that meets the minimum sample size requirements (except for families listed in error); and

(5) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the State uses reasonable methods to develop these estimates.

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[1] The Appendices contain the specific data elements in the quarterly Data Report and the quarterly Financial Report, as well as the instructions for filing these reports. The Appendices also contain a summary of the applicable sampling specifications and three reference tables that summarize the statutory basis and rationale for collecting the data elements in the Data Report.

[2] See Appendices A and B for the specific data elements we are proposing.

[3] See Appendix C for the specific data elements we are proposing.

[4] See Appendix D for the proposed content of the TANF Financial Report.

[5] See Appendices E through G for the proposed reporting requirements.

[6] See Appendix H for a summary of the applicable sampling specifications.

(c) For an aggregated data report, "a complete and accurate report" means that:

(1) The reported data accurately reflect information available to the State in its case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The data are reported for all applicable elements; and

(4) Monthly totals are unduplicated counts for all families (e.g., the number of families and the number of out-of-wedlock births are unduplicated counts).

(d) For the TANF Financial Report (or, as applicable, the Territorial Financial Report), "a complete and accurate report" means that:

(1) The reported data accurately reflect information available to the State in its case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The data are reported for all applicable elements; and

(4) All expenditures have been made in accordance with § 92.20(a) of this title.

(e) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the States.

(f) States must maintain records to adequately support any report in accordance with § 92.42 of this title.

§ 275.8 Under what circumstances will a State be subject to a reporting penalty for failure to submit quarterly reports?

(a) We will impose a reporting penalty under § 272.1(a)(3) of this chapter if:

(1) A State fails to file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report) on a timely basis;

(2) The disaggregated data in the TANF Data Report is not accurate or does not include all the data required by section 411(a) of the Act (other than section 411(a)(1)(A)(xii) of the Act) or those nine additional elements necessary to carry out the data collection system requirements;

(3) The aggregated data in the TANF Data Report does not include complete and accurate information on the data elements required by section 411(a) of the Act and the data elements necessary to carry out the data collection system requirements and verify and validate disaggregated data;

(4) The TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services; or

(5) The addendum to the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain the information required under §§ 271.22, 271.24, and 274.1 of this chapter on families excluded from the calculations in those sections because of the State's definition of families receiving assistance; the definition of work activities; and the description of transitional services provided by a State to families no longer receiving assistance due to employment.

(b) We will not apply the reporting penalty to the TANF–MOE Data Report, the annual program and performance report specified in § 275.9, or other information on individuals and families required by section 411(b) of the Act.

(c) If we determine that a State meets one or more of the conditions set forth in paragraph (a) of this section, we will notify the State that we intend to reduce the SFAG payable for the immediately succeeding fiscal year.

(d) We will not impose the penalty at § 272.1(a)(3) of this chapter if the State files the complete and accurate reports before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the reports were required.

(e) If the State does not file all reports as required by the end of the immediately succeeding fiscal quarter, the penalty provisions of §§ 272.4 through 272.6 of this chapter will apply.

(f) For each quarter for which the State fails to meet a reporting requirement, we will reduce the SFAG payable by an amount equal to four percent of the adjusted SFAG.

§ 275.9 What information must the State file annually?

(a) Each State must file annually, as an addendum to the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report), the following definitions and information with respect to the TANF program for that year:

(1) The number of families excluded from the calculations at §§ 271.22, 271.24, and 274.1 of this chapter because of the State's definition of families receiving assistance, together with the basis for such exclusions;

(2) The State's definition of each work activity;

(3) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(4) A description of how a State will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause.

(b) Each State must also file with the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report) the information on separate State MOE programs for that year specified at § 273.7 of this chapter.[7]

(c) Each State must file an annual program and performance report that provides information about the characteristics and achievements of each State program; the design and operation of the program; the services, benefits, assistance provided; the eligibility criteria; and the extent to which the State has met its goals and objectives for the program. Each State may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for the Department's annual report to Congress.

§ 275.10 When are annual reports due?

(a) The annual report of State definitions and expenditures required by § 275.9 (a) and (b) is due at the same time as the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report).

(b) The annual program and performance report to meet the requirements of section 411(b) of the Act (report to Congress) is due 90 days after the end of the fiscal year. The first report, covering FY 1997, is due December 30, 1997.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendices

Appendix A—Proposed TANF Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the TANF Program)
Appendix B—Proposed TANF Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program)
Appendix C—Proposed TANF Data Report—Section Three (Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance under the TANF Program)
Appendix D—Proposed TANF Financial Report and Fourth Quarter Addendum
Appendix E—Proposed TANF MOE Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix F—Proposed TANF MOE Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the Separate State Programs)
Appendix G—Proposed TANF MOE Data Report—Section Three (Aggregated Data Collection for Families Receiving Assistance under the Separate State Programs)
Appendix H—Sampling Specifications
Appendix I—Statutory Reference Table for Appendix A
Appendix J—Statutory Reference Table for Appendix B
Appendix K—Statutory Reference Table for Appendix C

[7] See Section 3 of Appendix D for the specific information we are proposing to collect.

Appendix A—TANF Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Deleware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. *Stratum:*

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros 1to fill in the number.

Instruction: Enter the number assigned by the State agency or Tribal grantee to uniquely identify the case after formal approval to receive assistance.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:* For States that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the State (Tribe) does not bifurcate its caseload, enter code "1."

1=Funded, in whole or in part, with Federal TANF block grant funds
2=Funded entirely from State-only funds (segregated State TANF program) which are subject to TANF rules.

9. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is "listed in error." States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1=Data collection completed
2=Not subject to data collection/listed in error

10. *New Applicant:*

Guidance: A newly-approved applicant means the current reporting month is the first month for which the TANF family has received TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly-approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1=Yes, a newly-approved application
2=No

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the State's (Tribe's) TANF Program during the reporting month.

12. *Type of Family for Work Participation:*

Guidance: This data element will be used to identify the type of family (*i.e.*, the number of parents or care-taker relatives in the family receiving assistance) in order to calculate the all family and the two-parent family work participation rates. A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate. A family that includes a disabled parent will not be considered a two-parent family for purposes of the work participation rate. A noncustodial parent, who lives in the State, may participate in work activities funded under the State TANF Program and receive other assistance. In order for the noncustodial parent to participate in work activities and receive assistance, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family. However, it is up to the State to consider whether a family with a non-custodial parent is a one-parent or two-parent family for the purposes of calculating the work participation rate.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Single-Parent Family for participation rate purposes
2=Two-Parent Family for participation rate purposes
3=No Parent Family for participation rate purposes (does not include parents, care-taker relatives, or minor child heads-of-household

13. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No housing subsidy

14. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is eligible to receive (*i.e.*, a certified recipient of) medical assistance under the State plan approved under Title XIX or "2" if no TANF family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives medical assistance
2=No

15. *Receives Food Stamps:* If the TANF family received Food Stamps for the reporting month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

16. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

17. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, ubsidized Child Care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

1=Yes, funded under the State (Tribal) TANF Program
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under another Federal program (e.g., SSBG)
4=Yes, funded under a State, Tribal, or local program
5=No

18. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter "00."

19. *Amount of Child Care Disregard:* Enter the total dollar amount of the TANF family's actual disregard allowed for child care expenses during the reporting month. If there is no child care disregard, enter "0" as the amount.

20. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the TANF family in the reporting month, which includes arrearages, recoupments, and pass-through amounts whether paid to the State or the family.

21. *Amount of the Family's Cash Resources:* Enter the total dollar amount of the TANF family's cash resources for the reporting month.

Amount of Assistance Received and the Number of Months that the Family Has Received Each Type of Assistance under the State (Tribal) TANF Program:

Guidance: Assistance means every form of support provided to TANF families under the State (Tribal) TANF Program (including child care, work subsidies, and allowances to meet living expenses), except for the following:

(1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

(2) one-time, short-term assistance (*i.e.*, assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

Instruction: For each type of assistance provided under the State's (Tribal) TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the State's (Tribe's) TANF program. If, for a "type of assistance", no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance", no assistance has been received (since the State began its TANF Program) by the TANF eligible family, enter "0" as the number of months of assistance.

22. *Cash and Cash Equivalents:*
A. *Amount*
B. *Number of Months*
23. *Educational:*
A. *Amount*
B. *Number of Months*
24. *Employment Services:*
A. *Amount*
B. *Number of Months*
25. *Work Subsidies:*
A. *Amount*
B. *Number of Months*
26. *TANF Child Care:*

Guidance: Include only the child care funded directly by the State (Tribal) TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

A. *Amount*
B. *Number of Months*
27. *Transportation:*
A. *Amount*
B. *Number of Months*
28. *Other Supportive Services and Special Needs, including Assistance with Meeting Home Heating and Air Conditioning Costs:*
A. *Amount*
B. *Number of Months*
29. *Transitional Services:*
A. *Amount*
B. Number of Months
30. *Contributions to Individual Development Accounts:*
A. *Amount*
B. *Number of Months*
31. *Other:*
A. *Amount*
B. *Number of Months*

Reason for and Amount of Reduction in Assistance. For each reason for which the TANF family received a reduction in assistance for the reporting month, enter the dollar amount of the reduction in assistance. Otherwise, enter "0."

32. *Work Requirements Sanction*
33. *Family Sanction for an Adult with No High School Diploma or Equivalent*
34. *Sanction for Teen Parent not Attending School*
35. *Non-Cooperation with Child Support*
36. *Failure to Comply with an Individual Responsibility Plan*
37. *Other Sanction*
38. *Recoupment of Prior Overpayment*
39. *Family Cap*
40. *Reduction Based on Family Moving into State From Another State*
41. *Reduction Based on Length of Receipt of Assistance*
42. *Other, Non-sanction*
43. *Waiver Evaluation Research Group:*

Guidance: In connection with waivers, approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to a research group consisting of a control group (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and an experimental group (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A state may choose, for the purpose of completing impact analyses, to continue a research group and thus maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases assigned to a non-experimental treatment group (*i.e.*, not part of the research group) may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. Where a state continues waivers, but does not continue a research group for impact evaluation purposes, all cases in the demonstration site will be treated as non-experimental treatment group cases regardless of their original assignment as control or experimental cases.

Instruction: Enter the one-digit code that indicates the family's waiver evalution case status.

Blank=Not applicable (no waivers apply to this case)
1=Control group (for impact analysis purposes)
2=Experimental group
3=Non-experimental treatment group

44. *Is the TANF Family Exempt from the Federal Time Limit Provisions:*

Guidance: Under TANF rules, an eligible family that does not include an adult (or minor child head-of-household) recipient, who has received assistance for 60 countable months, may continue to receive assistance. A countable month is a month of assistance for which the adult (or minor child head-of-household) is not exempt from the Federal time limit provisions. TANF rules provide for two categories of exceptions. First, a family which does not include an adult (or minor child head-of-household) who has received 60 countable months of assistance may be exempt from the accrual of months of assistance (*i.e.*, clock not ticking). Second, a family with an adult (or minor child head-of-household), who has received 60 countable months of assistance may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption which allows up to 20% of the families to receive assistance beyond the 60 month time limit. In lieu of the 20% hardship exemptions, States may choose to employ extension policies prescribed under approved waivers.

Instruction: If the TANF family has no exemption from the Federal five-year time limit, enter code "1." If the TANF family does not include an adult (or minor child head-of-household) who has received assistance for 60 countable months and is exempt from accrual of months of assistance under the Federal five-year time limit for the reporting month, enter "2", "3", or "4", whichever is appropriate. If the TANF family includes an adult (or minor child head-of-household) who has received assistance for 60 countable months and the family is exempt from termination of assistance, enter code "5", "6", "7" or "8", whichever is appropriate.

01=Family is not exempt from Federal time limit.

Family does not include an adult (or minor child head-of-household) who has received assistance for 60 countable months

02=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because no adult or minor child head-of-household in eligible family receiving assistance.
03=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.
04=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because the family is living on an Indian country of at least 1,000 persons at least 50 percent of whose adults are unemployed.
05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved waiver policy.

Family includes an adult (or minor child head-of-household) who has received assistance for 60 countable month

06=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.
07=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a temporary good cause domestic violence waiver (and an inability to work).
08=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a hardship exemption for reason other than domestic violence.
09=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because the adult's (minor child head-of-household's) residence is on an Indian country of at least 1,000 persons at least 50 percent of whose adults are unemployed.
10=Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers.
11=Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers (*i.e.*, adult-only time limit).

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household." For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the State (Tribal) TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

45. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

46. Noncustodial Parent Indicator:

Guidance: A noncustodial parent means a parent who does not live with his/her child(ren). A noncustodial parent, who lives in the State, may participate in work activities funded under the State TANF

Program. In order for the noncustodial parent to participate in work activities, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent
2=No

47. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the State (Tribal) TANF Program in the format YYYYMMDD.

48. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

49. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

50. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

51. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received Federal disability insurance
2=No

52. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

53. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV–APDT
2=No

54. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1=Yes, received aid under Title XVI–AABD
2=No

55. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

56. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month.

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

57. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code "01."

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

58. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

59. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

60. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

61. *Citizenship/Alienage:*

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 (such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees); (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

The citizenship/alienage is divided into four groups: individuals eligible (for the TANF Program based on citizenship/alienage), individuals eligible at State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

Individuals Eligible for the TANF Program

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

Individuals Eligible for the TANF Program at State Option

05=Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

Individuals Not Eligible for the TANF Program

08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.

Status Unknown

99=Unknown

62. *Number of Months Countable toward Federal Time Limit in Own State (Tribe):* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from the State (Tribe).

63. *Number of Months Countable toward Federal Time Limit in Other States or Tribes:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from other States or Tribes.

64. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit.

65. Is Current Month Exempt from the State's (Tribe's) Time Limit: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from State's (Tribe's) time limit.

1=Yes, adult (or minor child head-of-household) is exempt from the State's (Tribe's) time limit for the reporting month
2=No

66. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e*, unemployed, not looking for work, includes discouraged workers)

67. *Work Participation Status:*

Guidance: Disregarded from the participation rate means the TANF family is not included in the calculation of the work participation rate.

Exempt means that the individual will not be penalized for failure to engage in work (*i.e.*, good cause exception); however, the TANF family is included in the calculation of the work participation rate.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status.

01=Disregarded from participation rate, single custodial parent with child under 12 months
02=Disregarded from participation rate because all of the following apply: required to participate, but not participating, sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period
03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental treatment group) approved under Section 1115 of the Social Security Act
04=Disregarded from participation rate, is participating in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate
05=Exempt, single custodial parent with child under age 6 and unavailability of child care
06=Exempt, disabled (not using an extended definition under a State waiver)
07=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver)
08=A temporary good cause domestic violence waiver (not using an extended definition under a State waiver)
09=Exempt, State waiver
10=Exempt, other
11=Required to participate, but not participating, sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period
12=Required to participate, but not participating, sanctioned for the reporting month but not sanctioned for more than 3 months within the preceding 12-month period
13=Required to participate, but not participating and not sanctioned for the reporting month
14=Deemed engaged in work, teen head-of-household who maintains satisfactory school attendance
15=Deemed engaged in work, single parent with child under age 6 and parent engaged in work activities for at least 20 hours per week
16=Required to participate, participating but not meeting minimum participation requirements
17=Required to participate, and meeting minimum participation requirements
99=Not applicable (*e.g.*, person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance)

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (*e.g.*, the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (*i.e.*, the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training may only count as a work activity for a total of 12 months. For any adult (or minor child head-of-household) that has exceeded this limit, enter "0" as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under "Other."

The exception to the above 12 month rule may be a State that received a waiver which is inconsistent with the provision limiting vocational education training. In this case the State would adhere to the terms and conditions of the waiver.

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the State's (Tribe's) total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or the State is a needy State (within the meaning of Section 403 (b)(6)), then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use "0" as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

If a State is operating its TANF Program under a waiver which permits broader rules for participation in job search and job readiness training, the TANF rules apply for coding this element and any additional participation in job search and job readiness training permitted under the waiver rules

should be coded under the item "Additional Work Activities Permitted Under Waiver Demonstration."

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation.

68. *Unsubsidized Employment*
69. *Subsidized Private Sector Employment*
70. *Subsidized Public Sector Employment*
71. *Work Experience*
72. *On-the-job Training*
73. *Job Search and Job Readiness Assistance*

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under the work activity "Other Work Activities."

74. *Community Service Programs*
75. *Vocational Educational Training*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under the work activity "Other Work Activities."

76. *Job Skills Training Directly Related to Employment*
77. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency*
78. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency*
79. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program*
80. *Additional Work Activities Permitted Under Waiver Demonstration*

Instruction: Hours of participation in job search, job readiness training, or other work activities beyond the TANF limits as permitted by the State waiver should be counted in this item. Otherwise, count the additional hours of work participation in the work activity "Other Work Activities."

81. *Other Work Activities*

Guidance: Reporting on this data element is optional. States may want to demonstrate their additional efforts at helping individuals become self-sufficient even though these activities are not considered in the calculation of the work participation rates.

82. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations, was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. As the hour requirement in this case was integral and necessary to achieve the waiver purpose of appropriately requiring work activities to move individuals to self-sufficiency, the State could show inconsistency and could use the waiver hours instead of the hours in section 407. A waiver that merely increased work hour requirements would not be deemed inconsistent.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual as described in the demonstration terms or in an employability or personal responsibility plan. Otherwise, leave blank or enter "0."

Amount of Earned Income

Earned income has two categories. For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

83. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

84. *Wages, Salaries, and Other Earnings*

Amount of Unearned Income

Unearned income has four categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

85. *Social Security:* Enter the dollar amount of Social Security that the adult in the State (Tribal) TANF family has received for the reporting month.

86. *SSI:* Enter the dollar amount of SSI that the adult in the State (Tribal) TANF family has received for the reporting month.

87. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State (Tribal) TANF family has received for the reporting month.

88. *Other Unearned Income:*

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include Social Security, SSI, Worker's Compensation, value of Food Stamps assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State TANF family has received for the reporting month.

Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

89. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

90. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the State (Tribal) TANF Program in the format YYYYMMDD.

91. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format mmmmmmm.

92. *Race:* Enter the one-digit code for the race of the TANF child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

93. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

94. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

95. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

96. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household.)

01=Head-of-household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

97. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

98. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=no formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

99. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

100. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 56, on page 439.

101. *Cooperation with Child Support:* Enter the one-digit code that indicates this child's parent has cooperated with child support for this child.

1=Yes, child's parent has cooperated with child support
2=No
3=Not applicable

Amount of Unearned Income

Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

102. *SSI:* Enter the dollar amount of SSI that the child in the State (Tribal) TANF family has received for the reporting month.

103. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State (Tribal) TANF family has received for the reporting month.

Child Care Reporting Section

Complete this section for each child in the TANF family for which a TANF child care subsidy is received (*i.e.*, funded under the State or Tribal TANF Program). If child care is provided by more than one provider, enter the child care data for the greatest number of hours on the Primary Care line, and the next highest number of child care hours on the Secondary Care line.

104. *Type of Child Care:*

Definition: Provider types are divided into two broad categories of licensed/regulated and legally operating (no license category available in State or locality). Under each of these categories are four types of providers: in-home, family home, group home, and centers. A relative provider is defined as one who is at least 18 years of age and who is a grandparent, great-grandparent, aunt or uncle, or sibling living outside the child's home.

Instruction: Enter the two-digit code indicating the type of care for each child. The following codes specify who cared for the child and where such care took place during the reporting month.

01=Licensed/regulated in-home child care
02=Licensed/regulated family child care
03=Licensed/regulated group home child care
04=Licensed/regulated center-based child care
05=Legally operating (no license category available in State or locality) in-home child care provided by a non-relative
06=Legally operating (no license category available in State or locality) in-home child care provided by a relative
07=Legally operating (no license category available in State or locality) family child care provided by a non-relative
08=Legally operating (no license category available in State or locality) family child care provided by a relative
09=Legally operating (no license category available in State or locality) group child care provided by a non-relative
10=Legally operating (no license category available in State or locality) group child care provided by a relative
11=Legally operating (no license category available in State or locality) center-based child care

A. *Primary*
B. *Secondary*

105. *Total Monthly Cost of Child Care:* For each child receiving child care, enter the total dollar amount (round to the nearest dollar) that the provider charges for the service. Include both the fee the family pays and the child care subsidy.

A. *Primary*
B. *Secondary*

106. *Total Monthly Hours of Child Care Provided During the Reporting Month:* Enter the three-digit number for the total monthly number of child care hours provided for the reporting month.

States (Tribes) may use their own formula to estimate the number of child care hours provided. If the State payment system is based on daily or part day rates, the calculated number of hours of service would be based on the number of full or part days given in each week (as defined by the State) multiplied by the number of hours for the full or part day. The calculated number should be reported as the actual number of hours provided.

Example:
Full day=8 hours
Part day=5 hours
Care given=3 full days and 2 part days
Average hours of care provided=(3*8+2*5)=34

A. *Primary*
B. *Secondary*

Appendix B—TANF Data Report—Section Two—Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; *e.g.*, 001, 003, 005, * * *. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. *Stratum:*

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe uses a non-stratified sample design or opts to provide data for its entire caseload, enter the same stratum code any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency or Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

1=Data collection completed
2=Not subject to data collection/listed in error

9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month. A temporarily suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (*i.e.*, most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code.

Instruction: Enter the one-digit code that indicates the reason for the TANF family no longer receiving assistance.

1=Employment
2=Marriage
3=Five-Year Time Limit
4=Sanction
5=State (Tribal) policy
6=Minor child absent from the home for a significant time period
7=Transfer to Separate State MOE Program
8=Other

10. *Number of Family Members:* Enter two digits that represent the number of members in the family, which received assistance under the State's (Tribe's) TANF Program.

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No housing subsidy

12. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any TANF family member is eligible to receive (*i.e.*, a certified recipient of) medical assistance under the State plan approved under Title XIX or "2" if no TANF family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives medical assistance
2=No

13. *Receives Food Stamps:* If the TANF family received Food Stamps for the sample month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

15. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, subsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

1=Yes, funded under the State (Tribal) TANF Program
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under another Federal program (*e.g.*, SSBG)
4=Yes, funded under a State, Tribal, or local program
5=No

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter "00."

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child head-of-household and up to five adults) in the TANF family. A minor child head-of-household should be coded as an adult. For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the State (Tribal) TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

17. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

18. *Date of Birth:* Enter the eight-digit code for date of birth for this adult (or minor child head-of-household) under TANF in the format YYYYMMDD.

19. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

20. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

21. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

22. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received Federal disability insurance
2=No

23. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

24. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV-APDT
2=No

25. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-AABD for the reporting month.

1=Yes, received aid under Title XVI-AABD
2=No

26. *Receives Aid Under Title XVI-SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-SSI for the reporting month.

1=Yes, received aid under Title XVI-SSI
2=No

27. *Marital Status:* Enter the one-digit code for the marital status of the recipient.

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

28. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code "01."

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

29. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

30. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

31. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

32. *Citizenship/Alienage:*

Guidance: As described in TANF-ACF-PA–97–1, States have the flexibility to: (1) use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 [such aliens who arrived after

enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees]; (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

The citizenship/alienage is divided into four groups: individuals eligible (for the TANF Program based on citizenship/alienage), individuals eligible at State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

Individuals Eligible for the TANF Program

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

Individuals Eligible for the TANF Program at State Option

05=Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

Individuals Not Eligible for the TANF Program

08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.

Status Unknown

99=Unknown

33. *Number of Months Countable toward Federal Time Limit in Own State (Tribe):* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from the State (Tribe).

34. *Number of Months Countable toward Federal Time Limit in Other States or Tribes:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from other States or Tribes.

35. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit.

36. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e.* unemployed, not looking for work, includes discouraged workers)

Amount of Earned Income

For each category of earned income, enter the amount of the adult's (or minor child head-of-household's) earned income.

37. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (*e.g.*, tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

38. *Wages, Salaries, and Other Earnings:*

Amount of Unearned Income

39. *Unearned Income:* Enter the amount of the adult's (or minor child head-of-household's) unearned income.

Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

40. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

41. *Date of Birth:* Enter the eight-digit code for date of birth for this child under TANF in the format YYYYMMDD.

42. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

43. *Race:* Enter the one-digit code for the race of the TANF child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

44. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

45. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

46. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

47. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household.)

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

48. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

49. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

50. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

51. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 27, on page 486.

52. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this child's parent has cooperated with child support for this child.

1=Yes, child's parent has cooperated with child support
2=No, child's parent has not cooperated with child support
3=Not applicable

53. *Unearned Income:* Enter the dollar amount of the child's unearned income.

Appendix C—TANF Data Report—Section Three—Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

1. *State FIPS Code:* Enter your two-digit State code. Tribal grantees should leave this field blank.

2. *Tribal Code:* For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter	January–March.
Second quarter	April–June.
Third quarter	July–September.
Fourth quarter	October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (*e.g.*, first quarter of 1997 is entered as "19971").

Applications

Guidance: The term "application" means the action by which an individual indicates in writing to the agency administering the State (or Tribal) TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. *Total Number of Applications:* Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of Approved Applications:* Enter the number of applications approved during each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of Denied Applications:* Enter the number of applications denied (or otherwise disposed of) during each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (*i.e.*, cases funded under the TANF block grant and State MOE funded TANF cases) as cases receiving assistance under the State (Tribal) TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the State (Tribal) TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Families:* Enter the number of families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item #10) and the number of no-parent families (in item #11).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Two-parent Families:* Enter the total number of 2-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

10. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

11. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

12. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

13. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

14. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

15. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

16. *Total Number of Minor Child Heads-of-Household:* Enter the total number of minor child head-of-household families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

17. *Total Number of Births:* Enter the total number of births for families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

18. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births for families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Closed Cases

19. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

BILLING CODE 4184-01-P

APPENDIX D

Department of Health and Human Services
Administration for Children and Families

Temporary Assistance for Needy Families (TANF) ACF - 196 Financial Report

STATE

FISCAL YEAR | CURRENT QTR. ENDED | NEXT QTR. ENDING | ANNUAL RECONCILIATION [ ] YES [ ] NO

ITEMS	(A) FEDERAL AWARDS & TRANSFERS	(B)	(C)	(D) FEDERAL AWARDS
			SEAG FUNDS	**CONTINGENCY FUND**
		FEDERAL TANF EXPENDITURES	STATE TANF EXPENDITURES (MOE)	SEPARATE STATE PROGRAMS (MOE)	FEDERAL EXPENDITURES	FEDERAL SHARE AT FY 1995 FMAP RATE OF ____%
1. AWARDED						
2. TRANSFERRED TO CCDF DISCRETIONARY						
3. TRANSFERRED TO SSBG						
4. AVAILABLE FOR TANF						
5. EXPENDITURES ON ASSISTANCE						
a. CASH ASSISTANCE						
b. WORK SUBSIDIES						
c. CHILD CARE						
d. OTHER						
6. EXPENDITURES ON NON-ASSISTANCE						
a. WORK ACTIVITIES						
b. ADMINISTRATION						
c. SYSTEMS						
d. TRANSITIONAL SERVICES FOR EMPLOYED						
e. OTHER						
7. OTHER EXPENDITURES						
8. TOTAL EXPENDITURES						
9. FEDERAL UNLIQUIDATED OBLIGATIONS						
10. UNOBLIGATED BALANCE						
11. ESTIMATE FOR NEXT QTR. ENDED						

QUARTERLY ESTIMATE

TANF FEDERAL FUNDS

SUBMITTAL: [ ] REV [ ] REVISED

TYPED NAME, TITLE, AGENCY NAME

THIS IS TO CERTIFY THAT THE INFORMATION REPORTED ON ALL PARTS OF THIS FORM IS ACCURATE AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNATURE, AUTHORIZED STATE OFFICIAL

DATE SUBMITTED:

PAGE 1 OF 1 APPROVED OMB NO. 0970-0062 FORM ACF-196 (online)

BILLING CODE 4184-01-C

Appendix D—Section 2—Instruction for Completion of Form ACF–196

Financial Reporting Form for the Temporary Assistance for Needy Families (TANF) Program

All States must complete and submit this report in accordance with these instructions on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted quarterly by February 14, May 15, August 14 and November 14.

States must submit quarterly reports for each fiscal year until all Federal TANF funds are expended. A State may be submitting reports simultaneously to cover two or more fiscal years.

Distribution: The original copy (with original signatures) should be submitted to: Administration for Children and Families, Office of Program Support, Division of Formula, Entitlement and Block Grants, Aerospace Building, 7th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions

—Round all entries to the nearest dollar. Omit cents.
—Enter State name.
—Enter the Fiscal Year for which this report is being submitted. Funding for each fiscal year is available until expended. Therefore, for each fiscal year, a State may be submitting reports simultaneously to cover two or more fiscal years. It is important to indicate the year for which information is being reported.
—Enter the ending dates for the current quarter (the quarter just ended for which this constitutes the report of actual expenditures and obligations) and the ending date of the next quarter (the upcoming quarter for which estimates are being requested on line 11).

Example: The State is reporting for the 1st quarter of the Federal fiscal year (10/1 through 12/31), the report is due February 14, the current quarter ending date is 12/31, the next quarter ending date for which estimates are requested is 6/30. The estimate submitted by the State will be for the quarter of 1/1 through 6/30. Estimates are not required on quarterly reports submitted for prior fiscal years.

—Enter whether this report is being used for annual reconciliation of the Contingency Fund.
—Enter the Federal Medical Assistance Percentage Rate used by the State for the fiscal year for which Contingency Funds were received.
—Indicate whether this is a new report or a revision of a report previously submitted for the same period.
—Entries are not required or are not applicable to blocks that are shaded.

Columns: All amounts reported in columns (A) through (D) must be actual expenditures or obligations made in accordance with all applicable statutes and regulations. Amounts reported in the estimates section are Federal estimates of expenditures to be made during the quarter indicated based on the best information available to the State.

Explanation of Columns

Column (A) lines 1 through 4 refer to the Federal State Family Assistance Grant (SFAG) awards, amounts transferred to the Child Care and Development Fund (CCDF) (Discretionary Fund) and the Social Services Block Grant (SSBG) program, and the amount available for TANF.

Column (A) lines 5 through 10 refer to the Federal SFAG funds the State expended and obligated under its TANF program.

Column (A) line 11 is the SFAG grant award amount or percentage the State estimates it will need for the next quarter ending referenced at the top of the form. (See page 6 of Line Item Instructions)

Column (B) lines 5 through 8 refer to State TANF expenditures the State is making to meet its TANF Maintenance of Effort (MOE) requirement. Includes State funds that are commingled with Federal funds; or State funds expended on the State program funded under TANF.

Note: States receiving Contingency Funds under section 403(b) for the fiscal year must also use this same column to report State TANF expenditures made to meet the Contingency Fund (CF) MOE requirement and matching expenditures made above the 100 percent MOE requirement. Expenditures made to meet the CF MOE requirement and expenditures made above the MOE level (for matching purposes) must be expenditures made under the State TANF program only; they cannot include expenditures made under "separate State programs." In addition, child care expenditures cannot be included as MOE expenditures or expenditures that are matched with Contingency Funds.

Column (C) lines 5 through 8 refer to State expenditures the State is making in Separate State Programs outside the State TANF program to meet its TANF MOE requirement.

Note: For the TANF MOE requirement, the cumulative total expenditures (Sum of 6(B)+8(C)) reported at the end of the Federal fiscal year should add up to 75% of fiscal year 1994 historic State expenditures if the State met the TANF participation requirements, or 80% of fiscal year 1994 historic State expenditures if the State did not meet the TANF participation requirements. TANF MOE requirements and tables were published in Program Instruction No. TANF–ACF–PI–96–2, dated December 6, 1996.

For States that received Contingency Funds, line 8(B) minus line 5c(B) (child care) must exceed 100 percent of the CF MOE requirement.

Note: The State must submit an addendum attached to the fourth quarter report for each fiscal year that provides "separate State program" information as required under parts 273 and 274 of the proposed rules.

Column (D) line 1 refers to the Federal Contingency Fund grant awards.

Column (D) lines 5 through 10 refer to the Federal share of expenditures for which Federal funding is available at the FMAP rate for the fiscal year for which Contingency Funds were received. Contingency Funds are available for match for State expenditures in excess of 100% of CF MOE requirements as explained in the "Note" above.

Example: The State received Contingency Funds of $100,000 for 6 months of the fiscal year; the FMAP rate is 60% Federal and 40% State; the CF 100% MOE requirement is $1,000,000; the State reported expenditures under Columns (B) and (D) of $1,200,000. To determine how much of the Contingency Funds the State can keep, the expenditures of $1,000,000 (CF MOE requirement) must be subtracted from the total expenditures of $1,200,000. That difference ($200,000) is to be multiplied by 60 percent, *i.e.*, $200,000×60%=$120,000. The $120,000 must then be multiplied by 1/12 times the number of months a State received Contingency Funds, *i.e.*, $120,000×1/12×6=$60,000. The State may keep only $60,000 of the $100,000 ACF awarded it for the Contingency Fund.

Determining how much, if any, a State can keep of the Contingency Funds awarded to it for a fiscal year, is known only after annual reconciliation of the Contingency Fund account is completed. This form will serve as the annual reconciliation report when submitted for the fourth quarter of the fiscal year. Based on the example above, line 8 of Column (D) (Total Expenditures-Contingency Fund) must equal $60,000.

It is possible that a State will have received Contingency Funds after the end of the fiscal year that apply to expenditures made in the prior fiscal year. For a State receiving Contingency Funds for a fiscal year after it has ended, the State will be required to submit a revised fourth quarter report within 45 days of receipt of the additional Contingency Funds. There is no carryover from one fiscal year to the next.

State Replacement of Grant Reductions Resulting From Penalties

If a State's State Family Assistance Grant is reduced because of the imposition of a penalty under section 409, section 409(a)(12) provides that the State must maintain a level of spending at the SFAG amount. In place of SFAG funds withheld for a penalty, the State must substitute with its own funds an amount that is no less than the amount withheld. The State replacement funds must be included in Column (B).

Line Item Instructions—Cumulative Fiscal Year Expenditures and Obligations

Line 1. Awarded. Enter in column (A) the cumulative total of State Family Assistance Grant (SFAG) funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Enter in column (D) the cumulative total of Contingency Funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 2. Transferred to Child Care and Development Fund (CCDF). Enter in column (A) the cumulative total of funds the State transferred to the Discretionary Fund of the Child Care and Development Fund from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(1) of the Act governs the transfer of SFAG funds to the Discretionary Fund. In compliance with section 404(d)(1), a State may not transfer more than 30% of its total annual SFAG grant. A State may transfer this entire amount to the Discretionary Fund of the CCDF program. All funds transferred to the Discretionary Fund of the CCDF program take on the rules and regulations of that recipient Fund.

Line 3. Transferred to SSBG. Enter in column (A) the cumulative total of funds the State transferred to the Social Services Block Grant (SSBG) program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(2) of the Act governs the transfer of SFAG funds to the SSBG program; it limits the amount a State may transfer to no more than 10% of its total annual SFAG to SSBG. (Also, the combined amount transferred to SSBG and the Discretionary Fund may not exceed 30% of the annual SFAG. In other words, for all financial reports applicable to grant funds for one fiscal year, the sum of the total cumulative amount reported on line 3 and the total cumulative amount reported on line 2 cannot exceed 30% of the annual SFAG.) All funds transferred to the SSBG program are subject to the statute and regulations of the recipient SSBG program.

Line 4. Available for TANF. Enter in column (A) the cumulative total of funds available for TANF after subtracting the amounts transferred to the CCDF program (Discretionary Fund) (line 2(A)) and/or the SSBG program (line 3(A)) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5. Expenditures on Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 5a. through 5d.

Line 5a. Cash Assistance. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for cash assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5b. Work Subsidies. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for work subsidies from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5c. Child Care. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for child care from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. The amounts reported in this category do not include funds transferred to the CCDF (Discretionary Fund) or SSBG programs.

Line 5d. Other. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for other expenditures considered "expenditures on assistance" that were not included on Lines 5a–5c from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which identifies the activities for which the "other expenditures" under this line item applies.

Line 6. Expenditures on Non-Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 6a through 6e.

Line 6a. Work Activities. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for work activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year (or more frequently, if there are changes) the State's definition of each work activity.

Line 6b. Administration. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for administrative costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For State Family Assistance Grants (SFAG), the 15% administrative cost cap applies to the amount Available for TANF reported on line 4(A) of this form. For the Contingency Fund, the 15% administrative cost cap applies to the amount of total Federal expenditures reported on line 8(D). For State expenditures reported in columns (B) and (C), the 15% administrative cost cap applies to the amount of Total Expenditures (line 6) reported for each of these columns.

Line 6c. Systems. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for systems costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: Section 404(b)(1) of the Act limits States to which a grant is made under section 403 to expend no more than 15% of the grant for administrative costs. In addition, section 404(b)(2) of the Act states that the 15% administrative cost cap shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

Line 6d. Transitional Services for Employed. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures to provide transitional services to families that cease to receive assistance under the TANF program because of employment from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which describes the types of services the State provided under this line item.

Line 6e. Other. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for other expenditures considered "expenditures on non-assistance" that were not included on Lines 6a–6d. from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which identifies the activities for which the "other expenditures" under this line item applies.

Line 7. Other Expenditures. Enter in columns (A), (B), (C) and (D) the cumulative total other expenditures from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. "Other expenditures" are those expenditures that cannot be reported under any other category on this form.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which identifies the activities for which the "other expenditures" under this line item applies.

Line 8. Total Expenditures. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures (Sum of Line 5a through Line 7) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 9. Federal Unliquidated Obligations. Enter in columns (A) and (D) the cumulative total Federal unliquidated obligations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For the Contingency Fund, this line should indicate $0 for the report submitted for the fourth quarter.

Line 10. Unobligated Balance. Enter in columns (A) and (D) the cumulative total Federal unobligated balances from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. After the end of the Federal fiscal year any amount reported in column (D) as an unobligated balance will be de-obligated by ACF.

Line 11. Estimate for Next Quarter Ended. Enter in column (A) the estimate of SFAG grant award funds requested for the next quarter ending (refer to the next quarter ending entered at the top of this report).

Note: Section 405(c)(1) of the Act states ACF shall estimate the amount to be paid to each eligible State for each quarter, such estimate is to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under section 403.

Appendix D—Section 3

Information To Be Reported as an Addendum to the Fourth Quarter TANF Financial Report

A. The following definitions and information with respect to the TANF program:

(1) The number of cases excluded from the overall work participation rate, the two-parent work participation rate, and the time-limit calculations because of the State's definition of "families receiving assistance," together with an explanation of the basis for such exclusions;

(2) The State's definition of each work activity;

(3) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(4) The State's description of how it will reduce the amount of assistance otherwise

payable to the family prorata (or more) with respect to any period during a month in which the individual refuses to engage in work without good cause.

B. The following information on separate State programs whose expenditures are counted by the State as MOE:

(1) A description of the specific program activities provided to eligible families;

(2) Each MOE program's statement of purpose (*i.e.*, how the program activity serves eligible families);

(3) The applicable definitions of each work activity;

(4) Whether the program activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(5) The FY 1995 State expenditures for each program activity not authorized and allowable as of August 21, 1996;

(6) The total number of eligible families served by each program activity as of the end of the fiscal year;

(7) The eligibility criteria for the families served under each program; and

(8) A certification that those families served met the State's criteria for eligible families.

Appendix E—TANF MOE Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the Separate State Programs

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element shown below.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005, * * * A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (*i.e.*, State MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each State MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the State MOE family means (a) all individuals receiving assistance as part of a family under the Separate State Programs; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number—Separate State MOE:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency to uniquely identify the case.

6. *ZIP Code:* Enter the five-digit ZIP code for the State MOE family's place of residence for the reporting month.

7. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is "listed in error." States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each State MOE sampled case.

1 = Data collection completed
2 = Not subject to data collection/listed in error

8. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the Separate State Programs.

9. *Type of Family for Work Participation:*

Guidance: This data element will be used to identify the type of family (*i.e.*, the number of parents or care-taker relatives in the family receiving assistance) in order to calculate the all family and the two-parent family work participation rates. A family with a minor child head-of-household should be coded as either a one-parent family or two-parent family, whichever is appropriate. A family that includes a disabled parent will not be considered a two-parent family for purposes of the work participation rate. It is up to the State to consider whether a family with a non-custodial parent is a one-parent or two-parent family for the purposes of calculating the work participation rate.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Single-Parent Family for participation rate purposes
2=Two-Parent Family for participation rate purposes
3=No Parent Family for participation rate purposes (does not include parents, care-taker relatives, or minor child heads-of-household

10. *Has the family received assistance under a State (Tribal) TANF Program within the past six months:* If the State MOE family has received assistance under a State (Tribal) TANF Program within the past six months, enter code "1." Otherwise, enter "2."

1=Yes, family has received assistance under a State (Tribal) TANF program within the past six months.
2=No

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the State MOE family received subsidized housing for the reporting month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No Housing subsidy

12. *Receives Medical Assistance:* Enter "1" if, for the reporting month, any State MOE family member is eligible to receive (*i.e.*, a certified recipient of) medical assistance under the State plan approved under Title XIX or "2" if no State MOE family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives Medical Assistance
2=No

13. *Receives Food Stamps:* If the State MOE family received Food Stamps for the reporting month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the State MOE family, code this element in a manner that most accurately reflects the resources available to the State MOE family.

Instruction: Enter the State MOE eligible family's authorized dollar amount of Food Stamps assistance for the reporting month. If the State MOE family did not receive any food stamps for the reporting month, enter "0."

15. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, subsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the State MOE family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whichever is appropriate. Otherwise, enter code "5."

1=Yes, funded under the Separate State Programs
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under other Federal program (*e.g.*, TANF or SSBG)
4=Yes, funded under other State or local program 5=No

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the State MOE family has received for services in the reporting month. If State MOE family did not receive any subsidized child care, enter "0" as the amount.

17. *Amount of Child Care Disregard:* Enter the total dollar amount of the State MOE family's actual disregard allowed for child care expenses.

18. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the State MOE family in the reporting month, which includes arrearages, recoupments, and pass-through amounts whether paid to the State or the family.

19. *Amount of the Families' Cash Resources:* Enter the total dollar amount of the State MOE family's cash resources for the reporting month.

Amount of Assistance Received and the Number of Months that the Family Has Received Each Type of Assistance Under the Separate State Programs

Guidance: Assistance means every form of support provided to State MOE families under the Separate State Program (including child care, work subsidies, and allowances to meet living expenses), except for the following:

(1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

(2) one-time, short-term assistance (*i.e.*, assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

Instruction: For each type of assistance provided under the State's MOE Program, enter the dollar amount of assistance that the State MOE family received or that was paid on behalf of the State MOE family for the reporting month and the number of months that the State MOE family has received assistance under the State's Separate MOE programs. If, for a "type of assistance", no dollar amount of assistance was provided during the reporting month, enter "0" as the amount. If, for a "type of assistance", no assistance has ever been received by the TANF eligible family, enter "0" as the number of months of assistance.

20. *Cash and Cash Equivalents:*

A. *Amount*
B. *Number of Months*

21. *Educational:*

A. *Amount*
B. *Number of Months*

22. *Employment Services:*

A. *Amount*
B. *Number of Months*

23. *Work Subsidies:*

A. *Amount*
B. *Number of Months*

24. *Child Care:*

Guidance: Include only the child care funded directly by the Separate State Programs. Do not include child care funded under the TANF Program or the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the State TANF program.

A. *Amount*
B. *Number of Months*

25. *Transportation:*

A. *Amount*
B. *Number of Months*

26. *Other Supportive Services and Special Needs, including Assistance with Meeting Home Heating and Air Conditioning Costs:*

A. *Amount*
B. *Number of Months*

27. *Transitional Services:*

A. *Amount*
B. *Number of Months*

28. *Contributions to Individual Development Accounts:*

A. *Amount*
B. *Number of Months*

29. *Other:*

A. *Amount*
B. *Number of Months*

Reason for and Amount of Reduction in Assistance

For each reason for which the State MOE family received a reduction in assistance for the reporting month, enter the dollar amount of the reduction in assistance. Otherwise, enter "0."

30. *Work Requirements Sanction*
31. *Family Sanction for an Adult with No High School Diploma or Equivalent*
32. *Sanction for Teen Parent not Attending School*
33. *Non-Cooperation with Child Support*
34. *Failure to Comply with an Individual Responsibility Plan*
35. *Other Sanction*
36. *Recoupment of Prior Overpayment*
37. *Family Cap*
38. *Reduction Based on Family Moving into State From Another State*
39. *Reduction Based on Length of Receipt of Assistance*
40. *Other, Non-Sanction*
41. *Waiver Evaluation Research Group*

Guidance: In connection with waivers approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to a research group consisting of a control group (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and an experimental group (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A state may choose, for the purpose of completing impact analyses, to continue a research group and thus maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases assigned to a non-experimental treatment group (*i.e.*, not part of the research group) may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. Where a state continues waivers, but does not continue a research group for impact evaluation purposes, all cases in the demonstration site will be treated as non-experimental treatment group cases regardless of their original assignment as control or experimental cases.

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

Blank=Not applicable (no waivers apply to this case)
1=Control group (for impact analysis purposes)
2=Experimental group
3=Non-experimental treatment group

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the State MOE family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a "minor child head-of-household." For each adult (or minor child head-of-household) in the State MOE family, complete the adult characteristics section.

If there are more than six adults (or a minor child head-of-household and five adults) in the State MOE family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

42. Family Affiliation:

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1= Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2= Parent of minor child in the eligible family receiving assistance
3= Caretaker relative of minor child in the eligible family receiving assistance
4= Minor sibling of child in the eligible family receiving assistance
5= Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

43. Noncustodial Parent Indicator:

Guidance: A noncustodial parent means a parent who does not live with his/her child(ren). A noncustodial parent who lives in the State, may participate in work activities funded under the Separate State Programs. If the noncustodial parent participates in work activities, (s)he must be a member of the eligible family receiving assistance and be reported as part of the State MOE family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1= Yes, a noncustodial parent
2= No, not a noncustodial parent

44. Date of Birth: Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the Separate State Program in the format YYYYMMDD.

45. Social Security Number: Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

46. Race: Enter the one-digit code for the race of the adult (or minor child head-of-household).

1= White, not of Hispanic origin
2= Black, not of Hispanic origin
3= Hispanic
4= American Indian or Alaska Native
5= Asian or Pacific Islander
6= Other
0= Unknown

47. Gender: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1= Male
2= Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

48. Receives Federal Disability Insurance Benefits: Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

49. Receives Benefits Based on Federal Disability Status: Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

50. Receives Aid Under Title XIV–APDT: Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV–APDT
2=No

51. Receives Aid Under Title XVI–AABD: Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1=Yes, received aid under Title XVI–AABD
2=No

52. Receives Aid Under Title XVI–SSI: Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

53. Marital Status: Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month.

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

54. Relationship to Head-of-Household:

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State, (*i.e.*, the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code "01."

01=Head of household
02=Spouse
03=Parent
04=Daughter or son (Natural or adoptive)
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

55. Teen Parent With Child In the Family:

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts; the highest level of education attained and the highest degree attained.

56. Highest Level of Education Attained: Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

57. Highest Degree Attained: If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

58. Citizenship/Alienage:

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 (such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees); (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.
05=Qualified alien, (including immigrant accorded permanent resident status ("green card"), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;
08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.
99=Unknown

59. Employment Status: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e.* unemployed, not looking for work, includes discouraged workers)

60. Work Participation Status:

Guidance: Disregarded from the participation rate means the State MOE family is not included in the calculation of the work participation rate.

Exempt means that the individual will not be penalized for failure to engage in work (*i.e.*, good cause exception); however, the State MOE family is included in the calculation of the work participation rate.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status.

01=Disregarded from participation rate, single custodial parent with child under 12 months
02=Disregarded from participation rate because all of the following apply: required to participate, but not participating, sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period
03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental treatment group) approved under section 1115 of the Social Security Act
04=Disregarded from participation rate, is participating in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its Work Participation rate
05=Exempt, single custodial parent with child under age 6 and unavailability of child care
06=Exempt, disabled (not using an extended definition under a State waiver)
07=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver)
08=A temporary good cause domestic violence waiver (not using an extended definition under a State waiver)
09=Exempt, State waiver
10=Exempt, other
11=Required to participate, but not participating, sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period.
12=Required to participate, but not participating, sanctioned for the reporting month but not sanctioned for more than 3 months within the preceding 12-month period
13=Required to participate, but not participating and not sanctioned for the reporting month
14=Deemed engaged in work, single teen head-of-household or married teen who maintains satisfactory school attendance or is participating in education directly related to employment for an average of at least 20 hours per week during the reporting month
15=Deemed engaged in work, parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week
16=Required to participate, participating but not meeting minimum participation requirements
17=Required to participate, and meeting minimum participation requirements
99=Not applicable (*e.g.*, person in household, but not in eligible family receiving assistance)

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (*e.g.*, the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for the month in which the Friday falls (*i.e.*, the JOBS approach). A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation.

61. Unsubsidized Employment

62. *Subsidized Private Sector Employment*
63. *Subsidized Public Sector Employment*
64. *Work Experience*
65. *On-the-job Training*
66. *Job Search and Job Readiness Assistance*

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under the work activity "Other Work Activities."

67. *Community Service Programs*
68. *Vocational Educational Training*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item "Additional Work Activities Permitted Under Waiver Demonstration." Otherwise, count the additional hours of work participation under the work activity "Other Work Activities."

69. *Job Skills Training Directly Related to Employment*
70. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency*
71. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency*
72. *Providing Child Care Services to an Individual who is Participating in a Community Service Program*
73. *Additional Work Activities Permitted Under Waiver Demonstration*

Instruction: Hours of participation in job search and job readiness training beyond the TANF limits as permitted by State waiver should be counted in this item. Otherwise, count such additional hours of work participation under the work activity "Other Work Activities."

74. *Other Work Activities*
75. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations, was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. As the hour requirement in this case was integral and necessary to achieve the waiver purpose of appropriately requiring work activities to move individuals to self-sufficiency, the State could show inconsistency and could use the waiver hours instead of the hours in section 407. The waiver that increase work hour requirements would not be deemed inconsistent.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual as described in the demonstration terms or in an employability or personal responsibility plan. Otherwise, leave blank or enter "00."

Amount of Earned Income

Earned income has two categories. For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

76. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (*e.g.*, tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

77. *Wages, Salaries, and Other Earnings:*

Amount of Unearned Income

Unearned income has four categories. For each category of unearned income, enter the dollar amount of the adult's (minor child head-of-household's) unearned income.

78. *Social Security:* Enter the dollar amount of Social Security that the adult in the State MOE family has received for the reporting month.

79. *SSI:* Enter the dollar amount of SSI that the adult in the State MOE family has received for the reporting month.

80. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State MOE family has received for the reporting month.

81. *Other Unearned Income:*

Guidance: Other unearned income includes RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include Social Security, SSI, Worker's Compensation, value of Food Stamps assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State MOE family has received for the reporting month.

Child Characteristics

This section allows for coding up to ten children in the State MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the State MOE family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

82. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance

83. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the Separate State Programs in the format YYYYMMDD.

84. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

85. *Race:* Enter the one-digit code for the race of the State MOE child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

86. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

87. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

88. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

89. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head of household
02=Spouse
03=Parent
04=Daughter or son (Natural or adoptive)
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

90. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts; the highest level of education attained and the highest degree attained.

91. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

92. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

93. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 52, on page 548.

94. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this child's parent has cooperated with child support for this child.

1=Yes, parent cooperates with child support
2=No
3=Not applicable

Amount of Unearned Income

Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

95. *SSI:* Enter the dollar amount of SSI that the child in the State MOE family has received for the reporting month.

96. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State MOE family has received for the reporting month.

Appendix F—TANF MOE Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance Under the Separate State Programs

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element shown below.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005, ... A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (*i.e.*, State MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from "00" to "99." States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each State MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the State MOE family means (a) all individuals receiving assistance as part of a family under the Separate State Programs; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by theState agency to uniquely identify the State MOE family.

6. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

7. *Disposition:* Enter one of the following codes for each State MOE family.

1=Data collection completed
2=Not subject to data collection/listed in error

8. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's MOE Program in the prior month. A temporally suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (*i.e.*, most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code.

Instruction: Enter the one-digit code that indicates the reason for the State MOE family no longer receiving assistance.

1=Employment
2=Marriage
3=Five-Year Time Limit
4=Sanction
5=State policy
6=Minor child absent from the home for a significant time period
7=Transfer to State TANF Program
8=Other

9. *Number of Family Members:* Enter two digits that represent the number of members in the State MOE family, which received assistance under the Separate State Programs.

10. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the State MOE family received subsidized housing for the sample month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No housing subsidy

11. *Receives Medical Assistance:* Enter "1" if, for the sample month, any State MOE family member is eligible to receive (*i.e.*, a certified recipient of) medical assistance under the State plan approved under Title XIX or "2" if no State MOE family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives medical assistance
2=No

12. *Receives Food Stamps:* If the State MOE family received Food Stamps for the sample month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter "4."

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

13. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the State MOE family's authorized dollar amount of Food Stamp assistance for the reporting month. If the State MOE family did not receive any food stamps for the reporting month, enter "0."

14. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, ubsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as "2."

Instruction: If the State MOE family receives subsidized child care for the reporting month, enter code "1", "2", "3", or "4", whicheves is appropriate. Otherwise, enter code "5."

1=Yes, funded under the Separate State Programs
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under other Federal program (*e.g.*, TANF or SSBG)
4=Yes, funded under other State or local program
5=No

15. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the State MOE family has received for services in the reporting month. If the State MOE family did not receive any subsidized child care for the reporting month, enter "0."

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child head-of-household and up to five adults) in the State MOE family. A minor child head-of-Household should be coded as an adult. For each adult (or minor child head-of-household) in the State MOE family, complete the adult characteristics section.

If there are more than six adults (or a minor child head-of-household and five adults) in the State MOE family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

16. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

17. *Date of Birth:* Enter the eight-digit code for date of birth for this adult (or minor child head-of-household) under Separate State Programs in the format YYYYMMDD.

18. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

19. *Race:* Enter the one-digit code for the race of the State MOE adult (or minor child head-of-household).

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

20. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

21. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received Federal disability insurance
2=No

22. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

23. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV–APDT
2=No

24. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1=Yes, received aid under Title XVI–AABD
2=No

25. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

26. *Marital Status:* Enter the one-digit code for the marital status of the adult (or minor child head-of-household).

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

27. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household. If a minor child head-of-household, enter code "01."

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

28. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

29. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

30. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

31. *Citizenship/Alienage:*

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) use State MOE funds to serve "qualified" aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve "qualified" aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 [such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees]; (3) use State MOE funds to serve legal aliens who are not "qualified"; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which "affirmatively provides" for such benefits.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran,with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.
05=Qualified alien, (including immigrant accorded permanent resident status ("green card"), paroles granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;
08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who 1arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.
99=Unknown

32. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e.* unemployed, not looking for work, includes discouraged workers))

Amount of Earned Income

For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

33. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (*e.g.*, tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

34. *Wages, Salaries, and Other Earnings*

Amount of Unearned Income

35. *Unearned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

Child Characteristics

This section allows for coding up to ten children in the State MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the

second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as "99999999" and leave the other Child Characteristics fields blank.

If there are more than ten children in the State MOE family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

30. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance

37. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the Separate State Programs in the format YYYYMMDD.

38. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

39. *Race:* Enter the one-digit code for the race of the State MOE child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

40. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

41. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

42. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

43. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

44. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts; the highest level of education attained and the highest degree attained.

45. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

46. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

47. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 26, on page 583.

48. Cooperation with Child Support: Enter the one-digit code that indicates this child's parent has cooperated with child support for this child.

1=Yes, child's parent has cooperated with child support
2=No, child's parent has not cooperated with child support
3=Not applicable

49. *Unearned Income:* Enter the dollar amount of the child 's unearned income.

Appendix G—TANF MOE Data Report—Section Three—Aggregated Data Collection for Families Receiving Assistance Under the Separate State Programs

Instructions and Definitions

1. *State FIPS Code:* Enter your two-digit State code.

2. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter	January–March.
Second quarter	April–June.
Third quarter	July–September.
Fourth quarter	October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (*e.g.*, first quarter of 1997 is entered as "19971").

Active Cases

For purposes of completing this report, include all TANF eligible families receiving assistance under the Separate State programs, *i.e.*, State MOE families. All counts of families and recipients should be unduplicated monthly totals.

3. *Total Number of Families:* Enter the number of families receiving assistance under the Separate State Programs for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #4), the number of one-parent families (in item #5) and the number of no-parent families (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

4. *Total Number of Two-parent Families:* Enter the total number of two-parent families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

7. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the Separate State Programs for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #8) and the number of child recipients (in item #9).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

10. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

11. *Total Number of Minor Child Heads-of-Household:* Enter the total number of minor child head-of-household families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

12. *Total Number of Births:* Enter the total number of births for families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

13. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births for families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

14. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to families under the Separate State Programs for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Closed Cases

15. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Appendix H—Sampling Specifications

1. Sample Methodology

The sample methodology must conform to principles of probability sampling, *i.e.*, each family in the population of interest must have a known, non-zero probability of selection and computational methods of estimation must lead to a unique estimate. The State must construct a sample frame for each month in the annual sample period and must select approximately one-twelfth of the required minimum annual sample size from each monthly sample frame.

The recommended method of sample selection is stratified systematic random sampling.

2. Sample frame requirements for

a. *families receiving assistance under the state TANF Program (i.e., the active TANF sample) are:*

The monthly TANF sample frame must consist of an unduplicated list of all families who receive assistance under the State TANF Program for the reporting month by the end of the reporting month. Only families with a minor child who resides with a custodial parent or other adult relative or a pregnant woman may receive assistance.

b. *families no longer receiving assistance under the State TANF Program (i.e., the closed TANF sample) are:*

For closed cases, the monthly TANF sample frame must consist of an unduplicated list of all families whose assistance under the State TANF Program was terminated for the reporting month (do not include families whose assistance was temporarily suspended), but received assistance under the State's TANF Program in the prior month. Thus, TANF eligible families that are transferred to a Separate State Program are closed cases for the State TANF Program.

c. *families receiving assistance under the Separate State Programs (i.e., the active Separate State sample) are:*

The monthly Separate State sample frame must consist of an unduplicated list of all TANF-eligible families who receive assistance under the Separate State Programs for the reporting month by the end of the reporting month.

d. *families no longer receiving assistance under the Separate State Programs (i.e., the closed Separate State sample) are:*

For closed cases, the monthly Separate State sample frame must consist of an unduplicated list of all families who assistance under the Separate State Programs was terminated for the reporting month (do not include families whose assistance was temporarily suspended), but received assistance under the Separate State Programs in the prior month. Thus, State MOE families that are transferred to a State TANF Program are closed cases for the Separate State Programs.

3. Sample Size Requirement

a. *for families receiving assistance under a State TANF Program are:*

The minimum required annual sample size for families receiving assistance is 3000 families, of which 600 families must be newly, approved applicants. Of the 2400 families that have received ongoing assistance approximately 25% (600 families) must be two-parent TANF families. We established the minimum required sample sizes to provide reasonably precise estimates (*e.g.*, a precision of about plus or minus 2 percentage points at a 95% confidence level) for such proportions as the work participation rates for all families and for two-parent families, as well as for demographic and case characteristics of newly, approved TANF families and all TANF families.

b. *for families no longer receiving assistance under a State TANF Program are:*

The minimum required annual sample size for the sample of families no longer receiving assistance (*i.e.*, closed cases) is 800 families.

c. *for families receiving assistance under a Separate State Programs are:*

The minimum required annual sample size for families receiving assistance under the Separate State Programs is 3000 families, of which 600 families must be newly, approved applicants. Of the 2400 families that have received ongoing assistance approximately 25% (600 families) must be two-parent TANF-eligible families. We established the minimum required sample sizes to provide reasonably precise estimates (*e.g.*, a precision of about plus or minus 2 percentage points at a 95% confidence level) for such proportions as the work participation rates for all families and for two-parent families, as well as for demographic and case characteristics of State MOE families.

d. *for families no longer receiving assistance under a Separate State Programs are:*

The minimum required annual sample size for the sample of families no longer receiving assistance (*i.e.*, closed cases) under the Separate State Programs is 800 families.

4. What must States submit to ACF?

Each State that opts to sample its caseloads must submit the following:

a. Each State must submit for approval its annual sampling plan or any changes to its currently approved sampling plan at least sixty (60) calendar days before the start of the annual period. If the State's sampling plan is unchanged from the previous year, the State is not required to resubmit the sampling plan. The sampling plan must satisfy the requirements for plan approval as specified in Section 1300 of the TANF Sampling and Statistical Methods Manual and includes the following:

i. Documentation of methods for constructing and maintaining the sample frame(s), including assessment of frame completeness and any potential problems associated with using the sample frame(s);

ii. Documentation of methods for selecting the sample cases from the sample frame(s); and

iii. Documentation of methods for estimating case characteristics and their

sampling errors, including the computation of weights, where appropriate.

b. Each State must submit the estimated average monthly caseload for the annual sample period and the computed sample interval (if applicable) to the ACF Regional Administrator thirty (30) calendar days before the beginning of the annual sample period, *i.e.*, by September 1 for the October sample selection. States must submit the monthly list of selected sample cases (including reserve pool cases, if applicable) within 10 days of the date of selection specified in the State sampling plan.

c. Each State must submit the total number of families receiving assistance under the State TANF Program by stratum for each month in the annual sample period, the total number of families no longer receiving assistance under the State TANF Program (if stratified, by stratum) for each month in the annual sample period, the total number of families receiving assistance under the Separate State Programs by stratum for each month in the annual sample period, and the total number of families no longer receiving assistance under the Separate State Programs (if stratified, by stratum) for each month in the annual sample period. This data is required for weighting the sample results in order to produce estimates for the entire caseload.

Appendix I—Statutory Reference Table for Appendix A

Data elements	Justification
1. State FIPS Code	Implicit in administering data collection system.
2. County FIPS Code	411(a)(1)(A)(i).
3. Tribal Code	Implicit in administering data collection system.
4. Reporting Month	Implicit in administering data collection system.
5. Stratum	Implicit in administering data collection system.
Family Level Data—Items 6–44.	
6. Case Number	Implicit in administering data collection system.
7. ZIP Code	Needed for geographic coding (and rural/urban analyses) and is readily available.
8. Funding Stream	411(a)(1)(A)(xii): Use in calculation of participation rate.
9. Disposition	Implicit in administering data collection system.
10. New Applicant	411(b), requires the Secretary to report to Congress on families applying for TANF assistance. This element identifies applicants that are newly, approved families receiving assistance.
11. Number of Family Members	411(a)(1)(A)(iv).
12. Type of Family for Work Participation	411(a)(1)(A)(xii): Use in calculation of participation rate.
13. Receives Subsidized Housing	411(a)(1)(A)(ix).
14. Receives Medical Assistance	411(a)(1)(A)(ix).
15. Receives Food Stamps	411(a)(1)(A)(ix).
16. Amount of Food Stamp Assistance	411(a)(1)(A)(ix).
17. Receives Subsidized Child Care	411(a)(1)(A)(ix).
18. Amount of Subsidized Child Care	411(a)(1)(A)(ix).
19. Amount of Child Care Disregard	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K(a)(2)(C)).
20. Amount of Child Support	411(a)(1)(A)(xiv): Break-out of unearned income.
21. Amount of the Families' Cash Resources	411(b), requires the Secretary to report to Congress on financial circumstances of families receiving TANF assistance.
Amount of Assistance Received and Number of Months the Family Received Assistance by Type under the State TANF Program—Items 22–31 are types of assistance.	
22. Cash and Cash Equivalents	411(a)(1)(A) (x) & (xiii).
23. Educational	411(a)(1)(A) (x) & (xiii).
24. Employment Services	411(a)(1)(A) (x) & (xiii).
25. Work Subsidies	411(a)(1)(A) (x) & (xiii).
26. TANF Child Care	411(a)(1)(A) (x) & (xiii).
27. Transportation	411(a)(1)(A) (x) & (xiii).
28. Other Supportive Services and Special Needs, Including Assistance with Meeting Home Heating and Air Conditioning Costs.	411(a)(1)(A) (x) & (xiii).
29. Transitional Services	411(a)(1)(A) (x) & (xiii).
30. Contributions to Individual Development Accounts	411(a)(1)(A) (x) & (xiii).
31. Other	411(a)(1)(A) (x) & (xiii).
Reason for and Amount of Reduction in Assistance—Items 32–42 are the reasons for reduction in assistance	
32. Work Requirements Sanction	411(a)(1)(A)(xiii).
33. Family Sanction for an Adult with No High School Diploma or Equivalent.	411(a)(1)(A)(xiii).
34. Sanction for Teen Parent Not Attending School	411(a)(1)(A)(xiii).
35. Non-Cooperation with Child Support	411(a)(1)(A)(xiii).
36. Failure to Comply with an Individual Responsibility Plan	411(a)(1)(A)(xiii).
37. Other Sanction	411(a)(1)(A)(xiii).
38. Recoupment of Prior Overpayment	411(a)(1)(A)(xiii).
39. Family Cap	411(a)(1)(A)(xiii).
40. Reduction Based on Family Moving into State From Another State	411(a)(1)(A)(xiii).
41. Reduction Based on Length of Receipt of Assistance	411(a)(1)(A)(xiii).

Data elements	Justification
42. Other, Non-sanction	411(a)(1)(A)(xiii).
43. Waiver Evaluation Research Group	411(a)(1)(A)(xii): Use to calculate the participation rate for States with an ongoing waiver evaluation for impact analysis purposes.
44. Is the TANF Family Exempt from the Federal Time Limit	409 (a)(9).
Adult Characteristics—Items 45–58.	
45. Family Affiliation	411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.
46. Noncustodial Parent Indicator	411(a)(4): Report on Non-custodial Parents requires the number of non-custodial Parents. To provide assistance to non-custodial parents under the State TANF Program, States must include them in the family. Data could be collected under the element Relationship to Head-of-Household. Element was broken out to make the coding cleaner and easier for States to report.
47. Date of Birth	411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.
48. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.*, to track individual members of the TANF family).
49. Race	411(a)(1)(A)(vii).
50. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.*, husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits—Items 51–55.	
51. Receives Federal Disability Insurance Benefits	411(a)(1)(A)(ii) as revised by P.L. 105–33.
52. Receives Benefits Based on Federal Disability Status	411(a)(1)(A)(ii) as revised by P.L. 105–33.
53. Receives Aid Under Title XIV–APDT	411(a)(1)(A)(ii) as revised by P.L. 105–33.
54. Receives Aid Under Title XVI–AABD	411(a)(1)(A)(ii) as revised by P.L. 105–33.
55. Receives Aid Under Title XVI–SSI	411(a)(1)(A)(ii) as revised by P.L. 105–33.
56. Marital Status	411(a)(1)(A)(vi).
57. Relationship to Head-of-Household	411(a)(1)(A)(iv) as revised by P.L. 105–33.
58. Teen Parent with Child in the Family	411(a)(1)(A)(xvii) as revised by P.L. 105–33.
Adult Educational Level—Items 59 and 60.	
59. Highest Level of Education Attained	413(a)(1)(A)(vii).
60. Highest Degree Attained	411(a)(1)(A)(vii).
61. Citizenship/Alienage	411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect the complexity of TANF; also 409(a)(1).
62. Number of Months Countable toward Federal Time Limit in Own State (Tribe).	409(a)(9).
63. Number of Months Countable toward Federal Time Limit in Other States or Tribes.	409(a)(9).
64. Number of Countable Months Remaining Under State's Time Limit	409(a)(9).
65. Is Current Month Exempt from the State's Time Limit	409(a)(9).
66. Employment Status	411(a)(1)(A)(v).
67. Work Participation Status	411(a)(1)(A)(xii): Needed to calculate the work participation rate.
Adult Work Participation Activities—Items 68–81 are the work participation activities and are needed to calculate the work participation rate.	
68. Unsubsidized Employment	411(a)(1)(A)(xi)(III).
69. Subsidized Private Sector Employment	411(a)(1)(A)(xi)(II).
70. Subsidized Public Sector Employment	411(a)(1)(A)(xi)(IV).
71. Work Experience	411(a)(1)(A)(xi)(IV).
72. On-the-job Training	411(a)(1)(A)(xi)(VI).
73. Job Search and Job Readiness Assistance	411(a)(1)(A)(xi)(V).
74. Community Service Programs	411(a)(1)(A)(xi)(IV).
75. Vocational Educational Training	411(a)(1)(A)(xi)(VII).
76. Job Skills Training Directly Related to Employment	411(a)(1)(A)(xi)(VI).
77. Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.	411(a)(1)(A)(xi)(I).
78. Satisfactory School Attendance for Individuals with no High School Diploma or Certificate of High School Equivalency.	411(a)(1)(A)(xi)(I).
79. Providing Child Care Services to an Individual who is Participating in a Community Service Program.	411(a)(1)(A)(xi).
80. Additional Work Activities Permitted Under Waiver	411(a)(1)(A)(xii): Use to calculate work participation rate, when approved 1115 waiver permits other work activities.

Data elements	Justification
81. Other Work Activities	Related to 411(a)(1)(A)(xii) and 409(a)(3).
82. Required Hours of Work Under Waiver	411(a)(1)(A)(xii): Use to calculate the Work participation rate, when approved 1115 waiver permits a different number of hours of work participation to count as engaged in work.
Adult Earned Income—Items 83 and 84 break out earned income.	
83. Earned Income Tax Credit (EITC)	411(a)(1)(A)(v).
84. Wages, Salaries, and Other Earnings	411(a)(1)(A)(v).
Adult Unearned Income—Items 85 and 88 break out Unearned income.	
85. Amount of Social Security	411(a)(1)(A)(xiv).
86. Amount of SSI	411(a)(1)(A)(xiv).
87. Amount of Worker's Compensation	411(a)(1)(A)(xiv).
88. Amount of Other Unearned Income	411(a)(1)(A)(xiv).
Child Characteristics—Items 89–109.	
89. Family Affiliation	411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.
90. Date of Birth	411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.
91. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.*, to track individual members of the TANF family).
92. Race	411(a)(1)(A)(viii).
93. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.*, husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits	
94. Receives Benefits Based on Federal Disability Status	411(a)(1)(A)(ii) as revised by P.L. 105–33.
95. Receives Aid Under Title XVI–SSI	411(a)(1)(A)(ii) as revised by P.L. 105–33.
96. Relationship to Head-of-household	411(a)(1)(A)(iv) as revised by P.L. 105–33.
97. Teen Parent with Child in the Family	411(a)(1)(A)(xvii) as revised by P.L. 105–33.
Child Educational Level—Items 101 and 102.	
98. Highest Level of Education Attained	411(a)(1)(A)(viii).
99. Highest Degree Attained	411(a)(1)(A)(viii).
100. Citizenship/Alienage	411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect TANF; also 409(a)(1).
101. Cooperation with Child Support	409(a)(5).
Child Unearned Income—Items 105 and 106.	
102. Amount of SSI	411(a)(1)(A)(xiv).
103. Amount of Other Unearned Income	411(a)(1)(A)(xiv)—rather than breaking out unearned income into its parts, we ask for an indicator that the recipient has certain types of unearned income.
Child Care Reporting Section—Items 107–109.	
104. Type of Child Care	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K(a)(2)(C).
105. Total Monthly Cost of Child Care	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K(a)(2)(C)). The Total Amount of the Child Care Subsidy (required by 411(a)) may be derived from this item and the total Monthly cost of child Care.
106. Total Monthly Hours of Child Care Provided During the Reporting Month.	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K(a)(2)(C).

Appendix J—Statutory Reference Table for Appendix B

Data elements	Justification
1. State FIPS Code	Implicit in administering data collection system.
2. County FIPS Code	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
3. Tribal Code	Implicit in administering data collection system.
4. Reporting Month	Implicit in administering data collection system.
5. Stratum	Implicit in administering data collection system.
Family Level Data—Items 6–16.	
6. Case Number	Implicit in administering data collection system.
7. ZIP Code	Needed for geographic coding (and rural/urban analyses) and is readily available.
8. Disposition	Implicit in administering data collection system.
9. Reason for Closure	411(a)(1)(A)(xvi).
10. Number of Family Members	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
11. Receives Subsidized Housing	411 (b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
12. Receives Medical Assistance	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
13. Receives Food Stamps	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
14. Amount of Food Stamp Assistance	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
15. Receives Subsidized Child Care	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
16. Amount of Subsidized Child Care	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Characteristics—Items 17–39.	
17. Family Affiliation	Needed to identify persons in State-defined family and other individuals living in the household.
18. Date of Birth	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
19. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.*, to track individual members of the TANF family).
20. Race	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
21. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.*, husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits—Items 22–26.	
22. Receives Federal Disability Insurance Benefits	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
23. Receives Benefits Based on Federal Disability Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
24. Receives Aid Under Title XIV–APDT	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
25. Receives Aid Under Title XVI–AABD	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
26. Receives Aid Under Title XVI–SSI	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
27. Marital Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
28. Relationship to Head-of-Household	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
29. Teen Parent with Child in the Family	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Educational Level—Items 30 and 31.	
30. Highest Level of Education Attained	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.

Data elements	Justification
31. Highest Degree	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
32. Citizenship/Alienage	411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.
33. Number of Months Countable toward Federal Time Limit in Own State (Tribe).	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
34. Number of Months Countable toward Federal Time Limit in Other States or Tribes.	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
35. Number of Countable Months Remaining Under State's Time Limit	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
36. Employment Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Earned Income—Items 37 and 38 break out earned income	
37. Earned Income Tax Credit (EITC)	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
38. Wages, Salaries, and Other Earnings	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
39. Unearned Income	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Child Characteristics—Items 40–52.	
40. Family Affiliation	Needed to identify persons in State-defined family and other individuals living in the household.
41. Date of Birth	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
42. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.*, to track individual members of the TANF family).
43. Race	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
44. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.*, husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits—Items 45–49.	
45. Receives Benefits Based on Federal Disability Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
46. Receives Aid Under Title XVI–SSI	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
47. Relationship to Head-of-Household	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
48. Teen Parent with Child in the Family	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
49. Highest Level of Education Attained	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Child Educational Level—Items 52 and 53.	
50. Highest Degree	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
51. Citizenship/Alienage	411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.
52. Cooperation with Child Support	411(b): Use to construct comparable statistics based on 409(a)(5), for families receiving assistance.
53. Unearned Income	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.

Appendix K—Statutory Reference Table for Appendix C

Data elements	Statutory basis
1. State FIPS Code	Implicit in administering data collection system.
2. Tribal Code	Implicit in administering data collection system.
3. Calendar Quarter	Implicit in administering data collection system.
4. Total Number of Applications	411(b): Use in Report to Congress.

Data elements	Statutory basis
5. Total Number of Approved Applications	411(a): Implicit in use of samples. Needed to weight sample data report for the newly, approved applicants portion of the sample.
6. Total Number of Denied Applications	411(b): Use in Report to Congress.
7. Total Amount of Assistance	411(a)(6) as revised by P.L. 105–33.
8. Total Number of Families	411(a)(6) as revised by P.L. 105–33.
	407(b)(3): Use in calculation of caseload reduction for adjusting the participation rate standard.
	411(a): Implicit in use of samples to weight State data to national totals.
9. Total Number of Recipients	411(a)(6) as revised by P.L. 105–33.
10. Total Number of Adult Recipients	411(a)(6) as revised by P.L. 105–33.
11. Total Number of Child Recipients	411(a)(6) as revised by P.L. 105–33.
12. Total Number of Two-Parent Families	411(a)(6) as revised by P.L. 105–33.
	407(b)(3): Use in calculation of caseload reduction for adjusting the participation rate standard.
13. Total Number of One-Parent Families	411(a)(6) as revised by P.L. 105–33.
14. Total Number of No-Parent Families	411(a)(6) as revised by P.L. 105–33.
15. Total Number of Non-custodial Parents Participating in Work Activities.	411(a)(4).
16. Total Number of Minor Child Heads-of-Household	Used to test the reliability and representativeness of the sample.
	411(b): Use in Report to Congress.
17. Total Number of Births	413(e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births.
18. Total Number of Out-of-Wedlock Births	413(e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births.
19. Total Number of Closed Cases	411(a): Implicit in use of samples. Needed to weight sample data report for families no longer receiving assistance.

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November 20, 1997

Part III

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 3

Federal Reserve System
12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation
12 CFR Part 325

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 567

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Correction; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–22]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0995]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB31

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–06]

RIN 1550–AB11

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Correction

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking; correction.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the agencies) are issuing a correction to its joint notice of proposed rulemaking published on November 5, 1997 to clarify three of the tables contained in the preamble to the rule. The proposed rule would revise the agencies' risk-based capital standards to address recourse and direct credit substitutes.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Office of Thrift Supervision, (202) 906–7135; or any of the persons listed in the joint notice of proposed rulemaking.

SUPPLEMENTARY INFORMATION: On November 5, 1997, the agencies published a joint notice of proposed rulemaking concerning recourse and direct credit substitutes. 62 FR 59944 (November 5, 1997). It has been determined that three of the tables appearing in the preamble at 62 FR 59958–59959 are in need of clarification. These tables, entitled "Residential Mortgage-Backed Securities," "Asset-Backed Securities," and "Commercial Mortgage-Backed Securities," are being reprinted in their entirety at the end of this correction document.

Dated: November 10, 1997.

Jessie Gates,

Federal Register Liaison, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 10, 1997.

Barbara R. Lowrey,

Associate Secretary of the Board.

Dated at Washington, D.C., this 12th day of November, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: November 7, 1997.

By the Office of Thrift Supervision.

Mary H. Gottlieb,

Federal Register Liaison Officer.

The corrected tables follow:

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

Residential Mortgage-Backed Securities

Pool Type[1]	"Rating Benchmark" Prior Credit Enhancement Required for "A" Rating	Pool Standards
30-year loans	1.6 percent	Pools include at least 400 loans for each pool type.
15-year loans	0.8 percent	
Adjustable Rate Mortgages (ARMs) (1,5), (2,6)	2.4 percent	No borrower concentration over 3 percent for each pool type.
Hybrid loans (fixed-to-variable)	2.4 percent	
Balloon loans	2.0 percent	
	For no documentation and reduced documentation loans, multiply the above enhancements by 2. For condominiums, two-to-four family, and cooperative apartments, multiply the above enhancements by 2. For B and C loans, multiply the above enhancements by 3. For loan-to-value (LTV) ratios equal to or below 80 percent: – Use above enhancements. – Multiply above enhancements by 2, if there is private mortgage insurance (PMI) that brings loans below 80 percent. For LTV ratios above 80 percent, multiply the above enhancements by 4. For the first five years of the securitization, the above enhancement requirement, as a percentage of the outstanding principal, remains fixed. For years six through ten, the enhancement requirement would be multiplied by 0.75. Beyond ten years, the enhancement would be multiplied by 0.5[2,4].	

1 For positions that represent less than 10 percent of the size of the underlying pool of loans, add 20 percent to the enhancement level.
2 For closed-end second mortgage securities, determine the LTV ratio of the loans in the security and apply the enhancement requirements for the underlying collateral. In addition, change the 15-year enhancement requirement to 1.6 percent due to increased risk of security.
3 The reduction in the mulipliter over time reflects the reduced risk of the mortgage portfolio due to seasoning.
4 For a six-year old 15-year mortgage-backed security backed by B and C loans that have LTV ratios above 80 percent, the enhancement would be 0.8 percent x 3 x 4 x 0.75 = 7.2 percent.

Asset-Backed Securities

Pool Type[1]	"Rating Benchmark" Prior Credit Enhancement Required for "A" Rating	Pool Standards
Credit Cards[2]	The higher of 6 percent or 1.2 times lagged charge-off rate[3].	Enhancement has access to excess spread.
Auto Loans Prime (A type) Sub-prime (B, C, and D types)	7.0 percent The higher of 15.0 percent or 3 times net expected loss rate[4].	Sellers of automobile loans must have at least three years of historical information. Enhancement has access to excess spread.
Trade Receivables	12.0 percent per loan pool[5] (if all sellers of trade receivables are rated 1 or 2) 18.0 percent per loan pool[5] (if any seller of trade receivables is rated 3 or 4 and no lower than 4)	Pools may not have seller concentrations above 5 percent of pool amount. Based on Federal Reserve Board rating criteria for trade receivables, each seller must be rated between 1 and 4.
	All of the above enhancements will remain fixed as a percentage of outstanding principal, with a floor of 3 percent of original principal.	For credit cards and auto loans, pool must be randomly selected and nationally-diversified.

1 For positions that represent less than 10 percent of the size of the underlying pool of loans, add 20 percent to the credit enhancement level.
2 Credit cards include home equity lines of credit that are similar to credit card loans.
3 Lagged charge-off rate is based on the monthly average of past six month's charge-offs, multiplied by twelve, then divided by the average outstanding balance from a year ago.
4 Net expected loss rate is the monthly average of last quarter's gross default amount netted against recoveries, multiplied by twelve, then divided by the average outstanding loan balance for the last quarter.
5 Overcollateralization amount would count toward credit enhancement.

Commercial Mortgage-Backed Securities

Pool Type[1]	"Rating Benchmark" Prior Credit Enhancement Required for "A" Rating	Pool Standards
Office	26.0 percent	Debt-service coverage at least 1.25
Regional Mall	10.0 percent	Debt-service coverage at least 1.35
Industrial/Anchored Retail	13.0 percent	Debt-service coverage at least 1.35
Multifamily	17.0 percent	Debt-service coverage at least 1.25
	The above enhancements are for pools of loans with loan-to-value ratios less than or equal to 70 percent. For pools of loans with greater than 70 percent loan-to-value ratio, multiply the above enhancements by 1.5. For pools with property quality below the B level, multiply the above enhancements by 1.5. The above enhancements will remain fixed as a percentage of outstanding principal, with a floor of 3 percent of original principal.[2]	For each type of pool above: – No borrower concentration over 5 percent of pool amount. – The amortization schedule does not exceed 25 years.

1 For positions that represent less than 10 percent of the underlying pool of loans, add 20 percent to the credit enhancement level.
2 For example, the enhancement for a security containing regional mall loans with an 80 percent LTV ratio and B quality property would be 10 percent x 1.5 x 1.5 = 22.5 percent.

[FR Doc. 97–30544 Filed 11–19–97; 8:45 am]
BILLING CODE 4810–33–C, 4810–01–C, 6714–01–C, 6720–01–C

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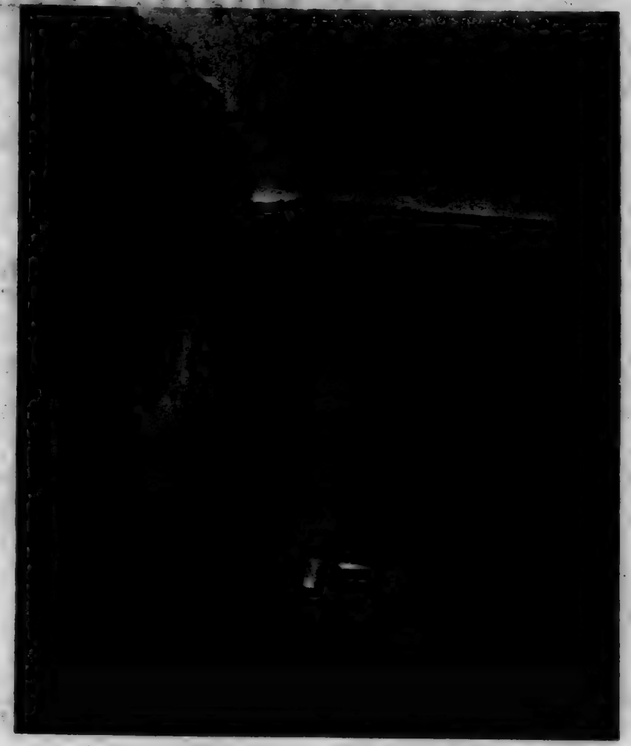
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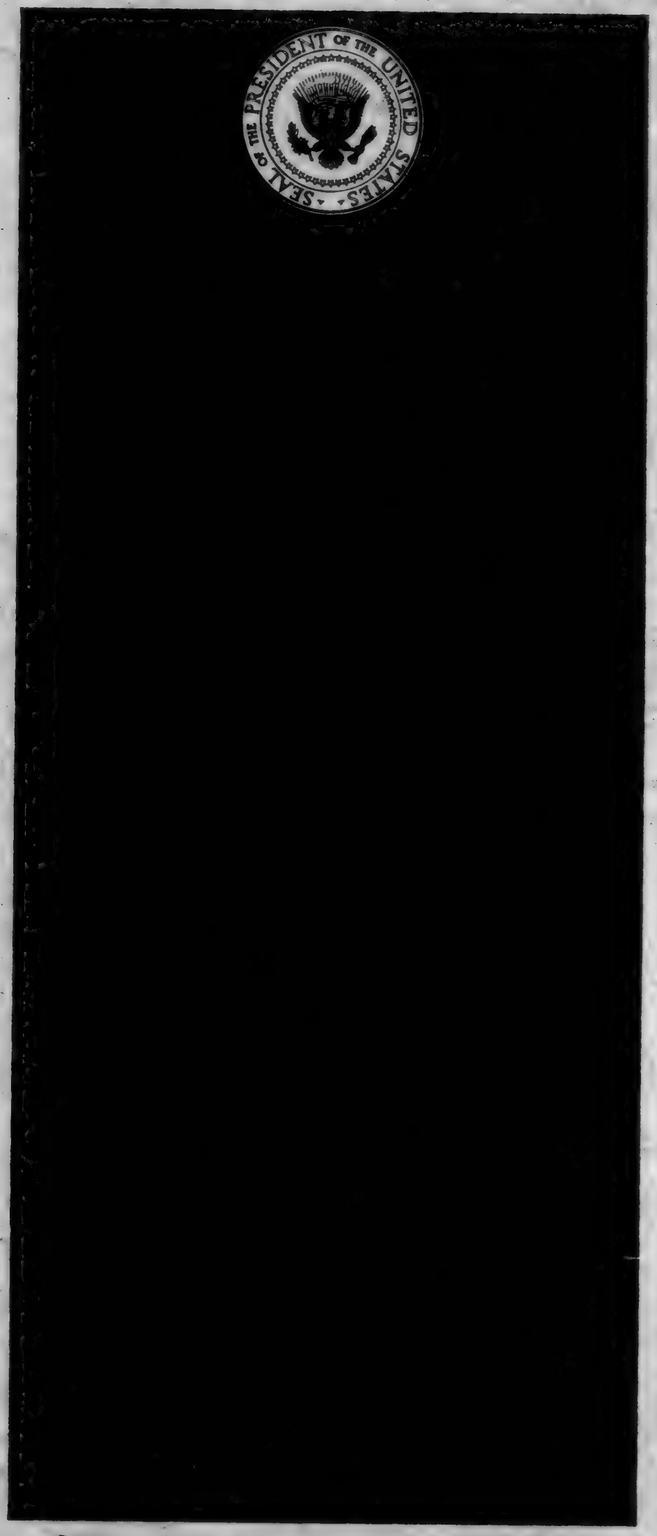
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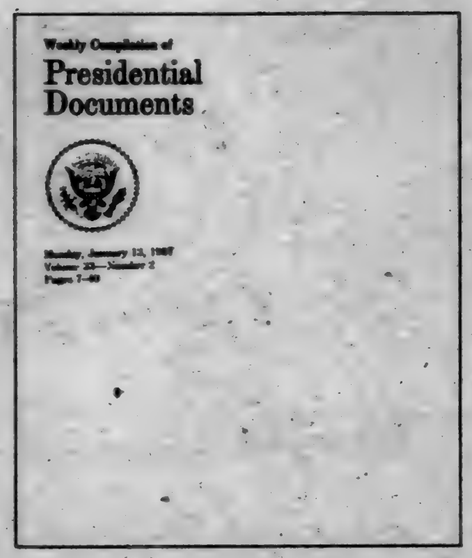
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Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 62, No. 225
Friday, November 21, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–22–AD; Amendment 39–10211; AD 97–24–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Eurocopter) Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters. This action requires a visual inspection of the main rotor blade reinforcement strips for debonding between the reinforcement strips of the blade; and a visual inspection of the main rotor blade (blade) skin for cracks or corrosion, and replacement of the blade with an airworthy blade if certain debonding or a crack or corrosion is found. This amendment is prompted by an accident in which a blade separated in flight. The actions specified in this AD are intended to detect debonding, cracks, or corrosion in the affected blades and to prevent failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective December 8, 1997.

Comments for inclusion in the Rules Docket must be received on or before January 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction General De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters with part number (P/N) 3130–S–11–10000, 3130–S–11–20000, or 3130–S–11–30000 main rotor blades installed. The DGAC advises that fatigue cracks, initiated by skin debonding or skin corrosion in the area of the reinforcement strip, may develop in the blade skin near the blade root, resulting in failure of the blade in flight and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter Telex Service 0033/00169/97, dated June 18, 1997, which specifies visual inspections of the blade root skin and reinforcement strip for bonding separation, and replacement of the blade with an airworthy blade if bonding separation is found; and a visual inspection of the blade root skin for cracks and corrosion, and replacement of the blade with an airworthy blade if cracks or corrosion are found. The DGAC classified this Telex Service as mandatory and issued AD 97–135–055(B) in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 318C helicopters of the same type design registered in the United States, this AD is being issued to detect debonding, cracks, or corrosion in the affected blades and to prevent failure of a blade and subsequent loss of control of the helicopter. This AD requires a visual inspection in the area extending 5 mm (0.200 inch) from the strip reinforcing the inboard edge of the blade as shown in Figure 1 for debonding between the main rotor blade skin and reinforcement strip, and replacement of the main rotor blade with an airworthy blade if debonding is found; a visual inspection for debonding between the blade and the reinforcement strip on the leading edge of the blade that covers the blade spar, and replacement with an airworthy blade if debonding is present for more than 0.750 inch^2 (500 mm^2); and a visual inspection of the main rotor blade skin for cracks and corrosion, and replacement with an airworthy blade if any crack or corrosion is found.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–22–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–24–04 Eurocopter France: Amendment 39–10211. Docket No. 97–SW–22–AD.

Applicability: Model SE 3130, SE 313B, SA 3180, SA 318B, and SA 316C helicopters with part number (P/N) 3130–S–11–10000, 3130–S–11–20000, or 3130–S–11–30000 main rotor blades, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect debonding, cracks, or corrosion in the affected blades and to prevent failure of a main rotor blade (blade) and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter at intervals not to exceed 25 hours time-in-service, for part number (P/N) 3130–S–11–10000, 3130–S–11–20000, or 3130–S–11–30000, visually inspect:

(1) For debonding in the area extending 5 mm (0.200 inch) from the strip reinforcing the inboard edge of the blade as shown in Figure 1. If there is any debonding of the reinforcement strip, replace the blade with an airworthy blade.

(2) For debonding between the blade and the reinforcement strip on the leading edge of the blade that covers the blade spar. If debonding is present for more than 0.750 inches^2 (500 mm^2) at any point on the blade, replace the blade with an airworthy blade.

(3) For cracks in the blade skin in the first 12 inches (300 mm) of the blade measured from the root reinforcement strip using a 3× or higher magnifying glass. If any crack is found, replace the blade with an airworthy blade.

(4) For corrosion in the blade skin in the first 12 inches (300 mm) of the blade measured from the root reinforcement strip. If any corrosion is found, replace the blade with an airworthy blade.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits are prohibited.

(d) This amendment becomes effective on December 8, 1997.

Note 3: The subject of this AD is addressed in Direction General De L'Aviation Civile (France) AD 97–135–055(B), dated June 20, 1997.

BILLING CODE 4910–13–U

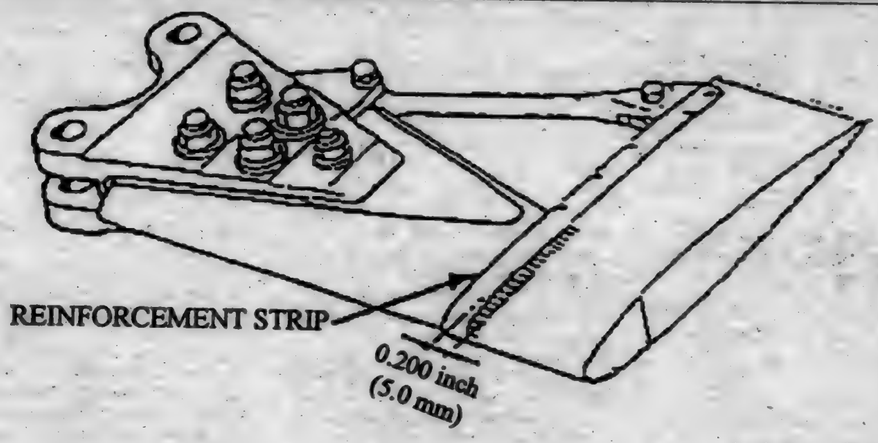


Figure 1

BILLING CODE 4910–13–C

Issued in Fort Worth, Texas, on November 14, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30603 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Schering-Plough Animal Health Corp. to Sioux Biochemical, Inc.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, has informed FDA that it has transferred ownership of, and all rights and interests in NADA 9–505 (follicle stimulating hormone) to Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250. Accordingly, the agency is amending the regulations in 21 CFR 522.1002 to reflect the transfer of ownership. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by alphabetically adding a new listing for Sioux Biochemical, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Sioux Biochemical, Inc." and in the table in paragraph (c)(2) by numerically adding a new entry for "063112" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * *
Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250	063112
* * *	* * *

(2) * * *

Drug labeler code	Firm name and address
063112	Sioux Biochemical, Inc., 204 Third St. NW., Sioux Center, IA 51250

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1002 [Amended]

4. Section 522.1002 *Follicle stimulating hormone* is amended in paragraph (b)(2) by removing "000061" and adding in its place "063112".

Dated: November 6, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–30563 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Doramectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for intramuscular use of doramectin in swine for the treatment and control of certain infections of nematode and arthropod parasites.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, is sponsor of NADA 141–061, which provides for the subcutaneous and intramuscular use of Dectomax® 1 percent injectable solution (doramectin) for treatment and control of certain gastrointestinal roundworms, lungworms, eyeworms, grubs, lice, and mange mites of cattle, and to control infections and to protect cattle from reinfection with *Ostertagia ostertagi* for 21 days, and *Cooperia punctata* and *Dictyocaulus viviparus* for 28 days after treatment. The firm filed a supplemental NADA that provides for intramuscular use of doramectin in swine for the treatment and control of certain infections of gastrointestinal roundworms, lungworms, kidney worms, sucking lice, and mange mites. The supplemental NADA is approved as of September 18, 1997, and the regulations are amended in 21 CFR 522.770(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, a tolerance for residues of doramectin in edible swine tissues has not been previously established. Section 556.225 (21 CFR 556.225) is amended to provide for a tolerance for residues of doramectin in swine tissues.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 18, 1997, because the supplement contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplemental application and conducted or sponsored by the applicant. Exclusivity applies only to the added indication for the treatment and control of gastrointestinal roundworms, lungworms, kidneyworms, sucking lice, and mange mites in swine.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.770 is amended by revising the heading of paragraph (d) and redesignating paragraphs (d)(1), (d)(2), and (d)(3) as paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), respectively, and by adding new paragraph (d)(2) to read as follows:

§ 522.770 Doramectin.

* * * * *

(d) *Conditions of use*—(1) *Cattle.* (i) *Amount.* * * *

* * * * *

(2) *Swine.* (i) *Amount.* 300 micrograms per kilogram (10 milligrams per 75 pounds).

(ii) *Indications for use.* For treatment and control of gastrointestinal roundworms, lungworms, kidney worms, sucking lice, and mange mites.

(iii) *Limitations.* Administer as a single intramuscular injection. Do not slaughter swine within 24 days of treatment. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.225 is revised to read as follows:

§ 556.225 Doramectin.

A tolerance of 0.1 part per million (ppm) is established for parent doramectin (marker residue) in liver (target tissue) of cattle and 0.16 ppm in liver of swine.

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30562 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Clopidol and Bacitracin Zinc With Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The abbreviated NADA provides for using approved clopidol, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, improved feed efficiency, improved pigmentation, and increased rate of weight gain.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–207 that provides for combining approved clopidol, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated feeds for broilers containing clopidol 113.5 grams per ton (g/t) and bacitracin zinc 4 to 25 g/t with roxarsone 45.4 g/t. The Type C medicated feed is used as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.

Alpharma Inc.'s ANADA 200–207 is approved as a generic copy of Rhone-Poulenc, Inc.'s NADA 44–016. The ANADA is approved as of November 21, 1997 and 21 CFR 558.175 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, from 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.175 [Amended]

2. Section 558.175 *Clopidol* is amended in paragraph (d)(1)(iii)(*b*) by removing "No. 000061" and adding in its place "Nos. 000061 and 046573."

Dated: November 7, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30564 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 96N–0062]

RIN 0910–ZA03

Medical Devices; Classification/Reclassification; Restricted Devices; Analyte Specific Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to classify/reclassify analyte specific reagents (ASR's) presenting a low risk to public health into class I (general controls), and to exempt these class I devices from the premarket notification (510(k)) requirements. FDA is classifying/reclassifying ASR's used in certain blood banking tests as class II (special controls) because general controls are insufficient to provide a reasonable assurance of safety and effectiveness. Finally, ASR's presenting a high risk are being classified or retained in class III (premarket approval). FDA is also designating all ASR's as restricted devices under the Federal Food, Drug, and Cosmetic Act (the act), and establishing restrictions on their sale, distribution and use. The scope of products covered by this final rule includes both pre-1976 devices, which have not been previously classified, as well as post-1976 devices, which are statutorily classified into class III. The intent of this final rule is to regulate these pre- and post-1976 devices in a consistent fashion. This rulemaking does not affect requirements for reagents that are subject to licensure under the Public Health Service Act (the PHS Act). This rulemaking also does not affect reagents sold to nonclinical settings, including those reagents sold as components to manufacturers of cleared or approved in vitro diagnostic tests.

DATES: This rule is effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Steven I. Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

The the act (21 U.S.C. 201 *et seq.*), as amended by the Medical Device

Amendments of 1976 (Pub. L. 94–295) (the amendments) and the Safe Medical Devices Act of 1990 (Pub. L. 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the degree of regulatory controls needed to protect the public health. The three categories of devices are as follows: Class I, general controls; class II, special controls; and class III, premarket approval.

Devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), are classified under section 360c of the act after FDA has: (1) Received a recommendation from a classification panel, an FDA advisory committee, (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. A device that is first offered in commercial distribution after May 28, 1976, and is substantially equivalent to a device classified under this scheme, is also classified into the same class as the device to which it is substantially equivalent.

A device that was not in commercial distribution prior to May 28, 1976, and that is not substantially equivalent to a preamendments device, is classified by statute into class III without any FDA rulemaking proceedings. FDA determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

FDA held a meeting of its Immunology Devices Panel (the Panel) on January 22, 1996, to seek expert advice and public input on determining the regulatory controls to be placed on commercially marketed ASR's. ASR's are reagents composed of chemicals or antibodies that may be thought of as the "active ingredients" of tests that are used to identify one specific disease or condition. ASR's are purchased by manufacturers who use them as components of tests that have been cleared or approved by FDA and also by clinical laboratories that use the ASR's to develop in-house tests used exclusively by that laboratory. These in-house developed tests (sometimes referred to as "home brew" tests) include those that measure a wide variety of antibodies used in the diagnosis of infectious diseases, cancer, genetic, and various other conditions.

The Panel recommended that most ASR's be classified into class I because the Panel believed that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of these ASR's. The Panel's recommendation for classification was based on the applicability of the general controls usually associated with class I products (e.g., registration, listing, current good manufacturing practice (CGMP), and medical device reporting), as well as the inclusion of restrictions on distribution, use and labeling. The Panel determined that the primary risks to health presented by ASR's sold to clinical laboratories are that they may be manufactured with variable quality, or be inappropriately labeled, or be used by persons without adequate qualifications. The Panel was also concerned that practitioners ordering the in-house tests made from ASR's may be unaware that the clinical performance characteristics of these tests have not been independently reviewed by FDA. In addition, the Panel identified a subset of ASR's whose use posed unique risks to public health because of the substantial clinical impact of the information generated using these devices.

After the Panel meeting, FDA published a proposed rule to regulate ASR's (61 FR 10484, March 14, 1996). FDA received 31 comments on the proposed rule from individuals, manufacturers, professional societies, and consumer and health associations. The majority of the comments support the regulations proposed by FDA. A summary of the comments and FDA's response to them is provided below:

II. The Final Rule

A. General Approach

The final rule classifies or reclassifies the majority of ASR's as class I medical devices. The final rule also exempts these class I devices from the premarket notification requirements of section 510(k) of the act. A small number of ASR's are being classified in class II or III because the agency has determined that additional requirements are necessary for their safe and effective use. Under the authority of section 520(e) of the act (21 U.S.C. 360j(e)), the final rule restricts the sale, distribution or use of all ASR's subject to the rule. FDA has determined that these restrictions are necessary to provide a reasonable assurance of the safety and effectiveness of ASR's, commensurate with their potentiality for harmful effect or the collateral measures necessary to their use. The final rule restricts ordering the use of in-house developed tests using ASR's to physicians or other health care practitioners authorized by applicable state law to access such tests. The final rule also restricts the sale of ASR's to those clinical laboratories regulated under Clinical Laboratory Improvement Amendments of 1988 (CLIA) as qualified to perform high complexity testing. In order to clarify that the rule is intended to allow ASR's to be sold to State laboratories exempt from CLIA certification, the language of the regulation has been modified to refer to laboratories "regulated" under CLIA rather than "certified" under CLIA as had been proposed. In addition, to clarify that ASR's may be sold to Department of Veterans Affairs (Veterans Affairs) laboratories not covered by CLIA, the regulation has been modified to include Veterans Affairs laboratories regulated under comparable laws; currently that law is Pub. L. 102–139. The rule requires those laboratories covered by the regulation to provide a disclaimer with the results obtained through use of in-house developed tests incorporating these ASR's. The rulemaking does not affect reagents sold to nonclinical settings, including those sold as components to manufacturers of approved or cleared in vitro diagnostic tests. The rulemaking does not affect requirements for reagents that are subject to licensure under the PHS Act.

B. Class II or III ASR's

FDA has identified a small subset of ASR's that require class II special controls to provide a reasonable assurance of safety and effectiveness; these are ASR's used in blood banking tests classified as class II devices where the underlying tests have already been cleared for marketing under section 510(k) of the act.

Class II blood banking tests fall into two categories. One category consists of blood banking tests required by FDA that screen for diseases with a low potential for transmission. The second category consists of certain blood banking tests used electively by blood banks to screen for diseases that are likely to be transmitted to subsets of blood unit recipients known to be at greater risk of infection. An example of the second category is cytomegalovirus serological reagents, which are used in tests that aid in the diagnosis of diseases caused by cytomegaloviruses. An example of the first category is treponema pallidum nontreponemal test reagents, which are used in tests that aid in the diagnosis of syphilis.

Class II ASR's will be subject to special controls that consist of the following National Committee for Clinical Laboratory Standards (NCCLS) documents: (1) "Specifications for Immunological Testing for Infectious Disease; Approved Guideline" (December 1994, NCCLS Document I/LA18–A) and (2) "Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots; Tentative Guideline" (December 1993, NCCLS Document KGP10–T) and the following FDA guidance documents: (1) "Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium spp." (July 6, 1993) and its "Attachment 1" (February 28, 1994); (2)" Draft Review Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms" (June 14, 1993); and (3) the Center for Biological Evaluation and Research's "Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type I" (54 FR 48943, November 28, 1989). FDA believes these special controls are sufficient to ensure safe and effective use of these ASR's because these ASR's have previously been evaluated in tests classified as class II and cleared by FDA.

Persons interested in obtaining the documents previously referenced should refer to section IV in this document on "Access to Special Controls."

In addition to the small subset of ASR's discussed above that have been identified as class III, FDA also has identified another small subset of ASR's for which class III premarket approval is necessary to protect the public health. These class III ASR's are those whose use poses unique risks because of the substantial clinical and public health impact of the information generated by using these devices. This subset of ASR's are those incorporated in tests intended to diagnose those contagious diseases that are highly likely to be fatal and where accurate diagnosis offers an opportunity to mitigate the public health impact of the condition or those ASR's incorporated in class III tests intended to establish the safety of blood and blood products, including genetic tests intended to ensure the safety of the blood supply. Examples of class III ASR's include ASR's used in tests to diagnose human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) or tuberculosis.

Under § 864.4020(b) (21 CFR 864.4020(b)), those analyte specific reagents that meet the class II or III ASR definition will be reviewed as a component of a test or kit. Because of the serious health risks associated with diseases diagnosed by tests utilizing class II or III ASR's, FDA believes that meaningful safety and effectiveness determinations require a review of the performance of the entire test or kit, including directions for use and expected analytical or clinical performance. Accordingly, FDA will undertake premarket review of the performance of the ASR and the test of which it is a component to determine the substantial equivalence or safety and effectiveness of class II and III ASR's. As a result, it is expected that most class II and III ASR's will not be marketed as independent components, separate from the test. Where manufacturers of the approved test or kit intend to market these class II and III ASR's independently, without the other components of the test, the restrictions issued under section 520(e) of the act will continue to apply. Cleared or approved class II or III ASR's that are marketed independently of kits may be sold only to in vitro diagnostic (IVD) manufacturers, laboratories qualified to do high complexity testing under CLIA, or nonclinical laboratories for research or other uses. These independently marketed ASR's must be labeled in accordance with § 809.10(e) (21 CFR 809.10(e)), which has been amended to include the following statement: "Except as a component of the approved test (Name of approved test), analytical and performance characteristics are not established."

Although manufacturers of Class II or III ASR's marketed as independent components are prohibited from making statements regarding the analytical or clinical performance of the ASR, they may identify the approved test or kit. Because the clinical laboratory is accountable for the use of the independently marketed ASR and its performance as a part of a test, the disclaimer required by § 809.30(e) (21 CFR 809.30(e) must be appended to the results of in-house developed tests using class II or III ASR's just as it is required with reports of results using class I ASR's. The same statement, of course, would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

C. General Controls

The final rule requires biological or chemical manufacturers and suppliers of ASR's to register with FDA and provide FDA with a list of the ASR's they supply to laboratories for use in developing in-house tests. The final rule also requires manufacturers and suppliers to conform to CGMP requirements (part 820 (21 CFR part 820)), as applicable. The final rule further requires manufacturers and suppliers to comply with medical device report (MDR) requirements (21 CFR part 803) and report to FDA adverse events that may have been due to the ASR's. FDA believes that these general controls address the risk to the public health presented by ASR's that may be manufactured with variable quality.

To reduce the burden on industry of complying with CGMP's, manufactures and suppliers have until November 23, 1998 to comply with part 820.

D. General Purpose Reagents

FDA has amended the definition of general purpose reagents to complement and be consistant with the ASR definition by adding language clarifying the distinction between ASR's and general purpose reagents.

E. Genetics Testing

FDA does not intend, at this time, to regulate ASR's used in genetic testing differently from other restricted class I medical devices that are exempt from premarket notification requirements. The ASR regulations are drafted to classify most ASR's used to develop in-house tests as class I devices because FDA believes this degree of regulatory control is commensurate with the need to bring consistency to the manufacture of these devices and to assure their safety and effectiveness when used by health and scientific personnel trained in laboratory practices.

FDA considered identifying a subset of ASR's that are used to develop tests intended for predictive genetic diagnosis as ASR's that pose unique risks to the public health because of the substantial clinical impact of the information generated using these devices. For the genetic tests currently in use, FDA is aware that both the genetic test and the ASR used in the genetic test are developed by the laboratory in-house. Because these ASR's are not being commercially marketed independently of the tests, they do not currently fall within the scope of this regulation. Nonetheless, FDA considered designating as class III devices those ASR's that would be marketed independently for use in tests intended for use in overtly healthy people to identify a genetic predisposition to a dementing disease, or to fatal or potentially fatal medical disorders (e.g., cancers or Alzheimer's disease), in situations where penetrance is poorly defined or variable and latency is 5 years or longer. However, after reviewing the comments and currently

available information, FDA has not yet identified criteria that would logically distinguish among genetic tests in order to determine which have the requisite impact to trigger more stringent controls. FDA has determined that the special issues related to genetic testing or predictive genetic testing do not warrant establishing a more stringent degree of regulatory control over ASR's used in those tests at this time. FDA believes that regulating most ASR's as restricted class I devices exempt from premarket notification establishes appropriate initial controls in the event more stringent requirements are later determined to be necessary for ASR's used in genetic tests.

FDA is aware of the public concern and desire that the regulation of products used in genetic testing be done in a thoughtful and prudent manner. As stated previously, FDA intends, with this regulation, to establish appropriate initial controls for ASR's use in genetic tests and to review agency policies relating to many aspects of regulation of genetic testing after FDA has had an opportunity to evaluate anticipated final recommendations from National Institute of Health's (NIH's) Task Force on Genetics Testing and other interested parties. After this review, FDA may propose additional regulation of genetic tests.

F. Definition of an ASR

Most comments found FDA's proposed definition for an ASR to be acceptable. However, FDA has decided to make minor changes to clarify the definition in response to some comments. FDA has amended § 864.4020(a) to clarify that the regulation only applies to reagents intended for use in a diagnostic application. FDA also has added the term "ligand" to the categories of materials that are within the definition of ASR because ligands bind the reagents to the analytes. Finally, FDA has amended the definition to clarify that binding between ASR's and their analytes may be through physical or chemical means.

G. Disclaimer

Under § 809.30, FDA is requiring that a disclaimer be appended by the laboratory to the test report informing the ordering practitioner of the test results obtained from the test in which the ASR was used. The statement will say, "This test was developed and its performance characteristics determined by [Laboratory Name]. It has not been cleared or approved by the U.S. Food and Drug Administration." FDA believes the disclaimer clarifies the regulatory status of the test in which the ASR has been used, is consistent with other in vitro diagnostic labeling, and addresses the concern raised by the Panel that practitioners ordering the tests made from class I exempt ASR's or from class II or III ASR's marketed independently of an approved test may be unaware that the clinical performance characteristics of those tests have not been independently reviewed by FDA. The statement would not be applicable or required when test results are generated using the test that is cleared or approved in conjunction with review of the class II or III ASR. It will be FDA's responsibility to enforce the disclaimer requirement.

H. Sale Restrictions

The final rule does not regulate the sale of ASR's to nonclinical laboratories. FDA has amended § 809.30(a)(3) to clarify that ASR's may be sold for nonclinical uses or uses not directly related to patient care to academic and other research laboratories as well as to other nonclinical laboratories. It is not the intent of the ASR regulations to prevent the continued sale of ASR's to research institutions that are using these devices for nondiagnostic testing.

I. Labeling Changes and Ordering Restrictions

FDA has amended § 809.10(e)(9) to clarify that labeling for class I exempt ASR's must include the statement, "Analyte Specific Reagent. Analytical and performance characteristics are not established." For class II and III ASR's, FDA has amended § 809.10(e)(9) to clarify that labeling must include the statement "Analyte Specific Reagent. Except as a component of the approved/cleared test (Name of approved/cleared test), analytical and performance characteristics are not established." Such labeling is consistent with other IVD labeling and provides accurate information to users and purchasers of these products.

FDA has added § 809.10(f) to restrict ordering in-house developed tests using ASR's to physicians or other health care practitioners authorized by the law of the State in which the test is being offered. FDA believes that interpretation of results from in-house developed tests that use ASR's requires the expertise of a health care practitioner authorized by the State to provide a reasonable assurance of the safe and effective use of commercially marketed ASR's. Because the performance characteristics of the individual tests have not been cleared or approved by FDA, consumer use of such tests without the benefit of the experience of a health care professional would significantly undermine safe and effective use of those ASR's.

III. Response to Comments

A. Comments Received in Response to FDA's Solicitation of Opinions on Specific Issues

1. Genetic Testing

(Comment 1)

Several comments supported regulating ASR's used in genetic testing as class I exempt devices. Those comments asserted that:

(a) Use of genetic test results are better addressed through regulations pertaining to confidentiality of results, discrimination based on genetic information, and the qualifications of genetic counselors and physicians, and through standards and guidelines established by professional organizations rather than through more stringent device controls.

(b) CGMP requirements, labeling restrictions, as well as CLIA requirements for qualifying laboratories to perform high complexity testing adequately, address FDA concerns about the safety and effectiveness of ASR's used for such tests.

(c) More stringent classifications of ASR's used in genetic tests may hamper the availability of genetic testing, which would adversely affect the development and practice of genetic medicine by adding substantially to the time and expense associated with test development.

(d) Clinical laboratories have the responsibility and expertise to validate genetic tests, to establish standard operating procedures so that tests can be consistently replicated by technicians, and to generate in-house reference standards to test any new reagent lot for specificity.

(e) ASR's should not be singled out for more stringent classification because ASR's are only one component of the clinical assay; properties of the general reagents used in the assay, such as ionic strength, pH and concentration, as well as conditions and procedures at the test site, are also critical for determining analytical specificity.

(f) Genetic tests are not fundamentally different from other diagnostic technologies.

(g) The proposed ASR category would allow flexibility for medical decision making but a system that attempts to distinguish among different genetic categories of testing, such as diagnostic, carrier, population screening, or prenatal diagnosis, would be unwieldy.

(h) Many ASR's could be unintentionally overregulated if a higher classification was established for this group of ASR's because a majority of ASR's could be used as ingredients in a genetic test, even if they were not sold for that use.

Other comments supported different treatment for ASR's used in genetic tests:

(a) One comment suggested that it was premature to regulate ASR's composed of human genetic products as class I until the molecular basis of human disease is better understood. Another comment suggested that ASR's should be regulated as class III medical devices if the practice of making in-house assays of genetic tests directly available to consumers becomes widespread or problematic.

(b) Two comments recommended that ASR's used in genetic screening tests for predictive purposes in apparently healthy persons should be regulated more strictly than class I, for example, by requiring premarket notification.

(c) One comment proposed that ASR's whose only labeled indications are in the area of genetic predisposition or in prognostic situations with long latency periods should be regulated as class II or III devices.

(d) Two comments proposed regulating ASR's used in genetic testing as class II devices. One comment proposed special controls for these ASR's and no exemption from notification. The second comment would allow the sale of ASR's to laboratories without regard to certification by CLIA.

(e) Because the clinical validity of ASR's may be difficult to establish, their sensitivity and predictive value may not be high, and the benefits they confer are not proven, one comment recommended that ASR's used in genetic screening tests for predictive purposes in apparently healthy persons should be available on an investigational basis only. Another comment said they should be available on an investigative basis until clinical validity is proven, and then they should be classified as class III devices. Two comments recommended that they should be regulated as class III devices.

In general, FDA agrees with those comments that support regulating ASR's used in genetic tests as class I exempt. (See the discussion in section II.E. of this document.) The regulations were issued to apply to ASR's as a category of device, and most ASR's can be used in a variety of in-house developed tests. At this time, FDA does not believe there is a scientific basis to distinguish between tests based on the use of DNA and tests based on the use of other proteins or substances, or between tests based on the use of DNA and tests based on the use of other molecular diagnostic technologies. However, FDA recognizes that there are special issues related to genetic testing or predictive genetic testing and that these issues may affect the degree of regulatory control needed to establish the safety and effectiveness of these tests or the ASR's used in their development. As stated previously, FDA intends to review its decision with respect to regulatory control of genetic testing after it has had an opportunity to evaluate final recommendations from NIH's Task Force on Genetics Testing and other interested parties.

FDA believes that this final regulation will assure the quality of material being used to develop in-house genetics tests. When used as part of in-house developed tests, the ASR regulations restrict use of commercially marketed ASR's to tests that are ordered by an authorized practitioner and to those clinical laboratories regulated under CLIA as qualified to perform high complexity testing. Except when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR, FDA is also requiring that a disclaimer be appended to the test report stating that the clinical laboratory determined and developed the test performance characteristics and that the test that incorporated the ASR has not been cleared or approved by FDA. FDA believes these restrictions address many of the concerns raised by those comments supporting more stringent regulation of ASR's used in genetic testing. The issuance of these regulations does not preclude FDA from reevaluating in the future whether additional controls may be needed for genetics testing or for ASR's used in such tests. FDA will reevaluate whether additional controls may be needed to provide an appropriate level of consumer protection if further developments in this area result in significant uses of ASR's in genetic assays or other IVD tests offered over-the-counter (OTC).

(Comment 2)

One comment stated that issues raised by predictive testing which yields information about the potential future health status of the patient and his or her blood relatives have been addressed by policy statements from professional groups. This comment asserted that the most practical approach to oversight and regulation of genetic testing would build on the existing system of professional society standards, using a system that creates either incentives for compliance or disincentives for noncompliance. The comment also stated that reliance on voluntary professional standards would minimize costs to Government agencies and avoid burdening compliant manufacturers with unnecessary regulation. Another comment recommended that regulation of human genetic testing should be considered separately from decisions regarding the appropriate classification and regulatory controls applied to ASR's.

As stated previously, FDA recognizes that there are special issues related to genetic testing or predictive genetic testing. Implementation of a system based on professional standards for oversight of genetic testing is one option for addressing these issues. FDA does not believe the regulatory steps being taken in this final rule overly burden manufacturers or preclude other types of controls in the future, including systems based on the principles described in this comment.

2. Nucleic Acids

(Comment 3)

Several comments agreed with FDA's proposal to include human nucleic acids within the definition of ASR's. Those comments stated that: (a) It would be inconsistent to exclude human nucleic acids; (b) human nucleic acids are essential for good patient management where no FDA approved alternative test can substitute; (c) the scientific basis for nucleic acid hybridization and amplification techniques utilizing oligonucleotide ASR's have been known for many years so that adherence to CLIA regulations should be sufficient regulation; (d) because factors affecting test performance, reliability, and accuracy of test results are assay dependent and not disease dependent, all ASR's should be regulated similarly as class I devices exempt from premarket notification; (e) the ongoing refinement of reagents for diagnosis of susceptibility genes required by the practice of medicine is facilitated when ASR's are required only to meet a minimum number of regulatory requirements; (f) the availability of nucleic acid probes for use in the practice of medicine will be facilitated if these nucleic acids are regulated as class I devices exempt from the premarket notification requirement; and (g) like other ASR's, human nucleic acids can be used in disease staging.

Several comments supported the exclusion of the word "nonhuman" to modify nucleic acids in the ASR definition, stating that it would be virtually impossible to distinguish between a nucleic acid synthesized in the laboratory and a human nucleic acid, and that human nucleic acids are

not the only category of ASR capable of being used in genetic tests. One comment expressed concern that FDA has appeared to misunderstand the panel's intent, which was to exclude human nucleic acids because they are most often used to directly identify genetic material or gene products.

FDA agrees with the comments that support including human nucleic acids in the ASR definition. FDA appreciates the basis for the concern raised by the comment about the intent of the panel recommendation, but remains concerned about the broad nature of such an exclusion. Consequently, the definition of ASR's in the final rule includes human nucleic acids. As discussed earlier, at a future date, FDA may reevaluate whether additional controls over genetic tests are appropriate.

3. Analyte Specific Reagent

(Comment 4)

Several comments supported the use of the term "analyte specific reagent" and no comment suggested an alternative.

Accordingly, FDA has retained this term in the final regulation.

4. Disclaimer

(Comment 5)

Several comments agreed with the proposed disclaimer, noting that it clarifies the regulatory status of ASR's, it is consistent with the current practice of labeling research or investigational IVD's, and it provides an incentive for laboratories to have their assays approved or cleared.

Several comments supported having a disclaimer, but would like it to contain more information, including that the clinical performance of the test has not been established, that neither the laboratory test nor the procedures used to obtain the results have been reviewed by FDA, and that the ASR manufacturer is accountable for the ASR.

Other comments suggested that the disclaimer be deleted, or, at a minimum, amended to read that the laboratory assay used to report these results has been validated in accordance with the requirements of CLIA. One comment would amend the disclaimer to read as follows:

The reagents used in this test are regulated by the Food and Drug Administration (FDA) under the general controls of the Food, Drug, and Cosmetic Act (FDC Act). The regulations that implement the FDC Act require compliance with current good manufacturing practices (CGMP), accurate labeling and adverse event reporting, among others. The distribution of these reagents is limited to manufacturers of in vitro tests, laboratories qualified to perform high complexity testing and forensic and underwriter laboratories. This test was validated in accordance with the provisions of the Clinical Laboratory Improvement Amendments (CLIA'88). The program is managed by another federal agency, the Health Care Financing Administration (HCFA). (Laboratory Name) was certified/recertified by HCFA on (date) as a high complexity laboratory that is in compliance with CLIA regulations.

Three comments opposed requiring any disclaimer, claiming it has no impact on the final diagnosis and is an intrusion on the process of medical interpretation. One of these comments suggested that it would be more reasonable to require the laboratory director to provide interpretive reporting to the physician.

FDA has considered the comments and has determined to require the disclaimer discussed in the proposed rulemaking. FDA believes that the disclaimer is sufficiently clear to communicate that the test that used the ASR was developed, and its performance characteristics defined, by the laboratory without FDA review. FDA believes this statement clearly communicates to health care providers the regulatory status of the in-house test that has used the ASR. FDA believes this labeling requirement is necessary to address the concern raised by the Panel that physicians may not be aware that the results of the testing they order using ASR's are generated by tests that have not been independently reviewed by FDA. Rather than being an intrusion on medical interpretation, the required statement ensures that health care providers have additional information upon which to make independent judgments. This labeling requirement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR. FDA does not believe a more detailed or lengthy statement is necessary.

B. General Comments

(Comment 6)

Several comments supported the regulation of ASR's as class I devices, exempt from premarket notification requirements in section 510(k) of the act. These comments stated that: (a) The CLIA regulations regarding in-house modification of materials or methods are adequate to protect the health and well-being of patients without increasing the regulatory burden on manufacturers and laboratories or overloading FDA's already encumbered review process by classifying ASR's in a more stringent category; (b) in-house modification of materials and methods falls within the scope of the practice of medicine, and a more stringent classification would hamper the ability to provide quality medical services and care to patients, such as diagnostic work performed by pathologists; (c) stringent regulation of in-house modified or developed materials and methods would constrain the development of new and better technologies and the improvement of existing IVD technologies; and (d) a substantial and appropriate measure of control is gained by the regulation announced in the proposed rule.

As recommended in these comments, FDA is finalizing the class I exempt classification as the classification for most ASR's.

(Comment 7)

One comment expressed concern that the proposed regulation would put companies that have made the investment to obtain clearance of 510(k)'s for class II antibodies at a competitive disadvantage if antibodies that are currently classified as class II are reclassified as class I devices exempt from premarket notification.

FDA disagrees with this comment. Manufacturers that have submitted or intend to submit antibodies for review as class II test systems would be allowed to market those devices with clear intended uses and indications for use, instructions for use, and appropriate definition of performance parameters. Manufacturers of class I exempt ASR's will be required to limit their labeling to a description of the identity and purity (including source and method of acquisition) of the ASR in addition to standard information already required for general purpose reagents (e.g., net weight; storage instructions). Sale of class I exempt ASR's is also restricted in accordance with other restrictions listed in 21 CFR 809.30(b), while manufacturers of class II test systems cleared by FDA would be allowed to market those devices without regard to the restrictions in 809.30.

(Comment 8)

One comment questioned whether classification of class III ASR's by the type of test for which it is to be used will create a quagmire of regulations, resulting in numerous exceptions to the class I status, confusion about how ASR's that can be used in multiple tests will be regulated, and the difficulty of distinguishing one fatal illness, such as HIV/AIDS, from another, such as herpes encephalitis.

FDA believes that through a narrow definition of the class II and III identification, the exceptions to the general ASR classification have been limited to a manageable number. Under the final rule, exceptions to the ASR class I exempt classification are analytes

used in developing a test intended for use in the: (a) Diagnosis of a contagious condition that is likely to result in a fatal outcome and where prompt accurate diagnosis offers the opportunity to mitigate the public health impact of the condition; (b) screening of a condition for which FDA has established a recommendation or requirement for the use of the test in safeguarding the blood supply or establishing the safe use of blood and blood products (e.g., hepatitis or tests for identifying blood groups); or (c) screening for blood banking when screening test has been classified as a class II device. Currently, FDA believes that ASR's used to test for evidence and monitoring for levels of HIV/AIDS and tuberculosis (TB) are examples that would fall within the class III exception, and reagents used in the diagnosis of diseases caused by cytomegaloviruses and treponema pallidum nontreponemal test reagents which aid in the diagnosis of syphilis fall within the class II exception.

Most blood banking tests fall into class III and some into class II. Class II blood banking tests fall into two categories. One category consists of blood banking tests required by FDA to screen for diseases with a low potential for transmission, e.g., syphilis. The second category consists of certain blood banking tests used electively by blood banks to screen for diseases that are likely to be transmitted to subsets of blood unit recipients known to be at greater risk of infection, e.g., cytomegalovirus. Because these blood banking tests have previously been classified into class II, FDA has determined that special controls are sufficient and that the submission of a premarket approval application (PMA) associated with a class III device is not necessary for the ASR used in the test.

(Comment 9)

One comment suggested that only those ASR's with the lowest risk factor for generating false results of little consequence should be classified as class I, and that the others should be classified as class II or III. The comment reasoned that the reliable, reproducible performance of a diagnostic test is dependent upon the entire integration of the test system. The comment also stated that while laboratories qualified to do high complexity testing have experience in utilizing and evaluating test systems developed by manufacturers, these laboratories do not have expertise in developing in vitro diagnostic tests. The comment noted that CLIA does not require the validation of diagnostic tests systems by rigorously controlled clinical trials to establish expected values and performance characteristics. Such trials are not required by CLIA but could be required by FDA if these tests were placed in class II or III.

FDA has considered this and related comments and appreciates the concerns raised about the development of in-house tests and the current marketing of test services based on tests that have not been reviewed independently for safety and effectiveness. FDA believes that clinical laboratories that develop such tests are acting as manufacturers of medical devices and are subject to FDA jurisdiction under the act. However, FDA recognizes that the use of in-house developed tests has contributed to enhanced standards of medical care in many circumstances and that significant regulatory changes in this area could have negative effects on the public health. For these reasons, FDA declines to accept the suggestion that all in-house developed tests be classified as class II or III medical devices. FDA views this final rule as a reasonable regulatory step at this time and an important contribution to assuring that the primary ingredients of most in-house developed tests are manufactured properly, used by trained professionals, and labeled accurately.

The focus of this rule is the classification and regulation of ASR's that move in commerce, not tests developed in-house by clinical laboratories or ASR's created in-house and used exclusively by that laboratory for testing services. The regulation restricts the sale of ASR's to a particular type of laboratory and FDA believes this restriction supports the safe and effective use of these ASR's. FDA believes that CLIA regulated laboratories qualified to perform high complexity testing have demonstrated expertise and ability to use ASR's in test procedures and analyses. In addition, the disclaimer being required by this rule will provide physicians with more complete information to better understand the basis of test development and to evaluate the information generated by the laboratory using the ASR.

Nevertheless, FDA understands that the use of ASR's to develop in-house tests raise questions about the safety and effectiveness of the tests that incorporate these ASR's. FDA has determined that certain types of testing raise public health concerns that require more stringent regulation of the ASR's that are the main ingredients of those tests: testing for highly contagious and fatal diseases and testing that protects the safety of the blood supply require different and additional review. As proposed, FDA is now classifying the ASR's associated with such testing into class III. In addition, FDA is classifying into class II those ASR's that are used in blood banking tests which previously have been classified into class II. These class II and III devices will be reviewed in association with the test that is incorporating the ASR so that FDA can assure a level of safety and effectiveness that is commensurate with the intended use of the ASR. In addition, ASR's and tests using ASR's that meet the definition of a biologic remain subject to licensure under the PHS Act.

Finally, FDA notes that the comment misunderstood the requirements under CLIA with respect to tests in the waived category. Under CLIA, manufacturers are required to submit studies to demonstrate that the statutory criteria for waiver are met, and any waived test must either be approved/cleared by FDA for home use or be simple, easy to perform, and essentially error free. The Centers for Disease Control and Prevention (CDC) is responsible for implementing the categorization provision of CLIA, including waived States.

(Comment 10)

One comment expressed concern that FDA has not fully discussed regulating moderate risk products and suggested that the level of sophistication of diagnostic technology requires more than two categories.

Although the final rule establishes three classes of ASR's, FDA disagrees that most moderate risk ASR's require additional regulation. FDA believes that the classification of most ASR's as restricted class I devices in conjunction with existing CLIA regulations and professional organization's standards applicable to laboratories qualified to do high complexity testing is adequate for regulating ASR's used in both low and moderate risk in-house assays. In addition, FDA has identified a small subset of ASR's used in class II blood banking tests that require special controls to provide a reasonable assurance of safety and effectiveness and that will be regulated as class II devices. The regulation represents an incremental regulatory change and does not preclude future regulatory activity by FDA or other Federal or professional groups involved in oversight of laboratory activities from developing mechanisms to improve the quality of laboratory practice or test production.

(Comment 11)

Several comments objected to any FDA regulation of ASR's. One of these suggested that FDA should work with HCFA to amend HCFA's regulation of clinical laboratories if changes in current regulation of home brews are

necessary, claiming that FDA's regulation in this area would only increase the administrative costs of medical care. Another comment stated that: (a) There is an absence of safety or effectiveness concerns in ASR use; (b) regulating ASR's increases the burden on FDA's scarce resources and facilities; (c) CLIA regulation is sufficient; and (d) the proposed rule does not target the party best suited to address issues of analytical validity, which is the laboratory preparing the in-house test. Another comment expressed concern that the proposed rule encourages in-house production of ASR's. Another comment suggested providing guidances rather than regulating by rulemaking.

FDA disagrees with these comments. FDA intends that this final rule, developed with input from HCFA and CDC, complement existing regulations issued under CLIA. FDA's rule establishes a basic requirement that manufacturers of ASR's for use in clinical laboratories comply with appropriate CGMP's. CGMP procedures and controls are designed to ensure high quality devices. FDA believes that high quality ASR's are likely to lower costs of developing and maintaining test systems at individual laboratory sites and to decrease, rather than increase, total medical costs.

FDA regards regulating ASR's using general controls and exempting them from the premarket notification requirements as a minimal burden and an appropriate level of regulation for devices that pose less safety or effectiveness concerns than devices marketed as test systems or test kits. In keeping with this approach, this rule addresses quality and identity of the ASR's and does not address analytic validity of the devices. FDA does not expect this regulation to independently increase efforts by laboratories to develop ASR's in-house. FDA believes that the in-house development of ASR's is driven by research goals, and is not a practice that grows in response to regulatory efforts. Finally, while it may be necessary for FDA to develop guidances concerning ASR's in the future, FDA believes that establishing a classification for ASR's through rulemaking is the appropriate mechanism to ensure consistent regulation of these devices for their manufacturers and users.

(Comment 12)

One comment suggested that the Panel's recommendation would unfairly burden the manufacturer of the ASR and that the clinical laboratory was the best party to ensure that the appropriate restraints are placed on interpretation of a diagnostic test through a disclaimer provision.

FDA agrees in part with the comment. FDA intends to minimize the regulatory burden on ASR manufacturers by regulating most ASR's as class I devices exempt from premarket notification. The final rule requires that a disclaimer be appended to the test report by the laboratory that uses the ASR. That statement will inform the ordering practitioner that: "This test was developed and its performance characteristics determined by (Laboratory Name). It has not been cleared or approved by the U.S. Food and Drug Administration." The statement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

(Comment 13)

One comment expressed concern about regulating the ASR ingredient, rather than the final test product, claiming that most clinical laboratories will not establish the clinical performance of a diagnostic product via properly controlled and population representative clinical trials.

FDA understands the concern raised by this comment but disagrees that regulation of ASR's will not be useful and that regulation of all in-house developed tests is appropriate at this time. As discussed previously, FDA has concluded that its regulation of ASR's will contribute to consistency and quality in their manufacture and that the requirement that the laboratory using the ASR explain the regulatory status of the test in which it was used will increase the information available to physicians ordering these tests. Development of in-house laboratory tests is a complex process in which diagnostic performance may be assessed either through the medical practice associated with a given laboratory or scientific literature. Although the types of trials performed in support of these tests are likely to be variable, laboratories will be responsible for both the quality and interpretation of results generated from these tests.

(Comment 14)

One comment questioned whether FDA has the resources to require CGMP compliance from all ASR manufacturers and prevent the inappropriate use of "research use only" labeling.

FDA believes it does have resources to enforce the requirements established by this regulation. The regulation requires all ASR manufacturers to follow general controls and, as with other FDA regulations, it is primarily the responsibility of the manufacturer to comply with the regulations pertaining to ASR's. FDA intends to monitor the level of compliance through inspections and, where necessary, take enforcement actions. FDA also expects that the clinical laboratory and physician community will join manufacturers in encouraging compliance; laboratories purchasing these ASR's and physicians ordering tests using these ASR's will now expect them to be produced consistently in accordance with appropriate CGMP's.

(Comment 15)

One comment suggested regulating the ASR by the same classification as the final assay.

FDA disagrees with this comment. A single class I ASR may be potentially used in multiple different versions of a final assay, which are developed and run by individual clinical laboratories. Basing the regulation of every class I ASR on the final assay developed and run by individual clinical laboratories, therefore, would be problematic. FDA believes that existing mechanisms for laboratory oversight under the mandate of CLIA are sufficient in most cases to assure proper test control.

(Comment 16)

One comment requested information on how the proposed rule relates to the immunohistochemical (IHC) regulation and the definition of IHC's, the Compliance Policy Guide (CPG) for the Distribution of Research and Investigational Use Products, and other classification actions currently underway.

Depending on their labeling and intended use, devices for use as IHC stains could be marketed under a variety of options. When an IHC is developed as a kit or system for "in vitro diagnostic use" (with a proposed intended use, indications for use, instructions for use, and performance characteristics), it would be subject to review as a class I, II, or III device according to intended use as outlined in the proposed IHC regulation (61 FR 30197, June 14, 1996). When an IHC is developed and marketed as an ASR (intended for ASR use only, with no instructions for use, and no defined performance characteristics), it would be subject to general controls and restrictions established by this final regulation but would be exempt from premarket review. When an IHC is developed and used only for "research use" or "investigational use," it would be subject to appropriate labeling only with no requirement for premarket review or compliance with the general controls or restrictions of this ASR regulation.

In August of 1992, FDA invited comment on a draft CPG entitled "Commercialization of Unapproved In Vitro Diagnostic Devices Labeled for Research and Investigation," which was intended to clarify the regulation of devices "for research use" or "for investigational use" and to describe FDA's enforcement policy concerning research or investigational IVD's that are being illegally commercialized for diagnostic or prognostic purposes. Any final CPG issued on this subject will be consistent with the ASR regulations.

(Comment 17)

One comment recommended that FDA create a task force to assist FDA in further delineating and defining issues raised in the proposed rule.

FDA believes that the comments submitted in response to the proposed rule provide the assistance FDA sought in delineating and defining the issues raised in the proposed rule and believes that it is unnecessary to institute an additional procedure at this time to address these issues. Where products pose new or unusual risks, FDA may seek assistance in classifying the products.

C. Adverse Event Reporting

(Comment 18)

One comment objected to the requirement that the ASR supplier be required to report adverse events and asserted that it would add an unnecessary step to the reporting process because ASR suppliers depend on the clinical laboratory to inform them of the occurrence of an adverse event.

FDA disagrees with this comment. This requirement is consistent with the medical device reporting regulations in part 803, which require device user facilities and manufacturers to report deaths and serious injuries to which a device has or may have caused or contributed, and to establish and maintain an adverse event file. Under these regulations, the burden for reporting adverse events is shared by both health care providers and manufacturers. If a number of events become associated with a particular ASR, it is the manufacturer who is likely to be in the best position to investigate the cause of the adverse events and to take corrective action, if necessary.

D. ASR Definition in § 864.4020(a)

(Comment 19)

One comment expressed concern that the proposed definition of ASR's would adversely impact basic research, noting that it included every polyclonal or monoclonal antibody specific to a human antigen and every oligonucleotide primer used in polymerase chain reaction (PCR), reverse transcription or labeled for use in detecting hybridization, including those whose primary or entire use is in basic research.

FDA does not intend to have this regulation apply to basic research and has amended the definition of ASR § 864.4020(a) to clarify that the regulation applies only to reagents intended for use in a diagnostic application.

(Comment 20)

One comment would add the term "ligand" to the proposed ASR definition, stating it is the ligand which binds to the categories of materials that are proposed to be within the ASR definition. Two comments would add "diagnostic" to the definition to clarify that an ASR is only intended for diagnostic use. One comment suggested amending the ASR definition to read "specific binding or chemical reaction," noting that binding between ASR's and analytes is often through physical means and that ASR's may also react chemically with analytes.

FDA agrees with the suggested clarifications and has modified the definition accordingly.

(Comment 21)

One comment stated that the chemical or biological source of a reagent should not preclude it from being identified as an ASR.

FDA agrees with this comment and believes that the definition of ASR's supports this concept.

E. Blood Supply

(Comment 22)

Two comments supported the regulations of ASR's used in tests intended to safeguard the blood supply as class III devices.

FDA agrees with these comments and will continue to classify ASR's used in tests intended to safeguard the blood supply as class III devices because of the serious health risks associated with their use in that setting. As discussed previously, ASR's used in tests that previously have been classified in class II, will be class II, rather than class III. ASR's and tests using ASR's that meet the definition of a biologic remain subject to licensure under the PHS Act.

(Comment 23)

One comment questioned whether it is consistent to apply class II or III and other regulatory requirements to manufacturers of ASR's used in blood banking tests and suggested it would be more appropriate to have the regulatory focus be on the developer of the in-house assay.

Although FDA has concluded that class I is an appropriate classification for most ASR's, FDA believes that regulation of the blood supply requires maximum assurance of safety, and that ASR's used in tests intended to safeguard the blood supply require a different and more stringent level of control. Accordingly, ASR's used for tests that are intended to assure the safety of the blood supply will be reviewed in association with the test that is going to incorporate that ASR. The concern of the comment is addressed, therefore, because the test will be reviewed in order to establish that the ASR can be used safely and effectively. FDA's Center for Biologic Evaluation and Research (CBER) will continue to take the lead in the review of such products and should be the point of contact for manufacturers of ASR's that are intended to be used in tests relating to the safety of the blood supply. These tests remain subject to licensure under the PHS Act.

(Comment 24)

One comment expressed concern that labeling test results using ASR's as not having been reviewed by FDA would restrict the use of valuable reagents used in immunohematology and suggested that the regulation of blood bank/immunohematology tests be specifically addressed by a panel of expert serologists.

FDA does not believe that the situation suggested by the comment is likely to occur. CBER has not licensed any biologic that is used in tests intended to safeguard the blood supply without reviewing and approving the test that will incorporate that biologic. This policy will not be affected by this final rule. Under this policy, an ASR should not be incorporated into a home brew test designed to protect the safety of the blood supply unless that test has been approved by FDA or is being investigated under an effective investigational new drug application. Because these ASR's would only be used in association with tests that have already been approved, the disclaimer would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

F. Certification

(Comment 25)

Several comments recommended that FDA not require ASR suppliers to certify that sales comply with the proposed sale restrictions, claiming that such certification would be a recordkeeping burden.

These comments appear to have misread the rule. There was no certification requirement in the

proposed ASR regulation and none has been included in the final rule. The ASR rule does not require ASR suppliers to certify that sales comply with the proposed sale restrictions.

G. CGMP's

(Comment 26)

Several comments objected to the application of CGMP's where ASR's are rare reagents made only once or so infrequently that CGMP's cannot be properly applied, or where ASR's are reagents made in an academic or research setting, or by very small companies. One comment suggested that acceptance specifications developed by individual laboratories for key ingredients and test performance criteria would determine an individual laboratory's standard for acceptability for manufacturing those ASR's.

In response to these comments, FDA notes that manufacturers are not required to follow CGMP's for reagents made and used within academic or research settings. For rare or infrequently made ASR's, FDA intends to apply only those provisions of the CGMP's as are appropriate to ensure the quality and purity of the ASR's being marketed for clinical applications. However, the size of a company that commercially markets ASR's will not exempt that manufacturer from compliance with appropriate CGMP's.

H. Economics

(Comment 27)

One comment stated that carefully controlled and documented performance of IVD tests will curb medical care costs by contributing to more specific diagnosis and more selective patient management. This comment suggested that FDA's regulation of ASR's is not stringent enough and that FDA should regulate in-house developed tests the same way FDA regulates other IVD's.

FDA believes that applying general controls to the majority of ASR's used to develop in-house tests is, in conjunction with CLIA certification of the laboratory, the appropriate degree of regulatory control. As discussed previously, FDA appreciates the concerns that have been raised about in-house developed tests that are not reviewed independently. If future developments in laboratory technologies or marketing of in-house developed tests indicate that additional regulation is necessary to provide an appropriate level of consumer protection, FDA may reevaluate whether additional controls over in-house developed tests are warranted.

(Comment 28)

Several comments expressed concern that the proposed regulations will increase the cost of diagnostic tests and/or decrease the availability of those reagents that are low use/low revenue products. The comments suggested that large companies will pass along the increased costs to consumers and that small companies will be unable to comply because the cost is prohibitively expensive. A comment also questioned what the regulatory impact would be on a clinical laboratory that both manufactures the ASR and uses the ASR in an in-house test.

FDA believes that the ASR regulations are a minimal regulatory burden and should improve the assurance of quality for purchasers of ASR's for use in test development without significantly increasing costs. In response to the concern that this regulation will eliminate the manufacture of low use ASR's, FDA notes that it has recently published regulations for humanitarian device exemption procedures (61 FR 33232, June 26, 1996) which could be applied to low use/low revenue products to prevent disruption of this important market. As explained previously, ASR's developed in-house and not marketed to other laboratories generally would not be subject to the ASR requirements established under the final rule. However, as noted previously, ASR's and tests incorporating ASR's that meet the definition of a biologic that are intended to protect the blood supply will remain subject to licensure under the PHS Act.

I. Sales Restriction to CLIA Regulated Laboratories That Perform High Complexity Testing

(Comment 29)

One comment objected to the restriction of sales of ASR's to CLIA laboratories that perform high complexity testing, stating that such laboratories may lack training and/or experience in such tests. The comment suggested that the sale of ASR's should be restricted to a laboratory's area of testing, rather than complexity of testing. Another comment stated that CLIA'88 does not provide assurance of safety and efficacy of tests because it does not require assessment of a test's clinical validity or utility. Several comments supported the proposed restriction of sales to laboratories qualified to perform high complexity testing under CLIA because CLIA established minimum standards for proficiency testing, quality assurance, quality control, and personnel.

FDA believes that restriction to a laboratory regulated under CLIA or comparable laws regulating Veterans Affairs laboratories as qualified to perform high complexity testing will ensure that these devices are handled in a setting that complies with the most stringent Federal regulatory standards for laboratory practice. FDA believes that these laboratory practice standards are a more appropriate regulatory distinction than areas of speciality, which may often overlap and are difficult to define.

FDA recognizes that CLIA does not require laboratories to assess the clinical validity of in-house developed tests. Nor do FDA's ASR regulations address the clinical validity of these tests. The purpose of restricting the sale of ASR's to laboratories qualified to perform high complexity testing under CLIA is to make certain that these devices are being handled by individuals whose training and experience are likely to assure the safe and effective use of the ASR's themselves. FDA currently believes that regulating the active ingredients of in-house developed tests should provide an appropriate level of regulation to protect the public health. However, the ASR regulations do not preclude FDA or other Federal agencies from taking other measures authorized by law to assure assessment of a test's clinical validity or utility if such measures are needed. As stated previously, at a future date, FDA may reevaluate whether additional controls over the in-house tests are warranted to provide an appropriate level of consumer protection.

(Comment 30)

One comment asked how ASR manufacturers can identify laboratories qualified to perform high complexity testing and whether ASR suppliers would be required to re-assess a laboratory's classification on an annual basis.

The ASR regulations require ASR manufacturers to label and market ASR's appropriately. FDA is allowing manufacturers and suppliers until November 23, 1998 to deplete their current stock of lables before requiring compliance with the labeling requirements. While the ASR regulations do not require ASR suppliers to certify sales to laboratories qualified to perform high complexity testing, such voluntary certification programs may be one way to ensure proper marketing of ASR's. Information concerning whether a particular laboratory is qualified to perform high complexity testing may be obtained by calling the State survey agency in the State where the laboratory is located.

(Comment 31)

Two comments stated that CLIA does not certify or regulate European clinical laboratories. The comments suggested that, in foreign countries, ASR's be sold in accordance with the laws of that country.

FDA agrees and does not expect the ASR regulations to affect the marketing of ASR's to laboratories or suppliers in foreign countries.

J. Research

(Comment 32)

One comment asked whether ASR's could be sold to universities doing pure research, and if so, would such ASR's require a separate research use only (RUO) label.

ASR's can be sold to universities doing research and FDA has amended 809.30 to clarify this point. ASR's and products labeled "for in vitro diagnostic use" can be used for research purposes so an additional label would not be necessary in those circumstances. However, products that have not been manufactured in accordance with CGMP's and are labeled "for research use only" cannot be marketed under the ASR classification or used by laboratories to develop clinical diagnostics.

K. Contagious Fatal Diseases

(Comment 33)

Two comments supported the regulation of ASR's used in tests intended for use in the diagnosis of potentially fatal contagious diseases as class III devices. Several comments objected to classifying such ASR's as class III, stating that: (a) Stricter regulation will impair the ability of the clinical laboratories to respond rapidly to outbreaks of new or emerging infectious diseases, (b) the patient population is small, (c) the proposed regulation of other ASR's provides sufficient regulation, and (d) it will cause confusion in a variety of situations, for instance, where the disease typically is not fatal, but occasionally may cause fatalities, or where an ASR may be used for multiple purposes, ranging from screening procedures to monitoring treatment or progression of disease, or where an ASR is used for the diagnosis of both infectious and noninfectious diseases. One comment suggested that it would be more appropriate to require premarket notification for these ASR's or to regulate them as class II devices that require premarket notification and special controls, rather than classify these ASR's as class III.

FDA does not believe that regulating this limited category of ASR's as class III devices will confuse the industry or interfere with laboratory development of tests. ASR's will be identified as class III devices only when they are intended to be used either in tests that establish or safeguard the safety of the blood supply or in tests that diagnose contagious fatal diseases when prompt, accurate diagnosis can mitigate risks to the public health. Examples of the diseases that meet these requirements are HIV/AIDS and tuberculosis. The ASR's used in tests that diagnose such conditions pose unique risks because of the substantial clinical and public health impact of the information generated by these tests. The agency has concluded, therefore, that class III controls are appropriate.

The agency does not believe that the application of these controls will hamper the development of accurate tests to respond to new conditions. FDA has in place procedures to expedite review of products when a device offers a potential for clinically meaningful benefit as compared to the existing alternatives or when the new medical device promises to provide a significant advance over currently available modalities. FDA also has issued procedures for obtaining a humanitarian device exemption (HDE) to encourage the discovery and use of devices intended to benefit patients in the treatment or diagnosis of diseases or conditions that affect or are manifested in fewer than 4,000 individuals in the United States. Therefore the agency does not expect that this regulation will impair the ability of clinical laboratories to develop useful tests.

L. General Purpose Reagent in 21 CFR 864.4010

(Comment 34)

Several comments agreed with the proposed amendment of the definition of general purpose reagents, stating that it clarifies the distinction between general purpose reagents and ASR's.

FDA agrees with these comments.

(Comment 35)

One comment claimed that ASR's are analogous to general purpose reagents because both are building blocks utilized in the development of home brews and are sold to clinical laboratories with no analytical or performance claims. The comment believed, therefore, that all ASR's should be class I devices, exempt from premarket notification and CGMP's, except for record-keeping and complaint files. The comment suggested that a first logical step would be to require registration and listing for ASR's before deciding what other regulatory requirements are needed.

FDA disagrees with this comment and notes that registration and listing are required for ASR's that are sold to clinical laboratories under this regulation. FDA believes that ASR's are distinguishable from general purpose reagents because they are more complex and have an implied intended use as the active ingredient for in-house developed tests. FDA has concluded, therefore, that ASR's merit a more stringent level of regulation than that currently applied to general purpose reagents.

M. Labeling

(Comment 36)

One comment stated that the ASR supplier should only be responsible for statements made on the ASR labeling because the ASR manufacturers have no control over a clinical laboratory's acceptance criteria for reagents. Another comment stated that the proposed label only goes to the identity and purity of the ASR and does not provide any directions for use, which would be desirable if the goal is to provide some regulation of in-house assays.

The agency agrees that the ASR supplier can only be responsible for statements made in the ASR labeling. FDA disagrees that the ASR labeling should include additional information. FDA believes the labeling required by the final rule communicates data that are appropriate and useful to laboratories creating in-house tests and also will establish regulatory consistency for all manufacturers of ASR's who seek to market their products to laboratories. Directions for use are not included in these labels because the laboratory producing the test, not the manufacturer of the ingredients, is accountable for the use of the ingredient. As mentioned earlier, the focus of the rule is to provide regulation of the ASR's, not to oversee the development of in-house testing.

(Comment 37)

One comment stated that promotional materials need to be regulated consistently with approved labeling, so that the purchaser can assess differences in product characteristics between different suppliers.

FDA agrees with this comment and requires promotional materials to be consistent with appropriate labeling. In addition, under section 502(q) of the act (21 U.S.C. 352(q)), a restricted device is misbranded if its advertising is false and misleading in any particular. § 809.10(e) delineates which product characteristics ASR labeling must address.

(Comment 38)

One comment proposed that products that are intended for use in diagnostic assays should be labeled with that intended use but that all reagents should be freely available for basic research.

FDA agrees with this comment. Products labeled "analyte specific reagent" or "for in vitro diagnostic use" would not be precluded from use by research laboratories for research purposes. (See comment 32 of section III.J. of this document.)

(Comment 39)

One comment from a manufacturer doing business in the European community suggested labeling ASR's "for research use" and defining that use, as do the Europeans, to include any reagent product not intended for a specific, well-defined diagnostic application. The comment claimed that products labeled "for in vitro diagnostic use" are required to include instructions for use in Europe while the proposed ASR regulation does not allow instructions for use. The comment claimed that the conflicting labeling regulations would restrict the ability of small manufacturers to compete in the global market and suggested that FDA not require the products be labeled "for in vitro diagnostic use." Another comment suggested that FDA should provide a "safe harbor" for ASR suppliers of the research community, and allow such ASR suppliers to label the products "not intended for use in diagnostic tests."

FDA is interested in working with international groups to harmonize labeling whenever such changes are practical and possible. FDA has modified § 809.10(e)(9) to require the label to read "analyte specific reagent" and has amended the definition of ASR to clarify that ASR's are intended for use in a diagnostic application. FDA believes these changes will address the potential problems raised by the comments.

N. Section 809.10(e)

(Comment 40)

One comment recommended that § 809.10(e) be clarified to indicate that labeling of ASR's may also include information concerning expiration date, chemical/molecular composition, nucleic acid sequence, binding affinity, cross-reactivities, and interference with substances of known clinical significance.

FDA agrees with this comment and has modified § 809.10(e) accordingly.

O. Section 809.10(e)(9)

(Comment 41)

Two comments would add to § 809.10(e)(9) the following: "For analyte specific reagent use only," claiming it is consistent with the investigational and research use labeling for IVD's and that it clarifies the ASR's regulatory status.

FDA generally agrees with these comments and has amended the labeling regulation to reflect that the products are for use as analyte specific reagents. Because these ASR's can also be used for research purposes, the regulation requires the label to read "Analyte Specific Reagent," rather than "For analyte specific reagent use only."

(Comment 42)

One comment would add to § 809.10(e) the following for reagents not intended for diagnostic use: "For laboratory research use only. CAUTION: Not for diagnostic use. The safety and efficacy of this product in diagnostic or other clinical uses has not been established."

FDA declines to amend the ASR labeling regulation to include this language. FDA believes it would be confusing to have a requirement not applicable to ASR's but applicable to "research use" reagents in this section. The ASR regulations are intended to complement and be consistent with existing regulations. Regulations governing the labeling of research use only products are codified at § 809.10(c).

P. Section 809.30(b)

(Comment 43)

One comment recommended adding the following to § 809.30(b)(3): "educational, academic and other research laboratories and nonclinical laboratories," stating it would minimize confusion and avoid the need for double-labeling of ASR's sold for diagnostic and research use. Another comment suggested that FDA add university and Government laboratories that are performing basic research to § 809.30(b)(3).

FDA has amended the regulation to include laboratories performing research as an example of organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners. As discussed previously, double labeling of ASR's sold for both diagnostic and research use will not be necessary.

(Comment 44)

One comment recommended directing the restrictions of § 809.30 to the users of ASR's rather than the sellers of ASR's by amending § 809.30(b) to delete, "sold to," and to add, "used in diagnostic applications by."

FDA believes the concerns expressed by this comment have been addressed. Changes made in the final regulation clarify that the requirements only apply to ASR's used in diagnostic applications. Section 520(e) of the act provides that FDA may restrict the sale of a device to provide a reasonable assurance of safety and effectiveness of the device. FDA believes that the sale restrictions are necessary to provide reasonable assurance of the safe and effective use of ASR's; sale is restricted to those laboratories that have the expertise and qualifications to use ASR's to develop in-house tests, and to assess the performance of the ASR's. As recommended by the comment, the use of the ASR by the laboratory is also being restricted because such use must be associated with a disclaimer when the ASR is incorporated by the laboratory into a test that has not been independently reviewed by FDA.

Q. Section 809.30(d)

(Comment 45)

One comment suggested more fully defining "identity and purity" with regard to ASR's to include source and method of acquisition.

FDA agrees with this comment and modified identity and purity in § 809.30 to include source and method of acquisition.

R. Prescription

(Comment 46)

One comment objected to any distinction between assays that use ARS's and other laboratory tests with respect to who can order or receive results. The comment stated that: (a) CLIA requires that laboratories follow state laws regulating health care providers and access to health care testing and that FDA should not preempt such state requirements; (b) the implication that assays developed using ASR's are inherently less reliable or harder to interpret than comparable laboratory tests is unwarranted; and (c) such a restriction is the regulation of the provision of laboratory services, which is not within FDA's jurisdiction.

Other comments that opposed a prescription use requirement, stated that: (a) The ASR manufacturer does not play a significant role in determining the claims or uses of ASR's; (b) there are no clear reasons for the requirement; (c) most States already prohibit laboratories from reporting results directly to patients; (d) it is unneeded because state regulation makes all IVD tests that are not specifically cleared or approved for consumer self testing de facto prescription-use devices; (e) tests that contain ASR's as ingredients are likely only to be available from laboratories qualified to perform high complexity testing under CLIA and will not ordinarily be available for consumer self testing; and (f) professionals other than physicians should also be allowed to request tests, e.g., genetic counselors

accredited by the appropriate professional society.

One comment supported the idea that the use of tests containing ASR's should require a physician's order because the performance characteristics of such tests are not as well documented as OTC tests that have been reviewed by FDA.

In the proposed rule, FDA solicited comment on whether tests developed by the laboratories using ASR's should be made available only on order of a physician. FDA has reviewed the comments and has decided that tests developed by laboratories using ASR's should be available only on the order of a physician or other persons authorized by applicable state law to order such tests. FDA disagrees with comments that have suggested that results from in-house assays developed using ASR's are no different from other IVD test results and that OTC access to the use of ASR's in these settings does not raise issues of their safety and effectiveness. Traditionally, IVD test results are evaluated in the context of a patient's history, physical examination and other sources of diagnostic information. In many cases, those tests are approved or cleared by FDA and their performance criteria have been established. Despite that review, and as several comments indicate, a professional intermediary is ordinarily necessary to assure that the test is ordered appropriately and results are interpreted effectively. By contrast, results of IVD tests using ASR's may be particularly difficult for lay persons to interpret correctly without the guidance of a physician because the performance characteristics of the individual tests often have not been cleared or approved by FDA.

State laws vary concerning access to in-house developed testing but FDA has found none that establish an affirmative right for consumers to access such testing without the order of a health care professional. Therefore, although FDA's regulations would preempt different or additional State laws as they might apply to in-house developed testing, there appear to be no conflicts between the final rule and current state requirements. If particular situations subsequently arise that raise questions of preemption, FDA notes that states may request an advisory opinion from FDA or apply for exemptions from the Federal regulations under section 510(k) of the act.

Nor does FDA agree that this restriction is an unauthorized intrusion into the provision of laboratory services. FDA's focus is on safe and effective use of ASR's and FDA's determination that use should only be on the order of a qualified health professional is consistent with its authority to regulate medical devices. FDA believes that meaningful interpretation of results based on use of ASR's requires the expertise of a health care practitioner licensed by the State to provide a reasonable assurance of the safe and effective use of these devices. FDA is concerned that OTC access to results based on the use of ASR's would require FDA to establish more stringent regulatory controls in order to protect the public health. However, rather than restricting the ordering of tests using ASR's to physicians only, FDA is broadening that category to include all health care practitioners licensed by the State to order such tests.

IV. Access to Special Controls

The two NCCLS documents entitled "Specifications for Immunological Testing for Infectious Disease: Approved Guideline" NCCLS Document I/LA18–A, December 1994 and "Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots: Tentative Guideline" and NCCLS Document KGP10–T, December 1993, may be obtained by writing the National Committee for Clinical Laboratory Standards (NCCLS) at 940 West Valley Rd., suite 1400, Wayne, PA 19087 or calling NCCLS at 610–688–0100 or faxing your request to NCCLS at 610–688–0700.

To receive the document entitled "Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms spp," FDA, July 6, 1993, and its Attachment 1, February 28, 1994, via fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access Division of Small Manufacturers Assistance (DSMA) Facts, at second voice prompt press 2, and then enter the document No. 862 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

To receive the document from the Center for Biologics Evaluation and Research, FDA, entitled "Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type I 1989" (54 FR 48943, November 28, 1989) via fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 662 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

The Center for Devices and Radiological Health (CDRH), FDA, maintains an entry on the World Wide Web (WWW) for easy access to information, including text, graphics, and files that may be downloaded to a PC with access to the Web. The CDRH home page is updated on a regular basis and includes: The "Draft Review Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms," FDA, July 6, 1993, document; device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses); small manufacturers' assistance; and information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled "Draft Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms," FDA, July 6, 1993, is available at: "http://www.fda.gov/cdrh/ods/odecl861.html".

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–22–0185 (terminal settings are 8/1/N). Once the modem answers, press ENTER several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select MEDICAL DEVICES AND RADIOLOGICAL HEALTH. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

V. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866, the Unfunded Mandates Reform Act (Pub. L. 104–4), and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA believes that this final rule is consistent with the regulatory philosophy and

principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order.

Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis for any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The expenditures required by this rule will be far below this amount.

The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. As explained below, the agency estimates that this final rule may impose significant costs on some small businesses. However, because FDA cannot adequately certify the extent of this impact, it has prepared a Regulatory Flexibility Analysis as part of its economic assessment.

A. Purpose and Objective of the Rule

As described previously in this document, FDA is taking this action to classify/reclassify analyte specific reagents (ASR's) presenting a low risk to public health into class I (general controls), and to exempt those class I ASR's from premarket notification. FDA is also restricting the sale, distribution, and use of all ASR's. FDA is regulating these reagents to ensure that ASR's are manufactured with appropriate quality controls, are labeled appropriately, and are used by persons with adequate qualifications to protect the public health and safety. The rule also classifies a small subset of ASR's into class II or III. Class II ASR's are those used in blood banking tests that have previously been classified as class II devices. Class III ASR's are those used in tests intended for use in the diagnosis of a contagious condition that is highly likely to result in a fatal outcome and where prompt, accurate diagnosis offers the opportunity to mitigate the public health impact of the condition, or for those used in tests intended for use in the diagnosis of a condition for which FDA has recommended or required testing in order to safeguard the blood supply or establish the safe use of blood and biological products.

B. Type and Number of Entities Affected

This rule will predominantly affect manufacturers and suppliers of ASR's that are for sale to clinical laboratories and, to a lesser extent, the clinical laboratories that develop and perform in-house tests using ASR's. Because ASR manufacturers and suppliers have not previously been required to register with the agency, FDA is uncertain of the number of entities that will be affected by this rule. The agency estimates that there are approximately 300 companies, of which most, if not all, are classified as small entities. (The Small Business Administration defines an entity in this industry as small if it employs less than 500 people.) HCFA estimates that there are approximately 57,000 certified or accredited clinical laboratories, most of which are small, that could potentially be required to add the statement delineated in the regulation to their test results. FDA does not know how many of these laboratories currently develop and perform in-house testing using ASR's.

C. Description of Economic Impact

The economic impact of this rule on individual manufacturers and suppliers will vary greatly. For the majority of firms that have other products already regulated by FDA, the added costs will be minimal because these firms are already required to register and list. If there are any firms without extensive experience producing FDA regulated products and without a comprehensive quality control program that produce many ASR's and that also derive a high percentage of income generated from sale of ASR's for clinical use, those firms will face greater costs.

1. Impact on Manufacturers and Suppliers

Because manufacturers of ASR's were not previously required to register and list with the agency, FDA does not know the precise number of firms and profile of the industry. The agency believes it probable, however, that the majority of ASR manufacturers also produce other medical devices already regulated by FDA and thus, can adapt their existing procedures and controls to these new requirements at a significantly lower cost than firms without such experience.

This rule requires manufacturers and suppliers of ASR's for sale to clinical laboratories to: (1) Register and list their ASR products with the agency, (2) conform to applicable medical device current good manufacturing practice requirements (21 CFR part 820), (3) comply with MDR reporting requirements (21 CFR part 803), (4) relabel products in accordance with this rule, and (5) restrict the sale of ASR's for clinical use to clinical laboratories that are CLIA certified as qualified to perform high complexity testing. The economic impact of these requirements on individual manufacturers will vary with a number of factors including: (1) Whether the firm currently produces other FDA regulated products and, therefore, has experience with FDA regulations, (2) the nature and number of ASR's produced, (3) the size of the firm, and (4) the adequacy of the firm's existing quality control procedures.

a. Registration and listing. The majority of manufacturers and suppliers of ASR's will incur a small cost to register and list their products with the agency. For manufacturers familiar with this requirement, the average time estimated to comply with the registration and listing requirement is 0.8 hour per year. For those manufacturers that do not currently produce any FDA regulated products, the initial registration and listing may require up to 2 hours of time (a combination of management and clerical time). If half of the estimated 300 manufacturers and suppliers have previous FDA experience, the estimated number of hours to comply with this requirement in the first year will be a maximum of 420 hours for a total industry cost of $9,555. In recurring years, registration and listing will require a total of 240 hours for an industry cost of $5,460 per year.

b. CGMP and MDR compliance. The actual costs of instituting CGMP and MDR procedures will vary greatly and, among other things, depend on the number and nature of the products produced, the size of the firm, and the nature of its current quality control system. FDA believes that the majority of firms have many of the necessary quality control procedures in place. However, for the smaller percentage of firms that do not currently have CGMP and MDR procedures in place, the cost of compliance with these two rules can be significant.

To comply with the CGMP regulation, manufactures will need to write and implement standard operating procedures for their operation, perform appropriate validation, train their employees, and develop, implement, and maintain procedures for reporting deaths and serious injuries related to their products. There will be additional documentation costs on an annual, recurring basis, and some firms may have to hire an additional person to perform the quality assurance function. Firms without FDA experience and those with limited regulatory staff may hire an industry consultant to help them come into compliance with this rule.

FDA believes that the majority of firms have experience producing FDA-related products. However, for the smaller number of firms that have little or no experience producing FDA-regulated products, that have limited quality control procedures, and that could require the help of a consultant to assist with CGMP compliance, the one-time costs range from $50,000 to $200,000 depending on the number of products produced and the size of the firm. In addition, firms that must hire a quality assurance manager may incur costs of $40,000 to $50,000 per year in additional salary and documentation costs. Alternatively, firms that produce other medical devices under the CGMP regulations would incur much smaller costs because they would expand their current procedures to include ASR production. FDA cannot estimate the total economic impact of these two requirements because the agency does not know how many of the firms that produce ASR's also produce other regulated medical devices. The agency believes, however, that the majority of the manufacturers affected by this rule also produce other medical devices and/or have many of the necessary quality control procedures in place. These firms will incur costs significantly lower than the $50,000 to $200,000 estimated above.

c. Class II and III ASR's. A small subset of ASR's are classified as Class II or III devices. In addition to the general controls, these products will also be subject to special controls. To market these ASR's, manufacturers or suppliers must have an approved 510(k) for a class II device or a PMA for a class III device. Because FDA will review the performance of these ASR's with the test for which it is a component, the agency believes that these ASR's will not be marketed as independent components. Manufacturers of these ASR's are either currently marketing them to kit manufacturers or are themselves manufacturing the kits or tests that already have approved 510(k)'s or PMA's for marketing. Thus, no costs were estimated for this requirement.

d. Labeling. FDA is allowing manufacturers and suppliers up to 1 year to deplete current labeling stock before requiring compliance with the labeling requirements. All ASR manufacturers or suppliers must review their labeling, including promotional materials, to ascertain compliance with the new labeling requirements. The agency believes that, except for those ASR's sold to in vitro diagnostic manufacturers, almost all ASR's will require relabeling. The economic impact of this requirement is the one-time cost of redesigning and reviewing the new labeling. The agency estimates that the cost to redesign the label is $89.50 (1 hour to redesign the label, 3 hours of middle management review) and the cost to redesign promotional materials is $115.50 (1 hour to redesign materials and 4 hours to review). Because manufacturers have not been required to list their products with the agency, FDA does not know how many ASR products are sold to clinical laboratories. Industry experts estimate that between 5,000 and 10,000 ASR's are marketed. Assuming there are 7,500 ASR products, the total cost to redesign both labels and promotional materials is $1.5 million ($671,250 for labels, $866,250 for promotional materials) or $205 per product. The impact on an individual firm will depend on the number of products produced.

e. Restriction of sales. This rule restricts the sale of ASR's for clinical use to laboratories certified to perform high complexity testing under CLIA. HCFA estimates that there are approximately 57,000 accredited and certified laboratories in the United States. Because of the large number of laboratories, the agency believes this restriction will have no economic impact on the industry. FDA received no comments to the proposed rule that suggested otherwise.

2. Impact on Clinical Laboratories

Clinical laboratories that develop in-house tests using ASR's will be required to inform the person ordering the tests that these tests were not cleared or approved by FDA. In addition, ordering of such tests is limited to physicians and other persons authorized by applicable State law. FDA believes the economic impact of these two requirements on clinical laboratories will be minimal. As discussed earlier in this preamble in section III.A.4 of this document, the disclaimer is not inconsistent with existing CLIA requirements. In addition, both state laws and current industry practice limit the access of testing to trained professionals. Moreover, no comments were received with regard to either of these requirements suggesting that they would increase the economic burden on clinical laboratories. Since FDA has not mandated the specific means by which clinical laboratories must comply with the disclosure statement requirement, laboratories that produce computer generated reports may choose to reprogram to add the statement, to order preprinted report forms, or to order a stamp. FDA estimates a one-time cost of about $80 per establishment. However, because FDA does not know how many clinical laboratories develop and use in-house tests using ASR's, the agency cannot estimate the total industry impact of this requirement.

D. Analysis of Alternatives

The agency considered a number of alternatives in developing the proposal and this final rule. The rejected alternatives would have created a greater economic burden on industry without an appreciable increase in public health or safety. The agency considered: (1) Enforcing its statutory authority and regulating all postamendment ASR's as class III devices subject to the premarket approval procedures, (2) classifying a greater number of ASR's as class II or III devices, and (3) requiring premarket notification for all class I ASR's. These alternatives, which were discussed in the preambles to the proposed and final rules, were rejected because the agency determined that for the majority of ASR's (the class I products) general controls would be sufficient to ensure that ASR's are of consistent quality and have appropriate labeling. As a result, the agency believes that the current rule is the least burdensome alternative that meets the agency's public health goal.

E. Response to Comments Concerning Small Business

The major concern of small business with regard to the economic impact of this rule is the cost of complying with the CGMP regulation. One comment suggested that the CGMP regulation should not be applied to small companies. Another suggested that small companies would be at a competitive disadvantage to large firms, suggesting that large firms could pass through any increase in compliance costs, while small firms would be unable to afford the initial costs of developing CGMP's.

As a rule, the nature of a firm's existing quality system will be the major determinant of the cost of compliance with the CGMP regulation. The more comprehensive a firm's quality system and the more closely it resembles the CGMP, the easier it will be for a firm to adapt its current practice. The agency recognizes that for some firms with limited quality control systems and no experience manufacturing FDA regulated products, the cost of developing CGMP's can be significant. These costs would vary directly, although not proportionally, with the size of the firm. Smaller firms tend to have fewer products and, thus, need to develop fewer procedures and controls. They also have fewer employees to train. Larger firms are more likely than very small firms to currently manufacture other medical devices already subject to CGMP's. Such firms would have proportionately lower

compliance costs. FDA recognizes that some of the firms that sell only a small percentage of their products to the clinical laboratory market may choose not to comply with the CGMP regulation and sell their products only to manufacturers of IVD tests or kits, or to research laboratories. The agency believes, however, that this will have no significant effect on the supply of ASR's to clinical laboratories.

To reduce the burden on industry, FDA has delayed the effective date for required CGMP compliance to 1 year after the date of publication of this final rule and allowed the industry time to deplete current stock of labeling. In addition, the agency has taken steps specifically to assist small businesses with compliance through the Division of Small Manufacturers Assistance (DSMA). DSMA provides guidance documents through the FDA's World Wide Web site (http://www.fda.gov) and fax-on-demand system (800–899–0381 or 301–827–0111), as well as participating in agency and industry sponsored workshops, conferences, and meetings to inform and assist businesses with compliance issues. In particular "The Medical Device Quality Systems Manual: A Small Entity Compliance Guide," available on the web site, provides examples of procedures and forms that can be adopted and modified by manufacturers to reduce their cost of compliance.

F. Summary

Because the firms that would be affected by this regulation are not currently required to register or list their ASR products, FDA cannot make a precise estimate of the total cost of this rule. The greatest cost, however, would be to facilities that are not currently subject to any CGMP's. FDA does not know how many firms would fall into this category, but even if all of the affected facilities needed to implement such requirements for the first time, the cost of the rule would be far below the $100 million threshold that determines an economically significant regulation under Executive Order 12866 or the Unfunded Mandate Reform Act. For some individual firms, the economic impact of this rule will be significant, but because the agency lacks an accurate profile of the industry, it can not determine if a substantial number of firms will be significantly affected.

VI. Environmental Impact

FDA has determined under 21 CFR 25.34(b) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. The Paperwork Reduction Act of 1995

A. Comments on the Paperwork Reduction Act Statement

One comment stated that the estimate in the proposed rule of additional recordkeeping requirements was not accurate because the estimate did not account for the burden resulting from registration, listing, medical device reporting or application of the CGMP's. The comment also stated that FDA should not establish a certification program to demonstrate compliance with proposed restrictions.

FDA agrees that the estimate did not contain the burden for registration, listing, medical device reporting, or application of CGMP's. The registration, listing, medical device reporting collections of information have already been approved by OMB (OMB control number 0910—0059). On October 7, 1996, FDA published the CGMP final rule (61 FR 52602) and provided a 60-day comment period to submit written comments to FDA on the information collection provisions of the rule as required under the Paperwork Reduction Act of 1995. A notice soliciting comments for an additional 30 days on these provisions is under development. These burdens were not included in the chart because any CGMP, medical device reporting, registration and listing requirements have already been estimated separately.

Neither the proposed nor the final rule contain a certification requirement. Questions concerning certification are addressed in section III.F. of this document.

B. Information Collection Provisions in the Final Rule

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S. 3501–3520). OMB did not approve FDA's information collection submitted to OMB with the proposed rule. The title, description and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Labeling Requirements for Analyte Specific Reagents—Labeling for Laboratories.

Description: The final rule amends the labeling requirements for certain in vitro diagnostic products to require that manufacturers of analyte specific reagents provide certain information concerning the reagents to laboratories that will use the reagents to develop tests for clinical use. The final regulation will also require that advertising and promotional material for analyte specific reagents include information about the identity and purity of the reagents and not make any claims about analytic or clinical performance. The purpose of the regulation is to assure that laboratories developing tests using these reagents have sufficient information about their identity and purity.

Description of Respondents: Businesses and other for profit organizations.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
809.10(e)	300	1	300	25	7,500
809.30(d)	300	1	300	25	7,500
Total				50	15,000

The proposed rule provided a 30-day comment period. As discussed previously, the revised burden hour estimates in the final rule are based partially on comments received. FDA has submitted the information collection provisions of the final rule to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 809 and 864 are amended as follows:

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

1. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 357, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

2. Section 809.10 is amended in paragraph (a) by adding at the end of the first sentence "or as provided in paragraph (e) of this section" and by adding new paragraph (e) to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

* * * * *

(e)(1) The labeling for analyte specific reagents (e.g., monoclonal antibodies, deoxyribonucleic acid (DNA) probes, viral antigens, ligands) shall bear the following information:

(i) The proprietary name and established name (common or usual name), if any, of the reagent;

(ii) A declaration of the established name (common or usual name), if any;

(iii) The quantity, proportion, or concentration of the reagent ingredient; and for a reagent derived from biological material, the source and where applicable, a measure of its activity. The quantity, proportion, concentration, or activity shall be stated in the system generally used and recognized by the intended user, e.g., metric, international units, etc.;

(iv) A statement of the purity and quality of the reagent, including a quantitative declaration of any impurities present and method of analysis or characterization. The requirement for this information may be met by a statement of conformity with a generally recognized and generally available standard that contains the same information, e.g., those established by the American Chemical Society, U.S. Pharmacopeia, National Formulary, and National Research Council. The labeling may also include information concerning chemical/molecular composition, nucleic acid sequence, binding affinity, cross-reactivities, and interaction with substances of known clinical significance;

(v) A statement of warnings or precautions for users as established in the regulations contained in 16 CFR part 1500 and any other warnings appropriate to the hazard presented by the product;

(vi) The date of manufacture and appropriate storage instructions adequate to protect the stability of the product. When applicable, these instructions shall include such information as conditions of temperature, light, humidity, date of expiration, and other pertinent factors. The basis for such instructions shall be determined by reliable, meaningful, and specific test methods, such as those described in § 211.166 of this chapter;

(vii) A declaration of the net quantity of contents, expressed in terms of weight or volume, numerical count, or any combination of these or other terms that accurately reflect the contents of the package. The use of metric designations is encouraged, wherever appropriate;

(viii) The name and place of business of manufacturer, packer, or distributor;

(ix) A lot or control number, identified as such, from which it is possible to determine the complete manufacturing history of the product;

(x) For class I exempt ASR's, the statement: "Analyte Specific Reagent. Analytical and performance characteristics are not established"; and

(xi) For class II and III ASR's, the statement: "Analyte Specific Reagent. Except as a component of the approved/cleared test (Name of approved/cleared test), analytical and performance characteristics of this ASR are not established."

(2) In the case of immediate containers too small or otherwise unable to accommodate a label with sufficient space to bear all such information, and which are packaged within an outer container from which they are removed for use, the information required by paragraphs (e)(1) through (e)(6) of this section may appear in the outer container labeling only.

3. New § 809.30 is added to subpart C to read as follows:

§ 809.30 Restrictions on the sale, distribution and use of analyte specific reagents.

(a) Analyte specific reagents (ASR's) (§ 864.4020 of this chapter) are restricted devices under section 520(e) of the Federal Food, Drugs, and Cosmetic Act (the act) subject to the restrictions set forth in this section.

(b) ASR's may only be sold to:

(1) In vitro diagnostic manufacturers;

(2) Clinical laboratories regulated under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), as qualified to perform high complexity testing under 42 CFR part 493 or clinical laboratories regulated under VHA Directive 1106 (available from Department of Veterans Affairs, Veterans Health Administration, Washington, DC 20420); and

(3) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic, academic, research, and other nonclinical laboratories.

(c) ASR's must be labeled in accordance with § 809.10(e).

(d) Advertising and promotional materials for ASR's:

(1) Shall include the identity and purity (including source and method of acquisition) of the analyte specific reagent and the identity of the analyte;

(2) Shall include the statement for class I exempt ASR's: "Analyte Specific Reagent. Analytical and performance characteristics are not established";

(3) Shall include the statement for class II or III ASR's: "Analyte Specific Reagent. Except as a component of the approved/cleared test (name of approved/cleared test), analytical and performance characteristics are not established"; and

(4) Shall not make any statement regarding analytical or clinical performance.

(e) The laboratory that develops an in-house test using the ASR shall inform the ordering person of the test result by appending to the test report the statement: "This test was developed and its performance characteristics determined by (Laboratory Name). It has not been cleared or approved by the U.S. Food and Drug Administration." This statement would not be applicable or required when test results are generated using the test that was cleared or approved in conjunction with review of the class II or III ASR.

(f) Ordering in-house tests that are developed using analyte specific reagents is limited under section 520(e) of the act to physicians and other persons authorized by applicable State law to order such tests.

(g) The restrictions in paragraphs (c) through (f) of this section do not apply when reagents that otherwise meet the analyte specific reagent definition are sold to:

(1) In vitro diagnostic manufacturers; or

(2) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic, academic, research, and other nonclinical laboratories.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

4. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 864.4010 is amended by revising paragraph (a) to read as follows:

§ 864.4010 General purpose reagent.

(a) A general purpose reagent is a chemical reagent that has general laboratory application, that is used to collect, prepare, and examine specimens from the human body for diagnostic purposes, and that is not labeled or otherwise intended for a specific diagnostic application. It may be either an individual substance, or multiple substances reformulated, which, when combined with or used in conjunction with an appropriate analyte specific reagent (ASR) and other general purpose reagents, is part of a diagnostic test procedure or system constituting a finished in vitro diagnostic (IVD) test. General purpose reagents are appropriate for combining with one or more than one ASR in producing such systems and include labware or disposable constituents of tests; but they do not include laboratory machinery, automated or powered systems. General purpose reagents include cytological preservatives, decalcifying reagents, fixative and adhesives, tissue processing reagents, isotonic solutions and pH buffers. Reagents used in tests for more than one individual chemical substance or ligand are general purpose reagents (e.g., *Thermus aquaticus* (TAQ) polymerase, substrates for enzyme immunoassay (EIA)).

* * * * *

6. New § 864.4020 is added to subpart E to read as follows:

§ 864.4020 Analyte specific reagents.

(a) *Identification.* Analyte specific reagents (ASR's) are antibodies, both polyclonal and monoclonal, specific receptor proteins, ligands, nucleic acid sequences, and similar reagents which, through specific binding or chemical reaction with substances in a specimen, are intended for use in a diagnostic application for identification and quantification of an individual chemical substance or ligand in biological specimens. ASR's that otherwise fall within this definition are not within the scope of subpart E of this part when they are sold to:

(1) In vitro diagnostic manufacturers; or

(2) Organizations that use the reagents to make tests for purposes other than providing diagnostic information to patients and practitioners, e.g., forensic, academic, research, and other nonclinical laboratories.

(b) *Classification.* (1) Class I (general controls). Except as described in paragraphs (b)(2) and (b)(3) of this section, these devices are exempt from the premarket notification requirements in part 807, subpart E of this chapter.

(2) Class II (special controls/guidance documents), when the analyte is used in blood banking tests that have been classified as class II devices (e.g., certain cytomegalovirus serological and treponema pallidum nontreponemal test reagents). Guidance Documents:

1. "Specifications for Immunological Testing for Infectious Disease; Approved Guideline," NCCLS Document I/LA18–A, December 1994.

2. "Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots; Tentative Guideline," NCCLS Document KGP10–T, December 1993.

3. "Review Criteria for Assessment of In Vitro Diagnostic Devices for Direct Detection of Mycobacterium spp," FDA, July 6, 1993, and its "Attachment 1," February 28, 1994.

4. "Draft Review Criteria for Nucleic Acid Amplification-Based In Vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms," FDA, July 6, 1993.

5. The Center for Biologics Evaluation and Research, FDA, "Points to Consider in the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Antibodies to the Human Immunodeficiency Virus, Type I" (54 FR 48943, November 28, 1989).

(3) Class III (premarket approval), when:

(i) The analyte is intended as a component in a test intended for use in the diagnosis of a contagious condition that is highly likely to result in a fatal outcome and prompt, accurate diagnosis offers the opportunity to mitigate the public health impact of the condition (e.g., human immunodeficiency virus (HIV/AIDS)or tuberculosis (TB)); or

(ii) The analyte is intended as a component in a test intended for use in donor screening for conditions for which FDA has recommended or required testing in order to safeguard the blood supply or establish the safe use of blood and blood products (e.g., tests for hepatitis or tests for identifying blood groups).

(c) *Date of 510(k), or date of PMA or notice of completion of a product development protocol is required.* (1) Preamendments ASR's; No effective date has been established for the requirement for premarket approval for the device described in paragraph (b)(3) of this section. See § 864.3.

(2) For postamendments ASR's; November 23, 1998.

(d) *Restrictions.* Restrictions on the sale, distribution and use of ASR's are set forth in § 809.30 of this chapter.

Dated: November 13, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–30334 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 657

RIN 2125–AE20

Truck Size and Weight; Office of Management and Budget Control Number and Expiration Date

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document adopts a technical amendment to the regulations at 23 CFR part 657 to provide the Office of Management and Budget (OMB) control number for the Federal Highway Administration's (FHWA) collection of information from the States about their size and weight enforcement programs and explains the significance of referencing that number in 23 CFR part 657.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Klimek, Office of Motor Carrier Information Analysis, (202) 366–2212, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Federal law requires each State to certify to the Secretary of Transportation before January 1 of each year that it is enforcing: (1) Federal law regarding (i) vehicle weight on the Interstate System and (ii) vehicle size on the former Federal-aid primary, secondary and urban systems; and (2) State size and weight laws on the former Federal-aid primary, secondary and urban systems [23 U.S.C. 141(a)].

If the weight laws that apply on the Interstate System in a State are not consistent with the Federal standard [23 U.S.C. 127], the State is subject to the withholding of its National Highway System (NHS) funds. If the size laws that apply on the former Federal-aid systems mentioned above (now designated the National Network [NN] for trucks) are not consistent with the Federal standard [49 U.S.C. 31111–31114], the State is subject to injunctive action in Federal court. If the State does not file a certification at all, or if the certification fails to demonstrate adequate enforcement of State size and weight laws, the Federal-aid funds that would otherwise be apportioned under 23 U.S.C. 104 must be reduced by 10 percent [23 U.S.C. 141(b)(2)].

The FHWA regulations implement these statutory mandates by requiring each State annually to file: (1) an enforcement plan setting forth measurable goals; and (2) a certification that discusses the consistency of State law with Federal requirements and the State's success in achieving its enforcement goals for the previous fiscal year (23 CFR part 657).

Under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], regulations which impose an information collection requirement must be authorized by the Office of Management and Budget (OMB). The information collection requirements of 23 CFR part 657 are currently authorized under OMB Control Number 2125–0034, which is valid until May 31, 2000. The FHWA, however, inadvertently failed to list the control number in part 657 or to inform the States of its legal significance, as required by OMB rules [5 CFR 1320.5(b)]. When a currently valid OMB control number is not displayed, failure to submit to the FHWA an annual enforcement plan or certification with the form and content specified by part 657 would not be grounds for withholding 10 percent of a State's Federal-aid highway funds [44 U.S.C. 3512(a)]. The reporting requirement [23 U.S.C. 141(a)–(b)] would remain in effect, but any kind of "certification" that met the terms of the statute would be adequate.

The FHWA is therefore amending 23 CFR part 657 to add a note at the end stating that the information collection requirements of that part have been approved by OMB. The agency has held OMB approvals for the information collection requirements associated with part 657 since the Paperwork Reduction Act became effective. The FHWA finds good cause pursuant to 5 U.S.C. 553(b) to dispense with prior notice and an opportunity for public comment on this document. Part 657 was adopted through notice and comment rulemaking, and the FHWA applied for and received the OMB control number in the normal manner. This amendment simply displays the control number, as required by OMB rules, and is not separately subject to notice and comment rulemaking procedures. The agency also finds good cause under 5 U.S.C. 553(d)(3), for the reasons given above, to make this amendment to part 657 final upon publication in the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is neither a significant regulatory action within the meaning of Executive Order 12866 nor significant within the meaning of Department of Transportation regulatory policies and procedures. It merely adds the OMB control number to the regulations requiring States to submit information about their size and weight programs. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Since it deals with regulations applicable to the States, it should have no effect on any small entities. Based on this evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements necessary for States to be able to certify that they are enforcing their size and weight laws, as provided in 23 CFR 657, have been approved by the OMB under control number OMB 2125–0034 in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The approval expires on May 31, 2000.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects 23 CFR 657

Grant programs—transportation, Highways and roads, Motor carrier size and weight.

Issued on: November 7, 1997.

Gloria J. Jeff,

Acting Administrator.

In consideration of the foregoing, the FHWA amends title 23 CFR part 657 as set forth below:

PART 657—[AMENDED]

1. The authority citation for 23 CFR part 657 is revised to read as follows:

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111, 31113, and 31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1), and (c)(19).

2. Part 657 is amended by adding the following note:

Note: The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget under control number 2125–0034.

[FR Doc. 97–30655 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–97–009]

Drawbridge Operation Regulations; Oakland Inner Harbor Tidal Canal, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the Fruitvale Railroad Vertical Lift Bridge over the Oakland Inner Harbor Tidal Canal. The deviation allows Alameda County, on behalf of the U.S. Army Corps of Engineers, to provide an opening on 30 minutes advance notice between sunrise and sunset from December 1 through December 20, 1997. At all other times, the bridge will continue to operate under its published regulations. The purpose of this deviation is to allow the Corps of Engineers to perform an electromagnetic test for adequacy of the bridge's 32 haul ropes.

DATES: The effective period of the deviation begins on Monday, December 1, 1997 and continues through Saturday, December 20, 1997.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry P. Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA, at (510) 437–3514.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. Mariners can avoid experiencing any adverse consequences throughout the effective period by either providing the bridge operator 30 minutes advance notice between sunrise and sunset or transiting at other times. Moreover, the Coast Guard expects the bridge to resume its normal operating schedule before the end of the effective period if the Corps of Engineers completes its tests in less than 20 days.

This deviation from the normal operating regulations in 33 CFR 117.181 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: November 6, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 97–30687 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 258

[Docket No. 96–3 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and order; correction.

SUMMARY: This document corrects the preamble to the final rule and order published in the **Federal Register** of October 28, 1997, (62 FR 55742), announcing the adjustment of the royalty rates for superstation and network signals under the satellite carrier compulsory license, 17 U.S.C. 119.

EFFECTIVE DATE: Effective on November 21, 1997.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, or Tanya Sandros, Attorney Advisor, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The final rule published by the Librarian of Congress on October 28, 1997 (62 FR 55742), contained two errors which need to be corrected. On page 55753 of October 28, 1997, FR Doc. 97–28543, add "not" before the phrase "served households as well" in the third column, first paragraph, third sentence. On page 55758, FR Doc. 97–28543, add "not" before the phrase "asked to do so." in the first column, first paragraph, sixth sentence.

Dated: November 18, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–30631 Filed 11–20–97; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5925–6]

Alabama: Final Authorization of Revisions to State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Alabama has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Alabama's revisions consist of the "Used Oil Management Standards" provision in RCRA Cluster III, and provisions in RCRA Clusters IV and V. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Alabama's applications and has made a decision, subject to public review and comments, that Alabama's hazardous waste management program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Alabama's hazardous waste management program revisions. Alabama's applications for program revisions are available for public review and comment.

DATES: Final authorization for Alabama shall be effective January 20, 1998 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Alabama's program revision application must be received by the close of business December 22, 1997.

ADDRESSES: Copies of Alabama's program revision applications are available during 8 am to 4:30 pm at the following addresses for inspection and copying: Alabama Department of Environmental Management, 1751 Congressman W. L. Dickinson Drive, Montgomery, Alabama 36109–2608, (334) 271–7700; U.S. EPA, Region IV, Library, Atlanta Federal Center, 61 Forsyth Street, S.W. Atlanta, Georgia 30303–3104. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 10th Floor, 61 Forsyth Street, Atlanta, Georgia 30303–3104; (404) 562–8448.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to

revise their program to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to state hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–268, and 270.

A. Alabama

Alabama initially received final authorization for its base RCRA program effective on December 22, 1987. Alabama received authorization for revisions to its program on January 28, 1992, July 2, 1992, December 21, 1992, May 17, 1993, November 23, 1993, April 4, 1994, January 1, 1995, October 13, 1995, April 15, 1996, and June 24, 1996. Today, Alabama is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Alabama's applications and has made an immediate final decision that Alabama's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Alabama. The public may submit written comments on EPA's immediate final decision until December 22, 1997.

Copies of Alabama's applications for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. Approval of Alabama's program revisions will become effective January 20, 1998, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 112, Recycled Used Oil Management Standards.	57 FR 41566	9/10/92	335–14–1–.02(1), 335–14–2–.01(3)(a), 335–14–2–.01(3)(a) 2(v)(1), 335–14–2–.01(3)(a) 2.(v)(11), 335–14–2–.01(5)(j), 335–14–2–.01(6)(a), 2.(iii).(viii), 335–14–2–.1(6)(a)4, 335–14–7–.08(1), 335–14–17–.1(1), 335–14–17–.02(1), 335–14–17–.02(1)(a), (b), (b)1.(i), (b)1.(ii), 335–14–17–.02(1)(b), 1.(ii)(1)(b)1.(ii)(11), 335–14–17–.02(1)(b)2, 335–14–17–.02(1)(b)2(ii), 335–14–17–.02(1)(b)2(iii), 335–14–17–.02(1)(b)3, 335–14–17–.02(1)(c)(d), (d)1(d)2, 335–14–17–.02(1)(e), 335–14–17–.02(1)(e)2–4, 335–14–17–02(1)(f)–(i), 335–14–17–.02(2), 335–14–17.02(2)Table 1, 335–14–17–.02(3)(a)–(c), 335–14–17–.03(1)(a), 335–14–17–.03(1)(b), 334–14–16–.03(3)(4)(5), 335–14–17–.4(1)(2)(3), 335–14–17–.05(1)–(8), 335–14–17–.06(1)–(10), 335–14–17–.07(1)–(8), 335–14–17–.08(1)–(6), 335–14–17–.09(1)(2)(3).
Checklist 122, Recycled used Oil Management Standards; Technical Amendments and Corrections I.	58 FR 26420	5/3/93	335–14–2–.01(4)b13–15, 335–14–2–.01(5)(j), 335–14–5–.01(1)g2, 335–14–6–.01(1)(c)6, 335–14–17–.01–(1), 335–14–17–.02(1)(b)2, 335–14–17–.02(c)–9e), 335–14–17–.02(1)(i), 335–14–17–.02(2), Table 1, 335–14—17–.02(3)(c)3, 335–14–17–.03(2)a 335–14–17–.03(4)(a), (b)(c), 335–14–17–.05(1)(a)4, 335–14–17–.05(1)(d)4, 335–14–17–.05(3)(a)(b), 335–14–17–.06(2)(a), 335–14–17–.06(3)(b)6, (3)(b)8.(viii)(III), 335–14–17–.06(5), 335–14–17–.07(a)(b)1, 335–14–17–.0793)(a), 335–14–18–.07(5), 335–14–17–.08(1)–(5)a.
Checklist 125, Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.	FR 38816	7/20/93	335–14–1–.02(2), 335–14–7–.08(5), 335–14–7–.08(7), 335–14–7 Appendix.
Checklist 126, Testing and Monitoring Activities.	58 FR 46040	8/31/93	335–14–1–.2(2), 335–14–1–.0392)(d)1(i), 335–14–2–.03(3)(a)1, 335–14–2–.03(3)(a)2, 335–14–2–.03(5)(a), 335–14–2–Appendix, 335–14–5–.10(1)(a), 335–14–5–.14(a5)(c), 335–14–6–.10(1)(a), 335–14–6–.14)(15)(d), 335–14–9–.01(7), 335–14–9–.04(1)(2), 335–14–9–Appendix I&IX, 335–14–8–.02(1)(c)1.(iii), 335–14—8–.02(10)(c), 1.(iv), 335–14–8–.06(2)(b)2, .(I)(III)(IV), 335–14–8–.06(5)(c)2.(iii).

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 127, Boilers & Industrial Furnaces; Administrative Stay & Interim Standards for Bevill Residues.	58 FR 59598	11/9/93	335–14–7–.08(13), Incorporated by Ref., 335–14–7–Appendix VII, Incorporated by Ref.
Checklist 128, Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection.	59 FR 458–469	1/4/94	335–14–1–.02(2), Incorporated by Ref. 335–14–2–Appendix VIII.
Checklist 129, Revision of Conditional Exemption for Small Scale Treatability Studies.	59 FR 8362	2/18/94	335–15–2–.01(4)(e)2.(i), 335–14–2–.01(4)(e)2.(ii), 335–14–2–.01(4)(e)3 (f)3–5.
Checklist 130, Recycled Used Oil Management Standards; Technical Amendments & Corrections II.	59 FR 10550	3/4/94	335–14–17–.01(1), 335–14–17–.01 (1)" used oil transfer "facility", 335–14–17–.02(1)(b)1.(ii)(b)2.(iii), 335–100000004–17–.02(1)(g), 335–14–17–.02(1)(g)1–6, 335–14–17–.03(1)(b)2(i), 335–14–17–.03(1)(b)2(ii), 335–14–17–.03(1)(b)2 (ii)(I–V), 335–14–17–.05(2)(c), 335–14–17–.05(5)(c), 335–14–17–.05(7)(a), 5.(i)(ii)(b)5.(i)(ii), 335–14–17–.06(4)(c), 335–14–17–.07(4)(c).
Checklist 131, Recordkeeping Instructions; Technical Amendment.	59 FR 13891	3/24/94	335–14–5–Appendix I, Table 1 Table 2, 335–14–6–Appendix I, Table 1, Table 2.
Checklist 132, Wood Surface Protection; Correction.	59 FR 28484	6/2/94	335–14–1–.02(2), Incorportarted by Ref.
Checklist 133, Letter of Credit Revision.	59 FR 29958	6/10/94	335–14–5–.08(12)(d), 335–14–5–.08(12)(k).
Checklist 134, Correction of Beryllium Powder (PO15) Listing.	59 FR 31551	6/20/94	335–14–1–.0494)(e), 335–14–2–Appendix VIII, 335–14–9–.05(3), Incorporated by Ref.
Checklist 135, Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste.	59 FR 38536	7/28/94	335–14–2–.01(3)(c)2.(ii) (II), 335–14–2–/01(4)(a)12, 335–14–2–.01(6)(a)3. (iv)–(vi), 335–14–7–.08(1).
Checklist 136, Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C-Recyclable Materials Used in a Manner Constituting Disposal; Final Rule.	59 FR 43496	8/24/94	335–14–7–.03(1)(c), 335–14–9–.04(4).
Checklist 137, Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	59 FR 47982, 60 FR 242.	9/19/94, 1/3/95	335–14–1–.03(10)(10)(b), 335–14–1–.03(11)(a), (11)(a)(b), 335–14–1.03(12)(13), 335–14–1–.03(13)(a)(b), 335–14–1–.01(2)(e)1.iii, 335–14–5–.01(1)(g)6, 335–14–6–.01(1)(c)10, 335–14–7–.03(4)(a), 335–14–7–.08(1), 335–14–7–Appendix 335–14–9–.01(1)(2)(3), 335–14–9–.01(7)(9), 335–14–9–.04(1–4)(6–8), 335–14–9–Appendix IV V & X.
Checklist 139, Hazardous Waste Management SystemTesting & Monitoring Activities.	60 FR 3089	1/13/95	335–14–1–.02(2).
Checklist 140, Hazardous Waste Management System; Carbamate Production Identification & Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities.	60 FR 7824, 60 FR 19165, 60 FR 2619.	2/9/95, 4/17/95, 5/12/95, 8/9/95.	335–14–2.01(3)(a), 2.(iv)(V)(VI)(VII), 335–14–2–.01(3)(c)2, 2.(ii)(IV), 335–14–2–.04(3), 335–14–2.04(4)(e), 335–14–2–.04(4)(f), 335–14–2–Appendix VII, VIII.
Checklist 141, Hazardous Waste Management System; Testing & Monitoring Activities.	60 FR 17001	4/4/95	335–14–1–.02(2).
Checklist 142 A, Universal Waste Rule; General Provisions.	60 FR 25492	5/11/95	335–14–1–.02(1), 335–14–2–.01(5)(c), 335–14–2–.01(5)(c)1–6, 335–14–2–.01(5)(f)3, (I)–(v), 335–14–2–.01(5), 335–14–2–.01(5)(g)3(i–v), 335–14–2–.01(9), 335–14–3–.01(1)9b)–(g), 335–14–3–.01(2)(d), 335–14–5–.01(1)(g)12, 335–14–6–.01(1)(c)14, 335–14–9–.01(1), 335–14–8–.01(1)(c02.(ix), 335–14–11–.01(1)(a)(b), 335–14–11–.01(5)(a), (A)1(a)2(b), 335–14–11–.01(6), 335–14–11–.02(1), 335–14–11–.02(2), (2)(a)(2)(b)(3)(5)(6), (6)(a–c), 335–14–11–.02(8)(a)(b), 335–14–11–.02(9)(a)–(h), 335–14–11–.02(10)(11), (11)(a)(b)(c), 335–14–11–.03(1)–(11), 335–14–11–.04(1)–(7), 335–14–.05(1)(a)(b), 335–14–11–.05(2)(a)–(d), 335–14–11–.05(3)(a)(b), 335–14–11–.06, (2)(a)(b), 335–14–11–.03(3)(a)1(a), 2(b), 335–14–11–.03(5)–(11), 335–14–11–.04(1)–(7), 335–14–11–.05(1)–(3), 335–14–11–.06(1).

Federal requirement	FR reference	FR promulgation date	State authority
Checklist 142 B, Universal Waste Rule; Specific Provisions for Batteries.	60 FR 25492	5/11/95	335–14–2–.01(1), 335–14–2–.01(6)(a)3.(ii), 335–14–2–.01(6)(a), 3.(ii)–(v), 335–14–2–.01(9)(a), 335–14–.01(1)9g)12.(i), 335–14–6–.01(1)(c)14.(i), 335–14–7–.07(1), 335–14–9–.01(1), 335–14–.01(1)(c)2.(ix)(I), 335–14–11–.01(2)(a)1,2, (b), 335–14–11–.01(3)(c)1,2, 335–14–11–.01(6), 335–14–11.02(4)(a), (5)(a), 335–14–11–.03(4)(a)1–3, 335–14–11–.03(5)(a).
Checklist 142 C, Universal Waste Rule; Specific Provisions for Pesticides.	60 FR 25492	5/11/95	335–14–.01(1), 335–14–2–.01(9)(b), 335–14–5–.01(1)(g), 12.(ii), 335–14–6–.01(1)(c), 14.(ii), 335–14–9–.01(1), 335–14–8–.01(1)(c), 2.(ix)(II), 335–14–11–.01(1)(a)2, 335–14–11–.01(3)a–d, 335–14–11.01(6), 335–14–11–.02(4)(b), (b) 1–4, 335–14–11–.02(5)(b), (5)(b) 1,2, 335–14–11–.02(5)(c), (5)(c)1.(i),(ii),(iii) 2, 335–14–11–.03(3)(a)1,3, (4)(b), (4)(b)1–5, 335–14–11–.03(5)(c), (5)(c)1.(i)(ii)(iii)(5)(c)2.
Checklist 142 D, Universal Waste Rule: Specific Provisions for Thermostats.	60 FR 25492	May 11, 1995	335–14–2–.01(1), 335–14–2–.01(9)(a), 335–14–5–.01(1)(g), 12.(iii), 335–14–6–.01(1)(c), 14(iii), 335–14–9–.01(1), 335–14–8–.01(1)(c)2., (ix)(I), 335–14–11–.01(1)(a)1), 335–14–11–.01(4)(a), 335–11–.01(4)(b)(c), 335–14–11–.01(6), 335–14–11–.02(4)(c), 335–14–11–.02(4)(c)1–3, 335–14–11–.02(5)(d), 335–14–11–.03(4)(c), (4), (c)1–3, 335–14–11–.03(5)(d).
Checklist 142 E, Universal Waste Rule: Petition Provisions to Add a New Universal Waste.	60 FR 25492	May 11, 1995	335–14–1–.03(3)(a)–(d), 335–14–11–.07(1)(a)(b), (c)(2)(a)–(h).

Alabama is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

B. Decision

I conclude that Alabama's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted final authorization to operate its hazardous waste program as revised.

Alabama now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision applications and previously approved authorities. Alabama also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

II. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

III. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local, or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "Federal intergovernmental mandate" affects an annual Federal entitlement program of $500 million or more that are not applicable here. Alabama's request for approval of revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program approved, Alabama will gain the authority to implement the program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulations are left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. EPA does not anticipate that the

approval of Alabama's hazardous waste program referenced in today's document will result in annual costs of $100 million or more. EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved State Hazardous Waste Program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to the program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

IV. Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This, rule, therefore, does not require a regulatory flexibility analysis.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801 (a) (1) (A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Phyllis P. Hall,

Acting Regional Administrator.

[FR Doc. 97–30656 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2760

RIN 1004–AC91

Reclamation Projects, Grant of Lands in Reclamation Townsites for School Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This rule removes the regulations on sales and grants of land in reclamation townsites for reclamation projects and school purposes. The Bureau of Land Management (BLM) is removing these regulations because they consist of outdated material and restatements of statutory language. Consequently, the regulations are unnecessary and can be removed without any significant effect.

EFFECTIVE DATE: December 22, 1997.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren, Bureau of Land Management, Lands and Realty Group, (202) 452–7779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted
III. Responses to Comments
IV. Procedural Matters

I. Background

The existing regulations at 43 CFR part 2760 were written for BLM to assist the Bureau of Reclamation in disposing of lands through public sale or grants to townsites for school purposes. BLM is removing these regulations because they are rarely used and contain no applicable, substantive provisions beyond what is already in the statutes.

The final rule published today is a stage of a rulemaking process that will conclude in the removal of the regulations in 43 CFR part 2760. This rule finalizes a proposed rule that was published on October 3, 1996, in the **Federal Register** at 61 FR 51666. The rule provided for a comment period of 60 days, and BLM received no comments from the public.

II. Final Rule as Adopted

This rule will remove the regulations at 43 CFR part 2760 in their entirety. Subpart 2764 consists entirely of unnecessary material. Sections 2764.1 and 2764.3 concern procedures the Commissioner of Reclamation must follow when appraising and selling the lots at issue. These provisions are derived from 43 U.S.C. 561–573, and merely inform the public of the role assumed by the Bureau of Reclamation in this program. The regulations are redundant because they repeat language in 43 U.S.C. 564, and for this reason, these two sections have no substantive effect. The remaining sections of subpart 2764 are direct restatements of statutory language: section 2764.2 repeats 43 U.S.C. 564–565, and section 2764.4 largely repeats 43 U.S.C. 566. Finally, the last sentence of section 2764.4, the part which does not merely repeat the statute, is outdated because it directs municipal corporations to comply with a CFR section that no longer exists.

Subpart 2765 consists of the filing procedures school districts must follow when applying for a land grant for school purposes. These regulations elaborate on the statutory provisions at 43 U.S.C. 570 authorizing the Secretary of the Interior to grant school districts up to six acres from a reclamation townsite. BLM is removing these regulations to give itself and the Bureau of Reclamation added flexibility in processing the rare application for a school grant. Rather than requiring the school district to submit the lengthy requirements currently contained in section 2765.1, BLM will only ask that an application be submitted which complies with any Bureau of Reclamation requirements and is otherwise adequate to inform BLM of its request. The substantive provisions currently contained in subpart 2765, such as the 6-acre limit and the reversion held by the United States in the event the land is used for purposes other than a school, are entirely contained in the statute at § 570.

III. Responses to Comments

BLM received no comments from the public, and is therefore adopting the proposed rule without changes.

IV. Procedural Matters

National Environmental Policy Act

BLM has determined that because this final rule only eliminates provisions that have no impact on the public and no continued legal relevance, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10. In addition, this action does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

This final rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this final rule would not have a significant economic impact on substantial number of small entities. As discussed above, the rule merely removes unnecessary regulations and causes no change in status or rights of any entities.

Unfunded Mandates Reform Act

Removal of 43 CFR part 2760 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of "policies that have takings implications." Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author of this rule is Erica Petacchi, Regulatory Management Group, Bureau of Land Management, 401LS, 1849 C Street, NW, Washington, DC 20240; Telephone (202) 452–5084.

List of Subjects for 43 CFR Part 2760

Public lands—sale, Reclamation, Schools.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 2760 of Group 2700, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is removed.

Dated: November 4, 1997.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 97–30664 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7677]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW.,

room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Arkansas: White County, unincorporated areas	050467	October 7, 1997	June 7, 1977.
Kentucky: Crittenden County, unincorporated areas	210254	do	December 23, 1977.
Missouri:			
Bates County, unincorporated areas	290786	October 10, 1997	April 19, 1983.
Worth County, unincorporated areas	290842	do	
Washington: Lummi Indian Reservation, tribe of, Whatcom County.	530331	October 14, 1997	
Kentucky:			
Hardin, city of, Marshall County	210303	October 15, 1997	January 25, 1980.
Junction City, city of, Boyle County	210377	October 16, 1997	
Virginia: Orange, town of, Orange County	510366	October 17, 1997	
Colorado: Lake County, unincorporated areas	080282	October 20, 1997	October 18, 1977.
Michigan:			
Grant, township of, Kaneenan County	261004	October 27, 1997	
Jamestown, township of, Ottawa County	261001	do	
Novesta, township of, Tuscola County	261002	do	
Otter Lake, village of, Lapeer County	261003	do	
Minnesota: Upsala, city of, Morrison County	270306	October 28, 1997	October 25, 1974.
New Eligibles—Regular Program			
California:			
Laguna Niguel, city of, Orange County,[1]	060764	October 9, 1997	January 3, 1997.
Solvang, city of, Santa Barbara County[2]	060756	do	June 5, 1997.
Missouri: Caineville, city of, Harrison County	290620	October 10, 1997	NSFHA.
Washington: Woodinville, city of, King County	530324	do	May 20, 1996.
California: Citrus Heights, city of, Sacramento County[3]	060765	October 15, 1997	November 15, 1989.

State/location	Community No.	Effective date of eligibility	Current effective map date
Washington: Coupeville, town of, Island County	530281	do	August 16, 1995.
North Carolina: Davidson, town of, Mecklenburg County[4].	370503	October 16, 1997	February 3, 1993.
Florida: Aventura, city of, Dade County[5]	120676	October 22, 1997	March 4, 1994.
North Carolina: Vance County, unincorporated areas	370366	do	July 16, 1991.
California: Shasta Lake, city of, Shasta County[6]	060758	do	September 20, 1995.
Texas: Rio Grande City, city of, Starr County[7]	481678	do	July 1, 1987.
California: Laguna Hills, city of, Orange County[8]	060760	October 31, 1997	January 3, 1997.
Withdrawal			
Oklahoma: Stuart, town of, Hughes County	400330	November 17, 1977, Emerg.; February 5, 1986, Reg.; October 28, 1997, With.	February 5, 1986.
Reinstatements			
Arkansas: Johnson, city of, Washington County	050218	April 28, 1976, Emerg.; July 16, 1980, Reg.; July 16, 1980, Susp.; October 1, 1997, Rein..	February 5, 1997.
Kentucky: Ravenna, city of, Estill County	210319	May 19, 1976, Emerg.; September 18, 1985, Reg.; September 18, 1985, Susp.; October 2, 1997, Rein.	September 18, 1985.
Colorado: Mancos, town of, Montezuma County	080123	July 25, 1975, Emerg.; September 29, 1986, Reg.; November 16, 1990 Susp.; October 3, 1997, Rein.	September 29, 1986.
Pennsylvania: South Greensburg, borough of, Westmoreland County.	420900	February 10, 1976, Emerg.; July 3, 1986, Reg.; August 5, 1987, Susp.; October 8, 1997, Rein.	August 5, 1997.
Virginia: Buchanan County unincorporated areas	510024	November 8, 1974, Emerg.; September 16, 1988, Reg.; September 16, 1988, Susp.; October 9, 1997, Rein.	August 19, 1997.
Michigan: Swan Creek, township of, Saginaw County	260888	May 12, 1995, Emerg.; October 16, 1997, Reg.; October 16, 1997, Susp.; October 24, 1997, Rein.	October 16, 1997.
Indiana: Fountain County, unincorporated areas	180064	December 21, 1978, Emerg.; March 2, 1979, With.; October 28, 1997, Rein.	November 4, 1977.
Regular Program Conversions			
Region II			
New Jersey: Mendham, township of, Morris County	340511	October 2, 1997, Suspension Withdrawn	October 2, 1997.
New York: Hume, town of, Allegany County	361007	do	Do.
Region IV			
Florida: Hillsboro Beach, town of, Broward County	120040	do	Do.
Region V			
Indiana: Dyer, town of, Lake County	180129	do	Do
Michigan:			
Bridgeport, charter township of, Saginaw County	260186	October 16, 1997, Suspension Withdrawn	October 16, 1997.
Carrollton, township of, Saginaw County	260187	do	Do.
Frankenmuth, city of, Saginaw County	260188	do	Do.
James, township of, Saginaw County	260802	do	Do.
Kochville, township of, Saginaw County	260501	do	Do.
Saginaw, city of, Saginaw County	260189	do	Do.
Spaulding, township of, Saginaw County	260303	do	Do.
St. Charles, village of, Saginaw County	260593	do	Do.
Swan Creek, township of, Saginaw County	260888	do	Do.
Taymouth, township of, Saginaw County	260503	do	Do.
Tittabawassee, township of, Saginaw County	260504	do	Do.
Zilwaukee, city of, Saginaw County	260285	do	Do.
Zilwaukee, township of, Saginaw County	260286	do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA—Non Special Flood Hazard Area.

[1] The City of laguna Niguel has adopted the Orange County (CID #060212) Flood Insurance Rate Map dated January 3, 1997.

[2] The City of Solvang has adopted the Santa Barbara County (CID #060331) Flood Insurance Rate Map dated June 5, 1997.

[3] The City of Citrus Heights has adopted the Sacramento County (CID #060262) Flood Insurance Rate Map dated November 15, 1989, panels 80, 85, 90, 95, 105, and 115.

[4] The Town of Davidson has adopted the Mecklenburg County (CID #370158) Flood Insurance Rate Map dated February 3, 1993, panels 10, 20, and 25.

[5] The City of Aventura has adopted the Dade County (CID #120635) Flood Insurance Rate Map dated March 4, 1994, panels 82 and 84.

[6] The City of Shasta Lake has adopted the Shasta County (CID #060358) Flood Insurance Rate Map dated September 20, 1995.

[7] The City of Rio Grande City has adopted the Starr County (CID #480575) Flood Insurance Rate Map dated July 1, 1987.

[8] The City of Laguna Hills has adopted the Orange County (CID #060212) Flood Insurance Rate Map dated January 3, 1997.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: November 13, 1997.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 97–30665 Filed 11–20–97; 8:45 am]

BILLING CODE 6718–05–P

Proposed Rules

Federal Register

Vol. 62, No. 225

Friday, November 21, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 97–030A]

RIN 0583–AC41

Labeling Standards for Ovine Carcasses, Parts of Carcasses, Meat and Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: Pursuant to a requirement in the Farm Bill of 1996, the Department is issuing this advance notice of proposed rulemaking to determine the type of labeling standards it should establish for lamb and mutton and their meat food products. The principal issue of concern in the marketing of sheep is the identification, for the benefit of consumers, of the higher valued lamb carcasses compared to the lower valued mutton and sheep carcasses. One of the key elements of this issue is the attributes that give lamb meat products this higher value, such as flavor, texture, moisture, color, mouth feel, or portion size.

ADDRESSES: Please send an original and two copies of written comments to FSIS Docket Clerk, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250. Copies of USDA guidance material cited in this notice are available for review in the FSIS Docket Room. All comments submitted in response to this advance notice of proposed rulemaking will be available for public inspection in the FSIS Docket Room, Room 102 Cotton Annex from 8:30 a.m. to 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Alfred Liepold, Food Technologist, Regulations Development and Analysis Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 205–0292.

SUPPLEMENTARY INFORMATION:

Background

Section 279 of H.R. 2854—Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill) (Pub. L. 104–127, 4/4/96) reads as follows:

SEC 279. LABELING OF DOMESTIC AND IMPORTED LAMB AND MUTTON

Section 7 of the Federal Meat Inspection Act (21 U.S.C. 607) is amended by adding at the end the following:

"(f) LAMB AND MUTTON.—The Secretary, consistent with United States international obligations, shall establish standards for the labeling of sheep carcasses, parts of carcasses, sheepmeat and sheepmeat food products."

According to the legislative history (House Conference Report, No. 104–494), this provision originated in a Senate provision which also stated that the standard to be used was to be based on the break or spool joint method to differentiate lamb from mutton by the degree of calcification of bone to reflect maturity. Immature mammals have long bones composed of three bony parts—a central bony shaft and two bony plates, one at each end. The three parts are joined by cartilage and, as the animal grows more cartilage is formed and some of the existing cartilage turns to bone. As the animal matures enough of the cartilage turns to bone so that the three bony parts fuse into one. So long as the animal is immature, the bony plate at the end of the bone can be cleanly broken through the cartilage between the shaft and the end plate, leaving clean bone surfaces on both sides of the break. This is the break joint; the one used on lambs is the metacarpal bone of the foreleg between the shaft and the plate nearest the hoof. Industry terms for the metacarpal bones are canon bones or trotters. Once the bone fuses and will not cleanly separate, it is called a spool joint. It is not a true joint.

This spool joint criterion of the Senate Bill did not carry through to the Farm Bill. Accordingly, the Secretary may prescribe objective criteria, or, in accordance with the regulatory reform initiative, specify the end to be achieved (performance standard), and allow producers to develop their own criteria to meet these performance standards.

Prior Grading Standards

In the past, the Agricultural Marketing Service (AMS) published two standards voluntarily regulating the marketing of sheep, lamb, and yearling carcasses and their meat food products on the basis, among other things, of age and/or maturity. These two publications were titled "Official United States Standards for Grades of Slaughter Lambs, Yearlings and Sheep" and "Official United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses."

The purpose of these voluntary grading standards was to develop and establish efficient marketing methods and practices for agricultural commodities so that consumers could obtain the quality of product they desire at a reasonable cost. The grade standards were developed to provide uniform language to describe the characteristics of many meat food commodities in the marketplace. However, rapid changes in consumer preferences together with associated changes in commodity characteristics, processing technology, and marketing practices outpaced the issuance of regulatory modifications or revisions, leaving the marketplace burdened with outdated grading standards. Therefore, in line with the President's regulatory review initiative, the standards were removed from Volume 7 of the Code of Federal Regulations on December 4, 1995, but have been kept available as guidelines in pamphlet form.

In the publication containing the grade standards for slaughter lambs, yearlings, and sheep, the term *lamb* is defined as: "A lamb is an immature ovine, usually under 14 months of age, that has not cut its first pair of incisor teeth." The term *yearling* is defined as: "A yearling is an ovine usually between one and two years of age that has cut its first pair of permanent incisor teeth but has not cut the second pair." The term *sheep* is defined as: "A sheep is an ovine , usually over 24 months of age, that has cut its second pair of permanent incisor teeth."

In the publication containing the grade standards for lamb, yearling mutton, and mutton carcasses where the head is not available, the following criteria are used. Typical lamb carcasses tend to have slightly wide and

moderately flat rib bones and a light red color and a fine texture of lean. By contrast, typical yearling mutton carcasses have moderately wide rib bones which tend to be flat and a slightly dark red color and coarse texture of lean.

The AMS standard recites that, in the dressing of ovine carcasses, both front cannon bones (trotters) normally are left attached to the carcass although in some instances, one or both trotters may be removed. If present, trotters will terminate in perfect break joints (all ridges forming the break joints are intact and well defined), imperfect break joints or spool joints. For determining the maturity of ovine carcasses, an imperfect break joint is considered the same as a spool joint and it is assumed that there was a spool joint on any missing trotter. These variations, as indicated by the following guidelines, are important considerations in determining whether a carcass is classed as lamb, yearling mutton, or mutton.

A carcass with perfect break joints on both trotters will be classed as lamb or yearling mutton based on its other evidences of maturity.

A carcass with spool joints on both trotters will be classed as yearling mutton or mutton based on its other evidences of maturity. Mutton carcasses always have spool joints on both front trotters.

A carcass which has a perfect break joint on one trotter and has either (1) a spool joint on the other trotter, or (2) has had the other trotter removed, will be classed as a lamb if its other maturity characteristics are not more advanced than described in the grade specifications as typical of the more mature lamb group. Otherwise, such carcasses will be classed as yearling mutton. Maturity within the lamb class shall be based on the combination of lean and all skeletal characteristics.

Except for the above referenced considerations given to break joints and spool joints, when making other maturity evaluations, more consideration is given to the characteristics of the flesh than is given to the characteristics of the skeleton.

Question Concerning New Grading Standards

The criteria stated above are those used by AMS to distinguish the more valued lamb meat from the less valued meat of older ovines. The standards have been voluntary; the costs to secure grading by an authorized USDA employee have been paid for by the person requesting the service. By and large, the only grading used has been that for "lamb." If one were to set up a labeling standard and permit the marketplace to determine its own methods of objectively identifying lamb carcasses so that they were acceptable to buyer and seller, the goal of identifying the more valued meat might be achieved by more simple and less costly means. One of the necessities of such a labeling standard would be to determine the desirable attributes that make lamb meat more valuable and whether these attributes can be determined directly and objectively. If lamb is a more desirable meat than mutton because of its attributes, e.g., it is more moist, has a finer texture, or a different chewy feeling, then some type of analysis may be able to determine objective data concerning moisture and chewiness. If the increased desirability of lamb meat results from lighter color, milder flavor, or the size of the portions, such as lamb chops, a colorimetric test may be devised. On the other hand, flavor is too subjective to be easily used for grading purposes; and too many variables other than maturity can influence portion size to make that factor of much value.

AMS has continued to grade lamb and mutton (sheep) carcasses, using the same grades as before the regulation change. The grading is on a voluntary basis, so the fact that the standards have been removed from the regulations has not affected such grading. As a practical matter, producers of lamb that they think will achieve U.S. Prime or Choice will have such lamb officially graded by AMS meat graders. But, since the program is voluntary, producers will not have other grades and classes of ovines graded. Further, although neither FSIS nor AMS has a definition of the word "lamb" in the regulations, when the term "lamb" is used on a federally inspected meat food product, the product must come from meat that meets the definition of "lamb" in the AMS standards. It is clear that if new standards are developed, they could differ from the current voluntary AMS grading standards.

This situation raises a number of practical questions: Should FSIS issue new grading standards or should AMS reissue the AMS standards in the regulations? If the standards are reissued, should compliance with such standards remain voluntary? Should the standards include the standard for yearling mutton, as the old AMS standard did? What criteria should FSIS use, if not the old AMS ones? Should FSIS only use some of these criteria, other criteria, some combination of these and other criteria, or performance standards? What would be the economic and other regulatory impacts of new standards on producers and processors?

According to a representative of the New Zealand Meat Producers Board, the break joint method of determining maturity is not used in Australia or New Zealand and would be considered a "thinly veiled attempt to erect a non-tariff trade barrier." The New Zealand representative states that the only appropriate method of defining lamb is to use a definition accepted throughout the world, namely; "young sheep under 12 months with no permanent incisors in wear." Some U.S. authorities agree with the foreign comments that the break-joint method is not sufficiently reliable.[1] However, the New Zealand definition differs from the AMS standards in the use of the term "in wear" and, more importantly, in the situation where there is no head on the carcass, the teeth method of defining is not viable. One issue there is whether the U.S. should accept the principle of grading in the export country, using the teeth method?

Other practical issues exist raised by the Farm Bill directly or indirectly, but not specifically mentioned in it; FSIS would appreciate any comments on these issues also: Attempts have been made in the past to label young ovine carcasses which had not been graded and which possibly do not meet the lamb criteria as "no-roll lamb," meaning that the grade markings have not been applied, or rolled on, the carcasses. The Agency considered this misbranding, since the phrase included the term "lamb" which could be inapplicable. Should this policy be changed? Also should the nomenclature for carcasses of one to two year old ovines be changed as has been requested from "yearling mutton" to "yearling lamb?" At present this also is considered misbranding. Further, although there is no definition for "lamb" in the regulations, FSIS, in 9 CFR 317.8 (b)(4) does define the term "spring lamb" or "genuine spring lamb" as applicable only to carcasses of new-crop lambs slaughtered during the period beginning in March and terminating not beyond the close of the week containing the first Monday of October. Should this present definition of "spring lamb;" be changed, deleted, or added to the standard? Also, as a matter of FSIS policy, sheep brains, hearts, and tongues are considered practically indistinguishable from lamb brains, hearts, and tongues, respectively; therefore, these articles from ovine carcasses may be designated as either sheep or lamb. Should this be changed?

[1] Field, Ray A., University of Wyoming, letter to Rosemary Mucklow, Western States Meat Association, 6/1/94.

If the U.S. requires the grading of lambs, and, at the same time, permits the grading of imported lambs in the country of origin by officials of that country, the economic effects of such a compulsory grading standard on the exporting country would be lessened. If this is not permitted, the country would have to leave the bone ends on the trotters, a practice which is not routine at the present time. This would mean a change in the slaughter technique in the originating country, an increase of a few ounces in the shipping weight of each carcass, and an increased cost of having each imported carcass graded at producer expense by U.S. Department of Agriculture personnel. It appears that such mandatory grading would not materially affect the number of imported lambs, since imported lambs tend to be younger than domestic ones at time of slaughter. Under a required grading program, domestic stock would also have to be graded and some domestic producers may consider this an undesirable requirement.

Any further information on these or other economic or regulatory impacts would be welcome. If there are related issues not mentioned, but relevant, any information or comments on such issues should also be submitted for evaluation.

Done at Washington, D.C., on November 14, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30569 Filed 11–20–97; 8:45 am]

BILLING CODE 3410–DM–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7476; File No. S7–22–97]

RIN 3235–AH23

Equity Index Insurance Products

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; extension of comment period.

SUMMARY: The Commission is extending from November 20, 1997, to January 5, 1998, the comment period for Securities Act Release No. 7438 (Aug. 20, 1997), 62 FR 45359 (Aug. 27, 1997). This release requested public comment on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–22–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Electronically submitted comments will also be posted on the Commission's internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, (202) 942-0670, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: On August 20, 1997, the Commission issued a concept release soliciting comment on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.[1] The Commission requested that comments on the release be received by November 20, 1997.

In a letter dated November 3, 1997, the American Council of Life Insurance ("ACLI") requested a 45-day extension of time within which to comment on the concept release.[2] The ACLI requested the extension to provide an opportunity for careful analysis and constructive comment on the release.

To permit additional time for careful analysis and constructive comment, and in light of the importance of comments on this subject, the Commission believes that a 45-day extension of the comment period is appropriate. Therefore, the comment period for responding to Securities Act Release No. 7438 is extended to January 5, 1998.

November 17, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30620 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–P

[1] Securities Act Rel. No. 7438 (Aug. 20, 1997) [62 FR 45359 (Aug. 27, 1997)].

[2] Letter from Carl B. Wilkerson, Senior Counsel, American Council of Life Insurance, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission (Nov. 3, 1997).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–042–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of proposed amendments to the Maryland regulatory program (hereinafter the "Maryland program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments consist of revision to the Maryland regulations regarding a reduced bond liability period for lands remined. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., E.S.T., December 22, 1997. If requested, a public hearing on the proposed amendment will be held on December 16, 1997. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T., on December 8, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220 Telephone: (412) 937–2153

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4132.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

Maryland provided and informal amendment to OSM regarding a reduced bond liability period for land remined in a letter dated August 18, 1996. OSM completed its review of the informal amendment and submitted comments to Maryland in a letter dated August 4, 1997. By letter dated October 9, 1997 (Administrative Record No. MD–579–00), Maryland submitted its response to OSM's comments in the form of a proposed amendment to its program pursuant to SMCRA.

The provisions of the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are as follows:

1. COMAR 26.20.01.02B Definitions

Specifically, Maryland proposes to delete the existing definition at (49), "keyway," and add a new definition at (49) as follows:

"Lands eligible for remining" means any land that would otherwise be eligible for expenditures under Environment Article. Title 15, Subtitle 11, Annotated Code of Marland.

2. COMAR 26.20.14.05 Duration of Performance Bonds

Paragraph B. is modified by adding to the opening phrase, "except on lands eligible for remining," and new paragraph C. is added as follows:

On lands eligible for remining included in permits issued before September 30, 2004, or any later date authorized by the federal Surface Mining Control and Reclamation Act, or any renewal thereof, the period of liability for a bond shall continue for a period of not less than 2 full years, beginning with the last year of augmented seeding, fertilizing, irrigation, or other work. The period of liability shall begin again when augmented seeding, fertilizing, irrigation or other work is ordered by the Bureau to correct a failure to maintain the permanent vegetative cover required under COMAR 08.20.29 on the site.

Existing paragraph C. is re-lettered as D. and the 5-year reference is deleted.

3. COMAR 26.20.14.08. Criteria and Schedule for Release of Performance Bond

Existing paragraph D.(2) is deleted and new paragraph D.(2) is added as follows:

For acreage on which Reclamation Phase II has been completed and for which a bond release application has been submitted, an amount of bond not to exceed 50 percent of the per acre rate submitted in accordance with Regulation .03D of this chapter may be released;

Existing paragraph D.(3) is deleted and new paragraph D.(3) is added a follows:

For acreage on which Reclamation Phase III has been completed and for which a bond release application has been submitted, the remaining amount of bond equal to 50 percent of the per acre rate submitted in accordance with Regulation .03D of this chapter may be released;

New paragraph D.(4) is added as follows:

On lands eligible for remining, for acreage on which Reclamation Phases II and III have been completed and for which a bond release application has been submitted, bond in the amount of the per acre rate submitted in accordance with Regulation .03D of this chapter may be released.

4. COMAR 26.20.29.07. Standards for Success

Existing paragraph B.(8) is revised by adding the phrase "except on lands eligible for remining as provided in § B.(9) of this regulation."

New paragraph B.(9) is added as follows:

On lands eligible for remining included in permits issued before September 30, 2004, or on any later date authorized by the federal Surface Mining Control ad Reclamation Act, or any renewal thereof, the period of responsibility shall continue for a period of not less than 2 full years.

New paragraph C. is added as follows:

On lands eligible for remining included in any permit, the lands shall equal or exceed the standards for success during the growing season of the last year of the responsibility period of § B(9) of this regulation.

5. COMAR 08.20.14.14 Release of Bonds on Remining Areas

Maryland proposed to add, and the Office Of Surface Mining approved, this section as published in the **Federal Register** (61 FR 12028) dated March 25, 1996. However, Maryland subsequently chose not to promulgate this regulation. Instead, Maryland now proposes the changes enumerated in Items 1. through 4. above.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., E.S.T. December 8, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 14, 1997.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–30598 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–05–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Outdoor Developed Areas; Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Regulatory negotiation committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates, times, and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet on: Sunday, December 14, 1997, 2:00 p.m. to 6:00 p.m.; Monday, December 15, 1997, 8:30 a.m. to 5:00 p.m.; and Tuesday, December 16, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: The committee will meet at the Wyndham Sea Tac Hotel, 18118 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request. This document is also available on the Board's web site (http://www.access-board.gov/rules/outdoor.htm).

SUPPLEMENTARY INFORMATION: In June 1997, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered outdoor developed areas covered by the Americans with Disabilities Act and the Architectural Barriers Act. (62 FR 30546, June 4, 1997). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by December 1, 1997, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

Lawrence W. Roffee,

Executive Director.

[FR Doc. 97–30652 Filed 11–20–97; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE40

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Riparian Brush Rabbit and Riparian Woodrat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian (San Joaquin Valley) woodrat (*Neotoma fuscipes riparia*) as endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The brush rabbit and woodrat inhabit riparian communities along the lower portions of the San Joaquin and Stanislaus rivers in the northern San Joaquin Valley, California. Only a single remaining population of each species has been confirmed. Potential threats to these species include flooding, wildfire, predation, and other random factors. This proposal, if made final, would extend the Act's protective provisions to these animals.

DATES: Comments from all interested parties must be received by January 20, 1998. Public hearing requests must be received by January 5, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Windham at the above address (telephone 916/979–2725).

SUPPLEMENTARY INFORMATION:

Background

The riparian brush rabbit (*Sylvilagus bachmani riparius*) was described as a distinct subspecies by Orr (1935) and is one of 13 subspecies of *S. bachmani* (Hall 1981). *Sylvilagus bachmani* belongs to the order Lagomorpha and family Leporidae. The riparian brush rabbit is a medium to small cottontail with a total length of 300 to 375 millimeters (mm) (11.8 to 14.8 inches (in)) and a mass of 500 to 800 grams (g) (1.1 to 1.8 pounds). It is unique in that the sides of the rostrum (nasal/upper jaw region of the skull), when viewed from above, are noticeably convex instead of straight or concave as in other races of *bachmani* (Orr 1940). The color varies from dark brown to gray above to white underneath. The subspecies visually resembles the desert cottontail (*Sylvilagus audubonii*), a species that also occurs in riparian habitats within the historic range of the riparian brush rabbit. In-hand identification is required to definitively distinguish between young individuals of these species (Williams 1993).

Brush rabbits in general breed between December and May or June (Mossman 1955). After a gestation period of 26 to 30 days, the young are born in nest cavities lined mainly with fur and covered with a grass plug (Davis 1936, Orr 1940, Orr 1942). The young are born naked, blind, and helpless and open their eyes in 10 days (Orr 1940, Orr 1942). Young rabbits remain in the nest about 2 weeks before venturing out, and the female will continue to suckle her young for 2 to 3 weeks after their birth. Orr (1940) reported a mean litter size of between three and four with a range of two to five, while Mossman (1955) reported an average of four with a range of three to six. Riparian brush rabbits grow to adult size in 4 to 5 months, but do not reach sexual maturity until the winter following birth. Females give birth to about 5 litters per season with an estimated average of 9 to 16 young per breeding season (Basey 1990). The percentage of females active during the breeding season is unknown, but in 1 study, 9 of 25, or 36 percent of, female adults examined showed no signs of reproductive activity (Basey 1990).

The habitat of the riparian brush rabbit is riparian forests with a dense shrub layer. Common food plants in riparian brush rabbit habitat include *Rosa californica* (California wild rose), *Rubus ursinus* (Pacific blackberry), *Vitis californica* (wild grape), *Sambucus mexicana* (elderberry), and grasses (Williams 1988, Basey 1990). Brush rabbits have relatively small home ranges that usually conform to the size and shape of available brushy habitat (Basey 1990). In general, the home ranges of males are larger than those of females but male home ranges do not overlap the primary activity centers within female territories (Basey 1990).

The riparian brush rabbit is currently restricted to a single population at Caswell Memorial State Park, San Joaquin County, along the Stanislaus River (Williams and Basey 1986). In surveys conducted in all potential habitat along the Merced, San Joaquin, Stanislaus, and Tuolumne rivers during 1985 and 1986, no additional populations of riparian brush rabbits were located (Williams 1988). A maximum of about 81 hectares (ha) (198 acres (ac)) in Caswell Memorial State Park are suitable habitat for riparian brush rabbit (Williams 1993). During periods of heavy flooding, when virtually no suitable habitat remains exposed as a refugium, the population can drop dramatically. Williams (1988) estimated a population low of 10 or fewer individuals after severe winter flooding in 1985–86. Extended flooding occurred during the winter and spring of 1997, but no population estimate is yet available (see factor A in the "Summary of Factors Affecting the Species" section). Such low population levels may make this subspecies extremely vulnerable to detrimental genetic processes and random events (see factor E in the "Summary of Factors Affecting the Species" section). Maximum population estimates from surveys conducted in recent years at Caswell Memorial State Park are 88 to 452 individuals (Williams 1988), 320 to 540 individuals (Basey 1990), and 170 to 608 individuals (Williams 1993).

Because this subspecies was not described until after it is believed to have been extirpated from most of its historic range, definitive information on its former distribution is lacking. Even though riparian brush rabbit specimen records and sightings were known only from along the San Joaquin River near the boundary of San Joaquin and Stanislaus counties, Orr (1940) believed, based on the presence of suitable habitat, that its historic range extended along the San Joaquin river system, from Stanislaus County north to the Sacramento-San Joaquin River Delta. It apparently has been extirpated from the Delta, as well as most of the lower San Joaquin River and its tributaries—the Stanislaus, Tuolumne, and Merced rivers (Williams 1986). The range of the subspecies likely extended farther upstream south of the Merced River, assuming that suitable habitat occurred historically along the length of the San Joaquin River system (Williams and Basey 1986).

The riparian (San Joaquin Valley) woodrat (*Neotoma fuscipes riparia*) was first described by Hooper (1938) and is 1 of 11 subspecies of *N. fuscipes* in the family Muridae (order Rodentia). The subspecies has been retained by Hall (1981) and Williams (1986 and 1993). The riparian woodrat is a medium-sized rodent, its total length averaging 443 mm (17.4 in), its tail length averaging 217 mm (8.5 in) (Hooper 1938), and its total weight, based on measurements of other subspecies, averaging about 227 g (8 ounces), with marked seasonal variation (Williams *et al.* 1992). The riparian woodrat is predominantly gray and cinnamon above and whitish beneath, with white hindfeet. *Neotoma fuscipes riparia* is distinguished from other subspecies of *N. fuscipes* by size and coloration of the body, tail, ears, or feet, in addition to skull measurements and characteristics (Hooper 1938).

The following information is taken from a number of studies on *Neotoma fuscipes*, including *riparia* and related subspecies. Mostly active at night, the woodrat's diet is diverse and mainly herbivorous, with leaves, fruits, terminal shoots of twigs, flowers, nuts, and fungi comprising the bulk of ingested material (Williams *et al.* 1992). Females have one to five litters per year with three to four young each time. Reproduction occurs in all months, with the fewest pregnancies in December and the most in February. The number of juveniles appearing outside the nest is greatest in July and least in January and February (Williams *et al.* 1992).

The young are born in stick nest houses or lodges, which are located on the ground and measure 0.6 to 0.9 meters (m) (2 to 3 feet (ft)) high and 1.2 to 1.8 m (4 to 6 ft) in diameter. Most lodges are positioned over or against logs (Cook 1992, cited in Williams 1993). Unoccupied houses can persist for 20 to 30 years (Williams 1993). Unlike other subspecies, the riparian woodrat occasionally builds nests in cavities in trees and artificial wood duck nest boxes (Williams 1986). Nest houses usually are occupied by single adults. Young seldom disperse far from their natal houses, and nest clusters occupied by related individuals tend to develop in favored habitats. Unlike males, females remain in or near natal areas throughout their life (Williams *et al.* 1992). At Caswell Memorial State Park, Williams (1993) reported a mean density of houses of 8.3 per ha (3.4 per ac), or 757 houses on 91 ha (225 ac) of suitable habitat; occupancy of these houses was not verified.

In a study of another subspecies of *Neotoma fuscipes*, Linsdale and Tevis (1951, cited in Williams *et al.* 1992) found that 70 percent of the population survived less than 1 year, 27 percent survived 2 years, and 3 percent survived 3 years or more. Williams *et al.* (1992) also cited a number of studies that indicated woodrats are highly responsive to habitat alteration, with populations fluctuating widely in response to a variety of perturbations such as fire, flood, drought, habitat modification, and browsing and trampling by ungulates.

Historical localities for the riparian woodrat are distributed along the San Joaquin, Stanislaus, and Tuolumne rivers, and in Corral Hollow in San Joaquin, Stanislaus, and Merced counties (Hooper 1938, Williams 1986). This range is similar to the presumed historical range for the riparian brush rabbit. Thus, prior to the statewide reduction of riparian communities by nearly 90 percent (Katibah 1984), the riparian brush rabbit and woodrat probably occurred throughout the extensive riparian forests along major streams flowing onto the floor of the northern San Joaquin Valley.

The only known population of the riparian woodrat occurs in, and immediately adjacent to, Caswell Memorial State Park, also the site of the only riparian brush rabbit population (Williams 1993). A woodrat population was reported during the early 1970s near the type locality at Vernalis, but the current status of the population is unknown (D. Williams 1986, pers. comm. 1994). The site of an old record at Corral Hollow, San Joaquin County, no longer supports suitable habitat (D. Williams, pers. comm. 1994). Cook (1992) estimated the Caswell Park population at 637 woodrats over 102 ha (250 ac) of habitat. Williams (1993) estimated a peak population at Caswell of 437 animals, based on mean density of 4.8 woodrats per ha on 91 ha (225 ac) of suitable habitat.

Today, riparian forests of the lower San Joaquin River and its tributaries outside of Caswell Memorial State Park have nearly been eliminated. The remaining habitat is small, narrow forest patches confined within levees. These areas flood completely during major storm events. Because these forest remnants are small, isolated, and subject to periodic prolonged flooding (Williams and Basey 1986), their capability to support viable populations of these subspecies over the long-term is doubtful. Historic habitat and refugia from flooding in adjacent lands are now mainly cultivated fields, orchards, and vineyards, habitats unsuitable for these subspecies (Williams and Basey 1986). Flooding, wildfire, predation, and other factors imperil their continued existence.

Previous Federal Action

Federal action on these two species began on September 18, 1985, when the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the riparian brush rabbit and riparian woodrat as category 2 candidate species. Category 2 candidates, a designation discontinued in a Notice of Review published by the Service on February 28, 1996 (61 FR 7596), were taxa for which information in possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate but for which conclusive data on biological vulnerability and threats were not currently available. In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service elevated the riparian brush rabbit to a category 1 candidate species as a result of more intensive field work by Williams and Basey (1986) that identified only a single remaining population of this subspecies. Category 1 comprised taxa for which the Service currently had substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. The Service retained the riparian brush rabbit as a category 1 candidate and elevated the status of the riparian woodrat to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804), based on a reevaluation of the information contained in the study conducted by Williams and Basey (1986). The November 15, 1994, Animal Notice of Review (59 FR 58987) included both subspecies in category 1. The February 28, 1996, combined Animal and Plant Notice of Review (61 FR 7596) included both subspecies as candidates.

The processing of this proposed listing rule conforms with the Service's listing priority guidance for fiscal year 1997 published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the status of proposed listings. A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status (Tier 3). The lowest priority actions are in Tier 4, a category which includes processing critical habitat determinations, delistings, or other types of

reclassifications. Processing of this proposed rule is a Tier 3 action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian woodrat (*Neotoma fuscipes riparia*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Both the riparian brush rabbit and the riparian woodrat inhabit riparian forests, and each has been extirpated from all of its historical range except for a single population at Caswell Memorial State Park along the Stanislaus River. Katibah (1984) estimated that only 41,300 ha (102,000 ac) remain of an estimated 373,000 ha (921,600 ac) of pre-settlement riparian forest in California's Central Valley, a reduction of 89 percent. Moreover, nearly one-half of the remaining forests are in a disturbed and/or degraded condition, and it is likely that the majority of the rest have been and continue to be heavily impacted by human activities. This elimination and modification of riparian forests along valley floor river systems was attributed to—urban; commercial, and agricultural development; wood cutting; land reclamation and flood control activities; groundwater pumping; river channelization; dam construction; and water diversions (Katibah 1984).

Several land use practices and related human activities have contributed to the decline of the riparian brush rabbit and riparian woodrat throughout their historical ranges. During the past 10 to 20 years, cultivation has expanded along the floodplains of the main tributaries of the lower San Joaquin River system (Basey 1990). Increased habitat conversion to agricultural uses has resulted from the recent construction of the following dams on tributaries that individually and collectively altered the timing, frequency, duration, and intensity of flooding—Exchequer Dam on the Merced River, New Melones Dam on the Stanislaus River, and New Don Pedro Dam on the Tuolumne River. Before these dams and other flood control projects were constructed, much of the floodplain was livestock pasture (Basey 1990). Uneven topography on the floodplains provided escape areas for species because some land remained above most flood levels and contained patches of shrubs and trees for cover. Sites like these probably provided refuge from flooding for brush rabbits. Williams and Basey (1986) stated that, "virtually all areas outside of flood control levees now have been cleared, leveled, and planted to orchards, vineyards, or annual row crops." Conversion from pasture to cultivated fields also eliminated hedge rows and other residual patches of cover that provided travel corridors and refuge sites for the two subspecies. The effects of catastrophic flooding are discussed further under factor E.

Although brush clearing adversely affected the habitat of the riparian brush rabbit and riparian woodrat populations at Caswell State Park in the mid-1980s (Williams 1986), the State Park populations are no longer directly threatened by brush clearing, tree cutting, or the conversion of land to agricultural uses. Because the State Park harbors the only known populations of these species, these activities outside of the park do not pose a direct threat to either species. Such activities continue, however, to eliminate and fragment patches of remnant habitat within the historic range of these species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a problem for either species. However, the very small population at the remaining site makes the riparian brush rabbit vulnerable to extinction from recreational hunting and collection for scientific or other purposes. The brush rabbit (*Sylvilagus bachmani*) is designated as a resident small game species in California and is hunted from July 1 through January 30 with a daily bag limit of five animals (Williams and Basey 1986). Hunting regulations set by the California Fish and Game Commission do not distinguish the riparian brush rabbit from other subspecies of S. bachmani. Therefore, riparian brush rabbits that disperse beyond the boundaries of Caswell Memorial State Park (as they may, especially during times of flooding) face a potential threat of being hunted.

C. Disease or Predation

All rabbits, including cottontails, are known to be susceptible to a variety of diseases that sometimes reach epidemic proportions. The small population size and restricted distribution of both the riparian brush rabbit and riparian woodrat increase their vulnerability to epidemic diseases, such as tularemia in the case of the brush rabbit (Williams 1988). However, the significance of the threat of disease to the riparian brush rabbit and riparian woodrat is not known.

Coyotes, gray foxes, long-tailed weasels, raccoons, feral cats and dogs, hawks, and owls are known predators of brush rabbits as well as other small mammals, including woodrats (Williams 1986, Verner and Boss 1980, Orr 1940). At currently depleted population levels, predation events could significantly affect the survival of these two subspecies.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal, State, and local laws and regulations have not proven adequate to curb habitat losses for the riparian brush rabbit and riparian woodrat. The National Environmental Policy Act (NEPA) and section 404 of the Clean Water Act (CWA) represent the primary Federal laws that potentially may afford some protection for these species. However, neither NEPA nor the CWA protect candidate species. Moreover, brush clearing, tree cutting, and the conversion to agricultural uses that are adversely affecting these species are generally unregulated at any level of government. For example, pursuant to 33 CFR 323.4, the U.S. Army Corps of Engineers (Corps) has promulgated regulations that exempt some farming, forestry, and maintenance activities from the regulatory requirements of section 404.

Caswell Memorial State Park has a management plan for the riparian brush rabbit that provides some measure of protection to the population. This plan does not address the riparian woodrat. Despite the existence of a management plan, both the riparian brush rabbit and woodrat remain vulnerable to threats and hazards originating outside of the park (see factor E below).

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impact of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. The CEQA provides that when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to the point of insignificance. Furthermore, proposed revisions to CEQA guidelines, if made final, may weaken protections for threatened, endangered, and other sensitive species.

The California Endangered Species Act affords the riparian brush rabbit some conservation benefits. The animal was listed as an endangered species by the State of California in May 1994. Although this State law provides a measure of protection to the species, resulting in the formulation of mitigation measures to reduce or offset impacts for any projects proposed in riparian brush rabbit habitat, this law is not adequate to prevent the ongoing loss of riparian habitat. Many of the threats facing the riparian brush rabbit and the riparian woodrat (see factor E below) are not amenable to management without supplementing the depleted habitat base upon which these species depend. Moreover, State listing does not provide a nexus with Federal agencies, such as the Corps, that regulate flood control and other activities in waters of the United States.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Random events such as flooding or fire may be more critical than genetic considerations to the survival of species (Shaffer 1987, Gilpin 1987). This is especially true for taxa, like the riparian brush rabbit and woodrat, that are represented by only one or a few small, isolated populations. In such cases, little or no possibility of recolonization exists if a chance environmental or human-caused catastrophe affects the population. Riparian habitat at Caswell State Park is confined entirely within river levees, and offers less habitat value for these subspecies during periods of high stream flow. This habitat is routinely flooded during the wet winter season. Major flooding likely drowns a significant portion of the populations, eliminates foraging habitat and shelter for prolonged periods, and exposes brush rabbits and woodrats to increased predation by concentrating the population on high ground and in areas with little or no cover. Only about 3.6 ha (8.9 ac) in five small areas of the 104.5 ha (258 ac) park showed regular use by brush rabbits in the summer of 1986 after floods in February and March of that year (Williams 1988).

Williams (1986) found that riparian brush rabbits sometimes gain temporary shelter from floods by climbing trees, but he estimated that only 10 or fewer individual rabbits survived the severe winter flooding in 1985–86 (Williams 1988). Basey (1990) concluded, based on visual sightings and pellet surveys, that this same riparian brush rabbit population may have been reduced to fewer than 15 to 20 individuals during flooding in 1983.

The floods of January 1997 left about 85 percent of Caswell Memorial State Park under 0.6–3.0 m (2–10 ft) or more of water in most areas for at least 2 weeks and, in lower areas, for as long as 7 weeks. During efforts in January to locate and potentially rescue stranded riparian brush rabbits, only a single rabbit pellet was found (D. Williams, *in litt.* 1997). In areas of the park searched visually in March 1997, no rabbits or pellets were found, although searchers did find two mounds containing fresh grass. Such mounds, or "forms" are typically made by rabbits. In April 1997, searchers found two rabbit fecal pellets, but no other sign of rabbits or woodrat activity. Trapping surveys were initiated in early May, well after flood waters had receded, in hopes that any surviving rabbits would be located. During 22 nights of trapping, no rabbits were caught, one rabbit was sighted, and at another location, fresh rabbit tracks were found (D. Williams, *in litt.* 1997). In comparison, during trapping efforts of similar intensity in January 1993, 41 brush rabbits were captured and several rabbits were sighted (D. Williams, *in litt.* 1997). A significant increase in brush rabbit sign was noted during surveys after May 30, 1997, including the finding of four separate groups of fecal pellets, two separate groups of dust baths with rabbit tracks, about a dozen rabbit runways, and one rabbit sighted by spotlight (P. Kelly, San Joaquin Valley Endangered Species Recovery Program, *in litt.* 1997a, 1997b). Two sightings were also reported by park visitors (K. Graham, California Dept. of Parks and Recreation in Kelley, *in litt.* 1997a).

The riparian woodrat also is vulnerable to flooding, although its ability to nest in trees and wood duck nest boxes (Williams 1993) suggests some ability to avoid the negative effects of flooding. Nonetheless, the large majority of nests occur on the ground (Williams 1993, pers. comm. 1994). After the January 1997 floods left Caswell Memorial State Park under 0.6–3.0 m (2–10 ft) of water for 2 to 7 weeks, trapping and survey efforts in May 1997 resulted in capture of only eight woodrats (D. Williams, *in litt.* 1997). Trapping efforts of similar intensity in 1993 resulted in the capture of 57 woodrats (D. Williams, *in litt.* 1997). Severe flooding could eliminate the Caswell Memorial State Park populations of both the riparian brush rabbit and the riparian woodrat and result in the extinction of these subspecies.

Flooding is also likely to increase competition between riparian brush rabbits and desert cottontails, a species that occurs in a wider range of habitats, including riparian zones, within the same geographic area (Basey 1990). Riparian brush rabbits cannot return to their home areas if displaced more than about 340 m (1,116 ft). Desert cottontails, in contrast, may return home when displaced as much as 4.6 kilometers (3 miles). Therefore, if displaced by flooding more than about 340 m (1,116 ft) from their home areas, riparian brush rabbits may be stranded in habitats where desert cottontails have a competitive advantage.

The number of individuals in the sole population of each subspecies is now sufficiently low that the effects of inbreeding may result in the expression of deleterious genes in the population (Gilpin 1987). Deleterious genes reduce individual fitness in various ways, the most typical being decreased survivorship of young. Small populations are also more at risk due to the effects of genetic drift, a decrease in genetic variation due to random changes in gene frequency from one generation to the next. This reduction of variability within a population limits the ability of that population to adapt to environmental changes.

Although Caswell Memorial State Park provides protection to the riparian brush rabbit and the riparian woodrat against some threats, the park is also a recreational facility and consequently faces an increased threat of human-caused wildfires that may kill both the riparian brush rabbit and woodrat and destroy their habitat (Basey 1990). The

brushy areas most vulnerable to fire are important habitat for brush rabbits and woodrats (Basey 1990). Between 1975 and 1987, 10 wildfires were reported within the park. After a large area burned in 1981, no evidence of brush rabbits was found in the area (Basey 1990). The extent to which recreational activities, such as vehicular and pedestrian traffic, dogs, etc., also may affect habitat quality is unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these subspecies in determining to propose this rule. Based on this evaluation, the preferred action is to list the riparian brush rabbit (*Sylvilagus bachmani riparius*) and the riparian woodrat (*Neotoma fuscipes riparia*) as endangered. The single, small population of each of these two taxa render them vulnerable to a wide array of threats. Increases in human population and pressures associated with urban development, as well as the inadequacy of existing regulatory mechanisms have led to a significant loss of historic habitat and reduced these subspecies to the brink of extinction. Both subspecies currently face threats from floods, wildfires, and predation. Riparian forests, the habitat type upon which the riparian brush rabbit and woodrat depend, are so depleted along the San Joaquin River system that all habitat remnants outside of Caswell Memorial State Park are too small and isolated to support viable populations of these animals. Thus, even if the few remaining unsurveyed tracts of habitat do harbor these subspecies, the status of the riparian brush rabbit and woodrat would not change and listing of these taxa as endangered would be warranted.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the detriments of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that the designation of critical habitat for the riparian brush rabbit and riparian woodrat is not prudent because such designation would not provide any additional benefit to the two species beyond that conferred by listing them as endangered species. The basis for these conclusions, including the factors considered in weighing the benefits against the detriments of designation, is explained below.

As discussed above, the sole site currently occupied by the riparian brush rabbit and the riparian woodrat is within Caswell Memorial State Park, and no other currently suitable habitat for these species is known to exist within their historical ranges (Basey 1990). State Park designation provides protection to the natural resources of the park, such as through hunting prohibitions, and facilitates appropriate resource management. This protection would not be increased through critical habitat designation.

A high potential for Federal involvement exists because of the flood control activities of the Corps and water regulation activities of the U.S. Bureau of Reclamation (BOR). Section 7 of the Act requires that Federal agencies refrain jeopardizing the continued existence of a listed species and from contributing to the destruction or adverse modification of critical habitat. However, implementing regulations (50 CFR part 402) define "jeopardize the continued existence of" and "destruction or adverse modification of" in virtually identical terms. Jeopardize the continued existence of means to engage in an action "that reasonably would be expected . . . to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. In this case, because each species exists as a single, small population, it is even clearer that any activity that would destroy or adversely modify their habitat would also likely jeopardize their continued existence. For this reason, designation of critical habitat provides no benefit beyond that conferred by listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations that implement this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may require conference or consultation with the Service include the funding or authorization by the Corps of levee and channel maintenance projects along the lower San Joaquin River and its tributaries and the operation of upstream dams by the Corps and the BOR.

Listing the riparian brush rabbit and riparian woodrat as endangered species would also provide for the development of a recovery plan (or plans) for the taxa. Such a plan would establish a framework for State, Federal, and local governmental efforts to coordinate conservation planning for these animals. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan also would describe site specific management actions necessary to achieve conservation and survival of these subspecies.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Under some circumstances, permits may be issued for a specified period for species in trade in order to relieve undue economic hardship that would be suffered if such relief were not available.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the two species. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of legally acquired riparian brush rabbits and riparian woodrats;

(2) Light to moderate livestock grazing in riparian brush rabbit and riparian woodrat habitat that prevents or minimizes the encroachment of invasive plant species and does not significantly reduce shrub cover;

(3) Federally approved projects, such as those involving the discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or alteration of surface or ground water into or out of riparian areas (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.), when conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the riparian brush rabbit and the riparian woodrat and result in "take" include, but are not limited to:

(1) Unauthorized collecting or handling of the species;

(2) Unauthorized destruction/alteration of occupied habitat of the riparian brush rabbit or riparian woodrat through the discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or the alteration of surface or ground water flow into or out of riparian habitat of these two species (i.e., due to the construction/installation of roads, impoundments, discharge pipes, stormwater detention basins, etc.);

(3) Any activity constituting a violation of discharge permits which results in death of or injury to riparian brush rabbits or riparian woodrats or which results in degradation of their occupied habitat;

(4) Burning, cutting, or mowing of riparian vegetation which results in death of or injury to riparian brush rabbits or riparian woodrats or which results in degradation of their occupied habitat;

(5) Application of pesticides in violation of label restrictions which results in death of or injury to riparian brush rabbits or riparian woodrats;

(6) Discharging or dumping toxic chemicals, silt, or other pollutants (i.e., sewage, oil, or gasoline) which results in death of or injury to riparian brush rabbits or riparian woodrats;

(7) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit. (Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.)

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed wildlife and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will also comply with its policy on peer review, published on July 1, 1994 (59 FR 34270), in the processing of this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and,

(5) Information on biological considerations, land ownership, habitat restoration potential, flood control constraints, and other factors that may lead to a critical habitat determination.

Final promulgation of the regulations for these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein, as well as others, is available from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Authors. The primary authors of this proposed rule are Peter Sorensen and Diane Windham, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section), telephone 916/979–2725.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Rabbit, riparian brush.	Sylvilagus bachmani riparius.	U.S.A. (CA)	Entire	E		NA	NA
*	*	*	*	*	*	*	*
Woodrat, riparian (San Joaquin Valley).	Neotoma fuscipes riparia.	U.S.A. (CA)	Entire	E		NA	NA
*	*	*	*	*	*	*	*

Dated: October 30, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–30553 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 225

Friday, November 21, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Submission for OMB Review; Comment Request for Employee Surveys in the Benefit/Cost Analysis of the Javits-Wagner-O'Day Program

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) is inviting public comment on surveys submitted for review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Committee is seeking public comment on surveys being conducted as part of 2 comprehensive Benefit/Cost Analysis of the JWOD Program. This request is for renewal with revisions of a questionnaire for interviews with individuals who are blind or have other severe disabilities employed on contracts authorized under the JWOD Act and for renewal of the Employee Information Form.

DATES: Submit comments on or before December 22, 1997.

ADDRESSES: Written comments should be addressed to Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the OMB submission and the proposed information collection requests should be submitted to Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302, telephone: 703–603–7740, fax: 703–603–0655.

SUPPLEMENTARY INFORMATION: The enabling regulations for the JWOD Act prescribe that the Committee: "Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring the effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to (1) The employment of the blind or individuals with other severe disabilities * * *" (41 CFR Ch. 51–2.2(g)).

As part of the effort to evaluate its activities and study the employment of individuals who are blind or severely disabled, the Committee has initiated a comprehensive analysis of benefits and costs of the JWOD Program. The following survey instruments included in the submission for OMB approval are required to collect data for determining the benefits and costs of the JWOD Program to individuals who are blind or have other severe disabilities and to taxpayers in general. Comments should reference the title of the collection of information to which they apply.

Title: JWOD Employee Interview Questionnaire.

Type of Review: Reinstatement with revisions.

Frequency: One-time.

Affected Public: Individuals who are blind or severely disabled and who participated in the baseline surveys for this study.

Burden Estimate:

Responses: 360.

Total Burden Hours: 180 hours.

Average Burden per respondent: 30 minutes.

Abstract: The burden estimate above is based on actual use of the previous survey questionnaire in baseline interviews with the same individuals who will participate in interviews using the revised follow-up survey. This survey instrument will be used in oral interviews conducted either by telephone or in person depending on individual circumstances. The follow-up survey has been revised based on comments and issues identified during the baseline interviews. The follow-up survey is significantly shorter than the baseline survey. Data collected will be used to determine long-term effects of employment provided through the JWOD Program.

Title: Employee Mail Questionnaire.

Type of Review: Reinstatement with Revisions.

Frequency: One-time.

Affected Public: Individuals who are blind or severely disabled who participated in the baseline surveys for this study and who are not available for an oral interview.

Burden Estimate:

Responses: 129.

Total Burden Hours: 64.5 hours.

Average Burden per respondent: 30 minutes.

Abstract: This survey contains the same survey questions as the Employee Interview Questionnaire with formatting changes suited for self-administration through a paper format. This survey will be sent to individuals who are not able or available to participate in an oral interview.

Title: JWOD Employee Information Form.

Type of Review: Reinstatement with revisions.

Frequency: One-time.

Affected Public: Nonprofit agencies that employed individuals who are blind or severely disabled who participated in the baseline surveys for this study.

Burden Estimate:

Responses: 82.

Total Burden Hours: 196.8 hours.

Average Burden per respondent: 2.4 hours per agency.

Abstract: This survey will be completed by the nonprofit agencies who currently or previously employed individuals participating in the baseline survey. The information to be collected by this survey will provide critical contact information and will provide employment data that cannot be accurately obtained from each survey respondent. The estimate of burden is based on a similar Employee Information Form completed by the same nonprofit agencies at the baseline stage.

Dated: November 18, 1997.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–30679 Filed 11–20–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 22, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies (Requirments for the Naval Station, Ingleside, Texas)
NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas

Extra Life & Shipper
M.R. 858
M.R. 859
NPA: Industries of the Blind, Inc., Greensboro, North Carolina

Sponge, Cellulose
7920–01–444–3650
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Services

Janitorial/Custodial
Robert N.C. Nix, Sr. Federal Center
9th & Market Street
Philadelphia, Pennsylvania
NPA: Elwyn, Inc., Elwyn, Pennsylvania

Mailroom Operation
Veterans Affairs Medical Center
Denver, Colorado
NPA: Bayaud Industries, Inc., Denver, Colorado

Switchboard Operation
Veterans Affairs Medical Center 2250 Leestown Road
Lexington, Kentucky
NPA: Kentucky Industries for the Blind, Louisville, Kentucky.

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–30677 Filed 11–20–97; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: December 22, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 13, August 1, September 5, 12, 26 and October 3, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 32288, 41339, 46943, 48050, 50555 and 51827) of proposed additions to and deletions from the Procurement List:

Additions

The Following Comments Pertain to Janitorial/Custodial, Calexico, California

Comments were received from the current contractor for this janitorial/custodial service. The commenter claimed that this addition to the Procurement List would have a severe adverse impact on the company and its employees as little other Federal work would remain in its area after this and other Procurement List additions.

This addition would not, in the Committee's view, remove a large enough percentage of the commenter's total sales to constitute severe adverse impact. The commenter was not the current contractor for the other janitorial services in its area which have been added to the Procurement List, so it was not impacted by losing the opportunity to perform those services. The commenter did not provide information concerning possible job losses by its employees, but given the relatively small amount of labor involved in the contract, at most only one or two employees would be impacted. Moreover, the Procurement List addition will create employment for people with severe disabilities, who have an unemployment rate far above that of people without disabilities. Consequently, the Committee believes this job creation outweighs the possible job loss by one or two of the commenter's employees.

The Following Comments Pertain to Tray, MM, Fiberboard

The Committee initially proposed to add the Government requirement for fiberboard MM trays and sleeves to the Procurement List. Comments were received from two companies which were current contractors for these items at the time the Committee wrote to them to request sales data. One company indicated that the items made up a substantial portion of its sales, and losing them would also cause layoffs of some workers. The other company described the production process and questioned whether the designated nonprofit agency would be capable of acquiring the machinery needed to perform it to Government specifications.

Because of concerns over contractor impact, the trays and sleeves have been separated into two Procurement List addition processes. This addition involves only the fiberboard MM sleeves. Neither company is currently a contractor for the sleeves, so the addition will have no impact on them or their workers. The company which is the contractor is a very large business, so the impact of the addition on it will not be severe.

The designated nonprofit agency has experience in producing corrugated items for the Government and other customers. The Committee's industrial engineer has reviewed the capability assessments which have been done by the contracting activity and the central nonprofit agency, and has concluded that the nonprofit agency will be capable of producing the sleeves to Government specifications at the time of contract performance.

The Following Comments Pertain to Dispenser, Tape

Comments were received from the current contractor for the tape dispenser. The commenter noted that the tape dispenser requires very little labor to produce, so it would not create much employment for people with severe disabilities. He also claimed that the Committee was adding a sizeable portion of his company's business to the Procurement List when earlier additions are considered along with this addition. The commenter also mentioned the impact of losing investment in product development and tooling to produce items which are then added to the Procurement List, and claimed that the company had not been contacted in the past before other Procurement List additions were made.

The Committee agrees that this particular tape dispenser produces only a small amount of direct labor employment for people with severe disabilities. However, it will complement other products, including another tape dispenser, being produced by the nonprofit agency to generate direct labor employment for people who are blind.

The commenter was not the current contractor for the other items it mentioned at the times they were added to the Procurement List. Consequently, the Committee did not contact the commenter to inquire about the impact of the additions on its sales, as it did for the current addition. The Committee does not consider loss of the opportunity to bid on future Government purchases of an item to constitute severe adverse impact on a company which is not the current contractor for the item. The current addition represents a percentage of the commenter's sales which is well below the level the Committee normally considers to have a severe adverse impact.

Because no contractor is guaranteed a contract under the Government's competitive bidding system, product development and tooling investment is a business expense which a contractor makes with the understanding that it may be lost if the contractor fails to secure a Government contract for the item in question. Consequently, the Committee does not consider such loss to constitute severe adverse impact. In addition, the contractor sold its stencil dies to nonprofit agencies which are producing stencils under the Committee's Javits-Wagner-O'Day (JWOD) Program, and has developed new business lines to replace the bidding opportunities it claims to have lost to the JWOD Program.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies (Requirements for the U.S. Military Academy, West Point, New York)

Tape Dispenser
7520–00–240–2408

Sleeve, MM, Fiberboard
P.S. Item 3916A

Services

Carpet Replacement, National Gallery of Art, 6th & Constitution Avenue, NW, Washington, DC

Janitorial/Custodial, Calexico Border Patrol Station, Calexico, California

Janitorial/Custodial, U.S. Army Reserve Center, Moffett Field, California

Janitorial/Custodial, Eisenhower Library Complex, 200 S.E. 4th Street, Abilene, Kansas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cover, Mattress
7210–00–241–9718
7210–00–067–7969

Smithsonian Institution Women's Council Newsletter

7690–00–NSH–0037
Beverly L. Milkman,
Executive Director.
[FR Doc. 97–30678 Filed 11–20–97; 8:45 am]
BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Tuesday, December 9, 1997, at the Catholic Charities, Conference Room, 467 Bloomfield Avenue, Bloomfield, Connecticut 06002. The purpose of the meeting is to discuss and plan followup activities to the Civil Rights Leadership Conference held on November 12 and 13, 1997, in Waterbury.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 97–30691 Filed 11–20–97; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Wednesday, December 17, 1997, at the Hotel Inter-Continental, 100 Chopin Plaza, Miami, Florida 33131. The purpose of the meeting is to discuss new project ideas, and new member orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 97–30694 Filed 11–20–97; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 6:30 p.m. on Thursday, December 11, 1997, at the United Technical Center, Region 4, Conference Room, 200 Hogan Road, Bangor, Maine 02208. The purpose of the meeting is to plan future events and discuss progress of the Committee report, "Limited English Proficient Students in Maine: An Assessment of Equal Educational Opportunities."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Barney Bérubé, 207–287–5980, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 97–30692 Filed 11–20–97; 8:45 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on Friday, December 5, 1997, at the Board of Directors Room, Alumnae House, Smith College, Northampton, Massachusetts 01063. The purpose of the meeting is to discuss followup activities to the Springfield briefing on police-community relations and plan for the 1998 Civil Rights Leadership Conference.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Fletcher Blanchard, 413–585–3909, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 97–30690 Filed 11–18–97; 4:15 pm]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, December 12, 1997, at the Hilton Head Island Hilton, 23 Ocean Lane, Hilton Head Island, South Carolina 29938. The purpose of the meeting is to discuss new project ideas and new member orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 18, 1997.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 97–30693 Filed 11–20–97; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 931]

Grant of Authority for Subzone Status, Nissan Industrial Engine Manufacturing USA, Inc.; (Spark Ignition Industrial Engines), Marengo, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Rockford Airport Authority, grantee of Foreign-Trade Zone 176, for authority to establish special-purpose subzone status at the spark ignition industrial engine manufacturing plant of Nissan Industrial Engine Manufacturing USA, Inc., in Marengo, Illinois, was filed by the Board on October 16, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 76–96, 61 FR 55268, 10–25–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 176D) at the Nissan Industrial Engine Manufacturing USA, Inc., plant in Marengo, Illinois, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of November 1997.

Robert S. LaRussa,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 97–30701 Filed 11–20–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 932]

Voluntary Relinquishment of the Grant of Authority Foreign-Trade Zone 188, Yakima, Washington

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on November 30, 1992, the Foreign-Trade Zones (FTZ) Board issued a grant of authority to the Yakima Air Terminal Board, authorizing the establishment of Foreign-Trade Zone 188 at the Yakima International Airport, in Yakima, Washington (Board Order 606, 57 FR 58457, 12/10/92);

Whereas, the Yakima Air Terminal Board has made a request (FTZ Doc. #37–97, 3–31–97) to the FTZ Board for voluntary relinquishment of the grant of authority for FTZ 188, and;

Whereas, the FTZ Board, noting the concurrence of the U.S. Customs Service, adopts the findings of the FTZ staff report and concludes that approval of the request is in the public interest;

Now, therefore, the Foreign-Trade Zones Board terminates the FTZ status of Foreign-Trade Zone No. 188 effective this date.

Signed at Washington, DC, this 12th day of November, 1997.

Robert S. LaRussa,
Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 97–30700 Filed 11–20–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–091. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Upgrade and Replacement Parts for Asphalt Testing Equipment. *Manufacturer:* Industrial Process Controls Ltd., United Kingdom. *Intended Use:* This is an upgrade for existing instrumentation that will be used for studying asphalt concrete with the objective of improving design of asphalt concrete in highway and airfield pavements. *Application accepted by Commissioner of Customs:* October 27, 1997.

Docket Number: 97–092. *Applicant:* University of Wisconsin, Mechanical Engineering, 1513 University Avenue, Madison, WI 53706. *Instrument:* Flame Ionization Detector System, Model HFR400. *Manufacturer:* Cambustion Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the concentrations of hydrocarbons produced during studies of the transient behavior of hydrocarbons produced by internal combustion engines. The

objectives of these studies are to extend the fundamental understanding of the hydrocarbon formation process, to extend the fundamental understanding of how engine transients affect this hydrocarbon formation and to understand the difference in hydrocarbon formation between steady-state and transient operation of the engine. *Application accepted by Commissioner of Customs:* October 30, 1997.

Docket Number: 97–093. *Applicant:* National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Building 8, Room 219, Bethesda, MD 20892. *Instrument:* Micromanipulator Microscope, Model MSM. *Manufacturer:* Singer Instrument Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for dissecting the spores formed during genetic crosses of the mutants in yeast that are essential to extending studies on the biochemistry, regulation and genetics of the amines, putrescine, spermidine and spermine and of the biosynthetic enzymes in *S. cerevisiae*. *Application accepted by Commissioner of Customs:* October 31, 1997.

Docket Number: 97–094. *Applicant:* Centers for Disease Control, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Mail Stop/2015, Morgantown, WV 26505–5288. *Instrument:* Electron Microscope, Model JEM–1220. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for investigating the impact of particulates and vapors on tissues, cells and cell organelles and for morphometric analysis to determine the extent of pathological changes in structures visible only at the electron microscope level. In addition, the instrument will be used to train Ph.D. candidates, postdoctoral fellows and staff in biomedical and occupational health research. *Application accepted by Commissioner of Customs:* November 5, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–30702 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1997 and September 30, 1997. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background:

The Department's regulations (19 CFR 351.225(o)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between July 1, 1997, and September 30, 1997, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in January 1998 a notice of scope rulings and anticircumvention inquiries completed between October 1, 1997, and December 31, 1997, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between July 1, 1997 and September 30, 1997

Country: People's Republic of China

A–570–502 Iron Construction Castings

Metraflex Company—Certain "Y" pipe strainers, imported by Metraflex Company, are outside the scope of the order. 8/13/97.

A–570–504 Petroleum Wax Candles

Indio Products Inc.—Various tapers, votives, pillars, and rounds are within the scope of the order. 9/15/97.

M.G. Maher & Co. Inc.—A red flame 12-inch spiral candle is within the scope of the order. 9/25/97.

Russ Berrie Co., Inc.—Heart-shaped "trinket box" candle is within the scope of the order. 9/25/97.

Russ Berrie Co., Inc.—Star-shaped confetti pillar candles are within the scope of the order. 9/2/97.

Meijer, Inc.—Four terra cotta candles (bell, tree, reindeer, and star) are within the scope of the order. A Jack O'Lantern candle is outside the scope of the order. 9/8/97.

Enesco Corporation—Birthday candle (style #9500340) is outside the scope of the order. 9/30/97.

A–570–822 Helical Spring Lock Washers (HSLWs)

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Helical Spring Lock Washers which are imported to the United States in an uncut, coil form are within the scope of the order. 9/30/97

A–570–827 Certain Cased Pencils

Nadel Trading Corporation—A plastic, "quasi-mechanical" pencil known as the Bensia pencil is outside the scope of the order. 9/15/97.

A–570–836 Glycine

Consolidated Pharmaceutical Group, Inc.—D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. 7/23/97.

Country: Taiwan

A–583–816 Certain Stainless Steel Butt-Weld Pipe Fittings

Eckstrom Industries—Eckstrom's cast stainless steel fittings are within the scope of the order. 9/29/97.

A–583–820 Helical Spring Lockwashers (HSLWs)

Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Helical Spring Lockwashers imported into the United States in an uncut, coil form are within the scope of the order. 9/30/97.

II. Anticircumvention Rulings Completed Between July 1, 1997 and September 30, 1997

None.

III. Scope Inquiries Terminated Between July 1, 1997 and September 30, 1997

None.

IV. Anticircumvention Inquiries Terminated Between July 1,1997 and September 30, 1997

None.

V. Pending Scope Clarification Requests as of September 30, 1997:

Country: Canada

A–122–823 Certain Cut-to-Length Carbon Steel Plate

Petitioners—Clarification to determine whether certain carbon steel plate with boron added is within the scope of the order.

Country: Sweden

A–401–040 Stainless Steel Plate

Avesta Sheffield AB and Avesta Sheffield NAD, Inc.—Clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the order.

Country: Germany

A–428–801 Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof

FAG Aerospace & Superprecision Bearings GmbH—Clarification to determine whether certain aerospace bearings which have entered the United States but have been returned to Germany for repair or refurbishing, and which then reenter the United States, are within the scope of the order.

Country: People's Republic of China

A–570–501 Natural Bristle Paint Brushes and Brush Heads

Kwick Clean and Green Ltd.—Clarification to determine whether a group of bristles held together at the base with glue, which are to be used as replaceable parts within the cavity of the paintbrush body, is within the scope of the order.

A–570–504 Petroleum Wax Candles

Long Island Distributing Co. Ltd.—Clarification to determine whether various pillars, Christmas tin candles, cherub candles, and fruit/veggie candles are within the scope of the order.

Sun-It Corporation—Clarification to determine whether taper candles containing oil of citronella are within the scope of the order.

Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order.

American Drug Stores—Clarification to determine whether spherical candles with a "wax veneer" are within the scope of the order.

A–570–808 Chrome-Plated Lug Nuts

Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.

A–570–827 Certain Cased Pencils

Creative Designs International, Ltd.—Clarification to determine whether 10 piece dress-up/vanity sets for young girls, containing two pencils (approximately 3 inches in length with no eraser or ferrule), are within the scope of the order.

Country: South Korea

A–580–803 Small Business Telephones From Korea

TT Systems Corporation—Clarification to determine whether the "Model 4300" which is a "blocking" system should be excluded from the scope of the order which pertains to "non-blocking" systems.

Country: Taiwan

A–583–009 Color Television Receivers, Monochrome and Color

Coach Master International Corporation (CMI)—Clarification to determine whether the Kitchen Coach Unit 8100 manufactured by Action Electronics and imported by CMI is within the scope of the order.

Country: Japan

A–588–028 Roller Chain, Other Than Bicycle

Kaga Chain Manufacturer (KCM)—Clarification to determine whether silent timing chain for use in automobiles is within the scope of the order.

A–588–405 Cellular Mobile Telephones and Subassemblies

Matsushita Communication Industrial Corporation of America—Clarification to determine whether a new subscriber unit (model number HS600) is within the scope of the order.

A–588–703 Certain Internal-Combustion Industrial Forklift Trucks

Nissan Motor Co., Ltd., and Nissan Forklift Corporation (collectively Nissan)—Clarification to determine whether model F05–70 is within the scope of the order.

A–588–802 3.5" Microdisks

Maxell Corporation of America—Clarification to determine whether Maxell's OSD325–Floptical Disk is within the scope of the order.

A–588–804 Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof

Koyo Seiko Co., Ltd.—Clarification to determine whether a cylindrical roller bearing, allegedly without a precision rating, for use as an axle bearing in cars and trucks is within the scope of the order.

A–588–813 Light-Scattering Instruments and Parts Thereof

Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.

A–588–824 Corrosion Resistant Carbon Steel Flat Products

Drive Automotive Industries—Clarification to determine whether 2000 millimeter wide, made to order, corrosion resistant carbon steel coils are within the scope of the order.

A–588–833 Stainless Steel Bar

Keystone Stainless Inc.—Clarification to determine whether "Keystone 2000," a specialty stainless steel bar product, should be excluded from the scope of the order because the process of manufacture of the product substantially differentiates it from any other product available.

VI. Pending Anticircumvention Inquiries as of September 30, 1997

Country: Mexico

A–201–805 Certain Welded Non-Alloy Steel Pipe

Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co., Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc. (Petitioners)—Anticircumvention inquiry to determine whether imports of (i) pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe) and (ii) pipe certified to both the API 5L line pipe specifications and the less stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual certified pipe), falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order.

Country: United Kingdom

A–412–810; C–412–811 Lead and Bismuth Carbon Steel Products

Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether British Steel PLC is circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Germany

A–428–811; C–429–812 Lead and Bismuth Carbon Steel Products

Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether Saarstahl A.G. and Thyssen s Stahl A.G. are circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Korea

A–580–008 Color Television Receivers From Korea

International Brotherhood of Electrical Workers, the International Union of Electronic Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (the Unions)—Anticircumvention inquiry to determine whether Samsung Electronics Co., L.G. Electronics Inc., and Daewoo Electronics Co., are circumventing the order by shipping Korean-origin color picture tubes, printed circuit boards, color television kits, chassis, and other materials, parts and components to plants operated by related parties in Mexico where the parts are then assembled in CTVs and shipped to the United States. Additionally, an anticircumvention inquiry to determine whether Samsung is circumventing the order by shipping Korean-origin color picture tubes and other CTV parts to a related party in Thailand for assembly into complete CTVs prior to exportation to the United States.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 14, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–30703 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111797A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisors, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Advisors, will hold a public meeting.

DATES: The meeting will be held on Thursday, December 11, 1997. The Summer Flounder Advisors will meet from 10:00 a.m. until noon, the Scup Advisors will meet from 1:00–3:00 p.m., and the Black Sea Bass Advisors will meet from 3:00–5:00 p.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the 1998 recreational measures for summer flounder, scup, and black sea bass.

Although other issues not contained in this agenda may come before these Advisors for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action by these Advisors will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 17, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30617 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Consultations With the Government of Cambodia

November 17, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On October 29, 1997, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Government of the United States requested consultations with the Government of Cambodia with respect to cotton and man-made fiber gloves and mittens in Categories 331/631, produced or manufactured in Cambodia.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Cambodia, the Government of the United States may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 331/631, produced or manufactured in Cambodia and exported during the twelve-month period which began on October 29, 1997 and extends through October 28, 1998, at a level of not less than 1,250,841 dozen pairs.

A statement of serious damage, actual threat of serious damage or the exacerbation of serious damage concerning Categories 331/631 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 331/631 or to comment on domestic production or availability of products included in Categories 331/631 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Cambodia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular commentary or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 331/631. Should such a solution be reached in consultations with the Government of Cambodia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Summary of the Statement in Support of Request for Consultations Under Section 204 of the Agricultural Act of 1956

Cotton and Manmade Fiber Gloves and Mittens—Category 331/631

October 1997

Import Situation and Conclusion

U.S. imports of cotton and manmade fiber gloves and mittens, Category 331/631, from Cambodia surged to 1,250,841 dozen pair during the year ending July 1997, over seven times the 176,732 dozen pair imported in the year ending July 1996 and more than 15 times the 79,968 dozen pair imported in calendar year 1995. Imports from Cambodia were 2.6 percent of total U.S. imports of Category 331/631 in the year ending July 1997, and were equivalent to 4.9 percent of U.S. production of Category 331/631 in 1996.

U.S. imports of cotton and manmade fiber gloves and mittens, Category 331/631, from Cambodia entered the U.S. at an average landed duty-paid value of $3.12 per dozen pair during the first seven months of 1997, 42 percent below the average landed duty-paid value for all cotton and manmade fiber glove and mitten imports into the U.S., and 70 percent below the average U.S. producers' price for cotton and manmade fiber gloves and mittens.

The sharp and substantial increase of low-valued Category 331/631 imports from Cambodia threatens to cause disruption to the U.S. cotton and manmade fiber glove and mitten market and to the orderly flow of trade in these products. In several instances, Cambodia's import level for the year ending July 1997 exceeds the trade levels of WTO countries that have quota agreements with the United States.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton and manmade fiber gloves and mittens, Category 331/631, declined in 1996 falling to 25,424,000 dozen pair, 1 percent below the 1995 production level. Imports of Category 331/631 increased from 45,559,773 dozen pair in 1995 to 47,336,957 dozen pair in 1996, a 4 percent increase. Imports continued to increase reaching 48,220,877 dozen pair in the year ending July 1997, 7 percent above the same period a year earlier.

The ratio of imports to domestic production increased to 186 percent in 1996. The domestic manufacturers share of the U.S. market for cotton and manmade fiber gloves and mittens decreased to 33 percent in 1996.

[FR Doc. 97–30570 Filed 11–20–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange: Proposed Amendments to the Nonfat Dry Milk Futures Contract to Change the Contract From Physical Delivery to Cash Settlement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Coffee, Sugar & Cocoa Exchange (CSCE or Exchange) has submitted amendments to its nonfat dry milk futures contract that would change the contract from physical delivery to cash settlement. In accordance with Section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting public comment on the proposal.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CSCE nonfat dry milk futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5273. Facsimile number: (202) 418–5527. Electronic mail: flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: The amendments provide for cash settlement of the nonfat dry milk (NDM) futures contract against the NDM "West Mostly" monthly average price as calculated and published by the United States Department of Agriculture (USDA). The USDA's NDM West Mostly price is published weekly and represents a survey of both buyers and sellers of NDM in western states. From this weekly price data, the USDA calculates the monthly average price. The value of the cash settled NDM contract would be 11,000 times the monthly average price.

The Exchange said that changing the NDM contract to one which is cash settled would significantly enhance the viability of this contract. The Exchange said that it has polled NDM industry participants who have reported that the USDA's West Mostly price is a fair and representative price, and that a majority of industry participants utilize it to price their product.

The amendments were submitted pursuant to the Commission's ast Track procedures for streamlining the review

of amendments to contract terms and conditions (62 Fed. Reg. 10434). Under those procedures, the amendments, absent any contrary action by the Commission, may be deemed approved on December 26, 1997, 45 days after receipt of the submission. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the amended terms and conditions for 15 days, rather than 30 days as provided for amendments submitted under the regular review procedures. Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CSCE may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CSCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 18, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–30676 Filed 11–20–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Realignment of E–2 Squadrons From Naval Air Station (NAS) Miramar

SUMMARY: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for the realignment of E–2 squadrons from NAS Miramar. The DEIS also has been prepared in accordance with the Defense Base Closure and Realignment Act of 1990 (DBCRA, P.L. 101–510) and the pertinent base closure and realignment decisions of the Defense Base Closure and Realignment Commission approved by the President and accepted by Congress in September 1993 and September 1995.

The proposed action is to relocate four E–2 aircraft squadrons (16 aircraft) and related support personnel, equipment and functions from NAS Miramar to one of three alternative naval air bases in California. The proposed action includes relocating the 16 E–2 aircraft, 988 associated personnel and their families, and expanding or constructing facilities to support aircraft and personnel, and to provide associated training functions. In addition to the increased staffing and equipment levels, there would be an increase in Navy training and an increase in flight operations at the receiving installation. The preferred alternative is realignment of the E–2 squadrons to Naval Air Weapons Station (NAWS) Point Mugu, CA. Two other alternative sites were evaluated in detail: (1) Naval Air Station (NAS) Lemoore, CA, and (2) Naval Air Facility (NAF) El Centro, CA. NAS North Island was initially considered as a potential alternative base, but was eliminated because of the need to support Clean Air requirements with regard to the BRAC-mandated Marine Corps realignment to MCAS Miramar.

A Notice of Intent (NOI) for the DEIS was published in the **Federal Register** on May 1, 1996. Public scoping meetings were held at the following locations: (1) On Tuesday, May 21, 1996, at the Oxnard Center for Performing Arts, Thousand Oaks/Hueneme Room, 800 Hobson Way, Oxnard, CA; (2) On Thursday, May 23, 1996, at the Board of Supervisors Chambers, County Administration Center (Second Floor), 940 West Main Street, El Centro, CA; (3) On Tuesday, May 28, 1996, at Coronado High School Auditorium, 650 D Avenue, Coronado, CA; and (4) On Wednesday, May 29, 1996, at Lemoore Union High School Cafeteria, Back Room, 101 East Bush Street, Lemoore, CA.

The DEIS analyzes potential environmental impacts of the proposed action on biological resources, hydrology/surface water quality, land use and airspace, socioeconomics, traffic and circulation, air quality, noise, aesthetics and visual resources, utilities and services, cultural resources, public health and safety, and hazardous materials and wastes. Potentially significant, but mitigable, environmental impacts include impacts to air quality, schools, and cultural resources at NAWS Point Mugu; air quality and schools at NAS Lemmore; and biological resources, noise/land use compatibility, and conflict with existing aircraft operations at NAF El Centro.

No decision on the proposed action will be made until the NEPA process has been completed.

The DEIS has been distributed to various federal, state and local agencies, local groups, elected officers, special interest groups and individuals. The DEIS is available for review at the following libraries:

Near NAWS Point Mugu

—City of Camarillo Public Library, 3100 Ponderosa Drive, Camarillo, CA;
—City of Oxnard Public Library, 251 South A Street, Oxnard, CA;
—City of Port Hueneme Public Library, 510 Park Avenue, Port Hueneme, CA;
—City of Santa Barbara Public Library, 40 East Anapamu Street, Santa Barbara, CA;
—City of Ventura Public Library, 651 East Main Street, Ventura, CA; and
—Ventura City College Library, 4667 Telegraph Road, Ventura, CA.

Near NAF El Centro

—City of Brawley Public Library, 400 Main Street, Brawley, CA; and
—City of El Centro Public Library, 539 State Street, El Centro, CA.

Near NAS Lemoore

—City of Avenal Public Library, 919 Skyline Boulevard, Avenal, CA;
—City of Lemoore Public Library, 457 C Street, Lemoore, CA;
—City of Hanford Public Library, 400 North Douty, Hanford, CA; and
—City of Fresno Public Library, 2420 Mariposa Street, Fresno, CA.

Near NAS North Island

—City of Coronado Public Library, 640 Orange Avenue, Coronado, CA;
—National City Public Library, 200 East 12th Street, National City, CA;
—City of Imperial Beach Public Library, 810 Imperial Beach Blvd., Imperial Beach, CA; and
—City of San Diego Public Library, 820 E Street, San Diego, CA.

ADDRESSES: The Navy will conduct three public hearings to receive oral and written comments concerning the DEIS: (1) On Monday, December 8, 1997, at 7:00 p.m., at Imperial County Administration Center, Board of Supervisors Chambers, 940 Main Street, El Centro, CA; (2) On Tuesday, December 9, 1997, at 7:00 p.m., at Oxnard Center for Performing Arts, Thousand Oaks/Hueneme Room, 800 Hobson Way, Oxnard, CA; and (3) On Wednesday, December 10, 1997, at 7:00 p.m., at Lemoore Civic Auditorium, 435 C Street, Lemoore, CA.

A brief presentation will precede a request for public information and comments. Navy representatives will be available at these hearings to receive information and comments from agencies and the public regarding issues of concern. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to four minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below.

FOR FURTHER INFORMATION CONTACT: Please provide written comments by January 5, 1998, to Ms. Kelly Knight, Code 553.KK, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132–5190, telephone (619) 532–2456, fax (619) 532–1242.

Dated: November 18, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–30673 Filed 11–20–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Joint Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for the Disposal and Reuse of the Former Hunters Point Naval Shipyard, San Francisco, California

SUMMARY: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500—1508), implementing the procedural provisions of the National Environmental Policy Act, and pursuant to the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*), the Department of the Navy and the City of San Francisco have prepared and filed with the U.S. Environmental Protection Agency a joint Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for the disposal and reuse of the former Hunters Point Naval Shipyard, San Francisco, California.

A Notice of Intent (NOI) to prepare the DEIS/DEIR was published in the **Federal Register** on 27 June 1995. A public scoping meeting for the proposed project was held on 12 July 1995 at Southeast Community Center, San Francisco, California.

Hunters Point Naval Shipyard is closed, pursuant to the Defense Base Closure and Realignment Act (Pub. L. 101–510) as implemented by the 1993 base closure process. Under Section 2824 of Pub. L. 101–510, as amended, the Navy plans to convey the former Naval Shipyard to the City of San Francisco. The proposed federal action involves the disposal of land, buildings and infrastructure of former Hunters Point Naval Shipyard for subsequent reuse. The City of San Francisco and the San Francisco Redevelopment Agency have been involved in a process to determine the reuse plans of the Naval Shipyard.

The environmental effects of two conceptual land use development alternatives (reuse alternatives) and the "No Action" alternative have been evaluated in the DEIS/DEIR. Each of the reuse alternatives describes proposed uses for approximately 935 acres of shipyard property. Proposed reuse alternatives emphasize mixed land uses including residential, industrial, maritime industrial, cultural, institutional, research and development, and open space.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed.

The DEIS/DEIR has been distributed to various federal, state and local agencies, local groups, elected official, special interest groups and individuals. The DEIS/DEIR is also available for review at the following locations:

—San Francisco Planning Department, Planning Information Center, 1660 Mission Street.
—San Francisco Main Library, Civic Center, Larkin & Grove Streets.
—San Francisco Public Library, Anna E. Waden Branch, 5075 Third Street.
—San Francisco Redevelopment Agency, 770 Golden Gate Ave.

ADDRESSES: Two public hearings will be held for the purpose to receive oral and written comment on the DEIS/DEIR. The first hearing will be held on Wednesday, December 10, 1997, at 5:00 p.m., in Building 101, at Hunters Point Naval Shipyard, San Francisco. The second hearing will be held at a joint meeting of the San Francisco Planning Commission and the San Francisco Redevelopment Agency Commission on Thursday, December 11, 1997, at 1:30 p.m., in Room 404, War Memorial Veterans' Building, 401 Van Ness Avenue, San Francisco. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below.

FOR FURTHER INFORMATION CONTACT: Please provide written comments no later than January 5, 1998, to Ms. Mary Doyle, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066, telephone (650) 244–3024, FAX (650) 244–3206 or Mr. Brian Kalahar, City of San Francisco Planning Department, Major Environmental Analysis Office, 1660 Mission Street, San Francisco, California 94103, telephone (415) 558–6359, FAX (415) 558–6426.

Dated: November 18, 1997.

Darse E. Carndall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–30672 Filed 11–20–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 20, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the PaperworkReduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 17, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for the Upward Bound and Upward Bound Math and Science Centers Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1,500.

Burden Hours: 51,000.

Abstract: The application form is needed to conduct a national competition for program year 98–99 for the Upward Bound and Upward Bound Math and Science Centers. These applications provide federal financial assistance in the form of grants to institutions of higher education, public and private agencies and organizations, combinations of institutions and agencies, and in exceptional cases, secondary schools to establish and operate projects designed to generate skills and motivation necessary for success in education beyond secondary school. The Math and Science Centers provide an intensive six-week summer math-science curriculum program.

[FR Doc. 97–30599 Filed 11–20–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–74–000]

ANR Pipeline Company v. Transcontinental Gas Pipe Line Corporation; Notice of Complaint

November 17, 1997.

Take notice that on November 7, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed with the Commission in Docket No. CP98–74–000 a complaint against Transcontinental Gas Pipe Line Company (Transco) P.O. Box 1396, Houston, Texas 77251 requesting that the Commission direct Transco to establish an interconnection that will enable ANR to make deliveries to Transco in Evangeline Parish, Louisiana, all as more fully set forth in the complaint on file with the Commission and open to public inspection.

ANR states that since January 1997, ANR and Transco have discussed the construction of an interconnection between their respective mainline facilities in Evangeline Parish, Louisiana that would allow ANR to make firm deliveries of up to 300 MMCF of gas per day to Transco to satisfy requests of certain shippers on the ANR system. ANR indicates that it has advised Transco that ANR will reimburse Transco for the cost of these facilities. ANR claims that in July 1997, Transco advised ANR that it would not consent to the construction of an interconnection that would allow gas to be delivered on a firm basis from ANR's mainline into Transco's mainline. ANR asserts that Transco informed ANR that, as an alternative, it would be willing to accept deliveries on behalf of ANR's shippers at an existing point of interconnection between ANR's facilities and a lateral pipeline owned by Transco and operated by Transco's affiliate, Williams Field Services, which is located at Enico, Louisiana. ANR states that ANR informed Transco that its alternate proposal for receiving gas from ANR was not acceptable because it did not satisfy the needs of ANR's shippers.

ANR claims that because Transco has declined to construct the facilities the dispute between ANR and Transco has reached an impasse. ANR requests that the Commission promptly resolve the dispute by ordering Transco to install the requested minor interconnection facilities.

Any person desiring to be heard or make a protest with reference to ANR's complaint should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions, together with the answer of Respondent to the complaint and motions, should be filed on or before December 17, 1997. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection. Answers to the complaint shall be due on or before December 17, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30634 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4603–000]

Boston Edison Company; Notice of Filing

November 17, 1997.

Take notice that on October 24, 1997, Boston Edison Company tendered for filing additional information to its September 15, 1997, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30642 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4606–000]

Boston Edison Company; Notice of Filing

November 17, 1997.

Take notice that on October 24, 1997, Boston Edison Company tendered for filing additional information to its September 15, 1997, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30643 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–154–001]

Central Illinois Public Service Corporation; Notice of Filing

November 13, 1997.

Take notice that on July 9, 1997, Central Illinois Public Service Corporation tendered for filing its non-rate terms and conditions in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30646 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–86–000]

Columbia Gas Transmission Corporation; Notice of Application

November 17, 1997.

Take notice that on November 12, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application in Docket No. CP98–86–000, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Columbia to refunctionalize approximately 105.19 miles of gas pipeline and appurtenances from gathering to transmission, and approximately 1.20 miles of pipeline from gathering to storage, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to refunctionalize its Miley and Trumbull Systems. The Miley System is located in Holmes County, Ohio, and consists of approximately 28.39 miles of pipeline and appurtenances. Columbia proposes to refunctionalize 27.19 miles of Miley System pipeline (primarily 8, 10 and 12-inch diameter pipe) from gathering to transmission, and the remaining 1.20 miles of 3-inch diameter pipeline from gathering to storage. The Trumbull System is located in Trumbull, Mahoning, and Geauga Counties, Ohio, and consists of approximately 78.00 miles of pipeline (primarily 10 and 12-inch diameter pipe). Columbia proposes to refunctionalize all of this system from gathering to transmission.

Columbia states that it is not proposing any construction in connection with the proposed refunctionalization of these facilities, and that the refunctionalization will not alter the service being provided to any of Columbia's existing customers. Columbia adds that the subject facilities are situated between facilities being sold and facilities being retained by Columbia; thus, the refunctionalization will avoid the potential assessment (by Columbia) of a gathering charge.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30637 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4586–000]

De Pere Energy L.L.C.; Notice of Issuance of Order

November 17, 1997.

De Pere Energy L.L.C. (De Pere Energy) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, De Pere Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by De Pere Energy. On October 31, 1997, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rater (Order), in the above-docketed proceeding.

The Commission's October 31, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by De Pere Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, De Pere Energy is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of De Pere Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of De Pere Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 1, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30575 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4427–000]

Electric Lite, Inc.; Notice of Filing

November 17, 1997.

Take notice that on October 21, 1997, Electric Lite, Inc., tendered for filing additional information to its September 2, 1997, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30644 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

[Docket No. CP98–75–000]

November 17, 1997.

Take notice that on November 7, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–075–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing meter station in Lake County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The meter station is currently being used to deliver gas to TECO Peoples Gas (TECO), and the upgrade is necessary to accommodate an increase in hourly peak demands from 142 MMBtu to 272 MMBtu of natural gas, as indicated by FGT. Specifically, FGT proposes to upgrade the subject meter station by replacing the existing 4-inch meter bypass spool with an 4-inch Ansi Class 150 Senior meter tube at an estimated cost of $30,000 of which TECO would reimburse FGT. FGT states that the proposed upgrade would not increase contractual deliveries to TECO above the currently authorized levels of firm service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30635 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4168–000]

Griffin Energy Marketing, L.L.C.; Notice of Issuance of Order

November 17, 1997.

Griffin Energy Marketing, L.L.C. (Griffin) filed an application for authorization to sell electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, Griffin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Griffin. On October 31, 1997, the Commission issued an Order Accepting for Filing Proposed Tariff for Market-Based Power Sales and Reassignment of Transmission Capacity (Order), in the above-docketed proceeding.

The Commission's October 31, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Griffin should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Griffin is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Griffin, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Griffin's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 1, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30574 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–78–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 17, 1997.

Take notice that on November 12, 1997, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP98–78–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to operate certain facilities in Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that it specifically requests authority pursuant to Subpart G of Part 284 of the Commission's Regulations to operate an existing one-inch tap originally installed to provide service authorized under Section 311 of the Natural Gas Policy Act and Subpart B, Part 284 of the Commission's Regulations. NGT further states that the one-inch tap, valve and first-cut regulator are located on NGT's Line KT–9 in Section 35, Township 18 South, Range 16 West, Union County, Arkansas: NGT asserts that the estimated volumes to be delivered through the tap are approximately 170 MMBtu annually and 2 MMBtu on a peak day. NGT indicates that the tap was constructed in July, 1997, at an estimated cost of $2,544.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30636 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4231–000]

Rochester Gas & Electric Company; Notice of Filing

November 17, 1997.

Take notice that on October 6, 1997, Rochester Gas & Electric Company tendered for filing a notice of withdrawal of its August 15, 1997, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30641 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2850–002]

Sierra Pacific Power Company; Notice of Filing

November 17, 1997.

Take notice that on October 17, 1997, Sierra Pacific Power Company (Sierra) filed its compliance filing pursuant to the Commission's order dated September 26, 1997, in Docket No. ER96–2850–001, directing Sierra to file a service agreement placing itself under its open access transmission tariff for the power sale to the City of Fallon.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30640 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–61–000]

Southern Natural Gas Company; Notice of Application

November 17, 1997.

Take notice that on October 31, 1997, as supplemented on November 7, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–61–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an existing receiving station in order to modify its operations at the receiving station all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern seeks approval to abandon the FGT-Franklinton to Southern Receipt Meter located at Southern's interconnection with Florida Gas Transmission Company (FGT), in Washington Parish, Louisiana. Southern states that upon receiving abandonment authorization, Southern will reverse the ten-inch meter run to enable it to deliver natural gas to FGT at that location. Southern asserts that the installation of the proposed facilities will have no impact on its peak day or firm requirements. Southern plans to perform the modification of the delivery point under its blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000 as an eligible facility pursuant to § 157.208(a) of the Commission's Regulations.

Any person desiring to be heard or to make protest with reference to said application should on or before December 8, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30633 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2462–001]

Unitil Resources, Inc.; Notice of Filing

November 17, 1997.

Take notice that on October 10, 1997, Unitil Resources, Inc. (Unitil Resources), tendered for filing pursuant to Rules 205 and 207, an amendment to its April 8, 1997, Petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its market-based rate schedule to be effective June 1, 1997. Unitil Resources indicates that it will prohibit sales to affiliates absent a separate section 205 filing. The Company also amends its code of conduct so as to prohibit disclosure of market power information to affiliates unless such information is simultaneously made available to the public.

Unitil Resources indicates that it has served a copy of this filing on the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30639 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–89–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

November 17, 1997.

Take notice that on November 13, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–89–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon the Jensen Farm Tap near Hinsdale, Montana, in accordance with the authority granted to Williston Basin issued in Docket No. CP82–487–000, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Williston Basin states that until recently, gas was transported through the Jensen Farm Tap for Montana-Dakota Utilities, Co., a local distribution company, for two of its residential customers. It is further stated that the tap is currently located in the yard of one of these residential customers and the customer has requested its removal. Williston Basin also states that the two customers previously served through this tap are being served through another existing Williston Basin tap at a different location.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30638 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Filing:* Interim Steelhead Protection Plan.

b. *Project No:* 2149–064.

c. *Date Filed:* October 9, 1997.

d. *Licensee:* Public Utility District No. 1 of Douglas County.

e. *Name of Project:* Wells Hydroelectric Project.

f. *Location:* The project is located on the Columbia River in Douglas County, Washington.

g. *Licensee Contact:* Garfield R. Jeffers, Stanley A. Bastian, Jeffers, Danielson, Sonn & Aylward, P.S., 317 North Mission, Wentachee, Washington 98807, Attorney for Public Utility District No. 1 of Douglas County.

h. *FERC Contact:* Jim Hastreiter (503) 326–5858.

i. *Comment Date:* December 18, 1997.

j. *Description of Filing:* The Public Utility District No. 1 of Douglas County (licensee) has filed, for Commission approval, an Interim Steelhead Protection Plan. The National Marine Fisheries Service has listed steelhead in the Upper Columbia River as endangered under the Endangered Species Act. The plan proposes continuation of studies to: (1) improve fish survival at the project and; (2) improve performance of hatchery-produced anadromous salmonids.

This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30645 Filed 11–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

November 18, 1997.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: NOVEMBER 25, 1997 10:00 a.m.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA; *NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: LOIS D. CASHELL, SECRETARY, TELEPHONE, (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO 686TH MEETING—NOVEMBER 25, 1997 REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# DI96–2, 001, THE COLLINSVILLE COMPANY
CAH–2.
DOCKET# P–2496, 011, EUGENE WATER & ELECTRIC BOARD

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER98–220, 000, ALLEGHENY POWER SERVICE CORPORATION ON BEHALF OF MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S EL98–3, 000, PENNSYLVANIA PUBLIC UTILITY COMMISSION
EL98–4, 000, PENNSYLVANIA PUBLIC UTILITY COMMISSION
ER98–28, 000, PECO ENERGY COMPANY
ER98–41, 000, PJM INTERCONNECTION, L.L.C.
ER98–50, 000, DUQUESNE LIGHT COMPANY
ER98–64, 000, METROPOLITAN EDISON COMPANY AND PENN-SYLVANIA ELECTRIC COMPANY, PECO ENERGY COMPANY, PP&L, INC. AND UGI UTILITIES, INC.
ER98–162, 000, OHIO EDISON COMPANY
CAE–2.
DOCKET# ER97–4814, 000, WESTERN RESOURCES, INC.
CAE–3.
DOCKET# ER97–4468, 000, PUGET SOUND ENERGY, INC.
OTHER#S ER96–697, 000, PUGET SOUND ENERGY, INC.
ER96–1456, 000, PUGET SOUND ENERGY, INC.
OA96–161, 000, PUGET SOUND ENERGY, INC.
CAE–4.
DOCKET# ER98–33, 000, ENRON POWER MARKETING, INC.
OTHER#S EL98–9, 000, ENRON POWER MARKETING, INC.
CAE–5.
DOCKET# ER98–13, 000, ENRON ENERGY SERVICES POWER, INC.
CAE–6.
DOCKET# ER97–3057, 000, FLORIDA POWER CORPORATION
CAE–7.
DOCKET# OA96–15, 000, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.
OTHER#S OA96–15, 003, CENTRAL LOUISIANA ELECTRIC COMPANY, INC.
CAE–8.
DOCKET# ER97–678, 000, NEW ENGLAND POWER COMPANY
OTHER#S ER97–680, 000, NEW ENGLAND POWER COMPANY
CAE–9.
DOCKET# TX97–9, 000, CINERGY SERVICES, INC.
CAE–10.
DOCKET# ER96–1320, 000, PUBLIC SERVICE ELECTRIC AND GAS COMPANY
CAE–11.
DOCKET# OA97–24, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
OTHER#S ER97–881, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY AND PUBLIC SERVICE COMPANY OF OKLAHOMA, ET AL.
CAE–12.
OMITTED
CAE–13.
DOCKET# ER96–697, 002, PUGET SOUND ENERGY, INC.
OTHER#S ER96–714, 000, PUGET SOUND ENERGY, INC.
ER96–714, 001, PUGET SOUND ENERGY, INC.
ER96–1456, 002, PUGET SOUND ENERGY, INC.
CAE–14.
DOCKET# ER97–964, 001, CONSUMERS ENERGY COMPANY
CAE–15.
DOCKET# ER95–854, 001, KENTUCKY UTILITIES COMPANY
CAE–16.
DOCKET# ER95–836, 002, MAINE PUBLIC SERVICE COMPANY
OTHER#S ER95–851, 001, MAINE PUBLIC SERVICE COMPANY
CAE–17.
DOCKET# ER97–940, 001, MONTANA-DAKOTA UTILITIES COMPANY
OTHER#S ER97–2618, 001, MONTANA-DAKOTA UTILITIES COMPANY
CAE–18.
DOCKET# RM87–3, 030, ANNUAL CHARGES UNDER THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986 (PHIBRO INC.)

CONSENT AGENDA—MISCELLANEOUS

CAM–1.
OMITTED

CONSENT AGENDA—GAS AND OIL

CAG–1.
OMITTED
CAG–2.
OMITTED
CAG–3.
DOCKET# RP98–16, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–4.
DOCKET# RP98–17, 000, DAUPHIN ISLAND GATHERING PARTNERS
CAG–5.
DOCKET# RP98–29, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–6.
DOCKET# RP98–30, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–7.
DOCKET# RP98–35, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–8.
DOCKET# RP98–20, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–9.
DOCKET# RP98–22, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–10.
OMITTED
CAG–11.
DOCKET# RP98–25, 000, WEST TEXAS GAS, INC.
OTHER#S RP98–25, 001 WEST TEXAS GAS, INC.
CAG–12.
DOCKET# RP98–26, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–13.
DOCKET# RP98–27, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–14.
DOCKET# RP98–28, 000, NORTHERN NATURAL GAS COMPANY
CAG–15.
DOCKET# RP98–31, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–16.
DOCKET# RP98–32, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–17.
OMITTED
CAG–18.
DOCKET# RP91–229, 024, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S RP92–166, 017, PANHANDLE EASTERN PIPE LINE COMPANY
RS92–22, 015, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–19.
DOCKET# RP97–373, 003, KOCH GATEWAY PIPELINE COMPANY
CAG–20.
DOCKET# TM98–2–76, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–21.
DOCKET# RP96–367, 006, NORTHWEST PIPELINE CORPORATION
CAG–22.
OMITTED
CAG–23.
DOCKET# RP97–315, 006, NORTHWEST PIPELINE CORPORATION
CAG–24.
DOCKET# RP91–203, 067, TENNESSEE GAS PIPELINE COMPANY
CAG–25.
DOCKET# RP95–239, 001, RIVERSIDE PIPELINE COMPANY, L.P.
CAG–26.
DOCKET# RP97–469, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–27.
OMITTED
CAG–28.
DOCKET# RP97–484, 002, WILLIAMS NATURAL GAS COMPANY
CAG–29.
DOCKET# RP97–29, 002, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–30.
DOCKET# RP97–171, 009, ANR PIPELINE COMPANY
CAG–31.
DOCKET# RP97–126, 005, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S RP97–333, 001, CONNECTICUT NATURAL GAS COMPANY, ET AL. V. IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–32.
DOCKET# RP97–366, 000, ANR PIPELINE COMPANY
CAG–33.
DOCKET# RP97–444, 000, HORSEHEAD RESOURCE DEVELOPMENT CO., INC. V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–34.
OMITTED
CAG–35.
DOCKET# MG96–1, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–36.
DOCKET# CP96–758, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–37.
DOCKET# CP97–276, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–38.
DOCKET# CP95–500, 000, SOUTHERN NATURAL GAS COMPANY
OTHER#S CP95–500, 001, SOUTHERN NATURAL GAS COMPANY
CAG–39.
DOCKET# CP96–339, 000, TOTAL PEAKING SERVICES, L.L.C.
CAG–40.
DOCKET# CP97–156, 000, HOPKINTON LNG CORPORATION
CAG–41.
DOCKET# CP97–520, 000, WILLIAMS NATURAL GAS COMPANY
CAG–42.
DOCKET# CP97–631, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–43.
OMITTED
CAG–44.
OMITTED
CAG–45.
DOCKET# TM98–2–20, 000, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–46.
OMITTED
CAG–47.
DOCKET# CP96–152, 005, KANSAS PIPELINE COMPANY AND RIVERSIDE PIPELINE COMPANY, L.P.
OTHER#S CP97–738, 002, TRANSOK, INC.
PR94–3, 005, KANSOK PARTNERSHIP
RP95–212, 005, KANSOK PARTNERSHIP, KANSAS PIPELINE PARTNERSHIP AND RIVERSIDE PIPELINE COMPANY, L.P.
RP95–395, 005, WILLIAMS NATURAL GAS COMPANY V. KANSAS PIPELINE OPERATING COMPANY AND KANSAS PIPELINE PARTNERSHIP, ET AL.

HYDRO AGENDA

H–1.
DOCKET# P–2389, 012, EDWARDS MANUFACTURING COMPANY, INC. AND THE CITY OF AUGUSTA, MAINE. ORDER ON APPLICATION FOR NEW LICENSE.
H–2.
DOCKET# P–2325, 007, CENTRAL MAINE POWER COMPANY. ORDER ON APPLICATION FOR NEW LICENSE.
H–3.
DOCKET# P–2329, 005, CENTRAL MAINE POWER COMPANY. ORDER ON APPLICATION FOR NEW LICENSE.
H–4.
DOCKET# P–2552, 007, CENTRAL MAINE POWER COMPANY. ORDER ON APPLICATION FOR SUBSEQUENT LICENSE.
H–5.
DOCKET# P–2671, 002, KENNEBEC WATER POWER COMPANY. ORDER ON APPLICATION FOR NEW LICENSE.
H–6.
DOCKET# P–11433, 000, TOWN OF MADISON, DEPARTMENT OF ELECTRIC WORKS. ORDER ON APPLICATION FOR LICENSE.

ELECTRIC AGENDA

E–1.
DOCKET# RM95–8, 003, PROMOTING WHOLESALE COMPETITION THROUGH OPEN ACCESS NON-DISCRIMINATORY TRANSMISSION, ET AL.
OTHER#S RM94–7, 004, RECOVERY OF STRANDED COSTS BY PUBLIC UTILITIES AND TRANSMITTING UTILITIES. ORDER ON REHEARING OF ORDER NO. 888–A.
E–2.
DOCKET# RM95–9, 002, OPEN ACCESS SAME-TIME SYSTEM (FORMERLY REAL-TIME INFORMATION NETWORKS) AND STANDARDS OF CONDUCT.
ORDER NO. 889–B—THIS ORDER ADDRESSES THE REQUESTS FOR REHEARING OF ORDER NO. 889–A.
E–3.
DOCKET# OA97–261, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
OTHER#S EC96–28, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EC96–29, 002, PECO ENERGY COMPANY.
EC97–38, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EL96–69, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
EL97–44, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION RESTRUCTURING.
ER96–2516, 002, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
ER96–2668, 002, PECO ENERGY COMPANY.
ER97–1082, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
ER97–1082, 001, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
ER97–3189, 000, ATLANTIC CITY ELECTRIC COMPANY, BALTIMORE GAS AND ELECTRIC COMPANY AND DELMARVA POWER & LIGHT COMPANY, ET AL.
ER97–3273, 000, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION RESTRUCTURING.
OA97–261, 001, PENNSYLVANIA-NEW JERSEY-MARYLAND INTER-CONNECTION.
OA97–678, 000, PJM INTERCONNECTION, L.L.C. ORDER ON RESTRUCTURING OF THE PENNSYLVANIA-NEW JERSEY-MARYLAND POWER POOL.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,
Secretary.

[FR Doc. 97–30825 Filed 11–19–97; 2:39 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Performance Review Board Members

November 18, 1997.

Section 4314(c) of Title 5, United States Code requires that notices of appointment of Performance Review Board members be published in the **Federal Register**. The following persons have been appointed to serve on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

Shelton M. Cannon
Kevin P. Madden
Christie L. McGue
Rebecca F. Schaffer

Douglas W. Smith
Lois D. Cashell,
Secretary.
[FR Doc. 97–30632 Filed 11–20–97; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; "Clean Water Act State Revolving Fund Program"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Clean Water Act State Revolving Fund Program, EPA ICR Number 1391.04, OMB Control Number 2040–118, and current expiration date of 02/28/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: Comments may be mailed to Clifford Yee, Office of Wastewater Management (4204), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Clifford Yee (202) 260–5822; FAX: (202) 260-0116; E-Mail: yee.clifford@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are the fifty States, Puerto Rico, and the recipients of assistance in each of these jurisdictions.

Title: Clean Water Act State Revolving Fund Program; OMB Control No. 2040–0118; EPA ICR No. 1391.04; expiring 02/28/98.

Abstract: The Clean Water Act, as amended by "The Water Quality Act of 1987" (U.S.C. 1381–1387 et. Seq.), created a Title VI which authorizes grants to States for the establishment of State Water Pollution Control Revolving Funds (SRFs). The information activities are pursuant to Section 606 of the Act, and SRF Interim Final Rule (March 1990). The 1987 Act declares that water pollution control revolving loan funds shall be administered by an instrumentality of the State subject to the requirements of the act. This means that each State has a general responsibility for administering its revolving fund, and must take on certain specific responsibilities in carrying out its administrative duties. The information collection activities will occur primarily at the program level through the State Intended Use Plan and Annual Report. The information is needed annually to implement Section 606 of the Clean Water Act (CWA). The Act requires the information to ensure national accountability, adequate public comment and review, fiscal integrity and consistent management directed to achieve environmental objectives. The individual information collections are: (1) Capitalization Grant Application and Agreement/ State Intended Use Plan, (2) Annual Report, (3) State Audit, and (4) Application for SRF Financial Assistance.

(1) Capitalization Grant Application and Agreement / State Intended Use Plan: The State will prepare a capitalization grant application that includes an Intended Use Plan (IUP) outlining in detail how it will use all the funds available to the Fund. The grant agreement contains or incorporates by reference the IUP, application materials, payment schedule, and required assurances. The bulk of the information is provided in the IUP. The legal agreement which commits the State and EPA to execute their responsibilities under the Act.

(2) Annual Report: The State will agree to complete and submit an annual report that indicates how the State has met the goals and objectives of the previous fiscal year as stated in the IUP and grant agreement. The Report provides information on loan recipients, loan amounts, loan terms, project categories, and similar data on other forms of assistance. The Report describes the extent to which the existing SRF financial operating policies, alone or in combination with other State financial assistance programs, will provide for the long term fiscal health of the Fund and carry out other provisions specified in the grant operating agreement.

(3) Annual Audit: Most States have agreed to conduct or have conducted a separate financial audit of the capitalization grant which will provide opinions on the financial statements, and a report on the internal controls and compliance with program requirements. The remaining States will be covered by audits conducted under the requirements of the Single Audit Act and by EPA's Office of Inspector General.

(4) Applications for SRF Financing Assistance: Local communities and other eligible entities have to prepare and submit applications for SRF assistance to their respective State Agency which manages the SRF program. The State reviews the completed loan applications, and verifies that the proposed projects will comply with applicable Federal and State requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

BURDEN STATEMENT

(1) Capitalization Grant Application and Agreement/State Intended Use Plan			
1998	51 States×400 Hours	=	20,400 Burden Hours.
1999	51 States×400 Hours	=	20,400 Burden Hours.
2000	51 States×400 Hours	=	20,400 Burden Hours.
(2) Annual Report			
1998	51 States×275 Hours	=	14,025 Burden Hours.
1999	51 States×275 Hours	=	14,025 Burden Hours.
2000	51 States×275 Hours	=	14,025 Burden Hours.
(3) State Annual Audit			
1998	51 States×80 Hours	=	4,080 Burden Hours.
1999	51 States×80 Hours	=	4,080 Burden Hours.
2000	51 States×80 Hours	=	4,080 Burden Hours.
(4) Applications for SRF Financing Assistance			
1998	51 States×24 Applications×40 Hours	=	48,960 Hours.
1999	51 States×29 Applications×40 Hours	=	59,160 Hours.
2000	51 States×34 Applications×40 Hours	=	69,360 Hours.
1998	1,224 Communities×60 Hours	=	73,440 Burden Hours.
1999	1,479 Communities×60 Hours	=	88,740 Burden Hours.
2000	1,734 Communities×60 Hours	=	104,040 Burden Hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 14, 1997.
Michael B. Cook,
Director, Office of Wastewater Management.
[FR Doc. 97–30657 Filed 11–20–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 10, 1997 Through November 14, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970446, Draft EIS, BLM, MT, Golden Sunlight Mine Expansion, Implementation of Amendment 008 to Operating Permit No. 0065, COE Section 404 Permit, Whitehall, Jefferson County MT, Due: January 21, 1998, Contact: David Williams (406) 494–5059.

EIS No. 970447, Final EIS, AFS, SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Plan-of-Operations, Approval, Black Hills National Forest, SD, Due: January 05, 1998, Contact: Don Murray (605) 578–2744.

EIS No. 970448, Draft EIS, USN, CA, Miramar Naval Air Station Realignment of E–2 Aircraft Squadrons, Three Installations are consider: Point Muga Naval Air Weapons Station, Lemoore Navel Air Station and El Centro, Ventura Fresno, King and Imperial Counties, CA, Due: January 05, 1998, Contact: Ms. Kelly Knight (619) 532–2456.

EIS No. 970449, Final EIS, USN, CA, Novato, California Department of Defense Housing Facility Disposal and Reuse, Implementation, City of Novato, Marin County, CA, Due: December 22, 1997, Contact: Gary J. Munekawa (650) 244–3022.

EIS No. 970450, Draft EIS, USN, HI, Fort Kamehameha Outfall Replacement for Wastewater Treatment Plant, Navy Public Works Center, Pearl Harbor, HI, Due: January 05, 1998, Contact: Gary Kasaoke (808) 471–9338.

EIS No. 970451, Draft EIS, DOE, CO, Rocky Flats Environmental Technology Site, Management of Certain Plutonium Residues and Scrub Alloy Stored for Disposal or other Disposition, Waste Isolation Pilot Plant, Golden, CO, Due: January 05, 1998, Contact: Charles Head (202) 586–5151.

Dated: November 18, 1997.
B. Katherine Biggs,
Associate Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 97–30695 Filed 11–20–97; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 03, 1997 Through November 07, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Final EISs

ERP No. F–COE–E40764–00, Fort Campbell Rail Connector, Construction between the Government-Owned Line Railroad and CSX Line, Hopkinsville and Clarkville, Christian Co., KY and Montgomery and Stewart Counties, TN.

Summary: EPA continued to express concern over the potential impacts of the preferred alternative, and suggested that Alternative 3 be selected instead in order to minimize long-term impacts to water and air quality.

ERP No. F–FHW–E54009–NC, US 117 Corridor Improvement Project, US 13/70 at Goldsboro, north to US 301 in Wilson, Funding and Section 404 Permit, Wayne and Wilson Counties, NC.

Summary: EPA continued to favor Alternative 1, the improvement of the present road, or Alternative 4, a new alignment outside the Little River critical watershed area. EPA is concerned that this project could directly or indirectly cause the degradation of the Little River and reduce the classified use of this river as a water supply. EPA would like to see commitments to long-term maintenance of measures to minimize the inflow of pollutants to the river.

ERP No. F–FHW–K50007–CA, Benicia-Martinez Bridge System Project, Construction/Reconstruction, Portions of I–680, I–780 and I–80 Corridors, Funding, U.S. CGD Bridge Permit and COE Section 10 and 404 Permits, Contra Costa and Solano Counties, CA.

Summary: EPA expressed continuing concerns on the placement of new toll booths in close proximity to an industrial facility using hazardous materials and requested FHWA to reconsider its decision. EPA also requested FHWA provide additional information on a contingency plan to guide travelers along the highway in the event of a chemical upset or accidental releases. EPA asked that the Record of Decision clarify what level of High Occupancy Vehicle (HOV) features would be part of the project, and strongly recommend that all feasible efforts to implement one or more dedicated HOV lanes for both north and southbound traffic in peak commute periods be part of the final project.

ERP No. F–NAS–A12041–00, X–33 Advanced Technology Demonstrator Vehicle Program, Final Design, Construction and Testing, Implementation, Approvals and Permits Issuance, CA, UT and WA.

Summary: EPA had no objection to proposed action.

ERP No. F–USN–L11031–WA, Puget Sound Naval Station, Sand Point, Disposal and Reuse, Implementation, King County, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FA–DOE–K03007–CA, Petroleum Production at Maximum Efficient Rate, updated Information for the Sale of Naval Petroleum Reserve No. 1 (NPR–1 also called "Elk Hills") Amendment for Kern County General Plan, Elk Hills, Kern County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: November 18, 1997.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–30696 Filed 11–20–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–778; FRL–5755–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–778, must be received on or before December 22, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Kerry Leifer	Rm. 4W17, CS #1, 703–308–8811, e-mail: leifer.kerry@epamail.epa.gov.	2800 Crystal Drive, Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–778] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF-778 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1997

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. BASF Corporation

PP 7F4848

EPA has received a pesticide petition (PP 7F4848) from BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709-3528 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of diflufenzopyr, (2-[1-[[[(3,5-difluorophenyl) amino]carbonyl]hydrazono] -ethyl]-3-pyridinecarboxylic acid), and its metabolites M1 (8-methylpyrido(2,3-d)pyridazin-5(6H)-one) and M5 (6-((3,5-Difluorophenyl-carbamoyl-8-methyl-pyrido (2,3-d)-5-pyridazinone) all as the M1 component in or on the raw agricultural commodities corn grain, corn forage and corn fodder at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/ nitrogen phosphorous detector (gc/npd).

2. *Magnitude of residues.* Over 20 residue trials were conducted in 16 states. Residues of diflufenzopyr, M5 and M1 were measured as M1 by gc/ npd. The method of detection had a limit of detection of 0.01 parts per million (ppm). Residues ranged from non detectable (majority) to 0.02 ppm rt text.

B. Toxicological Profile

1. *Acute toxicity.* A battery of acute toxicity tests were conducted which place diflufenzopyr in acute oral toxicity category IV, acute dermal toxicity category IV, acute inhalation toxicity category IV, primary eye irritation category III, and primary dermal irritation category IV. Diflufenzopyr is not a dermal sensitizer. Diflufenzopyr is not a neurotoxin in males and females at 2,000 mg/kg (limit test).

2. *Genotoxicity.* Diflufenzopyr was found to be negative for mutagenicity in a battery of mutagenicity tests (Ames Testing, Mouse Lymphoma testing *In vivo* micronucleus assay (mouse) and Unscheduled DNA synthesis).

3. *Reproductive and developmental toxicity—i. Developmental toxicity (rat).* Sprague-Dawley rats were dosed with 0, 100, 300 and 1,000 mg/kg/day diflufenzopyr in the diet from days 6 through 15 of gestation. The maternal no observed adverse effect level (NOAEL) was determined to be 300 mg/kg/day and the maternal lowest effect level (LEL) was determined to be 1,000 mg/kg/day based on reduced body weight gain, and reduced absolute and relative feed consumption during the dosing period. The developmental NOAEL was determined to be 300 mg/kg/day and the developmental LEL was determined to be 1,000 mg/kg/day based on reduced fetal body weight and reversible delays in sternal and caudal vertebral ossification.

ii. *Developmental toxicity (rabbit).* New Zealand white rabbits were dosed with 0, 30, 100, and 300 mg/kg/day diflufenzopyr in the diet from days 6 through 19 of gestation. The maternal NOEL was determined to be 30 mg/kg/day and the maternal LEL was determined to be 100 mg/kg/day based on increased incidence of abnormal feces and weight loss for the entire dosage period. The developmental NOEL was determined to be 100 mg/kg/day and the developmental LEL was determined to be 300 mg/kg/day based on increased incidences of supernumerary thoracic ribs, a variation in fetal ossification that commonly occurs at maternally toxic dosages. Only at the 300 dose level deaths and abortions were accompanied by gastric trichobezoars. Diflufenzopyr was not teratogenic to rabbit fetuses even at the higher of two dosages (100 and 300 mg/kg/day) that were toxic to the does.

iii. *Reproductive toxicity testing.* In a 2-Generation Reproduction study, Wistar rats were dosed with 0, 500, 2,000 and 8,000 ppm diflufenzopyr in the diet. The parental: systemic NOAEL/ reproductive-developmental NOEL was determined to be 2,000 ppm in both sexes (averaging 600 mg/kg/day in females during gestation). The parental LEL was determined to be 8,000 ppm (averaging 2,500 mg/kg/day in females during gestation) based on weight gain deficits in males and females during premating and pregnancy phases. The developmental NOEL was determined to be 2,000 ppm (averaging 400 mg/kg/day in dams during lactation) and the LEL determined to be 8,000 ppm (averaging 1,500 mg/kg/day in dams during lactation) based on slightly lower live birth (93%) and viability (90%) indices.

4. *Subchronic toxicity— i. 21-Day dermal (rabbit).* Rabbits were repeatedly dosed with diflufenzopyr at 0, 100, 300 and 1,000 mg/kg/day for 21 days. The NOAEL for systemic toxicity and dermal irritation was determined to be 1,000 mg/kg/day.

ii. *90-Day rodent (rat).* Wistar rats were dosed with diflufenzopyr at 0, 1,000, 5,000, 10,000 and 20,000 ppm in the diet for 90 days. The NOEL was determined to be 5,000 ppm (350 mg/kg/day) for males and 430 mg/kg/day in females. The LEL was determined to be 10,000 ppm (720 mg/kg/day) for males and 890 mg/kg/day in females based on reduced body weight gains, impaired food utilization; disturbances in hematology values in males, clinical chemistry values in both sexes, values for urinalysis in females; with histopathology seen in both sexes as increased foamy macrophages in the lungs.

iii. *90-Day mouse.* CD-1 mice were dosed with diflufenzopyr at 0, 350, 1,750, 3,500 and 7,000 ppm in the diet for 13 weeks. The NOEL was determined to be 7,000 ppm (1,225 mg/kg/day) in males and (1,605 mg/kg/day) in females as no clear toxic effects were observed.

iv. *90-Day non-rodent (dog).* Beagle dogs were dosed with diflufenzopyr at

0, 1,500, 10,000, and 30,000 ppm in the diet for 13 weeks. The NOEL was determined to be 1,500 ppm (58 mg/kg/day) in males and (59 mg/kg/day) in females. The LEL was determined to be 10,000 ppm (403 mg/kg/day) in males and (424 mg/kg/day) in females based on histopathological disturbances seen as erythreoid hyperplasia in the bone marrow and extramedullary hemopoiesis in the liver of a few dogs and hemosiderin deposits in Kupffer cells in 1 female dog.

v. *90-Day neurotoxicity (rat).* Rats were dosed with diflufenzopyr at 0, 25, 75, and 1,000 mg/kg/day in the diet for 13 weeks. At the 1,000 mg/kg/day treatment there was associated weight gain and impaired efficiency of food utilization. Therefore the no adverse effect level was set at 75 mg/kg/day. The NOAEL for subchronic neurotoxicity was determined to be 1,000 mg/kg/day based on the absence of changes indicative of neurotoxicity.

5. *Chronic toxicity*—i. *1-Year non-rodent (dog).* Beagle dogs were dosed with diflufenzopyr at 0, 750, 7,500 and 15,000 ppm in the diet for one year. The NOEL was determined to be 750 ppm (26 mg/kg/day) in males and (28 mg/kg/day) in females. The LOAEL was 7,500 ppm (299 mg/kg/day) in males and (301 mg/kg/day) in females. This is based on an erythropoietic response in bone marrow and increased hemosiderin deposits in spleen, liver and kidneys. Peripheral hematology investigations revealed mild to moderate reticulocytosis at the 7,500 and 15,000 ppm dose levels, in the absence of any signs of anemia. The erythropoietic response of bone marrow is thought to compensate probable toxic effects to erythrocytes. Because of a similarity of NOEL levels from this dog study and the rat chronic/oncogenicity study a suggested risk assessment reference dose (Rfd) is calculated by using 25 as a Noel level with a 100 fold safety factor ending with 0.25 mg/kg/day.

ii. *Combined rodent chronic toxicity/oncogenicity (rat).* Wistar rats were fed 0, 500, 1,500, 5,000 and 10,000 ppm diflufenzopyr in the diet for 104 weeks. The NOEL was determined to be 500 ppm (22 mg/kg/day) in males and (29 mg/kg/day) in females. The NOAEL was determined to be 1,500 ppm (69 mg/kg/day) in males and (93 mg/kg/day) in females based on reduced body weight gains of 8 % in males and 7% in females. The LEL was determined to be 5,000 ppm (235 mg/kg/day) in males and(323 mg/kg/day) in females based on 9% reduced weight gain in females and 11% in males plus males showed lower triglyceride and higher phosphate levels. Diflufenzopyr was not carcinogenic under the conditions of the test.

iii. *Oncogenicity in the rodent (mouse).* CD-1 mice were fed 0, 700, 3,500 and 7,000 ppm diflufenzopyr in the diet for 78 weeks. The NOAEL was determined to be 7,000 ppm (1037 mg/kg/day) in males and (1,004 mg/kg/day) in females. There were no changes or histopathological findings attributed to the dietary inclusion of test material in the 52 (interim) or 78 (terminal) week animals. Diflufenzopyr was not carcinogenic under the conditions of the test.

C. Aggregate Exposure

1. *Dietary exposure.* The potential aggregate dietary exposure is based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances for all crops on which diflufenzopyr is to be applied. The TMRC from the proposed use of diflufenzopyr of corn at the tolerance level of 0.05 ppm is 0.173168 ug/kg/day, and utilizes 0.069 percent of the RfD for the overall U.S. population. The exposure of the most highly exposed subgroup in the population, non-nursing infants, is 0.195424 ug/kg/day, and utilizes 0.078 percent of the RfD.

2. *Drinking water.* Based on the studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposure to residues of diflufenzopyr in drinking water. There is no established maximum concentration level for residues of diflufenzopyr in drinking water under the Safe Drinking Water Act.

3. *Non-dietary exposure.* BASF has not estimated non-occupational exposure for diflufenzopyr since the only pending registration for diflufenzopyr is limited to commercial crop production use. Diflufenzopyr products are not labeled for any residential uses therefore, eliminating the potential for residential exposure. The potential for non-occupational exposure to the general population is considered to be insignificant.

D. Cumulative Effects

BASF also considered the potential for cumulative effects of diflufenzopyr and other substances that have a common mechanism of toxicity. BASF has concluded that consideration of a common mechanism of toxicity is not appropriate at this time since there is no indication that toxic effects produced by diflufenzopyr would be cumulative with those of any other chemical compounds. Semicarbazone chemistry is new and diflufenzopyr has a novel mode of action compared to currently registered active ingredients.

E. Safety Determination

1. *U.S. population.* Dietary and occupational exposure will be the major routes of exposure to the U.S. population and ample margins of safety have been demonstrated for both situations. The TMRC from the proposed tolerance of 0.05 ppm is 0.173168 ug/kg/day and utilizes 0.0692 percent of the RfD for the overall U.S population. The MOEs for occupational exposure are greater than 7,000. Based on the completeness and reliability of the toxicity data and the conservative exposure assessments, there is a reasonable certainty that no harm will result from the aggregate exposure of residues of diflufenzopyr including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* Dietary exposure of the most highly exposed subgroup in the population, non-nursing infants, is 0.195424 ug/kg/day. This accounts for only 0.078 percent of the RfD. There are no residential uses of diflufenzopyr and contamination of drinking water is extremely unlikely. All chronic, lifespan and multigenerational bioassays in mammals plus tests in aquatic organisms and wildlife failed to reveal any endocrine effects. Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure of residues of diflufenzopyr including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level has not been established for diflufenzopyr by the Codex Alimentarius Commission.

2. Novartis Crop Protection, Inc.

PP 7E3489

EPA has received a pesticide petition (PP 7E3489) from Novartis Crop Protection, Inc. (formerly Ciba Crop Protection), P.O. Box 18300, Greensboro, NC 27419. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of 4-(dichloroacetyl)-3,4-dihydro-3-methyl-2H-1,4-benzoxazine (benoxacor) when used as an inert ingredient (safener) in pesticide formulations containing metolachlor in or on raw agricultural commodities for which tolerances have been established for metolachlor. The proposed analytical method is capillary gas chromatography using Nitrogen/Phosphorous (N/P) detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant/Animal metabolism.* Novartis Crop Protection, Inc. (Novartis) notes that the metabolism in plants and animals (goat, hen, and rat) is well understood. Identified metabolic pathways are similar in plants and animals.

2. *Analytical method.* Novartis Analytical Method AG536(C) is available and involves extraction, filtering, dilution, partitioning, and cleanup. Samples are then analyzed by capillary gas chromatography using Nitrogen/Phosphorous (N/P) detection. The limit of quantitation (LOQ) is 0.01 ppm.

3. *Magnitude of residues.* More than 30 residue trials were conducted in 19 states on a variety of agricultural crops [corn (field and sweet); soybeans, potatoes, green beans, radishes, sorghum, peanuts, head lettuce, peas]. There were no detectable residues of benoxacor at the limit of quantitation (LOQ) of 0.01 ppm (many samples were analyzed at an LOQ of 0.005 ppm and no residues were detected) in any raw agricultural commodity or processed commodity. No transfer of residue to animals is expected through their diet. Benoxacor is stable for a minimum of 12 months at temperatures down to -15°C.

B. Toxicological Profile

1. *Acute toxicity.* A rat acute oral study with an LD_{50} > 5,000 mg/kg, a rabbit acute dermal study with an LD_{50} > 2,010 mg/kg, a rat inhalation study with an LC_{50} > 2,000 mg/liter, a primary eye irritation study in the rabbit showing moderate eye irritation, a primary dermal irritation study in the rabbit showing benoxacor is not a skin irritant, and a skin sensitization study which showed benoxacor to be a skin sensitizer in the Guinea pig. Results of a dermal absorption study show a maximum of 55.7% of benoxacor is absorbed by the rat following a 24 hour dermal exposure. Benoxacor was applied to the shaved skin of 5 male and 5 female New Zealand white rabbits at dose levels of 0, 1,500, or 1,010 mg/kg for at least 22 consecutive days. This study showed benoxacor is not dermally toxic at doses greater than the limit dose of 1,000 mg/kg/day.

2. *Genotoxicty.* Benoxacor did not induce point mutations *in vitro* at limit (cytotoxic) concentrations in a *Salmonella/mammalian* microsome test or show any mutagenic activity in the Chinese hamster V79 mammalian point mutation test and is neither clastogenic nor aneugenic in the Chinese hamster at doses up to the limit dose of 5,000 mg/kg. Benoxacor did not induce unscheduled DNA synthesis in isolated rat hepatocytes at cytotoxic concentrations up to 20 micrograms/ml.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study in the rat at approximate doses of 0, 0.5, 2.5, 25 or 50 mg/kg/day. No effects on fertility, reproductive performance or development were seen in the rat at a maximally-tolerated dose of 50 mg/kg/day. Treatment related effects on body weight at feeding levels of > 25 mg/kg/day were accompanied by marginally reduced food intake only in the high dose group. The parental NOEL ranged from 3.4 to 4.8 mg/kg/day while the developmental NOEL was approximately 10-fold greater. A developmental toxicity study in the rat at doses of 0, 1, 100, or 400 mg/kg/day by gavage with maternal and developmental NOEL's of 1 and 100 mg/kg/day, respectively. Maternal, embryo, and fetal toxicity were observed at doses > 100 mg/kg/day. A developmental toxicity study in the rabbit at doses of 0, 0.5, 2.5, 12.5 or 62.5 mg/kg/day. Slight evidence of maternal and fetal toxicity was observed at 62.5 mg/kg/day. The maternal and developmental NOEL's were 12.5 mg/kg/day.

4. *Subchronic toxicity.* Six groups of 15 male and 15 female Sprague Dawley rats were fed benoxacor at dietary concentrations of approximately 0, 0.5, 5, 15, 50 or 300 mg/kg/day for 13 weeks. The liver (pigmentation, karyomegaly, cytomegaly, bile duct proliferation, portal mononuclear cell infiltration) and stomach (pyloric gland degeneration and necrosis) were identified as target organs in the 300 mg/kg/day group. Based on a significant depression of body weight gain at 50 and 300 mg/kg/day as well as hematology, clinical chemistry and pathology findings, the NOEL was determined to be 15 mg/kg/day.

A 90-day feeding study in the dog at approximate doses of 0, 0.25, 1, 5, 50, 150, or 400 mg/kg/day. Liver, kidney, stomach, and thymus were identified as target organs. The NOEL was 50 mg/kg/day. The maximum tolerated dose was exceeded at > 150 mg/kg/day.

A 90-day feeding study in CD-1 mice at dietary concentrations of approximately 0, 6.25, 62.5, 250, or 750 mg/kg/day for 90 days. Effects on survival, clinical signs, body weight, food consumption, the hematological system, and liver and kidney were seen at 750 mg/kg/day and to a lesser extent at 250 mg/kg/day. The NOEL was 62.5 mg/kg/day.

5. *Chronic toxicity.* A 52-week feeding study in the dog at doses of 0, 1, 5, 40, or 80 mg/kg. Liver and kidney were identified as target organs and the NOEL was established at 5 mg/kg.

An 18-month oncogenicity study in the mouse at approximate doses of 0, 1.4, 4.2, 84, or 168 mg/kg/day with a NOEL of 4.2 mg/kg/day for both chronic toxicity and tumors. Target organs were the liver and forestomach. A carcinogenic response was noted in the forestomach and is likely to be linked to a non-genotoxic mode of action involving direct irritation to the epithelial lining of the forestomach and limiting ridge between the non-glandular and glandular stomach.

A 24-month chronic feeding and oncogenicity study in the rat at approximate doses of 0, 0.5, 2.5, 25, or 50 mg/kg/day. Liver and forestomach were identified as target organs. A carcinogenic response was seen in the forestomach and is likely linked to a non-genotoxic mode of action involving direct irritation to the epithelial lining of the forestomach and the limiting ridge. The NOEL for tumors was 25 mg/kg/day and the NOEL for chronic toxicity was 0.5 mg/kg/day.

Based on the available chronic toxicity data, EPA has established the RfD for benoxacor at 0.004 mg/kg/day. This RfD is based on the 2 year feeding study in rats with a NOEL of 0.4 mg/kg/day and an uncertainty factor of 100. The uncertainty factor of 100 was applied to account for inter-species extrapolation (10) and intra-species variability (10).

Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), Novartis believes the Agency will classify benoxacor as a Group C carcinogen (possible human carcinogen) based on findings of a carcinogenicity effect in the non-glandular stomach of both rats and mice. Because this carcinogenic response was only observed at high doses in the non-glandular stomach of the rodent, an anatomical structure not found in humans, it is likely this response occurred via a non-genotoxic, threshold based mechanism. Novartis believes exposure to benoxacor should be regulated using a margin of exposure approach where the carcinogenic NOEL established in the most sensitive species, the mouse, was 4.2 mg/kg/day.

C. Aggregate Exposure

1. *Dietary exposure— Food.* For purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate exposure based on the theoretical maximum residue contribution (TMRC) from the benoxacor tolerance of 0.01 ppm in or on raw agricultural commodities for which tolerances have been established for metolachlor. In conducting this exposure assessment, Novartis has made very conservative assumptions--100% of all raw agricultural products for which tolerances have been established for metolachlor will contain benoxacor residues and those residues would be at the level of the tolerance (0.01 ppm) which result in an overestimate of human exposure.

2. *Drinking water.* Although benoxacor is mobile and hydrolyzes slowly at low pHs, it rapidly degrades in the soil (half-life of 49 days under aerobic conditions and 70 days anaerobically). Based on this data, Novartis does not anticipate exposure to residues of benoxacor in drinking water. This is supported by extensive experience with metolachlor, where in large scale ground water monitoring studies, metolachlor has been detected in less than 4% of the samples with the typical value being 1 ppb or less. Since benoxacor is formulated as a 1 to 30 ratio with metolachlor, (maximum of 0.2 pounds benoxacor per acre) the presence of benoxacor in groundwater is highly unlikely. The EPA has not established a Maximum Concentration Level for residues of benoxacor in drinking water.

3. *Non-dietary exposure.* Novartis has evaluated the estimated non-occupational exposure to benoxacor and based on its low use rate concludes that the potential for non-occupational exposure to the general population is unlikely except for the potential residues in food crops discussed above. Benoxacor is used only on agricultural crops and is not used in or around the home.

D. Cumulative Effects

Novartis also considered the potential for cumulative effects of benoxacor and other substances that have a common mechanism of toxicity. Novartis concluded that consideration of a common mechanism of toxicity is not appropriate at this time. Novartis does not have any reliable information to indicate that toxic effects seen at high doses of benoxacor (generalized liver toxicity, nephrotoxicity and the occurrence of forestomach tumors in an organ not present in humans) would be cumulative with those of any other chemical compounds; thus Novartis is considering only the potential risks of benoxacor in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for benoxacor, Novartis has calculated that aggregate exposure to benoxacor will utilize 4.7% of the RfD for the U.S. population based on chronic toxicity endpoints and only 0.4% based on a margin of exposure assessment and a carcinogenic NOEL of 4.2 mg/kg/day. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to benoxacor residues.

2. *Infants and children.* Using the same conservative exposure assumptions used for the determination in the general population, Novartis has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of benoxacor is 5.3% for nursing infants less than 1 year old, 20.2% for non-nursing infants, 11.9% for children 1-6 years old and 7.7% for children 7-12 years old. These worst case estimates are likely at least 4 times greater than actual values when considering that benoxacor residues have not been detected at the limit of quantitation of 0.005 ppm (tolerance is 0.01 ppm) and using a more realistic market share of 50% rather than the conservative 100%. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to benoxacor residues.

F. International Tolerances

A maximum residue level has not been established for benoxacor by the Codex Alimentarius Commission.

[FR Doc. 97-30659 Filed 11-20-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5925-9]

Availability of Draft Document on Information for States on Developing Affordability Criteria for Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability.

SUMMARY: The Environmental Protection Agency is making available for public comment a draft document entitled Information for States on Developing Affordability Criteria for Drinking Water. The Safe Drinking Water Act Amendments of 1996 require the Agency to publish information to assist states in developing affordability criteria. To meet the statutory schedule, this information must be published by February 6, 1998. The draft document being made available today was developed by a diverse working group of stakeholders under the auspices of the National Drinking Water Advisory Council (NDWAC). The full NDWAC reviewed this draft and recommended it to EPA as a draft to be made available for public comment. EPA invites interested members of the public to submit comments on the draft document. EPA will consider public comments and publish a final document by the February 6, 1998, statutory deadline.

DATES: Submit comments on or before December 31, 1997.

ADDRESSES: Address all comments concerning this draft document to Peter E. Shanaghan, Small Systems Coordinator, Office of Ground Water and Drinking Water, Mail Code 4606, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter E. Shanaghan, 202-260-5813 or shanaghan.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A copy of the draft document may be obtained by calling the Safe Drinking Water Hotline at 1-800-426-4791. The hotline operates Monday through Friday, 9:00 a.m.-5:30 p.m. (EST). The document may also be downloaded from EPA's homepage, http://www.epa.gov/OGWDW.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97-30660 Filed 11-20-97; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-00218A; FRL-5757-5]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: This document corrects in the "SUPPLEMENTARY INFORMATION" section the Fax-On-Demand item numbers assigned to the support documents for the 12 chemicals discussed in the **Federal Register** issue of Thursday, October 30, 1997, concerning acute exposure guideline levels for these hazardous substances.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET-543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554-1404; TDD: (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document corrects in the "SUPPLEMENTARY INFORMATION" section the Fax-On-Demand item numbers assigned to the support documents for the 12 chemicals discussed in the **Federal Register** issue of Thursday, October 30, 1997 (62 FR 58840) (FRL-5737-3).

In the **Federal Register** issue of October 30, 1997, on page 58840, in FR Doc. 97-28642, under "SUPPLEMENTARY INFORMATION" make the following corrections:

1. On page 58840, in the second column, under the heading "Fax-On-Demand," line 2, the item number "3800" is corrected to read "4800."

2. On page 58841, in the third column, under IV., the table is corrected to read as follows:

CAS No.	Chemical name	Fax-On-Demand item no.
57-14-7 ...	1,1-Dimethylhydrazine	4852
60-34-4 ...	Methylhydrazine	4853
62-53-3 ...	Aniline	4854
75-21-8 ...	Ethylene oxide	4861
302-01-2	Hydrazine	4891
540-59-0.	1,2-Dichloroethene	4895
540-73-8	1,2-Dimethylhydrazine	4852
7697-37-2	Nitric acid	4913
7782-41-4	Fluorine	4919
7782-50-5	Chlorine	4917
7784-42-1	Arsine	4922
7803-51-2	Phosphine	4924

List of Subjects

Environmental protection, Hazardous substances.

Dated: November 14, 1997.

Vanessa Vu,

Director, Risk Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97-30658 Filed 11-20-97; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting Tuesday, November 25, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 25, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Common Carrier—Title: Implementation of the Telecommunications Act of 1996 and Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers (CC Docket No. 96-238). Summary: The Commission will consider action concerning procedural rules to govern the resolution of formal complaints filed against common carriers in light of comments received.

2—Office of General Counsel and Mass Media—Title: Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Television Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings (GC Docket No. 92-52) and Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (GEN Docket No. 90-264). Summary: The Commission will consider action concerning the implementation of the provisions of the Balanced Budget Act of 1997, which amended the Commission's competitive bidding authority to include mutually exclusive initial license applications for certain types of broadcast stations, and also concerning the reexamination of the comparative criteria that the Commission has used to select among mutually exclusive applications for new broadcast facilities.

3—International—Title: Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (IB Docket No. 97-142) and Market Entry and Regulation of Foreign-Affiliated Entities (IB Docket No. 95-22). Summary: The Commission will consider action concerning rules governing the entry and regulation of foreign-affiliated carriers in the U.S. market for basic telecommunications services.

4—International—Title: Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States (IB Docket No. 96-111); Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations (CC Docket No. 93-23, RM-7931) and COMMUNICATIONS SATELLITE CORPORATION -- Request for Waiver of Section 25.131(j)(1) of the Commission's Rules as it Applies to Services Provided via the INTELSAT K Satellite (File No. ISP-92-007). Summary: The Commission will consider action concerning rules governing the entry of foreign-licensed satellite providers into the U.S. market to provide domestic and international satellite services.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418-0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857-3800 or fax (202) 857-3805 and 857-3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its-inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's

Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated November 18, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30850 Filed 11-19-97; 3:36 pm]

BILLING CODE 6712-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

SUMMARY: This report has been prepared by the FDIC pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C 1831n(c)). Section 37(c) requires each federal banking agency to report to the Committee on Banking and Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898-8906.

SUPPLEMENTARY INFORMATION: The text of the report follows: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

A. Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to Section 37(c) of the Federal Deposit Insurance Act, which requires the agency to submit a report to specified Congressional Committee describing any differences in regulatory capital and accounting standards among the federal banking and thrift agencies, including an explanation of the reasons for these differences. Section 37(c) also requires the FDIC to publish this report in the **Federal Register**. This report covers differences existing during 1995 and 1996 and developments affecting these differences.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (hereafter, the banking agencies) have substantially similar leverage and risk-based capital standards. While the Office of Thrift Supervision (OTS) employs a regulatory capital framework that also includes leverage and risk-based capital requirements, it differs in several respects from that of the banking agencies. Nevertheless, the agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies through December 31, 1996, have been substantially consistent with generally accepted accounting principles (GAAP). In the limited number of cases where the bank Call Report standards differed from (GAAP), the regulatory reporting requirements were intended to be more conservative than GAAP. The OTS requires each savings association to file the Thrift Financial Report (TFR), the reporting standards for which are consistent with GAAP. Thus, the reporting standards applicable to the bank Call Report have differed in some respect from the reporting standards applicable to the TFR.

On November 3, 1995, the FFIEC announced that it had approved the adoption of GAAP as the reporting basis for the balance sheet, income statement, and related schedules in the Call Report, effective with the March 31, 1997, report date. On December 31, 1996, the FFIEC notified banks about the Call Report revisions for 1997, including the previously announced move to GAAP. Adopting GAAP as the reporting basis for recognition and measurement purposes in the basic schedules of the Call Report was designed to eliminate existing differences between bank regulatory reporting standards and GAAP, thereby producing greater consistency in the information collected in bank Call Reports and general purpose financial statements and reducing regulatory burden. In addition, the move to GAAP for Call Report purposes in 1997 should for the most part eliminate the differences in accounting standards among the agencies.

Section 303 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994 (12 U.S.C. 4803) requires the banking agencies and the OTS to conduct a systematic review of the regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate inconsistencies. It also directs the four agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be "consistent with the principles of safety and soundness, statutory law and policy, and the public interest." The four agencies' efforts to eliminate existing differences among their regulatory capital standards as part of the Section 303 review are discussed in the following section.

B. Differences in Capital Standards Among the Federal Banking and Thrift Agencies

B.1. Minimum Leverage Capital

The banking agencies have established leverage capital standards based upon the definition of tier 1 (or core) capital contained in their risk-based capital standards. These standards require the most highly-rated banks (i.e., those with a composite rating of "1" under the Uniform Financial Institutions Rating System) to maintain a minimum leverage capital ratio of at least 3 percent if they are not anticipating or experiencing any significant growth and meet certain other conditions. All other banks must maintain a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ration of not less than 4 percent).

The OTS has a 3 percent core capital and a 1.5 percent tangible capital leverage requirement for savings associations. Consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the OTS has proposed revisions to its leverage standards for savings associations so that its minimum leverage standard will be at least as stringent as the revised leverage standard that the OCC applies to national banks. However, from a practical standpoint, the 4 percent leverage requirement to be "adequately capitalized" under the OTS' Prompt Correction Action rule is the controlling standard for savings associations.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the agencies are considering adopting a uniform leverage requirement that would subject institutions rated a composite 1 under the Uniform Financial Institutions Rating System to a minimum 3 percent leverage ratio and all other institutions to a minimum 4 percent leverage ratio. This change would simplify and streamline the banking agencies' leverage rules and would make all four agencies' rules in this area uniform. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC's leverage capital standards that would implement this change. This proposal is to be published jointly with the other agencies.

B.2. Interest Rate Risk

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandates that the agencies' risk-based capital standards take adequate account of interest rate risk. The banking agencies requested comment in August 1992 and September 1993 on proposals to incorporate interest rate risk into their risk-based capital standards. In August 1995, each of the banking agencies amended its capital standards to specifically include an assessment of a bank's interest rate risk, as measured by its exposure to declines in the economic value of its capital due to changes in interest rates, in the evaluation of bank capital adequacy. At the same time, the banking agencies issued a proposed joint policy statement describing the process the agencies would use to measure and assess the exposer of the economic value of a bank's capital. After considering the comments on the proposed policy statement, the banking agencies issued a Joint Agency Policy Statement on Interest Rate Risk in June 1996 which provides guidance on sound practices for managing interest rate risk. This policy statement does not establish a standardized measure of interest rate risk nor does it create an explicit capital charge for interest create risk. Instead, the policy statement identifies the standards upon which the agencies will evaluate the adequacy and effectiveness of a bank's interest rate risk management.

In 1993, the OTS adopted a final rule which adds an interest rate risk component to its risk-based capital standards. Under this rule, savings associations with a greater than normal interest rate exposure must take a deduction from the total capital available to meet their risk-based capital requirement. The deduction is equal to one half of the difference between the institution's actual measured exposure and the normal level of exposure. The OTS has partially implemented this rule by formalizing the review of interest rate risk; however, no deductions from capital are being made. As described above, the approach adopted by the banking agencies differs from that of the OTS.

B.3. Subsidiaries

The banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for regulatory capital purposes. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank ins exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely form capital, or the investments may be risk-weighted at 100 percent, depending upon the circumstances. These options for handling subsidiaries for purposes of determining the capital adequacy of the parent organization provide the banking agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in activities that are permissible for national banks and subsidiaries engaged in "impermissible" activies for national banks. For regulatory capital purposes, subsidiaries of savings associations that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, and loans to, subsidiaries that engage in impermissible activities are deducted when determing the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, and loans to, such subsidiaries that were outstanding as of that date were grandfathered and were phased out of capital over a five-year transition period that expired on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which had not been phased out of capital were consolidated on a pro rata basis. The phase-out provisions were amended by the Housing and Community Development Act of 1992 with respect to impermissible and activities. The OTS was permitted to extend the transition period until July 1, 1996, on a case-by-case basis if certain conditions were met.

B.4. Intangible Assets

The banking agencies' rules permit purchased credit card relationships and mortgage servicing rights to count toward capital requirements, subject to certain limits. Both forms of intangible assets are in the aggregate limited to 50 percent of Tier 1 capital. In addition, purchased credit card relationships alone are restricted to no more than 25 percent of an institution's Tier 1 capital. Any mortgage servicing rights and purchased credit card relationships that exceed these limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's Tier 1 capital.

In February 1994, the OTS issued a final rule making its capital treatment of intangible assets generally consistent with the banking agencies' rules. However, the OTS rule grandfathers preexisting core deposit intangibles up to 25 percent of core capital and all purchased mortgage servicing rights acquired before February 1990.

B.5. Capital Requirements for Recourse Arrangements

B.5.a. Leverage Capital Requirements—Through December 31, 1996, the banking agencies required full leverage capital charges on most assets sold with recourse, even when the recourse is limited. This included transactions where the recourse arises

because the seller, as servicer, must absorb credit losses on the assets being serviced. Two exceptions to this general rule pertained to certain pools of first lien one-to-four family residential mortgages and to certain agricultural mortgage loans. As required by Section 208 of the RCDRIA, an additional exception took effect in 1995 for small business loans and leases sold with recourse by "qualified insured depository institutions." Banks had to maintain leverage capital against most assets sold with recourse because the banking agencies' regulatory reporting rules that were in effect through December 31, 1996, generally did not permit assets sold with recourse to be removed from a bank's balance sheet (see "Sales of Assets With Recourse" in Section C.1. below for further details). As a result, such assets continued to be included in the asset base which was used to calculate a bank's leverage capital ratio.

Because the regulatory reporting rules for thrifts enable them to remove assets sold with recourse from their balance sheets when such transactions qualify as sales under GAAP, the OTS capital rules do not require thrifts to hold leverage capital against such assets.

As a result of the adoption of GAAP as the reporting basis for bank Call Reports in 1997, banks will no longer be precluded from removing assets transferred with recourse from their balance sheets if the transfers qualify for sale treatment under GAAP. Thus, this capital difference disappears in 1997.

B.5.b. Low Level Recourse Transactions—The banking agencies and the OTS generally require a full risk-based capital charge against assets sold with recourse. However, in the case of assets sold with limited recourse, the OTS has limited the capital charge to the lesser of the amount of the recourse or the actual amount of capital that would otherwise be required against that asset, i.e., the full effective risk-based capital charge. This is known as the "low level recourse" rule.

The banking agencies proposed in May 1994 to adopt the low level recourse rule that the OTS already had in place. Such action was mandated four months later by Section 350 of the RCDRIA. The FDIC adopted the low level recourse rule in March 1995, and the other banking agencies have taken similar action. Hence, this difference in capital standards has been eliminated.

B.5.c. Senior-Subordinated Structures—Some securitized asset arrangements involve the creation of senior and subordinated classes of securities. When a bank originates such a transaction and retains the subordinated interest, the banking agencies require that capital be maintained against the entire amount of the asset pool. However, when a bank acquires a subordinated interest in a pool of assets that it did not own, the banking agencies assign the investment in the subordinated security to the 100 percent risk weight category.

In general, the OTS requires a thrift that holds the subordinated interest in a senior-subordinated structure to maintain capital against the entire amount of the underlying asset pool regardless of whether the subordinated interest has been retained or has been purchased.

In May 1994, the banking agencies proposed to require banking organizations that purchase subordinated interests which absorb the first dollars of losses from the underlying assets to hold capital against the subordinated interest plus all more senior interests. This proposal was part of a larger proposal issued jointly by the four agencies to address the risk-based capital treatment of recourse and direct credit substitutes (i.e., guarantees on a third party's assets). The four agencies have considered the comments on the entire proposal and have been developing a revised proposal on recourse and direct credit substitutes that will also encompass the risk-based capital treatment of asset securitization transactions.

B.5.d. Recourse Servicing—The right to service loans and other assets may be retained when the assets are sold. This right also may be acquired from another entity. Regardless of whether servicing rights are retained or acquired, recourse is present whenever the servicer must absorb credit losses on the assets being serviced. The banking agencies and the OTS require risk-based capital to be maintained against the full amount of assets upon which a selling institution, as servicer, must absorb credit losses. Additionally, the OTS applies a capital charge to the full amount of assets being serviced by a thrift that has purchased the servicing from another party and is required to absorb credit losses on the assets being serviced.

The agencies' aforementioned May 1994 proposal also would require banking organizations that purchase certain loan servicing rights which provide loss protection to the owners of the loans serviced to hold capital against those loans. The treatment of purchased recourse servicing is also being addressed in the revised proposal on recourse and direct credit substitutes that the agencies are developing.

B.6. Collateralized Transactions

The FRB and the OCC have lowered from 20 percent to zero percent the risk weight accorded collateralized claims for which a positive margin of protection is maintained on a daily basis by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or the central governments of countries that are members of the Organization of Economic Cooperation and Development (OECD).

The FDIC and the OTS still assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or OECD central governments.

As part of their Section 303 review of capital standards, the banking and thrift agencies issued a joint proposal in August 1996 that would permit collateralized claims that meet criteria that are uniform among all four agencies to be eligible for a zero percent risk weight. In general, this proposal would allow less capital to be held by institutions supervised by the FDIC and the OTS for transactions collateralized by cash or U.S. or OECD government securities. The proposal would eliminate the differences among the agencies regarding the capital treatment of collateralized transactions.

B.7. Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent in each of the last five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2 capital. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

B.8. Presold Residential Construction Loans

The four agencies assign a 50 percent risk weight to loans that a builder has obtained to finance the construction of one-to-four family residential properties. These properties must be presold, and the lending relationships must meet certain other criteria. The OTS and OCC rules indicate that the property must be presold before the construction loan is made in order for the loan to qualify for the 50 percent risk weight. The FDIC and FRB permit loans to builders for residential construction to qualify for the 50 percent risk weight once the property is presold, even if that event occurs after the construction loan has been made.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the OTS and OCC are considering adopting the treatment of presold residential construction loans followed by the FDIC and the FRB, thereby making the agencies' rules in this area uniform. This would not require an amendment of the FDIC's risk-based capital standards.

B.9. Nonresidential Construction and Land Loans

The banking agencies assign loans for nonresidential real estate development and construction purposes to the 100 percent risk weight category. The OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital.

B.10. Privately-Issued Mortgage-Backed Securities

The banking agencies, in general, place privately-issued mortgage-backed securities in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued mortgage-backed securities, if collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities to the 20 percent risk weight category. These are, generally, privately-issued mortgage-backed securities with AA or better investment ratings.

B.11. Other Mortgage-Backed Securities

The banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, principal-only strips, and residuals. However, once the OTS' interest rate risk amendments to its risk-based capital standards take effect, stripped mortgage-backed securities will be reassigned to the 20 percent or 50 percent risk weight category, depending upon these securities' characteristics. Residuals will remain in the 100 percent risk weight category.

B.12. Junior Liens on One-to-Four Family Residential Properties

In some cases, a bank may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In this situation, the FRB and the OTS view both loans as a single extension of credit secured by a first lien and assign the combined loan amount a 50 percent risk weight if this amount represents a prudent loan-to-value ratio. If the combined amount exceeds a prudent loan-to-value ratio, the loans are assigned to the 100 percent risk weight category. The FDIC also combines the first and second liens to determine the appropriateness of the loan-to-value ratio, but it applies the risk weights differently than the FRB and the OTS. If the combined loan amount represents a prudent loan-to-value ratio, the FDIC risk weights the first lien at 50 percent and the second lien at 100 percent; otherwise, both liens are risk-weighted at 100 percent. This combining of first and second liens is intended to avoid possible circumvention of the capital requirement and to capture the risks associated with the combined loans.

The OCC treats all first and second liens separately. It assigns the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the agencies are considering adopting the OCC's treatment of junior liens on one-to-four family residential properties in order to eliminate this difference among the agencies' risk-based capital guidelines. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC'S guidelines that would treat first and junior liens separately with qualifying first liens risk-weighted at 50 percent and all junior liens risk-weighted at 100 percent. This amendment, which is to be published jointly with the other agencies, will simplify the risk-based capital standards and treat all junior liens consistently.

B.13. Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance. In no case, however, may a risk-weight of less than 20 percent be assigned to an investment in a mutual fund.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time, but not less than 20 percent. In addition, both the OTS and the OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis. However, the OTS and the OCC apply the pro rata allocation differently. While the OTS applies the allocation based on the actual holdings of the mutual fund, the OCC applies it based on the highest amount of holdings the fund is permitted to hold as set forth in its prospectus.

The four agencies' Section 303 review of their regulatory capital standards has led them to consider adopting the OCC's pro rata allocation alternative for risk weighting investments in mutual funds, thereby making their risk-based capital rules in this area uniform. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC's risk-based capital standards that would allow banks to apply a pro rata allocation of risk weights to a mutual fund based on the limits set forth in the prospectus. This proposal is to be published jointly with the other agencies.

B.14. "Covered Assets"

The banking agencies generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places these "covered assets" in the zero percent risk-weight category.

B.15. Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, Income Capital Certificates, and Mutal Capital Certificates do not exist in the banking industry and are not addressed in the capital guidelines of the three banking agencies.

The capital guidelines of the OTS permit savings associations to include pledged deposits and nonwithdrawable accounts that meet OTS criteria, Income Capital Certificates, and Mutal Capital Certificates in capital.

B.16. Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize certain losses related to agricultural lending that were incurred on or before December 31, 1991. These losses must be amortized over seven years. The unamortized portion of these losses is included as an element of Tier 2 capital under the banking agencies' risk-based capital standards.

Thrifts were not eligible to participate in the agricultural loan loss amortization program established by this statute.

C. Differences in Reporting Standards Among the Federal Banking and Thrift Agencies

C.1. Sales of Assets with Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse before January 1, 1997, is recognized as a sale if: (1) the transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

Through December 31, 1996, the practice of the banking agencies generally has been to allow banks to report transfers of receivables as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, except for the types of transfers noted below, transfers of assets with recourse could not normally be reported as sales on the Call Report. However, this general rule did not apply to the transfer of first lien one-to-four family residential mortgage loans and agricultural mortgage loans under one of the government programs (Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Federal Agricultural Mortgage Corporation). Transfers of mortgages under these programs were treated as sales for Call Report purposes, provided the transfers would be reported as sales under GAAP. Furthermore, private transfers of first lien one-to-four family residential mortgages also were reported as sales if the transferring institution retained only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, transfers of mortgage loans with recourse under the government programs or in private transfers that qualify as sales for Call Report purposes are viewed as off-balance sheet items that are assigned a 100 percent credit conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for the full amount outstanding of mortgages sold with recourse in such transactions, subject to the low-level recourse rule discussed earlier in this report.

Through year-end 1996, the OTS accounting policy has been to follow FASB Statement No. 77. However, in the calculation of risk-based capital under the OTS guidelines, assets sold with recourse that have been removed from the balance sheet in accordance with Statement No. 77 are converted at 100 percent and also are subject to the low-level recourse rule. This effectively negates that sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

Another exception to the banking agencies' general rule for reporting transfers with recourse applies to sales of small business loans and leases with recourse by "qualified insured depository institutions." Section 208 of the RCDRIA specifies that the regulatory reporting requirements applicable to these recourse transactions must be consistent with GAAP. Section 208 also requires the banking agencies and the OTS to adopt more favorable risk-based capital requirements for these recourse exposures than those described above. During August and September 1995, the FRB published a final rule and the FDIC, the OCC, and the OTS published interim rules (with requests for comment) which implemented Section 208 in a uniform manner.

C.2. Futures and Forward Contracts

Through December 31, 1996, the banking agencies have not, as a general rule, permitted the deferral of losses on futures and forward contracts used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard prior to the issuance of FASB Statement No. 80, which permits hedge or deferral accounting under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow GAAP for futures and forward contracts. In accordance with FASB Statement No. 80, when hedging criteria are satisfied, the accounting for a contract is related to the accounting for the hedged item. Changes in the market value of the contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in the deferral of losses which are reflected as basis adjustments to assets and liabilities on the balance sheet.

C.3. Excess Servicing Fees

As a general rule, through December 31, 1996, the banking agencies did not follow GAAP for excess servicing fees, but required a more conservative treatment. For loan sales that occurred prior to 1997, excess servicing arose when loans were sold with servicing retained and the stated servicing fee rate exceeded a normal servicing fee rate. Except for sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach was consistent with the provisions of FASB Statement No. 65 that were in effect through year-end 1996, excess servicing fee income in banks was to be reported as realized over the life of the transferred asset.

In contrast, for loan sales that occurred prior to 1997, the OTS allowed the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach was consistent with the then applicable provisions of FASB Statement No. 65.

C.4. Offsetting of Assets and Liabilities

FASB Interpretation No. 39, "Offsetting of Amounts Related to Certain Contracts," became effective in 1994. Interpretation No. 39 interprets the longstanding accounting principle that "the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists." Under Interpretation No. 39, four conditions must be met in order to demonstrate that a right of setoff exists. Then, a debtor with "a valid right of setoff may offset the related asset and liability and report the net amount." The banking agencies allow banks to apply Interpretation No. 39 for Call Report purposes solely as it relates to on-balance sheet amounts associated with off-balance sheet conditional and exchange contracts (e.g., forwards, interest rate swaps, and options). Under the Call Report instructions in effect through December 31, 1996, the netting of other assets and liabilities is not permitted unless specifically required by the instructions.

The OTS practice has been to follow GAAP as it relates to offsetting in the balance sheet.

C.5. Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

C.6. Negative Goodwill

Under Accounting Principles Board Opinion No. 16, "Business Combinations," negative goodwill arises when the fair value of the net assets acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to a zero value.

The banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the internationally agreed-upon Basle Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

C.7. In-Substance Defeasance of Debt

In-substance defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. According to FASB Statement No. 76, the liability is considered extinguished for financial reporting purposes if the possibility that the debtor would be required to make further payments on the debt, beyond the funds placed in the trust, is remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet.

For Call Report purposes through December 31, 1996, the banking agencies did not permit banks to report the defeasance of their liabilities in accordance with Statement No. 76. Instead, banks were to continue reporting any defeased debt as a liability and the securities contributed to the trust as assets. No netting was permitted, nor was any recognition of gains or losses on the transaction allowed. The banking agencies did not adopt Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors. In June 1996, the FASB issued a new accounting standard (FASB Statement No. 125) that supersedes Statement No. 76 for defeasance transactions occurring after 1996, thereby bringing GAAP in line with the Call Report treatment for these transactions.

The OTS practice has been to follow GAAP for defeasance transactions.

Dated at Washington, D.C., this 17th day of November, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–30560 Filed 11–20–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Opportunity to Submit Amicus Curiae Briefs in an Unfair Labor Practice Proceeding Pending Before the Federal Labor Relations Authority; FLRA Case No. WA–CA–40743

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file amicus curiae briefs in a case pending before the Federal Labor Relations Authority. In the subject case, the Authority is determining whether section 2(d) of Executive Order 12871 constitutes an agency election to bargain on matters set forth in section 7106(b)(1) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7106(b)(1)), and whether such an election can be enforced in Authority unfair labor practice and subsequent court review proceedings.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on a significant issue arising in a case pending before the Authority. The issue is common to a number of other cases also pending before the Authority. The Authority is considering the cases pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994 & Supp. II 1996) (Statute). The issue concerns an agency's obligation to negotiate on subjects set forth in section 7106(b)(1) of the Statute in light of the provisions of sections 2(d) and 3 of Executive Order 12871. Section 2(d) of Executive Order 12871 provides in relevant part that agency heads subject to Chapter 71 of title 5, United States Code shall "negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same[.]" Section 3 of Executive Order 12871 provides in relevant part that it "is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, [or] its agencies * * *."

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Case Control Office by 5 p.m. on Thursday, December 18, 1997. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issue on which amicus briefs are being solicited is before the Authority on exceptions to a recommended decision and order of an Administrative Law Judge (Judge) resolving unfair labor practice allegations. The following summary is offered.

In its partial decision in *U.S. Department of Commerce, Patent and Trademark Office*, Case No. WA–CA–40743 (*PTO*), the Authority concluded, in agreement with the Judge, that the agency violated sections 7116(a)(1) and (5) of the Statute by failing to bargain with the union over the impact and implementation of its decision to use term appointments to fill certain bargaining unit positions. The Authority also determined that the agency's decision to use term appointments concerns a matter encompassed by section 7106(b)(1) of the Statute. However, the Authority did not rule on the General Counsel's allegation that the agency violated the Statute by failing to bargain over the substance of its decision to use the term appointments. The Authority in *PTO* decided that resolving this remaining allegation requires examining provisions of the Statute and Executive Order 12871, as well as relevant precedent.

The Authority determined that the record before it in *PTO* did not adequately address issues critical to completing the analysis required to decide this remaining allegation. In particular, the Authority stated that the parties in *PTO*, as well as parties in other pending cases in which the General Counsel had similarly alleged that agencies had violated the Statute by refusing to bargain over matters encompassed by section 7106(b)(1), have not fully addressed long-established precedent regarding bargaining obligations under section 7106(b)(1).

Accordingly, with respect to the remaining allegation concerning the agency's obligation under section 7106(b)(1) to bargain over its decision to use term appointments, the Authority described in Section IV.C. through E. of its partial decision in *PTO*, applicable precedent and questions that arise from the parties' arguments. The Authority directed the parties in *PTO* and the other listed cases to submit briefs on the questions developed in its partial decision. The questions are set forth below.

Additionally, parties in the other listed cases were directed to address whether there are facts or issues in their cases that are distinguishable from those in *PTO* on the particular allegation that the respondent was obligated to bargain under section 7106(b)(1).

Finally, the Authority provided the parties to the various cases the opportunity to request oral argument before the Authority. However, the Authority determined that participation in any oral argument would be confined to the parties to the various pending cases, in the absence of a demonstration that the interests of a person desiring to participate in the oral argument will not adequately be represented by these parties.

In addition to *PTO*, the other pending cases are:

1. *Department of the Air Force, 647th Air Base Group, Hanscom Air Force Base, Massachusetts (and National Association of Government Employees, SEIU, AFL–CIO, Local R1–8)*, Case No. BN–CA–41011;

2. *U.S. Department of Justice, Immigration and Naturalization Service (and American Federation of Government Employees, National Border Patrol Council, AFL–CIO)*, Case No. WA–CA–50048;

3. *Social Security Administration, Santa Rosa District Office, Santa Rosa, California (and American Federation of Government Employees, Council 147, AFL–CIO)*, Case No. SF–CA–50155; and

4. *U.S. Department of Veterans Affairs Medial Center, Lexington, Kentucky (and National Association of Government Employees)*, Case No. CH–CA–50399.

Although the questions set forth below were asked of the parties in *PTO* and the other cases listed above, the matters addressed in the questions posed are likely to be of concern to the Federal sector labor-management relations community in general. Therefore, the Authority finds it appropriate to provide for the filing of amicus curiae briefs responding to the following questions, and addressing any other matters deemed relevant to resolving the questions raised in this and the other cases listed above concerning the respondent's obligation to bargain under section 7106(b)(1) of the Statute. Responses should address, at a minimum, the Statute, legislative history, Executive Order 12871, Authority and judicial precedent, as discussed in the Authority's partial decision in *PTO*. If it is contended that this precedent is distinguishable or was wrongly decided, the responses should provide the basis for this contention.

1. Under what circumstances, if any, does an election to bargain under section 7106(b)(1) of the Statute create rights and obligations that are enforceable through unfair labor practice proceedings?

2. If there are circumstances when an election to bargain is enforceable under the Statute, are those circumstances present in *PTO*, or in any of the other cases listed above? For example, if an "irrevocable" election can be made, has such an election been made by *PTO*?

3. Does section 2(d) of Executive Order 12871 constitute an agency election, within the meaning of section 7106(b)(1) of the Statute, to bargain on proposals on matters set out in section 7106(b)(1)?

4. If an election to bargain creates rights and obligations that are enforceable under any circumstances, what is the extent of the bargaining required to satisfy the obligations? For example, does the obligation to bargain extend to impasse, or is it satisfied by some other "amount" of bargaining?

5. In view of the fact that the President's issuance of Executive Order 12871 is the only basis asserted for finding that an election to bargain has been made that is binding on the agency, is enforcing the election barred by Section 3 of the Executive Order?

6. If the Authority were to find that there are circumstances when an election to bargain is enforceable under the Statute, and that such circumstances are present in *PTO* or in any of the other cases listed above, should a violation be found in *PTO* or in any of those other cases? If so, what is the appropriate remedy to enforce the election?

All briefs shall be captioned "*U.S. Department of Commerce, Patent and Trademark Office*, Case No. WA–CA–40743, *Amicus Brief*" and shall contain separate, numbered headings for each issue discussed. Briefs must include a signed and dated statement of service that complies with the Authority's regulations (5 CFR 2429.27(a) and (c)) showing service of one copy of the brief on all counsel of record or other designated representatives in *PTO* and the other cases listed above. Copies of the Authority's partial decision in *PTO*, dated November 17, 1997, and a list of the designated representatives for that and the other cases may be obtained in the Authority's Case Control Office at the address set forth above. Copies of these materials will be forwarded (by mail or by facsimile) to any person who so requests by contacting Peter Constantine at the same address. An original and four (4) copies of each amicus brief must be submitted, with any enclosures, on 8½×11 inch paper.

(Authority: 5 U.S.C. 7105(a)(2)(G) & (I))

Dated: November 17, 1997.

For the Authority.

Peter Constantine,

Director, Case Control Office, Federal Labor Relations Authority.

[FR Doc. 97–30688 Filed 11–20–97; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions by of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-30156) published on page 61506 of the issue for November 18, 1997.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Angeline R. Mixner, Worthington, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Angeline R. Mixner, Worthington, Minnesota; to acquire additional voting shares of Madison Agency, Inc., Sioux Falls, South Dakota, and thereby indirectly acquire First Security Bank - Sanborn, Sanborn, Minnesota.

Comments on this application must be received by November 26, 1997.

Board of Governors of the Federal Reserve System, November 18 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30698 Filed 11–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. L & W Holding Company, Oklahoma City, Oklahoma, a Qualified Family Partnership; to acquire voting shares of First Fidelity Bancorporation, Oklahoma City, Oklahoma, and thereby indirectly acquire First Fidelity Bank, N.A., Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, November 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30699 Filed 11–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community Bancshares of Mississippi, Inc., Forest, Mississippi; to acquire 100 percent of the voting shares of Community Bank, Southaven, Mississippi.

2. Hogan Investments, Inc., and Hogan Investments Limited, both of Forsyth, Georgia; and Laurens Bancshares, Inc., Dudley, Georgia; to become bank holding companies by acquiring 100 percent of the voting shares of Bank of Dudley, Dudley, Georgia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F & M Bancorporation, Inc., Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of Bank of South Wayne, South Wayne, Wisconsin.

2. First Busey Corporation, Urbana, Illinois; to acquire 100 percent of the voting shares of Busey Business Bank (in organization), Indianapolis, Indiana.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Eastwood Financial Corporation Employees' Profit Sharing and Stock Ownership Plan, Rochester, Minnesota; to become a bank holding company by acquiring 30 percent of the voting shares of Eastwood Financial Corporation, Rochester, Minnesota, and thereby indirectly acquire Eastwood Bank, St. Charles, Minnesota.

Board of Governors of the Federal Reserve System, November 18, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30697 Filed 11–20–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 26, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1998 Federal Reserve Bank officer salary structure adjustments. (This item was originally announced for a closed meeting on November 17, 1997.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications

scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30769 Filed 11–19–97; 10:57 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Grants for the Minority Community Health Coalition Demonstration Program

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of availability of funds and request for applications for the Minority Community Health Coalition Demonstration Grant Program.

Authority

This program is authorized under section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527, the Disadvantaged Minority Improvement Act of 1990.

Purpose

The purpose of this Fiscal Year 1998 Minority Community Health Coalition Demonstration Program is to issue grants to improve the health status of targeted minority populations through health promotion and disease risk reduction intervention programs. This program is intended to demonstrate the effectiveness of community-based coalitions in:

(1) Developing, implementing and conducting demonstration projects which coordinate integrated community-based screening and outreach services, and include linkages for access and treatment to minorities in high-risk, low-income communities; and

(2) Addressing sociocultural and linguistic barriers to health care.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. Potential applicants may obtain a copy of the Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 Midcourse Review and 1995 Revisions (Stock No. 017–001–00526–6) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 or telephone (202) 783–8238.

Background

This program is based on the hypothesis that the community coalition approach to health promotion and risk reduction can be effective in reaching minority target populations—especially those most at risk or hard to reach. Among the merits of using coalitions is the higher likelihood that: (1) the intervention will be culturally sensitive, credible and more acceptable to the target population; (2) the project will address the health problem(s) within the context of related socio-economic issues; and (3) the effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations. The OMH is continuing, through this announcement, to promote the utilization of community coalitions to develop and implement health promotion/disease risk reduction programs.

In FY 1998 the Minority Community Health Coalition Demonstration Program continues to focus on health problem areas identified in the 1995 OMH Report to Congress. These health areas are commonly referred to as the "7+4" health issue areas: (1) cancer; (2) cardiovascular disease and stroke; (3) chemical dependency; (4) diabetes; (5) homicide, suicide and unintentional injuries; (6) infant mortality; and (7) HIV/AIDS; plus, access to health care; health professions personnel development; improved data collection and analysis; and cultural competency. Flexibility for communities to define their own health problem priorities (e.g., asthma, sexually transmitted diseases [STDs], tuberculosis, female genital mutilation, immunization and tobacco use) is also encouraged.

Eligible Applicants

Public and private, nonprofit minority community-based organizations which represent an established community coalition of at least three discrete organizations. (See Definitions of Minority Community-Based Organizations and Community Coalition found in this announcement.) The minority community-based organization will: serve as the lead agency for the grant; be responsible for management of the project; and serve as the fiscal agent for the Federal grant awarded. The coalition must include a health care facility such as a community health center, migrant health center, health department or medical center to provide follow-up treatment services. The coalition membership must be documented as specified under the project requirements described in this announcement.

National organizations are not eligible to apply, however, local affiliates of such organizations which meet the definition of minority community-based organization are eligible. Currently funded OMH Bilingual/Bicultural Service Demonstration Program (Managed Care) grantees are not eligible to apply. Organizations are not eligible to receive funding from more than one OMH grant program.

Deadline

To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by January 20, 1998. Applications will be considered as meeting the deadline if they are: (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised July 1992 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH–RC) at 1–800–444–6472 for health information.

Availiability of Funds

Approximately $2.5 million is expected to be available for award in FY 1998. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12 month period will be made to approximately 16 to 18 competing applicants. Of the total amount obligated, at least $750,000 will be awarded to projects that include HIV/AIDS as one of the targeted health problem areas.

Period of Support

The start date for the Minority Community Health Coalition Demonstration Program grants is July 1, 1998. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

Project Requirements

Each applicant to this demonstration grant program must:

(1) Address at least one, but no more than three (3) health problem areas which significantly impact the local targeted community. At least one must be from Part A ("7+4") of the definition of health problem area found in this announcement.

(2) Have an established coalition capable of ensuring that the target population is provided with a continuum of appropriate health care services and support. The coalition must have the capacity to plan and coordinate services which reduce existing sociocultural and/or linguistic barriers to health care and carry out screening, outreach and enabling services to ensure that clients follow up with treatment and treatment referrals.

(3) Detail/specify the roles and resources that each coalition member will bring to the project, and state the duration and terms of the agreement, as confirmed by a signed agreement between the applicant organization and each coalition member. The document must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director).

Use of Grant Funds

Budgets of up to $150,000 total cost (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies (including screening and outreach supplies), equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluating Applications

Review of Application

Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive to the announcement or nonconforming will be returned without comment. Each organization may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this program, and their understanding and knowledge of the health problems and risk factors confronting racial and ethnic minorities in the United States.

Applications are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

Application Review Criteria

The technical review of applications will consider the following generic factors, which are listed in descending order of priority.

Factor 1: Methodology (35%)

Appropriateness of proposed approach and specific activities for each objective. Logic and sequencing of the planned approaches in relation to the objectives and program evaluation. Extent to which the applicant demonstrates access to the target population. Soundness of the established linkages.

Factor 2: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures. Potential for replication of the project for similar target populations and communities.

Factor 3: Background (15%)

Adequacy of demonstrated knowledge of the problem at the local level; demonstrated need within the proposed community and target population; demonstrated support and established linkages in order to conduct proposed model; and extent and documented outcome of past efforts/activities with the target population.

Factor 4: Goals and Objectives (15%)

Merit of the objectives, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 5: Management Plan (15%)

Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for "to be hired" staff; proposed staff level of effort; management experience of the lead agency; and experience of each coalition member as it relates to its defined roles and the project.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health, Office of Minority Health and will take under consideration: recommendations/ratings of the review panels; geographic and racial/ethnic distribution; and health problem areas having the greatest impact on minority populations. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities.

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization—Public and private, non-profit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Community Coalition—At least three (3) discrete organizations and institutions in a community which on specific community concerns, resolution of those concerns through a formalized relationship documented by written memoranda of understanding/agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Cultural Competency—A set of interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among and between groups. This requires a willingness and ability to draw on community-based values, traditions and customs, and to work with knowledgeable persons of and

from the community in developing focused interventions, communications and other supports. (Orlandi, Mario A., 1992)

Health Care Facility—A public nonprofit facility that has an established record for providing comprehensive health care services to a targeted, racial/ethnic minority community. Facilities providing only screening and referral activities are not included in this definition. A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center.

Health Problem Area—(a) One of the "7 + 4" health areas: cancer, cardiovascular disease and stroke; chemical dependency; diabetes; homicide, suicide and unintentional injuries; infant mortality; HIV/AIDS; access to health care; health professional personnel development; improved data collection and analysis; and cultural competency; or (b) a disease or health condition which has a demonstrated impact on morbidity rates among the minority population, for example, asthma, sexually transmitted diseases (STDs), tuberculosis, female genital mutilation, immunization and tobacco use.

Intervention—A combination of clinical preventive services (e.g., blood pressure screening), information dissemination, environmental modifications, educational activities, and coordinated networking activities among health and human service related programs (e.g., referral for child care services, job placement, literacy programs) designed to alter or modify a condition or outcome, or to change behavior to reduce the likelihood of a preventable health problem occurring or progressing further.

Minority Community-Based Organizations—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (OMB Statistical Policy Directive No. 15)

Risk Factor—The environmental and behavioral influences capable of causing ill health with or without predisposition.

Sociocultural Barriers—Policies, practices, behaviors and beliefs that create obstacles to health care access and service delivery (*e.g.*, immunization requirements, cultural differences between individuals and institutions, cultural differences of beliefs about health and illness, customs and lifestyles, cultural differences in languages or nonverbal communication styles).

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) semi-annual progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50–74.52, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number for the Minority Community Health Coalition Demonstration Program is 93–137.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 97–30565 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request; Extension

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging is announcing an opportunity for public comment on the continued collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish in the **Federal Register** concerning each collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the requirements relating to the submission, by AoA grantees, of semiannual financial reports on all Title III grants. The information contained in the OMB 269 and its supplemental forms reports currently being collected concurrently.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form to the Financial Status Report for all AoA Title II Grantees.

Description: Supplemental Form to the Financial Status Report provide an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent federal regulations, and other applicable instructions and guidelines issued by the Administration on Aging (AoA). This information will be used for federal oversight of Title III Projects.

Respondents: State Agencies on Aging.

Number of Respondents: 57.

Average Number of Responses per Respondent: 2.

Average Burden Hours: ½ hour per State Agency.

Additional Information

Copies of the collection may be obtained by writing to the Administration on Aging, Office of the Executive Secretariat, 330 Independence Avenue, SW, Washington, DC 20201, Attn: AoA Reports Clearance Officer.

OMB Comment

OMB is required to make a decision, concerning the collection of information, between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 10 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following address: Administration on Aging, Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW, Washington, D.C. 20201 ATTN: Margaret A. Tolson.

Dated: November 14, 1997.

William F. Benson,

Acting Principal Deputy Assistant Secretary on Aging.

[FR Doc. 97–30567 Filed 11–20–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services, Promulgation for Fiscal Year 1999

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for fiscal year 1999.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1999, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: Section 2003 of the Act authorizes $2.380 billion for Fiscal Year 1999 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.380 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.380 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1999, the allotments are based upon the Bureau of Census population statistics contained in its report "Estimates of the Population of the U.S. Regions, and States by Selected Age Groups and Sex: 1990 to 1996 (CB97–64, released April 21, 1997), and "1990 Census of Population and Housing" (CPH–6–AS and CPH–6–CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1998.

FISCAL YEAR 1999 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Total	$2,380,000,000
ALABAMA	38,121,040
ALASKA	5,415,275
AMERICAN SAMOA	68,560
ARIZONA	39,503,853
ARKANSAS	22,392,654
CALIFORNIA	284,395,631
COLORADO	34,106,421
CONNECTICUT	29,208,585
DELAWARE	6,467,998
DIST. OF COLUMBIA	4,844,307
FLORIDA	128,467,816
GEORGIA	65,598,878
GUAM	410,345
HAWAII	10,562,909
IDAHO	10,607,516
ILLINOIS	105,691,543
INDIANA	52,109,758
IOWA	25,443,765
KANSAS	22,945,779
KENTUCKY	34,650,625
LOUISIANA	38,816,907
MAINE	11,089,270
MARYLAND	45,249,220
MASSACHUSETTS	54,349,023
MICHIGAN	85,591,682
MINNESOTA	41,555,770
MISSISSIPPI	24,230,457
MISSOURI	47,809,654
MONTANA	7,841,890
NEBRASKA	14,738,113
NEVADA	14,300,966
NEW HAMPSHIRE	10,366,639
NEW JERSEY	71,263,952
NEW MEXICO	15,282,317
NEW YORK	162,235,224
NORTH CAROLINA	65,331,237

FISCAL YEAR 1999 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS—Continued

NORTH DAKOTA	5,745,366
NO. MARIANA ISLANDS	82,069
OHIO	99,678,535
OKLAHOMA	29,449,462
OREGON	28,584,089
PENNSYLVANIA	107,556,110
PUERTO RICO	12,310,345
RHODE ISLAND	8,832,162
SOUTH CAROLINA	33,000,170
SOUTH DAKOTA	6,530,447
TENNESSEE	47,461,721
TEXAS	170,648,082
UTAH	17,842,752
VERMONT	5,254,691
VIRGIN ISLANDS	410,345
VIRGINIA	59,550,185
WASHINGTON	49,361,974
WEST VIRGINIA	16,290,433
WISCONSIN	46,034,301
WYOMING	4,291,182

Dated: November 5, 1997.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 97–30686 Filed 11–20–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0446]

Determination That Desmopressin Acetate Nasal Solution 0.01% (for Refrigerated Storage) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that desmopressin acetate (DDAVP Nasal Spray) nasal solution 0.01% (for refrigerated storage) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for desmopressin acetate nasal solution 0.01% (for refrigerated storage).

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments) that authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

In accordance with § 314.161(a)(1) and (e), the agency initiated procedures to determine whether desmopressin acetate nasal solution 0.01% (for refrigerated storage) was withdrawn from sale for reasons of safety or effectiveness. Desmopressin acetate (DDAVP Nasal Spray) nasal solution 0.01% is the subject of approved NDA 17–922 held by Rhone-Poulenc Rorer Pharmaceuticals, Inc. The original formulation of desmopressin acetate nasal solution 0.01% (NDA 17–922) provided for refrigerated storage of the product. On August 7, 1996, FDA approved Rhone-Poulenc Rorer Pharmaceutical, Inc.'s supplemental application providing for reformulation of desmopressin acetate nasal solution 0.01% for room temperature storage. Rhone-Poulenc Rorer Pharmaceutical, Inc., later withdrew the original formulation, citing easier storage and convenience with the reformulated product.

FDA has reviewed its records and, under § 314.161, has determined that desmopressin acetate nasal solution 0.01% (for refrigerated storage) was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will maintain desmopressin acetate nasal solution 0.01% (for refrigerated storage) in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to desmopressin acetate nasal solution 0.01% (for refrigerated storage) may be approved by the agency.

Dated: November 14, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30614 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0289]

Content and Format of Labeling for Human Prescription Drugs; Pregnancy Labeling; Public Hearing; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period following its September 12, 1997, public hearing until January 12, 1998. This public hearing, which was announced in the **Federal Register** of July 31, 1997 (62 FR 41061), focused on requirements for the content and format of the pregnancy subsection of labeling for human prescription drugs. The comment period closed on November 12, 1997. This action is being taken in response to the request of the Pharmaceutical Research and Manufacturers of America for additional time to prepare comments because of the complexity and importance of the issues raised by pregnancy labeling.

DATES: Written comments by January 12, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 31, 1997 (62 FR 41061), FDA announced that it would be holding a public hearing on September 12, 1997, concerning the requirements for the content and format of the pregnancy subsection of labeling for human prescription drugs. The public hearing was intended to elicit comments on the practical utility, effects, and limitations of the current pregnancy labeling categories in order to help the agency identify the range of problems associated with the categories and to identify and evaluate options that might address identified problems. Interested persons were given until November 12, 1997, to submit written comments on these issues. Because of the complexity and importance of the issues raised by pregnancy labeling, the Pharmaceutical Research and Manufacturers of America has requested an additional 60 days to prepare comments.

Interested persons may, on or before January 12, 1998, submit to the Dockets Management Branch (address above) written comments on this subject. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with Docket No. 97N–0289. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30561 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Subcommittee Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Subcommittee meeting of the Antiviral Drugs Advisory Committee on immunosuppressive drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on January 14, 1998, 8:30 a.m. to 5 p.m.

Location: Quality Suites, Potomac Ballroom, Three Research Ct., Rockville, MD.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 14, 1998, the subcommittee will discuss new drug application (NDA) 50–722, CellCept® (mycophenolate mofetil), Syntex, USA, Inc., for immunosuppression following cardiac transplantation.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 7, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 7, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30705 Filed 11–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 11, 1997, 8 a.m. to 6 p.m., and December 12, 1997, 8 a.m. to 3:30 p.m.

Location: DoubleTree Hotel, Plazas I, II, and III, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 11, 1997, the committee will discuss and provide recommendations on the issue of FDA's donor deferral policy regarding men who have had sex with another man even one time since 1977.

On the morning of December 12, 1997, the committee will sit as a medical device panel and make recommendations on the issue of in vitro diagnostic detection of human immunodeficiency virus (HIV) viral load, sponsor, Roche Molecular Systems. In the afternoon, the Committee will hear an informational presentation on hepatitis C virus (HCV) risk in sexual partners of positive individuals.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 1, 1997. Oral presentations from the public will be scheduled between approximately 1 p.m. and 4:30 p.m., on December 11, 1997, and between approximately 10 a.m. and 11 a.m. and 2 p.m. and 3 p.m., on December 12, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 1, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and

an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30615 Filed 11-20-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 10, 1997, 9:30 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, ext. 144, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will provide advice and recommendations to the agency regarding a premarket approval application for a salivary estriol enzyme immunoassay that is to be used as a risk assessment marker for spontaneous preterm labor and preterm delivery.

Procedure: On December 10, 1997, from 10 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 1997. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 10, 1997, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present to the committee confidential information regarding pending or future submissions.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30707 Filed 11–20–97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 15, 1997, 8 a.m. to 5 p.m.

Location: Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Committee will discuss the safety and efficacy of new drug application (NDA) 20–793, Cafcit™ (caffeine citrate injection, 10 milligram/milliliter), Roxane Laboratories, Inc., for intravenous or oral use in the treatment of apnea of prematurity.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 5, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 5, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 14, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30616 Filed 11–20–97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 4, 1997, 12:30 p.m. to 3:30 p.m.

Location: Food and Drug Administration, Bldg. 29, conference room 121, 8800 Wisconsin Ave., Bethesda, MD. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the intramural scientific program of the Laboratory of Enteric and Sexually Transmitted Diseases.

Procedure: On December 4, 1997, from 12:30 p.m. to 1:15 p.m., and 2:30 p.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 26, 1997. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 26, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 4, 1997, from 1:15 p.m. to 2:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research program.

FDA regrets that it was unable to publish this notice 15 days prior to the December 4, 1997, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30613 Filed 11-20-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccine and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 11, 1997, 10:30 a.m. to 5:45 p.m., and December 12, 1997, 8 a.m. to 5 p.m.

Location: Holiday Inn Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 11, 1997, the committee will meet in closed session to discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications or pending product licensing applications. On December 12, 1997, in open session, the committee will consider the safety and efficacy of a new vaccine for the prevention of Rotavirus Diarrhea in children. The vaccine, RotaShield™, is made for infant indication by Wyeth-Lederle Vaccines and Pediatrics.

Procedure: On December 12, 1997, from 9:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 1997. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 11, 1997, from 10:30 a.m. to 5:45 p.m., and on December 12, 1997, from 8 a.m. to 9:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information. These portions of the meeting will be closed to discuss pending investigational new drug applications or pending product licensing applications (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30708 Filed 11–20–97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–151–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Second Quarter 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during April, May, and June of 1997 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of

Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this time frame.

FOR FURTHER INFORMATION CONTACT:

Bridget Wilhite, (410) 786–5248 (For Medicare instruction information).
Betty Stanton, (410) 786–3247 (For Medicaid instruction information).
Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).
Pam Gulliver, (410) 786–4659 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we list in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published during April through June 1997.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the time frame to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is HCFA's practice to announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How to Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, TTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http//www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published Rulings in the **Federal Register**. In addition, Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, Part 2—Audits, Reimbursement Program Administration (HCFA Pub. 13–2) transmittal entitled "Maximum Payment Per Visit For Rural Health Clinics," use the Superintendent of Documents No. HE 22.8/6–2 and the HCFA transmittal number 409.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Pam Gulliver, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4659.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: October 31, 1997.

Pamela J. Gentry,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

June 26, 1996 (61 FR 33119)
December 18, 1996 (61 FR 66676)
April 21, 1997 (62 FR 19328)
May 12, 1997 (62 FR 25957)
November 3, 1997 (62 FR 59358)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS
[April 1997 through June 1997]

Trans. No.		Manual/Subject/Publication No.
		Intermediary Manual **Part 2—Audits, Reimbursement Program Administration** **(HCFA Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
409	•	Maximum Payment Per Visit For Rural Health Clinics.
	•	Maximum Payment Per Visit For Freestanding Federally Qualified Health Centers.
410	•	List of MR Codes, Categories, and Conversion Factors.
		Intermediary Manual **Part 3—Claims Process** **(HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1709	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines.
1710	•	Review of Form HCFA–1450 For Inpatient and Outpatient Bills. Self-Administered Drugs and Biologicals. Oral Cancer Drugs. Self-Administered Antiemetic Drugs. Mammography Quality Standards Act. Self-Administered Drug Administered In An Emergency Situation. Hospital Outpatient Partial Hospitalization Services.
1711	•	Special Consideration When Processing ESRD Bills Under Method I. Special Consideration When Processing ESRD Bills Under Method II. Medical—Subject to Waiver.
1712	•	Drugs and Biologicals.
1713	•	Pneumoccal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
1714	•	Laboratory Test for Hemodialysis, Intermittent Peritoneal Dialysis, Continuous Cycling Peritoneal Dialysis, and Hemofiltration.
		Carriers Manual **Part 3—Claims Process (HCFA Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1564	•	Coverage of Supplies and Accessories. New Supplier Effective Billing Date.
1565	•	Assignment of a Partially Paid Bill.
1566	•	Method for Computing Fee Schedule Amount. Bundled Services/Supplies. Supervising Physicians in Teaching Settings. Anesthesia Claims Modifiers. Services of Portable X-ray Suppliers. Special Situations. Interpretation of Diagnostic Tests.
1567	•	Completing Quarterly Report on Provider Enrollment.
1568	•	Screening Mammography Examinations. Identifying a Screening Mammography Claim. Adjudicating the Claim.
1569	•	Bill Review of Laboratory Services.
1570	•	Self-Administered Drug and Biologicals.
1571	•	Paper Remittance Notice.
1572	•	Bill Review of Laboratory Services.
		Program Memorandum **Intermediaries (HCFA Pub. 60A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–97–4	•	Two Month Extension for Implementation of Filing Electronically Prepared Cost Reports for Skilled Nursing Facilities and Home Health Agencies.
		Program Memorandum **Intermediaries/Carriers (HCFA Pub. 60A/B)** **(Superintendent of Documents No. HE 22.8/6–5)**
AB–97–6	•	Current Status of Medicare Program Memorandums And Letters Issued Before Calendar Year 1997.
AB–97–7	•	Revision on Program Memorandum Transmittal No. AB–97–5, New Panels Approved by CPT.
AB–97–8	•	Hematocrit Levels for Erythropoietin.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April 1997 through June 1997]

Trans. No.		Manual/Subject/Publication No.
AB–97–9	•	New Code for HIV–1 Viral Load Testing.
		Program Memorandum **Medicaid State Agencies** **(HCFA Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5)**
97–1	•	Current Status of Medicaid Program Memorandums and Action Transmittals Issues Before Calendar Year 1997.
		Program Memorandum **Regional Offices** **(HCFA Pub. 54)** **(Superintendent of Documents No. HE 22.28/5:90–1)**
97–1	•	Civil Money Penalty Collection Procedures.
		State Operations Manual **Provider Certification** **(HCFA Pub. 7)** **(Superintendent of Documents No. HE 22.8/12)**
281	•	Interpretive Guidelines—Home Health Agencies.
282	•	Model Letter to Provider. Model Letter Notifying Provider of Results of Revisit. Model Letter to Provider (Imposition of Remedies). (Immediate Jeopardy Exists). Informal Dispute Resolution.
		Regional Office Manual **Standards and Certification** **(HCFA Pub. 23–4)** **(Superintendent of Documents No. HE 22.8/8–3)**
63	•	OPO Designation Procedures in Service Areas With Competing Applications.
		Hospital Manual **(HCFA Pub. 10)** **(Superintendent of Documents No. HE 22.8/2)**
712	•	Self-Administered Drugs and Biologicals. Oral Cancer Drugs. Self-Administered Antiemetic Drugs. Self-Administered Drug Administered In An Emergency Situation. Billing for Hospital Outpatient Partial Hospitalization Services. Completion of Form HCFA–1450 For Inpatient And/Or Outpatient Billing.
713	•	Review of Hospital Admissions of Patients Who Have Elected Hospice Care.
714	•	Outpatient Therapeutic Services.
715	•	Laboratory Test for Hemodialysis, Intermittent Peritoneal Dialysis, and Continuous Cycling Peritoneal Dialysis Included in Composite Rate.
		Rural Health Clinic Manual and Federally Qualified Health Centers Manual **(HCFA Pub. 27)** **(Superintendent of Documents No. HE 22.8/19:985)**
25	•	Rural Health Clinics. Federally Qualified Health Centers.
26	•	Billing of Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines By Rural Health Clinics and Federally Qualified Health Centers.
		Renal Dialysis Facility Manual **(Non-Hospital Operated)** **(HCFA Pub. 29)** **(Superintendent of Documents No. HE 22.8/13)**
78	•	Pneumoccal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
79	•	Completion of Form HCFA–1450 by Independent Facilities for Home Dialysis Items and Services Billed Under the Composite Rate (Method I).
80	•	Epoetin.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[April 1997 through June 1997]

Trans. No.		Manual/Subject/Publication No.
81	•	Laboratory Test for Hemodialysis, Intermittent Peritoneal Dialysis, and Continuous Cycling Peritoneal Dialysis.
		Coverage Issues Manual (HCFA Pub. 6) (Superintendent of Documents No. HE 22.8/14)
94	•	Artificial Hearts and Related Devices.
95	•	Electrostimulation in the Treatment of Wounds. Intrapulmonary Percussive Ventilator.
96	•	Breast Reconstruction Following Mastectomy Obsolete or Unreliable Diagnostic Test.
97	•	Urinary Drainage Bags.
98	•	–Electrostimulation in the Treatment of Wounds Intrapulmonary Percussive Ventilator.
99	•	Laser Procedures. Refractive Keratoplasty. Magnetic Resonance Angiography.
100	•	Electrostimulation in the Treatment of Wounds. Intrapulmonary Percussive Ventilator.
101	•	Laboratory Test-CRD Patients.
		Provider Reimbursement Manual Part 1—(HCFA Pub.15–1) (Superintendent of Documents No. HE 22.8/4)
399	•	Regional Medicare Swing-Bed SNF Rates. Changing Cost Finding Methods. Changing Bases for Allocating Costs Centers or Order in Which Cost Centers Are Allocated.
		Provider Reimbursement Manual Part 1—(HCFA Pub.15–1–27) (Superintendent of Documents No. HE 22.8/4)
27	•	Separately Billable ESRD Laboratory Services.
28	•	Epoetin.
		Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–II–AF) (Superintendent of Documents No. HE 22.8/4)
5	•	Electronic Reporting Specifications for Form HCFA 1728–94.
		Medicare Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–11–AI) (Superintendent of Documents No. HE 22. 8/4)
2	•	Cost Center Coding. Electronic Reporting Specifications for Form HCFA 2540–96.
		Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
97–5	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—March 1997.
97–6	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—April 1997.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
04/08/97	16894–16976	144, 146, 148	BPD–890–IFC	Interim Rules for Health Insurance Portability for Group Health Plans.	07/07/97	06/07/97
04/08/97	16985–17004	146	BPD–882–IFC	Individual Market Health Insurance Reform: Portability From Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules.	07/07/97	04/08/97

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
04/08/97	17004		BPD–882–CN BPD–890–CN	Interim Rules for Health Insurance Portability for Group Health Plans and Individual Market Health Insurance Reform: Portability from Group to Individual Coverage; and Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules; Correction.		04/08/97
04/17/97	18776–18777		ORD–098–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: February 1997.		
04/21/97	19326–19328		BPD–894–NC	Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Area.	06/20/97	
04/21/97	19328–19337		BPO–141–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter 1996.		
04/28/97	22995	413	BPD–808–P	Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services; Correction.		
04/29/97	23251–23253		HSQ–232–N	Medicare Program; Initiative Involving Facilities That Furnish Hemodialysis Treatments.		10/28/96
04/29/97	23140	433	MB–112–F	Medicaid Program; Third Party Liability (TPL) Cost-Effectiveness Waivers; Correcting Amendment.		09/08/95
04/30/97	23368–23376	417	OMC–025–FC	Medicare Program; Establishment of an Expedited Review Process for Medicare Beneficiaries Enrolled in Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans.	06/30/97	06/30/97
05/05/97	24483–24491		BPD–816–N	Medicare Program; Update of the Reasonable Compensation Equivalent Limits for Services Furnished by Physicians.		05/05/97
05/12/97	25844–25855	405, 417, 473	BPD–453–FC	Medicare Programs; Medicare Appeals of Individual Claims.	07/11/97	07/11/97
05/12/97	25855–25858	493	HSQ–237–FC	Medicare, Medicaid and CLIA Programs; Clinical Laboratory Requirements— Extension of Certain Effective Dates for Clinical Laboratory Requirements Under CLIA.	07/11/97	05/12/97
05/12/97	25957		ORD–099–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: March 1997.		
05/12/97	25957–25964		BPO–148–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances; Fourth Quarter 1996.		
05/14/97	26545–26550		MB–103–NC	Medicaid Program; Allocation of Enhanced Federal Matching Funds for Increased Administrative Costs Resulting From Welfare Reform.	06/13/97	05/14/97
05/19/97	27262–27265		HSQ–242–N	Approval of the Commission on Office Laboratory Accreditation for Immunohematology.		05/19/97–11/1/97
05/19/97	27210	413	BPD–788–CN	Medicare Program; Electronic Cost Reporting for Skilled Nursing Facilities and Home Health Agencies; Correction.		05/19/97
05/30/97	29355–29356		OPL–015–N	Medicare Program; June 16, 1997, Meeting of the Practicing Physicians Advisory Council.		

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
06/02/97	29902–30037	412, 413, 489	BPD–878–P	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates.	08/01/97	
06/04/97	30604–30605		ORD–100–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: April 1997.		
06/10/97	31669–31670	144, 146	BPD–890–CN	Interim Rules for Health Insurance Portability for Group Health Plans; Correction.		
06/17/97	32715–32733	410, 424	BPD–813–P	Medicare Program; Ambulance Services.	08/18/97	
06/18/97	33158–33305	400, 405, 410, 414.	BPD–884–P	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998.	08/18/97	
06/19/97	33459		MB–103–NC	Medicaid Program; Allocation of Enhanced Federal Matching Funds for Increased Administrative Costs Resulting From Welfare Reform; Correction.		

Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G960260	A1
G970007	A2
G970015	A2
G970018	A2
G970022	A2
G970068	A2
G970069	A2
G970076	A2
G970093	A2
G970121	A2

The following information presents the device number, category (in this case, B), and criterion code.

G960033	B4
G960209	B4
G960222	B2
G960233	B4
G960240	B5
G960261	B2
G970033	B4
G970043	B4
G970049	B3
G970060	B3
G970062	B1
G970063	B4
G970064	B2
G970065	B3
G970066	B4
G970067	B2
G970072	B2
G970077	B1
G970079	B2
G970080	B4
G970083	B4
G970085	B2
G970090	B4
G970091	B3
G970092	B2
G970098	B4
G970104	B2
G970105	B2
G970108	B1
G970109	B3
G970113	B4
G970115	B4
G970117	B4

[FR Doc. 97–30568 Filed 11–20–97; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4283–N–56]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 13, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Insurance for Home Equity Conversion Mortgages—Residential Loan Application for Reverse Mortgages.

Office: Housing.

OMB Approval Number: None.

Description of the Need for the Information and its Proposed use: The Housing and Community Development Act of 1987 established a Federal Mortgage Insurance Program, Section 255 of the National Housing Act, to insure Home Equity Conversion Mortgages (HECMs). In order to obtain a HECM loan, the borrower is required to complete a loan application and the HUD/VA Addendum to the Uniform Residential Loan Application. The Uniform Residential Loan Application (URLA) is completed by the borrower as part of the application loan process. The data collected is necessary to determine if the borrower will qualify for the HECM loan. The relevant "qualification" issues are the ages of the borrowers, the ownership status of the property, and any outstanding liens on the property.

Form Number: HUD–92900–A/B and URLA.

Respondents: Individuals or Households, Business or Other For-Profit and the Federal Government.

Frequency of Submission: On Occasion, Annually, and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Residential Loan Application	5,000		1		1		5,000

Total Estimated Burden Hours: 5,000.

Status: New.

Contact: Diane Labasso, HUD, (202) 708–2600 x2191; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–30593 Filed 11–20–97; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4283–N–57]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gloria Diggs, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Diggs.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 13, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Flexible Subsidy/Capital Improvement Loan Program.

Office: Housing.

OMB Approval Number: 2502–0395.

Description of the Need for the Information and its Proposed Use: This information collection is necessary to the Department to determine which projects will best benefit from flexible subsidy loans in order to improve financial soundness, improve management, and maintain affordability. In addition, this information provides the Department with a means to account for, on a project specific basis, the use of flexible subsidy dollars and the progress being made by each project toward its physical, financial, and management improvement goals.

Form Number: HUD–9823A, 9824A, 9835, and 9835A/B.

Respondents: State, Local, or Tribal Government, Business or Other For-Profit, and Not-For-Profit Institutions.

Frequency of Submission: Quarterly and Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–9823A	30		12		1		360
HUD–9824A	30		4		20		2,400
HUD–9835/A	30		1		8		240
HUD–9835B	30		1		1		30

Total Estimated Burden Hours: 3,030.

Status: Reinstatement, with changes.

Contact: Michael E. Diggs, HUD, (202) 708–0558x2514; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–30594 Filed 11–20–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 14, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–30595 Filed 11–20–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate a Contract Among Wasatch County Special Service Area #1, Central Utah Water Conservancy District, and Department of the Interior for Carriage of Non-Project Water Through the Wasatch Canal as Part of the Wasatch County Water Efficiency Project and Daniel Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract among Wasatch County Special Service Area #1 (WCSSA), Central Utah Water Conservancy District (District), and Department of the Interior for carriage of non-project water through the Wasatch Canal as part of the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP and DRP) under the Central Utah Project Completion Act.

SUMMARY: Public law 102–575, Central Utah Project Completion Act, Sections 202(a)(3), 207(e), and 303(b), allows for the construction of the WCWEP and DRP as part of the Central Utah Project. The WCWEP and DRP Projects provide for increasing irrigation efficiency in the Heber Valley, conserving water, and eliminating the diversion of water from the upper Strawberry River tributaries to Heber Valley. As part of these projects, the United States plans to acquire, and the District intends to improve, the Wasatch Canal, a feature which has historically been used to convey Provo River water to irrigators. The canal will be used to convey project water and non-project water for irrigation purposes.

The purpose of the negotiation sessions will be to determine the amount of non-project water which will be conveyed through the Wasatch Canal and the price to be paid by WCSSA to the Department for conveying the non-project water.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: November 17, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–30604 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate Agreements Between the Wasatch County Special Service Area #1, and Department of the Interior for the Purchase of the Timpanogos and Wasatch Canals as Part of the Wasatch County Water Efficiency Project and Daniel Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate agreements between Wasatch County Special Service Area #1 (WCSSA), and Department of the Interior for the purchase of the Timpanogos and Wasatch Canals as part of the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP and DRP) under the Central Utah Project Completion Act.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Sections 202(a)(3), 207(e), and 303(b), allows for the construction of the WCWEP and DRP as part of the Central Utah Project. The WCWEP and DRP Projects provide for increasing irrigation efficiency in the Heber Valley, conserving water, and eliminating the diversion of water from the upper Strawberry River tributaries to Heber Valley. As part of these projects, the United States plans to acquire the Timpanogos and Wasatch Canals from WCSSA. These two canals are features which have historically been used to convey Provo River water to Heber Valley irrigators. The canals will be used to convey project water and non-project water for irrigation purposes.

The purpose of the negotiation sessions will be to agree upon the price and the details for the United States to purchase Timpanogos and Wasatch Canals from WCSSA.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: November 17, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–30605 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 835433

Applicant: California Army National Guard, San Luis Obispo, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with presence or absence surveys in vernal pools throughout the species range in California for the purpose of enhancing their survival.

Permit No. 790167

Applicant: Kevin Lafferty, Santa Barbara, California.

The applicant requests an amendment to his permit to extend the area authorized to take (harass by survey, capture and release) the tidewater goby (*Eucyglobius newberryi*) in conjunction with presence or absence surveys and population monitoring throughout the species range in California for the purpose of enhancing its survival.

Permit No. 835549

Applicant: Charles Black, San Diego, California.

The applicant requests a permit to take (harass by survey, capture and release) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*), and remove and reduce to possession the San Diego mesa mint (*Pogogyne abramsii*) and the San Diego button celery (*Eryngium aristulatum* ssp. *pavishii*) for the purpose of enhancing their survival, in conjunction with research in vernal pools on Miramar Naval Air Station, San Diego, California.

Permit No. 804203

Applicant: Stephen Myers, Riverside, California.

The applicant requests an amendment of his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 835918

Applicant: Jutta C. Burger, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 836517

Applicant: Chet McGaugh, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Riverside, Orange, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. 836419

Applicant: Mike Wilcox, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in Riverside, Orange, and San Diego Counties, California, and take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in San Bernardino and Riverside Counties, California, in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 836521

Applicant: Dan Holland, Fallbrook, California.

The applicant requests a permit to take (capture, handle, measure, apply Passive Integrated Transponders, and radio-tag) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with ecological research in San Diego, Orange, and Los Angeles Counties, California, for the purpose of enhancing its survival.

Permit No. 836518

Applicant: The Environmental Trust, La Mesa, California.

The applicant requests a permit to: take (locate and monitor nests, capture, band, color-band, and release) the least Bell's vireo (*Vireo bellii pusillus*); take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (harass by survey, capture and release, collect and sacrifice voucher specimens) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*); take (capture and release) the Stephen's kangaroo rat (*Dipodomys stephensi*); and take (capture and release, conduct egg counts) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with population monitoring and ecological research in Southern California for the purpose of enhancing their survival.

Permit No. 777985

Applicant: LSA Associates, Irvine, California.

The applicant requests a permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in San Diego, Orange, Riverside, Los Angeles, San Bernardino, Ventura, Santa Barbara, and Kern Counties, California, in conjunction with presence or absence

surveys and population monitoring for the purpose of enhancing its survival.

Permit No. 836079

Applicant: Richard E. Hill, Fair Oaks, California.

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with presence or absence surveys and ecological research in vernal pools, throughout the species range in California for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before December 22, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; fax (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: 503–231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: November 17, 1997.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–30610 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement for Issuance of an Incidental Take Permit to the Rellim Redwood Company, Del Norte County, CA

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce; California Department of Forestry and Fire Protection.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (collectively "the Services"), and the California Department of Forestry and Fire Protection intend to prepare a joint National Environmental Policy Act Environmental Impact Statement addressing approval and implementation of a Multi-Species Habitat Conservation Plan (Plan) submitted by the Rellim Redwood Company (Rellim) as part of an application for an incidental take permit, pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (Act). The Plan will cover forest management activities on Rellim's forestlands in Del Norte County, California. Rellim intends to request an incidental take permit for the northern spotted owl *(Strix occidentalis caurina)*, marbled murrelet *(Brachyramphus marmoratus marmoratus)* and coho salmon *(Oncorhynchus kisutch)*; these species listed as threatened or endangered under the Act. Rellim is also seeking coverage under specific provisions of the permit for approximately 40 currently unlisted species (including those with State, proposed Federal or State, or other special status) should these species be listed under the Act in the future. The Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Forestry and Fire Protection are acting as joint lead agencies on the project. Under the California Environmental Quality Act and the state Z'Berg Nejedly Forest Practice Act, the California Department of Forestry and Fire Protection must conduct its own environmental assessment, and has determined that a Program Timberland Environmental Impact Report will be prepared. In accordance with Federal and State regulations, a joint Environmental Impact Statement/Program Timberland Environmental Impact Report will be prepared.

Public Involvement

This notice is being furnished pursuant to the Council on Environmental Quality Regulations for implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR sections 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the Environmental Impact Statement.

DATES: Comments must be received on or before December 24, 1997. Public scoping meetings, at which oral and written comments can be submitted, are scheduled for Monday, November 24, 1997, 2:00–4:00 p.m., at the Cultural Center Atrium, 1001 Front Street, Crescent City, California, and from 7:00–9:00 p.m. at the Eagles Hall, 1005 J Street, Arcata, California.

ADDRESSES: Comments regarding the scope of the Environmental Impact Statement should be addressed to Mr. Ken Hoffman, Coastal California Fish and Wildlife Office, 1125 16th Street, Room 209, Arcata, California 95521. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Hoffman, at the address above, or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION: Rellim manages approximately 30,000 acres in Del Norte County, California, as commercial forestlands that will be considered for inclusion in the Plan. Rellim is developing a comprehensive 50-year multi-species Plan, covering both listed and certain unlisted species. Rellim's Plan is expected to combine several mitigation strategies to ensure species protection.

Rellim's multi-species planning approach is anticipated to include the northern spotted owl, marbled murrelet, and coho salmon, which are listed as threatened or endangered under the Act. In addition, about 40 currently unlisted species (including those with State, proposed Federal or State, or other special status) are being considered for inclusion in the Plan.

Once completed, it is expected that Rellim will submit the Plan as part of the incidental take permit application process, as required under the provisions of section 10(a) of the Act. The Services will evaluate the incidental take permit application and associated Plan in accordance with section 10(a) of the Act and its implementing regulations. The environmental review of the permit application and the Plan will be conducted in accordance with the requirements of the National Environmental Policy Act and its implementing regulations. A No Action alternative will be considered consistent with the requirements of the National Environmental Policy Act. Another possible alternative is a "Listed Species Only" alternative. A revised Plan under this alternative would only address the habitat needs of the northern spotted owl, marbled murrelet, and coho salmon; there would be no permit coverage for species currently not listed under the Act. Further consideration of a reasonable range of project alternatives will be given during and subsequent to this scoping process.

Dated: November 14, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–30609 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications Under Three FGDC National Spatial Data Infrastructure (NSDI) Partnership Funding Programs for Fiscal Year (FY) 1998 Under the Catalog of Federal Domestic Assistance No. 15.809 National Spatial Data Infrastructure Competitive Cooperative Agreements Program

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for the NSDI Cooperative Agreements Program awards, the NSDI Benefits Program awards, and the NSDI Framework Demonstration Projects Program awards, for fiscal year 1998, with performance to begin in September 1998.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Partnership Funding Programs is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The NSDI consists of policies, standards, agreements, and partnerships among a variety of sectors and disciplines that promotes more cost-effective production, ready availability, and greater use of high quality geospatial data. Three separate but related programs constitute the FGDC Partnership Funding Programs: the NSDI Cooperative Agreements Program, the NSDI Benefits Program, and the NSDI Framework Demonstration Projects Program.

The Cooperative Agreements Program funds projects focused on promoting metadata collection and creating clearinghouses of geographic data linked to the Internet, developing NSDI standards, advancing the NSDI through education, and organizing and strengthening State-wide or regional programs for geographic data sharing.

The Benefits Program funds projects that assess the qualitative or quantitative benefits of using a shared data resource to solve particular problems over a given geographic area.

The Framework Demonstration Projects Program funds projects that demonstrate technical, operational and business capabilities to collaboratively create and maintain certain categories of commonly needed "Framework" data. Activities initiated under each of the three mentioned programs will promote development and maintenance of and access to data sets that are needed for national, regional, State, and local analyses.

Applications must involve partnering between two or more organizations. Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, private foundations, and Federally acknowledged or State-recognized Native American tribes or groups. Applications from Federal agencies will not be competed against applications from other sources. Participants are expected to cost share in the project. Authority for this program is contained in the Organic Act of March 3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The program announcements and application forms for each of the three aforementioned programs are expected to be available on or about November 29, 1997. Applications must be received on or before February 28, 1998.

ADDRESSES: Copies of Program Announcement #1434–HQ–98–PA–00044 for the NSDI Cooperative Agreements Program, Program Announcement #1434–HQ–98–PA–00046 for the NSDI Benefits Program, and Program Announcement #1434–HQ–98–PA–00045 for the NSDI Framework Demonstration Projects Program may be obtained by writing to Ms. Karen Staubs, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–7372, fax (703) 648–7901. Also, copies of each Program Announcement will be available through the Internet at <www.usgs.gov\contracts\index.html>.

FOR FURTHER INFORMATION CONTACT: For the NSDI Cooperative Agreements Program contact Ms. Kathleen Craig, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7357, fax (703) 648–7901.

For the NSDI Benefits Program contact Ms. Deborah Walsh, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7384, fax (703) 648–7901.

For the NSDI Framework Demonstration Projects Program contact Ms. Tammy Fanning, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7363, fax (703) 648–7901.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program proposals are to be directed towards any of four components of the NSDI. The first is the establishment of a National Geospatial Data Clearinghouse for finding and accessing geospatial data. Second is the development and promulgation of standards in data collection, documentation, transfer, and search and query. Third is the development and implementation of educational outreach programs to increase the awareness and understanding of the NSDI vision and concepts. Fourth is the building and strengthening of relationships among organizations to support digital geographic data coordination.

Under the NSDI Benefits Program, proposals are to be directed towards projects that assess the benefits of using shared geographic data, or spatially referenced information, to aid a public decision-making process within a particular geographic area. Assessment of the benefits of data sharing can be by quantitative or qualitative measures. No restriction is placed on the primary issue or problem being addressed. The problem may be environmental, economic, social, or cultural. Defined

geographic areas might include watersheds, ecosystems, counties, municipalities, regions, and so forth.

Under the NSDI Framework Demonstration Projects Program, proposals are to be directed towards projects that demonstrate or operationalize the framework concept. Projects can address initial or advanced technical, operational, and business aspects/capabilities to collaboratively create and maintain certain categories of commonly needed "Framework" data, or deal with specific framework topics such as coding permanent feature identifiers, data integration, generalization, transactions and feature maintenance, feature level metadata, and data certification. Framework data are defined as geodetic control, cadastral, digital orthoimagery, elevation, bathymetry, transportation, hydrography, and governmental units.

Dated: November 12, 1997.

Jack Fischer,

Associate Chief, Operations.

[FR Doc. 97–30580 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs,

Saginaw Chippewa Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in, *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that the Saginaw Chippewa Tribe of Michigan Liquor Ordinance was duly adopted by Resolution No. 97–067 of the Saginaw Chippewa Tribe of Michigan Tribal Council on June 26, 1997. The ordinance provides for the regulation, sale, possession and use of alcoholic liquor within the Tribe's jurisdiction.

DATES: This ordinance is effective as of November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, N.W., MS 4641 MIB, Washington, D.C. 20240–4401; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Saginaw Chippewa Tribe of Michigan Liquor Ordinance shall read as follows:

Chapter 8.7 Liquor Control Act

8.7.1 Legislative Findings. The Saginaw Chippewa Tribal Council hereby finds as follows:

8.7.1.1 The Council has authority to adopt this Act pursuant to powers vested in it by Article VI, sections 1(s), (i), (j), (k), (n), (o), and Article VI, section 2 of the Amended Tribal Constitution, said Constitution and Bylaws having been ratified by the Tribe on March 27, 1937, and approved by the Secretary of Interior on May 6, 1937, with revised amendments approved on November 4, 1986. Further, the Supreme Court held in *United States* v. *Mazurie*, 419 U.S. 544 (1975), that Congress through 18 U.S.C. 1161 delegated to Indian tribes authority to control the introduction, distribution, and use of alcoholic beverages into Indian country.

8.7.1.2 The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Isabella Reservation ("Reservation") is a matter of special concern to the Tribe.

8.7.1.3 Federal law as embodied in 18 U.S.C. 1161 provides that certain sections of the United States Code, commonly referred to as Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the state in which such act or transaction occurs, and with an act duly adopted by the tribe having jurisdiction over such area of Indian country.

8.7.2 Declaration of Policy.

8.7.2.1 The Council hereby declares that the policy of the Tribe is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation, and to promote temperance in the use and consumption of alcoholic liquor by increasing tribal control over such activities on the Reservation.

8.7.2.2 The importation, distribution, manufacture, and sale of alcoholic liquor for commercial purposes on the Reservation shall be lawful, provided that such activity is conducted by the Tribe or by an authorized tribal enterprise, and is in conformity with this Act. Such conditions are necessary to increase the Tribe's ability to control and regulate the distribution, sale, and possession of alcoholic liquor, while at the same time provide an important and necessary source of revenue for continued operation of the tribal government and delivery of tribal governmental services.

8.7.3 Short Title. This Act shall be known and cited as the "Saginaw Chippewa Liquor Control Act."

8.7.4 Purpose. The purpose of this Act is to prohibit the importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation except pursuant to a license issued by the Council under the provisions of this Act and other tribal laws.

8.7.5 Application of 18 U.S.C. 1161. The importation, manufacture, distribution, and sale of alcoholic liquor for commercial purposes on the Reservation shall be "in conformity with" this Act and the laws of the State of Michigan as that phrase is used in 18 U.S.C. 1161.

8.7.6 Incorporation by Reference of Michigan Laws.

8.7.6.1 In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: Sale to a minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; hours of operation; and similar substantive provisions, including such other laws prohibiting the sale of alcoholic beverages to certain categories of individuals. Said tribal laws which are defined by reference to the substantive areas of Michigan laws referred to in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan to off-Reservation transactions unless otherwise agreed by the Tribe and State; provided, that nothing in this Act shall be construed as a consent by the Tribe to the jurisdiction of the State of Michigan or any of its courts or subordinate political subdivisions or municipalities within the Reservation over any activity arising under or related to the subject of this Act nor shall anything in this Act constitute an express or implied waiver of the sovereign immunity of the Tribe.

8.7.6.2 The Tribe, for resale by the Tribe, shall purchase spirits from the Michigan Liquor Control Commission, and beer and wine from distributors licensed by the Michigan Liquor Control Commission, at the same price and on the same basis that such beverages are purchased by similar licensees.

8.7.6.3 In the event of any conflict or inconsistency between "adopted and applied" Michigan laws and this Act, the provisions of this Act shall govern.

8.7.6.4 Whenever such Michigan laws are incorporated herein by reference, amendments thereto shall also be deemed to be incorporated upon their effective date in the State of Michigan without further action by the Council.

8.7.7 Administration of Act. The Council, under its powers vested under the Constitution and Bylaws and this Act, shall exercise all of the powers and accomplish all of the purposes as set forth in this Act, which may include the following actions:

(a) Adopt and enforce rules and regulations for the purpose of effectuating this Act, which includes the setting of fees;

(b) Execute all necessary documents; and

(c) Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Act.

8.7.8 Sovereign Immunity Preserved.

8.7.8.1 The Tribe, and all of its constituent parts, which includes but is not limited to tribal enterprises, subordinate organizations, boards, committees, officers, employees and agents, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived in writing by the Tribe.

8.7.8.2 Nothing in this Act, and no enforcement action taken pursuant to this Act or otherwise, including without limitation the filing of suit by the Tribal Council to enforce any provision of this Act or other tribal law, shall constitute a waiver of such sovereign immunity, either as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence, or in any other respect.

8.7.9 Applicability Within the Reservation. This Act shall apply to all persons within the exterior boundaries of the Reservation, consistent with applicable federal laws.

8.7.10 Interpretation and Findings. The Council in the first instance may interpret any ambiguities contained in this Act.

8.7.11 Liberal Construction. The provisions of this Act shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

8.7.12 Savings Clause. In the event any provision of this Act shall be found or declared to be invalid by a court of competent jurisdiction, all of the remaining provisions of this Act shall be unaffected and shall remain in full force and effect.

8.7.13 Effective Date. The effective date of this Act is the date that the Secretary of the Interior publishes the same in the **Federal Register**.

8.7.14 Prior Inconsistent Acts. Except as provided otherwise under applicable federal law, this Act shall be the exclusive tribal law governing the introduction, distribution, sale and regulation of alcoholic beverages within the Isabella Reservation. This Act shall supersede any and all tribal laws that are inconsistent with the provisions of this Act, and such laws are hereby rescinded and repealed.

8.7.15 Computation of Time. Unless otherwise provided in this Act, in computing any period of time prescribed or allowed by this Act, the day of the act, event or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. For the purposes of this Act, the term "legal holiday" shall mean all legal holidays under tribal law.

8.7.16 Definitions. In construing the provisions of this Act, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise:

(a) *Alcohol* means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

(b) *Alcoholic liquor* or "alcoholic beverage" means any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume which is fit for use for beverage purposes. The following eight subclassifications comprise the entire universe of alcoholic liquor: beer, wine, spirits, alcohol, sacramental wine, brandy, mixed wine drink, and mixed spirit drink. Alcoholic liquor or alcoholic beverage does not include the exceptions set forth in Mich. Comp. Laws § 436.4 (Mich. Stat. Ann. § 18.974).

(c) *Applicant* means any person who submits an application to the Tribe for a liquor license and who has not yet received such a license.

(d) *Beer* means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops, or other cereal in potable water.

(e) *Brandy* means an alcoholic liquor as defined in the federal regulations, 27 CFR § 5.22(d) (1980).

(f) *Constitution* and *Tribal Constitution*, as used throughout this Code and elsewhere under tribal law, means the Constitution and Bylaws of the Saginaw Chippewa Indian Tribe of Michigan, approved by the Secretary of the Interior on May 6, 1937, amended on November 4, 1986, under the authority of Section 4 of the Saginaw Chippewa Indian Tribe Distribution of Judgment Funds Act, Public Law 99–346, 100 Stat. 676 (June 30, 1986), including all subsequent amendments ratified and approved pursuant to tribal and federal law.

(g) *Council* means the elected Tribal Council of the Saginaw Chippewa Indian Tribe of Michigan acting as the governing body of the Tribe pursuant to the Tribe's Constitution.

(h) *License* means a liquor license issued by the Saginaw Chippewa Tribal Council under the provisions of this Act authorizing the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes on or within the Reservation consistent with federal law.

(i) *Licensee* means any holder of a liquor license issued by the Tribe and includes any employee or agent of the Licensee.

(j) *Manufacturer* means any person engaged in the manufacture of alcoholic liquor.

(k) *Mixed wine drink* means a drink or similar product marketed as a wine cooler and containing less than 7% alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any one (1) or more of the following: Nonalcoholic beverages; flavoring; coloring materials; fruit juices; fruit adjuncts; sugar; carbon dioxide; or preservatives.

(l) *Mixed spirit drink* means a drink produced and packaged or sold by a mixed spirit drink manufacturer or an out-of-state seller of mixed spirit drink which contains 10% or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.

(m) *Person* means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust estate, tribe, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and any other Indian tribe, band, or group, whether recognized by the United States or otherwise. The term shall also include any tribal enterprise and licensee.

(n) *Reservation* Unless otherwise provided by applicable federal law, the Isabella Reservation includes five full and two one-half adjoining townships located in Isabella County, Michigan that were withdrawn and reserved for the benefit of the Tribe by Executive Order of President Pierce dated May 14, 1855, and selected by the Indians pursuant to the Treaty of August 2, 1855, 11 Stat. 633, and described with specificity and reaffirmed in Article II of the Treaty of October 18, 1864, 14 Stat. 657, as the north half of township 14 [Chippewa Township], and townships 15 [Denver Township] and 16 [Wise Township] north, range 3 west; the north half of township 14 [Union Township] and township 15 [Isabella Township] north, range 4 west; and townships 14 [Deerfield Township] and 15 [Nottowa Township] north, range 5 west, within Isabella County, Michigan, and all other lands added to the Reservation by executive order, act of Congress, proclamation or declaration of the Secretary of the Interior or other authorized federal official, or otherwise under federal law, including, without limitation, lands in Isabella County and Arenac County, Michigan that were added to the Isabella Reservation and described by declaration of the Secretary of the Interior on September 9, 1983, 48 FR 176 (1983), and shall include, without limitation, all lands, whether held in fee or trust and regardless of ownership, title, or patent, without regard to date of issuance; and all waters, waterways, streams and rivers; all highways and roadways, public or private; rights of way and easements, without regard to ownership or title of the land; and all airspace in a column above all such lands and territory.

(o) *Sacramental wine* means wine containing not more than 24% of alcohol by volume which is used for sacramental purposes.

(p) *Sale* means the exchange, barter, traffic, furnishing, or giving away for commercial purposes any alcoholic liquor.

(q) *Spirits* means any beverage which contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink.

(r) *Tribal Court* means the Tribal Court of the Saginaw Chippewa Indian Tribe of Michigan.

(s) *Tribal enterprise* means the Tribe or any activity or business owned, managed, or controlled by the Tribe or any agency, subordinate organization, or other entity of the Tribe, where the organic documents establishing such enterprise expressly allow for the sale of alcoholic liquor.

(t) *Tribal law* means the Tribal Constitution and all laws, acts, codes, resolutions, and regulations now and hereafter duly enacted by the Tribal Council.

(u) *Tribe* means, and "tribal" refers to, the Saginaw Chippewa Indian Tribe of Michigan.

(v) *Wine* means the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks.

8.7.17 Prohibition of Unlicensed Sale of Liquor. This Act prohibits the importation, manufacture, distribution, or sale of alcoholic liquor for commercial purposes other than where conducted by a tribal enterprise in accordance with this Act. No license shall be issued to any person or entity other than a tribal enterprise. The federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Act, and violators shall be subject to federal law.

8.7.18 Authorization to Sell Liquor. Any tribal enterprise applying for and obtaining a license under the provisions of this Act shall have the right to engage only in those alcoholic liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

8.7.19 Classes of Licenses. The Council shall have the authority to issue any one or more of the following classes of liquor licenses within the Reservation:

(a) "Retail on-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where alcoholic beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(b) "Retail on-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

(c) "Retail off-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(d) "Retail off-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

(e) "Manufacturer's license" means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Reservation.

(f) "Temporary license" means a license authorizing the sale of alcoholic liquor on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion.

The Council may, by appropriate Council action, limit or restrict the number of licenses issued or in effect in its sole discretion.

8.7.20 Application Form and Content. An application for a license shall be made to the Council and shall contain the following information:

(a) The name and address of the licensee, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the sale of alcoholic liquor;

(b) The specific area, location, and/or premise(s) for which the license is applied for;

(c) The class of liquor transaction applied for (*e.g.*, retail on-sale general license, etc.);

(d) Whether the applicant has a state liquor license;

(e) A sworn statement by the applicant to the effect that none of the applicant's officers and directors, and employees with primary management responsibility related to the sale of alcoholic liquor, were ever convicted of a felony under any law, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Act; and

(f) The application shall be verified under oath and notarized by a duly authorized representative.

8.7.21 Transfer of License. Each license issued or renewed under this Act is separate and distinct and is transferable from one licensee to another and/or from one premises to another only with the approval of the Tribal Council. The Tribal Council shall have the authority to approve, deny, or approve with conditions any application for the transfer of any license. The transfer application shall contain all of the information required of an original applicant under section I.G.19 of this Act and shall be signed by both the licensee and transferee. In the case of a transfer to a new premises, the application shall contain an exact description of the location where the alcoholic liquor is proposed to be sold.

8.7.22 Term and Renewal of License. All licenses shall be issued on a calendar year basis and shall be renewed annually. The applicant shall renew a license by, prior to the license's expiration date, submitting a written renewal application to the Tribal Council on the provided form, and paying the annual license fee for the next year.

8.7.23 Investigation. Upon receipt of an application for the issuance, renewal, or transfer of a license, the Tribal Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Act have been complied with, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

8.7.24 Public Hearing. Upon receipt of an application for issuance, renewal, or transfer of a license, and the payment of all fees required under this Act, the Tribal Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by United States mail, postage prepaid, at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Reservation. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance, renewal, or transfer, the class of license applied for, and a general description of the area where the alcoholic liquor will be or has been sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and to limit or prohibit repetitive testimony.

8.7.25 Tribal Council Action on the Application. The Tribal Council shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Upon approval of an application, the Council shall issue a license to the applicant in a form to be approved from time to time by Tribal Council resolution.

8.7.26 Denial of License, Renewal, or Transfer. An application for a new license, license renewal, or license transfer may be denied for one or more of the following reasons. Solely for purposes of this section and section I.G.26, "applicant" means licensee in the event of a renewal, and licensee and/or transferee in the event of a transfer.

(a) The applicant has materially misrepresented facts contained in the application;

(b) The applicant is presently not in compliance with tribal or federal laws;

(c) Granting of the license (or renewal or transfer thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

(d) The applicant has failed to complete the application properly or has failed to tender the appropriate fee; or

(e) A plea, verdict, or judgment of guilty, or the plea of *nolo contendere* by an applicant's officer or director, or an employee with primary management responsibility related to the sale of alcoholic liquor, to any offense under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic liquor.

8.7.27 Temporary Denial. If the application is denied solely on the basis of subsection I.G.25(d), the Tribal Council shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

8.7.28 Multiple Locations. Each license shall be issued to a specific licensee. Separate licenses shall be issued for each of the premises of any business establishment having more than one address. In the case of the sale of alcoholic beverages on boats, a separate license shall be issued for each boat regardless of the fact that the boats are moored at one location or owned by one person.

8.7.29 Posting of License. Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

8.7.30 Suspension or Revocation of License. Whenever it is brought to the attention of the Tribal Council that a licensee, through action or inaction:

(a) has materially misrepresented facts contained in any license application;

(b) is not in compliance with tribal or federal laws;

(c) failed to comply with any condition of a license, including failure to pay a required fee;

(d) has had a plea, verdict, or judgment of guilty, or a plea of *nolo contendere* entered against one of its officers or directors, or managers with primary responsibility over the sale of alcoholic liquor, to any offense under federal or state law prohibiting or regulating the sale, use, or possession, of alcoholic liquor;

(e) failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Tribal Council or its authorized representative; or

(f) suspension or revocation of the licensee's Michigan liquor license.

8.7.31 Initiation of Suspension or Revocation Proceedings. Suspension or revocation proceedings are initiated either: by the Tribal Council, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or by any person who files an accusation with the Tribal Council. The accusation shall be in writing and signed by the maker. Both the accusation and resolution shall state facts showing that there are specific grounds under this Act which would authorize the Tribal Council to suspend or revoke the license(s). The Tribal Council shall cause the matter to be set for a hearing before the Tribal Council on a date no later than thirty (30) days from the Tribal Council's receipt of an accusation or adoption of the resolution. Notice of the time, date, and place of the hearing shall be given the licensee and the public in the same manner as set forth in subsection I.G.23. The notice shall state that the licensee has the right to file a written response to the accusation or resolution, verified under oath and signed by the licensee, ten (10) days prior to the hearing date.

8.7.32 Hearing. Any hearing held on any accusation shall be held before a majority of the Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tribal Council. The Tribal Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Tribal Council shall be final.

8.7.33 Delivery of License. Upon suspension or revocation of a license, the enterprise shall return the license to the Tribal Council. In cases involving suspension, the Tribal Council shall

return the license to the enterprise at the expiration or termination of the suspension period, with a memorandum of the suspension written or stamped upon the face thereof in red ink.

8.7.34 General Penalties. Any person adjudged to be in violation of this Act, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil fine of not more than five hundred dollars ($500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the five hundred dollar ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may be imposed under applicable law.

8.7.35 Initiation of Action. Any violation of this Act shall constitute a public nuisance. The Tribal Council, on behalf of and in the name of the Tribe, may initiate and maintain an action in Tribal Court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Act. Any action taken under this section shall be in addition to any other penalties provided for in this Act. The plaintiff shall not be required to give bond in this action.

8.7.36 Inspection. All licensed premises used in the storage or sale of liquor, or any premises or parts of premises used or in any way connected physically or otherwise, with the licensed enterprise, shall at all times be opened to inspection by any tribal inspector.

8.7.37 Contraband; Seizure; Forfeiture.

8.7.37.1 All alcoholic liquor within the Reservation held, owned, or possessed by any person or licensee operating in violation of this Act is hereby declared to be contraband and subject to forfeiture to the Tribe.

8.7.37.2 Within three (3) weeks following the seizure of the contraband, a hearing shall be held by the Tribal Council, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

8.7.37.3 Notice of the hearing shall be given to the person from whom the property was seized, if known prior to hearing. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on the Reservation. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

8.7.37.4 If upon hearing, the evidence warrants, or if no person appears as a claimant, the Tribal Council shall thereupon enter a determination of forfeiture and order such contraband sold or destroyed forthwith.

Dated: November 10, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–30597 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–68–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–08–7122–00, AZ–070–98–01]

Arizona, Temporary Closure of Selected; Public Lands in La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of selected public lands in La Paz County, Arizona, during the operation of the 1997 Whiplash Parker 400 Desert Race.

SUMMARY: The Lake Havasu Field Office Manager announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1997 Whiplash Parker 400 Desert Race.

DATES: December 4, 1997 through December 6, 1997.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of BLM lands, roads and ways south of the Bill Williams River, East and north of AZ Highway 72 and west of Wenden Road is closed to public vehicle use from 9:00 a.m. Thursday, December 4, 1997, to 9:00 p.m. Saturday December 6, 1997 (Mountain Standard Time).

2. Vehicles are prohibited from the following four Wilderness Areas and one Wilderness Study area (WSA):

a. AZ–070–12 (Gibraltar Mountain).
b. AZ–070–15A (Swansea).
c. AZ–070–71 (Buckskin Mountains).
d. AZ–070–17 (East Cactus Plain).
e. AZ–070–14A/B (Cactus Plain WSA).

3. The entire area encompassed by the designated course and all areas within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles. Access routes leading to the course are closed to vehicles.

4. Vehicle parking or stopping along Bouse Road, Shea Road, and Swansea Road is prohibited except for the designated spectator areas.

5. Spectator viewing is limited to two designated spectator areas located at:

a. South and North of Shea Road as signed, approximately 7 miles east of Parker, Arizona.

b. Bouse Road, also known as Swansea Road as signed, approximately, 2 miles and 5 miles north of Bouse, Arizona.

6. A fee will be collected from the public entering the public land closure from Shea Road, east of Parker, Arizona. The primary purpose of the fee implementation is to offset management, and operation costs of spectator area services and facilities. The fee implementation is to improve public safety while helping provide natural resource protection through improved management of the permitted event.

7. The following regulations will be in effect for the duration of the closure: Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate of otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Possess, discharge, or use firearms, other weapons, or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle, including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

j. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

k. Fail to keep their site free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Mountain Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time. Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or to La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all La Paz County and BLM roads and ways.

Authority for closure of public lands is found in 43 CFR 8340, subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Mark Harris, BLM Ranger, or Myron McCoy, Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 at (520) 505–1200.

Dated: November 12, 1997.

Robert M. Henderson,

Acting Field Manager.

[FR Doc. 97–30589 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–037–08–1200–00–264a]

Public Land Closure To Use of Firearms

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 43 CFR 8364.1(a) and 8365.2–5(a), in order to protect persons, property and resources, notice is hereby given that the Pocatello Resource Area, Bureau of Land Management, prohibits the discharge or use of firearms, other weapons and fireworks within the Formation Cave/Springs Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC), located within the following boundaries of public lands:

T. 08 S., R. 42 E., Boise Meridian, Caribou County,
Sec. 28: E½SW¼.

DATES: Effective immediately, this prohibition will remain in effect until revoked.

FOR FURTHER INFORMATION CONTACT: Jeff Steele, Pocatello Resource Area Manager, Bureau of Land Management, 1111 N. 8th St., Pocatello, Idaho, 83201 (208) 236–6860.

SUPPLEMENTARY INFORMATION: This prohibition on the use of firearms, other weapons or fireworks within the Formation Cave/Springs RNA/ACEC will serve to protect the safety and health of individuals and groups visiting and hiking the network of trails located within the lands described above. Signs will be posted in strategic locations to provide notice of this restriction.

Dated: November 13, 1997.

Jeff S. Steele,

Area Manager.

[FR Doc. 97–30581 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM/MT/PL–98/003+1990; DES 97–38]

Draft Environmental Impact Statement for the Golden Sunlight Mines, Inc.; Amendment 008 and Mine Life Extension

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and the Montana Environmental Policy Act, the Bureau of Land Management (BLM) and the Montana Department of Environmental Quality (DEQ), as lead agencies, have prepared, through a third party contractor, a Draft EIS on the impacts of the Golden Sunlight Mines, Inc., implementation of Amendment 008 and the extension of the mine life through 2006. The Draft EIS presents a preferred alternative derived from seven alternatives including the company proposed action. The preferred alternative is the agencies' attempt to reduce or avoid the potential environmental impacts of the proposed action. The Draft EIS discloses the possible environmental consequences associated with each alternative.

DATES: Written comments on the Draft EIS will be accepted for 60 days following the date the Environmental Protection Agency publishes the Notice of Filing of the draft in the **Federal Register.**

Comments can also be presented at a public hearing to be arranged. Interested parties will be notified of the date, time, and location. This meeting will also be the forum for the U.S. Army Corps of Engineers to collect public comments on the Golden Sunlight Mines, Inc., 404 permit application for the Golden Sunlight Mines Amendment 008 and mine life extension.

ADDRESSES: Written comments should be addressed to Merle Good, Headwaters Resource Area Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702.

Copies of the Draft EIS will be available from the Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, telephone 406–494–5059; or the Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 50620–0901, telephone 406–444–3276.

Public reading copies will be available for review at the following locations: (1) Bureau of Land Management, Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC; (2) Bureau of Land Management, External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, Montana; (3) Bureau of Land Management, Butte District Office, 106 North Parkmont Street; Butte, Montana and (4) State of Montana, Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana.

FOR FURTHER INFORMATION CONTACT: Greg Hallsten, Team Leader, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901, telephone 406–444–3276 or David Williams, Team Leader, Bureau of Land Management, Box 3388, P.O. Butte, Montana 59702, telephone 406–494–5059.

SUPPLEMENTARY INFORMATION: The Golden Sunlight Mine (GSM) began large-scale operations to mine and process gold-bearing ore in 1982 following completion of an Environmental Impact Statement by the Montana Department of State Lands (DSL) in 1981. Several minor

amendments were processed by the DSL and BLM between 1983 and 1990.

In 1988 GSM applied for a major expansion of operations (Amendment 008). Following completion of a mitigated Environmental Assessment in 1990, GSM was authorized to proceed with the expansion. Amendment 008 included 31 stipulations attached to the Decision Record for the EA. These stipulations were designed to address a varity of environmental issues developed in the EA. This decision was appealed to the Interior Board of Land Appeals (IBLA) by several environmental groups in 1990. In 1993 the IBLA ruled largely in favor of the agencies. In 1992 these same groups appealed the approval of Amendment 008 in Montana State court. On September 1, 1994, the District Court Judge ruled that DSL must prepare an EIS for the impacts associated with Amendment 008. Following the court ruling the plaintiffs, GSM, and DSL negotiated a Settlement Agreement that allowed mining to continue until the completion of an EIS.

In compliance with the District Court Decision, the agencies began preparation of an EIS in 1995.

Total disturbance is approximately 2,336 acres at this time. Under the proposed action the mine's permitted disturbance would expand to include an additional 517 acres of GSM land, 75 acres of BLM-administered land, and 35 acres of school trust (state) land. Operations would continue until approximately 2006.

The Golden Sunlight mine is a conventional truck-and-shovel open-pit mine. Approximately 60,000 to 70,000 tons of rock are excavated per day, totaling approximately 22 million tons per year. Only 2.5 million tons of this total are ore, the remainder being waste rock. Approximately 320 million tons of waste have been placed in waste rock dumps. The ore is processed in a vat cyanide process. Gold-bearing cyanide solutions are treated by carbon adsorption to recover the gold. The recovered gold is ultimately returned to solution for electrowinning onto steel wool, which is then smelted down to recover gold as doré. Following processing, the mill stream is piped as a slurry to Impoundment II, a lined tailings impoundment. Impoundment I, an unlined facility which did experience some leakage in the early 1980s and corrected through a series of pumpback wells, is currently undergoing the early stages of reclamation.

Proposed reclamation of the waste rock dumps includes a mix of 2h:1v and 3h:1v slopes. Because the waste rock at GSM has high potential for "acid rock drainage" or low pH runoff/effluent, effective reclamation of these wastes is crucial to limiting the reactions that produce acid rock drainage. The reclamation plan calls for a cover system that includes approximately 24 inches of neutral waste rock and 19 to 24 inches of cover soil. Extensive monitoring of several slopes reclaimed since 1990 to 1992 has helped the mine and the agencies determine what reclamation practices have been most effective. Surface water management is another critical factor in reclamation success and is an important part of the reclamation plan. Long-term water treatment is an integral part of the mine plan. GSM has posted a total bond of approximately 38 million dollars to cover reclamation costs.

A Notice of Intent was published in the **Federal Register** on October 25, 1995. A public scoping meeting was conducted on October 17, 1995, to solicit comments for the scope of the EIS. Written comments were accepted through November 10, 1995.

Dated: November 5, 1997.

Merle Good,

Headwaters Resource Area Manager.

[FR Doc. 97–30133 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Notice of Intent To Prepare a Supplement to a Final Environmental Impact Statement; Colorado and New Mexico

AGENCY: Bureau of Land Management, USDI, and Forest Service, Department of Agriculture.

ACTION: Notice; Intent to prepare a supplement to a Final Environmental Impact Statement; Notice of scoping with a public comment period.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Bureau of Land Management (BLM) in cooperation with the U.S. Forest Service (USFS) is initiating the preparation of a Supplement (supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission Company (TransColorado) pipeline project on federal lands in Colorado and New Mexico. TransColorado is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The supplement will address the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 ft.) of portions the approved pipeline and right-of-way (ROW) grant COC–51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or, proposed ROW route changes or minor realignments. The supplement will also address the impacts of the construction, operation, maintenance and ultimate abandonment of several ROW route changes or realignments, and the construction and use of several alternative temporary work areas in unspecified locations. These unspecified temporary work areas and ROW route changes or minor realignments will be addressed in the supplement to accommodate conditions that might be encountered during construction. Cumulative affects of potential future gas supply facilities, such as gas supply pipeline laterals will be addressed. The FEIS is not being re-opened nor re-analyzed, nor are the decisions in the FEIS being reconsidered. Any comments addressing issues analyzed in the FEIS will not be considered. Please focus any comments on the proposed action of the supplement to the FEIS.

DATES: Written comments on the proposed action will be accepted until December 15, 1997. The comment period on the draft supplement to the FEIS will be 45 days from the notice of availability, published in the **Federal Register**.

ADDRESSES: Any comments relative to the proposed action described in this notice should be sent to Bill Bottomly, TransColorado Project Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, CO 81401.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

SUPPLEMENTARY INFORMATION: After preparing a Draft and Final Environmental Impact Statement in 1992, the BLM and the USFS issued Records of Decision on December 1, 1992, approving the authorization of a ROW grant and an adjacent Temporary Use Permit (TUP) for subsequent construction, operation and maintenance of the 292 mile-long TransColorado Gas Transmission pipeline from Meeker, Colorado to Bloomfield, New Mexico. Under the authority of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (37 Stat. 567), the BLM issued a 50 foot-wide ROW grant on December 4, 1997, accompanied by a 25 foot-wide TUP, excepting 1.7 miles near Grand Junction, Colorado. The FERC issued TransColorado a Certificate of Public Convenience and Necessity on June 3, 1994. TransColorado completed the 22.5 mile Phase I of the project in December, 1996. The proponent is now prepared to construct the remainder of the pipeline during 1998. TransColorado is requesting approval of additional temporary work areas to construct the pipeline, and is requesting that the existing ROW be amended to accommodate the proposed route changes and minor realignments (less than 100 ft). Public meetings or open houses may be conducted during the comment period to gather comments from the public prior to preparation of the supplement. Public notice of locations, dates, and times of any meetings to be held will be provided. Maps and plats of the project are available for public review at the following offices of the BLM and USFS: the Grand Junction District Office, the Montrose District Office, the Grand Mesa/Uncompahgre/Gunnison National Forest Office, the San Juan National Forest/San Juan Resource Area office, and the Farmington District Office. The level of public interest in the issues of the supplement to the FEIS will determine if additional meetings will be held.

Dated: November 7, 1997.

Phillip W. Dwyer,

Assistant District Manager, Montrose District.

Dated: November 17, 1997.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 97–30663 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1220–00: GP8–0036]

Prineville District; John Day River, OR: Special Recreation Permits

AGENCY: Bureau of Land Management (BLM), Department of the Interior (DOI), Prineville District.

ACTION: Notice is hereby given that the existing moratorium on the issuance of new commercial floatboating permits for the John Day River will be extended until completion of the John Day Wild and Scenic River Management Plan and Environmental Impact Statement.

The current moratorium on the issuance of new Special Recreation Permits for commercial boating use of the John Day Wild and Scenic River has been extended by Administrative Decision (dated November 12, 1997). The moratorium will remain in effect until the completion of the John Day Wild and Scenic River Management Plan and Environmental Impact Statement.

The BLM is currently in the process of completing the John Day Wild and Scenic River Management Plan and Environmental Impact Statement. This plan addresses management issues within the Wild and Scenic corridor, including the desired use level of commercial floatboating. To allow the desired use level of to be determined by the planning process, application for new commercial boating permits will not be accepted until further notice.

Decisions made by the plan will direct the future availability of commercial floatboating permits for the John Day Wild and Scenic River.

The authority for this decision comes from 43 CFR 8372.0–3: Authority, 8372.1–1: Public lands, general, and 8372.3 Issuance of permits.

A more specific location of public lands covered by this notice may be obtained at the BLM Prineville District Office.

FOR FURTHER INFORMATION CONTACT: Heidi Mottl, Recreation Planner, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754, telephone number (541) 416–6700.

Dated: November 12, 1997.

Donald L. Smith,

Acting District Manager.

[FR Doc. 97–30590 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–64–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations: Gateway National Recreation Area; Staten Island, Fort Wadsworth

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing food service, and conference center facilities and services for the public at Fort Wadsworth within the Staten Island Unit of Gateway National Recreation Area for a period of ten (10) years from date of contract execution.

EFFECTIVE DATE: January 20, 1998.

ADDRESSES: Interested parties should contact National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, MA 02109–3572 ATTN: Lynne Koser, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

There is no existing concessioner. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, Massachusetts 02109–3572, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 3, 1997.

Chrysandra L. Walter,

Acting Field Director, Northeast Field Area.

[FR Doc. 97–30647 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan Amendment for Backcountry and Wilderness Management Plan, Joshua Tree National Park, San Bernardino County, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 81–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS)

assessing the potential impacts of amending the current General Management Plan (approved in 1995). The DEIS includes a draft Backcountry and Wilderness Management Plan, and identifies and evaluates the environmental consequences of a proposed action and three alternatives. Mitigation measures are noted and evaluated. No significant adverse environmental impacts are anticipated. Once approved, the plan will guide wilderness management and other operations for the next 10–15 years.

Proposal

As described under Alternative A, the National Park Service (NPS) proposes to amend the General Management Plan (GMP) for Joshua Tree National Monument, including but not limited to the following changes: designate a trail system with prescriptions for specific uses; designate unpaved roads newly added to the park as part of the Development Zone (allowing limited motor vehicle use); designate places where installing fixed anchors for rock climbing may or may not be permitted; and designate locations where roadside vehicle-camping may or may not be permitted. The DEIS also analyzes the artificial water sources installed for wildlife in designated Wilderness and would determine where such sources should be removed or maintained. The draft plan would designate areas closed to public access and establish group size limits for overnight stays in the backcountry and Wilderness. Finally, the draft plan would implement the Department of the Interior's Desert Tortoise Recovery Plan of June 1994. Implementing Alternative A would result in the protection of (with no additional disturbance) park lands, and the reclamation of some previously disturbed lands. User conflicts would be minimized by providing for a variety of visitor experiences, groups sizes, trail allocations and designations, and a climbing bolt permit system.

Alternatives

Alternatives to the actions proposed include No Action (Alternative B), Maximum Protection (Alternative C), and Minimum Requirements (Alternative D). Under Alternative B the park would maintain existing programs and operations. Alternative C would impose greater restrictions upon all uses in the park and afford the most rigorous and strict protection to the resources, in particular the wilderness resource. Also, those lands in the Natural Zone that are not Wilderness would be treated and managed as if they were so designated. Alternative D would impose no restrictions on use of the old monument lands other than those that already exist. The public could use the newly added lands much as the lands were used prior to their inclusion within the park. Only those public recreational activities that are illegal in NPS or other regulations, such as hunting or operating vehicles in wilderness, would be prohibited.

SUPPLEMENTARY INFORMATION: The DEIS is now available for public review; review copies are available at park headquarters, as well as at local public libraries. Inquiries and comments on the DEIS should be directed to: Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, California 92277. The telephone number for the park is (760) 367–5503. All written comments must be postmarked not later January 31, 1998.

Public Meetings

A series of public workshops will be held to provide NPS staff an opportunity to hear concerns and suggestions from the public. In contrast to a traditional formal hearing, interested individuals and organization representatives will have the opportunity to offer informal input and engage in dialog about the range of alternatives, elements of the alternatives, and issues involved. This dialog is intended to provide additional guidance to the NPS in preparing a final EIS and plan amending the GMP. These workshops are scheduled as follows:

December 2, Santa Monica area—6:00–9:00 p.m.
December 11, Palm Desert area—6:00–9:00 p.m.
January 16, Moronga Basin area—6:00–9:00 p.m.

Complete details about locations for the meetings may be obtained via written or telephone inquiry as noted above.

Decision

After the formal DEIS review period has concluded, all comments and suggestions received will be considered in preparing a final plan. Currently the final EIS and plan amending the GMP are anticipated to be completed during summer 1998; their availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be executed no sooner than 30 (thirty) days after release of the final EIS. The responsible officials are John Reynolds, Regional Director, Pacific West Region and Ernest Quintana, Superintendent, Joshua Tree National Park.

Dated: November 4, 1997.

Sondra S. Humphries,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–30648 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoa Pili O Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 9:00 a.m., December 13, 1997, the Coffee Mill Room, Keauhou Beach Hotel in Kona, Hawaii.

On Saturday, December 13, the Commission will begin its first meeting with a formal swearing in ceremony. The business meeting will begin immediately following and last until 3 p.m.

The Advisory Commission was established by Pub. L. 95–625 and has been re-established by Title I, Section 503, of Pub. L. 104–333 to advise the park superintendent with respect to the historical, archeological, cultural, and interpretive programs of the park.

Members of the Commission are as follows:

David Roy, chairperson
Henry Auwae
Abbie Napeahi
George Naope
Hannah Kihalani Springer
Francis Kuailani
Bryan Harry
Angel Pilago
Stephen Kane–A–I Morse
Mervyn Thompson
Pualani Kanahele
Fred Cachola
Duane Hanakeawe

The regulations involving nude bathing and the use of the fish ponds and traps will be the principal discussion topics at the Saturday meeting.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after December 30, 1997. For copies of the minutes, contact the Park Superintendent at 808–329–6881.

Dated: November 7, 1997.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 97–30650 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, December 12, 1997. The meeting will convene at 7:00 p.m. in the basement meeting hall, St. David Church, on U.S. Route 1, Madawaska, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- the development and implementation of an interpretive program of Acadian culture in the state of Maine.
- the selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held October 17, 1997.
2. A talk by Steven White of Moncton, New Brunswick, on "Acadian Genealogy".
3. Report of the National Park Service Maine Acadian project staff.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: November 5, 1997.

Norm Dodge,

Acting Superintendent, Acadia National Park.

[FR Doc. 97–30649 Filed 11–20–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation; Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on September 2, 1997, in 62 FR 169, p. 46372, at which time a 60-calendar day comment period was announced. This comment period ended November 3, 1997. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer

Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–5871.

Summary of Form Under Review

Type of Request: Extension of a currently approved collection.

Title: Contractors & Exporters Program: Application for Political Risk Investment Insurance.

Form Number: OPIC–81.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per form.

Number of Responses: 15 per year.

Federal Cost: $300 annually.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application for the contractors and exporters program is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: November 7, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–30579 Filed 11–20–97; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on October 31, 1997, the trustees for natural resources at the Tulalip Landfill Superfund Site on Ebey Island in Puget Sound, Washington ("the Site") lodged with the United States District Court for the Western District of Washington consent decrees against defendants Seattle Goodwill Industries and R.W. Rhine, Inc. in the civil action styled *United States* v. *The Boeing Company, et al.*, Civil Action No. C97–1648–WD.

The consent decrees require the defendants to compensate the trustees for natural resource damages resulting from the release of hazardous substances at the Site. The trustees consist of the State of Washington Department of Ecology, the Tulalip

Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior. Under the consent decrees, R.W. Rhino will pay $26,734 and Seattle Goodwill Industries will pay $19,102 for natural resources damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The Boeing Company, et al.*, DOJ Ref. #90–11–3–1412D.

The proposed consent decrees may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G. Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting copies please refer to the referenced case, specify which decree or decrees you would like to receive, and enclose a check payable to the Consent Decree Library in the amount of $7.00 for the decree with R.W. Rhino and/or $7.50 for the decree with Seattle Goodwill Industries (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30585 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 31, 1997, a proposed Consent Decree in *United States* v. *Caribe General Electric Products, Inc., and General Electric Company*, No. 96–1366 (D.P.R.), was lodged with the United States District Court for the District of Puerto Rico.

In this action the United States sought, pursuant to Sections 107(a) and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607(a) and 9613(b), recovery of past costs and a declaratory judgment for future costs concerning the General Electric Wiring Devices Superfund Site, located in Juana Diaz, Puerto Rico. In the proposed consent decree, the settling parties, Caribe General Electric Products, Inc., and General Electric Company, agree to pay to the United States $612,500.00 for past response costs and future oversight costs, to provide the Environmental Protection Agency with access to their property pursuant to a 1984 Administrative Order on Consent, and to covenant not to sue the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Caribe General Electric Products, Inc., and General Electric Company*, No. 96–1366 (D.P.R.), D.J. Ref. 90–11–2–1157.

The consent decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Building, Room 452, Chardon Avenue, Hato Rey, Puerto Rico 00918, at U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30586 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Clean Air Act

Notice is hereby given that a proposed Consent Decree in *United States* versus *Ford Motor Company*, Civil Action No. 97 C 7716, has been lodged with the United States District Court for the Northern District of Illinois on November 3, 1997.

The Consent Decree resolves claims asserted against defendant, Ford Motor Company ("Ford"), under the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, for violations of 40 CFR 52.741(x), which was part of a Federal Implementation Plan for the Chicago metropolitan area ozone non-attainment area. Under the proposed Consent Decree, Ford will implement and maintain specific measures that will substantially reduce emissions from cleanup solvents at Ford's Chicago Assembly Plant, and Ford will pay a civil penalty of $135,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States* versus *Ford Motor Company*, D.J. Ref. 90–5–2–1–1932.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 200 West Adams Street, Chicago, Illinois 60606, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Bruce S. Gelber,

Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30587 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to May 24, 1994 Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on October 28, 1997, a proposed First Amendment to the May 24, 1994 Consent Decree ("Amendment") in *United States and State of Michigan* v. *Wayne County et al.*, Civil Action No. 87–70992, was lodged with the United States District Court for the Eastern District of Michigan.

The United States and the State of Michigan asserted claims in this case under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, against Wayne County, Michigan, and 13 addition municipalities that send wastewater to the Wayne's Treatment Plant (the "Plant"). The case was resolved in 1994 by a Consent Decree pursuant to which defendants agreed to attain and maintain compliance with the Plant's National Pollutant Discharge Elimination System permit limits and to comply with Decree-mandated interim limits during construction of Plant and collection-system improvements. Defendants further agreed to complete capital improvements needed at the Plant and in its collection system. The capital-improvements project, detailed in a 1993 Project Plan incorporated by reference in the 1994 Decree, included steps to achieve: the removal of improper infiltration-and-inflow; the improvement of transport and storage capacity in the Plant's wastewater collection system by constructing retention-equalization basins and an underground tunnel for storage and transport of untreated wastewater; and the upgrade the Plant's facilities to ensure that all flows meet Permit-mandated limits.

Since entry of the Consent Decree in 1994, defendants have submitted studies, plans, and design documents required by the 1994 Consent Decree to the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality. These documents contain recommendations for changes in the design of certain components of the work required by the 1994 Consent Decree, including: the modification of the wastewater storage and transport tunnel required by the original decree; further improvements in Plant treatment capacity; further study and design work prior to commencement of construction of a detention basin required by the 1994 Decree, referred to as the Eureka Basin, intended to eliminate sewer overflows and backups in the Plant's collection system above the proposed basin; and construction of a new connecting conduit, rather than a new Plant outfall, that would convey excess flows from the Plant to another treatment plant for treatment and discharge. The Amendment, if approved by the Court, would modify the injunctive relief provisions of the 1994 Decree to reflect these changes to the 1993 Project Plan. In all other respects, the 1994 Decree would remain the same.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Michigan* v. *Wayne County et al.*, D.J. Ref. 90–5–1–1–2766.

The Amendment may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort Street, Suite 2300, Detroit, MI 48226, at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the Amendment may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30588 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #167F]

Controlled Substances: Established Initial Aggregate Production Quotas for 1998

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 1998.

SUMMARY: This notice establishes initial 1998 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

EFFECTIVE DATE: November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On September 2, 1997, a notice of the proposed initial 1998 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (62 FR 46373). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before October 2, 1997.

One company commented that the initial 1998 aggregate production quota for amphetamine is insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

Another company commented that the initial 1998 aggregate production quotas for codeine (for sale), diphenoxylate, morphine (for sale), opium, and oxycodone (for sale) are insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

After a review of 1997 manufacturing quotas, current 1997 sales and inventories, 1998 export requirements and research and product development requirements, the DEA agrees that increases are necessary for amphetamine, codeine (for sale), morphine (for sale) and oxycodone (for sale). Regarding diphenoxylate and opium, the DEA has determined that the proposed initial 1998 aggregate production quotas are sufficient to meet the 1998 estimated medical, scientific, research and industrial needs of the United States.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage from manufacturers of Schedules I and II controlled

substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the 1998 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 1998 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	15,000,100
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	25
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30
3,4-Methylenedioxymethamphetamine (MDMA)	20
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5,-Dimeththoxyamphetamine	2
4-Bromo-2,5-Dimeththoxyphenethylamine (2–CB)	2
4-Methoxyamphetamine	100,100
4-Methylaminorex	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetylmethadol	7
Allylprodine	2
Alpha-acetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alpha-methadol	2
Alpha-methylfentanyl	2
Alphaprodine	2
Alpha-methylthiofentanyl	2
Aminorex	7
Beta-acetylmethadol	2
Beta-hydroxyfentanyl	2
Beta-hydroxy-3-methylfentanyl	2
Beta-methadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Codeine-N-oxide	2
Diethyltryptamine	2
Difenoxin	16,000
Dihydromorphine	7
Dimethyltryptamine	2
Ethylamine Analog of PCP	5
Heroin	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	57
Mescaline	7
Methaqualone	17
Methcathinone	11
Morphine-N-oxide	2
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	4
N,N-Dimethylamphetamine	7
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Psilocin	2
Psilocybin	2
Tetrahydrocannabinols	26,000
Thiofentanyl	2
Trimeperidine	2

Basic class	Established initial 1998 quotas
Schedule II:	
1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile (PCC)	12
Alfentanil	8,100
Amobarbital	12
Amphetamine	4,037,000
Cocaine	550,100
Codeine (for sale)	62,020,000
Codeine (for conversion)	18,460,000
Desoxyephedrine	1,332,000
1,300,000 grams of levodesoxyephedrine for use in a non-controlled, non-prescription product and 32,000 grams for methamphetamine.	
Dextropropoxyphene	109,500,000
Dihydrocodeine	189,000
Diphenoxylate	1,600,000
Ecgonine	651,000
Ethylmorphine	12
Fentanyl	202,000
Glutethimide	2
Hydrocodone (for sale)	13,908,000
Hydrocodone (for conversion)	3,000,000
Hydromorphone	766,000
Isomethadone	12
Levo-alpha-acetylmethadol (LAAM)	356,000
Levomethorphan	2
Levorphanol	15,000
Meperidine	9,311,000
Methadone (for sale)	3,790,000
Methadone (for conversion)	1,169,000
Methadone Intermediate	6,777,000
Methamphetamine (for conversion)	723,000
Methylphenidate	14,442,000
Morphine (for sale)	11,535,000
Morphine (for conversion)	75,918,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	2,117,000
Opium	615,000
Oxycodone (for sale)	9,032,000
Oxymorphone	120,000
Pentobarbital	16,562,000
Phencyclidine	60
Phenmetrazine	2
Phenylacetone	10
Secobarbital	301,000
Sufentanil	700
Thebaine	9,580,000

Dated: November 17, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–30651 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Supplementary homicide report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 20, 1998.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address

listed above). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg, WV 26302–9921. Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection

(2) *The title of the form/collection:* Supplementary Homicide Report [SHR].

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–704. Federal Bureau of Investigation Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to provide data regarding age, sex, race, victim/offender relationships, weapons and motives of murders committed throughout the United States. Data is tabulated and published in the annual "CRIME in the United States."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,145 agencies with 205,740 responses which includes Zero reports; and with an average completion time of 9 minutes a month per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 30,861 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30151 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Monthly return of arson offenses known to law enforcement.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 20, 1998.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg WV 26302–9921.

Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–725. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to collect information on arson offenses committed throughout the United States and reported to Law Enforcement. Data is tabulated and published in the annual "CRIME in the United States."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,145 agencies with 205,740 responses [including Zero Reports]; and with an average completion time of 9 minutes a month per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 30,861 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30152 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services: Agency Information Collection Activities; Proposed Collection, Comment Request

ACTION: Notice of information collection under review: Number of full-time law enforcement employees as of October 31.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 22, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gas, 304–625–4830, FBI, CJIS, Statistical Unit, PO Box 4142, Clarksburg, WV 26302–9921.

Overview of this information collection:

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Number of Full-Time Law Enforcement Employees as of October 31.

(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection. Form:* I–711A/I–711B/I–711C. Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract. Primary:* State and Local Law Enforcement Agencies. This collection is needed to determine the number of civilian and sworn full-time law enforcement employees in the United States. Data is tabulated and published in the annual "CRIME in the United States."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,125 agencies; 17,125 responses; and with an average completion time of 8 minutes a year per responding agency.

(6) *An estimate of the total public burden (in hours) associated with this collection:* 36 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 12, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30153 Filed 11–20–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 14, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction At of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096, ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for BLS or ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), by December 22, 1997.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Forms for Agricultural Recruitment System of Services to Migratory Workers and their Employers Applicant for Alien Employment Certification.

OMB Number: 1205–0134 (extension).

Frequency: On occasion.

Affected Public: State, Local or Tribal Government.

Form	Respondents	Responses	Average time per response
ETA 790.	52	2,000	1 hour.
ETA 795.	52	3,000	30 minutes.
ETA 786.	52	3,500	30 minutes.
ETA 785A.	52	2,500	30 minutes.

Total Burden Hours: 6,500.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: State Employment Security Agencies use forms in servicing agricultural employers to ensure their labor needs for domestic migratory agricultural workers are met; in servicing domestic agricultural workers to assist them in locating jobs expeditiously and orderly; and to ensure exposure of employment opportunities to domestic agricultural workers before certification for employment of foreign workers.

Agency: Employment and Training Administration.

Title: Income and Eligibility Verification.

OMB Number: 1205–0238 (reinstatement).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: Section 603.4=21,000,000; Section 603.8=243,100.

Estimated Time Per Respondent: Section 603.4=2 seconds; Section 603.8=10 minutes.

Total Burden Hours: 52,183.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $1,043,660.

Description: The exchange of Unemployment Insurance wage record and benefit payment information will allow the child support and Social Security agencies to verify applicant eligibility for benefits available under Titles II and XVI of the Social Security Act.

Agency: Employment and Training Administration.

Title: JTPA Summer Program Report and Monitoring Guide.

OMB Number: 1205–0379 (revision).

Frequency: On occasion.

Affected Public: State, Local or Tribal Government.

Activity	Frequency	Respondents	Average time per respondent
Reporting	3 reports	59	3 hours.
Recordkeeping	1 report	59	30 minutes.
Recordkeeping for auditing purposes	1 report	59	12 hours.
Monitoring	1 report	59	2 hours.

Total Burden Hours: 1,403.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Employment and Training Administration has revised the data collection process for reporting and monitoring information of the Summer Youth Employment and Training Program (SYEPT). The JASPR (JTPA Annual Summary Program Report) formerly used to collect non-financial information annually has been merged with the reporting form used to collect financial and participant information for II–B. The new form is entitled the JSPR (JTPA Summary Program Report), which will be used to collect both financial and non-financial information at three intervals (beginning of the program—providing planning information, midsummer report and end of the summer). In addition, collection of information through use of the monitoring instrument is included with the newly consolidated reporting system.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and the Report of Federal Employment and Wage (RFEW).

OMB Number: 1220–0134 (revision).

Frequency: Quarterly.

Affected Public: Federal Government; State, Local or Tribal Government.

Form	Respondents	Average time per response (minutes)
BLS 3020 (MWR)	112,666	22.2
BLS 3021 (RFEW)	2,154	22.2

Total Burden Hours: 169,934.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: States use the Multiple Worksite Report to collect employment and wages data by worksite from employers covered by State Unemployment Insurance which are engaged in multiple operations within a State. These data are used for sampling, benchmarking, and economic analysis.

Agency: Bureau of Labor Statistics.

Title: Annual Refiling Survey (ARS).

OMB Number: 1220–0032 (revision).

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Form	Frequency	Respondents	Average time per response (hours)
BLS 3023–VS.	Every 3 years.	1,994,750	.083
BLS 3023–VM.	Every 3 years.	38,197	.75
BLS 3023–CA.	Every 3 years.	53,000	.167
BLS 3023–P.	Every 5 years.	n/a[1]	n/a[1]

[1] Burden hours not included for this submission.

Total Burden Hours: 203,072.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Accurate industrial coding based on the 1987 Standard Industrial classification manual is needed by many Federal, State, and local government officials and private researchers. This extension will permit the use of previously approved forms to obtain this information.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–30681 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Change in Status of an Extended Benefit (EB) Period for the State of Puerto Rico

This notice announces a change in benefit period eligibility under the EB Program for the State of Puerto Rico.

Summary

The following changes have occurred since the publication of the last notice regarding States' EB status:

- August 24, 1997—Puerto Rico's 13-week insured unemployment rate for the week ending August 9, 1997 exceeded 6.0 percent, causing the State to trigger "on" EB effective August 24, 1997.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, regulations promulgated by the U.S. Department of Labor, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on November 13, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. 97–30682 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Illinois
IL970019 (Feb. 14, 1997)
Michigan
MI970063 (Feb. 14, 1997)
Minnesota
MN970007 (Feb. 14, 1997)
MN970008 (Feb. 14, 1997)
MN970058 (Feb. 14, 1997)
MN970059 (Feb. 14, 1997)

Volume V

Texas
TX970085 (Feb. 14, 1997)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 14th day of November 1997.

Margaret Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–30339 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–46]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Communication

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health

Administration is soliciting comments concerning the proposed extension of the information collection request for the Hazard Communication Standard 29 CFR 1910.1200; 1915; 1917; 1918; 1926; 1928. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 20, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–46, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Ave., NW, Washington D.C. 20210. Telephone: (202) 219–7075, extension 109. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Todd R. Owen (202) 219–7075 extension 109 or Barbara Bielaski on 219–8076, extension 142. For electronic copies of the Hazard Communication Information Collection Request, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazard Communication Standard and its information collection requirements are designed to ensure that the hazards of all chemicals produced or imported are evaluated and that information concerning their hazards is transmitted to employees and downstream employers. The standard requires chemical manufacturers and importers to evaluate chemicals they produce or import to determine if they are hazardous; for those chemicals determined to be hazardous, material safety data sheets and warning labels must be developed. Employers are required to establish hazard communication program, to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets and training programs. Implementation of these collection of information requirements will ensure all employees have the "right-to-know" the hazards and identities of the chemicals they work with and will reduce the incidence of chemically-related occupational illnesses and injuries.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Hazard Communication Standard. Extension is necessary to ensure that employees continue to receive information about hazardous and chemicals they are exposed to when working, as well as what protective measures are available to prevent adverse effects from occurring.

Type of review: Extension.
Agency: Occupational Safety and Health Administration.
Title: Hazard Communication.
OMB Number: 1218–0072.
Agency Number: Docket Number ICR–97–46.
Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.
Total Respondents: 5,041,918.
Frequency: On occasion.
Total Responses: 74,679,540.
Average Time per Response: Time per response ranges from 12 seconds to affix labels to in-house containers containing hazardous chemicals to 5 hours to develop a hazard communication program.
Estimated Total Burden Hours: 7,301,762.
Estimated Capital, Operational/Maintenance Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 17, 1997.

Adam M. Finkel,
Director, Directorate of Health Standards Programs.

[FR Doc. 97–30680 Filed 11–20–97; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–97]

Applied Research Laboratories, Inc., Recognition as a NRTL

AGENCY: Occupational Safety and Health Administration; Labor.

ACTIONS: Notice of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the application of Applied Research Laboratories, Inc. for recognition as a NRTL under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on November 21, 1997 and will be valid for a period of five years from that date, until November 21, 2002, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Applied Research Laboratories, Inc. (ARL), which made application pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or materials, and the program listed below.

The address of the laboratory covered by this recognition is: Applied Research Laboratories, Inc., 5371 NW 161st Street, Miami, Florida 33014.

Background

Applied Research Laboratories, Inc. (ARL), according to the applicant, was founded in 1949, and is a Florida-registered engineering corporation, with the owner as sole stockholder. Applied Research Laboratories, Inc., applied for recognition as a Nationally Recognized Testing Laboratory, pursuant to 29 CFR 1910.7, and a notice of the application was published in the **Federal Register** (62 FR 42827, 8/8/97). The notice included a preliminary finding that ARL could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 7, 1997. No comments were received concerning this request for recognition.

The four primary criteria for recognition are presented below, along with examples which illustrate how ARL has met these criteria.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be certified, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards.

The on-site review report indicates that ARL has facilities and personnel which are appropriate for the area of recognition it seeks. In addition, ARL maintains a Procedures Manual, which indicates step-by-step procedures for processing done in a number of areas. Procedures available cover areas such as testing, calibration, record keeping, and product follow-up service. ARL also maintains a Quality Assurance Manual and a Laboratory Accreditation Manual, with responsibility for internal quality control vested in the Director of Quality Control. The on-site review report indicates that ARL has test equipment available to perform testing necessary for the area of recognition it seeks, with the exception of specialized tests which ARL is unable to perform at its Miami facility.

In these cases, ARL obtains the services of other testing organizations, and witnesses the tests.

The On-site Review report indicates that ARL has adequate calibration procedures and calibration records, and that calibrations are traceable to NIST or other approved sources. A record of all calibrations is maintained by the Director of Quality.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production runs at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

ARL has procedures for follow-up inspections on the products it certifies, and for completing a Listing, Labeling, and Follow-up Service Agreement with a manufacturer. Other procedures cover control of its listing and labeling, and decertification. ARL conducts four inspections per year at those factories where ARL listed/certified products are manufactured. In addition, before use of the ARL certification mark is permitted, ARL will inspect the manufacturer's facility to ensure there is a capability to produce products in conformance with ARL's requirements.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and for any manufacturers or vendors of equipment or materials being tested for these purposes.

ARL supplied a statement of affiliation which included declarations that it has no managerial affiliations with any producer, supplier, or vendor; it has no securities, investments, or stock options in the product lines; the employment security of its personnel is free from influence by any producer, supplier, or vendor; and it is not owned, operated, or controlled by any producers, suppliers, or vendors.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that a recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

ARL's application, and the on-site review report indicate that ARL maintains various manuals that describe the procedures for testing and for all written reports, as well as record keeping requirements.

With regard to the handling of complaints or contested results, ARL maintains a Submissions and Review Board, which can be convened at the request of a client, to review results and actions undertaken by ARL.

Programs and Procedures

Applied Research Laboratories, Inc., performs acceptance of witnessed testing data, based upon the conditions as detailed in the **Federal Register** document titled "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures," 60 FR 12980, 3/9/95.

Currently, this Program is primarily utilized for certain wind load tests conducted on large structures which require they be tested as installed and which ARL does not have the facilities to perform. The tests would be witnessed by either an ARL Professional Engineer, or the ARL Department Head to which a particular project has been assigned. Test results are presented in report form to ARL and become part of the ARL file documentation.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site review report, OSHA finds that Applied Research Laboratories, Inc. has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, and for acceptance of witnessed test data.

Pursuant to the authority in 29 CFR 1910.7, Applied Research Laboratories, Inc. is recognized as a Nationally Recognized Testing Laboratory subject to the limitations and conditions listed below:

Limitations

This recognition is limited to equipment or materials which, under Title 29, require or permit testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is further limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards. ARL has stated that it believes that the following standards pertain to equipment or materials that will be used in environments under OSHA's jurisdiction, and OSHA has determined they are appropriate within the meaning of 29 CFR 1910.7(c):

ASTM E152—Standard Methods of Fire Tests of Door Assemblies
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL—858 Household Electric Ranges
UL 1838—Low Voltage Landscape Lighting Systems
UL 1995—Heating and Cooling Equipment

Conditions

Applied Research Laboratories, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to ARL's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ARL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ARL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ARL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ARL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ARL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ARL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Authority: 29 CFR 1910.7.

Signed at Washington, DC, this 14th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–30685 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–97]

Detroit Testing Laboratory, Inc., Application for Recognition

AGENCY: Occupational Safety and Health Administration; Labor.

ACTIONS: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of Detroit Testing Laboratory, Inc. for recognition as a NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 20, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Detroit Testing Laboratory, Inc. (DTL) has made application pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Detroit Testing Laboratory, Inc., 7111 E. Eleven Mile, Warren, Michigan 48092.

Background

Detroit Testing Laboratory, Inc. (DTL), according to the applicant, is a Michigan corporation and was formally incorporated in 1949. The applicant states that the lab was originally founded in 1903 as a partnership, that ownership of the lab changed in 1948 and again in 1968, and that in 1976, the current owner purchased DTL as sole stockholder.

The applicant submitted an application package, and separately submitted a Quality Assurance (QA) Manual (see Exhibits 2A and 2B). The QA Manual includes: an organization chart, position descriptions, and resumes of key personnel; department descriptions including equipment & standards used for departments involved in testing; description of certifications done and standards used for certification; and the details on how calibrations are handled, including descriptions of equipment and standards.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The applicant has one main facility at its site in Warren, Michigan, and a smaller test facility in Center Line, Michigan. This smaller site is not included in the applicant's request for recognition. The applicant claims that natural gas, electric, compressed air, steam, and water are available in the laboratory for product testing and for calibrations and tests.

The applicant's QA Manual shows the testing experience of its key testing staff, mentions its certification, and listing and labeling experience with products, and describes its testing capabilities and experience in a number of specific areas. It also contains a list of major instrumentation and equipment.

Quality Assurance Procedures, Test/Operating procedures (developed on a form, the original of which is kept by each lab), calibration procedures, and audits (including proficiency audits which depends in part on the use of outside private services) are described in the QA manual. Furthermore, the QA includes an Internal Corrective Action Procedure whereby reports are issued to an area when it operates outside the guidelines of the QA System. The QA Manual also contains a sample handling procedure and procedures on employee training. Written procedures exist for typical tests, per QA manual.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These consist of implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production runs at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of identifying marks or labels.

The application contains the description of the listing and labeling procedure, which indicates "inspections" will be done four times per year, and periodic compliance testing is done every four years. A sample listing and follow-up agreement was also provided. In addition, "Instructions for * * * Inspections * * *," and a sample inspection form were submitted.

Independence

A statement of independence was supplied attesting that DTL is independent of any producer, supplier, or vendor. The applicant claims in the statement that, for products being tested and certified: it has no managerial affiliations with any producer, supplier, or vendor; it has no securities, investments, or stock options in the product lines; the employment security of its personnel is free from influence by any producer, supplier, or vendor; that it is not owned, operated, or controlled by any producers, suppliers, or vendors; and that it is not engaged in promotion or design.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that a OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system. The QA manual contains details on development of test data and reports, and both the application and the QA manual describe a complaint procedure.

Standards

DTL desires recognition for testing and certification of products to determine compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 234—Low Voltage Lighting Fixtures for Use in Recreational Vehicles

ANSI/UL 1025—Electric Air Heaters

Preliminary Finding

Detroit Testing Laboratory, Inc., addressed all of the criteria which had to be met for recognition as an NRTL, as summarized above. In addition, the NRTL Recognition Program staff performed an on-site review of DTL's main facility and investigated nine major areas: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel. Any discrepancies noted by the survey team during the on-site review were adequately responded to following the on-site evaluation and are included as an integral part of the On-Site Review Report (see Exhibit 3). With the preparation of the final report, the Program staff was satisfied that the testing facility appeared to meet the necessary criteria required by 29 CFR 1910.7, and recommended that DTL be recognized.

Following a review of the application file and the On-Site Review Report, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory for the Warren, Michigan facility and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file, the On-Site Review Report, and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Detroit Testing Laboratory, Inc. can meet the requirements as prescribed by 29 CFR 1910.7 to recognize the Warren, Michigan facility for the two standards previously listed.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 20, 1998 and must be addressed to the Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N 3653, Washington, D.C. 20210. Copies of the DTL application, the laboratory On-Site Review Report, and all submitted comments, as received, (Docket No. NRTL–2–97), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (DTL) satisfies the requirements for recognition as a NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Authority: 29 CFR 1910.7.

Signed at Washington, DC, this 14th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–30684 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–4–93]

Underwriters Laboratories Inc.; Request for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces the application of Underwriters Laboratory for expansion of its recognition as a NRTL under 29 CFR 1910.7, for test standards, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 20, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653 Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Underwriters Laboratories Inc. (UL), has made application pursuant to 29 CFR 1910.7, for expansion of its recognition as a Nationally Recognized Testing Laboratory for the equipment or materials listed below. UL previously made application pursuant to 29 CFR 1910.7, for renewal of its recognition as a Nationally Recognized Testing Laboratory (see 60 FR 16171, 3/29/95), and was so recognized (see 60 FR 33852, 6/29/95).

The addresses of the UL laboratories covered by this application are:

333 Pfinsten Road, Northbrook, Illinois 60062

1285 Walt Whitman Road, Melville, Long Island, New York 11747

1655 Scott Boulevard, Santa Clara, California 95050

12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

2600 N.W. Lake Road, Camas, Washington 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor

34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., 3rd Floor, No. 35 Chung Yang South Road, Section 2, Pei Tou 11237, Taipei, Taiwan

Background

This Federal Register notice announces UL's application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional test standards, dated 2/5/96, and amended on 4/1/97 (see Exhibits 13A and 13B).

UL has stated that it believes that the following standards pertain to equipment or materials that will be used in environments under OSHA's jurisdiction. UL desires recognition for testing and certification of products when tested for compliance with these test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

[1] ANSI/IEEE–C37.013 AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis
[1] ANSI/IEEE–C37.13 Low Voltage AC Power Circuit Breakers Used in Enclosures
[1] ANSI/IEEE–C37.14 Low Voltage DC Power Circuit Breakers Used in Enclosures
[1] ANSI–C37.17 Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers
[1] ANSI/IEEE–C37.18 Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinary
[1] NSI/IEEE–C37.20.1 Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
[1] ANSI/IEEE C37.20.2 Metal-Clad and Station-Type Cubicle Switchgear
[1] ANSI/IEEE C37.20.3 Metal-Enclosed Interrupter Switchgear
[1] ANSI/IEEE C37.21 Control Switchboards
[1] ANSI/IEEE C37.29 Low-Voltage AC Power Circuit Protectors Used in Enclosures
[1] ANSI/IEEE C37.30 Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
[1] ANSI C37.42 Distribution Cutouts and Fuse Links
[1] ANSI C37.44 Distribution Oil Cutouts and Fuse Links
[1] ANSI C37.45 Distribution Enclosed Single-Pole Air Switches
[1] ANSI C37.46 Power Fuses and Fuse Disconnecting Switches
[1] ANSI C37.47 Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses
[1] ANSI C37.50 Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures
[1] ANSI C37.51 Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.52 Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures
[1] ANSI C37.53.1 High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures
[1] ANSI C37.54 Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.55 Metal-Clad Switchgear Assemblies—Conformance Test Procedures
[1] ANSI C37.57 Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
[1] ANSI C37.58 Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Test Procedures
[1] ANSI/IEEE C37.60 Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Fault Interrupters for AC Systems
[1] ANSI/IEEE C37.66 Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements
[1] ANSI/IEEE C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
[1] ANSI C37.72 Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System
[1] ANSI/IEEE C37.90 Relays and Relay Systems Associated with Electric Power Apparatus
[1] ANSI C37.121 Unit Substations—Requirements
[1] ANSI/IEEE C37.122 Gas-Insulated Substations
[1] ANSI/IEEE C57.12.00 Distribution, Power and Regulating Transformers—General Requirements
[1] ANSI C57.12.13 Liquid-Filled Transformers Used in Unit Installations including Unit Substations—Conformance Requirements
[1] ANSI C57.12.20 Overhead-Type Distribution Transformers, 500 kVA and Smaller
[1] ANSI C57.12.21 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
[1] ANSI C57.12.22 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers with High Voltage Bushings; 2500 kVA and Smaller
[1] ANSI C57.12.23 Underground-Type Self-Cooled, Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
[1] ANSI C57.12.24 Underground-Type Three-Phase Distribution Transformers, 2500 kVA and Smaller
[1] ANSI C57.12.25 Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
[1] ANSI C57.12.26 Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers for use with Separable Insulated High-Voltage Connectors; 2500 kVA and Smaller
[1] ANSI C57.12.27 Liquid-Filled Distribution Transformers Used in Pad-Mounted Installations, Including Unit Substations—Conformance Requirements
[1] ANSI C57.12.28 Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
[1] ANSI C57.12.40 Three Phase Secondary Network Transformers, Subway and Vault Types (Liquid Immersed); 2500 kVA and Smaller
[1] ANSI C57.12.50 Ventilated Dry-Type Distribution Transformers, 1 to 500 kVA, Single-Phase; and 15 to 500 kVA, Three Phase
[1] ANSI C57.12.51 Ventilated Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
[1] ANSI C57.12.52 Sealed Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
[1] ANSI C57.12.55 Dry-Type Transformers in Unit Installations, Including Unit Substations—Conformance Requirements
[1] ANSI C57.12.57 Ventilated Dry-Type Network Transformers, 2500 kVA and Below, Three-Phase
[1] ANSI/IEEE C57.13 Instrument Transformers—Requirements
[1] ANSI/IEEE C57.13.2 Instrument Transformers—Conformance Test Procedures
[1] ANSI/IEEE C57.15 Step-Voltage and Induction-Voltage Regulators
[1] ANSI/IEEE C57.21 Shunt Reactors Over 500 kVA
[1] ANSI/IEEE C62.1 Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
[1] ANSI/IEEE C62.11 Metal Oxide Surge Arresters for AC Power Circuits
ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
ANSI/NEMA 250 Enclosures for Electrical Equipment
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.60 Decorative Gas Appliances for Installation in Vented Fireplaces
ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
ANSI Z83.7 Gas-Fired Construction Heater
UL 5A Nonmetallic Surface Raceways and Fittings
UL 5B Strut-Type Channel Raceways and Fittings
UL 201 Standard for Garage Equipment
UL 218 Fire Pump Controllers
ANSI/UL 231 Electrical Power Outlets
ANSI/UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
ANSI/UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
ANSI/UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses
UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
ANSI/UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
ANSI/UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
ANSI/UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
ANSI/UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
ANSI/UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
ANSI/UL 252A Compressed Gas Regulator Accessories
UL 300 Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Areas
UL 307B Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
ANSI/UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
UL 508C Power Conversion Equipment
ANSI/UL 583 Electric-Battery-Powered Industrial Trucks
ANSI/UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 635 Insulating Bushings
ANSI/UL 668 Hose Valves For Fire Protection Service
ANSI/UL 745–1 Portable Electric Tools
ANSI/UL 745–2–1 Particular Requirements of Drills
ANSI/UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
ANSI/UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
ANSI/UL 745–2–4 Particular Requirements for Sanders
ANSI/UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
ANSI/UL 745–2–6 Particular Requirements for Hammers
ANSI/UL 745–2–8 Particular Requirements for Shears and Nibblers
ANSI/UL 745–2–9 Particular Requirements for Tappers
ANSI/UL 745–2–11 Particular Requirements for Reciprocating Saws
ANSI/UL 745–2–12 Particular Requirements for Concrete Vibrators
ANSI/UL 745–2–14 Particular Requirements for Planers
ANSI/UL 745–2–17 Particular Requirements for Routers and Trimmers
ANSI/UL 745–2–30 Particular Requirements for Staplers
ANSI/UL 745–2–31 Particular Requirements for Diamond Core Drills
ANSI/UL 745–2–32 Particular Requirements for Magnetic Drill Presses
ANSI/UL 745–2–33 Particular Requirements for Portable Bandsaws
ANSI/UL 745–2–34 Particular Requirements for Strapping Tools
ANSI/UL 745–2–35 Particular Requirements for Drain Cleaners
ANSI/UL 745–2–36 Particular Requirements for Hand Motor Tools
ANSI/UL 745–2–37 Particular Requirements for Plate Jointers
UL 791 Residential Incinerators
UL 962 Household and Commercial Furnishings
ANSI/UL 985 Household Fire Warning System Units
ANSI/UL 1023 Household Burglar-Alarm System Units
UL 1075 Gas Fired Cooling Appliances for Recreational Vehicles
ANSI/UL 1247 Diesel Engines for Driving Centrifugal Fire Pumps
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
UL 1363 Temporary Power Taps
ANSI/UL 1419 Professional Video and Audio Equipment
ANSI/UL 1431 Personal Hygiene and Health Care Appliances
ANSI/UL 1468 Direct-Acting Pressure-Reducing and Pressure-Control Valves for Fire Protection Service
UL 1472 Solid-State Dimming Controls
ANSI/UL 1478 Fire Pump Relief Valves
ANSI/UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
ANSI/UL 1637 Home Health Care Signaling Equipment
UL 1651 Optical Fiber Cable
UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
UL 1684 Reinforced Thermosetting Resin Conduit
UL 1690 Data-Processing Cable
ANSI/UL 1692 Polymeric Materials—Coil Forms
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1694 Tests for Flammability of Small Polymeric Component
UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
ANSI/UL 1740 Industrial Robots and Robotic Equipment
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 1838 Low Voltage Landscape Lighting Systems
UL 1889 Commercial Filters for Cooking Oil
UL 1951 Electric Plumbing Accessories
ANSI/UL 1963 Refrigerant Recovery/Recycling Equipment
ANSI/UL 1971 Signaling Devices for the Hearing Impaired
UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
ANSI/UL 1981 Central Station Automation Systems
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1994 Low-Level Path Marking and Lighting Systems
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
ANSI/UL 2044 Commercial Closed Circuit Television Equipment
UL 2061 Adapters and Cylinder Connection Devices for Portable LP-Gas Cylinder Assemblies
ANSI/UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
ANSI/UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Note: Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The NRTL staff reviewed the details of UL's on-site evaluation (review)

[1] These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded by the provisions of Subpart S in 29 CFR 1910, in particular Section 1910.302(2). This statement is intended as a clarification for any party reviewing this notice.

reports, and determined that UL has the staff capability and the necessary equipment to conduct testing of products covered by these additional test standards.

Preliminary Finding

Based upon a review of the complete application, the on-site evaluation (review) reports, and the recommendations of the staff, including the recommendation from the Lead Assessor dated August 19, 1997 (see Exhibit 14), the Assistant Secretary has made a preliminary finding that Underwriters Laboratory Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of its recognition to include the 174 test standards previously listed.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 20, 1998, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210. Copies of the UL application, the recommendation of the Lead Assessor, and all submitted comments, as received, (Docket No. NRTL–4–93), are available for inspection and duplication at the Docket Office, Room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Underwriters Laboratory Inc.) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Authority: 29 CFR 1910.7.

Signed at Washington, DC, this 14th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–30683 Filed 11–20–97; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[97–163]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13: 44 U.S.C. 3506(c)(2)(A)). The information is used by NASA attorneys and technology transfer specialists to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before January 20, 1998.

ADDRESSES: All comments should be addressed to Mr. Michael Battaglia, Office of Aeronautics & Space Transportation Technology, Code RW, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: AST—Technology Utilization.

OMB Number: 2700–0009.

Type of review: Reinstatement.

Need and Uses: As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisitions Regulations, NASA R&D contracts require federally funded technology to the private sector.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 300.

Responses Per Respondent: 3.

Annual Responses: 900.

Hours Per Request: 1 hour.

Annual Burden Hours: 900.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–30689 Filed 11–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XLI

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on December 5, 1997 from 9:00 a.m. to 12:00 p.m. This meeting will convene to discuss the recommendations made in Creative America, a Report to the President on the system of support for arts and culture in the United States today and to consider specific measures in California for increasing support for the arts and the humanities. The meeting will be held in the Schwab Room of the San Francisco Museum of Modern Art, 151 Third Street, San Francisco, California.

At 9:00 a.m. the Committee meeting will begin with a welcome from Mayor Willie Brown, followed by opening remarks from Dr. John Brademas, Chairman. Executive Director Harriet Fulbright will give a Director's update, and the meeting will conclude with reports by individual members of the committee. The meeting will adjourn at 12:00 p.m.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and staff of the San Francisco Museum of Modern Art will need to know who will be attending. Therefore, for this meeting, individuals wishing to attend

are required to notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: November 17, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–30592 Filed 11–20–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Notice of Meeting

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES AND TIME: December 11, 1997 from 10:00 am to 4:30 pm, and December 12, 1997 from 9:00 am to 4:00 pm.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Carolyn Staley, Deputy Director, National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006. Telephone (202) 632–1526.

SUPPLEMENTARY INFORMATION: The Board is established under Section 384 of the Adult Education Act, as amended by Title I of P.L. 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships. The Board will meet in Washington, DC on December 11, 1997 from 10:00 am to 4:30 pm, and December 12, 1997 from 9:00 am to 4:00 pm. The meeting of the Board is open to the public. This meeting of the Institute's Advisory Board will focus on the following agenda items: recent legislative activities effecting literacy and the Institute; a report from the 1996 Literacy Leader Fellows on their fellowship projects: the creation of Advisory Board Committees which would focus on specific topic areas; and a discussion of major Institute projects with a focus on developments since the September Board meeting.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 am to 5:00 pm.

Dated: November 14, 1997.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 97–30576 Filed 11–20–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a small research camp at Patriot Hills, Antarctica by Dr. Red Whittaker, a citizen of the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978 .

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Nadene Kennedy at the above address or (703) 306–1033

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the establishment of a field camp at Patriot Hills Antarctica (80°18′ S 61°16′ W) to support field testing of robotic components for possible future use in Antarctica. The field camp will be operated for approximately one month for each of three austral summer research seasons, from January 1998 to February 2000. The permit period requested is from January 1, 1998 through February 29, 2000. The permit applicant is: Dr. Red Whittaker, Director, Field Robotics Center, Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213.

Activity for Which a Permit is Requested

Researchers at Carnegie Mellon University wish to establish a temporary field camp to be used as the base camp for trials of robotic components in Antarctica. The camp will consist of three temporary structures and four backup tents housing up to seven researchers and their equipment. The scientists will also use two snowmobiles to carry equipment and personnel to sites outside the camp, generally within a 30 km radius. Approximately 800 liters (220 gallons) of unleaded gasoline will be used each season in snowmobiles and electric generators. Also, batteries will be used in some of the instrumentation to be evaluated. Generators will be equipped with drip pans to reduce the risk of spills. Any spills will be contained and clean up. Any solid waste generated will be removed from Antarctica at the conclusion of each season's field work. No waste will be left in Antarctica. Conditions of the permit would include requirements to educate all participants with the provisions of the Antarctic Conservation Act (ACA), report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–30662 Filed 11–20–97; 8:45 am]

BILLING CODE 7555–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider and act upon the 1998 budget and to deliberate and make final rulings on certain petitions for exemption from operation of the price regulation. The Commission will also receive Ad Hoc Committee reports on ongoing studies, and act upon such studies as appropriate, and consider certain matters relating to office administration.

DATES: The meeting is scheduled for December 3, 1997 commencing at 10:00 a.m. to adjournment.

ADDRESSES: The meeting will be held at the New Hampshire Historical Society, Tuck Library Building Auditorium—1st Floor, located at 30 Park Street in Concord, NH (exit 14 off Interstate 93).

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Northeast Dairy Compact Commission will hold its regularly scheduled monthly meeting. The Compact Commission will consider and act upon the 1998 budget and deliberate and make final rulings in certain administrative petitions for exemption from operation of the price regulation. See 62 FR 35065 (June 30, 1997) The Commission will also receive reports from the Ad Hoc Committees on Regulations, Cost of Production and School Lunch Program Impact and take action upon such reports as required. The Commission will also consider certain matters relating to administration of the Compact Commission.

Daniel Smith,

Executive Director.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and all other applicable Articles and Sections, as approved by Section 147, of the Federal Agriculture Improvement and Reform Act (FAIR ACT), Pub. L. 104–127, and as thereby set forth in S.J. Res. 28(1)(b) of the 104th Congress; Finding of Compelling Public Interest by United States Department of Agriculture Secretary Dan Glickman, August 8, 1996 and March 20, 1997. (b) Bylaws of the Northeast Dairy Compact Commission, adopted November 21, 1996.)

[FR Doc. 97–30601 Filed 11–20–97; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment To Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation Portsmouth Gaseous Diffusion Plant Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For Further Details with Respect to the Action see: (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of Amendment Request: June 16, 1997.

Brief Description of Amendment: The proposed amendment, in accordance with a commitment made in the USEC certificate application, adds an additional criticality safety program element to the list of elements committed to in Technical Safety Requirement (TSR) 3.11.1.

Section 3.9 of the PORTS Safety Analysis Report (SAR) Revision 4 dated July 26, 1996, summarizes the upgrades required to bring the process facilities in compliance with the descriptions provided in SAR Chapter 3. One of the upgrades involves the identification of Structures, Systems and Components (SSCs) and associated support systems required to meet the nuclear criticality safety (NCS) double contingency principle. These SSCs are also referred to as AQ–NCS SSCs. By March 3, 1997, USEC was required by Issue 23 of the Compliance Plan (DOE/ORO–2027/R3) submitted as part of their certificate application, to identify and delineate AQ–NCS SSCs and their associated support systems. According to USEC, this action has been completed. A commitment made in SAR Section 3.9.10 entitled "Identification of Nuclear Criticality Safety SSCs," requires USEC to follow-up by revising TSR 3.11.1, to reflect identification of AQ–NCS SSCs and their associated support systems. As such, USEC has proposed to add a new fourth bullet to TSR 3.11.1 to state that the NCS program will address the identification of SSCs and support systems necessary to meet the double contingency principle.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not significantly increase the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in new or different kinds of accidents.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, there will not be a significant reduction of any margin of safety. On the contrary, this amendment may constitute an increase in the NCS margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

This amendment adds an additional TSR commitment related to the PORTS NCS program by requiring identification of SSCs and support systems necessary to meet the double contingency principle. As such, it will not result in an overall decrease in the effectiveness of the plant's safety program. On the contrary, this amendment may increase the effectiveness of the plant's NCS program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards, or security programs.

Effective date: The amendment to GDP–2 will become effective immediately after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise the Technical Safety Requirements.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 12th day of November 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–30619 Filed 11–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meeting: December 17, 1997—Augusta, Georgia: DOE-Owned Spent Fuel, Spent Naval Fuel, Treatment and Disposal of Aluminum-Clad Fuel, Defense Waste Processing, Defense Waste and Surplus Plutonium Disposal

Pursuant to its authority under section 5051 of Pub. L. 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panel on the Repository will hold a meeting December 17, 1997, beginning at 8:30 a.m. The meeting, which is open to the public, will focus on Department of Energy (DOE)-owned spent nuclear fuel, spent naval fuel, defense waste processing, and defense waste and surplus plutonium disposal.

Representatives of the DOE and the U.S. Navy have been invited to make presentations, including introductions to DOE-owned spent fuel, naval spent fuel, and aluminum-clad, highly enriched uranium (HEU) spent fuel. Disposal of aluminum-clad HEU spent fuel will be covered, including package design, criticality analyses, and treatment options. Representatives of the Savannah River facility will talk about the work done there, including defense high-level waste processing and disposition. Other presentations will cover the characteristics and disposal of vitrified high-level defense waste, and the immobilization and disposal of surplus weapons-grade plutonium. A detailed agenda will be available approximately two weeks prior to the meeting by fax or email, or on the Board's web site at www.nwtrb.gov.

The meeting will be held at the Radisson Riverfront Hotel, Two 10th Street, Augusta, Georgia 30901; Tel (706) 722–8900; Fax (706) 823–6513. Reservations for accommodations must be made by December 8, 1997, and you must indicate that you are attending the Nuclear Waste Technical Review Board's panel meeting to receive the preferred rate.

Time has been set aside on the agenda for comments and questions from the public. Those wishing to speak are encouraged to sign the Public Comment Register at the check-in table. A time limit may have to be set on the length of individual remarks; however, written

comments of any length may be submitted for the record.

Transcripts of this meeting will be available on computer disk, via e-mail, or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning January 13, 1998. For further information, contact Frank Randall, External Affairs, 2300 Clarendon Blvd., Suite 1300, Arlington, Virginia 22201–3367; (Tel) 703–235–4473; (Fax) 703–235–4495; (E-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's high-level radioactive waste and commercial spent nuclear fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Dated: November 18, 1997.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 97–30621 Filed 11–20–97; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice was previously published at 62 FR 61153 on November 14, 1997, that the Railroad Retirement Board would hold a meeting on November 19, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. This meeting has been canceled.

Date: November 18, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–30770 Filed 11–19–97; 10:52 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22888; File No. 812–10740]

The Guardian Insurance & Annuity Company, Inc., et al.; Notice of Application

November 14, 1997.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from rule 6e–2(c)(1) and from certain provisions of the Act and rules thereunder specified in paragraph (b) of rule 6e–2; and from sections 2(a)(32) and 27(i)(2)(A) of the Act and rules 6e–2(b)(12) and 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary: (1) to permit them to offer and sell certain variable whole life insurance policies with modified scheduled premiums ("Policies"); and (2) to permit certain other persons which may become the principal underwriter for such Policies ("Future Underwriters") to offer and sell such Policies.

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. ("GIAC"), The Guardian Separate Account K ("Separate Account"), and Guardian Investor Services Corporation ("GISC").

FILING DATES: The application was filed on July 28, 1997, and amended and restated on October 20, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Richard T. Potter, Jr., Esq., The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue, South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. GIAC, a Delaware stock life insurance company, is a wholly-owned subsidiary of The Guardian Life Insurance Company of America.

2. GIAC established the Separate Account under Delaware insurance law to serve as a funding vehicle for certain variable life insurance products. The Separate Account is registered under the Act as a unit investment trust. The Separate Account currently has eight investment divisions, each of which invests in shares of a corresponding mutual fund registered under the Act as an open-end diversified management investment company.

3. GISC, a wholly-owned subsidiary of GIAC, will act as the principal underwriter for the policies. GISC is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the "NASD").

4. Those premium amounts set forth in each Policy which must be paid to obtain the benefits provided by the Policy exclusive of the additional benefit riders ("Basic Scheduled Premiums") plus rating charges for those insureds that do not satisfy (GIAC's underwriting requirements for standard issuance, and premiums for insurance benefits that the Policy owner may add as riders to the Policy (collectively, "Policy Premium Assessments") are payable until the Policy anniversary nearest the insured's 100th birthday. If all Basic Scheduled Premiums and Policy Premium Assessments (collectively, "Policy Premiums") are paid when due or skipped under the premium skip option (described below), the Policy will not lapse and will retain its minimum death benefit guarantee until the Policy anniversary nearest the insured's 100th birthday, so long as no partial withdrawals are made and there is no Policy debt outstanding.

5. Policy Premiums may be paid annually or periodically. Each periodic Policy Premium must be at least $100.

6. The Policy's Basic Scheduled Premiums cannot be increased during the guaranteed premium period, but will be reduced by GIAC if the Policy's face amount is decreased. The guaranteed premium period starts on the Policy date and ends on the later of the Policy anniversary nearest the insured's 70th birthday or the 10th Policy anniversary. After the expiration of the guaranteed premium period, a Policy's Basic Scheduled Premiums may increase.

7. A Policy owner also may make unscheduled premium payments, subject to certain limits and restrictions set forth in the Policy and GIAC's administrative procedures.

8. GIAC generally credits and allocates each payment as of the business day of receipt, if it receives the payment before the close of business at its executive office. There are two exceptions to this practice. First, GIAC credits and allocates any payment received prior to the issue date on the issue date. Second, GIAC credits and allocates that portion of any payment that is used to pay a Policy Premium on the premium due date if such payment is received on or during the 31 days preceding such premium due date.

9. If Policy Premiums and/or unscheduled payments in excess of $100,000 are received from the Policy owner prior to the later of: (i) 45 days after Part I of the completed application is signed; or (ii) 15 days after the issue date, GIAC will allocate that portion, if any, of a scheduled premium payment or an unscheduled payment which is allocated among the variable investment options and the fixed-rate option according to instructions provided by the Policy owner ("net premium") in excess of $100,000 ("excess net premium") to The Guardian Cash Fund, a money market fund. On the later of (i) or (ii), any excess net premium allocated to The Guardian Cash Fund and any earnings attributable thereto, will be re-allocated in accordance with the policy owner's then-current allocation instructions.

10. The Policy provides for a premium skip option, which permits an owner to skip one or more scheduled premium payments after the first Policy year, subject to certain conditions. When a premium skip is effected, GIAC deducts from the sum of the values attributable to a Policy which are allocated to the variable investment options, the fixed-rate option, and the loan collateral account (the "Policy Account Value") an amount equal to 92.5% of any Policy Premium Assessments that would be due on the Policy Anniversary to pay such assessments for the coming Policy year. The amount will be deducted proportionately from the Policy Account Value attributable to the variable investment options. If some or all of the required deduction exceeds the Policy Account Value held in the variable investment options, GIAC will deduct the remainder from the Policy Account Value held in the fixed-rate option.

11. In addition, a Policy owner may use up to 90% of the Policy's cash surrender value less any then-outstanding Policy debt ("loan value") to pay a Policy Premium if the Policy owner has elected and is eligible for the Policy's automatic premium loan feature. Under the automatic premium loan feature, GIAC transfers the required premium amount from the unloaned Policy Account Value to the loan collateral account and uses the loan proceeds to pay the Policy Premium due.

12. A Policy Premium which is unpaid as of its due date is in default, but the Policy provides a 31-day grace period for the payment of each Policy Premium after the first. If the insured should die during the grace period and before the premium is paid, the death proceeds payable to the beneficiary will be reduced by an outstanding Policy debt and any due and unpaid Policy Premium for the period through the Policy month of death. If GIAC does not receive a Policy Premium before the grace period ends, and neither the premium skip option nor the automatic premium loan feature are available, and no waiver of premium rider is in effect, the Policy will lapse. Upon Policy lapse, all insurance coverage ends as of the end of the grace period, unless a policy value option becomes effective. The Policy owner can surrender the Policy for its net cash surrender value at any time during the grace period.

13. GIAC deducts Policy Premium Assessments and a premium charge from Policy Premiums and unscheduled payments. Policy Premium Assessments are deducted from each Policy Premium to cover GIAC's risks and costs associated with providing insurance coverage to higher risk insureds or providing additional benefits through Policy benefit riders.

14. The premium charge initially is equal to 7.5% of each Basic Scheduled Premium and each unscheduled payment and will decrease to 4.5% after the total amount of premiums paid under a Policy, through Basic Scheduled Premiums and/or unscheduled payments, equals 12 annual Basic Scheduled Premiums payable during the guaranteed premium period for the current fact amount. This charge covers premium taxes, a portion of GIAC's federal income tax burden, and a premium sales charge. GIAC also reserves the right to charge a maximum handling fee of $2.00 for each unscheduled payment it receives.

15. GIAC deducts each month from the Policy Account Value a Policy charge, an administration charge, a guaranteed insurance amount charge, and a charge for the cost of insurance. These charges compensate GIAC for the cost of underwriting and issuing a Policy. GIAC also may make transaction deductions upon: (i) a partial withdrawal (the lesser of $25 or 2% of the requested withdrawal amount); (ii) a premium skip; and (iii) a transfer after the twelfth transfer in a Policy year ($25). GIAC also charges the Separate Account for the mortality and expense risks it assumes, at an annual rate of 0.60% (guaranteed not to exceed 0.90%) of the Separate Account's average daily net assets. Charges for investment advisory and other Fund expenses are indirectly borne by owners of the Policies.

16. During the first 12 Policy years, GIAC deducts a surrender charge upon surrender, lapse, a lapse option taking effect upon Policy default, and upon a reduction in face amount by request or through a partial withdrawal. The surrender charge during the first Policy year is expressed as a flat dollar amount charge per $1000 in face amount; the per $1000 rate will vary from $5.37 to $58.67 based upon the issue age, sex, and underwriting class of the insured. The surrender charge will decrease proportionally on an annual basis over the first 12 Policy years so that the surrender charge beginning in year 13 is $0. After imposition of the surrender charge, a Policy's net cash surrender value may be zero, particularly in early Policy years.

17. In the case of a reduction in face amount, the surrender charge is prorated by multiplying the applicable surrender charge by the following fraction to reduce the payable charges:

$$\frac{\text{the amount of the face amount reduction}}{\text{the face amount prior to the reduction}}$$

The adjusted surrender charge is paid by deductions from the unloaned Policy Account Value. The surrender charge is intended to compensate GIAC for certain sales-related and administrative expenses.

18. The Policy provides for two alternate death benefit options. The Option 1 death benefit is equal to the greatest of: (i) the face amount of the Policy on the date of the insured's death; (ii) the minimum death benefit then required under federal tax laws on the monthly date preceding the insured's death; or (iii) after the first Policy year, the Policy's "variable insurance amount." The variable insurance amount provides a guarantee that the death benefit will be greater than the then-effective face amount if the Policy Account Value is greater than

the net single premium set forth in that Policy on any Policy review date.

19. The Option 2 death benefit is equal to the greatest of: (i) the face amount of the Policy on the date of the insured's death plus any amount by which the Policy Account Value then exceeds the Benchmark Value [1] as adjusted to the monthly date preceding the date of death; (ii) the minimum death benefit then required under federal tax laws on the monthly date preceding the insured's death; or (iii) after the first Policy year, the Policy's variable insurance amount.

20. Under an Option 1 Policy, when favorable investment performance and unscheduled payments increase the Policy Account Value, the Net Amount at Risk (the amount of death benefit provided under the death benefit option then in force minus the Policy Account Value) under the Policy will decrease. When the Net Amount at Risk is reduced, the dollar amount of the cost of insurance charge deducted on each monthly date may also decline.

21. Under an Option 2 Policy, favorable investment performance and the addition of unscheduled payments can possibly increase the Policy Account Value sufficiently to increase the death benefit. At such time, however, the Net Amount at Risk will not change as a result of the favorable investment performance or unscheduled payments. Unfavorable investment performance can reduce an Option 2 Policy's death benefit, but the benefit will never be less than the face amount.

22. Under either Option, any partial withdrawal taken after a monthly date will reduce the death benefit by the amount of the partial withdrawal and any applicable charge if the insured dies after that monthly date but prior to the next succeeding monthly date.

Applicants' Legal Analysis

Definition of "Variable Life Insurance Contract"

1. Rule 6c–3 grants exemptions from those provisions of the Act that are specified in paragraph (b) of Rule 6e–2 (except for Sections 7 and 8(a)) to certain separate accounts of life insurance companies that support variable life insurance policies. Specifically, the exemptions provided by Rule 6c–3 are available only to separate accounts registered under the Act whose assets are derived solely from the sale of "variable life insurance contracts" that meet the definition set forth in Rule 6e–2(c)(1), and from certain advances made by the insurer. The term "variable life insurance contract" is defined by Rule 6e–2(c)(1) to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in the policy.

2. Applicants believe that the Option 2 death benefit falls within the requirement that it "vary to reflect the investment experience of the separate account." Although the Option 2 death benefit varies only when the Policy's cash value exceeds its Benchmark Value, Applicants state that it is analogous to more conventional scheduled premium variable life insurance policies where death benefits are increased when investment experience exceeds an assumed investment rate. Rule 6e–2(c)(1) clearly contemplates that a death benefit would vary only if it exceeds a guaranteed minimum death benefit. A Policy under the Option 1 death benefit, however, will fail to satisfy this requirement if the death benefit has not been otherwise increased to satisfy Federal tax law requirements.

3. The Policy also contains other provisions, relating primarily to the flexibility of premium payments, that are not specifically addressed in Rule 6e–2. Applicants must rely on certain exemptive provisions in Rule 6e–2(b), as described below, in order to issue, sell, and maintain the Policies.[2] Applicants therefore request relief from the definition of "variable life insurance contract" set forth in Rule 6e–2(c)(1) to the extent necessary to permit reliance on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth below, under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2.

(a) Paragraph (b)(1)—"Sales load" is no longer subject to the specific quantitative limits set forth in the Act and rules thereunder. It is nonetheless possible that the amount of "sales load" imposed under the Policies would need to be determined (for example, in connection with analyzing an exchange offer involving the Policies; or analyzing variations in sales load pursuant to Section 22(d) of the Act). Accordingly, Applicants seek relief permitting them to rely on paragraph (b)(1) of Rule 6e–2.

(b) Paragraph (b)(3)—Relief is requested to permit the Separate Account to rely on paragraph (b)(3)(ii) of Rule 6e–2 in order to effect compliance with Section 8(b) of the Act (regarding the filing of a registration statement with the Commission).

(c) Paragraph (b)(4)—Relief is requested to permit Applicants to apply the eligibility restrictions of Section 9 of the Act in the fashion contemplated by paragraph (b)(4).

(d) Paragraph (b)(5)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 13(a) of the Act relating to insurance regulatory authority imposing certain requirements on the investment policies of the Separate Account; and disapproval by GIAC of changes in the investment policy of the Separate Account initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(5); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(5).

(e) Paragraph (b)(6)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(6).

(f) Paragraph (b)(7)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 15(a), (b), and (c) relating to an insurance regulatory authority disapproving advisory or underwriting contracts; disapproval by GIAC of changes in the principal underwriter for the Separate Account initiated by Policy owners; and disapproval by GIAC of changes in the investment adviser to the Separate Account initiated by Policy owners under circumstances contemplated by and in accordance with the requirements of paragraph (b)(7); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(7).

(g) Paragraph (b)(8)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 16(a) relating to an insurance regulatory authority disapproving or removing a member of the board of directors of a separate account under circumstances contemplated by and in accordance with the requirements of paragraph (b)(8); and to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(8).

(h) Paragraph (b)(9)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 17(f) in order to maintain separate account assets in the custody of GIAC or an affiliate thereof, in accordance with the requirements of paragraph (b)(9).

(i) Paragraph (b)(10)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 18(i) in order to provide for variable contract owner voting as contemplated by and in accordance with the requirements of paragraph (b)(10).

(j) Paragraph (b)(12)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 22(d), 22(e), and Rule 22c–1 in connection with issuance, transfer and redemption procedures for the Policies, including premium processing, premium rate structure, underwriting standards, and the benefit provided by the Policies, as contemplated by and in accordance with the requirements of paragraph (b)(12).

(k) Paragraph (b)(14)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(14).

(l) Paragraph (b)(15)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 9(a), and to facilitate the voting by GIAC of shares of management investment companies held by the Separate Account in disregard of Policy owner instructions under the circumstances contemplated by, and in accordance with the requirements of, paragraph (b)(15). Relief is also requested to permit Applicants to rely on the exemptions provided from Section 14(a), 15(a), 16(a), and 32(a)(2) in connection with any registered management investment company established by GIAC in the future in connection with the Policies, in accordance with the requirements of paragraph (b)(15), and paragraphs (b)(5), (b)(7), (b)(8), and (b)(14) of Rule 6e–2.

4. Applicants submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Separate Account and the Policy, and that the exemptions provided by these rules should be granted to the Separate Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested in the application.

Redeemability

5. Section 27(i)(2)(A) provides that no registered separate account funding variable insurance contracts or its sponsoring insurance company shall sell such contract unless the contract is a "redeemable security." Section 2(a)(32) defines a "redeemable security" as one entitling its holder to receive "approximately his proportionate share" of the issuer's current net asset value upon presentation to the issuer. Applicants request relief from the requirement in Section 27 that the Policies be "redeemable securities," and from the definition of "redeemable security" set forth in Section 2(a)(32), in connection with the issuance and sale of the Policies.

6. Rule 22c–1 requires that a Policy be redeemed at a price based on the current net asset value of the Policy next computed after receipt of request for surrender. If the conditions of Rule 6e–2(b)(12) are satisfied, paragraph (b)(12) provides certain exemptions from Rule 22c–1. A contingent deferred charge such as the surrender charge may, however, not be contemplated by Rule 6e–2(b)(12), and thus may be deemed inconsistent with the foregoing provisions, to the extent that the charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after surrender or after partial withdrawal from the Policy. Accordingly, Applicants request relief from Rule 22c–1 and Rule 6e–2(b)(12), to the extent necessary to permit the deduction of the surrender charge on surrender, lapse, a lapse option taking effect, or face amount reduction by request or through partial withdrawal from a Policy.

7. Although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, Applicants assert that such charges are not necessarily inconsistent with the definition of "redeemable security."

8. Applicants submit that although the deferred imposition of the surrender charge (upon surrender, lapse, or reduction in face amount by request or through partial withdrawal) may not fall within the literal pattern of all the provisions described in the application, that does not change the charge's essential nature. Moreover, the proposed amendments to Rule 6e–2 would permit a sales charge to be imposed on a contingent deferred basis. Contingent deferred charges are also authorized by Rule 6e–3(T) for contracts able to rely on that rule. Therefore, Applicants submit that the surrender charge is consistent with the principles and policies underlying limitations in Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and (c)(1) and 22c–1 thereunder.

Class Exemption for Future Underwriters

9. Applicants seek the relief requested herein with respect to Future Underwriters. Future Underwriters will be members of the NASD.

10. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act. Further, Applicants state that, without the requested class relief, exemptive relief for any Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants submit, for all the reasons stated herein, that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Policy and provisions of the Act, and that an order of the Commission including such class relief, should, therefore, be granted.

Conclusion

For the reason summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30573 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The Benchmark Value is a hypothetical value to which GIAC compares the actual Policy Account Value to determine whether and to what extent certain Policy privileges can be exercised (such as the premium skip option), and to redetermine the Basic Scheduled Premium in Policy years after the guaranteed premium period.

[2] Certain of the relief requested may not currently be necessary in light of the structure of the Separate Account as a "unit investment trust," but would become necessary if the Separate Account were to be restructured as an open-end management company in the future. The Policies permit such a restructuring.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22891; 812–10860]

Kemper Technology Fund, et al.; Notice of Application

November 17, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without shareholder approval, of new investment advisory agreements between Zurich Kemper Investments, Inc. ("ZKI") and Zurich Kemper Value Advisors, Inc. ("ZKVA") (collectively, the "Advisers"), and the Funds (as defined below) (the "New Advisory Agreements") for a period of up to 120 days following the date of consummation of a merger and until each New Advisory Agreement receives shareholder approval (but in no event later than April 30, 1998) (the "Interim Period"). The order also would permit the Advisers to receive all fees earned under the New Advisory Agreements during the Interim Period following shareholder approval.

APPLICANTS: ZKI; ZKVA; Scudder, Stevens & Clark, Inc. ("Scudder"); Kemper Technology Fund ("KTEC"), Kemper Total Return Fund ("KTRF"), Kemper Growth Fund ("KGF"), Kemper Small Capitalization Equity Fund ("KSCF"), Kemper Income and Capital Preservation Fund ("KICPF"), Kemper National Tax-Free Income Series ("KNTIS"), Kemper Diversified Income Fund ("KDIF"), Kemper High Yield Series ("KHYS"), Kemper U.S. Government Securities Fund ("KGSF"), Kemper International Fund ("KIF"), Kemper State Tax-Free Income Series ("KSTIS"), Kemper Portfolios ("KP"), Kemper Adjustable Rate U.S. Government Fund ("KARGF"), Kemper Blue Chip Fund ("KBCF"), Kemper Global Income Fund ("KGIF), Kemper Value Plus Growth Fund ("KVGF"), Kemper Quantitative Equity Fund ("KQEF"), Kemper Asian Growth Fund ("KAGF"), Kemper Aggressive Growth Fund ("KAGGF"), Zurich Money Funds ("ZMF"), Zurich YieldWise Money Fund ("ZYMF"), Cash Equivalent Fund ("CEF"), Tax-Exempt California Money Market Fund ("TECMF"), Investors Cash Trust ("ICT"), Investors Municipal Cash Fund ("IMCF"), Cash Account Trust ("CAT"), Kemper Value Fund, Inc. ("KVF"), Kemper Horizon Fund ("KHF"), Kemper Europe Fund ("KEUF"), Kemper Target Equity Fund ("KTEF"), Kemper High Income Trust ("KHI"), Kemper Intermediate Government Trust ("KGT"), Kemper Municipal Income Trust ("KTF"), Kemper Multi-Market Income Trust ("KMM"), Kemper Strategic Municipal Income Trust ("KSM"), The Growth Fund of Spain, Inc. ("GSP"), Kemper Strategic Income Fund ("KST"), Investors Fund Series ("INFS") and Kemper International Bond Fund ("KIBF") (each a "Fund", collectively the "Funds").

FILING DATES: The application was filed on November 5, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Funds & ZKI, 222 South Riverside Plaza, Chicago, Illinois 60606; ZKVA, 280 Park Avenue, New York, NY 10017; Scudder, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Scudder is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The Funds are registered as open-end or closed-end investment companies under the Act. The Advisers are investment advisers registered under the Advisers Act and serve in the capacity of investment manager, investment adviser, or subadviser to at least one of the Funds or a series of the Funds under advisory agreements (the "Existing Advisory Agreements").[1]

2. On June 26, 1997, Zurich, ZKI Holding Corp., ZKI, Scudder and the representatives of the beneficial owners of the capital stock of Scudder entered into a transaction agreement (the "Transaction Agreement"), under which Zurich will become the majority stockholder in Scudder, and ZKI will become a wholly-owned subsidiary of, or be combined with, Scudder (the "Transaction"). Upon completion of the Transaction, Scudder will change its name to Scudder Kemper Investments, Inc. ("SKI").[2] Applicants expect consummation of the Transaction on December 5, 1997.

3. Applicants believe that the Transaction will result in an assignment of the Existing Advisory Agreements and that the Existing Advisory Agreements will terminate by their terms on the closing date of the Transaction. Applicants request an exemption to permit (i) implementation, during the Interim Period, prior to obtaining shareholder approval, of the New Advisory Agreements, and (ii) the Advisers to receive from each Fund, upon approval of that Fund's shareholders of the New Advisory Agreement, any and all fees earned under the related New Advisory Agreement during the applicable Interim Period. Applicants represent that the New Advisory Agreements will have substantially the same terms and conditions as the Existing Advisory Agreements, except for the effective dates. Applicants state that each Fund should receive, during the Interim Period, the same advisory services, provided in the same manner and at the same fee levels, by substantially the same personnel as it received prior to the Transaction.[3]

[1] ZKI is investment manager for the following Funds under Existing Advisory Agreements: KTEC, KTRF, KGF, KSCF, KICSPF, KNTIS, KDIF, KHYS, KGSF, KIF, KSTIS, KP, KARGF, KBCF, KGIF, KVGF, KQEF, KAGF, KAGGF, KHF, KEUF, KTEF, KHI, KGT, KMM, KTF, KSM, GSP, KST, CEF, TECMF, ICT, CAT, IMCF, INFS, KIBF, ZMF and ZYMF. ZKVA is investment manager for KVF and two series of INFS. Under agreements with ZKI, ZKVA is subadviser to KHF, KVGF and certain series of INFS. Under agreements with ZKI, Zurich Investment Management Limited, an indirect subsidiary of Zurich Insurance Company ("ZIML"), is subadviser to KEUF, KTEF, KHF, KTEC, KTRF, KGF, KSCF, KICPF, KDIF, KHYS, KIF, KBCF, KGIF, KVGF, KQEF, KAGF, KAGGF, KHI, KGT, KMM, KST, GSP, certain series of INFS and KIBF.

In each of the foregoing cases, whether acting as investment manager, investment adviser, or subadviser, each Adviser and ZIML is acting as an investment adviser within the meaning of section 2(a)(20) of the Act, and serves as investment manager, investment adviser or subadviser under a contract subject to section 15 of the Act.

[2] Subsequent to the execution of the Transaction Agreement, Zurich agreed to cause ownership of ZIML to be transferred by Zurich to SKI. In addition, as a wholly owned subsidiary of ZKI, ZKVA will become part of SKI.

[3] Except for KSCF and KAGGF, the management fee under the New Advisory Agreements will be paid at the end of each month and will be computed as 1/12 of the applicable annual rate based upon the average daily net assets (weekly net assets in the case of KHI, KGT, KTF, KMM, KSM, GSP and KST) for such month; whereas under the Existing Advisory Agreements, the management fee is paid at the end of each month and is computed at the annual rate based upon the average daily net assets (weekly net assets in the case of KHI, KGT, KTF, KMM, KSM, GSP and KST). While the annual rates are the same under the New Advisory Agreements and the Existing Advisory Agreements, depending upon the level of net assets at any time, the fees may differ. However, if at any time during the Interim Period, the fees payable under the New Advisory Agreements are greater than those that would have been payable under the Existing Advisory Agreements, the excess amount shall be waived. For KSCF and KAGGF, the management fee will continue on the same basis as under the Existing Advisory Agreements as if there were no termination of the Existing Advisory Agreements.

4. The board of trustees or directors, as the case may be, of each Fund ("Board") met on one or more dates between June 30, 1997 and September 20, 1997 to consider the Transaction and its anticipated effects upon the investment management and other services provided to the Funds by the Advisers and their affiliates. The Board members who are not "interested persons" of the Funds as that term is defined in section 2(a)(19) of the Act ("Independent Trustees") also met separately with counsel on a number of occasions to discuss the Transaction. On September 15, 1997 and September 20, 1997, the Boards, including the Independent Trustees, voted unanimously in accordance with section 15(c) of the Act to approve the New Advisory Agreements and to recommend them to shareholders for their approval.

5. Proxy materials for the shareholders meetings relating to the New Advisory Agreements were mailed by the Funds on or about October 22, 1997. Applicants state that it is possible that shareholders of each of the Funds will approve the New Advisory Agreements at the shareholders meetings expected to be held on December 3, 1997. Applicants note, however, that it may be necessary to adjourn a meeting to permit additional shareholders to vote their shares.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution. The fees payable to the Advisers during the Interim Period under the New Advisory Agreements will be paid into an interest-bearing escrow account maintained by the escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (a) to the applicable Adviser only upon approval of the Funds' shareholders of the relevant New Advisory Agreement; or (b) to the relevant Fund if the Interim Period has ended and its New Advisory Agreement has not received the requisite shareholder approval. Before any such release is made, the Funds' Boards would be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines the term "assignment" to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that the Transaction will be deemed to result in an assignment of the Existing Advisory Agreements and, therefore, their termination upon consummation of the Transaction.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

4. Applicants submit that it is in the best interests of shareholders to have sufficient time to consider and return proxies and to hold shareholder meetings. Applicants also believe it is desirable to close the Transaction as soon as possible.

5. Applicants believe that the requested relief is necessary to permit continuity of investment management services for the Funds during the Interim Period. Applicants also believe that the Interim Period would facilitate the orderly and reasonable consideration of the New Advisory Agreements with respect to those Funds whose shareholders have not voted in sufficient numbers by the date of the shareholders meeting.

6. Applicants submit that the scope and quality of services provided to the Funds during the Interim Period will not be diminished. The New Advisory Agreements would be substantially the same as the Existing Advisory Agreements, except for their effective dates. Applicants submit that they are not aware of any material changes in the personnel who will provide investment management services during the Interim Period. Accordingly, the Funds should receive, during the Interim Period, the same advisory services, provided in the same manner, at the same fee levels, by substantially the same personnel as they received before the Transaction.

7. Applicants submit that to deprive the Advisers of their customary fees during the Interim Period would be unduly harsh and unreasonable. Applicants emphasize that the fees payable to the Advisers have been approved by the Boards, including a majority of the Independent Trustees, in accordance with their fiduciary and other obligations under the Act, and that such fees will not be released by the escrow agent without the approval of the respective Fund's shareholders.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements to be implemented during the Interim Period will have substantially the same terms and conditions as the Existing Advisory Agreements, except for the effective dates.

2. Fees earned by an Adviser in respect of the New Advisory Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid (a) to an Adviser in accordance with the New Advisory Agreements, after the requisite shareholder approvals are obtained, or (b) to the respective Fund, in the absence of such approval with respect to such Fund.

3. The Funds will hold a meeting of shareholders to vote on approval of the New Advisory Agreements on December 3, 1997, or within the 120-day period following the consummation of the Transaction (but in no event later than April 30, 1998).

4. Zurich or its affiliates will bear the costs of preparing and filing the application, and any costs relating to the solicitation of approval of the Funds' shareholders necessitated by the consummation of the Transaction.

5. The Advisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Advisers will apprise

and consult with the Boards of the affected Funds to assure that the Boards, including a majority of the Independent Trustees, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30571 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22890; File No. 812–10674]

The Life Insurance Company of Virginia, et al.; Notice of Application

November 14, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemptions under Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving the proposed substitutions of shares and under Section 17(a) of the 1940 Act from the provisions of Section 17(a)(1) and 17(a)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities issued by certain registered management investment companies for securities issued by certain other registered management investment companies currently held by separate accounts of The Life Insurance Company of Virginia and Great Northern Insured Annuity Corporation to support variable life insurance policies and variable annuity contracts. Applicants also seek an order pursuant to Section 17(b) of the 1940 Act granting exemptions from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit Applicants to carry out certain of the proposed substitutions in-kind.

APPLICANTS: The Life Insurance Company of Virginia ("Life of Virginia"), Great Northern Insured Annuity Corporation ("GNA," collectively with Life of Virginia, the "Companies") and their respective separate accounts, Life of Virginia Separate Account I ("Account I"), Life of Virginia Separate Account II ("Account II"), Life of Virginia Separate Account III ("Account III"), Life of Virginia Separate Account 4 ("Account 4") and GNA Variable Investment Account ("GNA Account" and collectively with the other separate accounts "the Accounts").

FILING DATE: This application was filed on May 16, 1997, and amended and restated on October 9, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this aplicaiton by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 9, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o J. Neil McMurdie, Esq., The Life Insurance Company of Virginia, 6610 West Broad Street, Richmond, VA 23260. Copies to Stephen E. Roth/David S. Goldstein, Sutherland, Asbill & Brennan, L.L.P., 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004–2404.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Life of Virginia is a stock life insurance company operating under a charter granted by the Commonwealth of Virginia. Eighty percent of the capital stock of Life of Virginia is owned by General Electric Capital Assurance Corporation ("GECA"). The remaining twenty percent is owned by GE Life Insurance Group, Inc. ("GELIG"). GECA and GELIG are wholly owned subsidiaries of GE Capital Corporation ("GE Capital"). GE Capital's parent is General Electric Company. Life of Virginia is the depositor and sponsor of Account I, Account II, Account III and Account 4.

2. GNA is a stock life insurance company organized under the laws of Washington. GNA is a wholly owned subsidiary of GECA. GNA is the depositor and sponsor of the GNA Account.

3. Each of the Accounts is registered under the 1940 Act as a unit investment trust. The assets of each Account support either variable annuity contracts or variable life insurance contracts (together, the "Contracts"). Interests in each of the Accounts offered through such Contracts are registered under the Securities Act of 1933 on either Form S–6 or Form N–4.

4. Account 1 is divided into four investment subdivisions; Account II, Account III and Account 4 are each divided into 34 investment subdivisions. Each investment subdivision invests exclusively in shares representing an interest in a separate corresponding portfolio (each, a "Fund") of one of nine series-type investment companies, each of which is registered under the 1940 Act as an open-end management investment company. The following five investment companies are involved in the substitutions discussed in the application: GE Investments Funds, Inc. ("GEIF"), Variable Insurance Products Fund ("VIPF"), Oppenheimer Variable Account Funds ("OVAF"), Janus Aspen Series ("JAS") and Neuberger & Berman Advisers Management Trust ("AMT").

5. GEIF (formerly, Life of Virginia Series Fund, Inc.) currently comprises (or will soon comprise) eleven Funds. The following seven GEIF Funds are involved in the proposed substitutions discussed in the application: Money Market Fund, Government Securities Fund, Income Fund, Premier Growth Fund, U.S. Equity Fund, International Equity Fund and Value Equity Fund. GE Investment Management Incorporated ("GEIM"), a wholly owned subsidiary of GE, currently serves as investment manager for GEIF.

6. VIPF currently comprises five Funds. VIPF's Money Market Portfolio, High Income Portfolio and Growth Portfolio are involved in the proposed substitutions. Fidelity Management & Research Company ("FMR") serves as VIPF's investment adviser.

7. OVAF currently comprises nine investment portfolios. OVAF's Money Fund and High Income Fund are involved in the proposed substitutions. Oppenheimer Funds, Inc. serves as investment adviser to OVAF.

8. JAS currently comprises nine investment portfolios. The JAS Balanced Fund is involved in the proposed substitutions. Janus Capital Corporation serves as the investment adviser to JAS.

9. AMT currently comprises eight investment portfolios. AMT's Balanced Portfolio, Growth Portfolio and Limited Maturity Bond Portfolio are involved in the proposed substitutions. Neuberger & Berman Management Incorporated serves as investment adviser to AMT.

10. GNA Trust currently comprises for investment portfolios: GNA Adjustable Rate Portfolio, GNA Government Portfolio, GNA Value Portfolio and GNA Growth Portfolio. All four GNA Funds are involved in the proposed substitutions. GNA Capital Management Inc. serves as investment adviser to GNA Trust.

11. VIT currently comprises for investment portfolios: GE International Equity Portfolio, GE U.S. Equity Portfolio, GE Fixed Income Portfolio and GE Money Market Portfolio. All four VIT Funds are involved in the proposed substitution. GEIM serves as the investment adviser to VIT.

12. Life of Virginia on its own behalf and on behalf of Account I, Account II, Account III and Account 4 proposes to make certain substitutions of shares held in those Accounts. Applicants assert that by making the proposed substitutions in the Life of Virginia Accounts, Life of Virginia can better serve the interest of owners of its Contracts who will benefit from reduced confusion caused by duplicative Funds and the likely addition of new Funds of different types in the future that better suit the needs of such owners. At the current time, due to data processing constraints, Life of Virginia can only administer the Contracts on a cost-effective basis if the number of active investment subdivisions is limited to a manageable number. Applicants assert that while no particular number of investment subdivisions represents an outer limit as to what Life of Virginia could administer, each investment subdivision beyond the current thirty-four brings with it administrative expenses significantly beyond those associated with the addition of the tenth or twentieth investment subdivisions. The incremental cost of adding investment subdivisions in such that the projected increase in sales from each additional necessary to justify the addition, increase with each additional subdivision. Because of this, Applicants assert that there is an opportunity cost associated with each existing active investment subdivision. Thus, for example, having three investment subdivisions that invest in money market Funds could deprive owners of the opportunity to invest in two other alternative Funds. Likewise, maintaining investment subdivisions through which high income Fund offerings from both OVAF and VIPF and balances Fund offerings from both AMT and JAS are available, utilizes valuable administrative resources yet offers Contract owners little additional value. In addition, Applicant's state that GEIF's Government Securities Fund and AMT's Limited Maturity Bond Portfolio have proven unpopular and do not exhibit signs of future growth potential. Life of Virginia believes that it and Contract owners would be better served by consolidating the subdivisions investing in duplicative Funds and by replacing the two unpopular Funds with ones that may prove more popular.

13. GNA on its own behalf and behalf of GNA Account proposes to make certain substitutions of shares held in GNA Account. Applicants assert that by making the proposed substitutions in the GNA Account, GNA can better serve the interests of owners of its individuals Contracts and participants under its group Contracts who will benefit from larger Funds with future growth potential. The proposed substitutions by GNA are principally the result of recent reorganizations of the lines of business of several life insurance subsidiaries of GE Capital, including Life of Virginia and GNA. Among the changes taking place in these life insurance companies is the centralization of variable annuity and variable life insurance operations at Life of Virginia's home office in Richmond, Virginia. To facilitate this reorganization, variable annuity operations are being moved from other GE Capital life companies, such as GNA, to Richmond.

14. GNA Trust and VIT were both recently established to support variable annuity contracts issued by GNA and possibly other affiliated and unaffiliated life insurance companies. With Life of Virginia becoming the principal variable annuity carrier for the GE Capital organization, Applicants state that it is unlikely that GNA will sell a significant number of additional Contracts. Consequently, Applicants assert that it is unlikely that the Funds of the GNA Trust and VIT will grow to any appreciable size in the foreseeable future unless Life of Virginia offers them as investment options in its variable life insurance and viable annuity contracts or unless other alternative distribution channels are found for them. Applicants state that the substitutions proposed by GNA would facilitate the distribution of GNA Trust Fund and VIT shares by consolidating duplicative Fund offerings among GEIF, GNA Trust and VIT and by transferring non-duplicative GNA Trust and VIT Funds to GEIF. This is because the consolidated Funds would be larger than any of the component Funds and because housing all of the insurance Funds managed by GEIM in a single corporate entity with the "GE" name would enhance their brand identity.

15. Applicants state that in addition to the foregoing, the ultimate effect of the proposed GNA substitutions would be consolidate certain Fund offerings under the GEIF umbrella and to transfer other Funds to GEIF. Because GEIF is a Virginia corporation, GNA Trust is a Delaware Business Trust and VIT is a Massachusetts Business Trust, GEIM could achieve certain significant administrative efficiencies by housing all of the Funds in a single corporate entity.

The Proposed Transactions

1. Applicants propose that Life of Virginia carry out the following substitutions of shares held by corresponding investment subdivisions of Account I, Account II, Account III and Account 4: (1) shares of the GEIF Money Market Fund for shares of VIPF's Money Market Portfolio; (2) share of the GEIF Money Market Fund of shares of Oppenheimer Money Fund; (3) shares of the GEIF Income Fund for shares of the GEIF Government Securities Fund; (4) shares of the GEIF Income Fund for shares of AMT's Limited Maturity Bond Portfolio: (5) shares of Oppenheimer High Income Fund for shares of VIPF's High Income Portfolio; (6) shares of VIPF's Growth Portfolio for shares of AMT's Growth Portfolio; and (7) share of the Balanced Portfolio of JAS for shares of AMT's Balanced Portfolio. Where, after the proposed substitutions, more than one investment subdivision holds shares of a single Fund, Life of Virginia intends to consolidate those subdivisions.

2. Applicants propose that GNA carry out the following substitutions of hares held by corresponding sub-accounts of the GNA Account: (1) shares of the GEIF Income Fund for shares of GNA Trust's Adjustable Rate Portfolio; (2) shares of the GEIF Income Fund for shares of GNA Trust's Government Portfolio; (3) shares of the GEIF Income Fund for shares of VIT's Fixed Income Portfolio; (4) shares of the GEIF Premier Growth Fund for shares of GNA Trust's Growth Portfolio; (5) shares of the GEIF Value Equity Fund for shares of GNA Trust's Value Portfolio; (6) share of the GEIF International Equity Fund for shares of VIT's International Equity Portfolio; (7) shares of the GEIF U.S. Equity Fund for shares of VIT's U.S. Equity Portfolio; and (8) shares of GEIF's Money Market Fund for shares of VIT's Money Market Portfolio.

3. By supplements to the various prospectuses for the Contracted and the Accounts, all owners of the Contracts

have been notified of Life of Virginia's and GNA's intention to take the necessary actions, including seeking the order requested by the application, to carry out the proposed substitutions. The supplements for Accounts, I, II, III and 4 advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected investment subdivisions of the date of the supplement to another investment subdivision other than one of the other affected investment subdivision without that transfer counting as the free transfer permitted in a calendar month. The supplements also inform Contracts owners that Life of Virginia will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution. The supplements for GNA Account advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the sub-accounts on the date of the supplement to another sub-account without that transfer counting as one of the six free transfers permitted in a Contract year or certificate year. The supplements also inform Contract owners that GNA will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

4. Applicants state that the proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's contract or accumulation value or death benefit or in the dollar value off his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights or Life of Virginia's or GNA's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Life of Virginia or GNA. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not, of course, be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a calendar month or Contract year (or certificate year). Life of Virginia and GNA will not exercise any right either may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the proposed substitutions.

5. Applicants state that, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all amounts under a Contract invested in any one of the affected investment subdivisions or subaccounts on the date of the notice to another investment subdivision or sub-account without the transfer counting as one of any limited number of transfers permitted in a calendar month or Contract year (or certificate year) or as one of a limited number of transfers permitted in a calendar month or Contract year (or certificate year) free of charge. The notice will also reiterate the fact that Life of Virginia and GNA will not exercise any rights reserved by either under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notices will be accompanied by a current GEIF prospectus.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the proposed substitutions. Section 26(b) provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) also provides that the Commission will approve the substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act and are not the type of substitution which Section 26(b) was designed to prevent. Applicants state that, for Life of Virginia, the consolidation of three money market investment subdivisions into one money market investment subdivision, two high income subdivisions into one high income subdivision and two balanced subdivisions into one balanced subdivision is an appropriate way to promote the likelihood that additional new subdivisions will be added to Accounts II, III, and 4 in the future that better suit the needs of Contract owners. Similarly the consolidation of two relatively unpopular subdivisions with a third new one, offers a new subdivision while at the same time making room for an additional new subdivision in the future. Applicants represent that (1) GEIF's Money Market fund has a substantially identical investment objective to each of the VIPF's Money Market Portfolio and Oppenheimer Money Market Fund that it would replace; (2) Oppenheimer bond Fund has investment objectives that are similar to and compatible with those of the Government Securities Portfolio and Limited Maturity Bond Portfolios; (3) Oppenheimer High Income Fund has an investment objective that is compatible with that of VIPF's High Income Portfolio; (4) Growth Portfolio of VIPF and AMT's Growth Portfolio share similar investment objectives; and (5) JAS Balanced Portfolio has an identical investment objective to the Balanced Portfolio of AMT.

3. Applicants state that, for GNA, replacing certain GNA Trust and VIT Funds with those of GEIF and transferring others from GNA Trust or VIT to GEIF is an appropriate way in which to provide GNA Contract owners with Funds that have future growth potential. Applicants represent that the GEIF Income Fund has an investment objective that is similar to and compatible with GNA Trust's Adjustable Rate Portfolio and Government Securities Portfolio and that each of the other GEIF Funds that GNA proposes to substitute has an investment objective (or objectives) that is (or are) substantially identical to those that they would replace. With regard to GNA's proposed substitutions of shares of GEIF's Money Market Fund, Income Fund and International Equity Fund, the corresponding sub-accounts of GNA Account would immediately become invested in substantially larger Funds than those in which each sub-account is currently invested.

4. Applicants anticipate that Contract owners will be at least as well off with the proposed array of investment subdivisions or sub-accounts offered after the proposed substitutions as they have been with the array of investment subdivisions offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. All Contract owners will be permitted to allocate purchase payments to and transfer contract values or accumulation values among and between the same number of investment subdivisions or sub-accounts as they could before the proposed substitutions.

5. Applicants also request an order pursuant to Section 17(b) of the 1940 Act exempting them and GEIF, GNA Trust and VIT from the provisions of Section 17(a) to the extent necessary to permit GNA to carry out certain of the substitutions of securities by redeeming securities issued by GNA Trust and VIT in-kind and using the redemption proceeds to purchase securities issued by GEIF. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principals, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principal, from knowingly purchasing any security or other property from the registered investment company.

6. Section 2(a)(3) of the 1940 Act defines the term "affiliated person of another person" in relevant part as:

> (A) any person directly, or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

7. Applicants have concluded, as more fully described in the application, that GEIF, GNA Trust and VIT and the Funds of each may be affiliated persons of each other or affiliated persons of affiliated persons of each other. Each also may be an affiliated person of GNA or an affiliated person of an affiliated person of GNA. The proposed substitutions by GNA, which may entail the indirect purchase of shares of GEIF Funds with portfolio securities of GNA Trust and VIT Funds and the indirect sale of portfolio securities of such Funds for shares of GEIF Funds, therefore may also entail the purchase or sale of such securities by each of the Funds involved, acting as principal, to one of the other Funds and therefore may be in contravention of Section 17(a). In addition, the participation of GNA in such purchase and sale transactions could be viewed as entailing the purchase of such securities from Funds of GNA Trust and VIT and the sale of such securities to Funds of GEIF by GNA, acting as principal, and therefore may be in contravention of Section 17(a).

8. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

9. Applicants submit that the terms of the proposed substitutions by GNA, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants state that the transactions will not cause owners' interests under a Contract to be diluted. Applicants also state that the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's contract or accumulation value or death benefit or in the dollar value of his or her investment in any of the Accounts. Even though GNA, GEIF, GNA Trust and VIT may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons. Each transaction will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective management company's registration statement and as required by Rule 22c–1 under the 1940 Act.

10. Applicants also submit that the proposed substitutions by GNA are consistent with the policies of (1) GEIF and of its Income Fund, Premier Growth Fund, Value Equity Fund, International Equity Fund, U.S. Equity Fund and Money Market Fund; (2) GNA Trust and its Adjustable Rate Portfolio, Government Portfolio, Growth Portfolio and Value Portfolio; and (3) VIT and its Fixed Income Portfolio, International Equity Portfolio, U.S. Equity Portfolio, and Money Market Portfolio as recited in the current registration statements and reports filed under the 1940 Act.

11. Applicants submit that the proposed substitutions are consistent with the general purposes of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the terms of the proposed substitutions and related transactions meet the standards set forth in Sections 26(b) and 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30572 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26778]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 14, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the

request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc., et al. (70–7926)

GPU, Inc. ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and Jersey Central Power & Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), 2800 Pottsville Pike, Reading, Pennsylvania 19640, each an electric public utility subsidiary of GPU, have filed a post-effective amendment to their declaration under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 under the Act.

By order dated October 26, 1994 (HCAR No. 26150) ("Order") and supplemental order dated July 17, 1996 (HCAR No. 26544) ("Supplemental Order"), the Commission, among other things, authorized, through December 31, 1997: (1) GPU, JCP&L, Met-Ed, and Penelec ("Declarants") to issue, sell and renew their respective unsecured promissory notes ("Unsecured Promissory Notes"), maturing not more than nine months after issuance, to various commercial banks under loan participation arrangements and informal lines of credit ("Lines of Credit") in amounts up to the limitations on short-term indebtedness contained in their respective charters ("Charter Limits") and, in the case of GPU, up to $250 million; (2) JCP&L, Met-Ed and Penelec to issue and sell their unsecured short-term promissory notes as commercial paper ("Commercial Paper") in amounts up to their Charter Limits; and (3) the Declarants to issue, sell and renew unsecured promissory notes to lenders other than commercial banks, insurance companies or similar institutions ("Other Short-Term Debt") in amounts up to their Charter Limits and, in the case of GPU, up to $250 million. Borrowings under Lines of Credit, Commercial Paper and Other Short-Term Debt are collectively referred to as "Short-Term Borrowings."

Declarants request that the period during which they may issue, sell and renew Short-Term Borrowings be extended to December 31, 2000. In all other respects, the transactions remain as described in the Order and the Supplemental Order.

The proceeds from the borrowings will be used by the Declarants to finance their businesses, including, in the case of GPU, to finance the acquisition of exempt wholesale generators, as defined in section 32 of the Act, and foreign utility companies, as defined in section 33 of the Act.

Central and South West Corporation, et al. (70–9107)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered holding company, and its electric public-utility subsidiary companies, Central Power and Light Company ("CPL"), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma ("PSO"), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156–0001, and West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, and Central and South West Services, Inc. ("CSW Services"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a service company subsidiary of CSW (all companies collectively, "Applicants") have filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b) and 12(e) of the Act and rules 43, 45, 54, 62 and 65 under the Act.

The Applicants seek authorization to engage in various financing and related transactions ("Financing Plan"), effective through December 31, 2002 ("Authorization Period"). As described more fully below, the Applicants seek authority for: (i) External financings by CPL, PSO, SWEPCO, WTU and CSW Services ("Subsidiaries") and CSW; (ii) CSW to acquire common stock from the Subsidiaries; (iii) the Subsidiaries to repurchase their common stock from CSW; (iv) credit enhancement for their securities, including guarantees; (v) the Subsidiaries to guarantee the securities of their subsidiary financing entities; (vi) CSW and the Subsidiaries to repurchase their securities by means of tender offers; (vii) the issuance of other types of securities not exempt under rules 45 and 52; (viii) the Subsidiaries to organize new entities for facilitating certain types of financings and for the financing entities to issue securities to third parties; and (ix) increasing their authorized capital, amending their articles of incorporation, and soliciting proxies through a proxy statement requesting shareholder approval of any amendment to their articles of incorporation, subject to a reservation of jurisdiction pending completion of the record. The Applicants request authority to engage in financing transactions for which the specific terms and conditions are not currently known, subject to certain conditions concerning the financial condition of the Applicants.

Financings by each Applicant will be subject to the following limitations: (i) The issuance of common stock by CSW will not exceed $250 million; (ii) external financings by the Subsidiaries, other than the refunding of outstanding securities which will not be limited, will not exceed the following amounts—(a) CPL–$500 million, (b) PSO–$250 million, (c) SWEPCO–$300 million, (d) WTU–$150 million, and (e) CSW Services–$100 million; (iii) the issuance of common stock by the Subsidiaries to CSW will not exceed the following amounts—(a) CPO–$200 million, (b) PSO–$100 million, (c) SWEPCO–$100 million, and (d) WTU–$50 million; (iv) repurchases by the Subsidiaries of their common stock from CSW will not exceed the following amounts—(a) CPL–$1 billion, (b) PSO–$150 million, (c) SWEPCO–$200 million, and (d) WTU–$100 million; and (v) credit enhancement and guarantees will only be provided in connection with a financing that satisfies the requirements set forth in an order authorizing this Application.

1. External Financings by CSW

CSW requests authorization to issue common stock, including issuances of common stock upon the exercise of convertible debt or pursuant to rights, options, warrants and similar securities. CSW also requests authorization to purchase common stock from the Subsidiaries and to sell common stock back to the Subsidiaries. The only financing authority requested by CSW in the Application is to issue common stock.

CSW seeks authority to issue common stock in any of the following ways: (i) Through underwriters or dealers; (ii) directly to a limited number of purchasers or to a single purchaser, or (iii) through agents or dealers. If underwriters are used in the sale of the securities, these securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters) or directly by one or more underwriters acting alone. The securities may be sold directly by CSW or through agents designated from time to time. If dealers are used in the sale of any securities, these securities will be sold to the dealers as principal. Any dealers may then resell these securities to the public at varying prices to be determined by the dealer at the time of resale.

If the common stock is being sold by CSW in an underwritten offering, CSW may grant the underwriters a "green shoe" option permitting the purchase from CSW of additional equity securities (an additional 15% under present guidelines) at the same price as the original equity securities then being offered, solely for the purpose of covering over-allotments.

2. External Financing by the Subsidiaries

The Subsidiaries seek authority to obtain funds externally through: sales for preferred stock, including the sale of tax-advantaged preferred securities; short-term debt financing; long-term debt financing, such as first mortgage bonds, pollution control revenue bonds, notes (secured and unsecured) and debentures; medium-term notes; other forms of indebtedness; and borrowings under credit agreements ("Credit Agreements"). The Subsidiaries also request authorization to issue common stock to CSW.

The Subsidiaries propose to borrow from banks or other lending institutions from time to time through the end of the Authorization Period. The borrowings will be evidenced by promissory notes issued to the lender, to be dated as of the date of the first borrowing, with each borrowing maturing in not more than 50 years. Notes may or many not be prepayable, in whole or in part, with or without a premium in the event of prepayment.

The Subsidiaries seek authority to issue external financing in any of the following ways: (i) Through underwriters or dealers; (ii) directly to a limited number of purchasers or to a single purchaser, or (iii) through agents or dealers. If underwriters are used in the sale of the securities, these securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by managing underwriters) or directly by one or more underwriters acting alone. The securities may be sold directly by the Subsidiaries or through agents designated from time to time. If dealers are used in the sale of any securities, these securities will be sold to the dealers as principal. Any dealers may then resell these securities to the public at varying prices to be determined by the dealer at the time of resale.

If debt securities are being sold, they may be sold under "delayed delivery contracts" which permit the underwriters to locate buyers who will agree to buy the debt at the same price but at a later date than the date of the closing of the sale to the underwriters. Debt securities may also be sold through the use of medium-term note and similar programs, including in transactions covered by the rule 144A under the Securities Act of 1933. Pollution control revenue bonds may be sold either currently or in forward refunding where the price of the securities is established currently for delivery at a future date.

3. Acquisition of Securities

CSW requests authorization to purchase common stock from the Subsidiaries. In addition, the Subsidiaries request authorization to repurchase their common stock from CSW.

4. Credit Enhancement

Applicants may obtain credit enhancement for the securities covered by this Application, which could include insurance, a letter of credit or a liquidity facility. The Applicants anticipate they may be required to provide credit enhancement if they were to issue floating rate securities, whereas credit enhancement would be a purely economic decision for fixed rate securities. The Applicants anticipate that even though they would be required to pay a premium or fee to obtain the credit enhancement, they would realize a net benefit through a reduced interest rate on the new securities. Applicants will obtain credit enhancement only if it is economically beneficial to do so.

If insurance is obtained, the Applicants may be required to enter into an agreement with the insurer and an escrow agent under which the Applicants would be obligated to make payments of certain amounts into an escrow fund upon a failure to maintain certain financial ratios and on the occurrence of certain other events. Amounts held in an escrow fund would be payable to the insurer as an indemnity for any amounts paid by the insurer for principal or interest on the new securities.

5. Financing Entities

The Subsidiaries seek authority to organize new corporations, trusts, partnership or other entities to be created for the purpose of facilitating certain types of financing such as the issuance of tax advantaged preferred securities. The financing entities may issue these securities to third parties. In addition, authority is requested for (i) the Subsidiaries' issuance of debentures or other evidences of indebtedness to a financing entity in return for the proceeds of the financing and (ii) the acquisition by a Subsidiary of voting interests or equity securities issued by the financing entity to establish the Subsidiary's ownership of the financing entity (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, such as shares of stock or partnership interests, involving an amount usually ranging from 1 to 25 percent of the capitalization of the financing entity). The Subsidiaries also request authorization to enter into expense agreements with their respective financing entities, under which they would agree to pay all expenses of the financing entity.

6. Guarantees

Aside from any guaranty provided by any instrument acquired and/or issued for credit enhancement, the Subsidiaries may also guarantee (i) payment of interest, dividends or distributions on the securities issued by their subsidiary financing entities if and to the extent these financing entities declare dividends or distributions or pay interest out of funds legally available therefor; (ii) payments to the holders of the securities issued by financing entities of amounts due upon liquidation of these financing entities or redemption of their securities; and (iii) certain additional amounts that may be payable on these securities.

7. Refinanancings/Tender Offers

In connection with any refinancing by CSW or a Subsidiary under an order in this filing, CSW and the Subsidiaries may determine to acquire outstanding securities ("Outstanding Securities") through tender offers to the holders of the Outstanding Securities. Tender offers may be conditioned upon receipt of a certain percentage of the Outstanding Securities. The tender offer price would be based on a number of factors, including the coupon rate of the Outstanding Securities, the date of expiration of the refunding protection of the Outstanding Securities, the date of expiration of the refunding protection of

the Outstanding Securities, the redemption price on the expiration date and the then current market rates for similar securities, all of which are relevant to the decision of an informed holder as to whether to hold or sell Outstanding Securities. Holders of Outstanding Securities may be offered a fixed price for their Outstanding Securities, or the tender offer may be a "fixed spread" offer where the Applicants will offer a price based upon a fixed spread over comparable U.S. Treasury securities. Any tender offer will be conducted in accordance with standard market practice, *i.e.*, the length of time the offer will be held open, the method of solicitation, etc., at the time of the tender offer.

The Applicants would, in connection with any tender offer, retain one or more investment banking firms experienced in these matters to act as tender agent and dealer-manager. The dealer-manager will act as the Applicants' agent in disseminating the tender offer and receiving responses thereto. As a dealer-manager, the investment banking firm will not itself become obligated to purchase or sell any of the Outstanding Securities. The dealer-manager's fee will be determined following negotiation and investigation of fees in similar transactions and will include reasonable out-of-pocket expenses and attorney's fees. It is expected that the Applicants will be required, as is customary, to indemnify the dealer-manager for certain liabilities. The Applicants may also retain a depositary to hold the tendered Outstanding Securities pending the purchase thereof and/or an information agent to assist in the tender offer.

8. Other Securities

The Applicants also propose to issue other types of securities within the parameters of this Application during the period ending December 31, 2002. The Applicants request that the Commission reserve jurisdiction over the issuance of additional types of securities. The Applicants also undertake to file a post-effective amendment in this proceeding which will describe the general terms of each security and request a supplemental order of the Commission authorizing their issuance. The Applicants request that each supplemental order be issued by the Commission without further public notice.

9. Charter Amendments

The Applicants propose that they be allowed to (i) increase their authorized capital as deemed necessary and appropriate by CSW for proper corporate purposes, (ii) amend their articles of incorporation, and (iii) solicit proxies through a proxy statement, filed under and meeting the standards of the Securities Exchange Act of 1934, requesting shareholder approval of any amendment to their articles of incorporation.

Proxy solicitation material relating to amendments to the articles of incorporation will meet the requirements of Schedule 14A under the Securities Exchange Act of 1934, and will, to the extent required, be reviewed for compliance with this regulation by the Commission before the proxy material is sent to shareholders. The Applicants request reservation of jurisdiction over any order to solicit proxies and the implementation of amendments to the articles of incorporation pending completion of the record. The Applicants further request that any supplemental order authorizing amendments to the articles of incorporation be issued by the Commission without further public notice.

The authorization requested by the Applicants will be subject to the following conditions: (i) For financings at the Subsidiary level only, the Subsidiaries seeking to issue securities or enter into Credit Agreements will maintain long-term debt ratings which are investment grade as established by a nationally recognized statistical rating organization (as this term is used in rule 15c3–1(c)(2)(vi)(F) under the 1934 Act); (ii) the effective cost of money on debt securities will not exceed the greater of (a) 300 basis points over comparable term U.S. Treasury securities, or (b) a gross spread over comparable term U.S. Treasury securities which is consistent with comparable investment grade securities; (iii) the effective cost of money for borrowings under Credit Agreements will not exceed the greater of (a) the prime rate plus 300 basis points, or (b) the rate of interest for comparable investment grade credits prevailing in the market on the date of borrowing; (iv) the effective cost of money on preferred stock and other fixed income oriented securities will not exceed the greater of (a) 500 basis points over 30 year term U.S. Treasury securities, or (b) a gross spread over 30 year term U.S. Treasury securities which is consistent with comparable investment grade securities; (v) the underwriting fees, commissions, or other similar expenses paid in connection with the issue, sale or distribution of a security under an order for this filing will not exceed 5% of the principal or total amount of the financing; (vi) the aggregate amount of outstanding external financing, other than the refunding of outstanding securities which will not be limited, will not exceed $2 billion; and (vii) proceeds of the proposed financing may not be used to invest in an exempt wholesale generator, as defined under section 32 of the Act, or a foreign utility company, as defined under section 33 of the Act. Any deviation from these conditions would require further Commission approval.

The Applicants request authorization to deviate from the Commission's *Statement of Policy Regarding First Mortgage Bonds*, HCAR No. 13105 (Feb. 16, 1956), as amended by HCAR No. 16369 (May 8, 1969), and *Statement of Policy Regarding Preferred Stock*, HCAR No. 13106 (Feb. 16, 1956), as amended by HCAR No. 16758 (June 22, 1970), as applicable, where they apply to the proposed financings.

The Applicants are proposing that the authorization to engage in external financing requested in this filing supersede all relevant prior authorizations (the "Prior Authorizations").[1] If this proposal is approved, the Applicants would engage in long-term financing in the context of their needs and financial market conditions at the time of issuance, subject to the terms and conditions set forth in this notice and in any order in this file, and without reference to the terms and restrictions set forth in the Prior Authorizations. Any long-term debt or other security would have the designations, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, interest payment terms, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as the Applicants may at the time of issuance determine, unless this Application specifically provides otherwise.

New England Electric System (70–9109)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

NEES requests authority through December 31, 2002 to issue short-term notes to banks ("Notes") and/or commercial paper to dealers ("CP") up to an aggregate amount of $500 million outstanding at any one time.[2]

NEES proposes to enter into a credit agreement ("Credit Agreement") with Merrill Lynch Capital Corporation ("MLCC"), as arranger and syndication agent. The Credit Agreement provides for a revolving facility of $500 million which reduces to $400 million after three years and to $300 million after four years. Under the Credit Agreement, NEES would borrow at one of three types of interest rates.[3] Under the Credit Agreement, NEES is required to pay a facility fee quarterly in arrears to each bank that makes a commitment to loan funds to NEES.[4]

NEES also proposes to make arrangements with certain banks for short-term lines of credit, for various purposes, to be evidenced by notes payable maturing in less than one year from the date of issuance, and at rates that will not exceed on a daily basis the greater of the bank's base or prime lending rate, or the rate published daily as the high federal funds published in the Wall Street Journal.

NEES also proposes to issue and sell CP directly to one or more nationally recognized commercial paper dealers ("CP Dealers") Initially the CP Dealer will be CS First Boston Corporation and/or Merrill Lynch Money Markets Incorporated. NEES states that the commercial paper so issued and sold will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days, with no payment rights until maturity. The CP will be in denominations of not less than $50,000, and will be at an interest rate generally not exceeding the base lending rate at BankBoston.[5]

NEES states that it may use the proceeds from the authorized transactions, subject to meeting margin requirements, to facilitate a share buy back of its subsidiaries' shares (not to exceed five million shares) after their anticipated sale of their non-nuclear generation business to U.S. Generating Company in the near future. In addition, NEES states that it may need to make investments in anticipation of receipt of the sale proceeds in order prudently to re-deploy funds obtained through the sale. NEES further states that it may also need to use such proceeds to make contributions to NEP, pending consummation of the sale. NEES also plans to use proceeds for other general corporate purposes.

NGE Resources, Inc. (70–9111)

NGE Resources, Inc. ("NGE"), a New York corporation not currently subject to the Act, located at One Commerce Plaza, Suite 2006A, Albany, New York 12260, has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

NGE is a subsidiary of New York State Electric & Gas Corporation ("NYSEG"), a public utility company also not currently subject to the Act. NYSEG is engaged in generating, purchasing, transmitting and distributing electricity, and purchasing, transporting and distributing natural gas in the central, eastern and western parts of the state of New York.[6]

In summary, NGE seeks authority to acquire all of the outstanding common stock of NYSEG and of a wholly owned subsidiary of NYSEG ("Genco") organized to own all or a part of NYSEG's coal-fired generating assets ("Generation Assets"). In addition, NGE seeks an order under section 3(a)(1) of the Act exempting NGE from all provisions of the Act, except section 9(a)(2).

On May 20, 1996 the New York Public Service Commission ("PSC") issued an order establishing certain electricity industry restructuring goals for the state of New York. In response, NTSEG filed a petition on December 19, 1996 with the PSC requesting authority to form a holding company over NYSEG and to separate the Generating Assets from its other businesses regulated by the PSC.

Under a proposed plan of exchange, all outstanding NGE common stock will be canceled and all of the NYSEG common stock will be exchanged on a share-for-share basis for NGE common stock ("Share Exchange"), subject to appraisal rights. Each person who owned NYSEG common stock immediately prior to the Share Exchange (other than those who exercise their appraisal rights) will immediately after the Share Exchange own a corresponding number of shares and percentage of the outstanding NGE common stock. In addition, NGE will own all of the outstanding shares of NYSEG Common Stock.[7]

NGE also seeks authority to acquire all of the outstanding common stock of Genco, which will become an electric utility company as a consequence of the transfer to it of the Generation Assets by NYSEG. NYSEG may temporarily become a holding company under the Act if the Generation Assets are transferred to Genco prior to the acquisition of Genco by NGE. In this case, NYSEG will claim an exemption form the Act under sections 3(a)(1) or 3(a)(2) of the Act.

The Share Exchange will not affect shares of NYSEG's Serial Preferred Stock ("NYSEG Preferred Stock"), which will remain securities of NYSEG after the Share Exchange. Those shares of NYSEG Preferred Stock that were

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[1] Holding Co. Act Release Nos. 26703 (Apr. 10, 1997), 26548 (July 30, 1996), 26531 (June 12, 1996), 26390 (Oct. 13, 1995), 26340 (July 26, 1995), 26309 (June 15, 1995), 26045 (May 2, 1994), 26019 (Apr. 6, 1994), and 25928 (Nov. 19, 1993).

[2] By Commission Order dated October 9, 1996 (HCAR No. 26589), NEES was authorized to issue and sell short-term promissory notes to banks up to a maximum aggregate principal amount outstanding at any time not exceeding $100 million. This borrowing authority expires October 31, 1998. The authority requested in this filing is intended to supersede such existing authorization.

[3] 1. At a periodic fixed Eurodollar rate with maturities of 1, 2, 3 or 6 months at the then applicable LIBOR plus a margin (based on NEES' subsidiaries' senior debt ratings), payable at the end of each interest period or quarterly for interest periods longer than 3 months.

2. At the highest of the following base rates: (a) BankBoston base rate, (b) ½ of 1% per annum above the latest three week moving average of secondary market offering rates in the United States for three-month certificates of deposit of major U.S. money market banks adjusted to the nearest ⅛ of 1 percent; and (c) ½ of 1% per annum above the federal funds rate. These would be payable quarterly in arrears and would be calculated on the basis of a 365/366 day year.

3. At a rate obtained through competitive bids. NEES may request competitive bids for an aggregate outstanding amount not to exceed $100 million.

[4] The annual amount of the facility fee is determined by multiplying (i) the particular bank's commitment amount and (ii) the Applicable percentage (defined below). The Applicable Percentage varies between 0.065% and 0.200%, depending on the lowest debt rating of NEES' electric utility subsidiaries (Massachusetts Electric Company, The Narragansett Electric Company, and New England Power Company ("NEP") senior secured debt. If NEP does not have secured debt, then the rating for its senior debt will apply. Based on current ratings, the Applicable percentage would be 0.105%.

[5] NEES states, however, that the effective interest cost of such paper is based on the supply of, and demand for, that and similar paper at the time of sale. Specifically, NEES notes that on several previous occasions short-term money markets have become very volatile during brief periods of extraordinary demand, and the interest costs of commercial paper have exceeded bank base rates. Because such volatile market conditions usually exist for brief periods, it is not anticipated that any sale of commercial paper with interest costs in excess of bank base rates would have a significant marginal impact on the annual interest cost of NEES. Therefore, NEES states that while it anticipates that the effective annual cost of borrowing through commercial paper will not exceed the annual base rate borrowing from BankBoston, in order to obtain maximum flexibility during the periods described above, it may issue commercial paper with a maturity of not more than 90 days with an effective cost in excess of the then-existing lending rate.

[6] In addition, NYSEG has two direct nonutility subsidiaries. These are Somerset Railroad Corporation, which owns a rail line used to transport coal and other materials to one of NYSEG's generating plants, and NGE Enterprises, Inc. ("Enterprises"). Enterprises owns interests in various companies engaged in power marketing, environmental and conservation engineering and consulting, energy-related financial services, energy usage information services, demand-side management services, utility-related software development, and energy management services.

[7] Following the consummation of the proposed transactions, one of NYSEG's two direct nonutility subsidiaries, Somerset Railroad Corporation, will be a direct subsidiary of Genco and the other, NGE Enterprises, Inc., will be a direct subsidiary of NGE.

issued and outstanding immediately prior to the Share Exchange will have the same preferences, designations, relative rights, privileges and powers, and will be subject to the same restrictions, limitations and qualifications, as were applicable prior to the Share Exchange. Other than the release of the Generation Assets from the lien of NYSEG's first mortgage bond indenture, the proposed transactions will not result in any change in the outstanding indebtedness of NYSEG, which will continue to be obligations of NYSEG after the Share Exchange.

NGE asserts that it will satisfy the requirements for an exemption under section 3(a)(1). It states that it, NYSEG and Genco are organized and carry on their business substantially in New York State.

Monongahela Power Company, et al. (70–9115)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, each an electric utility subsidiary of Allegheny Energy, Inc., a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Monongahela, Potomac Edison, and West Penn ("Declarants") propose to enter into an agreement with The County Commission of Pleasants County, West Virginia ("County Commission") under which, through December 31, 2002, Declarants will issue notes to support the contemporaneous issuance of pollution control revenue bonds by the County Commission.

The County Commission proposes to issue $92.5 million aggregate principal amount in three new series of long-term bonds ("Series D Bonds"). The proceeds from the Series D Bonds will be used to refund the County Commission's Series A Bonds presently outstanding. The Series A Bonds were issued for the tax exempt financing of certain air and water pollution control equipment and facilities at the Declarants' Pleasants Power Station located in Pleasants County, West Virginia.

The Series D Bonds will be issued under a supplemental trust indenture with a corporate trustee, approved by the Declarants, and sold at a time, interest rate, and price approved by the Declarants. The interest rate for the Series D Bonds will not exceed the interest rate of the corresponding series of Series A Bonds presently outstanding. The Series D Bonds will mature no later than the year 2020.

Each Declarant will deliver concurrently with the issuance of the Series D Bonds its non-negotiable Pollution Control Note ("Notes") corresponding to the Series D Bonds in respect of principal amount, interest rate and redemption provisions (which may include a special right of the holder to require the redemption or repurchase of the Series D Bond at stated intervals) and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. The Notes will be secured by a second lien on the Facilities and certain other properties, under the Deed of Trust and Security Agreement dated November 1, 1977, as supplemented by a First Supplement thereto dated August 1, 1978 as to West Penn and Potomac Edison and a First Supplemental thereto dated February 1, 1979 as to Monongahela, delivered by the Declarants to the trustee creating a mortgage and security interest in the Facilities and certain other property (subject to the lien securing each Declarant's first mortgage bonds). Payment on the Notes will be made to the Trustee under the Third Supplemental Indentures to be entered into between the Declarants and the Trustee and will be applied by the Trustee to pay the maturing principal and redemption price of and interest and other costs on the Series D Bonds as the same become due. Each Declarant also proposes to pay any trustees' fees or other expenses incurred by the County Commission.

The Columbia Gas System, Inc., et al, (70–9129)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, its service company subsidiary, Columbia Gas System Service Corporation, its liquified natural gas subsidiary, Columbia LNG Corporation, its trading subsidiary, Columbia Atlantic Trading Corporation, Columbia's energy services and marketing subsidiaries, Columbia Energy Services Corporation ("Columbia Energy"), Columbia Assurance Agency, Inc., Columbia Energy marketing Corporation, Columbia Power Marketing Corporation, and Columbia Service Partners, Inc., all located at 12355 Sunrise Valley Drive, Suite 300, Reston, Virginia 20191–3458; Columbia's four distribution subsidiaries, Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc. (collectively, "Utility subsidiaries"), and Columbia's service company subsidiary, Commonwealth Gas Service, Inc., all located at 200 Civic Center Drive, Columbus, Ohio 43215; Columbia's two transmission subsidiaries, Columbia Gas Transmission Corporation, located at 12801 Fairlakes Parkway, Fairfax, Virginia 22030–0146, and Columbia Gulf Transmission Company, located at 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia's exploration and production subsidiary, Columbia Natural Resources, Inc. ("CNR"), CNR's subsidiaries, Alamco, Inc., Alamco-Delaware, Inc. and Hawg Hauling & Disposal, Inc, all located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia's propane distribution subsidiary, Columbia Propane Corporation, located at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236; Columbia's network services subsidiary, Columbia Network Services Corporation ("CNS") and CNS' subsidiary, CNS Microwave, Inc., both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; and Columbia's other subsidiaries, Tristar Ventures Corporation, Tristar Capital Corporation, Tristar Pedrick Limited Corporation, Tristar Pedrick General Corporation, Tristar Binghamton Limited Corporation, Tristar Binghamton General Corporation, Tristar Vineland Limited Corporation, Tristar Vineland General Corporation, Tristar Rumford Limited Corporation, Tristar Georgetown Limited Corporation, Tristar Georgetown General Corporation, Tristar Fuel Cells Corporation, TVC Nine Corporation, TVC Ten Corporation and Tristar System, Inc., all located at 205 Van Buren, Herndon, Virginia 22070 (collectively, the "System"), have filed an application-declaration under sections 6, 7, 9 and 10 of the Act and rules 53 and 54 under the Act.

Columbia requests Commission approval to updated and expand its existing short-term financing authority. By Commission order dated December 23, 1996 (HCAR No. 26634) (the "Omnibus Financing Order"), Columbia was authorized to engaged in a wide range of financing transactions through December 31, 2001, including short-term financing in an amount not to exceed $1 billion outstanding at any one time, subject to certain conditions and parameters. Columbia wishes to expand the foregoing order and specifically requests authorization to increase the System's short-term financing authority to an amount not to exceed $2 billion outstanding at any one time through December 31, 2003. The short-term financing could include a revolving credit agreement, the issuance of commercial paper, bid notes issued to individual banks, which are participants in the revolving credit agreement, bank borrowing, or medium-term notes issued under its Indenture dated November 28, 1995, between Columbia and marine Midland Bank, Trustee, as amended.

Columbia and the Utility Subsidiaries also request authorization for the Utility Subsidiaries to issue to Columbia, and for Columbia to acquire from the utility Subsidiaries, short-term securities through December 31, 2003.

The authorization Columbia requests is subject to the general conditions for financing contained in the Omnibus Financing Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30630 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39327; File No. SR–BSE–97–7]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. to Extend a Pilot Program Relating to Market-On-Close Orders

November 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1997,[3] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange has requested accelerated approval for the proposal, as amended. This order approves the Exchange's proposal, as amended, on an accelerated basis, and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend its pilot program for the handling of Market-on-Close ("MOC") orders through October 31, 1998.[4] The Exchange's pilot program procedures mirror the procedures in place on the primary markets, including the New York Stock Exchange, Inc. ("NYSE"), in order to ensure equal treatment of MOC orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Exchange's pilot program[5] for the handling of MOC orders on expiration days,[6] non-expiration days, and when NYSE Rule 80A is in effect. The pilot program, as previously approved by the Commission,[7] mirrors the procedures of the primary markets (including the NYSE) so that the Exchange does not become a haven for MOC orders for pilot stocks that are prohibited on the primary markets. In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the primary markets. The term "pilot stocks" refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.

On non-expiration days, these procedures include: (a) Providing a 3:50 p.m. deadline for the entry of all MOC orders in all stocks; (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:50 p.m.; (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:50 p.m. in the pilot stocks, stocks being added to or dropped from an index, and in any other stock with the approval of a floor official; and (d) limiting the entry of MOC orders after 3:50 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:50 p.m. in those instances where legitimate error has been made.

If an MOC index arbitrage order to buy (sell), to establish or increase a position (to eliminate or reduce a position), is entered and NYSE Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled regardless of the time NYSE Rule 80A goes into effect. If NYSE Rule 80A goes into effect prior to 3:50 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If NYSE Rule 80A goes into effect after 3:50 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

On expiration days, the pilot procedures include: (a) Providing a 3:40 p.m. deadline for the entry of all MOC orders in all stocks; (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:40 p.m.; (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:40 p.m. in the pilot stocks, stocks being added to or dropped from an index and, upon the request of a specialist, any other stock with the approval of a floor official; and (d) limiting the entry of MOC orders after 3:40 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made.

If an MOC index arbitrage order to buy (sell), to establish or increase a position (to eliminate or reduce a position), is entered and NYSE Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be canceled regardless

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] On November 10, 1997, the Exchange submitted an amendment to the filing, clarifying that the requested extension of the pilot was through October 31, 1998. *See* letter from Karen Aluise, Exchange to Mike Walinskas, Commission, dated November 10, 1997 ("Amendment No. 1").

[4] *See* Amendment No. 1, *infra* note 3.

[5] The pilot program has not been altered since its initial approval by the Commission. Phone conversation between Karen Aluise, Exchange and Janice Mitnick, Commission on November 10, 1997. *See* Release No. 34–37478 (July 25, 1996), 61 FR 40268 (August 1, 1996) (approving SR–BSE–96–4 relating to the Exchange's MOC pilot program).

[6] The term "expiration days" refers to both: (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures, and options on stock index futures expire or settle concurrently and (2) the trading day on which end of calendar quarter index options expire.

[7] *See* Release No. 34–37478 (July 25, 1996), 61 FR 40268 (August 1, 1996), *infra* note 5.

of the time NYSE Rule 80A goes into effect. If NYSE Rule 80A goes into effect prior to 3:40 p.m., the MOC order may be re-entered with the instruction "buy minus" ("sell plus"). If NYSE Rule 80A goes into effect after 3:40 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction "buy minus" ("sell plus") to offset the imbalance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5), in particular in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that it does not believe that the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–7, and should be submitted by December 12, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rule and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[8] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, the exchanges instituted certain safeguards (including the creation of auxiliary closing procedures on expiration days) to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. The Commission believes that the MOC order handling requirements instituted by the Exchange, as well as those instituted by other exchanges, work relatively well and may result in more orderly markets at the close on expiration days. In addition, under current competitive market conditions, a regional exchange which trades NYSE-listed stocks but does not have comparable auxiliary closing procedures could be utilized by market participants to enter MOC orders that would be prohibited on the NYSE. Although the Commission has no reason to believe that the Exchange has or will become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the Exchange that if this did occur, it could have a negative impact on the fairness and orderliness of the national market system. Accordingly, the Commission finds that it is reasonable for the Exchange to extend the pilot program for MOC orders, and thereby maintain procedures for MOC orders received by the Exchange that should result in treatment consistent with that of MOC orders on the primary exchanges. Further, the Commission believes that the renewal of the pilot program does not present any new or novel regulatory issues not previously considered by the Commission when initially approving the pilot program for MOC orders.

The Commission notes that the NYSE received permanent approval for its MOC procedures in October 1996.[9] As stated above, the Exchange's procedures for MOC orders are based on those of the NYSE. The Division of Market Regulation staff requests that prior to submitting another request for extension of the pilot program, the Exchange consider seeking permanent approval of its MOC procedures.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By accelerating the effectiveness of the Exchange's pilot program, the Commission will enable the Exchange to continue the pilot program with as little disruption as possible. In addition, the Commission believes that the extension of the pilot does not present any new or novel regulatory issues as the Exchange's proposal merely reflects the pilot as previously approved by the Commission. Accordingly, Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the act, that the proposed rule change (file No. SR–BSE–97–7) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30627 Filed 11–20–97; 8:45 am]

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[8] In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competion, and capital formation. 15 U.S.C. 78c(f).

[9] See Release No. 34–37894 (October 30, 1996), 61 FR 56987 (November 5, 1996).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39324; File No. SR–CBOE–97–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Exchange Fees

November 13, 1997.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on October 3, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to establish various fees and discounts relating to options based on Dow Jones & Company ("Dow Jones") indexes, and the use of the Exchange's new cellular phone and pager systems. The Exchange also seeks to indefinitely suspend its Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change: is (i) To establish fees relating to options based on Dow Jones indexes, three of which began trading on October 6, 1997;[2] (ii) to indefinitely suspend, effective October 1, 1997, the Exchange's Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues;[3] (iii) to establish user fees relating to the Exchange's new trading-floor cellular phone system; and (iv) to impose fees for the repair of abusive damage to pagers. The Exchange is implementing these fee changes pursuant to Exchange Rule 2.22.

The Exchange proposes to establish a transaction fee schedule for all options based on Dow Jones indexes that is identical to the current OEX transaction fee schedule. The fees would be as follows: (1) Forty cents per contract for customer transactions that have a premium greater than or equal to one dollar; (2) twenty cents per contract for customer transactions that have a premium less than one dollar; (3) ten cents per contract for member firm proprietary transactions; and (4) six cents per contract for market maker transactions.

In addition, the Exchange proposes to apply a Large Trade Discount Program to Dow Jones indexes, through which customer orders in excess of one thousand contracts would receive a discount. While the first one thousand contracts of a customer order will be assessed regular transaction fee rates, all contracts in excess of one thousand would receive a fifty percent discount. It should be noted that the discount program relating to Dow Jones products will be separate and distinct from the Large Trade Discount Program currently applicable to all other Exchange products. The Exchange proposes to cap Retail Automated Execution System ("RAES") fees for Dow Jones indexes, so that the fee of twenty five cents per contract only applies to the first twenty five contracts of any RAES order.

The Exchange also proposes, effective October 1, 1997, to indefinitely suspend its Prospective Fed Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues. As a result of the large expenditure of resources devoted to the commencement of options trading in the Dow Jones indexes, the Exchange finds it necessary to indefinitely suspend its Prospective Fee Reduction Program to recoup working capital.

The Exchange further proposes to establish fees for its new trading-floor cellular phone system. A lease fee of one hundred dollars per month is proposed to be charged for each cellular phone. Additionally, a lost, stolen, or damaged phone fee will be assessed at the current replacement or repair cost.

Finally, the Exchange proposes to impose a fee for abusive damage to pagers. The fee will be assessed at the current repair cost.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(4)[5] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (e) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

[2] On October 6, 1997, the Exchange commenced trading options on the following Dow Jones indexes: the Dow Jones Industrial Index ("DJX"), the Dow Jones Utilities Index ("DUX"), and the Dow Jones Transportation Index ("DTX").

[3] The Exchange filed its proposed rule change with the Commission on October 3, 1997. However, the proposed rule change indefinitely suspends the Exchange's Prospective Fee Reduction Program for Market-Maker Transaction Fees, Floor Broker Fees, and Member Dues, as of October 1, 1997. The Commission notes that a proposed rule change made pursuant to Section 19(b)(3)(A) of the Act, such as SR–CBOE–97–53, is not effective until filed with the Commission.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–97–53 and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30625 Filed 11–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39323; File No. SR–CHX–97–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc; Order Granting Accelerated Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to a Ban on the Entry of Certain Stop Orders and Stop Limit Orders

November 13, 1997.

I. Introduction

On September 22, 1997, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new rule to prohibit the entry of certain stop orders and stop limit orders if the New York Stock Exchange ("NYSE") implements a stop order ban pursuant to NYSE Rule 80A.

The proposed rule change was published for comment in the **Federal Register** on October 20, 1997.[3] No comments were received on the proposal. On October 31, 1997, the CHX submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to add Article IX, Rule 10B (Stop Order Ban Due to Extraordinary Market Volatility) to prohibit the entry of certain stop orders and stop limit orders if the NYSE implements a stop order ban pursuant to NYSE Rule 80A. The NYSE's Rule 80A prohibits the entry of stop orders and stop limit orders if the price of the primary Standard and Poor's 500 Stock Price Index[5] futures contract traded on the Chicago Mercantile Exchange reaches a value 12 points below the contract's closing value on the previous trading day. Likewise, the Boston Stock Exchange ("BSE") prohibits the entry of stop and stop limit orders on the BSE when the NYSE has a ban in place.[6] The Exchange's new rule would exempt from the ban stop orders and stop limit orders of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.

The Exchange has previously adopted circuit breaker rules on a pilot basis[7] which parallel the circuit breaker rules of the NYSE.[8] Such rules are designed to dampen market volatility by providing a "time-out" to permit investors and market professionals to evaluate the state of the market. However, unlike the NYSE, the Exchange has not previously prohibited the entry of stop and stop limit orders during times of market stress.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirement of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[11] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission believes that the prohibition against accepting stop orders and stop limit orders, except for individual investor orders of up to 2,099 shares, during periods of market stress will facilitate the maintenance of an orderly market and reduce market volatility.

The Commission recognizes that banning the entry of stop orders and stop limit orders in a significant market decline may help to reduce market volatility related to increased selling pressure in the security. The Commission believes that banning the entry of stop orders and stop limit orders in dually-traded issues when NYSE Rule 80A is in effect should prevent the transfer of market volatility from the NYSE to the CHX. The Commission believes that the CHX proposal represents a reasonable effort to arrive at a coordinated means to address potential strain on the market that may develop should the CHX become inundated with orders that have been banned pursuant to NYSE Rule 80A.

The Commission notes that stop orders and stop limit orders on the specialist's book at the time the ban is instituted will remain eligible for execution. Consequently, the Commission believes that investors who have submitted orders will be unduly disadvantaged or effected by any subsequent ban on such orders. The Commission further believes that allowing individual investors to enter stop orders or stop limit orders for 2,099 shares or less, while restricting the professional use of such orders when the NYSE institutes a ban pursuant to Rule 80A represents a reasonable response to the problem presented by smaller, individual investors who may be able to monitor market conditions on a continuous basis and who desire a measure of downside protection in a rapidly moving market. In contrast, market professionals are able to monitor the market on a continuous basis and have less of a need to enter such orders. The Commission believes that this exception to the proposed rule should protect investors and the public interest by ensuring that individual investors' stop orders and stop limit orders will be handled even during periods of market volatility.[12]

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 merely accelerates the effectiveness of the proposed rule. The Commission further notes that no comments were received on this proposal.Finally, the Commission notes that it has previously approved an identical proposal submitted by the BSE.[13] Therefore, the Commission believes that this filing raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act[14] to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–24 and should be submitted by December 12, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)2() of the Act,[15] that the proposed rule change (SR–CHX–97–24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30626 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39326; File Nos. SR–NASD–97–71, SR–NASD–96–20, and SR–NASD–96–29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change, and Order Extending Temporary Approval of SR–NASD–96–20 and SR–NASD–96–29, Regarding Proposed Changes in the By-Laws and Restated Certificates of Incorporation of the NASD, NASD Regulation, Inc., The Nasdaq Stock Market, Inc., and the Plan of Allocation and Delegation of Functions by the NASD to Subsidiaries

November 14, 1997.

On September 19, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] In this filing, the NASD proposed amendments to the corporate documents of the NASD, its regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), and its stock market operating subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"),[3] as well as to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan"), in order to finalize the corporate restructuring of the Association.[4] Notice of this proposed rule filing was published in the **Federal Register** on October 10, 1997 ("Notice").[5] The Commission did not receive any comment letters on the filing.

Portions of the NASD Proposal were previously submitted and noticed in the **Federal Register** in SR–NASD–96–02, SR–NASD–96–16, SR–NASD–96–20, SR–NASD–96–29, and SR–NASD–97–28.[6] The versions of the by-laws and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39320 (October 10, 1997) 62 FR 54496.

[4] *See* Letter from Charles R. Haywood, Foley & Lardner, to Debbie Flynn, Division of Market Regulation, SEC, dated October 30, 1997 ("Amendment No. 1"). In Amendment No. 1, the CHX requested that the rule filing by approved on an accelerated basis due to the recent volatility in the financial markets and the Exchange's belief that such volatility may continue.

[5] Standard and Poor's 500 Stock Index is a service mark of Standard and Poor's Corporation.

[6] *See* Ch. II, Sec. 35(b) of the BSE's rules.

[7] *See* Securities Exchange Act Release Nos. 26218 (October 26, 1988) 53 FR 44137 (November 1, 1988) (order approving File No. SR–MSE–88–9); 27370 (October 23, 1989) 54 FR 43881 (October 27, 1989) (order approving File No. SR–MSE–89–9); 28580 (October 25, 1990) 55 FR 45095 (October 31, 1990) (order approving File No. SR–MSE–90–16); 29868 (October 28, 1991) 56 FR 56535 (November 5, 1991) (order approving File No. SR–MSE–91–14); 33120 (October 29, 1993) 58 FR 59503 (November 9, 1993) (order approving File No SR–CHX–93–22); 36414 (October 25, 1995) 60 FR 55630 (November 1, 1995) (order approving File No. SR–CHX–95–23); 37459 (July 19, 1996) 61 FR 39172 (July 26, 1996) (order approving File No. SR–CHX–96–20); and 38221 (January 31, 1997) 62 FR 5871 (February 7, 1997) (order approving File No. SR–CHX–96–33).

[8] *See* CHX Art. IX, Rule 10A.

[9] 15 U.S.C. 78f.

[10] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] The Commission notes that this exception to the proposed rule is consistent with the rules adopted by the NYSE and BSE. *See* NYSE Rule 80A(b) and Ch. II, Sec. 35(b) of the BSE's rules.

[13] *See* Securities Exchange Act Release No. 32607 (July 29, 1993) 58 FR 41538 (August 4, 1993) (order approving File No. SR–BSE–92–05).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In this Order, NASD Regulation and Nasdaq are referred to as the "Subsidiaries." The three entities, NASD, NASD Regulation, and Nasdaq are referred to collectively as the "Association."

[4] The corporate documents proposed for amendment are: (1) The By-Laws of the NASD; (2) the By–Laws of NASD Regulation; (3) the By-Laws of Nasdaq; (4) the Restated Certificate of Incorporation of the NASD; (5) the Restated Certificate of Incorporation of NASD Regulation; and (6) the Restated Certificate of Incorporation of Nasdaq. The by-laws and restated certificates of incorporation of the NASD and its Subsidiaries are collectively referred to in this Order as the "corporate governance documents."

[5] Securities Exchange Act Release No. 39175 (September 30, 1997), 62 FR 53062 (October 10, 1997). On September 29, 1997, the NASD filed a technical amendment to the proposed rule change, the substance of which was included in the Notice. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 29, 1997. On September 30, 1997, the filing was further amended by the NASD to correct non-substantive typographical errors, all of which were incorporated in the original filing as well. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Mandy S. Cohen, Division of Market Regulation, Commission. Subsequent to notice of the rule filing, the NASD filed Amendment No. 2, which adjusted the period during which a member may add an agenda item to the annual meeting, to allow the NASD sufficient time to prepare for the new agenda item. See letter from T. Grant Callery, General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 7, 1997. Collectively, the original filing and its subsequent amendments are referred to herein as the "NASD" Proposal."

[6] Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (File No. SR–NASD–96–02); Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (File No. SR–NASD–96–16); Securities Exchange Act Release No. 37282 (June 6, 1996), 61 FR 29777 (June 12, 1996), (File No. SR–

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Delegation Plan contained in SR–NASD–96–02 and 96–16 were superseded by the later filings. The Commission's temporary approval of the versions of the by-laws and Delegation Plan proposed in SR–NASD–96–20 and 96–29 (as amended), which is scheduled to lapse on November 15, 1997, will be temporarily extended again, until the effective dates of the provisions approved in this Order.[7] The revisions to the corporate governance documents and the Delegation Plan proposed in SR–NASD–97–28 were withdrawn by Amendment No. 3 thereto.[8]

I. Introduction and Background

In November 1994, the NASD Board of Governors appointed the Select Committee on Structure and Governance ("Select Committee") to review the NASD's corporate governance structure and to recommend changes to enable the NASD to better meet its regulatory and business obligations, including its oversight of the Nasdaq market. The Select Committee published its findings and recommendations in the Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors ("Select Committee Report"), which was presented to the NASD Board of Governors at its September 1995 board meeting.

Following the recommendations of the Select Committee, the NASD proposed reorganizing its corporate structure. Nasdaq was given sole responsibility to operate and oversee the Nasdaq market and other over-the-counter ("OTC") markets, while NASD Regulation was given responsibility for regulation and member and constituent services. The NASD retained ultimate policymaking, oversight, and corporate authority as the parent holding company and statutory self-regulatory organization ("SRO"), while granting substantial deference to the operating Subsidiaries in the areas of their respective jurisdictions. These revisions to the corporate structure, outlined in the Delegation Plan[9] and implemented through amendment of the governing corporate documents, were proposed and adopted in mid-1996.[10]

On August 8, 1996, the Commission issued an order pursuant to Section 19(h)(1) of the Act ("SEC Order"), including fourteen undertakings ("Undertakings"),[11] and a related report pursuant to Section 21(a) of the Act ("21(a) Report").[12] The SEC Order made certain findings about the NASD and imposed remedial sanctions, including ordering the NASD to comply with the Undertakings. The Commission determined that the NASD had not complied with its own rules and had failed to satisfy its obligations under the Act to enforce such rules and the federal securities laws.

The 21(a) Report findings indicated, among other things, that market making firms were afforded a disproportionate representation on the boards and committees that formerly governed the NASD, administered its disciplinary process, and operated the Nasdaq market. The Commission found that the "undue influence of market makers and a lack of vigor and balance in the NASD's enforcement activities with respect to market maker firms" was inconsistent with the NASD's statutory obligation to oversee the Nasdaq market, and to enforce its rules and regulations fairly as to all member firms.[13]

Based on the Commission's specific findings, the NASD agreed to the Undertakings, including, among other things, undertakings to improve public representation on its Boards and committees, to confer sole discretion in the regulatory staff of the NASD as to prosecutorial and regulatory matters, and to promulgate and apply uniform standards for regulatory and other access issues.[14] In response to the

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NASD–96–20), as amended; Securities Exchange Act Release No. 37425 (July 11, 1996), 61 FR 37518 (July 18, 1996) (File No. SR–NASD–96–29), as amended; and Securities Exchange Act Release No. 38545 (April 24, 1997) 62 FR 25226 (May 8, 1997) (File No. SR–NASD–97–28), as amended, respectively.

[7] See Securities Exchange Act Release No. 38900 (August 7, 1997), 62 FR 43571 (August 14, 1997) (SR–NASD–97–29) and Securities Exchange Act Release No. 38644 (May 15, 1997), 62 FR 43571 (May 22, 1997) (SR–NASD–96–20). The effective dates of the provisions approved by this Order are set forth *infra* notes 51 and 52 and the accompanying text.

[8] See letter from Alden S. Adkins, General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 11, 1997 (Amendment No. 3 to SR–NASD–97–28).

[9] The initial version of the Delegation Plan (with the implementing provisions contained in Rule 0130) was filed with the Commission in SR–NASD–96–16. For the purposes of this Order, reference to a "Rule" refers to the NASD Rules of the Association. It was published for comment and approved by the Commission on a temporary basis for a period of 90 days. See Release No. 34–37107, *supra* note 6. The Commission thereafter published notice of proposed rule changes containing revisions to the initial Delegation Plan and granted temporary accelerated approval thereto in Release No. 34–37425, *supra* note 6 (additional 120 day approval, as revised), Securities Exchange Act Release No. 37957 (November 15, 1996), 61 FR 59267 (November 21, 1997) (additional six month temporary approval through November 15, 1997, as revised), Securities Exchange Act Release No. 38645 (May 15, 1997), 62 FR 28086 (May 22, 1997) (additional six month temporary approval, as revised), and Release No. 34–38909, *supra* note 7 (continuing temporary approval through November 15, 1997).

[10] The Commission first granted temporary approval of the by-law revisions implementing the restructuring on April 11, 1996. See Release No. 34–37106, *supra* note 6. The Commission thereafter published notice of proposed rule changes containing revisions to the by-laws and/or granted temporary accelerated approval of such revisions in Securities Exchange Act Release No. 37424 (July 11, 1996), 61 FR 37515 (July 18, 1996) (notice); Release No. 34–37282, *supra*, note 6 (temporary approval for 120 days, as revised); Securities Exchange Act Release No. 37956 (November 15, 1996), 61 FR 59265 (November 21, 1996) (temporary approval for 6 months, as revised); Release No. 34–38644, *supra* note 7 (temporary approval for 6 months, as revised).

[11] Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056). The first six Undertakings included in the SEC Order are reproduced *infra*, in note 14.

[12] Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (Aug. 8, 1996).

[13] See 21(a) Report, *supra* note 11, at 39.

[14] Undertakings one through six of the SEC Order require the NASD:

(1) To implement and maintain at least fifty percent independent public and non-industry membership in its Board of Governors, the Board(s) of Governors or Directors of all of its subsidiaries and affiliates that exercise or have delegated self-regulatory functions, and the following committees: The National Nominating Committee, the Trading/Quality of Markets Committee, the Arbitration Committee, the Market Surveillance Committee (now the Market Regulation Committee), the National Business Conduct Committee, the Management Compensation Committee, and all successors thereto.

(2) To provide that NASDR and any successor thereto has, consistent with the NASD's By-Laws and Plan of Delegation, as amended from time to time and as approved by the Commission, primary day-to-day responsibility for the regulation, surveillance, examination, and disciplining of NASD member firms and registered persons, with respect to market activities as well as other self-regulatory matters, with full access to the records of the Nasdaq market.

(3) To institute the participation of professional Hearing Officers (who shall be attorneys with appropriate experience and training) to preside over disciplinary proceedings.

(4) To provide for the autonomy and independence of the regulatory staff of the NASD and its subsidiaries such that the staff, subject only to the supervision of the Board of Governors of the NASD and the Boards of Directors of NASDR and Nasdaq, and any successor thereto, (a) has sole discretion as to what matters to investigate and prosecute, (b) has sole discretion to handle regulatory matters such as approval of applications for membership and the conditions and limitations that may be placed thereon, (c) prepares rule proposals, rule interpretations and other policy matters with any consultations with interested NASD constituencies made in fair and evenhanded manner, and (d) is generally insulated from the commercial interests of its members and the Nasdaq market. Among other things, the District Business Conduct Committees and the Market Surveillance Committee shall not have any involvement in deciding whether or not to institute disciplinary proceedings, nor shall the District Committees, or any subcommittee thereof, have any involvement in the review or approval of applications for membership in the NASD. Subject to the foregoing, the regulatory staff of the NASDR engaged in the disciplinary process may, solely on their own initiative, inform themselves on matters of market or other securities industry expertise by consulting with representatives of member firms or committees of the NASD or its subsidiaries.

(5) To promulgate and apply on a consistant basis uniform standards for regulatory and other access issues, such as admission to the NASD as a member firm, and conditions to becoming a market maker; and institute safeguards to ensure fair and evenhanded access to all services and facilities of the NASD.

(6) To ensure the existence of a substantial, independent internal audit staff which reviews all aspects of the NASD (including the regulatory function, the disciplinary process and the Nasdaq stock market and its systems) and reports directly to an audit committee of the NASD Board of Governors which includes a majority of public and non-industry Governors and is chaired by a public Governor.

Commission's findings in the 21(a) Report and to comply with the terms of certain undertakings, the NASD subsequently proposed the amendments to the Delegation Plan and the Association's corporate governance documents; these amendments were temporarily approved by the Commission. As discussed below, the NASD is now proposing further changes to the Association's corporate governance documents.

II. Description of the Proposal[15]

The revisions to the Association's corporate governance documents and the Delegation Plan respond to the changes required by the SEC Order, and the 21(a) Report. They also implement the most recent corporate restructuring, by reducing the number of members of the NASD, NASD Regulation and Nasdaq governing boards. In addition, they clarify various provisions in the corporate governance documents to more clearly delineate Association practices and procedures. The purpose of the amendments is to streamline the Association's decision making process to be more responsive, while simultaneously promoting public and member access to, and scrutiny of, the day-to-day activities of the Association.

A. The Corporate Governance Documents

The NASD proposes to retain the current three corporation structure, but reduce the overall number of board members for the three corporations and revise the structure of the three governing boards. Currently, the NASD Board has eleven Governors, the NASD Regulation Board has twenty-four Directors, and the Nasdaq Board has fourteen Directors.[16] As amended, the NASD Board will consist of twenty-one to twenty-seven Governors, and include a nucleus of Governors who will not serve as directors on either Subsidiary board.[17] The Subsidiary boards will have five to eight Directors each, all of whom will serve simultaneously as an NASD Governor.[18] The number of directors on each Subsidiary board will be equal, thereby enabling the nucleus of individuals serving only as NASD Governors to perform a tie-breaking function on the parent board. Each board will be balanced between Public, Non-Industry and Industry participants.[19] Specific terms of office for board and committee members have also been imposed.[20]

The NASD Board, while remaining ultimately responsible for the actions of its Subsidiaries, will retain its current authority to review and ratify or reject certain actions of the Subsidiaries. The process of exercising this authority, however, will be expedited by transferring certain functions to new entities under each Subsidiary board. The most significant of these transfers involves adjudication and listing decisions. Given the increased responsibilities of individual Governors created by the new interlocking boards structure, the Association wishes to ensure that a sufficient number of qualified individuals are available to review adjudication and listing decisions. The functions of the National Business Conduct Committee, a committee of the NASD Regulation Board composed entirely of board members, therefore will be transferred to a new entity, the National Adjudicatory Council ("NAC"),[21] and the functions of the Nasdaq Listing and Hearing Review Committee will transfer to the new Nasdaq Listing and Hearing Review Council ("Listing Council").[22] The NAC will be appointed by the NASD Regulation Board, after nomination by the National Nominating Committee. Similarly, the Listing Council members will be appointed by the Nasdaq Board. Except for the Chair of the NAC, members of the councils will not serve on any of the Association's boards. These new councils will meet at least 15 days before the Subsidiary boards and generally will provide written reports of their decisions to their respective boards not later than 15 days before the Subsidiary board meetings, which will be scheduled to occur one day before the meetings of the NASD Board.

In addition to changes in the structure and composition of the Association's boards and committees, the NASD proposes to include strict quorum requirements. These requirements provide that decisions made by less than the entire board or balanced committee are also reached through balanced consideration.[23] For example,

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[15] Only substantive changes to the corporate governance documents and the Delegation Plan are highlighted. Unless specifically noted otherwise, the term "committee" include the NAC and the Listing Council. For a more detailed description of the NASD's proposed rule change, *see* Notice, *supra* page 2.

[16] The NASD Proposal will allow the Association to reduce the overall number of Association board members from forty-nine to twenty-seven, reduce the number of board meetings from seventeen to seven, reduce the number of board committees from nine to five, and replace two Subsidiary board executive committees with one parent board executive committee.

[17] As reconstituted, the NASD Board will include the Chief Executive Officer and the Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, the Chair of the NAC, and between 16 and 22 elected Governors. The elected Governors will include an investment company, an insurance company, and a Nasdaq issuer.

[18] The NASD Regulation and Nasdaq Boards of Directors will have five to eight Directors, and will be equal in size at all times. Only Governors of the NASD Board are eligible for election to these boards. The boards will include their respective Presidents. The Chief Executive Officer of the NASD will be an ex-officio non-voting member of each, but will not be recognized for compositional purposes. The NASD Regulation Board will also include the chair of NAC, as well as an investment company and an issuance company representative. The Nasdaq Board will include at least one issuer representative. See new NASD Regulation By-Laws, Article IV, Sections 4.2, 4.3; see also new Nasdaq By-Laws, Article IV, Sections. 4.2, 4.3.

[19] A majority of the Governors on the NASD Board will be Non-Industry, including five or six Public Governors, depending on the size of the board. Non-Industry Directors on the NASD Regulation and Nasdaq Boards must equal or exceed the number of Industry Directors plus their respective President, and will also include at least one Public Director each (or two each for eight-member boards). For a discussion of the terms "Public," "Non-Industry," and "Industry," see *infra* notes 26, 27, and 29.

[20] The term of office for the Board of Governors of the NASD varies between elected and appointed positions. The Chief Executive Officer and the Chief Operating Officer of the NASD and the Presidents of NASD Regulation and Nasdaq serve until a successor is elected, or until death, resignation, or removal. The Chair of the NAC serves as a Governor for a one year term, or until a successor is elected and qualified, or until death, resignation, disqualification, or removal. The Governors elected by the members of the NASD serve three year terms. See new NASD By-Laws, Article VII, Sections 5(a–c). Members of the Boards of Directors for both NASD Regulation and Nasdaq are elected annually. See new NASD Regulation By-Laws, Article IV, Section 4.4; new Nasdaq By-Laws, Article IV, Section 4.4.; new Nasdaq By-Laws, Article IV, Section 4.4. Members of the NASD's Management Compensation Committee serve a term of one year. See new Delegation Plan, Article I(C).

[21] See new NASD Regulation By-Laws Article V.

[22] See new Nasdaq By-Laws Article V.

[23] See new NASD By-Laws Article IX, Section 4(d); new NASD By-Laws Article IX, Section 5(e); see also new NASD By-Laws Article VII, Section 8 (establishing quorum for transaction of business at Board meetings as a "majority of the Board, including not less than 50 percent of the Non-Industry Governors"); new NASD Regulation By-Laws Article V, Section 5.9 (establishing quorum requirements for the NAC as "a majority of the members, including not less than 50 percent of the Non-Industry members"); new Nasdaq By-Laws Article IV, Section 4.9 (establishing quorum for the

representation of Non-Industry and Public committee members on the new NASD Executive Committee must be at least as great as the representation of Non-Industry and Public Governors on the NASD Board, and the quorum for the transaction of business at Executive Committee meetings must consist of a majority of its members, including at least 50 percent of the Non-Industry committee members. Similarly, a quorum for the transaction of business at Audit Committee meetings will require a majority of the Audit Committee, including at least 50 percent of the Non-Industry committee members.[24]

Finally, the definitions of Industry, Non-Industry and Public have been revised.[25] A Public participant on a board or committee is someone who has no material business relationship with the Association, or with any broker or dealer.[26] The Non-Industry category is slightly broader, permitting participation by those connected with companies listed on Nasdaq.[27] The Industry category is,[28] and includes all brokers and dealers, their officers, directors, and holding companies, large shareholders of brokers and dealers, as well as many of the people (including professionals) that work for them.[29]

In addition to revising the structure of the boards and defining the categories of participants, the NASD proposes to change the nomination process for Governors, Directors and members of the NAC and the Listing Council.[30] Compositional requirements will be introduced for the National Nominating Committee, the number of Governors and Directors serving will be limited, and specific removal provisions for National Nominating Committee members will be added.[31] In addition, the provisions through which dissident candidates can stand for election will be refined.[32] Members will be given additional time in which to propose dissident candidates, and, in their official capacities, Governors will not be allowed to express a preference for any candidate during elections involving dissident candidates.[33]

The NASD also proposes to amend the conflicts of interest provisions.[34] As revised, Governors and committee members will be prohibited from directly or indirectly participating in any adjudication of the interests of a party if they have a conflict of interest or bias, or if circumstances otherwise exist where their fairness might reasonably be questioned. Governors or committee members must recuse themselves or be disqualified in accordance with the Rules of the Association.[35] In addition, similar provisions address contracts and transactions between the NASD and any entity in which a Governor or officer is involved.[36]

1. Changes to the NASD By-Laws

In addition to the structural and related changes, the NASD is proposing several clarifying amendments to its by-laws. For example, the term "person associated with a member" is revised to clarify that this term includes any natural person registered under the Rules of the Association, without regard to employment responsibilities.[37] This

Board of Directors to transact business as "a majority of the Board, including not less than 50 percent of the Non-industry Directors".

[24] Similar quorum requirements will be imposed on the Executive Committees of the Subsidiaries, the NASD Finance Committee, the National Nominating Committee, the Management Compensation Committee, and the NAC.

[25] In addition, disqualification and removal procedures have been imposed, supporting adherence to a balanced compositional structure. Disqualification in this instance refers to a change in status from Public and/or Non-Industry to Industry. See new NASD Article VII, Section 6. Both Governors and members of the NAC and the National Nominating Committee may be removed by the Board if they refuse, fail, neglect, or are not able to discharge their duties. See NASD By-Laws, Article VII, Section 1(b) (NASD); NASD By-Laws, Article VII, Section 9(d) (NAC); See NASD Regulation By-Laws, Article V, Section 5.6 (National Nominating Committee).

[26] The new NASD By-Laws define a "Public" participant as one "who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq." *See* NASD By-Laws Article I, Section (ff) and (gg); new NASD Regulation By-Laws Article I, Section (z); new Nasdaq By-Laws Article I, Section (s).

[27] The new NASD By-Laws define a "Non-Industry" participant as one "who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member." See new NASD By-Laws Article I, Section (cc) and (dd); NASD Regulation By-Laws Article I, Section (x); new Nasdaq By-Laws Article I, Section (q).

[28] Although not specifically defined as "Industry" participants, officers of the NASD, NASD Regulation or Nasdaq serving as members (other than ex-officio members) of a board or committee appointed under the newly revised by-laws of any of the three corporations, will be counted with the Industry participants for compositional and quorum requirements.

[29] The new NASD By-Laws define an "Industry" participant as one "who: (1) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director, (excluding an outside director) or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenue received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, or Nasdaq or has had any such relationship or provided any such services at any time within the prior three years." See new NASD By-Laws Article I, Section (n) and (o); new NASD Regulation By-Laws, Article I, Section (q); new Nasdaq By-Laws Article I, Section (j).

[30] See new NASD By-Laws Article VII, Sections 9 and 10.

[31] See, *e.g.*, new NASD By-Laws Article VII, Section 4(a) (Board size and composition); new NASD By-Laws Article VII, Section 1(b) (removal of Governors for cause); new NASD Regulation By-Laws Article V, Section 5.2(a) (NAC size and composition); new NASD Regulation By-Laws Article V, Section 5.6 (NAC member removal provisions); new Nasdaq By-Laws Article Vi, Section 5.2(a) (Listing Council size and composition); new Nasdaq By-Laws Article V, Section 5.6 (Listing Council member removal provisions).

[32] See new Article VII, Section 10, Related to these changes, enhanced procedures for participation in annual meetings have been added. See new NASD By-Laws Article XXI, "Meetings of Members."

[33] See new NASD By-Laws Article VII, Section 11; new NASD Regulation By-Laws Article IV, Section 4.14; new Nasdaq By-Laws Article IV, Section 4.15.

[34] See, *e.g.*, new NASD By-Laws, Article 4, Section 4.14(a).

[35] See, *e.g.*, Rule 9160.

[36] New Article XV, Section 4(b) of the NASD By-Laws provides that a contract or transaction between the NASD and a Governor or officer, or between the NASD and any entity in which a Governor or officer is a director or officer, or has a financial interest, is not void or voidable solely for this reason, or solely because the Governor or officer is present at the meeting of the Board or committee that authorizes the contract or transaction, or solely because the Governor's or officer's vote is counted for such purposes if: (1) The material facts pertaining to such relationship or interest are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Governors; or (2) the contract or transaction is fair to the NASD as of the time it is authorized, approved, or ratified by the Board or committee. New Section 4(b) further provides that only disinterested Governors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction. Contracts and Transactions between the NASD and its Subsidiaries are not subject to proposed Section 4(b). See also new NASD Regulation By-Laws, Article IV, Section 4.14(b); new Nasdaq By-Laws, Article IV, Section 4.14(b).

[37] See new NASD By-Laws Article I(ee); new NASD Regulation By-Laws I(y); and new Nasdaq By-Laws Article I(r).

counters the suggestion in certain case law that any person whose job title or position is not specifically identified in the Association's definition of associated person (regardless of whether the individual is registered with an NASD member firm) may not be considered an associated person if he or she is not directly "engaged" in the securities business.[38]

Similarly, the revisions clarify the proceedings for obtaining relief from the Association's eligibility requirements. The current language could be read to suggest that a broker or dealer seeking admission to the Association could use such proceedings to obtain relief from the eligibility requirements as a means of gaining admission to the Association. The Association did not intend to apply this provision to applicants for membership, and the amendment removes this potential ambiguity.[39]

2. Changes to the NASD Regulation By-Laws

The current NASD Regulation By-Laws were adopted on July 19, 1996, in connection with the initial restructuring of the NASD following presentation of the Select Committee Report to the NASD Board. In addition to amending the NASD Regulation By-Laws to conform them to the changes described above, the by-laws now include recognition of the NASD as sole stockholder of NASD Regulation capital stock. Furthermore, the language describing the composition and powers of the new NAC, including procedures for district elections, are included in the NASD Regulation By-Laws. Finally, indemnification provisions protecting NASD Regulation personnel (including Directors), identical to those of the NASD and proposed for Nasdaq, have been added.[40]

3. Changes to the Nasdaq By-Laws

Nasdaq adopted its current By-Laws on October 27, 1993. The proposed amendments conform the by-laws to the changes described above. The provisions creating and defining the Listing Council are contained herein. In addition, indemnification provisions mirroring the NASD and NASD Regulation have been included.[41]

4. Changes to the Restated Certificates of Incorporation

The changes to the NASD Restated Certificate of Incorporation conform it to the NASD Board structural changes previously described.[42] Similar conforming changes will be made to the NASD Regulation and Nasdaq Certificates of Incorporation.[43]

B. The Delegation Plan

The amendments to the Delegation Plan reflect the new interlocking board structure of the NASD and its Subsidiaries, discussed above. For example, the Delegation Plan is amended to authorize the NASD Board to take action on its own initiative, either by the full board or through the NASD Executive Committee. The purpose of this amendment is to allow the Association to act quickly and decisively when necessary. Separate consideration by the Subsidiary board can be avoided without any loss of Subsidiary board input because the Subsidiary board members constitute a subset of the NASD Board. This option is not available under the current corporate structure, which requires that matters within a Subsidiary's sphere of delegated authority be considered by that Subsidiary's board before consideration by the NASD Board.

In addition, time-sensitive matters arising between regularly scheduled board meetings can be resolved by the NASD Executive Committee. Currently, the Subsidiaries' executive committees may take initial action on such matters, but the action cannot be implemented without the unanimous written consent of the NASD Board. Obtaining such consent can impede the Association's ability to respond to urgent matters. As revised, the NASD Executive Committee will be able to convene telephonically on an as-needed basis to address time-sensitive matters.

The revisions to the Delegation Plan also include provisions addressing petitions for reconsideration of NAC and Listing Council recommendations on proposed rule changes, when their recommendations are inconsistent with later action taken by their respective governing Subsidiary boards. If either the NAC or Listing Council disagrees with its respective Subsidiary board, they may now petition the NASD Board for reconsideration of the matter.[44]

In addition to the changes related to reconstitution of the governing boards, the revised Delegation Plan includes changes to several important committees. Specifically, the compositional and quorum requirements of the NASD's Management Compensation Committee, NASD Regulation's Market Regulation, National Arbitration and Mediation, and Operations Committees, as well as Nasdaq's Quality of Markets and Market Operations Review Committees, are included in the revised Delegation Plan, providing for diversity of member, non-industry and public participation.

Furthermore, the revised Delegation Plan includes an amendment requiring establishment of procedures to consider requests by members, associated persons, and members of the public to initiate formal disciplinary action.[45] This will allow the Association to be more responsive to public inquiry and/or complaints about brokers, dealers and their employees.

Finally, the oversight and management responsibilities of Stockwatch, which handles the trading halt functions for the Nasdaq market and exchange-listed securities traded in the over-the-counter market, are more clearly defined. As amended, the Delegation Plan provides that review of all questionable market activity, possible rule infractions, or any other matters that require any type of

[38] See *Slade versus Metropolitan Life Ins. Co.* Index No. 117688 , Decision and Order of April 9, 1996 (Sup. Ct. *f. Co.), aff'd*, 231 A.D.2d 467 (N.Y. 1996), app. denied, 676 N.E.2d 500 (N.Y. 1996).

[39] See Article III, Section 3(d). The changes include deletion of Section 3(d)(2), the status of members or persons engaged in eligibility proceedings, which is not set forth in the 9520 series of the Rules of the Association. This is not a substantive change in the Association's practice. The by-law revisions also remove the requirement that members, registered representative and other associated persons release the Association from liability except for willful malfeasance. See Former Article III, "Membership," renumbered as new Article IV, and former Article IV, "Registered Representatives and Associated Persons," renumbered as new Article V. The Association proposes to delete Sections 1(e)(3) of Membership and 2(e)(2) of Registered Representatives and Associated Persons, which previously included the willful malfeasance release. This is not substantive revision, however. The governing state law in Delaware contains a similar release from liability under the "business judgment" rule, see, *Smith* v. *Van Gorkom*, 488 A.2d 858, 873 (De. 1985) (recognizing the gross negligence standard of care in the context of analyzing a corporate director's duty of care), although "there is no protection for directors who have made 'an unintelligent or unadvised judgment.'" *Id.*, at 872 (citing Mitchell v. Highland-Western Glass, 167 A.2d 831, 833 (De. 1933)).

[40] See new NASD Revised Certificate of Incorporation Article Fifth (Indemnification; Governor Liability); new Nasdaq By-Laws Article VIII (Indemnification of Directors, Officers, Employees, Agents, Nasdaq Listing and Hearing Review Council and Committee Members).

[41] See *e.g.*, new NASD Revised Certificate of Incorporation Article Fifth (Indemnification; Governor Liability); new NASD Regulation By-Laws Article X (Indemnification of Directors, Officers, Employees, Agents, NAC and Committee Members).

[42] See new Article Eighth.

[43] Full text versions of these changes are contained in the Notice, see *supra* text accompanying note 5.

[44] See new sections II.A.2. and III.B.3.

[45] See new section II.A.1.f. Additional discussion of these procedures is included in the order approving SR–NASD–97–28, discussed *supra* note 6, in connection with deletion of former Rule 6120 of the Rules of the Association. See Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997).

investigative or regulatory follow-up will be referred to and conducted by NASD Regulation, which will assume sole responsibility for the matter until resolution. This responsibility will include examinations, investigations, document requests, and any enforcement action that NASD Regulation deems necessary. In addition, the revisions provide that NASD Regulation staff at all times will have access to all records and files of the Stockwatch function.

III. Comments

The Commission did not receive comments on the NASD Proposal.

IV. Discussion

A. The Proposed Amendments

As discussed below, the Commission has determined at this time to approve the NASD Proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[46] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the NASD Proposal.[47]

The Commission has evaluated the NASD's proposed rule change in light of the standards and objectives set forth in the Act (particularly Sections 15A[48] and 3(f)[49]), as well as the SEC Order and the 21(a) Report. The Commission believes that the changes to the Association's corporate structure are consistent with those provisions, as well as the objectives of the Undertakings and the 21(a) Report. The proposed rule change maintains a balanced governance structure by providing that the number of Public and Non-Industry members of the NASD Board exceed the number of Industry members. By providing for substantial and meaningful public and non-industry involvement, in addition to diverse representation of various sectors of the securities industry, on the governing boards, the NASD Proposal should encourage dispassionate performance of the NASD's responsibilities as an SRO.

As reconstituted under the proposed rule change, each corporation will continue to retain a clear and distinct role, with separate officers and staff. Specifically, the NASD will continue to resolve conflicts between the Subsidiaries and retain ultimate responsibility for its statutory obligations as an SRO; NASD Regulation will continue to perform the day-to-day regulation of brokers and dealers, have primary responsibility for adjudication and enforcement, and to supervise surveillance of Nasdaq and other OTC markets; and Nasdaq will continue to own and operate the Nasdaq market and develop and implement rules governing that market.[50]

The substitution of the NAC and the Listing Council for their predecessor board committees, should provide that the adjudication and listing review process is conducted by qualified individuals representing both the public and the industry. Creation of the new councils is consistent with the requirements of the Act, and with the NASD's obligations under the SEC Order and the 21(a) Report.

Finally, the various changes to the quorum provisions, the nominating procedures, and the conflicts of interest provisions contribute to and enhance the Association's ability to perform its SRO responsibilities in an objective, balanced and responsive manner.

B. Effectiveness of the Amendments

The NASD has requested varying effective dates for the amendments contained in this Order.[51] In general, those portions addressing nomination and election procedures will become effective upon issuance of this Order. Immediate effectiveness of these changes will facilitate the nomination and election of members of the NASD, NASD Regulation, and Nasdaq Boards, the NAC, and the Listing Council whose terms of office will begin in 1998.

The remaining changes will become effective at the January 1998 meeting of the NASD Board, which will itself conform to the new balanced compositional requirements contained in this Order. Allowing a period of time between approval of this Order and the effective date will give the Association adequate time to achieve the comprehensive changes to its structure.

Finally, the Commission's temporary approval of SR–NASD–96–20 and SR–NASD–96–29, which is currently scheduled to lapse on November 15, 1997 (to the extent these rule filings are not superseded by the immediately-effective nomination and election procedure amendments), is extended until the first meeting of the NASD Board of Governors in January, 1998.[52]

V. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, Amendment No. 2 amends the time during which a member may submit agenda items for the annual meeting of NASD members. The Commission believes that this change, combined with those in the initial filing of SR–NASD–97–71 are consistent with the Act, and should enhance both the fair and efficient operation of the NASD and the dispassionate application of the rules and fairness in the NASD's adjudicatory and listing processes, as well as other regulatory activities. Finally, the acceleration of the effectiveness of Amendment No. 2 will enable the Commission to approve its changes at the same time as the other major modifications to the NASD corporate governance procedures proposed in the Notice. Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.[53]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–71 and should be submitted by December 12, 1997.

VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[54] that (a) the proposed rule change (SR–NASD–97–71) is approved, including approval of Amendment No. 2 on an accelerated basis (with the effective date of the nomination and election procedures to be immediate and the effective date of the remaining provisions to occur at the time of the January 1998 meeting of the NASD Board), and (b) temporary approval of the proposed rule changes (SR–NASD–96–20 and SR–NASD–96–29), to the extent not superseded by the immediately effective amendments to SR–NASD–97–71, is extended until the January 1998 meeting of the NASD Board.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30622 Filed 11–20–97; 8:45 am]

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[46] 15 U.S.C. 78o(b).

[47] 15 U.S.C. 78o–3.

[48] For example, Section 15A(b)(8) requires that the rules of an association provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership, the barring of any person becoming associated with a member thereof, and for the prohibition or limitation by the association of any person with respect to access to services offered by the association. Section 15A(h)(2) requires a registered securities association when determining whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or member thereof, to notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. Section 15A(h)(3) governs when a registered securities association may summarily suspend a member or a person associated with a member.

[49] In approving this proposal, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[50] Specifically, the proposed rule changes comport with the requirements (i) by balancing the Association's boards and committees (see new NASD By-Laws Article VII, Section 4 and Article IX; new NASD Regulation By-Laws Article IV; new Nasdaq By-Laws Article IV; Delegation Plan I.C., II.C); (ii) by placing primary day-to-day responsibility for regulatory matters with NASD Regulation (see new Delegation Plan section II.A.1); (iii) by providing for the autonomy and independence of the regulatory staff of the NASD and its Subsidiaries (see *id.*); and (iv) by providing for the existence of a substantial, independent internal audit staff that reports directly to an audit committee of the NASD Board (see new NASD By-Laws Article IX, Section 5).

[51] See Letter from T. Grant Callery, Vice President and Generl Counsel, NADS to Katherine A. England, Assistant Director, Commission, dated November 12, 1997.

[52] Specifically, the following sections of the corporate governance documents will become effective immediately upon issuance of this Order:

- NASD By-Laws Article VII, Section 9(a), 9(e), and 10 through 14;
- NASD By-Laws Article XX and XXI;
- NASD Regulation By-Laws Article IV, section 4.16
- Nasdq By-Laws Article IV, Section 4.15.

These provisions will supersede the following provisions of the temporarily approved Plan of Allocation and Delegation of Functions by NADS to Subsidiaries: I.C.2.a; I.C.2.b.3; IC.3., II.B.2. a through II.B.2.c; and III.B.2.a.

[53] 15 U.S.C. 78s(b)(2).

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.300–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38322; File No. SR–NASD–97–78]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Amended Interpretation of IM–8310–2, Release of Disciplinary Information, and the Implementation of Interim Pages in Forms U–4 and U–5

November 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4, thereunder,[2] notice is hereby given that on October 17, 1997,[3] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASDR").[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR is proposing to amend the Interpretation on the Release of Disciplinary Information, IM–8310–2 of Rule 8310 of the Procedural Rules of the NASD, to include additional information required to be reported pursuant to the amended Forms U–4, U–5, and BD. Interim pages for Forms U–4 and U–5 also have been filed to facilitate the immediate release of this additional information.[5] Below is the text of the proposed rule change. Proposed new language is an italics.

IM–8310–2. Release of Disciplinary Information

(a) The Association shall, in response to a written inquiry, *electronic inquiry,*[6] or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD for Form U–4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association will also release information *required to be reported on Form BD or Form U–4* concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, *pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On November 6, 1997, the NASD Regulation, Inc. filed an amendment, which among other things, clarifies the reference to "associated person" and explains the absence of the term "issuer" in the definition of "investment-related." See letter from Alden S. Adkins, General Counsel, NASD Regulations, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 6, 1997 ("Amendment No. 1"). On November 12, 1997, the NASD Regulation, Inc. amended its proposal to clarify the definition of "appropriate signatory" and to clarify the implementation dates of the interim Forms and the disclosure of additional information. See letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 12, 1997 ("Amendment No. 2").

[4] The Association submitted a similar proposal on November 25, 1996. See Securities Exchange Act Release No. 37994 (November 27, 1996) 61 FR 64549 (December 5, 1996) (SR–NASD–96–38). After several negotiations among the Commission, the NASD, and the North American Securities Administrators Association, Inc. ("NASAA"), SR–NASD–96–38 has been withdrawn and replaced in its entirety by the current filing. See letter from Joan C. Conley, Corporate Secretary, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 17, 1997.

[5] Copies of Forms U–4 and U–5, containing the interim pages, were submitted as Attachment A to the NASD's rule proposal. A complete set of these revised forms is available for inspection and copying in the Commission's Public Reference Room and is also available from the NASD.

[6] Upon approval of this proposal, the NASD plans to begin responding to electronic inquiries via the Internet on or about January 1, 1998. See Amendment No. 2, p. 1.

regulatory matters, terminations of employment after allegations involving violations of investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.[7]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the NASD's Public Disclosure Program,[8] the NASD, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository ("CRD") regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or Form U–4; all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association also releases information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

In 1992, the NASD began developing a replacement for the CRD system. In conjunction with that effort, the NASD worked with the NASAA, the Commission, and the New York Stock Exchange to amend Forms U–4, U–5, and BD to accommodate electronic filing of information with the new CRD when it became operational. The Commission approved the amended forms in July 1996.[9]

On November 25, 1996, the NASD filed a proposed rule change designed to permit the NASD to release additional information regarding the disciplinary history of its members and persons associated with a member as part of the Public Disclosure Program.[10] The proposed rule change would have allowed the NASD to release all information on any question on page 3 (Question 22) of the amended Form U–4 and Question 11 of the amended Form BD, as approved by the Commission in July 1996. At the time of this filing, the NASD anticipated that the new CRD system would become operational in the Spring of 1997. The additional information that the NASD proposes to disclose includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;

2. Pending written customer complaints alleging sales practice violations and compensatory damages of $5,000 or more;

3. Settlements of $10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions;

4. Current investigations involving criminal or regulatory matters;

5. Terminations of employment after allegations involving violations of investment-related statutes or rules, fraud, theft, or failure to supervise investment-related activities;

6. Bankruptcies less than 10 years old and outstanding liens or judgments;

7. Bonding company denials, pay outs, or revocations; and

8. Any suspension or revocation to act as an attorney, accountant, or federal contractor.

In January 1997, NASD Regulation senior management determined that the CRD redesign should be reassessed in light of changing business needs and rapidly advancing technology. The CRD reassessment reviewed each of the components of the CRD redesign, developed a revised Internet-based technology architecture and strategy for going forward with CRD modernization, and mapped that architecture into a series of incremental projects that will provide an overall modernization of CRD before the turn of the century.

As a result of the CRD reassessment and revised technology, the NASD is withdrawing the previously proposed rule change (SR–NASD–96–38) to the Public Disclosure Program because it was premised on the implementation of the redesigned CRD and the use of the amended Form U–4, Form U–5, and Form BD.

This filing, which replaces SR–NASD–96–38, proposes the same substantive disclosure. However, to accomplish the release of the additional information, the NASD has reformatted the questions set forth on the page 3 of amended Form U–4; questions 13 through 16 on amended Form U–5; and the Disclosure Reporting Pages for both Forms in a manner that is compatible with its current CRD technology architecture. The reformatted, interim forms contain no substantive changes to any of the questions on those pages.

The Association has clarified the definitions of "investigation" and "sales practice violation" for purposes of the Forms. For purposes of Forms U–4 and U–5 reporting, the instructions clarify that an "investigation" includes an NASD investigation after a "Wells" notice has been given or after a person associated with a member, as defined in the NASD By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action. The instructions further clarify that a "sales practice violation" includes any conduct directed at or involving a customer that would constitute a violation of rules for which a person could be disciplined by any self-regulatory organization.

The Association also proposes a technical correction to the interim Form U–5. On the amended Form U–4,[11] the Association defined the term "investment-related" as pertaining to "securities, commodities, banking, insurance, or real estate investment company, investment adviser, futures sponsor, bank, or savings association." The Association intended that the same definition apply for the Form U–5, but the word "issuer" was inadvertently omitted. Thus, on the interim Form U–5, this omission is corrected so that both the interim Form U–4 and Form U–5 set forth the same definition. Similarly, the definition of the term "appropriate signatory" on the interim Form U–5 is corrected to refer to "issuer" rather than "issuer of securities" because the former term was intended to be used consistently on the amended Forms U–4 and U–5. Thus, the interim Forms U–4 and U–5 have been corrected to reflect the intended reference and its consistent application.

The instructions to and reformatted pages of the proposed interim Forms U–4 and U–5 were submitted with the proposal as Attachment A.[12] The NASD proposes to make the interim Forms and the disclosure of the additional information set forth in this rule filing effective on February 17, 1998. This effective date will permit members and the NASD to complete annual registration renewals and permit the NASD to train members on the use of the interim Forms before the interim Forms are implemented. The NASD proposes to begin responding to electronic inquiries for Public Disclosure Program information via the Internet after this rule filing is approved, on or about January 1, 1998. The information that would be released from January 1 to February 17, 1998, would include only that information that currently is required to be reported on the Forms U–4 and U–5 and is currently released under IM–8310–2.[13]

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6)[14] and 15A(i)[15] of the Act. The NASD believes the proposed rule change will further the goals of these sections of the Act inasmuch as the increased disclosure will enhance the access of members of the public to information that will help them to determine whether to conduct or continue to conduct business with an NASD member or any of the member's associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97–30633 Filed 11–20–97; 8:45 am]
BILLING CODE 8010–01–M

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[7] The NASD proposes that the disclosure of this additional information will become effective on February 17, 1998. Information released from January 1 to February 17, 1998, would include only that information that currently is required to be reported on Forms U–4 and U–5. See Amendment No. 2, pp. 1–2.

[8] See Securities Exchange Act Rel. No 30629 (April 23, 1992) 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993) 58 FR 36723 (July 8, 1993).

[9] See Securities Exchange Act Rel. No. 37407 (July 5, 1996) 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996) 61 FR 37357 (July 18, 1996). See also Securities Exchange Act Rel. No. 37632 (September 4, 1996) 61 FR 47412 (September 9, 1996).

[10] See *supra* note 5.

[11] See *supra* note 9.

[12] See *supra* note 6.

[13] See *supra* notes 7 and 8.

[14] Section 15A(b)(6) requires that the Association amend its rules to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

[15] Section 15A(i) requires the Association to: (1) Establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39328; File No. SR–PCX–97–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to Applicant Specialists on the Exchange

November 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on November 10, 1997, the Pacific Exchange, Incorporated ("PCX" or "Exchange") filed with the Securities Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to make technical changes to its rules on the procedures relating the approval process for applicant specialists on the Exchange. The text of the proposed rule changes is available at the Office of the Secretary, PCX, and in the Public Reference Room at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PCX Rule 5.27(d) currently provides that an applicant for appointment as a registered specialist (the "applicant specialist") must function in a market making capacity at a specialist post on the floor of the Exchange for a minimum period of three months, and that the applicant specialist will be required to perform primary market making responsibilities in at least one issue throughout this minimum period. It further provides that the applicant specialists' performance will be reviewed by the Equity Allocation Committee after the first thirty days and again after the first seventy-five days. Finally, it states that the evaluation of the applicant specialist's performance will be based upon the results of an Applicant Specialist Evaluation Questionnaire Survey and, where applicable, the National Market System Quote Performance and P/COAST Limit Order Acceptance Performance.

The Exchange is proposing to eliminate the provision that states that the applicant specialists' performance will be reviewed after three months (or seventy-five days). Such reviews currently may be, and generally are, waived pursuant to Rule 5.27(e). However, as discussed below, the Exchange is proposing to add a provision to Rule 5.27(e) to permit a review of an applicant specialist's performance (*i.e.*, a review after the first thirty-day review) on a case-by-case basis. The Exchange is also proposing to eliminate superfluous language in Rule 5.25(d) that refers to the Specialist Evaluation that is conducted pursuant to Rule 5.37(a).[2] In addition, the Exchange is proposing to add a cross reference to Rule 5.37(a) in order to clarify the term "Applicant Specialist Evaluation."

PCX Rule 5.27(e) currently states, in part, that the Equity Allocation Committee will make recommendations with respect to each applicant specialist to the Joint Equity Floor Trading Committee based upon its review of the responses contained in the Applicant Specialist Evaluation Questionnaire Survey, National Market System Quote Performance, P/COAST Limit Order Acceptance Performance, as well as any written comments solicited or received from other floor members. The Exchange is proposing to remove the words "Questionnaire Survey, National Market System Quote performance, P/COAST Limit Order Acceptance Performance" from this rule because they are superfluous. In addition, the Exchange is proposing to add a cross reference in Rule 5.27(e) to Rule 5.37(a) in order to clarify the term "Applicant Specialist Evaluation."

PCX Rule 5.27(e) currently states, in part, that in such cases as the Equity Allocation Committee deems appropriate, the three month performance evaluation required for an applicant specialist may be waived, and that such a waiver will be based upon the Equity Allocation Committee's determination that the applicant specialist has demonstrated a degree of knowledge and experience which will enable the Committee to immediately make a favorable recommendation to the Joint Equity Floor Trading Committee concerning the applicant specialists' qualifications. The Exchange is proposing to replace those provisions with the following provisions: "In such cases as the Equity Allocation Committee deems appropriate, the thirty-day performance evaluation required for an applicant specialist may be extended or waived. Such a waiver or extension will be based upon the Equity Allocation Committee's determination of whether the applicant specialist has demonstrated a degree of knowledge and experience that will enable the Committee to immediately make a favorable recommendation to the Joint Equity Floor Trading Committee concerning the applicant specialist's qualification." This new provision will allow the Equity Allocation Committee to continue to require an applicant specialist to be evaluated more than once before being approved, but it eliminates the specification of a review after 75 days in such situations.

The Exchange is also proposing to modifying Rule 5.27(d) so that it will state that applicant specialists must function in a market making capacity at a specialist post on the floor of the Exchange for a minimum period of thirty days, unless the Allocation Committee waives this requirement pursuant to Rule 5.27(e).

The purpose of the proposed rule change is to assure that Rules 5.27 (d) and (e) reflect the Exchange's current practice on approving an applicant for appointment as a registered specialist. Specifically, those rules will now reflect the fact that applicants are generally considered for appointment as registered specialists just one time, after thirty days. As under the current rule, the Allocation Committee can require an additional review of the applicant's performance, but such a review would not need to be conducted after the first 75 days. Thus, under the rule change, the Committee will have greater flexibility as to the timing of the second review. In addition, under the rule change, the Allocation Committee will be permitted to waive the first performance review (after the first thirty days.[3]

The Exchange believes the proposed rule change is consistent with Section 6(b)[4] of the Act in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by clarifying the rules and making the rules better reflect how the applicant specialist review process is generally implemented.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule changes have been designated by the Exchange as a policy effecting a change solely in the administration of the Exchange that does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition, it has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and Rule 19b–4(e)(3)[7] thereunder. At any time within 60 days of the filing of a rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[2] The Commission has recently approved a PCX rule change to extend its specialist evaluation pilot program for six months and to make certain changes to the pilot program. *See* Exchange Act Release No. 38806 (July 1, 1997) 62 FR 36860 (July 9, 1997).

[3] The Exchange notes that as a matter of practice, the Allocation Committee will only waive the first performance review in situations where a specialist transfers from one post to another, and has received a performance review at the post from which he or she has transferred.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(e)(3).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal of the PCX. All submissions should refer to File No. SR–PCX–97–44 and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30626 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39325; File No. SR–PHLX–97–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to a Revision to the Exchange's Equity Floor Brokerage Assessment Fee

November 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 5, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act, proposes to amend the Exchange's Equity Floor Brokerage Assessment schedule which currently determines the rate of the assessment on a member's monthly equity floor brokerage based upon whether the member is a specialist with funds on deposit at the Stock Clearing Corporation of Philadelphia (SCCP) or not. The Exchange hereby proposes to change the fee to a flat rate of 1.25% of the amount that any member bills out in floor brokerage on the Phlx Equity floor each month. The schedule will be amended as follows (brackets indicate deletions, italics indicates additions):

Summary of Equity Charges

EQUITY FLOOR BROKERAGE ASSESSMENT

[5%] *1.25%* of net floor brokerage income [with specialist credits]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange assesses a monthly fee on the amount of money a floor broker bills to its customers each month for floor brokerage services with respect to equity securities. The rate used to calculate the fee is either 5% if the member only conducts business as a floor broker, or is discounted to 1.25% if the member also conducts business as an equity specialist with funds on deposit at SCCP. When this fee was originally adopted in 1974, the Exchange intended to encourage members who conducted business on the equity floor as floor brokers to also become specialists and open an account at SCCP. In recent years, the Exchange has observed that almost all floor brokers on the Equity floor were also specialists, thereby taking advantage of the lower rate. The Exchange has now decided that the fee should be determined solely by the amount of business a floor broker conducts. Accordingly, the Exchange is proposing to redesignate the fee as 1.25% of a member's floor brokerage on the Exchange Equity floor.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(4)[3] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[4] and subparagraph (e)(2) of Rule 19b–4 thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(2).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–97–56 and should be submitted by December 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30624 Filed 11–20–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector (ITAC–T) Study Groups D and CITEL AD–HOC; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Standardization Section (ITAC–T) Study Group D and CITEL AD–HOC will meet on Monday, January 5, 1998, Room 1207 at 9:00 a.m. and Tuesday, February 17, 1998, at 9:00 a.m. in the same room at the Department of State, 2201 C Street, NW., Washington, DC 20520.

The agenda for study group D will include consideration of contributions for upcoming meetings of Study Group 9 and 16. The CITEL Ad Hoc Group will consider the Preparatory process for future CITEL meetings, review possible contributions for the tasks assigned under CITEL Restructure proposals. Any other matters within the competence of Study Group D or the CITEL Ad Hoc Group may be raised at either of those meetings.

Persons presenting contributions to Study Group D should bring 20 copies of such contributions to the meeting.

Please Note: Persons intending to attend these meetings must announce this not later than 48 hours before the meeting to the Department of State by sending a fax to 202–647–7407. The announcement must include company/agency affiliation, name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: November 10, 1997.

Gary M. Fereno,

Chairman, U.S. ITAC for CITEL and Study Group D.

[FR Doc. 97–30582 Filed 11–20–97; 8:45 am]

BILLING CODE 4710–45–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2634]

Shipping Coordinating Committee Subcommittee for the Prevention of Marine Pollution; Meeting Notice

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Corodinating Committee, will conduct an open meeting at 9:30 am on Monday, December 15, 1997, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001.

The purpose of the meeting is to present the results, and to solicit comments from the public regarding the outcome, of the Conference of Parties to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) of the International Maritime Organization (IMO) which met during the period of September 15–26, 1997, at IMO Headquarters in London, England. The Conference adopted the Protocol of 1997, including a new Annex VI to MARPOL 73/78 which contains regulations for the prevention of air pollution from ships, as well as the mandatory Technical Code on control of emissions of nitrogen oxides from new marine diesel engines. In light of these developments, the United States must decide if it should be signatory to the Protocol of 1997. The Coast Guard would, therefore, like to receive any comments from the public on how the United States should proceed with regard to ratification of the Protocol of 1997.

All members of the maritime industry are encouraged to send representatives to participate in this meeting and provide comments regarding the new Annex VI to MARPOL 73/78, and those issues affecting your maritime industry.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G–MSE–3), 2100 2nd Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: November 10, 1997.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 97–30583 Filed 11–20–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice No. 2633]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, December 11, 1997, in room 6103, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 44th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 15–19, 1998, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting, and related matters
—Amendments to the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS)
—Revision of SOLAS chapter V
—Development of measures complementary to the Code for Safe Carriage of Irradiated Nuclear Fuel (INF)
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters including Radiocommunication ITU–R Study Group 8
—Operational aspects of wing in ground (WIG) craft: possible amendments to COLREGS
—Revision of the High Speed Craft (HSC) Code

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MOV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: November 10, 1997.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 97–30584 Filed 11–20–97; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Tradewinds, Inc., for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 97–11–29) Dockets OST–97–2794 and OST–97–2795.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Tradewinds Airlines, Inc., fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter passenger air transportation.

DATES: Persons wishing to file objections should do so no later than November 28, 1997.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–97–2794 and OST–97–2795 and addressed to the Department of Transportation Dockets (SVC–121.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: November 18, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–30653 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting, correction.

SUMMARY: The FAA is issuing this notice to advise the public that the December 5 meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee, scheduled to discuss Air Carrier and General Aviation Maintenance Issues (62 FR 61424, November 17, 1997) will take place at a different location. The meeting is still scheduled for December 5 from 9:00 a.m. to 1:00 p.m. and will now be held at the Air Transport Association of America, 1301 Pennsylvania Ave. NW, Suite 1100, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Carolina E. Forrester, Federal Aviation Administration (ARM–206), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9680; fax (202) 267–5075.

Issued in Washington, DC on November 17, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–30654 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3046]

Notice of Request for Renewal of Existing Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection for the Structure Inventory and Appraisal Sheet (OMB 2125–0501).

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., E.T; Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope. Interested parties are invited to send comments regarding any aspects of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Chambers, Office of Engineering, Bridge Division (HNG–33), (202) 366–4618, Federal Highway Administration, Room 3203, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:00 a.m. to 3:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Structure Inventory and Appraisal Sheet.

OMB Number: 2125–0501.

Background: The collection of the bridge information contained on the Structure Inventory and Appraisal Sheet is necessary to satisfy the requirements of 23 United States Code 144 and 151, and the Code of Federal Regulations, 23 Highways—part 650, subpart C—National Bridge Inspection Standards and subpart D—Highway Bridge Replacement and Rehabilitation Program. Because of a December 1967 catastrophic bridge failure, the Congress enacted the National Bridge Inspection Standards (NBIS) which require the inspection of the condition of bridges, and the reporting of the findings of the inspections at regular intervals for all bridges located on public roads.

The collected NBIS bridge information is used as a basis for setting priorities for the replacement or rehabilitation of bridges under the Highway Bridge Replacement and Rehabilitation Program (HBRRP) and for apportioning HBRRP funds to the States for bridge replacement or rehabilitation. In addition, the information is used for

strategic national defense needs and for preparing the report to Congress on the status of the Nation's highway bridges and funding under the HBRRP.

Respondents: Transportation agencies of the 50 States and the District of Columbia and Puerto Rico.

Average Burden per Response: The average burden is two hours per response.

Estimated Total Annual Burden: The estimated total annual burden is 540,000 hours.

Frequency: Annually.

Authority: 23 U.S.C. Sections 144 and 151, and 23 C.F.R. 650.307, 650.311, and 650.407.

Issued On: October 31, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–30577 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3033]

Notice of Request for Renewal of an Existing Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection identified below under supplementary information.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Engineering, 202–366–4658, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and execution of the Project Agreement and Modifications.

OMB Number: 2125–0529.

Background: Under the provisions of 23 U.S.C. 110, a formal agreement between the State highway agency and the FHWA is required for Federal-aid highway projects. This agreement, referred to as the "project agreement," is in essence a written contract between the State and the Federal government defining the extent of the work to be undertaken and commitments made concerning the project.

The requirements covering project agreements are contained in 23 CFR part 630, subpart C.

Respondents: State highway agencies.

Estimated Annual Burden on Respondents: The estimated annual reporting burden is approximately 12,040 hours.

Authority: 23 U.S.C. 110; 23 CFR 630, subpart C.

Issued On: October 31, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–30591 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3122; Notice 1]

Dan Hill & Associates, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Dan Hill & Associates, Inc., of Norman, Oklahoma, has petitioned for a one-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection.* The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

The applicant manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations and safety risks.

The applicant, which manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers), has asked for a year's exemption in order to explore the feasibility of a rear impact guard that will allow the Flow Boy trailer to connect to a conventional paver. In the absence of an exemption, it believes that approximately 60 percent of its work force would have to be laid off. Its gross revenues would decrease by $6,000,000 (these have averaged $13,885,000 over its 1994, 1995, and 1996 fiscal years). Present studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Body would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Applicant sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear impact guard. The applicant has contacted a British manufacturer of a retractable rear impact guard but the information received to date does not look encouraging. If an exemption is granted, the applicant will continue to explore the feasibility of a retractable rear guard that allows connection with a paver.

The applicant believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. It spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 11, 1997.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on November 13, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–30675 Filed 11–20–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Reebie Associates on behalf of Norfolk Southern Railway Company (WB484–1—11/4/97), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30666 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33503]

Delaware Transportation Group, Inc.—Acquisition Exemption—Delaware Valley Railway Company, Inc.

Delaware Transportation Group, Inc. (DTGI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Delaware Valley Railway Company, Inc. approximately 23.4 miles of rail line between approximately milepost 31.2, at Gettysburg, PA, and milepost 7.8, at Mt. Holly Springs, PA.

The transaction is scheduled to be consummated on or after October 31, 1997.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33505, *John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.*; wherein John H. Marino will continue in control of DTGI, upon its becoming a Class III rail carrier and STB Finance Docket No. 33504, *Gettysburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc.*, wherein Gettysburg Railway Company, Inc., will lease and operate the lines being acquired by DTGI.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33503, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30670 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33505]

John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.

John H. Marino (Marino) has filed a notice of exemption to continue in control of the Delaware Transportation Group, Inc. (DTGI), the Gettysburg Railway Company, Inc. (GRCI), and the Evansville Terminal Company, Inc. (ETCI).

DTGI and GRCI will become Class III rail carriers upon conclusion of the transactions covered by two simultaneously filed notices of exemption in (1) STB Finance Docket No. 33503, *Delaware Transportation Group—Acquisition Exemption—Delaware Valley Railway Company, Inc.*, wherein DTGI seeks to acquire certain rail lines from the Delaware Valley Railway Company, Inc., and (2) STB Finance Docket No. 33504, *Gettysburg Railway Company, Inc.,—Lease and Operation Exemption—Delaware Transportation Group, Inc.*, wherein GRCI will lease and operate the rail lines being acquired by DTGI in STB Finance Docket No. 33503. ETCI is an existing Class III rail carrier operating in the States of Indiana and Illinois.[1]

The transaction was expected to be consummated on or after October 31, 1997.

Marino states that: (i) the rail lines to be controlled do not connect with each other or any other railroads in the corporate family; (ii) the transaction is not part of a series of anticipated

[1] Marino states that he currently possesses an interest in ETCI.

transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33505, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30674 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33504]

Gettysburg Railway Company, Inc.—Lease and Operation Exemption—Delaware Transportation Group, Inc.

Gettysburg Railway Company, Inc. (GRCI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Delaware Transportation Group, Inc. (DTGI), and to operate, approximately 23.4 miles of rail line between approximately milepost 31.2, at Gettysburg, PA, and milepost 7.8, at Mt. Holly Springs, PA.

The transaction is scheduled to be consummated on or after October 31, 1997.

This transaction is related to two simultaneously filed notices of exemption in STB Finance Docket No. 33505, *John H. Marino—Continuance in Control Exemption—Delaware Transportation Group, Inc., Gettysburg Railway Company, Inc., and Evansville Terminal Company, Inc.*, wherein John H. Marino will continue in control of GRCI, upon its becoming a Class III rail carrier, and STB Finance Docket No. 33503, *Delaware Transportation Group, Inc.—Acquisition Exemption—Delaware Valley Railway Company, Inc.*, wherein DTGI will acquire the lines to be operated by GRCI.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33504, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20035.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30671 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33493]

RailAmerica, Inc.—Acquisition of Control Exemption—Cape Fear Railways, Inc.

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a notice of exemption to acquire, through stock purchase, the Cape Fear Railways, Inc. (CF), a Class III railroad, operating in the State of North Carolina.[1]

The transaction was expected to be consummated on or after October 17, 1997.

RailAmerica directly controls 11 common carrier Class III railroads operating in 7 states: the Cascade and Columbia River Railroad Company; the Delaware Valley Railway Company, Inc.; the St. Croix Valley Railroad Company; the Gettysburg Railway; the Huron & Eastern Railway Company, Inc.; the Minnesota Northern Railroad, Inc.; the Otter Tail Valley Railroad Company; the Saginaw Valley Railway Company, Inc; the West Texas & Lubbock Railroad Company, Inc.; the Dakota Rail, Inc.; and the South Central Tennessee Railroad Company.

RailAmerica states that: (i) The rail lines to be operated by CF do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect CF with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33493, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary Laakso, Esq., RailAmerica, Inc., 301 Yamato Road, Suite 1190, Boca Raton, FL 33431.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30668 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

[1] RailAmerica will purchase the stock of CF from Seaboard Corporation.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33508]

Rutland Line, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Rutland Line, Inc. (RLI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 23 miles of rail line from The Burlington Northern and Santa Fe Railway Company (BNSF) from milepost 42.67, at Genesee Junction, ND, to milepost 65.66, at the North Dakota/South Dakota border (subject line).[1] RLI will also acquire BNSF's interest in certain spur trackage and real estate at Hankinson and Lidgerwood, ND. In addition, RLI will obtain incidental operating rights to operate overhead rail freight services on BNSF's lines from milepost 212.32, at Breckenridge, MN, to milepost 195.6, at Aberdeen Line Junction, MN, and from milepost 0.00, at Aberdeen Line Junction, to milepost 0.60, at BN Junction, MN. Further, BNSF will also assign to RLI its operating rights under a July 5, 1956 agreement from BNSF milepost 0.60, at BN Junction, to CPRS[2] milepost 205.6, at Hankinson, and its operating rights under a September 18, 1959 agreement from CPRS milepost 205.6, at Hankinson, to BNSF milepost 42.67, at Genesee Junction.

The transaction was scheduled to be consummated on or after October 30, 1997. Because the exemption was filed on October 24, 1997, the transaction could not have been consummated sooner than October 31, 1997.

This transaction is related to STB Finance Docket No. 33501, *Douglas M. Head, Kent P. Shoemaker and Charles H. Clay—Continuance in Control Exemption—Rutland Line, Inc.*, wherein the named individuals have concurrently filed a petition for exemption to continue in control of RTI, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33508, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: November 14, 1997.

By the Board, Beryl Gordon, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30669 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

[1] RLI will enter into an agency agreement with Red River Valley & Western Railroad (RRVW) whereby RRVW will perform operations in RLI's name and for RLI's account on the subject line. However, RLI will retain the obligation to provide common carrier service on the subject line.

[2] This abbreviation refers to joint BNSF/Soo Line Railroad Company track.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–383 (Sub–No. 17X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Marquette and Alger Counties, MI

Wisconsin Central Ltd. (WCL) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* abandon approximately 37.3-mile line of railroad on the Marquette-Munising Line, between milepost 154, at a point east of Marquette, and milepost 116.7 in Munising Junction, in Marquette and Alger Counties, MI. The line traverses United States Postal Service Zip Codes 49806, 49822, 49855 and 49862.

WCL has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 21, 1997, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 1, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Barron, Jr., Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017–5062.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

WCL has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 26, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

[1] WCL has stated that it will not consummate the proposed abandonment until the pending petition to revoke in *Sault Ste. Marie Bridge Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33200, has been resolved, but that in no event will it consummate the abandonment before January 5, 1998.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See* Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See 49 CFR 1002.2(f)(25).*

conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by November 21, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30607 Filed 11–20–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Bond Of Indemnity to the United States of America.

DATES: Written comments should be received on or before January 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Bond of Indemnity to the United States of America.

OMB Number: 1535–0062.

Form Number: PD F 2966.

Abstract: The information is requested to support a request for refund of the purchase price of savings bonds purchased in a chain letter scheme.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 665.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–30606 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Authorization for purchase and request for change of United States Series EE Savings Bonds.

DATES: Written comments should be received on or before January 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Authorization For Purchase And Request For Change United States Savings Bonds.

OMB Number: 1535–0111.

Form Numbers: SB 2152 and SB 2153.

Abstract: The information is requested to support a request by employees to authorize employers to allot funds from their pay for the purchase of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,600,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 33,333.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–30607 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing the offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

DATES: Written comments should be received on or before January 23, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing The Offering Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

OMB Number: 1535–0127.

Abstract: The information is requested to establish an investor account, issue and redeem securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business.

Estimated Number of Respondents: 37.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 17, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 97–30608 Filed 11–20–97; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register
Vol. 62, No. 225
Friday, November 21, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document 97–29519 beginning on page 60510, in the issue of Monday, November 10, 1997, make the following correction:

On page 60511, in the first column, in the **DATES** section "[insert date 60 days from publication in the **Federal Register**]" should read "January 9, 1998".

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37 CFR Part 258

[Docket No. 96-3 CARP SRA]

Rate Adjustment for the Satellite Carrier Compulsory License

Correction

In rule document 97–28543 beginning on page 55742 in the issue of Tuesday, October 28, 1997 make the following corrections:

(1) On page 55744, in the second column, in the fourth line "current date" should read "current expiration date".

(2) On page 55745, in the second column, seven lines from the bottom "commercial" should read "Commercial".

(3) On the same page in the third column, in the first line "collective" should "collectively".

(4) On page 55746, in the first column, seven lines from the bottom "prize" should read "price".

(5) On page 55747, in the third column, in the third full paragraph, in the last line "except" should read "accept".

(6) On page 55748, in the third column, in the first full paragraph, in the sixth line "not" should read "note".

(7) On page 55750, in the third column, six lines from the bottom "11(f)" should read "111(f)".

(8) On page 55752:

(a) In the first column, in the second full paragraph, in the fifth line "retransmission" should read "retransmissions".

(b) In the second column, in the first full paragraph, in the first line "may not" should read "may not be".

(c) In the same column, in the last full paragraph, in the third line "has" should read "had".

(d) In the same column, in the same paragraph, in the tenth line "nuclear" should read "unclear".

(9) On page 55753, in the first column, in the second full paragraph, twelve lines from the bottom "1996" should read "1988".

(10) On the same page, in the third column, in the first paragraph, in the twelfth line "retransmissions" was misspelled.

(11) On page 55754, in the second column:

(a) Under the heading "3. Recommendation of the Register", in paragraph (ii), in the sixth line "described" should read "describes".

(b) In the last paragraph, in the second line "dates" should read "date".

(12) On page 55755, in the second column:

(a) In the eighth line "696" should read "969".

(b) In the first full paragraph, four lines from the bottom "statement" should read "statements".

(13) On the same page, in the third column, in the fourth line "has" should read "had".

(14) On page 55756, in the third column:

(a) In the second full paragraph, in the ninth line "known" should read "know".

(b) In the fourth full paragraph, in the sixteenth line "to" should read "do".

(15) On page 55757, in the third column, in the first full paragraph, nine lines from the bottom "if" should read "it".

(16) On page 55758, in the first column:

(a) In the first line "the" should read "this".

(b) In the first full paragraph, seven lines from the bottom "was asked" should read "was not asked".

(c) In the second full paragraph, in the fourth line "rates" should read "raises".

(d) In the same paragraph, in the tenth and eleventh lines "McLaughin" and "Harin" should read "McLaughlin" and "Haring".

(17) On the same page, in the third column, in the first line the notation for footnote "10" should read "19".

(18) On page 55759, in the first column, in the first full paragraph, in the ninth line "hers" should read "her".

BILLING CODE 1505-01-D

federal register

Friday
November 21, 1997

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571 and 595
Air Bag On-Off Switches; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 595

[Docket No. NHTSA–97–3111]

RIN 2127—AG81

Air Bag On-Off Switches

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This final rule seeks to preserve the benefits of air bags, while providing a means for reducing the risk of serious or fatal injury that current air bags pose to identifiable groups of people, e.g., people who cannot avoid sitting extremely close to air bags, people with certain medical conditions, and young children. The benefits are substantial; current air bags had saved about 2,620 drivers and passengers, as of November 1, 1997. However, those air bags had also caused the death of 87 people in low speed crashes, as of that same date. Most of those people were unbelted or improperly belted. Although vehicle manufacturers are beginning to replace current air bags with new air bags having some advanced attributes, i.e., attributes that will automatically avoid the risks created by current air bags, an interim solution is needed now for those groups of people at risk from current air bags in existing vehicles.

This final rule exempts motor vehicle dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that, beginning January 19, 1998, they may install retrofit manual on-off switches for air bags in vehicles owned by or used by persons whose requests for switches have been approved by the agency. While the administrative process necessary to provide prior approval is more complex than the process proposed by the agency in January 1997 for enabling vehicle owners to obtain switches, prior approval is warranted by several considerations. The requirement for prior approval of requests for switches emphasizes to vehicle owners the importance of taking the safety consequences of a decision to seek and use on-off switches very seriously. While some people need and will be benefited by on-off switches, the vast majority of people will not be. Further, checking the requests for switches is more appropriately performed by the agency than by the dealers and repair businesses who will install the switches. Finally, prior approval will enable the agency to monitor directly, from the very beginning, the implementation of the regulation and the effectiveness of its regulation and the associated educational materials in promoting informed decisionmaking about on-off switches.

Under the exemption, vehicle owners can request an on-off switch by filling out an agency request form and submitting the form to the agency. On the form, owners must certify that they have read an information brochure discussing air bag safety and risks. The brochure describes the steps that the vast majority of people can take to minimize the risk of serious injuries from air bags while preserving the benefits of air bags, without going to the expense of buying an on-off switch. The brochure was developed by the agency to enable owners to determine whether they are, or a user of their vehicle is, in one of the groups of people at risk of a serious air bag injury and to make a careful, informed decision about requesting an on-off switch. Owners must also certify that they or another user of their vehicle is a member of one or the risk groups. Since the risk groups for drivers are different from those for passengers, a separate certification must be made on an agency request form for each air bag to be equipped with an on-off switch.

If NHTSA approves a request, the agency will send the owner a letter authorizing the installation of one or more on-off switches in the owner's vehicle. The owner may give the authorization letter to any dealer or repair business, which may then install an on-off switch for the driver or passenger air bag or both, as approved by the agency. The on-off switch must meet certain criteria, such as being equipped with a telltale light to alert vehicle occupants when an air bag has been turned off. The dealer or repair business must then fill in information about itself and its installation in a form in the letter and return the form to the agency.

This final rule also denies a petition for reconsideration of the agency's January 1997 decision in a separate rulemaking not to extend the option for installing original equipment manufacturer on-off switches for passenger air bags to all new vehicles equipped with air bags. As a result of that decision, the option continues to apply only to those new vehicles lacking a rear seat capable of accommodating a rear-facing infant restraint.

DATES: *Effective Date:* Part 595 is effective December 18, 1997. The agency will begin processing air bag on-off switch requests on that same date. If a form is submitted before December 18, it will be given the same priority as a form submitted after that date. Accordingly, there will be no advantage to submitting forms early. Motor vehicle dealers and repair businesses may begin installing switches on January 19, 1998.

The amendments to Part 571 are effective January 19, 1998. Compliance with those requirements is optional before that date.

Petitions: Petitions for reconsideration must be received by January 5, 1998.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For information about air bags and related rulemaking: For additional information, call the NHTSA Hotline at 1–800–424–9393; in the D.C. area, call 202–366–0123. In addition, visit the NHTSA Web site at http://www.nhtsa.dot.gov/airbags/. Among the available materials are descriptions of the procedures for requesting authorization to obtain an on-off switch and a list of questions and answers about air bags and on-off switches. There are also crash videos showing what happens in a crash to a belted, short-statured dummy whose driver air bag is turned off.

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I. Executive Summary of This Final Rule

A. Final Rule

This final rule seeks to preserve the benefits of air bags, while providing a means for reducing the risks that some current air bag designs pose to discrete groups of people due to their extreme proximity to air bags. This final rule exempts motor vehicle dealers and repair businesses from the statutory prohibition against making federally-required safety equipment inoperative so that, beginning January 19, 1998, they may install, subject to certain conditions, retrofit manual on-off switches for the air bags of vehicle owners whose request is approved by NHTSA. To obtain approval, vehicle owners must submit a request form to NHTSA on which they have certified that they have read an agency information brochure about air bag benefits and risks and that they or a user of their vehicle is a member of one of the risk groups identified by the agency. The agency will begin processing and granting requests on December 18, 1997.

Air bags have saved the lives of about 2,620 drivers and passengers, primarily in moderate and high speed crashes, as of November 1, 1997. However, air bags have also caused fatal injuries, primarily in relatively low speed crashes, to a small but growing number of children, and on rare occasion to adults. These deaths were not random. They occurred when people were too close to their air bag when it began to inflate. The vast majority of these fatalities could have been avoided by preventive steps such as using seat belts, moving the front seats back as much as possible, and putting children in the back seat. Nevertheless, a relatively small number of people may still be at risk, even after taking these steps, because they will be more likely than the general population to be too close to their air bags. Although advanced air bags are the ultimate answer and manufacturers are beginning to install air bags with some advanced attributes, an interim solution is needed for those identifiable groups of persons for whom current air bags in existing vehicles may pose a risk of serious or fatal injury.[1]

Under the exemption, vehicle owners[2] may request a retrofit on-off switch, based on informed decisionmaking and their certification of their membership or the membership of another user of their vehicle in one of the risk groups identified by the agency. After reading the agency information brochure, owners can fill out and sign an agency request form and submit it to NHTSA. The information brochure, which provides guidance about which groups of people may be at risk from air bags and about appropriate use of on-off switches, is intended to inform consumers about which people are at risk from air bags and to promote informed decisionmaking by consumers about whether to request an on-off switch for those persons. To increase the likelihood that the decisions are, in fact, informed, owners requesting a retrofit on-off switch must certify on the request form that they have read the information brochure. To limit the availability of on-off switches to persons at risk of serious air bag injury, the owners must also certify that they or a user of their vehicle is a member of one or more of the risk groups described on the information brochure and listed on the request form. The particular risk group in which membership is claimed must be identified. Since the risk groups for driver air bags are different from those for passenger air bags, a separate certification must be made for each air bag to be equipped with an on-off switch.

To reinforce the importance of taking great care in accurately certifying risk group membership, the agency is requiring owners to submit their requests to the agency. The agency expects that owners will accurately and honestly make the necessary certifications and statements on their request forms, but reserves the right to investigate. The prior approval procedure will also enable the agency to monitor, from the very beginning, the volume of requests and patterns in switch requests and risk group certifications. The computerization of the process of preparing authorization letters will minimize the time needed by the agency to process and respond to the requests. The precise amount of time will depend in large measure on the volume of requests.

The agency strongly urges caution in obtaining and using on-off switches. As noted above, on-off switches are not

[1] An advanced air bag senses or responds to differences in crash severity, occupant size or the distance of the occupant from the air bag at the time of a crash. The advanced air bag adjusts its performance by suppressing deployment in circumstances in which fatalities might otherwise be caused by the air bag, but not by the force of the crash or by reducing the force of deployment in those circumstances.

[2] This final rule applies to leased as well as owned vehicles. See part VIII.G.8 of this preamble. For the sake of simplicity, however, most references in this preamble are to owners only. Those references should be deemed to include lessees as well as owners.

needed for the vast majority of people since they are not at risk. Most people can take steps that will eliminate or significantly reduce their risk without turning off their air bag and losing its protective value. If they take those steps, they will be safer than if they did not take those steps and simply turned off their air bag. The most important steps are using seat belts and other restraints and moving back from the air bag. More important, people who are not at risk will be less safe if they turn off their air bag.

This exemption is subject to certain conditions to promote the safe and careful use of on-off switches. For example, the on-off switches installed pursuant to this exemption must meet certain performance criteria, such as being operable by a key and being accompanied by a telltale to alert vehicle occupants whether the air bag is "on" or "off." In addition, to provide a reminder about the proper use of on-off switches, vehicle dealers and repair businesses must give vehicle owners an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group. Those consequences will include the effect of any energy managing features, e.g., load limiters, on seat belt performance.

In response to comments indicating that the definition of "advanced air bag" was too vague and that dealers could not reasonably ascertain whether a vehicle was equipped with such air bags, the agency has deferred adoption of that aspect of its proposal which would have prohibited installation of on-off switches for advanced air bags. NHTSA expects to adopt such a prohibition after it develops a more complete definition of "advanced air bags" that applies to driver as well as passenger air bags. This deferral should have no practical significance. Although the vehicle manufacturers are beginning to introduce air bags with advanced attributes, the agency does not expect the installation of significant numbers of advanced air bags before it is ready to establish a better definition.

The agency has selected January 19, 1998, as the beginning date for the installation of retrofit on-off switches under this rule. This date allows time for completion of the design, production and distribution of on-off switches and the training of installation personnel. It also allows time for the public education campaign of the agency and other interested parties (e.g., the Air Bag Safety Campaign (ABSC),[3] American Automobile Association (AAA), Centers for Disease Control and Prevention (CDC), Insurance Institute for Highway Safety (IIHS), motor vehicle dealers, and state motor vehicle departments) to effectively reach a substantial percentage of the public before the installation of on-off switches begins. Until on-off switches become available from the vehicle manufacturer for a given vehicle make and model, NHTSA will continue to exercise its prosecutorial discretion to grant requests for deactivating the air bags in that make and model. In view of the relative inflexibility and permanence of deactivation, the discretion will be exercised on a case-by-case basis in the same limited set of circumstances in which the requests are currently granted, e.g., in cases in which unusual medical conditions suggest that deactivation is appropriate, and in cases in which infants must be carried in the front seat of vehicles lacking a rear seat capable of accommodating a rear-facing infant seat.

B. Comparison of NPRM and Final Rule

The final rule being issued today follows, in several important respects, the agency's January 1997 proposal. Most important, the rule makes a means of turning off air bags available to vehicle owners. It simplifies the current process of obtaining a means of turning off air bags. Instead of having to compose an original request letter and type or write the letter out in longhand, as they must to obtain authorization from the agency for deactivation, vehicle owners will be able to fill out an agency request form. To promote informed decisionmaking, this rule requires owners to certify on the request form that they have read an air bag information brochure prepared by NHTSA so that owners can separate fact from fiction about who is really at risk and therefore may need an on-off switch.

However, the final rule differs from the proposal in several other important respects. First, the sole means authorized for turning off air bags is a retrofit on-off switch. Deactivation (i.e., modifying the air bag so that it will not deploy for anyone under any circumstance) is not allowed under the exemption. Although the agency recognized in January 1997 that retrofit on-off switches offered some advantages, the agency proposed deactivation because the apparent unavailability of retrofit on-off switches in the near term made them impracticable. When the deactivation proposal was issued, there were indications from the vehicle manufacturers that they would not be able to provide retrofit on-off switches for existing vehicles in a timely manner. Subsequent to the January 1997 proposal, a number of major vehicle manufacturers began reassessing the practicability of on-off switches and making statements to the agency and the media that they were able to provide retrofit on-off switches for existing vehicles, and for future vehicles. The change to on-off switches in this final rule will enhance safety because the on-off switches are a more focused, flexible means of turning off air bags. They enable consumers to leave air bags on for people who are not at risk and thus will benefit from their protection, and turn them off for people at risk.

Second, vehicle owners must certify that they are a member of one of several specified risk groups or that their vehicle will be driven or occupied by a person who is a member of such a group. The agency proposed to allow any person to choose to have his or her air bags deactivated, without having to demonstrate or state a particular safety need. Under the proposal, applicants would simply have had to fill out an agency form on which they indicated that they had received and read an information brochure explaining the safety consequences of having an air bag deactivated. For the final rule, the agency has devised a new form on which owners desiring an on-off switch for either a driver or passenger air bag not only must certify that they have read the brochure, but also that they or one of the users of their vehicle fall into an identifiable risk group for that air bag. Use of the revised form will help provide reasonable assurance that the exemption is implemented in a manner consistent with safety.

Third, the agency is requiring owners to submit their filled-out forms to the agency for approval. Together with the requirement for certification of risk group membership, the necessity for obtaining agency approval will help limit the installation and use of on-off switches to people who are at risk from air bags and give the agency information about the volume of requests and patterns in switch requests and risk group certifications.

[3] The ABSC represents all automobile manufacturers (domestic and importers), air bag suppliers, many motor vehicle insurance companies and the National Safety Council.

II. Overview of Problem and the Agency's Remedial Actions

A. Introduction

While air bags are providing significant overall safety benefits, NHTSA is concerned that current air bags have adverse effects on certain groups of people in limited situations. Of particular concern, NHTSA has identified 87 primarily low speed crashes in which the deployment of an air bag resulted in fatal injuries to an occupant, as of November 1, 1997.[4] NHTSA believes that none of these occupants would have died if they had not been seated in front of an air bag.

The primary factor linking these deaths is the proximity to air bags at the time of their deployment. All of these deaths occurred under circumstances in which the occupant's upper body was very near the air bag when it deployed.

There were two other factors common to many of the deaths. First, apart from 12 infants fatally injured while riding in rear-facing infant seats, most of the fatally injured people were not using any type of child seat or seat belt. This allowed the people to move forward more readily than properly restrained occupants in a frontal crash. Further, the air bags involved in those deaths were, like almost all current air bags, so-called "one-size-fits-all" air bags that have a single inflation level.[5] These air bags deploy with the same force in very low speed crashes as they do in higher speed crashes.

The most direct behavioral solution to the problem of child fatalities from air bags is for children to be properly belted and placed in the back seat whenever possible, while the most direct behavioral solution for the adult fatalities is to use seat belts and move the driver seat back as far as practicable. Implementing these solutions necessitates increasing the percentage of children who are seated in the back and properly restrained in child safety seats. It also necessitates improving the current 68 percent rate of seat belt usage by a combination of methods, including the enactment of State primary seat belt use laws.[6]

The most direct technical solution to the problem of fatalities from air bags is to require that motor vehicle manufacturers install advanced air bags that protect occupants from the adverse effects that can occur from being too close to a deploying air bag.

All of these solutions are being pursued by the agency. However, until advanced air bags can be developed and incorporated into production vehicles, behavioral changes based on improved information and communication about potential hazards and simple, manually operated technology are the best means of addressing fatalities from air bags, especially those involving children.

To partially implement these solutions, and preserve the benefits of air bags, while reducing the risk of injury to certain people, NHTSA issued two other final rules in the past year. One rule requires new passenger cars and light trucks whose passenger air bags are not advanced to bear new, enhanced warning labels. (61 FR 60206; November 27, 1996) The other final rule provides vehicle manufacturers with the temporary option of ensuring compliance by conducting a sled test using an unbelted dummy instead of conducting a vehicle-to-barrier crash test using an unbelted dummy. (62 FR 12960; March 19, 1997) The purpose of the option is primarily to enable vehicle manufacturers to expedite their efforts to lessen the force of air bags as they deploy.

On the behavioral side, the agency has initiated a national campaign to increase usage of seat belts through the enactment of primary seat belt use laws, more public education, and more effective enforcement of existing belt use and child safety seat use laws.

In conjunction with the National Aeronautical and Space Administration, as well as Transport Canada, and in cooperation with domestic and foreign vehicle manufacturers, restraint system suppliers and others through the Motor Vehicle Safety Research Advisory Committee (MVSRAC), NHTSA is undertaking data analysis and research to address remaining questions concerning the development and introduction of advanced air bags. As noted above, the Federal motor vehicle safety standards have permitted, but not required, the introduction of advanced air bags. NHTSA recognizes that, if it were to require advanced air bags, it would have to take into consideration the differing leadtimes for the various kinds of advanced bags under development, and the fact that the longest leadtimes will be those for the most advanced bags. The agency also recognizes the engineering challenge and potential costs associated with incorporating some of the advanced air bag design features into the entire passenger car and light truck fleet. A proposal to require the installation of advanced air bags is expected this winter.

B. Background

1. Air Bags: Safety Issues

a. Lives Saved and Lost. Air bags have proven to be highly effective in reducing fatalities from frontal crashes, the most prevalent fatality and injury-causing type of crash. Frontal crashes cause 64 percent of all driver and right-front passenger fatalities.

NHTSA estimates that, between 1986 and November 1, 1997, air bags have saved about 2,620 drivers and passengers (2,287 drivers (87 percent) and 332 passengers (23 percent)).[7] Of the 2,620, 1,800 (69 percent) were unbelted and 700 (31 percent) were belted. These agency estimates are based on comparisons of the frequency of front seat occupant deaths in vehicles without air bags and in vehicles with air bags. Approximately half of those lives were saved in the last two years. These savings occurred primarily in moderate and high speed crashes. Pursuant to the mandate in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for the installation of air bags in all passenger cars and light trucks, the number of air bags in vehicles on the road will increase each year. As a result, the annual number of lives saved by air bags will continue to increase each year. Based on current levels of effectiveness, air bags will save more than 3,000 lives each year in passenger cars and light trucks when all light vehicles on the road are equipped with dual air bags. This estimate is based on current seat

[4] The vast majority of the deaths appear to have occurred in crashes in which the vehicle was traveling at less than 15 miles per hour when the air bag deployed. Almost all occurred at vehicle speeds under 20 miles per hour. NHTSA notes that Federal safety standards do not specify a vehicle crash speed at which air bags must deploy.

[5] The Federal safety standards do not require a "one-size-fits-all" approach to designing air bags. They permit a wide variety of technologies that would enable air bags to deploy with less force in lower speed crashes or when occupants are out-of-position or suppress deployment altogether in appropriate circumstances.

[6] In States with "secondary" seat belt use laws, a motorist may be ticketed for failure to wear a seat belt only if there is a separate basis for stopping the motorist, such as the violation of a separate traffic law. This hampers enforcement of the law. In States with primary laws, a citation can be issued solely because of failure to wear seat belts.

[7] Studies published in the November 5, 1997 issue of the *Journal of the American Medical Association* by IIHS and by the Center for Risk Analysis at the Harvard School of Public Health confirm the overall value of passenger air bags, while urging action be taken quickly to address the loss of children's lives due to those air bags. IIHS found that passenger air bags were associated with a substantial reduction in crash deaths. The Center evaluated the cost-effectiveness of passenger air bags and concluded that they produce savings at costs comparable to many well-accepted medical and public health practices.

belt use rates (about 68 percent, according to State-reported surveys).

While air bags are saving large numbers of people in moderate and high speed crashes, they sometimes cause fatalities, especially to children, in lower speed crashes. As of November 1, 1997, NHTSA's Special Crash Investigation program had confirmed a total of 87 crashes in this country in which the deployment of an air bag resulted in fatal injuries. Forty-nine of those fatalities involved children. Three adult passengers have also been fatally injured. Thirty-five drivers are known to have been fatally injured.

In addition to the 87 confirmed air bag related deaths, there were 18 deaths under investigation, as of November 1, 1997, 1 involving a 1996 crash and 17 involving 1997 crashes. The single 1996 death still under investigation involved a driver. The 17 deaths in 1997 involved 1 infant, 11 children ranging in age from 1 to 11 years, and 5 drivers. Although the agency cannot predict how many of the deaths under investigation that will ultimately be categorized as confirmed air bag related deaths, the agency notes that roughly 80 percent of the deaths investigated to date have ultimately been confirmed.

The trends in the annual numbers of child and adult deaths differ significantly. The annual number of confirmed fatally-injured children increased significantly in 1993 through 1996 (1 in 1993, 5 in 1994, 8 in 1995 and 22 in 1996), while the number of confirmed fatally-injured drivers did not increase appreciably in the same period (4 in 1993, 7 in 1994, 4 in 1995, and 6 in 1996). As of November 1, 12 children and 6 drivers had been confirmed as having been fatally injured by air bags this year. However, as noted above, additional deaths are under investigation. The total number of confirmed deaths for this year will not be known until some time next year.

The number of vehicles with either driver air bags or both driver and passenger air bags increased steadily over the last four years. Since the fall of 1996, the number of vehicles with both driver and passenger air bags has been increasing at the rate of 1 million vehicles per month. The ratio of driver deaths to vehicles with driver air bags decreased significantly between 1993 and 1996. The ratio of child deaths to vehicles with passenger air bags also decreased, but not nearly so much.

b. Causes of Air Bag Fatalities. The one fact that is common to all who died is *not* their height, weight, sex, or age. Instead, it is the fact that they were too close to the air bag when it started to deploy. For some, this occurred because they were sitting too close to the air bag. More often this occurred because they were not restrained by seat belts or child safety seats and were thrown forward during pre-crash braking.

Air bags are designed to save lives and prevent injuries by cushioning occupants as they move forward in a front-end crash. They keep the occupants' head, neck, and chest from hitting the steering wheel or dashboard. To accomplish this, an air bag must move into place quickly. The force of a deploying air bag is greatest in the first 2–3 inches after the air bag bursts through its cover and begins to inflate. Those 2–3 inches are the "risk zone." The force decreases as the air bag inflates further.

Occupants who are very close to or in contact with the cover of a stored air bag when the air bag begins to inflate can be hit with enough force to suffer serious injury or death. In contrast, occupants who are properly restrained and who sit 10 inches away from the air bag cover will contact the air bag only after it has completely or almost completely inflated. The air bag then will cushion and protect them from hitting hard surfaces in the vehicle and thus provide a significant safety benefit, particularly in moderate to serious crashes.

The confirmed fatalities involving children have a number of fairly consistent characteristics. First, all 12 infants were in rear-facing infant seats. Second, the vast majority of the older children were not using any type of restraint.[8] Third, almost all of the small number of older children who were using some type of restraint were improperly restrained or were leaning so far forward that benefits of being restrained were largely negated. For example, some were too small to be using just a vehicle lap and shoulder belt. Fourth, as noted above, the crashes occurred at relatively low speeds. If the passenger air bag had not deployed in those crashes, the children would probably not have been killed or seriously injured. Fifth, the infants and older children were very close to the dashboard when the air bag deployed. Properly installed rear-facing infant seats are always very close to the dashboard. For essentially all of the older children, the non-use or improper use of occupant restraints or the failure to use the restraints most appropriate to the child's weight and age, in conjunction with pre-impact braking, resulted in the forward movement of the children.[9] As a result, they were very close to the air bag when it deployed. Because of their proximity, the children sustained fatal head or neck injuries from the deploying passenger air bag.

As in the case of the children fatally injured by air bags, the key factor regarding the confirmed adult deaths has been their proximity to the air bag when it deployed. The most common reason for their proximity was failure to use seat belts. Only 11 of the 35 drivers were known to be properly restrained by lap and shoulder belts at the time of the crash. Moreover, of those eleven, two appeared to be out of position (blacked out, due to medical conditions, and slumped over the steering wheel) at the time of the crash. As in the case of children, the deaths of drivers have occurred primarily in low speed crashes.

The other cause of air bag fatalities is the design of current air bags. Air bag fatalities are not a problem inherent in the concept of air bags or in the agency's occupant restraint standard, Standard No. 208 (49 CFR 571.208). That standard has long permitted, but not required, a variety of design features that would reduce or eliminate the fatalities that have been occurring, e.g., higher deployment thresholds that will prevent deployment in low speed crashes,[10] different folding patterns and aspiration designs, dual stage inflators,[11] new air bag designs like the Autoliv "Gentle Bag" that deploys first radially and then toward the occupant, and advanced air bags that either adjust deployment force or suppress deployment altogether in appropriate circumstances. While some of these features are new or are still under development, others have been around for more than a decade. The agency identified a number of these features in conjunction with its 1984 decision concerning automatic occupant

[8] 29 (or 78%) of the 37 forward-facing children who were fatally injured by air bags were not using any type of belt or other restraint. This included 4 children who were sitting on the laps of other occupants. The remaining 8 children included some who were riding with their shoulder belts behind them and some who were wearing lap and shoulder belts but who also should have been in booster seats because of their small size and weight. Booster seat use could have improved shoulder belt fit and performance. These various factors and pre-crash braking allowed the children to get too close to the air bag when it began to inflate.

[9] For information on the restraint most appropriate for a particular child, see the table at the end of the information brochure in Appendix A in the regulatory text.

[10] Mercedes Benz offers passenger air bags whose deployment threshold is 12 mph if the passenger is unbelted and 18 mph if the passenger is belted.

[11] The air bags installed in approximately 10,000 GM cars in the 1970's were equipped with dual stage inflators. Today, Autoliv, a Swedish manufacturer of air bags, has a "gas generator that inflates in two steps, giving the bag time to unfold and the vent holes to be freed before the second inflation starts. Should the bag then encounter an occupant, any excessive—gas indeed bag pressure—will exit through the vent holes."

protection and noted that vehicle manufacturers could choose among those features to address the problems reported by those manufacturers concerning out-of-position occupants.

Although Standard No. 208 permits vehicle manufacturers to install air bags incorporating those advanced features, very few current air bags do so. Instead, vehicle manufacturers have thus far used designs that inflate with the same force under all circumstances. Although the vehicle manufacturers are now working to incorporate advanced features in their air bags, the introduction of air bags with those features is only just beginning. Introduction of significant numbers of advanced air bags may not begin for another several model years.

With the help of a recent amendment to Standard No. 208, vehicle manufacturers have been able to expedite the introduction of depowered air bags. While these new air bags will reduce, but not eliminate, the likelihood of air bag-caused deaths, they still deploy with the same force in all crashes, regardless of severity, and regardless of occupant weight or location. Many manufacturers have introduced substantial numbers of these less powerful air bags in the current model year (1998).

2. Air Bag Requirements

Today's air bag requirements evolved over a 25-year period. NHTSA issued its first public notice concerning air bags in the late 1960's. However, it was not until the fall of 1996 that manufacturers were first required to install air bags in any motor vehicles.[12]

When the requirements for automatic protection (i.e., protection by means that require no action by the occupant) were adopted in 1984 for passenger cars, they were expressed in broad performance terms that provided vehicle manufacturers with choices of a variety of methods of providing automatic protection, including automatic belts and air bags. Further, the requirements allowed broad flexibility in selecting the performance characteristics of air bags.

Later, those requirements were extended to light trucks. Ultimately, strong market demand led manufacturers to begin to install air bags in all of their passenger cars and light trucks.

In 1991, Congress included a provision in ISTEA directing NHTSA to amend Standard No. 208 to require that all passenger cars and light trucks provide automatic protection by means of air bags. ISTEA required at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996, and before September 1, 1997, to be equipped with an air bag and a manual lap/shoulder belt at both the driver and right front passenger seating positions. Every passenger car manufactured on or after September 1, 1997, must be so equipped. The same basic requirements are phased-in for light trucks one year later.[13] The final rule implementing this provision of ISTEA was published in the **Federal Register** (58 FR 46551) on September 2, 1993.

Standard No. 208's automatic protection requirements, whether for air bags or (until the provisions of ISTEA fully take effect) for automatic belts, are performance requirements. The standard does not specify the design of an air bag. Instead, vehicles must meet specified injury criteria, including criteria for the head and chest, measured on test dummies. Until recently, these criteria had to be met for air bag-equipped vehicles in barrier crashes at speeds up to 30 mph, both with the dummies belted and with them unbelted.

However, on March 19, 1997, the agency published a final rule amending Standard No. 208 to temporarily provide the option of testing air bag performance with an unbelted dummy in a sled test incorporating a 125 millisecond standardized crash pulse instead of in a vehicle-to-barrier crash test. This amendment was made primarily to expedite manufacturer efforts to reduce the force of air bags as they deploy.

Standard No. 208's current automatic protection requirements, like those established 13 years ago in 1984, apply to the performance of the vehicle as a whole, and not to the air bag as a separate item of motor vehicle equipment. The broad vehicle performance requirements permit vehicle manufacturers to "tune" the performance of the air bag to the specific attributes of each of their vehicles.

The Standard's requirements also permit manufacturers to design seat belts and air bags to work together. Before air bags, seat belts had to do all the work of restraining an occupant and reducing the likelihood that the occupant will strike the interior of the vehicle in a frontal crash. Another consequence of not having air bags was that vehicle manufacturers had to use relatively rigid and unyielding seat belts that can concentrate a lot of force along a narrow portion of the belted occupant's body in a serious crash. This concentration of force created a risk of bone fractures and injury to underlying organs. The presence of an air bag increases the vehicle manufacturer's ability to protect belted occupants. Through using energy managing devices, such as load limiters, a manufacturer can design seat belts to give or release additional belt webbing before the belts can concentrate too much force on the belted occupant's body. When these new belts give, the deployed air bag is there to prevent the belted occupant from striking the vehicle interior.

Further, Standard No. 208 permits, but does not require, vehicle manufacturers to design their air bags to minimize the risk of serious injury to unbelted, out-of-position occupants, including children and small drivers. The standard gives the manufacturers significant freedom to select specific attributes to protect all occupants, including attributes such as the crash speeds at which the air bags deploy, the force with which they deploy, air bag tethering and venting to reduce inflation force when a deploying air bag encounters an occupant close to steering wheel or dashboard, the use of sensors to detect the presence of rear-facing child restraints or the presence of small children and prevent air bag inflation, the use of sensors to detect occupant position and prevent air bag inflation if appropriate, and the use of dual stage

[12] *Air bag firsts*—In view of the confusion evident in some public comments on this rulemaking and even now in some media accounts about when air bags were first required, and by whom, the agency has set forth a brief chronology below:

- 1972 *First year* in which vehicle manufacturers had the *option of installing air bags* in passenger cars as a mean of complying with Standard No. 208. Vehicle manufacturers also had the option of complying by means of installing manual lap and shoulder belts. GM installed driver and passenger air bags in approximately 10,000 passenger cars in the mid-1970's.
- 1986 *First year* in which vehicle manufacturers were *required to install some type of automatic protection* (either automatic belts or air bags) in passenger cars. This requirement was issued by Secretary Dole in 1984. At the time of issuance, the agency expressly noted the concerns expressed by vehicle manufacturers about out-of-position occupants. In response, NHTSA identified a variety of technological remedies whose use was permissible under the Standard. Between 1986 and 1996, vehicle manufacturers chose to comply with the automatic protection requirements by installing over 35 million driver air bags and over 18 million passenger air bags in passenger cars. Another 12 million driver air bags and almost 3 million passenger air bags were installed in light trucks in that same time period.
- 1996 *First year* in which vehicle manufacturers were *required to install air bags* in passenger cars. this requirement was mandated by the 1991 Intermodal Surface Transportation Efficiency Act.

[13] At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. Every light truck manufactured on or after September 1, 1998 must be so equipped.

versus single stage inflators. Dual stage inflators enable air bags to deploy with lower force in low speed crashes, the type of crashes in which children and drivers have been fatally-injured, and with more force in higher speed crashes.

C. Comprehensive Agency Plan to Address Air Bag Fatalities

In late November 1996, NHTSA announced that it would be implementing a comprehensive plan of rulemaking and other actions (e.g., consumer education and encouragement of State seat belt use laws providing for primary enforcement of their requirements) addressing the adverse effects of air bags.[14] While there is a general consensus that the best approach to preserving the benefits of air bags while preventing air bag fatalities will ultimately be the introduction of advanced air bags, those air bags will not be widely available in the next several years. Accordingly, the agency has focused on rulemaking and other actions that will help reduce the adverse effects of air bags in existing vehicles as well as in vehicles produced during the next several model years. The actions which have been taken, or are being taken, include the following:

1. Interim Rulemaking Solutions

a. Existing and Future Vehicles-in-Use. This final rule exempts, under certain conditions, motor vehicle dealers and repair businesses from the "make inoperative" prohibition in 49 U.S.C. 30122 by allowing them, beginning January 19, 1998, to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is approved by NHTSA. The purpose of the exemption is to preserve the benefits of air bags while reducing the risk that some people have of being seriously or fatally injured by current air bags. The exemption also allows consumers to have new vehicles retrofitted with on-off switches after the purchase of those vehicles. It does not, however, allow consumers to purchase new vehicles already equipped with on-off switches.

b. New Vehicles. On March 19, 1997, NHTSA published in the **Federal Register** (62 FR 12960) a final rule temporarily amending Standard No. 208 to facilitate efforts of vehicle manufacturers to depower their air bags quickly so that they inflate less aggressively. This change, coupled with the broad flexibility already provided by the standard's existing performance requirements, provided the vehicle manufacturers maximum flexibility to quickly reduce the adverse effects of current air bags.

On November 27, 1996, the agency published in the **Federal Register** (61 FR 60206) a final rule amending Standards No. 208 and No. 213 to require improved labeling on new vehicles and child restraints to better ensure that drivers and other occupants are aware of the dangers posed by passenger air bags to children, particularly to children in rear-facing infant restraints in vehicles with operational passenger air bags. The improved labels were required on new vehicles beginning February 25, 1997, and were required on child restraints beginning May 27, 1997.

On January 6, 1997, the agency published in the **Federal Register** (62 FR 798) a final rule extending until September 1, 2000, an existing provision in Standard No. 208 permitting vehicle manufacturers to offer manual on-off switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints.

2. Longer-Term Rulemaking Solution

The longer term solution is advanced air bags. The agency has established a working group under the Crashworthiness Subcommittee of MVSRAC to work cooperatively with the vehicle manufacturers, restraint system suppliers and other organizations regarding advanced air bags. Activities include sharing data and information from research, development and testing of advanced air bags and providing test procedures that could be used in evaluating the advanced air bag technologies. While some of these technologies are complex, others are relatively simple and inexpensive. NHTSA plans to issue an NPRM to require a phasing-in of advanced air bags and to establish performance requirements for those air bags. While Standard No. 208 has provided vehicle manufacturers with the flexibility necessary to introduce advanced air bags, the Standard has not required them to take advantage of that flexibility. Among other things, the agency anticipates proposing tests using a 5th percentile female dummy[15] and advanced child dummies and specify appropriate injury criteria for those dummies, including neck injury criteria, as part of its rulemaking regarding advanced air bags.

3. Educational Efforts; Child Restraint and Seat Belt Use Laws

In addition to taking these actions, and conducting extensive public education efforts, the Department of Transportation announced this past spring a national strategy to increase seat belt and child seat use. Higher use rates would decrease air bag fatalities and the chance of adverse safety tradeoffs occurring as a result of turning off air bags. The plan to increase seat belt and child seat use has four elements: stronger public-private partnerships; stronger State seat belt and child seat use laws (e.g., laws providing for primary enforcement of seat belt use requirements); active, high-visibility enforcement of these laws; and effective public education. Substantial benefits could be obtained from achieving higher seat belt use rates. For example, if observed belt use increased from 68 percent to 90 percent, an estimated additional 5,536 lives would be saved annually over the estimated 9,529 lives currently being saved by seat belts. In addition, an estimated 132,670 injuries would be prevented annually. The economic savings from these incremental reductions in both fatalities and injuries would be $8.8 billion annually.

III. Deactivation Proposal (January 1997)

On January 6, 1997, NHTSA published an NPRM (62 FR 831) to exempt motor vehicle dealers and repair businesses conditionally from the statutory "make inoperative" prohibition of 49 U.S.C. § 30122, so that they could deactivate either or both the driver and passenger air bags at the request of a vehicle owner. As noted above, this proposal was issued to help reduce the fatalities and injuries that current air bags are causing to persons who may be facing special risks from air bags.

The agency stated that, while it expected that advanced air bags will offer means for significantly reducing or eliminating the risk of adverse side effects from air bags, advanced air bags will not be widely available in the next several years. The agency said it believes that, in the interim, steps need to be taken to minimize the possibility that air bags will cause harm in existing vehicles and in new vehicles produced prior to the availability of advanced air bags. Just as depowering will provide a technological solution that will prevent a significant number of the air bag fatalities that might otherwise have occurred in new vehicles, so deactivation would provide a technological solution for persons facing special risks in existing vehicles. Although the agency recognized that retrofit on-off switches offered certain advantages, the agency proposed deactivation instead of installation of retrofit on-off switches based on information from the vehicle manufacturers indicating that they could not provide retrofit on-off switches for existing vehicles in a timely manner.

Noting that a depowered passenger air bag may not completely eliminate the risk to an infant in a rear-facing infant seat or to an unrestrained child who is near the dashboard as a result of pre-crash braking, the agency stated that deactivation of depowered passenger air bags would be permitted. However, since on-off switches and advanced air bags could be used to essentially eliminate the risks to children, deactivation of a passenger air bag would not be permitted under the proposal if that air bag were equipped with such an on-off switch or if the air bag were an advanced air bag.

NHTSA proposed to limit authorization to deactivate driver air bags to existing vehicles and vehicles lacking advanced driver air bags. The agency indicated that it might further restrict authorization to deactivate driver air bags by excluding vehicles with depowered driver air bags.

NHTSA noted that there were safety tradeoffs associated with air bag deactivation. The agency strongly recommended that air bag deactivation be undertaken only in instances in which the vehicle owner reasonably believes that the air bag poses a significant risk, based on the individual's particular circumstances. The agency indicated that there would be limited need for passenger air bag deactivation and even less need for driver air bag deactivation.

The mechanics of the proposed exemption from the make inoperative prohibition were based in large measure upon recommendations from BMW and Volvo in 1996 that the agency develop procedures similar to those being used in Europe for temporarily deactivating air bags. According to BMW,

> (I)n Europe, a BMW dealer is allowed to temporarily deactivate the passenger air bag for individuals who may have a special need or normally transport children after advising them of the benefits of air bags and approval forms are signed.

Given the administrative complexity and time that would be associated with reviewing individual applications, the agency proposed to allow any person to choose to deactivate, without having to demonstrate a particular safety need. However, applicants would have had to submit a written authorization to the dealer or repair business performing the deactivation and indicate that they had received and read an information brochure explaining the consequences of having an air bag deactivated.

NHTSA requested commenters to provide views regarding a number of specific issues, including—

- Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might reasonably be expected to occur?
- Would the administrative details involved in establishing and implementing limitations on eligibility overly complicate the availability of deactivation?
- If it becomes permissible to deactivate air bags, with the result that an air bag could be turned off permanently, should the agency permit lesser measures as well, such as an on-off switch?
- Should there be a requirement that deactivation be performed in a manner that facilitates reactivation?
- In the rulemaking regarding OEM on-off switches, the agency estimated that there would be more benefits than losses if the misuse rate were less than 7 percent. Since a seat with a deactivated air bag may sometimes be occupied by a person who would benefit from the air bag, is there a percentage of such occupancy that would result in the losses from deactivation outweighing the benefits?
- Should a vehicle lessee be allowed to seek deactivation?

IV. Summary of Public Comments on Proposal

There were approximately 700 comments on the NPRM. About 600 of those were from members of the general public. The rest were from companies or trade associations representing vehicle manufacturers, dealers and repair businesses, fleet managers and owners, equipment manufacturers, consumer safety groups, insurance companies, physicians and health-related groups, former NHTSA administrators, and miscellaneous other organized groups. Because so many commenters took the same or similar positions on the issues, the commenters are not identified in this preamble unless there is some special significance to their identity. Instead, they are referred to simply as "general public" commenters and "company and group" commenters (even if some of the "company and group" comments are from individual companies).

The general public commenters supported, and the company and group commenters did not oppose, the agency's exempting dealers and repair businesses from the make inoperative prohibition so that air bags could be turned off. However, the commenters were divided on many of the details of how this should be accomplished and on the breadth of the exemption.

Almost all commenters supported deactivation as a means for turning off air bags. Most of the companies and groups also supported permitting retrofit on-off switches at least as an alternative to deactivation. GM, a dealer's group, a service group, and a number of safety groups went further, stating that on-off switches should be the only permitted way of turning off an air bag. About one in six of the general public commenters also stated that on-off switches should be installed in lieu of, or as a preferred means of, turning off air bags. IIHS, which supported deactivation, stated that it reluctantly supported on-off switches as well. Its reluctance arose in large part from the amount of apparent interest in on-off switches. Based on a January 1997 public opinion survey that it commissioned showing a strong public preference for on-off switches over deactivation, IIHS suggested that more people would choose to have on-off switches installed than would choose to have deactivations performed. A few commenters opposed on-off switches. BMW stated that on-off switches should not be allowed because their development will divert resources from development of advanced air bags, conflict with the decision not to require them on new vehicles, and introduce complexity for service and repair, compared with the "simple reprogramming" necessary for temporary deactivation of its air bags. Both BMW and IIHS expressed concern that allowing on-off switches would encourage placing children in front where the risk of serious injury is greater, with or without air bags. Most company and group commenters thought that on-off switch misuse would be a significant problem.

The issues which drew the most comments were "who should be allowed to have their air bags deactivated, and under what procedure?"[16] The general public

[14] For a discussion of the actions taken by NHTSA before November 1996 to address the adverse effects of air bags, see pp. 40787–88 of the agency's NPRM published August 6, 1996 (61 FR 40784).

[15] A 5th percentile female dummy has a standing height of 5 feet and a weight of 110 pounds.

[16] In expressing their views on these issues, even those commenters who discussed on-off switches as a means that should be available under the

Continued

commenters almost universally favored allowing air bag deactivation for anyone who wants it, i.e., regardless of whether a person is actually in a risk group. Both the National Transportation Safety Board (NTSB) and IIHS also supported deactivation for any vehicle owners who want it, i.e., without requiring membership in a risk group. In addition, one equipment manufacturer, and three groups supported deactivation for owners who want it and based their support on personal liberty arguments. However, most of the other company and group commenters were opposed to deactivation for everyone who wants it.

The main argument given by the general public commenters for broad availability of deactivation was that there should be personal choice as to whether to turn one's air bag on or off. These commenters emphasized the danger that they believe air bags pose and many mentioned media reports that they had seen. They frequently noted that there were circumstances that they believed would tend to put them or their family members at risk. Generally, these circumstances included short stature, pregnancy, being elderly, needing to transport children, and certain medical conditions. Many stated that they wore their seat belts, and that they believed that the air bags were of marginal benefit.

IIHS said that it supported broad availability because of the apparent extent of public interest in turning off air bags for at least some vehicle occupants. The organization suggested that trying to limit the availability of deactivation would create an adverse public reaction. In support of this suggestion, IIHS cited its January 1997 survey indicating that 30 percent of their respondents would like an on-off switch for the driver air bag, and 67 percent would like one for the passenger air bag. Thirteen percent said they would like a permanent deactivation of the driver air bag, and 19 percent wanted permanent deactivation for the passenger air bag.

The main argument of the company and group commenters against relying on informed decisionmaking in allowing deactivation was that there would be widespread deactivation by frightened and misinformed consumers who were not actually at risk. Many company and group commenters expressed concern that the issues relating to air bag risks might be too complex for the general public to comprehend so that it would be difficult for the public to make informed decisions. Some commented that allowing deactivation for everyone would even encourage deactivations by implying that air bags were so dangerous that they generally should be disconnected. The great majority of company and group commenters favored a continuation of NHTSA's current practice of authorizing deactivations only in limited circumstances and solely on a case-by-case basis. In August 1997, a broad coalition of vehicle manufacturers, dealers, insurers, public interest groups, medical societies and others met first with the Office of Management and Budget (OMB) and later with NHTSA to urge that eligibility under the exemption be limited to persons in risk groups identified by the agency and that the agency approve each request for an on-off switch before a switch can be installed. The coalition re-iterated its concerns in a mid-October meeting with OMB.

Several individual vehicle manufacturers, and the industry associations representing all domestic and foreign vehicle manufacturers, said that NHTSA does not have the statutory authority to allow deactivation based on informed decisionmaking. General Motors (GM) argued that the proposal did not meet the three tests which it believes are implicit in the statute: (1) an exemption must be for a single individual, not classes of people; (2) an exemption for a specific individual must be based on the agency's judgment, not the individual's judgment; and (3) an exemption must be consistent with vehicle safety. These commenters noted that the agency emphasized in the NPRM that only in limited instances would deactivation be, on balance, in the best interests of a driver or passenger. They argued that the predicted widespread deactivations provided to anyone who wanted one would result in more people being killed and injured in situations in which the air bag might have saved them, thus resulting in a reduction of motor vehicle safety. Finally, Ford argued that the agency's desire for administrative simplicity does not overcome the necessity for complying with the statute.

The company and group commenters advanced a number of safety arguments against allowing deactivation based on informed decisionmaking. Some of them suggested that depowering air bags would obviate the need for a broad availability of deactivation. Several stated that occupant restraint systems are integrated. Seat belts designed to work with air bags may not work so well as conventional seat belts if the air bags are deactivated. In particular, it was stated that, depending on how it was performed, deactivating the air bag could also deactivate seat belt pretensioners that use the same crash sensors as the air bag. GM suggested that it is the safety conscious people who already buckle themselves and their children who will tend to deactivate their air bags in reaction to media reports of air bag deaths and injuries. Because people who wear belts are seldom harmed by air bags, GM concluded that, ironically, many or most who disconnect will be at increased risk. A majority of the company and group commenters stated that vehicles with deactivated air bags would be sold to other parties who might not know of the deactivation, or in the case of vehicles with retrofit on-off switches, might misuse the on-off switch.

The company and group commenters almost universally stated that deactivation was, given its permanency, appropriate only in rare circumstances. Most of these commenters did not identify those circumstances, but stated that NHTSA should determine the proper categories of persons who would be better off without the air bag, based on its expertise and data. To the extent that the circumstances were noted, they are discussed briefly below.

There was universal agreement that certain young children riding in the front need to be protected from the risk of serious injury from air bags. Nearly all commenters said that owners and lessees who have vehicles lacking a rear seat capable of accommodating a rear-facing infant restraint and who need to transport infants in such restraints should be able to have the passenger air bag deactivated. Some commenters suggested that air bags should be turned off for young children with medical conditions that need frequent monitoring by the driver. In contrast, the American Academy of Pediatrics stated that situations in which a child needs immediate attention are very rare, and that it was more dangerous to attend to them while driving. Another circumstance suggested by some commenters is the presence of too many children in a vehicle to place all of them in the back seat.

Other categories mentioned by some of the commenters include people of short stature, the elderly, and people with certain medical conditions or disabilities. These categories were also mentioned extensively in the general public comments. However, the company and group commenters tended

exemption for turning off air bags generally discussed the eligibility and procedural issues in terms of deactivation alone. NHTSA understands that the commenters generally intended those views regarding eligibility and procedure to apply equally to deactivation and on-off switches.

to minimize the risk to these categories of people. They generally did not include the elderly as a category, and some of them suggested that exemptions for medical reasons should be accompanied by a doctor's note. One safety group suggested NHTSA employ a licensed medical professional or panel to examine requests. One medical group suggested that NHTSA and a panel of medical professionals define qualifying medical conditions. While some commenters agreed that short people were in danger, they emphasized the difficulty of determining how short was too short.

More recent submissions and statements from the company and group commenters argue that the issue is not occupant height, but sitting distance from the air bag module. IIHS submitted a survey indicating that only 5 percent of female drivers (approximately 2.5 percent of all drivers) are accustomed to sitting within 10 inches of their air bag module. Of those 5 percent of female drivers, 66 percent normally sit 9–10 inches from their air bag, and an additional 17 percent normally sit 8–9 inches away. The remainder, accounting for less than 1 percent of female drivers, normally sit within 8 inches of their air bag.

IIHS also found that a high percentage of short-statured female drivers could adjust their driving position to achieve a 10-inch distance. This finding was based on 13 women, from 4 feet, 8 inches tall to 5 feet, 2 inches tall, who were asked to try to achieve that distance in a dozen vehicles of varying sizes. Ten of the women achieved 10 inches in all of the vehicles; the remaining 3 did so in all but a few of the vehicles. All drivers were able to achieve at least 9 inches in all vehicles.

Other reasons given for not allowing deactivation based on informed decisionmaking were assertions that NHTSA's current system of case-by-case determinations was believed to work well and only needed unspecified streamlining; that the few deactivation requests NHTSA received until recently proved that actual need was low; and that the authorization form would be ineffective, especially with respect to subsequent purchasers of vehicles with deactivated air bags, as a means of alleviating the liability concerns of the manufacturer, dealer, and repair business groups. In an August 1, 1997 letter, a broad coalition of company and group commenters argued that since the agency was reportedly answering all deactivation requests within 72 hours and had no backlog of unanswered requests, the agency should be able under the final rule to continue its current practice of reviewing and approving each deactivation request.

In addition to objecting generally to the proposal for deactivation based on informed decisionmaking, many of the company and group commenters expressed concerns about particular aspects of the proposed process for implementing the exemption from the make inoperative prohibition. The dealer and repair business groups, and generally also the vehicle manufacturers and safety groups, were opposed to the dealers having any role in the process of distributing information brochures or making any kind of decision in the process. They indicated that it would be difficult to reject the request of an owner who wanted deactivation or advice on whether to deactivate, yet the dealers did not have the expertise to advise owners on deactivation. Dealer and vehicle manufacturer groups also stated that the existing definition of "advanced air bags" was too vague and that a dealer could not be expected to determine whether a vehicle was equipped with one, and therefore ineligible for deactivation.

Some of the company and group commenters stated that NHTSA should require guidance from the vehicle manufacturers on how to perform deactivations. A dealers' group commented that if NHTSA did not require the vehicle manufacturers to provide procedures, dealers/repairers might perform improper repairs, and that deactivations should be done only by factory trained and certified deactivation technicians at a franchised dealership. Two manufacturers suggested that NHTSA requite manufacturers to provide such procedures, and one suggested requiring deactivation kits. Ford commented that NHTSA should require deactivation to be done in accordance with "manufacturer recommendations."

A large majority of company and group commenters also stated that any recordkeeping under the exemption from the make inoperative prohibition should be done by NHTSA. Vehicle manufacturers uniformly stated that NHTSA should keep the records because the agency could provide a centralized information clearinghouse on air bag deactivations. Vehicle manufacturers also commented that since they have no role in authorizing or performing deactivations, or in enforcement, they should not have recordkeeping responsibilities. Multinational Business Services (MBS) stated that the agency should be the recordkeeper so that it could analyze trends among the requests for deactivation and make any appropriate policy adjustments. The insurance and safety groups suggested that NHTSA notify insurers of any deactivations, because permanent deactivation would eliminate the basis for the air-bag discount many insurance companies offer. GM suggested that recordkeeping would be totally unnecessary if on-off switches were installed.

Many of the company and group commenters opposed an immediate effective date. Jaguar suggested at least 60 days would be needed for label printing, software development, preparations of procedures for disconnect/reconnect, and training. Other manufacturers, who urged that retrofit on-off switches be allowed as an alternative to permanent deactivation, stated that additional time would be needed for development of on-off switches. Ford said that it would need 5–6 months to have a large supply of retrofit on-off switch kits in dealer inventory. In an August 29, 1997 meeting with NHTSA representatives, a broad coalition of company and group commenters urged that adequate leadtime be provided to give the government as well as many of the company and group commenters sufficient opportunity to communicate their safety messages about air bag safety and risks to the public.

Opinion about sunsetting (i.e., terminating) the exemption was divided. GM opposed sunsetting the exemption when "smart air bag," i.e., advanced air bags, are introduced. The company said that until the term can be adequately defined, NHTSA should remove the term from the rule, along with any sunsetting associated with it. Advocates for Highway and Auto Safety commented that sunsetting the exemption was appropriate.

Some company and group commenters discussed the costs associated with deactivation. Some manufacturers merely stated that additional parts and extensive labor would be required for both deactivation and reactivation. Only Ford gave specific cost estimates. Ford estimates for parts and labor (but not including profit) ranged from $16 for a simple shorting bar removal, to $124 for an on-off switch. The NTSB commented that some manufacturers had indicated to it that the cost of on-off switches would be $300–400 per on-off switch. Some insurance groups indicated that insurers might eliminate the air bag discount, even with on-off switches, because they would be unable to identify deactivated vehicles. This would penalize those who do not disconnect.

IIHS submitted a July 1997 report in which that organization concluded the

results of 40 mph offset frontal crash tests demonstrate that turning off an air bag increases the risk that a belted driver will be seriously injured in a crash. Crash tests using dummies representing an average size male driver indicated that without an air bag, the safety belts alone would not have prevented a belted driver from suffering "life-threatening" head and neck injuries. Similarly, another July 1997 IIHS report concerning 35 mph barrier crash tests with 5th percentile female dummies indicated that short-statured women can obtain significant protection from an air bag even when the driver's seat is moved all the way forward. The tests indicated that without air bags to spread the crash forces over the entire head, the crash forces would instead be concentrated on a narrow portion of the middle or lower portions of the face where the bones are more fragile. IIHS noted that a study of 15 restrained drivers fatally injured in frontal crashes with head injuries of AIS 4 or greater, found that steering wheels were the sources of head injuries for 9 of these drivers, and that 13 drivers suffered their head injuries from loading to the facial bones.

Some company and group commenters noted that the adverse effect of turning off air bags would be greater for some vehicles equipped with seat belts specially designed to work with air bags. If the crash forces become too great, these new seat belts "give" or yield to avoid concentrating too much force on the chest. Some of these belt systems yield by allowing more belt webbing to spool out when a predetermined force level is reached. The inflated air bag prevents the occupant from moving too far forward after the seat belts give. Without the air bag, the new belts allow the occupant to move farther forward in moderate and high speed crashes.

Commenters addressed the conditions that should apply to deactivations. A wide variety of companies and groups commented that, whatever the method of deactivation, it should be done in a manner that facilitates reactivation. All commenters who addressed the question stated that the air bag readiness indicator should have to remain functional for the remaining air bag, even if one air bag were deactivated. The companies and groups also generally commented that if both air bags have on-off switches, the air bags should be individually controllable.

Nearly all company and group commenters emphasized the importance of the information brochure in promoting an informed decision by individual members of the public about deactivation. Many said improvements were needed in the information brochure. The most common assessment was that the brochure was too long and technical. Others commented that NHTSA should focus-group test the effectiveness of the brochure prior to distributing it. Several suggested that the information be provided in a video.

Many company and group commenters argued that the agency significantly underestimated the number of people who would seek deactivation under the proposal. Many commenters argued that the agency should consider public opinion surveys in making a new estimate. One commenter urged the agency to base its estimates on the IIHS' January 1997 survey. The most recent survey, an August 1997 survey from IIHS, indicated that 12 percent of vehicle owners were interested in obtaining an on-off switch for the driver's air bag and 16 percent for the passenger's air bag. Based on early 1997 surveys, that commenter contended that the proposal would have significant not adverse effects on safety. In an August 1, 1997 letter, the vehicle manufacturers argued that the net effects must be assessed in order to ensure that the exemption meets the statutory criterion of consistency with safety.

V. NHTSA's Use of Prosecutorial Discretion to Provide Case-by-Case Authorization of Air Bag Deactivation

From October 1, 1996, through October 30, 1997, NHTSA received 11,838 written requests for air bag deactivation. The volume of these requests peaked in the spring, possibly in response to the extensive publicity surrounding the NTSB hearings in mid-March, then fell steadily until the last month. In April–May, the agency received approximately 400 letters per week. In August, the weekly volume fell to slightly less than 300 letters. By mid-September, the volume bottomed out at slightly above 100. During October, the volume rebounded, averaging slightly less than 200 letters per week. That increase followed the media's reporting of the agency's submission of a draft final rule to the Office of Management and Budget on October 2.

Since October 29, 1996, the NHTSA Hotline has received over 27,000 calls seeking information about air bags. Approximately 13,500 of them were from people interested in deactivating their air bags.

More than 60 percent of the written requests, approximately 7,100 out of 11,838, concerned short adults. The vast majority of the remaining 4,738 requests concerned adults (many of whom were short) with certain medical conditions. The rest concerned children. Of those remaining requests, approximately 4,200 were granted, and 500 denied, by the agency. Approximately 85 percent of the grants were for adult medical conditions. The remaining approximately 15 percent involved children, including both children with medical conditions and children riding in vehicles lacking a rear seat capable of accommodating a rear-facing infant seat.

In its grant letters to persons with medical conditions, the agency told owners that if their physicians concluded that the risks associated with their medical condition and the deployment of their driver air bag exceeded the risks to their safety from the air bag's not deploying, NHTSA would not regard deactivation of the air bag as grounds for an enforcement proceeding.[17] Similarly, NHTSA told vehicle owners whose vehicle lacked a back seat in which to carry an infant or who needed to monitor closely a child with a special medical condition[18] that the agency would not regard the deactivation of the passenger air bag by a dealer or repair business as grounds for an enforcement proceeding against the dealer or repair business. The agency urged that the air bag be reactivated when the circumstances necessitating its deactivation ceased to exist.

Based on the current procedures for handling these requests, it is estimated that an average of about one hour is spent on each letter. This estimate covers time spent categorizing letters, making a decision whether to grant or deny, typing a response, keeping track of the letters in a data base, reviewing the response, having the response signed, mailing it, etc. Based on a weighted average of salaries of those involved, plus 15 percent overhead, and the costs of paper and postage, it is estimated that the cost to the agency of responding to these requests is about $30 per request.

[17] In the absence of any other source of expertise, such as the July 1997 National Conference on Medical Indications for Air Bag Disconnection, described below, the agency has relied in the past almost solely upon statements from the physicians of persons requesting disconnection of air bags. While many of the requests were granted based upon a physician's statement, some were granted notwithstanding the absence of a physician's statement. In those cases, the grant was based upon either the unique characteristics of the medical condition involved or the existence of physician's statements attached to earlier deactivation requests of other individuals with the same medical condition. As discussed below in part IX.A, the agency has changed its practices with respect to physicians' statements in response to the National Conference.

[18] The majority of medical conditions were related to apnea, although exemptions have also been granted for children in wheelchairs, and children with a tendency to spit up and choke.

VI. Focus Group Testing of Public Education Materials (June 1997)

To aid the agency in assessing the effectiveness of the materials it was developing to increase the public's understanding of air bags risks, and ways of reducing or eliminating those risks, NHTSA conducted nine focus groups in three cities to test consumer reaction to those materials. As noted above in the summary of public comments, a number of commenters urged that the agency take the time to enlist the help of focus groups.

Two focus groups were conducted in each of the following cities: Chicago, Illinois, on June 16, 1997, and Greenbelt, Maryland, and Sarasota, Florida, on June 18. Three more focus groups were conducted in Greenbelt on June 24 to look at educational materials concerning air bags. Since public concern about air bag safety has tended to be concentrated in three categories of vehicle owners, i.e., parents of young children, short-statured adults, and older adults, the focus group participants were evenly drawn from those categories. There were three parent focus groups, three short-statured adult focus groups, and three older adult focus groups. Each group had about 10 participants.

The knowledge and views of the various groups were fairly similar. While they had heard about some aspects of the air bag safety story, they did not know significant parts of it. They said that while they had heard or seen media reports about risks that air bags can pose for children, they had received little information about the reasons for those risks, the life-saving benefits of air bags and the methods of reducing risk for people of different ages. Early in each focus group session, and before examining any agency materials, some participants made remarks critical of the media for using what they called scare tactics and for focusing almost exclusively on the negative, eye-catching aspects of the air bag story. They said that media attention to air bag dangers for young children had created an atmosphere of fear and mistrust of air bags. They stated that many of their perceptions had been shaped by those media reports. They had many detailed questions about air bags, including air bag designs, deployment speed and force, severity and types of crashes in which they deployed, life-saving benefits, risk factors, types of injuries, and correct seating adjustments. They emphasized that public information and education would reduce misconceptions about air bags and the associated fear.

Among the very important safety messages that had not yet reached many of the focus group participants was that the recommendation for children to sit in the back seat applies to all children aged 12 and under, not just infants. In an attempt to get this message to vehicle owners last fall, the agency issued a final rule requiring labels in new vehicles expressly warning purchasers about air bag dangers for children aged 12 and under and recommending that children sit in the rear.[19] Further, the vehicle manufacturers' distributed copies of these labels to virtually all owners of existing vehicles with passenger air bags. Many participants were also unaware that proximity to the driver air bag at the time of deployment is the primary source of the risk to drivers of serious air bag-related injuries. They were pleased to be provided with a specific recommendation (10 inches) about the distance that drivers should sit from their air bags. Many participants said that they would attempt to change their driving position.

To determine how much air bag information the public really wants, the three June 24 focus groups were asked to compare a short brochure (essentially a 3-fold accordion brochure) and a long brochure (i.e., an earlier draft of the information brochure in Appendix A of the rule) concerning air bags and on-off switches. Each of the three groups unanimously endorsed the long brochure. These groups, consisting of an older adult group, a short-statured adult group and a parents group, stated that they wanted a lot of detailed, balanced information concerning air bags and air bag safety so that they could make up their own minds about seriousness and sources of the risks, and about their ability to avoid those risks. For example, they wanted to know why the upper limit on the group of children who should sit in back was stated in terms of age, instead of height or weight.

The educational value of the additional detailed information in the draft long brochure was demonstrated in a number of instances. For example, about 30–40 percent of the participants expressed surprise at learning that air bags differ in design and performance from vehicle model to vehicle model. They asked for more detailed information on how and why the air bags differed. An equal number were surprised to learn that air bags were vented and deflated in seconds after a crash. Before learning that, they thought that an air bag would remain inflated and could smother them or prevent their exiting from their vehicle after a crash. They expressed relief when they were informed that if they had to transport too many children to place them all in the rear seat, they could virtually eliminate any risk by placing a child (preferably the eldest) in the front seat, ensuring that the child properly used the seat belts and remained sitting upright against the back of the vehicle seat, and moving the seat all the way back.

[19] As noted more fully in footnote 23 below, it is safer for children sit in the rear seat in all passenger vehicles, even if the vehicle does not have a passenger air bag. NHTSA recommends that all children aged 12 and under sit in the rear, regardless of whether there is a passenger air bag in the front seat.

VII. Physicians' Conference on Medical Conditions That Warrant Turning Off an Air Bag (July 1997)

At the request of NHTSA, the Ronald Reagan Institute of Emergency Medicine at George Washington University conducted a National Conference on Medical Indications for Air Bag Disconnection on July 16–18, 1997. The purpose of the conference was to make recommendations on specific medical indications, i.e., conditions, that might warrant disconnecting an air bag. The conference consisted of a panel of representatives of 17 medical specialty societies or organizations. NHTSA selected the societies and organizations, in consultation with the University, based on the types of medical indications that vehicle owners were citing in their letters to NHTSA as possible justification for air bag disconnection. Each society and organization, in turn, selected a representative to attend the conference. Among the specialty areas and types of physicians represented were cardiology, ophthalmology, otolaryngology (ear, nose and throat), obstetrics and gynecology, physical and rehabilitative medicine, general surgeons, plastic and reconstructive surgery, orthopaedic surgery, neurological surgery, pediatrics, geriatrics, and emergency physicians. The American Medical Association was also represented.

The agency arranged for this conference for several reasons. First, informal agency conversations with emergency room physicians and surgeons familiar with the trauma caused by motor vehicle crashes had suggested to the agency that very few medical conditions warrant turning off an air bag. Second, several commenters on the January NPRM urged that the medical profession be enlisted to help identify those conditions. The American Academy of Pediatrics said that such

professional guidance was needed to educate dealers, repair businesses and some parts of the medical community itself about the circumstances under which it is appropriate to turn off an air bag. Advocates for Highway and Auto Safety urged that a panel of medical experts be convened to examine each vehicle owner request to turn off an air bag based on medical reasons.

While the agency does not believe that it is necessary or desirable for a panel of medical experts to review each such request, the agency did agree that general authoritative advice is needed to answer the concerns of some vehicle owners about air bags and help guide their actions. Since individuals with particular medical conditions can be expected to consult their physician prior to deciding whether to have an on-off switch installed, the medical profession also needs some guidance on when deactivation would be indicated.

In preparation for the conference, the representatives reviewed the available medical and engineering literature about air bag technology and injury risk and prevention. At the conference, the 17 representatives were divided into subpanels. Based on their literature review and clinical experience, the subpanels addressed each medical indication with respect to seven factors: known data, unknown data, recommendation, level of confidence in the recommendation, rationale for the recommendation, specific concerns about the recommendation, and stakeholders. The entire panel then discussed the work of the subpanels and adopted final recommendations.

General Panel Conclusions

Air bags are effective lifesavers whose benefits exceed the risks for most of the medical conditions considered by the panel. A medical condition does *not* warrant turning off an air bag *unless* the condition makes it *impossible for a person to maintain an adequate distance* from the air bag. NHTSA believes that 10 inches is an adequate distance.

Specific Recommendations

Excerpts from the panel's specific recommendations follow, beginning with the recommendations regarding the medical indications most commonly cited by persons who have written to NHTSA requesting deactivation based on a medical indication. Unless specifically indicated, the recommendations relate to drivers.

Medical Indications Not Warranting Disconnection of Air Bags

Medical Indications Most Commonly Cited by Vehicle Owners

• Osteogenesis Imperfecta

The panel recommends air bag not be disconnected for persons with osteogenesis imperfecta.

While there is little population-based data in the crash experience of this group, it is anticipated that the injury risk to these persons is higher without an air bag and proper restraint than with an air bag.

• Osteoporosis/Arthritis

For persons with osteoporosis, arthritis, and other skeletal conditions, air bags should not be disconnected unless the person cannot sit back a safe distance from the air bag.

Persons with specific conditions, such as ankylosing spondylitis, may have a relatively stiff spine and thus may be unable to place themselves an acceptable distance from the steering wheel while driving. Other than in this specific circumstance, persons with osteoporosis and types of arthritis are generally benefitted by the presence of an air bag.

• Pacemakers

There is no evidence to support disconnecting airbags for occupants who have pacemakers, implantable defibrillators, or similar devices.

Pacemakers and similar hardware are specifically designed to withstand impact. The forces associated with air bag deployment are typically distributed throughout the chest and are not directed at one specific area. The impact suffered without an air bag may in fact be more severe and more localized than that with an air bag. Clinical experience does not demonstrate any significant concern about the effects of air bag deployment on this type of hardware when properly installed. As forces to the chest in areas directly contacted by seatbelts may exceed forces from air bags, it is important the belts be placed properly and not directly over these devices.

• Median Sternotomy

We recommend that persons who have undergone median sternotomy not disconnect air bags.

Uneven pressure on the chest can harm a patient with a recent median sternotomy because the external wound may be opened. An air bag does not cause this uneven force; seatbelts or striking an object like a dashboard can cause this uneven force.

• Chronic Obstructive Pulmonary Disease/Emphysema/Asthma

We recommend not to disconnect air bags for patients with these chronic lung diseases.

There is no risk of oxygen deprivation during air bag deployment because of the quick deflation of the device. There is some equivocal evidence to suggest that the chemical irritants produced may precipitate bronchospasm in persons with asthma. However, there is no evidence to suggest that this phenomenon is occurring with any greater frequency in the presence of air bags. There is no reason to suspect that persons with any type of chronic lung disease will be adversely affected by an air bag deployment sufficiently enough to justify disconnection of the device.

• Short Stature

We are not able to determine an absolute cut-off height and weight for disconnection of air bags.

Short stature is a common area of concern for the public in regard to air bag deployment. As proximity to the air bag is the major issue, the passenger-side air bag should not be disconnected for a passenger of short stature. Beyond just short stature, weight, arm length, and leg length also play important roles in driver positioning. We know that a disproportionate number of the deaths attributed to air bag deployment have occurred in persons of short stature. However, of the 150,000 estimated air bag deployments involving persons of short stature, only 14 are known to have been fatal.

Some of the Less Commonly Cited Medical Indications

• Eyeglasses

There is no reason to recommend disconnection of air bags for persons wearing eyeglasses.

There are a number of anecdotal cases of eye injuries after air bag deployment, both with and without eyeglasses. Eyeglasses may, in fact, be protective during air bag deployment. There is no obvious increased risk of injuries in the presence of eyeglasses; moreover, impact with the steering column or dashboard may be more dangerous to someone wearing eyeglasses than impact with an air bag. Persons who need eyeglasses should wear them to drive and should not have air bags disconnected solely because of the eyeglasses.

• Hyperacusis or Tinnitus

We recommend not to disconnect air bags for persons with hyperacusis or tinnitus.

(T)he phenomenon of hearing loss has not been noted to occur due to air bags. The specific conditions of hyperacusis and tinnitus are not associated with hearing loss and persons with these conditions would have no greater likelihood of hearing loss from air bag deployment than any other persons. Some persons with tinnitus report that noise triggers attacks of tinnitus; however, it is difficult to separate the noise of an air bag from the noise of a crash in many situations.

• Advanced Age

Advanced age by itself does not suggest the need for air bag disconnection.

It is known that older persons are at greater risk of injury in all types of crashes. The data suggests that air bags may be less effective in the older population although the cause of this finding is unclear. There is no evidence to suggest that advanced age by itself, in the absence of other potential risk factors examined here, warrants air bag disconnection.

With respect to passenger seat occupants in general, the conference participants said:

Under most circumstances, with the notable exception of infants in rear-facing infant seats, the person in the passenger position can be made safe from inadvertent injury by the use of proper restraint and placement of the seat in the most rear position. Certain vehicles with bench seats may complicate this issue and may need to be considered carefully on a case-by-case basis.

Medical Indications Warranting Disconnection of Air Bag

• Osteoporosis/arthritis

For persons with osteoporosis, arthritis, and other skeletal conditions, air bags should not be disconnected *unless the person cannot sit back a safe distance from the air bag.*[20] (Emphasis added.)

• Scoliosis

If capable of being positioned properly, persons with scoliosis should keep air bag connected in their vehicles.[21] (Emphasis added.)

This specific condition might make it impossible for a person to sit upright and away from the air bag. This very small portion of the population of persons with scoliosis might be candidates for disconnection. It must be remembered that a person sitting far forward in either the driver or passenger seat is also at increased risk of injury from other structures (steering column, dashboard) in front of them.

This specific condition might make it impossible for a person to sit upright and away from the air bag. This very small portion of the population of persons with scoliosis might be candidates for disconnection. It must be remembered that a person sitting far forward in either the driver or passenger seat is also at increased risk of injury from other structures (steering column, dashboard) in front of them.

• Wheelchairs

For persons in wheelchairs the decision to allow disconnection of the air bag should be handled on a case-by-case basis. Disconnection may be needed if installation of special equipment requires removal of the air bag. If wheelchair installation or steering column configuration does not necessitate air bag removal, we recommend not to disconnect air bags.

• Achondroplasia

In persons with achondroplasia we recommend allowing disconnection of driver-side air bag *only if the person is unable to sit back from the air bag.*

Persons with significantly congenitally shortened limbs may be required to sit very close to the steering wheel in order to operate a vehicle. In this situation, pedal-extenders will offer limited assistance as the arms are also affected. However, there is no reason to disconnect the passenger-side air bag for an occupant with achondroplasia. (Emphasis added.)

• Down syndrome and atlantoaxial instability

Disconnection of the passenger air bag is warranted *if a person with this specific condition cannot reliably sit properly aligned in the front seat*, such as in those with developmental delay.

Children and adults with severe developmental delay, including some with Down syndrome, may be incapable of consistently maintaining a position away from a passenger-side air bag. If these individuals cannot ride in a back seat, air bag disconnection may be warranted.

While there is no known data on this specific situation in relation to air bags, atlantoaxial instability is present in 20% of persons with Down syndrome. This instability creates the clear risk of atlantoaxial subluxation. Persons with this condition should clearly sit properly restrained in the back seat of a vehicle. In situations in which they must sit in the front seat, air bag disconnection may be warranted because of the risk of cervical injury, particularly if these individuals have developmental delay which prevents them from consistently maintaining proper positioning. (Emphasis added.)

• Monitoring of Infants and Children

The panel recognizes that there are a few specific medical conditions in which infants and young children must be in the front seat for monitoring by the adult driving. In such situations, the passenger side air bag may need to be disconnected.

Parents are frequently concerned that they will be unable to properly monitor their infants if the infants are in the back seat without an adult. The American Academy of Pediatrics has clearly recommended that infants without underlying medical conditions can safely ride alone in the back seat properly restrained in a rear-facing restraint. The data shows that in the absence of an air bag, the injury risk in the back seat is 30% less than the risk in the front seat. The panel recognizes that certain vehicles do not have back seats. In these vehicles the option of on-off switches is already available.

Monitoring of certain infants may require placement of the car seat in the front passenger seat when the only adult in the vehicle is the driver. These situations may warrant air bag disconnection or an on-off option. Parents should clearly recognize that distraction while driving significantly increases the risk of a crash. Ideally, if a child needs attendance in a vehicle, someone other than the driver should be available. It is anticipated that the American Academy of Pediatrics will make recommendations regarding which specific conditions warrant close monitoring while driving.

VIII. Agency Decision To Issue Exemption Authorizing Installation of Retrofit On-Off Switches

A. Summary

This final rule exempts, under certain conditions, motor vehicle dealers and repair businesses from the "make inoperative" prohibition in 49 U.S.C. 30122 by allowing them, beginning January 19, 1998, to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is approved by NHTSA. The purpose of the exemption is to preserve the benefits of air bags while reducing the risk that some

[20] NHTSA believes that the safe distance for drivers with osteoporosis/arthritis is the same as that for persons without any medical indications, i.e., 10 inches between the center of the driver air bag cover and the center of the driver's breastbone.

[21] NHTSA defines *properly positioned* to mean positioned so that there is at least 10 inches between the center of the air bag cover and the center of the driver's breastbone.

people have of being seriously or fatally injured by current air bags.

Although the agency still believes that it is appropriate to exclude vehicles with advanced air bags from the exemption, it has not done so in this final rule. It is not necessary to do so yet since widespread introduction of advanced air bags is not expected during the next several years. This will give the agency time to develop an improved definition of "advanced air bag" and to address how dealers and repair businesses will be able to ascertain whether a particular vehicle has advanced air bags.

The agency has decided not only to authorize retrofit on-off switches, but to specify that they will be the only means authorized under the exemption for turning off an air bag.[22] The agency has made that choice because on-off switches are a more flexible and focused solution than deactivation to the risks which air bags may pose to certain people and thus are significantly more consistent with safety than deactivation. With retrofit on-off switches, air bags can be left on for the vast majority of the persons who will benefit from air bag protection and turned off for the relatively few persons at risk. By contrast, deactivation is essentially permanent and makes no distinction between vehicle users who are at risk from air bags and those who are not at risk from air bags and who will benefit substantially from them.

Under the exemption, vehicle owners can obtain a retrofit on-off switch from a dealer or repair business after filling out and submitting a request form to the agency and obtaining the agency's approval. The agency will begin processing and granting requests on December 18, 1997.

To promote the making of informed decisions about requesting and using on-off switches, consumers must certify on the form that they have read an agency information brochure providing guidance about the risks created by current air bags and describing the groups of people for whom it may be appropriate to obtain and use on-off switches to turn off air bags. The requirement for this certification is intended to help encourage persons considering on-off switches to focus on the factors that create risk from air bags and to reflect on whether they or their passengers are really at risk. Owners must also certify that they or another user of their vehicle is a member of one of the particular risk groups identified by the agency. Since the risk groups for drivers are different from those for passengers, a separate certification must be made for each air bag to be equipped with an on-off switch.

The agency strongly urges caution in obtaining and using on-off switches to turn off air bags. While on-off switches may be needed by a limited number of people in particular circumstances, they are not needed for the vast majority of people since they are not in a risk group. In fact, if people not at risk were to turn off their air bags, they would be less safe, not safer. Even those people in a risk group can take steps that will eliminate or significantly reduce any risk they might currently have without going to the extreme of turning off their air bag and losing its protective value. The easiest way of eliminating the risk for children is to place them in the back seat and buckle them up.[23] Those drivers who are at risk can eliminate that risk by using their seat belts and by moving the driver's seat rearward and/or tilting the back of the driver's seat so that there is 10 inches or almost 10 inches between the center of their breastbone and the center of the driver air bag. The primary risk of injury occurs 2–3 inches from the air bag cover because that is where the force of a deploying air bag is greatest.[24]

This exemption will be subject to certain conditions to promote the safe use of on-off switches. Each on-off switch must meet certain performance criteria similar to those applicable to the manual on-off switches that vehicle manufacturers may currently install for passenger air bags in new vehicles that do not have a rear seat capable of accommodating a rear-facing infant seat. One is that the on-off switch be operable by a key. Another is that there be a telltale light to indicate to vehicle occupants whether an air bag equipped with an on-off switch is on or off. As a reminder about the proper use of on-off switches, the agency is requiring that vehicle dealers and repair businesses give owners an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group.[25] Those consequences

[22] As explained below, full deactivation will continue to be available in limited circumstances through the agency's exercise of its prosecutorial discretion.

[23] Contrary to some media reports, the back seat has always been much safer than the front seat. Sitting in the back seat significantly reduces the likelihood of fatal injury for children, even in vehicles without air bags. Further, sitting in the back seat helps restrained children just as much as it helps unrestrained children. To quantify the benefits of sitting in the back seat, NHTSA analyzed data from vehicle crashes in 1986–1996. *Very few* of the vehicles in these crashes had passenger air bags. The agency concluded that placing children in back reduced the risk of death in a crash by 27 percent. This conclusion applies to restrained as well as unrestrained children. The size of this reduction can be appreciated from considering the following example. The number of children killed each year while riding in the front seat of a vehicle is over 500. If those 500 children had instead been sitting in the back seat, 135 of those children would still be alive because the back seat is a much safer seating environment for reasons having nothing to do with air bags. A new study of IIHS reaches a similar conclusion about the benefits of sitting in the back seat. After examining data from essentially the same time period regarding more than 25,000 children riding in vehicles that were involved in fatal crashes and *locked* passenger air bags, IIHS concluded that sitting in the back seat reduced the death rates by more than 27 percent, whether the children were restrained or not. The safest position of all was the center rear seat.

[24] NHTSA is recommending 10 inches as the minimum distance that drivers should keep between their breastbone and their air bags for several reasons. First, the agency believes that drivers who sit 10 inches away and buckle up will not be at risk of serious air bag injury. Drivers who can maintain that distance will be much safer if they keep their air bags on.

The 10-inch distance is a general guideline that includes a clear safety margin. IIHS recommended the same distance in its comments. The 10-inch distance ensures that vehicle occupants start far enough back so that, between the time that pre-crash braking begins and time that the air bag begins to inflate, the occupants will not have time to move forward and contact their air bag until it has completed or nearly completed its inflation. The 10-inch distance was calculated by allowing 2–3 inches for the size of the risk zone around the air bag cover, 5 inches for the distance that occupants may move forward while the air bags are fully inflating, and 2–3 more inches to give a margin of safety. The 5–inch rule of thumb commonly used in air bag described in the paper, "How Airbags Work (Design, Deploying Criteria, Costs, Perspective)" presented by David Breed at the October 19–20, 1992 Canadian Association of Road Safety Professional International Conference on Airbags and Seat Belts.

Second, the agency is focusing attention on the 10-inch distance because it wants drivers to strive to get back 10 inches. NHTSA believes that almost everyone can achieve at least 10 inches and get the extra margin of safety that comes from sitting that far back. See the July 1997 survey submitted by IIHS.

However, some drivers who cannot get back a full 10 inches will still be safer, on balance, if they are protected by their air bag. The nearer that these drivers can come to achieving the 10-inch distance, the lower their risk of being injured by the air bag and the higher their chance of being saved by the air bag. Since air bag performance differs among vehicle models, drivers may wish to consult their vehicle manufacturer for additional advice.

NHTSA considered an alternative suggestion by Ford in late August 1997 meeting with the agency that the 10-inch distance be measured from the air bag to the chin instead of the breastbone. The agency has decided to use the breastbone as the measuring point because of the greater safety margin provided.

[25] Vehicle manufacturers that install on-off switches in new vehicles lacking a rear seat capable of accommodating a rear-facing infant seat must, among other things, include in the owner's manual a statement of the safety consequences of using the on-off switch to turn off the passenger air bag for persons other than infants in such seats. See S4.5.4 and S4.5.4.4 of Standard No. 208. To comply with that requirement, manufacturers must state that the air bag will not inflate in a crash and that the occupant therefore will not have the extra protection of the air bag. To conform S4.5.4.4 to this final rule, NHTSA has amended that provision in this final rule so that the provision requires the listing the same risk groups listed in the information brochure and requires a statement of the vehicle specific safety consequences of using the on-off switch for persons not listed in those groups.

would include the effect of any energy managing features, e.g., load limiters, on seat belt performance. NHTSA anticipates that the inserts would be obtained primarily from the vehicle manufacturers, although in some cases the inserts might be obtained from independent switch manufacturers.

As noted above, the agency is setting January 19, 1998 as the date on which dealers and repair business may begin to install switches. This date was selected to allow time for the design and production of on-off switches and the proper training of installation personnel. Until then, NHTSA will continue its current practice of using its prosecutorial discretion to grant requests for deactivation on a case-by-case basis in a limited set of circumstances, e.g., unusual medical conditions. Beginning on January 19, vehicle manufacturers and aftermarket parts manufacturer may make on-off switches available to vehicle owners who have an agency authorization letter. NHTSA expects that vehicle manufacturers will make on-off switches available for the majority of vehicle makes and models. The agency will continue to consider deactivation requests after January 19 only for vehicles for which retrofit on-off switches are not available from the vehicle manufacturer. If aftermarket parts manufacturers make on-off switches available for any of those vehicles after January 19, motor vehicle dealers and repair businesses may install such switches for owners who have an agency authorization letter.

B. The Challenge and Overall Rationale

1. Risk Versus Perception of Risk

While air bags have proven to be highly effective in reducing fatalities in frontal crashes, and have saved about 2,287 drivers and 332 passengers (as of November 1, 1997), they are also known to have killed 35 drivers, 49 children, and 3 adult passengers (as of November 1, 1997). As discussed above, all of these fatalities occurred because of extreme proximity to the air bag, and almost all could have been prevented by behavioral changes, such as not placing infants in rear-facing infant restraints in the front seat, placing all children in the back seat, moving front seats farther back, and ensuring that all occupants are properly restrained.

As a whole, media reports about air bag fatalities have contributed to the heightening of the public's concerns about air bags, and of their desire to deactivate their air bags. Those reports deserve credit for helping spread the word about the real risks associated with air bags for some people. Increased public knowledge about the risks has helped induce changes in behavior to reduce or even eliminate those risks, e.g., by putting children in the back seat of vehicles.

However, some behavioral effects of those accounts may not be positive. Some media accounts which initially served the public by drawing attention to an initially unknown or underappreciated risk may ultimately have had the unintended consequence of causing people to generalize and exaggerate those risks. Unfortunately, many members of the public have focused their attention on the possibility of being killed by an air bag, to the exclusion of other factors that may be more determinative of their overall safety. These factors include the very small magnitude of risk from the air bag, the ability of teenagers and adults to preserve the benefits of air bags and nearly eliminate any risk by behavioral actions such as wearing safety belts and moving front seats back, and the much greater risk, almost always faced by the same occupants in the absence of an air bag, of hitting their heads, necks or chests on the steering wheel or dashboard in a moderate or serious crash.

By focusing on only one of an interrelated set of risks which consumers face while traveling by motor vehicle, and thus magnifying that one risk out of proportion to those other risks, some media accounts may also have had the effect of obscuring those other risks. Those accounts may cause some people to so focus on that one risk to the exclusion of the other risks that they induce those people to take actions that increase, instead of decrease, their overall risk of injury in a motor vehicle. The potential exists for a significant number of people doing just that. As noted elsewhere in this notice, several public opinion surveys indicate that the extent of the public interest in turning off air bags exceeds the number of persons actually at risk from them. For many of the teenagers and adults among these people, concern about air bags apparently tends to overshadow a much greater risk faced by these same occupants, i.e., the risk that, in the absence of an air bag, they will strike their head, neck or chest on the steering wheel or dashboard in a moderate to severe crash. This risk exists even for properly belted occupants.

2. Which Groups Are Really at Risk?

As noted above, air bag-related deaths are not random. They tend to involve particular groups of people who share common behavioral or other characteristics. The relatively few people who share those characteristics will be safer overall if they turn off their air bags. Conversely, people who do not share those characteristics would be less safe overall if they did so.

The primary source of risk is contact with or close proximity to the air bag module at the initial instant of deployment. The deploying force is the greatest in the first 2–3 inches of deployment.

On the passenger side, it is primarily children who get too close to the air bag. Infants get too close by being placed in a rear-facing infant restraint. That positions the child's head so that it is very close to the dashboard where the air bag is stored. Older children, i.e., children age 1–12, get too close typically because they are allowed to ride completely unrestrained. During pre-crash braking, these unrestrained children slide forward and are up against or very near the dashboard when the air bag begins to deploy. A few children have gotten too close because although they were placed in lap and shoulder belts, they either removed their shoulder belt or leaned far forward.

On the driver side, the fatally-injured drivers are believed to be people who sat close to their steering wheels primarily out of habit, although some may have done it out of necessity. Some may have been drivers who were physically unable to maintain a 10-inch distance between their air bag cover and their breastbone because of the limits of their reach (arm and leg length) or because of fatigue or other physical factors. However, they were generally tall enough that all or almost all of them should have been able to get back 10 inches. While they may have been able to maintain that distance, perhaps they did not do so because they had grown accustomed to sitting close to their steering wheel as matter of a preference. A few of the drivers were slumped over their steering wheel at the time of deployment due to medical conditions.

A second source of potential risk is a very limited number of medical conditions. Apart from the medical conditions which caused several drivers to lose consciousness and slump over their steering wheels, none of the air bag

fatalities confirmed to date has been attributed to the existence of a pre-existing medical condition that made the fatally-injured person more susceptible than the average person to injury from an air bag.[25] To provide vehicle owners and their physicians with guidance concerning which medical conditions warrant turning off an air bag, NHTSA arranged for the convening of representatives of the medical community in July 1997. The results of their deliberations are discussed above. Briefly, it appears that, in a very small number of cases in which a medical condition prevents a person from getting back 10 inches, a medical condition might, in combination with an air bag, present enough of a risk to warrant turning off either a driver or passenger air bag.

3. Agency Actions to Minimize Risks

In the longer term, the problems associated with air bags will be addressed and largely eliminated by changes in technology, initially by depowering and making various incremental improvements to air bags, and ultimately by installing advanced air bags. Standard No. 208 has provided all the flexibility necessary to enable vehicle manufacturers to develop and introduce those air bags, but thus far has not required their introduction. However, the challenge now facing NHTSA and the public is how to preserve the life-saving benefits of current air bags, while addressing the needs of the relatively small number of persons facing risks from these air bags as well as the fears being experienced by a much larger number of persons.

In meeting this challenge, NHTSA believes that it is essential to consider safety benefits in both the shorter term and longer term. The agency recognizes that, given the small number of fatalities associated with air bags as compared to the number of lives saved, the short-run safety benefits of air bags would be best preserved by minimizing the situations in which air bags are turned off, i.e., limiting the situations to the relatively rare ones where a person is actually better off with his or her air bag turned off.

However, the agency believes that great care must be taken with respect to *how* this is accomplished, to avoid a potentially much greater loss of safety benefits in the longer run. As the agency discussed in the depowering final rule, the continued availability of any safety device as standard equipment, whether provided voluntarily by manufacturers or pursuant to a regulation, is ultimately dependent on public acceptability. The agency believes that air bags which fatally injure occupants, particularly children in low speed crashes, place the concept of air bags at risk despite their overall net safety benefits. Thus, the agency believes it must take great care in how it responds to requests for turning off air bags, lest its actions have the unintended effect of reducing the public acceptability of air bags and their potential as a life-saving device.

Mindful of these considerations, the agency is taking the following actions:

1. In light of changed circumstances which make retrofit on-off switches a much more readily available option, NHTSA is specifying that they will be the only means authorized under the exemption for turning off an air bag. This will ensure that any air bag which is turned off for an occupant at risk can be readily turned on again for occupants who are not at risk. (In very limited cases, deactivation will continue to be available through the agency's exercise of its prosecutorial discretion.)

2. NHTSA has taken a balanced approach in establishing the process for determining which vehicle owners may have a dealer or repair business install an on-off switch. The agency is not going to insist that facts establishing the need for turning off an air bag be documented by the vehicle owner. Instead, the agency is requiring owners who wish to obtain on-off switches to certify, by marking a box on a request form developed by the agency, that they have read an agency information brochure providing guidance about the risks created by current air bags and discussing the circumstances in which it may be appropriate to use on-off switches. Owners must also certify that they or a user of their vehicle belongs to one of the risk groups identified by the agency. NHTSA is also requiring that vehicle owners submit their completed request forms to the agency for approval. This requirement will help reinforce the need for care and accuracy by owners in certifying risk group membership. The requirement will also enable the agency to monitor, from the very beginning, the patterns in switch requests and risk group certifications.

The agency has identified four risk groups. Based on the agency's assessment of risk, persons in the first two groups have a high enough risk that they would *definitely* be better off if an on-off switch is used to turn off their air bag:

- *Infants in rear-facing infant seats.*

A rear-facing infant seat must *never* be placed in the front seat unless the air bag is turned off. If a vehicle owner *must* transport an infant in the front seat, the owner is eligible for an on-off switch for the passenger air bag. The owner should get an on-off switch and turn off the air bag when the infant rides in front.

Note: NHTSA emphasizes that air bag-related risks for infants can be completely avoided by placing them in the back seat. The back seat has always been a much safer place for children than the front seat, even before there were any passenger air bags.

- *Drivers or passengers with unusual medical or physical conditions.*

These are people who have been advised by a physician that an air bag poses a special risk to them because of their condition. However, they should not turn off their air bag unless their physician also has advised them that this risk is greater than what may happen if they do turn off their air bag. Without an air bag, and even if belted, such persons could hit their head, neck or chest on the steering wheel in a crash. Medical conditions will not pose special risks unless the conditions make it impossible to sit 10 inches from the air bag. Only a few conditions have that effect. See the above discussion of the national conference of physicians.

Persons in the two other groups of people may be better off using an air bag on-off switch.

- *Children ages 1 to 12.*

Children in this age group can be transported safely in the front seat *if* they are properly belted, they do not lean forward, *and* their seat is moved all the way back. Almost all fatally injured children in this age range were *completely unrestrained*. But children, even when properly restrained, sometimes sit or lean far forward. The simple act of leaning forward to see out of the window or to change the radio station can place even a belted child in danger. They may also slip out of their shoulder belts, putting themselves at risk. If a vehicle owner *must* transport a child in the front seat, the owner is eligible for an on-off switch for the passenger air bag.[27] Since air bag performance differs from vehicle model to vehicle model, the vehicle owner may wish to consult the vehicle manufacturer for additional advice.

Note: The air bag related risks for these children can be avoided completely by placing them in the back seat.

- *Drivers who cannot get back 10 inches.*

Ideally, drivers should sit with at least 10 inches between the center of their breastbone and the cover of their air bag. Since the risk zone at the time of deployment is the first 2–3 inches from the air bag cover, sitting back 10 inches provides a clear margin of safety. By using their seat belts and sitting at that distance, drivers will eliminate the risk of serious air bag injury, and thus any need for an on-off switch.

Very few drivers are unable to achieve and maintain the 10-inch distance. The vast majority of drivers already sit that far or farther from their air bag.[28] The vast majority of those drivers who do not now sit that far back can change their position and achieve that distance. (See the information brochure for advice about changing position.)[29] Drivers unable to get back 10 inches, even after following that advice, should consult their dealer or vehicle manufacturer for additional advice or for information regarding vehicle modifications to help them to move back.

Drivers who cannot get back 10 inches, despite all efforts, may wish to consider an on-off switch. However, the nearer they can come to getting back that distance, the less likely the air bag will injure them and the less need there will be to get an on-off switch. If drivers can get back almost 10 inches, the air bag is unlikely to seriously injure them in a crash and they probably do not need an on-off switch. These drivers, plus those who cannot get back almost 10 inches, may wish to consult the vehicle manufacturer for additional advice since air bag performance differs among the various vehicle models.

3. Finally, the agency plans, in conjunction with other organizations, a public education information campaign to put air bag risks and benefits into proper perspective, to encourage those persons at special risk from current air bags to take steps to reduce those risks without losing the protection of their air bags, and to promote the enactment and effective enforcement of State laws concerning the use of seat belts and child restraints.

C. Changes in Circumstances Since the NPRM Make Retrofit On-Off Switches Preferable to Deactivation

In the January 1997 deactivation proposal, the agency compared the merits of deactivation to those of on-off switches in a companion notice, i.e., a January 1997 final rule extending the duration of the option allowing on-off switches for passenger air bags in certain new vehicles. NHTSA concluded in the preamble to the on-off switch final rule that it was better from a safety standpoint to selectively deactivate the air bags after the vehicles had been produced, in response to specific consumer requests, than to authorize installation of on-off switches as standard equipment in those vehicles when they were produced. NHTSA placed great weight in that discussion on the long leadtime that vehicle manufacturers had previously said would be needed to integrate standard equipment on-off switches into new vehicles and on concerns expressed by the vehicle manufacturers that the integration efforts would disrupt the development of advanced air bags. In response to an August 1996 NPRM, the vehicle manufacturers had indicated that development and installation of standard equipment on-off switches for makes and models not already equipped with them would take at least one year. As a practical matter, given the time estimates from the vehicle manufacturers regarding on-off switch availability, deactivation was the only readily available means for turning off air bags in existing vehicles. Accordingly, in issuing the NPRM, the agency proposed to allow deactivation. Nevertheless, it expressly requested comment regarding on-off switches. A wide variety of commenters responded to that request.

The facts underlying the agency's comparison of the relative merits of deactivation and on-off switches changed dramatically after issuance of the deactivation NPRM. Not long after the issuance of the January 1997 NPRM, a number of major vehicle manufacturers began announcing that retrofit on-off switches could be made available at reasonable cost and in anywhere from 2 to 6 months.

These announcements fundamentally changed the agency's assessment of the relative merits of on-off switches and deactivation. As a result of the new information from the vehicle manufacturers, on-off switches were elevated from a theoretically available alternative to an alternative that is actually available within a relatively short time. The new information also indicated that retrofit on-off switches could be made available without disrupting the development of advanced air bags.

D. Specifying That Retrofit On-Off Switches Are the Only Means Authorized Under the Exemption for Turning Off Air Bags Is Reasonable and Consistent With Safety

The ready availability of on-off switches and their safety advantage over deactivation make authorizing deactivation both unnecessary and undesirable. The primary source of that safety advantage is the flexibility of on-off switches.[30] With an on-off switch, an air bag's operational status can be changed at the flip of a switch. The flexibility of on-off switches gives them considerably greater potential than deactivation for promoting overall safety. On-off switches allow air bags to be turned off and on as needed, according to whether an air bag creates risks for particular occupants.

In addition to making it possible to accommodate the different risks faced by different people, on-off switches can likewise accommodate the changing needs, knowledge and attitudes of people. For example, a child will be at increasingly less risk as he or she grows older. In addition, a person whose attention is focused now on the perceived risk of an air bag fatality if he or she does not turn the air bag off may later recognize that there is a much greater risk of serious injury or death if he or she does not leave the air bag on. Finally, subsequent owners of existing vehicles may have no need to turn off their air bags. The ability of on-off switches to allow vehicle owners to respond to these changes will have important implications for the percentage of occasions on which air bags are able to deploy when needed.

NHTSA recognizes that the opinion survey conducted by IIHS in January indicates that there is apparently significant public interest in on-off switches. The agency is aware also of

[25] Two of the fatally-injured drivers were diabetics. While diabetes did not by itself make those persons more prone to injury, it did cause them to black out and slump over their steering wheel prior to the fatal crash.

[27] In its August 1997 survey concerning public interest in turning off air bags, IIHS asked the 137 respondents who owned dual air bag vehicles and said they carried children in the front seat why they carried children in that location. Approximately 20 percent of the respondents gave answers indicating that they carried children in the front seat out of necessity, e.g., "no room in back seat," "big family," "car pool," and "no rear seats in vehicle." Over half of the remaining 80 percent of the respondents said either "child wants to ride in front seat," or "driver wants child in front seat."

[28] Drivers who think that they are currently sitting closer than 10 inches should get a ruler and measure the distance. Research shows that many drivers underestimate the distance between them and their air bags. When they actually measure the distance, they often find that it is 10 or more inches.

[29] Drivers may underestimate their ability to change their driving position to achieve the 10-inch distance. A recent IIHS survey indicates that only 5 percent of female drivers (approximately 2.5 percent of all drivers) normally now sit less than 10 inches away from their air bag module. Another recent IIHS survey shows that most short-statured female drivers (10 out of 13 women ranging in height from 4 feet 8 inches to 5 feet 2 inches) could adjust their driving position to achieve that 10 inch distance in all 12 test vehicles used by IIHS. The remaining three drivers could achieve 10 inches in almost all of the vehicles.

[30] An additional safety advantage of on-off switches will be that they, together with the "Air Bag Off" telltale, will provide a permanent means of ensuring that people will not ride in a vehicle without knowing that an air bag has been turned off.

IIHS' suggestion that its January 1997 survey indicates that if the agency specifies on-off switches as the means for turning off air bags, more people may get on-off switches than would have had their air bags deactivated.

However, there are several reasons for believing that the January 1997 survey substantially overstates the number of people who will obtain on-off switches under this final rule. First, and foremost, the agency's decisions to require agency approval of each request and to limit eligibility for on-off switches to those vehicle owners who can certify membership in a particular risk group will significantly and appropriately limit the availability of on-off switches to persons with a real safety need for them. Further, the agency does not believe that a respondent's expressed interest in on-off switches in that January 1997 telephone public opinion survey will necessarily translate into a decision in January 1998 or thereafter to go to a dealer or repair business and pay to obtain an on-off switch. In addition, a consumer's decision to acquire and even to use the on-off switch does not mean that the consumer will continue to use the switch. The survey methods and results reflect not only the underlying safety problem, but also the atmosphere in which the survey was taken. That atmosphere was colored heavily by those media accounts that focused on an important, but limited, portion of the full story about air bags. Some of that same narrow focus can be seen in the survey.[31]

NHTSA recognizes that a new survey by IIHS cures some of the shortcomings of its January 1997 survey.[32] The new survey, conducted in August 1997, informed respondents about the cost of deactivation and on-off switches, the benefits of air bags and the steps that can be taken to minimize or even eliminate air bag risks for the vast majority of people. While the new survey suggests that many people are interested in on-off switches, it also shows that providing people with even minimal facts regarding these matters substantially reduced the extent of that interest. Before the respondents were provided with such information, 27 percent of the respondents indicated that they wanted on-off switches for driver air bags and 26 percent wanted them for passenger air bags. After receiving the information, these percentages fell to 12 percent and 16 percent, respectively. As noted below, the agency believes that a sustained, comprehensive public education campaign would reduce the level of interest in obtaining on-off switches even further.

Since the percentage of respondents to both IIHS surveys who expressed general interest in turning off their air bags far exceeds the percentage of the population at any significant risk, it is evident that the risks of air bag fatalities are significantly overestimated by many people. It is equally apparent that the misperception of risk regarding air bag-related fatalities is leading some consumers to insufficiently appreciate the risks of turning off an air bag. The agency expects that the requirement that owners certify that they have read the information brochure as well as the public education campaign will lead to a more balanced view of the risks associated with current air bag designs, and that the requirement for agency approval and for owner certification of risk group membership will appropriately limit the requesting of on-off switches.

The misperception of the risks in everyday life, whether related to air bags or other problems, arises from a variety of factors. An article published in *Smithsonian*, the magazine of the Smithsonian Institution, addressed some of the factors that make assessing and comparing risks difficult for scientists and engineers, and even harder for the average person without access to all available information and analytical methods:

> In a landmark test in 1980, a group of psychologists asked a representative sampling of the populace to rank 30 activities and technologies by risk; then they compared the results with rankings assigned by a panel of risk-assessment experts. In places, the two groups agreed, such as on the risk of motor vehicles, placed number one by the experts and number two by the public. But on others, there were large discrepancies: the public rated nuclear power as their number one risk, whereas the experts ranked it as a lowly number 20. Experts ranked x-rays as number 7, while the man-in-the-street saw them as a number 22. What, the risk-communication scientists next asked, was influencing the public's perception of risk?
>
> For starters, they found that the public responds differently to voluntary and involuntary risks. You and I are willing to tolerate far greater risks when it is our own doing, such as smoking cigarettes or climbing mountains. But if the risk is something we can't control, such as pesticides on food or radiation from a nuclear power plant, we protest, even if the threat is minimal.
>
> Second, we tend to overestimate the probability of splashy and dreadful deaths and underestimate common but far more deadly risks. . . .
>
> Yet another factor about how we rank risks revolves around whether or not the risk is perceived as "natural. * * *"[33]

As the author also noted, our problem in making everyday decisions about the risks we face is more difficult than simply assessing a single risk correctly.

We've also realizing that the trade-offs are not always so clear. Reducing risk in one area may very well increase the risk in another.* * *[34]

The actions being announced by NHTSA in this final rule will have the effect, directly or indirectly, of giving the public a sense of control over the risks associated with current air bags, and restoring objectivity to the public's perception of those risks. As a result, whatever the extent of the public's initial inclination to acquire and use on-off switches, these actions will thereby reduce that inclination. The air bag deaths are not random. Further, the risk of death is highly influenced by behavior. Through informing the public about how the vast majority of people can eliminate or substantially minimize any risk through behavioral changes and how the rest can eliminate the risk through the use of an on-off switch, the agency will give the public a significantly increased sense of control over the risk of air bag fatalities. Through these same means, the agency will inform the public about the steps that they can take to reduce, and thus control, this risk without turning off air bags.

Together, these actions will put air bag risks into proper perspective, enable those truly at risk to reduce or eliminate their risk, and calm the fears of others. As the public comes to appreciate more fully just how limited and controllable the risks are, interest in obtaining and using on-off switches to turn off air bags is expected to decline. Likewise, any inappropriate use of on-off switches will be reduced to a minimum. As noted above, the August 1997 IIHS survey demonstrates that giving the public even the barest facts reduces the level of interest in on-off switches. NHTSA believes that a sustained public education campaign which includes comprehensive reading materials, explanatory graphics and video clips will reduce the level of interest even further.

NHTSA notes also that some company and group commenters argued that on-off switches would be misused. They were particularly concerned that air bags would be turned off for people who are not at risk of serious air bag injuries and who would benefit from air bag protection. The agency recognizes that misuse is a possibility. However, the agency does not have any information indicating that there is a misuse problem associated with the 1.3 million vehicles equipped with an original equipment manufacturer (OEM) on-off switch for the passenger air bag. Further, the agency believes that any problem of misuse will be small, particularly given the requirements for agency approval and for vehicle owners to certify the reading of the information brochure and risk group membership. The public education campaign will also help minimize that problem. Because of these factors, the people who submit request forms for on-off switches will be aware of the dangers of misusing on-off switches by leaving them off when the vehicle is being used by people who are not at risk of being seriously injured by an air bag.[35]

Further, any small possibility of misuse will be more than offset by the fact that the use of an on-off switch instead of deactivation to turn off air bags will make it much more likely that air bags will be on for those people who will benefit from them. Compared to retrofit on-off switches, deactivation is an inflexible, overly broad, and essentially permanent method of turning off air bags. With deactivation, the consequence is universal, i.e., "off for one, off for all." Deactivation does turn off an air bag for those who are at risk and need the air bag to be off, and thereby can prevent air bag fatalities. However, it accomplishes this only at the price of sacrificing protection for those who could benefit from that protection. The net effect of widespread deactivation would likely be even greater loss of life. Further, another likely consequence of deactivation is permanency, i.e., "once off, forever off." In most instances, a consumer is unable, on his or her own, to change the operational status of a deactivated air bag to suit the needs of occupants on a particular trip. Likewise, a consumer cannot go to a dealer or repair business each time that the operational status of an air bag needs to be adjusted to meet the needs of the occupants on a particular trip. Given the time and expense involved, relatively few of the vehicle owners who have their bags deactivated are expected to make a return trip to the dealer or repair business to have them reactivated when needs or attitudes change, or when the vehicle is sold.

E. Case-by-Case Agency Authorizations of Retrofit On-Off Switch Installation, Based on Vehicle Owner Certification of Risk Group Membership and on Informed Consumer Decisionmaking, Is Reasonable and Consistent with Safety

As noted above, this rulemaking is being conducted under section 30122(c)(1) of Title 49, U.S.C., which provides that the Secretary of Transportation may prescribe regulations "to exempt a person from * * * [the make inoperative prohibition] * * * if the Secretary decides the exemption is consistent with motor vehicle safety and section 30101 of this title." Section 30101 sets forth the purpose and policy of Chapter 301, "Motor Vehicle Safety," of Title 49. The section states that, among other things, "(t)he purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents." This final rule will promote safety by reducing the fatalities caused by current air bags, particularly in existing vehicles, and promoting the long run acceptability of the concept of air bags.

This final rule will achieve these safety goals by authorizing persons at risk to obtain retrofit on-off switches, based on a combination of informed decisionmaking, owner certification of risk group membership, and agency approval of each request. To promote informed decisionmaking, the agency will, in conjunction with other organizations (ABSC, AAA, NSC, and IIHS), conduct a public education campaign explaining that most people are not at risk and that even among people at risk, not all people need obtain and use on-off switches to turn off their air bags. The agency will discuss who is at risk from air bags, who is not at risk, and why. It will advise consumers of a series of easy steps that will reduce this risk to a point that obtaining an on-off switch is unnecessary for all but a relatively small number of people. Only if those steps are insufficient should motorists consider seeking an on-off switch. These messages will be reinforced and echoed in an agency information brochure. Further, the request form provides a place where each vehicle owner desiring an on-off switch must certify that he or she has read the information brochure.

To obtain a switch that turns a driver air bag on and off, vehicle owners must also certify on the request form that the owner or a driver of their vehicle is a member of a particular driver risk group. Similarly, to obtain an on-off switch for a passenger air bag, vehicle owners must certify on the request form that they or a passenger of their vehicle is a member of a particular passenger risk group. If an owner wants on-off switches for both air bags, the owner must make separate certifications on the same request form, one for the driver air bag and another for the passenger air bag.

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[31] There are other reasons for discounting the results of this early 1997 IIHS survey as a basis for predicting how many people will obtain on-off switches. In asking the respondents whether they wanted on-off switches, the surveyors did not ask whether the respondents were aware of a number of key factors that might heavily influence the extent of their desire for an on-off switch. Further, the surveyors did not take the alternative approach of informing the respondents of these factors and then asking them whether learning any or all of this information influenced their desire for an on-off switch. Based on the factors that affect how the public perceives risk (see footnote 35), three undiscussed factors in particular seem key: (1) most people would be making significant safety tradeoffs if they turned off their air bags; (2) most people could control and virtually eliminate the risk of serious air bag injuries by changing their driving and riding habits instead of physically changing their vehicle; and (3) the cost of an on-off switch is not insubstantial. A survey by the Harvard School of Public Health's Center for Risk Analysis in late February and early March had similar shortcomings. The absence of these factors from these surveys in part simply reflects the fact that there was less of a consensus in early 1997 about the air bag-related risks and the most appropriate measures for reducing them. Nevertheless, their absence is a concern since the survey results themselves may not only measure (or at least attempt to measure) existing public attitudes regarding air bags and on-off switches, but also potentially affect future public attitudes regarding those matters.

NHTSA expects that when media reports and the agency's information brochure make the public more aware of the safety tradeoffs and available means of controlling and reducing risk, the level of public interest in obtaining on-off switches will fall. Interest is expected to fall further in response to the public education campaign to be conducted the agency and other organizations about air bags.

[32] The difference between the new IIHS survey and the January IIHS survey regarding the level of general interest in on-off switches for passenger air bags appears to demonstrate the influence which media accounts of recent air bag fatalities can have on survey results. The January survey, which was taken when media accounts of a particular child fatality were relatively fresh in the public mind, indicated that 67 percent of the respondents were generally interested in an on-off switch for passenger air bags. The August survey was not closely preceded by similar accounts. Its figure for general interest in passenger air bag on-off switches was 28 percent.

[33] John F. Ross, *Risk: Where Do Real Dangers Lie?* Smithsonian, November 1995, at 42. See also Marcia Angell, *Overdosing on Health Risks*, New York Times, May 4, 1997, Magazine Section, which, in part, notes that the media are not the only players that affect public risk perception; Michael Ryan, *What Is Really Risky?* Parade Magazine, June 15, 1997, which discusses a recent Harvard study concerning differences between the risk perceptions of scientists and the general public; and Matthew Wald, *Freewheeling Freedom; Appalled by Risk Except in the Car*, New York Times, June 14, 1997, section 4, Week in Review. For a related account of the difficulty in obtaining comparative information on risks and tradeoffs, see David Shaw's three-part series, *Living Scared. Why Do the Media Make Life Seem So Risky?* in the Los Angeles Times, September 11–13, 1994.

[34] Ibid.

[35] The requirement for a telltale light that indicates if the air beb is not operational will also eliminate the possibility that occupants will unknowingly ride without the protection of an air bag.

NHTSA believes that requiring owners to certify that they have read the information brochure and that they or a user of their vehicle is a member of a risk group and requiring that each request be approved by the agency is justified by the current climate of heightened, and exaggerated, concern about air bag fatalities. These requirements will help limit the availability of on-off switches to persons with a genuine safety need for them. Having to make the certifications will help induce consumers to read the information brochure, separate fact from fiction, and avoid trading one safety risk for another, larger safety risk. The necessity of obtaining agency approval will induce an even greater level of care and caution in requesting an on-off switch. As the public education campaign moves forward, media coverage expands to cover the safety benefits, risks and tradeoffs associated with air bags more broadly, public and private efforts result in increased seat belt use rates, and air bags with advanced attributes start to appear in new vehicles, the public will increasingly appreciate the low risk of air bag fatalities and the steps they can take, short of turning their air bags off, to reduce that risk. The requirement for vehicle owners to certify that they have read the information brochure and fill out the request form will also help ensure that any decision to seek and use on-off switches is a thoughtful, responsible one.

Allowing vehicle owners to obtain on-off switches, based on risk group certification and on informed decisionmaking, and subject to agency approval, will enhance safety because it will speed the reduction of serious and fatal injuries related to air bag deployment. It will also enhance the public acceptance of air bags. Public acceptance of motor vehicle safety technology is not only a relevant consideration in assessing the practicability of a Federal motor vehicle safety standard,[36] but also it is vital to the long run success of any vehicle safety program and to the effectiveness of all types of safety equipment.

Making retrofit on-off switches available will promote public acceptance of air bags by providing those people at risk with a means of eliminating their risk. NHTSA anticipates members of the public will, with their concerns thus allayed, be increasingly receptive to the public education campaign concerning air bag safety and seat belt use. The agency anticipates that the public will also increasingly come to appreciate the limited nature of the risk, the factors that create that risk, the limited number of people affected by those factors, and the ways in which those people can reduce and even eliminate the risks without sacrificing the benefits of air bag protection. The public will come to appreciate also that turning off air bags will make the vast majority of people less safe, not more safe. As a result, the demand for retrofit on-off switches, and the inclination to use them to turn off air bags, will decrease.

Making retrofit on-off switches available will also have other salutary effects that are consistent with motor vehicle safety and section 30101. As noted elsewhere, the agency is mindful of the surveys by IIHS and others showing that the percentage of respondents interested in deactivation or on-off switches exceeds the percentage of the general population that is at risk. Availability of on-off switches will minimize the likelihood that consumers, potentially including consumers not actually at risk, will obtain unauthorized deactivations with the negative consequences discussed above. It will also lessen the possibility of owners attempting to deactivate their air bags on their own. While owners are not prohibited by Federal law from removing or disabling safety features and equipment installed pursuant to NHTSA's safety standards, attempts by inexperienced people to deactivate air bags or install on-off switches could result in serious injuries to those people. Further, whether performed by commercial entities or the owners themselves, these illicit deactivations would not only be inflexible and essentially permanent, but they could also be invisible to current users and future owners, since they might not be accompanied by any labeling or recordkeeping.

NHTSA recognizes that the final rule will not allow installation of on-off switches for people who are concerned about their air bags, but who are not at risk and thus cannot certify that they are, or a user of their vehicle is, in a risk group. It would not be consistent with safety for the agency to authorize these people to obtain on-off switches and to turn off their air bags, since their doing so would make them significantly less safe. However, action is needed to address the concerns of these people. The agency is seeking to alleviate their concerns by providing the public with information about who really is at risk, and why. The information brochure and public education campaign are the key elements of that effort.

Before deciding to limit the availability of on-off switches to members of risk groups and to allow installation of on-off switches only after prior approval by the agency of each request for switches, the agency considered a spectrum of possible approaches, listed below in decreasing degree of administrative complexity: (1) full documentation by the vehicle owner of the facts establishing membership in a particular risk group specified by the agency and case-by-case agency review of the owner's request and documentation before the agency authorizes installation of an on-off switch, (2) case-by-case agency approval of the owner's request (unaccompanied by documentation of the underlying facts) to confirm that he or she has properly certified membership in a particular risk group specified by the agency before it authorizes installation of an on-off switch, (3) presentation by owner to a dealer or repair business of his or her certification of having read the information brochure and of membership in a particular risk group specified by the agency, plus post-installation submission by the dealers and repair businesses of the certification to agency, (4) presentation by owner to a dealer or repair business of his or her certification of having read the agency information brochure and retention of the certification document by dealer or repair business of certification, and (5) presentation by owner to dealer or repair business of his or her simple request. The second approach was suggested in a comment by GM,[37] the fourth was proposed by the agency in January, and the fifth was suggested in a comment by the Competitive Enterprise Institute (CEI).

In developing the fourth approach, i.e., its January 1997 proposal, the agency indicated that it had considered the relative merits of two alternatives: continuing case-by-case agency approval of individual requests from persons seeking authorization to turn off

[36] *Pacific Legal Foundation* v. Department of Transportation, 593 F.2d 1338, 1345 (D.C. Cir. 1979).

[37] GM suggested that the agency select and describe the most frequent circumstances warranting an on-off switch and develop a "* * * form letter that owners could complete (i.e., checking the appropriate one of the circumstances specified on the form), sign and submit to NHTSA." As to "* * * requests that do not fit under one of the defined circumstances * * *," owners could still submit them"* * * to NHTSA in non-form letters that detail the reasons for the request." GM apparently contemplated that the agency would quickly examine the form letters and concentrate on the non-form requests. GM described the agency's review function as follows: "The agency could *process requests made with the form letter in an expedited manner*, and focus attention principally on the non-form requests." (Emphasis added.)

their air bags based on a demonstrated safety need, or providing an information brochure informing vehicle owners about the factors that create risk and who is at risk, requiring owners to certify that they had read the brochure, and then letting them make their own decision. Given the complexity and time-consuming nature of the process then being used by the agency for processing deactivation requests, the agency proposed the latter alternative, which would have allowed any person to choose to deactivate, without having to demonstrate or claim a particular safety need, and without having to obtain the agency's approval. However, under the proposal, applicants would have had to submit a written authorization to the dealer or repair business performing the deactivation and certify that they had read an agency information brochure explaining the consequences of having an air bag deactivated.

Nevertheless, NHTSA requested views regarding the feasibility and advisability of limiting eligibility for deactivation to persons in specified risk groups. Specifically, the agency asked—

- Should deactivation of air bags be allowed at the owner's option in all cases or should deactivation be limited to situations in which death or serious injury might reasonably be expected to occur?
- Would the administrative details involved in establishing and implementing limitations on eligibility overly complicate the availability of deactivation?

The agency has decided that it is necessary to go beyond the fourth and even the third approaches and adopt provisions that give greater assurance that on-off switches are installed only when it is consistent with the interests of safety to do so. The complexities associated with such additional provisions are outweighed by other factors. Prior approval of requests for switches will encourage greater attention to the importance of on-off switches being requested and used only for people whose safety would be enhanced by turning off their air bag. As was noted by many of the group and company commenters, consistency with safety is the basic requirement of the statutory provision permitting the agency to issue exemptions from the make inoperative prohibition. Safety is also NHTSA's primary focus and responsibility under Chapter 301. Prior approval will also enable the agency to monitor directly, from the very beginning, the implementation of the regulation and the effectiveness of its regulation and the associated educational materials in promoting informed decisionmaking about air bag on-off switches.[38]

The final rule supplements the provision regarding informed decisionmaking by requiring that vehicle owners desiring on-off switches certify that the owner or a user of their vehicle is a member of a particular safety risk group. The necessity of certifying membership in a particular risk group will induce greater care on the part of vehicle owners who are considering authorizing the installation of an on-off switch. NHTSA notes, as it did in its proposal, that people not in a risk group would be less safe, not more safe, if they turned off their air bags. The further necessity for obtaining agency approval for an owner's request will induce vehicle owners to exercise even greater caution and to consider even more carefully whether they are at risk and, if so, whether they should request a switch.

A secondary reason for the decision to require agency approval of owner requests for on-off switches is the belief that the task of reviewing the owner request forms is more properly performed by NHTSA instead of the dealers and repair businesses. This belief became decisive with the addition of the provision for risk group certification. Determining eligibility for exemptions from statutory requirements and prohibitions is traditionally and most suitably a governmental function.

[38] The agency's decision to require that vehicle owners be initially authorized by the agency to obtain a on-off switch moots the arguments by some commenters, most notably GM and the Association of International Automobile Manufacturers, that the agency can exempt individuals on a case-by-case basis, but lacks authority to exempt classes of people. To reach this conclusion, those commenters attributed unwarranted significance to the use of the singular "person" in the statutory exemption provision. Since the exemption authority runs to dealers and repair businesses, not to consumers, these commenters apparently contemplated that the agency issue a separate exemption to each dealer or repair business and perhaps even issue a separate exemption for each owner who desires a retrofit cutoff switch.

There is no reason to believe that Congress intended to limit exemptions to ones granted to specific individuals. In the agency's view, the exemption provision can reasonably be read to permit an exemption based on classes of people. The singular includes the plural, absent contrary statutory language or purpose. Section 30122 neither contains any language nor has any purpose that would preclude reading "person" in the plural. NHTSA notes that similar use of the singular in 15 U.S.C. 1402(e), the statutory predecessor to 49 U.S.C. 30118(a) regarding the making of a defect and noncompliance determination concerning a motor vehicle or replacement equipment, has repeatedly been judicially interpreted to permit NHTSA to make determinations regarding classes of vehicles or equipment. Section 30118(a) was enacted in the same public law, Pub. L. No. 93–492, that contained the make inoperative prohibition.

NHTSA recognizes that the decision to require prior agency approval of each request will add increased cost and administrative complexity to the process of obtaining on-off switches and is accordingly taking steps to streamline the approval process. The form has been designed to allow for a speedy review. To minimize any disruption of normal agency activities, the agency will contract out for the performance of the review process. The agency will ensure that word and data processing technologies are used to establish efficient processes for reviewing the on-off switch request forms and recording data from them.[39]

NHTSA also rejected the first approach which was more administratively complex and cumbersome than the final rule in that it would have required each vehicle owner to document the facts underlying his or her claim of risk group membership. NHTSA believes that a requirement for documenting risk group membership would be unduly burdensome and impracticable for vehicle owners. For example, documenting the necessity for carrying children in the front seat would be time consuming and difficult, if not impossible. Would a vehicle owner whose family has too many young children to place all of them in the back seat have to submit the birth certificates of each child? Would a parent who car pools children to soccer games have to submit affidavits from the parents of the other children? And would a driver unable to maintain the proper distance from his or her steering wheel have to submit photographs showing the driver holding a ruler? Finally, the delays under such an approach might create unsafe conditions, either by inducing people to seek illegal deactivations or by simply extending the time that people must drive their vehicles without means for eliminating the risks for people in risk groups.

NHTSA also rejected the fifth approach, suggested by CEI, which

[39] NHTSA notes that some proponents of prior agency approval of on-off switch requests credited the introduction of streamlined practices and increased use of information technologies with being the key factors leading to substantial decreases this year in the agency's average processing time of air bag deactivation requests. Those parties further suggested that use of the same information technologies will enable the agency to process on-off switch requests with equal speed. While the introduction of those practices and technologies increased the efficiency of the agency's processing of the deactivation requests, by far the most important factor was the steady and substantive decline in the number of deactivation requests. The volume fell from a high of 400 requests per week in April and May to 100 requests per week in September.

would let people obtain an on-off switch without even requiring that they first read the agency information brochure so that they could make a fully informed decision. CEI also suggested that air bags should be optional instead of required equipment. This suggestion is premised primarily on the shortcomings of current air bag designs. Making air bags optional is inconsistent with safety. It is also inconsistent with the ISTEA, which mandates air bags. Further, the rationale underlying CEI's suggestion is akin to the rationale unsuccessfully used by this agency in the early 1980's to rescind the automatic restraint requirements adopted in the mid 1970's. The agency rescinded those requirements because the vehicle manufacturers chose to comply with them by means (detachable automatic seat belts) that were potentially ineffective and might not have produced significant safety benefits, instead of by more effective means (either nondetachable automatic seat belts or air bags) that were available to the vehicle manufacturers. The U. S. Supreme Court unanimously concluded that the appropriate regulatory response of the agency under the Vehicle Safety Act to ineffective or undesirable design choices under the automatic restraint requirements should not be simply to rescind those requirements, but first to consider the alternative of amending the requirements to preclude those choices. *Motor Vehicle Mfrs. Assn.* v. *State Farm Mut. Auto. Ins. Co.*, 403 U.S. 29 (1983). Similarly, the judgment that current air bag designs do not provide an optimal level of safety is not a sufficient reason to undercut or negate the Congressional mandate for air bags. Instead, the appropriate short term response is to allow the installation of on-off switches so that air bags can be readily turned off for people who are actually at risk from current air bags, as well as to require new labeling and expedite the depowering of air bags. Ultimately, the solution is to ensure that the manufacturers introduce advanced air bag designs.

F. Continued Use of Prosecutorial Discretion for Case-by-Case Authorizations of Air Bag Deactivation Until Retrofit On-Off Switches Become Available

Between now and January 19, 1998, the date on which on-off switch installation may begin, NHTSA will continue its current practice of using its prosecutorial discretion to grant requests for deactivating the air bags in all vehicle makes and models. This will be done on a case-by-case basis in a limited set of circumstances, e.g., those in which certain medical conditions suggest that deactivation is appropriate. The agency will continue to limit the circumstances because of the inflexible and relatively permanent nature of deactivation.

After January 19, NHTSA will cease granting deactivation requests for those vehicle makes and models for which the vehicle manufacturer makes on-off switches available.[40] NHTSA expects that most vehicle manufacturers will promptly make on-off switches available for most vehicle makes and models.[41] Vehicle owners can consult with dealers about the availability of such switches. As on-off switches become available from a vehicle manufacturer for a specific make and model, NHTSA will cease granting deactivation requests for that make and model. Owners of the make and model can then fill out request forms and send them to NHTSA for approval. If on-off switches are available both from the vehicle manufacturer and from an independent aftermarket manufacturer, a vehicle owner who obtains an authorization letter from the agency for a switch can choose to have the on-off switch installed by either a dealer or a repair business.

Owners of vehicle makes and models for which the vehicle manufacturer has not made available an on-off switch may have several options after January 19, 1998. They can write to NHTSA for authorization to deactivate their air bags. The agency will continue to grant such requests indefinitely under the same criteria that the agency is currently using in making such grants. Owners can also consult with a repair business to determine if an aftermarket parts manufacturer has made an on-off switch available for the owner's particular make/model. If such an on-off switch is available, these consumers could fill out a request form, send it to the agency, and ask it for authorization to have an on-off switch installed.

[40] However, if on-off switches become available for a vehicle make and model from an independent aftermarket manufacturer, but not the vehicle manufacturer, the agency will continue to authorize deactivation for that make and model. While the agency believes that on-off switches are superior to deactivation from a safety standpoint, it will continue to authorize deactivation in this limited circumstance in view of the agency's greater difficulty in tracking the availability of on-off switches from aftermarket manufacturers and the lack of a mechanism for testing the performance of an on-off switch as installed in a particular vehicle.

[41] The agency is aware that the incidence of air bag facilities is not the same for all manufacturers and that some manufacturers have indicated that they may not make on-off switches available. NHTSA notes that its exemption authority under section 30122 does not permit it to require manufacturers to make these on-off switches available.

Since the agency will continue to authorize deactivation at least until January 19, and since some vehicle owners may have been delaying submitting a request for deactivation in anticipation of the issuance of this rule with an immediate effective date, NHTSA is providing below an updated explanation of its procedure and criteria for reviewing and granting deactivation requests. This will help vehicle owners understand the limited circumstances in which NHTSA will be authorizing deactivations. Those circumstances have been modified to reflect the issuance of the physicians' report on medical conditions. The explanation will also inform the public about the nature of the information that NHTSA needs from vehicle owners to make appropriate decisions about the deactivation requests.

G. Other Issues

1. Request Form

NHTSA is requiring owners who want an on-off switch to submit a filled out request form and obtain agency approval before they can have an on-off switch installed. Most commenters who addressed the issue supported the use of a request form. As revised in this final rule, the form serves three major purposes.

First, the request form provides the agency, and the dealer or repair business, with a measure of assurance that the person requesting the on-off switch is the person with authority to authorize the installation of a switch. The dealer or repair business may, in addition, require further proof of ownership or authority. However, the necessity of submitting a signed request form on which the signer of the form must claim, subject to 18 U.S.C. 1001, ownership of the vehicle to be modified should help forestall installation requests by persons other than the owner of a vehicle.

Second, as noted above, the form reinforces the value of the information brochure by requiring the owner to certify that the owner has read the brochure and that the owner or a user of the vehicle is a member of a risk group listed on the brochure. In response to the concern expressed by several commenters that, partly because of the complexity of the subject matter involved, owners would not read the proposed information brochure, NHTSA has changed the brochure to make it more customer-friendly.

Third, the request form is intended to make the owner understand that he or she is responsible for the consequences of the decision to install, and later to use, the on-off switch. To that end, the form includes statements that the owner is aware of the safety risks and consequences of turning off an air bag.

The agency will begin processing of request forms on December 16, 1997. If a form is submitted before that date, it will be given the same priority as a form submitted after that date. Accordingly, there will be no advantage to submitting forms early.

2. Dealer and Repair Business Liability

To address the anticipated concerns of motor vehicle dealers, repair businesses and others regarding liability issues associated with turning off air bags, the agency proposed making the decision of vehicle owners to obtain on-off switches dependent upon informed decisionmaking, acknowledgment of the adverse safety consequences of turning air bags and execution of a limited standardized waiver in the proposed authorization form. The waiver would have stated that the owner's act of authorizing a deactivation would waive any claim or cause of action that the owner might have against the dealer or repair business by virtue of the fact that the air bag had been deactivated. A number of commenters questioned the efficacy of any such waiver, asserting that it would not apply to other possible vehicle occupants, such as family members or friends of the owner or to future owners and their family members and friends. Several vehicle manufacturers expressed concern that the waiver did not extend to actions and claims involving vehicle manufacturers. One commenter stated that only legislation could provide effective relief from liability risks.

NHTSA believes that the liability risks have been essentially eliminated and that those risks should not interfere with the implementation of this exemption. First, under this final rule, dealers and repair businesses will play no role in determining whether vehicle owners qualify for the installation of on-off switches. Those parties will have no involvement in the process until the vehicle owners contact them with agency authorization letters in hand.

Second, in recognition of the dealers' and repair businesses' concerns, NHTSA has switched from an authorization form to a request form and included a statement alerting vehicle owners that dealers and repair businesses may condition their agreement to install an on-off switch upon the owner's signing of a liability waiver. Owners desiring an on-off switch must acknowledge that possibility by marking the box next to that statement. This will facilitate the efforts of dealers and repair businesses to obtain waivers from owners.

Upon reviewing its proposal and the public comments, the agency decided not to include a standardized waiver in the request form. NHTSA agrees that the proposed waiver would not have covered all possible litigants. Further, the agency is concerned about state-to-state variations in the law regarding the precise language that is sufficient to waive a claim even by the vehicle owner. Those variations could undermine the value of any standardized waiver. Moreover, NHTSA is concerned that adoption of a standardized waiver might give some dealers and repair businesses false assurances of protection from liability in all states and in all cases. Finally, NHTSA believes that, to the extent dealers want vehicle owners to sign a waiver before they will install an on-off switch, this is an issue between them and vehicle owners. By taking this position regarding waivers, the agency believes that dealers and repair businesses will be in a better position to craft individualized waivers that reflect the law of the State in which they operate.

The agency's decision not to include a waiver moots the requests of some commenters to expand the proposed waiver to cover claims against vehicle manufacturers, distributors and employers who operate fleets. This final rule places no limitation on efforts by those parties to seek waivers from vehicle owners. Vehicle manufacturers can work together with their dealers to develop a waiver that covers both. Further, no implication should be drawn from this decision that the general concept of seeking of such waivers is in any way inappropriate. To the contrary, it reflects NHTSA's belief that any waiver is more appropriately a decision between the vehicle owner and the dealer or repair business. Dealers and repair businesses may condition their installation of on-off switches upon the making of waivers by vehicle owners. Employers that provide fleet vehicles to their employees may write their own waivers and condition any installation of on-off switches on the employees' signing those waivers.

Third, NHTSA believes that the various provisions included in the final rule regarding informed decisionmaking and risk group membership have the additional effect of significantly reducing the liability concerns of the dealers and repair businesses.

Fourth, the agency's decision to restrict the means of turning off air bags under the exemption adopted in this final rule to on-off switches substantially increases the likelihood that air bags will be turned on and protect those persons not in a risk group. One concern with allowing deactivation as proposed in the NPRM was that a deactivated air bag would not deploy in situations in which deployment would save lives. This concern was particularly great with respect to the friends and family of vehicle owners and the subsequent purchasers of vehicles with deactivated air bags. The presence of on-off switches in the clearly marked "off" position and/or the illumination of their indicator lights will be readily obvious to all front seat occupants, largely eliminating the concern about uninformed vehicle occupants and owners. In addition, the provisions requiring that owners read a government information brochure warning about the dangers of turning off air bags and that the owners expressly acknowledge those dangers should have the effect of reducing liability concerns.

There are additional reasons why the agency's decision to specify on-off switches will reduce any potential liability of manufacturers, dealers, and repair businesses. Under the deactivation proposal in the NPRM, it would have been the dealer or repair business itself that turned off the air bag. Subsequent purchasers might not know that an air bag has been turned off. In contrast, with on-off switches, no air bag will be turned off except by the hand of the owner or another user of the owner's vehicle. The last critical action or inaction that determines whether a vehicle's air bags will deploy in a crash is that of an occupant of that vehicle who has chosen whether the air bags are on or off. This is just as much true if the vehicle is owned by a subsequent purchaser as if it is still owned by the person who authorized the installation of the on-off switch.

The agency has not added a statement, requested by the National Association of Independent Insurers, that the obtaining or using of on-off switches may affect insurance premiums, or that it is the owner's responsibility to report the installation of an on-off switch to the insurance carrier. NHTSA wishes to maintain a strict safety orientation to the request form, and keep the paperwork to a minimum. Further, these are matters between insurers and their customers. An insurer can require its customers to notify it of on-off switch installation or attach whatever conditions it deems appropriate to continuing coverage of vehicles with on-off switches.

3. Information Brochure

In response to the commenters and the focus groups, the agency has revised the information brochure to make it much more informative. The focus groups requested not only detailed information about who was at risk and why, but also basic background information about how air bags work. That information is needed to address persistent misconceptions about some aspects of how air bags operate. The revised brochure—

- explains how air bags work,
- explains how air bags save many lives and prevent many injuries,
- describes the groups of people who have been killed by air bags,
- identifies the single factor that is common to all air bag deaths,
- makes clear why certain groups of people are at risk,
- gives practical advice to consumers on how to reduce their individual risk and that of the users of their vehicle without modifying their vehicles, and
- as printed by the agency, includes simple graphics showing the steps that drivers at risk can take to reduce those risks.

NHTSA agrees with IIHS and other commenters that the proposed information brochure was too technical, and has completely rewritten it to make it more consumer-friendly.[42] The data tables on historical fatalities and injuries in the proposed information brochure have been replaced by a practical, succinct, question and answer format. This makes it much more likely that the brochure will be read, and understood, in its entirety.

The agency recognizes that no single information brochure will fully meet everyone's needs and that some consumers will prefer more information. However, the agency disagrees that not being able to tailor the information brochure to individual needs means that the brochure will not contribute to informed decisionmaking by consumers. The brochure contains basic information, geared to the average person. Persons wishing more information can visit NHTSA's Internet Web site or call the agency's toll-free Hotline.

NHTSA will distribute the information brochure widely. In addition, on its Internet Web site, the agency is providing the public with an opportunity to view video clips of crash tests showing the difference in the amount of protection that test dummies receive when using both seat belts and air bags and when using seat belts alone. The clips show that when the air bag is turned off and does not deploy in a moderate to severe crash, the head of a dummy representing a short female driver strikes the steering wheel hard enough to cause fatal injuries. The opportunity to view these video clips is prominently noted on the information brochure. The agency believes that this multi-media approach will effectively inform consumers about the importance of air bag protection and about the limited circumstances in which turning off an air bag should be considered. However, although the video is a useful educational tool, the agency is not conditioning eligibility for an on-off switch upon viewing a video presentation of the information in the brochure, as suggested by one commenter.

The agency disagrees with Chrysler's argument that basing advice to drivers on distance from the steering wheel is not meaningful. While Chrysler is correct that differences in air bag systems and steering wheel inclinations will affect the appropriate distances, NHTSA believes that giving general advice is useful and effective, and that no other measure is better (height being only a rough proxy for distance). Moreover, the vehicle manufacturers have not provided information to the agency on which it could base distance recommendations that are individually tailored to each vehicle make and model. By focusing on the ability of the vast majority of drivers, particularly short ones, to move a sufficient distance away from the steering wheel, this general guidance will help drivers identify ways they can reduce and even eliminate their risk. NHTSA anticipates that the vehicle manufacturers will supplement this general guidance as appropriate to fit the circumstances and air bag performance of their individual makes and models of vehicles.

4. Dealer and Repair Business Responsibilities Regarding the Request Form and Information Brochure

Many dealer and repair business commenters objected to the agency's proposal to require them to receive authorization forms from vehicle owners and to check the forms. Under this final rule, dealers and repair businesses will not have these responsibilities. They will be performed instead by the agency.

Many dealer and repair business commenters also objected to the agency's proposal to require them to distribute the request form and the information brochure. NHTSA is not requiring that they do so. The information brochures and request forms will be available to anyone who visits NHTSA's Internet Web site or uses U.S. Government Printing Office (GPO) Access.[43] The public can also call the agency's Hotline and arrange to have copies faxed or mailed to them. NHTSA will also send copies to dealers and repair businesses and to State Departments of Motor Vehicles. In addition, other organizations, such as the American Automobile Association, will assist in distributing these documents.

5. Insert for Vehicle Owner's Manual

NHTSA has decided not to adopt its proposal that dealers and repair businesses be required to provide vehicle owners with a copy of the information brochure as an insert for the vehicle owner's manual. A requirement that the dealer or repair business provide the entire brochure seems unnecessary given that the owner must certify that he or she has read the brochure prior to signing the request form.

However, as a reminder about the proper use of on-off switches, the agency is requiring that vehicle owners be given an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group. Those consequences will include the effect of any energy managing features, e.g., load limiters, on seat belt performance. (See the discussion of safety belts with energy managing features in part II.B.2 above.)

6. Recordkeeping

In the deactivation proposal, the agency proposed to require that dealers and repair businesses send filled-out authorization forms to the appropriate vehicle manufacturer and that vehicle manufacturers be required to retain those forms for five years. The primary purpose of these proposals was to ensure that subsequent owners had a way of learning whether their air bags had been deactivated. The agency realized that the deactivated status of an air bag is not readily apparent from a visual examination of a vehicle interior and that the labels proposed by the agency could fall off, deteriorate over time or be removed.

NHTSA has concluded that recordkeeping by the vehicle manufacturers is not necessary to accomplish the primary goal of ensuring that the public is aware of the operational status of air bags that have been turned off by means of on-off switches. On-off switches and their warning lights are relatively conspicuous and more permanent than labels. Thus, keeping records for the benefit of other vehicle occupants and subsequent owners is unnecessary, and indeed, not so effective as these visible cues.

Instead, NHTSA is requiring that, when a dealer or repair business receives an agency authorization letter from a vehicle owner and installs a switch, the dealer or repair business must fill in the form provided in the letter for reporting information about the dealer or repair business and about the installation. See Appendix C. The form must then be returned to NHTSA. This requirement will facilitate agency efforts to ensure that the exemption from the make inoperative prohibition is being implemented in accordance with the conditions set forth in this final rule. It will also aid the agency in monitoring the volume of requests and the geographic and other patterns of switch requests and installations. To ensure that the forms are returned to the agency in a timely fashion, NHTSA is requiring that each form be mailed within seven days of the installation of an on-off switch by the dealer or repair business.

With respect to its continued exercise of prosecutorial discretion to authorize deactivation, NHTSA will keep records regarding the vehicles for which it has allowed deactivations and for which it is able to obtain sufficient information. NHTSA will be sending labels to all owners for whom it has authorized deactivation, and will enclose a request for information on whether a deactivation was performed, whether it was a driver or passenger air bag deactivation (or both), and the vehicle identification number (VIN). This will enable NHTSA to keep records on vehicles for which the agency has approved air bag deactivation. The VINs of those vehicles, but no other identifying information, will be made available on NHTSA's Internet Web site, or by phone to aid subsequent purchasers in identifying vehicles with deactivated air bags.

7. Labels

The agency proposed labeling for the same reason it proposed recordkeeping, i.e., the difficulty of determining by visual inspection whether an air bag has been deactivated. Since the agency has decided to specify retrofit on-off switches instead of deactivation as the means for turning off air bags, a labeling requirement is unnecessary. To be eligible for the exemption, the dealer or motor vehicle repair business must install a retrofit on-off switch meeting certain requirements, including a requirement for a telltale light that illuminates to indicate when the air bag is off and a requirement that the device be operable only by means of a key. The "on" or "off" position of the on-off switch and/or illumination or non-illumination of the telltale light will be readily apparent to other occupants and future owners and inform them of the on or off status of the air bags.

NHTSA intends to distribute warning labels to people who receive deactivation letters before retrofit on-off switches become available and for vehicles for which on-off switches do not become available. The agency will also distribute those labels to persons who have already received such a letter from the agency. The agency expects that those labels will be available in the near future.

8. Lessees

A leasing association and a fleet managers association commented that the proposal did not address how to handle special issues concerning deactivations of air bags in leased vehicles. These associations emphasized the contractual distinctions between commercial (corporate fleets) and consumer (individual) lease arrangements, the difficulty that a repair business would have in determining whether the person presenting the leased vehicle for modification has authority to have the air bag deactivated, and the many different use scenarios and occupants of fleet vehicles. One association stated that the corporate employer in charge of the operation of fleet vehicles, whether as an owner or lessee, should be the sole party with authority to request deactivation. It also stated that a fleet maintenance facility should be considered a "repair facility."[44]

NHTSA appreciates the complexity of the issue, and that it may be difficult for a dealer or repair business to determine whether the person presenting a leased vehicle has authority to request an on-off switch. This is, in part, why the agency did not make a specific proposal, but instead raised the issue of lessees and asked how issues relating to them should be addressed.

Under this final rule, the exemption from the make inoperative prohibition applies to leased vehicles as well as owned vehicles. The request form has been changed accordingly.

9. Definition of Repair Business

The agency has become aware that some businesses are holding themselves out as being willing and able to deactivate a vehicle's air bags. This is permissible so long as the owner of the vehicle has a letter from NHTSA authorizing the deactivation of the air bags. However, some businesses have suggested that they will deactivate air bags even for people who do not have such a letter from NHTSA, on the theory that they are "air bag technicians" (or perhaps mere "agents" of the owners) and not motor vehicle repair businesses.

The relevant part of 49 U.S.C. 30122(b) states that a "manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard. * * *" Air bags are items of safety equipment installed in compliance with applicable motor vehicle safety standard No. 208, and deactivating them, by definition, makes them inoperative.

The term *motor vehicle repair business* is defined in 49 U.S.C. 30122(a) as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." Especially in light of the broadly inclusive list of commercial entities in the statutory provision, NHTSA interprets this term as including the activities of mechanics, technicians, or any other individuals or commercial entities that knowingly make modifications to or perform work on safety equipment for a fee, if those modifications cause the vehicle no longer to comply with applicable Federal motor vehicle safety standards.

[42] NHTSA notes, however, the focus groups expressed a clear desire for extensive and detailed information about air bag safety and on-off switches to increase their understanding and aid their decisionmaking. Accordingly, the agency has not shortened the information brochure as urged by some commenters. It has, however, attempted to provide that information in a simple, readily understandable form. As printed by the agency, the information brochure will be supplemented with various graphics.

[43] GPO Access is a service of the U.S. Government Printing Office and is available directly as a subscription, or free through participating Federal Depository Libraries.

[44] NHTSA assumes that, in many cases, fleet maintenance facilities are owned by the same business that owns the fleet itself. Since vehicle owners are not subject to the make inoperative prohibition, and thus can modify their vehicles as they wish, subject to state and local law, the common ownership of the facilities and the fleet means that the fleet owners can have their maintenance facilities install on-off switches or even deactivate their air bags without NHTSA authorization. If the facilities are not operated by the owners of the fleet, then they are considered to be repair businesses, for purposes of 49 U.S.C. 30122(a).

The agency believes that Congress was drawing a distinction in the make inoperative prohibition between commercial entities that might work on a vehicle and a vehicle owner, or an owner's friend or relative who might work on a vehicle without compensation.

The legislative history of the Motor Vehicle and Schoolbus Safety Amendments of 1974, which added the "make inoperative" prohibition, supports this broad interpretation. The Conference Report states that it "is intended to ensure that safety equipment continues to benefit motorists for the life of the vehicle. The protection of subsequent . . . purchasers of a vehicle is thereby assured." H.R. Rep. No. 93–1452, 93rd Cong., 2d Sess. 39 (1974). It would subvert the purposes of Congress in enacting this prohibition to read the statutory term "repair" literally and allow a business to perform, for compensation, the very acts which the prohibition was intended to prohibit. Deactivating an air bag makes its benefits unavailable to subsequent purchasers.

NHTSA is aware that there is a court decision that addressed the definition of "repair business." A United States District Court concluded that businesses installing window tint film were not repair businesses because "the plain meaning of the term "repair business" will prevail. * * * The plain meaning of the word 'repair' is to restore to sound condition something that has been damaged or broken . . . they are not in the business of restoring or replacing motor vehicle equipment." *United States* v. *Blue Skies Projects, Inc.*, 785 F. Supp. 957, 961 (M.D. Fla. 1991).

NHTSA believes this case was not correctly decided. The court did not recognize and give sufficient effect to Congress's intent, expressed in legislative history, that federally-required safety equipment should continue to ensure safe performance of vehicles over their lifetime. Further, it is evident from the inclusion of repair businesses among the listed entities subject to the prohibition that some repair businesses sometimes do things other than restoring components and systems to sound condition. This implies a broader definition of "repair" than the one offered by the court.

Accordingly, NHTSA interprets the term "motor vehicle repair business" to include mechanics, technicians, or any other individuals or commercial entities that, for compensation, add, remove, replace or make modifications to motor vehicles and motor vehicle equipment, including safety equipment such as air bags, regardless of whether the vehicle or component was previously "broken" or needed to be "repaired." The description that a business applies to itself is not controlling; it is the business' commercial relationship with the public and the nature of the operations it performs on motor vehicles that is determinative. Any business currently deactivating air bags for customers who have not received authorization from NHTSA is violating the law and subject to enforcement action by the agency.

10. Effective Date

NHTSA proposed an immediate effective date in the January 1997 NPRM. As noted in the summary of comments, the vehicle manufacturers indicated that an immediate effective date would not be sufficient even for deactivation, for which minimal parts, if any, are needed. NHTSA recognizes that special parts are needed for on-off switches, and that their production requires additional time. The industry has indicated that the time necessary to produce retrofit on-off switches in large enough quantity to meet all of the anticipated demand is 4 to 6 months.

This period was calculated from March 1997, not from the actual date of a final rule. In anticipation of retrofit on-off switches being allowed as an alternative, vehicle manufacturers began developing them in March. At an NTSB hearing regarding air bag safety on March 17–19, 1997, two manufacturers stated that the time needed to develop switches was dependent on the volume needed. Smaller volumes would take less time. Although NHTSA has no information indicating that anyone other than vehicle manufacturers plans to produce on-off switches, it notes that independent aftermarket producers would not be precluded from doing so. Their implementation time might be different from that estimated by the vehicle manufacturers.

NHTSA has decided to make the exemption effective on December 18, 1997 and to set January 19, 1998, as the date on which switch installation may begin. NHTSA finds good cause for making the exemption effective less than 30 days after the publication of the final rule. Making the exemption effective on December 18 is necessary to enable the agency to begin processing requests at an early enough date that owners can have their agency authorization letters in hand by January 19. In this way, persons at risk can begin obtaining switches on that date or as soon thereafter as switches become available for the make and model of their vehicle.

A delayed date for the beginning of switch installation will promote the orderly implementation of the exemption. Based on the calls to NHTSA from consumers regarding deactivation, it appears likely that most owners who obtain agency authorization for switches will go to dealerships to obtain their switches. The date of January 19, 1998, will allow the manufacturers time to complete design of on-off switches, start production, and begin delivery to their dealers before consumers start expecting their requests to be filled. It will also allow them to develop procedures for installing on-off switches, and conduct necessary training for dealer service technicians. The date will also give the agency and many of the company and group commenters the time required to educate the public about air bag benefits and risks before the on-off switches become available.

Although the selection of January 19 provides less time than the manufacturers suggested in early 1997 would be needed to satisfy all anticipated requests for on-off switches, NHTSA believes that this date provides sufficient time for the manufacturers to begin to make retrofit on-off switches available for installation. The agency reiterates that the 4 to 6 month estimate by the vehicle manufacturers was made with reference to March of this year, not the date of the issuance of this rule. Further, a number of vehicle manufacturers are already producing on-off switches in anticipation of this final rule. In addition, on-off switches from aftermarket manufacturers might be available to satisfy any unmet orders for on-off switches.

11. Sunset Date or Event

The NPRM proposed that deactivation of advanced air bags would not be permitted under the exemption. NHTSA also stated that it would consider not allowing deactivation of driver air bags that had been depowered. GM and other manufacturers stated that NHTSA had not adequately defined "smart" (i.e., advanced) air bags, and that it was therefore inappropriate to sunset the availability of deactivation once advanced air bags were introduced. A safety group stated that a sunset was appropriate because on-off switches would not be necessary after advanced air bags were available.

Although NHTSA continues to believe, based on safety considerations, that it should prohibit dealers and repair businesses from retrofitting advanced air bag vehicles with on-off switches, there is no immediate need to do so. Widespread installation of advanced air bags is not expected to begin for another several years. Further, NHTSA notes that the existing definition of "advanced" air bag does not include driver air bags and needs updating. NHTSA will address these issues in the proposal on advanced air bag rulemaking scheduled to be issued this winter and will include a proposed sunset date for retrofit on-off switches.

As to permitting on-off switches for depowered air bags, NHTSA anticipates that those air bags will pose less of a risk of serious air bag injuries than current air bags. However, the agency will wait and accumulate data on depowered air bags before making a final decision on this issue. The agency may revisit this issue in a future rulemaking if data indicate that on-off switches are not appropriate in vehicles with depowered air bags. For the present, the exemption will apply to vehicles with depowered air bags.

12. On-Off Switches for New Vehicles

Many public commenters on the January 1997 deactivation proposal favored extending the existing option for installing on-off switches in certain new vehicles to all new vehicles. However, the company and group commenters were overwhelmingly opposed to the idea. NHTSA considered this idea and then rejected it in its January 6, 1997 final rule regarding on-off switches for passenger air bags in new vehicles with no rear seat or an inadequate rear seat for rear-facing infant seats (62 FR 798). The major reasons for this decision were (1) assertions of the vehicle manufacturers (at that time) that OEM on-off switches for new vehicles could not be developed quickly, (2) the possibility that extending the option to all new vehicles might result in on-off switches' being installed as standard equipment instead of being installed upon special request by those at risk, (3) the possibility that universal installation of on-off switches in new vehicles might do more harm than good (4) the lower cost of deactivation, and the fact that the cost would be borne primarily by those who actually at risk and therefore in need of deactivation, and (5) the possibility that the effort to develop on-off switches and integrate them into the design of new vehicles might necessitate a diversion of manufacturer engineering resources from development of advanced air bags.

While the extension of the option for OEM on-off switches for new vehicles to all air bag vehicles is outside the scope of this rulemaking, that same issue was raised in a pending petition from the National Motorists Association for reconsideration of the January final rule. NHTSA remains concerned that extending the option to all new vehicles might result in on-off switches' being installed as standard equipment in all new vehicles, thus resulting in many more vehicles being equipped with on-off switches than will occur under this final rule. The agency has concluded that such widespread installation of on-off switches without regard to whether individual consumers are actually at risk would not be in the best interests of safety. The agency also remains concerned that integrating on-off switches into new vehicles, which would entail redesigning dashboards, will require more resources than retrofitting on-off switches and thus could divert resources from the development of advanced air bags. For these reasons, NHTSA denies this petition for reconsideration.

13. Conforming Changes to Occupant Crash Protection Standard

This final rule amends Standard No. 208 so that the Standard refers to "on-off switches" instead of "cutoff switches." It also amends the Standard to revise the owner's manual insert for passenger air bag on-off switches installed in new vehicles. Instead of stating that use of the switch should be limited to instances in which the right front passenger seating position is occupied by an infant in a rear-facing infant seat, the insert will say that use should be limited to persons in one of the passenger risk groups identified in the request for in Appendix B of Part 595.

IX. Implementation of Agency Decision

A. Limited Continued Use of Prosecutorial Discretion to Authorize Deactivation: Procedures and Requirements

Between now and January 19, 1998, the date on which switch installation may begin, NHTSA will continue its current practice of granting requests for deactivating the air bags in all vehicle makes and models. This will be done on a case-by-case basis. The agency will grant those requests only if they are based on the justifications that are currently being accepted under existing agency practice, as modified to reflect changed circumstances such as the issuance of the report on medical conditions warranting turning off an air bag. Continuing to limit deactivation to requests based on these justifications is appropriate, given the inflexibility and relative permanency of deactivation.

NHTSA will grant deactivation requests after January 19, 1998, only for those vehicle makes and models for which the vehicle manufacturer does not make on-off switches available. NHTSA expects that vehicle manufacturers will make on-off switches available for most vehicle makes and models. For those specific makes and models for which on-off switches are available on January 19, the agency will cease granting deactivation requests as of that date. Likewise, as on-off switches become available from the vehicle manufacturer for a specific make and model after that date, NHTSA will cease granting deactivation requests for that make and model. Owners of that make and model can fill out an on-off switch request form and send it to the agency for approval. If an on-off switch is also manufactured by an aftermarket manufacturer, a consumer may wish to request that a dealer or repair business install it. For vehicle makes and models for which the vehicle manufacturer does not make available an on-off switch, the agency will continue to grant deactivation requests, even if an aftermarket parts manufacturer makes an on-off switch available for those vehicles.

As noted above, this section describes the procedures and practices that the agency will follow in response to changed circumstances such as the issuance of a report by the National Conference on Medical Indications for Air Bag Disconnection. Those procedures and practices differ from the ones previously followed regarding requests based on medical conditions since that report does not recommend deactivation for many of the medical conditions for which deactivation requests have been granted in the past. In addition, this section describes the legal effect of an agency letter authorizing deactivation and describes the conditions which motor vehicle dealers and repair businesses must meet in deactivating an air bag pursuant to such a letter.

Summary

If the owner of an air bag-equipped vehicle wishes to obtain the agency's authorization to have an air bag deactivated, based on one of the justifications described below, the consumer may write to NHTSA stating the consumer's justification and requesting authorization for deactivation. If the agency determines that the justification meets the criteria for granting requests, it sends the consumer a letter authorizing a dealer or repair business to deactivate the consumer's air bag. The consumer presents the letter to a dealer or repair business. Since the letter authorizes, but cannot require, the dealer or repair

business to perform a deactivation, the dealer or repair business then decides whether to deactivate the air bag(s), as authorized in NHTSA's letter. If the dealer or repair business decides to do so, it must meet certain conditions in deactivating the air bag.

Vehicle Owners

Air Bag Deactivation: Who is Eligible, and how is Authorization Obtained?

1. NHTSA [45] will authorize deactivation based upon the following justifications:

- A rear-facing infant restraint must be placed in front seat of a vehicle because there is no back seat in the vehicle or the back seat is too small for the child restraint (passenger air bag only).
- A child age 12 or under must ride in the front seat because the child has a medical condition that requires frequent monitoring in the front seat.
- The owner, or a driver or passenger of the owner's vehicle, has a medical condition that, in combination with an air bag, poses a special risk to the person with the condition, and
- That risk outweighs the increased risk that the person's head, neck or chest will violently strike the steering wheel or dashboard during a crash if the air bag is turned off (driver and/or passenger air bag, as appropriate).
- Drivers who are extremely short-statured (i.e., 4 feet, 6 inches or less) (driver air bag only).[46]

2. An owner who wants deactivation for any of the above reasons should describe the reason in a letter and send it to: National Highway Traffic Safety Administration, Attention: Air Bag Deactivation Requests, 400 7th St. S.W., Washington, D.C. 20590. Deactivation is not available for other reasons. The request can also be faxed to (202) 366–3443.

The request must contain the following:

- Name and address of the vehicle owner.
- The justification for the request. (See the list of accepted justifications above.) The letter should be as specific as possible about the justification and state whether the request applies to the driver or passenger air bag, or both.
- A description of the facts creating the need for deactivation.
- Each request based on a medical condition *must* be accompanied by a statement from a physician, *if* the condition is *not* one for which the National Conference recommended deactivation.[47] The physician's statement must not only identify the particular condition of the patient, but also state the physician's judgment—

a. That the condition causes air bags to pose a special risk to the person, *and*

b. That the condition makes the potential harm to the person from contacting an air bag in a crash greater than the potential harm from turning off the air bag and allowing the person's head, neck or chest to hit the steering wheel, dashboard or windshield. (Hitting the vehicle interior is likely in a moderate to severe crash, even if the person is using seat belts.) [48]

If the request concerns a child that must ride in the front seat to enable the driver to monitor the child's medical condition, the supporting physician's statement must identify the condition and state that frequent monitoring by the driver is necessary. NHTSA notes that the American Academy of Pediatrics has stated that medical conditions requiring such monitoring are very rare. According to the final report of the National Conference on Medical Indications for Air Bag Disconnection: "It is anticipated that the American Academy of Pediatrics will make recommendations regarding which specific conditions warrant close monitoring while driving" (passenger air bag only).

3. The agency will respond in writing, enclosing a copy of the information brochure in Appendix A of Part 595, labels to be attached to the vehicle interior for alerting vehicle users about the deactivated air bags, and a form to be filled out and mailed back to the agency regarding the deactivation. NHTSA will answer the deactivation requests as quickly as possible. It screens the incoming requests for requests involving rear-facing child restraints (because of the higher risk associated with those requests) and processes those requests first. Depending on the volume of requests being received by the agency, the processing usually occurs within several days. All other requests are handled in the order in which they are received. These requests currently take a couple days longer to answer.

The central reason for convening the National Conference on Medical Indications for Air Bag Disconnection was that the belief that the public and many physicians might benefit from guidance by physicians having expertise relating to automotive crash-induced trauma. The agency will attempt to ensure that due consideration is given the National Conference's report. If the agency receives a deactivation request accompanied by a physician's statement based on one of the medical conditions for which the National Conference did *not* recommend deactivation, the agency will defer to the requestor's physician and send a letter to the requestor granting his or her request. However, the agency will also enclose the report and urge that the requestor discuss it with his or her physician before having any modifications made to the requestor's air bags. NHTSA will also send a copy of the letter and report directly to the physician to ensure that he or she is made aware of the report's contents.

4. If a request has been granted, the recipient should call his or her dealer or a repair business and ask if it will disconnect the air bag. If the dealer or repair business says that it will, the recipient should ask further whether it is necessary to bring proof of owner status to the dealer or repair business.

5. Some dealers and repair businesses have a policy of not disconnecting air bags. NHTSA has no authority to require them to do so—that is the dealer's or business' decision. The owner may have to shop around to find a qualified automotive mechanic or technician who will disconnect the air bag.

6. If there is a motor vehicle insurance premium discount based on the presence of air bags in a vehicle, the premiums may increase slightly if the air bag(s) is(are) disconnected.

7. Seat belts should always be worn, whether a person's air bag is operational or deactivated. If a person's air bag is deactivated, seat belts are the only available means of restraint to reduce the likelihood that the person will hit the vehicle interior in a crash. Thus, it will be more important than ever to be properly restrained at all times.

8. NHTSA strongly urges owners to have their air bag reactivated if the condition that caused the deactivation ceases to exist, or if they sell the vehicle. If they do not reactivate the air bag upon sale, they should inform the new owner that the air bag has been deactivated.

9. If the agency denies a request, it will give the reason for the denial. The reason may be that there was not enough explanatory or supporting information submitted for NHTSA to approve the request. In that event, the request may be resubmitted with the necessary information. If a request was denied because the owner does not provide an accepted justification, the owner must wait for retrofit on-off switches to become available for his or her make/model of vehicle in order to turn off the air bag(s). If the owner or a user of his or her vehicle is a member of a risk group, the owner may request an on-off switch once one becomes available.

Motor Vehicle Dealers and Repair Businesses

Steps Which Must Be Taken if an Air Bag is Deactivated Pursuant to an Agency Authorization Letter

1. If a person requests deactivation of an air bag, the dealer or repair business should determine that the person is the owner of the vehicle and that the person possesses a letter from the agency authorizing that person to have that air bag deactivated. Owner status can normally be checked by looking at the vehicle title or registration. (NOTE: A dealer or repair business is prohibited by statute from deactivating a vehicle's air bag unless the owner has an authorization letter from the agency.)

2. The agency letter will indicate which air bag(s) may be deactivated. If the letter authorizes deactivation of the driver air bag, the passenger air bag may not be deactivated, and vice versa.

3. NHTSA recommends that the dealer or repair business consult with the vehicle's manufacturer regarding a deactivation procedure if there are any doubts about how to deactivate an air bag.

4. An air bag must be deactivated in a manner such that:

- It will not deploy in a crash; and
- Reactivation is facilitated, if possible. This means, for example, leaving the air bag module in the vehicle.

5. These steps may be supplemented in any manner, such as by keeping a copy of the agency grant letter. Some dealers and repair businesses are requiring owners to permit them to apply warning labels to the vehicle or sign waivers of liability.

B. Providing Retrofit On-Off Switches Under the Exemption: Procedures and Requirements

Consumers can request the installation of an on-off switch by completely filling out the request form in Appendix B of Part 595 and sending it to NHTSA for approval. The agency will begin processing request forms on December 18. If a form is submitted before that date, it will be given the same priority as a form submitted after that date. Accordingly, there will be no advantage to submitting forms early.

When the agency approves a request, it will send an authorization letter to the vehicle owner. Motor vehicle dealers and repair business may begin installing switches on January 19, 1998. If a dealer or repair business installs an on-off switch, it must comply with the conditions set forth in Part 595. Those conditions include obtaining the owner's authorization letter which includes a form to be filled in by the dealer or repair business and mailed back to NHTSA.

Vehicle Owners

Air Bag On-Off Switches: Who is Eligible, and How is Authorization Requested?

1. Ask a dealer or vehicle repair business if a retrofit on-off switch is available. As noted above, NHTSA will grant deactivation requests after January 19, 1998 for only those vehicle makes and models for which the vehicle manufacturer does not make on-off switches available. As on-off switches become available from the vehicle manufacturer for a specific make and model, NHTSA will cease granting deactivation requests for that make and model. If an owner of such a make and model writes to NHTSA requesting authorization to have an air bag deactivated, NHTSA will deny the request and notify the person that a retrofit on-off switch is available. Eligible owners of the make and model may fill out a request form and send it to the agency for approval. If the agency approves the request and sends an authorization letter to the owner, the owner may then give the letter to a dealer or repair business, and ask it to install the vehicle manufacturer's on-off switch. If an on-off switch is also manufactured by an aftermarket manufacturer, a consumer may wish to request that a dealer or repair business install it.

For vehicle makes and models for which the vehicle manufacturer does not make available an on-off switch, the agency will continue to consider deactivation requests, even if an aftermarket parts manufacturer makes an on-off switch available for those vehicles. If an aftermarket parts manufacturer does make an on-off switch, the eligible owner of such a vehicle has the choice of requesting the agency to authorize deactivation or submitting an on-off switch request form to the agency for approval. If the agency approves the request for a switch, the owner can then give the agency authorization letter to a dealer or repair business, and ask it to install the aftermarket on-off switch.

2. Determine if the vehicle owner or a user of the owner's vehicle meets the criteria in one of the risk groups and if obtaining a retrofit on-off switch is appropriate. The information brochure in Appendix A of Part 595 will help the owner make this decision. The owner will have to certify on the request form that he or she has read the information brochure and that he or she or a user of

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[45] The reference to owners is intended to include lessees as well.

[46] As noted above in IV. Summary of Comments on Proposal, IIHS conducted a study in which it found the almost all women in a group of women ranging in height from 4 feet 8 inches to 5 feet to 2 inches were able to get about 10 inches from their driver air bag in all test vehicles and all of the women could achieve that distance in almost all of those vehicles.

[47] The physicians at the National Conference did *not* recommend turning off air bags for pacemakers, supplemental oxygen, eyeglasses, median sternotomy, angina, chronic obstructive pulmonary disease, emphysema, asthma, breast reconstruction, mastectomy, scoliosis (if the person is capable of being positioned properly), previously back or neck surgery, previous facial reconstructive surgery or facial injury, hyperacusis, tinnitus, advanced age, osteogenesis imperfecta, osteoporosis and arthritis (if the person can sit back at a safe distance from the air bag), previous opthalmologic surgery, Down syndrome and atlantoaxial instability (*if* the person can reliably sit properly aligned in the front seat), or pregnancy. However, the physicians did recommend turning off an air bag if a safe sitting distance or position cannot be maintained by a driver because of scoliosis or achondroplasia or by a passenger because of scoliosis or Down syndrome and atlantoaxial instability. The physicians also noted that a passenger air bag might have to be turned off if an infant or child has a medical condition and must ride in front so that he or she can be monitored. This report is summarized more fully earlier in this notice. To obtain a complete copy of the detailed recommendations by the panel, call the NHTSA Hotline (1–800–424–9393) or download if from the NHTSA Web site.

[48] Physicians considering whether a person's medical condition makes it desirable for that person to turn off his or her air bag should consider the report of the National Conference and the following three points and guidance.

- Most medical conditions present no greater risk of air bag injury for a person with one of those conditions than the risk faced by the general public.
- The risks of air bag injury are generally less and almost never greater than the risks of injury from striking the steering wheel or dashboard.
- The types of injury sustained by persons who strike the steering wheel or dashboard are far more serious (except in extremely rare circumstances that occur only a few times a year) than the types of injury sustained as a result of contacting deploying air bags. Injuries from striking the steering wheel or dashboard typically include brain trauma and severe facial injuries. The facial injuries can be very disfiguring and may require multiple, complicated surgical procedures.

As noted above in the description of the report of the National Conference, very few medical conditions will cause an air bag to create a special risk. The few conditions that do create such a risk do so by making it necessary for persons with one of those conditions to sit less than 10 inches from an air bag. This is true for both low speed crashes and higher speed crashes. This guidance is based on the following facts:

1. The force of a deploying air bag decreases as the air bag moves away from the steering wheel or dashboard, and

2. An air bag spreads out the forces that a person experiences during a crash, reduces the crash forces that seat belts transmit to particular areas of the body, and decreases the risk that the person's head, neck or chest (even those of a belted person) will strike the steering wheel or dashboard.

the owner's vehicle is a member of one of the risk groups listed on the form. Separate certifications, one for a risk group related to the driver air bag and another for a risk group related to the passenger air bag, must be made on the form if the owner wants an on-off switch or switches for both the driver and passenger air bags.

3. Completely fill out the request form in Appendix B of Part 595. The agency cannot approve a request for an on-off switch unless the form is completely filled out and signed and dated by the owner.

4. Send the completed form to NHTSA.

5. Upon reviewing the owner's form and approving it, NHTSA will send an authorization letter to the owner.

6. Call your dealer or repair business and ask about the installation of a switch and the associated costs.

7. Give your authorization letter to a dealer or repair businesses willing to install the switch and request the installation of an on-off switch.

8. Use the retrofit on-off switch appropriately. The on-off switch should only be used if the person occupying the seating position is a member of one of the risk groups listed in the information brochure in Appendix A of Part 595. At all other times, the air bag should be on.

Motor Vehicle Dealers and Repair Businesses

Steps Which Must Be Taken if an Air Bag On-Off Switch is Installed Pursuant to the Exemption From the Make Inoperative Prohibition

1. Make sure the vehicle owner presents an authorization letter from NHTSA. The dealer or repair business may also require the owner to fill out a form devised by the dealer or repair business. That form may include a waiver of liability.

2. Install a retrofit on-off switch for each air bag covered by the agency's authorization.

3. Ensure that each on-off switch meets all of the following performance requirements—

a. Be activated solely by a key.

b. Cause the air bag to remain turned off until manually turned back on using a key and the on-off switch.

c. Be accompanied by a telltale light in the vehicle interior. The telltale must indicate when an air bag has been turned off and be visible to an occupant of the driver's seat, in the case of a light for the driver air bag, and to all front seat occupants, in the case of a light for the passenger air bag.

d. Not affect the ability of the required air bag readiness indicator to monitor an air bag that is not turned off. The indicator must show whether the air bag is functioning properly.

e. If a single on-off switch is installed to control both the driver's and passenger's air bag, the on-off switch must be capable of turning off one air bag without turning off the other. For a single on-off switch controlling both air bags, the telltale light must indicate which air bag is off.

4. Provide the owner with an insert for the vehicle owner's manual describing the operation of the on-off switch, listing the risk groups on the request form, stating that the on-off switch should only be used to turn off an air bag for a member of one of those risk groups, and stating the vehicle specific consequences for using it for persons who are not members of any of those risk groups. Those consequences must include the effect of any energy managing features, e.g., load limiters, on seat belt performance. NHTSA anticipates that the inserts can be obtained primarily from the vehicle manufacturers, although in some cases, they might be available from independent on-off switch manufacturers.

5. Fill in information about your dealership or repair business and about the installation on the form included in the authorization letter and return the form by mail to NHTSA within seven days of your installation of an on-off switch pursuant to that letter.

C. Steps to Promote Informed Decisionmaking by Consumers About Retrofit On-Off Switches

1. Information Brochure

To limit the obtaining and use of retrofit on-off switches to persons who may be at risk from serious air bag injury, the agency is issuing guidance to aid consumers in determining if they or a user of their vehicle is in a risk group and in making informed decisions about requesting and using retrofit on-off switches. This guidance is contained in the information brochure in Appendix A of Part 595. In response to public comments about the information brochure in the deactivation NPRM, the brochure has been rewritten in a question and answer format to be more user friendly. The brochure will be distributed widely and made available on the Internet. The electronic version of the information brochure on NHTSA's Web site will supplemented by video clips showing what happens to a belted dummy in a crash test when the driver air bag is turned off.

The information brochure explains which consumers may be at any risk from air bags, and which are not. The brochure identifies the factors that create risk and tells consumers how to reduce that risk. For those who may be at risk, it stresses how infrequently people, particularly drivers and adult passengers, are fatally injured by air bags.

The information brochure also emphasizes that on-off switches should not be used to turn off air bags for the people not at risk. They represent the vast majority of vehicle occupants. Their use of on-off switches to turn off air bags will not make them safer in low speed crashes, but will make them less safe in moderate and high speed crashes.

2. Insert for Vehicle Owner's Manual

To remind vehicle owners and users about the proper use of on-off switches, the agency is requiring that dealer or repair businesses which install switches give vehicle owners an owner's manual insert describing the operation of the on-off switch, listing the risk groups, stating that the on-off switch should be used to turn off an air bag for risk group members only, and stating the vehicle specific safety consequences of using the on-off switch for a person who is not in any risk group. Those consequences would include the effect of any energy managing features, e.g., load limiters, on seat belt performance.

3. Physicians' Guidance Regarding Medical Conditions Warranting Turning Off an Air Bag

As noted above, a national conference of physicians, convened by George Washington University at the request of NHTSA, has examined the medical conditions that have been cited by vehicle owners as the basis for requesting deactivation of air bags. The conference participants recently issued a report containing their assessment of each of those conditions as a justification for deactivation. The agency expects that publicizing the report will reduce some of the confusion and misapprehension about which medical conditions really justify air bag deactivation. NHTSA has briefly summarized the report in the information brochure and is placing it on the agency's Web site.

4. Campaign to Increase Use of Child Restraints and Seat Belts

NHTSA is also undertaking a campaign in conjunction with safety groups, vehicle manufacturers and state and local authorities to promote increased use of all types of occupants restraints. NHTSA is urging motorists to use child restrajnts and seat belts and

place children in the back seat, whenever possible, as well as spreading the word about the benefits of air bags for most people. Proper use of the restraint(s) most appropriate to the weight and age of each child fatally injured to date by air bags would have saved all or almost all of them. While increasing numbers of parents are placing their children in the back seat or ensuring that they are properly secured in the front seat, much consumer education work remains to be done.

Disturbingly, most of the fatally-injured children were allowed to ride in the front without any type of restraint whatsoever. And, as of July 15, 1997, five out of the last seven fatally injured children aged 1 to 12 were simply "held in place" on the lap of a front seat passenger. There were no similar fatalities before December 1996. It is not known whether the sudden appearance of fatalities under these particular circumstances is mere chance or a response to the publicity given child air bag fatalities last fall. It is known that the combined effects of the risk of an air bag to an unrestrained child, and the weight that an adult places on a child during a frontal crash can make the decision to attempt to hold a child in place a fatal one. Children should ride fully restrained, and in the back seat whenever possible.

In addition, NHTSA is seeking to increase the rate of seat belt use from the current 68 percent to 90 percent by 2005 by promoting the enactment of primary seat belt use laws and high-visibility enforcement of use laws. Such an increase could save an estimated additional 5,000 lives each year. Since most persons fatally injured by air bags have been unbelted, this increase would also provide an additional way of preventing air bag fatalities. This provides an additional reason why on-off switches should only be used when a person in one of the identified risk groups is in the seat.

X. Net Safety Effects and Costs of On-Off Switches

A. Effect of Turning Off Air Bags on the Performance of Some Seat Belts

A number of industry commenters stated that deactivating air bags could result in substandard performance of the seat belts. Senator John McCain also sent NHTSA a letter requesting that the agency investigate this possibility.

A good general introduction to this issue appeared in an article on March 31 in the Kansas City Star:

> The seat belts on some newer cars were designed to work with their air bags, automakers say. Alone, they will not protect a person in a serious crash as well as an older-style belt.
>
> The newer belts allow a person to travel forward a few more inches than older belts, and when used in conjunction with air bags have some advantages, experts say. If the air bag is removed, however, the person faces a greater risk of head or chest injuries from hitting the steering wheel or dashboard.
>
> In minor or moderately severe crashes, the redesign of the belt won't make a difference, auto and safety officials say. But in severe crashes, a person is more likely to travel forward far enough to hit the dashboard or steering wheel, sustaining head and chest injuries, they say.
>
> When used with an air bag as designed, the newer belt has some definite advantages over the traditional one
>
> Because it is looser, it is less likely to break a rib or collarbone in a severe crash. * * * That is particularly of concern for elderly people.
>
> In older cars without air bags, the work of restraining an occupant falls solely on the belt * * *
>
> The newer belt can * * * give way a little bit so that the air bag takes up some of the force of the crash and spreads it out over a broader section of your body * * * The result: fewer belt injuries.

Seat belts are required to meet minimum performance requirements in Standard No. 209, "Seat belt assemblies," and seat belt anchorages in vehicles are required to meet minimum performance requirements in Standard No. 210, "Seat belt anchorages." However, dynamically tested belts (automatic belts or manual belts with air bags) do not have to meet the requirement of Standard No. 209 that places a maximum of 30 percent on the amount of permitted webbing elongation. In addition, the anchorages for dynamically tested belts do not have to meet the anchorage location requirements of Standard No. 210. These requirements are not necessary for belts which are dynamically-tested, because the dynamic test ensures that the system works to protect the occupant from the type of injuries these requirements are designed to prevent. The elongation requirements also do not apply to belts that are equipped with "load limiters" and that are installed at a seating position with an air bag. A load limiter is a component of a seat belt system used to limit the levels of forces transferred to an occupant restrained by the belt during a crash. In very severe crashes, the forces in the seat belt system may rise above levels considered safe. If a belt system has a load limiter, parts in the system deform so that the belt forces transferred to the occupant do not rise above a predetermined maximum level. There are different designs of load limiters, ranging from simple folds stitched into the seat belt webbing that are designed to tear under a certain load, to more complex mechanical systems, some of which play out a small amount of additional webbing at incremental increases in load levels. The exclusion from the elongation requirements does not unnecessarily prevent manufacturers from using a design for these devices that operates by affecting the length of the webbing.

The exclusion from the elongation requirement is not likely to significantly affect the safety of the belt system. Although manufacturers may have designed belt systems in some air bag equipped vehicles with more "give" than those in non-air bag equipped vehicles, a 1991 NHTSA study showed that webbing in vehicles with air bags far exceeded Standard No. 209's requirements despite the exclusion from the elongation requirement. The study showed that maximum elongation, when tested according to the requirements of Standard No. 209, was 15 percent or less, or about half the permitted amount of elongation. NHTSA updated this study and again found that the maximum elongation was 15 percent or less.

Some manufacturers have, appropriately, been using the flexibility in Standard No. 209 to optimize their belt systems to work with air bags. Additional webbing elongation and load limiters would not normally be a problem in an air bag equipped vehicle, because the air bag would limit occupant excursion. This additional "give" in the seat belts is normally beneficial because it prevents the belt from causing injuries. However, some load limiters, those releasing a relatively large amount of additional webbing, could result in additional deaths and injuries if the air bags are turned off. Unfortunately, if the air bag cannot function because it has been turned off, the "give" in these seat belts would increase the chance that occupants would hit their heads and upper bodies more easily on the steering wheel, the A-pillar, the windshield, or other hard parts of the vehicle interior, and suffer serious injury. In some cases, the only way to solve this problem might be by replacing the entire belt assembly.

Another type of safety device that could be affected by turning off the air bags is a seat belt pretensioner. These devices retract the seat belt webbing to remove slack almost instantly in a crash, thus enhancing the effectiveness of the seat belts by reducing the distance that the occupant might otherwise travel forward. Pretensioners are not powerful enough to pull the occupant back into

the vehicle seat; they merely remove slack. Some seat belt pretensioners are triggered by the same sensor that actuates the air bag, and may be wired into the same circuit as the air bag. Therefore, unless on-off switches are designed correctly, turning off the air bag may also disable the seat belt pretensioners. Pretensioners are not required by NHTSA standards, but are an improvement added at the manufacturer's option. NHTSA is not aware of any belt systems with pretensioners that allow more slack to be introduced than is allowed by systems without pretensioners. However, the system is likely to be more effective if the pretensioner is not disconnected as a result of the installation and use of an on-off switch. To NHTSA's knowledge, all air bags in vehicles with pretensioners can be turned off without disabling the pretensioners.

The exclusion of air bag equipped vehicles from the requirements in Standard No. 210 may have also been used by manufacturers to optimize their seat belt anchorage locations for seat belts used in conjunction with air bags. The agency cannot quantify or even estimate the extent to which vehicle manufacturers have availed themselves of this opportunity. NHTSA's anchorage location requirements are intended to reduce the likelihood that occupants would "submarine," i.e., slide forward under the lap belt. Submarining would cause the seat belt loads to be transferred to an occupant up on the soft tissue of the abdomen instead of down on the pelvic bones, thereby increasing the likelihood of abdominal injury. The static test in Standard No. 210 is intended as a substitute for a dynamic test where the interaction between the occupant and the lap belt can be observed. Since manual belts used with air bags do not have to meet Standard No. 210's anchorage location requirements, manufacturers may have located the anchorage locations to optimize the interaction between the belt and the air bag in controlling the forward motion of the occupant. With the air bag turned off, the system as a whole will not operate as designed, and the chance of abdominal injuries could be increased.

A minority of vehicles have load limiters or seat belt pretensioners. Using information provided by manufacturers on the design of 1997 model year vehicles and sales numbers of 1996 vehicles, NHTSA estimates that vehicles with pretensioners will comprise only 5 percent of 1997 vehicle sales. Using the same information, NHTSA estimates that vehicles with load limiters comprise about 22 percent of 1997 model year sales. Very few models have both load limiters and pretensioners. Since the number of vehicles with these features has been increasing in recent years, the actual percentage of models with these features in the entire on-road vehicle fleet is lower than the percentage in 1997 model vehicles. Nonetheless, NHTSA expects vehicle manufacturers, dealers and repair businesses will take appropriate steps to inform consumers whether their vehicle is equipped with one of these devices and to advise them whether any modifications to the vehicle belt system should be made. The agency's information brochure advises vehicle owners to ask the manufacturer of their vehicle about this issue.

NHTSA agrees with the industry commenters that turning off the air bag could result in a seat belt system with less than optimal performance. Modern vehicle restraint systems are highly complex and integrated, with the seat belt and air bag components often designed to work together. The seat belt systems may not be designed to work alone. Taking out one component of the integrated system could result in reductions in performance. Because many of the features identified by NHTSA are designed to operate only when high loads are placed on the belt system, the presence of these features will be of no consequence in low severity crashes in which the air bag has been turned off, especially when a small/light weight person is using the belt. However, those features will be consequential in a more severe crash. In such a crash, the belts will not provide their full benefits for a vehicle occupant if that person's air bag is turned off.

B. Net Safety Effects and Costs

People not in any of the four risk groups specified in this final rule will be worse off if they turn off their air bag. These people include the vast majority of teenagers and adults, including older drivers. By turning off their air bags, they will increase their chance of death or serious injury in moderate to serious crashes. Even belted occupants and the vast majority of short occupants will increase their risk of serious or fatal head, neck or chest injury if they turn off their air bags.

The net safety effects of retrofit on-off switch use will depend in part upon what proportion of the switch users are people at risk. Among persons in risk groups, the net safety effect of use of the on-off switch will depend on the whether that group is, on balance, benefited or harmed by air bags. For a group, like infants, which has had members fatally injured, but not saved, by air bags, use of the on-off switch to turn off passenger air bags will produce a net positive safety effect for the group. However, for other groups, use of the on-off switch to turn off driver air bags could have a net negative safety effect for the group.

Survey data provided by commenters suggest that many more people want on-off switches than could possibly benefit from them. As suggested above, the agency believes that this is because people tend to hear more about, and be more reactive to, the small number of fatalities from air bags than the large number of lives saved by air bags. The January 1997 survey provided by IIHS suggested that 30 percent of respondents were generally interested in on-off switches for the driver air bag, and 67 percent in on-off switches for the passenger air bag. Several commenters suggested that widespread availability of on-off switches would raise the possibility of what they termed "misuse," i.e., use of on-off switches by persons who are not at risk and who are clearly better off with their air bag left on. If this were to occur, it could result in a negative effect on safety. However, to the extent that the reported interest in on-off switches simply reflected a desire to make it possible to turn off an air bag should a person at risk ever be carried, then the likelihood of use by persons not at risk would be smaller.

As previously noted, the more recent IIHS survey, conducted in August, indicates that the general interest in on-off switches for passenger air bags has declined considerably since January. According to the new survey, 26 percent of respondents expressed a general interest in passenger air bag switches. General interest in driver air bag on-off switches was essentially unchanged, with 27 percent of respondents expressing an interest in those switches. The new survey also showed that interest in on-off switches declined after the respondents were informed about matters such as air bag benefits, steps for reducing risk and the cost of switches. The figure for passenger air bags dropped from 26 percent to 16 percent and the figure for driver air bags dropped from 27 percent to 12 percent.

To minimize the possibility of adverse safety consequences, persons who wish to apply for retrofit on-off switches must certify that they have read a NHTSA information brochure that explains the benefits and risks related to air bags to ensure that they make informed decisions both with respect to obtaining, and then using, an on-off switch. The brochure identifies which groups may be at risk, and which are not. More important, persons interested in on-off switches must certify that they or a user of the seating position in question meets the criteria for one of the relevant risk groups. Limiting eligibility for on-off switches to vehicle owners who are able to certify risk group membership should minimize the possibility that persons not in a risk group will have an opportunity to use a on-off switch to turn off their air bag and reduce the possibility that the switch will be used improperly. Finally, owners must submit their request to the agency for approval.

Given the large numbers of lives currently being saved by air bags and the very small chance of a fatality due to an air bag, and notwithstanding the limitation on eligibility for a on-off switch, NHTSA recognizes the possibility that authorizing the installation of retrofit on-off switches could result in a net loss of life. The agency has analyzed these adverse effects in its Final Regulatory Evaluation (see summary below). NHTSA notes that to the extent such a loss occurs, it would be the unfortunate result of several readily avoidable events: the incorrect certification of risk group membership, the use of on-off switches by persons who are not members of risk groups, and the failure to use seat belts and/or child restraints properly and to take other readily available precautionary measures.

NHTSA is issuing this final rule, notwithstanding its potential to reduce the number of lives saved by air bags, because the agency believes that it must consider both the short-run and long-run implications of this rulemaking on safety. Ultimately, the continued availability and use of any safety device, whether provided voluntarily by manufacturers or pursuant to a regulation, is dependent on public acceptability. The agency believes that air bags which fatally injure occupants, particularly children in low speed crashes, weaken the acceptability of air bags, despite their overall net safety benefits. Accordingly, to help ensure that air bags remain acceptable to the public and ultimately achieve their full potential in the future (as advanced air bags are developed and introduced), the agency believes it is reasonable and appropriate to give persons in risk groups the opportunity to obtain and use an on-off switch, upon the making of the requisite certifications on the agency request form and obtaining agency approval for each request.

The potential savings and savings foregone are described in the executive summary of the Final Regulatory Evaluation (FRE). The following discussion is based on that summary.[49]

The Final Regulatory Evaluation analyzes the potential impact of allowing motor vehicle dealers and repair businesses to install air bag on-off switches in vehicles. This option is being considered in response to concerns that current air bags may injure or kill some occupants in low speed crashes.

Data indicate that only a small portion of vehicle occupants are actually at risk of fatal harm from air bags, and that these occupants tend to fall into well-defined groups. Because both the actual risk and the public's perception of this risk are quite different for drivers and passengers, this analysis addresses each occupant position separately.

On-off switches will not be necessary after advanced air bags become available. Vehicle manufacturers are expected to install some kind of advanced air bags throughout their fleet by the year 2002. An analysis was therefore performed of the impacts that might occur during the 1998–2001 period, when an average of 45 percent of the on-road vehicle fleet will have driver air bags, and 32 percent will have passenger air bags. Safety impacts will continue to occur over the remaining life of these pre-2002 model year fleets, but at a declining rate as more vehicles are retired from the fleet without being replaced by on-off-switch-equipped vehicles. For the purposes of isolating and analyzing the impacts of this rulemaking, it is assumed that there is no change in air bag design, i.e., the potential impact of depowering or other design changes are not included. It is also assumed that there is no change in driver/passenger behavior, belt use, child restraint use, or the percent of children sitting in the front seat. Since the agency has significant education and labeling efforts underway, and the manufacturers are constantly improving air bags, the population which could be positively affected by retrofit on-off switches is actually smaller than that assumed for the purpose of this analysis. The results of this analysis are as follows:

Drivers

If on-off switches are installed and used by all drivers actually at risk, the switches could prevent 45 fatalities during the 1998–2001 period, an average of 11 each year. For every one percent of those not in a risk group who always use on-off switches to turn off the driver air bag, the number of drivers saved by air bags would be reduced by 42 for that period, an average of 11 drivers each year. Nonfatal injuries impact a broad range of occupants for which particular risk groups cannot be properly identified.[50] For each one percent of drivers always use on-off switches to turn off the driver air bag, a net increase of 490 moderate to critical injuries would occur during 1998–2001 (123 annually).[51]

Passengers

Passenger impacts vary dramatically by age group. If on-off switches are always used for all child passengers (ages 0–12), they could prevent 177 deaths over the 1998–2001 period, an average of 44 deaths annually. The vast majority of these benefits would come from infants and from children 1–12 years old who ride completely unbelted, remove their shoulder belt, lean forward or otherwise place themselves at risk. The net impact of on-off switches on nonfatal injuries is uncertain, but the agency believes that on-off switches would provide a net benefit to children.

The agency cannot identify the teenage and adult at-risk group, with the exception of a minimal number of medical cases. The agency advises all those passengers above 12 years of age to leave air bags on. For every one percent of teenage and adult passengers who always utilize on-off switches to turn off their air bag, 9 additional fatalities and 93 additional moderate to critical injuries would occur, an average of 2 more fatalities and 23 more injuries annually.

Costs

NHTSA estimates that an on-off switch for one seating position would cost between $38 and $63 and that the cost for an on-off switch to control both the driver and right front passenger air bags would cost between $51 and $76 (1996 dollars) to install on aftermarket vehicles. These costs would be voluntary and incurred at the initiative of the vehicle owner. Ford was the only commenter on costs. Ford estimated the cost of installing an aftermarket on-off switch that controls both the driver and

[49] The agency notes that IIHS and BMW raised the possibility in their comments that use of on-off switches could lead to increased occupancy of the front seat, especially by children, and thus to increased injuries and fatalities. The extent to which this phenomenon might occur, if at all, is speculative and therefore not quantifiable.

[50] Some nonfatal injuries are unrelated to the factors (sitting distance from air bag and medical conditions) which define the driver risk groups. For example, since all drivers must hold the steering wheel, they are all subject to arm injuries without regard to those factors.

[51] This potential increase applies to all drivers, not just those in a risk group.

right front passenger air bag to be $95 to $124.

NHTSA notes that one commenter, MBS, submitted an analysis suggesting that a final rule would result in a large annual number of additional deaths by the year 2000. After reviewing MBS' analysis, the agency concludes that it rests on a number of incorrect assumptions about key matters and consequently cannot reliably assess the impacts of this final rule. First, MBS' analysis assumes the final rule would authorize deactivation, which is permanent and eliminates air bag protection for all vehicle users, instead of on-off switches. As noted above, on-off switches make it possible to leave air bags on except when a person at risk is riding in the vehicle. Second, MBS' analysis assumes that anyone may have their air bag turned off, based on informed decisionmaking alone. In fact, the final rule is based on informed decisionmaking, certification of risk group membership, and agency approval of each request. As a result, the final rule will reduce inappropriate requests for on-off switches, i.e., those requests based on reasons other than safety risk. Third, MBS' analysis relies on highly speculative assumptions about the percentage of respondents to telephone surveys (the January IIHS survey and a later survey by Ford) who will actually go to their dealers or repair business and purchase an on-off switch. Given the shortcomings of those early surveys, which are detailed above, they do not provide a reliable basis for estimating the level of interest in on-off switches. Although the more recent (August) survey by IIHS avoided those shortcomings and demonstrated the potential for education to reduce interest in on-off switches, that survey too does not provide a basis for reliably estimating the number of people who will obtain on-off switches under this final rule. Even though the new survey introduced key information about cost and safety, it did so only to the very limited extent that it was reasonable and practicable to do so in the context of a brief survey. Only the barest of facts were given to the respondents. Further, since IIHS was conducting an opinion survey, not a public education campaign, its efforts to educate respondents about who is at risk from air bags was very cursory. The public education campaign planned by the agency and other interested parties will provide the public with a much fuller description of the facts and present those facts in the context of persuasive explanatory discussions and graphics. Third, instead of using data representing the passenger vehicle fleet in 2000, MBS incorrectly used NHTSA data representing a later fleet fully equipped with driver and passenger air bags. By contrast, only 47 percent of the vehicles in the 2000 fleet will have driver air bags and 35 percent will have passenger air bags. The effect of this error was to magnify greatly MBS's estimate of the effects of a final rule.

XI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget (OMB) under E.O. 12866, "Regulatory Planning and Review." This rule is not economically significant under E.O. 12866. However, the action has been determined to be "significant" under the Department of Transportation's regulatory policies and procedures because of the degree of public interest in this subject. This rule is not a major rule under Chapter 8 of Title 5, U.S. Code.

Further, the agency does not believe that the annual net economic impacts of the actions taken under this rule will exceed $100 million per year. This final rule does not require a motor vehicle manufacturer, dealer or repair business to take any action or bear any costs except in instances in which a dealer or repair business agrees to install an on-off switch for an air bag. For consumers, the purchasing and installation of on-off switches is permissive, not prescriptive. Accordingly, universal use of on-off switches by risk group members is unlikely. As noted below, the agency estimates that the percentage of vehicle owners who will ultimately choose to seek and use on-off switches is relatively low. Further, while NHTSA has specified four risk groups and made them eligible for on-off switches, the agency is affirmatively recommending only that two of the four specified risk groups obtain on-off switches. As a result, the agency does not believe this rule will yield benefits whose value exceeds $100 million in any one year.

When an eligible consumer obtains the agency's authorization for the installation of a retrofit on-off switch and a dealer or repair business agrees to install the switch, there will be costs associated with that action. The agency estimates that installation of an on-off switch would typically require less than one hour of shop time, at the average national labor rate of up to $50 per hour. NHTSA estimates the cost of providing an on-off switch for the passenger air bag is $38 to $63 and the cost of providing an on-off switch for both driver and passenger air bag is $51 to $76. Ford estimated the cost of installing an aftermarket on-off switch that controls both the driver and passenger air bag to be $95 to $124.

At this time, any estimate of the number of vehicle owners who will actually fill out request forms, obtain agency authorization and pay for retrofit on-off switches is necessarily subject to substantial uncertainty. The agency's experience with requests for deactivation suggests a figure that is much lower than the estimates offered by some commenters based on public opinion surveys. The agency believes that actual experience provides a sounder basis for making an estimate. Based on the volume of deactivation requests,[52] the greater public interest in on-off switches than in deactivation, the burst of publicity likely to surround the issuance of the final rule, and the time needed for the public education campaign to take full effect, NHTSA estimates that at least 100,000 request forms will be submitted to the agency in the first year after the issuance of this final rule, and that the annual average for the three-year period including that year and the next two years will be at least 80,000.

Because of the public interest in air bags, the publicity that will surround the issuance of this final rule, and the continuing public education campaign, NHTSA expects that many more people will read the information brochure than will fill out request forms and seek authorization for on-off switches. The agency has no directly relevant experience upon which to base an estimate. However, NHTSA estimates that the number of persons who read the brochure will be at least 1,000,000 over the three year period following the issuance of this final rule. Thus, the annual average will be at least 330,000 people.

In view of the preceding analysis, there are no mandatory costs associated with this rule. A final regulatory evaluation for this notice has been placed in the docket.

[52] The agency is using the volume of requests from the peak period during 1997, i.e., April and May. The volume averaged about 400 letters per week during that period. By contrast, the volume in late August-early September was slightly less than 300 per week. In mid-September, the average was even lower, just over 100. However, in October, the weekly average increased to nearly 200.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses may perform on-off switch installations pursuant to this rule, and would presumably profit from these installations. However, the economic impact on any given business will not be significant. For every 100,000 vehicle owners who voluntarily decide to seek authorization to have an on-off switch installed and who obtain that authorization, the average new vehicle dealer will install about 4.4 on-off switches before the introduction of advanced air bags solves the problem. NHTSA estimates the cost of providing a single on-off switch that operates both driver and passenger air bag is $51 to $76. Ford estimated that cost as $95 to $124. Based on a range from $51 to $124, the average dealer will receive, for each 100,000 on-off switches installed nationwide, additional revenues of between $224 and $545, before subtracting the cost of materials, labor, and overhead. This does not represent a significant amount of money for these businesses.

To the extent that consumers take their vehicles to the much larger number of used car dealers and smaller repair businesses for on-off switch installations, the economic impact would be diluted on a per-business basis. A small number of businesses may specialize in on-off installation, and this rule would have a large impact on them. However, NHTSA has noted a reluctance, on the part of the people receiving letters of authorization to deactivate their air bags, to take their vehicles to businesses other than dealerships. Assuming that this lack of "demand" for the independent businesses extends to on-off switch installation, and given the general liability concerns even on the part of the dealerships, the agency does not believe that a substantial number of businesses will specialize in on-off switch installation.

Because the economic impact, per average business, is so small, I hereby certify that it will not have a significant economic impact on a substantial number of small entities. NHTSA notes again that the requirements will not impose any mandatory economic impact on any entities, small or otherwise.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not meet the definition of a Federal mandate, because it is completely permissive. In addition, annual expenditures will not exceed the $100 million threshold.

Executive Order 12612 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule has no retroactive effect. NHTSA is not aware of any State law that would be preempted by this final rule. This final rule does not repeal any existing Federal law or regulation. It modifies existing law only to the extent that it replaces an agency procedure under which vehicle owners had to obtain authorization to have their air bags deactivated with a new procedure under which owners may seek authorization to have on-off switches installed. This new procedure involves reading an information brochure about air bag safety and submitting to NHTSA a signed and dated request form on which the owner certifies that he or she has read the brochure and that he or she, or a user of his or her vehicle, is a member of a risk group defined by the agency. If the agency approves the request, it sends an authorization letter to the vehicle owner. This final rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

Paperwork Reduction Act

Several of the conditions placed by this final rule on the exemption from the make inoperative prohibition are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Specifically, this rule conditions the exemption for motor vehicle dealers and repair businesses upon vehicle owners filling out and submitting a request form to the agency, obtaining an authorization letter from the agency and then presenting the letter to a dealer or repair business. The exemption is also conditioned upon the dealer or repair business filling in information about itself and the installation in the form provided for that purpose in the authorization letter and then returning the form to NHTSA. The information collection requirements for part 593 have been approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends chapter V of title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S4.5.2, 4.5.4 and 4.5.4.4 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S4.5.2 Readiness indicator. An occupant protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position. If the vehicle is equipped with a single readiness indicator for both a driver and passenger air bag, and if the vehicle is equipped with an on-off switch permitted by S4.5.4 of this standard, the readiness indicator shall monitor the readiness of the driver air bag when the passenger air bag has been deactivated by means of the on-off switch, and shall not illuminate solely because the passenger air bag has been deactivated by the manual on-off switch. A list of the elements of the system being monitored by the indicator shall be included with the information furnished in accordance with S4.5.1 but need not be included on the label.

* * * * *

S4.5.4 Passenger Air Bag Manual On-Off Switch. Passenger cars, trucks,

buses, and multipurpose passenger vehicles manufactured before September 1, 2000 may be equipped with a device that deactivates the air bag installed at the right front passenger position in the vehicle, if all the conditions in S4.5.4.1 through 4.5.4.4 are satisfied.

* * * * *

S4.5.4.4 The vehicle owner's manual shall provide, in a readily understandable format:

(a) Complete instructions on the operation of the on-off switch;

(b) A statement that the on-off switch should only be used when a member of a passenger risk group identified in the request form in Appendix B to part 595 of this chapter is occupying the right front passenger seating position; and,

(c) A warning about the safety consequences of using the on-off switch at other times.

3. Part 595 is added to read as follows:

PART 595—RETROFIT ON-OFF SWITCHES FOR AIR BAGS

Sec.

595.1 Scope.
595.2 Purpose.
595.3 Applicability.
595.4 Definitions.
595.5 Requirements.
Appendix A to Part 595—Information Brochure.
Appendix B to Part 595—Request Form.
Appendix C to Part 595—Installation Of Air Bag On-off Switches.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

§ 595.1 Scope.

This part establishes conditions under which retrofit on-off switches may be installed.

§ 595.2 Purpose.

The purpose of this part is to provide an exemption from the "make inoperative" provision of 49 U.S.C. 30122 and authorize motor vehicle dealers and motor vehicle repair businesses to install retrofit on-off switches for air bags.

§ 595.3 Applicability.

This part applies to dealers and motor vehicle repair businesses.

§ 595.4 Definitions.

The term *dealer*, defined in 49 U.S.C. 30102(a), is used in accordance with its statutory meaning.

The term *motor vehicle repair business* is defined in 49 U.S.C. 30122(a) as "a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment." This term includes businesses that receive compensation for servicing vehicles without malfunctioning or broken parts or systems by adding or removing features or components to or from those vehicles or otherwise customizing those vehicles.

§ 595.5 Requirements.

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section:

(b)(1) The dealer or motor vehicle repair business receives from the owner or lessee of the motor vehicle a letter from the National Highway Traffic Safety Administration that authorizes the installation of an on-off switch in that vehicle for that air bag and includes a form to be filled in by the dealer or motor vehicle repair business with information identifying itself and describing the installation it makes.

(2) The dealer or motor vehicle repair business installs the on-off switch in accordance with the instructions of the manufacturer of the switch.

(3) The on-off switch meets all of the conditions specified in paragraph (a)(4)(i) and (ii) of this section.

(i) The on-off switch is operable solely by a key. The on-off switch shall be separate from the ignition switch for the vehicle, so that the driver must take some action other than inserting the ignition key or turning the ignition key in the ignition switch to turn off the air bag. Once turned off, the air bag shall remain off until it is turned back on by means of the device. If a single on-off switch is installed for both air bags, the on-off switch shall allow each air bag to be turned off without turning off the other air bag. The readiness indicator required by S4.5.2 of § 571.208 of this chapter shall continue to monitor the readiness of the air bags even when one or both air bags has been turned off.

(ii) A telltale light in the interior of the vehicle shall be illuminated whenever the driver or passenger air bag is turned off by means of the on-off switch. The telltale for a driver air bag shall be clearly visible to an occupant of the driver's seating position. The telltale for a passenger air bag shall be clearly visible to occupants of all front seating positions. The telltale for an air bag:

(A) Shall be yellow;

(B) Shall have the identifying words "DRIVER AIR BAG OFF" or "PASSENGER AIR BAG OFF," as appropriate, on the telltale or within 25 millimeters of the telltale;

(C) Shall remain illuminated for the entire time that the air bag is "off;"

(D) Shall not be illuminated at any time when the air bag is "on;" and,

(E) Shall not be combined with the readiness indicator required by S4.5.2 of § 571.208 of this chapter.

(4) The dealer or motor vehicle repair business provides the owner or lessee with an insert for the vehicle owner's manual that—

(i) Describes the operation of the on-off switch,

(ii) Lists the risk groups on the request form set forth in Appendix B of this Part,

(iii) States that an on-off switch should only be used to turn off an air bag for a member of one of those risk groups, and

(iv) States the safety consequences for using the on-off switch to turn off an air bag for persons who are not members of any of those risk groups. The description of those consequences includes information, specific to the make, model and model year of the owner's or lessee's vehicle, about any seat belt energy managing features, e.g., load limiters, that will affect seat belt performance when the air bag is turned off.

(5) In the form included in the agency authorization letter specified in paragraph (b)(1) of this section, the dealer or motor vehicle repair business fills in information describing itself and the on-off switch installation(s) it makes in the motor vehicle. The dealer or motor vehicle repair business then sends the form to the address below within 7 working days after the completion of the described installations: National Highway Traffic Safety Administration, Attention: Air Bag Switch Request Forms, 400 Seventh Street, S.W., Washington, D.C. 20590–1000.

BILLING CODE 4910-59-P

APPENDIX A TO PART 595--INFORMATION BROCHURE

U. S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

AIR BAGS AND ON-OFF SWITCHES
INFORMATION FOR AN INFORMED DECISION

Keeping the Benefits for the Many
and
Reducing the Risks for the Few

INTRODUCTION

Air bags are proven, effective safety devices. From their introduction in the late 1980's through November 1, 1997, air bags saved about 2,620 people. The number of people saved increases each year as air bags become more common on America's roads.

However, the number of lives saved is not the whole story. Air bags are particularly effective in preventing life-threatening and debilitating head and chest injuries. A study of real-world crashes conducted by the National Highway Traffic Safety Administration (NHTSA) found that the combination of seat belts and air bags is 75 percent effective in preventing serious head injuries and 66 percent effective in preventing serious chest injuries. That means 75 of every 100 people who would have suffered a serious head injury in a crash, and 66 out of 100 people who would have suffered chest injuries, were spared that fate because they wore seat belts and had air bags.

For some people, these life saving and injury-preventing benefits come at the cost of a less severe injury caused by the air bag itself. Most air bag injuries are minor cuts, bruises, or abrasions and are far less serious than the skull fractures and brain injuries that air bags prevent. However, 87 people have been killed by air bags as of November 1, 1997. These deaths are tragic, but rare events -- there have been about 1,800,000 air bag deployments as of that same date.

The one fact that is common to all who died is NOT their height, weight, sex, or age. Rather, it is the fact that they were too close to the air bag when it started to deploy. For some, this occurred because they were sitting too close to the air bag. More often this occurred because they were not restrained by seat belts or child safety seats and were thrown forward during pre-crash braking.

The vast majority of people can avoid being too close and can minimize the risk of serious air bag injury by making simple changes in behavior. Shorter drivers can adjust their seating position. Front seat adult passengers can sit a safe distance from their air bag. Infants and children 12 and under should sit in the back seat. And everyone can buckle up. The limited number of people who may not be able to make these changes may benefit from having the opportunity to turn off their air bags when necessary.

Beginning January 19, 1998, consumers can choose to have an on-off switch installed for the air bags in their vehicle if they are, or a user of their vehicle is, in a risk group listed below. The following information provides the facts you need about air bags so you can make the appropriate decision for you and anyone else who is in a risk group.

What is an on-off switch?
An on-off switch allows an air bag to be turned on and off. The on-off switch can be installed for the driver, passenger, or both. To limit misuse, a key must be used to operate the on-off switch. When the air bag is turned off, a light comes on. There is a message on or near the light saying "DRIVER AIR BAG OFF" or "PASSENGER AIR BAG OFF." The air bag will remain off until the key is used to turn it back on.

What steps can you take to reduce air bag risk without buying an on-off switch?

- **Always place an infant in a rear-facing infant seat in the back seat.**
- **Always transport children 1 to 12 years old in the back seat and use appropriate child restraints.**
- **Always buckle your seat belt.**
- **Keep 10 inches between the center of the air bag cover and your breastbone.**

The vast majority of people don't need an on-off switch. Almost everyone over age 12 is much safer with air bags than without them. This includes short people, tall people, older people, pregnant women – in fact, all people, male or female, who buckle their seat belts and who can sit far enough back from their air bag. Ideally, you should sit with at least 10 inches between the center of your breastbone and the cover of your air bag. The nearer you can come to achieving the 10-inch distance, the lower your risk of being injured by the air bag and the higher your chance of being saved by the air bag. If you can get back almost 10 inches, the air bag will still help you in a crash.

Who should consider installing an on-off switch?

- People who must transport infants riding in rear-facing infant seats in the front passenger seat.
- People who must transport children ages 1 to 12 in the front passenger seat.
- Drivers who cannot change their customary driving position and keep 10 inches between the center of the steering wheel and the center of their breastbone.
- People whose doctors say that, due to their medical condition, the air bag poses a special risk that outweighs the risk of hitting their head, neck or chest in a crash if the air bag is turned off.

If you cannot certify that you are, or any user of your vehicle is, in one of these groups, you are not eligible for an on-off switch. Turning off your air bag will not benefit you or the other users of your vehicle. Instead, it will increase the risk that you and the other users will suffer a head, neck or chest injury by violently striking the steering wheel or dashboard in a moderate to severe crash.

WHY SOME PEOPLE ARE AT RISK

How do air bag deaths occur?
Air bags are designed to save lives and prevent injuries by cushioning occupants as they move forward in a front-end crash. By providing a cushion, an air bag keeps the occupant's head, neck, and chest from hitting the steering wheel or dashboard. To perform well, an air bag must deploy quickly. The force is greatest in the first 2-3 inches after the air bag bursts through its cover and begins to inflate. Those 2-3 inches are the "risk zone." The force decreases as the air bag inflates farther.

Occupants who are very close to or on top of the air bag when it begins to inflate can be hit with enough force to suffer serious injury or death. However, occupants who are properly restrained and sit 10 inches away from the air bag cover will contact the air bag only after it has completely or almost completely inflated. The air bag then will cushion and protect them from hitting the hard surfaces in the vehicle.

Do both children and adults face risk?
Yes, both children and adults face the risk of air bag injury or death if they are positioned too close to the air bag or fail to use proper restraints. As of November 1, 1997, NHTSA has confirmed that 49 young children have died, all on the passenger side. 38 adults have died – 35 drivers and 3 passengers.

What were the specific circumstances of the children's deaths?
Almost all of the 49 children who died were improperly restrained or positioned. 12 were infants under age 1 who were riding in rear-facing infant seats in front of the passenger air bag. When placed in the front seat, a rear-facing infant seat places an infant's head within a very few inches of the passenger air bag. In this position, an infant is almost certain to be injured if the air bag deploys. Rear-facing infant seats must ALWAYS be placed in the back seat.

The other 37 children ranged in age from 1 to 9 years; most were 7 or under. 29 of them were totally unrestrained. This includes 4 children who were sitting on the laps of other occupants. The remaining 8 children included some who were riding with their shoulder belts behind them and some who were wearing lap and shoulder belts but who also should have been in booster seats because of their small size and weight. Booster seat use could have improved shoulder belt fit and performance. These various factors allowed the 37 children to get too close to the air bag when it began to inflate.

What were the specific circumstances of the adults' deaths?
Most of the adults who were killed by air bags were not properly restrained. 18 of the 35 drivers, and 2 of the 3 passengers, were totally unbelted. 2 of the drivers who were belted had medical conditions which caused them to slump over the steering wheel immediately before the crash. A few of the drivers did not use their seat belts correctly and the others are believed to have been sitting too close to the steering wheel.

SEE FOR YOURSELF
Visit the NHTSA Web site at **http://www.nhtsa.dot.gov** and click on the icon "AIR BAGS - Information about air bags." A video shows crash tests of properly belted dummies whose air bags are turned off. A properly belted short female dummy without an air bag is shown slamming her head hard enough to bend the steering wheel and suffer fatal injuries. For more information, call the NHTSA Hotline at 1-800-424-9393.

REDUCING THE RISK

What is the safest way to ride in front of an air bag?
First, move the seat back and buckle up -- every time, every trip. The lap belt needs to fit over your hips, not your abdomen, and the shoulder belt should lie on your chest and over your shoulder. Remove any slack from the belt. In a crash, seat belts stretch and slow down your movement toward the steering wheel or dashboard. Moving back and properly using seat belts give the air bag a chance to inflate before you move forward in a crash far enough to contact the air bag.

How do I best protect children?
Never place a rear-facing infant seat in the front seat if the air bag is turned on. Always secure a rear-facing seat in the back seat. Children age 12 and under should ride in the back seat. While almost all of the children killed by an air bag were 7 years old or younger, a few older children have been killed. Accordingly, age 12 is recommended to provide a margin of safety.

There are instances when children must sit in the front because the vehicle has no rear seat, there are too many children for all to ride in back, or a child has a medical condition that requires monitoring. If children must sit in the front seat, they should use the seat belts and/or child restraint appropriate for their weight or size (see the table at the end of this brochure) and sit against the back of the vehicle seat. The vehicle seat should be moved as far back from the air bag as practical. Make sure the child's shoulder belt stays on. If adult seat belts do not fit properly, use a booster seat. Also, children must never ride on the laps of others.

What should teenagers and adults do to be safest on the passenger side?
Always wear seat belts. This reduces the distance that they can move forward during a crash. Move the seat toward the rear. The distance between a passenger's chest and the dashboard where the air bag is stored is usually more than 10 inches, even with the passenger seat all the way forward. But more distance is safer.

How do I stay safe when I'm driving?
Since the risk zone for driver air bags is the first 2-3 inches of inflation, placing yourself 10 inches from your driver air bag provides you with a clear margin of safety. This distance is measured from the center of the steering wheel to your breastbone. If you now sit less than 10 inches away, you can change your driving position in several ways:

- Move your seat to the rear as far as you can while still reaching the pedals comfortably.

- Slightly recline the back of the seat. Although vehicle designs vary, many drivers can achieve the 10-inch distance, even with the driver seat all the way forward, simply by reclining the back of the seat somewhat. If reclining the back of your seat makes it hard to see the road, raise yourself by using a firm, non-slippery cushion, or raise the seat if your vehicle has that feature.
- If your steering wheel is adjustable, tilt it downward. This points the air bag toward your chest instead of your head and neck.

[In its published version, the brochure will be 10 inches tall and will indicate that it should be placed between your breastbone and the center of the air bag cover to check your distance.]

Will following these safety tips guarantee that I will be safe in a crash?
There is no guarantee of safety in a crash, with or without an air bag. However, most of the people killed by air bags would not have been seriously injured if they had followed these safety tips.

Are air bags the reason the back seat is the safest place for children?
No. The back seat has always been safer, even before there were air bags. NHTSA conducted a study of children who died in crashes in the front and back seats of vehicles, very few of which had passenger air bags. The study concluded that placing children in the back reduces the risk of death in a crash by 27 percent, whether or not a child is restrained.

THE ON-OFF SWITCH DECISION

Vehicle owners and lessees can obtain an on-off switch for one or both of their air bags only if they can certify that they are, or a user of their vehicle is, in one of the four risk groups listed below:
Two risk groups have a high enough risk that they would definitely be better off with an on-off switch:

- **Infants in rear-facing infant seats.** A rear-facing infant seat must never be placed in the front seat unless the air bag is turned off.
- **Drivers or passengers with unusual medical conditions.** These are people who have been advised by a physician that an air bag poses a special risk to them because of their condition. However, they should not turn off their air bag unless their physician also has advised them that this risk is greater than what may happen if they do turn off their air bag. Without an air bag, even belted occupants could hit their head, neck or chest in a crash.

  A national conference of physicians considered all medical conditions commonly cited as possible justifications for turning off air bags. The physicians did not recommend turning off air bags for persons with pacemakers, supplemental oxygen, eyeglasses, median sternotomy, angina, chronic obstructive pulmonary disease, emphysema, asthma, breast reconstruction, mastectomy, scoliosis (if the person can be positioned properly), previous back or neck surgery, previous facial reconstructive surgery or facial injury, hyperacusis, tinnitus, advanced age,

osteogenesis imperfecta, osteoporosis & arthritis (if the person can sit at a safe distance from the air bag), previous ophthalmologic surgery, Down syndrome and atlantoaxial instability (if the person can reliably sit properly aligned), or pregnancy. The physicians recommended turning off an air bag if a safe sitting distance or position cannot be maintained by a driver because of scoliosis or achondroplasia or by a passenger because of scoliosis or Down syndrome and atlantoaxial instability. The physicians also noted that a passenger air bag might have to be turned off if an infant or child has a medical condition and must ride in front so that he or she can be monitored. To obtain a copy of the recommendations, call the NHTSA Hotline or see the NHTSA Web site.

Two other risk groups may be better off with an air bag on-off switch:

- **Children ages 1 to 12.** Children in this age group can be transported safely in the front seat if they are properly belted, they do not lean forward, and their seat is moved all the way back. The vast majority of all fatally injured children in this age range were completely unrestrained. But children sometimes sit or lean far forward and may slip out of their shoulder belts, putting themselves at risk. The simple act of leaning far forward to change the radio station can momentarily place even a belted child in danger. If a vehicle owner must transport a child in the front seat, the owner is eligible for an on-off switch for the passenger air bag. Since air bag performance differs from vehicle model to vehicle model, the vehicle owner may wish to consult the vehicle manufacturer for additional advice.

CAUTION: If you allow children to ride in the front seat while unrestrained or improperly restrained, and especially if you sit with a child on your lap, **you are putting them at serious risk, with or without an air bag.** Turning off the air bag is not the safe answer. It would eliminate air bag risk but not the likelihood that in a crash an unrestrained child would fly through the air and strike the dashboard or windshield, or be crushed by your body.

- **Drivers who cannot get back 10 inches.** Very few drivers are unable to sit so that their breastbone is 10 inches away from their air bag. If, despite your best efforts, you cannot maintain a distance of 10 inches, you may wish to **consult your dealer or vehicle manufacturer for advice or modifications to help you move back.**

  Since the risk zone is the first 2-3 inches from the air bag cover, sitting back 10 inches provides a clear margin of safety. While getting back at least 10 inches is desirable, if you can get back almost 10 inches, the air bag is unlikely to seriously injure you in a crash and you probably don't need an on-off switch. If you cannot get back almost 10 inches from the air bag cover, you may wish to consider an on-off switch. Since air bag performance differs among vehicle models, you may wish to consult your vehicle manufacturer for additional advice.

What if you are, or a user of your vehicle is, not in one of the listed risk groups?
You are not at risk and do not need an on-off switch. This includes short people, tall people, older people, pregnant women -- in fact, all people, male or female over age 12, who buckle their seat belts and who can sit with 10 inches from the center of their breastbone to where the air bag is stored. You will have the full benefit of your air bag and will minimize the risk of violently striking the steering wheel and dashboard in a moderate to severe crash.

How do I get an on-off switch?
If you are eligible, you must fill out a NHTSA request form. Forms are available at state motor vehicle offices and may be available at automobile dealers and repair shops. You may also get one by calling the NHTSA Hotline or visiting the NHTSA Web site. On the form, you must indicate which air bags you want equipped with an on-off switch, certify that you have read this information brochure, certify that you are, or a user of your vehicle is, a member of a risk group listed above, and identify the group. Then send this form to NHTSA. Upon approval of your request, the agency will send you a letter authorizing an automobile dealer or repair shop to install an on-off switch in your vehicle.

Should a pregnant woman get an on-off switch?
No, not unless she is a member of a risk group. Pregnant women should follow the same advice as other adults: buckle up and stay back from the air bag. The lap belt should be positioned low on the abdomen, below the fetus, with the shoulder belt worn normally. Pull any slack out of the belt. Just as for everyone else, the greatest danger to a pregnant woman comes from slamming her head, neck or chest on the steering wheel in a crash. When crashes occur, the fetus can be injured by striking the lower rim of the steering wheel or from crash forces concentrated in the area where a seat belt crosses the mother's abdomen. By helping to restrain the upper chest, the seat belt will keep a pregnant woman as far as possible from the steering wheel. The air bag will spread out the crash forces that would otherwise be concentrated by the seat belt.

ON-OFF SWITCH PRECAUTIONS

If I turn off my air bag for someone at risk, what precautions should I take for others?
Since the air bag will not automatically turn itself back on after you turn it off with an on-off switch, you must remember to turn it on when someone who is not at risk is sitting in that seat. Every on-off switch has a light to remind you when the air bag is turned off.

If I turn off my air bag, will my seat belts provide enough protection?
Air bags increase the protection you can get from seat belts alone. If the air bag is turned off, you lose this extra protection.

In some newer vehicles, turning off your air bag may have additional consequences. These vehicles have seat belts that were specially designed to work together with air bags. If the crash forces become too great, these new seat belts "give" or yield to avoid concentrating too much force on your chest. The air bag prevents you from moving too far forward after the seat belts

give. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.

Ask your vehicle manufacturer whether your seat belts were specially designed to work with an air bag. If they were, your dealer or repair shop will provide you information about the effects that turning off your air bag will have on the performance of the belts. Ask your dealer or repair shop to show you this information before you decide whether to have an on-off switch installed.

HOW AIR BAGS WORK

Air bags are designed to keep your head, neck, and chest from slamming into the dash, steering wheel or windshield in a front-end crash. They are not designed to inflate in rear-end or rollover crashes or in most side crashes. Generally, air bags are designed to deploy in crashes that are equivalent to a vehicle crashing into a solid wall at 8-14 mph. Air bags most often deploy when a vehicle collides with another vehicle or with a solid object like a tree.

Air bags inflate when a sensor detects a front-end crash. The sensor sends an electric signal to start a chemical reaction that inflates the air bag with harmless nitrogen gas. All this happens faster than the blink of an eye. Air bags have vents, so they deflate immediately after cushioning you. They cannot smother you and they don't restrict your movement. The "smoke" you may have seen in a vehicle after an air bag demonstration is the nontoxic starch or talc that is used to lubricate the air bag.

Are all air bags the same?
No. Air bags differ in design and performance. There are differences in the crash speeds that trigger air bag deployment, the speed and force of deployment, the size and shape of air bags, and the manner in which they unfold and inflate. That is why you should contact your vehicle manufacturer if you want specific information about the air bags in your particular car or truck.

FUTURE AIR BAGS

Do I need an on-off switch if I buy a vehicle with depowered air bags?
Many manufacturers are installing depowered air bags beginning with their model year 1998 vehicles. They are called "depowered" because they deploy with less force than current air bags. They will reduce the risk of air bag-related injuries. However, even with depowered air bags, rear-facing child seats still should never be placed in the front seat and children are still safest in the back seat. Contact your vehicle manufacturer for further information.

Will on-off switches be necessary in the future?
Manufacturers are actively developing so-called "smart" or "advanced" air bags that may be able to tailor deployment based on crash severity, occupant size and position, or seat belt use. These bags should eliminate the risks produced by current air bag designs. It is likely that vehicle manufacturers will introduce some form of advanced air bags over the next few years.

WHAT RESTRAINT IS RIGHT FOR YOUR CHILD?

Weight or size of your child	Proper type of restraint (Put your child in back seat, if possible)
Children less than 20 pounds,* or less than 1 year	Rear-facing infant seat (*secured to the vehicle by the seat belts*)
Children from about 20 to 40 pounds* and at least 1 year	Forward-facing child seat (*secured to the vehicle by the seat belts*)
Children more than 40 pounds*	Booster seat, plus both portions of a lap/shoulder belt (*except only the lap portion is used with some booster seats equipped with front shield*)
Children who meet both criteria below: (1) Their sitting height is high enough so that they can, without the aid of a booster seat: wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, and (2) Their legs are long enough to bend over the front of the seat when their backs are against the vehicle seat back	Both portions of a lap/shoulder belt

* To determine whether a particular restraint is appropriate for your child, see restraint manufacturer's recommendations concerning the weight of children who may safely use the restraint.

APPENDIX B TO PART 595--REQUEST FORM

U. S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

OMB No. 2127-0588
Expiration Date: 11/30/00

REQUEST FOR AIR BAG ON-OFF SWITCH

Vehicle Owner or Lessee Instructions:
Read the National Highway Traffic Safety Administration (NHTSA) information brochure, "Air Bags & On-Off Switches, Information for an Informed Decision." If you want authorization for an on-off switch for your driver air bag, passenger air bag, or both, fill out Parts A, B, E and F completely, fill out Parts C and D as appropriate, and send this form to:

National Highway Traffic Safety Administration
Attention: Air Bag Switch Request Forms
400 Seventh Street, S. W.
Washington, D.C. 20590-1000

- Please print.
- Please note: Incomplete forms will be returned to the owner or lessee.
- If you need a copy of the brochure or have any questions about how to fill out this form, call the NHTSA Hotline at 1-800-424-9393.

Part A. Name and address

(First) (Middle In.) (Last)

Residence: Street address	City	State	Zip Code

Part B. I own or lease the following vehicle: (Owners of multiple vehicles should consult the additional instructions at the end of this form.)

Make	Model
Model year	Vehicle Identification Number (located on driver's side of dashboard near windshield and on certification label on driver's door frame)

Part C. Switch for Driver Air Bag.
I request authorization for the installation of an on-off switch for the driver air bag in my vehicle. I certify that I or another driver of my vehicle meets the criteria for the risk group checked below. (At least one box must be checked.)

☐ **Medical condition.** The driver has a medical condition which, according to his or her physician:
- causes the driver air bag to pose a special risk for the driver; and
- makes the potential harm from the driver air bag in a crash greater than the potential harm from turning off the air bag and allowing the driver, even if belted, to hit the steering wheel or windshield in a crash.

☐ **Distance from driver air bag.** Despite taking all reasonable steps to move back from the driver air bag, the driver is not able to maintain a 10-inch distance from the center of his or her breastbone to the center of the driver air bag cover.

Part D. Switch for Passenger Air Bag.
I request authorization for the installation of an on-off switch for the passenger air bag in my vehicle. I certify that I or another passenger of my vehicle meets the criteria for the risk group checked below. (At least one box must be checked.)

☐ **Infant.** An infant (less than 1 year old) must ride in the front seat because:
- my vehicle has no rear seat;
- my vehicle has a rear seat too small to accommodate a rear-facing infant seat; or
- the infant has a medical condition which, according to the infant's physician, makes it necessary for the infant to ride in the front seat so that the driver can constantly monitor the child's condition.

☐ **Child age 1 to 12.** A child age 1 to 12 must ride in the front seat because:
- my vehicle has no rear seat;
- although children ages 1 to 12 ride in the rear seat(s) whenever possible, children ages 1 to 12 sometimes must ride in the front because no space is available in the rear seat(s) of my vehicle; or
- the child has a medical condition which, according to the child's physician, makes it necessary for the child to ride in the front seat so that the driver can constantly monitor the child's condition.

☐ **Medical condition.** A passenger has a medical condition which, according to his or her physician:
- causes the passenger air bag to pose a special risk for the passenger; and
- makes the potential harm from the passenger air bag in a crash greater than the potential harm from turning off the air bag and allowing the passenger, even if belted, to hit the dashboard or windshield in a crash.

Part E. I make this request based on following certification and understandings:	
(Check each box below after reading carefully.)	
☐	**Information brochure.** I certify that I have read the NHTSA information brochure, "Air Bags & On-Off Switches, Information for an Informed Decision." I understand that air bags should be turned off only for people at risk and turned back on for people not at risk.
☐	**Loss of air bag protection.** I understand that turning off an air bag may have serious safety consequences. When an air bag is off, even belted occupants may hit their head, neck or chest on the steering wheel, dashboard or windshield in a moderate to serious crash. That possibility may be increased in some newer vehicles with seat belts that are specially designed to work with the air bag. Those belts, which are designed to reduce the concentration of crash forces on any single part of the body, typically allow the occupant to move farther forward in a crash than older belts. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.
☐	**Waiver.** I understand that motor vehicle dealers and repair businesses may require me to sign a waiver of liability before they install an on-off switch.

Part F. Cer ification. I certify to the U. S. Department of Transportation that the information, certifications and understandings given or indicated by me on this form are truthful, correct and complete to the best of my knowledge and belief. I recognize that the statements I have made on this form concern a matter within the jurisdiction of a department of the United States and that making a false, fictitious or fraudulent statement may render me subject to criminal prosecution under Title 18, United States Code, Section 1001.	
Date	Signature of owner/lessee

Additional instructions and information for vehicle owners and lessees: An owner or lessee of multiple vehicles (e.g., a fleet owner) who wants an on-off switch for the same air bag (e.g., just the passenger air bag) in more than one vehicle and for the same reason does not need to submit a separate form for each vehicle. Instead, the owner or lessee may list the make, model, model year, and vehicle identification number for each of those vehicles and attach the list to a copy of this form. Each page of the list must be signed and dated by the owner or lessee. A list may also be attached to a single copy of this form if the owner or lessee wishes to request authorization for on-off switches for both air bags in multiple vehicles.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number appears above.

APPENDIX C TO PART 595–INSTALLATION OF AIR BAG ON-OFF SWITCHES

INSTALLATION OF AIR BAG ON-OFF SWITCHES	OMB No. 2127-0588 Expiration Date: 11/30/00

(The form and instructions below will be included in agency letters sent to vehicle owners or lessees authorizing the installation of air bag on-off switches. Each letter will identify the owner or lessee and the vehicle for which installation is authorized.)

The vehicle dealer or repair business identified below made the following installations of on-off switch(es) for the air bags in the motor vehicle identified above:			
Name of motor vehicle dealer or repair business			
Street address			
City	State	Zip Code	
On-off switch(es) were installed for the air bag(s) checked on this form:	driver air bag ☐	passenger air bag ☐	
Date of installation	Signature of authorized representative of dealer or repair business		

Instructions for vehicle dealers and repair businesses: Within 7 days of your installation of an on-off switch in the vehicle identified above, you must complete this form and mail it to: National Highway Traffic Safety Administration, Attention: Air Bag Switch Installation Forms, 400 Seventh St., S. W., Washington, D.C. 20590-1000.

Note: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number appears above.

BILLING CODE 4910-59-C

Issued on: November 17, 1997.

[Signature page for Docket No. NHTSA–97–3111 (final rule)]

Ricardo Martinez,

Administrator.

[FR Doc. 97–30485 Filed 11–18–97; 10:00 ;am]

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Friday
November 21, 1997

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 285
Administrative Wage Garnishment; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

[Docket No. FMS–285.11]

RIN 1510–AA67

Administrative Wage Garnishment

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). The DCIA authorizes Federal agencies to garnish the disposable pay of an individual to collect delinquent nontax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

DATE: Comments must be received by December 22, 1997.

ADDRESSES: Comments should be sent to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 151, Washington, D.C. 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6660; Ronda Kent or Ellen Neubauer, Senior Attorneys, or Laurie Levin, Attorney-Advisor, at (202) 874–6680. This document is available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation implements the wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720D. Under this provision Federal agencies may administratively garnish up to 15 percent of the wages of a debtor to satisfy delinquent nontax debt owed to the United States. Prior to the enactment of the DCIA, agencies were required to obtain a court judgment before garnishing the wages of non-Federal employees. Section 31001(o) of the DCIA preempts State laws that prohibit wage garnishment or otherwise govern wage garnishment procedures.

As authorized by the DCIA, a Federal agency which is collecting delinquent nontax debt may administratively garnish a delinquent debtor's wages in accordance with regulations promulgated by the Secretary of the Treasury. As the lead agency for the collection of nontax debt in the Federal Government, the Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA.

In accordance with the requirements of the DCIA, this proposed rule establishes the following rules and procedures:

1. *Notice.* At least 30 days before an agency initiates garnishment proceedings, the agency will give the debtor written notice informing him or her of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action.

2. *Rights of the debtor.* The agency will provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. The hearing will be held prior to the issuance of a withholding order if the debtor's request is timely received. For hearing requests that are not received in the specified time frame, an agency need not delay issuance of the withholding order prior to conducting a hearing. An agency may not garnish the wages of a debtor who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months.

3. *Employer's responsibilities.* The agency will send to the employer of a delinquent debtor a wage garnishment order directing that the employer pay a portion of the debtor's wages to the Federal Government. This proposed regulation requires the debtor's employer to certify certain payment information about the debtor. Employers will not be required to vary their normal pay cycles in order to comply with the garnishment order.

The DCIA prohibits employers from taking disciplinary actions against the debtor based on the fact that the debtor's wages are subject to administrative garnishment. In addition, the DCIA authorizes an agency to sue an employer for amounts not properly withheld from the wages payable to the debtor.

Section Analysis

(a) Purpose

The purpose of this section is to implement the wage garnishment provision in the DCIA, codified at 31 U.S.C. 3720D, under which Federal agencies may administratively garnish up to 15% of the wages of a debtor to satisfy delinquent nontax debt owed to the United States.

(b) Scope

Paragraph (b)(1) states that all Federal agencies are authorized to utilize this collection tool to collect delinquent nontax debt owed to the United States. The term "agency" is defined in paragraph (c).

As provided in the DCIA, paragraph (b)(2) explains that State law does not apply to the withholding of an employee's wages under this section to the extent that such State law conflicts or interferes with the procedures and requirements of this section.

Paragraph (b)(3) explains that an agency's use of this collection tool does not interfere with an agency's discretion to compromise a debt, or to suspend or terminate collection action of the debt.

Paragraph (b)(4) explains that administrative wage garnishment is one of many debt collection tools available to an agency. An agency may use administrative wage garnishment concurrently with other collection tools, even if an agency receives payments through the use of wage garnishment.

Paragraph (b)(5) distinguishes Federal salary offset from administrative wage garnishment. Federal salary offset procedures, whereby Federal salary payments payable to Federal employees who owe debt to the United States are withheld to satisfy the outstanding obligations, are set forth in 5 U.S.C. 5514 and the implementing regulations.

(c) Definitions

Agency. The term "agency" has the same meaning as found in 31 U.S.C. 3701(a)(4). The term refers to an agency in the executive, judicial or legislative branches of the Government, including government corporations, that either administers the program that gave rise to the debt or pursues recovery of the debt. For example, the Department of the Treasury and Treasury-designated debt collection centers may collect debts by administrative wage garnishment in accordance with the provisions of this rule when collecting debts for other agencies.

Business day. The term "business day" means Monday through Friday and shall be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure.

Certificate of service. A "certificate of service" refers to a signed certificate that an agency is required to retain as evidence of mailing of a document. A certificate may be retained electronically and may contain a computer generated signature.

Day. Unless otherwise indicated, the term "day" means calendar day and shall be calculated consistent with Rule 6(a) of the Federal Rules of Civil Procedure.

Debt or claim. For the purposes of this rule, the terms "debt" and "claim" refer to delinquent nontax debt. The term "delinquent nontax debt" refers to debt that is past-due.

Debtor. The term "debtor" refers to an individual who owes a delinquent nontax debt to the United States.

Disposable pay. "Disposable pay" is all of a debtor's compensation except health insurance premiums and those amounts required to be withheld by law, such as social security taxes. Lump sum payments, such as bonuses and back pay, are included in disposable pay. For purposes of calculating disposable pay, voluntary withholdings, such as savings allotments, are not deducted from a debtor's compensation.

Employer. The term "employer" refers to a person or entity that employs the services of others and includes State and local Governments. For purposes of this section, however, the Federal Government is not an "employer" because debts owed by Federal employees are collected in accordance with the Federal salary offset procedures.

Garnishment. The term "garnishment" refers to the process of withholding amounts from an employee's pay and forwarding those amounts to a creditor in satisfaction of a withholding order.

Withholding order. The term "withholding order" refers to any order for withholding or garnishment of pay, whether issued under the provisions of this section or otherwise. A withholding order may be issued by an agency, or a judicial or administrative body. For purposes of this proposed rule, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(d) General Rule

Paragraph (d) sets forth the authority contained in the DCIA that authorizes an agency to administratively garnish the wages of a delinquent debtor. Agencies authorized to administratively garnish the wages of a delinquent debtor include the Department of the Treasury and Treasury-designated debt collection centers when collecting debt for other agencies.

(e) Notice Requirements

Paragraph (e)(1) contains the DCIA requirement that the agency give the debtor written notice at least 30 days before initiating garnishment proceedings. The notice will inform the debtor of the nature and amount of the debt, the intention of the agency to collect the debt through deductions from pay, and an explanation of the debtor's rights regarding the proposed action. The notice will include the time frame within which a debtor may exercise his or her rights. This notice may be combined with and made a part of any notice of intent to use other collection tools that an agency sends to the debtor.

Paragraph (e)(2) contains the DCIA requirement that the agency provide the debtor with an opportunity to inspect and copy records related to the debt, to establish a repayment agreement, and to receive a hearing. Agencies should review a debtor's request to establish a repayment agreement under paragraph (e)(2)(ii) of this section in accordance with the requirements of the Federal Claims Collection Standards (4 CFR Parts 101–105), or other applicable standards, to ensure that the debtor's ability to pay is considered. The debtor is entitled to a hearing only with respect to (1) the existence of the debt; (2) the amount of the debt; or, (3) the terms of the proposed repayment schedule under the garnishment order, e.g., that the amount withheld would create a financial hardship. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement between the debtor and the agency. As discussed below, a debtor who is subject to a wage garnishment order may request a review by the agency of the amount garnished based on materially changed circumstances that result in financial hardship. See paragraph (k) of this section.

Paragraph (e)(3) requires that the agency keep a copy of the certificate of service indicating the date of mailing of the notice required by this section as evidence of the agency having provided the debtor with notice and the opportunity for review. This regulation does not specify how the certificate should be retained by the agency, and accordingly the certificate may be retained electronically. However, agencies are advised to consult with the Department of Justice as to the adequacy of computer generated records for evidentiary purposes.

(f) Hearing

The DCIA requires agencies to promulgate regulations concerning procedures for the conduct of administrative wage garnishment hearings. Agencies may use established hearing procedures so long as they meet the requirements of this section. Paragraph (f)(1) allows agencies either to prescribe their own regulations for this purpose or adopt this section without change.

Under paragraph (f)(2), agencies may decide whether to hold an oral or written hearing. The subject matter of the hearing is limited to the existence or amount of the debt or the terms of an involuntary repayment schedule as described under paragraph (e) of this section.

Paragraph (f)(3) sets forth factors an agency should consider in determining the type of hearing or review to provide. If an agency determines that an oral hearing is appropriate, the debtor may choose an in-person hearing or a hearing by telephone conference.

As required by the DCIA, paragraph (f)(4) provides that a hearing will be held prior to the issuance of a withholding order if the debtor's request for a hearing is timely received by the agency. Timely received means that the request for a hearing is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section. Agencies are required to inform the debtor of the deadline for requesting a hearing prior to the issuance of a withholding order.

Paragraph (f)(5) addresses hearing requests received after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section. As provided in the DCIA, an agency need not delay issuance of the withholding order prior to conducting a hearing if the request for a hearing is not timely received.

Paragraph (f)(6) authorizes the head of the agency to designate any qualified individual as a hearing official.

Paragraph (f)(7) requires an agency to notify the debtor about the hearing, including the date and time of the hearing or the deadlines for the submission of evidence.

Paragraph (f)(8) describes the burden of proof on the respective parties to a hearing. The agency must present evidence as to the existence or amount of the debt. To dispute the debt, the debtor must present clear and convincing evidence that no debt exists or that the amount of the debt is

incorrect. If the terms of the repayment schedule are an issue, the debtor must show that such terms are unreasonable or unlawful.

Paragraph (f)(9) describes the type of record required for a hearing provided under this section.

As required by the DCIA, under paragraph (f)(10), the hearing official is required to issue a written decision no later than sixty (60) days after the request for a hearing was made. Thus, a hearing must be held and a decision rendered within 60 days after the receipt of a hearing request by the debtor. The agency may not issue a withholding order until a hearing is held and a decision rendered. If an agency has previously issued a withholding order and the agency is unable to hold a hearing and issue a decision within the 60-day time period, the agency must suspend the withholding order until a hearing and a decision have been provided to the debtor. The provisions of this paragraph (f)(10) do not apply to financial hardship reviews under the provisions of paragraph (k) of this section.

Paragraph (f)(11) sets forth the information that must be included in the hearing official's written decision.

Paragraph (f)(12) states that the hearing official's decision is the final agency action for appeal purposes.

Paragraph (f)(13) provides that if a debtor, without good cause shown, fails to appear at a scheduled hearing, an agency may issue a withholding order prior to rescheduling or holding a subsequent hearing.

(g) Wage Garnishment Order

In accordance with the provisions of the DCIA, paragraph (g)(1) requires agencies to send to employers of delinquent debtors a wage garnishment order directing the employer to pay a portion of the debtor's wages to the Federal Government. The agency is required to send the order within 30 days after the debtor fails to make a timely request for a hearing, or if a timely request is made, within 30 days after a final decision is made to proceed with the garnishment.

Paragraph (g)(2) describes the format and content of a withholding order. A withholding order may contain a computer generated signature.

Paragraph (g)(3) requires that the agency retain a copy of the certificate of service indicating the date of mailing of the withholding order as evidence of the agency having served the employer with the order. While a copy of the certificate may be retained electronically, agencies are advised to consult with the Department of Justice as to the adequacy of computer generated records for evidentiary purposes.

(h) Certification by Employer

When a debtor's employer receives a withholding order, paragraph (h) requires the employer to complete a certification in a form prescribed by the Secretary of the Treasury. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) Amounts Withheld

Paragraphs (i)(1), (i)(2), and (i)(3) describe the restrictions on the amounts that can be withheld from an employee's pay to satisfy a withholding order issued pursuant to this proposed rule. As provided in the DCIA, under paragraph (i)(1) no more than 15% of the debtor's disposable pay for each pay period may be garnished.

Special rules apply to calculating the amount to be withheld from a debtor's pay that is subject to multiple withholding orders. Paragraph (i)(2) describes the amount that may be garnished from a debtor's disposable pay if, at the time of the withholding, the debtor's pay is subject to other wage garnishment orders, whether issued under this section or otherwise, e.g., a wage garnishment order issued pursuant to the provisions of 28 U.S.C. 3205 (Garnishment) or a commercial wage garnishment.

For garnishments issued under this section, an employer is required to withhold from a debtor's pay the amounts set forth in paragraph (i)(1). However, when the employee's pay is subject to multiple withholding orders that would result in the withholding of more than 25% of a debtor's disposable pay, this proposed rule requires that the amounts withheld under this section be reduced if the other withholding orders are for family support or were served on the employer prior in time. For example, if the employer is withholding 15% of a debtor's disposable pay for a family support or prior withholding order, the amount withheld for the subsequent withholding order issued under this section is limited to 10% of the debtor's disposable pay. When the family support or prior withholding order terminates, the amount withheld for the subsequent withholding order issued under this section may be increased to the maximum 15% allowed under (i)(1).

The following examples illustrate how the rules described in paragraphs (i)(1) and (i)(2) work.

Examples: An agency issues a garnishment order under this section setting the amount of garnishment at 15% of the debtor's disposable pay.

(A) If the debtor's disposable pay is $200 weekly and is not subject to other garnishment orders with priority, then the amount of the garnishment under this section will be $30 weekly, 15% of disposable pay (15%×$200=$30).

(B) If the debtor's disposable pay is $200 weekly and is subject to a prior garnishment order in the amount of $40 weekly, then the amount of the garnishment under this section will be $10 weekly. The $10 amount is the lesser of 15% of disposable pay (15%×$200=$30) or the maximum amount to be garnished where a debtor's pay is subject to withholding orders with priority (25%×$200=$50; $50−$40=$10). When the prior garnishment order terminates, the amount of the garnishment shall be increased to $30 weekly because the calculation regarding the prior withholding orders is no longer necessary.

(C) If the debtor's disposable pay is $200 weekly and is subject to a garnishment order with priority in the amount of $100 weekly, then the amount of the garnishment under this section will be $0. The $0 amount is the lesser of 15% of disposable pay (15%×$200=$30) or the maximum amount to be garnished where a debtor's pay is subject to withholding orders with priority (25%×$200=$50; $50—$100 $0). When the prior garnishment order terminates, the amount of the garnishment shall be increased to $30 weekly because the calculation regarding the prior withholding orders is no longer necessary.

Paragraph (i)(3) allows the debtor to consent in writing to withholding a greater amount than provided in paragraphs (i)(1) and (i)(2).

Under paragraph (i)(4), the employer is required to promptly pay to the agency amounts withheld under the garnishment order, generally within 10 days.

As provided in the DCIA, under paragraph (i)(5) an employer is not required to vary its pay cycle or disbursement cycle to comply with a withholding order issued pursuant to this section.

Paragraph (i)(6) provides that a withholding order issued under this section will take priority over any assignment or allotment by an employee of his wages, except for an assignment or allotment made pursuant to a family support judgment or order.

Paragraph (i)(7) requires the employer to continue to garnish an employee's wages until the agency notifies the employer that garnishment is no longer appropriate.

(j) Exclusions From Garnishment

As required by the DCIA, paragraph (j) provides that no withholding of a debtor's wages may occur in the case of an individual who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. The debtor bears the burden of notifying the agency of an involuntary separation and the circumstances surrounding any separation from employment to avoid wage withholding based on this provision.

(k) Financial Hardship

Paragraph (k)(1) allows a debtor to request a review by the agency of the amount being garnished under a wage garnishment order based on materially changed circumstances which result in a financial hardship.

Paragraph (k)(2) requires the debtor to explain and submit evidence of the materially changed circumstances and the effect of the change on the debtor's ability to pay.

Paragraph (k)(3) explains that an agency is required to adjust the amounts withheld under the garnishment order if a financial hardship is found to exist.

(l) Ending Garnishment

Paragraph (l)(1) requires an agency to instruct the employer to discontinue garnishment upon its receipt of the full amount of the debt, including interest, penalties, and administrative costs.

Paragraph (l)(2) requires an agency to review its debtors' accounts, at least annually, to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) Actions Prohibited by the Employer

As mandated by the DCIA, paragraph (m) prohibits employers from taking disciplinary actions against a debtor based on the fact that the debtor's wages are subject to administrative garnishment.

(n) Refunds

Paragraph (n)(1) requires an agency to refund promptly to a debtor amounts improperly withheld from wages.

Paragraph (n)(2) provides that, unless required by law or contract, refunds shall not bear interest.

(o) Right of Action

As authorized by the DCIA, paragraph (o) provides that an agency may sue an employer for the amounts that were not properly withheld from the wages payable to the debtor. The agency may initiate action against an employer only after terminating its collection efforts against the debtor. For purposes of this section, this occurs when an agency (1) has terminated collection action in accordance with the Federal Claims Collection Standards or other applicable standards, or (2) has not received any payments for the debt from any source for at least one year.

Regulatory Analyses

This proposed rule is not a significant regulatory action as defined in Executive Order 12866.

It is hereby certified that this proposed regulation, including the certification referenced in this notice of proposed rulemaking (see paragraph (h) of this section), will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to this proposed regulation and to the certification requirement in this proposed rule, the requirements will not have a significant economic impact on these entities. Employers of delinquent debtors must certify certain information about the debtor such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer is served withholding orders on several employees over the course of a year, the cost imposed on the employer to complete the certifications would not have a significant economic impact on that entity. Employers are not required to vary their normal pay cycles in order to comply with a withholding order issued pursuant to this proposed rule.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Hearing and appeal procedures, Salaries, Wages.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 285 is proposed to be amended to read as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for Part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3716, 3720A, 3720D; E.O. 13019

2. Subpart B consisting of § 285.11 is added to Part 285 to read as follows:

Subpart B—Authorities Other Than Offset

§ 285.11 Administrative wage garnishment.

(a) *Purpose.* This regulation provides procedures for Federal agencies to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the United States.

(b) *Scope.* (1) This regulation applies to any Federal agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(2) This regulation shall apply notwithstanding any provision of State law.

(3) Nothing in this regulation precludes the compromise of a debt or the suspension or termination of collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 4 CFR Parts 101–105.

(4) The receipt of payments pursuant to this regulation does not preclude a Federal agency from pursuing other debt collection remedies, including the offset of Federal payments to satisfy delinquent nontax debt owed to the United States. A Federal agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(5) This regulation does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and the implementing regulations.

(c) *Definitions.* As used in this section the following definitions shall apply:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations. For purposes of this regulation, agency means either the agency that administers the program that gave rise to the debt or the agency that pursues recovery of the debt.

Business day means Monday through Friday. For purposes of computation, the last day of the period will be included unless it is a Federal legal holiday.

Certificate of service means a certificate signed by an agency official indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt or *claim* means any amount of money, funds or property that has been

determined by an appropriate official of the Federal Government to be owed to the United States by an individual. Delinquent nontax debt means any nontax debt that has not been paid by the date specified in the agency's initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms "debt" and "claim" are synonymous and refer to delinquent nontax debt.

Debtor means an individual who owes a delinquent nontax debt to the United States.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments, but does not include an agency of the Federal Government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

(d) *General rule.* Whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings to administratively garnish the wages of the delinquent debtor.

(e) *Notice requirements.* (1) At least 30 days before the initiation of garnishment proceedings, the agency shall mail, by first class mail, to the debtor's last known address a written notice informing the debtor of:

(i) The nature and amount of the debt;

(ii) The intention of the agency to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(iii) An explanation of the debtor's rights, including those set forth in paragraph (e)(2) of this section, and the time frame within which the debtor may exercise his or her rights.

(2) The debtor shall be afforded the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) To enter into a written repayment agreement with the agency under terms agreeable to the agency; and

(iii) For a hearing in accordance with paragraph (f) of this section concerning the existence or the amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (e)(2)(ii) of this section.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the notice.

(f) *Hearing.*—(1) *In general.* Agencies shall prescribe regulations for the conduct of administrative wage garnishment hearings or shall adopt this section without change by reference.

(2) *Request for hearing.* The agency shall provide a hearing, which at the agency's option may be oral or written, if the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule (for repayment schedules established other than by written agreement under paragraph (e)(2)(ii) of this section).

(3) *Type of hearing or review.* (i) For purposes of this section, whenever an agency is required to afford a debtor a hearing, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(ii) If the agency determines that an oral hearing is appropriate, the time and location of the hearing shall be established by the agency. An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(iii) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(iv) In those cases when an oral hearing is not required by this section, an agency shall nevertheless accord the debtor a "paper hearing," that is, an agency will decide the issues in dispute based upon a review of the written record. The agency will establish a reasonable deadline for the submission of evidence.

(4) *Effect of timely request.* Subject to paragraph (f)(13) of this section, if the debtor's written request is received by the agency on or before the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall not issue a withholding order under paragraph (g) of this section until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (f)(10) and (f)(11) of this section has been rendered.

(5) *Failure to timely request a hearing.* If the debtor's written request is received by the agency after the 15th business day following the mailing of the notice described in paragraph (e)(1) of this section, the agency shall provide a hearing to the debtor but will not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the debtor had no control, or the agency receives information that the agency believes justifies a delay or cancellation of the withholding order.

(6) *Hearing official.* A hearing official may be any qualified individual, as determined by the head of the agency, including an administrative law judge.

(7) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(i) The date and time of a telephonic hearing;

(ii) The date, time, and location of an in-person oral hearing; or

(iii) The deadline for the submission of evidence for a written hearing.

(8) *Burden of proof.* (i) The agency will have the burden of going forward to prove the existence or amount of the debt.

(ii) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present clear and convincing evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unreasonable or unlawful.

(9) *Record.* The hearing official must maintain a summary record of any hearing provided under this section. A hearing is not required to be a formal evidentiary-type hearing, however, witnesses who testify in oral hearings will do so under oath or affirmation.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the agency. If an agency is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) The agency may not issue a withholding order until the hearing is held and a decision rendered; or

(ii) If the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(11) *Content of decision.* The written decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedures Act (5 U.S.C. 701 *et seq.*).

(13) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (f)(4) of this section, will be deemed as not having timely filed a request for a hearing.

(g) *Wage garnishment order.* (1) Unless the agency receives information that the agency believes justifies a delay or cancellation of the withholding order, the agency shall send, by first class mail, a withholding order to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing (i.e., within 15 business days after the mailing of the notice described in paragraph (e)(1) of this section), or, if a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the agency to proceed with garnishment.

(2) The withholding order sent to the employer under paragraph (g)(1) of this section shall be in a form prescribed by the Secretary of the Treasury on the agency's letterhead and signed by the head of the agency or his/her delegatee. The order shall contain only the information as may be necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and social security number, as well as instructions for withholding and information as to where payments should be sent.

(3) The agency will keep a copy of a certificate of service indicating the date of mailing of the order.

(h) *Certification by employer.* Along with the withholding order, the agency shall send to the employer a certification in a form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the agency within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

(i) *Amounts withheld.* (1) Subject to the provisions of paragraph (i)(3), after receipt of the garnishment order issued under this section the employer shall deduct from all disposable pay paid to the applicable debtor during each pay period the amount indicated on the garnishment order up to 15% of the debtor's disposable pay.

(2) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(i) Unless otherwise provided by Federal law, withholding orders issued under this section shall be paid in the amounts set forth under paragraph (i)(1) of this section and shall have priority over other withholding orders which are served later in time. Notwithstanding the foregoing, withholding orders for family support shall have priority over withholding orders issued under this section.

(ii) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this section, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this section shall be the lesser of:

(A) The amount calculated under paragraph (i)(1) of this section, or

(B) An amount equal to 25% of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) An amount greater than that set forth in paragraphs (i)(1) and (i)(2) of this section may be withheld upon the written consent of debtor.

(4) The employer shall promptly pay to the agency all amounts withheld in accordance with the withholding order issued pursuant to this section.

(5) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(6) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this part, except for any assignment or allotment made pursuant to a family support judgment or order.

(7) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the agency to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

(j) *Exclusions from garnishment.* The agency may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor bears the burden of informing the agency of the circumstances surrounding an involuntary separation from employment.

(k) *Financial hardship.* (1) A debtor whose wages are subject to a wage withholding order under this section, may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(2) A debtor requesting a review under paragraph (k)(1) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. Agencies shall consider any information submitted in accordance with procedures and standards established by the agency.

(3) If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld.

(l) *Ending garnishment.* (1) Once the agency has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the agency shall send the debtor's employer

notification to discontinue wage withholding.

(2) At least annually, an agency shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

(m) *Actions prohibited by the employer.* An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this section.

(n) *Refunds.* (1) If a hearing official, at a hearing held pursuant to paragraph (f)(3) of this section, determines that a debt is not legally due and owing to the United States, the agency shall promptly refund any amount collected by means of administrative wage garnishment.

(2) Unless required by Federal law or contract, refunds under this section shall not bear interest.

(o) *Right of action.* The agency may sue any employer for any amount that the employer, after receipt of the garnishment order provided by the agency under paragraph (g) of this section, fails to withhold from wages owed and payable to an employee. However, a suit may not be filed before the termination of the collection action, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt, in whole or in part, from any source for a period of one (1) year.

Dated: November 17, 1997.

Russell D. Morris,

Commissioner.

[FR Doc. 97-30611 Filed 11-20-97; 8:45 am]

BILLING CODE 4810-35-P

federal register

Friday
November 21, 1997

Part IV

Department of Health and Human Services

Food and Drug Administration

Guidance for FDA and Industry: Direct Final Rule Procedures; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0439]

Guidance for FDA and Industry: Direct Final Rule Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for FDA and Industry: Direct Final Rule Procedures." This guidance explains when and how FDA will employ direct final rulemaking. FDA believes that direct final rulemaking will expedite the issuance of routine or otherwise noncontroversial rules and conserve limited Government resources for carrying out the agency' regulatory functions.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. A copy of this guidance will be made available on FDA's World Wide Web site at "http://www.fda.gov/ opacom/ morechoices /industry/preguide.htm".

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Background

In Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), the President set forth the administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of limited Government resources for carrying out its regulatory functions. Furthermore, "Improving Regulatory Systems," an Accompanying Report of the National Performance Review, recognized the need to streamline the regulatory process and recommended the use of "direct final" rulemaking procedures to reduce needless double review of noncontroversial rules. Direct final rulemaking involves agency publication of a rule in the **Federal Register** with a statement that unless significant adverse comment, as defined later in this document, is received on the rule within a specified time period, the rule will become effective as a final rule on a particular date. However, if a significant adverse comment is filed, the rule is withdrawn, and the agency may publish the rule as a proposed rule under the usual notice-and-comment procedures of the Administrative Procedure Act (APA).

From 1964 to 1995 the Administrative Conference of the United States (ACUS), established by the Administrative Conference Act (5 U.S.C. 591–596), studied the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs. When it was in existence, ACUS made recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)).

In the **Federal Register** of August 18, 1995 (60 FR 43108), ACUS issued a notice adopting five recommendations at its Fifty-Second Plenary Session held on June 15 to 18, 1995. Recommendation 95–4, "Procedures for Noncontroversial and Expedited Rulemaking," endorsed direct final rulemaking as a procedure that can expedite rules in appropriate cases (see 60 FR 43108, August 18, 1995). ACUS found direct final rulemaking appropriate where a rule is expected to generate no significant adverse comment. ACUS defined significant adverse comment as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change (60 FR 43108 at 43111) . ACUS stated that, in determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, agencies should consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process (Id.). ACUS noted that the direct final rule process allows the agency to issue a rule without having to go through the review process twice (i.e., at the proposed and final rule stages) while at the same time offering the public the opportunity to challenge the agency's view that the rule has no significant opposition (60 FR 43108 at 43111 and 43112).

ACUS determined that direct final rulemaking is supported by two rationales under current law. First, it is justified by the APA's "good cause" exemption from notice-and-comment procedures where they are found to be "unnecessary." ACUS found that the agency's solicitation of public comment does not undercut this argument, but rather validates the agency's initial determination. Second, ACUS stated that, alternatively, direct final rulemaking also complies with the basic notice-and-comment requirements in section 553 of the APA. ACUS stated that the agency provides the requisite notice and opportunity to comment on the rule through its **Federal Register** notice; the publication requirements are met, although the information has been published earlier in the process than normal; and, the requisite advance notice of the effective date required by the APA is provided (60 FR 43108 at 43111).

Because the process protects public comment and expedites routine rulemaking, ACUS recommended that agencies use direct final rulemaking in all cases where the "unnecessary" prong of the good cause exemption is available, unless the agency determines that the process would not expedite issuance of such rules (60 FR 43108 at 43111). ACUS further recommended that agencies explain when and how they will employ direct final rulemaking. Such a policy should be issued as a procedural rule or a policy statement (Id.).

Provided herein and on FDA's World Web site at "http://www.fda.gov/ opacom/morechoices/ industry/ preguide.htm", FDA is making available a guidance document titled "Guidance for FDA and Industry: Direct Final Rule Procedures." This guidance explains when and how FDA will employ direct final rulemaking. FDA believes that direct final rulemaking will expedite the issuance of routine or otherwise noncontroversial rules.

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments are to be identified with the docket number found in brackets in the heading of this document. Comments may be submitted at any time and will be used to determine whether to revise the guidance further.

Dated: November 12, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

The text of the guidance is set forth below:

BILLING CODE 4160–01–F

Guidance for FDA and Industry: Direct Final Rule Procedures

U.S. Department of Health and Human Services

Food and Drug Administration

Office of Policy

November (*insert date of publication in the* FEDERAL REGISTER), 1997

Comments and suggestions regarding this document should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm.1-23, Rockville, MD 20857. Requests and comments are to be identified with the docket number found in brackets in the heading of the notice of availability that published in the FEDERAL REGISTER. For questions regarding this document, contact Marquita B. Steadman, Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

I. Summary

This guidance will explain when and how the Food and Drug Administration (FDA) will employ direct final rulemaking. FDA believes that direct final rulemaking will expedite the issuance of routine or otherwise noncontroversial rules.

II. FDA's Direct Final Rulemaking Procedures

This guidance adopts many aspects of the former Administrative Conference of the United States' (1964 to 1995) recommendations concerning direct final rulemaking. FDA may use the direct final rule process when the agency does not anticipate receiving any significant adverse comment, or when a rule may qualify for exemption from notice-and-comment rulemaking. FDA will publish in the notice of direct final rulemaking the full text of the rule and the statement of basis and purpose, including all the material that would be required in the preamble to a final rule. FDA will also publish a companion proposed rule in the same issue of the **Federal Register**. That proposed rule will serve the purpose of issuing a proposed rule under usual notice-and-comment procedures in the event the direct final rule is withdrawn because the agency receives any significant adverse comment.

FDA ordinarily will allow at least 75 days for comment on the direct final rule after it is published in the **Federal Register**. If the agency receives any significant adverse comment, the agency will publish a notice of significant adverse comment and withdraw the direct final rule within 30 days after the comment period ends. In that circumstance, any comments received will be considered comments on the proposed rule and will be considered in developing a final rule using the usual APA notice-and-comment procedures. If the agency receives no significant adverse comment during the specified comment period, the direct final rule will go into effect no later than 60 days after the comment period ends. The agency will publish a document confirming the effective date within 30 days after the comment period ends, which ordinarily will state that the direct final rule will go into effect 30 days after the confirmation notice is published. This means that a direct final rule that receives no significant adverse comment will go into effect no later than 135 days after its publication in the **Federal Register**.

FDA will adopt ACUS's definition of significant adverse comment. Thus, significant adverse comment is defined as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. FDA notes that comments that are frivolous, insubstantial, or outside the scope of the rule would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (e.g., where a rule deletes several unrelated regulations), FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

As discussed previously, FDA will only use direct final rulemaking procedures when the agency expects that there will be no significant adverse comment. For example, FDA will consider direct final rulemaking for minor, substantive changes to regulations; incorporation by reference of the latest edition of technical or industry standards; extensions of compliance dates, direct incorporations of mandates from new legislation; and other noncontroversial rules where FDA determines that use of direct final rulemaking is in the public interest and that the rule is unlikely to result in any significant adverse comment.

III. Significance of Guidance

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as Level 1 guidance consistent with GGP's. The agency will not solicit public input prior to implementation because the guidance presents a less burdensome policy that is consistent with the public health. This guidance represents the agency's current thinking on direct final rules. It does not operate to create or confer any rights for or on any person and does not operate to

bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

IV. Request for Comments

Interested persons may, at any time, submit written comments on this guidance to the Dockets Management Branch (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy.

[FR Doc. 97-30704 Filed 11-20-97; 8:45 am]
BILLING CODE 4160-01-C

federal register

Friday
November 21, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guidance on Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0112]

International Conference on Harmonisation; Guidance on Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance identifies a standard set of genotoxicity tests that should be conducted for pharmaceutical registration and recommends the extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. The guidance complements the ICH guidance "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" (S2A).

DATES: Effective November 21, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2123.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of April 3, 1997 (62 FR 16026), FDA published a draft tripartite guideline entitled "Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals" (S2B). The notice gave interested persons an opportunity to submit comments by June 2, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 16, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

Genotoxicity tests are in vitro and in vivo tests designed to detect compounds that induce genetic damage directly or indirectly by various mechanisms. Compounds that are positive in tests that detect such damage have the potential to be human carcinogens and/or mutagens, i.e., may induce cancer and/or heritable defects. The guidance addresses two areas of genotoxicity testing for pharmaceuticals: (1) Identification of a standard set of tests that should be conducted for registration and (2) the extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. The guidance is intended to be used together with the ICH S2A guidance entitled "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals" (61 FR 18198, April 24, 1996) as ICH guidance principles for testing pharmaceuticals for potential genotoxicity.

This guidance represents the agency's current thinking on a recommended standard battery for genotoxicity testing of a pharmaceutical. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance.htm).

The text of the guidance follows:

S2B Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals[1]

1. Introduction

Two fundamental areas in which harmonization of genotoxicity testing for pharmaceuticals is considered necessary are the scope of this guidance: (I) Identification of a standard set of tests that should be conducted for registration. (II) The extent of confirmatory experimentation in in vitro genotoxicity tests in the standard battery. Further issues that were considered necessary for harmonization can be found in the ICH guidance S2A "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals." *The two ICH guidances on genotoxicity complement each other and therefore should be used together as ICH guidance principles for testing of a pharmaceutical for potential genotoxicity.*

2. General Purpose of Genotoxicity Testing

Genotoxicity tests can be defined as in vitro and in vivo tests designed to detect compounds that induce genetic damage directly or indirectly by various mechanisms. These tests should enable a hazard identification with respect to damage to DNA and its fixation. Fixation of damage to DNA in the form of gene mutations, larger scale chromosomal damage, recombination and numerical chromosome changes is generally considered to be essential for heritable effects and in the multistep process of malignancy, a complex process in which genetic changes may play only a part. Compounds which are positive in tests that detect such kinds of damage have the potential to be human carcinogens and/or mutagens, i.e., may induce cancer and/or heritable defects. Because the relationship between exposure to particular chemicals and carcinogenesis is established for man, while a similar relationship has been difficult to prove for heritable diseases, genotoxicity tests have been used mainly for the prediction of carcinogenicity. Nevertheless, because germ line mutations are clearly associated with human disease, the suspicion that a compound may induce heritable effects is considered to be just as serious as the suspicion that a compound may induce cancer. In addition, the outcome of such tests may be valuable for the interpretation of carcinogenicity studies.

3. The Standard Test Battery for Genotoxicity

Registration of pharmaceuticals requires a comprehensive assessment of their genotoxic potential. It is clear that no single test is capable of detecting all relevant genotoxic agents. Therefore, the usual approach should be to carry out a battery of in vitro and in vivo tests for genotoxicity. Such tests are complementary rather than representing different levels of hierarchy.

The general features of a standard test battery can be outlined as follows:

(i) It is appropriate to assess genotoxicity in a bacterial reverse mutation test. This test has been shown to detect relevant genetic changes and the majority of genotoxic rodent carcinogens.

(ii) DNA damage considered to be relevant for mammalian cells and not adequately measured in bacteria should be evaluated in mammalian cells. Several mammalian cell systems are in use: Systems that detect gross chromosomal damage (in vitro tests for structural and numerical chromosomal aberrations), systems that detect primarily gene mutations (see Note 1), and a system that detects gene mutations and clastogenic effects (mouse lymphoma tk assay) (see Note 2). The information given in Notes 3 and 4 demonstrates that with appropriate test protocols (see section 5 of this document) the various in vitro tests for chromosomal damage and the mouse lymphoma tk assay yield results with a high level of congruence for compounds that are regarded as genotoxic but yield negative results in the bacterial reverse mutation assay. Therefore, these systems are currently considered interchangeable when used together with other genotoxicity tests in a standard battery for genotoxicity testing of pharmaceuticals, if these test protocols are used.

(iii) An in vivo test for genetic damage should usually be a part of the test battery to provide a test model in which additional relevant factors (absorption, distribution, metabolism, excretion) that may influence the genotoxic activity of a compound are included. As a result, in vivo tests permit the detection of some additional genotoxic agents (see Note 5). An in vivo test for chromosomal damage in rodent hematopoietic cells fulfills this need. This in vivo test for chromosomal damage in rodents could be either an analysis of chromosomal aberrations in bone marrow cells or an analysis of micronuclei in bone marrow or peripheral blood erythrocytes.

The following standard test battery is recommended based upon the considerations mentioned above:

(i) A test for gene mutation in bacteria.

(ii) An in vitro test with cytogenetic evaluation of chromosomal damage with mammalian cells *or* an in vitro mouse lymphoma tk assay.

(iii) An in vivo test for chromosomal damage using rodent hematopoietic cells.

For compounds giving negative results, the completion of this 3-test battery, performed and evaluated in accordance with current recommendations, will usually provide a sufficient level of safety to demonstrate the absence of genotoxic activity (see Note 6). Compounds giving positive results in the standard test battery may, depending on their therapeutic use, need to be tested more extensively (see ICH S2A "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals").

The suggested standard set of tests does not imply that other genotoxicity tests are generally considered inadequate or inappropriate (e.g., tests for measurement of DNA adducts, DNA strand breaks, DNA repair or recombination). Such tests serve as options in addition to the standard battery for further investigation of genotoxicity test results obtained in the standard battery. Furthermore, molecular techniques to study mechanisms of genotoxicity in the standard battery systems may be useful for risk assessment. Only under extreme conditions in which one or more tests comprising the standard battery cannot be employed for technical reasons, alternative validated tests can serve as substitutes. For this to occur, sufficient scientific justification should be provided to support the argument that a given standard battery test is not appropriate.

The standard battery does not include an independent test designed specifically to test for aneuploidy. However, information on this type of damage may be derived from the tests for chromosomal damage in vitro and in vivo. Elements of the standard protocols that provide such information are elevations in the mitotic index, polyploidy induction and micronucleus evaluation. There is also limited experimental evidence that aneuploidy inducers can be detected in the mouse lymphoma tk assay (see Note 4). In such cases, further testing may be needed.

4. Modifications of the 3-Test Battery

The following sections give situations where the standard 3-test battery may need modification.

4.1 Limitations to the Use of Bacterial Test Organisms

There are circumstances where the performance of the bacterial reverse mutation test does not provide appropriate or sufficient information for the assessment of genotoxicity. This may be the case for compounds that are excessively toxic to bacteria (e.g., some antibiotics) and compounds thought or known to interfere with the mammalian cell replication system (e.g., topoisomerase inhibitors, nucleoside analogues, or inhibitors of DNA metabolism). For these cases, usually two in vitro mammalian cell tests should be performed using two different cell types and of two different endpoints (gene mutation (see Note 1) and chromosomal damage). Nevertheless, it is still important to perform the bacterial reverse mutation test (see Note 7); either a full test or a limited (range-finding) test (see section 5 of this document) may be appropriate.

4.2 Compounds Bearing Structural Alerts for Genotoxic Activity

Structurally alerting compounds (see Note 8) are usually detectable in the standard 3-test battery. However, compounds bearing structural alerts that have given negative results in the standard 3-test battery may necessitate limited additional testing. The choice of additional test(s) or protocol modification(s) depends on the chemical nature, the known reactivity, and metabolism data on the structurally alerting compound under question (see Note 9 and ICH S2A "Guidance on Specific Aspects of Regulatory Genotoxicity Tests for Pharmaceuticals").

4.3 Limitations to the Use of Standard In Vivo Tests

There are compounds for which standard in vivo tests do not provide additional useful information. These include compounds for which data from studies on toxicokinetics or pharmacokinetics indicate that they are not systemically absorbed and therefore are not available for the target tissues in standard in vivo genotoxicity tests. Examples of such compounds are some radioimaging agents, aluminum-based antacids, and some dermally applied pharmaceuticals. In cases where a modification of the route of administration does not provide sufficient target tissue exposure, it may be appropriate to base the evaluation only on in vitro testing.

[1] This guidance represents the agency's current thinking on a recommended standard battery for genotoxicity testing of a pharmaceutical. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

4.4 Additional Genotoxicity Testing in Relation to the Carcinogenicity Bioassay

4.4.1 Evidence for Tumor Response

Additional genotoxicity testing in appropriate models may be conducted for compounds that were negative in the standard 3-test battery but which have shown effects in carcinogenicity bioassay(s) with no clear evidence for a nongenotoxic mechanism. To help understand the mechanism of action, additional testing can include modified conditions for metabolic activation in in vitro tests or can include in vivo tests measuring genetic damage in target organs of tumor induction (e.g., liver UDS test, 32P-postlabeling, mutation induction in transgenes, molecular characterization of genetic changes in tumor-related genes).

4.4.2 Structurally Unique Chemical Classes

On rare occasions, a completely novel compound in a unique structural chemical class will be introduced as a pharmaceutical. When such a compound will not be tested in chronic rodent carcinogenicity bioassays, further genotoxicity evaluation may be invoked.

5. Standard Procedures for In Vitro Tests

Reproducibility of experimental results is an essential component of research involving novel methods or unexpected findings; however, the routine testing of chemicals with standard, widely used genotoxicity tests need not always be completely replicated. These tests are sufficiently well characterized and have sufficient internal controls that repetition can usually be avoided if protocols with built-in confirmatory elements, such as those outlined below, are used.

For both bacterial and mammalian cell gene mutation tests, the results of a range-finding test can be used to guide the selection of concentrations to be used in the definitive mutagenicity test. By these means, a range-finding test may supply sufficient data to provide reassurance that the reported result is the correct one. In bacterial mutagenicity tests, preliminary range-finding tests performed on all bacterial strains, with and without metabolic activation, with appropriate positive and negative controls, and with quantification of mutants, may be considered a sufficient replication of a subsequent complete test. Similarly, a range-finding test may also be a satisfactory substitute for a complete repeat of a test in gene mutation tests with mammalian cells other than the mouse lymphoma tk assay (see below) if the range-finding test is performed with and without metabolic activation, with appropriate positive and negative controls, and with quantification of mutants (see Note 10).

For the cytogenetic evaluation of chromosomal damage in vitro, the test protocol includes the conduct of tests with and without metabolic activation, with appropriate positive and negative controls, where the exposure to the test articles is 3 to 6 hours and a sampling time of approximately 1.5 normal cell cycles from the beginning of the treatment. A continuous treatment without metabolic activation up to the sampling time of approximately 1.5 normal cell cycles is needed in case of a negative result for the short treatment period without metabolic activation. Certain chemicals may be more readily detected by longer treatment or delayed sampling times, e.g., some nucleoside analogues or some nitrosamines. Negative results in the presence of a metabolic activation system may need confirmation on a case-by-case basis (see Note 11). In any case, information on the ploidy status should be obtained by recording the incidence of polyploid cells as a percentage of the number of metaphase cells. An elevated mitotic index or an increased incidence of polyploid cells may give an indication of the potential of a compound to induce aneuploidy. In such cases, further testing may be needed.

For the mouse lymphoma tk assay, the test protocol includes the conduct of tests with and without metabolic activation, with appropriate positive and negative controls, where the exposure to the test articles is 3 to 4 hours. A continuous treatment without metabolic activation for approximately 24 hours is needed in case of a negative result for the short treatment without metabolic activation (see Note 4). Negative results in the presence of a metabolic activation system may need confirmation on a case by case basis (see Note 11). In any case, an acceptable mouse lymphoma tk assay includes (i) the incorporation of positive controls, which induces mainly small colonies and (ii) colony sizing for positive controls, solvent controls, and at least one positive test compound dose (should any exist), including the culture that gave the greatest mutant frequency.

Following such testing, further confirmatory testing in the case of clearly negative or positive test results is not usually needed.

Ideally, it should be possible to declare test results as clearly negative or clearly positive. However, test results sometimes do not fit the predetermined criteria for a positive or negative call and therefore are declared "equivocal." The application of statistical methods aids in data interpretation, however, adequate biological interpretation is of critical importance. Nonetheless, further testing is usually indicated for equivocal results.

6. Notes

(1) Test approaches currently accepted for the assessment of mammalian cell *gene* mutation involve the *tk* locus using mouse lymphoma L5178Y cells or human lymphoblastoid TK6 cells, the *hprt* locus using CHO cells, V79 cells, or L5178Y cells, or the *gpt* locus using AS52 cells.

(2) The molecular dissection of mutants induced at the *tk* locus shows a broad range of genetic events including point mutations, deletions, translocations, recombinations, etc. Small colony mutants have been shown to predominantly lack the tk_0 allele as a consequence of structural or numerical alterations or recombinational events. There is some evidence that other loci, such as *hprt* or *gpt* are also sensitive to large deletion events. However, due to the X-chromosomal origin of the *hprt* gene which is probably, flanked by essential genes, large scale deletion events or numerical alterations often do not give rise to mutant colonies, thus limiting the sensitivity of this genetic locus relative to the *tk* locus for the detection of a wide range of genetic changes.

(3) With respect to the cytogenetic evaluation of chromosomal damage, it is not uncommon for the systems currently in use, i.e., several systems with permanent mammalian cells in culture and human lymphocytes either isolated or in whole blood, to give different results for the same test compound. However, there is evidence that some of the differences observed have been due to protocol differences. This may be minimized by using the procedures described in section 5 of this document.

For the great majority of presumptive genotoxic compounds that were negative in a bacterial reverse mutation assay, the data on chromosomal damage in vitro and mouse lymphoma tk results are in agreement. Several reliable studies indicate that the mouse lymphoma tk assay is able to detect compounds that induce structural and numerical chromosomal damage. For safety testing of pharmaceuticals, the mouse lymphoma tk assay is considered an acceptable alternative to the direct analysis of chromosomal damage in vitro. Although colony sizing is an essential element of the mouse lymphoma tk assay test protocol, it gives only limited information on the type of damage induced in mutant colonies. Further mechanistic investigations may be used to assess the nature of cytogenetic changes induced by clastogens and aneuploidy inducers in the mouse lymphoma tk assay. Such information could be provided by studies to demonstrate the loss of the *tk* gene or the loss of the chromosome carrying the *tk* gene.

(4) The detection of a number of different nucleoside analogues and base analogues is enhanced for the mouse lymphoma tk assay when the treatment protocol for both agar and microtitre methods includes a 24-hour treatment regimen in the absence of an exogenous metabolic activation system. Similarly, the detection of aneuploidy inducers is enhanced if a 24-hour treatment regimen is used with the microtitre method. Currently, there is no evidence to support this conclusion for the soft agar method. The specificity of the test protocol, i.e., to obtain correct test results for presumptive nongenotoxic compounds, does not change significantly using a 24-hour treatment in the microtitre method. For the soft agar method, there appears to be a reduction in specificity under the same treatment regimen. Based on this information, the microtitre method is recommended for use in the standard battery.

(5) There are a small but significant number of genotoxic carcinogens that are reliably detected by the bone marrow tests for chromosomal damage that have yielded negative/weak/conflicting results in the pairs of in vitro tests outlined in the standard battery options, e.g., bacterial reverse mutation plus one of a selection of possible tests with cytogenetic evaluation of chromosomal damage or bacterial mutation plus the mouse lymphoma tk assay. Carcinogens such as procarbazine, hydroquinone, urethane and benzene fall into this category.

(6) The continuing evolution of short-term tests and test methodologies will afford new, more sensitive, more practical, more expeditious, and more economical techniques for detection of genotoxic compounds. Some of these may ultimately replace the genotoxicity tests used for regulatory purposes. Among the more promising tests, the in vitro micronucleus test appears to offer potential for screening purposes.

(7) Some antibacterial agents, albeit highly toxic to the tester strains, are detected as genotoxic at very low, sublethal concentrations in the bacterial reverse mutation test (e.g., nitrofuran antibiotics).

(8) Certain structurally alerting molecular entities are recognized as being causally related to the carcinogenic and/or mutagenic potential of chemicals. Examples of structural alerts include alkylating electrophilic centers, unstable epoxides, aromatic amines, azo-structures, N-nitroso-groups, aromatic nitro-groups.

(9) For some classes of compounds with specific structural alerts, it is established that specific protocol modifications/additional tests are necessary for optimum detection of genotoxicity (e.g., molecules containing an azo-group, glycosides, compounds such as nitroimidazoles requiring nitroreduction for activation, compounds such as phenacetin requiring another rodent S9 for metabolic activation). The additional testing needed when the chosen 3-test battery yields negative results for a structurally alerting test compound could consist of such modifications.

(10) The dose range-finding study should: (i) Give information on the shape of the toxicity dose-response curve if the test compound exhibits toxicity, (ii) include highly toxic concentrations, and (iii) include quantification of mutants in the cytotoxic range. If a compound is not toxic, then mutants should nevertheless be quantified.

(11) A repetition of a test using the identical source and concentration of the metabolic activation system is usually not necessary. A modification of the metabolic activation system may be indicated for certain chemical classes where knowledge is available on specific requirements of metabolism. This would usually invoke the use of an external metabolizing system which is known to be competent for the metabolism/activation of the class of compound under test.

7. Glossary

Cytogenetic evaluation: Chromosome structure analysis in mitosis or meiosis by light microscopy.

DNA adduct: (Covalent) binding of chemicals to DNA.

DNA repair: Reconstitution of damaged DNA sequence.

DNA strand breaks: Single or double strand scissions in the DNA.

Numerical chromosome changes: Chromosome numbers different from the original haploid or diploid set of chromosomes; for cell lines, chromosome numbers different from the modal chromosome set.

Recombination: Breakage and balanced or unbalanced rejoining of DNA.

Transgene: An exogenous or foreign gene inserted into the host genome, into either somatic cells or germ line cells.

Dated: November 15, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30706 Filed 11–20–97; 8:45 am]

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Part VI

Department of Housing and Urban Development

The HUD 2020 Management Reform Plan; Notice of New HUD Field Structure; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4266-N-02]

The HUD 2020 Management Reform Plan; Notice of New HUD Field Structure

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of the New Field Structure under the HUD 2020 Management Reform Plan and Cost-Benefit Analysis.

SUMMARY: On August 12, 1997, HUD published in the **Federal Register** notice of the "HUD 2020 Management Reform Plan." The HUD 2020 Management Reform Plan is HUD's plan for significant management reforms at the Department. The reforms contained in the plan are directed toward (1) empowering people and communities to improve themselves and (2) restoring HUD's reputation and credibility by improving the efficiency and effectiveness of the Department's programs, operations and provision of services.

This notice presents the new HUD Field structure under the HUD 2020 Management Reform Plan, including an analysis of the costs and benefits of that plan. The new Field structure is designed to reallocate the Department's resources to strengthen service delivery from HUD's current 81 Field Offices. The HUD 2020 Management Reform Plan does not result in the closing of any HUD offices and calls for no reduction or transfer in the location or in the amount of services currently provided by the Department to its constituents.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Office of Departmental Operations and Coordination, the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410, (202) 708–0988. (This is not a toll free number.) Comments or questions can be submitted through the Internet to Candis__B.__Harrison@hud.gov. More information on HUD's Management Reform Plan can be found on HUD's Home Page on the World Wide Web at http://www.hud.gov, and the plan is available at http://www.hud.gov/reform/mrindex.html.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On August 12, 1997 (62 FR 43204), HUD published in the **Federal Register** notice of the "HUD 2020 Management Reform Plan." The HUD 2020 Management Reform Plan is HUD's plan for significant management reforms at the Department. This plan is directed to restoring HUD's reputation and credibility by improving the efficiency and effectiveness of the Department's programs, operations and delivery of services. The restructuring of HUD's internal operations (as distinct from its services to its constituency) is needed to resolve a series of management deficiencies identified by the Secretary, the General Accounting Office, and the Office of the Inspector General. The restructuring of HUD's internal operations includes restructuring of the Department's Field Offices. Indeed, HUD's internal operations at its Field Offices will undergo significant change under the HUD 2020 Management Reform Plan. The change is designed to strengthen HUD's field operations.

For some time, the Department has needed to find new and more efficient ways to carry out its mission because of budget constraints and related downsizing pressures. One strategy that HUD will pursue in this connection is the consolidation of certain internal operations and moving the responsibility for these operations to field locations. Consolidation of operations in field locations does not constitute a novel way of doing business. Many private sector companies reorganized and restructured under this type of model over a decade ago. Models of this type in the financial services industry are particularly compelling and relevant to HUD. Over the past decades, many banks, such as Citibank and NationsBank, consolidated their routine functions into centralized "back office" processing centers and established "store-front" customer offices closer to their markets. HUD's consolidated operation centers outlined in the HUD 2020 Management Reform Plan are based in part on these private sector models.

Therefore, to address the Department's current outdated and outmoded top-down Headquarters/Field structure, the HUD 2020 Management Reform Plan reallocates the Department's resources in a way that is designed to strengthen HUD's current 81 Field Offices, and improve service delivery capacity. The plan does this by creating at every Field Office a Community Builder Staff with the ability to provide the full range of HUD programs, liaison, and customer services to individuals, community organizations, and governments. This makes the Field Offices more customer-friendly and community-oriented. In creating these offices, there is no reduction or transfer in the location or amount of services provided by the Department to the recipients of its services. Additionally, no offices are being closed as a result of this restructuring. The design of the plan is for HUD's 81 Field Offices to remain and to be better focused in serving their constituents. Section III of this notice provides a cost-benefit analysis of the new field structure.

II. Description of Changes

The HUD 2020 Management Reform Plan will fundamentally alter the structure of HUD and the way it serves America's communities. The current field structure has State offices with a staff of program-specific employees. This structure will be replaced by Field Offices staffed with Community Builders and Public Trust Officers. While none of the Field Offices will close, their internal operations will change dramatically, becoming processing centers and new Service Centers. In this way, HUD will maintain an enhanced presence in the communities while improving the allocation of its resources.

Consolidated Operations Centers

The HUD 2020 Management Reform Plan provides for the consolidation of several major functions of the Department. The most important consolidation efforts involve creating both department-wide and program-specific centers. Overall, the HUD 2020 Management Reform Plan calls for the establishment of 17 types of consolidated operation centers in the field. The location of these centers reflects a geographic balance throughout the United States. The major consolidations include an Enforcement Center, a Real Estate Assessment Center, Section 8 Financial Management Center, Single Family Homeownership Centers and the Chief Financial Officer's (CFO) Accounting Center. The specific operations of these centers were discussed in more detail in the August 12, 1997 **Federal Register** notice. (See 62 FR 43212–43213.)

The consolidation of operations and functions in certain centers is exclusively a redesign of internal processing. While the consolidation may include the transfer of certain internal functions from Headquarters to the field or from one Field Office to another, there will be no impact on the level of government services to the local area since these functions by nature are not location specific. Since the consolidation of processing functions is designed to speed processing times and increase accuracy, the generalized impact is expected to be beneficial to program customers, regardless of geographic location. The establishment of consolidated operations centers in the field will bring HUD services closer to the customers who need these services, and closer to the customers who can help ensure that HUD is making the best decisions that it can with respect to its services and operations. A complete list of HUD's Consolidated Operations follows:

HUD'S CONSOLIDATED OPERATIONS CENTERS

Consolidated operation	Function
Assessment Center	Standardizes the financial and physical evaluations of housing and public housing portfolios.
Enforcement Center	Takes aggressive action against troubled housing and public housing portfolios that fail physical and financial inspections, along with enforcement actions for FHEO and CPD grantees.
Section 8 Financial Management Center	Integrates and restructures the financial management systems and payment processes for all Section 8 programs.
Title I Asset Recovery Center	Manages the collection of deficiency balances owed to FHA as a result of buyer defaults.
FHA/Single Family Homeownership Centers (4)	Manage insurance endorsements, technical reviews, underwriting, loss mitigation, marketing and outreach, and lender monitoring.
Property Disposition Centers (2)	Manage the foreclosure and disposition of HUD-owned and HUD-assigned properties.
FHA Multifamily Hubs (18)	Supervise multifamily centers and administer all FHA multifamily mortgage insurance, direct loan, and capital grant programs with the exception of Multifamily Property Disposition, Processing of Rent Supplement and Section 8 Voucher/Monthly billings and coinsured loans.
FHA Multifamily Program Operations Centers (33).	Administer all FHA multifamily mortgage insurance, direct loan, and capital grant programs with the exception of Multifamily Property Disposition, the processing of Rent Supplement and Section 8 Voucher/Monthly Billings and coinsured loans.
Field Legal Centers (8)	Provide full range of legal services.
Field Legal Hubs (22)	Provide program specific legal services to Housing and PIH.
PIH Troubled Agency Recovery Centers (2)	Develop and implement strategies to improve the performance of troubled PHAs.
PIH Special Applications Center	Administers the processing of PIH demolition/disposition, mixed-income allocation plans, and 5(h) Homeownership applications.
PIH Grants Processing Center	Manages all aspects of competitive grants, as well as the public housing operating and capital funds.
PIH Hubs (27)	Supervise and perform all PIH functions within a defined geographic area, including program performance, administration, technical assistance and compliance functions.
PIH Program Centers (16)	Perform all PIH program performance, administration, technical assistance and compliance functions.
Fair Housing Hubs (10)	Supervise all FHEO functions within a defined geographic area. Perform all FHEO compliance and enforcement or complaint intake functions for the defined area.
Fair Housing Program Centers (18)	Perform all FHEO compliance and enforcement functions.
Fair Housing Local Sites (24)	Perform all FHEO compliance and enforcement functions for a local jurisdiction.
Economic Development and Empowerment Service.	Coordinates all HUD economic development and job skills programs to provide improved focus on community empowerment.
Administrative Service Centers (3)	Support Field Offices with such services as information technology, human resources, procurement and space planning.
Employee Service Center	Handles all payroll, benefits and counseling services.
CFO Accounting Center	Manages all field program and administrative accounting operations.
HUD Area Office	In addition to being the location of one or more consolidated program operations hubs and centers, Area Office operations will consist of community resource and liaison services for public-private partnerships, marketing and outreach for homeownership, community and economic development, technical assistance and general trouble-shooting. They will also continue to perform the full range of field management functions. Area Offices will continue to perform major management responsibilities (e.g. funding, policy interpretation, monitoring and assistance) relating to FHEO, CPD, Housing, Public and Indian Housing Programs, as well as legal counsel and administrative support.
Community Service Center	Coordinators and Community Builders, with direct linkages to consolidated program operations, will provide the broad range of HUD programs, liaison and customer services to state, local and community organizations, that is, for public and assisted housing, homeownership, community and economic development, fair housing, technical assistance, public-private partnerships and complaints resolution.

Field Office Operations by Location

The restructuring of program operations in the Field Offices is designed substantially to increase the current level and quality of service to local communities. The HUD Management Reform Plan states that "it is paramount that HUD retain its scope and presence in communities across the country; HUD's 81 Field Offices will remain and be better focused in serving their constituents." The plan calls for every HUD Field Office to have a Community Service Center and the establishment of community builders to augment the quality and quantity of service delivery to local communities. With respect to the location of the consolidated centers to be established throughout the U.S., the general criteria for determining the locations of these centers are as follows:

Economy of Scale/Scope. Greater workload productivity and customer service by consolidating program operations at one or more sites as compared with current operations.

Projected Population Bases. Anticipated location of future customers, based on projected metropolitan area growth.

Workload and Portfolio. Current/anticipated concentration of program workload portfolio.

Location of Industry Partners. Sites convenient to the Department's primary program users/facilities.

Accessibility. Convenience of travel/transportation and other business requirements.

Consolidation of functions is designed to achieve consistency and uniformity in the performance of these functions, and to avoid duplication of effort and streamline operations. Consistency and uniformity make these functions easier for HUD employees to perform, and make HUD programs simpler and more understandable for HUD's program participants. Under this restructuring of internal, back office operations, there is no reduction or transfer in the location or amount of services provided by the Department to the recipients of its services as a result of the HUD 2020 Management Reform Plan. A complete description of how HUD's internal operations will be structured at each field location follows:

NEW HUD FIELD STRUCTURE LOCATIONS AND PROGRAM OPERATIONS

Location	Proposed HUD operations
Albany	Community Service Center, Local Administrative Support, Title I Asset Recovery Center.
Albuquerque	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Anchorage	Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Local Administrative Support.
Atlanta	Administrative Service Center, Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA/Single Family Homeownership Center, FHA Multifamily Hub, Field Legal Center, PIH Hub, Property Disposition Center.
Baltimore	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Bangor	Community Service Center.
Birmingham	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Hub.
Boise	Community Service Center.
Boston	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, Federal Tort Claims Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.
Buffalo	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Burlington	Community Service Center.
Camden	Community Service Center.
Caribbean	Area Office, Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Fair Housing Local Site, Field Legal Hub, Local Administrative Support, PIH Hub.
Casper	Community Service Center.
Charleston	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Chicago	Area Office, Community Service Center, CPD Field Office, Employee Service Center, FHA Multifamily Hub, Field Legal Center, Multifamily Quality Assurance Unit, PIH Special Applications Center, PIH Hub, Fair Housing Hub, Fair Housing Program Center.
Cincinnati	Community Service Center, Local Administrative Support.
Cleveland	Community Service Center, FHA Multifamily Programs Operation Center, Field Legal Hub, PIH Troubled Agency Recovery Center, Local Administrative Support, PIH Hub.
Columbia	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Columbus	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Program Center.
Coral Gables	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Hub.
Dallas	Community Service Center, Local Administrative Support.
Denver	Administrative Service Center, Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA/Single Family Homeownership Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.
Des Moines	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Detroit	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Fargo	Community Service Center.
Flint	Community Service Center.
Fort Worth	Area Office, CFO Accounting Center, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH HUB, Property Disposition Center.
Fresno	Community Service Center.
Grand Rapids	Community Service Center, Local Administrative Support.
Greensboro	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Hartford	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Headquarters	Assessment Center, Enforcement Center, PIH Grants Processing Center, Economic Development and Empowerment, Service.

NEW HUD FIELD STRUCTURE LOCATIONS AND PROGRAM OPERATIONS—Continued

Location	Proposed HUD operations
Helena	Community Service Center.
Honolulu	Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Fair Housing Local Site, Local Administrative Support.
Houston	Community Service Center, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Indianapolis	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Jackson	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Jacksonville	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Kansas City, KS	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Kansas City, MO	Section 8 Financial Management Center.
Knoxville	Area Office, Community Service Center, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Las Vegas	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Little Rock	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
Los Angeles	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Louisville	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
Lubbock	Community Service Center, Local Administrative Support.
Manchester	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Memphis	Community Service Center, Field Legal Hub, Local Administrative Support, PIH Troubled Agency Recovery Center.
Milwaukee	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Minneapolis/St. Paul	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Nashville	Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
New Orleans	Area Office, Community Service Center, CPD Field Office, Fair Housing Program Center, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
New York City	Administrative Service Center, Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Center, PIH Hub.
Newark	Area Office, Community Service Center, CPD Field Office, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
Oklahoma City	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Omaha	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Program Center.
Orlando	Community Service Center.
Philadelphia	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA/Single Family Homeownership Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.
Phoenix	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Pittsburgh	Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Field Legal Hub, Local Administrative Support, PIH Hub.
Portland	Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Providence	Community Service Center, FHA Multifamily Programs Operation Center, Local Administrative Support.
Reno	Community Service Center.
Richmond	Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Sacramento	Community Service Center, Local Administrative Support.
Salt Lake City	Community Service Center, Local Administrative Support.
San Antonio	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Hub.
San Diego	Community Service Center, Local Administrative Support.
San Francisco	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Center, Local Administrative Support, PIH Hub.

NEW HUD FIELD STRUCTURE LOCATIONS AND PROGRAM OPERATIONS—Continued

Location	Proposed HUD operations
Santa Ana	Community Service Center, FHA/Single Family Homeownership Center, Local Administrative Support.
Seattle	Area Office, Community Service Center, CPD Field Office, Fair Housing Hub, Fair Housing Program Center, FHA Multifamily Hub, Field Legal Hub, Local Administrative Support, PIH Hub.
Shreveport	Community Service Center, Local Administrative Support.
Sioux Falls	Community Service Center.
Spokane	Community Service Center.
Springfield	Community Service Center.
St. Louis	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, FHA Multifamily Programs Operation Center, Local Administrative Support, PIH Program Center.
Tampa	Community Service Center.
Tucson	Community Service Center.
Tulsa	Community Service Center, Local Administrative Support.
Washington, DC	Area Office, Community Service Center, CPD Field Office, Fair Housing Local Site, Local Administrative Support, PIH Program Center.
Wilmington	Community Service Center.

III. Impact of Restructuring of Internal Operations

HUD is publishing its cost-benefit analysis of the reorganization with this notice. (The reorganization of HUD proposed by the HUD 2020 Management Reform Plan does not result in the closing of any HUD offices or in the reduction of services. Therefore, publication of this study is not required, but HUD is publishing it as a matter of policy to provide background for its organizational decisions.) HUD considered the costs and benefits that the reorganization would have particularly on HUD's field operations since the restructuring of internal operations in the field is more profound than in Headquarters. HUD's analysis of costs and benefits includes:

(1) An estimate of cost savings supported by the background information detailing the source and substantiating the amount of the savings;

(2) An estimate of the additional cost which will result from the reorganization;

(3) A study of the impact on the local economy; and

(4) An estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

A. Cost-Benefit Analysis

Former Secretary Henry Cisneros committed to the Congress to reduce personnel by 3,000 employees by or near the year 2000. HUD intends to honor that commitment, and the HUD 2020 Management Reform Plan targets the year 2002 as the date by which the reduction will be achieved. By the year 2002, HUD staff will be reduced from its October 1, 1996 level of 10,500 employees to 7,500 employees. The HUD 2020 Management Reform Plan presents a new HUD that is staffed by this workforce of 7,500 employees. This restructuring of internal operations presented in the HUD 2020 Management Reform Plan is based on the principle that HUD's workload can be handled by a reduced workforce. The consolidation of functions is designed to make it possible for a HUD workforce of 7,500 employees to handle effectively and efficiently those functions that HUD must carry out to serve its constituents successfully.

Costs associated with the HUD 2020 Management Reform Plan amount to $289 million. These costs are related to employee buyouts and relocations, facility modifications and information technology for the new centers, and contract support. Reform costs appear only in fiscal years 1998 and 1999 and would be entirely funded within budget requests for those years.

Savings from the HUD 2020 Management Reform Plan begin to accrue in fiscal year 1999 and are primarily realized through reduced personnel costs and related reduced facilities needs. Figure 1 presents the analysis of projected savings from implementation of the Plan. The net present value of savings computed through fiscal year 2012 equates to $1.4 billion. Stated simply, the Department's planned spending for management is less under the Plan than it otherwise would have been. The value of those savings through 2012 is $1.4 billion, in today's dollars.

Because the entire cost of reform will be accommodated within the resources already available or planned for the Department, there is no additional cost of the HUD 2020 Management Reform Plan. The investments necessary to achieve the reforms will be funded by reallocations within the Department's existing budget or by savings generated by the Plan. Hence, there is no recovery period (as that term is commonly used).

B. Impact on Local Economies

The HUD 2020 Management Reform Plan calls for significant redeployment of HUD staff. Nonetheless, the proposed reorganization will have only a minimal economic impact on any single locality. Moreover, HUD expects that as the reforms contained in this Plan take effect, positive economic effects will accrue in all of the communities HUD serves, due to the Department's greater efficiency and responsiveness to addressing their needs.

C. Impact on the Quality of Services

The Department's main goal in implementing the HUD 2020 Management Reform Plan is to improve the quality of services it provides and to do so in the most efficient, fiscally responsible manner possible. The overall effect of the proposed reforms is to change fundamentally the way HUD works. These reforms will make the agency more efficient, competent and capable of carrying out HUD's dual mission—empowering communities and restoring the public trust. HUD expects that its ability to provide services that facilitate community empowerment will be improved through:

—Proposed legislative reforms to create performance-based grants—many communities' planning processes are hampered by the uncertainty associated with the need to apply for competitive grants funds each year. The creation of performance-based formula grant programs for homeless assistance and Public and Indian Housing will enable communities to plan for their futures with an assurance of funding to make those plans a reality.

—The Community Builder position—in addition to other HUD staff, there will be in every Field Office a cadre of highly trained individuals who are specifically dedicated to working with HUD's partners and customers in helping them to access the full range of HUD services. Since HUD will have consolidated many program operations into "back-office" processing centers away from the Field Offices, these staff will be focused only on helping communities to address their housing and community development needs.

Although there will be a reduction in Field Office staff levels, much of this reduction will be reflected in the segregation of processing functions to centers and hubs. Community Builders—linked by state-of-the-art technology to program centers, hubs, back office processing centers, and policy makers—will be responsible for meeting their communities' service needs. This specialization will thus enhance the public's access to high-quality services.

Other reforms—from the consolidation of program operations to the creation of the Enforcement Center and legislative reforms to facilitate enforcement actions—will improve the quality of HUD services by strengthening the integrity of the underlying programs. Moreover, HUD's new Public Trust Officers will focus on oversight, leaving other staff available to provide customer service and processing as their primary functions. Thus, HUD expects to see improvements in all aspects of departmental operations and service delivery to the public.

IV. Conclusion

The HUD 2020 Management Reform Plan states that "It is paramount that HUD retain its scope and presence in communities across the country; HUD's 81 Field Offices will remain and be better focused in serving their constituents." HUD's plan calls for an increase in area community service centers and the establishment of community builders to augment the quality and quantity of service delivery to local communities. Through implementation of the HUD 2020 Management Reform Plan, HUD will maintain its presence in the communities while allocating resources the way a customer-friendly Department should.

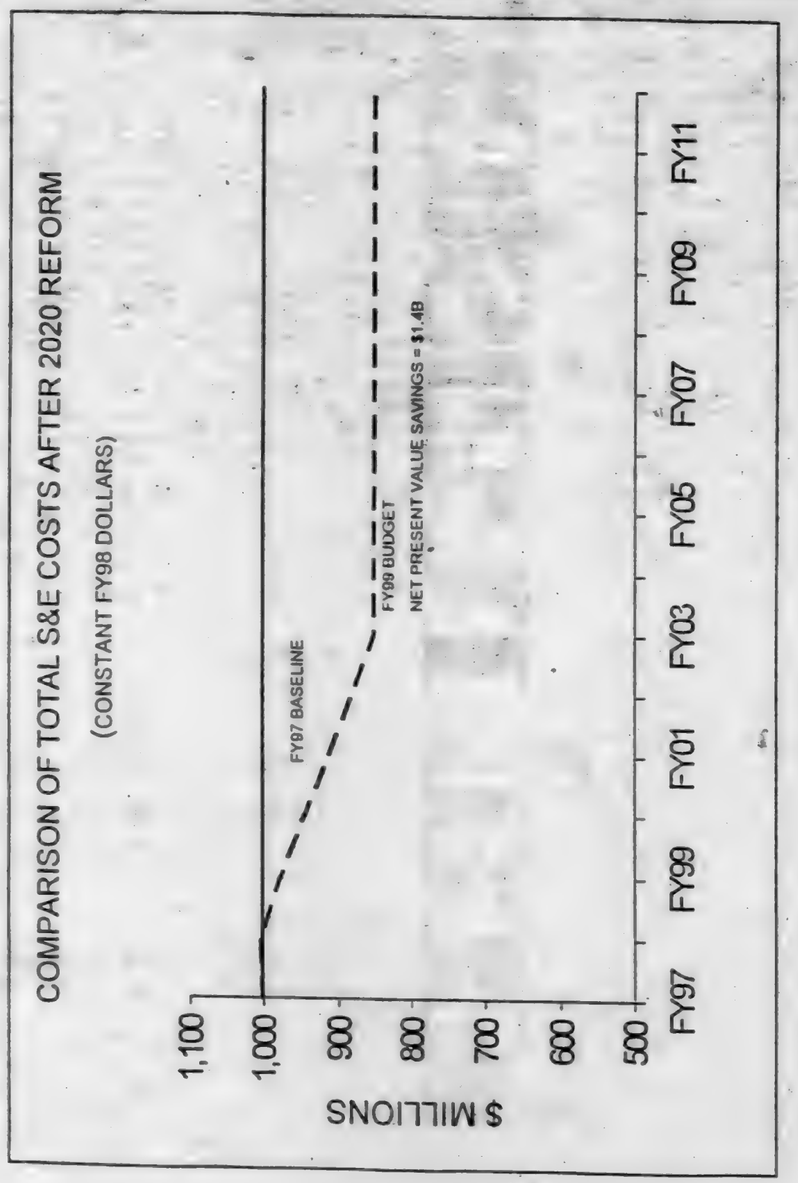
Dated: November 18, 1997.

Andrew Cuomo,

Secretary.

BILLING CODE 4210-32-P

Figure 1



[FR Doc. 97–30763 Filed 11–19–97; 10:24 am]
BILLING CODE 4210–32–C

federal register

Friday
November 21, 1997

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61
Robinson R–22/R–44 Special Training and Experience Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 28095; SFAR No. 73–1; Notice No. 97–15]

RIN 2120–AG47

Robinson R–22/R–44 Special Training and Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to extend the expiration date of Special Federal Aviation Regulation (SFAR) 73, and to amend the special training and experience requirements for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also proposes special training and experience requirements for certified flight instructors conducting student instruction or flight reviews. This action is proposed to maintain awareness of and training for the potential hazards of particular flight operations for the continued safe operation of Robinson helicopters.

DATES: Comments must be received by December 22, 1997.

ADDRESSES: Comments should be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28095, 800 Independence Avenue, S.W., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION:

Comments Invited

All interested persons are invited to comment on this proposed rule by submitting such written data, views, or arguments as they may desire, including comments relating to the environmental, energy, or economic impacts. Communications should identify the regulatory docket number, and be submitted in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28095, 800 Independence Ave., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: 9-nprm-cmts@faa.dot.gov. All communications received will be considered by the Administrator. This proposed rule may be changed as a result of comments received from the public. All comments submitted will be available for examination in the Rules Docket in Room 915–G of the FAA Building, 800 Independence Ave., Washington, DC 20591. Persons wishing to have the FAA acknowledge receipt of their comments must submit a self-addressed, stamped postcard with the following statement: "Comments to Docket Number 28095." The postcard will then be dated, time stamped, and returned by the FAA.

Availability of This Proposed Rule

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339), the **Federal Register**'s electronic bulletin board service ((202 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this proposal.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructions. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, the FAA determined in 1995 that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine-powered helicopter that is frequently used as low–cost initial student training aircraft. The R–44 is a 4-seat helicopter with similar operating characteristics and design features of the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

Since the R–22 was certificated, there have been 339 accidents in the U.S. involving R–22's. The FAA found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979; however, the R–22 has had a high number of fatal accidents due to main rotor/airframe contact when compared to other piston powered helicopters. Many of these accidents have been attributed to pilot performance or inexperience, leading to low rotor revolutions per minute (RPM) or low "G" conditions that resulted in most bumping or main rotor-airframe contact accidents. Its small size and relatively low operating costs result in its use as a training or small utility aircraft, and its operation by a significant population of relatively inexperienced helicopter pilots.

In its analysis of accident data, the FAA has found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. The additional pilot training, originally established by SFAR 73, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the accident causes, on March 1, 1995, the FAA published SFAR 73 (60 FR 11256) which required certain experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis without the usual public notice and comment; however, the FAA sought comment on the SFAR.

SFAR 73 will expire on December 31, 1997. Since its issuance, no accidents have occurred related to the low rotor RPM and/or tailboom/main rotor contact. Therefore, the FAA is proposing to extend, with a minor amendment, the provisions of SFAR 73.

Comments on SFAR 73

Forty-six comments were received on SFAR 73 from various individuals, associations and businesses. These are discussed by topic below. One comment received from Helicopter Association International was rescinded at their request, and was later amended and replaced by them. One comment received made reference to the potential noise problem of low flying helicopters; this comment had no relevance to the SFAR and is therefore considered to be outside the scope of the request for comment.

Twenty-one comments received in the docket supported the SFAR. One commenter expressed approval of the SFAR as an interim measure while engineering studies are completed. Two commenters suggested the SFAR was deficient or weak. Two commenters disagreed with the SFAR, stating that it was unnecessary or that they disagreed with the intent. The remaining commenters stated general support for the SFAR.

Scope of the SFAR

Some commenters recommended removing the reference to Robinson helicopters, and/or stating that SFAR, particularly in the area of awareness training, should apply to all helicopters, not only Robinson helicopters. However, five comments were received refuting this position stating that the SFAR should apply only to Robinson helicopters; in addition, they suggested the intent of the FAA was to apply the SFAR across the board for all light helicopters.

FAA Response: It was the FAA's intent that SFAR 73 apply only to Robinson Helicopters in that the R–22 and R–44 are the only U.S. manufactured, light helicopters utilizing a two blade teetering rotor system, combined with a high tail rotor mount position that has a history of this common type of accident. Therefore, the SFAR is directed to the Robinson helicopter models R–22 and R–44.

Awareness Training

One commenter noted that awareness training was not appropriate for beginning students and should not be required until just prior to solo and after 10 hours of dual instruction.

FAA Response: The FAA disagrees with this comment. Awareness training for helicopter operations should begin with the first flight. Students should be made aware from the outset of training of the hazards of abrupt control movements, rapid or abnormal control inputs, and the recognition of potential problems encountered in normal operations which could lead to an emergency. Such training is appropriate at all levels of proficiency, while the technical details surrounding such information increases in complexity and detail as understanding and experience increases.

Additionally, the subject matter of the training required by the SFAR pertaining to low "G" maneuvers, rotor RPM control, and the dangers of mast bumping applies to all helicopters. Therefore, the FAA has made significant and permanent changes to various advisory material publications (e.g. practical test standards) as well as standards for certification.

Required Experience and Training

Eight comments were received with regard to newly certificated flight instructors who had completed all, or the majority of their training in the Robinson helicopter. The commentors stated that those instructors who had received all their training in the R–22, even though they had a minimum time of 150 hours, should be authorized to conduct training (or continue to do so) in Robinson helicopters, if properly authorized and endorsed.

FAA Response: The FAA disagrees with this comment. While it is true that some newly certificated flight instructors who meet the minimum experience requirements established for certification may be eminently qualified to teach others, there are others whose skills may only meet minimum performance standards. Some who aspire to be flight instructors can and do occasionally acquire a flight instructor's certificate with as little as 50 hours of actual rotorcraft time, and little more than 150 hours of total flight time. The accidents that precipitated the issuance of SFAR 73 were attributed to pilot performance or experience, leading to low rotor RPM or low "G" conditions that resulted in mast bumping or main-rotor/airframe contact accidents. In its analysis of accident data, the FAA has found that apparently qualified pilots may not be properly prepared to operate safely the R–22 and R–44 helicopters in certain flight conditions. As was stated in the preamble to SFAR 73, there is a clear relationship between pilot inexperience in the R–22 and R–44 helicopters and main-rotor/airframe contact accidents. In 23 of the 30 fatal accidents, the pilot apparently manipulating the controls has less than 200 flight hours in helicopters or less than 50 flight hours in the model of Robinson helicopter they were operating.

Creditable Training

Robinson Helicopter Company (RHC) and 15 additional commentors provided support for a RHC proposal to allow a reduction in the hours of dual instruction required by paragraphs 2(b)(1)(ii) and 2(b)(2)(ii) from 10 hours to 5 hours for those persons who had an experience level of more than 200 flight hours in helicopters.

FAA Response: The FAA agrees with this comment and incorporated it into this proposal. SFAR 73 was originally written to provide for adequate training of instructional and evaluator cadre by separating the two models of aircraft (R–22 and R–44), noting that the model R–44 had, at that point, not been marketed in the United States. At that time, it was determined that 10 hours of dual instruction in each model would accomplish the goal of those who had been trained exclusively in one model of Robinson helicopter, the R–22 for United States pilots, and the Model R–44 for foreign operators. The 10 hour requirement could have been fulfilled by any dual flight instruction acquired in the appropriate model of aircraft over any period of time. The stipulation was that some dual flight instruction would entail the specific training provisions of the SFAR.

Since the R–44 is now being marketed in the United States, the training now entails transition or differences training, rather than initial training. The instruction provisions that applied to the model R–22, along with the acquired experience in that model of aircraft have provided a suitable increase in operational skills for pilots of the smaller aircraft which are applicable to the larger model R–44 aircraft.

For these reasons, the FAA determined that the safety aspects of the SFAR as they apply to flight experience in the model R–22 should be credited toward the flight experience requirements in the R–44.

The Proposed Amendment

Prior to the issuance of SFAR 73, there had been 339 accidents involving the Robinson R–22 helicopters. Many of these accidents were related to the hazardous condition encountered in low "G" maneuvers resulting in main-rotor/tailboom contact. The situation was so serious that on March 1, 1995, the FAA took corrective action and published SFAR 73 setting out specific training and experience requirements to perform PIC or CFI duties in the R–22 or R–44 Robinson helicopters.

Since the issuance of SFAR 73, there has been a dramatic drop in the accident rate of Robinson helicopters associated with low "G" maneuvers or main rotor/tailboom contact. Also in the interim, the FAA has taken steps to improve the airworthiness of the R–22 and R–44 through the issuance of a number of airworthiness directives.

With this remarkable decline in the accident rate, the FAA is proposing to extend the provisions of SFAR 73. As a result of the comments received on SFAR 73, there is a general consensus that the training is beneficial to those operating Robinson helicopters. Recognizing that there is a constant recurrence of training requirements to meet the ongoing influx of new rotary wing pilots, the FAA believes there is benefit to continuing the requirements of SFAR 73.

This proposal also provides a minor amendment to the previous provisions of SFAR 73 to clarify paragraph 2(b)(5) regarding the instructor experience required to conduct training in either the R–22 or R–44. The FAA has recognized that the R–44, which wasn't operated in the U.S. in large numbers when SFAR 73 was originally promulgated, is being operated in greater numbers now. The FAA has also recognized that the R–44 is a more stable aircraft than the R–22. Therefore, the FAA is proposing to allow the crediting of up to 25 flight hours acquired in the model R–22 helicopter towards the 50 flight hour experience requirements of paragraph 2(b)(2)(i) for the R–44, and up to 5 hours of dual instruction received in the R–22 credited toward the 10 hour dual flight instruction requirement of 2(c)(2)(ii) for R–44.

In addition, paragraph 2(b)(5)(ii) is clarified in this proposal. The FAA has received many inquiries as to the intent of this paragraph. Callers have mistaken the intent of the paragraph and concluded upon reading the SFAR, that instructors may be endorsed to provide flight instruction in the R–22 or R–44 if they comply with paragraph 2(b)(1)(ii) or 2(b)(2)(ii) of the SFAR. They contend that the reference in paragraph 2(b)(5)(ii) to the experience requirements of 2(b)(1)(i) or 2(b)(2)(i) include the "or," at the end of the sentence.

This was not the FAA's intent, paragraph 2(b)(5)(i) specifically refers to a numbered line only. The FAA is proposing a change to paragraph 2(b)(5)(i) to provide clarification.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on small entities and changes on international trade. In conducting these analyses, the FAA has determined that this proposal. (1) Is cost-beneficial; (2) is not "a significant regulatory action" as defined in the Executive Order, (3) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (4) will not have a significant impact on a substantial number of small entities, and (5) will not constitute a barrier to international trade. All of these analyses have been prepared as a regulatory evaluation and are summarized below. A copy of the regulatory evaluation has also been placed into the docket.

Benefits

The benefits of the proposed rule would be a reduction of the number of fatal accidents that occur in Robinson helicopters associated with low "G" maneuvers that can result in main rotor contact with the airframe. The estimated reduction in the number of accidents is expected from the increased level of safety related to specific flight training and awareness training requirements for all individuals operating Robinson R–22 and R–44 aircraft.

Between the years 1985 and 1994 there were a total of 43 fatal accidents involving Robinson helicopters, resulting in 63 fatalities. Accidents due to main rotor contact with the airframe accounted for 16 of the 43, or approximately 37 percent of the total accidents. There were 26 fatalities that resulted from those 16 accidents prior to the issuance of SFAR 73. The 26 fatalities represent 41 percent of all fatalities on Robinson helicopters prior to issuance of the SFAR. Since the SFAR was issued in 1995, however, there have been no accidents or fatalities involving R–22 or R–44 aircraft associated with low "G" operations or main rotor contact with the airframe. Although there is not yet sufficient historical data to statistically demonstrate that the almost three year period of no fatal accidents of this type is a result of SFAR 73, it is the judgement of the FAA after reviewing all available information that this is the case.

Assuming that SFAR 73 is effective at preventing the above types of rotorcraft accidents, the FAA has estimated the benefit associated with preventing these accidents. A value of $2.7 million was applied to each statistical fatality avoided. This computation resulted in an estimate of approximately $35.1 million in five year casualty costs. Also, the estimated value of the 16 destroyed aircraft was $587,000. If this rulemaking helps prevent the recurrence of the 26 fatalities associated with low "G" maneuvers then expected safety benefits would be approximately $35.7 million (present value, $29.3 million) over five years, in 1996 dollars.

Costs

In this analysis, the FAA has estimated the cost of the proposed rule over the five year period from 1998 through 2002. All of the costs incurred as a result of changes to existing procedures will begin when the proposed rule becomes effective. Costs are computed in 1996 dollars and are discounted by seven percent. The Office of Management and Budget (OMB) requires using a discount factor of seven percent when calculating the present value.

The groups that incur costs from the proposed rule are rated pilots who aspire to be flight instructors or newly certificated flight instructors who desire to conduct student instruction or flight reviews in the Robinson model R–22 or R–44 helicopter. In addition, students that receive their instruction in the R–22 or R–44, such as pilots adding a rotorcraft rating and new rotorcraft students, will also incur costs from the proposed rule. All the cost estimates pertaining to the acquisition of a rotorcraft category rating are based on the minimum times required to receive the category rating, as published in 14 CFR Part 61.

Flight Instructor Costs

Occasionally a flight instructor can acquire his or her certificate with as little as 50 hours of actual rotorcraft time and little more than 150 hours of total flight time. However, the SFAR established criteria for flight instructors who wish to continue to instruct or conduct flight reviews in a Robinson helicopter. The criteria were based on a combination of experience and training, which require more than the minimum amount required for certification as an instructor. Further, the criteria were established to ensure that the instructors are knowledgeable and competent to conduct the awareness and flight training the FAA believes are necessary for Robinson helicopters. Therefore, no grandfathering was permitted for evaluators or flight instructors.

While it is still possible for an individual to obtain a flight instructor certificate for aircraft other than Robinson helicopters in the minimum published time, those aspiring a flight instructor certificate in the Robinson model helicopters will require an additional 50 hours of flight time. However, because some flight experience requirements in the model R–22 also apply to flight experience requirements in the R–44, a credit of up to 25 flight hours acquired in the model R–22 helicopter can apply to the 50 flight hour experience requirement for the R–44.

For a rated pilot to become certificated as a flight instructor in the R–22, the pilot will need an additional 50 flight hours in the R–22, at a cost of $150 an hour, or $7,500. Likewise, for a rated pilot to become certificated as a flight instructor in the R–44, the pilot will need an additional 50 flight hours (25 hours credit in the R–22) in the R–44, at an additional cost of $300 an hour for 25 hours in a R–44 and $150 an hour for 25 hours in a R–22, or a total of $11,250 per person. However, for a person to become certificated as a flight instructor on both models of Robinson helicopters, the pilot will need 75 additional flight hours, 50 hours in the 422 and 25 hours in the R–44. The added cost for 75 additional flight hours to become certificated in both the R–22 and the R–44 is $15,000 per person. The FAA assumes that a rated pilot seeking to become a flight instructor would want to be certificated on both models of Robinson helicopters, therefore the FAA has based the cost estimate to become a flight instructor on the 75 additional flight hours.

For several reasons, the FAA believes that only a small number of potential flight instructors will be affected by the proposed rule. First, most certificated flight instructors have been rated pilots for some time, and as a consequence, have far more than the minimum total flight time. In addition many pilots have an instrument rating, which requires significantly more flight experience. Second, most FAA-approved schools require flight instructors to have considerably more experience than the required minimums to become a flight instructor.

Finally, the FAA believes that the number of individuals seeking a new flight instructor certificate for a specific Robinson model helicopter is small relative to the total of new flight instructor certificates issued. To estimate the number of people seeking a flight instructor certificate for the Robinson model helicopters, the FAA determined the ratio of rotorcraft-only certificates held to the total airmen certificates held (less student and glider-only certificates). The ratio was then applied to the change in flight instructor certificates between 1995 and 1996. These relationships may be summarized as follows:

Estimate of Rotorcraft only Flight Instructor Certificates=$\Sigma IC_t - \Sigma IC_{t-1} * \Sigma RC_t/\Sigma PC_t$

where:

IC_t=instructor certificates held in time period t;

IC_{t-1}=instructor certificates held in time period t=1;

PC_t=pilot certificates held in time period t;

RC_t=rotorcraft certificates held in time period t.

Applying the above formula, the FAA estimates that in 1996 there was the potential for 13 individuals to seek a flight instructor certificate based on the minimum requirements for a helicopter only rating. Based on the addition of 75 flight hours at an added cost of $15,000 per individual, the total cost for 13 people seeking a rotorcraft only flight instructor certificate in a Robinson helicopter is approximately $189,000 annually. The estimated cost over the next five years is approximately $900,000 (present value, $800,000), in 1996 dollars.

Student Costs

The costs encompass two classes of students: (1) pilots that currently have a class certificate who wish to add a rotorcraft rating, and (2) new students receiving rotorcraft only training. However, to be included in the cost estimate, students (new students or those adding a rotorcraft rating) must be receiving instruction in the Robinson model R–22 or R–44 helicopter.

New students receiving instruction in the Robinson helicopters would be required to receive an additional 5 hours of dual instruction. Because the small size, low purchase price, and low maintenance costs make the R–22 attractive to flight schools, the FAA assumes that new students will receive their instruction in the Robinson model R–22 helicopter. The added cost per student, assuming $150 an hour for instruction in the R–22, will amount to $750 (5 hours times $150 an hour).

Estimation of the total added cost for all students receiving instruction in the Robinson helicopter was calculated in several steps. First, the FAA estimated the ratio of original rotorcraft certificates issued to original student certificates issued. That ratio was applied to the total student pilot certificates held in 1996, which produced an estimate of the number of student rotorcraft certificates held. The student rotorcraft certificates held was multiplied by an estimate of the number of new students receiving instruction on Robinson helicopters. That estimate was then applied to the added cost per student to derive the total added cost for all students. These relationships may be summarized as follows:

Total Added Cost for all Students = $\{2*H*C_{R-22}*[\Sigma SPC*\Sigma(ORI/OSI)]\}/3$

where:

H = added hours;

C = added cost per hour;

SPC = student pilot certificates held;

OSI = original student certificates issued;

ORI = original rotorcraft certificates issued.

Applying the above procedure, the FAA estimates that approximately 4,000 new students will receive instruction in the Robinson R–22 model helicopter at an estimated cost of approximately $3.0 million annually. The total new student costs are approximately $14.9 million ($12.2 million, present value) over the next five years in 1996 dollars.

Pilots that have a current class certificate who wish to add a rotorcraft rating and receive instruction in the Robinson helicopters will be required to take an additional 5 hours of dual instruction the same as new students. However, unlike the new students, the FAA assumes that a portion of the pilots seeking to add a rotorcraft rating will receive instruction in the Robinson model R–44. Therefore, in addition to estimating the total number of pilots seeking to add a rotorcraft rating in Robinson helicopters in general, the FAA estimated the percentage of those seeking a rating only in the R–44.

Experienced pilots who wish to add a rotorcraft rating to a current class certificate could receive more advanced instruction, or instruction in more advanced equipment, than a new pilot. For example, they could receive instruction in a larger, more sophisticated turbine helicopter, or they could receive instruction to add the instrument rating to their class certificate. To determine the number of rotorcraft ratings that apply only to the R–44, the FAA multiplied the ratio of R–44s to the helicopter fleet by the added rotorcraft ratings for 1996. To estimate the added cost of instruction in the R–44, the number of R–44 ratings was multiplied by the number of required added hours of instruction, and by the R–44 cost per hour. As with the R–44, the added cost of the R–22 was estimated by applying the R–22 ratings to the added rotorcraft ratings for 1996. The number of R–22 ratings was multiplied by the number of added hours of instruction and by the R–22 cost per hour. Finally, the two products were added together to estimate the

annual cost or pilots to add a rotorcraft rating using a Robinson helicopter.

These relationships may be summarized as follows:

Total added cost to add a rotorcraft rating = $\Sigma ARR_t*(R44/F)*H*C_{R44} + \Sigma ARR_t*[(R-R-44)/F]*H*C_{R22}$

where:
R = U.S. active Robinson fleet;
F = U.S. active helicopter fleet;
R44 = Robinson Model R–44 helicopter;
ARR_t = added rotorcraft ratings in time period t;
H = added hours;
C = added cost per hour.

Applying the above description, the total additional cost to receive instruction in a Robinson helicopter for the purpose of adding a rotorcraft rating to a pilot certificate is approximately $448,000 annually. The estimated cost over the next five years is approximately $2.2 million (present value, $1.8 million) in 1996 dollars.

Cost Summary

The proposed rule would impose costs to those receiving instruction in Robinson model R–22 and R–44 helicopters. Before they could be certificated, affected individuals would be required to receive additional model-specific training and experience for each model of Robinson helicopter. Individuals affected by the proposal are rated pilots who aspire to be flight instructors or newly certificated flight instructors who desire to conduct student instruction or flight reviews in the Robinson model R–22 and R–44 helicopter, new rotorcraft students, and certificated pilots seeking to add a rotorcraft rating. Both the new student and the pilot seeking to add a rotorcraft rating must be receiving instruction in a Robinson helicopter to incur the added cost. The proposed rule would impose total estimated costs of approximately $18.1 million (present value, $14.8 million) over the next five years, in 1996 dollars.

All of the costs described in this analysis would be incurred voluntarily. These added costs are not being forced on any individual that wishes to receive rotorcraft training. If an individual wishes to avoid the additional costs of rotorcraft instruction delineated above, they can receive their instruction in a rotorcraft other than a Robinson model, and not incur any of the costs that are described in this analysis.

Comparison of Costs and Benefits

The proposal would require those who receive or provide instruction in a Robinson helicopter to incur additional costs related to specific flight training and awareness training. The addition of those proposed requirements would impose costs of approximately $18.1 million (present value, $14.8 million) over five years in 1996 dollars. Benefits from the proposed rule would be a reduction in the number of fatal accidents that occur in Robinson helicopters associated with low "G" maneuvers that may result in main rotor/airframe contact. The estimated reduction in the number of accidents is due to the increased level of safety due to specific flight training and awareness training requirements for all individuals operating Robinson model R–22 and R–44 aircraft. If the proposed action prevents the 26 fatalities that occurred during the past 10-year period, the estimated benefits would be $71.4 million ($50.1 million, present value). Since this SFAR will be in effect for only 5 years, the estimated benefits would be $35.7 million ($29.3 million, present value) for this rulemaking, resulting in benefits exceeding costs by a factor of about two.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The Act requires that whenever an agency publishes a general notice of proposed rulemaking, an initial regulatory flexibility analysis identifying the economic impact on small entities, and considering alternatives that may lessen those impacts must be conducted if the proposed rule would have a significant economic impact on a substantial number of small entities.

This notice is to extend SFAR 73 published on March 1, 1995, which was issued on an emergency basis without the usual public notice period, but the FAA sought comments after issuance. No comments were received from small entities indicating that they would suffer a significant adverse economic impact. Further, the SFAR is limited to experience and training requirements to perform pilot-in-command and certified flight instructor duties, thereby impacting individuals rather than entities. So in view of the above, the FAA concluded that this proposed rule, if extended, will not have a significant economic impact on a substantial number of small entities. The Agency, however, invites comments on this conclusion.

International Trade Impact Statement

This proposed rule is not expected to impose a competitive disadvantage to either US air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this proposed rule would impose additional costs only on those receiving instruction on Robinson helicopters. This proposal would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of United States aviation products or services in foreign countries.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The SFAR proposed herein will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

The OMB control number assigned to the collection of information for this proposed rule is 2120–0021.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Proposal

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

SFAR 73 [Amended]

2. Paragraphs 2(b)(2), 2(b)(5), and 3 of Special Federal Aviation Regulation (SFAR) No. 73 to part 61 are revised to read as follows:

SPECIAL FEDERAL AVIATION REGULATIONS

* * * * *

SFAR No. 73—ROBINSON R–22/R–44 SPECIAL TRAINING AND EXPERIENCE REQUIREMENTS

* * * * *

2. Required training, aeronautical experience, endorsements, and flight review.

(b) * * *

(2) No person may act as pilot in command of a Robinson model R–44 unless that person:

(i) has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–44. The pilot in command may credit up to 25 flight hours in the Robinson model R–44 toward this 50 hour requirement; or

(ii) has had at least 10 hours dual instruction in a Robinson helicopter, at least 5 hours of which must have been accomplished in the Robinson model R–44 helicopter. Beginning 12 calendar months after the date of the endorsement, the individual may not act as pilot in command unless the individual has completed a flight review in an R–44 within the preceding 12 calendar months and obtained an endorsement for that flight review. The dual instruction must include at least the following abnormal and emergency procedures flight training:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

* * * * *

(5) No certificated flight instructor may provide instruction or conduct a flight review in a Robinson model R–44 or R–44 unless that instructor:

(i) Completes the awareness training in paragraph 2(a) of this SFAR,

(ii) and for the R–22, has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22, or for the R–44, has had at least 200 flight hours in helicopters, 50 flight hours of which were in Robinson helicopters. Up to 25 flight hours of Robinson model R–22 flight time may be credited toward the 50 hour requirement,

(iii) Has completed flight training in an R–22, R–44, or both, on the following abnormal and emergency procedures:

(A) enhanced training in autorotation procedures,

(B) engine rotor RPM control without the use of the governor,

(C) low rotor RPM recognition and recovery, and

(D) effects of low G maneuvers and proper recovery procedures.

(iv) Been authorized by endorsement from an FAA aviation safety inspector or authorized designated examiner that the instructor has completed the appropriate training, meets the experience requirements and has satisfactorily demonstrated an ability to provide instruction on the general subject areas of paragraph 2(a)(3) of this SFAR, and the flight training identified in paragraph 2(b)(5)(iii) of this SFAR.

* * * * *

(3) *Expiration date.* This SFAR terminates on December 31, 2002, unless sooner superseded or rescinded.

Issued in Washington, D.C. on November 18, 1997.

Richard O. Gordon,

Acting Director, Flight Standards Service.

[FR Doc. 97–30772 Filed 11–20–97; 8:45 am]

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federal register

Friday
November 21, 1997

Part VIII

Department of Housing and Urban Development

Additional Funding Availability and Program Guidelines for Homeownership Zones; FY 1997; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4238–N–05]

Notice of Funding Availability (NOFA) and Program Guidelines for Homeownership Zones; Fiscal Year 1997; Notice of Additional Funding

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA); Notice of additional funding.

SUMMARY: This notice announces the availability of an additional $10 million in funding for Homeownership Zones, bringing the total amount available to $20 million. HUD will, therefore, accept new applications and amendments to applications previously submitted in response to the initial NOFA through December 22, 1997. On July 7, 1997, HUD published the fiscal year (FY) 1997 Notice of Funding Availability (NOFA) and program guidelines for Homeownership Zones, initially announcing that $10 million in funding was available for Homeownership Zones. HUD will consider applications received in response to the initial NOFA in the competition for the total $20 million.

DEADLINE DATE: One original and two copies of each application must be received by HUD Headquarters at the address provided below by the deadline date. One additional copy must be received by the HUD Field Office by the deadline date. All four copies may be used in reviewing the application.

Applications Delivered. Applications are due before midnight on December 22, 1997. Before the deadline date, and on normal workdays between the hours of 8:30 a.m. and 4:30 p.m., completed applications will be accepted at the Processing and Control Unit, Room 7255, Community Planning and Development at the address provided below.

After 4:30 p.m. on the deadline date, hand-delivered applications will be received at the South Lobby of the Department of Housing and Urban Development at the address provided below. HUD will treat as ineligible for consideration hand-delivered applications that are received after midnight on December 22, 1997.

Applications Mailed. HUD will consider applications as received by the deadline if they are postmarked before midnight on December 22, 1997, and received by HUD Headquarters within ten (10) calendar days after that date.

Applications Sent by Overnight Delivery. HUD will consider applications sent by overnight delivery as having been received by the deadline upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than December 22, 1997.

Applications Sent by Facsimile (FAX). HUD will NOT accept any application sent by FAX.

Applications Sent to HUD Field Offices. One copy of the application must be received by the HUD field office serving the area in which the applicant's Homeownership Zone is located. The field office must receive this copy by the deadline date, but a determination that an application was received on time will be made solely according to the receipt of the application at HUD Headquarters in Washington.

ADDRESSES: One original and two copies of the completed application must be submitted to HUD Headquarters at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410. One additional copy of the application must be sent to the Director of Community Planning and Development, at the HUD field office serving the State in which the Homeownership Zone is located (see Appendix A of the July 7, 1997 NOFA (62 FR 36412, 36419)).

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Taffet, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; telephone (202) 708–3226 (this is not a toll free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877–TDDY, which is a toll free number. Interested persons should consult the July 7, 1997 NOFA for information concerning basic program requirements and eligibility, and may also contact the appropriate HUD field office at the number and address provided in Appendix A of the July 7, 1997 NOFA. General background information about homeownership zones is also available through Community Connections by calling (800) 998–9999.

SUPPLEMENTARY INFORMATION: On July 7, 1997 (62 FR 36412), HUD published the FY 1997 NOFA and program guidelines for Homeownership Zones. The July 7, 1997 NOFA announced the availability of $10 million to help reclaim distressed neighborhoods by creating homeownership opportunities for low- and moderate-income families, and to serve as a catalyst for private investment, business creation, and neighborhood revitalization. The NOFA contained information concerning basic program requirements, eligible applicants, funding availability, and application requirements and procedures. HUD issued a correction to the July 7, 1997 NOFA and extended the application deadline until September 30, 1997, through a notice published on July 28, 1997 (62 FR 40370).

This notice announces the availability of an additional $10 million, for a total of $20 million in funding for Homeownership Zones. This notice also announces that HUD is accepting additional applications and amendments to applications submitted in response to the initial NOFA through December 22, 1997, as provided above in the "Deadline Date" section of this notice. All of the other provisions of the July 7, 1997 NOFA, as corrected by the notice published on July 28, 1997, apply to the availability and awarding of this additional $10 million. Therefore, applicants for this additional $10 million should refer to the July 7, 1997 NOFA and the July 28, 1997 notice for information regarding eligible applicants, the definition of a Homeownership Zone, the characteristics of a successful Homeownership Zone, eligible activities, income targeting, Section 108 loan guarantees and other funding sources, application format, criteria for rating applications, the selection process, environmental review requirements, program threshold criteria, technical deficiencies and technical assistance, other Federal requirements, and other matters. HUD will consider applications received in response to the July 7, 1997 NOFA by the deadline under that NOFA (September 30, 1997) in the competition for this additional $10 million available for Homeownership Zones.

Dated: November 8, 1997.

Jacquie Lawing,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 97–30596 Filed 11–20–97; 8:45 am]

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Reader Aids
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 62, No. 226
Monday, November 24, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351, 430, and 531

RIN 3206–AH32

Reduction in Force and Performance Management

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that enhance the opportunity for Federal employees to receive reduction in force retention service credit based on their actual job performance. The regulations also give agencies with employees who have been rated under different patterns of summary rating levels a mechanism to take this into account when providing employees additional retention service credit for reduction in force. These regulations also clarify certain other retention rights, including the coverage of employees serving under term appointments.

DATES: Effective date: December 24, 1997. Compliance dates: Subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised §§ 351.504 and 351.803(a), at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either §§ 351.504 and 351.803(a) effective December 24, 1997 or the prior §§ 351.504 and 351.803(a) in 5 CFR part 351 (January 1, 1997, edition).

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, Jacqueline Yeatman, or Edward P. McHugh (part 351); (202) 606–0960, FAX (202) 606–2329; or Barbara Colchao or Doris Hausser (parts 430 and 531); (202) 606–2720, FAX (202) 606–2395.

SUPPLEMENTARY INFORMATION: On February 4, 1997, OPM issued proposed regulations concerning reduction in force and performance management. These proposed changes were designed to enhance the opportunity for Federal employees to receive reduction in force retention credit based on their actual job performance. They proposed changes to the crediting procedures used when employees are missing performance ratings, as well as giving agencies the authority to vary performance credit in reduction in force to take into account ratings given under different summary level patterns.

We received comments from 21 agencies, 4 unions, and 3 individuals. Not every commenter mentioned every proposed provision. The key changes OPM proposed in the regulations are summarized below, along with a summary of the comments received on that particular proposal.

Providing Retention Service Credit When Employees in the Same Reduction in Force Competitive Area Have Been Rated Under More Than One Pattern of Summary Rating Levels

On August 23, 1995, OPM issued final regulations, at 60 FR 43936, giving agencies the option to determine which of eight permissible patterns of summary rating levels to use for their performance appraisal programs. As a result, changes in the crediting of performance in reduction in force were necessary because this flexibility in the design of performance appraisal programs can affect employees' relative retention standing for reduction in force. The proposed regulations revised 5 CFR 351.504 to require an agency to take into account different patterns of summary rating levels when providing employees additional retention service credit in reduction in force competition based on their performance.

Under the proposed regulations, an agency with employees in a reduction in force competitive area who have been rated under different patterns of summary rating levels must decide how many years of retention service credit within the allowable range of 12 to 20 years to assign to particular summary rating levels in their patterns. The specific method selected by the agency to provide retention service credit for performance will of necessity be specific to the reduction in force competitive area as the agency takes into account the combination of rating patterns used and the relative numbers of employees rated under each pattern.

If an agency has reduction in force competitive areas in which all employee ratings of record to be credited were given under the same pattern of summary levels, it is required to follow the current regulations for crediting performance in a reduction in force which now appear in paragraph (d) of section 351.504.

In applying the proposed regulations, agencies must treat employees within the reduction in force competitive area in a uniform and consistent manner. An agency carrying out a reduction in force may provide different amounts of additional retention service credit for ratings of record received in an employee's former agency than were provided by that former organization.

The majority of comments received on this proposal were very positive. Most of those who commented felt it was a necessary and logical outgrowth of performance rating flexibility that would be helpful to both agencies and employees. This proposal was especially well-received by those considering, or already using, alternative performance appraisal programs such as a 2-level ("Pass/Fail") program. Some agencies requested even greater flexibility to address what they see as potential inequities when employees in different competitive areas are rated under different appraisal programs, even if there is no inconsistency within each competitive area. This was deemed especially crucial to agencies having various offices or components using different summary rating patterns.

One commenter voiced the concern that employees rated as "Fully Successful" under a two-level program could actually be performing at very different levels. Another suggested that the proposal be modified in order to prevent an agency from giving less credit to an employee's ratings of record from their previous agency than to the agency's "own" ratings. Several other commenters suggested that specific mandates be established on how this flexibility is to be used.

OPM has carefully considered these suggestions and decided not to adopt them. We believe that many of these concerns are rooted in decisions about

using various types of performance appraisal programs in the first place, and most would be addressed by the requirement to provide uniformity and consistency within each competitive area. For example, an agency assigning 16 years of credit to a "fully successful" rating of record earned under a two-level program must give ALL employees who earned a "fully successful" rating of record in a two-level program this credit, no matter what agency or organization actually issued the rating. Granting additional flexibility, by definition, allows for decision-making that some may disagree with. Alternatively, an agency is free to choose a crediting system that mirrors the current 12/16/20 year pattern required for use in single-rating-pattern situations (they are required to examine the situation when multiple rating patterns exist, but there is no requirement to adopt any particular crediting method). In addition, agencies concerned about consistency are free to establish their own agencywide policies on how this flexibility will be used.

One commenter suggested that no additional credit beyond 12 years be provided for performance above the level of "Fully Successful". We have not adopted this suggestion since it goes beyond the scope of the proposal and because the new regulations would give agencies the flexibility to assign credit in this way if they choose, as long as ratings of record are assigned under more than one summary pattern in the competitive area.

Extending the "look-back" period to 6 years

This element of the proposal addressed the circumstance where employees have received fewer than three actual ratings of record in the last 4 years, which could occur due to a variety of circumstances. Current regulations require the substitution of an assumed rating of "Fully Successful" for each missing rating of record. To minimize the use of assumed ratings and to maximize the extent to which additional retention service credit is based on actual job performance, OPM proposed to lengthen the period of time from which ratings of record are taken into account from 4 years to 6 years prior to the reduction in force. This change would have been phased in to allow agencies time to change their recordkeeping procedures.

Several of those who commented supported this proposal, believing that the potential for increasing the use of actual performance appraisals earned by employees outweighed the additional record-keeping requirements it would impose on agencies. Some even suggested that we modify the proposal to allow agencies to go back longer than 6 years when necessary. However, the majority of commenters disagreed with the proposed lengthening of the "look-back" period from 4 years to 6 years, even with the phase-in provisions. The objections centered on the view that a 6-year-old appraisal is too dated to serve as an accurate indicator of current employee performance, and that allowing older appraisals to be used in reduction in force might discourage supervisors from preparing current appraisals when required. Some were also concerned that these additional administrative requirements were unduly burdensome, especially in light of the current emphasis on simplification, paperwork reduction, and streamlining. We have considered these comments, as well as the possibility of providing agencies with flexibility to determine what the length of their "look-back" period should be for specific reductions in force. We concluded that the significant additional administrative requirements resulting from a 6-year "look-back" do not justify the results, especially since the other changes provided for in this regulatory package would significantly reduce the number of assumed ratings. For these reasons, we concluded that the current "look-back" period of 4 years should be retained.

Averaging actual ratings received if fewer than three

To further enhance the use of actual performance in determining reduction in force service credit, OPM proposed to remove the requirement to fill in missing ratings of record with assumed "fully successful" ratings when an employee has received only one or two actual ratings of record. Under the proposal, the actual rating(s) of record available would serve as the sole basis of the employee's credit, and no assumed ratings would be used. Consequently, if an employee has received only two actual ratings of record during this period, the value assigned to each rating would be added together and divided by two to determine the amount of additional retention service credit.

Among those who commented on this proposal, there was an almost equal number of those who supported it and those who did not. Most of those opposing the proposed change cited the greater weight that would necessarily be placed on the one or two actual ratings of record received. One commenter was concerned that supervisors would be less likely to complete ratings of record as a result of this proposal. A number of commenters, however, supported this proposal because it simplifies the process and allows an employee's actual demonstrated performance to take the place of an artificially prescribed level of credit (assumed "Fully Successful"). In considering the comments received on this issue, we were persuaded that this change would serve to simplify the procedure and would increase the emphasis on actual performance, a stated goal of the proposed regulations. Therefore, we are adopting this proposal in the final regulations.

Crediting performance for employees with no actual ratings

OPM had proposed two methods of providing performance credit for reduction in force in cases where an employee would have no actual ratings of record at all. Under the proposed regulations, an employee with at least one year of current continuous service would be given the additional retention service credit for the most common, or "modal", summary rating level, as defined in 5 CFR 351.203, for the summary level pattern that applies to the employee's position at the time of the reduction in force. The proposal would allow agencies to determine the modal rating using ratings of record in the competitive area, in a larger subdivision of the agency, or agencywide, as long as the applicable modal rating(s) was applied uniformly and consistently within the competitive area to all employees with no ratings of record.

Under the proposal, the modal rating would not be used for employees who have completed less than one year of current continuous service. Instead, additional retention service credit would be given based on a Level 3 (Fully Successful or equivalent) rating of record under the summary level pattern that applies to the employee's position at the time of reduction in force.

Those who commented negatively on this proposal disliked the idea of using a modal rating because it did not represent performance actually demonstrated by the employee. Some felt the use of a modal rating was arbitrary and unfair, and potentially vulnerable to appeal or other challenge, while others saw it as more fair to employees than an assumed "fully successful" rating that now falls below the Governmentwide average rating. Several agencies were also concerned with how this requirement would be incorporated into existing automated systems.

One commenter suggested that the regulations be revised to require that all employees with at least one year of service must have a rating of record before a reduction in force can be conducted. We have not adopted this suggestion because we feel it is impossible to require a rating of record in all circumstances, given the various rating cycle dates and other circumstances that can occur.

One of those who commented suggested that employees who have received no ratings of record should receive no performance credit for reduction in force. We have not adopted this suggestion because we believe it unfairly and severely penalizes an employee who has no ratings of record due to factors completely outside his/her control. We believe that some reasonable and fair method of constructing performance credit is necessary to deal with these circumstances.

It is important to note that the modal rating would only be used in cases where the employee has no ratings of record of his/her own to credit. Since no rating of record exists, some form of "assumed" rating is the only recourse available. Because the modal rating is the summary level that was given most often to employees in the organization conducting the reduction in force, we believe it is the best way to assign credit with the least disadvantage to an individual employee who has no rating of record reflecting his/her actual performance.

Much of the opposition to the modal rating proposal focused on the complexity for personnelists in administering two different types of formulae based on length of service (less than one year means use assumed "Fully Successful"; more than one year requires tabulation of modal rating). Some saw this as contradictory to ongoing simplification initiatives. In addition, several commenters pointed out that this distinction could result in an employee with 364 days of service being treated differently (in terms of performance credit for reduction in force) than another employee with 366 days of service. We agree that the distinction based on length of service adds greater complexity to the process, and we have therefore eliminated this distinction in the final regulations. Instead, the modal rating will be used to grant performance credit in reduction in force for all employees who have no ratings of record. We feel this better supports the principles of uniformity and consistency in the reduction in force treatment of employees.

Several commenters requested that OPM designate the basis used by agencies to determine their modal ratings (i.e., agencywide; agency subdivision; or competitive area). They also asked that agencies not be allowed to change this basis once it is selected without OPM and/or union approval. However, agencies have different data systems and not all will have a great deal of flexibility in terms of tabulating modal ratings. Some may only have agencywide performance appraisal data to work with. We felt that it was necessary to preserve this flexibility for determining the basis used for tabulating modal ratings to ensure that all agencies are able to implement this requirement. However, we would encourage agencies to consider making this determination in partnership with employees and their representatives.

Use of Non-430 Ratings in Reduction in Force

OPM proposed language in the revised section 351.504 that would require agencies to use all ratings of record given to employees for assigning additional retention service credit during a reduction in force, including a performance evaluation given to an employee under an appraisal system not covered by the provisions of 5 CFR part 430, subpart B, if it meets the conditions specified in the new paragraph (c) of section 430.201.

Those who commented in support of this proposal felt it was appropriate to give credit for such ratings in a reduction in force if they were equivalent to those given under part 430.

One commenter disagreed with the proposal, believing it would be too difficult for agencies to establish the equivalent summary pattern and rating level for these non-430 ratings. We have considered this objection; however, we feel that agencies should be able to make these determinations with help from the agency that gave the rating and/or members of OPM's performance management staff.

Implementation Date Issues

(1) Performance in Retention Service Credit Determinations

The new agency authority to determine retention service credit when employees in a competitive area are rated under multiple rating patterns described in § 351.504(e) would apply only to ratings of record that are put on record, as defined in paragraph (b)(3) of § 351.504, on or after October 1, 1997. The agency credits any ratings of record put on record on or before September 30, 1997, based on the Governmentwide 12-, 16-, and 20-year formula for additional retention service credit currently in effect.

Agencies were divided on their preference for which ratings of record could be assigned credit using the new flexibility. While some wanted to be able to establish credit for ratings of record given since 1995 (when performance management was deregulated), others wished to establish credit only for ratings of record given under cycles begun after October 1, 1997. OPM originally proposed that the flexibility would apply to ratings of record put on record on or after October 1, 1997, and has decided to retain this provision in the final regulation.

A related issue was the effective date of the regulations and its effect on the implementation of some of the provisions, particularly those affecting the flexible assignment of service credit and situations where fewer than three ratings of record are available. Concerns such as the lead time required for changes in the automation of RIF processing programs, and the need to meet collective bargaining requirements prior to the implementation of these regulations were also raised during the comment process. OPM originally proposed implementation on October 1, 1997. We have considered the suggestions received on this issue and have determined that overall fairness is best managed through giving agencies the flexibility to implement the provisions of Sections 351.504 (crediting performance) and 351.803 (notice of eligibility for reemployment and other placement assistance), at any time between the effective date of these regulations and October 1, 1998. Agencies are required to apply the provisions used in a uniform and consistent manner to all employees in a given RIF competitive area.

When crediting performance in a reduction in force, agencies would have the option to implement immediately as of the effective date of these regulations the provisions for establishing credit when ratings of record were given under mixed summary level patterns (351.504(e)) and the use of the modal value for missing ratings as well as averaging only actual ratings of record found during the 4-year "look-back" period (351.504(c)). At its discretion, an agency could decide to delay implementation of these provisions until no later than October 1, 1998, and continue to use the performance crediting provisions in the current § 351.504 (i.e., those in effect on January 1, 1997).

The effect of the provisions in paragraphs 351.504 (b) and (d) remain unchanged by the new regulations. When applying paragraph 351.504(a), the context created by the new definition for rating of record and other regulatory changes will permit the use of non-430 ratings under the conditions specified even when an agency is using the older version of 5 CFR 351.504.

This gives agencies able to proceed immediately the opportunity to do so, without forcing others that need time to complete more extensive preparations into an unrealistic time frame. However, for reduction in force actions effective after September 30, 1998, the new provisions for crediting mixed-pattern ratings of record and handling situations where ratings are missing must be applied by all agencies.

(2) Implementation of Provisions During Ongoing Reductions

Several commenters mentioned their concern that ongoing reductions in force would be disrupted by the requirement to implement these provisions. Revising the procedures for handling missing ratings of record and crediting performance under multiple rating patterns could result in changed reduction in force outcomes, new notices, and additional delays due to notice period requirements. We agree that this would prove unnecessarily disruptive to both agencies and employees. However, we believe that giving agencies the option to implement the provisions of sections 351.504 and 351.803 at any time up until October 1, 1998, will allow them to take into account any upcoming reduction in force activity and plan accordingly.

Technical Amendments

OPM proposed a number of technical changes in parts 351, 430 and 531, which served to clarify existing regulations in various areas. These included redefinition of rating of record under part 351 to refer to the part 430 definition, provisions for handling employees with a written notice of pending action under part 752 similarly to those with action pending under part 432, changes to the critical element definition, barring non-critical elements in two-level appraisals, and clarifications of: appraisal period, acceptable level of competence determinations, competitive area, competitive level, procedures for determining grade intervals for assignment, expiration and amendment of reduction in force notices, assignment rights optionally provided to excepted service employees, and coverage of term employees under retention subgroups.

We received comments on some of these proposed clarifications. One suggested rewording of the definition of rating of record to better reflect that this rating belongs to the employee rather than the agency. We agree and have adopted this suggestion.

Several commenters asked what date should be used as the effective date of a rating of record. Perhaps contributing to their confusion are changes to the way ratings of record are reported to the Central Personnel Data File. While a rating of record is a personnel action, OPM no longer requires that it be reported separately with its own distinct nature of action code (009). Rating of record information is now transmitted to OPM via other standard reporting procedures. When a separate nature of action code was used, the previous reporting procedures specified that the effective date for a rating of record was the ending date of the appraisal period to which the rating applied. The new procedures capture this same information as an isolated data element and eliminate the need for separate processing of many thousands of actions. It is OPM's view that the ending date of the applicable appraisal period is the effective date of the rating of record, and this date should be used to determine whether or not a rating of record falls within the 4-year "look-back" period.

Section 5 CFR 351.402(b) clarifies OPM's longstanding policy on the minimum standard for a reduction in force competitive area. All of the comments on this proposed revision supported the change, and the proposed regulation is adopted without further modification.

To conduct a reduction in force, section 5 CFR 351.402(a) provides that the agency must establish the applicable competitive area that is the boundary within which employees compete for retention under reduction in force procedures.

Section 5 CFR 351.402(b) provides that employees in a competitive area compete for retention under OPM's reduction in force regulations only with other employees in the same competitive area. Employees do not compete for retention with employees of the agency in another competitive area.

Section 5 CFR 351.402(b) provides that the agency must define each competitive area solely in terms of organizational unit and geographical location. The competitive area then includes all employees within the organizational unit and geographical location that is included in the competitive area definition. Each employee competes with all other employees in the competitive area for positions under OPM's retention regulations. There is no minimum or maximum number of employees in a competitive area. Also, in any one reduction in force, an agency may not use one competitive area for the first round of competition and a different competitive area for second rounds of competition.

Section 5 CFR 351.402(b) clarifies that the minimum competitive area for any agency component is a subdivision of the agency within the local commuting area that is under separate administration. An agency may establish separate competitive areas for different components in the same local commuting area if each component is under separate administration, which includes that each is independent of the other in operation, work function, and staff.

As used for purposes of establishing a minimum competitive area consistent with section 5 CFR 351.402(b), "separate administration" is the administrative authority to take or direct personnel actions (i.e., the authority to establish positions, abolish positions, assign duties, etc.) rather than the issuance or processing of the documents by which these decisions are effected. This separate administration is evidenced by the agency's organizational manual and delegations of authority that document where, in the organization, final authority rests to make these decisions. (The competitive area standard also recognizes that many agencies retain certain personnel-related actions such as classification authority or final approval of higher-graded positions to a central authority above the organizational standard required for a minimum competitive area).

The same standard is used for a minimum competitive area in a local commuting area in both a headquarters organization or field component. Former references in 5 CFR 351.402(b) to organizational units that could comprise a minimum competitive area in a headquarters organization or field component were examples of where separate administration is often found in agencies. These references were deleted in final 5 CFR 351.402(b) to clarify that the same minimum competitive area standard is applicable whether the organizational unit is headquarters, a field activity, a duty station, or other applicable organization.

Under 5 CFR 351.402(b), an agency may establish a competitive area that is larger than the minimum standard. However, a competitive area may not be smaller than the minimum standard.

The fact that several activities may be serviced by the same personnel office does not, of itself, require that they be placed in the same competitive area. The personnel office merely processes personnel actions rather than having final responsibility to make decisions on whether to establish positions, abolish positions, assign duties, *etc.*

Another commenter felt that the proposal did not go far enough in dealing with employees who have received written decisions under part 752, and suggested that those employees be excluded from reduction in force competition altogether. There is, however, no basis in law to eliminate the right of these employees to remain in reduction in force competition until they are actually removed from Federal service. Therefore, this suggestion was not adopted.

OPM had also proposed changes to the requirements for reduction in force separation notices to include an estimate of severance pay if applicable, and information on benefits available under new subparts F and G (Career Transition Assistance Programs) of part 330 of this chapter and from the applicable State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act. To increase placement opportunities for employees affected by downsizing, the proposed section also required that agencies give employees receiving a reduction in force separation notice a release to authorize, at their option, the release of their resumes for employment referral to State dislocated worker unit(s) and potential public and private sector employers. OPM is developing material for this purpose.

A few commenters were concerned that these requirements would place a greater burden on personnel offices and reduce the emphasis on employee empowerment that is central to successful career transition programs. One felt the role of obtaining authorization for release of resumes belonged solely with the placement coordinator, and that this did not belong with the reduction in force notice since placement efforts would already be well underway by the time reduction in force notices are issued.

We agree that, ideally, placement efforts should begin long before reduction in force notices are issued. However, this is not always possible. We have considered these comments carefully and feel that providing a release that can be completed entirely at the employee's option remains within the spirit of empowerment and simply serves as another vehicle for coordination between Federal Government and other public and private employers that will hopefully aid employees in the transition process. Many agencies have personnel office staff who serve in dual roles, both conducting the reduction in force and assisting employees in placement. Since a reduction in force notice is issued to all employees being separated, it provides a unique opportunity for the agency to give employees career transition information and to ensure that all employees being separated will receive it. However, in recognition of the fact that agencies will need time to modify their reduction in force notices, we have made this provision one of those which may be implemented at any time between the effective date of these regulations and October 1, 1998. All notices issued on or after October 1, 1998, must meet the requirements of these regulations.

One commenter was concerned that the severance pay estimate calculation might be open to challenge if it was later found to be in error. They suggested instead that agencies provide information on how to compute severance pay and let employees do the calculations themselves. We have not adopted this suggestion because we believe agency-developed severance pay estimates are much more likely to be accurate than those done by employees. Further, we would emphasize that agencies should clearly indicate that their severance pay calculations are merely estimates, as many agencies do now, but that employees are ultimately responsible for verifying these estimates.

Several commenters suggested that we add a requirement that specific information on the employee's competitive level, including the names of employees in various levels, be added to the notice. Information of this type is normally discussed during reduction in force counseling sessions between affected employees and knowledgeable personnel specialists. Releasing this type of information in a reduction in force notice has serious privacy implications and would not be useful in isolation, nor would it serve to help the employee better understand his/her reduction in force rights without counseling. Therefore, we have not adopted this suggestion.

Another commenter questioned the restriction in the definition of critical elements to individual performance only, especially in light of the workplace trends toward team performance. We do not disagree with the observation that team work is becoming more prevalent in the workplace and should be captured when measuring performance. In recognition of the importance of team work in many organizations, the performance management regulations specifically provide for the use of non-critical elements that can address performance measured at the team level and that impact the summary level, which can be particularly useful in making performance distinctions above the Fully Successful (or equivalent) level. In addition, the regulations permit the use of critical elements to measure the individual's contribution to the team's success or failure. However, it would be inappropriate to allow a single team failure (i.e., failed team critical element) to result automatically in every individual on the team being designated as Unacceptable when some of the individual performance within the team is probably Fully Successful or better.

Critical elements are the cornerstone of individual accountability in employee performance. Therefore, they should not be used to measure performance over which the employee is not intended or expected to exercise individual control or authority. In addition, there is the prohibition that non-critical elements cannot be used with a two-level summary pattern (i.e., pass/fail). Organizations that summarize performance at only two levels can choose to incorporate additional performance elements to identify and measure team accomplishments. We, therefore, made no change to this proposal.

One commenter suggested that a within-grade increase following a delay, based on the circumstances stated in the regulations and a subsequent rating of record of Level 3 or higher, should be paid retroactively. Because no change was, or is, proposed to the current language at 5 CFR 531.409(c)(2)(iii) that addresses a retroactive within-grade increase following a delay in the acceptable level of competence determination, that paragraph had not appeared in the proposed regulations as printed in the **Federal Register**. Because that current language will remain in effect, the commenter's concern is already accommodated.

One commenter suggested that within-grade delay procedures should be incorporated into agency performance management plans and, thereby, be subject to OPM review and approval. Within-grade delay is prescribed by regulation because it is a procedure where Governmentwide consistency is appropriate. There is no value added to having OPM review agency procedures implementing such uniform regulations. Furthermore, the Performance Management Plan alluded

to is no longer required because, in part, the 1995 revision was designed to eliminate needless repetition of regulatory language. Therefore, this suggestion was not adopted.

Several other suggestions for minor wording changes to provide greater clarification were adopted where we felt they were warranted. Most of the requests for clarification or additional discussion would be more appropriately handled through individual discussions between OPM staff and agency personnelists, which we are happy to provide upon request. In addition, some comments were provided that addressed reduction in force and performance management issues that were outside the scope of these proposed regulations, such as changing the way performance is used relative to the other reduction in force factors; these suggestions were not adopted since they were not pertinent to the specific proposals made in these regulations. Suggestions for wording changes to 5 CFR part 293 were not adopted because we felt there was no basis for issuing revised regulations in this area as long as we were eliminating the proposal to lengthen the "look-back" period for ratings of record.

To the extent practicable, these regulations should be implemented by agencies in partnership with management and employees' union representatives.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 430

Decorations, medals, awards, Government employees.

5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending parts 351, 430, and 531 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

4. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

5. In § 351.203, the definition of *"Annual Performance rating of record"* is removed, and the definitions of *Current rating of record, Modal rating,* and *Rating of record* are added in alphabetical order, to read as follows:

§ 351.203 Definitions.

* * * * *

Current rating of record is the rating of record for the most recently completed appraisal period as provided in § 351.504(b)(3).

* * * * *

Modal rating is the summary rating level assigned most frequently among the actual ratings of record that are:

(1) Assigned under the summary level pattern that applies to the employee's position of record on the date of the reduction in force;

(2) Given within the same competitive area, or at the agency's option within a larger subdivision of the agency or agencywide; and

(3) On record for the most recently completed appraisal period prior to the date of issuance of reduction in force notices or the cutoff date the agency specifies prior to the issuance of reduction in force notices after which no new ratings will be put on record.

Rating of record has the meaning given that term in § 430.203 of this chapter. For an employee not subject to 5 U.S.C. Chapter 43, or part 430 of this chapter, it means the officially designated performance rating, as provided for in the agency's appraisal system, that is considered to be an equivalent rating of record under the provisions of § 430.201(c) of this chapter.

* * * * *

7. In § 351.402, paragraph (b) is revised to read as follows:

§ 351.402 Competitive area.

* * * * *

(b) A competitive area must be defined solely in terms of the agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an agency. The minimum competitive area is a subdivision of the agency under separate administration within the local commuting area.

* * * * *

8. In § 351.403, paragraph (c) is added to read as follows:

§ 351.403 Competitive level.

* * * * *

(c) An agency may not establish a competitive level based solely upon:

(1) A difference in the number of hours or weeks scheduled to be worked by other-than-full-time employees who would otherwise be in the same competitive level;

(2) A requirement to work changing shifts;

(3) The grade promotion potential of the position; or

(4) A difference in the local wage areas in which wage grade positions are located.

9. In § 351.404, paragraph (a) introductory text, and paragraph (b)(2), are revised to read as follows:

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Upon displacing another employee under this part, an employee retains the same status and tenure in the new position. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

* * * * *

(b) * * *

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision of removal under part 432 or 752 of this chapter.

10. Section 351.405 is revised to read as follows:

§ 351.405 Demoted employees.

An employee who has received a written decision under part 432 or 752 of this chapter to demote him or her competes under this part from the position to which he or she will be or has been demoted.

11. In § 351.501, paragraph (b)(3) is revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of a register, status quo appointments, term appointments, and any other nonstatus nontemporary appointments which meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter.

* * * * *

12. Section 351.504 is revised to read as follows:

§ 351.504 Credit for performance.

Note to § 351.504: Compliance dates: Subject to the requirements of 5 U.S.C. Section 7116(a)(7), agencies may implement revised § 351.504 at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either § 351.504 effective December 24, 1997, or the prior § 351.504 in 5 CFR part 351 (January 1, 1997 edition).

(a) *Ratings used.* (1) Only ratings of record as defined in § 351.203 shall be used as the basis for granting additional retention service credit in a reduction in force.

(2) For employees who received ratings of record while covered by part 430, subpart B, of this chapter, those ratings of record shall be used to grant additional retention service credit in a reduction in force.

(3) For employees who received performance ratings while not covered by the provisions of 5 U.S.C. Chapter 43 and part 430, subpart B, of this chapter, those performance ratings shall be considered ratings of record for granting additional retention service credit in a reduction in force only when it is determined that those performance ratings are equivalent ratings of record under the provisions of § 430.201(c) of this chapter. The agency conducting the reduction in force shall make that determination.

(b)(1) An employee's entitlement to additional retention service credit for performance under this subpart shall be based on the employee's three most recent ratings of record received during the 4-year period prior to the date of issuance of reduction in force notices, except as otherwise provided in paragraphs (b)(2) and (c) of this section.

(2) To provide adequate time to determine employee retention standing, an agency may provide for a cutoff date, a specified number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart. When a cutoff date is used, an employee will receive performance credit for the three most recent ratings of record received during the 4-year period prior to the cutoff date.

(3) To be creditable for purposes of this subpart, a rating of record must have been issued to the employee, with all appropriate reviews and signatures, and must also be on record (i.e., the rating of record is available for use by the office responsible for establishing retention registers).

(4) The awarding of additional retention service credit based on performance for purposes of this subpart must be uniformly and consistently applied within a competitive area, and must be consistent with the agency's appropriate issuance(s) that implement these policies. Each agency must specify in its appropriate issuance(s):

(i) The conditions under which a rating of record is considered to have been received for purposes of determining whether it is within the 4-year period prior to either the date the agency issues reduction in force notices or the agency-established cutoff date for ratings of record, as appropriate; and

(ii) If the agency elects to use a cutoff date, the number of days prior to the issuance of reduction in force notices after which no new ratings of record will be put on record and used for purposes of this subpart.

(c) *Missing ratings.* Additional retention service credit for employees who do not have three actual ratings of record during the 4-year period prior to the date of issuance of reduction in force notices or the 4-year period prior to the agency-established cutoff date for ratings of record permitted in paragraph (b)(2) of this section shall be determined under paragraphs (d) or (e) of this section, as appropriate, and as follows:

(1) An employee who has not received any rating of record during the 4-year period shall receive credit for performance based on the modal rating for the summary level pattern that applies to the employee's official position of record at the time of the reduction in force.

(2) An employee who has received at least one but fewer than three previous ratings of record during the 4-year period shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. If an employee has received only two actual ratings of record during the period, the value of the ratings is added together and divided by two (and rounded in the case of a fraction to the next higher whole number) to determine the amount of additional retention service credit. If an employee has received only one actual rating of record during the period, its value is the amount of additional retention service credit provided.

(d) *Single rating pattern.* If all employees in a reduction in force competitive area have received ratings of record under a single pattern of summary levels as set forth in § 430.208(d) of this chapter, the additional retention service credit provided to employees shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's applicable ratings of record, under paragraphs (b)(1) and (c) of this section computed on the following basis:

(1) Twenty additional years of service for each rating of record with a Level 5 (Outstanding or equivalent) summary;

(2) Sixteen additional years of service for each rating of record with a Level 4 summary; and

(3) Twelve additional years of service for each rating of record with a Level 3 (Fully Successful or equivalent) summary.

(e) *Multiple rating patterns.* If an agency has employees in a competitive area who have ratings of record under more than one pattern of summary levels, as set forth in § 430.208(d) of this chapter, it shall consider the mix of patterns and provide additional retention service credit for performance to employees expressed in additional years of service in accordance with the following:

(1) Additional years of service shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the additional retention service credit that the agency established for the summary levels of the employee's applicable rating(s) of record.

(2) The agency shall establish the amount of additional retention service credit provided for summary levels only in full years; the agency shall not establish additional retention service credit for summary levels below Level 3 (Fully Successful or equivalent).

(3) When establishing additional retention service credit for the summary levels at Level 3 (Fully Successful or equivalent) and above, the agency shall establish at least 12 years, and no more than 20 years, additional retention service credit for a summary level.

(4) The agency may establish the same number of years additional retention service credit for more than one summary level.

(5) The agency shall establish the same number of years additional retention service credit for all ratings of record with the same summary level in the same pattern of summary levels as set forth in § 430.208(d) of this chapter.

(6) The agency may establish a different number of years additional retention service credit for the same summary level in different patterns.

(7) In implementing paragraph (e) of this section, the agency shall specify the number(s) of years additional retention service credit that it will establish for summary levels. This information shall be made readily available for review.

(8) The agency may apply paragraph (e) of this section only to ratings of record put on record on or after October 1, 1997. The agency shall establish the additional retention service credit for ratings of record put on record prior to that date in accordance with paragraph (d) of this section.

13. In § 351.602, paragraph (c) is revised to read as follows:

§ 351.602 Prohibitions.

* * * * *

(c) A written decision under part 432 or 752 of this chapter of removal or demotion from the competitive level.

14. In § 351.701, paragraph (f) is added to read as follows:

§ 351.701 Assignment involving displacement.

* * * * *

(f)(1) In determining applicable grades (or grade intervals) under §§ 351.701(b)(2) and 351.701(c)(2), the agency uses the grade progression of the released employee's position of record to determine the grade (or interval) limits of the employee's assignment rights.

(2) For positions covered by the General Schedule, the agency must determine whether a one-grade, two-grade, or mixed grade interval progression is applicable to the position of the released employee.

(3) For positions not covered by the General Schedule, the agency must determine the normal line of progression for each occupational series and grade level to determine the grade (or interval) limits of the released employee's assignment rights. If the agency determines that there is no normal line of progression for an occupational series and grade level, the agency provides the released employee with assignment rights to positions within three actual grades lower on a one-grade basis. The normal line of progression may include positions in different pay systems.

(4) For positions where no grade structure exists, the agency determines a line of progression for each occupation and pay rate, and provides assignment rights to positions within three grades (or intervals) lower on that basis.

(5) If the released employee holds a position that is less than three grades above the lowest grade in the applicable classification system (e.g., the employee holds a GS–2 position), the agency provides the released employee with assignment rights up to three actual grades lower on a one-grade basis in other pay systems.

15. In § 351.705, paragraph (a)(3) is revised to read as follows:

§ 351.705 Administrative assignment.

(a) * * *

(3) Provide competing employees in the excepted service with assignment rights to other positions under the same appointing authority on the same basis as assignment rights provided to competitive service employees under § 351.701 and in paragraphs (a) (1) and (2) of this section.

* * * * *

16. In § 351.802, paragraph (a)(2) is revised to read as follows:

§ 351.802 Content of notice.

(a) * * *

(2) The employee's competitive area, competitive level, subgroup, service date, and three most recent ratings of record received during the last 4 years.

* * * * *

17. In § 351.803, paragraph (a) is revised to read as follows:

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration and career transition assistance under subparts B (Reemployment Priority List), F and G (Career Transition Assistance Programs) of part 330 of this chapter. The employee must also be given a release to authorize, at his or her option, the release of his or her resume and other relevant employment information for employment referral to State dislocated worker unit(s) and potential public or private sector employers. The employee must also be given information concerning how to apply both for unemployment insurance through the appropriate State program and benefits available under the State dislocated worker unit(s), as designated or created under title III of the Job Training Partnership Act, and an estimate of severance pay (if eligible).

Note to § 351.803(a): Compliance dates: Subject to the requirements of 5 U.S.C. 7116(a)(7), agencies may implement revised § 351.803(a) at any time between December 24, 1997 and October 1, 1998. For reduction in force actions effective between December 24, 1997 and September 30, 1998, agencies may use either § 351.803(a) effective December 24, 1997, or the prior § 351.803(a) in 5 CFR part 351 (January 1, 1997 edition).

* * * * *

18. Section 351.804 is revised to read as follows:

§ 351.804 Expiration of notice.

(a) A notice expires when followed by the action specified, or by an action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action.

(b) An agency may not take the action before the effective date in the notice; instead, the agency may cancel the reduction in force notice and issue a new notice subject to this subpart.

19. Section 351.805 is revised to read as follows:

§ 351.805 New notice required.

(a) An employee is entitled to a written notice of, as appropriate, at least 60 or 120 full days if the agency decides to take an action more severe than first specified.

(b) An agency must give an employee an amended written notice if the reduction in force is changed to a later date. A reduction in force action taken after the date specified in the notice given to the employee is not invalid for that reason, except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(c) An agency must give an employee an amended written notice and allow the employee to decide whether to accept a better offer of assignment under subpart G of this part that becomes available before or on the effective date of the reduction in force. The agency must give the employee the amended notice regardless of whether the employee has accepted or rejected a previous offer of assignment, provided that the employee has not voluntarily separated from his or her official position.

PART 430—PERFORMANCE MANAGEMENT

20. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43.

21. In § 430.201, paragraph (c) is added to read as follows:

§ 430.201 General.

* * * * *

(c) *Equivalent ratings of record.* (1) If an agency has administratively adopted and applied the procedures of this subpart to evaluate the performance of its employees, the ratings of record resulting from that evaluation are considered ratings of record for reduction in force purposes.

(2) Other performance evaluations given while an employee is not covered by the provisions of this subpart are considered ratings of record for reduction in force purposes when the performance evaluation—

(i) Was issued as an officially designated evaluation under the employing agency's performance evaluation system,

(ii) Was derived from the appraisal of performance against expectations that are established and communicated in advance and are work related, and

(iii) Identified whether the employee performed acceptably.

(3) When the performance evaluation does not include a summary level designator and pattern comparable to those established at § 430.208(d), the agency may identify a level and pattern based on information related to the appraisal process.

22. In § 430.203, the definitions of *Critical element*, *Performance rating*, and *Rating of record* are revised to read as follows:

§ 430.203 Definitions.

* * * * *

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.

* * * * *

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern (as specified in § 430.208(d)).

* * * * *

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in § 430.208(d)), or (2) in accordance with § 531.404(a)(1) of this chapter. These constitute official ratings of record referenced in this chapter.

23. In § 430.206, paragraphs (a)(2) and (b)(4) are revised, paragraphs (b)(6) and (b)(7) are redesignated as paragraphs (b)(7) and (b)(8) respectively, and a new paragraph (b)(6) is added to read as follows:

§ 430.206 Planning performance.

(a) * * *

(2) Each program shall specify a single length of time as its appraisal period. The appraisal period generally shall be 12 months so that employees are provided a rating of record on an annual basis. A program's appraisal period may be longer when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) * * *

(4) Each performance plan shall include all elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s).

* * * * *

(6) A performance plan established under an appraisal program that uses only two summary levels (pattern A as specified in § 430.208(d)(1)) shall not include non-critical elements.

* * * * *

24. In § 430.208, the introductory text to paragraph (d)(2) is revised, paragraph (d)(4) is revised, and a new paragraph (d)(5) is added to read as follows:

§ 430.208 Rating performance.

* * * * *

(d) * * *

(2) Within any of the patterns shown in paragraph (d)(1) of this section, summary levels shall comply with the following requirements:

* * * * *

(4) The designation of a summary level and its pattern shall be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under § 351.504 of this chapter.

(5) Under the provisions of § 351.504(e) of this chapter, the number of years of additional retention service credit established for a summary level of a rating of record shall be applied in a uniform and consistent manner within a competitive area in any given reduction in force, but the number of years may vary:

(i) In different reductions in force;

(ii) In different competitive areas; and

(iii) In different summary level patterns within the same competitive area.

* * * * *

PART 531—PAY UNDER THE GENERAL SCHEDULE

25. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

26. In § 531.409, paragraphs (c)(1), (c)(2)(i), and (c)(2)(ii) are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(c) *Delay in determination.* (1) An acceptable level of competence determination shall be delayed when, and only when, either of the following applies:

(i) An employee has not had the minimum period of time established at § 430.207(a) of this chapter to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within the minimum period of time (as established at § 430.207(a) of this chapter) before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period as established at § 430.207(a) of this chapter.

(2) * * *

(i) The employee shall be informed that his or her determination is postponed and the appraisal period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made based on the employee's rating of record

completed at the end of the extended appraisal period.

* * * * *

[FR Doc. 97–30428 Filed 11–21–97; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–26]

RIN 0579–AA83

Karnal Bunt; Additions to Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by adding portions of McCulloch, Mills, and San Saba Counties, TX, to the list of regulated areas and by expanding the boundaries of the regulated areas in La Paz, Maricopa, and Pinal Counties, AZ, due to the detection of Karnal bunt in those new areas. This action is necessary on an emergency basis to prevent the spread of Karnal bunt into noninfested areas of the United States.

DATES: Interim rule effective November 18, 1997. Consideration will be given only to comments received on or before December 24, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–26, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–26. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14.

The regulations in § 301.89–3(a) provide that the Administrator of the Animal and Plant Health Inspection Service will regulate each State, or each portion of a State, in which Karnal bunt, or any stage of development of *T. indica*, is present or in which circumstances exist that make it reasonable to believe that Karnal bunt is present. We currently require that a bunted wheat kernel be found in or associated with a field before an area will be designated a regulated area. A field's association with a bunted wheat kernel will be established when it has been determined that: (1) A bunted wheat kernel was found in the field during surveys; (2) seed from a lot contaminated with a bunted wheat kernel was planted in the field; or (3) the field was found during surveys to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

The regulations in § 301.89–3(b) provide that less than an entire State will be designated as a regulated area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the spread of Karnal bunt. The Administrator may also designate less than an entire State as a regulated area by exercising his or her extraordinary emergency authority under 7 U.S.C. 150dd when it is determined that a State is not taking adequate measures to prevent the spread of Karnal bunt.

Under § 301.89–3(e) of the regulations, a regulated area is further subdivided into areas classified as either restricted areas or surveillance areas. Restricted areas are further divided into restricted areas for seed and restricted areas for regulated articles other than seed. Restricted areas for seed are generally larger than restricted areas for regulated articles other than seed and surveillance areas, and will encompass both.

A restricted area for seed is a distinct definable area that includes at least one field that has been: (1) Found during survey to contain a bunted wheat kernel; (2) planted with seed from a lot found to contain a bunted wheat kernel; or (3) found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

Individual fields associated with a bunted wheat kernel, such as bunted kernels from a handling facility, are designated as restricted areas for regulated articles other than seed. The identity of those fields is determined using the same criteria discussed above with regard to restricted areas for seed, but it is the field itself, without any adjacent areas, that is designated as the restricted area for regulated articles other than seed.

A surveillance area is an area that includes at least one field that was either found during survey to contain a bunted wheat kernel, or that was found to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel.

All Karnal bunt host crops are prohibited from being planted in an area restricted for the movement of regulated articles other than seed. Under the regulations, a surveillance area surrounds an area restricted for the movement of regulated articles other than seed. While Karnal bunt host crops may be planted in the surveillance area, they may not be used for seed. Surrounding and encompassing the surveillance area is an area where the movement of seed is restricted unless certain conditions are met.

Recently, during surveys conducted as part of the National Karnal Bunt Survey, bunted wheat kernels were detected in areas of Texas that lie outside the regulated area in that State, and in fields in Arizona that are within the State's regulated area but outside of the established restricted areas for regulated articles other than seed and surveillance areas.

Therefore, in accordance with the criteria described above, we are amending the regulations to reflect those recent detections of bunted wheat kernels. Specifically, in Texas we are designating 17 fields in San Saba County as restricted areas for regulated articles other than seed; designating portions of McCulloch and Mills Counties and all of San Saba County as restricted areas for seed; and designating portions of McCulloch, Mills, and San Saba Counties as surveillance areas. In Arizona, we are designating four fields—two in Maricopa County and one each in La Paz and Pinal Counties—as restricted areas for regulated articles other than seed and designating additional portions of those three counties as surveillance areas. The description of surveillance areas in La Paz, Maricopa, and Pinal Counties, AZ, has also been amended to make the boundary lines of the surveillance areas more accurate by removing nonagricultural acreage and areas outside the 3-mile radius used to establish the surveillance areas in Arizona. The boundaries of the new regulated areas in Texas and Arizona are set forth in the description of regulated areas contained in § 301.89–3(f) in the rule portion of this document.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent Karnal bunt from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Karnal bunt regulations by adding portions of McCulloch, Mills, and San Saba Counties, TX, to the list of regulated areas and by expanding the boundaries of the regulated areas in La Paz, Maricopa, and Pinal Counties, AZ, due to the detection of Karnal bunt in those new areas. This action is necessary on an emergency basis to prevent the spread of Karnal bunt into noninfested areas of the United States. This action imposes certain restrictions on the movement of regulated articles from regulated areas.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0121.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–3, paragraph (f) is amended as follows:

a. Under the heading "Arizona", in paragraph (2), the entries for La Paz County, Maricopa County, and Pinal County are amended by adding, in numerical order, the field numbers set forth below, and paragraph (3) is revised to read as set forth below.

b. Under the heading "Texas", in paragraph (1), entries for McCulloch County, Mills County, and San Saba County are added, in alphabetical order, to read as set forth below; in paragraph (2), an entry for San Saba County is added, in alphabetical order, to read as set forth below; and paragraph (3) is revised to read as set forth below.

§ 301.89–3 Regulated areas.

* * * * *

(f) * * *

Arizona

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(2) * * *

La Paz County.

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319052007

* * * * *

Maricopa County.

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302112806

* * * * *

316150301

* * * * *

Pinal County.

* * * * *

315221403

* * * * *

(3) *Surveillance areas.*

La Paz County. Beginning at the northwest corner of sec. 6, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 1, T. 7 N., R. 21 W.; then south to the southeast corner of sec. 1, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 6, T. 6 N., R. 21 W.; then north to the point of beginning; and

Beginning at the northeast corner of sec. 22, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 34, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the northern side of sec. 21, T. 6 N., R. 22 W.; then east to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 36, T. 1 N., R. 1 E.; then west to the southwest corner of sec. 31, T. 1 N., R. 1 E.; then north to the northwest corner of sec. 19, T. 2 N., R. 1 E.; then west to the northeast corner of sec. 20, T. 2 N., R. 1 W.; then south to the southeast corner of sec. 29, T. 2 N., R. 1 W.; then west to the south center of sec. 28, T. 2 N., R. 2 W.; then north to the north center of sec. 33, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 36, T. 3 N., R. 2 W.; then north to the northwest corner of sec. 6, T. 3 N., R. 1 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northeast corner of sec. 24, T. 3 N., R. 1 W.; then east to

the northeast corner of sec. 24, T. 3 N., R. 1 E.; then south to the point of beginning;

Beginning at the southwest corner of sec. 1, T. 1 S., R. 5 W.; then north along the Hassayampa River to sec. 10, T. 1 N., R. 5 W.; then east to the north center of sec. 16, T. 1 N., R. 4 W.; then south to the southeast corner of sec. 4, T. 1 S., R. 4 W.; then west to the point of beginning; and

Beginning at the southeast corner of sec. 36, T. 2 S., R. 5 E.; then west to the southwest corner of sec. 32, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 20, T. 1 S., R. 5 E.; then east to the northwest corner of sec. 20, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 6, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 12, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 1, T. 2 S., R. 6 E.; then west to the southwest corner of sec. 6, T. 2 S., R. 6 E.; then south to the point of beginning.

Pinal County. Beginning at the southwest corner of sec. 31, T. 5 S., R. 4 E.; then west to the southwest corner of sec. 33, T. 5 S., R. 3 E.; then north to the northwest corner of sec. 33, T. 5 S., R. 3 E.; then west to the southwest corner of sec. 26, T. 5 S., R. 2 E.; then north to the west center of sec. 14, T. 4 S., R. 2 E.; then east to the east center of sec. 14, T. 4 S., R. 3 E.; then south to the northeast corner of sec. 2, T. 5 S., R. 3 E.; then east to the northeast corner of sec. 6, T. 5 S., R. 4 E.; then south to the point of beginning.

* * * * *

Texas

(1) * * *

* * * * *

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude −99.134731 W.; then north along the line of longitude −99.134731 W. to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south along the McCulloch/San Saba County line to the point of beginning.

Mills County. Beginning at the Mills/San Saba County line and the line of latitude 31.310619 N.; then east along the line of latitude 31.310619 N. to the line of longitude −98.743705 W.; then south along the line of longitude −98.743705 W. to the Mills/San Saba County line; then west and north along the Mills/San Saba County line to the point of beginning.

San Saba County. The entire county.

(2) * * *

* * * * *

San Saba County.

40104 3201
40111 2801
40111 3301
40112 1901
40112 1902
40112 1903
40112 2001
40112 2101
40112 3301
40112 3401
40113 2302
40113 2401
40113 2405
40113 2406
40113 3301
40115 0701
40115 1601

(3) *Surveillance areas.*

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude −99.134731 W.; then north along the line of longitude −99.134731 W. to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south along the McCulloch/San Saba County line to the point of beginning.

Mills County. Beginning at the Mills/San Saba County line and the line of latitude 31.310619 N.; then east along the line of latitude 31.310619 N. to the line of longitude −98.743705 W.; then south along the line of longitude −98.743705 W. to the Mills/San Saba County line; then west and north along the Mills/San Saba County line to the point of beginning.

San Saba County. Beginning at the San Saba/Mills County line and the line of longitude −98.743705 W.; then south along the line of longitude −98.743705 W. to the line of latitude 31.167959 N.; then west along the line of latitude 31.167959 N. to the line of longitude −98.903233 W.; then north along the line of longitude −98.903233 W. to the line of latitude 31.310819 N.; then east along the line of latitude 31.310819 N. to the San Saba/Mills County line; then south along the San Saba/Mills County line to the point of beginning; and

Beginning at the San Saba/McCulloch County line and the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the line of longitude −99.063487 W.; then south along the line of longitude −99.063487 W. to the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

Done in Washington, DC, this 18th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30784 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV97–931–2 FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Reduced Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1997–98, and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period began July 1 and ends June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate established for the Committee for the 1997–98, and subsequent fiscal periods of $0.03 per standard box of fresh Bartlett pears.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 29, 1997, and unanimously recommended 1997–98 expenditures of $111,441 and an assessment rate of $0.03 per standard box of fresh Bartlett pears. In comparison, last year's budgeted expenditures were $89,774. The assessment rate of $0.03 is $0.0075 less than the rate previously in effect. The former rate of $0.0375 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program. The Committee discussed alternatives to this rule, including alternative assessment levels, but decided that an assessment rate of less than $0.03 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. Applying the $0.03 per standard box rate of assessment to the Committee's 3,150,000 standard box shipment estimate should provide $94,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Committee for the 1997–98 year include $48,454 for salaries, $8,187 for office rent, and $4,956 for health insurance. Budgeted expenses for these items in 1996–97 were $46,306, $7,016, and $4,991, respectively.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was approved by the Department on August 26, 1997, and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule continues in effect a decreased assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $111,441 and an assessment rate of $0.03 per standard box of fresh Bartlett pears. The assessment rate of $0.03 is $0.0075 less than the rate previously in effect. Fresh Bartlett pear shipments for the year

were estimated at 3,150,000 standard boxes, which should provide $94,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Committee discussed alternatives to this rule, including alternative expenditure levels. The former rate of $0.0375 would have resulted in a reserve that exceeded the level the Committee believes is necessary to administer the program. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Committee for the 1997–98 fiscal period include $48,454 for salaries, $8,187 for office rent, and $4,956 for health insurance. Budgeted expenses for these items in 1996–97 were $46,306, $7,016, and $4,991, respectively.

Recent price information indicates that the grower price for the 1997–98 season will range between $5.79 and $12.72 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 0.24 and 0.52 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

The interim final rule published in the **Federal Register** (62 FR 44884) on August 25, 1997, requested comments to be received by September 24, 1997. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 931

Fresh Bartlett pear, Marketing agreements, Reporting and recordkeeping requirements.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 931 which was published at 62 FR 44884 on August 25, 1997, is adopted as a final rule without change.

Dated: November 18, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–30785 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R–0975]

Rules Regarding Availability of Information; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** of October 20, 1997, a document which amended the Board's Rules Regarding Availability of Information (Rules). This document corrects citation errors within the Rules.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel, 202–452–2418, Legal Division. For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD), 202–452–3544, Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board published a document in the **Federal Register** of October 20, 1997, (62 FR 54356). The document (FR Doc. 97–27566) amended the Board's Rules Regarding Availability of Information and contained several incorrect citations. This document also adds an amendatory instruction which will revise citations within subpart C of the Rules to reflect the new renumbering.

In final rule, FR Doc. 97–27566, published on October 20, 1997, (62 FR 54356) make the following corrections:

PART 261—[CORRECTED]

1. On page 54359, in the first column, in the authority citation, line 6, correct "15 U.S.C. 77uu(b)" to read "15 U.S.C. 77uuu(b)".

§ 261.22 [Corrected]

2. On page 54359, in the first column, add amendatory instruction 3a. to read as follows:

a. Newly designated § 261.22 is amended by:

a. In paragraphs (b)(1) introductory text and (b)(2), the reference "§§ 261.11 and 261.12" is removed and "§§ 261.20 and 261.21" is added in its place.

b. In paragraph (d), the reference "§ 261.9" is removed and "§ 261.12" is added each place it appears.

§ 261.1 [Corrected]

3. On page 54359, in the second column, in § 261.1, in paragraph (a)(1), line 22, correct "the Securities and Exchange Act," to read "the Securities and Exchange Commission Authorization Act,".

§ 261.12 [Corrected]

4. On page 54362, in the second column, in § 261.12, in paragraph (b)(3), line 7, correct "§ 261.23(b)(1)(ii)" to read "§ 261.22(b)".

5. On page 54362, in the second column, in § 261.12, paragraph (c)(3), last line, correct "§ 261.17(h)" to read "§ 261.17(f)".

6. On page 54362, in the second column, in § 261.12, paragraph (c)(4), last line, correct "§ 261.23(b)" to read "§ 261.22(b)".

§ 261.17 [Corrected]

7. On page 54366, in the first column, in § 261.17, paragraph (f)(4), last line, correct "§ 261.13(j)" to read "§ 261.13(i)".

By order of the Board of Governors of the Federal Reserve System, November 18, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–30711 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 566

[No. 97–116]

RIN 1550–AA77

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule that updates, simplifies, and streamlines its liquidity regulation. This final rule follows a detailed review of the regulation to determine whether it is necessary, imposes the least possible burden consistent with statutory requirements and safety and soundness, and is written in a clear, straightforward manner. Today's final rule is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Francis Raue, Program Analyst, (202) 906–5750, Robyn Dennis, Manager, Thrift Policy, (202) 906–5751, Supervision Policy, or Susan Miles, Attorney, (202) 906–6798, Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6 of the Home Owners' Loan Act (HOLA) [1] requires savings associations to hold a prescribed amount of statutorily defined liquid assets. The Director of the OTS may, by regulation, vary the amount of the liquidity requirement, but only within pre-established statutory limits. The requirement must be no less than four percent and no greater than ten percent of "the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less." [2] The Director may issue regulations defining the terms used in the statute, prescribing or limiting the extent to which certain assets included on the statutory liquidity list may be used to meet the liquidity requirement, and prescribing how to calculate the liquidity requirement.

Regulations implementing the Director's authority under section 6 of the HOLA appear at 12 CFR part 566 (1997). These rules define liquid assets to include cash and certain securities with detailed maturity limitations and marketability requirements.[3] The rules currently impose a liquidity requirement of five percent of an institution's liquidity base and a separate, "short-term" liquidity requirement of one percent of that base. The liquidity base in defined as net withdrawable accounts plus short-term borrowings. Except for institutions with less than $25,000,000 in assets, liquidity requirements are based on the "average daily balance" of the liquidity base during the preceding month. Institutions with less than $25,000,000 in assets may calculate their liquidity base using month-end figures.

On May 14, 1997, the OTS published a notice of proposed rulemaking (NPR) seeking comment on its liquidity regulation.[4] The OTS sought to reduce the burden of compliance with the statutory liquidity requirement to the maximum extent possible, consistent with statutory requirements and safety and soundness considerations. Specifically, the OTS proposed to: (1) reduce the liquidity requirement from five percent of net withdrawable accounts and short-term borrowings to four percent; (2) remove the one percent short-term liquidity requirement; (3) set forth an explicit requirement that thrifts maintain a safe and sound level of liquidity; (4) streamline the calculations used to measure compliance with the liquidity requirement; (5) expand the categories of liquid assets that may count toward satisfying a savings association's liquidity requirement; and (6) reduce the liquidity base by excluding withdrawable accounts payable in more than one year form the definition of the term "net withdrawable accounts."

II. Summary of Comments and Description of the Final Rule

The public comment period on the proposed rule closed on July 14, 1997. The OTS received twelve comments on its proposal. Commenters included eight savings associations, two trade associations, one holding company, and one individual. Commenters generally concurred that the statutory liquidity requirement imposes an unnecessary burden on institutions and no longer serves any useful purpose. Seven commenters specifically urged the OTS to continue to seek legislation that would eliminate this requirement. Two of these commenters urged the elimination of the requirement for institutions rated 1 or 2 under the CAMELS system.

Eleven commenters supported the proposed rule. These commenters generally concluded that the proposed rule would reduce the regulatory burden to the extent permitted by the statute, while maintaining the safety and soundness of institutions. Several commenters suggested revisions to the proposed rule which are discussed below. One commenter opposed the proposed rule.

Today's final rule is substantially similar to the May proposal, but incorporates several changes and clarifications in response to comments received. Specific comments are discussed where appropriate in the analysis below.

A. Reducing the Liquid Asset Requirement From Five to Four Percent and Removing the One Percent Short-Term Requirement

The OTS proposed to reduce the liquid asset requirement from five percent of the liquidity base to four percent, the lowest percentage permissible by statute. Additionally, the OTS proposed to eliminate the one percent short-term liquidity requirement, which is not mandated by statute. The agency believed that these changes were consistent with safety and soundness and the goal of reducing unnecessary burdens on the industry.

Commenters generally supported the reduction of the liquid asset requirement and the elimination of the short term liquidity requirement. One commenter noted that the OTS would retain sufficient flexibility through its examination process to determine the proper amount of liquid assets to support safe and sound operations. One commenter expressed general concern about this change, but did not cite specific reasons for its concern. These changes are adopted as proposed.

B. Adding a General Safety and Soundness Requirement

The OTS proposed to incorporate a general requirement that a savings

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[1] 12 U.S.C. 1465.

[2] 12 U.S.C. 1465(b)(2).

[3] 12 CFR 566.1(g) (1997).

[4] 62 FR 26449.

association must maintain sufficient liquidity to ensure its safe and sound operation. This requirement reflects the OTS's position that the statutory requirement is not necessarily indicative of a safe level of liquidity. The OTS would determine the adequacy of an institution's liquidity on a case-by-case basis.

Most commenters agreed that it is appropriate to determine liquidity requirements based on factors unique to each association, and supported this proposed requirement. One commenter, however, opposed the general safety and soundness requirement, suggesting that the proposed rule was vague. The OTS disagrees. The "safe and sound operation" standard is commonly used in banking parlance and in OTS regulations.[5] Safety and soundness determinations are generally made on a case-by-case basis in light of the particular circumstances of each institution. In the context of liquidity, a thrift is generally required to ensure that its current and prospective sources of liquidity are sufficient to permit it to meet its obligations in a timely manner and to fulfill the legitimate banking needs of its community.[6]

One commenter encouraged the OTS to consider latent sources of liquidity when determining whether an association is maintaining sufficient liquidity for safety and soundness purposes. When OTS evaluates an institution's liquidity, examiners consider additional sources of liquidity, not only those assets that meet the regulatory definition of liquid assets. Examiners consider the institution's visible liquidity position (*i.e.*, liquid assets such as cash and marketable securities) and the institution's invisible liquidity position (*i.e.*, available borrowing capacity).[7]

C. Streamlining the Average Balance Calculations of Liquid Assets and Liquidity Base

The current rule requires each savings association (except certain small associations and mutual savings banks) to calculate monthly average daily balances of liquid assets and the liquidity base. Thus, a savings association must calculate liquid assets and the liquidity base at the close of each business day, and then compute the average daily balance of the liquid assets and liquidity base for each month.

The proposal would streamline these calculations. While an institution would be required to continually satisfy the liquidity requirement, it would be required to calculate the liquidity base only on the last day of the preceding calendar quarter. This change would eliminate the need to calculate the average daily balance of the liquidity base for each month.

Commenters generally supported the proposed change to the liquidity base calculation as less burdensome, but suggested certain clarifications and modifications to further reduce the burden of compliance. For example, one commenter noted that it may be difficult or burdensome for some institutions to make the change to the new liquidity base calculation. The OTS goal is to decrease, rather than increase, regulatory burden connected with the statutory liquidity calculation. Accordingly, the final rule permits institutions to choose to use either the current or new method as set forth in the proposal of calculating the liquidity base.

Several commenters asked OTS to clarify how the liquid *asset* amount is to be calculated. For example, commenters asked whether liquid assets would be based on the actual balance at the end of each business day, the end of each calendar month, or the end of each quarter, and whether liquid assets would be based on the average daily balance for each month or quarter.

The final rule does not require a savings association to hold the required amount of liquid assets every day. Such a requirement would increase, rather than decrease, the regulatory burden imposed on institutions under the current regulation. Conversely, while a requirement that a savings association must hold the required amount of liquid assets only on one day during a quarter or month would reduce regulatory burden, such a requirement would, in effect, nullify the statutory liquidity requirement, and would be contrary to the statutory directive that liquid assets be maintained at a level specified by the Director.[8] Accordingly, the final rule continues to require savings associations to calculate liquid assets based on an average daily balance over a period of time. However, instead of determining the average daily balance for each month, a savings association will now determine the average daily balance for each quarter.

Under the final rule, a savings association may choose to calculate its liquidity ratio in one of two ways. It can maintain an average daily balance of liquid assets in each calendar quarter of not less than four percent of either: (1) its liquidity base at the end of the preceding quarter, or (2) the average daily balance of its liquidity base during the preceding quarter. The method of calculating the average daily balances for a period would be unchanged under the final rule.

D. Expanding the Categories of Liquid Assets That Count Toward Satisfaction of the Liquidity Requirement

Under sections 6(b)(1)(C) (vi) and (vii) of the HOLA,[9] as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),[10] certain mortgage-related securities and mortgage loans qualify as liquid assets to the extent approved by the Director of the OTS. The first category consists of mortgage-related securities that are defined in section 3(a)(41) of the Securities Exchange Act of 1934. The second category consists of mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) or are guaranteed by the Government National Mortgage Association (GNMA). The qualifying mortgage-related securities and mortgage loans must have one year or less remaining until maturity, or be subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year. In addition, the person that agrees to purchase the securities must be an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

The OTS proposed to add the FIRREA categories to the definition of liquid assets. Commenters generally supported the addition of these new categories. Accordingly, these new categories are added in the final rule.

The proposed rule text described the specific requirements for loans and mortgage-related securities with cross-references to other regulations and statutes. One commenter argued that the cross-references are different to

[5] *See* 12 CFR 550.1, 560.1, 562.2, and 563.161 (1997).

[6] For additional guidance, savings associations should refer to the Thrift Activities Handbook, Liquidity-Asset/Liability Management, Chapter 500.

[7] *See* Section 530, Cash Flow and Liquidity Management, Thrift Activities Handbook.

[8] *See* 12 U.S.C. 1465(b)(1).

[9] 12 U.S.C. 1465(b)(1)(C)(vi), (vii).

[10] Pub. L. 101–73, 103 Stat. 183, 313–314 (1989).

understand and urged the OTS to restate all applicable requirements in the rule text. The statutes and regulations cross-referenced by the proposed rule are rather lengthy. The OTS believes that the benefit of having a concise rule outweighs the inconvenience of having to look to the HOLA, the statute governing most savings association activities. Consequently, the cross-references are retained.

Another commenter recommended that the OTS should also include, in the definition of liquid assets, adjustable rate mortgage-backed securities issued by the FNMA, the FHLMC, or the GNMA. This commenter pointed out that the definition of liquid assets in the regulation suggests that an asset's final maturity always has a link to its price sensitivity or liquidity. The commenter noted that over the years the more common types of adjustable rate mortgage-backed securities have developed significant secondary market liquidity, and have price sensitivities that are lower than many of the currently qualifying liquid asset alternatives.

Section 6(b)(1) of the HOLA describes the specific types of assets that the OTS may consider to be liquid assets. The statutory listing includes "such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency or instrumentality of any one or more of the foregoing, and bankers' acceptances, as the Director may approve."[11] The OTS, and its predecessor, the Federal Home Loan Bank Board (FHLBB), have long included obligations of FNMA, GNMA, and FHLMC among such special obligations.[12] While section 6(b)(1)(c)(ii) of the HOLA does not contain any maturity requirement for such obligations, the current OTS regulation provides that, in order to qualify as a liquid asset, such obligations must have five years or less remaining until maturity. The ostensible basis for the imposition of these liquidity requirements was to reduce the risk of loss on the securities held as liquid assets.[13]

Upon review, the OTS believes that the maximum five-year maturity requirement for these specific obligations under § 566.1(g)(3) and the related maturity requirement for obligations of the United States under § 566.1(g)(2) are outdated and unnecessary.[14] In addition, we note that the other federal banking agencies do not impose, for liquidity purposes, a five-year maturity requirement for obligations. The continuing imposition of this requirement is contrary to our objectives of relieving unnecessary burden on the industry, and is consistent with the treatment of these assets by the other federal banking regulators in their safety and soundness examinations. Therefore, the OTS has removed the maturity requirement for these obligations.

E. Excluding Accounts With Unexpired Maturities Exceeding One Year From the Definition of "Net Withdrawable Accounts"

A savings association must maintain liquid assets of not less than a stated percentage of the amount of its liquidity base. The regulation defines "liquidity base" as net withdrawable accounts plus short term borrowings.[15] It defines "net withdrawable accounts" as all withdrawable accounts less the unpaid balance of all loans secured by such accounts with certain exclusions.[16] "Short term borrowings" is defined as borrowings where any portion of the principal is payable on demand or in one year or less.[17]

The OTS proposed to redefine "net withdrawable accounts" by excluding accounts with unexpired maturities exceeding one year and by deleting the word "all" from the phrase "all withdrawable accounts" in the first part of the definition. These changes would reduce a savings association's liquidity base which would reduce the association's liquid asset requirement.

Three commenters addressed this change. One commenter observed that this change is consistent with the regulation's current exclusion from the liquidity base of borrowings payable in more than one year. The commenter also noted that the statute does not specify different maturity requirements for withdrawable accounts and borrowings in the liquidity base.

Another commenter agreed with the proposed exclusion, provided that excluded accounts with maturities of more than one year are subject to an effective early withdrawal penalty. The OTS has decided not to impose an early withdrawal penalty requirement for excluded accounts with maturities of more than one year. Such a requirement is unnecessary and would place an additional burden on savings associations, which is contrary to the spirit of this rulemaking.

Two commenters noted that associations would have to create new reports in order to exclude deposits with unexpired maturities exceeding one year from their liquidity bases. These commenters requested that the final rule explicitly permit institutions to elect to use either the proposed or the current, more stringent, method of calculating the liquidity base.

The OTS agrees. Accordingly, the final rule provides a savings association with the option to exclude deposits with unexpired maturities exceeding one year from its liquidity base as proposed, or to continue to use the more stringent method of calculating the liquidity base. To implement this change, the OTS has amended the current definition of net withdrawable accounts to give institutions the option of either applying the current definition of net withdrawable accounts or excluding withdrawable account deposits with maturities exceeding one year from the computation of net withdrawable accounts.

F. Technical Revisions

The OTS has made several technical revisions to § 566.1. These revisions include appropriate cross-references in paragraph (g)(8) to new paragraphs (g)(12) and (g)(13) and punctuation and other minor changes throughout paragraph (g).

III. Paperwork Reduction Act

The recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1550–0011.

Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1(b).

The recordkeeping requirements contained in this final rule are found at 12 CFR 566.4 (1997). The information is needed by the OTS in order to ensure that associations comply with a

[11] 12 U.S.C. 1465(b)(1)(c)(ii).

[12] *See* 12 CFR 566.1(g)(3) (1997).

[13] *See* 39 FR 41263 (November 26, 1974).

[14] We note that the agency has adjusted this maturity requirement in the past. *See* 39 FR 17219 (May 14, 1974).

[15] 12 CFR 566.1(c) (1997).

[16] 12 CFR 566.1(d) (1997).

[17] 12 CFR 566.1(e) (1997).

statutory liquidity requirement. The likely recordkeepers are OTS-regulated savings associations. Records are to be maintained in accordance with basic business practices, but not less than a period of three years.

IV. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601), the OTS certifies that this regulation will not have a significant economic impact on a substantial number of small entities. It reduces the liquidity requirement from five percent to four percent, which should increase all savings associations' abilities to manage their assets. Additionally, the final regulation should ease the administrative burden of calculating compliance with liquidity requirements for all savings associations, including small savings associations.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule reduces regulatory burden. The OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more.

Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Effective Date

Section 302 of the CDRIA requires that regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective before that date. The OTS believes that CDRIA does not apply because this final rule imposes no new burden on thrifts. Further, the OTS believes that an immediate effective date is appropriate since the final rule relieves regulatory burden on savings associations. An immediate effective date would permit savings associations to better manage their assets by reducing the liquidity requirement from five to four percent and by eliminating the short-term liquidity requirement. Additionally, the final rule should ease administrative burden of computing compliance with liquidity requirements. For these reasons, the OTS believes that an immediate effective date is appropriate for this final rule.

Section 553(d) of the Administrative Procedure Act requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. The OTS further finds that the 30-day delayed effective date requirement may be waived because this final rule relieves regulatory restrictions.

List of Subjects in 12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends part 566, chapter V, title 12, Code of Federal Regulations, as set forth below:

PART 566—LIQUIDITY

1. The authority citation for part 566 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

2. Section 566.1 is amended by:
a. Revising paragraph (d);
b. Revising paragraph (g)(2);
c. Revising paragraph (g)(3) introductory text;
d. Revising paragraphs (g)(4)(i)(A) and (g)(4)(i)(B);
e. Revising paragraphs (g)(8), (g)(9) and (g)(10);
f. In paragraph (g)(11)(i), removing "("Association member")." and adding "("Association member") or" in its place;
g. In paragraph (g)(11), removing the period at the end of the concluding text and adding a semicolon in its place;
h. Adding paragraphs (g)(12) and (g)(13); and
i. Removing paragraph (h).

The additions and revisions read as follows:

§ 566.1 Definitions.

* * * * *

(d) *Net withdrawable accounts.* The term *net withdrawable accounts* means withdrawable accounts less the unpaid balance of loans secured by such accounts. In computing net withdrawable accounts, a savings association may, at its option, exclude withdrawable accounts maturing in more than one year. Tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, and U.S. Time Deposit Accounts are not withdrawable accounts.

* * * * *

(g) * * *

(2) Except as the Office may otherwise direct in a specific case, obligations of the United States;

(3) Obligations issued or fully guaranteed as to principal and interest, by:

* * * * *

(4) * * *

(i) * * *

(A) Negotiable and will mature in one year or less;

(B) Not negotiable and will mature in 90 days or less; or

* * * * *

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), (g)(9), (g)(12), and (g)(13) of this section;

(9) Corporate debt obligations and commercial paper denominated in dollars, Provided, That:

(i) Such corporate debt obligations:

(A) Continue to be rated in one of the four highest categories by the most recently published rating of such obligations by a nationally recognized investment rating service;

(B) Are marketable as defined by § 541.7 of this chapter;

(C) Will mature in three years or less; and

(D) Are not convertible to common stock;

(ii) Such commercial paper:

(A) Continues to be rated in one of the two highest categories by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated; and

(B) Will mature in 270 days or less; and

(iii) An amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a liquid asset;

(10) Reserves required to be maintained pursuant to title I of the Depository Institution Deregulation and Monetary Control Act of 1980 (94 Stat. 132) and established pursuant to 12 CFR part 204, whether in the form of:

(i) Vault cash, as defined in 12 CFR 204.2, provided that vault cash shall be included only once in calculating the aggregate amount of liquid assets;

(ii) Balances maintained directly with the Federal Reserve Bank in the district in which the savings association is located; or

(iii) A pass through account as defined in 12 CFR 204.2;

* * * * *

(12) Mortgage-related securities as described in 12 U.S.C. 1465(b)(1)(C)(vi); and

(13) Mortgage loans on the security of a first lien on residential real property as described in 12 U.S.C. 1465(b)(1)(C)(vii).

3. Section 566.2 is revised to read as follows:

§ 566.2 Requirements.

(a) *Safety and soundness requirement.* In addition to meeting the minimum requirement under paragraph (b) of this section, each saving association must maintain sufficient liquidity to ensure its safe and sound operation.

(b) *Minimum statutory liquidity requirement.* (1) Except as otherwise provided in paragraph (c) of this section, each savings association shall maintain an average daily balance of liquid assets in each calendar quarter of not less than 4 percent of:

(i) The amount of its liquidity base at the end of the preceding calendar quarter; or

(ii) The average daily balance of its liquidity base during the preceding quarter.

(2) The average daily balance of either liquid assets or liquidity base in a quarter is calculated by adding the respective balance as of the close of each business day in a quarter, and for any non-business day, as of the close of the nearest preceding business day, and dividing the total by the number of days in the quarter.

(c) *Reduction and suspension of liquidity requirements.* The Office may, to the extent and under conditions it may prescribe, permit a savings association to reduce its liquid assets below the minimum amount required by paragraph (b) of this section to meet withdrawals or pay obligations. The Office may suspend part or all of the liquidity requirements of paragraph (b) of this section whenever it determines that conditions of national emergency or unusual economic stress exist. Any such suspension, unless sooner terminated by its terms or by the Office, shall terminate after 90 days, but the Office may again suspend part or all of such requirement at any time.

Dated: November 13, 1997.

By the Office of Thrift Supervision.

Ellen S. Seidman,

Director.

[FR Doc. 97–30431 Filed 11–21–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–48–AD; Amendment 39–10214; AD 97–24–07]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes that have kit JK 2496 and modification JM 7537 installed. This action requires installing magnetic latching relays on the ignition system because of the auto-ignition system becoming disabled when switching from ground power to the airplane's internal power. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent loss of the airplane's internal power connection to the auto-ignition system, which could cause loss of engine power and possible loss of control of the airplane.

DATES: Effective December 31, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 31, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone (0292) 79888; facsimile (0292) 79703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 92–CE–48–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes, serial numbers 693 through 870, that have kit JK 2496 and modification JM 7537 installed and are registered in the United States, was published in the **Federal Register** on April 14, 1997 (62 FR 18062). The action proposed to require installing magnetically latching relays with wiring changes.

Accomplishment of the installation would be in accordance with Jetstream Service Bulletin No. 74–JM 7693A, Original Issue dated May 17, 1990; Revision No. 3 dated January 28, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 126 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 9 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The

manufacturer is providing the parts at no charge. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $68,040 or $540 per airplane.

Jetstream has informed the FAA it has received approximately 78 orders for the parts to accomplish this action. If each set of parts is installed on an affected airplane, the estimated cost to the owners/operators in the U.S. will be reduced from 68,040 to $25,920.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–24–07 Jetstream Aircraft Limited: Amendment 39–10214; Docket No. 92–CE–46–AD.

Applicability: Model 3101 and 3201 airplanes, serial numbers 693 through 870, certificated in any category, that have kit JK 2496 and modification JM 7537 installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of the airplane's internal power connection to the auto-ignition system, which could cause loss of engine power and possible loss of the airplane, accomplish the following:

(a) Install magnetically latching relays with wiring changes (quantity 2) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) No. 74–JM 7693A, Original Issue dated May 17, 1990; Revision 3, dated January 28, 1993.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Small Airplane Directorate.

(d) The installation required by this AD shall be done in accordance with BAe JETSTREAM Service Bulletin No. 74–JM 7693A, ORIGINAL ISSUE: May 17, 1990; REVISION NO. 3, dated January 28, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this document may be obtained from Jetstream Aircraft Limited, Prestwick Airport, Ayrshire, KA9 2RW, Scotland, or may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD addresses the United Kingdom's Civil Airworthiness Authority Mandatory BAe JETSTREAM Service Bulletin No. 74–JM 7693A, ORIGINAL ISSUE: May 17, 1990; REVISION NO. 3, dated January 28, 1993.

(e) This amendment (39–10214) becomes effective on December 31, 1997.

Issued in Kansas City, Missouri, on November 14, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30712 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–34–AD; Amendment 39–10212; AD 97–24–05]

RIN 2120–AA64

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (Formerly Government Aircraft Factory) Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N22S, and N24A airplanes. This AD requires repetitively inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage. This AD results from several reports of uncommanded flap extensions and displays of incorrect stall warning indications on the affected airplanes. The actions specified by this AD are intended to prevent contamination in the aft wing break connectors, which could result in uncommanded flap extensions and incorrect stall warning indications with consequent loss of airplane control.

DATES: Effective January 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all ASTA Models N22B, N22S, and N24A airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 18, 1997 (62 FR 43596). The NPRM proposed to require repetitively inspecting the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts; and removing deposits between contacts, tightening any loose contacts, and replacing any aft wing break connectors with arcing damage. Accomplishment of the proposed actions would be in accordance with Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995.

This NPRM resulted from several reports of uncommanded flap extensions and displays of incorrect stall warning indications on the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $900 or $60 per airplane. This figure does not take into account the cost of repetitive inspections or the cost to replace any damaged aft wing break connectors. The FAA has no way of determining the number of repetitive inspections each operator would incur over the life of each affected airplane or the number of aft wing break connectors that may be found damaged during the inspections required by this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–24–05 Aerospace Technologies of Australia PTY LTD: Amendment 39–10212; Docket No. 97–CE–34–AD.

Applicability: Models N22B, N22S, and N24A airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent contamination in the aft wing break connectors, which could result in uncommanded flap extensions and incorrect stall warning indications with consequent loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 300 hours TIS, inspect the aft wing break connectors for arcing damage, deposits between contacts, and looseness of contacts. Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995.

(b) If any deposits between contacts, loose contacts, or aft wing break connector arcing damage is found, prior to further flight, accomplish the following, as applicable, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995:

(1) Remove any deposits between contacts;

(2) Tighten any loose contacts; and

(3) Replace any aft wing break connectors with arcing damage.

(c) The repetitive inspections specified in this AD are required even if deposit is removed between the aft wing break connector contacts; any aft wing break connector contacts are tightened; or any aft wing break connectors are replaced.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) The inspections, removal, tightening, and replacement required by this AD shall be done in accordance with Nomad Alert Service Bulletin ANMD–57–13, dated October 30, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10212) becomes effective on January 8, 1998.

Issued in Kansas City, Missouri, on November 14, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30719 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–22]

Revision of Class D and E Airspace: McKinney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class D and Class E airspace at McKinney, TX. The development of a planned Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP's) at McKinney Municipal Airport, McKinney, TX, has made this rule necessary. This action is intended to provide adequate additional controlled airspace for aircraft operating under Instrument Flight Rules (IFR) in the vicinity of McKinney Municipal Airport, McKinney, TX.

DATES: Effective: 0901 UTC, February 26, 1998. Comment Date: Comments must be received on or before January 8, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–22, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 amends the Class D and Class E airspace at McKinney Municipal Airport, McKinney, TX. The development of GPS SIAPs to RWYs 13 and 17 at McKinney Municipal Airport, McKinney, TX, has made this action necessary. The intended effect of this action is to provide additional controlled airspace for aircraft operating under Instrument Flight Rules (IFR) in the vicinity of McKinney Municipal Airport, TX.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ASW–22." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000: Class D airspace areas

* * * * *

ASW TX D McKinney, TX [Revised]

McKinney, McKinney Municipal Airport, TX
(Lat. 33°10'50"N., long. 96°35'26"W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.2-mile radius of the McKinney Municipal Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continually published in the Airport/Facility Directory.

* * * * *

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Dallas-Forth Worth, TX [Revised]

Dallas/Fort Worth International Airport, TX
(Lat. 32°53'49"N., long. 97°02'33"W.)
McKinney Municipal, TX
(Lat. 33°10'50"N., long. 96°35'26"W.)
Rockwall Municipal Airport, TX
(Lat. 32°55'50"N., long. 96°28'08"W.)
Blue Ridge VORTAC
(Lat. 33°17'00"N., long. 96°21'54"W.)
Mesquite, Phil L. Hudson Municipal Airport, TX
(Lat. 32°44'49"N., long. 96°31'50"W.)
Mesquite RBN
(Lat. 32°48'33"N., long. 96°31'44"W.)
Phil L. Hudson ILS Localizer
(Lat. 32°44'21"N., long. 96°31'50"W.)
Lancaster Airport, TX
(Lat. 32°34'45"N., long. 96°43'09"W.)
Lancaster RBN
(Lat. 32°34'40"N., long. 96°43'19"W.)
Dallas/Fort Worth VORTAC
(Lat. 32°51'57"N., long. 97°01'41"W.)
Fort Worth Spinks Airport, TX
(Lat. 32°33'55"N., long. 97°18'30"W.)
Cleburne Municipal Airport, TX
(Lat. 32°21'17"N., long. 97°26'03"W.)
Bourland Field, TX
(Lat. 32°34'47"N., long. 97°35'34"W.)
Acton VORTAC
(Lat. 32°26'05"N., long. 97°39'50"W.)
Granbury Municipal Airport, TX
(Lat. 32°26'40"N., long. 97°49'01"W.)
Weatherford, Parker County Airport, TX
(Lat. 32°44'47"N., long. 97°40'57"W.)
Bridgeport Municipal Airport, TX
(Lat. 33°10'29"N., long. 97°49'42"W.)
Bridgeport VORTAC
(Lat. 33°14'16"N., long. 97°45'59"W.)
Decatur Municipal Airport, TX
(Lat. 33°15'17"N., long. 97°34'50"W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas/Fort Worth International Airport and within a 6.6-mile radius of McKinney Municipal Airport and within 1.1 miles each side of the 002° bearing from the McKinney Municipal Airport extending from the 6.6-mile radius to 9.2 miles north of the airport and within a 6.3-mile radius of Rockwall Municipal Airport and within 1.6 miles of the 190° radial of the Blue Ridge VORTAC extending from the 6.3-mile radius to 10.8 miles north of the airport and within a 6.5-mile radius of Phil L. Hudson Airport and within 8 miles east and 4 miles west of the 001° bearing from the Mesquite RBN extending from the 6.5-mile radius to 19.7 miles north of the airport and within 1.7 miles each side of Phil L. Hudson ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport and within a 6.5-mile radius of the Lancaster Airport and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster RBN extending from the 6.5-mile radius to 16 miles southeast of the RBN and within 8 miles northeast and 4 miles southwest of the 144° radial of the Dallas/Fort Worth VORTAC extending from the 30-mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the VORTAC and within 6.5-mile radius of Fort Worth Spinks Airport and within 8 miles east and 4 miles west of the 178° bearing from the airport extending from the 6.5-mile radius to 21 miles south of the airport and within a 6.9-mile radius of Cleburne Municipal Airport and within 3.6 miles each side of the 112° radial of the Acton VORTAC extending from the 6.9-mile radius of the Cleburne Municipal Airport to 12.2 miles northwest of the airport and within a 6.5-mile radius of Bourland Field and within a 6.3-mile radius of Granbury Municipal Airport and within a 6.3-mile radius of Parker County Airport and within 8 miles east and 4 miles west of the 357° radial of the Acton VORTAC extending from the 6.3-mile radius to 21.4 miles south of the airport and within a 6.3-mile radius of Bridgeport Municipal Airport and within 1.6 miles each side of the 220° and 040° radials of the Bridgeport VORTAC extending from the 6.3-mile radius to 10.6 miles northeast of the airport and within a 6.3-mile radius of Decatur Municipal Airport and within 1.5 miles each side of the 083° radial of the Bridgeport VORTAC extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–30776 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–28]

Revision of Class E Airspace; New Mexico, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 1,200 feet above ground level (AGL) within

Restricted Area R–5107B and the portion of Restricted Area R–5107A north of latitude 32°18′00″N., located in south/central New Mexico. These White Sands Missile Range restricted areas are currently Class G airspace and are excluded from the Class E airspace extending upward from 1,200 feet AGL within the boundary of the state of New Mexico. This action is intended to provide adequate controlled airspace for aircraft operating within the confines of Restricted Area R–5107B and that portion of Restricted Area R–5107A north of latitude 32°18′00″N., White Sands Missile Range, New Mexico, NM.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace within Restricted Area R–5107B, and the portion of Restricted Area R–5107A north of latitude 32°18′00″N., New Mexico, NM, was published in the **Federal Register** (62 FR 14375). The ability of White Sands to provide IFR services within the confines of these restricted areas made the proposal necessary. The proposal was to establish adequate controlled airspace for aircraft operating within Restricted Area R–5107B, and the portion of Restricted Area R–5107A north of latitude 32°18′00″N., New Mexico, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace to provide controlled airspace for aircraft operating within Restricted Area R–5107B and within the portion of Restricted Area R–5107A north of latitude 32°18′00″N.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW NM E5 New Mexico, NM [Revised]

Albuquerque VORTAC
(Lat. 35°02′38″N., long. 106°48′59″W.)

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of New Mexico, excluding that airspace north of a line beginning on the Arizona/New Mexico state line at lat. 35°31′00″N., to lat. 35°52′00″N., long. 106°47′02″W.; to lat. 35°47′30″N., long. 106°34′02″W.; thence along long. 106°34′02″W.; to and along the north boundary of V–62 to and clockwise along the arc of a 40-mile radius circle centered at the Albuquerque VORTAC to lat. 35°37′35″N., long. 106°24′50″W.; to lat. 35°47′00″N., long. 106°15′02″W.; to lat. 35°47′00″N., long. 106°12′32″W.; to lat. 36°05′35″N., long. 106°09′52″W.; to lat. 36°03′40″N., long. 105°52′22″W.; to lat. 35°47′00″N., long. 105°54′42″W.; to lat. 35°47′00″N., long. 105°50′02″W.; thence along long. 105°50′02″W.; to and along the north boundary of V–19 to long. 105°16′32″W.; to lat. 36°00′00″N., long. 105°07′02″W.; thence along lat. 36°00′00″N., to and along the north boundary of V–190 to the New Mexico/Texas state line, excluding Restricted Area R–5101, excluding that airspace bounded by a line beginning on the Arizona/New Mexico state line at lat. 34°18′00″N., thence to the south boundary of V–264 at long. 108°54′02″W.; thence along the south boundary of V–264 to and south along long. 107°00′02″W.; to and along the northwest boundary of V–19 to lat. 33°35′00″N., to lat. 33°35′00″N., long. 107°20′02″W., to the northwest boundary of V–202 at long. 107°25′02″W.; thence along the northwest boundary of V–202 to lat. 32°59′00″N., to lat. 32°35′00″N., long. 108°37′02″W., to the Arizona/New Mexico state line at lat. 32°25′00″N., thence along the state line to the point of beginning, excluding that airspace south of V–66.

* * * * *

Issued in Fort Worth, TX, on November 14, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–30774 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8739]

RIN 1545–AV09

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 6109 relating to taxpayer identifying numbers. The final regulations include a cross reference to the temporary regulations, which provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to those children. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These final and temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1564. Responses to this collection of information are required to obtain a taxpayer identification number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to identifying numbers under section 6109. Section 6109(a)(1) provides that any person required to make a return, statement, or other document must include in the document such identifying number as may be prescribed for securing proper identification of the person. Section 6109(a)(2) provides that any person with respect to whom a return, statement, or other document is required to be made by another person or whose identifying number must be shown on a return of another person, must furnish to the other person such identifying number as may be prescribed for securing the person's proper identification. Section 6109(d) provides that an individual must use a social security number as the individual's taxpayer identification number unless the Secretary prescribes otherwise by regulations.

Currently, there are three types of taxpayer identification numbers (TINs) assigned to individuals: (1) a social security number (SSN), (2) an IRS individual taxpayer identification number (ITIN) assigned to an alien individual who is ineligible to obtain an SSN, and (3) an employer identification number (EIN) assigned to an individual who is engaged in a trade or business as a sole proprietor. An SSN is assigned by the Social Security Administration. An ITIN or an EIN is assigned by the IRS.

Section 1615 of the Small Business Job Protection Act of 1996 (Public Law 104–188, 110 Stat. 1755, 1853 (1996)) added sections 21(e)(10) and 151(e) to deny the dependent care credit and the deduction for the dependency exemption if the TIN (as defined by section 6109 and the regulations thereunder) of the dependent is not included on the return claiming the credit or deduction. Sections 21(e)(10) and 151(e) generally are effective for tax returns due (without regard to extensions) after September 18, 1996.

In addition, section 101 of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788, 796 (1997)) added section 24 to the Code to provide a child tax credit for each qualifying child, effective for taxable years beginning after December 31, 1997. Pursuant to section 24(e), the taxpayer will be denied the credit if the qualifying child's TIN is not included on the return claiming the credit.

In most cases, taxpayers can meet the TIN requirements of sections 21, 24, and 151 by including a child's SSN on the return claiming the credit or deduction. In the case of adoption, however, a child may not have an SSN or, if the child does have an SSN, the taxpayer adopting the child (the prospective adoptive parent) may be unable to obtain the SSN because of confidentiality laws. See H.R. Rep. No. 542, 104th Cong., 2d Sess. 20 (1996); S. Rep. No. 412, 103d Cong., 2d Sess. 163 (1994).

Explanation of Provisions

These temporary regulations authorize the IRS to assign a new form of taxpayer identification number, the IRS adoption taxpayer identification number (ATIN), to a child who is in the process of being adopted (a prospective adoptive child). The regulations are effective for income tax returns due (without regard to extension) on or after April 15, 1998.

The temporary regulations provide that an ATIN is a temporary taxpayer identification number that expires two years after the date of issuance. However, upon application, the IRS may grant an extension of the ATIN. A prospective adoptive parent may apply for an ATIN for a child if: (1) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child; (2) the child is placed with the prospective adoptive parent for legal adoption by an authorized placement agency (as defined in § 1.152–2(c)); (3) the Social Security Administration will not assign the prospective adoptive parent an SSN for the child (for example, because the adoption is not final); and (4) the prospective adoptive parent has used all reasonable means to obtain the child's assigned SSN, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

The temporary regulations provide that an application for an ATIN must be made on the Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions*, or such other form prescribed by the IRS. The ATIN application must be accompanied by documentary evidence to establish that an authorized placement agency placed the child in the prospective adoptive parent's household for legal adoption by the parent. Such documentary evidence may include: a copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency; an affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law; a document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; or a court document ordering or approving the placement of a child for adoption.

When an adoption becomes final, the adoptive parent must apply for an SSN for the child. Once obtained, the SSN, rather than the ATIN, must be used as the child's TIN on all future returns, statements, or other documents required by the Code.

An ATIN may be used by the prospective adoptive parents to meet the TIN requirements of sections 21(e)(10), 24(e), and 151(e), relating to the dependent care credit, the child tax credit, and the dependency exemption, respectively. Also, as may be prescribed by forms, instructions, or otherwise, an

ATIN may be used to meet the TIN requirements under sections 23(f) and 137(e), relating to qualified adoption expenses. The ATIN may not be used to meet the TIN requirement of section 32. See section 32(l).

The ATIN procedures do not apply to adoptions involving alien children. Generally, the Social Security Administration will assign an SSN to an alien child if all the requirements for assigning a number are met. When the Social Security Administration cannot assign an SSN, the child generally will be eligible for an ITIN.

In addition to adoptions involving alien children, there are two other types of adoptions to which the ATIN procedures may not apply. If the child placed for adoption is a foster child or is otherwise in the custody of a government agency or court (because, for example, the birth parents' rights were previously terminated for abuse or neglect), the government agency or court will generally obtain an SSN for the child and can make the SSN available to the prospective adoptive parent. Also, the prospective adoptive parent may be able to obtain the child's SSN from the birth parents (or other person) in the case of an adoption by the child's relatives or an adoption in which the adoptive parent and birth parent share information about the child and themselves.

Taxpayers are invited to comment on two issues partially addressed by the temporary regulations. First, comments are requested regarding what types of documents are available to establish that a child has been placed in the prospective adoptive parent's household for legal adoption. Also, comments are requested as to whether certain types of adoptions (in addition to foreign adoptions) should be completely excluded from the ATIN process. In particular, comments are requested regarding whether a prospective adoptive parent is always able to obtain a prospective adoptive child's SSN if the child is a foster child or is otherwise in the custody of a government agency or court.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Only individuals may receive ATINs under this Treasury decision, and an individual is not a small entity as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6).

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michael L. Gompertz of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6109–1T also issued under 26 U.S.C. 6109;

Section 301.6109–3T also issued under 26 U.S.C. 6109; * * *

Par. 2. Section 301.6109–1 is amended by adding paragraph (h)(2)(iii) to read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(h) * * *

(2) * * *

(iii) Paragraphs (a)(1)(i), (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section do not apply after November 24, 1997. For further guidance after November 24, 1997, see § 301.6109–1T(a)(1)(i), (a)(1)(ii) introductory text, and (a)(1)(ii)(A) and (B).

Par. 3. Section 301.6109–1T is added to read as follows:

§ 301.6109–1T Identifying numbers (temporary).

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Principal types.* There are four principal types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, employer identification numbers, and IRS adoption taxpayer identification numbers. Social security numbers take the form 000–00–0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000–00–0000 but include a specific number or specific numbers designated by the IRS. Employer identification numbers take the form 00–0000000.

(ii) *Uses.* Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. For the definition of social security number and employer identification number, see §§ 301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see § 301.6109–1(d)(3). For the definition of IRS adoption taxpayer identification number, see § 301.6109–3T. Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows—

(A) Except as otherwise provided in § 301.6109–1(a)(1)(ii)(D), paragraph (a)(1)(ii)(B) of this section, and § 301.6109–3T, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in § 301.6109–1(a)(1)(ii)(D) and § 301.6109–3T, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

(a)(1)(ii)(C) through (g) [Reserved]. For further guidance, see § 301.6109–1(a)(1)(ii)(C) through (g).

(h) *Effective date.* Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section are applicable after November 24, 1997. For further guidance prior to November 24, 1997, see § 301.6109–1(a)(1)(i), (a)(1)(ii)(A) and (a)(1)(ii)(B).

Par. 4. Section 301.6109–3T is added to read as follows:

§ 301.6109–3T IRS adoption taxpayer identification numbers (temporary).

(a) *In general*—(1) *Definition.* An *IRS adoption taxpayer identification number* (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in § 301.6109–1(d)(3)(i)) who has been placed, by an authorized placement agency, in the household of a prospective adoptive parent for legal adoption. An ATIN is assigned to the child upon application for use in connection with filing requirements under this title. When an adoption becomes final, the adoptive parent must apply for a social security number for the child. After the social security number is assigned, that number, rather than the ATIN, must be used as the child's taxpayer identification number on all returns, statements, or other documents required under this title.

(2) *Expiration and extension.* An ATIN automatically expires two years after the number is assigned. However, upon request, the IRS may grant an extension if the IRS determines the extension is warranted.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Authorized placement agency* has the same meaning as in § 1.152–2(c) of this chapter;

(2) *Prospective adoptive child* or *child* refers to a child who has not been adopted, but who has been placed in the household of a prospective adoptive parent for legal adoption by an authorized placement agency; and

(3) *Prospective adoptive parent* or *parent* refers to an individual in whose household a prospective adoptive child is placed by an authorized placement agency for legal adoption.

(c) *General rule for obtaining a number*—(1) *Who may apply.* A prospective adoptive parent may apply for an ATIN for a child if—

(i) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child;

(ii) An authorized placement agency places the child with the prospective adoptive parent for legal adoption;

(iii) The Social Security Administration will not process an application for an SSN by the prospective adoptive parent on behalf of the child (for example, because the adoption is not final); and

(iv) The prospective adoptive parent has used all reasonable means to obtain the child's assigned social security number, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

(2) *Procedure for obtaining an ATIN.* If the requirements of paragraph (c)(1) of this section are satisfied, the prospective adoptive parent may apply for an ATIN for a child on Form W–7A, *Application for Taxpayer Identification Number for Pending Adoptions* (or such other form as may be prescribed by the IRS). An application for an ATIN should be made far enough in advance of the first intended use of the ATIN to permit issuance of the ATIN in time for such use. An application for an ATIN must include the information required by the form and accompanying instructions, including the name and address of each prospective adoptive parent and the child's name and date of birth. In addition, the application must include such documentary evidence as the IRS may prescribe to establish that a child was placed in the prospective adoptive parent's household by an authorized placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include—

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) *Effective date.* The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6109–3T	1545–1564
* * * * *	

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: October 24, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–30550 Filed 11–21–97; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5824–6]

Georgia: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the provisions contained in the rules promulgated between July 1, 1994 and June 30, 1995, RCRA Cluster V. These requirements are listed in section B of this document. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revisions is available for public review and comment.

DATES: Final authorization for Georgia shall be effective January 23, 1998 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business December 24, 1997.

ADDRESSES: Copies of Georgia's program revision application are available during regular office hours of 9 a.m. to 5 p.m., Monday through Friday, at the following addresses for inspection and copying: Georgia Department of Natural Resources, Environmental Protection

Division, Floyd Towers East, Room 1154, 205 Butler Street, SE, Atlanta Georgia 30334; U.S. EPA Region IV, Library, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8448.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303; (404) 562–8448.

SUPPLEMENTARY INFORMATION:

I. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006 (g) of RCRA, 42 U.S.C. 6926 (g), and later apply for final authorization for HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270 and 279.

A. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia has received authorization for revisions to its program through RCRA Cluster IV on May 6, 1996. Today, Georgia is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application and has made an immediate final decision that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until December 24, 1997.

Copies of Georgia's application for these program revisions are available for inspection and copying at the locations indicated in the Addresses section of this document.

Approval of Georgia's program revisions shall become effective January 23, 1998, unless an adverse comment pertaining to the State's revisions discussed in this document is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the following Federal requirements promulgated between July 1, 1994 and June 30, 1995.

Checklist	Description	FR date and page	State rule
135	Amendments to Definition of Solid Wastes	59 FR 38545, 7/28/94	12–8–62(10)&(20), 12–8/64(1)(J) & (L), 12–8–65(a)(16)&(21) Rules effective 12/28/95 391–3–11–.07, 391–3–11–.10
136	Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal.	59 FR 43499 8/24/94	12–8–64(1)(A),(B)&(I), 12–8–65(a)(16)&(21) Rules effective 12/8/95, 391–3–11–.10, 391–3–11–.16
126.1	Testing and Monitoring Activities, Land Disposal Restrictions; Correction.	59 FR 47980, 9/19/94	12–8–62(10), 12–8–64((1)(A),(B)(D),(E) &(I), 12–8–65(a)(16)&(21) rule effective 12/28/95, 391–3–11–.16
137	Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	59 FR 48041, 9/19/94 60 FR 244 1/3/95 (correction)	12–8–62(11)(13)(14), 12–8–64(1)(A)(B)(D) (F)&(I) 12–8–65(a)(16)(21) rules effective 12/28/95 391–3–11–.07, 391–3–11–.10, 391–3–11–.16
139	Testing & Monitoring Activities	60 FR 3095 1/13/95	12/8/62(10), 12–8–64(1(A(B(D(E)(I),12–8–65(a)(16)(21) Rules effective 12/28/95 391–3–11–.02
140	Carbamate Production; Correction	60 FR 7848, 2/9/95, 60 FR 19165, 4/17/95, 60 FR 25620, 5/12/95	12–8–62(9)(10)(20), 12–8–64 (1)(D)(E)(J)(M), 12–8–65(a)(16)(21), Rules effective 12/28/95, and 12/30/96, 391–3–11–.07 (1)
141	Testing & Monitoring Activities	60 FR 17004, 4/4/95	12–8–62(10), 12–8–64 (1)(A)(B)(D))E))I), 12–8–65 (a)(16)(21), Rule effective 12/28/95 391–3–11–.07
142	Universal Waste Rule, Parts A, B, C, D, & E	60 FR 25492, 5/11/95	12–8–62 (13), 12–8–64 (1)(A)(B)(D)(E)(F)(I), 12–8–65 (a)(16)(21), Rule effective 12/28/95, 391–3–11–.02, 391–3–11–.07, 391–3–11.08, 391–3–11–.10, 391–3–11–.11, 391–3–11–.16, 391–3–11–.18
144	Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs: Removal of Legally Obsolete Rules.	60 FR 33912, 6/29/95	12–8–62 (10)(11), 12–8–64 (1) (A)(B)(C)(D)(E)(I) 12–8–65 (a) (3)(4)(16)(21), 12–8–66, Rules effective 12/28/95, 391–3–11–.07, 391–3–11–.10, 391–3–11–.11

Footnote: Georgia adopted the Universal Waste Rule by reference at 391–3–11–.18. A new section 391–3–11–.19 entitled Standards for Management of Waste Mercury-Containing Lamps was added to the rules effective December 30, 1996. Georgia has included this rule, 391–3–11–.19, in the authorization application as part of the state rules, but these rules will not be part of the authorized program.

B. Decision

I conclude that Georgia's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

II. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

III. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. The requirements being codified today are the result of Florida's voluntary participation in accordance with RCRA Subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, this codification incorporates into the Code of Federal Regulations Florida's requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

IV. Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates "State's" requirements which have been authorized by EPA under 40 CFR part 271 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation; Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 4, 1997.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 97–30818 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5925–3]

The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing and Deletion Policy for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of interim final policy statement.

SUMMARY: The Environmental Protection Agency (EPA) is announcing two interim final policy revisions relating to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA)). CERCLA requires that the NCP include a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (NPL), which is Appendix B of 40 CFR part 300, constitutes this list.

This document announces an interim final revision to the Agency's policy on placing Federal facility sites on the NPL. For those Federal facility sites already on the NPL, this document describes an interim final policy revision for deleting such sites from the NPL. The interim final policy revisions apply to Federal facility sites that are RCRA-regulated facilities engaged in treatment, storage, or disposal of hazardous waste ("TSDs" under the RCRA program). EPA requests public comments on these interim final policy revisions.

DATES: *Effective date:* These interim final policy revisions are effective November 24, 1997.

Comment date: The EPA will accept comments concerning these interim final policy revisions on or before January 23, 1998.

ADDRESSES: *By Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters: U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT: Seth Thomas Low, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response (Mail Code 5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–8692, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* (CERCLA or "the Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (SARA), Pub. L. No. 99–499, 100 Stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency (EPA or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth guidelines and procedures for responding under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 U.S.C. 9601(23). "Remedial action[s]" are those "consistent with permanent remedy taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR part 300, is the National Priorities List (NPL).

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). Although Federal facility sites are eligible for the NPL pursuant to 40 CFR 300.425(b)(3), section 111(e)(3) of CERCLA limits the expenditure of Superfund monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA promulgated as Appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

II. Existing Policy for Listing Federal Facility Sites on the NPL

On March 13, 1989 (54 FR 10520), the Agency adopted a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of Subtitle C of RCRA.

III. Interim Final Revisions to Policy for Listing Federal Facility Sites on the NPL

A. Purpose of Today's Document

This document announces an interim final revision to the Agency's policy on placing Federal facility sites on the NPL. This document also announces an interim final policy revision for deleting Federal facility sites from the NPL. See discussion under section IV, below. Under current EPA policy, the Agency does not consider whether a Federal facility site is also subject to RCRA cleanup authorities in determining whether to place the site on the NPL. Likewise, EPA does not currently consider RCRA cleanup authorities when deciding whether to delete a Federal facility site from the NPL. With today's document, EPA is revising these polices to allow consideration of RCRA cleanup authorities in making listing and deletion decisions for Federal facility sites. EPA requests public comments on these interim final policy revisions.

B. RCRA/NPL Deferral Policy

In the preamble to the final rule promulgating the initial NPL (48 FR 40662, September 8, 1983), EPA announced the RCRA/NPL deferral policy,[1] which provided that "where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA." Since that time, EPA has amended the RCRA/NPL deferral policy on a number of occasions.

On June 10, 1986 (51 FR 21057), EPA announced several components of a policy for placing RCRA-regulated sites on the NPL, but made clear that the policy applied only to non-Federal sites. The policy stated that the listing of non-Federal sites with releases that can be addressed under RCRA Subtitle C corrective action authorities generally would be deferred. However, EPA would continue to list certain RCRA facilities at which Subtitle C corrective action authorities are available if they had an HRS score of 28.50 or greater and fell within at least one of the following categories: (1) facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws; (2) facilities that have lost authorization to operate, or for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; or (3) facilities, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action. EPA noted that it would consider at a later date whether this policy for deferring non-Federal RCRA regulated sites from the NPL should apply to Federal facilities.

As noted in section II above, on March 13, 1989 the Agency adopted a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of RCRA Subtitle C.

C. Rationale For Revising the Policy For Placing Federal Facilities Sites on the NPL

Recently Congress amended CERCLA section 120(d) to expressly grant EPA the discretion to consider non-CERCLA cleanup authorities when making a listing determination for Federal facility sites. Section 120(d), as amended by section 330 of the Defense Authorization Act of FY 97, now provides that:

> It shall be an appropriate factor to be taken into consideration for the purposes of section 105(a)(8)(A) that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this Act [CERCLA], to a release or threatened release of a hazardous substance. [CERCLA section 120(d)(2)(B)]

EPA believes that amended section 120(d) provides EPA with clear legal authority to consider cleanup under RCRA Subtitle C corrective action when making a listing decision for Federal facility sites. The legislative history of this provision supports EPA's view. The conference committee report states that the revised section 120(d) gives EPA "the discretion to withhold National Priorities List designation of a Federal facility cleanup action if the site is already subject to an approved Federal or State cleanup plan." H.R. Conf. Rep. No. 724, 104th Cong., 2d Sess. 724 (1996). In light of this amendment to CERCLA and the ongoing Agency efforts for administrative reforms to CERCLA that allow greater flexibility to address Superfund sites, EPA is revising its listing policy for Federal facility sites. The Agency believes that this revision may free CERCLA oversight resources for use in situations where another authority is not available.

D. Criteria for RCRA/NPL Deferral of Federal Facility Sites

In today's document, EPA sets forth the criteria the Agency will consider in determining when a Federal facility site may not be placed on the NPL because the cleanup is being conducted pursuant to RCRA Subtitle C corrective action authorities ("RCRA/NPL deferral for Federal facility sites"). A site should satisfy all of these criteria to be eligible for deferral. Where there is uncertainty as to whether the criteria have been met, deferral generally will be inappropriate. The criteria are the following:

1. The CERCLA site is currently being addressed by RCRA Subtitle C corrective action authorities under an existing enforceable order or permit containing corrective action provisions.
2. The response under RCRA is progressing adequately.
3. The state and community support deferral of NPL listing.

E. Discussion of Each Criterion

The first criterion states that the site is being addressed by RCRA corrective action authorities under an existing order or permit. The criterion specifies that the requirement applies to sites as defined by CERCLA, and that the authority addressing the site is RCRA Subtitle C corrective action.

Under the first criterion, corrective action orders or permits issued by EPA or an authorized state program that address corrective action at the facility must generally be in place as a condition for deferral.[2] This criterion serves as an objective indicator that contamination at a site is addressable under RCRA corrective action authorities. The term "addressable" in this context means that a CERCLA site is fully remediable by a permit or order with a schedule of compliance, whether or not actual cleanup has begun. Corrective action permits or orders should require the cleanup of all releases at the CERCLA site (*e.g.*, if

[1] The terms *deferral* and *deletion* as used in the context of the NPL refer to the following: Deferral refers to the decision not to list a site on the NPL, or not retain a site on the NPL, to allow another authority (RCRA corrective action in this case) to handle the remediation of the site in lieu of CERCLA. Deletion is the act of taking a site off the NPL, which may occur because cleanup at a site is complete or because another authority (such as RCRA corrective action) can be used to bring about remediation at the site and further CERCLA action is not needed.

[2] It should be noted that the RCRA/NPL deferral does not relieve a Federal facility from the CERCLA section 120(d) requirement to conduct preliminary assessments.

contamination stemming from the CERCLA "release" extends beyond the boundaries of a particular RCRA facility, such releases must be addressable under RCRA sections 3004(v) and 3008(h) or other enforcement authority under RCRA).[3] Corrective action orders or permits which do not require cleanup of all releases at the CERCLA site should be modified to address such releases; otherwise the CERCLA site would not be a candidate for deferral.

Under the second criterion, EPA evaluates whether response under RCRA is progressing adequately. Under this criterion, noncompliance with corrective action orders or permits generally would be regarded as an indicator that response under RCRA is not progressing adequately. However, even if a Federal facility site (*i.e.*, the owner/operator) is in compliance with a corrective action order or permit, EPA may determine that response is not progressing adequately based upon other factors. For example, the Agency may consider whether there has been a history of protracted negotiations due primarily to an uncooperative owner or operator.

Under the third criterion, EPA evaluates whether the affected state and community where the Federal facility site is located support deferral of the NPL listing of such site. Under this criterion, EPA expects the state and Federal facility which are interested in NPL deferral to take appropriate steps to inform the affected community and other affected parties (*e.g.*, communities downstream from the site, Natural Resource Trustees, etc.), as appropriate, of such interest and seek community participation on such issue. EPA believes that community participation will be facilitated by the establishment of Restoration Advisory Boards or Site Specific Advisory Boards by the affected Federal agencies in conjunction with the state. The state and Federal facility which are interested in NPL deferral should also document all of their interactions with the community and inform EPA of any possible opposition to NPL deferral of the site.

IV. Policy for Deleting Sites From the NPL Based Upon RCRA Deferral

A. RCRA Deletion Policy

On March 20, 1995 (60 FR 14641), the Agency announced the adoption of a policy for deleting RCRA facilities from the NPL before a cleanup is complete, if the site is being, or will be, adequately addressed by the RCRA corrective action program, provided certain criteria were met. The Agency based its action on the goals of freeing CERCLA oversight resources for sites where another authority is not available and avoiding possible duplication of effort. The Agency made clear that such policy does not pertain to Federal facility sites, even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA.

B. Revision to RCRA Deletion Policy

This document announces that EPA is revising the RCRA deletion policy to also be applicable to Federal facility sites. As noted in section III. C, above CERCLA section 120(d) was amended to expressly authorize EPA to consider other cleanup authorities in making Federal facility site listing decisions. In light of EPA's express discretion under section 120(d), EPA believes that it is also now appropriate to apply the Agency's RCRA deletion policy to Federal facility sites on the NPL. The first criterion under the RCRA deletion policy is that a site be eligible for RCRA deferral under EPA's current RCRA/NPL deferral policy. Until EPA revised the 1989 Federal facility site listing policy no Federal facility could satisfy the RCRA deletion policy criteria.

The Agency believes that revising the RCRA deletion policy to be applicable to Federal facility sites is consistent with CERCLA section 120(d), as amended, and the ongoing Agency efforts for administrative reforms to CERCLA that allow greater flexibility to address Superfund sites. The Agency believes that this revision may free CERCLA oversight resources for use in situations where another authority is not available. By this interim final revision, the criteria and process stated in the March 20, 1995 RCRA deletion policy are now applicable for deleting Federal facility sites from the NPL.

[Notice: This document does not represent final agency action, but is intended solely as guidance. It does not create any legal obligations. EPA officials may decide to follow the policies discussed in this document, or to act at variance with such policies, based on an analysis of specific site circumstances.]

Dated: November 13, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 97–30518 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

[3] Under CERCLA, the term *facility* is meant to be synonymous with "site" or "release" and is not meant to suggest that the listing is geographically defined (56 FR 3600, February 11, 1991). The size or extent of a facility listed on the NPL may extend to those areas where the contamination has "come to be located." (See CERCLA section 101(9)). On the other hand, a "facility" as defined under RCRA is "all contiguous property under the control of the owner or operator seeking a Subtitle C permit" (58 FR 8664, February 16, 1993). Thus, a RCRA site relates more to property boundaries, and a CERCLA site/facility/release includes contamination irrespective of RCRA facility boundaries.

Proposed Rules

Federal Register

Vol. 62, No. 226

Monday, November 24, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572–AB33

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) hereby revises its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on new Congressional mandates, changes in the electric industry, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

DATES: Public comments must be received by RUS or bear a postmark or equivalent, no later than January 23, 1998.

ADDRESSES: Written comments should be sent to Gary J. Morgan, Director, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, Room 2242, 1400 Independence Ave., SW., Washington, DC 20250–1571. This proposed rule and the guidance bulletins in this rule will be available on the Internet via the RUS home page at www.usda.gov/rus/.

FOR FURTHER INFORMATION CONTACT: Gary J. Morgan, Director or Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address (gmorgan@rus.usda.gov) or (lwolfe@rus.usda.gov).

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for financial assistance under the RUS electric and telecommunications programs and the application for loans and grants under the RUS water and waste program are discretionary, regulatory requirements will, therefore, apply only to those entities which choose to apply for financial assistance or funding.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by January 23, 1998.

Comments are invited in: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

For further information contact Lawrence R. Wolfe, Senior Environmental Protection Specialist; Engineering and Environment Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW, Washington, DC 20250–1571. Telephone: (202) 720–1784. E-mail: (lwolfe@rus.usda.gov).

Title: 7 CFR Part 1794, Environmental Policies and Procedures.

OMB Number: 0572–NEW.

Type of Request: New collection.

Abstract: The information collection contained in this rule are requirements prescribed by the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders.

The major events which influenced the promulgation of the proposed revisions to this rule were the 1994 reorganization of the U.S. Department of Agriculture, which transferred the water and waste program from the former Farmers Home Administration to RUS, reforms within the electric and telecommunications programs, and fundamental changes in RUS' implementation of the CEQ regulations.

The proposed rule will combine all three programs (electric, telecommunications, and water and waste) under a single environmental regulation and will eliminate unnecessary and burdensome requirements previously imposed on applicants seeking financial assistance under the three programs. The streamlining of the regulation will allow RUS headquarters and field staff to more expeditiously evaluate the environmental implications of implementing RUS programs and thus speed up the delivery of these programs to qualified applicants.

RUS applicants would provide environmental documentation, as prescribed by the rule, to assure that policy contained in NEPA is followed.

The burden will vary depending on the type, size, and location of each project, which would then prescribe the type of information collection involved. The collection of information is only that information which is essential for RUS to provide environmental safeguards and to comply with NEPA as implemented by the CEQ regulations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 229 hours per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 600.

Estimated Number of Responses per Respondents: 3.

Estimated Total Annual Burden on Respondents: 415,000 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720–0812.

Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, Stop 1522, 1400 Independence Ave., SW., Room 4034, Washington, DC 20250–1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

National Performance Review

This regulatory action is being taken as part of the National Performance Review to eliminate unnecessary regulations and improve those that remain in force.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, 10.760, Water and Waste Disposal System for Rural Communities, 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments of the private sector. Thus today's rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandate Reform Act.

Background

On March 13, 1984, the Rural Electrification Administration (predecessor of RUS) published 7 CFR part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (49 FR 9544) covering the actions of the electric and telecommunications programs. Based on new Congressional mandates, changes in the electric industry, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a smooth, efficient, and effective manner.

The existing 7 CFR part 1794 was designed to process proposals from RUS' electric and telecommunications programs in addition to the agency's internal administrative actions. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), under which RUS became the successor to the Rural Electrification Administration, transferred the water and waste program from the former Farmers Home Administration (FmHA) to RUS. Most changes proposed to 7 CFR part 1794 are the result of the addition of the water and waste program to RUS. The environmental review requirements of the water and waste program were previously contained in 7 CFR part 1940, subpart G. While the environmental review of electric and telecommunications proposals is entirely managed from the national office, the environmental review of all but major or highly controversial water and waste proposals is managed by USDA Rural Development staff in state, county, or district offices. To avoid confusion, some sections and subsections are further subdivided to differentiate among the responsibilities of the three program areas. Examples of differences in program responsibilities and requirements can be found in § 1794.5, Responsible Officials and § 1794.13, Public Involvement.

Due to the requirements of the existing regulation, RUS has sometimes gone through a lengthy environmental review with no commensurate benefit to the quality of the human environment. Consequently, significant time and resources have been expended by RUS and its applicants when early indications strongly suggest that an easier and more expeditious procedure would be more prudent. Experience has shown that several types of minor RUS applicant proposals involve negligible environmental impact. In a number of instances, such projects have been delayed as a result of outdated procedures without any benefit to the quality of the human environment.

To foster clarity, readability, and brevity, this proposed rule includes changes to the format of the current rule. A list of definitions has been added to subpart A. Existing subparts B and C have been combined. The order in which proposals are classified in subpart C has been arranged from minor to major actions. The arrangement of subparts D through G mirrors the order of classification in subpart C. Information originally included in subpart J on Supplemental Environmental Impact Statements (EIS) has been incorporated into proposed subpart G.

Appendix A, which displays a flow chart of RUS' EIS process would be deleted. RUS believes that displaying a flow chart of its EIS process as part of this regulation had limited value and there is no benefit to include it in the proposed revision.

For further guidance in the preparation of public notices and environmental documents, RUS is preparing a series of guidance bulletins. Three program specific bulletins that will be issued concurrently with the final rule provide guidance in preparing the Environmental Report (ER) for proposed actions classified as categorical exclusions and proposed actions which require an Environmental Assessment (EA). A fourth bulletin provides applicants with guidance in the preparation of public notices and public involvement activities. Further information on these bulletins is provided in § 1794.8.

This proposed rule contains a variety of substantive and procedural changes from the provisions of the current rule. Some of these revisions are minor or merely intended to clarify existing RUS policy and procedure, such as § 1794.4 (Trivial Violations) which was deleted and § 1794.7 which defines some of the terminology specific to the agency. Other revisions reflect fundamental changes in RUS' implementation of the CEQ regulations and are outlined below.

The relationship between RUS and its electric and telecommunications applicants has changed substantially since RUS issued the final rule in March of 1984. Changes that have occurred in the last 4 years have been particularly dramatic. Historically, RUS provided substantially all of its applicants' capital needs and established a lending relationship reflecting that dominant lending role. However, because of limited annual loan authorization levels, RUS no longer serves such a role. Moreover, in a 1993 amendment to section 306E of the Rural Electrification Act of 1936, as amended (7 U.S.C. 936e), Congress required RUS to abandon its close hands-on control of its applicants and instead follow the practices of private market lenders. RUS has done so through the development of new forms of loan agreements and security instruments and the publication of 7 CFR Part 1717, subpart M, Operational Controls, which reduce or eliminate much of the oversight and control historically exercised by RUS.

Reflecting these changes and reforms, RUS proposes to revise that section of the regulations identifying actions requiring environmental review. Environmental reviews will be required in connection with the approval of financial assistance for applicants and the issuance of rules, regulations, and bulletins by RUS. No reviews will be required in connection with approvals provided by RUS pursuant to its loan contracts and security instruments with applicants such as approvals of lien accommodations or the use of general funds by applicants. These approvals are ministerial and are not federal actions subject to environmental reviews.

The existing regulation states that all RUS prepared environmental documents will use metric units with non-metric equivalents in parentheses and that environmental documents prepared by or for the applicant should follow the same format. RUS proposes to reverse that format. All RUS prepared environmental documents will use non-metric equivalents with one of the following two options: metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. RUS environmental guide bulletins will recommend that applicants follow the same format.

Within subpart C, a classification system defines the level of environmental review required for agency and applicant proposed actions. Sections 1794.21 through 1794.25 are further subdivided when appropriate to differentiate between actions being proposed by RUS and actions proposed by electric, telecommunications, and water and waste program applicants. The purpose of these additional subsections is to aid program applicants in determining the category in which their proposed action is classified.

A number of classification changes are being proposed within subpart C. These proposed reclassifications involve minor actions proposed by applicants which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the proposed changes will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within §§ 1794.21(a) and 1794.22(a), RUS proposes to modify the thresholds for acreage (facility sites), and capacity (generation facilities). Three categories of proposals that previously required RUS approval of applicant actions would be deleted, five categories of proposals would be downgraded to no longer require an Environmental Report (ER), and six new categories of proposals would be added to § 1794.21(a). One proposal that previously required an Environmental Assessment (EA) and two new categories of proposals would be added to § 1794.22(a).

In addition to modifying the thresholds for acreage and capacity, RUS proposes to impose different thresholds for construction of electric generating capacity at new sites versus existing sites and to add three new categories of proposals within § 1794.23. Proposed acreage and capacity threshold changes within § 1794.24, and a proposed capacity threshold change within § 1794.25 reflect changes that would be made in §§ 1794.21(a), 1794.22(a), and 1794.23. No change is proposed for the existing thresholds for transmission line length, however, the existing thresholds for multiple substations associated with transmission lines would be eliminated. Capacity thresholds would also be eliminated for hydroelectric proposals in §§ 1794.22 and 1794.23. RUS proposed instead to, in most cases, adopt the NEPA document prepared by the Federal Energy Regulatory Commission, the Federal licensing agency of hydroelectric projects in which RUS applicants participate.

The thresholds for proposed actions in the Water and Waste Program as defined in 7 CFR part 1940, subpart G, were reclassified in §§ 1794.21(b) and 1794.22(b). In 7 CFR part 1940, subpart G, EAs are classified into two categories, Class I and II; each category establishing a level of documentation commensurate with the extent of potential environmental impacts. Class I EAs were classified as routine minor actions which typically do not justify more extensive documentation as are necessary for Class II EAs. The Class I EA includes a checklist to document environmental impacts similar to that of a categorical exclusion.

Based on historical experience and a survey of the thresholds established by other agencies who administer similar types of water and waste programs, RUS is proposing to eliminate the two tiered classification for EAs and adopt the more traditional classification scheme as outlined in the CEQ regulations. Because RUS co-funds a significant portion of its projects with other Federal and State agencies, a more traditional classification and documentation scheme is thought to be more conducive to minimizing duplicative environmental review efforts.

All current thresholds in 7 CFR part 1940, subpart G were re-evaluated and would be reclassified based on the following parameters. The primary parameter determining thresholds between categorically excluded actions and those actions which require the preparation of EAs would be the volume of water or wastewater, as defined in terms of equivalent residential dwelling units. The proposed regulation would require applicants to design categorically excluded proposals to meet current needs with a modest growth potential and to serve predominantly residential uses either within the existing service area of a system or confined to within a one-mile extension beyond current community boundaries. The proposed regulation would require that proposed actions not meeting the above conditions warrant a more detailed analysis as outlined for EAs.

In addition, specialized criteria would be established for not classifying a proposed action as a categorical exclusion. These criteria are consistent conceptually with the U. S. Environmental Protection Agency's environmental review requirements in 40 CFR 6.505 for Title II of the Clean Water Act, Grants for Construction of Treatment Works.

Reviewers that disagree with RUS' proposed classifications and or thresholds are encouraged to cite specific experiences that support their position on this proposed action.

RUS proposes to modify its procedures in subparts D through G of this part. In § 1794.32, public notice requirements are established for proposed actions that impact important land resources (floodplains, wetlands, and important farmland). Notice of availability requirements in § 1794.42 would be modified for all three program areas. As proposed, the EA would be the subject document of the notice, where previously, the applicant's ER was the subject document. By this change the notice requirements for all three programs would be consistent for both EA proposals and EA with scoping proposals. This change will encourage more public involvement by allowing public review of EA proposals prior to the issuance of a Finding of No Significant Impact (FONSI).

RUS would also change its notice requirements for electric program projects requiring scoping. The timing of RUS' **Federal Register** notice for public scoping meetings in § 1794.52 would be reduced from 30 days to 14 days prior to the meeting. RUS has determined that no appreciable benefit has resulted from an earlier notice requirement. The existing regulation allows RUS to adopt the applicant's ER as its EA but requires RUS to prepare its own EA from the applicant's Environmental Impact Assessment (EIA) where a proposed action requires scoping. RUS proposes to change this requirement by allowing the EIA to serve as its EA provided RUS completes an independent evaluation which certifies the accuracy of the document (see § 1794.53) and thus be consistent with 40 CFR § 1506.5(a).

RUS would modify its policy regarding the use of contractor prepared EIS's. Under the existing regulation, RUS was required to use agency funds when an independent contractor was chosen by RUS to prepare the EIS. In accordance with the provisions of 7 CFR part 1789, "Use of Consultants Funded by Applicants" and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996, the draft and final EIS may be prepared by a consultant selected by RUS and funded by the applicant. A new requirement, publication of a notice of availability by RUS and the applicant for a Record of Decision would be established in § 1794.63. Information on Supplemental EIS's would be included in subpart G of this part.

Any environmental document accepted or prepared by RUS prior to the effective date of these regulations should be developed in accordance with the RUS' environmental requirements in effect at the time the document was accepted or prepared by RUS.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended by revising part 1794 to read as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

Subpart A—General

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1794.6 Responsible officials.
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Subpart B—Implementation of the National Environmental Policy Act

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1794.32 Environmental report.
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1794.41 Document requirements.
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1794.50 Normal sequence.
1794.51 Preparation for scoping.
1794.52 Scoping meetings.
1794.53 Environmental impact analysis.
1794.54 Agency determination.
1794.55—1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statement

1794.60 Normal sequence.
1794.61 Environmental impact statement.
1794.62 Supplemental EIS.
1794.63 Record of decision.
1794.64 Timing of agency action.
1794.65—1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents

1794.70 General.
1794.71 Adoption of an EA.
1794.72 Adoption of an EIS.
1794.73 Timing of agency action.
1794.74—1794.79 [Reserved]

Authority: 7 U.S.C. 6941 *et seq.*; 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508.

Subpart A—General

§ 1794.1 Purpose.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) for implementing the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4346); the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and certain related Federal environmental laws, statutes, regulations, and Executive Orders (E.O.) that apply to RUS' programs and administrative actions.

(b) The policies and procedures contained in this part are intended to help RUS officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. In assessing the potential environmental impacts of its actions, RUS will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with information on the issues that are truly significant to the action in question.

§ 1794.2 Authority.

(a) This part derives its authority from and is intended to be compliant with NEPA, CEQ Regulations for Implementing the Procedural Provisions of NEPA, and other RUS regulations.

(b) Where practicable, RUS will use NEPA analysis and documents and review procedures to integrate the requirements of related environmental statutes, regulations, and orders.

(c) This part integrates the requirements of NEPA with other planning and environmental review procedures required by law, or by RUS practice including but not limited to:

(1) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(2) The National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(3) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(4) E.O. 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 Comp., p. 154);

(5) E.O. 11514, Protection and Enhancement of Environmental Quality (3 CFR, 1970 Comp., p. 104);

(6) E.O. 11988, Floodplain Management (3 CFR, 1977 Comp., p. 117);

(7) E.O. 11990, Protection of Wetlands (3 CFR, 1977 Comp., p. 121); and

(8) E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations (3 CFR, 1994 Comp., p. 859).

(d) Applicants are responsible for ensuring that proposed actions are in compliance with all appropriate RUS requirements, environmental statutes, regulations, and E.O.s. Bulletins identified in § 1794.8 contain a list of certain statutes, regulations, and E.Os that may be applicable to proposed actions for which RUS financial assistance is provided. Environmental documents submitted by the applicant shall be prepared under the supervision and guidance of RUS and RUS will evaluate and be responsible for the accuracy of all information contained therein.

§ 1794.3 Actions requiring environmental review.

The provisions of this part apply to actions by RUS including the approval of financial assistance pursuant to the Electric, Telecommunications, and Water and Waste Programs, the disposal of property held by RUS pursuant to such programs, and the issuance of new or revised rules, regulations, and bulletins.

§ 1794.4 [Reserved]

§ 1794.5 Metric units.

RUS normally will prepare environmental documents using non-metric equivalents with one of the following two options; metric units in parentheses immediately following the non-metric equivalents or a metric conversion table as an appendix. Environmental documents prepared by or for a RUS applicant should follow the same format.

§ 1794.6 Responsible officials.

The Administrator of RUS has the responsibility for Agency compliance with all environmental laws, regulations, and E.O.s that apply to RUS programs and administrative actions. Responsibility for ensuring environmental compliance for actions taken by RUS has been delegated as follows:

(a) *Electric and Telecommunications Programs.* The appropriate Assistant Administrator is responsible for ensuring compliance with this part for the respective programs.

(b) *Water and Waste Program.* The Assistant Administrator for this program is responsible for ensuring compliance with this part at the national level. The State Director is the responsible official for actions taken at the State Office level.

§ 1794.7 Definitions.

The following definitions, as well as the definitions contained in 40 CFR part 1508 of the CEQ regulations, apply to the implementation of this part:

Applicant. The organization applying for financial assistance or other approval from either the Electric or Telecommunications Programs or the organization applying for a loan or grant from the Water and Waste Program.

Construction Work Plan (CWP). The document required by 7 CFR part 1710.

Emergency situation. The repairs made to return the damaged facilities of an applicant's system back to service because of a natural disaster or system failure that may involve an immediate or imminent threat to public health or safety.

Environmental Impact Analysis (EIA). The document submitted by the applicant for proposed actions subject to compliance with § 1794.24 and under special circumstances § 1794.25.

Environmental Report (ER). The environmental document and documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 and 1794.23. An ER for the Water and Waste Program refers to the environmental review documentation normally included as part of the Preliminary Engineering Report.

Environmental review. Any one or all of the levels of environmental analysis described under subpart C of this part.

Equivalent Dwelling Unit (EDU). Level of water or waste service provided to a typical rural residential dwelling.

Important Land Resources. Defined pursuant to the U.S. Department of Agriculture's Departmental Regulation 9500–3, Land Use Policy, as important farmland, prime forestland, prime rangeland, wetlands, and floodplains. Copies of the Departmental Regulation are available from USDA, Rural Utilities Service, Washington, DC 20250.

Loan Design. Document required by 7 CFR part 1737.

Preliminary Engineering Report (PER). Document required by 7 CFR part 1780 for Water and Waste Programs. A PER is prepared by an applicant's engineering consultant documenting a proposed action's preliminary engineering plan and design and the applicable environmental review activities as required in this part. Upon approval by RUS, the PER, or a portion thereof, shall serve as the RUS environmental document.

Supervisory control and data acquisition system (SCADA). Electronic monitoring and control equipment installed at electric substations and switching stations.

Third-party consultant. A party selected by RUS to prepare the EIS for proposed actions listed in § 1794.25 where the applicant initiating the proposal agrees to fund preparation of the document in accordance with the provisions of 7 CFR Part 1789, "Use of Consultants Funded by Borrowers" and Section 759A of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2204b(b)).

§ 1794.8 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1794A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b)); and RUS Bulletin 1794A–602 provides guidance in the preparation of public notices. Copies of

these bulletins are available upon request by contacting Rural Utilities Service, Publications Office, PSRA, Stop 1522; 1400 Independence Avenue, SW; Washington, D.C. 20250–1522.

(b) *Water and Waste Program.* RUS Bulletin 1780–26 provides guidance in preparing the PER for proposed actions classified as CEs (§ 1794.22(b)) and EAs (§ 1794.23(c)). A copy of this bulletin is available upon request by contacting the appropriate State Director. State Directors may provide supplemental guidance to meet State and local laws and regulations and to provide for orderly application procedures and efficient service to applicants. State Directors shall obtain the Administrator's approval for all supplements to RUS Bulletin 1780–26.

§ 1794.9 [Reserved]

Subpart B—Implementation of the National Environmental Policy Act

§ 1794.10 Applicant responsibilities.

As described in subpart C of this part, applicants shall, under RUS' direct guidance and supervision, prepare the applicable documentation concurrent with a proposed action's engineering, planning, and design activities. Documentation shall not be considered complete until all public review periods, as applicable, have expired and RUS' concurrence, as defined by the appropriate decision document and associated public notice, has been issued. This section does not in any way relieve RUS or the applicant of the responsibilities for the scope, objectivity, and content of the entire environmental document or compliance with any policy, regulation, EO, or statute.

§ 1794.11 Apply NEPA early in the planning process.

The environmental review process requires early coordination with and involvement of RUS. Applicants should consult with RUS at the earliest stages of planning for any proposal that may require an RUS action. For proposed actions that normally require an EIS, applicants shall consult with RUS prior to obtaining the services of an environmental consultant.

§ 1794.12 Consideration of alternatives.

In determining what are reasonable alternatives, RUS considers a number of factors. These factors may include, but are not limited to, the proposed action's size and scope, state of the technology, economic considerations, legal and socioeconomic concerns, availability of resources, and the timeframe in which the identified need must be fulfilled.

§ 1794.13 Public involvement.

(a) *General.* In carrying out its responsibilities under NEPA, RUS shall make diligent efforts to involve the public in the environmental review process through public notices and public hearings and meetings. Specific guidance is found in RUS bulletins. See § 1794.8.

(1) All public notices required by this part shall describe the nature, location, and extent of the proposed action and indicate the availability and location of additional information. They shall be published in newspaper(s) of general circulation within the proposed action's area of environmental impact and the county(s) in which the proposed action will take place or such other places as RUS determines.

(2) The number of editions in which the notices should be published will be established on a project-by-project basis. Alternative forms of notice may also be necessary to ensure that residents located in the area affected by the proposed action are notified. The applicant should consult with RUS prior to the issuance of notices.

(3) A copy of all comments received by the applicant concerning environmental aspects of the proposed action shall be provided to RUS in a timely manner. RUS and applicants shall assess and consider public comments both individually and collectively. Responses to public comments will be appended to the applicable environmental document.

(4) RUS and applicants shall make available to the public all environmental documents, comments received, errata sheets and amendments thereto, public notices, interagency correspondence, and any applicable reference material. These materials shall be placed in locations convenient for the public as determined by RUS and the applicants.

(5) Public hearings or meetings shall be held at reasonable times and locations concerning environmental aspects of a proposed action in all cases where, in RUS' opinion, the need for hearings or meetings is indicated in order to develop adequate information on the environmental implications of the proposed action. Public hearings or meetings will be coordinated to the extent practicable with other meetings which may be required by RUS. Applicants shall, as necessary, participate in all public hearings or meeting.

(6) Scoping procedures, in accordance with 40 CFR 1501.7, are required for proposed actions normally requiring an EA with scoping (§ 1794.24) or an EIS (§ 1794.25). RUS may require scoping procedures to be followed for other proposed actions where appropriate to achieve the purposes of NEPA.

(b) *Electric and Telecommunication Programs.* RUS shall have public notices published in the **Federal Register** and the applicant shall concurrently have a similar notice published in a newspaper(s) as described in this section. Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document.

(c) *Water and Waste Programs.* The applicant shall have public notices described in this section published in a newspaper(s). Applicants shall obtain proof of publication from the newspaper(s) for inclusion into the applicable environmental document. Only where the proposed actions requires an EIS shall RUS, in addition to applicant published notices, publish notice in the **Federal Register**.

§ 1794.14 Interagency involvement and coordination.

In an attempt to reduce or eliminate duplication of effort with State or local procedures, RUS will, to the extent possible and in accordance with 40 CFR 1506.2, actively participate with any governmental agency to cooperatively or jointly prepare environmental documents so that one document will comply with all applicable laws. Where RUS has agreed to participate as a cooperating agency, in accordance with 40 CFR 1501.6, RUS may rely upon the lead agency's procedures for implementing NEPA procedures. In addition, RUS shall request that:

(a) The lead agency indicate that RUS is a cooperating agency in all NEPA related notices published for the proposed action;

(b) The scope and content EA or EIS satisfies the statutory and regulatory requirements applicable to RUS; and

(c) The applicant shall inform RUS in a timely manner of its involvement in a proposed action where another Federal agency is preparing an environmental document so as to permit RUS to adequately fulfill its duties as a cooperating agency.

§ 1794.15 Limitations on actions during the NEPA process.

(a) Until RUS concludes its environmental review process, the applicant shall take no action concerning the proposed action which would have an adverse environmental impact or limit the choice of reasonable alternatives being considered in the environmental review process. See 40 CFR 1506.1.

(b) Electric Program. In determining which applicant activities related to a proposed action can proceed prior to completion of the environmental review process, RUS must determine, among other matters that:

(1) The activity shall not have an adverse environmental impact and shall not preclude the search for other alternatives. For example, purchase of water rights, optioning or transfer of land title, or continued use of land as historically employed will not have an adverse environmental impact. However, site preparation or construction at or near the proposed site (*e.g.* rail spur) or development of a related facility (*e.g.* opening a captive mine) normally will have an adverse environmental impact.

(2) Expenditures are minimal. To be minimal the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Administrator, and must not compromise the objectivity of RUS' environmental review. Notwithstanding other considerations, expenditures equivalent to up to 10 percent of the proposed action's cost normally will not compromise RUS' objectivity. Expenditures for the purpose of producing documentation required for RUS' environmental review are excluded from this limitation.

§ 1794.16 Tiering.

It is the policy of RUS to prepare programmatic level analysis in order to tier an EIS and an EA where it is practicable, and there will be a reduction of delay and paperwork, or where better decision making will be fostered. This policy is in compliance with the requirements of 40 CFR 1502.20.

§ 1794.17 Mitigation.

(a) *General.* In addition to complying with the requirements of 40 CFR 1502.14(f), it is RUS policy that a discussion of mitigative measures essential to render the impacts of the proposed action not significant will be included in or referenced in the Finding of No Significant Impact (FONSI) and the Record of Decision (ROD).

(b) *Water and Waste Program.* (1) Mitigation measures which involve protective measures for environmental resources cited in this part or restrictions or limitations on real property located in the service areas of the proposed action shall be negotiated with applicants and any relevant regulatory agency so as to be enforceable. All mitigation measures incorporating land use issues shall recognize the rights and responsibilities of landholders in making private land use decisions and recognize the responsibility of governments in influencing how land may be used to meet public needs.

(2) Mitigation measures shall be included in the letter of conditions.

(3) RUS has the responsibility for the post approval construction or security inspections or monitoring to ensure that all mitigation measures included in the environmental documents have been implemented as specified in the letter of conditions.

§§ 1794.18–1794.19 [Reserved]

Subpart C—Classification of Proposals

§ 1794.20 Control.

Electric and Telecommunications Programs. For environmental review purposes, RUS has identified and established categories of proposed actions (§§ 1794.21 through 1794.25). An applicant may propose to participate with other parties in the ownership of a project where the applicant(s) does not have sufficient control to alter the development of the project. In such a case, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposal and all applicants cumulatively own:

(a) Five percent or less of a project, the proposed action will not be considered a Federal action subject to this part;

(b) Thirty three and one-third percent or more of a project, the proposed action shall be treated in its usual category;

(c) More than five percent but less than 33⅓ percent of a project, RUS shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal. Consideration shall be given to such factors as:

(1) Whether construction would be completed regardless of RUS financial assistance or approval;

(2) The stage of planning and construction;

(3) Total applicant participation;

(4) Participation percentage of each utility; and

(5) Managerial arrangements and contractual provisions.

§ 1794.21 Categorically excluded proposals without an ER.

(a) *General.* Certain types of action taken by RUS do not normally require an ER. Proposed actions within this classification are:

(1) The issuance of bulletins and information publications that do not concern environmental matters or substantial facility design, construction, or maintenance practices;

(2) Procurement activities related to the operation of RUS; and

(3) Personnel and administrative actions.

(b) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed below, normally do not require the submission of an ER. These types of actions are subject to the requirements of § 1794.31. Applicants shall sufficiently describe all proposed actions so their proper classification can be determined. Detailed description shall be provided for those proposed actions so noted. Proposed actions within this classification are:

(1) Purchase of land where use shall remain unchanged, or the purchase of existing water rights where no associated construction is involved;

(2) Additional or substitute financial assistance for proposed actions which have previously received environmental review and approval from the RUS, provided the scope of the proposal and environmental considerations have not changed;

(3) Rehabilitation or reconstruction of transportation facilities within existing rights-of-way (ROW) or generating facility sites where there is no substantial increase in use. A description of the rehabilitation or reconstruction shall be provided to RUS;

(4) Changes or additions to microwave sites, substations, switching stations, telecommunications switching or multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (0.4 hectare). A description of the additions or changes and the area to be impacted by the expansion shall be provided to RUS;

(5) Internal modifications or equipment additions (*e.g.*, computer facilities, relocating interior walls) to structures or buildings;

(6) Internal or minor external changes to electric generating or fuel processing facilities and related support structures where there is negligible impact on the outside environment. A description of the changes shall be provided to RUS;

(7) Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites);

(8) The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site;

(9) SCADA and energy management systems involving no new external construction;

(10) Testing or monitoring work (*e.g.*, soil or rock core sampling, monitoring wells, air monitoring;

(11) Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed;

(12) Construction of electric power lines within the fenced area of an existing substation, switching station, or within the boundaries of an electric generating facility site. A description of the facilities to be constructed shall be provided to RUS;

(13) Contracts for certain items of equipment which are part of a proposed action for which RUS is preparing an EA or EIS, and which meet the limitations on actions during the NEPA process as established in 40 CFR 1506.1(d) and contained in § 1794.17 (*e.g.*, long lead time items such as turbines, boilers, or substation transformers);

(14) Rebuilding of power lines or telecommunications cables where road or highway reconstruction requires the applicant to relocate the lines either within or adjacent to the new road or highway easement or right-of-way. A description of the facilities to be constructed shall be provided to RUS;

(15) Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities. A description of the facilities to be constructed shall be provided to RUS;

(16) Construction of new power lines, substations, or telecommunications facilities on previously disturbed industrial or commercial, where the applicant has no control over the location of the new facilities. Related off-site facilities would be treated in their normal category. A description of the facilities to be constructed shall be provided to RUS;

(17) Participation by an applicant(s) in any proposed action where total applicant financial participation will be five percent or less;

(18) Purchase of existing facilities or a portion thereof where use or operation will remain unchanged and which presently are in compliance with environmental laws and regulations. A description of the facilities to be purchased along with a certification from the utility owner that the facilities are in compliance with applicable environmental laws and regulations shall be provided to RUS;

(19) Additional bulk commodity storage (*e.g.*, coal, fuel oil, limestone) within existing generating station boundaries. A certification attesting to the current state of compliance of the existing facilities and a description of the facilities to be added shall be provided to RUS;

(20) Proposals designed to reduce the amount of pollutants released into the environment (*e.g.*, precipitators, baghouse or scrubber installations, coal washing equipment) which will have no other environmental impact outside the existing facility site. A description of the facilities to be constructed shall be provided to RUS;

(21) Construction of standby diesel electric generators one megawatt or less and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or an industrial facility served by the applicant. A description of the facilities to be constructed shall be provided to RUS;

(22) Construction of onsite facilities designed for the transfer of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations for recycling or storage at an existing coal mine (surface or underground). A description of the facilities to be constructed shall be provided to RUS;

(23) Changes or additions to an existing water well system, including new water supply wells and associated pipelines within the boundaries of an existing well field or generating station site. A description of the changes or additions shall be provided; and

(24) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station that does not include the substitution of one fuel combustion technology with another.

(c) *Water and Waste Program.* Applications for financial assistance for certain proposed actions do not normally require the submission of an ER. These types of actions are subject to the classification requirements of § 1794.31. Proposed actions within this classification are:

(1) Management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(2) Proposed actions that primarily involve the purchase and installation of office equipment or motorized vehicles;

(3) The award of financial assistance for technical assistance, planning purposes, environmental analysis, management studies, or feasibility studies; and

(4) Loan closing and service activities that do not alter the purpose, operation, location, or design of the proposal as originally approved, such as subordinations, and amendments and revisions to approved actions, and the provision of additional financial assistance for cost overruns.

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) *Electric and Telecommunications Programs.* Applications for financial assistance for the types of proposed actions listed herein normally require the submission of an ER and are subject to the requirements of § 1794.32. In order to provide for extraordinary circumstances, RUS may require development of an ER for proposals listed in § 1794.21(b). Proposed actions within this classification are:

(1) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(i) Less that 69 kilovolts (kV);

(ii) Less than 230 kV if no more than 25 miles (40.2 kilometers) of line are involved; or

(iii) 230 kV or greater involving no more than three miles (4.8 kilometers) of line;

(2) Construction of buried and aerial telecommunications lines, cables, and related facilities;

(3) Construction of microwave facilities, SCADA, and energy management systems involving no more than five acres (2 hectares) of physical disturbance at any single site;

(4) Construction of cooperative or company headquarters, maintenance facilities, or other buildings involving no more than 10 acres (4 hectares) of physical disturbance or fenced property;

(5) Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right-of-way (ROW). Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction;

(6) Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(7) Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property;

(8) Construction of diesel electric generating facilities of five megawatts (MW) (nameplate rating) or less either at an existing generation or substation site. This category also applies to a diesel electric generating facility of five MW or less that is located at or adjacent to an existing landfill site and supplied with refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Additions to or the replacement of existing generating units at a hydroelectric facility or dam which will result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

(10) Construction of a battery energy storage system at an existing generating station or substation site;

(11) Proposals designed or associated with facilities that will reduce the amount of pollutants released into the environment which will not have significant environmental impacts outside of the existing facility site; and

(12) Construction of new water supply wells and associated pipelines not located within the boundaries of an existing well field or generating station site.

(b) *Water and Waste Program.* For certain proposed actions, applications for financial assistance normally require the submittal of an ER as part of the PER. These types of actions are subject to the requirements of § 1794.32. Proposed actions within this classification are:

(1) Rehabilitation of existing facilities, functional replacement or rehabilitation of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities, including but not limited to, replacement of utilities such as water or sewer lines and appurtenances for existing users with modest or moderate growth potential, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements;

(2) Facility improvements to meet current needs with a modest change in use, size, capacity, purpose or location from the original facility. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts;

(3) Construction of new facilities that are designed to serve populations less than 500 EDU in size with modest growth potential. The proposed action must be designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts and must be located within the existing service area of the facility;

(4) The extension, enlargement or construction of interceptors, collection, transmission or distribution lines within a one-mile (1.6 kilometer) limit from existing service areas estimated from any boundary listed as follows:

(i) The corporate limits of the community being served;

(ii) If there are developed areas immediately contiguous to the corporate limits of a community, the limits of these developed areas; or

(iii) If an unincorporated area is to be served, the limits of the developed areas;

(5) Actions described in § 1794.21(c)(4) which alter the purpose, operation, location, or design of the proposed action as originally approved;

(6) Installation of new water supply wells or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection; and

(7) The lease or disposal of real property by RUS which may result in a change in use of the real property in the reasonably foreseeable future and such change is equivalent in magnitude or type as described above.

(c) *Specialized criteria for not granting a CE for Water and Waste Projects.* An EA must be prepared if a proposed action normally classified as a CE meets any of the following:

(1) The facilities to be provided will either create a new or relocate an existing discharge to surface or ground waters;

(2) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; or

(3) The facilities would provide capacity to serve a population greater than 500 EDUs or a 30 percent increase in the existing population whichever is larger.

§ 1794.23 Proposals normally requiring an EA.

RUS will normally prepare an EA for all proposed actions which are neither categorical exclusions (§§ 1794.21 and 1794.22) nor normally requiring an EIS (§ 1794.25). For certain actions within this class, scoping and document procedures contained in §§ 1794.50 through 1794.54 shall be followed (see § 1794.24). The following are proposed actions which normally require an EA and shall be subject to the requirements of §§ 1794.40 through 1794.44.

(a) *General.* Issuance or modification of RUS regulations concerning environmental matters.

(b) *Telecommunications and Water and Waste Programs.* An EA shall be prepared for applications for financial assistance for all proposed actions not specifically defined as a CE or otherwise specifically categorized by the Administrator on a case-by-case basis.

(c) *Electric Program.* Applications for financial assistance for certain proposed actions normally require the preparation of an EA. Proposed actions falling within this classification are:

(1) Construction of combustion turbine or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of combustion turbine or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facilities of 10 MW (nameplate rating) or less. All new associated facilities and related electric power lines shall be covered in the EA;

(4) Repowering or uprating of an existing unit(s) at a fossil-fueled generating station where the existing fuel combustion technology of the affected unit(s) is substituted for another (*e.g.*, coal or oil-fired boiler is converted to a fluidized bed boiler or replaced with a combustion turbine unit);

(5) Installation of new generating units at an existing hydroelectric facility or dam, or the replacement of existing generating units at a hydroelectric facility or dam which will result in a change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the EA;

(6) A new drilling operation or the expansion of a mining or drilling operation;

(7) Purchase of existing facilities or a portion thereof which are presently in violation of Federal, State, or local environmental laws or regulations;

(8) Construction of cooperative headquarters, maintenance, and equipment storage facilities involving more than 10 acres (4 hectares) of physical disturbance or fenced property;

(9) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more involving more than three miles (4.8 kilometers) but not more than 25 miles (40 kilometers) of line;

(10) The construction of electric power lines and related facilities designed for or capable of operation at a nominal voltage of 69 kV or more but less than 230 kV where more than 25 miles (40 kilometers) of power line are involved;

(11) The construction of substations or switching stations requiring greater than five acres (2 hectares) but not more than 10 acres (4 hectares) of new physical disturbance at a single site; and

(12) Construction of facilities designed for the transfer and storage of ash, scrubber wastes, and other byproducts from coal-fired electric generating stations that will be located beyond the existing facility site boundaries.

§ 1794.24 Proposals normally requiring an EA with scoping.

(a) *Electric Program.* Applications for financial assistance for certain proposed actions require the use of a scoping procedure in the development of the EA. These types of actions are subject to the requirements of §§ 1794.50—1794.54. Proposed actions falling within this classification are:

(1) The construction of electric power lines and related facilities designed for and capable of operation at a nominal voltage of 230 kV or more where more than 25 miles (40 kilometers) of power line are involved;

(2) The construction of substations and switching stations require new physical disturbance or fencing of more than 10 acres (4 hectares) at any one site; and

(3) Construction of combustion turbines and diesel generators of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 10 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

(b) *Telecommunications and Water and Waste Programs.* There are no actions normally falling within this classification.

§ 1794.25 Proposals normally requiring an EIS.

Applications for financial assistance for certain proposed actions that may significantly affect the quality of the human environment shall require the preparation of an EIS.

(a) *Electric Program.* An EIS will normally be required in connection with proposed actions involving the following types of facilities:

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than diesel generators or combustion turbines. All new associated facilities and related electric power lines shall be covered in the EIS; and

(2) A new mining operation when the applicants have effective control (*e.g.*, dedicated mine or purchase of a substantial portion of the mining equipment).

(b) Proposals listed above are subject to the requirements of §§ 1794.60, 1794.61, 1794.63, and 1794.64. Preparation of a supplemental draft or final EIS in accordance with 40 CFR 1502.9 shall be subject to the requirements of §§ 1794.62 and 1794.64.

(c) *Telecommunications and Water and Waste Programs.* No groups or sets of proposed actions normally require the preparation of an EIS. The environmental review process, as described in this part, shall be used to identify those proposed actions for which the preparation of an EIS is necessary. If an EIS is required, RUS shall proceed directly to its preparation. Prior completion of an EA is not mandatory.

§§ 1794.26–1794.29 [Reserved]

Subpart D—Procedure for Categorical Exclusions

§ 1794.30 General.

The procedures of this subpart which apply to proposed actions classified as CE's in §§ 1794.21 and 1794.22 provide RUS with information necessary to determine if the proposed action meets the criteria for a CE. Where, because of extraordinary circumstances, a proposed action may have a significant effect on the quality of the human environment, RUS may require additional environmental documentation.

§ 1794.31 Classification.

(a) *Electric and Telecommunications Programs.* RUS will normally determine the proper environmental classification of projects based on its evaluation of the project description set forth in the construction work plan or loan design which the applicant is required to submit with its application for financial assistance. Each project must be sufficiently described to ensure its proper classification. RUS may require the applicant to develop detailed descriptions where appropriate.

(b) *Water and Waste Program.* RUS will normally determine the proper environmental classification for projects based on its evaluation of the preliminary planning and design information. This information is developed by the applicant under the guidance and supervision of the State Environmental Coordinator.

§ 1794.32 Environmental report.

(a) For proposed actions listed in §§ 1794.21(a) and 1794.21(b), the applicant is normally not required to submit an ER.

(b) For proposed actions listed in §§ 1794.22(a) and 1794.22(b), the applicant shall normally submit an ER or its equivalent. The applicant may be required to publish public notices and provide evidence of such with its ER if the proposed action is located in, impacts on, or converts important land resources.

§ 1794.33 Agency action.

RUS may act on an application for financial assistance upon determining, based on the review of documents as set forth above and such additional information as RUS deems necessary, that the project is categorically excluded.

§§ 1794.34–1794.39 [Reserved]

Subpart E—Procedure for Environmental Assessments

§ 1794.40 General.

This subpart applies to proposed actions described in § 1794.23. Where appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant impact on the environment, the preparation of an EIS shall be required and the procedures in subpart G of this part shall be followed.

§ 1794.41 Document requirements.

Applicants will provide an ER in accordance with the appropriate guidance documents referenced in § 1794.8. After RUS has evaluated the ER and has determined the ER adequately addresses all applicable environmental issues, the ER will normally serve as RUS' EA. RUS will take responsibility for the scope and content of an EA.

§ 1794.42 Notice of availability.

(a) Prior to RUS making a finding in accordance with § 1794.43 and upon RUS' authorization and guidance, the applicant shall have a notice published which announces the availability of the EA and solicits public comments on the EA.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** which announces the availability of the EA and solicits public comments on the EA.

§ 1794.43 Agency finding.

(a) If RUS finds, based on an EA that the proposed action will not have a significant impact on the human environment, RUS will prepare a FONSI. Upon authorization of RUS, the applicant shall have a notice published which informs the public of the RUS' finding and the availability of the EA and FONSI. The notice shall be prepared and published in accordance with RUS guidance.

(b) *Electric and Telecommunications Programs.* RUS shall have a notice published in the **Federal Register** that announces the availability of the EA and FONSI.

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of the RUS and applicant notices that a FONSI has been made.

§§ 1794.45–1794.49 [Reserved]

Subpart F—Procedure for Environmental Assessments With Scoping

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with Scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed actions normally requiring an EIS through the point at which the Environmental Impact Assessment (EIA) is submitted (see § 1794.54). After the EIA has been submitted, RUS will make a judgment to utilize the EIA as its EA and issue a FONSI or prepare an EIS.

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS will have its notice of intent to prepare an EA or EIS published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

(b) As part of the early planning, the applicant should consult with appropriate Federal, State, and local agencies to inform them of the proposed action, identify permits and approvals which must be obtained, and administrative procedures which must be followed.

(c) Before formal scoping is initiated, RUS will require the applicant to submit an Alternative Evaluation Study and either a Siting Study (generation) or a Macro-Corridor Study (transmission lines).

(d) The applicant is encouraged to hold public information meetings in the general location of the proposed action and any reasonable alternatives when such applicant meetings will make the scoping process more meaningful. A written summary of the comments made at such meetings must be submitted to RUS as soon as practicable after the meetings.

§ 1794.52 Scoping meetings.

(a) Both RUS and the applicant shall have a notice published which announces a public scoping meeting is to be conducted, either in conjunction with the notice of intent or as a separate notice.

(b) The RUS notice shall be published in the **Federal Register** at least 14 days prior to the meeting(s). The applicant's notice shall be published in a newspaper at least 10 days prior to the meeting(s). Other forms of media may also be used by the applicant to notice the meetings.

(c) Where an environmental document is the subject of the hearing or meeting, that document will be made available to the public at least 10 days in advance of the meeting.

(d) The scoping meeting(s) will be held in the area of the proposed action at such places as RUS determines will best afford an opportunity for public involvement. Any person or representative of an organization, or government body desiring to make a statement at the meeting may make such statement in writing or orally. The format of the meeting may be one of two styles. It can either be of the traditional style which features formal presentations followed by a comment period, or the open house style in which attendees are able to individually obtain information on topics or issues of interest within an established time period. A transcript will be made of the scoping meeting.

(e) As soon as practicable after the scoping meeting(s), RUS, as lead agency, shall determine the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review. RUS will develop a proposed scope for further environmental study and review. RUS will send a copy of this proposed scope to cooperating agencies and the applicant, and allow recipients 30 days to comment on the scope's adequacy and emphasis. After expiration of the 30 day period, RUS shall provide written guidance to the applicant concerning the scope of environmental study to be performed and information to be gathered.

§ 1794.53 Environmental impact analysis.

(a) After scoping procedures have been completed, RUS will require the applicant to develop and submit an EIA. The EIA shall be prepared under the supervision and guidance of the RUS staff and RUS will evaluate and be responsible for the accuracy of all information contained therein.

(b) The EIA will normally serve as the RUS EA. The EIA can also serve as the basis for an EIS, and under such circumstances will be made an appendix to the EIS. After RUS has reviewed and found the EIA to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the EIA to satisfy RUS' distribution plan.

(c) The EIA shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information. and shall be incorporated by summary or reference into the FONSI or ROD.

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory EA, RUS shall make a judgment as to whether or not the proposed action is a major Federal action significantly affecting the quality of the human environment. If a significant effect is evident, RUS will continue with the procedures in subpart G of this part. If a significant effect is not evident, RUS will proceed in accordance with §§ 1794.42 through 1794.44.

§§ 1794.55–1794.59 [Reserved]

Subpart G—Procedure for Environmental Impact Statements

§ 1794.60 Normal sequence.

For proposed actions requiring an EIS (see § 1794.25), the NEPA process shall proceed in the same manner as for proposed actions requiring an EA with

scoping through the point at which the scoping process is completed (see § 1794.52).

§ 1794.61 Environmental impact statement.

(a) *General.* An EIS shall be prepared in accordance with 40 CFR part 1502. The draft and final EIS may be prepared by a third-party consultant selected by RUS and funded by the applicant.

(1) After a draft or final EIS has been prepared, RUS and the applicant shall concurrently have a notice of availability for the document published. The time period allowed for review will be a minimum of 45 days for a draft EIS and 30 days for a final EIS. This period is measured from the date that the U.S. Environmental Protection Agency (EPA) publishes a notice in the **Federal Register** in accordance with 40 CFR 1506.10.

(2) In addition to circulation required by 40 CFR 1502.19, the draft and final EIS (or summaries thereof, at RUS' discretion) shall be circulated to the appropriate state, regional, and metropolitan clearinghouses.

(3) Where a final EIS does not require substantial changes from the draft EIS, RUS may document required changes through errata sheets, insertion pages, and revised sections to be incorporated into the draft EIS. In such cases, RUS shall circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as its final EIS. RUS will not circulate the draft EIS again, although the draft EIS will be provided if requested within 30 days of publication of notice of availability of the final EIS.

(b) *Electric Program.* Where an EIA has been prepared by the applicant or its consultant, RUS will develop its draft and final EIS from the EIA. An EIA will not be required if the draft and final EIS is prepared by a third-party consultant.

§ 1794.62 Supplemental EIS.

(a) A supplement to a draft or final EIS shall be prepared, circulated, and given notice by RUS and the applicant in the same manner (exclusive of scoping) as a draft and final EIS (see § 1794.61).

(b) Normally RUS and the applicant will have published notices of intent to prepare a supplement to a final EIS in those cases where a ROD has already been issued.

(c) RUS, at its discretion, may issue an information supplement to a final EIS where RUS determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). RUS and the applicant shall concurrently have a notice of availability published. The notice requirements shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. RUS shall take no final action on any proposed modification discussed in the information supplement until 30 days after the RUS notice of availability or the applicant's notice is published, whichever occurs later.

§ 1794.63 Record of decision.

(a) Upon completion of the review period for a final EIS, RUS will have its ROD published in accordance with 40 CFR 1505.2 and 1506.10.

(b) Separate RUS and applicant notices shall be published concurrently. The notices shall summarize the RUS decision and announce the availability of the ROD. Copies of the ROD will be made available upon request from the point of contact identified in the notice.

§ 1794.64 Timing of agency action.

(a) RUS may take its final action or execute commitments on proposed actions requiring an EIS or Supplemental EIS at any time after the ROD has been published.

(b) For budgetary purposes some financial assistance may be approved conditionally with a stipulation that no funds shall be advanced until a ROD has been prepared .

§§ 1794.65–1794.69 [Reserved]

Subpart H—Adoption of Environmental Documents.

§ 1794.70 General.

This subpart covers the adoption of environmental documents prepared by other Federal agencies. Where applicants participate in proposed actions for which an EA or EIS has been prepared by or for another Federal agency, RUS may adopt the existing EA or EIS in accordance with 40 CFR 1506.3.

§ 1794.71 Adoption of an EA.

RUS may adopt a Federal EA or EIS or a portion thereof as its EA. RUS shall make the EA available and assure that notice is provided in the same manner as if RUS had prepared the EA.

§ 1794.72 Adoption of an EIS.

(a) Where RUS determines that an existing Federal EIS requires additional information to meet the standards for an adequate statement for RUS' proposed action, RUS may adopt all or a portion of the EIS as a part of its draft EIS. The circulation and notice provisions for a draft and final EIS (see § 1794.61) apply.

(b) If RUS was not a cooperating agency but determines that another Federal agency's EIS is adequate, RUS shall adopt the EIS as its final EIS. RUS and the applicant shall have separate notices published advising of RUS' adoption of the EIS and independent determination of its adequacy.

(c) If the adopted EIS is generally available and meets the Agency's standards, RUS shall have a public notice published informing the public of its action and availability of the EIS to interested parties upon request. If the adopted EIS is not generally available, RUS shall have a public notice published as above and will circulate copies in accordance with 40 CFR 1502.19 and 1506.3.

§ 1794.73 Timing of agency action.

Where RUS has adopted another agency's environmental documents, the timing of the action shall be subject to the same requirements as if RUS had prepared the required EA or EIS.

§§ 1794.74–1794.78 [Reserved]

Dated: November 12, 1997.

Inga Smulkstys,

Deputy Under Secretary, Rural Development.

[FR Doc. 97–30341 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103330–97]

RIN 1545–AV08

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 6109 relating to taxpayer identifying numbers. The temporary regulations provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to these children. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 23, 1998. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 4, 1998, at 10:00 a.m., must be received by February 11, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103330–97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103330–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/taxregs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael L. Gompertz, (202) 622–4910; concerning submissions and the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by February 23, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 301.6109–3T(c). This information is required by the IRS to assign IRS adoption taxpayer identification numbers (ATINs) to children who are in the process of being adopted. Unless an ATIN is assigned to a prospective adoptive child, the prospective adoptive parent cannot claim a dependency exemption for the child under section 151, a dependent care credit for the child under section 21, or, for taxable years beginning after December 31, 1997, a child tax credit under section 24. The collection of information in § 301.6109–3T is thus required to obtain a benefit. The likely respondents are individuals.

The collection of information in § 301.6109–3T is satisfied by including the required information on Form W–7A or other form as may be prescribed by the IRS to apply for an ATIN. The burden for this requirement is reflected in the burden estimate for Form W–7A.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6109. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, March 4, 1998, at 10:00 a.m. in Room 2615. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by February 23, 1998 and submit requests to speak and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 11, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael L. Gompertz, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,

Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6109–1 also issued under 26 U.S.C. 6109;

Section 301.6109–3 also issued under 26 U.S.C. 6109; * * *

Par. 2. Section 301.6109–1 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) * * * (1) *Taxpayer identifying numbers*—(i) [The text of proposed paragraph (a)(1)(i) is the same as the text of § 301.6109–1T(a)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of proposed paragraph (a)(1)(ii) introductory text is the same as the text of § 301.6109–1T(a)(1)(ii) introductory text published elsewhere in this issue of the **Federal Register**].

(A) and (B) [The text of proposed paragraphs (a)(1)(ii)(A) and (B) are the same as the text of § 301.6109–1T(a)(1)(ii)(A) and (B) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 301.6109–3 is added to read as follows:

§ 301.6109–3 IRS adoption taxpayer identification numbers.

[The text of this proposed section is the same as the text of § 301.6109–3T published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–30540 Filed 11–21–97; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Notice of proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (62 FR 45366–45368) on August 27, 1997, a proposal to amend section D042.2.5 through D042.2.7 of the Domestic Mail Manual to update and clarify procedures for delivery of an addressee's mail to a Commercial Mail Receiving Agency (CMRA). The proposal provides procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and in delivery of the mail to a CMRA. The Postal Service requested comments by September 26, 1997. Due to several requests received for additional time, the Postal Service is extending the comment period to December 24, 1997.

DATES: Comments on the proposed rule change must be received on or before December 24, 1997.

ADDRESSES: Written comments should be mailed to Manager, Delivery, Operations Support, U.S. Postal Service, 475 L'Enfant Plaza SW Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: Representatives of the CMRA industry interested in the proposed update and clarification of procedures for delivery of an addressee's mail to a CMRA, has requested an extension of time to file comments regarding the proposed rules published on August 27, 1997. Central to this request is an asserted oversight by the industry organizations and CMRA operators of the **Federal Register** publication of August 27. The Postal Service believes that the public interest will be served by the fullest practicable exposition of facts concerning this issue and accordingly extends the time for comments until December 24, 1997.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30828 Filed 11–21–97; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC67

Disaster Assistance; Public Assistance Program Appeals; Hazard Mitigation Grant Program Appeals

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the procedure for the review and disposition of appeals related to Public Assistance grants and the Hazard Mitigation Grant Program (HMGP). The rule would reduce from three to one the number of appeals allowed, would reduce delays in final resolution of appeals, and would make new provisions for reimbursing administrative costs for preparing and processing appeals.

DATES: We invite your comments on this proposed rule, which may be submitted on or before January 23, 1998.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Regarding HMGP appeals, Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104; regarding Public Assistance appeals, Melissa M. Howard, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3053, facsimile (202) 646–3304.

SUPPLEMENTARY INFORMATION: Under section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a, any decision regarding eligibility or amount of assistance may be appealed. Currently FEMA allows three appeal levels, respectively, to the Regional Director, the Associate Director, and to the Director.

This proposed rule would reduce from three to one the number of appeals allowed to be taken by an applicant. The authority for appeal decisions will rest with the Regional Director, who will consult with FEMA Headquarters on all potential appeal denials when the amount in question is $1,000,000 or more in Federal funds.

This proposed change would support FEMA policy that the Regional Director is responsible for final decisions on all Public Assistance and HMGP funding. The Regional Director's appeal determination would be the Agency's final position on the matter.

The intent of this change is to reduce the significant amount of time and associated costs incurred by FEMA, grantees, and subgrantees to resolve appeal issues. Given the timeframes allowed, the current process can take up to two years to make a final decision by the Director of the Agency. This proposed change would provide applicants with a final resolution sooner than previously. All provisions for fair and impartial consideration required by the Stafford Act would be maintained.

The rule would be effective for all appeals made on or after the effective date of the rule. Appeals pending from a decision of a Regional Director or an Associate Director/ Executive Associate Director before the effective date of the rule may be appealed to the next higher appeal level in accordance with §§ 202.206 and 206.440 as they existed before the effective date of this rule. The decision of the FEMA official at the next higher appeal level would be final. For example, if a Regional Director had *not* made a decision on an appeal pending before the effective date of the rule the appeal would be decided in accordance with the new rule, and the decision of the Regional Director would be final. If a Regional Director had made a decision before the effective date of the rule, the decision could be appealed to the Associate Director or Executive Associate Director, whose decision would be final. If the appeal had been decided at the Associate Director level, the decision could be appealed to the Director, whose decision would be final.

The proposed rule also provides that grantees and subgrantees would be responsible for separately tracking and accounting for all costs associated with preparing and processing appeals. FEMA would reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals only when an appeal is decided in favor of the applicant. This change is proposed in the interest of responsible use of tax dollars, and in the face of an increasing number of appeals that have been identified as frivolous or without merit.

This proposed rule supersedes the proposed Public Assistance appeal procedure published on October 24, 1996, 61 FR 55122–55123.

National Environmental Policy Act

This proposed rule is categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental impact statement or environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Regulatory Flexibility Act

The Director certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule would reduce the number of appeals that an entity might make and is expected to reduce administrative burden and compliance requirements associated with appeals. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule complies with applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance.

Accordingly, 44 CFR part 206 is proposed to be amended as follows:

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.206 is revised to read as follows:

§ 206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the following procedures.

(a) *Format and Content.* The applicant or subgrantee will make the appeal to the Regional Director, in writing, through the grantee. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* The Regional Director is the deciding official on all appeals. The Regional Director will consult with FEMA Headquarters during the review of all potential appeal denials when the amount in question is $1,000,000 or more in Federal funds.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director will notify the grantee in writing as to the disposition of the appeal or of the need for additional information. A request by the Regional Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of requested additional information or the expiration of the period for providing the information, the Regional Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director will notify the grantee in writing of the disposition of the appeal.

(e) *Administrative costs of appeal.* Grantees and subgrantees must track and account for all costs associated with preparing and processing appeals. FEMA will not reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals that are not decided in favor of the applicant.

(f) *Transition.* (1) This rule is effective for all appeals filed on or after [30 days

after date of publication of final rule in the **Federal Register**].

(2) Appeals pending from a decision of a Regional Director or an Associate Director/Executive Associate Director before [the effective date of the final rule] may be appealed to the next higher appeal level in accordance with 44 CFR 206.206 as it existed before [the effective date of the final rule]. The decision of the FEMA official at the next higher appeal level shall be final.

3. Section 206.440 is revised to read as follows:

§ 206.440 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the following procedures.

(a) *Format and Content.* The applicant or subgrantee will make the appeal to the Regional Director, in writing, through the grantee. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* The Regional Director is the deciding official on all appeals. The Regional Director will consult with FEMA Headquarters during the review of all potential appeal denials when the amount in question is $1,000,000 or more in Federal funds.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director will notify the grantee in writing as to the disposition of the appeal or of the need for additional information. A request by the Regional Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of requested additional information or the expiration of the period for providing the information, the Regional Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director will notify the grantee in writing of the disposition of the appeal.

(e) *Administrative costs of appeal.* Grantees and subgrantees must track and account for all costs associated with preparing and processing appeals. FEMA will not reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals that are not decided in favor of the applicant.

(f) *Transition.* (1) This rule is effective for all appeals filed on or after [30 days after date of publication of final rule in the **Federal Register**].

(2) Appeals pending from a decision of a Regional Director or an Associate Director/Executive Associate Director before [the effective date of the final rule] may be appealed to the next higher appeal level in accordance with 44 CFR 206.440 as it existed before [the effective date of the final rule]. The decision of the FEMA official at the next higher appeal level shall be final.

Dated: November 17, 1997.

James L. Witt,

Director.

[FR Doc. 97–30808 Filed 11–21–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC68

Disaster Assistance; Fire Suppression Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would simplify the fire eligibility process from three thresholds to one threshold and would change the Federal cost share to 75 percent for fire suppression assistance.

DATES: We invite comments on this proposed rule and will accept comments until January 23, 1998.

ADDRESSES: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Curtis Carleton, Chief, Community Services Branch, Federal Emergency Management Agency, 500 C Street SW., room 713, Washington, DC 20472, 202–646–4535.

SUPPLEMENTARY INFORMATION: As defined in section 420 of the Stafford Act, FEMA may provide Federal assistance to any State for fire suppression on publicly or privately owned forest or grassland if the Governor determines that the fire suppression assistance is warranted. Currently, fire suppression assistance is (1) based on a three-tiered funding system and (2) funded with the cost share for at least 70 percent of eligible costs in excess of the floor cost. This amendment is intended (1) to eliminate the three-tiered funding system and (2) to adjust the minimum Federal cost share for eligible costs to not less than 75 percent.

In 1970, the cost share structure was established with the assistance of the United States Department of Agriculture (Forest Service) and the United States Department of Interior. The structure was created before the existence of a cost share structure for any other Federal disaster assistance program. As with other disaster assistance programs, it attempted to ensure that Federal assistance supplemented State and local governmental resources and complemented other Federal and State fire programs.

Federal assistance under the current fire suppression grant is based on a three-tiered threshold system, as follows:

Three Tiered FEMA Reimbursement Approach

(1) State pays 100 percent of costs until single declared fire cost equals floor cost, and then FEMA pays 70 percent of costs in excess of floor cost for that fire and all subsequent, declared fires.

(2) If State's expenses for all fires, declared or not, exceed average State fiscal year costs, FEMA pays 70 percent of all costs for declared fires (no deduction for floor cost).

(3) If State's expenses for all fires, declared or not, exceed twice the average fiscal year costs, FEMA pays 100 percent of all costs for declared fires.

This proposed rule would simplify the three-tiered process, replacing it with a single threshold process. The single threshold will allow Federal funding to be available when the cost of a single declared event exceeds the State's annual floor cost; the State costs greater than the floor cost will be available for funding at not less than 75 percent. Any federal fire declarations for the remainder of that calendar year will receive funding at not less than 75 percent of the costs.

This amendment would not change any provisions (e.g., eligibility, application, administrative planning, payment of claims, or appeals) in the Stafford Act nor in the fire suppression assistance regulations at 44 CFR part 206, subpart L.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12812, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 206

Disaster assistance.

Accordingly, 44 CFR Part 206 is proposed to be amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Part 206, Subpart L, Fire Suppression Assistance, is proposed to be amended by adding § 206.398 to read as follows:

§ 206.398 Federal grant assistance.

(a) *General.* This section describes the extent of Federal funding available under the State fire suppression grants as well as limitations and special procedures applicable to each.

(b) *Limitations of Federal expenditures.* Federal funding will be available when the annual floor cost is surpassed during a single federal declared event. The amount of expense greater than the floor cost will be cost shared as stated in the FEMA-State Agreement. Any Federal declared event for the remainder of that calendar year will be eligible for funding. The floor cost will be established at the beginning of each calendar year in joint consultation between the State and the United States Department of Agriculture (Forest Service).

(c) *Cost sharing.* All fire suppression costs approved under the State's grant will be subject to the cost sharing provisions established in the FEMA-State Agreement. FEMA will contribute not less than 75 percent of the costs approved for funding under the Fire Suppression Grant Program for disasters declared on or after [insert effective date of final rule]. FEMA will contribute at least 70 percent of the costs for funding for disasters declared before [insert effective date of final rule].

Dated: November 18, 1997.

James L. Witt,

Director.

[FR Doc. 97–30809 Filed 11–21–97; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 8]

RIN 2137–AB36

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces the next meeting of the RSPA Negotiated Rulemaking Committee. This committee is conducting a negotiated rulemaking to develop a proposed rule on qualification of pipeline employees performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The advisory committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid pipeline operators, representatives of state and federal governments, labor organizations, and other interested parties.

DATES: The Committee will meet from 9:00 am to 5:00 pm on December 3–5, 1997.

ADDRESSES: The Committee will meet at the William P. Clements Building, 300 West 15th Street, Austin, TX 78701.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov) regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

Issued in Washington, DC on November 19, 1997.

G. Tom Fortner,

Director for Compliance and State Programs.

[FR Doc. 97–30790 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971112286–7286–01; I.D. 102997E]

Fisheries of the Northeastern United States; Proposed 1998 Fishing Quotas for Atlantic Surf Clams and Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed fishing quotas for the 1998 Atlantic surf clam and ocean quahog fisheries; request for comments.

SUMMARY: NMFS proposes quotas for the Atlantic surf clam and ocean quahog fisheries for 1998. These quotas were selected from a range defined as optimum yield (OY) for each fishery and in compliance with overfishing definitions for each species. The intent of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1998.

DATES: Public comments must be received on or before December 24, 1997.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis

and recommendations, including the Environmental Assessment and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis, are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

Send comments to: Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—1998 Surf Clam and Ocean Quahog quotas."

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Assistant Administrator for Fisheries, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the OY for each fishery. It is the policy of the Council that the level selected allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the quotas would be set at a level that would meet the estimated market demand.

The fishing quotas must be in compliance with overfishing definitions for each species. The overfishing definitions are fishing mortality rates of $F_{20\%}$ (20 percent of maximum spawning potential (MSP)) for surf clams and $F_{25\%}$ (25 percent of MSP) for ocean quahogs.

Surf Clams

The Council recommends a 1998 fishing quota of 2.565 million bushels for surf clams, unchanged from the 1996 and 1997 quotas. The Council staff recommended a surf clam quota of 2.565 million bushels based on management advice from the Stock Assessment Review Committee for the 22nd Northeast Regional Stock Assessment Workshop (SAW 22), which recommended no change from the 1996–97 quotas of 2.565 million bushels until a new stock assessment is available with abundance estimates based on fishery catch rate and research survey data. The results of the 1997 surf clam and ocean quahog survey will not be available for the 1998 fishery.

Ocean Quahogs

The Council recommends an ocean quahog fishing quota of 4 million bushels, a 317,000 bushel reduction from the 1997 quota of 4.317 million bushels. This quota level is the lowest possible within the range of 4 and 6 million bushels as specified in the FMP. The Council, in making this recommendation, questioned the validity of assuming that all of the Georges Bank biomass will become available to the fishery over the course of the 30-year harvest period. A notice of closure of the Georges Bank area to fishing for surf clams or ocean quahogs was published on February 1, 1991 (56 FR 3980). The closure was implemented due to the appearance of high levels of the organism responsible for paralytic shellfish poisoning (PSP). The area will remain closed until the Secretary of Commerce determines that the adverse environmental conditions caused by the PSP toxin are no longer present. In 1996, when the Council made the assumption of a reopening occurring in the Georges Bank area, it stated that additional quota reductions would be necessary in the future if demonstrable progress is not made toward a reopening of Georges Bank in the near future. The SAW 22 did not offer management advice on the ocean quahog quota. However, it noted that a 30-year supply as dictated by Council policy is possible only if the estimated biomass on Georges Bank and in areas off Southern New England and Long Island, generally too deep to be harvested with current technology, is included. Furthermore, it cautioned that this strategy implies that sustainable fishing after 30 years will be limited to recruitment and a very slow annual growth of fully recruited quahogs. Noting the SAW 22 advice, the Science and Statistical (S&S) Committee was concerned with the issue of refugia. It suggested that the Council request the next SAW for surf clams and quahogs to consider the importance of refugia to new recruitment by examining biological and economic aspects for three scenarios: No refugia, Georges Bank only, and Georges Bank and the deep offshore unfished areas. The Council adopted this recommendation and passed a motion to request the next SAW to add this to its "Terms of Reference."

In proposing these quotas, the Council considered the most recent available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council and adopted by the Regional Administrator, Northeast Region, NMFS.

NMFS, in 1996, approved overfishing definitions for surf clams and ocean quahogs. The overfishing threshold for surf clams is a fishing mortality rate (F) of $F_{20\%}$. This translates roughly to F = 0.18 for surf clams (15.3 percent exploitation rate). The F in 1997 associated with a quota of 2.565 million bushels was approximately equal to 0.12 for all areas. The specific F associated with the 1998 surf clam quota will be able to be calculated when the new assessment is complete, but will be roughly the same as the estimated F in 1997 for all areas. The overfishing threshold for ocean quahogs is $F_{25\%}$, yielding F = 0.04 (4.3 percent exploitation rate). The 1997 ocean quahog quota yielded an F of approximately 0.032. The specific F associated with the 1998 quota will be calculated when the new assessment is complete and will be slightly less than the F in 1997 since the quota is slightly reduced. Therefore, the proposed quotas for both fisheries are below the approved overfishing threshold definitions.

At its August 1997 meeting, the Council rejected its staff recommendations of 2.565 million bushels for the 1998 surf clam quota and of 4.317 million bushels for the 1998 ocean quahog quota. Instead, the Council submitted to NMFS a surf clam quota recommendation of 2.3 million bushels, a 10-percent decrease from the 1997 surf clam quota and of 4 million bushels for ocean quahogs, a 317,000-bushel reduction from the 1997 quota of 4.317 million bushels. The recommendation to reduce the surf clam quota came as a result of testimony given by a segment of the industry in which they argued that a decline in consumer demand for surf clam products had depressed prices and increased inventories for a portion of the industry. In their argument to reduce quota, they invoked the Council's surf clam policy of "meeting estimated demand." In response to the August surf clam and quahog recommendations, several industry representatives, many of whom were not present at the August meeting, protested. This group solicited the Council to reconsider the quota recommendations. In addition, letters to the Council from the New England Fishery Management Council and from a major processor also expressed concern over reducing the surf clam quota to meet the estimated demand.

The Council voted to reconsider the surf clam quota recommendation at its September meeting. This resulted in a surf clam quota recommendation of 2.565 million bushels, as initially recommended by the Council staff and SAW 22. The ocean quahog quota recommendation remained unchanged at 4 million bushels. The rationale for the reduction in this quota is biologically based, and the recommendation was not reconsidered at the September Council meeting.

The proposed quotas for the 1998 Atlantic surf clam and ocean quahog fisheries are as follows:

Proposed 1998 SURF CLAM/Ocean QUAHOG Quotas

Fishery	1998 final quotas (bu)	1998 final quotas (hL)
Surf clam	2,565,000	1,362,000
Ocean quahog	4,000,000	2,122,000

Classification

This action is authorized by 50 CFR part 648, complies with the National Environmental Policy Act, and has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA), as part of the Regulatory Impact Review (RIR), that describes the impact the proposed specification, if adopted, would have on small entities. The proposed 1998 fishing quota for surf clams of 2.565 million bushels is unchanged from the 1996 and 1997 quotas. This quota is based on management advice from the Stock Assessment Review Committee for the 22nd Northeast Regional Stock Assessment Workshop, which recommended no change in the quotas until a new stock assessment is available with abundance estimates based on fishery catch rate and research survey data.

The proposed 1998 fishing quota for ocean quahogs of 4.000 million bushels is a 317,000 bushel reduction from the 1997 quota of 4.317 million bushels, a decrease of 7.3 percent. This Council quota recommendation reflects the lowest quota specification possible within the range of 4.000 and 6.000 million bushels specified in the fishery management plan. The Council staff recommendation for quahogs was to maintain the 1997 quota of 4.317 million bushels. The Science and Statistics and the Surf Clam and Ocean Quahog Committees of the Council both endorsed the staff recommendation. However, the Council's rationale for the reduction of the ocean quahog quota is biologically based and involves the conservation of the resource and preservation of the fishery.

All of the 56 vessels participating in the surf clam and ocean quahog fisheries in 1996 are small entities. Twenty fished exclusively for surf clams, 14 fished for surf clams and ocean quahogs, and 22 fished exclusively for ocean quahogs. The proposed quota for the ocean quahog fishery for 1998 is 7.3 percent less than the quotas for both 1996 and 1997. Because 22 of the 36 vessels participating in the ocean quahog fishery (61 percent) harvest ocean quahog only, it is assumed that most or all of those vessels will have a reduction of 5 percent or more in ex-vessel revenues in 1998 compared to 1996, the most recent year for which data are complete. Meanwhile, the analyses indicate that no vessels will cease operations and compliance costs will not increase total costs of production of more than 5 percent for 20 percent or more of the affected small entities as a result of the proposed specifications. A copy of the RIR/IRFA is available from the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 18, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30805 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971110265–7265–01; I.D. 101797A]

RIN: 0648–AJ98

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery Off Alaska; Change in Season Dates

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to change the dates of the scallop fishing season for Registration Area D (Yakutat) and Registration Area E (Prince William Sound), and Registration Area H exclusive of the Kamishak District. The new fishing season would begin on July 1 and end on February 15 of the following year. The intended effect of this action is to consolidate the scallop fishing seasons in Alaska in the summer months to improve vessel safety and product quality, and to maintain consistency between Federal and State of Alaska fishing season regulations. This action is necessary to promote the conservation and management objectives of the Fishery Management Plan for the Scallop Fishery off Alaska (FMP).

DATES: Comments must be received by December 9, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the Environmental Assessment/ Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Authority

The scallop fishery in the exclusive economic zone (EEZ) off Alaska is managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act and approved by NMFS on July 26, 1995. Regulations implementing the FMP are set out at 50 CFR part 679. General regulations that also affect fishing in the EEZ are set out at 50 CFR part 600. Amendment 1 to the FMP established a cooperative State-Federal management regime under which each management action by the State of Alaska (State) is mirrored by a parallel Federal management action. The purpose of this cooperative management regime is to give primary management responsibility to the State while preventing unregulated fishing in Federal waters.

In March 1997, the Alaska State Board of Fisheries (Board) approved an industry proposal to change the scallop season dates in the Yakutat and Prince William Sound Registration Areas. Previously, the scallop fishery in those areas opened on January 10 and closed on June 30 of each year. The Board's action changes State regulations by specifying a season opening of July 1 and a closure of February 15 of the following year. The Board recommended that a parallel season change be made in Federal regulations to prevent conflicting regulations at the State and Federal levels. The following two reasons were cited in the Board's

decision to move the scallop season dates for these areas.

Changing circumstances in the scallop fishery. The historic reason for a January opening in the Yakutat and Prince William Sound Registration Areas no longer exists under the current management regime. Prior to 1993, the Alaska Department of Fish and Game (ADF&G) did not establish Guideline Harvest Levels (GHLs) for each registration area. Instead, winter and summer openings were used in different areas to spread effort and to mirror the historic pattern of scallop fishing throughout the State. However, under Amendment 1 to the FMP, approved July 10, 1996, ADF&G and NMFS now establish GHLs or total allowable catch (TAC) amounts for each scallop registration area. As a consequence, the January openings for Yakutat and Prince William Sound are no longer necessary to distribute effort between registration areas because the separate TACs established for each registration area accomplish the same objective.

Safety issues. At its March 1997 meeting, the Board received extensive testimony from scallop fishermen who reported that January is an unsafe time to fish for scallops in the smaller vessels that compose most of the fleet. Fishing conditions are much safer in July than in January when severe winter storms are common in the Gulf of Alaska. Historically, the summer fishery in the western registration areas would extend into the fall and winter months. Vessel operators would typically begin scallop fishing in the Bering Sea and Alaskan Peninsula during July and move to the more sheltered waters of Yakutat and Prince William Sound in the winter. However, in recent years, TAC limits and/or crab bycatch limits are reached relatively quickly in the western registration areas. No reason exists to delay the Yakutat and Prince William Sound scallop fisheries until January when the worst winter weather occurs.

Federal response to Board action. The Board has already amended State regulations to establish a scallop fishing season of July 1 through February 15 for the areas in question. Therefore, the goal under Amendment 1 to the FMP to maintain consistency between State and Federal scallop regulations requires NMFS to implement a parallel change in Federal regulations. This revision to Federal regulations is necessary to prevent conflicting fishing seasons at the State and Federal level and the resulting disruption to industry. If no action is taken, cooperative State-Federal management of the fishery would be impossible. State waters in Prince William Sound and Yakutat would open on July 1 while Federal waters would open on January 10. Furthermore, ADF&G and NMFS would be forced to split the TACs between State and Federal waters and manage separately each portion of the TAC.

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows:

In the past two years, eight of the eleven scallop vessels active in Alaska have participated in the scallop fishery in Yakutat or Prince William Sound. This is a "substantial number" of small entities, as NMFS has interpreted this term to mean 20 percent of the total universe of small entities affected by the regulation. However the proposed action would not impose any compliance costs on small entities. Furthermore, the likely effects of the proposed action are positive and include: Safer fishing conditions for vessels and crews, and a consolidated fishing season that will reduce the overhead costs that are associated with conducting scallop fishing during two separate times of the year. Therefore, this action would not have a "significant impact," as NMFS has interpreted that term to mean a reduction in annual gross revenues by more than 5 percent, an increase in total costs of production by more than 5 percent, or compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

This regulatory change was requested by industry to consolidate the scallop fishing seasons off Alaska and to improve safety in the fishery. While industry indicates that this regulatory change will improve safety, it will not have a significant economic impact on a substantial number of small entities because the scallop harvest quotas and other management measures for the fishery will remain unchanged. As a result, a regulatory flexibility analysis was not prepared. Copies of the EA/RIR are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 18, 1997.

David L. Evans,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 773 *et seq.*, and 3631 *et seq.*

2. Section 679.64 is revised to read as follows:

§ 679.64 Seasons.

(a) Fishing for scallops in the Federal waters off Alaska is authorized from 0001 hours, A.l.t., July 1, through 1200 hours, A.l.t., February 15 of the following year, subject to the other provisions of this part, except as provided in paragraphs (b) and (c) of this section.

(b) Fishing for scallops in the Federal waters of the Kamishak District of Scallop Registration Area H is authorized from 1200 hours, A.l.t., August 15 through 1200 hours, A.l.t., October 31, subject to the other provisions of this part.

(c) Fishing for scallops in the Federal waters of Registration Area A is authorized from 1200 hours A.l.t., January 10 through 1200 hours, A.l.t., June 30, subject to the other provisions of this part.

[FR Doc. 97–30803 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 226

Monday, November 24, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Small Farms; Meeting

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Agriculture by Departmental Regulation No. 1043–43 dated July 9, 1997, established the National Commission on Small Farms (Commission) and further identified the Natural Resources Conservation Service to provide support to the Commission. The purpose of the Commission is to gather and analyze information regarding small farms and ranches and recommend to the Secretary of Agriculture a national policy and strategy to ensure their continued viability. The Commission's next meeting is December 10, 11, and 12, 1997.

PLACE, DATE AND TIME OF MEETING: On December 10, the Commission will meet at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia from 7:00 p.m to 10:00 p.m. On December 11 and 12, the Commission will meet at the U.S. Department of Agriculture, Jamie L. Whitten Building, Room 107A, 1400 Independence Avenue S.W., Washington, D.C. On each day the Commission will meet from 8:00 a.m. to 5:00 p.m. to conduct Commission business. The purpose of the meeting is to finalize the Commission's findings and recommendations for consideration by the Secretary of Agriculture. The meeting is open to the public.

ADDRESSES: National Commission on Small Farms, USDA, PO Box 2890, Room 5237, South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Jennifer Yezak Molen, Director, National Commission on Small Farms, at the address above or at (202) 690–0648 or (202) 690–0673. The fax number is (202) 720–0596.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to gather and evaluate background information, studies, and data pertinent to small farms and ranches, including limited-resource farmers. On the basis of the review, the Commission shall analyze all relevant issues and make findings, develop strategies, and make recommendations for consideration by the Secretary of Agriculture toward a national strategy on small farms. The national strategy shall include, but not be limited to: Changes in existing policies, programs, regulations, training, and program delivery and outreach systems; approaches that assist beginning farmers and involve the private sectors and government, including assurances that the needs of minorities, women, and persons with disabilities are addressed; areas where new partnerships and collaborations are needed; and other approaches that it would deem advisable or which the Secretary of Agriculture or the Chief of the Natural Resources Conservation Service may request the Commission to consider.

The Secretary of Agriculture has determined that the work of the Commission is in the public interest and within the duties and responsibilities of USDA. Establishment of the Commission also implements a recommendation of the USDA Civil Rights Action Report to appoint a diverse commission to develop a national policy on small farms. Individuals may submit written comments to the contact person listed above before or after the meeting.

Dated: November 19, 1997.

Pearlie S. Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 97–30830 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee will meet on December 5, 1997 at the conference room in the Mendocino National Forest Supervisors Office, 825 N. Humboldt Avenue, Willows, California. The meeting will begin at 9:00 a.m. and adjourn at 3:30 p.m. Agenda items to be covered include: (1) Clear Creek Watershed Analysis Status, Community Proposal, and Grant Submittal; (2) Province Vegetation Mapping; (3) Effectiveness Monitoring Status; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Kathy Hammond, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1360.

Dated: November 17, 1997.

Kathy L. Hammond,

PAC Coordinator.

[FR Doc. 97–30764 Filed 11–21–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 13, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia (62 FR 6758). This review covers Heveafil Sdn. Bhd. ("Heveafil"), Rubberflex Sdn. Bhd. ("Rubberflex"), Filati Lastex Elastofibre (Malaysia) ("Filati"), Rubfil Sdn. Bhd. ("Rubfil") and Rubber Thread International (Rubber Thread) (collectively "respondents"), manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is October 1, 1993 through September 30, 1994. We gave interested parties an opportunity to comment on our preliminary results.

Petitioner and respondents submitted case briefs on March 10, 1997 and rebuttal briefs on March 17, 1997. No hearing was conducted in this review. Therefore, we have based our analysis on the comments received, and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or James Terpstra, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4740 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. We are conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Background

On October 7, 1992, the Department published in the **Federal Register** (57 FR 46150) the antidumping duty order on extruded rubber thread from Malaysia. In October 1994, the petitioner, North American Rubber Thread, and the following respondents requested the Department to conduct an antidumping administrative review covering the period October 1, 1993 through September 30, 1994: Heveafil Sdn. Bhd. ("Heveafil"), Rubberflex Sdn. Bhd. ("Rubberflex"), Filati Lastex Elastofibre (Malaysia) ("Filati"), and Rubfil Sdn. Bhd ("Rubfil"). In addition, petitioner requested a review of Rubber Thread International (Rubber Thread). On November 14, 1994, we published a notice of initiation of an administrative review of this order for the period October 1, 1993, through September 30, 1994 (59 FR 56459). We conducted a verification of Rubberflex in Malaysia from September 23, 1996 until October 5, 1996, and of its U.S. affiliate in Hickory, North Carolina from October 16 to 18, 1996. Our preliminary results of review were published in the **Federal Register** on February 13, 1997 (62 FR 6758). Petitioner, Heveafil, Filati, Rubfil and Rubberflex filed case briefs on March 10, 1997 and rebuttal briefs on March 17, 1997. Rubber Thread reported that it made no shipments of the subject merchandise during the POR. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and U.S. Customs purposes. Our written description of the scope of this review is dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from North American Rubber Thread (petitioner), and Rubberflex, Rubfil, Heveafil and Filati (respondents).

Best Information Available (BIA) for Rubberflex

We found that responses provided by Rubberflex could not be verified within the meaning of section 776(b) of the Act. For a significant portion of the cost and expense items reviewed at verification, the information provided in the questionnaire responses was inaccurate or could not be verified. This includes, but is not limited to, information on indirect selling expenses, overhead, selling, general and administrative (SG&A) expenses, labor, materials, rebates, corporate structure, and the completeness of U.S. sales reporting. For numerous items, Rubberflex attempted to present revised information at verification. However, Rubberflex failed to disclose the numerous errors in its responses prior to, or at the start of, verification, as repeatedly requested by the Department. Rather, Rubberflex attempted to present its new information in a piecemeal manner, often late in the verification. This effectively precluded the Department from having adequate time to evaluate the scope and magnitude of the changes. Accordingly, we determined that Rubberflex failed to demonstrate the completeness and accuracy of its questionnaire responses at verification and thus failed verification.

As discussed in comments 1 through 27 below, we carefully reviewed Rubberflex's arguments in light of the February 14, 1997 verification report (verification report) and the supporting verification exhibits. This analysis reveals that Rubberflex's brief systematically mischaracterizes, and seeks to minimize the importance of, all of the myriad problems encountered at verification. As described below, and as in the preliminary results of review, we find that, pursuant to section 776(b) of the Act, the errors and problems found at verification render Rubberflex's questionnaire responses unusable for purposes of calculating a margin.

Section 776(b) of the Act requires the Department to use the best information available (BIA) if it is unable to verify the accuracy of the information submitted. In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. *See* 19 CFR 353.37(b). Thus, the Department may determine the appropriate BIA on a case-by-case basis.

In cases where we have determined to use total BIA, we apply a two tier methodology of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995). When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's proceedings, we assign that company first-tier BIA, which is the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

When a company substantially cooperates with our requests for information including, in some cases, verification, but failed to provide complete or accurate information, we assign that company second-tier BIA, which is the higher of: (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate for any firm in this review for the class or kind of merchandise from the same country of origin. *See Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993).

We applied second-tier BIA to Rubberflex. While Rubberflex cooperated throughout the administrative review by submitting questionnaire responses and submitting to verification, we found that responses provided by Rubberflex could not be verified. Accordingly, we resorted to BIA pursuant to section 776(b) of the Act. The deficiencies are outlined in detail in the preliminary results of review and in the public version of the memorandum on Rubberflex's Failed Verification from Holly Kuga to Jeffrey P. Bialos, dated December 12, 1996.

In this case, the BIA rate is the highest calculated rate for any firm in this review for the class or kind of merchandise from the same country of origin. Thus, as a result of our review, we determined the dumping margin for Rubberflex to be 29.83 percent.

Comments Concerning Rubberflex

Rubberflex argues that the Department was not justified in disregarding its responses and assigning a total BIA rate in the preliminary results. Rubberflex contends that the Department verified Rubberflex's questionnaire responses, and that, at most, the Department should use partial BIA for certain aspects of its dumping calculations. Rubberflex made numerous detailed arguments refuting and rebutting the Department's preliminary results, verification report, and verification failure memo. We have addressed these to the greatest extent practicable in this notice. However, many of the comments are extremely detailed and many can only be completely addressed by reference to proprietary data. Accordingly, we addressed each comment in complete detail in a proprietary analysis memorandum to the file dated November 12, 1997.

Comment 1: Reconciliation of Sales, Profit and Expenses. Rubberflex maintains that it provided the Department with a reconciliation of its calendar year 1993 and 1994 trial balances to the appropriate audited, consolidated financial statements at verification. Rubberflex states that, contrary to the verification report, total sales, profit, financing expenses, and indirect selling expenses were reconciled to the audited financial statements.

DOC Position: We agree that Rubberflex was able to reconcile the total value of the expenses reported on the trial balance to its audited financial statements for the above-mentioned figures. We disagree that this had any bearing on the verification of the amounts reported in the questionnaire response. This reconciliation was not what was requested of the company at verification. Rubberflex voluntarily provided the reconciliation of sales, cost and profit from the trial balance to the audited financial statement in response to the Department's request that it demonstrate that the indirect selling expenses figures provided in the revised response provided at verification tied to the audited financial statements. Rubberflex did not demonstrate that the figures reported in its revised response for indirect selling expenses and G&A tied to its audited financial statements.

Comment 2: Reconciliation of Rubberflex's Affiliates' Financial Statements. Rubberflex disputes the Department's determination that its home market indirect selling expenses did not reconcile to its current financial statement due to the fact that indirect selling expenses incurred in Rubberflex's U.K. and German branch offices (expenses which account for differences between the home market indirect selling expenses and the financial statement) could not be verified. Rubberflex contends that during verification it demonstrated how total sales, expenses, and profits of the U.K. and German branches accounted for differences between consolidation totals and totals for Rubberflex in Malaysia. Further, Rubberflex claims that it should not be held accountable for providing original copies of the auditors' consolidation worksheets in the short time permitted at verification. Rubberflex also contends that it stressed during verification that information involving its U.K. and German branches could only be accurately verified on site in those particular countries.

DOC Position: We disagree. It is one of the primary requirements of verification that a company is required to tie the information in its questionnaire response to its audited consolidated financial statements. Rubberflex failed to do so at verification. Rubberflex is essentially arguing that we should accept their attempt, but ultimate failure. We disagree. Given the circumstances of this review, where Rubberflex provided numerous, inadequately explained or documented revisions to its questionnaire response, Rubberflex's failure in this regard undermines the entire verification.

Comment 3: Italian Sales List. Rubberflex states that the Department verified that all Italian sales were reported. Moreover, Rubberflex contends that the Department noted no discrepancies when Rubberflex tied Italian sales to its 1993/94 audited financial statements and other ledger balance accounts. Rubberflex claims that the sales prices and quantity for all third-country sales reviewed by the Department tied to source documents presented by Rubberflex, except for one minor discrepancy in the quantity reported in the sales list.

DOC Position: The Department did not note any discrepancies in its verification report with respect to the volume and value of sales to Italy. However, we did not verify the price of Italian back-to-back sales or inventory sales, since the proof of payment information is kept in Italy.

Comment 4: Foreign Inland Freight, and Brokerage and Handling. Rubberflex contends that these expenses were reported on a transaction-specific basis, and charged on a flat-rate based on the size of the container or the bill of lading. Although Rubberflex was unable to present original invoices for these expenses, or proof of payment on two preselected sales, Rubberflex contends that it was able to demonstrate that the flat fee allocated according to the actual quantity shipped tied to amounts reported in its response.

DOC Position: We agree that Rubberflex was unable to present original invoices for these expenses, or proof of payment on two preselected sales. In addition, our December 12, 1996 memorandum *Rubberflex Sdn. Bhd.: Reasons for a determination of failed verification for the 1993–1994 and 1994–1995 reviews of extruded rubber thread from Malaysia (A–557–805)* (December 12, 1996 memorandum) states that, Rubberflex was missing a number of freight invoices and/or the batch statements tying the invoices to the financial statements, and as a result, [we] could not document freight expenses from the factory to the port. Therefore, we disagree that Rubberflex was able to demonstrate that the flat fee allocated according to the actual quantity shipped tied to amounts reported in its response.

Comment 5: Ocean Freight. Rubberflex claims that the Department verified ocean freight on sales to Italy on a transaction-specific basis, and found no discrepancies in the information presented with respect to pre-selected sales.

DOC Position: We agree with Rubberflex's characterization of the verification of ocean freight.

Comment 6: Credit Expenses in the Home Market. Rubberflex states that its original response contained the

information needed to calculate credit expenses for third-country sales and that this response was neither revised nor found to contain any significant errors during verification.

DOC Position: Our verification report notes that Rubberflex reported the appropriate expenses for its net interest expense in the cost response, but omitted certain expenses related to export credit refinancing (EAR) expenses from its calculation of the interest rate used in home market sales. Therefore, we disagree with Rubberflex's contention that credit expenses for third-country sales were verified as reported.

Comment 7: Packing Expenses Incurred in the Home Market. Rubberflex claims that at the beginning of verification, it disclosed to the Department that it had erroneously allocated the cost of all factory workers' benefits in the category of fixed overhead costs, rather than allocating that cost among direct labor costs, fixed overhead costs, and packing labor costs. Rubberflex stated that a corrected worksheet reflecting this reallocation was submitted to the Department at the beginning of the cost verification, and subsequently verified. Rubberflex contends that a comparison of the original to the corrected worksheets reveals only minor changes in the calculation of packing labor costs. Further, Rubberflex also contends that it submitted an additional worksheet which proved that the reallocation did not affect the total cost of production (COP) or constructed value (CV).

DOC Position: We agree with Rubberflex that we found only minor discrepancies in Rubberflex's calculation of packing material and labor expenses. However, we disagree that Rubberflex presented any documentation at the beginning of verification to demonstrate what changes it made to the classification of labor expenses in its sales and cost response. Rubberflex did make a general oral statement that it had reallocated some labor costs across packing, indirect overhead and factory labor, but it did not spell out those changes. The Department then directly and repeatedly requested Rubberflex to provide this information in writing, which it said it would do. However, Rubberflex failed to report any of its changed allocations until each subject arose in the course of the verification.

Comment 8: Indirect Selling Expenses Incurred in the Home Market. Rubberflex states that the worksheets provided in its questionnaire response regarding home market indirect selling expenses and general and administrative expenses (G&A) were based on its auditor's presentation of G&A expenses, which in turn were based on Rubberflex's trial balance and general ledger. Rubberflex contends that the titles of the concepts listed in the auditor's presentation did not always relate directly to the titles of the accounts used by Rubberflex in the ordinary course of business because the auditor collapsed several accounts into a single concept. Rubberflex further contends that while preparing for verification, it discovered that the worksheets in its response required two corrections. However, Rubberflex maintains that: (1) It disclosed these changes on the first day of verification, (2) the Department reviewed these revisions, and (3) these revisions were tied to the financial statements.

DOC Position: As we explained in the Best Information Available for Rubberflex section of this notice and the Department's position to Comments 1 and 2, Rubberflex failed to demonstrate that it reported all of the appropriate indirect selling expenses and G&A expenses to the Department, despite three separate submissions, and that it failed to tie the reported expenses to its audited financial statements. It failed to provide a worksheet, or any other type of document, reconciling the titles and concepts used in its trial balance to those on the audited financial statements. (*See* page 2 of the Department's December 12, 1996 memorandum concerning the verification failure for Rubberflex.) Therefore, Rubberflex failed to demonstrate that it included all appropriate indirect selling expenses and G&A expenses in its revised exhibit, and that those expenses tied to the total amount of expenses recorded for Rubberflex Malaysia on Rubberflex's financial statements.

Comment 9: U.S. Sales Listing. Rubberflex contends that it demonstrated at the verification in Malaysia that (1) all purchase price (PP) sales entered into the United States during the review period were reported; (2) it accurately reported the date of sale for PP sales as the Malaysian bill of lading date; and (3) it accurately reported foreign inland freight, packing, indirect selling expenses, brokerage and handling, international freight and marine insurance pertaining to U.S. sales that were incurred in Malaysia.

DOC Position: We disagree with Rubberflex's characterization of the verification of the U.S. sales. Our review of Rubberflex's U.S. sales reporting during the U.S. portion of the verification revealed a great deal of confusion concerning the date of sale and the accuracy of the computer sales listing. Rubberflex was unable to demonstrate that the price, quantity and date of sale were accurately reported on the computer sales listing. At verification in Malaysia, and in the questionnaire response, the date of sale for all PP sales was identified as the Malaysian bill of lading date. However, in the United States, company officials stated that for certain consignment sales, which were made prior to importation, Rubberflex used the date on which the rubber thread is withdrawn from Rubberflex's customer's inventory as the date of sale. Thus, the questionnaire response, and the Malaysian verification findings, were contradicted. Moreover, because Rubberflex failed to indicate on its computer tape which sales were consignment sales, it was not possible to know what date of sale was operative for any of the sales listed on the computer tape.

With respect to the accuracy of the other expenses: (1) The problems with foreign inland freight and indirect selling expenses are discussed elsewhere, and (2) we found only minor discrepancies with ocean freight, marine insurance or brokerage and handling.

Comment 10: The Total Volume and Value of PP and Exporter's Sales Price (ESP) Sales. Rubberflex argues that the Department was able to reconcile the quantity and value of Rubberflex's sales to the response after certain adjustments were made at the U.S. verification. Rubberflex contends that, at the U.S. verification, Rubberflex provided worksheets that traced the reported quantities and values of the U.S. sales to Rubberflex's audited financial statements.

DOC Position: We disagree. The verification report establishes that Rubberflex was never able to conclusively demonstrate that its U.S. sales were correctly reported. Rubberflex was not able to demonstrate the validity of the information provided on the computer tapes by the end of the verification.

As Rubberflex explains in its case brief, it presented a reconciliation of the volume and value of sales from its financial statements to the response. We found a number of clerical errors and omissions, such as credit memos that were initially omitted from the reconciliation exercise because they were omitted from the response. We found that: (1) Certain sales were reported in two review periods; (2) others were misclassified between PP and ESP sales; (3) the date of sale for certain PP sales was misreported; and (4) Rubberflex could not reconcile its credit memos to the specific line items on the computer tape. Given that we found errors in almost every phase of the numerous attempted reconciliations of U.S. sales, it is not accurate to claim, as does Rubberflex, that the quantity of U.S. sales was in any way reconciled completely. Consequently, we found that these errors and omissions undermined the integrity of the response and made the computer tape unusable for the purpose of calculating a margin.

Comment 11: Date of Sale Methodology for U.S. Sales. Rubberflex notes that the Department's December 12, 1996 memorandum stated that Rubberflex failed to use the appropriate date of sale methodology for purchase price sales in the 1993–1994 review. Rubberflex contends that the terms of sale sometimes changed between purchase order and the bill of lading date; thus the essential terms were not set on the purchase order date. It notes that the reporting methodology for this review is consistent with the methodology used in both the original investigation and the prior reviews. Rubberflex contends that the verifiers confirmed that no entries had been improperly omitted in the beginning of the 1993–1994 period of review.

DOC Position: We disagree that Rubberflex reported all of its sales to the United States that were required by the questionnaire. Page 33 of our questionnaire asked Rubberflex to report all purchase price sales that caused the entry of the subject merchandise during the period of review, regardless of whether the sale date occurred during the period of review, or prior to the period of review. Rubberflex claimed at verification both in Malaysia and in the United States that the terms of the sale, that is, the price and quantity of the sale, were fixed on the purchase order date, and that the purchase order was required either to initiate production or shipment. The verification points to few, if any, changes in the terms of the sale after the purchase order date. Therefore, by using the Malaysian bill of lading date as date of sale for PP sales, and by reporting only those sales that were shipped from Malaysia during the period of review, rather than all purchase price sales that caused the entry of the subject merchandise during the review period, (which it had the ability to report) Rubberflex failed to report all the sales required by the Department's questionnaire. In addition, at verification, Rubberflex claimed that all consignment sales that entered the U.S. during the review period, but were withdrawn from Rubberflex's customer's inventory after the review period, should have been reported during the subsequent (1994–1995) review period using the U.S. invoice date as the date of sale. This date of sale methodology does not agree either with what was reported in the response, or what was requested in the Department's questionnaire.

Comment 12: Review Classification According to Date of Entry. Rubberflex states that its inadvertent error of classifying 37 sales under two different review periods can be easily rectified, and should not form the basis for the assignment of total BIA. Rubberflex disputes the Department's contention that Rubberflex was not able to state with any clarity for which review the 37 sales should have been reported. Rubberflex claims that the Department verified the entry dates for the sales in question and noted no discrepancies. Therefore, Rubberflex requests that the Department revisit this issue and reclassify those 37 sales into the appropriate review period according to date of entry.

DOC Position: At verification, Rubberflex was unable to appropriately classify all of its sales to the United States with regard to review period and type of sale (PP or ESP). We asked Rubberflex to properly classify 37 of the approximately 125 PP sales that we found reported in both reviews. Rubberflex claimed that all consignment sales should be classified in the 1994–1995 review. However, this classification did not coincide with the narrative of its response which indicated that it used the Malaysian bill of lading date as the date of sale. Some of these consignment sales had U.S. entry dates which occurred during the 1993–1994 review period. Therefore, since the U.S. entry date always follows the bill of lading date in Malaysia (since the ship arrives in the U.S. after it leaves Malaysia), these sales could not properly be classified in the 1994–1995 review. When the Department tried to examine the rest of the computer sales listing for the treatment of the date of sale in consignment sales, it found that Rubberflex did not indicate which sales were consignment sales on the computer sales listing submitted to the Department. Consequently, the Department cannot determine whether the rest of the sales reported on the computer tape were appropriately classified with respect to review period, and therefore, we have no basis by which to accurately reclassify these 37 sales or to verify the accuracy of respondent's classification of the remaining U.S. sales as reported by respondent.

We note again that it is Rubberflex's responsibility, not the Department's, to prepare the questionnaire response. The errors we found at verification in the preparation of Rubberflex's U.S. sales data were so wide-spread and pervasive that the Department could not ensure that any of the reported information was correct unless we were to undertake the task of reconstructing the questionnaire response ourselves.

Comment 13: ESP and PP Sales. Rubberflex disputes the Department's determination that it misreported or duplicated the reporting of certain sales (*i.e.*, certain sales classified as both ESP and PP). Rubberflex explains that it clarified during verification the reason why certain invoices were referenced under different review periods and classified under different U.S. databases. As an example, Rubberflex states that sales must be reported under various U.S. classifications because certain consignment sales and sales made out of inventory normally result in a number of invoices issued by the U.S. affiliate, whereas the container corresponding to those sales is recorded in Rubberflex's books as a single invoice. Moreover, Rubberflex claims that during verification, the Department examined a few invoices having similar circumstances and indicated its satisfaction with Rubberflex's explanations, and did not request to view additional invoices. Rubberflex contends that it properly reported all U.S. sales.

Petitioner contends that Rubberflex confused the standard for when sales are PP versus ESP. If a subsidiary is fully responsible for setting the terms of the sale (as Rubberflex's U.S. subsidiary is for all U.S. sales), that alone makes the sales ESP sales according to *Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9171, 9171–72 (February 28, 1997)(Comments 14 and 16).

DOC Position: We disagree with Rubberflex. Pages 27 and 28 of the verification report note that company officials were confused about the classification of Rubberflex's U.S. sales with respect to ESP and PP and with respect to review period. At the conclusion of the verification, company officials were still unable to determine which sales should or should not be reported, or whether they were PP or ESP sales.

Comment 14: Credit Memos in the U.S. Market. Rubberflex contends that the Department overstates the impact of the omitted credit memos during the POR. Rubberflex claims that its U.S. affiliate identified the omitted credit

memos, most of which had no effect on unit price, and thus no effect on dumping margins of any U.S. sales. Rubberflex disputes the Department's determination that the omitted credit memos made it impossible to tie the U.S. sales listing to the U.S. affiliate's financial statements.

DOC Position: We disagree. Rubberflex reported the U.S. price and quantity net of credit notes, despite instructions in the questionnaire to record price and quantity adjustments separately. Therefore, it is not possible to determine which sales have price and quantity adjustments attributed to them by examining the computer tape.

At verification, Rubberflex was unable to reconcile the credit memos to the computer sales listing. First, Rubberflex failed to have its reconciliation (via the mechanism of credit memos) of the PP sales value from the financial statements to the response prepared at the beginning of the verification. Second, Rubberflex initially failed to report all of its credit memos with respect to ESP sales on the reconciliation from the financial statements to the computer sales listing. Further examination revealed that Rubberflex had also failed to revise the computer sales listing to account for these missing credit memos. Finally, Rubberflex company officials in the United States stated that they did not know how to tie the credit memos listed in the verification exhibit 52 to the questionnaire response since Rubberflex company officials in Malaysia prepared that portion of the response.

Comment 15: U.S. Inland Freight. Rubberflex claims that it tied its U.S. average freight expense to its financial statements for a sample month, except for a small amount due to accruals.

DOC Position: We agree with Rubberflex's characterization of the U.S. inland freight verification.

Comment 16: Inventory Carrying Costs. Rubberflex contends that it established the accuracy of all of the figures used to calculate inventory carrying costs in the United States: the cost of goods sold in the U.S. and time on the water.

DOC Position: We were unable to examine Rubberflex's inventory turnover rates and U.S. interest rates during verification and, therefore, disagree with Rubberflex's contention that we established the accuracy of all the figures necessary to calculate inventory carrying costs in the United States. We agree that we found no discrepancies in the verification of the cost of goods sold in the United States and time on the water, which are the two other figures required to verify the inventory carrying costs.

Comment 17: Corrected Worksheets Should Be Part Of The Record. Rubberflex contends that given the time constraints, it was unable to present corrected worksheets on the first day of verification, and therefore, those worksheets, which Rubberflex contends were subsequently submitted and verified, should not be disregarded. Rubberflex disputes the Department's finding that it had no worksheets to demonstrate how the original responses were prepared or why they were changed or what the relationship was between the original and revised submissions. Rubberflex contends that corrected worksheets were submitted during verification, are referred to in the Department's verification report and are found in the verification exhibits. Rubberflex states that a side-by-side comparison of the original to the revised worksheets clearly reveals the relationship between the documents.

Rubberflex also contends that on the first day of verification, it suggested to the Department that any corrected worksheets be included as part of the verification exhibits normally submitted after verification and that the Department did not object to its proposal. Rubberflex also states that it repeatedly requested to submit revised computer tapes to reflect corrections it claims to have presented during the beginning of verification. However, Rubberflex claims that the Department never responded to its request.

Petitioner emphasized that Rubberflex did not submit to the Department a listing of reporting errors at the commencement of verification, nor was petitioner served such a list, as required by the Department's regulations. Petitioner contends that Rubberflex's claim that the Department was advised at the commencement of verification of certain errors in its submissions should be of no consequence.

DOC Position: As stated in our preliminary results, we found that the responses provided by Rubberflex could not be verified. The inaccuracies which render the response unusable for purposes of margin calculations include the fact that Rubberflex attempted to provide revised questionnaire responses at verification for home market indirect selling expenses, direct labor and packing labor expense, variable overhead, financing expenses and the cost of goods sold; for these same expenses Rubberflex could not demonstrate how the original response was supported by documentation, nor could it document the difference between the original and revised submission for these items.

Rubberflex failed to provide written disclosure of changes made to its questionnaire response on the first day of verification, although it was asked to do so. Rather, it provided verification exhibits which constitute revised questionnaire responses throughout the course of the verification. Rubberflex also failed to explain and/or quantify the effects of these revisions, rendering the Department unable to assess the significance or impact of these changes. As we stated in *Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 969, 970 (January 7, 1997), the Department can accept new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.

Rubberflex states in its brief that it submitted such revisions at the beginning of the verification. This is directly contradicted by the facts on the record. There were 38 verification exhibits covering the verification in Malaysia. The document concerning packing costs is exhibit number 18, that regarding direct labor is exhibit number 22 and that regarding fixed overhead is exhibit number 33. As such, the record clearly demonstrates that the information was provided piecemeal, and late in the verification exercise.

We also disagree with Rubberflex's contention that the Department engaged in any discussion during verification concerning a suggestion that Rubberflex file any corrected worksheets with the exhibits normally filed after verification. We further disagree that Rubberflex engaged in any discussion concerning the provision of a revised computer tape. Moreover, given the pervasive errors and changes made to the questionnaire response and the difficulties verifying those changes, the Department has no reason to believe that a new computer tape, submitted after verification, would accurately represent the changes to the response that were presented during the verification. Under the circumstances of this case, the Department would undermine its purpose in verifying the questionnaire response by accepting such new information after verification.

Comment 18: Corporate Structure. Rubberflex disputes the Department's finding that Rubberflex failed to identify the owners of its company and the existence of an affiliated European company. Rubberflex claims that it demonstrated the identity of its parent company through its annual return to the Government of Malaysia, which reports information regarding its shareholders and directors. Further, Rubberflex contends that it tied the shareholdings from the annual return to a corporate structure worksheet provided in its response.

In addition, regarding any European affiliates, Rubberflex contends that it could not provide documentation regarding the sale of these companies, which it explained to the Department at verification. Rubberflex further states that, regardless, the sale of affiliated European resellers have no relevance to Rubberflex's sales verification in the home and U.S. markets.

DOC Position: We disagree with Rubberflex that corporate structure was adequately verified. Rubberflex provided new information at verification by introducing the existence of a previously unreported corporate owner. We asked Rubberflex to provide information regarding whether this company had any affiliation with Rubberflex's customers or suppliers. However, Rubberflex declined to produce such information. Rubberflex merely stated, as it does in its case briefs, that the affiliated European resellers have no relevance to Rubberflex's sales in the home market and the United States. Consequently, the Department was unable to satisfy itself regarding whether any related-party sales, loans, equipment purchases or raw material purchases occurred during the POR. As the U.S. Court of International Trade stated in *Krupp Stahl A.G.* v. *United States*, 17 CIT 450; 822 F. Supp. 789, 792 (1993), it is inappropriate for respondents to limit or control which information they present to the Department in a way that impedes the Department's ability to confirm the accuracy of the questionnaire response or forces the Department to use information most beneficial to them.

Comment 19: Direct Material Costs. Rubberflex claims that the Department verified the direct material costs used in its COP and CV submissions. Rubberflex contends that the Department examined the following steps Rubberflex used to calculate the direct material costs: (1) The compound recipes of direct materials latex and chemicals used as the basis for determining product-specific cost of productions for all types of rubber thread; (2) the budgeted costs used to derive the standard per-unit costs; (3) the actual cost of materials used; and (4) the variance between standard and actual material costs. Rubberflex argues that the Department verified the steps by examining batch records (computer listings which aggregate a number of invoices that appear as a single line item in the general ledger), testing inventory formulas, and determining that Rubberflex accurately captured and reflected all direct material costs incurred during the review period.

Rubberflex notes that the Department questioned the budgeted costs because they were derived in 1991 and differed from the weighted-average costs of materials in inventory. Rubberflex stated that these budgeted costs had not been revised since 1991 because they were still a reasonable estimation of the costs of the various materials used to produce rubber thread and none of the costs had changed significantly. Rubberflex argues that the budgeted costs are a reasonably accurate tool for predicting costs over time.

DOC Position: We disagree with Rubberflex that per-unit direct materials cost was verified. We did verify the total material cost during the POR as well as the actual quantity of materials used. However, neither of these figures alone is sufficient to calculate the per-unit cost reported in the questionnaire response. Rubberflex reported its per-unit material cost by multiplying actual material used per product by standard material prices to arrive at a standard cost. To calculate a variance, Rubberflex calculated the total material cost at standard; it then made a factory-wide adjustment for the difference between total actual material cost and the total material cost at standard. This methodology is not, in itself, a problem.

There are two problems which arise from Rubberflex's use of the 1991 standard prices. The first is that Rubberflex was unable to substantiate how those prices were calculated in 1991 and what those figures represent. Therefore, it is not possible to evaluate the accuracy of the per-unit cost calculations. Rubberflex made no attempt to demonstrate that these prices were reasonable, or that the use of 1991 prices to calculate costs for 1995 products was non-distortive.

The second problem is that the actual material prices paid by Rubberflex during the POR have changed relative to the 1991 standard prices that were used as the basis for the company's standard costs and variance allocation. As the verification report on page 17 states, we compared the 1991 standard prices with the actual POR prices and found that the prices of individual materials increased or decreased at different rates. In several instances the changes were substantial. Because each product uses a different mix of materials, the cost of producing each different product would change relative to the cost of other products produced in the factory. Thus, by neglecting to update its standard material prices to reflect changes in the actual cost of materials, Rubberflex failed to accurately capture the per-unit materials cost for the subject merchandise, both in terms of its standard cost and for its variance allocation.

Comment 20: Direct Labor Costs. Rubberflex contends that the Department verified its labor costs in full. Rubberflex argues that it used the following steps to calculate the direct labor costs reported in its COP/CV submissions: (1) Calculate actual direct labor cost per minute of production by dividing total direct labor costs during the review period by the total production time during the revisw period; (2) allocate the cost per minute to specific products based on the standard number of minutes required to produce particular types of rubber thread; and (3) adjust the product-specific costs calculated using the standard yield for the variance between actual and predicted factory operation.

Rubberflex notes that at the beginning of verification, it disclosed certain minor revisions, and provided a corrected worksheet, to the Department. Rubberflex claims that a side-by-side comparison of the original and corrected worksheets reveals only minor corrections. In order to verify the corrected worksheet, Rubberflex states that it traced all of the reported expenses to its trial balance, and traced from the trial balance to the general ledger and relevant source documentation.

DOC Position: We agree that Rubberflex followed the method it outlined to determine direct labor expenses. However, we disagree with Rubberflex's characterization that these expenses were fully verified. *See DOC Position* to comment 17. Rubberflex failed to clearly demonstrate the impact of these changes on the calculations in the questionnaire response. For example, Rubberflex contends that the revised data reflected merely a reclassification of certain labor costs. Despite the fact that much of Rubberflex's explanation is *post hoc*, their own exhibits belie their assertions. An examination of the exhibits placed side-by-side in exhibit 3 of Rubberflex's brief reveals numerous and significant differences in the exhibits, differences that Rubberflex failed to account for.

A second problem arose during the verification of labor expenses. As we explain on page 15 of our verification report, Rubberflex failed to provide

supporting documentation for managerial labor expenses, despite the Department's request, thus placing control * * * in the hands of uncooperative respondents who could force Commerce to use possibly unrepresentative information most beneficial to them. *Krupp Stahl*, 822 F. Supp. at 792.

Comment 21: Variable Overhead Costs. Rubberflex contends that at the beginning of verification, it disclosed to the Department two minor errors concerning its variable overhead costs: (1) Rubberflex reported the salary of the factory supervisor and manager as variable overhead costs, rather than fixed overhead costs; and (2) certain components of variable overhead needed to be corrected to reflect year-end adjustments. Rubberflex stated that a corrected worksheet reflecting this reallocation was submitted to the Department during the cost verification. Rubberflex claims that a side-by-side comparison of the original and corrected worksheets reveals only minor changes. Rubberflex states that the costs were verified by the Department and that final expense figures used were appropriately recorded in monthly accounts, according to the Department's verification report. In addition, Rubberflex states that these minor changes were necessitated by adjustments made by the auditors after performing a physical inventory of materials.

DOC Position: We disagree. *See DOC Position* to Comment 17.

Comment 22: Fixed Overhead Costs. Rubberflex contends that at the beginning of verification, it disclosed to the Department several minor errors concerning its fixed overhead costs: (1) Rubberflex reported the salary of the factory supervisor and manager as variable overhead costs, rather than fixed overhead costs; (2) the cost of all benefits for workers in the factory was included in fixed overhead cost, rather than being allocated among direct labor costs, fixed overhead costs, and packing labor costs; and (3) Rubberflex's auditor made a provision for writing-off finished goods inventory, which did not exist at the time of the original questionnaire response. Rubberflex stated that it provided a corrected worksheet reflecting this reallocation during the cost verification. Rubberflex contends that the magnitude of any corrections made with regard to the original worksheet were minor. Rubberflex contends that the Department verified the corrected worksheet by tracing expense amounts to source documents, the trial balance and the general ledger.

DOC Position: We disagree. *See DOC Position* to Comment 17.

Comment 23: Depreciation. Rubberflex claims that the Department verified the reported depreciation figures by tracing the figures to the trial balance, general ledger, asset schedules, and selected purchase invoices for assets. Rubberflex disputes the Department's finding in the verification report that it could not rely on the accuracy of reported depreciation expense due to the fact that the original cost basis for certain assets acquired prior to 1990 could not be traced to the appropriate asset schedule in the year of purchase. Rubberflex justifies its inability to produce original cost basis information on certain assets by claiming that: (1) It is unreasonable for accounting or tax purposes to maintain accounting documents for more than five years, particularly where Malaysian tax authorities do not require the retention of these documents for that period of time; (2) Rubberflex was not notified that such documents may be needed for verification purposes; and (3) the Department traced the annual depreciation for assets purchased before 1990 to trial balances and asset schedules for fiscal years 1993, 1994, and 1995, and could plainly see that the assets were being depreciated in a systematic manner, which was reviewed and approved by its auditors. Therefore, Rubberflex claims that its inability to provide original asset schedules for years prior to 1990 does not provide grounds for the Department to question the accuracy of the reported costs.

DOC Position: We disagree with Rubberflex that its inability to provide original asset ledgers for certain items requested is not a verification problem. The verification report specifies that we became aware that Rubberflex purchased certain major pieces of capital equipment from an affiliated party. Examples of these purchases are recorded on verification exhibit 36. Pages 18 and 19 of the verification report note that we attempted to determine whether the transfer price of such equipment, and the associated depreciation expenses, represented arm's-length transactions. Rubberflex failed to provide information responsive to our request. Thus, we were unable to satisfy ourselves in this regard.

We agree that Rubberflex reported the depreciation expenses on its books and records, which were audited and in accordance with Malaysian GAAP. Normally we use the costs and expenses recorded on the company's books and records, provided that we are satisfied that such costs are non-distortive. In this case, we had reason to question whether the depreciation expenses recorded on Rubberflex's books where under-or overstated (*i.e.* distortive) by reason of an affiliated party transaction.

Finally, it is reasonable to request Rubberflex to document the figures that it used to record its depreciation expense on its books and records. Rubberflex depreciates certain machines and buildings for more than 5 years and reflects those figures on its books and records. It is standard verification practice to ask companies to demonstrate the figures, and to keep documentation supporting information submitted in an antidumping proceeding, for the purpose of verification. The U.S. Court of International Trade held in *Krupp Stahl*, 822 F. Supp. at 792, that, despite the fact that the German authorities did not require the company to maintain business records for more than five years, it did not absolve a respondent in an antidumping proceeding of the responsibility of providing source documents to support its questionnaire response.

Comment 24: General and Administrative (G&A) Expenses. Rubberflex states that at the beginning of verification, it submitted a revised worksheet which properly captured certain G&A expenses. Some of these expenses were misclassified as G&A expenses in the original questionnaire response and, therefore, were not properly included in the worksheet for indirect selling expenses. Rubberflex further explains that it provided worksheets and source documentation which substantiated its allocation methodology with regard to indirect selling expenses and G&A expenses. Rubberflex contends that the Department traced the amounts shown in the revised worksheet to relevant trial balances, source documentation, and the general ledger.

DOC Position: We disagree. *See DOC Position* to Comment 17. The G&A expenses in the original questionnaire response were presented in a different format from the G&A expenses in the revisions presented at verification, so direct comparisons are not possible. Rubberflex never presented a systematic explanation of how individual elements of G&A were affected by the revisions, nor how or why the totals changed. Rather, as with variable overhead, the Department was left with insufficient time and information to evaluate the magnitude of the change. Again, this was a situation where a company's failure to reconcile its submitted costs to its normal books and records prevents us from quantifying the magnitude of the distortions which exist in its

submitted data. *Certain Cut-to-Length Carbon Steel Plate From Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51898, 51899 (October 4, 1996) (the Department's position adopted in the final results of review, 62 FR 18396 (April 15, 1997)).

Finally, contrary to Rubberflex's assertion, it was unable to tie the specific line items from its revised worksheets to the audited financial statements. The fact that total profit, sales, and cost of goods sold (COGS) figures were traced is irrelevant. It is precisely the items which could not be traced—the components of G&A—which were under evaluation at verification.

Comment 25: Financing Expense. Rubberflex states that while preparing for verification it discovered slight errors related to the amounts reported for bank charges and interest on bills refinanced. Rubberflex further states that these corrections were presented to the Department at verification and that it demonstrated the accuracy of the revised worksheet by tying the total financing expenses and interest received to the total expenses stated in the trial balance for financing expenses and interest received, respectively.

DOC Position: We disagree. *See DOC Position* to Comment 17 and pages 20 and 21 of the verification report.

Comment 26: Conduct of the review. Rubberflex contends that it fully cooperated under difficult circumstances during this proceeding and that the Department must bear a significant portion of the responsibility for any problems that arose at verification. In addition to the short preparation time given to Rubberflex prior to the verification, Rubberflex enumerates a list of Departmental procedural errors, which Rubberflex contends unfairly prejudiced its interests and resulted in the use of BIA in the preliminary results. According to Rubberflex, these procedural errors were due to the Department's untimely handling of the case. Rubberflex stated that it did the best it could under these circumstances to cooperate fully and that it submitted its responses and verification exhibits in a timely manner, and prepared for the verification to the extent possible given the time available.

DOC Position: We agree with Rubberflex that there was a great deal of case activity within a relatively short period in 1996. However, we disagree that we unfairly prejudiced Rubberflex by our conduct of the case. The supplemental questionnaires for this and the 1994–1995 review were relatively short and not overly demanding and Rubberflex was given adequate time to respond. The record reflects that Rubberflex was given several extensions of time to submit its data; in fact, Rubberflex was granted every extension request it made. Finally, Rubberflex was given sufficient notice of the timing of verification, and the Department followed the same standard procedures, and issued a standard verification outline which was substantially similar for the verification of information in both the 1993–1994 and 1994–1995 reviews. These procedures were similar to those followed in the original investigation, when Rubberflex underwent verification. Thus, there is little evidence that the Department's conduct of the case placed an unreasonable burden on Rubberflex. Rather, in this case, as in virtually every case the Department conducts, the burden on respondents is to provide accurate and timely data which can be verified. To the greatest extent possible, the Department strives to be flexible with deadlines for respondents; ultimately, however, it is respondents' responsibility to meet this burden. Nevertheless, we took into account Rubberflex's level of cooperation in this case in our selection of the appropriate BIA rate for Rubberflex's antidumping margin. (*See Best Information Available for Rubberflex* section above.)

Comment 27: Partial BIA. Because of the arguments presented, Rubberflex claims that the application of a total BIA is not warranted. Rubberflex contends that during verification, it tied all information submitted in its original response to its trial balance, and ultimately, to its audited financial statements. Further, Rubberflex emphasizes that because the Department verified virtually all of the submitted sales and cost data, the fact that a few minor errors were disclosed at the commencement of verification should not provide the legal basis for the Department to disregard its entire response and resort to BIA. Rubberflex cites to prior Departmental determinations in which the Department states that it will resort to BIA only for those specific items of the response that it was not able to verify. *See Notice of Preliminary Results of Antidumping Duty Review; Roller Chain, Other Than Bicycle, From Japan*, 61 FR 28171, (June 4, 1996); *Final Results of Antidumping Duty Review and Revocation in Part of Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China*, 62 FR 6189, (February 11, 1997). Rubberflex concedes that it did not submit an error-free response. However, Rubberflex states that minor errors and corrections were presented to the Department during verification. Rubberflex argues that the fact that some corrections were not presented on the first day of verification does not provide the Department reasonable grounds for disregarding them because Rubberflex was provided only two days for verification preparation. Therefore, in light of the above-mentioned circumstances, Rubberflex's cooperation in this review, and Rubberflex's claims that the Department was able to verify its responses, Rubberflex argues that the Department does not have legal grounds to use total BIA.

Petitioner contends that because the Department determined during verification that Rubberflex's questionnaire responses were wholly deficient and unverifiable, Rubberflex should therefore be assigned a total BIA rate. Petitioner cites to the Department's Analysis Memorandum of December 12, 1996 and the verification report, which document Rubberflex's uncooperativeness due to misreportings, inaccuracies and omissions of certain information. Petitioner therefore argues that the Department should assess a margin which corresponds to criteria outlined in the Department's Antidumping Manual; * * * when a substantial amount of a response does not verify, the Department will normally assign the highest margin for the relevant class or kind of merchandise among (1) the margins in the petition, (2) the highest calculated margin of any respondent within that country * * * *See U.S. Department of Commerce, Antidumping Manual*, July 1993, Ch. 6, at 3. Further, Petitioner disputes that Rubberflex's claimed errors are minor. Petitioner contends that Rubberflex's purported justification for such errors, which Rubberflex claims were the result of year-end accounting adjustments, are unsubstantiated, and unpersuasive. Petitioner contends that any year-end adjustments should have been reported long before verification. Petitioner emphasizes that even minor errors would nevertheless generate an inaccurate margin calculation, which would place the U.S. industry at a disadvantage, given that extruded rubber thread is a commodity, price-sensitive product.

Petitioner emphasizes that Rubberflex did not submit to the Department a listing of errors at the commencement of verification, nor was petitioner served such a list, as required by the Department's regulations. Petitioner contends that Rubberflex's claim that the Department was advised at the

commencement of verification regarding certain errors in its submissions is therefore of no consequence.

DOC Position: We disagree with Rubberflex that the Department was able to verify Rubberflex's questionnaire response and tie all of the information provided in the original response to the trial balance, and ultimately to the audited financial statements. We have addressed this issue in the *Best Information Available for Rubberflex* section of this notice.

Comments Concerning Other Respondents

Comment 28: ESP versus PP Sales. The petitioner alleges that Heveafil's back-to-back sales are ESP, and not PP sales, as reported in the questionnaire response. The petitioner argues that the name back-to-back sales indicates that the U.S. subsidiary makes the sale and determines the price of the merchandise in the United States. Petitioner also notes that both Heveafil's and Filati's April 24, 1995 questionnaire responses indicate that the company's per-unit price is not fixed until the U.S. subsidiary issues the invoice to the U.S. customer.

Petitioner further contends that the Department has found that sales made under circumstances like those made by Heveafil and Filati are ESP sales. Petitioner notes that in *Brake Drums and Brake Rotors from the PRC: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 53190, 53194 (October 3, 1996), the Department stated that the responsibilities of the U.S. affiliates go well beyond those of a processor of sales related documentation or a communication link and therefore designated the sales in question as ESP sales. Petitioners note that in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51882, 51885 (October 4,1996), the Department found it more appropriate to determine that sales were CEP sales where: (1) The U.S. subsidiary was the importer of record and took title to the merchandise; (2) the U.S. subsidiary financed the relevant sales transactions; (3) and the U.S. subsidiary assumed the seller's risk. Petitioner argues that Heveafil's and Filati's sales meet these criteria.

Heveafil and Filati contend that the Department has repeatedly treated back-to-back sales as PP sales in the original investigation and in all prior administrative reviews. They note that Commerce verified that the characterization of the sales is correct in both the original investigation and the first administrative review.

Specifically, respondents argue that back-to-back sales must continue to be treated as purchase price sales, in accordance with the Department's practice for determining indirect PP/EP sales as set forth in *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 18547 (April 26, 1996). Heveafil and Filati argue that because petitioner has not submitted any new factual information that would warrant altering the treatment of these sales, the Department must not depart from its position in previous determinations. Accordingly, Heveafil and Filati argue that back-to-back sales conform to the Department's practice in the following ways: (1) Sales were made prior to importation; (2) the subject merchandise was shipped directly to the unrelated customer without entering the inventory of the related selling agent; (3) direct shipment to the unrelated buyer was the customary commercial channel for sales of this merchandise between the parties involved; and, (4) the related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers. For the sales made prior to importation, Filati and Heveafil further note that date of sale was reported as the bill of lading date, which occurred before importation, a methodology argued to be consistent with the Department's past determinations.

DOC Position: We agree that Heveafil's and Filati's back-to-back sales are properly treated as PP sales. Each company explained in its questionnaire response that the back-to-back sales were made prior to importation, and shipped directly to the unrelated buyer without ever entering a branch office warehouse. They noted that the branch office served only as a processor of sales related documents. Section 772(b) of the Act states that: The term 'purchase price' means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise, for exportation to the United States. Heveafil's and Filati's back-to-back sales fall within the criteria for purchase price sales set forth in section 772(b) of the Act. Since there has been no record evidence submitted in this segment of the proceeding that would cause us to alter our treatment of these sales as PP sales, we are not making any changes to our calculations.

Comment 29: Adjustments for Countervailing Duties (CVDs) Paid. Heveafil, Filati and Rubfil contend that the Department must increase the U.S. price for certain countervailing duties paid on imports of the subject merchandise pursuant to the CVD order. In accordance with section 772(d)(1)(D) of the Act, the Department should increase U.S. price by the amount of any countervailing duty imposed on the subject merchandise to offset an export subsidy. The Department, however, has not made adjustments nor increased U.S. price for export subsidies if foreign market value (FMV) has been based on CV. Respondents note that the Department has declined to make adjustments when FMV is based on CV, on the grounds that any benefit conferred through the export subsidy is reflected in the production costs as well as in U.S. price. (*See Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia*, 61 FR 54767 (October 22, 1996).

Respondents assert that export subsidies, specifically income tax holidays and income tax abatements, are not reflected in a company's production costs and must be included in an adjustment to U.S. price. They note that income taxes are not an element of the cost of production. Respondents note that the following Malaysian export subsidy programs found in the second and third countervailing duty reviews, qualify as income tax holidays or income tax abatements and thus, should be used in an adjustment to U.S. price: (1) Pioneer Status; (2) Abatement of Income Tax based on Ratio of Export Sales to Total Sales; (3) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports; (4) Industrial Building Allowance; and, (5) Double Deduction for Export Promotion Expenses.

DOC Position: We agree with respondents that the programs: (1) Pioneer Status, (2) Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales, (3) Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports, (4) Industrial Building Allowance, and (5) Double Deduction for Export Promotion Expenses have been found countervailable and classified as export subsidies in the most recently completed countervailing duty review, *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review*, 60 FR 55272 (October 25, 1996).

Therefore, in accordance with section 772(d)(1)(D) of the Act, we increase U.S. price by the amount of any countervailing duty imposed on the merchandise * * * to offset an export subsidy. The two most recently completed CVD reviews, *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review*, 61 FR 55272 (October 25, 1996) for calendar year 1993 and *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review*, 60 FR 51982 (October 4,1995) covering calendar year 1994, apply to this review. The calendar year 1993 CVD review found country-wide *ad valorem* net subsidies of 1% for all companies, of which 0.28% consisted of export subsidies. Since this total net subsidy rate is not *de minimis* within the meaning of 19 CFR 355.7 (section 355.7 of the Department's regulations), countervailing duties will be imposed and we must increase U.S. price by the amount of any countervailing duty imposed on the merchandise * * * to offset an export subsidy. In the CVD review covering calendar year 1994, we found company-specific *ad valorem* net subsidies of 0.23% for Heveafil, 0.19% for Rubberflex, 0.38% for Rubfil and 1.39% for Filati (of which 0.15% constituted export subsidies). These net subsidy rates, with the exception of Filati's, are *de minimis* within the meaning of section 355.7 of the Department's regulations, and thus, duties will not be imposed within the meaning of section 772(d)(1)(D) of the Act. Since Filati's rate during both of these two CVD review periods was not *de minimis* within the meaning of section 355.7 of the Department's regulations, we therefore increased U.S. price in the antidumping duty calculation for Filati by the amount of the countervailing duty imposed on the subject merchandise to offset the export subsidies. The amount of duty imposed to offset export subsidies is 0.28% for the period October 1, 1993 through December 31, 1993, and 0.15% for the period January 1, 1994 though September 30, 1994. We made no adjustments for Rubberflex since we used BIA to determine the margin.

However, we do not increase U.S. price under section 772(d)(1)(D) of the Act when, like the U.S. price, the foreign market value already reflects the benefit of the export subsidies, such as in the case of Heveafil and Rubfil. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from India*, 60 FR 10545, 10550 (February 27, 1996). FMV for both Rubfil and Heveafil was based on third-country sales and CV in this review. With respect to exports to third-country markets, respondents receive the same benefits from export subsidies as with exports to the United States. Therefore, the benefits from the export subsidies were reflected in both the U.S. price and the FMV and no adjustment was made to U.S. price. For those sales where CV was used as the basis for FMV, we used third-country SG&A expenses, as well as third-country profit in determining CV for both companies. Since third-country SG&A and profit reflect the benefits from the export subsidies, we have similarly made no adjustment to U.S. price for the benefits from export subsidies.

Comment 30: Import Duties. Filati claims that the Department erred in not making an adjustment for TAXH, which represents the impact of a duty imposed on imported inputs used to produce rubber thread which will later be exported, and is collected only on home market sales. Filati notes that TAXH is not collected on export sales. It claims that TAXH is included in the price of its home market sales and is passed on to its Malaysian customers, and, therefore, constitutes an indirect tax imposed directly upon the foreign like product which has not been collected on the subject merchandise. Therefore, Filati argues that TAXH must be added to U.S. price in accordance with section 772(d)(1)(C) of the Act. Alternatively, Filati proposes that the Department treat TAXH as a difference in circumstances of sale, and make a downward adjustment to FMV, in accordance with section 773(a)(4)(B) of the Act.

Petitioner disputes Filati's arguments. It claims that Filati did not claim that the home market prices it reported to the Department include these indirect taxes. Petitioner notes that, as a general matter, respondents usually report home market prices to the Department already exclusive of indirect taxes. As a result, petitioner argues that TAXH should not be netted from reported home market sales.

DOC Position: We disagree that these expenses represent a tax within the meaning of section 772(d)(1)(C). Filati's April 24, 1995 questionnaire response identifies the expense reported in the TAXH column as a duty on imported merchandise. It is imposed when the goods are sold in the home market, and remains uncollected when the subject merchandise is exported. Consequently, contrary to the Filati's characterization of the expense, the expenses recorded in the TAXH columns represent a duty, and not a tax. Filati explains that it includes the amount of this duty in its home market price and passes it on to its customers. The duty is neither added to nor included in the price of the export goods. Because this duty is only collected on home market sales, and not on export sales, we have determined it to be an uncollected duty within the meaning of section 772(d)(1)(B) of the Act, rather than an uncollected tax within the meaning of section 772(d)(1)(C) of the Act. Consequently, pursuant to section 772(d)(1)(B) of the Act, we have revised our calculations by adding the amount of the uncollected duty to the U.S. price.

Comment 31: Assessment for Filati with Respect to Re-exports of Covered Merchandise. Filati notes that the Department determined a rate of 0.00% for the preliminary results of review. It claims that, should the Department determine a margin for the final results of review, it should take Filati's re-exports of covered merchandise into account when determining the assessment rate. Filati contends that it is the Department's long-standing policy, which has been upheld by the U.S. Court of Appeals for the Federal Circuit (*The Torrington Company* v. *United States*, 82 F.3d 1039 (Fed. Cir. 1996)), not to calculate or collect antidumping duties on subject merchandise that is re-exported without any sale to unaffiliated parties in the United States. Filati contends that the Department cannot calculate or collect antidumping duties regarding such imports, because in the absence of sales in the United States, there is no basis for calculating United States price. Thus, Filati explains, where a respondent provides evidence that merchandise has been re-exported, the Department has modified its assessment methodology formula to account for the re-exports. Filati argues that it provided evidence of such entries in its September 23, 1996 supplemental response and that there were no computer programming instructions in the preliminary results of review to accommodate such re-exports. Filati further argues that the Department should structure its assessment instructions along the lines outlined in the Department's proposed regulations (by dividing the total duties calculated for the period of review (PUDD) by the entered value of the sales during the POR, and directing Customs to apply the resulting *ad valorem* rate to entries in the POR) as modified by the "per-unit" methodology used in the Department's August 31, 1992 memorandum to Richard W. Moreland, *First Administrative Review of 3.5 Inch Microdisks and Coated Media Thereof from Japan (Microdisks), Decisions Made with Respect to Issuing Assessment Instructions for all Five*

Japanese Companies which had an either PP and ESP Sales Transactions of 3.5-Inch Microdisks and Coated Media. Filati argues that this new *ad valorem* assessment rate should be calculated by dividing PUDD by the entered value of sales and then multiplying the result by the value of entries minus the value of re-exports divided by the value of entries (PUDD/entered value of sales* (value of entries-value of re-exports)/ value of entries).

DOC Position: We have recalculated the margin for Filati and found that none of the sales were made at prices that incurred a margin. Therefore, the cash deposit rate and the assessment rate is zero and this issue is moot.

Comment 32: The Calculation of the Average Actual Profit for Constructed Value. Petitioner contends the Department erroneously used Heveafil's, Filati's and Rubfil's average actual profit on both profitable and unprofitable sales for the profit figure in the CV calculation. Petitioner argues that only profit on profitable sales should be used in the calculation.

Respondents dispute petitioner's contention, arguing that the Department calculates profit for CV without excluding below-cost sales. In support of its argument, respondents rely on *Federal-Mogul Corp.* v. *United States*, 918 F. Supp. 386, 403 (CIT 1996) and *Torrington Co.* v. *United States*, 881 F. Supp. 622, 633 (CIT 1995), as well as a number of results of reviews of *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof.*

DOC Position: We agree with respondents. Section 773(e)(1)(B)(ii) of the Act states that the amount of profit in the constructed value of the imported merchandise shall not be less than 8 percent of the sum of such general expenses and cost. The Act does not require the Department to use only above cost sales in its calculation of profit for CV. This position has been upheld in the court cases mentioned above. Therefore, we have made no change to our calculations.

Comment 33: The Use of Color as a Model Match Criterion. Petitioner argues that color should be excluded as a matching criterion. Petitioner cites *Melamine Institutional Dinnerware from Taiwan: Final Determination of Sales at Less Than Fair Value (Melamine)*, 62 FR 1726, at 1773 (January 13, 1997), in which the Department stated that [c]olor is not a matching criterion in this investigation; thus, it is inappropriate to treat these products, if otherwise identical, as identical for purposes of model matching.

According to respondents, color should not be excluded as a matching criterion. Since color was used in the original investigation and subsequent reviews, the Department must apply the same matching criteria in this period of review.

DOC Position: We agree with respondents that color is an appropriate model matching criterion in this case. The Department has consistently used color as a product matching criteria in the investigation and reviews of the AD order. As we stated in our response to Comment 3 in the *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 38465, 38468 (August 25, 1992) because color can materially affect cost and be important to the customer and the use of the product, the Department determined at an early stage of this investigation that color should be included among the several product matching criteria. *See, Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 38465, (August 25, 1992). At this time, petitioner supported this decision and has since not offered any substantive reasons for changing the matching criteria. Moreover, color is a characteristic fully in accordance with the matching criteria as outlined in the January 26, 1994 memorandum to the file, entitled *Changing the Department's Questionnaire Order of the Product Concordance.* Petitioner did not comment on this memo which ranked color as third in the level of importance for the product matching criteria. With respect to *Melamine*, this determination covers a product with different physical characteristics, different uses and different expectations by the ultimate purchasers and, therefore, is irrelevant to this case.

Comment 34: Heveafil's Reported Cost Figures. Petitioner notes that Heveafil reported more than one cost figure for a number of products without providing any explanation for the provision of more than one weighted-average cost. In addition, petitioner notes that in its preliminary results of review, the Department erred in using the average of these cost figures to calculate the cost of production for Heveafil. Petitioner argues that by using this average cost, rather than the highest available cost, Heveafil benefits from the unexplained ambiguity in the response.

DOC Position: We disagree. Heveafil reported more than one per-unit cost of production for certain products in the 1994–1995 review, but did not have this data problem in the 1993–1994 review. Therefore, we have made no change to our calculation.

Comment 35: Rebates in the Calculation of a Home Market Price for comparison to COP. Petitioner asserts that the Department failed to deduct Heveafil's rebates from home market prices prior to conducting the sales below cost test.

DOC Position: As indicated on lines 76 and 97 of the third-country sales program issued in the preliminary results of review, we have taken rebates and discounts into account in our determination of the appropriate third-country price to be compared with the cost of production in our cost test. Therefore, we have made no change to our calculation.

Comment 36: Marine Insurance. Petitioner asserts that Rubfil did not explain how it calculated its reported cost of marine insurance. Accordingly, it cannot be determined if marine insurance was correctly calculated. Petitioner therefore contends that the Department should use, as BIA, the highest unit U.S. marine insurance cost of U.S. sales by Rubfil.

Rubfil responds that in its April 27, 1995 response, it explained that marine insurance was paid according to the terms of a global insurance policy that covers all risks associated with the shipment of merchandise from Rubfil's factory to its customers throughout the world. Rubfil provided a copy of the insurance agreement in exhibit C–1, which did not explicitly spell out the per-shipment terms of the policy.

DOC Position: In its December 19, 1996 *Analysis Memorandum for the Preliminary Results of Review* for Rubfil, the Department noted that Rubfil did not fully explain its calculations for marine insurance. However, we used the information provided in the questionnaire response to calculate our margins. We did not request Rubfil to submit further information, and there is no basis for making adverse inferences as suggested by petitioner. Therefore, we have not changed our calculations in this regard.

Final Results of Review

As a result of comments received we have revised our preliminary results and determine that the following margins exist for the period October 1, 1993 through September 30, 1994:

Manufacturer/exporter	Percent margin
Heveafil Sdn. Bhd	0.36
Rubberflex Sdn. Bhd	29.83
Rubfil Sdn. Bhd	29.83
Filati Lastex Elastofibre (Malaysia)	0.00
Rubber Thread International	(**)

** There were no shipments or sales of covered merchandise that were subject to this review. The company was not investigated/reviewed for earlier periods.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service. Since the final results for the more current review period, October 1, 1994 through September 30, 1995 were published on June 20, 1997, the cash deposit instructions contained in that notice will apply to all shipments to the United States of subject merchandise entered, or withdrawn from warehouse, for consumption on or after June 20, 1997. The dumping margins established for the October 1, 1993 through September 30, 1994 period will have no effect on the cash deposit rate for any firm.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 771(i) of the Act (19 U.S.C. 1677f(i)) and 19 CFR 353.22.

Dated: November 12, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30634 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 97–00003." A summary of the application is as follows.

Summary of the Application

Applicant: The Association for the Allocation of Rice Quotas, Inc. ("AARQ"), 3200 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201–2997.

Contacts: M. Jean Anderson, Esquire, Telephone: (202) 682–7217; Robert M. Bor, Esquire, Telephone: (202) 371–5730.

Application No.: 97–00003.

Date Deemed Submitted: November 14, 1997.

Members (in addition to applicant): Affiliated Rice Milling, Inc., Alvin, Texas; American Rice, Inc., Houston, Texas; Brinkley Rice Milling Company, Brinkley, Arkansas; Broussard Rice Mill, Inc., Mermentau, Louisiana; Busch Agricultural Resources, Inc., St. Louis, Missouri; Cargill Rice Milling, Greenville, Mississippi; Connell Rice & Sugar Co., Westfield, New Jersey; Continental Grain Company, New York, New York; El Campo Rice Milling Company, Louise, Texas; Farmers' Rice Cooperative, Sacramento, California; Farmers Rice Milling Company, Inc., Lake Charles, Louisiana; Gulf Rice Milling, Inc., Houston, Texas; Liberty Rice Mill, Inc., Kaplan, Louisiana; Louis Dreyfus Corporation, Wilton, Connecticut; Newfield Partners Ltd., Miami, Florida; Producers Rice Mill, Inc., Stuttgart, Arkansas; Riceland Foods, Inc., Stuttgart, Arkansas; RiceTec, Inc., Alvin, Texas; Riviana Foods, Inc., Houston, Texas; SunWest Foods, Inc., Davis, California; Supreme Rice Mill, Inc., Crowley, Louisiana; The Rice Company, Roseville, California; and Uncle Ben's, Inc., Houston, Texas. AARQ seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products shipped under the TRQs will be semi-milled or wholly milled rice, whether or not polished or glazed (item 1006.30 of the Harmonized Tariff Schedules [HTS]), and husked (brown) rice (item 1006.20 of the HTS). Distributions of the TRQ bid proceeds will be based on exports of the above types of rice and rice in the husk (paddy or rough) (item 1006.10 of the HTS).

Export Markets

Rice for which TRQ awards have been made will be exported to the countries that comprise the European Union. Exports that will serve as a basis for distribution of the proceeds of the TRQ awards will be to the European Union as well as all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

Purpose

The Association for the Allocation of Rice Quotas, Inc. ("AARQ") will manage on an open tender basis the tariff-rate quotas ("TRQs") for milled and brown rice granted by the European Union ("EU") to the United States under the U.S.-EU Enlargement Agreement signed July 22, 1996, or any amended or successor agreement providing for EU rice TRQs ("the TRQ System") and provide for distribution of the proceeds received from the tender process as set forth below.

Membership

Any person or entity domiciled or incorporated in the United States may become a Member of AARQ upon (i) submission to the Administrator of an application accompanied by evidence that the applicant is a rice mill or has exported U.S. rice from the United States, (ii) execution of the AARQ Operating Agreement, and (iii) in the case of applications received after December 31, 1997, payment of a one-time, nonrefundable fee of $3,000 to AARQ. The fee may be waived for small exporters, as determined by the Board of Directors of AARQ.

TRQ Administrator; Implementation

AARQ shall contract with an independent third party Administrator who is not engaged in the production, milling, distribution, or sale of rice, who shall bear responsibility for administering the TRQ System, subject to general oversight and supervision by the Board of Directors of AARQ.

Open Tender Process; Persons or Entities Eligible to Bid

(a) AARQ shall offer TRQ Certificates for duty-free or reduced-duty shipments of rice to the EU on open tender to the highest bidders. All U.S. TRQ quantities (in metric tons) shall be allocated through the Open Tender Process for such tranches ("TRQ Tranches") as may be provided for in the relevant EU regulations. The Open Tender Process shall constitute the sole and exclusive mechanism by which AARQ allocates TRQ quantities.

(b) Any person or entity incorporated or domiciled in the United States, whether or not a Member of AARQ, shall be eligible to bid in any Open Tender Process.

Notice

The Administrator will publish notice ("Notice") of each Open Tender Process to be held for the allocation of TRQs for each TRQ Tranche in the Journal of Commerce, and at the discretion of AARQ in other publications of general circulation within the U.S. rice industry. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) of each TRQ to be allocated pursuant to the applicable TRQ Tranche; and (ii) the date on which all bids for TRQ Certificates must be submitted to and received by the Administrator (the "Bid Date"). The Notice will normally be published not later than 45 days prior to the opening of the TRQ Tranche; if EU decisions on the opening of TRQs or EU regulations necessitate a condensed timetable for notice and bidding, the Administrator will publish the required Notice as promptly as possible after the EU announcements, and will in any event specify a Bid Date that is at least 5 working days after publication of the Notice. Bids may be submitted by hand delivery or facsimile, and must be received by the Administrator by 5:00 p.m. EST on the Bid Date.

Form of Bid; Performance Security

(a) A bid shall be submitted on a form provided by the Administrator and shall state (i) the name, address, telephone, and facsimile or telex number of the bidder; (ii) the form of rice and quantity in metric tons bid, with a minimum bid quantity of twenty (20) metric tons; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid.

(b) The bid form shall contain a provision, signed by the bidder, that the bidder agrees that any dispute that may arise relating to the bidding process or the award of TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(c) The bidder shall submit with its bid(s) a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier's check, wire transfer, or equivalent performance security, in a form approved by AARQ and for the benefit of an account designated by the Administrator, in the amount of $50,000 or the total value of its bid(s), whichever is less. Such performance security shall be forfeited if the bidder fails timely to pay for TRQ Certificates awarded to it. At the option of a successful bidder, its performance security may be applied to the price of its successful bid(s), or retained as security for a subsequent Open Tender Process. Any performance security not forfeited, applied to a bid price, or retained as future security shall be returned to the bidder promptly after the close of the Open Tender Process.

(d) The contents of the bids shall be treated by the Administrator as confidential and may be disclosed only to another neutral third party as necessary to ensure the effective operation of the TRQ System; provided, however, that after issuance of all TRQ Certificates in an Open Tender Process, the Administrator shall promptly notify all bidders of and release to the public (i) the total tonnage for which TRQ Certificates were awarded under the milled rice TRQ Tranche and the brown rice TRQ Tranche, respectively, and (ii) the price per metric ton of the highest successful bid for each TRQ Tranche.

TRQ Certificate Awards

(a) Following the close of the bidding period, after having carefully reviewed each apparently high bid to ensure its conformity with applicable requirements, the Administrator shall notify each high bidder that its bid(s) have been determined to be high bid(s). If two or more bidders have submitted identically priced high bids that together cover more than the available tonnage, the Administrator shall divide the award among those bidders in proportion to the quantities of their bids and offer the proportionate shares to each of those bidders. If any of those bidders rejects all or part of the quantity offered, it shall be offered first to the remaining such bidder(s) and then to the next highest bidder.

(b) Promptly after issuance of the notification that its bid is a high bid, a bidder shall pay the full amount of the bid to the Administrator either by certified check or by wire transfer to an account designated by the Administrator. If the bidder fails timely to pay the full amount of the bid, the Administrator shall revoke the award, and grant the award to the next highest bidder.

(c) If the total bids received cover less than the tonnage of the relevant TRQ Tranche, the unused portion shall, to the extent consistent with EU regulations, be carried over to a succeeding Tranche. In any Tranche as to which EU regulations prohibit such carry-over, should total bids received cover less than the total tonnage available in the Tranche, the unused portion shall be offered to all successful bidders, in proportion to the size of their respective awards, at the lowest successful bid price.

(d) The full amounts received from successful bidders shall be deposited in an interest-bearing account designated by the Administrator in a financial institution approved by the Board of Directors of AARQ.

Delivery of TRQ Certificates

(a) Promptly after receiving the full amount of a successful bid, the Administrator shall transmit to the successful bidder a TRQ Certificate that designates the quantity and form of rice covered by the bid and any known expiration date pursuant to EU regulations.

(b) To facilitate monitoring of shipments of packaged rice pursuant to EU regulations, the TRQ Certificate shall include a space for designation by the exporter of the type of packaging, if any, of the rice covered by the TRQ Certificate.

(c) TRQ Certificates issued to successful bidders shall be freely transferable.

Disposition of Tender Proceeds

(a) The proceeds of Open Tender Processes shall be applied and distributed as provided in paragraphs (b) through (g) below.

(b) Operating expenses of AARQ, including legal, accounting, and administrative costs of establishing and operating the TRQ System, shall be paid as incurred from tender proceeds as they become available, pursuant to authorization by the AARQ Board of Directors.

(c) From the remaining proceeds of tenders as soon as available—

(i) The U.S. Rice Industry Coalition for Exports, Inc. ("US RICE") shall be reimbursed for its documented TRQ-related legal expenses up to $450,000.

(ii) The Rice Millers' Association ("RMA") shall be reimbursed up to $450,000 (A) for its documented TRQ-related legal and administrative expenses, (B) for payment of up to $100,000 to the Committee for Fair Allocation of Rice Quotas for its documented TRQ-related legal expenses, (C) for payment of up to $25,000 to each individual member of the RMA/ETCR for its documented third party legal expenses in calendar years 1996 and 1997 in connection with the establishment of an ETC for administration of the TRQs, and (D) for payment of $25,000 to each member of the RMA/ETCR that documents that it shipped a minimum of 500 metric tons of milled or brown rice to the EU in calendar year 1996 and has not received a distribution under item (C). If there are insufficient funds available to make payments provided for in subparagraphs (c)(ii)(C) and (D), the amount that each RMA/ETCR member would otherwise be entitled to receive will be reduced by a pro-rata amount so that the total distribution will be equal to the amount available for this purpose.

(d) From the proceeds of tenders in each of the first two years of operations, each Member of AARQ that documents to the Administrator exports of milled or brown rice to Austria, Sweden, or Finland during 1990–1994 shall be paid up to $75 per metric ton of its documented 1990–1994 annual average of such shipments, provided, however, that the total amount paid to all eligible Members under this provision may not exceed $1,800,000 in each of the two years. If $1,800,000 is insufficient to permit payments of $75 per metric ton, the amount that each eligible Member would otherwise be entitled to receive will be reduced pro rata so that the total distribution will be equal to the amount available for this purpose. Any documented costs previously incurred by the RMA in reviewing and analyzing documentation of member shipments to Austria, Finland, or Sweden during 1990–1994 shall be considered a cost of administering the TRQ System, pursuant to paragraph (b) above.

(e) Of the proceeds remaining at the end of each year of operations—

(i) Twenty-two percent (22%) shall be distributed to the Rice Foundation, its successors, or assigns, solely for research purposes and expenses related thereto. Disbursement of the funds by the Rice Foundation is the subject of a separate agreement between the Rice Foundation and the State Rice Producer Legislative Groups of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas, and any dispute under that agreement shall not be a matter for resolution under this Operating Agreement.

(ii) Thirty-nine percent (39%) shall be distributed to Members exporting U.S. paddy, brown, and/or milled rice to the EU based on their percentage shares by volume, adjusted as provided in item (iv) of this subparagraph, of Members' exports to the EU during the year.

(iii) Thirty-nine percent (39%) shall be distributed to Members exporting U.S. paddy, brown, and/or milled rice to all non-EU world destinations, based on their percentage shares by volume, adjusted as provided in item (iv) of this subparagraph, of Members' non-EU worldwide exports during the year.

(iv) The computation of Members' exports under this paragraph (e) shall be made on a milled rice equivalent basis using U.S. Department of Agriculture standard equivalency factors.

(f) A year shall be the calendar year, except that if an Open Tender Process occurs in 1997, the first year of operations shall be the period from the date of that tender through December 31, 1998.

(g) Notwithstanding the foregoing provisions of this paragraph, promptly upon implementation of the TRQ System by the EU, the Board of Directors shall consider and may direct distributions during 1998 of proceeds from tenders of a major portion of the TRQ tonnage to be offered in the first year of operations, basing distributions pursuant to paragraph (e)(ii) and (iii) on Members' exports during calendar year 1997.

Eligibility for Distributions; Submission of Export Documentation.

Any Member of AARQ will be eligible to participate in distributions of tender proceeds if: (i) it is a member under the ETCR issued to AARQ by the U.S. Department of Commerce on the date of a distribution or its membership under the ETCR is the subject of an ETCR amendment pending with the Department of Commerce on that date, and (ii) it has timely submitted the required export documentation to the Administrator.

Distribution of Tender Proceeds

Within sixty (60) days of the submission of the required documentation for the year or as soon as practicable thereafter, the Administrator shall notify each Member, on a confidential basis, of its percentage share of U.S. rice exports by Members to the EU and/or non-EU destinations, as applicable, for the previous year, and the dollar amount of its distribution. As promptly as possible following such notification, the Administrator shall cause the distributions to be made to eligible Members. If an amendment to include an eligible Member under the ETCR is pending at the Department of Commerce, the Administrator shall cause such Member's distribution to be held for distribution promptly upon issuance of the amendment.

Arbitration of Disputes

Any controversy or claim arising out of or relating to the TRQ System or to

the AARQ Operating Agreement, or the breach thereof, including inter alia a Member's qualification for a distribution, the interpretation of documents, or the distribution itself, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Confidential Information

Confidential export documentation and any other confidential information submitted to AARQ by an applicant for membership, by a Member in connection with qualifying for a distribution, or by any person in connection with the TRQ System shall be marked "Confidential" and submitted to the Administrator, who shall maintain its confidentiality. The Administrator shall not disclose such confidential information to any Member other than the submitter, or to any officers, agents, or employees of any Member other than the submitter, and shall not disclose such confidential information to any other person except to another neutral third party as necessary to make the determination for which the information was submitted, to process distributions, or in connection with the arbitration of a dispute.

Annual Reports

In accordance with its Bylaws, AARQ shall publish an annual report, including a statement of the operating expenses and aggregate data on the distribution of proceeds, as reflected in the audited financial statement of the AARQ TRQ System.

Amendments

During the first eight years of the operation of the TRQ System, any amendment to the following fundamental provisions of the TRQ System shall take effect only upon the unanimous approval by all Voting Members of AARQ: provisions relating to (i) qualification for membership in AARQ, except the amount of the nonrefundable fee, (ii) the paragraph entitled "Open tender process; Persons or entities eligible to bid," and (iii) the disposition of tender proceeds. In addition, no reduction may be made in the distribution required to be made to the Rice Foundation for research and expenses related thereto, unless approved by unanimous consent of the Rice Producer Legislative Groups of Arkansas, California, Louisiana, Mississippi, Missouri, and Texas. The Board of Directors of AARQ shall otherwise have authority to amend the provisions of the TRQ System as set forth in the Bylaws of AARQ.

Cooperation With the U.S. Government and the European Commission

AARQ will provide whatever information and consultations may be useful in order to ensure effective consultations between the U.S. Government and the European Commission concerning the implementation and operation of the TRQ System. In particular, while maintaining the confidentiality of confidential information submitted by bidders and Members, AARQ will provide its annual report, regular reports following the tender for each TRQ Tranche, reports on distributions of tender proceeds, and/or any other information that might be requested by the U.S. Government. Directly or through the U.S. Government, AARQ will endeavor to accommodate any information requests from the Commission (while protecting confidential data), and will consult with the Commission as appropriate.

Miscellaneous Implementing Provisions

AARQ and/or its members may (i) meet, discuss and provide for an administrative structure to implement the foregoing tariff rate quota management system, assess its operations and provide modifications as necessary to improve its workability, (ii) meet, exchange and discuss information regarding the structure and method for implementing the foregoing tariff rate quota management system, (iii) meet, exchange and discuss the types of information needed regarding the bidding process, distribution of the bid proceeds, and past export transactions that are necessary for implementation of the system, (iv) meet, exchange and discuss information concerning U.S. and foreign agreements, legislation and regulations affecting the TRQ management system, (v) and otherwise meet, discuss and exchange information as necessary to implement the activities described above and take the necessary action to implement the foregoing TRQ management system.

Abbreviated Amendment Procedures

New AARQ members may be incorporated as Members in the Certificate through an abbreviated amendment procedure. Under the procedure, AARQ will notify the Secretary of Commerce and the Attorney General, in writing, of those members of AARQ that wish to be included as Members in the Certificate. The notification will include a certification from each such member of its domestic and export sales of Products in its preceding fiscal year. Notice of the members so identified shall be published in the **Federal Register**. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not so amend the Certificate within 60 days of publication in the **Federal Register**, such amendment must be sought through the normal amendment procedure.

Dated: November 19, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–30783 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971031260–7260–01]

Voluntary Product Standard PS 2–92 "Performance Standard for Wood-Based Structural-Use Panels"; Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice and request for comments on Voluntary Product Standard PS 2–92.

SUMMARY: The National Institute of Standards and Technology (NIST) provides notice that on behalf of the Department of Commerce NIST is conducting the five-year review of Voluntary Product Standard (VPS) PS 2–92 "Performance Standard for Wood-Based Structural-Use Panels" as required by Department Procedures. The Standing Committee for PS 2–92, responsible for maintaining the standard, is assisting NIST in implementing the review which is conducted to determine if the standard has become obsolete, technically inadequate, no longer acceptable to or used by the industry, or inconsistent with law or established public policy. Upon completion of the review, the Standing Committee will make a recommendation to NIST as to whether the standard should be reaffirmed, amended, revised, or withdrawn.

DATES: Written comments should be supported by written data, views, or arguments and must be received on or before January 23, 1998 to be assured of consideration.

ADDRESSES: Written comments are to be directed to Barbara M. Meigs, Technical Standards Activities Program, Office of Standards Services, Building 820, Room 164, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of PS 2–92 or for additional information are to be directed to Barbara M. Meigs, Technical Standards Activities Program, Office of Standards Services, National Institute of Standards and Technology, *telephone:* 301–975–4025, *fax:* 301–926–1559; *e-mail:* barbara.meigsnist.gov.

SUPPLEMENTARY INFORMATION: Voluntary Product Standard PS 2–92 establishes inspection, test, and labeling procedures for assessing the acceptability of wood-based structural-use panels for construction sheathing and single-floor applications for a variety of products; namely, plywood, wafer board, oriented strand board, structural particle board, and composite panels. It provides performance requirements, adhesive bond durability, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels. The Standard classifies panels by exposure durability and by grade. It provides test methods, a glossary of trade terms and definitions, and a quality certification program whereby agencies can inspect, sample, and test products for qualification under this Standard. Information regarding reinspection practices is provided in an appendix.

PS 2–92, published in 1992, was developed and is maintained in accordance with Department "Procedures for the Development of Voluntary Product Standards" established in Part 10, Title 15, of the Code of Federal Regulations (15 CFR Part 10, as amended; 51 FR 119 dated June 20, 1986).

Section 10.10 of the Procedures requires that each VPS standard be reviewed by the Department with such assistance of the Standing Committee (responsible for maintaining the standard) or others, as may be deemed appropriate by the Department, within five years after initial issuance or last revision of the standard.

Upon completion of the review of PS 2–92, the Standing Committee for PS 2–92 and NIST will act to reaffirm, amend, revise, or withdraw the standard, as appropriate.

Authority: 15 U.S.C. 272.

Dated: November 17, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–30717 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Public Meeting and Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act and with section 315 of the Coastal Zone Management Act of 1972; as amended, the State of Florida and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public scoping meeting on the proposed Guana Tolomato Matanzas (GTM) National Estuarine Research Reserve (NERR) in Florida to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS) and Draft Management Plan (DMP). The DEIS and DMP address research, monitoring, education and resource protection needs for the reserve.

DATE AND TIME: Wednesday, December 10, 1997 at 7:00 p.m.

ADDRESSES: St. Johns County Auditorium, Government Complex, 4020 Lewis Speedway, St. Augustine, Florida 32095.

FOR FURTHER INFORMATION CONTACT: Anna Marie Hartman, Bureau of Coastal and Aquatic Managed Areas, Division of Marine Resources, Department of Environmental Protection at (850) 488–3456; or Nathalie Peter, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, at (301) 713–3132, ext. 119.

SUPPLEMENTARY INFORMATION: In October 1997, NOAA Sanctuaries and Reserves Division (SRD) approved the nomination of the Guana Tolomato Matanzas (GTM) estuarine systems as a proposed National Estuarine Research Reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance scientific understanding of the coastal environment and aid in resource management decision making.

The proposed GTM Reserve encompasses approximately 53,333 acres of publicly owned lands and waters in St. Johns and Flagler Counties on the east coast of Florida. It consists of two sites: the Guana River and Tolomato River estuarine system located north of St. Augustine and the Matanzas River south of St. Augustine. The proposed reserve is an area important to many resident and migratory fish and waterfowl and a variety of threatened and endangered species, including the manatee, the least tern, and the loggerhead, green and leatherback turtles. Major habitat types include beach dunes, salt and freshwater marshes, cypress and hardwood swamps, shell mounds, and xeric hammocks. The Matanzas Inlet is the last naturally occurring inlet on the east coast of Florida that has not been subject to dredging and other manmade disturbances.

The Department of Environmental Protection (DEP) has developed a draft management plan for the NERR which identifies specific needs and priorities related to research, monitoring, education, and stewardship at the proposed site. It also presents draft action plans for administration, a volunteer program, public access, facilities/construction, and boundaries/land acquisition.

At the public meeting, DEP and NOAA will provide a synopsis of the draft management plan and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

The public meeting will be held in St. Augustine, Florida at the St. Johns County Auditorium, Government Complex, 4020 Lewis Speedway, on December 10, 1997, from 7:00 p.m. to 9:00 p.m.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend the above meeting. Parties who wish to respond in writing should do so by December 26, 1997, to Anna Marie Hartman, Department of Environmental Protection, Division of Marine Resources, Bureau of Coastal and Aquatic Managed Areas, 3900 Commonwealth Boulevard, MS 235 Tallahassee, Florida 32399–3000, or Nathalie Peter, NOAA Sanctuaries and

Reserves Division, 1305 East-West Highway N/ORM2, Silver Spring, MD 20910.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: November 19, 1997.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–30829 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period. The 1998 limits for all categories except 331, 341 and 641 have been reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	483,925 dozen.
331	1,229,621 dozen pairs.
334	140,004 dozen.
335	251,378 dozen.
336/636	449,849 dozen.
338/339	1,303,162 dozen.
340/640	2,945,879 dozen
341	2,580,983 dozen.
342/642	422,226 dozen.
347/348	2,196,353 dozen.
351/651	670,582 dozen.
352/652	10,004,398 dozen.
363	24,995,418 numbers.
369–S[1]	1,675,461 kilograms.
634	489,811 dozen.
635	317,340 dozen.
638/639	1,652,648 dozen.
641	1,080,730 dozen.
645/646	388,106 dozen.
647/648	1,381,355 dozen.
847	733,449 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30843 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	2,500,387 square meters of which not more than 836,774 square meters shall be in Category 410.
433	12,691 dozen.
435	22,849 dozen.
442	14,806 dozen.
444	69,296 numbers.
448	26,150 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 24, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30840 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,590,899 square meters.
433	6,248 dozen.
435	4,111 dozen.
443	76,167 numbers.
624	2,112,371 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 25, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30842 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

November 19, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998 in excess of the following limits:

Category	Twelve-month restraint limit
410	415,456 square meters.
433	11,604 dozen.
435	17,527 dozen.
443	96,940 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 25, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30841 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan; Correction

November 19, 1997.

On page 58945, second column, Annex I, replace the HTS numbers for part Category 347–W with the following HTS numbers:

347–W	Men's and boys' woven cotton pants: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30839 Filed 11–21–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Application of FutureCom, LTD. as a Contract Market in Live Cattle Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of application.

SUMMARY: FutureCom has applied for designation as a contract market for the automated internet-based trading of cash-settled live cattle futures and options. FutureCom has not previously been approved by the Commission as a contract market in any commodity, thus, in addition to the terms and conditions of the proposed futures and options contracts, FutureCom has also submitted proposed trading rules, rules of government, and other materials to meet the requirements for a board of trade seeking initial designation as a contract market. Notice of FutureCom's application was previously published for public comment on January 31, 1997 (62 FR 4730). Many comments received in response to that notice expressed the opinion that there were insufficient materials and information available concerning the applicant, thus commenters were unable to respond adequately to the request for comment. Since the initial publication, the Commission has received additional materials and information in support of the application. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets ("Division") has determined to again publish the proposal for public comment. The Division believes that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. The Division seeks comment regarding all aspects of FutureCom's application and addressing any issues commenters believe the Commission should consider.

DATES: Comments must be received on or before December 24, 1997.

FOR FURTHER INFORMATION CONTACT: With respect questions about the terms and conditions of the proposed futures and option contracts, please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, at Three Lafayette Centre, 21st Street NW, Washington, DC 20581; Telephone: (202) 418–5273; Facsimile number: (202) 418–5527; or Electronic mail: flinse@cftc.gov. With respect to questions about the trading rules and rules of government, please contact Lois Gregory, Division of Trading and Markets, at the same address; Telephone: (202) 418–5483; Facsimile number: (202) 418–5536; or Electronic mail: lgregory@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

FutureCom, LTD., a limited Texas partnership, has applied for designation as a contract market for the automated trading over the internet of cash-settled live cattle futures and options. FutureCom has not been approved previously by the Commission as a contract market in any commodity, thus, in addition to the terms and conditions of the proposed futures and options contracts, FutureCom has also submitted proposed trading rules, rules of government, surveillance and compliance procedures, system security documentation, and other materials and documents to meet the requirements for a board of trade seeking initial designation as a contract market.

Notice of FutureCom's application was previously published for public comment on January 31, 1997 (62 FR 4730). Many comments received in response to that notice expressed the opinion that there were insufficient materials and information concerning the applicant available at that time, thus commenters were unable to respond adequately to the request for comment. By letter dated June 20, 1997, the Division informed FutureCom that the running of the one-year review period provided in Section 6 of the Commodity Exchange Act would be stayed with respect to both the proposed futures and the proposed option contract until the Commission received information which fully addressed several major subject areas outlined in the letter. Since the initial publication, the Commission has received a considerable amount of additional material and information in support of the application. Based on the adequacy of the information contained in the submissions received to date, the Division has determined to lift the stay of the one-year review period and to publish again the proposal for public comment. The Division believes that publication of the proposal for comment again at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

FutureCom's affairs are managed under the direction of its Board of Directors and it will operate on a for-profit basis. FutureCom has proposed Bylaw provisions intended to meet requirements of various Commission regulations concerning the composition of governing boards and disciplinary committees. The FutureCom Board has the authority to establish classifications of membership and the qualifications that an applicant for membership must meet.

Each FutureCom member would have to maintain minimum net worth requirements applicable to the member's FutureCom membership classification. Every member would be a clearing member of the Exchange. Any member not in compliance with minimum financial requirements would not be able to engage in transactions except to close out positions.

FutureCom's proposed Bylaws also address trading standards, clearing and settlement, disciplinary proceedings, and arbitration. Trades would be matched in accordance with a trade matching algorithm based on a price-time priority. Traders could enter four types of orders: market, limit, stop, and market-if-touched. The trading standards would require each member to maintain records in accordance with Commission regulations. Bylaws would govern exchange of futures for physicals and position limits. Position limits would vary by trading level assigned to each member. Trading levels would be assigned based upon FutureCom's analysis of the credit risks associated with each applicant.

Each member would enter into an account and clearing agreement with FutureCom which would set forth, among other things, the details of the clearing arrangement, initial margin, margin calls, default, liquidation, trading and clearing fees, and order entry. All orders entered into the FutureCom system would be cleared and settled immediately upon execution through the First National Bank of Amarillo (the "Clearing Bank") via a system of automatic electronic debits and credits among traders' accounts. FutureCom and the Clearing Bank have entered into a cash settlement procedures agreement and a custody agreement. Initial margin for any order would have to be on deposit with the Bank before any transaction was executed. Maintenance margin notices would be sent by electronic mail and would specify the date, time and amount due and members would be responsible for receiving and assuring that funds were available to fund an electronic debit. FutureCom would liquidate any position or positions upon any condition of default including failure of a member to meet any margin call.

In the event of a trader default on a margin call, that margin would be delivered by FutureCom to the Clearing Bank on the day the default occurred. FutureCom intends to keep at least one million dollars in the form of a letter of credit on hand with the Clearing Bank for each listed futures and option contract. The amount would be increased according to the open interest in the listed contract to up to eight million dollars for open interest over 80,000 contracts. Additionally, FutureCom will accrue a reserve fund to be held by the Clearing Bank in a separate reserve fund account and be available against member defaults. From the transaction fees assessed in connection with each trade, the Exchange will apply $1.00 per contract to the reserve fund. Losses from trader defaults exceeding the FutureCom guarantee would be borne pro rata by all members according to the number of outstanding open contracts on the day of the default.

FutureCom expects that generally, all members including those members that otherwise maintain an account with an FCM, will enter transactions on FutureCom directly. However, in some cases, FutureCom members may, for a variety of reasons, prefer their FCM or other intermediary, such as their commodity trading advisor, to enter orders into the FutureCom system on their behalf. Any such intermediary, if not a FutureCom member itself, would have to be approved and accepted by FutureCom as an intermediary for the purpose of entering orders into the trading system.[1] The member would

[1] Every member would be required to register the computer(s) he/she/it intended to use to enter orders into FutureCom. Likewise, any intermediary entering orders on behalf of a member would be required to have the computer used to enter

Continued

give the FCM his I.D. and password for the purpose of entering the order as instructed by the member.

The Bylaws prohibit the entering of transactions designed to take advantage of orders entered for another. These prohibitions include any transaction that had been directly or indirectly prearranged, ones that are in the nature of a wash sale, trading ahead, or the disclosing or withholding of orders. FutureCom asserts, however, that generally, it should be far more difficult, if not impossible, for many of the types of unlawful trade practices to occur due to the fact that the predominant number of orders will be entered directly by the member.

FutureCom represents it will use due diligence in maintaining a continuing affirmative action program to secure compliance with various provisions of the Commodity Exchange Act and Commission regulations and with its own Bylaws. This will include trade practice and market surveillance programs designed and described by FutureCom to detect the trade practice abuses mentioned above as well as market manipulation, investigations of alleged violations of other rules, and disciplinary procedures. FutureCom's proposed Compliance Procedures require all intermediaries entering orders on behalf of members to comply fully with the requirements of Commission Regulation 1.35(a–1) consistent with the Commission's advisory relating to alternative methods of compliance with written record requirements.[2] FutureCom expects these records to be generated electronically in connection with the order entry process.

FutureCom intends to ask the National Futures Association ("NFA") to administer FutureCom's financial surveillance and arbitration programs and examine the books and records of joint FutureCom-NFA members relating to the members' business of dealing in commodity futures and options and cash commodities insofar as such business relates to their dealing on FutureCom. In this regard, therefore, NFA would assume the responsibilities of FutureCom set forth in Commission Regulations 1.51(a)(3) and 1.52(c) for all FCMs that are members of both FutureCom and NFA. Concerning arbitration, Commission Regulation 180.3(b)(4) requires each Commission registrant to include a registered futures association on a list of organizations that are qualified to conduct customer arbitration proceedings. As NFA is required to accept appropriate demands for arbitration, there is no need for a written agreement between FutureCom and NFA regarding delegation of FutureCom's arbitration program to NFA.

The Commission's Office of Information Resources and Management has reviewed the security of the proposed FutureCom trading system and analyzed issues of system vulnerability and issues related to the operation of the electronic trading system.

II. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate FutureCom should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. The Division seeks comment on all aspects of FutureCom's application for designation as a new contract market that would permit transmittal of orders over the internet and match orders electronically. Comments should also include the proposed clearing and settlement procedures, the ability of FutureCom to fulfill its self regulatory duties, and any other issues commenters believe the Commission should consider. Reference should be made to the FutureCom application for designation as an automated contract market for live cattle futures and options. Copies of the proposed terms and conditions, Exchange rules, compliance procedures, clearing and settlement description, and other related materials are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests or copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on November 18, 1997.

Alan L. Seifert,

Deputy Director.

[FR Doc. 97–30806 Filed 11–21–97; 8:45 am]

BILLING CODE 6351–01–M

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Final Sequestration Report for Fiscal Year 1998 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1998 to the House of Representatives, the Senate, and the Office of Management and Budget.

Mark G. Desautels,

Assistant for Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 97–30854 Filed 11–21–97; 8:45 am]

BILLING CODE 1400–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Airborne Laser Concept of Operations (ABL CONOPS) Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in Albuquerque, NM, on December 17–18, 1997 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings for the Quick Look Study on ABL CONOPS.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–30713 Filed 11–21–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 1999–2000 award year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs).

DATES: Interested persons are invited to submit comments on or before January 23, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. In addition, interested persons can access this document at the following website: http://www.ed.gov/offices/OPE/Professionals. Once at this website, the reader should go to the "What's New" area to locate the 1999–2000 FAFSA.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, section 483 authorizes the Secretary to include on the FAFSA up to eight non-financial data items that would assist States in awarding State student financial assistance.

Over the past several years, the Secretary, in cooperation with the above described agencies and organizations, has added questions to the form. Those questions were added to accommodate the needs of States that administer State student aid programs, and of institutions of higher education that administer the Title IV, HEA Programs. They were also added to facilitate eliminating or reducing the number of State and institutional forms that a student and his or her family must complete in order to receive student financial assistance.

In a notice published in the **Federal Register** of March 18, 1997, the Secretary noted that the Department of Education was reengineering the FAFSA and looking anew at all the questions on the form. The Secretary asked for comment on questions that applicants were not required to answer in order to have their eligibility and need for Title IV, HEA Programs determined. The Secretary also requested comment with regard to which of the questions were integral to State student aid programs. The Secretary wishes to emphasize that he was not considering eliminating a question merely because he listed that question for comment.

In addition to requesting comments in that notice regarding the 1999–2000 FAFSA, in May and June of this year, the Secretary convened public meetings in New York, St. Louis, San Diego, and Washington, D.C., for the purpose of receiving comments on early drafts of the reengineered FAFSA. Further, at the invitation of the National Association of Student Financial Aid Officers (NASFAA), in July the Department conducted a forum on a later draft of the reengineered FAFSA at NASFAA's annual convention in Philadelphia.

The FAFSA on which comments are requested reflects the many worthy and helpful comments the Department received during the Spring and Summer of this year. The adoption of many of these comments has made the FAFSA easier for applicants to understand and complete.

With regard to the data elements to be included in the FAFSA, it was necessary to balance often competing considerations. Those considerations included whether requested data was necessary for Federal purposes, whether data produced accurate and verifiable information, whether data was needed by a State as part of its State student aid program, and whether the elimination of data on the FAFSA would lead to the reintroduction of State forms. As a result of evaluating those considerations, only five date elements were eliminated.

The reengineered FAFSA differs from the current FAFSA as described below. References to the current FAFSA are to the 1997–98 FAFSA.

- Five data elements were eliminated that provided information that was of marginal value or could be easily obtained by another means. Those data elements are (1) applicant's permanent telephone number (question 10); (2) applicant's course of study (question 29); (3) date applicant expects to graduate (question 31); (4) whether applicant will attend the same college (question 36), and (5) applicant's release of information to state agencies (question 104).
- To make finding the actual application easier and to increase the probability that users will actually read instructions necessary to answer a particular question, the overall length of the document was reduced from 16 pages to eight pages. Instructions and background information were reduced from 12 pages to four pages, with one of these pages consisting of worksheets. To minimize the impact on processing, the application form itself remained four pages.
- To orient users, the first page prominently describes what kinds of aid an applicant may receive using the application and the telephone numbers that users may call for help.
- To serve as a navigational aid, answer fields are highlighted, one color for students and another color for parents. During usability testing, users were especially appreciative of this feature.
- To reduce confusion, the use of shortcut devices was eliminated. For example, users are not asked to navigate coordinates (columns and rows).
- With regard to the "simplified needs test," it was discovered through iterative design and usability testing that it was simpler and less burdensome to have applicants answer questions regarding their assets than it was for them to figure out whether they needed to answer those questions. Also, applicants who did not have to answer asset questions for Federal purposes may have to answer those questions for State purposes. As a result, all applicants will be required to answer asset questions. For the same reasons, the form could not be successfully designed to facilitate the "zero EFC" provisions.
- Worksheets were not given a name. Early usability testing showed that users frequently saw the name of a worksheet, assumed it did not apply to them, and ignored it. In later testing, all users looked at the worksheets. This later success was attributed to the fact that the worksheets are not named, the document is now much shorter, and the worksheets are easier to find.
- Users are now advised to complete their tax forms before filling out the FAFSA. Questions relating to filing estimated tax forms were eliminated (questions 56 C and D and 65 C and D).

FutureCom orders registered with FutureCom. Only orders from properly registered and approved computers would be accepted into the FutureCom trading system.

[2] "Alternative Method of Compliance With the Written Record Requirements," 62 FR 7675 (February 20, 1997).

As a result, more accurate income information should be reported.

• The wording of several questions was simplified and clarified. Instead of asking users for their "title", the form explains that males must be registered with the Selective Service and then asks if the users are male and want to be registered.

• The FAFSA no longer asks students whether they plan to attend various semesters on a ¾ time basis. The term "attending" was substituted for "enrolled" because students had a tendency to fill in only the Fall term, which is the term in which they generally would enroll.

• The FAFSA now asks for the name and address of the institution before it asks for the Title IV code. The FAFSA also tells the applicant where to find the Title IV code.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under the procedure for obtaining approval from OMB, ED must first obtain public comment on the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

To accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 19, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Free Application for Federal Student Aid (FAFSA).
Frequency: Annually.
Affected Public: Individuals and families.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 9,568,017
Burden Hours: 6,274,770

Abstract: The FAFSA collects identifying and financial information about a student and his or her family if the student applies for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility and need for State and institutional financial aid programs.

[FR Doc. 97–30810 Filed 11–21–97; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 18, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: Controlling the Cost of Postsecondary Education.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local and Tribal Gov't, SEAs and LEAs.
Annual Reporting and Recordkeeping Hour Burden: Responses: 75; Burden Hours: 1,500.
Abstract: This first time application package provides information and forms for those wishing to apply for grants that demonstrate projects addressing issues of cost control at postsecondary institutions.

Office of the Chief Financial Officer

Type of Review: New.
Title: Streamlined Clearance Process for Discretionary Grant Information Collections.
Frequency: Annually.
Affected Public: Individuals or households; Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden: Responses: 1; Burden Hours: 1.
Abstract: This information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance process. This streamlined information to the Office of Management and Budget (OMB) and, at the same time, publishes a 30-day public comment period notice in the **Federal Register**. OMB will then have 60 days after the public comment period begins to reach a decision on the information collection.

[FR Doc. 97–30760 Filed 11–21–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.200]

Notice of Correction; Graduate Assistance in Areas of National Need Program

The purpose of this notice is to correct the invitational priorities section of the Notice Inviting Applications For New Awards For Fiscal Year (FY) 1998, published in the **Federal Register** on October 27, 1997 (62 FR 55615). The description of activities under Invitational Priority 1 and Invitational Priority 2 was inaccurate.

Invitational Priority 1 should read as follows:

Within the absolute priority specified above, the Secretary is particularly interested in receiving applications from mathematics programs that train Ph.Ds in mathematics who will then train teachers who will specialize in the teaching of mathematics to students at the K–12 level.

Invitational Priority 2 should read as follows:

The Secretary is particularly interested in receiving applications from biology, chemistry, and physics programs that train Ph.Ds who will then train teachers who will specialize in the teaching of biology, chemistry or physics to students at the K–12 level.

For Applications or Information Contact: Cosette H. Ryan, U.S. Department of Education, International Education, International Education and Graduate Programs Service, 600 Independence Ave, SW, Suite 600–B, Portals Building, Washington, D.C. 20202–5247. Telephone: (202) 260–3608. Internet address: cosette__ryan@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134l–1134q–1.

Dated: November 14, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–30710 Filed 11–21–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–164]

Application To Export Electric Energy; Constellation Power Sources, Inc.

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of application.

SUMMARY: Constellation Power Source, Inc. (CPS), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 24, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On November 12, 1997, CPS applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada, as a power marketer, pursuant to section 202(e) of the FPA. Specifically, CPS has proposed to transmit to Canada electric energy purchased from electric utilities and other suppliers within the U.S.

CPS would arrange for the exported energy to be transmitted to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. Each of these transmission facilities, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with Kathleen C. Jones, Counsel, Constellation Power Source, Inc., 39 W. Lexington Street, Room 1120, Baltimore, MD 21201.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 18, 1997.

Anthony J. Cuno,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 97–30795 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Wetland Involvement; for Construction of a Consolidated Waste Processing Facility at the Miamisburg Environmental Management Project (MEMP)

AGENCY: Department of Energy (DOE), Miamisburg Environmental Management Project.

ACTION: Notice of wetland involvement.

SUMMARY: This is to give notice of DOE's proposal to construct a consolidated waste processing facility at the Miamisburg Environmental Management Project, located approximately ten (10) miles southwest of Dayton, Ohio. The proposed activity would involve a small portion of an isolated, man-made wetland in Montgomery County, Ohio. In accordance with 10 CFR 1022, DOE will prepare a Wetlands Assessment and conduct the proposed action in such a manner to avoid or minimize potential harm to or within the affected wetland area.

DATES: Written comments must be received by the DOE at the following address on or before December 9, 1997.

ADDRESSES: For further information on this proposed action, including a site map and/or a copy of the Wetlands Assessment, contact: Mr. James O. Johnson, SM/PP Hill Performance/ Technical Monitor, U.S. Department of Energy, Miamisburg Environmental Management Project Office, P.O. Box 66, Miamisburg, OH 45343–0066. Phone: (937) 865–5234; Facsimile: (937) 865–4489.

FOR FURTHER FURTHER INFORMATION CONTACT: For further information on general DOE wetland and floodplain environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The proposed activity would directly support the ongoing environmental remediation program at the Mound Plant. Construction and operation of the temporary, pre-fabricated consolidated waste processing facility would accomplish volume-reduction, metal recovery and waste packaging goals established for the site. Included in the construction of the facility are equipment and laydown pads and a roadway. Approximately 20% of the 50' × 60' laydown pad would encroach upon an isolated, man-made wetland with an overall areal extent of 0.04 acres. Construction of the laydown pad would, in turn, impact approximately one-third (⅓) of the subject wetland; the remaining two-thirds (⅔) of the wetland would not be impacted. The wetland was one of several delineated in the Mound Plant Habitat map (Mound Plant Ecological Characterization Report, March 1994); the map was prepared in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and has the concurrence of the Corps. The proposed action would result in long-term and direct impacts to approximately one-third of the 0.04 acre man-made wetland, as a result of back-filling with gravel before construction of the laydown pad. Best management practices would be utilized to minimize the amount of wetland area impacted. All reasonable efforts would be taken to backfill the smallest area of wetland possible. Staging and transport of equipment and supplies in the wetland would be avoided. Erosion controls such as silt fences would be used, if needed, to minimize sediment deposition into the wetland. Culverts would also be used, if necessary, to ensure continued overland flow to the wetland.

Issuance: Issued in Miamisburg, Ohio on November 18, 1997.

Susan L. Smiley,

NEPA Compliance Officer, Ohio Field Office.

[FR Doc. 97–30794 Filed 11–21–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement for the High Flux Beam Reactor Transition Project at the Brookhaven National Laboratory, Upton, NY

AGENCY: Department of Energy.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), for the High Flux Beam Reactor (HFBR) at the Brookhaven National Laboratory (BNL) in Upton, New York. The EIS will evaluate the range of reasonable alternatives regarding the future of the reactor, as required by NEPA, including: (1) No action (maintaining HFBR in a shutdown and defueled condition); (2) resume operation at a power level of 30 megawatt (MW) or up to 60 MW; (3) resume operation and enhance the facility; and (4) permanent shutdown with eventual decontamination and decommissioning (D&D). DOE invites individuals, organizations, and agencies to present oral and/or written comments concerning the scope of the EIS, including the environmental issues and alternatives the EIS should analyze.

DATES: The public scoping begins with publication of this NOI in the **Federal Register** and continues until January 23, 1998. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practicable.

DOE will conduct public scoping meetings to assist it in defining the appropriate scope of the EIS, including the significant environmental issues to be addressed. DOE plans to hold scoping meetings in the vicinity of BNL in December 1997 and January 1998. The December meeting will be held at the following date, time and location:

December 10, 1997, Mastic Beach Property Owners Association, 31 Neighborhood Road, Mastic Beach, New York 11951; Time: 4:00 p.m.–9:00 p.m.

Locations of additional scoping meetings to be held in January will be announced through the local media as soon as possible, but at least 15 days prior to the date of the meetings.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, requests for special arrangements to enable participation at scoping meetings (e.g., interpreter for the hearing-impaired) and questions concerning the project to: Michael Holland, Brookhaven Group, U.S. Department of Energy, 53 Bell Avenue, Bldg. 464, P.O. Box 5000, Upton, NY 11973–5000, (516) 344–3552, telefax (516) 344–1377, or by electronic mail to mholland@bnl.gov.

FOR FURTHER INFORMATION CONTACT: For general information associated with the research aspects of the HFBR, please contact: Iran Thomas, Deputy Associate Director, Office of Basic Energy Sciences, Office of Energy Research, U.S. Department of Energy, ER–10, Germantown, MD 20874, telephone: (301) 903–3427.

For technical information associated with reactor operation, please contact: Robert Lange, Associate Director, Office of Facilities, Office of Nuclear Energy, U.S. Department of Energy, NE–40, 19907 Germantown Rd., Germantown, MD 20874, telephone: (301) 903–2915.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, telephone: (202) 586–4600 or leave a message on (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Brookhaven National Laboratory was established in 1947 as a multi-disciplinary scientific research center. It is located close to the geographic center of Suffolk County, Long Island, about 56 miles (91 kilometers) east of New York City. The Laboratory site consists of 8.2 square miles (21.3 square kilometers, 2,130 hectares) with most principal facilities located near the center. The Laboratory carries out basic and applied research in the following areas: High-energy and nuclear physics; solid state physics; materials sciences and chemical sciences; nuclear medicine; biomedical and environmental sciences; and selected energy technologies.

The HFBR, which is centrally located within the BNL site (about 1 mile from the eastern site boundary and 1.5 miles from the southern boundary), was commissioned in 1965 as a scientific facility dedicated to neutron scattering research and other research programs in solid state physics, nuclear physics, materials technology, structural biology, medicine and chemistry. Neutron scattering techniques are used to study the structure and properties of materials. The HFBR has provided about two-thirds of the Department's experimental capability at reactors for neutron scattering.

The HFBR uses heavy water (deuterium) for cooling and a highly enriched uranium core to produce beams of thermal neutrons that are guided to experimental areas by nine horizontal aluminum alloy tubes called "beam tubes." In addition, there are seven vertical tubes for irradiating research samples in the reactor. The entire reactor and its control room are enclosed within a confinement dome. This reactor does not produce electric power. The HFBR staff presently consists of about 110 scientists, engineers, technicians, and administrative personnel. The HFBR scientific user community numbers about 300 researchers, including several from Japan and Europe.

In some research areas the HFBR is the best facility in the United States. For example, the facility's Small Angle Neutron Scattering (SANS) capability is regarded as a particularly useful technique by structural biologists, who represent a rapidly growing user community for neutron scattering. The HFBR SANS offers unique capabilities for the study of biological samples and is the best resource in the United States for this type of work. In addition, the HFBR's Single Crystal Neutron Diffraction equipment complements x-ray techniques in determining the structure of complex organic molecules because of its ability to locate hydrogen atoms. The HFBR facility has also been used for radioisotope production, neutron activation analysis, and material irradiation.

The reactor was originally designed for operation at a power level of 40 megawatts (MW). An equipment upgrade in 1982 allowed operation at 60 MW, which greatly enhanced the reactor's scientific capability. Beginning in 1991, the operating power of the reactor was limited to 30 MW until additional analysis could be performed to address safety concerns associated with a hypothetical loss of reactor coolant accident while operating at 60 MW. Subsequent analyses, currently under review as part of an on-going Safety Analysis Report revision program, indicate that the HFBR could be safely operated at 60 MW. Scientific users have recommended operating the reactor at 60 MW, and that the Department upgrade and modernize the scientific instrumentation and other features such as the beam tubes.

Current Status of HFBR

On December 21, 1996, the HFBR was shut down for refueling and maintenance, a routine activity which normally occurs almost every month. Before the reactor returned to scheduled scientific operations, however, monitoring indicated that a plume of tritiated water was contaminating the groundwater in excess of drinking water standards south and down gradient of the reactor. DOE, in cooperation with the U.S. Environmental Protection Agency (EPA), New York State Department of Conservation (NYSDEC), and Suffolk County Department of Health Services (SCDHS), immediately initiated activities to identify and eliminate the source of the tritium plume. These activities, now collectively called the Tritium Remediation Project, continue as part of the Department's commitment to remediate the contaminated groundwater.

Data collection and analysis identified the HFBR spent fuel pool as the likely source of the tritium plume. In May 1997, a short-term removal action, in the form of a groundwater extraction system, was undertaken to ensure that tritium contaminated groundwater in excess of drinking water standards does not leave the BNL site boundary.

The short-term removal action has been incorporated into the site's cleanup program in accordance with the Interagency Agreement among DOE, EPA and NYSDEC entered into pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). A description of the removal action taken, alternatives considered, regulatory interaction, and public participation activities associated with the short-term removal action are documented in the Action Memorandum for Operable Unit III Tritium Removal Action, dated May 9, 1997, which is available in the reading rooms identified in this notice.

The final remedial action will be determined through the CERCLA Operable Unit III Remedial Investigation/Feasibility Study (RI/FS) process and will be based on additional data collected, groundwater modeling, and evaluations of various remediation options, including those activities which comprise the Tritium Remediation Project. The CERCLA Record of Decision that completes this process is scheduled to be published in the fall of 1998. The potential environmental impacts associated with this CERCLA action will be reflected and accounted for in the environmental analysis contained in the EIS.

In addition to the activities associated with the cleanup of the contaminated groundwater plume, all fuel has been removed from the reactor and the pool and shipped off-site in preparation for removing all water from the fuel pool. Decontamination and dewatering of the storage pool is underway in order to eliminate the current source of the tritium to the groundwater beneath the HFBR. Operation of the groundwater plume pumping, treatment, and recharge system continues. The groundwater tritium plume has been characterized and modeled, and continues to be sampled and monitored. Removal of the water from the spent fuel pool is scheduled for completion by the end of 1997.

Purpose and Need for the Agency Action

The Department of Energy needs to make a decision regarding the future of the HFBR at BNL. This EIS will aid DOE in its decisionmaking process. In July

1997, the Department issued its "Action Plan for Improved Management of Brookhaven National Laboratory," which summarized the Department's planned process for deciding the future of the HFBR. The Action Plan states that the Secretary of Energy will decide the future of the HFBR and directs an appropriate environmental review process. That review process consists of this EIS on the HFBR, which will incorporate the results of the tritium remediation project being conducted in conjunction with the ongoing CERCLA process. The Secretary is scheduled to decide upon a preferred alternative for the future of the HFBR in early 1998 for inclusion in this EIS. As stated in the Action Plan, that decision will take into account several factors, including: public input from the local Long Island community; input from the HFBR scientific user community and the DOE Basic Energy Sciences Advisory Committee; and the value of the scientific information produced using the HFBR. The alternatives listed in this Notice for evaluation in the EIS reflect the full range of options available for the future of the HFBR. The results of the EIS scoping process will be considered in selecting the preferred alternative. The preferred alternative will be noted in the Draft EIS, but the EIS will analyze all reasonable alternatives, as required by NEPA.

The Conference Report accompanying Pub. L. 105–62, the Energy and Water Development Appropriations Act of 1998, directed that an EIS be prepared on the HFBR. The Report noted the conferees' expectation that the EIS include a "comprehensive survey of any environmental hazards that the tritium leak or other contamination associated with the HFBR pose to the drinking water and health of the people in the surrounding communities, and that it will provide a detailed plan for remediation." The EIS will provide this analysis, while concurrently proceeding with, the Tritium Remediation Project and applicable Interagency Agreement and CERCLA commitments. Long-term remediation plans are being prepared under the ongoing CERCLA program and will be discussed with the local community. Consistent with Congress' direction, the EIS will summarize this remediation plan and program, and assess the HFBR's potential for further contributing to groundwater contamination.

The Report also directed the Department to drain the spent fuel pool, meet the requirements outlined in the Suffolk County Sanitary Code Article 12, complete seismic upgrades, and repair and seal the floor drains. These modifications and repairs, in addition to those indicated in (3) below, are needed to place the HFBR into a radiologically and industrially safe condition, regardless of which alternative is selected for the future of the HFBR, and do not result in any adverse environmental impacts. Accordingly, since these activities do not have an adverse impact and do not limit the choice of reasonable alternatives, DOE intends to proceed with these activities prior to completion of the EIS. These modifications include repairs needed to bring the HFBR into compliance with applicable Federal, State, and local laws and requirements, including the requirements of Suffolk County Sanitary Code Article 12, which is relevant to reducing risks and preventing future leaks from the facility to the groundwater. These four specific modifications and repairs include:

(1) Several floor joints and conduit penetrations in the floor of the HFBR would be repaired and sealed to ensure that there is no leakage path to groundwater from any accidental spill within the reactor confinement building. The potential for spills exists during both reactor operations and deactivation activities, when there would be a need to move large quantities of radioactive liquids into tanks and drums for storage, treatment or disposal.

(2) Several piping systems and sumps in the HFBR would be modified and repaired by replacing single-walled piping and sumps with double-walled components, or installing new components above the floor, thus meeting the requirements of Suffolk County Sanitary Code 12 for protection of groundwater. These systems would be used during operations and during deactivation activities to flush systems and reduce contamination.

(3) The drains from the 350-foot tall stack (handles exhaust gases from HFBR and other nearby facilities) would be repaired, along with the collection piping and sump, to convert them from a single-walled to a double-walled system. This would enhance the confinement integrity of the HFBR by providing a barrier against potential accidental release of radioactive materials to groundwater.

(4) The HFBR control room and operations level crane would be reinforced to protect radiological monitoring and control systems, as well as operations personnel, in the event of a design basis earthquake. The control room and crane are needed to ensure safe reactor operations or deactivation activities.

The Department is also evaluating a proposal to construct and install a stainless steel liner in the spent fuel pool during the preparation of the EIS. The installation of this impervious liner and appurtenant leak detection system would result in the pool containing a double-walled barrier to ensure that the storage pool would not be a source of groundwater contamination in the future. DOE considers the storage pool to be an essential component of the HFBR regardless of whether or not the reactor operates. It would be needed to store spent fuel during operations. During deactivation activities, it would be used to handle various highly radioactive reactor components which must be dismantled or cut apart in preparation for shipment offsite. Much of this work would be conducted within the storage pool. A usable pool may also be necessary for maintenance of the HFBR during an extended period of time in its present shutdown condition. As part of the CERCLA cleanup of Operable Unit III, the Department committed to construct and install the liner prior to any use of the pool. As a result, the spent fuel liner is included at this time as part of all alternatives, except No Action. DOE specifically solicits comments on whether the liner should be installed, along with the other modifications and repairs, prior to completion of this EIS. After hearing public comments on this issue, the Department may decide to include installation of the liner as part of all alternatives, including No Action.

Alternatives To Be Evaluated

While Pub. L. 105–62 prohibited the use of funds made available under that Act or any other act to restart the HFBR, this EIS will analyze the following reasonable alternatives for the future of the HFBR, as required by NEPA:

No Action Alternative

Under this alternative, the reactor would be maintained in the current shutdown and defueled condition for the indefinite future; the four modifications and repairs listed above would be performed. The Department regards this as a non-preferred alternative, because it does not resolve the future of the HFBR.

Resume Operation Alternative

The earliest date that the reactor could be restarted is October 1999, following completion of the NEPA process and all of the modifications and repairs described above (including installation of the spent fuel liner). This alternative includes two subalternatives:

a. Startup and operation of the reactor at a power level of 30 MW (the power level prior to the shutdown).

b. Startup and operation of the reactor at a power level of 30 MW with a planned increase in operation at a level of up to 60 MW.

Resume Operation and Enhance Facility Alternative

Under this alternative, the Department would restart the reactor for operation at a power level of up to 60 MW, and eventually replace the reactor vessel to extend the life of the reactor, and upgrade the reactor (e.g., add scientific instruments) to enhance the reactor's scientific research capabilities and increase the number of potential reactor users. Because of budget limitations, the Department regards this as a non-preferred alternative.

Permanent Shutdown Alternative

Under this alternative, the HFBR would be permanently shut down for eventual decontamination and decommissioning. Additional NEPA review would be necessary in the future for a proposal to decontaminate and decommission the reactor. This alternative would involve terminating the scientific research mission of the HFBR at BNL and placing the reactor in an industrially and radiologically safe condition for an extended period of time until a proposal were made to decontaminate and decommission the reactor. While an analysis of the full and complete decontamination and decommissioning is beyond the scope of this EIS, the potential environmental impacts associated with decontamination and decommissioning will be analyzed to the extent possible.

At this time, the Department of Energy has no preferred alternative. As noted above, the Secretary of Energy will designate a preferred alternative based on the results of the scoping process and other information in early 1998.

Preliminary Environmental Analysis

The following issues have been tentatively identified for analysis in the EIS. This list is neither intended to be all-inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process.

Health and Safety: potential public and occupational consequences from routine operation and credible accident scenarios.

Waste Generation/Pollution Prevention: types of wastes expected to be generated and stored, pollution prevention opportunities, and the potential consequences to public safety and the environment.

Hazardous Materials: handling, storage, and use; waste management both present and future.

Background Radiation: cosmic, rock, soil, water, and air, and the potential addition of radiation.

Water Resources: surface and groundwater hydrology, use, and quality, and the potential for degradation.

Air Quality: meteorological conditions, ambient background, pollutant sources, and potential for degradation.

Earth Resources: physiography, topography, geology, and soil characteristics.

Land Use: plans, policies and controls.

Noise: ambient, sources, and sensitive receptors.

Ecological Resources: wetlands, aquatic, terrestrial, economically/recreationally important species, threatened and endangered species.

Socioeconomic: demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources.

Natural Disasters: floods, hurricanes, tornadoes, and seismic events. Unavoidable Adverse Impacts.

Natural and Depletable Resources: requirements and conservation potential.

Environmental Justice: any potential disproportionately high and adverse impacts to minority and low income populations.

Alternatives other than those presented in this document may warrant examination, and new issues may be identified for evaluation.

Scoping Meetings

The purpose of this NOI is to encourage public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. DOE will hold public scoping meetings in the BNL area to solicit both oral and written comments from interested parties.

DOE will designate a facilitator for the scoping meetings. The facilitator may ask for clarification of statements to ensure that representatives of the DOE fully understand the comments and suggestions. The scoping meetings will not be conducted as evidentiary hearings nor will there be questioning of the commentors. At the opening of each meeting the facilitator will establish the order of speakers and will announce any additional procedures necessary for conducting the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, a five-minute limit may be enforced for each speaker, with the exception of public officials and representatives of groups, who will be allotted ten minutes each. DOE encourages those providing oral comments to also submit them in writing. Comment cards will also be available for those who prefer to submit their comments in written form.

DOE will make transcripts of the scoping meetings and project-related materials available for public review in the following reading rooms:

1. U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 586–3142.

2. Brookhaven National Laboratory Research Library, Bldg. 477A Brookhaven Ave., Upton, NY 11973, Telephone: (516) 344–3483.

3. Longwood Public Library, 800 Middle Country Rd., Middle Island, NY 11953, Telephone: (516) 924–6400.

4. Mastics-Moriches-Shirley Community Library, 301 William Floyd Parkway, Shirley, NY 11967, Telephone: (516) 399–1511.

Other environmental materials available at these locations or through the Suffolk County Interlibrary Loan System include BNL's 1977 Site-wide EIS, Annual Site Environmental Reports, and the CERCLA Administrative record for cleanup activities.

NEPA Process

The EIS for the HFBR will be prepared according to the National Environmental Policy Act of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and DOE's NEPA Regulations (10 CFR Part 1021).

The draft EIS is scheduled to be published in the summer of 1998. A 45-day comment period on the draft EIS is planned, and public hearings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register** and in the local news media when the draft EIS is distributed.

The final EIS, which will incorporate public comments received on the draft EIS, is expected in November 1998. No sooner than 30 days after a notice of availability of the final EIS is published

in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**. The Record of Decision is expected to be issued in December 1998.

Signed in Washington, D.C., this 19th day of November, 1997.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health

[FR Doc. 97-30821 Filed 11-21-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Intent To Solicit Applications for Financial Assistance Grants

AGENCY: Department of Energy.

ACTION: Notice of intent to solicit applications for financial assistance grants.

SUMMARY: The U.S. Department of Energy is announcing its intent to solicit applications for awards of financial assistance (i.e., grants) for state-of-the-art research that contributes to any of the following eight areas: reactor physics, reactor engineering, nuclear materials, radiological engineering, radioactive waste management, applied radiation science, nuclear safety and risk analysis, and innovative technologies for next generation reactors, space power and propulsion, or radiation sources.

DATES: The anticipated issuance date of Solicitation Number DE-PS07-98ID13604 is December 1, 1997. A copy of the solicitation in its full text may be obtained on the Internet at http://www.inel.gov/doeid/proc-div.html under Current Solicitations. The deadline for receipt of applications will be approximately 52 days after issuance of the solicitation.

ADDRESSES: Applications will be submitted to: Dallas L. Hoffer, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401-1563.

FOR FURTHER INFORMATION CONTACT: Dallas Hoffer, Contract Specialist at (208) 526-0014 or Brad Bauer, Contracting Officer at (208) 526-0090; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401-1563.

SUPPLEMENTARY INFORMATION: The solicitation will be issued pursuant to 10 CFR 600.6(b) Eligibility for awards under this Nuclear Engineering Education Research (NEER) Program will be restricted to colleges and universities with nuclear engineering degree programs. The purpose of the NEER Program is to (1) support basic research in nuclear engineering; (2) assist in developing nuclear engineering students; and (3) contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for the program is Pub. L. 95-91.

Issued in Idaho Falls November 17, 1997.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 97-30796 Filed 11-21-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Commercialization Assistance for Awardees in the Small Business Innovation Research (SBIR) Program, Financial Assistance Solicitation No. DE-FC02-98ER12217

AGENCY: DOE, Chicago Operations Office.

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy (DOE) Office of Energy Research (OER) announces its interest in receiving applications to enhance the commercialization of SBIR recipients' technology. The Department may select more than one offeror for award under this solicitation. The selected offeror(s) may provide SBIR Awardees with individualized assistance in preparing business plans and developing presentation materials for raising capital or finding strategic partners to support the commercialization of their SBIR technology.

The Solicitation is available on the DOE Chicago Internet Home Page at http: //www.ch.doe.gov/business/ACQ.htm with proposals due December 15, 1997. Any modifications to the solicitation will continue to be posted on the Internet. Please note that users are not alerted when the solicitation is issued or when modifications are posted. Prospective offeror(s) are therefore advised to check the above Internet address on a daily basis. The Solicitation is available on the CH Acquisition Page (see address below).

DATES AND ADDRESSES: The complete solicitation document is available on the Internet by accessing the DOE Chicago Internet Home Page at http://www.ch.doe.gov/business/ACQ.htm under the heading "Current Acquisition Activities" Solicitation No. DE-FC02-98ER12217. Applications are due no later than 5:00 p.m. local time, on December 15, 1997. Awards are anticipated by January, 1998.

SUPPLEMENTARY INFORMATION: Completed applications referencing Solicitation No. DE-FC02-98ER12217 must be submitted to the U. S. Department of Energy, Chicago Operations Office, Attn: Peter R. Waldman, Bldg. 201, Rm. 3F-11, 9800 South Cass Avenue, Argonne, IL 60439-4899. As a result of this solicitation, DOE may award two(2) cooperative agreements. Available funding, irrespective of the number of offerors selected, is $250,000.00 in FY 1998, and follow-on funding of approximately $250,000.00 for FY99 and FY2000.

The solicitation invites applications which are limited to small business organizations. Eligibility to submit a proposal is restricted to small businesses. The SBIR program is a small business set-aside program. A small business award recipient will provide more credibility to SBIR participants. Past experience with previous commercialization assistance projects confirms that small businesses develop stronger and more productive business relationships with another company that has dealt with business problems similar to their own.

FOR FURTHER INFORMATION CONTACT: Peter R. Waldman, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439; Telephone No. (630) 252-2189, Fax No. (630) 252-5045, or by e-mail at peter.waldman@ch.doe.gov.

Issued in Chicago, Illinois on November 17, 1997.

James R. Bieschke,

Director, Operations Division.

[FR Doc. 97-30786 Filed 11-21-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-171-011]

ANR Pipeline Company; Notice Of Proposed Changes In FERC Gas Tariff

November 18, 1997.

Take notice that on November 13, 1997, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets to be effective November 1, 1997.

ANR states that the purpose of this filing is to comply with the Commission's October 29, 1997 letter order. That order addressed the incorporation of certain Gas Industry Standard Board business practices into ANR's tariff.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commissions Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30748 Filed 11-21-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96-492-006]

CNG Transmission Corporation; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 10, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective December 15, 1997:

First Revised Third Revised Sheet No. 1
Sheet No. 36
First Revised Substitute First Revised Sheet No. 114
First Revised First Revised Sheet No. 115
First Revised Substitute First Revised Sheet No. 116
First Revised Original Sheet No. 119
First Revised Substitute First Revised Sheet No. 124
First Revised Original Sheet No. 125
First Revised Original Sheet No. 126
First Revised First Revised Sheet No. 127
Second Revised Sheet No. 129
Second Revised Sheet No. 130
Second Revised Sheet No. 140
Second Revised Sheet No. 160
Sheet No. 161
First Revised First Revised Sheet No. 204
First Revised Second Revised Sheet No. 255
Second Revised Sheet No. 256
Second Revised Sheet No. 272
Second Revised Sheet No. 274
First Revised Original Sheet No. 292
First Revised First Revised Sheet No. 293
First Revised Original Sheet No. 304
First Revised Original Sheet No. 306
Second Revised Sheet No. 307
Second Revised Sheet No. 307A
First Revised First Revised Sheet No. 309
First Revised Sheet No. 310
Second Revised Sheet No. 314
First Revised Second Revised Sheet No. 346
First Revised Substitute Third Revised Sheet No. 350
Second Revised Sheet No. 381
First Revised Sheet No. 381A
Second Revised Sheet No. 382
First Revised Sheet No. 400
First Revised Sheet No. 401
First Revised Sheet No. 402
First Revised Sheet No. 403
First Revised Sheet No. 404
First Revised Sheet No. 405
Sheet No. 406

CNG states that the tendered tariff sheets were filed in compliance with the Commission's Order dated September 11, 1997 in Docket No. CP96-492-000, *et al.* Specifically, CNG states that the purpose of this filing is to comply with the Commission's directives to remove Rate Schedule OSS from CNG's tariff, and to clarify the availability provisions of CNG's remaining storage service rate schedules.

CNG proposes to: (1) revise the availability section of its existing Rate Schedule GSS to designate Rate Schedule GSS as CNG's open-access storage service pursuant to order No. 636 and Part 284 of the Commission's Regulations; (2) revise Rate Schedule GSS-II to clarify the scope of its availability; and (3) remove Rate Schedule OSS from CNG's tariff. CNG states that it will continue to provide Part 284 storage service under Rate Schedule GSS, and proposes to conduct storage services that have been authorized under Part 157 case-specific authorization pursuant to an individual X-rate schedule for each such service. CNG states that additional X-rate schedules will be filed in Volume No. 2A of CNG's FERC Gas Tariff, once the Commission approves CNG's proposed compliance filing.

CNG states that copies of this filing are being served on the parties to the proceeding in Docket No. CP96-492-004.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with the Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of CNG's filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30740 Filed 11-21-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM98-2-22-000 and RP97-212-002]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

November 18, 1997.

Take notice that on November 13, 1997, CNG Transmission Corporation (CNG), tendered for filing additional information regarding four aspects of its November 1 Annual TCRA filing, as directed by Letter Order of the Commission issued on October 29, 1997.

CNG states that copies of its filing have been mailed to the parties to the captioned proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-30756 Filed 11-21-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–366–008 and FA94–15–002]

Florida Gas Transmission Company; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 12, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendices A and B to the filing.

FGT states that on August 5, 1997, FGT filed a Stipulation and Agreement of Settlement (Settlement) in Docket Nos. RP96–366, et al. resolving all issues in its rate proceeding, including consolidated matters. Pursuant to Article XIII, the Settlement shall become effective upon the first day of the first month following the issuance of a final Commission order. On September 24, 1997, the Commission issued an order approving the Settlement (September 24 Order). Because no party requested rehearing as of October 24, 1997, the Settlement became effective November 1, 1997.

FGT states that the instant filing is made in compliance with the September 24 Order which directs FGT to file revised tariff sheets to reflect the settlement rates within thirty days of the effectiveness of the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30747 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–531–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 12, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fourth Revised Sheet No. 131 and Substitute Sixth Revised Sheet No. 132, with an effective date of November 1, 1997.

FGT states that On September 19, 1997, FGT filed tariff sheets (September 19 Filing) to modify the cash-out provisions in Section 14B of its tariff by (1) changing the method of determining the Posted Price be used for cashing out imbalances and (2) modifying the imbalance level factors for imbalance levels of 0% to 5%. Several parties protested FGT's filing. Subsequently, on October 10, 1997, FGT filed an answer in which FGT addressed various issues raised by the parties filing protests, but offered to withdraw the proposed changes to the imbalance factors if the Commission would approve the proposed changes to the determination of the Posted Price.

FGT's states that its offer to withdraw the proposed changes to the imbalance factors was made without prejudice to FGT refiling such proposals. On October 29, 1997, the Commission issued an order (October 29 Order) accepting FGT's revisions to the Posted Price determination and accepting FGT's offer to withdraw the proposed revisions to the imbalance level factors. The October 29 Order directed FGT to file revised tariff sheets eliminating the proposed revisions to the imbalance factors. FGT states that the instant filing is in compliance with the October 29 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 395.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30749 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–281–000]

Florida Power Corporation; Notice of Filing

November 18, 1997.

Take notice that on October 23, 1997, Florida Power Corporation (FPC), tendered for filing three separate service agreement between FPC and US Gen Power Services, L.P., Illinois Power Company and NP Energy, Inc., for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement was US Gen Power Services, L.P., is proposed to be effective October 8, 1997, the service agreement with Illinois Power Company is proposed to be effective October 14, 1997, and the service agreement was NP Energy, Inc., is proposed to be effective October 17, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30744 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–76–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 18, 1997.

Take notice that on November 10, 1997, Koch Gateway Pipeline Company, (Koch Gateway) P.O. Box 1478, Houston, Texas 77251–1478, filed in the above docket a request pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations, under its blanket certificate issued in Docket No. CP82–430–000 for authorization to operate as a jurisdictional facility in interstate commerce a dual 3-inch meter tube previously installed, operated and placed in service under Section 311(a) of the Natural Gas Policy Act (NGPA) and Section 284.3(c) of the Commission's regulations, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through a tap serving Entex, Inc. (Entex), a local distribution company in Montgomery County, Texas. Koch Gateway further states that it will operate the proposed facilities in compliance with 18 CFR, Part 157, Subpart F, and that the proposed facilities will not affect its ability to service its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30741 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–46–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1997.

Take notice that on November 12, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, the following tariff sheets, to become effective December 12, 1997:

Eleventh Revised Sheet No. 1
Seventh Revised Sheet No. 2
Original Sheet No. 205
Original Sheet No. 206
Original Sheet No. 207
Original Sheet No. 208
Original Sheet No. 209
Fifth Revised Sheet No. 1807
Fifth Revised Sheet No. 1808
Fifth Revised Sheet No. 1809
Fifth Revised Sheet No. 1810
Third Revised Sheet No. 1811
Second Revised Sheet No. 1812
Fourth Revised Sheet 1813
Second Revised Sheet No. 1814
Third Revised Sheet No. 4200
Fourth Revised Sheet No. 4201
Second Revised Sheet No. 4202

Koch states that it is submitting the above listed tariff sheets to implement a new Daily No Fuel Interruptible Transportation Service on its system. This new service will allow customers on a daily basis to transport gas from specifically identified receipt points to specifically identified delivery points without having to pay a fuel charge.

Any person desiring to be heard to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30752 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–54–001]

Louisiana-Nevada Transit Company; Notice of Tariff Filing

November 18, 1997.

Take notice that on November 13, 1997, Louisiana-Nevada Transit Company (LNT), tendered for filing as part of its Third Revised FERC Gas Tariff, Volume No. 1, the tariff sheet listed below, to be effective October 1, 1997:

Third Revised Sheet No. 56

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1997 ACA unit surcharge approved by the Commission is $.0022 per Dth.

Pursuant to Section 154.207 of the Commission's Regulations, LNT requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1997.

LNT states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30755 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–77–000]

Northern Border Pipeline Company; Notice of Application

November 18, 1997.

Take notice that on November 12, 1997, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP98–77–000 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act and Sections 157.14 and 157.16 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the acquisition and operation of certain meter facilities in Minnesota.

Specifically, Northern Border seeks to acquire the Windom measurement station from Northwest Gas of Cottonwood County, LLC (Northwest Gas). The Windom measurement station, which is located in Section 17, Township 105N, Range 35W, Cottonwood County, Minnesota, comprises the following facilities:

(1) one 4-inch turbine meter and associated piping;
(2) one 2-inch rotary meter and associated piping;
(3) approximately 110 feet of 4-inch pipe;
(4) remote terminal unit; and
(5) meter and control buildings, and appurtenances.

Northern Border states that Northwest Gas no longer desires to operate the measurement station and will transfer it to Northern Border for a nominal fee. Northwest Gas will pay Northern Border $46,633 for the negative cashflow that Northern Border states it will experience as a result of the timing of income tax liability incurred in acquiring the Windom measurement station.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 9, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30742 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–45–007]

Northern Border Pipeline Company; Notice of Billing Adjustment and Refund Report

November 18, 1997.

Take notice that on November 6, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing its billing adjustment and refund report in accordance with the Commission's August 1, 1997 order in Docket No. RP98–45–004 (80 FERC ¶ 61,150) approving the Stipulation and Agreement with modification dated October 15, 1996 (October 15 Settlement).

Northern Border states that on October 9, 1997, it distributed billing adjustment and refund checks to each affected shipper, or its designated agent. The total amount of the billing adjustment and refunds including applicable carrying charges was $52,629,752.46. Northern Border states that the billing adjustment and refunds with applicable carrying charges were calculated in accordance with the terms of the October 15 Settlement.

Northern Border states that a complete copy of this report has been served on all affected shippers and interested state commissions and is also available for review at Northern Border's office in Omaha, Nebraska.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such protests must be made as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30746 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–48–000]

Northwest Alaskan Pipeline Company; Notice of Tariff Changes

November 18, 1997.

Take notice that on November 14, 1997, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing in Docket No. RP98–48–000 as part of its FERC Gas Tariff, Original Volume No. 2, Forty-First Revised Sheet No. 5, with an effective date of January 1, 1998.

Northwest Alaskan states that it is submitting Forty-First Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Pan-Alberta Gas (U.S.), Inc. (PAG–US) under Rate Schedules X–1, X–2 and X–3, and to Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Forty-First Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1998 through June 30, 1998) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30754 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–80–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 18, 1997.

Take notice that on November 13, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP98–80–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate the Animas Air Park Meter Station located in La Plata County, Colorado as a certificated delivery point under Section 7(c) of the Natural Gas Act for the delivery of gas to Greeley Gas Company (Greeley) for any eligible shipper, under Northwest's blanket certificate issued in Docket No. CP82–443–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that the Animas Air Park Meter Station, located at milepost 6.34 on Northwest's Ignacio to Sumas mainline, was originally constructed pursuant to Section 311 of the Natural Gas Policy Act to be used for the delivery of gas to Greeley pursuant to Subpart B of Part 284 of the Commission's Regulations.

Northwest states that the Greeley has requested Northwest to operate the Animas Air Park Meter Station as a certificated delivery point for the delivery of gas to Greeley for any eligible shipper under Northwest's blanket transportation certificate.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 384.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30743 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–000]

Panhandle Eastern Pipe Line Company; Notice of Statement of Refunds Due

November 18, 1997.

Take notice that on November 10, 1997, Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the Commission's Order dated September 10, 1997, in Public Service Company of Colorado, *et al.*, Docket Nos. RP97–369–000, *et al.*, tendered for filing its Statement of Refunds Due with respect to refunds of Kansas Ad Valorem Taxes.

Panhandle states that copies of its filing is being sent to the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 25, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30751 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–47–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1997.

Take notice that on November 13, 1997, Shell Gas Pipeline company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 14, 20, 259 and 260, to become effective December 12, 1997.

SGPC states that the purpose of this filing is to meet the expressed needs of potential shippers. Therefore SGPC proposes to reduce the minimum requirements under Rate Schedule FT–2 to a reserve commitment level of 10 BCF and a MDQ of 1,000 Mcf per day.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30753 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–3–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 18, 1997.

Take notice that on November 13, 1997, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1997:

Substitute Second Revised Sheet No. 32
Substitute Fifth Revised Sheet No. 62
Substitute Second Revised Sheet No. 91
Substitute Fifth Revised Sheet No. 92
Substitute First Revised Sheet No. 244
Substitute Third Revised Sheet No. 245
Substitute Third Revised Sheet No. 246
Substitute Second Revised Sheet No. 247
Substitute Fourth Revised Sheet No. 248B
Substitute Second Revised Sheet No. 248D
Substitute Fourth Revised Sheet No. 249
Substitute Fourth Revised Sheet No. 252

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's "Order Rejecting Tariff Sheets and Accepting Tariff Sheets Subject to Conditions" issued October 30, 1997 in the above referenced docket as more fully detailed in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30750 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–7–000, et al.]

Enfield Operations, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 17, 1997.

Take notice that the following filings have been made with the Commission:

1. Enfield Operations, L.L.C.

[Docket No. EG98–7–000]

Take notice that on November 10, 1997, Enfield Operations, L.L.C., a limited liability company incorporated and existing under the laws of the State of Delaware, having its registered office at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged directly in operating an eligible facility located near the Plant. The Plant will consist of a 396 MW combined cycle power plant, fueled by natural gas and located in the Borough of Enfield, North London, England.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Wisconsin Public Service Corporation v. Wisconsin Power & Light Company and Wisconsin Public Power Incorporated SYSTEM

[Docket No. EL98–7–000]

Take notice that on November 6, 1997, Wisconsin Public Service Corporation tendered for filing a complaint against Wisconsin Power & Light Company and Wisconsin Public Power Incorporated SYSTEM alleging that Wisconsin Power and Light Company refuses to file the bypass amendment in violation of the Federal Power Act and that Wisconsin Public Power Incorporated SYSTEM is guilty of hoarding scarce transmission capacity.

Comment date: December 17, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before December 17, 1997.

3. Maine Electric Power Company

[Docket No. ER97–4517–000]

Take notice that on November 6, 1997, Maine Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Company

[Docket No. ER98–285–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 155.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER98–366–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreement and Certificates of Concurrence with Wheeled Electric Power Company, under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER98–367–000]

Take notice that on October 29, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing a summary of short-term transactions made during the third quarter of calendar year 1997, under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER98–368–000]

Take notice that on October 29, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company) filed one (1) umbrella service agreement for short-term firm point-to-point transmission service between SCS, as agent for Southern Company, and Williams Energy Services Company, under Part II of the Open Access Transmission Tariff (Tariff) of Southern Company. Southern Company also filed three (3) umbrella non-firm point-to-point transmission service agreements under the Tariff between SCS, as agent for Southern Company, and (i) Oglethorpe Power Corporation, (ii) Williams Energy Services Company, and (iii) NP Energy, Inc.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER98–369–000]

Take notice that on October 29, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with DPL Energy, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the DPL Energy, Inc.

NUSCO requests that the Service Agreement become effective October 23, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Company

[Docket No. ER98–371–000]

Take notice that on October 29, 1997, Central Illinois Public Service Company (CIPS), submitted an executed non-firm point-to-point service agreement, dated October 17, 1997, establishing Entergy Power Marketing Corp., as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 17, 1997, for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on Entergy Power Marketing Corp., and the Illinois Commerce Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Lowell Cogeneration Company Limited Partnership

[Docket No. ER98–372–000]

Take notice that on October 29, 1997, Lowell Cogeneration Company Limited Partnership (Lowell), tendered for filing a service agreement between the New England Power Pool and Lowell for service under Lowell's FERC Electric Tariff, Original Volume No. 1 (Tariff). This Tariff was accepted for filing by the Commission on July 17, 1997, in Docket No. ER97–2414–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Yadkin, Inc.

[Docket No. ER98–373–000]

Take notice that on October 29, 1997, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending September 30, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corporation

[Docket No. ER98–374–000]

Take notice that on October 29, 1997, Florida Power Corporation (Florida Power), filed a Cost-Based Wholesale Power Sales Tariff (CR–1) (Tariff) to permit Florida Power to engage in transactions for capacity and energy at negotiated rates, subject to a cost-based cap. Florida Power requests that the Tariff be made effective as of the date it was filed.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER98–375–000]

Take notice that on October 30, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and CMS Marketing, Services and Trading under Rate GSS.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER98–376–000]

Take notice that on October 30, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Constellation Power Source, Inc., (Constellation). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Constellation's signature page would permit NEPOOL to expand its membership to include Constellation. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Constellation a member in NEPOOL. NEPOOL requests an effective date of November 1, 1997, for commencement of participation in NEPOOL by Constellation.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–377–000]

Take notice that on October 30, 1997, PECO Energy Company (PECO), filed the following documents as part of its amendment to the Code of Conduct adopted by PECO in connection with the Commission's grant of market-based rates authorization to PECO in FERC Docket Nos. ER96–640–000, ER96–641–000 and ER97–316–000:

1. Letter of Transmittal.
2. Clean and redlined copies of the amended Code of Conduct.

Copies of the filing are being sent to the Pennsylvania Public Utility Commission and all customers with executed agreements under PECO's FERC Electric Service Tariff—Volume I.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–378–000]

Take notice that on October 30, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated October 28, 1997, with New Energy Ventures, L.L.C., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds New Energy Ventures, L.L.C., as a customer under the Tariff. DLC requests an effective date of October 28, 1997, for the Service Agreement.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER98–379–000]

Take notice that on October 30, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated October 28, 1997, with New Energy Ventures, L.L.C., under DLC's Open Access Transmission Tariff. The Service Agreement adds New Energy Ventures, L.L.C., as a customer under the Tariff. DLC requests an effective date of October 28, 1997, for the Service Agreement.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Lighting Company

[Docket No. ER98–381–000]

Take notice that on October 30, 1997, Long Island Lighting Company (LILCO), filed Electric Power Service Agreements entered into as of the following dates by LILCO and the following parties:

Purchaser	Service agreement date
Niagara Mohawk Power Corporation.	July 3, 1996.
Incorporated Village of Freeport.	April 23, 1997.

The Electric Power Service Agreements listed above were entered into under LILCO's Power Sales Umbrella Tariff.

LILCO requests that the Commission accept the Electric Power Service Agreement between LILCO and Niagara Mohawk Power Corporation with an effective date of October 16, 1996, and the Electric Power Service Agreement between LILCO and the Incorporated Village of Freeport with an effective date of May 31, 1997. LILCO has served copies of this filing on the customers which are a party to each of the Electric Power Service Agreements and on the New York State Public Service Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER98–382–000]

Take notice that on October 30, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and MC² Inc., (hereinafter Supplier). The terms and conditions contained within this agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER98–383–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Delmarva Power & Light d/b/a Connectiv Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern/AES Energy LLC

[Docket No. ER98–445–000]

Take notice that on October 31, 1997, Northern/AES Energy LLC (Northern/AES), petitioned the Commission for acceptance of Northern/AES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Northern/AES intends to engage in wholesale electric power and energy purchases and sales as a marketer. Northern/AES is not in the business of generating or transmitting electric power. AES Power, Inc. (AES Power), United Power Association (UPA), and J Power, Inc. (J Power), own member interests in Northern/AES. AES Power is a marketer of wholesale electric power and energy. The AES Corporation, the parent of AES Power, is a developer and owner of independent power projects. UPA is a generation and transmission cooperative that is regulated by the Rural Utility Service. J Power is a marketer of wholesale electric power and energy.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. COM/Energy Marketing, Inc.

[Docket No. ER98–449–000]

Take notice that on October 31, 1997, COM/Energy Marketing, Inc. (CE), tendered for filing pursuant to Rules 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective December 30, 1997.

CE intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CE sells electric energy it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Bangor Energy Resale, Inc.

[Docket No. ER98–450–000]

Take notice that Bangor Energy Resale, Inc. (Bangor Energy), a wholly-owned subsidiary of Bangor Hydro-Electric Company, submitted for filing on October 31, 1997, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1, a market-based rate schedule.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Bangor Hydro-Electric Company

[Docket No. ER98–463–000]

Take notice that on October 31, 1997, Bangor Hydro Electric Company (Bangor Hydro) tendered for filing a rate schedule providing for the sale of energy and capacity to Bangor Energy Resale, Inc., a wholly-owned subsidiary of Bangor Hydro.

Copies of this filing were served on the affected state public utility commissions and UNITIL Power Corporation.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER98–466–000]

Take notice that on October 31, 1997, New England Power Company (NEP), submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, an Amendment to Service Agreement that would terminate the obligation of the Water and Light Department of the Town of Littleton, New Hampshire (Littleton) to purchase from NEP, and the obligation of NEP to supply Littleton, requirements service pursuant to NEP's FERC Tariff, Original Volume No. 1, and would obligate Littleton to compensate NEP by the payment of Contract Termination Charges. NEP also filed a Service Agreement for the provision to Littleton of Network Integration Transmission Service and a Network Operating Agreement under NEP's open access transmission tariff. Copies of the filing have been served on the customer, the New Hampshire Public Utilities Commission and other Tariff 1 customers.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER98–486–000]

Take notice that on October 31, 1997, Puget Sound Energy, Inc., tendered for filing a Service Agreement for Network Integration Transmission Service pursuant to which Puget Sound Energy will implement a retail electric direct access pilot program. The pilot program was approved by the Washington Utilities and Transportation Commission to allow retail electricity sales by alternate suppliers in designated portions of Puget Sound Energy's service territory for a period of limited duration. A copy of the filing was served on the Washington Utilities and Transportation Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Orange and Rockland Utilities, Inc.

[Docket No. ER98–487–000]

Take notice that on October 30, 1997, Orange and Rockland Utilities, Inc. (O&R), tendered for filing an amendment to its agreement with the New York Power Authority (NYPA) dated June 28, 1985. O&R has served a copy of this filing on the New York State Public Service Commission and NYPA.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Oklahoma Gas and Electric Company

[Docket No. ER98–511–000]

Take notice that on November 3, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing an initial rate schedule (Power Sales Tariff) providing for sales of capacity and/or energy at market-based rates and for the resale of transmission rights that OG&E has reserved for its own use on its own transmission system or on the transmission systems of other transmission providers.

Copies of this filing have been sent to the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Boston Edison Company

[Docket No. ER98–522–000]

Take notice that on November 3, 1997, Boston Edison Company of Boston, Massachusetts, tendered for filing a (1) tariff providing for sales of electric capacity and/or energy at market-based rates and for the resale of transmission rights, (2) Standards of conduct as to inter-affiliate transactions, and (3) a form of service agreement and service specifications. Boston Edison asks that its tariff and related documents be allowed to become effective January 2, 1998.

Boston Edison states that it has served a copy of the instant filing upon the Massachusetts Department of Public Utilities and the Massachusetts Attorney General.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Wolverine Power Supply Cooperative Inc.

[Docket No. ER98–539–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997, tendered for filing an Open Access Transmission Tariff in compliance with Order No. 888, Order No. 888–A.

Copies of the filing were served on Wolverine's six wholesale power customers, two existing unbundled transmission customers, and the Michigan Public Service Commission.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30824 Filed 11–21–97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–390–000, et al.]

Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 18, 1997.

Take notice that the following filings have been made with the Commission:

1. Oklahoma Gas and Electric Company

[Docket No. ER98–390–000]

Take notice that on October 30, 1997, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for parties to take service under its open access tariff.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Fitchburg Gas and Electric Light Company

[Docket No. ER98–391–000]

Take notice that on October 30, 1997, Fitchburg Gas and Electric Light Company tendered for filing a summary of activity for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–392–000]

Take notice that on October 30, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with The Energy Authority, Inc., ConAgra Energy Services, Inc., and New Energy Ventures under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Washington Water Power Company

[Docket No. ER98–393–000]

Take notice that on October 30, 1997, The Washington Water Power Company (WWP), filed with the Federal Energy Regulatory Commission two Service Agreements for Network Integration Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 for service to participants in WWP's Direct Access Delivery Service program in the state of Washington and the state of Idaho. WWP requests effective dates of September 1, 1996 and October 1, 1996.

Copies of this filing were provided to the Idaho Public Utilities Commission and the Washington Utilities and Transportation Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Lowell Cogeneration Company Limited Partnership

[Docket No. ER98–394–000]

Take notice that on October 30, 1997, Lowell Cogeneration Company Limited Partnership, tendered for filing a summary of activity for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket No. ER98–395–000]

Take notice that on October 30, 1997, New York State Electric & Gas Corporation filed the Summary of Quarterly Activity for the calendar year quarter ending September 30, 1997, pursuant to § 205 of the Federal Power Act, 16 USC 824d (1995), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR Part 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997, order (the Order) in Docket No. ER97–2518–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corporation

[Docket No. ER98–396–000]

Take notice that on October 30, 1997, Wisconsin Public Service Corporation, tendered for filing executed service agreement with Marshfield Electric & Water Dept., Central Minnesota Municipal Power Agency, and Blue Earth Light & Water under its CS–1 Coordination Sales Tariff.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. The Cleveland Electric Illuminating Company

[Docket No. ER98–397–000]

Take notice that on October 30, 1997, The Cleveland Electric Illuminating Company, tendered for filing its quarterly report of transactions for the period July 1, 1997 through September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER98–398–000]

Take notice that on October 30, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a summary of short-term transactions made during the third quarter of calendar year 1997 under Virginia Power's market rate sales tariff, FERC Electric Power Sales Tariff, Original Volume No. 4, filed by Virginia Power in Docket No. ER97–3561–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Dayton Power and Light Company

[Docket No. ER98–399–000]

Take notice that on October 30, 1997, The Dayton Power and Light Company (Dayton), tendered for filing a summary of first quarter market based sales.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–400–000]

Take notice that on October 30, 1997, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2, for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric & Gas Company

[Docket No. ER98–401–000]

Take notice that on October 30, 1997, Public Service Electric & Gas Company, tendered for filing Transaction Summary of its activity for the third quarter of 1997, under its Market Based Rate Tariff, Original Volume No. 6.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Toledo Edison Company

[Docket No. ER98–402–000]

Take notice that on October 30, 1997, The Toledo Edison Company, tendered for filing its quarterly report of transactions for the period July 1, 1997 through September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power

[Docket No. ER98–403–000]

Take notice that on October 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, ConAgra Energy Services, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of October 23, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Washington Water Power

[Docket No. ER98–404–000]

Take notice that on October 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, Engelhard Power Marketing, Inc. WWP requests waiver of the prior notice requirement and requests an effective date of October 1, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–405–000]

Take notice that on October 30, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU Service, Inc., and American Energy Solutions, Inc. (AME), dated October 29, 1997. This Service Agreement specifies that AME has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and AME to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 29, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Kentucky Utilities Company

[Docket No. ER98–406–000]

Take notice that on October 30, 1997, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during July 1, 1997, through September 30, 1997, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Washington Water Power

[Docket No. ER98–407–000]

Take notice that on October 30, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed Service Agreements and associated Certificates of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with Benton County PUD, Delhi Energy Services, Inc., and Questar Energy Trading Company that were previously submitted by cover letter dated February 26, 1997, with a notice of filing. WWP requests waiver of the prior notice requirement and requests an effective date of February 1, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER98–408–000]

Take notice that on October 30, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Regulation and Frequency Response Service under Idaho Power's Open Access Transmission Tariff, Original Volume No. 5, between Idaho Power Company and Montana Power Company.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Washington Water Power

[Docket No. ER98–409–000]

Take notice that on October 30, 1997, Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with PG&E Energy Services, Energy Trading Corporation (PG&E), formerly doing business as Vantus Power Services (Vantus). WWP previously filed an unsigned Vantus Service Agreement dated December 15, 1996 with the Commission, noticed under Docket No. ER97–1252–000. The PG&E Service Agreement, dated October 22, 1997, therefore replaces the unsigned Vantus Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Potomac Electric Power Company

[Docket No. ER98–410–000]

Take notice that on October 30, 1997, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco, Northeast Utilities Service Company, and Sonat Power Marketing L.P., with an effective date of October 30, 1997, for these service agreements, and requesting waiver of notice.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER98–412–000]

Take notice that on October 30, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), submitted a report of short-term transactions that occurred under the Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) during the period July 1, 1997, through September 20, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Tucson Electric Power Company

[Docket No. ER98–414–000]

Take notice that on October 30, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm and non-firm point-to-point transmission service, and the following umbrella agreements for short-term firm transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements, and to permit the umbrella agreements to become effective as of the date of this filing. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Salt River Project dated September 11, 1997. Service under this agreement commenced on September 11, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc., dated October 23, 1997. Service under this agreement commenced on October 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated October 24, 1997. Service under this agreement commenced on September 13, 1997.

4. Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Co., Contracts & Wholesale Marketing dated October 24, 1997. Service under this agreement commenced on October 1, 1997.

5. Service Agreement for Non-Firm Point-to-Point Transmission Service with NP Energy, Inc., dated September 22, 1997. As of the date of this filing, service under this agreement has not yet commenced.

The details of the umbrella agreements are as follows:

1. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts and Wholesale Marketing dated October 21, 1997.

2. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Enron Power Marketing dated October 23, 1997.

3. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with PacifiCorp dated October 23, 1997.

4. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc. dated October 23, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Duquesne Light Company

[Docket No. ER98–416–000]

Take notice that on October 31, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 28, 1997, with Woodruff Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Woodruff Energy as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Duquesne Light Company

[Docket No. ER98–417–000]

Take notice that on October 31, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated October 16, 1997, with QST Energy Trading, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds QST Energy Trading, Inc., as a customer under the Tariff. DLC requests an effective date of October 16, 1997, for the Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–418–000]

Take notice that on October 31, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated October 29, 1997, with QST Energy Trading, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds QST Energy Trading, Inc., as a customer under the Tariff. DLC requests an effective date of October 29, 1997, for the Service Agreement.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER98–419–000]

Take notice that on October 31, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements with the following entities under APS' Market Rate Tariff No. 1, FERC Electric Tariff, Original Volume No. 3: Los Angeles Department of Water & Power, Nevada Power Company, San Diego Gas & Electric, Arizona Electric Power Cooperative, Salt River Project Agricultural Improvement & Power District, Southern California Edison

A copy of this filing has been served on the Arizona Corporation Commission and all entities on the Service List.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Powerex

[Docket No. ER98–420–000]

Take notice that on October 31, 1997, Powerex, tendered for filing of its summary of activities for the quarter ending September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services Inc.

[Docket No. ER98–421–000]

Take notice that on October 31, 1997, Cinergy Services, Inc. (Services), petitioned the Commission for acceptance of Rate Schedule Nos. 1–5; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. Rate Schedule Nos. 1–5 offer service on behalf of five yet-to-be-formed wholly-owned special purpose subsidiaries of Cinergy Corp., Services' parent corporation.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Cinergy Services, Inc.

[Docket No. ER98–422–000]

Take notice that on October 31, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated October 1, 1997, between Cinergy, CG&E, PSI and ProLiance Energy, LLC (ProLiance).

The Interchange Agreement provides for the following service between Cinergy and ProLiance:

1. Exhibit A—Power Sales by ProLiance
2. Exhibit B—Power Sales by Cinergy

Cinergy and ProLiance have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on ProLiance Energy, LLC, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER98–423–000]

Take notice that on October 31, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, revisions to Exhibit A to Service Agreement No. 65, of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Illinois Power Company

[Docket No. ER98–424–000]

Take notice that on October 31, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Avista Energy, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Southern California Edison Company

[Docket No. ER98–425–000]

Take notice that on October 31, 1997, Southern California Edison Company (Edison), tenders that effective on the later of the 1st day of January 1998, or the date the ISO assumes operational control of Edison's transmission grid, FERC Rate Schedule Nos. 74, 102, 117, 118, 120, 129, 130, 140, 141, 143, 147, 151, 153, 158, 159, 160, 161, 162, 166, 181, 185, 188, 240, 259, 346, and 347, and all Supplements thereto, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the following:

Arizona Electric Power Cooperative
Arizona Public Service Company
California Department of Water Resources
City of Anaheim
City of Azusa
City of Banning
City of Burbank
City of Colton
City of Glendale
City of Los Angeles Department of Water and Power
City of Pasadena
City of Riverside
Coastal Electric Services Company
Imperial Irrigation District
M–S–R Public Power Agency
Northern California Power Agency
Pacific Gas & Electric Company
Rainbow Energy Marketing Corporation
San Diego Gas & Electric Company
Western Area Power Administration
Public Utilities Commission of the State of California

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–426–000]

Take notice that on October 31, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Penn Power Energy, Energis Resources, Inc., PP&L, Inc., and Horizon Energy Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Southwestern Public Service Company

[Docket No. ER98–427–000]

Take notice that on October 31, 1997, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of July 1, 1997 through September 30, 1997.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Union Electric Company

[Docket No. ER98–428–000]

Take notice that on October 31, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and CNG Power Services Corporation, The Cinergy Operating Companies and Rainbow Energy Marketing Corp. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. New Century Services, Inc.

[Docket No. ER98–429–000]

Take notice that on October 31, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Williams Energy Services Company.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Union Electric Company

[Docket No. ER98–430–000]

Take notice that on October 31, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Electric Clearinghouse, Inc., and Florida Power Corporation. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Union Electric Company

[Docket No. ER98–431–000]

Take notice that on October 31, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between UE and Electric Clearinghouse, Inc. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to ECI pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Virginia Electric and Power Company

[Docket No. ER98–432–000]

Take notice that on October 31, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and UGI Power Supply, Inc., under the FERC Electric Tariff (Original Volume No. 4), which was accepted by order of the Commission dated September 11, 1997 in Docket No. ER97–3561–000 (80 FERC ¶ 61, 275 (1997)). Under the tendered Service Agreement, Virginia Power agrees to provide services to UGI Power Supply, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of October 9, 1997, for the Service Agreement.

Copies of the filing were served upon UGI Power Supply, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30823 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 17, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Filing: Interim Steelhead Protection Plan.

b. Project Nos: 2145–032, 943–064.

c. Date Filed: October 9, 1997.

d. Licensee: Public Utility District No. 1 of Chelan County.

e. Name of Projects: Rocky Reach and Rock Island Hydroelectric Projects.

f. Location: The projects are located on the Columbia River in Chelan County, Washington.

g. Licensee Contact: Mr. Jim Vasile, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, Washington, DC 20036, Attorney for Public Utility District No. 1 of Chelan County.

h. FERC Contact: Jim Hastreiter (503) 326–5858.

i. Comment Date: December 18, 1997.

j. Description of Filing: The Public Utility District No. 1 of Chelan County (licensee) has filed, for Commission approval, an Interim Steelhead Protection Plan. The plan includes modifications or additions to structures and operations at the Rocky Reach and Rock Island Hydroelectric Projects that may affect migrating steelhead trout. The National Marine Fisheries Service has listed steelhead in the Upper Columbia River as endangered under the Endangered Species Act. The principle components of the plan include modifications to, and continuation of, the juvenile fish bypass development program; a squawfish removal program; an interim spill program; and a hatchery compensation program.

This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters that title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30745 Filed 11–21–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–2]

Agency Information Collection Activities: Renewal of Existing Collection; Comment Request; National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports, EPA ICR No. 229.11, and OMB Control No. 2040–0004, expires May 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 23, 1998. All public comments shall be submitted to: ATTN: DMR ICR Comment Clerk (W–97–19), Water Docket MC–4101, U.S. EPA, Room 2616 Mall, 401 M. Street, S.W., Washington, D.C. 20460.

Please submit the original and three comments and enclosures (including references). Comments must be received or post-marked by midnight no later than January 23, 1998. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epamail.epa.gov Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–97–19. No Confidential Business Information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 5.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. The record for this proposed Information Collection Request (ICR) revision has been established under docket number W–97–19, and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI. The record is available for inspection from 9 am to 4 pm, Monday through Friday, excluding legal holidays, at the Water Docket, Room M2616, Washington, DC 20460. For access to the docket materials, please call (202) 260–3027 to schedule an appointment.

ADDRESSES: A copy of the proposed ICR will be available at the Water Docket (W–97–19), Mailcode 4101, Environmental Protection Agency, 401 M. Street, S.W., Washington, D.C. 20460. Copies of the proposed ICR can be obtained free of charge by writing to this address.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Telephone: (202)260–6814, Fax: (202) 260–8544, E-mail: Lee.Angela@EPAmail.EPA.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are NPDES permittees including publicly owned treatment works, privately owned treatment works industrial facilities, and storm water permittees. The sewage sludge record keeping and reporting requirements identified in this ICR apply to treatment works (public and private) treating domestic sewage and to domestic septage haulers.

Title: NPDES/Sewage Sludge Monitoring Reports, EPA ICR No. 0229, and OMB Control No. 2040–0004, expiring May 31, 1998.

Abstract: This ICR estimates the current monitoring, reporting, and record keeping burden and costs associated with submitting and reviewing Discharge Monitoring Reports (DMRs), sewage sludge monitoring reports, and other monitoring reports under the Environmental Protection Agency's (EPA) NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source discharges to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples or have the analysis performed at an outside laboratory and report the results to the permitting authority (EPA or an authorized NPDES State) using DMRs, a pre-printed form used for reporting pollutant discharge information. Sample monitoring, analysis, and reporting frequencies vary by permit, but must be performed at least annually for all permitted discharges except for certain storm water discharges.

Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum information necessary to achieve the Agency's goals and satisfy regulatory standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that 131,460 NPDES permittees and 24,346 sludge permittees will perform sample collection, pollutant analysis, reporting and record keeping as part their NPDES permit requirements to collect and report discharge monitoring data to permit authorities. The reporting frequency varies depending on the nature and effect of the discharge, but, except for storm water discharge, is not less than annually. Table 1 presents a summary of the estimated time and financial resources (burden) for NPDES (and sludge) facilities for submitting DMRs. The record keeping burden for NPDES permittees (other than sludge facilities) is reported in the Compliance Assessment ICR, OMB Control Number 2040–0110. There are no capital costs associated with this ICR because all monitoring and record keeping are performed using equipment that NPDES facilities already have as a routine part of running their facility or the facilities send their samples to outside sources. Annual sample analysis cost is estimated to be $281,277,550 nationwide for facilities that send their samples to outside sources for analysis.

TABLE 1.—SUMMARY OF BURDEN AND COSTS FOR THE DISCHARGE MONITORING REPORTS INFORMATION COLLECTION REQUEST

Category	Burden
Annual Pollutant Sampling Burden (hours) (A)	3,085,230
Annual Pollutant Analysis Burden (hours) (B)	2,410,081
Annual DMR Reporting Burden (hours) (C)	1,255,084
Total Response Burden (hours) (A+B+C)	6,750,395
Annual Record keeping Burden (hours)	12,326
Annual Contractor Sample Analysis Cost ($)	$281,277,550

TABLE 1.—SUMMARY OF BURDEN AND COSTS FOR THE DISCHARGE MONITORING REPORTS INFORMATION COLLECTION REQUEST—Continued

Category	Burden
Annual Number of Responses (D)	632,805
Average Time per Response (hours) (A+B+C)/(D)	10.67
Total Burden Hours for Respondents	6,762,721
Annual State Burden (hours)	134,811
Annual Federal Burden (hours)	44,482

EPA issued a April 19, 1996 policy memorandum entitled, "Interim Guidance for Performance-Based Reductions of NPDES Permit Monitoring Frequencies." EPA estimated that this guidance would result in a 26 percent reduction in monitoring burden (about 4,680,000 hours) for NPDES permittees and amended the 1995 DMR ICR's total burden to reflect this expected reduction. The amendment was approved by OMB in 1996 with a total burden of 13,333,396 hours. The proposed ICR incorporates the effect of the 1996 DMR ICR modification in the specific areas where a reduction in burden is expected. EPA has changed the presentation of the total burden in the proposed DMR ICR to reflect the new approach in reporting burden required by the 1995 Paperwork Reduction Act (PRA). The PRA requires outside contractor costs (i.e. the cost for analysis of pollutants conducted by an outside laboratory) to be disaggregated and reported separately in dollars rather than burden hours. The total burden hours for this draft ICR is 6,762,721 hours and $281,277,550 in capital costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 18, 1997.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 97–30814 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5827–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years ICR Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; EPA ICR # 1718.02; OMB No. 2060–0308; expires 3/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 23, 1998.

ADDRESSES: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2242A), 401 M Street SW, Washington, D.C. 20460. Copies of the ICR can be obtained free of charge by contacting Ervin Pickell as provided below.

FOR FURTHER INFORMATION CONTACT: Ervin Pickell, Telephone: (303) 969–6485; Facsimile number: (303) 969–6490; E-MAIL: pickell.erv@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who act as the transferor or the transferee of red dyed low sulfur highway diesel fuel. This is generally fuel terminals, truck distributors of such product and tax exempt end users.

Title: Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Years (OMB Control number 2060–0308; EPA ICR # 1718.02.) expiring 03/31/98.

Abstract: Section 211(g)(2) of the Clean Air Act (CAA) provides that no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which contains a concentration of sulfur in excess of 0.05% by weight, or which fails to meet a stated cetane index or an alternative aromatic level to be prescribed by the Administrator. Section 211(i) of the CAA prohibits the manufacture, sale, supply, transport or introduction into commerce of motor vehicle diesel fuel which fails to meet the quality requirements. The Act required the Administrator to promulgate regulations to "implement and enforce" the quality requirements. Congress specifically provided that "The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel * * * to segregate it from motor vehicle diesel fuel." The regulatory requirements promulgated by EPA are found at 40 CFR § 80.29. The dye requirement for high sulfur fuel was required by EPA to help enforce the requirement that only low sulfur diesel be used for highway vehicles. The dye is an important deterrence to violating the Congressionally mandated requirement, especially given the very large economic incentive to violate the law (high sulfur diesel is cheaper to produce and there are no highway taxes associated with it). Because the Internal Revenue Service promulgated a red dye requirement that covers both untaxed high sulfur diesel fuel (for off-road use) and untaxed low sulfur highway diesel fuel sold to tax-exempt entities, it was necessary for the EPA to include in its dye provisions a requirement that product transfer documents for the relatively low volume of dyed low sulfur fuel that is introduced into commerce state that the product is low sulfur tax exempt fuel. Otherwise, the EPA dye requirement would have been rendered meaningless since the Agency would not have been able to distinguish red dyed high sulfur product from red dyed low sulfur tax exempt product. EPA believes the requirement is also useful to distributors and end users in assuring their compliance. Since the IRS, not the EPA, requires the dye to be added to low sulfur tax exempt diesel fuel, the only EPA requirement subject to the ICR is the requirement that the customary business practice (CBP) product transfer document from the terminal (where the dye is added) to the tax exempt end user state that the fuel is dyed low sulfur tax exempt fuel. EPA allows industry to use preprinted product codes to provide the information. For this limited category of diesel fuel transactions the recordkeeping requirement is mandatory and is authorized by section 211 of the CAA 42 U.S.C. 7545, section 114 of the CAA, 42 U.S.C. 7414 and section 208 of the CAA, 42 U.S.C. 7542 and 40 CFR § 80.29. Confidentiality provisions are found at 40 CFR Part 2. The requirement, which has been in effect for several years, imposes almost no measurable annual burden on the affected parties. The transfer documents carrying the information are CBP documents. The information is preprinted and the truckers and end users have no measurable hourly burden associated with receiving and maintaining these CBP documents. The proposed ICR utilizes assumptions that are only slightly different from the original ICR. The burden statements below mention the basic assumptions used.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

In addition to this information, you may obtain a copy of the draft ICR supporting statement as provided above.

All parties that must maintain records under the regulation have a 5 year retention requirement.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For highway diesel fuel terminals the dyed status of diesel fuel is reflected in CBP documents that were prepared before the diesel sulfur rule was promulgated. There are about 1,843 entities that add dye to low sulfur non-taxed fuel. The frequency of response is estimated to be about 170 loads of fuel released per year per terminal. Total burden for all terminals is about 87 hours per year. There are no annual operating costs, purchased service costs or capital costs.

Hourly burdens for truckers who transport dyed low sulfur diesel fuel: These parties transfer the CBP product transfer documents, which is no change from the business practice before the rule's requirement was promulgated. There is no measurable hourly burden per response. The proposed ICR assumes that about 1,200 truckers haul about 261 loads of non-taxed low sulfur diesel fuel per year, and that the CBP transfer documents that were used before the diesel sulfur rule was promulgated reflect the dyed status of the diesel fuel. As a result, there are no measurable additional operating costs, purchased services or capital costs.

Hourly burdens for end users (wholesale-purchaser-consumers of non-taxed low sulfur diesel fuel): These parties receive the transfer documents CBP. There is no measurable hourly burden per response. The proposed ICR assumes that about 20,000 end users receive paperwork an average of about 15 times each. There are no measurable operating costs, purchased services or capital costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 7, 1997.

Sylvia K. Lowrance,

Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 97–30820 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5826–4]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Clean Air Act section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, State and local governments. On June 20, 1996, EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to State and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

The Accident Prevention Subcommittee was created in September 1996 to advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on these chemical accident prevention issues, specifically, section 112(r) of the Clean Air Act.

DATES: The Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public meeting on December 17, 1997 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Hall of States (Room 383) located at 444 North Capitol St., NW, Washington D.C., near Union Station. Members of the public are welcome to attend in person.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting, should contact Karen Shanahan, Designated Federal Official, U.S. EPA (5104), 401 M. St., SW, Washington DC 20460, via the Internet at: shanahan.karen@epamail.epa.gov, by telephone at (202) 260–2711 or FAX at (202) 260–1686.

SUPPLEMENTARY INFORMATION:

Agenda

I. Opening Remarks—Jim Makris (8:30–9:00)
II. Update on RMP*Info and RMP*Submit (9:00–11:45)
III. Comments from the public (11:45–12:00)
IV. RMP Implementation Workgroup Update (1:30–3:00)
V. Other Business (3:15–4:15)
VI. Comments from the public (4:15–4:30)

Members of the public who wish to make a brief oral presentation in person in Washington D.C. to the Subcommittee at the December 17 meeting, must contact Karen Shanahan in writing (by letter, fax, or email—see previously stated information) no later than December 10, 1997 in order to be included on the agenda. Written comments may be submitted to the Accident Prevention Subcommittee up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than thirty minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting.

Additional information on the Accident Prevention Subcommittee and Electronic Submission Workgroup are available on the Internet at: http://www.epa.gov/swercepp/acc-pre.html

If you would like to automatically receive future information on the Accident Prevention Subcommittee and its Workgroups by email, please send an email to Karen Shanahan at: shanahan.karen@epamail.epa.gov requesting to be put on the RMP email list. Please include your name, address and phone number.

Dated: November 19, 1997.

Karen Shanahan,

Designated Federal Official.

[FR Doc. 97–30819 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–3]

Full Delegation of Authority to Commonwealth of Virginia for the Prevention of Significant Deterioration Site-Specific Rulemaking for Merck & Co., Inc. Stonewall Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: The EPA is delegating to the Commonwealth of Virginia the authority to implement and enforce the site-specific rule for the Prevention of Significant Deterioration of Air Quality (PSD) for the Merck & Co., Inc. Stonewall Plant in Elkton, Virginia. The Commonwealth of Virginia has requested that EPA delegate to the Commonwealth the authority to implement and enforce this site-specific PSD rule. The Regional Administrator has determined that such a delegation is appropriate, with the conditions described in this notice.

DATES: This delegation is effective on November 24, 1997.

ADDRESSES: *Docket.* Copies of the delegation of authority request and accompanying support documents are available for public inspection during normal business hours at the following offices: U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA, 19107–4431, (215) 566–2064. Virginia Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801–1129, (540) 574–7800.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Moran, U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Street (3AT23), Philadelphia, PA 19107–4431, (215) 566–2064.

SUPPLEMENTARY INFORMATION: In a final rule published on October 8, 1997, EPA promulgated a site-specific PSD rule which applies only to the Merck & Co., Inc. (Merck) Stonewall Plant in Elkton, Virginia, in order to implement a project under the Project XL program. See 62 FR 52622 (October 8, 1997) and 40 CFR 52.2454. This site-specific PSD rule authorizes the Administrator to delegate the responsibility to implement and enforce this rule. The Commonwealth of Virginia currently implements the federal PSD program regulations codified at 40 CFR 52.21 under a delegation of authority from EPA effective on June 3, 1981. See 40 CFR 52.2451 and 46 FR 29753 (June 3, 1981). On October 27, 1997, the Director of the Virginia Department of Environmental Quality (VADEQ) sent to Epa Region III a letter which requested full delegation of authority for the implementation and enforcement of the site-specific PSD rule for the Merck Stonewall Plant.

In the preamble to the proposed site-specific rulemaking for the Merck XL project, and in the Merck's Project XL proposed Final Project Agreement, EPA had stated its intention to delegate the final site-specific PSD rule to the Commonwealth of Virginia. See 62 FR 15310 (March 31, 1997). EPA received no adverse comments on this approach during the public comment period for the proposed site-specific rulemaking. In the notice of final rulemaking for the Merck XL project, EPA also explained its intent to delegate to VADEQ the authority to implement and enforce the PSD site-specific rule. See 62 FR 52623 (October 8, 1997).

Section 301 of the Clean Air Act, in conjunction with sections 101 and 110, authorizes the Administrator to delegate her authority to implement and enforce the PSD regulations to any state which has submitted adequate implementation and enforcement procedures. Further, 40 CFR 52.2454(o) authorizes the Administrator to delegate the site-specific PSD rule for the Merck Stonewall Plant. The Regional Administrator has determined that the Commonwealth's request for delegation of the site-specific PSD rule for the Merck Stonewall Plant is appropriate, subject to the conditions set forth below. EPA has reviewed the pertinent laws of the Commonwealth of Virginia and the rules and regulations thereof, and has determined that they provide an adequate and effective procedure for the implementation of Merck's site-specific PSD regulation. On September 11, 1997, the State Air Pollution Control Board of the Commonwealth of Virginia (Board) approved an order granting a variance (9 VAC 5 Chapter 190) to the Merck Stonewall Plant for purposes of implementing the XL project. The variance contains site-specific PSD provisions consistent with those of EPA's final rulemaking. On October 1, 1997, the Board approved a regulation (9 VAC 5–190–110) which incorporated by reference the provisions of EPA's final site-specific PSD rule (as signed by the EPA Administrator on September 30, 1997). EPA has determined that the order and the variance regulation provide the Commonwealth with the authority to implement and enforce the site-specific PSD rule. Therefore, pursuant to 40 CFR 52.2454(o), EPA hereby delegates authority to implement and enforce the site-specific PSD rule for the Merck Stonewall Plant, 40 CFR 52.2454, to the Commonwealth of Virginia as follows:

1. Authority is delegated for 40 CFR 52.2454 only for the Merck Stonewall Plant in Elkton, Virginia, since that is the only source subject to this regulation.

2. If at any time there is a conflict between a Commonwealth regulation and a Federal regulation (40 CFR 52.2454), the Federal regulation must be applied if it is more stringent than that of the Commonwealth. If the Commonwealth does not have the authority to implement a Federal regulation that is more stringent than the applicable Commonwealth regulation, the pertinent portion of the authority may be revoked.

3. If the Regional Administrator determines that the Commonwealth's procedures for implementing all portions of the site-specific PSD regulation are inadequate, or that the site-specific PSD regulation is not being effectively carried out, this authority may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the VADEQ.

4. Enforcement of the Merck site-specific PSD rule in the Commonwealth of Virginia will be the primary responsibility of the VADEQ. If the Commonwealth determines that such enforcement is not feasible and so notifies EPA, or where the Commonwealth acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Sections 113 and 167 of the Clean Air Act. In accordance with Sections 113 and 167 of the Clean Air Act, EPA reserves the right to commence an enforcement action against Merck in violation of the site-specific PSD requirements should the Commonwealth of Virginia fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action.

5. Acceptance of this delegation of the presently promulgated site-specific PSD regulation does not commit the Commonwealth of Virginia to request or implement enforcement authority for future standards and requirements.

6. The Commonwealth and EPA will develop a system of communication sufficient to guarantee a program that includes, at a minimum, the items described below:

a. Each agency is informed of the current compliance status of the Merck Stonewall Plant;

b. The VADEQ shall send a copy of the preliminary determination and public comment notices required under paragraph (m) of 40 CFR 52.2454 to EPA Region III at the same time the notice is being forwarded for publication in the newspaper.

c. The VADEQ will forward to EPA Region III copies of the final PSD permit and any future permit modifications at the time of issuance.

7. The VADEQ will obtain prior EPA concurrence on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.2454 to the extent that implementation, review, administration or enforcement of these sections have not been covered by determinations or guidance sent by EPA to the VADEQ.

8. This delegation of authority should not be construed as a transfer of PSD responsibility under section 110(a)(2)(J) of the Clean Air Act, since such a transfer would involve different procedures and considerations.

Delegation: Pursuant to the authority delegated to him by the Administrator, the Regional Administrator is formally notifying the Director of the VADEQ that the Commonwealth is hereby delegated the authority to implement and enforce the site-specific PSD rule for the Merck Stonewall Plant, 40 CFR 52.2454, as of the publication date of this notice.

ADDITIONAL INFORMATION:

A. Effective Date

Pursuant to 5 U.S.C. 553(d)(3) and 42 U.S.C. 6930(b)(3), the Regional Administrator finds good cause for making this delegation of authority effective immediately because it is an administrative change and not one of substantive content. Further, the Merck & Co., Inc. Stonewall Plant is the only regulated entity affected by this delegation. Merck has full notice of this delegation and is prepared to comply immediately with the permit to be issued expeditiously under the rule that is being delegated to the Commonwealth of Virginia.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This delegation would not have a significant impact on a substantial number of small entities because it only affects one source, the Merck Stonewall Plant, which is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

As noted above, this delegation is limited to Merck's facility in Elkton, Virginia. EPA has determined that this delegation contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this delegation does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's delegation is not subject to the requirements of sections 202 and 205 of the UMRA.

Dated: November 17, 1997.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 97–30811 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–5]

Notice of Availability of and Initiation of a 30 Day Public Comment Period for Two Administrative Orders on Consent for de minimis Waste Contributors and One Administrative Order on Consent for a de micromis Waste Contributor Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 15, 1997, 3 administrative orders on consent ("Orders") between the United States Environmental Protection Agency, Region VIII and various parties potentially responsible for costs incurred by the United States for cleaning up the Summitville Mine Superfund Site (collectively, "the Settling Parties") were approved by the Assistant Attorney General of the Department of Justice, Environment and Natural Resources Division, on behalf of the Attorney General of the United States.

Because of the minimal nature, by volume and toxicity, of the hazardous substances allegedly contributed by the Settling Parties to the Site, EPA determined that the Settling Parties are eligible for either a *de minimis* or *de micromis* settlement in accordance with Section 122(g) of CERCLA.

The first settlement is a *de micromis* Order with Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company (collectively, "Newmont"). It settles Newmont's potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 for extremely limited historic exploration activities Newmont undertook at the Site. Because of the minuscule nature of Newmont's contribution of waste at the Site, and in accordance with EPA guidance, EPA is entering into this without requiring the payment of a settlement amount.

EPA is also entering into 2 *de minimis* Orders—one with ASARCO, Inc. and one with ARCO Environmental Remediation, L.L.C. These Orders settle ARCO and ASARCO's potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 for the limited historic exploration activities they undertook at the Site. ASARCO and ARCO are paying the United States settlement amounts of $86,052.73 and $95,000, respectively. All 3 Orders are based on the respective applicable EPA model Orders.

EPA Region VIII will receive comments relating to the proposed

Orders for a period of thirty days from the date of publication of this notice. Comments should be addressed to Nancy Mangone, Enforcement Attorney (8ENF–L), U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202 and should refer to the Summitville Mine Superfund Site, EPA Docket Nos. CERCLA–VIII–98–02, CERCLA–VIII–98–03, and CERCLA–VIII–98–04. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected areas.

The proposed Orders may be examined in person at the Superfund Records Center, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 312–6489. A copy of each Order may also be obtained by mail from the EPA Region VIII Superfund Records Center (8EPR–PS) at the address listed above. In requesting a copy, please refer to the referenced case and number. There is no cost for requesting this document.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. EPA Region VIII.

CERCLA Section 122(g)(4) De Micromis Administrative Order on Consent

In the Matter of: Summitville Mine Superfund Site, Site No. Y3; Newmont Exploration Limited, Newmont Gold Company, and Newmont Mining Corporation; Respondents.

Proceeding under section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9622(g)(4)). EPA Docket Number CERCLA–VIII–98–02.

I. Jurisdiction

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4), to reach settlements in actions under section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice.

2. This Order is issued to Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company (Respondents). The Respondents consent to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final *de micromis* settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), which resolves Respondents potential civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating the potentially responsible parties covered by this Order from further involvement at the Site; and

c. to protect Respondents, and to the extent provided herein, their affliates, successors and assigns, from any lawsuit a potentially responsible party could bring against them for response costs incurred and to be incurred at or in connection with the Site and to provide full and complete contribution protection for Respondents, and to the extent provided herein, their affliates, successors and assigns, with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Consent Order or *Order* shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

Day shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

EPA shall mean the United States Environmental Protection Agency and any successor departments or agencies.

EPA Hazardous Substance Superfund shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

Information currently known to the United States shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

New Information shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

Paragraph shall mean a portion of this Consent Order identified by an Arabic numeral.

Parties shall mean EPA and the Respondents.

Respondents shall mean Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company.

Response Costs shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA.

Section shall mean a portion of this Consent Order identified by a Roman numeral.

Site shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and are currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1—*Summitville Mine Site*—The area within the mine permit boundaries; Area 2—*Wightman Fork*-The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3—*Alamosa River*-The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4—*Terrace Reservoir*-The area which contains the Terrace Reservoir; and Area 5—*Below Terrace Reservoir*-The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

United States shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606 (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued four Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States incurred approximately $109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

8. Newmont Exploration Limited (NEL) conducted extremely limited exploration activities at the Site. NEL was previously a wholly owned subsidiary of Newmont Mining Corporation and is currently a wholly owned subsidiary of Newmont Gold Company.

9. Newmont Exploration Limited leased some property within the Site for approximately seven months from June 1953 to January 1954. Pursuant to the lease, limited exploratory activities were conducted, including conducting nonintrusive geophysical surveys of the area, collecting small surface soil and rock samples for assaying, drilling approximately nine small diameter exploratory holes and conducting limited reconnaissance examinations of portions of the underground mine workings. Exploratory drilling activities such as those conducted at the Site are designed to collect core samples to evaluate the geology of the area. Respondents assert that such exploratory activities did not generate mine wastes.

10. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million cubic yards. According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media. The Respondents' contribution of hazardous substances to these media is below the 3% *de minimis* cut-off established by EPA for the Site. *De micromis* parties are parties that have generated less than .0001% of the hazardous substances found at the Site. Respondents' alleged contribution is less than .0001% of the hazardous substances found at the Site.

11. Based on information currently known to the United States, EPA has calculated the Respondents' *de micromis* eligibility as follows: Respondents assert that the activities of NEL did not contribute any mine wastes to the Site. Even assuming a worst case scenario where all of the materials generated by NEL's exploration activity were deposited at the Site, EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondents constitutes substantially less than .0001% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site. EPA has also determined that the Respondents' activities have not contributed any copper loading to the waters at or emanating from the Site.

12. The material allegedly generated and disposed of by the Respondents therefore involves only a minuscule portion of the total hazardous substances generated or disposed of at the Site. EPA has also concluded that the hazardous substances allegedly contributed to the Site by Respondents are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

13. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $152 million. EPA has determined that the amount of waste which may have been contributed to the Site by the Respondents is so minor that it would be inequitable to require them to help finance or perform cleanup at the Site.

V. Determination

14. Based upon the Statement of Facts set forth above and on the information currently known to the United States, EPA has determined that:

(1) The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

(2) Each of the Respondents is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

(3) Each of the Respondents may be a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(4) There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Sections 101 (22) and (14) of CERCLA, 42 U.S.C. 9601 (22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondents and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondents are minuscule in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

(6) Respondents are eligible for a *de micromis* settlement because they have contributed no more than a minuscule amount of hazardous substance, if any, to the Site.

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de micromis* waste contributors, including but not limited to, "Revised Guidance on CERCLA Settlements with De Micromis Waste Contribution," OSWER Directive #9834.17 (June 3, 1996).

(8) Prompt final settlement with the Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondents may have for response actions and response costs with respect

to all releases or threatened releases at or in connection with the Site.

VI. Order

15. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby *Agreed to and Ordered;*

VII. Parties Bound

16. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate or other legal status of the Respondents including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondents' responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. Certification of Respondents

17. By signing this Consent Order, the Respondents certify that, to the best of their knowledge and belief, they have:

i. conducted a thorough, comprehensive, good faith search for documents, and have fully and accurately disclosed to EPA, all non-privileged documents currently in their possession, or in the possession of their officers, directors, employees, contractors or agents, which relate in any way to their liabilities under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

ii. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to their potential CERCLA and RCRA liabilities regarding the Site after notification of such potential liabilities; and

iii. fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

IX. Covenants Not To Sue

18. a. Except as provided in Section X (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondents for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site.

b. The United States' covenant not to sue extends to Respondents and to their affiliates, successors and assigns, but only to the extent that the liability of such affiliates, successors and assigns is derivative of Respondents' liability for those acts set forth in Paragraph 9, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

X. Reservation of Rights

19. The covenant not to sue by the United States set forth in Paragraph 18 of this Order does not pertain to any matters other than those expressly specified in Paragraph 18. The United States reserves, and this Order is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to the following:

(a) criminal liability;

(b) any liability against Respondents that results from their future disposal activities at the Site; or

(c) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

20. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondents seeking to compel Respondents to perform response actions at the Site and/or to reimburse the United States for response costs if New Information is discovered that the Respondents no longer qualify for a *de micromis* settlement under the criteria stated in Paragraphs 10–12 of this Order.

21. For purposes of Paragraph 20, "New Information" shall not include any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States.

XI. Covenant Not To Sue By Respondents

22. The Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

i. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2) , 111, 112 or 113 of CERCLA, 42 U.S.C. 9606(b)(2) , 9611, 9612 or 9613;

ii. any claim arising out of response activities at the Site; and

iii. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

23. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

24. The Respondents also waive any challenge they may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XII. Effect of Settlement; Contribution Protection

25. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

26. Respondents consent and agree to comply with and be bound by the term of this Order. The United States and the Respondents agree that this Order, Respondents' consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondents or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondents' consent to this Order, nor Respondents' actions in accordance with this Order shall be admissible in evidence against Respondents without their consent, except in a proceeding to enforce this Order. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

27. With regard to claims for contribution against Respondents and their affiliates, successors and assigns for matters addressed by this Order, the Parties hereto agree that Respondents and their affiliates, successors and assigns are entitled, as of the effective date this Order, to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for "matters addressed" in this Consent Order. "Matters addressed" by this Order shall include all claims the United States has taken or brought or could bring or any other civil or administrative action the United States could take against Respondents, or their affiliates, successors and assigns only to the extent that their liability is derivative of Respondents' liability for those acts set forth in Paragraph 9, Section IV of this Order, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIII. Public Comment

28. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XIV. Attorney General Approval

29. The Attorney General or her designee has approved the settlement embodied in this order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XV. Effective Date

30. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondents that the public comment period undertaken pursuant to Paragraph 28 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It is so agreed:

Newmont Mining Corporation, Newmont Exploration Limited and Newmont Gold Company.

Dated: July 28, 1997.

Joy E. Hansen,

Vice President.

It is so ordered and agreed:

Environmental Protection Agency, Region VIII.

Dated: September 2, 1997.

Martin Hestmark, for Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

CERCLA Section 122(g)(4) De Minimis Waste Contributor Administrative Order

In The Matter Of: Summitville Mine Superfund Site, Site No. 08–Y3; ARCO Environmental Remediation, L.L.C.; Respondent.

Proceeding Under Section 122(g)(4) Of The Comprehensive Environmental Response, Compensation, And Liability Act, As Amended (42 U.S.C. 9622(g)(4)). EPA Docket Number CERCLA–VIII–98–03.

I. Jurisdiction

1. This Administrative Order on Consent (Consent Order or Order) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Ecosystems Protection and Remediation.

2. This Order is issued to ARCO Environmental Remediation, L.L.C. (Respondent). The Respondent agrees to undertake all actions required by this Consent Order. The Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating one of the potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondent for its fair share, as determined by EPA, of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide full and complete contribution protection for Respondent with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Consent Order or *Order* shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

Day shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

EPA shall mean the United States Environmental Protection Agency and any successor departments or agencies.

EPA Hazardous Substance Superfund shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

Information currently known to the United States shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

Interest shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

New Information shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

Paragraph shall mean a portion of this Consent Order identified by an Arabic numeral.

Parties shall mean EPA and the Respondent.

Respondent shall mean ARCO Environmental Remediation, L.L.C.

Response Costs shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA.

Section shall mean a portion of this Consent Order identified by a roman numeral.

Site shall mean the Summitville Mine Superfund Site Remedial Investigation/ Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and is currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1-*Summitville Mine Site*—The area within the mine permit boundaries; Area 2-*Wightman Fork*—The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3-*Alamosa River*—The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4-*Terrace Reservoir*—The area which contains the Terrace Reservoir; and Area 5-*Below Terrace Reservoir*—The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

United States shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

EPA's Response Actions and Costs

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606(a) (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued 4 Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States had incurred approximately $109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

Respondent's Activities and Potential Liability

8. EPA alleges that the Respondent is liable for reimbursement of the United States' response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

9. From mid-1979 until the latter part of 1983, Respondent's predecessor-in-interest, Anaconda Minerals Company (Anaconda), conducted exploration and related activities at the Site. Due to Site access limitations, severe weather and other adverse Site conditions, Anaconda's actual on-Site exploration activities were conducted for an aggregate period of approximately 17 months, with this period generally coinciding with the summer season of each of the years of 1979 through 1983.

10. Anaconda's exploration and related activities at the Site, as referred to in Paragraph 9 above, consisted of: (1) a core drilling program, consisting of the development of 380 drill holes. In accordance with the Colorado Mined Land Reclamation Division regulations applicable at the time, these surface drill holes were properly plugged with cement and abandoned; (2) limited access to and exploration of certain underground mine workings, including the Science Mine, Copper Hill Mine, Dexter Mine, Esmond Mine and Chandler Mine, for the purpose of mapping and sampling these workings only; (3) related on-Site activities such as access road maintenance and road construction; and (4) implementation of a hazard elimination program at the Site, including tailings dam stabilization work.

11. Based on Anaconda's findings from these limited exploration and related activities, Anaconda determined it would not be profitable to initiate mining operations at the Site. Accordingly, Anaconda terminated or assigned its leasehold interest in the Site in early 1984, without conducting any ore extraction or physical mine development activities.

12. Anaconda's surface drilling activities resulted in the generation of, at most, 363 cubic yards of waste rock, which may have remained on-Site. Waste rock extracted at the Site was mixed with cement and used to properly plug and close the drill holes, accordance with the Colorado Mined Land Reclamation Division regulations applicable at the time. Summitville Consolidated Mining Company Inc. subsequently mined, milled, processed or otherwise disturbed this same waste rock as a result of its unrelated mining operations.

De Minimis Eligibility

13. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million yds.[3] Four million, five hundred thousand cubic yards of this material is being remediated pursuant to the CWP IROD; 6.5 million cubic yards are being remediated pursuant to the HLP IROD.

14. According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River.

15. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media.

16. EPA has determined that the Respondent's contribution of hazardous substances to each of these media is below the 3% *de minimis* cut-off established by EPA for the Site.

17. Based on Information currently known to the United States, EPA has calculated the Respondent's *de minimis* eligibility as follows: (1) assuming all waste rock, approximately 363 cubic yards, generated by Anaconda during its drilling program remained on-Site, EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondent constitutes approximately .0033% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site; and (2) because Anaconda's drill holes were properly plugged and it did not rehabilitate or otherwise undertake mining operations in adits, tunnels or mine workings hydraulically connected to the Reynolds Adit, the Respondent's activities have not contributed any copper loading to the waters at or emanating from the Site.

18. As required by Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), EPA has therefore determined that: (A) the amount of material allegedly contributed by the Respondent is minimal in comparison to the total hazardous substances generated or disposed of at the Site; and (B) the toxic or hazardous effect of the hazardous substances allegedly contributed to the Site by Respondent are minimal in comparison to the other hazardous substances at the Site.

19. Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1), further authorizes EPA to enter into expedited settlements under Sections 106 and 107 of CERCLA if such settlements involve only a minor portion of the response costs at the facility concerned. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $152 million. EPA calculated the settlement amount to be paid by Respondent as follows: EPA and Respondent agree that the material generated and disposed of by Respondent came to be located in the areas to be remediated pursuant to CWP and HLP IRODs. EPA and Respondent estimated that of the 363 cubic yards of material generated and disposed of by Respondent on the Site, 123 cubic yards came to be located in the area to be remediated by the CWP and 240 cubic yards came to be located in the HLP. EPA then calculated the appropriate settlement amount by: (a) taking the amount it cost to remediate Respondent's volumetric share of the CWP; (b) calculating the cost EPA will incur to remediate Respondent's volumetric share of the HLP; (c) adding a percentage for Respondent's share of Sitewide costs; (d) estimating the enforcement costs associated with negotiating and finalizing this AOC; and (e) applying a 100% "premium" payment to Respondent's share of those estimated costs not yet incurred by EPA. In accordance with applicable EPA guidance, this 100% "premium" payment on estimated costs to be incurred provides consideration for EPA's granting the Respondent a covenant not to sue without the normal remedy cost overrun reopener.

20. Based on the factors identified in Paragraph 19 above, EPA determined that the appropriate amount to settle Respondent's potential CERCLA Section 106 and 107 and RCRA Section 7003 liabilities is $95,000. The settlement amount required to be paid by the Respondent pursuant to this Order therefore represents only a minor portion of the response costs to be recovered for the cleanup of the Site.

V. Determinations

21. Based upon the Statement of Facts set forth above and on the Information currently known to the United States, EPA has determined that:

(1) The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

(2) The Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

(3) The Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(4) There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Sections 101 (22) and (14) of CERCLA, 42 U.S.C. 9601 (22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

(6) As to the Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de minimis* waste contributors, including but not limited to, "Standardizing the *De Minimis* Premium," (July 7, 1995), "Streamlined Approach for Settling with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A)," OSWER Directive No. 9834.7–1D (July 30, 1993), and "Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA Section 122(g)(1)(A)," OSWER Directive No. 9834.7–1C (June 2, 1992).

(8) Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondent may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

VI. Order

22. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby *Agreed to and Ordered:*

VII. Parties Bound

23. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. Payment

24. Within 10 days of the effective date of this Order, Respondents shall pay a total of $95,000 to the Hazardous Substance Superfund as provided below.

25. Payment shall be made by cashier's check made payable to "EPA Hazardous Substance Superfund." The check shall reference the Site name, the name and address of the Respondent, EPA CERCLA Number 08–Y3 and DOJ Case No. 90–11–3–1133A and shall be sent to: Mellon Bank, EPA Region VIII, Attn: Superfund Accounting, P.O. Box 360859M, Pittsburgh, PA 15251.

26. If the Respondent fails to make full payment within the time required by Paragraph 25, Respondent shall pay Interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 25, the United States may, in addition to any other available remedies or sanctions, bring an action against the Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

27. The Respondents' payment includes an amount representing the Respondent's fair share of: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a significant premium to cover the risks associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondent's payment is based.

28. Payments made under this Section may be placed in a site-specific "special" or "reimbursable" account by EPA. This site-specific reimbursable account within the EPA Hazardous Substance Superfund shall be known as the Summitville Mine Superfund Site Special Account and shall be retained and used by EPA to conduct or finance the response actions at or in connection with the Site. Upon completion of the final remedial action for the Site, any balance remaining in the Summitville Mine Superfund Site Special Account shall be transferred by EPA to the general EPA Hazardous Substance Superfund.

IX. Certification of Respondents

29. By signing this Consent Order, the Respondent certifies, that, to the best of its knowledge and belief, it has:

(1) conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all non-privileged documents currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relate in any way to its liability under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

(2) not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential CERCLA and RCRA liability regarding the Site after notification of such potential liability; and

(3) fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

X. Covenants Not To Sue

30. a. Except as provided in Section XI (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondent for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon full payment of the amount specified in Section VII (Payment) of this Order.

b. The United States' covenant not to sue extends to Respondent, and to its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, only to the extent that the liability of such predecessors-in-interest, affiliates, successors and assigns is derivative of Respondent's liability for those acts of Anaconda Minerals Company as set forth in Paragraph 9–12, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

XI. Reservation of Rights

31. The covenants not to sue by the United States set forth in Paragraph 30 of this Order do not pertain to any matters other than those expressly specified in Paragraph 30. The United States reserves, and this Order is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to the following:

(a) claims based on a failure to make the payments required by Section VII (Payment) of this Order;

(b) criminal liability;

(c) any liability against Respondent that results from its future disposal activities at the Site; or

(d) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

32. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondent seeking to compel Respondent to perform response actions at the Site and/or to reimburse the United States for additional costs of response if New Information is discovered that the Respondent contributed: (a) hazardous substances in an amount greater than 1% of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site; or (b) hazardous substances that contributed to the total copper loading to the waters at or emanating from the Site; or (c) hazardous substances at the Site which are significantly more toxic or are of significantly greater hazardous effect that other hazardous substances at the Site.

33. For purposes of Paragraph 32, "New Information" shall not include: (1) any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States; (2) any recalculation of the Respondent's contribution of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States; or (3) a calculation of Anaconda's activities giving rise to a contribution to the total copper loading to the waters at or emanating from the Site based solely on Information currently known to the United States.

34. In the event the United States institutes judicial or administrative proceedings against the Respondent pursuant to Paragraph 32 above, the Respondent shall:

(i) be credited, in any subsequent settlement or administrative or judicial proceeding relating to the Site, with the $95,000 payment made pursuant to Paragraph 24 of this Order;

(ii) retain any defense it may have to liability and any claim it may have under any applicable statute or the common law with regard to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site; and

(iii) continue to grant any waiver or covenant previously granted to the United States under Section XI of this Order for the amount credited to the Respondent, but such waiver or covenant shall be null and void as to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site.

XII. Covenant Not To Sue By Respondent

35. The Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9611, 9612 or 9613;

(2) any claim arising out of response activities at the Site; and

(3) any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

36. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR 300.700(d).

37. The Respondent also waives any challenge it may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XIII. Effect of Settlement; Contribution Protection

38. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondent each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

39. Respondent consents and agrees to comply with and be bound by the terms of this Order. The United States and the Respondent agree that this Order, Respondent's consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondent or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondent's consent to this Order, nor Respondent's actions in accordance with this Order shall be admissible in evidence against Respondent without its consent, except in a proceeding to enforce this Order. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

40. With regard to claims for contribution against the Respondent, the Parties hereto agree that, as of the effective date of this Order, the Respondent and its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for "matters addressed" in this Consent Order. "Matters addressed" by this Order shall include all claims the United States could bring or any other civil or administrative action the United States could take against the Respondent or its predecessors-in-interest, affiliates, successors and assigns, including the Anaconda Minerals Company and the Atlantic Richfield Company, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIV. Public Comment

41. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this Order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XV. Attorney General Approval

42. The Attorney General or her designee has approved the settlement embodied in this Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XVI. Effective Date

43. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondent that the public comment period undertaken pursuant to Paragraph 41 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It Is So Agreed:

ARCO Environmental Remediation, L.L.C.

Dated: July 2, 1997.

C. Richard Knowles,

President.

It Is So Ordered and Agreed:

Environmental Protection Agency, Region VIII.

Dated: September 2, 1997.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

In The Matter Of: Summitville Mine Superfund Site, Site No. 08–Y3; ASARCO Incorporated; Respondent.

Proceeding Under Section 122(g)(4) Of The Comprehensive Environmental Response, Compensation, And Liability Act, As Amended (42 U.S.C. 9622(g)(4)). EPA Docket Number CERCLA–VIII–98–04.

CERCLA Section 122(g)(4) De Minimis Waste Contributor Administrative Order

I. Jurisdiction

1. This Administrative Order on Consent (Consent Order or Order) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14–14–E. This authority has been redelegated to the Assistant Regional Administrator for Ecosystem Protection and Remediation.

2. This Order is issued to ASARCO Incorporated (Respondent). The Respondent agrees to undertake all actions required by this Consent Order. The Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. Statement of Purpose

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), that allows Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating one of the potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondent for its fair share, as determined by EPA, of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and to provide full and complete contribution protection for Respondent with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9622(f)(2) and 9622(g)(5).

III. Definitions

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Consent Order or *Order* shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

Day shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

EPA shall mean the United States Environmental Protection Agency and any successor departments or agencies.

EPA Hazardous Substance Superfund shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. 9507.

Information currently known to the United States shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

Interest shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. 9607(a).

New Information shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

Paragraph shall mean a portion of this Consent Order identified by an Arabic numeral.

Parties shall mean EPA and the Respondent.

Respondent shall mean ASARCO Incorporated.

Response Costs shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA.

Section shall mean a portion of this Consent Order identified by a roman numeral.

Site shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and is currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1-*Summitville Mine Site*—The area within the mine permit boundaries; Area 2-*Wightman Fork*—The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3-*Alamosa River*—The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4-*Terrace Reservoir*—The area which contains the Terrace Reservoir; and Area 5-*Below Terrace Reservoir*—The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

United States shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. Statement of Facts

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, 42 U.S.C. 9604 and 9606(a) (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued 4 Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States incurred approximately $109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

8. EPA alleges that the Respondent is liable for reimbursement of the United States' response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

9. Respondent conducted sporadic exploration and related activities from 1974 through 1980 under a lease that expired in 1981. ASARCO's exploration program consisted of a systematic program of percussion and diamond core drilling, aimed at determining the ore reserves and the viability of conducting mining operations at the Site. First, ASARCO drilled 2 deep holes, to depths of 3,000 and 4,700 feet, respectively, to test its theory that a large porphyry-type copper deposit was present at the Site. In 1975, ASARCO drilled 396 shallow holes and 14 deep holes as part of this drilling program. ASARCO also conducted backhoe trenching as part of its exploration program to generally define the boundaries of outcrops and underground mineral deposits. It is estimated that approximately 31 tons of material was generated from ASARCO's drilling program, some or all of which is believed to have been removed from the Site for sampling and analysis.

10. ASARCO dug 49 trenches amounting to 15,213 linear feet, with an average depth of 6 feet. The procedure for sampling these trenches was to collect approximately ½ pound per linear foot of trench. This sampling effort would have amounted in 2.9 tons of waste material disturbed by ASARCO remaining on-site. The trenches were backfilled and revegetated in accordance with contemporary mining practices and Colorado Mined Land Reclamation Board requirements.

11. ASARCO also evaluated several adits, including the Copper Hill, Del Norte, Upper Highland Mary, Esmond, Science, Narrow Gauge, Aztec, Old Pickens, Chandler, Iowa and French adits. A total of 3,915 feet was cleared of ice and mapped and 2,110 feet of these adits was sampled and assayed by ASARCO. The adit rehabilitation program was abandoned, without ASARCO either retimbering or otherwise conducting any rehabilitation activities.

12. As of August 1976, ASARCO also abandoned its plan to dewater and rehabilitate the Missionary Shaft or its underworkings. ASARCO did not conduct any rehabilitation or mining activities at the Missionary Shaft or its associated underworkings.

13. Based on the data available to the Parties, EPA and Respondent estimate that the amount of material generated as a result of ASARCO's limited exploration activities amounts to approximately 31 tons or 25 yds.^{3} EPA and ASARCO also agree that its limited diamond drilling program may have disturbed approximately 0.14 acre of the surface of the Site. EPA and ASARCO also agree that the actual amount of time ASARCO conducted its exploration activities lasted a total of approximately 16 months.

14. On July 1, 1987, Hydrometrics, Inc. became a wholly-owned subsidiary of ASARCO. As documented in ASARCO's CERCLA Section 104(e) information request response, Hydrometrics, Inc. performed certain testing, sampling and data compilation functions as a contractor or consultant to Galactic Resources, Ltd. or its wholly-owned subsidiaries, including Galactic Resources, Inc., Galactic Services, Inc. or Summitville Consolidated Mining Company, Inc. There is no indication, however, that any of Hydrometrics' activities resulted in the generation or disposal of any waste materials on-site.

15. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million yds.^{3} According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River. EPA has determined parties are eligible for a *de minimis* settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media. The Respondent's contribution of hazardous substances to these media are below the 3% *de minimis* cut-off established by EPA for the Site.

16. Based on information currently known to the United States, EPA has calculated the Respondent's *de minimis* eligibility as follows: EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondents constitutes substantially less than 1% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site. EPA has also determined that the Respondent's activities have not contributed any copper loading to the waters at or emanating from the Site.

17. The material allegedly generated and disposed of by the Respondent therefore involves only a minor portion of the total hazardous substances generated or disposed of at the Site. EPA has also concluded that the hazardous substances allegedly contributed to the Site by Respondent are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

18. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be $152 million. The payment required to be made by the Respondent pursuant to this Order represents only a minor portion of the response costs to be recovered for the cleanup of the Site.

V. Determinations

19. Based upon the Statement of Facts set forth above and on the Information currently known to the United States, EPA has determined that:

(1) The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9).

(2) The Respondent is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. 9601(21).

(3) The Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(4) There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Sections 101 (22) and (14) of CERCLA, 42 U.S.C. 9601 (22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

(6) As to the Respondent, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with *de minimis* waste contributors, including but not limited to, "Standardizing the *De Minimis* Premium," (July 7, 1995), "Streamlined Approach for Settling with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A)," OSWER Directive No. 9834.7–1D (July 30, 1993), and "Methodology for Early *De Minimis* Waste Contributor Settlements under CERCLA Section 122(g)(1)(A)," OSWER Directive No. 9834.7–1C (June 2, 1992).

(8) Prompt settlement with the Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondent may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

VI. Order

20. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby Agreed to and ordered:

VII. Parties Bound

21. This Consent Order shall apply to and be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. Payment

22. Within 10 days of the effective date of this Order, Respondents shall pay a total of $86,052.73 to the Hazardous Substance Superfund as provided below.

23. Payment shall be made by cashier's check made payable to "EPA

Hazardous Substance Superfund." The check shall reference the Site name, the name and address of the Respondent, EPA CERCLA Number 08–Y3 and DOJ Case No. 90–11–3–1133A and shall be sent to: Mellon Bank, PA Region VIII, Attn: Superfund Accounting, P.O. Box 360859M, Pittsburgh, PA 15251.

24. If the Respondent fails to make full payment within the time required by Paragraph 22, Respondent shall pay interest on the unpaid balance. In addition, if Respondent fails to make full payment as required by Paragraph 22, the United States may, in addition to any other available remedies or sanctions, bring an action against the Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(*l*) of CERCLA, 42 U.S.C. 9622(*l*), for failure to make timely payment.

25. The Respondent's payment includes an amount representing the Respondent's fair share of: (a) past response costs incurred at or in connection with the Site; (b) projected future response costs to be incurred at or in connection with the Site; and (c) a premium to cover the risks associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Respondent's payment is based.

26. Payments made under this Section may be placed in a site-specific "special" or "reimbursable" account by EPA. This site-specific reimbursable account within the EPA Hazardous Substance Superfund shall be known as the Summitville Mine Superfund Site Special Account and shall be retained and used by EPA to conduct or finance the response actions at or in connection with the Site. Upon completion of the final remedial action for the Site, any balance remaining in the Summitville Mine Superfund Site Special Account shall be transferred by EPA to the general EPA Hazardous Substance Superfund.

IX. Certification of Respondents

27. By signing this Consent Order, the Respondent certifies, that, to the best of its knowledge and belief, it has:

(1) conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all non-privileged documents currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to its liability under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

(2) not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential CERCLA and RCRA liability regarding the Site after notification of such potential liability; and

(3) fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e).

X. Covenants Not To Sue

28. a. Except as provided in Section XI (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondent for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon full payment of the amount specified in Section VII (Payment) of this Order.

b. The United States' covenant not to sue extends to Respondent, and to its predecessors-in-interest, affiliates, successors and assigns, including Hydrometrics, Inc., only to the extent that the liability of such predecessors-in-interest, affiliates, successors and assigns is derivative of Respondent's liability for those acts set forth in Paragraph 9–14, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

XI. Reservation of Rights

29. The covenants not to sue by the United States set forth in Paragraph 28 of this Order do not pertain to any matters other than those expressly specified in Paragraph 28. The United States reserves, and this Order is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to the following:

(a) claims based on a failure to make the payments required by Section VII (Payment) of this Order;

(b) criminal liability;

(c) any liability against Respondent that results from its future disposal activities at the Site; or

(d) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

30. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondent seeking to compel Respondent to perform response actions at the Site and/or to reimburse the United States for additional costs of response if New Information is discovered that the Respondent contributed: (a) hazardous substances in an amount greater than 1% of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site; or (b) hazardous substances that contributed to the total copper loading to the waters at or emanating from the Site; or (c) hazardous substances at the Site which are significantly more toxic or are of significantly greater hazardous effect that other hazardous substances at the Site.

31. For purposes of Paragraph 30, "New Information" shall not include any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States.

32. In the event the United States institutes judicial or administrative proceedings against the Respondent pursuant to Paragraph 30 above, the Respondent shall:

(i) be credited, in any subsequent settlement or administrative or judicial proceeding relating to the Site, with the $86,052.73 payment made pursuant to Paragraph 22 of this Order;

(ii) retain any defense it may have to liability and any claim it may have under any applicable statute or the common law with regard to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site; and

(iii) continue to grant any waiver or covenant previously granted to the United States under Section XI of this Order for the amount credited to the Respondent, but such waiver or covenant shall be null and void as to any additional amount demanded by the United States in any subsequent administrative or judicial proceeding relating to the Site.

XII. Covenant Not To Sue By Respondent

33. The Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees

with respect to the Site or this Order, including, but not limited to:

(1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through Sections 106(b)(2), 111, 112 or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9611, 9612 or 9613;

(2) any claim arising out of response activities at the Site; and

(3) any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. 9607 or 9613, relating to the Site.

34. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. 9611, or 40 CFR § 300.700(d).

35. The Respondent also waives any challenge it may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XIII. Effect of Settlement; Contribution Protection

36. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

37. Respondent consents and agrees to comply with and be bound by the terms of this Order. The United States and the Respondent agree that this Order, Respondent's consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondents or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondent's consent to this Order, nor Respondent's actions in accordance with this Order shall be admissible in evidence against Respondent without its consent, except in a proceeding to enforce this Order. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

38. With regard to claims for contribution against the Respondent, the Parties hereto agree that, as of the effective date this Order, the Respondent and its predecessors-in-interest, affiliates, successors and assigns, including Hydrometrics, Inc., is entitled to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5) for "matters addressed" in this Consent Order. "Matters addressed" by this Order shall include all claims the United States could bring or any other civil or administrative action the United States could take against the Respondent or its predecessors-in-interest, affiliates, successors and assigns, including Hydrometrics, Inc., for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the Site.

XIV. Public Comment

39. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i). In accordance with Section 122(i)(3), 42 U.S.C. 9622(i)(3), EPA may withdraw or modify its consent to this Order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XV. Attorney General Approval

40. The Attorney General or her designee has approved the settlement embodied in this Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4).

XVI. Effective Date

41. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondent that the public comment period undertaken pursuant to Paragraph 39 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

It is so agreed:

ASARCO Incorporated

Dated: February 2, 1997.

Michael O. Varner,

Vice President, Environmental Operations.

It is so ordered and agreed:

Environmental Protection Agency, Region VIII.

Dated: September 2, 1997.

Martin Hestmark for Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 97–30622 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Glacier Petroleum, Inc., Emporia, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Glacier Petroleum, Inc., Emporia, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 26, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of, Glacier Petroleum, Inc. Emporia, Kansas; CWA Docket No. VII–97–W–0053.

The Complaint proposes a penalty of Thirty-five Thousand Nine Hundred Five Dollars ($35,905) for the discharge of crude oil into or upon the navigable waters of the United States or adjoining shorelines in violation of Section 311(b)(3) of the Clean Water Act.

DATES: In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Venessa Cobbs, Regional Hearing Clerk at (913) 551–7630.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Glacier Petroleum, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: November 13, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–30815 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding OXY USA, Inc., Tulsa, OK

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding OXY USA, Inc., Tulsa, Oklahoma.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1321(b)(6), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1321(b)(6)(C).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 25, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of, OXY USA, Inc., Tulsa, Oklahoma; EPCRA Docket No. VII–97–W–0036.

The Complaint proposes a penalty of Twelve Thousand Dollars ($12,000) for the discharges of hazardous substances in violation of Section 311(b)(3) of the Clean Water Act.

DATES: In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to December 24, 1997.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by OXY USA, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: November 14, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–30817 Filed 11–21–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

November 18, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0802.

Expiration Date: 05/31/1998.

Title: Administration of the North American Numbering Plan, Order on Reconsideration, CC Docket No. 92–237 (Message Intercept Requirement).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1400 respondents; 9 hours per response (avg.); 12,600 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In response to concern expressed in the reconsideration record that LECs should develop intercept messages to inform dial-around customers that they need to dial additional digits, the *Order on Reconsideration* in CC Docket No. 92–237, titled, "Administration of the North American Numbering Plan," requires that LECs offer a standard intercept message beginning on or before June 30, 1998, explaining that a dialing pattern change has occurred and instructing the caller to contact its IXC for further information. In developing an intercept message, LECs must consult with IXCs and reach agreement on the content of the message and on the period of time during which the message will be provided. The Commission leaves to resolution by the parties decisions about who should have the ultimate responsibility for determining the content of the intercept message and the period of time during which the message must be offered. The Commission states that it will resolve any disputes arising from parties' inability to reach agreement on such matters. Finally, the Commission concludes that the determination of how best to cover the costs of providing the intercept message should be left to individual LECs, including whether their access customers should be charged a reasonable fee to cover those costs. The Commission has imposed these third party disclosure requirements to educate end users about their inability to reach carriers using five-digit access codes, and the need to dial seven-digit access codes instead. Compliance obligation is required.

OMB Control No.: 3060–0760.

Expiration Date: 05/31/1998.

Title: Access Charge Reform—CC Docket No. 96–262, First Report and Order; Second Order on Reconsideration and Memorandum Opinion and Order.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 14 respondents; 128,906 hours per response (avg.); 1,804,690 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $31,200.

Frequency of Response: On occasion and one-time.

Description: In the First Report and Order (Order), CC Docket No. 96–262, Access Charge Reform and the Second Order on Reconsideration and Memorandum Opinion and Order, the FCC adopts, that, consistent with principles of cost-causation and economic efficiency, non-traffic sensitive (NTS) costs associated with local switching should be recovered on an NTS basis, through flat-rated, per month charges. The information collections are as follows: a. *Showings Under the Market-Based Approach:* As competition develops in the market, the FCC will gradually relax and ultimately remove existing Part 69 federal access rate structure requirements and Part 61 price caps restrictions on rate level changes. Regulatory reform will take place in two phases. The first phase of regulatory reform will take place when an incumbent Local Exchange Carrier's (LEC) network has been opened to competition for interstate access services. The second phase of rate structure reforms will take place when an actual competitive presence has developed in the marketplace. Detariffing will take place when substantial competition has developed for the access charge elements. In our initial statement; we proposed that in order for LECs to meet this standard, they have to demonstrate that: (1) Unbundled network element prices are based on geographically deaveraged, forward-looking economic costs in a manner that reflects the way costs are incurred; (2) transport and termination charges are based on the additional cost of transporting and terminating another carrier's traffic; (3) wholesale prices for retail services are based on reasonably avoidable costs; (4) network elements and services are capable of being provisioned rapidly and consistent with a significant level of demand; (5) dialing parity is provided by the incumbent LEC to competitors; (6) number portability is provided by the incumbent LEC to competitors; (7) access to incumbent LEC rights-of-way is provided to competitors; and (8) open and non-discriminatory network standards and protocols are put into effect. We propose that the second phase of rate structure reforms would take place when an actual competitive presence has developed in the marketplace. LECs would have to show the following to indicate that actual competition has developed in the marketplace by: (1) Demonstrated presence of competition; (2) full implementation of competitively neutral universal service support mechanisms; and (3) credible and timely enforcement of pro-competitive rules. In the NPRM, we sought comment on four options for a prescriptive approach: reinitializing price cap indices (PCIs) to economic cost-based levels; reinitializing PCIs to levels targeted to yield no more than an 11.25 percent rate of return, or some other rate of return; adding a policy-based mechanism similar to the CPD to the X-Factor; or prescribing economic cost-based rates. We have decided above to rely primarily on a market-based approach, and impose prescriptive requirements only when market forces are inadequate to ensure just and reasonable rates for particular services or areas. We will determine the details of our market-based approach in a future Order. In that Order, we will also discuss in more detail what prescriptive requirements we will use as a backstop to our market-based access charge reform. Because we are not adopting the prescriptive approach at this time, we are removing the collections associated with the prescriptive approach from our statement. If the collections are adopted at a later date, we will request that OMB reinstates them at that time. (No. of respondents: 13; hour burden per respondent: 137,986 hours; total annual burden: 1,793,818). b. *Cost Study of Local Switching Costs:* The FCC does not establish a fixed percentage of local switching costs that incumbent LECs must reassign to the Common Line basket or newly created Trunk Cards and Ports service category as NTS costs. In light of the widely varying estimates in the record, we conclude that the portion of costs that is NTS costs likely varies among LEC switches. Accordingly, we require each price cap LEC to conduct a cost study to determine the geographically-averaged portion of local switching costs that is attributable to the line-side ports, as defined above, and to dedicated trunk side cards and ports. These amounts, including cost support, should be reflected in the access charge elements filed in the LEC's access tariff effective January 1, 1998. (No. of respondents: 13; hours per respondent: 400; total annual burden: 5200 hours). c. *Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation:* The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. We recognize, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. We also recognize, however, that there will be areas and services for which competition may not develop. We will adopt a prescriptive "backstop" to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. (No. of respondents: 13; hours per respondent: 8; total annual burden: 104 hours). d. *Tariff Filings:* In the *First Report and Order*, the Commission requires the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO side of the tandem shall be charged to users of common EO-to-tandem transport on a per-minute-of-use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998. In the

Second Order on Reconsideration, the FCC clarifies that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities, and directs incumbent local exchange carriers to include, in their access tariff filing, the amount of per-minute transport interconnection charge (TIC) they anticipate will be allocated to facilities-based rate elements in the future. (No. of respondents: 13; hours per respondent: 256 hours; total annual burden: 3328 hours). e. *Third-Party Disclosure:* In the *Second Order on Reconsideration*, the Commission requires LECs to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXC's presubscribed customers. One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or non-primary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXC will be unable to develop rates that accurately reflect the underlying costs. (No. of respondents: 14; hours per respondent: 160 hours; total annual burden: 2240 hours). Our authority to collect this information is provided under 47 U.S.C. 201–205 and 303(r). The information collected under these Orders would be submitted to the FCC by incumbent LECs for use in determining whether the incumbent LECs should receive the regulatory relief proposed in the Orders. The information collected under the Second Order on Reconsideration and Memorandum Opinion and Order would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures. Obligation to respond: mandatory.

OMB Control No.: 3060–0787.

Expiration Date: 10/31/2000.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 4275 respondents; 2.34 hours per response (avg.); 10,044 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." The section further provides that any telecommunications carrier that violates the Commission's verification procedures and that collects charges for telecommunications service from a subscriber must pay to the carrier previously selected by the subscriber an amount equal to all charges paid by the subscriber after the violation occurred. The Commission's current rules pertaining to changes in subscriber carrier selections are contained in Sections 64.1100 and 64.1150 of the Commission's rules, 47 CFR §§ 64.1100, 64.1150. These rules apply only to interexchange carriers (IXCs). Section 64.1100 requires that IXCs verify orders for long distance service generated by telemarketing, and Section 64.1150 prescribes the proper content and form for letters of agency (or, written authorization of subscriber carrier changes). The proposed modifications and additions to the rules are necessary to accommodate the Commission's expanded scope of authority to require all telecommunication carriers to verify change orders for telephone exchange and telephone toll service, and to provide that unauthorized carriers forfeit to the subscriber's authorized carrier, all charges collected as a result of their unlawful action. (Burden estimate for proposed Section 64.1100 is as follows: No. of respondents: 675; hours per respondent: 1.25; total annual burden: 844. Burden estimate for proposed 64.1150 is as follows: No. of respondents: 1800; hours per respondent: 2 hours; total annual burden: 3600 hours). Proposed Section 47 CFR § 64.1160 mirrors Section 258 of the 1996 Act by providing that no telecommunications carrier shall submit or execute a carrier change except in accordance with the Commission's verification procedures, and that a carrier that violates the verification procedures shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by the subscriber after the violation occurs. Under proposed Section 47 CFR Section 64.1170, a subscriber's properly authorized carrier must, within 10 days of receiving notification that the subscriber's carrier selection was changed without authorization, request from the unauthorized carrier the amount of charges paid by the subscriber to the unauthorized carrier, and the value of any premiums to which the subscriber would have been entitled had the subscriber's carrier selection not been changed. Upon notification that the subscriber's carrier selection was changed without authorization, the unauthorized carrier must remit these amounts to the subscriber's properly authorized carrier. The subscriber's properly authorized carrier must, upon receiving the value of lost premiums from the unauthorized carrier, restore any lost premiums (or an equivalent premium or dollar amount where the premium cannot be restored) to the subscriber. This section also provides that carriers disputing liability under this section must pursue private settlement negotiations prior to petitioning the Commission to resolve any dispute regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier. (No. of respondents: 1800; hours per respondent: 3 hours; total annual burden: 5400 hours). The information will be used to promulgate regulations to implement Section 258 of the Telecommunications Act of 1996, and to determine what additional measures should be taken to deter unauthorized switching of subscriber's carrier selections in light of the Act's new provisions. Specifically, we are proposing to expand the scope of our current verification rules to be applicable to all telecommunications carriers. Also, new proposed Sections 64.1160 and 64.1170 are intended to ensure that carriers that violate our verification rules do not retain any revenue gained from their unlawful activity, and that subscribers receive prompt and full reparation for harm suffered as a consequence of unauthorized carrier changes. We also seek comment on whether the verification rules should apply when carriers solicit preferred carrier freezes; whether the "welcome package" described in Section 64.1100(d) continues to be a necessary and viable verification alternative; whether we should exempt in-bound (or customer-initiated) calls from the verification rules; what the liability among carriers and subscribers should be; and whether to establish a "bright-line" evidentiary standard for determining whether a subscriber has relied on a resale carrier's identity of its underlying facilities-based network provider, hence requiring that the resale carrier notify the subscriber if the underlying network provider is changed.

OMB Control No.: 3060–0106.

Expiration Date: 10/31/2000.

Title: Reports of Overseas Telecommunications Traffic—Section 43.61.

Form No.: FCC 43–61.

Respondents: Business or other for-profit.

Estimated Annual Burden: 248 respondents; 30.45 hours per response (avg); 7,554 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $96,000.

Frequency of Response: Annually, semi-annually.

Description: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities. In addition to the annual filing requirement, private line resellers must report their U.S. outbound and inbound traffic originating or terminating over resold U.S. private lines on a semi-annual basis. This requirement applies for three years following a Commission finding that a particular country offers U.S. carriers "equivalent" opportunities for resale. The information is collected so that the Commission can closely monitor the equivalency decision's impact on the amount of IMTS traffic diverted from the settlements process. Sections 211, 214, 218, 219, 220 and 403 of the Communications Act of 1934, as amended, accord the Commission broad authority to obtain information from common carriers. Part 43 of the Commission's rules establishes the procedures for filing periodic reports and certain other information, including annual traffic and revenue reports. Obligation to respond: mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30798 Filed 11–21–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1190–DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–1190–DR), dated November 1, 1997, and related determinations.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1997:

Dodge County for Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–30807 Filed 11–21–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (46 U.S.C. § 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2193
Vessel: Tropicale

Fred. Olsen Travel Limited, Fred. Olsen Cruise Lines, Ltd., Fred. Olsen & Co., Fred. Olsen Shipping A/S and Fred. Olsen Shipping II A/S, White House Road, Ipswich, Suffolk IPI 5LL, United Kingdom
Vessel: Black Watch

Hapag-Lloyd Tours GmbH, Hapag-Lloyd Cruiseship Management GmbH, Hapag-Lloyd (Bahamas) Ltd. and Conti 1. Kreuzfahrt GmbH & Co. KG MS "Columbus", Ballindamm 25, D–20095, Hamburg, Germany
Vessel: c. Columbus

Holland America Line-Westours Inc., (d/b/a/ Holland America Line), Holland America Line N.V. and HAL Nederland N.V., 300 Elliott Avenue West, Seattle, Washington 98119
Vessel: Rotterdam

Ivaran Agencies, Inc. and Ivarans Rederi ASA, Newport Financial Center, 111 Pavonia Avenue, Jersey City, N.J. 07310–1755
Vessel: Americana

Norwegian Cruise Line Limited and, Norwegian Majesty Ltd., 7665 Corporate Center Drive, Miami, Florida 33126
Vessel: Norwegian Majesty

Norwegian Cruise Line Limited, 7665 Corporate Center Drive, Miami, Florida 33126
Vessel: Norwegian Sea

Dated: November 18, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30757 Filed 11–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Fred. Olsen Travel Limited, Fred. Olsen Cruise Lines Ltd., and Fred. Olsen & Co., White House Road, Ipswich, Suffolk IP1 5LL, United Kingdom
Vessel: Black Watch

Hapag-Lloyd Tours GmbH and Hapag-Lloyd Cruiseship Management GmbH, Ballindamm 25, D–20095 Hamburg, Germany
Vessel: c. Columbus

Holland America Line-Westours Inc. (d/b/a Holland America Line) and Holland America Line N.V., 300 Elliott Avenue, Seattle, Washington 98119
Vessel: Rotterdam

Ivaran Agencies, Inc. and Ivarans Rederi ASA, Newport Financial Center, 111 Pavonia Avenue, Jersey City, N.J. 07310–1755
Vessel: Americana

New SeaEscape Cruises, Inc., Cruise Charter Ltd. and Maritime Management Ltd., 140 South Federal Highway, Dania, Florida 33004
Vessel: Island Holiday

Norwegian Cruise Line Limited, 7665 Corporate Center Drive, Miami, Florida 33126
Vessels: Norwegian Majesty and Norwegian Sea

Princess Cruises, Inc., Princess Cruises Liberia, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, California 90067
Vessel: Sea Princess

Riverbarge Excursion Lines, Inc., 201 Opelousas Avenue, New Orleans, Louisiana 70114
Vessel: River Explorer

Dated: November 18, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30758 Filed 11–21–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. David D. Dallas, Liberty Corner, New Jersey, and Robert J. Van Volkenburgh, Jr., Somerville, New Jersey; to acquire voting shares of Unity Bancorp Inc., Clinton, New Jersey, and thereby indirectly acquire First Community Bank, Clinton, New Jersey.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Norman Lane Nelson, Dunlap, Illinois, and Louise Kay Kanive, Washington, Illinois; to acquire voting shares of First Lacon Corp., Lacon, Illinois, and thereby indirectly acquire First National Bank of Lacon, Lacon, Illinois.

2. John Ryburn Stipe, Forrest City, Arkansas; to acquire additional voting shares of Forrest City Financial Corporation, Forrest City, Arkansas, and thereby indirectly acquire Forrest City Bank, N.A., Forrest City, Arkansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael Stevens Helfer, Washington, D.C.; to acquire voting shares of First Community Bancshares, Inc., Houston, Texas, and thereby indirectly acquire FCBI Delaware, Wilmington, Delaware; Fort Hood National Bank, Fort Hood, Texas; First National Bank, Killeen, Texas. Texas.

Board of Governors of the Federal Reserve System, November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30836 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Brookline Bancorp, M.H.C., and Brookline Bancorp, Inc., both of Brookline, Massachusetts; to become bank holding companies by acquiring 100 percent of the voting shares of Brookline Savings Bank, Brookline, Massachusetts.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to merge with Horizon Bancorp, Inc., Arkadelphia, Arkansas, and thereby indirectly acquire Horizon Bank, Malvern, Arkansas.

In connection with this application, Applicant also has applied to acquire Horizon Financial Services, Inc., Arkadelphia, Arkansas, and thereby indirectly engage in full service securities brokerage activities, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

2. J.R. Montgomery Bancorporation, Lawton, Oklahoma; to acquire an additional 6.6 percent, for a total of 37.33 percent, of the voting shares of Fort Sill National Bank, Fort Sill, Oklahoma.

Board of Governors of the Federal Reserve System, November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30835 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Security Corporation, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Capital Markets, Salt Lake City, Utah, in underwriting and dealing in certain bank-ineligible securities. *See Citicorp, et al.*, 73 Fed. Res. Bull. 473 (1987); *Chemical New York Corporation, et al.*, 73 Fed. Res. Bull. 731 (1987); *Bank South Corporation*, 81 Fed. Res. Bull. 1116; *BOK Financial Corporation*, 83 Fed. Res. Bull. 510 (1997). First Security Corporation also plans to engage in the following activities: (1) acting as agent in the private placement of all types of securities; (2) buying and selling all types of securities on the order of customers as riskless principal; (3) providing full-service securities brokerage and investment advisory services in combination; (4) acting as investment and financial adviser; (5) making, acquiring, and servicing loans; (6) leasing property, engaging as principal in investing and trading activities; and (7) engaging in futures, forward, and option contracts for hedging purposes; pursuant to §§ 225.28(b)(1) - (3),(6),(7), and (8).

Board of Governors of the Federal Reserve System, November 19, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30837 Filed 11–21–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Planning and Evaluation; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Planning and Evaluation, with authority to redelegate, all the authorities under Sections 403(a)(5)(G), (H), and (I) of the Social Security Act, as amended, 42 U.S.C. Section 603(a)(5)G), (H), and (I).

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby affirm and ratify any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein prior to the effective date of the delegation. This delegation is effective immediately.

Dated: November 12, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–30793 Filed 11–21–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, Aid to Needy Aged, Blind, or Disabled Persons and for the New Children's Health Insurance Programs for October 1, 1998 Through September 30, 1999

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentage and Enhanced Federal Medical Assistance Percentages for Fiscal Year 1999 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 1998 through September 30, 1999. This notice announces the calculated "Federal Medical Assistance Percentages" and "Enhanced Federal Medical Assistance Percentages" that we will use in determining the amount of Federal matching in State medical and medical insurance expenditures and for the annual reconciliation of contingency funds under Title IV–A. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. Programs under title XXI are new, beginning in 1998. The percentages in this notice apply to State expenditures for assistance payments, medical services and medical insurance services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 2105(b) of the Act, as revised by section 9528 of Pub. L. 99–272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 2105(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages," for residual payments under the old Aid to Families with Dependent Children (AFDC) program, will no longer be published. Anyone who needs these values may call the contact person named below and receive them. If a sufficient number of persons call, we may publish them again beginning in 2000.

The "Federal medical assistance percentages" are for Medicaid. States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraph (2) of sections 3(a), 1003(a), and 1403(a) of the Act. They will also be used for the annual reconciliation of any Contingency funds received under the Temporary Assistance for Needy Families program.

The "Enhanced Federal Medical Assistance Percentages" are for use in the new Children's Health Insurance Program under Title XXI, and for some or all of children's medical assistance under the new Medicaid sections 1905(u)(2) and 1905(u)(3).

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1998 and ending September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 690–7861.

(Catalog of Federal Domestic Assistance Program Nos. 93.560—Assistance Payments—Maintenance Assistance (State Aid); 93.778—Medical Assistance Program; Children's Health Insurance Programs—not yet added)

Dated: November 17, 1997.

Donna E. Shalala,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1998–SEPTEMBER 30, 1996

[Fiscal year 1999]

State	Federal Medical Assistance percentages	Enhanced Federal Medical Assistance percentages
Alabama	69.27	78.49
Alaska	59.80	**71.86
American Samoa	50.00	*65.00
Arizona	65.50	75.85
Arkansas	72.96	81.07
California	51.55	66.09
Colorado	50.59	65.42
Connecticut	50.00	65.00
Delaware	50.00	65.00
District of Columbia	70.00	79.00
Florida	55.82	69.07
Georgia	60.47	72.33
Guam	50.00	*65.00
Hawaii	50.00	65.00
Idaho	69.85	78.89
Illinois	50.00	65.00
Indiana	61.01	72.71
Iowa	63.32	74.32
Kansas	60.06	72.03
Kentucky	70.53	79.37
Louisiana	70.37	79.26
Maine	66.40	76.48
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	52.72	66.91
Minnesota	51.50	66.05
Mississippi	76.78	83.75
Missouri	60.24	72.17
Montana	71.73	80.21
Nebraska	61.46	73.02
Nevada	50.00	65.00
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	72.98	81.09
New York	50.00	65.00
North Carolina	63.07	74.15
North Dakota	69.94	78.96
Northern Mariana Islands	50.00	*65.00
Ohio	58.26	70.78
Oklahoma	70.84	79.59
Oregon	60.55	72.38
Pennsylvania	53.77	67.64
Puerto Rico	50.00	*65.00
Rhode Island	54.05	67.83
South Carolina	69.85	78.89
South Dakota	68.16	77.71
Tennessee	63.09	74.16
Texas	62.45	73.72
Utah	71.78	80.25
Vermont	61.97	73.38
Virgin Islands	50.00	*65.00
Virginia	51.60	66.12
Washington	52.50	66.75
West Virginia	74.47	82.13
Wisconsin	58.85	71.20

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1998–SEPTEMBER 30, 1996—Continued

[Fiscal year 1999]

State	Federal Medical Assistance percentages	Enhanced Federal Medical Assistance percentages
Wyoming	64.08	74.86

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centrum.

**For 1998, 1999, and 2000, the values in the table were set for state plans under Titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, the percentage for Alaska is 52.26

[FR Doc. 97–30832 Filed 11–21–97; 8:45 am]

BILLING CODE 4110–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Vaccine Program Office of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Adult Immunization Workshop.

Times and Dates: 12:30 p.m.–5 p.m., December 1, 1997; 8:30 a.m.–4:30 p.m., December 2, 1997.

Place: The Grand Hyatt Washington, 1000 H Street NW, Washington, DC 20001, telephone 202/582–1234.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to gather information on adult immunization practices at non-traditional sites and explore opportunities to increase immunization rates by offering immunizations to adults who are unlikely to be immunized at traditional sites.

Matters to be Discussed: Agenda items will include a presentation of the Adult Immunization Plan; presentations on current immunization activities at various non-traditional sites; discussions by representatives of community organizations on methods to increase immunization levels in various segments of the adult population; and a discussion on the possibility of expanding the types of non-traditional sites utilized.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Alicia S. Postema, Program Analyst, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333, telephone 404/639–4450.

Dated: November 18, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30766 Filed 11–21–97; 8:45 am]

BILLING CODE 4163–18–P

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Program Announcement for a Cooperative Agreement for the Development and Enhancement of Health Promotion and Disease Prevention Curriculum Components Within Health Professions Education

The Health Resources and Services Administration (HRSA) announces the awarding of a single source cooperative agreement to the Association of Teachers of Preventive Medicine (ATPM) to plan for the development and enhancement of Health Promotion and Disease Prevention (HP/DP) curriculum components within health professions education. This activity will be supported under the authority of Title III, Section 301, of the Public Health Service Act. Five years of support are proposed beginning in fiscal year 1997. An initial award of $262,301 will be used for the development of vaccine benefit-risk curriculum for health care professionals.

The project will: (1) Enhance the integration of HP/DP within existing health professions primary care curriculum; (2) identify and develop standards, guidelines, competencies, and training models that address HP/DP curricula; (3) serve as a resource for professional organizations, specialty societies, and academic units in developing a program of education and training in preventive medicine; and (4) explore project ideas regarding the instruction, practice and research in preventive medicine which respond to the national objectives of *Healthy People 2000.* The ATPM was chosen because it is the only professional organization solely committed to advancing the teaching of HP/DP in the clinical specialities. It has an established membership of professionals which include teachers, researchers, practitioners, and administrators of multiple disciplines and medical specialities located in schools of medicine, academic health centers, schools of public health, accredited graduate medical education programs, nursing schools and various practice settings. It is uniquely structured to access current HP/DP instruction for health professionals of multiple disciplines and to influence the development of essential information as required. The Association also has developed and provided access to preventive medicine teaching and curriculum materials for both pre-service health professions education and continuing education. Many of these materials are proprietary in nature.

Federal Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement with the planning, development, administration, and evaluation of the proposed projects.

Requests for Additional Information

Requests for additional information regarding this sole source cooperative agreement should be directed to: D.W. Chen, M.D., MPH, Bureau of Health Professions, Room 8–101, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–6853, FAX: (301) 443–1164, Email: dwchen@hrsa.dhhs.gov.

Requests for additional information for the initial project concerning vaccine benefit-risk curriculum development should be directed to: Pamela A. Eason, M.P.A., Bureau of Health Professions, Room 8A–35, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, MD 20857, Telephone:

(301) 443–3474, FAX: (301) 443–3354, e-mail: peason@hrsa.dhhs.gov.

Dated: November 14, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–30782 Filed 11–21–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Special Factors for Grants for Residency Training and Advanced Education in the General Practice of Dentistry Programs for Fiscal Year 1998

Grants for Residency Training and Advanced Education in the General Practice of Dentistry Programs are authorized under section 749, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

Proposed Special Factors

The following Special Factors are proposed:

Special Factors

In determining the funding of approved applications, the Secretary will consider the following Special Factors:

Community linkages—This special factor may be addressed by the establishment of academic-community linkages, in particular linkages between the training program and underserved populations or communities. Documentation of such linkages should include verification that at least 20% of residents' training time occurs in one or more underserved settings. Memoranda of agreement and letters of support from the community settings involved should be included in the appropriate appendix of the application.

Establishment of new PGY–1 training positions—To address the recommendations of expert panels such as the Institute of Medicine and Pew Commission on Health that a year of post-doctoral training be available for all dental graduates, and that the majority of these positions be in general dentistry programs, this special factor may be addressed by the establishment of new postgraduate year-one (PGY–1) training positions, either through the establishment of a new program or the expansion of an existing program. An increase in the number of PGY–2 positions does not address the intent of this special factor.

Innovative training methods—Examples of ways in which applicants address this special factor might include new sponsor/co-sponsor arrangements; different organizational and administrative structures; expanded private/public sector affiliations and setting linkages; and creative applications for current instructional telecommunications and computer technologies.

Peer reviewers will take into consideration the extent to which proposals address these Special Factors and adjust their individual technical review scores accordingly.

An announcement will be made in the *HRSA Preview* for grant programs which will conduct competitive cycles in FY 1998.

The comment period is 30 days. All comments received on or before December 24, 1997 will be considered before the final review criteria are established. Written comments should be addressed to: Bernice Pariak, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6853; FAX: (301) 443–1164.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: November 14, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–30781 Filed 11–21–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4210–N–03]

Housing Opportunities for Persons With AIDS Program; Announcement of Funding Awards—Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal year 1997 Housing Opportunities for Persons with AIDS (NOPWA) program. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Vos, Acting Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7154, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1934. the TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers). Information on HOPWA, community development and consolidated planning, and other HUD programs may also be obtained from the Community Connections information center at 1–800–998–999 (voice) or 1–800–483–2209 (TTY); by email at amcom@aspensys.com; or by internet at gopher://amcom.aspensys.com. The HUD Home Page address on the World Wide Web is http://www.hud.gov.

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grants for housing assistance and supportive services by three types of projects: (1) Grants for special projects of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families, including at least one grant for National HOPWA Technical Assistance; (2) grants for projects under the HIV Multiple-diagnoses Initiative (MDI) which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families who are also homeless and have chronic alcohol and/or other drug abuse problems and/or serious mental illness; and (3) grants for projects which are part of long-term comprehensive strategies for providing housing and related to services for low-income persons living with HIV/AIDS and their families in areas that do not receive HOPWA formula allocations, including additional funds for the evaluation of MDI grant selected under the 1996 competition.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the Department's appropriation, The "Department of Veterans Affairs and

Housing and Urban Development, and Independent Agencies Appropriation Act, 1997" (Pub. L. 102–204, approved September 26, 1996). The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on May 7, 1997 (62 FR 25082). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.241.

A total of $19,600,000 was awarded for 27 applications. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A.

Dated: November 17, 1997.

Jacquie Lawing,

Acting Assistant Secretary for Community Planning and Development.

Appendix A—FY 1997 HOPWA Competitive Grants

Chart 1. Awards for Projects That Are Part of Long Term comprehensive Strategies (Non-Formula Areas)

Alaska Housing Finance Corporation, Anchorage, Alaska, $572,800
New Mexico Mortgage Finance Authority, Albuquerque and Gallup, New Mexico, $1,100,000
Rhode Island Housing and Mortgage Finance Corporation, Providence, Cumberland and Cranston, Rhode Island, $1,097,030
Wyoming Department of Health, Casper, Wyoming, $288,640
Pima County Community services, Tucson, Arizona, $639,196

Chart 2. Awards for Special Projects of National Significane

The AIDS Project, Portland, Maine, $1,064,194
AIDS Housing Corporation, Boston, Massachusetts for the New England region, $749,689
San Diego County, Department of Housing and Community Development, San Diego, San Marcos and Vista, California, $1,053,800
North Carolina Department of Environment, Health and Natural Resources, Charlotte, Raleigh, Greenville, Wilmington, and eastern rural NC, $785,714
Kentucky Housing Corporation, Louisville, Lexington, Dayton and Covington, Kentucky, $901,323
Ho'omana'olana, Honolulu, Hawaii, $1,028,797
Hudson Planning Group, Inc., New York City, $334,750

Chart 3. Award for National HOPWA Technical Assistance—SPNS

AIDS Housing of Washington, Seattle, Washington for nation-wide activities, $1,030,000

Chart 4. Awards for the HIV Multiple-Diagnoses Initiative

City of Bridgeport, Bridgeport, Connecticut, $1,270,000
Church Avenue Merchants Block Association (CAMBA), Brooklyn, New York City, $1,199,901
AIDS Task Force of Alabama, Inc., Birmingham, Alabama, $1,270,000
The Salvation Army, Harbor Light Multi-Service Center, Minneapolis, Minnesota, $1,200,000
Catholic Community Services, Hudson County Division, Jersey City, New Jersey, $1,236,922
Local Health Council of East Central Florida, Inc., Orlando, Florida, $1,205,903
Center for Children & Families, Manhattan, New York City, $1,221,450

Chart 5. Additional Pat III Funds for Evaluation of 1996 HIV Multiple-Diagnoses Initiative Projects

Bernal Heights Housing Corporation, San Francisco, California, $50,000
Housing Authority of Santa Cruz, Santa Cruz Co., California, $50,000
Housing & Services Inc. (of South Florida), Miami, Florida, $50,000
Baltimore Department of Housing and Community Development, Baltimore, Maryland, $50,000
Catholic Community Services, Jersey City, New Jersey, $49,936
United Bronx Parents, Inc., New York City, $50,000
Houston Regional HIV/AIDS Resource Group, Inc., Houston, Texas, $50,000
Total for all 27 grants: $19,600,000

[FR Doc. 97–30812 Filed 11–21–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on December 10 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission for funding approval. The meeting is open to the public.

DATES: December 10, 1997, 9:00 A.M.

ADDRESSES: The meeting will be held at the Tensas River National Wildlife Refuge, Route 2, Box 295, Tallulah, Louisiana, (318) 574–2664. The North American Wetlands Conservation Council Coordinator is located at the Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Room 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State, Federal, and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: November 14, 1997.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–30802 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1430–01, COC–60372, COC–60883, and COC–60911]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Boulder County, CO.

SUMMARY: The following described land has been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value:

COC–60372

T. 1 N., R. 71 W., Section 6: portion of Mineral Survey (M.S.) 18390, comprising approximately 0.04 acres.

COC-60883

T. 1 N., R. 71 W., Section 19: parcel of public land bordered by M.S. 15086, the Katherine H. and M.S. 12927, the Charter Oak, comprising approximately 0.1 acres.

COC-60911

T. 1 N., R. 72 W., Section 7: portion of lot 59, comprising approximately 0.4 acres.

The land in parcel COC–60372 will be offered to Steven Strand. The land in parcel COC–60883 will be offered to Ron Brotzman, agent for Old Republic National Title Insurance Company. The land in parcel COC–60011 will be offered to Richard Marchese. These sales will be made to resolve inadvertent trespass situations. This determination amends the segregation of February 10, 1995 to allow for sale under Section 203 of the Federal Land Policy and Management Act of 1976. Lot designations and exact acreages will be determined before sale. Minerals will be included if determined appropriate. Detailed information concerning these sales, including price, patent reservations, etc. will be available upon request.

Any parcels not purchased when initially offered, will be offered competitively to the public through sealed bids on the next scheduled sale day.

DATES: Interested parties may submit comments to the District Manager at the above address until January 15, 1998.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 E. Main St. Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Jan Fackrell, Realty Specialist, (719) 269–8525.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–30714 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement on the General Management Plan for Little River Canyon National Preserve, Alabama

SUMMARY: The National Park Service will prepare an Environmental Impact Statement (EIS) to accompany its General Management Plan (GMP) for Little River Canyon National Preserve. The Service invites suggestions for issues to be considered and ideas for resolving the issues.

DATES: Scoping suggestions should be submitted on or before January 1, 1998 to ensure adequate consideration by the Service.

ADDRESSES: Superintendent, Little River Canyon National Preserve, P.O. Box 45, Fort Payne, Alabama 35967, Telephone: (205) 997–9239.

SUPPLEMENTARY INFORMATION: In 1995, the National Park Service began the preparation of an Environmental Assessment (EA) on the GMP.

This included scoping for the EA. The National Park Service has announced that an EIS on GMPs will be prepared for all park units. To comply with this policy, a formal scoping period is announced.

Comments are invited on any issue believed to be relevant to Preserve management and should be submitted to the Superintendent whose address is given above. No public scoping meeting will be held. We urge that comments be made in writing. Issues may be suggested for the Service to consider during its planning as well as suggestions for resolution. Issues currently being considered include the preservation of water quality and quantity, the preservation and management of the Preserve's natural features and cultural resources, identification of resource compatible recreational pursuits, and infrastructure needs. Central to these issues is the determination of the Preserve's mission—its purpose and significance. The plan will identify desired conditions for resources and visitor experiences for various management units within the Preserve. A draft GMP/EIS will be prepared and presented to the public for review and comment followed by preparation and availability of the final GMP/EIS.

Dated: November 5, 1997.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 97–30800 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–70–M

NATIONAL PARK SERVICE

Tallgrass Prairie National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the first meeting of the Tallgrass Prairie National Preserve Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES, TIME, AND ADDRESS: Wednesday, December 10, 1997; 8 a.m. until business and public comment are complete; St. Anthony's Hall, 6th and Elm Street, Strong City, Kansas.

This business meeting is open to the public. Space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. An agenda will be available from the Superintendent 1 week prior to the meeting. Attendees are encouraged to participate in these meetings. If you would like to address the committee, please contact the Superintendent by December 1, 1997, at the address or telephone number listed below requesting that your name be added to the agenda. Depending on the number of requests, the Superintendent has the right to limit the amount of time each participant is allowed to address this committee.

FOR FURTHER INFORMATION CONTACT: Steve Miller, Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845; or telephone him at 316–273–6034.

SUPPLEMENTARY INFORMATION: The Tallgrass Prairie National Preserve was established by Public Law 104–333, dated November 12, 1996.

Dated: November 14, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–30801 Filed 11–21–97; 8:45 am]

BILLING CODE 4310–70–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Criminal Rules public hearing scheduled to be held in New Orleans, Louisiana, on December 12, 1997, has been canceled. (Original notice of hearing appeared in the **Federal Register** of August 25, 1997.)

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: November 18, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–30767 Filed 11–21–97; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: January 8–9, 1998.

TIME: 8:30 a.m.–5:00 p.m.

ADDRESS: Fess Parker's Double Tree Hotel, 633 East Cabrillo Boulevard, Santa Barbara, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: November 18, 1997.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 97–30768 Filed 11–21–97; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Justice Programs; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: Notice of information collection under review; a 1-minute survey on curfews.

The Department of Justice, Office of Juvenile Justice and Delinquency Prevention previously published this notice in the **Federal Register** on September 12, 1997 for 60 days. During this comment period no comments were received by the Department of Justice. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 24, 1997.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: A 1-Minute Survey on Curfews.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form, None; Sponsoring component, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary, State and local governments; Other, Not-for-profit institutions. The purpose of the data collection is to gather information from jurisdictions on the use of juvenile curfew and its effectiveness as a tool to reduce juvenile crime and victimization. The survey form will be sent to all those who were mailed a copy of an OJJDP Bulletin on the topic of curfew.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 2,000 respondents at 1 minute per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 33.3 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: November 18, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30759 Filed 11–21–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–81; Exemption Application No. D–09685, et al.]

Grant of Individual Exemptions; EBPLife Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

EBPLife Insurance Company, Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 97–61, Application No. D–9685]

Exemption

Section I—Transaction

The restrictions of section 406(a) of the Act shall not apply, effective from April 15, 1994, to July 1, 1997, to the reinsurance of risks and the receipt of premiums therefrom by EBPLife Insurance Company (EBPLife) in connection with certain stop-loss policies (the Stop-Loss Policy or Stop-Loss Policies) issued by unrelated third party insurance carriers (the Carriers or Carrier) to employers (the Employers or Employer) any of whose employees were covered by various employee welfare benefit plans (the Plans or Plan),[1] when at the time EBPLife reinsured risks and received premiums, Affiliates of EBPLife, as defined in paragraph (a) of section III below or the predecessors of such Affiliates also provided non-discretionary administrative services to such Plans for a fee, provided that the conditions set forth in section II below were satisfied.

Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements, as of the effective dates of this exemption:

(a) Each transaction was effected by EBPLife in the ordinary course of its business as an insurance company;

(b) The terms of each transaction were at least as favorable to the Plans as those negotiated at arm's-length with unrelated third parties under similar circumstances;

(c) The combined total of all fees and other consideration received by EBPLife, its Affiliates, and predecessors of such Affiliates for the provision of services to Employers and their Plans and in connection with the purchase of insurance contracts was not in excess of "reasonable compensation" within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(d) EBPLife, its agents or Affiliates, or the predecessors to such Affiliates have not served as: (1) trustees to any of the Plans (other than as non-discretionary trustees, as defined in paragraph (f) in section III below, who do not render investment advice with respect to any of the assets of such Plans); (2) plan administrators, within the meaning of section 3(16)(A) of the Act; (3) fiduciaries who are expressly authorized in writing to manage, acquire, or dispose of the assets of any of the Plans; or (4) employers any of whose employees are covered by any of the Plans.

(e) EBPLife, its Affiliates, or the predecessors of such Affiliates have not acted as fiduciaries in connection with the decision by the Employer to purchase Stop-Loss Policies reinsured by EBPLife;

(f) As of the effective dates of this exemption, if an Employer executed an agreement (the Administration Agreement) with the Affiliates of EBPLife or with the predecessors of such Affiliates to provide services to an Employer or Plan; and such Employer also purchased or renewed a Stop-Loss Policy reinsured by EBPLife for the purpose of funding a Plan, then the fiduciaries of such Plan (the Plan Fiduciaries or Plan Fiduciary), as defined in paragraph (g) of section III below, must have received prior to the decision which resulted in the retention of Affiliates of EBPLife or the predecessors of such Affiliates to provide services and stop-loss insurance reinsured by EBPLife, a full and detailed written disclosure, including but not limited to a copy of the Administration Agreement which, among other things, disclosed whether EBPLife reinsured risk under a Stop-Loss Policy issued to the Employer of such Plan and described all of the services provided by EBPLife, its Affiliates, or the predecessors of such Affiliates to such Plan or such Employer. Such disclosures have been provided by EBPLife or its Affiliates or by the predecessors of such Affiliates, in a form calculated to be understood by such Plan Fiduciaries who have no special expertise in insurance.

(g)(1) As of the effective dates of this exemption, and prior to the execution of a transaction described in this exemption, following receipt of the disclosures, described in paragraph (f) of this section II, the Plan Fiduciary, by signing the Administration Agreement, acknowledged receipt of such disclosures and acknowledged that the decision to engage in a transaction which is the subject of this exemption was a decision made in a fiduciary capacity, and that such Plan Fiduciary approved of the subject transaction.

(2) With respect to the renewal by Employers during the effective period of this exemption of expired Stop-Loss Policies reinsured by EBPLife where Affiliates of EBPLife or the predecessors of such Affiliates were parties in interest with respect to a Plan by reason of the provision of services to such Plan, the written disclosures required under paragraph (f) of this section II need not have been repeated, unless—

(A) More than three years had passed since such disclosures were made with respect to the same kind of services provided by the Affiliates of EBPLife or by predecessors of such Affiliates or the same kind of reinsurance of the risk on the Stop-Loss Policies, or

(B) The reinsurance of the risk on such Stop-Loss Policies by EBPLife or the receipt of compensation for services by Affiliates of EBPLife or by predecessors of such Affiliates thereto was materially different from that for which approval described in paragraph (g) of this section II was obtained.

(h) The Plans have paid no commission with respect to the reinsurance by EBPLife of the Stop-Loss Policies.

(i) Each of the Plan Fiduciaries have not received, directly or indirectly (i.e. through any Affiliates), any compensation or other consideration for his or her own personal account from EBPLife, any of its Affiliates, any predecessors of such Affiliates, or other party dealing with any of the Plans in connection with a transaction described in this exemption.

(j) EBPLife and its Affiliates and any predecessors of such Affiliates followed the standard claims processing practices regarding any claims submitted with respect to benefits under any of the Plans covered by any of the Stop-Loss Policies reinsured by EBPLife;

(k) The Employer had final authority regarding the payment or nonpayment of any and all claims submitted with respect to benefits under any of the Plans covered by the Stop-Loss Policies reinsured by EBPLife;

(l) EBPLife or its Affiliates or the predecessors of such Affiliates have made available upon request by the Employers of each of the Plans at no additional charge full and detailed written reports which detail any and all of the following information:

(1) The average turn-around time from the date that a claim was initially received to the date that the claim was processed for payment;

(2) The percentage of claims processed within the target period, as set forth in the Administration Agreement;

(3) The average turn-around time from the date that a claim was received to the date that a claim was actually paid; and

(4) A summary of pending claims that were received but not paid accompanied by a code indicating the reason why each claim had not yet been paid.

(m) Regarding its operations and reserves, EBPLife complied with all applicable requirements of law and insurance regulations of the State of Oklahoma, where it is domiciled and licensed to do business;

(n) EBPLife has been subject to a financial audit by the Department of Insurance of the State of Oklahoma, where it is domiciled and licensed to do business no less frequently than once every three years;

(o) The issuing Carriers of the Stop-Loss Policies are fully liable for all claims covered by the Stop-Loss Policies in excess of the applicable stop-loss limits under such Stop-Loss Policies;

(p) Where the Stop-Loss Policies are reinsured by EBPLife, EBPLife, as reinsurer, is fully liable for the payments of claims under such Stop-Loss Policies;

(q) Independent insurance consultants, who were unrelated to EBPLife, its Affiliates, or to the predecessors of such Affiliates, solicited bids for administrative services and/or Stop-Loss Policies on behalf of Employers and served as brokers or agents to Employers with respect to the purchase by Employers of Stop-Loss Policies reinsured by EBPLife;

(r)(1) EBPLife or its Affiliates retain or the predecessors of such Affiliates have retained for a period of six (6) years from the date of any transaction covered by this exemption, the records necessary to enable the persons, as described in paragraph (s) of this section II, to determine whether the conditions of this exemption have been met. Such records shall include, but not be limited to, the following information:

(A) A copy of the information disclosed by EBPLife, its Affiliates, or by the predecessors of such Affiliates to the Plan Fiduciaries, pursuant to paragraph (f) of section II above;

(B) A copy of the Administration Agreement which discloses, among other things, whether EBPLife reinsures risk under a Stop-Loss Policy issued to an Employer;

(C) Any additional information or documents provided to any Plan Fiduciary with respect to a transaction covered by this exemption;

(D) Evidence of the written acknowledgment of receipt of disclosures by the Plan Fiduciary as described in paragraph (g) of this section II.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of EBPLife, its Affiliates, or the predecessors of such Affiliates, such records were or are lost or destroyed prior to the end of the six (6) year period.

(3) No party in interest, other than EBPLife, its Affiliates, and the predecessors of such Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, if the records are not maintained, or are not available for examination as required by paragraph (s) of this section II; and

(S)(1) Except as provided in paragraph (s)(2) of this section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of section II above are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor;

(B) Any fiduciary of each of the Plans or any duly authorized employee or representative of such fiduciary; and

(C) Any Employer of Plan participants and beneficiaries, any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary; any employee organization any of whose members are covered by a Plan.

(2) None of the persons described in paragraph (s)(1) (B) and (C) of section II shall be authorized to examine trade secrets of EBPLife, its Affiliates, or the predecessors of such Affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption:

(a) An "Affiliate" or "Affiliates" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term, "relative," means a "relative" as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or a sister.

(e) The term "non-discretionary services" means custodial services and services ancillary to custodial services, none of which services are discretionary.

(f) The term "non-discretionary trustee" of a Plan means a trustee whose powers and duties with respect to any assets of the Plan are limited to (1) the provision of non-discretionary trust services, as defined in paragraph (e) of this section III, to the Plan, and (2) duties imposed on the trustee by any provision or provisions of the Act.

(g) The term "Plan Fiduciary" or "Plan Fiduciaries" means a person(s) who are independent of EBPLife, its Affiliates, and any predecessors of such Affiliates, are sufficiently knowledgeable with respect to administration, benefits, funding, and any matters related thereto concerning such Plan, are capable of making an informed and independent decision, and are responsible for executing the Administration Agreement and for deciding to purchase or renew the Stop-Loss Policies reinsured by EBPLife.

EFFECTIVE DATE: The exemption is effective, from April 15, 1994, to July 1, 1997.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days

[1] The Department, herein, is not providing relief for transactions involving any plans sponsored by EBPLife or its affiliates (the Affiliates), as defined in paragraph (a) of section III below, or any predecessors of such Affiliates. In this regard, EBPLife represents that it may have issued stop-loss or other insurance contracts in connection with welfare benefit plans that covered employees of EBPLife, its Affiliates or predecessors of such Affiliates. However, in all cases, EBPLife represents that it either satisfies the requirements of the statutory exemption provided by section 408(b)(5) of the Act, or it ensures that the insurance contracts are not "plan assets" within the meaning of the Act.

of the date of the publication of the Notice in the **Federal Register** on July 11, 1997. All comments and requests for hearing were due by August 25, 1997. Subsequently, on two occasions the applicant requested additional time within which to notify interested persons. Accordingly, the Department agreed to extend the comment period to October 29, 1997.

As of the close of the extended comment period, the Department had received no requests for hearing. However, the Department did receive a comment letter from the applicant, EBPLife, dated September 3, 1997, in which the applicant confirmed the July 1, 1997, sale by First Data Corporation of its administrative service affiliate, First Health, to an unrelated company. As a result of that sale, EBPLife no longer has current plan sponsor clients with respect to which it, or its Affiliates, provides both reinsurance and non-discretionary administrative services. Accordingly, the Department has determined to amend the effective date of the exemption to cover the period from April 15, 1994, the date the application was filed, to July 1, 1997, the date when the First Health was sold.

After full consideration and review of the entire record, including the written comment filed by the applicant, the Department has determined to grant the exemption, as modified and clarified above. The comment submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on July 11, 1997, 62 FR 37299.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Franklin & Davis, P.C. Profit Sharing Plan (the Plan), Located in Troy, Michigan

[Prohibited Transaction No. 97–62; Exemption Application No. D–10450]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two loans (the Loans) totaling $229,000 to Franklin & Davis, P.C. (F&D), the Plan's sponsor and a disqualified person with respect to the Plan, by the individual account (the Account) of Bruce W. Franklin (Mr. Franklin), provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Account; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain securities which have a fair market value not less than 200% of Loan 2; and (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 2, 1997 at 62 FR 51692.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of November, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–30627 Filed 11–21–97; 8:45 am]

BILLING CODE 4510–29–P

[2] Since Mr. Franklin is the sole owner of F&D and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10328, et al.]

Proposed Exemptions; MS Commodity Investments Portfolio II, L.P. (the Partnership, et al.)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713,October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

MS Commodity Investments Portfolio II, L.P. (the Partnership) and Morgan Stanley Commodities Management, Inc. (MSCM, Collectively the Applicants), Located in New York, NY

[Application Nos. D–10328 and D–10329]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D), shall not apply, effective April 3, 1996, to the acquisition or redemption of units (the Units or Unit) in the Partnership by certain plans (the Plans or Plan) that invest in the Partnership, where MSCM, the general partner of the Partnership, and/or its affiliates are parties in interest and/or disqualified persons with respect to such Plans; provided that the conditions, as set forth below in Section II are satisfied as of the effective date of this exemption.[1]

Section II. General Conditions

This proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

(a) Prior to the investment of the assets of a Plan in the Partnership, a fiduciary of such Plan (the Plan Fiduciary or Plan Fiduciaries) who is/are independent of MSCM and its affiliates must approve such investment.

(b) MSCM has determined and documented and will determine and document, pursuant to a written procedure, that the decision of a Plan to invest in the Partnership was and will be made by a Plan Fiduciary who was and is independent of MSCM and its affiliates and who was and is capable of making an informed investment decision about investing in the Partnership.

(c) The independent Plan Fiduciary of each Plan investing in the Partnership has retained and will retain complete discretion with respect to transactions initiated by such Plan involving the acquisition or redemption of Units in the Partnership.

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets by Plans in the Partnership nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to the investment of such assets.

(e) No Plan investing in the Partnership has acquired and held or will acquire or hold Units in the Partnership that represent more than 20 percent (20%) of the assets of the Partnership.

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan does not exceed 10 percent (10%) of the assets of such Plan.

(g) At the time transactions are entered into, the terms of such transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party.

(h) No Plan has paid or will pay a fee or commission to MSCM or any of its affiliates by reason of the acquisition or redemption of Units in the Partnership.

(i) The total fees paid to MSCM have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) Prior to making an investment in the Partnership, the independent Plan Fiduciary of each potential Plan investor, and/or such Plan investor's authorized representative has been and will be provided by MSCM or by an affiliate with a written copy of the following offering materials:

(1) the Private Placement Memorandum of the Partnership (the Memorandum) (which contains among other things, a description of the offering of Units, all material facts concerning the purpose, structure, and operation of the Partnership, as well as any associated risk factors, and a description of the relationships existing

between MSCM, Morgan Stanley Asset Management Inc. (MSAM), Morgan Stanley & Co. Incorporated (MS&Co), and Morgan Stanley Group Inc. (the MS Group));

(2) the then-current limited partnership agreement (the LP Agreement) between MSCM and the investors in the Partnership; and

(3) the then-current subscription agreement (the Subscription Agreement) (an executed copy of which is delivered to a subscriber and/or its authorized representative as soon as practicable following such subscriber's investment in the Partnership) and the Investor Certification previously furnished by MSCM or its affiliates to the independent Plan Fiduciaries for completion which contains information about each potential Plan investor, specifies such Plan's proposed investment in the Partnership, and documents the fact that the investment decision is being made by an independent Plan Fiduciary who is capable of making an informed investment decision about investing in the Partnership.

(l) With respect to the ongoing participation in the Partnership, the independent Plan Fiduciary of each Plan invested in the Partnership has received and will receive, within the time periods specified below, the following additional written disclosures from MSCM or from its affiliates:

(1) within ninety (90) days after the close of each fiscal year, audited financial statements of the Partnership, prepared annually by a qualified, independent, public accountant including:

(i) a balance sheet; (ii) a statement of income or a statement of loss; (iii) the net asset value of the Partnership, as of the end of the two preceding fiscal years; (iv) either: (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; (v) a statement of changes in partner's capital; and (vi) the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

(2) within thirty (30) days after the end of each calendar month, a monthly statement of account prepared by MSCM or by its affiliates containing the following unaudited financial information:

(i) the total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

(m) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III(d) below.

(n) The Partnership has not invested in and will not invest in any entity in which MS Group or any of its affiliates has an ownership interest.

(o) Affiliates of MSCM have not invested in and will not invest in the Partnership.

(p) The non-U.S. commodity trading activities of the Partnership has been and will be limited to the London Metals Exchange (the LME).

(q) The Applicants have not accepted and will not accept subscriptions from Plans which permit participants to exercise control over the decision to acquire or redeem Units;

(r) MSCM has maintained and shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (s) of this Section II to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MSCM and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than MSCM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by paragraph (s) of this Section II below.

(s)(1) Except as provided in subsection (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(a) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(b) any fiduciary of any Plan investing as a limited partner in the Partnership or any duly authorized representative of such fiduciary;

(c) any contributing employer to any Plan investing as a limited partner or any duly authorized employee representative of such employer;

(d) any participant or beneficiary of any participating Plan investing as a limited partner, or any duly authorized representative of such participant or beneficiary; and

(e) any other limited partner.

(2) None of the persons described above in subparagraphs (b)–(e) of paragraph (s)(1) of this Section II shall be authorized to examine the trade secrets of MSCM or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An *affiliate* of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control of such person. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) any officer, director, or partner in such person, and

(3) any corporation or partnership of which such person is an officer, director, or a 5 percent (5%) or more partner or owner.

(b) A *Plan* or the *Plans* has not included and will not include any individual account plan(s) where participants have the right to exercise control over the decision to acquire or redeem Units.

(c) A *Plan Fiduciary* or *Plan Fiduciaries* is defined as a fiduciary or fiduciaries of a Plan who is/are independent of MSCM and its affiliates.

(d) A *swap transaction* is defined as an individually negotiated, non-standardized agreement between two parties to exchange cash flows at specified intervals known as payment or settlement dates. The cash flows of a swap are either fixed, or calculated for each settlement date by multiplying the quantity of the underlying asset (notional principal amount) by specified reference rates or prices. Depending upon the type of underlying asset, the great majority of these transactions are classified into interest rate, currency, commodity, or equity swaps. Interim payments are generally netted, with the difference being paid by one party to the other.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective retroactively, as of April 3, 1996, the date the Partnership was organized.

Summary of Facts and Representations

1. The MS Group is a publicly-traded company whose shares are listed on the New York Stock Exchange. The MS Group is a worldwide financial services firm employing more than 9,000 people which provides, directly or through its subsidiaries, services to a large and diversified group of clients and customers, including corporations, governments, and individual investors.

One subsidiary of the MS Group is MS&Co, a Delaware corporation with business offices in New York, New York. MS&Co is a registered futures commission merchant, a member of the National Futures Associations (NFA), a registered broker-dealer, a member of the National Association of Securities Dealers, and a member of most major United States and foreign commodity exchanges.

MSCM, a Delaware corporation, is a wholly-owned subsidiary of the MS Group. Since June 4, 1992, MSCM has been a registered commodity pool operator and commodity trading advisor and, as of the same date, has been a member of the NFA in such capacities. Currently, MSCM serves as the trading advisor for several U.S. and offshore funds. As of January 31, 1997, MSCM had $10 million in total assets and $6.5 million in total shareholder's equity. As of January 31, 1997, MSCM had total assets under management of approximately $130,740,000.

Another wholly-owned subsidiary of the MS Group, MSAM, a Delaware corporation, is registered with the Securities and Exchange Commission as an investment adviser, is registered with the Commodity Futures Trading Commission as a commodity trading advisor, and is a member of the NFA in such capacity. MSAM also meets the definition of a "qualified professional asset manager" as contained in Part V of the Department's Prohibited Transaction Class Exemption 84–14.[2]

2. The Partnership is a Delaware limited partnership with offices in New York, New York. The aggregate fair market value of the total assets of the Partnership, as of August 15, 1996, was approximately $15 million. The Partnership was organized on April 3, 1996, in order to trade, buy, sell, or otherwise acquire, hold, or dispose of commodity futures contracts (the Commodity Interests) on U.S. commodity exchanges and on non-U.S. commodity exchanges. It is represented that the Partnership may engage in the business of trading commodity interests directly or through partnerships, joint ventures, or similar arrangements.

It is represented that the trading strategy of the Partnership has been and will be applied to a broad range of commodities, including commodity interests on metals, energy products, grains, livestock, and other commodities selected by MSCM from time to time. It is represented that the assets of the Partnership has consisted and will consist solely of cash, Treasury securities, and positions with respect to exchange-traded futures contracts. Further, the Applicants have agreed as a condition of this exemption that the Partnership will not engage in swaps transactions, as defined in Section III(d) above.

The Applicants represent that the Partnership has invested and will invest solely in assets for which independent, objective pricing information is readily available. In this regard, the Applicants state that the Partnership's open futures positions are valued by reference to the closing price for each futures contract on the applicable commodity exchange. It is represented that the current value of any Treasury securities has been and will be determined by reference to prices established in over-the-counter transactions by persons unaffiliated with MSCM.

It is further represented that the trading strategy of the Partnership has been and will be limited in the following manner: (a) The Partnership has maintained and will maintain only long positions in Commodity Interests; (b) The Partnership has traded and will trade only futures contracts that are or may be traded on U.S. commodity exchanges or the LME; (c) the Partnership has not traded and will not trade interests on financial instruments (including stock indices) and foreign currencies; (d) the underlying value of the positions entered into in the commodity interest markets has been and will be targeted at 1.0 times the assets of the Partnership; (e) at the time of the initial closing and thereafter upon every portfolio reweighting: a minimum of 10 percent (10%) of the Partnership's assets has been and will be exposed to commodity sectors in energy, precious metals, and base metals; a maximum of 25 percent (25%) of the Partnership's assets have been and will be exposed to any one sector; and a maximum of 15 percent (15%) of the Partnership's assets have been and will be exposed to one particular commodity.

The Applicants have agreed that as a condition of this exemption, any non-U.S. commodity trading activities of the Partnership will be limited to the LME, which is subject to substantial regulation by the Securities and Futures Authority and the Securities Investment Board in the United Kingdom.

3. MSCM, as the sole discretionary general partner of the Partnership, controls, conducts, and manages the business of the Partnership, including executing various documents on behalf of the Partnership, determining the distributions, if any, of profits and income, and supervising the liquidation of the Partnership. It is represented that the affairs of the Partnership will be wound up and the Partnership liquidated as soon as practicable upon the first to occur of: (a) December 31, 2026, or (b) certain other terminating events, as set forth in the LP Agreement.

In addition, MSCM has retained MSAM, an affiliate of MSCM, as the trading advisor for the Partnership and cash management advisor with overall responsibility for the investment of the assets of the Partnership and for the Partnership's trading. MSAM has selected MSCM to make trading decisions on behalf of the Partnership of Commodity Interests on all U.S. exchanges and on the LME. It is represented that notwithstanding any such delegation, MSAM remains liable to the Partnership for the trading of Commodity Interests on behalf of the Partnership, to the same extent as if MSAM alone were making the actual trading decision regarding such Commodity Interests.

With respect to the trading of Commodity Interests by the Partnership, MSCM has retained: (1) MS&Co to act as the futures commission merchant with respect to trading by the Partnership on U.S. exchanges; and (2) Morgan Stanley International Limited to act as the futures commission merchant with respect to trading by the Partnership on the LME. In this regard, the Applicants

[2] The final exemption for PTCE 84–14 was published in the **Federal Register** on March 13, 1984, (49 FR 9494), and the proposed exemption was published in the **Federal Register** on December 21, 1982, (47 FR 56945).

have represented that, in connection with the Partnership's commodity trading activities, any transaction on the LME with respect to which it eventuates that an affiliate of MSCM is the formal counterparty, will be a "blind transaction" (*i.e.*, one in which the identity of the counterparty is not within the knowledge or control of MSCM or any affiliate thereof). The Applicants represent that, in connection with any commodity trading on the LME, the Partnership and any affiliates of MSCM will retain independent floor brokers. Although it is possible that the Partnership and an affiliate of MSCM will use the same floor broker, the Applicants represent that MSCM will instruct any floor broker retained on behalf of the Partnership not to cross trades with an affiliate of MSCM.

4. The Partnership pays monthly to MSCM an administrative fee (the Administrative Fee) computed daily and equal to a percentage of the net assets of the Partnership, as of the beginning of each day (before deduction of an incentive fee (the Incentive Fee) described below). It is represented that MSCM, as general partner, is responsible for paying all of the ordinary administrative expenses, brokerage commissions, any per transaction service charges, and any other similar fees with respect to trading by the Partnership. To the extent any expenses exceed the amount of the Administrative Fee paid to MSCM, the Partnership is not responsible for the payment of any such additional expenses. However, it is represented that MSCM received from the Partnership reimbursement for organizational expenses and initial offering costs.

Further, the Partnership pays monthly to MSAM for services, as described above, a management fee (the Management Fee) computed daily and equal to a percentage of the net assets of the Partnership as of the beginning of each day, before deduction of the Incentive Fee, as more fully described in the paragraph below. In consideration for making trading decisions with respect to the Partnership with regard to its commodity interest trading, MSAM pays to MSCM 80 percent (80%) of such Management Fee and 100 percent (100%) of the Incentive Fee.

With respect to the Incentive Fee, it is represented that the Partnership pays to MSAM at the end of each annual incentive period an Incentive Fee equal to a percentage of the amount that the Partnership's net performance exceeds a target return. Net performance equals the realized and unrealized trading profits and losses of the Partnership plus interest income credited to the Partnership, less the Management Fee, the Administrative Fee, and other fees and costs of the Partnership (but not including the Incentive Fee, initial offering costs, and extraordinary expenses). Net Performance is measured over a period of not less than one (1) year. The target return against which this performance is compared is a predetermined objective index. It is represented that the calculation of the Incentive Fee complies with the terms and conditions of SEC Rule 205–3 and is reviewed by an independent accounting firm as part of an annual audit of the Partnership's financial statements.[3]

5. It is represented that Units in the Partnership have been and will be offered to investors under exemptions from registration, pursuant to section 4(2) of the Securities Act of 1933 (the 1933 Act) and Rule 506 of Regulation D promulgated thereunder.[4] It is represented that, as the Partnership is not a private investment company, it is not required to limit the number of its investors to 100.

The Memorandum provided for an initial offering of Units in the Partnership for sale through MS&Co for a period of thirty (30) days from the date of the Memorandum (*i.e.*, May 23, 1996), subject to the discretion of MSCM to shorten or extend such period. No minimum amount of sales of Units was necessary in order for the initial offering to close. In this regard, it is represented that the date of the initial closing was July 1, 1996.

Following the initial closing, Units in the Partnership have been and will be continually offered on a daily basis through MS&Co to new investors who are qualified and to existing limited partners of the Partnership in a private offering (the Continuous Offering). In this regard, the Partnership may continue indefinitely to sell Units, subject to the discretion of MSCM which may at any time or from time to time terminate and recommence the offering. The Applicants have agreed, as a condition of this exemption, that affiliates of MSCM will not be permitted to invest in the Partnership.

After the initial offering, the minimum investment in the Partnership per subscriber is $5,000,000, with a $50,000 minimum for additional investments by existing limited partners in the Partnership, subject to exceptions at the discretion of MSCM. There is no limit on the total capitalization of the Partnership. It is represented that as of April 2, 1997, the capital of the Partnership totaled $25,400,000.

During the Continuous Offering, Units have been and will be issued as of the close of business each business day at a price per Unit equal to the net asset value per Unit, as of the date of issuance. The net asset value of a Unit is defined as net assets allocated to capital accounts divided by the aggregate number of Units. It is represented that the net assets of the Partnership are determined in accordance with generally accepted accounting principles consistently applied under the accrual basis of accounting. It is represented that the market values of the Commodity Interests of the Partnership are determined by MSCM in good faith on a basis consistently applied in accordance with generally accepted accounting principles.

6. The Applicants maintain that the assets of the Partnership may be deemed to be plan assets pursuant to 29 CFR 2510.3–101 of regulations issued by the Department (the Plan Asset Regulations). Under the Plan Asset Regulations, when a plan acquires an equity interest in an entity, such as the Partnership, which interest is not a publicly offered security (as in the case of the Units), nor a security issued by an investment company registered under the Investment Company Act of 1940, the underlying assets of the entity will be deemed to include plan assets, if 25 percent (25%) of the outstanding interests of such entity are held by "benefit plan investors," as defined in the Plan Asset Regulations. It is anticipated that prior to the grant of this proposed exemption the equity participation by Plans in the Partnership may exceed 25 percent (25%) of the total value of all of the Partnership Units. If and when such event occurs, the underlying assets of the Partnership will constitute "plan assets" within the meaning of 29 CFR 2510.3–101. Accordingly, the Applicants have requested that the exemption be effective, as of April 3, 1996, the date on which the Partnership was organized.

[3] The Applicants maintain that the Incentive Fee structure, described herein, is comparable in several respects to the performance fee arrangements previously reviewed by the Department of Labor in certain advisory opinion letters, 86–20A, 86–21A, and 89–31A. In this regard, the Applicants have not requested relief for the receipt of the Incentive Fee by MSAM and/or by its affiliates. The Department, herein, offers no opinion as to whether the Incentive Fee structure violates any provision of the prohibited transaction provisions of section 406 of the Act, nor is the Department providing relief, herein, for the receipt by MSCM or by its affiliates of any Incentive Fee.

[4] Rule 506 provides a special exemption for limited offers and sales of securities by an issuer without regard to the dollar amount of the offering. In particular, Rule 506(b)(2)(i) limits to 35 the number of non-accredited investors in an offering.

7. Once the assets of the Partnership are deemed to be assets of the Plans which invest in the Partnership, by virtue of its discretionary authority and control over such assets as general partner, MSCM becomes a fiduciary within the meaning of section 3(21) of the Act, and a party in interest, pursuant to section 3(14)(A) of the Act, with respect to any Plan which invests in the Partnership.

Further, the MS Group anticipates that Plans for which the MS Group or its affiliates perform services will invest in the Partnership. In this regard, as set forth in the most recent Memorandum, it is represented that the MS Group or its affiliates provide: (a) Brokerage services to plans; (b) asset management and/or investment advisory services to plans; and (c) services to plans as custodian, clearing agent, and/or trustee. Accordingly, MSCM may also be a party in interest with respect to Plans which invest in the Partnership by virtue of the affiliation of MSCM with other entities that are fiduciaries of Plans or that provide services to such Plans. It is further represented that other partners of the Partnership, as yet unidentified, may also be parties in interest with respect to Plans which invest in the Partnership.

8. The Applicants seek a retroactive exemption for the acquisition of Units in the Partnership by Plans from MSCM, the general partner of the Partnership, and other potential parties in interest with respect to such Plans, which may constitute prohibited transactions between such Plans and such parties in interest under section 406(a) of the Act. In this regard, the acquisition of Units by the Plans may be characterized as an indirect sale by each existing partner of the Partnership of a portion of its Partnership interest to such investing Plan (and a corresponding transfer of Plan assets) in violation of section 406(a)(1)(A) and/or 406(a)(1)(D) of the Act. Likewise, the redemption of Units by a Plan may be characterized as an indirect sale of a portion of such Plan's redeemed interest in the Partnership to each remaining partner (and a corresponding transfer of Plan assets) in violation of section 406(a)(1)(A) and/or 406(a)(1)(D) of the Act, if a party in interest to the Plan is involved. Accordingly, the Applicants request an administrative exemption from the Department with respect to the acquisition and redemption of Units in the Partnership by Plan investors.

As discussed above, the Applicants have represented that MSCM and its affiliates provide various investment-related services to Plans that may invest in the Partnership and also provide comparable services to the Partnership. In this regard, the Applicants are of the opinion that in the ordinary course of trading of commodities futures, any prohibited transactions that may arise, other than those for which relief is proposed herein, would result from the Partnership engaging in trading through a futures commission merchant that is a party in interest with respect to a Plan invested in the Partnership. To the extent that the provision of services by MSCM and its affiliates to the Partnership constitutes an indirect furnishing of services to Plans invested in the Partnership which is prohibited under section 406(a) of the Act, the Applicants intend to rely on the statutory exemption provided by section 408(b)(2) of the Act.[5] Furthermore, the Applicants represent that any brokerage fees paid to affiliates of MSCM have not and will not be expenses of the Partnership but have been and will be paid by MSCM. Finally, with respect to the selection of MSCM or an affiliate to provide services to the Partnership for a fee, the Applicants represent that neither MSCM nor any of its affiliates have investment discretion or render investment advice with respect to any assets of the plans used to purchase Units in the Partnership. As a result, it is the Applicant's opinion that the furnishing of these services have not and will not constitute an act of self-dealing prohibited by section 406(b) of the Act.[6]

9. At the time the application for exemption was submitted to the Department, it was represented that the Plans that have been or may be affected by the grant of this proposed exemption could not be determined. Upon submission of the application, MSCM represented that it did not anticipate investment in the Partnership by individual retirement accounts, by Keogh plans, and or by employee benefit plans which provide for participant-directed investments. However, the application did not preclude such investment to the extent that such plans could satisfy the investor certification requirements and other conditions, as set forth in the Subscription Agreement. The Applicants anticipate that sponsors or fiduciaries of plans providing for participant-directed investment may wish to include Units in a diversified portfolio that is one of several designated investment alternatives. However, as a condition of the exemption, the Applicants have agreed not to accept subscriptions by Plans which permit participants to exercise control over the decision to acquire or redeem Units.

10. Only Plans with assets having an aggregate market value of at least $25 million will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust. In addition, prior to accepting a subscription from a prospective Plan investor, the Plan Fiduciaries who are independent of the Applicants and their affiliates complete certain investor certification representations in the Subscription Agreement. In this regard, each Plan and/or its authorized representative is required to represent that such Plan is an "accredited investor," within the meaning of Rule 501(a) of Regulation D promulgated under the 1933 Act, and a "qualified eligible participant," as defined in Rule 4.7 under the Commodities Exchange Act, as amended. Each Plan and/or its authorized representative is also required to represent that such Plan, together with any advisers retained by it, has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of investing in the Partnership.[7] Furthermore, each

[5] Section 406(b)(2) of the permits any reasonable arrangement with a party in interest, for services necessary for the establishment or operation of a plan, provided that no more than reasonable compensation is received therefor. The Department express no opinion, herein, as to whether the provision of services to the Partnership by MSCM and/or its affiliates and the compensation received therefor satisfy the terms and conditions of section 406(b)(2) of the Act.

[6] The Applicants believe that the analysis contained in Advisory Opinion 82–26A (June 9, 1982) is applicable to the provision of multiple services by MSCM and/or its affiliates. This opinion involved the provision of multiple services where a fiduciary did not use the authority, control, or responsibility which made it a fiduciary to cause the plan to select such fiduciary or to pay any fee for the provision of services by such fiduciary. In addition, the Applicants rely on Advisory Opinion 82–62A (December 8, 1982) which involved a fiduciary's decision to retain an affiliate to provide services to a plan, where the fee for such services was paid by the plan sponsor not by the plan and where the fiduciary of the plan was not in a position to benefit, or to cause a person to whom the fiduciary had an interest to benefit from such decision at the expense of such plan. Thus, the Department is not offering relief, herein, for the provision of multiple services by MSCM and/or its affiliates.

[7] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the investment described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investment by the Department. Section 404 of ERISA requires, among other things,

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subscriber that is purchasing Units with the assets of a Plan is required to represent: (a) That it has evaluated for itself the merits of the investment; (b) that it has not solicited and has not received from the Partnership, from MSCM, or from any affiliate thereof any evaluation or investment advice in respect of the advisability of such an investment in light of the Plan's assets, cash needs, investment policies or strategy, overall portfolio, or diversification of assets; (c) that it is not relying on and has not relied on MSCM, or on any affiliate thereof, for any such investment advice; and (d) that neither MSCM nor its affiliates has investment discretion with respect to the assets of the Plan which have been or will be used to acquire or redeem Units.[8]

11. Prior to investing in the Partnership, each potential investor and/or its authorized representative (including a Plan and/or a Plan Fiduciary) has been and will be provided with a copy of: (a) The Memorandum (which contains, among other things, a description of the offering and the relationships existing between MSCM, MSAM, MS&Co, and the MS Group; (b) the then-current LP Agreement; (c) the then-current Subscription Agreement (an executed copy of which is also delivered to a subscriber and or its authorized representative, including a Plan and/or a Plan Fiduciary, as soon as practicable following investment in the Partnership by such subscriber). Further, the Applicants represent that a copy of this notice of proposed exemption (the Notice) and a copy of the final exemption (the Final Exemption), if granted, will be provided to all Plans that invest in the Partnership subsequent to the publication of the Final Exemption in the **Federal Register**.

12. It is represented that MSCM has distributed and will distribute to each Plan that invests in the Partnership as a limited partner (a) within ninety (90) days after the close of each fiscal year of the Partnership, audited financial statements (including a balance sheet; a statement of income or a statement of loss; the net asset value of the Partnership, as of the end of the two preceding fiscal years; either (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; a statement of changes in partner's capital; and the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

It is also represented that MSCM has distributed and will distribute to each Plan that invests in the Partnership as a limited partner within thirty (30) days after the end of each calender month, a report for such month specifying, among other things: (i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

13. It is represented that a capital account is established for each partner in the Partnership, including the Plans. However, in this regard, it is represented that investors in the Partnership may not allocate invested funds to any specific investment. Instead, the funds raised through the offering of Units have been and will be deposited in an account maintained by the Partnership with MS&Co or to the extent the Partnership trades on the LME, deposited in certain accounts maintained with non-U.S. banks and foreign brokers.

14. Under current federal and state income tax laws, MSCM (in its capacity as general partner of the Partnership) may be required to maintain contributions to the capital of the Partnership in cash for all fiscal years in amounts which equal at least one percent (1%) of the aggregate capital contributions to the Partnership by all partners for all fiscal years (including contributions by MSCM). On July 1, 1996, the date of the closing of the initial offering of Units in the Partnership, MSCM had contributed $120,694 to the Partnership. As of January 31, 1997, the aggregate contributions by MSCM to the Partnership totaled $172,000. The Applicants represent that, MSCM will not maintain an interest in the Partnership that exceeds one percent (1%) of the aggregate capital contributions to the Partnership by all partners. In the event that MSCM's interest in the Partnership exceeds this amount by more than a *de minimis* amount, MSCM shall, within five (5) business days, reduce its interest to the permitted level by accepting additional subscriptions, if possible, or by withdrawing any portion of its interest in the Partnership that is in excess of one percent (1%) of the Partnership's capital, as permitted under the LP Agreement.

15. It is represented that a limited partner in the Partnership, including a Plan, may sell or transfer Units or any interest therein in the Partnership only with the consent of MSCM. Such consent may be withheld in the sole discretion of MSCM as general partner of the Partnership.

A limited partner, including a Plan, may withdraw all or part of its capital contributions and undistributed profits, if any, by requiring the Partnership to redeem all or part of its Units, effective as of the close of each business day. Redemptions may only be made in amounts greater than or equal to $20,000, unless the limited partner, including a Plan, is redeeming all of its interest in the Partnership. A limited partner may not make a partial redemption of Units that would reduce the net asset value of such limited partner's unredeemed Units, as of the effective date of the redemption, to less than $5,000,000 or the amount of such limited partner's initial investment, whichever is *less*. Requests for redemption must be made by letter in a form acceptable to MSCM and must be received by MSCM at its offices at least two full business days prior to the effective date of the redemption.

In addition, MSCM may, in its sole discretion as general partner, require any limited partner, including a Plan, to redeem all of its Units or a portion of such Units upon written notice to such limited partner. No fee or other charge is payable by a limited partner, including a Plan, upon redemption of its Units. It is represented that any distributions to a limited partner from the Partnership in redemption of Units have been and will be made in cash.

16. It is represented that the requested exemption is protective of the rights of the participants and beneficiaries of affected Plans in that the decision to invest in the Partnership has been and will be made by a Plan Fiduciary who is independent of MSCM and its affiliates. In this regard, such Plan Fiduciaries retain complete discretion with respect to transactions initiated by a Plan investor involving the acquisition or redemption of Units. In addition, investors in the Partnership are furnished with audited financial statements and periodic reports that enable the Plan Fiduciaries to monitor the investment activities of the Partnership and permit such parties to discharge their oversight responsibilities.

Further protections are afforded by appropriate limitations which are placed on Plan investment in the Partnership. In this regard, no single Plan investor is permitted under any circumstances to acquire or hold an amount of Units which causes the investment by such Plan to exceed 20 percent (20%) of the total assets of the Partnership. In addition, at the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan has not and will not exceed 10 percent (10%) of the total assets of such Plan.

17. The Applicants maintain that the terms and conditions of this proposed exemption provide additional safeguards for the protection of Plans which invest in the Partnership. In this regard, as a condition of this exemption, MS&Co and its affiliates have agreed that the Partnership has not invested and will not invest in any entity in which MS&Co or any of its affiliates has an ownership interest. In addition, the Partnership has not engaged and will not engage in swaps transactions, as defined in Section III (d) above, nor does the Partnership anticipate making any investment in U.S. or off-shore funds. Furthermore, it is represented that the Partnership does not anticipate making any equity investments in entities for which a party in interest with respect to any Plan invested in the Partnership has an ownership interest.

18. The Applicants represent that the requested exemption would be administrative feasible, because the transactions involved have been and will be well-documented through professionally maintained books and records which are subject to government review and independent, certified audits. As such, it is represented that the transactions can be readily monitored to ensure compliance with the terms of the exemption. In addition, the Applicants have borne and will bear all of the costs of the exemption applications and will be responsible for the costs of notifying interested persons.

19. It is represented that the requested exemption is in the interest of the affected Plans (and their participants and beneficiaries) in that the Partnership provides Plans with the type of investment medium and risk factors that such Plans desire in their investment portfolios.

Moreover the transactions are in the interest of the Plans which invest in the Partnership, because no placement fee or other sales charge has been or will be payable by the Partnership or by investors in connection with the offering of the Units. In addition, Plans have been and will be permitted to redeem their investments in the Partnership upon reasonably short notice, without the payment of fees or penalties of any sort. In this regard, it is represented that MSCM, MSAM, MS&Co, the MS Group or their affiliates do not receive any fees in connection with the acquisition or redemption of Units by Plan investors.

20. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The participation by Plans in the Partnership has been and will be approved by Plan Fiduciaries prior investment by Plans in the Partnership;

(b) The Applicants have instituted and maintained and will institute and maintain a written procedure and records establishing criteria for determining that the Plan Fiduciaries are independent of the Applicants and their affiliates and are sufficiently knowledgeable to make an informed decision regarding the investment by Plans in the Partnership;

(c) A Plan Fiduciary maintains complete discretion with respect to acquiring or redeeming Units in the Partnership on behalf of a Plan;

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets of the Plans in Units of the Partnership nor renders investment advice with respect to the investment of those assets;

(e) No Plan has acquired and hold or will acquire or hold Units in the Partnership that represents more than 20 percent (20%) of the assets of the Partnership;

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired or held by such Plan has not and will not exceed 10 percent (10%) of the assets of such Plan;

(g) The terms of each acquisition or redemption of Partnership Units has been and will be at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party;

(h) No Plan has paid or will pay a fee or commission by reason of the acquisition or redemption of Partnership Units;

(i) The total fees paid to MSCM or their affiliates with respect to services rendered have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act;

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

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that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, following disclosure to such fiduciary of all relevant information. In addition, such plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[8] The Department is not expressing an opinion on whether the Applicants or their affiliates would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act. In this regard, the Department believes, as a general matter, that when a person is deemed a fiduciary by virtue of rendering investment advice described in regulation section 2510.3–21(c)(1)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the Plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. The Department's regulation section 2510.3–21(c)(1)(ii)(B) presupposes the existence of a second fiduciary who by agreement or conduct manifests a mutual understanding to rely on the investment adviser's recommendations as a primary b[illegible]s for the investment of Plan assets. In the presence of such an agreement or understanding, the rendering of investment advice involving self-dealing such as the acquisition of Units in the Partnership which results in the payment of fees to the adviser, will subject the investment adviser to liability under section 406(b) of the Act. The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the Plans and their participants and beneficiaries. If, however, the unrelated second fiduciary has not agreed to rely on the investment adviser's recommendations, the investment adviser will not be deemed to be a fiduciary under section 3(21)(A)(ii) because the requirements of regulation section 2510.3–(21)(c)(1)(ii)(B) will not be met. Accordingly, the Department has limited exemptive relief for the acquisition or redemption of Partnership Units to section 406(a) violations only.

(k) The Applicants have made and will make periodic written disclosures to Plans with respect to the financial condition of the Partnership;

(l) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III(d) above;

(m) The Partnership has not invested and will not invest in any entity in which MS&Co or any of its affiliates has an ownership interest;

(n) Affiliates of MSCM have not invested in and will not invest in the Partnership;

(o) The non-U.S. commodity trading activities of the Partnership has been and will be limited to the LME;

(p) The Applicants have not accepted and will not accept subscriptions by Plans which permit participants to exercise control over the decision to acquire or redeem Units; and

(q) As of the effective date of this exemption and thereafter, MSCM has maintained and shall maintain for a period of time the records necessary to enable certain persons to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption will include prospective Plan investors, and Plan Fiduciaries of Plans which have already invested in the Partnership. Because the Applicants are uncertain as to which Plans will invest in the Partnership, the Department has determined that the only practical form of providing notice to interested persons of the pendency of this proposed exemption is the distribution by the Applicants of a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, in the form set forth in the Department's regulations under 29 CFR § 2570.43(b)(2) to any Plan investors who at the time the Notice is published are interested in investing in the Partnership, and to the fiduciaries of all Plans that are invested in the Partnership at the time the Notice is published. Such distribution will be effected by first-class mail within fifteen (15) days of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

National Rural Utilities Cooperative Finance Corporation (CFC), Located in Washington, D.C.

[Application No. D–10394]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. If this proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions relating to the refinancing by CFC of certain rural utility cooperative loans made to the Kansas Electric Power Cooperative, Inc. (KEPCO), and certain notes issued by KEPCO in connection with such loans which are assigned to trusts for which CFC acts as servicer, and certificates evidencing interests in such trusts:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between CFC or an underwriter and an employee benefit plan when CFC, the underwriter, or the trustee is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates;

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2); and

(4) The purchase by CFC of existing notes issued by KEPCO from the existing trusts and the contribution by CFC of new notes to new trusts pursuant to the refinancing of KEPCO's existing loans on the scheduled refinancing date (i.e. December 18, 1997).

B. If the proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding trust agreement; and

(2) The trust agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[9]

C. If this proposed exemption is granted, effective November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates issued pursuant to this proposed exemption or issued pursuant to Prohibited Transaction Exemption 89–93 (PTE 89–93, 54 FR 45816, October 31, 1989).[10]

Section II—General Conditions

A. The relief described under Section I of this proposed exemption will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Service (S&P's) or Moody's Investors Service, Inc. (Moody's; together, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[10] PTE 89–93 permits, as of July 22, 1987, certain transactions between CFC and employee benefit plans where CFC may be deemed to be a party in interest with respect to the plans as a result of providing services to a trust in situations where the assets of the trust are considered to be "plan assets" as a result of the plans acquiring significant ownership interests in the trust in the form of pass-through certificates.

Group. However, the trustee shall not be considered to be an affiliate of CFC, as servicer, solely because the trustee has succeeded to the rights and responsibilities of CFC pursuant to the terms of a trust agreement providing for such succession upon the occurrence of one or more events of default by CFC;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by CFC, as sponsor, pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by CFC, as servicer, represents not more than reasonable compensation for CFC's services under the trust agreement and reimbursement of CFC's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) Any swap transaction entered into by KEPCO which is assigned to a trust is entered into with a bank or other financial institution of high credit standing, initially Morgan Guaranty Trust Company of New York (Morgan), with a credit rating of at least AA or an equivalent rating from the Rating Agencies;

(8) The bank or other financial institution acting as the swap counterparty to the trust is required, if there is an adverse change in such counterparty's credit rating, to either: (i) Post collateral with the trustee of the trust in an amount, determined daily, equal to all payments owed by the counterparty if the swap transaction were terminated; or (ii) find a replacement swap counterparty for the trust, within a specified period under the terms of the swap agreement with the trust, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies; provided that if the swap counterparty fails to abide by its obligations under either (i) or (ii) above, the swap agreement shall terminate in accordance with the rights and obligations of each counterparty under the terms thereof, which shall be enforced by the trustee to protect the rights of certificateholders of such trust;

(9) Each swap transaction between a trust and Morgan, or other swap counterparty, in connection with the refinancing of KEPCO's loans requires payments to be made to the trust monthly (or at such other times as required under the swap agreement) and requires payments to be made by the trust no less frequently than semi-annually, but in no event shall the trust be obligated to make payments to a swap counterparty more frequently than those which it is entitled to receive from a swap counterparty;

(10) The certificateholders have the right to exit the transaction by tendering the certificates to an underwriter (initially, Alex. Brown & Sons, Inc.) for purchase at par (plus accrued interest) on seven (7) days' notice;

(11) The U.S. Government guarantees the payment of principal and interest on the loans made by CFC to KEPCO;

(12) The purchase of notes issued by KEPCO from the existing trusts is for a price which is at least equal to the outstanding principal balance of such notes, plus accrued (but unpaid) interest, at the time of the scheduled refinancing of the loans made by CFC to KEPCO (i.e. December 18, 1997); and

(13) The certificates are not sold to any plans established and maintained by KEPCO or CFC, or to plans for which any other member of the Restricted Group (as defined in Section III.E. below) is an investment fiduciary for the assets of the plan that are to be invested in the certificates.

B. Neither CFC nor the trustee shall be denied the relief that would be provided under Section I of this proposed exemption if the provision of Section II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that: (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6) above.

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust, and consists solely of:

(1) One or more notes issued by KEPCO which shall be guaranteed as to payment of principal and interest by the U.S. Government, acting through the U.S. Department of Agriculture's Administrator of the Rural Utilities Service (RUS), including fractional undivided interests in any such obligations;

(2) Property which has secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the trust agreement, and rights under any insurance policies, third-party guarantees, swap agreements, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue "asset-backed" pass-through securities to plans, that is similar in format and structure to this proposed exemption (the Underwriter Exemptions);[11] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

E. *Restricted Group* with respect to a class of certificates means:

[11] For a listing of the Underwriter Exemptions, see Section V(h) of PTE 95–60, 60 FR 35925, July 12, 1995.

(1) Each underwriter/remarketing agent;
(2) The trustee;
(3) CFC;
(4) KEPCO;
(5) The swap counterparty/liquidity provider; or
(6) Any affiliate of a person described in subsection E.(1)–(5) above.

F. *Affiliate* of another person includes:
(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
(3) Any corporation or partnership of which such other person is an officer, director or partner.

G. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

H. A person will be *independent* of another person only if:
(1) Such person is not an affiliate of that other person; and
(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

I. *Sale* includes the entrance into a forward delivery commitment (as defined in subsection J. below), provided:
(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;
(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and
(3) At the time of this delivery, all conditions of this proposed exemption applicable to sales are met.

J. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

K. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

L. *Trust Agreement* means the agreement or agreements among KEPCO, CFC and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, *Trust Agreement* also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

M. *RUS* means the U.S. Department of Agriculture, acting through the Administrator of the Rural Utilities Service or any successor to the guarantee obligations of such organization.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of November 18, 1997.

Preamble

On October 31, 1989, the Department granted an individual administrative exemption under section 408(a) of the Act to CFC (PTE 89–93) for several prohibited transactions relating to CFC's role as a financial intermediary in the refinancing of various loans to rural utility cooperatives. CFC now proposes that two of the loans involving KEPCO that were refinanced using the structure involved in PTE 89–93 be refinanced through a new series of transactions. CFC requests a new individual exemption for these refinancing transactions.

CFC states that the restructured KEPCO loans and the trust structure through which interests in these loans will be offered to institutional investors, including employee benefit plans, are in many respects similar to the transactional structure presented in PTE 89–93. However, under the new refinancing structure, the interest rate on the trust certificates will be a variable rate rather than a fixed rate guaranteed by the U.S. Government. The floating rate will be paid through an interest rate swap transaction between the trust and a bank or other financial institution acting as a swap counterparty (initially, Morgan). Thus, the variable rate on the certificates will not be guaranteed by the U.S. Government, although if the bank fails to make the variable rate payments, as required, the fixed rate guaranteed payments on the notes will be applied to the variable rate payments due on the certificates.

In addition, the new exemption requested by CFC has been expanded to include: (i) The purchase by CFC of the existing KEPCO notes and the contribution of amended KEPCO notes to the new trusts; and (ii) the servicing, management and operation of the trusts in a manner that is generally the same as the relief provided by the Department in other exemptions involving asset-backed securities (i.e., the Underwriter Exemptions).

Summary of Facts and Representations

1. The Applicant. CFC is a tax-exempt, not-for-profit cooperative association organized in 1969 under the laws of the District of Columbia. CFC was established by its members to provide them with a source of financing to supplement the loan programs of RUS (which was formerly known as the Rural Electrification Administration (REA)), a guarantor of loans made to rural electric utilities. CFC is a finance company that makes loans to its rural utility system members to enable them to acquire, construct and operate electric distribution, generation, transmission and related facilities. Most CFC long-term loans to its members are made in conjunction with concurrent loans from RUS and are secured equally and ratably with RUS' loans by a single mortgage. The principal and interest obligations under CFC's loans are guaranteed by RUS (the RUS Guarantee).

CFC also provides guarantees for tax-exempt financings of pollution control facilities and other properties constructed or acquired by its members, and provides guarantees of other debt in connection with certain leases and other transactions of its members. CFC presently has loans outstanding to its members in the aggregate principal amount of approximately $8.0 billion and has guaranteed on behalf of members an additional $2.3 billion in obligations. CFC acts as the servicer under six trusts that were established in 1988 to refinance certain rural utility cooperative loans guaranteed by REA in transactions eligible for the exemption provided by PTE 89–93. CFC also provides financial advisory services to its members.

As of May 31, 1996, CFC's 1051 members were generally non-profit cooperative electric utilities and service organizations and represented approximately 95 percent of the total number of such entities in the United States. As of December 31, 1995, CFC's member systems owned approximately $66.5 billion (before depreciation of $19.4 billion) in total utility plants and equipment. Funds for CFC's programs are derived primarily from the sale to its members of its subordinated debt, the sale of collateral trust bonds, medium-term notes and commercial paper in the capital markets and from retained earnings. As of May 31, 1996, outside investors held approximately $1 billion of CFC collateral trust bonds, $604 million of CFC medium term notes and $4.7 billion of CFC commercial paper. CFC has approximately $1.0 billion principal amount of bonds listed on the New York Stock Exchange and registered under Section 12(b) of the Securities Exchange Act of 1934.

In the refinancing transactions that are the subject of this proposed exemption, CFC will act as the servicer of the new trust that will be established for purposes of holding the note or notes (with the RUS Guarantee) that are issued by KEPCO, a rural utility cooperative (KEPCO Notes). In addition, there will be a fixed to floating interest rate swap entered into between KEPCO and Morgan Guaranty Trust Company of New York (Morgan), a financial counterparty of high credit standing. The interest rate swap will be assigned to the trust by KEPCO. CFC will service the KEPCO Note(s) and the RUS Guarantee in accordance with the terms and conditions of the trust agreement (the Trust Agreement) under which the trust (the Trust) will be established.

2. The Trustee. The Trustee, which is The First National Bank of Chicago (First Chicago), is the legal owner of the assets in the Trust. The Trustee is also a party to, or beneficiary of, all the documents and instruments deposited in the Trust. The Trustee is responsible for enforcing all the rights created by the Trust in favor of the certificateholders. In the proposed transactions, the Trustee will be an independent entity and, therefore, will be unrelated to CFC, KEPCO, the swap counterparty and the underwriter. The Trustee will monitor and administer the swap agreement that will be assigned to the Trust.

CFC represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be specified in the trust agreement and will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

3. The Underwriter. It is anticipated that the certificates will be registered under the Securities Act of 1933 and will be sold in a public offering on a firm commitment basis. Each underwriter will be an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue so-called "asset-backed" pass-through securities to plans (an Underwriter Exemption), an affiliate of such entity, or a member of an underwriting syndicate of which such entity is a manager or co-manager (see Section III.C above). The lead underwriter will act as the remarketing agent (Remarketing Agent) with respect to the certificates. If the certificates are sold to institutional investors in a private placement under Section 4(2) of the Securities Act and Rule 144A thereunder, the registered broker-dealer acting as placement agent will also act as the Remarketing Agent with respect to the certificates. The role of the Remarketing Agent is described further below.

4. The Swap Counterparty. The swap counterparty will be a bank or financial institution of high credit standing with a credit rating of at least AA or an equivalent rating from the Rating Agencies. As noted earlier, initially the swap counterparty will be Morgan. Morgan will continue to be the swap counterparty unless there is an event, such as a credit rating downgrade of Morgan, which requires a replacement of the swap counterparty under the terms of the swap. Thus, if there is such an adverse change in Morgan's credit rating, the swap agreement will require Morgan to either: (i) post collateral with the Trustee of the Trust in an amount, determined daily, equal to all payments owed by Morgan if the swap transaction were to be terminated by KEPCO; or (ii) find a replacement swap counterparty for the Trust, within a specified period, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies. Otherwise, the swap agreement will terminate in accordance with its terms and the Trustee will be responsible for enforcing all rights created in favor of the certificateholders of the Trust.

The Subject Transactions

5. The proposed transactions for which exemptive relief is requested are described by the Applicant in the context of certain refinancing arrangements involving loans that were made by CFC to KEPCO (*i.e.* Kansas Electric Power Cooperative Inc). These refinancing transactions were initiated with the cooperation of the U.S. Department of Agriculture, acting through the Administrator of RUS. The Applicant represents that the subject transactions have been designed to further a U.S. Congressional policy to facilitate the reduction of the financing costs for rural electric power cooperatives and to reduce the U.S. Government's possible exposure as the guarantor of the debt of such cooperatives.

6. In 1988, KEPCO had outstanding certain loans from the U.S. Federal Financing Bank (the FFB Loans) which were guaranteed by RUS (then, the REA). Pursuant, to Section 306A of the Rural Electrification Act of 1936, as amended (the RE Act) and the implementing regulations thereunder (the Regulations), the FFB loans were refinanced in the following manner.

First, CFC loaned KEPCO the amount necessary to prepay the FFB Loans pursuant to a Loan Agreement, dated as of February 15, 1988 (the Loan Agreement). To evidence its repayment obligations to CFC, KEPCO executed three lender loan notes (the Notes). Then, CFC deposited each of the three Notes in a separate grantor trust—Trust K–1, Trust K–2, and Trust K–3 (collectively, the 1988 Trusts), pursuant to three Trust Agreements between CFC, KEPCO and First Chicago, as Trustee. The original REA guarantee of the FFB Loans (the Guarantees) was transferred to each of the Notes before they were deposited in the 1988 Trusts.

The obligations of (i) CFC to service the Notes while they were in the 1988 Trusts, (ii) the U.S. Government acting through the Administrator of the REA, as guarantor, to guarantee payment of principal and interest (as defined in the Loan Agreement) on the Notes under the Guarantees, and (iii) the Trustee with respect to the Guarantees, were contained in a Loan Guarantee and Servicing Agreement dated February 15, 1988 (the Loan Guarantee Agreement). Trust K–1, Trust K–2, and Trust K–3 issued certificates of beneficial interest in the assets of the 1988 Trusts (the Series 1988 Certificates) to CFC as depositor of the 1988 Trusts. CFC then sold the Series 1988 Certificates (other than from Trust K–3) to investors pursuant to a registered public offering of the Series 1988 Certificates. The Applicant states that these transactions were the subject of the relief provided by PTE 89–93, and similar refinancing transactions were effected for other rural electric cooperatives.

Note One and Note Two (the Outstanding Notes), which were deposited in Trust K–1 and Trust K–2, respectively, will mature on December 4, 2002 and December 4, 2017, respectively. [12] Pursuant to the terms of the Loan Agreement, Note One and Note

[12] Note Three, originally deposited in Trust K–3, matured by its terms on December 4, 1968, and the certificates representing ownership interests in Trust K–3 were redeemed and Trust K–3 was terminated by the Trustee.

Two will become available for purchase at the election of KEPCO by a purchaser designated by KEPCO on any business day on or after the day immediately prior to December 15, 1997. The Series 1988 Certificates representing ownership interests in Trust K–1 and Trust K–2 are subject to purchase or redemption upon the prepayment or purchase of the Outstanding Notes.

7. The Proposed Refinancing Transaction. KEPCO and RUS are proposing to refinance the Outstanding Notes using the transactions described below. KEPCO will redeem the outstanding Series 1988 Certificates by exercising, on December 18, 1997 (the Refinancing Date), the right given in the Loan Agreement to have the Outstanding Notes purchased by CFC at a specified premium over par [13] (plus accrued interest), and the Outstanding Notes will thereafter be amended (the Amended Outstanding Notes) to reduce the guaranteed interest rate payable by KEPCO or by RUS, as guarantor of the Outstanding Notes.

CFC will direct the Trustee (i.e. First Chicago), as trustee of Trust K–1 and Trust K–2, to terminate Trust K–1 and Trust K–2 after the owners of the Series 1988 Certificates are paid in full. The Trustee will be directed to transfer the Amended Outstanding Notes, with the Guarantees attached, to a single new grantor trust (the Series 1997 Trust) established pursuant to the Trust Agreement. The Trustee of the Series 1997 Trust will be First Chicago.

This refinancing structure was designed to lock in current interest rates for new loans to KEPCO as of the preliminary closing date for such refinancing (December 20, 1996), instead of waiting until the actual Refinancing Date (December 18, 1997) when rates may be higher. In particular, KEPCO has entered into a forward interest rate swap agreement (the Swap Agreement) with Morgan as the swap counterparty. KEPCO will assign its right to receive and make payments under the Swap Agreement, effective as of the Refinancing Date, to the Trustee for the Series 1997 Trust (i.e. First Chicago). Morgan is currently rated AAA by S&P and Aa1 by Moody's. The Swap Agreement will require Morgan to post collateral with the Trustee, for the benefit of certificate-holders, if Morgan's credit ratings are reduced to below AA or an equivalent rating by the Rating Agencies during the term of the Swap Agreement. Such collateral must be in the form of highly stable and liquid fixed-income securities, such as short-term debt securities issued and/or guaranteed by the U.S. Government or an agency or instrumentality thereof or debt securities issued by non-U.S. Government entities which have credit ratings comparable to those of the certificates. The amount of such collateral will be determined daily and will be equal to all payments owed by Morgan under the Swap Agreement in the event the swap were terminated.

Pursuant to the terms of the Swap Agreement, KEPCO will agree to pay a fixed rate of interest to Morgan on each December 4th and June 4th following the Refinancing Date until the maturity of the Amended Outstanding Notes. In return, Morgan will agree to pay to KEPCO a variable rate of interest at the times interest is payable on the Series 1997 Certificates. As noted earlier, KEPCO will assign its right to receive and make payments under the Swap Agreement to the Trustee on the Refinancing Date. On such date, CFC will deposit the Amended Outstanding Notes, with the RUS Guarantees attached, into the Series 1997 Trust. The Series 1997 Trust will issue certificates of beneficial interest (the Series 1997 Certificates) which will have interest distributable to holders of the Series 1997 Certificates (the Series 1997 Certificateholders) at a variable market rate of interest. The variable market rate will be initially set by the Remarketing Agent, and reset weekly by the Remarketing Agent, based on an independent index for 30-day commercial paper known as the H.15 Index, which is compiled daily by the New York Federal Reserve Bank. The variable rate of interest on the Series 1997 Certificates will determine the variable rate of interest payable to the Trustee by Morgan pursuant to the Swap Agreement, which payments will be distributed monthly to the Series 1997 Certificateholders, or at other times as set forth in the Series 1997 Trust Agreement. The initial variable rate on the certificates will be known to investors, including plans, approximately one week before the Refinancing Date.

When installments or payments are made by KEPCO on the Amended Outstanding Notes, the funds are placed in a segregated account established in the name of the Trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the Trustee. However, the account's assets are invested at the direction of CFC in short-term securities described in the Trust Agreement which have received a rating comparable to the rating assigned to the certificates. In addition, CFC will furnish a report on the operation of the Trust to the Trustee on a monthly basis.

Because of the structure of the refinancing, the credit behind the Series 1997 Certificates will be bifurcated. First, if KEPCO fails to pay the Trustee any amounts on the KEPCO Notes, Series 1997 Certificateholders will look to the guarantee provided by the U.S. Government (acting through RUS) for payment of principal, which will continue to be distributed to Series 1997 Certificateholders annually each December 15. Second, Series 1997 Certificateholders will look to the credit of Morgan for the variable rate payments of interest to be made on the Series 1997 Certificates.[14] If Morgan fails to make any variable rate payment when due, amounts received by the Trustee from KEPCO (or RUS as guarantor) for interest on the Amended Outstanding Notes, less a servicing fee payable to CFC, will become payable, to the extent of the amount of the defaulted payment, to the Series 1997 Certificateholders. Morgan, or another financial institution of comparable credit standing selected by Morgan, will provide liquidity support for the tender rights (Tender Rights) that attach to the Series 1997 Certificates. The Tender Rights will enable certificateholders to sell the Series 1997 Certificates back to the Remarketing Agent at any time upon seven (7) days notice.

As noted earlier, the documentation executed and delivered for the KEPCO refinancing will be executed in three closings:

(i) The preliminary closing on December 20, 1996, at which time most of the operative documents were executed and delivered (the Preliminary Closing);

(ii) The Deposit Date closing on November 18, 1997 (the Deposit Date Closing), at which time the offering documentation was delivered and CFC deposited the purchase price for KEPCO's Outstanding Notes with the Series 1988 Trustee and gave advance notice that the purchase is to occur on December 18, 1997; and

(iii) The Refinancing Date closing on December 18, 1997, at which time KEPCO's Outstanding Notes will be purchased by CFC from the 1988 Trusts and the amended Outstanding Notes will be delivered to the Trustee of the Series 1997 Trust, after which the Series 1997 Certificates will be issued and sold to investors.

The Applicant states that in order to eliminate or to minimize creditors' risks, forward purchase transactions are structured so that as little as possible is left to the discretion of the parties after the first commitment is made. Consequently, virtually all of the binding commitments for the proposed refinancing were made at the Preliminary Closing. The fixed rate payable to Morgan by KEPCO under the Swap Agreement (i.e. 7.654 percent per annum) was established at the time of the signing of such Agreement. That fixed rate, plus the servicing fee payable to CFC, will determine the new guaranteed interest rate on the Amended Outstanding Notes, effective upon the sale of the Certificates to the Underwriters on the Refinancing Date.

KEPCO and CFC entered into a First Amendment to the Loan Agreement at the Preliminary Closing which obligates CFC, subject to certain conditions, to provide the funds for the purchase of Note One and Note Two on the Deposit Date Closing. In addition, the First Amendment to the Loan Agreement contains the operative amendments to the Loan Agreement, which will serve to reduce the interest rate on the Outstanding Notes and to remove any call protection or call premium from the Outstanding Notes. The amendments will become effective on the Refinancing Date. However, if upon issuance of the Certificates to CFC the Certificates are not sold to the Underwriter for any reason, CFC will hold the Certificates and receive the existing fixed interest rate on the Amended Outstanding Notes. Pursuant to a separate agreement, KEPCO will make up any loss CFC may incur in funding the carrying of the Certificates and will receive a credit for any "float" CFC realizes while holding the Certificates. The RUS does not guarantee any such additional payments to CFC that may be required from KEPCO.

8. The Sale of the Certificates. At the Preliminary Closing, KEPCO and CFC entered into a forward certificate purchase agreement with Alex. Brown & Sons, Inc. (Alex Brown), as Underwriter of the Series 1997 Certificates, pursuant to which KEPCO and CFC obligated themselves, subject to certain conditions, to sell the Series 1997 Certificates to Alex Brown on the Refinancing Date. Alex Brown committed to purchase and resell the Series 1997 Certificates at par on such date in a firm commitment public offering registered with the SEC. The prospectus (or private placement memorandum if the sale to investors is converted to a private placement under SEC Rule 144A) for the Certificates will provide detailed information about the Amended Outstanding Notes, the RUS Guarantee, the Trust, the Swap Agreement, and the rights and entitlements of the Series 1997 Certificateholders. The compensation payable to CFC, as servicer of the Trusts, and to the Trustee will be set forth in the Trust Agreement and will be described in detail in the prospectus relating to the Series 1997 Certificates.

The Applicant states that once the lower fixed guaranteed interest rate on the Amended Outstanding Notes is established and the Series 1997 Certificates are sold to investors, neither the KEPCO nor RUS will ever have to pay more than such rate. Morgan, as the swap counterparty, will be paying the "market rate" on the Series 1997 Certificates for the remaining terms of the Notes. Consequently, Morgan has an interest in insuring that the Series 1997 Certificates are sold at an appropriate market rate and that such rate is reset weekly at an appropriate market rate. If investors (including plans) are not satisfied with the variable interest rates paid on the Series 1997 Certificates, as reset weekly by the Remarketing Agent, then such Certificateholders may exercise their Tender Rights to require the Remarketing Agent to repurchase the Certificates at par plus accrued interest. In such instances, Morgan or another qualified financial institution of comparable credit quality will stand behind the Remarketing Agent with liquidity support to enable that entity to honor the Tender Rights.

The rate payable for the Series 1997 Certificates will be determined by a Remarketing Agent (initially, Alex Brown) as being the minimum rate of interest necessary, in the Remarketing Agent's judgment, to enable the Remarketing Agent to sell the Series 1997 Certificates at par. As noted above, when the Series 1997 Certificates are in the "weekly rate mode", the Certificateholders will have the right at all times to exercise their Tender Rights to tender their Certificates for repurchase by the Remarketing Agent at par (plus accrued interest) on any business day upon seven (7) days notice.[15] CFC, as servicer, will verify and confirm to the Trustee the information provided by Morgan and the Remarketing Agent for the variable interest rate payments.

Although the Series 1997 Trust Agreement permits the swap counterparty (i.e. Morgan) and the Remarketing Agent (i.e. Alex Brown) to lengthen the interest reset period from seven (7) days (and the right to tender Certificates would exist only at the end of such longer reset period), any such change will result in a mandatory repurchase of all outstanding certificates (at par plus accrued interest) before it becomes effective. Thus, any Certificateholders that want to continue to invest in the Certificates under the new conditions will have to make an affirmative decision to do so. As stated above, in order to assure the operation of these provisions regarding Tender Rights of Certificateholders, KEPCO will enter into a liquidity protection agreement with Morgan pursuant to which Morgan will agree to provide, or cause another qualified financial institution of comparable credit quality to provide, a liquidity facility during the term of the Swap Agreement.

The Swap Agreement will be in effect until the maturity of the Series 1997 Certificates. After the Refinancing Date, the financial condition or performance of KEPCO will not affect the requirement of Morgan's performance under the Swap Agreement. However, KEPCO and RUS (should RUS become the payor of the Amended Outstanding Notes pursuant to the Guarantees) will have the right to terminate the Swap Agreement and prepay or purchase the Amended Outstanding Notes at any time after the Refinancing Date (after providing notice as specified in the Loan Agreement and the Trust Agreement). There are no prepayment penalties attached to KEPCO's right to prepay the Amended Outstanding Notes. However, with respect to the resulting termination of the Swap Agreement, prior to prepaying or purchasing the Amended Outstanding Notes, any termination payment owing under the Swap Agreement must be paid by KEPCO (or RUS). Consequently, depending on market conditions and interest rates, KEPCO (or RUS) could be obligated to make a payment to Morgan or could be entitled to receive a

[13] This premium amount will be distributed to the certificateholders of the Series 1988 Certificates issued by Trust K–1 and Trust K–2.

[14] Morgan has the obligation to continue to make timely payments under the Swap Agreement even in the event of a default by KEPCO. In such instances, Morgan will look to the guarantee provided by the U.S. Government for future payments of interest on the Amended Outstanding Notes, which the Trustee will use to make the semi-annual payments to Morgan under the Swap Agreement.

[15] As noted earlier, the 7-day reset by the Remarketing Agent will be priced based on the H.15 Index, a 30-day commercial paper index, which is compiled daily by the New York Federal Reserve Bank. The H.15 Index is readily available to fixed income investors through data services, conversations with broker-dealers, on-line reports, and other transactions in which such investors participate. This information would be used by certificateholders on a continuous basis to determine both the anticipated level of repricing as well as to evaluate whether the repriced certificates continue to meet their investment needs.

payment from Morgan, in the event of termination of the Swap Agreement.[16]

The Applicant states that the refinancing is intended to emulate, as closely as possible, the 1988 refinancing, except that the certificates will have a variable rate of return. The parties to the 1997 transaction are the same as the parties to the 1988 transaction with the exception of Morgan and Alex Brown—the parties involved in making the Series 1997 Certificates available as variable rate securities. As with the 1988 refinancing, the Applicant anticipates that the Certificates will be acquired by employee benefit plans subject to the Act.

CFC is participating in this transaction to facilitate the refinancing of the existing loans (as evidenced by Note One and Note Two) to KEPCO under applicable U.S. Department of Agriculture regulations and guarantee programs. CFC does not intend to take a proprietary interest in the Amended Outstanding Notes. The purchase of the Amended Outstanding Notes by CFC and the contribution of such Notes to the Series 1997 Trust will occur virtually simultaneously and will be for the same consideration. CFC will continue to receive servicing fees for the Series 1997 Trust (as discussed below) and a fee for the 30-day period between its prepayment of the purchase price for the Amended Outstanding Notes and the closing of the sale of the Series 1997 Certificates to the Underwriters on the Refinancing Date.

The Series 1997 Certificates will have received one of the three highest ratings available from either S&P or Moody's, or both. The Applicant states that these ratings will be based, in part, on the RUS Guarantee and the high credit standing of Morgan as the swap counterparty and the liquidity provider.

In this regard, the entire KEPCO refinancing transaction (including the proposed swap transaction) has been reviewed by Moody's and S&P for the purpose of rating the certificates. S&P has concluded the following: (a) the long-term rating on the certificates would be the lower of (i) "AAA", based on the guarantee provided by the U.S. Government acting through the Administrator of the RUS, or (ii) the rating of the swap counterparty (i.e. Morgan, which is currently rated "AAA"). The short-term rating on the certificates would be the short-term rating of the entity providing the standby certificate purchase agreement. This entity will be either Morgan or another financial institution that is rated P–1, the highest short-term credit rating available. Moody's has also concluded that the certificates would be rated Aa1 (long-term) and P–1 (short-term), based on the guaranty provided by the U.S. Government, the swap agreement with Morgan, and the standby certificate purchase agreement provided by either Morgan or another P–1 rated entity.

9. *Disclosure.* The prospectus (or private placement memorandum) to be issued in connection with the original issuance of the Series 1997 Certificates, will contain information material to a fiduciary's decision to invest in the Certificates, including:

(i) Information concerning the payment terms of, and the rating of, the Series 1997 Certificates;

(ii) A description of the operation of the Trust as a separate entity and of how the Trust was formed by CFC;

(iii) Identification of First Chicago as the independent trustee for the Trust;

(iv) A description of the assets contained in the Trust (i.e. the Amended Outstanding Notes, the RUS Guarantee and the swap, including their principal terms and their material legal aspects, as well as financial information regarding Morgan, as the swap counterparty);

(v) A description of CFC, its role in the refinancing and its role as the servicer of the Trust;

(vi) A description of the Trust Agreement, including a description of the procedures for collection of payments on the Notes, the payments to be made under the Swap Agreement and the procedures for making distributions to certificateholders; a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation that may be deducted from any payments before distributions are made to certificateholders; a description of periodic statements to be provided to the Trustee and provided to or made available to certificateholders by the Trustee; and a description of the events that constitute events of default under the Trust Agreement and a description of the Trustee's and the certificateholders' remedies with respect thereto;

(vii) A description of the RUS Guarantee;

(viii) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through certificates by a typical investor;

(ix) A general discussion of the fiduciary and prohibited transaction considerations that are to be taken into account by a fiduciary under the Act considering the purchase of the Series 1997 Certificates,[17] including a brief description of the exemption (if granted) and a discussion of the potential need for compliance by plan investors with certain prohibited transaction class exemptions issued by the Department in connection with the swap transaction;[18]

(x) A description of the underwriters' plan for distributing the pass-through certificates to investors, including the structure and operation of the variable interest rate reset mechanism; and

(xi) Information about the scope and nature of the secondary market for the certificates, the operation of the put rights, the role of the liquidity provider and financial information regarding the liquidity provider (which will be Morgan or a financial institution of comparable credit standing).

10. The RUS Guarantee. The Applicant states that RUS has endorsed on each Outstanding Note its guarantee of the timely payment of principal and interest on such Note and, on or before the Preliminary Closing, will have consented to an amendment of each Outstanding Note to lower the guaranteed interest rate thereon and to make the other amendments described below for the servicing of the Outstanding Notes. The RUS Guarantee is a full faith and credit obligation of the United States of America. RUS will be required to pay the Trust the amount of any principal and interest not paid when due on an Outstanding Note within five business days of notice of such default from CFC, acting in its capacity as servicer.

11. Servicing of KEPCO's Loans. CFC will contract with RUS and the Trust to service the Amended Outstanding Notes, thereby establishing an agency relationship (as the "Servicer") with respect to the Trustee in a manner that complies with the RE Act and the Regulations and described in the terms of the Trust Agreement.

Under the Trust Agreement, the Trustee appoints the Servicer as its attorney-in-fact to prosecute any claims to enforce or collect on each Amended Outstanding Note and Guarantee. However, the Servicer as such attorney-in-fact may not rescind, cancel, release, waive or reschedule the right to collect the unpaid balance on any such Note from KEPCO or RUS. If a court holds that the Servicer is not entitled or able to enforce an Amended Outstanding Note or Guarantee, the Trustee, on behalf of the Trust, is obligated to take such steps as the Servicer deems necessary to enforce such Note or Guarantee.

In administering, servicing and enforcing an Amended Outstanding Note or Guarantee according to the terms of the Trust Agreement, the Servicer after a default in payment on such Note is obligated to exercise such of the rights and powers vested in it by the Trust Agreement and to use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Prior to a default in payment on an Amended Outstanding Note, the Servicer is obligated to perform only those duties that are specifically set forth in the Trust Agreement. The Servicer has no liability for any error of judgment made in good faith by it (unless it is proved that the Servicer was negligent in ascertaining the pertinent facts) or for any action it takes or omits to take in good faith in accordance with a direction received by it from the Trustee or the Certificateholders.

In addition to enforcing the Trustee's rights under the Amended Outstanding Note (including the RUS Guarantee) held by the Trust, CFC as the Servicer for the Trust is obligated to fulfill a number of administrative and notice functions under the Trust Agreement. For example, the Servicer is obligated to deliver a notice to KEPCO and the Trustee specifying the date any payment is due on the Note held by such Trust and the amount of such payment. The Servicer is responsible for notification of RUS of any default in the payment of interest and principal on the Amended Outstanding Note held in the Trust. The Servicer is obligated to submit to RUS reports assessing the causes behind, and seriousness of, the default. The Servicer is also obligated to notify RUS of any known violations, defaults or conditions which might lead to a default or violation by KEPCO under the Loan Agreement, the Loan Guarantee Agreement or an Amended Outstanding Note. The Servicer is further obligated to notify RUS of any redemption of the Amended Outstanding Note held by a Trust and to calculate the amount payable on such Note and the related Certificates pursuant to any redemption or purchase of such Note.

The Servicer will handle the billing of Note payments from KEPCO, and will notify RUS promptly of any default under a Loan and of adverse developments affecting KEPCO, but payments on the Note will be made directly to the Trustee and not to CFC. The Trustee will be responsible for monitoring and enforcing the Swap Agreement. In this regard, the Servicer will verify and confirm to the Trustee the information provided by Morgan and the Remarketing Agent with respect to the variable rate of return. The Servicer will also prepare for distribution by the Trustee to Certificateholders regular semiannual reports concerning distributions on the Certificates and its fees, as well as tax information required by Certificateholders. No less often than annually, an independent public accountant will audit the books and records of the Trust. Upon completion, copies of the auditor's reports will be provided to the Trustee.

12. Servicing Compensation. The Servicer will be compensated out of payments on the KEPCO Notes. The servicing fee (out of which the Servicer will pay the Trustee's fees and expenses) will total not more than approximately 1/10 of one (1) percent per annum of the principal amount of the Notes. Because the return to the certificateholders is based upon the floating rate payments made under the Swap Agreement, these reimbursements will not affect the payments to certificateholders.

The Servicer may transfer its duties and obligations with the consent of 51 percent of the certificateholders and the swap counterparty. The Servicer may also be terminated following certain defaults or events of bankruptcy relating to the Servicer. The insolvency of the Trustee or the Servicer will not affect the certificateholders' rights, because the Servicer will not hold any Trust assets, and assets held in a fiduciary capacity by the Trustee should not be subject to claims of the Trustee's general creditors.

13. Description of Certificates. Each Certificate will represent a fractional undivided interest in the Trust. The Certificates will be issued in denominations of $100,000 (and in integral multiples of $5,000 above such amount), and will not be divisible into certificates with original principal amounts below $100,000. The Certificates will be transferable, and may be listed on a national securities exchange. Payments on the Certificates will represent a pass-through of both (i) payments of principal received by the Trustee on the KEPCO Notes held by the Trust, and (ii) the payments to be made by Morgan under the Swap Agreement.[19] Interest on the KEPCO Notes will be payable semi-annually, whereas interest on the floating-rate Certificates will be paid monthly (or on such other periodic basis as may be reset in accordance with the Trust Agreement). Principal payments on both the KEPCO Notes and the Certificates will be payable annually for the period during which each Note amortizes.

The Certificates will be prepaid at any time a Note is prepaid. The Notes will be prepayable at the KEPCO's option in whole (but not in part) at any time at par. KEPCO will be required to accompany its notice of prepayment (to be given in advance in order to permit the Trustee in turn to notify certificateholders of the impending retirement of the Certificates) with cash

[16] In no event will the Trust be obligated to make termination payments to Morgan, or another swap counterparty, in the event KEPCO purchases the Amended Outstanding Notes.

[17] The Department wishes to note that ERISA's general standards of fiduciary conduct would apply to the investment described in this proposed exemption, and that satisfaction of the conditions of this proposal should not be viewed as an endorsement of the investment by the Department. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciary must act prudently with respect to the decision to enter into an investment transaction. The Department further emphasizes that it expects the plan fiduciary to fully understand the benefits and risks associated with engaging in a specific type of investment, following disclosure to such fiduciary of all relevant information. In addition, such plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[18] See PTE 84–14, 49 FR 9494, March 13, 1984 (regarding transactions entered into for plans by a "qualified professional asset manager" or "QPAM"), PTE 90–1, 55 FR 2801, January 29, 1990 (regarding transactions entered into by insurance company separate accounts), PTE 91–38, 56 FR 31966, July 12, 1991 (regarding transactions entered into by bank collective investment funds), PTE 95–60, 60 FR 35925, July 12, 1995 (regarding transactions entered into by insurance company general accounts), or PTE 96–23, 61 FR 15975, April 10, 1996 (regarding transactions entered into for plans by "in-house" asset managers). In this regard, the Department is not providing any opinion in this proposed exemption as to whether the conditions of such class exemptions would be met for a swap transaction between the Trust and Morgan, or any other bank or financial institution acting as a swap counterparty to the Trust.

[19] It should be noted that the notional principal amount for the swap transaction between the Trust and Morgan, used to determine the payments to be made between the parties, initially will be $57,390,000. As principal payments on the KEPCO Notes are received by the Trustee and passed-through to the certificateholders, the notional principal amount for the swap transaction will be adjusted to equal the outstanding principal balance of the certificates. It should also be noted that, based on the confirmation statement submitted by Morgan, all payments made between the parties will be based on the applicable notional principal amount, the day count fractions, the fixed or floating rates (determined by objective third party sources) designated under the swap agreement, calculated on a one-to-one ratio and not on a multiplier of such rates or with formulas that produce leveraged amounts. However, because the payments will be made between the parties on different dates, there will be no netting of payments. Thus, both parties will be responsible for making the full payments that are due on the designated dates (i.e. semi-annually for KEPCO and monthly for Morgan).

equal to the amount that will be due on such Note at the time of prepayment. This procedure will assure that funds will be available for the prepayment of the Note at the appropriate time. These funds will be invested in obligations issued by the United States or in repurchase agreements.

With the exception of prepayments by KEPCO, all payments on the Note obligations are supported by the full faith and credit of the United States. If KEPCO defaults in making its payments or in its other obligations to RUS, RUS has the option either to pay under the RUS Guarantee principal and interest as they fall due on the KEPCO Note, to proceed against KEPCO and to assume KEPCO's obligations under the KEPCO Note or, if KEPCO could at that time make an optional prepayment of the KEPCO Note, to optionally prepay or purchase the Note. The Trustee (or the Servicer as its agent), and not the certificateholders, will enforce payments due on the KEPCO Notes (or the RUS Guarantee) and the Trustee will enforce payments due under the Swap Agreement. However, a specified percentage of certificateholders may direct the time, method and place of exercising any remedy available to the Trustee or the Servicer, subject to customary trust indenture exceptions. The Trustee may not resign until the Trust is liquidated and the proceeds distributed to certificateholders, unless a successor Trustee has been designated and has accepted such trusteeship.

14. Distributions for the Certificates. Scheduled distributions on the Certificates attributable to payments of principal on the KEPCO Notes will be made 11 days (in the case of regular payments of principal) following the corresponding payment on the Note. This interval will allow time for the Servicer to notify RUS if there is a default by KEPCO in making a payment on the Note and to permit the five business days that RUS has requested before it is obligated to make a payment under the guarantee to elapse before the payment date on the Certificates. As a consequence, if KEPCO defaults, the full faith and credit guarantee payment will fall due before the scheduled payment on the Certificates. As indicated above, if KEPCO elects to prepay its Loan, distributions on the Certificates will be made only after advance receipt of the amounts to be prepaid. This procedure will permit notice of the resulting distribution to be given to certificateholders.

During these periods pending distribution, payments on the KEPCO Notes received by the Trust will be invested at the direction of CFC, as servicer for the Trust, in: (i) obligations issued by the United States (and supported by its full faith and credit), or (ii) repurchase agreements with respect to such obligations, over-collateralized on a basis that will not result in a reduction in the ratings of the Certificates. All such investments must mature before the next scheduled distribution date on the Certificates. The obligations collateralizing the repurchase agreements in question would be marked to market on a daily basis and kept in the possession of the Trustee or in its control through book-entry, unless the Rating Agencies indicate that this is not necessary to maintain the Certificates' rating. The Applicant states that assuming all amounts then due on the KEPCO Notes have been paid in full, any yield on these investments will be returned to KEPCO (or to RUS to the extent of any unreimbursed payments on the RUS Guarantee). The Applicant states further that such yield will not flow through to the Servicer or the certificateholders, or increase the return on their investment, and the prospectus (or private placement memorandum) will make this clear to the certificateholders.

Other Information

15. The Applicant represents the proposed exemption (if granted) for plan investments in the Certificates and the participation by CFC in the refinancing program would be effective as of November 18, 1997, the Deposit Closing Date for the refinancing of KEPCO's existing loans. The plans affected by the requested exemption are those plans that will acquire and hold Certificates representing an interest in a trust established under a trust agreement as described herein, including any plans that own certificates for trusts that were established as a part of the 1988 refinancings. The Applicant states that the Certificates will not be sold to plans established by KEPCO or CFC, or to plans for which either the Trustee, the swap counterparty/liquidity provider, or the underwriter/remarketing agent (or any affiliate of any of the foregoing entities) is an investment fiduciary for the assets of the plan that are to be invested in the Certificates.

16. The Applicant represents that the Department's regulations defining *plan assets* for purposes of the prohibited transaction provisions of the Act [20] provide that a plan that acquires an equity interest in an entity, such as certificates of beneficial ownership in a grantor trust, will be required under certain circumstances to treat the underlying assets of the entity as assets of the plan for purposes of the Act. Generally, this "plan asset look-through" occurs if there is significant participation by benefit plan investors (i.e. 25 percent or more) and the class of equity interests in question are not: (i) held by 100 or more investors independent of the issuer and of each other, (ii) freely transferable, and (iii) either registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 (the '34 Act) or sold as a part of an offering pursuant to an effective registration statement under the Securities Act of 1933, and then timely registered under Section 12(b) or 12(g) of the '34 Act. In this regard, the Applicant states that although there will be no restrictions imposed on the transfer of the Certificates and CFC intends to cause the registration requirements to be satisfied, the Certificates may be held by fewer than 100 independent investors at the conclusion of the initial offering. Therefore, if benefit plan investors (including employee benefit plans covered by the Act, governmental plans, etc.) hold, in the aggregate, Certificates representing a 25 percent or greater interest in the Trust, the plan certificateholder's assets will be deemed to include assets of the Trust.

As discussed herein, CFC performs certain services for the Trust as agent for the Trustee according to the terms of the Trust Agreement. CFC will be compensated for such services out of interest payments on KEPCO's Note before payments are made by the Trust to Morgan under the Swap Agreement. The Trustee also has duties and responsibilities for the assets of the Trust for which it will be compensated. Therefore, if the assets of the Trust are deemed to be "plan assets" for the reasons discussed above, the activities of CFC for the Trust would cause it to become a service-provider to the participating plans.

The Applicant states that this "service provider" status gives rise to potential prohibited transactions between the participating plans and CFC. In addition, the "plan asset look-through" may create prohibited transactions between the participating plans and any other parties in interest with respect to such plans that have a relationship to the trust (i.e. members of the Restricted Group, as defined in Section III.E).

17. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because:

(a) The decision to acquire a certificate will be made on behalf of a plan by a fiduciary of the plan who is independent of CFC after receipt of full and detailed disclosure of all material features of the trust and the certificates, including all applicable fees and charges.

(b) The assets of the Trust (i.e. the notes, the RUS Guarantee and the Swap Agreement) are described to prospective purchasers of certificates. Neither CFC nor the Trustee has discretion to substitute assets once the Trust has been formed (except in the limited circumstances where KEPCO is required to obtain a substitute swap agreement from another financial institution of comparable credit quality).

(c) KEPCO's notes are guaranteed as to principal and interest by the United States of America and the certificates will be rated in one of the three highest rating categories by S&P's and/or Moody's.

(d) All actions by CFC and the Trustee with respect to the trust, the assets of the Trust, the certificates and certificateholders will be governed by the Trust Agreement, which will be available to plan fiduciaries for their review prior to the plan's investment in certificates.

(e) The certificates will bear a variable rate of return that will be generally reset weekly; any change in the reset period will require a new investment decision by the certificateholder because of the mandatory redemption (at par plus accrued interest) feature of the certificates.

(f) The variable rate should be closely related to a published independent index (e.g. the H.15 index for 30-day commercial paper, as compiled by the New York Federal Reserve Bank) so that it can be readily monitored by certificateholders. Given the historical range of reset rates, and the put and redemption features of the certificates, any adverse change in the variable rate would have only a de minimis impact on a plan investor's overall return on the certificates.

(g) Alex Brown, a currently identified underwriter, anticipates that it will make a secondary market in the certificates, and the certificateholders will have certain put rights (at par plus accrued interest) which are supported by a liquidity facility provided by a financial institution that is rated in one of the three highest rating categories by S&P's and/or Moody's.

(h) All fees and charges under the Trust and for the Certificates are fixed and reasonable and are disclosed to certificateholders.

(i) CFC and the Trustee will maintain books and records of all transactions which will be subject to annual audit by a certified public accountant.

(j) The certificates will be offered and sold in a public offering or an exempt private placement, with full disclosure in the prospectus or private placement memorandum.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption will include prospective plan investors, and fiduciaries of plans which have already invested in certificates of a trust which holds an existing KEPCO Note. Because CFC is uncertain as to which plans will invest in a new trust, the Department has determined that the only practical form of providing notice to interested persons is the publication of this notice of proposed exemption in the **Federal Register**. However, with respect to plans that are invested in a trust holding an existing KEPCO Note at the time this notice is published, CFC will distribute in redemption notices for the outstanding certificates of the existing trusts a statement that plan investors may request a copy of this notice of proposed exemption within 15 days of the receipt of the notice of redemption. CFC represents that transmittal of redemption notices will occur shortly after the publication of this notice of proposed exemption in the **Federal Register**.

Comments and requests for a public hearing are due within sixty (60) days following the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Pentair Retirement Savings and Stock Incentive Plan (the Plan), Located in St. Paul, MN

[Application No. D–10472]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan (the Sale) of the Plan's remaining interest (the Interest) in two guaranteed investment contracts (the GICs) of Confederation Life Insurance Company (CL) to Pentair, Inc. (Pentair), the sponsoring employer and a party in interest with respect to the Plan; provided the following conditions were met:

(1) The Sale was a one-time transaction for cash;

(2) The Plan received no less than the fair market value of the Interests at the time of the Sale;

(3) The Plan and its participants and beneficiaries have not incurred any expenses or any losses from the Sale; and

(4) Any future distributions from the GICs that exceed the consideration paid by Pentair to the Plan for the Interests shall be paid to the Plan and allocated to the respective accounts of the affected Plan participants.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective on June 13, 1997.

Summary of Facts and Representations

1. Pentair, a Minnesota corporation and located in St. Paul, is a publicly held corporation whose stock is traded on the New York Stock Exchange. It is a diversified manufacturer and vendor of electrical and electronic enclosures, portable and stationary tools and equipment, water products, and sporting and law enforcement ammunition.

The Plan, established by Pentair on January 1, 1984, is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The Plan includes a cash or deferred arrangement that is intended to qualify under section 401(k) of the Code.[21] As of December 31, 1996, the Plan had approximately 9,700 participants and total assets with a fair market value of approximately $270,000,000. The Plan provides for individual participant accounts and permits its participants to self-direct their respective accounts in the Plan (other than the ESOP part of the Plan) into various investment options pursuant to section 404(c) of the Act, including an investment option referred to as the Pooled Stable Return Trust (the PSR Fund), which acquires and holds a pool of fixed income investments. As of December 31, 1996, the PSR Fund held assets with a total fair market value of approximately $72,000,000.

Pentair, as named Plan fiduciary, delegates the administrative responsibilities of the Plan to a Plan

[20] See 29 CFR 2510.3–101.

[21] A component of the Plan is an employee stock ownership plan (ESOP) of the stock bonus variety, with its assets held under a separate trust and invested in the stock of Pentair.

Committee (the Committee), currently comprised of Richard W. Ingman, Debby S. Knutson, John T. Moynihan, and Roy T. Rueb, each of whom is an employee of Pentair. Two of the members of the Committee, Richard W. Ingman and Roy T. Rueb (the Fund Trustees), are also the trustees of the PSR Fund.

2. Among the fixed income investments purchased by the Fund Trustees on behalf of the PSR Fund are the GICs, described as follows:

(a) Contract No. 62541 is a single deposit contract acquired from CL on July 26, 1991, for $3,500,000, with a maturity date on June 30, 1996, providing for a guaranteed rate of compound interest at 8.53 percent through maturity.

(b) GIC No. 62608 is a single deposit contract acquired from CL on January 22, 1992, for $5,000,000, with a maturity date on December 31,1996, and which provides for a guaranteed rate of simple interest at 7.21 percent through maturity.

3. On August 11, 1994, Canadian insurance company regulatory authorities seized the assets of CL because of serious liquidity problems confronting CL. On August 12, 1994 (the Seizure Date), the assets of CL located in the United States of America were seized by the Insurance Commissioner for the State of Michigan. On the Seizure Date, legal action was taken to freeze the operations of CL in the United States and to initiate a rehabilitation CL's operations in the United States. Pentair represents that, as of August 12, 1994, the book value of both of the GICs totaled $9,685,734.43 (the Seizure Date Values).[22] Pentair represents that as of the Seizure Date, GIC No. 62541 had a book value of $4,491,311.71 and GIC No. 62608 had a book value of $5,194,422.72, with the total representing approximately 11.7 percent of the total assets in the PSR Fund as of the Seizure Date. Immediately after the Seizure Date, the Fund Trustees took action to freeze a portion of the account balance of each participant account invested in the PSR Fund, and the frozen amount of each such account equaled the percentage of the total PSR Fund assets represented by the Seizure Date Value of the GICs, approximately 11.7% as of the Seizure Date.

4. Subsequent to the Seizure Date, a formal plan of rehabilitation of CL (the Rehab Plan) was developed which offered contract holders such as the PSR Fund the option of participation in the Rehab Plan, by receiving payments over several years, or nonparticipation in the Rehab Plan by receiving a lump sum settlement. The Rehab Plan was approved by rehabilitation authorities on October 23, 1996, and became final 21 days later, and the Fund Trustees elected that the PSR Fund participate in the Rehab Plan. The Fund Trustees represent that pursuant to the Rehab Plan, the Plan has already received from CL's available liquid assets in excess of 100 percent of the Seizure Date Values of the GICs, and that they anticipate from the Rehab Plan an eventual recovery of approximately 110% of the Seizure Date Values. Pentair represents that as of June 13, 1997, the Plan had received a total of $9,723,592 from the Rehab Plan with respect to its investments in the GICs, and that these funds were immediately invested in the PSR Fund's money market fund.

In addition to the funds realized from the Rehab Plan, the Plan has received funds from a state guaranty association. During development of the Rehab Plan, the State of Minnesota, through its Minnesota Life and Health Insurance Guaranty Association (MGA), accepted and confirmed guaranty coverage for the two GICs and thereby provided additional funds to compensate those affected Plan participants residing in Minnesota. Pentair represents that 62.221 percent of the PSR Fund's investment in the GICs was allocable to the participant accounts of Minnesota residents. Pentair represents that as of June 13, 1997, the Plan had received a total of $1,307,732 from MGA with respect to its investments in the GICs, and that these funds were immediately invested in the PSR Fund's money market fund.

Pentair represents that in addition to the funds realized from the Rehab Plan and MGA, as of June 13, 1997 the PSR Fund had also earned a total of $59,080 in interest on the Rehab Plan and MGA payments which had been deposited in the PSR Fund's money market account.

5. In order to assure that all affected participants, regardless of their state of residency, receive a timely and equivalent recovery of their frozen account balances invested in the GICs, and in order to restore to all affected Plan participants complete access to their entire account balances invested in the PSR Fund, Pentair represents that it proceeded on June 13, 1997 to purchase from the Plan the Interest, which is the PSR Fund's entire remaining interest in the GICs (the Interest) by depositing cash into the PSR Fund. For this past purchase of the Interest from the Plan for cash, Pentair requests an exemption under the terms and conditions described herein.

6. Pentair represents that it purchased the Interest from the Plan by depositing cash into the PSR Fund in the amount of $635,672, which was the amount necessary to enable the Plan to have received, from all sources, a total recovery on the GICs in the amount of $11,726,076 (the Total Recovery Amount). Pentair represents that in receiving the Total Recovery Amount, the Plan recovered the Seizure Date Values of the GICs plus interest thereon at the Contract Rates through the maturity dates of each GIC, plus post-maturity interest on each GIC at the rate of five percent from the maturity dates through March 31, 1997, the date established under the Rehab Plan for contract valuation. Pentair represents that the 5 percent rate of interest was the rate of interest established under the Rehab Plan, and accepted by MGA, for the purposes of crediting earnings to the GICs after their contract maturity dates.

7. Pentair represents that by purchasing the Interest from the PSR Fund, it has assumed all risks with respect to the future payments by the Rehab Plan and MGA with respect to the GICs. Upon receipt of the purchase price for the Interest, the Fund Trustees were able to lift the freeze on the portion of the participant accounts invested in the GICs and they restored to each affected account its pro-rata share in the Total Recovery Amount. Pentair represents that it proceeded with the purchase of the Interest on June 13, 1997 in order that affected Plan participants residing outside Minnesota would not be required both to await future Rehab Plan and to accept a lesser recovery with respect to their frozen account balances. Pentair represents that its purchase of the Interest also enabled all affected participants, regardless of residency, to have immediate access to their account balances for purposes of making investment transfers, obtaining hardship withdrawals or plan loans, and receiving distributions of the portion of their account balances which had been frozen when they became entitled for distributions. Pentair represents that in the event the amount of future distributions from the GICs exceeds the purchase price paid to the Plan for the Interest, such excess amounts shall be transferred to the Plan and allocated pro rata among the accounts of the affected Plan participants.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale was a one-time transaction for cash; (b) the purchase price paid by Pentair for the Interest enabled the Plan to have recovered the Total Recovery Amount, representing the sum of (i) the book value of the GICs as of the Seizure Date, (ii) Contract Rate interest thereon through the GICs' maturity dates, (iii) post-maturity interest at the rate of 5 percent through March 31, 1997; (c) the transaction enabled the PSR Fund to avoid any risk associated with the continuation of the Rehab Plan and enabled the participants to direct PSR Fund assets to other investments; and (d) the Plan did not incur any expenses or suffer any losses from the transaction.

[22] Book value represents total deposits under the GICs plus interest at the rates guaranteed under the GICs (the Contract Rates) through August 12, 1994, less previous withdrawals.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert H. Herzog Profit Sharing Plan, (the Plan) Located in Santa Barbara, California

[Application No. D–10494]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain residential condominium (the Property) by the Plan[23] to Robert H. Herzog (Mr. Herzog), a disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(c) The Plan receives the fair market value of the Property at time of the Sale; and

(d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Factual Representations

1. The Plan is a profit sharing plan which was established by Mr. Herzog, the sole participant and beneficiary. As of August 1997, the Plan held assets valued at approximately $141,500. The trustee of the Plan is Mr. Herzog.

2. The Property is a residential condominium unit located at 362 Old Mammoth Road, Unit 62, Sherwin Villas in Mammoth Lakes, California. The Property consists of one bedroom, one-and-a-quarter baths and has a total living area of 704 square feet. The specific zoning classification and description of the Property is "RF–2 Residential Multiple Family."

3. According to the applicant, the Plan originally acquired the Property as a real estate investment. The Plan purchased the Property in October 1996 from an unrelated third party in a cash transaction for $40,271, including expenses. The applicant represents that the Plan has rented out the Property on a short-term basis to visitors of the Mammoth Lakes resort, and all income and expenses attributable to the Property are applied to the Plan. Since purchasing the Property, the Plan has spent approximately $9,723 on improvements but, because of rental income, has shown a net profit of approximately $945.

Mr. Herzog represents that the Property has not been leased to, or used by, any disqualified persons.

4. The applicant requests an exemption for the proposed sale of the Property by the Plan to Mr. Herzog. According to Mr. Herzog, he desires to sell the Property because it has failed to produce the desired rate of return and because it has become unwieldy investment from a management perspective. As noted above, the Plan would receive cash for the Property in an amount equal to the fair market value of such Property, as determined by a qualified, independent appraiser at the time of the Sale.

The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Plan because it would permit the Sale of the Property, enabling the Plan to invest the proceeds from the Sale in assets with a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Plan will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of sale, and will incur no commissions, costs, or other expenses as a result of the Sale.

5. Cheryl L. Schafer (Ms. Schafer), an accredited appraiser with Mammoth Lakes Appraisal, located in Mammoth Lakes, California, appraised the Property on July 14, 1997. Ms. Schafer states that she is a full time qualified, independent appraiser, as demonstrated by her status as a Certified Residential Real Estate Appraiser licensed by the State of California. In addition, Ms. Schafer represents that both she and her firm are independent of Mr. Herzog. After inspecting the Property, Ms. Schafer determined that a fee simple interest in the Property is worth $50,000.

In her appraisal, Ms. Schafer relied primarily on the direct sales comparison approach. According to Ms. Schafer this method best represents the actions of buyers and sellers in the marketplace. This method of appraisal involves an analysis of similar recently sold properties in the area in question so as to derive the most probable sales price of the Property. Ms. Schafer's appraisal indicates that she compared the Property to six recently sold condominium units in the Mammoth Lakes area before reaching a conclusion as to the value of the Property.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale would be a one-time cash transaction allowing the Plan to invest in assets with a higher rate of return; (c) the Plan would receive the fair market value of the Property, established by a qualified independent appraiser; and (d) the Plan would not be required to pay any commissions, costs or other expenses in connection with the Sale.

Notice to Interested Persons

Because Mr. Herzog is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

CoreStates GIC and BIC Fund (the Fund), Located in Philadelphia, Pennsylvania

[Application No. D–10522]

Proposed Exemption

The Department of Labor is considering granting an exemption

[23] Because Mr. Herzog is the only participant in the Plan, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Fund of the Fund's remaining interest in two Guaranteed Investment Contracts (the GICs) of Confederation Life Insurance Company (CL) to CoreStates Bank, N.A. (the Bank), a party in interest with respect to the Fund; provided (1) the Sale was a one-time transaction for cash, (2) the Fund received no less than the fair market value of the GICs at the time of the Sale, (3) the Fund and its participants and beneficiaries did not incur any costs or expenses with respect to the Sale, and (4) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the respective accounts of the affected employee benefit plans.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 31, 1997.

Summary of Facts and Representations

1. The Bank, which is the applicant, is a wholly-owned subsidiary of CoreStates Financial Corp., a bank holding company organized under federal and Pennsylvania laws and located in Philadelphia. The Bank is the successor to Hamilton Bank, which the Bank acquired in 1980. The Bank offers traditional commercial banking services to individuals and privately and publicly created entities located in the Middle Atlantic states.

Until 1993, Hamilton Bank served as trustee or investment custodian for approximately 250 employee benefit plans, and had investment discretion for either some or all of the assets of such plans (the Plans). Commencing in 1993, the Bank undertook such activities and duties for the Plans. The Plans include both defined benefit and defined contribution plans, such as profit sharing, money purchase pension, 401(k), and Keogh plans.

2. The Fund is a pooled fund sponsored and administered by the Bank in which the Plans invest portions of their assets. The investments made by the Fund are limited to guaranteed investment contracts issued by insurance companies and to bank investment contracts issued by banks. The applicant states that CoreStates Investment Advisers, Inc. (Advisers), a wholly-owned subsidiary of the Bank, is the investment adviser for the Fund and has investment discretion over the assets of the Fund. The applicant represents that with respect to each Plan that has invested in the Fund, the determination to invest Plan assets in the Fund is made by a fiduciary of the Plan independent of the Bank or by the participants of a Plan which provides for self-directed investment of individual participant accounts. As of September 30, 1997, the applicant represents that the fair market value of the assets of the Fund was approximately $5,638,341.

3. The Fund has invested a portion of its assets in the two GICs issued by CL, a Canadian insurance corporation doing business in the United States through branches in the states of Georgia and Michigan. The two GICs involved in the transaction for which the exemption is requested are described as follows:

	GIC No. 61977	GIC No. 62403
Date Purchased	Dec. 4, 1989	March 1, 1991.
Original Maturity Date	Dec. 3, 1994	April 30, 1996.
Amount Deposited	$500,000.00	$1,000,000.00.
Contract Rate of Interest	8.50 percent	8.20 percent.
8/12/94 Book Value [24]	$528,615.00	$1,036,045.00

[24] Book Value is the sum of the total principal deposits plus interest thereon at the rates guaranteed under the terms of the GICs, less previous withdrawals.

4. On August 11, 1994, the Canadian insurance regulatory authorities placed CL into liquidation and a winding-up process. On August 12, 1994, the insurance authorities of the state of Michigan commenced legal action to place the U.S. operations of CL into rehabilitation, which involved liquidating the assets of CL and establishing the methodology for determining and paying its contractual obligations. The applicant represents that a plan of rehabilitation (the Rehab Plan) has been approved by the rehabilitation authorities, and payments to CL contract holders, including the Fund, commenced under the Rehab Plan in April of 1997.

In addition to the amounts paid to the Fund by CL under the Rehab Plan, the GICs have also been afforded protection by the Pennsylvania Life and Health Insurance Guaranty Association (PLHIGA). Under the terms of the enabling statute of PLHIGA, the principal amount of the GICs was fully insured, and a substantial portion the interest due under the terms of the GICs was also insured by PLHIGA.[25]

5. The applicant states that In accordance with the Rehab Plan, substantial payments have been made by CL to the Fund with respect to the GICs. The applicant represents that in combination with the additional payments to the Fund by PLHIGA, the Fund already has recovered 100 percent of is principal investment in the GIC, plus substantial portions of the interest due under the GICs within the limits of PLHIGA's coverage. The applicant represents that CL has predicted that some additional amounts will be paid from various reserve funds over the next few years as the remaining assets of CL are liquidated.

The details of payments to the Fund are as follows:

	GIC No. 61977	GIC No. 62403
Paid 4/25/97 by CL	$458,773.70	$910,105.36
Paid 5/20/97 by CL	9,578.40	5,429.83

[25] The applicant represents that PLHIGA's coverage of interest on a GIC's principal (a) is limited to the four years prior to the rehabilitation date during which the GIC was in effect, (b) does not exceed 2 percentage points below the Moody Corporate Bond Average, and (c) for the period after the rehabilitation date up to the date of payment by PLHIGA, does not exceed 3 percentage points below the Moody Corporate Bond Yield Average.

	GIC No. 61977	GIC No. 62403
Paid 5/27/97 by CL	60,480.93	120,522.70
Paid 5/30/97 by PLHIGA	75,085.11	164,396.53
Paid 9/2/97 by CL	11.96	23.73
Total to date received	603,930.10	1,220,478.15
Projected future payments	3,714.00	8,347.00

6. In order to enable the Fund and its participating Plans to achieve a completed liquidation of the Fund's investment in the GICs and avoid additional accounting expenses related to monitoring and allocating future Rehab Plan payments, the Bank proposes to purchase the Fund's remaining interests in the GICs by acquiring the Fund's right to all future payments from CL pursuant to the Rehab Plan with respect to the GICs. The Bank is requesting an exemption for this purchase transaction under the terms and conditions described herein. As purchase price for all rights to future CL payments with respect to the GICs, the Bank proposes to pay the Fund cash in the amount of $12,061.00, which the applicant represents to be the amount of projected future payments on the GICs as calculated in accordance with the terms of the Rehab Plan. The Bank intends the cash sale transaction to take place December 31, 1997. The applicant represents that the Sale will enable the Plans invested in the Fund and their affected participants and beneficiaries to realize immediately the future Rehab Plan payments with respect to the GICs without awaiting the four years which is estimated for complete payment under the Rehab Plan. The applicant represents that the Fund and the Plans will not incur any costs or expenses with respect to the sale transaction. In the event the Bank should receive future payments on behalf of the GICs in excess of the purchase price of $12,061.00, such excess amounts shall be transferred to the Fund.

The applicant represents that the valuation methodologies used to determine the projected future payments on the GICs have been reviewed and accepted by the Michigan Insurance Commissioner, the Circuit Court of Ingham County, Michigan, the National Organization of Life and Health Guaranty Associations, and ACLIC, an organization of large financial institutions and plan sponsors that invested in CL GICs.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash; (b) the transaction will enable the Fund to avoid the additional administrative costs that will be experienced from retention of the Fund's remaining interests in the GICs; (c) no costs or expenses will be incurred by the Fund with respect to the Sale; (d) the plans participating in the Fund, and their participants and beneficiaries, will receive promptly all anticipated amounts owed by CL rather than over an anticipated next four years; and (e) any future distributions from the GICs that exceed the consideration paid to the Fund by the Bank in the Sale shall be paid to the Fund and allocated to the accounts of the Plans invested in the Fund at the time of the Sale.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Hawaii Laborers' Apprenticeship and Training Trust Fund (the Trust Fund)

[Application No. L–10485]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Laborers International Union of North America, Local 368, AFL–CIO (a/k/a the Hawaii Laborers Union), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The purchase of the Property by the Trust Fund is a one-time transaction for cash;

(b) The Trust Fund pays no more than the lesser of: (i) $1,570,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the Hawaii Laborers Union or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund does not pay any commissions or other expenses with respect to the transaction;

(e) The Hawaiian Trust Company, Ltd. (Hawaiian Trust), acting as an independent, qualified fiduciary for the Trust Fund, determines that the proposed transaction is in the best interest of the Trust Fund and its participants and beneficiaries;

(f) Hawaiian Trust monitors various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and takes whatever action is necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Summary of Facts and Representations

1. The Trust Fund is an apprenticeship training plan the assets of which are subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Trust Fund is also established and administered pursuant to the provisions of section 302 of the Labor Management Relations Act of 1947. Currently, there are approximately 2800 participants and beneficiaries covered by the Trust Fund. As of May 1997, the Trust Fund had total assets of $6,221,075.

2. The Property is a parcel of unimproved real property located at 96–150 Farrington Highway in Waiawa on the island of Oahu in the State of Hawaii. The Property is currently owned by the Hawaii Laborers' Union (the Union).

The Property is an irregularly shaped parcel with a gross land area of 3,981 acres or approximately 173,412 square feet. Approximately, 40,000 square feet of the Property is adjacent to the Waiawa Stream and is considered unusable for development. Thus, the usable portion of the Property represents approximately 133,412 square feet. The Property is

undeveloped and partially overgrown with trees and shrubs along its perimeter. The interior portions of the Property are terraced, due to varying topography, with open yard areas.

The Property was recently re-zoned as an I–2 Intensive Industrial District. In this regard, the I–2 zoning designation is intended to set aside areas of Waiawa for a full range of industrial uses necessary to support the city. The applicant states that the current zoning designation will allow for the planned construction of a building to be used as a training school for participants in the Hawaii Laborers' Union apprenticeship and training plan (see Paragraph 3 below). The Property is located at the fringe of the Pearl City commercial area and is in close proximity to major freeways in Waiawa. Real estate appraisals of the Property state that an industrial complex which maximizes allowed density would represent the highest and best use of the site.

3. The applicant states that the Trust Fund's trustees (the Fund Trustees) would like to have the Trust Fund purchase the Property from the Union, a party in interest with respect to the Trust Fund. The proposed transaction would allow the Trust Fund to construct a building on the Property for use as a training facility for the Trust Fund's participants. At the present time, training classes are being held in temporary quarters—10 by 40 foot trailers—which limit the amount of students per class. The Fund Trustees believe that the Property is an ideal location for a training facility.

Current plans call for the construction of a three-story building (the Building), which will house six classrooms, a multi-purpose room, a kitchen, restrooms, and storage areas. In addition, a dormitory for neighboring island students and caretaker's quarters will be located on the second floor of the Building. The third floor of the Building will accommodate the administrative offices. The Building would be designed to meet the applicable zoning specifications.

The Building will provide a permanent facility for classrooms and "hands-on" training for laborer employment in various construction trades as well as housing accommodations for trainees from the neighboring islands. The Trust Fund currently lodges the trainees in hotels, which is fairly expensive for the Trust Fund.[26]

[26] The Department is providing no opinion in this proposed exemption as to whether the current expenditures made by the Trust Fund for providing training, or whether future expenditures to be made by the Trust Fund for the construction of the Building and for the maintenance of the Building as a training facility, are or will be consistent with the fiduciary responsibilities contained in Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan and its participants and beneficiaries when providing benefits to such participants and beneficiaries and defraying reasonable expenses of administering the plan.

The applicant states that if the Trust Fund is unable to purchase the Property, it will have to consider other locations which are more expensive and possibly not as conducive to the activities for the proposed training facility. According to information supplied by independent real estate appraisers,[27] the cost of purchasing a similarly sized property suitable to the Trust Fund would be almost twice the cost of the proposed transaction. Thus, the applicant represents that if the Trust Fund is unable to proceed with the proposed transaction, and if no other affordable properties are available, the Trust Fund's existence may be in jeopardy.

4. The Property was appraised by James E. Hallstrom, Jr., MAI, SRA, of The Hallstrom Group, Inc. (Hallstrom), a real estate consultant and appraisal firm located in Honolulu, Hawaii. Hallstrom determined that the fair market value of the net usable area (*i.e.*, approximately 133,412 square feet) of the Property was approximately $1,570,000, as of January 31, 1997. Thus, based on Hallstrom's appraisal, the unusable portion of the Property does not add any value to the Property. The applicant states that in the proposed transaction the Trust Fund would not pay any additional amount to acquire this portion of the Property.

Hallstrom utilized a sales comparison methodology in valuing the Property. Hallstrom compared the Property with recent sales of four other industrial zoned properties, all within immediate and/or competitive market areas of the Property. In order to equate these four transactions with the Property, Hallstrom made adjustments for various comparative factors including appreciation/depreciation over time, location, zoning, frontage/access, off-site improvements, current easements and restrictions,[28] physical characteristics, and size. After making the necessary adjustments, Hallstrom concluded that the unencumbered fee simple interest in the Property would have a fair market value of approximately $11.75 per usable square foot, which would be rounded to a total of approximately $1,570,000. Hallstrom also concluded that an industrial complex, such as the Trust Fund's proposed training facility, would represent the highest and best use of the Property.

[27] Other sites, as stated by The Hallstrom Group, Inc. (the Trust Fund's real estate appraiser for the Property as discussed in Paragraph 4 above) were valued at $40 per square foot, $37.85 per square foot, $24.73 per square foot, and $31 per square foot, whereas the Property was determined to be $11.75 per usable square foot. In addition, Art Balmaceda of Prudent Investors' Choice Realty Inc., an independent realtor in Honolulu, Hawaii, investigated two other properties for the Trust Fund. One property was 97,936 square feet (approximately 73 percent of the size of the Property) and valued at $2.5 million or $25.53 per square foot. The other property, which was approximately 7.52 acres and valued at $8.9 million, was too expensive for the Trust Fund.

[28] Hallstrom's appraisal notes that there is a 12-foot wide easement, in favor of the Hawaiian Electric Company, for power poles and overhead electrical wires. However, the Hawaiian Electric Company is currently negotiating with the Trust Fund to cancel the existing easement and relocate it so as not to interfere with the proposed Building.

5. The Union has agreed to sell the Property to the Trust Fund for $1,570,000 in cash, subject to the review and approval of an independent fiduciary (see Paragraph 6 below). The parties will obtain an updated appraisal of the Property from Hallstrom at the time of the proposed transaction to ensure that the appraised amount (*i.e.*, $1,570,000) still reflects the fair market value of the Property at that time. The parties have agreed that the Trust Fund will pay the lesser of either: (i) $1,570,000, or (ii) the fair market value of the Property at the time of the transaction. In addition, the applicant states that the Trust Fund will not pay any commissions, transaction costs, or other expenses associated with the sale of the Property by the Union, other than the fees necessary for services of the Trust Fund's independent fiduciary, Hawaiian Trust. Thus, the Union will pay, among other things, the costs of the title search and title insurance premiums, the cost of recording the deeds conveying title to the Property to the Plan, all sales and transfer taxes (including the conveyance tax), the escrow fees, and the cost of Hallstrom's appraisal.

6. Hawaiian Trust has been appointed by the Fund Trustees to act as an independent fiduciary for the Trust Fund for purposes of the proposed transaction. Hawaiian Trust represents that it is a trust company organized under the laws of Hawaii and that it exercises fiduciary powers similar to those of national banks. Hawaiian Trust states that it is an experienced fiduciary in matters concerning employee benefit plans subject to the Act and is also experienced with real estate transactions and investments. Hawaiian Trust acknowledges its duties, responsibilities and liabilities in acting as a fiduciary for the Trust Fund for purposes of the proposed transaction.

Hawaiian Trust represents that it is an independent fiduciary and not an affiliate of, or related to, the entities involved in the subject transaction. In this regard, Hawaiian Trust certifies that: (i) less than one (1) percent of its total deposits, or outstanding loans, are attributable to the deposits of, or loans to, the Union and its affiliates; and (ii) less than one (1) percent of its annual income (measured on the basis of the prior year's income) comes from business derived from the Union and its affiliates.

7. Hawaiian Trust has reviewed all of the terms and conditions of the proposed purchase of the Property by the Trust Fund. Hawaiian Trust's review and analysis included an on-site inspection of the Property as well as meetings with the appraiser, Hallstrom, and a thorough review of their most recent appraisal of the Property. Hawaiian Trust states that Hallstrom's appraisal has considered all of the factors necessary to accurately determine the fair market value of the Property, including its location vis-a-vis Waiawa Stream, the Hawaiian Electric Company's easement, the applicable zoning restrictions for industrial usage, the Property's accessibility to the Farrington Highway, and the offsite improvements surrounding the Property.

Based of this review and analysis, Hawaiian Trust concludes that the proposed transaction would be in the best interests of the Trust Fund and its participants and beneficiaries. In this regard, Hawaiian Trust states that the purchase of the Property would be a prudent transaction taking into consideration that the Trust Fund will be using this site as a training facility. Hawaiian Trust states that the agreed upon purchase price of $1,570,000, based on the Hallstrom appraisal, accurately reflects the current market value of the Property.

Hawaiian Trust states further that it will monitor the proposed purchase of the Property by the Trust Fund and will take whatever actions are necessary to protect the interests of the Trust Fund's participants and beneficiaries with regard to the transaction. To this end, Hawaiian Trust represents that it will ensure that the current appraisal of the Property is updated at the time of the transaction and that the Trust Fund pays no more than the fair market value of the Property. Hawaiian Trust will also ensure that the purchase price paid by the Trust Fund represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

Hawaiian Trust represents that the Trust Fund will be able to meet all of its current expenses after the proposed transaction and that the transaction will not adversely affect the Trust Fund's liquidity needs. By letter dated August 22, 1997, Hawaiian Trust states that it has reviewed the Trust Fund's most recent financial information, including audited financial reports for the past six years, budget and financial statements for the last three full years, and the revised budget for the current plan year through July 31, 1997. In addition, Hawaiian Trust states that it spoke with the Trust Fund's Investment Manager, Brian H. Morikuni of T.M. Hogan, Inc., regarding the latest asset valuations and investment earnings. These valuations show that the proposed purchase price of $1.57 million should be less than 25 percent of the Trust Fund's total assets as of December 1997 (the projected time of closing).

Hawaiian Trust is responsible for ensuring that inspections of the Property are conducted by appropriate professionals prior to the transaction. These inspections will ensure that there are no hidden or unapparent surface or subsurface conditions on the Property—including soils, subsoils, geologic formulations, ground water or drainage conditions—that would adversely affect improvements and the value of the Property. Hawaiian Trust will review the latest soil analysis [29] and environmental assessment [30] (Phase I) reports for the Property, prior to the proposed transaction. In the event that there are significant environmental concerns regarding the Property (e.g. groundwater contamination exceeding State or Federal standards), Hawaiian Trust will not approve the proposed purchase of the Property by the Trust Fund. Hawaiian Trust will also verify the cancellation of the Hawaiian Electric Company's easement (see Footnote 2 herein) prior to the transaction. Finally, Hawaiian Trust represents that it will continue to review and monitor the proposed transaction until closing to ensure that the transaction is in the best interests of the participants and beneficiaries of the Trust Fund.

[29] C.W. Associates, Inc. d/b/a GeoLabs-Hawaii (GeoLabs), a geotechnical engineering firm in Honolulu, Hawaii, was hired to conduct a soil analysis of the Property. An October 14, 1997 letter from GeoLabs states that the Property will support the proposed Building utilizing spread footing foundations.

[30] M&E Pacific, Inc. (M&E), an independent, qualified environmental assessment firm located in Honolulu, Hawaii, has conducted a Phase I report, as of October 1997. The purpose of the Phase I report was to inventory the presence of potential on-site hazardous waste or hazardous substance contamination (e.g. hydrocarbons), and to detect potential noncompliance in relation to current and past activities conducted on or adjacent to the Property. According to the findings of M&E, there is no physical evidence of environmental concerns regarding the Property. However, two previous petroleum pipeline spills have been documented in the vicinity of the Property. Thus, M&E recommends further groundwater sampling on the southern boundary of the Property to determine the extent of any contamination.

In this regard, Hawaiian Trust will ensure that appropriate groundwater sampling tests are conducted prior to the transaction.

8. In summary, the applicant states that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase of the Property by the Trust Fund will be a one-time transaction for cash; (b) the Trust Fund will pay no more than the lesser of either $1,570,000, or the fair market value of the Property as determined at the time of the transaction; (c) the fair market value of the Property will be established by an independent, qualified real estate appraiser; (d) the Trust Fund will not pay any commissions or other expenses with respect to the transaction, other than the services of an independent fiduciary (as described herein); (e) Hawaiian Trust, acting as the Trust Fund's independent fiduciary, has determined that the proposed transaction would be in the best interest of the Trust Fund and its participants and beneficiaries; (f) Hawaiian Trust will monitor the proposed transaction and will take whatever actions are necessary to protect the interests of the Trust Fund; and (g) the purchase price paid by the Trust Fund for the Property will represent no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of November, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–30826 Filed 11–21–97; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 8, 1997, from 10 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room H130.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Update—Electronic Records Task Force

Report—Abraham Lincoln Commemoration

Report—Project 2000 Proposals

Update—Center for Legislative Archives

Other current issues and new business

The meeting is open to the public.

Dated: November 18, 1997.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 97–30797 Filed 11–21–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held on Thursday, December 11, 1997, from 9:30 a.m. to 11:30 a.m. The Business Session will be held at the Department of State, 2101 C Street NW., Washington, DC. The Executive Session will be held at the Old Executive Office Building, 16th and Pennsylvania Avenue NW., Washington, DC. The agenda is as follows:

—Call to Order/Welcoming Remarks

—Eligible Receiver

—NCS Manager's Report

—IES Report of Activities

—PCCIP Report

—Industry Executive Subcommittee (IES) Reports

—Summary of Work Plan Accomplishments

—IATF/IIG Infrastructure Assessments

—Recommendations to the NSTAC Principals

—Adjournment

The meeting is classified at the SECRET level. Due to the sensitive nature of the issues listed above, the meeting will be closed to the public in the interest of national defense.

FOR FURTHER INFORMATION: Please contact Ms. Janet Jefferson (703) 607–6209 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

Chief, Technology and Standards.

[FR Doc. 97–30804 Filed 11–21–97; 8:45 am]

BILLING CODE 8000–03–M

NATIONAL CREDIT UNION ADMINISTRATION

Information Collection; Comment Request for Reinstatement

DATES: November 24, 1997.

The National Credit Union Administration (NCUA) intends to submit the following public information collection request to the Office of Management and Budget (OMB) for review and reinstatement under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. Public comments are encouraged and will be accepted until January 23, 1998.

Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Betty May, (703–518–6414). Comments and/or suggestions regarding the information collection request should be directed to Mrs. May at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433; e-mail address: bettym@ncua.gov within 60 days from the date of this publication in the **Federal Register**.

OMB Number: 3133–0015.

Form Number: 4000, 4001, 4008, 4012, 4015, 4016, 4401, 9500, 9600.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Federal Credit Union Charter Application and Field of Membership Amendments.

Description: The Federal Credit Union Act sets forth the requirements for establishing a credit union based on a type of field of membership. The data collection is necessary to determine that the application for the charter/amendment is in compliance with the FCU Act. Respondents are credit union officials or applicants for credit union charters.

Respondents:

Estimated No. of Respondents/Recordkeepers: 5725.

Estimated Burden Hours Per Response: 3.6.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 20,303.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 14, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30785 Filed 11–21–97; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

Time and Date: 2:13 p.m., Monday, November 17, 1997.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Status: Closed.

Matter Considered: 1. Matters Relating to OPM Report. Closed pursuant to exemptions (2) and (6).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30873 Filed 11–19–97; 4:26 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on December 9 and 10, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, December 9, 1997—8:30 a.m. until the conclusion of business

Wednesday, December 10, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the results of the Westinghouse Test and Analysis Program being conducted in support of the AP600 design certification. Specifically, the Subcommittee will continue its review of the Westinghouse Phenomena Identification and Ranking Table (PIRT) and Scaling Report pertaining to the AP600 primary system. The Subcommittee will also continue its review of the use of the NOTRUMP code for small-break LOCA analyses. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 18, 1997.

Amarjit Singh,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 97–30779 Filed 11–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on December 11 and 12, 1997, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss Westinghouse Electric Corporation proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, December 11, 1997—8:30 a.m. until the conclusion of business

Friday, December 12, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the results of the Westinghouse Test and Analysis Program being conducted in support of the AP600 design certification. Specifically, the Subcommittee will continue its review of the Westinghouse WGOTHIC code for its application to the Passive Containment System safety analysis. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 18, 1997.

Amarjit Singh,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 97–30780 Filed 11–21–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Management of Radioactive Material Safety Programs at Medical Facilities: Availability of NUREG

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U. S. Nuclear Regulatory Commission is announcing the availability of NUREG–1516: "Management of Radioactive Material Safety Programs at Medical Facilities," dated May 1997.

ADDRESSES: Copies of NUREG–1516 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Susanne Woods, Mail Stop TWFN 8–F5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7267.

DESCRIPTION AND SUPPLEMENTARY INFORMATION: On February 13, 1995 (60 FR 8259), NRC announced the availability of Draft NUREG–1516: "Management of Radioactive Material Safety Programs at Medical Facilities," dated January 1995, and requested comments on the document. During preparation of the final NUREG report, the staff considered all the comments, to improve the document.

The final version of NUREG–1516 is now available for use by license applicants, licensees, and NRC staff. The report represents the collective work of a number of staff, with input from two representatives from Agreement States. During various stages of development, the authors received additional input from professional organizations and the Agreement States through presentation and peer review.

NUREG–1516 represents guidance on mechanisms and tools for managing radiation safety programs at medical facilities licensed by either NRC or Agreement States. The guidance describes a systematic approach for effectively managing radiation safety programs by defining the roles of an institution's executive management, radiation safety officer (RSO), and radiation safety committee, if required. Various aspects of program management are discussed and guidance is offered in the following areas: selecting an RSO; determining adequate program resources; using contractual services such as consultants and service companies; conducting program audits; and clarifying the roles of both physician authorized users and supervised individuals.

Current NRC reporting and notification requirements are outlined and a general description is given for how NRC licensing, inspection, and enforcement programs are presently conducted. The NUREG does not describe new or proposed regulations, and licensees are not required to adhere to the principles presented in the document. Rather, this should be viewed as a practical guide to present a management approach and describe management tools that regulatory agencies have observed to be effective for managing a radiation safety program at a medical facility, using current regulatory requirements. The radiation safety principles and practices in NUREG–1516 are specifically directed toward the safe use of byproduct radioactive material; however, the universal applicability of these principles and practices may be helpful to individuals, managing the safe uses of radiation in medicine, who are not mentioned in the NUREG.

Small Business and Regulatory Enforcement Fairness Act

In accordance with the Small Business and Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 12th day of November, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–30778 Filed 11–21–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Notice

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on October 1, 1997 (62 FR 51494). Individual authorities established or revoked under Schedules A and B and established under Schedule C between September 1, 1997, and September 30, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during September 1997.

The following Schedule A authority was revoked during September 1997:

Commission on Civil Rights

Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Schedule B

No Schedule B authorities were established or revoked during September 1997.

Schedule C

The following Schedule C authorities were established during September 1997:

Commission on Civil Rights

Deputy General Counsel to the General Counsel, Office of the General Counsel. Effective September 11, 1997.

Department of Agriculture

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 5, 1997.

Confidential Assistant to the Under Secretary for Research, ducation and Economics. Effective September 9, 1997.

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 17, 1997.

Special Assistant to the Administrator, Food and Consumer Service. Effective September 17, 1997.

Confidential Assistant to the Administrator, Farm Service Agency. Effective September 17, 1997.

Staff Assistant to the Deputy Chief of Staff, Office of the Secretary. Effective September 19, 1997.

Confidential Assistant to the Under Secretary for Research, Education and Economics. Effective September 25, 1997.

Confidential Assistant to the Deputy Administrator for Special Nutrition Programs, Food and Consumer Service. Effective September 26, 1997.

Staff Assistant to the Chief of Staff, Office of the Secretary. Effective September 26, 1997.

Special Assistant to the Administrator, Farm Service Agency. Effective September 30, 1997.

Department of Commerce

Director, Secretariat for Electronic Commerce to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective September 17, 1997.

Department of Defense

Staff Assistant to the Secretary of Defense. Effective September 11, 1997.

Protocol Specialist to the Secretary of Defense. Effective September 11, 1997.

Program Analyst to the Deputy Under Secretary (Environmental Security). Effective September 24, 1997.

Department of Education

Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective September 10, 1997.

Director, Intergovernmental and Interagency Affairs Coordination to the Deputy Assistant Secretary, Intergovernmental and Constituent Relations. Effective September 10, 1997.

Deputy Director for Policy and Programs to the Director, Office of Bilingual Education and Minority Language Affairs. Effective September 12, 1997.

Deputy Director for Administration and Management to the Director, Office of Bilingual Education and Minority Language Affairs. Effective September 12, 1997.

Special Assistant to the Assistant Secretary, OPE. Effective September 29, 1997.

Department of Energy

Staff Assistant to the Director, Office of Civilian Radioactive Waste Management. Effective September 11, 1997.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective September 12, 1997.

Special Assistant for Energy Security and International Issues to the Assistant Secretary for Fossil Energy. Effective September 25, 1997.

Special Assistant to the Director, Office of Worker and Community Transition. Effective September 25, 1997.

Staff Assistant to the Special Assistant and Acting Assistant Secretary of Policy and International Affairs. Effective September 25, 1997.

Department of Health and Human Services

Director of Scheduling to the Chief of Staff, Office of the Secretary. Effective September 24, 1997.

Special Assistant to the Director of Intergovernmental Affairs to the Director, Office of Intergovernmental Affairs. Effective September 26, 1997.

Special Assistant to the Assistant Secretary for Children and Families. Effective September 30, 1997.

Department of the Interior

Special Assistant to the Director, Office of Surface Mining, Office of the Director. Effective September 5, 1997.

Special Assistant to the Director, Bureau of Land Mines. Effective September 12, 1997.

Special Assistant to the Chief of Staff. Effective September 17, 1997.

Department of Justice

Senior Advisor to the Director, Community Oriented Policing Services. Effective September 26, 1997.

Department of State

Special Assistant to the Deputy Director. Effective September 3, 1997.

Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective September 12, 1997.

Protocol Specialist to the Chief of Protocol. Effective September 23, 1997.

Federal Energy Regulatory Commission

Special Assistant to the Director, Office of External Affairs. Effective September 4, 1997.

Federal Housing Finance Board

Special Assistant to the Chairman. Effective September 5, 1997.

Federal Mediation and Conciliation Service

Chief of Staff to the Director, Federal Mediation and Conciliation Service. Effective September 18, 1997.

Federal Mine Safety and Health Review Commission

Attorney Advisor to the Commissioner. Effective September 26, 1997.

National Aeronautics and Space Administration

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective September 9, 1997.

Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs. Effective September 23, 1997.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director for Science. Effective September 5, 1997.

Small Business Administration

Senior Advisor to the Associate Administrator for Communications and Public Liaison. Effective September 19, 1997.

Senior Advisor to the Associate Deputy Administrator. Effective September 19, 1997.

U.S. Arms Control and Disarmament Agency

Special Assistant and Speechwriter to the Director, United States Arms Control

and Disarmament Agency. Effective September 10, 1997.

United States Information Agency

Director, Office of Congressional and External Affairs to the Director, International Broadcasting Bureau. Effective September 25, 1997.

United States Tax Court

Trial Clerk to a Judge. Effective September 11, 1997.
Trial Clerk to a Judge. Effective September 11, 1997.
Trial Clerk to a Judge. Effective September 11, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

[FR Doc. 97–30718 Filed 11–21–97; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 29, File No. 270–169, OMB Control No. 3235–0149
Rule 83, File No. 270–82, OMB Control No. 3235–0131

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 29 [17 CFR 250.29] states that "[a] copy of each annual report submitted by an registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after such submission." The Commission receives about 62 annual reports per year under this regulation, which imposes an annual burden of about 15.5 hours.

Rule 83 [17 CFR 250.83] authorizes an exemption from the "at cost" requirements of Section 13(b) for "the performance of any service, sales, or construction contract for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States * * *." The Commission receives about one application per year under Rule 83, which imposes an annual burden of about three hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

It should be noted that "an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number."

Written comments regarding the above information shall be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30722 Filed 11–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39331; File No. SR–CBOE–97–56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Elimination of the Prohibition on the Use of Headsets and Other Telephone Technology

November 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On November 3, 1997, the CBOE filed Amendment No. 1 to its proposal.[3] On November 13, 1997, the CBOE submitted a letter clarifying its ability to surveil the use of telephone headsets on its trading floors.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to eliminate certain restrictions on the types of telephones that may be used at the trading posts for equity options and options on the Standard & Poor's 100 Index ("OEX"). The text of the proposed rule change and Amendment No. 1 is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the prohibitions on certain types of telephones that may be used by members at the equity option posts and at the OEX trading post. The Exchange's phone policy for the OEX option trading post is reflected in Regulatory Circular RG 96–73, and the Exchange's phone policy for the equity option trading post is contained in Regulatory Circulars RG 94–26 and RG 97–03.

The Exchange is proposing to eliminate the current prohibition on the use of headsets and cellular telephones at both the equity and the OEX option trading posts. The Exchange no longer sees a regulatory reason for continuing to impose these specific prohibitions. The Exchange believes that its customary floor surveillance procedures and the monitoring of trading activities of a member, after a call, by other self-interested members of the trading post are sufficient. In place of prohibiting the use of these types of telephones, the Exchange will issue a circular to its members stating that "the Exchange may disapprove the use of any type of telephone technology that interferes with the normal operation of the Exchange's own systems or facilities or that the Exchange determines interferes with its regulatory duties." The Exchange believes this constitutes a clarification of the authority the Exchange already exercises under Exchange Rule 6.23 which permits the Exchange to "direct the discontinuance of any communication facility terminating on the floor of the Exchange." Pursuant to Rule 6.23, the Exchange will continue to prohibit the use of cellular telephones. In addition to distributing the circular, the Exchange will redistribute a revised version of the OEX and equity option post telephone circulars with the change in the policy indicated. As under the current policies, the CBOE's members wishing to establish a telephone line on the floor must first receive approval of the Exchange or the appropriate Floor Procedure Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[5] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange believes that the elimination of the prohibition on headsets and other telephone technology is consistent with these objectives in that it is designed to improve communication to and from the Exchange's trading floor in a manner that prevents fraudulent and manipulative acts and practices and maintains fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should filed six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–56 and should be submitted by December 15, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes the Exchange's proposal to eliminate the per se prohibition on headsets and other telephone technology is consistent with Section 6(b)(5) of the Act.[7] Approval of this rule change permits the CBOE to extend the use of established headset communications equipment to the OEX and equity trading areas.[8] The Commission believes that the Exchange continues to have sufficient authority to regulate and restrict the use of communication devices on its floor under Exchange Rule 6.23 and the phone line approval process in the Exchange's Regulatory Circulars. The Commission also believes that the CBOE has adequately represented its ability to surveil the use of headset communications equipment.

The Commission nonetheless encourages the Exchange to consider the adoption of more comprehensive guidelines in the area of communications equipment approval. The current CBOE telephone policies rely upon the ability to: (1) Approve new telephone lines; and (2) restrict the use of communication devices on its floor, pursuant to Exchange Rule 6.23. This creates a potential loophole whereby a novel communications device could be brought on to the floor, without Exchange approval, if the device did not rely on a "telephone line" and had not been clearly restricted pursuant to Exchange Rule 6.23.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This immediate impact of the proposal is to allow the CBOE's members to utilize headsets that are provided within the Exchange's new Ericsson wireless telephone system. As noted above, this system is currently in use in other trading crowds on the Exchange. Accelerated approval will allow the incorporation of this new technology on the OEX and equity trading posts without further delay. For the foregoing reasons, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change [SR–CBOE–97–

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE added a sentance to clarify that the immediate impact of the rule change will be to allow members in the Standard & Poor's 100 index pit and in equity pits to use headsets that are being provided with the Exchange's new Ericsson wireless telephone system. See Letter from Timothy Thompson, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated October 31, 1997.

[4] See Letter from Timothy Thompson, Senior Attorney, CBOE, to Jerome Roche, Law Clerk, Division of Market Regulation, SEC, dated November 13, 1997.

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(b)(5).

[7] U.S.C. 78f(b)(5).

[8] Headsets are currently being used at the trading posts for options on the Standard & Poor's 500 Index ("SPX") and the Dow Jones Industrial 30 Index ("DJX") without any reported problems. Telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Mike Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, on October 30, 1997.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78s(b)(2).

56), including Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30721 Filed 11–21–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39332; File No. SR–PHLX–97–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Options Trading Rotations

November 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 23, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Act, the PHLX proposes to amend PHLX Rule 1047, "Trading Rotations, Halts and Suspensions," to (1) Emphasize that opening rotations are conducted daily; (2) replace references to "the Exchange" with references to "two Floor Officials and a Market Regulation officer" throughout PHLX Rule 1047; (3) delete references in PHLX Rule 1047, Commentary .01 (a) and (d) to puts and calls trading on the same security; (4) define modified, reverse and shotgun rotations in PHLX Rule 1047, Commentary .01(b); (5) require reverse rotations where there is a heavy influx of orders, unless exempted by two Floor Officials with the concurrence of a PHLX Market Regulation officer, approve second and subsequent rotations; (7) provide that, with the approval of two Floor Officials and the concurrence of a PHLX Market Regulation officer, modified rotations (other than a reverse or shotgun rotation) can be employed where there is a delayed opening, halt or suspension in trading or other unusual market conditions; and (8) regarding closing rotations at expiration, add "or at an earlier time, with the concurrence of a Market Regulation officer," to allow the closing rotation at expiration to begin other than after the option normally ceases trading (4:02 p.m.).

The PHLX proposes to make comparable changes to PHLX Rule 1047A, "Trading Rotations, Halts or Reopenings," regarding index options, and to Floor Procedure Advice ("Advice") G–2, "Trading Rotations, Halts or Reopenings."[1] Because PHLX Rule 1047A(b) refers directly to PHLX Rule 1047, Commentary .01,[2] most of the above-described amendments will apply to index options trading. For PHLX Rule 1047A(a)(ii), (c), (d), and (f), and for the corresponding paragraphs of Advice G–2, the PHLX proposes to replace references to "the Exchange" with references to "two Floor Officials and a Market Regulation officer." Under PHLX Rule 1047A(e), closing rotations for expiring index options are not required, nor are they prohibited.[3]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PHLX Rule 1047 governs options trading rotations[4] (including opening rotations), delayed openings, halts or suspensions in trading, reopenings and closing rotations. Trading rotations are intended to produce fair and orderly markets by fairly setting opening prices, taking into account orders and bids/offers on the book and in the trading crowd. The Exchange has considered the types of opening rotations that should be permitted or required in order to reduce the length of option openings, especially in unusual circumstances, and to prevent subsequent rotations. The purpose of the proposed rule change is to improve the efficiency of option openings. PHLX Rule 1047A is the corresponding rule governing index options trading.

First, the Exchange proposes to amend PHLX Rule 1047(a) to emphasize that opening rotations are conducted daily, as opposed to closing rotations, which are conducted only at expiration. This change is designed to clarify PHLX Rule 1047(a).

Second, the Exchange proposes to replace "the Exchange" with "two Floor Officials and a Market Regulation officer" throughout PHLX Rule 1047. This term originated in a comparable rule of the American Stock Exchange, but lacks specificity and does not reflect that, in reality, the approval of two Floor Officials is received. The Exchange believes that trading rotations present the types of issues and need for prompt determinations that are particularly suited for Floor Official approval.[5] The purpose of adding an Exchange officer is to trigger proper notification of the approval and further encourage prompt openings. It should also enable Exchange staff to better monitor the conditions giving rise to rotation-related Floor Official approval.

Third, the Exchange proposes to delete references in PHLX Rule 1047, Commentary .01(a) and (d) to puts and calls trading on the same security. The purpose of this change is to recognize that almost without exception, both puts and calls trade respecting all Exchange options, such that the preface "if" is confusing. The remainder of Commentary .01(a) states that the Specialist shall determine which type of option should open first, and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions. The proposal adds the language "except as provided below" to emphasize that PHLX Rule 1047.01(b), for example, contains exceptions to these normal rotation procedures.

Fourth, the Exchange proposes to define modified rotations in Commentary .01(b) to include reverse and shotgun rotations. Currently, Commentary .01(b) defines a modified rotation as an opening rotation where each option series opens in the same manner and sequence as during a regular trading rotation,[6] but is permitted to freely trade once all option series with the same expiration month have been opened. The proposal is intended to correct PHLX Rule 1047 to reflect that this description refers to a type of modified rotation, a shotgun rotation. Further, the PHLX proposes to add a definition of a reverse rotation, stating that it involves opening the series with the most distant expiration first, proceeding to the next nearest expiration, and so forth, ending with the nearest expiration, until all series have been opened. Thus, the proposal is designed to update PHLX Rule 1047 to define rotations more thoroughly.

Fifth, the Exchange proposes to amend PHLX Rule 1047, Commentary .01(b)(ii) to require reverse rotations where there is a heavy influx of orders, unless exempted by two Floor Officials with the concurrence of a PHLX Market Regulation officer. Because a reverse rotation opens the most distant expiration first, it is intended to help decrease the number of rotations and result in more prompt openings. Specifically, most order flow and open interest is generally in the nearest months, such that starting with the nearest months and ending with the most distant often results in opening free trading with the most active months (the nearest) being outdated, which, in turn creates the need for subsequent rotations to update those first-rotated months. For purposes of this provision, a heavy influx of orders will be determined on a case-by-case basis, in light of order flow through the PHLX's Automated Options Market ("AUTOM") system, the number of floor brokers in the trading crowd indicating handheld orders for the opening, and the number of orders placed on the book, relative to normal conditions for that option.

Sixth, the Exchange proposes to amend PHLX Rule 1047, Commentary .01(b)(ii) to require that two Floor Officials, with the concurrence of a PHLX Market Regulation officer, approve second and subsequent rotations to ensure that they occur only when warranted, because of the additional delay in opening free trading. Subsequent rotations are conducted in situations, including the influx of near-month order flow described above, where the rotation was so time-consuming that certain series, such as those earlier in the rotation, become inundated with additional order flow or become priced incorrectly, as the underlying stock price changes. Currently, PHLX Rule 1047 does not refer to or prohibit more than one rotation. The purpose of this change is to expressly permit additional rotations, but to require Floor Official approval to ensure proper and limited use.

Seventh, the PHLX proposes to amend PHLX Rule 1047, Commentary .01(b) to provide that modified rotations (other than a reverse or shotgun) can be employed where there is a delayed opening, halt or suspension in trading or other unusual market conditions, with the approval of two Floor Officials and the concurrence of a PHLX Market Regulation officer. This is intended to facilitate a prompt opening by permitting, although not requiring, a modified rotation in response to certain market conditions. Floor Officials' approval should ensure that expedited rotations are employed where warranted. Specialists could thus conduct rotations other than those defined in PHLX Rule 1047 (shotgun and reverse rotations), which may be appropriate in certain situations.[7]

Lastly, the Exchange proposes to amend the provision regarding equity option closing rotations at expiration. PHLX Rule 1047, Commentary .01(d) provides that when the PHLX's Options Committee decides to conduct a closing rotation on the trading day prior to expiration in an equity option for which the underlying did not trade, the rotation must commence as immediately as practicable following the time at which the option normally ceases free trading (4:02 p.m.). The proposal adds "or at an earlier time, with the concurrence of a Market Regulation officer," similar to other option exchanges,[8] which have conducted such rotations during the trading day. In certain situations, such as where an underlying stock has not traded for a length of time, where there is little likelihood that such stock will reopen that day, it would be more orderly to conduct the closing rotation during the trading day. The time after the close of trading is particularly hectic, due to that confirmation of all trading activity and the preparation of exercise decisions, among other things. The Exchange notes that notification of such an earlier rotation would take place, in accordance with this provision.

According to the PHLX, the Commission previously has acknowledged the importance of prompt and efficient openings, which decrease the amount of time required to obtain market quotes and allow free trading to commence as quickly as possible after the opening.[9] This, in turn, should allow market participants to engage in option strategies promptly after opening and also should facilitate the prompt execution of customer orders. Further, the Commission has acknowledged that permitting Floor Officials to authorize deviations from normal operating procedures may be appropriate, because it facilitates a prompt response to market conditions.[10] The current proposal is intended to promote prompt and efficient openings by updating PHLX rules 1047 and 1047A, and Advice G–2.

For these reasons, the PHLX believes that the proposal is consistent with Section 6 of the Act, in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest, by improving the efficiency of option openings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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[11] 17 CFR 200.30–3(a)(12).

[1] Advice G–2 does not contain a fine schedule. Accordingly, the proposal does not affect the Exchange's minor rule violation enforcement and reporting plan.

[2] PHLX Rule 1047A(b) allows specialists to conduct a rotation in accordance with PHLX Rule 1047, Commentary .01 (b) and (c).

[3] See also CBOE Rule 6.2, Interpretation .03 (closing rotation for expiring index options is not ordinarily employed).

[4] A trading rotation is a series of brief time periods during which bids, offers and transactions in only specified series can be made.

[5] See Securities Exchange Act Release No. 35742 (May 19, 1995), 60 FR 28188 (May 30, 1995) (order approving File No. SR–CBOE–95–04) ("CBOE Approval Order").

[6] PHLX Rule 1047, Commentary .01(a) describes a regular trading rotation as opening the series with the nearest expiration, proceeding to the next most distant expiration, and so forth, until all series have been opened.

[7] See also CBOE Rule 6.2, Interpretation .04 (allowing for abbreviated rotations).

[8] See CBOE rule 6.2, Interpretation .03 (requiring a closing rotation for each series of individual stock options on the last business day prior to expiration, commencing at the later of 3:10 p.m. Chicago time or after a closing price of the stock in its primary market is established).

[9] See Securities Exchange Act Release No. 29869 (October 28, 1991), 56 FR 56537 (November 5, 1991) (order approving File No. SR–PHLX–91–04).

[10] See CBOE Approval Order, *supra* note 5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members/Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–97–52 and should be submitted by December 15, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30720 Filed 11–21–97; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

1. Application for Child's Insurance Benefits—0960–0010. The information collected on Form SSA–4–BK is used to entitle children of living and deceased workers to Social Security benefits. The respondents are children of living or deceased workers.

Number of Respondents: 1,740,000.
Frequency of Response: 1.
Average Burden Per Response: 10.5 or 15.5 minutes (depending on the type of claim).
Estimated Average Burden: 372,417 hours.

2. Notice Regarding Substitution of Party Upon Death of Claimant—0960–0288. The information collected on Form HA–539 is used to advise claimants of their statutory right to a hearing and of a decision by the Social Security Administration (SSA) on who, if anyone, should become a substitute party for the deceased, as provided for in the Social Security Act. The respondents are individuals requesting hearings on behalf of deceased claimants on Social Security benefits issues.

Number of Respondents: 35,451.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Average Burden: 2,954 hours.

3. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019. SSA uses the information collected on Form SSA–781 to decide if "in care" requirements are met by noncustodial parent(s) (or the spouse of a parent), who is filing for benefits based on having a child in care. The respondents are noncustodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Number of Respondents: 14,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Average Burden: 2,333 hours.

4. Report of Function—Child—0960–0542. The information collected on Forms SSA–3375, 3376, 3377, 3378, and 3379 will be used by SSA to help determine if a child claiming Supplemental Security Income disability benefits under title XVI is disabled. The respondents are parents or guardians who file for such benefits on behalf of a child.

Number of Respondents: 500,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 166,667 hours.

5. Payee Interview, SSA–835; Beneficiary Interview, SSA–836; Custodian Interview, SSA–837—0960–NEW. SSA is proposing a three-tier review process of the representative payee program. As part of this review process, SSA is proposing to conduct interviews with a sample of beneficiaries and their representative payees. The information will be used to assess the effectiveness of the representative payee program.

	SSA–835	SSA–836	SSA–837
Number of Respondents	2,000	1,000	380
Frequency of Response	1	1	1
Average Burden Per Response (minutes)	30	20	10
Estimated Annual Burden (hours)	1,000	333	63

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Blood Donor Locator Service—0960–0501. Regulation 20 CFR 401.200 requires that requesting State agencies provide to the SSA Blood Donor Locator Service (BDLS) specific information on blood donors who have tested positive for Human Immunodeficiency Virus. The information is used to identify the donor, locate the donor's address in SSA records and assure that States meet regulatory requirements to qualify for using the BDLS. SSA will retain no record of the request or the information after processing has been completed. The respondents are requesting State agencies acting on behalf of authorized blood facilities.

Number of Respondents: 10.
Frequency of Response: 5.
Average Burden Per Response: 15 minutes.
Estimated Average Burden: 13 hours.

2. Child Relationship Statement—0960–0116. The information collected on Form SSA–2519 is used to help determine children's entitlement to Social Security benefits under Section 216(h)(3) of the Social Security Act (deemed child provision). The respondents are persons providing information about the relationship between the worker and his/her alleged biological child, in connection with a child's application for benefits.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Average Burden: 12,500 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: November 17, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–30620 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–29–P

DEPARTMENT OF STATE

[Public Notice 2636]

The Bureau of Oceans and International Environmental and Scientific Affairs (OES/S); 60-Day Notice of Proposed Information Collection: U.S.-Egypt Science and Technology Joint Fund Annual Grant Program

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Emergency extension of a currently approved collection.
Originating Office: The Bureau of Oceans and International Environmental and Scientific Affairs (OES/S).
Title of Information collection: U.S.-Egypt Science and Technology Joint Fund Annual Grants Program.
Frequency: Annually.
Form Number: None.
Respondents: Researchers requesting funding for science and technology programs.
Estimated Number of Respondents: 250.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30723 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice 2636]

Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Application For Consular Report of Birth Abroad of a Citizen of the United States of America

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.
Originating Office: The Bureau of Consular Affairs (CA).
Title of Information Collection: Application For Consular Report of Birth Abroad of a Citizen of the United States of America.
Frequency: On occasion.
Form Number: FS–579.
Respondents: American parent of persons born abroad.
Estimated Number of Respondents: 40,000.
Average Hours Per Response: 20 minutes.
Total Estimated Burden: 13,334 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including

through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 14, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30724 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2637]

Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Report of the Death of an American Citizen Abroad

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Report of the Death of an American Citizen Abroad.

Frequency: On occasion.

Form Number: OF–180.

Respondents: Survivors, relatives, and estates of deceased American citizens who have died abroad.

Estimated Number of Respondents: 5,500.

Average Hours Per Response: 60 minutes.

Total Estimated Burden: 5,500 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30725 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2638]

Bureau of Diplomatic Security; 60-Day Notice of Proposed Information Collection; Request for Building Pass Identification Card (DS–1838)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Existing collection in use without an OMB control number.

Originating Office: Bureau of Diplomatic Security (DS).

Title of Information Collection: Request for Building Pass Identification Card.

Frequency: On occasion.

Form Number: DS–1838.

Respondents: USG employees, Contractors, Vendors, Press, Caterers, Family Members, Retired employees, and others as needed.

Estimated Number of Respondents: 10,250.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 2,550 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30726 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF STATE

[Public Notice 2639]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection: Nonimmigrant Fiance(e) Visa Application (OF–156(K))

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs.

Title of Information Collection: Nonimmigrant Fiance(e) Visa Application.

Frequency: On occasion.

Form Number: OF–156(K).

Respondents: Aliens seeking to obtain nonimmigrant visas.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 24,000 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30727 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2640]

Bureau of Population, Refugees and Migration (PRM); 60-Day Notice of Proposed Information Collection; Refugee Biographic Data Sheet OMB #1405–0102

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Population, Refugees and Migration (PRM).

Title of Information Collection: Refugee Biographic Data Sheet.

Frequency: On occasion.

Form Number: OMB #1405–0102.

Respondents: Refugees.

Estimated Number of Respondents: 75,000.

Average Hours Per Response: 30 minutes.

Total Estimated Bureau: 37,500.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30728 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF STATE

[Public Notice 2641]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Nonimmigrant Treaty Trader/Investor Visa Application (OF–156(E))

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Consular Affairs (CA).

Title of Information Collection: Nonimmigrant Treaty Trader/Investor Visa Application.

Frequency: On occasion.

Form Number: OF–156 (E).

Respondents: Aliens and enterprises that qualify for E–1 and E–2 nonimmigrant visas for the purpose of carrying on their business enterprise in the United States.

Estimated Number of Respondents: 15,000.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 30,000 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30729 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2642]

Office of Overseas School; 60-Day Notice of Proposed Information Collection; Approval of Funding to Support Educational Projects (JF–45)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Office of Overseas Schools (A/OS).

Title of Information Collection: Approval of Funding to Support Educational Projects.

Frequency: Annually.

Form Number: JF–45.

Respondents: The 190 Overseas American sponsored schools.

Estimated Number of Respondents: 190.
Average Hours Per Response: 25 minutes.
Total Estimated Burden: 47.50 hours.
Public comments are being solicited to permit the agency to—
• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.
Eliza McClenaghan,
Chief Information Officer.
[FR Doc. 97–30730 Filed 11–21–97; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2643]

The Office of Operations (A/OPR); 60-Day Notice of Proposed Information Collection; Department of State Acquisition Regulation (DOSAR)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.
The following summarizes the information collection proposal submitted to OMB:
Type of Request: Extension of a currently approved collection.
Originating Office: The Office of Operations (A/OPR).
Title of Information Collection: Department of State Acquisition Regulation (DOSAR).
Frequency: On occasion.
Form Number: OMB #1405–0050.
Respondents: Prospective government contractors.
Estimated Number of Respondents: 2,000.
Average Hours Per Response: 128 hours.
Total Estimated Burden: 225,302.5 hours.
Public comments are being solicited to permit the agency to—
• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.
Eliza McClenaghan,
Chief Information Officer.
[FR Doc. 97–30731 Filed 11–21–97; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2644]

The Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection: Application to Determine Returning Resident Status

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.
The following summarizes the information collection proposal submitted to OMB:
Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.
Originating Office: The Bureau of Consular Affairs.
Title of Information: Application to Determine Returning Resident Status.
Frequency: On occasion.
Form Number: DSP–117.
Respondents: Returning lawfully alien for permanent residence.
Estimated Number of Respondents: 1,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 1,500 hours.
Public comments are being solicited to permit the agency to—
• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.
Eliza McClenaghan,
Chief Information Officer.
[FR Doc. 97–30732 Filed 11–21–97; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2645]

The Office of Defense Trade Controls; 60-Day Notice of Proposed Information Collection: DTC Customer Service Survey

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.
The following summaries the information collection proposal submitted to OMB:
Type of Request: New Collection.
Originating Office: The Office of Defense Trade Controls (PM/DTC).
Title of Information collection: DTC Customer Service Survey.
Frequency: Annually.
Form Number: None.
Respondents: U.S. Defense Industry Customers.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 150 hours.
Public comments are being solicited to permit the agency to—
• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.
Eliza McClenaghan,
Chief Information Officer.
[FR Doc. 97–30733 Filed 11–21–97; 8:45 am]
BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2646]

The Office of the Coordinator for Business Affairs; 60-Day Notice of Proposed Information Collection: Business Survey

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.
The following summarizes the information collection proposal submitted to OMB:
Type of Request: New Collection.
Originating Office: The Office of the Coordinator for Business Affairs.
Title of Information collection: Business Survey.
Frequency: Annually.
Form Number: None.
Respondents: American business community.
Estimated Number of Respondents: 1,500.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 250 hours.
Public comments are being solicited to permit the agency to—
• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.
Eliza McClenaghan,
Chief Information Officer.
[FR Doc. 97–30734 Filed 11–21–97; 8:45 am]
BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice 2647]

Bureau of Consular Affairs (CA/VO/F/P); 60-Day Notice of Proposed Information Collection; OF–230 I & II, Application for Immigrant Visa and Alien Registration

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.
The following summarizes the information collection proposal submitted to OMB:
Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.
Originating Office: Bureau of Consular Affairs (CA/VO/F/P).
Title of Information Collection: Application for Immigrant Visa and Alien Registration.
Frequency: On occasion.
Form Number: OF–230.
Respondents: Aliens.
Estimated Number of Respondents: 750,000.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 750,000.
Public comments are being solicited to permit the agency to—
• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.
FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 31, 1997.
Eliza McClenaghan,
Chief Information Officer.
[FR Doc. 97–30735 Filed 11–21–97; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2648]

Office of Foreign Missions (OFM); 60-Day Notice of Proposed Information Collection; DSP–99 (Application for Diplomatic Exemption From Taxes on Utilities), and DSP–99A (Application for Diplomatic Exemption From Taxes on Gasoline)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purposes of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.
The following summarizes the information collection proposal submitted to OMB:
Type of Request: Extension of a currently approved collection.
Originating Office: The Office of Foreign Missions (OFM).
Title of Information Collections: DSP–99 (Application for Diplomatic Exemption from Taxes on Utilities), and

DSP–99A (Application for Diplomatic Exemption from Taxes on Gasoline.

Frequency: On occasion.

Form Number: DSP–99 and DSP–99A.

Respondents: Foreign diplomatic missions and personnel.

Estimated Number of Respondents: 40,000.

Average Hours Per Response: 12 minutes.

Total Estimated Burden: 664 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 3, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30736 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2649]

Office of Foreign Missions (OFM); 60-Day Notice of Proposed Information Collection; DS–1972, Drivers License and Tax Exemption Card Application

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: The Office of Foreign Missions (OFM).

Title of Information Collection: DS–1972, Drivers License and Tax Exemption Card Application.

Frequency: On occasion.

Form Number: DS–1972.

Respondents: Foreign mission personnel and their dependents in the United States.

Estimated Number of Respondents: 12,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 6,250.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 31, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30737 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–44–M

DEPARTMENT OF STATE

[Public Notice 2650]

Bureau of Consular Affairs; 60-Day Notice of Proposed Information Collection; Affidavit of Identifying Witness (DS–71)

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Affidavit of Identifying Witness (DS–71).

Frequency: On occasion.

Form Number: DSP–71.

Respondents: Citizens of the United States.

Estimted Number of Respondents: 68,000.

Average Hours Per Response: 5 minutes.

Total Estimated Burden: 7,333.

Public Comments are being solicited to permit the agency to——

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: October 31, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30738 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

[Public Notice 2651]

The Bureau of Diplomatic Security; 60-Day Notice of Proposed Information Collection: Building Access Application.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Revision of a currently approved collection.

Originating Office: Bureau of Diplomatic Security.

Title of Information collection: Building Access Application.

Frequency: On occasion.

Form Number: DSP–97.

Respondents: Press Corps, maintenance personnel, visitors, and others as needed.

Estimated Number of Respondents: 10,250.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 2,550 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management Branch, U.S. Department of State, Washington, DC 20520, (202) 647–0596.

Dated: November 4, 1997.

Eliza McClenaghan,

Chief Information Officer.

[FR Doc. 97–30739 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF STATE

[Public Notice No. 2626]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1998 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Eastern Europe and the independent states of the former Soviet Union. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1998 under a program administered by the Department of State. The program seeks to build and sustain expertise among Americans willing to make a career commitment to the study of Eastern Europe and the countries of the former Soviet Union.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this of Notice: notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by February 20, 1998.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, 2201 C Street, N.W., Washington, D.C. Please phone first ((202) 736–4572) to ensure access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The program provides financial support for advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Eastern Europe and the independent states of the former Soviet Union, the program contributes to the overall objectives of the FREEDOM Support and SEED programs.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kazakstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Bosnia and Herzegovina, Slovenia, Croatia, Serbia (including Kosovo and Montenegro), and the Former Yugoslav Republic of Macedonia.

The Act establishes an Advisory Committee to recommend grant policies

and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on the independent states of the former Soviet Union and the countries of Eastern Europe and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Eastern Europe and/or the independent states of the former Soviet Union.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Eastern Europe and/or the independent states of the former Soviet Union by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) *National programs* which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) *National programs* which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) *National programs* which provide advanced training and research on a reciprocal basis in the countries of Eastern Europe and the independent states of the former Soviet Union by facilitating access for American specialists to research facilities and resources in those countries;

(5) *National programs* which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Eastern Europe and the independent states of the former Soviet Union in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Support for Transitions.* The Advisory Committee strongly encourages support for activities which, while building expertise among U.S. specialists on the region, *also* promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies.

—*Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Funds may be used for certain library activities which clearly strengthen research and training on the countries of Eastern Europe and the independent states of the former Soviet Union and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the independent states of the former Soviet Union and the less commonly taught languages of the East European countries. Support provided for Russian language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above which has appropriate peer group review mechanisms.

—*Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Eastern Europe and the independent states of the former Soviet Union. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Eastern Europe and the independent states of the former Soviet Union. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $5.0 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1997, the Congress appropriated to the program $4.2 million from the U.S. Agency for International Development budget, which funded grants to 10 national organizations. The number of awards varies each year, depending on the level of funding.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective date.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one-page executive summary, a budget, and vitae of key professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully. The one-page summary and budget should precede the narrative in the proposal.

Proposed programs should be described fully, including benefits for the fields. All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amount of anticipated awards.

Applicants who have received a grant from this program in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant received support prior to the last competition, a summary of those awards also should be included.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Proposals from national organizations involving language instruction programs should provide for those programs supported in the past year information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre-and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices must be included in the application.

Applications should include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L.100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and (2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Since funds provided by U.S. AID would come separately from its East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, "Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and OMB Circular A–133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A–21, "Cost Principles for Educational Institutions," or OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations;"

(2) A detailed program budget indicating direct expenses by program element, by region (the independent states of the former Soviet Union or Eastern Europe), indirect costs, and the total amount requested. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address, and point of contact of the audit agency. N.B.: The threshold for grants that trigger an audit requirement has been raised from $25,000 to $300,000.

(5) An indication of the proposer's priorities if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the Department of State.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *Part II, Program Information* (45 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Eastern Europe and the independent states of the former Soviet Union (35 points); and

(3) Budget presentation and cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510. Telephone: (202) 736–4572 or 736–4386, fax: (202) 736–4851.

Dated: November 4, 1997.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 97–30761 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2656]

Extension of the Restriction on the Use of United States Passports for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintain a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular

assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an ora "* * * where there is imminent danger to the public health or physical safety of United States travelers" within the meaning of 22 U.S.C. 221a and 22 CFR 51–73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 1998, unless extended or sooner revoked by Public Notice.

Date: November 20, 1997.

Strobe Talbott,

Acting Secretary.

[FR Doc. 97–30688 Filed 11–21–97; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of November 14, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3106.
Date Filed: November 10, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–JK 0018 dated November 7, 1997
Europe-Japan/Korea Expedited Resos r–17
Intended effective date: January 1, 1998

Docket Number: OST–97–3107.
Date Filed: November 10, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0029 dated October 28, 1997
Mid Atlantic Resos r1–6
PTC123 0030 dated October 28, 1997
South Atlantic Resos r7–10
Tables—
PTC123 Fares 0014 dated October 31, 1997
PTC123 Fares 0015 dated October 31, 1997
Intended effective date: March 1, 1998

Docket Number: OST–97–3108.
Date Filed: November 10, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0028 dated October 28, 1997
North Atlantic Resolutions
Minutes—PTC123 0031 dated November 7, 1997
Tables—PTC123 Fares 0013 dated October 31, 1997
Intended effective date: March 1, 1998

Docket Number: OST–97–3116.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 N/C 0044 dated October 17, 1997 r1–9
PTC31 N/C 0045 dated October 17, 1997 r10–28
PTC31 N/C 0046 dated October 17, 1997 r29–44
North & Central Pacific Resolutions
Minutes—PTC31 N/C 0048 dated November 11, 1997
Tables—
PTC31 N/C Fares 0021 dated Oct. 21, 1997
PTC31 N.C Fares 0023 dated Oct. 31, 1997
Intended effective date: April 1, 1998

Docket Number: OST–97–3117.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 S/CIRC 0033 dated October 14, 1997
Circle Pacific Resos r1–3
Tables—PTC31 S/CIRC Fares 0010 dated October 14, 1997
(Minutes, contained in PTC31 N/C 0048, are filed this date with the Department with the U.S.-related portion of the North and Central Pacific agreement.)
Intended effective date: April 1, 1998

Docket Number: OST–97–3114.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SWP 0016 dated October 24, 1997
Europe-Southwest Pacific Resos r1–23
Minutes—PTC23 EUR–SWP 0015 dated Oct. 24, 1997
Tables—
PTC23 EUR–SWP Fares 0006 dated November 11, 1997
Intended effective date: April 1, 1997

Docket Number: OST–97–3119.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Reso 033f—Pakistan Local Currency Rate Changes
Intended effective date: November 16, 1997

Docket Number: OST–97–3120.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 N/C 0047 dated October 17, 1997 r1–16
TC3—Central/South America Resolutions
Tables—PTC31 N/C Fares 0022 dated Oct. 28, 1997
(Minutes, contained in PTC31 N/C 0048, are filed this date with the U.S.-related portion of the agreement.)
Intended effective date: April 1, 1998

Docket Number: OST–97–3121.
Date Filed: November 12, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/089 dated October 24, 1997
Expedited PSC Resolutions (19th PSC/18th JPSC)
r–1–720a r–2–722 rp–3–1720a rp–4–1728 rp–5–1785a

Intended effective date: as early as January 1, 1998

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–30788 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 14, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for filing Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3113.
Date Filed: November 12, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 10, 1997.
Description: Application of Sky King, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing foreign charter air transportation of persons and property (passenger and cargo).

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–30789 Filed 11–21–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–58]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on November 18, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28971.
Petitioner: AirStar Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 93.316(b).
Description of Relief Sought: To permit the petitioner to add two McDonnell Douglas MD 600N NOTAR helicopters to its 14 CFR part 135 operations specifications and use these aircraft in the Grand Canyon Special Flight Rules Area.

Docket No.: 29041.
Petitioner: Skydive Chicago, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)(1).
Description of Relief Sought: To permit the petitioner to allow individuals who have completed a course of instruction in main parachute packing administered by a Federal Aviation Administration-certificated parachute rigger to pack main parachutes for others to make parachute jumps.

Docket No.: 29025.
Petitioner: Nortwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought: To permit the petitioner to use an appropriately qualified and authorized check airman in lieu of a Federal Aviation Administration inspector to observe a qualifying pilot in command who is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training.

Docket No.: 29003.
Petitioner: Columbia Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.175(a).
Description of Relief Sought: To permit the petitioner to operate its Boeing Vertol/Kawasaki Vertol 107 rotocraft in passenger-carrying operations conducted in daylight under visual flight rules without those rotocraft having approved airborne weather radar equipment installed.

Docket No.: 142CE.
Petitioner: Sino Swearingen Aircraft Company.
Sections of the FAR Affected: 14 CFR 23.3(d).
Description of Relief Sought: To permit the petitioner to type certificate its SJ30–2, a design powered by twin turbofan engines, in the commuter category.

Dispositions of Petitions

Docket No.: 26101.
Petitioner: America West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123.
Description of Relief Sought/Disposition: To permit the petitioner to operate four flights (two arrivals and two departures) at Washington National Airport.

Grant, November 4, 1997, Exemption No. 5133H

Docket No.: 28924.
Petitioner: Stunts Adventure Equipment.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To permit the petitioner to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps while wearing a duel-harness, duel-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with 14 CFR 105.43(a). This exemption also permits PICs of aircraft involved in these operations to allow such persons to make these parachute jumps subject to certain conditions and limitations.

Grant, October 24, 1997, Exemption No. 6693

Docket No.: 29045
Petitioner: Gail Force Express.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit the petitioner to operate its 14 twin-engine aircraft under part 135 without a TSO–C112 (Mode S) transponder installed.

Grant, November 4, 1997, Exemption No. 6697

Docket No.: 29026.
Petitioner: Mobil Business Resources Corporation.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit the petitioner to operate certain Bell Model 206 and Sikorsky S–76 helicopters without a TSO–C112 (Mode S) transponder installed.

Grant, November 6, 1997, Exemption No. 6696

Docket No.: 22441.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(a), 121.441(a)(1) and (b)(1), appendix F to part 121 and Special Federal Aviation Regulation No. 58, paragraph 6(b)(3)(ii)(A).
Description of Relief Sought/ Disposition: To permit the petitioner to combine recurrent flight and ground training and proficiency checks for United Airlines, Inc.'s pilots in command, second in command, and flight engineers in a single annual training and proficiency evaluation program, i.e., a single-visit training program.

Grant, November 6, 1997, Exemption No. 3451K

Docket No.: 26952.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 61.3 (a) and (c).
Description of Relief Sought/ Disposition: Permits the establishment of special procedures that enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based on information contained in the operator's approved record system.

Grant, November 6, 1997, Exemption No. 5560B

[FR Doc. 97–30775 Filed 11–21–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.
DATES: The meeting will be held on December 18, 1997, at 10 a.m. Arrange for oral presentations by December 8, 1997.
ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.
SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on December 18, 1997, at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC, 10 a.m. the agenda will include:

- A vote on a proposed recommendation on electronic signatures
- Update on the status of the effort to define a strategy for expediting the completion of old ARAC tasks and recommendations
- Update on the status of the Overflights of the National Parks effort
- Update on the Rulemaking Business Process Reengineering effort
- Administrative issues

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by December 8, 1997, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on November 18, 1997.

Joseph A. Hawkins,
Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–30771 Filed 11–21–97; 8:45 am]
BILLING CODE 4910–03–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).
DATES: Comments must be received on or before December 24, 1997.
ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under section 158.23 of Part 158 of the Federal Aviation Regulations.
FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.
SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 29, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of section 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than December 31, 1997.

The following is a brief overview of the use application.

PFC Project #: 97–06–C–00–MHT
Level of the proposed PFC: $3.00
Charge effective date: January 1, 1993
Estimated charge expiration date: October 1, 1998
Estimated total net PFC revenue: $1,626,000
Brief description of project: Upgrade Runway 6–24

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103.

Issued in Burlington, Massachusetts on November 4, 1997.

Vincent A. Scarano,
Manager, Airports Division, New England Region.

[FR Doc. 97–30777 Filed 11–21–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33502]

Portland & Western Railroad, Inc.—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire [1] and, to the extent it does not already have such authority, to operate 62.74 miles of rail lines owned by The Burlington Northern and Santa Fe Railway Company in the State of Oregon, described as follows: (1) Between (a) BN milepost 16.87 near Bowers Junction and BN milepost 18.83 near Bendemeer, (b) BN milepost 18.83 to BN milepost 21.26, and (c) BN milepost 21.50 to BN milepost 22.00 at or near Orenco, a distance of approximately 4.89 miles; (2) between BN milepost 17.07 at Bowers Junction and BN milepost 27.84 near Banks, a distance of approximately 10.77 miles; (3) between BN milepost 4.68 near Hillsboro and BN milepost 10.28 near Forest Grove, a distance of approximately 5.60 miles; (4) between BN milepost 25.52 near St. Marys Junction and BN milepost 26.71 near St. Marys, a distance of approximately 1.19 miles; (5) between BN milepost 31.28 near Greton and BN milepost 64.70 near Hopmere, a distance of approximately 33.42 miles; and (6) between BN milepost 10.00 at or near United Junction and BN milepost 16.87 at or near Bowers Junction, a distance of approximately 6.87 miles.[2]

PNWR expected to commence operations on or about November 14, 1997, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33502, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: November 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 97–30787 Filed 11–21–97; 8:45 am]
BILLING CODE 4915–00–P

[1] PNWR states that it is buying the rail, track materials, and other personal property necessary for rail service and that it is acquiring an exclusive rail easement over the underlying property.

[2] PNWR states that it currently operates most of the lines under lease authority obtained in *Portland & Western Railroad, Inc.—Lease and Operation Exemption—Lines of Burlington Northern Railroad Company*, Finance Docket No. 32766 (ICC served Jan. 5, 1996).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 555X)]

CSX Transportation, Inc.—Abandonment Exemption—In Alachua County, FL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.41 miles of its line of railroad between milepost AR–716.89 and milepost AR–715.48 at the end of track, in High Springs, Alachua County, FL. The line traverses United States Postal Service Zip Code 32643.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 4, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 15, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 28, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by November 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30791 Filed 11–21–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 554X)]

CSX Transportation, Inc.—Abandonment Exemption—In Jasper County, SC and Chatham County, GA

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 14.20 miles of its line of railroad from milepost SHC–497.59 near South Hardeeville, SC, to milepost SHC–505.05, and from milepost SH–505.05 to milepost SH–510.06 at North Savannah, GA and the Hutchison Island Spur from milepost SHB–509.93 to milepost SHB–511.66, in Jasper County, SC and Chatham County, GA. The line traverses United States Postal Service Zip Codes 29927, 31326, 31401, 31407, and 31408.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 4, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 15, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 28, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by November 24, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30792 Filed 11–21–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

federal register

Monday
November 24, 1997

Part II

Department of Education

34 CFR Part 5b

Privacy Act Regulations; Proposed Rule

Privacy Act of 1974; Notice

DEPARTMENT OF EDUCATION

34 CFR Part 5b

RIN 1880–AA78

Privacy Act Regulations

AGENCY: Office of Inspector General, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations implementing the Privacy Act of 1974 (the Act). These amendments are needed to modify existing departmental regulations to exempt from certain provisions of the Act a new system of records known as the Office of Inspector General (OIG) Hotline Complaints Files (System No. 18–10–0004) (ED/OIG Hotline Complaint Files). These exemptions are needed to protect information regarding Hotline complaints from disclosure to target individuals and others who could interfere with the processing and disposition of the information and with law enforcement activities relating to the Hotline complaints.

DATES: Comments must be received by the Department on or before January 8, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dianne Van Riper, U.S. Department of Education, 600 Independence Avenue, SW., Room 4106, Switzer Building, Washington, DC 20202–1530. Comments may also be sent through the Internet to: Comments@ed.gov

You must include the term "Privacy Act" in the subject line of the electronic message.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

FOR FURTHER INFORMATION CONTACT: Dianne Van Riper. Telephone: (202) 205–8762. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the Federal Register.

General

The proposed exemptions are authorized under the Privacy Act, 5 U.S.C. 552a(j)(2) and (k)(2). Under subsection (j)(2) of the Act, the Secretary through rulemaking may exempt from certain provisions of the Act those systems of records maintained by a component of the Department that performs as its principal function any activity pertaining to the enforcement of criminal laws, if the information in the system is compiled for the purpose of criminal investigation. Under 5 U.S.C. 552a(k)(2), the Secretary through rulemaking may exempt from a more limited number of Privacy Act requirements a system of records that contains investigatory materials compiled for civil and administrative law enforcement purposes.

The OIG is a component of the Department that performs as its principal function investigations into violations of criminal law in connection with the Department's programs and operations, pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3. The ED/OIG Hotline Complaint Files system of records falls within the scope of subsection (j)(2), *i.e.*, information compiled for the purpose of criminal investigation. The proposed (j)(2) exemptions for criminal law enforcement records would remove restrictions on the manner in which information may be collected and the type of information that may be collected by OIG in processing Hotline information; would limit certain requirements regarding notice to individuals; and would exempt the system of records from civil remedies for violations of the Act. These exemptions are necessary primarily to avoid premature disclosures of sensitive information, including, but not limited to, the existence of a criminal investigation, that may compromise or impede the disposition of Hotline complaints and allegations.

The proposal to add (k)(2) exemptions reflects recognition that certain records in the Hotline system may fall outside the (j)(2) exemptions because they relate primarily to civil and administrative law enforcement, such as allegations of misconduct by Department employees in violation of the Standards of Conduct. Nevertheless, the Act recognizes that these records may also properly be exempted from certain disclosure and notice requirements, as well as restrictions on the manner in which OIG may collect information, in order to avoid compromising, impeding, or interfering with the disposition of those Hotline complaints.

A more complete explanation of each proposed exemption follows.

A. Exemptions Pursuant to (j)(2)

The Secretary has determined that, to the extent the ED/OIG Hotline Complaint Files consist of information compiled for the purpose of criminal investigation, the system of records should be exempt from the following provisions of the Privacy Act and corresponding departmental regulations, as authorized under subparagraph (j)(2) of the Privacy Act, for the following reasons:

1. 5 U.S.C. 552a(c)(3) and 34 CFR 5b.9(a)(1) *require an agency to make the accounting of disclosures from a system of records available to the individual named in the record at the individual's request.* If the OIG made such an accounting available to target or source individuals, the availability of that information could seriously impede or compromise the processing of the Hotline complaint and any resulting criminal investigation by prematurely revealing its existence and nature, compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators, and lead to suppression, alteration, or destruction of evidence.

2. 5 U.S.C. 552a(c)(4) and 34 CFR 5b.7(c) and 5b.8(b) *require an agency to inform parties to whom records have been disclosed about any correction of records or a subject individual's statement disputing information in the record.* Because the Secretary also proposes to exempt this system of records from the requirements to correct records or to permit an individual to put in his or her records a statement disagreeing with a decision not to correct records, the requirement to inform parties who have received the record is not applicable.

3. 5 U.S.C. 552a(d)(1) through (4) and (f) and 34 CFR 5b.5(a)(1) and (c), 5b.7, and 5b.8 *require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request.* Providing individuals with access to records of Hotline complaints, permitting them to contest the complaint contents, and allowing them to force changes to be made to the information contained in those records seriously interfere with and compromise the OIG's ability to conduct an orderly and unbiased processing of Hotline complaints and would impede the conduct of resulting investigations.

4. 5 U.S.C. 552a(e)(1) and 34 CFR 5b.4(a)(1) *require an agency to maintain in its records only "relevant and necessary" information about an individual.* Because it is not always possible to detect the relevance or necessity of each piece of information reported to the Hotline or collected in the preliminary phase of an investigation, this provision is inappropriate for Hotline complaints. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity is clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further inquiry or investigation. Also, the Hotline may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (*e.g.*, the fraudulent use of social security numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, the OIG should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

5. 5 U.S.C. 552a(e)(2) and 34 CFR 5b.4(a)(3) *require an agency to collect information from the subject individual of the investigation.* The requirement that OIG collect information "to the greatest extent practicable" from the target individual is not appropriate for the Hotline Complaint Files system of records where allegations are volunteered to OIG. To determine the proper disposition of the complaint, it is often necessary to conduct an inquiry so that the target individual does not suspect that he or she is being investigated. The requirement to obtain information from targeted individual may alert the suspect of an investigation resulting from a Hotline complaint and thwart the investigation by enabling the suspect to destroy evidence or take another avoidance action.

6. 5 U.S.C. 552a(e)(3) and 34 CFR 5b.4(a)(3) *require an agency to provide a Privacy Act notice in the collection of information from individuals.* Giving notice to a complainant would impair the OIG's ability to collect candid and forthright information of criminal wrongdoing from Hotline sources.

7. 5 U.S.C. 552a(e)(4)(G), (H), and (I) *requires an agency to publish notice of procedures for notification, access, and correction of records and notice of the categories of sources of records in the system.* These requirements are unnecessary, since this system of records will be exempt from the underlying duties imposed by the Privacy Act. An exemption from (I) is required to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants.

8. 5 U.S.C. 552a(e)(5) *requires an agency to maintain records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness.* The OIG makes every effort to maintain records that are accurate, relevant, timely, and complete; however, it is not always possible in processing a Hotline complaint to determine with certainty that all the information collected is accurate, relevant, timely, and complete.

9. 5 U.S.C. 552a(e)(8) *requires an agency to make reasonable efforts to serve notice on an individual if any record on that individual is made available under compulsory legal process if that process becomes a matter of public record.* If the OIG complied with this provision, it could prematurely reveal and compromise an ongoing criminal investigation that resulted from a Hotline complaint.

10. 5 U.S.C. 552a(g) *requires an agency to be subjected to civil remedies from an individual for alleged violations of the Privacy Act.* Allowing civil lawsuits for alleged Privacy Act violations would compromise the orderly and objective processing of Hotline complaints and the conduct of resulting criminal investigations by subjecting the sensitive and confidential information in the ED/OIG Hotline Complaint Files to the possibility of premature disclosure under the liberal civil discovery rules. That discovery may reveal confidential sources, the identity of informants, and investigative procedures and techniques.

B. Exemptions Pursuant to (k)(2)

The Secretary has determined that, to the extent the ED/OIG Hotline Complaint Files consist of investigatory material compiled for law enforcement purposes, the system of records should be exempt from the following provisions of the Privacy Act and corresponding departmental regulations, as authorized by subparagraph (k)(2) of the Privacy Act, for the following reasons:

1. 5 U.S.C. 552a(c)(3) and CFR 5b.9(c)(3) *require an agency to make the accounting of disclosures from a system of records available to the individual named in the record at the individual's request.* If the OIG made such an accounting available to target or source individuals, the availability of that information could seriously impede or compromise the processing of the Hotline complaint and any resulting criminal investigation by prematurely revealing its existence and nature, compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators, and lead to suppression, alteration, or destruction of evidence.

2. 5 U.S.C. 552a(d)(1) through (4) and (f) and 34 CFR 5b.5(a)(1) and (c), 5b.7, and 5b.8 *require an agency to provide access to records, make corrections and amendments to records, and notify individuals of the existence of records upon their request.* Providing individuals with access to records of Hotline complaints, permitting them to contest the complaint contents, and allowing them to force changes to be made to the information contained therein would seriously interfere with and compromise the OIG's ability to conduct an orderly and unbiased processing of Hotline complaints and would impede the conduct of resulting investigations.

3. 5 U.S.C. 552a(e)(1) and 34 CFR 5b.4(a)(1) *require an agency to maintain in its records only "relevant and necessary" information about an individual.* Because it is not always possible to detect the relevance or necessity of each piece of information reported to the Hotline or collected in the preliminary phase of an investigation, this provision is inappropriate for Hotline complaints. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity is clear. In other cases, what may appear to be a relevant and necessary piece of information may

become irrelevant in light of further inquiry or investigation. Also, the Hotline may obtain information that relates primarily to matters under the investigative jurisdiction of another agency (*e.g.*, the fraudulent use of social security numbers), and that information may not be reasonably segregated. In the interest of effective law enforcement, the OIG should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

4. 5 U.S.C.552a(e)(4)(G), (H), and (I) *requires an agency to publish notice of procedures for notification, access, and correction of records and notice of the categories of sources of records in the system.* These requirements are unnecessary, since this system of records will be exempt from the underlying duties imposed by the Privacy Act. An exemption from (I) is required to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 5b.11 *Exempt systems.*) (4) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations involve procedural rights of individuals under the Privacy Act. Individuals are not considered to be "entities" under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5624, GSA Regional Office Building 3, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 5b

Privacy.

Dated: November 18, 1997.

Richard W. Riley,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Number does not apply)

The Secretary proposes to amend Part 5b of Title 34 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for Part 5b is revised to read as follows:

Authority: 5 U.S.C. 301 and 552a.

2. Section 5b.11 is amended by revising paragraphs (b) introductory text and (c)(1) introductory text to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) *Specific systems of records exempted under (j)(2).* The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) and the Hotline Complaint Files of the Inspector General ED/OIG (18–10–0004) systems of records from the following provisions of 5 U.S.C. 552a and this part:

* * * * *

(c) * * *

(1) The Department exempts the Investigative Files of the Inspector General ED/OIG (18–10–0001) and the Hotline Complaint Files of the Inspector General ED/OIG (18–10–0004) from the following provisions of 5 U.S.C. 552a and this part to the extent that these systems of records consist of investigatory material and complaints that may be included in investigatory material compiled for law enforcement purposes:

* * * * *

[FR Doc. 97–30716 Filed 11–21–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974

AGENCY: Office of Inspector General, Department of Education.

ACTION: Notice of a new System of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education (ED) publishes this notice of a new system of records entitled "Hotline Complaint Files of the Inspector General." The system will contain records of telephone calls and letters directed to the Office of Inspector General (OIG) Hotline citing complaints and allegations of wrongdoing concerning ED programs, ED operations, and recipients of ED-administered program funds. It also will contain information on OIG's handling of these complaints. The allegations reported through the Hotline may give rise to the opening of an investigation, audit, or other OIG inquiry or be referred elsewhere for resolution. The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: Comments on the proposed routine uses of this system of records must be received by the Department on or before December 24, 1997. The Department filed a report of the new system of records with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 18, 1997. Normally, this system of records would become effective after the 30-day period for OMB review of the system expired, unless OMB gave specific notice within the 30 days that the system was not approved for implementation or required an additional 10 days for OMB review. However, the Secretary proposes to exempt this system of records from certain requirements of the Privacy Act, as authorized under 5 U.S.C. 552a(j)(2) and (k)(2), and this system will not be implemented until the proposed exemptions become final (See the separate notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**). The Department will publish any changes to the system of records that are a result of comments on the system.

ADDRESSES: All comments on the proposed routine uses should be addressed to the Privacy Act Officer, Information Management Group, Office of the Chief Information Officer, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5624, GSA Regional Office Building 3, Washington, D.C. 20202–4651. Comments may also be sent through the Internet to: Comments@ed.gov

You must include the term "Hotline" in the subject line of the electronic command.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 5624, 7th & D Streets, S.W., between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for this notice. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dianne Van Riper, Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4106, Switzer Building, Washington, D.C. 20202–1510. Telephone: (202) 205–8762. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

General

The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records. The Department's regulations implementing the Privacy Act of 1974 are contained in the Code of Federal Regulations (CFR) in 34 CFR Part 5b.

The Office of Inspector General (OIG) has long maintained a Hotline that receives numerous telephone calls and letters citing allegations of wrongdoing concerning ED programs, ED operations, and recipients of ED-administered program funds. These Hotline complaints may give rise to the opening of an investigation, audit, or other OIG inquiry or be referred elsewhere for resolution. Records in the Hotline system of records contain information obtained from complainants who report indications of wrongdoing relating to ED programs and operations. In addition, information on the OIG disposition of the complaints is maintained in the system. That information may include name and address (if available) of the complainant, date the complaint was received, identity of individuals against whom the complaint is filed, affected program area, nature and subject of the complaint, and any additional witnesses, contacts, and specific comments provided by the complainant.

Information gained through the Hotline has until now been retained in general complaint files. In order to more effectively carry out OIG's mission of combating fraud, waste, and abuse through administration of the Hotline, OIG intends to reorganize Hotline complaints so that they will be accessible by an individual identifier, if appropriate, and to incorporate that information into the Hotline Complaint Files System. The records contained in this system are used by the OIG in furtherance of the responsibilities of the Inspector General under the Inspector General Act of 1978, as amended (IG Act), to conduct and supervise audits,

investigations, inspections, and other inquiries relating to programs and operations of ED; to promote economy, efficiency, and effectiveness in the administration of those programs and operations; and to prevent and detect fraud and abuse in those programs and operations.

The personal data on individuals will be maintained only to the extent that the information is considered necessary to meet the purposes of the IG Act. Hotline calls not resulting in investigations are destroyed when five years old in accordance with the National Archives and Records Administration's General Records Schedules, GRS 22/item 1a. If OIG opens investigations based upon Hotline information, the resulting investigation files will be part of another existing system of records, the Investigative Files of the OIG (18–10–0001). Investigative case files are destroyed 10 years after close-out in accordance with GRS 22/item 1b.

The records will be kept in locked file cabinets and in computer terminals that are secured in controlled areas. Access to records is limited to authorized personnel who must use a key to retrieve records in the file cabinets and have a password to gain access to records on the computer terminals.

Dated: November 18, 1997.

Thomas R. Bloom,

Inspector General.

The Inspector General of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

18–10–0004

SYSTEM NAME:

Hotline Complaint Files of the Inspector General ED/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, 330 C Street, S.W., Room 4116, Switzer Building, Washington, D.C. 20202–1510.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include individuals who are sources of information or have made complaints to the OIG Hotline, individuals who allegedly have knowledge regarding wrongdoing affecting the programs and operations of the Department, and individuals about whom complaints and allegations have been made concerning wrongdoing involving the programs and operations of the Department of Education. These individuals may include, but are not limited to, current and former ED employees, grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees, or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain information obtained from complainants who report allegations of wrongdoing relating to ED programs and operations. Specific data may include name and address (if available) of the complainant, the date the complaint was received, the affected program area, the nature and subject of the complaint, and any additional contacts and specific comments provided by the complainant. In addition, information on the OIG disposition of the complaint is included in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended (IG Act), 5 U.S.C. app. 3.

PURPOSES:

Pursuant to the Inspector General Act, the system is maintained for the purposes of maintaining a record of complaints and allegations received concerning Department of Education programs and operations and concerning the disposition of those complaints and allegations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

(a) *Disclosure for Use by Other Law Enforcement Agencies.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting such a violation or charged with enforcing or implementing the statute, Executive order or rule, regulation, or order issued pursuant thereto.

(b) *Litigation Disclosure.*

(1) Introduction. In the event that one of the following parties is involved in litigation, or has an interest in litigation, ED may disclose certain records to the parties described in paragraphs (2), (3), and (4) of this routine use under the conditions specified in those paragraphs:

(i) ED, or any component of the Department; or

(ii) Any ED employee in his or her official capacity; or

(iii) Any employee of ED in his or her individual capacity if the Department of Justice has agreed to provide or arrange for representation for the employee; or

(iv) Any employee of ED in his or her individual capacity if the agency has agreed to represent the employee; or

(v) The United States if ED determines that the litigation is likely to affect the Department or any of its components.

(2) Disclosure to the Department of Justice. If ED determines that disclosure of certain records to the Department of Justice or attorneys engaged by the Department of Justice is relevant and necessary to litigation, ED may disclose those records as a routine use to the Department of Justice.

(3) Administrative Disclosures. If ED determines that disclosure of certain records to an adjudicative body before which ED is authorized to appear or to an individual or an entity designated by ED or otherwise empowered to resolve disputes is relevant and necessary to the administrative litigation, ED may disclose those records as a routine use to the adjudicative body, individual, or entity.

(4) Opposing Counsels, Representatives, and Witnesses. If ED determines that disclosure of certain records to an opposing counsel, representative, or witness in an administrative proceeding is relevant and necessary to the litigation, ED may disclose those records as a routine use to the counsel, representative, or witness.

(c) *Disclosure to Public and Private Entities to Obtain Information Relevant to ED/OIG Functions and Duties.* ED/OIG may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to an ED/OIG investigation, audit, inspection, or other inquiry.

(d) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as amended (HEA).* ED/OIG may disclose information from this system of records as a routine use to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the HEA, to any guarantee agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA, or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(e) Disclosure to the Department of Justice. ED/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

(f) *Congressional Disclosure.* ED/OIG may disclose information from this system of records to a congressional member from the record of an individual in response to an inquiry from the congressional member made at the written request of that individual. The right of the member to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in complaint files, computer mainframe files, and computer-printed listings.

RETRIEVABILITY:

Hard copy records are organized by and retrievable by the assigned Hotline number. The computer files are indexed and retrievable by Hotline number, name of complainant, and the name of the subject or subjects.

SAFEGUARDS:

Records are maintained in locked file cabinets or in metal file cabinets in secured rooms or premises to which access is limited to those persons whose official duties require access. Computer terminals are secured in controlled areas that are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password system to gain access.

RETENTION AND DISPOSAL:

Hotline records not resulting in investigations are destroyed when five years old, in accordance with the National Archives and Records Administration's General Records Schedules (GRS), GRS 22/item 1a. Investigative case files are destroyed 10 years after close-out in accordance with GRS 22/item 1b.

SYSTEM MANAGER AND ADDRESS:

Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, Room 4106, Switzer Building, 330 C Street, S.W., Washington, D.C. 20202–1510.

NOTIFICATION PROCEDURES:

See "Systems Exempted." As provided in 34 CFR 5b.11(f), the notification procedures are not applicable to Hotline files except at the discretion of the Inspector General. The notification procedures are applicable to noncriminal files only under the conditions in 34 CFR 5b.11(f)(2). To the extent these procedures apply to the ED/OIG Hotline Complaint Files, they are governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See "Notification Procedures."

CONTESTING RECORD PROCEDURES:

Not applicable. See "Systems Exempted."

RECORD SOURCE CATEGORIES:

Complainants who include, but are not limited to, current and former employees of ED, employees of other Federal agencies, employees of State and local agencies, private individuals, and officers and employees of non-governmental organizations that are involved with ED programs, contracts, or funds or have knowledge about ED programs, contracts, or funds.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has by regulations exempted the Hotline Complaint Files of the Inspector General ED/OIG from the following provisions of the Privacy Act:

(a) Pursuant to 5 U.S.C. 552a(j)(2):

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of a record.

(2) 5 U.S.C. 552a(c)(4), regarding notification to outside parties and agencies of correction or notation of dispute made in accordance with 5 U.S.C. 552a(d).

(3) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification or access to records and correction or amendment of records.

(4) 5 U.S.C. 552a(e)(1), regarding maintaining only relevant and necessary information.

(5) 5 U.S.C. 552a(e)(2), regarding collection of information from the subject individual.

(6) 5 U.S.C. 552a(e)(3), regarding notice to individuals asked to provide a record to the Department.

(7) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

(8) 5 U.S.C. 552a(e)(5), regarding maintaining records with requisite accuracy, relevance, timeliness, and completeness.

(9) 5 U.S.C. 552a(e)(8), regarding service of notice on subject individual if a record is made available under compulsory legal process if that process becomes a matter of public record.

(10) 5 U.S.C. 552a(g), regarding civil remedies for violation of the Privacy Act.

(b) Pursuant to 5 U.S.C. 552a(k)(2):

(1) 5 U.S.C. 552a(c)(3), regarding access to an accounting of disclosures of records.

(2) 5 U.S.C. 552a(d)(1) through (4) and (f), regarding notification of and access to records and correction or amendment of records.

(3) 5 U.S.C. 552a(e)(1), regarding the requirement to maintain only relevant and necessary information.

(4) 5 U.S.C. 552a(e)(4)(G), (H), and (I), regarding inclusion of information in the system notice about procedures for notification, access, correction, and source of records.

These exemptions are stated in 34 CFR 5b.11.

[FR Doc. 97–30715 Filed 11–21–97; 8:45 am]

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federal register

Monday
November 24, 1997

Part III

The President

Proclamation 7051—National Great American Smokeout Day, 1997

Federal Register
Vol. 62, No. 226
Monday, November 24, 1997

Presidential Documents

Title 3—

The President

Proclamation 7051 of November 20, 1997

National Great American Smokeout Day, 1997

By the President of the United States of America

A Proclamation

For 21 years, this special day has been devoted to communicating a simple message: if you smoke, you need to quit—for life. Smoking is the largest cause of preventable death in this country, eventually killing one of every two people who continue to smoke. Every day, 3,000 adolescents in America smoke their first cigarette, taking the first step to becoming regular smokers, and one-third of these new smokers will eventually die of tobacco-related diseases. Each of these devastating statistics represents a personal tragedy, needless suffering, and irreparable loss.

Because most smokers—more than 80 percent of them—begin smoking before their 18th birthday, my Administration is working hard to reach children before they decide to start. Last year, I announced tough measures to limit children's access to tobacco products and to reduce their appeal to young people. Now we are working with the Congress, the public health community, State attorneys general across the country, and other interested organizations to develop and pass comprehensive national legislation to reduce teen smoking significantly.

Such legislation must set ambitious targets to cut teen smoking rates and stiff financial penalties to help ensure that tobacco companies meet those targets. To counteract the pervasive influence of cigarette and smokeless tobacco advertising and promotion, we must mount a nationwide effort to strip tobacco of its allure, warning our young people of its addictive nature and deadly consequences and helping parents discourage their children from ever taking up the habit. The Food and Drug Administration must have full authority to see to it that industry develops less addictive, reduced-risk products. And we must strengthen and expand our current efforts to limit the advertising of tobacco to children and restrict young people's access to tobacco products.

The Great American Smokeout offers all Americans, smokers and nonsmokers alike, an invaluable opportunity to show our young people how much we care about them and how much their good health means to us. I urge the almost 48 million adult Americans and 4 million of our young people who still smoke to set an example of strength and determination by quitting for the day and, ultimately, for life. I encourage students across the Nation to participate in Smokeout activities designed to teach them about the dangers of smoking. I ask all Americans to renew their commitment to a smoke-free environment for themselves and for our children. If we can accomplish these goals today, we can do so every day, creating a better, healthier future for us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 20, 1997, as National Great American Smokeout Day. I call upon all Americans to join together in an effort to educate our children about the dangers of tobacco use, and I urge both smokers and nonsmokers to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-31069
Filed 11-21-97; 11:41 am]
Billing code 3195-01-P

federal register

Monday
November 24, 1997

Part IV

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, and Department of Interior and Related Agencies Appropriations Act, 1998; Notices

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, and Department of Interior and Related Agencies Appropriations Act, 1998

November 20, 1997.

Two Special Messages from the President under the Line Item Veto Act are published below. The President signed these messages on Novmeber 20, 1997. Under the Act, the messages are required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,

Associate Director for Administration.

THE WHITE HOUSE,
Washington
November 20, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Department of the Interior and Related Agencies Appropriations Act, 1998" (H.R. 2107). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, D.C. 20515

THE WHITE HOUSE,
Washington
November 20, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Department of the Interior and Related Agencies Appropriations Act, 1998" (H.R. 2107). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Albert Gore, Jr.
President of the Senate, Washington, D.C. 20510

Cancellation No. 97–75

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of the Interior and Related Agencies Appropriations Act, 1998" (H.R. 2107)

1(A). Dollar Amount of Discretionary Budget Authority: $1,000 thousand for Franklin County Dam on page 83 of House Report 105–337, dated October 22, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: These funds would be used to obtain land survey information necessary for planning the construction for a new dam on Forest Service (USDA) land in Mississippi. The funds are being canceled because (1) they were not requested in the President's FY 1998 Budget and would be used to plan the construction of a recreation dam that has substantial out-year funding costs, which are unlikely to be accommodated within projected USDA funding levels unless higher-priority projects are postponed; and (2) the Forest Service does not traditionally construct dams, for recreational or any other purpose. Construction of this dam is currently estimated to cost about $12 million.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−750
1999	−250
2000	
2001	
2002	
2003–07	
Total	−1,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$1,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Forest Service.

2(A). Governmental Function/Project (Account): Franklin County Dam Recreation Facilities (Reconstruction and Construction).

2(B). States and Congressional Districts Affected: Mississippi, 2nd and 4th Congressional Districts.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Mississippi: two; 2nd District: one; 4th District: two.

Cancellation No. 97–76

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Department of the Interior and Related Agencies Appropriations Act, 1998" (H.R. 2107).

1(A). Dollar Amount of Discretionary Budget Authority: $5,200 thousand with respect to the conveyance to the State of Montana of $10 million in Federal mineral rights in Montana, under Section 503(a)(1)–(2) of the Act.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C),(E). Reasons for Cancellation: Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: In connection with the Crown Butte/New World Mine acquisition (addressed in Section 502 of the Act), Section 503 provides for the uncompensated conveyance to the State of Montana of either $10 million in Federal mineral rights in Montana or the Federal mineral rights in Otter Creek Tracts 1, 2 and 3 (in Montana).

Outlay changes—Continued

[In thousands of dollars]

2003–07	
Total	−1,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$1,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Forest Service.

2(A). Governmental Function/Project (Account): Franklin County Dam Recreation Facilities (Reconstruction and Construction).

2(B). States and Congressional Districts Affected: Mississippi, 2nd and 4th Congressional Districts.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Mississippi: two; 2nd District: one; 4th District: two.

Section 503 would cause Federal taxpayers to lose their share of royalties from Federally owned lands, which would normally be split between the State where the Federal owned lands are located and the U.S. Treasury upon development of Federal mineral rights. The Federal share would be $5.2 million. The section would set a costly precedent by requiring the Federal Government to "compensate" a State for a purchase or exchange of lands between the Federal Government and a willing seller. This precedent could therefore discourage innovative, cost-effective land protection solutions in the future.

This cancellation applies to the budget authority under each of the alternative conveyances under Section 503(a)(1)–(2).

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal budget authority will not increase, as specified below (the amount of the effect depends on whether mineral rights would have been conveyed under Section 503(a)(1) or Section 503(a)(2); as discussed below, we estimate that mineral rights would more likely have been conveyed under Section 503(a)(1); Section 503 would not require a reduction in spending). This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Budget Authority changes under cancellation of section 503(a)(1)

[In thousands of dollars]

Fiscal year:	
1998	−1,300
1999	−1,300
2000	−1,300
2001	−1,300
2002	
2003–07	
Total	−5,200

Budget Authority changes under cancellation of section 503(a)(2)

[In thousands of dollars]

Fiscal year:	
1998	
1999	
2000	
2001	
2002	
2003–07	−1,352
Total	−1,352

The negotiations requirement in Section 503(b), and the legislative history of Section 503, make clear it was intended that the Secretary would convey $10 million in Federal mineral rights in the State of Montana under Section 503(a)(1), rather than all Federal mineral rights in Otter Creek Tracts 1, 2, and 3 under Section 503(a)(2), and it is most likely that this is what the Secretary would have done. The discretionary budget authority in both Section 503(a)(1) and Section 503(a)(2) is canceled, but because the Secretary could not have made both conveyances, and the dollar amount of discretionary budget authority for the intended and most likely conveyance under Section 503(a)(1) exceeds the dollar amount of discretionary budget authority for the alternative conveyance under Section 503(a)(2), the dollar amount of discretionary budget authority reflected above in 1(A), and the adjustments to discretionary spending limits below in 1(F), are based upon the intended and most likely conveyance under Section 503(a)(1).

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: The estimated budget authority effect (in FY 1998 through FY 2002) is shown above (based on the figures for a conveyance under Section 503(a)(1), as discussed in 1(D)).

Outlays: The estimated outlay effect for each year is the same as the estimated effect of budget authority.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of the Interior.

2(A). Bureau: Bureau of Land Management.

2(A). Governmental Function/Project (Account): Natural Resources and Environment/Conveyance to State of Montana (net receipts from mineral leasing on Federal lands are deposited, by formula, to Rent and Bonuses From Land Leases for Resource Exploration and Extraction; and Royalties on Natural Resources, not Otherwise Classified (General Fund accounts), and Reclamation Fund, All Other, Royalties on Natural Resources (Reclamation Fund account)).

2(B). States and Congressional Districts Affected: Montana, At Large.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Montana: four.

THE WHITE HOUSE
Washington
November 20, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998" (H.R. 2160). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Newt Gingrich,
Speaker of the House of Representatives, Washington, DC 20510

THE WHITE HOUSE
Washington
November 20, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998" (H.R. 2160). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, DC 20510

Cancellation No. 97–77

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1998 (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $900 thousand for Biocontrol and Insect Rearing Laboratory, Stoneville, Mississippi, on p.41 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: USDA's Agriculture Research Service (ARS) currently conducts insect mass rearing/augmentative biological control research at the State-owned Gast Facility in Starkville, Mississippi. The Gast Facility has been used for the mass propagation of insect pests and biological control agents for several decades, and this grant would provide funding to renovate the facility. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) these funds would provide for planning of this facility and would require additional future appropriations for construction ($12.9 million); (3) ARS conducts insect rearing at nearly 30 other locations; and (4) the need for additional research facilities is under review by the Strategic Planning Task Force mandated by the 1996 Farm Bill to review potential consolidations of Federal agricultural research facilities. The Task Force report is due in April 1999.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−400
1999	−500
2000	
2001	
2002	
2003–2007	
Total	−900

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$900 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Agricultural Research Service.

2(A). Governmental Function/project (Account): Agricultural Research and Services/Biocontrol and Insect Rearing Laboratory, Stoneville, Mississippi (Buildings and Facilities).

2(B). States and Congressional Districts Affected: Mississippi, 2nd Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Mississippi: three; 2nd Congressional District: two.

Cancellation No. 97–78

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1998" (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $600 thousand for the Poisonous Plant Laboratory, Logan, Utah, on page 42 of House Report 105–252 dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The funds would be used for planning and design of an office and laboratory building to house the staff of the Poisonous Plants Laboratory, an Agricultural Research Service (USDA) facility in Logan, Utah. A new facility would replace an existing, aged building that has been expanded periodically. The Poisonous Plants Laboratory's mission is to strengthen the livestock industry by reducing economic losses caused by poisoning. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) these funds would provide for planning of this facility and would require additional future appropriations for construction ($4.8 million); and (3) the need for additional research facilities is under review by the Strategic Planning Task Force mandated by the 1996 Farm Bill to review potential consolidations of Federal agricultural research facilities. The Task Force report is due in April 1999.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−300
1999	−300
2000	
2001	
2002	
2003–07	
Total	−600

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$600 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Agricultural Research Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Poisonous Plant Laboratory, Logan, Utah (Buildings and Facilities).

2(B). States and Congressional Districts Affected: Utah, 1st Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Utah: two; 1st District: one.

Cancellation No. 97–79

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998" (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $250 thousand for Special Research Grants, project "Dairy, Alaska" on page 43 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: Funding for this project at the University of Alaska would support research on high energy and high protein feeds to meet the nutritional requirements of dairy cattle in the State of Alaska. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) USDA currently funds a large amount (several million dollars worth) of research on the nutritional requirements of dairy cows that addresses needs of dairy farmers nationwide, whereas this grant focuses on the specific production and economic issues facing the dairy industry in Alaska; (3) the President's Budget proposals emphasize high priority programs in the national interest and competitively-awarded research to ensure that limited financial resources are used to support only the highest quality research; and (4) without this project, the University of Alaska would be able to conduct this research if it chooses to use its federal Hatch Act formula funds.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−25
1999	−75
2000	−75
2001	−50
2002	−25
2003–07	
Total	−250

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$250 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Cooperative State Research, Education, and Extension Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Dairy, Alaska (Research and Education Activities).

2(B). States and Congressional Districts Affected: Alaska, At-Large.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Alaska: three.

Cancellation No. 97–80

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998" (H.R. 2160)

1(A). Dollar Amount of Discretionary Budget Authority: $140 thousand for Special Research Grants, project "Hydroponic Tomato Production, Ohio" on page 43 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: The purpose of this Ohio State University project is to develop and demonstrate state-of-the-art hydroponic technology, solar greenhouses, and Internet tools to achieve year-round tomato growing systems that are capable of consistently producing high-quality, pesticide-free tomatoes for consumers. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) the President's Budget proposals emphasize high priority programs in the national interest and competitively-awarded research to ensure that limited financial resources are used to support only the highest quality research; and (3) Ohio State University has been conducting hydroponic tomato research for approximately thirty years, and would be able to conduct this project if it chooses to use its federal Hatch Act formula funds or other resources.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−14
1999	−42
2000	−42
2001	−28
2002	−14
2003–07	
Total	−140

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$140 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Cooperative State Research, Education, and Extension Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Hydroponic Tomato Production, Ohio (Research and Education Activities).

2(B). States and Congressional Districts Affected: Ohio, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Ohio: one; 12th District: one.

Cancellation No. 97–81

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998" (H.R. 2160).

1(A). Dollar Amount of Discretionary Budget Authority: $50 thousand for Special Research Grants, project "Plant Genome Research, Ohio" on page 43 of House Report 105–252, dated September 17, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and

Considerations Relating to or Bearing upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: This project at Ohio State University would support the development of a "Bacterial Artificial Chromosome" (BAC) database constructed using Tripsacum dactyloides, a wild variety of corn. The availability of a BAC Tripsacum database would facilitate the map-based cloning of those genes regulating hybrid vigor. The project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) the President's Budget Proposals emphasize higher priority programs in the national interest and competitively-awarded research to ensure that limited financial resources are used to support only the highest quality research; (3) without this project, Ohio State University (at which the library would be maintained) could conduct this research using its federal Hatch Act formula funds, or the principal investigator could compete for the $40 million available in FY 1998 through the National Science Foundation for plant genome research.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	−5
1999	−15
2000	−15
2001	−10
2002	−5
2003–07	
Total	−50

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$50 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Agriculture.

2(A). Bureau: Cooperative State Research, Education, and Extension Service.

2(A). Governmental Function/Project (Account): Agricultural Research and Services/Plant Genome Research, Ohio (Research and Education Activities).

2(B). States and Congressional Districts Affected: Ohio, 12th Congressional District.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Ohio: two; 12th District: two.

[FR Doc. 97–31034 Filed 11–21–97; 2:48 pm]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 282/P.L. 105–87
To designate the United States Post Office building located at 153 East 110th Street, New York, New York, as the "Oscar Garcia Rivera Post Office Building". (Nov. 19, 1997; 111 Stat. 2113)

H.R. 661/P.L. 105–88
To designate the United States Post Office building located at 313 East Broadway in Glendale, California, as the "Carlos J. Moorehead Post Office Building". (Nov. 19, 1997; 111 Stat. 2114)

H.R. 867/P.L. 105–89
Adoption and Safe Families Act of 1997 (Nov. 19, 1997; 111 Stat. 2115)

H.R. 1057/P.L. 105–90
To designate the building in Indianapolis, Indiana, which houses the operations of the Indianapolis Main Post Office as the "Andrew Jacobs, Jr. Post Office Building". (Nov. 19, 1997; 111 Stat. 2137)

H.R. 1058/P.L. 105–91
To designate the facility of the United States Postal Service under construction at 150 West Margaret Drive in Terre Haute, Indiana, as the "John T. Meyers Post Office Building". (Nov. 19, 1997; 111 Stat. 2138)

H.R. 1377/P.L. 105–92
Savings Are Vital to Everyone's Retirement Act of 1997 (Nov. 19, 1997; 111 Stat. 2139)

H.R. 1479/P.L. 105–93
To designate the Federal building and United States courthouse located at 300 Northeast First Avenue in Miami, Florida, as the "David W. Dyer Federal Building and United States Courthouse". (Nov. 19, 1997; 111 Stat. 2146)

H.R. 1484/P.L. 105–94
To redesignate the United States courthouse located at 100 Franklin Street in Dublin, Georgia, as the "J. Roy Rowland United States Courthouse". (Nov. 19, 1997; 111 Stat. 2147)

H.R. 1747/P.L. 105–95
John F. Kennedy Center Parking Improvement Act of 1997 (Nov. 19, 1997; 111 Stat. 2148)

H.R. 1787/P.L. 105–96
Asian Elephant Conservation Act of 1997 (Nov. 19, 1997; 111 Stat. 2150)

H.R. 2129/P.L. 105–97
To designate the United States Post Office located at 150 North 3rd Street in Steubenville, Ohio, as the "Douglas Applegate Post Office". (Nov. 19, 1997; 111 Stat. 2154)

H.R. 2367/P.L. 105–98
Veterans' Compensation Rate Amendments of 1997 (Nov. 19, 1997; 111 Stat. 2155)

H.R. 2564/P.L. 105–99
To designate the United States Post Office located at 450 North Centre Street in Pottsville, Pennsylvania, as the "Peter J. McCloskey Postal Facility". (Nov. 19, 1997; 111 Stat. 2159)

H.R. 2607/P.L. 105–100
Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1998, and for other purposes. (Nov. 19, 1997; 111 Stat. 2160)

S. 813/P.L. 105–101
Veterans' Cemetery Protection Act of 1997 (Nov. 19, 1997; 111 Stat. 2202)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* service at http://www.access.gpo.gov/nara/cfr. For information about *GPO Access* call 1-888-293-6498 (toll free).

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Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869–032–00001–6)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869–032–00002–5)	20.00	[1] Jan. 1, 1997
●4	(869–032–00003–4)	7.00	Jan. 1, 1997
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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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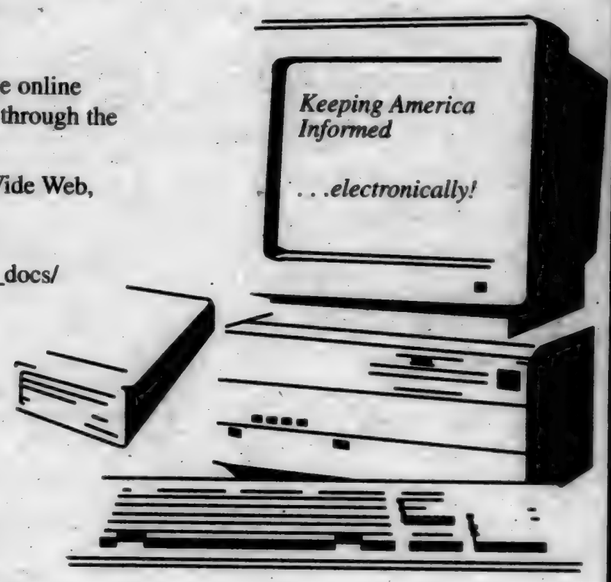
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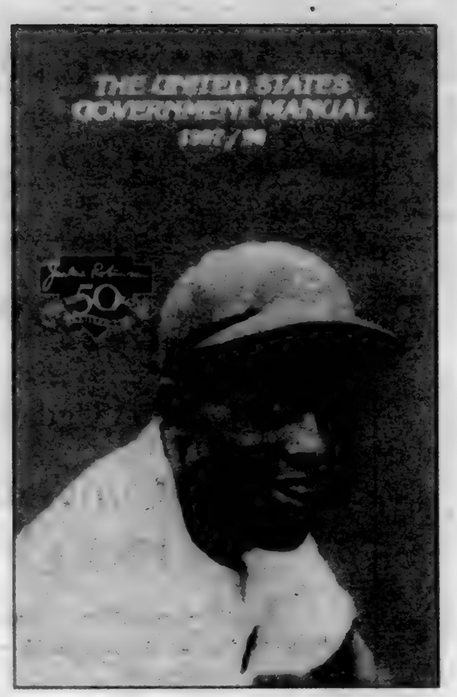
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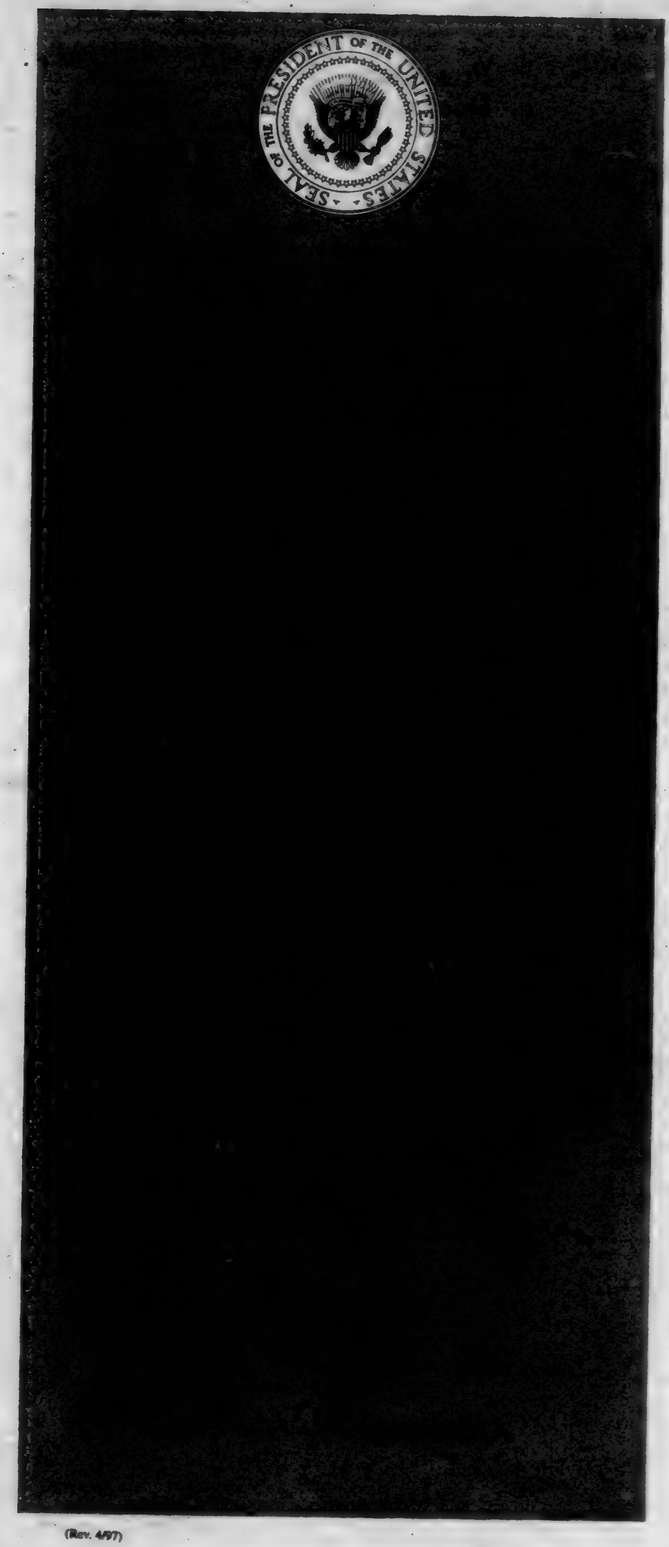
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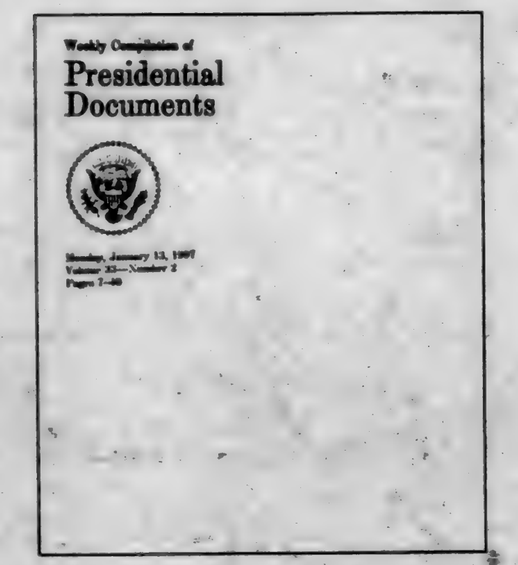
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 62, No. 227
Tuesday, November 25, 1997

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Title 3—

The President

Proclamation 7052 of November 21, 1997

Thanksgiving Day, 1997

By the President of the United States of America

A Proclamation

Another year has passed on our American journey. The seasons have completed another cycle, and it is harvest time in America. Once again, millions of us will gather with family and friends to give thanks to God for the many blessings that He has bestowed upon us.

This Thanksgiving Day, as every day, we are grateful for the gift of freedom, for the vision made real by our Nation's founders and preserved by the courage, vigilance, and sacrifice of generations of Americans. We are thankful for the bounty and beauty of this great land, which has welcomed so many to its shores across the years. We cherish the love of our families and friends. We value the opportunity to provide for our children's future with the fruits of our honest labor. And, like the Pilgrims who celebrated Thanksgiving more than 300 years ago, we thank God for bringing us safely to the threshold of a new world, full of exhilarating challenge and promise.

In this new world, our children are growing up free from the shadows of the Cold War and the threat of nuclear holocaust. Nations once held captive by communism are learning the lessons of liberty and democracy. A revolution in technology has brought the world closer together and holds the prospect of greater knowledge and prosperity for people across the globe.

More than three centuries of change and growth separate us from the Pilgrims and their Native American friends who sat down together for their Thanksgiving meal. But the example and experience of those early Americans still hold great meaning for us today. They remind us that God's love strengthens and sustains us, both as individuals and as a Nation. They remind us that everyone has something to contribute, and that we are all richer when we learn to share. They teach us a simple but powerful lesson that each new generation of Americans must learn and pass on: we need one another. Like the Pilgrims, if we are to flourish in our new world, we must do so not as isolated individuals, but as members of a family, one America, sharing our gifts and leaving no one behind.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 27, 1997, as a National Day of Thanksgiving. I encourage all Americans to assemble in their homes, places of worship, or community centers to share the spirit of goodwill and prayer; to express heartfelt thanks to God for the many blessings He has bestowed upon us; and to reach out in true friendship to our brothers and sisters across this land who, together, comprise our great American family.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-31112
Filed 11-24-97; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 62, No. 227
Tuesday, November 25, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule; request for comments.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure to provide notice that a judge may exclude a party or representative from all or any portion of a Board proceeding before him or her because of misconduct. The intent of this amendment is to inform parties and their representatives that MSPB judges have this authority and will exercise it when necessary to ensure that adjudication of cases proceeds expeditiously and without undue disruption.

DATES: Effective date November 25, 1997. Submit written comments on or before January 26, 1998.

ADDRESSES: Send comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419. Comments may be sent via e-mail to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: The Board's current rule at 5 CFR 1201.41(b) provides notice that a judge "will take all necessary action to avoid delay in all proceedings" and "will have all powers necessary to that end unless those powers are otherwise limited by law." It further provides explicit notice of a judge's authority to "maintain decorum, and exclude any disruptive persons from the hearing," [§ 1201.41(b)(6)], "[e]xclude any person from the hearing for good reason" [§ 1201.41(b)(7)], and "[i]mpose sanctions as provided under § 1201.43 of this part" [§ 1201.41(b)(11)]. Section 1201.43 permits a judge to "impose sanctions upon the parties as necessary to serve the ends of justice."

These provisions in the Board's current rules are sufficient to permit a judge to exclude a party or representative from a proceeding when the person engages in misconduct. The Board is amending its regulations to provide explicit notice that a judge may exercise such authority at a hearing or at any other point in a proceeding, such as a settlement conference or prehearing conference.

The Board is amending its rule at 5 CFR 1201.31 ("Representatives") by adding a new paragraph (d) to make clear that misconduct by representatives, as well as parties or other persons, may result in exclusion by a judge from the Board proceeding before him or her. The new paragraph (d) also requires that the reasons for an exclusion be documented in the record and that, where a representative is excluded, the party be given a reasonable time to obtain new representation. The new provision also states that the Board, when considering a petition for review, is not bound by a judge's decision to exclude a person from the proceeding below.

The Board also is amending its rule at 5 CFR 1201.41 ("Judges") by revising subparagraph (b)(7) to provide for exclusion from "all or any part of the Board proceeding before him or her" rather than from "the hearing."

The Board is publishing this rule as an interim rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.31 is amended by adding a new paragraph (d) at the end, as follows:

§ 1201.31 Representatives.

* * * * *

(d)(1) A judge may exclude a party, a representative, or other person from all or any portion of the proceeding before him or her for contumacious misconduct or misbehavior that obstructs the hearing.

(2) When a judge excludes a person from participation in a proceeding, the judge shall document the reasons for the exclusion in the record.

(3) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative.

(4) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

3. Section 1201.41 is amended by revising paragraph (b)(7) to read as follows:

§ 1201.41 Judges.

* * * * *

(b) * * *

(7) Exclude any person from all or any part of the proceeding before him or her for good reason;

* * * * *

Dated: November 19, 1997.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 97-30831 Filed 11-24-97; 8:45 am]
BILLING CODE 7400-01-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Parts 1421 and 1446

RIN 0560-AF01

1997-Crop Peanuts; National Poundage Quota; National Average Support Level for Quota and Additional Peanuts; and Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Peanuts

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1997 peanut crop: the national poundage quota for quota peanuts is established at 1,133,000 short tons (st); the national average support level for quota peanuts is $610 per st; the national average support level for additional peanuts is set at $132 per st; and the minimum Commodity Credit Corporation (CCC) export edible sales price for price-support loan-inventory additional peanuts is $400 per st. The poundage quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). The determination of the national average support levels for quota and additional peanuts was made pursuant to the statutory requirements of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The determination and announcement of the minimum export edible sales price for additional peanuts is a discretionary action made to facilitate the negotiation of private contracts for export edible peanuts. This rule also codifies the additional peanut price support determinations for the 1996 crop and the minimum CCC price for loan inventory additional peanuts from the 1996 crop.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

These amendments do not contain information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

A. Announcement of the Quota

Section 358–1(a)(1) of the 1938 Act as amended by the 1996 Act, requires that the national poundage quota for peanuts for each of the 1996 through 2002 marketing years (MYs) be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) of the 1938 Act provides that a temporary allocation of quota pounds for the MY only shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. The MY for 1997-crop peanuts runs from August 1, 1997, through July 31, 1998. Poundage quotas for the 1996 and 1997 crops of peanuts were approved by 97 percent of peanut producers voting in a referendum conducted December 11–14, 1995.

The national poundage quota for the 1997 MY was established at 1,133,000 st, based on the following data.

Estimated Domestic Edible and Related Uses for 1997-Crop Peanuts

Item	Farmer stock equivalent (short tons)
Domestic edible—Domestic production:	
For domestic food use	913,000
On-farm and local sales	9,000
Related uses:	
Crushing residual	120,500
Shrinkage and other losses	36,500
Segregation 2 and 3 loan:	
Transfers to quota loan	5,000
Under production	49,000
Total	1,133,000

The estimate of MY 1997 domestic food use of peanuts was developed in two steps. First, the farmer stock equivalent of 1,062,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 149,500 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358e of the 1938 Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent ICEC's MY 1997 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspection data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, and seed is excluded from quota determinations under amendments to the 1938 Act by the 1996 Act.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given lot of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota consists of the edible and crushing content of the farmer stock weight of quota peanuts. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1997 domestic production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. The utilized factor is a FSA estimate equal to the minimum allowable shrinkage used in calculating a handler's obligation to export or crush additional peanuts as set forth in Section 359e(d)(2)(iv) of the 1938 Act. Excessive moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered since such factors are accounted for as inspection factors at buying points and do not impact quota marketing tonnage.

The adjustment for Segregation 2 and 3 loan transfers represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support at the quota loan rate, if it were not for quality problems. In such cases, for price support purposes only, these peanuts may be pledged as collateral for price support loans at a discounted quota loan rate. Subject to a national limit of 5,000 st, individual producers can transfer up to 25 percent of their effective farm poundage quota from the additional loan pool and receive 70 percent of the quota loan rate. Regarding the disposition of such peanuts, the CCC will ensure that they are crushed for oil.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since the 1996 Act eliminated the carryover of unmarketed quota pounds, any quota pounds not marketed will be a loss of potential income for producers. It is expected that somewhat more than 92 percent will be marketed. It was assumed, based on a consideration of all factors, that 95.5 percent of the 1997 quota will be marketed. This assumption, together with expected growth in domestic consumption of peanut products through new uses and a small increase in demand because of lower peanut support prices resulted in the setting of a national peanut poundage quota of 1,133,000 st for the 1997 MY. This determination followed the publication of a proposed rule on November 25, 1996, in the **Federal Register** (61 FR 59840), which set forth a proposed MY 1997 national poundage quota level, an additional price support level and a minimum CCC sales price for export edible peanuts for sales of price support loan peanuts of the 1997 crop.

There were 169 letters received comprising 63 separate comments in response to the notice during the comment period that ended on December 10, 1996. The 63 comments addressing these issues represent 29 manufacturers, 18 Associations, five Members of Congress, four producers, four shellers, and the three producer owned cooperatives that administer the loan program. The manufacturers and their associations were concerned with adequate supplies and stock levels. Manufacturers and their associations mostly recommended quota levels ranging from 1,400,000 to 1,500,000 st for MY 1997. Shellers and their associations were concerned with adequate supplies and competitive prices for export edible peanuts. Producers and their associations were concerned with supplies, stock levels and program costs. The Congressional letters counseled the Secretary to be thorough and cautious in setting the 1997 national peanut poundage quota.

A significantly larger quota recommended by most peanut product manufacturers would lower the price received by first buyers and could slightly reduce cost to consumers for peanut products. Furthermore, a substantial increase in quota would lower the average producer price to a level near the average national support price. A quota of 1,400,000 to 1,500,000 st would likely result in sufficient qualities and quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than $610 per st. Since the demand for greater supplies of peanuts is small, this level of quota would likely result in a surplus and a loss on loan placements for more than 300,000 st of peanuts. These peanut losses would be around $400 per st. Losses of up to $120 million could occur and result in producer assessments of over $100 per st the following year. This level of assessment could lower the effective price received by producers for quota peanuts in MY 1998 to near $500 per st. In any event, the quota formula is set by statute and the determined quota was calculated using that formula.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1997 price support level for additional peanuts was announced at $132 per st on February 14, 1997. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, is set at $610 per st by the 1996 Act and is codified at 7 CFR section 1446.103. So that both prices may be codified in the same regulations, this final rule moves the regulation setting out the additional peanut price from 7 CFR part 1421 to 7 CFR part 1446.

The MY 1997 price support level for additional peanuts was established at $132 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information was considered:

1. The domestic use of peanut oil during MY 1997 is forecast to be 92,500 st, unchanged from MY 1996 projected domestic use. MY 1997 peanut oil beginning stocks are expected to be 18,500 st, down 44 percent from MY 1996. The MY 1997 average peanut oil price is expected to be $0.380 per pound, down $0.015 per pound from MY 1996.

2. The domestic use of peanut meal during MY 1997 is forecast to be 140,000 st, up 5,000 st from MY 1996 projected domestic use. MY 1997 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1996. The MY 1997 average peanut meal price is expected to be $174.50 per st, down $60.50 per st from MY 1996.

3. The domestic disappearance of soybean oil during MY 1997 is forecast to be 6,850,000 st, up 1.1 percent from projected MY 1996 domestic disappearance. MY 1997 soybean oil beginning stocks are expected to be 1,117,500 st, up about 11.2 percent from MY 1996. The MY 1997 average soybean oil price is expected to be $0.220 per pound, down $0.005 per pound from MY 1996.

4. The domestic disappearance of cottonseed oil during MY 1997 is forecast to be 517,500 st, up 2 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed oil beginning stocks are expected to be 55,000 st, up 10 percent from MY 1996. The MY 1997 average cottonseed oil price is expected to be $0.260 per pound, down $0.0025 per pound from MY 1996.

5. The domestic disappearance of soybean meal during MY 1997 is

forecast to be 27,000,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 soybean meal beginning stocks are expected to be 225,000 st, down about 12.5 percent from MY 1996. The MY 1997 average soybean meal price is expected to be $227.50 per st, down $7.50 per st from MY 1996.

6. The domestic disappearance of cottonseed meal during MY 1997 is forecast to be 1,690,000 st, up 0.9 percent from projected MY 1996 domestic disappearance. MY 1997 cottonseed meal beginning stocks are expected to be 40,000 st, unchanged from MY 1996. The MY 1997 average cottonseed meal price is expected to be $182.50 per st, down $7.50 per st from MY 1996.

7. The world use of peanuts for MY 1996 is expected to be 26.36 million metric tons, up slightly from MY 1995. World peanut production for MY 1996 is forecast to be 26.36 million metric tons, up 1.7 percent from MY 1995. Ending stocks for MY 1996 are forecast at 0.46 million metric tons, unchanged from 1995.

Discussion of Comments

During the comment period there were six comments received concerning the 1997 additional peanut price support level. One sheller association, two sheller firms, and the three producer-owned cooperatives made specific recommendations on the additional price support level. They recommended a range in the price support level from no-change ($132 per st for the 1996 crop) up to $200 per st. Strong prices in the oil seed complex were cited as the reason to increase the additional price support level. The final determination was made for the reasons given above. Based on the consideration of these same factors, the 1996-crop additional peanut support level was also $132 per st. An analysis of the data for that year is available from the contact person listed above. In the proposed rule it was indicated incorrectly that the 1996 additional peanut price had been codified previously in 7 CFR part 1421. Likewise, the 1996 price for sales by the CCC for export edible use of 1996-crop loan inventory peanuts had also not been codified. Both of these determinations are also codified in this rule and are given the new locations used for the 1997 determinations rather than the location for the corresponding determinations for the prior years. This change of location is the result of a reorganization of Departmental regulations following the 1996 legislation referred to earlier.

C. Announcement of CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The establishment of a minimum price at which 1997-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts. The minimum price at which 1997 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets was established at $400 per st on April 30, 1997. This price should encourage exports while providing price stability for additional peanuts sold under contract. It will also assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for export edible sales below the minimum sales price.

Discussion of Comments

During the comment period seven comments were received concerning the minimum export edible sales price. Four suggested keeping the price at $400 per st, and three suggested lowering it to between $300 and $375 per st. Producer groups preferred keeping the minimum price at $400 per ton while shellers preferred lowering it. The final price was set based on the factors set forth above. However, the Department plans to seek comments on this discretionary price for subsequent years to determine whether there should be a new method proposed for determining the price. As indicated, the 1996-crop CCC price was the same amount for the same reasons and that amount is also codified in this rule.

In addition, this rule provides a minor revision of the provisions of 7 CFR 1421.27 with respect to the listing of the minimum sales price for certain sales in situations where the farmer has a farm-stored price support loan. The current regulations have an unnecessary reference to the sales price for export edible use of 1996 crop farm-stored peanuts. The reference is removed in this final rule, which does not change the substance of the rule. The regulations in 7 CFR part 1421 will simply rely on the announcement of the general price or export edible use sales by CCC of loan peanuts which will now be codified in 7 CFR part 1446.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1421

Loan programs, Agriculture loan and loan deficiency payments, Peanuts, Reporting and recordkeeping requirements, Warehouses.

7 CFR Part 1446

Loan program—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements.

Accordingly, this final rule amends 7 CFR parts 729, 1421 and 1446 as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 is amended by revising paragraph (c) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota for quota peanuts for marketing year 1997 is 1,133,000 short tons.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 7231–7239; 7237; and 15 U.S.C. 714b and 714c.

4. Section 1421.27 is amended by: in paragraph "(a)(2)," adding the word "and" after the semicolon; removing paragraph "(a)(3)", and redesignating paragraph "(a)(4)" as paragraph "(a)(3)."

PART 1446—PEANUTS

5. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

§ 1446.103 [Amended]

6. Section 1446.103 is amended by adding the words "as set out in § 1446.310" after "announced by the Secretary" to the definition of "Support rate" in that section.

7. Two new sections, §§ 1446.310 and 1446.311, are added to subpart C to read as follows:

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is $132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop is $132 per short ton.

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is $400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 crop is $400 per short ton.

Signed at Washington, DC, on October 26, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–30965 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AF23

Noninsured Crop Disaster Assistance Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; correction.

SUMMARY: In the interim rule published in the **Federal Register** on October 17, 1997 (62 FR 53929) the comment period was inadvertently omitted. This correction announces the comment period.

DATES: The interim rule was effective on October 17, 1997. Comments on this rule must be received on or before January 26, 1998 to be assured of consideration.

ADDRESSES: Comments should be mailed to Sean O'Neill, Chief, Noninsured Assistance Branch (NAB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0526; telephone (202) 720–9003.

FOR FURTHER INFORMATION CONTACT: Sean O'Neill, Chief, Noninsured Assistance Branch (NAB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0526; telephone (202) 720–9003.

Signed at Washington, DC, on November 18, 1997.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–30966 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 971014243–7243–01]

Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow the delegation of the authority to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 (the effective date of the MBNMS designation) from the Director of the Office of Ocean and Coastal Resource Management (Director) to other Federal officials below the Director's level; for example, the Sanctuary Manager.

DATES: This rule will be effective on November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251 or Elizabeth Moore at (301) 713–3141 ext. 170.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Regulatory Amendment

The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities and thus make it unlawful for any person to conduct them or cause them to be conducted.

Under 15 CFR 922.49 (Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity), the MBNMS prohibitions do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of the Sanctuary designation (i.e., January 1, 1993 for the MBNMS) by any Federal, State or local authority of competent jurisdiction, provided that the applicant for such authorization complies with the procedures of section 922.49. The Director is required to notify the applicant whether he or she has an objection to issuance of the authorization and what terms and conditions he or she deems necessary to protect Sanctuary resources or qualities.

Section 922.134(a) of the MBNMS regulations states "The authority granted the Director under § 922.49 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 may not be delegated or otherwise assigned to other Federal officials below the Director's level." This provision prevents the Director from delegating this authority to the Sanctuary Manager of the MBNMS or any other Federal official below the Director's level. The Sanctuary Manager currently has the delegated authority to issue Sanctuary permits. Further, the MBNMS is the only Sanctuary of the twelve in the National Marine Sanctuary Program in which the authority to object to or impose terms and conditions under § 922.49 cannot be and has not been delegated to the Sanctuary Manager. Consequently, this rule amends the MBNMS regulations to allow for the delegation to the Sanctuary Manager or any other Federal official below the Director's level of the authority to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993, pursuant to § 922.49.

II. Miscellaneous Rulemaking Requirements

Executive Order 12866: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget has concurred in this determination.

Executive Order 12612: Federalism Assessment

This regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Paperwork Reduction Act

This rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

Administrative Procedure Act

This rule is exempt from the rulemaking requirements of 5 U.S.C. 553 by paragraph (a)(2) of that section because it is a matter relating to agency management.

Regulatory Flexibility Act

Because this rule is not required to be issued with prior notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, it is not subject to the Regulatory Flexibility Act requirement for preparation of a regulatory flexibility analysis, and none has been prepared.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 13, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart M—Monterey Bay National Marine Sanctuary

§ 922.134 [Amended]

2. Section 922.134 is amended by removing and reserving paragraph (a).

[FR Doc. 97–30367 Filed 11–24–97; 8:45 am]
BILLING CODE 3510–08–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 2632]

Passport Procedures—Amendment to Restriction of Passports Regulation

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim final.

SUMMARY: This interim final rule would add one new ground for denying, revoking or canceling a passport. The interim final rule would require the Secretary of State to deny a passport to a person who has been certified by the Secretary of Health and Human Services upon receipt of a State Agency determination to be in arrears of child support by an amount exceeding $5,000.00, and would except from review adverse actions on that ground.

EFFECTIVE DATE: October 1, 1997.

COMMENTS: Interested persons are invited to submit written comments on or before December 26, 1997.

ADDRESSES: Director, Office of Passport Policy and Advisory Services, 1111 19th Street, N.W., Suite 260, Washington, D.C. 20524.

FOR FURTHER INFORMATION CONTACT: Sharon E. Palmer-Royston, Office of Passport Policy and Advisory Services, Bureau of Consular Affairs, Department of State (202) 955–0231.

SUPPLEMENTARY INFORMATION: Section 51.70(a) of the passport regulations in Title 22 of the Code of Federal Regulations provides the grounds other than noncitizenship which require the Secretary of State to refuse to issue a passport. Section 452(k) of the Social Security Act (Pub. L. 93–647, 42 U.S.C. 652) as added by Section 370 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193), effective October 1, 1997: (1) Requires that the Secretary of Health and Human Services shall transmit to the Secretary of State a certification by a State agency in accordance with the requirements of section 454(31) of the Act of a determination that an individual owes arrearages of child support in an amount exceeding $5,000.00; and, (2) requires that the Secretary of State shall, upon receipt of such certification by the Secretary of Health and Human Services, refuse to issue a passport to such individual, and authorizes the Secretary to revoke, restrict, or limit a passport previously issued to such an individual.

This interim final rule would amend the existing regulation at section 51.70(a) of Title 22 of the Code of Federal Regulations by the addition of a new section 51.70(a)(8) to require the Secretary of State to refuse to issue a passport, except one limited for direct return to the United States, to a person who has been certified by the Secretary of Health and Human Services to be in arrears of child support by an amount exceeding $5,000.00. The Department of State is already authorized by the provisions in § 51.72(a) of Title 22 of the Code of Federal Regulations to revoke or restrict or limit a passport where a national would not be entitled to the issuance of a new passport under section 51.70 of Title 22 of the Code of Federal Regulations.

The Department of State is required by the provisions in section 51.75 of Title 22 of the Code of Federal Regulations to notify any person, who is the subject of a passport denial or cancellation and revocation, in writing of the reasons for the adverse action. In this regard, subsection 452(k)(3) of the Social Security Act (Pub. L. 93–647), as added by section 370 of the PRWORA (Pub. L. 104–193), provides that the Secretary of State shall not be liable to an individual for any action with respect to certification by a State agency under this section; and, section 454(31)(A) of the Social Security Act (Pub. L. 93–647) requires that State agencies afford each individual concerned with notice of the determination of their arrearage of child support in an amount exceeding $5,000.00 and the consequences thereof, and an opportunity to contest the determination. Therefore, the remedy of any individual who is the subject of a passport denial, revocation, restriction or limitation due to arrearages of child support in an amount exceeding $5,000.000 lies only with the State agency, and no administrative review by the Department of State under the provisions in §§ 51.81 through 51.89 of Title 22 of the Code of Federal Regulations will be performed. Section 51.80 of Title 22 of the Code of Federal Regulations is amended to exempt this reason for passport denial from entitlement to a hearing.

These changes to the regulations are not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). In addition, they will not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35. Nor do these rules have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12988. These rules are exempt form review under E.O. 12988 but have been reviewed and found to be consistent with the objectives.

For the reasons set forth in the preamble, part 51 to title 22 is amended as follows:

PART 51—PASSPORTS

1. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, as amended; 8 U.S.C. 1104(d); 22 U.S.C. 2651a, 3926; sec. 122(d)(3), Pub. L. 98–164, 97 Stat. 1017; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; Pub. L. 100–690; sec. 129, Pub. L. 102–138, 105 Stat. 661; sec. 503, Pub. L. 102–140, 105 Stat. 820; Title V, Pub. L. 103–317, 108 Stat. 1724; sec. 452(k) and sec. 454(31), Pub. L. 93–647, 42 U.S.C. 652, as amended by sec. 370, Pub. L. 104–193, 110 Stat. 2251–2252.

2. Section 51.70(a) is amended as follows:

a. Substitute "; or" for the period after paragraph (a)(7).

b. Add paragraph (a)(8) to read as follows:

§ 51.70 Denial of passports.

(a) * * *

(8) The applicant has been certified by the Secretary of Health and Human Services as notified by a State agency under 42 U.S.C. 652(k) to be in arrears of child support in an amount exceeding $5,000.00.

§ 51.80 [Revised]

3. Section 51.80 is revised to read as follows:

The provisions of §§ 51.81 through 51.89 shall not apply to any action of the Secretary of State taken on an individual basis in denying, restricting, revoking or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport by reason of:

(a) Noncitizenship.

(b) Refusal under the provisions of § 51.70(a)(8),

(c) Refusal to grant a discretionary exception under the emergency or humanitarian relief provisions of § 51.71(c), or

(d) Refusal to grant a discretionary exception from geographical limitations of general applicability. The provisions of this subpart shall otherwise constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under § 51.70, § 51.71 or § 51.72.

Dated: November 6, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–30762 Filed 11–24–97; 8:45 am]
BILLING CODE 4710–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 86–1–9802a; TN 127–1–9803a; FRL–5923–2]

Designation of Areas for Air Quality Planning Purposes; Tennessee: Redesignation of the Polk County and New Johnsonville Sulfur Dioxide Nonattainment Areas to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving maintenance plans and requests for redesignation of the Polk County area and portions of Benton and Humphreys Counties, Tennessee, surrounding TVA's Johnsonville plant (New Johnsonville area) from nonattainment to attainment for the sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS), pursuant to requests submitted on January 6, 1988, July 12, 1990, December 17, 1993, and April 17, 1995, by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC).

DATES: This final rule is effective January 26, 1998 unless notice is received by December 26, 1997 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to:

For the Polk County area: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

For the New Johnsonville area: Steven M. Scofield, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT:

For the Polk County area: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404/562–9036.

For the New Johnsonville area: Steven M. Scofield, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404/562–9034.

SUPPLEMENTARY INFORMATION:

In a **Federal Register** document published March 3, 1978, (43 FR 8962) the Polk County and New Johnsonville areas were designated nonattainment for SO_2. On July 12, 1990, the State of Tennessee, through the TDEC, submitted a request for redesignation of the Polk County SO_2 nonattainment area to attainment. This request did not contain a maintenance plan, including contingency measures, as required in section 107(d)(3)(E) of the Clean Air Act (CAA). Subsequently, on April 17, 1995,

the State submitted a maintenance plan that completed the redesignation request. The State of Tennessee has met all of the CAA requirements for redesignation pursuant to Section 107(d)(3)(E).

On January 6, 1988, the State of Tennessee, through the TDEC, submitted a request for redesignation of the New Johnsonville SO_2 nonattainment area to attainment. The submittal was not approvable due to stack height issues that were affected by a January 22, 1988, court decision, which prohibited EPA from exempting stack height increases from demonstration requirements. Since the 1990 amendments to the CAA, it has been EPA's policy to approve redesignation requests affected by that court decision. However, this request did not contain a maintenance plan, including contingency measures, as required in section 107(d)(3)(E) of the CAA. Subsequently, on December 17, 1993, the State submitted a maintenance plan that completed the redesignation request. The State of Tennessee has met all of the CAA requirements for redesignation pursuant to Section 107(d)(3)(E).

Section 107(d)(3)(E)(i). The Administrator has determined that the area has attained the NAAQS.

Tennessee submitted air quality data demonstrating attainment with both the primary and secondary SO_2 NAAQS for the years 1988 and 1989 in the Polk County area and 1981 through 1993 in the New Johnsonville area. As required by the EPA for SO_2 redesignations, a nonattainment area must demonstrate attainment by showing no more than one exceedance annually for two complete, consecutive calendar years and must continue in attainment status until the final notice approving such redesignation is effective. During that period there were no exceedances in the Polk County area and one exceedance of each of the primary and secondary NAAQS during 1986 in the New Johnsonville area, and hence, no violations of the SO_2 NAAQS. Both areas have continued to monitor attainment of the SO_2 NAAQS to date.

Section 107(d)(3)(E)(ii). The Administrator has fully approved the applicable implementation plan for the area under Section 110(k).

The Tennessee SO_2 State Implementation Plan (SIP) is fully approved and meets all requirements under section 110(k) which are applicable to the Polk County and New Johnsonville areas. Additionally, Reasonably Available Control Technology (RACT) emission limits for sources located in the Polk County area are specified in Rule 1200–3–19–.19 of the Tennessee Air Pollution Control regulations and RACT limits for the New Johnsonville area are specified in Rule 1200–3–19–.14 of the Tennessee Air Pollution Control regulations. TDEC Rule 1200–3–19–.19 became federally enforceable after EPA approval and publication in the **Federal Register** on February 6, 1980 (45 FR 8004) and May 27, 1982 (47 FR 23160) and TDEC Rule 1200–3–19–.14 became federally enforceable after EPA approval and publication in the **Federal Register** on April 7, 1993 (58 FR 18011).

Section 107(d)(3)(E)(iii). The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.

The BIT Manufacturing, Inc. facility is the only significant source of SO_2 emissions located in or impacting the Polk County area. The TDEC submits that the present SIP is adequate and the RACT emission limitations contained in TDEC Rule 1200–3–19–.19 have resulted in permanent and enforceable reductions in emissions. TDEC Rule 1200–3–19–.19 became federally enforceable after EPA approval and publication in the **Federal Register** on February 6, 1980 (45 FR 8004), and May 27, 1982 (47 FR 23160).

For the New Johnsonville area, the State has demonstrated that the present SIP is adequate and the RACT emission limitations contained in TDEC Rule 1200–3–19–.14 have resulted in permanent and enforceable reductions in emissions. TDEC Rule 1200–3–19–.14 became federally enforceable after EPA approval and publication in the **Federal Register** on April 7, 1993 (58 FR 18011).

Section 107(d)(3)(E)(iv). The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

Section 175A of Part D of the CAA requires maintenance and contingency plans for nonattainment areas before redesignation can occur. As required by section 175A the TDEC submitted to the EPA air dispersion modeling which demonstrated maintenance of the SO_2 NAAQS. The TDEC used EPA approved models ISC2 and COMPLEX1 (VALLEY screening mode) as their dispersion models. Additionally, for both areas, the TDEC will evaluate any permittable SO_2 emissions increases from existing sources, or any permittable SO_2 emissions from any new source that might locate in the area, with atmospheric dispersion modeling to ensure that compliance with the NAAQS for SO_2 is maintained. The maintenance plan is to be in effect for a ten year period after redesignation of the area. The State must also submit an additional plan, 8 years after redesignation of the area, for maintaining the NAAQS for 10 years after the expiration of the initial 10-year maintenance period. In the case of the Polk County area, attainment of both the primary and secondary NAAQS has been evident since 1986. The RACT standards in place have achieved the desired effect of a maintenance plan. Therefore, the maintenance plan for the Polk County area will also include continued implementation of the RACT standards specified in TDEC Rule 1200–3–19–.19. In the case of the New Johnsonville area, attainment of both the primary and secondary NAAQS has been evident since 1981. The RACT standards in place have achieved the desired effect of a maintenance plan. Therefore, the maintenance plan for the New Johnsonville area will also include continued implementation of the RACT standards specified in TDEC Rule 1200–3–19–.14.

Any violation of the NAAQS for SO_2 will trigger initiation of TDEC's contingency plan for the Polk County and New Johnsonville areas. TDEC regulations contained in Chapter 20 require companies to maintain logs for malfunctions and upsets. This includes production of records and log notes regarding operation of processes or fuel burning, control room data, and pollution control equipment data. In the event of exceedances of the NAAQS, a field visit within 30 days will be conducted by the TDEC and a field report shall be completed within 45 days concerning the findings and conclusions. The following three-fold approach shall be utilized based on the particular situation described below.

1. If current SIP emission limits are exceeded, then the TDEC will proceed with enforcement action according to the Tennessee EPA enforcement agreement. Corrective action measures will be required by the TDEC in a timely manner. The TDEC requires a form entitled APC–19, "Proposed Schedule for Corrective Action", to be returned which outlines specific measures and time frames for facilities to bring the violating source into compliance in a timely manner.

2. If no emission limits are exceeded and it is determined that the current SIP requirements are inadequate to maintain the NAAQS, within 60 days of issuance of the field report revised SIP permits with more stringent emission limits will be formulated. A compliance schedule to achieve the revised emission limits will be incorporated in any new permits as part of the SIP.

3. If there is an exceedance of the SO_2 standard and no emission limit is violated and the TDEC has evidence that the ambient exceedance resulted from a permitted source or a non-permitted source due to an accidental release, the situation would be handled using one of the two following methods.

(1) If the source is permitted and is within the maintenance area, a plan of future action will be formulated within 90 days by the facility acceptable to the TDEC to either prevent and/or handle incidents of this nature.

(2) If the source is not permitted, the TDEC will contact the party and negotiate, if possible, a voluntary plan of action for the future.

Section 107(d)(3)(E)(v). The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

Tennessee has complied with all requirements for section 110 of the CAA and part D. The implementation plan meets the requirements of section 110 of the CAA and the RACT plan in place provides specific emission limits to minimize SO_2 emissions. Part D entitled *Plan Requirement for Nonattainment Area* lists general plans for nonattainment areas which include attainment dates, incorporating RACT, tracking reasonable further progress (RFP), compiling periodic inventories, adopting enforceable measures, and permitting new and modified sources in accordance with section 173 while not interfering with RFP. All of the above measures have been adopted by the TDEC and approved in the SIP. Therefore, all of the requirements for section 107(d)(3)(E) have been satisfied.

Final Action

In this action, EPA is approving the Polk County area SO_2 maintenance plan submitted on April 17, 1995, and the New Johnsonville area SO_2 maintenance plan submitted on December 17, 1993, because both meet the requirements of section 175A. In addition, the Agency is approving the request to redesignate the Polk County and New Johnsonville SO_2 areas to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

The SO_2 SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the SO_2 NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the SO_2 emission limitations and restrictions contained in the approved SO_2 SIP. Changes to SO_2 SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of non-implementation [section 173(b) of the CAA] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the CAA.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective January 26, 1998 unless, by December 26, 1997 adverse or critical comments are received, or the areas fail to continue in attainment status until the final notice approving such redesignation is effective.

If the EPA receives such comments or the areas fail to continue in attainment status until the final action approving such redesignation is effective, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 26, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Regional Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the

U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 10, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraphs (c)(159) and (160) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(159) The maintenance plan and redesignation request for the Polk County area submitted by the Tennessee Department of Environment and Conservation on April 17, 1995, as part of the Tennessee SIP.

(i) Incorporation by reference. The following sections of the Tennessee Department of Environment and Conservation Board Order Number 95–24: VI. Maintenance and contingency plan adopted on April 12, 1995.

(ii) Other material. None.

(160) The maintenance plan and redesignation request for the New Johnsonville Area which includes that portion of Benton and that portion of Humphreys Counties, Tennessee, surrounding TVA's Johnsonville plant submitted by the Tennessee Department of Environment and Conservation on December 17, 1993, as part of the Tennessee SIP.

(i) Incorporation by reference. The following sections of the Tennessee Department of Environment and Conservation Board Order Number 93–25: I. Maintenance Plan; and II. Contingency Plan adopted on December 15, 1993.

(ii) Other material. None.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the "Tennessee-SO_2" table is amended by revising the entries for "That portion of Benton County surrounding TVA's Johnsonville plant", "That portion of Humphreys County surrounding TVA's Johnsonville plant", and "Polk County" to read as follows:.

§ 81.343 Tennessee

* * * * *

TENNESSEE—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
That portion of Benton County surrounding TVA's Johnsonville plant				X
That portion of Humphreys County surrounding TVA's Johnsonville plant				X
Polk County				X

* * * * *

[FR Doc. 97–30952 Filed 11–24–97; 8:45 am]

BILLING CODE 6560–50–U

Proposed Rules

Federal Register

Vol. 62, No. 227

Tuesday, November 25, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 353

[Docket No. 95–071–1]

RIN 0579–AA75

Export Certification; Accreditation of Non-Government Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the export certification regulations to provide for the establishment of a program under which non-government facilities could become accredited to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport. The accreditation criteria for particular laboratory testing and phytosanitary inspection services would be developed by the Animal and Plant Health Inspection Service in cooperation with other interested government, industry, academic, or research entities. Currently, only tests conducted by public laboratories or inspections carried out by Federal, State, or county inspectors or by agents may be used as the basis for the issuance of Federal certificates. The proposed accreditation program would provide a mechanism for qualified non-government facilities to become accredited to perform testing or inspection services that may be used as supporting documentation for the issuance of certificates for certain plants or plant products.

DATES: Consideration will be given only to comments received on or before January 26, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–071–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–071–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Narcy G. Klag, Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8537.

SUPPLEMENTARY INFORMATION:

Background

The export certification regulations contained in 7 CFR part 353 (referred to below as the regulations) set forth the procedures for obtaining certification for plants and plant products offered for export or re-export. Export certification is not required by the regulations; rather, it is provided by the Animal and Plant Health Inspection Service (APHIS) as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry. After assessing the condition of the plants or plant products intended for export, relative to the receiving country's regulations, an inspector will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578), if warranted.

Since 1975, APHIS has participated with State governments in the Cooperative Phytosanitary Export Certification Program, which allows certain State officials, as well as APHIS officials, to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products. Because the number of Federal inspectors is limited, the use of State and county inspectors is a considerable service to exporters of plants and plant products in terms of both time and convenience.

In a final rule published in the **Federal Register** on April 8, 1996 (61 FR 15365–15371, Docket No. 90–117–3), we amended the export certification regulations to, among other things: (1) Revise the requirements for a person to qualify as an inspector; (2) allow county-level plant regulatory officials, in addition to State and APHIS officials, to qualify as inspectors; (3) allow persons other than inspectors—those persons being referred to as "agents"—to perform phytosanitary field inspections; and (4) provide for an industry-based certification, under certain conditions, of certain low-risk plant products such as kiln-dried lumber offered for export. Those amendments were intended, in part, to provide additional qualified personnel and export certification options in order to relieve some of the demands placed upon the existing pool of inspectors by increasingly stringent foreign import requirements and dwindling Federal and State budgets.

In this document, we are proposing to further broaden the options for inspection and export certification by establishing regulations under which non-government facilities such as commercial laboratories and private inspection services could become accredited by APHIS to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of a Federal phytosanitary certificate, phytosanitary certificate for reexport, or export certificate for processed plant products. This proposed approach is consistent with current international trends toward industry self-certification and is based upon the recent efforts of a working group within the North Atlantic Plant Protection Organization (NAPPO) to draft standards for the accreditation of laboratories performing phytosanitary and other export certification activities to ensure compliance with import requirements for products moving into or within the regional territories of the NAPPO member countries (Canada, Mexico, and the United States).

The regulations proposed in this document would establish a means by which non-government facilities could be accredited by APHIS to perform certain functions related to phytosanitary export certification. It is important to note, however, that these proposed regulations would only establish a template upon which accreditation programs for specific functions could be developed—these proposed regulations would not establish specific accreditation

standards for, by way of example, a private laboratory seeking to be accredited to perform virus testing on plant material intended for export. Rather, specific accreditation standards would be developed as demand dictates. If, for example, a private laboratory wishes to perform virus testing on plant material intended for export, APHIS would work with that laboratory, and any other similarly situated laboratory, as well as with any other appropriate and interested government, industry, academic, or research entity, to identify and develop the appropriate specific standards against which the private laboratory's ability and competence to perform that virus testing could be judged. Once completed, those standards would be reviewed by APHIS and its cooperators and published in the **Federal Register** for comment. Once approved and published as a final rule, they would become the standard for the accreditation of non-government facilities to perform virus testing of plant material intended for export. Such standards would be published in 7 CFR part 353.

We believe that this proposed approach is beneficial in two ways: First, it would be difficult, if not impossible, for APHIS to develop a single, one-size-fits-all set of standards for the numerous disciplines that play a role in phytosanitary export certification. Secondly, the proposed approach would allow APHIS to develop specific standards with the participation of those best able to recommend valid scientific criteria, i.e., the government, academic, and private-sector individuals who have the experience and expertise in the particular area for which specific standards are being developed.

Proposed Regulations

To establish this proposed accreditation program, we would first amend § 353.1 to add a definition of *non-government facility*, which we would define as "laboratory, research facility, inspection service, or other entity that is maintained, at least in part, for the purpose of providing laboratory testing or phytosanitary inspection services and that is not operated by the Federal Government or by the government of a State or a subdivision of a State." We believe that laboratories, research facilities, or inspection services are the types of entities most likely to seek accreditation under the proposed regulations. By excluding facilities operated by Federal, State, county, or local governments, the intent is that the accreditation program is to apply only to private entities. The involvement of government-run facilities in phytosanitary export certification is already covered under the current regulations in part 353; it is not our intent to require facilities operated by any level of Federal or State government to become accredited.

The regulations in § 353.7 currently state, with regard to the issuance of certificates, that the Administrator of APHIS may authorize inspectors to issue phytosanitary certificates, phytosanitary certificates for reexport, or export certificates for processed plant products on the basis of inspections made by cooperating Federal, State, and county agencies. Therefore, to accommodate the proposed accreditation program, we are proposing to amend paragraphs (a), (b), and (c) of § 353.7 to further provide that the Administrator may also authorize inspectors to issue those certificates on the basis of a laboratory test or an inspection conducted by a non-government facility that has been accredited in accordance with § 353.8, which is a new section that we would add to the regulations to spell out the specific provisions of the proposed accreditation program.

The proposed new § 353.8 would be divided into three main paragraphs: Paragraph (a) would serve to describe the accreditation program, paragraph (b) would set out the criteria for accreditation, and paragraph (c) would discuss the fees related to the accreditation program. These three paragraphs are discussed in greater detail below.

Paragraph (a) of proposed § 353.8 would begin by stating that the Administrator may accredit a non-government facility to perform specific laboratory testing or phytosanitary inspection services if the Administrator determines that the facility meets the criteria for accreditation found in paragraph (b). (Note: The term "Administrator" is used in this document, as it is used throughout APHIS' regulations, to mean the Administrator of APHIS or any person authorized to act for the Administrator.) A list of accredited non-government facilities could be obtained by writing to APHIS.

To determine whether or not a facility meets the criteria for accreditation, APHIS would conduct an assessment of the facility and its fitness to conduct the testing or inspection services for which it is seeking accreditation. A description of the assessment process is found below in the discussion of the criteria for accreditation.

Paragraph (a)(2) of proposed § 353.8 describes the conditions under which the Administrator could deny accreditation to a non-government facility or withdraw the accreditation that had been previously granted to a facility. Clearly, a facility would have to be able to meet and comply with the standards identified as being necessary for the accurate and reliable execution of the testing or inspection services for which it has been, or is seeking to be, accredited. Therefore, the proposed regulations would provide that the Administrator could deny accreditation to a facility that APHIS determines, through its pre-accreditation assessment, does not meet the criteria for accreditation and has failed to take the remedial action recommended to correct identified deficiencies. Similarly, the Administrator could withdraw the accreditation of an accredited facility if APHIS determined that the facility was not adhering to the criteria for the maintenance of accreditation and had failed to take the remedial action recommended to correct the identified deficiencies.

If APHIS denied a facility's application for accreditation, the operator of the facility would be informed of the reasons for the denial and would be afforded the opportunity to appeal the decision to the Administrator. To ensure that there would be an informed and timely review of the appeal, the operator's appeal would have to be in writing and submitted within 10 days after receiving notification of the denial and would have to include all of the facts and reasons upon which the operator was relying to show that the facility had been wrongfully denied accreditation. The Administrator would then grant or deny the operator's appeal in writing as promptly as circumstances permitted, with the response stating the reasons for his or her decision. If there was a conflict as to any material fact regarding the denial or the reasons for the denial, a hearing would be held to resolve the conflict under rules of practice adopted by the Administrator.

The withdrawal of a facility's accreditation would be handled in much the same way. The operator of the facility would be informed of the reasons for the proposed withdrawal before any action was taken and given the opportunity to appeal the proposed withdrawal. The appeal would have to be in writing and submitted to the Administrator within 10 days after the operator was informed of the reasons for the proposed withdrawal. The appeal would have to include all of the facts and reasons upon which the operator of the facility was relying to show that the reasons for the proposed withdrawal were incorrect or did not support the withdrawal of the facility's accreditation. The Administrator would grant or deny the appeal in writing as promptly as circumstances permitted and would state the reason for his or her decision. If there was a conflict as to any material fact regarding the proposed withdrawal or the reasons for the proposed withdrawal, a hearing would be held to resolve the conflict under rules of practice adopted by the Administrator. However, the proposed regulations would provide that the withdrawal of a facility's accreditation could become effective before a final determination was made regarding an appeal if the Administrator determined that an immediate withdrawal was necessary to protect the public health, interest, or safety. In such a case, the withdrawal would be effective at the time APHIS notifies the operator of the facility either orally or in writing. In the event of an oral notification, a written confirmation would be given to the operator as promptly as circumstances allowed. The withdrawal would continue in effect pending the completion of the withdrawal and appeal proceedings, and any subsequent judicial review of those proceedings, unless the Administrator ordered otherwise.

The proposed regulations also would provide that the Administrator would withdraw a facility's accreditation if the operator of the facility informed APHIS in writing that the facility wished to terminate its accredited status.

We would allow a non-government facility that has had its application for accreditation denied or its accreditation withdrawn to reapply for accreditation using the same application procedures provided for first-time applicants. However, if the facility's accreditation had been denied or withdrawn because it failed to meet or comply with the standards for accreditation, we would require the facility operator to include written documentation with the application that specified what actions had been taken to correct the conditions that led to the denial or withdrawal of the facility's accreditation. It is likely that a pre-accreditation assessment of a reapplying facility would place added emphasis on those areas in which the facility had been deficient, so the documentation describing the actions taken to correct those deficiencies would be useful when determining the scope and design of the assessment.

Because a facility may need to disclose confidential business information to APHIS during the course of its pre-accreditation assessment or during the term of its accreditation, paragraph (a) of proposed § 353.8 would conclude by stating that all information gathered by APHIS during its accreditation-related activities would be treated with the appropriate level of confidentiality. As set forth in the U.S. Department of Agriculture's (USDA's) administrative regulations in 7 CFR 1.11, the USDA is responsible for making the final determination with regard to the disclosure or nondisclosure of information submitted by a business, but the policy of the USDA is to obtain and consider the views of the submitter of any privileged or confidential business information and to provide the submitter the opportunity to object to the disclosure of such information.

Pre-Accreditation Assessment

Paragraph (b) of proposed § 353.8 would set out the criteria for the achievement and retention of accreditation. The paragraph would begin by stating that specific standards for accreditation in a particular area of laboratory testing or phytosanitary inspection could be obtained by writing to APHIS. However, as discussed previously in this document, specific standards have not yet been developed for any area of accreditation. Rather, it is our intention that specific standards would be developed in the future on an "as needed" basis when a non-government facility informs APHIS that it would like to become accredited in a particular area of laboratory testing or phytosanitary inspection. Once standards in a particular area have been developed and adopted by APHIS, those standards would be available to non-government facilities that may wish to become similarly accredited.

Because accreditation standards under the proposed regulations would, at least initially, have to be drafted and adopted before the assessment process could begin, the proposed regulations would provide for APHIS' development of standards. Therefore, paragraph (b)(1) would state that if specific standards for accreditation in a particular area of laboratory testing or phytosanitary inspection had not been identified by APHIS, the Administrator would develop the appropriate specific standards applicable to accreditation in that particular area. The regulations would further provide that APHIS would place a notice in the **Federal Register** to inform the public of the opportunity to participate in the development of those standards by submitting suggested criteria or recommending particular considerations that may need to be addressed in the standards. This proposed approach would ensure that APHIS' resources are focused on those areas in which facilities are interested in obtaining accreditation and allow for standards to be prepared through a collaborative, cooperative process that provides for the participation of all interested parties, including the operator of the non-government facility seeking accreditation and any other interested governmental, industry, academic, or research entity.

Once accreditation standards are promulgated, the operator of a non-government facility seeking accreditation would begin the accreditation process by submitting an application to APHIS. The first items on the application would be the legal name and full address of the facility and the name, address, telephone number, and fax number of the operator of the facility or his or her authorized representative. These items would enable APHIS to identify the facility for its records and contact the facility's operator or an authorized representative as the pre-accreditation assessment process begins and during the term of the facility's accreditation.

The application would then have to contain a description of the facility itself. This information would enable APHIS to understand the nature of the facility, i.e., whether the facility is a stand-alone building or is located within a larger office or laboratory building, what the facility's primary function is and the scope of operations within the facility, and, if applicable, the relationship the facility has to a larger corporate entity. This type of information would give APHIS a frame of reference as it considers the suitability of the facility for the type of work it is seeking to perform under the accreditation program and would provide a starting point for the design of a pre-accreditation assessment. The application would conclude with a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. The completed application would then have to be signed by the operator of the facility or his or her authorized representative.

After it had received the completed application, APHIS would review the application to identify the scope of the assessment that would be necessary to adequately review the facility's fitness to conduct the laboratory testing or phytosanitary inspection services for which it is seeking accreditation. Through that review, APHIS would determine the number of assessors needed for an assessment team, the fields of expertise that should be

represented on the team, and the means by which the facility's competence to conduct the applicable laboratory tests or phytosanitary inspections could be evaluated.

Once the scope of the assessment has been defined, APHIS could identify the individuals who would comprise the assessment team, determine the materials that would be needed for the assessment, and project the length of the assessment process, which would allow APHIS to develop an estimate of the expenses that would be incurred by the government in the course of the pre-accreditation assessment process. Those expenses would have to be reimbursed by the facility seeking accreditation, so APHIS would provide the estimate to the operator of the facility before embarking upon any activities that would result in costs being incurred.

Before the assessment of a facility could begin, the operator of the facility would have to agree, in writing, to allow the assessment team access to its facilities, supply the team with the information it needs to evaluate the facility, and to enter into a trust fund agreement with APHIS to pay the assessment fee regardless of the assessment's outcome (i.e., even if the assessment team recommends that the facility not be accredited), and, if accreditation is granted, to pay the charges related to the subsequent maintenance of the facility's accreditation, such as laboratory fees for the corroboration of check tests. (The specific provisions of the trust fund agreement are explained below under "Fees and Trust Fund Agreement.") Once the operator of the facility had agreed, in writing, to these terms, APHIS would assemble the assessment team and commence the assessment as soon as circumstances permitted.

The assessment itself would focus on four major areas: Physical plant, equipment, methods of testing or inspection, and personnel. The assessment team would compare the facility's performance in those areas against the specific accreditation standards that had been identified for the particular laboratory testing or phytosanitary inspection services for which the facility was seeking accreditation. The four areas are explained in greater detail below.

Physical Plant

The facility's physical plant would have to meet the criteria identified in the accreditation standards as necessary to properly conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation. For example, a facility that wished to be accredited to perform laboratory testing would have to have adequate laboratory space in which to perform the testing, storage space for holding samples and supplies, and office space for preparing reports and other documentation.

Equipment

The assessment team would determine whether the facility's personnel had unrestricted access to the equipment identified in the accreditation standards as necessary to properly conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation. To continue with the example in the previous paragraph, a facility seeking accreditation for laboratory testing would have to have the microscopes, computers, scales, analyzers, etc. that would be necessary for the facility to properly conduct that laboratory testing. The assessment team would also verify, where appropriate, that calibration and monitoring of the required equipment is documented and conforms to prescribed standards.

Methods of Testing or Inspection

To ensure that the facility was employing scientifically valid and up-to-date methodology to conduct its laboratory testing or phytosanitary inspection activities, the assessment team would review the facility's quality manual or other equivalent documentation that described the system in place at the facility for the conduct of the laboratory testing or phytosanitary inspection services for which the facility seeks accreditation. The assessors would verify that the manual was available to, and in use by, the facility personnel who perform the services and that the methods and procedures described in the manual were equal to those identified in the accreditation standards.

Personnel

The assessment team would also review the qualifications of the facility's personnel, both management and staff, who were responsible for the testing or inspection services for which the facility was seeking accreditation. Those personnel, who would have to be identified to the assessment team, would have to possess the training, education, or experience identified in the accreditation standards as necessary to properly conduct the testing or inspection services for which the facility was seeking accreditation, and that training, education, or experience would have to be documented. If the particular accreditation standards under which the facility was being reviewed allowed for the use of subcontractors, the assessment team would also review the qualifications of any subcontractors used by the facility in connection with its laboratory testing or phytosanitary inspection activities.

Retaining Accreditation

Once accredited, the non-government facility would have to observe several conditions to maintain its accreditation. First, the facility would have to continue to observe the specific standards applicable to its area of accreditation, i.e., the standards by which it was judged in its initial, pre-accreditation assessment. To give APHIS the ability to monitor the facility's compliance with those standards, the facility would have to agree to be assessed and evaluated on a periodic basis through proficiency tests or check samples and be able to demonstrate on request that it is able to perform the tests or inspection services for which it was accredited. If, in the course of an assessment or evaluation, APHIS identifies any deficiencies in the facility or in its conduct of testing or inspection activities, the operator of the facility would have to ensure that those deficiencies are resolved.

Because the facility's accreditation would have been based largely on APHIS' review and acceptance of specific elements in place at the facility at the time of the assessment, we would require that the facility notify APHIS when those elements changed. Specifically, we would require that the operator of the facility notify APHIS when there are any changes in key management personnel or facility staff accountable for the testing or inspection services for which the facility has been accredited. We would also require the operator of the facility to report any changes involving the location, ownership, physical plant, equipment, or other conditions that existed at the facility at the time accreditation was granted.

Fees and Trust Fund Agreement

To cover the costs of APHIS' involvement in the assessment process, the operator of the facility seeking accreditation would have to enter into a trust fund agreement with APHIS. Under the agreement, the operator of the facility would pay in advance all estimated costs that APHIS expected to incur through its involvement in the pre-accreditation assessment process and the maintenance of the facility's accreditation. Those costs would include administrative expenses incurred in those activities, such as laboratory fees for evaluating check test results, and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the APHIS in performing those activities. The agreement would require the operator of the facility to deposit a certified or cashier's check with APHIS for the amount of the costs, as estimated by APHIS. If the deposit was not sufficient to meet all costs incurred by APHIS, the agreement would further require the operator of the facility to deposit another certified or cashier's check with APHIS for the amount of the remaining costs, as determined by APHIS, before APHIS' services would be completed. After a final audit at the conclusion of the pre-accreditation assessment, any overpayment of funds would be returned to the operator of the facility or held on account until needed for future activities related to the maintenance of the facility's accreditation.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would amend the export certification regulations to provide for the establishment of a program under which non-government facilities could become accredited to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of Federal phytosanitary certificates, phytosanitary certificates for reexport, or an export certificates for processed plant products. The accreditation criteria for particular laboratory testing and phytosanitary inspection services would be developed by APHIS with the participation of other interested governmental, industry, academic, or research entities. Currently, only tests conducted by public laboratories or inspections carried out by Federal, State, or county inspectors or by agents may be used as the basis for the issuance of a Federal certificate. The proposed accreditation program would provide a mechanism for qualified non-government facilities to become accredited to perform the testing or inspection services that may be used as supporting documentation for the issuance of Federal certificates for the export or reexport of certain plants or plant products.

The regulations proposed in this document are intended only to provide a framework upon which accreditation programs for specific functions could be established, so they would not, in and of themselves, entail any costs to APHIS or any non-government facility. However, any specific accreditation program that would be established under these proposed regulations would entail costs to both the entities being accredited and the accrediting body, i.e., APHIS. Because the accreditation program is expected to be self-supporting, the costs to APHIS would be recouped through accreditation fees. The fees charged by APHIS in connection with the initial accreditation of a non-government facility and the maintenance of that accreditation would, therefore, have to be adequate to recover the costs incurred by the government in the course of APHIS' accreditation activities. We expect that the costs that would have to be reimbursed would be largely attributable to the cost of transportation for the assessors to travel to the site of the facility, lodging for the assessors, their salary and per diem, any laboratory fees charged for evaluating check test results, and administrative expenses. Costs for specific accreditation programs would vary depending on the range of activities for which a facility was seeking accreditation, the number of assessors needed to adequately conduct a pre-accreditation assessment, the type and number of any proficiency tests that would have to be conducted, and the frequency with which post-accreditation evaluation activities such as check tests and site visits would have to be conducted.

The proposed regulations would stipulate that APHIS would provide an estimate of its anticipated fees to the operator of the facility prior to undertaking any activities that would result in fees being charged to a facility. Participation in any accreditation program developed under these proposed regulations would be voluntary. At this time, we estimate that 15 individual non-government facilities would be likely to seek and maintain accreditation annually on about 82 accredited procedures, as long as the costs of participating in an accreditation program are lower than the benefits they receive from the program. As a result, this program would have to meet the test of the marketplace.

The domestic seed industry, through the American Seed Trade Association, has indicated its interest in establishing an accreditation program for seed health testing and field inspection of seed, so we have used the domestic seed industry to illustrate the potential benefits that could result from the establishment of specific accreditation programs.

The seed industry would likely benefit from the establishment of an accreditation program because domestic seed exporters routinely require the services of inspectors and agents in order to obtain the phytosanitary certification required by most, if not all, importing countries; the benefits would be realized in terms of more timely certifications, which in turn could lead to reduced costs as well as increased U.S. exports.

The value of seed exported from the United States to other countries continues to grow rapidly, from $665 million in 1994–95 (July to June), to $705 million in 1995–96, to more than $800 million projected for 1996–97. There has been a concomitant rise in demand for laboratory testing and phytosanitary inspection services to meet other countries' import requirements. The ability of Federal, State, and county testing and inspection services to meet this growing demand will be increasingly strained. Already there are instances in which the accreditation of non-government facilities would have prevented the loss of export sales.

For example, some seed export opportunities have been forfeited because the results of pre-harvest field inspections are usually not known until after harvest. It is common for seed from several fields to be blended before shipment. If the sample from one field is subsequently reported to contain an actionable pest, then none of the blended seed—which may have been harvested from as many as eight or nine fields—could be exported. In one case in which this occurred, the affected seed company lost foreign sales worth $250,000. Such losses would be much less likely to occur if there were more timely reporting of pre-harvest inspections; accredited non-government inspection facilities could make timely reporting a reality. In general, non-government testing and inspection services could be expected to be completed with minimal delay, leading to greater marketing flexibility and lower risk of lost sales.

Additional benefits, of even greater potential significance, would be gained through the standardization of testing and inspection protocols that would result from the establishment of accreditation standards, particularly when internationally recognized standards are used. Major seed trading partners of the United States, such as

Canada, France, and The Netherlands, have national seed health organizations that address seed health issues in part by employing laboratory accreditation protocols. The standards that would underlie accreditation of non-government facilities in the United States could help lead to the removal of discrepancies among foreign phytosanitary regulations, thereby expediting U.S. seed exports.

Accreditation of non-government facilities, by promoting more streamlined exports based on internationally recognized standards, could be expected to benefit other export sales besides those of the seed industry. As a self-supporting system, private firms that expect benefits in excess of costs of accreditation would participate. In addition to the net benefits received by these firms directly, society as a whole would benefit from enhanced trade.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–071–1. Please send a copy of your comments to: (1) Docket No. 95–071–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would provide for the establishment of a program under which non-government facilities could become accredited to perform specific laboratory testing or phytosanitary inspection services that could serve as the basis for the issuance of a Federal phytosanitary certificate, export certificate for processed plant products, or phytosanitary certificate for reexport. This proposed accreditation program would provide a mechanism for qualified non-government facilities to become accredited to perform testing or inspection services that may be used as supporting documentation for the issuance of certificates for certain plants or plant products.

Launching this accreditation program would necessitate that APHIS use a number of information collection activities to ensure that non-government facilities participating or seeking to participate in the program possess the necessary qualifications. Therefore, we are seeking OMB approval to employ the following information collection activities in connection with the APHIS export certification program:

Application for accreditation: The operator of a non-government facility who wishes to be accredited in a particular area of laboratory testing or phytosanitary inspection must submit an application to APHIS. The application must contain the legal name and full address of the facility; the name, address, telephone, and fax number of the facility's operator; a description of the facility; and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation.

Agreement to fulfill accreditation procedure: Before APHIS will assess a non-government facility to determine whether it meets the standards for accreditation, the operator of the facility must sign an agreement with APHIS. Specifically, the operator must agree to supply any information needed for the evaluation of the facility, pay the fees charged for the assessment, and accept the charges related to the subsequent maintenance of the facility's accreditation.

Documentation of equipment: The equipment used in the non-government facility (microscopes, computers, etc.) must be calibrated and monitored to ensure that it conforms to the standards for accreditation. This calibration and monitoring must be documented by facility personnel.

Quality manual or equivalent documentation: The operator of a non-government facility is responsible for maintaining a quality manual or similar documentation at the facility that describes the system in place for conducting the laboratory testing or phytosanitary inspection services for which the faculty is accredited. The manual must be available to and used by facility personnel performing the work.

Identity of personnel and subcontractor's qualifications: The personnel employed at the non-government facility must be identified and possess the training, education, or experience necessary to perform the laboratory testing or phytosanitary inspection services for which the facility is accredited. The operator of the facility is responsible for acquiring and maintaining documentation concerning the training, education, and experience of facility personnel. If the non-government facility uses a subcontractor to perform some of its testing or inspection services, the qualifications of the subcontractor must be documented and made available to APHIS. The facility operator is responsible for acquiring and maintaining this documentation.

Notification of changes in personnel: The facility operator must notify APHIS whenever the facility undergoes any change in personnel. This notification may be written, communicated via telephone, or by any other means of communication convenient to the facility's operator.

Report changes in location or ownership: The facility operator must notify APHIS if the facility moves its operations to a new location, undergoes an ownership change, replaces equipment, or experiences any other changes in the conditions that existed at the time the facility received its accreditation. This notification may be written, communicated via telephone, or by any other means of communication convenient to the facility's operator.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 3.609 hours per response.

Respondents: Operators of non-government facilities who wish to be accredited to perform laboratory testing or phytosanitary inspection services in connection with APHIS' export certification program and certain employees of such non-government facilities.

Estimated number of respondents: 15.

Estimated number of responses per respondent: 5.466.

Estimated annual number of responses: 82.

Estimated total annual burden on respondents: 296 hours.

Copies of this information collection can be obtained from Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 353

Exports, Plant diseases and pests, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 353 would be amended as follows:

PART 353—EXPORT CERTIFICATION

1. The authority citation for part 353 would continue to read as follows:

Authority: 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 353.1, a definition of *non-government facility* would be added, in alphabetical order, to read as follows:

§ 353.1 Definitions.

* * * * *

Non-government facility. A laboratory, research facility, inspection service, or other entity that is maintained, at least in part, for the purpose of providing laboratory testing or phytosanitary inspection services and that is not operated by the Federal Government or by the government of a State or a subdivision of a State.

* * * * *

3. In § 353.7, paragraphs (a)(4), (b)(4), and (c)(4) would each be amended by adding a new sentence at the end of each paragraph to read as follows:

§ 353.7 Certificates.

(a) * * *

(4) * * * The Administrator may also authorize inspectors to issue a certificate on the basis of a laboratory test or an inspection performed by a non-government facility accredited in accordance with § 353.8.

* * * * *

(b) * * *

(4) * * * The Administrator may also authorize inspectors to issue a certificate on the basis of a laboratory test or an inspection performed by a non-government facility accredited in accordance with § 353.8.

* * * * *

(c) * * *

(4) * * * The Administrator may also authorize inspectors to issue a certificate on the basis of laboratory test or an inspection performed by a non-government facility accredited in accordance with § 353.8.

* * * * *

4. A new § 353.8 would be added to read as follows:

§ 353.8 Accreditation of non-government facilities.

(a) The Administrator may accredit a non-government facility to perform specific laboratory testing or phytosanitary inspection services if the Administrator determines that the non-government facility meets the criteria of paragraph (b) of this section.[1]

(1) A non-government facility's compliance with the criteria of paragraph (b) of this section shall be determined through an assessment of the facility and its fitness to conduct the laboratory testing or phytosanitary inspection services for which it seeks to be accredited. If, after evaluating the results of the assessment, the Administrator determines that the facility meets the accreditation criteria, the facility's application for accreditation will be approved.

(2) The Administrator may deny accreditation to, or withdraw the accreditation of, any non-government facility to conduct laboratory testing or phytosanitary inspection services upon a determination that the facility does not meet the criteria for accreditation or maintenance of accreditation under paragraph (b) of this section and has failed to take the remedial action recommended to correct identified deficiencies.

(i) In the case of a denial, the operator of the facility will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the facility was wrongfully denied accreditation. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(ii) In the case of withdrawal, before such action is taken, the operator of the facility will be informed of the reasons for the proposed withdrawal. The operator of the facility may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the accreditation of the facility. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written

[1] A list of accredited non-government facilities may be obtained by writing to Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236.

confirmation will be given as promptly as circumstances allow. This withdrawal will continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(3) The Administrator will withdraw the accreditation of a non-government facility if the operator of the facility informs APHIS in writing that the facility wishes to terminate its accredited status.

(4) A non-government facility whose accreditation has been denied or withdrawn may reapply for accreditation using the application procedures in paragraph (b) of this section. If the facility's accreditation was denied or withdrawn under the provisions of paragraph (a)(2) of this section, the facility operator must include with the application written documentation specifying what actions have been taken to correct the conditions that led to the denial or withdrawal of accreditation.

(5) All information gathered during the course of a non-government facility's assessment and during the term of its accreditation will be treated by APHIS with the appropriate level of confidentiality, as set forth in the U.S. Department of Agriculture's administrative regulations in § 1.11 of this title.

(b) *Criteria for accreditation of non-government facilities.* (1) Specific standards for accreditation in a particular area of laboratory testing or phytosanitary inspection are set forth in this part and may be obtained by writing to APHIS. If specific standards for accreditation in a particular area of laboratory testing or phytosanitary inspection have not been promulgated by APHIS, the Administrator will develop appropriate standards applicable to accreditation in the area for which the non-government facility is seeking accreditation and publish a notice of proposed rulemaking in the **Federal Register** to inform the public and other interested persons of the opportunity to comment on and participate in the development of those standards.

(2) The operator of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection shall submit an application to the Administrator. The application must be completed and signed by the operator of the facility or his or her authorized representative and must contain the following:

(i) Legal name and full address of the facility;

(ii) Name, address, and telephone and fax number of the operator of the facility or his or her authorized representative;

(iii) A description of the facility, including its physical plant, primary function, scope of operation, and, if applicable, its relationship to a larger corporate entity; and

(iv) A description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation.

(3) Upon receipt of the application, APHIS will review the application to identify the scope of the assessment that will be required to adequately review the facility's fitness to conduct the laboratory testing or phytosanitary inspection services for which it is seeking accreditation. Before the assessment of the facility begins, the applicant's representative must agree, in writing, to fulfill the accreditation procedure, especially to receive the assessment team, to supply any information needed for the evaluation of the facility, and to enter into a trust fund agreement as provided by paragraph (c) of this section to pay the fees charged to the applicant facility regardless of the result of the assessment and to pay the charges of subsequent maintenance of the accreditation of the facility. Once the agreement has been signed, APHIS will assemble an assessment team and commence the assessment as soon as circumstances permit. The assessment team will measure the facility's fitness to conduct the laboratory testing or phytosanitary inspection services for which it is seeking accreditation against the specific standards identified by the Administrator for those services by reviewing the facility in the following areas:

(i) *Physical plant.* The facility's physical plant (e.g., laboratory space, office space, greenhouses, vehicles, etc.) must meet the criteria identified in the accreditation standards as necessary to properly conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation.

(ii) *Equipment.* The facility's personnel must possess or have unrestricted access to the equipment (e.g., microscopes, computers, scales, triers, etc.) identified in the accreditation standards as necessary to properly conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation. The calibration and monitoring of that equipment must be documented and conform to prescribed standards.

(iii) *Methods of testing or inspection.* The facility must have a quality manual or equivalent documentation that describes the system in place at the facility for the conduct of the laboratory testing or phytosanitary inspection services for which the facility seeks accreditation. The manual must be available to, and in use by, the facility personnel who perform the services. The methods and procedures used by the facility to conduct the laboratory testing or phytosanitary inspection services for which it seeks accreditation must be commensurate with those identified in the accreditation standards and must be consistent with or equivalent to recognized international standards for such testing or inspection.

(iv) *Personnel.* The management and facility personnel accountable for the laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation must be identified and must possess the training, education, or experience identified in the accreditation standards as necessary to properly conduct the testing or inspection services for which the facility seeks accreditation, and that training, education, or experience must be documented. Any subcontractor utilized by the facility in connection with the testing or inspection services for which accreditation is sought must be identified to APHIS; the subcontractor's qualifications will be reviewed by APHIS as part of the facility's assessment.

(4) To retain accreditation, the facility must agree to:

(i) Observe the specific standards applicable to its area of accreditation;

(ii) Be assessed and evaluated on a periodic basis by means of proficiency testing or check samples;

(iii) Demonstrate on request that it is able to perform the tests or inspection services representative of those for which it is accredited;

(iv) Resolve all identified deficiencies;

(v) Notify APHIS as soon as circumstances permit of any changes in key management personnel or facility staff accountable for the laboratory testing or phytosanitary inspection services for which the facility is accredited; and

(vi) Report to APHIS as soon as circumstances permit any changes involving the location, ownership, physical plant, equipment, or other conditions that existed at the facility at the time accreditation was granted.

(c) *Fees and trust fund agreement.* The fees charged by APHIS in connection with the initial accreditation of a non-government facility and the maintenance of that accreditation shall be adequate to recover the costs incurred by the government in the course of APHIS' accreditation activities. To cover those costs, the operator of the facility seeking accreditation must enter into a trust fund agreement with APHIS under which the operator of the facility will pay in advance all estimated costs that APHIS expects to incur through its involvement in the pre-accreditation assessment process and the maintenance of the facility's accreditation. Those costs shall include administrative expenses incurred in those activities, such as laboratory fees for evaluating check test results, and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the APHIS in performing those activities. The operator of the facility must deposit a certified or cashier's check with APHIS for the amount of the costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the operator of the facility must deposit another certified or cashier's check with APHIS for the amount of the remaining costs, as determined by APHIS, before APHIS' services will be completed. After a final audit at the conclusion of the pre-accreditation assessment, any overpayment of funds will be returned to the operator of the facility or held on account until needed for future activities related to the maintenance of the facility's accreditation.

Done in Washington, DC, this 19th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30944 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: Under this proposed rule, an SBA disaster loan borrower could request an increase in a disaster loan within two years after the loan was approved. The increase must be used to cover eligible damages resulting from events that occurred after the loan was approved and were beyond the borrower's control. Under the proposed rule, the SBA Associate Administrator for Disaster Assistance could waive the two year limit because of extraordinary circumstances.

DATES: Comments must be submitted on or before December 26, 1997.

ADDRESSES: Comments should be mailed to Bernard Kulik, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, 202/205–6734.

SUPPLEMENTARY INFORMATION: SBA makes thousands of physical and economic injury disaster loans to repair or replace damaged property or to help a business recover from economic injury. Borrowers must use such loans only to help them recover from the effects of a specific disaster. Borrowers may request increases in their loans after the initial disaster loans were made and, where appropriate, SBA will approve the request. Under this proposed rule, SBA is defining the circumstances under which a borrower can request an increase and limiting the time period for the request to two years. The SBA Associate Administrator for Disaster Assistance (AA/DA) would have the authority to waive the two year limit for extraordinary and unforeseeable circumstances.

Under the proposed rule, a borrower of a disaster loan (whether physical or economic injury) could request an increase in the loan amount if the eligible cost of repair or replacement of damages increases because of events occurring after the loan approval that were beyond the borrower's control. For example, a borrower can request an increase of a physical disaster loan before the repair, renovation or reconstruction is completed if hidden damage is discovered or if official building codes changed since SBA approved the physical disaster loan. With respect to economic injury disaster loans, borrowers could request an increase in working capital if they could not resume business activity as quickly as planned because of events beyond their control. These examples, while not all inclusive, would support a borrower's request for an increase in the amount of a disaster loan. These kinds of events usually will be apparent within two years after SBA approves a disaster loan. However, in extraordinary circumstances, the proposed rule would permit the AA/DA to waive the two year limitation.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* It is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Programs, No. 59.012 and 59.008)

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Small Businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 123, chapter I, title 13, Code of Federal Regulations, as follows:

PART 123—DISASTER LOAN ASSISTANCE

1. The authority citation for Part 123 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. Sections 123.18, 123.19 and 123.20 would be added to read as follows:

§ 123.18 Can I request an increase in the amount of a physical disaster loan?

SBA will consider your request for an increase in your loan if you can show that the eligible cost of repair or replacement of damages increased because of events occurring after the loan approval that were beyond your control. An eligible cost is one which is

related to the disaster for which SBA issued the original loan. For example, if you discover hidden damage within a reasonable time after SBA approved your original disaster loan and before repair, renovation, or reconstruction is complete, you may request an increase. Or, if applicable building code requirements were changed since SBA approved your original loan, you may request an increase in your loan amount.

§ 123.19 Can I request an increase in the amount of an economic injury loan?

SBA will consider your request for an increase in the loan amount if you can show that the increase is essential for your business to continue and is based on events occurring after SBA approved your original loan which were beyond your control. For example, delays may have occurred beyond your control which prevent you from resuming your normal business activity in a reasonable time frame. Your request for an increase in the loan amount must be related to the disaster for which the SBA economic injury disaster loan was originally made.

§ 123.20 How long do I have to request an increase in the amount of a physical disaster loan or an economic injury loan?

You should request a loan increase as soon as possible after you discover the need for the increase, but not later than two years after SBA approved your physical disaster or economic injury loan. After two years, the SBA Associate Administrator for Disaster Assistance (AA/DA) may waive this limitation after finding extraordinary and unforeseeable circumstances.

Dated: November 14, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–30847 Filed 11–24–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, which would have superseded an existing AD that currently requires either leak tests of the forward lavatory service system, and repair, as necessary; or draining the system and placarding the lavatory inoperative. That proposed AD would have provided an option for accomplishing terminating action for certain leak tests. It would have required leak tests of other lavatory drain systems; installation of a cap or vacuum break on the flush/fill line; and either periodic replacement of the seal for the cap and tank anti-siphon valve or periodic maintenance of the vacuum break in the flush/fill line. This action revises the proposed AD by removing the terminating action; requiring periodic changing of the seals of certain lavatory drain systems; replacing "donut valves" with other FAA-approved valves; revising certain leak test intervals; and revising the pressurization and fluid level requirements for testing. The actions specified by this proposed AD are intended to prevent damage to engines, airframes, and property on the ground that is associated with the problems of "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage.

DATES: Comments must be received by January 5, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–111–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 2, 1995 (60 FR 55673). That NPRM proposed to supersede AD 89–11–03, amendment 39–6223 (54 FR 21933, May 22, 1989), applicable to certain Boeing Model 737–300 and –400 series airplanes. That proposal would have continued to require either repetitive leak tests on the forward lavatory service system, and repair, as necessary; or draining of the system and placarding the lavatory inoperative. It would have also added a requirement to perform leak tests of other lavatory drain systems; provided for the option of revising the FAA-approved maintenance program to include a schedule of leak tests; required the installation of a cap or vacuum break on the flush/fill line; and required either a periodic replacement of the seal for the cap and tank anti-siphon valve or periodic maintenance of the vacuum break in the flush/fill line. That proposal also would have expanded the applicability of the rule to include all Model 737 series airplanes.

That NPRM was prompted by continuing reports of damage to engines and airframes, separation of engines from airplanes, and damage to property on the ground, caused by "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. Such formation and dislodging of "blue ice," if not corrected, could result in damage to the engine and potential separation of the engine from the airplane.

Actions Since the Issuance of Previous NPRM

Since the issuance of that previous NPRM, the FAA has received reports indicating that leakage of certain in-line valves of the lavatory waste drain systems has been detected. In consideration of this and other factors (a more detailed discussion of the other factors is presented later in this supplemental NPRM), the FAA has determined that the terminating action provided by the previous NPRM must be removed from this supplemental NPRM. In addition, the FAA has determined that certain additional changes to the previous NPRM are necessary.

Related AD's

On November 9, 1994, the FAA issued AD 94–23–10, amendment 39–9073 (59 FR 59124, November 16, 1994), which is applicable to Boeing Model 727 series airplanes. That AD contains numerous requirements that are similar to those proposed in this action, which is applicable to Model 737 series airplanes. In fact, several of the proposed requirements of this action are based on alternative methods of compliance that the FAA had approved previously for compliance with AD 94–23–10.

The FAA is currently considering additional rulemaking to address the problems associated with "blue ice" on other transport category airplanes.

General Changes to the Proposal: Revision of Optional Maintenance Program

As discussed previously, the FAA has received recent reports of leakage in certain in-line drain (ball) valves. In order to ensure that leak check results are uniformly reviewed before any extension of leak check intervals, the FAA has determined that the previously proposed optional terminating action provided for in paragraph (b) of the previous NPRM must be removed from this supplemental NPRM in order to maintain an adequate level of safety. The 5,000-hour leak test interval remains unchanged.

General Changes to the Proposal: Revised Leak Test Intervals for Certain Valves

Based on recently received new data submitted by various operators, the supplemental NPRM would revise the previously proposed leak test intervals for certain valves. These changes have been added to paragraphs (a) and (b) of this supplemental NPRM. (A more detailed discussion of those proposed changes in the leak test intervals is presented later in the preamble.)

General Changes to the Proposal: Requirement To Change Seals

One comment submitted to the Rules Docket in response to the previously issued NPRM, requests that a requirement to change the valve seals be added to paragraph (a) of the proposal. The commenter points out that if the seals are not changed periodically, they could fail and leak in between leak testing. The FAA concurs with the request, and has added a requirement to paragraph (a) of this supplemental NPRM to change the seals of valves at intervals similar to the proposed requirements of the valve seal changes in paragraph (b) of this supplemental NPRM.

General Changes to the Proposal: Requirement To Remove "Donut" Valves

Another comment submitted to the Rules Docket in response to the previously issued NPRM, requests that the FAA mandate the removal of "donut" style valves from the airplane and require replacement with one of the three service panel valves, as specified in the proposed rule. The commenter states that the "donut" valves have a long history of poor performance.

The FAA concurs that the "donut" style valves should be removed. "Donut" style valves have been involved in more cases of leakage and consequent formation of "blue ice" than any other valve design. In addition, cases of leakage of "donut" style valves that have been leak tested (as required by previous AD's) are still being reported. Therefore, the FAA has determined that the "donut" style valves should be removed.

However, the FAA finds that, rather than require replacement of the "donut" style valves with one of the three service panel valves listed in the previous NPRM, a requirement to replace the "donut" valves with "an FAA-approved valve" is more appropriate. This leaves an opportunity for operators to choose valves that may be "FAA-approved," but that may not be specified in the rule. Paragraphs (a)(6)(iii) and (b)(2)(iv)(C) of this supplemental NPRM have been revised to reflect this change.

General Changes to the Proposal: Revised Pressurization Requirements

Several comments submitted to the Rules Docket in response to the previously issued NPRM included requests to revise the requirement to pressurize the airplane while performing leak tests to verify the integrity of in-line drain valves or service panel drain valves. The commenters state that applying a minimum pressure of 3 pounds per square inch differential pressure (PSID) across the line by using a leak test tool, such as a hand-held vacuum pump, would be just as effective as pressurizing the airplane, yet would provide a more economical method of accomplishing the leak test. Additionally, the commenters point out that using a 3 PSID differential pressure is consistent with the "blue ice" AD requirements for Boeing Model 727 series airplanes.

The FAA concurs. Paragraphs (a) and (b) of this supplemental NPRM have been revised to require the tests while applying a minimum 3 PSID differential pressure in the same direction as would occur during flight.

General Changes to the Proposal: Revised Requirement of Fluid Level

Several comments submitted to the Rules Docket in response to the previously issued NPRM included requests that the FAA revise the proposed leak test procedure to empty and refill the lavatory to within two inches of overflowing. The commenters state that the difference between that specified level of fluid and actual overflowing of the fluid is approximately only one gallon. Since overflow of the lavatory could cause damage to the airplane, the commenters consider that any fluid above normal level (10 gallons) is unnecessary.

Therefore, the commenters request that the required fluid level be reduced.

The FAA concurs that a lower fluid level is acceptable, except in the case of testing the anti-siphon valve. The FAA finds that fluid at the 10-gallon level is too low to result in fluid contacting the seals during the test of the anti-siphon valve; the lack of contact of the fluid with the seals would invalidate the test. Therefore, this supplemental NPRM has been revised to require that the lavatory be filled with a minimum of 10 gallons of fluid, except when testing the anti-siphon valve. However, operators should take precautions to ensure that the tank is not overfilled; a statement to this effect has been added to this supplemental NPRM.

Conclusion

Since the changes described above expand the scope of the previously issued proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Comments Received

Due consideration has been given to the comments received in response to the NPRM issued previously.

Support for the Proposal

One commenter supports the proposed rule.

Request To Withdraw the Proposal: Risk of Injury From "Blue Ice" Is Extremely Remote

The Air Transport Association (ATA) of America, on behalf of its members, requests that the proposed rule be withdrawn. The commenter considers that, from a statistical standpoint, the risk of injury to persons on the ground from falling "blue ice" is extremely remote.

The FAA does not concur that the proposed rule should be withdrawn. The FAA has responded to the commenter on this issue during previous rulemaking concerning "blue ice" on Boeing Model 727 series airplanes. As stated in the preamble of that final rule, the FAA pointed out that demographic studies have shown that population density has increased around airports, and probably will continue to increase. These are populations that are at greatest risk of damage and injury due to "blue ice" dislodging from an airplane during descent. Without actions to ensure that leaks from the aft lavatory drain systems are detected and corrected in a timely manner, "blue ice" incidents would go untested and eventually someone would be struck, perhaps fatally, by falling "blue ice." To discount the unsafe condition to persons on the ground presented by falling "blue ice" would be a gross breach of the FAA's safety obligations and commitment to the public.

Request To Withdraw the Proposal: Issue an Advisory Circular in Lieu of an AD

This same commenter suggests that, if some type of action must be taken, a more manageable alternative to issuing an AD should be considered. The commenter suggests that such an alternative could be the development of an Advisory Circular (AC).

The FAA does not concur that issuance of an AC would provide a "more manageable" method of addressing the "blue ice" safety issue. In certain cases, the issuance of an AC is an appropriate first step to address a concern at a more informal level than an AD. In line with this approach, Advisory Circular 120–39, "Hazards of Waste Water Ice Accumulation Separating from Aircraft in Flight," was issued on October 31, 1980. Paragraph 3. of that AC states, "Each operator should initiate and accomplish inspections and maintenance of waste drain valves, caps, and heater systems to the extent necessary to ensure that these systems remain airworthy and function as designed, to prevent ice build-up from leaking waste water, and the resultant separation from the aircraft." The FAA concludes that the time elapsed since the issuance of that AC has given industry sufficient opportunity to make this approach work. The continuing problems with "blue ice," however, demonstrate the need for a more definitive solution; this proposed rule is an appropriate approach.

Request To Revise Rulemaking Criteria To Ensure Level of Safety Is Cost Beneficial

The ATA requests that the FAA redefine the criteria used to determine an "unsafe condition" so that the cost of rulemaking (airworthiness directives) is commensurate with the risks associated with not correcting the identified safety concern. Additionally, the commenter states that in meetings between the ATA and FAA management, participants agreed to a definition of "airworthiness." The ATA would like to see that definition adopted for use in determining the need for an airworthiness directive. ATA states that without specific criteria and definitions of these terms, the FAA's determination of an unsafe condition and compliance period for adoption of the proposed rule must be viewed as subjective and, therefore, deficient as rulemaking.

The FAA does not concur with the commenter's assertion that "without further guidance, the FAA's determination of an unsafe condition must be viewed as subjective and, therefore, deficient as rulemaking." The legal question is whether the FAA has identified an unsafe condition that may exist or develop in other products of the same type design. The FAA's determination on this issue is legally appropriate (and the rulemaking is not "deficient") as long as the FAA has a reasonable basis for that determination. In this supplemental proposed rule, the FAA finds that there is an unsafe condition based on reports of damage to engines, airframes, and property on the ground that is associated with the problems of "blue ice" that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. Although these reasons may be characterized as "subjective" because they are qualitative rather than quantitative, the FAA considers them to be appropriate and sufficient to establish the reasonableness of this proposed action.

Request To Consider the Cost Impact to Airline Operators

One commenter states that in order to standardize leak testing intervals at 1,000 and 4,500 flight hours, it will have to install a part in the aft drain system on its entire fleet, and in the forward drain system on airplanes that do not have Kaiser in-line ball valves installed in the forward drain system. The commenter requests that, since the annual cost for this will be $8,064, the FAA should reconsider that requirement.

Another commenter asserts that compliance with the proposed rule will force airlines with good maintenance programs and high levels of "blue ice" awareness to spend money accomplishing repetitive leak tests that will not add any additional levels of safety to the aircraft or to people on the ground. The commenter further states that the additional ground time required to perform these tests will also complicate scheduling and hamper efforts to increase aircraft utilization. The FAA infers that the commenter is requesting that the FAA reconsider the cost impact of the proposed action.

The FAA acknowledges that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. "Blue ice" frequently is not traceable to the particular airplane, operator, and waste system that produced it. Incidents of leakage usually are not reported; only the relatively serious leakage incidents become known to the FAA. Previous attempts to rely solely upon increased maintenance while using lower reliability hardware have not proven to be successful. Therefore, a system to prevent incidents of "blue ice" in the fleet must be based upon reduction of the number of incidents of leakage by encouraging the use of more reliable equipment, and requiring that, if an incident of leakage does occur, it is detected and corrected in a timely manner.

In addition, because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this proposal is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the proposed actions even if they were not required to do so.

Request To Distinguish Risks Associated With Forward and Aft Lavatories Drain Systems

Two commenters note that the compliance times of the NPRM do not reflect a difference between risks associated with leakage from the forward lavatory drain system and the risks associated with leakage from the aft drain. One of the commenters asserts that operators who upgraded their forward lavatory systems to address the more significant safety concern over ice ingestion in engines would still be subject to the more stringent leak test intervals of the aft lavatory drain systems because of difficulties in redesigning and implementing retrofit of the aft lavatory drain systems. The commenters assert that the differences between the risks of leakage from the forward lavatory should be reflected by an adjustment to the proposed compliance times.

The FAA does not concur that the risks associated with either the forward or aft lavatories should be distinguished by an adjustment to the proposed compliance times of the NPRM. As discussed previously, "blue ice" detaching from the forward lavatory could cause damage to the engine and airframe, as well as present a hazard to persons on the ground; "blue ice" detaching from the aft lavatory presents a hazard to persons on the ground. Regardless of whether the formation of "blue ice" occurs on the forward or aft lavatory drain system, the resultant unsafe condition would exist. Even if the formation of "blue ice" on the aft lavatory drain systems may appear to be a less "significant" safety concern than the forward systems, a safety concern for those persons on the ground, nevertheless, still exists.

Request To Involve Principal Maintenance Inspectors (PMI)

This same commenter, in reference to paragraph (b) of the previous NPRM, contends that it is more appropriate for the PMI, rather than the Seattle Aircraft Certification Office (ACO) engineering staff, to approve subsequent changes to the maintenance program once the program has been approved. The commenter considers that the PMI is more qualified than the ACO staff to approve tasks on training, reporting, and adjustment to the leak test intervals based upon reliability program recommendations. The commenter points out that the subject matter of the rule is clearly maintenance-related, and the ACO staff is not equipped to effectively respond to requests for maintenance interval changes that may occur. The commenter states that paragraph (b) of the proposal should be revised to include a statement that the AD is no longer applicable once a revision to the FAA-approved maintenance program is implemented.

The FAA does not concur. Although the FAA agrees that the PMI should have oversight of most of the requirements of the proposed alternative maintenance program provision of the rule, the FAA does not agree that the PMI should be tasked with approving certain adjustments of the program. Failure threshold criteria and definitive leak/failure rate data do not exist for the majority of the subject valves; therefore, a PMI would have no data on which to base the approval of an extension of a leak test interval for many valves with the assurance that the valve would not fail within the adjusted interval. In light of this, it is essential that the FAA, at the ACO level, have feedback as to the leak and failure rates experienced in the field. Although the PMI's serve as the FAA's critical link with the operators (and the PMI oversight responsibilities will not be minimized by this AD action), it is the staff of the ACO that provides the engineering support necessary to evaluate whether increases in leak test intervals will maintain an acceptable level of safety.

Further, the FAA considers it essential that any adjustment of the required leak test intervals, seal change intervals, and data reporting procedures should be approved in a uniform manner to ensure that the program is administered uniformly (and appropriately) fleetwide. The staff of the Seattle ACO is in the best position to ensure that this is accomplished. Additionally, given that possible new relevant issues might be revealed during the approval process, it is imperative that the engineering staff at the ACO have such feedback. In any case, the ACO staff will work closely with the cognizant PMI to ensure that any approved revisions to this aspect of the maintenance program are appropriate and workable for the applicable airline.

Request To Increase Leak Test Intervals for Pneudraulics Drain Valves

Several commenters request that the leak test interval for Pneudraulics drain valve having part number (P/N) 9527–1 be increased from the proposed 1,000 flight hours. Two of the commenters requested the interval be increased to 2,000 flight hours; and one of the commenters, the valve manufacturer, requests that the interval be increased to 4,500 flight hours.

The FAA concurs partially. Since the issuance of the NPRM, the FAA has received new data regarding the in-service performance of the Pneudraulics 9527 series drain valve. The data was obtained in accordance with procedures similar to those of paragraphs (b) and (c) of this supplemental NPRM. This data revealed that, only two leak tests failures were detected during a total time of 847,927 hours on 412 Pneudraulics valves. In consideration of this data, the FAA finds that, for those operators who choose to comply with the requirements of paragraph (a) of the AD, this information justifies an increase of the leak test interval of Pneudraulics valves having P/N 9527 series from 1,000 hours to 2,000 hours. Additionally, the FAA finds that, for operators who choose to comply with the maintenance option of paragraph (b) of the AD, this information justifies an increase of the leak test interval of the Pneudraulics valves P/N 9527 series from 1,000 hours to 4,000 hours. Paragraphs (a) and (b) of this supplemental NPRM have been revised accordingly. However, if following the requirements of paragraphs (b) and (c) of this supplemental NPRM, similar data is gathered by a number of operators and are submitted to the FAA in support of an extension of the leak check interval for another type of valve, the FAA will consider extension of the leak check intervals for that valve for all operators using the valve.

Request To Increase Leak Test Intervals of Certain Other Shaw Valves

One commenter states that its fleet has a mixture of valves that have been modified in accordance with Shaw Service Bulletin SB 10101000B–38–1, and valves that have not been modified in accordance with that service bulletin. The operator requests that the currently proposed leak test interval of 600 flight hours (for the valves that have not been modified in accordance with the service bulletin) be increased to equal the 1,000 flight hour leak test interval of the valves modified in accordance with that service bulletin. Because of the operator's high level of awareness, it sees no safety compromise in requiring the unmodified valves to be leak tested at 1,000 flight hours.

The FAA does not concur. The modifications described by the subject service bulletin were designed to make the valves less likely to leak. Therefore, the leak test interval is permitted to be increased only for those valves that have been modified in accordance with Shaw Service Bulletin SB 1010000B–38–1.

Request To Increase Leak Test Interval for Other Shaw Valves

One commenter, a valve manufacturer, requests that the leak test interval for certain Shaw valves be extended from 1,000 flight hours to 2,000 flight hours when the maintenance procedures have been revised and data have been submitted to substantiate the increased interval.

The FAA concurs that when maintenance procedures have been revised and data have been submitted to substantiate the increased interval, approval may be granted to increase the leak test intervals. Under the provisions of this supplemental NPRM, an operator has the option of proposing a change to its maintenance program, gathering data, and making a request for extension of the leak test interval. Operators interested in this option should contact the Seattle Aircraft Certification Office to discuss implementation of this option before submitting the request to extend the leak test intervals. If a number of operators successfully follow this procedure and provide data similar to that provided for the Pneudraulics P/N 9527 series valve, the FAA will consider an "across the board" increase for extension of the leak check interval for the valve that they are using. This procedure is applicable to valve manufacturers as well.

Request To Increase Interval of Replacement of Pneudraulics Valve Seals

One commenter, an operator, requests that the replacements of the seals of the Pneudraulics valves be extended from the proposed "prior to 5,000 flight hours after the effective date of the AD, and thereafter at intervals not to exceed 18 months," to replacement of the seal "every third leak test of the drain system, or every 6,000 flight hours." The commenter states that implementation of the revised compliance times would provide a scheduling convenience, and would still maintain an acceptable level of safety.

The FAA concurs that the intervals for the repetitive replacements can be extended somewhat. Since the Pneudraulics valve seals are similar to those used in the in-line drain valves and replacement of those seals are approved for longer replacement intervals, the FAA has revised paragraphs (a)(1)(ii) and (b)(1)(ii) of this supplemental NPRM to require accomplishment of repetitive seal replacements at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

Request To Revise Compliance Times for Certain Seal Changes

One commenter, the airplane manufacturer, requests that the proposed rule be revised to provide for an alternative repetitive interval for accomplishment of the seal changes. Specifically, the commenter requests that, "or within 48 months after the last documented seal change" be added after the proposed repetitive interval of "5,000 flight hours" in paragraph (b)(1)(i) of the proposed rule. The commenter states that this alternative repetitive interval would prevent unnecessary seal changes for operators that have recently performed the seal change.

The FAA concurs that the requested alternative repetitive interval would prevent unnecessary seal changes for operators that have recently performed the seal change. The FAA considers that those alternative repetitive intervals provide an equivalent level of safety. Therefore, the FAA has revised paragraph (b)(3) of this supplemental NPRM (which appeared as paragraph (b)(1) of the previous proposal). The FAA also has made a corresponding change to paragraph (a)(8) of this supplemental NPRM since it is similar to the requirements of paragraph (b)(3) of the supplemental NPRM.

Request To Delete Certain Seal Part Numbers

One commenter, the airplane manufacturer, requests that valve seal part numbers 2651–329, 2651–334, 10101000C–G, 10101000C–M, and 1010000C–R be deleted from the proposal. The commenter considers that part numbers that have not been installed, either in production or retrofit, on Boeing Model 737 series airplanes should not be cited in the NPRM. The FAA concurs with the commenter's remarks, and has removed all references to those parts numbers from this supplemental NPRM.

Request To Mandate Leak Testing of All Seals in the Lavatory System

One commenter notes that, while the previous NPRM proposes leak testing of the dump valve seal and the inner seal of the drain valve of the service panel, no testing of the outer cap/door seal is required. The commenter states that since the outer cap/door seal is the "last resort" in preventing leakage of "blue ice," leak testing should be required of the outer cap/door.

The FAA does not concur. Some valve designs are such that the valve must be partially disassembled (removing the inner seal, interlocking inner plugs, etc.) to allow the outer door to be tested, which would invalidate the test of the inner seal. Additionally, different valve designs may require valve disassembly and reassembly as part of the test procedure with different test procedures for different valve designs. These factors complicate the specification of a usable test of both inner and outer doors for all existing valve designs. Therefore, the FAA finds that the requirement to apply 3 PSID across the valve inner door and to visually inspect the outer door seal for damage that could cause leakage on all service panel valves to be adequate and appropriate. However, if an operator prefers to test the outer door and inspect the inner door, the FAA will consider requests for an alternative method of compliance as provided in paragraph (f) of this proposed AD.

Request To Require a Lever Lock Cap and a Vacuum Breaker Check Valve

One commenter states that, instead of permitting a vacuum breaker check valve to be used as an alternative to the installation of a lever lock cap, the FAA should require both of them. The commenter states that a long history of poor performance of check valves and lever lock caps indicates that a redundant system requiring both the valve and cap would have greater reliability.

The FAA does not concur in this case. The FAA acknowledges that redundant systems generally provide a higher level of safety; however, in this case, redundancy to the check valve function is provided by the vacuum breaker. In the case of a check valve alone, the lever lock cap provides redundancy to the check valve. There are insufficient data to show which combination is more reliable.

However, service history information indicates that vacuum breaker check valves with poppet check valves (rather than mushroom check valves) have a greater reliability record. Therefore, the FAA has removed reference to Monogram Part Number 3765–175 (mushroom type) from paragraphs (a) and (b) of this supplemental NPRM. By requiring repair of leaking components when "blue streaks" are observed, the FAA intends that operators, through their own experience, will determine which combination of valves works the best to avoid leakage. However, if the FAA receives data indicating service problems or unreliability with vacuum breaker check valves using poppet checks, the FAA may consider further rulemaking action.

Request To Revise Approvals of Certain Vacuum Breakers

Two commenters request that the approval of vacuum breakers, as referenced in the proposed rule, be revised. One commenter requests that reference to all Monogram part number series 3765–175 or 3765–190 series be deleted, and replaced with "* * * an FAA-approved check valve with a vacuum breaker * * *," or replaced with a specific reference to valves having Shaw part number 301–0009–01. This commenter states that the vacuum breaker check valves leaked, and should not be provided as an alternative to installation of a lever lock cap on the flush/fill line. The other commenter requests that instead of specifying particular part numbers, the approval reference should be to "* * * an FAA-approved vacuum break in the * * *." This commenter considers that this would cover all vacuum breaker manufacturers.

The FAA concurs partially. The FAA has reviewed available service history data and concluded that vacuum breaker check valves of the poppet type (such as Monogram part number series 3765–190) have fewer reports of leakage than the vacuum breaker test valves of the mushroom type (such as Monogram part number 3765–175). Therefore, as stated previously, the FAA has removed reference to Monogram part number 3765–175 as an approved valve from this supplemental NPRM.

The FAA also has reviewed the design of Shaw part number 301–0009–01, which is a vacuum breaker check valve of the poppet type, and has added it as an acceptable part number in paragraphs (a)(8)(ii) and (b)(3)(ii) of this supplemental NPRM.

Additionally, since the issuance of the previous NPRM, another acceptable valve for the flush/fill line has been certified. The installation of Kaiser Electroprecision flush/fill ball valve part number series 0062–0009 has been added to paragraphs (a)(8)(iii), (b)(3)(iii), and (d)(3) of this supplemental NPRM as an alternative method of preventing leakage from the flush/fill line.

Request To Shorten Leak Test Intervals of Flush/Fill Caps

The commenter states that there is no discussion in the proposal of what would prompt an airline to ensure flush/fill caps are installed in all positions prior to each flight. The commenter contends that it is common practice for caps to be removed from airplanes due to their nuisance value. The commenter also states that the flush/fill caps, as well as the lever lock caps, are difficult to operate and commonly have the seals removed, which render them inoperable on the airplane. The commenter considers the ease with which the seal is removed is a design flaw of the valve itself. Therefore, the commenter requests that another device be considered instead of the flush/fill caps that is not on the exterior of the aircraft and cannot be tampered with by ground maintenance personnel. The commenter notes that a device incorporated further upstream with positive shut-off and anti-siphon features would eliminate the "blue ice" that occurs at the flush/fill port. Therefore, the commenter requests that, until such a device can be developed and FAA-approved, the leak tests and inspections of this area should be performed more frequently.

The FAA does not concur with the commenter's request. The FAA does not consider it necessary to require an additional inspection to ensure installation of the flush/fill caps when they are installed in accordance with an AD. If, as the commenter asserts, cases of uninstalled flush/fill caps commonly occur, the FAA does not find that reason to assume that operators would continue that practice in the future if operation without the flush/fill caps would be a violation of an AD. Further, lever lock caps are specified by this supplemental NPRM precisely because they must be in the closed position to allow the service panel door to be closed. In addition, this supplemental NPRM specifies that if there is evidence of leakage, the leaking device must be corrected, or the lavatory drained and placarded inoperative. Therefore, if seals or caps are removed and result in leakage, this provision will ensure that the system is repaired before the lavatory is returned to service.

Additionally, the FAA notes that the vacuum break poppet type check valves specified in the previous NPRM can be used as an alternative to using lever lock caps. The FAA is not aware of any data, presently, that supports an increase or decrease in the leak test intervals of the devices on the flush/fill line. Consequently, this supplemental NPRM contains neither an increase nor a decrease in the leak test intervals of these devices. However, if such data becomes available that supports a decrease in the leak test intervals, the FAA may consider additional rulemaking.

Request To Revise the Leak Test of the Inner Door of the Service Panel Drain Valve

Several commenters request that the leak test of the inner door of the service panel drain be revised to require the test to be run with the outer door open when using a vacuum box so that the 3 PSID differential is applied across the inner door. One of these commenters, the airplane manufacturer, points out that if the outer door seal is good, the inner door seal will not reflect a pressure differential. For this reason, the FAA concurs. The FAA has revised the supplemental NPRM to specify that the test be run with the outer door open when using a vacuum box.

Request To Revise Testing of Drain Panel Valves

One commenter requests that testing of the drain valves cover both the inner door of the valve and the outer door/cap of the valve. The commenter also notes that some valves have their primary seals on the outer doors, not the inner doors, so that omitting the test of the outer door, as proposed in the NPRM, results in the primary seal of the valve being untested.

The FAA does not concur. As discussed previously in the request to mandate leak testing of all seals in the lavatory system, the FAA has revised the requirements of the leak testing of the drain valves of service panels to require applying 3 PSID across the valve inner door and visually inspecting the outer door seal for damage. This approach should adequately test valves with inner and outer doors. However, if

an operator elects to test the outer door and visually inspect the inner door, that operator should apply for approval of an alternative method of compliance under the provisions of paragraph (f) of this supplemental NPRM.

Request To Require Visual Inspection of the Outer Cap/Door

Two commenters request that paragraphs (a)(4) and (b)(2)(iii) of the proposal be revised to delete the requirement to perform a leak test of the outer door of "donut" type valves, and add a visual inspection of the outer doors instead. The commenters state that the "donut" valves are similar to other valves in that they provide two sealing surfaces. The commenters note that for those other valves, the proposal would require only a test of the inner door or the sealing surface.

The FAA concurs and has revised paragraphs (a)(4) and (b)(2)(iii) of this supplemental NPRM accordingly. In light of the fact that this supplemental NPRM would require eventually removing all "donut" valves and replacing them with FAA-approved valves, the FAA finds that, in the interim, a visual inspection of the outer doors, rather than a leak test, will ensure an acceptable level of safety.

Request To Require a Leak Test of the Outer Door of the Service Panel Drain

Another commenter states that since the FAA required it to perform the leak test of the outer door, the rules for testing the service panel drain should not be changed at this time. The commenter states that by requiring leak tests only of the inner door, the proposal provides an unfair competitive advantage in favor of its competitors because some valves have their primary seals on the outer doors instead of the inner doors. In addition, by not requiring a leak test of the outer door, the actual primary seal of the valve would not be tested.

The FAA does not concur with the request to require leak tests of the outer door seal. The FAA finds that performing a leak test of the inner door and visual inspections of the outer door provide an acceptable level of safety. However, if an operator chooses to test the outer door and visually inspect the inner door, under the provisions of paragraph (f) of this supplemental NPRM, that operator may request approval of an adjustment of this requirement if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Extend Leak Test Intervals in Paragraph (b) of the Proposal

Several commenters state that the leak test intervals specified in paragraph (b) of the proposal should be relaxed so that operators would be encouraged to select it as an alternative to the accomplishment of the requirements of paragraph (a) of the proposal. One of the commenters states that this same request was made in response to the proposed rule concerning "blue ice" for Boeing Model 727 series airplanes, and that the FAA did not respond to that request. Several commenters assert that paragraph (b) of the proposal should additionally provide terminating action once an operator's FAA-approved maintenance plan has been incorporated.

The FAA does not concur with the commenters' request to increase the leak test intervals specified in paragraph (b) simply in order to encourage operators to choose that option. For the reasons specified previously under the "General Changes to the Proposal: Revision of Optional Maintenance Program" section of this supplemental NPRM, the FAA finds that the previously proposed terminating action must be deleted. Further, the expansion of leak test intervals that are included in paragraph (b) of this supplemental NPRM is primarily related to the reliability of the waste drain valves involved. The additional requirements of paragraph (b) provide assurance that expansion of the intervals will not result in significant leakage events in the time between the leak tests. The FAA included paragraph (b) of this supplemental NPRM not only because it does contain certain "attractive" features, but also to provide a format for verifiable empirical data to serve as a reliability indicator for the waste drain valves. To date, three operators have opted to follow requirements similar to those provided in paragraph (b) of this supplemental NPRM. The FAA concludes, therefore, that compliance with the optional provisions of paragraph (b) of this supplemental NPRM is of value to some operators.

Additionally, in reviewing the preamble of AD 94–23–10 (applicable to Boeing Model 727 series airplanes), the FAA finds that the commenter's request regarding the leak test intervals of paragraph (b) of that AD was specifically addressed in the final rule. The FAA's response noted the revision of several requirements of paragraph (b) of that final rule to make it more "attractive" to operators; certain of those revised requirements included extended leak test intervals for some valves.

Request To Revise Leak Test Intervals for Service Panel Drain Valves

The airplane manufacturer requests that paragraph (b)(2)(ii) of the proposal be revised to increase the replacement interval of the service panel drain valves from 1,000 flight hours to 2,000 flight hours. The commenter states that increasing this interval would not decrease the level of safety because of other requirements of paragraph (b) of the proposal. Further, the commenter notes that two alternative methods of compliance have been granted to increase the interval to 2,000 flight hours.

The FAA does not concur with the commenter's request to increase the leak test interval "across the board" for service panel drain valves at this time. However, if data are submitted for specific service panel drain valves in accordance with the data gathering requirements of paragraph (b) of this supplemental NPRM, the FAA will review the data and may consider extending the leak test intervals accordingly. If a number of operators have successfully accomplished such programs, the FAA will evaluate all the data submitted for a particular valve and consider an "across the board" extension of the leak test interval.

Request for Clarification of Compliance Times

The airplane manufacturer requests that compliance times in paragraph (b)(4) of the proposal be revised. That proposed compliance time is currently specified as "* * * at intervals not to exceed 4 calendar days or 45 flight hours, whichever occurs later." The commenter requests that the phrase "not to exceed" be deleted and replaced with the word "of." The manufacturer states that the phrase "not to exceed" appears to be in conflict with the phrase "* * * whichever occurs later." Therefore, the manufacturer suggests revising the compliance time to read "at intervals of 4 calendar days or 45 flight hours, whichever occurs later."

The FAA does not concur that the phrases are in conflict with each other. The phrases "at intervals not to exceed 4 calendar days or 45 flight hours, whichever occurs later" are standard phrasing the FAA uses routinely in providing certain compliance times. The phrase, "not to exceed," allows accomplishment of the required action at frequencies less than the specified intervals. The phrase, "whichever occurs later," allows an operator to select the means of measuring the interval that results in less frequent accomplishment of the required actions, depending upon the operator's individual utilization rates. Therefore, no change of compliance time is required to paragraph (b)(4) of the supplemental NPRM.

Request To Incorporate Paragraph (b) Into Paragraph (f) of the Proposal

One commenter considers that the provisions in paragraph (b) of the NPRM are merely guidelines for submitting alternative methods of compliance. Therefore, the commenter requests that paragraph (b) of the proposal be incorporated into the paragraph that specifically addresses alternative methods of compliance [paragraph (f) of the proposal].

The FAA does not concur. The maintenance option provided by paragraph (b) of this supplemental NPRM provides for the acquisition of data that are required to justify extending leak test intervals. Compliance with paragraph (b) of the supplemental NPRM is an approved method of establishing empirical data on valve reliability. The FAA sees no added value in changing the paragraph numbering of the proposal. Moreover, the FAA considers that a change in the numbering of the paragraphs would have the potential for added confusion since an existing AD for the Boeing Model 727 series airplanes concerning "blue ice" also has paragraph (b) designated as the maintenance option.

Request To Revise Test Requirements for Flush/Fill Line Anti-Siphon Valves

The airplane manufacturer requests that paragraph (b)(3) of the proposal be revised from "Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours" to "Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours or 24 months." The commenter notes that the paragraph would then be consistent with the test requirements of the in-line drain valve in paragraph (b)(2)(i) of the proposal.

The FAA does not concur. The compliance times for testing the in-line drain valves specified in paragraph (b)(2)(i) of the supplemental NPRM were based on supportive data to justify those times. The FAA has not received data justifying a similar compliance time for the flush/fill line anti-siphon valve.

Request To Clarify Table 1 of the Proposal

One commenter, a valve manufacturer, requests that specific Shaw Aero valves approved for a leak test interval of 1,000 flight hours be clarified. The FAA has revised Table 1 of this supplemental NPRM to clarify specifically which Shaw valves have been approved for use on Boeing Model 737 series airplanes.

Request To Base Leak Test Intervals for Valves on Valve Quality

One commenter states that it is more important to use a quality valve than a "maintenance program" to ensure reliability. The commenter asserts that maintenance programs should be required of all airlines, so that leak test intervals would be based on the quality and performance of the hardware.

The FAA does not concur that claims of valve quality should be the only basis for determining leak test intervals, or that all operators should be required to follow the requirements of the optional maintenance program [paragraph (b) of the supplemental NPRM]. Extension of the leak test interval is based primarily upon hardware reliability, as stated elsewhere in this supplemental NPRM. However, verification of the actual reliability of the hardware is difficult to determine. Review of maintenance data that is obtained through the maintenance program and verified by FAA Flight Standards plays a major role in determining the extension of leak test intervals. Although valve manufacturers and some operators claim that the hardware and systems currently in service are providing adequate levels of safety, incidents of "blue ice" continue to occur.

Since leakage from the waste system is not a reportable event according to part 21 of the Federal Aviation Regulations (14 CFR part 21), the FAA included the provisions of paragraph (b) of the proposal to make leakage from the waste system a reportable event. Those operators who choose to compile that data will have documented information to submit to the FAA as a basis for increasing leak test intervals. As stated earlier, the FAA has already used this program to extend the leak test interval for a certain valve.

With regard to the commenter's statement that all operators should be required to follow a maintenance program, the FAA has incorporated requirements to periodically change valve seals and correct any leakage found in accordance with paragraph (a) of this supplemental NPRM. The more extensive requirements of the maintenance program specified in paragraph (b) of the supplemental NPRM provide assurance that significant leakage will not occur during the expanded leak test intervals.

Request To Increase Certain Leak Test Intervals

The ATA asserts that leak test intervals of every 200 flight hours for certain drain system valves cannot be justified based on safety concerns with "blue ice." The ATA requests that those leak test intervals be extended.

The FAA does not concur. The current leak test interval for certain drain system valves is every 200 flight hours, as required by AD 89–11–03. Nevertheless, the FAA has continued to receive reports of damage to airplanes. The FAA intends to increase the leak test interval only for those valves documented to be reliable, in accordance with the proposed requirements of this supplemental NPRM.

Request for Definition of "Vent Line"

Another operator requests that the term "vent line" be defined specifically. The commenter questions if "vent line" as cited in the proposed AD refers only to the portion of the line shown on the Monogram check valve.

The FAA acknowledges that clarification is necessary. The vent line vacuum breaker is that portion of the valve and vent line that functions as a vacuum breaker, as opposed to the part of the valve performing a "check valve" function. The intent of the previous NPRM was to perform maintenance on the vacuum breaker check valve and ensure that the vacuum break feature operates correctly. For clarification purposes, reference to the term "vent line" has been removed from this supplemental NPRM, and the applicable paragraphs have been revised to reference a "vent line vacuum breaker."

Request To Revise Reference to Service Information

The airplane manufacturer advised that the correct service bulletins that should be cited in paragraph (f)(2) of the proposal are Boeing Service Bulletins 737–38–1026 (lavatory A), and 737–38–1031 (lavatory F). Those service bulletins describe alternative methods of compliance with the requirements of only paragraph (a)(2) of the supplemental NPRM. The FAA inadvertently cited an incorrect service bulletin in the previous NPRM; the supplemental NPRM has been revised to cite the correct service bulletins.

Request To Change Reference to Certain Drain System Valves

One commenter requests that the description of the "donut" valves in paragraphs (a)(4) and (b)(2)(iii) of the NPRM be expanded to read, "For each lavatory drain system that incorporates

"donut" plugs (Kaiser Electroprecision, part number 4259–20 or 4259–31), or FAA-approved equivalent, or incorporates Kaiser Electroprecision cap/flange, part numbers * * *." The FAA concurs, and has revised paragraphs (a)(6) and (b)(2)(iv) of this supplemental NPRM [which appeared as paragraphs (a)(4) and (b)(2)(iii), respectively, of the previous NPRM] to provide clarification concerning the specific "donut" valves, as suggested by the commenter.

Request To Revise Notes 3 and 5 of the Proposal

The airplane manufacturer requests that Notes 3 and 5 of the NPRM be corrected to reference Boeing Maintenance Manual Section 38–32–00/501 instead of the currently referenced Boeing service letter.

The FAA acknowledges that Boeing Maintenance Manual Section 38–32–00/501 is the appropriate guidance for the testing, and has revised Note 3 of this supplemental NPRM accordingly. However, since reference to guidance for performing leak tests specifically addressed in Note 5 of the previous NPRM is no longer necessary or applicable, it has been removed from this supplemental NPRM. (Note 5 of this supplemental NPRM now contains information unrelated to NOTE 5 of the previous NPRM.)

Request To Delete Reference to Development of Future In-Line Drain Valves

One commenter, a valve manufacturer, requests that reference to the development of future in-line drain valves that would provide for possible terminating action be deleted from the proposal since that statement may mislead airlines and other interested parties to think that development and approval of those valves is currently in progress. The commenter states that the NPRM is a place for facts, not supposition of what might be. The commenter further states that it believes it has been "damaged" by mention of a future valve, specifically when the FAA has not considered existing in-service data concerning the reliability of this manufacturer's valves.

The FAA acknowledges the commenter's request. The FAA has removed reference to current in-line drain valves, as well as possible future development of those valves, from consideration as terminating action for certain requirements of this supplemental NPRM. As discussed previously in the preamble of this supplemental NPRM, the FAA has determined that terminating action for the leak testing of the in-line valves under an approved maintenance program is no longer appropriate, based on recent reports of leakage of drain systems with in-line drain valves installed.

In addition, it is common practice for the FAA to provide information in NPRM's concerning possible development and approval of various corrective actions. For example, in certain cases, compliance times for corrective actions are based on a time frame that is determined to be adequate in order to develop, approve, and install such corrective actions, e.g., repair, parts, or modifications. Establishment of a reasonable compliance time enables the manufacturer to plan its schedules and resources so that the corrective action is made available to the airlines well within the compliance time established by an AD. For these reasons, the FAA finds that the development and approval of future parts, repair, or modifications are not only relevant to discussions in proposed rules, they are, in certain cases, inherent to the discussion itself.

Economic Impact

There are approximately 2,410 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,031 airplanes of U.S. registry and 110 U.S. operators would be affected by this proposed AD.

The proposed waste drain system leak test and outer cap inspection would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of these proposed requirements of this AD is estimated to be $371,160, or $360 per airplane, per test/inspection.

Certain airplanes (i.e., those that have "donut" type drain valves installed) may be required to be leak tested as many as 15 times each year. Certain other airplanes having other valve configurations would be required to be leak tested as few as 3 times each year. Some airplanes that have various combinations drain valves installed would require approximately 2 leak tests of one drain valve and 3 leak tests of the other drain valve each year. Based on these figures, the annual (recurring) cost impact of the required repetitive leak tests on U.S. operators is estimated to be between $1,080 and $5,400 per airplane per year.

With regard to replacement of "donut" type drain valves, the cost of a new valve is approximately $1,200. However, the number of leak tests for an airplane that is flown an average of 3,000 flight hours a year is thereby reduced from 15 tests to 3 tests. The cost reduction because of the number of tests required is approximately equal to the cost of the replacement valve. Therefore, no additional cost is incurred because of this change.

The FAA estimates that it would take approximately 1 work hour per airplane lavatory drain to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor cost of $60 per work hour. As with leak tests, certain airplanes would be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the annual (recurring) cost impact of the required repetitive visual inspections on U.S. operators is estimated to be between $180 and $900 per airplane per year.

The proposed installation of the flush/fill line cap would take approximately 1 work hour per cap to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be $275 per cap. There are an average of 2.5 caps per airplane. Based on these figures, the cost impact on U.S. operators of these proposed requirements of this AD is estimated to be $863,483, or $838 per airplane.

The addition of the seal change requirement to paragraph (a) will require approximately 2 work hours to accomplish, at an average labor cost of $60 per hour. The cost of required parts would be $200 per each seal change. Based on these figures, the cost impact on U.S. operators of these proposed requirements of this AD is estimated to be $329,920, or approximately $320 per airplane per year.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

In addition to the costs discussed above, for those operators who elect to comply with proposed paragraph (b) of this proposed AD action, the FAA estimates that it would take approximately 40 work hours per operator to incorporate the lavatory drain system leak test procedures into the maintenance programs, at an average labor cost of $60 per work hour. Based on these figures, the cost impact of the proposed maintenance revision requirement of this AD action on the 110 U.S. operators is estimated to be $264,000, or $2,400 per operator.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6223 (54 FR 21933, May 22, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–111–AD. Supersedes AD 89–11–03, Amendment 39–6223.

Applicability: All Boeing Model 737 series 100, 200, 300, 400 and 500 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine damage, airframe damage, and/or hazard to persons or property on the ground as a result of "blue ice" that has formed from leakage of the lavatory drain system or flush/fill systems and dislodged from the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, accomplish the applicable requirements of paragraphs (a)(1) through (a)(9) of this AD at the time specified in each paragraph. If the waste drain system incorporates more than one type of valve, only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location. The waste drain system valve leak tests specified in this AD shall be performed in accordance with the following requirements: fluid shall completely cover the upstream end of the valve being tested; the direction of the 3 pounds per square inch differential pressure (PSID) shall be applied across the valve in the same direction as occurs in flight; the other waste drain system valves shall be open; and the minimum time to maintain the differential pressure shall be 5 minutes. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Seattle Aircraft Certification Office (SACO), FAA, Transport Airplane Directorate.

(1) Replace the valve seals in accordance with the applicable schedule specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a Pneudraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months.

(2) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Within 4,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 4,500 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid

overfilling the tank and spilling fluid into the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(ii) If a service panel valve or cap is installed, perform a visual inspection of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces for wear or damage that may allow leakage.

(3) For each lavatory drain system that has a service panel drain valve installed, Pneudraulics part number series 9527: Within 2,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD. Thereafter, repeat the leak tests at intervals not to exceed 2,000 flight hours.

(i) Conduct leak tests of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(4) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032 or Shaw Aero part number/serial number as listed in Table 1 of this AD: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the requirements of paragraphs (a)(4)(i) and (a)(4)(ii) of this AD:

TABLE 1.—SHAW AERO VALVES APPROVED FOR 1,000 FLIGHT HOUR LEAK TEST INTERVAL

Shaw waste drain valve part no.	Serial Nos. of part number valve approved for 1,000-hour leak test interval
331 Series, 332 Series	All.
10101000B–A	None.
10101000B–A–1	0207–0212, 0219, 0226 and higher.
10101000BA2	0130 and higher.
10101000C–A–1	0277 and higher.
10101000C–J	None.
10101000C–J–2	None.
10101000CN OR C–N	3649 and higher.
Certain 10101000B valves	Any of these "B" series valves that incorporate the improvements of Shaw Service Bulletin 10101000B–38–1, dated October 7, 1994, and are marked "SB838–1–58".
Certain 10101000C valves	Any of these "C" series valves that incorporate the improvements of Shaw Service Bulletin 10101000C–38–2 dated October 7, 1994, and are marked "SBC38–2–58".

Note 2: Table 1 is a comprehensive list of all approved Shaw Valves, including those valves approved by Parts Manufacturer Approval (PMA) or Supplemental Type Certificate (STC) for installation on Boeing Model 737 series airplanes.

(i) Conduct a leak test of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(5) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0026; or Shaw Aero Devices part number series 10101000B or 10101000C (except as specified in paragraph (a)(4) of this AD): Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, accomplish the requirements of paragraphs (a)(5)(i) and (a)(5)(ii) of this AD:

(i) Conduct a leak test of the dump valve and the service panel drain valve. The leak test of the dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(6)(i).

(6) For each lavatory drain system with a lavatory drain system valve that incorporates either "donut" plug, Kaiser Electroprecision part number 4259–20 or 4259–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange part numbers 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; or other FAA-approved equivalent parts; accomplish the requirements at the specified times of paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) of this AD. For the purposes of this paragraph [(a)(6)], "equivalent part" means either a "donut" plug that mates with the cap/flange having part numbers listed in this paragraph, or a cap/flange that mates with the "donut" plug having part numbers listed in this paragraph, such that the cap/flange and "donut" plug are used together as an assembled valve.

(i) Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak tests of the toilet tank dump valve and the service panel drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(ii) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(6)(i).

(iii) Within 5,000 flight hours after the effective date of this AD, replace the donut valve (part numbers per paragraph (a)(6) of this AD) with another type of FAA-approved valve. Following installation of the replacement valve, perform the appropriate leak tests and seal replacements at the intervals specified for that replacement valve, as applicable.

(7) For each lavatory drain system not addressed in paragraph (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, accomplish the requirements of paragraphs (a)(7)(i) and (a)(7)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(8) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, perform the requirements of paragraph (a)(8)(i), (a)(8)(ii), or (a)(8)(iii) of this AD, as applicable. Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Perform a leak test of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(8)(ii)(A) of this AD, as applicable.

Note 3: The leak test procedure described in Boeing Maintenance Manual, 38–32–00/501, may be referred to as guidance for this test if the toilet tank is filled to the level specified in paragraph (a)(8)(ii)(A) of this AD.

(ii) If a vacuum breaker check valve, Monogram part number series 3765–190, or Shaw Aero Devices part number series 301–0009–01 is installed on the subject lavatory, replace the seals/o-rings in the valve. Perform a leak test of the vacuum breaker check valve and verify proper operation of the vent line vacuum breaker in accordance with paragraphs (a)(8)(ii)(A) and (a)(8)(ii)(B) of this AD.

(A) Leak test the toilet tank anti-siphon valve or the vacuum breaker check valve by filling the toilet tank with water/rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl.) Apply 3 PSID across the valve in the same direction as occurs in flight. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/open during the test. Check for leakage at the flush/fill line port for a period of 5 minutes.

(B) Verify proper operation of the vent line vacuum breaker by filling the tank and testing at the fill line port for back drainage after disconnecting the fluid source from the flush/fill line port. If back drainage does not occur, replace the vent line vacuum breaker or repair the vacuum breaker check valve in accordance with the component maintenance manual to obtain proper back drainage. As an alternative to the above test technique, verify proper operation of the vent line vacuum breaker in accordance with the procedures of the applicable component maintenance manual.

(iii) If a flush/fill ball valve, Kaiser Electroprecision part number series 0062–0009 is installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve. Perform a leak test of the toilet tank anti-siphon valve with a minimum of 3 PSID across the valve, in accordance with paragraph (a)(8)(ii)(A) of this AD.

(9) As a result of the leak tests and inspections required by paragraph (a) of this AD, or if evidence of leakage is found at any other time, accomplish the requirements of paragraph (a)(9)(i), (a)(9)(ii), or (a)(9)(iii), as applicable.

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the appropriate leak test, as applicable. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 4: For purposes of this AD, "leakage" is defined as any visible leakage, if observed during a leak test. At any other time (than during a leak test), "leakage" is defined as the presence of ice in the service panel, or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(9)(i) or (a)(9)(ii): Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) As an alternative to the requirements of paragraph (a) of this AD, operators may revise the FAA-approved maintenance program to include the requirements specified in paragraphs (b)(1) through (b)(7) of this AD. However, until the FAA-approved maintenance program is so revised, operators must accomplish the requirements of paragraph (a) of this AD. The waste drain system valve leak tests specified in this AD shall be performed in accordance with the following requirements: fluid shall completely cover the upstream end of the valve being tested; the direction of the 3 pounds per square inch differential pressure (PSID) shall be applied across the valve in the same direction as occurs in flight; the other waste drain system valves shall be open; and the minimum time to maintain the differential pressure shall be 5 minutes. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Seattle ACO.

(1) Replace the valve seals in accordance with the applicable schedule specified in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this AD.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a Pneudraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months.

(2) Conduct periodic leak tests of the lavatory drain systems in accordance with the applicable schedule specified in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), and (b)(2)(v) of this AD. Only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location.

(i) For each lavatory drain system, that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Within 5,000 flight hours after the effective date of this AD, or within 5,000 hours of the last documented leak test, whichever occurs later, accomplish the procedures specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this AD. Thereafter repeat the procedures at intervals not to exceed 24 months or 5,000 flight hours, whichever occurs later.

(A) Conduct a leak test of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(B) If a service panel valve or cap is installed, perform a visual inspection of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces, for wear or damage that may allow leakage.

(ii) For each lavatory drain system that has a service panel drain valve installed, Pneudraulics part number series 9527: Within 4,000 flight hours after the effective date of this AD, or within 4,000 flight hours of the last documented leak test, whichever occurs later, accomplish the requirements of paragraph (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD. Thereafter, repeat the requirements at intervals not to exceed 4,000 flight hours.

(A) Conduct leak tests of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(B) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(iii) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032, or Kaiser Electroprecision part number series 0218–0026, or Shaw Aero Devices part number series 10101000B, 10101000C, 331-series, 332-series: Within 1,000 flight hours after the effective date of this AD, or within 1,000 flight hours of the last documented leak test, whichever occurs later, accomplish the requirements of paragraphs (b)(2)(iii)(A) and (b)(2)(iii)(B) of this AD. Thereafter, repeat the requirements at intervals not to exceed 1,000 flight hours.

(A) Conduct leak tests of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(B) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(iv) For each lavatory drain system with a lavatory drain system valve that incorporates either "donut" plugs Kaiser Electroprecision part number 4250–20 or 4250–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange part number 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; or other FAA-approved equivalent part; accomplish the requirements at the times specified in paragraphs (b)(2)(iv)(A), (b)(2)(iv)(B), and (b)(2)(iv)(C) of this AD. For the purposes of this paragraph [(b)(2)(iv)], "FAA-approved equivalent part" means either a "donut" plug that mates with the cap/flange having part numbers listed in this paragraph, or a cap/flange that mates with the "donut" plug having part numbers listed in this paragraph, such that the cap/flange and "donut" plug are used together as an assembled valve.

(A) Within 200 flight hours after the effective date of this AD, or within 200 flight hours after the last documented leak test, whichever occurs later, conduct leak tests of the dump valve and the service panel drain valve. Thereafter, repeat the tests at intervals not to exceed 200 flight hours. The dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(B) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. Perform this inspection in conjunction with the leak tests specified in paragraph (b)(2)(iv)(A).

(C) Within 5,000 flight hours after the effective date of this AD, replace the donut valve with another type of FAA-approved valve. Following replacement of the valve, perform the subsequent leak tests and seal replacements at the intervals specified for the new valve.

(v) For each lavatory drain system that incorporates any other type of approved valves: Within 400 flight hours after the effective date of this AD, or within 400 flight hours of the last documented leak test, whichever occurs later, accomplish the requirements of paragraph (b)(2)(v)(A) and (b)(2)(v)(B) of this AD. Thereafter, repeat the requirements at intervals not to exceed 400 flight hours.

(A) Conduct leak tests of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve. If the service panel drain valve has an inner door with a second positive seal, only the inner door must be tested.

(B) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(3) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, perform the requirements of paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii), as applicable. Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Perform a leak test of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve as specified in paragraph (b)(3)(ii)(A) of this AD.

(ii) If a vacuum breaker check valve, Monogram part number series 3765–190 or Shaw Aero Devises part number series 301–0009–01, is installed on the subject lavatory; replace the seals/o-rings in the valve. Prior to further flight, leak test the vacuum breaker check valve, and test for proper operation of the vent line vacuum breaker as specified in paragraphs (b)(3)(ii)(A) and (b)(3)(ii)(B) of this AD.

(A) Leak test the toilet tank anti-siphon valve or the vacuum breaker check valve by filling the toilet tank with water/rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl). Pressurize the airplane to 3 PSID. The vent line vacuum breaker on vacuum breaker check valves must be pinched closed or plugged for this leak test. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/opened during the test. Test for leakage at the flush/fill line port for a period of 5 minutes.

Note 5: The leak test procedure in the appropriate section of Boeing Maintenance Manual 38–32–00 may be used as guidance for this test if the toilet tank is filled approximately half full (at least 2 inches above the flapper in the bowl).

(B) Verify proper operation of the vent line vacuum breaker by filling the tank and testing at the fill line port for back drainage after disconnecting the fluid source from the flush/fill line port. If back drainage does not occur, replace the vent line vacuum breaker or repair the vacuum breaker check valve in accordance with the component maintenance manual as required to obtain proper back drainage.

(iii) If a flush/fill ball valve, Kaiser Electroprecision part number series 0062–009 installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve. Perform a leak test of the toilet tank anti-siphon valve in accordance with paragraph (b)(3)(ii))(A) of this AD.

(4) Provide procedures for accomplishing visual inspections to detect leakage, to be conducted by maintenance personnel at intervals not to exceed 4 calendar days or 45 flight hours, which ever occurs later.

(5) Provide procedures for reporting leakage. These procedures shall provide that any "horizontal blue streak" findings must be reported to maintenance and that, prior to further flight, the leaking system shall either be repaired, or be drained and placard inoperative.

(6) Provide training programs for maintenance and servicing personnel that include information on "Blue Ice Awareness" and the hazards of "blue ice".

(7) If a leak is discovered during a leak test required by paragraph (b) of this AD; or if evidence of leakage is found at any other time; or if repair/replacement of a valve (or valve parts) is required as a result of a visual inspection required in accordance with this AD; prior to further flight, accomplish the requirements of paragraph (b)(7)(i), (b)(7)(ii), or (b)(7)(iii), as applicable.

Note 6: For purposes of this AD, "leakage" is defined as any visible leakage, if observed during a leak test. At any other time (than during a leak test), "leakage" is defined as the presence of ice in the service panel, or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(i) Repair the leak and, prior to further flight after repair, perform a leak test. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

(ii) Repair or replace the valve or valve parts.

(iii) In lieu of either paragraph (b)(7)(i) or (b)(7)(ii), drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(c) For operators who elect to comply with paragraph (b) of this AD: Any revision to (i.e., extension of) the leak test intervals required by paragraph (b) of this AD must be approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Requests for such revisions must be submitted to the Manager of the Seattle ACO through the FAA Principal Maintenance Inspector (PMI), and must include the following information:

(1) The operator's name;

(2) A statement verifying that all known cases/indications of leakage or failed leak tests are included in the submitted material;

(3) The type of valve (make, model, manufacturer, vendor part number, and serial number);

(4) The period of time covered by the data;

(5) The current FAA leak test interval;

(6) Whether or not seals have been replaced between the seal replacement intervals required by this AD;

(7) Whether or not a service panel drain valve is installed downstream of an in-line drain valve, Kaiser Electroprecision part number series 2651–278: Data on a service panel valve installed downstream of an in-line drain valve will not be considered as an indicator of the reliability of the service panel drain valve because the in-line valve prevents potential leakage from reaching the service panel drain valve.

(8) Whether or not leakage has been detected between leak test intervals required by this AD, and the reason for leakage (i.e., worn seals, foreign materials on sealing surface, scratched or damaged sealing surface on valve, etc.);

(9) Whether or not any cleaning, repairs, or seal changes were performed on the valve prior to conducting the leak test. [If such activities have been accomplished prior to conducting the periodic leak test, that leak test shall be recorded as a "failure" for purposes of the data required for this request submission. The exception to this is the normally-scheduled seal change in accordance with paragraph (b)(1) of this AD. Performing this scheduled seal change prior to a leak test will not cause that leak test to be recorded as a failure. Debris removal of major blockages done as part of normal maintenance for previous flights is also allowable and will not cause a leak test to be recorded as a failure. Minor debris removal that is not commonly removed during the normal ground maintenance test should not be removed prior to the leak test.]

Note 7: Requests for approval of revised leak test intervals may be submitted in any format, provided the data give the same level of assurance specified in paragraph (c) above. Results of an Environmental Quality Analysis (EQA) examination and leak test on a randomly selected high-flight-hour valve, with seals that have not been replaced during a period of use at least as long as the desired interval, may be considered a valuable supplement to the service history data, reducing the amount of service data that would otherwise be required.

Note 8: For the purposes of expediting resolution of requests for revisions to the leak test intervals, the FAA suggests that the requester summarize the raw data; group the data gathered from different airplanes (of the same model) and drain systems with the same kind of valve; and provide a recommendation from pertinent industry group(s) and/or the manufacturer specifying an appropriate revised leak test interval.

Note 9: In cases where changes are made to a valve design approved for an extended leak test interval such that a new valve dash number or part number is established for the valve, the FAA may not require extensive service history data to approve the new valve to the same leak test interval as the previous valve design. Similarity of design, the nature of the design changes, the nature and amount of testing, and like factors will be considered by the FAA to determine the appropriate data requirements and leak test interval for a new or revised valve based upon an existing design.

(d) For all airplanes: Unless already accomplished, within 5,000 flight hours after the effective date of this AD, perform the actions specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD:

(1) Install an FAA-approved lever/lock cap on the flush/fill lines for all lavatories. Or

(2) Install a vacuum break, Monogram part number series 3765–190, or Shaw Aero Devises part number series 301–0009–01, in the flush/fill lines for all lavatories. Or

(3) Install a flush/fill ball valve Kaiser Electroprecision part number series 0062–0009 on the flush/fill lines for all lavatories.

(e) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak tests required by this AD shall be established in accordance with either paragraph (e)(1) or (e)(2) of this AD, as applicable. After each leak test has been performed once, each subsequent leak test must be performed in accordance with the new operator's schedule, in accordance with either paragraph (a) or (b) of this AD as applicable.

(1) For airplanes previously maintained in accordance with this AD, the first leak test to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that leak test.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first leak test to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA PMI, but within a period not to exceed 200 flight hours.

(f) Alternative method(s) of compliance with this AD:

(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance previously approved for AD 89–11–03, which permit a 4,500-flight hour interval between leak tests of the forward waste drain system for those operators installing the modifications specified in Boeing Service Bulletin 737–38–1026, Revision 2, dated May 4, 1995, or Boeing Service Bulletin 737–38–1031, Revision 1, dated April 20, 1995, and later FAA-approved revisions, are considered acceptable alternative methods of compliance with the requirements of only paragraph (e)(2) of this AD. For those operators, the other requirements of this AD are still required to be accomplished. All other alternative methods of compliance approved for AD 89–11–03 are terminated and are no longer in effect.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 11: For any valve that is not eligible for the extended leak test intervals of this AD: To be eligible for the extended leak test intervals specified in paragraph (b) of this AD, the service history data of the valve must be submitted to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, with a request for an alternative method of compliance. The request should include an analysis of known failure modes for the valve, if it is an existing design, and known failure modes of similar valves, with an explanation of how design features will preclude these failure modes, results of qualification tests, and approximately 25,000 flight hours or 25,000 flight cycles of service history data which include a winter season, collected in accordance with the requirements of paragraph (c) above, or a similar program. One of the factors that the FAA will consider in approving alternative valve designs is whether the valve meets Boeing Specification S417T105 or 10–62213. However, meeting the Boeing specification is not a prerequisite for approval of alternative valve designs.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30855 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 and A321 series airplanes. This proposal would require replacement of the fuel pump strainers with improved strainers. This

proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent blockage of fuel by the buildup of ice crystals, which could result in low fuel pressure, and consequent shutdown of the engine during critical phases of flight.

DATES: Comments must be received by December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–148–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 and A321 series airplanes. The DGAC advises that it has received reports of low fuel pressure during taxi, takeoff, and climb. Investigation revealed that the low fuel pressure was caused by the build-up of ice on the fuel pump strainer during extended cold soak conditions or extreme cold weather operations. This condition, if not corrected, could result in low fuel pressure, and consequent shutdown of the engine during critical phases of flight.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28–1044, Revision 10, dated November 5, 1996, which describes procedures for replacement of the 8 mesh strainers of the fuel pump with 4 mesh strainers. These new strainers have a larger mesh to prevent the build-up of ice, and have protective cowl-strainers to prevent the entry of debris. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–170–082(B), dated August 28, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 132 Airbus Model A320 and A321 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $102,960, or $780 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97–NM–148–AD.

Applicability: Model A320 and A321 series airplanes; as listed in Airbus Service Bulletin A320–28–1044, Revision 10, dated November 5, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent blockage of fuel by the build-up of ice crystals, which could result in low fuel pressure, and consequent shutdown of the engine during critical phases of flight, accomplish the following:

(a) Within 24 months after the effective date of this AD, replace the 8 mesh strainers of each fuel pump with 4 mesh strainers, in accordance with Airbus Service Bulletin A320–28–1044, Revision 10, dated November 5, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–170–082(B), dated August 28, 1996.

Issued in Renton, Washington, on November 18, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30856 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–178–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–178–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France,

notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and A300–600 series airplanes. The DGAC advises that, on two in-service airplanes, fatigue cracking has been detected on Gear Rib 5 of the main landing gear attachment fitting at the lower flange. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–57A6087 (for Model A300–600 series airplanes) and A300–57A0234 (for Model A300 series airplanes), both dated August 5, 1997. These service bulletins describe procedures for detailed visual and high frequency eddy current inspections to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive (CN) 97–274–230(B), dated September 24, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposed AD and the Related Service Bulletins

The service bulletins described previously specify that appropriate corrective action may be obtained by contacting the manufacturer, Airbus, directly. However, this proposed AD would requires that any such repair be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,120, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97–NM–178–AD.

Applicability: Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57A6087, dated August 5, 1997; and Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57A0234, dated August 5, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight cycles as of the effective date of this AD: Except as provided by paragraph (b) of this AD, within 40 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57A0234, dated August 5, 1997. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the actions required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current inspection to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57A6087 (for Model A300–600 series airplanes) or A300–57A0234 (for Model A300 series airplanes), both dated August 5, 1997; as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the inspection required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 97–274–230(B), dated September 24, 1997.

Issued in Renton, Washington, on November 18, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30858 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–78–AD]

RIN 2120–AA64

Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica Ltda. Models AMT–100 and AMT–200 Powered Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Aeromot-Industria Mecanico Metalurgica Ltda. (Aeromot) Models AMT–100 and AMT–200 powered gliders. The proposed action would require replacing all main landing gear attaching nuts and bolts with ones of improved design. The proposed AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for Brazil. The actions specified by the proposed AD are intended to prevent failure of the main landing gear, which could cause loss of control of the sailplane during landing operations.

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 9–CE–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Centro Tecnico Aeroespacial (CTA), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain Aeromot Models AMT–100 and AMT–200 powered gliders. The CTA reports that the main landing gear on two powered gliders failed. The failure is the result of hard landings shearing the attaching bolts and causing collapse of the main landing gear. After further investigation, the manufacturer has determined that these bolts (part numbers (P/N) TH 6x30 PL11) and nuts (P/N 6PA–108) may have intergranular defects and the design is not adequate to withstand a very hard landing. These conditions, if not corrected, could result in loss of the main landing gear during landing operations.

Relevant Service Information

Aeromot has issued Service Bulletin (SB) No. SB–200–32–044, Issue Date August 18, 1997, which specifies procedures for removing the original attaching bolts and nuts, and installing attaching bolts and nuts of an improved design.

The CTA classified these service bulletins as mandatory and issued Brazilian AD 97–09–06, dated August 14, 1997, in order to assure the continued airworthiness of these airplanes in Brazil.

The FAA's Determination

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CTA has kept the FAA informed of the situation described above. The FAA

has examined the findings of the CTA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Aeromot Models AMT–100 and AMT–200 powered gliders of the same type design registered in the United States, the proposed AD would require replacing all main landing gear attaching bolts and nuts with attaching bolts and nuts of improved design. Accomplishment of the proposed action would be in accordance with Aeromot SB No. SB–200–32–044, Issue Date August 18, 1997.

Cost Impact

The FAA estimates that 18 powered gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per powered glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,080 for the fleet or $60 per glider.

Compliance Time

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected glider ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours TIS in one year. In order to ensure that all of the owners/operators of the affected gliders have replaced the attaching bolts and nuts on the main landing gear within a reasonable amount of time, the FAA is proposing a compliance time of 30 calendar days.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aeromot-Industria Mecanico Metalurgica LTDA: Docket No. 97–CE–78–AD.

Applicability: Model AMT–100 powered gliders (serial numbers (S/N) 100.001 through 100.039 and 100.041 through 100.044) and Model AMT–200 powered gliders (S/N 200.040 and 200.045 through 200.080), certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear, which could cause loss of control of the sailplane during landing operations, accomplish the following:

(a) Replace all main landing gear attaching bolts (part number (P/N) TH 6x30 PL11 or an FAA-approved equivalent part number) and nuts (P/N 6 PA–108 or an FAA-approved equivalent part number) with attaching bolts (P/N DIN 931 M6x30 (Pitch 1.0) Class 10.9 or an FAA-approved equivalent part number) and nuts (P/N DIN 982 M6 (Pitch 1.0) or an FAA-approved equivalent part number) in accordance with the Procedures section in AEROMOT–IND. MECANICO–METALURGICA LTDA. Service Bulletin No. SB–200–32–044, Issue Date August 18, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of this document referred to herein upon request to Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD addresses Brazilian CTA AD 97–09–06, dated August 14, 1997.

Issued in Kansas City, Missouri, on November 17, 1997.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30866 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes. This proposal would require removal and reconfiguration of the battery grounds of the auxiliary power unit (APU). This proposal is prompted by reports of smoke or fire coming from the APU due to battery grounds that were not installed or maintained properly. The actions specified by the proposed AD are intended to prevent overheating and heat damage of the APU battery grounds due to improper installation of the APU battery ground, which could result in heat damage and consequent smoke or fire on the airplane.

DATES: Comments must be received by January 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2790; fax (425) 227–1181.

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–138–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of smoke or fire during ground operation and after auxiliary power unit (APU) start that occurred below the APU battery ground on certain Boeing Model 767 series airplanes. Investigation revealed that the APU, which has a pre-installed, single-ground, single-lug configuration, was the possible source of ignition; fuel for the fire was attributed to debris in the area. Further investigation revealed that an APU battery ground wire connection was loose and the torque of the nut (less than 140 inch-pounds) was less than the minimum (180 inch-pounds) necessary for the ground configuration. The APU battery ground showed signs of arcing and did not have the two washers necessary for the ground build-up. Such improper installation or maintenance, if not corrected, could result in heat damage to the battery grounds of the APU and consequent smoke or fire on the airplane.

Related AD's

On July 11, 1997, the FAA issued AD 97–15–09, amendment 39–10083 (62 FR 38204, July 17, 1997), applicable to all Boeing Model 757 and 767 series airplanes. That AD requires repetitive inspections to detect damage and to verify proper configuration of the battery ground terminations of the APU at the battery and connected structure; and removal, replacement, and repair of the battery ground termination, if necessary. That AD was prompted by reports of smoke or fire coming from the APU due to battery grounds that were not installed or maintained properly.

Similar Model Subject to the Unsafe Condition

APU battery ground configurations installed on Boeing Model 757 and 767 series airplanes are similar to those APU battery grounds installed on Boeing Model 747–400 series airplanes; therefore, Model 747–400 series airplanes may be subject to the same unsafe condition described previously.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–24A2214, dated June 19, 1997, which describes procedures for reconfiguring the APU battery grounds from a single-ground, single-lug configuration to a dual-direct ground, single-lug configuration. This new configuration has less mounting hardware and a larger electrical bonding surface area, which will prevent overheating of the APU battery ground due to improper installation of the APU battery grounds.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require reconfiguring the APU battery grounds from a single-ground, single-lug configuration to a dual-direct ground, single-lug configuration. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

There are approximately 359 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,325 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $59,410, or $2,285 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–138–AD

Applicability: Model 747–400 series airplanes; as listed in Boeing Alert Service Bulletin 747–24A2214, dated June 19, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the auxiliary power unit (APU) from overheat and heat damage due to an improperly installed/maintained APU battery ground, accomplish the following:

(a) Within 6 months after the effective date of this AD, reconfigure the APU battery grounds to a dual-direct ground, single-lug configuration, in accordance with Boeing Alert Service Bulletin 747–24A2214, dated June 19, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30868 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–11–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing stations (IWS) 310 and 343, and of the web area around those fasteners; and various follow-on actions. That AD also provides for an optional modification, which, if accomplished, would defer the initiation of the inspections for a certain period of time. This action would require accomplishment of the previously optional modification. This proposal is prompted by an FAA determination that the optional terminating modification specified in the existing AD must be accomplished within a specified period of time to ensure an acceptable level of safety of the affected fleet. The actions specified by the proposed AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage.

DATES: Comments must be received by January 5, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–11–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 5, 1996, the FAA issued AD 96–12–24, amendment 39–9667 (61 FR 29642, June 12, 1996), applicable to all Lockheed Model L–1011–385 series airplanes, to require repetitive visual inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing stations (IWS) 310 and 343, and of the web area around those fasteners; and various follow-on actions. That action also provides for an optional modification, which, if accomplished, would allow the initiation of the visual inspections to be deferred for a certain period of time. That action was prompted by a report of fatigue cracking in the web of the rear spar of the wing. The requirements of that AD are intended to prevent such fatigue cracking, which could result in failure of the rear spar of the wing and consequent fuel spillage.

Actions Since Issuance of Previous Rule

Since the issuance of AD 96–12–24, the FAA has determined that the optional terminating modification specified in the existing AD must be required to be accomplished within a specified period of time to reduce the possibility of fatigue cracking remaining undetected and to ensure an acceptable level of safety of the affected fleet.

Lockheed Service Bulletin 093–57–218, which is referenced in the existing AD as the appropriate source of service information, does not recommend a limit on the number of inspections to be accomplished prior to installation of the modification. Table I of the service bulletin recommends that the inspections be accomplished at short repetitive intervals, which range from 60 to 180 landings.

The FAA finds that the possibility of maintenance errors during inspection could result in a net degradation in airplane safety if the inspections are performed in accordance with the schedule set forth in the service bulletin. The FAA considers that accomplishment of continuous inspections at the short inspection intervals specified in the service bulletin increases the risk that fatigue cracking could remain undetected. Consequently, the FAA has determined that the previously optional modification must be accomplished to ensure an acceptable level of safety. Following accomplishment of the modification, inspection must resume after the accumulation of no more than 5,000 landings.

Explanation of Relevant Service Information

Since the issuance of AD 96–12–24, the FAA has reviewed and approved Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. This service bulletin revision describes procedures for inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar, and for modification of the web-to-cap fastener holes, in an expanded area of the IWS (i.e., IWS 299 through IWS 343). In all other respects, Revision 1 of the service bulletin is essentially the same as the original issue.

Additionally, the FAA has reviewed and approved several other Lockheed service bulletins, listed below, which provide options for accomplishment of certain modifications in lieu of that specified in Lockheed Service Bulletin 093–57–218. If accomplished, these modifications would allow the repetitive inspections to be deferred for specified periods of time.

For Lockheed Model L–1011–385–3 series airplanes:

- Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; as amended by Change Notifications 093–57–203, R3–CN1, dated June 22, 1992; 093–57–203, R3–CN2, dated February 15, 1993; and 093–57–203, R3–CN3, dated September 15, 1994.
- Lockheed Service Bulletin 093–57–215, dated April 11, 1996. For Lockheed Model L–1011–385–1 series airplanes:
- Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, as amended by Change Notifications 093–57–184, R6–CN1, dated June 22, 1992, and 093–57–184, R6–CN2, dated December 14, 1992.
- Lockheed Service Bulletin 093–57–184, Revision 7, dated December 6, 1994, as amended by Change Notifications 093–57–184, R7–CN1, dated August 22, 1995, 093–57–184, R7–CN2, dated February 20, 1996, and 093–57–184, R7–CN3, dated April 4, 1996; and Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification 093–57–212, CN1, dated September 27, 1995.
- Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, as amended by Change Notification 093–57–196, R5–CN1, dated June 22, 1992; and Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification 093–57–212, CN1, dated September 27, 1995.
- Lockheed Service Bulletin 093–57–196, Revision 6, dated December 6, 1994, as amended by Change Notification 093–57–196, R6–CN1, dated August 22, 1995, 093–57–196, R6–CN2, dated February 20, 1996, and 093–57–196, R6–CN3, dated May 21, 1996.

A description of each service bulletin follows:

- Lockheed Service Bulletin 093–57–203. This service bulletin describes procedures for modification of the upper and lower caps of the rear spar between IWS 228 and IWS 346. The modification involves removal of fasteners, reaming of fastener holes, performing an eddy current inspection, removing crack indications, cold working the holes, installing oversize fasteners, adding angle reinforcements to the upper caps, and adding doublers at the rear spar and main landing gear fitting joint.
- Lockheed Service Bulletin 093–57–215: This service bulletin describes procedures for modification of the left and right wing rear spars. The modification entails cold working the fasteners, installing new oversized fasteners (if necessary), adding structure reinforcements to the lower caps, and adding new upper caps and webs at the rear spar and main landing gear fitting joint.
- Lockheed Service Bulletins 093–57–184 and 093–57–212. These service

bulletins describe procedures for modification of the inboard and outboard rear spars, respectively. Modification of the inboard spar web entails removing the entire web inboard to IWS 228.774 and replacing it with a new web portion; adding new upper caps and stiffeners in both wings, cold working certain fastener holes, and removing certain existing fasteners for eddy current hole inspection. Modification of the outboard spar web involves performing an eddy current inspection of the fastener holes, cold working specific fastener holes (if no cracking is found), repairing any crack found, and installing a new outboard web section.

• Lockheed Service Bulletin 093–57–196. This service bulletin describes procedures for modification of the inboard rear spar, which includes removing the entire web inboard to IWS 228.774 and replacing it with a new web portion; adding new upper caps and stiffeners in both wings, cold working certain fastener holes, and removing certain existing fasteners for eddy current hole inspection.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–12–24 to continue to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between IWS 310 and IWS 343, and of the web area around those fasteners; and various follow-on actions. This proposed AD would require accomplishment of the previously optional modification, which, when accomplished, will defer the initiation of the inspections for a certain period of time. The proposed AD also provides for additional options for accomplishment of the previously optional modification, which also defer the inspections for certain specified periods of time. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Service Bulletin and This Proposed AD

Operators should note that Revision 1 of Lockheed Service Bulletin 093–57–218 expands the inspection area to include IWS 299 through IWS 310. However, the FAA has determined that the various X-ray, eddy current, and ultrasonic inspections of certain areas of the rear spar caps, web, skin, and fastener holes required by AD 96–07–13, amendment 39–9563 (61 FR 16379, April 15, 1996), adequately address fatigue cracking in the expanded area specified in Revision 1 of the service bulletin. Therefore, this proposed AD does not require inspection of that expanded area. However, the FAA finds that accomplishment of the proposed modification in the expanded area, as recommended in the service bulletin, is necessary to ensure an acceptable level of safety.

Cost Impact

There are approximately 235 Lockheed Model L–100–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 96–12–24 take approximately 13 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $91,260, or $780 per airplane.

The new actions that are proposed in this AD action would take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $702,000, or $6,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9667 (61 FR 29642, June 12, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Lockheed: Docket 97–NM–11–AD. Supersedes AD 96–12–24, Amendment 39–9667.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking on the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage, accomplish the following:

Restatement of Requirements of AD 96–12–24

(a) Perform a visual inspection to detect signs of cracking and other discrepancies (i.e., corrosion, fastener looseness, nicks, scratches, or other surface damage) of the web-to-cap fasteners of the rear spar between inner wing stations (IWS) 310 and 343, as specified in Figure 2 of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996; and of the web area around those fasteners; in accordance with Part I of the Accomplishment Instructions of that service bulletin. Perform the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Except as provided by paragraph (a)(2) of this AD: Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, or within 10 days after June 27, 1996 (the effective date of AD 96–12–24), whichever occurs later.

(2) For airplanes on which the wing rear spar has been modified prior to June 27, 1996, in accordance with one of the Lockheed service bulletins listed in paragraph (a)(2)(ii) of this AD, accomplish the inspection as follows:

(i) Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, calculated from the time the wing rear spar was modified (rather than from the date of manufacture of the airplane), or within 10 days after June 27, 1996, whichever occurs later.

(ii) This paragraph applies to airplanes on which the wing rear spar has been modified in accordance with one of the following service bulletins:

• Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; or

• Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; or

• Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, or Revision 4, dated March 27, 1995; or

• Lockheed Service Bulletin 093–57–215, dated April 11, 1996.

(b) If no sign of cracking or other discrepancy is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(c) If any sign of cracking is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, perform either eddy current surface scan (ECSS) inspections, or bolt hole eddy current (BHEC) inspections, as appropriate, to confirm cracking, in accordance with Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(1) If no cracking is confirmed, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of the service bulletin.

(2) If any cracking is confirmed, prior to further flight, repair it in accordance with the service bulletin.

New Requirements of This AD

(d) Except as provided by paragraph (e) or (f) of this AD, as applicable: Within 12 months after the effective date of this AD, modify the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343 in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(e) For Model L–1011–385–3 series airplanes: Accomplishment of the modifications specified in paragraph (e)(1) or (e)(2) of this AD, within 12 months after the effective date of this AD, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the upper and lower caps of the rear spar between IWS 228 and IWS 346 in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the left and right wing rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–215, dated April 11, 1996. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–215, dated April 11, 1996), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(f) For Model L–1011–385–1 series airplanes: Accomplishment of the modifications specified in paragraph (f)(1) or (f)(2) of this AD, within 12 months after the effective date of this AD, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the inboard and outboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; and Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification CN1, dated September 27, 1995. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; and Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification CN1, dated September 27, 1995), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the inboard and outboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; and Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification CN1, dated September 27, 1995. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; and Lockheed Service Bulletin 093–57–212, dated November 14, 1994, as amended by Change Notification CN1, dated September 27, 1995), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(g) If any condition (i.e., number of fasteners per stiffener bay, or cracking) is identified during the accomplishment of the modification specified in Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, and that condition exceeds the limits specified in paragraph B.(3) of Part II of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–12–24, amendment 39–9667, are approved as alternative methods of compliance with paragraph (d) of this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30857 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWP–2]

Proposed Relocation of the Kahului (OGG) VORTAC and Realignment of VOR Federal Airways; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on March 18, 1994. The NPRM proposed to relocate the Kahului Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and realign seven Federal airways. The FAA has determined that withdrawal of the proposal is warranted due to an in-flight aeronautical evaluation (flight check) that revealed the airways would not meet FAA designed criteria.

DATES: The proposed rule is withdrawn as of November 25, 1997.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, (ATA–400), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On March 18, 1994, an NPRM was published in the **Federal Register** to amend 14 CFR part 71 to relocate the Kahului VORTAC and realign seven Federal airways that would be affected by this Kahului VORTAC relocation. No comments were received on the proposal.

The FAA has decided to withdraw the proposal at this time due to flight check results.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of proposed rulemaking, Airspace Docket No. 94–AWP–2, as published in the **Federal Register** on March 18, 1994 (59 FR 12875), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on November 13, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–30773 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39336; IC–22896; File No. S7–25–97]

RIN 3235–AH29

Amendments to Rules on Shareholder Proposals

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Securities and Exchange Commission ("we" or "Commission") is extending the comment period for its proposals to amend rule 14a–8, and related rules, set forth in Securities Exchange Act Release No. 39093 (9/18/97), 62 FR 50682 (9/26/97) (the "Release"). The original deadline established by the Release was November 25, 1997. The new deadline is January 2, 1998.

DATES: Public comments are due on or before January 2, 1998.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters can be sent electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7–25–97; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters in the SEC's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Frank G. Zarb, Jr., Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900, or Doretha M. VanSlyke, Division of Investment Management, at (202) 942–0721, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On September 18, 1997, the Commission issued the Release, proposing amendments to rule 14a–8,[1] the shareholder proposal rule, and related amendments to rules 14a–4,[2] 14a–5,[3] 14a–2,[4] and 13d–5.[5] The deadline for submitting public comments established by the Release was November 25, 1997. The Commission has received requests to extend the deadline. We are therefore extending the comment period to January 2, 1998, so that commenters are ensured of adequate time to fully address the issues raised by the Release.

Dated: November 19, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30022 Filed 11–24–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Rescue Devices; Use and Location Requirements

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Extension of comment period.

SUMMARY: MSHA is extending the comment period on its proposed policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines.

DATES: Submit all comments on or before February 23, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: peilvey@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Milton D. Conley, Division of Health, Coal Mine Safety and Health, (703) 235–1358.

SUPPLEMENTARY INFORMATION: On September 26, 1997, (62 FR 50541), MSHA published a notice in the **Federal Register** requesting comments on a draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. MSHA published the notice to voluntarily afford an opportunity for interested persons to comment on the PPL before its anticipated issuance and effective date.

The comment period was scheduled to close on November 25, 1997; however, in response to commenters' requests for additional time to prepare their comments, MSHA is extending the comment period until February 23, 1998. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the draft policy. All interested parties are encouraged to submit their comments on or prior to February 23, 1998.

Dated: November 20, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–30955 Filed 11–24–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–97–008]

RIN 2115–AE46

Special Local Regulations; U.S. National Waterski Racing Championship

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the table of events in 33 CFR 100.1101 by adding the U.S. National Waterski Racing Championship conducted in the waters of Mission Bay in San Diego, California, from Government Island south to Ski Beach on the following dates: annually, commencing on the first Friday of October every year, and, including the first Friday of October, lasting a total of three days. The special local regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events. The Coast Guard is also making a technical amendment to paragraph (a) of 33 CFR 100.1101 to reflect a change of address for the Eleventh Coast Guard District staff element responsible for the Local Notice to Mariners.

DATES: Comments must reach the Coast Guard on or before January 9, 1998.

ADDRESSES: You may mail comments to Lieutenant Michael A. Arguelles, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, California 92101, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except holidays. The telephone number is (619) 683–6484.

The Marine Safety Office maintains the public docket for this rulemaking. Comments, and any documents referenced in this preamble, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 9 a.m. and 2 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael A. Arguelles, U.S. Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, California 92101. The telephone number is (619) 683–6484.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identifying this rulemaking (CGD11–97–008) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The U.S. National Waterski Racing Championship will consist of various waterski racing events. The races will take place, annually, over a three day period beginning on the first Friday of October. The special local regulations applicable to this event are necessary to provide for the safety of life, property, and navigation on the navigable waters of the United States during scheduled events. A technical amendment to paragraph (a) of 33 CFR 100.1101 is necessary because the Eleventh Coast Guard District staff element responsible for the Local Notice to Mariners has moved from Long Beach, CA to Alameda, CA.

Discussion of Proposed Rule

The race zone encompasses the water of Mission Bay in San Diego, California, from Government Island south to Ski Beach in Mission Bay. The race course will be marked by buoys to alert non-participants. Each year, the race zone will be in use by vessels competing in the event from and including the first Friday of October, for a total of three days, during the hours of 8 a.m. until 6 p.m. (PDT). During these times the waters of Mission Bay from Government Island to Ski Beach will be closed to all traffic with the exception of emergency vessels, official patrol vessels, and participant vessels. No vessels other than emergency, participant, or official patrol vessels will be allowed to enter this zone unless specifically cleared by or through an official patrol vessel.

Pursuant to 33 CFR 100.1101(b)(3), Commander, Coast Guard Activities San Diego, is designated Patrol Commander for this event; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard. Once the zone is established, authorization to remain within the zone is subject to termination by the Patrol Commander at any time. The Patrol Commander may impose other restrictions within the zone if circumstances dictate. Restrictions will be tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary to safely conduct the race.

With respect to the technical amendment to paragraph (a) of 33 CFR 100.1101, the correct address of the

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[1] 17 CFR 240.14a–8.
[2] 17 CFR 240.14a–4.
[3] 17 CFR 240.14a–5.
[4] 17 CFR 240.14a–2.
[5] 17 CFR 240.13d–5.

Eleventh Coast Guard District staff element responsible for Local Notice to Mariners now reads: Commander (Pow), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

Because it expects the impact of this proposal to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if adopted, will not have a substantial impact on a significant number of small entities. If, however, you think that your business or organization qualifies as a small entity and this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Regattas and Marine Parades.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100, section 100.1101, as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. In § 100.1101 revise paragraph (a) and amend Table 1 of that section by adding an entry for the U.S. National Waterski Racing Championship immediately following the last entry to read as follows:

§ 100.1101 Southern California annual marine events.

(a) Special local regulations will be established for the events listed in Table 1. Further information on exact dates, times, details concerning number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list contact: Commander (pow), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100.

* * * * *

Table 1

* * * * *

U.S. National Waterski Racing Championship
Sponsor: U.S. National Waterski Racing Association.
Date: First Friday of October every year, lasting a total of 3 days (including the first Friday of October).
Location: Mission Bay, San Diego, California, from Government Island south to Ski Beach.

Dated: October 15, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 97–30923 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–97–007]

RIN 2115–AA98

Anchorage Regulations: San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of several special anchorages in San Diego Bay, California. These areas are currently used as temporary and long term anchorages. A "special anchorage" is an area on the water where vessels less than 20 meters (approximately 65 feet) in length are allowed to anchor without displaying navigation lights which are otherwise required for anchored vessels under Rule 30 of the Inland Navigational Rules, codified at 33 U.S.C. 2030. The intended effect of these special anchorages is to reduce the risk of vessel collisions within San Diego Bay by specifying more special anchorage areas which will provide designated moorings for vessels less than 20 meters in length. In addition, minor corrections to some of the coordinates describing the corner points of existing special anchorage areas have been made in the proposed regulations.

DATES: Comments must be received on or before January 26, 1998.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA 92101, (619) 683–6495. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7:00 a.m. and 4:00 p.m., Monday through Friday except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mike Arguelles, Marine Safety Office San Diego, (619) 683–6484, or Mike Van Houten, USCG, Pacific Operations and Waterways Branch, Eleventh Coast Guard District, (510) 437–2984.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments to the office listed under **ADDRESSES** in this preamble. Persons submitting comments should include

their names and addresses, identify the docket number for the regulations (CGD11–97–007), the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rule making process.

Discussion of the Proposed Regulation

A "special anchorage" is an area on the water in which vessels less than 20 meters (approximately 65 feet) in length are allowed to anchor without displaying navigation lights. Such lights are otherwise required for anchored vessels under Rule 30 of the Inland Navigational Rules, codified at 33 U.S.C. 2030. The Coast Guard proposes to establish 7 new special anchorage areas (A–1a, A–1b, A–1c, A–4, A–6, A–8, & A–9), and modify the 4 special anchorage areas already in existence (A–1, A–2, A–3, & A–5), as follows:

(A–1, A–1a, A–1b, A–1c) Shelter Island Moorings, North San Diego Bay, approximately 75 yards off shore and along Shelter Island (for A–1, minor corrections to some of the coordinates describing the corner points of the special anchorage area),
(A–2) America's Cup Harbor, North San Diego Bay, in the area known as Commercial Basin (minor corrections to some of the coordinates describing the corner points of the special anchorage area),
(A–3) Laurel Street Roadstead Moorings, North San Diego Bay, east of the Coast Guard Activities (minor corrections to some of the coordinates describing the corner points of the special anchorage area),
(A–4) Bay Bridge Roadstead Moorings, Central San Diego Bay, at the northwest end of the Coronado Bridge,
(A–5) Glorietta Bay Anchorage, Central San Diego Bay, across the bay from Naval Amphibious Base (minor corrections to some of the coordinates describing the corner points of the special anchorage area),
(A–6) Fiddlers Cove, South San Diego Bay, just south of the Naval Amphibious Base,
(A–8) Sweetwater Anchorage, South San Diego Bay, west of 24th Street Marine Terminal, and
(A–9) Cruiser Anchorage, North San Diego Bay, west of the Coast Guard Activities.

The primary users of these anchorages are recreational vessels, with the majority of them being long term users. Some of the anchorages are depicted on local charts, while all of them use buoys to delineate their boundaries. By establishing these areas as special anchorages, the requirement of displaying anchor lights and day shapes will be removed for vessels less than 20 meters in length.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule making does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This proposal has been reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2 of Commandant Instruction M16475.1B, as revised in 59 FR 38654, July 29, 1994. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES**.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will impose no cost on vessel operators, it will have minimal impact on vessel traffic, and will provide greater options to vessels desiring to anchor in San Diego Bay.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the small Business Act (15 U.S.C. 632). Since the impact of this proposal is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal imposes no collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[REVISED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

1. Section 110.90 is revised to read as follows:

§ 110.90 San Diego Harbor, California.

(a) *Area A–1.* In North San Diego Bay, the Shelter Island Yacht Basin Anchorage, the water area enclosed by a line beginning at latitude 32°42'56.7" N., longitude 117°13'47.1" W.; thence southwesterly to latitude 32°42'53.6" N., longitude 117°13'51.3" W.; thence northwesterly to latitude 32°43'01.3" N., longitude 117°13'59.1" W.; thence northeasterly to latitude 32°43'02.6" N., longitude 117°13'55.5" W.; thence southeast to latitude 32°42'59.8" N., longitude 117°13'50.4" W.; thence southeast to the point of beginning.

(b) *Area A–1a.* In North San Diego Bay, the Shelter Island Roadstead Anchorage east of Shelter Island, the water area 55 feet either side of a line beginning at latitude 32°42'33.6" N., longitude 117°13'48.3" W.; thence northeast to latitude 32°42'36.0" N., longitude 117°13'45.1" W.

(c) *Area A–1b.* The water area off Shelter Island's eastern shore, 210 feet shoreward of a line beginning at latitude 32°42'43.9" N., longitude 117°13'34.3" W.; thence northeast to latitude 32°42'52.8" N., longitude 117°13'22.4" W.

(d) *Area A–1c.* The water area off Shelter Island's eastern shore, 210 feet shoreward of a line beginning at latitude 32°42'55.0" N., longitude 117°13'19.4" W.; thence northeast to latitude

32°43'03.5" N., longitude 117°13'07.6" W.

(e) *Area A–2.* In North San Diego Bay, the America's Cup Harbor Anchorage, the water area enclosed by a line beginning at latitude 32°43'13.7" N., longitude 117°13'23.8" W.; thence northeast to latitude 32°43'16.7" N., longitude 117°13'16.4" W.; thence northwest to latitude 32°43'22.6" N., longitude 117°13'25.8" W.; thence west to latitude 32°43'22.5" N., longitude 117°13'29.6" W.; thence southwest to latitude 32°43'19.0" N., longitude 117°13'32.6" W.; thence southeast to the point of beginning.

(f) *Area A–3.* In the North San Diego Bay, the Laurel Street Roadstead Anchorage, the water area enclosed by a line beginning at latitude 32°43'30.5" N., longitude 117°10'28.5" W.; and thence southwesterly to latitude 32°43'29.8" N., longitude 117°10'34.2" W.; and thence southwesterly to latitude 32°43'25.8" N., longitude 117°10'36.1" W.; and thence southerly to latitude 32°43'20.2" N., longitude 117°10'36.1" W.; thence westerly to latitude 32°43'20.2" N., longitude 117°10'52.9" W.; thence northeasterly to 32°43'29.8" N., longitude 117°10'48.0" W., thence northeasterly following a line parallel to, and 200 feet bayward of, the shoreline of San Diego Bay adjoining Harbor Drive to the point of beginning.

(g) *Area A–4.* In Central San Diego Bay, the Bay Bridge Roadstead Anchorage, the water enclosed by a line beginning at latitude 32°41'32.1" N., longitude 117°09'43.1" W.; thence southwesterly to latitude 32°41'19.1" N., longitude 117°09'46.1" W.; thence southeasterly to latitude 32°41'17.8" N., longitude 117°09'44.3" W.; thence southeasterly to latitude 32°41'14.9" N., longitude 117°09'37.9" W.; thence northeasterly to latitude 32°41'26.9" N., longitude 117°09'35.1" W., thence southwesterly to the point of beginning.

(h) *Area A–5.* In Central San Diego Bay, the Glorietta Bay Anchorage, the water area enclosed by a line beginning at latitude 32°40'42.2" N., longitude 117°10'03.1" W.; thence southwesterly to latitude 32°40'41.2" N., longitude 117°10'06.6" W.; thence northwesterly to latitude 32°40'46.2" N., longitude 117°10'15.6" W.; thence northeasterly to latitude 32°40'46.7" N., longitude 117°10'14.1" W.; thence southeasterly to the point of beginning.

(i) *Area A–6.* In Fiddler's Cove, the water enclosed by a line beginning at latitude 32°39'10.4" N., longitude 117°08'49.4" W.; thence northwesterly to latitude 32°39'14.9" N., longitude 117°08'51.8" W.; thence northeasterly to latitude 32°39'17.6" N., longitude 117°08'47.5" W.; thence northwesterly to latitude 32°39'19.8" N., longitude 117°08'48.8" W.; thence northeasterly to latitude 32°39'24.4" N., longitude 117°08'41.4" W., thence southeasterly to latitude 32°39'15.7" N., longitude 117°08'36.0" W.; thence southwesterly to the point of beginning.

Note: This area is located on Federal Property owned by the United States, and it is reserved for active duty military, their dependents, retirees, and DOD employees only.

(j) *Area A–8.* In South San Diego Bay, the Sweetwater Anchorage, the water enclosed by a line beginning at latitude 32°39'12.2" N longitude 117107'45.1" W.; thence easterly to latitude 32°39'12.2" N., longitude 117°07'30.1" W.; thence southerly to latitude 32°38'45.2" N., longitude 117°07'30.1" W.; thence westerly to latitude 32°38'45.2" N., longitude 117°07'45.1" W.; thence northerly to the point of beginning.

(k) *Area A–9.* In North San Diego Bay, the Cruiser Anchorage, the water enclosed by a line beginning at latitude 32°43.35.9" N., longitude 117°11'06.2" W.; thence southwesterly to latitude 32°43'31.5" N., longitude 117°11'13.2" W.; thence southeasterly to latitude 32°43'28.9" N., longitude 117°11'11.0" W.; thence southeasterly to latitude 32°43'25.9" N., longitude 117°11'07.7" W.; thence northeasterly to latitude 32°43'34.8" N., longitude 117°11'03.2" W.; thence northwesterly to the point of beginning. All coordinates referred use Datum: NAD 83.

Note: Mariners anchoring in these anchorages, excluding Anchorage A–6, should consult applicable local ordinances of the San Diego Unified Port District. Temporary floats or buoys for marking anchors are allowed. Fixed moorings, piles or stakes are prohibited. All moorings shall be so that no vessel, when anchored, shall at any time extend beyond the limits of the area.

Dated: October 6, 1997.

J.C. Card,

Vice Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 97–30898 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH88

Election of Education Benefits

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) educational assistance and educational benefits regulations relating to certain elections between benefits. VA has provided by regulation that after a veteran seeks to make an election to have service in the Selected Reserve credited toward payment under the Montgomery GI Bill—Selected Reserve (MGIB–SR) program or under the Montgomery GI Bill—Active Duty (MGIB–AD) program, the election will take effect when the individual has negotiated a check issued under the program she or he has elected. In order to adapt the current rules to the new system of electronic transfers, it is proposed to change these election provisions to make the election effective either upon negotiation of a check or electronic receipt of education benefits. VA has provided by regulation that an election to receive benefits under Survivors' and Dependents' Educational Assistance (DEA) for a program of education rather than pension, compensation, or Dependency and Indemnity Compensation (DIC) will take effect when the individual has commenced a program of education and negotiated a check issued under the program she or he has elected. In order to adapt the current rule to the new system of electronic transfers and to ensure that decisions are made with knowledge, it is proposed to change these election provisions to require a written election to be submitted and to make the election effective either upon negotiation of a check or electronic receipt of education benefits. Nonsubstantive changes would also be made for purposes of clarity and to reflect current statutory codification and authority. The proposed requirements for individuals to make elections before receiving certain benefit payments constitute collections of information.

Accordingly, this document also requests comments under the Paperwork Reduction Act on those proposed collections of information.

DATES: Comments must be received on or before January 26, 1998.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH88." All written comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

SUPPLEMENTARY INFORMATION: VA administers a number of benefit programs. A veteran or other eligible person may be potentially eligible for benefits under more than one of them. Often the law governing eligibility requires that the individual elect the program under which she or he is to receive benefits. This document proposes to amend the VA educational assistance and educational benefits regulations relating to certain elections between benefits.

VA is given broad statutory authority to prescribe the manner of elections when a veteran must elect whether time served in the Selected Reserve is to be applied toward establishing eligibility for the MGIB–SR program or toward establishing entitlement to a greater monthly rate of educational assistance under the MGIB–AD program. VA has provided by regulation in 38 CFR 21.7042 and 21.7540 that after a veteran seeks to make an election to have service in the Selected Reserve credited toward payment under the MGIB–SR program or under the MGIB–AD program, the election will take effect when the individual has negotiated a check issued under the program she or he has elected. In order to adapt the current rules to the new system of electronic transfers, it is proposed to change these election provisions to make the election effective either upon negotiation of a check or electronic receipt of education benefits.

This document also proposes to amend § 21.3023, which concerns an election to receive DEA for a program of education rather than pension, compensation, or DIC. That section currently provides that the commencement of a program of education constitutes an election and, with limited exceptions, that the election is final when the payee has negotiated one check for the benefit. This section was issued pursuant to 38 U.S.C. 3562, which provides that if a child of a veteran is eligible for both DEA and DIC, commencement of a program of education under DEA would bar the child from receiving pension, compensation, or DIC in the future as a child. For the purposes of determining when there is commencement of a program of education under DEA, it is proposed that the "commencement of a program" will be deemed to have occurred at the time of negotiation of the first DEA benefit payment check or upon receipt of the first electronic transfer of a DEA benefit payment. It also is proposed that such an election occur only after a written election to receive DEA has been submitted to VA. These proposed provisions are designed to ensure that elections are made with knowledge and become effective at the time of commencement of a program of education under DEA.

These changes are necessary because the Debt Collection Improvement Act of 1996 (sec. 31001, Pub. L. 104–134) requires that the Federal government make payments through electronic funds transfer. The proposed provisions are intended to adapt the current rules to include the new system of electronic transfer.

This document also proposes to make nonsubstantive amendments for purposes of clarification and to reflect current statutory authority. In addition, this document also seeks approval, as explained below, for certain collections of information in §§ 21.3023, 21.7042, and 21.7540.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this proposal insofar as it relates to the MGIB–SR program. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this proposal is issued solely by VA.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the provisions of the proposed §§ 21.3023, 21.7042, and 21.7540 include collections of information. Accordingly, as required by the Act at § 3507(d), VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the proposed collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH88."

Title: Election to Receive Dependents' Educational Assistance Instead of Dependency and Indemnity Compensation.

Summary of collection of information: The collection of information in the proposed amendment to § 21.3023 in this rulemaking proceeding would implement a statutory provision that prevents an individual with potential eligibility for DEA and compensation, pension, or DIC from receiving more than one benefit for pursuing a program of education. The proposed rule would require such an individual to make an election if she or he wished to receive DEA.

Description of need for information and proposed use of information: An eligible child may not receive educational assistance under DEA and payments under DIC for the same school attendance. In order for VA to know when the child wishes to receive DEA, it is necessary for the child to state his or her desire for educational assistance under DEA.

Description of likely respondents: Individuals with potential eligibility for DEA.

Estimated number of respondents: 2,900 annually.

Estimated frequency of responses: Once per eligible claimant.

Estimated total annual reporting and recordkeeping burden: 580 hours of reporting burden. VA does not believe that there would be an additional recordkeeping burden.

Estimated average burden per collection: .2 hour.

Title: Election to Apply Selected Reserve Service to Either the Montgomery GI Bill—Active Duty or to the Montgomery GI Bill—Selected Reserve.

Summary of collection of information: The collection of information in the

proposed amendments to §§ 21.7042 and 21.7540 in this rulemaking proceeding would implement a statutory provision that prevents an individual with potential eligibility for educational assistance under both the Montgomery GI Bill—Active Duty or the Montgomery Bill—Selected Reserve from using the same Selected Reserve service to establish eligibility for assistance under the Montgomery GI Bill—Selected Reserve, and to establish entitlement to educational assistance at an increased monthly rate under the Montgomery GI Bill—Active Duty.

Description of need for information and proposed use of information: An individual who participates in the Montgomery GI Bill—Active Duty and who serves on active duty for two years followed by six years in the Selected Reserve must choose whether to apply the Selected Reserve service toward the Montgomery GI Bill—Active Duty or to the Montgomery GI Bill—Selected Reserve. If she or he decides to apply it towards the Montgomery GI Bill—Selected Reserve, she or he would be eligible for 36 months of educational assistance under the Montgomery GI Bill—Active Duty at the rate of $347.65 per month for full-time training and 12 months of educational assistance under the Montgomery GI Bill—Selected Reserve. If she or he chooses to apply that service towards the Montgomery GI Bill—Active Duty, she or he would be eligible for 36 months of educational assistance under the Montgomery GI Bill—Active Duty at the rate of $427.87 per month for full-time training while remaining ineligible for educational assistance under the Montgomery GI Bill—Selected Reserve. VA must know which benefit the individual wants the Selected Reserve service credited to in order to determine the proper payments to the individual.

Description of likely respondents: Members of the Selected Reserve.

Estimated number of respondents: 35 annually.

Estimated frequency of responses: Once per eligible claimant.

Estimated total annual reporting and recordkeeping burden: 11.67 hours of reporting burden. VA does not believe that there would be an additional recordkeeping burden.

Estimated average burden per collection: .33 hour.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The signers of this document hereby certify that this proposed rule, if promulgated, would not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and would not directly affect small entities. Pursuant to 5 U.S.C. 605(b), the proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by the proposed rule are 64.117 and 64.124. The proposed rule also affects the Montgomery GI Bill—Selected Reserve for which there is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant Programs—veterans, Health care, Loan programs—education, Loan Programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 5, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: August 6, 1997.

G.R. Woolever,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

Approved: August 5, 1997.

Normand G. Lezy,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy).

For the reasons set out in the preamble, 38 CFR part 21, subparts C, K, and L are proposed to be amended as follows.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C, is revised to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

2. In § 21.3023, paragraph (c)(3) is amended by removing "educational assistance" and adding, in its place, "education under DEA"; the section heading, paragraph (c) introductory text, and paragraph (c)(1) are revised, and an authority citation for the section is added, to read as follows:

§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

* * * * *

(c) *Child; election.* An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

* * * * *

(Authority: 38 U.S.C. 3562)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

3. The authority citation for part 21, subpart K, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

4. In § 21.7042, the section heading and paragraphs (d)(2), and (d)(3) are revised, and paragraph (d)(4) is added, to read as follows:

§ 21.7042 Eligibility for basic educational assistance.

* * * * *

(d) * * *

(2) An individual must elect, in writing, whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual:

(A) Is a veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section; and

(B) Also is a reservist who has established eligibility for benefits under 10 U.S.C. chapter 1606 through meeting the requirements of § 21.7540; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505.

(3) An election under this paragraph (d) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the veteran either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(4) If a veteran is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (d)(1) through (d)(3) of this section.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c))

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

5. The authority citation for part 21, subpart L, is revised to read as follows:

Authority: 10 U.S.C. 1606; 38 U.S.C. 501, unless otherwise noted.

6. In § 21.7540, paragraph (c) and the authority citation for paragraph (d) are revised, to read as follows:

§ 21.7540 Eligibility for educational assistance.

* * * * *

(c) *Limitations on establishing eligibility.* (1) An individual must elect in writing whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 3012 and has established eligibility to that assistance partially through service in the Selected Reserve; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 3012 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505 followed by service in the Selected Reserve.

(2) An election under this paragraph (c) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the reservist either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(3) If a reservist is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (c)(1) and (c)(2) of this section.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c))

* * * * *

(d) * * *

(Authority: 10 U.S.C. 16132(d), 16134)

[FR Doc. 97–30872 Filed 11–24–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 86–1–9602b; TN 127–1–9603b; FRL–5822–7]

Designation of Areas for Air Quality Planning Purposes; Tennessee: Redesignation of the Polk County and New Johnsonville Sulfur Dioxide Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve requests for redesignation of the Polk County area and that portion of Benton and that portion of Humphreys Counties, Tennessee, surrounding TVA's Johnsonville plant (New Johnsonville area) from nonattainment to attainment for the sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS), pursuant to the request submitted on January 6, 1988, July 12, 1990, December 17, 1993, and April 17, 1995, by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC). EPA is also proposing to approve the maintenance plans.

In the final rules section of this **Federal Register**, the EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by December 26, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Scott M. Martin regarding the Polk County area and Mr. Steven M. Scofield regarding the New Johnsonville area at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The

interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531

FOR FURTHER INFORMATION CONTACT:

For the Polk County area: Mr. Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404/562–9036.

For the New Johnsonville area: Mr. Steven M. Scofield, Regulatory Planning Section, Air Planning Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is 404/562–9034.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 10, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–30953 Filed 11–24–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262 and 263

[FRL–5825–3]

Uniform Hazardous Waste Manifest: Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold public meetings on December 11, 1997 and January 8, 1998 to make information available on a project underway to revise the Resource Conservation and Recovery Act (RCRA) regulations governing hazardous waste transportation.

ADDRESSES: The first public meeting will be held on Thursday, December 11, 1997 from 8:30 a.m. to 5:00 p.m. at the Hyatt Regency Crystal City at 2799 Jefferson Davis Highway, Arlington, Virginia 22202. The second meeting will be held on Thursday January 8, 1998 at the Sheraton Fisherman's Wharf Hotel at 2500 Mason Street, San Francisco, California 94133. A meeting for state regulators will take place at the above locations on Wednesday December 10, 1997 and Wednesday, January 7, 1998. States are also encouraged to attend the public meetings.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington D.C. metropolitan areas, call 703–412–9810 or TDD 703–412–3323.

SUPPLEMENTARY INFORMATION: Under RCRA, EPA published regulations governing hazardous waste management. A portion of these regulations cover the movement of hazardous waste from its site of generation to a facility that can appropriately manage the waste. Specifically, they are the regulations found at 40 CFR part 262 for packaging, labeling, marking, and manifesting of hazardous wastes in preparation for transport; the regulations found at 40 CFR part 263 which address transportation (and which are jointly issued by the Department of Transportation); the regulations at 40 CFR part 264, Subpart E and 40 CFR part 265, Subpart E governing the receipt of waste at Treatment Storage and Disposal Facilities; and 40 CFR part 271 regarding state program implementation of the manifest system.

EPA is preparing a rulemaking to modify the current hazardous waste manifest system to reduce its burden. EPA is considering several approaches to reducing the burden of the Uniform Hazardous Waste Manifest form and the manifest system in general. These include the use of automation to electronically prepare, transmit, and store manifests; the use of a streamlined paper form; easier access to manifest-related information; and allowing some current manifest users alternatives to the traditional tracking system.

The purpose of these public meetings is to explain the draft rulemaking strategies the Agency is considering and to gather information on whether these strategies ensure that the burden of the manifest tracking system is minimized while ensuring the safe movement of hazardous waste.

The Agency believes that this project will affect all small quantity generators and large quantity generators of hazardous waste. The regulated community will benefit from public meetings by having early input into the regulatory development process. The Agency will be able to use this early input to finalize options it will incorporate into a proposed rulemaking on the manifest. Such early discussion will result in more fully developed options which take into account as much as possible, the input received from participants. EPA will answer questions and will receive informal input from the regulated community and from states as to whether the strategies developed by EPA will result in burden reduction without compromising environmental protection.

EPA will also hold separate meetings with state hazardous waste regulators to discuss state implementation of the new manifest system. State meetings will be held on the day prior to the public meetings.

EPA anticipates publishing the proposed rulemaking in the Fall of 1998 at which time formal comments will be taken from the public. The RCRA Hotline will take names and addresses of those who would like copies of the materials developed at the meetings.

This document is also available in electronic format on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/osw

FTP: ftp.epa.gov

Login: anonymous

Password: your internet address

Files are located in /OSW/publicate/htm

Dated: November 17, 1997.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 97–30816 Filed 11–24–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971029257–7257–01; I.D. No. 101097A]

RIN 0648–AG56

Designated Critical Habitat; Central California Coast and Southern Oregon/Northern California Coast Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; request for comments and notice of public hearings.

SUMMARY: The NMFS proposes to designate critical habitat for two Evolutionarily Significant Units (ESUs) of coho salmon (*Oncorhynchus kisutch*) pursuant to the Endangered Species Act of 1973 (ESA). Critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California. Also included are two rivers entering San Francisco Bay: Mill Valley Creek and Corte Madera Creek. Critical habitat for the Southern Oregon/Northern California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in this proposed rule represent the current freshwater and estuarine range of the listed species. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). NMFS has identified twelve dams in the range of these ESUs that currently block access to habitats historically occupied by coho salmon. However, NMFS has not designated these inaccessible areas as critical habitat because areas downstream are believed to be sufficient for the conservation of the ESUs. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

DATES: Comments must be received on or before January 26, 1998. Public hearings on this proposed action are scheduled for the month of December 1997. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Comments should be sent to: Garth Griffin, NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737; or Craig Wingert, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. See **SUPPLEMENTARY INFORMATION** for locations of public hearings.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005, Craig Wingert at (562) 980–4021, or Joe Blum at (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1996, NMFS published its determination to list Central California Coast coho salmon (Oncorhynchus kisutch) as threatened under the ESA (61 FR 56138). In a technical correction to the final listing determination (62 FR 1296, January 9, 1997), NMFS defined the Central California Coast coho salmon ESU to include all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, California, and the San Lorenzo River in Santa Cruz County, California. Subsequently, on May 6, 1997, NMFS published its determination to list the Southern Oregon/Northern California Coast coho salmon ESU as threatened under the ESA (62 FR 24588) and defined the ESU to include all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, Oregon, and Punta Gorda in Humboldt County, California.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. On July 25, 1995, NMFS published a **Federal Register** notice (60 FR 38011) soliciting information and data regarding the biological status of West Coast coho salmon, available salmon conservation measures, and information on areas that may qualify as critical habitat. At the time of final listing for each of these two ESUs, critical habitat was not determinable, since information necessary to perform the required analyses was lacking. NMFS has determined that sufficient information now exists to designate critical habitat for the two listed coho salmon ESUs. NMFS has considered all available information and data in making this proposal.

Use of the term "essential habitat" within this Notice refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et sec.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species." (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." (see U.S.C. 1532(3)).

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR 424.12(b)(1)).

Consideration of Economic and Other Factors

The economic and other impacts of a critical habitat designation have been considered and evaluated in this proposed rulemaking. NMFS identified present and anticipated activities that may adversely modify the area(s) being considered or be affected by a

designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases, the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal (see Significance of Designating Critical Habitat section of this notice). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the "take" prohibitions contained in section 9 of the ESA and associated regulations. "Take," as defined in the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (see 16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, rearing, or migration.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (see 50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (see 50 CFR 402.02). Using these definitions, activities that would destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. When actions may affect these areas, Federal agencies are required to consult with NMFS under section 7 (see 50 CFR 402.14(a)), a requirement which may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides a clear indication to Federal agencies as to when section 7 consultation is required, particularly in cases where the action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). The critical habitat designation, describing the essential features of the habitat, also assists in determining which activities conducted outside the designated area are subject to section 7, i.e., activities that may affect essential features of the designated area.

A critical habitat designation will also assist Federal agencies in planning future actions, since the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of a critical habitat designation is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of those proposed regulations and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local management programs, such as zoning or wetlands and riparian lands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and habitat areas and features that are essential to the conservation of the species are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features is evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation, considering comments on the proposal and impacts assessment, is typically published within one year of the proposed rule. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the critical habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections.

Critical Habitat of California and Southern Oregon Coho Salmon

Biological information for listed coho salmon can be found in NMFS species' status reviews (Bryant, 1994; Weitkamp *et al.*, 1995; NMFS, 1997), species life history summaries (Shapavalov and Taft, 1954; Laufle *et al.*, 1986; Hassler, 1987; Anderson, 1995; Sandercock, 1991), and in **Federal Register** notices of proposed and final listing determinations (59 FR 21744, April 26, 1994; 60 FR 38011, July 25, 1995; 61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997).

The current geographic range of coho salmon from the Oregon and California coasts includes vast areas of the North Pacific ocean, nearshore marine zone, and extensive estuarine and riverine

areas. The marine distribution south of Punta Gorda, California, appears to encompass a relatively narrow, nearshore strip approximately 100 km wide (Taft, 1937; Shapovalov and Taft, 1954; Laufle *et al.*, 1986; NOAA, 1990; Weitkamp *et al.*, 1995). North of Punta Gorda, the distribution widens to encompass nearly all marine areas north of 41 °N latitude (Wright, 1968; Godfrey *et al.*, 1975; NOAA, 1990). Major rivers, estuaries, and bays known to support coho salmon within the Southern Oregon/Northern California Coast ESU include the Rogue River, Smith River, Klamath River, Mad River, Humboldt Bay, Eel River, and Mattole River. Within the range of the Central California Coast ESU, major rivers, estuaries, and bays include the Ten Mile, Noyo, Big, Navarro, Garcia, Gualala, and Russian Rivers, and Tomales and San Francisco Bays [Emmett *et al.*, 1991; Nickelson *et al.*, 1992; Brown and Moyle, 1991; Bryant, 1994; California Department of Fish and Game (CDFG), 1994; Weitkamp *et al.*, 1995]. Many smaller coastal rivers and streams in each ESU also provide essential estuarine habitat for coho salmon, but access is often constrained by seasonal fluctuations in hydrologic conditions.

Any attempt to describe the current distribution of coho salmon must take into account the fact that extant populations and densities are a small fraction of historical levels. All coho salmon stocks in the Central California Coast ESU are extremely depressed relative to past abundance and there are limited data to assess population numbers or trends. The main coho salmon stocks in this region are from the Ten Mile River, Big River, Noyo River, Navarro River, Garcia River, Gualala River, Russian River, Lagunitas Creek, Waddell Creek, and Scott Creek. Several of these stocks are heavily influenced by hatcheries and apparently have little natural production in mainstem reaches. Historically, coho salmon abundance within this region was estimated from 50,000 to 125,000 native coho salmon. Presently, coho salmon abundance within this region is estimated to be less than 5,000 naturally reproducing fish, and a vast majority of these are considered to be non-native fish (Brown and Moyle, 1991; Bryant, 1994; CDFG, 1994).

All coho salmon stocks between Punta Gorda and Cape Blanco in the Southern Oregon/Northern California Coast ESU are also depressed relative to past abundance, and there are limited data to assess population numbers or trends currently. The main coho salmon stocks in this region are from the Rogue, Klamath, and Trinity Rivers, and the latter two are heavily influenced by hatcheries and apparently have little natural production in mainstem reaches. Other important stocks within this ESU include the Winchuck, Chetco, Smith, Mad, Elk, Eel, and the Mattole Rivers. Historically, coho salmon abundance within this region was estimated from 150,000 to 400,000 native fish. Presently, abundance is estimated to be less than 30,000 naturally reproducing coho salmon, and a vast majority of these (roughly 20,000) are considered to be non-native fish (Brown and Moyle, 1991, Bryant, 1994; CDFG, 1994; Weitkamp *et al.*, 1995). Within the range of both ESUs, the species' life cycle can be separated into five essential habitat types: (1) juvenile summer and winter rearing areas; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; (4) adult migration corridors; and (5) spawning areas. Areas 1 and 5 are often located in small headwater streams, while areas 2 and 4 include these tributaries as well as mainstem reaches and estuarine zones. Growth and development to adulthood (area 3) occurs primarily in near- and off-shore marine waters, although final maturation takes place in freshwater tributaries when the adults return to spawn. Within these areas, essential features of coho salmon critical habitat include adequate: (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by each of these coho salmon ESUs and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by CDFG, 1965; California Advisory Committee on Salmon and Steelhead Trout (CACSST), 1988; Brown and Moyle, 1991; Bjornn and Reiser, 1991; Nehlsen *et al.*, 1991; Higgins *et al.*, 1992; California State Lands Commission (CSLC), 1993; Botkin *et al.*, 1995; NMFS, 1996; and Spence *et al.*, 1996.

NMFS believes that the current freshwater and estuarine range of the species encompasses all essential habitat features and is adequate to ensure the species' conservation. Therefore, designation of habitat areas outside the species' current range is not necessary. It is important to note that habitat quality in this current range is intrinsically related to the quality of upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches. NMFS recognizes that estuarine habitats are important for rearing and migrating coho salmon and has included them in this designation. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions are believed to have a major influence on coho salmon survival (see review in Pearcy, 1992). However, no need appears to be necessary for special management consideration or protection of this habitat. Therefore, NMFS is not proposing to designate critical habitat in marine areas at this time. If additional information becomes available that supports the inclusion of such areas, NMFS may revise this designation.

Defining specific river reaches that are critical for coho salmon is difficult because of the current low abundance of the species and of our imperfect understanding of the species' freshwater distribution, both current and historical. The latter is due, in large part, to the lack of comprehensive sampling effort dedicated to monitoring the species. For example, in contrast to coho salmon spawner surveys in index and randomly selected stream reaches north of Cape Blanco, Oregon, information on adult coho salmon distribution in California and southwest Oregon streams has been typically gathered secondarily to chinook salmon surveys. Some surveys concerning juveniles have been conducted. However, they are rarely conducted in a consistent, systematic and comprehensive manner and typically do not give an accurate estimate of future adult escapement.

In California and Oregon, several recent efforts have been made to characterize the species' distribution [Brown and Moyle, 1991; Hassler *et al.*, 1991; The Wilderness Society (TWS), 1993; Bryant, 1994; CDFG, 1994; Weitkamp *et al.*, 1995; Adams *et al.*, 1996; Oregon Coastal Salmon Restoration Initiative (OCSRI), 1997] or to identify watersheds important to at-risk populations of salmonids and resident fishes [Forest Ecosystem Management Assessment Team (FEMAT), 1993]. In southwest Oregon, the Oregon Department of Fish and Wildlife (ODFW) has developed a draft series of maps depicting "core areas" for coho salmon and other species. These core areas are defined as "reaches or

watersheds within individual coastal basins that are judged to be of critical importance to the sustenance of salmon populations that inhabit those basins" (OCSRI, 1997) and are derived from 1:100,000 U.S. Geological Survey (USGS) hydrologic unit maps. The areas depicted are primarily river reaches where best available data or professional judgement indicate high concentrations of spawning or rearing coho salmon. Within the Oregon portion of the Southern Oregon/Northern California Coast ESU, 17 areas have been identified as core areas, and the vast majority of these (14 of 17) are located in the mid-to-upper portions of the Rogue River basin. Notably missing are core areas for this species in the Chetco, Pistol, and Winchuck River basins. The ODFW recognizes that coho salmon do inhabit these other southwest Oregon basins, but considers the species "rare" in coastal streams draining the Siskiyou Mountains (ODFW, 1995). While NMFS believes that this mapping effort holds great promise to focus habitat protection and restoration efforts, the core areas are only a subset of the areas that NMFS believes are critical habitat for coho salmon.

In California, the NMFS and U.S. Forest Service (Bryant and Olsen, in prep.) have developed a series of Geographic Information System maps depicting coho salmon historic and current distribution by using data and information NMFS had compiled for the west coast coho salmon status review and information previously developed on fish distributions by ODFW, California Department of Fish and Game, U.S. Forest Service, and U.S. Fish and Wildlife Service. These coho salmon distribution maps, depicted on USGS hydrologic units at a scale of 1:100,000, are the first attempt to develop a comprehensive distribution profile of coho salmon throughout California's watersheds and are an important step in the development of conservation and recovery efforts.

The limited data across the range of both ESUs, as well as dissimilarities in data types within the Southern Oregon/Northern California Coast ESU, make it difficult to define this species distribution at a fine scale. However, through consultations with other Federal and State biologists, NMFS has been able to construct a clearer picture of coho salmon distribution at the scale of fifth, sixth, and seventh field watersheds (Bryant and Olsen, in prep.). These watersheds and drainages provide a finer scale of geographic resolution than the larger USGS hydrologic units they are nested within. NMFS explored using these data to more accurately characterize the coho salmon's distribution in these listed ESUs. Except in a very few cases, the assessment revealed that coho salmon, though considerably reduced in population size, are still distributed or have the potential for distribution throughout nearly all watersheds within the geographic range of both ESUs. Notable exceptions are areas above several impassable dams (see Barriers Within the Species' Range section of this notice) and some streams that have had only sporadic presence/absence sampling.

Based on consideration of the best available information regarding the species' current distribution, NMFS believes that the preferred approach to identifying critical habitat is to designate all areas (and their adjacent riparian zones) accessible to the species within the range of each ESU. The NMFS has taken this approach in previous critical habitat designations for other species (e.g., Snake River salmon and proposed for Umpqua River cutthroat trout) which inhabit a wide range of freshwater habitats, in particular small tributary streams (58 FR 68543, December 28, 1993; 62 FR 40786, July 30, 1997). NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages, from small headwater streams to migration corridors and estuarine rearing areas; (2) takes into account the natural variability in habitat use (e.g., some streams may have fish present only in years with plentiful rainfall) that makes precise mapping difficult; and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upslope areas.

An array of management issues encompass these habitats, and special management considerations will be necessary, especially on lands and streams under Federal ownership (see Activities that May Affect Critical Habitat and Need for Special Management Considerations or Protection sections of this notice). While marine areas are also a critical link in this cycle, NMFS does not believe that special management considerations are needed to conserve the habitat features in these areas. Hence, only the freshwater and estuarine areas are being proposed for critical habitat at this time.

Barriers Within the Species' Range

Within the range of both ESUs, coho salmon face a multitude of barriers that limit the access of juvenile and adult fish to essential freshwater habitats. While some of these are natural barriers (e.g., waterfalls or high-gradient velocity barriers) that have been in existence for hundreds or thousands of years, more significant are the manmade barriers that have been created in the past several decades (CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; National Research Council, 1996). The extent of such barriers as culverts and road crossing structures that impede or block fish passage appears to be substantial. For example, of 532 fish presence surveys conducted in Oregon coastal basins during the 1995 survey season, nearly 15 percent of the confirmed end of fish use were due to human barriers, principally road culverts (OCSRI, 1997). Pushup dams/diversions and irrigation withdrawals also present significant barriers or lethal conditions (e.g., high water temperatures) to coho salmon in southern Oregon and California. However, because these manmade barriers can, under certain flow conditions, be surmounted by fish or present only a temporary/seasonal barrier, NMFS does not consider them to delineate the upstream extent of critical habitat.

Numerous hydropower and water storage projects have been built which either block access to areas used historically by coho salmon or alter the hydrograph of downstream river reaches. NMFS has identified a total of 12 dams within the range of both ESUs which currently have no fish passage facilities to allow coho access to former spawning and rearing habitats. Blocked habitat constitutes approximately 9 to 11 percent of the historic range of each ESU. While these blocked areas are proportionally significant in certain basins, NMFS believes this blocked habitat is not currently essential for the recovery of either ESU. NMFS will re-evaluate this conclusion during the recovery planning process and in section 7 consultation.

Because these projects are widely distributed throughout the range of each ESU, they can have a major downstream influence on coho salmon. Such impacts can include the following: Depletion and storage of natural flows which can drastically alter natural hydrological cycles; increase juvenile and adult mortality due to migration delays resulting from insufficient flows or habitat blockages; loss of sufficient habitat due to deterring and blockage; stranding of fish resulting from rapid flow fluctuations; entrainment of juveniles into poorly screened or unscreened diversions; and increased

mortality resulting from increased water temperatures (CACSST, 1988; Bergren and Filardo, 1991; CDFG, 1991; Reynolds *et al.*, 1993; Chapman *et al.*, 1994; Cramer *et al.*, 1995; NMFS, 1996). In addition to these factors, reduced flows negatively affect fish habitats due to increased deposition of fine sediments in spawning gravels, decreased recruitment of large woody debris and spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas resulting in reduced available habitat (CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; NMFS, 1996). These dam-related factors will be effectively addressed through section 7 consultations. Following are brief summaries of the 12 dams (by ESU, ordered from south to north) identified within the range of both ESUs and the habitats these dams effectively remove from coho salmon production.

Dams in the Range of the Central California Coast ESU

There are five dams within the range of this ESU that currently block access to historical spawning and rearing areas of coho salmon. Combined, these blocked areas amount to approximately 9 percent of the freshwater and estuarine range of the ESU.

1. Newell Dam is located on Newell Creek (tributary to the San Lorenzo River), approximately 18 miles (29 km) upstream from the Pacific Ocean, and forms Loch Lomond reservoir in Santa Cruz County, California. The dam does not have a fish passage facility, and upon its completion in 1960, blocked access to approximately 5 miles (8 km) of mainstem upstream habitat. These blocked areas constitute approximately 26 percent of the entire San Lorenzo River basin.

2. Peters Dam is located on Lagunitas Creek, approximately 14 miles (23 km) upstream from the Pacific Ocean, and forms Kent Lake in Marin County, California. The dam does not have a fish passage facility, and upon its completion in 1940, blocked access to approximately 8 miles (13 km) of mainstem upstream habitat. These blocked areas constitute approximately 6 percent of the entire Lagunitas Creek basin.

3. Nicasio Dam is located on Nicasio Creek (tributary to Lagunitas Creek), approximately 8 miles (13 km) upstream from the Pacific Ocean, and forms Nicasio Reservoir in Marin County, California. The dam does not have a fish passage facility, and upon its completion in 1961, blocked access to approximately 5 miles (8 km) of mainstem upstream habitat. These blocked areas constitute approximately 10 percent of the entire Lagunitas Creek basin.

4. Warm Springs Dam is located on Dry Creek (tributary to the Russian River), approximately 45 miles (72 km) upstream from the Pacific Ocean, and forms Sonoma Lake in Sonoma County, California. The dam does not have a fish passage facility, and upon its completion in 1982, blocked access to approximately 50 miles (80 km) of upstream habitat. These blocked areas constitute approximately 9 percent of the entire Russian River basin.

5. Coyote Dam is located on the mainstem Russian River, approximately 95 miles (153 km) upstream from the Pacific Ocean, and forms Lake Mendocino in Mendocino County, California. The dam does not have a fish passage facility, and upon its completion in 1959, blocked access to approximately 36 miles (58 km) of mainstem upstream habitat. These blocked areas constitute approximately 7 percent of the entire Russian River basin.

Dams in the Range of the Southern Oregon/Northern California Coast ESU

There are seven dams within the range of this ESU that currently block access to historical spawning and rearing areas of coho salmon. Combined, these blocked areas amount to approximately 11 percent of the freshwater and estuarine range of the ESU.

1. Scott Dam is located on the mainstem Eel River, approximately 169 miles (272 km) upstream from the Pacific Ocean, and forms Lake Pillsbury in Lake County, California. The dam does not have a fish passage facility, and upon its completion in 1922, blocked access to approximately 36 miles (58 km) of upstream habitat. These blocked areas constitute approximately 8 percent of the entire Eel River basin.

2. Matthews Dam is located on the mainstem Mad River, approximately 79 miles (127 km) upstream from the Pacific Ocean, and forms Ruth Lake in Trinity County, California. The dam does not have a fish passage facility, and upon its completion in 1961, blocked access to approximately 2 miles (3 km) of mainstem upstream habitat. These blocked areas constitute approximately 13 percent of the entire Mad River basin.

3. Lewiston Dam is located on the Trinity River (tributary to the lower Klamath River), approximately 110 miles (177 km) upstream from the Pacific Ocean, and forms Lewiston Reservoir in Trinity County, California. The dam does not have a fish passage facility, and upon its completion in 1963, blocked access to approximately 109 miles (175 km) of upstream habitat. These blocked areas constitute approximately 24 percent of the Trinity River subbasin and 9 percent of the entire Klamath River basin.

4. Dwinnell Dam is located on the Shasta River (tributary to the upper Klamath River), approximately 214 miles (345 km) upstream from the Pacific Ocean, and forms Dwinnell Reservoir in Siskiyou County, California. The dam does not have a fish passage facility, and upon its completion in 1928, blocked access to approximately 17 miles (27 km) of upstream habitat. These blocked areas constitute approximately 17 percent of the Shasta River subbasin and 2 percent of the entire Klamath River basin.

5. Iron Gate Dam is located on the mainstem Klamath River, approximately 190 miles (306 km) upstream from the Pacific Ocean, and forms Iron Gate Reservoir in Siskiyou County, California. The dam does not have a fish passage facility, and upon its completion in 1961, blocked access to approximately 30 miles (48 km) of mainstem upstream habitat. These blocked areas constitute approximately 8 percent of the entire Klamath River basin.

6. Applegate Dam is located on the Applegate River (tributary to the Rogue River), approximately 140 miles (225 km) upstream from the Pacific Ocean, and forms Applegate Reservoir in Jackson County, Oregon. The dam does not have a fish passage facility, and upon its completion in 1980, blocked access to approximately 30 miles (48 km) of upstream habitat. These blocked areas constitute approximately 29 percent of the Applegate River subbasin and approximately 5 percent of the entire Rogue River basin that was historically accessible to coho salmon.

7. Lost Creek Dam is located on the Rogue River, approximately 156 miles (252 km) upstream from the Pacific Ocean, and forms Lost Creek Reservoir in Jackson County, Oregon. The dam does not have a fish passage facility, and upon its completion in 1977, blocked access to approximately 6 miles (10 km) of mainstem upstream habitat. These blocked areas constitute approximately 1 percent of the entire Rogue River basin that was historically accessible to coho salmon.

Land Ownership Within the Species' Range

Tables 5 and 6 summarize the major river basins inhabited by each coho salmon ESU as well as counties containing basins designated as critical

habitat. NMFS has also derived estimates of land ownership by Federal, State, and Private/Other (primarily private and tribal) landholders for each of the major river basins. Due to data limitations which prevent mapping the precise river reaches inhabited by coho salmon, the ownership estimates were based on land area within entire river basins. Aggregating all basins in the Central California Coast ESU yields ownership estimates of approximately 5 percent Federal; 6 percent State, and 89 percent Private/Other lands. In contrast, ownership for the Southern Oregon/ Northern California Coast ESU is approximately 53 percent Federal, 1 percent State, and 46 percent Private/ Other lands. These data clearly indicate that the role of Federal land/water management agencies will be greater in the Southern Oregon/Northern California Coast ESU while private landholders will play a major role in protecting and restoring coho salmon habitat in the Central California Coast ESU.

Need for Special Management Considerations or Protection

In order to assure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for freshwater and estuarine life stages of listed coho salmon include, but are not limited to (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) irrigation water withdrawals and returns; (7) mining; (8) road construction; (9) dam operation and maintenance; and (10) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed; however, they indicate the potential types of activities that will require consultation in the future. No special management considerations have been identified for listed coho salmon while they are residing in the ocean environment.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of listed coho salmon. More in-depth discussions are contained in the **Federal Register** notices announcing the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). These activities include water and land management actions of Federal agencies (i.e., U.S. Forest Service, U.S. Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, the Federal Highway Administration, and the Federal Energy Regulatory Commission) and related or similar actions of other federally regulated projects and lands, including livestock grazing allocations by the U.S. Forest Service and U.S. Bureau of Land Management; hydropower sites licensed by the Federal Energy Regulatory Commission; dams built or operated by the U.S. Army Corps of Engineers or U.S. Bureau of Reclamation; timber sales conducted by the U.S. Forest Service and U.S. Bureau of Land Management; road building activities authorized by the Federal Highway Administration, U.S. Forest Service, and U.S. Bureau of Land Management; and mining and road building activities authorized by the states of California and Oregon. Other actions of concern include dredge and fill, mining, and bank stabilization activities authorized or conducted by the U.S. Army Corps of Engineers.

The Federal agencies that will most likely be affected by this critical habitat designation include the U.S. Forest Service, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, the Federal Highway Administration, and the Federal Energy Regulatory Commission. This designation will provide these agencies, private entities, and the public with clear notification of critical habitat designated for listed coho salmon and the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed coho salmon and their critical habitat and in determining when consultation with NMFS is appropriate.

Expected Economic Impacts

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to either listing or to authorities other than the ESA (see Consideration of Economic and Other Factors section of this notice). Incremental impacts result from special management activities in areas outside the present distribution of the listed species that have been determined to be essential to the conservation of the species. However, NMFS has determined that the species' present freshwater and estuarine range contains sufficient habitat for conservation of the species. Therefore, the economic impacts associated with this critical habitat designation are expected to be minimal.

The Forest Service, Bureau of Land Management, Bureau of Reclamation, and Army Corps of Engineers manage areas of proposed critical habitat for the listed coho salmon ESUs. The Corps of Engineers and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Because NMFS believes that virtually all "adverse modification" determinations pertaining to critical habitat would also result in "jeopardy" conclusions, designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes. Additionally, previously completed biological opinions would not require re-initiation to reconsider any critical habitat designated in this rulemaking.

Public Comments Solicited; Public Hearings

NMFS is soliciting information, comments and/or recommendations on any aspect of this proposal from all concerned parties (see **ADDRESSES**). In particular, NMFS is requesting any data, maps, or reports describing areas that should be excluded from the critical habitat designation due to either the species' historic absence or the lack of special management considerations required in a particular area. NMFS will consider all information, comments, and recommendations received before reaching a final decision.

Joint Commerce-Interior ESA implementing regulations state that the Secretary "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to * * * designate or revise critical habitat." (see 50 CFR 424.16(c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters.

The public will have the opportunity to provide oral and written testimony at the public hearings. Written comments on the proposed rule may also be submitted to Garth Griffin (see **ADDRESSES** and **DATES**). The hearings are scheduled from 6 p.m. to 9 p.m. as follows:

1. Monday, December 8, 1997—Gold Beach City Hall, City Council Chambers, 29592 Ellensburg Avenue, Gold Beach, Oregon.

2. Tuesday, December 9, 1997—Eureka Inn, 518 7th Street, Eureka, California.

3. Thursday, December 11, 1997—Days Inn, 185 Railroad Street, Santa Rosa, California.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin or Craig Wingert (see **ADDRESSES**).

Compliance With Existing Statutes

NMFS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for critical habitat designations made pursuant to the ESA. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

NMFS proposes to designate only the current range of these coho salmon ESUs as critical habitat. Given the affinity of this species to spawn in small streams, this current range encompasses a wide range of habitat, including small tributary reaches, as well as mainstem, off-channel and estuarine areas. Areas excluded from this proposed designation include nearshore habitats in the Pacific Ocean, historically-occupied areas above 12 extant and impassable dams, and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS has concluded that currently inhabited areas within the range of each ESU are the minimum habitat necessary to ensure conservation and recovery of the listed species.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact of a substantial number of small entities, as described in the Regulatory Flexibility Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The AA has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the states of Oregon and California. This determination will be submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: November 19, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Sections 226.24 and 226.25 are added to subpart C to read as follows:

§ 226.24 Central California Coast Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Mill Valley and Corte Madera Creeks, tributaries to San Francisco Bay. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 ft (91.4 m) from the normal line of high water of a stream channel or adjacent off-channel habitats (600 ft or 182.8 m, when both sides of the channel are included). Figure 10 of this part identifies the general geographic extent of larger rivers and streams within hydrologic units designated as critical habitat for Central California Coast coho salmon. Note that Figure 10 of this part does not constitute the definition of critical habitat but, instead, is provided as a general reference to guide Federal agencies and interested parties in locating the boundaries of critical habitat for listed Central California Coast coho salmon. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1986, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974 and State of California, 1978 which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

§ 226.25 Southern Oregon/Northern California Coast Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). Adjacent riparian zones are defined as those areas within a horizontal distance of 300 ft (91.4 m) from the normal line of high water of a stream channel or adjacent off-channel habitats (600 ft or 182.8 m, when both sides of the channel are included). Figure 11 of this part identifies the general geographic extent of larger rivers and streams within hydrologic units designated as critical habitat for Southern Oregon/Northern California Coast coho salmon. Note that Figure 11 of this part does not constitute the definition of critical habitat but, instead, is provided as a general reference to guide Federal agencies and interested parties in locating the boundaries of critical habitat for listed Southern Oregon/Northern California Coast coho salmon. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1986, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon (1974) and State of California (1978) which are incorporated by reference.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.

3. Tables 5 and 6 are added in numerical order to part 226 to read as follows:

TABLE 5 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR THREATENED CENTRAL CALIFORNIA COAST COHO SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU[1]	Dams (reservoirs)
San Lorenzo-Soquel	18060001	Santa Cruz (CA), San Mateo (CA)	1. Newell Dam (Loch Lomond).
San Francisco Coastal South	18050006	San Mateo (CA).	
San Pablo Bay	18050002	Marin (CA), Napa (CA).	
Tomales-Drake Bays	18050005	Marin (CA), Sonoma (CA)	2. Peters Dam (Kent Lake). 3. Nicasio Dam (Nicasio Reservoir).
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	
Russian	18010110	Sonoma (CA), Mendocino (CA)	4. Warm Springs Dam (Sonoma Lake) 5. Coyote Dam (Lake Mendocino).
Gualala-Salmon	18010109	Sonoma (CA), Mendocino (CA).	
Big-Navarro-Garcia	18010108	Mendocino (CA).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

TABLE 6 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR THREATENED SOUTHERN OREGON/NORTHERN CALIFORNIA COAST COHO SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU[1]	Dams (reservoirs)
Mattole	18010107	Humboldt (CA), Mendocino (CA).	
South Fork Eel	18010106	Mendocino (CA), Humboldt (CA).	
Lower Eel	18010105	Mendocino (CA), Humboldt (CA), Trinity (CA).	
Middle Fork Eel	18010104	Mendocino (CA), Trinity (CA), Glenn (CA), Lake (CA).	
Upper Eel	18010103	Mendocino (CA), Glenn (CA), Lake (CA)	1. Scott Dam (Lake Pillsbury).
Mad-Redwood	18010102	Humboldt (CA), Trinity (CA)	2. Matthews Dam (Ruth Lake).
Smith	18010101	Del Norte (CA), Curry (OR).	
South Fork Trinity	18010212	Humboldt (CA), Trinity (CA).	
Trinity	18010211	Humboldt (CA), Trinity (CA)	3. Lewiston Dam (Lewiston Reservoir).
Salmon	18010210	Siskiyou (CA).	
Lower Klamath	18010209	Del Norte (CA), Humboldt (CA), Siskiyou (CA).	
Scott	18010208	Siskiyou (CA).	
Shasta	18010207	Siskiyou (CA)	4. Dwinnell Dam (Dwinnell Reservoir).
Upper Klamath	18010206	Siskiyou (CA), Jackson (OR)	5. Irongate Dam (Irongate Reservoir).
Chetco	17100312	Curry (OR), Del Norte (CA).	

TABLE 6 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR THREATENED SOUTHERN OREGON/NORTHERN CALIFORNIA COAST COHO SALMON, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT—Continued

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU[1]	Dams (reservoirs)
Illinois	17100311	Curry (OR), Josephine (OR), Del Norte (CA).	
Lower Rogue	17100310	Curry (OR), Josephine (OR), Jackson (OR).	
Applegate	17100309	Josephine (OR), Jackson (OR), Siskiyou (CA).	6. Applegate Dam (Applegate Reservoir).
Middle Rogue	17100308	Josephine (OR), Jackson (OR).	
Upper Rogue	17100307	Jackson (OR), Klamath (OR), Douglas (OR).	7. Lost Creek Dam (Lost Creek Reservoir).
Sixes	17100306	Curry (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.

4. Figures 10 and 11 are added in numerical order to part 226 to read as follows:

Figures to Part 226

* * * * *

BILLING CODE 3510-22-P

Figure 10 to Part 226.—Critical Habitat for Central California Coast Coho Salmon



Figure 11 to Part 226.—Critical Habitat for Southern Oregon/Northern California Coast Coho Salmon



[FR Doc. 97–30865 Filed 11-20-97; 12:13 pm]
BILLING CODE 3510-22-C

Notices

Federal Register

Vol. 62, No. 227

Tuesday, November 25, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection. This information collection is used in support of loan programs regarding rice, feed grains, wheat, oilseeds, and farm-stored peanuts as authorized by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act).

DATE: Comments on this notice must be received on or before January 26, 1998 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Margaret Wright, Agricultural Program Specialist, USDA, FSA, PSD, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–8481; e-mail mwright2 @ wdc.fsa.usda.gov.; or facsimile (202) 690–3307.

SUPPLEMENTARY INFORMATION:

Title: Loan Program.

OMB Control Number: 0560–0087.

Expiration Date of Approval: February 28, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The 1996 Act provides for loans to eligible producers on eligible commodities. The information is necessary to ensure the integrity of the program and to ensure that only eligible producers receive loans.

Producers requesting CCC commodity loans must provide specific data relative to the loan request. Forms included in this information collection package require the type of commodity, quantity of commodity, storage location, liens on the commodity, etc., in order to determine eligibility. Producers must also agree to the terms and conditions contained in the loan note and security agreement and other loan-related forms. Without this collection of information, CCC cannot ensure the integrity of the CCC commodity loan program. One form that allowed a producer to use their CCC loan grain as livestock feed for the Emergency Feed Assistance Program is being eliminated from this package because this provision is no longer available.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .2253 hours per response.

Respondents: Individual producers and small businesses.

Estimated Number of Respondents: 364,240.

Estimated Number of Responses per Respondent: 3.92.

Estimated Total Annual Burden Hours on Respondents: 438,732 hours.

Proposed topics for comments include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Margaret A. Wright, Agricultural Program Specialist, USDA–FSA–PSD, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512; telephone (202) 720–8481; e-mail mwright2 @ wdc.fsa.usda.gov. Copies of the information collection may be obtained from Margaret Wright at the above address.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives in within 30 days of publication.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on November 19, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–30945 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–072N]

HACCP Implementation Meetings

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a series of four one-day "HACCP Implementation Meetings." The purpose of the meetings is to brief management of large (500 + employees) official meat and poultry establishments on how the Agency will conduct inspection operations subsequent to the January 26, 1998, deadline for HACCP/Pathogen Reduction implementation in large plants. At each meeting, FSIS officials will discuss HACCP requirements, microbiological requirements, HACCP/Pathogen Reduction training, and Agency verification. Time will be allotted for questions and answers.

DATES: See **SUPPLEMENTARY INFORMATION** for dates and times of the meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the location of the meetings.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, call (202) 501–7136 or FAX (202) 501–7642. If you require a sign language interpreter or other special accommodations, contact Ms. Jennifer Callahan at (202) 501–7138.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806). This rule introduced sweeping changes to the meat and poultry inspection system. In the preamble to the final rule, FSIS announced that it would hold implementation conferences in Washington, DC, and in various cities throughout the country. A series of six meetings were held from October to November, 1996. The following is a list of locations, dates, and times for each of the four additional implementation meetings scheduled for December 1997 and January 1998.

Meeting location	Date	Time
Washington, DC: Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005	December 16, 1997	8:00 a.m.–5:00 p.m.
Des Moines, IA: Hotel Savery, 4th & Locust, Des Moines, IA 50309	January 14, 1998	8:00 a.m.–5:00 p.m.
Denver, CO: Four Points Hotel 3535 Quebec Street, Denver, CO 80207	January 16, 1998	8:00 a.m.–5:00 p.m.
Memphis, TN: Holiday Inn Select, 160 Union Avenue, Memphis, TN 38103	January 21, 1998	8:00 a.m.–5:00 p.m.

Done in Washington, DC, on: November 18, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30962 Filed 11–20–97; 4:11 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet on December 3 and 4, 1997, at the Brook Trails Fire Department meeting room in Willits, CA. The meeting will be held from 10:00 a.m. to 5:30 p.m. on December 3, and from 8:30 a.m. to 4:30 p.m. on December 4. The Brook Trails Fire Department is located at 24860 Birch Street in Willits. Agenda items to be covered include: (1) Coho Salmon Subcommittee recommendation on road stream crossings; (2) Presentation on Intergovernmental Advisory Committee (IAC)/PAC relations; (3) US Fish and Wildlife Service presentation on baseline analysis/current conditions of the northern spotted owl in the four northern California National Forests; (4) Recreation/Tourism Subcommittee report; (5) Panel presentation on Native American perspectives on prescribed burning and fuels management; (6) Public/Private/Tribal Partnership Opportunities Subcommittee reports to include Fork Fire recommendations, Forest Highway 7 update, grazing and Jobs in the Woods proposals; (7) Monitoring Subcommittee report on findings on watershed analyses; (8) Presentation on Pacific Southwest Research fuels research proposal; (9) Report and recommendations from the PAC/SCERT coordinating committee; (10) Presentation on how changes related to implementation of the Northwest Forest Plan affect Forest Service payments in lieu of taxes to Counties; (11) Presentation on the Effectiveness Monitoring Protocol; (12) Work on the Ground Subcommittee reports to include federal agencies' fuels planning, Threatened and Endangered Species consultations, and future subcommittee topics; and (13) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: November 14, 1997.

Arthur Quintana,

Acting Forest Supervisor.

[FR Doc. 97–30960 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration, USDA

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock market named below is a stockyard as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

GA–222—B & B Sales Commerce, Georgia

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyard named above as a posted stockyard subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408-South Building, U. S. Department of Agriculture, Washington, D.C. 20250 by December 10, 1997.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock

Marketing Division during normal business hours.

Done at Washington, DC this 14th day of November 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97–30878 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by Section 302(a). Notice was given to the stockyard owners and to the public as required by Section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No., name, and location of stockyard	Date of posting
AR–173, Centerton Livestock Auction, Centerton, Arkansas.	Oct. 6, 1997.
KY–175, Kentucky Livestock Exchange, Owenton, Kentucky.	Oct. 28, 1997.
NC–172, Martin County Horse Auction, Oak City, North Carolina.	Oct. 23, 1997.

Done at Washington, DC this 14th day of November 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 97–30877 Filed 11–24–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
KS–115, Concordia Livestock Auction, Concordia, Kansas.	May 7, 1952.
MD–119, Kolb's Sale Barn, Woodsboro, Maryland.	June 3, 1996.
NC–138, Wells Livestock Market, Inc., Wallace, North Carolina.	July 10, 1959.
NC–150, Jefferson Stockyard & Grill, Inc., Jefferson, North Carolina.	Nov. 22, 1978.
TX–162, El Paso Livestock Auction Co., Inc., El Paso, Texas.	Nov. 15, 1967.
VA–110, Southside Livestock Markets, Inc., Farmville, Virginia.	Mar. 20, 1961.
WA–121, Sunnyside Livestock Market, Inc., Sunnyside, Washington.	Oct. 5, 1959.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC this 14th day of November 1997.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division Packers and Stockyards Programs.

[FR Doc. 97–30879 Filed 11–24–97; 8:45 am]

BILLING CODE 3210–KD–P

DEPARTMENT OF COMMERCE

Critical Foundations: Protecting America's Infrastructures

AGENCY: Department of Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of Commerce announces the availability of and seeks public comment on "Critical Foundations: Protecting America's Infrastructures," the report of the President's Commission on Critical Infrastructure Protection. The Commission was established by Executive Order in July 1996 to conduct a comprehensive study of the physical and electronic ("cyber") threats to and vulnerabilities of the nation's critical infrastructures and recommend a national policy for protecting the infrastructures and assuring their continued operation. The executive order provided for a Commission comprised 10 members from the Federal government and 10 members from outside the Federal government. When the Commission terminated on October 13, 1997, some of the Commission's staff was retained to assist the Principals Committee, Steering Committee, and Advisory Committee in reviewing the report and preparing recommendations to the President. Notwithstanding the substantial public input that went into development of the Commission's findings and recommendations, their significance makes them worthy of additional public discussion and comment.

DATES: Comments should be submitted no later than January 9, 1998.

REPORT AVAILABILITY AND ADDRESSES: The report is available electronically from the Commission's transition office site on the World Wide Web: http://www.pccip.gov/.

Comments may be sent to the Commission at P.O. Box 46258, Washington, DC 20050–6258. Comments may also be submitted by facsimile to 202–696–9411, or by electronic mail to Comments@pccip.gov. Comments submitted by facsimile or electronic mail need not also be submitted by regular mail.

FOR FURTHER INFORMATION CONTACT: The Commission at 703–696–9395.

SUPPLEMENTARY INFORMATION: Executive Order 13010 of July 15, 1996 (61 FR 37347), as amended, established the President's Commission on Critical Infrastructure Protection and its associated Principals Committee, Steering Committee, and Advisory Committee as described below. A complete text of the Executive Order may also be found at the Commission's website (http://www.pccip.gov).

A Statement of the Problem

Certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States. These critical infrastructures include telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services (including medical, police, fire, and rescue), and continuity of government services. Threats to these critical infrastructures fall into two categories: physical threats to tangible property ("physical threats"), and threats of electronic, radio-frequency, or computer-based attacks on the information or communications components that control critical infrastructures ("cyber threats"). Because many of these critical infrastructures are owned and operated by the private sector, it is essential that the government and private sector work together to develop a strategy for protecting them and assuring their continued operation.

Commission Membership

The Commission comprised one member each from the Department of the Treasury, Department of Justice, Department of Defense, Department of Commerce, Department of Transportation, Department of Energy, Central Intelligence Agency, Federal Emergency Management Agency, Federal Bureau of Investigation, National Security Agency. These agencies also appointed members from the private sector. The Commission Chair was designated by the President from the private sector.

The Principals Committee

The Commission reported to the President through a Principals Committee, which is charged to review any reports or recommendations before submission to the President. The Principals Committee comprises the Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of Commerce, Secretary of Transportation, Secretary of Energy, Director of Central Intelligence, Director of the Office of Management and Budget, Director of the Federal Emergency Management Agency, Assistant to the President for National Security Affairs, Assistant to the Vice President for National Security Affairs, Assistant to the President for Economic Policy and Director of the National Economic Council, and Assistant to the President and Director of the Office of Science and Technology Policy.

The Steering Committee

The Commission's day-to-day work was overseen by a Steering Committee on behalf of the Principals Committee. The Steering Committee comprised five members: The Deputy Secretary of Defense, the Attorney General, the Deputy National Security Advisor, the Vice President's Domestic Policy Advisor and the Chair of the Commission itself. The Steering Committee received regular reports on the progress of the Commission's work and approved the submission of reports to the Principals Committee.

Advisory Committee

The Commission received advice from an Advisory Committee composed of individuals appointed by the President from the private sector, academia, and local government who were knowledgeable about critical infrastructures. The Committee will study the report and provide advice to the Steering Committee.

Mission

As provided in the Executive Order, the Commission was to consult with the public and private sector owners and operators of the critical infrastructures and others that have an interest in critical infrastructure assurance issues and that may have differing perspectives on these issues. The Commission was to assess the scope and nature of threats to and vulnerabilities of the critical infrastructures; determine the legal and policy issues raised by efforts to protect critical infrastructures and assess how they might be addressed; recommend a comprehensive national policy and implementation strategy for protecting critical infrastructures and assuring their continued operation; and propose any statutory or regulatory changes necessary to effect its recommendations.

Sector Studies

The Commission divided its work into these five "sectors" based on the common characteristics of the included industries:

- Information and communications:
- Banking and finance.
- Energy, including electrical power, and oil and gas production and storage.
- Physical distribution, including transportation and oil and gas distribution.
- Vital human services, including water supply, emergency services and government services.

Public Hearings and Outreach

The Commission conducted extensive meetings with a range of professional and trade associations concerned with the infrastructures, private sector infrastructure users and providers, academia, state and local government agencies, consumers, federal agencies, and many others. Of special interest were five public meetings in five major cities.

Overview of the Report's Findings

1. New Thinking is Required in Cyberspace. It is not surprising that infrastructures have always been attractive targets for those who would do us harm. In the past we have been protected from hostile attacks on the infrastructures by broad oceans and friendly neighbors. Today, the evolution of cyber threats has changed the situation dramatically. In cyberspace, national borders are no longer relevant.

Potentially serious cyber attacks can be conceived and planned without detectable logistic preparation. They can be invisibly reconnoitered, clandestinely rehearsed, and then mounted in a matter of minutes or even seconds without revealing the identity and location of the attacker.

Formulas that carefully divide responsibility between foreign defense and domestic law enforcement no longer apply as clearly as they used to and, in some instances, you may have to solve the crime before you can decide who has the authority to investigate it.

2. We Should Act Now to Protect our Future. The Commission has not discovered an imminent attack or a credible threat sufficient to warrant a sense of immediate national crisis. However, the Commission found that our vulnerabilities are increasing steadily while the costs associated with an effective attack continue to drop. The investments required to improve the situation are still relatively modest, but will rise if we procrastinate.

3. Infrastructure Assurance is a Shared Responsibility. National security requires much more than military strength. While no nation state is likely to invade our territory or attack our armed forces, we are inevitably the target of ill will and hostility from some quarters. Disruption of the services on which our economy and well-being depend could have significant effects, and if repeated frequently, could seriously harm public confidence. Because our military and private infrastructures are becoming less and less separate, because it is getting harder to differentiate threats from local criminals from those from foreign powers, and because the techniques of protection, mitigation, and restoration are largely the same, we conclude that responsibility for infrastructure protection and assurance can no longer be delegated on the basis of who the attacker is or where the attack originates. Rather, the responsibility should be shared cooperatively among all of the players.

Overview of the Report's Recommendations

1. A Broad Program of Education and Awareness. Possible undertakings include White House conferences, National Academy of Science studies, presentations at industry and government associations and professional societies, development and promulgation of elementary and secondary curricula, and sponsorship of graduate studies and programs.

2. Infrastructure Protection through Industry Cooperation and Information Sharing. Sector-by-sector cooperation and information sharing would take place in the context of partnerships between owners and operators and government. These partnerships would identify and share best practices. The National Institute of Standards and Technology, the National Security Agency, and the Department of Energy's National Laboratories would provide technical skills and expertise required to identify and evaluate vulnerabilities in the associated information networks and control systems. Sector cooperation might begin with sharing information and techniques related to risk management assessments. This could evolve into the development and deployment of ways to prevent attacks, and if attacks occur, to mitigate damage, quickly recover services, and reconstitute the infrastructure

3. Reconsideration of Laws Related to Infrastructure Protection. Some laws capable of promoting infrastructure assurance efforts are not as clear or effective as they could be. Others operate in ways that may be unfriendly to security concerns. Sorting them all out will be a lengthy and complex undertaking, involving efforts at local, state, federal, and international levels. The report identifies specific existing laws that could be modified to support infrastructure protection.

4. A Revised Program of Research and Development. While some of the basic technology needed to improve infrastructure protection already exists, it is not yet widely deployed. In all areas of activities aimed at protecting and assuring the infrastructure, mitigating damages, and responding and recovering from attacks, additional research effort is needed. The Commission recommends increasing government spending in research and development on capabilities such as intrusion detection.

5. A National Organization Structure. To implement the recommendations the following new organizations and revised roles for existing organizations are recommended:

Office of National Infrastructure Assurance as the top-level policy making office connected closely to the National Security Council and the National Economic Council;

Infrastructure Assurance Support Office to house the bulk of the staff that would be responsible for follow-through on the Commission's recommendations;

Information Sharing and Analysis Center to begin the step-by-step process of establishing a realistic understanding of distinguishing actual attacks from coincidental events;

National Infrastructure Assurance Council of industry CEOs, Cabinet Secretaries, and representatives of state and local government to provide policy advice and implementation commitment;

Lead Agencies, designated within the Federal government, to serve as a conduit from the government into each sector and to facilitate the creation of sector coordinators, if needed; and

Sector Coordinators to provide the focus for industry cooperation and information sharing, and to represent the sector in matters of national cooperation and policy;

Warning Center to identify anomalous events indicating that the infrastructure is under attack and alert the Information Sharing and Analysis Center for dissemination of bulletins and threat advisories to infrastructure stakeholders.

William Reinsch,

Under Secretary of Commerce, Bureau of Export Administration.

[FR Doc. 97–30851 Filed 11–24–97; 8:45 am]

BILLING CODE 3110–65–P

DEPARTMENT OF COMMERCE

Bureau of the Census

The Census Advisory Committee (CAC) on the African American Population, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, and the CAC on the Hispanic Population

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

Pursuant to the Federal Advisory Committee Act (P.L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a joint meeting followed by separate and concurrently held (described below) meetings of the CAC on the African American Population, the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, and the CAC on the Hispanic Population. The joint meeting will convene on December 11–12, 1997 at the Bureau of the Census, Francis Amasa Walker Conference Center, Federal Building 3, 4700 Silver Hill Road, Suitland Maryland 20746.

Each of these Committees is composed of nine members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on its efforts to reduce the differential in the population totals from Census 2000 and on ways that decennial census data can be disseminated to maximize their usefulness to these communities and other users.

The Committees will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the expertise and insight of their members to provide advice and recommendations during the research and development, design, planning and implementation phases of Census 2000.

The agenda for the December 11 combined meeting, which will begin at 9 a.m. and end at 5 p.m., is as follows: (1) Introductory Remarks and Updates; (2) What Is the Master Activity Schedule? How Will it Work for Census 2000 Dress Rehearsal Plans?; and (3) Building Partnerships.

The agendas for the four separate committees in the concurrent meetings held at various times during the day are as follows:

The CAC on the African American Population: (1) Review Issues From Last Meeting; (2) Discussants' Review of the Topics for the Plenary Sessions; (3) Review Responses to Recommendations; and (4) Discussion of Topics with Staff.

The CAC on the American Indian and Alaska Native Populations: (1) Review Issues From Last Meeting; (2) Discussants' Review of the Topics for the Plenary Sessions; (3) Review Responses to Recommendations; and (4) Discussion of Topics with Staff.

The CAC on the Asian and Pacific Islander Populations: (1) Review Issues From Last Meeting; (2) Discussants' Review of the Topics for the Plenary Sessions; (3) Review Responses to Recommendations; and (4) Discussion of Topics with Staff.

The CAC on the Hispanic Population: (1) Review Issues From Last Meeting; (2) Discussants' Review of the Topics for the Plenary Sessions; (3) Review Responses to Recommendations; and (4) Discussion of Topics with Staff.

The agenda for the December 12 combined meeting, which will begin at 8:45 a.m. and end at 4:15 p.m., is as follows: (1) Report on the 2000 Census Advisory Committee Meetings; (2) Process of Determining the Final Proposals on Tabulation of Race and Ethnic Data in Federal Statistical Systems; (3) How Will the OMB Proposal on Tabulation of Race and Ethnic Data Be Implemented in the Dress Rehearsal Tabulations? (4) What Standard Products Should the Census Bureau Develop From the Census 2000?; (5) How Can Local Organizations and Local Officials Identify Service Locations [such as shelters, soup kitchens] Needed to Conduct the Service-Based Enumeration? (6) A Conversation: Advisory Committees; (7) Committee Recommendations; and (7) Public Comment.

The agendas for the four separate committees in their concurrent meetings held at various times are as follows:

The CAC on the African American Population: Draft Recommendations.

The CAC on the American Indian and Alaska Native Populations: (1) Election of Chair and (2) Draft Recommendations.

The CAC on the Asian and Pacific Islander Populations: Draft Recommendations.

The CAC on the Hispanic Population: Draft Recommendations.

All meetings are open to the public, and a brief period is set aside on December 12 during the closing session for public comment and questions. Individuals with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 3039, Federal Building 3, Washington, D.C. 20233, at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Individuals who wish additional information regarding these meetings or to submit written statements may contact the Committee Liaison Officer on (301) 457–2308, TDD (301) 457–2540.

Dated: November 19, 1997.

Bradford R. Huther,

Deputy Director and Chief Operating Officer, Bureau of the Census.

[FR Doc. 97–30853 Filed 11–24–97; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of the Census

The Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

Pursuant to the Federal Advisory Committee Act (Public Law 92–463 as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Census Advisory Committee on the American Indian and Alaska Native Populations. The meeting will convene on December 10, 1997 at the Bureau of the Census, Francis Amasa Walker Conference Center, Federal Building 3, Suitland, Maryland 20746.

The Committee is composed of nine members appointed by the Secretary of Commerce. The Committee provides an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on its efforts to reduce the differential in the population totals from Census 2000 and on ways that decennial census data can be disseminated to maximize their usefulness to their communities and other users.

The committee will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the expertise and insight of its members to provide advice and recommendations during the research and development, design, planning, and implementation phases of Census 2000.

The agenda for the meeting on December 10, which will begin at 1:30 p.m. and adjourn at 5:30 p.m., covers the American Indian and Alaska Native enumeration plan, geography issues, and staffing needs.

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, Ms. Maxine Anderson-Brown, Room 3039, Federal Building 3, Washington, D.C. 20233, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Individuals who wish additional information regarding this meeting or to submit written statements may contact the Committee Liaison Officer on (301) 457–2308, TDD (301) 457–2540.

Dated: November 19, 1997.

Bradford R. Huther,

Deputy Director and Chief Operating Officer, Bureau of the Census.

[FR Doc. 97–30852 Filed 11–24–97; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Coalition for Fair Atlantic Salmon Trade, the Department of Commerce published in the **Federal Register** (62 FR 27720, May 21, 1997) a notice announcing the initiation of an administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway for one exporter Nordic Group A/L, covering the period April 1, 1996, through March 31, 1997. The Department of Commerce is terminating this review as a result of the absence of entries into the United States of fresh and chilled Atlantic salmon exported by Nordic Group A/L.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Background

On April 12, 1991, the Department of Commerce (the Department) published the antidumping duty order on fresh and chilled Atlantic salmon from Norway (56 FR 14920). The Department published a notice of "Opportunity to Request Administrative Review" on April 2, 1997 (62 FR 15655). On April 30, 1997, the petitioner, Coalition for

Fair Atlantic Salmon Trade (FAST), requested that we conduct an administrative review of Nordic Group A/L (Nordic), an exporter of subject merchandise, for the period April 1, 1996, through March 31, 1997. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on May 21, 1997 (62 FR 27720). On May 27, 1997, Nordic reported that it made no shipments of the subject merchandise during the period of review (POR). On August 5, 1997, the Department conducted a no-shipment data query regarding Nordic using the U.S. Customs Service database. The purpose of this query was to determine whether the U.S. Customs Service suspended liquidation of entry summaries of this merchandise during the POR. Because the U.S. Customs Service did not identify any suspended entry summaries of subject merchandise exported by Nordic during the POR, we have determined that no entries into the Customs territory of the United States occurred during the POR. Therefore, the Department is terminating this review. The cash deposit rate for Nordic will continue to be zero percent, the rate established in the most recently completed segment of this proceeding (62 FR 1430, January 10, 1997, a new shipper review).

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 18, 1997.

Holly Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 97–30959 Filed 11–24–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Dennis McClure, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0650 or (202) 482–3530, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as they existed on December 31, 1994.

Background

On October 2, 1997, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey (62 FR 51629). The period of review (POR) is May 1, 1993, through April 30, 1994.

On October 16, 1997, the Borusan Group (Borusan) filed two timely clerical error allegations. On October 21, 1997, Allied Tube & Conduit and Wheatland Tube Company (petitioners) replied to the allegations made by Borusan, pursuant to 19 C.F.R. 353.28. On October 24, 1997, Borusan filed unsolicited and untimely comments in response to the petitioners' October 21, 1997, submission. Pursuant to 19 C.F.R. 353.31, we did not consider Borusan's October 24, 1997, submission in our analysis, since it was submitted after the October 16, 1997, deadline for submitting comments on ministerial error allegations.

Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53, or A–135.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Allegations of Clerical Errors

Allegation 1: Inclusion of Inventory Carrying Costs in Constructed Value (CV)

Borusan alleges that because Borusan's sales to the United States were purchase price (PP) sales the Department should not have included inventory carrying costs in the calculation of CV.

The petitioners argue that Borusan's allegation is methodological, not ministerial, in nature. The petitioners cite to Policy Bulletin 94.2, "Treatment of Inventory Carrying Costs in Constructed Value" (March 25, 1994).

DOC Position: We do not find this issue to be ministerial in nature, because it is a substantive argument for a new methodology. *Kerr-McGee Chemical Corp.* v. *United States*, No. 97–2, Slip Op. at 20 (CIT January 8, 1997). Accordingly, we have not considered this issue because it is outside the scope of permissible corrections under 19 C.F.R. 353.28(d). Id. For more discussion, *see* Memorandum from the Team to Richard W. Moreland, dated November 18, 1997 (*Analysis Memorandum*).

Allegation 2: Calculation of Weighted-Average Packing Costs

Borusan alleges that the Department should have used production quantities, instead of sales quantities, to weight-average the indexed packing costs used in calculating cost of production and foreign market value.

The petitioners respond that the Department's use of sales quantities does not appear to be a ministerial error, noting that the use of sales quantity is reasonable because packing costs are largely related to the shipment, not production, of merchandise.

DOC Position: In the final results of the 1994–95 administrative review of certain welded carbon steel pipe and tube from Turkey, we indexed all costs, including packing expenses, using production quantities instead of sales quantities. *See* SAS programs used in the *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 62 FR 27013 (May 16, 1997). Therefore, in accordance with 19 C.F.R. 353.28(c), we are amending the final results of this administrative review to correct this ministerial error. For more discussion, *see Analysis Memorandum*.

Amended Final Results of Review

Upon correction of the ministerial error regarding packing costs, we have determined that the following margin for Borusan exists for the period indicated below:

Manufacturer/ exporter	Time period	Margin percent
Borusan	5/1/93–4/30/94	3.97

For Borusan, the cash deposit rate will continue to be 2.57 percent, the rate effective since May 16, 1997, which was published in the *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 62 FR 27013 (May 16, 1997).

For merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate. If the exporter is not a firm covered in this or a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise. If neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 14.74 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice is a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also reminds parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28.

Dated: November 19, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30958 Filed 11–24–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111097B]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Addendum to previously published agenda.

SUMMARY: The following items have been added to the previously published agenda for the meeting of the North Pacific Fishery Management Council (Council) December 9–14, 1997.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. Third Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The Council has added a discussion of topics relating to the recently-approved License Limitation Program for Alaska groundfish and crab fisheries, including discussion of the treatment of vessels which were foreign-owned on June 17, 1995, and the timing of a trawl closure in the Eastern Gulf of Alaska and reallocation of sablefish bycatch to the individual fishing quota fishery. The Council may initiate analysis of amendments to the program and/or give direction to staff as appropriate.

2. The Council will also receive a report on an experimental fishing project involving mesh panel openings.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 18, 1997.

Gary C. Matlock, Ph.D.,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–30874 Filed 11–24–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 20, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 6950, published on February 14, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 20, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive

issued to you on February 10, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products and silk apparel, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on November 26, 1997, you are directed to increase the limits for the following categories, as provided for under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	751,317 kilograms.
334	341,541 dozen.
359–C [2]	622,579 kilograms.
438	28,228 dozen.
445/446	310,468 dozen.
611	5,576,939 square meters.
634	653,954 dozen.
641	1,404,487 dozen.
651	811,250 dozen of which not more than 138,858 dozen shall be in Category 651–B [3].
Group IV 832, 834, 838,839,843,850–852, 858 and 859, as a group.	11,588,728 square meters equivalent.

[1] The limits have been adjusted to account for any imports exported after December 31, 1996.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31083 Filed 11–21–97; 12:41 pm]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 20, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 434, 647, 670–L and 870 are being increased for carryforward. As a result, the limits for these categories, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 6950, published on February 14, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 20, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 10, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products and silk apparel, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on November 26, 1997, you are directed to increase the limits for the following categories, as provided for under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
434	14,256 dozen.
647	1,663,051 dozen.
670–L [2]	16,687,879 kilograms.
Level not in a group	
870	33,923,079 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31084 Filed 11–21–97; 12:41 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0135]

Proposed Collection; Comment Request Entitled Subcontractor Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0135).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontractor Payments. The clearance currently expires on March 31, 1998.

DATES: Comments may be submitted on or before January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 28 of the FAR contains guidance related to obtaining financial protection against damages under Government contracts (e.g., use of bonds, bid guarantees, insurance etc.). Part 52 contains the texts of solicitation provisions and contract clauses. These regulations implement a statutory requirement for information to be provided by Federal contractors relating to payment bonds furnished under construction contracts which are subject to the Miller Act (40 USC 270a-270d). This collection requirement is mandated by Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190), as amended by Section 2091 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–335). The clause at 52.228–12, Prospective Subcontractor Requests for Bonds, implements Section 806(a)(3) of Public Law 102–190, as amended, which specifies that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a construction contract for which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly provide a copy of such payment bond to the requestor.

In conjunction with performance bonds, payment bonds are used in Government construction contracts to secure fulfillment of the contractor's obligations under the contract and to assure that the contractor makes all payments, as required by law, to persons furnishing labor or material in performance of the contract. This regulation provides prospective subcontractors and suppliers a copy of the payment bond furnished by the contractor to the Government for the performance of a Federal construction contract subject to the Miller Act. It is expected that prospective subcontractors and suppliers will use this information to determine whether to contract with that particular prime contractor. This information has been and will continue to be available from the Government. The requirement for contractors to provide a copy of the payment bond upon request to any prospective subcontractor or supplier under the Federal construction contract is contained in Section 806(a)(3) of Public Law 102–190, as amended by Sections 2091 and 8105 of Public Law 103–355.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *12,000;* responses per respondent, *5;* total annual responses, *60,000;* preparation hours per response, *.5;* and total response burden hours, *30,000.*

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

Dated: November 20, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–30896 Filed 11–24–97; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (draft EIS) for public review and comment. The Department has prepared this draft EIS pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321, *et seq.*), in accordance with the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and the DOE NEPA implementing regulations (10 CFR part 1021). The draft EIS analyzes reasonable alternative means of processing certain plutonium residues and all of the scrub alloy currently stored at the Rocky Flats Site near Golden, Colorado to a form suitable for disposal or other disposition. Plutonium residues and scrub alloy are materials that were generated during the manufacture of components for nuclear weapons. DOE will hold three public hearings during the comment period, which ends January 5, 1998.

ADDRESSES: Requests for copies of the draft EIS should be directed to: Center for Environmental Management Information, P.O. Box 23769, Washington, D.C. 20026–3769, 1–800–736–3282 or in Washington, D.C., 202–863–5084. Copies of the draft EIS are also available for public review at the locations listed at the end of this Notice.

Written comments on the draft EIS should be mailed to: Mr. Charles R. Head, U.S. Department of Energy, Office of Environmental Management (EM–60), 1000 Independence Avenue, SW, Room 5B–086, Washington, DC 20585–0001. Comments may also be submitted to RFPR.EIS@EM.DOE.GOV by E-mail.

FOR FURTHER INFORMATION CONTACT: For further information about the draft EIS and about plutonium residues and scrub alloy, contact: Mr. Charles Head at the above address or call (202) 586–5151.

For information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0001, (202) 586–4600 or leave a message at 1–800–472–2756.

DATES: The comment period ends on January 5, 1998. Comments postmarked after that date will be considered to the extent practicable. DOE will hold public hearings as follows:

Golden, Colorado—December 10, 1997
Los Alamos, New Mexico—December 11, 1997
Augusta, Georgia—December 16, 1997

Further details on the hearings are provided under **SUPPLEMENTAL INFORMATION.**

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1996, DOE published a Notice of Intent (NOI) in the **Federal Register** (61 FR 58866) to prepare an EIS on the management of certain plutonium residues and scrub alloy stored at the Rocky Flats Environmental Technology Site. The plutonium residues and scrub alloy were generated as intermediate products or byproducts resulting from the manufacture of components for nuclear

weapons. Now that nuclear weapons manufacturing and processing activities at Rocky Flats have ceased, the plutonium residues and scrub alloy are being stored pending disposition.

The purpose and need for agency action is to process certain plutonium residues and all of the scrub alloy currently stored at the Rocky Flats Site to address health and safety concerns raised by the Defense Nuclear Facilities Safety Board in its Recommendation 94–1, and to prepare these materials for offsite disposal or other disposition, while supporting site closure and limiting worker exposure and waste production. The proposed action is to process the plutonium residues and scrub alloy in preparation for disposal or other disposition.

The materials addressed in this draft EIS include approximately 40% of the 106,600 kg (235,000 lb) existing inventory of Rocky Flats plutonium residues, and also the entire inventory of Rocky Flats scrub alloy. The covered material consists of 42,200 kg (93,000 lb) of plutonium residues [containing 2,600 kg (5,730 lb) of plutonium] and 700 kg (1,540 lb) of scrub alloy [containing 200 kg (440 lb) of plutonium]. The remaining Rocky Flats plutonium residues will meet the requirements for disposal after being processed as discussed in DOE's Solid Residues Environmental Assessment (DOE/EA–1120, April 1996), and are not addressed in the draft EIS.

Alternatives Considered

The draft EIS evaluates reasonable processing alternatives that could be applied in the 1998–2004 time frame. Three alternatives are analyzed for each residue category and the scrub alloy:

Alternative 1—No Action
Alternative 2—Processing without Plutonium Separation
Alternative 3—Processing with Plutonium Separation

Any plutonium separated from the plutonium residues and scrub alloy as a result of the proposed action would be placed into safe and secure storage pending disposition by immobilization or conversion to mixed-oxide fuel in accordance with decisions to be made under DOE's Surplus Plutonium Disposition Environmental Impact Statement (62 FR 28009, May 22, 1997). The processing technology options for each material category analyzed in the draft EIS include those that can be accomplished at Rocky Flats, and those for plutonium separation only that can be accomplished offsite at the Savannah River Site, near Aiken, South Carolina, and/or at Los Alamos National Laboratory in Los Alamos, New Mexico.

Invitation To Comment

The public is invited to submit written and oral comments on any or all portions of the draft EIS. DOE especially welcomes comments on the following topics: the technical adequacy of the document; the alternative(s) that DOE should select upon completion of the document; and the criteria that DOE should use in making these selections.

Public Hearings and Procedures

DOE will hold three public hearings according to the schedule provided at the end of this section. The hearing format will provide for collection of written and oral comments and will enable the public to discuss issues and concerns with DOE staff. Participants who wish to speak at the hearings are asked to register in advance by calling toll-free: 1–800–736–3282. Requests to speak that have not been submitted prior to the hearings will be handled in the order in which they are received during the meetings. DOE's responses to comments received during the public comment period will be presented in the final EIS.

An independent facilitator will open the hearings by explaining the format to be followed. The hearings will be conducted in a manner that is intended to foster a cordial, open and mutually beneficial dialog between the participants and the DOE representatives. In the interests of achieving this goal, DOE representatives may ask clarifying questions regarding statements made at the hearings, will answer questions from the public, and may comment on statements made by other hearing participants.

To ensure that everyone has an adequate opportunity to speak, each speaker at a public hearing will be allotted 5 minutes. Depending on the number of persons who request an opportunity to speak, more time may be allowed for speakers representing several parties or organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Written comments will also be accepted at the hearings, and speakers at public hearings are encouraged to provide written versions of their oral comments for the record.

DOE will take notes and prepare a summary of the oral comments received during the public hearings.

Schedule of Public Hearings

December 10, 1997—Rocky Flats Environmental Technology Site, Near Golden, CO

6:00–9:00 pm mountain time, Rocky Flats Environmental Technology Site, Building 060 (outside of the West Gate of the Rocky Flats Environmental Technology Site), State Highway 93, Golden, CO 80402. Contact: Michael Konczal, 303–966–7095.

December 11, 1997—Los Alamos, NM

6:00–9:00 pm mountain time, Los Alamos Area Office, 528—35th Street, Rooms 100/129, Los Alamos, NM 87544. Contact: Bob Promell, 505–665–4411.

December 16, 1997—Augusta, Georgia

6:00–9:00 pm eastern time, Ramada Plaza Hotel, Grove Room, 640 Broad Street, Augusta, GA 30901. Contact: Drew Grainger, 807–725–1523.

Public Reading Rooms where the draft EIS is available:

U.S. Department of Energy, Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone 202–586–6020.

Lawrence Livermore National Laboratory, East Gate Visitors Center, Greenville Road, Livermore, CA 94550. Telephone 510–424–4026.

California State University, Northridge/Oviatt Library, 18111 Nordhoff Street, Northridge, CA 91330. Telephone 818–677–2274.

U.S. Department of Energy, Oakland Operations Office, Public Reading Room, Energy Information Center, 8th Floor, 1301 Clay Street, Oakland, CA 94612. Telephone 510–637–1762.

Simi Valley Public Library, 2629 Tapo Canyon Road, Simi Valley, CA 93063. Telephone 805–525–2384.

Platt Brand Public Library, 23600 Victory Boulevard, Woodland Hills, CA 91367. Telephone 818–887–0160.

Standley Lake Public Reading Room, 8485 Kipling Street, Arvada, CO 80005. Telephone 303–456–0806.

University of Colorado Libraries, Government Publications, Campus Box 184, Boulder, CO 80309. Telephone 303–492–1411.

U.S. EPA Superfund Records Center, 999 18th Street, 5th Floor Denver, CO 80202. Telephone 303–312–6473.

Colorado Department of Public Health and Environment, Information Center, 4300 Cherry Creek Drive South, Denver, CO 80222. Telephone 303–692–2037.

Colorado State University, Document Department, The Libraries, Fort Collins, CO 80523. Telephone 970–491–1101.

U.S. Department of Energy, Golden Field Office, Public Reading Room, 14869 Denver West Parkway, Golden, CO 80401. Telephone 303–275–4742.

Colorado School of Mines, Arthur Lakes Library, 1400 Illinois Street, Golden, CO 80401. Telephone 303–273–3000.

Rocky Flats Citizens Advisory Board, Public Reading Room, 9035 Wadsworth Avenue, Suite 2250, Westminster, CO 80021. Telephone 303–420–7855.

Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030. Telephone 303–469–4435.

Pullen Public Library, 100 Decatur Street, SE, Atlanta, GA 30303. Telephone 404–651–2185.

Georgia Institute of Technology, Bobby Dodd Way, Atlanta, GA 30332. Telephone 404–894–4519.

Reese Library—Augusta College, 2500 Walton Way, Augusta, GA 30904. Telephone 706–737–1744.

Chatham Effingham Library, 2002 Bull Street, Savannah, GA 31499. Telephone 912–234–5127.

Argonne National Laboratory, Technical Library, P.O. Box 2528, Idaho Falls, ID 83403. Telephone 208–533–7341.

University of Illinois at Chicago, U.S. Department of Energy, Public Document Room, 3rd Floor, 801 S. Morgan Street, Chicago, IL 60607. Telephone 312–996–2738.

East St. Louis Public Library, 405 North 9th Street, East St. Louis, IL 62201. Telephone 618–747–7280.

Lincoln Public Library, 326 South 7th Street, Springfield, IL 62701. Telephone 217–753–4900.

Salina Public Library, 301 West Elm, Salina, KS 67401. Telephone 785–825–4624.

Washburn Law Library, 1700 College, Topeka, KS 66621. Telephone 913–231–1010.

U.S. Department of Energy, Environmental Information Center, 175 Freedom Boulevard, Kevil, KY 42053. Telephone 502–462–2550.

Paducah Public Library, 555 Washington Street, Paducah, KY 42001. Telephone 502–442–2510.

Mid Continent Public Library, Blue Ridge Branch, 9253 Blue Ridge Boulevard, Kansas City, MO 64138. Telephone 816–761–3382.

St. Louis Public Library, 1301 Olive Street, St. Louis, MO 63103. Telephone 314–241–2288.

Scenic Regional Library, 308 Hawthorn Drive, Union, MO 63084. Telephone 314–583–3224.

Albuquerque Operations Office, National Atomic Museum, 20358 Wyoming Boulevard SE, Kirtland Air Force Base, Albuquerque, NM 87185. Telephone 505–845–4378.

U.S. Department of Energy, Technical Vocation Institute, Main Campus Library, 525 Buena Vista SE, Albuquerque, NM 87106. Telephone 505–845–4378.

U.S. Department of Energy, FOIA Reading Room, 4700 Morris NE, Albuquerque, NM 87111. Telephone 505–224–5731.

Los Alamos Community Reading Room, 1350 Central, Suite 101, Los Alamos, NM 87544. Telephone 505–665–2127.

New Mexico State Library, 325 Don Gasper, Santa Fe, NM 87503. Telephone 505–827–3800.

U.S. Department of Energy, Public Reading Room, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801. Telephone 803–641–3465.

County Library, 404 King Street, Charleston, SC 29403. Telephone 803–723–1645.

South Carolina State Library, 1500 Senate Street, Columbia, SC 29211. Telephone 803–734–8666.

Orangeburg County Free Library, 510 Louis Street, NE, Orangeburg, SC 29116. Telephone 803–531–4636.

Lawson McGhee Public Library, 500 West Church Avenue, Knoxville, TN 37902. Telephone 615–544–5750.

Nashville Public Library, 225 Polk Avenue, Nashville, TN 37203. Telephone 615–862–5800.

U.S. Department of Energy, Public Reading Room, Oak Ridge Operations Office, 55 Jefferson Circle, Room 1123, Oak Ridge, TN 37831. Telephone 615–576–1216.

Issued in Washington, D.C., November 20, 1997.

David G. Huizenga,

Acting Deputy Assistant Secretary for Nuclear Material and Facility Stabilization, Office of Environmental Management.

[FR Doc. 97–30957 Filed 11–24–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–81–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

November 19, 1997.

Take notice that on November 12, 1997, Florida Gas Transmission Company, (FGT) 1400 Smith Street, Houston, Texas 77002, filed in the above docket a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations, under the Natural Gas Act (NGA) (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point in Iberville Parish, Louisiana under FGT's blanket authority issued in Docket No. CP82–553–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, FGT proposes to construct, operate and own a new delivery point for Iberville Parish Natural Gas System (Iberville) at or near mile post 19.9 on FGT's existing Chacahoula Lateral in Iberville Parish, Louisiana. FGT states that the subject delivery point will include minor connecting pipe, electronic flow measurement equipment, and any other related appurtenant facilities necessary for FGT to transport for and deliver up to 500 MMBtu per day and 182,500 MMBtu per year of natural gas to Iberville. FGT further states that Iberville will construct, own and operate the meter and regulation station. Iberville will reimburse FGT for the $30,000 estimated construction costs.

FGT states that the proposed quantities to be delivered by FGT to Iberville at the subject delivery point will be on an interruptible basis and consequently will have no incremental effect on FGT's pipeline system. FGT states that the proposed request will not impact FGT's peak day deliveries but could impact FGT's annual gas deliveries up to 182,500 MMBtu.

FGT states that the proposed activity described herein is not prohibited by its existing tariff and that it has sufficient capacity to continue all services without detriment or disadvantage to FGT's other customers. FGT further states that the total volumes to be delivered after this request will not exceed the total volumes delivered prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30883 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–002]

Kansas Pipeline Company; Notice of Supplement to Amendment

November 19, 1997.

Take notice that on November 12, 1997, Kansas Pipeline Company, majority owner and operator of Riverside Pipeline Company, L.P. ("Kansas Pipeline"), 8325 Lenexa Drive, Suite 400, Lenexa, Kansas 66214, filed a letter, a corrected pro forma tariff sheet and alternative pro forma tariff sheets to supplement its amendment to its proposed tariff that is the subject of the Commission's October 3, 1997 order in the above docketed proceeding, *Kansas Pipeline Company, et. al.*, 81 FERC ¶ 61,005 (1997).

On October 21, 1997, Kansas Pipeline filed pro forma tariff Sheet Nos. 18 and 19 proposing to implement negotiated transportation rates with its largest customers, Western Resources, Inc., and Missouri Gas Energy, a Division of Southern Union Company. The original pro forma sheets reflect unbundled negotiated transportation rates exclusive of costs associated with the Transok, Inc., lease.

By this supplement, Kansas Pipeline corrects a mathematical error to Sheet No. 18 and submits Alternative pro forma Sheet Nos. 18 and 19 which depict rates that will be used if Kansas Pipeline continues, in the interim, to provide service to these two customers under the Transok lease.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Kansas Pipeline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30881 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–83–000]

Koch Gateway Pipeline Company; Texas Gas Transmission Corporation; Notice of Joint Application for Abandonment

November 19, 1997.

Take notice that on November 12, 1997, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251 and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304 filed a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon a natural gas exchange service between Koch and Texas Gas which was authorized in Docket No. CP61–79,[1] as amended, and provided under Koch's Rate Schedule X–12 in its FERC Gas Tariff, Original Volume No. 2 and Texas Gas's FERC Rate Schedule X–27, Original Volume No. 2. The application is on file with the Commission and open to public inspection.

Koch and Texas Gas state that this exchange service is no longer required and request that the Commission grant abandonment of this obsolete service commitment. By letter dated April 18, 1996, Texas Gas notified Koch of its desire to terminate the August 30, 1960 exchange agreement, effective July 18, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch and Texas Gas to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30884 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 24 FPC 1099 (1960).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–79–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 19, 1997.

Take notice that on November 12, 1997, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–79–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon a portion of NorAm's Line 2–T located in Roger Mills County, Oklahoma, and a portion of its Line 5 located in Grant and Kay Counties, Oklahoma. NorAm makes such request under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

NorAm proposes to abandon segments of two lines that it acquired as part of its merger with Consolidated Gas Utilities Corporation,[1] because the expected revenue recovery does not justify the expenditure to relocate those line segments. It is stated that both lines serve ARKLA, a division of NorAm Energy Corporation.

Line 2–T is comprised of 59,277 feet of 3-inch line. NorAm is proposing to abandon 53,764 feet of Line 2–T, along with nine active and six inactive rural domestic taps. It is stated that the remaining 5,513 feet of Line 2–T will continue to serve ARKLA's Cheyenne town border station without interruption. NorAm avers that planned construction by the Oklahoma Department of Transportation, dictates that the above mentioned facilities be abandoned or moved from the public right-of-way.

Line 5 is comprised of 115,838 feet of 8-inch to 12-inch line. NorAm is proposing herein to abandon a 43,824 foot 8-inch segment of Line 5, along with 19 active and one inactive rural domestic tap. NorAm indicates that this segment of Line 5, is likewise located on a county right-of-way.

NorAm estimates it would cost $327,000 to relocate that segment of Line 2–T, indicating that segment of Line 2–T generates an annual revenue of approximately $200. NorAm further indicates that the subject segment of Line 5, has an estimated yearly lost and unaccounted for gas cost of $62,740—compared to the approximate $583 of annual revenue that is generated by that segment of Line 5.

NorAm states that it has paid to convert each active customer to an alternate source of fuel.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30882 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

[1] See 24 FPC 91, CP60–79.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–384–000]

PECO Energy Company; Notice of Filing

November 19, 1997.

Take notice that on October 30, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and MC² Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 an 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30887 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–385–000]

PECO Energy Company; Notice of Filing

November 19, 1997.

Take notice that on October 30, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and Enron Power Marketing Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before

December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30888 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–386–000]

PECO Energy Company; Notice of Filing

November 19, 1997.

Take notice that on October 30, 1997, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Enron Power Marketing Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30886 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–388–000]

PECO Energy Company; Notice of Filing

November 19, 1997.

Take notice that on October 30, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Allegheny Energy Solutions Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30889 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–389–000]

PECO Energy Company; Notice of Filing

November 19, 1997.

Take notice that on October 30, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Delmarva Power & Light d/b/a Connective Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30891 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–84–000]

The Peoples Gas Light and Coke Company; Notice of Application

November 19, 1997.

Take notice that on November 12, 1997, The Peoples Gas Light and Coke Company (Peoples Gas), 130 East Randolph Drive, Chicago, Illinois 60601, filed in Docket No. CP98–84–000, an application pursuant to Section 7 of the Natural Gas Act, as amended, and Section 284.224 of the Commission's Regulations, for a blanket certificate of public convenience and necessity authorizing Peoples Gas to provide firm and interruptible transportation services in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Peoples Gas is a public utility and its rate and tariffs are subject to regulation by the Illinois Commerce Commission. Peoples Gas is engaged in the business of purchasing and storing natural gas and distributing and selling natural gas to approximately 840,000 retail customers within the City of Chicago, Illinois. Peoples Gas owns and operates a distribution system within the City of Chicago and it owns and operates a storage field located in central Illinois. Peoples Gas states that it owns and operates a looped pipeline (30-inch and 42-inch) which connects the storage field with its distribution system. Peoples Gas claims that these facilities are subject to the Illinois Commission's jurisdiction. Peoples Gas asserts that these facilities currently serve only retail customers in Illinois and that it is not authorized to provide interstate services subject to the Commission's jurisdiction.

Peoples Gas notes that its facilities interconnect with four interstate pipelines, namely ANR Pipeline Company, Midwestern Gas Transmission Company, Natural Gas Pipeline Company of America and Trunkline Gas Company. Peoples Gas claims that it could also have interconnections with Northern Border Pipeline Company and Alliance Pipeline Company if these projects are approved and completed. Since these pipelines are tied to major gas producing regions in the United States and Canada, Peoples Gas feels that it is strategically located to provide transportation service in the Chicago, Illinois market area. By transporting gas on behalf of other local distribution companies, producer/marketers and end users, Peoples Gas claims that it will enhance competition in the Chicago market by facilitating pooling, providing additional options for shippers serving midwest markets and for end users in those markets by linking existing and proposed pipelines, and improving liquidity in the commodity market at the Chicago citygate.

Peoples Gas asserts that during the twelve-month period ending September 30, 1997, it received 287,644 Mdth of gas from all sources into its system within or at the boundary of the State of Illinois. Peoples Gas states that it does not currently provide wholesale transportation services and none of the gas received during the most recent period was exempt from the Commission's regulation by reason of Section 1(c) of the NGA. Peoples Gas states that all of the gas received was exempt from the Commission's jurisdiction by reason of section 1(b) of the NGA since all of such gas was purchased for the purpose of distribution to end users within Illinois and was subject to the Illinois Commission jurisdiction. Peoples Gas filed its proposed rates in its contemporaneously filed application in Docket No. PR98–1–000 for approval of rates pursuant to Sections 284.123 and 284.224 of the Commissions Regulations (18 CFR 284.123 and 284.224) Peoples Gas states that it will comply with the conditions of Section 284.224(e) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and grant of certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Peoples Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30885 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–85–000]

Texas Eastern Transmission Corporation; Notice of Application for Abandonment

November 19, 1997.

Take notice that on November 12, 1997, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas (77056–5310, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain facilities in place and by removal, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern requests authorization to abandon the Point Au Chien compressor station; lateral lines 40–E–11, 40–E–12, 40–E–13, and 40–F; and certain meter stations and appurtenant facilities. All of the facilities for which Texas Eastern seeks abandonment authority for are located in Lafourche and Terrebonne Parishes, Louisiana. Texas Eastern states that neither it nor its customers are utilizing the subject facilities. In addition, Texas Eastern states that it does not propose to attach any new sources of natural gas to the subject facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1997, file with the Federal Energy Regulatory Commission, 888 1st Street, NE, Washington, D.C. 20426, a

motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30886 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–000]

Trailblazer Pipeline Company; Notice of Informal Settlement Conference

November 19, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on December 4, 1997 at 10:00 a.m., to continue through December 5, 1997 as needed, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Robert Young at (202) 208–5705 or Thomas Burgess at (202) 208–2058.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30892 Filed 11–24–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42193; FRL–5759–3]

Endocrine Disruptors; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of public meeting.

SUMMARY: EPA is announcing the sixth meeting of the Endocrine Disruptors Screening and Testing Advisory Committee (EDSTAC), a committee established under the provisions of the Federal Advisory Committee Act (FACA) to advise EPA on a strategy for screening chemicals and pesticides for their potential to disrupt endocrine function in humans and wildlife.

DATES: The meeting will begin on December 2 at 9 a.m. and is scheduled to adjourn December 3 at 12 p.m. A public comment period will be held on the evening of December 2 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Omni Rosen Hotel, 9840 International Drive, Orlando, FL. The telephone number at the hotel is 407–354–9840; fax: 407–248–0865.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Anthony Maciorowski (telephone: 202–260–3048) or Mr. Gary Timm (telephone: 202–260–1859) at EPA. To obtain additional information please contact the contractor assisting EPA with meeting facilitation and logistics: Ms. Tutti Otteson, The Keystone Center, P.O. Box 8606, Keystone, CO 80435. Telephone: 970–468–5822; fax: 970–262–0152; email: totteson@keystone.org.

SUPPLEMENTARY INFORMATION: EPA's Office of Prevention, Pesticides and Toxic Substances is taking the lead for the Agency on endocrine disruptor screening and testing required by recent legislation (i.e., reauthorization of the Safe Drinking Water Act and the Food Quality Protection Act) and has formed an advisory committee (EDSTAC) to provide advice and counsel to the Agency on a strategy to screen and test chemicals, including pesticides, for their potential to disrupt endocrine function in humans, fish, and wildlife.

It is proposed that the agenda for this meeting include the following topics:

1. A report from the Screening and Testing Work Group—Further discussion of Tier 1 screening assays—Proposals for Tier 2 testing.
2. An update on the Communication Strategy from the Communications and Outreach Work Group.
3. A report from the Priority Setting Work Group—Proposals for handling mixtures and polymers—Update on other topics.

Dated: November 20, 1997.

William H. Sanders,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–31127 Filed 11–21–97; 2:49 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 17, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0739.
Title: Amendment of the Commission's Rules to Establish Competitive Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services.
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit; state, local or tribal government.
Number of Respondents: 19.
Estimated Time Per Response: 6,056 hours.
Cost to Respondents: $1,003,000.
Total Annual Burden: 116,456 hours.
Needs and Uses: Incumbent Local Exchange Carriers (LECs) offering in-region broadband Commercial Mobile Radio Services (CMRS) must do so through a separate affiliate. The CMRS affiliate must maintain separate books of accounts and will be subject to the Commission's joint cost and affiliate transaction rules. The Commission imposes the recordkeeping collection to ensure that incumbent LECs providing in-region broadband CMRS through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations.

OMB Control Number: 3060–0698.
Title: Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico (ET Docket No. 96–2, RM–8165; Report and Order).
Form Number: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals or households; business or other for-profit; state, local or tribal government.
Number of Respondents: 500.
Estimated Time Per Response: 1 hour.
Cost to Respondents: $3,000.
Total Annual Burden: 300 hours.
Needs and Uses: The Report and Order establishes a Coordination Zone that covers the Islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (the Puerto Rico Islands). The Coordination Zone and notifications procedures will enable the Arecibo Radio Astronomy Observatory (Observatory) to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Observatory's operations and will promote efficient resolution of problems coordination between applicants and the Observatory.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30849 Filed 11–24–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 19, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0621.
Title: Rules and Requirements for Broadband PCS Licenses.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.
Number of Respondents: 3,000.
Estimated Time Per Response: Ranges from .50–20 hours.
Cost to Respondents: N/A.
Total Annual Burden: 14,044 hours.
Needs and Uses: The information requested provides the Commission with information to determine the legal, technical and other qualifications of applicants to obtain a broadband Personal Communications Service (PCS) license. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The staff uses the information to ensure that licensees who acquire their licenses through competitive bidding are not unjustly enriched by premature transfer of their licenses.

OMB Control Number: 3060–0508.
Title: Rewrite and Update of Part 22.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 20,860 respondents; 107,872 annual responses.
Estimated Time Per Response: Ranges from .25 to 600 hours.
Cost to Respondents: N/A.
Total Annual Burden: 266,555 hours.
Needs and Uses: The information requested provides the Commission with information to determine the legal, technical and other qualifications of applicants to operate a station in the Public Mobile Services. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The staff uses the information to ensure that applicants and licensees comply with ownership and transfer restrictions.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–30901 Filed 11–24–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA–97–2420; Report No. AUC–17–D (Auction No. 17)]

Opportunity for Reply Comment on Reserve Prices or Minimum Opening Bids for LMDS Auction Extended

Released: November 18, 1997.

When FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the Commission determines that a reserve price or minimum bid is not in the public interest. The Commission recently announced the auction of 986 licenses for the Local Multipoint Distribution Service ("LMDS"), and originally set an auction commencement date of December 10, 1997 (62 FR 53629, October 15, 1997), later rescheduled to February 18, 1998 by Public Notice released on November 10, 1997. This document is available in the Commission's Office of Public Affairs, 1919 M Street, N.W., Room 202, Washington, DC 20554. In anticipation of that auction and in light of the Balanced Budget Act, the Commission proposed that minimum opening bids be established for the LMDS auction, that they be calculated under a specific iterated formula, and that the Commission have discretion to lower the minimum opening bids as it deems appropriate. Because of the imminence of the auction, the Commission sought comment on its proposals under a schedule that provided a somewhat abbreviated deadline for reply comments.

The Commission received comments from the following parties:

BroadBand, Inc.
Cornerstone Wireless Communications, L.L.C.
East Ascension Telephone Company, Inc.
Eclipse Communications Corporation
Fremont Telcom Co.
HighSpeed.Com, L.L.C.
Horizon Personal Communications, Inc.
JATO Communications Corp.
Midwest Wireless Communications, L.L.C.
Montana Wireless, Inc.
North Alabama Cellular, LLC
Pioneer Telephone Association, Inc.
Richard L. Vega Group, Inc.
Spectraware Corporation
Tel/Logic Inc.
Thomas F. Mitts and Pappas Telecasting Companies
U.S. WaveLink Telecommunications, L.P.
U.S. Wireless Communications, Inc.
Vanguard Cellular Systems, Inc.
VIPC
Virginia Tech Foundation, Inc.
WinStar Communications, Inc.
Zip Communications Corporation

A reply comment was received from the National Telephone Cooperative Association.

More recently, the Commission postponed the auction commencement date until February 18, 1998. Because of the additional time available prior to the commencement of the auction, the Commission hereby reopens the period for reply comments on its above-referenced proposals regarding minimum opening bids. Reply comments therefore will be due on or before December 1, 1997. To file formally, parties must submit an original and four copies to the Office of the Secretary, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

For further information concerning this proceeding, contact Brett Tarnutzer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 97–30848 Filed 11–24–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:41 a.m. on Wednesday, November 12, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 18, 1997.
Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.
[FR Doc. 97–31025 Filed 11–20–97; 4:35 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 a.m. on Tuesday, November 18, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director Joseph H. Neely (Appointive), concurred in by Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii)), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: November 18, 1997.
Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.
[FR Doc. 97–31026 Filed 11–20–97; 4:35 pm]
BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–008090–041.
Title: Mediterranean North Pacific Coast Freight Conference.
Parties:
Med Pacific Express
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would permit the parties to discuss and agree, with voluntary adherence, on rates to be charged for the carriage of open tariff items and would reduce the independent action notice period applicable to direct vessel calls at San Francisco and Oakland from ten calendar days to two business days. It would also permit members that provide direct vessel service to Portland, Oregon, or serve Seattle via Portland to offer individual service contracts for those ports.

Agreement No.: 202–011375–034.
Title: Trans-Atlantic Conference Agreement ("TACA").
Parties:
Atlantic Container Line AB
Cho Yang Shipping Co., Ltd.
DSR-Senator Lines
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie GmbH
Hyundai Merchant Marine Co., Ltd.
Mediterranean Shipping Co., S.A.
A.P. Moller-Maersk Line
Orient Overseas Container Line (UK) Ltd.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
POL-Atlantic
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Tecomar S.A. de C.V.
Transportation Maritima Mexicana, S.A. de C.V.
Synopsis: The proposed modification (1) authorizes the parties to consider and act upon proposals and recommendations of the Equipment Interchange Discussion Agreement (FMC No. 202–011284), and (2) deletes expiration dates attached to exceptions to service contract through rate and assessorial charge guidelines applicable to shipments to and from the territory of the former Soviet Union.

Agreement No.: 232–011521–004.
Title: Hanjin/Tricon Far East Services Slot Charter Agreement.
Parties:
Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co. Ltd.
DSR-Senator Lines GmbH
Synopsis: The proposed amendment expands the geographic scope of the Agreement to include ports in Europe, the Middle East, Asia, Canada, and Central America. It also changes the name of the Agreement to the Hanjin/Tricon Slot Charter Agreement.

Agreement No.: 232–011519–003.
Title: Tricon/Hanjin Transpacific Agreement.
Parties:
Hanjin Shipping Co., Ltd.
Cho Yang Shipping Co. Ltd.
DSR-Senator Lines
Synopsis: The proposed amendment expands the geographic scope of the Agreement to include ports in Europe, the Middle East, Asia, Canada, and Central America. It changes the name of the Agreement to the Tricon/Hanjin Agreement and replaces and supersedes Agreements No. 232–011475 (the Hanjin/Tricon Agreement) and 232–011501 (the Hanjin/Tricon Panama Agreement).

Agreement No.: 207–011586–001.
Title: Transroll Navegacao, S.A./NPR Holding Corp. Joint Venture Agreement.
Parties:
Transroll Navegacao, S.A.
NPR Holding Corporation
Synopsis: The proposed Agreement reflects Transroll Navegacao's assignment of its rights and obligations under the Agreement to Transroll Maritime Services, Ltd., a newly created Liberian subsidiary.

Agreement No.: 202–011587–001.
Title: United States South Europe Conference.
Parties:
A. P. Moller-Maersk Line
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Synopsis: The proposed amendment would permit the parties to apply surcharges to service contracts at the level set in the Agreement tariff or at some higher level at the time the contract is signed and it would permit them to deviate from their tariff with regard to currency and bunker fuel surcharge amounts on such items.

Agreement No.: 232–011594.
Title: Sea-Land/Dole Space Charter Agreement.
Parties:
Sea-Land Service, Inc.
Dole Ocean Liner Express
Synopsis: The proposed Agreement permits the parties to charter space to each other, and to engage in related activities, including providing terminal services to each other, interchanging containers and related equipment, and agreeing on sailing schedules, in the trade between United States Atlantic and Gulf ports and ports in Puerto Rico, and U.S inland and coastal points served via such ports, on the one hand, and, on the other hand, ports in Guatemala, Honduras, Costa Rica, Nicaragua, and El Salvador, and inland and coastal points via such ports.

Agreement No.: 224–201041.
Title: Port of New Orleans/International Shipholding Corp. Terminal Agreement.
Parties:
Port of New Orleans
International Shipholding Corporation
Synopsis: The proposed Agreement establishes dockage rates for LASH mother vessels owned and/or operated by Waterman Steamship Corporation, Central Gulf Lines, Inc., and Forest Lines, Inc. The term of the Agreement continues until September 30, 1998. This Agreement supersedes Agreement No. 224–200852.

Dated: November 20, 1997.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 97–30908 Filed 11–24–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should

not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

J.E.S. Forwarding Inc., 130A Kinderkamack Road, Montvale, NJ 07645, Officer: John E. Staib, Jr., President

A A Shipping, 100 Market Street, Suite 116, Inglewood, CA 90301, Peter Mozie, Barbara Mozie, Partnership

Dated: November 19, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30871 Filed 11–24–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases (BSC, NCID): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Infectious Diseases (BSC, NCID), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period beginning October 31, 1997, through October 31, 1999.

For further information, contact Joseph E. McDade, Ph.D., Acting Deputy Director, National Center for Infectious Diseases, CDC, 1600 Clifton Road, m/s C20, Atlanta, Georgia 30333.

Dated: November 19, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30900 Filed 11–24–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 8:30 a.m.–5 p.m., December 16, 1997. 8:30 a.m.–3 p.m., December 17, 1997.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items will include issues regarding building HIV prevention capacity in racial/ethnic minority communities; issues pertaining to integration of HIV/STD prevention efforts; and discussions on HIV surveillance.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Beth Wolfe, Program Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, N.E., m/s E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Dated: November 19, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30899 Filed 11–24–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payments in Excess of the Poverty Income Level from a State Program Funded under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description: This information is collected to meet the statutory requirements of section 1124 of Title I of the Elementary and Secondary Education Act (as amended by Pub. L. 103–382). It is collected by DHHS from State public welfare agencies and turned over to the Department of Education which uses it to arrive at the formula for allocating Title I grant funds to State and local elementary and secondary schools for the purposes of providing education assistance to disadvantaged children.

Respondents: States, Local and Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–4125	52	1	6	312

Estimated Total Annual Burden Hours: 312.

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by April 9, 1997. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Driscoll at (202) 401–9313.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 395–7316.

Dated: November 19, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–30919 Filed 11–24–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0456]

Agency Information Collection Activities: Proposed Collection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements relating to the use of narcotic drugs in treating drug addiction.

DATES: Submit written comments on the collection of information by January 26, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Conditions for the Use of Narcotic Drugs for Treatment of Narcotic Addiction Reporting and Recordkeeping Requirements (21 CFR 291.505) (OMB Control Number 0910–0140—Reinstatement)

Section 303(g) of the Controlled Substances Act (21 U.S.C. 823(g)) provides for a separate controlled substances registration for practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment. This separate registration is conditioned on the Secretary of Health and Human Services (the Secretary) determining that the applicant is a practitioner who is qualified (under standards established by the Secretary) to engage in the treatment with respect to which registration is sought. Section 303(g) requires that the Secretary (and, by delegation, FDA and the National Institute of Drug Abuse): (1) Establish standards for practitioners who dispense narcotic drugs to persons for maintenance and/or detoxification treatment; (2) determine whether practitioners who wish to conduct such treatment are qualified under the standards; and (3) determine whether such practitioners will comply with the standards regarding the quantities of narcotic drugs that may be provided for unsupervised use by persons in such treatment.

Regulations found at 21 CFR 291.505 were issued under this authority. These regulations establish reporting requirements that include an application for approval of use of narcotic drugs in a narcotic addiction treatment program that must be submitted to, and approved by, FDA before the treatment program (which may be an individual or an organization) may receive shipments of narcotic drugs. Additional submissions are required when significant changes are implemented by treatment programs; for some kinds of changes, the regulations require FDA preapproval of the change before it is implemented. Additional submissions and FDA preapproval are also required if a treatment program seeks an exemption from certain requirements. The regulations contain no periodic reporting requirements.

The regulations governing the use of narcotic drugs for treatment of addiction also contain recordkeeping requirements that codify usual and customary practices within the medical and rehabilitative communities. Because the records required by the regulations would be kept even without a regulatory requirement, the time and financial resources necessary to comply with the recordkeeping requirements have not been included in the burden estimate below (see 5 CFR 1320.3(b)(2)).

FDA is requesting approval of the following FDA forms:

Form FDA–2632—"Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program". Organizations or individuals who wish to receive shipments of narcotic drugs for the treatment of narcotic addiction are required to submit this form in duplicate to FDA and to the appropriate State regulatory authority. All information and attachments to the application are required by the regulation. The application must include a list of personnel active in the program, such as physicians, nurses, and counselors; the names of hospitals, institutions, and analytical laboratories; and all other facilities used to provide necessary services required by the regulations. Form FDA–2632 is also used to report to FDA that a program will relocate, change the sponsor, or dispense Levo-Alpha-Acetyl-Methadol (LAAM).

Form FDA–2633—"Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program". Each licensed physician authorized to administer or

dispense narcotic drugs for the treatment of narcotic addiction must complete this form and submit it to FDA and to the appropriate State regulatory authority.

Form FDA–2635—"Consent to Treatment with an Approved Narcotic Drug". This form is to be completed by the practitioner and signed by the patient when the practitioner explains the treatment program to each new patient. The completed form becomes part of the patient's records and is not transmitted to FDA. Having a patient execute an informed consent form before undertaking a course of medical therapy, such as maintenance or detoxification, is usual and customary medical practice.

Form FDA–2636—"Hospital Request for Methadone Detoxification Treatment". Before a hospital may receive shipments of methadone for detoxification treatment, a responsible official of the hospital must submit this form to FDA and to the appropriate State regulatory authority, and must have received a notice of approval from FDA. Form FDA–2636 is also used to inform FDA of changes in responsible hospital administrators.

Respondents to this information collection are sponsors and physicians, for treatment programs, and hospital officials, for hospital detoxification programs.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Time per Response	Total Hours
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (New Programs)	291.505(b)(1)(ii), (b)(2)(i), (b)(2)(vi), (b)(3)(i), (c)(3), (c)(4), (d)(2)(i), and (d)(4)(i)(D)	55	1	55	105 min	96.25
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (Relocation)	291.505(b)(1)(ii), (c)(4)	35	1	35	70 min	40.83
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (Sponsor Change)	291.505(c)(2)(ii),(c)(4)	60	1	60	20 min	20
Form FDA–2632, Application for Approval for Use of Narcotic Drugs in a Narcotic Addiction Treatment Program (Levo-Alpha-Acetyl-Methadol(LAAM)Use)	291.505(b)(2)(iv), (c)(4)	75	1	75	15 min	18.75
Form FDA–2633, Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program	291.505(c)(4)	275	1	275	15 min	68.75
Form FDA–2636, Hospital Request for Methadone Detoxification Treatment (New Applicant)	291.505(f)(2)	20	1	20	10 min	3.33
Form FDA–2636, Hospital Request for Methadone Detoxification Treatment (Administrator Change)	291.505(f)(2)	5	1	5	10 min	0.83
Notifications of deletion of facility in which medication is administered	291.505(b)(2)(i)	45	1	45	15 min	11.25
Requests to change testing laboratory	291.505(d)(2)(i)	25	1	25	40 min	16.66
Reports of addition, modification, or deletion of any program services	291.505(d)(4)(i)(D)	32	1	32	15 min	8
Requests to allow patients to take home daily doses greater than 100 milligrams	291.505(d)(6)(v)(D)	600	1	600	15 min	150
Requests for exemptions from specific program standards	291.505(d)(11)	800	3	2,100	30 min	1,050
Requests for approval of a hospital as a temporary treatment program	291.505(f)(2)(i)	3	1	3	15 min	.75
Requests for alternative methods of distribution	291.505(j)(1)	5	1	5	30 min	2.5
TOTALS		2,035		3,335		1,487.9

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on conversations with treatment and detoxification programs, on the number of responses received in past years, and on examination of received responses.

Dated: November 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30911 Filed 11–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0376]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The purpose of the proposed collection of information, a two-part telephone survey of tobacco retailers, is to assess the effectiveness of an advertising campaign aimed at increasing retailers' awareness of, and motivating retailers to comply with, new regulations that prohibit retailers from selling cigarettes and smokeless tobacco to persons younger than 18 years of age and require retailers to verify, by means of photographic identification containing the bearer's date of birth, the age of every purchaser who is younger than 27 years old. The first phase of the survey must be completed by December 31, 1997.

DATES: Submit written comments on the collection of information by December 5, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–18, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Tobacco Retailer Tracking Survey

On February 28, 1997, new Federal regulations at 21 CFR part 897 went into effect that prohibit retailers from selling cigarettes and smokeless tobacco to persons younger than 18 years of age, and require retailers to verify, by means of photographic identification, the age of purchasers younger than 27 years old. FDA is planning to conduct a pilot advertising will campaign, in one State, aimed at raising retailers' awareness of the new regulations, and motivating retailers to comply. The campaign will target persons who sell cigarettes or smokeless tobacco to consumers for their personal use, including clerks and cashiers in grocery and convenience stores, pharmacies and drug stores, gas stations, liquor stores, taverns and bars, and tobacco stores. As part of the pilot, FDA is proposing to conduct a two-part telephone survey of tobacco retailers to measure their awareness of, and self-reported compliance with, the new regulations before and after exposure to the advertising campaign in the test State. FDA also would study levels of awareness and self-reported compliance among tobacco retailers in a control State matched demographically with the test State. Retailers in the control State would not be exposed to the media campaign, and FDA would not be actively conducting compliance checks before awareness and self-reported levels of compliance are measured.

A random sample of 1,350 tobacco retailers in the test State (675 for each phase) and 300 tobacco retailers in the control State would be selected for a telephone interview. All interviewing would be conducted by a single market research firm that would employ computer-aided telephone interviewing technology to expedite the fieldwork and ensure accuracy. FDA plans to use the results of the survey in designing a nationwide advertising campaign that would help to reduce youth access to cigarettes and smokeless tobacco. Under 21 U.S.C. 393(b)(2)(C), FDA is authorized to conduct surveys and other research relating to its responsibilities under the Federal Food, Drug, and Cosmetic Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1,650 survey	1	1,650	.2	330
Total		1,650		330

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA and 5 CFR 1320.13. This information is needed by December 31, 1997, and is essential to the agency's mission. The use of normal PRA clearance procedures would be likely to result in the prevention or disruption of this collection of information.

Dated: November 19, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30912 Filed 11–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0445]

Intermountain Health Care, Inc.; Revocation of U.S. Licensee No. 0729

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 0729) and the product licenses issued to Intermountain Health Care, Inc., for the manufacture of Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Plasma, and Platelets. The firm voluntarily surrendered its licenses as part of a Consent Decree of Permanent Injunction.

DATES: The revocation of the establishment license (U.S. License No. 0729) and the product licenses became effective October 8, 1997.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 0729) and product licenses issued to Intermountain Health Care, Inc., Eighth Ave. and C St., Salt Lake City, UT 84143, for the manufacture of Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Plasma, and Platelets. The revocation affects all locations under the license which included: Salt Lake City, Ogden, Provo, Logan, and St. George, UT.

FDA inspected Intermountain Health Care, Inc., facilities located in Ogden, UT, December 3 through December 18, 1996; Provo, UT, February 13, 1997, through March 14, 1997; and Salt Lake City, UT, March 17, 1997, through April 18, 1997. These inspections revealed numerous serious deviations from applicable Federal regulations and the standards established in the firm's license. Based on the serious nature of the deficiencies identified, FDA determined that a danger to health existed. The deficiencies noted included, but were not limited to, the following: (1) Failure to operate equipment in a manner for which it was designed (21 CFR 606.60(a)); and (2) failure to perform and document a thorough investigation, including conclusions and followup, of: (a) Any unexplained discrepancy or the failure of any lot or unit to meet any of its specifications; (b) any reports of complaints of adverse reactions regarding each unit of blood or blood product arising as a result of either blood collection or transfusion (21 CFR 606.100(c) and 606.170(a)); (c) failure to adequately determine donor suitability (21 CFR 640.3(b)); (d) failure to adequately prepare the skin of the donor at the site of phlebotomy by a method that provides maximum assurance of a sterile container of blood (21 CFR 640.4(f)); (e) failure to assure that personnel responsible for the collection, processing, compatibility testing, storage, or distribution of blood or blood products have adequate training and experience (§ 606.20(b) (21 CFR 606.20(b))); and (f) failure to maintain complete, accurate, and concurrent records (21 CFR 606.160).

FDA determined that these deficiencies constituted a danger to the public health that warranted suspension under 21 CFR 601.6(a). These deficiencies also demonstrated management's failure to exercise control over the establishment in all matters relating to compliance and to ensure that personnel are adequate in number, adequately trained and supervised, and have a thorough understanding of the procedures that they perform, as required by 21 CFR 600.10(a) and (b) and § 606.20(a) and (b).

In a letter to the firm dated April 28, 1997, FDA suspended the establishment license (U.S. License No. 0729) and product licenses for the manufacture of Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Plasma, and Platelets. As required by a Consent Decree of Permanent Injunction signed by the court on July 9, 1997, Intermountain Health Care, Inc., waived its opportunity for a hearing, and in a letter to FDA dated July 11, 1997, surrendered its licenses.

FDA has placed copies of the letters previously discussed on file under the docket number found in brackets in the heading of this notice with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. These letters are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5(a), section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 0729) and the product licenses for the manufacture of the aforementioned products issued to Intermountain Health Care, Inc., were revoked, effective October 8, 1997.

This notice is issued and published under 21 CFR 601.8 and the redelegation under 21 CFR 5.67(c).

Dated: November 12, 1997.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 97–30915 Filed 11–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Subcommittee Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Subcommittee meeting of the Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 17, 1997, 9 a.m. to 6 p.m.

Location: DoubleTree Hotel, Plaza Ballrooms I and II, 1750 Rockville Pike, Rockville, MD.

Contact Person: Gail M. Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 17, 1997, the Xenotransplantation Subcommittee will discuss the following public health issues concerning cross-species transplantation: (1) Development of appropriate assays for detection and identification of infectious retroviruses, (2) limitations of current screening and diagnostic tools, (3) diagnostic testing and clinical care of patients post-transplant, (4) impact of diagnostic screening results on clinical trial development, and (5) delineation of the key features of informed consent for patients who have received a porcine xenograft and who undergo screening for porcine endogenous retrovirus.

Procedure: On December 17, 1997, from 9 a.m. to 11:30 a.m., and 12 m. to 6 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 10, 1997. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 10, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 17, 1997, from 11:30 a.m. to 12 m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The meeting will be closed to discuss current investigational new drug application submissions under FDA review.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 17, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30910 Filed 11–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 11, 1997, 9 a.m. to 8 p.m., and December 12, 1997, 8 a.m. to 2 p.m.

Location: Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Jodi H. Nashman, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 11, 1997, the committee will discuss, make recommendations, and vote on one premarket approval application (PMA) for a spinal intervertebral fusion device. Additionally, there will be a general discussion of the minimum acceptable length of patient followup for marketing approval of spinal implant devices. On December 12, 1997, the committee will discuss, make recommendations, and vote on a PMA for an anti-adhesion barrier gel.

Procedure: On December 11, 1997, from 9 a.m. to 8 p.m., and on December 12, 1997, from 9 a.m. to 2 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 1997. Oral presentations from the public regarding spinal intervertebral fusion systems and devices will be scheduled between approximately 9 a.m. and 10 a.m., on December 11, 1997. Oral presentations from the public regarding anti-adhesion barrier gels will be scheduled between 9 a.m. and 10 a.m., on December 12, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 12, 1997, from 8 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)) regarding present and future FDA issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 18, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–30914 Filed 11–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on December 4, 1997, 8 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Procedure: On December 4, 1997, from 8 a.m. to 9 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues appropriate for the committee. Written submissions may be made to the contact person by December 3, 1997. Oral presentations from the public will be scheduled between 8 a.m. and 9 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the December 4, 1997, Circulatory System Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Circulatory System Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Closed Committee Deliberations: On December 4, 1997, from 9 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information on a product development protocol. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b (c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 20, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–31064 Filed 11–21–97; 11:12 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 4, 1997, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include: (1) Center for Scientific Review; (2) Report from the Clinical Research Panel; (3) New Investigator Awards, Modular Awards, and Clinical Research Training; (4) Report from the Working Group on Research Tools; (5) Implementation of the Government Performance and Results Act; and (6) Report on the Review of Administrative Functions at NIH. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than November 26, 1997.

Dated: November 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30931 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of Public Law 92–463, as amended, notice is hereby given of a meeting of the President's Cancer Panel, National Cancer Institute. This meeting will be closed to the public in accordance with the provisions set forth in sec. 552b(c)(9)(B), Title 5, U.S.C. The purpose of this meeting is to plan the 1997 Final Report of the Chairman to the President and to set agendas for the upcoming 1998 panel meetings. Premature disclosure of the specific details of these discussions and recommendations would be likely to significantly frustrate the subsequent implementation of the proposed recommendations made by the Panel.

Linda Quick-Cameron, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 609, 6130 Executive Blvd., MSC 7410, Bethesda, MD 20892–7410 (301/496–5708) will provide a copy of the roster of committee members upon request. Other information pertaining to the meeting may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Date: December 1, 1997.

Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Closed: 10:30 a.m. to Adjournment.

Agenda: Discussion and preparation of the 1997 Final Report of the Chairman to the President and set agendas for the 1998 meetings.

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, Building 31, Room 4A48, 9000 Rockville Pike, MSC 2473, Bethesda, MD 20892–2473, Telephone: (301) 496–1148.

Dated: November 6, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30926 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board and its Subcommittees

Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the National Cancer Advisory Board (Board), National Cancer Institute (NCI), and its Subcommittees on December 2–3, 1997. The meetings of the Board and its Subcommittees will be open to the public as indicated below. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C. and section 10(d) of the Federal Advisory Committee Act, as amended, for discussions pertaining to NCI personnel and programmatic issues. These discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and would be likely to significantly frustrate the subsequent implementation of personnel and programmatic recommendations made during these discussions.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Bethesda, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC MSC 7405, Bethesda, MD. 20892–7405, (301) 496–5147.

Dates of Meeting: December 2–3, 1997.

Place of Meeting: Building 31, Conference Room 10/C Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD. 20892.

Open: December 2—8:30 a.m. to 4:00 p.m.; December 3—8:30 a.m. to 1:00 p.m.

Agenda: Report of the Director, National Cancer Institute; Legislative Update; Report of the President's Cancer Panel; Subcommittee Reports; Overview of Board of Scientific Advisors activities. Intramural and Extramural Program Overviews and Updates. Presentations by various NCI working groups on current and proposed program activities, projects and initiatives; other NCAB business.

Closed: December 2—4:10 p.m. to Recess.

Agenda: Review and discussion of Intramural site visits, proprietary, programmatic and personnel issues. Review and discussion of Extramural proprietary, programmatic and personnel issues.

This notice is being published less than 15 days to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Detection and Diagnosis Research; 93.3394, Cancer Treatment Research; 93.396, Cancer Biology Research; 93:397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30928 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Research Resources Special Emphasis Panel (SEP) meeting:

Name of SEP: Comparative Medicine (Telephone Conference Call).

Date: December 8, 1997.

Time: 11:00 a.m.

Place: National Institutes of Health, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965.

Contact Person: Dr. Raymond R. O'Neill, Scientific Review Administrator, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0820.

Purpose/Agenda: To evaluate and review grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.306, Laboratory Animal Science and Primate Research, National Institutes of Health, HHS)

Dated: November 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30929 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Research.

Date: December 3, 1997.

Time: 8:30 a.m.

Place: National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.

Purpose/Agenda: Review of Grant Applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: November 17, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–30932 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Medical Management of Bleeding Disorders in Women (Telephone Conference Call).

Date: December 18, 1997.

Time: 11:00 a.m.

Place: Two Rockledge Center, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924.

Contact Person: Valerie Prenger, Ph.D., Two Rockledge Center, Room 7198, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0297.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Maintenance of NHLBI Biological Specimen Repository.

Date: December 18, 1997.

Time: 8:00 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Diane M. Reid, M.D., Two Rockledge Center, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: SCOR—Cystic Fibrosis.

Date: January 11–12, 1998.

Time: 7:30 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Contact Person: Ivan Baines, Ph.D., Two Rockledge Centar, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Structure, Function, and Genetics of Coagulation Factors.

Date: January 15, 1998.

Time: 10:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Louis M. Ousllette, Ph.D., Two Rockledge Center, Room 7216, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0310.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the

applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30934 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of Sep: Bone Structure and Gene Expression.

Date: December 19, 1997.

Time: 8:00 a.m.—adjournment.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Tommy L. Broadwater, Ph.D., Scientific Review Administrator, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Disease Research], National Institutes of Health, HHS)

Dated: November 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30925 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: ZDK1–GRB–C–J1.

Date: December 11–13, 1997.

Time: 8:00 p.m.

Place: Sheraton Grande Torrey Pines Hotel, 10950 North Torrey Pines Road, La Jolla, California 92037.

Contact: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37B, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8894.

Name of SEP: ZDK1–GRB–C–J2.

Date: December 8, 1997.

Time: 1:00 p.m.

Place: Room 6as–37B, Natcher Building, NIH (Telephone Conference Call).

Contact: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37B, National Institutes of Health, Bethesda. Maryland 20892–6600, Phone: (301) 594–8894.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: November 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30927 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB 8 J3.

Date: December 10, 1997.

Time: 1:30 PM.

Place: Room 6as–25N, Natcher Building, NIH (Telephone Conference Call).

Contact: Roberta Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: November 17, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30933 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: December 3, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 5198, Telephone Conference.

Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Biological and Physiological Sciences.

Date: December 8, 1997.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 5202, Telephone Conference.

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Biological and Physiological Sciences.

Date: December 10, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4206, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1224.

Name of SEP: Clinical Sciences.

Date: December 10, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.

Date: December 11, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Biological and Physiological Sciences.

Date: December 11, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4202, Telephone Conference.

Contact Person: Dr. Gene Zimmerman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

Name of SEP: Biological and Physiological Sciences.

Date: December 11, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4208, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 6701 Rockledge Drive, Room 4208, Bethesda, Maryland 20892, (301) 435–1224.

Name of SEP: Chemistry and Related Sciences.

Date: December 11, 1997.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4172, Telephone Conference.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

Name of SEP: Biological and Physiological Sciences.

Date: December 18, 1997.

Time: 9:00 a.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 21, 1997.

Time: 1:00 p.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Gilbert Meir, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 455–1169.

The notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Behavioral and Neurosciences.

Date: December 2, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Silver Spring, MD.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 2, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1219.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 3, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5112, Telephone Conference.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1219.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(b), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 18, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30930 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Pigment Epithelium Derived Growth Factor

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), announces that the National Institutes of Health is contemplating the grant of an exclusive world-wide license to GenVec, Inc., a Delaware corporation headquartered in Rockville, Maryland to practice the inventions embodied in the U.S. Patent Applications listed below (and corresponding foreign patent applications) in the field of ocular gene therapy. These inventions are owned by the Government of the United States of America as represented by the Department of Health and Human Services.

1. USSN 07/952,798 entitled "DNA Clones for the Expression of Pigment Epithelium Derived Growth Factor and Related Proteins" filed September 24, 1992 by Fintan R. Steele, Gerald J. Chader, Joyce Tombran-Tink and Sofia P. Becerra.

2. USSN 08/257,963 entitled "Pigment Epithelium Derived Factor: Characterizations of Its Biological Activity and Sequences Encoding and Expressing the Protein" filed June 7, 1994 by Gerald J. Chader, Sofia P. Becerra, Joan P. Schwartz, Takayuki Taniwaki and Yukihera Sugita.

3. USSN 08/279,979 entitled "Retinal Pigmented Epithelium Derived Neurotrophic Factor" filed July 25, 1994 by Fintan R. Steele, Gerald J. Chader, Joyce Tombran-Tink, Sofia P. Becerra and Ignacio R. Rodriquez and Lincoln Johnson.

4. USSN 08/367,841 entitled "Pigment Epithelium Derived Factor: Characterization, Genomic Organization and Sequence of the PEDF Gene" filed December 30, 1994 by Gerald J. Chader, Joyce Tombran-Tink, Sofia P. Becerra, Ignacio R. Rodriquez and Fintan R. Steele and Lincoln Johnson.

5. USSN 08/377,710 entitled "DNA Clones for the Expression of Pigment Epithelium Derived Factor and Related Proteins" filed January 25, 1995 by Fintan R. Steele, Gerald L. Chader, Joyce Tombran-Tink, Sofia P. Becerra and Ignacio R. Rodriquez.

6. USSN 08/520,373 entitled "Retinal Pigmented Epithelium Derived

Neurotrophic Factor" filed August 29, 1995 by Gerald J. Chader, Joyce Tombran-Tink, Sofia P. Becerra, Ignacio R. Rodriquez and Fintan R. Steele.

DATES: Only written comments and/or applications for a license which are received by NIH on or before January 26, 1998 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Jaconda Wagner, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *Telephone:* (301) 496–7735 ext. 284; *Facsimile:* (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Cultured retinal pigment epithelium (RPE) cells secrete pigment epithelium-derived factor (PEDF) into the photoreceptor matrix. This protein, with a molecular weight of approximately 50 kD, has trophic activity which induces neuronal cell differentiation, survival of mature neurons and a gliastatic effect. This technology can be used to develop therapeutics for the treatment of inflammatory, vascular, degenerative and dystrophic diseases of the retina and central nervous system (CNS) as well as to treat cancers of the CNS and conditions resulting from the activity of serine proteases.

The various patent applications encompassing this invention contain claims to a recombinant DNA molecule comprising a gene encoding the PEDF; an organism transformed with the recombinant DNA molecule; a method of treating tumors ocular diseases, nerve injuries and conditions resulting from the activity of serine proteases using the PEDF; the PEDF protein and its biological activity, specifically a method of enhancing neuron cell survival and inhibiting glial cell proliferation; purified antibodies to PEDF; a method for purifying the PEDF; and immunoassay for detecting the level of PEDF in a sample.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 14, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–30924 Filed 11–24–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–58]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: January 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Policy Development & Research, Department of Housing & Urban Development, 451—7th Street, SW, Room 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Alan Rothman, Social Science Research Analyst, Office of Policy Development and Research—telephone (202) 708–4370, x139 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The office is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Assessment and Analysis of Multifamily Building's Conformity with Fair Housing Guidelines Provisions

OMB Control Number: None.

Description of the Need for Information and the Proposed Use: The Fair Housing Amendment Act (the Act) of 1988 requires that newly constructed multifamily dwellings covered under the Act, available for first occupancy after March 13, 1991, be designated and constructed to be accessible to persons with disabilities. The purpose of this project is to assess the extent of conformity with the accessibility provisions and examine reasons for, as well as explanations, for different patterns of conformity/non-conformity.

Agency Form Numbers: Not applicable.

Members of the Affected Public: Property owners, property management personnel, occupants, local code officials, architects, engineers, and builders.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Grand total hours for all personnel is 11,936 labor hours over ninety (90) weeks. Total hours for contractor personnel is estimated at 10,900 hours. The total hours for voluntary one-time responses, from management/owners/project representatives and residents, is 1,036 hours for the 386 projects to be considered in the statistical model. The hour breakdown for the survey respondents is 128 hours during the mobilization phase, 803 hours during Phase I—survey/data gathering efforts, and 105 hours for Phase II—assessment and analysis effort.

Status of the Proposed Information Collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 13, 1997.

Paul A. Leonard,

Deputy Assistant Secretary for the Office of Policy Development.

[FR Doc. 97–30942 Filed 11–24–97; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Central Gulf Sales 169, 172, 175, 178, and 182

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the final multisale Environmental Impact Statement (EIS) on proposed central Gulf of Mexico (GOM) sales 169, 172, 175, 178, and 182.

The Minerals Management Service (MMS) has prepared a final multisale EIS on five proposed Outer Continental Shelf (OCS) oil and gas lease sales in the Central GOM. We will conduct a planning process for one sale each year from 1998 through 2002. Although this EIS addresses five proposed lease sales, it is a decision document only for proposed Sale 169. We will consult with other Federal Agencies and the affected States for each of the yearly proposed sales. We will perform a National Environmental Policy Act review, and give the public an opportunity to participate in each sale.

You may obtain single copies of the final multisale EIS from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS–5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

You may look at copies of the draft EIS in the following libraries:

Texas

Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene;
Alma M. Carpenter Public Library, 330 South Ann, Sourlake;
Aransas Pass Public Library, 110 North Lamont Street, Aransas Pass;
Austin Public Library, 402 West Ninth Street, Austin;
Bay City Public Library, 1900 Fifth Street, Bay City;
Baylor University, 13125 Third Street, Waco;
Brazoria County Library, 410 Brazoport Boulevard, Freeport;
Calhoun County Library, 301 South Ann, Port Lavaca;
Chambers County Library System, 202 Cummings Street, Anahuac;
Comfort Public Library, Seventh & High Streets, Comfort;
Corpus Christi Central Library, 805 Comanche Street, Corpus Christi;
Dallas Public Library, 1513 Young Street, Dallas;
East Texas State University Library, 2600 Neal Street, Commerce;
Houston Public Library, 500 McKinney Street, Houston;
Jackson County Library, 411 North Wells Street, Edna;
Lamar University, Gray Library, Virginia Avenue, Beaumont;
LaRatama Library, 505 Mesquite Street, Corpus Christi;
Liberty Municipal Library, 1710 Sam Houston Avenue, Liberty;
Orange Public Library, 220 North Fifth Street, Orange;
Port Arthur Public Library, 3601 Cultural Center Drive, Port Arthur;
Port Isabel Public Library, 213 Yturria Street, Port Isabel;
R.J. Kleberg Public Library, Fourth and Henrietta, Kingsville;
Reber Memorial Library, 193 North Fourth, Raymondville;
Refugio County Public Library, 815 South Commerce Street, Refugio;
Rice University, Fondren Library, 6100 South Main Street, Houston;
Rockwall County Library, 105 South First Street, Rockwall;
Rosenberg Library, 2310 Sealy Street, Galveston;
Sam Houston Regional Library & Research Center, FM 1011 Governors Road, Liberty;
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches;
Texas A & M University, Corpus Christi Library, 6300 Ocean Drive, Corpus Christi;
Texas A & M University, Evans Library, Spence and Lubbock Streets, College Station;
Texas Southmost College Library, 1825 May Street, Brownsville;
Texas State Library, 1200 Brazos Street, Austin;
Texas Tech University Library, 18th and Boston Avenue, Lubbock;
University of Houston Library, 4800 Calhoun Boulevard, Houston;
University of Texas at Arlington, Library, 701 South Cooper Street, Arlington;
University of Texas at Austin, Library, 21st and Speedway Streets, Austin;
University of Texas at Brownsville, Oliveria Memorial Library, 80 Fort Brown, Brownsville;
University of Texas at Dallas, McDermott Library, 2601 North Floyd Road, Richardson;
University of Texas at El Paso, Library, Wiggins Road and University Avenue, El Paso;
University of Texas at San Antonio, Library, 6900 North Loop 1604 West, San Antonio;
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin;
University of Texas, LBJ School of Public Affairs Library, 2313 Red River Street, Austin;
Victoria Public Library, 320 North Main, Victoria;

Louisiana

Calcasieu Parish Library, 327 Broad Street, Lake Charles;
Cameron Parish Library, Marshall Street, Cameron;
Grand Isle Branch Library, Highway 1, Grand Isle;
Government Documents Library, Loyola University, 6363 St. Charles Avenue, New Orleans;
Iberville Parish Library, 24605 J. Gerald Berret Boulevard, Plaquemine;
Jefferson Parish Regional Branch Library, 4747 West Napoleon Avenue, Metairie;
Jefferson Parish West Bank Outreach Branch Library, 2751 Manhattan Boulevard, Harvey;
Lafayette Public Library, 301 W. Congress Street, Lafayette;
Lafitte Branch Library, Route 1, Box 2, Lafitte;
Lafourche Parish Library, 303 West 5th Street, Thibodaux;
Louisiana State University Library, 760 Riverside Road, Baton Rouge;
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston;
LUMCON, Library, Star Route 541, Chauvin;
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles;
New Orleans Public Library, 219 Loyola Avenue, New Orleans;
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux;
Plaquemines Parish Library, 203 Highway 11, South, Buras;
St. Bernard Parish Library, 1125 East St. Bernard Highway, Chalmette;
St. Charles Parish Library, 105 Lakewood Drive, Luling;
St. John The Baptist Parish Library, 1334 West Airline Highway, LaPlace;
St. Mary Parish Library, 206 Iberia Street, Franklin;
St. Tammany Parish Library, Covington Branch, 310 West 21st Street, Covington;
St. Tammany Parish Library, Slidell Branch, 555 Robert Boulevard, Slidell;
Terrebonne Parish Library, 424 Roussell Street, Houma;

Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans;
University of New Orleans Library, Lakeshore Drive, New Orleans;
University of Southwestern LA, Dupre Library, 302 East St. Mary Boulevard, Lafayette;
Vermilion Parish Library, Abbeville Branch, 200 North Street, Abbeville;

Mississippi

Gulf Coast Research Laboratory, Gunter Library, 703 East Beach Drive, Ocean Springs;
Hancock County Library System, 312 Highway 90, Bay St. Louis;
Harrison County Library, 14th and 21st Avenues, Gulfport;
Jackson George Regional Library System, 3214 Pascagoula Street, Pascagoula;

Alabama

Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island;
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores;
Mobile Public Library, 701 Government Street, Mobile;
Thomas B. Norton Public Library, 221 West 19th Avenue, Gulf Shores;
University of South Alabama, University Boulevard, Mobile;
Montgomery Public Library, 445 South Lawrence Street, Montgomery;

Florida

Bay County Public Library, 25 West Government Street, Panama City;
Charlotte-Glades Regional Library System, 18400 Murdock Circle, Port Charlotte;
Collier County Public Library, 650 Central Avenue, Naples;
Environmental Library, Sarasota County, 7112 Curtis Avenue, Sarasota;
Florida A & M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee;
Florida Northwest Regional Library System, 25 West Government Street, Panama City;
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee;
Fort Walton Beach Public Library, 105 Miracle Strip Parkway, Fort Walton Beach;
Leon County Public Library, 200 West Park Avenue, Tallahassee;
Marathon Public Library, 3152 Overseas Highway, Marathon;
Monroe County Public Library, 700 Fleming Street, Key West;
Port Charlotte Public Library, 2280 Aaron Street, Port Charlotte;
Selby Public Library, 1001 Boulevard of the Arts, Sarasota;
St. Petersburg Public Library, 3745 Avenue North, St. Petersburg;
Tampa-Hillsborough County Library, Documents Division, 900 North Ashley Drive, Tampa;
University of Florida Library, University Avenue, Gainesville;
University of Florida, Holland Law Library, Southwest 25th St. and 2nd Avenue, Gainesville;
West Florida Regional Library, 200 West Gregory Street, Pensacola

Dated: November 19, 1997.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 97–30921 Filed 11–24–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 169

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Gulf of Mexico Outer Continental Shelf (OCS); notice of availability of the proposed notice of sale for proposed Oil and Gas Lease Sale 169 in the Central Gulf of Mexico. This notice of availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed notice of sale for proposed Sale 169 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2519.

The final notice of sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for March 1998.

Dated: November 18, 1997.

Carolita U. Kallaur,

Acting Director, Minerals Management Service.

[FR Doc. 97–30893 Filed 11–24–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 15, 1997. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 10, 1997.

Paul Lusignan,

Acting Keeper of the National Register.

CALIFORNIA

Los Angeles County

Town House, The, 2959–2973 Wilshire Blvd. and 607–643 S. Commonwealth Ave., Los Angeles, 98000821

INDIANA

Allen County

Brown, John, Stone Warehouse, 114 E. Superior St., Fort Wayne, 97001542

Dearborn County

Moore's Hill United Methodist Church, 13476 Main St., Moores Hill, 97001537

Grant County

Woodside, 1119 Overlook Rd., Marion vicinity, 97001538

Marion County

Wasson, H.P. & Company Building, 2 W. Washington and 2 N. Meridian Sts., Indianapolis, 97001539

Rush County

St. Paul Methodist Episcopal Church, 426 N. Morgan St., Rushville, 97001536

St. Joseph County

Children's Dispensary, 1045 W. Washington, South Bend, 97001541
Colonial Gardens Commercial Historic District, 2919–3027 Mishawaka Ave., South Bend, 97001540
South Michigan Street Historic District, Roughly along jct. of Monroe and Michigan Sts., South Bend, 97001556

Vermillion County

Hill Crest Community Center, 505 N. Eight St., Clinton, 97001555

IOWA

Lee County

Mechanic's Rock, Approx. 1 mi. S of Montrose, Mississippi mi. 374, Montrose vicinity, 97001543

Linn County

Lesinger Block (Commercial and Industrial Development of Cedar Rapids MPS), 1317 3rd St., SE, Cedar Rapids, 97001544

NEVADA

Lyon County

Buckland Station, 7 mi. S of jct. of NV 95 and US 50, Stagecoach vicinity, 97001546

NORTH CAROLINA

Rowan County

Hambley-Wallace House, 508 S. Fulton St., Salisbury, 97001545

OHIO

Clark County

Pringle-Patric House, 1314–1316 E. High St., Springfield, 97001547

TENNESSEE

Hardeman County

Davis Bridge Battlefield (Civil War Historic and Historic Archeological Resources in Tennessee MPS), Roughly along Ripley-Pocahontas and Essary Spring Rds, Pocahontas vicinity, 97001549

Henderson County

Parker's Crossroads Battlefield (Civil War Historic and Historic Archeological Resources in Tennessee MPS), TN 22, 26 mi. E of Jackson, Parker's Crossroads vicinity, 97001550

Maury County

Spring Hill Battlefield (Civil War Historic and Historic Archeological Resources in Tennessee MPS), Jct. of Kedron and Old Kedron Rds., Spring Hill, 97001548

WISCONSIN

Calumet County

Calumet County Ark Group, Address Restricted, Hilbert vicinity, 97001551

Crawford County

Unpleasant Ridge, Address Restricted, Boydtown vicinity, 97001553

Dane County

Southwest Side Historic District, Roughly bounded by Lowell, S. Monroe, W. Main and S. Page Sts., Stoughton, 97001554

Vernon County

Tollackson Mound Group, Address Restricted, Harmony vicinity, 97001552

Proposed Move; A move has been proposed for:

INDIANA

Chief Richardville House, W. of Huntington, US 24 and IN 9/37 Huntington vicinity, 85002446

[FR Doc. 97–30846 Filed 11–24–97; 8:45 am]

BILLING CODE 4310–70–U

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 2, 1997 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA–753–756 (Final) (Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: November 20, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31090 Filed 11–21–97; 12:37 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Edward B. Curry, M.D.; Revocation of Registration

On June 3, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edward B. Curry, M.D., of Syracuse, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC2054360, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of New York. The order also notified Dr. Curry that should no request for a hearing be filed within 30 days of receipt, his hearing right would be deemed waived.

The Order to Show Cause was first sent to Dr. Curry's registered address, and was returned to DEA unclaimed. DEA then learned that Dr. Curry was residing at an address in Birmingham, Alabama, and the Order to Show Cause was sent to him at that address. DEA received a signed receipt indicating that the order was received by Dr. Curry on August 8, 1997. No request for a hearing or any other reply was received by DEA from Dr. Curry or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Curry is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that effective May 7, 1996, the State of New York, Department of Health, State Board for Professional Medical Conduct (Board) issued a Determination and Order revoking Dr. Curry's license to practice medicine. The Board found that Dr. Curry failed to comply with an order of the Committee on Professional Conduct that he undergo a psychiatric examination; engaged in physical and/or verbal abuse of patients; engaged in conduct evidencing moral unfitness; suffered from mental impairment; and practiced medicine while impaired.

The Acting Deputy Administrator finds that in light of the fact that Dr. Curry is not currently licensed to practice medicine in the State of New York, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16193 (1997); Demetris A. Green, M.D., 61 FR 60728 (1996), Dominick A. Ricci, M.D., 58 FR 51104 (1993).

Here it is clear that Dr. Curry is not currently authorized to handle controlled substances in the State of New York. Therefore, Dr. Curry is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC2054360, previously issued to Edward B. Curry, M.D., be,

and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be and they hereby are, denied. This order is effective December 26, 1997.

Dated: November 17, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–30844 Filed 11–24–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Revision to existing collection: Summary of sentenced population movement—annual data collection.

Office of Management and Budget approval is being sought for the information collection listed below. The proposed collection was previously published in the **Federal Register** on September 16, 1997, allowing for a 60-day public comment period. One comment was received by the Bureau of Justice Statistics. Changes were performed where appropriate.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 26, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Summary of Sentenced Population Movement—Annual Data Collection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NPS–1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Federal, State, and Local or Tribal Government. The National Prisoner Statistics—1 is the only national source of information on the number of persons under jurisdiction or in custody at midyear and yearend; the number and type of admissions and releases; the number of inmate deaths by cause; counts by sex, race and Hispanic origin; number of inmates with HIV/AIDS, and prison capacity and jail backups due to crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* Fifty-two respondents at 6.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Three hundred thirty-eight annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington, Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 19, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30894 Filed 11–24–97; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following item, which is open to public observation, to the previously announced open meeting (Federal Register, Vol. 62, page 62077, Thursday, November 20, 1997) scheduled for Monday, November 24, 1997.

9. Interim Final Rule with Request for Comments, Part 703, NCUA's Rules and Regulations, Investment and Deposit Activities.

The Board voted unanimously that agency business requires that this item be considered with less than the usual seven days notice, that it be open to the public, and that no earlier announcement of this change was possible.

The previously announced items are:

1. Requests from Three (3) Federal Credit Unions to Convert to a Community Charter.

2. Request from a Federal Credit Union for a Charter and Insurance Conversion.

3. Requests from Two (2) Credit Unions to Merge and Convert Insurance.

4. Extension of Regulation Effective Date: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

5. Notice of Proposed Rule and Request for Comments: Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non-Credit Union Status.

6. Notice of Proposed Rule and Request for Comments: Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.

7. Proposed National Small Credit Union Development Program.

8. NCUA's 1998/1999 Operating Budget.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of The Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–31145 Filed 11–21–97; 3:05 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business requires the addition of the following item, which is closed to public observation to the previously announced closed meeting (Federal Register, Vol. 62, page 62077, Thursday, November 20, 1997) scheduled for Monday, November 24, 1997.

9. Matters Relating to the OPM Report. Closed pursuant to exemptions (2) and (8).

The Board voted unanimously that agency business requires that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items are:

1. Administrative Action under Sections 116, 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).

4. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

5. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).

6. Delegations of Authority. Closed pursuant to exemptions (2) and (6).

7. Final Rule: Amendments to Part 790.2(b)(7), NCUA's Rules & Regulations. Closed pursuant to exemptions (2) & (6).

8. Final Rule: Amendments to Part 791, including 791.4, 791.5, and 791.6, NCUA's Rules & Regulations. Closed pursuant to exemptions (2) & (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–31146 Filed 11–21–97; 3:05 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR 50.55a, "Codes and Standards; Amended Requirements."

3. The form number if applicable: Not applicable.

4. How often the collection is required: The ASME has set a frequency for conducting these activities with its attendant recordkeeping based on operating history and the need for component functionality. The frequency is dependent on the safety function of the component. The information is generally not submitted to the NRC, but is retained by the licensees to be made available to the NRC in the event of an NRC audit. Reporting requirements consist of one-time relief requests or technical specification amendments.

5. Who will be required or asked to report: Nuclear power plant licensees.

6. An estimate of the number of responses: The requirements will apply to licensees and applicants for nuclear power plant licenses. Because no applicants for construction permits or operating licensees are expected, the reports will apply to the 109 nuclear power plants with operating licenses.

7. The estimated number of annual respondents: 109.

8. An estimate of the total number of hours needed annually to complete the requirement or request: Implementation of later Code edition and addenda for ASME Boiler and Pressure Vessel Code (BPV Code) Section XI and OM Code activities is estimated to result in a (1) one-time recordkeeping burden of 48,502 hours (445 hours/plant) and (2) one-time reporting requirements of 328 hours (3 hours/plant) for a total of 18,830 hours. The estimated total annual industry increase in recordkeeping burden is 13,512 hours annually (124 hours/plant). Due to elimination of certain ASME OM Code reporting requirements, the estimated total industry annual reporting burden will decrease by 4,245 hours annually (39 hours/plant).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) regulations require that nuclear power plant owners (1) construct Class 1, Class 2, and Class 3 components in accordance with the rules provided in Section III, Division 1, "Requirements for Construction of Nuclear Power Plant Components," of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code), (2) inspect Class 1, Class 2, Class 3, Class MC (metal containment) and Class CC (concrete containment) components in accordance with the rules provided in Section XI, Division 1, "Requirements for Inservice Inspection of Nuclear Power Plant Components," of the ASME BPV Code, and (3) test Class 1, Class 2, and Class 3 pumps and valves in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code. Every 120 months licensees are required to update their inservice inspection (ISI) and inservice testing (IST) programs to meet the version of Section XI incorporated by reference into the regulations in effect 12 months prior to the start of a new 120-month interval.

Submit, by (insert date 30 days after publication in the **Federal Register**), comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance packages are available via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Comments and questions should be directed to the OMB reviewer by December 26, 1997: Norma Gonzales, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 19th day of November, 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Information and Records Management Branch, Office of the Chief Information Officer.

[FR Doc. 97–30917 Filed 11–24–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-309]

Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company (the licensee), for operation of the Maine Yankee Atomic Power Station (Maine Yankee) located in Lincoln County, Maine.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise selected portions of Technical Specification (TS) Section 5.0, Administrative Controls, to define the facility staffing and training requirements for a permanently defueled facility.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1997, as supplemented by letters dated September 19 and October 21, 1997.

The Need for the Proposed Action

By letter dated August 7, 1997 the licensee submitted certifications of permanent cessation of power operation and permanent removal of fuel from the reactor in accordance with 10 CFR 50.82(a)(1) (i) and (ii). Pursuant to 10 CFR 50.82(a)(2), the 10 CFR Part 50 license no longer authorizes operation of the reactor or placement or retention of fuel in the reactor vessel. The proposed amendment would implement administrative changes to reflect the elimination of the TS requirement for the licensee to maintain 10 CFR Part 55 licensed operators. There will be no physical changes to the Maine Yankee facility associated with this proposed amendment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed amendment to the Maine Yankee TS and concludes that the proposed amendment is an administrative change reflecting the elimination of the TS requirement to maintain 10 CFR Part 55 licensed operators that is consistent with the permanently defueled condition of the plant. There will be no changes to the facility or its operation as a result of the proposed amendment.

The proposed change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other nonradiological environmental impacts.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee facility.

Agencies and Persons Consulted

In accordance with its stated policy, on October 16, 1997 the staff consulted with Mr. Pat Dostie of the State of Maine, Office of Nuclear Safety regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 15, 1997, as supplemented by letters dated September 19 and October 21, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wiscasset Public Library, High Street, P. O. Box 367 Wiscasset, Maine, 04578.

Dated at Rockville, Maryland, this 18th day of November 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97-30918 Filed 11-24-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 24, December 1, 8, and 15, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 24

There are no meetings the week of November 24.

Week of December 1—Tentative

There are no meetings the week of December 1.

Week of December 8—Tentative

Thursday, December 11

2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

3:00 p.m.
Affirmation Session (PUBLIC MEETING) (if needed)

Friday, December 12,

9:00 a.m.
Meeting with Northeast Nuclear on Millstone (PUBLIC MEETING), (Contact: Bill Travers, 301-415-1200)

Week of December 15—Tentative

Wednesday, December 17

2:00 p.m.
Briefing on Integration and Evaluation of Results from Recent Lessons-Learned Reviews (including 50.59 Process Improvements)

3:30 p.m.
Affirmation Session (PUBLIC MEETING) (if needed)

Thursday, December 18

10:00 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW), (Contact: John Larkins, 301-415-7360)

ADDITIONAL INFORMATION: Affirmations of "Final Rule—Deliberate Misconduct by Unlicensed Persons" and "Louisiana Energy Services—Financial Qualifications Aspects of Petitions for Review of LBP-96-25" were postponed from Friday, November 21. No new date has been set.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415-1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301-415-1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 21, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97-31115 Filed 11-21-97; 2:27 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22894; 812-10630]

Cash Accumulation Trust, et al.; Notice of Application

November 18, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1) (A) and (B) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: The requested order would permit certain registered investment companies to invest excess cash in affiliated money market and/or short-term bond funds in excess of the limits of section 12(d)(1) of the Act.

APPLICANTS: Cash Accumulation Trust ("CAT"), PIMCO Funds: Multi-Manager Series ("PFMMS"), and all other registered investment companies and series thereof that currently or in the future are part of a "group of investment companies" that includes either CAT or PFMMS (together with CAT and PFMMS, the "Funds"), PIMCO Advisors, L.P. ("PALP"), and PIMCO Funds Distribution Company ("PFDCO").

FILING DATES: The application was filed on April 25, 1997 and amended on July 31, 1997, and September 30, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Newton B. Schott, Jr., Esq., 2187 Atlantic Street, Stamford, CT 06902.

FOR FURTHER INFORMATION CONTACT: Annmarie Zell, Law Clerk, at (202) 942-0532 or Mercer E. Bullard, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicants' Representations

1. CAT and PFMMS are open-end investment companies organized as Massachusetts business trusts and registered under the Act. CAT has a money market portfolio and a short-term bond portfolio. PFMMS has 22 separate portfolios.

2. PALP, a Delaware limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940. PALP serves as investment adviser to CAT and PFMMS and has retained a number of PALP's subpartnerships to act as subadvisers for most of the Funds' portfolios (collectively with PALP, the "Advisers"). PFDCO, a subsidiary of PALP, is registered as a broker-dealer under the Securities Exchange Act of 1934 and acts or will act as each Fund's principal underwriter.

3. Applicants request an order that would permit certain Funds ("Participating Funds") to invest their excess cash in one or more Funds that are money market or short-term bond Funds ("Central Funds"), and the Adviser to effect such transactions.[1] Central Funds that are money market funds will be subject to rule 2a-7 under the Act. Central Funds that are short-term bond funds will seek current income consistent with the preservation of capital by investing in fixed-income securities while maintaining a dollar-weighted average maturity of three years or less.

4. Each Participating Fund has, or may have, uninvested cash held by its custodian bank. Uninvested cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new cash received from investors. Currently, the Funds can invest uninvested cash directly in money market instruments or other short-term debt obligations.

5. The Participating Funds wish to have the option to use the Central Funds as an additional cash management device for their uninvested cash. Applicants believe that the proposed transactions may reduce aggregate counterparty risk on repurchase agreements, protect liquidity, reduce credit exposure to custodian banks, reduce custodian transaction costs, and diversify risk across a wide range of short-term investments.

6. To provide the Participating Funds with a wider selection of short-term investment vehicles, the Central Funds may include one or more short-term bond funds. Applicants note that an investment in a Central Fund that is a

[1] Each Fund that intends to rely on the order has been named as an applicant. Any other existing Fund and any Future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

short-term bond fund would be available only to those Participating Funds for which a direct investment in short-term bonds would be consistent with their investment objectives, policies, and restrictions. By investing in a short-term bond fund, a Participating Fund could gain exposure to different points on the yield curve without the need to buy the underlying securities. A Participating Fund could achieve this exposure through a Central Fund while obtaining greater liquidity and diversification than otherwise might be available.

7. If a Central Fund offers more than one class of shares, each Participating Fund will invest only in the class with the lowest expense ratio at the time of investment. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act ("rule 12b–1 fee"), or service fee (as defined in section 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

8. Under applicants' proposal, the number or value of the shares of the Central Funds held by a Participating Fund may exceed the percentage restrictions set forth in section 12(d)(1) of the Act. Applicants' review of the historical cash positions held by the Participating Funds indicates that, while the Funds typically are fully invested (*e.g.*, cash positions of 10% of total assets or less), cash positions fluctuate with shareholder and investment activity, and cash positions in excess of 20% of total assets occasionally may occur. For each Participating Fund, the uninvested cash available for investment at any particular time may total 25% or more of the Participating Fund's total net assets. Thus, each Participating Fund seeks relief to invest up to 25% of its total assets in the Central Funds.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that a registered investment company may not acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons or transactions from section 12(d)(1) to the extent the exemption is consistent with the public interest and the protection of investors. For the following reasons, applicants believe the proposed transactions satisfy this standard.

2. Applicants state that section 12(d)(1) is intended to protect an investment company's shareholders against (a) undue influence over portfolio management through the threat of large scale redemptions; (b) the layering of fees; and (c) an overly complex structure. Applicants believe that none of these perceived abuses is created by the proposed transactions.

3. Applicants submit that each of the Central Funds will be managed specifically to maintain a highly liquid portfolio, and the Adviser will have superior ability to anticipate Participating Funds' cash flows. Applicants believe that no layering of sales charges will occur because no front-end sales charge, contingent deferred sales charge, rule 12b–1 fee, or other underwriting or distribution fee will be charged in connection with the purchase and sale of shares of the Central Funds. The Adviser will credit to the respective Participating Fund or waive the investment advisory fee that it or its affiliates earns as a result of the Participating Fund's investment in one or more Central Funds to the extent such fees are based upon the Participating Fund's assets invested in shares of the Central Funds. Therefore, applicants believe that the proposed transactions will not result in the layering of any sales charges or investment advisory fees. Regarding the complexity of the proposed structure, applicants note that, as conditions to the application, no Participating Fund will invest more than 25% of its assets in the Central Funds and no Central Fund will acquire securities of any investment company in excess of the limits of section 12(d)(1)(a).

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person that owns more than 5% of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with such investment company. Because the Funds share a common investment adviser or have an investment adviser that is under common control with those of the other Funds, and because PFMMS and CAT share a common board of trustees, applicants believe that each of the Funds may be deemed to be under common control with all the other Funds, and, therefore, an affiliated person of those Funds. In addition, applicants state that a Participating Fund may be an affiliated person of a Central Fund by owning more than 5% of the outstanding voting securities of the Central Fund. Applicants request an exemption from section 17(a) to permit the sale of shares of the Central Funds to the Participating Funds and the redemption of such shares by the Central Funds.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit, for the reasons discussed below, that their request for relief satisfies these standards.

6. Applicants believe that section 17(a) was designed to prevent "overreaching" on the part of an affiliated person and to ensure that all transactions between an affiliated person and an investment company are conducted on an arm's length basis. Applicants submit that the proposed transactions will not involve overreaching because the consideration paid and received for the sale and redemption of shares of the Central Funds will be based on the net asset value per share of the Central Funds. Applicants also assert that the proposed transactions are appropriate because they provide the Participating Funds and their shareholders with a possible means of obtaining high current rates of return for cash investments.

7. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company unless the SEC has issued an order authorizing the arrangement. Applicants believe that the Funds, by participating in the proposed transactions, and the Adviser, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In determining whether to grant an exemption under rule 17d–1, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that no Participating Fund or Central Fund will participate in the proposed transactions on a basis that is different from or less advantageous than that of any other participant and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The shares of the Central Funds sold to and redeemed from the Participating Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

2. If the Adviser collects a fee from a Central Fund for acting as its investment adviser with respect to assets invested by a Participating Fund, before the next meeting of the board of trustees of a Participating Fund that invests in the Central Funds is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Participating Fund will provide the board of trustees with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Participating Fund that can be expected to be invested in such Central Funds. Before approving any advisory contract under section 15, the board of trustees of such Participating Fund, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for the fee indirectly paid by the Participating Fund because of the advisory fee paid by the Central Fund to the Adviser. The minute books of the Participating Fund will record fully the trustees' consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Participating Funds will invest uninvested cash in, and hold shares of, the Central Funds only to the extent that the Participating Fund's aggregate investment in the Central Funds does not exceed 25% of the Participating Fund's total net assets. For purposes of this limitation, each Participating Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Central Funds will be in accordance with each Participating Fund's respective investment restrictions, if any, and will be consistent with each Participating Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Participating Fund, the Central Funds, and any future Fund that may rely on the order shall be part of a "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, that includes either CAT or PFMMS.

6. No Central Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30863 Filed 11–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26781]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 18, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 12, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70–8583)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a post-effective amendment to its application-declaration filed under Sections 6(a) and 7 of the Act and rule 54 under the Act.

EUA is currently authorized under an order of the Commission dated December 19, 1994 (HCAR No. 26193) ("Prior Order") to sell up to 6.8 million of its authorized common shares under its Dividend Reinvestment and Common Share Purchase Plan ("Plan") through December 31, 1997. Under the Prior Order, EUA is authorized to issue these shares or to purchase them on the open market. As of November 1, 1997, EUA has sold 6,042,088 of its authorized common shares under the Plan.

EUA now proposes to extend its authority to sell the remaining 757,912 shares of its common stock under the Plan through December 31, 2000. In addition, EUA proposes to sell up to one million additional shares of its common stock under the Plan from time to time through December 31, 2000. EUA will either issue the shares of its common stock it sells under the Plan or purchase them on the open market.

EUA will use the proceeds from the sale of common shares under the Plan for investment in its subsidiaries, payment of its indebtedness and/or for its general corporate purposes.

Consolidated Natural Gas Company, et al. (70–8621)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its wholly owned nonutility subsidiary, CNG Energy Services Corporation ("Energy Services"), One Park Ridge Center, Pittsburgh, Pennsylvania 15244–

0746, have filed a post-effective amendment to an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 83–91 thereunder.

By order dated February 27, 1987 (HCAR No. 24329), the Commission authorized Energy Services, among other things, to be the gas marketing subsidiary for the Consolidated System. This order authorized Energy Services, as a gas marketer, to purchase, pool, transport, exchange, store and sell gas supplies from competitively priced sources, including the spot markets, independent producers and brokers, and CNG Producing Company ("Gas Related Activities").

By order dated July 26, 1995 ("Order") Energy Services was authorized, through December 31, 1997, to invest an aggregate amount up to $150 million to acquire: (1) An ownership interest, which may be up to 50% of the voting or nonvoting stock, in one or more corporations established for the sole purpose of engaging in Gas Related Activities; (2) either in its own name or through a wholly owned special purpose subsidiary company, up to 50% of the general partnership interest in one or more partnerships, or up to 50% voting equity interest in one or more other joint business entities such as joint ventures or limited liability companies, which are established for the sole purpose of engaging in Gas Related Activities; and/or (3) up to 100% of the limited partnership interests in one or more partnerships established for the sole purpose of engaging in Gas Related Activities (collectively, "Authorized Activities"). None of the projects in which Energy Services may invest can be a public-utility company.

As of June 30, 1997 Energy Services has invested, under the Order, $19.168 million and $14.845 million in two pipeline gathering systems, respectively, in the Main Pass area near the Alabama coast of the Gulf of Mexico. The Order also authorized Consolidated and Energy Services to guarantee their obligations incurred as a result of equity investments made in the joint entities. To date, no guarantees have been issued.

The applicants now propose to extend the period of authorization, through December 31, 2002, whereby the applicants may invest the remaining $115.987 million and an additional $84.013 million (totaling $200 million) in Authorized Activities under the terms and conditions set forth in the Order.

Consolidated and Energy Services also propose to continue to make guarantees of obligations to make equity investments in the joint entities, up to an aggregate principal amount of $200 million under the terms and conditions set forth in the Order.[1]

Energy Services proposes to continue to enter into service agreements with one or more of the entities in which it is investing. These agreements would be in the form of an operating and maintenance agreement under which Energy Services would operate and manage the business of the entity, and/or administrative services agreement whereby Energy Services would provide certain administrative services. Under the proposed service agreements, Energy Services would be compensated according to the "at cost" requirements of section 13 and the corresponding rules.

Energy Services proposes to finance its $200 million investment in Authorized Activities by: (1) Selling shares of its common stock[2] to Consolidated; (2) open account advances;[3] and (3) long-term loans.[4]

Monongahela Power Company, et al. (70–9121)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, each an electric utility subsidiary of Allegheny Energy, Inc., a registered holding company, have filed a declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rule 53 under the Act.

By order dated February 4, 1977 (HCAR No. 19875), the Commission authorized Monongahela, Potomac Edison and West Penn ("Declarants") to issue notes ("Series A Notes") to The Greene County Industrial Authority, Greene County, Pennsylvania ("Authority"). Declarants issued these notes in connection with the issuance of five series of Bonds (together, "Series A Bonds") by the Authority used to finance certain pollution control equipment and facilities ("Facilities") at a generating station in Greene County that is jointly owned by Declarants. The Series A Bonds were issued in an aggregate principal amount of $27.495 million, of which $24.995 million currently remains outstanding.

The Authority intends to issue three series of the bonds in an aggregate principal amount of $24.995 million (together, "Series B Bonds"), the proceeds of which will be used to refund the Series A Bonds that remain outstanding. Declarants now request authority through December 31, 2002 to issue notes ("Series B Notes") to support the contemporaneous issuance of the Series B Bonds by the Authority. The Series A Notes will be canceled.

The Series B Bonds will be issued under a supplemental trust indenture with a corporate trustee, approved by Declarants, and sold at a time, interest rate, and price approved by Declarants. The interest rate for the Series B Bonds will not exceed the interest rate of the corresponding series of Series A Bonds presently outstanding. The Series B Bonds will mature no later than the year 2020.

Each Declarant will issue a Series B Note that will correspond to that series of Series B Bonds issued by the Authority on its behalf with respect to principal amount, interest rate and redemption provisions. In addition, each Series B Notes will have principal payment installments that correspond to any mandatory sinking fund payments and stated maturities of the corresponding Series B Bonds. The Series B Notes will be secured by a second lien on the Facilities and certain other properties, subject to the lien securing each Declarant's first mortgage bonds.

Payment on the Series B Notes will be applied to pay the maturing principal and redemption price of and interest and other costs on the Series B Bonds as such amounts become due. Each Declarant also proposes to pay any trustees' fee or other expenses incurred by the Authority.

Yankee Atomic Electric Company (70–9135)

Yankee Atomic Electric Company ("Yankee Atomic"), 580 Main Street, Bolton, Massachusetts 01740, an indirect electric utility subsidiary of New English Electric System and Northeast Utilities, both registered holding companies, has filed a declaration under Sections 6(a) and 7 of the Act and rule 54 under the Act.

By order dated December 28, 1995 (HCAR No. 26441), the Commission authorized Yankee Atomic to incur short-term borrowings through December 31, 1997 from banks up to an aggregate principal amount of $10 million at any one time. Yankee Atomic now requests an extension of this authority through December 31, 2002.

Yankee Atomic will evidence its borrowings through the issuance of notes that will be payable in less than one year from the date of issuance. The interest rate will not exceed the lending bank's base or prime lending rate, or the high federal funds rate, plus 1% in either case. Yankee Atomic pays fees to the banks in lieu of compensating balance arrangements. Yankee Atomic will use the proceeds to meet its working needs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30861 Filed 11–24–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The guarantees would be calculated as part of the maximum $2 billion authority to guarantee obligations of subsidiaries granted to Consolidated and its subsidiaries in *Consolidated Natural Gas Co.*, Holding Co. Act Release No. 26500 (Mar. 28, 1996).

[2] Energy Services currently has authorized 4,000 shares of common stock par value $1.00 per share. However, it has requested in a pending proceeding in File No. 70–8061 for authority to increase its common stock equity to 50,000 shares of common stock, par value $10,000 per share.

[3] Open account advances may be made to Energy Services on a revolving basis to finance the Authorized Activities. Open account advances will be made under letter agreement with Energy Services and will be repaid on or before a date not more than one year from the date of the first advance with interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York. Only outstanding amounts of open account advances will be calculated against the $200 million financing limits requested in this filing.

[4] Loans to Energy Services will be evidenced by long-term non-negotiable notes of Energy Services maturing over a period of time (not in excess of 50 years) to be determined by the officers of Consolidated, with the interest predicated on and equal to Consolidated's cost of funds for comparable borrowings. In the event Consolidated has not had recent comparable borrowings, the rates will be tied to the Salmon Brothers, Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. All loans may be prepaid at any time without premium or penalty.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22995; 812–10624]

UAM Funds, Inc., et al.; Notice of Application

November 19, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(G)(i)(II), and under sections 6(c) and 17(b) for an exemption from section 17(a).

SUMMARY OF THE APPLICATION: Applicants seek an order that would permit a fund of funds relying on section 12(d)(1)(G) to make direct investments in equity and fixed income securities. The order also would permit applicants to redeem shares in-kind under certain circumstances.

APPLICANTS: UAM Funds, Inc. (the "Fund"), on behalf of the TS & W Balanced Portfolio (the "Balanced Portfolio") and the TS & W International Equity Portfolio (the "International Equity Portfolio") (collective, the "Portfolios"), and Thompson, Siegel & Walmsley, Inc. (the "Adviser").

FILING DATES: The application was filed on April 18, 1997, and amended on August 4, 1997. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One International Place, 44th Floor, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as an open-end management investment company and is comprised of multiple series, including the Portfolios.[1] The Balanced Portfolio invests in a diversified portfolio of common stocks of established companies and investment grade fixed income securities. The Balanced Portfolio may invest in equity securities issued by foreign companies as provided in its investment policies.

2. The International Equity Portfolio generally invests in equity securities of established companies listed on U.S. or foreign securities exchanges. The International Equity Portfolio also may invest in convertible bonds, convertible preferred stocks, non-convertible preferred stocks, fixed income securities of governments, government agencies, supranational agencies and companies, and cash equivalents (including foreign money market instruments). The International Equity Portfolio may purchase and sell options on any of the above-mentioned securities and also may invest in closed-end investment companies holding foreign securities.

3. The Adviser, registered under the Investment Advisers Act of 1940, serves as investment adviser to the Portfolios. The Adviser is a wholly-owned subsidiary of United Asset Management Corporation ("UAM"), which is a Delaware holding company incorporated for the purpose of acquiring and owning firms engaged primarily in institutional investment management.

4. The Adviser receives an advisory fee based on a percentage of net assets of the particular Portfolio. The Adviser currently intends to waive its advisory fee with respect to the portion of the Balanced Portfolio's assets that are invested in the shares of the International Equity Portfolio by excluding these assets from the net assets of the Balanced Portfolio for purposes of calculation of the advisory fee. Currently, no sales loads or other distribution charges will be incurred by the Balanced Portfolio in purchasing shares of the International Equity Portfolio. Other expenses incurred by the International Equity Portfolio will be borne by it, and thus indirectly by the Balanced Portfolio.

5. Applicants propose to use the International Equity Portfolio as a means to invest a portion of the Balanced Portfolio's assets in foreign equity securities. Applicants believe that the use of a single investment vehicle to invest in a broadly diversified portfolio of foreign equity securities will provide the Balanced Portfolio with the most effective exposure to the

[1] Until October 31, 1995, the Fund was named The Regis Fund, Inc. All parties that currently intend to rely on the order are named as applicants.

performance of foreign markets while at the same time minimizing costs. The Balanced Portfolio also may have some additional direct investments in foreign stocks. This could occur both (a) because the Balanced Portfolio, between its periodic purchase or sale transactions in shares of the International Equity Portfolio, may accumulate cash that it wishes to invest in foreign securities, and (b) because the Balanced Portfolio may use foreign securities to meet some of its remaining strategic diversification targets. Applicants state that the Balanced Portfolio needs the flexibility to invest directly in foreign securities because, on occasion, a particular foreign security may be determined to be the most suitable investment to satisfy a specific investment strategy being pursued by the Balanced Portfolio. Direct investments also may result because the Balanced Portfolio determines that a specific weighting in a particular foreign security, which is not satisfied by ownership of the International Equity Portfolio, would be beneficial to the Portfolio.

6. Applicants state that the International Equity Portfolio is more diversified in foreign markets than the Balanced Portfolio could be investing on its own. As a result, events affecting the price of a single foreign issuer or country can be expected to have less impact on the International Equity Portfolio than they would have on the foreign securities holdings of the Balanced Portfolio. Applicants represent that this diversification can be expected to benefit both Portfolios by providing greater price stability and lower volatility, while at the same time capturing the performance benefits of exposure to foreign markets.

7. Applicants also expect that use of the International Equity Portfolio as a vehicle for international investing by the Balanced Portfolio will increase the efficiency of portfolio management of the Balanced Portfolio. Tracking the performance of various country markets and issuers in foreign markets is a time-consuming process and substantially different from tracking the domestic market and domestic issuers, which would normally be attendant with the Balanced Portfolio's portfolio management. By obtaining most of its exposure to foreign markets through the International Equity Portfolio, the Balanced Portfolio and its shareholders would gain the benefit of exposure to this sector without incurring the penalty attendant upon its portfolio manager spending a disproportionate amount of his or her time following these relatively small positions.

8. Applicants anticipate that the efficiencies resulting from the use of the International Equity Portfolio will result in cost savings to the Balanced Portfolio in three areas: administrative costs, out-of-pocket costs, and trading costs. Savings of administrative costs will be attributable to a great reduction in administrative procedures. Savings of out-of-pocket costs such as audit fees and custodial fees will be offset by increases in other out-of-pocket costs such as legal and transfer agency fees. Applicants expect that the major cost savings will occur because the International Equity Portfolio will experience trading costs that will be substantially less than the trading costs that would be incurred if the foreign stocks were purchased separately for the Balanced Portfolio. Applicants believe that this cost savings will increase in direct proportion to the number of foreign stocks over which the investment in the foreign securities is diversified.

9. Although the majority of the Balanced Portfolio's investments in foreign securities will be through the International Equity Portfolio, the Balanced Portfolio may have some additional direct investments in foreign stocks. Applicants state that the Adviser has adopted the following procedures to avoid the unnecessary expense that could occur if the International Equity Portfolio were to sell a particular stock at the same time that the Balanced Portfolio were to purchase it, or vice versa. The International Equity Portfolio will generate a list of stocks that it intends to purchase or sell, which it will forward to the portfolio manager of the Balanced Portfolio. If the Balanced Portfolio's portfolio manager wishes to sell or buy a stock on the list, the International Equity Portfolio will effect the transaction directly with the Balanced Portfolio pursuant to the provisions of rule 17a–7 (a) through (f), except as described below. The value of the stock will be the current market price, determined in accordance with the provisions of rule 17a–7. Payment will be made by simultaneous transfer of cash or by simultaneous redemption or issuance of shares of the International Equity Portfolio with an equal value, depending on whether the Balanced Portfolio wishes to alter its investment in the International Equity Portfolio. In cases where the payment for the subject stock is International Equity Portfolio shares rather than cash, the transactions will comply with the provision of rule 17a–7 (a) through (f) in all respects other than the requirement that purchases and sales be made only for cash consideration.

10. To minimize the need for the International Equity Fund to maintain excessive cash balances, the Adviser will coordinate the Balanced Portfolio's purchases and sales of shares of the International Equity Portfolio to minimize the cash flow into or out of the International Equity Portfolio, and attempt to anticipate the Balanced Portfolio's cash needs and to coordinate net cash investment or redemptions to permit the orderly acquisition or disposition of foreign securities within the International Equity Portfolio. The purchase or sale of shares of the International Equity Portfolio by the Balanced Portfolio will also be coordinated with purchase and sale or "rebalancing" transactions calculated to bring the holdings of the International Equity Portfolio back in line with its targets. The Adviser will monitor the process over time to ensure that the best interests of the Balanced Portfolio and the International Equity Portfolio are met.

11. The Adviser anticipates that in virtually all instances it will be able to follow the foregoing procedures. It is conceivable, however, that there will be occasions where these procedures cannot be followed because the Balanced Portfolio makes an unusually large purchase or redemption of International Equity Portfolio shares. Under these circumstances, the Adviser in its sole discretion may cause the transaction to be executed in-kind. In the case of a purchase, the Balanced Portfolio would acquire foreign stocks directly, then contribute them to the International Equity Portfolio in exchange for its shares. In the case of a redemption, the International Equity Portfolio would deliver redemption proceeds to the Balanced Portfolio in the form of a *pro rata* distribution of foreign stocks, which the Balanced Portfolio could then sell. These in-kind transactions will comply with the provisions of rule 17a–7(a) and (f), except that the consideration for the foreign stocks will be International Equity Portfolio shares rather than cash.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from the acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G).

3. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that the Balanced Portfolio would like to retain the flexibility to invest directly in stocks, bonds, and other instruments, in addition to investing in the International Equity Portfolio.[2]

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants believe that the proposed arrangement will not implicate any of the abuses that section 12(d)(1) was intended to prevent, such as duplicative costs, undue influence or control, or the potential adverse impact of large-scale redemptions.

B. Section 17(a)

5. Section 17(a) of the Act prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3) of the Act. The Adviser is an affiliated person of each Portfolio. To the extent that the Portfolios are deemed under common control by reason of having the same investment adviser, each Portfolio would be an affiliated person of the other Portfolio under section 2(a)(3)(C) of the Act. Accordingly, purchases or sales of securities between the International Equity Portfolio and the Balanced Portfolio may violate section 17(a). Applicants request an exemption from section 17(a) of the Act to the extent necessary to permit them to redeem shares in-kind as described in the application.

6. Sections 6(c) and 17(b) of the Act set forth the standards for exempting a series of transactions from section 17(a). Under section 17(b), the terms of the transaction must be reasonable and fair and must not involve overreaching on the part of any person, the transaction must be consistent with the policy of each investment company concerned, and the transaction must be consistent with the general purposes of the Act. In addition, under section 6(c), the exemption must be necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

7. Applicants believe that the proposed transactions meet the standards for relief under sections 6(c) and 17(b). Applicants contend that the terms of the proposed transactions are reasonable and fair and do not involve overreaching. The consideration paid and received for the purchase and redemption of International Equity Portfolio shares will be based on the net asset value of the International Equity Portfolio. Currently, the Balanced Portfolio will not incur any sales load or other charge in purchasing shares of the International Equity Portfolio. Applicants believe that the proposed transactions are consistent with the policies of each Portfolio. The Balanced Portfolio's investments in the International Equity Portfolio, and the International Equity Portfolio's issuance of shares, will be effected in accordance with each Portfolio's investment restrictions and policies. Applicants also believe that the proposed transactions are consistent with the general purposes of the Act. Section 17(a) was intended to prohibit affiliated persons from furthering their own interests by, for example, selling property to an investment company at less than fair value. Applicants believe that their proposal does not present those concerns.

[2] Section 12(d)(1)(G)(i)(II) limits a fund of funds' investments to certain government securities and short-term instruments.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Balanced Portfolio from investing in equity and fixed income securities, and other instruments as described in the application.

2. Before approving any advisory contract for the Balanced Portfolio under section 15 of the Act, the directors of the Fund, including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act (the "Independent Directors"), shall find that the advisory fee, if any, charged under the contract is based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the International Equity Portfolio's advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30862 Filed 11–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39333; File No. SR–AMEX–97–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Revised Equity Fee Schedule

November 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the fee change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the fee change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex has revised its schedule of fees imposed on trades in Standard & Poor's Depositary Receipts® ("SPDRs®") and Standard & Poor's MidCap Depositary Receipts® ("MidCap SPDRs®"). The text of the fee change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the fee change and discussed any comments it received on the fee change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently imposes a transaction charge and a regulatory fee on trades in equity securities executed on the Exchange. The Exchange's equity transaction charge is a two-part fee consisting of a share charge and a value charge, based on the total number of shares traded and the value of such shares, respectively. All equity trades executed through the Exchange's Post Execution Reporting ("PER") order routing system up to 1,099 shares are exempt from Exchange equity transaction charges (excluding only those for the account of non-member competing dealers). The Exchange also imposes a separate regulatory fee on all equity trades calculated at .00005 times the total value of shares traded.

The Exchange is now making revisions to its schedule of fees relative to trades on the Exchange in SPDRs and MidCap SPDRs. The Exchange will charge a different and separate fee which will vary depending on for whom the trade was executed. Specialists will be charged a transaction fee of $.006 per share ($.60 per 100 shares), capped at $300 per trade. Registered Traders will be charged a transaction fee of $.007 per share ($.70 per 100 shares), capped at $350 per trade. Off-floor orders (both customer and broker-dealer) will be charged a transaction fee of $.006 per share ($.60 per 100 shares), capped at $100 per trade.

In addition to the foregoing, orders up to 5,099 shares in SPDRs and MidCap SPDRs routed to the Exchange Floor electronically through the Exchange's PER System will not be assessed a transaction fee.[1] However, the new fee schedule will operate on a principle consistent with that applied in the context of the Exchange's current fee waiver in equities generally for PER orders up to 1,099 shares, in that the various fee waivers in SPDRs and MidCap SPDRs will not be available to PER orders for the account of a non-member competing marketmaker.

These changes are calculated to lower costs to users of the products while making the cost of trading on the Exchange comparable to the economics of trading this and functionally similar products in other markets. The revised equity fee schedule was implemented by the Exchange on October 29, 1997. The Exchange will notify member firms as to the date of effectiveness and as to any necessary modifications to provide for proper identification of orders entitled to the fee exemption.

2. Statutory Basis

The fee change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4)[2] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The fee change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the fee change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[3] and subparagraph (e)(2) of the Rule 19b–4 thereunder.[4] At any time within 60 days of the filing of such fee change, the Commission may summarily abrogate such fee change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the fee change that are filed with the Commission, and all written communications relating to the fee change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–97–36 and should be submitted by December 16, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30864 Filed 11–24–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Very recently (see SR–AMEX–97–34) the Exchange had extended a PER fee waiver to customer orders up to 5,099 shares in all exchange-traded fund products ("EXTRA Funds"). This fee schedule change was not implemented and is being replaced by the fee schedule revisions being made herein.

[2] 15 U.S.C. 78f(b)(4).

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 19b–4(e).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2654]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Thursday, December 4, 1997, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the 76th session of the IMO Legal Committee, which was held October 13–17, 1997, in London, regarding the provision of financial security for seagoing vessels (focussing on security for passenger claims), compensation for pollution from ships' bunkers, a draft convention on wreak removal, the carriage by sea of radioactive materials, and other matters. This meeting will also be a further opportunity for interested members of the public to express their views on whether the United States should ratify the 1996 Hazardous and Noxious Substances Convention, or the 1996 protocol to the Limitation of Liability for Maritime Claims convention of 1976, both adopted in London in May, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views concerning the subjects of discussion, write to either Captain Malcolm J. Williams, Jr., or Lieutenant Commander Bruce P. Dalcher, U.S. Coast Guard (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593, or by telephone (202) 267–1527, telefax (202) 267–4496.

Dated: November 20, 1997.

Russell A. La Mantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97–30920 Filed 11–24–97; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request of the Government of Anguilla To Be Designated a Beneficiary of the Caribbean Basin Economic Recovery Act; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for public comment.

SUMMARY: Anguilla has requested designation as a beneficiary country under the Caribbean Basin Economic Recovery Act. Interested parties are invited to submit comments relevant to the criteria to be examined in determining Anguilla's eligibility for such designation.

DATES: Comments are due at USTR by January 2, 1998.

ADDRESSES: Comments should be addressed to: Susan Cronin, Director for Caribbean and Central American Affairs, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 523, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Susan Cronin, Director for Caribbean and Central American Affairs, Office of the United States Trade Representative, 600 17th Street, N.W., Room 523, Washington, DC 20506; (202) 395–5190.

SUPPLEMENTARY INFORMATION: The Caribbean Basin Economic Recovery Act (the "CBERA") (Title II, Pub. L. 98–67, as amended (19 U.S.C. 2701 et seq.)) authorizes the President to proclaim duty-free treatment for eligible articles from designated beneficiary countries in the Caribbean Basin. Anguilla has requested designation as a beneficiary country under the CBERA.

Section 212(b) of the CBERA provides that the President shall not designate any country a CEBRA beneficiary country—

(1) If such country is a Communist country;

(2) If such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States Citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their disputes;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

Section 212(c) of the CBERA provides that the President, in determining whether to designate any country a CBERA beneficiary country, shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to provide its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

Interested parties are invited to submit comments on the application to Anguilla of some or all of these criteria for designation.

Public Comments

Interested parties must provide twelve copies of any comments, which must be in English and which must be received at USTR no later than 5 p.m., Friday, January 2, 1998. If the comments contain business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the comments should be treated confidentially must be included in the comments. In addition, comments containing confidential information should be clearly marked "confidential" at the top of each page. The version that does not contain confidential information should be clearly marked "public version" or "non-confidential" at the top of each page.

Comments submitted in response to this notice, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline, by appointment with the staff of the USTR Public Reading Room (202 395–6186).

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–30954 Filed 11–24–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3129; Notice 1]

Ford Motor Company; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company, Dearborn, Michigan, has estimated that approximately 853,000 of the 1995–1997 Ford Explorer and 1997 Mercury Mountaineer vehicles with console armrests fail to comply with 49 CFR 571.302, Federal Motor Vehicle Safety Standard (FMVSS) No. 302, "Flammability of Interior Materials," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Ford has also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

FMVSS No. 302, Paragraphs S4.2 and S4.3 specify that any portion of a single or composite material which is within ½ inch of the occupant compartment air space, when tested in accordance with paragraph S5, shall not burn, nor transmit a flame across its surface at a rate of more than 4 inches per minute. Composite is defined as a material that adheres to other material(s) at every point of contact. FMVSS No. 302's burn rate testing requires a 4-inch wide by 14-inch long sample, wherever possible (S5.2).

The Ford armrest has multi-layer cover materials: a 1.5mm thick exterior cover, a 2mm thick second layer Ethylene Vinyl Acetate/Polyethylene (EVA/PE), referred to in the petition as "plus pad," a 13mm thick third layer foam bun pad, and a 3mm polycarbonate substratum. The subject flammable interior material of Ford's petition for determination of inconsequential noncompliance is the 2mm thick "plus pad" layer.

Ford acknowledged that the "plus pad" material is not adhered to its 1.5mm exterior cover material or the 13mm foam bun under it at every point of contact. Therefore, as specified in FMVSS No. 302, the "plus pad" material cannot be tested with other materials as a composite material and has to be tested separately. Ford reported that when the "plus pad" material was tested separately, it showed a burn rate range from 8 to 10 inches per minute—a noncompliance to FMVSS No. 302. Ford stated that all other affected materials in the armrest satisfy the 4-inch per minute burn rate, presumably they were tested according to the standard's requirements. Ford explained that the supplier of the "plus pad" material only "certified" the raw material for FMVSS No. 302 by testing 11mm thick samples, not the designed 2mm thickness.

Ford supports its application for inconsequential noncompliance with the following:

A. Ford stated that the FMVSS No. 302 burn rate testing requirement of cutting a sample from the "normal configuration and packaging in the vehicle" is conservative in regard to the actual fire spreading potential of the tested material.

B. The 2mm "plus pad" failed the FMVSS No. 302 test requirements when tested as a single material. However, a series of further testing demonstrates that the noncompliance does not adversely affect occupant safety because it does not increase the burn rates of the assembly or the adjacent materials in the assembly to levels higher than specified by FMVSS No. 302.

C. The "plus pad" counts less than 10 percent of the armrest material and is an insignificant percentage of the vehicle's remaining materials. All other flammable interior materials of the subject vehicles complied with FMVSS No. 302. Therefore, the noncompliance of the "plus pad" offers an insignificant portion of interior materials that could potentially support an interior fire.

Ford attached the following summary results of several alternative tests, including a worse case scenario test:

1. FMVSS No. 302 type tests (cover, plus pad, and foam)—treated the assembly materials as a composite material.

2. FMVSS No. 302 type tests (cover, plus pad, and foam) simulating cut or torn materials:

a. Cut the cover layer longitudinally,

b. Cut a hole in the cover layer, and

c. Cut through the cover layer and the "plus pad" longitudinally.

3. FMVSS No. 302 type tests (plus pad and foam)—with the cover layer completely removed to simulate a worst case scenario.

4. Cut a complete armrest assembly in half along the lateral-vertical plane:

a. Exposed the opposite of the cut end to the flame, and

b. Exposed the cut cross-section to the flame.

All tested results satisfied the FMVSS No. 302 burn rate requirements.

In conclusion, Ford requested NHTSA to grant the inconsequentiality petition since the "plus pad" complied with FMVSS No. 302's requirements in every other test except that when tested by itself. Ford's request was based on the facts that the "plus pad" represents an insignificant adverse effect on interior material burn rate and the potential for occupant injury due to interior fire and that the noncompliance presents no reasonably anticipated risk to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application of Ford described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 26, 1997.

For further information contact the following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. For non-legal issues: Dr. William J.J. Liu, Office of Crashworthiness Standards (Telephone: 202–366–4923). For legal issues: Mr. Z. Taylor Vinson, Office of the Chief Counsel (Telephone: 202–366–5263).

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 19, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–30904 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3052; Notice 1]

Kolcraft Enterprises, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that approximately 107,000 child restraint systems fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Kolcraft has also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

FMVSS No. 213, Paragraph S5.7 requires that each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302, "Flammability of Interior Materials." This requires that any material that does not adhere to other material(s) at every point of contact shall meet the burn rate requirements of S4.3 when tested separately. Materials are to be tested as a composite only if the material adheres to other material(s) at every point of contact.

At issue in this petition are seat covers on certain models of Kolcraft child restraints that do not meet the flammability requirements of FMVSS Nos. 213 and 302. The Kolcraft child restraints affected and the dates of production are as follows: Plus 4, Infant Rider (Models 36822–HY and 13x22–HY; 1/96 to 4/97); Plus 4, Infant Rider (Models 36820–LM and 13822–LM; 2/96 to 4/97); Plus 4, Travel-About, Infant Rider (Models 36820–RF and 138x2–RF; 3/96 to 4/97); Plus 4, Plus 5, Infant Rider, Travel-About (Models 368xx-SE and 13xx2–SE; 2/96 to 12/96); Rock n' Ride (Model 13100–PJ; 1/96 to 5/97; no longer in production); and Performa (Model 23305–TU; 3/96 to 10/96). The seat covers are constructed either of fabric, fiberfill and backing (scrim) or of vinyl, foam, and vinyl backing. In each of the affected models, one or more of the filling, face, or backing materials exceeded the 4 inches per minute burn rate when tested in accordance with S5 of FMVSS No. 302. Kolcraft estimates that about 107,000 child restraints potentially contain the non-compliant materials.

Kolcraft supports its application for inconsequential noncompliance with the following:

Kolcraft tested all potentially affected child restraint seat covers in the composite state and disaggregated state, and confirmed that all seat covers comply with the flammability standards of FMVSS No. 302 when tested in the composite state (as incorporated into FMVSS No. 213). Kolcraft also found that all potentially affected child restraint seat covers passed the cigarette burn test contained in California Technical Bulletin 116 when tested in the composite state.

Kolcraft maintains that the construction of the potentially affected seat covers makes it very unlikely that the various layers of its child restraint seat covers would ever be exposed to fire separately. The layers of fabric are securely bonded or sewn together around the entire perimeter of the seat cover and other areas. Kolcraft contends that it is unlikely that a large section of the fabric would be torn away, and extremely remote that that particular portion would be exposed to a potential ignition source. The most common source of ignition, and the source that FMVSS No. 302 is primarily designed to protect against, is a lighted cigarette. As stated above, all of Kolcraft's child restraints passed the cigarette burn test contained in California Technical Bulletin 116.

Kolcraft also contends that the frequency of incidents involving nonconforming materials or equipment should be a factor in determining whether noncompliance has an impact on safety. Kolcraft notes that, to their knowledge, there has not been one incident of a child injured by a fire that originated in a child restraint in the last 19 years.

Based on the above factors, Kolcraft contends that their child restraint seat pads—by virtue of complying with the flammability requirements of FMVSS No. 302 when tested in the composite state and by passing the cigarette burn test contained in California Technical Bulletin 116—comply with the purpose and intent of FMVSS Nos. 213 and 302, and therefore, their noncompliance is inconsequential as it relates to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application of Kolcraft described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC

20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 26, 1997.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 20, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–30905 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-theft line, the Carline 3, from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the 1999 model year (MY).

FOR FURTHER INFORMATION CONTACT: Mr. Sanjay Patel, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Mr. Patel's telephone number is (202) 366–0846. His fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a petition dated August 28, 1997, BMW of North America, Inc. (BMW), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Carline 3, beginning with MY 1999. The petition has been filed pursuant to 49 CFR Part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

BMW's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an electronic immobilizer system, consisting of a key with a transponder (a transmitter/receiver) that is a microchip that is integrated into the key. This transponder will allow the ignition to operate and fuel supply to be released when a correct signal has been received. BMW states that its electronically-coded vehicle immobilizer (EWS) will prevent the vehicle from being driven away under the power of its own engine by manipulations on the ignition lock and on the doors. The immobilizer device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by use of its radio frequency remote control. The frequency codes of the remote control are ever-changing which prevents an unauthorized person from opening the vehicle by intercepting the signals.

The vehicle is also equipped with a central-locking system which locks all doors, the hood, the trunk and fuel filler lid. To prevent locking the keys in the car upon exiting, the driver door can only be locked with a key or by the radio frequency remote control after it is closed. This also locks the other doors, and if they are open at the time of locking, the doors are locked when they are closed.

BMW mentioned the uniqueness of its locks and its ignition key. BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market. BMW also stated that a special key blank, key-cutting machine and owner's individual code are needed to cut a new key and that its key blanks, machines and codes will be closely controlled and new keys will only be issued to authorized persons. Additionally, spare keys can only be obtained through the BMW dealer because they are not a copy of lost originals, but new keys with their original electronic identification. Every key request is also documented so that any inquiries by insurance companies and investigative authorities can be followed up on.

The battery for BMW's Carline 3 will be inaccessibly located and covered as an additional security measure. Therefore, even if a thief does manage to penetrate and disconnect the battery, it will not unlock the doors. However, in the event of a crash, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the data indicate that lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its Carline 3 for the MY 1999 is exactly the same system that BMW installed on its Carline 5 for MY 1997. The agency granted BMW's petition for exemption of its Carline 5 in full beginning with the 1997 model year (See 61 FR 6292, February 16, 1996).

In order to ensure reliability and durability of the device, BMW stated that it conducted performance tests under BMW Standard 600 13.0, Parts 1 and 2, e.g., climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), and must become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and must deactivate the vehicle only by electronic means and not with the mechanical key. BMW also stated that the doors and ignition locks for the Carline 3 conform to Swedish Regulation F42–1975, which requires a minimum of five minutes resistance to the application of commonly available tools.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the Carline 3 is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

The agency concludes that the device will provide the types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 543.6(a)(3)(ii)).

As required by 49 U.S.C. § 33106 and 49 CFR Part 543.6(a) (4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its device.

For the foregoing reasons, the agency hereby grants in full BMW's petition for exemption for Carline 3 from the parts-marking requirements of 49 CFR Part 541.

If BMW decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 542.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption." The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued: November 18, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–30903 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97–14]

Notice of Information Collection Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Information Collection Approval.

SUMMARY: This notice announces OMB approval of information collection request for OMB No. 2137–0595, entitled Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service. This information collection has been extended until March 31, 1999.

DATES: The expiration date of this information collection is March 31, 1999.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. RSPA published a final rule in the **Federal Register** (62 FR 44038) on August 18, 1997, entitled "Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service". RSPA received approval from OMB for the information collection in that final rule under OMB No. 2137–0595. The approval expires on February 28, 1998.

RSPA published Notice No. 97–4 (62 FR 44169) on August 19, 1997, requesting comments on this information collection. The comment period on Notice No. 97–4 closed on September 18, 1997. Based on comments received on Notice 97–4, RSPA submitted a request to OMB for extension of the information collection approval until March 31, 1999, which is the expiration date for requirements in the final rule. RSPA received no comments to Notice No. 97–4. RSPA has received approval from OMB for information collection OMB No. 2137–0595, entitled "Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service."

This information collection approval expires on March 31, 1999.

Issued in Washington, DC on November 20, 1997.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 97–30963 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Notice of Meeting

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATE: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on December 11, 1997. The

session will be held from approximately 9:00 a.m. to 12:30 p.m. at a meeting room in or near the main Treasury Building at 1500 Pennsylvania Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary for Enforcement, Room 4004, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: This is the fifth meeting of the current two-year term of the Committee. The provisional agenda to be considered at the meeting is as follows:

1. Automated Export System: Establishment and operation of the subcommittee to develop industry recommendations.

2. The Treasury Investment Review Board role in the future of Customs automation.

It is expected that several additional items will be added to the provisional agenda prior to the meeting. Members of the public may obtain the final content of the agenda and the precise location of the meeting by calling the information number one week prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than December 4, 1997 at 202–622–0220.

Dated: November 19, 1997.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 97–30956 Filed 11–24–97; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

RIN 1505–AA71

Bank Enterprise Award Program; Amended Notice of Funds Availability (NOFA) for the Bank Enterprise Award (BEA) Program

AGENCY: Community Development Financial Institutions Fund, Department.

ACTION: Amended Notice of Funds Availability (NOFA).

SUMMARY: The Community Development Financial Institutions Fund (the Fund) issues this amendment to the Notice of Funds Availability (NOFA) published in the **Federal Register** on March 7, 1997, which invited applications for the Bank Enterprise Award (BEA) Program. That NOFA identified the applicable Assessment Period as March 1, 1997 through August 31, 1997. Since publication, the Fund has learned that technical advice that the Fund provided to an entity in connection with the entity's certification as a Community Development Financial Institution (CDFI) under 12 CFR part 1805 may have led the entity to obtain investment capital from insured depository institutions prior to the commencement of the Assessment Period. Currently, pursuant to the BEA Program as set forth in the March 7, 1997 NOFA and the BEA Program regulations at 12 CFR part 1806, CDFI Related Activities carried out by insured depository institutions before March 1, 1997 are not eligible for an award. To fulfill the purpose of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), the Fund will allow insured depository institution applicants the option of electing an Assessment Period from February 1, 1997 through July 31, 1997, provided that they meet certain conditions. The Fund is confident that there are sufficient funds available to make full cash awards to all insured depository institution applicants in the second round of the BEA Program that qualified to receive awards, and assures all such applicants that no awards will be reduced as a result of this amendment.

DATES: Elections must be received in the offices of the Fund on or before December 12, 1997.

ADDRESSES: Elections shall be mailed or faxed to: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, Fax Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Community Development Banking and Financial Institutions Act of 1994 (Act) was to create the Fund to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). The Fund's BEA Program helps achieve this purpose through an incentive system for insured depository institutions to increase their lending to and investment in CDFIs by rewarding participating institutions with awards.

II. Reasons for Amending the March 7, 1997 Notice of Funds Availability

In early 1997, the Fund provided technical advice to an entity regarding the Fund's requirements for certification as a CDFI under 12 CFR part 1805. The Fund understands that its technical advice led the entity to obtain investment capital from insured depository institutions in February 1997, and that the Fund also certified it as a CDFI in February 1997.

Under the BEA Program, insured depository institutions which engage in CDFI Related Activities, including equity investments in CDFIs, during an Assessment Period will be eligible for an award (see 12 CFR part 1806). The Fund sets forth the applicable Assessment Period in a Notice of Funds Availability (NOFA). On March 7, 1997 (62 FR 10679), the Fund published a NOFA in the **Federal Register** setting the applicable Assessment Period as March 1, 1997 through August 31, 1997. As a result, CDFI Related Activities conducted by insured depository institutions in February 1997 are not eligible for a Bank Enterprise Award.

The Fund believes that such a result would be inconsistent with the purpose of the Act under circumstances where insured depository institutions carried out CDFI Related Activities prior to the Assessment Period as a direct or indirect result of the Fund's technical advice, and would have carried out such activities during the Assessment Period but for such advice. Specifically, the Act is intended to reward insured depository institutions for increased investments in CDFIs. If the Fund does not amend the NOFA, at least two insured depository institutions would not be eligible to receive a Bank Enterprise Award for CDFI Related Activities carried out in February 1997.

III. Amended Optional Assessment Period

The amended optional Assessment Period is February 1, 1997 through July 31, 1997.

IV. Eligibility

Any insured depository institution that timely submitted to the Fund an application in response to the March 7, 1997 NOFA may elect the amended optional Assessment Period, provided that the Fund receives the following by the date set forth above:

(a) A detailed written explanation, with any and all supporting documentation, describing the Fund's technical advice, the impact of such advice on the insured depository institution's carrying out of CDFI Related Activities in February 1997; and

(b) A revised "Worksheet," "Certification," and "Documentation" to reflect the Qualified Activities carried out during the February 1, 1997 through July 31, 1997 Assessment Period (see 12 CFR 1806.301 and 1806.202(d)).

V. Acceptance

Elections received in the offices of the Fund after the date set forth above will be rejected. The Fund will accept a timely election from an eligible insured depository institution which meets its burden of establishing to the Fund that: (1) it carried out CDFI Related Activities in February 1997 as a direct or indirect result of the Fund's technical advice; and (2) it would have carried out those Activities during the March 1, 1997 through August 31, 1997 Assessment Period but for the Fund's technical advice. The Fund reserves the right to make follow-up inquiries.

Authority: 12 U.S.C. 1834a, 4701, 4704, 4713; 12 CFR part 1806.

Maurice A. Jones,

Acting Deputy Director.

[FR Doc. 97–30895 Filed 11–24–97; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Annual Financial Statement of Surety Companies—Schedule F

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Annual Financial Statement of Surety Companies—Schedule F."

DATES: Written comments should be received on or before January 26, 1997.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Surety Bond Branch, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Annual Financial Statement of Surety Companies—Schedule F.

OMB Number: 1510–0012.

Form Number: FMS 6314.

Abstract: This form provides information that is used to determine the amount of unauthorized reinsurance of a Treasury Certified Company, and to compute its underwriting limitations. This computation is necessary to ensure the solvency of companies certified by Treasury, and their ability to carry out contractual surety requirements.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 385.

Estimated Time Per Respondent: varies from 8 hrs–80 hrs.

Estimated Total Annual Burden Hours: 16,324.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: November 19, 1997.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 97–30845 Filed 11–24–97; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed Collection; Comment Request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the public use form entitled "Application for Administrative and Teaching Exchanges/Seminars Abroad". This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)].

USIA is requesting OMB approval for a three-year reinstatement to the Fulbright Teacher Exchange Program, Application for Teaching Positions/Seminars Abroad, IAP–92 under OMB control number 3116–0181 which is scheduled to expire on February 28, 1998. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Education and Cultural Exchange Act of 1961, Pub. L. 87–256.

DATES: Comments are due on or before January 26, 1998.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Mrs. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address: JGiovett@USIA.GOV; and OMB review: Mr. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building,

Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0181) is estimated to average two (2) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Responses are voluntary and respondents will be required to respond only one time.

Comments are requested on the proposed information collection concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Current Actions: USIA is requesting OMB approval for the reinstatement of this collection for a three-year period.

Title: Application for Teaching Positions/Seminars Abroad.

Form Number: IAP–92.

Abstract: To be used by applicants under the Fulbright Teacher Exchange Program which provide opportunities for U.S. teachers to exchange positions for designated periods with foreign counterparts, or to attend one of a number of short-term seminars abroad on a variety of topics.

Proposed Frequency of Responses: No. of Respondents—840, Recordkeeping Hours—2.0, Total Annual Burden—1680.

Dated: November 19, 1997.

Rose Royal,

Federal Register Liaison.

[FR Doc. 97–30880 Filed 11–24–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Special Medical Advisory Group has been renewed for a 2-year period beginning November 13, 1997, through November 13, 1999.

Dated: November 17, 1997.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–30875 Filed 11–24–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that two meetings of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on:

Monday, December 8, 1997: 8:30 a.m. to 4:30 p.m.

Tuesday, December 9, 1997: 10:00 a.m. to 12:30 p.m.

The location of the meetings will be 811 Vermont Avenue, NW; Washington, DC; in Room 438 on December 8, 1997, and Room 442 on December 9, 1997.

The all day meeting of Monday, December 9, 1997, is a work session to review the developments in the field of structural design, as they relate to seismic safety of buildings, and fire safety issues. The Tuesday, December 9, 1997, meeting is a formal session to vote on structural and fire safety issues for inclusion in VA's standards.

Both meetings will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Krishna K. Banga, Senior Structural Engineer, Standards Service, Facilities Quality Office, Office of Facilities Management, Department of Veterans Affairs Central Office (phone 202–565–9370) by December 1, 1997.

Dated: November 17, 1997.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–30876 Filed 11–24–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
November 25, 1997

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Primary Category Seaplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27641; Amendment No. 21–75]

RIN 2120–AG39

Primary Category Seaplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule increases the maximum weight limit for seaplanes that are proposed for type certification in the primary category. When the Federal Aviation Administration (FAA) established the 2,700-pound maximum weight limit for primary category aircraft, it did not consider seaplanes. Seaplanes generally weigh more than comparable landplanes because of the increased airframe weight and drag associated with their designs. Therefore, the 2,700-pound maximum weight limit for primary category aircraft results in a significantly inferior performance, range, and payload when applied to seaplanes than was originally intended for primary category aircraft. The FAA has determined that a 3,375-pound maximum weight limit would provide seaplanes with a level of utility comparable to primary category landplanes.

DATES: Effective February 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 26, 1997.

ADDRESSES: Comments on this direct final rule should be delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel (AGC–200), *Attention:* Rules Docket, Docket No. 27641, 800 Independence Avenue, SW., Washington, DC 20591. Comments also may be submitted electronically to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. Comments submitted must be marked: Docket No. 27641. Comments may be examined in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brian A. Yanez, Certification Procedures Branch (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SE., Washington, DC 20591, telephone (202) 267–9588.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, is issuing it as a direct final rule. The subject of this rulemaking was raised previously in the **Federal Register** through the publication of a notice of a petition for exemption to permit an amphibious airplane to be type certificated in the primary category with a maximum weight of 3,300 pounds. The FAA received 115 favorable comments and no negative comments on the proposed increased weight limit.

Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received on this direct final rule within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective.

If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking (NPRM) may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by an NPRM, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Comments should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports a commenter's ideas and suggestions is helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Substantive comments should be accompanied by cost estimates. All comments submitted will be available, before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this action will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27641." The postcard will be date stamped and returned to the commenter.

Availability of Final Rule

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board service (*telephone:* 703–321–3339).

Internet users may reach the FAA's web page at http://www.faa.gov or the Office of the Federal Register's web page on GPO Access at http://www.access.gpo.gov/nara/index.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this direct final rule.

Background

Statement of the Problem

On December 22, 1993, a manufacturer of amphibious kit planes petitioned the FAA for exemption from the maximum weight limit for type certification of primary category aircraft in § 21.24(a)(1)(ii) of Title 14, Code of Federal Regulations (14 CFR). The manufacturer listed the individual components that cause amphibious airplanes to weigh more than landplanes with a comparable utility. On May 10, 1994, a summary of the petition was published in the **Federal Register** (59 FR 24209) for public comment. The FAA subsequently determined that the manufacturer's request should be addressed in a rulemaking action rather than through the exemption process, because the relief sought addressed the general applicability of the type certification requirements for primary category aircraft.

History

On September 9, 1992, the FAA published in the **Federal Register** (57 FR 41360) a final rule establishing a new certification category for personal- and recreational-use aircraft, known as primary category aircraft. The final rule established simplified procedures for type, production, and airworthiness certification, and associated maintenance procedures for these aircraft. The intent of the rule was to: (1) provide a category for aircraft that are less costly to certificate, produce, purchase, and maintain than current normal category aircraft; (2) stimulate the introduction of new, less costly aircraft designs; (3) enable kit manufacturers to fill the demand for low-cost aircraft; and (4) improve the safety of kit-built aircraft presently being certificated as experimental, amateur-built aircraft.

Primary category airplanes may be unpowered or powered by a single, naturally aspirated engine, with a stall speed of 61 knots or less. These airplanes are limited to a maximum weight of 2,700 pounds, a maximum seating capacity of four persons, and an unpressurized cabin. Seaplanes were not considered when the primary category weight limit was established.

Discussion

A seaplane is an airplane designed to take off from and land on water. A seaplane can be classified as a flying boat, whose hull is the means of support on the water, or a floatplane, which is supported on the water by one or more floats. Amphibious airplanes are seaplanes designed to take off from and land on either water or land.

Seaplanes generally weigh more than comparable landplanes due to the increased airframe weight and drag associated with their designs. Therefore, the 2,700-pound maximum weight limit for primary category aircraft results in a significantly inferior performance, range, and payload when applied to seaplanes than was originally intended for primary category aircraft. The following features may contribute to a seaplane's increased weight:

(1) A requirement for more horsepower to counteract the increased drag of the hull/step configuration and sponsons. Seaplanes typically require a six-cylinder engine rather than the lighter four-cylinder engine used on landplanes weighing less than 2,700 pounds;

(2) Increased structural strength of the airplane's pylon or tail structure to support the engine and propeller, which are usually mounted above the hull;

(3) Larger elevators and stabilizers to overcome the vertical pitching forces and a larger rudder for yaw stability due to the high thrust line;

(4) A water rudder mechanism for taxiing in the water;

(5) Structural strengthening of the hull (including skin strength, bulkheads, and longerons) to withstand water takeoff and landing loads;

(6) Wing sponsons and necessary reinforcement of the wing structure to carry additional loading; and

(7) Retractable landing gear to permit operations from water or land.

Because seaplanes weigh an average of 25 percent more than comparable landplanes, this rule increases the maximum weight limit by 25 percent, to 3,375 pounds, for seaplanes certificated in the primary category. This increase should offer primary category seaplanes a level of utility comparable to primary category landplanes.

Currently, many seaplanes are certificated as experimental airplanes. The inclusion of seaplanes in the primary category will result in safety benefits by standardizing the design and construction processes of these airplanes through the type certification process. The FAA notes that kit-built seaplanes are eligible for certification in the primary category if the kit is supplied by an FAA-approved manufacturer and is assembled under the supervision and quality control of the production approval holder.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no reporting or recordkeeping requirements associated with this direct final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization (ICAO) standards and Joint Aviation Authorities (JAA) regulations and found no comparable primary category certification standards. The FAA notes that because primary category aircraft have a special airworthiness certificate rather than an airworthiness certificate based on ICAO Annex 8 standards, owners of U.S.-registered primary category aircraft would require prior permission of the appropriate airworthiness authority to operate outside the United States.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to consider, for new regulations or modifications to existing regulations, if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act (RFA) of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these assessments, the FAA has determined that the proposed rule: (1) would generate benefits exceeding its costs and is not "significant" as defined in Executive Order 12866; (2) would not be "significant" as defined in the Department of Transportation's (DOT) Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not restrain international trade. These analyses, available in the docket, are summarized below.

The rule will provide the opportunity to reduce certification and manufacturing costs for seaplanes weighing between 2,700 and 3,375 pounds that otherwise would be certificated under § 21.21. The rule makes available simplified procedures for type, production, and airworthiness certification, and associated maintenance procedures for these aircraft. The certification basis and standards afforded by this amendment will be an option for the affected parties. Manufacturers and owners/operators will only select the new alternative if it is in their own best economic interests to do so. Therefore, the FAA concludes that the rule will be cost beneficial.

Regulatory Flexibility Determination

The RFA of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have a significant economic impact, detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. Since the alternatives afforded will be optional, the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year.

This rule does not meet the thresholds of the Act. Therefore, the requirements of Title II of the Act do not apply.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and International Trade Impact Analysis, the FAA has determined that this regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Primary category, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 21 of the Federal Aviation Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

2. Section 21.24 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 21.24 Issuance of type certificate: primary category aircraft.

(a) * * *

(1) * * *

(ii) Weighs not more than 2,700 pounds; or, for seaplanes, not more than 3,375 pounds;

* * * * *

Issued in Washington, DC, on November 19, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–30833 Filed 11–24–97; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
November 25, 1997

Part III

Northeast Dairy Compact Commission

7 CFR Ch. XIII

Compact Over-Order Price Regulation and Results of Producer Referendum; Final Rules

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1301, 1304, 1305, 1306 and 1307

Compact Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: This rule extends the present compact over-order price regulation ("price regulation") for all Class I, fluid milk route distributions in the territorial region of the six New England states beyond its present expiration date of December 31, 1997. The rule extends the price regulation for the period January 1, 1998 through termination of the Compact enabling legislation.[1] The regulation is established in the combined, Federal Milk Market Order #1 and compact over-order, amount of $16.94 (Zone 1).

In so extending the price regulation, the Northeast Dairy Compact Commission ("Compact Commission") reaffirms and again bases the decision on its findings that such price regulation is necessary to assure the viability of dairy farming in New England, that it is necessary to assure the region's consumers of a continued, adequate, local supply of fresh and wholesome milk, reasonably priced, and that it is otherwise in the public interest. The Compact Commission also establishes the price regulation based on the finding that the regulation has been approved by producer referendum pursuant to Article V, section 13 of the Northeast Interstate Dairy Compact. Notice of approval by referendum is published separately in this **Federal Register**.

This rule also establishes a Task Force under Article VII. D. of the Compact Commission's Bylaws to determine whether it is appropriate to provide similar reimbursement to the region's School Lunch Programs, established under the National School Lunch Act of 1946 and the Child Nutrition Act of 1966 for any adverse financial impact. The Task Force is to report back on its assessment of whether it is appropriate to reimburse the programs and, if so, to recommend a procedure for reimbursement to the Compact Commission at its regularly scheduled meeting for February, 1998.

Finally, the price regulation extends the administrative assessment of 3.2 cents per hundredweight of milk on all route dispositions of Class I, fluid milk in the territorial region of the six New England states. It is noted that the additional, start-up assessment of approximately 1.3 cents per hundredweight presently imposed will expire with final payment in December, 1997.

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, VT 05601.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2026.

SUPPLEMENTARY INFORMATION:

Background

The Compact Commission was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Public Law 93–320; Maine—Public Law 89–437, as amended, Public Law 93–274; Massachusetts—Public Law 93–370; New Hampshire—Public Law 93–336; Rhode Island—Public Law 93–106; Vermont—Public Law 89–95, as amended, 93–57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Public Law 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Section 8 of the Compact empowers the Compact Commission to engage in a broad range of activities designed to "promote regulatory uniformity, simplicity and interstate cooperation." For example, the Compact authorizes the Compact Commission to engage in a range of inquiries into the existing milk programs of both the participating states and the federal milk marketing system, to make recommendations to participating states, and to work to improve industry relations as a whole. See Compact, Art. IV, section 8.

In addition to the powers conferred by Section 8, the Compact also authorizes the Compact Commission to consider adopting a compact over-order price regulation. See Compact, Art. IV, section 9. A "compact over-order price" is defined as:

> A minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to sections nine and ten of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the commission.

See Compact, Art. II, section 2(8).

The regulated price authorized by the Compact is actually an incremental amount above, or "over-order" the minimum price for the same milk established by Federal Milk Market Order #1. The price regulation establishes the minimum procurement price to be paid by fluid milk processors for milk that is ultimately utilized for fluid milk consumption in the New England region.[2] Price regulation also provides for payment of a uniform "over-order" price, out of the proceeds of the price regulation, to all dairy farmers making up the New England milkshed regardless of the utilization of their milk.[3] See Compact, Art. IV, section 9 ("The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area.".)

Section 11 of the Compact delineates the administrative procedure the Compact Commission must follow in deciding whether to adopt a price regulation:

> Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section four of the Federal Administrative Procedures Act, as amended (5 U.S.C. 553). In addition, the commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the commission shall hold a public hearing. The Commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

Section 12(a) of the Compact directs the Commission to make four findings of fact before an over-order price regulation can become effective. Specifically, the Commission shall make findings of fact with respect to:

> (1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.
>
> (2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.[4]
>
> (3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.
>
> (4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section thirteen.

Compact, Art. V, Section 12.

Pursuant to Section 11 of the Compact, the Compact Commission initiated a rulemaking procedure in December, 1996.[5] The rulemaking culminated on May 30, 1997 with the issuance of a final rule establishing a compact over-order price regulation for the period July 1–December 31, 1997.[6]

On September 8, 1997, the Compact Commission issued notice of proposed rulemaking to consider whether to extend the price regulation beyond the present December 31, 1997 expiration date.[7] The technical provisions of the price regulation established by final rule of May 30, 1997 and as codified at 7 CFR Chapter 1300, and the summary and analysis of the rule, were issued as a proposed rule in the September 8, 1997 notice of rulemaking, with the further proposals that the regulation be extended for one year and that it be amended generally. Pursuant to Compact, Art. IV, Section 11, the Compact Commission held a public hearing on September 24, 1997 on the proposed rule, and accepted written comment pursuant to its bylaws until October 8, 1997.

Based on the oral and written comment received, and upon the reasoning set forth in its previous proposed and final rules, the Compact Commission hereby extends the present price regulation for the period January 1, 1998 through termination of the Compact enabling legislation. As explained below, the amount of the price regulation remains unchanged at $16.94. As also explained below, the technical regulation, as codified at 7 CFR Chapter 13 [§§ 1301.11(b), 1304.5(a), 1305.1, 1306.1, 1306.2, 1306.3(b) through (f), 1307.1, 1307.2, and 1307.4(f)], is amended in certain instances.

Immediately following is a summary analysis and response to the comment received during the present rulemaking procedure. A more detailed review and response follows, organized around the finding analysis required by Section 12 of the Compact. This analysis also summarizes and incorporates the relevant reasoning developed in the previous rulemaking. The analysis also identifies and describes any amendments to the price regulation made as part of this final rule.

I. Summary Analysis of Comments Received in Response to the Proposed Rule and Compact Commission's Response

Oral and written comment received in the September 24, 1997 hearing and additional written comments received by the Compact Commission's published deadline of October 8, 1997 were duly considered by the Compact Commission. The Compact Commission met on October 23, 1997 to consider and act on the comment received. Public notice of this meeting was published on October 16, 1997 in the **Federal Register**. 62 FR 53769.

Eighty-nine separate comments were received during the hearing and written comment period. Of the total commenters, five expressed opposition to the regulation's extension and eighty-four expressed support for its extension.

The five commenters expressing opposition to the regulation's extension include an economist for Public Voice for Food and Health Policy, a public interest group based in Washington, DC, and four representatives of Massachusetts ACORN, a low income community advocacy group in Dorchester, MA. These commenters expressed concern primarily with the regulation's impact on low income consumers in the New England region.

The Compact Commission recognizes and acknowledges the concerns raised by these opposing commenters. As explained in greater detail in the subsequent analysis, one of the central reasons the Compact Commission adopted its initial regulation for the limited period of six months on May 30, 1997 was to ensure close monitoring of the regulation's impact on consumers, including low income consumers. See 62 FR 29638. This careful scrutiny is derived from the finding analysis and inquiry into the public interest in milk price regulation which the Compact Commission must make under the Compact, and which is concerned with, among other issues, the impact of price regulation upon consumers, including low income consumers.

While accentuating the need for continued, careful scrutiny, the commenters have not established that the price regulation is causing such anomalous market distortions of the retail market as to justify elimination of price regulation. When viewed in the context of, and balanced with, the comments presented in support of continuing the regulation, along with the reasoning derived from the prior rulemaking, the Compact Commission concludes the interests of consumers in a stable milk supply and, ultimately, stabilized prices, will continue to be served by extending the price regulation.

Fifty-four of the eighty-four commenters expressing support for extension of the regulation were dairy farmers. Other commenters expressing support for extension include representatives of dairy farmer cooperatives, farm credit agencies, banks, dairy processors, dairy feed and fertilizer suppliers, Farm Bureaus, farm machinery dealers, New England state WIC Programs, New England state Departments of Agriculture, a state legislator, a large animal veterinarian, and a consumer.

These commenters, farmers and others alike, expressed support for extending the regulation for periods of varying duration. The broad majority supported extension through the termination of the Compact Commission's authority to establish an over-order price regulation under the Congressional Consent to the Compact.[8] The supporting comment also was mixed with regard to whether the amount of the over-order price should be kept at the same rate or increased, and, if increased, at what rate. Most of

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[1] 7 U.S.C. 7256(3) "Consent for the Northeast Interstate Dairy Compact shall terminate concurrent with the Secretary's implementation of the dairy pricing and Federal milk marketing order consolidation and reforms under section 7203 of this title."

[2] 7 CFR 1305.2.

[3] 7 CFR 1307.4.

[4] The Commission limited its assessment to issues relating to the fluid milk market, given the limitations on its authority to regulate the price of milk used for manufacturing purposes. See Compact, Section 9(a); see also 7 U.S.C. 7256(2).

[5] The Commission issued a notice of Hearing on December 13, 1996 at 61 FR 65604 and held public hearings on December 17 and 19, 1996. The Notice also invited the public to submit written comments through January 2, 1997. Following the close of this comment period, the Commission met on January 16, 1997 and established three working groups to consider the testimony and data submitted. The Commission issued a Notice of Additional Comment Period on March 14, 1997. 62 FR 12252. This comment period closed on March 31, 1997; the reply comment period closed April 9, 1997. Based on the testimony and comment received, the Compact Commission issued a proposed rule on April 28, 1997 to adopt price regulation. 62 FR 23032. As part of the proposed rule, the Commission published for comment technical regulations to be codified at 7 CFR Section 1300, et seq. Minor corrections to the proposed rule were published on May 8, 1997, 62 FR 25140, to provide clarification and to correct errors. The Compact Commission received additional comment in response to the proposed rule issued April 28, 1997.

[6] 62 FR 29626 (May 30, 1997).

[7] 62 FR 47156 (September 8, 1997).

[8] 7 U.S.C. 7256(3).

the comment supported an increase reflecting the increase in the Consumer Price Index. Finally, a number of the commenters recommended certain amendments to the technical codified price regulation.

In view of these amendments suggested by the commenters, the Compact Commission notes that, in addition to allowing for close review of the regulation's impact on the retail market, the limited, six month duration of the initial price regulation was also established to ensure close scrutiny of the regulation's impact on the overall fluid milk marketplace. As with review of the impact on the retail market, this overall assessment is necessary to determine whether the price regulation has caused such market distortions as to require its discontinuation, or whether its extension will continue to serve the public interest.

As explained in detail below, the Compact Commission concludes from this rulemaking process that the public interest is best served by the regulation's extension from January 1, 1998 through termination of the Compact enabling legislation. Accounting for the concerns of the commenters, the Compact Commission concludes the public interest, including those of low income consumers, will be better served by extending the price regulation so as to establish stable prices across the wholesale and retail markets in New England for the continuous period July 1, 1997 through termination of the Compact enabling legislation. The Commission concludes that close scrutiny of the regulation's impact must continue and, accordingly, schedules subsequent rulemaking with review of all relevant issues to be commenced, pursuant to Section 11 of the Compact, no later than July 1, 1998.

The comments received, with regard to the significant concerns and relative positions on the critical issues invoked by the finding analysis mandated by Section 12(a) of the Compact, are now addressed in detail.

II. Summary and Further Explanation of Findings Regarding Adoption of Over-order Price

As noted above, Section 12(a) of the Compact directs the Commission to make four findings of fact before an over-order price regulation can become effective. The issues relating to the first three topics (excluding the referendum procedure) were exhaustively reviewed in the Compact Commission's initial proposed rule. The Compact Commission's findings on these topics, based on that analysis, were reaffirmed with further discussion in the subsequently adopted final rule on May 30, 1997, which rule served as the proposed rule in the present rulemaking process. The analysis of these issues contained in the previous proposed and final rules is again reaffirmed, subject to the further discussion contained here.

As in the previous rulemaking, the second finding required by the Compact (the level of prices needed to assure a sufficient price to producers and an adequate supply of milk) is discussed initially. The Compact Commission finds that a price of $16.94 per hundredweight continues to be needed to achieve these dual goals. The first finding required by the Compact (whether the public interest will be served by the establishment of minimum milk prices) is then discussed. The Compact Commission further finds that the public interest will be served by an over-order price regulation in the amount of $16.94 to extend from January 1, 1998 through termination of the Compact enabling legislation.

With respect to both of these findings, the Compact Commission's inquiry has been guided by Section 9(e) of the Compact, which sets forth several factors which the Compact Commission must consider during the hearing process to determine whether to adopt and if so, the amount of, an over-order price:

> In determining the price, the commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production, including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and the distributor.

The third finding required by the Compact is then discussed; the Compact Commission concludes that the major provisions of this order, other than those establishing minimum milk prices, are in the public interest and reasonably designed to achieve the purposes of the order.

The fourth required finding is whether the terms of the proposed order have been approved by producer referendum, pursuant to Article IV, section 12 of the Compact. In this final rule, the Compact Commission makes this finding premised upon certification of such approval, published separately in this **Federal Register**. The procedure for such certification is set forth infra in the section of this rule addressing the fourth finding.

A. What Level of Prices Will Assure That Producers Receive a Price Sufficient To Cover Their Costs of Production and Elicit an Adequate Local Supply of Milk

As one of the four underlying findings required for the establishment of price regulation, the Compact Commission must determine:

> (2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.[9]

Compact Art. V, section 12(a)(2).

As in the prior rulemaking, the Compact Commission's deliberations regarding the level of price required to cover costs of production focused again on the variety of cost inputs identified in Section 9(e) of the Compact. With regard to the price needed to elicit an adequate local supply of milk, the Compact Commission reviewed the nature of the balance of production and consumption in the region, as also called for by Section 9(e) of the Compact.[10] This required review again prompts assessment of the degree to which farm prices have been insufficient to cover costs of production over time ("price insufficiency"), and the degree to which such insufficiency has affected the balance of production and consumption in the region. Assessment of this issue also required consideration of the wide swings over time in farmer pay prices under federal regulation, which have caused farm financial stress and made it difficult for farmers to plan financially ("price instability"), and the failure of farmer pay prices to keep up with inflation.

Farmer Costs of Production

The Compact Commission's inquiry with regard to whether prices are sufficient to cover the cost of production was guided by Section 9(e) of the Compact, which directs the Commission to consider cash costs of production, including feed, machinery expense, labor, and interest, as well as the non-cash costs of value for the farmer's own labor and a reasonable return on the farmer's investment.

With regard to the various specific components of cash and non-cash costs

[9] The Commission limited its assessment to issues relating to the fluid milk market, given the limitations on its authority to regulate the price of milk used for manufacturing purposes. *See* Compact, § 9(a); *see also* 7 U.S.C. section 7256(2). At the same time, for purposes of this analysis, it must be recognized that the present supply needs for manufacturing purposes are not available for fluid usage.

[10] This assessment was presented under the second, broader public interest analysis in the first rulemaking procedure.

reviewed under Section 9(e) of the Compact, the Compact Commission determined in the previous rulemaking that feed costs are a significant production cost component. The Commission found that feed costs can account for as much as 50 percent of a farmer's cost of production. 62 FR 23034. Farmers indicated that feed costs had risen beyond their means. In 1996, in particular, feed costs increased by some 29 percent. 62 FR 29633.[11]

According to the comment received in the present rulemaking, feed costs continue to account for a significant portion of cost of production. A Vermont dairy farmer indicated that the ratio of purchased grain cost to the value of milk produced for his farm has normally been 20% but that, since January of 1997, it has averaged 32%. De Geus and Gillmeister, in their joint submission,[12] report that the Economic Research Service (ERS) of the USDA indicate that feeds account for as much as 50% of the cash expenses for milk production in 1996. They also report that feed prices are down this year relative to 1996 but remain historically high. They rely on the ERS September 1997 Livestock, Dairy, and Poultry Monthly Report,[13] as well as the recent farm experience in New England, to conclude that high grain and high hay prices will raise this year's production costs higher, but not as high as last year's level.

De Geus, in a separate submission,[14] indicates that Vermont feed costs are expected to remain high because of flooding in northern Vermont and drought conditions in southern Vermont, parts of New York, and much of the rest of New England.[15] A dairy farmer from Connecticut reported that, since last September, his grain costs had increased approximately 8%.[16] Other commenters noted that the increase in grain prices they are experiencing is creating an imbalance between their production costs and farm price for milk.[17]

Machinery expense as a factor in the cost of production arises primarily in the context of depreciation; that is, depreciation must be covered by replacing old and worn out equipment. *See* 62 FR 29633. As in the prior rulemaking, farmers again indicated that pay prices are too low to permit them to make these investments.[18] Claude and Jeanne Bourbeau indicated that that "[their] debt load has increased in the past year due to depreciation of farm equipment. Money is needed to replace equipment and the milk check does not provide adequate funds to replace this equipment."[19] Another farmer indicated that it doesn't make sense to invest in new equipment because it would just add to his debt load and increase his monthly payments.[20] Both Wesley Snow of Brookfield, Vermont and Robert Dow of Dover, Maine indicated that the increase in equipment costs since they purchased their current equipment makes replacement impossible, given their current milk price.[21]

Section 9(e) also directs the Compact Commission to consider interest and labor costs in assessing the sufficiency of farmer pay prices. (Measurement of these components of costs of production, in particular, provide for much of the variability in the range of cost of production noted below.) In the previous rulemaking, the Compact Commission determined that both interest and non-family labor expenses constitute a significant proportion of costs of production: from $0.50 to $1.18 per hundredweight for interest expenses, and $1.08 to $1.92 per hundredweight for labor expenses. 62 FR 29633.[22]

Section 9(e) also directs the Compact Commission to consider certain non-cash costs, including a reasonable value for the farmer's own labor and a reasonable return on the farmer's investment. In considering whether pay prices provide a reasonable value for the farmer's labor, the Compact Commission previously determined that dairy farms in New England are still predominately family operated, and, that in light of farmer pay prices, much of this family labor is completely uncompensated, or significantly undercompensated. *Id.* The Commission concluded that this failure to compensate for family labor discourages entry into the dairy industry. See 62 FR at 23035.

Comment received in this rulemaking again supports this determination. A number of commenters indicated that they were experiencing difficulty in hiring labor at rates they were able to pay.[23] One dairy farmer indicated that he must pay his hired help more than he pays himself.[24]

Allaire Palmer reports that his "family employees have not had a raise in four years and work for six dollars per hour. Rent is furnished because employees are required to be available twenty-four hours per day."[25] Two dairy farmers testified that their children and grandchildren were not interested in continuing the family tradition of farming because of the long hours and short profit.[26] On the basis of the record, the Compact Commission finds that current pay prices continue to discourage family entry into dairy farming because they fail to offer reasonable value for the farmer's labor.

With regard to whether pay prices provide a reasonable return on the farmer's investment, the Compact Commission noted several comments received in the previous rulemaking indicating that a reasonable return ranges between 4% and 5%.[27] The Commission determined that, for an extended period of time, pay prices have been insufficient to provide a rate of return on equity that reaches these levels. 62 FR 29633.

Comment received from farmers in the present rulemaking again highlighted the impact of these

[11] In addition, a cost-of-production study conducted by Wackernagel and relied upon by the Commission (62 FR 23034) indicated that feed and crop expenses together can account for some 30% of a farmer's cash operating expenses.

[12] Reenie De Geus and William Gillmeister, Dairy Economists for the Vermont and Massachusetts Departments of Agriculture, Written comment, ("WC"), October 8, 1997.

[13] The Report describes the current national situation to be: "Forage supplies will be of mediocre quality and high priced, even though the silage crop looks promising in most areas. Milk-feed price ratios will be at levels normally associated with conservative concentrate feeding and below-trend growth in milk per cow."

[14] Reenie De Geus, WC, October 8, 1997.

[15] Vermont dairy farmers reiterated this point in their submissions. Paul Doten, Harvey T. Smith, WC, October 8, 1997.

[16] David Jaquier, Dairy Farmer, East Canaan, CT, Public Hearing ("PH") at p.134, September 14, 1997.

[17] Walter Fletcher, Donna Caverly, Richard Woodger, Maine Dairy Farmers, WC, October 8, 1997.

[18] See 62 FR 29633. Economist Reenie De Geus noted in record testimony that expenditures on machinery and other depreciation expenses tend to rise in the good years and are delayed in the bad years. Reenie De Geus, WC 75.

[19] Claude and Jeanne Bourbeau, Dairy Farmers, Swanton, Vermont, WC, October 8, 1997.

[20] David Hinsworth, Dairy Farmer, Royalton, Vermont, WC, October 8, 1997.

[21] WC, October 8, 1997.

[22] See: Wackernagel, which analyzed Agrifax and ELFAC farms over a 3-year period; Maine cost-of-production studies; and Pelsue and ERS-USDA studies submitted by Smith.

[23] Lester Bailey, Robert L. Foster, and Claude and Jeanne Bourbeau, Dairy Farmers, WC, October 8, 1997.

[24] Onan Whitcomb, Williston, Vt., WC, October 8, 1997.

[25] Allaire P. Palmer, Dairy Farmer, Cornish, Maine, WC, October 8, 1997.

[26] Douglas Carlson, Dairy Farmer, Canaan, CT, and Dale Lewis, Dairy Farmer, Haverill, NH, PH at p. 90 and p. 140, respectively, September 24, 1997.

[27] Robert A. Smith of the Yankee Farm Credit System suggested a 4% rate of return was reasonable in his testimony at the September 24, 1997 PH and in his comments submitted in the previous rulemaking in April, 1997. 62 FR 23033. The Maine cost-of-production studies, which analyze southern New England, used a 5% return on equity. *Id.* at 23034. In addition, Michael Sciabarrasi of University of New Hampshire Cooperative Extension Service, suggested that 5% was a minimal rate of return. Id.

expenses upon their costs of production and the failure of pay prices to cover them completely. A number of commenters pointed out that failure of pay prices to cover their costs of production left them with no return on their investment.[28] Douglas Carlson pointed out in his testimony that because of the large number of recent farm foreclosures, auctions are not bringing a reasonable return on the original investment, reflecting a lower general value of farm capital investments.[29] The Compact Commission, therefore, reaffirms the determination that pay prices are insufficient to provide a rate of return on equity that reaches a reasonable range between 4% and 5%.

This survey of various cost inputs of under Section 9(e) of the Compact underscores the pressure farmers operate under with regard to the inability of pay prices to cover costs of production. With regard to identifying overall costs of production, as determined by the previous rulemaking, numerous studies provide a variety of estimates.[30] While based on different methods for determining costs of production, particularly with respect to non-cash costs, these studies provide the basis for making the overall assessment of price needed to cover cost of production, as required by the Compact. In the previous rulemaking, based on a comprehensive assessment of a number of studies, the Compact Commission concluded that the range of the costs of production for New England is somewhere between $14.06 and $16.46. *Id.*

The Compact Commission received additional comment on the measure of overall cost of production in the present rulemaking from a number of commenters. Robert A. Smith of Northeast Farm Credit Associations again reported that, on the basis of a report prepared by Farm Credit Partners surveying farms in New England, New York and Pennsylvania, the costs of production for the region were $14.25/cwt. for 1995 and $15.00/cwt. for 1996. When adjusted for a 4% return on equity, these costs become $15.37/cwt. for 1995 and $16.02/cwt. for 1996.[31] The cost figures for New England were the same as for the larger region as a whole.[32]

Reenie De Geus, Vermont's Department of Agriculture, Food and Market dairy economist, reported that the average costs of production for Vermont farms in the Farm Credit Partners survey was $14.06/cwt. for 1995 and $15.32/cwt. for 1996, up 9%.[33] For that six year period, 1991 to 1996, the average cost of production for these Vermont farms is $14.65/cwt. with only a 3% return on equity.[34] A representative of a dairy processor testified that the cost of production is in the range of $13.50/cwt. to $14.00/cwt.[35] Comment from individual farmers indicated a range for their costs of production from $12.66/cwt. to $17.95/cwt.[36] for an average among them of $14.65/cwt.

Combined with the analysis conducted during the prior rulemaking, the Compact Commission determines in this rule that the cost of production remains in the range of $14.06/cwt. to $16.46/cwt.[37] Acccordingly, the Commission concludes that an overall combined pay price[38] in this range is necessary "to assure that producers receive a price sufficient to cover their costs of production" within the meaning of the finding analysis required by Section 12(a) of the Compact.

In the prior rulemaking, the Compact Commission concluded that an over-order pay price in the range of $0.46–$1.90 was necessary to bring farmer pay prices up to the level necessary to cover cost of production. See 62 FR 29633 (Final Rule); 62 FR 23040–41 (Proposed Rule). Assuming Class I utilization of 50 percent, this means that price regulation in the amounts of $0.92–$3.80 would be necessary to achieve the necessary range of over-order payment.

Elicitation of an Adequate Local Supply of Milk

The required finding with regard to pay price accounts for the broader assessment of the level needed to elicit an adequate supply of milk, in addition to the relatively discrete assessment of the level needed to cover cost of production. In the prior rulemaking, the Compact Commission determined that the Compact § 9(e) scrutiny of the balance of production and consumption of fluid, or beverage milk, in the region is critical to this additional assessment. See 62 FR 29634–35.

The Compact Commission determined that production and consumption is presently in balance, but in a balance of pronounced and unsustainable stress that must be alleviated. 62 FR 23040. The Compact Commission concluded that overall milk production was in decline in the New England region and in the portion of New York State which has traditionally been a supplemental part of the New England milkshed. 62 FR 23039–40. The Compact Commission also found that supplies of milk are being transported increasing distances from the region's population centers and associated processing plants. 62 FR 23040. While over fifty percent of the milk produced in the New England milkshed is presently utilized in a variety of manufactured dairy products, the Compact Commission concluded that substitution of such milk cannot be relied upon to provide an alternative supply for fluid utilization purposes. 62 FR 23039. In sum, the Compact Commission concluded that the balance of production and consumption in the region depended on at least stabilizing, if not increasing, the present, local supply through price regulation. 62 FR 23040.

Assessment of how to alleviate the stress on the region's supply of milk through price regulation requires consideration of how best to alleviate the stress under which producers operate. This inquiry naturally reverts back to the issue of the degree to which farmer pay prices are not sufficient to cover costs of production. In addition, as previously determined, the review leads the Compact Commission to conclude that the nature of the persistently unstable farmer pay prices and the degree to which farmer prices have failed to keep pace with inflation are also structural factors of stress.

Price Insufficiency

As noted above, the Compact Commission's comprehensive review in the prior rulemaking of the various cost inputs and the variety of studies of

[28] Allaire Palmer, David Bradshaw, Rosemarie Jelesiewski, Harold Larrabee, and Roger Scott, Dairy Farmers, WC, October 8, 1997.

[29] Douglas Carlson, PH at p. 102.

[30] 62 FR 29632–33.

[31] Robert A. Smith, Manager of Public Affairs and Regional Council Relations, CoBank and Northeast Farm Credit Associations, PH at p. 75, September 24, 1997.

[32] *Id.*

[33] De Geus, WC.

[34] *Id.*

[35] Gary Warren, Vice-President, Fairdale Farms, Bennington, VT, PH at p. 124, September, 24, 1997.

[36] Ivar Green, Allaire Palmer, David Bradshaw, Claude and Jeanne Bourbeau, and Neal Rea, WC, October 8, 1997; Ed Platt, PH, September 24, 1997. It is to be noted that some of their estimates include a return on equity and while others do not.

[37] The Commission notes that it is in process of conducting the comprehensive cost of production study authorized by its previous final rule. See 62 FR29632. One commenter (Gillmeister) argues for a division of the proceeds of price regulation based upon a presentation of varying costs of production among the New England states and New York. The Commission declines to adopt the approach of this commenter as premature, given that the Commission has just undertaken its study process to determine costs of production in the states and the region.

[38] This combined price reflects the federal Market Order #1 blend price plus the Compact over-order producer price. For a more complete discussion of the components of the actual pay or "mail box" price paid to farmers see 62 FR 23037.

overall cost of production provided the basis for the Compact Commission to determine the amount and degree to which farmer pay prices were not sufficient to cover costs of production. 62 FR 29633. Based on its review of the studies, overall, the Compact Commission concluded that costs of production have exceeded the farm pay price by an amount in the range of $0.46–$1.90. *Id.*

As also noted above, the newly received data, in combination with the previous analysis, leads the Compact Commission again to conclude that farmer pay prices are failing to cover costs of production and that there is a continuing need for an over-order price that results in farmer pay prices in the range of $0.46 to $1.90.

Failure of Farmer Pay Prices To Keep Up With Inflation

The Compact Commission determined in the prior rulemaking that the failure of farmer pay prices to keep up with inflation was a significant factor contributing to chronic price insufficiency and farm financial stress. 62 FR 29633–64. For this reason, the Compact Commission adopted the joint proposal of Reenie De Geus and William Gillmeister, dairy economists for the Vermont and Massachusetts Departments of Agriculture, respectively, to establish an over-order price regulation based, in part, on an inflation adjustment.[39]

Comment received in the present rulemaking did not focus on the issue of the chronic, structural failure of prices to keep up with inflation to the same degree as in the prior rulemaking. This is perhaps a result of the fact that the price regulation adopted as part of the prior rulemaking was premised, in part, on a structural adjustment for inflation. In any event, the Commission remains mindful that the relationship between farmer pay prices and inflation remains a critical concern. Certainly, the comment received supports this determination.[40]

The Compact Commission also remains mindful, however, of the concern expressed by several commenters in the prior rulemaking (62 FR 29634) and a comment submitted in this rulemaking[41] that an inflation adjustment not be built in as a permanent, automatic adjustment.[42] The Compact Commission's determination of the proper balance between adjustment for inflation and accounting for broader market conditions, in establishing the appropriate level of price regulation, is presented in the summary analysis of this section, below.

Price Instability

The Compact Commission received a wealth of testimony and comment in the prior rulemaking indicating that wide fluctuations in the price of milk are also a primary cause of farm financial stress and, in particular, made it difficult for farmers to plan financially. 62 FR 29633.

The comment received in the present rulemaking accentuates the fact of persistent fluctuations in the pricing structure under federal regulation. The price drop from the Autumn of last year to the present was both precipitous and dramatic. Between October, 1996 and July, 1997, the New England Market Order #1 Blend price fell from $16.84 to $11.97.[43] For October, 1997, the blend price is estimated to be $13.50.[44]

Not surprisingly, farmers again expressed their reluctance to make long-term investments in their farming operations, and their concern that when prices dropped precipitously they were unable to meet their most basic obligations. For example, the ability of farmers to pay machinery expenses is further diminished by price instability because farmers are unable to invest (e.g., in new machinery or in upgrading their facilities), given the wide fluctuations in the price of milk.

Of most concern, Leon Berthiaume, General Manager of St. Albans Cooperative Creamery, testified that—

> In May through July, 66 to 100 of our members received a check of less than $1,000.00 for 15 days worth of milk production. We also during [sic] this period of time there was 20 to 50 members that received no check at all for those 15 days of production. We are continuing to experience farm auctions. In the last 2½ weeks, we have lost 12 members from our Cooperative, and in the next week we have three more members that are scheduled to be auctioned off.[45]

Gary Warren, in his testimony at the public hearing, underscored the benefits of price stability across the market, from farmer to consumer.[46] Robert A. Smith pointed out that volatility in milk prices makes it very difficult for farmers to effectively plan and make the type of investments necessary to position themselves for the future.[47]

In addition to testimony of the apparent, continuing, stress on supply, however, the Compact Commission received testimony that production had nonetheless increased by 2.2 percent in 1997.[48] This indicates that, in the short term, despite the persistent failure over time of prices to cover cost of production and the structural conditions of market stress, farmers are still able to produce milk to cover demand. The Compact Commission concludes this is in part because of the presence of a range of cost of production,[49] and in part because of the working dynamic between the fluid and manufactured milk markets under federal regulation. One commenter indicated such increased production may also in part be a function of the cool 1997 summer.[50] In addition, testimony in the record indicates that increased production may be a factor of persistently low farm prices.[51] (The Compact Commission also notes that, in addition to price enhancement under the Compact price regulation for August and September, 1997, according to De Geus, "last year was an abnormally high year both for price and costs with the result that farmers had a positive return

[39] Their joint submission in this rulemaking, however, argues against using the Consumer Price Index (CPI) as a structural adjustment to the Compact over-order price because the dairy farmer's costs of production are driven by factors other than those measured by the CPI, such as the cost of grain. The Commission concludes that the CPI is not a perfect fit for systemic cost increases on the farm.

[40] Robert Wellington, Sr. Vice-President, AgriMark Cooperative, WC, October 8, 1997; Lee and Charlotte Bosworth, Auburn, ME; Mary Connolly, Pittsfield, ME; Alaine Palmer, Cornish, ME; Pery and Carol Hogden, Randolph, VT; David Hansen, North Brookfield, MA; Edward A. Ellis, Hebron, CT; Wesley and Brenda Snow, Brookfield, VT; Robert Dow, Dover, ME; Lowell J. Davenport Jr., Ancramdale, NY; Dairy Farmers, WC, October 8, 1997.

[41] See De Geus and Gillmeister, Id. In large part based on their comment, CPI is rejected for automatic adjustment to the Compact over-order price. See below.

[42] Based in part on this concern, the Commission concluded on May 30, 1997 that adoption of a price regulation for the limited duration of six months would allow for continuing evaluation of broader market conditions. *Id.*

[43] Market Order #1 Administrator Statistics.

[44] Wellington, PH at p. 8.

[45] Leon Berthiaume, PH at pp. 57–58. Robert Wellington also testified at the PH at p. 8 that AgriMark, the region's largest cooperative, accounting for 1630 of the approximately 3640 pool producers in Federal Market Order #1, indicates a loss of 73 member producers in July, 1997 from the previous July. It also was down 61 members in August compared to the previous August. Agri-Mark also added 10 new New York members in July, 1997 as compared with the previous July, and 17 such new members in August, as compared with the previous year. According to the testimony, "New York has been the only area available to obtain the additional milk needed for New England consumers."

[46] Warren, PH at p. 128.

[47] Smith, PH at p. 76.

[48] Leon Graves, Commissioner, Vt. Dept. of Agriculture, Food and Markets, WC, October 8, 1997.

[49] John Schnittker, Public Voice for Food and Health Policy, PH at p. 13, September 24, 1997; Gillmeister, WC, October 8, 1997; De Geus and Gillmeister, WC, October 8, 1997.

[50] Wellington, PH at p. 114.

[51] Wellington, PH at p. 110; Carl Peterson, Dairy Farmer and President, AgriMark, PH at p. 70.

of one cent for the first time in six years.")[52]

The Compact Commission concludes, accordingly, that the required determination of the amount needed both to cover cost of production and to assure an adequate supply must account simultaneously for both the persistent gap between cost of production and pay prices and the level of supply in the market in spite of that gap. The finding analysis reflects an intended balancing of the basic economic requirement that pay prices cover cost of production to ensure sustainability with a recognition that supply may still be provided despite some gap between cost of production and pay prices.

John Schnittker argues, without supporting evidence, that the price regulation would primarily help the larger and generally more financially healthy dairy producers and would help the smaller and financially stressed producers the least.[53] The commenter made the same argument in the previous rulemaking process, also without supporting evidence. The Compact Commission there concluded that the criticism of the Compact over-order price regulation by Schnittker was incorrect. 62 FR 29634. The assertion assumes that the smaller producer is less efficient than the larger producer. On the basis of the detailed analysis of Professor Wackernagel,[54] the Commission again concludes, however, that the financial viability of both 80 cow farms and 350 cow farms will be improved substantially by the Compact over-order price regulation.

Summary Analysis—Level of Prices Needed to Assure That Producers Receive a Price Sufficient To Cover Their Costs of Production and Elicit an Adequate Local Supply of Milk

As noted above, the Compact Commission has determined that an over-order price in the range of $0.46–$1.90 continues to be needed to assure that farmer costs of production are covered, requiring an over-order price regulation in the range of $0.92–$3.80.[55] With regard to the price needed to elicit an adequate supply of milk for the region, the Compact Commission again notes that such an amount is not necessarily identical with that required to cover costs of production. The Compact Commission further concludes that the analysis of the appropriate level of price regulation must also account for price instability and the failure of producer prices to account for inflation,[56] as well as the regulation's duration.

As noted at the outset, the prior rulemaking resulted in establishment of an over-order price regulation of $16.94 for six months duration. 62 FR 29632. The Compact Commission received numerous comments from farmers on the appropriate level of price and duration for an extension of the price regulation. The majority of these commenters recommended that the price be adjusted by the CPI at 2.2%, with such adjustment to last through the termination of the Compact.[57] Wellington and Berthiaume made a similar recommendation; Beach recommended an adjustment by the CPI at 2.2% for a period of six months.[58] De Geus and Gillmeister recommended that it be raised by 2%.[59] (In his separate comment, Gillmeister proposed a six months' duration; De Geus proposed extension through sunset.) Warren suggested that the price be raised by $1.00.[60]

Viewing the comment in light of all the relevant factors, the Compact Commission finds the argument of De Geus and Gillmeister[61] persuasive for not further adjusting the amount of the Compact over-order price regulation in direct proportion to the Consumer Price Index. The function of the initial regulation was a one-time regulatory adjustment in response to the strikingly apparent, chronic, structural failure of the marketplace to account for inflation. Price regulation forward must be responsive to the variety of market forces at work, including but not limited to inflation, as argued by these commenters.

The Compact Commission further concludes that the present amount of the price regulation at $16.94 is sufficiently responsive to the variety of market forces referred to above. The resulting degree of price enhancement provided by the price regulation still ensures that the net pay price remains within the range, albeit at the low end, of that identified as necessary to provide for covering the costs of production.

The Compact Commission also determines that extension of the $16.94 price regulation for the period January 1, 1998 through termination of the Compact enabling legislation, so as to establish uniform regulation and price for a total period of at least 21 months, will provide critical assurance of continued price stability for producers. Finally, the presence of a regulation of stable, continuous, duration will still allow the Commission to hear and consider the need to make further adjustment to account for increased costs of production and inflation at any time, before farmer pay prices again begin to lag far behind inflation. The Commission will commence rulemaking, pursuant to Section 11 of the Compact, no later than July 1, 1998 to consider whether any further adjustment in the Compact over-order regulation price is necessary and appropriate.

In this regard, the Commission takes official notice of the fact that the first three months of the regulation increased farmer pay prices, on average, by approximately $1.30 per hundredweight, raising the combined, regulated minimum pay price from approximately $12.00 to approximately $13.30 per hundredweight. For the next two months of the regulation, it is projected that the regulation will increase the pay price by approximately $.75 and $.40, respectively, yielding combined pay prices of approximately $13.90—$14.10 per hundredweight. The regulation, accordingly, is providing both price enhancement and stability.

With this background, the response of the Compact Commission to the comments received from farmers and cooperative representatives indicating the need for further price enhancement is to extend the current regulation at the same price. The extension of the regulation serves the essential function of establishing combined price enhancement and price stability in the market for a period of at least 21 consecutive months. At the same time, the extension in no way precludes the Commission from finding that a further adjustment in price is warranted after making an assessment of the costs of production, market prices and production levels during the rulemaking process the Commission will commence no later than July 1, 1998.

In sum, extension of the price regulation in the amount of $16.94 through termination of the Compact enabling legislation is the appropriate "level of price needed to assure that producers receive a price sufficient to cover their costs of production and elicit an adequate local supply of milk."

[52] See footnote 27; 62 FR 29633.

[53] Schnittker, PH at p. 11.

[54] 62 FR 29634 (May 30, 1997).

[55] Assuming Class I utilization of 50 percent, the amount of the over-order regulation price must be twice the over-order producer price to account for the entire, identified, amounts.

[56] The Commission here reaffirms its reliance upon the study by Professor Wackernagel, cited at length in both the previous proposed and final rules, which analyzed in detail the impact of Compact price enhancement and price stabilization upon two different farm sizes—an 80 cow herd and a 350 cow herd. 62 FR 29634 (May 30, 1997).

[57] 7 U.S.C. 7256(3).

[58] Wellington, PH at p. 107; Berthiaume, PH at p. 58; Sally Beach, Independent Dairymen's Coop., PH at p. 82.

[59] De Geus and Gillmeister, WC.

[60] Warren, PH at p. 128.

[61] See: note 34 *supra*.

B. Whether the Public Interest Will Be Served by the Establishment of Minimum Milk Prices to Dairy Farmers

In the prior rulemaking, the Compact Commission first focused specifically on the producer related-inquiry of Section 9(e) in making the finding concerning the appropriate level of price required by the Compact, and then referred to the conclusions there determined in making the broader "public interest finding" required by the Compact. 62 FR 29632. This analytical approach is adopted for purposes of extending the rule. This analytical approach is also adopted with regard to the dual findings required for establishment of the proper level of price under the rule.

The Compact Commission also adopts the two-part assessment of the broader "public interest" utilized in the prior rulemaking. This assessment is premised first on a review of those components of the public interest specifically identified by section 9(e), followed by consideration of a broader range of subjects and issues drawn from these specific components.

As set forth in section A, above, focusing on the producer/milk supply-related finding inquiry, the Compact Commission found the amount of $16.94 per hundredweight to be the appropriate level of price regulation, extended for the period January 1, 1998 through termination of the Compact enabling legislation. This level of price was determined to be necessary to "cover * * * costs of production and elicit * * * an adequate supply of milk" within the meaning of the required finding analysis. The price assures in addition, thereby, that the "balance between production and consumption of milk productions in the regulated area" will be maintained within the meaning of Compact, section 9(e).

With regard to the review of "the purchasing power of the public" contemplated by Compact, section 9(e), the Compact Commission has again determined that this inquiry is relevant to assessing the impact of price regulation on the consumer market, the "critical part of the Compact Commission's assessment of the public interest under this finding section." 62 FR 23045. This inquiry focuses "primary concern on the consumer interest because milk is a staple product." *Id.*[62]

The Compact Commission determined in the prior rulemaking that the continuing erosion of the region's milkshed has had a direct—and adverse—impact on retail prices, and hence on the purchasing power of the public, in part because of the increased transportation costs associated with an expanding milkshed. 62 FR 29635. The Compact Commission similarly determined that "farm/wholesale price volatility had also likely had an adverse impact on retail prices over time, and that stabilization of the farm/wholesale price through a compact over-order price regulation, traced through to the endpoint retail market, likely will manifest as a corresponding positive impact on retail prices."[63] *Id.* Finally, the Compact Commission determined that "the foregoing analysis supports the conclusion that the purchasing power of the public likely will be enhanced, rather than diminished, as a result of the stabilizing effects of the over-order price regulation." *Id.*

Based on the reasoning presented in the proposed and final rules, the Compact Commission reaffirms these determinations.[64]

The detailed data and comment received with regard to the consumer interest focused on prevailing retail prices for Class I fluid milk in the region and the potential and actual impact of the price regulation on the retail market. Adverse comment was also received with regard to retail prices and concerns about the regulation's impact on low income consumers. Comment was also submitted with regard to extension of the State WIC program reimbursement provisions.

Impact on Retail Prices—Data and Analysis

De Geus and Gillmeister submitted joint testimony with regard to the impact of the price regulation on the overall retail market. Data was submitted placing the price regulation's impact within a context of price movements between 1995 and the present. The relationship between the procurement cost for raw milk and the retail price was assessed. According to their testimony,

> The important point to note in the relationship between tables 1 and 2 is that farm prices for Class I milk fell dramatically in January of 1997, while retail price [sic] remained elevated. Then, when the Compact [sic] implemented the Final Rule in July of 1997, the prevailing price jumped 30 cents from their already elevated level. In Figure 1, Vermont shows a 20 cent increase in the price of a gallon of milk. Then in August the prevailing price in Boston fell 10 cents and remained unchanged in September. Expectations are that the prevailing price will fall more over time.

The commenters further indicated that—

> The baseline projections for dairy product prices for 1998 shows a decrease in prices of 0.4%. That is to say, dairy product prices are expected to decline * * *. Overall, we feel that the consumer is doing quite well. While fluid milk prices increased in July, they should decrease some over the next several months as competition for the growing sea of consumer dollars begins to over-ride any over-order price.

TABLE 1: FEDERAL MARKET ORDER #1 (ZONE 1) CLASS I PRICES 1995–1997

[Per cwt][65]

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Average
15.10	14.62	14.59	15.03	15.13	14.47	14.36	14.66	14.47	14.79	15.32	15.85	14.85
16.11	16.15	15.97	15.83	15.94	16.33	17.01	17.16	17.73	18.18	18.61	17.37	16.82
14.85	14.58	15.18	15.69	15.73	14.69	16.94	16.94	16.94	16.94	16.94	16.94	15.54

[65] Source: Gillmeister and DeGeus, infra, (Market Order #1 Administrator Statistics).

[62] With regard to the Compact's emphasis on the "prevailing price for milk outside the regulated area" and the first "public interest" finding, the Compact Commission again determines this data to be relevant with regard to the retail price of milk outside the region. (It is also relevant to the farm price of milk outside the region.) Based on the comments received in the prior rulemaking, the Commission identified the retail prices in two separate markets outside the Compact region as a benchmark for tracking the impact of price regulation on retail prices in the region, 62 FR 23046–47 (April 28, 1997), and to compare "the current, relative alignment in prices between the New England and New York regions against the relative alignments once price regulation is in place." 62 FR 23048 (April 28, 1997). The comprehensive study to conduct this tracking analysis is currently being developed by the Commission.

[63] As a general manager of a processing facility testified, stable wholesale prices should lead to stable retail prices. Warren, PH at p. 130.

[64] The Commission also concluded that the actual impact on retail prices could only be determined by careful monitoring and tracking over time. 62 FR 23048 (April 28, 1997). The Commission is in process of establishing and implementing the study procedure necessary to accomplish this assessment.

TABLE 2: BOSTON RETAIL PRICES 1995–1997

[Per gallon] [66]

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Average
2.59	2.49	2.49	2.59	2.49	2.49	2.49	2.49	2.49	2.49	2.49	2.59	2.52
2.59	2.59	2.69	2.59	2.69	2.59	2.59	2.79	2.59	2.59	2.59	2.59	2.62
2.59	2.59	2.69	2.59	2.59	2.59	2.89	2.79	2.79	.....	.....	.....	2.67

[66] Source: Gillmeister and De Geus, infra, (International Association of Milk Control Agencies).

De Geus submitted additional individual testimony, indicating similar retail price experience in Vermont and Connecticut:

RETAIL PRICE

	Vermont: $/gallon	Connecticut: $/gallon
November 1996	$2.49	$2.67
December	2.53	2.68
January 1997	2.54	2.65
February	2.51	2.62
March	2.48	2.61
April	2.49	2.60
May	2.48	2.65
June	2.49	2.61
July	2.64	2.81
August	2.62	2.83
September	2.52	2.78

As can be seen, prices in Vermont increased by 15 cents after initiation of the price regulation in July, then declined the following month, and held constant in September. In Connecticut, prices were observed to have increased by 20 cents after initiation of the price regulation in July, another 2 cents in August, and then decreased by 5 cents for September.

Despite the apparent initial spike in retail prices,[67] the Compact Commission concludes that the regulation has not affected the retail market so anomalously as to require its elimination. Rather, it is concluded from the data and analysis presented that the retail market can best be understood as in the process of adjustment to the current price regulation. The Commission particularly notes that the average Class I price for 1997 will be 11 cents less than last year, while the retail price for the Boston market is expected to be 5 cents greater. Recognizing that last year's prices were unusually high, and that the retail market usually takes time to adjust to price changes,[68] it is noted that the retail price has increased 15 cents since 1995, while the farm price, including that imposed by the price regulation has increased by only six cents.

The Compact Commission also takes note that the over-order price obligation for July, 1997 was $3.00, while for November it will be substantially less, in the amount of $0.91. The impact of having a flat price in the market, resulting from the interplay between the underlying federal, Class I price and the Compact "over-order" price, accordingly, thus has yet to be fully assimilated into the pricing dynamic of the market.

The data and analysis presented are not inconsistent with the Compact Commission's prior determination that stabilization of the farm/wholesale price through a compact over-order price regulation, traced through to the endpoint retail market, likely will manifest as a corresponding positive impact on retail prices." 62 FR 29635.[69] Indeed, if the commenters cited above are correct in their assessment of the likely trend of retail prices in 1998, it will only require a slight such "drift downward" for retail prices to reach their 1995 level.

Comment on the Impact of the Compact Over-order Price Regulation on Low Income Consumers

The Compact Commission received four comments from an organization representing low income consumers[70] who expressed opposition to the extension of the price regulation. Their comments centered on a concern with increased retail prices for fluid milk faced by low income parents and grandparents. Because they attributed recent price increases in their neighborhoods to the Compact Commission's decision to establish the price regulation, they are opposed to its extension.

Another commenter expressed opposition based on his analysis that the regulation was benefiting farmers at the expense of consumers, particularly low income consumers. According to this commenter, the over-order price now in effect could increase consumer cost for milk in the Compact region by as much as $70 million over the next year.[71]

The Compact Commission's response to these commenters flows from its assessment of the actual and potential impact on the retail market described above. As indicated, the Commission determined price regulation would likely have a "positive impact" on retail prices over time, though cognizant of the possibility of short-term increases in milk prices at the retail level, when it adopted the regulation. Establishment of a six month regulation ensured either expiration of the regulation in short order or review of the regulation soon after its adoption to determine whether unexpected anomalies were occurring so as to preclude its extension.[72]

Even accounting for these adverse comments, the Compact Commission determines that no such anomalies are occurring in the marketplace. Rather, the market is in process of responding to the imposition of a flat, combined

[67] De Geus indicated that the data gathered for the Connecticut market, identifying a price increase of 20 cents, includes "Mom and Pop" stores while the Vermont data, identifying a price increase of 15 cents, does not. According to De Geus, this difference is attributable to the difference in data collection. WC.

[68] Cf. 62 FR 29629 citing Hansen, Hahn, and Weimar, "Determinants of the Farm-to-Retail Milk Price Spread", Agriculture Information Bulletin Number 693 (March 1994). See also Kinnucan and Forker, "Asymmetry in Farm-Retail Price Transmission for Major Dairy Products", Amer. J. Ag. Econ., 285–292 (May, 1987).

[69] One commenter who is the general manager of a processing facility supported the Commission's analysis with his assessment that stable wholesale prices should lead to stable retail prices. PH at p 130.

[70] Joyce Campbell, Patricia Mabon, and Florence Knedsen of Massachusetts ACORN, a low income community advocacy group, PH at pp. 14–25; Felicia Fields, President, Boston ACORN, WC.

[71] John Schnittker, Public Voice for Food and Health, PH at p 9. The Commission notes in response to this comment that, despite the apparent initial spike in prices, the Commission does not determine that the apparent impact of the price regulation is some form of a price increase attributable to a direct "pass-through", as apparently inferred by the commenter. As in the previous rulemaking the Commission declines to adopt this approach in view of the lack of explanation, and given that it is directly contrary to the developed literature on this issue which suggests a contrary conclusion. As the Commission determined in its proposed rule, price stabilization eliminates the need for retailers to retain significant margins in order to protect against the uncertainty in wholesale costs that exists when prices are volatile. See 62 FR 23049 (citing Hahn, et al.). Because retailers will not have to engage in this "risk response" pricing strategy to ensure cost recovery, the Commission again disagrees with the commenter's conclusory remarks regarding the impact of price regulation on retail prices.

[72] The WIC reimbursement provisions were established in part to cover such a contingency.

Class I price, and the actual impact of the regulation is yet to be determined. The interplay of the underlying federal Class I pricing regulation and the "over-order" mechanism, combining to establish the flat, combined price, have yet to work through the asymmetric pricing regimen of retail milk prices. Moreover, while prices may have spiked up in response to initial imposition of the price regulation, according to the received data and analysis, they declined the next month and "are expected to fall more over time." [73]

The Compact Commission notes further that the WIC program,[74] along with the School Lunch Program,[75] provides a buffer to assist low income consumers with increases in the retail cost of milk that might occur.[76] In view of the existence of these programs, and given the current market picture presented by the data and analysis as a whole, the Commission determines that the adverse comment does not establish the need for elimination of the price regulation.

Reasonable Rate of Return to the Distributor

With regard to the "price necessary to yield a reasonable rate of return to the distributor," Compact, Section 9(e), the Compact Commission has previously determined that "[t]he focus of this inquiry is the determination of a price that ensures a reasonable rate of return," and, more specifically, "whether processing plants are currently covering costs of production," including the distributors' rate of return on capital. 62 FR 23045.

Working from this framework, the Compact Commission sought and received comment on wholesale costs and prices. The data received persuaded the Compact Commission to conclude that processors are in fact covering their margins, including a return on capital of $0.06 per gallon.[77] The Compact Commission further determined that "minimization of such persistent fluctuations in price can only serve as a benefit to stability of firm participants in the wholesale market." 62 FR 29635.

The Compact Commission hereby reaffirms the resulting determination that the benefits of price stabilization [78] in the wholesale market parallel the benefits of price stabilization at the farm level, namely, allowing processors to engage in long-term economic planning and investment, and thereby improve their economic efficiency and performance. *Id.*

Broadened Inquiry Under Compact Section 9(e)

As indicated in the introduction to this finding section, the Compact Commission determined under the prior rulemaking that the ultimate finding required by Section 12 of the Compact—whether "the public interest will be served by the establishment of minimum milk prices to dairy farmers"—necessitated consideration of a broader range of subjects and issues than those specifically delineated by Section 9(e) of the Compact. Accordingly, the Compact Commission sought comment regarding the potential impact of price regulation on each of the farm, wholesale and retail sub-markets which comprise the overall market for fluid milk. 62 FR 23042. These inquiries were broken down further into the individual components of these respective sub-markets, including some of the components specifically listed in Section 9(e) of the Compact, as discussed above. This broad-ranging inquiry, focusing on all phases of the fluid milk market, allowed the Compact Commission to gather substantial data and make an informed determination that an over-order price regulation would be in the public interest, overall, and with regard to its specific impact on each of the three discrete sub-markets—farm, wholesale and retail. 62 FR 23048–50. For purposes of completeness, the Compact Commission's conclusions with regard to the wholesale and retail submarkets are again expressly presented, along with analysis of relevant comment received as part of this rulemaking process.[79]

Wholesale Sub-Market—The Compact Commission assessed the impact of price regulation on the wholesale market by considering the issue of rate of return to processors, as discussed above, (62 FR 23045), and by assessing whether price regulation would result in market distortion with regard to wholesale price and thereby contravene the public interest. 62 FR 23048. In assessing the concern with market distortion, the Compact Commission carefully reviewed present patterns of supply for the region's wholesale needs. The Compact Commission determined that the wholesale market presently is supplied almost totally in the form of raw, bulk product transported from areas of concentration of dairy farms in the rural part of the region to the fluid processing plants located in close proximity to the region's cities. 62 FR 23045. The Compact Commission also determined that the marginal, remainder of the wholesale market is supplied by finished, packaged milk transported from processing plants located some distance away from the region's cities. *Id.*

With regard to the primary bulk supply component of the wholesale market, the Compact Commission determined that there was unlikely to be market distortion caused by price regulation that could adversely affect the wholesale price. According to the comment received in the previous rulemaking, present patterns of raw product supply between processors and independent farmers or cooperative organizations of farmers are relatively stable and are unlikely to be affected by a regulated price increase in the amount and for the duration established by the price regulation. 62 FR 23048.

The Compact Commission also concluded that price regulation was unlikely to cause market distortion with regard to the secondary packaged product component of the market. The concern here is whether price regulation can be administered uniformly with regard to raw product and, as identified and addressed in the current rule, packaged milk supplies. If a significant portion of the packaged milk supplies is left unregulated, this might distort the market by creating a competitive advantage for such packaged products, encouraging their substitution as a source of wholesale supply. 62 FR 23048. Given that packaged milk as

[73] De Geus and Gillmeister, infra.

[74] The WIC reimbursement provisions remain in effect as part of this extended price regulation.

[75] Pub.L. 79–346 and Pub.L. 89–642; see also: 62 FR 29637 (May 30, 1997).

[76] The Commission takes official notice that the Massachusetts WIC Program guidelines show program eligibility at 185% of the federal poverty level. Under the guidelines, a family of four is eligible at an income of $29,639 per annum or $572 monthly.

[77] The comment received and used for this analysis included a study by R. Aplin, R. Erba, M. Stephenson, "An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants," February 1997, R.B. 97–03, Cornell University, and an extract by the same authors, entitled "Presentation at IDFA Annual Meeting in Dallas, Texas (October 1996). (This extract provides "estimated costs of marketing 2% lowfat milk through supermarkets, New York Metro Area, $ per gallon, 1995). In comment received on the proposed rule, Professor Aplin indicates that the extract was based on identified costs of the northeast plants that were part of the broader, overall study group. The Commission also relied upon a study by the Economic Research Service (ERS) of the United States Department of Agriculture, Food Cost Review/AER–729. The Commission found the Aplin et al. study more representative, given its identified inclusion of a significant percentage of northeast plants. Moreover, the ERS study incorporated data drawn from vertically integrated, or combined, processing/retailing facilities. The Compact region only includes one such operation.

[78] See: footnote 64, supra.

[79] As in the prior rulemaking, the impact on the farm submarket is presented under the inquiry mandated by the farmer/supply finding.

wholesale supply is more expensive than raw product supply, such substitution resulting from market distortion would increase retail prices and be contrary to the public interest.

The Compact Commission concluded that raw product and packaged product supplies could be regulated uniformly and that such uniform regulation will prevent market distortion, including indirect impact on price. (The basis for this conclusion was presented under the third finding analysis of the prior rulemaking. 62 FR 29637)

The comment received in the present rulemaking initially confirms the Compact Commission's assessment that the price regulation would not adversely affect the relatively stable market patterns of the wholesale sub-market. As presented in the next finding analysis, the Commission received and has responded in detail to comment received indicating the need for marginal adjustment in the operation of the price regulation in the wholesale market. Such comment indicating the need only for marginal adjustment confirms that the regulation has not had such an anomalous impact on the marketplace so as to require its elimination. At the same time, the Compact Commission reaffirms the need to continue to monitor comprehensively the regulation's impact on this sub-market, as detailed in the prior rulemaking. The Commission is in process of implementing the tracking mechanism necessary to conduct the required monitoring established by the prior rulemaking.

Retail Sub-Market—With regard to the retail market, the Compact Commission concluded in the prior rulemaking that price regulation was likely overall to have a positive impact on "the purchasing power of the public" within the meaning of Compact Section 9(e), and thereby to be distinctly in the public interest. See 62 FR 23048. (The Commission's underlying conclusion, that stabilizing the milk supply and removing variability in the federally regulated, farm/wholesale, pricing structure would likely combine to have a positive, downward impact on retail prices is explained in further detail at 62 FR 23048–50.) As noted above, the Commission has reaffirmed this conclusion in view of the comment received with regard to retail prices.

In the prior rulemaking, the Compact Commission also made a further determination of the potential, positive impact of price regulation with regard to the broader, consumer-based market. More specifically, the Commission concluded that price regulation will not have a negative impact on government supplemental nutrition programs such as the National School Lunch Program. The Commission made this further determination based on its assessment that the pricing patterns of such programs were premised on essentially the same competitive patterns of the broader, consumer-based market. See 62 FR 23050. Citing a General Accounting Office description of the program, the Commission noted in its proposed rule:

> The National School Lunch Act of 1946 (Pub L. 79–396) and the Child Nutrition Act of 1966 (Pub L. 89–642) authorize USDA to reimburse state and local school authorities—under grant agreements—for some or all of the costs of these programs. Reimbursements are based on either the number of meals served or the number of half pints served. The schools use these funds, as well as state and local funds and moneys collected from students, to purchase food, including milk, for these programs. These purchases are made through either sealed bid or negotiated procurements. USDA's regulations require that these procurements be conducted in a manner that provides for the maximum amount of open and free competition.[80]

The Compact Commission reaffirms this understanding of the expected interplay between the price regulation and the School Lunch Program. Given the critical concern with the potential impact on such supplemental food nutrition programs, and in view of the comment received on this issue, the Commission determines it appropriate to establish a Task Force pursuant to Article VII. D. of the Compact Commission's Bylaws to assess more closely the regulation's actual and potential impact on the School Lunch programs. The Task Force shall report back to the Commission at its regularly scheduled meeting for February, 1998. Based on the Committee's assessment of the impact of the Compact over-order price regulation, it shall make recommendations as to whether the region's School Lunch Programs should receive reimbursement for some or all of any increased costs attributable to the price regulation and, if so, the method for reimbursing the appropriate local authorities.

Price Regulation and the WIC Program

The Compact Commission did determine in the prior rulemaking that pricing and reimbursement patterns for one government supplemental nutrition program, the WIC Program, are not configured according to the same pattern as the broader consumer-based retail market. 62 FR 23050; 29637. Accordingly, the Commission exempted the WIC program from operation of the price regulation. *Id.* at 23050–53; 29637.

Two of the State WIC Program Directors submitted comment in support of extending the provisions in the current rule for reimbursing State WIC Programs for their costs incurred as a result of the Compact over-order price regulation.[81] The current rule includes a formal agreement between the Compact Commission and the six State WIC Programs that governs the terms of the reimbursement program. The Compact Commission herein extends that agreement for the effective period of the rule.

About the WIC Program

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is a unique health and nutrition program serving women and children with—or at risk of developing—nutrition-related health problems. WIC provides access to healthcare, free nutritious food, and nutrition information to help keep low to moderate income pregnant women, infants and children under five healthy and strong. The Program provides a monthly "prescription" for nutritious foods tailored to supplement the individual dietary needs of each participant. Milk and other dairy products play a large and important role in every participant's food package.

The WIC Program is a Federally funded program carried out according to provisions of the Federal Child Nutrition Act. The Program is funded through the Food and Consumer Service of the United States Department of Agriculture (USDA) and administered on the local level by State WIC Programs in the Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont State Departments of Public Health (the States). Additional state funds are also provided in Massachusetts. Participants are issued WIC checks or vouchers at local agencies for WIC authorized foods. The checks or vouchers—which do not have a predetermined value—are redeemed at authorized retail stores at current store prices in accordance with posted prices. Prepayment edits are performed on each check to ensure that specific food purchasing, pricing and payment requirements are met.

Because WIC is not an entitlement program and has a capped program appropriation, any increase in food costs results in fewer women and children being served. It is imperative, therefore, that WIC's funds be held harmless from any adverse impact due to a Regulation. While the Compact Commission has again concluded that price regulation should have a "positive impact" on retail markets, it has also found that the market is presently adjusting to the price regulation with an as-yet indeterminable, overall, actual outcome. In order to ensure that WIC funds are held harmless, it is necessary to extend the reimbursement procedure during the effective period of the Compact over-order price regulation.

Continuing Assessment of Impact

The Compact Commission, in its current rule, provides for continuous monitoring and analysis of Class I fluid milk retail price data in order to accurately assess and evaluate any regulation-related adverse or beneficial impact on costs to consumers and WIC, and to make related adjustments to assure that the public interest is served and consumers and the WIC Program and its participants are protected. The Compact Commission, under this rule, will continue to monitor and analyze information at both the New England Regional and individual State levels—including each State's WIC programs—comprising representative samples of market areas and retail store types, proportion of sales by package size, and degree to which retail price fluctuations differ for package sizes in relation to each other.

WIC Reimbursement System

Given that State WIC Programs have a September 30th fiscal year end, the Compact Commission can not make the Program whole after the fact. WIC must operate in a funding "limbo" between October and January when its State Program grants are announced. Uncertainty regarding the potential effect of price regulation, or reimbursements to States made by the Compact Commission at a later date, would force State WIC managers to lower first quarter participation levels. The State WIC Programs have proposed and the Commission has agreed to a method by which the WIC Program will be held harmless from any impact related to a demonstration of a Compact Over-Order Price Regulation for Class 1 fluid milk. The Commission will reimburse each respective State WIC Program. The amount of reimbursement will be based on a formal agreement to be entered into by the Compact Commission and the six New England State WIC Program Directors, as approved by the Food and Consumer Service of the USDA. Under the agreement, the reimbursement amounts will be based on: (1) The quantities of milk purchased with WIC checks and (2) the amount of any Compact Over-Order Price Regulation.

The Compact Commission has also made provision for continuing monitoring and analysis of retail and wholesale prices for fluid milk. Should there be continuing adverse impacts on consumers, in general, and low income consumers, in particular, the Commission will be able to react.

Impact on Retailers

Finally, the Compact Commission reaffirms its prior determination that price regulation does not and will not likely have an adverse impact on the retailers, themselves. In summary: in similar manner as with its assessment of the wholesale market in the prior rulemaking, the Commission reviewed retail costs and prices to determine if retailers are covering costs, including return on capital, under present market conditions. 62 FR 23045, 23046–48. The Compact Commission concluded that such margins are presently being covered, and that price regulation will not adversely affect the ability of retail outlets to continue to cover their margins. *Id.* at 23048.[82]

Public Interest Finding—Summary Analysis

Based on this analysis under Compact section 9(e) and the broader market-wide analysis, the Compact Commission concludes that continuing the price regulation in the amount of $16.94 for the period January 1, 1998 through termination of the Compact enabling legislation will ensure the "public interest" is served in the manner contemplated by the finding analysis under Compact section 12(a)(2). The Compact Commission concludes the current price regulation has begun to achieve its intended purposes of price stabilization and limited price enhancement for producers without distortion of downstream wholesale and retail markets. While the actual impact on the downstream markets cannot yet be determined comprehensively, the data and comment presented indicate that at worst only marginal adjustments are necessary and that at best the regulation may be serving its intended purpose of having a positive, downward pressure on retail prices. Extension of the regulation in substantially similar form will continue its function as a limited market adjustment which again accounts for its potential impact on all levels of the market, from farm to retail, including the benefits of market stability.

As noted throughout the analysis under this and the previous finding section, the Compact Commission has again considered and accounted for the variety of potential market impacts in fashioning this extension of the price regulation. The Commission remains concerned with its potential, adverse impact on the wholesale market, as well as with regard to unanticipated impacts on consumer prices.

While the Compact Commission has concluded that the regulation has not and is not likely to adversely affect the wholesale market and may well, indeed, have a positive impact on retail prices, the Commission will ensure comprehensive monitoring of these market functions. The Commission has also determinod that it will commence a rulemaking proceeding, pursuant to section 11 of the Compact, no later than July 1, 1998 during which it will make an assessment of, among other issues, the data and analysis received as a result of its tracking analysis.

As a final safeguard against unanticipated, adverse consequences, the Commission has again acted to "hold harmless" the WIC Program by reestablishing the reimbursement provisions for all New England State WIC Programs, despite the Commission's conclusion of the remoteness of there occurring unanticipated, adverse consequences in the retail market. Finally, as a new element of this monitoring procedure adopted under the previous rulemaking, the Commission will establish a Task Force to assess the specific impact of the regulation on the region's School Lunch Programs and to determine whether it is appropriate to establish some form of reimbursement for these programs.

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[80] GAO Report 13–239877 at 2 (October 16, 1992), submitted by Jeffords as Additional Reply Comment, April 9, 1997; See also 62 FR 23050.

The Commission further notes that the purchasing patterns of other institutional buyers such as the military and hospitals, as described in the GAO study similarly mirror the broader, competitive market. The Commission concludes that these institutional buyers will also benefit from the impact of price regulation on the competitive market.

[81] Mary Kelligrew Kaseler, Director of the Massachusetts WIC Program, WC; Jadwiga Goclowski, Division Director/State WIC Director, Department of Health, State of Connecticut, WC.

[82] The comment received and used for the cost analysis relied upon the study by Aplin et al, "An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants", February 1997, R.B. 97–03, Cornell University and the extract by the same authors, entitled "Presentation at IDFA Annual Meeting in Dallas, Texas (October 1996). (This extract provides "estimated costs of marketing 2% lowfat milk through supermarkets, New York Metro Area, $ per gallon, 1995). In comment received on the proposed rule, Professor Aplin indicates that the represented supermarket costs were representative of New England supermarkets, as well. The Commission notes that these studies focus on supermarket costs. Supermarkets represent the primary retail outlet for fluid milk in the marketplace. According to the Aplin study, retail cost, with return is $2.12 per gallon.

C. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Prices, Are Reasonably Designed To Achieve the Purposes of the Order

The third provision of section 12(a) of the Compact requires that the Compact Commission determine whether the non-price provisions of the proposed rule would also be in the public interest, and, based on the record before it, the Commission so finds. The Commission's assessment focuses on two conditions: assurance that the regulation does not create an incentive for dairy farmers to produce additional, surplus supplies of milk, and second, the Commission's regulation is uniform and equitable and does not unduly distort traditional markets and marketing channels. The Compact Commission finds that both conditions are met by the final rule, as amended from the proposed rule.

Based on their individual farm or cooperative experience with production over the period January through August, 1997, several commenters[83] indicated that the price regulation had not created an incentive for dairy farmers to produce additional, surplus supplies of milk. They indicated that production for either their farm or their cooperative was roughly the same in 1997 for the 8 month period as for the same period in 1996.[84] One dairy farmer indicated that in his experience, it is low prices that cause the farmer to produce more milk in order to meet the monthly fixed commitments for farm expenses.[85] Similarly, another commenter indicated that the over-order producer price would likely not be an incentive for increased production because the farmer will have a better cash flow under the regulation and can avoid the extra costs of increasing production with additional cows or other strategies.[86]

Two commenters[87] based their opinion that the regulation will not elicit increased production on an analysis of the interactive effect of the compact over-order price when applied in complement to the Basic Formula Price (BFP) of the federal Milk Market Order #1. Because the current compact over-order price of $16.94 establishes a partial floor price to the producer, the supply and demand in the New England milkshed, the farmer receives appropriate economic signals about the amount of production called for by the market. They independently conclude that this mechanism provides a more stable price for the producer while allowing the natural mechanisms of the marketplace to influence supply and demand.

The joint submission of Renee De Gues and William Gillmeister, both dairy economists for the Vermont and Massachusetts Departments of Agriculture, respectively, indicates that, based on reported data, production levels in the region have not changed dramatically since the Final Rule was implemented on July 1, 1997. Based on the data they submitted, they conclude that "the Compact is not stimulating production in New York and Pennsylvania because from July through September, milk production in those states seems to have matched milk production patterns for the U.S.", as a whole. Receipts for New York and New England, while up over the same period in 1996, were normal when compared to 1994 and 1995. In their joint submission, they report that receipts from New York, Vermont and Connecticut increased by 0.6%, 0.17%, and 3.5%, respectively, from July to August, 1997. Receipts from Maine, Massachusetts, New Hampshire, and Rhode Island fell by 1.6%, 2.1%, 1.4%, and 2.4%, respectively, from July to August, 1997. Moreover, production levels were considerably below the average increase in the national production.[88]

The Compact Commission notes that the Commodity Credit Corporation (CCC) made no purchases of surplus milk in the region during fiscal year 1996 or 1997.[89] The Commission established a monitoring plan in the May 30, 1997 Final Rule that will track regional and national rates of production to determine whether the regional rate of increased production is within 0.25% of the national rate of increased production. If New England production levels do increase within this range, then for each such month, the Commission will estimate the potential cost of CCC surplus purchases of surplus which might occur should the rate of regional increased production exceed the national rate. The Commission will retain a portion of the proceeds of the price regulation sufficient to cover such estimated costs, as necessary. See 62 FR 23054. In this rulemaking, the Commission determines that the tracking procedure and the plan for paying CCC for any surplus purchases are still the most viable and reasonable method for dealing with any increased production in the region.

On the basis of this record, the Compact Commission concludes that neither additional supplies nor surplus production has occurred to date nor does it expect any to occur under an extension of the Compact over-order price regulation. The Commission will continue the tracking procedures established under the current regulation to monitor production, so as to allow appropriate action should an unanticipated change in production patterns occur. 62 FR 23054. Pursuant to section 9(f)[90] of the Compact, the Commission finds that it is not now necessary to take any action to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk. If the monitoring procedures indicate the need for such action, the Commission will take the necessary and feasible action, as appropriate, to reimburse the Commodity Credit Corporation for any purchases of resulting surplus supplies.[91]

One commenter[92] suggested an amendment to the codified regulations that would establish a method for assessing pro rata all pooled producers for a three month period for the purpose of any retroactive payment to the Commodity Credit Corporation for surplus purchases. The Commission's response is that, should payments at the end of the fiscal year to the commodity Credit Corporation be necessary and appropriate, the entire producer pool ought to bear those costs, when incurred. This mechanism provides an added disincentive for over-production

[83] Leon Berthiaume, St. Albans Coop., PH at p. 63 and WC; Sally Beach, IDA, PH at p. 85; Douglas Carlson, dairy farmer, PH at p. 102; David Jaquier, dairy farmer, PH at p. 137; Norma O'Leary, Ct. Farm Bureau, WC; Carl Peterson, dairy farmer, PH at p. 70; Robert Wellington, AgriMark Coop., PH at p. 111 and WC.

[84] Berthiaume indicated in his testimony, PH at p. 59–64 that production for St. Albans Cooperative was the same for January through June, 1997 as it was for the same period in 1996. It increased 1% in July, 1997 and 2.3% in August, 1997, well below the average increase in the 20 largest dairy states which was 5% and 4.4%, respectively.

[85] Peterson, PH, p. 70.

[86] Wellington, WC. In his written comment, he also made the point that farm prices regularly below the costs of production will not themselves generate any long-term additional supplies of milk.

[87] Smith and Wellington. *op. cit.*

[88] Leon Graves, Commissioner, Vt. Dept. of Agriculture, Food and Markets, WC.

[89] Wellington, WC.

[90] When establishing a compact over-order price, the commission shall take such action as necessary and feasible to ensure that the price does not create an incentive for producers to generate additional supplies of milk." Compact. section 9(f).

[91] "Before the end of each fiscal year that a Compact price regulation is in effect, the Northeast Interstate Dairy Compact Commission shall compensate the Commodity Credit Corporation for the cost of any purchases of milk and milk products by the Corporation that result from the projected rate of increase in milk production for the fiscal year within the Compact region in excess of the projected national average rate of the increase in milk production, as determined by the Secretary [of Agriculture]." 7 U.S.C. 7256(6).

[92] Leon Berthiaume, WC.

by the pool producers appropriate under Section 9(e) of the Compact.

The inquiry on the second condition centers on the technical provisions, currently codified in 7 CFR parts 1300, 1301, and 1303–1307. These provisions establish the definitions and procedures for the assessment of price regulation collection from processors and disbursements to producers. The Commission finds, generally, that these provisions continue to ensure uniform and equitable administration of the price regulation. The provisions continue to be patterned closely upon the underlying federal Milk Market Order #1, as they were when adopted on May 30, 1997. 62 FR 29637. They are designed to and have, in fact, worked since July 1, 1997 in complement to the Market Order with the direct, technical assistance of the Market Order #1 Administrator's office.

In response to the Compact Commission's proposal to extend and amend generally the current provisions of the regulation, a number of comments were received at both the public hearing and in later written submissions. To allow later written comment on a number of technical administrative issues, the Compact Regulation Administrator[93] suggested in his testimony at the September 24, 1997 public hearing, that an additional criteria be added to 7 CFR 1301.11(b), relating to qualifying as a producer under the regulation, to include having moved milk into the regulated area for more than half the days during December of 1997. The current rule provides that any dairy farmer who moved milk into New England in December of 1996 for over half of the days on which he or she shipped milk qualified for the over-order producer price. This reflects the traditional parallel provision of the federal Milk Market Order for qualifying for pooling during a specific time period of each year.[94] Those who qualify during this specific period have demonstrated that they are traditionally associated the regional milkshed. The Commission finds it reasonable and consistent to provide a parallel one month qualifying period for December of 1997 added to December of 1996. It, therefore, amends 7 CFR 1301.11(b) to insert "and December 1997" after December, 1996 in the current regulation.

The same commenter also suggested that 7 CFR 1301.11(b) be further amended by adding a provision that would limit the total amount of milk at a pool plant eligible to qualify out of region producers to the total bulk receipts of fluid milk products less the total bulk transfers of fluid milk products (not including bulk transfers of skimmed milk and condensed milk).

The principal criterion for qualifying a producer for the over-order producer price is whether the farmer has committed to supply the Compact area milkshed. Out of area producer milk being shipped into a Compact area pool plant and then transferred out of the plant for distribution outside of the regulated area does not meet that criteria. The commenter noted that, under the current version of this section, milk could be shipped into a pool plant only to qualify the producer for the Compact over-order producer price. The Commission finds that the suggestion deals adequately with this problem and is consistent with the principal criteria for producer qualification of a demonstrated commitment to supply the New England milkshed. There are, however, additional problems associated with this suggested provision.

Another commenter[95] advocated that the current rule not be amended and that the current treatment of plant diversions be left in place, to parallel the treatment under the federal Milk Market Order. He pointed out that plant diversions are part of everyday life in all regions of the country and that these diversions are required by a variety of circumstances. A third commenter[96] pointed out that it would be unfair to penalize the out of area producers and prevent their qualification because business necessity at the plant required that producer's milk be transferred on any particular day. He suggested that "reloading" occurs for a variety of reasons, among which are varying seasonal demand and supply in the milkshed, and that a percentage limit on bulk milk transfers for purposes of qualifying out of region producers could solve the problem while not distorting normal business practice.

A dairy processor from New York[97] identified a somewhat related concern with regard to the current rules for qualified out of region producers whose milk is shipped to a pool plant in the regulated area with sales outside the regulated area in competition with the New York processor. According to the commenter, the New York processing facility must match the over-order producer price paid by the New England-based pool plant to qualified New York producers in order to assure maintenance of raw product supply. According to the commenter, this payment raises the New York processor's costs compared with the New England processing facility's costs.

This comment raises a similar concern to that presented with regard to bulk transfers, in that new milk is being pooled which is not traditionally associated with the pool for the regulated New England area. The Commission responds to this comment by amending the regulation to limit producer qualification in some instances with regard to milk utilized for sales outside the region. All out of region producers historically associated with the milkshed for the region, or those providing supply in December 1996 and 1997, will qualify on that basis. Newly supplying producers, however, will qualify only to the extent that their receiving plant has sales in the regulated region attributable to such new, additional, supply.

In recognition of the problem to which Ross's suggested amendment is addressed, to reflect the need to accommodate reloading as a current business practice for balancing milk supplies to fit consumer needs and available plant capacity, and to correct the problem pointed out by the New York processor, the Compact Commission adopts two new provisions in § 1301.11(b) which will:

(a) restrict a handler's ability to increase its out of region producer supply not traditionally associated with regulated area, by limiting the out of region producer qualification to only 10% of the milk received from those producers but subsequently reloaded and transferred in bulk for disposition out of the region; and will:

(b) provide for minimization or elimination of qualification of out of region producers whose milk is shipped to a pool plant that packages the milk for sale outside of the regulated area, solely for such sales.

To reflect the decisions of the Compact Commission to include these new provisions, 7 CFR 1301.11 (b) is amended as indicated *infra* in "Codification in Code of Federal Regulations".

One commenter[98] suggested that the five month qualifying period be reduced to 3 months to allow more out of region producers to take advantage of the over-order producer price. Another

[93] Carmen L. Ross, Compact Regulation Administrator, PH at pp. 44–55.

[94] Under the federal Milk Market Order #1 regulatory provisions, producers qualify who ship milk for over half of the days in July through August each year.

[95] Eugene Madill, CEO, Dairylea Coop., PH at p. 37.

[96] Wellington, PH at p. 109 and WC.

[97] Gary Dake, Vice-President, Stewart's Processing Corp., Saratoga Springs, NY, WC.

[98] Garry Warren, PH at p.128.

commenter,[99] however, advocated that the qualifying period remain at the five months required by the current provision. The Compact Commission's response to these comments is that the five month period is a reasonable measure of a producer's initial commitment to supply the New England milk pool. The Commission concludes that the current provision with the suggested amendments adopted above ensures equitable and uniform treatment of out of region producers. The Commission, therefore, will continue the current five month requirement in 7 CFR 1301.11(b).

A previous commenter [100] suggested another amendment to clarify the current regulation in 7 CFR 1304.5 dealing with the classification of milk. He suggested deleting the current provision at § 1304.5(a) and adding a new subsection (a) to clarify that fluid milk products which had been pooled at a New England pool plant and shipped to a partially regulated plant will be attributed only to the pool plant. This suggestion ensures that milk already subject to the Compact over-order obligation at the pool plant will not again be subject to the obligation at a partially regulated plant to which it is later shipped.

Although no double billing has occurred under the current provision, this clarification will ensure that it cannot happen. There was no comment opposing this suggestion.

The Compact Commission agrees that the current provision should be clarified to ensure uniform and equitable administration of the regulation. The Commission, therefore, adopts the amendment to delete the current language at 7 CFR 1304.5(a) and to replace it with a new subsection (a) as is indicated *infra* in "Codification in Code of Federal Regulations."

The Commission notes that the current codified provision at § 1305.1 establishing the Compact over-order Class I price does not include the dollar amount adopted by the Commission on May 30, 1997. Because of the need for clarity in the codified regulations, the Compact Commission amends that section to include reference to the new Compact over-order price of $16.94, as indicated *infra* in "Codification in Code of Federal Regulations."

The same commenter suggested that 7 CFR 1306.1 and 1306.2 be amended to establish a parallel exemption from regulation with that of the federal Milk Market Order #1 for any dairy processor who handles less than an average of 300 quarts per day. He points out that these limited amounts of milk should be excluded from the Compact pool as a *de minimus* exemption because of the relatively small amounts of the Compact over-order obligation and consequent producer price distribution. There was no further comment received on this suggestion.

The Compact Commission finds merit in the suggestion as a way to simplify administration of the regulation and to reflect the practice under the federal Milk Market Order system. The Commission, therefore, amends 7 CFR 1306.1 and 1306.2 as is indicated *infra*. "Codification in Code of Federal Regulations."

The same commenter pointed out that, in the notice of final rule,[101] the Compact Commission adopted the requirement of a formal agreement for a reimbursement system between the Commission and the State WIC Program directors, to be approved by the Food and Consumer Service of the USDA, that will ensure reimbursement of any additional costs incurred by those programs because of the over-order price regulation, the requirement was inadvertently omitted from the codification. In the same final rule notice, the Commission had also approved the establishment of a Commission reserve account for reimbursement of anticipated WIC Program costs.

As explained in the prior finding analysis, the Commission has reestablished and extended the WIC reimbursement system.[102] The Commission, therefore, amends 7 CFR 1306.3 to add a new subsection (b).

In addition, the Compact Commission notes that, although it adopted a mechanism for reserving funds to cover any costs to be reimbursed to the Commodity Credit Corporation for surplus purchases in its Proposed and Final Rule,[103] it did not include any provision in the codified regulations. To address that omission, the Commission amends 7 CFR 1306.3 further to add a new subsection (c) and to redesignate the remaining subsections to be (d) through (f), as indicated *infra* in "Codification in Code of Federal Regulations."

The same commenter also suggested changes needed to 7 CFR 1307.1 both to accommodate new references required by the above amendments and to correct the language. There was no additional comment on these suggestions. The Commission adopts these suggestions and amends 7 CFR 1307.1, as indicated *infra* in "Codification in Code of Federal Regulations."

The same commenter suggested changes to 7 CFR 1307.2 to clarify the intent and to delete subsection (c) which is not needed. There were no additional comments on this suggestion. The Compact Commission agrees with the comments and amends 7 CFR 1307.2 by deleting (c) in its entirety and amending (b) (1) and (2), as indicated *infra* in "Codification in Code of Federal Regulations."

This same commenter's last suggestion for changes to the codified provisions of the regulation was to amend 7 CFR 1307.4 to exclude milk at a partially regulated plant that was diverted from a pool plant, where it was already pooled for purposes of the Compact over-order price obligation. There was no additional comment on this suggestion. Because this amendment will ensure that the price obligation not be assessed twice on the same milk, the Commission adopts the suggestion and amends 7 CFR 1307.4(f), as indicated *infra* in "Codification in Code of Federal Regulations."

Another commenter [104] suggested an amendment to 7 CFR 1304.4(a)(ii) to avoid the assessment of the over-order obligation on a cooperative for bulk milk which the cooperative ships to other pool or partially regulated plants. He points out that under the current regulation the cooperative and its membership are financially responsible for the assessment for which the receiving plant is billed by the cooperative and which will ultimately be paid by the receiving plant. He suggests that it is more appropriate that the second processing plant be financially responsible than the farmer cooperative.

The Compact Commission's response is that the over-order price obligation is imposed on this particular cooperative as a processor operating a compact pool plant. It is a traditional technique of milk market regulation to impose the obligation on the pool plant that receives the milk from the producer. It is, therefore, appropriate that the cooperative continue to be responsible for the obligation as the operator of the receiving pool plant.

With these amendments to the current codified provisions of the price regulation, the Commission finds that the major provisions of the order, other than those fixing minimum prices, are reasonably designed to achieve the purposes of the order.

[99] Wellington, WC.
[100] Carmen L. Ross, Id.
[101] 62 FR 29630.
[102] See: Discussion of the WIC Programs, supra.
[103] 62 FR 23054 and 29638.
[104] Leon J. Berthiaume, WC.

Finally, the Compact Commission concludes that the administrative assessment of $0.032 per hundredweight of milk on all route dispositions of class I fluid milk in the territorial region of the six New England states should be extended in order to finance the budgeted costs for administration of the Compact Commission's regulations through the effective period of the rule. The Commission notes that the additional, start-up assessment of approximately $0.013 per hundredweight presently imposed will expire with final payment in December of 1997.

III. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the continuation of minimum prices in the amount of $16.94 (Zone 1) to dairy farmers under Article IV for the period January 1, 1998 through termination of the Compact enabling legislation.

(2) That a level price of $16.94 (Zone 1) will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed price regulation were approved by producers by referendum.[105]

[105] Section 13 of the Compact requires that the Commission conduct a referendum among producers and that, at least, two-thirds of the voting producers approved the regulation. A separate notice in the **Federal Register** certifies the results of the referendum pursuant to the following Referendum Approval Certification Procedure:

The Compact Commission resolves and adopts this procedure for certifying whether the price regulation adopted by this final rule has been duly approved by producer referendum in accordance with Compact Article V, section 12.

_____ is hereby designated as "Referendum Agent" and authorized to administer this procedure.

The designated Referendum Agent shall:

1. Verify all ballots with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots. Verification of ballots shall include those cast individually by block vote. Ballots determined by the Referendum Agent to be invalid shall be marked "disqualified" with a notation of the reason for disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation.

2. Compute and certify the following:

A. The total number of ballots cast.

B. The total number of ballots disqualified.

C. The total number of verified ballots cast in favor of the price.

D. The total number of verified ballots cast in opposition to the price regulation.

E. Whether two-thirds of all verified ballots were cast in the affirmative.

3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2.

4. At the completion of his or her work, seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted, and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

The Executive Director shall publish the certified results of the referendum in the **Federal Register**.

List of Subjects in 7 CFR Parts 1300, 1301, 1303–1307

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Compact Commission amends title 7, chapter XIII, as follows:

PART 1301—DEFINITIONS

1. The authority citation for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256

2. In § 1301.11, paragraph (b) is revised to read as follows:

§ 1301.11 Producer.

* * * * *

(b) A dairy farmer who produces milk outside of the regulated area that is moved to a pool plant, *provided* that on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during December 1996 and December 1997, all of that milk was physically moved to a pool plant in the regulated area. *Or:* to be considered a qualified producer, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the current month and for five (5) months subsequent to July of the preceding calendar year, all of that milk must have moved to a pool plant, provided that the total amount of milk at a pool plant eligible to qualify producers who did not qualify in December 1996 and December 1997 shall not exceed the total bulk receipts of fluid milk products less:

(1) Producer receipts as described in paragraph (a) of this section and producer receipts as described in paragraph (b) of this section who are qualified based on December 1996 and December 1997;

(2) 90% of the total bulk transfers of fluid milk products (not including bulk transfers of skimmed milk and condensed milk) disposed outside of the regulated area; and

(3) 100% of packaged fluid milk products disposed outside of the regulated area.

* * * * *

PART 1304—CLASSIFICATION OF MILK

1. The authority for part 1304 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. In § 1304.5, paragraph (a) is revised to read as follows:

§ 1304.5 Classification of producer milk at a partially regulated plant.

* * * * *

(a) Subtract from the total pounds of fluid milk products in Class I the pounds of fluid milk products in:

(1) Receipts of Class I fluid milk products from pool plants if reported and classified Class I by the pool plant;

(2) Disposition of Class I fluid milk products outside of the regulated area;

(3) Receipts of exempt fluid milk products pursuant to Section 1301.13 (a), (b), and (c) of this Chapter.

* * * * *

PART 1305—CLASS PRICE

1. The authority citation for part 1305 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1305.1 is revised to read as follows:

§ 1305.1 Compact over-order class I price and compact over-order obligation.

The compact over-order Class I price per hundredweight of milk shall be as follows:

(a) The class I price shall be $16.94 per hundredweight.

(b) The compact over-order obligation shall be computed as follows:

(1) The compact Class I price ($16.94);

(2) Deduct Federal Order #1 Zone 1, Class I price;

(3) The remainder shall be the compact over-order obligation.

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority for part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Sections 1306.1, 1306.2, and 1306.3 are revised to read as follows:

§ 1306.1 Handler's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1301.9 (d) of the chapter with respect to milk that was not received at a pool plant, as directed in this section. Any pool plant that does not exceed a daily average of 300 quarts of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1 (a) by the compact over-order obligation.

§ 1306.2 Partially regulated plant operator's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk disposition in the regulated area by the operator of a partially regulated plant as directed in this section. Any partially regulated plant that does not exceed a daily average of 300 quarts of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1 (a) of this chapter by the compact over-order obligation.

§ 1306.3 Computation of basic over-order producer price.

The compact commission shall compute the basic over-order producer price per hundredweight applicable to milk received at plants as follows:

(a) Combine into one total the values computed pursuant to § 1306.1 and § 1306.2 of this chapter for all handlers from whom the compact commission has received at the Compact Commission's office prior to the 9th day after the end of the month the reports for the month prescribed in § 1303.1 and the payments for the preceding month required under § 1307.3 (a) of this chapter.

(b) Subtract 3% of the total value computed pursuant to paragraph (a) above for the purpose of retaining a reserve for WIC pursuant to the Formal Agreement for reimbursement of WIC Program costs entered into between the Commission and the six New England State WIC Program Directors, as approved by the Food and Consumer Service of the United States Department of Agriculture (USDA);

(c) In any month when the average percentage increase in production in the regulated area comes within 0.25 of the average percentage increase in production for the nation, subtract from the total value computed pursuant to paragraph (a) above, for the purpose of retaining a reserve, an amount estimated by the Commission in consultation with the USDA for anticipated costs to reimburse the Commodity Credit Corporation (CCC) at the end of its fiscal year for any surplus milk purchases. Should those funds not be needed because no surplus purchases were made by the CCC at the end of its fiscal year, it is to be disbursed as follows:

(1) Any producer who has received payment from a handler pursuant to § 1307.4 shall become eligible to receive a pro rata disbursement by submitting to the Commission documentation that the producer did not increase production of milk during and after the month on which the regional rate of production increase met or exceeded the national rate of production increase, as compared to the same period in the preceeding year. Such documentation shall be filed with the Commission not later than 45 days after the end of the fiscal year.

(2) The Commission shall calculate the amount of refund to be provided to each eligible producer by taking into account the total amount of retained proceeds, the total production of milk by all producers eligible for refunds, and the total amount of production by each eligible producer.

(d) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 8th day after the end of the month;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1306.2(a); and

(f) Subtract not less than four (4) cents nor more than five (5) cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic over-order producer price for the month.

§ 1307.1 Producer-settlement fund.

(a) The compact commission shall establish and maintain a separate fund known as the *producer-settlement fund*. It shall deposit into the fund all amounts received from handlers under § 1307.3, § 1307.7, and § 1307.8 of this Chapter and the amount subtracted under § 1306.3(f). It shall pay from the fund all amounts due handlers under § 1307.3, § 1307.7, and § 1307.8 and the amount added under § 1306.3(d) subject to their right to offset any amounts due from the handler under these sections and under § 1308.1 of this chapter.

(b) All amounts subtracted under § 1306.3(f), including interest earned thereon, shall remain in the producer-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1306.3(d).

(c) The compact commission shall place all monies subtracted under § 1306.3(b), 1306.3(c), and 1306.3(f) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1307.2 Handlers' producer-settlement fund debits and credits.

On or before the 15th day after the end of the month, the compact commission shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit for each plant and each cooperative association in its capacity as a handler under § 1301.9 (d) of this chapter shall be the value computed pursuant to §§ 1306.1 and 1306.2.

(b) The producer-settlement fund credit for each plant and each cooperative association in its capacity as a handler under § 1301.9 (d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of producer milk that were reported by pool plants pursuant to § 1303.1 and the quantities or route disposition in the marketing area by partially regulated plants for which a value was determined pursuant to § 1306.2(a) by the basic over-order producer price computed under § 1306.3.

(2) For any cooperative association in its capacity as a handler under § 1301.9 (d), multiply the quantities of all producer milk reported pursuant to § 1303.1(c) by the basic over-order producer price computed under § 1306.3.

3. In § 1307.4, paragraph (f) is revised to read as follows:

PART 1307—PAYMENTS FOR MILK

1. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Sections 1307.1 and 1307.2 are revised to read as follows:

§ 1307.4 Payments to producers.

* * * * *

(f) At a partially regulated plant each handler shall make payments, on a pro rata basis, to all producers and dairy farmers for milk (excluding diverted pool producer milk) received from them during the month, the payment received pursuant to § 1307.3 (b).

Daniel Smith,

Executive Director.

[FR Doc. 97–30602 Filed 11–24–97; 8:45 am]

BILLING CODE 1650–01–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Results of Producer Referendum

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of referendum results.

SUMMARY: On October 23, 1997, the Northeast Dairy Compact Commission adopted, by final rule, an extension of the current over-order price regulation through the termination of the Compact enabling legislation,[1] which is published elsewhere in this issue of the **Federal Register**. To become effective, the extension of a price regulation must be approved by at least two-thirds of all producers voting by referendum. A producer referendum was held during the period of October 24 through November 12, 1997. The extension of the Commission's price regulation through termination of the Compact enabling legislation was approved by more than two-thirds of all producers voting in the referendum. This document discusses the referendum on the final rule and gives notice of the results.

ADDRESSES: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

FOR FURTHER INFORMATION CONTACT: Daniel Smith, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941 or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION: The Compact Commission was established under the authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 89–95, as amended, 93–57. Consistent with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR ACT), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Article V, Section 13(a) of the Compact provides that to ascertain whether a price regulation established by the Commission is approved by producers the Commission shall conduct a referendum among producers. Section 13(b) provides further that a price regulation shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period, have been engaged in the production of milk subject to Commission price regulation. Section 13(c) directs the Commission to consider the approval or disapproval of any qualified cooperative association by block vote as the approval or disapproval of the producers who are members or stockholders in the cooperative association. Section 13(c)(4) provides that producers who are members of cooperatives may express their approval or disapproval of the order by ballot, contrary to the position taken by their cooperative, and the Commission shall then remove their vote from the total certified by the Cooperative.

By Final Rule, published in this **Federal Register**, the Commission adopted an extension of the over-order price regulation through termination of the Compact enabling legislation on October 23, 1997. The Final Rule includes specific findings of fact required under Section 12(a)(1)–(4) of the Compact. The following notice provides certification of the finding required under Section 12(a)(4), specifically: "Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13."

The Commission adopted the following resolution for certifying a referendum vote at its October 23, 1997 meeting:

Referendum Approval Certification Procedure

The Compact Commission resolves and adopts this procedure for certifying whether the Price Regulation adopted on October 23 has been duly approved by producer referendum in accordance with Article V, § 12 of the Northeast Interstate Dairy Compact.

The Compact Commission further resolves to designate and authorize a "Referendum Agent" to administer this procedure. The Referendum Agent shall:

1. Verify all ballots in accordance with Commission's requirements with respect to timeliness, Cooperative identification, producer eligibility, appearance of authenticity and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid shall be marked "disqualified" with a notation of the reason for the disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation. Verification of ballots shall include those cast individually and by block vote.

2. Certify the following:

a. The total number of ballots cast.

b. The total number of ballots disqualified.

c. The total number of verified ballots cast in favor of the price.

d. The total number of verified ballots cast in opposition to the price regulation.

e. Whether two-thirds of all verified ballots were cast in the affirmative.

3. Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under Section 2, who shall publish such results in the **Federal Register**.

4. At the completion of his or her work, shall seal all ballots, including the disqualified ballots, and shall submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

The Commission hereby duly appoints Mae Schmidle as the Referendum Agent to act in accordance with the procedures adopted by this Resolution.

The Commission appointed Ms. Mae Schmidle, the Commission's Vice Chair as Referendum Agent. A referendum was held during the period of October 24 through November 12, 1997. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during August of 1997, the representative period determined by the Commission were deemed eligible to vote. The mailing of ballots to eligible producers was completed on October 30, 1997 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 PM on November 12, 1997.

Eleven Cooperative Associations were notified of the procedures necessary to

[1] U.S.C. 7256(3).

block vote by a letter dated October 24, 1997. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, (2) the number of eligible producers for whom they claimed to be voting, and (3) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that Cooperative Association block vote reporting forms had to be returned to the Commission offices by 5:00 PM on November 12, 1997.

Notice

On November 13, 1997 the duly authorized referendum agent verified all Ballots according to procedures and criteria established by the Commission. A total of 4,178 ballots were mailed to eligible producers. All ballots and Block Vote Reporting Forms received by the Commission were opened and counted. A total of 3,560 producer ballots were returned to the Commission office. Ballots and Block Vote Reporting forms were verified or disqualified based on criteria established by the Commission, including timeliness, cooperative identification by cooperative members, producer eligibility, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason. A total of 65 ballots were disqualified by the referendum agent.

The referendum agent then certified the following:

A total of 4,178 ballots were mailed to eligible producers.

A total of 3,560 ballots were returned to the Commission.

A total of 65 ballots were disqualified.

A total of 3,495 ballots were verified.

A total of 3,482 verified ballots were cast in favor of the price regulation.

A total of 13 verified ballots were cast in opposition to the price regulation.

Accordingly, pursuant to the Referendum Approval Certification Procedure resolution adopted by the Northeast Diary Compact Commission on October 23, 1997, I hereby provide notice that 3,482 of 3,495 verified ballots cast or 99.6% of all verified ballots cast were in favor of the price regulation, and that, therefore, greater than two-thirds of all verified were cast in the affirmative.

Daniel Smith,

Executive Director.

[FR Doc. 97–30600 Filed 11–24–97; 8:45 am]

BILLING CODE 1650–01–M

federal register

Tuesday
November 25, 1997

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC38

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations (34 CFR part 668) to revise Subparts B and K and add a new Subpart L. These final regulations improve the Secretary's oversight of institutions participating in programs authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs), by revising the standards of financial responsibility to provide a more accurate and comprehensive measure of an institution's financial condition. The regulations reflect the Secretary's commitment to ensuring institutional accountability and protecting the Federal interest while imposing the least possible burden on participating institutions.

DATES: *Effective dates:* These regulations take effect on July 1, 1998.

Applicability and Compliance Dates: The Secretary will apply the standards of financial responsibility established in these regulations to institutions that submit audited financial statements to the Department on or after July 1, 1998. However, affected parties do not have to comply with the information collection requirements in §§ 668.171(c), 668.172(c)(5), 668.174(b)(2)(i), 668.175(d)(2)(ii), 668.175(f)(2)(iii), and 668.175(g)(2)(i) until the Department publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements.

FOR FURTHER INFORMATION CONTACT: For general information contact Mr. John Kolotos or Mr. Lloyd Horwich, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045, ROB–3, Washington, D.C. 20202, telephone (202) 708–8242. For information regarding accounting and compliance issues, an institution should contact the Department's Institutional Participation and Oversight Service (IPOS) Case Management Team for the state in which it is located:

IPOS Case Management Team Contacts

Boston Team, (617) 223–9338 (covering Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont)

New York City Team, (212) 264–4022 (covering New Jersey, New York, Puerto Rico and the Virgin Islands)

Philadelphia Team, (215) 596–0247 (covering Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia)

Atlanta Team, (404) 562–6315 (covering Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina)

Chicago Team, (312) 886–8787 (covering Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin)

Dallas Team, (214) 880–3044 (covering Arkansas, Louisiana, New Mexico, Oklahoma and Texas)

Kansas City Team (816) 880–4053 (covering Iowa, Kansas, Kentucky, Missouri, Nebraska and Tennessee)

Denver Team, (303) 844–3677 (covering Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming)

San Francisco Team, (415) 437–8276 (covering Arizona, California, Hawaii, Nevada, American Samoa, Guam, Federated States of Micronesia, Palau, Marshall Islands and Northern Marianas)

Seattle Team, (206) 287–1770 (covering Alaska, Idaho, Oregon and Washington).

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern standard time, Monday through Friday.

Individuals with disabilities may obtain a copy of this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting Mr. John Kolotos or Mr. Lloyd Horwich.

SUPPLEMENTARY INFORMATION:

The following is an ordered list of the key topics covered in this preamble:

- Overview of the Standards and Provisions of Financial Responsibility.
- Community Involvement in the Regulatory Process.
- The Secretary's Responsibility for Assessing the Financial Condition of Participating Institutions.
- Need for Revising the Rules.
- The Final Rule.
- Provisions for Public Institutions.
- The Ratio Methodology for Private Non-Profit and Proprietary Institutions.
- Overview of the Methodology.
- Issues Raised in the Notice of Proposed Rulemaking and other Department Publications.
- Substantive Changes to the NPRM.
- Analysis of Comments and Changes.

On September 20, 1996, the Secretary published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) addressing a variety of topics, including a ratio methodology that would be used in part to determine whether an institution is financially responsible (61 FR 49552–49574). The NPRM also included financial responsibility standards for third-party servicers that enter into a contract with a lender or guaranty agency, and provisions for submitting financial statement and compliance audits, adding additional locations, and changes of ownership that result in a change of control (61 FR 49552–49574). On November 29, 1996, the Secretary published final regulations governing submissions of financial statement and compliance audits and other aspects of financial responsibility, but delayed establishing final standards regarding the ratio methodology and other proposed provisions (including changes of ownership and additional locations), pending further comment, study, and review (61 FR 60565–60577).

The Secretary provided an extensive opportunity for public involvement and comment on these final regulations. On December 18, 1996, the Secretary reopened the comment period until February 18, 1997 for the delayed standards and provisions (61 FR 66854). On February 18, 1997, the Secretary extended that comment period until March 24, 1997 (62 FR 7333–7334). On March 20, 1997, the Secretary again extended the comment period until April 14, 1997 (62 FR 13520).

These regulations establish under a new Subpart L the provisions and standards of financial responsibility that an institution must satisfy to begin or continue to participate in the title IV, HEA programs. Furthermore, these regulations amend certain sections of Subparts B and K to harmonize the requirements under those sections with the provisions and standards under Subpart L. As discussed more fully under Parts 4 and 15 of the Analysis of Comments and Changes, these regulations do not establish new standards of financial responsibility for lender or guaranty agency third-party servicers, or new provisions regarding additional locations and changes of ownership.

Overview of the Standards and Provisions of Financial Responsibility

As provided under section 498 of the HEA, the Secretary determines whether an institution is financially responsible based on the extent to which an institution satisfies three statutory components, which are illustrated below.

STATUTORY COMPONENTS OF FINANCIAL RESPONSIBILITY

Financial obligations (provisions for debt payments, refunds, and repayments)	Administration of the title IV, HEA programs (past performance and program compliance provisions)	Financial condition (ratio standards)
HEA sections 498(c)(1)(C)	HEA sections 498(c)(1)(B) and 498(d)	HEA sections 498(c)(1)(A)
The extent to which an institution: (1) Satisfies its obligations to students and to the Secretary, including making refunds to students in a timely manner and repaying program liabilities to the Secretary; and (2) Is current in its debt payments.	The extent to which an institution or the persons or entities that exercise substantial control over the institution administer properly the title IV, HEA programs.	The extent to which an institution has the resources necessary to: (1) Provide and to continue to provide the education and services described in its official publications; and (2) Continue to satisfy its financial obligations.

The current standards and provisions under 34 CFR 668.15 relating to an institution's financial obligations and administration of title IV, HEA programs are detailed in the above chart and carried forward in these regulations, under §§ 668.171 and 668.174, respectively. These regulations focus on establishing a ratio methodology that provides a comprehensive measure of the financial condition of proprietary and private non-profit institutions.

The current regulations employ three independent tests for assessing the financial condition of an institution, and require an institution to satisfy the minimum standard established for each of those separate tests to be considered financially responsible.

In contrast, these regulations employ a ratio methodology under which an institution need only satisfy a single standard—the composite score standard. Unlike the current tests that treat different measures of an institution's financial condition without reference to each other, the ratio methodology takes into account an institution's total financial resources and provides a combined score of the measures of those resources along a common scale (from negative 1.0 to positive 3.0). This new approach is more informative and allows a relative strength in one measure to mitigate a relative weakness in another measure.

Under these regulations, the Secretary considers a proprietary or private non-profit institution to be financially responsible based on its composite score. If an institution achieves a composite score of at least 1.5, it is financially responsible without further oversight. An institution with a composite score in the zone from 1.0 to 1.4 is financially responsible, subject to additional monitoring, and may continue to participate as a financially responsible institution for up to three years.

An institution that does not satisfy either the composite score or zone standards, or that fails to meet its financial obligations or satisfy other standards of financial responsibility, may be allowed to participate in the title IV, HEA programs by qualifying under the provisions of an alternative standard. The alternative standards are described under § 668.175 of these regulations and illustrated in the following table.

ALTERNATIVE STANDARDS

Alternative	Used when:	Provisions
Letter of credit[1] for a new institution	An institution that seeks to participate in the title IV, HEA programs for the first time does not satisfy the composite score standard but satisfies all other applicable standards and provisions.	The institution may begin to participate by submitting a letter of credit for at least 50 percent of the title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation, as provided under § 668.175(b).
Letter of credit for a participating institution	A participating institution does not satisfy one or more of the standards of financial responsibility (including the composite score standard) or the institution's auditor expresses an adverse, qualified, or disclaimed opinion, or the auditor expresses doubt about the continued existence of the institution as a going concern.	The institution may continue to participate as a financially responsible institution by submitting a letter of credit for at least 50 percent of the title IV, HEA program funds the institution received during its last completed fiscal year, as provided under § 668.175(c).
Provisional certification	A participating institution: (1) Does not satisfy the composite score standard or any provision regarding its financial obligations; or (2) Has or had a program compliance problem as provided under § 668.174 but satisfied or resolved that problem.	The institution may participate under a provisional certification by submitting a letter of credit for at least 10 percent of the title IV, HEA program funds the institution received during its last completed fiscal year and meeting other provisions described under § 668.175(f).
Provisional certification for an institution where persons or entities owe liabilities.	The persons or entities that exercise substantial control over the institution owe a liability for a violation of a title IV, HEA program requirement.	The institution may continue to participate under a provisional certification if it satisfies the provisions described under § 668.175(g).

[1] A letter of credit is a financial instrument, typically issued by a commercial bank, whereby the bank guarantees payment to the Secretary for an amount up to the amount of the letter of credit.

A public institution demonstrates that it is financially responsible under these regulations by providing a letter from an official of the State or other government entity confirming the institution's status as a public institution.

Although the Secretary proposed to treat independent hospital institutions slightly differently under the ratio methodology, the Secretary now believes that any differences between these institutions and institutions in the other sectors relate primarily to control. Under these regulations, therefore, an independent hospital institution must satisfy the provisions of the ratio methodology established for a proprietary institution if it is a for-profit entity, or the provisions established for a private non-profit institution if it is a non-profit entity. If an independent hospital institution is a public entity, it must satisfy the requirements established for public institutions.

Community Involvement in the Regulatory Process

The Secretary sought to maximize the postsecondary education community's participation in this regulatory initiative. In developing the initial study on which the NPRM was based, the Department's contractor, KPMG Peat Marwick LLP (KPMG), consulted with a task force representing various sectors of the community. To ensure that the community was given sufficient time to analyze and comment on the proposed rules, the Secretary reopened the original comment period and then extended that comment period twice, so that the total comment period was 207 days. In response, the Secretary received approximately 850 comments during the original and extended comment periods.

Between December 18, 1996 and the publication of these final regulations, the Department took the following actions to supplement the original empirical work on which the NPRM was based, and to solicit questions, suggestions, and other comments regarding the proposed ratio methodology:

- The Department again engaged KPMG to assist the Department in reexamining the proposed ratio methodology, considering public comments and suggestions to change and improve the methodology, and conducting additional empirical studies of financial statements and other sources of information. Much of this additional work was based on suggestions made by the community.
- The Department held meetings with more than 20 representatives of higher education associations and institutions on February 5, 1997 and March 11, 1997, with nine representatives of proprietary institutions on February 27, 1997, and with four representatives of higher education associations and public institutions on April 4, 1997. The Department also conducted a number of other meetings with parties representing individual institutions or groups of institutions.
- For purposes of public consideration and comment, the Department published on the Office of Postsecondary Education's World-Wide Web site, minutes of the meetings with representatives of postsecondary education associations, information regarding possible changes to the proposed ratio methodology, and the results of some of the empirical studies. The Department also made available, for viewing on-line, the KPMG report on which the Department based the proposed ratio methodology.

Many commenters expressed their appreciation to the Secretary for the open, collaborative, and cooperative nature of this rulemaking process and for the extensive opportunities for public and community involvement. The Secretary in turn appreciates the commenters' thoughtful and constructive contributions to this process.

The Secretary's Responsibility for Assessing the Financial Condition of Participating Institutions

The statute and the legislative record show that Congress expects the Secretary to determine whether institutions participating in the title IV, HEA programs are financially sound and administratively capable of providing the education they advertise (Higher Education Amendments of 1992, Report of the Committee on Education and Labor, House of Representatives, One Hundred Second Congress, Second Session, p. 74). Congress authorized the Secretary (at that time, the Commissioner) to establish financial responsibility standards with the passage of the Education Amendments of 1976 (Pub. L. 94–482), and reinforced that authority in subsequent amendments to the HEA. In those amendments, but particularly in the legislative history leading to the 1992 Amendments, Congress made clear that the Secretary should scrutinize closely the financial condition of institutions with regard to their capacity to fulfill their educational and administrative responsibilities, and thus expected the Department to "play a more active role" in the gatekeeping process (i.e., determining whether institutions should begin to participate in the title IV, HEA programs and overseeing participating institutions to determine whether those institutions should continue to participate).

In keeping with the statute and congressional intent, the Secretary establishes in these regulations the standards and provisions that a postsecondary institution must satisfy to demonstrate that it is financially sound enough for students to confidently invest their time and money in programs offered by the institution, and for the Federal government, on behalf of taxpayers, to provide that institution with access to substantial amounts of public funds. The Department is committed to carrying out the Secretary's gatekeeping and oversight responsibilities in a manner that ensures accountability and program integrity but that provides as much flexibility to, and places as little burden on, institutions as possible.

Need for Revising the Rules

The current regulations have enabled the Department to identify and take action against many financially weak problem institutions that drew the attention of Congress. The Secretary nevertheless believes that problems still exist that call for continued close scrutiny, and undertook an extensive process to develop more effective regulations for the following reasons.

First, the Secretary believes that the standards need to be revised to provide a more comprehensive measure of an institution's financial condition. As previously noted, the current standards provide discrete measures of certain aspects of an institution's financial condition. Those aspects are measured by three independent tests—an acid test ratio, a test for operating losses, and a test of tangible net worth. However, because each test provides a measure of financial health without regard to the other tests or to other resources available to an institution, the assessment made under each of these tests does not always reflect the overall financial condition of an institution.

Second, because the current standards do not consider the extent to which an institution satisfies or fails to satisfy the tests, the Department cannot readily make distinctions among (1) institutions that are clearly not financially healthy, (2) institutions that are financially sound enough to participate in the title IV, HEA programs, and (3) institutions whose financial health is questionable. Consequently, a more considered approach is needed to evaluate the relative level of financial health of institutions to more closely tie the Department's gatekeeping and oversight efforts to the corresponding risk to the Federal interest posed by institutions at various levels.

Third, the Secretary believes that the current standards must be improved to properly address the different accounting, financial, and operating characteristics that exist between proprietary and private non-profit institutions.

Finally, based on KPMG's original study and the additional analysis performed during the extended comment period, the Secretary is prepared to carry out a commitment made to representatives of the postsecondary education community in the context of the promulgation of the 1994 financial responsibility regulations, that instead of establishing independent tests, the Department would assess the institutions' financial responsibility based on blended test scores.

The Final Rule

Provisions for Public Institutions

The Secretary initially proposed to apply the ratio methodology to public institutions, but, based on public comment, the Secretary has decided not to use the methodology to determine the financial responsibility of those institutions for two primary reasons. First, these institutions are subject to more public oversight and scrutiny than private non-profit and proprietary institutions. The Secretary believes that it is the responsibility of the State or responsible government entity to make available the resources necessary for those institutions to provide the education and services expected by students who enroll at those institutions and the residents of the State or locality whose funds support the institutions. Second, the legal and financial relationships between public institutions and their respective State or local governments vary widely, impacting in different ways the assets and liabilities reported on those institutions' financial statements. Thus, the ratio methodology would not treat all public institutions equitably.

In view of these and other reasons noted by the commenters (see Analysis of Comments and Changes, Part 4), the Secretary does not establish in these regulations a composite score standard for public institutions. Rather, the Secretary will rely on the statutory alternative that, in lieu of satisfying the general standards of financial responsibility (including the composite score standard), a public institution is financially responsible if its debts and liabilities are backed by the full faith and credit of the State or other government entity. The Secretary will consider that a public institution has that backing if the institution provides a letter from the cognizant State or government entity confirming the institution's status as a public institution. The Secretary takes this approach in implementing the full faith and credit provision under section 498(c)(3)(B) of the HEA to eliminate technical and other problems experienced by public institutions in demonstrating their compliance with this provision under the current regulations.

The Ratio Methodology for Private Non-Profit and Proprietary Institutions

In developing the final regulations, the Secretary sought to address all of the needs for revising the current rules by formulating a ratio methodology, and provisions relating to the methodology, that would be fair, easily understood by institutions, and efficiently administered by the Department.

Based on the additional analysis performed by the Department and KPMG during the extended comment period, and the many helpful comments and suggestions made by the community, the Department establishes by these final regulations a ratio methodology for proprietary and private non-profit institutions that:

(1) Provides a comprehensive measure of financial health (the composite score) by using ratios that take into account all of the resources of an institution and employing an approach under which the financial strength demonstrated in one ratio mitigates a financial weakness in another ratio;

(2) Provides the Department the means to assess the relative health of all institutions along a common scale; and

(3) Takes into account the key differences between these sectors of postsecondary institutions.

In so doing, the ratio methodology enables the Department to use more effectively the case management system implemented by IPOS. Under this system, case teams responsible for particular institutions have access to all of the data available to the Department regarding those institutions, including financial, compliance, and programmatic information. The case teams use this information to identify institutions whose level of financial health, or whose conduct in administering the title IV, HEA programs, or both, indicates that those institutions (1) need technical assistance, (2) must be monitored more closely, or (3) pose a risk to the Federal interest that requires the Department to initiate an adverse action.

Furthermore, in the interest of treating all institutions fairly and equitably, the Department will calculate the ratios under the methodology by using only the information contained in an institution's audited financial statements that are prepared in accordance with generally accepted accounting principles (GAAP) and by removing the effects of questionable accounting treatments.

The Secretary is committed to ensuring a smooth transition and to helping institutions understand the ratio methodology and other provisions established in these regulations by offering technical assistance, both initially and as case teams identify institutions in need of further assistance.

Overview of the Methodology

The methodology is an arithmetic means of combining different but complementary measures (ratios) of fundamental elements of financial health that yields a single measure (the composite score) representing an institution's overall financial health. Under the methodology, the composite score is calculated by:

(1) Determining the value of each ratio;

(2) Calculating a strength factor score for each of the ratios;

(3) Calculating a weighted score by multiplying the strength factor score by its corresponding weighting percentage; and

(4) Adding together the weighted scores to arrive at the composite score.

In the first step of the methodology, the values of the Primary Reserve, Equity, and Net Income ratios are calculated from information contained in an institution's audited financial statement. These ratios together measure the five fundamental elements of financial health: financial viability, liquidity, ability to borrow, capital resources, and profitability. The strength factor scores are calculated using linear algorithms (equations) and those scores reflect along a common scale the degree to which an institution in a particular sector demonstrates strength or weakness in the fundamental elements. The weighting percentages for each of the ratios make it possible to compare institutions across sectors by accounting for the relative importance that the fundamental elements have for institutions in each sector. In the final step of the methodology, the weighted scores are added together. The resulting value, the composite score, represents an overall measure of an institution's financial health.

Each step of calculating the composite score under the ratio methodology is illustrated in Appendices F and G of these regulations and discussed more fully in the following sections.

Step 1: Financial Ratios

The methodology employs three ratios that measure the same elements of financial health but are customized to reflect the accounting differences between the sectors. The values of the ratios are determined from information contained in an institution's audited financial statement and are generically defined as follows:

For proprietary institutions:

$$\text{Primary Reserve ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

For private non-profit institutions:

$$\text{Primary Reserve ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenues}}$$

A detailed description of the components of the numerators and denominators of the ratios is provided under Appendix F of these regulations for proprietary institutions and under Appendix G for private non-profit institutions.

In view of the public comment and the empirical work performed by KPMG, the Secretary selected these ratios because together they take into account the total financial resources of an institution and provide broad measures of the following fundamental elements of financial health:

1. *Financial viability:* The ability of an institution to continue to achieve its operating objectives and fulfill its mission over the long-term;
2. *Profitability:* Whether an institution receives more or less than it spends during its fiscal year;
3. *Liquidity:* The ability of an institution to satisfy its short-term obligations with existing assets;
4. *Ability to borrow:* The ability of an institution to assume additional debt; and
5. *Capital resources:* An institution's financial and physical capital base that supports its operations.

In identifying these fundamental elements, the Secretary relied on KPMG's extensive experience in analyzing the financial condition of postsecondary institutions and the work of the community task force assembled to assist the Department and KPMG in developing the ratio methodology.

The *Primary Reserve ratio* provides a measure of an institution's expendable or liquid resource base in relation to its overall operating size. It is, in effect, a measure of the institution's margin against adversity. The Primary Reserve ratio measures whether an institution has financial resources sufficient to support its mission—that is, whether the institution has (1) sufficient financial reserves to meet current and future operating commitments, and (2) sufficient flexibility in those reserves to meet changes in its programs, educational activities, and spending patterns. Thus, the Primary Reserve ratio provides a measure of two of the fundamental elements of financial health—financial viability and liquidity.

The *Equity ratio* provides a measure of the amount of total resources that are financed by owners' investments, contributions or accumulated earnings, depending on the type of institution, or stated another way, the amount of an institution's assets that are subject to claims of third parties. Thus, the ratio captures an institution's overall capitalization structure, and by inference its ability to borrow. With respect to the fundamental elements of financial health, the Equity ratio measures capital resources, ability to borrow, and financial viability.

The *Net Income ratio* provides a direct measure of an institution's profitability or ability to operate within its means and is one of the primary indicators of the underlying causes of a change in an institution's financial condition.

A more thorough description of the ratios is provided under part 4 of the Analysis of Comments and Changes.

Step 2: Strength Factor Scores

The strength factor score reflects the degree to which an institution demonstrates strength or weakness in the fundamental elements as measured by the ratios. That strength or weakness is assigned a point value of not less than negative 1.0 nor more than positive 3.0, where a negative 1.0 indicates a relative weakness in the fundamental elements and a positive 3.0 indicates relative strength in those elements. The point values are assigned by a linear algorithm (equation) developed for each ratio.

For example, the linear algorithm for calculating the strength factor score for the Equity ratio of a proprietary institution is "6 X Equity ratio result." A proprietary institution with an Equity ratio equal to −0.167 would have a strength factor score of negative 1.0 (6 X −0.167=−1.002).

The linear algorithms developed for each ratio are contained in Appendix F for proprietary institutions and Appendix G for private non-profit institutions. The algorithms are explained in greater detail under Part 6 of the Analysis of Comments and Changes.

In developing the algorithms, the Department, having consulted with KPMG, determined the value of each ratio at three critical points along the scoring scale:

(1) The point at which an institution begins to demonstrate a minimal level of strength;

(2) The point at which an institution demonstrates no strength; and

(3) The point at which an institution demonstrates relative strength.

The algorithms were then constructed to yield, at these relative levels of financial health, strength factor scores of 1.0, zero, and 3.0, respectively. For example, as calculated under the algorithms, a strength factor score of 1.0 indicates that an institution has a minimal level of expendable reserves (Primary Reserve ratio), is just beginning to demonstrate equity (its assets are greater than its liabilities, but not by much) (Equity ratio), and broke even (Net Income ratio). A strength factor score of zero indicates that an institution has no expendable reserves or equity, and incurred a small loss. On the upper end of the scale, a strength factor score of 3.0 indicates that an institution has a healthy level of expendable reserves and equity (its assets are substantially greater than its liabilities) and generated operating surpluses that added to its overall wealth.

The Secretary considered carefully the comments made by the community regarding the proposed scoring scale and the impact of the proposed methodology on an institution's ability to satisfy its mission objectives. In view of these comments and the empirical work performed by KPMG during the extended comment period, the Secretary revised the scoring scale to make greater distinctions among institutions on the lower end of the scale and to consider more fairly the actual financial health of institutions as measured by the methodology. Since the strength factor scores reflect the degree to which an institution demonstrates strength or weakness in the fundamental elements as measured by the ratios, these scores enable the Department to assess the extent to which an institution has the financial resources to:

(1) Replace existing technology with newer technology;

(2) Replace physical capital that wears out over time;

(3) Recruit, retain, and re-train faculty and staff (human capital); and

(4) Develop new programs.

A more thorough discussion of the revisions to the scoring process and strength factor scores is provided under Part 6 of the Analysis of Comments and Changes.

Step 3: Weighting Percentages

The weighting percentages for each of the ratios make it possible to compare institutions across sectors by accounting for the relative importance that the fundamental elements have for institutions in each sector. For example, expendable resources (as measured by the Primary Reserve ratio) are more important to private non-profit institutions than to proprietary institutions—proprietary institutions generally have greater access to capital markets, and owners, unlike trustees, may invest cash as needed to support operations, or may increase expendable resources by leaving earnings in the institution. On the other hand, non-profit institutions are generally dependent on contributions from donors as their primary source of additional capital.

In this step of the methodology, the strength factor score is multiplied by a weighting percentage. For example, the weighting percentage for the Primary Reserve strength factor score of a proprietary institution is 30 percent. To determine the weighted score for a proprietary institution with a Primary Reserve strength factor score of 1.2, the institution would multiply 1.2 by 30 percent, for a weighted score of 0.36 (1.2 × 30 percent = 0.36).

The regulations revise the proposed weighting percentages to account for the effect of replacing the proposed Viability ratio with the Equity ratio and to reflect more accurately the importance of each ratio. These revisions, and the rationale for establishing the weighting percentages, are discussed more fully under Part 7 of the Analysis of Comments and Changes.

Step 4: Composite Score

In the final step of the methodology the weighted scores are added together to arrive at the composite score. Because the weighted scores reflect the strengths and weaknesses represented by the ratios and take into account the importance of those strengths and weaknesses, a strength in the weighted score of one ratio may compensate for a weakness in the weighted score of another ratio. Thus, the composite score reflects the overall financial health of an institution and provides a cardinal ranking of all institutions along a common scale from negative 1.0 to positive 3.0.

A sample calculation of a composite score is illustrated in the following chart.

CALCULATING A PROPRIETARY INSTITUTION'S COMPOSITE SCORE

Step 1 Calculate the ratio results	Step 2 Calculate strength factor score by use of the appropriate algorithm	Step 3 Calculate weighted score (multiply strength factor score by weighting percentage)	Step 4[1]
Primary reserve ratio = .06	.06 × 20 = 1.20	1.20 × 30% = 0.36000	
Equity ratio = .27	.27 × 6 = 1.620	1.620 × 40% = 0.64800	
Net income ratio = .029	(.029 × 33.3) + 1 = 1.9657	1.9657 × 30% = 0.58971	

[1] Step 4: Add the weighted scores (=1.59771) and round the total of the weighted scores to one digit after the decimal point to arrive at the composite score = 1.6.

While institutions may achieve the same composite score in different ways (by having different ratio results), institutions with the same scores are similarly situated with respect to the resources that they can bring to bear to satisfy their obligations to students and to the Secretary.

The Regulatory Standard of Financial Responsibility

As noted previously, an institution must satisfy the standards and provisions under each component of financial responsibility. With respect to its financial condition, an institution must achieve a composite score of at least 1.5 (the composite score standard).

In determining the minimum composite score that an institution

would need to achieve to demonstrate that it is financially responsible, the Department, having consulted with KPMG, formulated the algorithms to establish the point along the scoring scale below which an institution is clearly not financially healthy, i.e., a composite score of 1.0. From that point, the Secretary determined the level of financial health that indicates that an institution has the resources necessary not only to continue operations, but to fund to some extent its mission objectives.

An institution with a composite score of 1.0 should be able to continue operations but does not have the financial resources to meet its operating needs without difficulty, or the financial reserves necessary to deal with adverse economic events without having to rely on additional sources of capital. Moreover, because it has very limited resources, the institution will have difficulty funding its technology, capital replacement, and program needs. Below this level, an institution will have even more difficulties, if not serious difficulties, in meeting its operating needs without additional revenue or support, and in funding any of its technology, capital replacement, human capital, or program needs.

A composite score of 1.5 generally characterizes an institution that has some margin against adversity, is funding its historical capital replacement costs, and has the resources to provide funding for some investment in human and physical capital. However, the institution has no excess funds to support new program initiatives or major infrastructure upgrades.

The composite score reflects the relative financial health of institutions along the scoring scale from negative 1.0 to positive 3.0. Stated another way, any given composite score along this scale reflects the degree of uncertainty that an institution will be able to continue operations and meet its obligations to students and to the Secretary; the uncertainty that an institution will be able to continue operations and meet its obligations increases as its composite score decreases. Thus, if the Secretary's sole aim for these regulations had been to accept the lowest level of uncertainty, only institutions achieving the highest composite score would be considered financially responsible. The Secretary notes that a significant number of institutions in the samples examined by the Department and KPMG attained composite scores of 3.0 (44 percent of the institutions in the private non-profit sample, and 13 percent of the institutions in the proprietary sample). However, the Secretary believes that a composite score of 1.5 reflects a level of financial health that is in keeping with the statutory requirements and the Secretary's goals in determining that institutions are financially responsible. This level balances the need to minimize uncertainty with the need to minimize regulatory burdens on institutions that are likely to remain in business, provide educational services at a satisfactory level, and administer properly the title IV, HEA programs.

Institutions With Composite Scores in the Zone

As noted previously, provided that an institution satisfies the standards relating to its debt payments and its administration of the title IV, HEA programs, an institution demonstrates that it is financially responsible by achieving a composite score of at least 1.5, or by achieving a composite score in the zone from 1.0 to 1.4 and meeting certain provisions.

The ratio methodology is designed to identify the point along the scoring scale where an institution is financially sound enough (a composite score of at least 1.5) to continue to participate in the title IV, HEA programs without any additional monitoring arising from a review of its financial condition, and the point below which (a composite score of less than 1.0) there is considerable uncertainty regarding an institution's ability to continue operations and meet its obligations to students and to the Secretary. For institutions scoring below 1.0, additional monitoring and surety are required immediately to protect the Federal interest.

The Secretary considers institutions with composite scores in the zone between these two points (i.e., a composite score of 1.0 to 1.4) to be financially weak but viable, and therefore allows these institutions up to three consecutive years to improve their financial condition without requiring surety. The provisions for institutions scoring in the zone are contained in § 668.175(d) of these regulations under the zone alternative.

Under those provisions, an institution qualifies initially as a financially responsible institution by achieving a composite score between 1.0 and 1.4, and continues to qualify by achieving a composite score of at least a 1.0 in each of its two subsequent fiscal years. If an institution does not achieve at least a 1.0 in each of its subsequent two fiscal years or does not sufficiently improve its financial condition so that it satisfies the 1.5 composite score standard by the end of the three-year period, the institution may continue to participate in the title IV, HEA programs by qualifying under another alternative.

Institutions scoring in the zone should generally be able to continue operations in the short-term, absent any adverse economic events. However, even though the resources of institutions scoring in the zone are notably greater than the resources of institutions scoring below 1.0, those resources provide only a limited margin against adversity. Moreover, because zone institutions have notably less resources than institutions scoring above the zone, their ability to fund necessary mission objectives is similarly limited. In view of the limited resources of zone institutions, and the uncertainty regarding the ability of those institutions to continue operations and satisfy their obligations to students and to the Secretary in times of fiscal distress, the Secretary believes it is necessary to monitor more closely the operations of zone institutions, including their administration of title IV, HEA program funds.

Accordingly, the regulations require an institution in the zone to provide timely information regarding certain accrediting agency actions that may adversely effect the institution's ability to satisfy its obligations to students and to the Secretary, and certain financial events that may cause or lead to a deterioration of the institution's financial condition. In addition, the Secretary may require the institution to submit its compliance and financial statement audits soon after the end of its fiscal year.

With regard to the administration of title IV, HEA program funds, the Secretary provides those funds to a zone institution, or to an institution with a composite score of less than 1.0, under the reimbursement payment method or under a new payment method, cash monitoring. The Secretary establishes as part of these regulations the cash monitoring payment method in view of the public comment that the reimbursement payment method is burdensome or that it may be inappropriate for some institutions. Under either the reimbursement or cash monitoring payment method, to help ensure that title IV, HEA program funds are used for their intended purposes, an institution must first make disbursements to eligible students and parents before it requests or receives funds for those disbursements from the Secretary. However, unlike reimbursement, where an institution must provide specific and detailed documentation for each student to whom it made a disbursement, before the Department provides title IV, HEA programs funds to the institution, the Department provides funds to an institution under the cash monitoring payment in one of two less burdensome ways. The Department either requires an institution to make disbursements to eligible students or parents before drawing down title IV, HEA program funds for the amount of those disbursements, or requires the institution to submit some documentation identifying the eligible students and parents to whom a disbursement was made before the Secretary provides funds to the institution for those disbursements. Although the Secretary anticipates that the documentation requirements under cash monitoring will be minimal for most institutions, the Case Teams have the flexibility under these regulations to tailor the documentation requirements on a case-by-case basis. In addition, the Secretary expects that institutions with composite scores of less than 1.0 will continue to receive funds under the reimbursement payment method if those institutions are provisionally certified (in rare instances, however, the Secretary may provide funds under the cash monitoring payment method to an institution based in part on its compliance history and the amount of the letter of credit submitted to the Department).

The Secretary notes that the future implementation of the just-in-time payment method—which the Secretary intends to implement as soon as possible—may reduce or eliminate the use of the cash monitoring payment method. Any changes to the cash monitoring payment method arising from the implementation of the just-in-time payment method will be addressed in a future proposed regulation, and the Secretary will invite public comment on those changes. (For more information on Cash Monitoring, see the discussion under part 9 of the Analysis of Comments and Changes).

In developing these provisions, the Secretary intended to achieve three objectives. First, the Secretary wished to provide a reasonable amount of time for institutions to improve their financial condition without increasing the risks to the Federal interest. Second, the Secretary did not wish to interfere unnecessarily in the operations of institutions seeking to improve their financial condition. Third, the Secretary wished to provide as much flexibility as possible to the Department's case teams in determining the appropriate level of monitoring and oversight required of institutions in the zone.

Alternative Ways of Demonstrating Financial Responsibility

Section 498(c)(3) of the HEA provides alternatives under which the Secretary must consider an institution to be financially responsible if it fails to satisfy one or more of the components of financial responsibility. These alternatives are described under § 668.175 of the regulations. This section also contains alternatives under which the Secretary will permit an institution that does not demonstrate that it is financially responsible under the statutory provisions to continue to participate in the title IV, HEA programs.

An institution that does not achieve a composite score of 1.5, or qualify under the zone alternative, may demonstrate that it is financially responsible by submitting to the Secretary a letter of credit for at least 50 percent of the title IV, HEA program funds the institution received in its last fiscal year. If the institution's composite score is less than 1.0, it may continue to participate as a financially responsible institution by submitting the 50 percent letter of credit, or the institution may submit a smaller letter of credit (at least 10 percent of the amount of its prior year title IV, HEA program funds) and participate under a provisional certification.

As noted previously, the ratio methodology is designed to consider all of an institution's resources. In particular, the Primary Reserve and Equity ratios together reflect all of the resources accumulated over time by an institution that are available to the institution to support its current and future operations. For this and other reasons discussed under Part 7 of the Analysis of Comments and Changes, these two ratios account for 70 percent of the composite score for proprietary institutions and 80 percent for non-profit institutions.

Institutions that do not satisfy the composite score standard that would otherwise participate under the zone alternative or be required to provide a letter of credit may find that it is less costly to take the steps necessary to improve their financial condition. Based on an analysis of the data compiled by KPMG, the Secretary notes that a number of institutions scoring below the zone (i.e., have composite scores of less than 1.0) may qualify under the zone alternative by making relatively small capital infusions or increasing modestly their unrestricted net assets. For some of these institutions, the amount of the cash infusion or increase in net assets that would be necessary to achieve a composite score of 1.0 is less than five percent of total revenue because that infusion or increase is reflected positively in both the Primary Reserve and Equity ratios. Alternatively, institutions may choose to retain more earnings. In either case, the cost to many institutions of improving their financial condition is less, sometimes far less, than the cost of securing a letter of credit.

Institutions that qualify under the zone alternative may find that by taking similar actions they can improve sufficiently their financial condition to achieve a composite score of 1.5. A zone institution that achieves a composite score of 1.5 at the end of any year in the zone or by the end of the three-year period, avoids the costs that it would otherwise incur in securing a letter of credit under the available alternatives.

More importantly, the resources that would otherwise be used, by a zone institution or an institution scoring below the zone, to secure the letter of credit would now be available to the institution to support its mission objectives. The Secretary anticipates that financially weak institutions will move into and out of the zone as those institutions demonstrate a commitment to improve their financial health. Furthermore, the Secretary expects that institutions will seek to improve their financial health in the manner that most benefits students.

Collective Guarantees

Several commenters suggested that the Secretary revise the final regulations to include an alternative under which a group of institutions could (under some type of insurance-pooling arrangement) collectively provide a letter of credit, or other financial instrument, that would serve to cover the potential liabilities of any institution in the group. The merits of this alternative are that all of the institutions in the group could continue to participate in the title IV, HEA programs as financially responsible institutions at a lower cost than if any one of those institutions posted a letter of credit on its own. In the meetings held during the extended comment period, some participants noted that the potential interest in such an alternative would depend on the nature of the final regulations.

Although the Secretary did not revise the regulations to include this suggested alternative (primarily because the commenters and meeting participants did not provide any details regarding insurance-pooling arrangements or alternative financial instruments, and because the Secretary is uncertain about the continued community interest in

this alternative), the Secretary will consider collective guarantee or insurance-pooling requests on a case-by-case basis.

Issues Raised in the Notice of Proposed Rulemaking and Other Department Publications

The September 20, 1996 NPRM included a discussion of the major issues surrounding the proposed regulations (as well as a summary of the August 1996 report by KPMG) that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM (61 FR 49552–49563) on which the discussion of those issues can be found:

- The scope and purpose statement of the new subpart L (p. 49556).
- A proposal to modify the precipitous closure alternative to demonstrating financial responsibility, and a clarification of the types of alternatives to demonstrating financial responsibility available to new institutions (pp. 49557–49558).
- Financial responsibility standards and other requirements for institutions undergoing a change of ownership (p. 49558).
- Past performance standards (p. 49559).
- An outline of additional requirements and administrative actions, including requirements for institutions that are provisionally certified, and an outline of administrative actions taken when an institution fails to demonstrate financial responsibility (p. 49559).
- The contents of the proposed Appendix F (p. 49559).

The following list summarizes the areas of discussion that were posted on the Department's World-Wide Web site. This site is located at (http://www.ed.gov/offices/OPE/PPI/finanrep.html). This web site will remain active at least until the regulations are fully effective.

- The possibility of using in the ratio analysis an Equity ratio either as an additional ratio, or as a substitute for the Viability ratio; and a discussion of the components of, and possible strength factor scores for, that ratio.
- Possible adjustments to the threshold factors to take into account new data of the effects of Financial Accounting Standards Board (FASB) Statements 116 and 117 on private non-profit institutions, and to take into account additional data on proprietary institutions.
- Possible modifications to the weighting percentages of the ratios, including the weighting for the proposed Equity ratio.
- Possible modifications to the calculation of composite scores from the ratio analysis to eliminate "cliff effects," including the possible use of a linear algorithm or the addition of more strength factor categories to linearize the composite scores.
- Possible modifications to the scoring scale, including truncating the upper end of the scale to eliminate unnecessary differentiation of institutions that attain high composite scores.
- Community suggestions regarding the treatment of goodwill in the calculation of the ratios.
- Community suggestions for a secondary tier of analysis, and suggested changes to the alternative means of demonstrating financial responsibility for those institutions that fail the ratio test.
- Discussions of the utility of using a cash flow analysis.
- Discussions of the treatment of institutional grants and other fully-funded operations in the calculation of the ratios.
- Discussions of donor income with regard to determining the financial responsibility of non-profit institutions, and in particular of institutions that have continued for many years on tight budgets with a minimal financial cushion.
- The treatment of debt in the proposed ratio methodology, including concerns that the proposed ratio methodology could penalize institutions for taking on necessary amounts of debt to expand or to invest in infrastructure, and suggestions for the evaluation of institutions that remain debt-free.
- Community suggestions for altering the proposed standards for changes of ownership.
- Discussions of the utility and practicality of using a trend analysis rather than a snapshot approach, and community suggestions that financial responsibility need not be determined annually, at least for stronger institutions.
- Community suggestions for revising the "full faith and credit" alternative for public institutions.

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations.

- The proposed ratio standards for public institutions have been eliminated in favor of a revised approach in implementing the statutory alternative that an institution is financially responsible if it is backed by the full faith and credit of a State or equivalent government entity.
- The proposed Viability ratio has been replaced by the Equity ratio.
- The proposed scoring scale has been modified to range from negative 1.0 to positive 3.0, rather than from 1.0 to 5.0. The low end of the range, below 1.0, indicates the poorest financial condition. At the high end, a score of 3.0 indicates financial health.
- The proposed strength factor tables have been replaced by linear algorithms.
- The proposed ratio results necessary to earn points along the scoring scale have been lowered to reflect a time frame of 12-to-18 months rather than 3-to-4 years.
- As a result of revising the scoring scale and the strength factor scores, and the change in focus from 3-to-4 years to 12-to-18 months, the minimum composite score for establishing financial responsibility has been changed from the proposed standard of 1.75 (on a scale of 1.0 to 5.0) to 1.5 (on a scale of negative 1.0 to positive 3.0).
- The proposed precipitous closure alternative has been modified and implemented in these regulations as the zone alternative. Under the zone alternative, an institution whose composite score is less than 1.5 but equal to at least 1.0 may participate in title IV, HEA programs as a financially responsible institution for up to three consecutive years.
- As part of the modifications to the proposed precipitous closure alternative, the provision requiring owners or persons exercising substantial control over an institution to provide personal financial guarantees is eliminated. Instead, an institution whose composite score is less than 1.5 is required to provide information regarding certain oversight and financial events, and the Department provides title IV, HEA program funds to that institution under the reimbursement payment method or under a new, less burdensome payment method, Cash Monitoring (discussed above and under part 9 of the Analysis of Comments and Changes).
- The proposal to apply the ratio methodology to third-party servicers entering into a contact with lenders and guaranty agencies has been withdrawn. The financial standards currently under § 668.15 continue to apply to those entities.
- The proposed revisions to the procedures relating to changes of ownership have been withheld pending further review and comment.

Executive Order 12866

These final regulations have been reviewed as significant in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the heading Final Regulatory Flexibility Analysis (FRFA), and in the information previously stated under Supplementary Information and in the following Analysis of Comments and Changes.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the NPRM, approximately 850 parties submitted comments. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

The Department received comments on these regulations from September 20, 1996 through April 14, 1997. Although the Department received and considered comments on all of the topics included in the NPRM, the comments discussed here are primarily those which address the changes to the NPRM made by these final regulations.

Major issues are discussed under the section of the regulations to which they pertain. Comments concerning the new Subpart L are grouped by topic or issue. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed. An analysis of the comments received regarding the Initial Regulatory Flexibility Analysis (IRFA) can be found elsewhere in this preamble under the heading Final Regulatory Flexibility Analysis (FRFA).

Section 668.23—Compliance Audits and Audited Financial Statements

Comments: Several commenters noted that the requirements under § 668.23(f)(3) (previously codified under § 668.24), are not always possible to meet. Under this section, an institution's or servicer's response to the Secretary regarding notification of questioned expenditures must be based on an attestation engagement performed by the institution's or servicer's auditor. The commenters maintained that an attestation engagement is proper only when the subject of the attestation is capable of being evaluated based on reasonable, objective criteria, and that some responses to notifications of questioned expenditures may be based on grounds that could not be so evaluated, i.e., the contention that an auditor misinterpreted or misapplied a regulatory requirement when the auditor questioned the institution's or servicer's compliance or expenditure.

Discussion: The Secretary agrees that there are cases in which the institution's response to an audit does not have to be based on an attestation engagement. This provision was intended to inform institutions that new information or documentation that was not available during the original audit should be accompanied by the auditor's attestation report, when that report is submitted to the Secretary. Without the auditor's report, the resolution of the audit may be delayed or the data may not be considered reliable. However, the Secretary agrees that the necessity for the attestation engagement is determined by the nature of the response being made, and may not be required in all cases.

The Secretary also has determined that the procedures described in § 668.23(f)(1)–(3) are redundant with requirements under OMB Circulars A–128 and A–133 and the Office of Inspector General Audit Guide, and that redundancy may cause confusion for some institutions. The OMB Circulars and the Audit Guide each contain requirements that a Corrective Action Plan, which includes the institution's responses to the audit findings and questioned costs, be submitted with the audit. If the institution disagrees with the findings or believes corrective action is not needed, it provides the rationale for that belief in the Corrective Action Plan.

Normally, an institution submits information in its Corrective Action Plan, in response to a specific request from the Secretary, or as part of an appeal under 34 CFR 668 subpart H. The Secretary establishes whether an attestation report is required as part of the Secretary's request for information; the Hearing Official evaluates the reliability of information submitted with an appeal. To avoid duplication and unnecessary audit work and because few institutions submit additional data as described in paragraph (f), the Secretary removes this paragraph.

Changes: The Secretary removes paragraph (f) under § 668.23.

Subpart L—Financial Responsibility

Part 1. General Comments Regarding the Proposed Ratio Methodology

Comments: Many participants involved in the discussions conducted by the Secretary during the extended comment period expressed the view that the manner in which those discussions were conducted demonstrated the Department's commitment to public and community involvement in the rulemaking process and should serve as a model for future rulemaking.

Several commenters maintained that the Secretary cannot change the current standards of financial responsibility without first convening regional meetings to obtain public involvement in the development of proposed regulations as provided under the negotiated rulemaking process described in section 492 of the HEA. One commenter opined that absent a negotiated rulemaking process the Secretary could not promulgate regulations that would have legal force and effect.

Several commenters argued that the proposed ratio methodology is contrary to statutory provisions under section 498 of the HEA because the proposed ratios do not include the type of ratios specified by the HEA.

Other commenters maintained that any attempt by the Secretary to promulgate financial responsibility standards was duplicative, and that for reasons of efficiency and regulatory relief the Secretary should rely upon standards used by financial institutions and accrediting agencies.

Discussion: The Secretary appreciates the participants' remarks and thanks those persons for their valuable input regarding the direction and development of these rules. The Secretary disagrees that negotiated rulemaking is required under the HEA to implement these regulations. In accordance with section 492 of the HEA, the Secretary conducted regional meetings to obtain public involvement in the preparation of draft regulations for parts B, G and H of the HEA as amended by the Higher Education Amendments of 1992. As required under section 492, those draft regulations were then used in a negotiated rulemaking process that was subject to specific time limits connected with the enactment of the 1992

Amendments. The negotiated rulemaking requirement was therefore anchored at one end by the statutorily required regional meetings that followed the enactment of the 1992 Amendments, and at the other end by fixed time limits for the final regulations created by that process. Subsequent regulatory changes to these sections cannot be tied to those requirements for negotiated rulemaking because the regional meetings and statutory timeframes for those regulations have already passed. The HEA does not restrict the Secretary's authority to make additional regulatory changes in this area, and changes to the regulations may therefore be made without using negotiated rulemaking.

Even though negotiated rulemaking was not required for these regulations, the Secretary believes that the opportunities afforded to the higher education community during the extended comment period to provide input regarding the proposed regulations are consistent with the spirit of cooperation that underlies the negotiated rulemaking process. In the numerous meetings held during the extended comment period with representatives from institutions, higher education associations, and other interested parties, the meeting participants identified many areas in the proposed regulations that the Secretary has since modified and improved to more accurately measure the relative financial health of institutions.

The Secretary disagrees that section 498(c)(2) of the HEA requires the Secretary to utilize particular ratios in determining financial responsibility. That section of the HEA merely provides examples of ratios that the Secretary may use in determining whether an institution is financially responsible, e.g., the statutory reference to an "asset to liabilities" ratio is a generic rather than a specific reference or requirement. Moreover, the Secretary believes that the ratio methodology established by these regulations not only incorporates the same aspects of financial health as the ratios illustrated in the HEA, but does so in a more comprehensive manner.

With respect to the comments that the Secretary should rely on financial determinations made by accrediting agencies or financial institutions, the Secretary notes that section 498(c) of the HEA requires the Secretary to make those determinations for institutions participating in the title IV, HEA programs. In addition, because the financial standards used by other parties reflect the mission of those parties or are used by those parties to initiate or continue a business relationship, there is no assurance that determinations made under those standards by those parties will have a direct bearing on whether an institution is financially responsible for the purposes required under HEA, i.e., that the institution is able to (1) provide the services described in its official publications, (2) administer properly the title IV, HEA programs in which it participates, and (3) meet all of its financial obligations to students and to the Secretary. Moreover, and absent any provision in the statute that permits the Secretary to delegate financial responsibility determinations to other parties, if the Secretary adopted the commenters' suggestion, similarly situated institutions would be treated differently depending on the party making the determination.

Changes: None.

Part 2. Comments Regarding the Timing and Implementation of New Financial Standards

Comments: Several commenters recommended that the Secretary postpone any changes to the financial responsibility standards until after reauthorization of the HEA. The commenters argued that if new standards are implemented now, these standards might be changed during the reauthorization process or the statute may be amended to include other requirements, thus potentially subjecting institutions to several different requirements within a few years. Another commenter suggested that the proposed standards form the starting point for discussions between the Secretary and the higher education community on reauthorization issues involving financial responsibility.

Many commenters believed that the reporting requirements under FASB 116, Accounting for Contributions Received and Contributions Made, and FASB 117, Financial Statements of Not-for-Profit Organizations, are too recent to be thoroughly understood. In particular, the commenters maintained that since the impact of these FASB requirements on the proposed ratio methodology is not known, the Secretary should delay publishing final rules. Along the same lines, commenters representing proprietary institutions maintained that the Secretary should not promulgate the ratio methodology because it is untested and its impact on the community is not known.

Discussion: The Secretary believes that changes to the current financial responsibility standards are necessary for the reasons cited in the preamble to this regulation (see the discussion under the heading *Need for Revising the Rules* in the **SUPPLEMENTARY INFORMATION** section of these regulations).

With regard to new accounting standards under FASB Statements 116 and 117, since most private non-profit colleges and universities adopted the new FASB standards for their fiscal years that ended June 30, 1996, only a limited number of financial statements prepared under those standards were available for examination at the time the NPRM was published. Based on that limited number of financial statements, the proposed strength factors for the Primary Reserve ratio were set approximately 66 percent higher than strength factors for institutions under a fund accounting model (AICPA Audit Guide financial reporting model). This increase in the strength factors was intended to reflect the fact that under FASB 116/117 realized and unrealized gains on investments held as endowments are included in unrestricted or temporarily restricted net assets, whereas under fund accounting these gains were generally treated as nonexpendable assets. Therefore, it was anticipated that the expendable net assets of all institutions would increase significantly.

During the extended comment period KPMG conducted an analysis of financial statements from 395 non-profit institutions that adopted FASB 116/117 and found that the impact of the new accounting standards is not uniform across the private non-profit sector. The anticipated impact that expendable net assets would increase significantly occurred only among institutions holding large endowments; the impact was negligible for institutions with little or no endowment. Based on the more thorough KPMG analysis, the Secretary revises the strength factors for the Primary Reserve ratio for private non-profit institutions in a manner that discounts the effects of the new FASB standards for all non-profit institutions.

Changes: See the discussion of the strength factor score for the Primary Reserve ratio, Analysis of Comments and Changes, Part 6.

Comments: A commenter representing proprietary institutions questioned the manner in which the KPMG study was conducted. The commenter believed that small business interests were not considered since no representatives of small proprietary institutions were among those institutional representatives that assisted with the KPMG study. Moreover, the commenter implied that the Secretary did not consider the comments submitted by a group of CPAs on behalf of proprietary institutions regarding the KPMG report, and therefore may have violated the

requirement in the Regulatory Flexibility Act (RFA) that the Secretary confer with representatives of small businesses.

Discussion: The Secretary notes that the suggestions of the group of CPAs referenced by the commenters were considered in developing these final regulations. More significantly, however, during the extended comment period the Secretary sought and obtained the views and comments of individuals and organizations with diverse experience in higher education finance. Specifically, the Secretary met with organizations representing proprietary institutions and directly with persons from proprietary institutions, including representatives from small institutions. In addition the Secretary provided on the Department's web site a summary of the views expressed by the participants at those meetings and additional information regarding the ratio methodology.

Changes: None.

Part 3. Comments Regarding Annual Determinations of Financial Responsibility

Comments: Many commenters from private non-profit institutions maintained that institutions should not be subjected to annual determinations of financial responsibility. The commenters believed that annual determinations are unnecessarily burdensome, and represent an inefficient use of the Secretary's resources, particularly in cases in which an institution has been recently recertified. The commenters opined that when a determination is made during the recertification process that an institution is financially responsible, the Secretary has sufficiently discharged his oversight responsibilities in this area.

Discussion: The Secretary believes that it is not prudent to ignore the financial condition of many institutions for the three- to four-year period between recertification cycles for several reasons. First, the financial condition of an institution may deteriorate, increasing unnecessarily the risks to students and taxpayers that the institution will close or will otherwise be unable to meet its obligations. Second, many institutions prepare an annual audited financial statement for other purposes, so the only burden that may result from an annual determination stems from the institution's failure to satisfy the standards of financial responsibility. Lastly, if the Secretary were to adopt the commenters' suggestion by establishing longer term financial standards for all institutions, those standards would necessarily need to be much higher than the standards in these regulations, resulting in more institutions failing the standards and creating additional burdens for those institutions and the Secretary. Nevertheless, the Secretary may in the future explore the possibility of determining the financial responsibility of certain institutions less often or only during the recertification process.

Changes: None.

Part 4. Comments Regarding the Adequacy and Appropriateness of the Proposed Ratio Methodology

General comments: Many commenters from a variety of sectors supported the direction taken by the proposed regulations, including customizing the ratios for each sector. The commenters agreed with the Secretary that the proposed methodology provides a better assessment of an institution's financial condition than the regulatory tests currently in place. However, the commenters believed that some changes should be made to the proposed regulations.

Several commenters asserted that the proposed ratio methodology is inadequate because it does not consider other factors, such as enrollment trends, used by credit rating agencies like Moody's or Standard and Poor's. The commenters suggested that along with using the proposed methodology, the Secretary should consider an institution's Moody's or Standard and Poor's credit rating, and the institution's history of handling Federal funds, before the Secretary determines whether the institution is financially responsible.

Similarly, one commenter from a non-profit institution argued that credit rating agencies place a significant emphasis on the strength of an organization's revenue stream, but the proposed ratios virtually ignore this variable. The commenter stated that in assessing the revenue strength of educational institutions, the rating agencies typically review such data as average SAT scores and student acceptance rates. It was the commenter's view that a revenue strength score should be part of the evaluation process and should carry no lesser weight than that associated with expenses.

Other commenters from non-profit institutions maintained the ratio methodology is not valid because it is not based on traditional measures of financial strength, and did not take into account the institution's total financial circumstances as required by the HEA. Another commenter from the non-profit sector argued that the proposed rules, because of their emphasis on profitability, appeared to be designed for proprietary institutions. The commenter urged the Secretary to amend the rules to reflect the difference in each sector. Several other commenters from private non-profit institutions asserted that the proposed ratio methodology is deficient because it does not take into account specific missions of institutions.

Several commenters believed that the proposed methodology is too restrictive, arguing that it is too heavily biased in safeguarding the Secretary from events that are very rare.

Several other commenters representing proprietary institutions maintained that the new methodology was incomplete because it contained no way to measure the effectiveness of an institution's management.

Other commenters believed that many small institutions with good educational and compliance records that pass the current standards would fail the standards proposed in the NPRM. The commenters opined that this outcome points to a flaw in the manner in which the methodology treats small institutions. An accountant for a proprietary institution argued that because the proposed methodology does not provide an adjustment for size, it is unfair to compare an institution with $10 million in tuition revenue to an institution with $500,000 in tuition revenue by applying the same standards and criteria to both institutions.

Several commenters maintained that the proposed methodology is complex and difficult to understand. The commenters argued that the proposed rules will require institutions to rely more heavily on CPAs, thus increasing their costs.

Discussion: The Secretary thanks the commenters supporting the approach taken under these rules to establish better, more comprehensive financial standards and appreciates the cooperation and effort of commenters and other participants in the rulemaking process for sharing their views and concerns with the Secretary during the initial and extended comment periods.

With regard to the concerns raised by the commenters about the adequacy of the ratio methodology, the Secretary wishes to make the following points. First, the ratio methodology is designed to make appropriate, albeit broad, distinctions between the sectors of higher education institutions. The Secretary acknowledges that the methodology does not directly consider intra-sector differences nor does it take into account all of the variables or elements suggested by the commenters regarding the mission or organizational

structure of institutions. To do so would create an enormously complex model that as a practical matter would be impossible to implement. Rather, the methodology focuses on key ratios and differences between the sectors that the Secretary believes are the most critical in evaluating fairly the relative financial health of all institutions along a common scale.

Second, the adequacy of the ratio methodology should be judged in the context of both its design objectives and the associated regulatory provisions that complement those objectives. In developing these regulations the Secretary sought to minimize two potential errors—that a financially healthy institution would fail the ratio standard and be inappropriately subject to additional requirements and burdens, and that a financially weak institution would satisfy the ratio standard and later fail to carry out its obligations at the expense of students and taxpayers. The ratio methodology, in combination with the alternative standards established by these regulations (see Analysis of Comments and Changes, Part 9), reflects the Secretary's decision to err on the side of allowing some financially weak institutions to participate in the title IV, HEA programs but in a manner that protects the Federal interest.

Third, the Secretary disagrees that the ratio methodology is flawed because it does not provide an adjustment for the size of an institution. To the contrary, an adjustment for size is unnecessary because a ratio converts amounts into a metric that is relative to an institution's own size, making possible a comparison of that institution to other institutions regardless of the size of those institutions. This comparative analysis is the basic design element of the ratio methodology that enables the Secretary to evaluate the relative financial health of all institutions along a common scale.

Similarly, the Secretary disagrees that the methodology favors large or publicly traded institutions. Presumably, the commenters are referring to a situation where a large institution is not dependent upon a single revenue stream or has access to wider donor bases or more capital markets than a small institution. While this flexibility may advantage a large institution, the Secretary believes that flexibility is inherent to the institution and beyond the scope of the methodology. The fact that a large institution may be able to improve its financial condition by managing its resources effectively also holds true for a small institution, particularly since the ratios account for an institution's performance relative to its size.

With regard to the comment from the non-profit sector that the proposed ratio methodology appeared to be designed for proprietary institutions because it emphasized profitability, the Secretary notes that the measure of profitability (the Net Income ratio) accounted for 50 percent of the composite score for proprietary institutions, but for only 10 percent of the composite score for non-profit institutions. As discussed more fully under Part 7 of the Analysis of Comments and Changes (Comments regarding the weighting of the proposed ratios), the Secretary has revised the proposed percentages for the Net Income ratio to more accurately reflect the differences between the sectors of postsecondary institutions.

The Secretary disagrees that the methodology will require institutions to rely more heavily on CPAs. As illustrated in the appendices to these regulations, an institution can readily calculate its composite score from its audited financial statements, provided that those statements are prepared in accordance with GAAP. Furthermore, by limiting the number of ratios, the Secretary believes that it should not be difficult for any institution to determine the impact that its business and programmatic decisions have or will have on its financial condition as measured by the methodology.

Changes: None.

Comments regarding alternative ratios: Several commenters argued that the proposed ratio methodology is limited and arbitrary, suggesting alternative ratios that should be used instead, including: the acid test ratio; a debt to equity ratio; a title IV, HEA loan program default ratio; a debt to revenue ratio; a longevity ratio; a debt service coverage ratio; and a measure of working capital.

Several commenters believed that the Primary Reserve ratio disadvantages institutions that converted short-term liabilities into long-term debt to meet the acid test ratio requirement.

A commenter from an accrediting agency asserted that the composite score based on the proposed ratio methodology is inadequate in assessing an institution's financial health, and that other measures such as operating income, debt levels, availability of working capital, and significant items contained in notes to the financial statements should be used instead.

Discussion: The Secretary considered a number of ratios that could be used in addition to or in place of the proposed ratios, including the ratios suggested by the commenters, but decided to replace only the proposed Viability ratio, with an Equity ratio. As discussed below, while the ratios suggested by the commenters are valid measures, taken individually or as a whole they measure the financial health of an institution more narrowly than do the ratios established by these regulations. In selecting the ratios, the Secretary considered the extent to which those ratios provided broad measures of the following fundamental elements of financial health:

1. *Financial viability:* The ability of an institution to continue to achieve its operating objectives and fulfill its mission over the long-term;
2. *Profitability:* Whether an institution receives more or less than it spends during its fiscal year;
3. *Liquidity:* The ability of an institution to satisfy its short-term obligations with existing assets;
4. *Ability to borrow:* The ability of an institution to assume additional debt; and
5. *Capital resources:* An institution's financial and physical capital base that supports its operations.

The Secretary believes that the ratios used in the methodology, Primary Reserve, Equity, and Net Income, not only measure these fundamental elements well, but that they do so in a manner that takes into account the total resources of an institution. With respect to the ratios suggested by the commenters, the Secretary wishes to make the following points.

The Secretary agrees that the acid test ratio (cash and cash equivalents divided by current liabilities) is a useful measure of highly liquid assets available to meet current obligations, and it is used in the current regulations as a test of financial responsibility. However, the acid test is not included in the ratio methodology for several reasons. First, it has been the Department's experience that certain institutions manipulate the ratio elements to satisfy the 1:1 acid test standard, such as by reclassifying current liabilities as long-term liabilities. Second, the information needed to calculate the ratio is difficult to extract from the financial statements prepared for non-profit institutions because that information is not a required disclosure (assets and liabilities are not necessarily classified on those financial statements as current and noncurrent). Moreover, expendable capital (as measured by the Primary Reserve ratio) is a broader and more important element of financial health than highly liquid capital, because it mitigates the effects of differing cash management and investment strategies used by institutions. For example, an institution that invests excess cash in other than short-term instruments may fail the acid test requirement, whereas that excess cash, regardless of how it is invested, is considered an expendable resource under the Primary Reserve ratio. For these same reasons, Working Capital ratios (working capital is the difference between current assets and current liabilities) are not included in the methodology.

With respect to Cash Flow ratios, the Secretary considered several measures of cash provided from operations to cover debt payments. However, cash flow (taken directly from the Cash Flow Statement) can be easily manipulated. For example, delaying payment to creditors by simply extending the normal payment terms to 120 days would give the appearance that cash has been provided by operations. Therefore, the Secretary decided to retain the Net Income ratio which, as an accrual-based measure, recognizes expenses when they are incurred, not when they are paid.

The Secretary considered an Operating Income ratio that would measure income from operations as a percentage of net revenue, but the results of that ratio would only partially address the question of whether an institution operated within its means during its fiscal year. By comparison, the Net Income ratio measures net income as a percentage of net revenues after operations and other non-operating items and thus provides a more complete measure of whether an institution spent more than it brought in during the fiscal year.

The Secretary also considered adjusting the Net Income ratio for non-cash items, but decided instead to make an allowance for the largest non-cash item—depreciation expense—in the strength factors for this ratio (see Analysis of Comments and Changes, part 6).

With regard to the Debt to Equity ratio and the other suggested Debt ratios, the Secretary notes that, like the proposed Viability ratio, these ratios cannot be applied universally. Based on the audited financial statements reviewed by KPMG during the extended comment period, approximately 35 percent of proprietary institutions and 13 percent of private non-profit institutions have no debt. In addition, Debt to Revenue and Debt Service Coverage ratios, while providing insight as to how the institution is managing its debt, are less important than a measure of leverage itself. For these and other reasons, the Secretary includes in the ratio methodology an Equity ratio (tangible equity divided by tangible total assets) as the primary measure of leverage.

The Secretary is not convinced that the utility of a Longevity measure or ratio is on par with the utility of the ratios used in the methodology. Unlike the ratios used in the methodology that measure the actual financial condition of an institution, it is not clear how a Longevity measure could be used as part of the methodology. A Longevity measure merely implies that an institution that has been operating for many years will continue to operate, but provides no insight regarding the institution's current financial condition or its ability to satisfy its obligations. Moreover, a Longevity measure cannot be used as an independent test because it has no predictive value at the institutional level. Based on data obtained from Dun & Bradstreet regarding the probabilities of credit stress and bankruptcy, the Secretary found that institutions that have been in existence for more than 30 years have on average more likelihood of enduring credit stress and less likelihood of going bankrupt than institutions that are less than 30 years old. However, there were a significant number of institutions in the data group that have been in existence for more than 30 years that were rated by Dun & Bradstreet as representing high risks of late payments or financial failure. In addition, the Secretary reviewed the files of closed institutions and found that a significant percentage of those institutions (12 percent) were in existence for more than 25 years.

With regard to the notes to financial statements and independent accountants' reports, the Secretary wishes to clarify that these notes and reports are reviewed by the Secretary to determine if an institution complies with other standards or elements of financial responsibility. For example, if an auditor expresses a "going-concern" opinion, the institution is not financially responsible even if it satisfies all other standards. However, the information contained in the notes and reports does not always constitute a sufficient basis on which the Secretary makes or can make a determination of financial responsibility.

Changes: The proposed ratio methodology is revised, in part, by replacing the Viability ratio with the Equity ratio.

Comments regarding the use of ratios: One commenter from the proprietary sector argued that the proposed ratio methodology should not be used to determine that an institution is not financially responsible. The commenter stated that the AICPA CPA/MAS Technical Consulting Practice Aid No. 3 warns of the shortcomings of ratio analysis, including improper comparisons that do not take into account size, geographical location and business practices, and other variables such as depreciation and number of years considered by that analysis. Based on these shortcomings, the commenter concluded that a financially strong institution may fail to achieve the required composite score requirement or be forced to make unsound business decisions solely to meet the requirement. Although the commenter believed that the proposed ratio methodology could be used to determine that an institution is financially responsible, the commenter recommended that the Secretary allow an institution that fails to achieve the composite score to demonstrate its financial strength without imposing the letter of credit requirement.

Discussion: The Secretary disagrees. The practice aid is specifically designed to provide a consulting or accounting practitioner illustrative examples of the use of financial ratio analysis techniques in performing a comparative analysis of a client organization with other appropriate organizations.

The "shortcomings" referred to by the commenter relate to factors that should be considered by the practitioner in understanding the differences that may occur between comparable companies and explaining those differences to the client. To the extent practicable, the ratio methodology developed for these regulations mitigates these differences by evaluating the financial health of an institution relative to other institutions, and by measuring an institution's financial health against a minimum standard established by the Secretary. In addition, the individual ratio definitions are constructed to account for reporting and accounting differences between the sectors of higher education institutions. While other factors, such as operating structure, could affect an institution's performance, the consequences of those factors reflect management decisions that fall outside the scope of the Secretary's review.

Changes: None.

Comments regarding public institutions: One commenter argued that there is no need for Federal financial standards for public institutions for several reasons.

First, the commenter maintained that there is no danger of a "precipitous closure" of a public institution because, in his State, the closure of a State college or university requires the approval of the State General Assembly. Moreover, the commenter believed that

in authorizing a closure, the General Assembly would be careful to protect the interests of students and all creditors. In any event, the commenter opined that the Secretary could recover any monies due from a closed State institution by offset against future aid to other State institutions. For local public institutions (community colleges), the commenter stated that, in his State, a closure would have to be approved in a general election. However, the closure of a local institution cannot adversely affect student refunds or other liabilities of the institution because State law requires the continuance of property tax assessments until all debts of the institution are paid in full.

Second, the commenter noted that public institutions are subject to far more official oversight than private or proprietary institutions. In his State, the activities of State institutions are monitored by, among others, the State Controller, the State Auditor, and the State Commission on Higher Education.

Third, the commenter pointed out that public institutions are subject to more public scrutiny than are private and proprietary institutions, i.e., public institutions conduct their affairs in public, publish budgets, hold governing board meetings that are open to the public, and make their financial statements available for public inspection. The commenter believed strongly that this scrutiny enhances the financial responsibility of public institutions.

Fourth, the commenter noted that the 1973 AICPA Audit Guide is obsolete for colleges and universities under FASB jurisdiction and will soon be obsolete for other public institutions. The commenter stated that the Government Accounting Standards Board (GASB) intends to publish an exposure draft on its Colleges and Universities Reporting Model at the end of March 1997 and a final Statement of Financial Reporting Standards in the second quarter of 1988. According to the commenter, since the proposed reporting model makes major changes to public institutions' financial statements, it is unlikely that any ratio definitions based on the 1973 AICPA Audit Guide will be useful when the new model takes effect (probably the fiscal year starting in 2000). The commenter suggested therefore that the Secretary delay promulgating financial ratio standards for public institutions until the new GASB standards are in effect.

Next, the commenter argued that the proposed methodology's reliance on profits and expendable fund balances is inappropriate for public institutions, and may be contrary to State public policy. The commenter believed that unlike private non-profit and proprietary institutions that need to have sufficient reserves (or be able generate the profits necessary to accumulate sufficient reserves) to continue operations during economic fluctuations, public institutions have much less need for reserves because their major funding sources are less susceptible to those fluctuations.

In addition, the commenter stated that in his State, public policy prohibits State institutions from accumulating large expendable funds balances. The State General Assembly appropriates funds for the purpose of meeting the immediate education needs of State residents and not for creating institutional reserves. The commenter continued that consistent with this policy, the State does not fund colleges and universities for the long-term compensated absence liabilities that those institutions are required to accrue under GASB Statement No. 16 (the State funds these liabilities when they become due). Consequently, the commenter believed that the existence of these liabilities virtually guarantees that smaller State institutions will fail the proposed ratio standards. Moreover, the commenter argued that the proposed ratio standards do not sufficiently recognize the differences between public sector financial reporting requirements (GASB) and private sector requirements (FASB).

Several other commenters maintained that some State institutions would not achieve the required composite score if they are required to include in the calculation of the proposed ratios, items that are beyond the control of those institutions. Therefore, the commenters suggested that it would be fairer to allow State institutions to exclude from the ratio analysis items such as plant debt and certain employee benefits that are the obligation of the State or funded by the State.

For several reasons, commenters representing public institutions believed that the Secretary should amend proposed § 668.174(a)(1). Under this section, an institution that fails to achieve the required composite score may demonstrate to the Secretary that it is nevertheless financially responsible if the institution's liabilities are backed by the full faith and credit of the State or by an equivalent government entity. First, the commenters recommended that the Secretary qualify the term "liabilities" by adding the phrase "that may arise from the institution's participation in the title IV, HEA programs." In support of this recommendation, the commenters noted that in both of the other alternatives under this section, liabilities are either based on or limited to the amount of title IV, HEA program funds received by an institution. Moreover, the commenters argued that if the Secretary interprets "liabilities" to mean all balance sheet liabilities of an institution, the State would have to accept these liabilities as General Obligations of the State. According to the commenters, since most States have constitutional prohibitions against general obligation debt, States would be prohibited from providing the required backing for any institution that has revenue bonds or similar debt outstanding.

Next, the commenters recommended that the Secretary amend the term "equivalent government entity" by adding the phrase "including local governments or separate districts with taxing authority" to clarify that the guarantee required under § 668.174(a)(1) may be provided by any entity that has the taxing power to validate its guarantee.

Discussion: The Secretary agrees with many of the points made by the commenters and therefore does not establish in these regulations a composite score standard for public institutions. Instead of satisfying the composite score standard, an institution must notify the Secretary that it is designated as a public institution by the State, local or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation, and provide a letter from an official of that State or government entity confirming that it is a public institution.

Changes: The composite score standard and Primary Reserve requirements proposed under § 668.172(a)(1)(i) and (ii) for public institutions are eliminated. The replacement provisions described above are relocated under § 668.171(c).

Comments regarding third-party servicers: Several commenters believed strongly that the proposed regulations are unsuitable for third-party servicers, noting that the KPMG study did not include an analysis of third-party servicers. The commenters argued that the servicer business sector is fundamentally different from any type of institutional educational sector, pointing out that the contractual obligations and legal structures of servicers are different than those of institutions.

In addition, the commenters contended that while the proposed requirements regarding alternative financial standards and the actions the Secretary may take against entities that fail to satisfy the standards may be appropriate for institutions, these alternate standards and actions are not applicable or appropriate for third-party servicers. For these reasons, the commenters requested the Secretary to put aside the proposed rules and work with third-party servicers to formulate new, more applicable rules.

Several other commenters representing third-party servicers argued that since the proposed methodology favors entities with high equity and low debt, it is inappropriate for third-party servicers that have low equity and high debt but generate high income streams. Moreover, the commenters noted that while the Secretary consulted with third-party servicers in establishing the current regulations (as part of the Negotiated Rulemaking process), third-party servicers were not consulted before these proposed rules were published. Therefore, the commenters recommended that the Secretary continue to evaluate third-party servicers under the current regulations.

Several commenters representing third-party servicers maintained that the alternative of submitting a letter of credit of up to 50 percent of title IV, HEA program funds does not apply to third-party servicers. The commenters suggested instead that third-party servicers that are collection agencies for FFELP funds post a fidelity bond in the amount equal to the amount held each month by the agency in its trust account on behalf of the guarantors prior to remittance to the guarantor. These commenters argued that such a standard represents the current industry practice to protect guaranty agencies with which a collection agency contracts, from loss caused by the agency's actions.

Discussion: The Secretary agrees to develop in the future financial standards solely for third-party servicers. In the meantime, those servicers must comply with the requirements under 34 CFR Parts 668 and 682.

Changes: The third-party servicer requirements under proposed § 668.171(b) are removed.

Part 5. General Comments Regarding the Proposed Ratios

Comments regarding the Primary Reserve ratio: Many commenters opposed the requirement that public and private non-profit institutions must have a positive Primary Reserve ratio to meet the general standards of financial responsibility. The commenters maintained that this requirement represents a separate, single standard, contradicting both the intent of proposed ratio methodology and the statutory requirement that the Secretary consider an institution's total financial condition.

Several commenters from non-profit institutions believed that the Primary Reserve ratio favors colleges and universities that accumulate resources to safeguard Federal funds rather than expend those resources to provide student services. The commenters argued that this preference is not only contrary to the operation and mission of most colleges and universities, it will result in inflationary pressures that create tuition increases.

Several commenters argued that institutions will be forced to reduce teaching and other staff to attain adequate scores for the Primary Reserve ratio. The commenters reasoned that reducing "total expenses" to improve the ratio score necessarily reduces salaries and wages for teachers and staff because salaries and wages comprise the largest component of "total expenses" at most institutions.

A commenter from a non-profit institution argued that expended title IV, HEA program funds should be subtracted from "total expenses" because these funds are not included in "total unrestricted income." Likewise, the commenter believed that revenues expended from restricted endowments should not be included in "total expenses" if those funds are not counted in "total unrestricted income."

Other commenters opined that the Primary Reserve ratio treats non-profit institutions unfairly because the numerator excludes most restricted assets, but the denominator does not exclude the expenses attributable to those assets.

Some commenters suggested that the Secretary refine the term "expenses" in several ways. First, it should be adjusted so that it reflects cash consumption rather than non-cash accounting charges—such non-cash charges as depreciation and amortization expense should be eliminated, while principal repayments on debt should be added. Second, expenses associated with sponsored programs should be eliminated. These commenters, and other commenters, maintained that sponsored program expenses, such as those associated with the U.S. Government-sponsored scientific research programs, are a function of those research programs and can generally be eliminated upon termination of those programs (during the course of the program, expenses are funded by revenues received from the sponsoring agency). The commenters concluded that the Secretary should not penalize an institution whose researchers are capable of generating significant grants.

Discussion: The Primary Reserve ratio provides a measure of an institution's expendable or liquid resource base in relation to its overall operating size. It is, in effect, a measure of the institution's margin against adversity. Specifically, the Primary Reserve ratio measures whether an institution has financial resources sufficient to support its mission—that is, whether the institution has (1) sufficient financial reserves to meet current and future operating commitments, and (2) sufficient flexibility in those reserves to meet changes in its programs, educational activities, and spending patterns. Therefore, the Secretary continues to believe that an institution with a negative Primary Reserve ratio has serious financial difficulties.

If an institution's Primary Reserve ratio is negative, expendable net assets are in a deficit position. In those cases the institution will need to generate surpluses to replenish the deficit, or may be forced to draw on other resources or sell off assets to make ends meet, thus increasing the uncertainty that the institution will be able to meet its obligations. However, because an Equity ratio is now included in the methodology, the Secretary eliminates the proposed provision that a non-profit institution is not financially responsible if it has a negative Primary Reserve ratio. The Equity ratio measures the amount of total resources that are financed by owners' investments, contributions, or accumulated earnings (or conversely, the amount of total resources that are subject to claims of third parties) and thus captures an institution's overall capitalization structure and, by inference, its overall leverage. Because the Equity ratio supplements the measure of the amount of expendable reserves provided by the Primary Reserve ratio with a measure of other capital resources available to support the institution, it provides a measure of resources that could mitigate the effects of a negative Primary Reserve ratio.

With regard to the comments about total expenses, those expenses, including salaries paid to faculty and staff, are part of the commitment of an institution to provide services to students. The relative size of each component in an institution's annual operating budget is a management decision. In addition, the Secretary notes that based on the AICPA Audit Guide for Not-for-Profit Organizations issued on June 1, 1996, most title IV,

HEA program funds will not be included in total expenses of colleges and universities. For example, payments made to those institutions under the Direct Loan, Federal Family Education Loan, Federal Pell Grant, and Federal Supplementary Educational Opportunity Grant programs are not included in total expenses reported on the statement of activities. In addition, the Audit Guide will require scholarship expenses to be netted against tuition income in the revenue portion of the statement.

The Secretary disagrees that the definition of the term "expenses" as used in the Primary Reserve ratio should exclude non-cash charges such as depreciation and amortization and, except in certain circumstances, sponsored program expenses. The Primary Reserve ratio measures an institution's expendable or liquid resource base in relation to its overall operating size. Operating size is the total of all expenses incurred by the institution in the course of its business and is a key financial element because it provides the best view of the size of its programmatic activities and commitments. Because depreciation expense represents a charge to operations that reflects the future replenishment of the existing plant (and replaces the actual cash outlays for equipment and repairs formerly in the revenue and expenditures statement of private non-profit institutions under the fund accounting model), it represents a commitment of capital resources to the institution and reflects its overall operating size.

The Secretary disagrees that an institution can eliminate expenses relating to U.S. Government-sponsored scientific research programs immediately upon the termination of those programs. To the contrary, because many universities require highly specialized facilities and equipment to conduct research under those programs, they will likely incur significant upfit and other costs in re-deploying their research facilities in the event of a loss in program funding. Therefore, the Secretary considers scientific research expenditures to be an appropriate component of the operating size of an institution since the institution is committed to making those expenditures until adjustments can be made.

However, the Secretary agrees that in certain instances sponsored program expenses should be excluded from the ratio calculations. The Secretary believes that an institution that receives HEA grant program funds, especially those associated with programs that strengthen institutions or expand access to higher education, should not fail the composite score standard solely because of the expenditure of those funds. Therefore, the amount of HEA funds that an institution reports as expenses in its Statement of Activities for a fiscal year are excluded from the ratio calculations but only if these reported expenses alone are responsible for the institution's failure to achieve a composite score of 1.5 for that fiscal year.

Changes: The Secretary eliminates the requirement proposed under § 668.172(a)(1)(ii) that a public or private non-profit institution must have a positive Primary Reserve ratio.

Proposed § 668.173(e), describing the items that are excluded from the ratio calculations, is relocated under § 668.172(c) and revised, in part, to provide that the Secretary may exclude from the ratio calculations reported expenses of HEA program funds under the conditions described previously.

Comments regarding the Viability ratio: A commenter from a non-profit institution maintained that the implicit assumption of the Viability ratio is that an institution should minimize or eliminate debt in order to preserve the accumulation of assets. The commenter opined that such a philosophy would lead to institutions avoiding the creation of revenue-creating assets, such as residence halls. Accordingly, the commenter believed that the correct measurement should be the amount of risky loans that an institution undertakes, and recommended therefore that the amount of loans secured by collateral be eliminated from the denominator of the Viability ratio.

Similarly, many commenters opined that the proposed definition of adjusted equity will discourage institutions from financing property, plant and equipment from current revenues. The commenters believed that institutions will elect instead to assume long-term debt even if the assumption of long-term debt is contrary to good business practice.

For several reasons, many commenters opposed the proposed adjustment for proprietary institutions that would limit the threshold factor for the Viability Ratio to the threshold factor for the Primary Reserve ratio in cases where the institution's Primary Reserve ratio threshold factor is a one or a two. First, these commenters maintained that such an adjustment defeats the purpose of measuring financial responsibility on the basis of three ratios. Second, the commenters argued that if the reason for this adjustment is to circumvent possible abuse and manipulation of the Viability ratio, then there may be something wrong with using the ratio as part of the methodology. Third, the commenters argued that it is arbitrary and unfair to assume, based on the premise that the institution has manipulated its financial report, that an institution's Viability ratio will always be higher than its Primary Reserve ratio. Rather, the commenters maintained that an institution could achieve a high Viability ratio through careful financial management. The commenters recommended therefore that the Secretary use this adjustment only if the reason for using it is consistent with the concepts underlying the proposed ratio methodology. Similarly, commenters maintained that this adjustment is unfair to non-profit institutions that have no debt, because the weighting for the Primary Reserve ratio increases from 55 percent to 90 percent.

One commenter suggested that if an institution has no debt, the Secretary should allow an institution to show the amount of long-term debt that it would be able to obtain, such as, by demonstrating to the Secretary that the institution has a line of credit, or by providing to the Secretary a letter from a bank indicating the bank's willingness to make a long-term loan to the institution.

Many other commenters from the proprietary sector believed the Secretary should reward an institution that has no debt for its sound management practices, rather than penalize that institution by increasing the weighting for its Primary Reserve ratio from 20 percent to 50 percent. These commenters, and other commenters, suggested instead that for an institution that has no debt the Secretary should assign a threshold factor of 5.0 on its Viability ratio, or weight the Viability ratio at 30 percent, or both. Another commenter maintained that the amount of equity needed to achieve a strength factor score of 3.0 on the Viability Ratio is excessive and penalizes an institution for using leverage prudently. This commenter proposed that the amount of equity that results in achieving a strength factor score of 3.0 should instead yield a strength factor score of 5.0.

Another commenter suggested that an institution's Viability ratio strength factor be limited to two times the Primary Reserve strength factor in cases where the institution has a Primary Reserve strength factor score of 1.0 or 2.0. According to the commenter, this weighting scheme would allow an institution with no debt, but with a reasonable Primary Reserve ratio score,

to pass the ratio standards if it has a bad year (i.e., achieves only a strength factor score of 1.0 on the Net Income ratio). The commenter further stated that under this approach, a similarly situated institution with a Primary Reserve ratio strength factor score of 1.0 would not pass the ratio standards.

Several commenters from proprietary institutions asserted that eliminating the Viability ratio for institutions that have no debt is particularly unjust because the current acid test ratio compels institutions to remain debt-free. One of the commenters argued that the proposed adjustment to the Viability ratio acts to raise the Primary Reserve weighting for proprietary institutions to a level required of non-profits despite the real differences between these sectors. The commenter asserted that this methodology would only encourage institutions to take out debt in order to use the Viability ratio, rather than discourage that practice. The commenter suggested that if the Secretary chooses to keep this methodology, the Net Income and Primary Reserve ratios should be weighted at 80 percent and 20 percent, respectively.

Discussion: The Secretary proposed the Viability ratio because it measures one of the most basic elements of clear financial health: the availability of expendable resources (resources which can be accessed in short order) to cover debt should the institution need to settle its obligations. As such, it is useful in measuring the financial condition of most institutions. However, the Secretary has decided to remove the Viability ratio from the ratio methodology established in these regulations for the following reasons.

First, in linking the results of the Viability and Primary Reserve ratios the Secretary sought to discourage an institution from manipulating its Viability ratio by taking on a small amount of debt solely to inflate its composite score. However, linking the two ratios may result in a composite score that understates the financial health of an institution that legitimately carries a small amount of debt.

Second, based on analyses conducted by KPMG during the extended comment period of 507 audited financial statements from proprietary institutions and 395 audited financial statements from private non-profit institutions, the Secretary found that 35 percent of those proprietary institutions and 13 percent of those non-profit institutions had no long-term debt. Accordingly, the Viability ratio could not be applied to a significant number of institutions in each sector—the composite score for those institutions would therefore be determined solely on the results of the Primary Reserve and Net Income ratios. The Secretary agrees that this was a shortcoming in the proposed methodology, and includes in the ratio methodology established by these regulations only ratios that can be applied to all institutions.

In view of the public comments, the Secretary agrees that certain aspects of the proposed methodology associated with the Viability ratio may cause, unintentionally, tensions between an institution's desire to make appropriate business decisions and the institution's compliance with the proposed regulations. Among these business decisions are those related to whether an institution should finance the cost of plant assets with external sources, or whether it should fund the cost of those investments internally with revenues from operations (or from some combination of those sources). From the analysis performed during the extended comment period, the Secretary found that some institutions chose to utilize internal resources to fund their plant assets as opposed to borrowing from external sources. For some of those institutions, that choice was a prudent business decision that is not reflected directly in either the Viability or Primary Reserve ratios. The impact of those business decisions is now reflected in the Equity ratio.

Changes: The proposed Viability ratio is replaced by the Equity ratio.

Comments regarding the numerator of the Primary Reserve and Viability ratios—Expendable Net Assets or Adjusted Equity: Commenters from non-profit institutions asserted that the numerator of the Viability and Primary Reserve ratios mistakenly neglects permanently restricted endowment net assets. The commenters maintained that revenue generated from these assets not only helps fund operations, but also helps to provide scholarships to students that generate more revenue for the institution. Some commenters believed that the Primary Reserve and Viability ratios should also include some percentage of the physical plant which is free and clear of debt, arguing that excluding physical plant from the numerators of these ratios will only encourage institutions to keep assets in cash rather than invest in physical assets that benefit students. Alternately, these commenters, and other commenters, asserted that if physical plant is not included in the numerator of the Primary Reserve ratio, then depreciation costs on physical plant should not be included in "total expenses" of the denominator of this ratio.

Another commenter representing private non-profit institutions objected to the blanket exclusion of related party receivables from the ratio calculations. The commenter asserted that this exclusion would impact negatively many institutions that depend on church pledges, and suggested instead that the Secretary consider such factors as prior payment history and the financial strength of the related party before making a decision to exclude these receivables.

A few commenters suggested that expendable net assets exclude an institution's liability for post-retirement benefits, maintaining that this liability represents a very long-term moral obligation that will not render any institution incapable of teaching its students or discharging its obligations under the title IV, HEA programs.

Many commenters from the proprietary sector, including students, objected to the definition of "adjusted equity" as used in the numerator of the Primary Reserve and Viability ratios. The commenters asserted that excluding fixed assets (property, plant, and equipment) and intangible assets from the definition will cause institutions to forego investing in new educational equipment and educational facilities, resulting in an erosion in the quality of education students receive. Moreover, these commenters argued that the proposed treatment of equity is counterproductive because it creates a disincentive for owners to invest the resources necessary to provide quality education.

Based on the information provided by the Secretary during the extended comment period, one commenter calculated the Primary Reserve ratio for the 30 Dow Jones companies. According to the commenter, 18 of those companies would receive a strength factor score of zero, and only 9 would receive a strength factor score of 2.0 or 3.0. In order for 50 percent of these companies to achieve a strength factor score of 2.0 or 3.0, the commenter indicated that the suggested ratio score of .20 would need to be reduced to .07. From this analysis, the commenter concluded that the suggested strength factors for the Primary Reserve ratio do not appear to be reasonable and recommended that the Secretary modify the proposed definition of adjusted equity to include fixed assets.

One commenter opposed the proposed definition of adjusted equity, arguing that the definition is not explained or justified, and that it is contrary to evaluations conducted by

other agencies, such as the Securities and Exchange Commission (SEC). The commenter suggested that if the Secretary is attempting to ascertain through this definition which assets the institution holds that have value and may easily be converted to cash, then all items that result in cash flow should be included. An example of this would be that all of an institution's deferred income (reflected as a liability on the balance sheet) will not be paid in cash. In particular, the commenter maintained that many of the costs associated with an institution's recruiting activities will already have been incurred and when the deferred income is recognized on the institution's income statement as shareholder equity, the cash outlay will be less than the revenue, i.e., if the cash outlay is 55 percent of the revenue, the remaining 45 percent of the deferred income should be added to equity to arrive at the institution's adjusted equity.

Another commenter from a proprietary institution objected to the proposed definition of "adjusted equity" because it does not measure the debt capacity of an institution. This commenter suggested that the definition be changed to "net tangible assets plus unused lines of credit."

Several commenters maintained that the proposed definition of "adjusted equity" does not capture the institution's ability to adjust to periods of declining revenue, which the commenters believed is the aim of the Primary Reserve and Viability ratios.

Discussion: The Secretary disagrees with the commenters who suggested that the definition of expendable net assets mistakenly excludes permanently restricted net assets. The Primary Reserve ratio is a measure of the resources available to an institution on relatively short notice, and therefore the ratio measures only expendable net assets. Permanently restricted net assets are neither liquid or expendable, except in the event of some legal action, and therefore do not form any part of the resource measured by this ratio. The Secretary wishes to emphasize that the non-liquid resources represented by permanently restricted assets are measured by the Equity ratio.

With regard to the comment concerning the applicability of the Primary Reserve ratio to the 30 Dow Jones companies, the Secretary notes that the ratio methodology is designed to measure the elements of financial health that are appropriate for postsecondary institutions, not for manufacturing and industrial entities, which comprise most of the Dow Jones companies.

The Secretary disagrees that fixed assets should be included in adjusted equity or that plant assets should be included in the definition of expendable net assets. Because the Primary Reserve ratio provides a measure of an institution's expendable resource base in relation to its overall operating size, the logic for excluding net investment in plant is twofold. First, plant assets represent sunk costs to be used in future years by an institution to fulfill its mission—plant assets will not normally be sold to produce cash since they will presumably be needed to support on-going programs. Moreover, in some instances there is a lack of a ready market to turn the assets into cash, even if they are not needed programmatically.

Second, excluding net plant assets is necessary in identifying the expendable or relatively liquid net assets (that would be used as a component of any measure of liquid equity) available to the institution on relatively short notice. Including plant assets would distort the measure of liquid equity, and therefore would distort an important short-term measure of the institution's financial health. (The regulatory practice of excluding fixed assets is not unique to these rules. Various other regulated industries, such as depository institutions and broker dealers, are also subject to practices that exclude or limit the extent that fixed assets may comprise regulatory capital.) The Secretary notes that all tangible assets are considered by the Equity ratio.

The definition of expendable net assets excludes from those assets an institution's post-retirement benefits obligation.

The Primary Reserve ratio is not meant to capture debt or ability to borrow, but to measure the institution's expendable reserves. A measure of debt and ability to borrow is incorporated in the Equity ratio.

The Secretary disagrees that the proposed definition of "adjusted equity" does not capture an institution's ability to adjust to periods of declining revenue because the balance sheet ratios, Primary Reserve and Equity, represent the resources accumulated over time by the institution that are available to the institution to make necessary adjustments.

Changes: None.

Comments regarding the Equity ratio: Several commenters from proprietary institutions who opposed excluding fixed assets from adjusted equity (in calculating the Primary Reserve ratio) believed that this exclusion not only discourages institutions from investing in educational equipment, but rewards institutions that invest the least, i.e., those institutions that lease instead of purchase equipment.

Most commenters supported the suggestion made by the Secretary during the extended comment period to use an Equity ratio instead of the proposed Viability ratio. Some of these commenters believed that the use of an Equity ratio not only resolves many of the problems associated with the Viability ratio; it is also a good measure of how well an institution is capitalized and an indirect measure of an institution's ability to borrow. Moreover, these commenters opined that an Equity ratio encourages the kind of behavior that the Secretary should want to encourage—reinvestment in the institution.

Similarly, several commenters believed that the Equity ratio provides a necessary measure of capital investment, and argued that it is a better ratio than the liquidity ratio under current regulations. One of these commenters stated that liquidity ratios measure assets that can be removed fraudulently, whereas capital investment ratios measure assets that can be used to determine the owner's commitment to the institution.

Other commenters supporting the use of an Equity ratio recommended that the ratio include endowment assets in the numerator. However, some of these commenters suggested the Secretary should not raise the strength factors for the Equity ratio to compensate for the inclusion of endowment assets because this would disadvantage institutions with little or no endowments. Another commenter believed that excluding endowment assets from the Equity ratio would treat all institutions more fairly.

Discussion: The Secretary reiterates that fixed assets are not expendable assets and are thus not included in calculating the Primary Reserve ratio. However, fixed assets are included (as part of the total resources of the institution) in the Equity ratio. In providing a measure of capital resources, the Equity ratio supplements the expendable resources measured by the Primary Reserve ratio.

By comparing equity to total assets, the Equity ratio indicates the share of assets shown on the institution's balance sheet that the institution actually owns, reflecting the commitment to the institution of the owners or persons that control the institution, and provides insight into the capital structure of the institution, i.e., it indicates whether an institution has acquired a disproportionate amount of its assets utilizing debt. Excessive amounts of debt will adversely affect the

ratio and little or no debt will have the opposite effect.

The Secretary notes that Permanently Restricted Net Assets (which include the permanently restricted piece of endowment funds) are included in the numerator of the Equity ratio. However, in including those assets the Secretary did not adjust the strength factors for the Equity ratio. The strength factor values for the Equity ratio are not normalized to the relative equity of institutions in either sector; therefore inclusion of permanently restricted endowment in the calculation of the Equity ratio will help the ratio results of institutions with large endowments, but will not hurt the ratio results of institutions with little or no endowment.

Changes: The ratios described under proposed § 668.173 are relocated under § 668.172 and revised to include the Equity ratio. The Equity ratio is specifically defined for proprietary institutions under Appendix F and for private non-profit institutions under Appendix G.

Comments regarding the Net Income ratio: A few commenters believed that the proposed Net Income ratio is not fair to proprietary institutions, arguing that since the ratio is constructed and weighted in a manner that does not allow institutions that have operating losses to meet the composite score standard, those institutions would be forced to submit a letter of credit. One of these commenters asserted that operating losses sometimes occur due to changing economic circumstances (e.g., the acquisition and redevelopment of a financially-troubled institution), but that this condition is usually not a permanent feature of the institution's financial condition. Accordingly, the commenter suggested that one way of remedying this inequity would be for the Secretary to determine that an institution is financially responsible if the institution satisfies the composite score requirement for two years in a three-year cycle, or three years in a four-year cycle.

Similarly, other commenters believed that the Net Income ratio should be eliminated because it represents only the results from operations for one fiscal year but does not take into consideration prior year reserves that may be available to offset negative net income in any year.

Several commenters representing proprietary institutions asserted that institutions operating in states such as Oregon, Texas, Florida, Alaska, and Nevada that have taxes on gross receipts or property rather than on income are disadvantaged by the Net Income ratio because taxes on gross receipts or property are always reflected as a business tax in operating expenses rather than an income tax.

Many commenters from proprietary institutions maintained that, although it is important under the proposed methodology to attain a strength factor score of at least 3.0 on the Primary Reserve ratio (so that the Viability ratio can be counted independently), attaining that strength factor requires that adjusted equity be at least 30 percent of annual expenses. The commenters argued that this strength factor was too high for several reasons. First, the commenters opined that retaining 30 percent of equity as a reserve fund creates a disincentive to invest in property and equipment. Second, the commenters stated that retaining equity rather than distributing profits to shareholders exposes a for-profit institution to an "accumulated earnings tax" of 39.6 percent on profits in excess of $250,000, unless the institution provides a reasonable business reason for retaining the equity and a plan for its use. Under this 30 percent requirement, the commenters maintained that an institution with as little as $833,333 in annual expenses would be exposed to the accumulated earnings tax. Third, the commenters maintained that it is very unusual for a business that is expected to provide a return on investment to retain equity exclusive of fixed assets in an amount equal to 30 percent of a year's expenses.

Similarly, several commenters representing proprietary institutions maintained that the ratios erroneously ignore differences between Chapter S and C corporations, particularly in regard to accumulated earnings tax. The commenters argued that since the treatment of owners' salaries is discretionary under both types of corporations, the proposed methodology creates an incentive for owners to manipulate their salaries (or dividends and other equity distributions) to meet the composite score. The commenters further stated that this manipulation runs afoul of income and payroll tax laws, and that regulations should not entice owners to behave in this manner. One of these commenters suggested that the Secretary define "income before taxes" as the profit before owners' salaries and distributions so that all proprietary institutions are treated in the same manner with respect to calculating the Net Income ratio.

Discussion: An institution must generate surpluses to build reserves for future program initiatives and to increase its margin against adversity. However, the Secretary accepts that there will be circumstances where this is not possible. Therefore, the strength factors for the Net Income ratio allow an institution to earn some points toward its composite score if the institution incurs a small loss.

Regarding the comment that the Net Income ratio does not consider prior-year reserves, the Secretary reminds the commenters that those reserves are considered by the Primary Reserve and Equity ratios.

With regard to the Accumulated Earnings Tax, the Secretary would like to clarify that the only portion of stockholders' equity that is subject to the tax is retained earnings. Other components of equity such as common stock and other capital are not subject to this tax. Moreover, the Secretary believes that any potential exposure to the accumulated earnings tax on excess profits is a tax planning issue regardless of the value of the strength factors for the Primary Reserve ratio (of the 507 financial statements reviewed for proprietary institutions, the Primary Reserve ratio was 0.30 or higher for 84 or 17 percent of these institutions; of those 84 institutions, only 39 had equity (retained earnings) greater than $250,000). These and other institutions should already be considering the potential impact of the tax, including ways to use earnings accumulated beyond the IRS limits for reasonable business needs. In any event, the Secretary notes that the changes made to the proposed methodology for other reasons minimize an institution's exposure to the accumulated earnings tax—the Viability ratio has been eliminated, and a Primary Reserve ratio result of 0.15 (as opposed to the proposed result of 0.30) is now required to earn the maximum strength factor score for that ratio.

If earnings are accumulated beyond the IRS limits, IRS regulation 26 CFR 1.537–2(b) provides some broad criteria that can be used to support the contention that earnings are being accumulated for the reasonable needs of the business, including to: (1) Provide for bona fide business expansion or plant replacement, (2) acquire a business enterprise through purchasing stock or assets, (3) provide for the retirement of bona fide indebtedness created in connection with the trade or business, (4) provide necessary working capital for the business, (5) provide for investments in or loans to customers or suppliers if necessary to maintain the business of the corporation, and (6) provide for the payment of reasonable anticipated product liability losses, an actual or potential lawsuit, the loss of a major customer, or self-insurance. A

business contingency can be considered a reasonable need if the contingency is likely to occur (e.g. flood losses in a flood prone area). The accumulation of earnings to provide against unrealistic contingencies is not considered a reasonable need.

The Secretary notes that there are several other ways to determine reasonable working capital needs, including the "Bardahl" formula. Institutions should work with their tax advisor with respect to these matters.

The Secretary disagrees that the methodology should discount Gross Receipt Tax paid by institutions in certain States because these taxes, just like other sales and property taxes that differ from State to State, are a cost of doing business.

Changes: The strength factors and weighting percentages for the Primary Reserve and Net Income ratios are revised (see Analysis of Comments and Changes, Parts 6–7).

Comments regarding the market value of assets: A commenter from a non-profit institution noted that the Viability ratio ignores the market value of assets (assets are booked at cost for balance sheet presentations), but that lenders look to market values when considering collateral to secure long-term debt. Consequently, the commenter argued that an institution's ability to borrow in order to liquidate or restructure debt may be a better measure of financial viability than an institution's ability to liquidate long-term debt from expendable resources.

Similarly, several commenters from proprietary institutions maintained that since the proposed ratio methodology does not consider the market value of real estate, it depresses the financial score of an institution that holds valuable properties, particularly if those properties have been depreciated over a long period of time. One commenter argued that this is evidenced by the fact that the commenter's institution was rated "good" by Dun and Bradstreet as of June 30, 1995, and passes the current financial responsibility standards under § 668.15, but would fail the proposed ratio standards. The commenter suggested that this problem could be solved either by allowing the institution to credit back the difference between the net book value of the property and the secured debt (mortgage), or allow the institution to provide and include as an asset the amount of the property's appraised value as certified by an appraiser. A few commenters suggested that the term "expendable net assets" include at least the book value (if not the market value) of property, plant, and equipment, arguing that it is unrealistic to assume that these assets are valueless or incapable of being liquidated.

Discussion: The Secretary has decided not to consider the market value of property, plant, and equipment because accepting the market value of those assets would introduce a significant amount of subjectivity into the ratio calculations—the appraised value of those assets may differ depending on the person making the appraisal and the method by which that appraisal is made (such as future cash flows or comparable sales). In addition, the ratio methodology would favor unfairly an institution that chose to bear appraisal costs over an institution that did not similarly do so.

Changes: None.

Comments regarding second-tier and trend analysis: Several commenters suggested that the Secretary perform a "second-tier analysis" or use trend data to determine whether an institution that fails to achieve the required composite score is nevertheless financially responsible.

Other commenters believed that trend analysis is more revealing than the proposed one-year snapshot of an institution's financial health and suggested that the Secretary require that CPAs include that analysis as part of the institution's audited statements. One of these commenters stated that since trend data is available to an institution's current CPA, the CPA could add a footnote to the financial statement that contained the required ratio results for the institution's three most current fiscal years, as well as an average for that three-year period.

Another commenter argued that the proposed ratio methodology is useless because it employs hybrid ratios that cannot be benchmarked. This commenter proposed instead that the standards consist of a liquidity ratio, a trend analysis of cash flows from operations, and a different, better defined income ratio.

One commenter believed that the proposed methodology should be discarded in favor of more easily constructed measures, including a three-year averaged adjusted current ratio of 1:1 that would compare tangible current assets with adjusted current liabilities and a five- to ten-year trend analysis of cash flows from operations.

Discussion: In addition to the ratios suggested by the commenters previously discussed under this Part, the Secretary considered other ratios (Age of Plant, Cash Income, Secondary Reserve, and Debt to Total Assets) that could be used as secondary measures.

The Secretary did not adopt these ratios because, like the ratios suggested by the commenters, they measure financial health more narrowly than the Primary Reserve, Equity, and Net Income ratios. Moreover, the Secretary believes that these ratios do not provide significant additional insight with respect to evaluating the financial health of an institution that would warrant their inclusion in the methodology.

Although the Secretary believes that trend analysis could be a useful approach or consideration in determining whether an institution is financially responsible, historical data regarding the ratios and the ratio methodology must first be obtained and analyzed before promulgating regulations.

Changes: None.

Comments regarding extraordinary gains and losses: Several commenters representing the proprietary sector opposed the proposal under which the Secretary may exercise discretion in determining whether an institution is financially responsible. Under this proposal, the Secretary may decide to exclude extraordinary gains and losses, income or losses from discontinued operations, prior period adjustments, and the cumulative effects of changes in accounting principles. The commenters argued that the uncertainty inherent in this proposal would make it difficult for an institution to calculate the ratios (preventing the institution from determining its regulatory status), and to develop a plan to compensate for a treatment that may exclude these items. Moreover, the commenters believed that if some institutions are favored by this discretionary treatment, public confidence in the fairness of the proposed methodology would be eroded. For these reasons, the commenters suggested that the proposal be amended by eliminating the Secretary's discretion in favor of excluding these items for all institutions.

Discussion: The commenters are correct that extraordinary gains and losses, income or losses from discontinued operations, prior period adjustments, and the cumulative effects of changes in accounting principles, should be excluded from the calculation of the Net Income ratio because these items are generally non-recurring and do not reflect the institution's continuing operations. The Secretary notes that these items are generally excluded from the ratio calculations.

The commenters are also correct in arguing that the ratio methodology should treat all institutions fairly with respect to these items, and that is the basis for the Secretary's discretion. It has been the Secretary's experience that certain institutions do not present these items in accordance with GAAP or employ questionable accounting treatments that beneficially distort their financial condition. Consequently, the Secretary retains the discretion to include or exclude these items, or include or exclude the effects of questionable accounting treatments.

Changes: The items that the Secretary may exclude from the ratio calculations proposed under § 668.173(e) are relocated under § 668.172(c) and revised to provide that the Secretary generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates. This section is also revised to provide that the Secretary may include or exclude the effects of questionable accounting treatments.

Comments regarding unsecured related party receivables and intangible assets: Several commenters maintained that because GAAP requires that an asset possess value before it can be included in a financial statement, the Secretary improperly excludes all unsecured related party receivables on the assumption that those receivables have no value. The commenters believed that in order to obtain a complete and accurate picture of an institution's cash flow, and thus financial condition, the Secretary must change the definition of "adjusted equity" to include intangible assets, unsecured related party receivables, and fixed assets that the institution's independent auditor determines have value and liquidity. The commenters suggested that adjusted equity include at least the following: (1) Fixed assets and intangible assets that the institution's CPA determines to have value and liquidity, and (2) unsecured related party receivables, if the related party co-signs the institution's Program Participation Agreement and satisfies the same financial ratios required of the institution.

Other commenters suggested that equity be defined in accordance with the FASB pronouncement, "Accounting for the Impairment of Long-Lived Assets", maintaining that all authoritative accounting pronouncements must be taken into account in preparing financial statements under GAAP.

Several commenters argued that excluding intangible assets disregards accounting conventions used when acquisitions occur.

A commenter asserted that the definition of intangible assets contained in Accounting Principles Board (APB) Opinion No. 17 is too vague to be useful, and that the final rules should include a clarification of the term, specifically as it relates to deferred tax benefits, deferred direct response advertising costs, deferred enrollment expenses, and prepaid expenses.

A few commenters responding to the alternative set forth by the Secretary during the extended comment period for dealing with intangible assets—that intangibles could either be excluded from the calculation of the Equity ratio or that the strength factors for the Equity ratio could be increased to compensate for including intangibles—generally preferred to exclude intangibles because this alternative would disadvantage fewer institutions. One of these commenters suggested, however, that the Secretary include intangible assets but not increase the strength factors in cases where those assets are less than 10 percent of shareholders' equity. Another commenter suggested that the Secretary include in the calculation of the ratios a portion of intangible assets but require that an institution amortize those assets over a limited period, for example eight years.

Other commenters from proprietary institutions believed that the Secretary should exclude intangible assets because of the difficulties in valuing those assets.

Discussion: The Secretary uses the term "intangible assets" with the same meaning as the definition contained in APB Opinion No. 17, Intangible Assets, and disagrees that this definition is unsuitable for regulatory purposes. That definition, which may not be all inclusive, includes specifically identifiable intangibles, i.e., patents, franchises, and trademarks. The definition also includes the most common intangible asset, goodwill. "Goodwill" is the common name used to describe the excess of the cost of an acquired enterprise over the sum of identifiable net assets. The Secretary notes that items such as deferred tax assets and liabilities, deferred enrollment expenses, deferred direct response advertising costs and prepaid expenses do not meet the definition of an intangible asset in accordance with the definition in APB Opinion No. 17.

The Secretary does not agree that intangible assets should be included in the calculation of the ratios, because those assets generally represent amounts that are not readily available to meet obligations. In addition, the Secretary believes that including those assets would inject a very subjective element into the ratio calculations, leading to an evaluation of financial health that would be arbitrary, or that could overstate significantly the financial health of an institution. Although amounts on financial statements are estimates to varying degrees, goodwill valuation is particularly subjective. In reviewing the financial statements of the proprietary sector, the Secretary found that the two most common intangibles were goodwill (excess purchase price over the fair value of assets purchased) and covenants not to compete. Clearly there is no established market for those assets and assigning a value to those assets for purposes of determining financial responsibility would be subjective at best. Moreover, there is the problem of the nature of the asset itself—it is highly unlikely that an institution could sell intangible assets to meet its general obligations. If an institution finds itself in need of liquidating assets during its normal business cycle to meet obligations, an asset such as goodwill is likely impaired. Also, in reviewing financial standards for other industries like banking and securities, the Secretary found that removing intangibles when calculating regulatory equity is a generally accepted practice.

With regard to unsecured related party receivables, the empirical data show that these receivables occur mainly in the proprietary sector where an institution is one entity in a commonly-controlled business group. Generally, unsecured related party receivables result from various intercompany transactions including shifting cash from one entity to another in the form of advances, intercompany sales for goods and services, or through more formal borrowing arrangements. Because the control over the repayment of the transaction usually lies completely with the "owners" of the business group, the receivable has little or no value to the institution whose financial responsibility is being evaluated. Also, in an administrative proceeding, unsecured or uncollateralized related party receivables are not recognized by the judge as assets available to satisfy the obligations of an institution. For these reasons, the Secretary excludes these receivables from the ratio calculations.

With regard to the commenters from private colleges and universities who objected to the blanket exclusion of related party receivables from the ratio calculations, these commenters are likely referring to annual pledges from churches or other benefactors, and not to related party receivables as defined under GAAP. On this matter, the

Secretary follows the guidance of FASB Statement 116, which prescribes criteria for recording pledges (unconditional promises to give) in the financial statements of colleges and universities as net contributions receivable. The Statement defines the term "promise to give" using the common meaning of the word promise—a written or oral agreement to do (or not to do) something. A promise to give is a written or oral agreement to contribute cash or other assets to another entity. A promise carries rights and obligations—the recipient of a promise to give has a right to expect that the promised assets will be transferred in the future, and the maker has a social and moral obligation, and generally a legal obligation, to make the promised transfer. The making or receiving of an unconditional promise to give is an event that, like other contributions, meets the fundamental recognition criteria. The Secretary will include these assets (such as pledges from church related organizations, community foundations, and trust funds) in the calculation of the numerators of the Primary Reserve and Equity ratios if they meet these requirements as set forth under FASB 116 and are recorded as an economic resource in an institution's audited financial statements.

With regard to deferred marketing costs, the Secretary is concerned that institutions that record deferred direct response advertising costs as an asset are not always following the letter or spirit of the published guidance on this subject. The Secretary has experienced significant abuses with regard to recording those costs—institutions are listing items as assets that do not meet the criteria in the Accounting Standards Division—Statement of Position (SOP) 93–7, Reporting on Advertising Costs. In instances where the Secretary determines that abuses are occurring the Secretary will exclude those assets from the ratio calculations.

With respect to deferred direct response advertising costs, the Secretary will specifically determine whether (1) the primary purpose of the advertising is to elicit sales to customers who have responded to that advertising, and (2) that advertising results in probable future benefits.

Specific documentation that the Secretary may request with respect to the first item includes the following:

(1) Files indicating the customer names and the related direct-response advertisement;

(2) A coded order form, coupon or response card, included with an advertisement, indicating the customer's name; and

(3) A log of customers who have made phone calls to a number appearing in an advertisement, linking those calls to the advertisement.

The Secretary also reminds institutions that the conditions in SOP 93–7 must be met in order to report the costs of direct-response advertising as assets. The Secretary believes that those conditions are narrow because it is generally difficult to determine the probable future benefits of the advertising with the degree of reliability sufficient to report related costs as deferred assets.

Changes: None.

Part 6. Comments Regarding the Proposed Strength Factors

Comments regarding the scoring process: Several commenters maintained that the proposed ratio methodology is flawed because slight changes in a single factor could create an unusual variance in an institution's composite score.

Other commenters noted that an institution could automatically receive a strength factor score of 1.0 on all its ratios regardless of its financial condition, and questioned this procedure given that it would equate institutions that have a net loss or deficit with institutions that are profitable and have positive equity.

Several commenters were concerned that the media would use the composite scores of institutions in frivolous and very misleading ways such as ranking institutions by those scores.

Discussion: The Secretary agrees that under the proposed methodology a minor difference in a ratio result could disproportionately affect an institution's composite score. For example, a proprietary institution with a Primary Reserve ratio result of 0.29 would be assigned a strength factor score of 2.0, whereas another institution with only a marginally better ratio result of 0.30 would be assigned a higher strength factor, 3.0. Assuming that all other factors are equal, the latter institution would receive a higher composite score even though the ratio results of both institutions are essentially the same. In addition, because the proposed strength factors represent a range of ratio results, a proprietary institution with a Primary Reserve ratio result of 0.30 would be assigned the same strength factor as an institution with a higher ratio result, 0.49. To eliminate the effects of differences in ratio results, the Secretary establishes in these regulations linear algorithms under which a strength factor score is calculated based on an institution's actual ratio result. For example, the strength factor score for a proprietary institution with a Primary Reserve ratio result of 0.15 is calculated by multiplying that ratio result by a constant, using the algorithm $0.15 \times 20 = 3.0$.

The Secretary also agrees that the proposed procedure of assigning a strength factor score of 1.0 for negative ratio results does not differentiate sufficiently the financial health of institutions on the lower end of the scoring scale. In addition, the Secretary believes that for the purpose of these regulations, it is not necessary to differentiate greatly among institutions at the higher end of the scale. Therefore, in keeping with the methodology's design objective that an institution must demonstrate strength in one aspect of financial health to compensate for a weakness in another aspect and to provide greater differentiation among institutions on the lower end of the scale, the Secretary establishes in these regulations a scoring scale of negative 1.0 to positive 3.0.

In developing the strength factor scores for each of the ratios along this scale, the Secretary considered an institution's ability to satisfy its mission objectives relating to technology, capital replacement, human capital, and program initiatives. Specifically, the strength factor score reflects the extent to which an institution has the financial resources to:

(1) Replace existing technology with newer technology;

(2) Replace physical capital that wears out over time;

(3) Recruit, retain, and re-train faculty and staff (human capital); and

(4) Develop new programs.

The Secretary acknowledges that the importance of satisfying these objectives varies from institution to institution but believes that an institution must satisfy these objectives over time, not only to demonstrate that it has the financial resources necessary to provide the education and services for which its students contract, but also to meet the changing needs of its students and the demands of the marketplace.

The Secretary wishes to emphasize that the methodology measures only the financial ability of an institution to carry out these objectives. The methodology does not, nor is it intended to, assess the quality of an institution's educational programs or facilities; such quality assessments are made by the institution's accrediting agency.

Changes: The procedures for calculating the composite score proposed under § 668.173(a) are revised and relocated under § 668.172(a) to provide for the calculation of the strength factor scores. In addition, proposed Appendix F is revised and supplemented by a new Appendix G, to reflect a scoring scale from negative 1.0 to positive 3.0, and to incorporate the linear algorithms used to calculate the strength factor scores for each of the ratios.

Comments regarding the strength factors:

Primary Reserve ratio: Several commenters believed that the required ratio results associated with the strength factors should be lowered for proprietary institutions to reflect the shorter programs offered by those institutions, arguing that since the ratio appears to gauge an institution's financial ability to complete a program, fewer resources are needed to ensure the completion of short programs.

One commenter opined that the ratio values underlying the Primary Reserve ratio strength factors for proprietary institutions are too high, noting that none of the large proprietary corporations he surveyed maintained adjusted equity equal to 30 percent of their total year expenses. The commenter argued that as the strength factor levels for this ratio are unfairly comparable to those proposed for non-profit institutions, the Secretary should adjust the proprietary sector strength factors as follows:

Ratio result	Strength factor
.05 or less	1
.06–.14	2
.15–.24	3
.25–.34	4
.35 or more	5

Another commenter also recommended that the Secretary revise the Primary Reserve ratio strength factors as indicated previously, arguing that the proposed factors penalize any institution that chooses to invest in property and equipment.

Another commenter from a proprietary institution argued that since the Primary Reserve ratio does not consider the timing of expenses or the differences between variable and fixed expenses, the ratio is difficult to value (it overlooks too many variables, such as normal business cycles for fixed expenses, and the ability of institutions to forego variable expenses during times of fiscal distress). The commenter suggested that if the Secretary establishes a Primary Reserve ratio in final regulations, the middle range of the strength factors for this ratio should reflect about 60–90 days of expenses, or about 17–25 percent of total annual expenses.

Equity ratio: Several commenters from proprietary institutions maintained that the proposed ratio standards do not recognize unused lines of credit or other direct measures of ability to borrow. One commenter suggested that such a measure should be constructed by comparing fixed assets to long-term debt, with strength factors as follows:

Ratio result	Strength factor
0.0–0.18	1
0.19–0.39	2
0.40–0.59	3
0.60–0.79	4
>0.79	5

Another commenter maintained that the suggested Equity ratio should be amended to include such a measure.

One commenter from a proprietary institution maintained that the strength factors for the Equity ratio should be set by considering an acceptable ratio of long-term assets to long-term liabilities. The commenter argued that an institution that is growing will expend its asset base in advance of recording income generated by those assets. According to the commenter, assuming a current ratio of 1:1, a ratio of long-term assets to long-term liabilities should have the following strength factors:

Ratio result	Strength factor
0.0	0
.10	1
.20	2
.25	3

Net Income ratio: Many commenters from the proprietary sector believed that the proposed strength factors for the Net Income ratio are too high. Several of these commenters opined that the emphasis placed on profitability under the proposed methodology might tempt institutions to raise tuition and cut back on educational outlays, thus shortchanging students and lowering the quality of education.

Several commenters from the proprietary sector objected to the Net Income ratio, arguing that it would discourage institutions from investing in property, plant, and equipment because it measures net income after depreciation. The commenters suggested two alternatives: (1) Retaining the proposed strength factors but reconstructing the ratio so that it is based on operating profit; or (2) retaining the proposed ratio but adjusting the strength factors.

One commenter from a proprietary institution stated that certain accrediting agencies take a strong stance against profits in excess of five percent. The commenter suggested therefore that the Secretary take this into account in establishing strength factors for the Net Income ratio.

Although several commenters agreed that the strength factors for proprietary institutions should be higher than those for non-profit institutions to take taxes into account, the commenters believed that the difference in the proposed strength factors between these sectors is excessive. Assuming a tax rate of 40 percent, the commenters suggested that comparable and fairer strength factors for proprietary institutions should be set at 166 percent of those for non-profit institutions. Under this suggestion, the resulting strength factors would be:

Ratio result	Strength factor
<0	1
0–.0166	2
0.0167–.049	3
0.050–.082	4
>0.082	5

Another commenter argued that the strength factors for the Net Income ratio for proprietary institutions should be set at 3.0 for a five percent profit level, and the rest of the range set as follows:

Ratio result	Strength factor
<.02	1
0.02–.035	2
0.036–.05	3
0.051–.075	4
>.075	5

One commenter suggested the following strength factors, opining that the proposed strength factors penalize an institution that returns some of its operating profit to students (by providing better qualified faculty and updated teaching tools and equipment, and increasing student services):

Ratio result	Strength factor
<0	1
0–.017	2
0.018–.049	3
0.050–.082	4
>.082	5

A commenter suggested that the Secretary establish a strength factor score of 3.0 for a net income ratio of .03, to reflect the amount of State and Federal income taxes an institution must pay.

Another commenter from a proprietary institution argued that a low profit percentage does not necessarily indicate financial weakness since

income tends to be lower for a financially healthy institution during periods of expansion. Accordingly, the commenter suggested the following strength factors:

Ratio result	Strength factor
<0.0	1
0.0–.015	2
>0.015	3

One commenter recommended that the Secretary establish equal strength factor levels for proprietaries and non-profits, amend the numerator of the ratio for proprietaries to "Income After Taxes", and impute the taxes for proprietary institutions that are Subchapter S corporations or partnerships.

Discussion: The Secretary thanks the commenters for their suggestions regarding the proposed strength factors. In view of these comments, other comments regarding the proposed ratios, and the analysis performed by KPMG during the extended comment period, the Secretary revises the proposed strength factors.

In developing the strength factor scores for each of the ratios, the Secretary started by selecting critical points along the scoring scale and determining the appropriate value (ratio result) for each of those points. For example, a strength factor score of 1.0 represents the lowest ratio result that the Secretary believes an institution must achieve to continue operations, absent any adverse economic conditions. With respect to the Net Income ratio, a strength factor score of 1.0 equates to a ratio result of zero—the point where an institution just barely operated within its means. At this point, the institution broke even on an accrual basis, but it did not add to or subtract from its overall wealth. Moving down the scale, a strength factor score of zero indicates that the institution may have generated sufficient cash to meet its operating expenses, but, on an accrual basis, the institution incurred a loss. On the upper end of the scale, a strength factor score of 3.0 indicates that the institution not only operated within its means, but that it added to its overall wealth. The Secretary then drew a line that best fit those values, resulting in the linear algorithms.

Strength factor scores for the Primary Reserve ratio: The strength factor score for the Primary Reserve ratio for a proprietary institution is calculated using the following algorithm:

Strength factor score = 20 × Primary Reserve ratio result. The strength factor score for the Primary Reserve ratio for a private non-profit institution is calculated using the following algorithm:

Strength factor score = 10 × Primary Reserve ratio result. The charts below show the strength factor scores for specific Primary Reserve ratio results.

PRIMARY RESERVE RATIOS' STRENGTH FACTOR SCORES FOR PROPRIETARY INSTITUTIONS

A Ratio Result of	Algorithm (20 X Ratio Result)	Equals a Strength Factor Score of
–.05 or less	20 X (–.05)	–1.0
0	20 X 0	0
.05	20 X .05	1.0
.075	20 X .075	1.5
.15 or greater	20 X .15	3.0

PRIMARY RESERVE RATIOS' STRENGTH FACTOR SCORES FOR PRIVATE NONPROFIT INSTITUTIONS

A Ratio Result of	Algorithm (10 X Ratio Result)	Equals a Strength Factor Score of
–.10 or less	10 X –.10	–1.0
0	10 X 0	0
.10	10 X .10	1.0
.15	10 X .15	1.5
.30 or more	10 X .30	3.0

As illustrated in the charts, for any strength factor score, the Primary Reserve ratio result is twice as high for a non-profit institution as it is for a proprietary institution. There are two reasons for this difference.

First, proprietary institutions generally have shorter business cycles than non-profit institutions, i.e., a proprietary institution generally has new classes starting throughout the year whereas a non-profit institution typically has only two to four starts (semesters or quarters) each year. Because of these shorter business cycles proprietary institutions are generally not as dependent on reserves of liquid assets (as measured by Primary Reserve ratio) since they can rely more on tuition revenues for necessary liquidity. In comparison, non-profit institutions must generally maintain greater amounts of liquid resources to fund short-term operations because of the longer period of time between receipt of new revenues.

Second, proprietary institutions should generally be able to obtain additional capital more quickly than non-profit institutions because owners, unlike trustees, are free to invest cash as needed to support operations and owners may increase expendable resources by leaving earnings in the institution. On the other hand, non-profit institutions are generally dependent on contributions from donors as their primary source of additional capital.

Discussion of Strength Factor Scores for the Primary Reserve Ratio

Strength factor score of 1.0: A strength factor score of 1.0 indicates that an institution has very little margin against adversity. For a proprietary institution, expendable resources equal only five percent of its total expenses (stated another way, the institution has about 18 days worth of resources that can be liquidated in the short-term to cover current operations). For a non-profit institution, expendable resources equal only 10 percent of its total expenses (the institution has about 37 days worth of resources that can be liquidated in the short-term to cover current operations).

At this level of expendable resources, the Secretary believes that an institution may be able to make payroll and meet existing obligations, but it will have difficulty financing any of its mission objectives. With respect to the fundamental elements of financial health, a strength factor score of 1.0 indicates relative weakness in viability and liquidity.

Strength factor score of zero: Moving down the scale, a strength factor score of zero indicates than an institution has no margin against adversity—the value of its liabilities is equal to the value of its expendable assets.

With no expendable resources, the Secretary believes that the institution will have difficulty meeting existing or future obligations without additional revenue or support, i.e., the institution is very sensitive to fluctuations in revenues or unexpected losses and will need to access shortly some resources from additional borrowing, capital infusions, or conversions from non-expendable assets to pay bills if it does not generate sufficient resources from revenues. With respect to the fundamental elements of financial health, a strength factor score of zero indicates weakness in financial viability and liquidity. Below this level, an institution receives negative points toward its composite score.

Strength factor score of negative 1.0: A strength factor score of negative 1.0 means that an institution has negative expendable resources—the value of its liabilities exceeds the value of its expendable assets.

At this level, the Secretary believes the institution will have serious difficulties satisfying existing obligations, and even more difficulties meeting any of its mission objectives. Because the institution is financing daily operations from another source, it must demonstrate some strength in that other source (revenue or ability to borrow) to earn positive points toward its composite score. A strength factor score of negative 1.0 indicates extreme weakness in viability and liquidity.

Strength factor score of 3.0: On the other end of the scale, a strength factor score of 3.0 indicates that an institution has a healthy margin against adversity. For a proprietary institution, expendable resources are equal to 15 percent of its total expenses. The institution has about 55 days worth of resources that can be liquidated in the short-term to cover current operations—one or more class starts. For a non-profit institution, expendable resources are equal to 30 percent of its total expenses. The institution has about 110 days worth of resources that can be liquidated in the short-term to cover current operations—about one semester.

At this level of expendable resources, the Secretary believes that an institution has the resources to invest in human and physical capital and new program initiatives. The institution demonstrates strength in the fundamental elements of financial viability and liquidity.

In assessing the reasonableness of the strength factors for the Primary Reserve ratio, the Secretary compared these factors to the standards set by Moody's. Moody's, a primary bond rating agency, uses an expendable resources to operations ratio (similar to the Primary Reserve ratio) in analyzing credit worthiness. The Secretary notes that the Moody's ratio is more conservative than the Primary Reserve ratio because it considers only unrestricted net assets as expendable resources whereas the Primary Reserve ratio generally includes unrestricted net assets and temporarily restricted net assets as expendable resources. The median Moody's ratio for non-profit institutions with a bond rating of Aa is 4.58 for small institutions and 3.28 for large institutions. (As this ratio decreases, the relative financial health of the institution decreases.) The median Moody's ratio for institutions with a Baa bond rating is 0.669 for large institutions and 0.449 for small institutions. The Moody's definition of their Baa grade is: "Medium grade obligations, i.e., they are neither highly protected nor poorly secured. They lack outstanding characteristics and in fact have speculative characteristics as well." Institutions in this category represent a reasonable credit risk, but absent some other factor or set of circumstances, Moody's would not consider those institutions to be financially healthy.

The Secretary notes that while there are differences between the Moody's ratio and the Primary Reserve ratio, the Primary Reserve ratio result necessary to earn the highest strength factor (0.30 for non-profit institutions, and 0.15 for proprietary institutions) is lower than the median standard set by Moody's for investment grade institutions (0.669 or 0.449).

The Secretary believes it is appropriate that the Primary Reserve strength factors are lower than the standards set by Moody's for two reasons. First, the ratio methodology is designed to assess an institution's financial health over the short-term (a 12- to 18-month time horizon), whereas the repayment period of the bonds being rated is generally long-term. Second, the rating agencies are assessing repayment capabilities in the normal course without abnormal events such as spending endowment funds or liquidating fixed assets.

Strength Factor Scores for the Equity Ratio

The strength factor score for the Equity ratio for both proprietary and non-profit institutions is calculated using the following algorithm:

Strength factor score=6 × Equity ratio result.

The chart below shows the strength factor scores for specific Equity ratio results.

EQUITY RATIO

A ratio result of:	Algorithm (6 × ratio result)	Equals a strength factor score of:
–0.167 or less	6 × –0.167	–1
0	6 × 0	0
0.167	6 × 0.167	1
0.250	6 × 0.250	1.5
0.50 or more	6 × 0.50	3

Discussion of Strength Factor Scores for the Equity Ratio

Strength factor score of 1.0: For a proprietary institution, a strength factor score of 1.0 indicates that the owner is just beginning to demonstrate a financial commitment to the business since the institution's assets are greater than its liabilities, but not by much. For a non-profit institution, a strength factor score of 1.0 may reflect a permanent endowment that provides some revenue or that may be drawn upon in extreme circumstances. In either case, most of the institution's assets are subject to claims of third parties—for every $10.00 in assets, the institution has $8.33 in liabilities. Stated another way, the institution's liabilities are five times greater than its equity.

The Secretary believes that this relatively small amount of equity indicates that the institution will have difficulty borrowing at favorable market rates and that it has a very limited ability to meet its technology and capital replacement needs. With respect to the fundamental elements of financial health, a strength factor score of 1.0 indicates relative weakness in financial viability, ability to borrow, and capital resources.

Strength factor score of zero: Moving down the scale, an absence of equity (strength factor score of zero) provides no evidence of an owner's financial commitment to the business since there are no accumulated earnings or invested amounts beyond the institution's liabilities to third parties. For a non-profit institution, the absence of net assets indicates that there is little or no permanent endowment to draw upon in extreme circumstances.

At this level, the value of the institution's assets is equal to the value of its liabilities. Consequently, the Secretary believes that the institution will have difficulty obtaining additional financing because there may not be any assets to secure that financing. For an institution with relatively old plant assets that have been fully depreciated, zero equity implies that the institution must rely on additional revenues, including pledges or capital infusions, to build or invest in the future. For an institution with newer plant assets, zero equity implies that the institution has stretched its borrowing capacity beyond a reasonable limit. With respect to the fundamental elements of financial health, a strength factor score of zero indicates weakness in viability, ability to borrow, and capital resources. Below this level, an institution receives negative points toward its composite score.

Strength factor score of negative 1.0: A strength factor score of negative 1.0 means that the institution is virtually insolvent since its obligations to third parties are greater than the assets it has to satisfy those obligations. For every $11.67 (or more) in liabilities, the institution has just $10.00 in assets.

At this level, the Secretary believes that the institution has no ability or a significantly diminished ability to borrow because it has no resources, or very limited resources, to offer as collateral that are not already subject to claims of third parties. Moreover, the institution will have difficulty meeting any of its mission objectives. The institution will need to demonstrate strength in another source (profitability), or the owner will need to make a capital infusion, to earn positive points toward its composite score. With respect to the fundamental elements of financial health, a strength factor score

of negative 1.0 indicates extreme weakness in viability, ability to borrow, and capital resources.

Strength factor score of 3.0: On the upper end of the scale, a strength factor score of 3.0 provides evidence of an owner's financial commitment to the business, and for a non-profit institution, it indicates the accumulation of substantial net assets, including permanent endowment. The institution's assets are significantly greater than its liabilities—for every $10.00 in assets the institution has $5.00 in liabilities. Stated another way, the institution's liabilities are less than its equity.

At this level, the Secretary believes that an institution has the resources necessary to borrow significant amounts at favorable market rates, replace physical capital as needed, and fund new program initiatives. A strength factor score of 3.0 indicates strength in financial viability, ability to borrow, and capital resources.

As with the Primary Reserve ratio, the Secretary tested the reasonableness of the Equity ratio strength factor scores by comparing the scores in this case, to the data compiled by Robert Morris Associates (RMA). The Secretary notes that although RMA compiles survey data from various industries, it forms no conclusions about those industries from that data. RMA uses a total liabilities to tangible net worth ratio (total liabilities divided by (total tangible assets—total liabilities)) that is similar to the Equity ratio ((total tangible assets—total liabilities) divided by tangible assets). By using the RMA data, lending institutions and other investors can see how a particular institution's ratio result compares to industry averages.

In the RMA 1996 Annual Statement Studies, the median total liabilities to tangible net worth ratio score for colleges and universities (SIC #8221) was generally around 0.50 but went as high as 2.7 for small institutions—a 0.50 ratio result indicates that for every $3.00 of assets, there is $1.00 in liabilities. For SIC #8299, Services-School and Educational Services (proprietary institutions), the median was around 1.3, but went as high as 2.4—a ratio result of 1.3 indicates that for every $1.77 of assets, there is $1.00 in liabilities.

Although the 2 to 1 (assets to liabilities) relationship necessary to earn the highest score for the Equity ratio is slightly lower than the RMA median for proprietary institutions, 2.3 to 1 (and much lower than the RMA median for non-profit institutions, 3 to 1), the Secretary believes that the strength factor score for the Equity ratio is reasonable for two reasons. First, the methodology is designed to differentiate more among institutions on the lower end of the scoring scale, not at the median or high end ranges. Second, the methodology measures an institution's financial health over a relatively short time horizon, 12-to-18 months, whereas users of the RMA data are evaluating the institution over a much longer time frame.

Strength Factor Scores for the Net Income Ratio

The strength factor score for the Net Income ratio for a proprietary institution is calculated using the following algorithm:

Strength factor score=1+(33.3 × Net Income ratio result). The strength factor score for the Net Income ratio for a private non-profit institution is calculated using the following algorithms:

If the Net Income ratio result is negative, the Strength factor score=1+(25 × Net Income ratio result);

If the Net income ratio result is positive, the Strength factor score=1+(50 × Net Income ratio result); or

If the Net Income ratio result is zero, the Strength factor score=1.

The charts below show the strength factor scores for specific Net Income ratio results.

NET INCOME RATIOS' STRENGTH FACTOR SCORES FOR PROPRIETARY INSTITUTIONS

A ratio result of:	Algorithm 1+(33.3×net income ratio result)	Equals a strength factor score of:
−0.06 or less	1+(33.3×−0.06)	−1.0
−0.03	1+(33.3×−0.03)	0
0.00	1+(33.3×0.00)	1.0
0.015	1+(33.3×0.015)	1.5
0.06 or more	1+(33.3×0.06)	3.0

Net Income Ratios' Strength Factor Scores for Private Non-Profit Institutions

A ratio result of:	Algorithm (see below)	Equals a strength factor score of:
−0.08 (or less).	1+(25×−0.08)	−1.0
−0.04	1+(25×−0.04)	0
0.00	If ratio equals zero, strength factor score automatically equals 1.	1.0
0.01	1+(50×0.01)	1.5

Net Income Ratios' Strength Factor Scores for Private Non-Profit Institutions—Continued

A ratio result of:	Algorithm (see below)	Equals a strength factor score of:
0.04 (or greater).	1+(50×0.04)	3.0

The Secretary is convinced by the commenters not to unduly penalize institutions that incur a small operating loss, and to maintain a more neutral position on those institutions that break even. Therefore, the Secretary allows an institution with a small operating loss to earn positive points toward its composite score by taking into account that the institution may be generating positive cash flow despite those losses.

Based on the analysis conducted by KPMG during the extended comment period, the Secretary found that, on average, three percent of the expenses for proprietary institutions related to non-cash items such as depreciation or amortization. The corresponding amount for non-profit institutions was approximately four percent. The Secretary believes that an institution should generally be able to endure three or four percent losses before being forced to rely on expendable reserves or its ability to raise additional capital or sell off any of its infrastructure to continue operations. Although the Secretary found that some institutions had significantly higher amounts of depreciation, limiting the depreciation estimate to these percentages adds a degree of conservatism to the methodology. If higher percentages were adopted, an institution would be able to incur larger operating losses (including cash losses) before receiving negative points toward its composite score. Moreover, higher depreciation estimates would have the perverse effect of rewarding an institution that incurred sizable operating losses but had little or no depreciation expense (the institution's assets may be nearly or fully depreciated, indicating technological and physical obsolescence). Therefore, the Secretary set a strength factor score of 1.0 for the Net Income ratio at the point where an institution is estimated to break even on an accrual basis, and a strength factor score of zero at the point where an institution is estimated to break even on a cash basis.

The Secretary also agrees with the commenters from the proprietary sector that the combined effect of the proposed strength factors and weighting placed too much emphasis on the Net Income ratio. In addition, research conducted by KPMG during the extended comment period indicates that a six percent return on revenue for proprietary institutions, and a four percent return for non-profit institutions, are reasonable values for those institutions to earn the highest strength factor score for the Net Income ratio.

Industry Norms and Key Business Ratios, published by Dun & Bradstreet, indicates that the return on sales ratio (net profit after taxes divided by annual sales) for the middle quartile of comparable industries (SIC codes 82, 8243, 8244, and 8299) is three or four percent. *The Almanac of Business and Industrial Financial Ratios*, authored by Leo Troy, Ph.D., shows that similar industries' typical pre-tax profit as a percentage of net sales is between two and seven percent. As with the Moody's and RMA data discussed earlier, the information published by Dun & Bradstreet and Leo Troy is used only to test the reasonableness of the strength factor scores for the Net Income ratio.

In addition, Moody's uses a return on unrestricted net assets ratio and their literature shows that the median results for small non-profit institutions is 0.043—very close to the 0.04 Net Income ratio result needed to earn the highest strength factor score. For large non-profit institutions, the median result is 0.052. The Secretary notes that the ratio used by Moody's excludes investment gains and measures net income as a percentage of net assets, not total revenue, so it is not perfectly comparable with the Net Income ratio.

Discussion of Strength Factor Scores for the Net Income Ratio:

Strength factor score of 1.0: A strength factor score of 1.0 indicates that an institution just barely operated within its means. On an accrual basis, the institution broke even. At this level the institution is able to fund historical capital replacement costs, but is not completely providing for the future replenishment of its capital assets.

The Secretary believes that an institution needs to generate operating surpluses because, absent those surpluses, it cannot grow its margin against adversity without capital infusions or donor contributions. A strength factor score of 1.0 indicates relative weakness on the fundamental financial element of profitability.

Strength factor score of zero: Moving down the scale, a strength factor score of zero indicates that an institution did not operate within its means during its operating cycle, but may have broken even on a cash basis, i.e., the institution may have generated sufficient cash to meet its operating expenses, but it did not fund its non-cash expenses. On an accrual basis, a proprietary institution incurred a loss equal to three percent of its total revenues, and a non-profit institution incurred a loss equal to four percent of its total revenues.

At this level, the Secretary believes that an institution is unable to fund its capital replacement costs and that it cannot continue operations for an extended time without depleting its equity. A strength factor score of zero indicates weakness on the fundamental financial element of profitability. Below this level, an institution receives negative points toward its composite score.

Strength factor score of negative 1.0: A strength factor score of negative 1.0 indicates that an institution not only did not operate within its means, but that its operations most likely produced negative cash flow since losses exceeded non-cash expenses. On an accrual basis, a proprietary institution incurred losses equal to 6 percent (or more) of its total revenues, while a non-profit institution incurred losses equal to 8 percent (or more) of its revenues.

At this level, the institution decreased its margin against adversity and continued losses will deplete its other resources. A strength factor score of negative 1.0 indicates weakness in the fundamental financial element of profitability.

Strength factor score of 3.0: On the upper end of the scale, a strength factor score of 3.0 indicates that an institution not only operated within its means, but added to its overall wealth, thus increasing its margin against adversity. On an accrual basis, a proprietary institution generated operating surpluses equal to at least six percent of its total revenues, and a non-profit institution generated surpluses equal to at least four percent of its total revenues.

At this level, the Secretary believes that the institution is not only funding its capital replacement costs, but that it has operating surpluses to invest in new program initiatives and human and physical capital. A strength factor score of 3.0 indicates strength on the fundamental financial element of profitability.

Changes: As discussed in this Part, proposed Appendix F is revised and supplemented by a new Appendix G to reflect the strength factor scores for each of the ratios, and to provide the linear algorithms used to calculate those scores.

Part 7. Comments Regarding the Weighting of the Proposed Ratios

Comments: A commenter from a proprietary institution believed that the proposed strength factor values and weighting of the Primary Reserve ratio for proprietary institutions are too low. The commenter argued that the weighting given to the Primary Reserve ratio should be at least equal to the weighting given to the Net Income ratio because the retained wealth of an institution, which can be used to weather financial difficulties, is just as important as the one-year profit earned by the institution. Accordingly, the commenter suggested that the Secretary weight the ratios as follows: 40 percent for the Primary Reserve ratio, 30 percent for the Net Income ratio, and 30 percent for the Viability ratio.

A commenter from a proprietary institution opined that if the Secretary substitutes an Equity ratio for the Viability ratio, the Secretary should weight the Equity ratio the most because it is the ratio that best measures long-term financial stability.

Commenters from proprietary institutions believed that a 50 percent weighting on the Net Income ratio placed too much emphasis on the short-term financial situation of the institution. One of these commenters suggested instead that all of the ratios should be weighted equally. Along the same lines, other commenters from proprietary institutions favored lowering the weighting of the Net Income ratio from 50 percent to 30 percent or 40 percent, while another commenter suggested that the Secretary assign the same weight to the Net Income ratio for proprietary institutions that is assigned to non-profit institutions.

Some commenters believed that the proposed weighting of the income ratio would lead to fiscal mismanagement (institutions would need to stockpile profits to meet the ratio standards) or encourage unscrupulous for-profit institutions to declare and pay out huge dividends to owners.

One commenter representing proprietary institutions appreciated the Secretary's willingness to revise the proposed ratio weights in response to public comment, but believed that the suggested revised weights moved too far in reducing the weight of the Net Income ratio and increasing the weight of the Primary Reserve ratio for proprietary institutions. The commenter asserted that because the proprietary sector consists of a variety of institutions of different sizes, structures, and management philosophies (and

must deal with a variety of different tax issues), the Secretary should place the majority of the weight on the combination of the ratios that measure financial health in the short and long-term: the Net Income and Equity ratios. The commenter suggested that an equitable weighting would be in the neighborhood of 40 percent for the Equity ratio, 40 percent for the Net Income ratio, and 20 percent for the Primary Reserve ratio.

Another commenter believed that the two most important factors for determining the financial responsibility of a proprietary institution are whether the institution is making a profit and the amount of tangible net worth the institution has available to sustain losses. Accordingly, the commenter suggested that the Secretary weight the Net Income ratio at 50 percent, the Equity ratio at 30 percent, and the Primary Reserve ratio at 20 percent. Alternatively, the commenter opined that weighting the Net Income and Equity ratios at 40 percent each would also be reasonable. The commenter believed strongly that the weighting for the Primary Reserve could be increased above 20 percent, but only if the ratio results required for the corresponding strength factors are reduced or if the Secretary modifies the definition of adjusted equity to include fixed assets.

Other commenters suggested various other weighting percentages that the Secretary should adopt for proprietary institutions, including weighting the Equity ratio at 30 percent, the Primary Reserve ratio at 20 percent, and the Net Income ratio at 50 percent.

A commenter representing private non-profit institutions argued that the Secretary should consider any institution to be financially responsible if that institution has positive expendable net assets and generates an annual surplus of revenues over expenses because such an institution does not represent a threat to Federal funds. Accordingly, the commenter recommended that the Secretary weight the Net Income ratio more heavily and in a manner that establishes the financial responsibility standard for private non-profit institutions as breaking even or running a small surplus annually. Similarly, another commenter from a private non-profit institution objected that the proposed ratio methodology weights the two balance sheet ratios (Viability and Primary Reserve) more heavily than the income statement ratio (Net Income). The commenter believed that this weighting scheme minimizes the value of strong operating results (as measured by annual changes in unrestricted net assets), and favors unfairly institutions with substantial expendable net assets. Along the same lines, another commenter suggested that the Primary Reserve and Net Income ratios for private non-profit institutions be weighted equally.

Other commenters from the non-profit sector believed that the Primary Reserve ratio was too heavily weighted (55 percent), arguing that such a weighting would create a disincentive for institutions to invest internal funds in plant assets even if those assets were revenue producing (such as dormitories).

Discussion: The Secretary thanks the commenters for their suggestions regarding the weighting percentages.

Discussion Regarding the Relative Importance (Weighting Percentages) of each of the Ratios for Proprietary Institutions

Regarding these and other comments from proprietary institutions that the weighting percentage for the Primary Reserve ratio should not be increased from the proposed level of 20 percent, the Secretary notes that expendable resources are measured by two of the proposed ratios, Primary Reserve and Viability, that together carry a combined weight of 50 percent. The Primary Reserve ratio measures expendable resources in relation to total expenses and the Viability ratio measures expendable resources in relation to total long-term debt. Since the proposed Viability ratio has been eliminated in favor of the Equity ratio, the Secretary believes that the weighting percentage for the Primary Reserve ratio must be increased because it is the only remaining measure of an institution's expendable resources. However, the Secretary does not believe that the weighting percentage of the Primary Reserve ratio should be increased to reflect the combined weight given to expendable resources under the proposed methodology because the importance of expendable resources to proprietary institutions is somewhat mitigated for two reasons. First, since proprietary institutions have frequent class starts they can rely more on tuition revenues than on reserves of liquid assets to meet near-term needs. Second, by comparing expendable equity to debt, the Viability ratio provided a measure of an institution's ability to borrow that is now provided by the Equity ratio.

The Secretary agrees with the commenters who argued that the Primary Reserve and Equity ratios are just as or more important than the Net Income ratio because together these balance sheet ratios reflect all of the resources accumulated over time by an institution that are available to the institution to support its current and future operations. By comparing tangible equity to tangible total assets, the Equity ratio provides a measure of the total resources that are financed by accumulated earnings and owner investments, or, stated another way, the amount of an institution's assets that are subject to claims of third parties. In so doing, the Equity ratio provides an indication of the commitment of an owner to the institution—a higher ratio indicates a greater commitment on the owner's part because a greater percentage of the owner's capital is at risk than would otherwise be the case if that institution was either highly leveraged or the owner had taken capital out of the institution. However, unlike the Primary Reserve ratio (or the Viability ratio), the Equity ratio does not provide a direct measure of the amount of resources that an institution has to meet its near-term obligations. Rather, the Equity ratio provides a high-level view of an institution's overall capitalization, and by inference its proportionate ability to borrow. Thus, the Equity ratio supplements the direct measure of the resources that an institution has available in the near-term (i.e., expendable resources measured by the Primary Reserve ratio) by providing a measure of all of the resources available to the institution to support its operations. In combination, the Primary Reserve and Equity ratios reflect the financial viability of an institution; that is, the ability of the institution to continue to achieve its operating and mission objectives over the long-term.

With regard to the weighting of the Net Income ratio, the Secretary is convinced by the commenters that in emphasizing profitability (by weighting the Net Income ratio at 50 percent), the proposed methodology may encourage proprietary institutions to cut back on necessary educational expenses or engage in other inappropriate behaviors. In addition, the Secretary agrees with these and other commenters that minor operating losses or year-to-year fluctuations in profits may not severely impair an institution from meeting its operating objectives in any particular year as long as the institution has other resources available to support its operations. For these reasons, the Secretary believes that the weighting percentage for the Net Income ratio must be reduced. However, the Net Income ratio must still carry a significant weight because operating profits increase the institution's financial health over time and are necessary for a proprietary institution to meet one of its primary objectives—to distribute earnings to owners and shareholders.

Discussion Regarding the Relative Importance (Weighting Percentages) of Each of the Ratios for Non-Profit Institutions

The Secretary agrees that the weighting percentage for the Net Income ratio must be increased because the proposed methodology does not adequately account for strong operating performance. However, that increase must be limited because, unlike proprietary institutions, generating operating surpluses is not an objective of many non-profit institutions. In addition, accumulated operating surpluses are reflected in the Equity ratio.

The Secretary also agrees with the comments that the proposed weighting of Primary Reserve ratio (55 percent) is too high and that emphasizing the importance of expendable resources may create a disincentive for institutions to invest internal funds in necessary non-expendable assets. By using internal funds to finance the cost of plant assets, an institution's expendable resources are reduced, lowering both its Primary Reserve and Viability ratios. Because these two ratios carry a combined weight of 90 percent under the proposed methodology, a business decision to use internal funds for these purposes may substantially impact an institution's composite score. Although the Secretary believes that the weighting percentage of the Primary Reserve ratio must be reduced, it must still carry a significant weight for two reasons. First, since the operating cycles for non-profit institutions are generally tied to semesters or terms (as compared to proprietary institutions that generally have more frequent class starts), non-profit institutions must rely more on expendable reserves than on tuition revenues to meet near-term needs. Second, since the Viability ratio has been eliminated in favor of the Equity ratio that considers all of an institution's resources (including fixed assets and endowments), the impact of any reduction in expendable reserves reflected by the Viability ratio is also eliminated.

Changes: In view of this discussion, and the professional judgment of the Department and KPMG, the Secretary establishes the following weighting percentages:

Ratio	Proprietary institutions (percent)	Private non-profit institutions (percent)
Primary Reserve	30	40
Equity	40	40
Net Income	30	20

Proposed Appendix F is revised and supplemented by a new Appendix G to reflect these weighting percentages.

Part 8. Comments Regarding the Proposed Ratio Methodology as a Test of Financial Responsibility.

Comments regarding the composite score standard: Many commenters from private non-profit institutions opposed the creation of a "bright line" standard (i.e., the 1.75 composite score) based on the KPMG report. These commenters maintained that the KPMG report did not establish a test of financial responsibility, but merely recommended a screening process under which the Secretary could easily identify problem institutions. The commenters recommended that the Secretary remove the bright line standard as a test of financial responsibility and instead perform additional analyses of institutions falling below the 1.75 composite score before determining whether those institutions are financially responsible.

Several commenters from proprietary institutions maintained that the 1.75 composite score was too high, and that the Secretary should either abandon or revise the proposed methodology.

One commenter from a proprietary institution suggested that because of the uncertainty of the impact of these ratios, the Secretary should establish a three-year period of evaluation during which the composite score would be set at 1.25.

Several commenters opined that the Secretary should not conclude that an institution is not financially responsible solely because it failed to achieve a 1.75 composite score. The commenters asserted that certain occurrences, such as retirement incentive plans formulated to downsize an institution, could make it appear that the institution is not financially responsible under the proposed ratio methodology, when in fact the institution is financially healthy. The commenters suggested that the Secretary should determine that an institution is not financially responsible only if an independent auditor indicates concern about the institution's financial health in the Independent Auditor's Report or Management Letter comments.

A commenter from a proprietary institution suggested that the Secretary establish the composite score requirement based on the following rationale: if the Secretary allows an institution that loses money to pass the composite score requirement, the institution should be allowed to pass only if it is able under the other ratios to operate for 45 days by using its equity to meet current expenses. According to the commenter, this would lead to the following set of strength factors and weightings for a passing composite score of 1.0: a Primary Reserve Ratio result of .06 would equal a strength factor score of 1.0, weighted at 20 percent; an Equity Ratio result (defined as net worth/expenses) of .125 would equal a strength factor score of 2.0, weighted at 40 percent; and a Net Income Ratio result that was negative, resulting in a strength factor score of zero, weighted at 40 percent. The commenter suggested that the absolute value of the Net Income Ratio, when negative, should be no less than 50 percent of equity in order for the institution to pass. The commenter also suggested that an institution with negative equity, or with an operating loss that is in excess of 50 percent of its net worth, should fail the ratio tests.

Discussion: With regard to the first set of comments, the Secretary acknowledges that there were differing expectations about the intended use of the methodology. However, the Secretary disagrees that the KPMG report did not provide a basis for proposing a regulatory test (the composite score standard) solely because the report did not describe how the Secretary would determine the disposition of those institutions that would not satisfy that test. The Secretary provided alternatives for those institutions as part of the proposed rule. Moreover, the methodology detailed in that report provided a measure of the financial health of institutions along a scale from which the Secretary could reasonably propose a regulatory test of financial responsibility.

The Secretary agrees with the commenters that the composite score standard under the proposed methodology is too rigorous, mainly because that methodology was designed to evaluate the financial health of an institution over a two-to four-year time horizon.

In the methodology established by these regulations, the strength factor scores and weighting percentages are revised to measure the financial health of an institution over a much shorter time horizon, 12-to-18 months, to correspond with the period that generally passes before the Secretary receives financial statements from institutions and makes financial

responsibility determinations based on those statements.

In determining the minimum value of the composite score that an institution would need to achieve to demonstrate that it is financially responsible, the Secretary sought to identify the score at which an institution should not only have some margin against adversity, but also the resources to fund to some extent its technology, capital replacement, human capital, and program needs. The Secretary understands that institutions have differing funding needs and that it may not be necessary for some institutions to fully fund those needs every year. However, the Secretary believes that for an institution to demonstrate that it has the financial ability to provide, and to continue to provide in times of fiscal distress, the education and services for which its students contract, it must over time generate or acquire the resources to adequately fund its needs and to grow, if necessary, its margin against adversity. Along these lines, the Secretary establishes a composite score standard of 1.5.

As discussed previously under Analysis of Comments and Changes, Part 6, a strength factor score of 1.0 represents the lowest ratio result that the Secretary believes an institution must achieve to continue operations, absent any adverse economic conditions. A hypothetical institution with strength factor scores of 1.0 for all of the ratios achieves a composite score of 1.0. At this level on the scoring scale, the institution has very little margin against adversity, is just barely living with its means, and most of its assets are subject to claims of third parties. Although the institution may be able to make its payroll and meet its existing obligations, it will have difficulty borrowing at favorable market rates. Moreover, because it has very limited resources, the institution will have difficulty funding its technology, capital replacement, and program needs. Moving below this level on the scoring scale, it becomes very difficult for the institution to satisfy existing obligations, and even more difficult to fund any of its technology, capital replacement, human capital, and program needs. Moving up the scale, the institution's overall financial health increases incrementally. At a composite score of 1.5, the institution operated within its means and added somewhat to its overall wealth, and has some margin against adversity. At this level, the institution is funding historical capital replacement costs and has operating surpluses to provide funding for some investment in human and physical capital, but it has no excess funds to support new program initiatives or major infrastructure upgrades. In addition, while the institution may be able to borrow at favorable market rates, it may need to borrow to replace physical capital.

The Secretary notes that the specific financial characteristics of institutions may differ somewhat from those of this hypothetical institution, depending on the strength or weakness those institutions demonstrate in the fundamental elements of financial health. However, since the methodology measures those strengths and weaknesses along a common scale and takes into account the relative importance of the fundamental elements, the overall financial health of an institution at any given composite score is the same as that of any other institution with that composite score.

To illustrate the differences between groups of institutions scoring above and below the composite score standard, the following charts show the median value of each ratio for those institutions.

EMPIRICAL DATA FOR PROPRIETARY INSTITUTIONS, MEDIAN RATIO RESULTS

Range of composite scores	Equity ratio	Primary reserve ratio	Net income ratio
0.5 to 0.9	0.089	0.008	0.017
1.0 to 1.4	.180	.038	.024
1.5 to 1.9	.294	.094	.009

EMPIRICAL DATA FOR NON-PROFIT INSTITUTIONS, MEDIAN RATIO RESULTS

Range of composite scores	Equity ratio	Primary reserve ratio	Net income ratio
0.5 to 0.9	0.388	−0.087	−0.017
1.0 to 1.4	.583	.009	−0.001
1.5 to 1.9	.602	.087	.004

These ranges are selected to reflect the difference between the minimum composite score that the Secretary believes an institution must attain to continue operations (1.0) and the composite score that an institution must attain to be financially responsible (1.5). To characterize the ratio results of institutions in these ranges, the median (the value that falls in the middle of the range) was chosen as the measure of central tendency because unlike the mean or mode, the median ignores extreme values, except to account for their location with respect to the middle value of the range.

For proprietary institutions in the 0.5 to 0.9 composite score range, the median value of the Net Income ratio indicates relative strength in one fundamental element of financial health—profitability. However, that strength is outweighed by weaknesses in the Equity and Primary Reserve ratios. In contrast, the proprietary institutions scoring in the 1.5 to 1.9 range show relative strength in the Equity and Primary Reserve ratios. These strengths in viability, liquidity, capital resources, and ability to borrow, account for 70 percent of the composite score and outweigh those institutions' relative weakness in profitability.

For non-profit institutions in the 0.5 to 0.9 composite score range, the median value for the Equity ratio indicates relative strength in ability to borrow, viability, and capital resources, but that strength is outweighed by serious weaknesses in the Primary Reserve and Net Income ratios which account for 60 percent of the composite score. In the 1.5 to 1.9 range, the positive Primary Reserve and Net Income ratios, although relatively weak, supplement those institutions' strength in the Equity ratio.

Changes: The composite score standard proposed under § 668.172(a) is relocated to § 668.171(b) and revised to provide that to be financially responsible an institution must achieve a score of at least 1.5.

Part 9. Comments Regarding Alternative Means of Demonstrating Financial Responsibility

Comments regarding the proposed precipitous closure alternative: A commenter from a higher education association believed that the Secretary should amend the proposed precipitous closure alternative by eliminating the qualifying requirement that an institution must satisfy the general standards of financial responsibility for its previous fiscal year. The commenter opined that the ratios are not short-term measures of financial health that can be corrected quickly by an institution and suggested that an institution should only have to show that its financial condition has not worsened during the year in which the institution relied on this alternative in order to use it again. The commenter reasoned that if the institution's financial health is improving, it poses less of a risk in subsequent years.

Many commenters from proprietary institutions opposed the proposed precipitous closure requirements. The commenters believed that by including personal financial guarantees, the Secretary elevated the precipitous closure standard beyond the current past performance and going concern requirements. These commenters and many others from the non-profit sector maintained that the proposed requirement of personal financial guarantees is neither supported by, nor in keeping with, section 498(c)(3)(C) of the HEA. The commenters believed that the Secretary should retain the current alternatives described in § 668.15(d)(2) under which an institution that fails to satisfy the general standards may demonstrate that it is nevertheless financially responsible.

Many other commenters opposed the concept of requiring personal financial guarantees under any circumstances. Some commenters from non-profit institutions maintained that personal financial guarantees would be impossible to obtain from their trustees or would lead persons to refuse to serve as trustees or would create conflicts of interest for trustees. Several commenters representing proprietary institutions believed that personal financial guarantees are unfair and arbitrary, because the guarantees would expose the owners of small family businesses to the loss of personal assets, including their homes and savings.

Several other commenters recommended that instead of immediately requiring a letter of credit or personal financial guarantees from an institution that fails to achieve the composite score, the Secretary should use a longer term analysis of the institution's financial condition, including the institution's management record. These commenters believed that if an institution failed the general standards one year out of several, more extensive forms of reporting or monitoring should be required to determine whether the institution is improving (particularly when the institution's failure to meet the ratio standards results from normal fluctuations in the business cycle).

Discussion: With regard to the comment that the Secretary should eliminate the requirement that an institution must satisfy the general standards of financial responsibility for its previous fiscal year to qualify for the proposed alternative, the Secretary notes that this requirement was originally established as part of the precipitous closure exception under the financial responsibility regulations published on April 29, 1994. Under that exception an institution was not required to post a surety or enter into provisional certification to continue participating in the title IV, HEA programs. To minimize the Federal risks from unprotected participation, the Secretary structured the exception so that it was available only to an institution that (1) was financially responsible in its fiscal year prior to the year in which it sought to qualify under the exception, (2) demonstrated that its deteriorated financial condition was not exacerbated by benefits given to owners or related parties, and (3) otherwise demonstrated, by satisfying certain conditions, that it had sufficient resources to ensure that it would not close precipitously. That structure allowed a qualifying institution one year to improve its financial condition and prevented that exception from becoming a means for the institution to continue participating under a lower standard of financial responsibility than that required of all other institutions (for more information, see 59 FR 34964–34965).

In keeping with the concept that the precipitous closure exception should provide an opportunity for a financially weak institution to improve its financial condition, but instead of requiring the institution to demonstrate that it had not engaged in certain practices that could have led to its deteriorated financial condition, the Secretary proposed that an institution would need to attain a composite score of at least 1.25 and the owners, trustees, or other persons exercising substantial control over the institution would have to provide personal financial guarantees. The proposed composite score was intended to establish a minimum threshold below which an institution's financial condition had so seriously deteriorated that additional protections, such as surety or provisional certification, would be required immediately to protect the Federal interest. For institutions scoring at or above that minimum threshold, the Secretary proposed requiring personal financial guarantees based on the reasoning that if the owner or person exercising substantial control over the institution was willing to risk the loss of his or her personal assets on behalf of the institution, the Secretary would accept the corresponding risk to the Federal interest by allowing that financially weak institution to continue to participate in the title IV, HEA programs.

In light of the comments, the Secretary acknowledges that requiring personal financial guarantees may prevent some institutions from qualifying under the proposed alternative. Moreover, the Secretary is convinced by these and other commenters that instead of immediately requiring personal financial guarantees or a surety, a more considered and less burdensome approach should be adopted for institutions that do not satisfy the composite score standard.

Along these lines, and in view of the preceding discussion, the Secretary establishes in these regulations the "zone" alternative under which a financially weak institution has up to three consecutive years to improve its financial condition without having to post a surety, provide personal financial guarantees, or participate under a provisional certification. To qualify initially under this alternative, an institution must achieve a composite score in the zone from 1.0 to 1.4, and to continue to qualify, must achieve a composite score of at least 1.0 in each of its two subsequent fiscal years. If the institution does not score at least 1.0 in one of those subsequent fiscal years or does not sufficiently improve its financial condition so that it satisfies the composite score standard (achieves a composite score of at least 1.5) by the end of the three-year period, the institution must satisfy another alternate standard under these regulations to continue to participate in the title IV, HEA programs. However, the institution may qualify again under the zone alternative for its fiscal year following the next fiscal year in which it achieves a composite score of at least 1.5.

The zone alternative is not available to an institution scoring below 1.0 because there is considerable uncertainty regarding the ability of the institution to continue operations and satisfy its obligations to students and to the Secretary. For that institution, the Secretary believes that additional oversight and surety are required immediately to protect the Federal interest.

On the other hand, an institution scoring in the zone should generally be able to continue operations for the next 12-to-18 months, absent any adverse economic event. However, because of that institution's limited ability to deal with adversity and its overall weak financial condition, the Secretary believes it is necessary to monitor more closely the operations of that institution, including its administration of title IV, HEA program funds. Accordingly, under the zone alternative the Secretary requires an institution to provide timely information regarding certain oversight and financial events that may adversely impact the institution's financial condition, but that the Secretary would not generally become aware of until six months after the end of the institution's fiscal year when that institution submits its audited compliance and financial statements. The following chart compares the proposed precipitous closure alternative to the zone alternative.

Provision	Proposed precipitous closure alternative, § 668.174(a)(3)	Zone alternative, § 668.175(d)
To qualify initially under the alternative, an institution must.	1. Achieve a composite score of 1.25 to 1.74 (on a scale from 1.0 to 5.0);. 2. Satisfy all of the general standards of financial responsibility for its previous fiscal year;. 3. Provide personal financial guarantees from owners, board of trustees, or other persons exercising substantial control over institution; and. 4. Demonstrate to the Secretary that it will not close precipitously.-	1. Achieve a composite score of 1.0 to 1.4 (on a scale from negative 1.0 to positive 3.0). *Informational and Administrative Procedures* Rather than having to satisfy the qualifying requirements under the proposed precipitous closure alternative, an institution must provide information regarding certain oversight and financial events and comply with cash management and other provisions.
To continue to qualify, an institution must.	Not available; an institution could qualify under this alternative for only one year.	Achieve a composite score no less than 1.0 in each of its next two years under the alternative and continue to comply with the *Informational and Administrative Procedures* above.
Institution may qualify again under the alternative.	For its fiscal year following the year that it satisfies the composite score standard (1.75).	For its fiscal year following the next year that it satisfies the composite score standard (1.5 or greater).

With regard to the reporting requirements under the zone alternative, an institution must provide information to the Secretary no later than 10 days after the following events occur: (1) Any adverse action taken against it by its accrediting agency, (2) any event that causes the institution, or related entity, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statements, (3) any violation by the institution of any existing loan agreement, (4) any failure of the institution to make a payment in accordance with its existing debt obligations that results in a creditor filing suit to recover funds under those obligations, (5) any withdrawal of owner's equity from the institution by any means, including by declaring a dividend, or (6) any extraordinary losses.

In addition, the Secretary may, on a case-by-case basis, require an institution to submit its compliance and financial statement audits earlier than six months after the end of its fiscal year or provide information about its current operations and future plans.

With regard to administering title IV, HEA program funds, the Secretary is mindful of the concerns raised by commenters about the onerous nature of the reimbursement payment method. Therefore, the Secretary amends the Cash Management regulations under subpart K to include a new payment method, cash monitoring, that is in several respects similar to reimbursement but much less onerous. Like the reimbursement payment method, an institution under the cash monitoring payment method must first make disbursements to eligible students and parents before the Secretary provides title IV, HEA program funds to the institution for the amount of those disbursements.

However, under cash monitoring, the Secretary (1) allows the institution itself to make a draw of title IV, HEA program funds for the amount of the disbursements the institution has made to eligible students and parents, or (2) reimburses the institution for those disbursements based on a modified and more streamlined review and approval process. For example, instead of requiring the institution to provide specific documentation for each student to whom the institution made a disbursement, and reviewing that documentation before providing funds to the institution, the Secretary may simply require the institution to identify those students and their respective disbursement amounts and provide title IV, HEA program funds to the institution based solely on that information. The Secretary further amends subpart K to provide that an institution that is placed under the cash monitoring payment method is subject to the disbursement and certification provisions that apply to FFEL Program funds, but in keeping with the nature of cash monitoring, the Secretary may modify those provisions.

For an institution that qualifies under the zone alternative, the Secretary determines whether to provide title IV, HEA program funds to the institution under one of the cash monitoring payment options or by reimbursement. As part of its compliance audit, an institution must require its auditor to express an opinion on its compliance with the requirements under the zone alternative, including its administration of the payment method under which the institution received and disbursed title IV, HEA program funds. If an institution fails to comply with the information reporting or payment method requirements, the Secretary may determine that the institution no longer qualifies under this alternative.

Finally, with respect to the other comments regarding personal financial guarantees, the Secretary would like to clarify that under section 498(e) of the HEA the Secretary may require these guarantees from an institution with past performance problems or from an institution that fails, or has failed in the preceding five years, to satisfy the general standards of financial responsibility.

Changes: The precipitous closure alternative proposed under § 668.174(a)(3) is replaced by the zone alternative. The zone alternative is located under § 668.175(d) of these regulations.

The Cash Management regulations under subpart K are revised in several ways. First, § 668.162(a)(1) is amended to include cash monitoring as a payment method under which the Secretary may provide title IV, HEA program funds to an institution. Second, a new paragraph (e) is added to § 668.162 that sets forth the provisions of the cash monitoring payment method. Lastly, a new paragraph (f) is added to § 668.167 to provide that the Secretary may require an institution under the cash monitoring payment method to comply with the disbursement and certification provisions that apply to institutions placed under the reimbursement payment method. This paragraph also provides that the Secretary may modify those disbursement and certification procedures for institutions under cash monitoring.

The provisional certification alternatives proposed under § 668.178 (b) through (d) are relocated under § 668.175 (f) and (g) and revised to clarify when and the conditions under which the Secretary may require an institution, or the persons who exercise substantial control over the institution, to provide personal financial guarantees. Also, these sections are amended by removing the proposed

requirement that an institution must demonstrate that it will not close precipitously and providing in place of that requirement that an institution must comply with the zone provisions under § 668.175 (d)(2) and (3).

Comments regarding the irrevocable letter of credit alternative: Many commenters maintained that the proposed rules continue to contradict statutory language in specifying that letters of credit be for one-half of all annual title IV, HEA disbursements, rather than for one-half of potential annual liabilities.

A commenter representing private non-profit institutions asserted that the letter of credit alternative was not feasible for small, frugal, tuition-driven institutions. The commenter suggested that the Secretary should not require these institutions to provide letters of credit unless the institutions have audit or program review liabilities.

Many commenters contended that providing a letter of credit payable to the Secretary erodes an institution's financial condition, affects negatively an institution's ability to provide educational services, and could lead to the precipitous closure of an institution that would otherwise have continued operations. One of these commenters reasoned that this provision is counter-intuitive—an institution that could afford to secure a letter of credit would not need to because it would probably pass the ratio standards, but an institution that did not pass the ratio standards probably could not afford to secure the letter of credit.

Similarly, another commenter recommended that in cases where institutions fail to meet the composite score standard for one year, the Secretary should adopt an accrediting agency approach and work with those institutions by helping them create a formal recovery plan instead of imposing letter of credit requirements that would weaken those institutions' financial condition.

Several commenters from the proprietary sector suggested that the Secretary expand the alternative methods of demonstrating financial responsibility for small institutions to include a provision under which those institutions could provide a letter of credit in the amount of five percent or 10 percent of their prior-year title IV, HEA program funds. The commenters stated that this alternative would be more equitable because a small institution may not be able to afford the cost of obtaining a large letter of credit, or have available sufficiently large credit lines to secure a 50 percent letter of credit. The commenters also recommended that for all institutions, an alternative should be the provision of a letter of credit in an amount ranging from five percent to 50 percent of the institution's prior-year title IV funds, tied to the perceived shortfall in funds, or to the operating loss that triggered the institution's failure to meet the standards.

Discussion: The Secretary continues to believe that the practice of equating the institution's potential liabilities with the amount of funds received during a prior year is reasonable, especially since the law takes into consideration the value of potential loan discharges and unpaid student refunds. The thresholds used to measure financial responsibility, and to establish appropriate minimum surety levels, do not take into consideration additional risks that may be present at institutions where there have been demonstrated compliance problems in administering the title IV, HEA programs. For that reason, the larger surety that allows an institution to be considered financially responsible may be as low as 50 percent, the minimum required under the law which states that such a surety must be not less than one-half of its annual potential liabilities. In the alternative, the Secretary may certify the institution provisionally and require the institution to post a letter of credit as low as 10 percent of its prior year's funding.

Where compliance issues are identified with an institution that does not demonstrate financial responsibility under these regulations, or where greater risks are identified in the institution's deteriorated financial condition, the corresponding amounts of surety required to either demonstrate financial responsibility or participate under provisional certification will be higher. Although this larger surety may impose additional hardships on an institution that is experiencing financial difficulties, the corresponding higher risks arising from that institution's continued participation in the title IV, HEA programs warrant the additional protection to the Federal interests.

With respect to the comments that the Secretary should provide an alternative under which an institution would be allowed to post a small letter of credit to demonstrate that it is financially responsible, the Secretary notes that this alternative is not permitted under the law. Under section 498(c)(3)(A) of the HEA, an institution that does not satisfy the general standards of financial responsibility must post a letter of credit of not less than one-half of its potential annual liabilities to demonstrate that it is financially responsible. For this reason, the Secretary structured the zone alternative to allow a financially weak institution with no compliance problems to continue to participate as a financially responsible institution for up to three consecutive years. This alternative provides institutions scoring in the zone a reasonable period of time to improve their financial condition by working with their accrediting bodies through the formal recovery plans mentioned by the commenter, or by other means. To the extent that an institution is unable to raise its composite score to 1.5 or higher after three years, or if the institution's composite score decreases below 1.0, that institution will generally be able to continue to participate in the title IV, HEA programs by posting a large surety or under a provisional certification with a smaller surety.

Changes: None.

Comments regarding other alternatives: One commenter from a non-profit institution believed that the calculation of a few ratios cannot begin to compare as a true measure of financial strength to a credit rating received by an institution from a major rating agency. Therefore, instead of the proposed methodology the commenter suggested that the Secretary consider any institution whose debt is rated as investment grade (BBB/Baa) or better to be financially responsible.

Many commenters from proprietary institutions argued that in accordance with the language contained in section 498(c)(3)(A) of the HEA, the Secretary should allow institutions to post performance bonds as well as letters of credit as an alternative to meeting ratio standards of financial responsibility.

A commenter from a higher education organization representing public and non-profit institutions suggested the following alternatives for any degree-granting, regionally accredited institution that is designated as a public institution by the State in which it is located or that has been in continuous existence for 25 years or since the authorization of the HEA in November 1965: (1) The institution can meet reasonable tests of self-insurance covering the potential liability of one-half of its annual funding under the title IV, HEA programs, (2) the institution participates in an insurance pool approved by the Secretary that indemnifies the institution for one-half of its annual funding under the title IV, HEA programs, (3) the institution presents a letter of credit covering at least one-half of its annual funding under the title IV, HEA programs, or (4) the institution presents other financial instruments, satisfactory to the Secretary, to cover one-half of the

institution's funding under the title IV, HEA programs.

Similarly, another commenter from a non-profit institution suggested the Secretary (1) should consider that an institution is financially responsible if the institution has been continuously operating with the same management structure for the past 20 years, (2) apply financial responsibility standards only if an institution has exceeded the maximum allowable default rate; and (3) should consider an institution a financial risk and place that institution on some type of probation if the institution has experienced five or more consecutive years of operating deficits, declining net assets, declining net worth, or declining enrollments.

A commenter from a higher education association representing proprietary institutions believed that the 50 percent letter of credit alternative was onerous and excessive and suggested that the Secretary consider the following alternatives: (1) A letter of credit equal to 25 percent of the amount of title IV, HEA program funds received by an institution during the previous year, (2) a performance bond, (3) a 10 percent letter of credit if the institution participates in a State tuition recovery program, (4) instead of reimbursement, the use of an escrow account under which an institution would be allowed to draw title IV, HEA program funds when it earned those funds, (5) a financial guarantee, or infusion of additional capital, by a parent corporation on behalf of an institution, or (6) a 10 percent letter of credit combined with provisional certification but not the reimbursement payment method.

Discussion: Some of the suggested alternatives, such as those relating to longevity, trend analysis, and smaller letters of credit, are not included in these regulations based on the discussion under Analysis of Comments and Changes, Part 9. Regarding the suggestion that the Secretary permit institutions to post performance bonds rather than letters of credit, it has been the Secretary's experience that performance bonds are virtually uncollectible and thus provide little or no protection to the Federal interest.

With respect to the commenters' suggestion that institutions should be able to use self-insurance or insurance pooling as a method of providing surety, the Secretary notes that a letter of credit may be obtained on behalf of an institution from a bank by a number of different enfities, and that these regulations do not prevent several institutions (or other entities) from entering into an arrangement with a bank under which their pooled resources would be used to obtain a letter of credit for an institution that is required to post surety. In the absence of any specific information from the commenters regarding self-insurance or insurance pooling, the Secretary does not modify the regulations to permit any type of insurance pooling that would provide anything other than a letter of credit as surety for an institution.

In response to the comment regarding bond ratings, the Secretary believes that it is unlikely that an institution with an investment grade bond rating will not achieve a composite score of at least 1.5 because, as noted under Analysis of Comments and Changes, Part 6, the financial standards used by rating agencies are more stringent than the standards under these regulations.

While the regulations permit an institution to use its participation in an approved State tuition recovery plan as a substitute for a surety that would otherwise be required if the institution failed to make its refunds in a timely manner, the Secretary does not believe that these plans are appropriate resources to consider for paying liabilities that arise from an institution's administration of the title IV, HEA programs.

The Secretary notes that the cash monitoring payment method may also be used instead of reimbursement for institutions that participate under a provisional certification. This new payment method will reduce the relative burden noted by the commenters who suggested that the reimbursement requirement should be eliminated from the provisional certification procedures.

Changes: The provisional certification alternatives proposed under § 668.178 (b) through (d) are relocated under § 668.175 (f) and (g) and revised to provide that the Secretary may require an institution under either of these alternatives to disburse and request title IV, HEA program funds under the cash monitoring payment method.

Comments regarding alternatives for new institutions: Some commenters objected to the proposal contained in § 668.174(b)(2) under which the Secretary has the discretion to establish the amount of a letter of credit based on the amount of title IV, HEA program funds the Secretary expects that a new institution will receive for the first year it participates under these programs. The commenters believed that the Secretary could use this discretion to establish arbitrarily high letters of credit. As an alternative, the commenters suggested that the Secretary enter into an agreement with an institution establishing the amount of title IV, HEA program funds the institution may draw down during its initial year of participation. Under this arrangement, the institution would initially submit a letter of credit based on the agreed amount and submit additional letters of credit during the year if the institution needed to draw down title IV, HEA program funds in excess of the agreed amount.

Discussion: While the commenters' suggestion has merit, even if an institution agreed to submit additional letters of credit as a condition under a provisional certification, there is no assurance that the institution would be able to submit those letters of credit. In that circumstance, the institution's continued participation in the title IV, HEA programs would be severely jeopardized, placing at risk both students who relied on Federal funds to attend the institution and the Secretary for providing those funds.

To the extent that the Secretary accepts the risk to the Federal interest by allowing a financially weak institution to participate for the first time in the title IV, HEA programs, that risk must be mitigated at the onset by a letter of credit for an amount that the Secretary estimates is sufficient to cover the institution's potential liabilities. This is not to say that the Secretary will determine the amount of that letter of credit without conferring with the institution.

Changes: None.

Part 10. Comments Regarding Past Performance

Comments regarding substantial control: A commenter representing proprietary institutions was concerned that the past performance standards under proposed § 668.167(a)(1) could adversely affect innocent people. The commenter described a situation where an individual acting as a court-appointed officer of an institution undergoing reorganization under Chapter 11 could be harmed if the institution has title IV, HEA program liabilities and that individual is unable to bring the institution out of Chapter 11 status. The commenter believed that under the current rules, the Secretary would consider that the individual exercised substantial control over this failed institution and thus, because of the unpaid program liabilities could not subsequently exercise substantial control over another institution, i.e., because of the individual's past performance, another institution would not risk losing its ability to participate in the title IV, HEA programs by allowing the individual to exercise substantial control. The commenter suggested that the Secretary modify the regulations to exclude from these provisions a person who was not employed by an institution at the time that the institution incurred title IV, HEA, program liabilities but who is retained either for the purpose of assisting in a reorganization plan or by a bankrupt corporation under a court-approved process.

Discussion: The commenter correctly notes that the regulations cause an institution to fail the financial responsibility standards if a person that exercises substantial control over the institution either held an ownership interest in another institution that owes a liability or exercised substantial control over that other institution. The regulations also provide that such a failure can be cured either by showing that the liability from the other institution is being repaid under an agreement with the Secretary, or that the person has repaid a portion of that liability that is equivalent to the former ownership interest. If the person did not hold an ownership interest in the other institution, but was instead a board member or executive officer of that institution or related entity, that person's repayment liability is capped at 25 percent of the applicable liability. Furthermore, the regulations provide that the institution whose financial responsibility is being determined may show that the person identified as exercising substantial control over the institution should nevertheless be considered to lack that control, or the institution may show that the person lacked that control over the institution that owes the liability.

The analysis made under this provision will take into consideration whether the liability arose when the person was exercising control over the institution, and whether that person should have ensured that the institution paid the liability. In the commenter's example, it could be reasonable to conclude that a court-appointed bankruptcy trustee with no prior dealings with the institution, who took control when no funds remained available to pay the liability, would not now cause another institution to fail the financial responsibility requirements. In other situations where someone has taken control over an institution that continued to participate in the title IV, HEA programs, it may be appropriate to hold that person accountable under the regulations if prior liabilities remained unpaid.

Changes: None.

Comments regarding administrative actions, program review and audit findings: One commenter representing proprietary institutions questioned the provision in proposed § 668.177(a)(2) under which an institution would not be considered financially responsible if it had been limited, suspended, or terminated (LS&T) by the Secretary or by a guaranty agency. The commenter maintained that limitations by guaranty agencies could have nothing to do with the financial condition of the institution (for example, the practice of an agency to limit the level of its guarantees to a certain amount per year). Therefore, the commenter believed that these limitations, or any other action taken by guaranty agencies, fall beyond the scope of this provision. The commenter suggested that if a guaranty agency questions the financial condition of an institution, the agency should refer that institution to the Secretary before any action is taken.

Other commenters representing proprietary institutions opined that the proposed provisions under § 668.177(a)(3) are arbitrary. Under these provisions, the Secretary would consider that an institution is not financially responsible based on a material finding in an audit or program review in one of the previous five years. The commenters argued that such a finding might have nothing to do with the financial responsibility of an institution.

Several commenters noted that since the Secretary does not conduct program reviews of all institutions on a regular basis, the limitation on financial responsibility tied to the findings of the institution's two most recent program reviews should be changed to reflect a fixed period of time.

One commenter noted that erroneous program review findings that are settled in favor of an institution are sometimes not settled in a timely fashion. The commenter suggested that the Secretary delay making a determination that an institution is not financially responsible under the past performance standards until after the appeal process is completed.

Discussion: The Secretary reminds the commenters that in addition to satisfying the numeric standard regarding its financial condition (i.e., the composite score standard), to be financially responsible under the provisions in the HEA, an institution must demonstrate that it administers properly the title IV, HEA programs in which it participates and that it meets all of its financial obligations, including repayments to the Secretary for debts and liabilities arising from its participation in those programs. An institution that is the subject of an adverse action taken by the Secretary or a guaranty agency, or that had a material finding of a program violation in an audit or program review, has clearly mismanaged title IV, HEA program funds and is therefore not financially responsible under these provisions.

The Secretary agrees with the commenters who noted that the proposed past performance provision under which an institution is not financially responsible if that institution had a material finding in either of its two most recent program reviews should be changed because those reviews are not conducted of all institutions on a routine basis.

Changes: The past performance provision regarding program reviews under proposed § 668.177(a)(3)(ii) is relocated under § 668.174(a)(2) and revised to parallel the two-year compliance audit requirement.

Part 11. Comments Regarding Administrative Actions and Other Requirements

Comments regarding the procedures under which the Secretary initiates an LS&T action: A commenter representing proprietary institutions argued that the provision under proposed § 668.177(a)(3)(iii) is arbitrary and highly punitive, because the Secretary would determine that an institution is not financially responsible if the institution submits its financial statements a day late or the Secretary rejects the institution's financial statements. The commenter maintained that this provision is unnecessary since the Secretary already has recourse under § 668.178(a) to initiate an action to limit, suspend, or terminate an institution.

Several commenters from private non-profit institutions asserted that the Secretary should not take an action to limit, suspend, or terminate an institution unless (1) the institution fails to correct or cure deficiencies cited in an audit report within ninety days after receiving formal notification of those deficiencies from the Secretary, or (2) the institution fails to submit an audit report within 30 days after receiving formal notification that the Secretary has not received that audit report.

Discussion: Under the regulations, an institution is required to submit audits within a fixed time period, and an institution's failure to do so is a serious matter. The Secretary expects that institutions will work diligently to ensure that the combined financial statement and compliance audit is submitted on time. To the extent that the commenters suggest that an institution may inadvertently fail to submit an audit on time, that mistake is

routinely corrected when the institution is contacted by the Department and asked to provide the missing audit immediately.

The question of whether it may be appropriate to initiate an administrative action against an institution based upon deficiencies or program violations that are identified in an institution's audit is best resolved on a case-by-case basis. Furthermore, an institution should not wait for the Secretary to notify it of program violations identified in its own audit report before the institution takes steps to correct those violations.

Changes: None.

Comments regarding teach-out plans: Many commenters from proprietary institutions opposed any additional requirements relating to institutions on provisional certification, on the grounds that current requirements already provide the Secretary with sufficient oversight authority. The commenters specifically opposed the suggested provision that would require teach-out plans from institutions on provisional certification, arguing that earlier teach-out proposals failed because of serious implementation problems.

Discussion: The Secretary is still considering whether it is feasible to require institutions to routinely provide teach-out plans when a review of the financial statements shows that the institution does not demonstrate financial responsibility. Although the Secretary may ask for this information on a case-by-case basis where some heightened risk of closure is indicated, no broader requirement will be included in the regulations at this time.

Changes: None.

Part 12. Comments Regarding the Proposed Transition Period

Comments: Many commenters supported the concept of a transition period under proposed § 668.171 during which the Secretary would consider an institution to be financially responsible if it failed the proposed ratio standards but passed the current standards. However, the commenters suggested that the proposed one-year transition rule be extended to a two-year or three-year period. Some of these commenters agreed that a one-year transition period was necessary to ensure that the standards are not applied retroactively, but suggested that an additional year would be required to allow the Secretary to test and assess the impact of the standards. Other commenters stated that a longer transition period was necessary so that institutions could structure their operations to meet the standards. Several commenters recommended that the Secretary allow institutions to use either the current or proposed standards for an indefinite period of time.

Many commenters from the proprietary sector recommended that the Secretary allow institutions to use the exceptions to the general standards now contained under § 668.15(d) during the transition period.

Several commenters from the proprietary sector asked the Secretary to clarify how the transition period would work for institutions that have fiscal years ending December 31.

Discussion: The Secretary has considered the suggestions from the commenters to extend the transition period, but continues to believe that the proposed one-year window during which an institution may use either the current standards or the new standards is reasonable. Moreover, a number of changes have been made to the proposed regulations that will minimize any difficulties that an institution may encounter in adjusting to the new measures. For example, an institution whose composite score is less than 1.5 may continue to participate as a financially responsible institution for up to three consecutive years under the zone alternative so long as its composite score is greater than 1.0. Furthermore, by extending the comment period and delaying the issuance of final regulations until 1997, the final regulations will not go into effect until July 1, 1998. This delay in publication while additional comments were sought has also provided institutions with additional time to evaluate their operations under the ratio analysis framework that has been proposed and discussed with the community.

The Secretary agrees to allow an institution that does not satisfy the composite score standard for the transition year to demonstrate that it is financially responsible by satisfying the standards or alternative requirements under § 668.15 or by qualifying under an alternative standard in § 668.175 of these regulations. The Secretary clarifies that such an institution may use the transition-year alternative only once and only for its fiscal year beginning between July 1, 1997 and June 30, 1998. For any fiscal year beginning on or after the effective date of these regulations, July 1, 1998, an institution must satisfy the requirements under these regulations.

In the commenter's example, the transition-year alternative is available to an institution for its fiscal year beginning on January 1, 1998 and ending on December 31, 1998.

Changes: The transition-year provisions proposed under § 668.171(c) are relocated under § 668.175(e) and revised to provide that an institution may demonstrate that it is financially responsible by satisfying the requirements under §§ 668.15(b)(7), (b)(8), (d)(2)(ii), or (d)(3), as applicable.

Part 13. Comments Regarding Debt Payments

Comments: One commenter representing proprietary institutions questioned the need for the general standard regarding debt payments contained in the proposed § 668.172(a)(3), particularly in view of the proposed ratio methodology. The commenter maintained that there might be reasons why an institution would be late in paying debts or be in violation of a loan agreement, including disputes over the nature and amount of the debt. The commenter believed that in those cases, the violation or delinquency does not indicate financial instability. Another commenter recommended that the general standards contain a provision that allows for the resolution of disputes between an institution and a creditor who has filed suit on a debt that is 120 days past due. Along the same lines, another commenter noted that since there are no alternatives for an institution that is not current in its debt payments, the Secretary should not initiate an action to terminate such an institution without providing the institution an opportunity to rectify this situation.

Discussion: As a condition of demonstrating financial responsibility, an institution is expected to conduct its business affairs in a manner that enables the institution to pay its debts in a timely manner. When any creditor files suit against an institution to collect a debt that is more than 120 days late, the Secretary believes that there is a significantly increased risk that Federal funds could be used improperly, or that Federal funds held in the institution's bank account could be sought by a creditor through the legal system. Furthermore, since such a lawsuit between an institution and a creditor is unlikely to present Federal questions where the Department would be likely to intervene in the legal proceedings, it is reasonable to require the institution to be provisionally certified and post a small letter of credit. The Secretary believes that this additional protection to the taxpayers is warranted where an unpaid, or even disputed, debt has prompted a creditor to initiate a legal proceeding to obtain a judgment against the institution. When an institution fails to demonstrate financial responsibility under the regulations due to the filing of such a lawsuit, the institution would be given an opportunity to be certified provisionally and post a surety unless other problems were identified that involved the institution's administration of the federal student aid programs.

Changes: None.

Part 14. Comments Regarding the Definition of Terms

Comments: Several commenters requested that the Secretary provide detailed definitions for the following terms used for the financial ratios under proposed § 668.173: intangibles, total expenses, income before taxes, total revenues (particularly if refunds, returns, and allowances are deducted), and long-term debt and total long-term debt (especially as to whether the last two terms include or exclude the current portion of the debt, and whether the terms include long-term debt owed stockholders or other related parties or entities). One of these commenters believed that the term "income before taxes" should be defined as "income from continuing operations before extraordinary items and changes in accounting principles."

One commenter asked whether total revenues include those items included under gross revenues or net revenues as those terms are used on financial statements. This commenter also asked how the definition of total expenses related to the captions "operating expenses" and "other expenses and income" on financial statements, and whether drop and withdrawal accounts, interest, and other non-operating expenses should be included in the definition of total expenses.

Another commenter asked for clarification of the term "unrestricted income." This commenter asserted that under Statement of Financial Accounting Standards 117, unrestricted income can be defined either as total unrestricted income (tuition, fees, contributions, auxiliary revenues, etc.) before considering net assets released from restrictions, or it can be defined as unrestricted income plus any net assets released from restrictions.

Discussion: To assist in clarifying the final regulations, the Secretary provides definitions for the following terms:

Total Expenses—Expenses are outflows or other using up of assets or incurrences of liabilities (or a combination of both) from delivering or producing goods, rendering services, or carrying out other activities that constitute the entity's ongoing major or central operations. Losses are decreases in equity (net assets) from peripheral or incidental transactions of an entity and from all other transactions and other events and circumstances affecting the entity except those that result from expense or distributions to owners. Total expenses in the context of this final rule include both operating and non-operating expenses and losses, except extraordinary losses meeting the criteria of APB Opinion No. 30, paragraph 19. Therefore, total expenses for proprietary institutions includes items such as costs of sales, selling and administrative expenses (including interest and depreciation) and other non-operating losses. Total expenses for private non-profit institutions includes similar items of expense and is defined as the required line item in the Statement of Activities entitled Total Expenses for those institutions reporting under the new accounting standards FASB Statement 117.

Total Revenues—Revenues are inflows or other enhancements of assets of an entity or settlements of its liabilities (or combination of both) from delivering or producing goods, rendering services, or other activities that constitute the entity's ongoing major or central operations. Gains are increases in equity (net assets) from peripheral or incidental transactions of an entity and from all other transactions and other events and circumstances affecting the entity except those that result from revenues or investments by owners. Total revenues in the context of this final rule includes both revenues and gains, except extraordinary gains meeting the criteria of APB Opinion No. 30, paragraph 19. Therefore, total revenues for proprietary institutions includes items such as tuition and fees, bookstore revenues, investment gains, other income and miscellaneous revenue. Revenues are reported net of refunds, returns, allowances and discounts (including tuition discounts) and drop and withdrawals. Total revenues for private non-profit colleges and universities includes similar items of revenue and is defined as the required line item in the Statement of Activities typically entitled Total Unrestricted Income for those institutions reporting under the new accounting standards FASB Statement 117. Unrestricted income includes unrestricted revenues, gains and other support including net assets released from restrictions during the period.

The Secretary wishes to clarify that the definition of total revenues includes net assets released from restrictions of private non-profit colleges and universities. In accordance with the AICPA Audit and Accounting Guide for Not-for-Profit Organizations as of June 1, 1996, certain items such as investment gains may be reported net of fees with appropriate disclosure in the footnotes to the financial statements.

Income Before Taxes—Income before taxes is defined as income from operations before extraordinary items, discontinued operations, and changes in accounting principles. The Secretary wishes to clarify that the definition of income before taxes does not include income or loss from discontinued operations. However, the Secretary may consider the effect of extraordinary items, discontinued operations, and changes in accounting principle in the overall evaluation of financial responsibility.

Changes: None.

Part 15. Comments Regarding the Proposed Standards and Requirements for Institutions Undergoing a Change in Ownership

Comments regarding the proposed letter of credit and personal financial guarantee provisions: Several commenters believed that the Secretary took an extreme position that will prevent owners from selling their institutions by proposing under § 668.175 that a new owner either (1) submit a letter of credit equal to 50 percent of the title IV, HEA program funds that the Secretary estimates the institution will receive during its first year under new ownership, or (2) provide personal financial guarantees.

Some commenters opposed the requirement of financial guarantees for several reasons. First, the commenters maintained that since recent changes of ownership have resulted in financially stronger rather than financially weaker institutions, the guarantees are not necessary. Second, they believed that the guarantees would slow the process of obtaining approval from the Secretary for a change of ownership. Third, the commenters argued that the provision for personal financial guarantees is not common in the business world and would negate the concept of a corporation. Moreover, the commenters opined that personal financial liability should only be required in cases involving personal wrongdoing; in other cases, it only serves to discourage strong owners from buying financially troubled institutions.

Many other commenters from proprietary institutions stated that they would support the proposed rules for institutions that change ownership only if: (1) The new rules speed up the process under which the Secretary determines whether to allow those institutions to participate in the title IV, HEA programs, or (2) provide uninterrupted participation for institutions that change ownership.

However, the commenters did not believe the proposed rules would achieve either of these objectives.

Comments regarding the consolidating date of the acquisition balance sheet: Several commenters maintained that requiring a consolidating date of the acquisition balance sheet would be unnecessary, expensive, and time consuming. Some of these commenters asserted that such a requirement would limit the marketability of institutions, or destroy the value of small institutions, because it would require an institution to close its books as of the acquisition date and have a complete audit performed, resulting in large audit costs and losses of time. According to one of the commenters, these costs could be avoided for a publicly traded corporation if the Secretary would agree to determine financial responsibility from the information contained in the financial statements included as part of the corporation's quarterly reports to the SEC. The commenter noted that these financial statements would be no more than 90 days old, and believed that the Secretary could rely on their accuracy for two reasons: the SEC levies criminal penalties against corporations that file inaccurate statements, and the statements are reviewed by an independent CPA.

Another commenter requested the Secretary to clarify how the current requirement under which an institution provides an audited balance sheet when it applies for a change of ownership differs from the proposed requirement that the institution submit a consolidating date of acquisition balance sheet.

Comments containing alternative proposals for institutions undergoing a change in ownership: Several commenters suggested that an institution undergoing a change of ownership that meets the general requirements should be exempt from the letter of credit or personal financial guarantees requirements if the institution achieves the required ratio score based on a balance sheet audit or an audited financial statement that covers only part of a year. The commenters preferred this approach over the proposed requirements under which the Secretary would maintain the letter of credit or keep in place the personal financial guarantees until the institution completed a full fiscal year.

One commenter offered several ways to deal with changes of ownership. First, the commenter suggested that the Secretary charge a reasonable fee for processing change of ownership applications, believing that it is fair to compensate the Secretary for committing trained staff to process application requests timely. Moreover, the commenter opined that this suggestion would eliminate frivolous and unqualified requests. Second, the commenter believed that the Secretary should examine applications from existing owners purchasing existing institutions differently from new owners with no experience in the school business entering the business. In either case, the commenter argued that the Secretary should approve a change of ownership request without interrupting the acquired institution's title IV, HEA program funds if the owner satisfies certain conditions. For an existing owner, the owner must demonstrate that he or she has managed an institution participating in the title IV, HEA programs to the highest standards. According to the commenter, the owner's current institution must have: (1) A low cohort default rate (20 percent or lower), (2) an excellent job placement rate (80 percent or more), (3) less than 1 percent audit exceptions, (4) been in business for five years or more, and (5) resolved any actions taken by the Secretary, an accrediting agency, or the State.

For a new owner purchasing an existing institution, the commenter suggested that the Secretary (1) require that owner to submit a letter of credit (or cash) for an amount equal to three months of the amount of title IV, HEA program funds that the institution received in the prior year, and (2) limit any increase in the amount of title IV, HEA program funds the institution receives during its first 12 months under new ownership to 10 percent over the amount the institution received in the prior year.

Another commenter suggested lowering the percentage of the letter of credit, asserting that no business acquiring an institution could possibly post a letter of credit for 50 percent of the title IV, HEA program funds that the institution would receive.

Finally, a commenter from a proprietary institution suggested that the Secretary could establish standards for the Equity and Primary Reserve ratios for institutions that change ownership that are higher than the standards established for participating institutions.

Comments regarding other change of ownership issues: A commenter requested that the Secretary clarify whether the proposed requirements for an institution undergoing a change would eliminate the current provision under which that institution is provisionally certified.

Another commenter inquired whether the excluded transactions described under § 600.31(e) would continue to exempt an institution from the change of ownership provisions under proposed § 668.175.

One commenter argued that it was erroneous to assume that a change of ownership results in a change of control. The commenter believed that a change of ownership occurs when a corporation releases a majority of its stock on the market. However, the commenter reasoned that a change of control does not occur if a large number of shareholders acquire that stock since no shareholder acquires a controlling interest. Moreover, the commenter concluded the Secretary should not require a financial statement audit or surety if the corporation was financially responsible before such an event because the financial condition of the corporation does not change as a result of this event. Therefore, the commenter suggested that the Secretary amend proposed § 668.175(a) so that it applies only to a change of ownership that results in a new person or entity exercising substantial control over the institution, or if the institution's financial statement is affected by the change.

Comments regarding additional locations: Several commenters opposed the proposal under which the Secretary could require personal financial guarantees or letters of credit for additional locations of an institution, arguing that it is inappropriate to require such letters or guarantees in any situation other than one involving past misconduct. Moreover, the commenters believed that the Secretary should not consider the expansion of operations as an event that requires heightened scrutiny.

Another commenter added that it was inappropriate to single out additional locations for heightened scrutiny since other forms of expansion, including the rental of additional buildings or the expansion of housing or research facilities, could have an equal impact on an institution's financial situation. In any event, the commenter suggested that the guarantees should only remain in place until the institution demonstrates that it is financially responsible and that such guarantees should not exceed 50 percent of the amount of title IV, HEA program funds that would be received by the additional location.

One commenter asked that the Secretary clarify the types of financial surety that would be required for an additional location. The commenter stated that if the surety was limited to personal financial guarantees, a publicly traded corporation could not add locations, because shareholders who are purely investors would also be required, but would refuse, to provide personal guarantees. Therefore, the commenter recommended that the Secretary accept instead irrevocable letters of credit.

Another commenter suggested that decisions regarding additional locations should be made by accrediting agencies in accordance with the regulations contained in § 602.27. Under this suggestion, if the accrediting agency determines that an institution is administratively capable and financially responsible, then the institution would be allowed to open the additional location without any other restrictions. If the accrediting agency determines otherwise, then the institution would not be allowed to open that location even if the institution is willing to provide a surety.

A commenter asserted that it was important to describe the conditions under which the Secretary would draw upon a surety provided when an institution adds an additional location, because these conditions will profoundly affect the cost of the surety. In particular, the commenter asked whether the Secretary would draw upon the surety only if an institution closed, or under other circumstances, and whether the amount drawn would be the amount equal to unpaid refunds and improperly disbursed title IV, HEA program funds, or some other amount.

Discussion: The Secretary thanks the commenters for their suggestions and recommendations under this Part, but notes that several issues raised by the commenters relating to institutional participation, application and certification procedures, and additional locations fall beyond the scope of the proposed financial responsibility regulations. Consequently, the Secretary could not amend the applicable sections of the regulations that address those areas and procedures. Moreover, because changes to those areas and procedures will likely affect how the Secretary determines whether institutions undergoing a change of ownership are financially responsible, and to harmonize any new financial standards with those changes, the Secretary will delay promulgating final financial responsibility regulations for those institutions. In the meantime, the financial responsibility of an institution that undergoes a change of ownership will be determined under current regulations and administrative procedures.

Changes: The Secretary withdraws the provisions under proposed § 668.175 that an institution undergoing a change in ownership would be financially responsible only if the persons or entities acquiring an ownership interest in that institution provide personal financial guarantees or letters of credit. The Secretary will in the future propose regulations regarding changes of ownership and other related issues.

Final Regulatory Flexibility Analysis

The Secretary has determined that a substantial number of small entities are likely to experience significant economic impacts from this regulation. Thus, the Regulatory Flexibility Act (RFA) required that an Initial Regulatory Flexibility Analysis (IRFA) of the economic impact on small entities be performed and that the analysis, or a summary thereof, be published in the Notice of Proposed Rulemaking. The IRFA was performed and a summary was published in the Notice of Proposed Rulemaking for this rule. This Final Regulatory Flexibility Analysis (FRFA) discusses the comments received on the IRFA and fulfills the other RFA requirements.

The Department of Education has a long history of providing compliance assistance to institutions participating in the Title IV, HEA programs, in the form of guidance, training, and access to staff for individualized assistance. The Department will provide similar support to institutions in implementing this new rule. This assistance fulfills the letter and the spirit of the RFA requirement that this assistance is provided to small entities.

Summary of Significant Issues Raised by the Public Comments on the IRFA, a Summary of the Assessment of the Department of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

In the notice of proposed rulemaking, the Secretary invited comments on the IRFA, particularly comments on the definition of small entities, the estimation of the number of institutions likely to experience economic impacts, and the estimated costs of alternative demonstrations of financial responsibility. No comments were received on these issues, but other comments on the RFA and small entities were received. These comments are discussed here.

Comments: Many commenters from the proprietary sector maintained that the Secretary had not met the burden of proof required in the RFA regarding the Department's reasons for taking action.

Discussion: The RFA requires the Secretary to publish a description of the reasons why action by the Department was taken and a succinct statement of the objectives of, and legal basis for, the final rule. In the next section of this FRFA and in the preamble, the Secretary describes why the Department took action. The Secretary believes this explanation satisfies the RFA requirements.

Changes: None.

Comments: A commenter representing proprietary institutions questioned the manner in which the first KPMG study was conducted. The commenter believed that small business interests were not considered since no representatives of small proprietary institutions were among those institutional representatives that assisted with the first KPMG study. Moreover, the commenter asserted that this omission, as well as the fact that the Secretary did not consider the comments submitted by a group of CPAs on behalf of proprietary institutions regarding the first KPMG report, violated the requirement in the RFA that the Secretary confer with representatives of small businesses.

Discussion: The Secretary has conferred extensively with representatives of all types of postsecondary institutions throughout the period of this rulemaking process. This consultation goes well beyond the RFA requirement that the Secretary confer with representatives before the final rule is published. This consultation is evidenced by the fact that the group of CPAs to whom this commenter referred had received the first KPMG report when that report was in its draft stage, and had time to consider and provide extensive comments on that draft report. The Secretary distributed a draft of that report to all sectors, including representatives of small proprietary institutions. The comments received were considered carefully by the Department and KPMG before the August 1996 KPMG report was issued, and considered again before the NPRM was published. During the comment period on this rule, the Secretary had extensive discussions with the postsecondary community, as discussed in the preamble. These discussions included several representatives of small for-profit and small non-profit institutions.

Changes: None.

Comments: Many commenters from proprietary institutions concluded from the discussion in the IRFA section of the NPRM that the ratio standards are weighted heavily against the for-profit sector.

Discussion: The Secretary feels that the ratio standards are correctly tailored

to measure financial health at different institutions. The final rule has been designed so that institutions across all sectors that demonstrate similar levels of financial health receive similar scores. Thus, a proprietary institution that earns a score of 2.0 will have approximately the same level of financial health as a non-profit institution with the same score. As discussed in the IRFA, the estimates of the number of institutions experiencing economic impacts used in that analysis were based on the best information available at that time. That information came from a judgmental sample of financial statements in which financially weak institutions were intentionally over-sampled in order to provide as clear a picture as possible of these institutions. The estimates contained in this FRFA were obtained from a non-judgmental sample of institutions and thus represent improved estimates of the number of institutions likely to experience economic impacts. It is true that institutions in the proprietary sector are more likely to experience negative economic impacts from this rule. The degree to which a higher proportion of proprietary institutions do not attain passing scores is consistent with the lower levels of financial health in that sector evidenced by the audited financial statements analyzed by the Department and KPMG.

Changes: The FRFA contains improved estimates of the number of institutions likely to experience economic impacts. These estimates are based on a larger and non-judgmental sample.

Comments: Several commenters from proprietary institutions asserted that the proposed standards favor large or publicly traded corporations at the expense of small and new institutions. Other commenters believed that many small institutions with good educational and compliance records that pass the current standards would fail the proposed standards. The commenters opined that this outcome points to a flaw in the manner in which the methodology treats small institutions. An accountant for a proprietary institution argued that because the proposed methodology does not provide an adjustment for size, it is unfair to compare an institution with $10 million in tuition revenue to an institution with $500,000 in tuition revenue by applying the same standards and criteria to both institutions.

Discussion: As discussed elsewhere in the preamble, the final methodology does account for the size of the institution by using ratios that consider an institution's financial strength in relation to certain characteristics of the institution. It is estimated that between 105 and 165 small institutions that pass the current standards would fail the new standards. The Secretary believes that, based on this more comprehensive and accurate measure, these institutions have a sufficiently poor financial condition to warrant additional oversight of the Federal funds administered by these institutions, irrespective of their educational and compliance records.

Changes: None.

Comments: A commenter representing private non-profit institutions asserted that the letter of credit alternative was not feasible for small, frugal institutions that are tuition-driven. The commenter suggested that these institutions should not be required to provide letters of credit, or that only those institutions that have audit or program review liabilities be required to provide a letter of credit. Several commenters from the proprietary sector stated that a small institution may not be able to afford the cost of obtaining a large letter of credit, or have available sufficiently large credit lines to secure a 50 percent letter of credit. The commenters stated that a more equitable alternative would be for the Secretary to expand the alternative methods of demonstrating financial responsibility for small entities to include a provision under which those entities could provide a letter of credit in the amount of five percent or 10 percent of their prior-year title IV, HEA program funds. The commenters also recommended that for all institutions, an alternative should be the provision of a letter of credit in an amount ranging from five percent to 50 percent of the institution's prior-year title IV funds, tied to the perceived shortfall in funds, or to the operating loss that triggered the institution's failure to meet the standards.

Discussion: The Secretary understands that small (and large) institutions that are in poor financial condition may have difficulty obtaining a 50 percent letter of credit. This requirement is only imposed on institutions whose ability to continue operations is highly uncertain. Furthermore, there are other alternatives by which institutions can continue to participate in the title IV, HEA programs without posting a 50 percent letter of credit. For instance, institutions can participate under provisional certification by posting a 10 percent letter of credit. Other alternative methods were considered and rejected, including the alternatives described by the commenters. These alternatives are discussed earlier.

Changes: This final rule contains the zone alternative, under which financially weak institutions may continue to participate without posting a letter of credit.

Comments: Several commenters representing proprietary institutions believed that personal financial guarantees are unfair and arbitrary, because the guarantees would expose the owners of small family businesses to the loss of personal assets, including their homes and savings.

Discussion: The proposed alternative of providing personal financial guarantees was intended to provide owners with additional options, and was available at the discretion of the owner of the institution. The provision of collateral is standard operating practice in the financial sector and this proposed alternative was offered to provide institutions with flexibility in meeting the financial responsibility standards. The Secretary does not feel that providing an alternative that can be exercised at the option of the small business owner is unfair or arbitrary. However, the resources of the Department can be better utilized in administering the provision associated with the zone alternative than in administering personal financial guarantees.

Changes: The personal financial guarantee alternative has been removed from the final rule.

Description of the Reasons Why Action by the Department Was Taken and a Succinct Statement of the Objectives of, and Legal Basis for, the Final Rule

The Secretary is directed by section 498(b) of the HEA to establish that institutions participating in title IV, HEA programs are financially responsible. The Department, as part of its regulatory reinvention process, has analyzed the current standards for institutions to demonstrate financial responsibility and found that improvements are both possible and needed. The tests of financial responsibility are being modified so that they more accurately reflect the financial health of the institutions participating in the programs. The modifications provide different tests for each postsecondary sector. Institutions are evaluated according to standards appropriate to their sector and financial practices and conditions. More information about the need and justification for this rule can be found elsewhere in the preamble.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The Secretary has applied the U.S. Small Business Administration (SBA) Size Standards to the set of institutions that will be affected by this rule. Postsecondary educational institutions are classified in the Standard Industry Classification (SIC) in Major Industry 82—Educational Services. Within this SIC, all subclassifications except Flight Training Schools have the same criterion for qualifying as a small business. This criterion is that the business have total annual revenue less than or equal to $5 million. Thus, for the purposes of analyzing this regulation, for-profit and non-profit businesses with total annual revenue less than or equal to $5 million are considered small entities. For public institutions, the SBA standard is that the governmental body that is responsible for the institution have a population less than 50,000. For instance, a postsecondary vocational institution that is operated by a county with a population under 50,000 would be considered a small governmental entity using the SBA Size Standard.

In order to determine the number of small institutions to which the rule will apply, an analysis was performed using a census of postsecondary educational institutions. This census is named the Integrated Postsecondary Educational Data System (IPEDS) and is maintained by the U.S. Department of Education's National Center for Education Statistics (NCES). All postsecondary educational institutions that participate in the title IV, HEA programs are required, as a condition of participation, to fully participate in the IPEDS data collections. The last year for which finance data were collected covered the 1993–94 academic year. These data were required to categorize the institutions by their total revenue. The actual data point that is collected is "Total Current Fund Revenue," which is used as a proxy for Total Revenue. The differences between this measure and the measure used by SBA are considered negligible; in any case, this is the only measure available. For small governmental entities, data on the size of the population of the governing body was not available for this analysis. However, a decision was made to err on the side of including more institutions rather than run the risk of including too few in the "small" category. For that reason, any public institution that was controlled at any level below that of a state was considered a small institution for this part of the analysis. No adjustment was available for growth or shrinkage of the number of participating institutions. However, the analysis shows that a substantial number of small entities will be affected by the proposed rule and no adjustment factor would change that, so the question of adjusting to current program participation levels is not important for the determination of whether a substantial number of small entities would be affected by the proposed regulation.

The estimates are that this rule will apply to 1,690 small for-profit entities, 660 small non-profit entities, and 140 small governmental entities. The RFA directs that these small entities be the sole focus of the Regulatory Flexibility Analysis.

Estimate of the Number of Institutions Experiencing Economic Impacts From the Rule

There are no significant adverse economic impacts of these regulations on public entities. This is because public entities are assumed to satisfy the financial responsibility requirements by virtue of their backing by the full faith and credit of the State or other governmental body where they are located. The minimal reporting requirements contained in this rule for public entities to establish their public status do not represent a significant economic impact. It is estimated that this would represent four hours of time per institution. Using a loaded labor rate of $20.00 per hour, this would cost each small public institution $80.00. This is similar to the paperwork burden associated with the current rule with regard to public institutions, so no change in the economic impact on these entities is expected.

The small for-profit and small non-profit entities that would experience adverse economic impacts from this rule are those that would not pass the new financial responsibility test and would be required to provide additional surety to continue participating in the title IV, HEA programs, or to comply with the heightened monitoring required of institutions.

Any institution that does not pass the financial ratio test can post a letter of credit worth at least 50 percent of its previous year's title IV, HEA program funds. Institutions that use this alternative will be considered financially responsible.

Institutions that fail the financial ratio test can post a letter of credit worth at least 10 percent of their previous year's title IV, HEA program funds, comply with additional reporting requirements, provide early financial audits if requested, and participate under reimbursement or one of the cash monitoring payment methods. Institutions that use this alternative will not be considered financially responsible and will be provisionally certified to participate in the programs.

Institutions that fall into the zone can participate by complying with additional reporting requirements, providing early financial audits if requested, and participating under reimbursement or one of the cash monitoring payment methods. Institutions in the zone that use this alternative will be considered financially responsible. This alternative method of demonstrating financial responsibility for institutions in the zone is available for only three out of any four years. An institution which was in the zone for three years must pass the ratio test at the end of the third year or it will be considered to have failed the financial ratio test and must participate under one of the alternatives described above (50 percent letter of credit, or 10 percent letter of credit with provisional certification and heightened monitoring).

The Department contracted with KPMG to perform an analysis of the financial tests that will be conducted on audits submitted by participating institutions. Using the KPMG sample to infer to the population, the following estimates were obtained. An estimated total of 220–390 small institutions that failed the old financial responsibility test would have passed the new test or been eligible for the zone alternative, had it been in effect during this period. For these institutions, the proposed changes would have had a positive economic impact because they would have been spared the expense of an alternative demonstration of financial responsibility. At the same time, an estimated total of 260–415 small institutions that passed the old financial responsibility test would have failed or fallen into the zone under the new test. For these institutions, these changes would have had a negative impact because they would have had to go to the expense of posting surety or heightened monitoring, or both, as discussed in the next section. A fuller description of these institutions, broken down by the type of organization, is presented in Table 1.

TABLE 1. ESTIMATED NUMBER OF INSTITUTIONS EXPERIENCING ECONOMIC IMPACTS

Status with regard to old and new financial responsibility tests	Small for-profit institution	Medium and large for-profit institution	Small non-profit institution	Medium and large for-profit institution
Old test: Pass. New test: Pass (no economic impact)	1,300–1,400 56%–71%	75–125 29%–63%	300–350 50%–81%	875–950 53%–69%
Old test: Pass. New test: Zone (adverse economic impact)	150–200 6%–10%	15–25 6%–17%	25–50 4%–12%	20–40 1%–3%
Old test: Pass. New test: Fail (adverse economic impact)	100–150 4%–8%	15–25 6%–17%	5–15 1%–3%	10–20 0%–1%
Old test: Fail. New test: Pass (positive economic impact)	75–125 3%–6%	10–20 4%–13%	50–100 8%–23%	400–450 24%–32%
Old test: Fail. New test: Zone (positive economic impact)	75–125 3%–6%	5–15 2%–10%	20–40 3%–9%	50–100 3%–7%
Old test: Fail. New test: Fail (possible positive economic impact)	275–325 12%–16%	30–50 12%–33%	30–50 5%–12%	50–100 3%–7%

Source: Department and KPMG analysis from sample data.

Estimates of Economic Impacts

The economic impact of the new financial tests depends on the alternative method that the institution uses to continue participating in the title IV, HEA programs. It is impossible to determine what alternative these entities will choose. Of course, one alternative that is available to entities is to discontinue participation in the programs. Using the economic principle of profit-maximization (or cost-minimization for non-profit entities), entities that would choose to discontinue participation have demonstrated that their cost of withdrawal is lower than their cost of these alternative methods for demonstrating financial responsibility. Therefore, these costs represent estimates of maximum economic costs associated with the choice of alternative certification or withdrawal from the title IV, HEA programs. It is difficult to determine the cost of withdrawal from participation in these programs.

Post a Letter of Credit Equal to at Least 50 Percent of the Institution's Prior Year Title IV, HEA Program Funds

The cost of posting a letter of credit varies according to the particular financial situation of the institution employing this alternative. The cost also depends on the type of relationship that the institution has with its bank. The costs estimated here assume that the institution has no relationship with a bank that would allow the bank to rely on its institutional knowledge to more accurately determine the risk of having to pay out the letter of credit. Thus, the estimates here are overstated for at least some institutions that have such a relationship with their banks.

For the purposes of this analysis, costs will be estimated for a small institution of typical size. An institution with annual title IV revenue of $2 million would be required to post a letter of credit of $1 million. The bankers representing local, regional, and national commercial banks contacted by KPMG stated that they would charge a fee of between 0.75 percent and 1.25 percent for such an institution, or between $7,500 and $12,500. In addition, the bankers stated that the institution would be required to collateralize the letter of credit. Using an opportunity cost of the collateral of four points above the prime rate (12.5 percent), this would represent an estimated opportunity cost of $125,000. The bankers indicated that the fees and requirements would be similar for both proprietary and private non-profit institutions.

It is estimated that about one-fifth of the institutions that fail the financial responsibility test will choose to post a 50 percent letter of credit. This estimate represents the best professional judgment of Department program staff. Institutions that fail the old and new standards and are already participating with this alternative will not experience an economic impact from this provision. This estimate is based on the assumption that none of the institutions in the zone will choose to post a 50 percent letter of credit, since the other alternative for institutions in the zone has a lower economic impact. The letter of credit alternative is available for institutions in the zone under the statute. Some institutions may experience different economic costs than those estimated here and find the 50 percent letter of credit alternative more attractive than the other requirements in the zone alternative.

Post a Letter of Credit Equal to at Least 10 percent of the Institution's Prior Year Title IV Funds and Participate Under Provisional Certification

As discussed above, the costs of securing a letter of credit depend on the particular financial situation of the institution and the type of relationship that the institution has with its bank.

For the purposes of this analysis, costs will be estimated for a small institution of typical size. An institution with annual Title IV revenue of $2 million would be required to post a letter of credit of $200,000. The bankers contacted by KPMG stated that they would charge a fee of between 0.75 percent and 1.25 percent for such an institution, or between $1,500 and $2,500. In addition, the bankers stated that the institution would be required to collateralize the letter of credit. Using an opportunity cost of the collateral of four points above the prime rate (12.5 percent), this would represent an estimated opportunity cost of $25,000. The bankers indicated that the fees and requirements would be similar for both proprietary and private non-profit institutions.

It is estimated that about four-fifths of the institutions that fail the financial responsibility test will choose to post a 10 percent letter of credit. This estimate represents the best professional judgment of Department program staff. Institutions that fail the old and new standards, and are already participating with this alternative, will not experience an economic impact from this provision.

Additional Reporting

Institutions that fail the financial responsibility ratio test or use the zone alternative to demonstrate financial responsibility will be required to report significant adverse financial or oversight events to the Department. It is estimated that about one-fifth of institutions using the zone alternative will have an average of 1.5 events per year that they would have to report to the Department. It is estimated that about one-third of institutions that fail the ratio test will have an average of two events per year that they would have to report to the Department.

Reporting each event is expected to take about 15 minutes. Using a loaded labor rate of $20.00 per hour, reporting each event will cost the institutions $5.00. An estimated one-fifth of the institutions using the zone alternative will experience an average economic impact of $7.50. An estimated one-third of the institutions that fail the ratio test will experience an average economic impact of $10.00.

These estimates represent the best professional judgment of Department program staff.

Early Submission of Audits

Institutions that fail the financial responsibility ratio test or use the zone alternative to demonstrate financial responsibility may be required to submit early financial audits to the Department, at the Department's discretion. It is expected that these institutions will be required to submit these audits within 60 days of the end of the fiscal year. It is estimated that the Department will exercise that discretion for about one-half of the institutions using the zone alternative, and about two-thirds of the institutions that fail the ratio test.

The only economic impact institutions will experience from being required to submit their audited financial statements early is any higher fees that may be charged to the institutions by their auditors. KPMG researched the types of fees that a national, regional and local accounting firm would typically charge for this service. It was estimated that a small institution with about $2.5 million in total revenue and one campus would be charged between $6,000 and $8,000 in additional fees for a combined financial and compliance audit performed in January or February. The accounting firms also stated that institutions with fiscal years that do not end on December 31 would probably not be subject to additional fees as long as they receive sufficient advance notice of this requirement.

Cash Monitoring, Type 1

Institutions that are required to obtain title IV, HEA program funds through the first type of cash monitoring will be required under § 668.162(e)(1) to credit students' accounts before drawing federal funds. The institution's compliance audit will contain verification that this did occur throughout the year. There is no additional paperwork associated with this option. There will be some minimal one-time costs associated with changing from the advance payment method to this payment method. It is difficult to estimate what changing payment systems might cost since it would vary depending on the administrative structure of the institution. It is expected that it might take a small institution an estimated 40 hours to reprogram its financial system and make other adjustments. Using a loaded labor rate of $50.00 per hour for this type of technical work, the estimated economic impact is $2,000. Since institutions are expected to credit students' accounts and draw federal funds in the same banking day, there should be no borrowing costs associated with this payment method. Under the advance payment system, institutions are allowed to keep up to $250 in interest earned from depositing federal funds in advance of disbursing it to students. Institutions that are no longer able to participate on advance payment would lose the portion of that $250 they were able to earn.

It is estimated that about three-fourths of the institutions participating under the zone alternative will be placed on this level of cash monitoring. It is estimated that about five-eighths of institutions who fail the ratio test and participate under the 10 percent letter of credit alternative will be placed on this level of cash monitoring.

Institutions that fail the old and the new test of financial responsibility and participate under provisional certification may experience a positive economic benefit from this provision. Under current rules, institutions can only participate under the current reimbursement system. To the degree that these institutions are allowed to participate using a less stringent type of cash monitoring than that available under current rules, they will experience a positive economic benefit.

Cash Monitoring, Type 2

Institutions that are required to obtain title IV, HEA program funds through the second type of cash monitoring will be required under § 668.162(e)(2) to credit students' accounts and provide some documentation of students and amounts before receiving federal funds. The institution's compliance audit will contain verification that this did occur throughout the year. Institutions will be required to document students and amounts and submit this to the Department. This is expected to represent about one hour of paperwork for the small institution and cost about $20.00 using a loaded labor rate of $20.00 per hour. As discussed above, there will be some one-time costs associated with changing from the advance payment method to this payment method, which are estimated at $2,000. Institutions are expected to credit students' accounts and receive federal funds within six days. Institutions will be receiving some or even all of the federal funds in the form of student charges, so they are not expected to be required to borrow the entire amount of the delayed funds. However, they will experience the economic impact of not having the opportunity to use these funds for that six-day period. The opportunity cost of capital is estimated here at the borrowing rate. It is assumed that institutions in such a situation could obtain a short-term loan at their bank for an annual interest rate of prime plus four points, or about 12.5 percent. This yields an economic cost of about $2,000 per million dollars of title IV, HEA program funds received annually. As discussed above, institutions would also lose up to $250 in interest fees on advance payments they may have been earning.

It is estimated that about one-eighth of the institutions participating under the zone alternative will be placed on this type of cash monitoring. It is estimated that about one-eighth of the institutions who fail the ratio test and participate under the 10 percent letter of credit alternative will be placed on this type of cash monitoring.

Institutions that fail the old and the new tests of financial responsibility and participate under provisional certification may experience a positive economic benefit from this provision. Under current rules, institutions can only participate under the current reimbursement system, under § 668.162(d). To the degree that these institutions are allowed to participate using a less stringent type of cash monitoring than that available under current practice, they will experience a positive economic benefit.

Reimbursement

Institutions that are required to obtain title IV, HEA program funds through the current reimbursement system will be required to credit students' accounts and provide supporting documentation to the Department before receiving federal funds. The institution's compliance audit will contain verification that this did occur throughout the year. Institutions will be required to compile the paperwork and

submit this to the Department. This is expected to represent about five hours of paperwork, that will cost about $100 using a loaded labor rate of $20.00 per hour. As discussed above, there will be some one-time costs associated with changing from the advance payment method to this payment method, which are estimated at $2,000. Institutions are expected to credit students' accounts and be reimbursed with federal funds within 24 banking days. As discussed in more detail above, there is an economic cost of not having the use of those funds for that 24 day period, which is estimated at $8,000 per million dollars of title IV, HEA funds received annually. As discussed above, institutions would also lose up to $250 in interest fees on advanced payments they may have been earning.

It is estimated that about one-eighth of the institutions participating under the zone alternative will be placed on reimbursement. It is estimated that about one-fourth of the institutions who fail the ratio test and participate under the 10 percent letter of credit alternative will be placed on reimbursement.

Optional Disclosure in Audited Financial Statement of HEA Institutional Grants

Institutions that would otherwise fail or be required to use the zone alternative that wish to have their HEA institutional grants excluded from the calculation of their ratios would be required to have the amount of the HEA institutional grant disclosed in a note to their financial statements, or in a separate attestation. KPMG researched the types of fees that a national, regional and local accounting firm would typically charge for this service. It was estimated that a small institution with about $2.5 million in total revenue and one campus would be charged about $300 for this information disclosed as a note to the financial statements, and between $2,000 and $3,000 if the institution chose to have this disclosed as a separate attestation. It is assumed that institutions will choose the note disclosure due to its lower cost.

It was not possible to estimate the number of institutions that could be able to take advantage of this option, since these data were not available from the audited financial statements analyzed here.

TABLE 2.—SUMMARY OF ESTIMATED ADVERSE ECONOMIC IMPACTS ON SMALL ENTITIES

Action (not all actions are required of all institutions)	Institutions that fail the ratio test	Institutions using the zone alternative
50 percent letter of credit	One-fifth of institutions will pay fees of $7,500 to $12,500 per million, plus estimated opportunity cost of $125,000 per million.	No institutions eligible for the zone alternative are expected to post letters of credit.
10 percent letter of credit	Four-fifths of institutions will pay fees of $7,500 to $12,500 per million, plus estimated opportunity cost of $125,000 per million.	No institutions eligible for the zone alternative are expected to post letters of credit.
Additional reporting	One-third of institutions will have average paperwork costs of about $10.	One-fifth of institutions will have average paperwork costs of about $7.50.
Early submission of audits	Two-thirds of institutions will have increased audit costs of between $6,000 and $8,000.	One-half of institutions will have increased audit costs of between $6,000 to $8,000.
Cash monitoring, type 1	Five-eighths of institutions who fail the ratio test and participate under the 10 percent letter of credit alternative will have: costs of changing payment system of about $2,000; and loss of interest revenue up to $250.	Three-fourths of institutions will have: costs of changing payment system of about $2,000; and loss of interest revenue up to $250.
Cash monitoring, type 2	One-eighth of institutions who fail the ratio test and participate under the 10 percent letter of credit alternative will have: paperwork costs of $20; costs of changing payment system of about $2,000; borrowing costs (or opportunity cost of capital) of about $2,000 per million dollars of Title IV funds received; and loss of interest revenue up to $250.	One-eighth of institutions will have: paperwork costs of $20; costs of changing payment system of about $2,000; borrowing costs (or opportunity cost of capital) of about $2,000 per million dollars of Title IV funds received; and loss of interest revenue up to $250.
Reimbursement	One-fourth of institutions who fail the ratio test and participate under the 10 percent letter of credit alternative will have: paperwork costs of $100; costs of changing payment system of about $2,000; borrowing costs (or opportunity cost of capital) of about $8,000 per million dollars of Title IV funds received.	One-eighth of institutions will have: paperwork costs of $100; costs of changing payment system of about $2,000; borrowing costs (or opportunity cost of capital) of about $8,000 per million dollars of Title IV funds received.
Action	Institutions that initially fail but employ optional disclosure to raise score into zone.	Institutions that initially fall into the zone but employ optional disclosure to raise score to passing.
Optional disclosure of HEA institutional grants	An unknown number of institutions will have an economic impact of $300.	An unknown number of institutions will have an economic impact of $300.

NOTE: All of the figures in this table are estimates. The previous discussion provides a complete explanation of how these estimates were made.

Description of Significant Alternatives Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Final Rule on Small Entities

While the Department considered alternative means of satisfying many specific provisions, as discussed in the Analysis of Comments and Changes to this final rule, there are no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the impact on small entities. *The factual, policy, and legal reasons for selecting the alternative adopted in the final rule.*

The adopted approach balances regulatory reform values and improved accountability in a reasonable fashion. Consistent with the Secretary's Regulatory Relief Initiative, participating institutions are subject to the minimum requirements that adequately protect the Federal fiscal interest. A substantial number of institutions will experience a reduced regulatory burden as a result of these rules. The Secretary believes that the proposed approach is the least complicated and burdensome for small (and large) entities involved in the administration of the title IV, HEA programs while still allowing for the proper protection of the Federal fiscal interest and the interests of students and their parents.

For the purposes of performing this regulatory flexibility analysis, the alternative of "no action" could be considered a significant alternative. If the Secretary did not undertake any action in this area, small (and large) entities would not experience the economic impacts imposed by this regulation. However, as described in the preamble to this final rule, the Secretary believes that this action is required to further Department initiatives and to better protect the Federal fiscal interest. This is discussed further in the next section.

Why Each One of the Other Significant Alternatives to the Rule Considered by the Department Which Affect the Impact on Small Entities Was Rejected

The Department considered many alternatives to this rule. Significant alternatives that were considered but determined not to meet the policy objectives are discussed in the next section. The policy objectives for this rule are discussed at length in the preamble. These various alternatives might have had an effect on the impact on small entities to the degree that they might have led to a different result from the ratio test. Some of these alternatives are discussed at greater length elsewhere in the Analysis of Comments and Changes.

Case-by-Case Precipitous Closure Alternative

The Department considered performing a case-by-case analysis of institutions that marginally failed the regulatory standard (*i.e.*, the composite score standard) to determine if they were in danger of closing precipitously. This alternative was rejected for several reasons. This alternative would have required significantly more resources than the Department has available for such an activity and would have been difficult to enforce. This alternative could have conceivably reduced the impact on small entities, if there was additional information not available in the ratio approach that would have led an individualized analysis to determine that the institution was not in danger of precipitously closing. However, the fairness of such a system could be suspect and the policy goal of having a fair rule that is known and consistently applied would have been undermined. In addition, the Secretary believes that the ratio analysis takes the total financial condition into account, so that it would be an exceedingly rare event for an institution with a very low score to have sufficient financial strength to warrant continued participation. The zone alternative chosen employs as much case-by-case treatment as the Department considers appropriate and manageable. The alternative chosen gives the case management teams some discretion with regard to the stringency of the additional monitoring that will be required.

Continuous Improvement Zone Alternative

The Department considered requiring institutions to demonstrate continuous improvement to be eligible to use the zone alternative. This alternative was rejected for several reasons. In such a system, an institution would be required to have a score that was continuously rising. For instance, an institution with a score of 1.1 would have to score higher in the subsequent year in order to be able to use the zone alternative in a second year. The Secretary believes that the final score accurately reflects the institution's financial health. A continuous improvement model would mean, for instance, that two institutions with a score of 1.3 would be treated differently depending on their scores the previous year. An institution with a score of 1.3 in the current year that scored a 1.0 the previous year would have demonstrated improvement while the institution that scored 1.3 in both years would not have demonstrated improvement, leading to different regulatory results. The policy goal of treating institutions in a similar situation equitably would not have been satisfied if a continuous improvement model were chosen. The zone alternative chosen does require institutions to demonstrate improvement, in that institutions must score at or above the regulatory standard by the end of the third year. In addition, this option would add to the complexity of administering the rule.

Secondary Analysis

The Department considered various types of secondary analysis for institutions that marginally failed the ratio test. One type of secondary analysis that was considered was to calculate some additional ratios and assign bonus points for institutions with high values in these additional ratios. These alternatives were rejected for several reasons. Extensive analysis of the audited financial statements did not uncover any additional ratios that provided sufficient useful information about an institution's financial condition, such as the secondary reserve ratio or a ratio of equity to expenses. Other ratios were rejected because they lent themselves to manipulation, such as cash flow ratios or current ratios. Some ratios were rejected because they could not be calculated for all institutions, such as the Viability ratio or a debt service ratio.

Personal Financial Guarantees

The Department considered allowing institutions to demonstrate financial responsibility by providing personal financial guarantees at their option. This alternative was proposed in the NPRM, but rejected for several reasons. This proposed alternative was not considered to be desirable by the community. The resources that the Department would have devoted to administering this alternative were determined to be better employed in managing the zone alternative.

Requiring Institutions Only To Pass the Ratio Test for Most Years

The Department considered a methodology by which institutions would have only been required to pass the ratio test in two of three years, or in three of four years. This alternative was rejected for several reasons. Such a methodology would have allowed an institution to marginally pass for two years, while failing miserably the third year. However, an analysis of data of

closed institutions indicates that institutions that fail the ratio test should not be allowed to continue to participate without some additional surety to protect the Federal interest.

Analysis of Information Not on General Purpose Audited Financial Statements

The Department considered including information that was not available on audited financial statements. This alternative was rejected for several reasons. The Department does not have sufficient resources to determine the veracity of unaudited information that institutions would have provided under this alternative, such as enrollment data or similar types of information. The Department did consider requiring certain types of information that could have been attested to by the institution's auditor and disclosed in a note to the audited financial statement. KPMG advised the Department about the types of information that could be audited, and it was determined that the types of information that could have been attained using this method, combined with the difficulties in implementing a note disclosure, would not provide sufficient additional information beyond that contained in the ratio methodology chosen.

Conclusion

The Secretary concludes that a substantial number of small entities are likely to experience significant adverse economic impacts from the proposed rule, offset by significant positive economic effects on a slightly smaller number of small entities. As discussed in the section referring to the cost-benefit assessment of this proposed rule pursuant to Executive Order 12866, the Secretary has concluded that the costs are justified by the benefits. In this case, the benefits are reduced Federal fiscal liabilities as well as improved service to students participating in the title IV, HEA programs.

Paperwork Reduction Act of 1995

Sections 668.171(c), 668.172(c)(5), 668.174(b)(2)(i), 668.175(d)(2)(ii), 668.175(f)(2)(iii), and 668.175(g)(2)(i) contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Education has submitted a copy of these sections to OMB for its review. (44 U.S.C. 3504(h)).

Assessment of Educational Impact

In the NPRM published September 20, 1996, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: November 14, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Educational Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.036 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program, and 84.268 Direct Loan Program)

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c and 1141, unless otherwise noted.

Subpart B—Standards for Participation in the Title IV, HEA Programs

§ 668.13 [Amended]

2. Section 668.13 is amended by removing paragraphs (d) and (e), and by redesignating paragraph (f) as paragraph (d).

§ 668.23 [Amended]

3. Section 668.23 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as paragraphs (f) and (g), respectively.

Subpart K—Cash Management

4. Section 668.162 is amended by revising paragraph (a)(1), and by adding a new paragraph (e) to read as follows:

§ 668.162 Requesting funds.

(a) *General.* (1) The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance, reimbursement, just-in-time, or cash monitoring payment methods.

* * * * *

(e) *Cash monitoring payment method.* Under the cash monitoring payment method, the Secretary provides title IV, HEA program funds to an institution under the provisions described in paragraph (e)(1) or (e)(2) of this section. Under either paragraph (e)(1) or (e)(2) of this section, an institution must first make disbursements to students and parents for the amount of title IV, HEA program funds that those students and parents are eligible to receive, before the institution—

(1) Submits a request for funds under the provisions of the advance payment method described in paragraph (b) of this section, except that the institution's request may not exceed the amount of the actual disbursements the institution made to the students and parents included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

5. Section 668.167 is amended by adding a new paragraph (f) to read as follows:

§ 668.167 FFEL program funds.

* * * * *

(f) *An institution placed under the cash monitoring payment method.* The Secretary may require an institution that is placed under the cash monitoring described under paragraph § 668.162(e), to comply with the disbursement and certification provisions under paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the institution's disbursement or certification request.

6. A new subpart L is added to read as follows:

Subpart L—Financial Responsibility

Sec.
668.171 General.
668.172 Financial ratios.
668.173 Refund reserve standards.
668.174 Past performance.
668.175 Alternative standards and requirements.

§ 668.171 General.

(a) Purpose. To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Administer properly the title IV, HEA programs in which it participates; and

(3) Meet all of its financial obligations.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and Appendices F and G;

(2) The institution has sufficient cash reserves to make required refunds, as provided under § 668.173;

(3) The institution is current in its debt payments. An institution is not current in its debt payments if—

(i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or

(ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; and

(4) The institution is meeting all of its financial obligations, including but not limited to—

(i) Refunds that it is required to make under § 668.22; and

(ii) Repayments to the Secretary for debts and liabilities arising from the institution's participation in the title IV, HEA programs.

(c) *Public institutions.* The Secretary considers a public institution to be financially responsible if the institution—

(1)(i) Notifies the Secretary that it is designated as a public institution by the State, local or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(2) Is not in violation of any past performance requirement under § 668.174.

(d) *Audit opinions and past performance provisions.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if—

(1) In the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition; or

(2) As provided under the past performance provisions in § 668.174(a) and (b)(1), the institution violated a title IV, HEA program requirement, or the persons or entities affiliated with the institution owe a liability for a violation of a title IV, HEA program requirement.

(e) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d).

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

§ 668.172 Financial ratios.

(a) *Appendices F and G, ratio methodology.* As provided under Appendices F and G to this part, the Secretary determines an institution's composite score by—

(1) Calculating the result of its Primary Reserve, Equity, and Net Income ratios, as described under paragraph (b) of this section;

(2) Calculating the strength factor score for each of those ratios by using the corresponding algorithm;

(3) Calculating the weighted score for each ratio by multiplying the strength factor score by its corresponding weighting percentage;

(4) Summing the resulting weighted scores to arrive at the composite score; and

(5) Rounding the composite score to one digit after the decimal point.

(b) *Ratios.* The Primary Reserve, Equity, and Net Income ratios are defined under Appendix F for proprietary institutions, and under Appendix G for private non-profit institutions.

(1) The ratios for proprietary institutions are:

For proprietary institutions:

$$\text{Primary Reserve ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

(2) The ratios for private non-profit institutions are:

$$\text{Primary Reserve ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenues}}$$

(c) *Excluded items.* In calculating an institution's ratios, the Secretary—

(1) Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;

(2) May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;

(3) Excludes all unsecured or uncollateralized related-party receivables;

(4) Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and

(5) Excludes from the ratio calculations Federal funds provided to an institution by the Secretary under program authorized by the HEA only if—

(i) In the notes to the institution's audited financial statement, or as a separate attestation, the auditor discloses by name and CFDA number, the amount of HEA program funds reported as expenses in the Statement of Activities for the fiscal year covered by that audit or attestation; and

(ii) The institution's composite score, as determined by the Secretary, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the Primary Reserve ratio.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves (as required under § 668.171(b)(2)) to make any refunds required under § 668.22 if the institution—

(1) Satisfies the requirements of a public institution under § 668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Demonstrates that it makes its refunds timely, as provided under paragraph (b) of this section.

(b) *Timely refunds.* An institution demonstrates that it makes required refunds within the time permitted under § 668.22 if the auditor(s) who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(1) Did not find in the sample of student records audited or reviewed for either of those fiscal years that—

(i) The institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund under § 668.22; or

(ii) The institution made only one late refund to a student in that sample; and

(2) Did not note for either of those fiscal years a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(c) *Refund findings.* Upon a finding that an institution no longer satisfies a refund standard under paragraph (a)(1) or (2) of this section, or that the institution is not making its refunds timely under paragraph (b) of this section, the institution must submit an irrevocable letter of credit, acceptable and payable to the Secretary, equal to 25 percent of the total amount of title IV, HEA program refunds the institution made or should have made during its most recently completed fiscal year. The institution must submit this letter of credit to the Secretary no later than—

(1) Thirty days after the date the institution is required to submit its compliance audit to the Secretary under § 668.23, if the finding is made by the auditor who conducted that compliance audit; or

(2) Thirty days after the date that the Secretary, or the State or guaranty agency that conducted a review of the institution notifies the institution of the finding. The institution must also notify the Secretary of that finding and of the State or guaranty agency that conducted that review of the institution.

(d) *State tuition recovery funds.* In determining whether to approve a State's tuition recovery fund, the Secretary considers the extent to which that fund—

(1) Provides refunds to both in-State and out-of-State students;

(2) Allocates all refunds in accordance with the order required under § 668.22; and

(3) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the fund's assets.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

§ 668.174 Past performance.

(a) *Past performance of an institution.* An institution is not financially responsible if the institution—

(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, as defined in 34 CFR part 682, within the preceding five years;

(2) In either of its two most recent compliance audits had an audit finding, or in a report issued by the Secretary had a program review finding for its current fiscal year or either of its preceding two fiscal years, that resulted in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

(3) Has been cited during the preceding five years for failure to submit in a timely fashion acceptable compliance and financial statement audits required under this part, or acceptable audit reports required under the individual title IV, HEA program regulations; or

(4) Has failed to resolve satisfactorily any compliance problems identified in audit or program review reports based upon a final decision of the Secretary issued pursuant to subpart G or H of this part.

(b) *Past performance of persons affiliated with an institution.* (1)(i) Except as provided under paragraph (b)(2) of this section, an institution is not financially responsible if a person who exercises substantial control over the institution, as described under 34 CFR 600.30, or any member or members of that person's family, alone or together—

(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a title IV, HEA program requirement; or

(B) Owes a liability for a violation of a title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary.

(2) The Secretary may determine that an institution is financially responsible, even if the institution is not otherwise financially responsible under paragraph (b)(1) of this section, if—

(i) The institution notifies the Secretary, within the time permitted and in the manner provided under 34 CFR 600.30, that the person referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

(ii) The person referenced in paragraph (b)(1) of this section repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(A) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(B) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why—

(A) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) *Ownership interest.* (1) An ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, an institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation. The term "ownership interest" includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term "ownership interest" does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer if the person—

(i) Directly or indirectly holds at least a 20 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 20 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 20 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 20 percent ownership interest in the institution or servicer.

(4) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

§ 668.175 Alternative standards and requirements.

(a) *General.* An institution that is not financially responsible under the general standards and provisions in § 668.171, may begin or continue to participate in the title IV, HEA programs by qualifying under an alternate standard set forth in this section.

(b) *Letter of credit alternative for new institutions.* A new institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) *Letter of credit alternative for participating institutions.* A

participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b), or because of an audit opinion described under § 668.171(d), qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(d) *Zone alternative.* (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative. (i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

(2) Under this zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in § 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency;

(B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement;

(C) Any violation by the institution of any loan agreement;

(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations;

(E) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or

(F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30.

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under § 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described under paragraph (d)(2)(ii) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic or facsimile transmission no later than 10 days after that event occurs. An institution that provides this information electronically or by facsimile transmission is responsible for confirming that the Secretary received a complete and legible copy of that transmission; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraphs (d)(2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) *Transition year alternative.* A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 for the institution's fiscal year that began on or after July 1, 1997 but on or before June 30, 1998, may qualify as a financially responsible institution under the provisions in § 668.15(b)(7), (b)(8), (d)(2)(ii), or (d)(3), as applicable.

(f) *Provisional certification alternative.* (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if—

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b) or because of an audit opinion described under § 668.171(d); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition.

(2) Under this alternative, the institution must—

(i) Submit to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year;

(ii) Demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under § 668.171(b)(3) and (b)(4), for its two most recent fiscal years; and

(iii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section.

(3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary may again permit the institution to participate under a provisional certification, but the Secretary—

(i) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under § 668.174(d), or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(ii) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under § 668.174(d), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

(g) *Provisional certification alternative for persons or entities owing liabilities.* (1) The Secretary may permit an institution that is not financially responsible because the persons or entities that exercise substantial control over the institution owe a liability for a violation of a title IV, HEA program requirement, to participate in the title IV, HEA programs under a provisional certification only if—

(i)(A) The persons or entities that exercise substantial control, as determined under § 668.174(d), repay or enter into an agreement with the Secretary to repay the applicable portion of that liability, as provided under § 668.174(c)(2)(ii); or

(B) The institution assumes that liability, and repays or enters into an agreement with the Secretary to repay that liability;

(ii) The institution satisfies the general standards and provisions of financial responsibility under § 668.171 (b) and (d), except that institution must demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under § 668.171(b)(3) and (b)(4), for its two most recent fiscal years; and

(iii) The institution submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(2) Under this alternative, the Secretary—

(i) Requires the institution to comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3) of this section;

(ii) May require the institution, or one or more persons or entities that exercise substantial control over the institution, or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(iii) May require one or more of the persons or entities that exercise substantial control over the institution to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

BILLING CODE 4000–01–P

7. A new Appendix F is added to read as follows:

Appendix F: Ratio Methodology for Proprietary Institutions
Section 1: Ratios and Ratio Terms

$$\text{Primary Reserve Ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income Ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

Definitions:

Adjusted Equity = (total owner's equity) - (intangible assets) - (unsecured related-party receivables) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)**

Total Expenses excludes income tax, discontinued operations, extraordinary losses, or change in accounting principle.

Modified Equity = (total owner's equity) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Income Before Taxes is taken directly from the audited financial statement

Total Pre-Tax Revenues = (total operating revenues) + (non-operating revenues and gains). Investment gains should be recorded net of investment losses. No revenues shown after income taxes (e.g., discontinued operations, extraordinary gains, or change in accounting principle) on the income statement should be included.

* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.
** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.

Section 2, Calculating the Ratios from the Balance Sheet and Income Statement

Balance Sheet

Line		
1	Cash	$ 190,000
2	Accounts Receivable	1,010,000
3	Prepaid Expenses	150,000
4	Inventories	130,000
5	Note Receivable from Affiliate	200,000
6	Investments	330,000
7	**Total Current Assets**	2,010,000
8	Property and Equipment, net	500,000
9	Amount Due from Owner	170,000
10	Goodwill	80,000
11	Organization Costs	70,000
12	Deposits	60,000
13	**Total Assets**	2,890,000
14	Accounts Payable	200,000
15	Accrued Expenses	330,000
16	Current Portion of Long-Term Debt	120,000
17	Deferred Revenue	650,000
18	**Total Current Liabilities**	1,300,000
19	Long-Term Debt, net of Current Portion	330,000
20	**Total Liabilities**	1,630,000
21	Contributed Capital	440,000
22	Retained Earnings	820,000
23	**Total Owner's Equity**	1,260,000
24	**Total Liabilities and Owner's Equity**	2,890,000

Statement of Income and Retained Earnings

Line		
25	Operating Income	$ 9,700,000
26	Non-Operating Income	300,000
27	**Total Income**	10,000,000
28	Cost of Goods Sold	6,800,000
29	Administrative Expenses	2,660,000
30	Depreciation Expense	60,000
31	Interest Expense	40,800
32	**Total Expenses**	9,500,000
33	Other: Gain on Sale of Investments	10,000
34	**Net Income Before Taxes**	510,000
35	Federal Income Taxes	153,000
36	**Net Income After Taxes**	357,000
37	Extraordinary Loss, net of tax	800,000
38	**Net Income**	(443,000)
39	Retained Earnings, beginning of year	1,263,000
22	**Retained Earnings, end of year**	820,000

Primary Reserve Ratio	= (lines) $\frac{21-5-9-10-8+(16+19)^*}{32}$	=	$\frac{\$ \ 760,000}{\$9,500,000}$	= 0.080
Equity Ratio	= (lines) $\frac{21-5-9-10}{13-5-9-10}$	=	$\frac{\$ \ 810,000}{\$2,440,000}$	= 0.332
Net Income Ratio	= (lines) $\frac{34}{27+33}$	=	$\frac{\$ \ 510,000}{\$10,010,000}$	= 0.051

*Long-Term Debt (lines 16+19) cannot exceed Property and Equipment (line 8) in this formula

Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms:

	Example (for Proprietary institutions)
Primary Reserve strength factor score = 20 x* Primary Reserve ratio result:	20 x 0.080 = 1.600
Equity strength factor score = 6 x Equity ratio result:	6 x 0.332 = 1.992
Net Income strength factor score = 1 + (33.3 x Net Income ratio result):	1 + (33.3 x 0.051) = 2.698

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 30% x Primary Reserve strength factor score:	0.30 x 1.600 = 0.480
Equity weighted score = 40% x Equity strength factor score:	0.40 x 1.992 = 0.797
Net Income weighted score = 30% x Net Income strength factor score:	0.30 x 2.698 = 0.809
Composite score = sum of all weighted scores:	0.480 + 0.797 + 0.809 = 2.086
Round the composite score to one digit after the decimal point to determine the final score:	2.1

* The symbol "x" denotes multiplication.

8. A new Appendix G is added to read as follows:

Appendix G: Ratio Methodology for Private Non-Profit Institutions
Section 1: Ratios and Ratio Terms

$$\text{Primary Reserve Ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income Ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenue}}$$

Definitions:

Expendable Net Assets = (unrestricted net assets) + (temporarily restricted net assets) - (annuities, term endowments, and life income funds that are temporarily restricted) - (intangible assets) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)**

Total Expenses is total unrestricted expenses taken directly from the audited financial statement

Modified Net Assets = (unrestricted net assets) + (temporarily restricted net assets) + (permanently restricted net assets) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Change in Unrestricted Net Assets is taken directly from the audited financial statement

Total Unrestricted Revenue is taken directly from the audited financial statement (This amount includes net assets released from restriction during the fiscal year)

* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.
** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.

Section 2, Calculating the Ratios from the Balance Sheet and Statement of Activities

Balance Sheet

Line		Total
1	Cash and Cash Equivalents	$ 1,000,000
2	Accounts Receivable	6,000,000
3	Prepaid Expenses	1,500,000
4	Inventories	500,000
5	Contributions Receivable	2,000,000
6	Student Loans Receivable	8,000,000
7	Investments	6,000,000
8	Property and Equipment, net	50,000,000
9	Bond Insurance Costs	720,000
10	Goodwill	500,000
11	Deposits	20,000
12	**Total Assets**	76,240,000
13	Line of Credit	$ 500,000
14	Accounts Payable	2,000,000
15	Accrued Expenses	3,500,000
16	Deferred Revenue	650,000
17	Post-Retirement Benefits Liability	6,600,000
18	Bonds Payable	36,000,000
19	**Total Liabilities**	49,250,000
20	**Unrestricted Net Assets**	15,190,000
21	Annuities	300,000
22	John Doe Scholarship Fund	2,500,000
23	**Total Temp. Restricted Net Assets**	2,800,000
24	**Permanent Restr. Net Assets**	9,000,000
25	**Total Net Assets**	26,990,000
26	**Total Liabilities & Net Assets**	76,240,000

Statement of Activities

Line		column: a Unrestricted	b Temporarily Restricted	c Permanently Restricted	d Total
27	Tuition and Fees	$45,000,000			$45,000,000
28	Contributions	1,200,000	$ 300,000	$ 120,000	1,620,000
29	Auxiliary Enterprises	5,500,000			5,500,000
30	Net Assets Released from Restrictions	200,000			200,000
31	**Total Revenue**	51,900,000	300,000	120,000	52,320,000
32	Operating Expenses	38,000,000			38,000,000
33	Depreciation	5,000,000			5,000,000
34	Interest Expense	2,880,000			2,880,000
35	Auxiliary Enterprises	5,200,000			5,200,000
36	Non-Operating Expenses	900,000			900,000
37	Net Assets Released from Restrictions		200,000	—	200,000
38	**Total Expenses**	51,980,000	200,000	—	52,180,000
39	**Change in Net Assets**	(80,000)*	100,000	120,000	140,000
40	Net Assets at beginning of year	15,270,000	2,700,000	8,880,000	26,850,000
41	Net Assets at end of year	15,190,000	2,800,000	9,000,000	26,990,000

Primary Reserve Ratio = (lines) $\frac{20+23-21-10-8+18^{**}+17}{38a}$ = $\frac{\$\ 9,790,000}{51,980,000}$ = 0.188

Equity Ratio = (lines) $\frac{25-10}{12-10}$ = $\frac{\$26,490,000}{75,740,000}$ = 0.350

Net Income Ratio = (lines) $\frac{39a}{31a}$ = $\frac{\$\ (80,000)}{51,900,000}$ = (0.0015)

* In accounting statements, parentheses denote negative numbers (i.e., (80,000) equals negative 80,000).

** Long-Term Debt (line 18) cannot exceed Property and Equipment, net (line 8) in this formula.

Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms

	Example (for Private Non-Profit institutions)
Primary Reserve strength factor score = 10 x* Primary Reserve ratio result:	10 x 0.188 = 1.880
Equity strength factor score = 6 x Equity ratio result:	6 x 0.350 = 2.100
Because the Net Income ratio result is negative, the algorithm for negative net income is used -- Net Income strength factor score = 1 + (25 x Net Income ratio result):	1 + (25 x -0.0015) = 0.963

(Note: If the Net Income ratio result is positive, the following algorithm is used, Net Income strength factor score = 1 + (50 x Net Income ratio result) -- If the Net Income ratio result is 0, the Net Income strength factor score is 1).

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 40% x Primary Reserve strength factor score:	0.40 x 1.880 = 0.752
Equity weighted score = 40% x Equity strength factor score:	0.40 x 2.100 = 0.840
Net Income weighted score = 20% x Net Income strength factor score:	0.20 x 0.963 = 0.193
Composite score = sum of all weighted scores:	0.752 + 0.840 + 0.193 = 1.785
Round the composite score to one digit after the decimal point to determine the final score:	1.8

* The symbol "x" denotes multiplication.

[FR Doc. 97-30850 Filed 11-24-97; 8:45 am]
BILLING CODE 4000-01-C

federal register

Tuesday
November 25, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0448]

International Conference on Harmonisation; Draft Guidance on Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guidance entitled "Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides guidance on the selection of test procedures and the setting and justification of acceptance criteria for new chemical drug substances and new drug products produced from them. The draft guidance is intended to assist in the establishment of a single set of global specifications for new drug substances and new drug products.

DATES: Written comments by January 26, 1998.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the draft guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Eric B. Sheinin, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918, or

Neil D. Goldman, Center for Biologic Evaluation and Research (HFM–416), Food and Drug Administration, 8800 Rockville Pike, Rockville, MD 20852, 301–827–0377.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In July 1997, the ICH Steering Committee agreed that a draft guidance entitled "Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances" should be made available for public comment. The draft guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group. A related document for biotechnology derived products is the subject of a separate Expert Working Group.

In accordance with Good Guidance Practices (62 FR 8961, February 27, 1997), this document is now being called a guidance, rather than a guideline.

The draft guidance provides guidance on the selection of test procedures and the setting and justification of acceptance criteria for new drug substances of synthetic chemical origin, and new drug products produced from them, that have not been registered previously in the United States, the European Union, or Japan. The draft guidance is intended to assist in the establishment of a single set of global specifications for new drug substances and new drug products.

This draft guidance represents the agency's current thinking on the selection of test procedures and the setting and justification of acceptance criteria for new chemical drug substances and new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before January 26, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at "http://www.fda.gov/cder/guidance.htm".

The text of the draft guidance follows:

Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances[1]

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[1] This draft guidance represents the agency's current thinking on the selection of test procedures and the setting and justification of acceptance criteria for new chemical drug substances and new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

1. Introduction

1.1 Specifications

A specification is defined as a list of tests, references to analytical procedures, and appropriate acceptance criteria that are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a drug substance or drug product should conform to be considered acceptable for its intended use. "Conformance to specifications" means that the drug substance and/or drug product, when tested according to the listed analytical procedures, will meet the listed acceptance criteria. Specifications are binding quality standards that are agreed to between the appropriate governmental regulatory agency and the applicant.

Specifications are one part of a total control strategy for the drug substance and drug product designed to ensure product quality and consistency. Other parts of this strategy include thorough product characterization during development upon which specifications are based, adherence to good manufacturing practices (GMP's), and a validated manufacturing process, e.g., raw material testing, in-process testing, stability testing.

Specifications are chosen to confirm the quality of the drug substance and drug product rather than to establish full characterization, and should focus on those characteristics found to be useful in ensuring the safety and efficacy of the drug substance and drug product.

1.2 Objective of the Guidance

This guidance is intended to assist, to the extent possible, in the establishment of a single set of global specifications for new drug substances and new drug products. It provides guidance on the setting and justification of acceptance criteria and the selection of test procedures for new drug substances of synthetic chemical origin, and new drug products produced from them, that have not been registered previously in the United States, the European Union, or Japan.

1.3 Scope of the Guidance

The quality of drug substances and drug products is determined by their design, development, in-process controls, GMP controls, and process validation, and by specifications applied to them throughout development and manufacture. This guidance addresses specifications, i.e., those tests, procedures, and acceptance criteria used to assure the quality of the new drug substance and new drug product at release and during shelf life. Specifications are an important component of quality assurance, but are not its only component. All of the considerations listed above are necessary to ensure consistent production of drug substances and drug products of high quality.

This guidance addresses only the marketing approval of new drug products (including combination products); it does not address drug substances or drug products during the clinical research stages of drug development. Biological/biotechnological products, peptides, oligonucleotides, radiopharmaceuticals, fermentation and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin are also not covered. A separate ICH guidance addresses specifications, tests, and procedures for biotechnological/biological products.

Guidance is provided with regard to acceptance criteria that should be established for all new drug substances and new drug products, i.e., universal acceptance criteria, and those that are considered specific to individual drug substances and/or dosage forms. This guidance reflects the current state of the art at the time it has been written, and should not be considered all-encompassing. New analytical technology, and modifications to existing technology, are continuously being developed. Such technologies should be used when justifiable.

Dosage forms addressed in this guidance include solid oral dosage forms, liquid oral dosage forms, and parenterals (small and large volume). This is not meant to be an all-inclusive list, or to limit the number of dosage forms to which this guidance applies. The dosage forms presented serve as models that may be applicable to other dosage forms that have not been discussed. The extended application of the concepts in this guidance to other dosage forms, e.g., inhalation dosage forms (powders, solutions, etc.), topical formulations (creams, ointments, gels), and transdermal systems, is encouraged.

2. General Concepts

The following concepts are important in the development and setting of harmonized specifications. They are not universally applicable, but each should be considered in particular circumstances. This guidance presents a brief definition of each concept and an indication of the circumstances under which it may be applicable. Generally, proposals to implement these concepts should be justified by the applicant and approved by the appropriate regulatory authority before being put into effect.

2.1 Periodic/Skip Testing: Periodic or skip testing is the performance of specified tests at release on preselected batches and/or at predetermined intervals, rather than on a batch-to-batch basis. This represents a less than full schedule of testing and should therefore be justified and presented to the regulatory authority prior to implementation. This concept may be applicable to, for example, dissolution (see section 2.4), residual solvents, and microbiological testing, e.g., for solid oral dosage forms. It is recognized that only limited data may be available at the time of submission of an application (see section 2.5). This concept may therefore sometimes be implemented postapproval in accordance with GMP.

2.2 Release Vs. Shelf-Life Acceptance Criteria: The concept of different acceptance criteria for release vs. shelf-life specifications applies to drug products only; it pertains to the establishment of more restrictive criteria for the release of a drug product than are applied to the shelf-life. Examples where this may be applicable include assay and impurity (degradation product) levels. In Japan and the United States, this concept may only be applicable to inhouse criteria, and not to the regulatory release criteria. In the European Union, there is a regulatory requirement for distinct specifications for release and for shelf-life.

2.3 In-Process Tests: In-process tests are tests that may be performed during the manufacture of either the drug substance or drug product, rather than as part of the formal battery of tests which are conducted prior to release. In-process tests that are used for the purpose of adjusting process parameters within an operating range, e.g., hardness and friability of tablet cores that will be coated, are not included in the specification. Certain tests conducted during the manufacturing process, where the acceptance criterion is identical to or tighter than the release requirement (e.g., pH of a solution), may be acceptable to satisfy specification requirements when the test is included in the specification.

2.4 Design and Development Considerations: The experience and data accumulated during the development of a new drug substance or product should form the basis for the setting of specifications. It may be possible to propose excluding or replacing certain tests on this basis. Some examples are:

- Microbiological testing for drug substances and solid dosage forms that have been shown during development not to support microbial viability or growth.
- Extractables from product containers where it has been reproducibly shown that either no extractables are found in the drug product or the levels meet accepted standards for safety.
- Particle size testing may fall into this category, may be performed as an in-process test, or may be performed as a release test, depending on its relevance to product performance.
- Dissolution testing for immediate release solid oral drug products made from very water soluble drug substances may be replaced by disintegration testing, if these products have been demonstrated during development to have consistently rapid drug release characteristics. (See Decision trees #7(1) through #7(4)).

2.5 Limited Data Available at Filing: It is recognized that only a limited amount of data

may be available at the time of filing, which can influence the process of setting acceptance criteria. As a result, it may be necessary to propose revised acceptance criteria as additional experience is gained with the manufacture of a particular drug substance or drug product (example: acceptance limits for a specific impurity). The basis for the acceptance criteria at the time of filing will focus necessarily on safety and efficacy.

2.6 Parametric Release: Parametric release can be used as an operational alternative to routine release testing for the drug product. Sterility testing for terminally sterilized drug products is one example. In this case, the release of a batch is based on results from monitoring specific parameters, e.g., temperature and pressure, during the terminal sterilization phase(s) of drug product manufacturing. These parameters can generally be more accurately controlled and measured, so that they are more reliable in predicting sterility assurance than is end-product sterility testing. It is important to note that the sterilization process should be adequately validated before parametric release is proposed. When parametric release is performed, the attribute which is indirectly controlled (e.g., sterility), together with a reference to the associated test procedure, still should be included in the specifications.

2.7 Alternative Procedures: Alternative procedures are those that may be used to measure an attribute when such procedures control the quality of the drug substance or drug product to an extent that is comparable or superior to the official procedure. Example: For tablets that have been shown not to degrade during manufacture, it may be permissible to use a spectrophotometric procedure for release as opposed to the official procedure, which is chromatographic. However, the chromatographic procedure should still be used to demonstrate compliance with the acceptance criteria during the shelf-life of the product.

2.8 Pharmacopoeial Tests and Acceptance Criteria: References to certain methods are found in pharmacopoeias in each region. Wherever they are appropriate, pharmacopoeial methods should be utilized. Whereas differences in pharmacopoeial methods and/or acceptance criteria have existed among the regions, a harmonized specification is possible only if the methods and acceptance criteria defined are acceptable to regulatory authorities in all regions. This guidance is dependent on the successful completion of harmonization of pharmacopoeial methods for several attributes commonly considered in the specifications for new drug substances or new drug products.

The following attributes are essentially harmonized with respect to analytical method and acceptance criteria, except where noted, across the European Pharmacopoeia (Ph. Eur.), Japanese Pharmacopoeia (JP), and United States Pharmacopeia (USP):

Sterility
Residue on Ignition/Sulfated Ash
Bacterial Endotoxins
Color/Clarity
Particulate Matter
Dissolution (apparatus)
Disintegration (apparatus)

To signify the harmonized status of these general methods, the pharmacopoeias will include a statement in the text that indicates that the methods and acceptance criteria from all three pharmacopoeias are considered equivalent and are, therefore, interchangeable. An appropriate reference to the harmonized method and acceptance criteria is considered acceptable for a specification in all three regions. For example, sterility data generated using the JP method, as well as the JP method itself and its acceptance criteria, are considered acceptable for registration in all three regions. An appropriate reference may be expressed as JP/Ph. Eur./USP.

Harmonization of the following attributes will be completed prior to approval of a step 4 guidance:

Dissolution (media and acceptance criteria)
Disintegration (media and acceptance criteria)
Uniformity of Mass
Uniformity of Content
Extractable Volume
Preservative Effectiveness (scope of test and acceptance criteria)
Microbial Contamination

2.9 Evolving Technologies: New analytical technology and modifications to existing technology are continuously being developed. Such technologies should be used when they are considered to offer additional assurance of quality, or are otherwise justifiable.

2.10 Impact of Drug Substance on Drug Product Specifications: In general, it should not be necessary to test the drug product for quality attributes uniquely associated with the drug substance. Example: It is normally not necessary to test the drug product for synthesis impurities that are controlled in the drug substance and are not degradation products. Refer to the ICH guidance "Impurities in New Drug Products" for detailed information.

2.11 Reference Standard: A reference standard, or reference material, is a substance prepared for use as the standard in an assay, identification, or purity test. The substance may be either the new drug substance or a known impurity. It has a quality appropriate to its use. For new drug substance reference standards intended for use in assays, the impurities should be adequately identified and/or controlled, and purity should be measured by a quantitative procedure.

3. Guidelines

3.1 Specifications: Definition and Justification

3.1.1 Definition of Specifications

A specification is defined as a list of tests, references to analytical procedures, and appropriate acceptance criteria that are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a new drug substance or new drug product should conform to be considered acceptable for its intended use. "Conformance to specifications" means that the drug substance and/or drug product, when tested according to the listed analytical procedures, will meet the listed acceptance criteria. Specifications are binding quality standards that are agreed to between the appropriate governmental regulatory agency and the applicant.

It is possible that, in addition to release tests, a specification may list in-process tests, periodic (skip) tests, and other tests which are not always conducted on a batch-by-batch basis. In such cases, the applicant should specify which tests are routinely conducted batch-by-batch, and which tests are not, with an indication and justification of the actual testing frequency. In this situation, the drug substance and/or drug product should meet the acceptance criteria if tested.

It should be noted that changes in the specification after approval of the application may need prior approval by the regulatory authority.

3.1.2 Justification of Specifications

When a specification is first proposed, justification should be presented for each procedure and each acceptance criterion included. The justification should refer to relevant development data, pharmacopoeial standards, test data for drug substances and drug products used in toxicology and clinical studies, and results from accelerated and long term stability studies, as appropriate. Additionally, a reasonable range of expected analytical and manufacturing variability should be considered. It is important to consider all of this information.

Approaches other than those set forth in this guidance may be applicable and acceptable. The applicant should justify alternative approaches. Such justification should be based on data derived from the new drug substance synthesis and/or the new drug product manufacturing process. This justification may consider theoretical tolerances for a given procedure or acceptance criterion, but the actual results obtained should form the primary basis for whatever approach is taken.

Test results from primary stability and scale-up/validation batches should be considered in setting and justifying specifications. If multiple manufacturing sites are planned, it may be valuable to consider data from these sites in establishing the initial tests and acceptance criteria. This is particularly true when there is limited initial experience with the manufacture of the drug substance or drug product at any particular site. If data from a single representative manufacturing site are used in setting tests and acceptance criteria, product manufactured at all sites should still comply with these criteria.

Presentation of test results in graphic format may be helpful in justifying individual acceptance criteria, particularly for assay values and impurity levels. Data from development work should be included in such a presentation, along with stability data available for new drug substance or new drug product batches manufactured by the proposed commercial processes. Justification for exclusion of a test from the specification should be based on development data and on process validation data (where available).

When only limited data are available, the initially approved tests and acceptance criteria should be reviewed as more information is collected, with a view towards possible modification. This could involve loosening, as well as tightening, acceptance criteria as appropriate.

3.2 Universal Tests/Criteria

Implementation of the recommendations in the following section should take into account the ICH guidances "Text on Validation of Analytical Procedures" and "Validation of Analytical Procedures: Methodology."

3.2.1 New Drug Substances

The following tests and acceptance criteria are considered generally applicable to all new drug substances.

(a) *Description*: A qualitative statement about the state (e.g., solid, liquid) and color of the new drug substance. If any of these characteristics change during storage, this change should be investigated and appropriate action taken.

(b) *Identification*: Identification testing should optimally be able to discriminate between compounds of closely related structure that are likely to be present. Identification tests should be specific for the new drug substance, e.g., infrared spectroscopy (IR). Identification solely by chromatographic retention time, for example, is not regarded as being specific; however, a combination of tests into a single procedure, such as HPLC (high pressure/performance liquid chromatography)/UV (ultraviolet)-diode array, HPLC/MS (mass spectroscopy), or GC (gas chromatography)/MS may be acceptable. If the new drug substance is a salt, identification testing should be performed for the individual ions.

New drug substances which are optically active may also need specific identification testing. Please refer to section 3.3.1.(d) in this guidance for further discussion of this topic.

(c) *Assay*: A specific, stability-indicating procedure should be included to determine the content of the new drug substance. In many cases it is possible to employ the same procedure (e.g., HPLC) for both assay of the new drug substance and quantitation of impurities.

In cases where use of a nonspecific assay is justified, other supporting analytical procedures should be used to achieve overall specificity. For example, where titration is adopted to assay the drug substance, the combination of the assay and a suitable test for impurities can be used.

(d) *Impurities*: Organic and inorganic impurities and residual solvents are included in this category. Refer to the ICH guidances "Impurities in New Drug Substances" and "Residual Solvents in Pharmaceuticals" for detailed information.

Decision tree #1 addresses the extrapolation of meaningful limits on impurities from the body of data generated during development. At the time of filing, it is unlikely that sufficient data will be available to assess process consistency. Therefore, it is inappropriate to establish acceptance criteria that tightly encompass the batch data at the time of filing. (See section 2.5, limited data available at filing.)

3.2.2 New Drug Products

The following tests and acceptance criteria are considered generally applicable to all new drug products:

(a) *Description*: A qualitative description of the dosage form should be provided (e.g., size, shape, color). If any of these characteristics change during manufacture or storage, this change should be investigated and appropriate action taken. The acceptance criteria should include the final acceptable appearance. If color changes during storage, a quantitative procedure may be appropriate.

(b) *Identification*: Identification testing should establish the identity of the new drug substance(s) in the new drug product and should be able to discriminate between compounds of closely related structure which are likely to be present. Identity tests should be specific for the new drug substance, e.g., infrared spectroscopy. Identification solely by chromatographic retention time, for example, is not regarded as being specific; however, a combination of tests into a single procedure, such as HPLC/UV-diode array, may be acceptable.

(c) *Assay*: A specific, stability-indicating assay to determine strength should be included for all new drug products. In many cases it is possible to employ the same procedure (e.g., HPLC) for both assay of the new drug substance and quantitation of impurities. Results of content uniformity testing for new drug products can be used for quantitation of drug product strength, if the methods used for content uniformity are also appropriate as assays.

In cases where use of a nonspecific assay is justified, other supporting analytical procedures should be used to achieve overall specificity. For example, where titration is adopted to assay the drug substance, the combination of the assay and a suitable test for impurities can be used.

(d) *Impurities*: Organic and inorganic impurities and residual solvents are included in this category. Refer to the ICH guidances "Impurities in New Drug Products" and "Residual Solvents in Pharmaceuticals" for detailed information.

Organic impurities arising from degradation of the new drug substance should be monitored in the new drug product. Acceptance limits should be stated for individual specified degradation products, which may include both identified and unidentified degradation products as appropriate, and total degradation products. Process impurities from the new drug substance synthesis are normally controlled during drug substance testing, and therefore are not included in the total impurities limit. When it has been conclusively demonstrated via appropriate analytical methodology, with a significant body of data, that the drug substance does not degrade in the specific formulation, and under the specific storage conditions proposed in the new drug application, degradation product testing may be reduced or eliminated upon approval by the regulatory authorities.

Decision tree #2 addresses the extrapolation of meaningful limits on degradation products from the body of data generated during development. At the time of filing, it is unlikely that sufficient data will be available to assess process consistency. Therefore, it is inappropriate to establish acceptance criteria that tightly encompass the batch data at the time of filing. (See section 2.5, limited data available at filing).

3.3 Specific Tests/Criteria

In addition to the universal tests listed above, the following tests may be considered on a case by case basis for drug substances and/or drug products. Individual tests/criteria should be included in the specification when the tests have an impact on the quality of the drug substance and drug product for batch control. Tests other than those listed below may be needed in particular situations or as new information becomes available.

3.3.1 New Drug Substances

(a) *Physicochemical properties*: These are properties such as pH of an aqueous solution, melting point/range, and refractive index. The procedures used for the measurement of these properties are usually unique and do not need much elaboration, e.g., capillary melting point, Abbé refractometry. The tests performed in this category should be determined by the physical nature of the new drug substance and by its intended use.

(b) *Particle size*: For some new drug substances intended for use in solid or suspension drug products, particle size can have a significant effect on dissolution rates, bioavailability, and/or stability. In such instances, testing for particle size distribution should be carried out using an appropriate procedure, and acceptance criteria should be provided.

Decision tree #3 provides additional guidance on when particle size testing should be considered.

(c) *Solid state forms*: Some new drug substances exist in different solid state forms (polymorphs or solvates) that differ in their physical properties. Differences in these forms could, in some cases, affect the quality or performance of the new drug products. In cases where differences exist that have been shown to affect drug product performance, bioavailability, or stability, then the appropriate solid state should be specified.

Physico-chemical measurements and techniques are commonly used to determine whether multiple forms exist. Examples of these procedures are: Melting point (including hot-stage microscopy), solid state IR, X-ray powder diffraction, thermal analysis procedures (like DSC (differential scanning calorimetry), TGA (thermogravimetric analysis) and DTA (differential thermal analysis)), Raman spectroscopy, scanning electron microscopy, and solid state NMR (nuclear magnetic resonance spetroscopy).

Decision trees #4(1) through #4(3) provide additional guidance on when, and how, solid state forms should be monitored and controlled.

Note: These decision trees should be followed sequentially. Trees #1 and #2 consider whether polymorphism is exhibited by the drug substance and whether the different polymorphic forms can affect performance of the drug product. Tree #3 should only be applied when polymorphism has been demonstrated for the drug substance

and has been shown to affect these properties. Tree #3 considers the potential for change in polymorphic forms in the drug product and whether such a change has any effect on product performance.

It is generally technically very difficult to measure polymorphic changes in drug products. A surrogate test (e.g., dissolution) can generally be used to monitor product performance, and polymorph content should only be used as a test and acceptance criterion of last resort.

The decision trees focus on polymorphism, but the same decision process can be applied to other solid state criteria, such as hydration and solvation, where appropriate.

(d) *Tests for new drug substances that are optically active*: Chiral impurities are excluded from ICH guidances on "Impurities in New Drug Substances" and "Impurities in New Drug Products" because of practical difficulties in quantifying them at the qualification and identification thresholds given in those guidances. However, chiral impurities in chiral new drug substances and the resulting new drug products should be treated according to principles established in those guidances.

Decision tree #5 summarizes when and if chiral identity tests, impurity tests, and assays may be needed for both new drug substances and new drug products, according to the following concepts:

Drug Substance: Impurities. For chiral drug substances that are developed as a single enantiomer, control of the other enantiomer should be considered in the same manner as for other impurities. However, technical limitations may preclude the same limits of determination or qualification being applied. If it is technically difficult to effect control in the drug substance itself, assurance of control could be given by appropriate testing of a starting material or intermediate, with suitable justification.

Assay. An enantioselective determination of the drug substance should be part of the specification. It is considered acceptable for this to be achieved either through use of a chiral assay procedure or by the combination of an achiral assay together with appropriate methods of controlling the enantiomeric impurity.

Identity. The identity test(s) should be capable of distinguishing a single enantiomer from its opposite enantiomer. Where a drug substance is a racemate, the identity method should be capable of verifying the racemic nature and distinguishing it from either enantiomer.

Drug Product: Degradation products. Control of the other enantiomer in a drug product is necessary if that enantiomer has been shown to be a degradation product.

Assay. Where development studies have demonstrated that the enantiomer is not a degradation product, an achiral assay may be sufficient. However, a chiral assay is preferred or, alternatively, the combination of an achiral assay plus a procedure to control the presence of the opposite enantiomer.

Identity. An identity test should be established that is capable of verifying the presence of the correct enantiomer or the racemate, as appropriate.

(e) *Water content*: This test is important in cases where the new drug substance is known to be hygroscopic or degraded by moisture or when the drug substance is known to be a stoichiometric hydrate. The acceptance criteria may be justified with data on the effects of hydration or moisture absorption. In some cases, a Loss on Drying procedure may be adequate; however, a detection procedure that is specific for water (e.g., Karl Fischer titration) is preferred.

(f) *Inorganic impurities*: The need for inclusion of tests and acceptance criteria for inorganic impurities should be studied during development and based on knowledge of the manufacturing process. Where justified, procedures and acceptance criteria for sulfated ash/residue on ignition should follow pharmacopoeial precedents; other inorganic impurities may be determined by other appropriate procedures, e.g., atomic absorption spectroscopy.

(g) *Microbial limits*: There may be a need to specify the total count of aerobic microorganisms, the total count of yeasts and molds, and the absence of specific objectionable bacteria (e.g., Staphylococcus aureus, Escherichia coli, Salmonella, Pseudomonas aeruginosa). These should be suitably determined using pharmacopoeial procedures. In special cases, sterility testing or endotoxin testing may be appropriate. For example, the drug substance is manufactured as sterile (sterility testing appropriate) or will be used to formulate an injectable drug product (endotoxin testing appropriate).

Decision tree #6 provides additional guidance on when microbial limits should be included.

3.3.2 New Drug Products

Additional tests and acceptance criteria generally should be included for particular new drug products. The following selection presents a representative sample of both the drug products and the types of tests and acceptance criteria which may be appropriate. The specific dosage forms addressed include solid oral drug products, liquid oral drug products, and parenterals (small and large volume). Application of the concepts in this guidance to other dosage forms is encouraged. Note that issues related to optically active drug substances and to solid state considerations for drug products are discussed in section 3.3.1 of this guidance.

3.3.2.1 The following tests are applicable to tablets (coated and uncoated) and hard capsules. One or more of these tests may also be applicable to soft capsules and granules.

(a) *Dissolution/disintegration*: For rapidly dissolving products containing drugs that are highly soluble throughout the physiological pH range, disintegration testing may sometimes be sufficient. Disintegration testing is most appropriate when a relationship to dissolution has been established or when disintegration is shown to be more discriminating than dissolution. In such cases, dissolution testing may not always be necessary, or may be proposed as a skip test. It is expected that development information will be provided to support the robustness of the formulation and manufacturing process with respect to the selection of dissolution vs. disintegration testing.

Single-point measurements are normally considered to be suitable for immediate release dosage forms. For modified release dosage forms, appropriate test conditions and sampling procedures should be established. For example, multiple-time-point sampling should be performed for extended release dosage forms, and two-stage testing (using different media in succession or in parallel, as appropriate) may be appropriate for delayed release dosage forms. In these cases it is important to consider the populations of individuals who will be taking the drug product (e.g., achlorhydric elderly) when designing the tests and acceptance criteria.

Where multiple-point acceptance criteria are necessary, in vitro/in vivo correlation may be used to establish these criteria when human bioavailability data are available for formulations exhibiting different release rates. Where such data are not available, and drug release cannot be shown to be independent of in vitro test conditions, then acceptance criteria should be established on the basis of available batch data. Normally, the permitted variability in release rate at any given time point should not exceed a total numerical difference of +/-10 percent of the labeled content of drug substance (i.e., a total variability of 20 percent; a requirement of 50 +/-10 percent thus means an acceptable range from 40 to 60 percent) unless a wider range is supported by a bioequivalency study.

Decision trees #7(1) through #7(4) provide additional guidance on the use of dissolution and disintegration testing.

(b) *Hardness/friability*: It is normally appropriate to perform hardness and/or friability testing as an in-process control (see section 2.3). Under these circumstances, it is normally not necessary to include these attributes in the specification. If the characteristics of hardness and friability have a critical impact on drug product quality (e.g., chewable tablets), acceptance criteria should be included in the specification.

(c) *Uniformity of dosage units*: This term includes both uniformity of content and uniformity of mass; a pharmacopoeial procedure should be used. If appropriate, these tests may be performed as in-process controls; the acceptance criteria should be included in the specification.

(d) *Water content*: A test for water content should be included when appropriate. The acceptance criteria may be justified with data on the effects of hydration or water absorption on the drug product. In some cases, a Loss on Drying procedure may be adequate; however, a detection procedure which is specific for water (e.g., Karl Fischer titration) is preferred.

(e) *Microbial limits*: Microbial limit testing is seen as an attribute of GMP, as well as of quality assurance. In general, it is advisable to test the drug product unless its components are tested before manufacture and the manufacturing process is known, through validation studies, not to carry a significant risk of microbial contamination. It should be noted that, whereas this guidance does not directly address excipients elsewhere, the principles discussed here may be applicable to excipients as well as to new drug products. Skip testing may be an appropriate approach in both cases.

Acceptance criteria should be set for the total count of aerobic microorganisms, the total count of yeasts and molds, and the absence of specific objectionable bacteria (e.g., Staphylococcus aureus, Escherichia coli, Salmonella, Pseudomonas). These should be determined by suitable procedures, using pharmacopoeial procedures, and at a sampling frequency or time point in manufacture that is justified by data and experience. With acceptable scientific justification, it may be possible to propose no microbial limit testing for solid oral dosage forms.

Decision tree #8 provides additional guidance on the use of microbial limit testing.

3.3.2.2 *Oral liquids*: One or more of the following specific tests will normally be applicable to oral liquids and to powders intended for reconstitution as oral liquids.

(a) *Uniformity of dosage units*: This term includes both uniformity of content and uniformity of mass. Generally, acceptance criteria should be set for weight variation, fill volume, and/or uniformity of fill. Pharmacopoeial procedures should be used.

If appropriate, tests may be performed as in-process controls; however, the acceptance criteria should be included in the specification. This concept may be applied to both single-dose and multiple-dose packages.

The dosage unit is considered to be the typical dose taken by the patient. If the actual unit dose, as taken by the patient, is controlled, it may either be measured directly or calculated based on the total measured weight or volume of drug divided by the total number of doses expected. If dispensing equipment (such as medicine droppers or dropper tips for bottles) is an integral part of the packaging, this equipment should be used to measure the dose. Otherwise, a standard volume measure should be used. The dispensing equipment to be used is normally determined during development.

For powders for reconstitution, uniformity of mass testing is generally considered acceptable.

(b) *pH*: Acceptance criteria for pH should be provided where applicable and the proposed range justified.

(c) *Microbial limits*: Microbial limit testing is seen as an attribute of GMP, as well as of quality assurance. In general, it is advisable to test the drug product unless its components are tested before manufacture and the manufacturing process is known, through validation studies, not to carry a significant risk of microbial contamination. It should be noted that, whereas this guidance does not directly address excipients elsewhere, the principles discussed here may be applicable to excipients as well as to new drug products. Skip testing may be an appropriate approach in both cases. With acceptable scientific justification, it may be possible to propose no microbial limit testing for powders intended for reconstitution as oral liquids.

Acceptance criteria should be set for the total count of aerobic microorganisms, total count of yeasts and molds, and the absence of specific objectionable bacteria (e.g., Staphylococcus aureus, Escherichia coli, Salmonella, Pseudomonas). These should be determined by suitable procedures, using pharmacopoeial procedures, and at a sampling frequency or time point in manufacture which is justified by data and experience.

Decision tree #8 provides additional guidance on the use of microbial limit testing.

(d) *Antimicrobial preservative content*: For oral liquids needing an antimicrobial preservative, acceptance criteria for preservative content may be appropriate. These criteria should be based on the levels necessary to maintain microbiological product quality throughout the shelf-life. The lowest specified concentration of antimicrobial preservative should be demonstrated to be effective in controlling microorganisms by using a pharmacopoeial antimicrobial preservative effectiveness test.

Release testing for antimicrobial preservative content should normally be performed. Under certain circumstances, in-process testing may suffice in lieu of release testing. When antimicrobial preservative content testing is performed as an in-process test, the acceptance criteria should remain part of the specification.

Antimicrobial preservative effectiveness should be demonstrated during development, during scaleup, and throughout the shelf-life (e.g., in stability testing, see the ICH guidance "Stability Testing of New Drug Substances and Products"), although chemical testing for preservative content is the attribute normally included in the specification.

(e) *Antioxidant preservative content*: Release testing for antioxidant content should normally be performed. Under certain circumstances, where justified by developmental and stability data, shelf-life testing may be unnecessary, and in-process testing may suffice in lieu of release testing. When antioxidant content testing is performed as an in-process test, the acceptance criteria should remain part of the specification. If only release testing is performed, this decision should be reinvestigated whenever either the manufacturing procedure or the container/closure system changes.

(f) *Extractables*: Generally, where development and stability data show no significant evidence of extractables, elimination of this test may be proposed. This should be reinvestigated if the container/closure system changes.

Where data demonstrate the need, tests and acceptance criteria for extractables from the container/closure system components (e.g., rubber stopper, cap liner, plastic bottle) are considered appropriate for oral solutions packaged in nonglass systems, or in glass containers with nonglass closures. The container/closure components should be listed, and data collected for these components as early in the development process as possible.

(g) *Alcohol content*: Where it is declared quantitatively on the label in accordance with pertinent regulations, the alcohol content should be specified. It may be assayed or calculated.

(h) *Dissolution*: In addition to the attributes recommended immediately above, it may be appropriate (e.g., insoluble drug substance) to include dissolution testing and acceptance criteria for oral suspensions and dry powder products for resuspension. The testing apparatus, media, and conditions should be pharmacopoeial, if possible, or otherwise justified. Dissolution procedures using either pharmacopoeial or non-pharmacopoeial apparatus and conditions should be validated.

Single-point measurements are normally considered suitable for immediate release dosage forms. Multiple-point sampling, at appropriate intervals, should be performed for modified release dosage forms. Acceptance criteria should be set based on the observed range of variation, and should take into account the dissolution profiles of the batches that showed acceptable performance in vivo. Developmental data should be considered when determining the need for either a dissolution procedure or a particle size distribution procedure.

Dissolution testing may be performed as an in-process test, or as a release test, depending on its relevance to product performance. The discussion of dissolution for solid oral dosage forms (above), and of particle size distribution (immediately following), should also be considered here.

(i) *Particle size distribution*: Quantitative acceptance criteria and a procedure for determination of particle size distribution may be appropriate for oral suspensions. Developmental data should be considered when determining the need for either a dissolution procedure or a particle size distribution procedure for these formulations.

Particle size distribution testing may be performed as an in-process test or as a release test, depending on its relevance to product performance. If these products have been demonstrated during development to have consistently rapid drug release characteristics, exclusion of a particle size distribution test from the specification may be proposed.

Particle size distribution testing may also be proposed in place of dissolution testing; justification should be provided. The acceptance criteria should include acceptable particle size distribution in terms of the percent of total particles in given size ranges. The mean, upper, and/or lower particle size limits should be well defined.

Acceptance criteria should be set based on the observed range of variation, and should take into account the dissolution profiles of the batches that showed acceptable performance in vivo, as well as the intended use of the product. The potential for particle growth should be investigated during product development; the acceptance criteria should take the results of these studies into account.

(j) *Redispersibility*: For oral suspensions which settle on storage (produce sediment), acceptance criteria for redispersibility may be appropriate. Shaking may be an appropriate test. The procedure (mechanical or manual) should be indicated. Time required to achieve resuspension by the indicated procedure should be clearly defined. Data generated during product development may be sufficient to justify skip lot testing or elimination of this attribute from the specification.

(k) *Rheological properties*: For relatively viscous solutions or suspensions, it may be appropriate to include rheological properties (viscosity) in the specification. The test and acceptance criteria should be stated. Data generated during product development may be sufficient to justify skip lot testing or elimination of this attribute from the specification.

(l) *Specific gravity*: For oral suspensions or relatively viscous or nonaqueous solutions, acceptance criteria for specific gravity may be appropriate. Testing may be performed as an in-process control.

(m) *Reconstitution time*: Acceptance criteria for reconstitution time should be provided for dry powder products which require reconstitution. The choice of diluent should be justified. Data generated during product development may be sufficient to justify skip lot testing or elimination of this attribute from the specification.

(n) *Water content*: For oral products requiring reconstitution, a test and acceptance criterion for water content should be proposed when appropriate. Loss on drying is generally considered sufficient if the effect of absorbed moisture vs. water of hydration has been adequately characterized during the development of the product. In certain cases, a more specific procedure (e.g., Karl Fischer titration) may be preferable.

3.3.2.3 *Parenteral Drug Products*: The following tests may be applicable to parenteral drug products.

(a) *Uniformity of dosage units*: This term includes both uniformity of content and uniformity of mass; a pharmacopoeial procedure should be used. Generally, acceptance criteria should be set for weight variation, fill volume, or uniformity of fill.

If appropriate, these tests may be performed as in-process controls; the acceptance criteria should be included in the specification. This test may be applied to both single-dose and multiple-dose packages.

For powders for reconstitution, uniformity of mass testing is generally considered acceptable.

(b) *pH*: Acceptance criteria for pH should be provided where applicable and the proposed range justified.

(c) *Sterility*: All parenteral products should have a test procedure and acceptance criterion for evaluation of sterility. Where data generated during development and validation justify parametric release, this approach may be proposed for terminally sterilized drug products.

(d) *Endotoxins*: A test procedure and acceptance criterion for endotoxins, using a procedure such as the limulus amoebocyte lysate test, should be included in the specification.

(e) *Pyrogens*: Pyrogenicity testing may be proposed as an alternative to endotoxin testing where justified.

(f) *Particulate matter*: Parenteral products should have appropriate acceptance criteria for particulate matter. This will normally include limits for visible particulates (also designated "foreign matter") and/or clarity of solution, as well as for subvisible particulates.

(g) *Water content*: For nonaqueous parenterals, and for parenteral products for reconstitution, a test procedure and acceptance criterion for water content should be proposed when appropriate. Loss on drying is generally considered sufficient for parenteral products if the effect of absorbed moisture vs. water of hydration has been adequately characterized during development. In certain cases, a more specific procedure (e.g., Karl Fischer titration) may be preferred.

(h) *Antimicrobial preservative content*: For parenteral products needing an antimicrobial preservative, acceptance criteria for preservative content may be appropriate. These criteria should be based on the levels necessary to maintain microbiological product quality throughout the shelf-life. The lowest specified concentration of antimicrobial preservative should be demonstrated to be effective in controlling microorganisms by using a pharmacopoeial antimicrobial preservative effectiveness test.

Release testing for antimicrobial preservative content should normally be performed. Under certain circumstances, in-process testing may suffice in lieu of release testing. When antimicrobial preservative content testing is performed as an in-process test, the acceptance criteria should remain part of the specification.

Antimicrobial preservative effectiveness should be demonstrated during development, during scaleup, and throughout the shelf-life (e.g., in stability testing, see the ICH guidance "Stability Testing of New Drug Substances and Products"), although chemical testing for preservative content is the attribute normally included in the specification.

(i) *Antioxidant preservative content*: Release testing for antioxidant content should normally be performed. Under certain circumstances, where justified by developmental and stability data, shelf-life testing may be unnecessary and in-process testing may suffice in lieu of release testing. When antioxidant content testing is performed as an in-process test, the acceptance criteria should remain part of the specification. If only release testing is performed, this decision should be reinvestigated whenever either the manufacturing procedure or the container/closure system changes.

(j) *Extractables*: Control of extractables is considered significantly more important for parenteral products than for oral liquids. However, where development and stability data show no significant evidence of extractables, elimination of this test may be proposed. This should be reinvestigated if the container/closure system changes.

Where data demonstrate the need, acceptance criteria for extractables from the container/closure components are considered appropriate for parenteral products packaged in nonglass systems or in glass containers with elastomeric closures. This testing may be performed at release only, where justified by data obtained during development. The container/closure system components (e.g., rubber stopper) should be listed, and data collected for these components as early in the development process as possible.

(k) *Functionality testing of delivery systems*: Parenteral formulations packaged in prefilled syringes, autoinjector cartridges, or the equivalent, should have test procedures and acceptance criteria related to the functionality of the delivery system. These may include control of syringeability, pressure, and seal integrity (leakage), and/or parameters such as tip cap removal force, piston release force, piston travel force, and power injector function force. Data generated during product development may be sufficient to justify skip lot testing or elimination of some attributes from the specification.

(l) *Osmolality*: When the tonicity of a product is declared in its labeling, appropriate control of its osmolality should be performed. Data generated during development and validation may be sufficient to justify performance of this procedure as an in-process control, skip lot testing, or direct calculation of this attribute.

(m) *Particle size distribution*: Quantitative acceptance criteria and a procedure for determination of particle size distribution may be appropriate for injectable suspensions. Developmental data should be considered when determining the need for either a dissolution procedure or a particle size distribution procedure.

Particle size distribution testing may be performed as an in-process test or as a release test, depending on its relevance to product performance. If the product has been demonstrated during development to have consistently rapid drug release characteristics, exclusion of particle size controls from the specification may be proposed.

Particle size distribution testing may also be proposed in place of dissolution testing when development studies demonstrate that particle size is the primary factor influencing dissolution; justification should be provided. The acceptance criteria should include acceptable particle size distribution in terms of the percent of total particles in given size ranges. The mean, upper, and/or lower particle size limits should be well defined.

Acceptance criteria should be set based on the observed range of variation, and should take into account the dissolution profiles of the batches that showed acceptable performance in vivo and the intended use of the product. The potential for particle growth should be investigated during product development; the acceptance criteria should take the results of these studies into account.

(n) *Redispersibility*: For injectable suspensions which settle on storage (produce sediment), acceptance criteria for redispersibility may be appropriate. Shaking may be an appropriate test. The procedure (mechanical or manual) should be indicated. Time required to achieve resuspension by the indicated procedure should be clearly defined. Data generated during product development may be sufficient to justify skip lot testing or elimination of this attribute from the specification.

(o) *Reconstitution time*: Acceptance criteria for reconstitution time should be provided for all parenteral products which require reconstitution. The choice of diluent should be justified. Data generated during product development may be sufficient to justify skip lot testing or elimination of this attribute from the specification.

4. Glossary

Acceptance criteria: Numerical limits, ranges, or other suitable measures for acceptance of the results of analytical procedures.

Chiral: Not superposable with its mirror image, as applied to molecules, conformations, and macroscopic objects, such as crystals. The term has been extended to samples of substances whose molecules are chiral, even if the macroscopic assembly of such molecules is racemic.

Combination product: A drug product that contains more than one drug substance.

Degradation product: A molecule resulting from a chemical change in the drug molecule brought about over time and/or by the action of e.g., light, temperature, pH, water, or by reaction with an excipient and/or the immediate container/closure system. Also called decomposition product.

Enantiomers: Compounds with the same molecular formula as the drug substance, that differ in the spatial arrangement of atoms within the molecule and are nonsuperimposable mirror images.

Impurity: (1) Any component of the new drug substance that is not the chemical entity defined as the new drug substance. (2) Any component of the drug product that is not the chemical entity defined as the drug substance or an excipient in the drug product.

Identified impurity: An impurity for which a structural characterization has been achieved.

New drug product: A pharmaceutical product type, for example, tablet, capsule, solution, cream, that has not previously been registered in a region or Member State, and which contains a drug ingredient generally, but not necessarily, in association with excipients.

New drug substance: The designated therapeutic moiety, that has not previously been registered in a region or Member State (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved drug substance.

Polymorphism: The occurrence of different crystalline forms of the same drug substance. This may include solvation or hydration products (also known as pseudopolymorphs) and amorphous forms.

Quality: The suitability of either a drug substance or drug product for its intended use. This term includes such attributes as the identity, strength, and purity of the article.

Racemate: A composite (solid, liquid, gaseous, or in solution) of equimolar quantities of two enantiomeric species. It is devoid of optical activity.

Reagent: A substance, other than a starting material or solvent, that is used in the manufacture of a new drug substance.

Solvent: An inorganic or an organic liquid used as a vehicle for the preparation of solutions or suspensions in the synthesis of a new drug substance or the manufacture of a new drug product.

Specification: A list of tests, references to analytical procedures, and appropriate acceptance criteria that are numerical limits, ranges, or other criteria for the tests described. It establishes the set of criteria to which a drug substance or drug product should conform to be considered acceptable for its intended use. "Conformance to specifications" means that the drug substance and/or drug product, when tested according to the listed analytical procedures, will meet the listed acceptance criteria. Specifications are binding quality standards that are agreed to between the appropriate governmental regulatory agency and the applicant.

Specific test: A test that is considered to be applicable to particular new drug substances or particular new drug products depending on their specific properties and/or intended use.

Specified impurity: An identified or unidentified impurity that is selected for inclusion in the new drug substance or new drug product specification and is individually listed and limited in order to assure the quality of the new drug substance or new drug product.

Unidentified impurity: An impurity that is defined solely by qualitative analytical properties (e.g., chromatographic retention time).

Universal test: A test that is considered to be potentially applicable to all new drug substances, or all new drug products (e.g., appearance, identification, assay, and impurity tests).

5. References

International Conference on Harmonisation, "Impurities in New Drug Substances," 1995.

International Conference on Harmonisation, "Impurities in New Drug Products," 1996.

International Conference on Harmonisation, "Stability Testing of New Drug Substances and Products," 1994.

International Conference on Harmonisation, "Text on Validation of Analytical Procedures," 1994.

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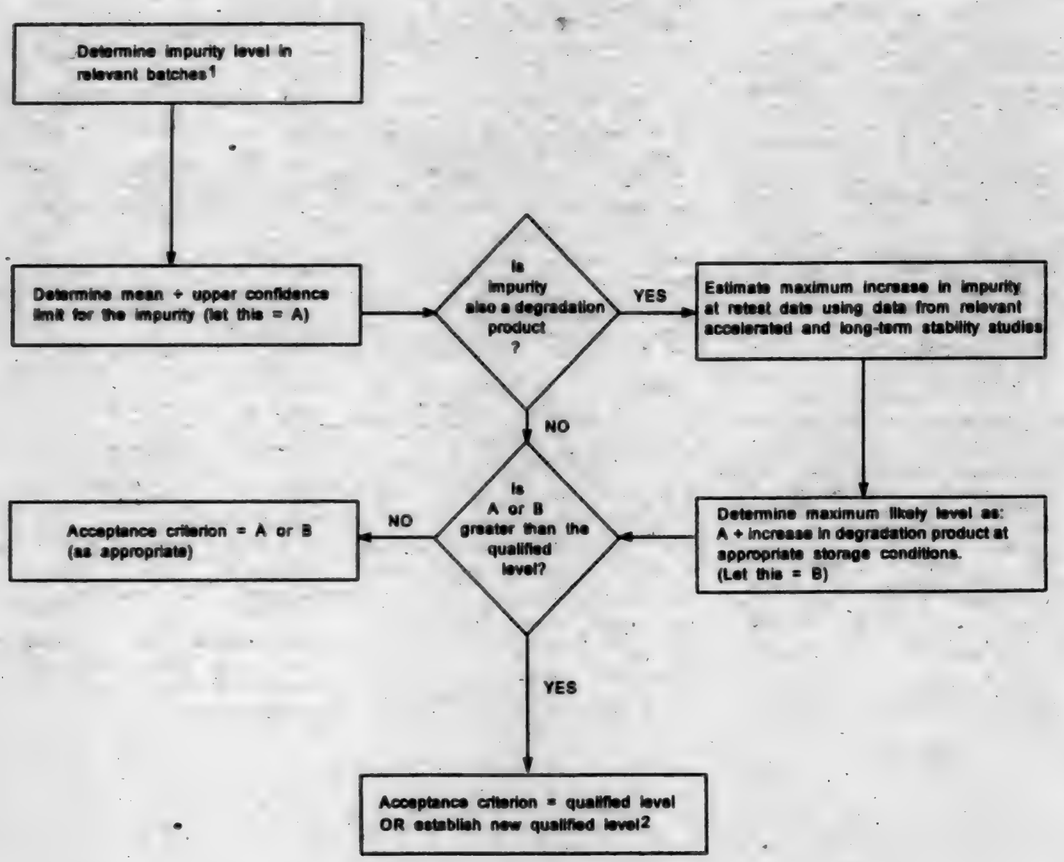
International Conference on Harmonisation, "Residual Solvents in Pharmaceuticals," 1996.

6. Attachments: Decision Trees #1 through #8

For the decision trees referenced in this guidance, see the following pages.

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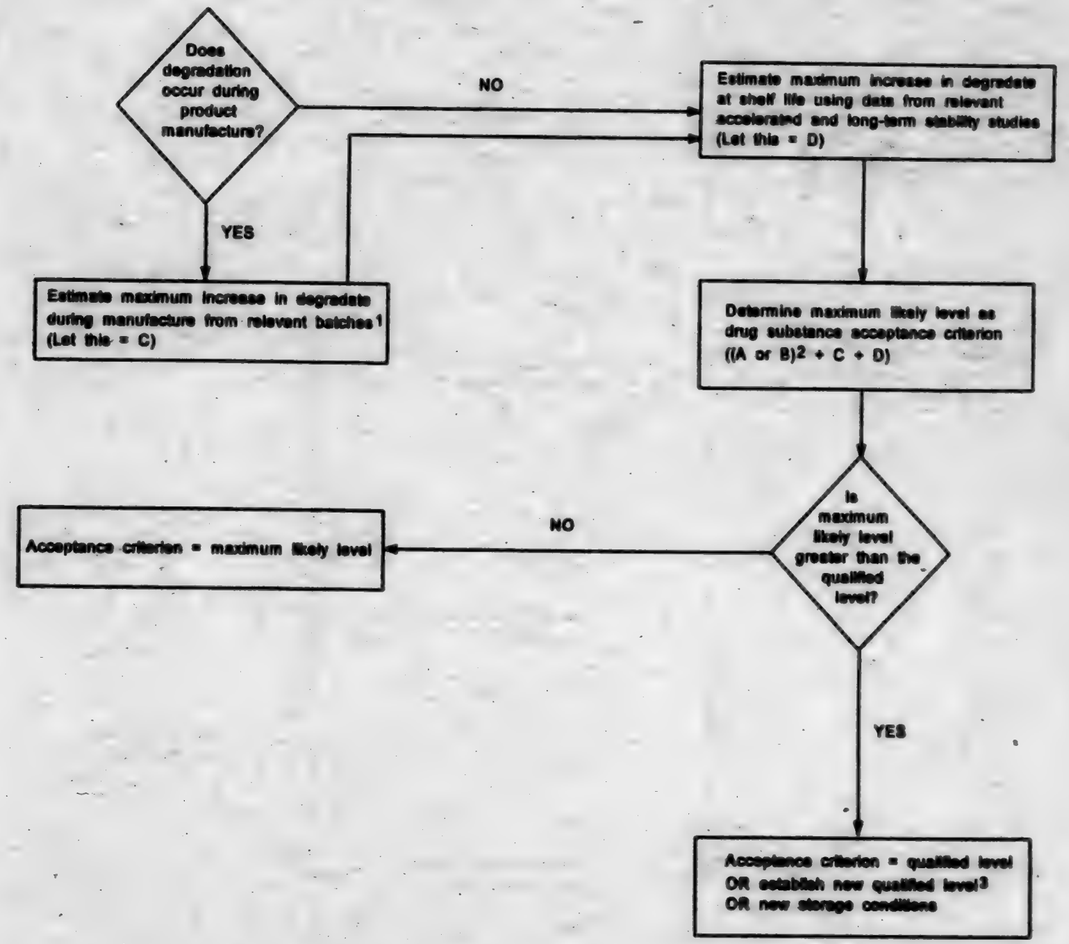
DECISION TREE #1: ESTABLISHING ACCEPTANCE CRITERIA FOR A SPECIFIED IMPURITY IN A NEW DRUG SUBSTANCE



1 Relevant batches are those from development, pilot and scale-up studies.
2 Refer to ICH Guidance on Impurities in New Drug Substances

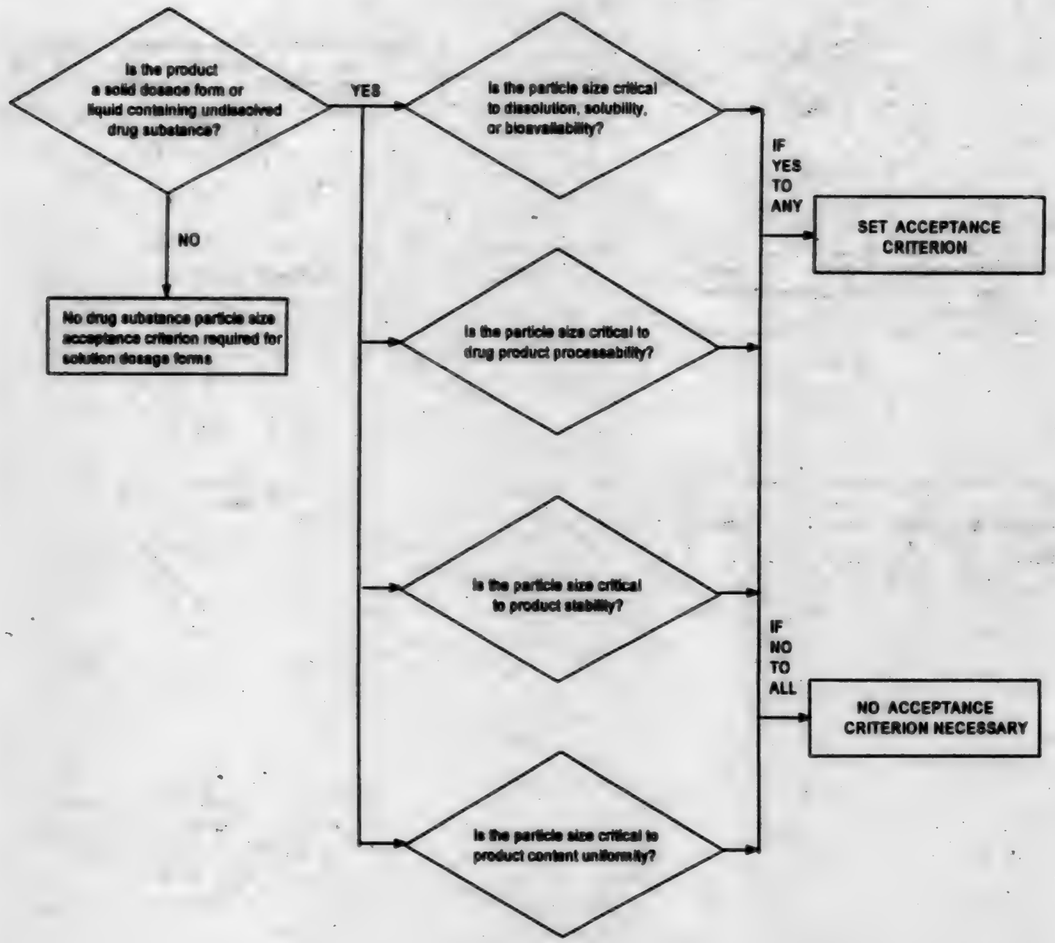
Definition: upper confidence limit = three times the standard deviation of batch analysis data

DECISION TREE #2: ESTABLISHING ACCEPTANCE CRITERIA FOR A DEGRADATION PRODUCT IN A NEW DRUG PRODUCT



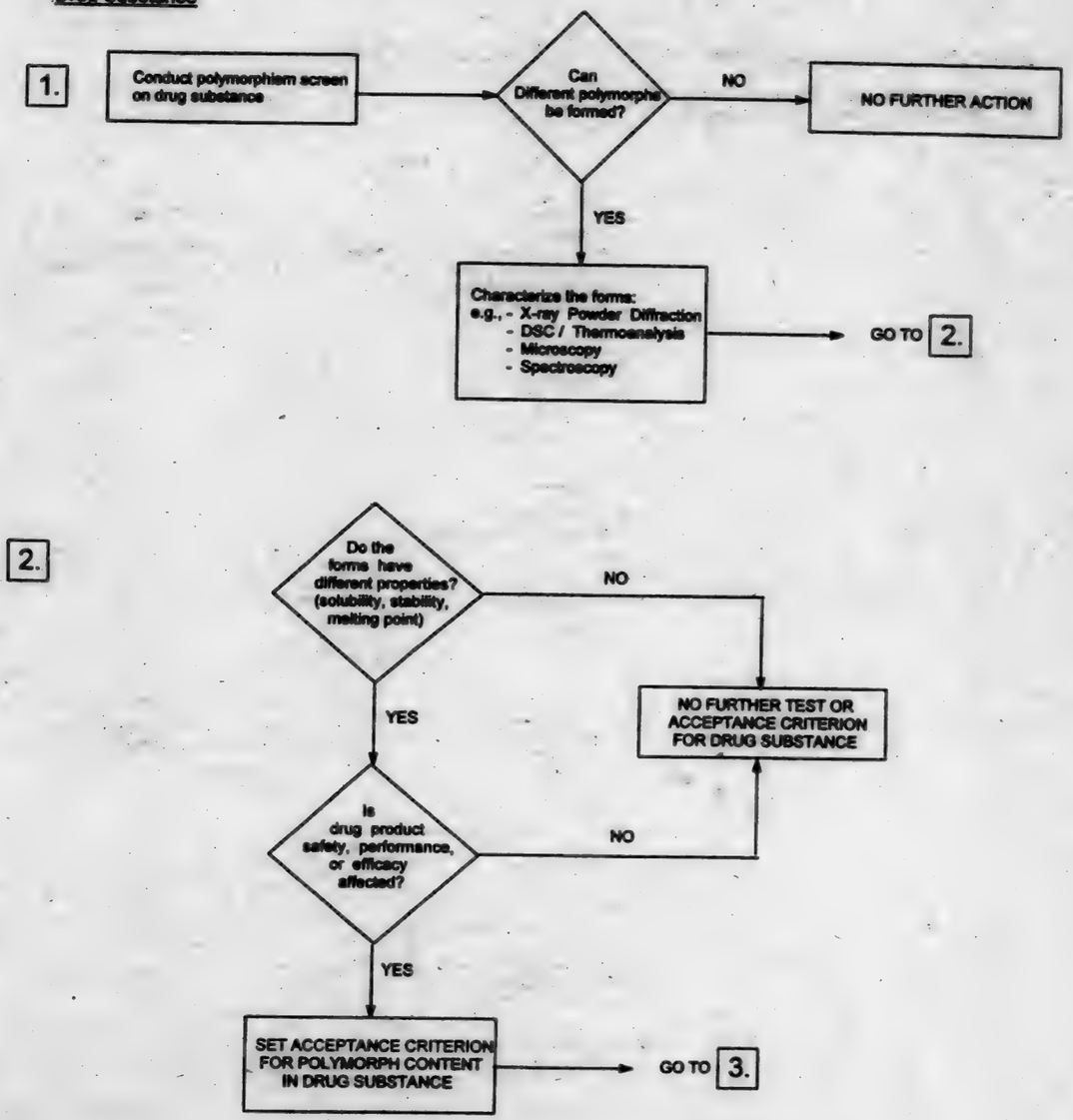
1 Relevant batches are those from development, pilot and scale-up studies.
2 Refer to Decision Tree 1
3 Refer to ICH Guidance on Impurities in New Drug Substances

DECISION TREE #3: SETTING ACCEPTANCE CRITERIA
FOR
DRUG SUBSTANCE PARTICLE SIZE DISTRIBUTION



DECISION TREES #4: INVESTIGATING THE NEED TO SET
ACCEPTANCE CRITERIA FOR POLYMORPHISM
IN DRUG SUBSTANCES AND DRUG PRODUCTS

Drug Substance

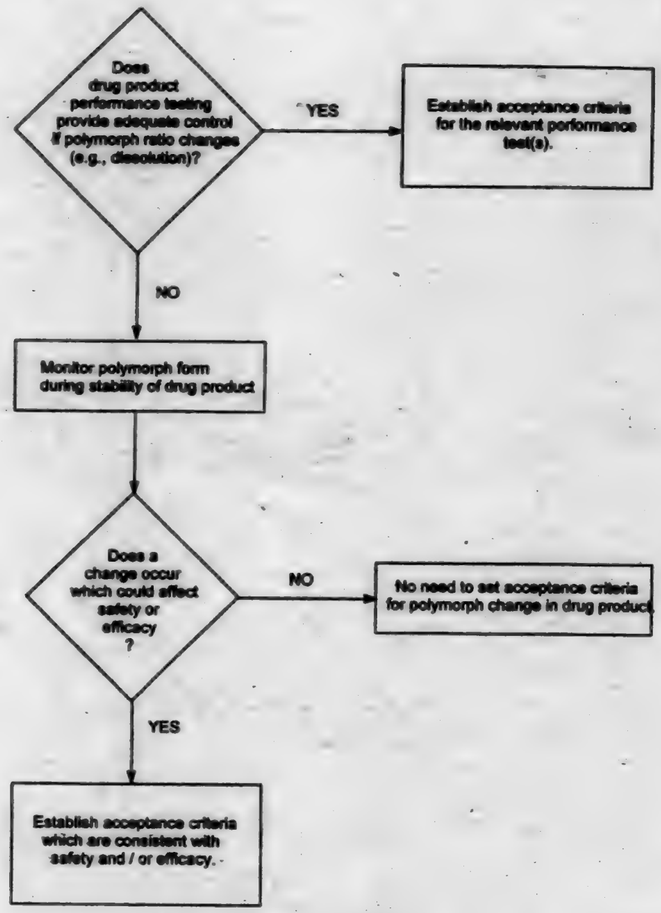


DECISION TREES #4: INVESTIGATING THE NEED TO SET ACCEPTANCE CRITERIA FOR POLYMORPHISM IN DRUG SUBSTANCES AND DRUG PRODUCTS

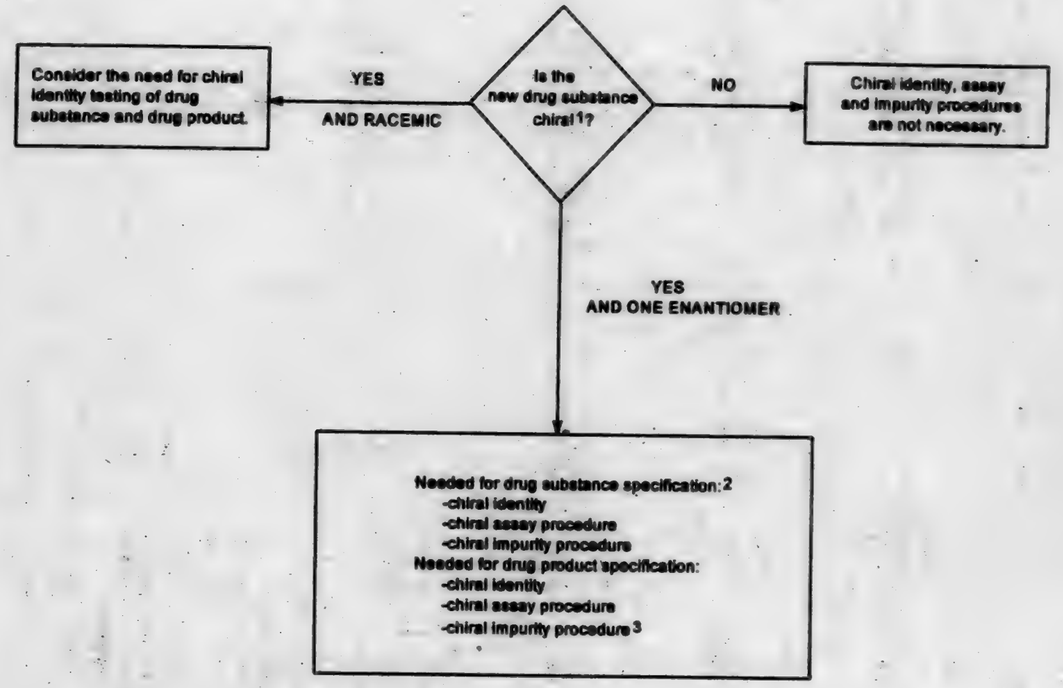
Drug Product - Solid Dosage Form or Liquid Containing Undissolved Drug Substance

N.B.: Undertake the following process only if technically possible to measure polymorph content in the drug product.

3.



DECISION TREE #5: ESTABLISHING IDENTITY, ASSAY AND CHIRAL IMPURITIES PROCEDURES IN A NEW DRUG PRODUCT CONTAINING A CHIRAL DRUG SUBSTANCE

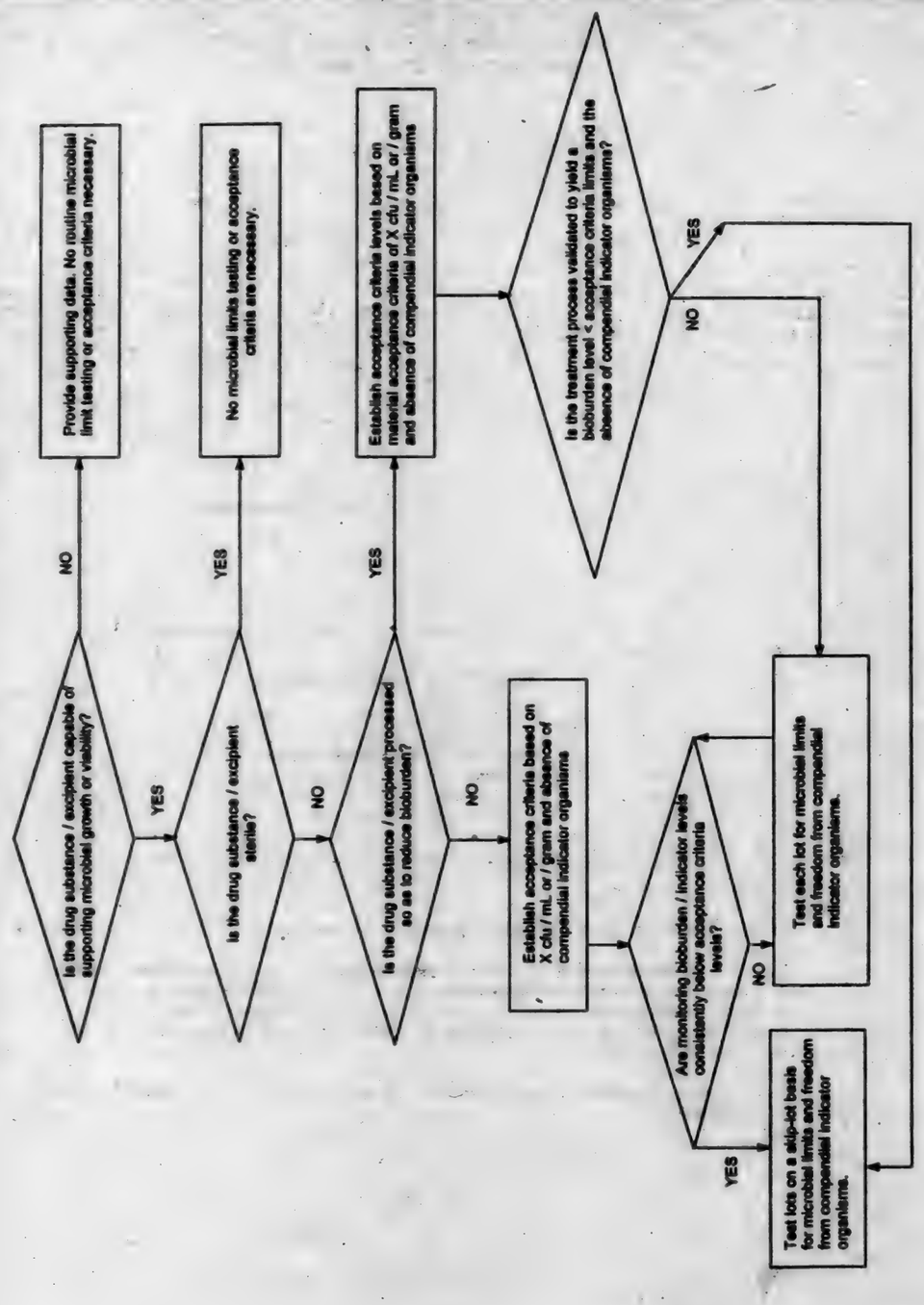


1 Chiral substances of natural origin are not addressed in this Guidance.

2 As with other impurities arising in and from raw materials used in drug substance synthesis, control of chiral quality could be established alternatively by applying limits to appropriate starting materials or intermediates when justified from development studies. This will be essentially the case when there are multiple chiral centers (e.g., three or more), or when measurement in drug substance at an appropriate sensitivity is technically impossible.

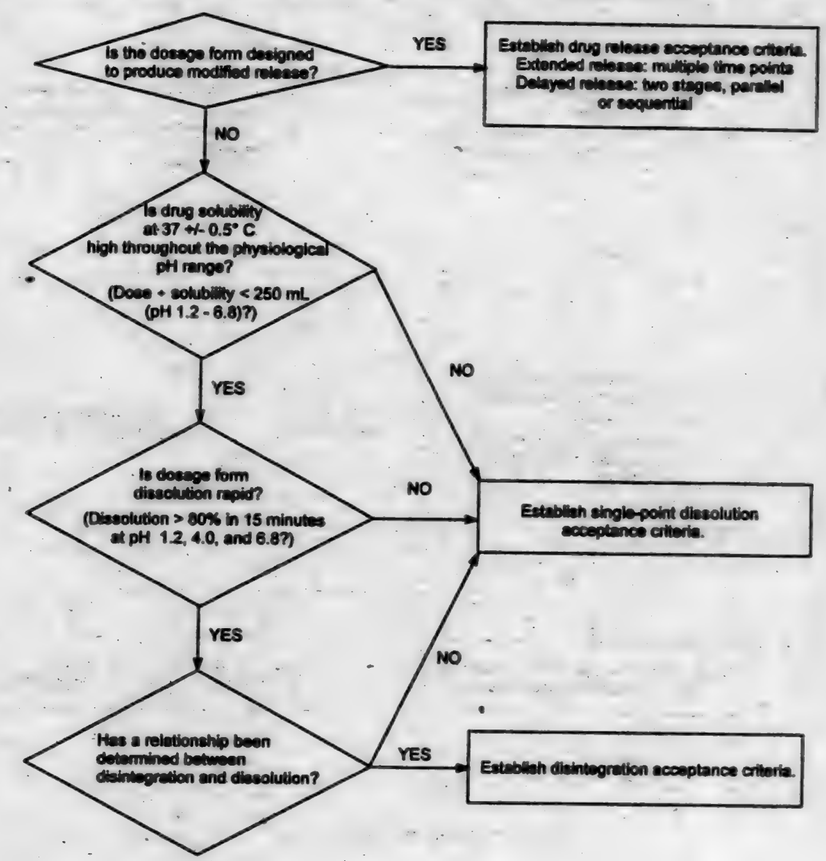
3 A chiral assay may not be necessary if chiral impurity testing is done via a method which is equivalent to an assay procedure.

DECISION TREE #6: MICROBIOLOGICAL QUALITY ATTRIBUTES OF DRUG SUBSTANCE AND EXCIPIENTS



DECISION TREES #7: SETTING ACCEPTANCE CRITERIA FOR DRUG PRODUCT DISSOLUTION

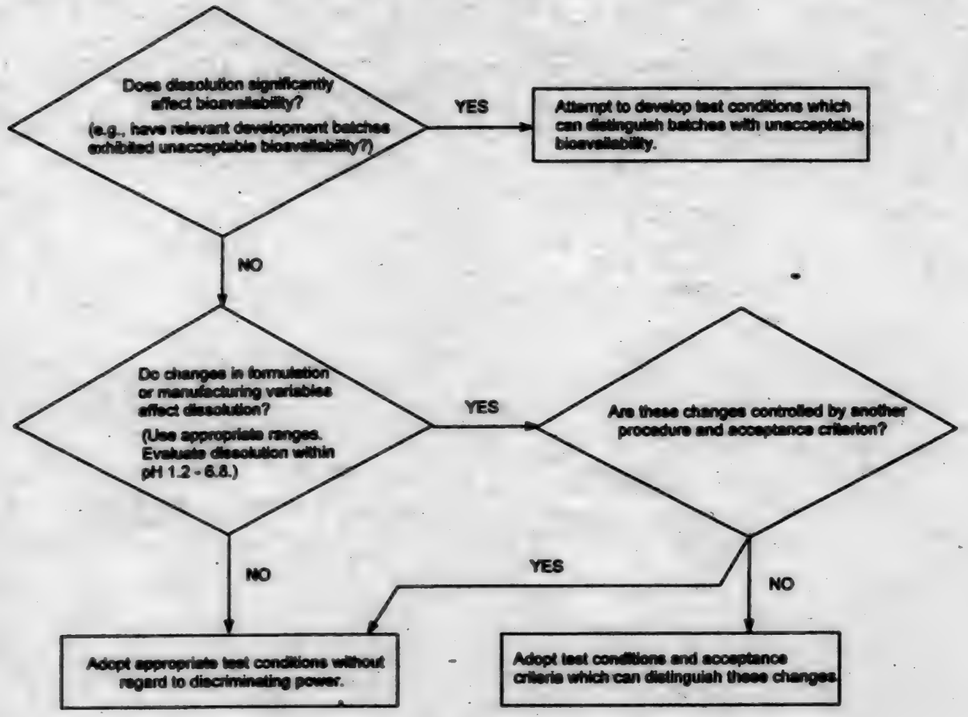
1. What type of drug release acceptance criteria are appropriate?



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DECISION TREES #7: SETTING ACCEPTANCE CRITERIA FOR DRUG PRODUCT DISSOLUTION

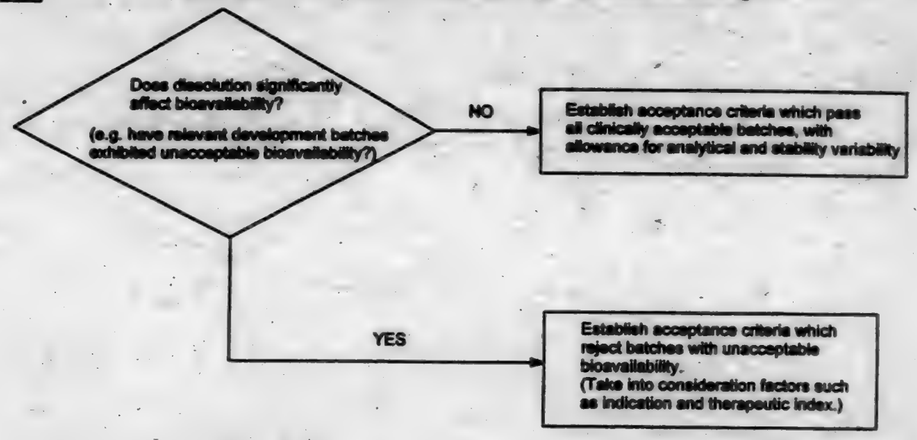
2. What specific test conditions are appropriate? [immediate release]



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DECISION TREES #7: SETTING ACCEPTANCE CRITERIA FOR DRUG PRODUCT DISSOLUTION

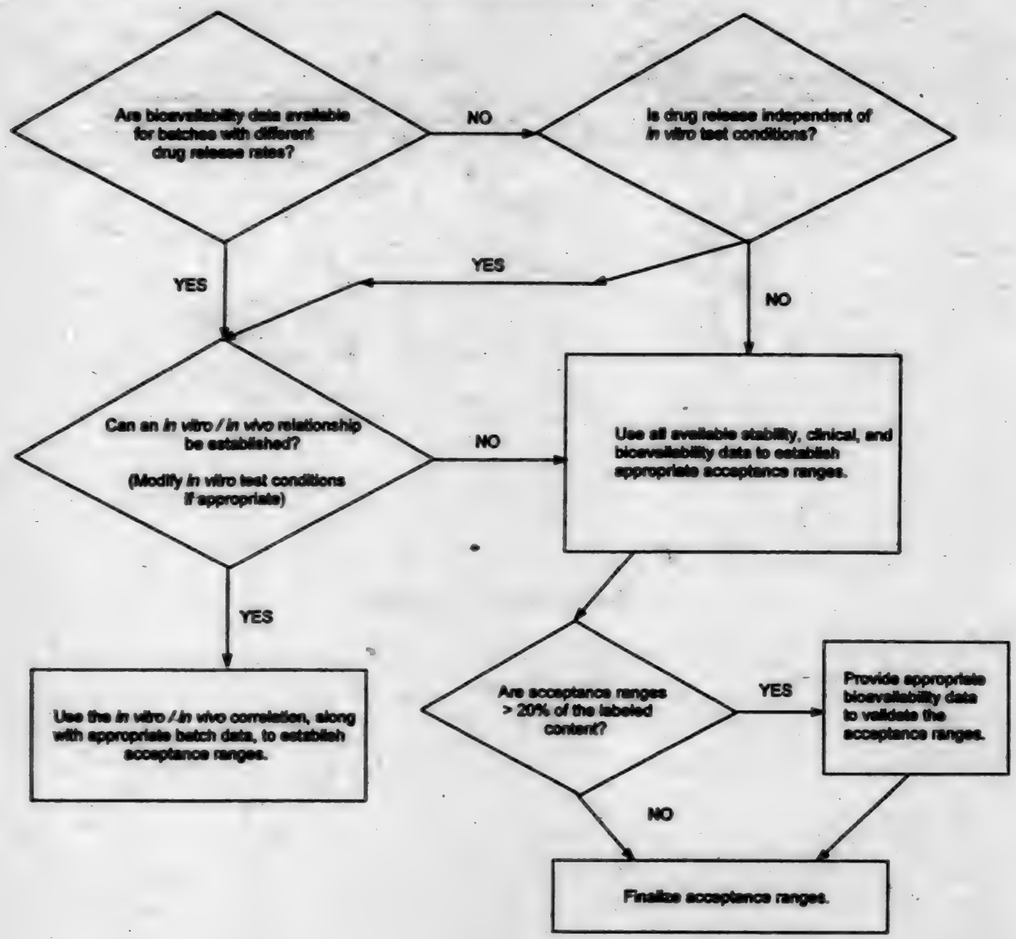
3. What are appropriate acceptance criteria? [immediate release]



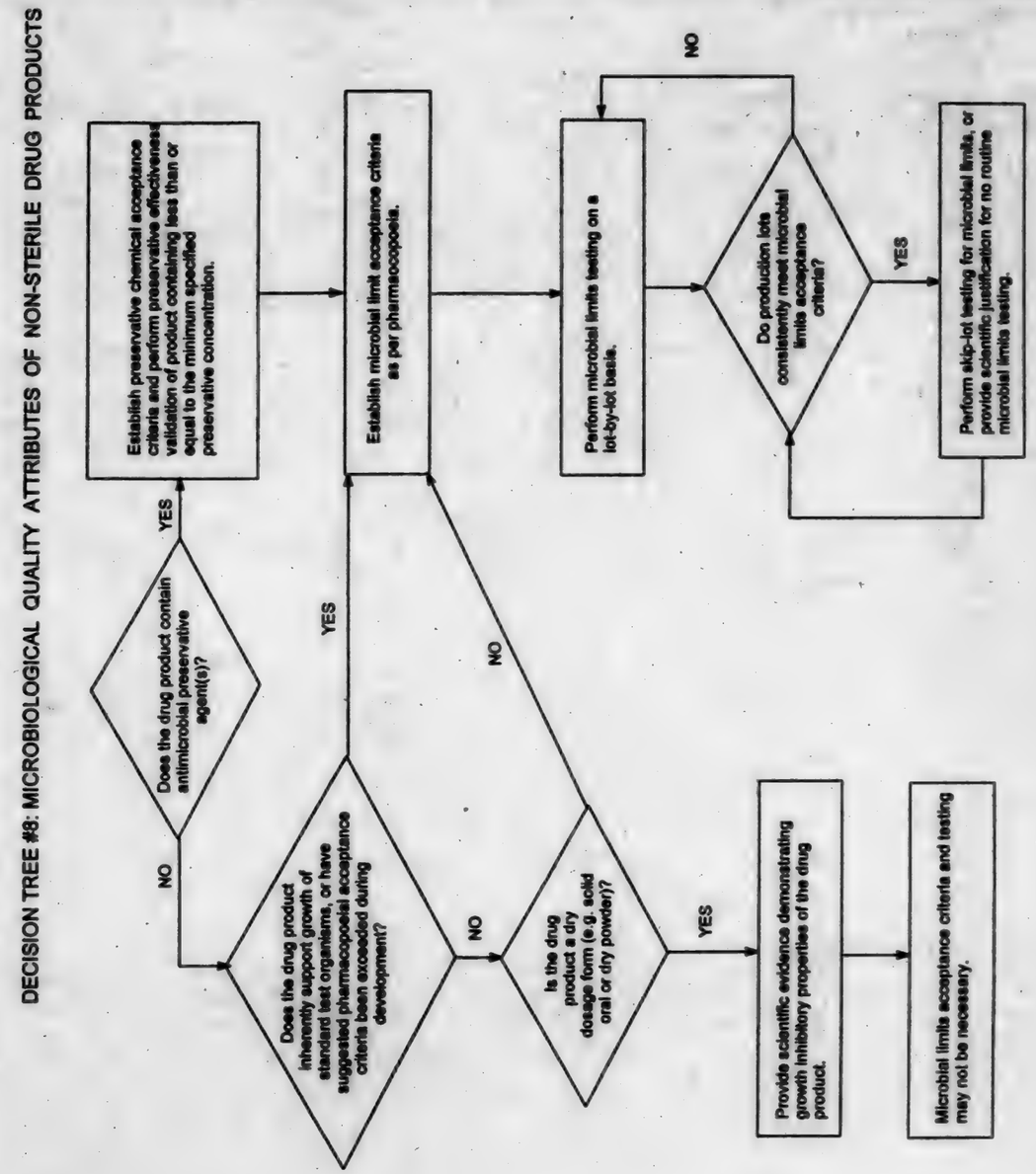
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DECISION TREES #7: SETTING ACCEPTANCE CRITERIA FOR DRUG PRODUCT DISSOLUTION

4. What are appropriate acceptance ranges? [extended release]



DECISION TREE #8: MICROBIOLOGICAL QUALITY ATTRIBUTES OF NON-STERILE DRUG PRODUCTS



Dated: November 18, 1997.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 97-30916 Filed 11-24-97; 8:45 am]
BILLING CODE 4190-01-C

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federal register

Tuesday
November 25, 1997

Part VI

Department of Housing and Urban Development

24 CFR Part 570
Community Development Block Grants: New York Small Cities Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4155–F–02]

RIN 2506–AB91

Community Development Block Grants: New York Small Cities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Community Development Block Grants (CDBG) Small Cities Program for the State of New York. This rule eliminates the use of multiyear plans in the Small Cities Program for any NOFA published in calendar year 1997 or later. This rule also limits the maximum grant award under the annual Small Cities NOFA to any single, eligible unit of general local government to $400,000, except that counties may apply for a maximum of $600,000. HUD will honor grant awards for multiyear plans approved in response to NOFAs issued prior to calendar year 1997. In order to implement the reduction of grant limits, HUD intends to restrict competition under future annual Small Cities NOFAs to single purpose grants. This rule also makes minor technical and clarifying changes to the regulations.

EFFECTIVE DATE: December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Cornelia Robertson Terry, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1322 (voice). (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5300–5320) permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. The policies and procedures for HUD's CDBG Small Cities Program in 24 CFR part 570, subpart F, apply to grants for nonentitlement areas in States such as New York that did not elect to administer the CDBG Program.

Section 226 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (Pub. L. 104–134; approved April 26, 1996) (the Act) requires that HUD issue proposed and final rules for the requirements of the CDBG program for the State of New York before issuing a Notice of Funding Availability for funds made available for fiscal year (FY) 1997. In accordance with section 226, HUD published a proposed rule on June 11, 1997 (62 FR 31944) in order to solicit public comments on the requirements of the New York CDBG Small Cities Program in 24 CFR part 570, subpart F. (Although §§ 570.429 and 570.430 also appear in subpart F and are set forth in this final rule, these sections only apply to the Small Cities Program in Hawaii.) HUD also solicited comments on two proposed changes to the New York Small Cities Program, as described below.

New York Small Cities Program Design

On June 11, 1997, HUD proposed to remove paragraph (a)(3) of § 570.421, and to add a new paragraph (f), which would eliminate the use of multiyear plans in the New York Small Cities Program for NOFAs published in calendar year 1997 or later. HUD will, however, continue to honor multiyear plans approved in response to NOFAs published prior to calendar year 1997. HUD also proposed to add a new paragraph (g) to the current regulations to provide that the maximum grant amount that HUD will award to an eligible unit of general local government in response to a NOFA for the annual Small Cities competition published in calendar year 1997 or later is $400,000, except that counties could apply for a maximum of $600,000 in HUD-administered Small Cities grant funds. HUD will, however, award larger grants as necessary to honor the terms of multiyear plans approved under the provisions of NOFAs published prior to calendar year 1997.

Discussion of Public Comments

The deadline for public comments on the July 11, 1997 proposed rule was July 11, 1997. HUD received only 10 comments.

Grant Limits

Several commenters offered support for HUD's proposal to limit maximum future grant amounts. These commenters included a private consultant and public and private housing and community development organizations. These commenters remarked that the grant limits will help spread the extremely limited funds to worthwhile projects in small communities across the State.

Other commenters disagreed, however, arguing that communities need larger comprehensive grants in order to avert infrastructure dilapidation or to provide substantial housing assistance or economic development. These commenters included a United States Senator, a State senator, and others that commented on behalf of local communities.

Although HUD recognizes that there are certain advantages of higher grant limits, HUD has determined that the grant limits contained in the June 11, 1997 proposed rule are appropriate and has adopted them in this final rule. In addition, in order to encourage units of general local government to act cooperatively to resolve regional problems that affect more than one locality, this final rule amends § 570.422 to provide that the grant limit for joint applications will be the maximum single purpose grant limit established in § 570.421(g) or a NOFA, multiplied by the number of participating governments in the cooperation agreement that was established to submit the joint application. For the purpose of determining such a multiple grant limit, and in order to receive such amount, this rule clarifies that a participating joint applicant must receive a substantial direct benefit from the activities proposed in the application and must not be acting solely on behalf of, or in conjunction with, another jurisdiction solely to raise the maximum grant amount that may be awarded. In addition, this rule provides that the statistics of each participant counted for maximum grant limits shall also be used for purposes of the selection factors referred to in § 570.421(a).

Multiyear Commitments

Some of the commenters agreed with HUD's proposal to eliminate the use of multiyear plans in the Small Cities Program. These commenters included a private consultant and public and private housing and community development organizations.

In response to previous suggestions from Small Cities grantees, HUD offered multiyear grant commitments in FY 1995, along with the increase in grant limits in FY 1996, to assist communities with longer term development programs within the context of a comprehensive strategy. These multiyear commitments assure continued funding during the second and/or third year, provided the applicant submits an acceptable application with the required

certifications and is able to demonstrate continued administrative capacity for carrying out grant activities, and sufficient appropriated funds are available. Multiyear plans are particularly beneficial for smaller communities, which lack full-time staff and must turn to high-priced consultants to prepare Small Cities applications each year.

The granting of multiyear commitments does not, however, unfairly reduce the pool of funds available for competition in future years. In the 5-year period from FY 1990 to FY 1994, prior to the offering of multiyear commitments, 46 communities received at least 3 annual grants. In effect, these 46 communities, based on the depth of their needs and the rating quality of their applications, had achieved a de facto multiyear status. In the last 2 fiscal years, the Small Cities Program has only extended multiyear commitments to 29 grantees (including 17 3-year commitments and 12 2-year commitments). Most of these multiyear commitments were awarded in single purpose grants to the smallest communities. Therefore, the multiyear commitments did not significantly change the availability of the funds, but reduced the administrative burden and cost of annual applications.

In response to the support of the commenters, however, this final rule eliminates the use of multiyear plans in the Small Cities Program for NOFAs published in calendar year 1997 or later, as provided in the June 11, 1997 proposed rule.

Small Cities Funds in Entitlement Communities

Two commenters remarked that Small Cities funds should not go to communities that are eligible for CDBG entitlement funds. Since the metropolitan areas are generally covered by entitlement funds, these commenters stressed that these areas should not also be able to make use of the Small Cities funds.

Under the current regulations, entitlement communities are not eligible applicants for Small Cities CDBG nonentitlement funds. Section 570.421(e) provides, however, that "[a]n applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law." This provision allows a nonentitlement county, for example, to use funds in a metropolitan city or an urban county. HUD did not propose to change these requirements in the June 11, 1997 proposed rule.

As some of the commenters noted, the strength of the Small Cities CDBG Program is that local communities can and should determine how the funds should be used. HUD supports such local decisionmaking about how best to meet local needs. Therefore, HUD has decided not to change the current regulations regarding the use of Small Cities CDBG funds in entitlement areas in response to the two commenters.

Set-Asides

Two commenters expressed concern regarding the "set-asides" provided for in the Small Cities regulations for public service activities (§ 570.421(d)), imminent threats to public health and safety (§ 570.424), and economic development (§ 570.421(a)(5) of this rule; § 570.421(a)(6) of the regulations prior to the effectiveness of this rule). These commenters argue that such "set-asides" remove funds from the general competition that would otherwise be available for worthy community development activities.

Although HUD appreciates the comments received on these provisions, there is no set-aside for public services. The regulations merely provide that no more than 15 percent of the State's nonentitlement allocation may be used for public services. This provision is consistent with the CDBG program as a whole. This is not a new provision; HUD did not specifically propose changes to this provision in the June 11, 1997 proposed rule. HUD has never held a separate competition for "public service" grants and has no authority to do so under the regulations.

Imminent threat grants address health and safety related needs in communities. Only 15 percent of Small Cities funds may be used for such grants, and the actual percentage of imminent threat grants is far lower. This is not a new provision, and HUD proposed no changes to this provision. Therefore, notwithstanding the two comments received on this issue, this final rule retains the imminent threat set-aside to enable quick responses to disasters or emergencies that small cities face.

Section 570.421(a)(5) of this rule, which allows HUD to fund economic development grants under certain circumstances, is not a new provision, and HUD proposed no changes to that provision. Notwithstanding the two comments HUD received, HUD has determined that it should retain this provision.

Minor Technical Changes and Clarifications

HUD is also taking the opportunity in this final rule to make several minor technical changes and clarifications to the regulations for the Small Cities CDBG Program. These changes include correcting an inconsistency in § 570.430(a) regarding the limitation on planning and administrative costs in the Hawaii program. This paragraph refers to § 570.200(g) of the regulations for the Entitlement Program, under which the planning and administrative costs cap is calculated based on obligated funds. The Small Cities provision in § 570.430(a), however, had relied upon expenditures. This final rule corrects that provision so that it consistently relies upon obligated funds.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication, and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule would make limited changes that would not have a significant impact on small entities.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule would make limited changes that would not have Federalism implications. As a result, this rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance program number is 14.219, Community Development Block Grants—Small Cities Program.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, for the reasons set out in the preamble, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Subpart F is revised to read as follows:

Subpart F—Small Cities Program

Sec.
570.420 General.
570.421 New York Small Cities Program design.
570.422 Applications from joint applicants.
570.423 Application for the HUD-administered New York Small Cities Grants.
570.424 Grants for imminent threats to public health and safety.
570.425 HUD review and actions on applications for New York State applicants.
570.426 Program income.
570.427 Program amendments.
570.428 Reallocated funds.
570.429 Hawaii general and grant requirements.
570.430 Hawaii program operation requirements.
570.431 Citizen participation.
570.432 Repayment of Section 108 loans.

§ 570.420 General.

(a) *HUD administration of nonentitlement CDBG funds.* Title I of the Housing and Community Development Act of 1974 permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. This subpart sets forth policies and procedures applicable to grants for nonentitlement areas in States that have not elected, in a manner and time prescribed by the Secretary, to administer the CDBG Program. States that elected to administer the program after the close of fiscal year 1984 cannot return administration of the program to HUD. A decision by a State to discontinue administration of the program would result in the loss of CDBG funds for nonentitlement areas in that State and the reallocation of those funds to all States in the succeeding fiscal year.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities Program which apply to nonentitlement areas in States where HUD administers the CDBG Program. HUD currently administers the Small Cities Program in only two States—New York and Hawaii. This subpart principally addresses the requirements for New York, and §§ 570.429 and 570.430 identify special procedures applicable to Hawaii.

(2) The allocation of formula CDBG funds for use in nonentitlement areas of Hawaii and New York is as provided in subpart A of this part. The policies and procedures set forth in the following identified subparts of this part 570 apply to the HUD-administered Small Cities Program, except as modified or limited under the provisions thereof or this subpart:

(i) Subpart A—General Provisions;
(ii) Subpart C—Eligible Activities;
(iii) Subpart J—Grant Administration;
(iv) Subpart K—Other Program Requirements; and
(v) Subpart O—Performance Reviews.

(c) *Public notification requirements.* (1) Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. All competitive grants in the HUD-administered Small Cities Program in New York are affected by this legislation, and the requirements identified at 24 CFR part 4 apply to them. Imminent threat grants under § 570.424 and section 108 repayment grants under § 570.432 are not affected by section 102 as they are not competitive grants.

(2) The Hawaii HUD-administered Small Cities Program is not subject to section 102, since the funds are not distributed in a competitive manner.

(d) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program which contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(e) *National and primary objectives.* (1) Each activity funded through the Small Cities Program must meet one of the following national objectives as defined under the criteria in § 570.208. Each activity must:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity which the grantee certifies is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities Program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of §§ 570.208(a), or 570.208(d) (5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to 3 years must be expended for activities which benefit low- and moderate-income persons. Thus, 70 percent of the grant for year 1 of a multiyear plan approved in response to NOFAs published prior to calendar year 1997 must meet the 70 percent requirement, 70 percent of the combined grants from years 1 and 2 must meet the requirement, and 70 percent of the combined grants from years 1, 2, and 3 must meet the requirement. In determining the percentage of funds expended for such activity, the provisions of

§ 570.200(a)(3) (i), (iii), (iv), and (v) shall apply.

(Approved by the Office of Management and Budget under control number 2506–0060).

§ 570.421 New York Small Cities Program design.

(a) *Selection system*—(1) *Competitive applications.* Each competitive application will be rated and scored against at least the following factors:

(i) Need-absolute number of persons in poverty as further explained in the NOFA;

(ii) Need-percent of persons in poverty as further explained in the NOFA;

(iii) Program Impact; and

(iv) Fair Housing and Equal Opportunity, which may include the applicant's Section 3 plan and implementation efforts with respect to actions to affirmatively further fair housing. The NOFA described in paragraph (b) of this section will contain a more detailed description of these factors, and the relative weight that each factor will be given.

(2) In addition HUD reserves the right to establish minimal thresholds for selection factors and otherwise select grants in accordance with § 570.425 and the applicable NOFA.

(3) *Imminent threats to public health and safety.* The criteria for these grants are described in § 570.424.

(4) *Repayment of Section 108 loans.* The criteria for these grants are described in § 570.432.

(5) *Economic development grants.* HUD intends to use the Section 108 loan guarantee program to the maximum extent feasible to fund economic development projects in the nonentitlement areas of New York. In the event that there are not enough Section 108 loan guarantee funds available to fund viable economic development projects, if a project needs a grant in addition to a loan guarantee to make it viable, or if the project does not meet the requirements of the Section 108 program but is eligible for a grant under this subpart, HUD may fund Economic Development applications as they are determined to be fundable in a specific amount by HUD up to the sum set aside for economic development projects in a notice of funding availability, notwithstanding paragraph (g) of this section. HUD also has the option in a NOFA of funding economic development activities on a competitive basis, as a competitive application as described in paragraph (a)(1) of this section. In order for an applicant to receive Small Cities grant funds on a noncompetitive basis, the field office must determine that the economic development project will have a substantial impact on the needs identified by the applicant.

(b) *Notice of funding availability.* HUD will issue one or more Notice(s) of Funding Availability (NOFA) each fiscal year which will indicate the amount of funds available, the annual grant limits per grantee, type of grants available, the application requirements, and the rating factors that will be used for those grants which are competitive. A NOFA may set forth, subject to the requirements of this subpart, additional selection criteria for all grants.

(c) *Eligible applicants.* (1) Eligible applicants in New York are units of general local government, excluding: Metropolitan cities, urban counties, units of general local government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city. Indian tribes are also ineligible for assistance under this subpart. An application may be submitted individually or jointly by eligible applicants.

(2) Counties, cities, towns, and villages may apply and receive funding for separate projects to be done in the same jurisdiction. Only one grant will be made under each funding round for the same type of project to be located within the jurisdiction of a unit of general local government (e.g., both the county and village cannot receive funding for a sewer system to be located in the same village, but the county can receive funding for a sewer system that is located in the same village as a rehabilitation project for which the village receives funding). The NOFA will contain additional information on applicant eligibility.

(3) Counties may apply on behalf of units of general local government located within their jurisdiction when the unit of general local government has authorized the county to apply. At the time that the county submits its application for funding, it must submit a resolution by the governing body of the unit of local government that authorizes the county to submit an application on behalf of the unit of general local government. The county will be considered the grantee and will be responsible for executing all grant documents. The county is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the county with respect to issues of program administration and performance, including remedial actions. The unit of general local government will be considered the grantee for the purpose of determining grant limits. The unit of general local government's statistics will be used for purposes of the selection factors referred to in § 570.421(a).

(d) *Public service activities cap.* Public service activities may be funded up to a maximum of fifteen (15) percent of a State's nonentitlement allocation for any fiscal year. HUD may award a grant to a unit of general local government for public service activities with up to 100 percent of the funds intended for public service activities. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications in each NOFA until the cap is reached.

(e) *Activities outside an applicant's boundaries.* An applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law. This provision includes using funds provided under this subpart in a metropolitan city or an urban county.

(f) *Multiyear plans.* HUD will not make any new multiyear commitments for NOFAs published in calendar year 1997 or later. HUD will continue to honor the terms of the multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

(g) *Maximum grant amount.* The maximum grant amount that will be awarded to a single unit of general local government in response to the annual Small Cities NOFA published in calendar year 1997 or later is $400,000, except that counties may apply for up to $600,000 in HUD-administered Small Cities funds. HUD may specify lower grant limits in the NOFA, which may include different limits for different types of grants available or different types of applicants. This paragraph (g) does not apply to multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997, nor does it apply to grants awarded in connection with paragraphs (a)(3) through (a)(5) of this section. The maximum limits in this paragraph (g) apply to grants for economic development projects awarded under NOFAs in which there is no set-aside of funds for such projects.

§ 570.422 Applications from joint applicants.

Units of general local government may submit a joint application which addresses common problems faced by the jurisdictions, to the extent permitted

by the NOFA. A joint application must be pursuant to a written cooperation agreement submitted with the application. The cooperation agreement must authorize one of the participating units of government to act as the lead applicant which will submit the application to HUD, and must delineate the responsibilities of each participating unit of government with respect to the Small Cities Program. The lead applicant is responsible for executing the application, certifications, and grant agreement, and ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD reserves the right to deal exclusively with the lead applicant with respect to issues of program administration and performance, including remedial actions. In the event of poor performance, HUD reserves the right to deny and/or restrict future funding to all units of general local government that are parties to the cooperation agreement. The maximum amount that may be awarded pursuant to a joint application is the maximum single grant limit established in a NOFA or pursuant to § 570.421(g) multiplied by the number of participants in the cooperation agreement, provided that for the purpose of determining such a multiple grant limit, and in order to receive such amount, a participating joint applicant must receive a substantial direct benefit from the activities proposed in the application, and must not be acting solely on behalf of, or in conjunction with, another jurisdiction for the sole purpose of raising the maximum grant amount that may be awarded. In addition, the statistics of each participant counted for maximum grant limits purposes shall also be used for purposes of the selection factors referred to in § 570.421(a).

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application and comply with citizen participation requirements as described in § 570.431. The applicant should follow the citizen participation requirements of 24 CFR part 91 if it submits a complete consolidated plan.

(b) *Final application.* The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted, in a form prescribed by HUD, to the appropriate HUD office. The application also must contain a priority nonhousing community development plan, in accordance with 24 CFR 91.235.

(c) *Certifications.* (1) Certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its abbreviated consolidated plan, as described at 24 CFR part 91.

(2) In the absence of evidence (which may, but need not, be derived from performance reviews or other sources) which tends to challenge in a substantial manner the certifications made by the applicant, the certifications will be accepted by HUD. However, if HUD does have available such evidence, HUD may require the submission of additional information or assurances before determining whether an applicant's certifications are satisfactory.

(d) *Thresholds.* The HUD Office may use any information available to it to make the threshold judgments required by the applicable NOFA, including information related to the applicant's performance with respect to any previous assistance under this subpart. The annual performance and evaluation report required under § 570.507(a) is the primary source of this information. The HUD Office may request additional information in cases where it is essential to make the required performance judgments.

(Approved by the Office of Management and Budget under control number 2506–0060).

§ 570.424 Grants for imminent threats to public health and safety.

(a) *Criteria.* The following criteria apply for an imminent threat to public health or safety:

(1) The Director of Community Planning and Development of the HUD office may, at any time, invite an application for funds available under this subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution. HUD shall verify the urgency and the immediacy of the threat with an appropriate authority other than the applicant prior to acceptance of the application, and the Director of Community Planning and Development of the HUD Office shall review the claim to determine if, in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply has an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next 2 years does not have an imminent threat within the definition of this paragraph (a). A natural disaster is prima facie evidence of an imminent threat to public health or safety. These funds are to be used to deal with those threats that represent a unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within the State of New York.

(2) The applicant does not have sufficient local resources, and other Federal or State resources are unavailable to alleviate the imminent threat.

(3) All imminent threat projects must meet the requirement of § 570.420(e).

(b) *HUD action.* (1) Fifteen percent of the funds allocated to New York State in the Small Cities Program may be reserved to alleviate imminent threats to the public health or safety unless a lesser amount is specified in a NOFA. Applications shall be submitted in accordance with § 570.423.

(2) Applications which meet the requirements of this section may be approved by the Director of Community Planning and Development of the HUD Office without competition.

(3) The only funds reserved for imminent threats to the public health or safety are those specified by this section as modified by the NOFA. After the funds have been depleted, HUD shall not consider further requests for grants relating to imminent threats during that fiscal year.

(c) *Letter to proceed.* Notwithstanding § 570.425(a)(3), after a determination has been made that an imminent threat exists, HUD may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat. Reimbursement of such costs is dependent upon HUD approval of the final application.

(d) *Environmental review.* Pursuant to 24 CFR 58.34(a)(10), grants for imminent threats to public health or safety are excluded from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided therein.

§ 570.425 HUD review and actions on applications for New York State applicants.

(a) *Final application submission*—(1) *Submission deadline.* HUD will establish a time period during which final applications must be submitted to the appropriate office. The dates for this period will be published in a notice in the **Federal Register**.

(2) *Incomplete applications.* Applications must contain the information required by HUD. Information relative to the application will not be accepted or considered if received after the submission deadline, unless the information is specifically requested in writing by HUD.

(3) *Pre-agreement costs.* HUD authorizes a unit of general local government to incur costs during a Federal fiscal year in which a grant is made or the prior fiscal year for preparation of a CDBG grant application, planning costs eligible under § 570.205, environmental assessments, and project engineering and design costs for eligible activities under §§ 570.201 through 570.204 before the establishment of a formal grant relationship between the applicant and HUD. Costs of such activities for the funded application may be charged to the grant should it be funded, provided that the activities are undertaken in accordance with the requirements of this subpart, and 24 CFR part 58. It is understood that the incurring of costs described in this paragraph creates no obligation on HUD to approve the application.

(b) *HUD action on final application*—(1) *Review and notification.* Following the review of the applications, HUD will promptly notify each applicant of the action taken with regard to its application. Documentation which supports HUD's decisions on applications will be available to the public.

(2) *Conditional approval.* HUD may make a conditional approval, in which case the grant will be approved but the obligation and utilization of funds will be restricted. The reasons for the conditional approval and the actions necessary to remove the condition will be specified. Failure to satisfy the condition may result in a termination of the grant.

(3) HUD will not make a Small Cities grant when it is determined that the grant will only have a minimal or insignificant impact on the grantee.

(4) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, HUD may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner.

(c) *Streamlined application requirement for previous applicants.* HUD may provide pursuant to a NOFA that if an applicant notifies HUD in writing within the application period specified in a NOFA that it wishes to be so considered, HUD will consider unfunded applications from the prior round or competition that meet the threshold requirements of the NOFA. The applicant will have the option of withdrawing its application, or amending or supplementing the application for succeeding rounds of competition. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for succeeding rounds of competition. Applicants availing themselves of the option to have an application from the previous round or competition reconsidered by HUD must submit a new abbreviated or full consolidated plan, if the new competitive funding round is in a different fiscal year than the funding round or competition for which the application was originally submitted.

§ 570.426 Program income.

(a) The provisions of § 570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than $25,000 per year will not be considered to be program income unless needed to repay a Section 108 guaranteed loan. When more than $25,000 of program income is generated from one or more closed out grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part. This will be a subject of the closeout agreement described in § 570.509(c).

§ 570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the following:

(1) Programs or projects that include new or significantly altered activities are rated in accordance with the criteria for selection applicable at the time the original preapplication or application (whichever is applicable) was rated. The rating of the program or projects proposed which include the new or altered activities proposed by the amendment must be equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(3) If the grant was received on a noncompetitive basis, the proposed amended project must be able to be completed promptly, and must meet all of the threshold requirements that were required for the original project. If the proposal is to amend the project to a type of project that was rated competitively in the fiscal year that the noncompetitive project was funded, the new or altered activities proposed by the amendment must receive a rating equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in § 570.431 must be met.

§ 570.428 Reallocated funds.

(a) *General.* This section governs reallocated funds originally allocated for use under 24 CFR part 570, subpart F (Small Cities Program).

(b) *Assignment of funds to be reallocated.* Reallocated funds may be:

(1) Used at any time necessary for a Section 108 repayment grant under § 570.432;

(2) Added to the next Small Cities Program competition;

(3) Used to fund any application not selected for funding in the most recent Small Cities competition, because of a procedural error made by HUD; or

(4) Used to fund the most highly ranked unfunded application or applications from the most recent Small Cities Program competition.

(c) *Timing.* Funds which become available shall be used as soon as practicable.

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to the HUD-administered Small Cities Program in the State of Hawaii.

(b) *Scope and applicability.* Except as otherwise provided in this section, the policies and procedures outlined in

subparts A, C, J, K, O of this part, and in §§ 570.420, 570.430, and 570.432, apply to the HUD-administered Small Cities Program in the State of Hawaii.

(c) *Grant amounts.* (1) For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. (0.25 + 0.50 + 0.25 = 1.00).

(d) *Adjustments to grants.* Grant amounts under this section may be adjusted where an applicant's performance is judged inadequate, considering:

(1) Capacity to utilize the grant amount effectively and efficiently;

(2) Compliance with the requirements of § 570.902(a) for timely expenditure of funds beginning with grants made in FY 1996. In making this calculation, all outstanding grants will be considered. For the FY 1995 grant the requirement is substantial compliance with the applicant's schedule or schedules submitted in each previously funded application;

(3) Compliance with other program requirements based on monitoring visits and audits.

(e) *Reallocation.* (1) Any amounts that become available as a result of adjustments under paragraph (d) of this section, or any reductions under subpart O of this part, shall be reallocated in the same fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (e) of this section in any fiscal year to any applicant whose grant amount was adjusted under paragraph (d) of this section or reduced under subpart O of this part.

(f) *Required submissions.* In order to receive its formula grant under this subpart, the applicant must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(g) *Application approval.* HUD will approve an application if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91 and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(h) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(i) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or criteria described in subpart O of this part. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the grant amount pursuant to § 570.911.

(Approved by the Office of Management and Budget under control number 2506–0060)

§ 570.430 Hawaii program operation requirements.

(a) *Limitation on planning and administrative costs.* For grants made with allocations prior to FY 1995, no more than 20 percent of the sum of the grant plus program income received during the grant period shall be expended for planning and program administrative costs. For grants received from allocations in FY 1995 and thereafter, a grantee will be considered to be in conformance with the requirements of § 570.200(g) if funds obligated for planning and administration during the most recently completed program year do not exceed 20 percent of the sum of the grant made for that program year and the program income received from post FY 1994 grants during that program year.

(b) *Performance and evaluation reports.* Grantees will follow the requirements of § 570.507(a) for entitlement grant recipients for all grants received in FY 1995 and thereafter. Grantees will continue following the requirements of § 570.507(a) for HUD-administered small cities grants for grants received prior to FY 1995 until those grants are closed out.

(c) *Grant closeouts.* Grants received prior to FY 1995 shall be closed out in accordance with the procedures in § 570.509. Grants received in FY 1995 and thereafter shall not be closed out individually. A grantee's entire program shall be closed upon program completion if a grantee ceases its participation in the Small Cities Program.

(d) *Public Services.* Starting with the FY 1996 grant, grantees may follow the provisions of § 570.201(e)(1) that refer to entitlement grantees, allowing grantees to use 15 percent of the program income received in the previous program year in addition to 15 percent of the grant amount for public services.

(e) *Compliance with the primary objective.* Starting with the FY 1995 grant, grantees may select a time period of one, two or three program years in which to meet the requirement that not less than 70 percent of the aggregate of CDBG fund expenditures be for activities benefitting low- and moderate-income persons. Grants made from allocations prior to FY 1995 will be considered individually for meeting the primary objective, and expenditures for grants from pre-FY 1995 allocations made during and after FY 1995 will not be considered in determining whether the primary objective has been met for post-1994 allocations. If the State of Hawaii decides to administer the Community Development Block Grant Program for nonentitlement units of general local government in Hawaii, the State will be bound by the time period for meeting the primary objective that was chosen by each nonentitlement grantee within the State until those time periods have expired.

(f) *Program amendments for grants received prior to FY 1995.* Grantees must follow the requirements of 24 CFR 91.505 when amending their program with regard to grants received prior to FY 1995. For purposes of this paragraph (f), the term *consolidated plan* as used in 24 CFR 91.505 means an application submitted under the Hawaii program for pre-FY 1995 funds. Also for purposes of this paragraph (f), to comply with the requirements of 24 CFR 91.505, grantees must refer to their current citizen participation plans (adopted in accordance with 24 CFR 91.505) to determine the criteria for substantial amendment and the citizen participation process to be followed.

(Approved by the Office of Management and Budget under control number 2506–0020.)

§ 570.431 Citizen participation.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD, and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low- and moderate-income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under § 570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low- and moderate-income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings, for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The applicant must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in slum or blighted areas, and in other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* (1) The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the application's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed application; and

(iii) Submit comments on the performance of the applicant.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed application in one or more newspapers of general circulation, and by making copies of the proposed application available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed application, and must include a list of the locations where copies of the entire proposed application may be examined.

(d) *Preparation of a final application.* An applicant must prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include the community development objectives and projected use of funds, and the community development activities.

(e) *New York grantee amendments.* To assure citizen participation on program amendments to final applications that require HUD approval under § 570.427, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

§ 570.432 Repayment of section 108 loans.

Notwithstanding any other provision of this subpart, a unit of general local government in a nonentitlement area where the State has not elected to administer the CDBG program shall be eligible for Small Cities Grant assistance hereunder for the sole purpose of paying any amounts due on debt obligations issued by such unit of general local government (or its designated public agency) and guaranteed by the Secretary pursuant to section 108 of the Act (see subpart M of this part). The award of grant assistance for such purpose shall be consistent with section 106(d)(3)(B) of the Act, in such amount, and subject to such conditions as the Secretary may determine. Since guaranteed loan funds (as defined in § 570.701) are required to be used in accordance with national and primary objective requirements, and other applicable requirements of this part, any grant made to make payments on the debt obligations evidencing the guaranteed loan shall be presumed to meet such requirements, unless HUD determines that the guaranteed loan funds were not used in accordance with such requirements. Any such determination by HUD shall not prevent the making of the grant in the amount of the payment due, but it may be grounds for HUD to take appropriate action under subpart O of this part based on the original noncompliance.

Dated: November 19, 1997.

Jacquie Lawing,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 97–30940 Filed 11–21–97; 10:06 am]

BILLING CODE 4210–29–P

federal register

Tuesday
November 25, 1997

Part VII

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guidance on Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0147]

International Conference on Harmonisation; Guidance on Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance is intended to recommend international standards for and to promote harmonization of the nonclinical safety studies needed to support human clinical trials of a given scope and duration.

DATES: Effective November 25, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448 or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT: Regarding the guidance: Robert E. Osterberg, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2123.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union (EU), Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of May 2, 1997 (62 FR 24320), FDA published a draft tripartite guideline entitled "Guideline on the Timing of Nonclinical Studies for the Conduct of Human Clinical Trials for Pharmaceuticals" (M3). The notice gave interested persons an opportunity to submit comments by June 16, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 16, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance is intended to recommend international standards for and to promote harmonization of the nonclinical safety studies needed to support human clinical trials of a given scope and duration. The nonclinical safety study requirements for the marketing approval of pharmaceuticals usually include single and repeat dose toxicity studies, reproductive toxicity studies, genotoxicity studies, local tolerance studies, an assessment of carcinogenic potential, safety pharmacology studies, and pharmacokinetic studies. The guidance discusses these types of studies, their duration, and their relation to the conduct of human clinical trials. The guidance should facilitate the conduct of clinical trials and reduce the unnecessary use of animals and other resources, which in turn should promote safe and ethical development of drugs and the availability of new pharmaceuticals.

This guidance represents the agency's current thinking on nonclinical safety studies for the conduct of human clinical trials for pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance.htm) or through the CBER home page (http://www.fda.gov/cber/cberftp.html).

The text of the guidance follows:

M3 Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals[1]

1. Introduction

1.1 Objectives of the Guidance

The purpose of this document is to recommend international standards for and to promote harmonization of the nonclinical safety studies needed to support human clinical trials of a given scope and duration.

Harmonization of the guidance for nonclinical safety studies will help to define the current recommendations and reduce the likelihood that substantial differences will exist between regions.

This guidance should facilitate the timely conduct of clinical trials and reduce the unnecessary use of animals and other resources. This should promote safe and ethical development and availability of new pharmaceuticals.

1.2 Background

The recommendations for the extent of nonclinical safety studies to support the various stages of clinical development differ among the regions of Europe, the United States, and Japan. This raises the important question of whether there is scientific justification for these differences and whether it would be possible to develop a mutually acceptable guidance.

The present guidance represents the consensus that exists among the ICH regions regarding the scope and duration of nonclinical safety studies to support the conduct of human clinical trials for pharmaceuticals.

1.3 Scope of the Guidance

The nonclinical safety study recommendations for the marketing approval of a pharmaceutical usually include single and repeated dose toxicity studies, reproduction toxicity studies, genotoxicity studies, local tolerance studies, and for drugs that have special cause for concern or are intended for a long duration of use, an assessment of carcinogenic potential. Other nonclinical studies include pharmacology studies for safety assessment (safety pharmacology) and pharmacokinetic (absorption, distribution, metabolism, and excretion (ADME)) studies. These types of studies and their relation to the conduct of human clinical trials are presented in this guidance.

This guidance applies to the situations usually encountered during the conventional development of pharmaceuticals and should be viewed as providing general guidance for drug development. Animal safety studies and human clinical trials should be planned and designed to represent an approach that is scientifically and ethically appropriate for the pharmaceutical under development.

There have been marked changes in the kinds of therapeutic agents being developed (e.g., biotechnology-derived products), and the existing paradigms for safety evaluation may not always be appropriate or relevant. The safety evaluation in such cases should be considered on a case-by-case basis as described in the ICH guidance "Safety Studies in Biotechnological Products" (Ref. 1). Similarly, pharmaceuticals under development for indications in life-threatening or serious diseases without current effective therapy may also warrant a case-by-case approach to both the toxicological evaluation and clinical development to optimize and expedite drug development. In these cases, particular studies may be abbreviated, deferred, or omitted.

1.4 General Principles

The development of a pharmaceutical is a stepwise process involving an evaluation of both the animal and human safety information. The goals of the nonclinical safety evaluation include: A characterization of toxic effects with respect to target organs, dose dependence, relationship to exposure, and potential reversibility. This information is important for the estimation of an initial safe starting dose for the human trials and the identification of parameters for clinical monitoring for potential adverse effects. The nonclinical safety studies, although limited at the beginning of clinical development, should be adequate to characterize potential toxic effects under the conditions of the supported clinical trial.

Human clinical trials are conducted to demonstrate the efficacy and safety of a pharmaceutical, starting with a relatively low exposure in a small number of subjects. This is followed by clinical trials in which exposure usually increases by dose, duration, and/or size of the exposed patient population. Clinical trials are extended based on the demonstration of adequate safety in the previous clinical trial(s) as well as additional nonclinical safety information that is available as the clinical trials proceed. Serious adverse clinical or nonclinical findings may influence the continuation of clinical trials and/or suggest the need for additional nonclinical studies and a reevaluation of previous clinical adverse events to resolve the issue.

Clinical trials are conducted in phases for which different terminology has been utilized in the various regions. This document uses the terminology as defined in the ICH guidance "General Considerations for Clinical Trials" (Ref. 2). Clinical trials may be grouped by their purpose and objectives. The first human exposure studies are generally single dose studies, followed by dose escalation and short-term repeated dose studies to evaluate pharmacokinetic parameters and tolerance (Phase I studies—Human Pharmacology studies). These studies are often conducted in healthy volunteers but may also include patients. The next phase of trials consists of exploratory efficacy and safety studies in patients (Phase II studies—Therapeutic Exploratory studies). This is followed by confirmatory clinical trials for efficacy and safety in patient populations (Phase III studies—Therapeutic Confirmatory studies).

2. Safety Pharmacology

Safety pharmacology includes the assessment of effects on vital functions, such as cardiovascular, central nervous, and respiratory systems, and these should be evaluated prior to human exposure. These evaluations may be conducted as additions to toxicity studies or as separate studies.

3. Toxicokinetic and Pharmacokinetic Studies

Exposure data in animals should be evaluated prior to human clinical trials (Ref. 3). Further information on ADME in animals should be made available to compare human and animal metabolic pathways. Appropriate information should usually be available by the time the Phase I (Human Pharmacology) studies have been completed.

4. Single Dose Toxicity Studies

The single dose (acute) toxicity for a pharmaceutical should be evaluated in two mammalian species prior to the first human exposure (Note 1). A dose escalation study is considered an acceptable alternative to the single dose design.

5. Repeated Dose Toxicity Studies

The recommended duration of the repeated dose toxicity studies is usually related to the duration, therapeutic indication, and scale of the proposed clinical trial. In principle, the duration of the animal toxicity studies conducted in two mammalian species (one nonrodent) should be equal to or exceed the duration of the human clinical trials up to the maximum recommended duration of the repeated dose toxicity studies (Tables 1 and 2).

In certain circumstances, where significant therapeutic gain has been shown, trials may be extended beyond the duration of supportive repeated dose toxicity studies on a case-by-case basis.

5.1 Phase I and II Studies

A repeated dose toxicity study in two species (one nonrodent) for a minimum duration of 2 to 4 weeks (Table 1) would support Phase I (Human Pharmacology) and Phase II (Therapeutic Exploratory) studies up to 2 weeks in duration. Beyond this, 1-, 3-, or 6-month toxicity studies would support these types of human clinical trials for up to 1, 3, or 6 months, respectively. Six-month rodent and chronic nonrodent studies (Ref. 11) would support clinical trials of longer duration than 6 months.

[1] This guidance represents the agency's current thinking on nonclinical safety studies for the conduct of human clinical trials for pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Table 1.—Duration of Repeated Dose Toxicity Studies to Support Phase I and II Trials in the EU and Phase I, II, and III Trials in the United States and Japan[1]

Duration of Clinical Trials	Minimum Duration of Repeated Dose Toxicity Studies	
	Rodents	Nonrodents
Single Dose	2–4 Weeks[2]	2 Weeks
Up to 2 Weeks	2–4 Weeks[2]	2 Weeks
Up to 1 Month	1 Month	1 Month
Up to 3 Months	3 Months	3 Months
Up to 6 Months	6 Months	6 Months[3]
> 6 Months	6 Months	Chronic[3]

[1] In Japan, if there are no Phase II clinical trials of equivalent duration to the planned Phase III trials, conduct of longer duration toxicity studies should be considered as given in Table 2.

[2] In the EU and the United States, 2-week studies are the minimum duration. In Japan, 2-week nonrodent and 4-week rodent studies are needed (Also see Note 2). In the United States, as an alternative to 2-week studies, single dose toxicity studies with extended examinations can support single dose human trials (Ref. 4).

[3] See Ref. 11. Data from 6 months of administration in nonrodents should be available before the initiation of clinical trials longer than 3 months. Alternatively, if applicable, data from a 9-month nonrodent study should be available before the treatment duration exceeds that which is supported by the available toxicity studies.

5.2 Phase III Studies

For the Phase III (Therapeutic Confirmatory) studies, the recommendations for the United States and Japan are the same as those in Table 1. In the EU, a 1-month toxicity study in two species (one nonrodent) would support clinical trials of up to 2 weeks duration (Table 2). Three-month toxicity studies would support clinical trials for up to 1 month duration, while 6-month toxicity studies in rodents and 3-month studies in nonrodents would support clinical trials of a duration up to 3 months. For longer term clinical trials, a 6-month study in rodents and a chronic study in nonrodents are recommended.

Table 2.—Duration of Repeated Dose Toxicity Studies to Support Phase III Trials in the EU and Marketing in All Regions[1]

Duration of Clinical Trials	Minimum Duration of Repeated Dose Toxicity Studies	
	Rodents	Nonrodents
Up to 2 Weeks	1 Month	1 Month
Up to 1 Month	3 Months	3 Months
Up to 3 Months	6 Months	3 Months
> 3 Months	6 Months	Chronic[2]

[1] The above table also reflects the marketing recommendations in the three regions except that a chronic nonrodent study is recommended for clinical use > 1 month.

[2] See Ref. 11.

6. Local Tolerance Studies

Local tolerance should be studied in animals using routes relevant to the proposed clinical administration. The evaluation of local tolerance should be performed prior to human exposure. The assessment of local tolerance may be part of other toxicity studies.

7. Genotoxicity Studies

Prior to first human exposure, in vitro tests for the evaluation of mutations and chromosomal damage are generally needed. If an equivocal or positive finding occurs, additional testing should be performed (Ref. 5).

The standard battery of tests for genotoxicity (Ref. 6) should be completed prior to the initiation of Phase II studies.

8. Carcinogenicity Studies

Completed carcinogenicity studies are not usually needed in advance of the conduct of clinical trials unless there is cause for concern. Conditions relevant for carcinogenicity testing are discussed in the ICH document (Ref. 7).

For pharmaceuticals developed to treat certain serious diseases, carcinogenicity testing, if needed, may be concluded postapproval.

9. Reproduction Toxicity Studies

Reproduction toxicity studies (Refs. 8 and 9) should be conducted as is appropriate for the population that is to be exposed.

9.1 Men

Men may be included in Phase I and II trials prior to the conduct of the male fertility study since an evaluation of the male reproductive organs is performed in the repeated dose toxicity studies (Note 2).

A male fertility study should be completed prior to the initiation of Phase III trials (Refs. 8 and 9).

9.2 Women Not of Childbearing Potential

Women not of childbearing potential (i.e., permanently sterilized, postmenopausal) may be included in clinical trials without reproduction toxicity studies provided the relevant repeated dose toxicity studies (which include an evaluation of the female reproductive organs) have been conducted.

9.3 Women of Childbearing Potential

For women of childbearing potential there is a high level of concern for the unintentional exposure of an embryo/fetus before information is available concerning the potential benefits versus potential risks. There are currently regional differences in the timing of reproduction toxicity studies to support the inclusion of women of childbearing potential in clinical trials.

In Japan, assessment of female fertility and embryo-fetal development should be completed prior to the inclusion of women of childbearing potential using birth control in any type of clinical trial. In the EU, assessment of embryo-fetal development should be completed prior to Phase I trials in women of childbearing potential and female fertility studies prior to Phase III trials.

In the United States, women of childbearing potential may be included in early, carefully monitored studies without reproduction toxicity studies provided appropriate precautions are taken to minimize risk. These precautions include pregnancy testing (for example, based on the b-subunit of HCG), use of a highly effective method of birth control (Note 3), and entry after a confirmed menstrual period. Continued testing and monitoring during the trial should be sufficient to ensure compliance with the measures not to become pregnant during the period of drug exposure (which may exceed the length of study). To support this approach, informed consent should include any known pertinent information related to reproductive toxicity, such as a general assessment of potential toxicity of pharmaceuticals with related structures or pharmacological effects. If no relevant information is available, the informed consent should clearly note the potential for risk.

In the United States, assessment of female fertility and embryo-fetal development should be completed before women of childbearing potential using birth control are enrolled in Phase III trials.

In the three regions, the pre- and postnatal development study should be submitted for marketing approval or earlier if there is cause for concern. For all regions, all female reproduction toxicity studies (Ref. 8) and the standard battery of genotoxicity tests (Ref. 6) should be completed prior to the inclusion, in any clinical trial, of women of childbearing potential not using highly effective birth control (Note 3) or whose pregnancy status is unknown.

9.4 Pregnant Women

Prior to the inclusion of pregnant women in clinical trials, all the reproduction toxicity studies (Refs. 8 and 9) and the standard battery of genotoxicity tests (Ref. 6) should be conducted. In addition, safety data from previous human exposure are generally needed.

10. Supplementary Studies

Additional nonclinical studies may be needed if previous nonclinical or clinical findings with the product or related products have indicated special safety concerns.

11. Clinical Trials in Pediatric Populations

When pediatric patients are included in clinical trials, safety data from previous adult human exposure would usually represent the most relevant information and should generally be available before pediatric clinical trials. The necessity for adult human data would be determined on a case-by-case basis.

In addition to appropriate repeated dose toxicity studies, all reproduction toxicity studies (Ref. 8) and the standard battery of genotoxicity tests (Ref. 6) should be available prior to the initiation of trials in pediatric populations. Juvenile animal studies should be considered on an individual basis when previous animal data and human safety data are insufficient.

The need for carcinogenicity testing should be addressed prior to long term exposure in pediatric clinical trials considering the length of treatment or cause for concern (Ref. 7).

12. Continuing Efforts to Improve Harmonization

It is recognized that significant advances in harmonization of the timing of nonclinical safety studies for the conduct of human clinical trials for pharmaceuticals have already been achieved and are detailed in this guidance. However, differences remain in a few areas. These include toxicity studies to support first entry into man and the recommendations for reproduction toxicity studies for women of childbearing potential. Regulators and industry will continue to consider these differences and work towards further improving the drug development process.

13. Endnotes

Note 1 For the conduct of single dose toxicity studies, refer to the ICH–1 recommendations (Ref. 10) and the regional guidances.

Note 2 There are currently regional differences for the minimum duration of repeated dose toxicity studies; 2 weeks in the EU and the United States, and 2 weeks nonrodent and 4 weeks rodent in Japan. In Japan, unlike the EU and the United States, the male fertility study has usually been conducted prior to the inclusion of men in clinical trials. However, an assessment of male fertility by careful histopathological examination in the rodent 4-week repeated dose toxicity study has been found to be more sensitive in detecting effects on male reproductive organs than fertility studies (Ref. 9), and is now recommended to be performed prior to the first clinical trial in Japan. In the EU and the United States, 2-week repeated dose studies are considered adequate for an overall assessment of the potential toxicity of a drug to support clinical trials for a short duration.

Note 3 A highly effective method of birth control is defined as one that results in a low failure rate (i.e., less than 1 percent per year) when used consistently and correctly, such as implants, injectables, combined oral contraceptives, some intrauterine contraceptive devices (IUD's), sexual abstinence, or a vasectomized partner. For subjects using a hormonal contraceptive method, information regarding the product under evaluation and its potential effect on the contraceptive should be addressed.

14. References

1. ICH Topic S6 Document "Preclinical Testing of Biotechnology-Derived Pharmaceuticals."

2. ICH Topic E8 Document "General Considerations for Clinical Trials."

3. ICH Harmonised Tripartite Guideline (S3A) Note for "Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies."

4. FDA, "Single Dose Acute Toxicity Testing for Pharmaceuticals; Revised Guidance," 61 FR 43934 to 43935, August 26, 1996.

5. ICH Harmonised Tripartite Guideline (S2A) "Guidance on Specific Aspects of Regulatory Genotoxicity Tests."

6. ICH Topic S2B document "Standard Battery of Genotoxicity Tests."

7. ICH Harmonised Tripartite Guideline (S1A) "Guideline on the Need for Carcinogenicity Studies for Pharmaceuticals."

8. ICH Harmonised Tripartite Guideline (S5A) "Detection of Toxicity to Reproduction for Medicinal Products."

9. ICH Harmonised Tripartite Guideline (S5B) "Toxicity to Male Fertility."

10. Arcy, P. F., and D. W. G. Harron, "Proceeding of The First International Conference on Harmonisation, Brussels 1991," Queen's University of Belfast, pp. 183–184, 1992.

11. ICH Topic S4 Document "Duration of Chronic Toxicity Testing in Animals (Rodent and Nonrodent Toxicity Testing)."

Dated: November 18, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30913 Filed 11–24–97; 8:45 am]

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Part VIII

Department of Housing and Urban Development

24 CFR Part 5
Ceiling Rents for Public Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–3880–P–02]

RIN: 2577–AB75

Ceiling Rents for Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit public housing agencies (PHAs) to adopt caps on total tenant payments for public housing projects or dwelling units that are assisted under the United States Housing Act of 1937 (1937 Act). The Balanced Budget Downpayment Act I (also known as the Continuing Resolution) amended the 1937 Act to permit the establishment of caps, or ceiling rents, on the income-based monthly total tenant payment that reflect the reasonable market value of the housing, but that are not less than the monthly costs: to operate the housing of the PHA; and to make a deposit to a replacement reserve (in the sole discretion of the PHA). The proposed rule would not amend HUD's Indian housing regulations. Further, this proposed rule would not apply to Section 8 assisted housing.

DATES: *Comments due date:* January 26, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Linda Campbell, Director, Marketing and Leasing Management Division, Office of Public and Indian Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW Washington, DC 20410, telephone (202) 708–0744 (this is not a toll-free number). Hearing or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Total Tenant Payment

Section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) establishes the monthly total tenant payment for tenants of public housing assisted under the 1937 Act as the highest of: (1) 30 percent of the family's monthly adjusted income; (2) 10 percent of the family's monthly income; or (3) if a family receives welfare assistance and the welfare assistance is subject to adjustment in accordance with actual housing costs, the portion of that assistance specifically designated for housing costs. Further, section 402(a) of the Balanced Budget Downpayment Act, I (Pub.L. 104–99, 110 Stat. 40, approved January 26, 1996) (also known as the Continuing Resolution), as amended by section 201(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub.L. 104–204, 110 Stat. 2874, approved September 26, 1996) requires that, notwithstanding section 3(a)(1) of the 1937 Act, each family assisted under the Public or Indian housing rental programs shall pay a monthly minimum rent of up to $50.

B. Ceiling Rents Under Section 102 of the 1987 HCD Act

Section 102 of the Housing and Community Development Act of 1987 (Pub.L. 100–242, 101 Stat. 1815, approved February 5, 1988) (1987 HCD Act) added a new section 3(a)(2) to the 1937 Act which allows the establishment of caps ("ceiling rents") on the income-based monthly total tenant payment, as calculated under section 3(a)(1). Under section 102 of the 1987 HCD Act, the ceiling rents could not be greater than the income-based formula, and not less than the average monthly amount of debt service and operating expenses attributable to units of similar size in other housing projects owned and operated by the Public Housing Agency (PHA).

Ceiling rents are a useful tool in easing the rent burden on working families residing in public housing assisted under the 1937 Act. Working families are generally regarded as having positive effects on housing projects by providing leadership and acting as role models for other tenants. Higher income families are often the resident leaders who help to ensure that the units are well-maintained and drug-free. Working families also help create an economic and social mix that is desirable in preventing the isolation of the very poor in public housing projects. Without ceiling rents, these residents are often faced with the dilemma of leaving public housing or having total tenant payments that are above the market value of their units.

On March 15, 1989, HUD published a notice for public housing (54 FR 10733) announcing that it would consider applications from PHAs for waivers of the requirements of its regulations implementing section 3(a)(1) of the 1937 Act, so that PHAs could adopt ceiling rents for projects or dwelling units owned and operated by the PHAs.

C. Section 402(b) of the Continuing Resolution

Section 402(b) of the Continuing Resolution amended section 3(a)(2) of the 1937 Act. Specifically, the Continuing Resolution permits the establishment of ceiling rents that reflect the reasonable market value of the housing, but that are not less than the monthly costs: (1) to operate the housing of the PHA; and (2) to make a deposit to a replacement reserve (in the sole discretion of the PHA). A replacement reserve may be used for major expenditures, such as the acquisition of capitalized equipment and structural repairs. Section 402(b) of the Continuing Resolution does not mandate the establishment of a replacement reserve, but leaves the decision regarding the creation of such a reserve to each PHA.

Section 402(b)(2)(B) of the Continuing Resolution provides that pending HUD's issuance of final regulations implementing the changes to section 3(a)(2), a "transition rule" will be in effect. Under the "transition rule," PHAs can implement ceiling rents, which must be not less than the monthly costs to operate the PHA's units and: (1) using the provisions of the prior law (i.e., section 3(a)(2) of the 1937 Act as it existed prior to the Continuing Resolution); (2) equal to Fair Market Rents (FMRs) for the area in which the unit is located; or (3) equal to the 95th percentile of total tenant payments paid for a unit of comparable size by tenants in the same housing development or a group of comparable developments totalling 50 units or more. HUD has issued nonregulatory guidance (Notice PIH 96–6, February 13, 1996) to assist those PHAs wishing to establish ceiling rents prior to the issuance of a final rule implementing the amendments made by the Continuing Resolution.

D. Effectiveness of Continuing Resolution Beyond Fiscal Year 1997

Section 402(f) of the Continuing Resolution limited the effectiveness of the ceiling rents and minimum rent provisions to Fiscal Year (FY) 1996. Section 201(c)(2) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1996) extended their effectiveness through FY 1997. Although section 402(b) of the Continuing Resolution will expire at the end of FY 1997 (September 30, 1997), HUD believes the burden of increased total tenant payments on many tenant families is significant enough to merit proceeding with the establishment of the necessary regulatory procedures for implementing ceiling rents. HUD is advocating the extension of the current statutory authority for ceiling rents.

II. This Proposed Rule

A. General

This proposed rule would amend HUD's regulations governing total tenant payments for its public housing programs (24 CFR part 5, subpart F) to implement the changes made by the Continuing Resolution to section 3(a)(2) of the 1937 Act. The proposed rule would not amend the corresponding requirements for HUD's Indian housing programs (24 CFR part 950). The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, 110 Stat. 4016; approved October 26, 1996) completely revises HUD's Indian housing programs. The regulations promulgated under the Native American Housing Assistance and Self-Determination Act of 1996 will address the applicability of the Continuing Resolution to HUD's Indian housing programs.

B. Applicability

This rule proposes to establish a new 24 CFR 5.614 which would describe the policies and procedures governing the establishment of ceiling rents. Section 5.614 would apply to public housing rental projects. It would not apply to: (1) homeownership programs (such as the Turnkey III program—24 CFR part 904); (2) applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)); or (3) the Section 8 Rental Voucher and Rental Certificate Programs.

C. Calculating Ceiling Rents

This proposed rule would permit a PHA to establish ceiling rents which reflect the reasonable market value of the housing and which are not less than the statutory minimum: the monthly cost to operate the housing of the PHA and to make a deposit to a replacement reserve (in the sole discretion of the PHA).

In determining the reasonable market value of the housing, a PHA may utilize: (1) the 95th percentile of the total tenant payments paid for a unit of comparable size by tenants in the same public housing development or group of comparable developments totalling 50 units or more or having at least 15 units of the same unit size (number of bedrooms) for which ceiling rents would be applied; (2) the FMRs for the area in which the unit is located; or (3) any other similar indicator of reasonable market value, such as a comparability study. The comparability study would have to analyze relevant factors for the community in which the unit is located, including unassisted rents for housing of similar age, location, condition, amenities, design, and size.

For purposes of determining the minimum ceiling rent, the average monthly operating expense would equal one-twelfth (1/12) of the sum of all annual operating expenses reported on the Statement of Operating Receipts and Expenditures (SORE) for the PHA's most recent fiscal year and the aggregate annual utility allowances for all tenant-paid utilities; minus the sum of excess utility charges and annual costs, if any, associated with units approved for deprogramming.

The sum of the operating expenses would be distributed over all of the PHA's public housing dwelling units, except those approved for deprogramming, whether or not ceiling rents are adopted for all units, with an adjustment only for unit size (number of bedrooms). Operating expenses would be allocated according to unit size with larger units receiving a larger portion of the operating expenses than smaller units.

Under this proposed rule, HUD would establish the two-bedroom unit as the base total tenant payment. The allocation of operating expenses for a particular unit will be calculated by multiplying the base total tenant payment by an adjustment factor. The adjustment factors will vary from 70 percent of the base total tenant payment for an efficiency to 182 percent of the base total tenant payment for a six-bedroom unit. HUD uses this method to adjust total tenant payments by unit size in establishing the FMRs (24 CFR 888.113(c).)

The Appendix to this proposed rule demonstrates how the statutory minimum is calculated in establishing ceiling rents.

D. Establishing Ceiling Rents

This proposed rule would permit a PHA to establish ceiling rents for: (1) all dwelling units in its inventory; (2) all of the units in one or more projects; or (3) some of its units in one or more projects, based on bedroom size. The rule would allow a PHA to implement, change the amount of, or revoke ceiling rents after giving reasonable notice to the affected tenants. If the amount of the ceiling rent is changed, the new amount would have to conform with the provisions of this rule.

Since section 402(b) of the Continuing Resolution authorizes, rather than mandates ceiling rents, a PHA has the discretion to decide whether to establish ceiling rents. If a PHA elects to establish ceiling rents, however, each tenant family admitted to or living in a dwelling unit subject to a ceiling rent is eligible for the ceiling rent. This proposed rule also provides that a family residing in a dwelling unit subject to a ceiling rent may not be charged an amount that exceeds the amount the family would pay under the income-based calculation of 24 CFR 5.613(a), as required by the Continuing Resolution. Therefore, a family residing in a dwelling unit with a ceiling rent will be charged the lesser of the income-based total tenant payment or the ceiling rent set for the unit; however, in all cases the family must pay the minimum rent established by the PHA.

A PHA must ensure that the ceiling rents it has established are not less than the statutory minimum (i.e., the monthly cost to operate the housing of the PHA and, in the sole discretion of the PHA, to make a deposit to any replacement reserve) at the time it prepares its Statement of Operating Receipts and Expenses each fiscal year, and must update the ceiling rents accordingly. PHAs are also reminded that in establishing ceiling rents, they must abide by Federal laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, age, disability, and familial status.

The final rule may require that a PHA maintain records regarding its calculation and establishment of ceiling rents. Further, the final rule may require a PHA to notify HUD that it has established or revoked ceiling rents. HUD invites comment on what would be the least burdensome recordkeeping and notification methods

E. Continued Effectiveness of Existing Ceiling Rents

Section 102 of the 1987 HCD Act originally limited the effectiveness of ceiling rents for a period of 36 months.

This period was subsequently extended to 60 months by section 302 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235; 103 Stat. 1987, approved December 15, 1989) (HUD Reform Act). Section 102 of the Housing and Community Development Act of 1992 (Pub. L. 102–550; 106 Stat. 3672, approved October 28, 1992) removed the 60 month limit and extended the ceiling rents in effect prior to the date of enactment of the HUD Reform Act without time limitation. Accordingly, this proposed rule would not impact the effectiveness of those ceiling rents that were approved by a HUD regulatory waiver under the March 15, 1989 **Federal Register** notice. These ceiling rents are valid indefinitely, as long as they cover current operating expenses and the PHA wants to have them. Further, HUD also considers any ceiling rents adopted under the transition rule and HUD Notice 96–6 as being valid for an indefinite period of time, as long as they cover current operating expenses and the PHA wants to have them (subject to the extension of the statutory authority for ceiling rents beyond September 30, 1997).

A PHA with HUD-approved ceiling rents under the March 15, 1989 **Federal Register** notice may opt to switch to PHA-adopted ceiling rents under the provisions of the transition rule (or later, under the provisions of HUD's final rule on ceiling rents). However, although ceiling rents adopted under the March 15, 1989 notice are valid for an indefinite period of time (so long as they cover current operating expenses and the PHA wants to have them), any ceiling rents adopted under the transition notice or HUD's final rule are valid only until September 30, 1997, unless extended by law.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule have no Federalism implications, and that the policies are not subject to review under the Order. Specifically, this proposed rule would permit PHAs to adopt ceiling rents for public housing projects or dwelling units that are assisted under the 1937 Act. It will effect no changes in the current relationships between the Federal government, the States and their political subdivisions.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will have no adverse or disproportionate economic impact on small entities. Each PHA will make the decision whether to implement ceiling rents and is not expected to do so if ceiling rents will have a significant economic effect on the PHA. Furthermore, the procedures for administering ceiling rents should not entail significantly greater expense to the PHA than the PHA would normally incur in administering income-based rents.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule would not pose an environmental health risk or safety risk on children.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for Public and Indian Housing is 14.850.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 5 would be amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations for the Public Housing and Section 8 Programs

2. The authority citation for subpart F continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

3. A new § 5.614 is added to read as follows:

§ 5.614 Ceiling rents for public housing.

(a) *Applicability.* This section applies to public housing rental projects. This section does not apply to:

(1) Homeownership programs, such as the Turnkey III program;

(2) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)); or

(3) Section 8 assisted housing.

(b) *Calculating ceiling rents.* (1) *General.* A PHA may establish caps on total tenant payments (as described in § 5.613) for the dwelling units described in § 5.614(c)(1) that reflect the reasonable market value of the housing, but that are not less than:

(i) The average monthly amount of operating expenses attributed to units of similar size in public housing projects owned by the PHA; and

(ii) The monthly cost to make a deposit to a replacement reserve (in the sole discretion of the PHA).

(2) *Reasonable market value.* The reasonable market value of the housing is equal to:

(i) The 95th percentile of the total tenant payments paid for a unit of comparable size by tenants in the same public housing development or group of comparable developments totalling 50 units or more or having at least 15 units of the same unit size (number of bedrooms) for which ceiling rents would be applied;

(ii) The Fair Market Rents (FMRs) for the area in which the unit is located (See 24 CFR part 888); or

(iii) Any other similar indicator of reasonable market value utilized by the PHA, such as a comparability study.

(3) *Average monthly operating expenses.* The average monthly operating expenses is one-twelfth ($\frac{1}{12}$) of the sum of:

(i) All annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the PHA's most recent fiscal year and the aggregate annual utility allowances for all tenant paid utilities; minus the sum of:

(ii) Excess utility charges and annual costs, if any, associated with units approved for deprogramming.

(4) *Distributing the average monthly amount of operating expenses.* The total average monthly amount of operating expenses must be distributed over all of the PHA's public housing dwelling units, except those approved for deprogramming, whether or not ceiling rents are proposed for all units, and adjusted only for unit size (i.e., number of bedrooms), in accordance with paragraph (b)(5) of this section.

(5) *Unit adjustment factors.* The adjustment for unit size is determined by using a percentage relationship based on the rent of a two-bedroom unit as an adjustment factor. Adjustment factors for all units are as follows:

(i) Zero-bedroom units (efficiencies)—0.70;

(ii) One-bedroom units—0.85;

(iii) Two-bedroom units—1.00;

(iv) Three-bedroom units—1.25;

(v) Four-bedroom units—1.40;

(vi) Five-bedroom units—1.61; and

(vii) Six-bedroom units—1.82.

(c) *Establishing ceiling rents.* (1) A PHA may establish ceiling rents for:

(i) All dwelling units in its inventory;

(ii) All of the units in one or more projects; or

(iii) Some of its units in one or more projects, based on bedroom size.

(2) A PHA may implement, change the amount of, or revoke ceiling rents after giving reasonable notice to the affected tenants. If the amount of the ceiling rent is changed, the new amount would have to conform with the provisions of this section.

(3) The total tenant payment of a family residing in a dwelling unit subject to a ceiling rent is the lesser of the income-based total tenant payment or the ceiling rent for such dwelling unit; however, the total tenant payment may not be lower than the minimum rent established by the PHA.

(4) A PHA must ensure that the ceiling rents it has established are not less than the statutory minimum (i.e., the monthly cost to operate the housing of the PHA and, in the sole discretion of the PHA, to make a deposit to any replacement reserve) at the time it prepares its Statement of Operating Receipts and Expenses each fiscal year, and must update the ceiling rents accordingly.

(5) In establishing ceiling rents, a PHA is reminded that it must abide by Federal laws prohibiting discrimination on the basis of race, religion, sex, color, national origin, age, disability, and familial status.

Date: August 22, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix—to 24 CFR Part 5

Note: This appendix will not be codified in title 24 of the Code of Federal Regulations.

Example of Calculating the Statutory Minimum in Establishing Ceiling Rents

Step 1

1. Operating expenses (Line 620) from the Statement of Operating Receipts and Expenditures for the PHA's most recent fiscal year. _____ $190,000
2. Cost of utility allowances for tenant-paid utilities for the PHA's most recent fiscal year. _____ $30,000
3. Add line 1 and line 2. _____ $220,000
4. Excess utility charges (Line 070) from HUD–52599 for the PHA's most recent fiscal year. _____ $5,200
5. Costs associated with deprogramming units, if any, for the PHA's most recent fiscal year. _____ $0
6. Add line 4 and line 5. _____ $5,200
7. Subtract line 6 from line 3. _____ $214,800
8. Total average monthly operating expenses (line 7 divided by 12). _____ $17,900

Step 2

Number of units owned by PHA Times Adjustment Factor *

0-bedroom units 20 × 0.70	14
1-bedroom units 40 × 0.85	34
2-bedroom units 20 × 1.00	20
3-bedroom units 20 × 1.25	25
4-bedroom units 0 × 1.40	0
5-bedroom units 0 × 1.61	0
6-bedroom units 0 × 1.82	0
Total	93

* Whether or not a ceiling rent is proposed for these units.

Step 3

Calculate the two-bedroom minimum monthly rent:

1. Enter Line 8 from Step 1. _____ $17,900
2. Enter Total from Step 2. _____ 93
3. Calculate the 2-bedroom minimum monthly rent (line 1 divided by line 2) _____ $192.47
4. Calculate the minimum rent for other size units:

a. 0-bedroom (line 3 × .70)	$134.73
b. 1-bedroom (line 3 × .85)	$163.69
c. 3-bedroom (line 3 × 1.25)	$240.59
d. 4-bedroom (line 3 × 1.40)	N/A
e. 5-bedroom (line 3 × 1.61)	N/A
f. 6-bedroom (line 3 × 1.82)	N/A

[FR Doc. 97–30941 Filed 11–24–97; 8:45 am]
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federal register

Tuesday
November 25, 1997

Part IX

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2510

Amendment to the Definition of Plan Assets; Participant Contributions; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA59

Final Rule Amending the Definition of Plan Assets; Participant Contributions

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule amending the Department of Labor's regulation published in the **Federal Register** on August 7, 1996, that defines when participant contributions to a pension benefit plan become plan assets for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The amendment set forth in this notice harmonizes the Title I rules governing the definition of plan assets with the Internal Revenue Code (Code) rules governing the timing of deposits for Savings Incentive Match Plans for Employees (SIMPLE plans) that involve Individual Retirement Accounts (SIMPLE IRAs) and thereby simplifies compliance by small businesses.

EFFECTIVE DATE: This regulation is effective on November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–8671; or William W. Taylor, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC, (202) 219–9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On March 27, 1997, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** at 62 FR 14760 (the "proposal") to amend a regulation which had been issued on August 7, 1996, at 61 FR 41220 (the "1996 regulation") defining when certain monies that a participant pays to, or has withheld by, an employer for contribution to a plan are "plan assets" for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the related prohibited transaction provisions of the Internal Revenue Code (the Code).[1] The purpose of the proposed amendment was to harmonize the 1996 regulation with the Code rules governing the timing of deposits for SIMPLE Plans that involve IRAs, in order to simplify compliance for small plans.

The 1996 Regulation

Section 2510.3–102(a) of the 1996 regulation sets forth a general rule which provides that the assets of a plan include amounts that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets. With respect to employee pension benefit plans covered by Title I of ERISA, section 2510.3–102(b) of the 1996 regulation further provides that in no event shall the date determined pursuant to section 2510.3–102(a) occur later than the 15th business day of the month following the month in which the participant contribution amounts are received by the employer or in which such amounts would otherwise have been payable to the participant in cash.

Except as provided in ERISA § 403(b), plan assets are required to be held in trust by one or more trustees.[2] ERISA § 403(a), 29 U.S.C. 1103(a). In addition, ERISA's fiduciary responsibility provisions apply to the management of plan assets. Among other things, these provisions make clear that the assets of a plan may not inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries, and defraying reasonable expenses of administering the plan. ERISA §§ 403–404, 29 U.S.C. 1103–1104. These provisions also prohibit a broad array of transactions involving plan assets. ERISA §§ 403–408, 29 U.S.C. 1106–1108. Employers who fail to transmit promptly participant contributions, and plan fiduciaries who fail to collect those amounts in a timely manner, will violate the requirement that plan assets be held in trust; in addition, such employers and fiduciaries may be engaging in prohibited transactions.

The Proposal

On August 20, 1996, the Small Business Job Protection Act of 1996 (the Act, Pub. L. 104–188) was signed into law. Section 1421 of the Act amended section 408(p) of the Code to provide that certain employers may establish SIMPLE plans. Under amended section 408(p) of the Code, an eligible employer may establish an employee pension benefit plan by making contributions to each eligible employee's SIMPLE IRA. Section 408(p)(5)(A)(i) of the Code provides that an employer must make salary reduction elective contributions to each eligible employee's SIMPLE IRA not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made.[3] However, section 1421 of the Act did not amend Title I of ERISA, as it did the Code, with respect to when such participant contributions become assets of the plan.

In order to harmonize the Title I rules governing the definition of plan assets with section 408(p) of the Code, as amended by the Act, the Department proposed to amend 29 CFR 2510.3–102 to provide that salary reduction elective contributions under a SIMPLE plan that involves SIMPLE IRAs become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event later than the 30th day following the month in which such amounts would otherwise have been payable to the participant in cash.

The Department explained in the preamble to the proposed rule that, while the amendment would preserve the general rule set forth in section 2510.3–102(a) of the 1996 regulation governing when participant contributions to employee pension benefit plans become plan assets, it would amend 29 CFR 2510.3–102(b) of the 1996 regulation by specifying that, for purposes of Title I of ERISA, the maximum period during which salary reduction elective contributions under a SIMPLE plan that involves SIMPLE IRAs may be treated as other than plan assets is the same number of days as the period within which the employer is required to deposit withheld contributions under a SIMPLE plan that involves SIMPLE IRAs under section 408(p) of the Code, as amended by the Act. The Department further explained in the preamble to the proposed rule that, for all other pension plans covered under Title I of ERISA, including SIMPLE 401(k) plans that meet the requirements of section 401(k)(11) of the Code, the maximum period would remain 15 business days following the month in which participant contributions were received by the employer (for amounts that participants or beneficiaries pay to the employer) or would otherwise have been payable to the participants in cash (for amounts that the employer withholds from the participant's wages).

[1] The Secretary of Labor has authority to issue regulations relating to most of section 4975 of the Internal Revenue Code pursuant to section 102 of Reorganization Plan No. 4 of 1978. 5 U.S.C. App. 165, 43 FR 47713, October 17, 1978. For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA. However, these references apply to the corresponding provisions of section 4975 of the Code as well.

[2] ERISA § 403(b) contains a number of exceptions to the trust requirement for certain types of assets, including assets which consist of insurance contracts, and for certain types of plans. In addition, the Secretary has issued a technical release, T.R. 92–01, which provides that, with respect to certain welfare plans (e.g. cafeteria plans), the Department will not assert a violation of the trust or certain other reporting requirements in any enforcement proceeding, or assess a civil penalty for certain reporting violations involving such plans solely because of a failure to hold participant contributions in trust. 57 FR 23272 (June 2, 1992), 58 FR 45359 (Aug. 27, 1993).

[3] The Department has taken the position that contributions to an employee benefit plan made at the election of the participant, whether made pursuant to a salary reduction agreement or otherwise, constitute amounts paid to or withheld by an employer (i.e., participant contributions) within the scope of § 2510.3–102, without regard to the treatment of such contributions under the Internal Revenue Code. See 53 FR 29860 (Aug. 8, 1988).

Discussion of the Comments and Final Rule

The Department received only one comment letter in response to the March 27, 1997, notice of proposed rulemaking. The commenter expressed concern with regard to the statement in the preamble to the proposal at 59 FR 14760 that "employers who fail to transmit promptly participant contributions, and plan fiduciaries who fail to collect those amounts in a timely manner, will violate the requirement that plan assets be held in trust; in addition, such employers and fiduciaries may be engaging in prohibited transactions." Specifically, the commenter contended that this language is too broad and that financial institutions that are fiduciaries (by virtue of being investment advisers or otherwise) but have no control over when participant contributions are sent to them should not be subject to liability in connection with failures by employers to transmit participant contributions in a timely manner. The Department does not agree that the referenced preamble language should be modified or withdrawn. As noted at 61 FR 41226 in the preamble to the 1996 regulation, while it is the view of the Department that the plan sponsor (usually the employer) is primarily responsible for assuring that participant contributions are transmitted to the trustee in a timely manner, section 405(a)(3) of ERISA would impose a fiduciary duty on plan trustees in certain circumstances. See, for example, the guidance of ERISA's co-fiduciary liability provisions set forth in 29 CFR 2509.75–5. Similar considerations would be relevant with respect to plan fiduciaries who are not necessarily trustees and who do not have control over when participant contributions are sent to them but who are involved in the process of investing such contributions.

For the reasons set forth herein, the Department is by this notice adopting the amendment as proposed.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires each Federal agency to perform an initial regulatory flexibility analysis (IRFA) for all proposed rules unless the head of the agency certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The Department published an IRFA with regard to the proposed amendment in the March 27, 1997, notice of proposed rulemaking, in accordance with the requirements of 5 U.S.C. 603. In the IRFA, the Department explained the basis for its belief that the proposed rule would not have a significant economic effect on a substantial number of small entities. Because the final rule amending the 1996 regulation is identical to the proposal and because no comments were received from the public in response to the IRFA included in the March 27, 1997, notice of proposed rulemaking, the Department has made a final determination that this final rule will not have a significant effect on a substantial number of small entities.

Executive Order 12866

This regulatory action is not a "significant rule" within the meaning of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Paperwork Reduction Act

This final rule contains no information collection requirements which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 et seq.).

Unfunded Mandates Reform Act

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 5 U.S.C. 1531–1538, as well as Executive Order 12875, this final rule does not contain any federal mandate that may result in increased expenditures in either federal, State, local and tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

Congressional Review

The Department has determined that this final rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Statutory Authority

This final rule is adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332 and under Secretary of Labor's Order No. 1–87, 52 FR 13139 (Apr. 21, 1987).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

Final Rule

For the reasons set out in the preamble, 29 CFR part 2510 is amended as forth below:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

1. The authority for part 2510 continues to read as follows:

Authority: Secs. 3(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 852, 894 (29 U.S.C. 1002(2), 1031, 1135) Secretary of Labor's Order No. 27–74, 1–86, 1–87, and Labor-Management Services Administration Order No. 2–6.

Section 2510.3–101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332, and sec. 11018(d) of Pub. L. 99–272, 100 Stat. 82.

Section 2510.3–102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1978); 3 CFR 1978 Comp. 332.

2. Paragraph (b) of § 2510.3–102, as published in the **Federal Register** on August 7, 1996 at 61 FR 41233, is revised to read as follows:

§ 2510.3–102 Definition of "plan assets"—participant contributions.

* * * * *

(b) *Maximum time period for pension benefit plans.* (1) Except as provided in paragraph (b)(2), of this section, with respect to an employee pension benefit plan as defined in section 3(2) of ERISA, in no event shall the date determined pursuant to paragraph (a) of this section occur later than the 15th business day of the month following the month in which the participant contribution amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

(2) With respect to a SIMPLE plan that involves SIMPLE IRAs (*i.e.*, Simple Retirement Accounts, as described in section 408(p) of the Internal Revenue Code), in no event shall the date determined pursuant to paragraph (a) of this section occur later than the 30th calendar day following the month in which the participant contribution amounts would otherwise have been payable to the participant in cash.

* * * * *

Signed at Washington, DC, this 20th day of November 1997.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 97–30981 Filed 11–24–97; 8:45 am]

BILLING CODE 4510–29–M

federal register

Tuesday
November 25, 1997

Part X

The President

Proclamation 7053—National Farm-City Week, 1997

Proclamation 7054—National Family Week, 1997

Proclamation 7055—National Family Caregivers Week, 1997

Federal Register
Vol. 62, No. 227
Tuesday, November 25, 1997

Presidential Documents

Title 3—

The President

Proclamation 7053 of November 21, 1997

National Farm-City Week, 1997

By the President of the United States of America

A Proclamation

When Americans sit down to a meal each day, we sometimes take for granted the quality and variety of the food we eat. Our grocery stores, supermarkets, and restaurants offer us an enormous volume and selection of fruits, vegetables, meats, dairy products, and other food items, but we too often forget the hardworking men and women whose skill and effort put that food on our tables.

Strengthening our economy and providing food for people around the world, American agriculture is a leading global industry and a source of pride for our Nation. While producing an abundance of safe and affordable food and fiber, America's farmers and ranchers also provide a rich source of jobs in the United States. American agriculture employs more than 21 million people today, and agriculture-related industries continue to expand, pumping a trillion dollars into the American economy each year.

During the earliest days of our Nation, most of the crops farmers grew were used to feed their families or local consumers. Today, through advances in technology and marketing and through partnerships with agribusiness industries, research scientists, carriers, shippers, and retail distributors, America's farmers produce enough food and fiber to help meet the needs of people around the globe.

This week, as Americans gather with family and friends around the dinner table to give thanks for their many blessings, it is fitting that we count among those blessings the vital farm-city partnerships that have done so much to improve the quality of our lives. Rural and urban communities, working together to make the most of America's rich agricultural resources, continue to contribute immensely to the health and well-being of our people and to the vigor of our national economy.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 21 through November 27, 1997, as National Farm-City Week. I call upon citizens in urban and rural areas throughout the Nation to acknowledge and celebrate the achievements of all those who, working together, produce an abundance of agricultural products that strengthen and enrich our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-31218
Filed 11-24-97; 11:55 am]
Billing code 3195-01-P

Proclamation 7054 of November 21, 1997

National Family Week, 1997

By the President of the United States of America

A Proclamation

As we approach the end of the 21st century, our world is becoming increasingly complex, our society more mobile, and our pace of life more rapid. It is at times like this, full of dynamic challenge and change, that we need to remember the fundamental values and institutions that strengthen and uplift us. Among the most precious of these are our families.

Families come in many forms and sizes. They can number several generations or only one; they can include birth parents and stepparents, foster children and adopted children. Families are created by ties of blood or law, but they are sustained by ties of love and caring.

Few people in our lives will have so profound an effect on us as our family members. From the day we are born, the people who live with us, nurture us, and guide us play a crucial role in shaping the kind of men and women we become. They challenge us to look beyond ourselves and to respect and care for others. At their best, they help us to be our best. Families are the most basic—and the most important—unit of our society.

Recognizing this, we realize that many of our dreams for America begin with strong families. We want to be a caring people, and the lessons of tolerance, sharing, and compassion are best taught in the home. We want to be a peaceful people, and we look to families to teach our young people how to respect one another's differences and resolve disputes without resorting to violence. We want to be wise people, so we need families that value education and acknowledge the importance of lifelong learning.

Nothing is more important to our future than preserving and promoting strong, loving families. This week, as we gather with our own families to celebrate Thanksgiving, let us resolve to do all we can as individuals, and as a Nation to help families who are in need, to provide support and encouragement for troubled families, and to promote policies at the local, State, and Federal level that will help America's families to flourish.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 23 through November 29, 1997, as National Family Week. I call upon Federal, State, and local officials to honor American families with appropriate programs and activities; I encourage educators, community organizations, and religious leaders to celebrate the strength and values we draw from family relationships; and I urge all the people of the United States to reaffirm their family ties and to reach out to others in friendship and goodwill.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William Jefferson

[FR Doc. 97-31219
Filed 11-24-97; 11:55 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7055 of November 22, 1997

National Family Caregivers Week, 1997

By the President of the United States of America

A Proclamation

During this season of thanksgiving, when we reflect on the many blessings that have been bestowed on us as individuals and as a Nation, we are especially grateful for the love of our families and friends. One of the most profound ways in which that love is expressed is through the generous support provided by caregivers to those who need help if they are to remain in their homes and communities.

Caregivers reflect family and community life at its best. Thanks to their efforts, Americans with disabilities and a growing number of elderly Americans are able to stay in familiar surroundings and to maintain their dignity and independence. Caregivers not only enhance the quality of life for those they serve, but also greatly reduce the demands on the formal system of caregiving services in our Nation.

The statistics describing caregivers in America today tell an extraordinary story of generosity and compassion. Nearly one in four households is involved in caring for a relative or other loved one in need, providing a range of assistance from personal care to household help to transportation. Thirty percent of caregivers are caring for two or more people, and 64 percent hold down jobs while providing such care. Caregivers share not only their time, but also their resources, spending some $2 billion a month of their own assets for groceries, medicine, and other aid.

There is another side to caregiving in America today. Many older relatives now take care of children whose parents, for whatever reason, are no longer able to provide that care themselves. These generous men and women, who in many cases have already raised families and are looking forward to pursuing their own interests in retirement, embrace the challenges of parenting a new generation of young people. They give millions of our most vulnerable youth the opportunity to grow up in stable, loving homes.

These everyday heroes among us deserve our lasting gratitude and respect. This week, as we honor the many contributions that family caregivers make to the quality of our national life, let us resolve to work through our community, religious, social, business, and other organizations to offer programs and services that will provide caregivers the support and encouragement they need to carry out their vital responsibilities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 23 through November 29, 1997, as National Family Caregivers Week. I call upon Government officials, businesses, communities, educators, volunteers, and all the people of the United States to acknowledge the invaluable efforts of caregivers this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-31220
Filed 11-24-97; 11:55 am]
Billing code 3195-01-P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

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To codify without substantive change laws related to transportation and to improve the United States Code. (Nov. 20, 1997; 111 Stat. 2204)

H.R. 2813/P.L. 105–103

To waive time limitations specified by law in order to allow the Medal of Honor to be awarded to Robert R. Ingram of Jacksonville, Florida, for acts of valor while a Navy Hospital Corpsman in the Republic of Vietnam during the Vietnam conflict. (Nov. 20, 1997; 111 Stat. 2218)

H.J. Res. 91/P.L. 105–104

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H.J. Res. 92/P.L. 105–105

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S. 669/P.L. 105–106

To provide for the acquisition of the Plains Railroad Depot at the Jimmy Carter National Historic Site. (Nov. 20, 1997; 111 Stat. 2247)

S. 858/P.L. 105–107
Intelligence Authorization Act for Fiscal Year 1998 (Nov. 20, 1997; 111 Stat. 2248)

S. 1231/P.L. 105–108
United States Fire Administration Authorization Act for Fiscal Years 1996 and 1999 (Nov. 20, 1997; 111 Stat. 2264)

S. 1347/P.L. 105–109
To permit the city of Cleveland, Ohio, to convey certain lands that the United States conveyed to the city. (Nov. 20, 1997; 111 Stat. 2268)

S. 1377/P.L. 105–110
To amend the Act incorporating the American Legion to make a technical correction. (Nov. 20, 1997; 111 Stat. 2270)

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11–26–97
Vol. 62 No. 228

federal register

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11-26-97
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Wednesday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–37–AD; Amendment 39–10216; AD 97–24–09]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft-und Raumfahrt, Model G 103 C Twin III SL Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Burkhart Grob, Luft-und Raumfahrt (Grob), Model G 103 C Twin III SL sailplanes. This action requires repetitively inspecting the propeller bearing and upper pulley wheel for increased play and, if increased play is found, modifying the propeller bearing and pulley wheel with a part of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the loss of the sailplane engine propeller and possible loss of the sailplane.

DATES: Effective January 5, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 5, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D–86874 Mattsies, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Grob Model G 103 C Twin III SL sailplanes was published in the **Federal Register** on January 29, 1997 (62 FR 4205). The action proposed to require inspecting the propeller bearing and pulley wheel for increased play, if there is no increased play in the propeller bearing and pulley wheel, continuing to inspect, and if increased play is found, modifying the propeller bearing and upper pulley wheel by installing a part of improved design. The modification would be considered a terminating action to the repetitive inspections. Accomplishment of this action would be in accordance with Grob Service Bulletin (SB) 869–18, dated March 7, 1996, and Grob SB 869–18/2, dated July 8, 1996, which is a revised page 6 of the Grob SB 869–18, dated March 7, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480 or $60 per sailplane.

Grob has informed the FAA that parts have been distributed to equip 7 of the 8 sailplanes in the United States, which would reduce the estimated impact on U.S. operators from $480 to $60.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 97–24–09 Burkhart Grob, Luft-Und Raumfahrt: Amendment 39–10216; Docket No. 96–CE–37–AD.

Applicability: Model G 103 C Twin III SL Sailplanes (serial numbers 35002 through 35051), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the loss of the sailplane engine propeller and possible loss of the sailplane, accomplish the following:

(a) Within the next 5 engine operating hours after the effective date of this AD, do one of the following:

(1) Modify the propeller bearing and upper pulley wheel by installing parts of improved design in accordance with the "Actions: 2." and the "Installation Instructions" sections of Grob service bulletin (SB) 869–18, dated March 7, 1996, and Grob SB 869–18/2, dated July 8, 1996; or,

(2) Inspect the propeller bearing and upper pulley wheel for increased play (movement that exceeds or is equal to 0.4 mm) in accordance with the "Actions" section of Grob service bulletin (SB) 869–18, dated March 7, 1996.

(i) If increased play is found, prior to further flight, accomplish the modification in paragraph (a)(1) of this AD or,

(ii) If no increased play is found, continue to repetitively inspect for increased play in the propeller bearing and upper pulley wheel every 5 engine operating hours in accordance with the "Actions: 1." section in Grob SB 869–18, dated March 7, 1996, and Grob SB 869–18/2, dated July 8, 1996. If increased play is found during any inspection, then, prior to further flight, accomplish the modification in paragraph (a)(1) of this AD.

(b) Accomplishing the modification in paragraph (a)(1) of this AD is a terminating action to the repetitive inspection required in paragraph (a)(2)(ii) of this AD. This modification may be accomplished at any time, but must be accomplished if increased play is found.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The inspections and modifications required by this AD shall be done in accordance with Burkhart Grob, Luft-und Raumfahrt Service Bulletin 869–18, dated March 7, 1996, and Burkhart Grob, Luft-und Raumfahrt Service Bulletin 869–18/2, dated July 8, 1996, which is a revised page six of the Burkhart Grob, Luft-und Raumfahrt Service Bulletin 869–18, dated March 7, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained Burkhart Grob Luft-und Raumfahrt, D–86874 Mattsies, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD addresses German AD 96–206, April 4, 1996.

(f) This amendment (39–10216) becomes effective on January 5, 1998.

Issued in Kansas City, Missouri, on November 17, 1997.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30860 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–95–AD; Amendment 39–10215; AD 97–24–08]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft-und Raumfahrt, GmbH. Model G102 Astir CS Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Burkhart Grob, Luft-und Raumfahrt, GmbH. (Grob) Model G102 Astir CS sailplanes. This action requires replacing the elevator control lever with an improved elevator control lever. The discovery of cracks in the elevator control lever during a routine inspection of a Grob Model G102 Astir CS sailplane prompted this action. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the elevator control lever, which could result in loss of control of the sailplane.

DATES: Effective January 5, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 5, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Grob Luft-und Raumfahrt, GmbH, Postfach 1257, D–87712, Mindelheim, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 95–CE–95–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Burkhart Grob, Luft-und Raumfahrt, GmbH. Model G102 Astir CS sailplanes was published in the **Federal Register** on December 10, 1996 (61 FR 65001). The action proposed to require replacing the elevator control lever, part number (P/N) 102–3542 or an FAA-approved equivalent part number, with an improved elevator control lever, P/N 102–3543 or an FAA-approved equivalent part number.

Accomplishment of this action would be in accordance with Grob Service Bulletin (SB) TM 306–33, dated September 15, 1994, and Grob Installation Instructions No. 306–30/1, dated October 11, 1994. Grob has also issued SB TM 306–34, dated December 4, 1994, which expounds on the weight and balance procedure that is required in Item 4 of the Grob Installation Instructions No. 306–30/1, dated October 11, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The addition of Grob Service Bulletin TM 306–34, dated December 12, 1994, was not included in the proposed action and is added to the final rule for clarification of the weight and balance procedures required in Item 4 of the Grob Installation Instructions 306–30/1, dated October 11, 994. The FAA has determined that this clarification and any minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time

The FAA has determined that it is more beneficial and less burdensome to the owners/operators to require a replacement of the elevator control lever within the next 20 hours time-in-service, instead of requiring an initial inspection for cracks and if cracks are found, replacing the part prior to further flight, and then if no cracks are found, replacing the part prior to a certain date, as required by the Luftfahrt-Bundesamt (LBA), the airworthiness authority for Germany and the manufacturer. The one time replacement is more time and labor efficient.

After reviewing the compliance times recommended by the manufacturer in the Grob SB 306–33, and by the German AD 94–317/2 Grob, dated April 21, 1995, the FAA has determined that one compliance time for all operators is less burdensome and would not present any undue burden on any of the owner/operators of any U.S. registered sailplanes. Therefore, the compliance time stated in the body of this AD takes precedence over the compliance time recommended by Grob and the LBA.

Cost Impact

The FAA estimates that 53 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 hours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $180 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $47,700.

Grob has informed the FAA that no parts have been distributed to equip any sailplane in the United States. The FAA has no way of determining how many owners/operators may have incorporated these actions on their sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 97–24–08 Burkhart Grob Luft-Und Raumfahrt, GMBH: Amendment 39–10215; Docket No. 95–CE–95–AD.

Applicability: Model G102 Astir CS sailplanes (serial numbers 1001 through 1536), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 20 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 2: The compliance time in this AD does not reflect the compliance time given in the Grob service bulletin or the LBA AD 94–317/2 Grob, dated April 21, 1995.

To prevent failure of the elevator control lever, which could result in loss of control of the sailplane, accomplish the following:

(a) Replace the elevator control lever, Burkhart Grob Luft-und Raumfahrt (Grob) part number (P/N) 102–3542 (or FAA-approved equivalent part number), with an elevator control lever of improved design (Grob P/N 102–3543 or FAA-approved equivalent part number) in accordance with the "Procedure" section of the Grob Installation Instructions No. 306–30/1, dated October 11, 1994, which are referenced in the "Actions: 2" section of Grob Service Bulletin (SB) TM 306–33, dated September 15, 1994.

(b) Accomplish the weight and balance procedure required in Item 4 of the "Procedure" section in Grob Installation Instructions No. 306–30/1, dated October 11, 1994, by following the "Procedure" and "Actions" section in Grob SB No. 306–34, dated December 4, 1994.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The replacement required by this AD shall be done in accordance with the Grob Luft-Und Raumfahrt Installation Instructions No. 306–30/1, dated October 11, 1994, Grob Luft-und Raumfahrt Service Bulletin TM 306–33, dated September 15, 1994, and Grob Luft-und Raumfahrt Service Bulletin Service Bulletin No. 306–34, dated December 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grob Luft-und Raumfahrt, GmbH, Postfach 1257, D–87712, Mindelheim, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The actions specified in this AD are addressed in German AD 94–317/2 Grob, dated April 21, 1995.

(f) This amendment (39–10215) becomes effective on January 5, 1998.

Issued in Kansas City, Missouri, on November 17, 1997.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30867 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–96–AD; Amendment 39–10217; AD 97–24–10]

RIN 2120–AA64

Airworthiness Directives; Burkhardt Grob Luft-und Raumfahrt, GmbH. Model G 103 Twin Astir Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Burkhardt Grob Luft-und Raumfahrt, GmbH. (Grob) Model G 103 Twin Astir sailplanes. This action requires replacing the airbrake over-center lever and installing new inspection holes. The AD is the result of cracked airbrake over-center levers found during routine inspections. The actions specified by this AD are intended to prevent an asymmetrical airbrake deployment, which could result in an uncontrollable roll and possible loss of control of the sailplane.

DATES: Effective December 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Grob Luft-und Raumfahrt, GmbH., D–8939, Mattsies-am Flugplatz, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 95–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2165.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Grob Model G 103 Twin Astir sailplanes was published in the **Federal Register** on December 23, 1996 (61 FR 67506). The action proposed to require replacing the airbrake over-center lever (Grob part number (P/N) 103–4123 (left) and P/N 103–4124 (right)) with a new part of improved design, (Grob P/N 103B–4123 (left) and 103B–4124 (right), or FAA-approved equivalent part numbers) and installing new inspection holes.

Accomplishment of the proposed action would be in accordance with Grob Service Bulletin TM 315–47/2, dated January 20, 1993, and Grob Repair Instructions No. 315–45/2, dated October 11, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After examining all information related to this AD, the FAA has noticed two discrepancies in the NPRM that should be clarified in the final rule.

First, clarification is required regarding Grob Repair Instructions TM 315–45/2. There is a difference between the dimensions called out in Drawing 3 of Grob Repair Instructions TM 315–45/2 and the dimensions called out in the materials list on page one of the Repair Instructions for the composite sheet used for the 2 composite stops. Specifically, refer to the material list on page one of the repair instructions, which calls out 2 stops of 3mm × 30mm × 30mm composite sheet. Drawing 3 calls out the composite sheet material as 3mm × 30mm × 40mm, but should actually call out the composite sheet material as 3 × 30 × 30. The material list on page one is the correct dimension.

Second, there are only 16 Grob Model G 103 sailplanes in the U.S. registry rather than the figure of 60 sailplanes that was originally published in the NPRM. This would lower the cost impact on the U.S. operators, and would not have an adverse impact.

The FAA's Determination

After careful review of all available information related to the subject presented above, including the service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of a note to refer to the materials list for correct dimensions on the composite sheet, the lowering of the number of sailplanes affected, and minor editorial corrections. The FAA has determined that these corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 16 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 workhours per sailplane to accomplish the action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $650 per sailplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $24,660 or $1,370 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 97–24–10 Burkhardt Grob Luft-und Raumfahrt, GMBH: Amendment 39–10217; Docket No. 95–CE–96–AD.

Applicability: Model G 103 Twin Astir Sailplanes, (serial numbers 3000 through 3291, with or without the suffix "T"), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent an asymmetrical airbrake deployment, which could result in an uncontrollable roll and possible loss of control of the sailplane, accomplish the following:

(a) Replace the airbrake over-center lever (Grob part number (P/N) 103–4123 (left) and 103–4124 (right), or FAA-approved equivalent part numbers) with a new part of improved design (Grob P/N 103B–4123 (left), and 103B–4124 (right), or FAA-approved equivalent part numbers) in accordance with the Procedures section of Grob Service Bulletin (SB) TM 315-47/2, dated January 20, 1993, and Grob Repair Instructions No. 315–45/2, dated October 11, 1991. Use the dimension called out in the materials list on page one of the Repair Instructions for the correct dimension of the composite sheet.

(b) Install inspection holes in accordance with the Procedure section of Grob Repair Instructions No. 315–45/2, dated October 11, 1991.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The modification and replacement required by this AD shall be done in accordance with Burkhardt Grob Luft-und Raumfahrt, GmbH G 103 Service Bulletin TM 315–47/2, dated January 20, 1993, and Burkhardt Grob Luft-und Raumfahrt, GmbH Repair Instructions No. 315–45/2, dated October 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may also be obtained from Grob Luft-und Raumfahrt, GmbH., D–8939, Mattsies-am Flugplatz, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD addresses German AD 92–309/2 Grob, dated February 26, 1993.

(f) This amendment (39–10217) becomes effective on December 29, 1997.

Issued in Kansas City, Missouri, on November 18, 1997.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30870 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[CA–002–PP; FRL–5926–2]

Clean Air Act Approval and Promulgation of Title V Operating Permits Program Revisions; State Implementation Plan Revision, Santa Barbara County Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of a revision to Rule 1301 of Regulation XIII proposed in the **Federal Register** on September 3, 1997, both as a revision to the federally-approved State Implementation Plan (SIP) and as a revision to the title V operating permit program adopted by the Santa Barbara County Air Pollution Control District (Santa Barbara, SBCAPCD, or District) on September 18, 1997. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this revision is to allow Department of Defense (DoD) facilities to become exempt from title V of the Clean Air Act permit requirements, if the source implements an emission reduction plan that achieves a minimum reduction of 10 tons per year of ozone precursors.

Thus, EPA is finalizing the approval of this rule as a revision to the title V operating permit program, and as a revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on December 26, 1997.

ADDRESSES: Copies of the rule revision and EPA's evaluation report is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revision is available for inspection during normal business hours at the following locations:

Permits Office (AIR–3), Air Division, U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, 17th Floor, San Francisco, CA 94105
Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117
California Air Resources Board, 2020 L Street, Sacramento, CA 95814
U.S. Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: John Walser (telephone 415/744–1257), Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Applicability

The following rule is being approved into the California SIP: SBCAPCD Rule 1301—Part 70 Operating Permit Program—General Information.

II. Background

On September 3, 1997, in 62 FR 46451, EPA proposed to approve the following rule in the California SIP and as a revision to the title V program: SBCAPCD Rule 1301—Part 70 Operating Permit Program—General Information. On behalf of the District, Rule 1301 was submitted by the California Air Resources Board to EPA on October 10, 1997 as a revision to the title V program, and on October 31, 1997 as a SIP-submittal. A detailed discussion of the background for the above rule is provided in the Proposed Rulemaking (NPRM) cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rule meets the applicable EPA requirements. On October 31, 1997, EPA reviewed this rule for completeness and found that the rule conformed to the completeness criteria in 40 CFR part 51, Appendix V.

III. Response to Comments

A 30 day public comment period was provided in 62 FR 46451. EPA received no comments.

IV. EPA Action

EPA is finalizing action to approve the above rule as a revision to the title V Operating Permit Program and for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting requirements of section 110(a) and part D of the CAA. This approval action will incorporate this rule into the federally approved SIP and revise the title V program. These revisions apply to any source under jurisdiction of the SBCAPCD that qualifies as a Part 70 source and meets the requirements for exclusion of military tactical support and/or infrastructure building maintenance equipment at a Department of Defense facility. In Santa Barbara County, only Vandenberg Air Force Base (VAFB) meets these requirements.

The revision enables VAFB to comply with Rule 370, the District's prohibitory rule, which limits the Base's potential to emit to below the title V applicability thresholds and requires VAFB to reduce its annual emissions rate of ozone precursors by at least 10 tons through the ENVVEST initiative. The rule revision also includes emission reduction plan requirements and milestones to be approved by the District and made federally-enforceable by the EPA by incorporating the rule revisions into the SIP for California, if EPA finds that the planned emission reductions are real, quantifiable, surplus, and enforceable.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Docket

Copies of Santa Barbara's submittal and other information relied upon for final actions are contained in docket number CA–002–PP maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address revisions to Santa Barbara's existing operating permits program that was submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Date Signed: November 14, 1997.

Felicia Marcus,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding and reserving paragraphs (c)(247) through (c)(249) and by adding paragraph (c)(250) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) [Reserved]

(248) [Reserved]

(249) [Reserved]

(250) New regulations for the following APCD were submitted on October 31, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(*1*) Rule 1301 adopted on September 16, 1997.

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising paragraph (aa) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(aa) Santa Barbara County Air Pollution Control District (APCD) submitted on November 15, 1993, as amended March 2, 1994, August 8, 1994, December 8, 1994, June 15, 1995, and September 18, 1997; interim approval effective on December 1, 1995; interim approval expires on October 1, 1998.

* * * * *

[FR Doc. 97–30951 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL162–1a; FRL–5926–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 8, 1997, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the Environmental Protection Agency (EPA) which tightens Volatile Organic Material (VOM) regulations for cold cleaning degreasing operations in the Chicago and Metro-East ozone nonattainment areas. VOM, as defined by the State of Illinois, is identical to "Volatile Organic Compounds" (VOC), as defined by EPA. VOM combines with oxides of nitrogen in the atmosphere to form ground-level ozone, commonly known as smog. Exposure to ozone is associated with a wide variety of human health effects, agricultural crop loss, and damage to forests and ecosystems. The State intends to include the tightened cold cleaning degreasing regulations as part of its 1999 and 2002 Rate-Of-Progress (ROP) Plans. Illinois expects that the control measures specified in this SIP revision will reduce VOM emissions by 11.35 tons per day (TPD) by 1999 in the Chicago area and 0.79 TPD by 1999 in the Metro-East area. This rulemaking action approves, through direct final, the Illinois SIP revision request.

DATES: The "direct final" is effective on January 26, 1998, unless EPA receives written adverse or critical comments by December 26, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of this SIP revision request is available for inspection at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo, Environmental Protection Specialist at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(2)(B) of the Clean Air Act (Act) requires any serious and above ozone nonattainment area to achieve post–1996 ROP reductions of 3 percent of VOC 1990 baseline emissions per year, averaged over each consecutive 3 year period, until the area has achieved attainment of the 1-hour ozone National Ambient Air Quality Standard. In Illinois, the Chicago area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as "severe" nonattainment for the 1-hour ozone standard. As such, the Chicago nonattainment area is subject to the post–1996 ROP requirement.

The Act specifies under section 182(b)(1)(C) that emission reductions claimed under ROP plans must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of Federal rules, or through permits under Title V of the Act. Control measures implemented before November 15, 1990, are precluded from counting toward ROP reduction.

Illinois has submitted tightened cold cleaning degreasing rules for the control of VOC as a revision to the SIP for the purpose of meeting post–1996 ROP requirements for the Chicago ozone nonattainment area. These tightened rules also apply to the Metro-East moderate ozone nonattainment area (Madison, Monroe, and St. Clair Counties), to help the area reach attainment.

A public hearing on the tightened rules was held on March 4, 1997, in Chicago, Illinois. The rules were adopted by the Illinois Pollution Control Board on June 5, 1997. The rules

became effective on June 9, 1997; they were published in the *Illinois Register* on June 20, 1997. The Illinois Environmental Protection Agency (IEPA) formally submitted the rules to EPA on September 8, 1997, as a revision to the Illinois SIP for ozone. EPA made a finding of completeness in a letter dated October 9, 1997.

The September 8, 1997, submittal includes the following new or revised rules:

Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.1885 Electronic Component.

Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart E: Solvent Cleaning, Section 218.182 Cold Cleaning.

Part 219: Organic Material Emission Standards and Limitations for the Metro-East St. Louis Area, Subpart E: Solvent Cleaning, Section 219.182 Cold Cleaning.

The cold cleaning rules contained in part 218 are identical to those in part 219 except for the areas of applicability. Part 218 applies to the Chicago area, while part 219 applies to the Metro-East area. EPA's evaluation of these rules is as follows.

II. Evaluation of Rules

Cold cleaning degreasing rules were originally implemented by Illinois as part of the State's Reasonably Available Control Technology (RACT) requirements for VOC control The rules are codified under 35 Illinois Administrative Code sections 218/219.182, which was incorporated into the SIP on September 9, 1994 (59 FR 46562). The September 8, 1997, SIP revision submittal amends sections 218/219.182 to tighten requirements for operators of cold cleaning degreasers and adds new requirements for sellers of solvent for use in cold cleaning degreasing operations.

As previously discussed, this SIP revision submittal is required by the Act to the extent that the rule was submitted to meet Illinois' post–1996 ROP requirements. A review of what emission reduction this SIP revision achieves for purposes of ROP will be addressed when rulemaking action on Illinois— post–1996 ROP plan is taken.

To determine whether the Illinois submittal meets the requirements for an approvable SIP revision, the rules were reviewed for their consistency with section 110 and part D of the Act. A discussion of the rules and EPA's evaluation follows.

Material Requirements

Sections 218/219.182(c) have been added to limit the vapor pressure of solvent used or sold for use in cold cleaning degreasing operations in the Chicago and Metro-East ozone nonattainment area. Beginning March 15, 1999, the vapor pressure limit is 2.0 millimeters of mercury (mmHg), or 0.038 pounds per square inch (psi) measured at 20 degrees Celsius (C) (68 degrees Fahrenheit (F)). On March 15, 2001, the vapor pressures limit is tightened to 1.0 mmHg (0.019 psi) measured at 20 degrees C (68 degrees F).

Exemptions

The supplier sales requirements under sections 218/219.182(c) do not apply to the sale of solvents in units less than or equal to 5 gallons. This provision is intended to exclude cleaning solvents sold at various stores specializing in auto products, including department stores with auto supply sections. The State submittal documentation indicates that due to the quantity of solvent used in commercial cold cleaning operations, and the lower per gallon costs offered by larger suppliers, facilities engaged in cold cleaning would not typically purchase their solvents at such auto supply stores.

Sections 218/219.182(f) exempt the cleaning of electronic components from the March 15, 1999, and March 15, 2001, vapor pressure limits under section 218/219.182(c). Illinois has defined "electronic component" under section 211.1885 as all portions of an electronic assembly, including, but not limited to, circuit board assemblies, printed wire assemblies, printed circuit boards, soldered joints, ground wires, bus bars, and associated electronic component manufacturing equipment such as screens and filters. The State submittal documentation indicates that this exemption was added based on concern that the 1.0 mmHg vapor pressure solvent would not adequately clean certain types of electronic equipment.

Sections 218/219.182(g) also exempt from section 218/219.182(c) any cold cleaning taking place in a Detrex cold batch degreaser Model # 2D-CC-SPL Size 24–4–10, or substantial equivalent, including automated loading of parts, totally enclosed operation (excluding loading or unloading) and permitted by IEPA. The State submittal documentation indicates that Detrex degreasers, and other substantially similar, large-scale degreasing operations, are highly controlled and specialized operations which provide emissions reductions that are equivalent or more stringent than the vapor pressure limits required under sections 218/219.182(c).

Compliance Testing

Sections 218/219.186 indicate that the test methods under sections 218/219.110 shall be used to determine vapor pressures to demonstrate compliance with Illinois' cold cleaning degreasing regulations under sections 218/219.182. These test method provisions were incorporated into the SIP on September 9, 1994 (59 FR 46562).

Recordkeeping

Sections 218/219.182(d) and (e) require subject solvent suppliers and users to maintain documents which indicate the solvent's vapor pressure at the prescribed temperature. The marketers of cold cleaning solvents to users must keep records indicating the name and address of the solvent purchaser, the date of purchase, the type of solvent purchased, the solvent unit quantity, the total volume purchased, and the vapor pressure of the solvent purchased measured in mmHg at 20 degrees C (68 degrees F). Solvent users must maintain records for each solvent purchase indicating the name and address of the solvent supplier, the date of the solvent purchase, the type of solvent purchased, and the vapor pressure of solvent measured in mmHg at 20 degrees C (68 degrees F). These records must be kept for three years.

III. EPA Rulemaking Action

The EPA is approving, through final rulemaking action, Illinois' tightened cold cleaning degreasing rules for the Chicago and Metro-East St. Louis ozone nonattainment areas.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds, Incorporation by reference, Recordkeeping and reporting.

Dated: November 7, 1997.

David A. Ullrich,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(139) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(139) On September 8, 1997, the State of Illinois submitted tightened volatile organic material rules for cold cleaning degreasing operations in the Chicago and the Metro-East ozone nonattainment areas.

(i) *Incorporation by reference.* Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.1885, amended at 21 Ill. 7695, effective June 9, 1997.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart E: Solvent Cleaning, Section 218.182, amended at 21 Ill. 7708, effective June 9, 1997.

(C) Part 219: Organic Material Emissions Standards and Limitations for the Metro-East Area, Subpart E: Solvent Cleaning, Section 219.182, amended at 21 Ill. 7721, effective June 9, 1997.

[FR Doc. 97–31139 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5927–4]

Standards of Performance for New Stationary Sources; Standards of Performance for Nonmetallic Mineral Processing Plants; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of policy; clarification.

SUMMARY: This action clarifies the applicability of the New Source Performance Standards for Nonmetallic Mineral Processing Plants (40 CFR part 60, subpart OOO). This action is necessary because of incorrect guidance and preamble language regarding the regulation's applicability to affected facilities in the nonmetallic mineral processing industry. The April 1991 Regulatory and Inspection Manual for Nonmetallic Mineral Processing Plants included the following incorrect statement: "Subpart OOO affected facilities begin with the first crushing or grinding operation at the plant." The same incorrect statement was made in a response to a comment in the preamble to the June 9, 1997, **Federal Register** document for the final amendments to subpart OOO.

Section 60.670(a) of subpart OOO lists the affected facilities in fixed or portable nonmetallic mineral processing plants. This list includes each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. The clear intent of the regulation is that *all* facilities listed in section 60.670(a) are subject to subpart OOO. While subpart OOO affected operations typically have crushers or grinding mills located at or near the beginning of the nonmetallic mineral processing line, this is not always the case (e.g., some plants may convey, screen or otherwise process materials without first utilizing a crusher located in the plant). Therefore, with this document, the EPA is clarifying that as long as crushing or grinding occurs anywhere at a non-metallic mineral processing plant, *any affected facility listed in § 60.670(a) is subject to subpart OOO regardless of its location within the plant. EPA expects that plants that have not considered facilities prior to the first crushing or grinding operation as affected facilities, will now ensure that those affected facilities will meet all of the applicable regulatory requirements.*

FOR FURTHER INFORMATION CONTACT: Mr. Scott Throwe at (202) 564–7013, Manufacturing, Energy, and Transportation Division (2223A), U.S. EPA, 401 M Street, Washington, D.C. 20460.

Dated: November 20, 1997.

Scott A. Throwe,

Environmental Protection Specialist.

[FR Doc. 97–30950 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300576; FRL–5754–9]

RIN 2070–AB78

Tefluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of tefluthrin and its metabolite in or on corn, grain, field and pop; corn, forage and fodder, field, pop and sweet; and corn, fresh (including sweet K and corn with husk removed (CWHR)) at 0.06 parts per million (ppm). It also removes time limitations for tolerances for residues of tefluthrin on the same commodities that expire on November 15, 1997. Zeneca Ag Products requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300576], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300576], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300576]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5400, e-mail: edwards.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On February 1, 1989 (54 FR 5080), EPA established time limited tolerances under Section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d) and 348 for residues of tefluthrin on corn, grain, field, and pop; corn, forage and fodder, field and pop. As additional crop tolerances were established, they were also made time-limited. These tolerances expire on November 15, 1997. Zeneca Ag Products, on September 15, 1997, requested that the time limitation for tolerances established for residues of the insecticide tefluthrin in the corn commodities mentioned above be removed based on environmental effects data that they had submitted as a condition of the registration. Zeneca Ag Products also submitted a summary of its petition as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

In the **Federal Register** of September 25, 1997 (62 FR 50337) (FRL–5748–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petitions (PP 7F3521 and 4F4406) for tolerances by Zeneca Ag Products, P.O. Box 15458, Wilmington, DE, 19850–5458. This notice included a summary of the petition prepared by Zeneca Ag Products, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.440 be amended by removing the time-limitation for tolerances for combined residues of the insecticide and pyrethroid tefluthrin and its metabolite (Z)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid, in or on corn, grain, field and pop; corn, forage and fodder, field, pop and sweet; and corn, fresh (including sweet K and corn with husk removed (CWHR)) at 0.06 part per million (ppm).

The basis for the time-limited tolerances that expire November 15, 1997, was given in the **Federal Register** of October 20, 1993 (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by

pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of tefluthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for combined residues of tefluthrin and its metabolite on corn, grain, field and pop; corn, forage and fodder, field, pop and sweet; and corn, fresh (including sweet K and corn with husk removed (CWHR)) at 0.06 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tefluthrin are discussed below.

1. Acute toxicity studies with the technical grade of the active ingredient tefluthrin: oral LD_{50} in the rat is 21.8 milligrams/kilogram (mg/kg) for males and 34.6 mg/kg for females - Toxicity Category I; dermal LD_{50} in the rat is 316 mg/kg in males and 177 mg/kg in females - Toxicity Category I; acute inhalation LC_{50} in the rat is 0.037 mg/l and 0.049 mg/l in male and female rats, respectively - Toxicity Category I; the primary eye irritation study in the rabbit was an invalid study; primary dermal irritation study in the rabbit showed slight irritation - Toxicity Category IV; dermal sensitization study in the guinea pig showed no skin sensitization; and the acute delayed neurotoxicity study did not show acute delayed neurotoxicity.

2. In an oral toxicity study, rats were dosed at 0, 25, 100, or 400 ppm (1.25, 5, or 20 milligrans/kilogram/day) (mg/kg/day) for 21 days. The LOEL for females for this 21-day oral toxicity study is 400 ppm (equivalent to approximately 20 mg/kg/day) based on decreased body weight gain, decreased platelet counts, and increased WBC and lymphocytes in the high-dose females. The NOEL for females is 100 ppm (equivalent to approximately 5 mg/kg/day). The NOEL in males was not observed.

3. In a subchronic oral toxicity study, rats were dosed at 0, 50, 150, or 350 ppm (2.5, 7.5, or 17.5 mg/kg/day) for 90 days. The LOEL for this 90-day feeding study is 150 ppm (equivalent to approximately 7.5 mg/kg/day) based on changes in hemoglobin, cholesterol, and liver weight in the mid-dose animals. The NOEL is 50 ppm (equivalent to approximately 2.5 mg/kg/day).

4. In a subchronic oral toxicity study, dogs were dosed at 0, 0.1, 0.5, or 1.5 mg/kg/day for 90 days. The LOEL for this 90-day oral toxicity study is 1.5 mg/kg/day based on thyroid changes, and increased levels of plasma triglycerides and aspartate transaminase observed at the high-dose. The NOEL is 0.5 mg/kg/day.

5. In an oral toxicity study, mice were dosed at 0, 25, 75, 200, or 400 ppm (0, 3.75, 11.3, 30.0, or 60.0 mg/kg/day) for 28 days. The LOEL is 400 ppm (equivalent to approximately 60 mg/kg/day) based on decreased body weight gains in both sexes and final body weights in females. The NOEL is 200 ppm (equivalent to approximately 30 mg/kg/day).

6. In a dermal toxicity study, rats were dosed at 0, 0.1, 1.0, or 50 mg/kg. The LOEL for skin effects for this 21-day dermal toxicity study is 50.0 mg/kg based on acanthosis, necrosis epidermis, and inflammatory cell infiltrate dermis observed in the high-dose animals. The NOEL for skin effects is 1.0 mg/kg). The NOEL for neurological effects (the observed postural effects) may be between 0.025 and 0.1 mg/kg.

7. In a chronic/oncogenicity study, mice were dosed at 0, 25, 100, or 400 ppm (actual dose levels were equivalent to 3.4, 13.5, or 54.4 mg/kg/day) for 104 weeks. The chronic LOEL is 13.5 mg/kg based on hemangiomatous changes of the uterus and liver necrosis observed in the mid- and high-dose females. The chronic NOEL is 3.4 mg/kg. Under the conditions of this study, there was no evidence of carcinogenic potential.

8. In a chronic toxicity study, dogs were dosed at dose levels of 0, 0.1, 0.5, and 2 mg/kg/day for 12 months. The LOEL for this chronic study is 2.0 mg/kg/day based on the increased incidence of ataxia in both sexes at the high-dose. The NOEL is 0.5 mg/kg/day.

9. In a chronic/oncogenicity study, rats were dosed for 24 months at 0, 25, 100, or 400 ppm (actual dose levels were equivalent to 1.1, 4.6, or 18.2 mg/kg/day). The chronic LOEL is 4.6 mg/kg/day based on decreased body weights, and neurotoxicity and clinical chemistry changes in the mid- and high-dose animals. The chronic NOEL is 1.1 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

10. In a developmental toxicity study, rats were dosed at 0, 1, 3, or 5 mg/kg/day from days 7 through 16 of gestation. The maternal LOEL is 3 mg/kg/day, based on treatment-related decrease body weight gains during dosing. The maternal NOEL is 1 mg/kg/day. Developmental toxicity was demonstrated at 5 mg/kg/day as an increase in the fetal incidence of bilaterally unossified calcanea (92.9% vs. 87.5% in controls, $p<0.05$; litter incidence was not shown) and a slight increase in the pes score (3.05 vs. 2.96 in controls) indicating slight inhibition of ossification at these sites. There were no treatment-related effects on the number, growth, and survival of the young in utero. In addition, the inter-group differences in the mean numbers of corpora lutea, implantations, pre- and post- implantation deaths, live fetuses, proportion of male fetuses, and fetal weights were not remarkable. The developmental LOEL is 5 mg/kg/day, based on inhibited ossification. The developmental NOEL is 3 mg/kg/day.

11. In a developmental toxicity study, rabbits were dosed at 0, 3, 6, or 12 mg/kg/day from days 7 through 19 of gestation. The maternal LOEL is 3 mg/kg/day, based on treatment-related clinical signs of toxicity (tremors). The maternal NOEL is <3 mg/kg/day. There was no developmental toxicity demonstrated at any dose level. There were no treatment-related effects on in utero survival and growth or on litter size and sex ratio of the fetuses. The skeletal variant data showed significant ($p<0.01$ or 0.05) increases in incidence of extra thoracic ribs and 27 pre-sacral vertebrae among fetuses in the dosed groups; however, when the litter was used as the unit for comparison, the incidences of these respective variants were comparable between all groups. The incidences of these variants were not biologically significant. The NOEL for developmental toxicity is 12 mg/kg/day. The developmental LOEL was not observed.

12. In a multi-generation reproduction study, rats were dosed at 0, 15, 50, or 250 ppm (0, 0.75, 2.5, or 12.5 mg/kg/day). The LOEL for parental toxicity is 12.5 mg/kg/day, based on lowered body weight gains, and the NOEL is 2.5 mg/kg/day. The LOEL for neurotoxic effects is 2.5 mg/kg/day, based on abnormal, splayed, or high-stepping gait. The NOEL for neurotoxic effects is 0.75 mg/kg/day. Reproductive toxicity was demonstrated at the high-dose as lowered pup body weight gain throughout the study in all generations and in both sexes. Additionally, total litter weight was decreased on day 29 in all of the high-dose groups. The LOEL for reproductive toxicity is 12.5 mg/kg/day, based on lowered pup body weight gains. The reproductive NOEL is 2.5 mg/kg/day.

13. Mutagenicity. There is no mutagenicity concern. The submitted studies satisfy the pre-1991 mutagenicity test battery and the new mutagenicity testing requirements. There are seven acceptable studies: one dominant lethal study in mice; reverse mutation assay (*Salmonella typhimurium*); one forward mutation assay in mammalian cells; one mouse lymphoma assay, one *in vivo* chromosomal aberration assay, *in vitro* chromosome aberration study; one UDS assay in primary rat hepatocytes. All these studies were negative.

14. Metabolism. In both rats and dogs, when given either 1 or 10 mg/kg, most of the radioactivity was found in the feces unchanged and most urinary metabolites were conjugated. Approximately 30% of the administered dose was absorbed and excreted in the urine in both species. Single doses in both rats and dogs were excreted within 48 hours, 50–65% in feces and 20–30% in the urine. In rats, a biliary fistula experiment suggested that the radioactivity measured in the feces may be partially due to biliary excretion. Studies also suggest that oxidation precedes the ester body cleavage. In rats, the halflife in the liver is 4.8 days, in the fat is 13.3 days and in the blood is 10.6 days. In a study with rat fat, half of the radioactive residues could be attributed to the parent and the remaining residues consisted of a mixture of fatty acid esters of hydroxylated parent metabolites.

15. Neurotoxicity. No acceptable mammalian neurotoxicity studies are available. In a supplementary study, 10 animals/sex/group were given either vehicle, 2,5-hexanedione or 5 mg/kg or 15 mg/kg tefluthrin. The positive control, 2,5-hexanedione, elicited the appropriate neurotoxicological response. No consistent effects on motor or sensory nerve electrophysiology or function or clinical signs of neurotoxicity were evident in animals treated with either 5 or 15 mg/kg tefluthrin. A slight but significant increase in pull-up time was observed on day 12 in males which was accompanied by a significant decrease in both SNCV and the amplitude of the SNAP. Both quickly returned to values similar to control values, and did not decrease again.

Neurotoxicity studies will be required under a special Data Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change the risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, EPA recommends use of a NOEL of 0.5 mg/kg/day based on increased incidence of tremors and ataxia in both sexes of dogs at 2.0 mg/kg/day (LOEL) on day 1 of the study from the 1 year oral chronic toxicity study in dogs.

2. *Short - and intermediate - term toxicity.* For short- and intermediate term MOE's, EPA recommends use of a NOEL of 0.5 mg/kg/day based on increased incidence of tremors and ataxia in both sexes of dogs at 2.0 mg/kg/day (LOEL) from the one year oral toxicity study in dogs and use of a dermal absorption rate of 25%. A dermal absorption rate of 25% was recommended based on the weight-of-the-evidence available for structurally related pyrethroids.

3. *Chronic toxicity.* EPA has established the RfD for tefluthrin at 0.005 milligrams/kilogram/day (mg/kg/day). This RfD is based on increased incidence of tremors and ataxia in both sexes of dogs in a chronic toxicity study and an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* No evidence of carcinogenicity was demonstrated in studies conducted with mice or rats.

C. Exposures and Risks

1. *From food and feed uses.*Tolerances have been established (40 CFR 180.440) for the combined residues of tefluthrin and its metabolite, in or on corn. Risk assessments were conducted by EPA to assess dietary exposures and risks from tefluthrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Percent of crop treated data and tolerance values were used in conjunction with Monte Carlo. The acute dietary MOE at the 99.9th percentile for the most highly exposed population subgroup (non-nursing infants <1 year old) is 691. The MOE at the 99.9th percentile for the general U.S. population is 1,469. EPA concludes that there is a reasonable certainty of no harm for MOEs of 100 or greater. Therefore, the acute dietary risk assessment for tefluthrin indicates a reasonable certainty of no harm.

ii. *Chronic exposure and risk.* The chronic dietary exposure assessment used tolerance values and percent crop treated information. The RfD used for the chronic dietary analysis is 0.005 mg/kg/day. The risk assessment resulted in use of less than one percent (0.1%) of the RfD for the U.S. population. The percent of the RfD used for the most highly exposed population subgroup (children ages one to six) is 0.3%.

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating tolerance levels and percent of crop treated refinements. The chronic dietary risk assessments used tolerance levels and percent crop treated information.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided five years after the tolerance is established, modified or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a timeframe it deems appropriate. Section 408(b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for tefluthrin were derived from federal and market survey data. EPA considers these data reliable. A range of estimates

are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimate for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under the FIFRA.

2. *From drinking water.* Tefluthrin is immobile in soil and, therefore, will not leach into ground water. Additionally, due to the insolubility and lipophilic nature of tefluthrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical synthetic pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM). Based on this screening assessment, potential concentrations of a pyrethroid in ground water at depths of 1 to 2 meters are essentially zero (<0.001 ppb). Surface water concentrations for pyrethroids were estimated using PRZM1 and Exposure Analysis Modeling Systems (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulation pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, EPA concludes that together these data indicate that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* The acute drinking water exposure and risk estimates are 0.000040 mg/kg/day (MOE of 12,362) and 0.000078 mg/kg/day (MOE of 6,439) for the overall U.S. population and non-nursing infants <1 year old, respectively.

ii. *Chronic exposure and risk.* The chronic drinking water exposure and risk estimates are 0.000000 mg/kg/day (0.0% of RfD utilized) and 0.000002 mg/kg/day (0.0% of RfD utilized) for the overall U.S. population and non-nursing infants <1 year old, respectively.

3. *From non-occupational non-dietary exposure.* Tefluthrin is currently not registered for use on residential non-food sites; therefore, no non-occupational non-dietary exposure is expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tefluthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tefluthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tefluthrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The acute aggregate MOE calculated at the 99.9th percentile for the overall U.S. population is 1,316. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger. Therefore, the Agency concludes that there is reasonable certainty that no harm will result from acute aggregate exposure to tefluthrin residues in food and drinking water.

2. *Chronic risk.* Using the Anticipated Residue Concentration (ARC) exposure assumptions described above, EPA has concluded that aggregate exposure to tefluthrin from food and water will utilize 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children age 1-6 years (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tefluthrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Based on tefluthrin not being registered for residential non-food sites, EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern (MOE less than 100), and that there is reasonable certainty that no harm will result from aggregate exposure to tefluthrin residues.

E. Aggregate Cancer Risk for U.S. Population

No evidence of carcinogenicity was demonstrated in studies conducted mice or rats.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tefluthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, the developmental NOEL was greater than the maternal NOEL, indicating a lack of sensitivity to in utero exposure. In rats, the maternal NOEL (1 mg/kg/day), based on body weight decreases at the LOEL of 3 mg/kg/day, which was based on ossification reductions in the extremities at 5 mg/kg/day. In the rabbit study, maternal pyrethroid toxicity was observed at all dose levels (maternal NOEL <3 mg/kg/day), but no developmental toxicity was observed (developmental NOEL >12 mg/kg/day).

iii. *Reproductive toxicity study.* In the two-generation reproduction study in rats, offspring toxicity (reduced mean pup weight gain) was observed only at the highest dose level tested (250 ppm; 12.5 mg/kg/day), while evidence of neurotoxicity in parental animals was observed at the systemic LOEL of 50 ppm (2.5 mg/kg/day). The offspring toxicity NOEL was 50 ppm (2.5 mg/kg/day) and the parental systemic NOEL was 15 ppm (0.75 mg/kg/day).

iv. *Pre- and post-natal sensitivity.* The data demonstrated no indication of increased sensitivity of rats or to in utero and/or postnatal exposure with tefluthrin.

v. *Conclusion.* The data base related to pre- and post-natal sensitivity is complete. Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* The acute aggregate MOE calculated at the 99.9th percentile for non-nursing infants <1 year old is 623. EPA concluded that aggregate dietary acute risk (food plus water) would not exceed levels of concern. Therefore, the Agency has no acute aggregate concern due to exposure to tefluthrin through food and drinking water.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to tefluthrin from food and water will utilize 0.3% of the RfD for children age 1-6 years. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- or intermediate-term risk.* Based on tefluthrin not being registered for residential non-food sites, EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is reasonable certainty that no harm will result.

EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tefluthrin residues.

5. *Special Docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

Plant metabolism studies indicate that tefluthrin *per se* is not translocated to plants but is degraded in soil to two principal metabolites that are capable of being taken up by plants. The metabolites are the products of the cleavage of the ester to the free acid (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylic acid (Metabolite Ia) and to 2,3,5,6-tetrafluoro-4-hydroxymethylbenzoic acid (Metabolite VI). The Agency concluded that Metabolite VI need not be regulated.

In animals, dosing with radioactive tefluthrin at level equivalent to 11 ppm in feed resulted in identifiable residues of tefluthrin and its metabolites in tissues but at levels below those capable of detection by proposed enforcement methods.

B. Analytical Enforcement Methodology

Validated enforcement analytical methods are available for tefluthrin parent (Method PPRAM No. 85/1, The Determination of Residues of Tefluthrin in Crops and Soil-A Gas-Liquid Chromatographic Method) and for Metabolite Ia (Method GRAM-028 A Gas Chromatography Method for the

Determination of Residues of the Tefluthrin Metabolite PP890 in Crops of High and Low Moisture Content). The limits of quantitation of these methods are 0.01 ppm for tefluthrin and 0.05 ppm for Metabolite Ia.

C. Magnitude of Residues

1. *Plant commodities— Field trial studies.* No residues were detected in field trials conducted at maximum label rates and minimum PHIs. Tolerances were established at the limit of quantitation of the analytical method (0.06 ppm). The 0.06 ppm tolerances were used to estimate chronic and acute dietary exposure to potential residues of tefluthrin.

2. *Animal commodities.* Studies conducted indicate that no residues are detected in animal tissues, milk, and eggs and therefore secondary residues would not be a concern. For that reason, no tolerances have been established on meat, milk, and eggs. Secondary residues were therefore not considered in these analyses.

D. International Residue Limits

There are no Codex Maximum Residue Levels established for tefluthrin. No Canadian MRLs have been established for residues of tefluthrin on corn commodities. Mexico has established a tolerance for residues of tefluthrin on corn grain (0.06 ppm) which is in harmony with the U.S. tolerance.

IV. Conclusion

Therefore, the tolerance is established for combined residues of tefluthrin and its metabolite in corn, grain, field and pop; corn, forage and fodder, field, pop and sweet; and corn, fresh (including sweet K and corn with husk removed (CWHR)) at 0.06 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300576] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.440 is revised to read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide tefluthrin (2,3,5,6 tetrafluroro-4-methylphenyl)methyl-(1 alpha, 3 alpha)-(*Z*)-(±)-3(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-diemthylcyclopropanecarboxylate) and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluroro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid in or on the following commodities:

Commodity	Parts per million
Corn, field, fodder and forage, pop and sweet	0.06
Corn, fresh (including sweet K and corn with husk removed (CWHR)	0.06
Corn, field, grain and pop	0.06

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–30946 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300579; FRL–5754–7]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide bifenthrin ((2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate), in or on the raw agricultural commodities (RAC) cottonseed at 0.5 parts per million (ppm); corn, grain (field, seed, and pop) at 0.05 ppm; corn, forage at 2.0 ppm; corn, fodder at 5.0 ppm; hops, dried at 10.0 ppm; fat of cattle, goat, hogs, horses, and sheep at 1.0 ppm; meat of cattle, goat, hogs, horses, and sheep at 0.5 ppm; meat and meat by-products (mbyp) of cattle, goat, hogs, horses, and sheep at 0.10 ppm, eggs at 0.05 ppm; milk, fat (reflecting 0.1 ppm in whole milk) at 1.0 ppm; poultry, fat, meat, and mbyp at 0.05 ppm. It also removes time limitations for tolerances for residues of bifenthrin on the same commodities that expire on November 15, 1997. These tolerances were requested under pesticide petitions (PP) 6F3453, 7F3546, and OE3921. FMC Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300579], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300579], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300579]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Adam Heyward, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5416, e-mail: heyward.adam@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 15, 1988, EPA established a time-limited tolerance under section 408 of the FFDCA, 21 U.S.C. 346 a(d) and 348 for residues of bifenthrin on cottonseed (53 FR 30678). As additional crops were approved tolerances were also made time-limited. These tolerances will expire on November 15, 1997. FMC Corporation, on September 15, 1997, requested that the time limitations for

tolerances for residues of the insecticide bifenthrin in or on the commodities mentioned above be removed based on environmental effects data that they had submitted as a condition of registration. FMC Corporation also submitted a summary of its petition as required under the FFDCA as amended by the FQPA of 1996 (Pub. L. 104–170).

In the **Federal Register** of Friday, September 25, 1997 (62 FR 50337) (FRL–5748–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 6F3453, 7F3546, and 0E3921) for tolerances by the FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 and from the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. This notice included a summary of the petitions prepared by the FMC Corporation and the Interregional Research Project No. 4 (IR–4), the registrants. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.442 be amended by removing the time limitation for tolerances of the insecticide bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities cottonseed at 0.5 ppm; corn, grain (field, seed, and pop) at 0.05 ppm; corn, forage at 2.0 ppm; corn, fodder at 5.0 ppm; hops, dried at 10.0 ppm; fat of cattle, goat, hogs, horses, and sheep at 1.0 ppm; meat of cattle, goat, hogs, horses, and sheep at 0.5 ppm; meat and mbyp of cattle, goat, hogs, horses, and sheep at 0.10 ppm, eggs at 0.05 ppm; milk, fat (reflecting 0.1 ppm in whole milk) at 1.0 ppm, poultry, fat at 0.05 ppm, poultry, meat at 0.05 ppm, and poultry mbyp at 0.05 ppm. Tolerances for corn (forage and fodder) and livestock commodities were inadvertently not listed in the proposal paragraph of the notice of filing but were included in the discussion under Aggregate Exposure of the notice. These tolerances were considered by EPA for risk assessment purposes.

The basis for time-limited tolerances that expire November 15, 1997, was given in the October 20, 1993 **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rational for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . .."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate-term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure and high-end residential exposure are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g., frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e. the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. Toxicity results at lower levels when the dosing duration is increased.

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), on cottonseed at 0.5 ppm; corn, grain (field, seed, and pop) at 0.05 ppm; corn, forage at 2.0 ppm; corn, fodder at 5.0 ppm; hops, dried at 10.0 ppm; fat of cattle, goat, hogs, horses, and sheep at 1.0 ppm; meat of cattle, goat, hogs, horses, and sheep at 0.5 ppm; meat and mbyp of cattle, goat, hogs, horses, and sheep at 0.10 ppm, eggs at 0.05 ppm; milk, fat (reflecting 0.1 ppm in whole milk), poultry, fat at 0.05 ppm, poultry, meat at 0.05 ppm, and poultry mbyp at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by bifenthrin are discussed below.

1. Acute toxicity. Acute toxicity studies with the technical grade of the active ingredient bifenthrin: Oral LD_{50} in the rats of 70.1 milligram/kilogram (mg/kg) (male) and 53.8 mg/kg (female): Toxic category II, dermal LD_{50} in the rats of > 2000 mg/kg (male and female): Toxic category II, primary dermal and eye showed no irritation: Toxic category IV. Bifenthrin is not a dermal sensitizer.

2. Mutagenicity. The following genotoxicity tests were all negative: A *Salmonella typhimurium* reverse gene mutation assay, a mouse lymphoma forward gene mutation assay (HGPRT locus), a mouse lymphoma $TO^{\pm}$ assay, a CHO/HGPRT assay, an *in vitro* chromosomal aberration assay in CHO cells, a rat bone marrow cytogenetic assay, and 2 unscheduled DNA synthesis assays in primary rat hepatocytes. Bifenthrin tests positively both with and without metabolic activation in the mouse lymphoma forward gene mutation assay ($TO^{\pm}$). There is also presumptive evidence that bifenthrin is mutagenic with metabolic activation in the CHO gene mutation assay. However, this study appears to be unacceptable at this time. All the other studies tested negatively. The submitted studies satisfies both the pre 1991 and new mutagenicity test batteries. No further testing is required at this time.

3. A 13-week feeding study in dogs (by capsule) of doses at nominal dose levels of 0, 2.5, 5, 10, or 20 milligram/kilogram/day (mg/kg/day) (equivalent to 2.21, 4.42, 8.84, and 17.7 mg/kg/day, based on percent active ingredient (a.i.)) for 13 weeks. There was no mortality during the study. There were no treatment-related changes noted in food consumption, hematology, clinical chemistry, organ weight, gross or microscopic parameters. In addition,

there were no treatment-related ophthalmological changes. Tremors were noted in 3 dogs/sex at 4.42 mg/kg/day and in 4 dogs/sex at 8.84 and 17.7 mg/kg/day. Ataxia was noted in 4 dogs/sex at 8.84 and 17.7 mg/kg/day and in one female at 4.42 mg/kg/day. Languidness occurred primarily at 17.7 mg/kg/day in both sexes, but also occasionally at 8.84 mg/kg/day. All of these symptoms occurred more frequently during the last 3 weeks of the study. Other dose-related clinical signs included blinking, mydriasis, nystagmus, lacrimation, and polypnea. One high-dose female appeared thin and/or dehydrated during the final weeks of the study. A non-statistically significant, but possibly treatment-related reduction in body weight (bwt) gain was noted in females at 17.7 mg/kg/day (0.6 kilogram (kg)) relative to the controls (1.3 kg). None of the females at 8.84 or 17.7 mg/kg/day showed cyclic activity or signs of estrus, but cyclic activity was observed in 2, 2, and 1 female at 0, 2.21, and 4.42 mg/kg/day, respectively and ⅘ showed signs of estrus. The lowest observed effect level (LOEL) for this 13-week study is 4.42 mg/kg/day based on the increased incidence of tremors in both sexes. The NOEL is 2.21 mg/kg/day.

4. A 90-day feeding study in rats fed at doses of 0, 12, 50, 100, and 200 ppm (0, 0.6, 2.5, 5, or 10 mg/kg/day) with a NOEL of 2.5 mg/kg/day and LOEL of 5 mg/kg/day based on the increased incidence of tremors in both sexes.

5. A 21-day study in rabbits exposed dermally to doses of 0, 25, 50, 100, or 500 mg/kg/day for 21 days with a systemic NOEL of 100 mg/kg/day. Systemic LOEL is 500 mg/kg/day based on the loss of muscle coordination in both sexes.

6. A 1-year chronic/carcinogenicity study in dogs was administered in the diet at dose levels of 0, 0.75, 1.5, 3, or 5 mg/kg/day. No mortality occurred during the study and there were no treatment-related effects on bwt, food consumption, organ weights, and grossor microscopic pathology. In addition, there were no treatment-related ophthalmological changes. Tremors were noted in all males and females at 5 mg/kg/day during weeks 15–29 and in ¼ males and ¾ females at 3 mg/kg/day during weeks 16–23. A significant increase in platelets was noted at 52 weeks in 5 mg/kg/day males. Serum sodium levels were significantly increased in males at 3 and 5 mg/kg/day and serum chloride was increased in males at 5mg/kg/day. The LOEL for this 52-week study is 3 mg/kg/day based on the increased incidence of tremors in both sexes. The NOEL is 1.5 mg/kg/day.

7. A chronic/carcinogenicity study in mice fed at doses of 0, 50, 200, 500, or 600 ppm (0, 2.5, 10, 25, or 30 mg/kg/day) in the diet for 87 weeks (males) or 92 weeks (females). Chronic LOEL is 10 mg/kg/day based on the incidence of tremors in both sexes. Chronic NOEL is 2.5 mg/kg/day. Carcinogenic potential was evidenced by a statistically significant increased trend for hemangiopericytomas in the urinary bladders of males, a significant dose-related trend for combined hepatocellular adenomas and carcinomas in males, and a significanfly higher incidence of combined lung adenomas and carcinomas in females.

8. Chronic/carcinogenicity study in rats was administered for in the diet at doses of 0, 12, 50, 100, or 200 ppm (0, 0.6, 2.5, 5, or 10 mg/kg/day). Chronic LOEL is 5 mg/kg/day based on the increased incidence of tremors in both sexes and possible increases in organ-to-body weight ratios in males. Chronic NOEL is 2.5 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

9. In a pilot developmental study in rats bifenthrin was administered in the diet at dose levels of 0, 0.5, 1.0, 2.0, or 2.5 mg/kg/day during days 6–15 of gestation. Three of 10 rats at 2.5 mg/kg/day died on days 14–15. Tremors were noted in all 10 rats at 2.5 mg/kg/day and in 9/10 at 2.0 mg/kg/day. Mean bwt gains were depressed at 2.5 mg/kg/day throughout the study, and food consumption was 20 percent lower at this dose level during days 6–13. There were no differences in mean bwt gains or food consumption in the lower dose groups with respect to the controls. There were no treatment-related differences from controls in the number of implantations or litter size. The mean number of resorptions was similar in the lower dose groups; at 2.5 mg/kg/day it was somewhat higher, but this was attributable to an excessive number of resorptions in a single rat. The maternal LOEL is 2.0 mg/kg/day based on sporadic tremors (gestation days 7–18) and 30 percent mortality at 2.5 mg/kg/day. The maternal NOEL is 1.0 mg/kg/day. The developmental LOEL and NOEL were not determined; fetuses were not examined.

10. A developmental study in rats given gavage doses of 0, 0.5, 1.0, or 2.0 mg/kg/day was administered. Developmental toxicity was noted at 2.0 mg/kg/day and was characterized as an increased fetal and litter incidence of hydroureter. Although not statistically significant, the incidence of hydroureter was double that of the vehicle control and the lower dose groups. Developmental LOEL is 2.0 mg/kg/day based on the increased fetal and litter incidence of hydroureter. Developmental NOEL is 1.0 mg/kg/day. Maternal toxicity NOEL was 1.0 mg/kg/day based on tremors at LOEL of 2.0 mg/kg/day.

11. A developmental study in rabbits given gavage doses of 0, 2.67, 4.0, or 8.0 mg/kg/day or with 3.0 gram/kilogram/day (g/kg/day) resulted in no developmental toxicity observed under the conditions of the study. The maternal NOEL is 2.67 mg/kg/day, based on head and forelimb twitching at LOEL of 4.0 mg/kg/day. The developmental NOEL is ≥ 8.0 mg/kg/day, the highest dose tested.

12. A 2-generation reproduction study in rats fed diets containing doses of 0, 30, 60, or 100 ppm (0, 1.5, 3 or 5 mg/kg/day). Systemic LOEL is 5 mg/kg/day based on the incidence of tremors and marginally lower bwts in P and F_1 generation females during gestation and lactation. Systemic NOEL is 3 mg/kg/day. A reproductive LOEL was not observed. The reproductive NOEL is 5 mg/kg/day.

13. Animal metabolism. Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, bifenthrin was rapidly metabolized and excreted. Unchanged bifenthrin is the major residue component of toxicological concern in meat and milk.

14. In a dermal absorption study, the following doses of ^{14}C bifenthrin were administered dermally in aqueous suspension: 49.2, 514, or 5253 µg/rat. Bifenthrin is rapidly absorbed into and through the skin, with a direct correlation between the doses applied and the amount absorbed. Most of the label was recovered within the skin at the application site. Average amounts of activity absorbed at the skin site for each of the doses at the 0.5 hour sacrifice were 54.47 percent, 56.42 percent, and 52.54 percent; and at the 24-hour sacrifice were 71.34 percent, 45.33 percent, and 53.63 percent.

15. No neurotoxicity studies are available. These studies will be required under a special data call-in letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient data to support these tolerances and these additional studies will not significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, EPA has used the maternal NOEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats. The maternal lowest effect level (LEL) of this study is 2.0 mg/kg/day, which was based on tremors from day 7–17 of dosing. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Short- and intermediate-term toxicity.* The maternal NOEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats is also used for short- and intermediate-term MOE calculations (as well as acute, discussed in Unit II.B.1. of this preamble). The maternal LEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing, which was observed at this dose level in the pilot study. In comparison to the other studies, tremors were observed at the earliest time period with the lowest dose level in this study. A dermal absorption rate of 25 percent was recommended based on the weight of the evidence for structurally related pyrethroids. Although a 21-day dermal study in the rabbit is available it was not used because the rat is considered to be more sensitive than the rabbit based on comparison of the maternal NOELs and LELs in the developmental studies.

For the inhalation endpoint, no appropriate studies were available. EPA determined that the risk assessment should be inclusive of oral and inhalation exposure components assuming 100 percent absorption via the inhalation route. An aggregate oral and inhalation risk assessment is appropriate due to the similarity in the toxicity endpoint (neurotoxicity) seen in rats via these routes. The inhalation study used for comparison purposes was an acute toxicity study in rats on the 25.1 percent formulation where tremors, convulsions, and loss of hindlimb motor control was observed among other clinical signs of toxicity.

3. *Chronic toxicity.* EPA has established the RfD for bifenthrin at 0.015 mg/kg/day. This RfD is based on a 1-year oral feeding study in dogs with a NOEL of 1.5 mg/kg/day, based on intermittent tremors observed at the LOEL of 3.0 mg/kg/day; an uncertainty factor of 100 is used.

For chronic dermal occupational and residential exposure, EPA recommended the NOEL of 1.5 mg/kg/day from the chronic oral study in the dog with a dermal absorption rate of 25 percent. The LEL for the dog study was 3.0 mg/kg/day based on intermittent tremors. The recommended MOE is 100.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992) the Carcinogenicity Peer Review Committee (CPRC) has classified bifenthrin as a Group C chemical, possible human carcinogen, based on urinary bladder tumors in mice, but did not recommend assignment of a cancer potency factor Q^* (Q star) for a linear quantitative cancer risk assessment, instead, the CPRC recommended the RfD approach. Based on CPRC's recommendation that the RfD approach be used to assess dietary cancer risk, a quantitative linear dietary cancer risk assessment was not performed. Human health risk concerns due to long term consumption of bifenthrin residues are adequately addressed by the dietary risk evaluation chronic exposure analysis using the RfD.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of bifenthrin on corn (grain, forage, and fodder), cottonseed, hops, and livestock commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from bifenthrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute risk assessment used Monte Carlo modeling incorporating anticipated residue and percent crop treated refinements. The acute dietary (food only) MOE calculated at the 99.9th percentile for the most highly exposed population subgroup (children 1–6 years old) is 193. The MOE calculated at the 99.9th percentile for the general U.S. population is 466. EPA concludes that there is a reasonable certainty of no harm for MOE of 100 or greater. Therefore, the acute dietary risk assessment for bifenthrin indicates a reasonable certainty of no harm.

ii. *Chronic exposure and risk.* The chronic dietary exposure assessment used anticipated residues and percent crop treated information. The risk assessment resulted in use of 0.2 percent of the RfD for the U.S. population and 0.3 percent of the most highly exposed population subgroup (children 1–6 years old).

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent crop treated refinements. The chronic dietary risk assessment used percent crop treated information and anticipated residues.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the antipicated residue levels of pesticide chemicals that have been measure in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified or left in effect, and a demonstration must be made to show that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. Section 408 (b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings:

(1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues.

(2) That the exposure estimate does not underestimate the exposure for any significant subpopulation.

(3) Where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for bifenthrin were derived from Federal and market survey data. EPA considers these reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under the FIFRA.

2. *From drinking water.* Laboratory and field data have demonstrated that bifenthrin is immobile in soil and will

not leach into ground water. Other data show that bifenthrin is virtually insoluble in water and extremely lipophilic. As a result, EPA concludes that residues reaching surface waters from field runoff will quickly absorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<< 0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM2 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, EPA concludes that together these data indicate that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* The acute drinking water exposure and risk estimates are 0.000060 mg/kg/day (MOE 16,664) and 0.000115 mg/kg/day (MOE 8,658) for the overall population and non-nursing infants < 1 year old respectively.

ii. *Chronic exposure and risk.* The chronic drinking water exposure and risk estimates are 0.000001 mg/kg/day (0.0 percent RfD utilized) and 0.000002 mg/kg/day (0.0 percent of RfD utilized) for the overall population and non-nursing infants < 1 year old respectively.

3. *From non-dietary exposure.* Bifenthrin is currently registered for use on the following residential non-food sites: General indoor/outdoor pest control, termiticide, ornamental plants and lawns around homes, park, recreation areas and athletic fields, and golf courses turf. Application of this pesticide in and around these sites is mainly limited to commercial applicators. Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with bifenthrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet.

In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e. lawn care) and receptor subpopulation (i.e. adults, children 1–6 years old and infants < 1 year old) are compared to the systemic absorbed dose NOEL for bifenthrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for bifenthrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs.

In the case of potential aggregate health risks, the above-mentioned conservative point estimates of inhalation and incidental ingestion non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1–6 years old and infants < 1 year old. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOEL to provide estimates of aggregate MOEs.

The short and intermediate-term non-dietary and aggregate (non-dietary + chronic dietary (food and water) MOEs for bifenthrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion + dermal) MOEs for post-application exposure for the lawn care product evaluated was estimated to be > 51,000 for adults, 1,900 for children 1–6 years old and 1,800 for infants < 1 year. The aggregate MOE (inhalation + incidental oral + dermal + chronic dietary, summed across all product use categories) was estimated to be 417 for adults, 196 for children 1–6 years old and 200 for infants (< 1 year old).

It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for bifenthrin are associated with substantial margins of safety.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in acumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The acute aggregate MOE calculated at the 99.9th percentile for the U.S. population is 453. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or large. Therefore, the Agency has no acute aggregate concern due to exposure to bifenthrin through food and drinking water.

2. *Chronic risk.* Using the Anticipated Residue Concentrations (ARC) exposure assumptions described in Unit II.C.1.ii. of this preamble, EPA has concluded that aggregate exposure to bifenthrin from food and water will utilize 0.2 percent of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1–6 year old (discussed in Unit II.F. of this preamble). EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, EPA does not expect the aggregate exposure to exceed 100 percent of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to bifenthrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. As indicated above the non-dietary and chronic dietary MOEs was estimated to be 417 for adults.

E. Aggregate Cancer Risk for U.S. Population

As indicated in Unit II.B.4. of this preamble, based on EPA's recommendation that the RfD approach be used, a quantitative dietary cancer risk assessment was not performed. Human health risk concerns due to long term consumption of bifenthrin residues are adequately addressed by the dietary risk evaluation chronic exposure analysis using the RfD.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional 10-fold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOEL of 4 mg/kg/day. In the rat developmental study, the maternal NOEL was 1 mg/kg/day, based on tremors at the LOEL of 2 mg/kg/day. The developmental (pup) NOEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOEL 2 mg/kg/day. There were 5/123 (22 percent) litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero in the control, 1 and 0.5 mg/kg/day groups. According to recent historical data (1992–1994) for this strain of rat, incidence of distended ureter averaged 11 percent with a maximum incidence of 90 percent.

iii. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased bwt at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested).

iv. *Pre- and post-natal sensitivity.*—a. *Pre-natal.* Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion.* The toxicological data base related to pre- and post-natal sensistivity is complete. Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Aggregate acute risk.* The aggregate acute MOE calculated at the 99.9th percentile for children age 1–6 is 191. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. Therefore, the Agency has no acute aggregate concern due to exposure to bifenthrin through food and drinking water.

3. *Aggregate chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 0.3 percent of the RfD for children 1–6 years old. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. As indicated above the non-dietary and chronic dietary MOEs was

estimated to be 196 for children 1–6 year old and 200 for infants (1 year old).

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

G. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of bifenthrin in plants and animals is adequately understood. Studies have been conducted to delineate the metabolism of radio labelled bifenthrin in various crops and animals all showing similar results. The residue of concern is the parent compound only.

B. Nature of the Residue

Nature of the residue studies in corn, ruminants and poultry for bifenthrin have been adequately defined. The EPA Health Effect Division (HED) Metabolism Committee concluded that only the parent compound should appear in the tolerance expression for corn grain, forage, fodder, ruminant, and poultry commodities. No special concern was expressed about the principal metabolite in corn, 4'-hydroxy bifenthrin. The metabolite typically is found in corn forage or fodder at about 1/10 the concentration of parent and is also a rat metabolite of bifenthrin. Similarly, no concern was raised over biphenyl alcohol, the only metabolite predicted to be present in ruminant tissue in detectable concentrations. EPA estimated that the maximum concentration of this metabolite in ruminant tissue would be 0.04 ppm in fat. Neither bifenthrin nor its metabolites are likely to be present in poultry and eggs in detectable concentrations.

C. Analytical Enforcement Methodology

An enforcement method Gas Chromatography/Electron Capture Detector (GC/ECD) for the determination of residues of bifenthrin in cottonseed has been sent to the FDA for inclusion in Pesticide Analytical Method II (PAM II). Additionally, EPA has recently concluded that another method (Method P–2550M, GC/ECD large bore fused silica column) is suitable as an enforcement method for the determination of bifenthrin residues in corn matrices.

D. Magnitude of Residues

Crop field trial residue data from studies conducted at the maximum label rates for cotton, corn (field, seed, pop), strawberries, and hops show that the established bifenthrin tolerances on cottonseed of 0.5 ppm, corn, grain (field, seed, and pop) of 0.05 ppm, corn, fodder of 5.0 ppm, corn, forage of 2.0 ppm, strawberries of 3.0 ppm, and hops, dried of 10.0 ppm will not be exceeded when the bifenthrin products labeled for these uses are used as directed.

F. International Residue Limits

Codex Maximum Residue Levels (MRLs) for bifenthrin have been established which are in harmony with the U.S. tolerances for cattle meat (0.5 ppm), corn grain (0.05 ppm), poultry fat (0.05 ppm), poultry meat (0.05 ppm), and poultry meat byproducts (0.05 ppm). Codex MRLs have been established which exceed the U.S. tolerances for horse fat (10.0 vs. 1.0 ppm). Codex MRLs have been established which are below their U.S. counterparts for cattle fat (0.5 vs 1.0 ppm), cattle meat byproducts (0.05 vs. 0.10 ppm), corn forage (0.05 vs. 2.0 ppm), corn fodder (0.2 vs. 5.0 ppm), eggs (0.01 vs.0.05 ppm), and whole milk (0.05 vs. 0.1 ppm).

As indicated above there are differences between the section 408 tolerances and the Codex MRL values for specific commodities. These differences could be caused by differences in methods used to establish tolerances, calculate animal feed dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

No Canadian MRLs have been established for residues of bifenthrin. Mexico has established a tolerance for residues of bifenthrin on cottonseed (0.5 ppm) which is in harmony with the U.S. tolerance.

IV. Conclusion

Therefore, tolerances are established for bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on cottonseed at 0.5 ppm; corn, grain (field, seed, and pop) at 0.05 ppm; corn, forage at 2.0 ppm; corn, fodder at 5.0 ppm; hops, dried at 10.0 ppm; fat of cattle, goat, hogs, horses, and sheep at 1.0 ppm; meat of cattle, goat, hogs, horses, and sheep at 0.5 ppm; meat and meat by-products (mbyp) of cattle, goat, hogs, horses, and sheep at 0.10 ppm, eggs at 0.05 ppm; milk, fat (reflecting 0.1 ppm in whole milk), poultry, fat at 0.05 ppm, poultry, meat at 0.05 ppm, and poultry mbyp at 0.10 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300579] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.442 is amended by revising paragraph (a) and removing the entire entry for "Raspberries" in the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a) *General.* Tolerances are established for residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	1.0
Cattle, mbyp	0.10
Cattle, meat	0.5
Corn, fodder	5.0
Corn, forage	2.0
Corn, grain (field, seed, and pop)	0.05
Cottonseed	0.5
Eggs	0.05
Goats, fat	1.0
Goats, mbyp	0.10
Goats, meat	0.5
Hogs, fat	1.0
Hogs, mbyp	0.10
Hogs, meat	0.5
Hops, dried	10.0
Horses, fat	1.0
Horses, mby	0.10

Commodity	Parts per million
Horses, meat	0.5
Milk, fat (reflecting 0.1 ppm in whole milk)	1.0
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	1.0
Sheep, mbyp	0.1
Sheep, meat	0.5
Strawberries	3.0

* * * * *

[FR Doc. 97–30946 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300587; FRL–5757–4]

RIN 2070–AB78

Fipronil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fipronil (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1*R,S*)-(trifluoromethyl)sulfinyl]-1*H*-pyrazole-3-carbonitrile) and its metabolites MB 46136 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]4-[(trifloumethyl) sulfonyl]-1*H*-pyrazole-3-carbonitrile) and MB 45950 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-[(trifluoromethyl)thio]-1*H*-pyrazole-3-carbonitrile) in or on field corn grain, stover, and forage; milk fat, (reflecting residues in whole milk); eggs; poultry fat, meat, and meat byproducts; hog fat, meat, meat byproducts, and liver; and liver, fat, meat, and meat byproducts of cattle, goat, horse, and sheep. In petition number 5F4426 Rhone Poulenc AG, Inc. requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104–170).

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300587], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300587], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300587]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Marion Johnson, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6788, e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1997 (62 FR 33641)(FRL–5723–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide petition for a tolerance (PP 5F4426) by Rhone Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by Rhone Poulenc, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the insecticide fipronil (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1*R,S*)-(trifluoromethyl)sulfinyl]-1*H*-pyrazole-3-carbonitrile) and its metabolites MB 46136 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl) sulfonyl]-1*H*-pyrazole-3-carbonitrile) and MB 45950 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-[(trifluoromethyl)thio]-1*H*-pyrazole-3-carbonitrile) in or on the following items: corn, field, grain — 0.02 ppm; corn, field, stover — 0.30 ppm; corn, field, forage — 0.15 ppm; Milk, fat (reflecting 0.05 ppm in whole milk) — 1.50 ppm; Liver of cattle, goat, horse and sheep — 0.10 ppm; eggs — 0.03 ppm; Fat of cattle, goat, horse and sheep — 0.40 ppm; poultry fat — 0.05 ppm; meat of cattle, goat, horse and sheep — 0.04 ppm; poultry meat — 0.02 ppm; meat byproducts (except liver) of cattle, goat, horse and sheep — 0.04 ppm; poultry meat byproducts — 0.02 ppm; hog fat — 0.04 ppm; hog liver — 0.02 ppm; hog meat byproducts (except liver) — 0.01 ppm; hog meat — 0.01 ppm.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop

treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of fipronil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of fipronil (5-amino-1-[2,6- dichloro-4-(trifluoromethyl)phenyl]-4-[(1*R,S*)-(trifluoromethyl)sulfinyl]-1*H*-pyrazole-3-carbonitrile) and its metabolites MB 46136 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl) sulfonyl]-1*H*-pyrazole-3-carbonitrile) and MB 45950 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-[(trifluoromethyl)thio]-1*H*-pyrazole-3-carbonitrile) in or on the following items at the following levels:

Commodity	Tolerance (in parts per million)
Corn, field, grain	0.02
Corn, field, stover	0.30
Corn, field, forage	0.15
Eggs	0.03
Fat of cattle, goat, horse and sheep.	0.40
Hog fat	0.04
Hog liver	0.02
Hog meat byproducts (except liver).	0.01
Hog meat	0.01
Liver of cattle, goat, horse and sheep.	0.10
Milk, fat (reflecting 0.05 ppm in whole milk).	1.50
Meat of cattle, goat, horse and sheep.	0.04
Meat byproducts (except liver) of cattle, goat, horse and sheep.	0.04
Poultry fat	0.05
Poultry meat	0.02
Poultry meat byproducts	0.02

EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicology Data Base

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fipronil are discussed below.

1. *Acute studies.* i. A battery of acceptable acute toxicity studies place technical fipronil in toxicity Categories II and III. It is classified as a non-sensitizer.

ii. An acceptable acute neurotoxicity study in the rat using technical fipronil concluded the following: The no observed effect level (NOEL) was 0.5 mg/kg for males and females. The low observed effect level (LOEL) was 5.0 mg/kg for males and females based on decreased hind leg splay at the 7 hour post-treatment evaluation in males and females.

2. *Subchronic toxicity testing.* i. An acceptable subchronic toxicity study in the dog using technical fipronil concluded the following: The LOEL was 10.0 mg/kg/day for males (based on clinical signs of toxicity) and 2.0 mg/kg/day for females (based on clinical signs of toxicity and decreased body weight gain). The NOEL was 2.0 mg/kg/day for males and 0.5 mg/kg/day for females.

ii. A supplemental subchronic toxicity study in the rat using technical fipronil concluded the following: The LOEL was 30 ppm for males (1.93 mg/kg/day) and females (2.28 mg/kg/day) based on alterations in serum protein values and increased weight of the liver and thyroid. The NOEL was 5 ppm for males (0.33 mg/kg/day) and females (0.37 mg/kg/day).

iii. An acceptable 21–day dermal toxicity study in the rabbit using technical grade fipronil concluded the following: The Systemic LOEL was 10 mg/kg/day based on decreased body weight gain and food consumption; Dermal irritation LOEL > 10.0 mg/kg/day. The systemic NOEL was 5.0 mg/kg/day; Dermal irritation NOEL was greater than or equal to 10.0 mg/kg/day.

3. *Chronic toxicity studies.* i. An acceptable chronic toxicity study in the dog using technical fipronil concluded the following: The LOEL was 2.0 mg/kg/day based on clinical signs of neurotoxicity and abnormal neurological examinations. The NOEL was 0.2 mg/kg/day.

ii. An acceptable carcinogenicity study in the mouse using technical fipronil concluded the following: The LOEL was 10 ppm (1.181 mg/kg/day for males and 1.230 mg/kg/day for females) based on decreased body weight gain, decreased food conversion efficiency (males), increased liver weights and increased incidence of hepatic histopathological changes. The NOEL was 0.5 ppm (0.055 mg/kg/day for males and 0.063 mg/kg/day for females). The study demonstrated that Fipronil is not carcinogenic to CD-1 mice when administered at doses of 30 ppm.

iii. An acceptable combined chronic toxicity/carcinogenicity study in the rat using technical fipronil concluded the following: The LOEL was 1.5 ppm for males (0.059 mg/kg/day) and females (0.078 mg/kg/day) based on an increased incidence of clinical signs and alterations in clinical chemistry and thyroid parameters. The NOEL was 0.5 ppm for males (0.019 mg/kg/day) and females (0.025 mg/kg/day). The study demonstrated that fipronil is carcinogenic to rats at doses of 300 ppm in males (12.68 mg/kg/day) and females (16.75 mg/kg/day).

4. *Developmental and reproduction toxicity studies.* i. An acceptable developmental toxicity study in the rat using technical fipronil concluded the following: The maternal toxicity LOEL was 20 mg/kg/day based on reduced body weight gain, increased water consumption, reduced food consumption and reduced food efficiency. The maternal toxicity NOEL was 4 mg/kg/day. The developmental toxicity LOEL was greater than 20 mg/kg/day. The developmental toxicity NOEL was 20 mg/kg/day or higher.

ii. An acceptable developmental toxicity study in the rabbit using technical fipronil concluded the following: The maternal toxicity LOEL was less than or equal to 0.1 mg/kg/day based on reduced body weight gain, reduced food consumption and efficiency. The maternal toxicity NOEL was less than 0.1 mg/kg/day. The developmental toxicity LOEL was greater than 1.0 mg/kg/day. The developmental toxicity NOEL was greater than or equal to 1.0 mg/kg/day.

iii. An acceptable multigeneration reproduction study in the rat using technical fipronil concluded the following: The LOEL for parental (systemic) toxicity was 30 ppm (2.54 mg/kg/day for males and 2.74 mg/kg/day for females) based on increased weight of the thyroid glands and liver in males and females; decreased weight of the pituitary gland in females; and an increased incidence of follicular epithelial hypertrophy in the females. The NOEL for parental (systemic) toxicity was 3 ppm (0.25 mg/kg/day for males and 0.27 mg/kg/day for females). The LOEL for reproductive toxicity was 300 ppm (26.03 mg/kg/day for males and 28.40 mg/kg/day for females) based on clinical signs of toxicity in the F_1 and F_2 offspring; decreased litter size in the F_1 and F_2 litters; decreased body weights in the F_1 and F_2 litters; decrease in the percentage of F_1 parental animals mating; reduction in fertility index in F_1 parental animals; reduced post-implantation survival and offspring postnatal survivability in the F_2 litters; and delay in physical development in the F_1 and F_2 offspring. The NOEL for reproductive toxicity was 30 ppm (2.54 mg/kg/day for males and 2.74 mg/kg/day for females).

iv. An acceptable developmental neurotoxicity study using technical fipronil concluded as follows: The maternal LOEL was 200 ppm (15 mg/kg/day), based on decreased body weight, body weight gain and food consumption. The maternal NOEL was 10 ppm (0.90 mg/kg/day). The developmental LOEL was 10 ppm (0.9 mg/kg/day), based on statistically significant decrease in group mean pup weights during lactation and significant increase in time of preputial separation in males. The developmental neurotoxicity LOEL was 10 ppm (0.9 mg/kg/day) based on a significant increase in mean motor activity counts in females on Postnatal Day 17. The NOEL for developmental and developmental neurotoxicity is 0.5 ppm (0.05 mg/kg/day). It is noted that developmental neurotoxicity occurred in the absence of maternal toxicity in this study.

5. *Mutagenicity studies*— i. *Studies conducted with fipronil.* a. An acceptable *Salmonella*/mammalian activation gene mutation assaying technical fipronil concluded as follows: fipronil was not mutagenic in 4 strains of S. typhimurium at concentrations up to 500 µg/plate in the presence or absence of S9 activation.

b. An acceptable *in vitro* gene mutation assay in mammalian cells/Chinese hamster V79 cells using technical fipronil concluded as follows: Fipronil was negative for inducing forward gene mutations at the HGPRT locus in cultured Chinese hamster V79 cells at concentrations up to 385.65 µg/ml both with and without S9 activation.

c. An acceptable *in vitro* micronucleus assay in the mouse using technical fipronil concluded as follows: fipronil was not cytotoxic to the target cell. There was, however, no evidence of a clastogenic or aneugenic effect at any dose or at any harvest time.

d. An acceptable cytogenic assay in human lymphocytes using technical fipronil concluded as follows: there was no evidence of a clastogenic effect when human lymphocytes were exposed *in vitro* to fipronil at doses of 75, 150 or 300 µg/ml with and without S9 activation.

ii. *Studies conducted with fipronil metabolite MB 46136.* a. An acceptable *Salmonella*/mammalian activation gene mutation assay using 98.7% pure metabolite showed that the fipronil metabolite was not mutagenic in 4 strains of *S. typhimurium* at concentrations of up to 200 µg/plate without S9 activation and up to 500 µg/plate in the presence of S9 activation.

b. An acceptable cytogenic assay with human lymphocytes using 98.7% pure metabolite showed that there was no evidence of a clastogenic effect when human lymphocytes were exposed *in vitro* to MB 46136 at doses of 75, 150 or 300 µg/ml with and without S9 activation.

6. *Metabolism study.* An acceptable metabolism study in the rat using ^{14}C Fipronil showed the following: with oral dosing, the rate and extent of absorption appeared similar among all dose groups, but may have been decreased at the high dose. Distribution data showed significant amounts of residual radioactivity in carcass, G.I. tract, liver, adrenals, and abdominal fat at 168 hours post-dose for all rats in all dose groups. Repeated low oral dosing or a single high oral dose resulted in an overall decrease in the amount of residual radioactivity found, but an increase in the amount in abdominal fat, carcass, and adrenals. Feces appeared to be the major route of excretion for fipronil derived radioactivity, where 45–75% of an administered dose was excreted. Excretion in urine was between 5–25%. Increases in the percentages excreted in urine and feces were observed with repeated low oral dosing or a single high dose, while the percentage found in all tissues combined decreased. There were no significant sex-related differences in excretion. Major metabolites in urine included two ring-opened products of the metabolite MB 45897, two oxidation products (MB 46136 and RPA 200766), and parent chemical (MB 46030). In feces, parent MB 46030 was detected as a significant fraction of the sample radioactivity as well as the oxidation products MB 46136 and MB 45950.

7. *Special studies.* i. A supplemental thyroid function study in the rat using technical fipronil showed the following: Four groups of 27 male rats per group were administered either methylcellulose (vehicle control), 10 mg/kg/day fipronil, 200 mg/kg/day propylthiouracil (PTU) or 50 mg/kg/day Noxyflex for 14 days. On Day 15, each animal received $Na^{125}I$ at a dose level of 1 µCi ^{125}I. Six hours later, 9 males per group received either 10 or 25 mg/kg potassium perchlorate or 0.9% saline solution. The treatment with fipronil or Noxyflex appeared to result in stimulation of the thyroid glands as evidenced by increased accumulation of ^{125}I in the thyroid glands and by increases in the ratios of radioactive distribution between the blood and thyroid. These changes were accompanied by increases in thyroid weight. Treatment with PTU produced decreases in the amount of ^{125}I incorporated in the thyroid and in the blood: thyroid ratios along with elevated levels of ^{125}I in the blood. However, the weights of the thyroids from these animals were increased by over 2.5 fold compared to the controls and therefore, the ratio of ^{125}I in the blood to thyroid weight was reduced. The administration of perchlorate produced further reductions in the ^{125}I content in the thyroids and in the blood: thyroid ^{125}I radioactivity ratio. There was no evidence of an inhibition of iodide incorporation by either fipronil or Noxyflex.

ii. A supplemental thyroxine clearance study in the rat using technical fipronil showed the following: Six groups of six male rats per group were administered either fipronil (10 mg/kg/day by gavage), phenobarbital (80 mg/kg/day intraperitoneally) or 0.5% methylcellulose (vehicle control at 5 ml/kg by gavage) for a duration of either 1 day or 14 days. Four hours after the final dose of either test substance, each rat received [^{125}I] thyroxine at a dosage of 10 µCi/kg. Fipronil had no effect on mortality or other ante mortem parameters. Phenobarbital-treated animals were observed to have collapsed posture, lethargy and shallow breathing on the first day of treatment. There was no effect of fipronil on clearance after 1 day of treatment, however after 14 days, there was a decrease in terminal half life (52% of control level) and increases in clearance and volume of distribution (261% and 137% of control level, respectively). The effects seen with phenobarbital treatment were similar, although quantitatively not as severe and were evident on Day 1 of treatment.

iii. An acceptable 28–day study in the rat by dietary administration using 96.2% pure fipronil metabolite RPA 200766 showed the following: The NOEL was 50 ppm (3.80 mg/kg/day for males and 4.44 mg/kg/day for females). The LOEL was 500 ppm (38.16 mg/kg/day for males and 43.97 mg/kg/day for females) based on decreased

hemoglobin values, increased cholesterol values and increased liver weights in both sexes.

iv. An acceptable 28–Day Study in the rat using technical fipronil showed that: the LOEL is ≤ 25 ppm (3.4 mg/kg/day in males; 3.5 mg/kg/day in females) based on clinical laboratory changes, increased absolute liver weights in females and histopathological alterations in the thyroid glands. The NOEL is < 25 ppm.

B. Toxicology Profile

The toxicology endpoints and dose levels of concern have been identified for use in this fipronil exposure and risk assessment as set forth below:

1. *Residential exposure—i. Short - and intermediate - term exposure (1 to 7 days).* a. A dermal absorption factor is set at less than 1% at 24 hours based on a dermal absorption study.

b. For short- and intermediate-term residential exposure for females age 13+ years, the NOEL is 5 mg/kg/day based on decreased body weight gain and food consumption in male and female rabbits observed at the LOEL of 10 mg/kg/day in the 21–day dermal study.

In the supporting study of developmental toxicity and developmental neurotoxicity, the developmental NOEL was 0.5 ppm (0.05 mg/kg/day) based on decreased mean pup weights during lactation and a significant increase in time to preputial separation in male rats observed at the developmental LOEL of 10 ppm (0.9 mg/kg/day). The developmental neurotoxicity LOEL was 10 ppm (0.9 mg/kg/day) based on an increase in mean motor activity counts for females on Postnatal Day 17.

It should be noted that the NOEL established after dermal administration in the 21–day dermal toxicity study is 5 mg/kg/day. When the co-critical study NOEL based on oral administration in the developmental neurotoxicity study, 0.05 mg/kg/day is corrected for the less than 1% dermal absorption, exposure is essentially the same as the critical study (5 mg/kg/day).

c. For short- and intermediate-term residential exposure for the general population, including infants and kids, the NOEL is 5.0 mg/kg/day, based on decreased body weight gain and food consumption in male and female rabbits observed at the LOEL of 10 mg/kg/day in the 21–day dermal toxicity study.

ii. *Chronic or residential exposure (several months to lifetime).* The NOEL is 0.5 ppm, based on an increased incidence of clinical signs (seizures and death) and alterations in clinical chemistry (protein) and thyroid parameters (increased TSH, decreased T4) at the LOEL of 1.5 ppm in a combined chronic toxicity/carcinogenicity study in the rat. Since the NOEL identified is from an oral study, a dermal absorption factor of < 1% should be used in risk calculations.

2. *Dietary exposure—i. Acute risk.* The NOEL is 0.5 mg/kg, based on decreased hind leg splay in male and female rats observed at LOEL = 5 mg/kg in the acute neurotoxicity study in rats.

ii. *Chronic risk.* The RfD (reference dose) for fipronil is 0.0002 mg/kg/day. This RfD is based on a NOEL of 0.019 mg/kg/day and an uncertainty factor of 100; the NOEL was established from the combined chronic toxicity/carcinogenicity study in rats where the LOEL was 1.5 ppm, based on an increased incidence of clinical signs (seizures and death) and alterations in clinical chemistry (protein) and thyroid parameters (increased TSH, decreased T4).

iii. *Cancer risk.* Fipronil has been classified as a Group C - Possible Human Carcinogen, based on increases in thyroid follicular cell tumors in both sexes of the rat, which were statistically significant by both pair-wise and trend analyses. The RfD methodology should be used to estimate human risk because the thyroid tumors appear to be related to a disruption in the thyroid-pituitary status. There was no apparent concern for mutagenicity (no mutagenic activity).

B. Exposures and Risks

1. *From food and feed uses.* In today's action, tolerances will be established (40 CFR 180.517) in or on a variety of raw agricultural commodities as follows:

Commodity	Tolerance (in parts per million)
Corn, field, grain	0.02
Corn, field, stover	0.30
Corn, field, forage	0.15
Eggs	0.03
Fat of cattle, goat, horse and sheep.	0.40
Hog Fat	0.04
Hog Liver	0.02
Hog Meat Byproducts (except liver).	0.01
Hog Meat	0.01
Liver of cattle, goat, horse and sheep.	0.10
Milk, fat (reflecting 0.05 ppm in whole milk).	1.50
Meat of cattle, goat, horse and sheep.	0.04
Poultry Fat	0.05
Poultry Meat	0.02
Meat Byproducts (except liver) of cattle, goat, horse and sheep.	0.04
Poultry Meat Byproducts	0.02

Risk assessments were conducted by EPA to assess dietary exposures and risks from fipronil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute dietary exposure endpoint of concern for fipronil is neurotoxicological. As this endpoint is not developmental, all population subgroups are of potential concern. EPA calculated MOE values of 277 for the U.S. population, 167 for non-nursing infants (< 1 year old) and 167 for children (1–6 years years old). Anticipated residues were used for milk and corn commodities in this assessment.

ii. *Chronic exposure and risk.* Chronic dietary residues exposure estimates (DRES) for fipronil were calculated using anticipated residues derived from field-trial data for all commodities. In addition, an anticipated market share of 7% was used for corn grain, forage, and stover. The proposed fipronil tolerances result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percents of the RfD:

U.S. Population (48 States)	4.6%
Hispanics	5.9%
Non-Hispanic Others	5.2%
Non-Nursing Infants (< 1 year old).	10.1%
Females (13+ years, pregnant)	3.2%
Females (20+ years, not pregnant, not nursing).	3.0%
Females (13+ years, nursing)	4.1%
Children (1–6 years old)	11.1%
Children (7–12 years old)	7.4%

The subgroups listed above are: (1) the U.S. population (48 states); (2) infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is equal to, or greater than, that occupied by the subgroup U.S. population (48 states).

iii. *Percent crop treated and anticipated residues.* Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a timeframe it deems appropriate. Section 408(b)(2)(F) allows the Agency to use data on the actual

percent of crop treated when establishing a tolerance only where the Agency can make the following findings:

a. That the data used are reliable and provide a valid a basis for showing the percentage of food derived from a crop that is likely to contain residues.

b. That the exposure estimate does not underestimate the exposure for any significant subpopulation.

c. Where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for fipronil were derived from Federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To provide for the periodic evaluation of these estimates of percent crop treated and to meet the requirement for data on anticipated residues, EPA may require fipronil registrants to submit data on percent crop treated. Such evaluation will likely be conducted no sooner than 5 years after date of issuance of this tolerance. Further, as required by the FQPA, EPA will issue a Data Call-In under section 408(f) to all fipronil registrants for data on anticipated residues, to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *From drinking water.* EPA does not have monitoring data available to perform a quantitative drinking water risk assessment for fipronil at this time. EPA estimated ground and surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a screening level model for determining concentrations of pesticides in surface water. GENEEC uses the soil/water partition coefficient, hydrolysis half life, and maximum label rate to estimate surface water concentration. In addition, the model contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated. As fipronil is relatively immobile in soil, residues in groundwater are expected to be less than those in surface water.

i. *Acute exposure and risk.* The exposure estimate for surface water is 247 ppt (peak concentration). Based on an acute NOEL of 0.5 mg/kg/day and water consumption of 1 L/d for a 10 kg child, the worst-case estimates of residues in drinking water (247 ppt) result in a child exposure of 2.5×10^{-5} mg/kg/day. This exposure value corresponds to a MOE of 20,000 for the most highly exposed subgroup for acute exposure (children 1–6 years old). As this value exceeds 100, fipronil residues in surface drinking water do not pose an acute risk.

ii. *Chronic exposure and risk.* The exposure estimate for surface water is 48.8 ppt (54–day average). Based on a RfD of 0.0002 $(mg/kg/day)^{-1}$ and water consumption of 2 L/d for a 70 kg adult (male) and of 1 L/d for a 10 kg child (1–6 years old), the worst-case estimates of residues in drinking water (48.8 parts per trillion (ppt)) result in the following exposures: Adult exposure is 1.4×10^{-6} mg/kg/day and exposure for children is 4.9×10^{-6} mg/kg/day. These exposure values correspond to 0.7% of the RfD for adult males and 2.4% of the RfD for children (1–6 years old).

3. *From non-dietary exposure.* Fipronil is currently registered for use on the following residential non-food sites: ant and cockroach bait traps ranging from 0.01 to 0.05% active ingredient; and flea and tick control products for dogs and cats, including a pump spray (0.29% RTU (ready to use) and a 9.7% RTU spot treatment in which a premeasured small amount is applied between the pet's shoulder blades. The flea and tick spray use is expected to result in the highest exposure of fipronil products. Based on the high MOE's resulting from these uses (see below), the application of small amounts between the pet's shoulder blades was not addressed. This use is expected to result in much lower exposure based on lower duration and a considerably smaller area being treated. Exposure from the use of fipronil in self contained bait stations is also expected to result in lower exposures since there is no contact with the pesticide.

i. *Acute exposure and risk.* For incidental non-dietary (acute) exposures, the endpoint selected for acute dietary (oral) assessments is used. The NOEL is 0.5 mg/kg/day. The MOE for a child/hand-to-mouth exposure after petting a wet or recently treated pet is 5,000 to 8,000.

ii. *Chronic exposure and risk.* Fipronil is reportedly strongly bound to the skin and does not come off the dog once dry. Therefore, the use of fipronil products in residential situations is not expected to result in chronic exposures. It should be noted that an exposure study assessing exposures resulting from the pet uses will be submitted in the fall of 1997. The risk assessment may be refined at that time.

iii. *Short- and intermediate-term exposure and risk.* Label directions on pet care products state that applications of fipronil are expected to occur several times per year in residential settings, resulting in acute and short- and intermediate-term exposures. The endpoint selected for short and intermediate-term non-occupational exposure assessments is based on the results of a 21–day dermal toxicity study. The systemic toxicity NOEL is 5.0 mg/kg/day. The MOE for applicators of the 0.29% ready-to-use formulation on dogs and cats is 50,000. The MOE for a child/dermal contact with a wet or recently treated pet is 1,000 to 2,000.

iv. *Cumulative exposure to substances with common mechanism of toxicity.* Fipronil is structurally similar to other members of the pyrazole class of pesticides (i.e., tebufenpyrad, pyrazolynate, benzofenap, etc.). Further, other pesticides may have common toxicity endpoints with fipronil. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific

understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether fipronil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative approach based on a common mechanism of toxicity, fipronil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fipronil has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the most highly exposed subgroup (children 1–6 years old), the calculated MOE value is 160 (the reciprocal of the sum of the reciprocal food, residential and water MOEs). (The MOE is 167 for food, 5,000 for residential (oral) and 20,000 for water). This aggregate MOE does not exceed the HED's level of concern for acute dietary exposure.

2. *Chronic risk.* Based on the available data and assumptions for dietary/water/residential exposure and risk estimates, the population group estimated to be most highly exposed is children (1–6 years old) with a risk estimate from combined sources equaling 13.5% of the RfD (11.1% dietary + 2.4% water). As previously noted, no chronic residential exposure is anticipated. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fipronil residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure should take into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. However, the short and intermediate term end points for fipronil are based on dermal exposure, and chronic endpoints are based on dietary exposure. The two exposure scenarios use different toxicological end points, and thus are not comparable in toxicological terms. At the present time, EPA does not know how to aggregate dermal and oral exposures for this chemical. For this reason, EPA has not developed a short and intermediate term risk assessment for fipronil. Further, as indicated above, when viewed independently, neither oral nor dermal exposure posed a risk of concern.

E. Aggregate Cancer Risk for U.S. Population

Based on the Cancer Peer Review Committee recommendation that the RfD approach be used to quantify carcinogenicity, a quantitative dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of fipronil residues are adequately addressed by the chronic exposure analysis using the RfD.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of fipronil, EPA considered data from developmental toxicity studies in the rat and rabbit, a two-generation reproduction study in the rat, and a developmental neurotoxicity study. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. The developmental neurotoxicity study provided further information about the acute and chronic neurotoxic effects during prenatal and postnatal development.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *FQPA considerations.* EPA has evaluated the chemical fipronil for FQPA considerations. The following discussion represents the information EPA considered.

i. *Developmental toxicity studies.* Acceptable prenatal developmental toxicity studies in rats and rabbits have been submitted to the Agency, meeting basic data requirements, as defined for a food-use chemical by 40 CFR part 158.

ii. *Reproductive toxicity study.* An acceptable two-generation reproduction study in rats has been submitted to the Agency, meeting basic data requirements, as defined for a food-use chemical by 40 CFR part 158.

iii. Developmental neurotoxicity study. An acceptable developmental neurotoxicity study was conducted with fipronil and reviewed by the Agency.

iv. Pre- and post-natal sensitivity. There are no data gaps for the assessment of the effects of fipronil on developing animals following *in utero* and/or early postnatal exposure.

v. *Conclusion.* The available data contained evidence of increased sensitivity of rats to alterations in functional development following pre- and/or postnatal exposure with fipronil. Specifically, in a developmental neurotoxicity study in rats, the developmental and developmental-neurotoxicity NOEL of 0.5 ppm (0.05 mg/kg/day) was lower than the maternal toxicity NOEL of 10 ppm (0.9 mg/kg/day). In the offspring, decreased pup weights, increased time of preputial separation in males, and increased motor activity counts in female pups were observed at the developmental LOEL of 10 ppm (0.9 mg/kg/day), while maternal toxicity (decreased body weight, body weight gain, and food consumption) was observed at the maternal LOEL of 200 ppm (15 mg/kg/day).

Previously conducted studies with fipronil did not identify any issues of increased sensitivity in the fetuses or pups following pre- and/or postnatal exposure. In the prenatal developmental toxicity study in rats, there was no evidence of developmental toxicity at the highest doses tested (20 mg/kg/day). Maternal toxicity (decreased body weight gain, food consumption and/or water consumption) was observed at this dose (20 mg/kg/day) with the maternal NOEL established at 4 mg/kg/day. In the prenatal developmental toxicity study in rabbits, there was also no evidence of developmental toxicity at the highest doses tested (1.0 mg/kg/day). Maternal toxicity (decreased body weight gain, food consumption and/or water consumption) was observed at this same dose (1.0 mg/kg/day) and lower, with the maternal NOEL established at < 0.1 mg/kg/day.

Additionally, in the two-generation reproduction study in rats, offspring toxicity was observed only in the presence of parental toxicity. The offspring NOEL was 30 ppm (2.54–2.74 mg/kg/day), based upon clinical signs of toxicity, decreased litter size, decreased body weights, decreased pre- and postnatal survival, and delays in physical development at the LOEL of 300 ppm (26.0–28.4 mg/kg/day). In the parental animals, reproductive toxicity (reductions in mating and fertility) was also observed at the 30 ppm dietary level. The systemic NOEL for the parental animals was 3 ppm (0.25–0.27 mg/kg/day), based upon increased weight of the thyroid gland and liver in both sexes, decreased weight of the pituitary gland in the females, and increased incidence of thyroid follicular epithelial hypertrophy in the females at the LOEL of 30 ppm.

In considering whether additional uncertainty factors were needed to protect children, EPA noted that the developmental neurotoxicity NOEL of 0.05 mg/kg/day, when adjusted for 1% dermal absorption, yields an equivalent NOEL of 5 mg/kg/day, the value established as the systemic NOEL in the 21–day dermal study in rabbits. This value was selected for use in the short term and intermediate risk assessment calculations for fipronil. The NOEL used for the RfD calculation was 0.019 mg/kg/day from the combined chronic toxicity-carcinogenicity study in the rat, a value that is even lower than the NOEL used for short- and intermediate-term exposure. Therefore, it was concluded that the risk assessment calculations as defined, will provide adequate protection for sensitive subpopulations, including infants and children. The Committee determined that the third uncertainty factor in the risk assessment of fipronil, under the provisions of the FQPA mandate to ensure the protection of infants and children, was not warranted for chronic or less than life time exposure and could be removed.

EPA believes that reliable data support using the hundredfold margin/factor, rather than the thousandfold margin/factor, when EPA has a complete data base under existing guidelines, and when the severity of the effect in infants or children, the potency or unusual toxic properties of a compound, or the quality of the exposure data do not raise concerns regarding the adequacy of the tenfold margin/factor.

For the reasons outlined above, EPA has determined there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of fipronil following its use on field corn and other uses registered to date.

III. Other Considerations

A. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inert ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

B. Metabolism In Plants and Animals

EPA considers the nature of the residue in corn to be understood. Fipronil is metabolized by: (1) hydrolysis to the amide (RPA 200766) with further hydrolysis to the carboxylic acid (RPA 200761) or (2) oxidation to the sulfone MB 46136. The EPA Metabolism Committee has concluded that the residues of concern for the tolerance expression and dietary risk assessment in corn and animal RACs are fipronil, MB 46136, and MB 45950.

C. Analytical Enforcement Methodology

Analytical methodology suitable for the enforcement of the proposed tolerance is available. For corn RACs, the registrant has submitted a proposed analytical enforcement method which measures the parent and its metabolites (MB 45950, and MB 46136) in a single chromatographic separation using GC with ECD. The limit of quantitation (LOQ) for each compound is 0.01 ppm in grain and 0.02 ppm in forage and fodder. This method has undergone a successful Petition Method Validation (PMV).

For animal RACs, the registrant has submitted a proposed analytical enforcement method which measures the parent and its metabolites (MB 45950 and MB 46136) in a single chromatographic separation using GC with ECD. The LOQ of cattle, goat, horse and sheep for each compound is < 0.02 ppm. This method has also undergone a successful PMV.

D. Magnitude of Residues

As a result of this use, residues of fipronil are not expected to exceed the following levels:

corn, field, grain	0.02 ppm
corn, field, stover	0.30 ppm
corn, field, forage	0.15 ppm

Secondary residues in animal commodities from this proposed use on corn are not expected to exceed the following levels:

Eggs	0.03 ppm
Fat of cattle, goat, horse and sheep	0.40 ppm
Hog Fat	0.04 ppm
Hog Liver	0.02 ppm
Hog Meat Byproducts (except liver)	0.01 ppm
Hog Meat	0.01 ppm
Milk, fat (reflecting 0.05 ppm in whole milk)	1.50 ppm
Liver of cattle, goat, horse and sheep	0.10 ppm
Meat Byproducts (except liver) of cattle, goat, horse and sheep	0.04 ppm
Meat of cattle, goat, horse and sheep	0.04 ppm
Poultry Fat	0.05 ppm
Poultry Meat	0.02 ppm
Poultry Meat Byproducts	0.02 ppm

E. International Residue Limits

There are no CODEX, Canadian, or Mexican MRLs established for fipronil

in/on corn and animal RACs. Therefore, no compatibility problems exist.

F. Rotational Crop Restrictions

The rotational crop restrictions specified on the labels (1 month for leafy vegetables, 5 months for root crops, 12 months for small grains and all other crops) are supported by the results of the confined rotational crop study.

IV. Conclusion

Therefore, the tolerance is established for combined residues of the insecticide fipronil (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1*R,S*)-(trifluoromethyl)sulfinyl]-1*H*-pyrazole-3-carbonitrile) and its metabolites MB 46136 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl) sulfonyl]-1*H*-pyrazole-3-carbonitrile) and MB 45950 (5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-[(trifluoromethyl)thio]-1*H*-pyrazole-3-carbonitrile) in or on the following items at the levels specified:

Commodity	Tolerances (in parts per million)
Corn, field, grain	0.02
Corn, field, stover	0.30
Corn, field, forage	0.15
Eggs	0.03
Fat of cattle, goat, horse and sheep	0.40
Hog fat	0.04
Hog liver	0.02
Hog meat byproducts (except liver)	0.01
Hog meat	0.01
Liver of cattle, goat, horse and sheep	0.10
Meat byproducts (except liver) of cattle, goat, horse and sheep	0.04
Meat of cattle, goat, horse and sheep	0.04
Milk, fat (reflecting 0.05 ppm in whole milk)	1.50
Poultry fat	0.05
Poultry meat	0.02
Poultry meat byproducts	0.02

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300587] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. By adding a new § 180.517 to read as follows:

§ 180.517 Fipronil; tolerances for residues.

(a) *General.* Therefore, tolerances are established for combined residues of the insecticide fipronil, (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1*R,S*)-(trifluoromethyl)sulfinyl]-1*H*-pyrazole-3-carbonitrile) and its metabolites 5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(trifluoromethyl) sulfonyl]-1*H*-pyrazole-3-carbonitrile and 5-amino-1-[2,6-dichloro-4-(trifluoromethyl) phenyl]-4-[(trifluoromethyl)thio]-1*H*-pyrazole-3-carbonitrile in or on the following items at the levels specified:

Commodity	Parts per million
Corn, field, grain	0.02
Corn, field, stover	0.30
Corn, field, forage	0.15
Eggs	0.03
Fat of cattle, goat, horse and sheep	0.40
Hog Fat	0.04
Hog Liver	0.02
Hog Meat	0.01
Hog Meat Byproducts (except liver)	0.01
Liver of cattle, goat, horse and sheep.	0.10
Milk, fat (reflecting 0.05 ppm in whole milk).	1.50
Meat Byproducts (except liver) of cattle, goat, horse and sheep.	0.04
Meat of cattle, goat, horse and sheep.	0.04
Poultry Fat	0.05
Poultry Meat	0.02
Poultry Meat Byproducts	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–30949 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300569; FRL–5751–1]

RIN 2070–AB78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of tebufenozide in or on sugarcane. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sugarcane. This regulation establishes a maximum permissible level for residues of tebufenozide in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and be revoked on December 31, 1998.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300569], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300569], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300569]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing request on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9358, e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing

a tolerance for residues of the insecticide tebufenozide, in or on sugarcane at 0.3 part per million (ppm). This tolerance will expire and be revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Tebufenozide on Sugarcane and FFDCA Tolerances

On March 27, 1997, EPA received a request from the Louisiana Department of Agriculture and Forestry, requesting that EPA authorize emergency use of tebufenozide (Confirm 2F Agricultural Insecticide, EPA Registration No. 707–238, registered by Rohm and Haas Co.) on sugarcane to control sugarcane borer, under provisions of section 18 of FIFRA. Louisiana's request for this pesticide use asserted that the population of sugarcane borer has chronically attained levels that can inflict significant damage to the sugarcane crop. In the past the preferred method of control had been with the chemical azinphos-methyl. However, due to large-scale fish kills which have resulted from use of azinphos-methyl, EPA has restricted that chemical's use. Although Louisiana describes their efforts to develop an integrated pest management program to control sugarcane borer, they still require use of chemicals for this program to succeed. The state requested use of tebufenozide on up to 60,000 acres of sugarcane, at application rates of 0.12 lbs. active ingredient per acre, per application, with a maximum of two applications allowed during the use season of June 15 - September 15, 1997. This use was also requested and authorized by EPA during the growing season of 1996. EPA allowed the Louisiana Department of Agriculture and Forestry to exercise its authority to authorize the use of tebufenozide on sugarcane for control of sugarcane borer in Louisiana under crisis provisions of section 18, described in 40 CFR 166.40–160.53, on June 13, 1997.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide in or on sugarcane. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and be revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether tebufenozide meets EPA's registration requirements for use on sugarcane or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent (%) or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any

significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tebufenozide on sugarcane at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed below.

1. *Acute toxicity.* No acute dietary risk endpoint was identified by EPA, and is not of concern in this risk assessment.

2. *Chronic toxicity.* EPA has established the RfD for tebufenozide at 0.018 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 1–year feeding study in dogs with a NOEL of 1.8 mg/kg/day. An uncertainty factor of 100 was used to account for both the interspecies extrapolation and intraspecies variability. The LEL of 8.7 mg/kg/day was based on hematopoietic findings (decreased red blood cells, hematocrit, hemoglobin levels, and increased heinz bodies, MCV, MCH, reticulocytes, and platelets).

3. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by EPA.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. The residue of concern in sugarcane is the parent compound, tebufenozide per se, as specified in 40 CFR 180.482. A permanent tolerance is established for the residues of tebufenozide in/on walnuts at 0.1 ppm and a time-limited tolerance in/on peppers at 0.5 ppm. A permanent tolerance at 1.0 ppm has also previously been established for imported apples. EPA has recently taken actions to establish time-limited tolerances in connection with section 18 uses on domestic apples (and time-limited tolerances on associated animal commodities), on cottonseed at 0.2 ppm, leafy vegetables (except Brassica) at 5.0 ppm, Brassica (cole) leafy vegetables at 5.0 ppm, sugar beets at 0.3 ppm, and turnip tops at 5.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebufenozide as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Since an acute dietary endpoint has not been identified in EPA's toxicology database, an assessment of acute dietary risk was not conducted for this Section 18 request.

ii. *Chronic exposure and risk.* In conducting this exposure assessment, EPA has made very conservative assumptions – 100% of sugarcane and all other commodities having tebufenozide tolerances will contain tebufenozide residues and those residues would be at the level of the tolerance – which result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment. The existing tebufenozide tolerances (published, pending, and including the necessary section 18 tolerances) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Population Subgroup	$TMRC_{food}$ (mg/kg/day)	%RfD
U.S. Population - 48 States	0.005516	31%
Nursing Infants (<1 year old)	0.007384	41%
Non-Nursing Infants (<1 year old)	0.014348	80%
Children (1–6 years old)	0.010646	59%
Children (7–12 years old)	0.007595	42%
Non-Hispanic Blacks	0.006063	34%
Non-Hispanic Others	0.007358	41%
Western Region	0.006033	34%

The subgroups listed above are: (1) the U.S. population (48 States); (2) those for infants and children; and, (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

For chronic dietary risk to tebufenozide, the population subgroup with the largest percentage of the RfD occupied is non-nursing infants (<1 year old) at 80% of the RfDs.

2. *From drinking water.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no established Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the "Pesticides in Groundwater Database" (EPA 734–12–92–001, September 1992).

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tebufenozide to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tebufenozide in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for any indoor or outdoor residential uses; therefore, no non-dietary residential exposure is anticipated.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 31% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is infants or children, which is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Since there are no non-dietary non-occupational exposure scenarios for tebufenozide, there are no additional exposure from those routes. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

2. *Short- and intermediate-term risk.* Since there were no toxicity endpoints identified by the TES Committee for tebufenozide and no indoor/outdoor residential uses, no short- or intermediate-term risk assessment was required.

D. Aggregate Cancer Risk for U.S. Population

Since tebufenozide has been classified as a Group E chemical, "no evidence of carcinogenicity for humans," no cancer risk assessment was required.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. This is generally the case – edit if different studies. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies* — a. *Rats.* In the developmental toxicity study in rats, the maternal (systemic) NOEL was 250 mg/kg/day. The LOEL was 1,000 mg/kg/day, based on decreased body weight and food consumption. The developmental (pup) NOEL was >1,000 mg/kg/day (HDT).

b. *Rabbits.* In the developmental toxicity study in rabbits, the maternal and developmental NOELs were >1,000 mg/kg/day (HDT).

c. *Pre-Natal Sensitivity.* EPA has concluded that the developmental NOELs of >1,000 mg/kg/day (HDT) from the developmental toxicity studies in rats and rabbits demonstrate that there is no developmental (prenatal) toxicity present for tebufenozide. Additionally, these developmental NOELs are greater than 500-fold higher than the NOEL of 1.8 mg/kg/day from the 1-year feeding study in dogs which was the basis of the RfD.

iii. *Reproductive toxicity study — Rats.* In the multigeneration reproductive toxicity study in rats, the parental (systemic) NOEL was 0.85 mg/kg/day. Splenic pigmentation changes and extramedullary hematopoiesis occurred at the LOEL of 12.1 mg/kg/day (male, female; F_0, F_1). In addition to these effects, decreased body weight gain and food consumption occurred at 171.1 mg/kg/day. The reproductive (pup) NOEL was 125 mg/kg/day. The reproductive LOEL of 171.1 mg/kg/day, based on a slight increase in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed (F_1). Additionally at the LOEL, in F_1 dams, the length of gestation increased and implantation sites decreased significantly. Finally, the number of pups per litter decreased on Lactation Day (LD) 4 to 90% of the controls for the F_1 and on LD's 0 and 4 to 80% for the second generation.

iv. *Pre- and post-natal sensitivity.* In the reproductive toxicity study in rats, the reproductive NOEL (12.1 mg/kg/day) is 14-fold higher than the parental NOEL (0.85 mg/kg/day) and indicates that post-natal toxicity in the reproductive studies occurs only in the presence of significant parental toxicity. These developmental and reproductive studies indicate that tebufenozide does not have additional post-natal sensitivity for infants and children in comparison to other exposed groups.

2. *Chronic risk.* Using the conservative exposure assumptions described above, HED has concluded that the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of tebufenozide ranges from 41% for nursing infants (< 1 year old) up to 80% for non-nursing infants (< 1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of tebufenozide in/on plants is adequately understood. The residue of concern is the parent compound, tebufenozide per se, as specified in 40 CFR 180.482.

The metabolism of tebufenozide in animals is not adequately understood. However, for the purpose of this section 18 exemption only, EPA considers the residue of concern to be the parent compound, tebufenozide per se.

B. Analytical Enforcement Methodology

The HPLC/UV analytical method, TR 34–04–38 is adequate to detect residues of the parent compound in sugarcane to support this section 18 request. There is also an available extraction and GC/MS confirmatory technique described in the Rohm and Haas rice metabolism study.

There are no analytical methods available to the Agency, at this time, to detect secondary residues in animal matrices likely as a result of the proposed use.

C. Magnitude of Residues

Residues of tebufenozide per se are not expected to exceed the following levels as a result of this section 18 use:

Commodity	Parts per million
sugarcane	0.3

A time-limited tolerance for the residues of tebufenozide per se should be established at this level.

The summation of a sugarcane processing study submitted with this action indicates that residues of tebufenozide do not concentrate in sugarcane refined sugar (0.03x) or molasses (1.1x). Thus, tolerances for the residues of tebufenozide per se are not needed on these commodities. However, the following levels were used for the DRES analysis which EPA performed:

Commodity	Parts per million
sugar, refined	0.01
sugar cane molasses	0.35

Based on the summary data provided, residues of tebufenozide in ruminant commodities (cattle, sheep, horse, and goat) will not exceed the levels established for the use of tebufenozide on apples.

There are no poultry or swine feed items associated with these uses; consequently secondary residues of tebufenozide are not expected in poultry or swine commodities.

D. International Residue Limits

There are currently no CODEX, Canadian, or Mexican listings for tebufenozide residues, therefore there are no harmonization issues for this action.

E. Rotational Crop Restrictions

Sugarcane is not rotated to other crops, therefore a discussion of rotational crop restrictions is not germane to this action.

VI. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in sugarcane at 0.3 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300567] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482(b), by adding alphabetically the following entry to the table:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/Revocation Date
* *	* * *	
Sugarcane	0.03	December 31, 1998
* *	* * *	

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[FR Doc. 97–31100 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300568; FRL–5750–9]

RIN 2070–AB78

Hexythiazox; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of hexythiazox (trans-5-(4-chlorophenyl) -*N*-cyclohexyl-4-methyl-2- oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl in or on cotton, undelinted seed, and cotton gin byproducts. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cotton in California. This regulation establishes a maximum permissible level for residues of hexythiazox in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and be revoked on October 1, 1998.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300568], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300568], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300568]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9358, e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the insecticide hexythiazox (trans-5- (4-chlorophenyl) -*N*-cyclohexyl-4-methyl-2- oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl, in or on cotton, undelinted seed at 0.1 part per million; and on cotton gin byproducts at 2.0 part per million (ppm). This tolerance will expire and be revoked on October 1, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for hexythiazox on Cotton and FFDCA Tolerances

The state of California submitted a request to EPA on April 1, 1997 for a specific exemption from the requirements of FIFRA, allowed under provisions of section 18 of FIFRA, for the emergency use of hexythiazox on cotton to control various spider mites (strawberry spider mite *Tetranychus turkestani*, twospotted spider mite *T. urticae*, Pacific spider mite *T. pacificus*, carmine spider mite *T. cinabarinus*). The state contended that an emergency condition was likely to develop during the 1997 growing season, due to conditions which have developed over the past several years favoring spider mite infestations on cotton. The state's request detailed the lack of effective non-chemical control measures for this pest. Additionally, three of the four mite species have been shown to have developed resistance to alternative registered chemicals. Spider mites attack plants primarily as foliage feeders. This action reduces plant vigor and growth, which can lead to reduced yields and/or nonproductive crops. During the last several years, wetter than normal conditions have resulted in more vegetation outside the irrigated cotton fields. This habitat has supported larger numbers of plant bugs, including mites, which have inflicted increased losses on cotton fields. On May 29, 1997 EPA allowed the state to invoke it's crisis authority under FIFRA section 18 for the use of hexythiazox on cotton for control of spider mites in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of hexythiazox in or on cotton. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and be revoked on October 1, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cotton, undelinted seed, and cotton gin byproducts after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA while these tolerances were in effect. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether hexythiazox meets EPA's registration requirements for use on cotton or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of hexythiazox by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for hexythiazox, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the

carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup nursing and non-nursing infants, <1 year old was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of hexythiazox and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of hexythiazox (trans-5-(4-chlorophenyl) -*N*-cyclohexyl -4-methyl-2- oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl on cotton, undelinted seed at 0.1 ppm, and cotton gin byproducts at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hexythiazox are discussed below.

1. *Acute toxicity.* An acute dietary risk assessment is not required, since EPA did not identify an acute toxicological endpoint.

2. *Short - and intermediate - term toxicity.* For short and intermediate-term Margin of Exposure (MOE) calculations, EPA recommended use of the maternal NOEL of 240 mg/kg/day from the developmental toxicity study in rats. At the LEL of 740 mg/kg/day, there was decreased food consumption, decreased body weight and increased ovarian weights.

3. *Chronic toxicity.* EPA has established the RfD for hexythiazox at 0.025 milligrams/kilogram/day (mg/kg/day). This RfD is based on a one year feeding study in dogs with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 100. The LOEL of 12.5 mg/kg/day was based on hypertrophy of the adrenal cortex (both sexes).

4. *Carcinogenicity.* Hexythiazox has been classified as a Group C chemical (possible human carcinogen) by the Cancer Peer Review Committee (CPRC), based on an increased incidence of female mouse liver tumors. The Committee recommended using the Q_1^* approach. The Q_1^* is 0.039 mg/kg/day^{-1}.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.448) for the combined residues of hexythiazox (trans-5-(4-chlorophenyl) -*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from hexythiazox as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment is not required for this pesticide use, as the EPA did not identify an acute dietary risk endpoint.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made conservative assumptions – 100% of cotton seed commodities (oil and meal) and apple commodities will contain residues of hexythiazox and its metabolites and those residues will be at the level of the tolerance. Percent crop treated data were utilized for pear commodities. These conservative assumptions result in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The published tolerances for the regulated residue of hexythiazox, plus this proposed Section 18 use result in a Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

U.S. Population	<1%
Nursing Infants	<1%
Non-Nursing Infants (<1 year old)	<1%
Children (1–6 years old)	<1%
Children (7–12 years old)	<1%

The subgroups listed above are: (1) the U.S. population (48 states); and (2) those for infants and children.

2. *From drinking water.* Based on information currently available to EPA, hexythiazox is considered persistent in soil. EPA's current data also indicates that hexythiazox and soil metabolites are not likely to leach to groundwater. There are no established Maximum Contaminant Levels for residues of hexythiazox in drinking water. No health advisory levels for hexythiazox in drinking water have been established.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause hexythiazox to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with hexythiazox in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Hexythiazox is not currently registered for use on any residential non-food sites. The Agency does not expect there to be any meaningful non-dietary residential exposure to hexythiazox.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether hexythiazox has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hexythiazox does not appear to produce a toxic metabolite produced by other substances. According to information evaluated related to this action, hexythiazox is a member of the thiazolidinone class of pesticides and there are no other members of this class. For the purposes of this tolerance action, therefore, EPA has not assumed that hexythiazox has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has concluded that dietary exposure (food only) to hexythiazox will utilize <1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to humm health. Despite the potential for exposure to hexythiazox in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to hexythiazox residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. EPA believes that uses of hexythiazox may constitute a short- and/or intermediate-term exposure scenario. However, the Agency is not, at this time, able to complete a comprehensive residential risk assessment for many pesticides, including hexythiazox. Because there are no residential non-food uses registered for hexythiazox, and because there are no other chemicals that share its class, and based on the lack of an identified acute toxicological endpoint for hexythiazox, and the low percentage (<1%) of the RfD occupied by food and water, in the best scientific judgment of EPA, short- and intermediate-term aggregate risk will not exceed the Agency's level of concern.

D. Aggregate Cancer Risk for U.S. Population

Based on published tolerances (none are currently pending) and this proposed section 18 use, an upper bound lifetime dietary (food only) cancer risk estimate of 5.9×10^{-7} was calculated for the hexythiazox regulated residue. The calculation used the conservative exposure assumptions described above for generating ARC's and amortized the cancer risk over a 70-year lifetime (i.e., 5/70, for this first year section 18 use). This section 18 use contributes 8.0×10^{-8} to the upper bound lifetime dietary (food only) cancer risk and 5.7×10^{-9} if the cancer risk is amortized over a 70-year lifetime.

The cancer risk estimate for the existing hexythiazox uses plus the amortized risk estimate for cottonseed commodities does not exceed EPA's level of concern. EPA believes the registered uses do not constitute a chronic exposure scenario. Thus, no non-dietary, non-occupational chronic exposure to hexythiazox is expected, or is a factor in aggregate cancer risk.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of hexythiazox, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*— a. *Rats.* In the rat developmental study, the maternal (systemic) NOEL was 240 mg/kg/day. The maternal LOEL of 720 mg/kg/day was based on decreased food consumption and decreased body weight. The developmental (fetal) NOEL was 240 mg/kg/day. The developmental LOEL was based on slight delayed ossification.

b. *Rabbits.* In the rabbit developmental toxicity study, the maternal (systemic) NOEL was 1,080 mg/kg/day at the highest dose tested (HDT). The developmental (fetal) NOEL was 1,080 mg/kg/day at the highest dose tested.

iii. *Reproductive toxicity study. Rats.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 20 mg/kg/day. The LOEL of 120 mg/kg/day was based on decreased body weight and decreased food consumption. The developmental NOEL was 20 mg/kg/day. The developmental LOEL of 120 mg/kg/day was based on decreased body weight and delayed maturation. The reproductive NOEL was 120 mg/kg/day at the highest dose tested.

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for hexythiazox is complete with respect to current toxicological data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. In the developmental study in rats, the developmental NOEL and LOEL is the same as the maternal NOEL and LOEL demonstrating that no extra-sensitivity for infants and children is present. In rabbits, there are no maternal or developmental effects up to the limit dose of 1,080 mg/kg/day HDT. In the 2-generation reproductive toxicity study in rats, there are no pup effects at doses below maternal effects and the common effects in both pups and parental animals decreased body weight also demonstrates that there is no extra-sensitivity for infants and children.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor and that an the additional safety factor is not needed to protect the safety of infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to hexythiazox from food will utilize is less than 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to hexythiazox in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Therefore, taking into account the completeness and reliability of the toxicity data, the conservative exposure assessment and the fact that residential uses do not fall under a chronic exposure scenario, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to hexythiazox residues.

V. Other Considerations

A. Metabolism In Plants and Animals

1. For the purpose of this section 18 request, the nature of the residue in plants is adequately understood. The residue of concern is hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (as specified in 40 CFR 180.448).

2. Although no livestock commodity tolerances are established, the nature of the residue in animals is considered to be understood. The residue of concern is hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety.

B. Analytical Enforcement Methodology

Adequate methods to enforce the tolerance expression have been submitted for publication in PAM II. The approved method is designated as AMR 985-87 which has been used in a variety of commodities. This method is available in PP 5F3254, and by request from U.S. EPA, IRSD/PIRIB (7502C), 401 M St., SW., Washington DC 20460.

C. Maghitude of Residues

1. Residues of hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent compound) are not expected to exceed 0.10 ppm in/on cotton, undelinted seed. A time-limited tolerance is being established at this level.

2. It is unknown if residues will concentrate in processed products of cotton seed. Therefore, the tolerance level for the RAC has been adjusted to account for any possible concentration of the residue. Additional tolerances on processed products of cotton are not required for this section 18 request.

3. Residue data are not available for cotton gin byproducts. For the purpose of this section 18 request, EPA has estimated residue levels in cotton gin byproducts. A search by EPA of the data currently available indicates two chemicals for which tolerances are established on both cotton gin byproducts and cotton seed. One use is for an at-planting use of an insecticide. The other cotton seed/cotton gin byproducts tolerance pair, 6 ppm and 100 ppm respectively, was established for a preharvest desiccant use of a herbicide. Since this preharvest desiccant use would be considered a worst case scenario, the hexythiazox residues on cotton gin byproducts will be estimated based on the concentration factor from that use, $16.6 \times (100/6)$. Thus, EPA estimates that the residue level of hexythiazox on cotton gin byproducts will be 2 ppm. A time-limited tolerance is being established at 2 ppm for hexythiazox residues in/on cotton gin byproducts. EPA notes that residue data for hexythiazox in/on cotton gin byproducts will be required for a section 3 registration decision to be made.

4. Tolerances for secondary residues of hexythiazox in livestock commodities are not established. Livestock feedstuffs for cattle (dairy and beef), poultry (discussed below)and swine are derived from cotton (meal,seed, and hulls). The maximum dietary burden from established tolerances on apples and this time-limited tolerance are 0.53 ppm for beef cattle, and 0.51 ppm for dairy cattle. EPA has previously reviewed a hexythiazox feeding study in dairy cows, in which the only measurable residues were in kidney and liver. For the purpose of this time-limited tolerance, EPA has translated these data to swine commodities. Based upon available data, EPA would not expect detectable residues of hexythiazox and its metabolites in commodities derived from cattle (beef and dairy), and swine.

5. Poultry feedstuffs are derived from cotton (cotton seed meal). Data concerning the potential for secondary residues in poultry are available. The maximum dietary burden from poultry, resulting from use associated with this time-limited tolerance is 0.02 ppm. Hexythiazox tolerances are not established on other poultry feed items. Based upon the total radioactive residue levels from the poultry metabolism study, tolerances for secondary residues of hexythiazox in poultry commodities are not required for this section 18 request.

D. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for hexythiazox and its metabolites on cotton seed. Thus, harmonization is not an issue for this time-limited tolerance.

E. Rotational Crop Restrictions

As hexythiazox is not registered for use on crops that are typically rotated, rotational crop data are not available and rotation crop restrictions are not present on the hexythiazox label. Therefore, EPA cannot determine the potential for uptake of residues into crops that may be rotated into hexythiazox treated fields. In the absence of data, the following rotational crop restriction has been added to the section 18 product label: "In order to avoid illegal residues, do not rotate treated fields to crops, other than cotton, for one year following application of hexythiazox. After one year following application of Hexythiazox, any crops may be rotated into treated fields."

VI. Conclusion

Therefore, the tolerance is established for combined residues of hexythiazox (trans-5-(4-chlorophenyl) -*N*-cyclohexyl-4-methyl-2- oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl in cotton, undelinted seed at 0.1 ppm, and on cotton gin byproducts at 2.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A

request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300568] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300568]. Electronic comments on this rule may be filed online at many Federal Depository Libraries.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since this tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 29, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.448 is amended as follows:

i. By designating the existing text as paragraph (a) and adding a heading.

ii. Adding paragraph (b) with a heading.

iii. Paragraphs (c) and (d) are added and reserved with headings.

§ 180.448 Hexythiazox; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the insecticide hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
cotton seed, undelinted	0.1	10/1/98
cotton gin byproducts	2.0	10/1/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–31104 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300584; FRL–5756–2]

RIN 2070–AB78

Deltamethrin and Tralomethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of deltamethrin and tralomethrin in or on: deltamethrin--cottonseed at 0.04 parts per million (ppm) and cottonseed oil at 0.2 ppm; and tralomethrin--broccoli at 0.50 ppm, cottonseed at 0.02 ppm, lettuce, head at 1.00 ppm, lettuce, leaf at 3.00 ppm, soybeans at 0.05 ppm, sunflower seed at 0.05 ppm and cottonseed oil at 0.20 ppm. It also removes time limitations for tolerances for residues of deltamethrin and tralomethrin on the same commodities that expire on November 15, 1997. AgrEvo USA Company requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104-170). These tolerances were established under petition numbers PP 2F4055, PP 6F3436, PP 4F2993, and PP 6F3309.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300584, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300584, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300584. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: John Hebert, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–3068, e-mail: hebert.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On August 16, 1995 and September 15, 1985, EPA established time limited tolerances under section 408 of the Federal Food Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d) and 348 for residues of deltamethrin (60 FR 42455) (FRL–4966–3) and tralomethrin (50 FR 37851) respectively, on cottonseed. These tolerances expire on November 15, 1997. AgrEvo USA Company, on September 15, 1997, requested that the time limitation for tolerances established for residues of the insecticides deltamethrin on cottonseed at 0.04 ppm and cottonseed oil at 0.2 ppm; and tralomethrin on broccoli at 0.50 ppm, cottonseed at 0.02 ppm, lettuce, head at 1.00 ppm, lettuce, leaf at 3.00 ppm, soybeans at 0.05 ppm, sunflower seed at 0.05 ppm and cottonseed oil at 0.20 ppm, be removed based on ecological and environmental effects data that they had submitted as a condition of the registration and time-limited tolerances. AgrEvo USA Company also submitted a summary of its petition as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170). In the **Federal Register** of September 25, 1997 (62 FR 50337) (FRL–5848–2), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for a tolerance by AgrEvo USA Company. This notice included a summary of the petition prepared by AgrEvo USA Company (acting as registered US agent for Hoechst Schering AgrEvo, S. A., Little Falls Centre, 2711 Centerville Road, Wilmington, DE 19808, the registrant. There were no comments received in response to the notice of filing.

The basis for time limited tolerances that expire November 15, 1997, was given in the October 20, 1993 **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

Deltamethrin and tralomethrin are being combined for analysis under FQPA because tralomethrin is rapidly metabolized by animals to deltamethrin as a result of debromination. Results of the rat metabolism study supports this action.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes

exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst-case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of deltamethrin and tralomethrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), to remove the time limitation for a tolerances for residues of deltamethrin--cottonseed at 0.04 ppm and cottonseed oil at 0.2 ppm; and tralomethrin--broccoli at 0.50 ppm, cottonseed at 0.02 ppm, lettuce, head at 1.00 ppm, lettuce, leaf at 3.00 ppm, soybeans at 0.05 ppm, sunflower seed at 0.05 ppm and cottonseed oil at 0.20 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by deltamethrin and tralomethrin are discussed below.

Deltamethrin

1. A battery of acute toxicity studies places technical deltamethrin in Toxicity Category III for acute dermal (LD_{50} > 2,000 milligrams/kilograms (mg/kg)), acute inhalation (LC_{50} = 2.2 mg/l) and primary eye irritation; Category IV for acute oral (LD_{50} > 5,000 mg/kg) and primary dermal (non-irritating). Deltamethrin is a non-sensitizer. The NOEL for acute delayed neurotoxicity is greater than 5,000 mg/kg.

2. In a subchronic oral toxicity study deltamethrin was administered to 20 Sprague-Dawley rats/sex/dose in polyethylene glycol 200 by gavage at dose levels of 0, 0.1, 1.0, 2.5, or 10.0 milligrams/kilograms/day (mg/kg/day) for 13 weeks. The lowest observed effect level (LOEL) for males is 2.5 mg/kg/day, based on depressed body weights and body weight gains. The LOEL for females is 10 mg/kg/day, based on some hypersensitivity observed during neurotoxicity testing. The NOEL for males and females is 1.0 and 2.5 mg/kg/day, respectively. This subchronic oral toxicity study in rats is classified as core minimum.

3. In a subchronic oral toxicity study deltamethrin was administered to 3-5 beagle dogs/sex/dose in polyethylene glycol in gelatine capsules at dose levels of 0, 0.1, 1.0, 2.5, or 10 mg/kg/day for 13 weeks. The LOEL is 2.5 mg/kg/day, based on gastro-intestinal disturbance and stimulation of the nervous system as noted in the clinical signs of toxicity for both sexes. The NOEL is 1.0 mg/kg/day. This subchronic oral toxicity study in dogs is classified as core minimum. A NOEL of 1.0 mg/kg/day is supported. At higher levels stimulation of the nervous system is noted (the LOEL is set at 2.5 mg/kg/day, but effects were more definite at 10 mg/kg/day).

4. In a 21–day subchronic dermal toxicity study five Sprague-Dawley rats/sex/dose were dermally exposed to 6 ml/kg of deltamethrin for 6 hours/day at dose levels of 0, 100, 300, or 1,000 mg/kg/day (limit test). The LOEL for males is 300 mg/kg/day, based on slightly decreased body weight gain supported by marginally decreased food consumption. The NOEL for males is 100 mg/kg/day. The LOEL for females was not observed. The NOEL for females is >1,000 mg/kg/day (limit dose).

5. In a 3-week inhalation toxicity study deltamethrin was administered to eight CD rats/sex/dose at concentrations of 0.003, 0.0096, or 0.0563 mg/l for 6 hours/day for 5 days/week (14 exposures total). The LOEL is 0.0096 mg/l, based on signs of irritation (nerve stimulation) and reduced body weight gains in males and elevated Na+ levels in both males and females. The NOEL is 0.003 mg/l.

6. In a chronic toxicity study deltamethrin was administered to eight beagle dogs/sex/dose in the diet at dose levels of 0, 0.026, 0.261, or 1.134 mg/kg/day for males and 0, 0.024, 0.271, or 1.061 mg/kg/day for females for 24 months. The NOEL is ≥40 ppm (equivalent to 1.134 mg/kg/day for males and 1.061 mg/kg/day for females). A LOEL was not observed. Sufficient data to support a NOEL of >40 ppm have been generated.

7. In a chronic toxicity study deltamethrin was administered to 80 Charles River CD-1 mice/sex/dose in the diet at dose levels of 0, 0.12, 0.61, 3.1, or 12 mg/kg/day for males and 0, 0.15, 0.76, 3.8, or 15 mg/kg/day for females. The NOEL is ≥12 mg/kg/day for males or ≥15 mg/kg/day for females. A LOEL was not observed.

8. In a chronic toxicity study deltamethrin was administered to 90 Charles River CD rats/sex/dose in the diet at dose levels of 0, 0.1, 1.0, or 2.5 mg/kg/day. The LOEL is 2.5 mg/kg/day based on decreased body weight gains noted in both sexes. The NOEL is 1.0 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

9. In a developmental toxicity study deltamethrin was administered to 16 New Zealand White rabbits/dose in 0.5% carboxymethylcellulose by gavage at dose levels of 0, 10, 25, or 100 mg/kg/day from days 7 through 19 of gestation. The maternal LOEL is 25 mg/kg/day, based on treatment-related clinical findings (decreased defecation). The maternal NOEL is 10 mg/kg/day. The developmental LOEL is 100 mg/kg/day, based on treatment-related increases in the fetal incidence of several skeletal variations and a positive trend for litter incidence of two of these variations (unossified pubic and tail bones). The developmental NOEL is 25 mg/kg/day. The developmental toxicity study in the rabbit is classified core minimum.

10. In a developmental toxicity study deltamethrin was administered to 25 Charles River Crl:CD VAF/Plus rats/dose in corn oil by gavage at dose levels of 0, 1.0, 3.3, or 11 mg/kg/day from days 6 through 15 of gestation. Because of excessive toxicity at 11 mg/kg/day, an additional group of 25 rats dosed at 7 mg/kg/day was added. The maternal

LOEL is 7 mg/kg/day, based on treatment-related increases in mortality, clinical findings (increased salivation), and decreased body weight gains during dosing. The maternal NOEL is 3.3 mg/kg/day. There were no treatment-related effects on fetal deaths or resorptions, altered growth, or developmental malformations or variations (external, visceral, and skeletal) noted at any dose level. The developmental NOEL is ≥11 mg/kg/day. A developmental LOEL was not observed.

11. In three different developmental toxicity studies deltamethrin was administered to mice, rats, and rabbits. *Mice:* Mice were dosed at 0, 0.1, 1.0, or 10 mg/kg/day on gestational days 6-17 and were sacrificed on day 18. The maternal NOEL is ≥10 mg/kg/day. There was no maternal LOEL observed. The developmental LOEL is 1.0 mg/kg/day based on increase incidence (fetal and/or litter) of delayed ossification of the sternebrae and paws together with decreased fetal body weights. The developmental NOEL is 0.1 mg/kg/day.

Rats: Rats were dosed at 0, 0.1, 1.0, or 10 mg/kg/day on days 6-18 of gestation and were sacrificed on day 21. The maternal LOEL is 10 mg/kg/day based on slightly reduced body weights. The maternal NOEL is 1.0 mg/kg/day. The developmental LOEL is equivocally set at 10 mg/kg/day, based only on a statistically significant increased incidence (fetal and/or litter) of delayed ossification of the sternebrae. The developmental NOEL is 1.0 mg/kg/day.

Rabbits: Rabbits were dosed at 0, 1, 4, or 16 mg/kg/day on days 6-19 of gestation and were sacrificed on day 28; two separate groups of rabbits received 16 mg/kg/day. The maternal NOEL is ≥16 mg/kg/day. There was no maternal LOEL observed. The developmental LOEL is 16 mg/kg/day based on increased fetal losses and decreased fetal weights. The developmental NOEL is 4 mg/kg/day.

12. In a 3-generation reproduction study deltamethrin was administered to 10 male and 20 female Charles River CD rats/dose in the diet at doses of 0, 0.1, 1.0, or 2.5 mg/kg/day. Parental toxicity was not demonstrated at any dose level. The NOEL for systemic toxicity is ≥2.5 mg/kg/day. The LOEL for systemic toxicity was not observed. Reproductive toxicity was not demonstrated at any dose level. The NOEL for reproductive toxicity is ≥2.5 mg/kg/day. The reproductive LOEL was not observed.

13. There is no mutagenicity concern. There are three acceptable studies: one reverse mutation assay; one *in vitro* chromosome aberration study; one UDS assay in primary rat hepatocytes. All these studies were negative. A dominant lethal study is also available but has not been officially reviewed. A quick assessment indicated that it is also negative.

14. Studies on metabolism: Deltamethrin ^{14}C-labeled at either the benzyl (BD) or the dimethyl (DMD) portion of the molecule was relatively well absorbed. Urine and fecal excretions were almost complete at 48 hours post-dosing. Seven days after dosing, 31-56% of the radioactivity administered was recovered in the urine, 36-59% recovered in the feces, < 0.2% recovered in tissues (fat was highest) and < 1.2% recovered in carcass. Fecal extracts contained mostly unabsorbed, unchanged deltamethrin (17-46% of BD dose and 21-35% of DMD dose).

15. Studies on neurotoxicity: With the exception of the acute delayed neurotoxicity study, no neurotoxicity studies are available.

16. The following studies are considered data gaps in the toxicology data base: 2-generation reproduction study and acute, chronic and developmental mammalian neurotoxicity. These studies will be required under a special Data Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

Tralomethrin

1. A battery of acute toxicity studies places technical tralomethrin in Toxicity Category II for acute oral (LD_{50} in males = 84.9 mg/kg; LD_{50} in females = 95.4 mg/kg), acute inhalation (LC_{50} > 2,000 mg/kg) and primary eye irritation (corneal opacity which reversed within 14 days); Category III for acute dermal (LD_{50} > 2,000 mg/kg); Category IV for primary dermal irritation (non-irritating). Tralomethrin is not a sensitizer. The NOEL for Acute Delayed Neurotoxicity is greater than 6,000 mg/kg.

2. In a rat oral toxicity study, tralomethrin was administered to 20 CD rats/sex/dose via gavage at dose levels of 0, 1, 6, or 18 mg/kg/day for 13 weeks (91 days). The LOEL for this 13-week rat oral toxicity study is 6 mg/kg/day based on decreased liver weights. The NOEL is 1 mg/kg/day.

3. In a 13-week dog feeding study, tralomethrin in polyethylene glycol was administered to 5 beagle dogs/sex/group via capsule at dose levels of 0, 0.1, 1.0, or 10 mg/kg/day. The LOEL for this 13-week dog feeding study is 10 mg/kg/day based on neurological and hematological effects. The NOEL is 1 mg/kg/day.

4. In a 1-year dog feeding study, tralomethrin in corn oil was administered to eight beagle dogs/sex/group by capsule at dose levels of 0.75, 3.0, and 10.0 mg/kg/day. The high dose level was excessively toxic and was reduced to 8.0 mg/kg/day at 4 weeks and to 6.0 mg/kg/day on week 14. The low dose level was increased from 0.75 to 1.0 mg/kg/day during week 14. The LOEL in this 1-year dog feeding study is 3.0 mg/kg/day, based on reduced body weight gain, tremors, and ptyalism. The NOEL is 0.75/1.0 mg/kg/day.

5. In a mouse oncogenicity study, tralomethrin in corn oil was administered to 80 CD-1 mice/sex/dose by gavage at dose levels of 0.75, 3.0, or 10.0 mg/kg/day for up to 2 years. The systemic LOEL in this mouse oncogenicity study is 3 mg/kg/day, based on skin lesions in male and female mice. The systemic NOEL is 0.75 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

6. In a rat chronic toxicity/oncogenicity study, tralomethrin in corn oil was administered to 80 CD rats/sex/dose by gavage at dose levels of 0.75, 3.0, or 12.0 mg/kg/day for up to 2 years. The LOEL is 3.0 mg/kg/day in male and female rats based on decreased body weight gain in males and decreased food and water consumption in males and females at 3.0 mg/kg/day. The NOEL is 0.75 mg/kg/day. Under the conditions of this study, there was no evidence of carcinogenic potential.

7. In a rat developmental study, tralomethrin in corn oil was administered to 25 female Sprague-Dawley CD rats per group at 0, 2, 6, or 18 mg/kg/day via gavage on days 6-17 of gestation. On day 21 the rats were sacrificed and pups delivered by cesarean section. The maternal LOEL 18 mg/kg/day based on one treatment-related death at this dose level. The maternal NOEL is 6 mg/kg/day. There was no developmental toxicity noted at any dose level. There were no treatment-related increases in malformations or variations found upon external, internal, and skeletal examination of the fetuses. A developmental LOEL was not observed. The developmental NOEL is ≥18 mg/kg/day.

8. In a developmental study, tralomethrin in corn oil was administered to 15 female New Zealand white rabbits per group at 0, 2, 8, or 32 mg/kg/day via gavage on days 6-18 of gestation. On day 28 the dams were sacrificed and pups delivered. A maternal LOEL was not observed. The maternal NOEL is ≥32 mg/kg/day. There was no developmental toxicity noted at any dose level. A developmental LOEL was not observed. The developmental NOEL is ≥32 mg/kg/day.

9. In a two-generation rat reproductive toxicity study, tralomethrin in corn oil was administered to COBS CD rats by gavage at dose levels of 0, 0.75, 3.0, or 12.0 mg/kg/day. The LOEL for parental toxicity is 3.0 mg/kg/day, based on decreased body weight gains. The NOEL for parental toxicity is 0.75 mg/kg/day. Reproductive toxicity was demonstrated at the mid- and high-doses. The LOEL for reproductive toxicity is 0.75 mg/kg/day, based on litters with smaller than normal pups. A reproductive NOEL was not observed.

10. There does not appear to be a concern for mutagenicity, however, all studies should be revisited, particularly, the mouse lymphoma. There are three reviewed studies that are not classified for acceptability: one mouse lymphoma assay (Accession No. 072115; one *in vitro* chromosome aberration study in CHO cells and one UDS assay in primary rat hepatocytes (MRID 41138803). The mouse lymphoma assay tested negatively without activation and was moderately positive with activation. The other two assays tested negatively.

11. The metabolism studies indicate that tralomethrin is rapidly debrominated to deltamethrin. It is then further metabolized to alcohols, carboxylic acids, glucuronides, glycine and sulfate conjugates.

12. No mammalian neurotoxicity studies are available. The acute delayed neurotoxicity study in the hen is summarized in section one.

13. The following studies are considered data gaps in the toxicology data base: acute, chronic and developmental mammalian neurotoxicity. These studies will be required under a special Data Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

Tralomethrin is rapidly metabolized to deltamethrin. The toxicology data bases for deltamethrin and tralomethrin were combined in order to determine appropriate endpoints for risk assessment. Results of the rat metabolism study support this action.

1. *Acute toxicity.* EPA has established an NOEL of 1.0 mg/kg/day based on combined acute dietary dog studies with a combined deltamethrin/tralomethrin data base. This NOEL is based on an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

2. *Short - and intermediate-term toxicity.* There is no concern for short- and intermediate-term toxicity. There is no dermal or systemic toxicity at 1,000 mg/kg/day in 21–day dermal study in rats.

3. *Chronic toxicity.* EPA has established the RfD for deltamethrin and tralomethrin at 0.01 (mg/kg/day). This RfD is based on a NOEL of 0.75/1.0 mg/kg/day from a 1 year toxicity study in dogs. The NOEL is based on decreased body weight gain, tremors, and ptyalism. This RfD is based on an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* There is no evidence of carcinogenicity in either rats or mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.422 and 180.435) for the residues of tralomethrin and deltamethrin in or on a variety of raw agricultural commodities. For purposes of the risk assessment the data bases for deltamethrin and tralomethrin have been combined. EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA's June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent crop treated refinements. Field trial data and FDA monitoring data were used to generate anticipated residues or residue distribution for Monte Carlo analyses. Chronic dietary risk assessments used anticipated residues and percent crop treated refinements. Risk assessments were conducted by EPA to assess dietary exposures and risks from deltamethrin and tralomethrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The NOEL used for the acute dietary exposure was 1.0 mg/kg/day. Potential acute exposures from food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis). The MOE's (99.9th percentile) for the U.S. population based on an acute dietary exposure of 0.000728 mg/kg/day are 1,373. For children 1-6 years old (most highly exposed population), the MOE's based on an acute dietary exposure of 0.001855 mg/kg/day are 539. The Agency has no cause for concern if total exposure calculated for the 99.9th percentile yields an MOE of 100 or larger.

ii. *Chronic exposure and risk.* Potential chronic exposures were estimated using NOVIGEN's DEEM (Dietary Exposure Evaluation Model). The RfD used for the chronic dietary analysis is 0.01 mg/kg/day. Using tolerance values and anticipated residues discussed above, the risk assessment resulted in use of 0.2% of the RfD for the general U.S. population and 0.5% of the RfD for children 1-6 years.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate.

Section 408(b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used. The percent of crop treated estimates for deltamethrin and tralomethrin were derived from federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further,

regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under FIFRA.

2. *From drinking water.* Deltamethrin and tralomethrin are immobile in soil and will not leach into ground water. Additionally, due to their insolubility and lipophilic nature, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment. A screening evaluation of leaching potential of a typical potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM1). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 ppb). Therefore, EPA concludes that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* Acute drinking water exposure is estimated for the U.S. population to be 0.000014 mg/kg/day with an MOE of 69,093. For Non-nursing infants less than 1 year old the exposure is 0.000028 with and MOE of 35,895.

ii. *Chronic exposure and risk.* Chronic drinking water exposure is estimated for the U.S. population to be zero and for the non-nursing infants 0.000001 mg/kg/day. Zero percent of the RfD is occupied by both population groups.

3. *From non-dietary exposure.* Deltamethrin and tralomethrin are broad spectrum insecticides registered for use on a variety of food and non-food agricultural commodities. Non-agricultural registered uses include turf and lawn care treatments, broadcast carpet treatments, indoor fogger, spot, crack and crevice treatment, insect baits, lawn and garden sprays and indoor and outdoor residential, industrial, and food/feed handling establishments.

To evaluate non-dietary exposure, the "flea infestation control" scenario was chosen to represent a plausible but worst-case non-dietary (indoor and outdoor) non-occupational exposure. This scenario provides a situation where deltamethrin and/or tralomethrin is commonly used and they can be used concurrently for a multitude of uses, e.g., spot and/or broadcast treatment of infested indoor surfaces such as carpets and rugs, treatment of pets and treatment of the lawn. This hypothetical situation provides a very conservative, upper bound estimate of potential non-dietary exposures. Consequently, if health risks are acceptable under these conditions, the potential risks associated with other more likely scenarios would also be acceptable.

Because tralomethrin is rapidly metabolized to deltamethrin, and the toxicology profiles of deltamethrin and tralomethrin are virtually identical, a non-dietary and aggregate (non-dietary + chronic dietary) exposure/risk assessment has been conducted for the combination of both active ingredients. The total exposure to both materials was expressed as "deltamethrin equivalents" and these were compared to the toxicology endpoints identified from the combined deltamethrin/tralomethrin toxicology data base.

The total aggregate non-dietary exposure including lawn, carpet, and pet uses (in mg/kg/day) are: 0.00002 for adults; 0.000503 for children aged 1-6 years; and 0.000543 for infants less than 1 year old.

4. Cumulative exposure to substances with common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Although deltamethrin and tralomethrin are similar to other members of the synthetic pyrethroid class of insecticides, EPA does not have, at this time, available data to determine whether deltamethrin and tralomethrin have common methods of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed, a cumulative risk approach based on a common mechanism of toxicity, deltamethrin and tralomethrin do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that deltamethrin and tralomethrin have a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and drinking water. The potential acute exposure from food and water to the US population for deltamethrin and tralomethrin is 0.000742 mg/kg/day with an MOE of 1,346. This acute dietary exposure estimate is considered conservative, using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to deltamethrin and tralomethrin from food and drinking water will utilize 0.2% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure are children 1-6 years old (discussed in Unit II.F. of this preamble). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Short- and intermediate-term risk.* Short- and intermediate aggregate exposure takes into account chronic dietary food and drinking water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The potential short- and intermediate-term aggregate risk for the U.S. population is an exposure 0.000042 mg/kg/day with an MOE of 49,000.

EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to deltamethrin and tralomethrin residues.

E. Aggregate Cancer Risk for U.S. Population

Deltamethrin and tralomethrin do not yet have carcinogenicity classification; however, there is no evidence of carcinogenicity in any of the chronic studies. Therefore, a carcinogenicity risk analysis is not required.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of deltamethrin and tralomethrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* See toxicological profile in Unit II.A. of this preamble.

iii. *Reproductive toxicity study.* See toxicological profile in Unit II.A. of this preamble.

iv. *Pre- and post-natal sensitivity.* There is no evidence of additional sensitivity to young rats or rabbits following prenatal exposure to deltamethrin or tralomethrin.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* The potential acute exposure from food and drinking water to the most sensitive population subgroup, children 1-6 years old is 0.001867 mg/kg/day with an MOE of 535. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to deltamethrin and tralomethrin from food will utilize 0.5% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- or intermediate-term risk.* EPA has concluded that potential short- or intermediate-term aggregate exposure of deltamethrin or tralomethrin from chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure to infants (less than 1 year old) is 0.000057 mg/kg/day with an MOE of 1,800. For children (1-6 years old) the exposure is 0.000055 mg/kg/day with and MOE of 2,700.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

EPA concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to deltamethrin and tralomethrin.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . . ." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

The absorption of deltamethrin appears to be highly dependent upon the route and vehicle of administration. Once absorbed, deltamethrin is rapidly and extensively metabolized and excreted through urine and feces, almost completed within the first 48 hours. Tralomethrin is rapidly metabolized to deltamethrin after debromination. The metabolic pattern of the debrominated tralomethrin is exactly the same as that of the metabolic pattern of deltamethrin.

B. Analytical Enforcement Methodology

The analytical method designated HRAV-7B is adequate for enforcement purposes. Multi residue methods data for tralomethrin, deltamethrin, and trans-deltamethrin have been sent to the Food and Drug Administration.

C. Magnitude of Residues

Based on the low level of deltamethrin residues expected in the diet of cattle from the use on cotton, the ruminant metabolism study, and an available cattle feeding study, measurable residues are not expected in the milk or meat of ruminants. A poultry metabolism or feeding study is not required because cottonseed meal is

not a major poultry feed item and deltamethrin residues are predicted to be non-detectable. For dietary exposure analyses, field trial data and FDA monitoring data were used to generate the appropriate anticipated residues or residue distribution for Monte Carlo analysis.

D. International Residue Limits

No CODEX maximum residue levels (MRL) are established for deltamethrin and tralomethrin tolerances addressed in this document. For deltamethrin on cottonseed, Mexico has an established tolerance of 0.1 ppm (vs. U.S. tolerance of 0.04 ppm). For tralomethrin on broccoli and soybeans Mexico has established tolerances of 0.02 ppm (vs. U.S. tolerance of 0.50) and 0.05 ppm (vs. U.S tolerance of 0.05ppm) respectively. As indicated above, there are small differences between the section 408 tolerances and the Codex MRL values for specific commodities. These differences could be caused by differences in methods to establish tolerances, calculation of animal feed dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

IV. Conclusion

Therefore, the tolerance is established for residues of deltamethrin in cottonseed at 0.04 ppm and cottonseed oil at 0.2 ppm and tralomethrin broccoli at 0.50 ppm, cottonseed at 0.02 ppm, lettuce, head at 1.00 ppm, lettuce, leaf at 3.00 ppm, soybeans at 0.05 ppm, sunflower seed at 0.05 ppm and cottonseed oil at 0.20 ppm.

In addition to the tolerances being established, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerance for cottonseed oil that now appears in § 185.1580 with the tolerances that appear in §180.435.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number OPP–300584 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule removes time limitations for tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests. requirements.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.422 to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the pesticide chemical tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethyl-cyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethyl-cyclopropanecarboxylate calculated as the parent in or on the following agricultural commodities:

Commodity	Parts per million
Broccoli	0.5
Cottonseed	0.02
Cottonseed oil	0.20
Lettuce, head	1.00
Lettuce, leaf	3.00
Soybeans	0.05
Sunflower seed	0.05

(2) A food additive tolerance of 0.02 part per million is established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(RS)-1,2,2,2-tetrabromoethyl] cyclopropanecarboxylate) and its metabolites *cis*-deltamethrin [(*S*-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-[2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and trans-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] as follows:

(i) In or on all food items (other than those covered by a higher tolerance as a result of use on growing crops) in food-handling establishments.

(ii) The insecticide may be present as a residue from application of tralomethrin in food-handling establishments, including food service, manufacturing, and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries in accordance with the following prescribed conditions:

(A) Application shall be limited to a general surface and spot and/or crack and crevice treatment in food-handling establishments where food and food products are held, processed, prepared, and served. General surface application may be used only when the facility is not in operation provided exposed food has been covered or removed from the area being treated. All food-contact surfaces and equipment must be thoroughly cleaned after general surface applications. Spot and/or crack and crevice application may be used while the facility is in operation provided exposed food is covered or removed from the area being treated prior to application. Spray concentration shall be limited to a maximum of 0.06 percent active ingredient. Contamination of food and food-contact surfaces shall be avoided.

(B) To assure safe use of the insecticide, its label and labelling shall conform to that registered with the U.S. Environmental Protection Agency and shall be used in accordance with such label and labelling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

c. By revising § 180.435 to read as follows:

§ 180.435 Deltamethrin, tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the pesticide chemical deltamethrin [(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-*alpha*-cyano-3-phenoxybenzyl ester and its major metabolites, *trans* deltamethrin [(*S*)-*alpha*-cyano-*m*-phenoxybenzyl(1R,3S)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *alpha*-*R*-deltamethrin [(*R*)-*alpha*-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on the following agricultural commodities:

Commodity	Parts per million
Cottonseed	0.04
Cottonseed oil	0.2
Tomatoes	0.2
Tomato (products) concentrated.	1.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.1580 [Removed]

b. By removing § 185.1580.

§ 185.5450 [Removed]

c. By removing § 185.5450.

[FR Doc. 97–31103 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300581; FRL–5755–5]

RIN 2070–AB78

Lambda-Cyhalothrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of the pyrethroid lambda-cyhalothrin and its epimer in or on broccoli, cabbage, corn (grain, fodder and forage), corn (sweet), cottonseed, dry bulb onion, garlic, lettuce, head, peanuts, rice, soybeans, sorghum, sunflower, tomatoes, wheat, sunflower, and livestock commodities. It also removes time limitations for tolerances for residues of lambda-cyhalothrin on the same commodities that expire on November 15, 1997. The Zeneca Ag Products requested these tolerances under the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 28, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300581], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300581], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300581]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Adam Heyward, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–6100, e-mail: heyward.adam@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On May 24, 1988, EPA established a time limited tolerance under section 408 of the FFDCA, 21 U.S.C. 346 a(d) and 348 for residues of lambda-cyhalothrin and its epimer on cottonseed (53 FR 18558). As additional crops tolerances were established, they were also made time-limited. These tolerance expire on November 15, 1997. Zeneca Ag Products, on September 15, 1997, requested that the time limitation for tolerances for residues of the insecticide lambda-cyhalothrin and its epimer in or on the commodities mentioned above be removed based on environmental effects data that they had submitted as a condition of registration. Zeneca Ag Products also submitted a summary of its petition as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

In the **Federal Register** of Friday, September 25, 1997 (62 FR 50337) (FRL–5748–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 6F3318, 7F3560, 7H5543, 7F3488, 1F3952, 1H5607, 1F3992, 2F4109, 2F4100, 2F4114, 1F3985, 9F3770 and 6F4769) for tolerances by Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, Delaware 19850–5458. This notice included a summary of the petition prepared by Zeneca Ag Products, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.438 be amended by removing time limitatioins for tolerances for the combined residue of the insecticide, lambda-cyhalothrin and its epimer in or on the following crops and commodities: broccoli at 0.4 parts per millions (ppm); cabbage at 0.4 ppm; cattle, fat at 3.0 ppm; cattle, meat at 0.2 ppm; cattle, meat and meat by-products (mbyp) at 0.2 ppm; corn, grain (field and pop) at 0.05 ppm; corn, fodder at 1.0 ppm; corn, forage at 6.0 ppm; corn, sweet (k+kwhr) at 0.05 ppm; cottonseed at 0.05 ppm; dry bulb onion at 0.1 ppm; eggs at 0.01 ppm; garlic at 0.1 ppm; goats, fat at 3.0 ppm; goats, meat at 0.2 ppm; goats, mbyp at 0.2 ppm, hogs, fat at 3.0 ppm; hogs, meat at 0.2 ppm; hogs, mbyp at 0.2 ppm; horses, fat at 3.0 ppm; horses, meat at 0.2 ppm; horses, mbyp at 0.2 ppm; lettuce, head at 2.0 ppm; milk, fat (reflecting 0.2 ppm in whole milk) at 5.0 ppm; peanuts at 0.05 ppm; peanuts, hulls at 0.05 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, mbyp at 0.01 ppm; rice, grain at 1.0 ppm; rice, hulls at 5.0 ppm; rice, straw at 1.8 ppm; sheep, fat at 3.0 ppm; sheep, meat at 0.2 ppm; sheep, mbyp at 0.2 ppm; soybeans at 0.01 ppm; sorghum, grain at 0.02 ppm; sorghum, grain dust at 1.5 ppm; sunflower, seeds at 0.2 ppm; sunflower, forage at 0.2 ppm; tomatoes at 0.1 ppm; wheat, grain at 0.05 ppm; wheat, forage at 2.0 ppm; wheat, hay at 2.0 ppm; wheat, straw at 2.0 ppm; wheat, grain dust at 2.0 ppm; corn, grain flour at 0.15 ppm; sunflower, oil at 0.30 ppm; sunflower, hulls at 0.50 ppm; tomato pomace (dry or wet) at 6.0 ppm; and wheat, bran at 0.2 ppm.

In the Notice of Filing the established tolerance level for sorghum grain was inadvertently listed as 0.02 ppm. The correct tolerance level for this commodity if 0.2 ppm. The correct tolerance was considered by EPA for risk assessment purposes. In the latest CFR, 40 CFR 180.438 (revised as of July 1, 1997), the tolerance for garlic was incorrectly listed as 0.02 ppm. The correct level if 0.1 ppm. This error occurred when the CFR was updated. The 0.1 ppm level was considered by EPA for risk assessment.

The basis for time limited tolerances that expire November 15, 1997 was given in the October 20, 1993 **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain environmental effects data. The rational for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) if none of the conditions of registration had any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months

to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and its epimer, and to make a determination on aggregate exposure, consistent with section 408(b)(2) in or on the crops and commodities listed above under SUPPLEMENTARY INFORMATION. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by lambda-cyhalothrin and its epimer are discussed below. Note that the studies discussed below were conducted using either cyhalothrin or lambda-cyhalothrin. Cyhalothrin and lambda-cyhalothrin are basically the same chemical, the differences are found in their stereo chemistry and the number of isomers in each mixture. Cyhalothrin consists of four stereo isomers in each mixture. Cyhalothrin consists of four steno isomers while lambda-cyhalothrin is a mixture of the two iomers. The two lambda-cyhalothrin isomers are contained in cyhalothrin, they represent 40% of the cyhalothrin mixture. The major studies submitted to the Agency were conducted with cyhalothrin. However, these studies are used in support of registration for both mixtures. There is evidence, based on subchronic studies in rats, that the two mixtures are not biologically different with respect to their mammalian toxicity.

1. Acute toxicity studies with the technical grade of the active ingredient lambda-cyahothrin: oral LD_{50} in the rat of 79 milligrams/kilogram (mg/kg) (males) and 56 mg/kg (females)(Tox Category II), dermal LD_{50} in the rat of 632 mg/kg (males) and 696 mg/kg females (Tox Category II), primary eye irritation study showed mild irritation (Tox Category II) and primary dermal irritation study showed no irritation (Tox Category IV).

2. The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an *in vitro* cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. In a three-generation reproduction study, rats were fed diets containing cyhalothrin at 0, 10, 30 or 100 ppm (approximately 0, 0.5, 1.5 or 5.0 mg/kg/day). Parental toxicity was observed as decreased mean body weight and body weight gain during the premating and gestation periods at 5.0 mg/kg/day. There were no other treatment-related effects. Offspring toxicity was observed as reduced mean pup weight and pup weight gains during lactation, again at 5.0 mg/kg/day. No other treatment-related effects were observed. The reproductive and parental NOELs are 1.5 mg/kg/day and the reproductive and parental LOELs are 5.0 mg/kg/day. The developmental NOEL is 5.0 mg/kg/day (highest dose tested).

4. In a developmental toxicity study, rabbits were given gavage dose levels of cyhalothrin at: 0, 3, 10, 30 mg/kg/day during the gestation period (days 6 through 18). The maternal NOEL was 10 mg/kg/day and the maternal LOEL was 30 mg/kg/day based on decreased body weight gain (48% of controls) during the dosing period. The developmental NOEL was 30 mg/kg/day highest dose tested (HDT). No developmental effects were observed.

5. In a developmental study rats were given gavage dose levels of cyhalothrin at: 0, 5, 10, 15 mg/kg/day during the gestation period (days 6 through 15). The maternal NOEL was 10 mg/kg/day and the maternal LOEL was 15 mg/kg/day based on reduced body weight gain (70% of control) and food consumption (as low as 76%) during the dosing period. The developmental NOEL was greater than 15 mg/kg/day (HDT). No developmental effects were observed.

6. In a 90–day feeding study in rats, lambda-cyhalothrin was fed at doses of, 0, 10, 50 or 250 ppm (0,0.5, 2.5, 12.5 mg/kg/day). The animals were examined once daily for clinical signs of toxicity. Bodyweights, food consumption, hematological and clinical chemistry parameters, urinalysis parameters, organ weights, and macroscopic and microscopic observations were recorded. Body weight gain and food consumption were significantly reduced for both sexes at 12.5 mg/kg/day. There was also a slight but statistically significant reduction in food efficiency in females at this dose level. The NOEL is 2.5 mg/kg/day and the LEL is 12.5 mg/kg/day based on reduction in bodyweight gain and food consumption in both sexes and food efficiency in females.

7. In another 90–day feeding study in rats cyhalothrin was fed at doses of 0, 10, 50 or 250 ppm (0, 0.5, 2.5, 12.5 mg/kg/day). The animals were examined for clinical signs of toxicity. Bodyweights, food consumption, hematological and clinical chemistry parameters, urinalysis parameters, organ weights, and macroscopic and microscopic observations were recorded. Body weight gain was significantly reduced in males at 12.5 mg/kg/day. Body weight gain was also significantly reduced in females at this level, but only during the first week. Body weight gain was not significantly affected at lower dose levels. The NOEL is 2.5 mg/kg/day and the LEL is 12.5 mg/kg/day based on decreased bodyweight gain.

8. A In 28–day study in the mouse cyhalothrin was fed to mice in the diet as a range-finding study for the carcinogenicity study at 0, 5, 25, 100, 500, or 2,000 ppm (0, 0.65, 3.30, 13.5, 64.2 or 309 mg/kg/day for males and 0, 0.80, 4.17, 15.2, 77.9 or 294 mg/kg/day for females).The NOEL is 500 ppm and the LEL is 2,000 ppm based on mortality, clinical signs of toxicity, decreases in body weight gain and food consumption, changes in hematology and organ weights and minimal centrilobular hepatocyte enlargement.

9. In a 21 day dermal toxicity study rats were exposed dermally to doses of 1, 10, or 100 mg/kg of lambda-cyhalothrin (reduced to 50 mg/kg after two or three applications) 6 hours/day for 21 consecutive days. No significant signs of skin irritation was observed at any dose level. Two male rats were found dead after 3 applications of 100 mg/kg. There was no evidence prior to death, at postmortem examination, or from histopathology, of the possible cause of death, but it is thought likely to be due to pyrethroid toxicity. Animals dosed with 50 mg/kg/day displayed clinical signs of slight general toxicity (bizarre behavior, paw flicking, splayed gait, sides pinched in, thin, tip-toe gait, reduced stability, dehydration and reduced splay reflex). Effects on body weight gain and food consumption were also seen in males at this dose level. No toxicologically significant treatment-related effects were observed at any other dose level. The NOEL is 10 mg/kg/day and the LEL is 100/50 mg/kg/day based on death, clinical signs of toxicity and decreased bodyweight gain and food consumption.

10. In a 21–day inhalation study rats were exposed nose-only 6 hours/day, 5 days/week for 21 days to lambda-cyhalothrin at 0.3, 3.3, or 16.7 µg/L. The NOEL was 0.3 µg/L and the LOEL was 3.3 µg/L based on decreased bodyweight gains (high dose males) and food consumption (high dose, both sexes), clinical signs of toxicity (paw flicking, tail erections, tiptoe gait, lachrymation or salivation), punctate foci on cornea (both sexes, mid- and high dose), raised prothrombin time, changes in hematology, clinical chemistry and urinalysis parameters and a slight increase in the incidence of alveolitis in females.

11. In a 12–month chronic/carcinogenicity feeding study, dogs were fed dose (by capsule) levels of lambda-cyhalothrin at 0, 0.1, 0.5, 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

12. In a 24–month chronic feeding/carcinogenicity study rats were fed diets containing 0, 10, 50, and 250 ppm (0, 0.5, 2.5 or 12.5 mg/kg/day) of cyhalothrin. The LEL for chronic toxicity in rats is 12.5 mg/kg/day and the NOEL is 2.5 mg/kg/day. There was no indication of carcinogenic effects observed under the conditions of the study.

13. In a carcinogenicity study, mice were fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) of cyhalothrin in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The EPA has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). No treatment-related carcinogenic effects were observed under the conditions of the study.

14. Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow.

15. No neurotoxicity studies are available. These studies will be required under a special data call-in letter pursuant to Section 3(c)(2)(B) of FIFRA. Although these data are lacking EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, EPA used a systemic NOEL of 0.5 mg/kg/day based on gait adnormalities in dogs on day 2 in the chronic toxicity study.

2. *Short - and intermediate - term toxicity.* For short-and intermediate-term dermal risk assessment, EPA recommends use of a NOEL of 10.0 mg/kg/day from the 21–day dermal toxicity study based on systemic toxicity at 50 mg/kg/day (LOEL). A dermal absorption rate of 25% was used based on weight of the evidence available for all structurally related pyrethroids. EPA used a NOEL of 0.3 µg/L from the 21–day inhalation study in rats based on clinical signs indicative of neurotoxicity (paw slicking) tail erections, and tiptoe gait) at 3.3 µg/L.

3. *Chronic toxicity.* EPA has established the reference dose (RfD) for lambda-cyhalothrin at 0.001 mg/kg/day. This RfD is based on a 1–year oral study in dogs with a NOEL of 0.1 mg/kg/day and an uncertainty factor (UF) of 100. The LEL of 0.5 mg/kg/day was based on clinical signs of neurotoxicity (convulsions, ataxia, muscle tremors) and a slight increase in liquid feces.

4. *Carcinogenicity.* Based on the available carcinogenicity studies in two rodent species, lambda-cyhalothrin has been classified as a Group "D" chemical, "not classifiable as to human carcinogenicity." Although lambda-cyhalothrin was not shown to be carcinogenic in either the mouse or rat, the EPA Health Effects Division (HED) RfD/PEER review committee based the "D" classification on: (1) Lambda-cyhalothrin was not tested at adequate dose levels for carcinogenicity testing in the mouse, and (2) the equivocal nature of the findings with regard to the incidence of mammary adenocarcinomas. No additional cancer studies are being required at this time.

C. Exposures and Risks

1. *From food and feed uses.* The primary source of human exposure to lambda-cyhalothrin will be from ingestion of both raw and processed food commodities treated with lambda-cyhalothrin. Tolerances have been established in 40 CFR 180.438 and 40 CFR 186.3765 for combined residues of lambda-cyhalothrin and its epimer in or on a variety of food commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from lambda-cyhalothrin as follows:

i. *Acute exposure and risk.* An acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute dietary exposure used Monte Carlo modeling incorporating anticipated residue and percent crop treated refinements. The acute dietary Margin of Exposure (MOE) calculated at the 99.9th percentile for the most highly exposed population subgroup (non-nursing infants < 1 year old) is 139. The MOE calculated at the 99.9th percentile for the general U.S. population is 311. EPA concludes that there is a reasonable certainty of no harm for MOE of 100 or greater. Therefore, the acute dietary risk assessment for lambda-cyhalothrin indicates a reasonable certainty of no harm.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is

0.001 mg/kg/day from the lambda-cyhalothrin chronic dog study and an uncertainty factor of 100. The chronic dietary exposure assessment used anticipated residues and percent crop treated information. The chronic dietary exposure estimate for the overall U.S. population was calculated to be 0.000068 mg/kg/day (6.8% of the RfD utilized) and for children 1–6 years was calculated to be 0.000192 mg/kg/day (19.2% of the RfD utilized).

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent crop treated refinements. The chronic dietary risk assessment used percent crop treated information and anticipated residues. Section 408(b)(2)(E) authorizes EPA to consider available data and information on the antipicated residue levels of pesticide chemicals that have been measure in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified or left in effect, demonstration that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a timeframe it deems appropriate. Section 408 (b)(2)(F) allows the agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for lambda-cyhalothrin were derived from federal and market survey data. EPA considers these reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Date Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under the FIFRA.

2. *From drinking water.* Laboratory and field data have demonstrated that lambda-cyhalothrin is immobile in soil and will not leach into groundwater. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, EPA concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM1). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<<0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption.

i. *Acute exposure and risk.* The acute drinking water exposure and risk estimates are 0.000022 mg/kg/day (MOE 22,876) and 0.000042 mg/kg/day (MOE 11,956) for the overall U.S. population and non-nursing infants < 1 year old, respectively.

ii. *Chronic exposure and risk.* The chronic drinking water exposure and risk estimates are 0.000000 mg/kg/day (0.0% of RfD utilized) and 0.000000 mg/kg/day (0.0% of RfD. Utilized) for the overall U.S. population and non-nursing infants < 1 year old, respectively.

3. *From non-dietary exposure.* Lambda-cyhalothrin is currently registered for use on the following residential non-food sites: general indoor/outdoor pest control (crack/crevice/spot), termiticide, ornamental plants and lawns around homes, parks, recreation areas and athletic fields, and golf course turf. Application of this pesticide in and around these sites is mainly limited to commercial applicators. Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with lambda-cyhalothrin products used for residential flea infestation control and agricultural/commercial applications. In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e. lawn care) and receptor based on the toxicity endpoints selected by EPA for lambda-cyhalothrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOEL for estimating MOEs.

4. *Short- and intermediate-term exposure and risk.* EPA used a NOEL of 0.3 µg/L (0.05 mg/kg/day) from the 21–day inhalation toxicity study in rats. The LOEL of 3.3 µg/L was based on decreased body weight gains and clinical signs of toxicity including paw flicking, tail erections and tiptoe gait. For short- and intermediate-term dermal exposure MOE calculations, EPA used a NOEL of 10.0 mg/kg/day based on systemic toxicity at 50 mg/kg/day (LOEL). MOE = 100.

The short and intermediate-term non-dietary aggregate (non-dietary + chronic dietary (food and water)) MOEs for lambda-cyhalothrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion + dermal) MOEs for post-application exposure for the lawn care product evaluated was estimated to be > 15,000 for adults, 7,200 for children 1–6 years old and 7,000 for infants < 1 year. It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for lambda-cyhalothrin are associated with substantial margin of safety.

5. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry,

and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Although lambda-cyhalothrin is structurally similar to other members of the synthetic pyrethroids class of insecticide, EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The acute aggregate MOE calculated at the 99.th percentile for the U.S. population is 307. In a conservative policy, the Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or large. EPA concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to lambda-cyhalothrin residues.

2. *Chronic risk.* Aggregate chronic exposure is the sum of chronic exposure from food and chronic water. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food and water will utilize 6.8% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to lambda-cyhalothrin residues.

3. *Short- and intermediate-term risk.*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. For lambda-cyhalothrin the aggegrate MOE (inhalation + incidental oral + chronic dietary summed across all product use category was estimated to be 14,000 for the U.S. population. EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is reasonable certainty that no harm will result from aggregate exposure to lambda-cyhalothrin residues.

E. Aggregate Cancer Risk for U.S. Population

Lambda-cyhalothrin has been classified by EPA as a Group "D" chemical, "not classifiable as to human carcinogenicity." Therefore, this risk assessment was not conducted.

F. Aggregate Risks and Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of lambda-cyhalothrin, EPA considered data from developmental toxicity studies in rats and rabbits and a three-generation reproductive toxicity study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during prenatal development. Reproduction studies provide information relating to pre- and post-natal effects from exposure to the pesticide, information on the reproductive capability of mating animals, and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor is designed to account for inter-species extrapolation and intra-species variability. EPA believes that reliable data support using the standard hundredfold factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard factor.

1. *Developmental toxicity studies. i.* From the developmental toxicity study in rats, the maternal (systemic) NOEL was 10 mg/kg/day. The maternal LEL of 15 mg/kg/day was based on decreased body weight gain and decreased food consumption. The developmental (fetal) NOEL was > 15 mg/kg/day at the HDT.

ii. From the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 10 mg/kg/day. The maternal LEL of 30 mg/kg/day was based on decreased body weight gain. The developmental (fetal) NOEL was ≥ 30 mg/kg/day (HDT).

2. *Reproductive toxicity study.* From the three-generation reproductive toxicity study in rats, both the parental (systemic) and reproductive (pup) NOEL's were 1.5 mg/kg/day. Both the parental (systemic) and reproductive (pup) LEL's were 5 mg/kg/day. They were based on a significant decrease in

parental body weight (systemic) or a significant decrease in pup body.

3. *Pre- and post-natal sensitivity.* The toxicology data base for lambda-cyhalothrin is complete with respect to current toxicological data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the three-generation reproductive toxicity study in rats.

The toxicological database relative to pre- and post- natal sensitivity is complete. Based on the above, EPA concludes that reliable data support the use of the standard hundredfold margin of uncertainty factor and that an additional uncertainty factor is not warranted at this time.

4. *Acute risk.* The aggregate acute MOE calculated at the 99.9th percentile for non-nursing infants < 1 year old is 138. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. Therefore, the Agency has no acute aggregate concern due to exposure to lambda-cyhalothrin through food and drinking water.

5. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food will utilize 19.2% of the RfD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to lambda-cyhalothrin residues.

6. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background level) plus short-term and intermediate term residential exposure. The aggregate MOE was estimated to be 6,300 for children 1–6 years old and 6,800 for infants (< 1 year old). EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is reasonable certainty that no harm will result from aggregate exposure to lambda-cyhalothrin residues.

G. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of lambda-cyhalothrin in plants and animals is adequately understood for the purpose of this tolerance. EPA has determined that plant and animal metabolites do not need to appear in the tolerance expression at this time. The residues to be regulated are lambda-cyhalothrin and its epimer as specified in 40 CFR 180.438.

B. Analytical Enforcement Methodology

There is a practical analytical method available for determination of residues of lambda-cyhalothrin and its epimer. Adequate enforcement methodology (gas chromatography/electron capture detector) for plant and animal commodities is available to enforce the tolerances. EPA will provide information on this method to FDA. In the interim, the analytical method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–5805.

C. Magnitude of Residues

A report entitled "Reanalysis of Chronic and Acute Exposure and Risk for Lambda-Cyhalothrin Residues" contains revisions to the originally submitted report: "Chronic and Acute Dietary Exposure Analyses and Risk Assessment for Lambda-Cyhalothrin Residues in Food." The report dated October 10, 1997 contains a list of all residue values used in the chronic and acute dietary exposure analyses (including drinking water). The residue values have been verified by EPA and are appropriate.

D. International Residue Limits

No Codex MRLs for residues of lambda-cyhalothrin have been established. Canadian MRLs have been established for residues of lambda-cyhalothrin. Mexico has established tolerances for residues of lambda-cyhalothrin on cottonseed (0.05 ppm) which is in harmony with the U.S. tolerance. Mexico has established tolerances which are below their U.S. counterparts for corn grain (0.01 vs. 0.05 ppm) and sorghum grain (0.1 vs. 0.2 ppm).

As indicated above there are differences between the section 406 tolerances and the Codex MRL values for specific commodities. These differences could be caused by differences in methods used to establish tolerances, calculate animal feed dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

IV. Conclusion

Therefore, tolerances are established for lambda-cyhalothrin and its epimer in or on broccoli at 0.4 ppm; cabbage at 0.4 ppm; cattle, fat at 3.0 ppm; cattle, meat at 0.2 ppm; cattle, meat and meat by-products (mbyp) at 0.2 ppm; corn, grain (field and pop) at 0.05 ppm; corn, fodder at 1.0 ppm; corn, forage at 6.0 ppm; corn, sweet (k+kwhr) at 0.05 ppm; cottonseed at 0.05 ppm; dry bulb onion at 0.1 ppm; eggs at 0.01 ppm; garlic at 0.1 ppm; goats, fat at 3.0 ppm; goats, meat at 0.2 ppm; goats, mbyp at 0.2 ppm, hogs, fat at 3.0 ppm; hogs, meat at 0.2 ppm; hogs, mbyp at 0.2 ppm; horses, fat at 3.0 ppm; horses, meat at 0.2 ppm; horses, mbyp at 0.2 ppm; lettuce, head at 2.0 ppm; milk, fat (reflecting 0.2 ppm in whole milk) at 5.0 ppm; peanuts at 0.05 ppm; peanuts, hulls at 0.05 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, mbyp at 0.01 ppm; rice, grain at 1.0 ppm; rice, hulls at 5.0 ppm; rice, straw at 1.8 ppm; sheep, fat at 3.0 ppm; sheep, meat at 0.2 ppm; sheep, mbyp at 0.2 ppm; soybeans at 0.01 ppm; sorghum, grain at 0.02 ppm; sorghum, grain dust at 1.5 ppm; sunflower, seeds at 0.2 ppm; sunflower, forage at 0.2 ppm; tomatoes at 0.1 ppm; wheat, grain at 0.05 ppm; wheat, forage at 2.0 ppm; wheat, hay at 2.0 ppm; wheat, straw at 2.0 ppm; wheat, grain dust at 2.0 ppm; corn, grain flour at 0.15 ppm; sunflower, oil at 0.30 ppm; sunflower, hulls at 0.50 ppm; tomato pomace (dry or wet) at 6.0 ppm; and wheat, bran at 0.2 ppm.

In addition to the tolerance being amended, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerances that now appear in §§ 185.3765 and 186.3765 with the tolerances in § 180.438 and is removing §§ 185.3765 and 186.3765.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300581] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Feed additives, Pesticides and pests.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.438 is amended by revising paragraph (a) to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3- phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate, on plants and livestocks, as indicated in the following table.

Commodity	Parts per million
Broccoli	0.4
Cabbage	0.4
Cattle, fat	3.0
Cattle, meat	0.2
Cattle, mbyp	0.2
Corn, grain (field and pop)	0.05
Corn, fodder	1.0
Corn, forage	6.0
Corn, grain flour	0.15
Corn, sweet (K+kwhr)	0.05
Cottonseed	0.05
Dry bulb onion	0.1
Eggs	0.01
Garlic	0.1
Goats, fat	3.0
Goats, meat	0.2
Goats, mbyp	0.2
Hogs, fat	3.0
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	3.0
Horses, meat	0.2
Horses, mbyp	0.2
Lettuce, head	2.0
Milk, fat (reflecting 0.2 ppm in whole milk)	5.0
Peanuts	0.05
Peanuts, hulls	0.05
Poultry, fat	0.01
Poultry, meat	0.01
Poultry, mbyp	0.01
Rice, grain	1.0
Rice, hulls	5.0
Rice, straw	1.8
Sheep, fat	3.0
Sheep, meat	0.2
Sheep, mbyp	0.2
Soybeans	0.01
Sorghum, grain	0.2
Sorghum, grain dust	1.5
Sunflower, forage	0.2
Sunflower, hulls	0.50
Sunflower, oil	0.30
Sunflowers, seeds	0.2
Tomatoes	0.1
Tomato pomace (dry or wet)	6.0
Wheat, grain	0.05
Wheat, forage	2.0
Wheat, hay	2.0
Wheat, straw	2.0
Wheat, grain dust	2.0
Wheat, bran	0.2

(2) A food additive tolerance of 0.01 part per million is established for residues of the insecticide [1α(*S**),3α(*Z*)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate (lambdacyhalothrin) as follows:

(i) In or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food-handling establishments where food products are held, processed, or prepared.

(ii) Application shall be limited solely to spot and/or crack and crevice treatment with a spray solution maximum of a 0.06-percent active ingredient by weight. Food must be removed or covered during treatment. Spray should not be applied directly to surfaces or utensils that may come into contact with food. Food-contact surfaces and equipment should be thoroughly cleaned with an effective cleaning compound and rinsed with potable water before using.

(iii) For spot treatment, a coarse low-pressure spray shall be used. Limit individual spot treatments to an area no larger than 20 percent of the surface area. Any individual spot treatment shall not exceed 2 square feet.

(iv) For crack and crevice treatment, equipment capable of delivering a pin-stream of spray directly into the cracks and crevices shall be used.

(v) To assure safe use of the additive, its label and labeling shall conform to that registered with the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(3) A food additive tolerance is established for residues of the insecticide [1α (*S**),3α(*Z*)]-(±)-cyano-(3-phenoxylphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate as follows:

Commodity	Parts per million
Hops, dried	10.0

* * * * *

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.3765 [Removed]

b. Section 185.3765 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 186.3765 [Removed]

b. Section 186.3765 is removed.

[FR Doc. 97–30959 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300582; FRL–5755–2]

RIN 2070–AB78

Cyfluthrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyfluthrin in or on the raw agricultural commodities in or on the following raw agricultural commodities: alfalfa; alfalfa, hay; aspirated grain fractions; carrots; cattle, fat; cattle, meat; cattle, meat by-products (mbyp); citrus, crop group; citrus dried pulp; citrus oil; cottonseed; cottonseed, hulls; cottonseed, oil; eggs; goats, fat; goats, meat; goats, mbyp; hogs, fat; hogs, meat; hogs, mbyp; horses, fat; horses, meat; horses, mbyp; milkfat; peppers; poultry, fat; poultry, meat; poultry, mbyp; radishes; sheep, fat; sheep, meat; sheep, mbyp; sorghum, fodder; sorghum, forage; sorghum, grain; sugarcane; sugarcane, molasses; sunflower, forage; sunflower, seed; tomato; tomato, concentrated products; and tomato, pomace (wet and dry). It also removes time limitations for tolerances for residues of cyfluthrin on the same commodities. Bayer Ag Corporation requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300582], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300582], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300582]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 1988 (53 FR 1924), EPA established time-limited tolerances under Section 408 and 409 of the Federal Food Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348 for residues of cyfluthrin. These tolerances expire on November 15, 1997. On September 15, 1997, Bayer requested that the time limitation for tolerances established for residue of the insecticide cyfluthrin in the above mentioned commodities be removed based on environmental effects data that they had submitted as a condition of the registration and time-limited tolerances. Bayer also submitted a summary of its petition as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

In the **Federal Register** of Thursday, September 25, 1997 (62 FR 50337) (FRL–5748–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (4F3046, 9F3731, 3F4204, 4F4313, 2F4137, and 4F4313 and food/feed additive petitions 4H5427, 9H5574, 3H5670, 4H5686, and 4H5687) for tolerances by the Bayer Ag Corporation, 8400 Hawthorn Rd., Kansas City, MO 64120. This notice included a summary of the petitions prepared by the Bayer Ag Corporation. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.436 be amended by establishing permanent tolerances for residues of the insecticide cyfluthrin, in or on alfalfa, carrots, citrus, cotton, peppers, radishes, sorghum, sugarcane, sweet corn, sunflowers and tomatoes at the following levels part per million (ppm): alfalfa, 5.0 ppm; alfalfa, hay, at 10.0 ppm; aspirated grain fractions at 300 ppm; carrots at 0.2 ppm; cattle, fat, at 5.0 ppm; cattle, meat, at 0.4 ppm; cattle, mbyp at 0.4 ppm; citrus, crop group, at 0.2 ppm; citrus, dried pulp at 0.3 ppm; citrus oil, at 0.3 ppm; cottonseed at 1.0 ppm; cottonseed, oil, at 2.0 ppm; cottonseed, hulls, at 2.0 ppm; eggs at 0.01 ppm; goats, fat, at 5.0 ppm; goats, meat, at 0.4 ppm; goats, mbyp at 0.4 ppm; hogs, fat, at 5.0 ppm; hogs, meat, at 0.4 ppm; hogs, mbyp at 0.4 ppm; horses, fat, at 5.0 ppm; horses, meat, at 0.4 ppm; horses, mbyp at 0.4 ppm; milkfat, at 15.0 ppm (representing 0.5 ppm in whole milk); peppers, at 0.5 ppm; poultry, fat, at 0.01 ppm; poultry, meat, at 0.01 ppm; poultry, mbyp at 0.01 ppm; radishes at 1.0 ppm; sheep, fat, at 5.0 ppm; sheep, meat, at 0.4 ppm; sheep, mbyp at 0.4 ppm; sorghum, fodder, at 5.0 ppm; sorghum, forage, at 2.0 ppm; sorghum, grain at 4.0 ppm; sugarcane, at 0.05 ppm; sunflower, forage, at 1.0 ppm; sunflower, seed, at 0.02 ppm; tomato, at 0.2 ppm; tomato, concentrated products, at 0.5 ppm; and tomato, pomace (wet and dry) at 5.0 ppm.

In the Notice of Filing, the established tolerance levels for cattle, fat; goat, fat; hog, fat; and horse, fat were incorrectly listed as 1.0 ppm. The correct tolerance level for these commodities is 5.0 ppm as stipulated in PP No. 2F4137 in the **Federal Register** of July 31, 1996 (61 FR 39883)(FRL–5387–2). A tolerance level of 5.0 ppm was considered by EPA for risk assessment purposes.

The basis for time-limited tolerances that expire November 15, 1997 was given in the **Federal Register** of October 20, 1993 (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limed due to the conditional status of a product registration under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerances with expiration dates if none of the conditions of registration have any bearing on human dietary risk. This current action meets that condition and thus expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cyfluthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of cyfluthrin on alfalfa, carrots, citrus, cotton, peppers, radishes, sorghum, sugarcane, sunflowers and tomatoes at the following levels (ppm): alfalfa, forage, at 5.0 ppm; alfalfa, hay, at 10.0 ppm; aspirated grain fractions at 300 ppm; carrots at 0.2 ppm; cattle, fat, at 5.0 ppm; cattle, meat, at 0.4 ppm; cattle, mbyp at 0.4 ppm; citrus, crop group, at 0.2 ppm; citrus dried pulp, at 0.3 ppm; citrus oil, at 0.3 ppm; cottonseed at 1.0 ppm; cottonseed, hulls, at 2.0 ppm; cottonseed, oil, at 2.0 ppm; eggs at 0.01 ppm; goats, fat, at 5.0 ppm; goats, meat, at 0.4 ppm; goats, mbyp at 0.4 ppm; hogs, fat, at 5.0 ppm; hogs, meat, at 0.4 ppm; hogs, mbyp at 0.4 ppm; horses, fat, at 5.0 ppm; horses, meat, at 0.4 ppm; horses, mbyp at 0.4 ppm; milkfat, at 15.0 ppm (representing 0.5 ppm in whole milk); peppers, at 0.5 ppm; poultry, fat, at 0.01 ppm; poultry, meat, at 0.01 ppm; poultry, mbyp at 0.01 ppm; radishes at 1.0 ppm; sheep, fat, at 5.0 ppm; sheep, meat, at 0.4 ppm; sheep, mbyp at 0.4 ppm; sorghum, fodder, at 5.0 ppm; sorghum, forage, at 2.0 ppm; sorghum, grain at 4.0 ppm; sugarcane, at 0.05 ppm; sugarcane, molasses, at 0.2 ppm; sunflower, forage, at 1.0 ppm; sunflower, seed, at 0.02 ppm; tomato, at 0.2 ppm; tomato, concentrated products, at 0.5 ppm; and tomato, pomace (wet and dry) at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyfluthrin are discussed below.

1. *Acute toxicity.* The required toxicity battery studies for acute oral (LD_{50} ≥16.2 mg/kg), dermal (LD_{50} >5,000 mg/kg), inhalation (LC_{50} ≥0.468 mg/L), primary eye irritation (category III), primary dermal irritation (category IV), and dermal sensitization have been conducted and were found adequate. Cyfluthrin is not a dermal sensitizer.

2. *Mutagenicity.* There are seven acceptable studies upon which the Agency based its evaluation: three reverse mutation assays (*Salmonella typhimurium* , *E. coli* and *Saccharomyces cerevisiae*); one reverse mutation, mitotic recombination and conversion assay in *Saccharomyces cerevisiae* ; one CHO/HGPRT assay; one sister chromatid exchange assay in CHO cells; and one UDS assay in primary rat hepatocytes. All these studies were negative. There is no mutagenicity concern.

3. *Reproductive and developmental toxicity*— i. *Oral developmental study in rats.* Cyfluthrin was administered via gavage to pregnant female rats during days 6-15 of gestation at dose levels of 0, 1, 3, or 10 milligrams/kilograms/day (mg/kg/day). A maternal LOEL was not observed. (i.e. the maternal NOEL is >10 mg/kg/day). A developmental LOEL was not observed. The developmental NOEL is >10 mg/kg/day. This developmental study in rats was classified core guideline.

ii. *Oral developmental study in rabbits.* Cyfluthrin was administered via gavage to pregnant female rabbits during days 6-18 of gestation at dose levels of 0, 20, 60, or 180 mg/kg/day. The maternal LOEL is 60 mg/kg/day based on decreased body weight gain and food consumption during the dosing period. The maternal NOEL is 20 mg/kg/day. The developmental LOEL is 60 mg/kg/day based on increased numbers of resorptions and percent incidence of postimplantation loss. The developmental NOEL is 20 mg/kg/day. This study was classified core guideline.

iii. *Rat developmental studies via inhalation.* In the first two studies, pregnant female rats at day 0 gestation were exposed head-only to cyfluthrin concentrations of 0, 1.1, 4.7 or 23.7 mg/m^3/day (milligrams/per cubic meter/day) for 6 hours/day on gestation days 6 through 15. In the second study, the dams were exposed to analytical concentrations of 0, 0.09, 0.25, 0.59 or 4.2 mg/m^3 of the test material. The dams were sacrificed on day 20 and their pups removed by caesarian section. The maternal NOEL was 1.1 mg/m^3 and the maternal LOEL was 4.7 mg/m^3 (reduced motility, dyspnea, piloerection, ungroomed coats and eye irritation. The developmental NOEL was 0.59 mg/m^3 and the developmental LOEL was 1.1 mg/m^3 (increases in the incidence of runts and skeletal anomalies in the sternum (1.1 mg/m^3 and above); increases in post-implantation losses and decreases in pup weights (4.7 mg/m^3 and above) and increased incidences of late embryonic deaths, in skeletal anomalies in the extremities, pelvis and skull and in microphthalmia (23.7 mg/m^3). The study was graded core minimum.

In a third study, In a developmental toxicity study via inhalation, cyfluthrin was administered to female rats at 0.46, 2.55, 11.9 or 12.8 mg/m^3 exposure levels for gestational days 6 through 15 in a nose only inhalation chamber. The rats were exposed to the test material 6 hours per day, 7 days per week. The maternal NOEL/LOEL were < 0.46/<0.46 mg/m^3 based on decreased body weight gain and reduced relative food efficiency. The developmental NOEL/LOEL were 0.46/2.55 mg/m^3 based on reduced fetal and placental weight, reduced ossification in the phalanx, metacarpals and vertebrae. This study was classified as core guideline.

iv. *3-Generation reproduction study.* Cyfluthrin was administered in the diet to male and female rats dose levels of 0, 50, 150, or 450 ppm (actual animal intake; 0, 2.5, 7.5, or 22.5 mg/kg/day). The LOEL for parental toxicity was 450 ppm (22.5 mg/kg/day) based on decreased body weight gains. The NOEL for parental toxicity is 150 ppm (7.5 mg/kg/day). The LOEL for reproductive toxicity was 150 ppm (7.5 mg/kg/day) based on decreased viability and lactational indices and decreased pup body weight gains. The reproductive NOEL was 50 ppm (2.5 mg/kg/day). The multigeneration reproductive study in the rat was classified core minimum.

4. *Subchronic toxicity*— i. *28-Day oral toxicity study in rats.* Cyfluthrin was administered to SPF-Wistar rats via gavage at 0, 5, 20, or 80 (40) mg/kg/day. The high dose was 80 mg/kg/day during

the first and third weeks and 40 mg/kg/day during the second and fourth weeks. The LOEL was 80 (40) mg/kg/day in both sexes based on clinical signs of nerve toxicity, decreases in body weight gain, and changes in liver and adrenal weights. The NOEL was 20 mg/kg/day. This study was classified as core minimum.

ii. *28-Day oral toxicity study in rats.* Rats were dosed with cyfluthrin in the diet at 0, 100, 300, or 1,000 ppm (equivalent to 0, 5, 15, or 50 mg/kg/day). The LOEL was 15 mg/kg/day in both sexes based on decreased blood glucose. The NOEL was 5 mg/kg/day. This study was classified core supplementary.

iii. *3 Month feeding study in rats.* SPF Wistar rats were dosed with cyfluthrin in the diet at 0, 30, 100, or 300 ppm (equivalent to 0, 1.5, 5, or 15 mg/kg/day) for 3 months. No treatment related effects were observed at any of the levels tested, thus the NOEL for this 3-month rat feeding study was 15 mg/kg/day for both sexes. This study was classified core minimum.

iv. *6 Month dog feeding study.* Cyfluthrin was administered in the diet to dogs at 0, 65, 200 or 600 ppm (equivalent to 0, 1.62, 5 or 15 mg/kg/day) for 26 weeks. The LOEL for this study was 15 mg/kg/day for both sexes, based on neurological effects (hindlimb abnormalities) and gastrointestinal disturbances. The NOEL was 5 mg/kg/day for males and females. The study was classified as core minimum.

v. *21-Day dermal study in rats.* In a 21-day repeated dose dermal toxicity study, male and female rats were treated with cyfluthrin by dermal occlusion at target doses of 0, 100, 340, or 1,000 mg/kg/day for 6 hours/day (average actual dose levels were 0, 113, 376 or 1,077 mg/kg/day). No mortality was observed, and there were no treatment-related effects on body weight, ophthalmology, organ weights, clinical biochemistry, or hematology. The LOEL for dermal effects was 376 mg/kg/day for male and female Sprague-Dawley rats based on gross and histological skin lesions. The NOEL for dermal effects was for technical Baythroid was 113 mg/kg/day. The LOEL for systemic effects was 1,077 mg/kg/day based on decreased food consumption, red nasal discharge and urine staining. The NOEL for systemic effects was 376 mg/kg/day. This study was classified as acceptable.

vi. *3-Week inhalation toxicity studies in rats*— a. Wistar rats were dynamically exposed by nose-only inhalation to cyfluthrin in at concentrations of 0, 2.3, 11.5, or 69.6 mg/ for 6 hours/day, 5 consecutive days/week for 3 weeks (total of 15 exposures). The LOEL was 2.3 mg/m ^{3}, based on the treatment-related effects on body weight and temperature observed during the 3-week exposure period. A NOEL was not established; therefore, this study was repeated using lower doses.

b. Wistar rats were dynamically exposed by nose-only inhalation to cyfluthrin at concentrations of 0, 0.4, 1.4, or 10.5 mg/m^3 for 6 hours/day, 5 consecutive days/week for 3 weeks (total of 15 exposures). The LOEL was 10.5 mg/m^3, based on the treatment-related behavioral effects as well as effects on body and organ (spleen) weights. The NOEL is 1.4 mg/m^3. These studies were classified as core minimum.

vii. *4-Week inhalation toxicity study in rats.* Rats were dynamically exposed by inhalation (nose only) to cyfluthrin at concentrations of 0, 0.44, 6.04, or 46.6 mg/m^3 for 6 hours/day, 5 consecutive days/week for 4 weeks (20 exposures). The LOEL is 6.04 mg/m^3 based on the decrease in body and thymus weights, hypothermia, reduction in leukocytes counts (females), and low serum protein. The NOEL is 0.44 mg/m^3. This subacute inhalation toxicity study in rats was classified as supplementary.

viii. *13-Week inhalation toxicity study in rats.* Rats were dynamically exposed by head-only inhalation to cyfluthrin at concentrations of 0, 0.09, 0.71, or 4.51 mg/m^3 for 6 hours/day, 5 consecutive days/week for 13 weeks. All animals survived the 13-week study, and no treatment-related changes were observed in organ weight, gross pathology, and histopathology. The LOEL was 0.71 mg/m^3, based on the treatment-related behavioral effects in females as well as the increased urinary protein in males. The NOEL was 0.09 mg/m^3. This study was classified as core minimum.

5. *Chronic toxicity*— i. *1 Year dog study.* Cyfluthrin was fed to beagle dogs at 0, 40, 160, or 640 ppm (equivalent to 0, 1, 4, or 16 mg/kg/day) for 52 weeks. The NOEL was 4 mg/kg bw/day. The LOEL was 16 mg/kg/day for both sexes, based on slight ataxia in two dogs on single occasions, decreased body weight in males, and on observations of increased vomiting and diarrhea at the high dose. The NOEL is 4 mg/kg/day. This study was classified as core minimum.

ii. *Chronic/carcinogenicity-rat.* Cyfluthrin was administered for 24 months in the diet to rats at dose levels of 0, 50, 150, or 450 ppm (equivalent to 2.02, 6.19, or 19.20 mg/kg/day in males and 2.71, 8.15, or 25.47 mg/kg/day in females based on food consumption and body weights). The chronic LOEL was 150 ppm (equivalent to 6.19 mg/kg/day in males and 8.15 mg/kg/day in females) based on decreased body weights in the high-dose animals and the mid-dose males. The chronic NOEL was 50 ppm (equivalent to 2.02 mg/kg/day in males and 2.71 mg/kg/day in females). Under the conditions of this study, there was no evidence of carcinogenic potential. The study was classified core minimum for both chronic toxicity and oncogenicity.

iii. *Chronic/carcinogenicity- mouse.* In a chronic/carcinogenicity study, cyfluthrin was administered in the diet for 23 months to mice at dose levels of 0, 50, 200, or 800 ppm (equivalent to 11.6, 45.8, or 194.5 mg/kg/day in males and 15.3, 63.0, or 259.9 in females based on food consumption and body weights). There were no treatment related changes noted in the clinical observation, food consumption, hematology, gross observation, organ weight, and microscopic data. The chronic LOEL is 50 ppm (equivalent to 11.6 mg/kg/day in males and 15.3 mg/kg/day in females) based on increased alkaline phosphatase activity in the dosed males. A chronic NOEL was not established in male and female mice. Under the conditions of this study, there was no evidence of carcinogenic potential. This study was classified core minimum for carcinogenicity and supplementary for chronic toxicity.

6. *Animal metabolism.* Metabolism studies in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Neurotoxicity.* Other studies evaluated included a subacute oral neurotoxicity study in rats (LOEL of 50/mg/kg/day; no NOEL observed); a second subacute oral neurotoxicity study (NOEL of 40 mg/kg/day); a subchronic neurotoxicity study in rats (NOEL <60 mg/kg/day), and a subacute inhalation study in mice NOEL for pups, 0.006 mg/L; parental NOEL 0.058 mg/L HDT). These studies were all graded acceptable/guideline. Additional neurotoxicity data may be required under a special Data-Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has a sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* To assess acute dietary risk, the Agency used an endpoint of 20 mg/kg/day, the NOEL from the oral developmental toxicity study in rabbits.

2. *Short - and intermediate - term toxicity.* For the short and intermediate term dermal exposures, the Agency used a NOEL of 20 mg/kg/day from the rabbit developmental study. The dermal absorption rate was 25%. This factor is based on the weight of evidence available for structurally related pyrethroids. For the short term inhalation exposures, the Agency used a NOEL of 0.00044 mg/L based on decreases in body and thymus weights, hypothermia, and clinical pathology at 0.00604 mg/L in a 28-day inhalation study. The recommended MOE is 300 which includes FQPA considerations. For the intermediate term inhalation exposure, the Agency used a NOEL of 0.00009 mg/L based on behavioral effects in rats at 0.00071 mg/L in a 90-day inhalation study. The additional certainty factor was included for inhalation because an inhalation study is available in the mouse which indicates increased sensitivity of the pups in comparison to the dams.

3. *Chronic toxicity.* EPA has established the RfD for cyfluthrin at 0.008 mg/kg/day. This RfD is based on a chronic/carcinogenicity feeding study in the rat with a NOEL of 2.5 mg/kg/day and an uncertainty factor of 300.

4. *Carcinogenicity.* Cyfluthrin has been classified as a Group E chemical (evidence of non-carcinogenicity for humans) by the Agency. The classification was based on a lack of convincing evidence of carcinogenicity in adequate studies with two animal species, rat and mouse.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.436) for the parent residues of cyfluthrin, in or on a variety of raw agricultural commodities. For purposes of dietary risk assessment, residue data generated from residue field trials conducted at maximum application rates and minimum preharvest intervals were used. To assess secondary exposure from edible animal commodities, animal dietary burdens were calculated using mean field trial residues, adjusted for percent crop treated and applying appropriate processing factors for all feed items. Risk assessments were conducted by EPA to assess dietary exposures and risks from cyfluthrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a day or single exposure. For the acute dietary exposure analysis for cyfluthrin treated raw agricultural commodities and processed food items, residue field trial data incorporating percent crop treated refinement and anticipated residues were used in Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document). The acute exposure via food was estimated as 0.004917 mg/kg/day for adults in the U.S., and 0.010687 mg/kg/day for nonnursing infants < 1 year old (most highly exposed subgroup. To assess acute dietary risk, the Agency used an endpoint of 20 mg/kg/day, the NOEL from the oral developmental toxicity study in rabbits. The resulting margin of exposure (MOE) is 4,068 for the general U.S. population, and 1,871 for nonnursing infants < 1 year old. For cyfluthrin, EPA generally has no concern for MOEs over 300.

ii. *Chronic exposure and risk.* The chronic dietary exposure assessment incorporated tolerance values and percent crop treated information. The RfD used was 0.008 mg/kg/day. Exposure was estimated at 0.000076 mg/kg/day for the U.S. population, and 0.000151 mg/kg/day for nonnursing infants < 1 year old. The percent RfD occupied is 1.0 % for the U.S. population, and 1.9% for infants < 1 year old. EPA generally has no concern for RfD of less than 100%

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticides residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided five years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for cypermethrin were derived from federal and market basket survey data. EPA considers these data reliable. A range of estimates supplied by this data and upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer based model for evaluating exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under FIFRA.

2. *From drinking water.* There is no established Maximum Concentration Level for residues of cyfluthrin in drinking water. Although data indicate little potential for soil mobility or leaching, cyfluthrin is moderately persistent. Estimates were generated with the PRZM I and EXAMS computer models in 1993 for comparative ecological risk assessment for these chemicals.

i. *Acute exposure and risk.* The acute drinking water exposure and risk estimates for cyfluthrin for the general U.S. population as estimated by the Agency was 0.000054 mg/kg/day. The acute drinking water exposure and risk estimate for non-nursing infants <1 year old was 0.000104 mg/kg/day. Using these values and an endpoint of 20 mg/kg/day, the margin of exposure (MOE) for the U.S. population is estimated at 368,982. For non-nursing infants <1 year old, the MOE is estimated at 192,308. For cyfluthrin, the Agency general has concern for risk estimates only below 300.

ii. *Chronic exposure and risk.* For the U.S. population, exposure is estimated at 0.000001 mg/kg/day, resulting in negligible risk. For nonnursing infants < 1 year old, exposure is estimated as 0.000005 mg/kg/day, which occupies 0.1% of the RfD.

3. *From non-dietary exposure.* Cyfluthrin is currently registered for use on non-food sites including golf courses, ornamental shrubs, indoor foggers, wood surfaces, lawns, and carpet. Nonoccupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses.

Short- and intermediate-term exposure and risk. Exposure is estimated at 0.00524 mg/kg/day for the

U.S. population, and 0.00810 mg/kg/day for nonnursing infants < 1 year old.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Cyfluthrin is a member of the synthetic pyrethroid class of pesticides. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA doe not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluation the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Four members of the insecticide class Pyrethroids produce a common metabolite known as DCVA. These insecticides are cyfluthrin, cypermethrin, z-cypermethrin and permethrin. Although the residues of DCVA can be estimated, no toxicology data on the compound per se are available to directly conduct a hazard evaluation and thereby establish an appropriate endpoint for use in a joint risk assessment. To date, for the purpose of assessing the risk of the parent compound the toxicity of DCVA has been assumed to be equivalent to the parent compound. However, due to the different toxicological profiles of cyfluthrin, cypermethrin, z-cypermethrin, and permethrin, EPA does not believe that it would be appropriate to cumulate DCVA for these pesticides, or DCVA residues from one of these pesticides with the parent of another of these pesticides, in conducting the risk assessment for these pesticides.

Accordingly, EPA does not have, at this time, available data to determine whether cyfluthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyfluthrin does not appear to produce a toxic metabolite produces by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyfluthrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

The Agency has determined that an aggregate systemic (oral) and dermal exposure risk assessment is appropriate for cyfluthrin because of concern for the developmental effects seen after oral exposure. An aggregate oral and inhalation exposure risk assessment is also appropriate due to similarity in systemic toxicity observed in rats via these routes.

1. *Acute risk.* Aggregate acute dietary exposure is estimated at 0.004971 mg/kg/day resulting in a MOE of 4,023 for the U.S. population.

2. *Chronic risk.* EPA has concluded that aggregate exposure to cyfluthrin from food and water is estimated at 0.000076 mg/kg/day and will utilize 1% of the RfD for the U.S. population.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. For the general U.S. population, exposure is estimated at 0.0053 mg/kg/day, resulting in an MOE of 3,800.

E. Aggregate Cancer Risk for U.S. Population

Cyfluthrin has been classified as a Group E chemical (evidence of non-carcinogenicity for humans) by the Agency. The classification was based on a lack of convincing evidence of carcinogenicity in adequate studies with two animal species, rat and mouse. Therefore there is no concern for cancer in humans.

EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, EPA considered data from a developmental toxicity study in the rat (see unit II.A.3. of this preamble). In addition, data from a 7-day inhalation study conducted with mouse dams and their offspring were considered (see also unit II.A.3.). There were no data gaps for the assessment of the effects of cyfluthrin following in utero or early postnatal exposure. Suggested sensitivity of rats to in utero exposure to cyfluthrin was hypothetically linked to bradypnea in the dams and was judged not be a valid consideration in the calculation of risk. However, evidence of increased sensitivity of young rats following pre- and/or postnatal exposure to cyfluthrin was observed in the two-generation reproduction study and in the 7-day inhalation study in mice.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes a 3-fold safety factor for children is appropriate for cyfluthrin based on lack of severity of the effect.

Based on the submitted studies, EPA concludes that reliable data support the use of a 300-fold uncertainty factor for infants and children.

2. *Acute exposure.* For nonnursing infants <1year old, the aggregate acute exposure is 0.010791 mg/kg/day, with a resulting MOE of 1,853. For cyfluthrin, EPA has no concern for MOEs over 300.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cyfluthrin from food and water will utilize 2% of the RfD for infants and children (nonnursing infants <1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. *Short- or intermediate-term risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate nondietary exposure to cyfluthrin to infants <1 year is 0.008255 mg/kg/day. The MOE is estimated at 2,400.

Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cyfluthrin residues.

5. *Special Docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement the program. Congress has allowed 3 years from passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disruption effects.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of cyfluthrin in plants and animals is adequately understood. Studies have been conducted to delineate the metabolism of radio labeled cyfluthrin in various crops and animals all showing similar results. The residue of concern is cyfluthrin.

B. Analytical Enforcement Methodology

Adequate analytical methodology (gas/liquid chromatography with an electron capture detector) is available for enforcement purposes.

C. Magnitude of Residues

Field trial residue and feeding study data have been submitted and reviewed in support of tolerances on alfalfa, carrots, citrus, cotton, peppers, radishes, sorghum, sugarcane, sunflowers and tomatoes. Tolerances to support these uses were proposed in pesticide petitions 4F3046, 9F3731, 3F4204, 4F4313, 2F4137, and 4F4313 and food/feed additive petitions 4H5427, 9H5574, 3H5670, 4H5686, and 4H5687.

D. International Residue Limits

Codex maximum residue levels (MRLs) are establish for residues of cyfluthrin in milk, whole (0.01 ppm); cottonseed (0.05 ppm); peppers, sweet (0.2 ppm); and tomatoes (0.5 ppm). Mexico has established a tolerance on cottonseed at 1 ppm. There are no Canadian tolerances for cyfluthrin. As indicated in unit II. of this preamble there are differences between the section 408 tolerances and the Codex MRL values for specific commodities. These differences could be caused by differences in methods to establish tolerances, calculation of animal dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

IV. Conclusion

Therefore, the tolerances are established for residues of cyfluthrin in/on alfalfa, 5.0 ppm; alfalfa, hay, at 10.0 ppm; aspirated grain fractions at 300 ppm; carrots at 0.2 ppm; cattle, fat, at 5.0 ppm; cattle, meat, at 0.4 ppm; cattle, mbyp at 0.4 ppm; citrus, crop group, at 0.2 ppm; citrus dried pulp, at 0.3 ppm; citrus oil, at 0.3 ppm; cottonseed at 1.0 ppm; cottonseed, oil, at 2.0 ppm; cottonseed, hulls, at 2.0 ppm; eggs at 0.01 ppm; goats, fat, at 5.0 ppm; goats, meat, at 0.4 ppm; goats, mbyp at 0.4 ppm; hogs, fat, at 5.0 ppm; hogs, meat, at 0.4 ppm; hogs, mbyp at 0.4 ppm; horses, fat, at 5.0 ppm; horses, meat, at 0.4 ppm; horses, mbyp at 0.4 ppm; milkfat, at 15.0 ppm (representing 0.5 ppm in whole milk); peppers, at 0.5 ppm; poultry, fat, at 0.01 ppm; poultry, meat, at 0.01 ppm; poultry, mbyp at 0.01 ppm; radishes at 1.0 ppm; sheep, fat, at 5.0 ppm; sheep, meat, at 0.4 ppm; sheep, mbyp at 0.4 ppm; sorghum, fodder, at 5.0 ppm; sorghum, forage, at 2.0 ppm; sorghum, grain at 4.0 ppm; sugarcane, at 0.05 ppm; sugarcane, molasses, at 0.2 ppm; sunflower, forage, at 1.0 ppm; sunflower, seed, at 0.02 ppm; tomato, at 0.2 ppm; tomato, concentrated products, at 0.5 ppm; and tomato, pomace (wet and dry) at 5.0 ppm. tomatoes at ppm.

In addition to the tolerances being amended, since for purposes of establishing tolerances FQPA has eliminated distinctions between raw and processed food, EPA is combining the tolerances that appear in §§ 185.1250 and 186.1250 with § 186.436 and is removing tolerances under §§ 185.1250 and 186.1250.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection

with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300582] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.436 is amended as follows:

i. By designating the text following the heading in paragraph (a) as paragraph (a)(1) and by revising the table in newly designated paragraph (a)(1).

ii. Paragraph (b) is redesignated as paragraph (a)(2).

iii. New paragraphs (b), (c), and (d) are added and reserved with headings.

The revised table to § 180.436 reads as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Alfalfa	5.0
Alfalfa, hay	10.0
Aspirated grain fractions	300
Carrots	0.20
Cattle, fat	5.0
Cattle, mbyp	0.40
Cattle, meat	0.40
Citrus, crop group	0.2
Citrus, dried pulp	0.3
Citrus, oil	0.3
Cottonseed	1.0
Cottonseed hulls	2.0
Cottonseed oil	2.0
Eggs	0.01
Goats, fat	5.0
Goats, mbyp	0.40
Goats, meat	0.40
Hogs, fat	5.0
Hogs, mbyp	0.40
Hogs, meat	0.40
Hops, dried	20.0
Hops, fresh	4.0
Horses, fat	5.0
Horses, mbyp	0.40
Horses, meat	0.40
Milkfat (reflecting 0.5 ppm in whole milk)	15.0

Commodity	Parts per million
Peppers	0.50
Poultry, fat	0.01
Poultry, mbyp	0.01
Poultry, meat	0.01
Radishes	1.0
Sheep, fat	5.0
Sheep, mbyp	0.40
Sheep, meat	0.40
Sorghum, fodder	5.0
Sorghum, forage	2.0
Sorghum, grain	4.0
Sugarcane	0.05
Sugarcane, molasses	0.20
Sunflower, forage	5.0
Sunflower, seed	0.02
Tomato	0.20
Tomato, concentrated products	0.5
Tomato, pomace	5.0

(2) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.1250 [Removed]

b. In § 185.1250:

i. Paragraph (c) introductory text, (c)(1), (c)(2), and (c)(3) are transferred to § 180.436 and redesignated as paragraph (a)(3) introductory text, (a)(3)(i), (a)(3)(ii), and (a)(3)(iii), respectively.

ii. The remainder of § 185.1250 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

§ 186.1250 [Removed]

b. In § 186.1250:

i. Paragraph (c) introductory text, (c)(1), (c)(2), and (c)(3) are transferred to § 180.436 and redesignated as paragraph (a)(4) introductory text, (a)(4)(i), (a)(4)(ii), and (a)(4)(iii), respectively.

ii. The remainder of § 186.1250 is removed.

[FR Doc. 97–31101 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300575; FRL–5754–6]

RIN 2070–AB78

Fenvalerate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenvalerate, including the S,S-enriched isomer esfenvalerate in or on cottonseed at 0.2 parts per million (ppm). It also removes time limitations for tolerances for residues of fenvalerate on the same commodities that expire on November 15, 1997. DuPont Agricultural Products requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). This tolerance was established under petition number PP 7F2013.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300575], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed withthe Hearing Clerk identified by the docket control number, [OPP–300575], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300575]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: John Hebert, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–3068, e-mail: hebert.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On October 20, 1993 EPA established time limited tolerances under Section 408 of the Federal Food Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d) and 348 for residues of esfenvalerate on cottonseed. These tolerances expire on November 15, 1997. DuPont Agricultural Products, on September 15, 1997, requested that the time limitation for tolerances established for residues of the insecticide fenvalerate, including the S,S-enriched isomer esfenvalerate in or on cottonseed at 0.2 parts per million (ppm) be removed based on ecological and environmental effects data that they had submitted as a condition of the registration. DuPont Agricultural Products also submitted a summary of its petition as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

In the **Federal Register** of September 25, 1997 (62 FR 50337)(FRL 5748–2), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by DuPont Agricultural Products, P.O. Box 80038, Wilmington, DE 19880–0038. This notice included a summary of the petition prepared by DuPont Agricultural Products. There were no comments received in response to the notice of filing.

The basis for time limited tolerances that expire November 15, 1997 was given in the October 20, 1993 **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and

environmental effects data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

The petition requested that 40 CFR 180.379 be amended by removing the time limitation for a tolerance for residues of the pyrethroid insecticide esfenvalerate, in or on: cottonseed at 0.2 parts per million (ppm). Tolerances are based on the sum of all isomers of fenvalerate. Fenvalerate is a racemic mixture of four isomers (about 25% each). This product was registered as Pydrin®. However since 1992, an S,S-isomer enriched formulation, Asana (esfenvalerate), has been the only fenvalerate formulation sold in the U.S. for agricultural use. Since the S,S-isomer is the insecticidally active isomer, the use rate for Asana® is four times lower than that for Pydrin®. A petition is pending (PP 4F4329), to convert tolerances (still to be expressed as the sum of all isomers) based on the use rates for Asana®. Bridging residue studies have shown Asana® residues to be 3–4 times lower than Pydrin® residues.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of esfenvalerate and to make a determination on aggregate exposure, consistent with section 408(b)(2), to remove the time limitation for a tolerances for residues of esfenvalerate on cottonseed at 0.2 parts per million (ppm). EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by esfenvalerate are discussed below.

1. A battery of acute toxicity studies places technical esfenvalerate in Toxicity category II for acute oral (LD_{50} = 87.2 mg/kg), Category III for acute dermal (LD_{50} > 2000 mg/kg) and primary eye irritation, Category IV for primary skin irritation. Esfenvalerate is a non-sensitizer. Acute inhalation on technical grade active ingredient is waived due to negligible vapor pressure. The Acute Delayed Neurotoxicity (Guideline 81–8) remains a data gap.

2. In a 90–day feeding study, rats were administered 0, 4.7, 6.2, 7.8 or 18.7 mg/kg/day of esfenvalerate. The Lowest Observed Effect Level (LOEL) is 18.7 mg/kg/day based on neurological dysfunction. The NOEL is 7.8 mg/kg/day.

In another 90–day feeding study, rats were administered 0, 5, 15, 30 or 50 mg/kg/day of esfenvalerate. The LOEL is 15 mg/kg/day based on neurological dysfunction. The NOEL is 5 mg/kg/day.

Esfenvalerate was administered to mice at dose levels of 0, 10.5, 30.5 or 106 mg/kg/day (male) and 0, 12.6, 36.8 or 113 mg/kg/day (female). The LOEL for esfenvalerate is 106 mg/kg/day. The NOEL is 30.5 mg/kg/day.

3. In a chronic/onco feeding study (MRID 00082244, 00111888), rats were administered 0.050, 0.25, 1.25 or 12.5 mg/kg/day of fenvalerate in the diet for 2 years. The LOEL was ≥ 12.5 mg/kg/day. There was no increase in tumors at 12.5 mg/kg/day. The NOEL was determined to be 12.5 mg/kg/day (the Highest Dose Tested (HDT) in the 2 year study.) The study is supplementary and does not satisfy the requirement for a guideline series 83–5 combined chronic/carcinogenicity study in rats.

In a lifetime feeding study (MRID 00079877), rats were administered 0 or 50.0 mg/kg/day of fenvalerate in the diet. Spindle cell sarcomas were produced in male rats only. The LOEL was 50.0 mg/kg/day based on loss of weight and neurological effects. The NOEL was 12.5 mg/kg/day.

The conclusion that fenvalerate is associated with the production of spindle cell sarcomas was later retracted by EPA. The study is supplementary and does not satisfy the requirement for a guideline series 83–5 combined chronic/ carcinogenicity study in rats. When taken together with chronic/ carcinogenicity feeding study (MRID's 00082244, 00111888) the guideline requirement for a 83–2a, cancer study in the rat is satisfied.

4. In a 2-year feeding study mice were administered 0, 0, 1.5, 7.5, 38.0 or 187.5 mg/kg/day fenvalerate in the diet. The LOEL was 7.5 mg/kg/day based on granulomatous changes (related to fenvalerate only, not esfenvalerate). The NOEL was 1.5 mg/kg/day. This study satisfies the requirement for combined chronic feeding carcinogenicity study in mice.

In an 18–month feeding study, mice 0, 15.0, 45.0, 150.0 or 450.0 mg/kg/day of fenvalerate in the diet. The LOEL is 45.0 mg/kg/day based on granulomatous changes in the liver and spleen. The NOEL is 15.0 mg/kg/day. No oncogenicity was observed. The study is supplementary and does not satisfy the requirement for a guideline series 83–2b carcinogenicity study in mice.

In a life span feeding study, mice were administered 0, 1.5, 4.5, 15.0 or 45.0 mg/kg/day of fenvalerate in the diet. The LOEL was determined to be 15 mg/kg/day based on the granulomatous lesions observed and on the change in hematological parameters. Fenvalerate was determined not to be carcinogenic in the ddy strain of the mouse. The NOEL was determined to be 3.48 mg/kg/day. The study is supplementary and does not satisfy the requirement for a

guideline series 83–2b carcinogenicity study in mice.

5. In a 21–day probe for a 1 year feeding study 2 male and 2 female beagles were administered 0, 2.80, 6.40 or 9.38 mg/kg/day in males and 0, 2.25, 7.37 or 8.50 mg/kg/day of esfenvalerate. The LOEL was determined to be 6.40 mg/kg/day based on nervous system involvement and decreases in body weight and food consumption. The NOEL is 2.25 mg/kg/day.

In a 1-year feeding study, 6 male and 6 female beagles/group were administered 0, 0.68, 1.36 or 5.29 mg/kg/day esfenvalerate. The LOEL was determined to be 6.40 mg/kg/day based on nervous system involvement and decreases in body weight and food consumption. The NOEL was determined to be 5.29 mg/kg/day. These studies are acceptable and satisfies the requirement for a guideline series 83–1b chronic feeding study in dogs.

6. Esfenvalerate was administered to female rats at doses of 0, 2.5, 5.0, 10.0 or 20.0 mg/kg/day from gestation days 6 through 15 (pilot study doses were 1.0, 2.0, 3.0, 4.0, 5.0 and 20 mg/kg/day). The LOEL is 2.5 mg/kg/day based on behavioral/Central Nervous System clinical signs. The NOEL for maternal toxicity is 2.0 mg/kg/day (from the pilot study). There was no evidence of developmental toxicity at any dose. The NOEL is 20 mg/kg/day, the highest dose tested.

Esfenvalerate was administered to rabbits at doses of 0, 3.0, 10.0 or 20.0 mg/kg/day from gestation days 7 through 19 (pilot study doses were 0, 2.0, 3.0, 4.0, 4.5, 5.0 or 20.0 mg/kg/day). The LOEL is 3.0 mg/kg/day based on behavioral/CNs clinical signs. The NOEL is 2.0 mg/kg/day (from the pilot study). There was no evidence of developmental toxicity at any dose. The LOEL is greater than 20.0 mg/kg/day. The NOEL is equal to or greater than 20.0 mg/kg/day, the highest dose tested.

7. In a 2-generation reproduction toxicity study in rats esfenvalerate was administered to rats at dose levels of 0, 3.75, 5.0, 17.5 and 35.0/17.5 mg/kg/day. The LOEL for parental toxicity is 3.75 mg/kg/day based on decreases in mean body weights of F_1 females and an increased incidence of skin lesions. The NOEL could not be determined. The LOEL for reproductive toxicity is 5.0 mg/kg/day based on decreases in F_1 pup weights on day 21 of lactation; decreases in litter size and F_2 pup weights and an increased incidence of subcutaneous hemorrhage. The NOEL is 3.75 mg/kg/day.

8. In a reverse gene mutation assay in bacteria, *S. typhimurium* and *Escherichia coli* were exposed to fenvalerate in DMSO at concentrations of 15, 50, 150, 500, 1,500, or 5,000 µg/plate in the presence and absence of mammalian metabolic activation (S9-mix). There was no evidence of induced mutant colonies over background.

In a mammalian cell gene mutation assay at the HGPRT locus, Chinese hamster V79 cells cultured *in vitro* were exposed to fenvalerate in DMSO at concentrations of 12.6, 42, 126, 420 µg/ml in the presence of mammalian metabolic activation (S9-mix) and at concentrations of 4.2, 12.6, 42, 126 µg/ml in the absence of S9-mix. There was no evidence of induced mutant colonies over background. In Chinese hamster lung fibroblasts (V79 cells) forward gene mutation assay the test was negative up to cytotoxic and/or precipitating levels (126 µg/ml in the absence of metabolic activation –S9; 420 µg/ml in the presence of metabolic activation +S9).

In a mammalian cell cytogenetics chromosomal aberration assay CHO-K1 cell cultures were exposed to fenvalerate in DMSO at concentrations of 4.2 µg/ml, 8.4 µg/ml, 21 µg/ml, 42 µg/ml respectively without exogenous metabolic activation (S9-mix) and at concentrations of 21 µg/ml, 42 µg/ml, 84 µg/ml, 210 µg/ml respectively with S9-mix. There was no evidence of a significant induction of chromosomal aberrations or polyploid cells over background.

A mouse micronucleus assay was negative in male ICR mice up to the HDT (150 mg/kg) administered by intraperitoneal injection. Since there appears to be no sex specific difference in the toxicity of Esfenvalerate, the use of males only is justifiable. No overt toxicity was observed, but suggestive evidence of bone marrow cytotoxicity was seen 48 hours post-administration at the highest dose level tested.

Other genetic toxicology studies submitted on racemic Fenvalerate indicate that the mixture containing equal parts of the four stereoisomers is not mutagenic in bacteria. The racemic mixture was also negative in a mouse host mediated assay and in a mouse dominant lethal assay.

9. The following studies are considered data gaps in the toxicology data base: general metabolism, 21 day dermal, dermal penetration and acute, subchronic and developmental mammalian neurotoxicity. These studies will be required under a special data call in letter pursuant to Section 3 (c)(2)(B) of FIFRA. Although these data are lacking EPA has sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* EPA has established an NOEL of 2.0 mg/kg/day through the dietary route in rat and rabbit developmental studies. This NOEL is based on behavioral and central nervous system clinical signs. A MOE of 100 is required.

2. *Short - and intermediate - term toxicity.* To assess risk from (nonfood) short and intermediate term dermal exposure, EPA has established a NOEL of 2.0 mg/kg/day from the rat and rabbit developmental studies. No dermal penetration/absorption study is available and the NOEL incorporates a 25% dermal absorption based on the weight-of-evidence available for structurally related pyrethroids. This NOEL is based on behavioral and central nervous system clinical signs. For exposure via inhalation the Agency used an oral NOEL of 2.0 mg/kg/day and assumed 100% absorption (based on the 2 mg/kg/day used for the dermal risk assessment since no appropriate inhalation toxicity studies are available).

3. *Chronic toxicity.* EPA has established the RfD for esvenvalerate at 0.02 mg/kg/day. This RfD is based on a NOEL of 2.0 mg/kg/day through the dietary exposure route in developmental study in rat. The NOEL is based on behavioral changes and clinical signs of neurotoxicity. This RfD is based on an uncertainty factor of 100.

4. *Carcinogenicity.* Esfenvalerate is classified as a Group E. There is no evidence of carcinogenicity in either rats or mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.379) for the residues of fenvalerate, in or on a variety of raw agricultural commodities.

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent of crop treated refinements. Field trial data and FDA monitoring data were used to generate anticipated residues or residue distribution for Monte Carlo analyses. Chronic dietary risk assessments used anticipated residues and percent crop treated refinements. Risk assessments were conducted by EPA to assess dietary exposures and risks from esfenvalerate as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The NOEL used for the acute dietary exposure was 2.0 mg/kg/day. Potential acute exposures from food commodities were estimated using a Tier 3 acute dietary risk assessment (Monte Carlo Analysis). The MOE's (99.9th percentile) for the US population based on an acute dietary exposure of 0.011717 mg/kg/day are 171. For children 1–6 years old (most highly exposed population) the MOE's based on an acute dietary exposure of 0.019445 mg/kg/day are 103. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger.

ii. *Chronic exposure and risk.* Potential chronic exposures were estimated using NOVIGEN's DEEM (Dietary Exposure Evaluation Model). The RfD used for the chronic dietary analysis is 0.02 mg/kg/day. Using tolerance values and anticipated residues discussed above the risk assessment resulted in use of 1.9% of the RfD for the general US population and 4.6% of the RfD for children 1–6 years.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided five years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. Section 408(b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not underestate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for esfenvalerate were derived from federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonable certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under the FIFRA.

2. *From drinking water.* Esfenvalerate is immobile in soil and will not leach into groundwater. Additionally, due to their insolubility and lipophilic nature, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment. A screening evaluation of leaching potential of a typical potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM1). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion). Therefore, EPA concludes that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* Acute drinking water exposure is estimated for the US population to be 0.000039 mg/kg/day with an MOE of 51,743. For Non-nursing infants less than 1 year old the exposure is 0.000074 with and MOE of 27,042.

ii. *Chronic exposure and risk.* Chronic drinking water exposure is estimated for the US population to be 0.000001 mg/kg/day and for the non-nursing infants 0.000005 mg/kg/day. Zero percent of the RfD is occupied by both population groups.

3. *From non-dietary exposure.* Esfenvalerate is registered for non-crop uses including spray treatments in and around commercial and residential areas, treatments for control of ectoparasites on pets, home care products including foggers, pressurized sprays, crack and crevice treatments, lawn and garden sprays, and pet and pet bedding sprays. For the non-agricultural products, the very low amounts of active ingredient they contain, combined with the low vapor pressure (1.5×10^{-9} mm Mercury at 25° C.) and low dermal penetration, would result in minimal inhalation and dermal exposure.

Individual non-dietary risk exposure analyses were conducted using a flea infestation scenario that included pet spray, carpet and room treatment, and lawn care, respectively.

Short- and intermediate-term exposure and risk. The total aggregate non-dietary exposure including lawn, carpet, and pet uses (mg/kg/day) are: 0.000023 for adults; 0.00129 for children aged 1–6 years; and 0.00138 for infants less than one year old.

It can be concluded that the potential non-dietary exposure for esfenvalerate are associated with substantial margins of safety.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk

assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Although esfenvalerate is similar to other members of the synthetic pyrethroid class of insecticides, EPA does not have, at this time, available data to determine whether esfenvalerate has a common method of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, esfenvalerate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that esfenvalerate has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and drinking water. The potential acute exposure from food and drinking water to the overall US population provides an acute dietary exposure of 0.011756 mg/kg/day with an MOE of 170. This acute dietary exposure estimate is considered conservative, using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to esfenvalerate from food and drinking water will utilize 1.9% of the RfD for the U.S. population based on a dietary exposure of 0.000377 mg/kg/day. The major identifiable subgroup with the highest aggregate exposure are children 1 - 6 years old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the Rfd represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The potential short- and intermediate-term aggregate risk for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244.

EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues.

E. Aggregate Cancer Risk for U.S. Population

Esfenvalerate is classified as a Group E carcinogen - no evidence of carcinogenicity in rats or mice. Therefore, a carcinogenicity risk analysis is not required.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of esfenvalerate, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In both prenatal developmental toxicity studies in rats and rabbits, there is no evidence of developmental toxicity at a dose up to 20 mg/kg/day. Maternal clinical neurotoxicity (based on behavioral and central nervous system clinical signs) was observed at a dose as low as 2.5 or 3.0 mg/kg/day for rats and rabbits respectively. The maternal NOEL was 2.0 mg/kg/day.

iii. *Reproductive toxicity study.* In the two-generation reproduction study in rats, offspring toxicity was observed only at dietary levels which were also found to be toxic to parental animals. The LOEL was 5.1 mg/kg/day based on decrease in mean body weights of females and increased incidence of dermal lesions. The NOEL for parental systemic toxicity was not determined. Effects on the offspring, including decreased pup weights in both generations during early and/or late lactation, decreased litter size, and increased incidence of subcutaneous hemorrhage, were observed at dietary levels of 6.70 mg/kg/day and above, with a NOEL of 5.1 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* There is no evidence of additional sensitivity to young rats or rabbits following pre- or postnatal exposure to esfenvalerate.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* The potential acute exposure from food and drinking water to the most sensitive population subgroup, children 1–6 years old is 0.019477 mg/kg/day with an MOE of 103. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to esfenvalerate from food and drinking water will utilize 4.6% of the RfD for children 1–6 years old, the most sensitive population subgroup based on a dietary exposure of 0.000912 mg/kg/day. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

4. Short- or intermediate-term risk. EPA has concluded that potential short- or intermediate -term aggregate exposure of esfenvalerate from chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure to children (1–6 years old) is 0.0113 mg/kg/day with an MOE of 177. For infants (less than 1 year old) the exposure is 0.0098 mg/kg/day with an MOE of 204.

EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to esfenvalerate residues.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and animals is adequately defined. EPA has concluded that the qualitative nature of the residue is the same for both fenvalerate and esfenvalerate. The residue to be regulated is fenvalerate: the S,S; R,S; S,R; and R,R isomers.

B. Analytical Enforcement Methodology

There is a practical analytical method utilizing electron-capture gas chromatography with nitrogen phosphorous detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels. The limit of detection for updated method is the same as that of the current PAM II, which is 0.01 ppm.

C. Magnitude of Residues

Tolerances are based on the sum of all isomers of fenvalerate. Fenvalerate is a racemic mixture of four isomers (about 25% each). This product was registered as Pydrin . However since 1992, an S,S-isomer enriched formulation, Asana® (esfenvalerate), has been the only fenvalerate formulation sold in the U.S. for agricultural use. since the S,S-isomer is the insecticidally active isomer, the use rate for Asana® is four times lower than that for Pydrin®. A petition is pending (PP 4F4329), to convert tolerances (still to be expressed as the sum of all isomers) based on the use rates for Asana®. Bridging residue studies have shown Asana® residues to be 3–4 times lower than Pydrin® residues.

EPA has established a tolerance of 0.2 ppm for fenvalerate on cottonseed. Magnitude of residue and processing studies support this tolerance.

D. International Residue Limits

Codex maximum residue levels (MRL's) have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. The Codex MRL for fenvalerate on cottonseed is in harmony with the U.S. tolerance.

As indicated in the Notice of Filing, there are small differences between the section 408 tolerances and the Codex MRL values for specific commodities. These differences could be caused by differences in methods to establish tolerances, calculate animal feed dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

IV. Conclusion

Therefore, the tolerances are established for residues of fenvalerate in cottonseed at 0.2 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 4– . However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300575] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch,

Information Resources and Services division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule removes time limitations for a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

40 CFR Part 185

Environmental protection, Food and additives, Pesticides and pest.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pest.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180 — [AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.379 is amended as follows:

i. By adding a heading to paragraph (a), designating the text following the heading as paragraph (a)(1) and by revising the entry for cottonseed in the table to newly designated paragraph (a)(1).

ii. By redesignating paragraph (b) as paragraph (c).

iii. By adding a paragraph heading to newly designated paragraph (c).

iv. By adding and reserving new paragraph (b) and (d) with paragraph headings.

The additions and amendments to § 180.379 read as follows:

§ 180.379 Cyano-(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide Cyano-(3-phenoxyphenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate in or on the following raw agricultural commodities:

Commodity	Parts per million
* * *	* *
cottonseed	0.2
* * *	* *

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * * *

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185 — [AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.1300 [Removed]

b. Section 185.1300 is amended by transferring paragraph (a) introductory text, (a)(1), (a)(2), (a)(3), and (a)(4) to § 180.379 and redesignating them as paragraphs (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii) and (a)(2)(iv); the remainder of § 185.1300 is removed.

PART 186 — [AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348 and 701.

§ 186.1300 [Removed]

b. Section 186.1300 is amended by transferring the text to § 180.379 and redesignating it as paragraph (a)(3) and § 186.1300 is removed.

[FR Doc. 97–31099 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300580; FRL–5755–1]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenpropathrin in or on cottonseed at 1.0 parts per million (ppm), peanut nutmeat at 0.01 ppm, peanut vine hay at 20 ppm, strawberry at 2.0 ppm, tomato at 0.6 ppm, meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm, fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by products and eggs at 0.05 ppm, and in the processed products cottonseed oil at 3.0 ppm. It also removes time limitations for tolerances for residues of fenpropathrin on the same commodities that expire on November 15, 1997. Valent U.S.A. Corporation requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

In addition, this regulation removes a feed additive tolerance for cottonseed hulls at 2.0 ppm. Originally, a feed additive tolerance existed for cottonseed soapstock at 2.0 ppm. In the November 14, 1994 **Federal Register** (59 FR 56454), which extended the time-limitation for these tolerances, the Agency inadvertently changed the expression from cottonseed soapstock to cottonseed hulls. Because a tolerance for cottonseed hulls was never intended, the Agency is removing the tolerance with this regulation. Also, the Agency no longer considers cottonseed soapstock to be a significant feed commodity. Under present residue chemistry guidelines, a tolerance for cottonseed soapstock is no longer required. Therefore, with this regulation, the tolerance for cottonseed soapstock is also removed.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before Jnauary 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300580], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300580], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300580]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5400, e-mail: edwards.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 14, 1993, EPA established time-limited tolerances under section 408 and 409 of the Federal Food Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d) and 348 for residues of fenpropathrin on cottonseed; meat; meat byproducts, and fat of cattle, goats, hogs, horses, poultry, and sheep; milk fat; eggs; a food additive tolerance in or on cottonseed oil; and a feed additive tolerance in or on cottonseed soapstock (58 FR 19357). On September 27, 1995, EPA established time-limited tolerances for residues of fenpropathrin on strawberries and tomatoes (60 FR 49793)(FRL–4979–1). On July 31, 1996, EPA established time-limited tolerances for residues of fenpropathrin on peanut hay and nutmeat (61 FR 39887)(FRL–5385–1). These tolerances expire on November 15, 1997. Valent U.S.A., on September 15, 1997, requested that the time limitation for tolerances established for residues of the insecticide fenpropathrin in the commodities mentioned above be removed based on environmental effects data that they had submitted as a condition of the registration. Valent U.S.A. also submitted a summary of its petition as required under the FFDCA as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

In the **Federal Register** of September 25, 1997 (62 FR 50337)(FRL–5748–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 2F4144, 3F4186, and 4F4327) for tolerances by Valent U.S.A. Corporation, 1333 North California Blvd., Walnut Creek, CA 94596–8025. This notice included a summary of the petitions prepared by Valent U.S.A. Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.466 be amended by removing the time limitation for tolerances for residues of the insecticide and pyrethroid fenpropathrin, in or on cottonseed at 1.0 parts per million (ppm), peanut nutmeat at 0.01 ppm, peanut vine hay at 20 ppm, strawberry at 2.0 ppm, tomato at 0.6 ppm, meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm, fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by-products and eggs at 0.05 ppm, and in the processed products cottonseed oil at 3.0 ppm and cottonseed soapstock at 2.0 ppm.

The basis for time-limited tolerances that expire November 15, 1997 was given in the October 20, 1993 issue of the **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rationale for using time-limited tolerances was to encourage

pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity database, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources, (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of fenpropathrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for residues of fenpropathrin on cottonseed at 1.0 parts per million (ppm), peanut nutmeat at 0.01 ppm, peanut vine hay at 20 ppm, strawberry at 2.0 ppm, tomato at 0.6 ppm, meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm, fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by-products and eggs at 0.05 ppm, and in the processed product cottonseed oil at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenpropathrin are discussed below.

1. Acute toxicity studies with technical fenpropathrin: Oral LD_{50} in the rat is 54.0 milligram/kilogram (mg/kg) for males and 48.5 (mg/kg) for females - Toxicity Category I; dermal LD_{50} is 1,600 mg/kg for males and 870 mg/kg for females - Category II; acute inhalation (impossible to generate sufficient test article vapor or aerosol to elicit toxicity) - Category IV; primary eye irritation (no corneal involvement, mild iris and conjunctival irritation) - Category III; and primary dermal irritation (no irritation) - Category IV. Fenpropathrin is not a sensitizer.

2. In a subchronic oral toxicity study, rats were dosed at concentrations of 0, 3, 30, 100, 300, or 600 ppm in the diet. The lowest effect level (LEL) is 600 ppm (30 mg/kg/day) based on body weight reduction (female), body tremors, and increased brain (female) and kidney (male) weights. The NOEL is 300 ppm (15 mg/kg/day).

3. In a subchronic oral toxicity study, dogs were dosed at concentrations of 0, 250, 500, or 1,000 ppm in the diet. A 1,000 ppm dog was sacrificed moribund during the third week after having tremors and showing other signs of poisoning caused by the test article. Because of this death, the dose for this group was reduced to 750 ppm for the remainder of the study. The LOEL is 750 ppm (18.8 mg/kg/day) based on tremors. The NOEL is 500 ppm (12.5 mg/kg/day).

4. In a 21–day dermal toxicity study, rabbits were dosed 5 days/week for 3 weeks on abraded or unabraded skin at doses of 0, 500, 1,200, or 3,000 mg/kg/day. There were no dose-related effects on body weight, food consumption, clinical pathology, gross pathology, or organ weights. Trace or mild inflammatory cell infiltration was seen in the intact and abraded skin in all groups, including controls, and was attributed to the test article. The systemic NOEL is > 3,000 mg/kg/day. Local irritation only.

Although a 21–day dermal toxicity study in rabbits is available the Agency has determined that rats are the most sensitive species to ascertain the dermal toxicity potential of fenpropathrin. Therefore, the lack of a 21–day dermal study in rats is data gap. This study will be required under a special Data-Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data to support these tolerances and these additional studies are not expected to significantly change the risk assessment.

5. In a 1–year feeding study, dogs were dosed at 0, 100, 250, or 750 ppm in the diet. The systemic LEL is 250 ppm (6.25 mg/kg/day) based on tremors in all dogs. The neurologic NOEL is 100 ppm (2.5 mg/kg/day); the systemic NOEL is 100 ppm (2.5 mg/kg/day).

6. In a chronic feeding/carcinogenicity study, rats were dosed at 0, 50, 150, 450, or 600 ppm in the diet (0, 1.93, 5.71, 17.06, or 22.80 mg/kg/day in males, and 0, 2.43, 7.23, 19.45, or 23.98 mg/kg/day in females). There was no evidence of carcinogenicity at any dose up to and including 600 ppm (22.80 and 23.98 mg/kg/day in males and females, respectively). The systemic NOEL (male) is 450 ppm (17.06 mg/kg/day). The systemic NOEL (female) is 150 ppm (7.23 mg/kg/day); systemic LEL (male) is 600 ppm highest dose tested (HDT); 22.80 mg/kg/day) based on increased mortality, body tremors, increased pituitary, kidney, and adrenal weights. The systemic LEL (female) is 450 ppm (19.45 mg/kg/day) based on increased mortality and body tremors.

7. In a chronic feeding/carcinogenicity study, mice were dosed at 0, 40, 150, or 600 ppm in the feed (0, 3.9, 13.7, or 56.0 mg/kg/day in males, and 0, 4.2, 16.2, or 65.2 mg/kg/day in females). As expected, mortality was highest during the final quarter of the study, but the incidence was similar in all dosed and control groups. No other indications of toxicity or carcinogenicity were seen. The systemic NOEL is > 600 ppm (HDT; male/female, 56.0/65.2 mg/kg/day).

8. In a developmental toxicity study in rats, pregnant female rats were dosed by gavage on gestation days 6–15 at 0 (corn oil control) 0.4, 1.5, 2.0, 3.0, 6.0, or 10.0 mg/kg/day. The maternal no observed adverse effect level (NOAEL) is 6 mg/kg/day; maternal LEL is 10 mg/kg/day based on death, moribundity, ataxia, sensitivity to external stimuli, spastic jumping, tremors, prostration, convulsions, hunched posture, squinted eyes, chromodacryorrhea, and

lacrimation; developmental NOAEL is > 10 mg/kg/day.

9. In a developmental toxicity study in rabbits, pregnant female New Zealand rabbits were dosed by gavage on gestation days 7 through 19 at 0, 4, 12, or 36 mg/kg/day. Maternal NOEL is 4 mg/kg/day; maternal LEL is 12 mg/kg/day based on grooming, anorexia, flicking of the forepaws; developmental NOEL is > 36 mg/kg/day (HDT).

10. A 3-generation reproduction study was performed in rats. Rats were dosed with fenpropathrin at concentrations of 0, 40, 120, or 360 ppm (0, 3.0, 8.9, or 26.9 mg/kg/day in males; 0, 3.4, 10.1, or 32.0 mg/kg/day in females, respectively). Parents (male/female): systemic NOEL = 40 ppm (3.0/3.4 mg/kg/day); systemic LEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors with spasmodic muscle twitches, increased sensitivity and maternal lethality; reproductive NOEL = 120 ppm (8.9/10.1 mg/kg/day); reproductive LEL = 360 ppm (26.9/32.0 mg/kg/day) based on decreased mean F_{1b} pup weight, increased F_{2b} loss. Pups (male/female): developmental NOEL = 40 ppm (3.0/3.4 mg/kg/day); developmental LEL = 120 ppm (8.9/10.1 mg/kg/day) based on body tremors, increased mortality.

11. Studies on gene mutation and other genotoxic effects: An Ames Assay was negative for *Salmonella* TA98, TA100, TA1535, TA1537; and TA1538; and *E. coli* WP2uvrA (trp-) with or without metabolic activation; Sister Chromosome Exchange in CHO-K1 Cells - there were no increases in sister chromatid exchanges seen in the CHO-K1 cells treated with S–33206 or the DMSO vehicle; Cytogenetics *in vitro* (CHO/CA) - negative for chromosome aberrations (CA) in Chinese hamster ovary (CHO) cells exposed *in vitro* to toxic doses (≥ 30 µg/ml) without activation; and to limit of solubility (1,000 µg/ml) with activation; *In Vitro* Assay in Mammalian Cells - equivocal results - of no concern; DNA Damage/Repair in *Bacillus subtilis* - not mutagenic or showing evidence of DNA damage at ≤ 5,000 µg/paper disk.

12. In a metabolism study in rats, animals were dosed with radiolabelled S–3206 fenpropathrin by three protocols. They were dosed with S–3206 radiolabelled on either the alcohol or acid portion of the molecule (i.e. [alcohol-^{14}C]–S–3206 or [acid-^{14}C]–S–3206). In Experiment I, rats received 14 daily oral low-doses of 2.5 mg/kg/day of unlabelled S–3206 followed by a 15th dose of either the alcohol or acid radiolabelled S–3206. In Experiments II and III, groups of rats received a single dose of either of the two radiolabelled test articles at 2.5 mg/kg (II) or 25 mg/kg (III). No clinical signs were seen in any rats.

The major biotransformations included oxidation at the methyl group of the acid moiety, hydroxylation at the 4'-position of the alcohol moiety, cleavage of the ester linkage, and conjugation with sulfuric acid or glucuronic acid.

Four metabolites were found and characterized in the urine of rats dosed with alcohol-radiolabel. The major metabolites were the sulfate conjugate of 3-(4'-hydroxyphenoxy)benzoic acid and 3-phenoxybenzoic acid (22–44% and 3–9% of the administered dose, respectively). Eight metabolites were found in the urine of rats dosed with acid-radiolabel, but only four were characterized. The major urinary metabolites of the acid-labeled fenpropathrin were TMPA-glucuronic acid and TMPA-CH_2OH (11–26% and 6–10% of the administered dose, respectively). None of the parent chemical was found in urine.

The major elimination products in the feces included the parent chemical (13–34% of the administered dose) and four metabolites. The fecal metabolites (and the percentage of administered dose) included CH_2OH-fenpropathrin (9–20%), 4'-OH-fenpropathrin (4–11%), COOH-fenpropathrin (2–7%), and 4'-OH-CH_2OH-fenpropathrin (2–7%).

13. No neurological studies are available. These studies will be required under a special Data Call-In letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change this risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, EPA recommends use of a NOEL of 6.0 mg/kg/day based on clinical signs of neurotoxicity on day one of dosing in dams from developmental toxicity study in rats.

2. *Short - and intermediate - term toxicity.* toxicity. A short- and intermediate-term risk assessment is not required for fenpropathrin. There was no systemic toxicity at 3,000 mg/kg/day in a 21–day study in rabbits.

3. *Chronic toxicity.* EPA has established the RfD for fenpropathrin at 0.025 mg/kg/day. This RfD is based on the 1–year toxicity study in dogs with a NOEL of 2.5 mg/kg/day (tremors) with an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* There is no evidence of carcinogenicity in any of the chronic studies. Fenpropathrin has not yet been classified.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.466) for the residues of fenpropathrin, in or on a variety of raw agricultural commodities. These are cottonseed (1.0 ppm), strawberries (2.0 ppm), and tomatoes (0.6 ppm); in the fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; in the meat of cattle, goats, hogs, horses and sheep at 0.1 ppm; in the meat byproducts of cattle, goats, hogs, horses and sheep at 0.1 ppm; milkfat at 2.0 ppm (reflecting 0.08 ppm in whole milk); and poultry fat, meat, meat byproducts, and eggs at 0.05 ppm. A food additive tolerance for residues of fenpropathrin on cottonseed oil at 3.0 ppm has been established under 40 CFR 185.3225. A feed additive tolerance for residues of fenpropathrin on cottonseed soapstock at 2.0 ppm has been established under 40 CFR 186.3225. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenpropathrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The acute dietary exposure assessment used Monte Carlo modeling incorporating anticipated residues and percent crop treated refinements. The acute dietary Margin of Exposure (MOE) calculated at the 99.9th percentile for the most highly exposed population subgroup (children 1–6 years old) is 803. The MOE calculated at the 99.9th percentile for the general U.S. population is 2,108. EPA concludes that there is a reasonable certainty of no harm for MOEs of 100 or greater. Therefore, the acute dietary risk assessment for fenpropathrin indicates a reasonable certainty of no harm.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.025 mg/kg/day. The chronic dietary exposure assessment used anticipated residues and percent crop treated information. The risk assessment resulted in use of 0.1% of the RfD for the U.S. population and 0.2% of the most highly exposed population subgroup (non-Hispanic other than black or white).

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA is June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent of crop treated refinements. The chronic dietary risk assessment used

percent crop treated information and anticipated residues.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a timeframe it deems appropriate. Section 408(b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings: (1) that the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for fenpropathrin were derived from Federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under the FIFRA.

2. *From drinking water.* Since fenpropathrin is applied outdoors to growing agricultural crops, the potential exists for fenpropathrin or its metabolites to reach ground or surface water that may be used for drinking water. Fenpropathrin is extremely insoluble in water (14 ppb), with a high octanol/water partitioning coefficient (K_{ow} 1.19 × 10^5) and a relatively short soil half-life for parent and environmental metabolites. Estimates of fenpropathrin drinking water concentrations were generated with the PRZM I and EXAMS computer models. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, EPA concludes that together these data indicate that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* The acute drinking water MOEs, calculated at the 99.9th percentile, are 5,756 and 3,007 for the U.S. population and non-nursing infants < 1 year old, respectively.

ii. *Chronic exposure and risk.* The chronic drinking water risk assessment resulted in use of 0.3% and 1.6% of the RfD for the U.S. population and non-nursing infants < 1 year old, respectively.

3. *From non-occupational non-dietary exposure.* Fenpropathrin has no other uses, such as indoor pest control, homeowner or turf, that could lead to unique, enhanced exposures.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether fenpropathrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenpropathrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenpropathrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The acute aggregate MOE calculated at the 99.9th percentile for the U.S. population is 1,543. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. Therefore, the Agency concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to fenpropathrin residues in food and drinking water.

2. *Chronic risk.* Using the Anticipated Residue Contribution (ARC) exposure assumptions described above, EPA has concluded that aggregate exposure to fenpropathrin from food and water will utilize 0.4% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old. EPA generally has no concern for exposures below 100% of the RfD

because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenpropathrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Based on fenpropathrin not being registered for residential uses, EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern (MOE less than 100), and that there is a reasonable certainty that no harm will result from aggregate exposure to fenpropathrin residues.

E. Aggregate Cancer Risk for U.S. Population

This chemical has not yet been classified; however, there is no evidence of carcinogenicity in any of the chronic studies. EPA believes that this pesticide does not pose a significant cancer risk.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenpropathrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 3-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* See Toxicological Profile in Unit II. A. of this preamble.

iii. *Reproductive toxicity studies.* See Toxicological Profile in Unit II. A. of this preamble.

iv. *Pre- and post-natal sensitivity.* There is no evidence of additional sensitivity to young rats or rabbits following pre- or postnatal exposure to fenpropathrin.

v. *Conclusion.* The data base related to pre- and post-natal sensitivity is complete. Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* The aggregate acute MOE calculated at the 99.9th percentile for children age 1–6 is 719. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. Therefore, the Agency has no acute aggregate concern due to exposure to fenpropathrin through food and drinking water.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to fenpropathrin from food and water will utilize 1.6% of the RfD for non-nursing infants. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenpropathrin residues.

4. *Short- or intermediate-term risk.* Based on fenpropathrin not being registered for residential uses, EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is a reasonable certainty that no harm will result.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

Metabolism studies have been conducted on pinto beans, tomatoes, apples, cotton and tomato. In the earlier studies, the parent compound was found to be the major residue; remaining residues were characterized but not identified. The apple metabolism study was deemed fully adequate because the majority of the residue was the parent compound. The cotton temporary tolerances were established with an expiration date because the petitioner had indicated that a new cotton metabolism study would be conducted to further elucidate the nature of radioactive residues in cotton commodities. In both recent plant metabolism studies, on cotton and tomatoes, it has been concluded that the residue of concern is the parent compound fenpropathrin per se.

Metabolism studies with goats and poultry dosed with radiolabeled fenpropathrin were submitted with PP7F03485/FAP7H05527. The majority of the residue in muscle, fat, and milk and eggs was found to be the parent compound, fenpropathrin. The residue in kidney and liver consisted mainly of various metabolites. Livestock metabolites, with the possible exception of TMPA lactone, have also been identified in rat metabolism studies and their contributions to the overall toxicity of fenpropathrin have been considered. For the apple and pear tolerances, the levels of the metabolites in livestock were low enough not to be included in the tolerance expression.

B. Analytical Enforcement Methodology

Residues of fenpropathrin in peanut raw agricultural and processed commodities were determined using analytical method RM–22–4 Gas Chromatography with Electron Capture Detection (GC/ECD). An EPA trial of method RM–22–4 for fenpropathrin residues in/on apples and method RM–22A–1 for residues of fenpropathrin in meat and milk has been successfully conducted. In addition, recovery of fenpropathrin was tested through FDA multiresidue methods and fenpropathrin was found to be completely recovered by the PAM I Section 302 method (Luke method); thus a confirmatory method is available.

C. Magnitude of Residues

1. *Plant commodities—field trial studies.* For the purposes of dietary risk assessment, residue data generated from residue field trials conducted at maximum application rates and minimum pre-harvest intervals were used to estimate chronic and acute dietary exposure to potential residues of fenpropathrin. For chronic dietary exposure analyses, mean anticipated residue values were calculated, substituting one-half the limit of detection for those samples for which residues were reported as non-detectable. For acute dietary exposure analyses, the entire range of field trial residue data which reflected the current labeled maximum rate and minimum PHI for single serving commodities were used (Tier 3 modeling, as outlined in "Final Office Policy for Performing Acute Dietary Exposure Assessment," D. Edwards, June 13, 1996.) For those foods considered to be blended, mean field trial residues were calculated, substituting the full limit of detection for those samples for which residues were reported as non-detectable (Tier 2 modeling) used residue distributions from field trial studies.

2. *Animal commodities.* For chronic dietary analyses, dietary burdens were calculated using mean field trial residues, adjusted for percent of crop treated and applying appropriate processing factors, for all feed items. For acute dietary analyses, mean field trial residues (with no adjustment for percent of crop treated) were used for those feed items that are processed or blended, while the highest field trial residue values were used for the remaining feed items.

The secondary residue levels in animal tissues were then calculated by multiplying the total dietary burden by the tissue-to-feed ratio calculated from the lactating ruminant or laying hen feeding studies.

D. International Residue Limits

Codex Maximum Residue Limits (MRLs) for fenpropathrin have been established which are in harmony with the U.S. tolerances for cottonseed (1.0 ppm). Codex MRLs have been established which exceed the U.S. tolerances for cattle meat byproducts (0.05 vs. 0.02 ppm), cattle meat (0.5 vs. 0.02 ppm), whole milk (0.1 vs 0.02 ppm), and tomatoes (1.0 vs. 0.6 ppm). Codex MRLs have been established which are below their U.S. counterparts for eggs (0.01 vs 0.02 ppm) and poultry meat byproducts (0.01 vs. 0.02 ppm).

There are differences between the section 408 tolerances and the Codex MRL values for secondary residues in animal products. These differences are mainly caused by differences in the methods used to calculate animal feed dietary exposure. The only substantial difference between the U.S. tolerance and the Codex MRL value is for tomatoes. The JMPR (Joint Meeting on Pesticide Residues) reviewer required that the MRL exceed the highest field residue, and rounded to unity. The EPA reviewer agreed with Valent that one set of field residue samples was possibly comprised by the presence of a high rate processing treatment nearby. High outliers were ignored, and the tolerance was set at 0.6 ppm.

No Canadian MRLs have been established for residues of fenpropathrin. Mexico has established a tolerance for residues of fenpropathrin on cottonseed (1.0 ppm) which is in harmony with the U.S. tolerance.

IV. Conclusion

Therefore, these tolerances are established for residues of fenpropathrin in cottonseed at 1.0 ppm, peanut nutmeat at 0.01 ppm, peanut vine hay at 20 ppm, strawberry at 2.0 ppm, tomato at 0.6 ppm, meat and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm, fat of cattle, goats, hogs, horses and sheep at 1.0 ppm, milk fat (reflecting 0.08 ppm in whole milk) at 2.0 ppm, and poultry meat, fat, meat by-products and eggs at 0.05 ppm, and in the processed products cottonseed oil at 3.0 ppm.

In addition to the tolerances being amended, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerances that now appear in § 185.3225 with the tolerances in § 180.466 and is removing the tolerances under § 185.3225 and § 186.3225.

Originally, the tolerance under § 186.3225 was for cottonseed soapstock at 2.0 ppm. In the **Federal Register** of November 14, 1994 (59 FR 56454)(FRL–4919–3) which extended the time-limitation for these tolerances, the Agency inadvertently changed the expression from cottonseed soapstock to cottonseed hulls. Because a tolerance for cottonseed hulls was never intended, the Agency is removing the tolerance by this regulation. Also, the Agency no longer considers cottonseed soapstock as a significant feed commodity. Under present residue chemistry guidelines, a tolerance for cottonseed soapstock is no longer required. Therefore, with this regulation, the tolerance for cottonseed soapstock is also removed.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the

material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Records and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300580] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Feed additives, Pesticides and pests.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.466, is revised to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the pesticide chemical fenpropathrin (alpha-cyano-3-phenoxy-benzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on the following agricultural commodities:

Commodity	Parts per million
Cattle, fat	1.0
Cattle, mbyp	0.1
Cattle, meat	0.1
Cottonseed	1.0
Cottonseed, oil	3.0
Eggs	0.05
Goats, fat	1.0
Goats, mbyp	0.1
Goats, meat	0.1
Hogs, fat	1.0
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	1.0
Horses, mbyp	0.1
Horses, meat	0.1
Milkfat (reflecting 0.08 ppm in whole milk).	2.0
Peanut, hay	20.0
Peanut, nutmeat	0.01
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	1.0
Sheep, mbyp	0.1
Sheep, meat	0.1
Strawberry	2.0
Tomato	0.6

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3225 [Removed]

b. By removing § 185.3225 *Fenpropathrin.*

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348 and 701.

§ 186.3225 [Removed]

b. By removing § 186.3225 *Fenpropathrin.*

[FR Doc. 97–31102 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50621C; FRL–5757–6]

RIN 2070–AB27

Dipropylene Glycol Dimethyl Ether; Final Significant New Use Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 97–29153) in the **Federal Register** of November 4, 1997, adding a significant new use rule (SNUR) for the chemical substance described as dipropylene glycol dimethyl ether (DGDE), which was the subject of premanufacture notice (PMN) P–93–507. The CAS No. listed for DGDE in the rule was incorrect. This document corrects that CAS No.

DATES: Effective on November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a document (FR Doc. 97–29153) in the **Federal Register** of November 4, 1997 (62 FR 59579) (FRL–5745–1), stating that the CAS No. for DGDE was 11109–77–4. This document correctly changes the CAS No. from 11109–77–4 to 111109–77–4.

On page 59583, in the first column, in § 721.3550, in paragraph (a), in the fifth line, "CAS No. 11109–77–4" should read "CAS No. 111109–77–4".

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 19, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–31130 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 97–D312]

Defense Federal Acquisition Regulation Supplement; Allowability of Costs for Restructuring Bonuses

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to prohibit use of DoD funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid to the employee, when such payment is part of restructuring costs associated with a business combination. This rule implements Section 8083 of the Fiscal Year 1998 Defense Appropriations Act.

DATES: Effective date: November 26, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before January 26, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMB 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D312 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D312 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends paragraph (f) (1) of DFARS 231.205–6, Compensation for personal services, to implement Section 8083 of the Fiscal Year 1998 Defense Appropriations Act (Pub. L. 105–55). Section 8083 prohibits DoD from using fiscal year 1998 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payments in excess of the normal salary paid by the contractor to the employee, when such payment is part of restructuring costs associated with a business combination. Similar provisions were contained in the Fiscal Year 1996 and Fiscal Year 1997 Defense Appropriations Acts (Pub. L. 104–61 and Pub. L. 104–208, respectively).

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial umber of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 97–D312), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 8083 of the Fiscal Year 1998 Defense Appropriations Act (Pub. L. 105–56), which was effective upon enactment on October 8, 1997. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–6 is amended by revising paragraph (f)(1) to read as follows:

§ 231.205–6 Compensation for personal services.

(f)(1) In accordance with Section 8122 of Pub. L. 104–61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205–70(b) for the definitions of "business combination" and "restructuring costs.")

[FR Doc. 97–31113 Filed 11–25–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE47

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish an Additional Manatee Sanctuary in Kings Bay, Crystal River, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: This emergency rule establishes an additional West Indian manatee (*Trichecus manatus*) sanctuary in Citrus County, Florida, adjacent to Kings Bay/Crystal River at the confluence of the Three Sisters Spring run with a residential canal, and prohibits all waterborne activities in the sanctuary for a period of 120 days. This emergency action will help prevent the taking of manatees by harassment resulting from waterborne activities during upcoming winter months. This increases the number of sanctuaries in Kings Bay to seven and has been initiated to prevent harassment from increasing public use at this site. A proposed rule to establish this sanctuary is published elsewhere in today's **Federal Register**. The proposed rule provides for public comment and a hearing (if requested). The emergency action is effective for 120 days and is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972, as amended.

DATES: Effective November 24, 1997, through March 23, 1998, unless terminated sooner by publication in the **Federal Register**. In accordance with 50 CFR 17.106, the effective date for this action was established through a legal notice published in the St. Petersburg Times, Citrus County Edition and the Citrus County Chronicle on November 24, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at the above address, (904/232–2580 ext. 117); or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Drive, Suite 206, St. Petersburg, Florida 33702, (813/570–5398).

SUPPLEMENTARY INFORMATION:

Background

Crystal River is a tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by numerous freshwater springs. The Kings Bay springs constitute one of the most important natural warm-water refuges for manatees, a federally listed endangered species. More than 250 animals may seek refuge in the bay's warm waters during winter cold periods. With the winter presence of manatees and its sheltered, warm and clear waters, Kings Bay also attracts large numbers of waterborne users (boaters, recreational divers, snorkelers, and swimmers) most of whom seek out manatees for a close viewing experience. The influx of visitors, primarily there to see and interact with manatees, provides a major economic impact to the Crystal River community.

Large aggregations of manatees apparently did not exist in Kings Bay until recent times (Beeler and O'Shea 1988). The first careful counts were made in the late 1960's. Since then manatee numbers have increased significantly. In 1967–1968 Hartman (1979) counted 38 animals. By 1981–1982, the maximum winter count increased to 114 animals (Powell and Rathbun 1984), and in December 1994 the count was 271 (U.S. Fish and Wildlife Service, unpublished data). Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River.

The Second Revision of the Florida Manatee Recovery Plan (U.S. Fish and Wildlife Service 1995) identifies the need to minimize disturbance and harassment of manatees in the wild. This concern for the welfare of manatees in Kings Bay has resulted in the establishment of a series of sanctuary areas to protect manatees from any potential negative impacts of human activities. The first three sanctuaries were created in 1980, encompassing a total of about 10 acres in Kings Bay. These were closed to all human access each winter from November 15 to March 31 and provided manatees with areas where they could retreat from waterborne users. To better administer and protect the bay's manatee habitat, the Service purchased several islands associated with the sanctuaries in 1983 and established the Crystal River National Wildlife Refuge. During the 1980's, the number of manatees and divers increased steadily, resulting in the need for additional manatee sanctuaries. In 1994, the Service established three additional sanctuaries and expanded an existing sanctuary. The six sanctuaries now encompass approximately 39 acres within Kings Bay.

The Kings Bay manatee sanctuary system provides significant protection to the more than 250 manatees that use this area as a winter warm-water refuge. With the increasing number of manatees using Kings Bay and an increasing number of recreational divers and snorkelers coming to Crystal River to seek close encounters with manatees, another problem area outside the existing sanctuary system has been identified.

Since the establishment of the three most recent sanctuaries, reports of waterborne users harassing manatees and causing manatees to leave the Three Sisters Spring run area has been documented by researchers, refuge staff and concerned citizens. The Save the Manatee Club and the Marine Mammal Commission have urged the Service to act to protect manatees utilizing the Three Sisters Spring run area. Dive shop operators have acknowledged that there is a manatee harassment problem in the area of the proposed sanctuary.

Prior to last winter, the Service and local interest groups met separately with local dive shop owners to discuss the harassment issue and the feasibility of establishing a new sanctuary. There was a consensus that a sanctuary was needed and that it would be more effective if it was developed through a local city or county ordinance. Representatives of each of the local dive shops wrote letters recognizing the need for a small sanctuary near Three Sisters Spring and recommended that the regulations be promulgated locally. Local efforts have been made to address the problem and the Service will continue to encourage local officials to create a permanent refuge. However, the Service is taking this interim measure to protect manatees, already beginning to seek the warmer waters of Kings Bay springs, from harassment.

The Service funded a manatee and human interaction study at Three Sisters Spring (January 23–February 17, 1997) which confirmed that harassment was occurring and documented instances in which manatees left the warm waters at the confluence of the spring run and the residential canal when divers, snorkelers and/or swimmers arrived (Wooding, 1997). The Service is concerned that these animals may be leaving earlier than if they were left undisturbed.

Reasons for Emergency Determination

In deciding to implement this rule, the Service has carefully assessed the best available information, and conducted a study to evaluate manatee and human interactions at Three Sisters Spring. The study clearly documented a manatee harassment problem at the site. With more than 250 manatees utilizing the sanctuary system along with an increasing number of visitors who seek close encounters with manatees, manatees are experiencing more frequent disturbance at Three Sisters Spring. Without sufficient space to rest, free from harassment, a significant proportion of the manatees depending upon the Kings Bay springs could be at considerable risk should they be driven away from essential warm-water areas. Based on this evaluation, the preferred appropriate action is to establish an additional sanctuary at the confluence of the Three Sisters Spring run and a residential canal in Kings Bay, Crystal River, Citrus County, Florida. At present, there is currently insufficient time to complete preparations for implementing a permanent sanctuary before cold weather arrives. Therefore, the Service is establishing a seventh manatee sanctuary on an emergency basis to provide maximum protection for manatees until a permanent sanctuary is put in place, either by a local ordinance or by final rule by the Service.

The authority to establish emergency manatee protection areas is provided by the Endangered Species Act and the Marine Mammal Protection Act, and is codified in 50 CFR, part 17, subpart J. Under subpart J, the Director may establish, by regulation, manatee protection areas whenever she determines there is substantial evidence that there is imminent danger of a taking (including harassment) of one or more manatees, and that such establishment is necessary to prevent such a taking.

The emergency sanctuary is located on the west side of the confluence of Three Sisters Spring run and the residential canal, Kings Bay, Crystal River, Citrus County, Florida. The sanctuary will be less than one quarter acre in size.

References Cited

Beeler, E.I. and T.J. O'Shea. 1988. Distribution and mortality of the West Indian manatee (*Trichechus manatus*) in southeastern United States: a compilation and review of recent information. Prepared by the Fish and Wildlife Service for the U.S. Army Corps of Engineers. U.S. Natl. Tech. Info. Serv., Springfield, Virginia PB 88–207 980/AS. 613.

Hartman, D.S. 1979. Ecology and behavior of the manatee (*Trichechus manatus*) in Florida. Am. Soc. Mamm. Spec. Pub. No. 5. 153 pp.

Powell, J.A. and G.B. Rathbun. 1984. Distribution and abundance of manatees along the northern coast of the Gulf of Mexico. Northeast Gulf Sci. 7:1–2.

Wooding, J. 1997. An assessment of manatee behavior relative to interactions with humans at Three Sisters Spring, Crystal River, Florida. A report submitted to the U.S. Fish and Wildlife Service, Jacksonville, Florida. 65 pp.

U.S. Fish and Wildlife Service. 1995. Florida Manatee Recovery Plan Second Revision. U.S. Fish and Wildlife Service, Atlanta, Georgia. 160 pp.

Author. The primary author of this emergency rule is Robert O. Turner, Manatee Coordinator (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.108 by adding paragraph (a)(7) to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(7) A tract of submerged land on the west side of the confluence of Three Sisters Spring run and the residential canal off the eastern

shore of Kings Bay, Crystal River, lying in the northeast corner of Section 28, Township 18, South Range 17 East in Citrus County, Florida; containing less than one quarter acre.

* * * * *

Dated: November 20, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31107 Filed 11–21–97; 3:41 pm]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 228
Wednesday, November 26, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require inspections to detect cracking of the aft door frame area, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracks in the aft door frame area, which could result in reduced structural integrity and rapid decompression of the airplane.

DATES: Comments must be received by December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–230–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that, during scheduled inspections of in-service airplanes, 16 cases of stress corrosion cracks have been found at and between rivet holes on the inner and outer door frame flanges of frames 73A and 75A, and on the inner and outer flanges of the longaron at stringer 11. Such stress corrosion cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity and possible rapid decompression of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–303 (for Model A300 series airplanes); A310–53–2079 (for Model A310 series airplanes); and A300–53–6056 (for Model A300–600 series airplanes), all dated February 23, 1996. These service bulletins describe procedures for inspections to detect cracking of the aft door frame area, and repair, if necessary. In each of the referenced service bulletins, inspection procedures are provided for multiple locations around the aft door frame area. There are 7 locations specified for Model A300 and A310 series airplanes, and 3 locations specified for Model A300–600 series airplanes. Accomplishment of a permanent repair, as specified in these service bulletins, eliminates the need for the repetitive eddy current inspections for the area in which the permanent repair is accomplished.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive (CN) 96–135–199(B), dated July 17, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between the Proposal and the related Service Bulletin

The proposed rule would differ from the Airbus service bulletins described previously in that, unlike certain repair times specified in the referenced service bulletins, this proposed AD would not permit further flight with cracks detected in the aft door frame area. Depending on the extent and location of the cracking, the service bulletins, in certain circumstances, provide for continued flight without immediate repair of the damaged area. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all locations in the aft door frame area that are found to be cracked must be repaired prior to further flight.

Additionally, for cracks found in certain locations, the service bulletins specify that operators should contact Airbus for possible repair solutions. Unlike the procedures described in the service bulletins, this proposed AD would require that any repairs other than those specifically identified in the service bulletins be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 49 Airbus Model A300 and A310 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 25 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators of Model A300 and A310 series airplanes is estimated to be $73,500, or $1,500 per airplane.

The FAA estimates that 51 Airbus Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators of Model A300–600 series airplanes is estimated to be $55,080, or $1,080 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97–NM–230–AD.

Applicability: Model A300, A310, and A300–600 airplanes on which Airbus Modification 6924 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the aft door frame area, which could result in reduced structural integrity and possible rapid decompression of the aircraft, accomplish the following:

(a) Prior to the accumulation of 10 years since date of manufacture, or within 12 months after the effective date of this AD, whichever occurs later: Except as provided by paragraphs (b) and (c) of this AD, accomplish a high frequency eddy current inspection to detect stress corrosion cracks in the aft door frame area, and perform the applicable corrective actions, in accordance with Airbus Service Bulletin A300–53–303, dated February 23, 1996 (for Model A300 series airplanes); A310–53–2079, dated February 23, 1996 (for Model A310 series airplanes); or A300–53–6056, dated February 23, 1996 (for Model A300–600 series airplanes); subsequently referred to as the applicable service bulletin. Thereafter, repeat the inspection at intervals not to exceed 5 years, in all areas not repaired permanently in accordance with the applicable service bulletin.

(b) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies a compliance time other than "prior to further flight" for accomplishment of the repair: Accomplish the repair prior to further flight in accordance with the procedures specified in the applicable service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 96–135–199(B), dated July 17, 1996.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31022 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dassault Model Mystere Falcon 200 series airplanes. This proposal would require reducing the life limit of the polyurethane foam used in the fuselage fuel tanks. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure replacement of the polyurethane foam in the fuselage fuel tanks when it has reached its maximum life limit; polyurethane foam that is not replaced in a timely manner could result in fuel contamination or increased risk of explosion in the fuselage fuel tank.

DATES: Comments must be received by December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–189–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–189–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Mystere Falcon 200 series airplanes. The DGAC advises that studies of aging airplanes conducted by Dassault have shown that, after 8 years, the characteristics of the polyurethane foam material used in the fuselage fuel tanks are no longer acceptable. The airplane maintenance manual originally called for replacement of the polyurethane foam within 10 years. However, based on the Dassault study, the life limit of the foam should be reduced to 8 years. If not replaced in a timely manner, the polyurethane foam could degrade and result in fuel contamination or increased risk of explosion in the fuselage fuel tank.

Explanation of Related French Airworthiness Directive

The DGAC issued French airworthiness directive (CN) 96–078–021(B), dated April 10, 1996, in order to assure the continued airworthiness of these airplanes in France. The French airworthiness directive requires replacement of the polyurethane foam of the fuselage tanks at intervals not to exceed 8 years.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require reducing the life limit of the polyurethane foam used in the fuselage fuel tanks. The action would be required to be accomplished in accordance with procedures specified in the airplane maintenance manual.

Cost Impact

The FAA estimates that 20 Dassault Model Mystere Falcon 200 series airplanes of U.S. registry would be

affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $89,600, or $4,480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 97–NM–189–AD.

Applicability: All Model Mystere Falcon 200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel contamination or increased risk of explosion in the fuselage fuel tank as a result of degradation of the polyurethane foam used in the fuselage fuel tanks, accomplish the following:

(a) Replace the polyurethane foam in the fuselage fuel tanks with new foam, in accordance with procedures specified in Chapter 5 of the Dassault Falcon 200 Maintenance Manual, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD. Thereafter, replace the foam with new foam at intervals not to exceed 8 years.

(1) Within 8 years after the last replacement of the foam; or

(2) Within 7 months or 350 flight hours after the effective date of this AD, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 96–078–021(B), dated April 10, 1996.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31024 Filed 11–25–97; 8:45 am]

BILLING CODE 4010–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections to detect uneven wear of the heat pack of the main landing gear (MLG) brake unit; measurement and setting of the wear remaining length (WRL) of the wear indicator pin (WIP); and replacement of the brake heat pack unit with a serviceable unit, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect uneven wear of the brake heat pack unit and prevent failure of the pressure stator of the MLG brake unit, which could result in reduced braking efficiency and consequent longer stopping distances upon landing.

DATES: Comments must be received by December 26, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–200–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises it received reports indicating that the heat pack unit of the main landing gear (MLG) brake unit has exhibited uneven wear at the pressure stator/first rotor interface in some instances, which has resulted in a small number of failures of the pressure stator. The pressure stator failures have been attributed to incorrect wear remaining length (WRL) indicated by the wear indicator pin (WIP). Such uneven wear and/or failure of the pressure stator/first rotor interface of the brake units, if not corrected, could result in reduced braking efficiency and consequent longer stopping distances upon landing.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin ATP/J61–32–71, dated May 23, 1996, and Revision 1, dated June 18, 1996, which describe procedures for repetitive inspections to detect uneven wear of the heat pack of the MLG brake unit at the pressure stator/first rotor interface; measurement and setting of the WRL of the WIP to indicate the correct amount of allowable remaining wear of the brake heat pack unit; and replacement of the brake heat pack unit with a serviceable unit, if necessary. (The Jetstream service bulletin references Dunlop service Bulletin AHA1612/AHA2004–32–1122, dated April 16, 1996, as an additional source of service information for inspecting the brakes, measuring the WRL of the WIP, and setting the corrected length of the pin.

The CAA classified the Jetstream service bulletin as mandatory and issued British airworthiness directive 002–05–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Differences Between Proposed AD and Service Information

Operators should note that certain procedures described in the referenced Dunlop Service Bulletin are not included in this AD. Those procedures address the possible delay in the accomplishment of some of the work tasks due to the lack of qualified persons to set the WRL of the WIP. However, this AD permits no delay in setting the corrected length of the pin.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,000, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 96–NM–200–AD.

Applicability: BAe Model ATP airplanes having constructors numbers 2002 through 2067 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect uneven wear of the brake heat pack unit and prevent failure of the pressure stator of the main landing gear (MLG) brake unit, which could result in reduced braking efficiency and consequent longer stopping distances upon landing, accomplish the following:

(a) Within 300 hours time-in-service (TIS) after the effective date of this AD: Perform an inspection of the brake units of the left and right MLG to detect uneven wear at the pressure stator/first rotor interface, measure the wear remaining length (WRL) of the wear indicator pin (WIP), and accomplish the action specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, or Revision 1, dated June 18, 1996.

Note 2: Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, and Revision 1, dated June 18, 1996, reference Dunlop Service Bulletin AHA1612/AHA2004–32–1122, dated April 16, 1996, as an additional source of service information for procedures to inspect the brakes, measure the wear remaining length (WRL) of the wear indicator pin (WIP), and set the corrected length of the pin.

(1) If the WRL of the WIP is greater than or equal to 0.5 inches: Repeat the action required in paragraph (a) of this AD thereafter at intervals not to exceed 300 hours TIS.

(2) If the WRL of the WIP is less than 0.5 inches: Prior to further flight, measure the thickness of the pressure stator and accomplish the action specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; and repeat the action required in paragraph (a) of this AD thereafter at intervals not to exceed 300 hours TIS.

(i) If the pressure stator is less than or equal to 0.31 inches thick: Replace the heat pack of the MLG brake unit with a serviceable unit and set the WRL of the WIP to indicate the corrected WRL measurement.

(ii) If the pressure stator exceeds 0.31 inches thick: Set the WRL of the WIP to indicate the corrected WRL measurement.

(b) If, during any inspection required by this AD, the WRL of the WIP on any brake unit shows that the wear status of the brake heat pack is outside the acceptable limits specified in Jetstream Service Bulletin ATP/J61–32–71, dated May 23, 1996, or Revision 1, dated June 18, 1996: Prior to further flight, replace the brake heat pack unit with a serviceable unit in accordance with the referenced service bulletin; and repeat the action required in paragraph (a) of this AD thereafter at intervals not to exceed 300 hours TIS.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add additional comments, and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 002–05–96.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31023 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 778, and 843

RIN 1029–AB94

Ownership and Control; Redesign

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Advance notice of proposed rulemaking; extension of public comment period and notice of public meetings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM), United States Department of the Interior (DOI) published a notice that it would hold public meetings in order to solicit comments, concerns, and new ideas regarding the drafting of new ownership or control, permit information, and improvidently issued permit regulations to implement certain provisions of the Surface Mining Control and Reclamation Act of 1977. The notice invited written comments regarding the drafting of these regulations and advised that a concept/issue paper has been prepared to assist those interested in commenting or preparing for the meetings. The notice also stated that OSM would meet with interested persons and accept written comments through December 15, 1997. OSM is now extending the time during which written comments may be submitted and announcing the dates and locations for public meetings.

DATES: *Written comments:* The date for submitting written comments is extended until 5:00 p.m., Eastern Time on January 16, 1998.

Public Meetings: The period in which to request a meeting is unchanged. Requests for meetings should be made prior to December 1, 1997. Public meetings have already been scheduled for seven locations. See **SUPPLEMENTARY INFORMATION** for the dates, times and locations.

ADDRESSES: *Written comments and requests for concept/issue paper:* Hand deliver or mail to Earl Bandy, Office of Surface Mining Reclamation and Enforcement, AVS Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (800) 643–9748. E-mail: ebandy@osmre.gov.

Telefax: Copies of the concept/issue paper may be obtained from FAX ON DEMAND by calling 202–219–1703 and following the instructions on the recorded announcement. The concept/issue paper document code is 3009.

Public meetings: Upon request OSM staff will be available to meet with interested persons, individually or in groups, during the comment period. In addition to public meetings scheduled by request, OSM has scheduled meetings at seven locations. See **SUPPLEMENTARY INFORMATION** for the dates, times and locations.

For planning purposes, participants must call 1–800–643–9748 to confirm their attendance. If no confirmations are received for any location where a meeting has been scheduled, that meeting will not be held. Any individual who requires special accommodation to attend a meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2796 or (800) 643–9748. E-mail: ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION: On October 29, 1997 (62 FR 56139), OSM published a notice that it would hold public meetings in order to solicit comments, concerns, and new ideas regarding the drafting of new ownership or control, permit information, and improvidently issued permit regulations to implement certain provisions of the Surface Mining Control and Reclamation Act of 1977. The notice also invited written comments regarding the drafting of these regulations and advised that a concept/issue paper has been prepared to assist those interested in commenting or preparing for the meetings. The re-design of these regulations is underway in order to fulfill the commitment made in the publication of the interim final rules on April 21, 1997 (62 FR 19450). The commitment was to seek public comment on proposed regulatory changes that would precede final rules adopted to reflect the January 31, 1997, decision of the U.S. Court of Appeals for the District of Columbia Circuit that invalidated previous ownership or control and related rules.

Public meetings have been scheduled at the following locations on the dates specified.

Date	Time	Location
12/2/97	9 a.m.–12 noon	Holiday Inn South, 5332 Athens-Boonesboro Road, Lexington, KY.
12/3/97	9 a.m.–12 noon	Heart O Town Hotel, 1000 Washington Street, East, Charleston, WV.
12/4/97	10 a.m.–12 noon	OSM Conference Room, 10 Parkway Center, Building #3, Pittsburgh, PA.
12/5/97	10 a.m.–12 noon	OSM Conference Room 220, 1951 Constitution Ave., NW., Washington, DC.
12/8/97	10 a.m.–12 noon	OSM Conference Room, 2nd Floor, 530 Gay Street, Knoxville, TN.
12/9/97	10 a.m.–12 noon	OSM Conference Room, 1st Floor, 501 Belle Street, Alton, IL.
12/10/97	10 a.m.–12 noon	OSM Conference Room, 34th Floor, 1999 Broadway, Denver, CO.

Dated: November 21, 1997.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 97–31096 Filed 11–25–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–066–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois regulatory program (hereinafter the "Illinois program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Illinois regulations pertaining to administrative review. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., December 26, 1997. If requested, a public hearing on the proposed amendment will be held on December 22, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on December 11, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM'S Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, IL 62701–1787, Telephone (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913,16, and 913.17.

II. Description of the Proposed Amendment

By letter dated November 3, 1997 (Administrative Record No. IL–5000), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment at its own initiative. In its submission letter, Illinois stated the amendment was necessitated by a permit review case wherein the hearing officer found that the Department's burden of proof standard was improper. The hearing officer ruled that a preponderance of the evidence standard was the appropriate standard to apply in a permit review proceeding. On a subsequent appeal of the administrative case, the circuit court agreed that the clearly erroneous standard was invalid, and that the preponderance of the evidence standard was the correct standard to apply (Citizens Organizing Project v. IDNR, 96–MR–126, Sangamon County Circuit Court). The provision of Title 62, Illinois Administrative Code (IAC) that Illinois proposes to amend is at 62 IAC 1847.3(g), permit hearings. Specifically, Illinois proposes to delete the existing language at 62 IAC 1847.3(g) and replace it with the following language.

The standard of proof in a hearing conducted under this Section shall be the preponderance of the evidence.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 731.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on December 11, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 1997.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–31095 Filed 11–25–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL162–1b; FRL–5926–7]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a September 8, 1997, State Implementation Plan (SIP) revision request submitted by the State of Illinois to tighten Volatile Organic Material regulations for cold cleaning degreasing operations in the Chicago and Metro-East ozone nonattainment areas. In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse written comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse written comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, the direct final rule will be withdrawn and all written public comments received will be addressed in a subsequent final rule based on the proposed rule. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments on this proposed rule must be received on or before December 26, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: November 7, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–31140 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 214 and 215

[DFARS Case 97–D011]

Defense Federal Acquisition Regulation Supplement; Distribution of Contract Financing Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that, when a contract contains multiple accounting classification reference numbers and a clause for progress payments, the contracting officer shall provide instructions to enable the paying office to distribute the progress payments in proportions that reasonably reflect the performance of work under the contract. This policy was originally scheduled for implementation on October 1, 1997; implementation has been delayed pending a more complete review of the resource implications of the Department's planned manner of distributing progress payments. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. The Administrator of the Office of Information and Regulatory Affairs has determined that this is a major rule under 5 U.S.C. 804.

DATES: Comments on the proposed rule and the associated information collection requirements should be submitted in writing to the addresses specified below on or before January 26, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 97–D011 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 97–D011 in the subject line.

Interested parties should submit written comments on the associated information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Peter N. Weiss, Desk Officer, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations Council at the address specified above.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed DFARS rule was published in the **Federal Register** on June 5, 1997 (62 FR 30829). The rule required a contracting officer to provide payment instructions to enable the paying office to distribute financing payments to the contract line item number (CLIN)/subline item number (SLIN) that reflects the work performed during the period covered by the contractor's financing request. Public comments were received from seven sources. All comments were considered.

This DFARS rule differs significantly from the proposed DFARS rule published in the **Federal Register** on June 5, 1997. Therefore, this second proposed rule is being published to obtain further public comments, prior to promulgation of a final rule. One of the main differences is that this revised rule raises the level to which actual funds usage must be identified. The previously published proposed rule required contracting officers to provide distribution instructions at the contract line item or subline item level. DoD has concluded that instructions by CLIN or SLIN are not necessary, in particular, in cases where several CLINs/SLINs are funded with the same accounting classification reference number (ACRN). Consequently, this DFARS rule requires distribution instructions by ACRN, rather than by CLIN/SLIN. Each appropriation or subdivision thereof is reflected in the contract by a distinct ACRN.

A second difference between the two proposed rules is that this revised rule no longer requires the contracting officer to use one of four alternative approaches for developing the payment instructions. However, for research and development contracts, the rule does retain the approach of using oldest funds first, absent conflicting information.

This proposed rule also differs from the June 5, 1997, proposed rule by

clarifying that the rule applies to the progress payments type of financing; and that contractors, when asked by contracting officers to provide information, need to provide best estimates of funding distribution by ACRN, based on existing accounting systems.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meeting of the Regulatory Flexibity Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold, and, therefore, do not use the progress payments method of financing. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 97–D011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, applies because the proposed rule contains information collection requirements. A new information collection requirement has been submitted to the Office of Management and Budget (OMB) for review under 44 U.S.C. 3507(d)(1)(A).

1. Title, Associated Form, and OMB Number: A new information collection requirement, "Distribution of Contract Financing Payments," has been submitted to OMB for review. An OMB Number has not yet been assigned.

2. Needs and Uses: 31 U.S.C. 1301(a) provides that "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." To facilitate compliance, the Under Secretary of Defense (Comptroller) (USD(C)) has directed paying offices to begin charging progress payments to the obligations that correspond to the deliverables for which costs were incurred during the period covered by the progress payment request. In order to implement this direction, contracting officers must provide progress payment distribution instructions to paying offices. One possible source of information for devising distribution instructions is the contractor, by means of a contract requirement for estimates of distributions by ACRN.

Affected Public: Businesses or other for profit.

Annual Burden Hours: 1,440,000.

Number of Respondents: 2,000.

Average Burden Per Response: 60 hours.

Frequency: On occasion.

3. Supplementary Information: Summary of Information Collection. The collection of information from contractors will be required only to the extent deemed necessary by contracting officers if they are unable to devise payment distribution instructions using other available information. Compliance with 31 U.S.C. 1301(a) does not require submission of information by contractors. However, in order to better meet the requirements of the law, contracting officers may need to obtain certain information from contractors in the form of contractor estimates of payment distribution by ACRN, based on actual or anticipated contract performance. When obtained from contractors, the frequency of submittal of distribution information will be determined by the frequency of the contractor's submission of progress payment requests, but may not be more frequent than monthly.

4. Comments: Particular comments are solicited on:

a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. The accuracy of the agency's estimate of the burden of the information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

List of Subjects in 48 CFR Parts 214 and 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 214 and 215 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 214 and 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 214—SEALED BIDDING

2. Sections 214.201, 214.201–2, and 214.201–9 are added to read as follows:

214.201 Preparation of invitations for bids.

214.201–2 Part I—the Schedule.

(g) *Section G, Contract administration data.*

(i) When a contract contains multiple accounting classification reference numbers (ACRNs) (see 204.7101) and includes a clause for progress payments, the contracting officer shall provide instructions to enable the paying office to distribute progress payments to the ACRNs in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall represent a best estimate based on available information, and shall be updated as necessary.

(ii) The contracting officer may provide payment distribution instructions to the paying office with each progress payment request, or as an extended schedule for application to multiple requests on one contract. If provided as an extended schedule, the instructions must be furnished before the first progress payment is to be paid.

(iii) For incrementally funded research and development (R&D) contracts, or contract line items funded with R&D appropriations, the contracting officer may assume contractor work will be performed for the benefit of ACRNs with the earliest fiscal year's funding (*i.e.*, using oldest funds first), unless there is information to the contrary available.

(iv) For non-R&D contracts, the contracting officer should provide distribution instructions using the best information available, including information based upon—

(A) Contract funds status reports provided under a contract requirement for contractor cost reporting;

(B) The contract delivery schedule; or

(C) A profile of anticipated contractor expenditures based on historical spending patterns, or other knowledge of contractor performance of similar efforts.

(v) If the type of information set forth in paragraph (g)(iv) of this subsection is not available, or the contracting officer is not able to develop distribution instructions based on available information, the contracting officer may develop a best estimate of the contractor's anticipated work progress based on a general knowledge of the contractor or industry practices. Alternatively, the contracting officer may require the contractor to furnish distribution instructions in accordance with a contract requirement. However, if such a requirement is included in a contract, the contracting officer shall—

(A) Require the contractor to provide its best estimate of work performed by ACRN, in accordance with the guidance provided in DFARS 214.201–2(g), and inform the contractor that this information is not considered to be an attachment to the Standard Form 1443, Contractor's Request for Progress Payment.

(B) Provide information to the contractor on total obligations by ACRN, including their relationship with each contract line item/subline item, and maintain that information as required by contract changes. A matrix such as the following may be used for this purpose:

	AA	AB	AC
0001	$500		
0002	1,000		
0003AA		$800	
0003AB		800	
0004			$400
Total	1,500	1,400	400

(C) Not require the contractor to revise its accounting system to account for or accumulate costs by ACRN.

(vi) The overall limit on progress payments on a contract, established through application of the contract progress payment rate and, if applicable, a loss ratio, shall continue to govern the total amount of progress payments that may be paid on a contract. These limits should continue to be applied on a total contract basis. Progress payments will be liquidated at the ACRN level.

214.201–9 Simplified contract format.

(b) *Contract schedule.*

(8) See 214.210–2(g) for contracts that contain multiple accounting classification reference numbers and include a clause for progress payments.

PART 215—CONTRACTING BY NEGOTIATION

3. Section 215.406–2 is revised to read as follows:

215.406–2 Part I—The Schedule.

(g) *Section G, Contract administration data.*

(i) When a contract contains both fixed-price and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

(ii) Contracts with multiple accounting classification reference numbers (ACRNs) and a clause for progress payments.

(A) When a contract contains multiple accounting classification reference numbers (ACRNs) (see 204.7101) and includes a clause for progress payments, the contracting officer shall provide instructions to enable the paying office to distribute progress payments to the ACRNs in proportions that reasonably reflect the performance of the work on the contract. Payment instructions shall represent a best estimate based on available information, and shall be updated as necessary.

(B) The contracting officer may provide payment distribution instructions to the paying office with each progress payment request, or as an extended schedule for application to multiple requests on one contract. If provided as an extended schedule, the instructions must be furnished before the first progress payment is to be paid.

(C) For incrementally funded research and development (R&D) contracts, or contract line items funded with R&D appropriations, the contracting officer may assume contractor work will be performed for the benefit of ACRNs with the earliest fiscal year's funding (i.e., using oldest fund first), unless there is information to the contrary available.

(D) For non-R&D contracts, the contracting officer should provide distribution instructions using the best information available, including information based upon—

(*1*) Contract funds status reports provided under a contract requirement for contractor cost reporting;

(*2*) The contract delivery schedule; or

(*3*) A profile of anticipated contractor expenditures based on historical spending patterns, or other knowledge of contractor performance of similar efforts.

(E) If the type of information set forth in paragraph (g)(ii)(D) of this subsection is not available, or the contracting officer is not able to develop distribution instructions based on available information, the contracting officer may develop a best estimate of the contractor's anticipated work progress based on a general knowledge of the contractor or industry practices. Alternatively, the contracting officer may require the contractor to furnish distribution instructions in accordance with a contract requirement. However, if such a requirement is included in a contract, the contracting officer shall—

(*1*) Require the contractor to provide its best estimate of work performed by ACRN, in accordance with the guidance provided in DFARS 215.406–2(g), and inform the contactor that this information is not considered to be an attachment to the Standard Form 1443, Contractor's Request for Progress Payment.

(*2*) Provide information to the contractor on total obligations by ACRN, including their relationship with each contract line item/subline item, and maintain that information as required by contract changes. A matrix such as the following may be used for this purposes:

	AA	AB	AC
0001	$500		
0002	1,000		
0003AA		$800	
0003AB		800	
0004			$400
Total	1,500	1,400	400

(3) Not require the contractor to revise its accounting system to account for or accumulate costs by ACRN.

(F) The overall limit on progress payments on a contract, established through application of the contract progress payment rate and, if applicable, a loss ratio, shall continue to govern the total amount of progress payments that may be paid on a contract. These limits should continue to be applied on a total contract basis. Progress payments will be liquidated at the ACRN level.

[FR Doc. 97–31111 Filed 11–25–97; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

[DFARS Case 97–D018]

Defense Federal Acquisition Regulation Supplement: Contracting by Negotiation; Part 215 Rewrite

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise procedures pertaining to contracting by negotiation. These amendments conform with amendments made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular 97–02, which was published in the **Federal Register** on September 30, 1997.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 26, 1998 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, *Attn:* Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D018 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D018 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises DFARS part 215 to align it with the reorganized format of FAR part 15 (FAR Case 95–029, FAR part 15 Rewrite) that was published as a final rule in the **Federal Register** on September 30, 1997 (62 FR 51224). In addition to changes related to format, the following changes have been made:

- DFARS guidance on the four-step source selection process and the alternate source selection process have been removed, as the new guidance at FAR 15.101, best value continuum, clearly allows such source selection processes.
- DFARS requirements for obtaining approvals before requesting second or subsequent best and final offers have been removed in view of the new guidance on proposal revisions at FAR 15.307.
- DFARS guidance on cost realism analysis has been revised to reflect the new guidance on cost realism analysis at FAR 15.404–1(d).
- Thresholds for requesting field pricing assistance have been added at DFARS 215.404–2. Similar guidance was removed from the FAR, but is still considered to be appropriate for DoD activities.
- DFARS guidance on field pricing support has been revised to conform with the FAR revisions that eliminated standard content requirements for field pricing reports.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily consists of conforming DFARS amendments to reflect existing FAR guidance on contracting by negotiation. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D018 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 215 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Part 215 is revised to read as follows:

PART 215—CONTRACTING BY NEGOTIATION

Sec.

215.000 Scope of part.

Subpart 215.2—Solicitation and Receipt of Proposals and Information

215.204–2 Part I—The Schedule.

Subpart 215.3—Source Selection

215.304 Evaluation factors and significant subfactors.
215.305 Proposal evaluation.

Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.
215.403–1 Prohibition on obtaining cost or pricing data.
215.403–1–70 Waivers and exemptions.
215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.
215.404 Proposal analysis.
215.404–1 Proposal analysis techniques.
215.404–2 Information to support proposal analysis.
215.404–3 Subcontract pricing considerations.
215.404–4 Profit.
215.404–70 DD Form 1547, Record of Weighted Guidelines Method Application.
215.404–71 Weighted guidelines method.
215.404–71–1 General.
215.404–71–2 Performance risk.
215.404–71–3 Contract type risk and working capital adjustment.
215.404–71–4 Facilities capital employed.
215.404–72 Modified weighted guidelines method for nonprofit organizations.
215.404–73 Alternative structured approaches.
215.404–74 Fee requirements for cost-plus-award-fee contracts.
215.404–75 Reporting profit and fee statistics.
215.406–1 Prenegotiation objectives.
215.406–3 Documenting the negotiation.
215.407–1 Defective cost or pricing data.
215.407–2 Make-or-buy programs.
215.407–3 Forward pricing rate agreements.
215.407–4 Should-cost review.
215.407–4 Estimating systems.
215.407–5–70 Disclosure, maintenance, and review requirements.
215.408 Solicitation provisions and contract clauses.
215.470 Estimated data prices.

215.000 Scope of part.

See 225.872 for additional guidance on procedures for purchasing from qualifying countries.

Subpart 215.2—Solicitation and Receipt of Proposals and Information

215.204–2 Part I—The Schedule.

(g) When a contract contains both fixed-priced and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

Subpart 215.3—Source Selection

215.304 Evaluation factors and significant subfactors.

(d)(i) In acquititions that require use of the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged businesses in performance of the contract shall be addressed in source selection.

(A) For acquititions other than those based only on cost or price competition, the contracting officer shall evaluate the extent which offerors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangements, or subcontractors.

(B) Evaluation factory may include—

(*1*) The extent of which such firms are specifically identified in proposals;

(*2*) The extent to commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(*3*) The complexity and variety of the work small firms are to perform;

(*4*) The realism of the proposal;

(*5*) When not otherwise required by 215.305(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(*6*) The extent of participation of such firms in terms of the value of the total acquisition.

(C) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

(D) When an evaluation includes the factors in paragraph (d)(i)(B)(1) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

(ii) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

(iii) In competitive acquisition of services—

(A) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(B) The weighting of costs must be commensurate with the nature of the services being acquired.

(*1*) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(*i*) The effort being contracted for departs from clearly defined efforts; or

(*ii*) Highly skilled personnel are required.

(*2*) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(*i*) Services being acquired are of a routine or simple nature;

(*ii*) Highly skilled personnel are not required; or

(*iii*) The product to be delivered is clearly defined at the outset of the acquisition.

215.305 Proposal evaluation.

(a)(1) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see 237.170) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(A) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(B) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

(2) When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

(b) Any determination to reject a proposal based on a violation or possible violation of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.

215.403–1 Prohibition on obtaining cost or pricing data.

(c) *Standards for exceptions from cost or pricing data requirements.*

(1) *Adequate price competition.*

(A) An example of a price "based on" adequate price competition is a priced option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable in accordance with FAR 17.207(d);

(B) Dual or multiple source programs.

(*1*) In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(*2*) Adequate price competition normally exists when—

(*i*) Prices are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(*ii*) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404–1(b)).

215.403–1–70 Waivers and exemptions.

(a) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(b) The DoD has waived certain cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations.

215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(b)(1)(A) Contracting officers may develop contract pricing proposal supporting schedules for use by offerors in providing supporting data for their pricing proposals. Schedules should only request data that are necessary and reasonable based on industry, company, or commodity practices.

(B) When the solicitation requires contractor compliance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715–8, Navy—NAV PUB P–5241, and Air Force—AFMCP 800–15), require the contractor to submit DD Form 1921 or 1921–1 with its pricing proposal.

215.404 Proposal analysis.

215.404–1 Proposal analysis techniques.

(d) *Cost realism analysis.*

The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is available from sources other than the offerors (see FAR 15.402(a)(2)), the contracting officer will need to request data from the offerors. The contracting officer—

(i) Should request only necessary data; and

(ii) May not request submission of cost or pricing data.

(f) *Unit prices.*

For spare parts or support equipment, perform an analysis of—

(i) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period;

(ii) Those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(iii) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(iv) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

215.404–2 Information to support proposal analysis.

(a) *Field pricing assistance.*

(i) The contracting officer should consider requesting field pricing assistance for—

(A) Fixed-price proposals exceeding the cost or pricing data threshold;

(B) Cost-type proposals exceeding the cost or pricing data threshold from offerors with significant estimating system deficiencies (see 215.407–5–70 (a)(4) and (c)(2)(i)); or

(C) Cost-type proposals exceeding $10 million from offerors without significant estimating system deficiencies.

(ii) The contracting officer should not request field pricing support for proposed contracts or modifications in an amount less than that specified in paragraph (a)(i) of this subsection. An exception may be made when a reasonable pricing result cannot be established, because of—

(A) A lack of knowledge of the particular offeror;

(B) Sensitive conditions (e.g., a change in, or unusual problems with, an offeror's internal systems); or

(C) An inability to evaluate the price reasonableness through price analysis or cost analysis of existing data.

(c) *Audit assistance for prime contracts or subcontracts.*

(i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), the contracting officer should inform the administrative contracting officer (ACO) having cognizance of the prime contractor before the review is initiated.

(ii) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposal under a major weapon system acquisition. Where audit reports are received on contracting actions that are subsequently cancelled, notify the cognizant auditor in writing.

215.404–3 Subcontract pricing considerations.

(a)(i) When obtaining field pricing assistance on a prime contractor's proposal, the contracting officer should request audit or field pricing assistance to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such assistance is necessary to ensure the reasonableness of the total proposed price. Such assistance may be appropriate when, for example—

(A) There is a business relationship between the contractor and subcontractor not conducive to independence and objectivity;

(B) The contractor is a sole source supplier and the subcontract costs represent a substantial part of the contract cost;

(C) The contractor has been denied access to the subcontractor's records;

(D) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing assistance for a subcontract at any tier is critical to a fully detailed analysis of the prime contractor's proposal;

(E) The contractor or higher-tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the Government; or

(F) A lower-tier subcontractor has been cited as having significant estimating system deficiencies.

(ii) It may be appropriate for the contracting officer or the ACO to provide assistance to a contractor at any tier where the contractor has been denied access to a subcontractor's records in carrying out the contractor's responsibilities under FAR 15.404–3 to conduct price or cost analysis to determine subcontractor price reasonableness. Under these circumstances, the contracting officer or the ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

(iii) When DoD performs the subcontract analysis, DoD shall furnish to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determing any unacceptable costs included in the subcontract proposal. If the subcontractor withholds consent, DoD shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

(iv) When possible, the contracting officer should notify the appropriate contract administration activities in advance when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractor proposals under a major weapon system acquisition.

(v) Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(A) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(B) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(*1*) Circumstances require prompt negotiation; and

(*2*) A statement substantially as follows is included in the repricing modification of the prime contract:

As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(vi) If the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (see also FAR 15.101 and 15.304 and 215.304). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(vii) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.404–4(c)(4)(i).

215.404–4 Profit.

(b) *Policy.*

(1) Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective (profit objective) on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (but see 215.404–74). There are three approaches—

(A) The weighted guidelines method;

(B) The modified weighted guidelines method; and

(C) An alternate structured approach.

(c) *Contracting officer responsibilities.*

(1) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) The contracting officer—

(A) Shall use the weighted guidelines method (see 215.404–71), unless—

(*1*) The modified weighted guidelines method applies; or

(*2*) An alternate approach is justified.

(B) Shall use the modified weighted guidelines method (see 215.404–72) on contract actions with nonprofit organizations.

(C) May use an alternate structured approach (see 215.404–73) when—

(*1*) The contract action is—

(i) Under $500,000;

(ii) For architect-engineer or construction work;

(iii) Primarily for delivery of material from subcontractors; or

(iv) A termination settlement; or

(2) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(D) Shall use the weighted guidelines method to establish a basic profit rate under a formula-type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(E) Shall document the profit analysis in the price negotiation memorandum.

(5) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(A) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(B) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(6) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(d) *Profit-analysis factors.*

(1) *Common factors.* The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

215.404–70 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(b) The military departments are responsibilities for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.404–75).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.404–4(b) (see 215.404–71, 215.404–72, and 215.404–73 for guidance on using the structured approaches). Administrative instructions for completing the form are in 253.215–70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

215.404–71 Weighted guidelines method.

215.404–71–1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation memorandum, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

215.404–71–2 Performance risk.

(a) *Description.*

This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts—

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination.*

The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
21	Technical	(1)	(2)	N/A	N/A
22	Management	(1)	(2)	N/A	N/A
23	Cost Control	(1)	(2)	N/A	N/A
24	Performance Risk Composite	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the three weights equals 100%.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d), (e), and (f) of this subsection.

(3) Compute the composite as shown in the following example—

	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value	100		4.5

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development/bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

	Normal value (percent)	Designated range (percent)
Standard	4	2 to 6.
Alternate	6	4 to 8.

(1) Standard.

The standard designated range should apply to most contracts.

(2) Alternate.

Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404–71–4(c)(3)).

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(D) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to need DoD requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Route services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management.*

(1) The contracting officer should—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) Assess the management involvement expected on the prospective contract action;

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value added by the contractor; and

(iv) Consider the contractor's support of Federal socioeconomic programs.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination; or

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs; or

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control.*

(1) The contracting officer should evaluate—

(i) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering);

(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Any other factors that affect the contractor's ability to meet the cost targets, e.g., foreign currency exchange rates and inflation rates.

(2) *Above normal conditions.*

The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicators of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) *Below normal conditions.*

The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate;

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

215.404–71–3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.*

The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors		Assigned value	Base (item 18)	Profit objective
25.	Contract Type Risk		(1)	(2)	(3)
26.	Working Capital (4)	Cost Financed (5)	Length Factor (6)	Interest Rate (7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses, independent research and development and bid and proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (230.7101–1(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm fixed-price, no financing	(1)	5	4 to 6.
Firm fixed-price, with financing	(2)	3	2 to 4.
Fixed-price-incentive, no financing	(1)	3	2 to 4.
Fixed-price with redeterminable provision	(3)		
Fixed-price-incentive, with financing	(2)	1	0 to 2.

Contract type	Notes	Normal value (percent)	Designated range (percent)
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time and material contracts (including overhaul contracts priced on time and material basis)	(5)	.5	0 to 1.
Labor-hour contracts	(5)	.5	0 to 1.
Firm fixed-price-level-of-effort-term	(5)	.5	0 to 1.

(1) "No financing" means that the contract either does not provide progress payments, or provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) "With financing" means progress payments. When progress payments are present, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redeterminable provisions as if it were a fixed-price-incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(d) *Evaluation criteria*—(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions; and

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (see also 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0%, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor; or

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk; or

(iv) Incentive provisions that place a low degree of risk on the contractor.

(e) *Costs financed.* (1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development and bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100% minus the customary progress payment rate (FAR 32.501). For example, if a contractor receives progress payments at 75%, the portion financed by the contractor is 25%. On contracts that provide flexible progress payments (252.232–7003) or progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques, provided they produce a representative result.

TABLE

Period to perform substantive portion	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65

TABLE—Continued

Period to perform substantive portion	Contract length factor
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

215.404–71.4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.*

The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned	Amount employed	Profit objective
27.	Land	N/A	(2)	N/A
28.	Buildings	(1)	(2)	(3)
29.	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, "Contract Facilities Capital Cost of Money" (see 230.7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) *Values: Normal and designated ranges.*

Notes	Asset type	Normal value (percent)	Designated range (percent)
(1)	Land	0	N/A
(1)	Buildings	15	10 to 20
(1)	Equipment	35	20 to 50
(2)	Land	0	N/A
(2)	Buildings	5	0 to 10
(2)	Equipment	20	15 to 25
(3)	Land	0	N/A
(3)	Buildings	0	0
(3)	Equipment	0	0

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (215.404–71–2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.*

(1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clause, capital investment indemnification, and productivity saving rewards; and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to

support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

215.404–72 Modified weighted guidelines method for nonprofit organizations.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) That operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are Federally Funded Research and Development Centers (FFRDCs), the contracting officer—

(1) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(i) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(ii) Facilities capital acquisition plans;

(iii) Working capital funding as assessed on operating cycle cash needs;

(iv) Contingency funding; and

(v) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(2) Shall, when a fee is considered appropriate, compute the fee objective using the weighted guidelines method in 215.404–71, with the following modifications—

(i) *Modifications to performance risk (Blocks 21–24 of the DD Form 1547).*

(A) If the contracting officer assigns a value from the standard designated range (215.404–71–2(c)), reduce the fee objective by an amount equal to 1% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(B) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of −1% to 8% in lieu of the values in 215.404–71–3. There is no normal value.

(c) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(2) of this subsection.

(d) For all other nonprofit organizations, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(2)(i) of this subsection.

215.404–73 Alternative structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.404–4(c).

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1% of total cost or the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (see FAR 31.205–10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.

215.404–74 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.404–2 and 216.404–2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.404–73(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1% of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.404–75 Reporting profit and fee statistics.

(a) Contracting officers in contracting offices that participate in the management information system for profit and fee statistics shall send completed DD Forms 1547 on actions of $500,000 or more, where the contracting officer used either the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(b) Participating contracting offices and their designated offices are—

Contracting office	Designated office
Army	
All	Army Procurement Research and Analysis Office, Attn: SFRD–KPR (WGL), Bldg 12500, C Wing, Ft. Lee, VA 23801–6045.
Navy	
*Naval Air Systems Command *Naval Sea Systems Command *Space and Naval Warfare Systems Command *Naval Facilities Engineering Command *Naval Supply Systems Command *Office of Naval Research *Headquarters, United States Marine Corps *Strategic Systems Programs Office *Military Sealift Command *Automatic Data Processing Selection Office *Navy Regional Data Automation Center *Naval Research Laboratory *Navy Commercial Communications Center *Naval Aviation Depot Operations Center *Includes all subordinate field offices	Commander, Fleet and Industrial Supply Center, Norfolk, Washington Detachment, Code 402, Washington Navy Yard, Washington, DC 20374.
Air Force	
Air Force Materiel Command, (all field offices)	Air Force Materiel Command, 645 CCSG/SCOS, Attn: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, OH 45433.

(c) When negotiation of a contract action over $500,000 has been delegated to another contracting agency (e.g., to an administrative contracting officer), that agency shall ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days from negotiation of the contract action.

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

(e) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to—

Washington Headquarters Service, Directorate for Information Operations and Reports, (WHS/DIOR), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

(f) In preparing and sending the quarterly report, designated offices—

(1) Perform the necessary audits to ensure information accuracy;

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

(4) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(g) These reporting requirements have been assigned report control symbol: P&L(Q)1751.

215.406–1 Prenegotiation objectives.

(a) Also consider—

(i) Data resulting from application of work measurement systems in developing prenegotiation objectives; and

(ii) Field pricing assistance personnel participation in planned prenegotiation and negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, shall be documented and reviewed in accordance with Departmental procedures.

215.406–3 Documenting the negotiation.

(a)(7) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The documentation—

(A) Must address significant deviations from the prenegotiation profit objectives;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see 215.404–70), if used, with supporting rationale; and

(C) Must address the rationale for not using the weighted guidelines method when its use would otherwise be required by 215.404–70.

215.407–1 Defective cost or pricing data.

(b)(2) Unless there is clear evidence to the contrary, the contracting officer may presume the defective data were relied on and resulted in a contract price increase equal to the amount of the defect plus related overhead and profit or fee. The contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been considered by the negotiating parties if the nondefective data had been known.

215.407–2 Make-or-buy programs.

(e) *Program requirements.*—(1) *Items and work included.* The minimum dollar amount is $1 million.

215.407–3 Forward pricing rate agreements.

(b)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.407–4 Should-cost review.

(b) *Program should-cost review.* (2) DoD contracting activities should consider performing a program should-cost review before award of a definitive major systems contract exceeding $100 million.

(c) *Overhead should-cost review.* (1) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060–6221, at (703) 767–3387, for questions on overhead should-cost analysis.

(2)(A) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP), should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist:

(1) Projected annual sales to DoD exceed $1 billion;

(2) Projected DoD versus total business exceeds 30 percent;

(3) Level of sole-source DoD contracts is high;

(4) Significant volume of proposal activity is anticipated;

(5) Production or development of a major weapon system or program is anticipated; and

(6) Contractor cost control/reduction initiatives appear inadequate.

(B) The head of the contracting activity may request an overhead should-cost review for a business unit that does not meet the criteria in paragraph (b)(1) of this subsection.

(C) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMC/DLA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every three years.

215.407–5 Estimating systems.

215.407–5–70 Disclosure, maintenance, and review requirements.

(a) *Definitions.*

(1) "Adequate estimating system" means an estimating system that—

(i) Is established, maintained, reliable, and consistently applied; and

(ii) Produces verifiable, supportable, and documented cost estimates.

(2) "Contractor" means a business unit as defined in FAR 31.001.

(3) "Estimating system" is as defined in the clause at 252.215–7002, Cost Estimating System Requirements.

(4) "Significant estimating system deficiency" means a shortcoming in the estimating system that is likely to consistently result in proposal estimates for total cost or a major cost element(s) that do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability.*

(1) DoD policy is that all contractors have estimating systems that—

(i) Are adequate;

(ii) Consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices;

(iii) Are consistent with and integrated with the contractor's related management systems; and

(iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year the contractor received DoD prime contracts or subcontracts totaling $50 million or more for which cost or pricing data were required; or

(ii) In its preceding fiscal year the contractor received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer (ACO), determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities.*

(1) The contracting officer shall—

(i) Through use of the clause at 252.215–7002, Cost Estimating System Requirements, apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirement to other than large business contractors.

(2) The cognizant ACO, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the adequacy of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an adequate system;

(ii) Describe its system to the ACO;

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an adequate estimating system.*

(1) *General.* An adequate system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to estimated policies and procedures.

(2) *Evaluation.* In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review, and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience, and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies.* The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required;

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgment where historical experience of commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(1) The ACO or a representative should—

(i) Coordinate the contract administration activity's review;

(ii) Consolidate findings and recommendations; and

(iii) When appropriate, prepare a comprehensive written report for submission to the auditor.

(2) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review every three years of contractors subject to the disclosure requirements. The ACO and auditor may lengthen or shorten the three-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings.*

(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.* The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies that need correction;

(ii) The deficiencies are significant estimating deficiencies that would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval.* If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies that prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration office having substantial business with the contractor.

(6) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: bringing the issue to the attention of higher-level management, reducing or suspending progress payments (see FAR 32.503–6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval.* The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals.*

(1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., and FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system;

(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

215.408 Solicitation provisions and contract clauses.

(1) Use the clause at 252.215–7000, Pricing Adjustments, in solicitations and contracts that contain the clause at—

(i) FAR 52.215–11, Price Reduction for Defective Cost or Pricing Data-Modifications;

(ii) FAR 52.215–12, Subcontractor Cost or Pricing Data; or

(iii) FAR 52.215–13, Subcontractor Cost or Pricing Data—Modifications.

(2) Use the clause at 252.215–7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of cost or pricing data.

215.470 Estimated data prices.

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items; and

(5) Differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7000 is amended by revising the introductory text to read as follows:

252.215–7000 Pricing Adjustments.

As prescribed in 215.408(1), use the following clause:

* * * * *

4. Section 252.215–7002 is amended by revising the introductory text to read as follows:

252.215–7002 Cost Estimating System Requirements.

As prescribed in 215.408(2), use the following clause:

* * * * *

5. Section 252.243–7000 is amended by revising the clause date and paragraph (c)(1) to read as follows:

252.243–7000 Engineering Change Proposals.

* * * * *

Engineering Change Proposals (XXX 19XX)

* * * * *

(c) * * *

(1) A completed contract pricing proposal; and

* * * * *

[FR Doc. 97–31109 Filed 11–25–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE47

Endangered and Threatened Wildlife and Plants; Proposed Rule To Establish an Additional Manatee Sanctuary in Kings Bay, Crystal River, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to establish an additional West Indian manatee (*Trichecus manatus*) sanctuary in Citrus County, Florida, adjacent to Kings Bay/Crystal River at the confluence of the Three Sisters Spring run with a residential canal. All waterborne activities in the sanctuary would be prohibited from November 15 through March 31 of each year. The proposed action would help prevent the taking of manatees by harassment resulting from waterborne activities during the winter months. The number of sanctuaries in Kings Bay would be increased to seven to accommodate the increase in the number of manatees using the area each winter and to offset harassment from increasing public use. Due to insufficient time to complete preparations for establishing a permanent sanctuary before cold weather arrives, an emergency rule is published elsewhere in today's **Federal Register** to provide the manatee with immediate protection for a period of 120 days. This action is proposed under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972, as amended.

DATES: Comments from all interested parties must be received by January 26, 1998. If requested, a public hearing will be held for the purpose of receiving comments on the permanent establishment of an additional manatee sanctuary at Kings Bay, Crystal River, Florida.

ADDRESSES: Written comments and materials should be sent to Manatee Coordinator, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at the above address, (904/232–2580 ext.117); or Vance Kaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Drive, Suite 206, St. Petersburg, Florida 33702, (813/570–5398)

SUPPLEMENTARY INFORMATION:

Background

Crystal River is a tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by numerous freshwater springs. The Kings Bay springs constitute one of the most important natural warm-water refuges for manatees, a federally listed endangered species. More than 250 animals may seek refuge in the bay's warm waters during winter cold periods. With the winter presence of manatees and its sheltered, warm and clear waters, Kings Bay also attracts large numbers of waterborne users (boaters, recreational divers, snorkelers, and swimmers) most of whom seek out manatees for a close viewing experience. The influx of visitors, primarily there to see and interact with manatees, provides a major economic impact to the Crystal River community.

Large aggregations of manatees apparently did not exist in Kings Bay until recent times (Beeler and O'Shea 1988). The first careful counts were made in the late 1960's. Since then manatee numbers have increased significantly. In 1967–1968 Hartman (1979) counted 38 animals. By 1981–1982, the maximum winter count increased to 114 animals (Powell and Rathbun 1984), and in December 1994 the count was 271 (U.S. Fish and Wildlife Service, unpublished data). Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River.

The Second Revision of the Florida Manatee Recovery Plan (U.S. Fish and Wildlife Service 1995) identifies the need to minimize disturbance and harassment of manatees in the wild. This concern for the welfare of manatees in Kings Bay has resulted in the establishment of a series of sanctuary areas to protect manatees from any potential negative impacts of human activities. The first three sanctuaries were created in 1980, encompassing a total of about 10 acres in Kings Bay. These were closed to all human access each winter from November 15 to March 31 and provided manatees with areas where they could retreat from waterborne users. To better administer and protect the bay's manatee habitat, the Service purchased several islands associated with the sanctuaries in 1983 and established the Crystal River National Wildlife Refuge. During the 1980's, the number of manatees and divers increased steadily, resulting in the need for additional manatee sanctuaries. In 1994, the Service established three additional sanctuaries and expanded an existing sanctuary. The six sanctuaries now encompass approximately 39 acres within Kings Bay.

The Kings Bay manatee sanctuary system provides significant protection to the more than 250 manatees that use this area as a winter warm-water refuge. With the increasing number of manatees using Kings Bay and an increasing number of recreational divers and snorkelers coming to Crystal River to seek close encounters with manatees, another problem area outside the existing sanctuary system has been identified.

Since the establishment of the three most recent sanctuaries, reports of waterborne users harassing manatees and causing manatees to leave the Three Sisters Spring run area has been documented by researchers, refuge staff and concerned citizens. The Save the Manatee Club and the Marine Mammal Commission have urged the Service to act to protect manatees utilizing the Three Sisters Spring run area. Dive shop operators have acknowledged that there is a manatee harassment problem in the area of the proposed sanctuary.

Prior to last winter, the Service and local interest groups met separately with local dive shop owners to discuss the harassment issue and the feasibility of establishing a new sanctuary. There was a consensus that a sanctuary was needed and that it would be more effective if it was developed through a local city or county ordinance. Representatives of each of the local dive shops wrote letters recognizing the need for a small sanctuary near Three Sisters Spring and recommended that the regulations be promulgated locally. Local efforts have been made to address the problem and the Service will continue to encourage local officials to create a permanent refuge. However, in conjunction with the emergency rule published elsewhere in today's **Federal Register**, regulations at 50 CFR 17.106(e) require the Service to also commence with the establishment of the sanctuary through publication of a proposed rule.

The Service funded a manatee and human interaction study at Three Sisters Spring (January 23–February 17, 1997) which confirmed that harassment was occurring and documented instances in which manatees left the warm waters at the confluence of the spring run and the residential canal when divers, snorkelers and/or swimmers arrived (Wooding, 1997). The Service is concerned that these animals may be leaving earlier than if they were left undisturbed.

Reasons for Determination

Refer to the emergency rule published elsewhere in today's **Federal Register**.

National Environmental Policy Act

The Service has determined this action qualifies as a categorical exclusion in accordance with 516 DM 2, Appendix 1 and 516 DM 5, Appendix 1. No further National Environmental Policy Act documentation will therefore be made.

Required Determinations

This proposed rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The previous establishment of sanctuaries in Kings Bay, Crystal River, did not result in a significant economic impact. Thus it is not expected that any significant impacts would result from the establishment of a sanctuary (less than one quarter acre in size) at the Three Sisters Spring. Also, no direct costs, enforcement costs, information collection, or record-keeping requirements are imposed on small entities by this action and the rule contains no information collection requirements under the Paperwork Reduction Act of 1995. This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

References Cited

Refer to the emergency rule published elsewhere in today's **Federal Register**.

Author: The primary author of this proposed rule is Robert O. Turner, Manatee Coordinator (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter

I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.108 by adding paragraph (a)(7) to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(7) A tract of submerged land on the west side of the confluence of Three Sisters Spring run and the residential canal off the eastern shore of Kings Bay, Crystal River, lying in the northeast corner of Section 28, Township 18, South Range 17 East in Citrus County, Florida; containing less than one quarter acre.

* * * * *

Dated: November 20, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–31108 Filed 11–21–97; 3:41 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971107284–7284–01; I.D. 102297A]

RIN 0648–AK47

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1998 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and proposed 1998 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1998 fishing year for Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish (MSB). In addition, NMFS proposes to amend the minimum net mesh size requirement for *Loligo* squid to make it applicable only to the cod end of the net. The intent of this change is to reduce the frequency that nets need to be replaced with a resultant cost savings to the fishery. Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and provide an opportunity for the public to comment.

DATES: Public comments must be received on or before December 26, 1997.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations, the Environmental Assessment, and Regulatory Impact Review, including analysis of impacts under the Regulatory Flexibility Act, are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope "Comments—1998 MSB specifications."

FOR FURTHER INFORMATION CONTACT: Myles Raizin, (978) 281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish a proposed rule specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. In addition to commercial quotas, the Council, in consultation with its Squid, Mackerel, and Butterfish Technical Monitoring Committee, may recommend revisions to the amount of *Loligo* and *Illex* squids and butterfish that may be retained, possessed, and landed by vessels issued the incidental catch permit; commercial minimum fish sizes; commercial trip limits; commercial seasonal quotas/closures for *Loligo* or *Illex* squid; minimum mesh sizes; commercial gear restrictions; recreational harvest limit; recreational minimum fish size; and recreational possession limits.

The following table contains the proposed initial specifications for the 1998 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council:

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1998

[Metric ton (mt)]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	[1]26,000	[1]24,000	[2]N/A	[3]16,000
ABC	21,000	19,000	382,000	7,200
IOY	21,000	19,000	[4]80,000	5,900
DAH	21,000	19,000	[5]80,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP	0	0	15,000	0
TALFF	0	0	0	0

[1] Maximum optimum yield (Max OY) corresponds to a level of fishing beyond which overfishing occurs for *Loligo* and *Illex*.
[2] Max OY is not applicable for Atlantic mackerel.
[3] Max OY is specified as a catch level that would result from F_{max} for butterfish.
[4] IOY for Atlantic mackerel may be increased during the year, but the total will not exceed 382,000 mt.
[5] Includes 15,000 mt of Atlantic mackerel recreational allocation.

1998 Proposed Specifications

Atlantic Mackerel

The ABC is recommended to be 382,000 mt. This is consistent with the overfishing definition for Atlantic mackerel that restricts ABC in U.S. and Canadian waters to that quantity of mackerel associated with a fishing mortality rate of $F_{0.1}$, estimated by the most recent stock assessment (1996) at 405,000 mt. In addition, the recommendation must maintain a spawning stock size of at least 900,000 mt in the year following the year for which specifications are being developed (see § 648.21(b)(2)). A harvest of 405,000 mt is estimated by the assessment to result in an estimated spawning stock for 1999 of 1,695,000 mt. Using the projected Canadian catch of 23,000 mt, the proposed measure would cap ABC for Atlantic mackerel at 382,000 mt (405,000—23,000 mt).

IOY is a modification of ABC which reflects social and economic factors (see § 648.21(b)(2)(ii)). IOY is comprised of two components: DAH and TALFF. DAH is the sum of a recreational catch estimate: DAP and JVP. The Council estimates that the 1998 recreational catch will be 15,000 mt, and DAP will be 50,000 mt. The Council also recommends that IOY be set at a level that provides for a JVP of 15,000 mt and TALFF of zero. The resulting IOY recommended is 80,000 mt.

DAP has historically been estimated using the Council's annual process or survey, which this year estimated 11,364 mt necessary for 1998. However, for the 1998 estimates, response was low and did not contain projections from the large, known processors. In addition, inquiries concerning entry of displaced New England groundfish trawlers into the Atlantic mackerel fishery have led the Council to anticipate increases in harvest. Therefore, the Council recommends no change to the DAP for the 1998 fishery from the 1997 level of 50,000 mt.

The 1998 JVP specification of 15,000 mt was reduced by 10,000 mt from 1997 to reflect the concern the Council has about the negative effect that joint ventures (JVs) could have on the further development of the U.S. export market. The potential for future North Sea mackerel total allowable catch (TAC) reductions may provide an opportunity for U.S. producers to sell additional mackerel on the international market. The reduction is consistent with the Council's stated policy to proceed on a course that recognizes the need for JVs in the short term to allow U.S. harvesters to take mackerel at levels in excess of current U.S. processing capacity. However, in the longer term, the Council intends to eliminate JVs as U.S. processing and export capacity increases.

An IOY level that keeps TALFF at zero is recommended for the 1998 Atlantic mackerel fishery. The Fisheries Act of 1995 prohibits a specification of TALFF unless recommended by the Council. In 1992, the Council used testimony from both the domestic fishing and processing industries and analysis of nine economic factors found at § 648.21(b)(2)(iii) to determine that mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to recent declines in the North Sea mackerel stock, have resulted in increased opportunities for U.S. producers to increase sales to new markets abroad. The U.S. industry has made some progress in capturing an increased market share for mackerel in Japan over the past 2 years, though Canada and Jamaica remain the most important export nations. Several factors indicate that market expansion for U.S. Atlantic mackerel is likely to continue. In addition, U.S. Atlantic mackerel stock abundance remains high. The continued low abundance of several important groundfish stocks in the Gulf of Maine, southern New England, and on Georges Bank and restrictions on fishing for those species also increase the likelihood that harvesters will redirect their efforts to Atlantic mackerel. Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and marketing.

The Council also recommended that four special conditions imposed in previous years continue to be imposed on the 1998 Atlantic mackerel fishery as follows: (1) Joint ventures be allowed south of 37°30′ N. lat., but river herring bycatch can not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) must ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total must not exceed ABC; and (4) a joint venture with a particular nation shall not be allowed unless the Regional Administrator determines, based on an evaluation of performance, that the nation's purchase obligations from previous years have been fulfilled.

Atlantic Squids

The FMP sets the Maximum Optimum Yield (Max OY) for *Loligo* squid at 26,000 mt. The recommended ABC for the 1998 *Loligo* squid fishery is 21,000 mt, unchanged from the 1997 ABC. This level represents the harvest level associated with a fishing mortality rate of F_{30}, which was adopted in Amendment 6 to the FMP as an appropriate target harvest level for this species. The Council recommended that IOY should equal ABC.

The FMP sets the Max OY for *Illex* squid at 24,000 mt. The Council recommended an ABC of 19,000 mt, which represents the harvest level associated with a fishing mortality rate of F_{50} as required in Amendment 6 to the FMP. As for *Loligo* squid, the Stock Assessment Workshop (SAW) 21 recommended that F_{50} would be an appropriate target harvest level for this species. The Council recommended that the IOY for *Illex* squid be set equal to ABC.

Butterfish

The FMP sets the Max OY for butterfish at 16,000 mt. The most recent stock assessment was done in 1994 (SAW–17) and advised that the stock may not be able to sustain landings in excess of the long-term historical average (1965–92) of 7,200 mt. Based on this advice, the Council recommends maintaining ABC at 7,200 mt (unchanged from 1997). The Council also recommended maintaining IOY and DAH at 1997 levels (5,900 mt) to reflect the uncertainty that exists regarding the level of discards in the directed fishery.

As a result of the approval of Amendment 5, the FMP specifies that there will be no JVP or TALFF specified for *Loligo* squid, *Illex* squid, or butterfish, except that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Since the Council recommended no TALFF for Atlantic mackerel, no bycatch TALFF is required for butterfish.

Framework Measure for Loligo Squid Nets

Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish FMP established a minimum mesh requirement of 1⅞ inches (48 mm) throughout the entire net, for vessels possessing *Loligo* squid. Amendment 5 also established a framework procedure whereby the minimum mesh provision

for *Loligo* squid could be reconsidered by the Council on an annual basis. Numerous members of the commercial fishing industry testified before the Council that the minimum mesh requirement for *Loligo* squid established in Amendment 5, applied throughout the entire net, was creating a major compliance problem within the squid industry. Testimony was given that, after continuous use, meshes forward of the codend become distorted and shrink. Because the body of the net forward of the codend lasts significantly longer than the codend, this problem becomes more acute with time. Industry is concerned that nets, which were legal when new, could be in violation of the minimum mesh provision after extended use. Since selection occurs in the codend of the net, they argue that the requirement for minimum mesh throughout the entire net is creating an unnecessary burden on the industry.

In response to these concerns the Council decided to change the minimum mesh requirement for *Loligo* squid such that it applies to the codend of the net only. The actual mesh size requirement of 1⅞ inches (48 mm) remains unchanged. Thus the Council has chosen to modify the mesh requirement for *Loligo* squid for 1998 by requiring that nets have a minimum mesh size of 1⅞ inches (48 mm) diamond, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or, if the net is not long enough for such a measurement, the terminal one-third of the net, measured from the terminus of the net to the head rope. This should relieve the industry of major costs associated with replacing the body of the net before its useful service life has been realized. The effects on the fishery should be minimal since the selection process, which occurs in the codend, will be unchanged. The Council concluded that the benefits to the industry in terms of cost savings far outweighed any negative effects of applying the mesh requirement to the codend only. Additional savings in terms of enforcement of the mesh regulations should be realized since enforcement officers will only be required to check mesh sizes in the codend instead of the entire net, which, in most cases, is quite large and can consume a significant amount of time during the boarding process.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. It is assumed that all vessels prosecuting these fisheries are small entities. For *Loligo* and *Illex* squid and butterfish, gross revenues are not expected to decrease as a consequence of the proposed actions. In 1996, *Loligo* squid landings were 12,459 mt. The proposed IOY specification for *Loligo* squid in 1998 is 21,000 mt. In 1996, *Illex* squid landings were 16,969 mt. The proposed IOY specification for *Illex* squid in 1998 is 19,000 mt. In 1996, butterfish landings were 3,489 mt. The proposed IOY specification for butterfish in 1998 is 5,900 mt. In the case of Atlantic mackerel, the 1998 IOY was reduced from 90,000 mt in 1997 to the proposed level of 80,000 mt in 1998. Both specifications far exceed recent harvest in the 1996 fishery of 15,712 mt. In addition, the reduction in IOY in 1998 was due to a reduction in the JV specification by 10,000 mt. Since there has been no JV activity in recent years, the reduction in the JV specification should not affect revenues in the fishery.

Based on this information, the 1998 quotas allow for a further expansion of domestic fishing effort. Assuming that prices are constant and 1997 harvest levels are similar to those in 1996, the 1998 quotas represent no constraint on the ability of individual vessels to increase revenues. It was also determined that restricting the minimum mesh size to the codend, for the *Loligo* squid fishery, would decrease operating costs for the industry by reducing the number of times they would be forced to change the mesh in the body of the net.

NMFS, therefore, concludes that the proposed 1998 quota specifications for the squid, mackerel, and butterfish fisheries would not decrease annual gross revenues by more than 5 percent for a substantial number of small entities. Furthermore, it is not expected that any vessels would cease operations if these proposed specifications are implemented, nor should compliance costs increase by 10 percent or more for 20 percent of the vessels or processors in any of these fisheries. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 20, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.23, paragraph (a) introductory text is revised to read as follows:

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* squid harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the head rope, unless they are fishing during the months of June, July, August, and September for *Illex* squid seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

* * * * *

[FR Doc. 97–31065 Filed 11–25–97; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 228
Wednesday, November 26, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 21, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) May be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Food and Consumer Service**

Title: Food Coupon Deposit Document.
OMB Control Number: 0584–0314.
Summary of Collection: The Food Coupon Deposit Document is used by all financial institutions when remitting food coupons to the Federal Reserve.
Need and Use of the Information: The information allows financial institutions, the Federal Reserve and the Food and Consumer Service to track food coupon deposits.
Description of Respondents: Business or other for-profit.
Number of Respondents: 10,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 3,675.

- **Rural Utilities Service**

Title: 7 CFR 1794, Environmental Policies and Procedures.
OMB Control Number: 0572–New.
Summary of Collection: Information collected includes a proposal for the project and an environmental analysis.
Need and Use of the Information: The information will be used to evaluate the cost and feasibility of the project and the environmental impact.
Description of Respondents: Not-for-profit institutions; Business or other for-profit.
Number of Respondents: 600.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 415,000.

- **Food and Consumer Service**

Title: FSP Store Application.
OMB Control Number: 0584–0008.
Summary of Collection: The Food Stamp Act of 1977, as amended, requires that the Agency determine the eligibility of firms and specified programs to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.
Need and Use of the Information: This information is used for determining a firm's eligibility for participation in the program, program administration, compliance monitoring and investigations, and for sanctioning stores found to be violating the program.
Description of Respondents: Business or other for-profit.
Number of Respondents: 80,613.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 18,396.

- **Foreign Agricultural Service**

Title: Regulations Covering CCC's Facility Guarantee Program (FGP).
OMB Control Number: 0551–0032.
Summary of Collection: The Commodity Credit Corporation (CCC) requires that an application be submitted to participate in the Facility Guarantee Program (FGP). A request to become an eligible participant in the FGP is included in the application. This information ensures CCC that all participants have a business office in the United States.
Need and Use of the Information: The information is necessary in order to determine eligibility for participation in the Facility Guarantee Program.
Description of Respondents: Business or other for-profit.
Number of Respondents: 25.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 647.

- **Natural Resources Conservation Service**

Title: Rural Abandoned Mine Program.
OMB Control Number: 0578–0019.
Summary of Collection: Information is collected regarding progress in applying the conservation plan and a contract to receive Federal cost-share assistance is completed.
Need and Use of the Information: The information is used to ensure proper utilization of program funds.
Description of Respondents: Farms; Individuals or households; State, Local or Tribal Government.
Number of Respondents: 400.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 223.
Emergency processing of this submission has been requested by December 12, 1997.

- **Rural Business—Cooperative Service**

Title: 7 CFR Part 4284–G, Rural Business Opportunity Grants.
OMB Control Number: 0570–New.
Summary of Collection: Information collected includes a scope of work, organizational documents, a narrative description of the project, financial statements, and an evaluation method of the project's success.
Need and Use of the Information: The information is used to make decisions

regarding eligibility of applicants and selection priority, to ensure compliance with applicable laws and regulations, and to evaluate the program.

Description of Respondents: Not for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Quarterly.

Total Burden Hours: 8704.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–31015 Filed 11–25–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub.L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection on the demographic and economic characteristics of participants in USDA's Single Family Direct Loan Rural Housing Program in order to better understand how this program helps provide adequate and affordable housing for rural residents.

DATES: Comments on this notice must be received by January 30, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Linda Ghelfi or Leslie Whitener, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Washington, D.C. 20036–5801, 202–694–5420.

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information on participants in USDA's Single Family Direct Loan Rural Housing Program.

Type of Request: Approval to collect information on participants in USDA's Single Family Direct Loan Rural Housing Program.

Abstract: The Economic Research Service has the responsibility to provide social and economic intelligence on changing rural housing needs in the United States to help assess the relationship between Federal housing assistance policies and rural development. Research activities focus on three major objectives: (1) Identification of trends in rural housing availability, affordability, and adequacy which underlie an understanding of rural housing needs; (2) assessment of the use and effectiveness of Federal housing assistance programs in rural areas; and (3) investigation of the potential effects of Federal policy changes on rural housing programs and the residents they serve. Housing has an enormous influence on the quality of life of rural residents, and rural housing is an important focus of the Department's rural development efforts. Research findings are provided to public and private decision-makers for use in developing and evaluating policies and programs to insure that adequate and affordable housing is available to rural residents.

The USDA, through its Rural Development Single Family Direct Loan Housing Program, has provided billions of dollars to over 600,000 low-income rural borrowers nationwide. The Department has only sporadic and incomplete information on the residents that benefit from these program outlays and what this program means for the stock of available, affordable, and adequate single family housing in rural areas. The data collection effort proposed here will provide a unique and detailed information base on the characteristics of USDA's Section 502 Direct Loan Program participants to help (1) assess the impact of this housing-assistance program on rural residents and their communities and (2) provide a better understanding of the effects of changing Federal policies, such as welfare reform, on rural borrowers's participation in the direct loan program. The survey will collect information from USDA-assisted borrowers to determine their demographic, employment, income, and housing characteristics; reliance on other public assistance programs; and dependence on rural housing program funds. This information will help to fill a serious gap in our understanding of the nature of housing needs in rural areas and will provide USDA and other policy makers with sound information to help evaluate current programs and develop more effective rural housing policies. ERS, working with Washington State University's Social and Economic Sciences Research Center, will conduct a telephone survey of borrowers participating in USDA's Section 502 Single Family Direct Loan Housing Program. Borrowers to be interviewed will be selected from a simple random national sample of recent borrowers who obtained loans during 1995, 1996, or 1997, taken from USDA's Rural Development administrative records. Survey data will be collected using Computer-Assisted Telephone Interviewing (CATI) techniques, which are more efficient and less time consuming than traditional written interview techniques. Responses are voluntary and confidential. Survey data will be used with other data for statistical purposes and reported only in aggregate or statistical form.

Information to be obtained from borrowers includes: characteristics of current and past housing; housing problems; satisfaction with current residence, neighborhood, and the USDA financing experience; demographic characteristics of household members; education and employment characteristics of borrowers; public assistance program participation; and sources and amounts of household income. No existing data sources, including USDA administrative data or the biennial American Housing Survey, are sufficiently detailed to allow an in-depth analysis of the relationships among these variables for participants in the Section 502 program. These data and the research they will support are vital to the Department's ability to assess the impact of its rural housing programs on rural residents and rural community development.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 20 minutes per completed interview, including time for listening to instructions, gathering data needed, and responding to questionnaire items.

Respondents: Homeowners who obtained a loan during 1995, 1996, and 1997 through USDA's Section 502 Single Family Direct Loan Program.

Estimated Number of Respondents: 3,000.

Estimated Total Annual Burden on Respondents: 1,000 hours. Copies of information concerning the data collection can be obtained from Linda Ghelfi or Leslie Whitener, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Washington, D.C. 20036–5801, 202–694–5420.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Linda Ghelfi, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. St., NW, Washington, D.C. 20036–5801. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C.

Thomas A. Carlin,

Deputy Director, Food and Rural Economics Division.

[FR Doc. 97–31079 Filed 11–25–97; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one countervailing duty order in part.

EFFECTIVE DATE: November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received a request to revoke in part the countervailing duty order on certain agricultural tillage tools from Brazil.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 1998.

Antidumping duty proceedings	Period to be reviewed
Italy: Pressure Sensitive Tape	
A–475–059	10/1/96–9/30/97
N.A.R.S.p.A.	
Japan: Tapered Roller Bearings, Under 4 Inches	
A–588–054	10/1/96–9/30/97
Koyo Seiko Co., Ltd.	
NSK, Ltd.	
Fuji Heavy Industries, Ltd.	
Japan: Tapered Roller Bearings, Over 4 Inches	
A–588–604	10/1/96–9/30/97
NSK Ltd.	
NTN	
Fuji Heavy Industries, Ltd.	
Malaysia: Extruded Rubber Thread	
A–557–805	10/1/96–9/30/97
Filati Lastex Sdn. Bhd.	
Filmax Sdn. Bhd.	
Heveafil Sdn. Bhd.	
Rubberflex Sdn. Bhd.	
Rubfil Sdn. Bhd.	
The People's Republic of China: Helical Spring Lock Washers*	
A–570–822	10/1/96–9/30/97
Hangzhou Spring Washer Plant	
Zejiang Wanxin Group Co., Ltd.	
*If one of the above named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
The People's Republic of China: Chrome-Plate Lug Nuts*/**	
A–570–808	9/1/96–8/31/97
China National Automotive Industry I/E Corp.	
China National Machinery & Equipment I/E Corp.	
Shanghai Automobile Import & Export Co.	
Tianjin Automobile Import & Export Co.	
Ningbo Knives & Scissors Factory	
China National Automotive Import & Export Corp./Yangzhou Branch	
Jiangsu Rudong Grease Gun Factory	
China National Automotive Industry I/E Corp./Nantong Branch	

*Inadvertently omitted from previous initiation notice.

** If one of the above named companies does not qualify for a separate rate, all other exporters of chrome-plated lug nuts from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

Countervailing duty proceedings	Period to be reviewed
Brazil: Certain Agricultural Tillage Tools	
C–351–406	1/1/96–12/31/96
Marchesan Implementos e Maquinas Argicolas "TATU" S.A.*	
*Marchesan has submitted a request for partial revocation of the order under 19 CFR 351.222(c)(3). The Department will examine the request for revocation to determine whether Marchesan meets the threshold requirements for revocation under 19 CFR 351.222(e)(2)(iii).	
India: Certain Iron-Metal Castings.	
C–533–063	1/1/96–12/31/96
Calcutta Ferrous Ltd.	
Carnation Enterprise Pvt. Ltd.	
Carnation Industries	
Commex Corporation	
Crescent Foundry Co. Pvt. Ltd.	
Delta Enterprises	
Dinesh Brothers (P) Ltd.	
Kajaria Iron Castings Ltd.	
Kejriwal Iron & Steel Works	
Metflow	
Nandikeshwari Iron Foundry Pvt. Ltd.	
Orissa Metal Industries	
Overseas Iron Foundry	
R.B. Agarwalla & Company	
R.B. Agarwalla & Co. Pvt. Ltd.	
RSI Limited	
Serampore Industries Pvt. Ltd.	
Shree Rama Enterprise	
Shree Uma Foundries	
Siko Exports	
SSL Exports	
Super Iron Foundry	
Uma Iron & Steel	
Victory Castings Ltd.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 21, 1997.

Louis Apple,

Acting Deputy Assistant Secretary, Group II Import Administration.

[FR Doc. 97–31133 Filed 11–25–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Standard Steel Pipes and Tubes From India; Amendment of Final Results of New Shippers Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of new shippers antidumping duty administrative review.

SUMMARY: On September 10, 1997, the Department of Commerce published the final results of its new shippers antidumping duty administrative review on certain welded carbon standard steel pipes and tubes from India. The review covered two manufacturers/exporters of the subject merchandise to the United States and the period May 1, 1995 through April 30, 1996. Because of ministerial errors made with respect to one manufacturer/exporter, we are publishing an amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: November 25, 1997.

FOR FURTHER INFORMATION CONTACT: Kristie Strecker or Greg Thompson, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3174 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA).

Background

On September 10, 1997 (62 FR 47632), the Department of Commerce (the Department) published the final results of the new shipper review of the antidumping duty order on certain welded carbon standard steel pipes and tubes from India (51 FR 9089, March 17, 1989). On September 23, 1997, we received a timely allegation from Rajinder Pipes Ltd. (Rajinder), pursuant to § 353.28 of the regulations, that we made ministerial errors in the final results.

Rajinder contended that in the margin calculations for the final results we incorrectly deducted inventory carrying costs incurred in India from U.S. price and failed to deduct advertising expenses from normal value. See Memorandum to the File from Kristie Strecker to Robin Gray (October 21, 1997). We agree with Rajinder that these were ministerial errors, and we have corrected these ministerial errors in these amended results in order to reflect our intent and our practice pursuant to § 353.28.

Amended Final Results of Review

As a result of our correction of the ministerial errors, we have determined the margin for the period May 1, 1995 through April 30, 1996 to be:

Company	Margin (percent)
Rajinder	18.25

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Rajinder will be the rate indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 7.06 percent, the all-others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: November 19, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–31134 Filed 11–25–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–401]

Certain Apparel From Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 3, 1997, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on Certain Apparel from Thailand for 1991. The Department of Commerce has now completed this review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net bounty or grant, please see the "Final Results of Review" section. We will instruct the U.S. Customs Service to assess countervailing duties as indicated in that section.

EFFECTIVE DATE: November 26, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Constance Cunningham, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (the Department) is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Background

On September 3, 1997, the Department published in the **Federal Register** (62 FR 46475) the preliminary results of its administrative review of the countervailing duty order on Certain Apparel from Thailand. Since the publication of the preliminary results, the following events have occurred. We invited interested parties to comment on the preliminary results. On September 23, 1997, we received one comment from UNITE, formerly known as the

Amalgamated Clothing and Textile Workers Union, indicating support for the preliminary results.

This review covers the period January 1, 1991, through December 31, 1991, and involves 19 companies and 4 programs.

Scope of Review

Imports covered by this review are certain apparel from Thailand. Such merchandise is described in detail in the Appendix to this notice.

Calculation Methodology for Assessment Purposes

The country-wide rate we calculated for this administrative review was above *de minimis*, as defined by 19 CFR § 355.7 (1994). We examined the net rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR § 355.22(d)(3). Four companies had significantly different net rates during the review period. These companies are treated separately for assessment purposes. All other companies are assigned the country-wide rate. *See* "Final Results of Review" section, below.

Analysis of Programs

I. Programs Conferring Subsidies

In the preliminary results we found that these programs conferred countervailable benefits on the subject merchandise. Our review of the record has not led us to change our findings from the preliminary results. On this basis, the weighted-average bounty or grant for these programs are as follows:

Program name	Program rate (percent)
Export Packaging Credits	0.55
Tax Certificates for Exports	.31
Electricity Discounts for Exporters	.20
Investment Promotion Act (IPA)—Sections 28 and 36(4)	.07

II. Programs Found Not to be used

We determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Rediscount of Industrial Bills
B. Assistance for Trading Companies
C. IPA (Sections 29, 30, 31, 33, 36(1–3))
D. Export Processing Zones
E. Financing from the Industrial Finance Corporation of Thailand

Final Results of Review

For the period January 1, 1991 through December 31, 1991, we determine the net bounty or grant to be 1.13 percent *ad valorem* for all companies except Thai Garment Export Co., Ltd., Fairtex Garment Co., Ltd., Fang Brothers Holding (Thailand) Co., Ltd., and East Asia Textile Ind. Co., Ltd., which have *de minimis* rates. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

The Department will instruct the U.S. Customs Service to assess countervailing duties of 1.13 percent *ad valorem* for all shipments of the subject merchandise exported on or after January 1, 1991, and on or before December 31, 1991, for all producers and exporters except Thai Garment Export Co., Ltd., Fairtex Garment Co., Ltd., Fang Brothers Holding (Thailand) Co., Ltd., and East Asia Textile Co., Ltd. For these companies, the Department will instruct the U.S. Customs Service to liquidate all shipments of the subject merchandise without regard to countervailing duties.

As noted above, this countervailing duty order was subject to section 753 of the Act, as amended by the URAA. *See Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation* (60 FR 27,693, May 26, 1995). Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *See Revocation of Countervailing Duty Order* (60 FR 40568, August 9, 1995) and *Notice of Determination to Amend Revocation, in Part, of Countervailing Duty Order* (62 FR 392, January 3, 1997). Accordingly the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 19, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix

[C–549–401]

Countervailing Duty Order on Certain Apparel From Thailand; Harmonized Tariff Schedule Numbers

HTS No.	Annotation
6101.2000	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6101.3020	
6102.1000	
6103.1920	Coverage limited to garments that would be covered if separately entered.
6103.2200	Coverage limited to garments that would be covered if separately entered.
6103.2300	Coverage limited to garments that would be covered if separately entered.
6103.2910	Coverage limited to garments that would be covered if separately entered.
6103.4210	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6103.4315	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6103.4910	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6104.1320	
6104.1915	
6104.2100.10	
6104.2100.30	
6104.2100.40	

HTS No.	Annotation
6104.2100.60	
6104.2100.80	
6104.2200.10	
6104.2200.60	
6104.2200.80	
6104.2200.90	
6104.2300.22	
6104.2910.60	
6104.5100	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6104.5310	Coverage limited to wool skirts.
6104.5910	Coverage limited to wool skirts; coverage excludes girls' skirts or divided skirts not having embroidery or permanently affixed applique work on the outer surface.
6104.6920	Coverage limited to wool trousers.
6105.1000	
6105.2020	
6106.1000	
6109.1000	
6109.9010.07	
6109.9010.09	
6109.9010.13	
6109.9010.25	
6109.9010.47	
6109.9010.49	Coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6110.2020	Coverage excludes men's or boys' garments having embroidery or permanently affixed applique work on the outer surface.
6110.3030.05	
6110.3030.10	
6110.3030.15	
6110.3030.20	
6110.3030.25	
6110.3030.40	
6110.3030.50	
6111.3040	Coverage limited to sweaters; coverage excludes garments having embroidery or permanently affixed applique work on the outer surface.
6111.3050	
6111.9040	Coverage limited to sweaters.
6111.9050	
6112.1200.10	
6112.1200.30	
6112.1200.50	
6112.1910.10	Coverage limited to men's and boy's garments that would be covered if separately entered.
6112.1910.30	Coverage excludes men's or boy's garments that would be covered if separately entered.
6112.1910.50	Coverage excludes men's or boy's garments that would be covered if separately entered.
6112.2010.10	Coverage excludes men's or boy's garments that would be covered if separately entered.
6112.2010.30	Coverage limited to men's and boy's garments that would be covered if separately entered.
6112.2010.50	Coverage excludes men's or boy's garments that would be covered if separately entered.
6112.2010.60	Coverage excludes men's or boy's garments that would be covered if separately entered.
6112.2010.80	Coverage limited to men's and boy's garments that would be covered if separately entered.
6114.2000	
6114.3010.10	
6114.3030	
6201.1220	
6201.1340	
6201.9220	
6203.1910	Coverage limited to garments that would be covered if separately entered.
6203.2230	Coverage limited to garments that would be covered if separately entered.
6203.2300	Coverage limited to garments that would be covered if separately entered.
6203.2920	Coverage limited to garments that would be covered if separately entered.
6203.4240	
6203.4340	
6203.4920	
6204.2300	Coverage limited to woolen garments that would be covered if separately entered.
6204.2920.10	
6204.2920.30	
6204.2920.40	
6204.2920.50	Coverage limited to garments that would be covered if separately entered.
6205.2020	
6208.2200	
6208.9200.30	
6208.9200.40	
6209.2050	

[FR Doc. 97–31132 Filed 11–25–97; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review No. 88–00002.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Olde South Traders, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Olde South Traders, Inc.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 23, 1988 to Olde South Traders, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Olde South Traders, Inc. on May 13, 1997, a letter containing annual report questions with a reminder that its annual report was due on July 7, 1997. Additional reminders were sent on August 7, 1997, and on September 12, 1997. The Department has received no written response to any of these letters.

On November 20, 1997, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Olde South Traders, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 20, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–30979 Filed 11–25–97; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review No. 91–00003.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Fabiano & Associates, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Fabiano & Associates, Inc.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 29, 1991 to Fabiano & Associates, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to Fabiano & Associates, Inc. on May 20, 1997, a letter containing annual report questions with a reminder that its annual report was due on July 14, 1997. Additional reminders were sent on August 7, 1997, and on September 12, 1997. The Department has received no written response to any of these letters.

On November 20, 1997, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify Fabiano & Associates, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 20, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–30980 Filed 11–25–97; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC)

ACTION: Notice of public meeting.

Time and Date: December 10, 1997 beginning at 8:00 a.m.

Place: This meeting will take place at the Silver Spring Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland.

Status: The meeting will be open to the public. The time between 11:30 a.m. and noon will be set side for oral comments or questions from the public and approximately 50 seats will be available on a first-come first-served basis.

Matters To Be Considered: This meeting will cover: Consultation on 12 combined Automation and Closure Certifications including the NWS report and consultation on Evansville, 10 combined Consolidation, Automation and Closure Certifications, and 1 Automation Certification; consultation on the FY 1999 National Implementation Plan; and reports on the NWS Modernization status and NWS interactions with the Astoria community.

CONTACT PERSON FOR MORE INFORMATION: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: November 20, 1997.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 97–30973 Filed 11–25–97; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111497B]

Marine Mammals; Permit No. 1004 (P595)

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research no. 1004 submitted by the Whale Conservation Institute, 191 Weston Road, Lincoln, MA 01773, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

SUPPLEMENTARY INFORMATION: On September 16, 1997, notice was published in the **Federal Register** (62 FR 48611) that an amendment of permit no. 1004, issued June 21, 1997 (61 FR 33906) had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits (50 CFR parts 217–227).

Permit No. 1004 has been amended to: (1) extend the expiration date of the permit from June 30, 1998 to November 30, 1998; (2) increase the number of imported southern right whale (*Eubalaena australis*) tissue samples taken at Peninsula Valdez, Argentina from 20 to 340; and (3) redefine these "tissue samples" from southern right whales to include baleen, blood and bone, skin/blubber and organ tissues (from dead/stranded whales), and sloughed skin (from live free-ranging whales).

Issuance of this amendment as required by the ESA of 1973 was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: November 19, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–30977 Filed 11–25–97; 8:45 am]
BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Temporary Suspension of Export Visa and Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

November 21, 1997

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending export visa and certification requirements.

EFFECTIVE DATE: November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on November 24, 1997, and until further notice, textile products which are produced or manufactured in Haiti and exported from Haiti, regardless of the date of export, shall not be denied entry for the lack of a visa or certification. This is a temporary measure which is being taken by the U.S. Government and which only waives the requirements to present a visa or certification with the shipment. It does not waive other documentation requirements.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This letter refers to the directive of February 19, 1987 from the Chairman of the Committee for the Implementation of Textile Agreements establishing visa and certification requirements for certain cotton, wool and man-made fiber textile products from Haiti. That letter directed you to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Haiti, which are not visaed or certified in accordance with procedures described in the letter.

Effective on November 24, 1997, and until further notice, you are directed not to deny entry of textile products, produced or manufactured in Haiti and exported from Haiti, regardless of the date of export, for lack of a visa or certification. This is a temporary measure which is being taken by the U.S. Government and which only waives the requirements to present a visa or certification with the shipment. It does not waive other documentation requirements.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31175 Filed 11–24–97; 9:47 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0229]

Notice of Request for Comments

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), DoD announces the proposed extension of a public information collection requirement, and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through June 30, 1998. DoD proposes that OMB extend its approval for use through June 30, 2001.

DATES: Consideration will be given to all comments received by January 26, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfarsacq.osd.mil.

Please cite OMB Control Number 0704–0229 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0229 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/

Paper copies may be obtained from Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

Title, Associated Form, and OMB Number: Foreign Acquisition—Defense Federal Acquisition Regulation Supplement part 225 and Related Clauses at 252.225, DD Form 2139, OMB Control Number 0704–0229.

Needs and Uses: This information collection requirement pertains to information collection requirements used to ensure contractor compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base. Other information is required for compliance with U.S. trade agreements and Memoranda of Understanding, which promote reciprocal trade with U.S. allies, and for inclusion in reports to the Department of Commerce on the Balance of Payments Program.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 74,333 hours.

Number of Respondents: 31,347.

Responses per Respondent: Approximately 7.

Number of Responses: 224,262.

Average Burden per Response: .33 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

- *DFARS 252.225–7000,* Buy American Act-Balance of Payments Program Certificate, as prescribed in 225.109(a), requires the offeror to identify in its proposal supplies that do not meet the definition of domestic end product, separately listing qualifying and nonqualifying country end products.
- *DFARS 252.225–7003,* Information for Duty-Free Entry Evaluation, as prescribed in 225.605–70(e), requires a check in paragraph (a) as to whether the offer is based on furnishing a domestic end product with nonqualifying country components for which the offeror requests duty-free entry, or a foreign end product, other than those that will be accorded duty-free entry as qualifying country end products or components, or eligible products under a trade agreement. If the answer to paragraph (a) is positive, then paragraph (b) requires two checks, as to whether such foreign supplies are now in the United States, whether duty has been paid, and if the duty has not yet been paid, an indication of what amount is included in the offer to cover such duty. Paragraph (c) requires the awardee to identify, at the request of the contracting officer, the foreign supplies which are subject to duty-free entry. Alternate I, as prescribed in 225.605–70(e), is used when the Buy American Act/Balance of Payments Program does not apply, and refers to U.S. made end products rather than domestic products (proposed rule, published September 9, 1997, 62 FR 47407).
- *DFARS 252.225–7005,* Identification of Expenditures in the United States, as prescribed in 225.305–70, requires contractors to identify, on each request for payment under certain contracts subject to the Balance of Payments Program, the part of the requested payment representing expenditures in the United States.
- *DFARS 252.225–7006,* Buy American Act-Trade Agreements—Balance of Payments Program Certificate, as prescribed in 225.408(a)(1), is similar to 225.252–7000, but requires separate listing of end products that are U.S. made but not domestic, or that are from a qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country.
- *DFARS 252.225–7009,* Duty-Free Entry-Qualifying Country Supplies (End Products and Components), *DFARS 252.225–7010,* Duty-Free Entry-Additional Provisions, and *DFARS 252.225–7037,* Duty-Free Entry-Eligible End Products, all as prescribed in 225.605–70, require the contractor or an authorized agent to provide information on shipping documents and customs forms regarding those items that are eligible for duty-free entry (proposed rule, published March 11, 1997, 62 FR 11142).
- *DFARS 252.225–7016* Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7019–4, requires contractor retention of records showing compliance with the restriction until 3 years after final payment. The contractor agrees to make the records available to the contracting officer upon request. The Contractor may request a waiver in accordance with 225.7019–3, which also requires the contractor to submit a written plan for transitioning to domestically manufactured bearings, for a waiver under a multiyear contract or a contract exceeding 12 months.
- *DFARS 252.225–7018,* Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDTSE, as prescribed in 225.7011–5, is used in all competitively negotiated Ballistic Missile Defense solicitations for research, development, test, and evaluation, unless foreign participation is otherwise excluded, and requires the offeror to check its status as a U.S. firm.
- *DFARS 252.225–7020,* Trade Agreements Certificate, as prescribed in 225.408(a)(3), requires the offeror to list nondesignated country end products. This is a new provision, used in solicitations for information technology products subject to the Trade Agreements Act, in lieu of 252.225–7006 (proposed rule, published September 9, 1997, 62 FR 47407).
- *DFARS 252.225–7025,* Restriction on Acquisition of Forgings, as prescribed in 225.7102–4, requires contractor retention of records showing compliance with the restriction until 3 years after final payment. The contractor agrees to make the records available to the contracting officer upon request. The contractor may request a waiver in accordance with 225.7102–3.
- *DFARS 252.225–7026,* Reporting of Contract Performance Outside the United States, as prescribed in 225.7203, requires the contractor to submit a Report of Contract Performance Outside the United States when any part of the contract that exceeds a specified dollar threshold will be performed outside the United States. The specified threshold is $500,000 for contracts that exceed $10 million, or the simplified acquisition threshold ($100,000) for contracts that exceed $500,000. The Contractor may submit the report on DD Form 2139, Report of Contract Performance Outside the United States, or may use a computer-generated report that contains all information required by DD Form 2139 (proposed rule, published October 17, 1997, 62 FR 54017).
- *DFARS 252.225–7032,* Waiver of United Kingdom Levies, as prescribed in 225.873–3, requires United Kingdom (U.K.) prime contractors, and prime contractors with subcontracts of a dollar value exceeding $1 million with U.K. firms, to provide certain information necessary for DoD to obtain a waiver of U.K. levies.
- *DFARS 252.225–7035,* Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, as prescribed in 225.408(a)(3), requires the offeror to list qualifying country (except Canada), NAFTA country, or other foreign end products. Alternate I, as prescribed in 225.408(a)(3), requires listing of Canadian end products, rather than NAFTA country end products, in solicitations between $25,000 and $50,000 (proposed rule published March 11, 1997 (62 FR 11142).

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 97–31110 Filed 11–25–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revision of the Department of Defense 6055.9—Standard, Department of Defense Ammunition and Explosives Safety Standards

AGENCY: Department of Defense.

ACTION: Notice of change.

SUMMARY: The Department of Defense Explosives Safety Board (DDESB) is today announcing several changes to Department of Defense 6055.9—Standard, dated October 1992. Because of the length of time since the Standard was last published in full, the DDESB is republishing the Standard with all changes adopted by the Board since 1992 incorporated therein.

The DDESB is taking this action pursuant to its statutory authority as set forth in Title 10, United States Code, Section 172 (10 U.S.C. 172) and DoD Directive 6055.9, "Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities," July 29, 1996. The Standard is applicable to the Office of the Secretary of Defense, the Military Departments (including the Army and Air Force National Guards), the Defense Nuclear Agency, the Defense Logistics Agency, the Coast Guard (when under DoD control), and other parties who produce or manage ammunition or explosives under contract to the DoD. Through DoD 6055.9–STD, the DDESB establishes minimum explosives safety requirements for storing and handling ammunition and explosives. Copies of this Standard may be obtained from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 27161.

For more detailed information on specific aspects of this Standard, contact Ray Sawyer by calling (703) 325–8625 or by writing to Department of Defense Explosives Safety Board, 2461 Eisenhower Avenue, Room 856–C, Alexandria, VA 22331–0600.

SUPPLEMENTARY INFORMATION: Dating back to 1928 when Congress directed the Secretaries of the military departments to establish a joint board of officers to "keep informed on stored supplies of ammunition and components thereof * * *, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations," the DDESB (formerly known as the Ammunition Safety Board) has periodically revised or updated the Standard based on new scientific or technical information and explosives safety experience. The implementation of a change to DoD 6055.9–STD does not depend on formal publication of a change to DoD 6055.9–STD. Changes to the Standard are effective when adopted by the Board, or as the Board may otherwise direct. In order to ensure compliance, the Services and Defense Agencies modify their Service or Agency implementing procedures and standards accordingly.

This revision to the October 1992 version of DoD 6055.9–STD incorporates decisions of the DDESB made at its 307th through 314th meetings held from July 1992 through February 1997. Although the decisions adopted at the 307th meeting of the Board in July 1992 pre-date the October 1992 publication, the Standard was already at the printer and those changes could not be included. This revision also reflects the recent assignment of the DDESB to the Office of the Under Secretary of Defense for Acquisition and Technology.

The changes included herein address the following:

- Expands the Scope of the Standard to include application to any energetic material (U.S. titled or otherwise) on DoD owned or leased facilities.
- Eliminates high explosives limits for training military working dogs for explosives detection and maintains evacuation distances applicable to personnel who are not involved in the training activity.
- Establishes quantity-distance criteria for non-essential personnel and establishes protection level criteria for essential personnel for use at ammunition and explosives burning sites.
- Expands and clarifies quantity-distance criteria for the location of steel tanks used to store hazardous materials or water with respect to ammunition and explosives locations.
- Establishes criteria for sites where explosives loaded containers may be moved from a rail to a road transport mode, and vice versa.
- Modifies lightning protection criteria into performance oriented criteria that are consistent with current National Fire Protection Association (NFPA) standards.
- Establishes criteria that apply to locations where inhabited building quantity-distance arcs are allowed to extend beyond DoD boundary lines.
- Clarifies the application of explosion propagation prevention measures when storing Storage Compatibility Groups B and F ammunition with other compatibility groups ammunition.
- Expands the exemption from quantity-distance requirements for specific combat aircraft weapons loads.
- Establishes quantity-distance criteria for Navy Maritime Pre-positioning Ships based on test results for specific ship explosives load configurations.
- Expands and clarifies the standards applicable to real property containing ammunition, explosives, or chemical agents, including providing for specified depth criteria in the absence of a site-specific assessment.
- Specifies the conditions that would allow limited opening of boxes loaded with ammunition while inside storage facilities.
- Clarifies the quantity-distance criteria applicable to training facilities occupied by military personnel.
- Clarifies the criteria for types of ammunition and inert materials that may be stored in modular storage units and sets explosives limits for modular storage cells.
- Based upon tests results and analysis, reduces the quantity-distance criteria for U.S. 3rd generation harden aircraft shelters.
- Allows commanders to determine the appropriate separation distances between aircraft parking areas, combat aircraft parking areas, the associated ready ammunition storage facilities, and ammunition cargo areas.
- Based upon test results, clarifies the criteria used to satisfy the quantity-distance requirements for underground ammunition and explosives storage facilities.
- Establishes requirement to retain the explosives facility site plan package at the installation.
- Establishes quantity-distance criteria for siting range control points with respect to other potential explosion sites.
- Expands and clarifies quantity-distance criteria to include separation of combat- and explosives-loaded aircraft from taxiways and runways.
- Revises the definitions and quantity-distance requirements, particularly inter-magazine separation requirements, for earth covered magazines.
- Clarifies the requirements for location of overhead electric services lines with respect to ammunition and explosives facilities.
- Expands and clarifies the requirements for transporting materials contaminated with chemical agents.
- Clarifies the criteria for containers that may be used to monitor protective clothing that may be used in chemical agent areas.
- Modifies public traffic route distance criteria by expanding traffic density evaluations to include rail and ship traffic, basing density on passengers per day, and providing guidance for evaluating traffic density to clarify the use of minimum fragment distances.
- Corrects inconsistencies with current Hazard Division 1.6 ammunition criteria, and harmonizes U.S. criteria with NATO criteria.
- Establishes criteria applicable to the use of revetments to separate ammunition stored on pads or hung on aircraft.

In adopting these changes, the DDESB has determined that the Standards, as changed, are at least as protective as the previous Standards.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30996 Filed 11–25–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 96–20]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–20, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

0 9 NOV 1997

In reply refer to:
I-55236/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-20, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $109 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 88 million
Other	$ 21 million
TOTAL	$ 109 million

(iii) Description of Articles or Services Offered:
Three MK 41 Vertical Launch Systems, 144 MK 13 MOD 0 canisters, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support.

(iv) Military Department: Navy (LOW)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold
See Annex attached.

(vii) Date Report Delivered to Congress: 0 9 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea - MK 41 Vertical Launch Systems

The Government of Korea has requested the possible sale of three MK 41 Vertical Launch Systems, 144 MK 13 MOD 0 canisters, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support. The estimated cost is $109 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The missile launchers will be installed on new construction frigates and are intended for use with STANDARD missiles as the principal air defense armament of these new vessels. Korea will have no difficulty absorbing this missile launch systems into its armed forces.

The proposed sale of this shipboard missile launch systems and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Aero and Naval Systems, Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any contractor representatives in Korea; however, there will be three U.S. Government personnel for approximately 39 months during the preparation, equipment installations, and equipment test and checkout of the MK 41 Vertical Launch Systems on the ships.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The MK-41 Vertical Launch Systems (VLS) contains sensitive technology and is Unclassified. The launch control computer program, which also contains missile launch rates, is classified Confidential. Sections of the MK-41 technical documentation, which disclose launcher vulnerabilities, are classified Confidential.

2. If a technologically advanced adversary were to obtain knowledge of this system, it is possible that countermeasures could be developed to reduce its effectiveness.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97-30983 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–13]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense in publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–13, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

0 9 NOV 1997

In reply refer to:
I-55944/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-13, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Portugal for defense articles and services estimated to cost $185 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Portugal

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 185 million
TOTAL	$ 185 million

(iii) Description of Articles or Services Offered:
Twenty Mid-Life Update (MLU) modification kits for Portuguese Air Force F-16A/B aircraft, installation, support equipment, training and training devices, technical assistance, technical orders, system drawings, U.S. Government and contractor engineering, spare parts, and other logistics elements necessary for full program support.

The MLU is an avionics retrofit program for F-16 aircraft consisting of a Central Core Computer, Block 50 cockpit design, Digital Terrain System, Global Positioning System, APG-66(V2) radar upgrade, Integrated Data Modem, microwave landing system and night capabilities provisions, and an Advanced Identification Friend or Foe (AIFF).

(iv) Military Department: Air Force (NMP)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 09 NOV 1997

* as defined Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Portugal - F-16A/B Mid-Life Update Modification Kits

The Government of Portugal has requested a possible sale of 20 Mid-Life Update (MLU) modification kits for Portuguese Air Force F-16A/B aircraft, installation, support equipment, training and training devices, technical assistance, technical orders, system drawings, U.S. Government and contractor engineering, spare parts, and other logistics elements necessary for full program support. The estimated cost is $185 million.

The MLU production phase is the continuation of the development program notified to the Congress in August 1990. This multi-national effort has included the governments of the United States, Belgium, Denmark, The Netherlands, and Norway who have participated with the United States Air Force in the full scale MLU engineering development and integration effort. The MLU is an avionics retrofit program for F-16 aircraft consisting of a Central Core Computer, Block 50 cockpit design, Digital Terrain System, Global Positioning System, APG-66(V2) radar upgrade, Integrated Data Modem, microwave landing system and night capabilities provisions, and an Advanced Identification Friend or Foe (AIFF).

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Portugal while enhancing weapon system standardization and interoperability with the U.S. forces in the region.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Tactical Aircraft systems, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S. Government personnel and contractor representatives to Portugal to provide technical and logistics services prior to delivery of the last MLU kit. The number of personnel and types of skills necessary to support the program will be determined jointly between U.S. and Portuguese representatives upon program implementation.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-13

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The F-16A weapon system is unclassified except as mentioned below. The aircraft does contain state-of-the-art technology. Sensitive elements of the F-16A include the F100-PW-200/220 turbofan engine, the FMS version of the AN/ALR-69 radar warning receiver (RWR), the FMS version of the AN/ALQ-131 electronic countermeasures pod, the FMS version of the AN/APG-66 radar, the AIM-7 radar missile capability, the AIM-9 missile capability, the AIM-120 (AMRAAM) missile capability, the ATLIS II laser designator pod capability, and the fly by wire flight control system. The system design notes on software architecture are also critical elements.

2. Classified elements of the F-16A include the F100 engine infrared signature, radar software documentation, the Operational Flight Program (OFP) and the Emitter Identification Data (EID) for the ALR-69, the OFP and EID for the ALQ-131, the OFP for the Fire Control Computer, AIM-9 hardware, AIM-7 hardware, AIM-120 hardware, and 15 operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operation and repair at the organizational and intermediate levels. Classified elements of the MLU kit in addition to the above items include: the Advanced IFF (AIFF). The hardware, software, and data identified are classified to protect vulnerabilities, design, and performance parameters, munitions related data, and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of these specific hardware and software elements, they might be able to develop countermeasures or countertactics which could reduce weapon system effectiveness. Of additional concern, but requiring a much longer exploitation period, is the possibility such information could be used in the development of systems with similar advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of

[FR Doc. 97-30984 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98-09]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmitted 98-09, with attached transmittal, policy justification, Section 620C(d) of the Foreign Assistance Act of 1961, and sensitivity of technology pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800 09 NOV 1997

In reply refer to:
I-52383/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services estimated to cost $26 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$ 22 million
Other	$ 4 million
TOTAL	$ 26 million

(iii) Description of Articles or Services Offered:
Four AN/TPQ-36(V)9 FIREFINDER radar sets with support equipment, a U.S. Government Quality Assurance Team, spare and repair parts, measurement and diagnostic equipment, publications, personnel training and training equipment, technical assistance, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Army (JAY)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 09 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey - AN/TPQ-36(V)9 FIREFINDER Radar Sets

The Government of Turkey has requested a possible sale of four AN/TPQ-36(V)9 FIREFINDER radar sets with support equipment, a U.S. Government Quality Assurance Team, spare and repair parts, measurement and diagnostic equipment, publications, personnel training and training equipment, technical assistance, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $26 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey a major NATO ally while furthering weapon system standardization and interoperability.

This purchase augments similar radars purchased and delivered under prior FMS cases and provides a modest increase in counter-mortar capability consistent with Turkey's force modernization plans. These radar sets will be provided in accordance with, and subject to the limitation on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Turkey will have no difficulty absorbing these additional radars into its armed forces.

The prime contractor will be the Hughes Aircraft Corporation, Los Angeles, California. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Turkey. A Quality Assurance team consisting of four persons will be required in-country for two weeks to assist in deprocessing and inspecting the equipment upon delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

THE SECRETARY OF STATE

WASHINGTON

November 9, 1997

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145, (sections 1(a)(1) and 4(d)), I hereby certify that the furnishing to Turkey of four AN/TPQ-36(V)9 FIREFINDER radar sets and program support at an estimated cost of $26 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Madeleine K. Albright

[FR Doc. 97-30985 Filed 11-25-97; 8:45 am]
BILLING CODE 8000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–12]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–12, with attached transmittal, policy justification, Section 620C(d) of the Foreign Assistance Act of 1961, and sensitivity of technology pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

09 NOV 1997

In reply refer to:
I-55446/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-12, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $31 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-12

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 30 million
Other	$ 1 million
TOTAL	$ 31 million

(iii) Description of Articles or Services Offered:
Thirty Army Tactical Missiles and launch assemblies (ATACMS), support equipment, spare and repair parts, personnel training and training equipment, U.S. Government and contractor technical assistance, publications and other related elements of logistics support.

(iv) Military Department: Army (XGS, Amendment 1)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 09 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - Army Tactical Missile System

The Government of Greece has requested a possible sale of 30 Army Tactical Missiles and launch assemblies (ATACMS), support equipment, spare and repair parts, personnel training and training equipment, U.S. Government and contractor technical assistance, publications and other related elements of logistics support. The estimated cost is $31 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability of this important NATO ally.

The proposed sale complements a previous initial sale of 41 ATACMS that were approved in July 1996. The additional 30 ATACMS under this proposal will provide the Hellenic Army with an area fire system for use against hostile artillery, air defense and maneuver elements. ATACMS mounts on the multiple launch rocket system (MLRS) launcher which Greece has previously purchased and, therefore, will have no difficulty absorbing these additional systems capabilities. The missiles will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractor will be Lockheed Martin Loral Vought Systems, Dallas, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

THE SECRETARY OF STATE

WASHINGTON

November 9, 1997

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145, (sec. 1(a)(1) and 4(d)), I hereby certify that the furnishing to Greece of 30 Army Tactical Missiles and launch assemblies (ATACMS) and program support at an estimated cost of $31 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Madeleine Albright

Madeleine K. Albright

[FR Doc. 97-30986 Filed 11-25-97; 8:45 am]
BILLING CODE 8000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98-21]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98-21, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

09 NOV 1997

In reply refer to:
I-56131/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-21, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $197.9 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MS Davison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 137.0 million
Other	$ 60.9 million
TOTAL	$ 197.9 million

(iii) Description of Articles or Services Offered:
Co-production of 50 M88A2 recovery vehicle kits, 53 M2 machine guns, 100 AN/PVS-7B night vision goggles, spare and repair parts, contractor technical support, support and test equipment, ammunition, publications, program management, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support.

(iv) Military Department: Army (JBM)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 09 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - Co-production of M88A2 Recovery Vehicle Kits

The Government of Egypt has requested the possible sale of co-production of 50 M88A2 recovery vehicle kits, 53 M2 machine guns, 100 AN/PVS-7B night vision goggles, spare and repair parts, contractor technical support, support and test equipment, ammunition, publications, program management, personnel training and training equipment, U.S. Government and contractor technical and logistics services and other related elements of program support. The estimated cost is $197.9 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale and co-production of these vehicles at their Factory 200, Egyptian Tank Plant, will support the 555 M1A2 tanks in their inventory. The M88A2 recovery vehicles will be used for towing, winching, and hoisting operations supporting recovery operations and evacuation of heavy tanks and other tracked combat vehicles. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense, Limited Partnership, York, Pennsylvania. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any contractor representatives but will require the assignment of approximately 26 U.S. Government personnel in-country for three years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-21

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The M88A2 recovery vehicles includes the following classified or sensitive components:

a. AVDS-1790-8CR Engine Propulsion System - an unique modification to the standard piston engine family found in the M60 series and the base M88A1. Manufacturing processes associated with the production of turbochargers, fuel injection system, and cylinders are proprietary, and therefore, commercially competition sensitive.

b. Hydraulic System - use of commercially available hydraulic components is not entirely unique in the armored vehicle world. None of the subcomponents of the system are classified. Manufacturing processes associated with winches, hydraulic motors, control valves, and the like are proprietary and therefore, commercially competition sensitive.

2. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 97-30987 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–16]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–16, with attached transmittal and policy justification pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

0 9 NOV 1997

In reply refer to:
I-56704/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-16, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $140 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-16

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 140 million
TOTAL	$ 140 million

(iii) Description of Articles or Services Offered: This sale will provide funds for the establishment of a Cooperative Logistics Supply Support Arrangement (CLSSA) for spare parts in support of F-5B/E/F, F-104, F-16, C-130, C-119, C-47, and T-38 aircraft and for U.S. systems and sub-systems of the Indigenous Defense Fighter (IDF) aircraft.

(iv) Military Department: Air Force (KDF)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 09 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - Cooperative Logistics Supply Support Arrangement

The Taipei Economic and Cultural Representative Office in the United States (TECRO) has requested the establishment of a Cooperative Logistics Supply Support Arrangement (CLSSA) for spare parts in support of F-5B/E/F, F-104, F-16, C-130, C-119, C-47, and T-38 aircraft and for U.S. systems and sub-systems of the Indigenous Defense Fighter (IDF) aircraft. The estimated cost is $140 million.

This proposed sale is consistent with United States law and policy, as expressed in Public Law 96-8.

These spare parts are required to assure that aircraft and aircraft systems previously procured from the United States are maintained in a mission capable status. The recipient will have no difficulty utilizing these spare parts.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Taiwan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97-30980 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–15]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–15, with attached transmittal and policy justification pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

13 NOV 1997

In reply refer to:
I-56156/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-15, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $160 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MS Davison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-15

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Republic of Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 160 million
TOTAL	$ 160 million

(iii) Description of Articles or Services Offered:
This sale will provide fund for the purpose of spare parts under a Cooperative Logistics Supply Support Arrangement (CLSSA) requisition case (FMSO II) for the support of F-4D/E, RF-4C, F-5A/B/E/F, RF-5A, A/T-37, F-16C/D, and C-130H aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7 and AIM-9 missile components. These items are of U.S. origin and are being operated by the Republic of Korea.

(iv) Military Department: Air Force (KCH)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 13 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - Cooperative Logistics Supply Support Arrangement

The Republic of Korea has requested a possible sale of spare parts under a Cooperative Logistics Supply Support Arrangement (CLSSA) requisition case (FMSO II) for the support of F-4D/E, RF-4C, F-5A/B/E/F, RF-5A, A/T-37, F-16C/D, and C-130H aircraft; AN/FPS-117 and AN/FRN-45 radar systems; and AIM-7 and AIM-9 missile components. These items are of U.S. origin and are being operated by the Republic of Korea. The estimated cost is $160 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The Republic of Korea needs these additional spare parts to maintain the aircraft, radar, and missile systems previously procured from the United States in a mission capable status.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items of support will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the Republic of Korea.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97-30990 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–11]

38(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–11, which attached transmittal and policy justification pages.

Dated: November 20, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

09 NOV 1997

In reply refer to:
I-55169/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-11, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Portugal for defense articles and services estimated to cost $29 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Portugal

(ii) Total Estimated Value:

Major Defense Equipment*	$ 26 million
Other	$ 3 million
TOTAL	$ 29 million

(iii) Description of Articles or Services Offered: Fourteen M109A5 self-propelled howitzers, Quality Assurance Team (QAT), spare and repair parts, support equipment, publications and technical data, personnel training and training equipment and other related elements of logistics support.

(iv) Military Department: Army (UPV)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress 09 NOV 1997

* as defined Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Portugal - M109A5 Self-propelled Howitzers

The Government of Portugal has requested a possible sale of 14 M109A5 self-propelled howitzers, Quality Assurance Team (QAT), spare and repair parts, support equipment, publications and technical data, personnel training and training equipment and other related elements of logistics support. The estimated cost is $29 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Portugal while enhancing weapon system standardization and interoperability.

Portugal currently operates M109A2 self-propelled howitzers and will use this new procurement of howitzers to re-equip existing units and retire older artillery pieces, modernizing the Army's fire support capability. Portugal will have no difficulty absorbing these howitzers.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense Limited Partnership (UDLP), York, Pennsylvania. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of several contractor representatives for three months to provide technical support. This proposed sale will require U.S. Government Quality Assurance Team during initial delivery and fielding of the new howitzers in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97-30991 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–07, with attached transmittal, policy justification, and Certification Under Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: October 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON DC 20301-2800

16 OCT 1997

In reply refer to:
I-55506/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-07 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $42 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

H. Diehl McKalip
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Separate Cover:
Classified Annex

Transmittal No. 98-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 41 million
Other	$ 1 million
TOTAL	$ 42 million

(iii) Description of Articles or Services Offered:
Ninety AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), missile containers, and other related elements of logistics and program support.

(iv) Military Department: Air Force (SBD, Amendment 6)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 10 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - AIM-120B Advanced Medium-Range Air-to-Air Missiles

The Government of Greece has requested a possible sale of 90 AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), missile containers, and other related elements of logistics and program support. The estimated cost is $42 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece while enhancing weapon system standardization and interoperability with U.S. forces.

These additional missile systems will augment Greece's previous procurement of 150 AMRAAMs as well as enhance aircraft air-to-air capabilities. These missiles will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be Hughes Aircraft International Services Company, Tucson, Arizona and Raytheon Company, Bedford, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97-30992 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of Secretary

[Transmittal No. 98-08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98-08, with attached transmittal, policy justification, Section 620C(d) of the Foreign Assistance Act of 1961, and sensitivity of technology pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

09 NOV 1997

In reply refer to:
I-52381/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-08, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $376 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$296 million
Other	$ 80 million
TOTAL	$376 million

(iii) Description of Articles or Services Offered:
Seven CH-47D CHINOOK helicopters with 28 M60 and eight M2 machine guns, chaff, radar warning receiver, three spare turbine engines, ammunition, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, field service representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support.

(iv) Military Department: Army (JBK and XHE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 09 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - CH-47D CHINOOK Helicopters

The Government of Greece has requested a possible sale of seven CH-47D CHINOOK helicopters with 28 M60 and eight M2 machine guns, chaff, radar warning receiver, three spare turbine engines, ammunition, spare and repair parts, support equipment, publications and technical data, communications equipment, maintenance, personnel training and training equipment, U.S. Government Quality Assurance Team, field service representatives, contractor engineering and technical support services, preparation of aircraft for shipment, and other related elements of logistics support. The estimated cost is $376 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Greece and enhancing standardization and interoperability with U.S. forces.

These helicopters will provide the Greek armed forces an improved capability to transport personnel and cargo for both military and humanitarian assistance purposes. They will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be Boeing Defense and Space Group, Philadelphia, and Allied Signal Aerospace Incorporated, Torrance, California. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a Quality Assurance Team for two weeks to support delivery of the helicopters. Two contractor representatives will be required for one year and may remain an additional year.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

THE SECRETARY OF STATE

WASHINGTON

November 9, 1997

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and State Department Delegation of Authority No. 145, (sec. 1(a)(1) and 4(d)), I hereby certify that the furnishing to Greece of CHINOOK helicopters and program support at an estimated cost of $376 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Madeleine Albright

Madeleine K. Albright

[FR Doc. 97-30993 Filed 11-25-97; 8:45 am]
BILLING CODE 3800-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98-14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98-14, with attached transmittal and policy justification pages.

Dated: November 20, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON DC 20301-2800

12 NOV 1997

In reply refer to:
I-56116/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-14, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $287 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MS Davison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$ 1 million
Other	$ 286 million
TOTAL	$ 287 million

(iii) Description of Articles or Services Offered: Services and support for F-16C/D aircraft, 12 M61A1 20mm guns, modification kits, maintenance, flight training, spare and repair parts, support equipment, program management, publications and documentation, personnel training and training equipment, logistics personnel services and other related elements of program support.

(iv) Military Department: Air Force (NCL)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress: 12 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore - F-16C/D Aircraft Support with M61A1 Guns

The Government of Singapore has requested a possible sale of services and support for F-16C/D aircraft, 12 M61A1 20mm guns, modification kits, maintenance, flight training, spare and repair parts, support equipment, program management, publications and documentation, personnel training and training equipment, logistics personnel services and other related elements of program support. The estimated cost is $287 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for economic progress in Southeast Asia.

This proposed sale will support Singapore's current and future F-16 aircraft inventory. The training portion is for a long term pilot training program in CONUS. Singapore will have no difficulty absorbing this support into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 97-30994 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98-18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98-18, with attached transmittal and policy justification pages.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

0 9 NOV 1997

In reply refer to:
I-56706/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-18, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost $280 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MS Davison

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 280 million
TOTAL	$ 280 million

(iii) Description of Articles or Services Offered: The continuation of a pilot training program and logistics support for F-16 aircraft to include flight training, supply and maintenance support, spare and repair parts, support equipment, program management, publications and documentation, personnel training and training equipment, fuel and fueling services, and other related program requirements necessary to sustain a long term CONUS training program.

(iv) Military Department: Air Force (NHC)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 0 9 NOV 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - Pilot Training Program

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale of services related to the continuation of a pilot training program and logistics support for F-16 aircraft to include flight training, supply and maintenance support, spare and repair parts, support equipment, program management, publications and documentation, personnel training and training equipment, fuel and fueling services, and other related program requirements necessary to sustain a long term CONUS training program. The estimated cost is $280 million.

This proposed sale is consistent with the United States law and policy as expressed in Public Law 96-8.

The recipient needs these services and equipment in order to continue a long term pilot training program at Luke Air Force Base, Arizona. This program will enable the recipient to develop mission ready and experienced pilots through CONUS training.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this possible sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Taiwan.

There will be no adverse impact on U.S. defense readiness as a result of this possible sale.

[FR Doc. 97-30995 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board

ACTION: Notice.

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC-29, which was signed by the President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Police Board, and will function as a federal advisory committee in accordance with the provisions of Pub. L. 92-463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Admiral Thomas Brooks, USN (Ret.) and Ms. Ninâ Stewart.

The next meeting of the Board will be held on 12 December 1997, at 1330 hours at Marriott Hotel, 8028 Leesburg Pike, Tysons Corner, VA. 22182. The meeting will be open to the public.

For further information please contact Mr. Terence Thompson, *telephone:* 703-602-9999.

Dated: November 20, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-30997 Filed 11-25-97; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement (DEIS) on the Disposal and Reuse of the Seneca Army Depot Activity, New York

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this DEIS is the disposal of the Seneca Army Depot Activity (SEDA), New York, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended.

The DEIS addresses the environmental impacts of the disposal and subsequent reuse of the entire installation except for the property required to create and maintain an enclave for storage of hazardous materials and ores as directed by the BRAC Commission. Alternatives examined in the DEIS include encumbered disposal of the property, unencumbered disposal of the property and retention of the property in a caretaker status (i.e., the no action alternative). The Army's preferred alternative for disposal of SEDA property is encumbered disposal, with encumbrances pertaining to historical resources, remedial activities, easements, wetlands, groundwater use, and unexploded ordnance.

Disposal of the Depot property is the Army's primary action. Reuse of the property is a secondary action that will be taken by others. The DEIS also analyzes the potential environmental effects of reuse by means of evaluating intensity-based probable reuse scenarios. Appropriate to the Depot are low, medium-low, and medium intensity reuse scenarios reflecting the range of activities that could occur after disposal of the property.

The Army proposes to transfer the majority of the 10,594 acres to the Seneca County Industrial Development Agency (IDA). The U.S. Coast Guard would obtain 290 acres for continued use of a LORAN-C antenna station. The establishment of an enclave as directed by the BRAC Commission would require the Army's retention of 30 acres to be used for storage of hazardous materials and ores. This would leave approximately 10,274 acres available for transfer or conveyance to the IDA.

The Army will hold a public review meeting for this DEIS in January 1998. The location and date of the meeting will be announced in the local news media.

DATES: Written public comments received within the 45 days of the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register** will be addressed in the preparation of the Final EIS.

ADDRESSES: The DEIS is available for review at three libraries: the Waterloo Library and Historical Society, *Attn:* Ms. Mary Zingerella, 31 East Williams Street, Waterloo, NY 13165; Edith B. Ford Memorial Library, *Attn:* Mr. & Mrs. Henry Morris, 7169 North Main Street, Ovid, NY 14521; and the Geneva Free Library, *Attn:* Ms. Kim Iraci, 244 Main Street, Geneva, NY 14456. Comments can be addressed to and copies may be obtained by writing to Mr. Hugh McClellan, Corps of Engineers, Mobile District, *Attn:* SAMPD, P.O. Box 2288, Mobile, Alabama 36628-0001 or by facsimile at (334) 690-2605.

Dated: November 20, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 97-31080 Filed 11-25-97; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army

Armored Security Vehicle (ASV)

AGENCY: U.S. Army Tank-automotive and Armaments Command.

ACTION: Notice of intent.

SUMMARY: The Program Manager, Light Tactical Vehicles (PM LTV) has prepared a Life-Cycle Environmental Assessment (LCEA) which examines the potential impacts to the natural and human environmental from the life cycle activities of the Armored Security Vehicle (ASV). Based on the LCEA, PM LTV has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement is not required and the Army is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to, U.S. Army Tank-automotive and Armaments Command (TACOM), ATTN: AMSTA-DSA-LT (ASV), Warren, MI 48397-5000

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of the ASV Life-Cycle Environmental Assessment contact Mr. Anthony Shaw, Weapon System Manager (810) 574-8654.

SUPPLEMENTARY INFORMATION:

a. Proposed Action

This LCEA examines the potential impacts to the natural and human environment from the procurement of the ASV to satisfy the Army's need for survivability in a Military Police (MP) mobile platform. The ASV will be used by MP three-man teams in highly exposed threat environments. Current funding is available to procure up to 195 vehicles.

b. Environmental Impact

The ASV life-cycle includes the transport of vehicles to test sites, testing, vehicle production, deployment and

operation of production vehicles and their eventual demilitarization. Potential environmental impacts of these life-cycle stages may include Air Quality, Noise, Water, Soil and Groundwater, Hazardous Materials and Hazardous Wastes, and Flora, Fauna and Threatened or Endangered Species at each of these life-cycle phases.

c. Additional Findings

Impacts from the proposed action would be minimal and not significant for the following reasons:

(1) The ASV will be used in its intended environment. This intended environment includes vehicle production and some testing at the Contractor's facility, and the remainder of life-cycle activities at Army installations and facilities.

(2) The ASV is very similar to vehicles produced commercially and vehicles already in the Army inventory. It is being produced in low to moderate quantities and will not significantly increase the vehicle population at Army installations and facilities.

(3) The overall environmental risk associated with the ASV is very low. It does not introduce any new technologies or processes. Vehicle life cycle activities do not introduce any potential environmental impacts that are not already currently mitigated by Army policy and procedures.

(4) The ASV Project Manager has ensured that the Contractor producing the vehicle is environmentally compliant, has no permit violations, and has commercial practices for Hazardous Material Management and Pollution Prevention in production of the ASV.

(5) The ASV Product Manager recognizes that Army installations and facilities have environmental plans and measures in place to address vehicle life cycle activities very similar to that of the ASV to prevent, mitigate and remediate environmental damage caused by vehicle operation. Vehicle operations at these Army installations and facilities are in conjunction with normal activities that are already addressed in their site specific environmental impact statements.

d. Determination

It is therefore concluded that this program:

(1) Is not a major federal action significantly affecting the quality of human environment.

(2) Will not have a significant impact on the environment.

(3) Is not likely to be environmentally controversial.

(4) Will not likely result in litigation based on environmental quality issues.

(5) Does not require an Environmental Impact Statement (EIS).

Phillip O. Meengs,

Project Manager, Light Tactical Vehicles.

[FR Doc. 97–31036 Filed 11–25–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Atlantic Coast of Long Island, From Fire Island Inlet to Montauk Point, New York (Reach 1—Fire Island Inlet to Moriches Inlet Interim Plan for Storm Damage Protection)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New York District of the U.S. Army Corps of Engineers is beginning preparation of a Draft Environmental Impact Statement (DEIS) for proposed measures for interim storm damage protection for Reach 1—Fire Island Inlet to Moriches Inlet (study area) of the Atlantic Coast of Long Island, from Fire Island Inlet to Montauk Point, New York. A Notice of Intent for the preparation of a DEIS for the Atlantic Coast of Long Island, from Fire Island Inlet to Montauk Point, New York Reformulation Study, a long-term solution for the entire 83 mile study area, has also been published in the **Federal Register** dated July 28, 1997 (Volume 62, Number 144). For this Notice of Intent, the Corps is considering interim protection measures to address critical areas due to recent storm activity which has resulted in continual erosion leading to a decrease in the width of beach and a loss of beach material. Due to the continued erosion and a lack of sufficiently high beaches, berms or dune systems, residential and commercial developments have become increasingly susceptible to storm damage from flooding and wave attack and may need to be addressed prior to completion of the Reformulation Study. The EIS will be prepared according to the U.S. Army Corps of Engineers procedures for implementing the National Environmental Policy Act of 1969, as amended, (NEPA), 42 U.S.C. 4332(2) (C), and consistent with the U.S. Army Corps of Engineers' policy to facilitate public understanding and scrutiny of agency proposals. This notice of intent is published as required by the President's Council on Environmental Quality regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Couch, Study Manager, (212) 264–9077; Mr. Peter M. Weppler, EIS Coordinator, (212) 264–4663; Planning Division, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION: The overall Fire Island Inlet to Montauk Point, New York, Combined Beach Erosion Control and Hurricane Protection Project was authorized by the River and Harbor Act of 1960 in accordance with the recommendations of the Chief of Engineers in House Document No. 425, 86th Congress dated June 21, 1960. The original authorized project provided for beach erosion control and hurricane protection along five reaches by means of widening the beaches along the developed areas, raising the dunes by artificial placement of suitable sand, grass planting on the dunes, and construction of interior drainage structures at Mecox Bay, Sagaponack Lake, and Georgica Pond. The project authorized construction of 50 groins subject to determination of their actual need. The authorization was subsequently modified by Section 103 of the River and Harbor Act of October 12, 1962, Section 31 of the Water Resources Development Act of 1974, Section 502 of the Water Resources Development Act of 1986, and Section 102 of the Water Resources Development Act of 1992. These modifications were made primarily to adjust the cost sharing provisions of the authorized project.

1. Location of Proposed Action

The project area is located entirely in Suffolk County, Long Island, New York, along the Atlantic and bay shore of the towns of Babylon, Islip, and Brookhaven. The study area is approximately 30 miles long. The study area includes Great South Bay which is connected to the Atlantic Ocean through Fire Island Inlet, a federal navigation channel. Great South Bay is connected to Moriches Bay by a narrow channel behind the barrier island. The westernmost portion of the study area, Fire Island Inlet, is located approximately 52 miles by water east of the Battery, New York. The project area includes the Atlantic Ocean and Great South Bay, Fire Island proper, Moriches Inlet, barrier beaches, the mainland of Long Island fronted by Fire Island Proper, as well as suitable offshore borrow areas that will supply material for beach construction and replenishment.

2. Description of Proposed Action

The basic design of the interim plan consists of beachfill with a minimum berm width of 90 feet (ft) at elevation +9.5 ft NGVD, and a minimum 25 ft wide dune at elevation +15 ft NGVD. Proposed dune slopes are 1V:5H to Mean Low Water (MLW), and 1V:30H below MLW.

Variations of this basic design plan occur between Kismet and Point O'Woods and at Old Inlet in the Federal Wilderness Area. The dune and berm elevations from Kismet to Point O'Woods were increased to 18 ft NGVD and 11.5 ft NGVD, respectively to provide a 44 year level of protection. This modification is necessitated by the low elevations north of the dune in these areas.

Due to the environmental sensitivity of the Wilderness Area, and concerns raised by the Department of the Interior, fill in Old Inlet has been deferred. The District instead recommends use of a feeder beach and stockpile at Smith Point County Park. The deferred construction could be analyzed and implemented in the future, to minimize the negative environmental impacts associated with repeated breach closure efforts.

3. Reasonable Alternative Actions

In addition to the "No Action" alternative, the interim storm damage protection study will consider variations of the beach fill alternative to identify a short term solution to the severe erosion that has occurred within the study area and which continues to threaten the mainland communities with increased exposure to storm damages.

4. Scoping Process

a. Public Involvement

Additional scoping correspondence detailing the proposed plan will be distributed to all interested public and private agencies and organizations with the intent of receiving opinions all from interested parties.

b. Scoping Meetings

The scoping meetings are intended to assist in defining the focus of the EIS issues. A public notice issued at a later date will provide the dates, times and places of the scoping meetings. Further, the U.S. Army Corps of Engineers will provide ample opportunity for public participation in defining the issues to be addressed in the EIS and in reviewing and commenting on the draft EIS. Additions to this mailing list can be made by notifying the project EIS coordinator.

c. Significant Issues Requiring In-Depth Analysis

1. Water Quality Impacts; 2. Archaeological and Cultural Resources Impacts; 3. Aquatic and Terrestrial Resources Impacts; 4. Impacts to Shorebird Populations; 5. Recreational Impacts; 6. Economic Impacts; 7. Impacts to Longshore Sand Transport.

d. Environmental Review and Consultation

Review will be conducted as outlined in the Council on Environmental Quality regulations dated November 29, 1983 (40 CFR parts 1500–1508) and U.S. Army Corps of Engineer regulation ER 200–2–2 dated March 4, 1988.

e. Federal Agency Participation in the EIS Process

Federal agencies with an interest in this EIS effort are requested to participate as cooperating agencies pursuant to 40 CFR Part 1501.6. All interested federal agencies are requested to submit a letter of intent to Colonel Gary Thomas, District Engineer at the above address.

5. Estimated Date of DEIS Availability

June 1998.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–31039 Filed 11–25–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Stabilization of the Bluff Toe at Norco Bluffs

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction.

SUMMARY: In previous **Federal Register** notice (Vol 62, No. 105, page 29719) Monday, June 2, 1997, make the following corrections:

On Page 29719 in column two, Summary paragraph, lines six through eleven, the sentence should be changed to read "The purpose of the proposed project is to stabilize the toe of the bluff parallel to Shadow Canyon Circle, Alahambra Street, and River Ridge Drive, as far upstream as Crest Drive, in the City of Norco, and thereby maintain the location of the 566 foot elevation line."

On Page 29719 in column three, Availability of the Draft EIS paragraph, change the date from "September 1997" to "March 1998."

The above corrections are required to clarify the location of the proposed project which has been expanded to cover areas immediately upstream and downstream of the originally proposed project, and to inform individuals of the change in the availability of the draft EIS for publication and circulation.

FOR FURTHER INFORMATION CONTACT: Any comments on this increase in project area should be sent to Mr. Alex Watt, U.S. Army Corps of Engineers, Los Angeles district, Programs and Project Management Division at (213) 452–3860.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–31037 Filed 11–25–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Availability of a Proposed Plan for the Formerly Utilized Sites Remedial Action Program (FUSRAP)

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: During the 1940s, 1950s, and 1960s, the Ashland 1 (including Seaway Area D) and Ashland 2 Sites became contaminated as a result of disposal and relocation of residues from uranium processing, performed in support of the nation's early atomic energy program, at the Linde Site. The sites are being addressed under the Formerly Utilized Sites Remedial Action Program (FUSRAP). In December 1989, the U.S. Department of Energy (DOE) published a Notice of Intent to complete a Remedial Investigation/Feasibility Study-Environmental Impact Statement (RI/FS–EIS) for the Tonawanda (Ashland 1, 2, Seaway D, and Linde) Site. Since the issuance of that notice, DOE established a policy in June 1994 of incorporating National Environmental Policy Act (NEPA) values into Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) documentation. In accordance with that policy, likewise, the Corps does not intend to issue a separate Environmental Impact Statement for the Tonawanda Site. The Proposed Plan summarizes the findings of the Remedial Investigation and Feasibility

Study and identifies the preferred alternative for Ashland 1 (including Seaway Area D) and Ashland 2. The preferred alternative includes: Complete Excavation with Offsite Disposal of radioactively contaminated materials that exceed the 40 picocurie per gram Thorium-230 guideline. The Administrative Record file was established to support the Remedial Investigation and Feasibility Study at Ashland 1 and Ashland 2. The Administrative Record is a compendium of documentation that is compiled progressively throughout the decision-making process. The file contains documentation that will be relied upon in issuing a Record of Decision for Ashland 1 and Ashland 2. This notice establishes a 60-day public comment period for the Proposed Plan for Ashland 1 and Ashland 2, beginning November 10, 1997 and lasting through January 9, 1998. Written comments will be accepted anytime during this comment period and both oral and written comments will be accepted at a public meeting, which is scheduled to be held 7 to 9 p.m. on December 17, 1997, at the Phillip Sheridan Building, 3200 Elmwood Avenue, Kenmore, NY.

FOR FURTHER INFORMATION CONTACT: Copies of the Proposed Plan and further information may be requested from: U.S. Corps of Engineers, FUSRAP Public Information Center, 70 Pearce Avenue, Tonawanda, NY 14150, Telephone (716) 871–9660, ATTN: Ms. Sarah Snyder. Hours are 8:00 a.m. to 5:00 p.m., Monday through Thursday, and 9:00 a.m. to noon on Friday.

SUPPLEMENTARY INFORMATION: Written comments will be accepted if postmarked by January 8 at the following address: U.S. Army Corps of Engineers, FUSRAP Public Information Center, 70 Pearce Avenue, Tonawanda, NY 14150, ATTN: Ms. Sarah Snyder.

Gregory B. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–31035 Filed 11–25–97; 8:45 am]

BILLING CODE 3710–GP–M

DEPARTMENT OF DEFENSE

Department of the Navy, DoD

Notice of Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Outfall Replacement for Wastewater Treatment Plant at Fort Kamehameha, Pearl Harbor, Oahu, Hawaii

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency a DEIS for the outfall replacement for Wastewater Treatment Plant at Fort Kamehameha, Pearl Harbor, Oahu, Hawaii.

The Navy proposes to construct a new concrete pipeline, 2.4 miles long and 42 inches in diameter, into open coastal waters to replace the existing outfall for effluent discharge from the Public Works Center, Pearl Harbor Wastewater Treatment Plant (WWTP). The present outfall discharges into the Pearl Harbor Estuary, which is classified Water Quality Limited Segment (WQLS) by the State of Hawaii. The classification limits the discharge of municipal and industrial wastewater effluents. The proposed action is needed to eliminate the discharge to the WQLS and associated future permit limitations and violations.

A Notice of Intent (NOI) to prepare the DEIS was published in the **Federal Register** on September 11, 1996. Two public scoping meetings were held on Oahu: (1) Honolulu: October 1, 1996, 7:00 p.m. to 10:00 p.m., Washington Intermediate School, 1633 South King Street and (2) Pearl Harbor: October 2, 1996, 7:00 p.m. to 10:00 p.m., Makalapa Elementary School, 4435 Salt Lake Boulevard.

The DEIS analyzes reasonable alternatives to the proposed action, such as upland disposal of treated effluent by subsurface injection, reclamation of effluent for reuse, and "no action" alternative. Based on analysis of the alternatives, the proposed action with appropriate mitigation has been presented to be the environmentally preferred alternative.

No decision on the proposed action will be made until the NEPA process has been completed.

The DEIS has been distributed to various federal, state and local agencies, local groups, elected officials, special interest groups and individuals. The DEIS is also available for review at local libraries as follows: Hawaii State Main Library, Salt Lake Moanalua Public Library, Aiea Public Library, Pearl City Public Library and Ewa Beach Public School Library, all of which are situated in the vicinity of Pearl Harbor.

ADDRESSES: The Navy will conduct a public hearing to receive oral and written comments concerning the DEIS on Wednesday, December 17, 1997, from 7:00 p.m. to 10:00 p.m., at the Radford High School Cafeteria, 4361 Salt Lake Boulevard, Honolulu.

A brief presentation will precede a request for public information and comments. Navy representatives will be available at the hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state and local agencies and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. Both oral and written statements will become part of the public record for this study. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address below.

FOR FURTHER INFORMATION CONTACT: Please provide written comments by January 9, 1998, to Mr. Gary Kasaoka, Code 231GK, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860–7300, telephone (808) 471–9338, fax (808) 474–5909, or e-mail address: gkasaoka@efdpac.navfac.navy.mil.

Dated: November 21, 1997.

Michael I. Quinn,

LCDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 97–31094 Filed 11–25–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 26, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 20, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.
Title: Longitudinal Evaluation of School Change and Performance (LESCP).
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 13,690.
Burden Hours: 45,901.
Abstract: The LESCP is being conducted in response to the legislative requirement in P.L. 103–382, Section 1501 to assess the implementation of Title I and related education reforms. The information will be used to examine changes—over a 3-year period—that are occurring in schools and classrooms. Teacher and teacher aids will complete a mail survey, and district Title I administrators, school-based staff, and parents will be interviewed during on-site field work.

Office of the Under Secretary

Type of Review: New.
Title: Local Implementation of Federal Programs.
Frequency: One time.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 3,176.
Burden Hours: 3,176.
Abstract: The Department of Education is charged with evaluating Title I of the Elementary and Secondary Education Act and other elementary and secondary education legislation enacted by the 103rd Congress. This study will collect information on the operations and effects at the district level of legislative provisions and federal assistance, in the context of state education reform efforts. Findings will be used in reporting to Congress and improving information dissemination. Respondents are local superintendents, directors of federal programs, directors of research and assessment, and school principals.

[FR Doc. 97–30974 Filed 11–25–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 26, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 20, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Applications for Assistance (sections 8002 and 8003) and State Certification Requests (section 8009)—Impact Aid.
Frequency: Annually.

Affected Public: Individuals or households; Federal Government; State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 925,698.

Burden Hours: 943,318.

Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

[FR Doc. 97–30975 Filed 11–25–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: December 18, 1997 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre Hotel located at 1143 New Hampshire Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sterling Henry, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW, the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board is established to advise on the financial stability of Historically Black Colleges and Universities, to issue an annual report to the President on HBCU participation in Federal programs, and to advise the Secretary of Education on increasing the private sector role in strengthening HBCUs.

The meeting of the Board is open to the public. The meeting will be primarily devoted to the discussion of challenges facing historically black colleges and universities.

Records are kept of all Board procedures, and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, S.W., The Portals Building, Suite 605, Washington, DC, 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: November 19, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–31043 Filed 11–25–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Availability of the Final Environmental Impact Statement on the Disposal of the S3G and D1G Prototype Reactor Plants

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has published the Final Environmental Impact Statement on the Disposal of the S3G and D1G Prototype Reactor Plants. The Final Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508); and DOE NEPA Implementing Procedures (10 CFR Part 1021). The Final Environmental Impact Statement and its supporting references are available to the public at the Saratoga Springs Public Library in Saratoga Springs and the Schenectady County Public Library in Schenectady, New York. The Final Environmental Impact Statement is also available by mail upon request.

SUPPLEMENTARY INFORMATION:

Background

The S3G and D1G Prototype reactor plants are located on the Kesselring Site near West Milton, New York, approximately 17 miles north of Schenectady. The S3G and D1G Prototype reactor plants first started operation in 1958 and 1962, respectively, and served for more than 30 years as facilities for testing reactor plant components and equipment and for training of U.S. Navy personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S3G and D1G Prototype reactor plants were shut down in May 1991 and March 1996, respectively. Since then, the S3G and D1G Prototype reactor plants have been defueled and placed in a safe and stable protective storage condition. The Kesselring Site will not be released for other uses in the foreseeable future since two active prototype reactor plants continue to operate to perform training of U.S. Navy personnel and testing of naval nuclear propulsion plant equipment.

Alternatives Considered

1. Prompt Dismantlement—Preferred Alternative

The Final Environmental Impact Statement identifies prompt dismantlement as the preferred alternative. If selected, this alternative would be subject to the availability of appropriated funding. This alternative would involve the prompt dismantlement of the S3G and D1G Prototype reactor plants. All S3G and D1G Prototype reactor plant systems, components and structures would be removed from the Kesselring Site. To the extent practicable, the resulting low-level radioactive metals would be recycled at existing commercial facilities. The remaining low-level radioactive waste would be disposed of at the DOE Savannah River Site in South Carolina. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors' sites in the eastern United States. Both the volume and radioactive content of the S3G and D1G Prototype reactor plant low-level waste fall within the projections of Naval Reactors' waste provided to the Savannah River Site, which are included in the *Savannah River Site Waste Management Final Environmental Impact Statement*, dated July 1995. For the purposes of providing an upper bound in transportation related risk analyses, transportation of low-level radioactive waste to the Hanford Site in Washington State is also evaluated. There are no current plans to ship low-level radioactive wastes from S3G and D1G Prototype reactor plant dismantlement activities to the Hanford Site. In the event that shipment of these wastes to Hanford Site becomes necessary, waste disposal plans and activities would comply with all applicable State and Federal statutes and regulations.

2. Deferred Dismantlement

The deferred dismantlement alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in protective storage for 30 years before dismantlement. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60. The very small amount of longer-lived radioisotopes, such as nickel-59, would remain and would have to be addressed during dismantlement.

3. No Action

The no action alternative would involve keeping the defueled S3G and D1G Prototype reactor plants in protective storage indefinitely. Since there is some residual radioactivity with long half-lives, such as nickel-59, in the defueled reactor plant, this alternative would leave some radioactivity at the Kesselring Site indefinitely.

4. Other Alternatives Considered

The other alternatives considered include permanent on-site disposal. Such on-site disposal could involve building an entombment structure over the S3G and D1G Prototype reactor plants or developing a below-ground disposal area at the Kesselring Site. Another alternative would be to remove the S3G and D1G Prototype reactor plants as two large reactor compartment packages for offsite disposal. Each of these alternatives was considered but eliminated from detailed analysis.

Public Comments on the Draft Environmental Impact Statement

Naval Reactors held a public hearing with two sessions on the Draft Environmental Impact Statement in Milton, New York on August 13, 1997. Comments from 14 individuals and agencies were received in either oral or written statements at the hearing or in comment letters. Approximately one-third of the commenters expressed a preference for the preferred alternative, prompt dismantlement. Two commenters favored the deferred dismantlement alternative and the remaining commenters expressed no specific preference for any of the alternatives. Public comments resulted in only minor clarifications in the Final Environmental Impact Statement. Based on U.S. Environmental Protection Agency (EPA) review of the Draft Environmental Impact Statement, EPA rated the proposed project as "LO" (Lack of Objection). All of the comments and Naval Reactors" responses are included in an appendix to the Final Environmental Impact Statement.

Preferred Alternative

Naval Reactors has identified the prompt dismantlement alternative as the preferred alternative since it is consistent with the Naval Reactors' record of managing waste efficiently and minimizing its generation. Prompt dismantlement would allow Naval Reactors to utilize an experienced work force that is presently located at the Kesselring Site. Prompt dismantlement could be accomplished safely, economically, and with a high degree of certainty that the environmental impacts would be small.

Availability of Copies of the Final Environmental Impact Statement

The Final Environmental Impact Statement has been distributed to interested Federal, State, and local agencies, and to individuals who have expressed interest. Copies of the Final Environmental Impact Statement and its supporting references are available for review at the Saratoga Springs Public Library at 49 Henry Street, Saratoga Springs, NY 12866, and at the Schenectady County Public Library at 99 Clinton Street, Schenectady, NY 12301. Requests for copies of the Final Environmental Impact Statement should be directed to Mr. A. S. Baitinger, Chief West Milton Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 1069, Schenectady, NY 12301; telephone (518) 884–1234.

Issued at Arlington, VA this 18th day of November 1997.

F. L. Bowman,

Admiral, U.S. Navy Director, Naval Nuclear Propulsion Program.

[FR Doc. 97–31073 Filed 11–25–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (FERC–511)

November 21, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 21, 1997 (62 FR 44462) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before December 26, 1997.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–511 "Application for Transfer of License."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0069. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is no change to the reporting burden. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–511 is filed in accordance with Sections 4(e), and 8(FPA). Section 4(e) of the FPA authorizes the Commission to issue licenses for construction, operation and maintenance of dams, water conduits,

reservoirs, and transmission lines or other facilities necessary for the development, transmission and utilization of power from bodies of water Congress has jurisdiction over. Section 8 of the FPA provides that the voluntary transfer of any license can only be made with the written approval of the Commission. Any successor to the licensee may assign the rights of the original licensee, but is subject to all of the conditions of the license. The information is collected in the form of a written application for transfer of a license, executed jointly by the parties to the proposed transfer. It is used by the Commission staff to determine the qualifications of the proposed transferee to hold the license, and to prepare the transfer of the license order. Respondent Description: The respondent universe currently comprises on average, 23 applicants for transfer of a hydro electric license.

6. *Estimated Burden:* 920 total burden hours, 23 respondents, 1 response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 920 hours ÷ 2,087 hours per year × $110,000 per year = $48,491.

Statutory Authority: Sections 4(e), 8 of the Federal Power Act (FPA), 16 U.S.C. 791a *et seq.*

Lois D. Cashell,

Secretary.

[FR Doc. 97–31066 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (FERC–515)

November 21, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 21, 1997 (62 FR 44463) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before December 26, 1997.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–515 "Hydropower License-Declaration of Intention."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0079. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of applicants who intend to undertake hydroelectric projects. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under commission identifier FERC–515 is filed in accordance with Sections 23(b) of the FPA. Section 23(b) of the FPA authorizes the Commission to make a determination as to whether it has jurisdiction over a proposed hydroelectric project. Section 23(b) also requires that any person intending to construct project works on a navigable commerce clause water must file a declaration of their intention to do so with the Commission. If the Commission finds the proposed project will have an impact on "interstate or foreign commerce", then the person intending to construct the project must obtain a Commission license or exemption before starting constructions. Such sites are generally on streams defined as U.S. navigation waters, and over which the Commission has jurisdiction under its authority to regulate foreign and interstate commerce. The information is collected in the form of a written application, declaring the applicant's intent and used by Commission staff to research the jurisdictional aspects of the project. This research includes examining maps and land ownership records to established whether or not there is Federal jurisdiction over the lands and waters affected by the project. A finding of non-jurisdiction by the Commission eliminates a substantial paperwork burden for an applicant who might otherwise have to file a license or exemption application.

5. *Respondent Description:* The respondent universe currently comprises on average, 10 applicants for a declaration of intention ("DI").

6. *Estimated Burden:* 800 total burden hours, 10 respondents, 1 response annually, 80 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 800 hours ÷ 2,087 hours per year × $110,000 per year = $42,166, average cost per respondent = $4,216.

Statutory Authority: Sections 23(b), of the Federal Power Act (FPA), 16 U.S.C. 617.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31067 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–011]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

November 20, 1997.

Take notice that on November 17, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective October 1, 1997 and November 1, 1997, as applicable.

CIG states that on March 29, 1996, in Docket No. RP96–190–000, it filed to implement a general rate increase applicable to its transportation and storage services. Intensive settlement discussions resulted in CIG filing on August 27, 1997, an Offer of Settlement (August 27 Settlement) which was supported or unopposed by all parties to the proceeding. CIG states it included pro forma tariff sheets as part of the August 27 Settlement. An order issued on October 16, 1997, in Docket No. RP96–190–009 approving the August 27 Settlement as a fair and reasonable resolution of the issues in the proceeding.

CIG further states that Section 2.10 of the August 27 Settlement provides for a filing to implement the terms of the August 27 Settlement on an interim basis pending Commission approval of the August 27 Settlement. On September 16, 1997, CIG filed tariff sheets to implement the August 27 Settlement on a interim basis. The tariff sheets that accompanied the interim filing were the same as the pro forma tariff sheets filed in the August 27 Settlement except they were filed as actual tariff sheets and on each of the filed tariff sheets there was a paragraph that would allow reinstatement of the superseded tariff sheet if the August 27 Settlement did not become effective.

CIG states it is filing to remove this paragraph from its tariff sheets as it is no longer necessary.

CIG states it filed on October 1, 1997, in Docket No. RP97–63–006, Sixth Revised Sheet No. 233, Second Revised Sheet No. 233A, Fifth Revised Sheet No. 234, Second Revised Sheet No. 234A and Fourth Revised Sheet No. 301. All these sheets were filed with the August 27 Settlement with the Section 2.10 paragraph included. CIG is filing substitute tariff sheets to remove this paragraph from both the interim tariff sheets and the RP97–63–006 tariff sheets.

Further, in Docket No. RP97–63–006 CIG states it incorrectly filed First Revised Sheet No. 281B, First Revised Sheet No. 281C and Original Sheet No. 281D. CIG is filing here to correct this pagination error. These sheets should have been filed in Docket No. RP97–63–006 as Second Revised Sheet No. 281B, Second Revised Sheet No. 281C and First Revised Sheet No. 281D. CIG is also filing Original Sheet No. 234D, which is the "No Notice and Firm Storage Service Reservoir Inventory Limit", which was inadvertently omitted when filing tariff sheets for Docket No. RP97–63–006. CIG states it has also reinstated nomination language referring to HUB Nominations on Second Revised Sheet No. 281B.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31006 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–87–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

November 20, 1997.

Take notice that on November 12, 1997, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP98–87–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by retirement approximately 1.1 miles of 8-inch pipeline located in Hancock County, West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act; all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to abandon a section of lateral transmission Line 306 consisting of approximately 1.1 miles of 8-inch pipeline and appurtenances in Hancock County. Columbia was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132 and Columbia has stated that there are no points of delivery from this Line 306 section. According to Columbia, the Line 306 section for which abandonment authority is requested is an uncoated, low pressure pipeline in need of replacement and cathodic protection due to its deteriorating condition. The proposed abandonment will avoid both annual operation and maintenance expenses as well as the costs of future pipeline replacement. Columbia states that these predictable and certain savings make the abandonment of this section of Line 306 the most practical and least costly alternative to Columbia without impacting Columbia's ability to render service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31001 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–91–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

November 20, 1997.

Take notice that on November 14, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–91–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 18 CFR 157.212) for authorization to construct, own, and operate a lateral and a new meter station in Pasco County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct a new meter station to serve Florida Power Corporation (FPC) at the FPC Anmclote Plant and a new lateral to extend from FGT's 30-inch West leg to the FPC Anclote Plant. The meter station is expected to accommodate the current

and future anticipated volumes of up to 100,000 MMBtu per day of natural gas. FGT estimates the cost of the construction of the proposed lateral at $13,363,000, of which amount FGT would not be reimbursed, and the construction cost related to the meter station to be $465,000, of which FGT would be reimbursed, exclusive of tax gross up.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31002 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–221–000]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

November 20, 1997.

Take notice that on November 14, 1997, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 50,000 MMBtu, not to exceed 2,000,000 MMBtu of Frontier's gas storage inventory on an "as metered" basis to Rainbow Gas Company, for term ending December 31, 1998.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commerce the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (888 First Street N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 18 CFR 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30998 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–221–000]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

November 20, 1997.

Take notice that on November 14, 1997, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of 1,000,000 MMBtu of Frontier's gas storage inventory on an "in place" basis to Rainbow Gas Company.

Under Subpart (b) of Ordering Paragraph (G) of the Commission's February 13, 1985, Order, Frontier is "authorized to consummate the proposed sale in place unless the Commission issues an order within 20 days after expiration of such notice period either directing that the sale not take place and setting it for hearing or permitting the sale to go forward and establishing other procedures for resolving the matter. Deliveries of gas sold in place shall be made pursuant to a schedule to be set forth in an exhibit to the executed service agreement."

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the **Federal Register**, file with the Federal Energy Regulatory Commission (888 First Street N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 or 18 CFR 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30999 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–157–006]

Gas Transport, Inc.; Notice of Compliance Filing

November 20, 1997.

Take notice that on November 17, 1997, Gas Transport, Inc. (GTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following substitute tariff sheets:

Effective November 1, 1993

Sub. Original Sheet No. 126
2nd Sub. Original Sheet No. 150
Sub. Original Sheet No. 203
Sub. Original Sheet No. 208
Sub. Original Sheet No. 213
Sub. Original Sheet No. 218

Effective June 1, 1997

2nd Sub. First Revised Sheet No. 195

GTI is filing 2nd Sub. First Revised Sheet No. 195 to comply with the condition in the letter order issued by the Commission on October 31, 1997, requiring GTI to revise its Interconnection Agreement to limit the scope of the terms to the Operator's obligation with respect to material changes in compressor operations that may affect delivery conditions at a receipt point.

GTI is filing the remaining tariff sheets to correct minor wording errors identified in the Commission's letter order.

GTI states that copies of this filing were served upon its jurisdictional customers and the Regulatory Commissions of the states of Ohio and West Virginia.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31008 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2674–003, Vermont]

Green Mountain Power Company; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

November 20, 1997.

The Federal Energy Regulatory Commission (Commission or FERC) received an application from the Green Mountain Power Company (Green Mountain or Applicant) to relicense the Vergennes Hydroelectric Project No. 2674–003.The 2.4-megawatt project is located on Otter Creek in the city of Vergennes, Addison County, Vermont. The Commission will hold public and agency scoping meetings on December 11, 1997, for preparation of an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) for the issuance of a major license for the project.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Thursday, December 11, 1997.
Time: From 9:00 a.m. until 12:00 p.m.
Place: Vergennes Fire Station Meeting Room.
Address: Green Street, Vergennes, Vermont.

Public Scoping Meeting

Date: Thursday, December 11, 1997.
Time: From 7:00 p.m. until 10:00 p.m.
Place: Vergennes Fire Station Meeting Room.
Address: Green Street, Vergennes, Vermont.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visits

The applicant and FERC staff will conduct a project site visit beginning at 1:00 p.m. on December 10, 1997. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Green Mountain Power Service Center, adjacent to the #9 Power House on Mechanic Street in Vergennes, Vermont. All participants are responsible for their own transportation to the side. Anyone with questions about the site visit should contact Mr. Michael Scarzello of Green Mountain at 802–660–5835.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EA; and (5) identify resource issues that are of lesser importance, and, therefore, do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record. Speaking time for attendees at the meetings will be determined before the meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. All speakers will be provided at least 5 minutes to present their views.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, until January 12, 1998. All filings should contain an original and eight copies, and must clearly show at the top of the first page "Vergennes Hydroelectric Project, FERC No. 2674–003."

For further information, please contact Lee Emery at (202) 219–2779.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31003 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–49–000]

Koch Gateway Pipeline Company; Notice of Report of Pooling Service

November 20, 1997.

Take notice that on November 14, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing its report of the pooling service after one year of operation.

Koch states that this filing is being filed in compliance with Section 8 of the Pooling Rate Schedule (PS Rate Schedule). The Commission required Koch to file a report 45 days after the first year of operating experience. Koch states that the pooling service has been implemented successfully and that no changes are being proposed for this service at this time.

Koch states that copies of the filing are being served upon each of its customers, and other interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practices and Procedure. All such motions or protests must be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31013 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–8–001]

Mississippi River Transmission Corporation; Notice of Filing

November 20, 1997.

Take notice that on November 14, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 1997:

Substitute Twenty-Third Revised Sheet No. 7

MRT states that this filing is being made to comply with the Commission's order dated October 30, 1997, in the above-referenced docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31011 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–253–004]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1997.

Take notice that on November 18, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No. 20, to be effective December 1, 1997.

Natural states that the purpose of this filing is to implement a change in the currently effective rates applicable to Rate Schedule DSS to reflect Settlement factors in accordance with a July 5, 1996, order issued in Docket Nos. RP96–253–000 and 001.

Natural requested any waivers which may be required to permit the tendered tariff sheet to become effective on December 1, 1997.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP96–253.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31007 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–82–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 20, 1997.

Take notice that on November 12, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP98–82–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install and operate a new delivery point authorized in blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery point, located in Green County, Wisconsin, which would accommodate natural gas deliveries to Wisconsin Gas Company (WGC) to be used to serve a local residential customer. Northern states that the proposed volumes to be delivered for WGC would be 1 MMBtu on a peak day and 104 MMBtu on an annual basis. Northern further states that the estimated cost of constructing the proposed delivery point would be $6,500.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31000 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–2–002]

Northern Natural Gas Company; Notice of Compliance Filing

November 20, 1997.

Take notice that on November 18, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet:

Second Substitute First Revised Sheet No. 211

Northern states that the above sheet addresses Northern's meter provisions and is being filed in compliance with the Commission's Letter Order issued December 22, 1995, in Docket No. RP96–2–001.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31005 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–51–000]

Pacific Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

November 20, 1997.

Take notice that on November 14, 1997, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Third Revised Sheet No. 72 and Original Sheet No. 72A. PGT requested waiver to allow the above-referenced tariff sheets to become effective November 15, 1997.

PGT asserts that the purpose of this filing is to modify the credit-worthiness standards for firm transportation service to provide for a waiver of standard credit requirements for shippers seeking to acquire capacity for a term of five years or less.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31014 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–50–000 and RP98–50–001]

Raton Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1997.

Take notice that on November 14, 1997, Raton Gas Transmission Company (Raton) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Tariff Sheets Nos. 4 and 18 to become effective October 1, 1997.

On November 18, 1997, Raton filed in Docket No. RP98–50–001 its filing to include a "redlined" version showing additions and deletions to its tariff.

On September 27, 1997, Raton filed First Revised Sheets Nos. 4, 10, 18, and 23 to its FERC Gas Tariff, First Revised Volume No. 1, to incorporate, in its tariff, the tariff changes made effective as of October 1, 1996 by Raton's supplier, Colorado Interstate Gas Company (CIG), pursuant to Docket No. RP96–190. By orders issued October 25 and December 24, 1996, the Commission accepted Raton's filing in Docket No. RP96–391, and allowed Raton's tariff changes to be made effective as of October 1, 1996, subject to a flow through of any refunds received from CIG upon the termination of Docket No. RP96–190.

On September 16, 1997 CIG filed revised tariff sheets incorporating the rates agreed to by all parties in the settlement of Docket No. RP96–190 and the Commission has authorized CIG to make those tariff sheets effective as of October 1, 1997. Those revised tariff sheets will provide significant reductions in the cost of the transportation services provided by CIG to Raton, and Raton proposes to pass those rate reductions on to its customers.

Raton states that Second Revised Tariff Sheets Nos. 4 and 18, submitted by Raton, incorporate CIG's charges pursuant to its revised Rate Schedules NNT–1 and TF–1, certain surcharges which have been agreed to, and the supplemental seasonal TF–1 contract, pursuant to which Raton will receive transportation service from CIG effective October 1, 1997. The charges for the off-speak seasonal FT–1 volumes will be passed through as surcharges pursuant to Section 18.5. Refunds and/or credits which Raton will receive from CIG for the period October 1, 1996 through September 30, 1997, will be flowed through to Raton's customers.

Raton states that a full copy of its filing is being served upon each of its two customers and upon the New Mexico Public Service Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31012 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–343–002]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

November 20, 1997.

Take notice that on November 17, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets set forth on Appendix A to the filing, pursuant to Section 4 of the Natural Gas Act and in compliance with the Commission's October 17, 1997, Order in Docket Nos. RP97–343–000 and 001 to become effective November 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order No. 587. 18 CFR 284.10(b). On January 3, 1997, Sea Robin made its compliance filing submitting pro forma tariff sheets to comply with Order No. 587 in Docket No. RP97–224. On March 3, 1997, the Commission issued an order in said docket in response to Sea Robin's January 3, 1997 filing, requiring Sea Robin to file to implement a pooling service on its system.

Sea Robin filed tariff sheets on April 29, 1997, setting forth the terms and conditions under which Sea Robin proposed to implement a pooling service on its system. The Commission's October 17, 1997, Order approved implementation of a pooling service on Sea Robin's system on or before July 1, 1998, and required Sea Robin to clarify references in Section 5.10(c) regarding nomination of interruptible transportation and assignment of delivery points under Pooling Service Agreements and to allow for pool to pool transfers.

The compliance sheets filed by Sea Robin established Tier I and Tier II pools consistent with the Tier I and Tier II mechanism in Southern Natural Gas Company's Tariff to facilitate pool to pool transfers. In addition, Sea Robin has clarified in Section 5.10(c) that the intended purpose of the section was to establish a shipper's right to retain its primary delivery points rights under its FTS or FTS–2 Agreement or designate such rights to the pool. Since a FTS or FTS–2 shipper's right to a primary delivery point is capacity specific, it should not have to give away such rights to the pool if it wants to retain them. If a FTS or FTS–2 shipper does not designate to the pool its rights to a primary firm point, then the pool's priority at a delivery point for purposes of capacity allocation will be established on a secondary (B–1) firm basis.

Sea Robin also made some minor changes to the tariff sheets to incorporate its Rate Schedule FTS–2 and some language in its definition section previously approved by the Commission in Sea Robin's GISB compliance proceeding in Docket No. RP97–224. Sea Robin has requested to place the tariff sheets into effect November 1, 1997; and, consistent with the terms of the October 17, 1997, Order, Sea Robin has identified on the tariff sheets that it will implement pooling service on the system no later than July 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31009 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–003]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 20, 1997.

Take notice that on November 14, 1997, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, First Revised Volume No. 1. This filing is in compliance with the Commission's Order issued October 30, 1997, in Docket No. RP97–344 at 81 FERC ¶61,118 (1997).

Substitute First Revised Sheet No. 166.
Substitute Second Revised Sheet No. 170.
Substitute First Revised Sheet Nos. 182–185

Texas Gas states that the instant filing is incorporating those changes directed by the October 30, 1997 Order, or are providing explanation where modifications have not been made.

Texas Gas requests an effective date of November 1, 1997, for the proposed tariff sheets.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers, interested state commissions, and all parties appearing on the official service list in Docket No. RP97–344.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests may be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31010 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP92–106–016 and RP92–137–049]

Transcontinental Gas Pipe Line Corporation; Notice of Report of Refunds

November 20, 1997.

Take notice on November 14, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report of refunds pertaining to refunds distributed on October 14, 1997.

Transco states that the purpose of such refund was to comply with (i) the Commission's Order on Remand issued on June 12, 1997, regarding the distribution of excess interruptible transportation (IT) revenues for the period November 1, 1993 through August 31, 1995, and (ii) the Division of Audits letter order issued January 8, 1997, regarding IT revenues related to the Spider Field lateral.

Transco states that it is serving copies of the instant filing to the State Commissions of the recipients of the refund.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31004 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–9–000, et al.]

Cobisa-Person Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

November 19, 1997.

Take notice that the following filings have been made with the Commission:

1. Cobisa-Person Limited Partnership

[Docket No. EG98–9–000]

On November 14, 1997, Cobisa-Person Limited Partnership, 820 Gessner, Suite 930, Houston, Texas, 77024, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Cobisa-Person Limited Partnership is a Delaware limited partnership. The general partners of Cobisa-Person Limited Partnership are Cobisa-Person Power Company, Inc.; Ibis Power Corporation; and Jacaranda Power Corporation. The sole limited partner of Cobisa-Person Limited Partnership is Cobisa Corporation. Cobisa-Person Limited Partnership plans to construct a nominal 106 megawatt gas and oil-fired combustion turbine in Bernalillo County, New Mexico. Electric energy produced by the Cobisa-Person Limited Partnership facility will be sold exclusively to the Public Service Company of New Mexico.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. R. Hedler and Company, Inc.

[Docket No. ER97–3056–001]

Take notice that on October 31, 1997, R. Hedler and Company, Inc., tendered for filing its revised Code of Conduct in the above-referenced docket.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER98–387–000]

Take notice that on October 30, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Allegheny Energy Solutions Inc. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Company

[Docket No. ER98–415–000]

Take notice that on October 30, 1997, Sierra Pacific Power Company (Sierra) filed a revision to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA).

Sierra states that the revision would increase the total monthly facilities charge from $132,656 to $134,556 to reflect a change in the percentage of initial capital investment used to calculate the Estimated O&M Charge. Sierra requests that the increased charge be made effective on October 31, 1997.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California, the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–433–000]

Take notice that on October 31, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business and collectively referred to as GPU Energy) submitted for filing a Service Agreement between GPU Energy and its power marketing affiliate, GPU Advanced Resources. GPU Energy requested an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PP&L, Inc.

[Docket No. ER98–434–000]

Take notice that on October 31, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 23, 1997, with GPU Advanced Resources (GPU), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds GPU as an eligible customer under the Tariff.

PP&L requests an effective date of October 31, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to GPU and to the Pennsylvania Public Utility Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Southwestern Public Service Company

[Docket No. ER98–435–000]

Take notice that on October 31, 1997, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with Avista Energy, Inc., (Avista). This umbrella service agreement provides for Southwestern's sale and Avista's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Electric Power Company

[Docket No. ER98–436–000]

Take notice that on October 31, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with New Energy Ventures, LLC. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Maine Power Company

[Docket No. ER98–437–000]

Take notice that on October 31, 1997, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with NorAm Energy Services, Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER98–438–000]

Take notice that on October 31, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a revision to Exhibit A, to Service Agreement No. 65 of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER98–439–000]

Take notice that on October 31, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Ontario Hydro (Hydro).

Cinergy and Hydro are requesting an effective date of October 7, 1997.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Old Dominion Electric Cooperative

[Docket No. ER98–440–000]

Take notice that on October 31, 1997, Old Dominion Electric Cooperative (ODEC) submitted a Filing of Form of Service Agreement for market-based sales of power by it, in compliance with the Commission's Order Conditionally Accepting for Filing Proposed Market-Based Rates and Granting Waiver of Notice Requirement that was issued on October 17, 1997, in Docket No. ER97–4313–000.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER98–442–000]

Take notice that on October 31, 1997, Tampa Electric Company (Tampa Electric), tendered for filing a letter of commitment providing for the sale of capacity and energy to the Reedy Creek Improvement District (RCID) under Service Schedule J, of the Contract for Interchange Service between them. Tampa Electric requests that the letter of commitment be made effective on January 1, 1998.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Indiana Michigan Power Company

[Docket No. ER98–444–000]

Take notice that on October 31, 1997, Indiana Michigan Power Company (I&M Power), will terminate the service that it currently provides to the City of Dowagiac, Michigan, (Dowagiac) under Federal Energy Regulatory Commission (FERC) Rate Schedule Volume No. 1 (effective date March 1, 1992), the Partial Requirements Contract between I&M Power and Dowagiac (FERC Rate Schedule, Original Volume No. 1).

I&M Power is terminating service to Dowagiac at Dowagiac's request. Dowagiac has notified I&M Power that, commencing February 28, 1998, it will purchase power from a supplier other than I&M Power.

This notice of termination has been served upon City Manager and Counsel for Dowagiac and the Michigan Public Service Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER98–446–000]

Take notice that on October 31, 1997, Commonwealth Edison Company (ComEd) submitted for filing Short-Term Firm Service Agreements with Rainbow Energy Marketing Corporation (REMC), and Aquila Power Corporation (Aquila), and a Non-Firm Service Agreement with e prime, inc. (e prime), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 8, 1997, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon REMC, Aquila, e prime, and the Illinois Commerce Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Panda Power Corporation

[Docket No. ER98–447–000]

Take notice that on October 31, 1997, Panda Power Corporation (PPC), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing pursuant to Rules 205 and 207, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective November 1, 1997.

In transactions where PPC will sell electric energy and capacity at wholesale, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. PPC may engage in

electric energy and capacity transactions as a marketer and energy and capacity transactions as a broker.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Great Bay Power Corporation

[Docket No. ER98–448–000]

Take notice that on October 31, 1997, Great Bay Power Corporation, tendered for filing a revised summary of activity for the quarter ending September 30, 1997.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER98–450–000]

Take notice that on October 31, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Interstate Power Company (Interstate).

Cinergy and Interstate are requesting an effective date of October 7, 1997.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company

[Docket No. ER98–451–000]

Take notice that on October 31, 1997, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Market Responsive Energy Inc., under Rate GSS.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER98–452–000]

Take notice that on October 31, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Tenaska Power Services Company.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Pool

[Docket No. ER98–453–000]

Take notice that on October 31, 1997, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by EnergyEXPRESS, Inc., (EnergyEXPRESS). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of EnergyEXPRESS's signature page would permit NEPOOL to expand its membership to include EnergyEXPRESS. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make EnergyEXPRESS a member in NEPOOL. NEPOOL requests an effective date of January 1, 1998, for commencement of participation in NEPOOL by EnergyEXPRESS.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L, Inc.

[Docket No. ER98–454–000]

Take notice that on October 31, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 28, 1997, with DTE Energy Trading, Inc. (DTE), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds DTE as an eligible customer under the Tariff.

PP&L requests an effective date of October 31, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to DTE and to the Pennsylvania Public Utility Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER98–455–000]

Take notice that on October 31, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated October 20, 1997, with Ohio Edison Company (OEC) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds OEC as an eligible customer under the Tariff.

PP&L requests an effective date of October 31, 1997 for the Service Agreement.

PP&L states that copies of this filing have been supplied to OEC and to the Pennsylvania Public Utility Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER98–523–000]

Take notice that on November 3, 1997, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc., (collectively referred to as Cinergy), tendered for filing an unexecuted form of Service Agreement under Cinergy's Open Access Transmission Tariff for certain retail customers who take or are eligible to take buy-through commodity service. Cinergy has requested an effective date of October 4, 1998, for the form of Service Agreement.

Copies of the filing have been served on the customers currently effected and the Indiana Utility Regulatory Commission and the Public Utilities Commission of the Ohio.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Maine Yankee Atomic Power Company

[Docket No. ER98–570–000]

Take notice that on November 6, 1997, Maine Yankee Atomic Power Company tendered for filing, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, an amendment to the power contracts for the sale of electricity for resale to ten New England utilities. Maine Yankee states that the amendment is designed to clarify the obligations of the purchasing utilities following the decision to cease power production at Maine Yankee's nuclear generating plant. Maine Yankee's filing also includes adjustments to amounts being amortized for unrecovered nuclear fuel, a revised schedule of decommissioning charges based on a new study of decommissioning costs, and adjustments to the billing for post retirement benefits other than pensions and to cease earning a current return on CWIP.

Maine Yankee states that the effects of the above adjustments would be an increase in those rate components of $5,096,102 as compared against the 1996 test year. However the projected reductions in operations and maintenance and other expenses due to the premature shutdown will result in an overall rate decrease of

approximately $60 million in 1998 as compared to the test year.

Maine Yankee states that copies of its filing have been provided to its jurisdictional customers, secondary customers and to state regulatory commissions in Connecticut, New Hampshire, Massachusetts, Maine and Rhode Island and the Office of the Public Advocate, State of Maine.

Comment date: December 2, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Indiana Michigan Power Company

[Docket No. SC98–1–000]

Take notice that on October 31, 1997, American Electric Power Service Corporation, as agent for Indiana Michigan Power Company (I&M), an operating company of the American Electric Power System, tendered for filing an estimate of, and a proposal to charge, stranded costs to the City of Dowagiac, MI (Dowagiac), through the rates for wholesale transmission service to Dowagiac, or to another Transmission Customer which serves Dowagiac, upon the termination of I&M's Municipal Resale Service (MRS) Agreement with Dowagiac. I&M requests an effective date of March 1, 1998, the day following such termination.

Copies of the filing have been served upon Dowagiac and the Michigan Public Service Commission.

Comment date: December 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31068 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project Rate Adjustment; Notice of Rate Order No. WAPA–75

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–75 and Rate Schedules for Wholesale Firm Power Service (PD–F6), Firm Transmission Service (PD–FT6), Firm Transmission Service of Salt Lake City Area Integrated Projects Power (PD–FCT6), and Nonfirm Transmission Service (PD–NFT6) placing into effect the rate methodology for determining rates for existing Parker-Davis Project (P–DP) contractors of the Western Area Power Administration (Western) on an interim basis. The rate methodology will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until superseded.

DATES: Rate Schedules PD–F6, PD–FT6, PD–FCT6, and PD–NFT6 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after November 1, 1997, and will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 59-month period, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: J. Tyler Carlson, Regional Manager, Western Area Power Administration, Desert Southwest Regional Office, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2453, or Joel K. Bladow, Assistant Administrator for Power Marketing Liaison, Room 8G–027, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5581.

SUPPLEMENTARY INFORMATION: The proposed rate methodology is the result of Western, the Bureau of Reclamation, and existing P–DP customers working together to develop a methodology that would recover the project costs and accommodate advance funding for P–DP expenses. The changes made to the P–DP rate methodology are outlined as follows. The first change concerns the Cost Apportionment Study. The study, which demonstrates the distribution of costs between generation and transmission, has been changed as follows: (1) the Priority Use Power (PUP) contractors' delivery commitments are now included in the total amounts reflected in the generation and transmission delivery commitment figures; and (2) the amount of funds to be repaid through the collection of revenues through rates is now based on the single Fiscal Year (FY) projection, instead of a projected 5-year average calculation. These changes were required so the PUP contractors can demonstrate payment of their portion of generation and transmission costs, and to accommodate the yearly reconciliation of expenses under the advance funding agreements which have been executed with the PUP contractors and are currently being negotiated with the Firm Electric Service (FES) contractors.

The second change concerns the ratesetting methodology. The new rate methodology includes the PUP contractors' delivery commitments in the calculations of the rates. This was necessary so the PUP contractors can demonstrate payment of their portion of generation and transmission costs.

The third change concerns the billing for firm electric service. Due to the separation of the transmission component from the Capacity Rate, the FES contractors will be billed a Capacity Rate of dollars per kilowatt per month, an Energy Rate of mills per kilowatthour, and a Firm Transmission Rate of dollars per kilowatt per month.

The fourth change concerns the updating of the expense and other revenue estimates for FY 1997 and the cost evaluation period of FY 1998 through FY 2002 as a result of better data.

The final change concerns the significant decrease in the transmission contract rate of delivery (CROD) used to calculate the Firm Transmission Rate, Firm Transmission Rate of Salt Lake City Area Integrated Projects (SLCA/IP) Power, and Nonfirm Transmission Rate. The decrease in the CROD resulted primarily from changes in delivery commitments.

A comparison of the existing rates and rates for FY 1998 calculated in accordance with the proposed rate methodology are as follows:

COMPARISON OF EXISTING RATES AND PROPOSED RATE METHODOLOGY RATES

	Existing Rate (FY 1995)	Proposed Rate (FY 1998) [1]	Difference
Rate Schedule:	PD–F5	PD–F6	
Firm Capacity Rate ($/kW-month)	$1.92	$0.56	($1.36)
Firm Energy Rate (mills/kWh)	1.95	1.29	(0.67)
Composite Rate (mills/kWh)	6.33	2.57	(3.76)
Rate Schedule:	PD–FT5 & PD–FCT5	PD–FT6 & PD–FCT6	
Firm Transmission Rate ($/kW-month)	$0.96	$1.08	$0.12
Firm Transmission Rate for SLCA/IP ($/kW-month)	$0.96	$1.08	$0.12
Rate Schedule:	PD–NFT5	PD–NFT6	
Nonfirm Transmission Rate (mills/kWh)	2.19	2.47	0.28

[1] New rates will be calculated in accordance with the rate schedules each year by September 1. These rates represent FY 1998 only.

The decrease in the Firm Energy Rate and Firm Capacity Rate for FY 1998 can be attributed to a large revenue carryover balance from FY 1997, the removal of the transmission component from the Firm Capacity Rate which will be billed separately, and the inclusion of the contracted energy and capacity for the PUP contractors. The increase in the Firm Transmission Rate, Firm Transmission Rate of SLCA/IP Power, and Nonfirm Transmission Rate can be attributed to a significant decrease in the CROD used to calculate these rates even though there is a large revenue carryover balance from FY 1997.

Statement of Annual Revenue Requirement

The Annual Revenue Requirement Allocated to Generation and Transmission will be based upon the net amount between the estimated expenses and other revenue as presented in the Cost Apportionment Study. The Power Repayment Study (PRS) will document these expenses and other revenue. The difference between the estimated and the actual Annual Revenue Requirement Allocated to Generation and Transmission for the rate year will be used to adjust the next year's Annual Revenue Requirement.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy (Secretary) delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

These power and transmission rates are established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. § 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved, were transferred to and vested in the Secretary, acting by and through the Administrator of Western.

Rate Order No. WAPA–75, confirming, approving, and placing the proposed rate methodology for determining rates for existing contractors from the P–DP into effect on an interim basis, is issued, and the new Rate Schedules PD–F6, PD–FT6, PD–FCT6, and PD–NFT6 will be submitted promptly to FERC for confirmation and approval on a final basis. Western is developing open access tariffs consistent with FERC Order No. 888 and intends to publish short-term rates by November 1997, and to submit long-term rates to the FERC by April 1, 1998.

Dated: November 18, 1997.

Elizabeth A. Moler,

Deputy Secretary.

Department of Energy Deputy Secretary

Order Confirming, Approving, and Placing the Parker-Davis Project Firm Power Service Rate, Firm Transmission Service Rate, and Nonfirm Transmission Service Rate Into Effect on an Interim Basis

November 1, 1997.

The rate methodology is established pursuant to Section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. § 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. § 371 et seq., as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. § 485h(c), and other acts specifically applicable to the project system involved were transferred to and vested in the Secretary of Energy (Secretary), acting by and through the Administrator of Western.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR Part 903) became effective on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW-month: Monthly charge for capacity. $/kW-season and $/kW-year are converted to a monthly rate ($ per kilowatt per month) for billing purposes.

$/kW-season: Seasonal rate for capacity ($ per kilowatt per season). This is used with the Firm Transmission Rate of Salt Lake City Area Integrated Projects power.

$/kW-year: Yearly rate for capacity ($ per kilowatt per year). This is used with the Firm Transmission Rate and the Capacity Rate.

Annual Revenue Requirement: The revenue that Western needs to meet repayment criteria, which serves as the basis for allocation between generation and transmission.

Annual Revenue Requirement Allocated to Generation: The dollar amount that has been allocated to Generation. This amount is used to calculate the Energy Rate, Capacity Rate, and Composite Rate.

Annual Revenue Requirement Allocated to Transmission: The dollar amount that has been allocated to Transmission. This amount is used to calculate the Firm Transmission Rate, Firm Transmission Rate of Salt Lake City Area Integrated Projects, and Nonfirm Transmission Rate.

Annual Energy: The total annual energy entitlement for the PUP and/or FES contractors.

Capacity Rate: Expressed in $/kW-month and applied to each kW of the FES contractor's seasonal CROD and each kW over the FES contractor's seasonal CROD, as applicable.

Energy Rate: Expressed in mills per kilowatthour (mills/kWh) and applied each billing period to each kWh of the FES contractor's monthly energy entitlement, each kWh over the FES contractor's monthly energy entitlement, and to each kWh of excess energy sold, as applicable.

CIA: Compound Interest Amortization.

Cost Apportionment Study: A study which allocates P–DP's total costs and other revenue between generation and transmission.

CROD: Contract Rate of Delivery.

Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.

DOE: Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.

FERC: Federal Energy Regulatory Commission.

FES: Firm Electric Service.

FY: Fiscal Year.

Interior: U.S. Department of the Interior.

kW: Kilowatt.

kW-month: Kilowatt-month.

kW-season: Kilowatt-season.

kW-year: Kilowatt-year.

kWh: Kilowatthour.

mills/kWh: Mills per kilowatthour—the unit of charge for energy.

NEPA: National Environmental Policy Act of 1969.

O&M: Operation and Maintenance.

P–DP: Parker-Davis Project.

Proposed Rate: A rate adjustment that the Administrator of Western recommends to the Deputy Secretary.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power Repayment Study.

PUP: Priority Use Power.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Seasonal CROD: The CROD that FES contractors are entitled to during winter season and summer season. P–DP winter season is October through February and summer season is March through September. SLCA/IP winter season is October through March and summer season is April through October.

SLCA/IP: Salt Lake City Area Integrated Projects.

Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

The new rate methodology for determining the rates for existing P–DP contractors will become effective on an interim basis beginning November 1, 1997, and remain in effect pending FERC's approval on a final basis for a 59-month period, or until superseded.

Public Notice and Comment

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR Part 903, have been followed by Western in developing the method for determining the total Annual Revenue Requirement, Annual Revenue Requirement Allocated to Generation, Annual Revenue Requirement Allocated to Transmission, Energy Rate, Capacity Rate, Firm Transmission Rate, Firm Transmission Rate of SLCA/IP Power, and Nonfirm Transmission Rate.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. Review and discussion of the rate methodology and allocating factors were conducted at several meetings with the contractors and interested parties. These meetings were held October 24, 1996, November 18, 1996, January 16, 1997, April 21, 1997, and August 8, 1997.

2. Discussion of the changes to the proposed rate methodology and resulting rates were initiated at an informal P–DP contractor meeting held on May 7, 1997, in Phoenix, Arizona. At this informal meeting, Western explained the need for a change in the estimates and methodology used to calculate the charges and rates.

3. A **Federal Register** notice was published on May 23, 1997 (62 FR 28465), officially announcing the proposed firm power rate, firm transmission rate, and nonfirm transmission rate adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation.

4. On June 3, 1997, a letter was mailed from Western to all P–DP firm power, firm transmission, and nonfirm transmission customers and other interested parties providing a copy of the P–DP Rate Brochure dated May 1997 which included a copy of the **Federal Register** notice of May 23, 1997.

5. At the public information forum held on June 10, 1997, Western and Reclamation representatives explained the proposed rate methodology, a change in the proposed billing procedures, and outlined the changes in the Annual Revenue Requirement for Rate Year 1998 in greater detail and answered questions.

6. The comment forum was held on July 14, 1997, to give the public an opportunity to comment for the record. Six persons representing customers and customer groups made oral comments.

7. On August 14, 1997, a letter was mailed from Western to all P–DP firm power, firm transmission, and nonfirm transmission customers and other interested parties providing a copy of the revised PRS and related tables. The letter stated the final proposed rates and reminder of the coming close of the comment period.

8. Six comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended August 21, 1997. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The Parker Dam Power Project was authorized by Section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1039), and the Davis Dam Project was authorized April 26, 1941, by the Acting Secretary of the Interior under provisions of the Reclamation Project Act of 1939 (43 U.S.C. 485, et seq.). The P–DP was formed by the consolidation of the two Projects under the terms of the Act of May 28, 1954 (68 Stat. 143).

Davis Dam, which creates Lake Mohave, provides regulation, both hourly and seasonally, of the water releases from Lake Mead (through Hoover Dam and Powerplant) to facilitate water delivery for downstream irrigation requirements and for water delivery beyond the boundary of the United States as required by the Mexican Water Treaty. Operation of the powerplant began in January 1951 with a generating capacity of 225,000 kW. During the period 1974–1978 the generator nameplate capacity was increased to 240,000 kW by rewinding the generator stators.

Construction of Parker Dam was authorized for the purposes of controlling floods, improving river navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof, for the reclamation of public lands and Indian reservations, and for other beneficial uses, and for the generation of electric energy as a means of making the P–DP a self-supporting and financially solvent undertaking.

Parker Dam was constructed by the Bureau of Reclamation (Reclamation) with funds advanced by the Metropolitan Water District of Southern California (MWD). Lake Havasu, the reservoir created behind Parker Dam, serves as the forebay from which water is diverted into the MWD aqueduct. The aqueduct delivers a major portion of California's entitlement of Colorado River water to southern California and is the diversion point for delivering Central Arizona Project water to Arizona. The reservoir operation is limited to minor storage fluctuations.

The dam provides a head of approximately 75 feet for the Parker Powerplant. Reclamation began operation of Parker Powerplant in December 1942. Although the total generator nameplate capacity is 120,000 kW, the powerplant capacity is essentially limited to 104,000 kW because of operating constraints of downstream physical structures, primarily Headgate Rock Dam. Under contract, MWD is entitled to one-half of the net energy generated by Parker Powerplant at any given time.

All facilities of the P–DP were operated and maintained by Reclamation until the formation of the Department of Energy pursuant to the Department of Energy Organization Act (DOE Act), 42 U.S.C. Sections 7101 et seq., enacted by Congress on August 4, 1977. Pursuant to Section 302 of the DOE Act (42 U.S.C. 7152), responsibility for the power marketing functions of Reclamation, including the construction, operation, and maintenance of substations, transmission lines and attendant facilities was transferred to the Department of Energy. The responsibility for operation and maintenance of the dams and powerplants remains with Reclamation.

Power Repayment Studies

A PRS is prepared each FY to determine if power revenues will be sufficient to repay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, Section 12b, requires that:

In addition to the recovery of the above costs (operation and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects, or States.

Existing and Provisional Rates

A comparison of the existing rates and rates for FY 1998 calculated in accordance with the provisional rate methodology are as follows:

COMPARISON OF EXISTING RATES AND PROPOSED RATE METHODOLOGY RATES

	Existing Rate (FY 1995)	Provisional Rate (FY 1998) [1]	Percent Change (%)
Firm Power Service Rate Schedule:	PD–F5	PD–F6	
Capacity Rate ($/kW/month)	$1.92	$0.56	−70.83
Energy Rate (mills/kWh)	1.95	1.29	−34.36
Composite Rate (mills/kWh)	6.33	2.57	−59.40
Firm Transmission Service Rate Schedule:	PD–FT5	PD–FT6	
Firm Transmission Charge ($/kW-month)	$0.96	$1.08	12.50
Firm Transmission Charge for SLCA/IP ($/kW-month)	$0.96	$1.08	12.50
Nonfirm Transmission Service Rate Schedule:	PD–NFT5	PD–NFT6	
Nonfirm Transmission Charge (mills/kWh)	2.19	2.47	12.79

[1] New rates will be calculated in accordance with the rate schedules each year by September 1. These rates represent FY 1998 only.

Certification of Rate

Western's Administrator has certified that the rate methodology for determining the P–DP firm power rate, firm transmission rate, transmission service SLCA/IP rate, and nonfirm transmission rate, placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The rate methodology has been developed in accordance with administrative policies and applicable laws.

Discussion

Western is requesting approval to place into effect a ratesetting methodology that will be used each year to calculate the total Annual Revenue Requirement, Annual Revenue Requirement Allocated to Generation, Annual Revenue Requirement Allocated to Transmission, Capacity Rate, Energy Rate, Firm Transmission Rate, Firm Transmission Rate of SLCA/IP Power, and Nonfirm Transmission Rate. For FY 1998, the ratesetting methodology produces a decrease in the firm power rates for capacity and energy, and a rate increase for firm and nonfirm transmission service for the P–DP on an interim basis. Five major changes to the rate methodology are affecting these rates for the P–DP.

The first change concerns the Cost Apportionment Study. The study, which demonstrates the distribution of

costs between generation and transmission, has been changed as follows: (1) the PUP contractors' delivery commitments are now included in the total amounts reflected in the generation and transmission delivery commitment figures; and (2) the amount of funds to be repaid through the collection of revenues through rates is now based on the single FY projection, instead of a projected 5-year average calculation. These changes were required so the PUP contractors can demonstrate payment of their portion of generation and transmission costs, and to accommodate the yearly reconciliation of expenses under the advance funding agreements which have been executed with the PUP contractors and are currently being negotiated with the FES contractors.

The second change concerns the ratesetting methodology. The new rate methodology includes the PUP contractors' delivery commitments in the calculations of the rates. This was necessary so the PUP contractors can demonstrate payment of their portion of generation and transmission costs.

The third change concerns the billing for FES. Due to the separation of the transmission component from the Capacity Rate, the FES contractors will be billed a Capacity Rate of dollars per kilowatt per month, an Energy Rate of mills per kilowatthour, and a Firm Transmission Rate of dollars per kilowatt per month.

The fourth change concerns the updating of the expense and other revenue estimates for FY 1997 and the cost evaluation period of FY 1998 through FY 2002 as a result of better data.

The final change concerns the significant decrease in the transmission CROD used to calculate the Firm Transmission Rate, Firm Transmission Rate of Salt Lake City Area Integrated Projects Power, and Nonfirm Transmission Rate. The decrease in the CROD resulted primarily from changes in delivery commitments.

With these changes to the existing methodology, the proposed rate methodology will yield annual revenues sufficient to satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2. The existing Annual Revenue Requirement and Annual Revenue Requirement for FY 1998 for the P-DP are as follows:

	Estimated Revenue (Rounded to Nearest $1,000)	
	Existing	FY 1998
Annual Revenue Requirement	$28,522	$25,036
Annual Revenue Requirement for Generation	4,495	3,459
Annual Revenue Requirement for Transmission	24,027	21,577

Statement of Revenue and Related Expenses

The Annual Revenue Requirement for Generation and the Annual Revenue Requirement for Transmission are based upon a ratebase PRS and a Cost Apportionment Study which estimates the annual costs less other revenues. The following table provides a summary of revenue and expense data through the 5-year period FY 1998–FY 2002 at the provisional rates, compared to the 5-year period FY 1996–FY 2000 at the current rates.

PARKER-DAVIS PROJECT COMPARISON OF 5-YEAR RATE PERIOD REVENUES AND EXPENSES

[$1,000]

	Current Rate PRS 1996–2000	Provisional Rate PRS 1998–2002	Difference
Total Revenues	$180,212	$189,728	$9,516
Revenue Distribution:			
O&M	114,874	123,447	8,573
Purchased Power	4,500	2,170	(2,330)
Other	1,017	769	(248)
nterest	56,452	58,342	1,890
Investment Repayment	3,014	3,496	482
Capitalized Expenses Repayment	355	$1,504	1,149
Total	180,212	189,728	9,516

Basis for Rate Development

The rates are calculated using the Annual Revenue Requirement for Generation and the Annual Revenue Requirement for Transmission as calculated in the Cost Apportionment Study. As a result of this study for FY 1998, 86.18 percent of the P-DP costs are to be recovered from the firm transmission service, while the remaining 13.82 percent of the costs are to be recovered from firm power and PUP service. The rate design consists of seven steps.

1. The data in the Cost Apportionment Study is updated yearly with the latest (1) approved budget plans for the next 5 years, (2) principal and interest payments derived from the PRS for the next 5 years, (3) estimate of other revenue, (4) number of electric service and transmission contractors for the next 5 years, (5) amount of energy commitments for the next 5 years, (6) amount of CROD for the next 5 years, (7) amount of in-service investments in the plant accounts since 1987, and (8) 5-year historical capitalized movable property expense data.

2. From the Cost Apportionment Study, the Annual Revenue Requirement Allocated to Generation and Transmission is derived on a yearly basis.

3. The firm transmission rate is developed by dividing the Annual Revenue Requirement Allocated to Transmission by the average monthly billing CROD, rounded to the penny, to determine the yearly rate. The monthly billing rate is equal to the yearly rate divided by 12, rounded to the penny. Transmission sales include the contracted transmission capacity with the firm transmission service customers, FES customers, and PUP customers.

4. The Capacity Rate, Energy Rate, and the Composite Rate are calculated. The Capacity Rate is calculated by taking 50 percent of the Annual Revenue Requirement Allocated to Generation divided by the sum of the Average Monthly Billing CROD for the PUP contractors and FES contractors, rounded to the penny, to determine the yearly rate. The monthly billing rate is equal to the yearly rate divided by 12, rounded to the penny.

The Energy Rate is calculated by taking 50 percent of the Annual Revenue Requirement Allocated to Generation divided by the sum of the Annual Energy obligation for the PUP contractors and the Annual Energy obligation for the FES contractors, rounded to two decimal places.

The composite rate is calculated by taking the Annual Revenue Requirement Allocated to Generation divided by the sum of the Annual Energy obligation for the PUP contractors and the Annual Energy obligation for the FES contractors, rounded to two decimal places.

5. The firm transmission rate for delivery of SLCA/IP power is determined by dividing the firm transmission service rate in half, rounded to the penny to determine the seasonal rate. The monthly billing rate is equal to the seasonal rate divided by six, rounded to the penny.

6. The nonfirm transmission rate is calculated by taking the firm transmission rate yearly rate divided by the product of 8,760 multiplied by 60 percent with the result multiplied by 1,000, rounded to two decimal places.

7. The FES contractors are billed monthly an energy charge, a capacity charge, and a transmission charge. The contractor's monthly energy charge is equal to the contractor's monthly energy entitlement multiplied by the energy rate. The contractor's monthly capacity charge is equal to the contractor's seasonal billing CROD multiplied by the monthly capacity rate. The contractor's monthly transmission charge is equal to the contractor's seasonal billing CROD multiplied by the monthly firm transmission rate.

Comments

During the 90-day comment period, Western received six written comments either requesting information or commenting on the rate adjustment. In addition, six persons commented during the July 14, 1997, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

R. W. Beck, Arizona Public Service Company, Overton Power District No. 5 and Valley Electric Association, Irrigation & Electrical Districts Association of Arizona, K. R. Saline & Associates, and Citizens Utilities Company.

Representatives of the following organizations made oral comments:

Arizona Power Authority, Citizens Utilities Company and Arizona Public Service Company, Salt River Project, Irrigation & Electrical District Association of Arizona and the City of Needles, CA, Overton Power District No. 5, Valley Electric Association, and the Town of Fredonia, AZ, and K. R. Saline & Associates.

The comments received at the public meetings and in correspondence dealt with (1) the development of better allocators for apportioning the costs and other revenues between generation and transmission; (2) the finalization of budget estimates and what costs should go into those estimates; (3) the changes in contract relationships with contractors and their effect on the rates; and (4) the use of the PRS. The comments and responses, paraphrased for brevity, are discussed below. Direct quotes from comment letters are used for clarification where necessary.

Issue: A contractor commented that the "customer allocator" used in the Cost Apportionment Study does not sufficiently provide for a direct relationship between cost-causation and the recovery of expenses through rates. The customer requests serious consideration of this issue be addressed in the future.

Response: Western has given this issue serious consideration during this rate process and will continue to examine this issue during the next rate process. Additional information concerning the allocation factors is discussed below.

Issue: A customer commented that a reexamination of the cost allocation factors would not be cost beneficial and would result in only a minor change to the overall allocation percentages.

Response: At this time, Western cannot predict what the effect to the overall allocation percentages would be upon reexamination of the cost allocation factors. With the overall revenue requirement for the P–DP approaching $30 million, even a minor change to the overall allocation percentages may significantly affect some of Western's smaller customers.

Issue: A comment was made that the public comment period be continued for an additional 30 to 60 days in order to further review the cost allocation factors and to analyze the allocation of Western's operation expenses.

Response: At a meeting held with contractors and interested parties on January 16, 1997, it was agreed the cost allocation factors, as they currently exist, remain functional and that a better process does not exist. However, it was also agreed the allocation factors may be revisited during future rate processes. At another meeting with the contractors and interested parties held on August 8, 1997, it was once again agreed the current rate process move forward using the allocation factors that were documented and approved during the last rate process and reaffirmed during this current rate process. Once again it was agreed the cost allocation methods be reexamined during the next rate process.

Issue: A customer commented that Western review its current policies or develop new processes to mitigate the rate impacts to remaining customers when it enters new relationships with existing customers.

Response: Western will continue to seek to improve on existing procedures or develop new processes that will meet Western's legislated mandates in a fair and equitable manner. Furthermore, Western will continue to pursue sound business practices that produce the lowest possible rate to the extent possible.

Issue: A customer stated that staffing levels, below authorized levels, allowed a large portion of the projected current year carryover and suggested that Western perform a thorough review of its staffing requirements and provide supporting evidence to its customers of any increased staffing over current levels.

Response: Western is nearing completion of a transformation process that began in 1995 and is expected to be complete by June of 1998. The recommended staffing level was a result of a detailed and in-depth analysis that evaluated all of Western's processes and recommended the most effective and efficient staffing levels to meet Western's needs. Any variation from those levels would require another in-depth analysis. Western will continue to evaluate all processes for continuous improvement and will make adjustments to staffing levels as necessary to meet changing requirements.

Issue: A customer commented a review of the cost allocation of the Conservation and Renewable Energy Program costs be conducted and that these costs are not transmission related and should be allocated to generation.

Response: It is intended the allocation of the Conservation and Renewable Energy Program be reviewed during the next rate process.

Issue: A customer suggested that Western review the methodology used to allocate multiproject costs and general Western administration costs. Furthermore, another customer commented that FTE data should be based on actual staff levels, not authorized positions, and where possible, the use of direct allocations to responsible projects.

Response: The methodology for allocating multiproject costs was published in a report developed in cooperation with the DSW customers. A meeting was held with DSW customers in March 1997 to review the methodology for allocating multiproject costs. During that meeting, minor adjustments to the methodology were recommended and are in the process of being implemented. Western will continue to review the methodology to seek improvements. Any changes to the methodology will be done in a joint customer forum.

The method for distributing general Western administration costs is a Western-wide methodology that was implemented after a review of Western's operations by the firm of Deloitte and Touche. Any change to this

methodology would require involvement of all offices throughout Western, and involvement of Western's auditors.

Issue: A customer commented on a recent disclosure by Western that certain pension costs may be included in future rate processes and is of the opinion that these costs not be included for repayment unless legislatively mandated.

Response: Western will record the costs for pension and health benefits in the 1997 financial statements. However, the inclusion of these costs in the PRS will depend upon the outcome of a final decision on Western's legal authority to include these costs in the rate base.

Issue: A customer commented about waiting for several years for Reclamation's commitment to develop a 10-year planning process for Parker-Davis.

Response: Reclamation has begun to develop and implement its 10-year planning process for the Parker-Davis Project and intends for it to be a useful and beneficial process for obtaining customer comments and feedback.

Issue: A customer commented on the need to review the program function of the PRS and on the possibility of developing a more efficient tool for implementing the PRS function.

Response: Western remains open to implementing more efficient and effective processes in the best interests of the customers. Continual improvement of the PRS program is a goal and customer feedback is always welcome. In the forthcoming fiscal year, Western will once again look for ways to implement changes to the PRS program that provides for more efficient output.

Issue: A customer commented on the potential for large rate swings from year to year now that the rates for the Parker-Davis Project are being calculated on an annual basis and no longer on a 5-year average.

Response: The calculation of the rate on an annual basis performs two very critical functions. It allows for a synchronization of the costs shown in the Cost Apportionment Study with those in the PRS and it enables Western to perform an annual cost reconciliation to the Cost Apportionment Study without causing a divergence to the data in the PRS. In order to mitigate potential surprises to the customers in the 5-year out period, Western will continue to project the rates for those years thereby allowing contractors to adequately budget for those future costs or to mitigate those costs by providing feedback through Western and Reclamation's 10-year planning process.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Availability of Information

Information regarding this rate adjustment, including PRSs, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Desert Southwest Regional Office, Western Area Power Administration, Office of the Assistant Regional Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 85009; and Office of the Assistant Administrator for Power Marketing Liaison, Room 8G–027, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission

The rate herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis. Western is developing open access tariffs consistent with FERC Order No. 888 and intends to publish short-term rates by November 1997, and submit long-term rates to the FERC by April 1, 1998.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective November 1, 1997, Rate Schedules PD–F6, PD–FT6, PD–FCT6, and PD–NFT6 for the Parker-Davis Project. The rate schedule shall remain in effect on an interim basis, pending Federal Energy Regulatory Commission confirmation and approval of it or a substitute rate on a final basis, through September 30, 2002.

Dated: November 18, 1997.

Elizabeth A. Moler,

Deputy Secretary.

[Rate Schedule PD–F6; (Supersedes Schedule PD–F5)]

Schedule of Rates for Wholesale Firm Power Service

Effective: The first day of the first full billing period beginning on or after November 1, 1997, and remaining in effect through September 30, 2002, or until superseded, whichever occurs first.

Available: In the marketing area serviced by the Parker-Davis Project (P–DP).

Applicable: To the existing wholesale power customers for firm power service supplied through one meter at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Charge: Energy Charge. Each Contractor shall be billed monthly an energy charge. This charge is equal to the Contractor's monthly energy entitlement multiplied by the Energy Rate (rounded to the penny). The Energy Rate shall be equal to 50 percent of the Annual Revenue Requirement Allocated to Generation divided by the sum of the Annual Energy entitlement to the P–DP Priority Use Power Contractors and the Annual Energy entitlement to the P–DP Firm Electric Service Contractors, rounded to two decimal places.

Capacity Charge: Each Contractor shall be billed monthly a capacity charge. This charge is equal to the Contractor's Seasonal Billing Contract Rate of Delivery (CROD) multiplied by the Capacity Rate, rounded to the penny. The Capacity Rate shall be equal to 50 percent of the Annual Revenue Requirement Allocated to Generation divided by the sum of the Average Monthly Billing CROD for the P–DP Priority Use Power Contractors and P–DP Firm Electric Service Contractors that is then divided by 12, rounded to the penny.

Transmission Charge. Each Contractor shall be billed monthly a transmission charge equal to the Contractor's Seasonal Billing Contract Rate of Delivery (CROD) multiplied by the rate calculated in accordance with PD–FT6, rounded to the penny.

Billing of Excess Energy: For each billing period in which there is excess energy available, offered, and delivered to the Contractor, such excess energy purchases shall be billed at the Energy Rate.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the CROD, energy, and/or transmission obligations, such overruns shall be billed at 10 times (1) the Energy Rate for energy overruns, (2) the Capacity Rate for CROD overruns, and (3) the P–DP Firm Transmission Rate, then in effect as it may be amended, for transmission overruns.

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: The customer will normally be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

[Rate Schedule PD–FT6; (Supersedes Schedule PD–FT5)]

Schedule of Rate for Firm Transmission Service

Effective: The first day of the first full billing period beginning November 1, 1997, and remaining in effect through September 30, 2002, or until superseded, whichever occurs first.

Available: Within the marketing area served by the Parker-Davis Project (P–DP).

Applicable: To existing firm transmission service customers where capacity and energy are supplied to the P–DP system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Transmission Service Charge: Each Contractor shall be billed a dollar per kilowatt per year rate for each kilowatt at the point of delivery, established by contract, payable monthly at a dollar per kilowatt per month rate. The yearly rate is equal to the Annual Revenue Requirement Allocated to Transmission divided by the Average Monthly Billing Contract Rate of Delivery, rounded to the penny. The monthly billing rate is equal to the dollar per kilowatt per year rate divided by 12, rounded to the penny.

Adjustments: For Reactive Power. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns. For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm transmission obligations, such overrun shall be billed at 10 times the above rates.

[Rate Schedule PD–FCT6; (Supersedes Schedule PD–FCT5)]

Schedule of Rate for Firm Transmission Service of Salt Lake City Area Integrated Projects Power

Effective: The first day of the first full billing period beginning on or after November 1, 1997, and remaining in effect through September 30, 2002, or until superseded, whichever occurs first.

Available: Within the marketing area served by the Parker-Davis Project (P–DP) transmission facilities.

Applicable: To existing Salt Lake City Area Integrated Projects (SLCA/IP) southern division customers where SLCA/IP capacity and energy are supplied to the P–DP system by the Colorado River Storage Project (CRSP) at points of interconnection with the CRSP system and for transmission and delivery on a unidirectional basis, less losses, to southern division customers at points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract. .

Monthly Rate: Transmission Service Charge: Each Contractor shall be billed a dollar per kilowatt per seasonal rate for each kilowatt at the point of delivery, established by contract, payable monthly at a dollar per kilowatt per month rate. The seasonal rate is equal to the P–DP Firm Transmission Rate then in effect as it may be amended divided by 2, rounded to the penny. The monthly billing rate is equal to the dollar per kilowatt per season rate divided by six, rounded to the penny.

Adjustments: For Reactive Power. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Billing for Unauthorized Overruns. For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm transmission obligations, such overrun shall be billed at 10 times the above rates.

[Rate Schedule PD–NFT6; (Supersedes Schedule PD–NFT5)]

Schedule of Rate for Nonfirm Transmission Service

Effective: The first day of the first full billing period beginning on or after November 1, 1997, and remaining in effect through September 30, 2002, or until superseded, whichever occurs first.

Available: Within the marketing area serviced by the Parker-Davis Project (P–DP) transmission facilities.

Applicable: To existing nonfirm transmission service customers where capacity and energy are supplied to the P–DP system at points of interconnection with other systems, transmitted subject to the availability of the transmission capacity, and delivered on a unidirectional basis, less losses, to points of delivery on the P–DP system specified in the service contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Monthly Rate: Nonfirm Transmission Service Charge: Each Contractor shall be billed monthly a mills per kilowatthour rate of scheduled or delivered kilowatthours at point of delivery, established by contract, payable monthly. This rate is equal to P–DP Firm Transmission dollar per kilowatt-year rate then in effect as it may be amended divided by (8,760 multiplied by 0.60) multiplied by 1,000, rounded to two decimal places.

Adjustments: For Reactive Power. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Capacity and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 97–31074 Filed 11–25–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–1]

Agency Information Collection Activities: Proposed Collection; Emergency Clearance Request; Comment Request; Four Private Party Anecdotal Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA has submitted an emergency clearance request for the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Four Private Party Anecdotal Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters, EPA ICR Number 1837.01. The emergency clearance request has been submitted for emergency processing within 14 days after publication in the **Federal Register**. During this time period, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Please submit comments on or before December 10, 1997.

ADDRESSES: U.S. Environmental Protection Agency, Office of Site Remediation Enforcement, 401 M Street, SW (MC 2273A), Washington, DC 20460. Interested persons may contact Elisabeth Freed at (202) 564–5117 for a copy of the ICR or see the EPA ICR website at http://www.epa.gov/icr. Refer to ICR Number 1837.01.

FOR FURTHER INFORMATION CONTACT: Elisabeth Freed, Office of Site Remediation Enforcement, Policy and Program Evaluation Division, (202) 564–5117, (202) 564–0093 (fax), freed.elisabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are non-government parties at sites where Prospective Purchaser Agreements and Comfort/Status Letters have been issued, or at sites where they have been sought, but not obtained. These parties may include, but are not limited to, lending officials, developers, and attorney representatives of parties to the site.

Title: Four Private Party Anecdotal Surveys Regarding Prospective Purchaser Agreements and Comfort/Status Letters, EPA ICR Number 1837.01, [Proposed Information Collection]

Abstract: In 1995, EPA issued guidance and policies concerning the use of Prospective Purchaser Agreements and Comfort/Status Letters. (See Guidance on Settlements with Prospec-tive Purchasers of Contaminated Property, published in May of 1995 and Policy on the Issuance of Comfort/Status Letters, published in November of 1996). Since that date, EPA has entered into 66 Prospective Purchaser Agreements and issued more than 200 Comfort/Status Letters. OSRE will use four anecdotal surveys to collect information from private parties (non-govern-ment personnel) at sites where Prospective Purchaser Agreements and Comfort/Status Letters have been issued, or where they have been sought but not obtained. OSRE will use the information collected to evaluate the effectiveness of the guidance on Prospective Purchaser Agreements and the Comfort/Status Letter policy. Responses to this information collection are strictly voluntary, and the information collection is a one-time effort. OSRE will ensure the confidenti-ality of the responses to the information collection by employing contractor support to collect the information and by limiting access to individual responses to EPA personnel overseeing the information collection. Using contractors to collect the information through telephone surveys is expected to increase the candor of the responses. Contractors will transcribe responses onto survey forms and will assist in compiling and analyzing the information. Only EPA personnel overseeing this information collection will have access to individual responses. All other personnel, as well as other interested parties, will be limited to examining only compiled summaries of data. This process will safeguard the confidentiality of the information. All contractors involved in the information collection have signed non-disclosure statements and Conflict of Interest assessments. These documents ensure that the contractors have examined the information collection assignment for possible conflicts of interest and have found none. They also ensure that contractors will not reveal any information they collect while conducting the surveys. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This information collection is estimated to cost $28,882 and take 1048 hours. Note that although four survey instruments will be used in this information collection, each respondent will be asked to respond to only one survey instrument. Which instrument they will receive will be determined by their site type (site type is defined as participant or non-participant) and whether a Prospective Purchaser Agreement or a Comfort/Status Letter was involved at the site. There will be approximately 600 respondents, with an average response time of 36 minutes. This is a one-time information collection, and participation is strictly voluntary. Of the anticipated 1048 hours required for the information collection, 650 are estimated as EPA burden, and 398 are estimated as respondent burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 20, 1997.

Leslie A. Jones,

Acting Branch Chief of Site Remediation Enforcement, Policy Guidance Branch.

[FR Doc. 97–31141 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–8]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Approval of a Notification of Intent to Certify Equipment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Agency Certification of Equipment for the Urban Bus Retrofit/Rebuild Program.

SUMMARY: The Agency received a notification of intent to certify equipment signed March 11, 1997 from Nelson Industries, Inc., Nelson Division (Nelson) with principal place of business at 1801 Highway 51 West, P.O. Box 428, Stoughton, WI, 53589 for certification of urban bus retrofit/rebuild equipment pursuant to 40 CFR 85.1401 through 85.1415. The equipment is applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-stroke/cycle engines originally installed in urban buses from model year 1979 to model year 1993, excluding the DDC 6L71TA 1990 model year engines, all alcohol fueled engines, and models which were manufactured with particulate trap devices. In addition, the equipment is applicable to engines which have been previously rebuilt using the certified DDC 6V92TA MUI or DDECII upgrade kits.[1] On July 11, 1997, EPA published a notice in the **Federal Register** that the notification had been received and made the notification available for public review and comment for a period of 45-days (62 FR 37228). EPA received no comments in response to that **Federal Register** notice. Subsequently, EPA has completed its review of this notification, and the Director of the Engine Programs and Compliance Division has determined that it meets all the requirements for certification. Accordingly, EPA certified this equipment in a letter to Nelson Industries dated October 14, 1997.

The certified equipment provides 25 percent or greater reduction in exhaust emissions of particulate matter (PM) for the engines for which it is certified. In addition, this equipment is certified as complying with a life cycle cost limit of $2,000 or less (in 1992 dollars).

The Nelson notification, as well as other materials specifically relevant to it, are contained in Public Docket A–93–42, category XIX, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located in room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

DATES: The effective date of certification is October 14, 1997, established in a letter from EPA to Nelson Industries. This certified equipment may be used immediately by urban bus operators. The impact of this certification on transit operators is discussed in more detail in section IV of today's notice.

FOR FURTHER INFORMATION CONTACT: Tom Stricker, Engine Compliance Programs Group, Engine Program and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Telephone: (202) 564–9322.

SUPPLEMENTARY INFORMATION:

I. Background

By a notification of intent to certify signed March 11, 1997, Nelson applied for certification of equipment applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-cycle engines originally installed in an urban bus from model year 1979 to model year 1993, excluding the DDC 6L71TA 1990 model year engines and models which were manufactured with particulate trap devices or alcohol fueled. In addition, Nelson requested certification for engines rebuilt using the certified DDC 6V92TA MUI or DDECII upgrade kits when the CEM is installed at the same time as the DDC rebuild kit. The notification of intent to certify states that the equipment being certified is a catalytic exhaust muffler (Nelson converter), packaged as a direct replacement for the muffler. The application demonstrates that the candidate equipment provides a 25 percent or greater reduction in emissions of particulate matter (PM) for petroleum fueled diesel engines relative to an original engine configuration with no after treatment installed. Certification is applicable to engines that are rebuilt to original specifications, or in-use engines that are not rebuilt at the time the Nelson converter is installed provided the engine is calibrated to meet the original manufacturer's specifications and meets engine oil consumption limits specified by Nelson. According to Nelson, a 6-cylinder engine that uses more than one-and-a-half quarts of oil per 10 hours of operation, or an 8-cylinder engine that uses more than 2.0 quarts of oil per 10 hours of operation, must be rebuilt. The Nelson Converter is certified for use on engines rebuilt using new DDC certified rebuild kits only in those instances where the Nelson converter is installed at the same time the DDC rebuild kit is installed on the engine.

Using engine dynamometer testing in accordance with the Federal Test Procedure for heavy-duty diesel engines, Nelson documented a 53% PM reduction for the test engine retrofit with the Nelson Converter compared to a standard rebuild. The test engine with the certified retrofit equipment installed complies with applicable Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), and smoke emissions in addition to demonstrating reductions in PM exhaust emissions.

Table A below lists the engine models covered by this certification, and the PM level to which each model is certified. The Nelson equipment is certified to reduce PM emissions by 25 percent. The certification level (shown as "PM Level with Converter" in Table A) represents a 25 percent reduction in PM emissions compared to the pre-rebuild PM level shown in the table at 40 CFR Section 85.1403(c)(1)(iii)(A).

TABLE A.—CERTIFICATION LEVELS

Engine models	Model year	PM level with converter	Code	Family
6V92TA MUI[2]	1979–87	0.38	All	All.

[1] The DDC 6V92TA MUI upgrade kit was certified by EPA on October 2, 1995 (60 FR 51472). The DDC 6V92TA DDECII upgrade kit was certified by EPA on July 19, 1996 (61 FR 37738).

TABLE A.—CERTIFICATION LEVELS—Continued

Engine models	Model year	PM level with converter	Code	Family
	1988–1989	0.23	All	All.
6V92TA DDEC I	1986–89	0.23	All	All.
6V92TA DDEC II [3]	1988–91	0.23	All	All.
1992–93	0.19	All	All.	
6V71N	1973–87	0.38	All	All.
6V71N	1988–89	0.38	All	All.
6V71T	1985–86	0.38	All	All.
8V71N	1973–84	0.38	All	All.
6L71TA	1988–89	0.23	All	All.
6L71TA DDEC	1990–91	0.23	All	All.
8V92TA	1979–87	0.38	All	8V92TA.
	1988	0.29	All	
8V92TA.				
8V92TA–DDEC	1988	0.31	All	8V92TA–DDEC II.
8V92TA	1989	0.35	9E70	KDD0736FWH9.
8V92TA	1989	0.29	9A90	KDD0736FWH9.
8V92TA	1989	0.26	9G85	KDD0736FWH9.
8V92TA DDEC	1989	0.31	1A	KDD0736FZH4.
8V92TA	1990	0.35	9E70	LDD0736FAH9.
8V92TA DDEC	1990	0.37	1A	LDD0736FZH3.
8V92TA DDEC	1991	0.19	1A or 5A	MDD0736FZH2.
8V92TA DDEC	1992–93	0.16	1D	NDD0736FZH1 & PDD0736FZH X.
8V92TA DDEC	1992–93	0.22	6A	NDD0736FZH 1 & PDD0736FZH X.
8V92TA DDEC	1992–93	0.15	5A	NDD0736FZH 1 & PDD0736FZHX.
8V92TA DDEC	1992–93	0.19	1A	NDD0736FZH 1 & PDD0736FZHX.

[2] For 6V92TA MUI models that are rebuilt using a certified DDC emissions retrofit kit, Nelson is certifying the PM engine emissions to a level of 0.22 g/bhp-hr for the 1979 to 1987 models and to a level of 0.17 g/bhp-hr for the 1988–1989 models provided the Nelson converter is installed at the same time the rebuild with the DDC upgrade takes place. The DDC 6V92TA MUI upgrade kit certification notification was published in the **Federal Register** on October 2, 1995 (60FR51472).

[3] For the 6V92TA DDECII models that are rebuilt using a certified DDC emissions retrofit kit, Nelson is certifying the PM engine emissions to a level of 0.17 g/bhp-hr for 1988–1990 models provided the Nelson converter is installed at the same time the rebuild with the DDC upgrade takes place. The DDC 6V92TA DDECII upgrade kit certification notification was published in the **Federal Register** on July 19, 1996 (61 FR 37738).

Note: The original PM certification levels for the 1991 6V92TA DDEC II, 6LV71TA DDEC and 8V92TA DDEC engine models are based on Federal Emission Limits (FELs)under the averaging, banking and trading program. These limits are higher than the 1991 PM standard of 0.25 g/bhp-hr. The PM level listed in this table for the engines that are equipped with the Nelson converter provide at least a 25% reduction from the original certification levels. The 1992 to 1993 6V92TA DDEC II and 8V92TA DDEC engine models were also certified using FELs under the trading and banking program and likewise the PM levels for the engines equipped with the Nelson converter represent at least a 25% reduction from the original certification levels.

In addition to reducing PM emissions by 25% or more, this equipment is certified to comply with a life cycle cost limit of $2,000 or less (in 1992 dollars). The maximum purchase price for the Nelson converter is $2,091 (in August 1997 dollars), and the maximum installation time is stated to be 5 hours, or $201 (in August 1997 dollars). Nelson states that no additional maintenance cost is associated with use of the Nelson converter, and the test data demonstrate no fuel economy impact. Thus, the maximum total life cycle cost for this equipment is $2,292 (in August 1997 dollars), or $2,000 (in 1992 dollars). Although this equipment meets the life cycle cost limit associated with 25% reduction technology, this certification does not trigger any new program requirements for applicable engines. The requirement to use equipment certified to achieve at least a 25% reduction in PM has previously been triggered for some of these engines and is superseded by the 0.10 g/bhp-hr PM standard that has been triggered for 1979–89 DDC 6V92TA MUI engines. The impact of this certification on transit operators is discussed in more detail in section IV of today's notice.

II. Summary and Analysis of Comments

EPA received no comments in response to the July 11, 1997 **Federal Register** notice. However, EPA requested clarification from Nelson regarding several issues discussed below.

The Notification of Intent to Certify (NIC) describes the baseline rebuilt engine used in emissions testing as having 9G75 fuel injectors rated at 294 horsepower (HP). However, the NIC also states that the initial run-in power for the engine was 277 HP. Nelson was asked to explain this apparent discrepancy in rated HP versus observed HP. In response, Nelson states that the engine was rebuilt by DDC with 9G75 fuel injectors rated at 294 HP, although the engine only produced 277 HP upon initial run-in. Nelson states that the DDC power rating has a tolerance of plus/minus 5% (279 to 306 HP for a 294 HP rating). After additional break-in in the test cell, the engine produced 283 HP (within the tolerance range) as documented in the laboratory checklist contained in the NIC.

Nelson requested that certification be granted for the Nelson converter installed on rebuilt, and non-rebuilt engines. EPA requested that Nelson provide a rationale to support why the claimed PM reductions are appropriate for engines which have not been rebuilt. In response, Nelson states that the installation instructions provide criteria which must be met in order to install the Nelson converter on non-rebuilt engines. These criteria include maintenance of the engine in accordance with the original engine manufacturer's specifications, adjustment of all adjustable parameters in accordance with manufacturer's specifications, and oil consumption criteria. For 6-cylinder engines, the oil consumption may be no greater than 1.5 quarts per 10 hours of service. For 8-cylinder engines, the oil consumption may be no greater than 2.0 quarts per 10 hours of service. These criteria are intended to ensure that the engine is operating within the worse-case PM level of 0.5 g/bhp-hr. In addition, Nelson states that certification testing demonstrated a PM removal of 0.16 g/bhp-hr on an engine emitting at 0.30 g/bhp-hr. Nelson states that it is reasonable to assume that an even greater mass of PM would be removed from an engine operating at 0.50 g/bhp-hr. Even if this is not the case, conservatively using a 0.16 g/bhp-hr of PM removal on such an engine results in a 32% reduction, which is still greater than the 25% reduction to which the equipment is certified. EPA believes that Nelson's response is adequate to support certification for applicable non-rebuilt engines. In addition, Nelson clarified that certification for use on engines rebuilt with new DDC certified rebuild kits is limited to instances where the Nelson converter is installed on the engine at the same time as the DDC rebuild kit.

As discussed in the July 11, 1997 **Federal Register** notice requesting public comment, EPA believes that the Nelson test engine meets the criteria for worse-case test engine, described at § 85.1406(a), for all two-stroke cycle engines (exclusive of the 1990 model year DDC 6L71TA), including both mechanically and electronically fuel injected engines. EPA reserves the right to request additional information showing that PM reduction does not vary significantly among engine families. However, because the Nelson test data indicate over a 50 percent PM reduction on the DDC 6V92TA MUI test engine, EPA believes it reasonable to expect that electronically-controlled engines, with the Nelson catalyst installed, will be capable of meeting the 25 percent reduction standard for which Nelson is requesting certification. EPA received no comments contrary to this position, and thus approves certification for both mechanically and electronically fuel injected engines as shown in Table A.

Finally, EPA notes that Nelson is required to provide a 100,000 mile emission defect warranty on the Nelson converter, and a 150,000 mile emission performance warranty per 40 CFR 85.1409. Use of the Nelson Converter on an engine utilizing a DDC certified upgrade kit does not in any way relieve Nelson of the required warranty responsibilities outlined above.

III. Certification

The Agency has reviewed this notification, along with comments received from interested parties, and finds that the equipment described in this notification of intent to certify:

(1) Reduces particulate matter exhaust emissions by at least 25 percent, without causing the applicable engine families to exceed other exhaust emissions standards;

(2) Will not cause an unreasonable risk to the public health, welfare, or safety;

(3) Will not result in any additional range of parameter adjustability; and,

(4) Meets other requirements necessary for certification under the Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (40 CFR Sections 85.1401 through 85.1415).

The Agency therefore certified this equipment in a letter to Nelson dated October 14, 1997, for use in the urban bus retrofit/rebuild program as discussed below in section IV.

IV. Transit Operator Requirements

Based on this certification, no new requirements are placed on operators and no operator will be required to purchase this equipment. For the 1979 through 1989 6V92TA MUI engine models, EPA has previously certified equipment which triggered the requirement to use equipment certified to the 0.10 g/bhp-hr level beginning September 15, 1997. Therefore, under Program 1, operators who rebuild or replace 1979 through 1989 model year DDC 6V92TA MUI engines after this date will be required to use equipment certified to meet the 0.10 g/bhp-hr PM level. For all other engine models to which this certification applies, EPA has previously certified equipment which triggered the requirement to use equipment certified as providing a minimum 25 percent reduction in PM beginning December 1, 1995. The Nelson converter is certified to reduce PM by at least 25 percent, and can be used under program 1 to meet this requirement for these other engine models until such time that equipment is certified to trigger the 0.10 g/bhp-hr emission standard for these engines for less than a life cycle cost of $7,940 (in 1992 dollars).

Operators who choose to comply with Program 2 and install the Nelson equipment, will use the specified PM emission levels in Table A in their calculation of fleet level attained.

Dated: November 19, 1997.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–31138 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–8]

Request for Great Lakes Preproposals Through "FY 98–99 Great Lakes Priorities and Funding Guidance"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of preproposals for GLNPO funding. This request is part of the *FY98–99* Great Lakes Priorities and Funding Guidance (Funding Guidance). The Great Lakes Funding Guidance identifies Great Lakes priorities, solicits preproposals for assistance projects, and describes other Federal Great Lakes funding opportunities.

DATES: The deadline for submission of Preproposals is January 15, 1998.

ADDRESSES: Copies of the document are available by calling Larry Brail at 312–886–7474. It is also available through the GLNPO Internet home page (http://www.epa.gov/glnpo).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA–GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604, (312–886–4013/ russ.michael@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: Under the Great Lakes Funding Guidance, Preproposals are requested for a total of up to $3.7 million in funding targeted to: Contaminated Sediments ($1.4 million), Pollution Prevention $700 thousand), Assessment/Indicators ($200 thousand), Habitat Protection and Restoration ($1.1 million), and Exotic Species ($300 thousand). A "roadmap" section describes some of the other Great Lakes Federal funding available through USEPA, the Natural Resources Conservation Service, the Fish and Wildlife Service, and the Army Corps of Engineers.

Dated: November 18, 1997.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 97–31135 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400120; FRL–5758–8]

Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2–day meeting of the Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology. This will be the second meeting of the Toxics Data Reporting (TDR) Committee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on December 9-10, 1997, from 8:30 a.m. to 5 p.m. Written and electronic comments in response to this notice should be received by December 5, 1997.

ADDRESSES: The meeting will be held at: L'Enfant Plaza, 480 L'Enfant Plaza SW., Washington, DC 20024, (202) 484–1000.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this action. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, telephone: (202) 260–0675, fax number: (202) 401–8142, e-mail: vail.cassandra@epamail.epa.gov. or Michelle Price, telephone: (202) 260–3372, fax number: (202) 410–8142, e-mail: price.michelle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

At the 2–day meeting, the TDR Committee will continue the discussions begun at the September 29-30 meeting regarding the Agency's interpretation of the EPCRA definition of "release." In section 5 of the Form R, there have been a number of issues raised with regard to the definition of "release," particularly with respect to Class I underground injection wells and RCRA Subtitle C Landfills. Several commenters believe that EPA's interpretation of the EPCRA definition of "release" will lead to the misperception that a reported EPCRA section 313 "release" necessarily results in an actual exposure of people or the environment to a toxic chemical. The TDR Committee will continue to discuss possible recommendations on ways to collect (including nomenclature and format changes) and disseminate the data that are consistent with the Agency's interpretation of the EPCRA definition of "release" and would address the concerns raised regarding public misperception.

In addition to the discussions on section 5, the TDR Committee will also be discussing how EPA characterizes the TRI data through the annual public data release. Concerns have been raised that EPA's presentation of the TRI data can lead to public misperception of the data. Some commenters have stated that because EPA uses the word "release," TRI data leads to the misperception that a reported EPCRA section 313 "release" necessarily results in actual exposure of people or the environment to a toxic chemical. The Committee will be discussing possible recommendations on ways to more clearly present release data to the public to distinguish between the various methods of disposal while still making it possible to present meaningful statistics on a national basis about releases.

A meeting summary from the September 29-30 TDR Committee meeting will shortly be available on the TRI Home Page. The address of the TRI Home Page is http://www.epa.gov/opptintr/tri. This summary can be found under the heading "TRI Stakeholder Dialogue." In addition, the agenda and an issue paper outlining topics for discussion at the December 9-10 Committee meeting will also be available at this same site prior to the meeting. Oral presentations or statements by interested parties will be limited to 5 minutes. Interested parties are encouraged to contact Cassandra Vail, to schedule presentations before the Committee.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPPTS–400120" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–400120." Electronic comments on this action may be filed online at many Federal Depository Libraries.

Dated: November 24, 1997.

Cassandra Vail,

Designated Federal Official, Office of Pollution Prevention and Toxics.

[FR Doc. 97–31298 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5927–6]

Science Advisory Board; Notification of Open Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

1. Clean Air Scientific Advisory Committee (CASAC)

The Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board will meet on Monday, December 15, 1997 at the U.S. Environmental Protection Agency (USEPA), Environmental Research Center, Main Auditorium, Route 54 and Alexander Drive, Research Triangle Park, NC 27711. The meeting will begin at 9 am and end no later than 5 pm. At this meeting, the Committee will receive briefings from Agency Staff concerning: (a) the project work plan for preparation of the air quality criteria document for Carbon Monoxide (CO), which will serve as the scientific basis for the next periodic review of the CO National Ambient Air Quality Standards (NAAQS); (b) the schedule for the Particulate Matter (PM) NAAQS review; and (c) an overview of the Agency's plans for upcoming reviews of the other NAAQS. These briefings will help set the stage for subsequent meetings of the Committee as it begins its review responsibilities for the various NAAQS.

Interested parties may obtain a copy of the CO Project Work Plan by writing to the CO Project Manager, USEPA, Office of Research and Development, National Center for Environmental Assessment, Research Triangle Park, NC 27711 or by sending a request via fax (919–541–1818) or e-mail (ray.diane@epamail.epa.gov). The review schedule for the PM NAAQS is contained in 62 FR 55201 (October 23, 1997).

2. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board, will meet on Tuesday, December 16, 1997 in the Science Advisory Board Conference Room, Room 2103 Mall Level (entry near the Safeway Supermarket), U.S. Environmental Protection Agency Headquarters Building, 401 M St. SW, Washington, DC 20460. The meeting will begin at 8:30 am and end no later than 4:30 pm. The purpose of the meeting is to receive briefings from Agency Staff on the Office of Research and Development's (ORD) strategic planning and budgeting process and to discuss the upcoming RSAC review of the ORD budget and the role of RSAC in ORD's strategic planning process.

For Further Information

Members of the public desiring additional information about either meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee (CASAC) and Research Strategies Advisory Committee (RSAC), Science Advisory Board (1400), Room 2812, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via the INTERNET at FLAAK.ROBERT @EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda for either meeting should contact Ms. Dorothy Clark at (202) 260–8414 or by FAX at (202) 260–7118 or via the INTERNET at CLARK.DOROTHY @EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–8414.

Members of the public who wish to make a brief oral presentation to either Committee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 Noon Eastern Time, Tuesday, December 9, 1997 in order to be included on the respective Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, the name of the committee (CASAC or RSAC) they wish to address, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. Public comments should focus on scientific or technical aspects of the matters before the respective Committee at its meeting. There will be time allocated for public comment at subsequent meetings when the Committees are actually involved in substantive review activities.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 97–31136 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00513; FRL–5758–5]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, December 8, and December 9, 1997. This notice announces the location and times for the meetings and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG will meet on Monday, December 8, 1997, from 8:30 a.m. to 5 p.m. and Tuesday, December 9, 1997, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the National Airport Doubletree Hotel, 300 Army Navy Drive, Arlington-Crystal City, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 1113I, Arlington-Crystal City, VA; (703) 305–5306; (703) 308–1850 (fax); e-mail: Lyon.elaine.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following:

1. Update on the Food Quality Protection Act:

a. Tolerance reassessment program.

b. Minor crops - office interactions with USDA for use data collection.

c. Section 18 regulations.
2. Section 18 homepage.
3. Office of Enforcement and Compliance Assurance (OECA) Updates:
a. Performance partnerships status.
b. Urban pesticide initiative activities and states funding request.
c. Cooperative agreement issues.
4. Antimicrobial Issues:
a. Definition of pest in the antimicrobial rule.
b. Clarification of state support in the antimicrobial area.
c. Office of Enforcement and Compliance assurance plans for efficacy testing.
d. State lab involvement.
5. Performance Measures:
a. Results of September 1997 workshop.
b. Future activities.
c. OECA's direction regarding measures and GPRA.
6. Policy to address changes to worker risk mitigation measures.
7. Quality assurance/quality control/ national environmental laboratory program.
8. Pesticide regulatory education program course offerings.
9. Regional reports and introduction of issue papers.
10. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: November 20, 1997.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 97–31129 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–777; FRL–5754–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–777, must be received on or before December 26, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller (PM 23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–777] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–777] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 6F4604, 4F3041 and FAP 4H5428

EPA has received pesticide petitions (PP 6F4604, 4F3041, and FAP 4H5428) from BASF Corporation, 26 Davis Drive, Research Triangle Park, P.O. Box 13528, NC 27709, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.227 by establishing and amending tolerances for residues of the herbicide dicamba in or on the raw agricultural commodities soybeans, wheat, barley, oats, corn, cotton, grasses and asparagus at the proposed tolerances as described below. The proposed analytical methods involve extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (gc/ecd). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism is adequately understood on the basis of soybean, asparagus, cotton, sugarcane and published data on grass. In the majority of registered crops, the major metabolite is the 3,6 dichloro-5-OH-*o*-anisic acid. Tolerances are expressed as the dicamba parent plus the respective major metabolite.

2. *Analytical method.* BASF Corp. has provided suitable independently validated analytical methods for detecting and measuring levels of dicamba and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels described in these and the existing tolerances. Adequate methods are available in PAM-II for enforcement purposes. The analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (gc/ecd).

3. *Magnitude of the residue*—i. *Plant.* Residue trials have been conducted with dicamba on the crops for expanded use requested in the subject petitions. Multiple salts of dicamba were studied in side-by-side testing to confirm that no effect on magnitude of the residues was caused by the salt formulation type of the dicamba. The tolerances listed below are based on the maximum expected residue from geographically representative field trial data:

Proposed tolerances for combined residues of the herbicide dicamba (3,6-dichloro-o-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid in or on the raw agricultural commodities as follows 40 CFR 180.227(a): Cottonseed 3.0 parts per million (ppm); Corn, forage 3.0 ppm; Corn, fodder 3.0 ppm; Crop Group 17, Grass forage, fodder and hay Forage 125 ppm, Hay 200 ppm; Wheat, forage 80 ppm, Wheat, hay 20 ppm; 21 U.S.C. section 701 MRL Cottonseed meal 5.0 ppm; Wheat grain 2 ppm, Wheat straw 30 ppm; Barley grain 2 ppm; Barley straw 30 ppm.

Proposed tolerances for combined residues of the herbicide dicamba (3,6-dichloro-o-anisic acid) and its metabolite 3,6-dichloro-2-hydroxybenzoic acid in or on the raw agricultural commodities as follows 40 CFR 180.227(b): Soybean grain 4 ppm, Soybean hulls 13 ppm; Asparagus 3.5 ppm.

Only newly generated data, or data not implicated in the CRAVEN Laboratories indictment are used to support the subject petitions.

Dicamba residues concentrate in the following commodities: soybean hulls; sugarcane molasses; cottonseed meal.

ii. *Animal.* The amended uses proposed do not yield secondary residues in meat and milk above the tolerances already published under 40 CFR 180.227. Data from metabolism and feeding studies in poultry have established that the maximum expected dietary burden from crops treated with dicamba will not result in quantifiable residues above the limits of the analytical method.

B. Toxicological Profile

Data are provided that are representative of the mammalian toxicity effects of dicamba and are part of the many studies conducted to support the BASF Corp. assertion of safety of dicamba to humans.

1. *Acute toxicity*—i. Oral Rat LD_{50}: 1,879 mg/kg (m); 1581 mg/kg (f).

ii. Acute Dermal Rat LD_{50}: > 2,000 kg/kg (m/f).

iii. Acute Inhalation Rat LC_{50}: > 9.6 mg/L (m/f).

iv. Primary Eye Irritation: Extremely irritating and corrosive to the eye.

v. Primary Dermal Irritation Rabbits: Not a primary skin irritant.

vi. Dermal Sensitization Guinea Pigs: Moderate potential to cause dermal sensitization.

vii. Acute Neurotoxicity: NOEL <300 mg/kg (lowest dose tested). Neurobehavioral effects were observed at all dose levels but primarily at the initial 1.5 hr post-dose testing only. No neurobehavioral effects were noted by day 14 after treatment and no neuropathological effects were found indicating there are no persistent effects on the nervous system.

2. *Genotoxicity.* Ames: Negative; *In vitro* chromosome aberration in Chinese Hamster Ovary: Negative; Sex-linked recessive lethal in Drosophila: Negative; Chromosome aberrations in rat bone marrow: Negative; Mitotic recombination: Negative; UDH (UDS with WI-38 human lung fibroblasts: Negative; DNA damage as detected with repair deficient prokaryote *E. coli*: Positive; DNA damage as determined with repair deficient eukaryote *S. typhimurium*: Negative; UDS in human lung lymphocytes with activation: Negative; Sister chromatid exchange in human cultured lymphocytes: slight increase. Overall weight of the evidence from all studies indicates that dicamba is not genotoxic.

3. *Reproductive and developmental toxicity*—i. *Rodent developmental toxicity rat.* Oral doses of 0, 64, 160, or 400 mg/kg were administered daily during gestation days 6 to 19. Maternal toxicity occurred at the high dose as evidenced by mortality of four animals, clinical signs and decreased weight gain. The numbers of implantations, resorptions, and fetuses for test animals were similar to those numbers for control animals. No fetal abnormalities were attributed to exposure to dicamba. Therefore, technical dicamba was not found to be teratogenic. Maternal toxicity was found only at the HDT with a NOEL of 160 mg/kg/day. The developmental NOEL was the highest dose tested of 400 mg/kg/day.

ii. *Rabbit developmental toxicity.* Dicamba was administered orally (undiluted) via capsule to groups of 20 artificially inseminated New Zealand White rabbits at dose levels of 0, 30, 150, or, 300 mg/kg on days 6-18 of presumed-gestation. Females were sacrificed on Day 29 of presumed gestation. Maternal toxicity occurred at 150 and 300 mg/kg/day as evidenced by clinical signs and either body weight loss or reduced weight gain. Abortions occurred at 150 and 300 mg/kg/day. No significant differences were obtained in litter averages for corpora lutea, implants, litter sizes, resorption sites, percent male fetuses, fetal body weight, percent resorbed conceptuses or number of does with any resorptions. No gross external, soft tissue or skeletal alterations in fetuses were considered to be related to treatment. Therefore, dicamba was found to be not teratogenic. The maternal no-observed-adverse-effect-level (NOAEL) for technical dicamba to pregnant rabbits was 30 mg/kg/day. Levels of 150 and 300 mg/kg caused abortions, but were at significant maternally toxic doses. The developmental NOAEL was the highest dose tested, 300 mg/kg/day.

iii. *Two-generation reproduction rat.* Potential effects on growth and reproductive performance were assessed over 2-generations of rats maintained on diets containing Technical Dicamba at concentrations of 0 (control), 500, 1,500,

or 5,000 ppm. Parental toxicity occurred at 5,000 ppm in the form of lower weight gain in females and increased liver weights of both sexes. Exposure at 5,000 ppm was associated with a slower growth rate of F1 pups prior to weaning and resulted in lower initial body weights in those selected as parental animals. The lower body weight was associated with a decrease in both food consumption and water intake. Sexual maturation was slightly delayed among males, but was likely associated with the initial reduced growth rate. F2 pup weights were reduced at 3,000 and 1,500 ppm. There were no treatment-related effects on reproductive ability at any level. The NOEL and LOEL for systemic toxicity were 1,500 (approx. 130 mg/kg/day) and 5,000 ppm, respectively. The NOEL and LOEL for pup toxicity were 500 (approx. 45 mg/kg/day) and 1,500 ppm, respectively.

4. *Subchronic toxicity*—i. *Twenty-one-day Dermal.* Technical dicamba was applied dermally to rabbits for 5 days a week for three weeks at dosage levels of 0, 100, 500 and 2,500 mg/kg/day. There were no systemic effects at any level of treatment. Skin irritation was evident at all treatment levels, but consisted of only a slight erythema at 100 mg/kg/day. The systemic NOEL was the highest dose tested of 2,500 mg/kg/day.

ii. *Thirteen-week rodent feeding (rat).* Rats were offered technical dicamba at dietary concentrations of 0, 1,000, 5,000, or 10,000 ppm. The mean body weight and food consumption values for the high dietary level animals were decreased from the control values. No adverse treatment-related findings were noted in either the blood parameters investigated or necropsy evaluation. Microscopic examinations of the liver revealed an absence or reduction of cytoplasmic vacuolation in the hepatocytes of the high dietary level animals. The NOEL was 5,000 ppm (342 mg/kg/day males, 392 mg/kg/day females).

iii. *Thirty-eight-week non-rodent (dog).* In a dose-range finding study for a subsequent chronic dog study, a small number of dogs were treated via the feed with technical dicamba at dosage levels of 0, 1,000, 2,500 and 5,000 ppm for four to eight weeks. Decreased food consumption occurred in all dose groups during the first week of treatment, and persisted in some dogs at 2,500 and 5,000 ppm. Decreased body weight gains or weight loss were noted in the treatment groups. The NOEL from the one-year dog study discussed below is used to satisfy the requirement for the subchronic dog NOEL.

iv. *Sub-chronic neurotoxicity.* Rats were fed technical dicamba for 13 weeks at dosage levels of 0, 3,000, 6,000 and 12,000 ppm. Body weights were slightly reduced in high dose animals. Neurobehavioral effects were noted at the high dose and consisted primarily of signs associated with rigidity in response to handing. No histopathological effects on the peripheral or central nervous system were noted. The neurotoxicity NOEL was established at 6,000 ppm (401 mg/kg/day males, and 472 mg/kg/day, females).

5. *Chronic toxicity*—i. *Chronic toxicity-dog.* Technical Dicamba was offered orally at dietary concentrations of 0 (Control), 100, 500, or 2,500 ppm to dogs for 1 year. Initially, a decrease in food consumption was noted mainly among males at 500 and 2,500 ppm. This was most notable in a single 2,500 ppm male resulting in almost no food consumed for the 1st 3 weeks of feeding. Following administration of the 2,500 ppm diet in a water slurry during weeks 4-6, this male was placed back on feed and food consumption stabilized. There appears to be a limit to the amount of material that can be added to the feed before dogs will not consume the diet. The 2,500 ppm level was considered close to the maximum that could be employed, as 1 dog failed to consume the diet when offered in the usual form. Due mainly to the aforementioned male, mean body weight of 2,500 ppm males did not increase until week 5. The overall body weight gain for the 1 year period was comparable for all groups. It was concluded that aside from the lower food consumption, there were no effects due to treatment with dicamba. The no-effect level for toxicity was the highest dose tested of 2,500 ppm (approx. 59 mg/kg/day males, 57 mg/kg/day females).

ii. *Chronic feeding/oncogenicity in rat.* Groups of 60 rats/sex were maintained on diets containing technical dicamba at concentrations of either 0, 50, 250, or 2,500 ppm. An interim sacrifice of 10/sex/level was conducted at 12 months. Initially scheduled as a 27 month (108 week) study, males were sacrificed at 115 weeks and females at 118 weeks due to high survival rates.

There were no effects due to treatment on any chronic toxicity parameters investigated. In males, no statistically significant differences in data for all tumors combined, all benign tumors combined, and all malignant tumors combined were obtained. A slight increase in malignant lymphoma was not statistically significant (pairwise comparisons) and was not considered to be toxicologically significant. A slight increase in thyroid parafollicular cell carcinoma in the high treatment group was noted but was not statistically significant in pairwise comparisons. In females, no statistically significant differences were noted in comparisons with all tumors combined, all benign tumors combined, and all malignant tumors combined or in any individual tumor type.

In summary, no signs of toxicity related to administration of dicamba were noted. Dicamba was not oncogenic. Based on the results of the study, the no effect level was considered to be 2,500 ppm (107 mg/kg/day males and 127 mg/kg/day females).

iii. *Oncogenicity in mice.* Groups of mice were fed diets containing dicamba at concentrations of 0, 50, 150, 1,000, or 3,000 ppm. Males were killed following 89 weeks of feeding and females were killed following 104 weeks of feeding. Reduced body weight gain (not statistically different) was noted among 3,000 ppm females. Increased mortality noted among 3,000 ppm males was considered unlikely to be related to treatment but could not be completely excluded. An increased incidence in lymphoid tumors, showing a statistical significance at 150 and 1,000 ppm, occurred in females. However, the incidence at 3,000 ppm did not statistically differ from control. Additionally, there was no significant trend with dosage and the values for treated females were within historical control data. The incidence of benign and malignant tumors in all tissues were similar for treated and control animals. The NOEL was determined to be 1,000 ppm (108 mg/kg/day in males and 121 mg/kg/day in females). However, the RfD best committee chose to establish the NOEL at 3,000 ppm and stated that no LOEL had been established.

6. *Estrogenic or other endocrine effects.* No specific tests have been conducted to determine endocrine-disrupting effects. However, extensive subchronic and chronic tests have been conducted in several species, and results have demonstrated no effects on the endocrine system.

7. *Animal metabolism.* Dicamba has been tested in rats, dogs, cattle, goats and hens. In all cases, dicamba is excreted very rapidly, mainly as unchanged dicamba and to a lesser extent as 3,6-dichloro-2-hydroxybenzoic acid with trace amounts of 3,6-dichloro-5-hydroxy-*o*-anisic acid. The results of these studies demonstrate that dicamba is not persistent and does not accumulate in animals.

8. *Metabolite toxicity.* Toxicity of the metabolites of dicamba to humans is concurrently evaluated during toxicity testing because both plant and animal metabolites are formed during the course of toxicity tests. Both plant and animal major metabolites are considered not of toxicological concern.

C. Aggregate Exposure

1. *Dietary exposure.* Exposure from the use of Dicamba in the culture of wheat, barley, oats, millet, sorghum, corn, soybeans, grasses, cotton, sugarcane and asparagus crops is discussed under the below topics of food and drinking water.

2. *Food.* The subject petition amends these uses but does not add new crops. The potential dietary exposure of the population to residues of dicamba or its metabolites is calculated based on the Theoretical Maximum Residue Contribution (TMRC) for all crops with dicamba use. The TMRC is a worst case estimate of dietary exposure since it assumes that 100 percent of all crops for which tolerances are established are treated with dicamba, and that pesticide residues are present at the tolerance levels. The resulting dietary exposure estimate therefore overestimates exposure and is considered conservative. The number is then determined to be a percentage of the EPA decided Reference Dose (RfD). Dietary exposure may occur from crop commodities and meat and milk. Based on the EPA DRES model BASF Corp. has estimated that the average US population dietary exposure to dicamba to be only 1.87% percent of the RfD. This number is very low and considered very safe as an active ingredient is allowed up to 100% before less conservative risk assessment measures are initiated.

Acute dietary analysis compared the daily dietary exposure to the lowest NOEL for acute and subchronic studies. EPA's current policy for Tier I analysis uses the conservative assumption that all residues are at a high end estimate or maximum, typically taken as the tolerance value. Acute dietary assessment for dicamba is made by comparing the ratio of exposure and the NOEL from acute neurotoxicity of 300 mg/kg/day to achieve a Margin of Exposure (MOE). A MOE of 300 is required because a NOEL was not reached in the acute neurotoxicity test. The following MOE values are obtained for key population subgroups.

Population Subgroup	Margin of Exposure
US Population	6000
Infants <1 year	3000
Children 1 to 6	3000
Females 13+ years	17000
Males 13+ years	10000

3. *Drinking water.* Dicamba has been used commercially for in excess of 30 years. From available public data, detections in ground water from commercial uses have been very low and infrequent. The typical level found in ground water is less than 5 ppb. This should be compared to the current Health Advisory Level (HAL) of 200 ppb and the anticipated HAL of 3,000 ppb under the newly revised RfD of 0.45 mg/kg/d.

These infrequent and low levels of detection in groundwater demonstrate that significant movement of dicamba is not likely and is not a considerable factor in assessing human health risk.

4. *Non-dietary exposure.* Non-dietary exposure would mainly occur from the use of dicamba for broadleaf weed control on residential or recreational turf. BASF is currently collecting data on the potential exposure from non-dietary sources such as residential turf use. However, no reliable information is currently available for risk assessment at this time. This petition is only related to already approved crop uses and therefore non-dietary route of exposure is not considered to be a factor in assessing additional human risk.

D. Cumulative Effects

Dicamba belongs to the benzoic acid class of compounds. There are no other compounds of this class in significant use and none in food use. Therefore, cumulative effects from dietary or non-occupational exposure from pesticides of similar chemistry are considered unlikely. BASF Corp. does not have reliable data to indicate a common mechanism of toxicity to other compounds. Therefore cumulative effects from common mechanisms of action are also unlikely.

E. Safety Determination

The RfD for dicamba is 0.45 mg/kg/d. The RfD is a level at or below which daily aggregate exposure over a lifetime will not cause appreciable human health risk. The estimates of exposure are based on conservative assumptions that all crops with a tolerance for dicamba are treated and that all residues found are at the maximum or tolerance level.

1. *U.S. population.* Using the conservative assumptions described above, BASF Corp. has estimated that the US population dietary exposure to dicamba is 1.87% percent of the RfD.

2. *Infants and children.* Dicamba was not teratogenic in either rats or rabbits despite testing to maternally toxic doses. No developmental toxicity was observed in rats and the only effect observed in rabbits were abortions at clearly maternally toxic doses. Dicamba produced no effects on reproduction in a 2-generation study in rats. The only effect observed was a decrease in pup body weight at the high dose which also produced parental toxicity, and at the mid-dose that was relatively high (130 mg/kg/day). Based on the weight of evidence from all reproductive and developmental studies, no selective toxic efects on infants and children are expected, and no additional safety factor is warranted.

Using the conservative assumptions described above, BASF Corp. has estimated the dietary exposure to infants and children as percent of the RfD. From the current and new proposed use of dicamba dietary exposure for the most sensitive subgroups are 6.65% for non-nursing infants (<1 yr old) and 4.6% for children 1 to 6 yrs old.

Aggregate exposure due to the combined residues in food, drinking water and non-dietary exposure through direct contact with residues in a residential setting (lawn) should be pursued through the use of a reserve risk approach. The elements for consideration are therefore estimated as follows:

Food: Total Population 1.87%
Non-nursing Infants <6 yrs . . . 6.7%
Water/Lawn: Low human risk. . . . . expected to be inconsequential

BASF Corp. believes that the water and non-dietary exposure risk for the most sensitive subgroup is inconsequential due to demonstrated low findings in water relative to the HAL and low toxicity to humans with respect to oral, dermal and inhalation exposure.

Aggregate exposure is therefore estimated to be less than 10% of the RfD for the most sensitive population subgroup. Therefore, BASF Corp. concludes that there is reasonable certainty that no harm will result from aggregate exposure of residues of dicamba or its metabolites including all dietary and other non-occupational exposures.

F. International Tolerances

No international tolerances have been established under CODEX. Therefore there is no need to ensure consistency.

[FR Doc. 97–30813 Filed 11–25–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–776; FRL–5753–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–776, must be received on or before December 26, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

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Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader listed in the table below:

Regulatory Action Leader	Telephone Number/E-mail Address	Office Location/Address
Driss Benmhend .... Michael Mendelsohn.	703–308–9525, e-mail: benmhend.driss@epamail.epa.gov. 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov.	5th floor CS#1, 2800 Crystal Drive, Arlington, VA 22202 Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–776] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–776] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 18, 1997.

Janet Andersen,
Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Engelhard Corporation

PP 7E4908

EPA has received a pesticide petition (PP 7E4908) from Engelhard Corporation, 101 Wood Avenue, Iselin, NJ 08830, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of kaolin in or on all food commodities. Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Engelhard Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition.

A. Proposed Use Practices

Kaolin is to be used as an aid in control of damage to plants from insects, mites, fungi, and bacteria. Kaolin is used at the rates of 6.25 to 12.4 lbs/acre for row crop vegetables, 25 to 175 lbs/acre for tree fruit crops, and 12.5 to 37.5 lbs/acre for small fruit crops. Treatment is made prior to leaf or plant emergence and applied to crops at 7 to 10 day intervals depending on the pest to be controlled. Dosage rates are applied with standard spray equipment.

B. Product Identity/Chemistry

Kaolin is a white, nonporous, nonswelling, natural occuring aluminosilicate mineral with the chemical formula $Al_4Si_4O_{10}(OH)_8$. Kaolin is one of the most highly divided and highly refined naturally occurring minerals. Median particle size of commercial products vary between 0.1 – 10 microns. Kaolin is nonreative. Its hydrophilic surface allows kaolin to be easily dispersed in water at neutral pH values of 6–8. Common physical properties of kaolin are: platy shape, high brightness (80–95), specific gravity 2.58–2.63, refractive index 1.56–1.62, and Mohs hardness 2–3.

C. Toxicological Profile

Acute toxicity. An acute oral toxicity limit test, acute dermal toxicity test on the active ingredient and an acute oral toxicity test, a primary skin irritation test, and primary eye irritation test on the end use product have been submitted. The acute oral limit dose test on the active ingredient showed that the single dose Acute Oral LD_{50} is greater than 5,000 mg/kg of bodyweight of rats. The acute dermal toxicity limit test on the active ingredient showed that the single dose Acute Dermal LD_{50} is greater than 5,000 mg/kg of bodyweight. The primary skin irritation study on the end use product showed that the test substance is classified as slightly irritating to the skin. The primary eye irritation study on the end use product showed that the test substance is classified as minimally irritating and non-irritating to the unrinsed and rinsed eye respectively.

Kaolin is used as an indirect food additive for paper/paper board dry food contact, adhesives, polymeric coatings, rubber articles, and cellophane. Kaolin is used in pharmaceuticals, tablet diluents, poultices, and surgical dusting powders. Kaolin is used as a cosmetic in face powders, face masks, and face packs. Kaolin is used in health products and toiletries, toothpaste, and antiperspirants. Kaolin can be used directly in foods as an anti-caking agent (up to 2.5%). Kaolin has GRAS (Generally Recognized as Safe) status under 21 CFR 186.1256 and is generally recognized as safe "As an indirect human food ingredient with no limitation other than current good manufacturing practice."

D. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure of kaolin via food or water is difficult to estimate due to the use of kaolin in thousands of products. Kaolin is an inert mineral naturally occuring in the environment, and has no known toxicological effects.

2. *Non-dietary exposure, non-occupational exposure.* Increased non-dietary exposure of kaolin via lawn care, topical insect repellents, etc., is not applicable to this application.

E. Cumulative Exposure

Kaolin has no mode of toxicity and therefore cumulative exposure is not applicable. Kaolin is used in thousands of products as well as being a naturally occurring part of the environment. Cumulative exposure is not possible to calculate nor is it necessary due to the non-toxic nature of kaolin.

F. Endocrine Disruptors

Engelhard Corporation has no information to suggest that kaolin will adversely affect the immune or endocrine systems.

G. Safety Considerations

The lack of toxicity of kaolin is demonstrated by the above summary. Based on this information, the aggregate exposure to kaolin over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to kaolin residues. Exempting kaolin from the requirement of a tolerance should be considered safe and pose insignificant risk.

H. Analytical Method

An analytical method for residues is not needed as this petition requests an exemption from the requirement of a tolerance.

I. Existing Tolerances

Kaolin is exempted from the requirement of a tolerance "when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest." (40 CFR 180.1001).

The registrant does not know if international tolerance exemptions exist. (Driss Benmhend).

2. Plant Genetic Systems (America) Inc.

PP 7G4921

EPA has received pesticide petition (PP 7G4921) from Plant Genetic Systems (America), Inc., 7200 Hickman Road, Suite 202, Des Moines, IA 50322, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a temporary exemption from the requirement of a tolerance for residues of the plant-pesticide *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in corn for feed use only. The summary of the petition published in this notice was proposed by the petitioner. This request proposes to amend Experimental Use Permit, 70218–EUP–1, issued to Plant Genetic Systems (America), Inc. on February 5, 1997, issued under crop destruct conditions.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Plant Genetic Systems (America) has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Plant Genetic Systems (America) and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Bacillus thuringiensis subsp. *tolworthi* Cry9C Protein Uses

Corn plants have been protected from lepidopteran insect pests such as European corn borer *Ostrinia nubilalis* (Huber), by expressing a Cry9C protein. The Cry9C protein expressed by the corn plants corresponds to the insecticidal moiety of the Cry9C crystal protein of a *Bacillus thuringiensis* subsp. *tolworthi* strain. Transgenic corn plants, expressing Cry9C protein, represents an excellent addition to growers' options for insect control that reduces or eliminates the need for chemical inputs and fits well within an integrated pest management program.

B. Product Identity/Chemistry

The cry9C gene, was isolated from the *Bacillus thuringiensis tolworthi* strain, truncated and modified before it was stably inserted into corn plants. The tryptic core of the microbially produced Cry9C delta-endotoxin is similar to the Cry9C protein found in event CBH351. The Cry9C protein was produced and purified from a bacterial host, for the purposes of mammalian toxicity studies. Product analysis that compared the Cry9C protein from the two sources included: SDS-PAGE, Western blots, *N*-terminal amino acid sequencing, glycosylation tests (for possible post-translational modifications) and insect bioassays.

No analytical method is included since this petition requests a temporary exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Bacillus thuringiensis proteins have been used commercially for more than 30 years without any evidence for adverse health effects. *Bacillus thuringiensis* mode-of-action can be divided into a series of critical steps: ingestion by the insect, specific binding to brush border membrane receptors, membrane insertion, and pore formation thus destroying the midgut lining and causing death of the insect. *Bacillus thuringiensis* proteins do not bind or cause these types of effects to mammalian gut membranes. The extensive mammalian toxicity studies performed to support the safety of *Bacillus thuringiensis* - containing pesticides clearly demonstrate that the tested isolates are not toxic or pathogenic (McClintock, *et al.*, 1995, Pestic. Sci. 45:95–105). Although *Bacillus thuringiensis* strains have been used for decades as sprayable microbial products, no confirmed cases of allergic reactions have been documented, despite dermal, oral and inhalation exposures. A reference to this is made by the EPA in a **Federal Register** notice, dated August 16, 1995 (60 FR 42443) (FRL–4971–3).

The Cry9C protein insecticidal mode-of-action is apparently similar to that of the well known Cry1A proteins. In addition to the safe history of *Bacillus thuringiensis* proteins outlined above, several other studies were performed to evaluate mammalian safety of the Cry9C protein. An acute toxicological study was performed with mice, which demonstrated that the Cry9C protein had an LD_{50} >6,500 mg/kg. A test for *in vitro* digestibility under simulated gastric conditions showed that the Cry9C protein found in bacteria and the protein produced in plants was stable for 4 hours when exposed to simulated gastric juice. However, an amino acid sequence homology search performed using three different data banks (against 135,867 sequences) only found homology to other related *Bacillus thuringiensis* proteins. To determine possible short stretch homology, an 8-amino acid homology search was also performed. Except with the *Bacillus thuringiensis* proteins, no identical 8-amino acid peptide sequences could be detected in the searches. Therefore, it is unlikely that Cry9C protein would have significant allergenic potential.

The Cry9C protein or metabolites of the protein are not expected to interact with the immune or endocrine system, since the protein sequence does not match any known allergens or hormones. Since proteins, in general, are not known to be carcinogenic it is unlikely that the Cry9C protein would have carcinogenic properties.

All living organisms contain DNA and there are no examples of nucleic acids causing any toxicological effects from dietary consumption. The genetic material necessary for the production of the Cry9C protein in plants includes the genetic construct that encodes the Cry9C protein and all other necessary genetic elements for it's expression. These elements include: a promotor, polylinker sequences, leader sequences and terminators and none of which are expected to cause any toxicological effects.

Taken together, the data supports the lack of mammalian toxicological effects for the plant-pesticide *Bacillus thuringiensis* subsp. *tolworthi* Cry9C protein and the genetic material necessary for the production of this protein in corn for feed use only.

D. Aggregate Exposure

Since the Cry9C protein is expressed in plant tissues, dermal or inhalation will be negligible to non-existent. Drinking water is unlikely to be contaminated with Cry9C protein due to the rapid degradation of plant materials in the soil. Furthermore, no direct human dietary exposure to Cry9C protein will occur since this request is for animal feed use only.

E. Cumulative Effects

The unique mode-of-action of Bt proteins in general, coupled with the lack of mammalian toxicity for the Cry9C protein provides no basis for the expectation of cumulative effects with other compounds.

F. Safety Determination

Bt microbial pesticides containing Cry proteins have been applied for more than 30 years to food and feed crops consumed by the US population. There have been no human safety problems attributed to Cry proteins. The extensive mammalian toxicity studies performed to support the safety of *Bacillus thuringiensis* - containing pesticides clearly demonstrate that the tested isolates are not toxic or pathogenic (McClintock, et al., 1995, Pestic. Sci. 45:95–105). The lack of mammalian toxicity of the Cry9C protein provides support for our request of a temporary exemption from the requirement of a tolerance set forth in this petition. Non-dietary exposure of infants, children or the US population in general, to the Cry9C protein expressed in corn plant materials, are not expected due to the uses of this product for animal feed use only.

G. Existing Tolerances

No tolerances or tolerance exemptions have been granted for the *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in corn for feed use only. (Michael Mendelsohn)

[FR Doc. 97–31131 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–779; FRL–5755–6]

Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–779, must be received on or before December 26, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 265, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-7801; e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–779] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–779] and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1997

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Rhone-Poulenc Ag Company

PP 3F4233

EPA has received a pesticide petition (PP 3F4233) from Rhone-Poulenc Ag Company, 2 Alexander Drive, Research Triangle Park, NC 27709, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to extend the current time-limited tolerances for bromoxynil and its metabolite DBHA (3,5-dibromo-4-hydroxybenzoic acid) resulting from the application of octanoic and heptanoic acid esters of bromoxynil to cotton in or on the raw agricultural commodities undelinted cottonseed at 7 parts per million (ppm), cotton gin byproducts at 50 ppm, and cotton hulls at 21 ppm for a 1–year period and to increase the current acreage limitation from 3% to 10% of the U. S. cotton acreage (1,300,000 acres). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the bromoxynil residue in bromoxynil-tolerant cotton is considered to be adequately understood. The two major components of the terminal residue are parent bromoxynil and the metabolite 3,5-dibromo-4-hydroxybenzoic acid (DBHA).

2. *Analytical method.* Adequate analytical methodologies for both parent bromoxynil and the DBHA are available for enforcement purposes. The method involves sample reflux in methanolic KOH, partitioning with ether/hexane and analysis by Gas Chromatography. Limits of quantitation allow monitoring of residues in cotton commodities at or above tolerance levels. Multiresidue testing with DBHA has been conducted and submitted to FDA.

3. *Magnitude of residues.* Available magnitude of the residue data from a 60 day phi crop field residue study conducted at a maximum application rate of 4.5 lb active ingredient/acre indicate that the currently established time-limited tolerances for bromoxynil and DBHA will not be exceeded when Buctril 4EC herbicide is used according to approved label directions.

B. Toxicological Profile

1. *Acute toxicity.* A complete battery of acute toxicity studies for bromoxynil (phenol) has been conducted. The acute oral toxicity study in rats resulted in a LD_{50} of 81 milligrams/kilogram (mg/kg) (males) and a LD_{50} of 93 mg/kg (females). The acute dermal toxicity study in rabbits resulted in a LD_{50} of >2,000 mg/kg for both males and females. The acute inhalation study in rats resulted in a LC_{50} of 0.269 milligram/liter (mg/L) for males and 0.150 for females. The primary eye irritation study showed corneal opacity resolved within 3 days, iritis resolved within 4 days and conjuctival irritation which persisted for 10 days. There was no irritation in the primary dermal irritation study and the dermal sensitization study in guinea pigs was negative.

2. *Genotoxicty.* Mutagenicity studies conducted include an unscheduled DNA synthesis study-rat primary hepatocytes (negative); *in vitro* transformation assay-mouse cells (negative); sister chromosomal exchange study-CHO cells (negative); forward mutation study-mouse lymphoma cells (negative without activation and positive with activation); DNA repair test-*E. Coli* (positive); *in vitro* chromosomal aberration (negative without activation and positive with activation); two separate micronucleus assays (both negative); forward mutation-CHO cells (negative); and *Salmonella typhimurium* reverse mutation assay (negative with and without activation). Rhone-Poulenc considers bromoxynil (phenol) and DBHA to be non-mutagenic.

3. *Reproductive and developmental toxicity.* A teratology study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 4, 12.5, or 40 mg/kg/day. The maternal no-observed-effect level (NOEL) and lowest-observed-effect level

(LEL) are 12.5 and 40 mg/kg/day respectively. The developmental NOEL and LEL are 4.0 and 12.5 mg/kg/day, respectively. Maternal body weights and food consumption were reduced in the high dose group. Fetal effects observed were reduced body weight, with associtaed decreases in ossification. An increase in 14th ribs was observed in the mid and high dose levels. A teratology study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 5, 15, or 35 mg/kg/day. The maternal NOEL and LEL are 5.0 and 15 mg/kg/day, respectively. The fetotoxicity and developmental NOEL and LEL are less than 5 and 5 mg/kg/day, respectively. Significant maternal mortality and decreased body weight gain were associated with the high dose, indicating that the maximum tolerance dose was exceeded. Decreases in maternal body weight gain were also observed in the mid and low dose levels. At the mid-dose level a statistically significant increase in the number of fetuses with supernumerary ribs, a common fetal variant was observed. A teratology study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 1.7, 5, or 15 mg/kg/day. The maternal NOEL and LEL are 5 and 15 mg/kg/day, respectively. The developmental NOEL and LEL are 5 and 15 mg/kg/day, respectively. This study was classified as unacceptable, primarily due to reporting deficiendies. A teratology study was conducted with rabbits administered (orally) bromoxynil phenol at dose levels of 0, 15, 30, or 60 mg/kg/day. The maternal NOEL and LEL are 15 and 30 mg/kg/day, respectively. The developmental NOEL and LEL are less than 15 and 15 mg/kg/day, respectively. Significant body weight gain decrements were reported at the two highest dose levels along with observed decreases in food consumption. The severe maternal toxicity among high dose dams was associated with fetoxicity and teratogenicity. A slight, nonsignificant increase in supernumerary ribs was reported at the mid and low dose levels. A teratology study was conducted with mice administered (orally) bromoxynil phenol at dose levels of 0, 11, 32, or 96 mg/kg/day. Maternal mortality was observed at 32 and 96 mg/kg/day. Fetal body weight was decreased at the top dose level, associated with a decrease in caudal vertebral ossification and an increase in supernumerary ribs. The maternal NOEL and LEL are 11 and 32 mg/kg/day respectivel. The developmental NOEL and LEL are 32 and 96 mg/kg/day, respectively.

A reproduction study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0. 0.8, 4, or 21 mg/kg/day in the diet. The systemic adult rat NOEL is 4 mg/kg/day and the LEL is 21 mg/kg/day. The reproductive NOEL is 21 mg/kg/day, and the LEL is greater than 21 mg/kg/day. The postnatal developmental NOEL is 4 mg/kg/day, and the LEL is 21 mg/kg/day. Body weight gain decrements were reported. However, no adverse effects on fertility, fecundity, reproductive performance or pre and postnatal development were observed. A reproduction study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 1.5, 5, or 15 mg/kg/day in the diet. The systemic rat NOEL is 1.5 mg/kg/day, and the LEL is is 5 mg/kg/day. The reproductive NOEL is 15 mg/kg/day, and the LEL is greater than 15 mg/kg/day. The offspring developmental NOEL is 5 mg/kg/day and the LEL is 15 mg/kg/day. Body weight gain decrements were reported. However, no adverse effects on fertility, fecundity, reproductive performance or pre and postnatal development were observed.

Based on the studies discussed above, it is concluded that bromoxynil is not teratogenic at doses that are not maternally toxic. In addition, bromoxynil is not considered a reproductive toxicant and shows no evidence of endocrine effects.

4. *Subchronic toxicity.* In a 12–week range-finding study, bromoxynil (phenol) was administered in the diets of male and female CD-1 mice at dose levels of 0, 1.3, 3.9, 13, 39, 130, or 390 mg/kg/day. For male mice, the NOEL is 3.9 mg/kg/day and the LOEL is 13 mg/kg/day based on increased liver weights and hepatocellular hypertrophy. In female mice, the NOEL is 13 mg/kg/day and the LOEL is 39 mg/kg/day based on increased liver weights, hepatocellular hypertrophy, hepatocellular degeneration, and hepatocellular vacuolization. In a 13–week subchronic feeding study, bromoxynil (phenol) was administered in the diet to male and female Sprague-Dawley rats at dose levels of 0, 28, 58, or 168 mg/kg/day. For male rats, the NOEL is 28 mg/kg/day and the LOEL is 58 mg/kg/day based on decreased body weight gain, increased ALT and increased alkaline phosphatase. For female rats, no NOEL was determined in this study and the LOEL is 35 mg/kg/day based on decreased body weight gain. In a 13–week range-finding study, bromoxynil (phenol) was administered orally to male and female dogs at doses of 0, 1, 5, 8, 12, 16, 20, 30, 40, or 50 mg/kg/day. For males, no NOEL was determined and the LOEL is 1 mg/kg/day based on decreased body weight gain. For females, the NOEL is 1 mg/kg/day and the the LOEL is 5 mg/kg/day based on decreased body weight gain, panting and liquid feces. In a 21 day subchronic dermal study, bromoxynil (phenol) was applied to skin of male and female New Zealand white rabbits at doses of 0, 30, 300, or 1,000 mg/kg/day for 6 hours/day, 5 days/week. Treatment produced no observable dermal or systemic toxicity, therefore the NOEL is 1,000 mg/kg/day.

5. *Chronic toxicity.* A 1–year oral study was conducted with dogs administered bromoxynil (phenol) at dose levels of 0, 0.1, 0.3, 1.5, and 7.5 mg/kg/day in capsules. The NOEL/LEL is 1.5 mg/kg/day for both females and males based on decreased body weight gain, decreased RBC count, decreased hemoglobin, decreased PCV, and increased liver weights. The chronic dog study was determined by Rhone-Poulenc to be the most appropriate study for setting the Reference Dose (RfD) of 0.015 mg/kg/day (includes a hundredfold safety factor).

A 2–year combined chronic toxicity/carcinogenicity study was conducted with rats administered (oral) dosages of 0, 60, 190, or 600 ppm (0, 2.6, 8.2, or 28 mg/kg/day in males; 0, 3.3, 11.0, or 41 mg/kg/day in females) bromoxynil phenol in the diet. In males the no-observed-effect-level (NOEL) for systemic toxicity is 2.6 mg/kg/day, and the lowest-effect-level (LEL) is 8.2 mg/kg/day. In females, the NOEL is 3.3 mg/kg/day, and the LEL is 11.0 mg/kg/day. This study did not demonstrate any increase in tumor incidences in either male or female rats.

A 2–year combined feeding/carcinogenicity study was conducted with rats administered bromoxynil phenol in the diet at dose levels of 0, 10, 30, or 100 ppm (0, 0.5, 1.5, or 5 mg/kg/day). In both males and females, the NOEL and LOEL for systemic toxicity was 5 mg/kg/day and >5 mg/kg/day, respectively. At the highest dose tested, increased liver weights were observed at 12 months, but not at 24 months. This study was considered negative for carcinogenicity. An 18 month carcinogenicity study was conducted with mice administered bromoxynil phenol at dose levels of 0, 10, 30, or 100 ppm (0, 1.3, 3.9, or 13 mg/kg/day) in the diet. For males, dose related increases in hyperplastic nodules and liver adenomas/carcinomas were observed which were statistically significant at the 100 ppm. Increased relative liver weights were also observed. In females, increased absolute liver weights and relative liver and kidney weights were observed. The study was considered negative for carcinogenicity for females. An 18 month carcinogenicity study was conducted with mice administered bromoxynil phenol at dose levels of 0, 20, 75, or 300 ppm (0, 3.1, 12 or 46 mg/kg/day in males and 0, 3.7, 14, or 53 mg/kg/day in females). Mice given 300 ppm had significantly increased absolute and relative liver weights. Histopathology of the liver revealed increased hepatocellular hypertrophy, hepatocellular degeneration, necrosis of individual hepatocytes, and pigment accumulation in hepatocytes and Kupffer cells. Male mice had statistically significant increased numbers of hepatocellular adenomas and carcinomas at 20 ppm, but not 75 ppm. In contrast, no significant increase in tumor incidence was observed for female mice by pair-wise analysis. The trend test was significant for adenomas or carcinomas in females, only at $p<0.05$, not $p<0.01$ as would be appropriate for this type of tumor. The trend is due entirely to the high dose group and therefore is of questionable validity. It is concluded that bromoxynil is a weak, single sex, single species, non-metastic, single target organ carcinogen, inducing hepatocellular tumors in male mice exposed to 300 ppm for 18 months. These tumors and associated histopathological findings are consistent with secondary mechanisms such as peroxisome proliferation, a mechanism known to have marked species differences and questionable relevance for humans. It is the opinion of Rhone-Poulenc that the data are not suitable for quantitative risk assessment. A threshold safety factor approach is more appropriate and is commonly used for single sex, single species carcinogens such as bromoxynil that are thought to work through secondary mechanisms. For the purposes of this tolerance petition, risk assessments have been performed using a low dose linear extrapolation model (Q_1^* is 1.03×10^{-1}).

6. *Animal metabolism.* Results of a bromoxynil metabolism study with the rat (octanoate) demonstrated that 2 mg/kg of radiolabeled bromoxynil octanoate was rapidly absorbed, hydrolyzed to bromoxynil phenol, distributed, and excreted in rats following repeated oral administration. The urine was the major route of excretion, representing 80.24% of the administered dose in males and 67.91% in females at 7 days post-dosing. Tissue distribution was similar for both sexes with the highest radioactivity recovered in the liver and kidney. Similar results were obtained in a separate rat metabolism study conducted with bromoxynil heptanoate.

7. *Metabolite toxicology.* DBHA (3,5-dibromo-4-hydroxybenzoic acid) is a major plant metabolite of bromoxynil only in bromoxynil-resistant transgenic cotton. Acute oral toxicity testing with DBHA in rats resulted in an LD_{50} of >2,000 mg/kg. Acute dermal toxicity testing with DBHA in rabbits resulted in an LD_{50} of >2,000 mg/kg. The primary dermal irritation study with DBHA in rabbits indicated DBHA to be a slight irritant, and DBHA was not a dermal sensitizer in Guinea pigs. Mutagenicity studies conducted with DBHA include a Salmonella typhimurium reverse mutation assay (negative with and without activation); micronucleus assay (negative); and $TK^{+/-}$ mouse lymphoma assay (negative with and without metabolic activation). In subchronic feeding studies in the rat, DBHA was administered by oral gavage to groups of Sprague-Dawley rats for 28 days at dose levels of 25, 50, 100 and 250 mg/kg/day. No toxicologically meaningful changes were observed in any of the parameters measured in this study. The NOEL and LEL for this study were 250 and >250 mg/kg/day, respectively.

C. Aggregate Exposure

1. *Dietary (food) exposure.* For the purpose of estimating the potential human dietary exposure resulting from bromoxynil use on cotton under the existing tolerances, anticipated residues of bromoxynil and DBHA were used. Anticipated residue values of 1.44 ppm (cottonseed), 8.74 ppm (cotton gin trash), and 0.43 ppm (cottonseed meal) were derived by taking the mean residue values from available crop field trials conducted at the 4.5 lb/A broadcast rate and adjusting by a factor of 0.333 to extrapolate to the current 1.5 lb/A application rate. Adjusting these values for % dry matter and the proposed 10% of crop treated results in anticipated cotton feedstuff residue values of 0.14 ppm (cottonseed), 0.87 ppm (cotton gin trash), and 0.043 ppm (cottonseed meal). Based on the use of these exposure data and a unit risk (Q_1^* (mg/kg/day)$^{-1}$, of bromoxynil of 1.03×10^{-1}, the upper-bound human risk estimate for the general (U.S.) population represented by all sources of bromoxynil exposure, including use on up to 10% of the U.S. treated acreage is approximately 2×10^{-6}.

2. *Drinking water.* There is no Maximum Concentration Level or Health Advisory Level established for bromoxynil under the Safe Drinking Water Act. Based on field dissipation studies demonstrating a short half-life of bromoxynil in the environment (average half-life of 3–7 days), bromoxynil residues will degrade in soil before residues can move downward into ground water. Therefore, no significant potential exists for bromoxynil residues to be present in drinking water from ground water. Likewise, contamination of drinking water supplies from bromoxynil movement through agricultural surface runoff is considered highly unlikely due to relatively low application rates and rapid degradation rates in soil. As demonstrated by available monitoring data, normal dilution and degradation processes will greatly reduce concentrations in surface water during movement from agricultural ditches near fields into streams of adequate size for use as drinking water. It is the conclusion of Rhone-Poulenc that the potential bromoxynil exposure derived from any use through drinking water is insignificant and does not significantly increase the aggregate risk assessment above that estimated to occur through food exposure alone.

3. *Non-dietary exposure.* The potential for non-occupational exposure to bromxynil among the general public is insignificant. There are no residential lawn or garden uses for bromoxynil products where the general population might be exposed via inhalation or dermal routes. Turfgrass use is restricted to non-residential areas. Exposure to bromoxynil following application to non-residential turfgrass is not likely to be significant in either time or duration. This use will therefore not significantly add to the aggregate exposure.

D. Cumulative Effects

There are no reliable data suggesting that any toxic effect that might be caused by bromoxynil would be cumulative with those of any other compound. Further, bromoxynil does not appear to produce a toxic metabolite that is produced by other substances. Therefore, consideration of potential cumulative effects is not appropriate at this time.

E. Safety Determination

1. *U.S. population.* Using the present RfD for bromoxynil of 0.015 mg/kg/day, it has been determined that aggregate chronic exposure to bromoxynil from all uses, including cotton, represents <1% of the RfD for all population sub-groups. A unit risk, Q_1^* (mg/kg/day)$^{-1}$, of bromoxynil of 1.03×10^{-1} in human equivalents, has been calculated based on mouse liver tumors. It is the opinion of Rhone-Poulenc that the bromoxynil data are not suitable for quantitative risk assessment. A threshold safety factor approach is more appropriate and is

commonly used for single sex, single species carcinogens such as bromoxynil that are thought to work through secondary mechanisms. Nevertheless, the risk assessments filed with this petition have been performed using quantitative risk assessment methodology. Accordingly, the upper-bound risk estimate for the general U.S. population represented by all sources of bromoxynil exposure, including use of bromoxynil on up to 10% of the U.S. treated acreage is approximately 2×10^{-6}.

2. *Infants and children.* To estimate acute dietary risk for systemic effects other than developmental from food sources, an MOE of 270 was calculated using 1-day dietary exposure for infants (the most highly exposed population group) and a NOEL of 8 mg/kg/day derived from a 13-week oral toxicity study in dogs. It is concluded that reliable data support use of the standard hundredfold margin of exposure/safety factor in assessing the risk to children. The general U.S. population and all population sub-groups are estimated to be exposed at a level less than 1 percent of the bromoxynil RfD of 0.015 mg/kg/day. Both chronic and acute assessments show no appreciable threshold risks to children and the non-threshold cancer risk is no greater than negligible. Therefore, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bromoxynil.

Two multi-generation rodent reproduction studies demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development. Maternal and developmental NOELs and LOELs were comparable indicating no increase susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore concluded that bromoxynil poses no additional risk for infants and children and no additional uncertainty factor is warranted.

F. International Tolerances

There are no Codex tolerances established for bromoxynil residues, therefore international compatibility is not considered to be an issue at this time.

[FR Doc. 97-30812 Filed 11-25-97; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5927-7]

Proposed Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Sealand Restoration Superfund Site, Lisbon, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (EPA), Region II, announces a proposed administrative *de minimis* settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Sealand Restoration Superfund Site (Site). The Site is located on Pray Road in the Town of Lisbon, St. Lawrence County, New York. This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and give it the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed *de minimis* settlement between EPA and Westpoint Stevens Inc., on behalf of former Cluett, Peabody & Co. (Respondent) has been memorialized in an Administrative Order on Consent (Index Number CERCLA-97-0215). This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Agreement. Under the Order, the Respondent will be obligated to make payments to the Hazardous Substance Superfund in reimbursement of EPA's response costs relating to the Site, plus a premium, based on documented volumes of substances in EPA's records associated with the Site, totaling $47,676.

Pursuant to CERCLA section 122(h)(1), the Order may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative order in writing.

DATES: Comments must be provided on or before December 26, 1997.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007-1866, and should refer to: "Sealand Restoration Superfund Site, U.S. EPA Index No. CERCLA-97-0215". For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Davis, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637-3165.

Dated: November 4, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97-31137 Filed 11-25-97; 8:45 am]

BILLING CODE 6560-50-P

COUNCIL ON ENVIRONMENTAL QUALITY

Notice of Meeting; Postponement

SUMMARY: The Council on Environmental Quality (CEQ) is postponing a public meeting it had previously scheduled for December 2, 1997, to discuss development of a memorandum of understanding on coordinating environmental response actions with natural resource restoration under the Comprehensive Environmental Response, Compensation, and Liability Act and other laws. 62 FR 51660 (October 2, 1997). CEQ intends to reschedule the meeting for late January or early February, 1998. CEQ will soon publish another **Federal Register** notice identifying the time, place, and agenda for the meeting.

FOR FURTHER INFORMATION CONTACT: Mary Morton at (202) 208-3302.

Bradley M. Campbell,

Associate Director.

[FR Doc. 97-31031 Filed 11-25-97; 8:45 am]

BILLING CODE 3125-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96-45; DA 97-2392]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Diane Law, Common Carrier Bureau, Accounting and Audits Division, Universal Service Branch, (202) 418-7400, or via E-mail to "dlaw@fcc.gov".

SUPPLEMENTARY INFORMATION:

Released: November 13, 1997.

In this Public Notice, the Accounting and Audits Division announces the proposed universal service contribution factors for the first quarter of 1998.

In the *Universal Service Order* released on May 8, 1997, the Commission established new federal universal service support mechanisms consistent with the Telecommunications Act of 1934, as amended. (*See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 (62 FR 32862, June 17, 1997)). The Commission required all telecommunications carriers that provide interstate telecommunications services, providers of interstate telecommunications, and payphone service providers to contribute to the federal universal service support mechanisms. The Commission found that contributions for the schools, libraries, and rural health care programs would be based on interstate, intrastate, and international end-user telecommunications revenues. The Commission also found that contributions for the high cost, rural, and insular and low-income programs would be based on interstate and international end-user telecommunications revenues.

On July 18, 1997, the Commission released an Order directing the National Exchange Carrier Association (NECA) to create an independently functioning not-for-profit subsidiary, the Universal Service Administrative Company (USAC), through which it will administer temporarily certain aspects of the federal universal service support mechanisms. The Commission also directed NECA to create two independent, not-for-profit entities, Schools and Libraries Corporation and Rural Health Care Corporation, to administer certain aspects of the schools, libraries, and rural health care programs of the federal support mechanisms. The Commission instructed USAC, Schools and Libraries Corporation, and Rural Health Care Corporation to submit projections of demand and administrative expenses for their respective programs for the first quarter of 1998 to the Commission at least sixty days before the start of the first quarter of 1998. USAC also must compile total interstate, intrastate, and international end-user telecommunications revenues and submit that information to the Commission. The Commission stated that it would publish these figures and the proposed quarterly contribution factors in a Public Notice. (*See* Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, FCC 97-253 (62 FR 41294, August 1, 1997)).

On October 31, 1997, USAC, Schools and Libraries Corporation, and Rural Health Care Corporation submitted projections of demand and administrative expenses for their respective programs for the first quarter of 1998. Those figures are as follows:

Program	Program demand (million)	Administrative expenses	Interest income	Total program costs (millions)
Schools and Libraries Program	$299.1	$2.7 million	($1.8 million)	$300.0
Rural Health Care Program	98.4	2.2 million	(605,000)	100.0
High Cost Program	434.0	1.1 million	(2.8 million)	432.3
Low Income Program	135.7	600,000	(900,000)	136.0
Totals	967.2	6.6 million	(6.1 million)	968.3

Based on information contained in the Universal Service Worksheets, FCC Form 457, USAC submitted the following information regarding end-user telecommunications revenues on November 13, 1997:

Total Interstate and International End-User Telecommunications Revenues from January 1, 1997-June 30, 1997: $35.001 billion;

Total Interstate, Intrastate, and International End-User Telecommunications Revenues from January 1, 1997—June 30, 1997: $89.827 billion.

To calculate the proposed quarterly contribution factors, the Bureau divided the combined total demand projections by the appropriate six-month contribution base. Based on USAC's recommendation, to account for possible uncollectible contributions and possible errors in the projections of demand and administrative expense, the Accounting and Audits Division decreased the contribution base totals submitted by USAC by two percent. Based on the figures submitted by USAC, Schools and Libraries Corporation, and Rural Health Care Corporation, the proposed contribution factors for the first quarter of 1998 are as follows:

Contribution factor for interstate and international end-user telecommunications revenues: 0.0166. This figure was calculated by dividing $568 million total projected demand for the high cost and low income programs by $34,301 million interstate and international end-user telecommunications revenues. $34,301 million is 98 percent of the reported $35.001 billion interstate and international end-user telecommunications revenues contribution base.

Contribution factor for interstate, intrastate, and international end-user telecommunications revenues: 0.0045. This figure was calculated by dividing $400 million total projected demand for the schools, libraries, and rural health care programs by $88,030 million interstate, intrastate, and international end-user telecommunications revenues. $88,030 million is 98 percent of the reported $89.827 billion interstate, intrastate, and international end-user telecommunications revenues contribution base.

If the Commission takes no action regarding the proposed contribution factors by November 28, 1997, the proposed contribution factors will be deemed approved by the Commission. Until November 28, 1997, the Commission reserves the right to modify

these contribution factors and set the projections of demand and administrative expenses at amounts that the Bureau determines will serve the public interest. Once the proposed contribution factors are deemed approved by the Commission or are modified and approved in a subsequent Public Notice, USAC shall use the approved contribution factors to calculate and bill first quarter universal service contributions. USAC will send all contributors a quarterly bill for the federal universal service support mechanisms in December of 1997. Contributors must submit their first quarter universal service contribution to USAC within thirty days of the date listed on their quarterly bill. Payments must be sent to the address specified on the quarterly bill.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Division Chief, Common Carrier Bureau.

[FR Doc. 97–31116 Filed 11–24–97; 10:00 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

November 20, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0803.

Expiration Date: 05/31/98.

Title: Tariff Review Plan Revisions.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 16 respondents (estimated annual responses: 71); 25 hours per response (avg.); 1776 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: One-time requirement.

Description: In the Tariff Review Plan (TRP) Revision, the Commission initiates the necessary revisions to the TRPs under which incumbent price cap local exchange carriers (LECs) should make their access filing to take effect on January 1, 1998. This filing is necessary so that incumbent price cap LECs can adjust their rates in response to the *First Report and Order* (rel. May 16, 1997) and the *Second Order on Reconsideration* (rel. October 9, 1997) in CC Docket No. 96–262. Sections 201, 202, 203, 204 and 205 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 201, 202, 203, 204 and 205, require that common carriers establish just and reasonable charges, practices and regulations for the telecommunications services provided. The tariff schedules containing those charges, practices and regulations must be filed with the FCC, and the FCC is required to determine whether such schedules are just, reasonable, and not unduly discriminatory. The Commission is granted broad authority to require the submission of data showing the value of the property used to provide these services. 47 U.S.C. Section 213. Pursuant to its statutory mandate to assure just, reasonable, and nondiscriminatory charges for interstate telephone service, the FCC has adopted specific rules regarding the determination of the range of rates charged by local exchange carriers (LECs) to interexchange carriers (IXCs) transporting long distance calls. The IXCs use local networks of LECs to originate or terminate long distance calls. 47 CFR Part 69. The TRP material submitted by the Local Exchange Carrier is used by the FCC to determine whether its interstate access rates are just and reasonable as required by the Communications Act of 1934, as amended. Obligation to respond: mandatory. Contact Shoko Hair (202–418–1379) for copies of the TRP Revision displaying the OMB control number and expiration date and required PRA statements.

OMB Control No.: 3060–0804.

Expiration Date: 05/31/98.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467, and 468.

Respondents: Business or other for profit.

Estimated Annual Burden: 15,400 respondents; 2.5 hours per response (avg.); 117,000 total annual burden hours.

• *Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

Frequency of Response: On occasion.

Description: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service by preserving and advancing universal service markets toward competition, and to benefit everyone. Congress placed on the Commission the duty to implement these principles in a manner consistent with the pro-competition purposes of the Act. To fulfill that mandate, on March 8, 1996, the Commission adopted a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96–45 implementing the Congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. On May 8, 1997, the Commission adopted rules providing support for all telecommunications services, limited distance charges, and Internet access for all eligible health care providers. In an effort to implement these requirements and obligations the Commission has received OMB approval for the following forms to administer the health care providers universal service program: *FCC Form 465* "Description of Services Requested and Certification." All health care providers requesting services eligible for universal service support must file a "Description of Services and Certification" form with the Administrator.

Filing this form is the first step a health care providers must take to participate in the universal service program. The Administrator will then post a description of the services sought on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 CFR 54.603(b)(2), 47 CFR 54.615(c). *FCC Form 466* "Services Ordered and Certification." All health care providers ordering services that are eligible for universal service support must file a "Services Ordered and Certification" form with the Administrator. 47 CFR 54.603(b)(4). Form 466, "Services Ordered and Certification," will be used to ensure health care providers have selected the most cost-effective method of providing the requested services as set forth in 47 CFR 54.603(b)(4). FCC Form 466 is also the means by which an applicant informs the Administrator that it has entered a contract with a telecommunications service provider for services that are supported under the universal services support program. The administrator must receive this form before it can commit universal service funds to support the services for which the applicant has contracted. *FCC Form 467* "Receipt of Service Confirmation."

All health care providers that are receiving supported telecommunications service must file this form with the Administrator. The data in the report will be used to ensure that health care providers are receiving the services they have contracted for with telecommunications service providers so that universal service support may be appropriate to the telecommunications service provider pursuant to 47 CFR 54.611. *FCC Form 468* "Telecommunications Service Providers Support." All health care providers ordering services eligible for universal service support must file this form. The data in the report will be used to ensure that health care providers have calculated the amount of universal service support as set forth in 47 CFR 54.609(b). Telecommunications carriers must complete Form 468 by indicating the rural and urban rates for the services they have provided and the amount of the discount for which they must be reimbursed, and return it to the health care provider. The health care provider must attach it to Form 466 and file both forms with the administrator. These forms are used to administer the health care providers universal service program. The information is used primarily to determine eligibility. Obligation to respond: required to obtain or retain benefits. A Public Notice will be issued when the forms are available for public use.

OMB Control No.: 3060–0790.

Expiration Date: 11/31/2000.

Title: Availability of Inside Wiring Information—Section 68.110(c).

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 1200 respondents; 1 hours per response (avg.); 1200 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $5000.

Frequency of Response: On occasion.

Description: Title II of the Communications Act of 1934, as amended, 47 U.S.C. Section 201 et al provides the statutory authority for the Commission to promulgate the rules and regulations contained in Part 68 of the FCC Rules, 47 CFR Part 68. Requirements in Part 68 are necessary to prevent the degradation of the telephone network. In CC Docket No. 88–57, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking (Order on Reconsideration) (released 6/17/97), the Commission amends Part 68 to require telephone companies to provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records, shall be provided by the telephone company upon request of the building owner or agent thereof. The telephone company may charge the building owner a reasonable fee for this service, which shall not exceed the cost involved in locating and copying the documents. In the alternative, the telephone company may make these documents available for review and copying by the building owner. In this case, the telephone company may charge a reasonable fee, which shall not exceed the cost involved in making the documents available, and may also require the building owner to pay a deposit to guarantee the documents' return. The FCC is requiring the disclosure of drawings and schematics of existing carrier-installed wiring for duplication by building owners or their agents for a reasonable fee to be determined by the carrier. Building owners will be able to contract with a installer of their choice for maintenance and installation service, or elect to contract with the telephone company to modify existing wiring or assist with the installation of additional inside wiring. See 47 CFR 68.110. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31301 Filed 11–25–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2430; CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Applications for State Certification Accepted

Released: November 20, 1997.

Notice is hereby given that the state listed below has applied to the Commission for State Telecommunications Relay Service (TRS) Certification. Current state certifications expire July 25, 1998. Applications for certification, covering the five year period of July 26, 1998 to July 25, 2003, must demonstrate that the state TRS program complies with the Commission's rules for the provision of TRS, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225. These rules are codified at 47 CFR §§ 64.601–605.

Copies of applications for certification are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, N.W., Washington, D.C., Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM) and the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., daily, from 9:00 AM to 4:30 PM. Interested persons may file comments *on or before December 12, 1997.* Comments should reference the relevant state file number of the state application that is being commented upon. One original and five copies of all comments must be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Two copies also should be sent to the Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554.

A number of state TRS programs currently holding FCC certification have failed to apply for recertification. Applications received after October 1, 1997, for which no extension has been requested before October 1, 1997, must be accompanied by a petition explaining the circumstances of the late-filing and requesting acceptance of the late-filed application.

File No: TRS–97–38.

Applicant: Public Utilities Commission of Ohio, State of Ohio.

For further information, contact Al McCloud, (202) 418–2499, amccloud@fcc.gov, or Andy Firth, (202) 418–2224 (TTY), afirth@fcc.gov, at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30971 Filed 11–25–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and

approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Dispute Resolution Neutrals Questionnaire.

Form Number: 8000/01.

OMB Number: 3064–0107.

Annual Burden:

Estimated annual number of respondents: 100.

Estimated time per response: 0.5 hours.

Average annual burden hours: 50 hours.

Expiration Date of OMB Clearance: November 30, 1997.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4022, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before December 26, 1997 to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC's Roster of Dispute Resolution Neutrals is part of its Alternative Dispute Resolution (ADR) program. Parties wishing to be considered for inclusion on the Roster must submit a completed questionnaire containing biological and demographic data. The information obtained from respondent is used to evaluate the candidate's qualifications to serve as neutrals in cases involving ADR.

Dated: November 21, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–31088 Filed 11–25–97; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

[No: 97–70]

Pilot Procedures and Pilot Proposal Initial Submission Guidelines

Whereas, the Federal Housing Finance Board (Finance Board) considers it appropriate to adopt a policy that provides procedures for processing and analyzing pilot programs proposed by the Federal Home Loan Banks;

Now therefore be it resolved that, the Finance Board hereby adopts the Pilot Procedures and Pilot Proposal Initial Submission Guidelines attached hereto.

Dated: November 12, 1997.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

The text of the Pilot Procedures and Pilot Proposal Initial Submission Guidelines follows:

Policy and Procedures For Pilot Proposals That Support Housing and Community Investment

Purpose: To establish procedures to be followed by staff of the Federal Housing Finance Board (Finance Board) in the processing and analysis of proposed Federal Home Loan Bank (Bank) pilot programs through which the Banks would make other investments that support housing and community development. These procedures shall apply also to the processing and analysis of proposed amendments to existing pilot programs. In establishing these procedures, it is the Finance Board's intent that the pilot review process proceed in an efficient, expeditious fashion at all stages.

Introduction: The Federal Home Loan Bank Act (Bank Act) provides that certain assets of each Bank not required for advances to members, may be invested in certain specified securities and investments. The Finance Board has implemented the investment provisions of the Bank Act through its regulations and the Financial Management Policy (FMP). Under Section 934.1 of the Finance Board's regulations and Section II.B.12 of the FMP, certain Bank investments that support housing and community development, and that are not specifically authorized under the FMP or otherwise, may be submitted to the Finance Board for approval. This policy establishes general procedures to be followed by Finance Board staff in reviewing pilot proposals or pilot amendment proposals (Proposal) for compliance with the statutory, regulatory, and FMP requirements.

References: 12 U.S.C. Sections 1431(g), 1431(h), and 1436(a); 12 CFR Section 934.1, of the Finance Board regulations; and Section II.B.12 of the FMP.

Procedures for Review of Proposals

I. Receipt of Proposal. Copies of a Proposal shall be distributed to Finance Board Directors and appropriate Finance Board staff.

II. Review of Proposal. The Office of Policy and the Office of General Counsel shall review the Proposal to ensure that it is complete and to determine whether there is evidence of a market for the proposal and whether it prima facie satisfies the FMP requirements (detailed below) and responds to the Finance Board's Pilot Proposal Submission Guidelines (Attachment).

III. FMP Requirements. Section II of the FMP specifies certain types of assets as permissible investments to the extent they are specifically authorized under 12 U.S.C. 1431(g), 1431(h), or 1436(a), or to the extent a Bank has determined that they are securities in which fiduciary or trust funds may be invested under the laws of the State in which the Bank is located. Other investments that support housing and community development are permitted, provided that the Bank:

A. Ensures the appropriate levels of expertise, establishes policies, procedures, and controls, and provides for any reserves required to effectively limit and manage risk exposure and preserve the Bank's and the Federal Home Loan Bank System's triple-A rating;

B. Ensures that the Bank's involvement in such investment activity assists in providing housing and community development financing that is not generally available, or that is available at lower levels or under less attractive terms;

C. Ensures that such investment activity promotes (or at the very least, does not detract from) the cooperative nature of the System;

D. Provides a complete description of the contemplated investment activity (including a comprehensive analysis of how the above three requirements are fulfilled) to the Finance Board; and

E. Receives written confirmation from the Finance Board, prior to entering into such investments, that the above investment eligibility standards and requirements have been satisfied.

IV. The Office of Policy and the Office of General Counsel shall identify any policy or legal issues or questions, identify and discuss with the Office of Supervision the management of any potential risks involved in the Proposal, discuss the Proposal with other staff as necessary, call Bank personnel to clarify any uncertain or unclear aspects, and discuss issues or questions with the Director of the Office of Policy and the General Counsel, as appropriate.

V. If the Office of Policy and the Office of General Counsel deem the Proposal incomplete, staff shall contact the Bank and afford Bank officials the opportunity to submit the necessary additional information.

VI. If the Proposal is deemed complete by the Office of Policy and the Office of General Counsel but is not believed to meet the requirements of the FMP, the Director of the Office of Policy shall notify the Bank, either formally or informally, and afford the Bank the opportunity either to withdraw, modify, or insist upon the Proposal, as structured, being published for comment.

VII. If the Office of Policy and the Office of General Counsel determine that the Proposal is complete and appears to address the requirements of the FMP and all issues or questions are satisfactorily resolved, the Office of Policy and the Office of General Counsel shall draft a Notice for publication in the **Federal Register**. The Notice shall be a summary of the Proposal that is sufficiently detailed to allow meaningful comments from interested parties through a comment period. However, it need not contain the staff's analysis of whether or how the proposal meets the FMP requirements. Publication of a Notice does not imply any level of approval or support of the Proposal by the Finance Board. The Board of Directors of the Finance Board will not review and render a decision on the Proposal until after public comments received on the Proposal are reviewed and analyzed by staff, as is discussed below.

VIII. Prior to publication, the Office of Policy shall provide the Bank a copy of the section of the Notice that describes the Proposal and solicit the Bank's comments on the accuracy and completeness of the section.

IX. The Notice must be approved by the Director of the Office of Policy and the Office of General Counsel, with copies provided to the Directors of the Office of Supervision and the Office of Public Affairs, prior to going to the Executive Secretariat and then to the Managing Director for signature.

X. After publication of the Notice in the **Federal Register**, the Office of Policy and the Office of General Counsel shall respond to calls from the general public concerning the Proposal. The Office of Policy may answer questions about the program but requests for written information should be referred to the Office of General Counsel.

XI. The Office of Policy and the Office of General Counsel shall analyze comments received and discuss them with other Finance Board staff as necessary.

XII. To the extent necessary and appropriate, the Office of Policy or the Office of General Counsel shall contact the Bank and request a response to the issues or questions raised by commenters.

XIII. Following publication of the Notice, the Bank shall submit to the Finance Board proposed policies and procedures to address risks inherent in its proposed pilot program (e.g., credit risk, market risk, interest rate risk, and other risks).

XIV. Prior to Finance Board consideration, the Office of Policy and the Office of General Counsel shall review the proposed policies and procedures submitted by the Bank; the Bank's identification of, and plans for, managing risk; and the adequacy of expertise and number of staff planned by the Bank for its proposed pilot program. If necessary, staff may request additional information, clarification, etc.

XV. Following review and analysis of the Proposal, public comments received, and the above three factors, the Office of Policy and the Office of General Counsel, in consultation with the Office of Supervision, shall make a determination as to whether to recommend approval or disapproval to the Board of Directors of the Finance Board. The following shall result from this determination:

A. A briefing shall be held for Finance Board Directors regarding the Proposal and staff's recommendation.

B. A Board package shall be prepared for the Proposal and include the staff's recommendation and a summary of public comments.

C. Finance Board staff shall present the Proposal and their recommendation to the Board of Directors of the Finance Board.

XVI. The Board of Directors of the Finance Board will take action on the Proposal. If approved, the Board resolution approving the Proposal shall indicate that the approval is subject to the pilot program passing a safety and soundness examination conducted by the Office of Supervision.

XVII. The Office of Policy shall prepare a letter for signature by the Chairman or Managing Director to inform the Bank of the Finance Board's decision on the Proposal.

XVIII. If the Board of Directors has approved the Proposal, program implementation shall be contingent upon confirmation by the Office of Supervision that the appropriate program policies, procedures, and controls have been implemented by the FHLBank.

Pilot Proposal Initial Submission Guidelines

The following criteria should be addressed and included in a Bank's pilot proposal or pilot amendment proposal (Proposal) submitted to the Finance Board for approval.

1. *Board Resolution:* A resolution from the Bank's board of directors approving the Proposal and authorizing its submission to the Finance Board.

2. *Description of Proposal:* A complete description and discussion of the Proposal, including each of the following:

a. Overall goals and objectives
b. Pilot size and basis for determination
c. Pilot operations
d. Profitability goals and timeline
e. The marketplace: Potential competitors (size, sophistication, typical staffing, expertise, etc.) typical margins, historical loss experience, and whether marketplace is expanding or contracting and why.
f. Discuss which components of the program the Bank will have to create, hire, etc. This could include personnel, management, policies, procedures, hardware, software, facilities, etc.
g. How the Proposal would benefit membership
h. Expected benefits for the end user of the pilot product
i. Identification and management of potential risks
j. Explanation/basis for loan loss or risk reserves anticipated

3. *Compliance Authorization Criteria:* Explanation of how the Proposal meets the requirements of Section II B.12 of the Finance Board's Financial Management Policy. Please provide specific responses for each subpart. This should also include a legal opinion that the proposed activity may be legally authorized by the Finance Board.

4. *Pilot Documentation, Support and Reporting:* Discussion of anticipated program documentation, support, and reporting, including each of the following:

a. Evidence of a market for the pilot product. This could include letters of support from anticipated participants, market surveys, etc., and should include anticipated participants' estimates of the dollar volume of their participation within the first three years of the program.

b. Examples of required documentation between the Bank, members and other related counterparties, as well as any legal agreements drafted for the pilot.

c. The management structure for operating the pilot program. Identify the management, staff and directors who will be assigned to oversee and operate the pilot and discuss their expertise. Their resumes should be included with the Proposal. Discuss what additional personnel will need to be hired.

d. A listing, description, and examples of management reports necessary to adequately monitor ongoing pilot activities.

5. *Measurement of Pilot Success:* A discussion of criteria the Bank intends to utilize to measure the success of the program, such as:

a. When the Bank anticipates reviewing the program and making a decision on whether to seek permanent or other status for the pilot.

b. The existence of a sunset provision.

c. The factors or conditions that might trigger a decision to terminate the pilot.

[FR Doc. 97–30964 Filed 11–25–97; 8:45 am]
BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 692. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, by December 8, 1997.

Agreement No.: 202–008900–063.
Title: The "8900" Lines Agreement.
Parties:
The National Shipping Company of Saudi Arabia
United Arab Shipping Company (S.A.G.)
DSR-Senator Lines
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
P&O Nedlloyd Limited

Synopsis: The proposed modification to Article 14 of the Agreement authorizes any party or any group of parties to enter into individual service contracts and deletes the current prohibition on such contracts. The modification also expands and clarifies current guidelines applicable to service contracts.

Agreement No.: 217–011595.
Title: TBS/Oceanica Space Charter Agreement.
Parties:
TBS North America Liner, Ltda. ("TBS")
Comercial Maritima Oceanica Ltd. ("Oceanica")

Synopsis: The proposed Agreement authorizes Oceanica to charter space to TBS on a maximum of six vessels it will operate from United States ports, and U.S. inland and coastal points served via such ports, to ports and points in Central America, South America and the Caribbean Sea. It also authorizes the parties to agree on transshipment arrangements and to cooperate with respect to terminals and equipment.

Dated: November 20, 1997.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 97–30978 Filed 11–25–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 97–22]

Bermuda Container Line Ltd. v. SHG International Sales Inc. FX Coughlin Co., and Clark Building Systems, Inc., Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Bermuda Container Line, Ltd., ("Complainant") against Respondents SHG International Sales Inc. ("SHG"), FX Coughlin Co. ("Coughlin"), and Clark Building Systems, Inc. ("Clark") was served November 20, 1997. Complainant alleges that (1) Respondent SHG violated sections 8 and 23 or, alternatively, section 19, and section 10(a)(1) of the Shipping Act of 1984 ("the Act"), 46 U.S.C. app. §§ 1707 and 1721 or 1718, and 1709(a)(1), by failing to file a non-vessel operating common carrier ("NVO") tariff or bond or performing freight forwarding services without a forwarder license, and by concealing the identity of the shipper with respect to a shipment from Clark, PA to Bermuda, entering into a credit agreement with no intention of paying the freight and misrepresenting itself as the shipper; (2) Respondent Coughlin violated section 19 of the Act and 46 CFR §§ 510.21(c), (e) and (f), by falsely certifying it had processed the shipment's Bill of Lading ("BL") when it knew or should have known that the BLs designated shipper (SHG) could not be a shipper, seeking a commission from Complainant by misrepresentation and permitting SHG to use Coughlin's forwarding license; and (3) Respondent Clark violated section 10(a)(1) of the Act by delivering cargo to Complainant when it knew or should have known that SHG had no tariff or NVO bond on file with the Commission and failing to inform Complainant of the facts or to pay the shipment's freight.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 20, 1998, and the final decision of the Commission shall be issued by March 22, 1999.

Joseph C. Polking,
Secretary.
[FR Doc. 97–31032 Filed 11–25–97; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 10, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Wallace Company, Limited Partnership, Cheyenne, Wyoming; to acquire voting shares of Farmers State Bankshares, Inc., Cheyenne, Wyoming, and thereby indirectly acquire Wyoming Bank & Trust, Cheyenne, Wyoming.

Board of Governors of the Federal Reserve System, November 20, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–30967 Filed 11–25–97; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 1, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 21, 1997.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 97–31151 Filed 11–21–97; 4:09 pm]
BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gail T. Lovelace, Director of Human Resources, General Services Administration, 1800 F Street, N.W., Washington, DC 20405, (202) 501–0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendation to the appointing authority relative to the performance of the senior executive.

Members of the Review Board are:

1. Thurman M. Davis, Sr. (Chairperson), Deputy Administrator.
2. Martha N. Johnson, Chief of Staff.
3. Dennis J. Fisher, Commissioner, Federal Technology Service.
4. Robert A. Peck, Commissioner, Public Buildings Service.
5. Frank P. Pugliese, Commissioner, Federal Supply Service.
6. G. Martin Wagner, Associate Administrator for Governmentwide Policy.

Dated: November 20, 1997.
Gail T. Lovelace,
Director of Human Resources.
[FR Doc. 97–31038 Filed 11–25–97; 8:45 am]
BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0472]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing a petition for administrative stay of action.

DATES: Submit written comments on the collection of information by January 26, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502 (3) and 5 CFR 1320.3 (c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506 (c) (2) (A) of the PRA (44 U.S.C. 3506 (c) (2) (A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Petition For Administrative Stay of Action—21 CFR Part 10.35 (OMB Control Number 0910—0194)—Reinstatement

Section 10.35 (21 CFR 10.35), issued under the authority of section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)), sets forth the format and procedures by which an interested person may file a petition for an administrative stay of action.

Respondents to this information collection are interested persons who choose to file a petition for an administrative stay of action. Such a petition must: (1) Identify the decision involved; (2) state the action requested—including the length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. The information provided in the petition is used by the agency to determine whether the requested stay should be granted.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.35	7	1	7	100	700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on FDA's experience with petitions for administrative stay of action over the past 3 years. Agency personnel responsible for processing the filing of petitions for administrative stays of action estimate that seven such petitions are received by the agency annually, with each requiring approximately 100 hours of preparation time.

Dated: November 19, 1997

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30982 Filed 11–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0396]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by December 26, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reports of Corrections and Removals for Manufacturers, Importers, and Distributors of Medical Devices (21 CFR 806.10 and 806.20).

In a final rule published in the **Federal Register** of May 19, 1997 (62 FR 27183), FDA issued regulations requiring that manufacturers, importers, and distributors of medical devices report promptly to FDA any corrections or removals of a device undertaken to reduce a risk to health posed by the device or to remedy a violation of the Federal Food, Drug, and Cosmetic Act (the act) that could present a risk to health. The collection of this information is required by section 519(f) of the act (21 U.S.C. 360i(f)). These regulations will help FDA to protect the public health by ensuring that the agency has current and complete information regarding those actions taken to reduce risks to health caused by devices. Reports of such actions will improve the agency's ability to evaluate device-related problems and to take prompt action against potentially dangerous devices.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
806.10	880	1	880	10	8,800

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
806.20	440	1	440	10	4,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the final rule (62 FR 27183), the agency requested comments on the information collection provision of the new regulation. The 60-day comment period closed July 18, 1997. The agency received four comments. Comments received in response to the information collection provisions stated that: (1) The U.S. designated agent provisions should be reinstated; (2) the definition of risk to health is confusing and contradictory, and it raises the threshold of reports of corrective and removal actions to that of a voluntary recall, and as such will de facto result in the automatic classification of these reports as recalls; (3) FDA has underestimated the reporting burden; and (4) the recordkeeping requirements place undue burden on industry.

FDA disagrees with these comments. As discussed in the May 1997 final rule requiring reports of corrections and removals, FDA published a final rule staying the U.S. designated agent provisions of the medical device reporting (MDR) rule in the **Federal Register** of July 23, 1996 (61 FR 38346). FDA stayed those provisions in response to serious concerns on the part of regulated industry that the agency had not adequately considered the costs to and administrative burden on foreign firms. The same concerns apply to the U.S. designated agent provision included in the proposed rule to require reports of corrections and removals (59 FR 13828, March 23, 1994). FDA omitted that provision in the final rule (62 FR 27183) to allow the agency to continue to consider industry's concerns. The agency has not announced its decision on whether it will reinstate U.S. designated agent provisions in MDR or the corrections and removals rule, but intends to do so in the future.

FDA does not believe that the definition of "risk to health" in the corrections and removals rule is confusing or contradictory. The agency and manufacturers have used this same definition successfully under part 7 (21 CFR part 7), the voluntary recall rule, for over 20 years. Moreover, by using the definition of "risk to health" that appears in the voluntary recall rule, the agency believes that it has established an appropriate threshold for requiring reports of removals and corrections. The definition the agency adopted in the final rule is narrower than the one that appeared in the proposed rule and eliminates the burden on manufacturers of having to report corrections of minor or very remote health risks. Adoption of this definition does not affect recall procedures under part 7, which remain voluntary.

The agency does not believe that the reporting burden for reports of corrections and removals has been underestimated. The agency revised the reporting and recordkeeping burden estimate in the final rule upward based on a review of voluntary reporting data and industry complaint files. The comments did not submit any specific data as to what they believe to be the true costs of the rule.

The agency disagrees with the comment that recordkeeping requirements place an undue burden on industry. The statute requires manufacturers to keep records of corrections and removals that do not meet the requirements for reporting. The regulation implements this statutory requirement. FDA believes that the recordkeeping requirement of the corrections and removals rule carries out the statutory mandate and is appropriately tailored to the agency's mission of protecting the public health. The statute and the regulation require reporting only of events, corrections, and removals that are initiated to address a public-health risk. FDA believes that it has limited reporting requirements to information necessary to carry out its mission of protecting the public health.

Dated: November 19, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31063 Filed 11–25–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–56]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 26, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 20, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Homeownership Assistance Under Section 235 of the National Housing Act.

Office: Housing.

OMB Approval Number: 2502–0190.

Description of the Need for the Information and its Proposed Use: The information collection will be used to determine a homeowner's eligibility for and amount of financial assistance to be provided under Section 235, Homeowners Assistance Payments Program.

Form Number: HUD–93100.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–93100	21,000		1		25		250

Total Estimated Burden Hours: 5,250.

Status: Reinstatement, with changes.

Contact: Diane Lobasso, HUD, (202) 708–2700 x2191; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 20, 1997.

[FR Doc. 97–31071 Filed 11–25–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–60]

Submission of OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 26, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 20, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Description of materials.

Office: Housing.

OMB Approval Number: 2502–0192.

Description of the Need for the Information and Its Proposed Use: Form HUD–92005 is needed so that builders and sponsors can describe the materials for the construction and other improvements to the single family property. This form and the drawings define the scope and limits of the proposed construction. This information is also used by HUD to estimate the value for FHA mortgage insurance to determine if the construction meets regulatory requirements.

Form Number: HUD–92005.

Respondents: Business or Other For-Profit and the Federal Government.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–92005	2,500		20		.5		25,000

Total Estimated Burden Hours: 25,000.

Status: Reinstatement, with changes.

Contact: Kenneth L. Crandall, HUD, (202) 708–6396 X5626; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 20, 1997.

[FR Doc. 97–31072 Filed 11–25–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1999

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the NEHRP.

The purpose of this program is to support research in earthquake hazards prediction; to provide earth-science data and information essential to determine seismic hazards present in the United States; and information essential to mitigate earthquake damage.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of state and local governments.

The NEHRP supports research related to the following general areas of interest:

I. Evaluating National and Regional Hazard and Risk. National and regional hazard and risk maps are critical to effective risk reduction strategies.

II. Evaluating Urban Hazard and Risk. The strong ground shaking and resulting catastrophic losses in the 1994 Northridge earthquake reinforced the need for the U.S. Geological Survey to concentrate its efforts where the risks are highest, that is, in the nation's urban areas.

III. Understanding Earthquake Processes. The effectiveness of risk-mitigation strategies and disaster response are limited by our meager understanding of the tectonic processes that cause earthquakes and generate the strong shaking and ground failure that devastates the built environment.

IV. Providing Real-time Hazard Assessment. Effective earthquake hazard evaluation and response to damaging events depend on timely, accurate information. Short, intermediate, and long-term earthquake forecasts in regions of high earthquake potential can all lead to mitigation activities that reduce the losses in subsequent earthquakes.

V. Providing Geologic Hazards Information Services. Computer technology has evolved rapidly in recent years to the point that new powerful tools are accessible both to the providers and the users of geologic hazards information.

DATES: The closing date for receipt of applications will be on or about April 1, 1998. The actual closing date will be specified in Announcement No. 1434–HQ–99–PA–00061.

ADDRESSES: The program announcement is expected to be available on or about February 2, 1998. You may obtain a copy of Announcement No. 1434–HQ–99–PA–00061 from the USGS Contracts and Grants Information Site at http://www.usgs.gov/contracts/nehrp/ or by writing Brian Heath, U.S. Geological Survey, Office of Acquisition and Federal Assistance—Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (703–648–7901).

FOR FURTHER INFORMATION CONTACT: John Sims, Earthquake Hazards Reduction Program—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone: (703) 648–6722.

SUPPLEMENTARY INFORMATION: Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977. Pub. L. 95–124 (42 U.S.C. 7701, *et seq.*). The Office of Management and Budget Catalog of Federal Domestic Assistance number is 15.807.

Tim Calkins,

Acting Associate Chief, Operations.

[FR Doc. 97–30897 Filed 11–25–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[4310–CA065–1492]

Notice of Availability

November 20, 1997.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Record of Decision for the Soledad Mountain Gold Mine, Kern County, California, is available.

ADDRESSES: Written requests for copies of the Record of Decision should be addressed to Bureau of Land Management, Ridgecrest Resource Area, 300 S. Richmond Road, Ridgecrest, California 93555, Attention: Ahmed Mohsen, EIS Coordinator.

FOR FURTHER INFORMATION CONTACT: Ahmed Mohsen-EIS Coordinator (760) 384–5421.

Russell Miles,

Acting Area Manager.

[FR Doc. 97–31042 Filed 11–25–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Oil Transportation Allowance (OMB Control Number 1010–0061); this information collection pertains to Indian leases only.

FORMS: MMS–4110, Oil Transportation Allowance Report

DATES: Written comments should be received on or before January 26, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:Mail address is David—Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis—C—Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior (Secretary) is responsible for the collection of royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation and allowance determination process is essential to assure that the public and/or the Indians receive payment on the proper value of the minerals being removed.

MMS performs the royalty management functions for the Secretary. When a company or an individual enters into a contract (a lease) to explore, develop, produce, and dispose of oil from Indian lands, that company or individual agrees to pay the United States or Indian tribe or allottee a share (royalty) of the value received from production from the leased lands. Royalty rates are specified in the lease agreement. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is first necessary to establish the proper value of the oil that is being sold or otherwise disposed of in some other manner, as well as the proper costs associated with allowable deductions.

In some circumstances, lessees are authorized to deduct from royalty payments the reasonable actual cost of transporting the royalty portion of the oil from the lease to a delivery point remote from the lease. Transportation allowances are a part of the product valuation process which MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

Before any deduction may be taken, the lessee must submit page one of the Oil Transportation Allowance Report, Form MMS–4110, declaring the amount of reasonable actual transportation costs to be deducted from royalty. We estimate that 3 respondents will each submit an average of 7 allowance data lines for a total of 21 data lines annually. We estimate that each data line will require ¼ hour to prepare, a total of 5.25 burden hours. Authorization to deduct a transportation allowance continues for 12 months, or until the contract is changed or terminated. At that time, the lessee must resubmit page one of Form MMS–4110. We estimate that recordkeeping for these transportation allowances will require 1/2 hour per respondent annually.

Dated: November 20, 1997.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 97–31081 Filed 11–25–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service, Interior

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Coal Transportation and Washing Allowance (OMB Control Number 1010–0074); this information collection pertains to Indian leases only.

FORMS: MMS–4292, Coal Washing Allowance Report and MMS–4293, Coal Transportation Allowance Report.

DATES: Written comments should be received on or before January 26, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:Mail address is David_Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis_C_Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information and are inviting your comments. In this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands, to collect the royalties due, and to distribute the funds in accordance with those laws. The product valuation process is essential to assure that the public and/or the Indians receive payment on the full value of the minerals being removed.

MMS performs these royalty management functions for the Secretary. When a company or an individual enters into a contract (a lease) to develop, mine, and dispose of coal deposits from Indian lands, that company or individual (the lessee) agrees to pay the United States, Indian tribe, or allottee (the lessor) a share (royalty) of the gross proceeds received from the sale of production from leased lands. Royalty rates are specified in the lease agreement. In order to determine whether the amount of royalty tendered represents the proper royalty due, it is necessary to establish the value of the coal being sold or otherwise disposed of in some other manner, as well as the proper costs associated with allowable deductions.

In some circumstances, lessees are authorized to deduct certain costs in the calculation of royalties due. An allowance may be granted from royalties to compensate lessees for the reasonable actual cost of washing the royalty portion of coal. Also, when the sales point is not in the immediate vicinity of a lease or mine area, an allowance may be granted to compensate lessees for the reasonable actual cost of transporting the royalty portion of coal to a sales point not on the lease or mine area.

Before any deductions are taken, the lessee with an arm's-length contract must submit page one of the Coal Washing Allowance Report, Form MMS–4292, or the Coal Transportation Allowance Report, Form MMS–4293. The allowances will be based on reasonable actual costs reported by the lessees and are subject to later audit. We estimate that one lessee will submit two reports annually and that each submission will require ½ hour to prepare, a total of 1 burden hour.

Lessees with a non-arm's-length contract must also submit Form MMS–4292 or Form MMS–4293. All applicable pages of the allowance application forms should be submitted. The allowances will be based on reasonable actual costs reported by the lessees and are subject to later audit. We do not anticipate any lessee with a non-arm's-length contract submitting allowance reports.

In those instances when Indian royalty coal is washed, transported, or sold under non-arm's-length conditions, it is necessary for MMS to obtain other data, and in some cases, appropriate sales contracts, to accurately determine if the value of coal and the gross proceeds for royalty calculation purposes have been correctly computed by the lessee. Coal sales contracts for Indian lands are required to be submitted only upon request by MMS. We estimate that four lessees may be requested to submit sales contracts and that each submission will take 3 hours to prepare, a total of 12 burden hours.

Authorization to deduct coal transportation and washing allowances continues for 12 months, or until the contract is changed or terminated. We estimate that recordkeeping for these allowances will require 1 hour per respondent annually (5 respondents × 1 hour = 5 burden hours). Therefore, the total annual burden hour estimate for this information collection is 18 burden hours (1+12+5=18).

Dated: November 20, 1997.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 97–31082 Filed 11–25–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Wayne National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces the decision of the Office of Surface Mining Reclamation and Enforcement (OSM) on a request by Edward and Madeiline Blaire and Buckingham Coal Company, Inc. (Buckingham) for a determination of valid existing rights (VER) under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM has determined that the requesters do possess VER to mine coal by surface methods on 25.2 acres of federal lands within the Wayne National Forest in Perry County, Ohio. This decision is based on the "takings standard," which requires OSM to evaluate whether a determination that the requester does not have VER would result in a compensable taking of a property interest under the Fifth Amendment to the U.S. Constitution.

FOR FURTHER INFORMATION CONTACT: Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2867. E-mail address: pmichael@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on VER Requirements for National Forest Lands

Section 522(e) of SMCRA (30 U.S.C. 1272(e)) prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977, the date of enactment of SMCRA. Section 522(e)(2) in relevant part, applies the prohibition to federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that (1) there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and (2) the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act and 30 CFR 740.11, the state definition of VER applies to all federal lands in states with regulatory programs approved under section 503 of SMCRA. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954). However, to be consistent with a previous federal court decision concerning OSM's March 13, 1979 definition of VER, the preamble included the caveat that, in states with an all-permits standard for VER, OSM would apply the standard as if it contained a good-faith component. In other words, if the state program requires that a person obtain all necessary permits prior to August 3, 1977, to qualify for VER, OSM will apply the standard as if it recognizes that a person also has VER in situations where that person has made a good faith effort to obtain all necessary permits by that date.

The approved Ohio program relies primarily upon the all-permits standard. Ohio Revised Code 1501:13–3–02(A)(1)(a). However, the United States District Court for the Southern District of Ohio has prohibited OSM from using the state program definition or the policy set forth in the November 20, 1986 suspension notice. *Belville Mining Co.* v. *Lujan*, No. C–1–89–790 (S.D. Ohio July 22, 1991), *modified*, Sept. 21, 1992. In separate litigation, the same court applied a takings standard to a VER determination. *Sunday Creek Coal Co.* v. *Hodel*, No. C12–88–0416 (S.D. Ohio 1988).

In the *Belville* litigation, OSM made a commitment to the court to apply a takings standard in determining whether a person possesses VER to conduct surface coal mining operations on federal lands within the court's jurisdiction, including the Wayne National Forest, until a new federal rule defining VER is in place. Therefore, in the Southern District of Ohio, under the takings standard, a person has VER if, as of the date of the lands come under the protection of section 522(e) of SMCRA, application of the prohibitions of section 522(e) would result in a compensable taking of property under the Fifth Amendment to the U.S. Constitution.

II. Request for VER Determination

On August 14, 1995, James F. Graham of Buckingham requested that OSM determine whether the company has VER to remove the No. 6 coal seam, using block cut, contour, and area mining methods, from 25.2 acres of federal lands within the authorized boundaries of the Wayne National Forest in Perry County, Ohio. Buckingham previously submitted an application for a permit to conduct surface mining and reclamation operations on this parcel and an adjoining 10.7 acres of land in private ownership to the Ohio Department of Natural Resources (ODNR), Division of Reclamation on March 8, 1995. Of the 35.9 acres in the permit application, Buckingham proposes to mine a total of 12.6 acres of coal. The federal government owns the surface overlying 9.8 of these acres.

The lands included in the request lie along the eastern edge of a 134-acre parcel for which the United States of America purchased the surface rights from Daniel C. Jenkins, Jr. and other interested parties on April 24, 1967, and the Blaires on May 1, 1967. The U.S. Department of Agriculture, Forest Service (USFS) currently manages the land as part of the Wayne National Forest. The Blaires own the mineral estate and Mr. Graham is the lessee of all coal within that estate.

The property extends from north to south along an ephemeral tributary of Pine Run and is about 1.8 miles northeast of the city of Shawnee, Ohio. Its southern limit is adjacent to County

Route 43. The center of the property lies on the boundary between Sections 11 and 14 on the New Straightsville, Ohio USGS Quadrangle.

The proposed permit area, including the federal lands, has been affected by past surface and underground mining of the No. 6 coal seam. Two unreclaimed highwalls and an impoundment remain on 5.1 acres at the southern end of the property. The coal which the requester proposes to surface mine comprises a line of barrier pillars in an abandoned underground mine beneath the Pine Run tributary. The requester estimates that the extractable coal reserves total 88,200 tons.

On August 28, 1995, OSM notified the USFS that it had received a request for a VER determination from Buckingham and requested that the USFS provide a title opinion and any related information concerning Buckingham's property right to mine coal by the methods proposed. By letter dated April 24, 1996, the USFS submitted a report from the U.S. Department of Agriculture's General Counsel that concluded that the Blaires do have the property right to remove the coal by surface mining methods. (A person must possess the right to conduct the proposed activity under state property law before OSM can issue a positive VER determination under SMCRA.)

In a notice published in the March 1, 1996 **Federal Register** (61 FR 8074), OSM provided opportunity for public comment on the Buckingham request. In response to a request for a public hearing from the Buckeye Forest Council, OSM reopened the public comment period by notice published in the July 16, 1996 **Federal Register** (61 FR 37078). The public hearing took place at the Ohio University Inn in Athens, Ohio on August 8, 1996. The comment period closed on August 16, 1996.

On September 16, 1996, OSM requested additional information from Buckingham. Buckingham forwarded supplemental information on September 17 and October 3, 1996. The October 3 submittal also added the Blaires as persons requesting the VER determination.

On May 27, 1997, OSM again requested that Buckingham and the Blaires provide additional information relating to the economic viability of the proposed surface mining operation and other potential uses for the property. On August 7, 1997, Buckingham and the Blaires supplied information responsive to the request after OSM agreed to treat the information as presumptively confidential and protected commercial or financial information within the limitations of the Freedom of Information Act.

III. The Applicable Standard

Pursuant to OSM's commitment to the court in the Southern District of Ohio, as set forth in the portion of this notice entitled "Background on VER Requirements for National Forest Lands," OSM evaluated Buckingham's request in accordance with judicial case law involving takings and the Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings, issued June 30, 1988. *See* 56 FR 33165 (July 18, 1991). Specifically, OSM relied upon a three-part regulatory takings analysis commonly used by the courts in deciding whether governmental action has effected a compensable taking of private property. This analysis includes a determination of: (1) The economic impact of the proposed government policy or action on the property interest involved, (2) the extent to which the action or regulation interferes with any reasonable, investment-backed expectations of the owner of the property interest, and (3) the character of the government action. Under the standard for compensable takings, OSM will not find that the Blaires have VER unless OSM makes either of two sets of findings. First, OSM could find that the Blaires have demonstrated that, as of August 3, 1977, application of the prohibition would preclude all economic use of the property. In the alternative, OSM could find that prohibition would not substantially advance a legitimate public purpose of SMCRA. Under the latter option, OSM would also have to find that the Blaires have demonstrated either that prohibition of surface coal mining would significantly diminish the property's value, or that prohibition would substantially interfere with the Blaires' investment-backed expectations. If the Blaires have VER to surface mine the 25.2 acres, then the lease to Buckingham would also convey VER to Buckingham.

IV. Application of the Standard

This matter involves a situation where governmental regulation has the potential to result in a taking of private property. The rights of property owners are not absolute and government may, within limits, regulate the use of property. But, the United States Supreme Court has long held that regulation that affects the value, use, or transfer of property may constitute a taking if it goes too far. *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393 (1922). In making the VER determination, OSM must decide whether prohibiting surface coal mining on the property would cause economic impacts on the property or interfere with reasonable, investment-backed expections of the persons with an interest in the property to the extent that justice and fairness would require that the public, rather than the private property owners, pay for the public use of the property. *Armstrong* v. *United States*, 364 U.S. 40, 49 (1959).

When regulation goes too far in infringing on private property rights is not precisely definable. The Supreme Court has consistently "eschewed any 'set formula' for determining how far is too far, preferring to 'engage in * * * essentially ad hoc, factual inquiries.'" *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992), *quoting Penn Central Transportation Co*, v. *New York City*, 438 U.S. 104, 124 (1978). To aid in this determination, however, the Court has identified the three factors referenced in Part III above as having "particular significance." *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224–25 (1986).

A. Protected Property Interest

In *Lucas*, the Supreme Court recognized what it characterized as a "logically antecedent inquiry" into a takings claimant's title prior to the inquiry into whether the government has interfered with rights inherent in that title in a manner that rises to the level of a Fifth Amendment taking. *Id.* at 1027. Thus, OSM starts with this inquiry.

The Court notes in *Lucas* that its takings jurisprudence "has traditionally has been guided by the understandings of our citizens regarding the content of, and the State's power over the 'bundle of rights' that they acquire when they obtain title to property." *Id.* at 1027. Thus, the Court continues, some regulation of rights should be expected. "In the case of personal property, by reason of the State's traditionally high degree of control over commercial dealings," the possibility of significant impacts should be anticipated. *Id.* at 1027–28. But, the Court indicated that interests in land have greater expectations of protection. *Id.* at 1028. Further, the Court suggested that an "owner's reasonable expectations" may be critical to a takings determination. *Id.* at 1016 n. 7. These expectations are those that "have been shaped by the State's law of property—i.e., whether and to what degree the State's law has accorded legal recognition and protection to the particular interest in land with respect to which the takings claimant alleges a diminution (or elimination of) value." *Id.* at 1016 n. 7.

In this case, the critical property interest is the mineral estate held by the Blaires. This is an interest in land historically accorded recognition and protection by the courts of Ohio, as well as all other states. This is not the type of interest that might normally be expected to be subject to deprivation without compensation. Thus, the Blaires possess title to an interest subject to Fifth Amendment protection.

B. Economic Impact of the Prohibition

Evaluation of the economic impact of a government action on a property interest involves determination of the economic and property interest or interests affected, the degree of the economic impact on the property interests, the character and present use of the property, the duration of the proposed governmental action, and whether the proposed government action carries benefits to the private property owner that offset or mitigate any adverse economic impact.

With respect to the property interest affected, OSM considers the relevant unit of property for analysis to be the land for which VER is requested and all other contiguous units of property under the same ownership and/or same use. *See* 56 FR 33161 (July 18, 1991). In this case, the relevant unit of property is the 134-acre tract of property for which the Blaires own the mineral estate.

The VER determination requested by the Blaires and Buckingham includes only 25.2 acres of this unit. The economic interest in this coal has been split, since the Blaires have leased the right to mine the coal at issue to Buckingham in return for a one dollar royalty per ton of the coal mined. Hence, the Blaires' place the value of their interest in the coal at $88,200, based on an estimated 88,200 tons of recoverable coal. OSM's analysis confirms the requesters' estimate of the recoverable coal reserves.

Administrative Record No. 206 (hereinafter, "A.R. ____"). Furthermore, OSM's evaluation of information provided by Buckingham concerning coal quality and overburden ratios confirms the proposed operation is economically viable, which means that the Blaires' royalty interest has economic value. (A.R. 219.)

With respect to Buckingham's interest, the company contends that the coal is a necessary and integral part of a larger operation. Specifically, the company states that it needs the low-sulfur coal from this property to blend with higher-sulfur coal from its other mines to meet contractual supply obligations with a local utility. Buckingham further contends that it will suffer losses amounting to approximately 3.5 million dollars if it cannot mine the coal in question. This contention is based upon the assumption Buckingham will be unable to market the coal from its other reserves if it cannot blend this coal with the coal from the national forest tract.

OSM's analysis, however, finds that Buckingham may have other options with far less dramatic financial implications. (A.R. 220.) For example, obtaining low-sulfur coal from another source could reduce the projected financial impact by 90% or more. Alternatively, Buckingham might be able to renegotiate its supply contract and acquire sulfur dioxide emission allowances to package with its higher sulfur coat, which would reduce the potential losses by 67–90 percent. Under either option, OSM agrees that the company likely would sustain some lost profit potential if it cannot develop the proposed mine. However, it is not clear from the record what the loss in market value of the leased coal would be, as distinguished from lost profits in Buckingham's business dealings.[1]

Analysis of the economic impact of a prohibition on surface mining involves a number of factors. First, there cannot be a compensable taking unless there is a diminution in the value of the requesters' property rights. Thus, if the coal could be extracted by some other method, there may be no taking issue. If this is not possible, any value allegedly taken must be compared to other value in the property that has accrued or will accrue to the owners. If a prohibition would affect merely one strand of a bundle of property rights and would not be significant, there may be no taking. Thus, it must be determined whether the property proposed surface coal mining.

With respect to alternative methods of mining, the requesters claim that the absence of competent rock above the coal seam precludes underground mining. The requesters also dismiss auger mining as a viable alternative, because they contend that method is not suitable for the removal of pillars from abandoned underground mine workings.

After a technical review, OSM finds that underground mining is not feasible for this site because of stress relief fracturing, roof stability and water inflow problems. (A.R. 206.) In addition, because of the need to establish a face-up to perform auger mining and due to the irregular shape of the remaining block of coal and the fact that entries have been cut through it in the past so that it is not solid, OSM agrees that auger mining is an unviable option for mining the coal.

Since alternative methods of mining are not possible here, other benefits derived from the property or other potential uses for the property are relevant. The 134-acre tract for which the Blaires own the mineral interest has previously been underground and/or surface mined. Maps in OSM's mine map repository indicate this mining was completed prior to 1940, which predates the current owners' acquisition of the property. Thus, the bulk of the use of the coal interest in this property has already been derived from the property by the Blaires' predecessors in interest. Prohibition of mining the remainder of the coal, then, would only deprive the Blaires of the use of the unmined pillars of coal.

OSM's investigation indicate there may be other recoverable coal from the No. 6 seam within the 134-acre tract. (A.R. 222). The maps in OSM's mine map repository show barrier pillars along Pine Run which, if still existing, may be surface mineable. The record provides no further information on the value of that coal. In addition, the 1981 New Straightsville USGS topographic quadrangle indicates that surface mining has already occurred along both sides of the run. In any event, any remaining coal could not be surface mined absent a VER determination. Underground extraction of the remainder of the workings appears infeasible because of mine-stability and safety considerations, as well as the low percentage of coal remaining. (A.R. 222.)

Published geologic maps and cross sections for Ohio indicate the potential existence of other seams below the No. 6 coal seam. However, there has been little interest in mining these seams to date and ODNR has no records of marketable coal beneath the No. 6 seam in Perry County. (A.R. 222.) An ODNR geologist advised that the occurrence of these coal beds is spotty and, where present, the quality of the coal can change significantly between locations. (A.R. 222.) Thus, there is no data to indicate any value in lower coal seams in which the Blaires may have an interest.

Other potential uses of the mineral estate include oil and gas production. The Blaires receive royalties from two wells operating since 1987 on the 134-acre tract of land. Another well drilled on the property proved economically unproductive. The wells tap the Clinton

[1] In any case, as noted below, OSM did not base its decision on the economic impacts of prohibition of mining on Buckingham's current property interests, but rather on the property interests that existed on August 3, 1977.

sandstone, which is the most productive oil and gas deposit in the region. Income from the two economically productive wells has been modest. Based on the state's regulatory restrictions on spacing of oil and gas wells and information provided by the Blaires concerning performance of the existing wells, OSM determined that the Blaires could potentially develop two or three additional wells on the property, the value of which, with the existing wells, would likely be approximately the same as the value of the coal royalties the Blaires expect to receive from their coal interest. (A.R. 221.) Other deposits may exist, but their presence and recoverability are entirely speculative.

Clay also exists on the property, with the shallowest deposit located immediately underneath the No. 6 coal seam. However, the market for clay is limited (Perry County produced less than 18,000 tons in the last two years combined) and its value is low, generally about one-fifth that of coal. (A.R. 222.) Most clay mining occurs in conjunction with coal mining and is secondary to the coal mining. In addition, the requesters state that the type of clay on the property is not in demand, so no market exists. Therefore, OSM finds that the record (including available market and geologic information) indicates that the clay on the property is not economically recoverable and that clay mining does not constitute a reasonable alternative use of the property.

Based on the record before it and on the analysis in this decision, OSM finds that application of the 552(e)(2) prohibition to the Blaires property (the mineral estate of the 134-acre parcel) would not deny the Blaires all economic use of the property in question. In particular, OSM finds that predecessors in interest to the Blaires have already made reasonable economic use of the coal rights on the 134 acres, because the record shows that the coal on this property has already been underground and surface mined. Further, OSM finds that the Blaires are making economic use of the oil and gas rights they hold in the 134 acres by means of two operating oil and gas wells and available information indicates the Blaires could potentially operate as many as three more wells on their property.

However, because the remaining coal on the Blaires property can only be mined by surface methods, OSM also concludes that a negative VER determination would preclude recovery of the remaining coal, and therefore would cause diminution in the value of the Blaires' property.

C. Interference With Reasonable, Investment-Backed Expectations

This element of the standard taking analysis requires an evaluation of (1) the owner's demonstrated expectations for use of the property, (2) whether the expectations are reasonable and investment-backed, and (3) the degree to which the government action interferes with these expectations.

The Blaires cite the acquisition of the property with an expectation of mining, contending that the coal was the principal value of the mineral estate. Buckingham points to its investment of resources in preparation of a permit application, as well as significant additional investments in an integrated mining operation that it claims relies upon access to the high sulfur coal under the national forest tract. Buckingham invested significant resources (several million dollars) in both acquiring the contract to be served by the integrated operation, and in establishing the mining operation.[2]

While the Blaires may have had expectations of exploiting the mineral interest when they acquired the property, it appears their acquisition was by inheritance and; consequently involved no investment. Presumably, the purchase they cite was the original purchase by the predecessor in interest. OSM does not consider this an investment by the Blaires, and therefore concludes that the record does not demonstrate that the Blaires have investment-backed expectations.

D. Character of the Government Action

This element of the takings analysis requires an evaluation of (1) the intended purpose of the enabling statute, (2) whether the action will substantially advance a legitimate public purpose, and (3) the degree to which the regulated activity contributes to a harm that the governmental action is designed to address.

The public purpose in this matter is Congress' intent to protest federal lands in national forests from the harmful affects of surface coal mining operations. The prohibition, specified in section 522(e)(2) of SMCRA, is based on Congress' determination that federal lands in the national forests are places that are generally incompatible with surface coal mining operations. *See* S. Rep. No. 95–128, at 55 (1977). Congress was concerned that mining might destroy the land's potential for other equally or more desirable land uses. *Id.*

[2] OSM did not base its decision on evaluation of the investment-backed expectations of Buckingham, because Buckingham did not hold the coal rights on August 3, 1977.

For purposes of this takings analysis, OSM will assess the degree to which the mining of this specific property would contribute to the harm Congress proposed to address by prohibiting mining. This determination, then, must address the intended uses, purposes and values of this particular national forest land.

The United States acquired the surface rights to this parcel pursuant to the Weeks Forestry Act of 1911, 16 U.S.C. § 515. The Weeks Act authorized the Secretary of Agriculture to "purchase such forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber." *Id.* Thus, the principal purposes for acquiring land for the national forests under this Act were to provide watershed control and to ensure a national timber supply. But, over time, the uses, purposes and values of the national forests have expanded. In the Multiple-Use Sustained-Yield Act of 1960, Congress expressed its policy "that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." 16 U.S.C. § 528. The Secretary of Agriculture was further "directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom." 16 U.S.C. § 529. Accordingly, the current purpose of national forest lands is to provide a diversified, multiple use of the forest resources. Pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act, national forest administrators are required to prepare forest management plans. 16 U.S.C. § 1604. The Wayne National Forest has such a plan. This plan provides guidance on the uses, purposes and values of lands within the forest. The tract at issue here is included in Management Area 3.3, which has a designated management goal of providing (1) high-quality hardwoods on a sustained-yield basis; (2) wildlife habitat diversity, favoring species that require mature and overmature hardwoods; and (3) dispersed recreational activities, such as hiking, horseback riding and hunting. Forest areas managed for these purposes are intended to be in blocks of 1,000 acres or larger. Provision is made for mineral exploration and extraction.

More general statements in the forest plan recognize the existence of considerable private mineral ownership on federal lands within the national forest. The plan does not specifically address surface coal mining, but it does refer to the possibility of surface mining and recognizes that mineral extraction will occur throughout the forest. With respect to minerals, the forest management goal provides that the USFS administer private mineral rights so that all activities and operations are prudently consistent with the best private management practices.

The persons requesting the VER determination claim that the proposed surface coal mining operation would not adversely impact these uses, purposes and values. They state that the land in its current condition has no significant recreational, timber, or economic values incompatible with the proposed surface mining. They point out that the USFS has not developed the land for recreation. There are no camp sites, picnic sites or hiking trails. Further, it is noted that the tract is not contiguous with any other USFS property and only approximately twenty acres of relatively undisturbed timber is at issue. They also assert that development of the property as a resource is limited by the topography, soil conditions, shape of the area and timber quality. Finally, the requesters contend that the proposed mining and reclamation would improve the land in some respects by eliminating highwalls and subsidence depressions resulting from previous surface and underground mining operations.

OSM's examination of the property confirms that the requesters have accurately portrayed the condition of the property. In particular, the size of the subject property and its isolated location render it of limited current use and value for the purposes specified by the USFS. As indicated, the size of the property is small for the intended uses and the USFS has not developed the property. Also, it is approximately three-fourths of a mile from any other national forest tract, with properties owned by a number of other persons separating the forest tracts, making consolidation in the near future unlikely. In addition, the quality of the timber does not appear to be consistent with the purposes delineated for the property. It has been characterized as low to medium quality by the USFS. (A.R. 223.) Further, the property exhibits scars of previous mining that would benefit from reclamation, as claimed.

Finally, the USFS has not asserted that any governmental interest in the national forest would be significantly impacted by the proposed mining. (A.R. 223.) Rather, the USFS has confirmed that the proposed operation likely would have no significant impact on the current uses, purposes and values of this land. In addition, the USFS has provided input to the state regulatory authority concerning the proposed reclamation plan for the site and has stated that the agency will work closely with the state to ensure that reclamation fully returns the land to its planned use under the USFS management plan for this area. (A.R. 112.) Thus, OSM finds that mining the subject tract would have no significant impact on the current uses, purposes and values of the national forest.

V. Summary and Disposition of Comments

As discussed in Part II of this notice, OSM solicited public comments and held a public hearing on the request for a VER determination. Approximately 175 people attended the public hearing and OSM received approximately 150 comments. With two exceptions, all commenters opposed a positive VER determination. Most of the comments are addressed in the foregoing analysis of this matter. The following, however, are more specific responses to the comments made.

A number of commenters argued that OSM should rely upon the good-faith all-permits standard rather than the takings standard in making the VER determination. As discussed in Part I of this notice, as a result of litigation, OSM must use the takings standard when making VER determinations in the Southern District of Ohio.

One commenter proposed delaying a decision on the request until OSM adopts a final federal rule defining VER. OSM finds no support in law or regulation for this course of action. The agency has an obligation to execute its responsibilities with due diligence.

Several commenters questioned the propriety of Buckingham requesting the VER determination, since it did not own the coal in question. As noted in Part II of this notice, the owners of the mineral estate (the Blaires) subsequently joined Buckingham in requesting the VER determination. OSM notes, however, that Buckingham, as the lessee of the coal, also possesses an interest in the coal and is appropriately a part of the determination.

Some commenters emphasized SMCRA's expressed intent to protect public lands and urged OSM to accord preference to the public interest over the private interests when conducting the takings analysis. As discussed in Parts III and IV of this notice, OSM has conducted its takings analysis in accordance with its understanding of applicable takings jurisprudence.

Many commenters expressed concern about Buckingham's ability to reclaim the site and avoid adverse impacts to soil, water, wildlife habitats and ecosystems. While these concerns are not pertinent to the VER determination process, the regulatory authority must address them as part of its review of the permit application. Under both SMCRA and the Ohio program, the regulatory authority may not approve a permit application unless it finds that reclamation in accordance with the requirements of the approved program is feasible and that the operation has been designed to ensure compliance with these requirements. In addition, the USFS has provided input to the state concerning the proposed reclamation plan for the operation, and has stated that it does not anticipate that the proposed surface coal mining operation would significantly affect the current use of value of the affected lands for national forest purposes.

A few commenters also expressed concern that a positive VER determination in this case could establish an adverse precedent for allowing surface coal mining in the national forests. Since all takings analyses are fact-specific and limited to the unique circumstances of each case, OSM does not consider this case to have precedential value of the nature feared by the commenters.

VI. Conclusion

OSM deems the Blaires' interest to be key to this VER determination. If the Blaires had VER on August 3, 1977, they could transfer it under the lease to Buckingham. Conversely, if the Blaires did not possess VER as of that date, then VER could not be created by transferring one small portion of the coal rights to Buckingham.

As of August 3, 1977, if OSM applied the section 522(e)(2) prohibition to the Blaires' property, the Blaires would be deprived of the right to conduct surface coal mining on federal lands portion of the proposed permit area, which would mean that they could not recover approximately 88,200 tons of coal. This deprivation is slight, because the majority of the coal on the entire 134-acre parcel has already been exploited by predecessors of the Blaires. In addition, the Blaires also have a remaining use of their mineral estate in the form of oil and gas production. The value of the remaining oil and gas interest is probably about equivalent to the value of the coal interest. Thus, OSM finds that (1) most of the economic use of the Blaires' coal interest has already been made by previous exploitation; (2) the Blaires retain

substantial remaining use of their mineral property interests in the form of oil and gas production; (3) prohibition of the proposed surface coal mining would cause a diminution in value of the Blaires' property; and (4) the Blaires have no reasonable, investment-backed expectations of surface mining this land.

Finally, the agency finds that mining of this national forest tract would not contribute significantly to the harm Congress addressed through the prohibition of mining on federal lands within national forests. Because of its small size, isolated location relative to other national forest lands, and previously mined condition, the tract is of limited current use for the designated national forest purposes. The proposed surface coal mining operation would have only minimal short-term impacts on the current use and value of the land. There are no anticipated adverse long-term impacts. Thus, mining the tract would have no significant impact on the forest and reclamation will restore the land to the planned uses under the management plan. Therefore, OSM concludes that the record does not demonstrate that prohibition of surface coal mining of the property in question would substantially advance the section 522(e) prohibition.

OSM also finds that, because most of the coal on this property has already been mined, the use of that part of the Blaires' property interest has already occurred. Therefore, a prohibition on surface mining the remaining coal would not totally abrogate a property interest historically viewed as an essential stick in the bundle of property rights. However, because prohibition would diminish the value of the Blaires' property and would not substantially advance a legitimate public purpose of SMCRA, OSM finds that application of the statutory prohibition on surface mining the Blaires' property would constitute a compensable taking of the Blaires' property interests under the Fifth Amendment to the U.S. Constitution. Therefore, OSM finds that the Blaires have VER for the lands in question and that Buckingham acquired VER for the same lands by virtue of its lease of the Blaires' coal rights.

VII. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* (1988). Notice of intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper with circulation in Perry County, Ohio.

Dated: November 19, 1997.

John A. Holbrook, II,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97-31041 Filed 11-25-97; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-372 (Enforcement Proceeding)]

In the Matter of Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same; Notice of Commission Determination to Deny Motion of YBM Magnex, Inc. to be Substituted for Complainant Crucible Materials Corporation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("the Commission") determined to deny as moot the September 25, 1997, motion of YBM Magnex, Inc. ("YBM") to substitute YBM for complainant Crucible Materials Corporation ("Crucible") in the above-referenced enforcement proceeding.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION: On May 16, 1996, the Commission instituted a formal enforcement proceeding based on an enforcement complaint filed by Crucible Materials Corporation ("Crucible") alleging that respondents San Huan New Materials High Tech, Inc. ("San Huan"), Ningbo Konit Industries, Inc. ("Ningbo"), and Tridus International, Inc. ("Tridus") (collectively "respondents") had violated the Commission's October 11, 1995, consent order wherein those respondents agreed not to sell for importation, import, or sell after importation magnets which infringe any of claims 1-3 of Crucible's U.S. Letters Patent 4,588,439 ("the '439 patent") by importing or selling magnets that infringed the claims in issue of the '439 patent. On December 24, 1996, following an evidentiary hearing, the presiding administrative law judge ("ALJ") issued a recommended determination ("RD") finding that respondents had violated the consent order on 33 different days and recommending that the Commission impose a civil penalty of $1,625,000 on respondents. The Commission adopted the bulk of the RD's findings on violation on April 8, 1997, and issued an opinion explaining that determination on April 15, 1997, finding that respondents violated the consent order on 31 days between October 11, 1995, and October 10, 1996. On September 26, 1997, the Commission issued its final determination in the enforcement proceeding, imposing a $1.55 million civil penalty on respondents, revoking the consent order and issuing an exclusion order directed to foreign respondents San Huan and Ningbo and a cease and desist order directed to domestic respondent Tridus, denying Crucible's request for attorneys' fees and its petition for reconsideration of the Commission's prior determination regarding the application of the Federal Circuit decision in *Maxwell* v. *J. Baker, Inc.* 86 F.3d 1098, 29 U.S.P.Q.2d 1001 (Fed. Cir.), *reh'g denied, suggestion of reh'g in banc declined (1996), cert. denied*, 117 S. Ct. 1244 (1997), and denying respondents' request that the Commission require the domestic industry to submit periodic reports regarding its status as a domestic industry. Thus, there are no outstanding issues in this investigation.

On September 25, 1997, YBM moved to be substituted as the complainant in this investigation in place of Crucible in light of the fact that YBM had acquired the '439 patent from Crucible. On October 6, 1997, respondents and the Commission investigative attorney filed replies to YBM's motion opposing it as moot in light of the fact that the Commission concluded this investigation on September 26, 1997.

Because the Commission concluded this investigation on September 26, 1997, the Commission determined to deny YBM's motion as moot. The Commission noted, however, that it would have granted YBM's motion had this proceeding still been ongoing.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR § 210.75).

By order of the Commission.

Issued: November 20, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-31091 Filed 11-25-97; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-370 (Sanctions Proceeding)]

In the Matter of Certain Salinomycin Biomass and Preparations Containing Same; Notice of Postponement of Commission Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to postpone indefinitely a public hearing in the above-captioned proceeding while the Commission considers a joint motion by the private parties to terminate the proceeding.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3104. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov or ftp://ftp.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 6, 1995, based on a complaint filed by Kaken Pharmaceutical Co. Inc. (Kaken). On November 6, 1995, the ALJ issued his final initial determination (ID) in this investigation, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by respondents Hoechst Aktiengesellschaft, Hoechst Veterinar GmbH, and Hoechst-Roussel Agri-Vet Co. (collectively, Hoechst). His determination was based on his findings that the patent at issue was invalid for failure to disclose the best mode of operation and unenforceable due to inequitable conduct during prosecution of the patent. The ALJ's ID was not reviewed by the Commission and was ultimately upheld on appeal to the U.S. Court of Appeals for the Federal Circuit, *Kaken Pharmaceutical Co.* v. *USITC*, Appeal Nos. 96-1300,-1302, nonprecedential opinion dated March 31, 1997.

On January 19, 1996, Hoechst filed a motion for sanctions against Kaken, which the Commission referred to the presiding ALJ for issuance of a recommended determination (RD). Hoechst's motion alleged, *inter alia*, that Kaken committed sanctionable conduct by filing a complaint totally lacking in merit. On May 14, 1997, the ALJ issued his RD in which he recommended that the Commission impose on Kaken and its attorneys joint and several liability for an amount of money equal to double the entire attorneys fees and costs of the Hoechst respondents incurred in both the section 337 investigation on the merits and in the proceedings on sanctions. All parties filed comments on the RD. On August 8, 1997, Kaken and its attorneys requested an opportunity for oral argument before the Commission. On October 24, 1997, the Commission granted the motion for oral argument and set a hearing date for December 10, 1997. 62 FR 58746 (Oct. 30, 1997).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337 and Commission rule 210.25, 19 CFR § 210.25.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: November 21, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-31092 Filed 11-25-97; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 21, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45271), Bridgeway Trading Corporation, 7401 Metro Blvd., Suite 480, Minneapolis, Minnesota 55439, made application by renewal to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

The firm plans to import marihuana seed which will be rendered non-viable and used as bird feed.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Bridgeway Trading Corporation to import marihuana is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 14, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-31098 Filed 11-25-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,817]

AMEX Manufacturing Incorporated, El Paso, Texas, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1997 in response to a worker petition which was filed August 18, 1997 on behalf of workers at AMEX Manufacturing Incorporated located in El Paso, Texas (TA-W-33,817).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA-W-32,431). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 10th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97-31057 Filed 11-25-97; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-33,715]

Brandon Apparel Group, Incorporated Columbus, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of October 21, 1997, petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on September 11, 1997, and published in

the **Federal Register** on October 14, 1997 (62 FR 53347).

The petitioner presents evidence that Department's collection of information regarding company sales and imports was incomplete for the time period relevant to the investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 31st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31051 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 3rd day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 11/3/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,946	Chevron U.S.A. Production (Comp)	Houston, TX	10/22/97	Crude Oil and Natural Gas.
33,947	H.K. Co (Comp)	New York, NY	10/07/97	Lace Fabric.
33,948	W.S. Wormser (Wrks)	Bradford, TN	10/17/97	Sleepwear-Childrens'.
33,949	Metro Plastics Tech. (Comp)	Columbus, IN	10/16/97	Injection Molding Components.
33,950	Mario Casuals, Inc. (UNITE)	New York, NY	10/16/97	Better Ladies' Wear.
33,951	Robinson Manufacturing (Wrks)	Linden, NJ	10/15/97	Gym Shirts, Casuals Shorts.
33,952	Amesbury Group, Inc (UAW)	Amesbury, MA	10/14/97	EMI Shielding Gaskets.
33,953	Royal Craft Trimmings (Wrks)	New York, NY	10/14/97	Beaded Ornaments and Trimmings.
33,954	Color-Clings, Inc (Comp)	Plymouth, MN	10/13/97	Static Cling Window Decorations.
33,955	Koh-I-Noor, Inc (Comp)	Bloomsbury, NJ	10/13/97	Pens.
33,956	Veratec Lewisburg Int'l (UPIU)	Lewisburg, PA	10/10/97	Non Woven Roll Goods.
33,957	Tubed Products, Inc (Comp)	Freehold, NJ	10/03/97	Plastic Squeeze Tubes.
33,958	Henchel Manufacturing (Wrks)	Potosi, MO	09/30/97	Leather Ball Caps.
33,959	Electra-Sound, Inc (Wrks)	Parma, OH	10/15/97	Engine Control Modules.
33,960	Wilhold (Wrks)	Sunbury, PA	10/20/97	Hair Care Products.
33,961	Teledyne Fluid Systems (UAW)	Independence, OH	10/17/97	Molds & Dyes for Auto Industry.
33,962	Fonda Group (UPIU)	Three Rivers, MI	10/16/97	Paper Plates and Cups.
33,963	Lenworth Aminco, Inc (Wrks)	Meadville, PA	10/16/97	Steel Racking/Shelving.
33,964	International Flavors (Comp)	Union Beach, NJ	10/21/97	Aroma Chemicals.
33,965	Tri America (Wrks)	El Paso, TX	10/24/97	Jeans.
33,966	Cason Manufacturing Co (Comp)	Stephenville, TX	10/24/97	Skirts and Pants.
33,967	Fedco Corp (USWA)	Buffalo, NY	10/23/97	Automobile Heater Cores.
33,968	Pendleton Woolen Mills (UNITE)	Milwaukie, OR	10/23/97	Men's Woolen Shirts.
33,969	Champion Aviation Prod. (Wrks)	Weatherly, PA	10/22/97	Incandeecent Displays for Aircrafts.
33,970	GE Control Products (Wrks)	Carroll, IA	10/20/97	Range Minute Timers, Motors.
33,971	Buster Brown Apparel, Inc (Comp)	Chattanooga, TN	10/03/97	Children's Socks.
33,972	Banner Packaging (Wrks)	Shelbyville, TN	10/14/97	Poultry Bags, Diaper Bags.
33,973	A.O. Smith Corp (IBEW)	Upper Sandusky, OH	10/23/97	Fractional Horsepower Electric Motors.
33,974	Lightalarms Electronics (IBEW)	Baldwin, NY	10/21/97	Emergency Lighting.
33,975	Marion Power Shovel Co (USWA)	Marion, OH	10/24/97	Large Shovels, Draglines and Repair Parts.
33,976	Trade Apparel, Inc (Wrks)	El Paso, TX	10/17/97	Jeams—Cutting, Sewing, and Laundry.

[FR Doc. 97–31047 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,477; TA–W–33,477B]

Cone Mills Corporation; Haynes Plant, Henrietta, North Carolina and Cliffside Plant, Cliffside, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 17, 1997, applicable to workers of Cone Mills Corporation, Haynes Florence Plant located in Henrietta, North Carolina. The notice was published in the **Federal Register** on July 18, 1997 (62 FR 38579). The worker certification was subsequently amended to correctly identify the plant to read Haynes Plant instead of Haynes Florence Plant and to include workers of the Florence Plant in Forest City, North Carolina (TA–W–33,477A). The notice of amended certification was published in the **Federal Register** on July 18, 1997 (62 FR 38584).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers produce denim. Findings on review show that workers separations have occurred at the subject firm's Cliffside Plant, in Cliffside, North Carolina.

The intent of the Department's certification is to include all workers of Cone Mills Corporation who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of the Cliffside Plant of Cone Mills Corporation, Cliffside, North Carolina.

The amended notice applicable to TA–W–33,477 is hereby issued as follows:

"All workers of Cone Mills Corporation, Haynes Plant, Henrietta, North Carolina (TA–W–33,477) and Cliffside Plant, Cliffside, North Carolina (TA–W–33,477B), who became totally or partially separated from employment on or after April 8, 1996 through June 17, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 31st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31055 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, D.C. this 27th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

[Petitions Instituted on 10/27/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,916	Delphi Energy and Engine (Co.)	Ansheim, CA	10/04/97	Automotive Batteries.
33,917	International Paper Co (UPIU)	Erie, PA	10/08/97	Paper Products.
33,918	Aeroquip Corp. (UAW)	Spring Arbor, MI	10/07/97	Automobile Glove Boxes.
33,919	Brooklyn Foil, Inc (Wkrs)	Brooklyn, NY	10/07/97	Tin/Lead Alloy Foil and Sheets.
33,920	Tarrytown Garment Co (UNITE)	Tarrytown, NY	10/08/97	Ladies' Bathing Suits.
33,921	Tru Stitch Footwear (UFCW)	Bombay, NY	10/06/97	Soft Moccasin and Boot Style Slippers.
33,922	Anitec Image Corp (ICWU)	Binghamton, NY	10/10/97	Graphic Arts Film Paper & Chemicals.
33,923	Timberline Lumber, Inc (Wkrs)	Kalespell, MT	10/01/97	Lumber Studs.
33,924	International Wire (Co.)	Bremen, IN	10/06/97	Wire.
33,925	Apparel Brands, Inc (Co.)	Wrightsville, GA	10/08/97	Men's & Ladies' Uniform Pants & Shorts.
33,926	Robinson Manufacturing (Wkrs)	Parsons, TN	10/09/97	Sports Apparel.
33,927	Oneita Industrial (Co.)	Fayette, AL	10/07/97	Tee Shirts.
33,928	Grainger Knitwear (Wkrs)	Rutledge, TN	10/08/97	Tee Shirts.
33,929	Micro Stamping Corp (Co.)	Somerset, NJ	10/08/97	Lead Frames, Medical Device.
33,930	Frolic Footwear (Wkrs)	Walnut Ridge, AR	09/29/97	Shoes.
33,931	Stroh Brewery (IAM)	St. Paul, MN	10/08/97	Beer.
33,932	Racal Datacom, Inc (Wkrs)	Sunrise, FL	10/05/97	PC Boards, Chassis.
33,933	University Technical Serv (Wkrs)	Canton, NY	10/06/97	Electric Power.
33,934	Delphi Energy & Engine (Co.)	Olathe, KS	10/08/97	Automotive Batteries.
33,935	Reef Gear Manufacturing (Wkrs)	East China, MI	10/10/97	Transmissions Gears.
33,936	Jennmar Corporation (Wkrs)	Knoxville, TN	10/13/97	Coal Mine Roof Products.

Appendix—Continued
[Petitions Instituted on 10/27/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,937	O.R. Technology (Co.)	Campbell, CA	10/14/97	Floppy Disk Drive.
33,938	Lees Manufacturing Co (Co)	Cannon Falls, MN	10/09/97	Children's Sleepwear and Sportswear.
33,939	KD Industries (Co.)	Blountsville, AL	10/09/97	Children's Sleepwear & Sportswear.
33,940	Liberty Childrenswear Co (Co.)	Snead AL	10/17/97	Children's Sportswear.
33,941	Maine Yankee Atomic Power (UWUA)	Wiscasset, ME	10/21/97	Electric Power.
33,942	Woodgrain Millwork, Inc (Wkrs)	Lakeview, OR	10/14/97	Moulding.
33,943	Carolyn of Virginia, Inc (Co.)	Bristol, VA	09/15/97	Ladies' Apparel.
33,944	Kysor Michigan Fleet (UAW)	Scottsburg, IN	10/16/97	Auxiliary Fuel Tanks.
33,945	General Motors Corp (UAW)	Danville, IL	10/22/97	Automobile Iron Castings.

[FR Doc. 97–31045 Filed 11–25–97; 8:45 am]
BILLING CODE 4510–30–m

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 404]

Devoe & Raynolds Company, Louisville, Kentucky; Notice of Negative Determination on Reconsideration

On July 18, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented new evidence regarding company imports of paint. The notice was published in the **Federal Register** on August 1, 1997 (62 FR 41424).

The Department initially denied TAA to workers of Devoe & Raynolds Company, Louisville, Kentucky because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm produced latex and alkyd paints. The layoffs at the Louisville plant were attributed to the corporate decision to consolidate operations with that of the parent company's domestic plants in Texas, Ohio, Pennsylvania, and Florida. The parent company did not import paint from foreign sources.

New findings on reconsideration show that the parent company of Devoe & Raynolds, ICI Paints, operating in the U.S. as Glidden, had a corporate-wide sales increase from 1995 to 1996. Other new findings reveal that the company did import paint from its foreign production facility. Company imports, however, were negligible, accounting for less that 1 percent of corporate-wide sales in 1995 and 1996.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Devoe & Raynolds Company, Louisville, Kentucky.

Signed at Washington, DC, this 31st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31054 Filed 11–25–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 8, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 10th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX
[Petitions Instituted on 11/10/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,977	Falcon Industries (Co.)	Graham, TX	10/23/97	T-Shirts, Athletic Shirts.
33,978	Howden Fan (USWA)	Buffalo, NY	10/23/97	Commercial Fans and Blowers.
33,979	Cytec Industries (USWA)	Linden, NJ	10/28/97	Surfactants and Docusates.
33,980	Lockheed Martin (IUPPE)	Liverpool, NY	10/31/97	Electronic Defense Equipment.
33,981	Shenandoah Knitting Mills (Wkrs)	Edinburg, VA	10/29/97	Sweaters.
33,982	Gary Peterson Logging (Co.)	Cascade, ID	10/21/97	Logging.
33,983	Standard Keil TAP Rite (Co.)	Allenwood, NJ	10/31/97	Refrigerator Doors, Hinges, Latches.

APPENDIX—Continued
[Petitions Instituted on 11/10/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,984	Hartsville Garment (Co.)	Hartsville, TN	10/30/97	Men's & Ladies' Shirts and Blouses.
33,985	Gardin Logging (Wkrs)	Winlock, WA	10/24/97	Cedar Logs.
33,986	Texas Instruments (Co.)	Central Lake, MI	10/27/97	Thermal Motor Over Load Devices.
33,987	Dublin Garment Co., Inc (Co.)	Dublin, VA	10/27/97	Uniform Shirts and Pants.
33,988	EIF Atochem North America (Wkrs)	Tonawanda, NY	10/27/97	Peroxide.
33,989	Allegheny Ludlum Steel (USWA)	Pittsburgh, PA	10/07/97	Silicon Steel.
33,990	Extex, Inc (Co.)	St. Elmo, IL	10/27/97	Crude Oil.
33,991	Jetricks (Wkrs)	Selmer, TN	10/21/97	Children's Clothing.
33,992	Claridge Products (Wkrs)	Harrison, AR	10/23/97	Chalkboard, Bulletin Board.
33,993	Nye Tex Manufacturing (Wkrs)	Dallas, TX	10/31/97	Office Products.
33,994	Wilroy, Inc (UNITE)	Secaucus, NJ	10/29/97	Children's Clothing.
33,995	Eaton Corporation (Wkrs)	Athens, AL	10/21/97	Thermostats for Appliances.
33,996	Brownsville Products (Wkrs)	Brownsville, TX	10/29/97	Parts for Airbags.

[FR Doc. 97–31048 Filed 11–25–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,782]

General Motors Corporation, Delphi Chassis (Livonia Plant), Livonia, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 1997 in response to a worker petition which was filed on behalf of workers at General Motors Corporation, Delphi Chassis, Livonia Plant, Livonia, Michigan.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 10th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31049 Filed 11–25–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,718 and TA–W–33,718C]

Glenn Enterprises, Incorporated; McCoy Manufacturing, #3, Caledonia, Mississippi and Vernon Manufacturing Company, Vernon, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Trade Adjustment Assistance on September 24, 1997, applicable to all workers of McCoy Manufacturing #3, located in Caledonia, Mississippi. The notice was published in the **Federal Register** on October 14, 1997 (62 FR 53348).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in employment related to the production of men's dress and casual pants and shorts for its parent company, Glenn Enterprises, Incorporated, Sulligent, Alabama. New information received from the company shows that worker separations occurred at Vernon Manufacturing Company, Vernon, Alabama when it closed on April 11, 1997. The workers produced men's dress pants for Glenn Enterprises, Incorporated.

Accordingly, the Department is amending the certification to cover the workers of Vernon Manufacturing Company, Vernon, Alabama.

The intent of the Department's certification is to include all workers of Glenn Enterprises, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–33,718 is hereby issued as follows:

"All workers of Glenn Enterprises, Incorporated, McCoy Manufacturing #3, Caledonia, Mississippi (TA–W–33,718) and Vernon Manufacturing Company, Vernon, Alabama (TA–W–33,718C) who became totally or partially separated from employment on or after July 25, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington D.C. this 31st day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31052 Filed 11–25–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,519]

Hayes Wheels International, Incorporated, Romulus, Michigan; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 11, 1997, the United Automobile-Aerospace-Agricultural Implement Workers of America (UAW) requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance, applicable to workers of the subject firm. The denial notice was signed on June 13, 1997 and will be published in the **Federal Register**.

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that the workers are facing a plant closing and job loss as the result of Hayes Wheels International, Inc. moving work and awarding new work to their Europe, Mexico, Venezuela plants.

In order for the Department to issue a worker group certification, all of the group eligibility requirements of Section 222 of the Trade Act must be met. Review of the investigation findings show that criterion (3) was not met.

Sales and production at the subject firm increased from 1995 to 1996 and from January through September 1997 over the corresponding 1996 period. The company is in the process of shifting work performed at the subject firm to two other domestic corporate facilities. The decision to close the facility down is attributed to corporate excess capacity and an outmoded manufacturing facility. The investigation further revealed that although the company imported wheels, the quantity was not significant and was not the contributing factor in the terminations at the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 17th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31059 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,513; TA–W–33,513X]

Levi Strauss and Company; Goodyear Cutting Facility and El Paso Field Headquarters 1440 Goodyear, El Paso, Texas; San Benito, Texas, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at the El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51155).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information received by the State shows that worker separations have occurred at the San Benito, Texas plant of Levi Strauss and Company. The workers in San Benito are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firms' workers at the San Benito, Texas plant.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to TA–W–22,513 is hereby issued as follows:

"All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (TA–W–33,513) and San Benito, Texas (TA–W–33,513X) who were engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after May 13, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington D.C. this 10th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31050 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,704 and TA–W–31,704A]

Parker & Parsley Petroleum USA, Incorporated, A/K/A Pioneer Natural Resources USA, Inc., Midland, Texas and Various Locations in Texas (except Midland); Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 2, 1996, applicable to all workers of Parker & Parsley Petroleum USA, Incorporated located in Midland, Texas. The notice was published in the **Federal Register** on February 21, 1996 (61 FR 6660). The certification was amended on February 12, 1996, to include workers at the Parker & Parsley operations at various locations in Texas. The notice of amendment was published in the **Federal Register** on February 23, 1996 (61 FR 7023).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers of Parker & Parsley Petroleum are engaged in employment related to the production of crude oil and natural gas. New information provided by the company shows that some of the workers of Parker & Parsley have had their wages reported to the Unemployment Insurance tax account of Pioneer Natural Resources USA, Inc.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of Pioneer Natural Resources USA, Inc.

The amended notice applicable to TA–W–31,704 is hereby issued as follows:

All workers of Parker & Parsley Petroleum USA, Incorporated, also know as Pioneer Natural Resources USA, Inc., Midland, Texas (TA–W–31,704), operating at various locations in Texas except Midland (TA–W–31,704A), who became totally or partially separated from employment on or after June 30, 1994 through February 12, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31053 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,431]

Shaneco Manufacturing Company a/k/a Amex Manufacturing Incorporated, El Paso, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 11, 1996, applicable to workers of Shaneco Manufacturing Company located in El Paso, Texas. The notice was published in the **Federal Register** on July 3, 1996 (61 FR 34875).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers at the subject firm produce miscellaneous sewn articles. Findings on review show that some of the workers have had their wages reported to the Unemployment Insurance tax account of Amex Manufacturing Incorporated. The intent of the Department's certification is to include all workers of Shaneco Manufacturing Company who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Amex Manufacturing Incorporated.

The amended notice applicable to TA–W–32,431 is hereby issued as follows:

All workers of Shaneco Manufacturing Company, also known as Amex Manufacturing Incorporated, El Paso, Texas, who became totally or partially separated from employment on or after May 23, 1995 through June 11, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31062 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,725]

Stanwood Mills, Incorporated, Slatington, Pennsylvania; Notice of Revised Determination on Reopening

In response to a letter of October 28, 1997, from a company official requesting administrative reconsideration of the Department's denial of TAA for workers of the subject firm, the Department reopened its investigation for the former workers of Stanwood Mills, Incorporated.

The initial investigation resulted in a negative determination issued on October 14, 1997, because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce greige goods. The denial notice will soon be published in the **Federal Register**.

The Department has new information showing that during the time period relevant to the investigation, a customer of Stanwood Mills, Incorporated increased import purchases of greige goods, while reducing purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with greige goods produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Stanwood Mills, Incorporated, Slatington, Pennsylvania who became totally or partially separated from employment on or after July 30, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 17th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31061 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,353]

Technotrim, Incorporated Greencastle, Indiana; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 6, 1997, the peer counselor for TechnoTrim's dislocated worker group, hereafter referred to as the petitioners, requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice applicable to workers of the subject firm located in Greencastle, Indiana, was signed on May 20, 1997, and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Findings of the investigation showed that workers of TechnoTrim, Incorporated were engaged in employment related to the Production of automobile set covers. The petitioners assert that workers of the subject firm produced seat covers for pick-up trucks, not automobiles. The Department's reference to automobile seat covers in the final determination is intended to include light trucks.

The petitioners assert that production at the subject firm was shifted to Hyperion for 90 days so that the sewing machines could be shipped from Greencastle, Indiana to Mexico. The petitioners add that Hyperion is not a TechnoTrim plant but another domestic facility located in Lewisburg, Tennessee. The petitioners assert that the office equipment at Greencastle was

also shipped to Mexico. Transfer of production from the subject firm to another domestic facility, whether or not corporate affiliated, and the shift of equipment to Mexico are not a basis for a worker group certification under the Trade Act of 1974, as amended.

In order to issue a worker group certification, the Department must be able to show that increased imports of articles like or directly competitive with the products produced at the workers' firm contributed importantly to the worker separations.

The Department's denial of TAA for workers of the subject firm was based on the fact that the "contributed importantly" test of the Group Eligibility requirements of Section 222 of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department of Labor surveyed the major declining customers of the subject firm regarding their purchases of automobile seat covers. None of the respondents increased their import purchases of seat covers while decreasing their purchases form TechnoTrim, Incorporated. The company reports that it does not import seat covers from foreign sources.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 31st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31058 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,880]

United Technologies Automotive, Incorporated, Steering Wheels Division (Currently Known as Breed Technologies, Incorporated) Niles, Michigan; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 30, 1997, applicable to all workers of United Technologies Automotive, Incorporated, Steering Wheels Division, Niles, Michigan. The notice was published in the **Federal Register** on February 13, 1997 (62 FR 6806).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of molded steering wheels and airbag covers. The company reports that in July, 1997 the Niles, Michigan location of United Technologies became known as Breed Technologies, Incorporated. The Niles, Michigan workers have their wages reported under a separate unemployment insurance (UI) tax account, "United Technologies, Incorporated on Behalf of Breed Technologies, Incorporated".

The company also reports that worker separations are expected to occur at the Niles, Michigan facility when it closes at the end of October, 1997. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of United Technologies Automotive, Incorporated, Steering Wheels Division adversely affected by increased imports.

The amended notice applicable to TA–W–32,880 is hereby issued as follows:

"All workers of United Technologies, Incorporated, Steering Wheels Division, currently known as Breed Technologies, Niles, Michigan who became totally or partially separated from employment on or after October 15, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 12th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31060 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 799]

West Virginia Shoe Company, Marlinton, West Virginia; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at West Virginia Shoe Company, Marlinton, West Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33, 799; West Virginia Shoe Company, Marlinton, West Virginia (November 6, 1997)

Signed at Washington, D.C. this 6th day of November, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31046 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01766]

Seminole Tribe of Florida, Hollywood, Florida; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 27, 1997 in response to a petition filed on behalf of workers at Seminole Tribe of Florida located in Hollywood, Florida.

The sole petitioner was not employed by the subject firm cited, therefore, the petition is not valid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 7th day of November 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–31056 Filed 11–25–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–164)]

NASA Advisory Council, Advisory Committee on the International Space Station (ACISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Advisory Committee on the International Space Station.

DATES: Tuesday, December 9, 1997, from 9:00 a.m. until 5:00 p.m.; and Wednesday, December 10, 1997 from 11:00 a.m. until 12:00 p.m.

ADDRESSES: Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. W. Michael Hawes, Code ML, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0242.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room, from 9:00 a.m. until 5:00 p.m. on Tuesday, December 9, 1997. The meeting will reconvene at 11:00 a.m. until 12:00 p.m. on Wednesday, December 10, 1997. The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—ISS Status
—On-Orbit Maintenance
—Contingency Planning for the Assembly Sequence
—PrePlanned Program Improvement
—Space Station Utilization Advisory Subcommittee Report
—Cost Assessment and Validation Task Force Report
—Outreach Task Group Report

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 19, 1997.

Alan M. Ladwig,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–31097 Filed 11–25–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185).

Date and Time: December 15–16, 1997, 8:30 am to 5:00 pm.

Place: Embassy Suites Hotel, 1881 Curtis Street, Denver, CO 80202.

Type of Meeting: Closed.

For Further Information Contact: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the New Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31121 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Galactic Astronomy Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 16 and 17, 1997, (3). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

For Further Information Contact: Dr. Vernon L. Pankonin, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, Room 1030, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1826.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31119 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: December 12, 1997; 8:30 a.m. to 5:00 p.m.

Place: Best Western Key Bridge Hotel, 1850 North Fort Meyer Dr., Arlington, Virginia 22209. 703/522–0400.

Contact Person: Dr. Sunil Saigal, Program Director, Mechanics and Materials Programs, Division of Civil and Mechanical Systems, Room 545, NSF, 4401 Wilson Blvd., Arlington, VA 22230. 703/306–1363, x 5069.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31124 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date & Time: December 15; 8:30 am–5:00 pm.

Place: Room 1060 and 1020, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

For Further Information Contact: Steve Mahaney, Program Director, CISE/OCDA, National Science Foundation, 4201 Wilson Blvd., Room 1160, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31120 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: December 13, 1997.

Place: O'Hare Airport Hilton, Chicago, Illinois.

Type of Meeting: Closed.

Contact Meeting: Lloyd Douglas, Infrastructure Program, Program Officer, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Mathematical Sciences Postdoctoral Research Fellowship Program, as part of the selection processes for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31125 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: December 18 to 20, 1997.

Place: Room 1020 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd Douglas, Infrastructure Program, Program Officer, room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Interdisciplinary Grants in the Mathematical Sciences Program, as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31126 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: Thursday, December 18, 1997; 8:00 a.m. to 5:00 p.m., Room 365.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

For Further Information Contact: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Nuclear Faculty Early Career Development (CAREER) program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31123 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral, and Economic Sciences, Committee of Visitors (1171).

Date and Time: December 11–12 1997; 9:00 a.m. to 5:00 p.m.

Place: Rm. 970, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

For Further Information Contact: Dr. Jonathan Leland, Program Director, Decision, Risk and Management Sciences Program National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1757.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Decision, Risk and Management Sciences Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: November 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–31122 Filed 11–25–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Crystal River Nuclear Generating Plant Unit 3; Exemption

I

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Nuclear Generating Plant Unit 3 (CR3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is of a pressurized water reactor type and is located in Citrus County, Florida.

II

In its letter dated September 5, 1997, the licensee requested an exemption from the Commission's regulations.

Title 10 of the *Code of Federal Regulations*, part 50, Appendix A, "General Design Criteria for Nuclear Power Plants," Criterion 3, "Fire Protection," specifies that "Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions." 10 CFR part 50, Appendix R sets forth the fire protection features required to satisfy certain provisions of General Design Criterion 3 of the Commission's regulations. Pursuant to 10 CFR part 50, Appendix R, Section III, Paragraph O, "Oil Collection System for Reactor Coolant Pump," reactor coolant pumps (RCPs) shall be equipped with an oil collection system which "* * * shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems."

In 1985, CR3 added remote oil addition lines (ROALs) to the original RCP oil fill lines to eliminate the need to shut down the reactor, and to reduce personnel radiation and heat stress exposure during periodic RCP oil additions. At that time, the licensee did not consider the ROALs to be a part of the RCP lube oil systems and as a result, did not provide a lube oil collection system to collect potential leakages. As part of its current Appendix R design review project, the licensee has now determined the ROALs to be a part of the RCP lube oil systems and therefore, would require a lube oil collection system.

The licensee states that the ROALs are of a rugged leak tight design. They are used only periodically using controlled plant procedures. In a hypothetical worst case spill, with ignition assumed, use of the ROALs does not impact post fire safe shutdown capability. As a result, the licensee believes that a lube oil collection system for the ROALs is not necessary to achieve the underlying purpose of the rule. Exemption from Appendix R, Paragraph O, requirements is required for the ROALs to have no lube oil collection system for collecting oil from potential leak sites.

III

Discussion

The licensee requests an exemption from the technical requirements relating to an oil collection system for the ROALs associated with the RCPs.

CR3 design includes four RCP motors which are located inside the D-Ring area. This area is separated from other fire areas by concrete barriers forming primary containment. Each group of two RCPs is separated from the other group by the reactor vessel and its concrete compartment. The walls of the reactor compartment are four feet thick concrete.

The RCP Motors have an upper oil reservoir for the thrust bearing containing 175 gallons of oil, and a lower bearing oil reservoir containing 15 gallons of oil. Both reservoirs are vented to ensure that they would not be overpressurized during oil addition operations. The upper and lower oil reservoirs have oil fill lines at the motors which are contained by the RCP motor lube oil collection system. In 1985, ROALs were added to the original RCP oil fill lines to eliminate the need to shut down the reactor, and to reduce personnel radiation and heat stress exposure during periodic RCP oil additions. The RCP lube oil collection system provides collection coverage for the original oil fill lines and the ROAL connection at the RCP motor. High and low oil level control room annunciators, and digital local level indications are provided for both upper and lower lube oil reservoirs.

The ROALs are constructed of ½" stainless steel tubing with 3000 psi pressure-rated swagelok unions. The ROALs transition to ½" stainless steel flexible metal hose (3000 psi rating) with compression type fittings at the D-Ring penetrations and attachment to each RCP motor reservoir. Connections to the original RCP lube oil fill line are above the maximum oil level of the upper and lower reservoirs. The operating pressure of the ROALs is 30 psig or less.

Inside the RCP D-Ring, the ROALs travel over or along a main steam line, steam generator insulation, and RCP casing before attaching to the original oil fill lines. The main steam line and the steam generator are insulated with stainless steel encapsulated mineral wool. The RCP casing insulation is a non-absorbing mirror-type insulation. Outside the secondary shield wall, the ROALs do not travel over any hot main pipes or steam lines.

A portable oil metering pump skid, two portable tanks, and associated high pressure flexible hoses transport oil to containment during oil transfer operations. Connection of the pump discharges to the permanently mounted ROALs is via high pressure flexible hose with quick disconnect fittings. Each metering pump is provided with a relief valve located adjacent to the pump discharge and arranged to ensure that any oil discharge from the relief valve is captured and contained in a portable tank (suction supply). The oil supply tanks for each of the oil metering pumps meet the requirements of CR3's Administrative Instructions for the use of flammable or combustible liquids inside plant areas.

To minimize the potential for an oil fire due to a leak from the ROALs, the licensee proposes to implement several precautionary procedural actions during and following oil additions. They include requirements for monitoring oil transfers, communications between the control room and local operations personnel, walkdown and inspection of the ROALs and the areas around the oil pumping manifolds, and containment closeout inspection following refueling outages to assure the integrity of the ROALs.

IV

Evaluation

The Commission has completed its evaluation of the licensee's application.

The reactor lube oil collection system is required to prevent a major fire from occurring inside the reactor

containment as a result of a lube oil leak from the RCPs. The ROALs are a low pressure system. The 3000 psi minimum design pressure of the ROALs is significantly higher than the 30 psig line operating pressures. All piping components associated with the suction and discharge of the portable oil transfer pump skid are appropriately rated for the service conditions. The hose connections are flexible hoses, and therefore, are not subjected to mechanical vibration and thermal stresses.

Oil leakage from the ROALs is not expected to occur during oil transfer operations. The ROALs are used only periodically and operated using controlled procedures and processes. The controlled oil addition process includes determining the amount of oil to be added, performing a walk down before oil addition to check for leakage, and local and control room monitoring of the oil addition process. Following the addition of the proper amount of oil, the ROAL is drained either by gravity or by reversing the pump suction and discharge connections and pumping down the line. The upper and lower reservoirs contain only limited quantities of oil, 175 and 10 gallons, respectively. Based on the maximum oil addition allowed by procedures, the maximum potential oil spill will be only 12 gallons.

During power operation, damage to the ROALs would not occur because the reactor building access and work activities are limited during this time. Further, following refueling outages, containment close-out procedures require visual inspections to assure the integrity of the ROALs.

Inside the D-ring, the ROALs travel over or along hot components that are insulated with a non-absorbing material or encased mineral wool. The surface temperatures of the insulation are below the ignition temperature of the oil, such that the insulation would not be a potential ignition source. The construction of this insulation makes it less likely for potential leaking oil to soak the encased mineral wool. Any potential oil leak in this area would be reasonably expected to travel down the insulation to the floor. Further, there are spot-type heat detectors located in this general area which can provide early warning to the control room in the event of a fire.

Outside the secondary shield wall, the ROALs do not travel over any hot main coolant pipes or steam lines and any potential leak in this area would pool on the floor and have no opportunity for ignition.

The ROALs are routed through two fire areas in the reactor building (RB), elevations 95 and 119 feet, designated as RB–95–300 and RB–119–302. The licensee has administrative controls that are designed to control the type, amount, use and location of combustibles. Proper control of combustibles minimizes the possibility of starting, spreading, or contributing to a fire. The probability for a fire hazard in this area is minimal because of separation of redundant components, the surrounding concrete structure, minimal or no intervening combustibles in the area, high ROAL design pressure and low operating pressure, and the short duration and infrequency of oil addition operations. However, the licensee has evaluated a worst case lube oil fire for these fire areas that contain ROALs and concluded that it is bounded by the CR3's existing Fire Hazards Analysis and Appendix R fire study.

In 1985, when the ROALs were originally installed, they were functionally leak tested with no visible leakage detected. During the last 12 years of performance there has been no indication of any leakage from the ROALs.

Fire detection and manual fire suppression equipment is available in the vicinity of the lube oil fill lines. In the event of a fire, it is expected that a detector will alarm while the fire is in its incipient stages. Operators would then take appropriate action to mitigate the consequences of the fire. This provides further assurance that a worst-case postulated fire would not damage safe shutdown equipment.

Based on the design features of the ROALs and associated lube oil collection systems, and the licensee's proposed compensatory actions, there is reasonable assurance that the RCP lube oil system will not lead to a major fire hazard. In addition, based on the present level of fire protection provided for the RCPs, if a fire were to occur in the area, there is reasonable assurance that the fire will be detected and mitigated. Therefore, the staff finds the ROALs without an oil collection system acceptable.

The underlying purpose of 10 CFR part 50, Appendix R, Section III.O, is to ensure that lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems would be collected and not become a fire hazard such that "the capability to achieve and maintain safe shutdown conditions during and after any postulated fire in the plant" will be ensured. On the basis of its review and evaluation of the licensee's exemption request, the staff concludes that the addition of an oil collection system for the ROALs is not necessary to achieve the underlying purpose of the rule. Therefore, an exemption from the requirement for providing a lube oil collection system for the RCP Motor ROALs is acceptable.

V

For the foregoing reasons, the NRC staff has concluded that pursuant to 10 CFR 50.12(a) an exemption permitting the licensee's proposed use of ROALs without an oil collection system is authorized by law, will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR part 50, Appendix R, Section III.O, is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission hereby grants an exemption from the technical requirements of 10 CFR part 50, Appendix R, Section III.O to the extent that the ROALs need not be provided with an oil collection system.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 59752).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of November 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31085 Filed 11–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–8622]

Pathfinder Mines Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–442 to change three reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Pathfinder Mines Corporation's (PMC's) Source Material License SUA–442 to change three reclamation milestone dates. This amendment was requested by PMC in its letter dated September 11, 1997, and the receipt of the request by NRC was noticed in the **Federal Register** on October 6, 1997.

The license amendment modifies License Condition 50 to change completion dates for three site-reclamation milestones. The new dates approved by the NRC extend completion of placement of the interim cover over tailings pile by two years, and completion of placement of the final radon barrier and placement of the erosión protection cover by three years. PMC attributes the delays to a substantial volume of water still remaining to be evaporated from the tailings system, before an interim cover could be placed. Based on the review of PMC's submittal, the NRC staff concludes that the delays are attributable to factors beyond the control of PMC, the proposed work is scheduled to be completed as expeditiously as practicable, and the added risk to the public health and safety is not significant.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: PMC's amended license, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 19th day of November, 1997.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–31086 Filed 11–25–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Special Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of material		End use	Country of origin
	Material type	Total quantity		
Transnuclear, Inc., October 27, 1997, October 29, 1997, XSNM03012.	High-enriched Uranium (93.3%)	26.738 kg ...	Fabrication of target material for production of medical isotopes.	Canada.

Dated this 12th day of November 1997 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 97–30968 Filed 11–25–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 3, 1997, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 3, 1997—10:00 a.m. until 11:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the pubic, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the pubic, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this

meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 12, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–30969 Filed 11–25–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Plant Operations

The ACRS Subcommittee on Plant Operations will hold a meeting on December 2, 1997, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 2, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will review the staff's Safety Evaluation Report on the BWR Owners' Group Utility Resolution Guidance to address emergency core cooling system suction strainer blockage. The Subcommittee will also review the results of licensee responses to NRC Bulletins to address strainer blockage, research associated with debris generation and transport, and proposed actions to provide closure to these issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic Recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by containing the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 13, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–30970 Filed 11–25–97; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22987; File No. 812–10780]

Western Reserve Life Assurance Co. of Ohio, et al.; Notice of Application

November 19, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 ("1940 Act") approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants request an order approving the substitution of securities issued by certain registered management investment companies and held by the Accounts to support individual flexible premium deferred variable annuity contracts and individual flexible premium variable life insurance policies issued by Western Reserve.

APPLICANTS: Western Reserve Life Assurance Co. of Ohio ("Western Reserve"), WRL Series Annuity Account ("Annuity Account") and WRL Series Life Account ("Life Account") (the Life Account and the Annuity Account together, the "Accounts").

FILING DATES: The application was filed on August 15, 1997, and an amended and restated application was filed on October 22, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1997, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Thomas E. Pierpan, Esquire, Western Reserve Life Assurance Co. Of Ohio, 201 Highland Avenue, Largo, Florida 33770–2597.

FOR FURTHER INFORMATION CONTACT: Michael Koffler, Attorney, or Mark Amorosi, Branch Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Western Reserve, a stock life insurance company, is principally engaged in the business of writing life insurance policies and annuity contracts and is authorized to do business in the District of Columbia and all states except New York. Western Reserve is a wholly-owned subsidiary of First AUSA Life Insurance Company which is a wholly-owned subsidiary of AEGON USA, Inc., which in turn is a wholly-owned indirect subsidiary of AEGON nv, a Netherlands corporation, which is a publicly traded international insurance group. Western Reserve is the sponsor and depositor of the Accounts.

2. Western Reserve issues individual flexible premium variable life insurance policies and individual flexible premium deferred variable annuity contracts (collectively, the "Contracts") through the Life Account and the Annuity Account respectively. Each of the Accounts is a separate account and is registered under the 1940 Act as a unit investment trust. Interests in the Accounts offered through the Contracts have been registered under the Securities Act of 1933 ("1933 Act"). Each Account is comprised of sub-accounts established to receive and invest net purchase payments of the Contracts. Each sub-account invests exclusively in the shares of a specified portfolio of the WRL Series Fund, Inc. (the "Fund") and supports the Contracts.

3. The Fund is registered under the 1940 Act as an open-end management investment company. The Fund is a series investment company as defined by rule 18f–2 under the 1940 Act and is currently comprised of 21 investment portfolios (the "Portfolios"). The Fund issues a separate series of shares of stock in connection with each Portfolio and has registered these shares under the 1933 Act. WRL Investment Management, Inc. ("WRL Management"), a direct wholly-owned subsidiary of Western Reserve, is the investment adviser to the Fund.

4. Applicants state that the following Portfolios of the Fund have not generated substantial Contract owner interest since their inception: the Short-to-Intermediate Government Portfolio, the C.A.S.E. Quality Growth Portfolio, the C.A.S.E. Growth & Income Portfolio, the Foreign Sector Portfolio and the US Sector Portfolio (collectively, the "Replaced Portfolios"). In addition, the Replaced Portfolios are each relatively small in terms of assets compared to many other similar investment portfolios of open-end management investment companies available as investment vehicles for variable annuity and variable life insurance products. Applicants state that, as a result, the annual expense ratios of the Replaced Portfolios, absent any expense reimbursement, have been higher than the ratios of most similar, but larger portfolios. Moreover, the current expense reimbursement arrangements for the Replaced Portfolios are voluntary and there is no assurance these arrangements will continue in the future. Applicants also state that the performance of the Replaced Portfolios since their inception has been unremarkable given overall market performance during the relevant time periods.

5. For these reasons, Applicants propose that Western Reserve substitute shares of the Bond Portfolio for shares of the Short-to-Intermediate Government Portfolio; shares of the U.S. Equity Portfolio for shares of the US Sector Portfolio; shares of the Global Portfolio for shares of the Foreign Sector Portfolio; shares of the C.A.S.E. Growth Portfolio for shares of the C.A.S.E. Quality Growth Portfolio; and shares of the C.A.S.E. Growth Portfolio for shares of the C.A.S.E. Growth & Income Portfolio.

6. Applicants represent that the Portfolios proposed as substitutes for each of the Replaced Portfolios (the "Substitute Portfolios") are substantially larger than their Replaced Portfolio counterparts. Applicants also represent that each Substitute Portfolio also has lower expense ratios and (with the exception of the U.S. Equity Portfolio, which does not yet have a performance record of significant duration) has either outperformed or performed comparably, relative to the corresponding Replaced Portfolio.

7. Applicants state that, by supplements to the prospectuses for the Contracts of the Accounts, all owners and prospective owners of the Contracts were notified of Western Reserve's intention to take the necessary actions to substitute the Replaced Portfolios with the Substitute Portfolios. The supplements advised owners and prospective owners that they will be unable to allocate net purchase payments to, or transfer cash values to, the sub-accounts of the Accounts corresponding to each of the Replaced Portfolios after November 15, 1997. The supplements also advised owners and prospective owners that on the date of the proposed substitutions, the Substitute Portfolios will replace the Replaced Portfolios as the underlying investments for such sub-accounts. The supplements further apprised owners and prospective owners that from the date of the supplements until 30 days after the date of the proposed substitutions, owners will be permitted to make one transfer per affected sub-account of all the cash value under a Contract invested in such affected sub-account to other available subaccount(s), other than one of the other affected sub-accounts, without that transfer(s) counting as one of the 12 transfers permitted in a Contract year free of charge. In addition, the supplements informed owners and prospective owners that Western Reserve will not exercise any rights reserved by Western Reserve under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

8. Applicants state that at least 60 days before the date of the proposed substitutions, affected owners were provided with a prospectus for the Fund which includes complete current information concerning the Substitute Portfolios.

9. Applicants propose to have Western Reserve redeem shares of each Replaced Portfolio in cash and purchase with the proceeds shares of the relevant Substitute Portfolio. Applicants represent that redemption requests and purchase orders will be placed simultaneously so that Contract values will remain fully invested at all times.

10. Applicants state that the proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the Accounts. Applicants represent that Contract owners will not incur any fees or charges as a result of the proposed substitutions and that their rights and Western Reserve's obligations under the Contracts will not be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Western Reserve. In addition, Applicants represent that the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

11. Within 5 days after the proposed substitutions, any owners who were affected by a substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all cash value under a Contract invested in each of the affected subaccounts to other subaccount(s) until 30 days after the substitution without that transfer counting as one of the 12 transfers permitted in a Contract year free of charge. the notice will also reiterate that Western Reserve will not exercise any rights reserved by Western Reserve under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act approving the substitutions by Western Reserve of (1) shares of the Bond Portfolio for shares of the Short-to-Intermediate Government Portfolio; (2) shares of the U.S. Equity Portfolio for shares of the US Sector Portfolio; (3) shares of the Global Portfolio for shares of the Foreign Sector Portfolio; (4) shares of the C.A.S.E. Growth Portfolio for shares of the C.A.S.E. Quality Growth Portfolio; and (5) shares of the C.A.S.E. Growth Portfolio for shares of the C.A.S.E. Growth & Income Portfolio held by

corresponding sub-accounts of the Accounts.

2. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

3. Applicants assert that the Contracts give Western Reserve the right, subject to Commission approval, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account of the relevant Account. Applicants also assert that the prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

4. Applicants contend that the Substitute Portfolios will have lower or equal future expense ratios than the past expense ratios of the Replaced Portfolios. Each of the Substitute Portfolios is substantially larger than the corresponding Replaced Portfolio and each Substitute Portfolio (except the U.S. Equity Portfolio, which commenced operations on January 2, 1997) has had more favorable expense ratios over the last two years than the corresponding Replaced Portfolio.

5. As of November 15, 1997, the Replaced Portfolios will no longer be available for new investment, and most likely will experience the net redemption of their shares from that date forward. Therefore, Applicants assert that it is highly likely that in the near future each Replaced Portfolio's asset base will decrease and, accordingly, each Replaced Portfolio's expense ratio will increase.

6. Applicants state that each Substitute Portfolio has performed favorably over the past two years (except the U.S. Equity Portfolio, which commenced operations on January 2, 1997), and since its inception compared to the corresponding Replaced Portfolio. Applicants therefore anticipate that after the proposed substitutions, the Substitute Portfolios will provide Contract owners with more favorable or comparable investment results than would be the case if the proposed substitutions do not take place.

7. Applicants represent that each of the Substitute Portfolios is a suitable and appropriate investment vehicle for Contract owners and that each Substitute Portfolio has, or will have, substantially identical or similar investment objectives and policies to its corresponding Replaced Portfolio.

Conclusion

Applicants submit that, for all the reasons summarized above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 97–31016 Filed 11–27–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22906]

Allied Capital Corporation (File No. 811–907) and Allied Capital Lending Corporation (File No. 811–2708); Notice of Proposed Deregistration

November 20, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposed deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF NOTICE: The SEC proposes to declare by order on its own motion that the registrations of Allied Capital Corporation ("Allied") and Allied Capital Lending Corporation ("Allied Lending") under the Act have ceased to be in effect as of June 28, 1991, and November 12, 1993, respectively, the dates that each elected to be regulated as a business development company ("BDC").

HEARING OR NOTIFICATION OF HEARING: An order will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the relevant registrant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1997, and should be accompanied by proof of service on the registrant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Allied and Allied Lending: 1666 K Street, N.W., 9th Floor, Washington, D.C. 20006–2803.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0572, (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Statement of Facts

1. Allied and Allied Lending, both Maryland corporations and closed-end investment companies registered under the Act, filed Notifications of Registration under the Act on September 29, 1959 and November 23, 1976, respectively. In January 1960, Allied began a public offering. Until November 23, 1993, Allied Lending was a wholly-owned subsidiary of Allied. Allied Lending filed a registration statement under the Act and the Securities Act of 1933 that became effective on November 16, 1993. Allied commenced an initial public offering of its shares on November 23, 1997.

2. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under sections 2(a)(48) (A) and (B) of the Act may elect to be subject to the provisions of sections 55 through 65 of the Act and be regulated as a BDC by filing with the SEC a notification of the election, if the company: (i) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act"); or (ii) has filed a registration statement pursuant to section 12 of the Exchange Act for a class of its equity securities. On June 28, 1991, and November 12, 1993, Allied and Allied Lending, respectively, each elected BDC status by filing a Form N–54A. Allied Lending filed a registration statement under the Exchange Act on November 12, 1993. Allied did not file a registration statement under the Exchange Act in reliance on the exemption provided by rule 12g–2 under the Exchange Act.

3. Section 8(a) of the Act, which requires registration of investment companies, does not apply to BDCs. After an existing registered investment company has filed an election to be regulated as a BDC, the SEC on its own motion will declare by order under section 8(f) that the company's registration under the Act has ceased to be in effect. The order will be effective retroactively, as of the date the SEC

received the company's election. See Investment Company Act Release No. 11703 (March 26, 1981).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31018 Filed 11–25–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39338; File No. SR–CBOE–97–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to a Reduction in the Value of the Standard & Poor's 100 Stock Index and a Corresponding Increase in the Existing Position and Exercise Limits for the Option Traded on the Index

November 19, 1997.

I. Introduction

On September 19, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to double current position and exercise limits in connection with a reduction by Standard & Poor's ("S&P") of the value of its S&P 100 Stock Index ("Index") option ("OEX") to one-half of its present value by doubling the divisor used in calculating the Index.

The proposed rule change appeared in the **Federal Register** on October 10, 1997.[3] No comments were received on the proposed rule change. This order approves the CBOE's proposal.

II. Description of the Proposal

In March 1983, the CBOE began trading OEX options,[4] which are American-style, cash-settled options on the Index. The Exchange notes that the value of the OEX has doubled in value since mid-1995, such that the value of the Index stood at 928.20 as of August 7, 1997. As a result of the significant increase in the value of the underlying Index, the premium for OEX options also has increased. This has caused OEX options to trade at a level that may be uncomfortably high for retail investors, a large and important part of the market for OEX options.

As a result, pursuant to CBOE's request, S&P (the reporting authority and sole party responsible for maintaining the Index) has agreed to a "two-for-one split" of the Index. The change, which will be implemented immediately following the November expiration,[5] will result in a halving of the Index level, as well as a doubling of the number of OEX contracts outstanding, such that for each OEX contract held, the holder will receive two contracts at the reduced value, with a strike price of one-half of the original strike price.[6]

In addition to the above, the CBOE proposes to double the position limits applicable to the OEX from 25,000 to 50,000 contracts.[7] The CBOE also proposes to double the exercise limits applicable to OEX options from 15,000 to 30,000 contracts. The Exchange believes this increase in the position and exercise limits is justified because the reduction in the divisor would result in each contract overlying only one-half of the value of a current OEX contract. Consequently, the revised position and exercise limits would be equivalent to the current levels in terms of the value of the Index.

The CBOE announced the effective date of the change by way of an Exchange circular to its membership, which also described the changes to the strike prices and the position and exercise limits.[8]

The Exchange expects the proposed changes to attract additional customer business in OEX in those series in which retail customers are interested most in trading. The Exchange believes the proposed change will permit some retail investors to trade these options who otherwise have been priced out of the market due to the recent market surge. The Exchange further believes that OEX options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the stocks comprising this broad-based, widely followed Index. By reducing the value of the Index, investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The Exchange believes that this should attract additional investors and create a more active and liquid trading environment.

The Exchange believes that reducing the value of the Index does not raise manipulation concerns and will not cause adverse market impact because the Exchange will continue to employ the same surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, because reducing the value of the Index will enhance the depth and liquidity of the market for both members and investors in general, the Commission believes that this rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act[11] in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

By reducing the value of the Index, the Commission believes that a broader range of investors will be provided with a means to hedge their exposure to the market risk associated with the stocks underlying the Index. Similarly, the Commission believes that reducing the value of the Index may attract additional investors, thus creating a more active and liquid trading market in OEX.

The Commission also believes that CBOE's adjustments to its position and exercise limits are appropriate and consistent with the Act. In particular,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39192 (October 3, 1997) 62 FR 53040.

[4] *See* Securities Exchange Act Release No. 19264 (November 22, 1982) 47 FR 53981 (November 30, 1982).

[5] The Index is scheduled to be split on November 24, 1997. Telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Michael Walinskas, Senior Special Counsel, Division of Market Regulation, Commission, on November 10, 1997.

[6] The value of reduced-value Long-Term AnticiPation Securities ("LEAPS") based on the Index will not be affected by the proposed change in the value of the Index. Therefore, reduced value OEX LEAPS, based on one-tenth of the value of the Index, will be based on one-fifth of the value of the Index after the value of the Index is reduced by one-half. *See* Letter from Timothy H. Thompson, Senior Attorney, CBOE, to Michael Walinskas, Division of Market Regulation, Commission, dated November 11, 1997.

[7] The Exchange has separately requested an increase in the position and exercise limits for OEX. *See* Securities Exchange Act Release No. 38525 (April 18, 1997) 62 FR 20046 (April 24, 1997) (noticing SR–CBOE–97–11).

[8] In this regard, the Commission notes that in a circular dated November 13, 1997, the CBOE provided notice to its members and member organizations of the S&P's intent to reduce the value of the Index by one-half and of the CBOE's intent to double the position and exercise limits for OEX.

[9] 15 U.S.C. 78f(b).

[10] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

the Commission believes that the position and exercise limits are reasonable in light of the fact that the size of the OEX contract will be halved. Doubling the position and exercise limits, therefore, will permit market participants to maintain, after the split of the Index, their current level of investment in OEX options.

The Commission further believes that doubling the Index's divisor will not have an adverse market impact or make trading in OEX options susceptible to manipulation. After the split, the Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisor. The Commission notes that the CBOE's surveillance procedures also will remain the same.

Finally, the Commission notes that the Exchange provided notice of the proposed changes to the Index and the OEX contract to its membership through a circular.[12] The Commission believes that the CBOE provided adequate notice to market participants regarding this change to the Index value and the OEX contract prior to its implementation.

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–97–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31019 Filed 11–25–97; 8:45 am]

BILLING CODE 8010–01–M

[12] *See supra* note 8.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39337; File No. SR–CHX–97–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Codifying the Exchange's Clearing the Post Policy

November 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 23, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add interpretation and policy .02 to Rule 10 of Article XX relating to clearing the post. The text of the proposed rule change is as follows: Additions are italicized.

Article XX

Rule 10. Manner of Bidding and Offering.

No change in text.

* * * Interpretations and Policies

.02 Clearing the Post.

Policy. All orders received by floor brokers or originated by market makers on the floor of the Exchange must effectively clear the post before the orders may be routed to another market, either via the ITS System or through the use of alternative means.

Floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price executive for such order. This responsibility includes clearing of the Exchange's post prior to routing an order to another market so that other buying and selling interest at the post can be checked for a potential execution that may be as good as or better than the execution available in another market.

Market makers are required to provide depth and liquidity to the Exchange market, among other things. Exchange Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In so doing, market makers must adhere to traditional agency/auction market principles on the floor. Transactions by Exchange market makers on other exchanges which fail to clear the Exchange post do not constitute such a course of dealings.

Notwithstanding the above, it is understood that on occasion a customer will insist on special handling for a particular order that would preclude it from clearing the post on the Exchange floor. For example, a customer might request that a specific order be given a primary market execution. These situations must be documented and reported to the Exchange. Customer directives for special handling of all orders in a particular stock or all stocks, however, will not be considered as exceptions to the clearing the post policy.

All executions resulting from bids and offers reflected on Instinet terminals resident on the Exchange floor constitute "orders" which are "communicated" to the Exchange floor. Therefore, all orders resulting from interest reflected on Instinet terminals on the Exchange floor must be handled as any other order communicated to the floor. All such orders must be presented to the post during normal trading hours. All trades between Instinet and Exchange floor members are Exchange trades and must be executed on the Exchange.

Method of Clearing the Post. The Exchange's clearing the post policy requires the floor broker or market maker to be physically present at the post. A market maker, after requesting the specialist's market quote, must bid or offer the price and size of his intended interest at the post. A floor broker must clear the post by requesting a market quote from the specialist. If the specialist or any other member who has the post indicates an interest to trade at the price that was bid or offered by the market maker or the price of the floor broker's order (even though that order has not yet been bid or offered), then the trade may be consummated with the specialist (or whomever has the post) in accordance with existing Exchange priority, parity and precedence rules. If the specialist (or any other member who has the post) indicates interest to trade at that price but the member communicating the intended interest, including Instinet interest, determines not to consummate the trade with the specialist or such member, then, to preserve the Exchange's existing priority, parity and precedence rules, the trade may not be done with any other Exchange floor member. (See Article XXX, Rule 2.) If the trade is consummated with the specialist or other member who has the post, the specialist (or any customer represented by the specialist) is not required to pay any fees to the broker or market maker in connection with the execution of the order, unless such fee is expressly authorized by an Exchange Rule. If the specialist does not indicate an interest to trade, then the trade may be consummated with another Exchange floor member on the Exchange floor with a resultant Exchange print.

Failure to clear the post may result in a "trade-through" or "trading ahead" of other floor interest. In addition, failure to properly clear the post may result in a violation of the Exchange's Just and Equitable Trade Principles Rile (Article VIII, Rule 7) and a market maker rule that requires all market maker transactions to constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market (Article XXXIV, Rule 1). Failure to properly clear the post may also subject the violator to a minor rule violation under the Exchange's Minor Rule Violation Plan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the Exchange's existing clearing the post policies in the CHX Guide. The clearing the post policy will become an interpretation and policy of CHX Article XX, Rule 10. The Exchange's clearing the post policies are currently contained in several Notices to Members which had been approved by the Commission.[2] These Notices to Members, and their corresponding Approval Orders explain the Exchange's clearing the post requirements. No substantive change is being made to the clearing the post policy at this time.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[3] in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange pursuant to Section 19(b)(3)(A)[4] of the Act and subparagraph (e) of Rule 19b–4[5] thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–30 and should be submitted by December 17, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31017 Filed 11–25–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 33806 (March 23, 1994) 59 FR 15248 (Notice of Filing and Immediate Effectiveness of file No. SR–CHX–94–03); Securities Exchange Act Release No. 17786 (May 8, 1981) 46 FR 25745 (Order approving SR–MSE–81–3 and SR–MSE–81–5); and Securities Exchange Act Release No. 28638 (November 30, 1990) 55 FR 49731 (Order approving SR–MSE–90–7).

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28896]

Airport Privatization Pilot Program: Application Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of amendment to final application procedures; request for comments.

SUMMARY: Section 149 of the Federal Aviation Authorization Act of 1996 establishes an airport privatization pilot program, and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. On September 16, 1997, the FAA issued a notice of final procedures for application for an exemption under the program. The notice included a provision that air carriers that submitted a proposal for the private operation of an airport but were unsuccessful would not be counted as air carriers for the purpose of the requirement that certain aspects of the privatization application be approved by 65 percent of the air carriers at the airport. In this amendment to the procedures, the FAA is clarifying that the provision does not apply retroactively to requests for proposals issued prior to the issuance of the FAA procedures on September 16, 1997. With respect to future requests for proposals, the provision is suspended until the FAA undertakes further public process on this aspect of the procedures. A separate provision of the procedures, which states that an air carrier that is a *successful* bidder on a privatization proposal will not be considered an air carrier under the 65 percent rule, is not affected.

[6] 17 CFR 200.30–3(a)(12).

DATES: This policy amendment is effective on publication. Comments on the issue are due January 12, 1998.

ADDRESSES: Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28895, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: "Docket No. 28895." Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28895." The postcard will be date stamped and mailed to the commenter. Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m..

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano Manager, (202–267–8728) or Kevin C. Willis (202–267–8741) Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

This notice of amendment to application procedures to be used by applicants for an airport privatization project and request for comments is being published pursuant to § 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. No. 104–264 (October 9, 1996) (1996 Reauthorization Act), which adds a new § 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the FAA issued a notice of procedures to be used in applications for exemption under the Airport Privatization Pilot Program (62 FR 48693). The FAA has identified one issue in that notice that requires clarification.

Specifically, 49 U.S.C. § 47134(b)(1)(i)(ii) limits the exemption to permit the use of funds by the public airport sponsor for non-airport purposes, to amounts approved by 65 percent of the air carriers serving the airport and 65 percent of the air carriers by total landed weight of air carriers from the preceding calendar year. The same approval is required for increases in air carrier fees that exceed the increase in the Consumer Price Index. In interpreting this requirement, the FAA stated that the air carriers included in the calculation of the 65 percent would not include otherwise qualified air carriers that submitted proposals or that participate in consortia that submitted proposals for the privatization of the subject airport. This position was based on the consideration that the vote of such a carrier, whether or not it is the successful proponent, could be based on its interests as a proponent rather than its interests as a user of the airport and would not further the congressional objective of the 65 percent approval requirement.

On September 17, 1997, counsel for several Allegheny County Airport Part 135 operators filed comments arguing that the FAA had exceeded its authority by disqualifying otherwise qualified air carriers that submitted proposals or that participate in consortia that submitted proposals for the privatization of the subject airport from exercising their voting rights expressly granted in 49 U.S.C. Section 47134. The comments requested that the FAA delete provisions in question.

The comments argue that Congress did not intend for air carriers to lose their voting rights in the privatization process. The statute provides no basis for carrier exclusion or limitation other than the creation of the two classes, number serving the airport and percentage of landed weight. The comments further argue that the disqualification provision was issued in final notice without an opportunity for public comment and review. As a result, this provision violates the Administrative Procedure Act. Additionally, its application, retroactively is unlawful and a denial of due process. In the case of Part 135 operators at Allegheny County Airport, the provision would exclude many of the air carriers from exercising their voting rights under the statute because many of the air carriers responded to the airport's RFP without notice that doing so would jeopardize their voting rights under the statute.

After consideration of counsel's arguments, the FAA has decided to amend its application procedures and suspend the effectiveness of one provision. First, air carrier exclusion from the 65 percent approval rule based upon participation as a bidder in the privatization process will not be applied retroactively, i.e., to a solicitation issued before September 16, 1997, the date of the final notice, on the basis that this provision was not proposed for public comment and review. To impose it retroactively on carriers that participated in a bidding process prior to publication of the final procedures would inappropriately exclude them from exercising their voting rights without the benefit of notice of the adverse consequences of their participation as a bidder. Second, the FAA suspends indefinitely the provision in Part VI Certification of Air Carrier Approval (62 FR 48707) excluding otherwise qualified air carriers who submitted unsuccessful proposals as a private operator from participating in the voting process.

This provision was not proposed by the FAA and was not suggested in the **Federal Register** comment process. Moreover, it is not obvious that an unsuccessful bidder would give more weight to its interests as an unsuccessful bidder than its interests as an air carrier in deciding how to cast its vote.

In contrast, the proposal to exclude successful air carrier bidders from participation in the voting process was proposed in a comment in the **Federal Register** process, and the September 17 comments do not oppose such an exclusion. Moreover, the potential conflict of interest for a successful bidder is clear.

The FAA is suspending the provision, rather than deleting it, because we believe that the issue deserves further public comment before a final decision is made. We are therefore, providing a 45-day comment period to permit interested persons to address specifically the issue of whether otherwise qualified air carriers should be disqualified from participating in the statutory voting process because of their participation as unsuccessful bidders in a privatization proposal.

Pending further action, the FAA will exclude from the air carrier voting process only otherwise qualified air carriers that have been selected as the private operator (either individually or as a participant in a consortium) by the public agency.

Issued in Washington, DC, on November 20, 1997.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 97–31106 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held December 15–19, 1997, starting at 9:00 a.m. on Monday, December 15. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Response to SICASP Paper Concerning the Use of ADS–B Information for Collision Avoidance; (4) Editorial Committee Report; (5) Review of work accomplished during the meeting on September 29–October 2, 1997, and continuation of the ballot review and approval of the ADS–B MASPS (Only written comments will be considered); (6) Other Business; (7) Date and Place of Next Meeting. (At the conclusion of the plenary meeting, the 1090 MHz MOPS drafting group will meet for the remainder of the week.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 18, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31076 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (#98–04–C–00–MFR) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International-Medford Airport, Submitted by Jackson County, Medford, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International-Medford Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, A.A.E., Airport Director, at the following address: 3650 Biddle Road, Medford, OR 97504.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International-Medford Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary E. Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#98–04–C–00–MFR) to impose and use PFC revenue at Rogue Valley International-Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, Oregon, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1998.

Proposed charge expiration date: March 1, 2001.

Total requested for use approval: $1,540,000.00.

Brief description of proposed project: Security fencing; Master plan update/ terminal area study; Jet blast fence; GA parking apron immediately NW of main terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air Taxi/ Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are conducted within 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rogue Valley International-Medford Airport.

Issued in Renton, Washington, on November 19, 1997.

George K. Saito,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–31077 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#98–01–C–00–SGU) To Impose a Passenger Facility Charge (PFC) and Use the Revenue From a PFC at St. George Municipal Airport, Submitted by the City of St. George, St. George, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at St. George Municipal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 26, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Bulloch, Public Works Director, at the following address: City of St. George, 175 E. 200 North, St. George, Utah 84770.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to St. George Municipal Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#98–01–C–00–SGU) to impose and use PFC revenue at St. George Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 19, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of St. George, St. George Municipal Airport, St. George, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: August 1, 2002.

Total requested for use approval: $538,575.00.

Brief description of proposed project: Additional terminal ramp lighting; Acquisition of handicap lift; Terminal ramp, midfield apron, taxiway and miscellaneous pavement rehabilitation; Asphalt overlay of existing runway and replacement of pavement markings; Terminal parking expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Unscheduled part 135 air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the St. George Municipal Airport.

Issued in Renton, Washington, on November 19, 1997.

George K. Saito,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–31078 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–97–3140]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Walter Lockland, Chief, Division of Operations Support, Office of Ship Operations, Maritime Administration, MAR–613, Room 2123, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 366–5735 or fax (202) 366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Position Reporting System for Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0025.

Form Number: CG–4796–A (MA) (Rev. 8–88).

Expiration Date of Approval: May 31, 1998.

Summary of Collection of Information: This collection is used to gather information regarding the location of U.S.-flag and certain other U.S. citizen-owned vessels for the purpose of Search and Rescue in the saving of lives at sea; and for the marshaling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions electronically via radio message, and from this, location data is read into a database and is accessed only by the U.S. Coast Guard and MARAD to determine the location of a particular ship.

Need and Use of the Information: The collection is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels in order to facilitate immediate marshaling of ships for national defense purposes, and for the purpose of maintaining a current plot for Search and Rescue purposes for safety of life at sea.

Description of Respondents: U.S.-flag and U.S. citizen-owned vessels which are required to respond under current statute and regulation.

Annual Responses: 20,800 responses.

Annual Burden: 3,328 hours.

Comments: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001.

Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

Dated: November 20, 1997.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 97–31093 Filed 11–25–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub-No. 3X)][1]

Track Tech, Inc.—Abandonment Exemption—in Eddy County, ND

On November 6, 1997, Track Tech, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad located generally between Hamar, ND (milepost 98.0), and Warwick, ND (milepost 103.92), a distance of 5.92 miles in Eddy County, ND. The line traverses U.S. Postal Service ZIP Codes 58380 and 58381.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 24, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 16, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30906 Filed 11–25–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Petitioner acquired this line and 5 others from Burlington Northern Railroad Company in November 1996. Petitioner is also seeking to abandon, or will seek to abandon, the other lines via exemption in STB Docket No. AB–493 (Sub-Nos. 1X, 2X, 4X, 5X, and 6X).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub-No. 4X)][1]

Track Tech, Inc.—Abandonment Exemption—in Ward County, ND

On November 6, 1997, Track Tech, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad located generally between Minot, ND (milepost 4.00), and Tatman, ND (milepost 16.70), a distance of 12.70 miles in Ward County, ND. The line traverses U.S. Postal Service ZIP Codes 58701 and 58702.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 24, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 16, 1997.[2] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 4X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on

[1] Petitioner acquired this line and 5 others from Burlington Northern Railroad Company in November 1996. Petitioner is also seeking to abandon, or will seek to abandon, the other lines via exemption in STB Docket No. AB–493 (Sub-Nos. 1X, 2X, 3X, 5X, and 6X).

[2] The Minot Park District, Minot, ND, has requested issuance of a public use condition and a notice of interim trail use, it has also submitted a statement of willingness to assume financial responsibility for the right-of-way. This request will be handled in a subsequent decision.

the EA will generally be within 30 days of its service.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30907 Filed 11–25–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–493 (Sub-No. 6X)][1]

Track Tech, Inc.—Abendonment Exemption—In Lubbock County, TX

On November 6, 1997, Track Tech, Inc. filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad located generally between milepost 351.15 and milepost 357.40, a distance of 6.25 miles in Lubbock County, TX. The line traverses U.S. Postal Service ZIP Codes 79403 and 79404.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 24, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 16, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–493 (Sub-No. 6X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) T. Scott Bannister, 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA 50309.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: November 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30909 Filed 11–25–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 115X)]

Union Pacific Railroad Company—Abandonment Exemption—In Waukesha County, WI

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 1.40-mile line of railroad on the Waukesha Industrial Lead from milepost 18.16 to the end of UP's line at milepost 19.56 (Grand Avenue), near Waukesha, in Waukesha County, WI. The line traverses United States Postal Service Zip Codes 53186, 53187 and 53188.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 26, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 8, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 16, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] Petitioner acquired this line and 5 others from Burlington Northern Railroad Company in November 1996. Petitioner is also seeking to abandon, or will seek to abandon, the other lines via exemption in STB Docket No. AB–493 (Sub-Nos. 1X, 2X, 3X, 4X, and 5X).

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $900. *See* 49 CFR 1002.2(f)(25).

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 1, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 26, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 20, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary,

[FR Doc. 97–31089 Filed 11–25–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled (MA)-Real Estate Lending and Appraisals—12 CFR 34.

DATES: Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC. Comments are due on or before December 26, 1997.

ADDRESSES: A copy of the submission may be obtained by calling the OCC contact listed. Direct all written comments to the Communications Division, Attention: 1557–0190, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–0190.

Form Number: Not applicable.

Type of Review: Renewal of OMB approval.

Title: (MA) Real Estate Lending and Appraisals.

Description: The collections of information contained in 12 CFR part 34 are as follows:

Subpart C establishes real estate appraisal requirements that a national bank must follow for all federally-related real estate transactions. These appraisal requirements provide protections for the bank, further public policy interests, and were issued pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

Subpart D requires that a national bank adopt and maintain written policies for real estate lending transactions. These requirements ensure bank safety and soundness and were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828(o)).

Subpart E requires that a national bank file an application to extend the five-year holding period for Other Real Estate Owned (OREO) and file notice when it makes certain expenditures for OREO development or improvement projects. These requirements further bank safety and soundness and were issued pursuant to 12 U.S.C. 29.

Respondents: Businesses or other for-profit; individuals.

Number of Respondents: 2,800.

Total Annual Responses: 3,540.

Frequency of Response: Occasional.

Estimated Total Annual Burden: 240,180.

OCC Contact: Jessie Gates, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202) 395–7340, Paperwork Reduction Project 1557–0190, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

The OCC may not conduct or sponsor, and respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility; (b) the accuracy of the OCC's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Date: November 13, 1997.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 97–30976 Filed 11–25–97; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register
Vol. 62, No. 228
Wednesday, November 26, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97-5]

Martha Hernandez, M.D.; Reprimand and Continuation of Registrations with Restriction

Correction

In notice document 97–29972 beginning on page 61145, in the issue of Friday, November 14, 1997, make the following corrections:

1. On page 61146, in the second column, in the first complete paragraph, in the last line, "January 1995." should read "January 1994."

2. On page 61148, in the first column, in the first complete paragraph, in the tenth line from the bottom, "was to due" should read "was not due".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39223; File No. SR-SCCP-97-04]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change Relating to Revision and Limitation of Clearing Services

Correction

In notice document 97–27278 beginning on page 53681, in the issue of Wednesday, October 15, 1997, make the following correction:

On page 53681, in the third column, the File No. should be as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
November 26, 1997

Part II

Department of Education

34 CFR Part 97
Protection of Human Subjects; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 97

RIN 1880–AA75

Protection of Human Subjects

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations governing the protection of human research subjects to add special protections for children who are involved as subjects of research. These amendments to the Department's regulations are needed to secure additional protections for children who are involved as subjects of research. The regulations will, for research involving children as subjects, remove exemptions for certain kinds of research, modify the informed consent provisions, and further limit the risks to which children may be made vulnerable. These amendments will make the Department's policy regarding the protection of children as research subjects consistent with the regulations of the Department of Health and Human Services and the Federal Policy for the Protection of Children as practiced by other research agencies of the Federal government.

EFFECTIVE DATE: These regulations take effect December 26, 1997.

FOR FURTHER INFORMATION CONTACT: Kent H. Hannaman, U.S. Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. *Telephone:* (202) 708–5207. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Secretary adopts for the Department of Education regulations that are already in effect for research supported or conducted by the Department of Health and Human Services (DHHS), Subpart D—Additional DHHS Protections for Children Involved as Subjects in Research (Subpart D). These regulations contain provisions specifically designed to protect children who are involved in research as subjects. Children are involved as subjects of important research that will benefit the Nation's children. Balancing the importance of this research with the needs of children, the Secretary is adding these protections because the research activities supported by the Department often include children, and the Department has a particular interest in protecting the welfare of children.

The Common Rule, in which the Department of Education is a participant, currently only includes Subpart A of the DHHS rule. To ensure that the protections in Subpart D apply to research subjects who are children, the Secretary adopts Subpart D, applying it to research programs of the Department.

On May 22, 1997, the Secretary proposed to add Subpart D through a notice of proposed rulemaking (NPRM) published in the **Federal Register** (62 FR 28156–28159). In the preamble to that NPRM, the Secretary discussed the current government-wide and Department of Education policy, the additional protections provided by these regulations, the additional costs and administrative burdens, alternative policy mechanisms, and additional protections for children as education research subjects other than the protections in these regulations.

There are no differences between the proposed regulations and these final regulations.

Analysis of Public Comment

In response to the Secretary's invitation in the NPRM, three parties submitted comments on the proposed regulations. Two commenters were from associations representing affected communities, and one commenter was an individual at an institution of higher education. Two of the commenters expressed support for the protections and the consistency of these protections with policies of other Federal agencies. An analysis of the other comments follow.

Comment: One commenter expressed concern over whether the regulations were sufficiently clear about the need to provide potential research subjects with specific information about their involvement in proposed research activities.

Discussion: The Secretary agrees that potential research subjects must have appropriate information about a specific research activity in order to give informed consent to participate. Subpart A of the existing regulations protecting human research subjects requires, as part of the provisions concerning informed consent, that potential research subjects be given information including the purpose of the particular research activity, the specific procedures to be followed, and the risks and benefits to the subject. Because existing regulations cover this subject, Subpart D, as proposed in the NPRM, has not been changed.

Changes: None.

Comment: One commenter recommended that the regulations include guidance stating that research project descriptions include information about what safeguards will be put into place in order to respond to anticipated risks that actually occur.

Discussion: Information about safeguards for anticipated risks in research is important both for the review and approval of research activities and for the informed consent of potential research subjects. Subpart A of the existing regulations for the protection of human research subjects calls for information about available medical treatment in cases of injury as part of the informed consent process for research involving more than minimal risks. This information should be made available to any potential human research subject, not just children who are potential research subjects. Because existing regulations cover this subject, Subpart D, as proposed in the NPRM, has not been changed.

Changes: None.

Paperwork Reduction Act of 1995

These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no additional information collection requirements.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://gcs.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these document in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register.**

List of Subjects in 34 CFR Part 97

Human subjects, Reporting and recordkeeping requirements, Research.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: November 18, 1997.

Richard W. Riley,

Secretary of Education.

The Secretary amends Part 97 of Title 34 of the Code of Federal Regulations as follows:

PART 97—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for Part 97 is revised to read as follows:

Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; 42 U.S.C. 300v–1(b).

2. Sections 97.101 through 97.124 are designated as Subpart A—Federal Policy for the Protection of Human Subjects (Basic ED Policy for Protection of Human Research Subjects) and Subparts B and C are reserved.

* * * * *

3. Sections 97.101, 97.102, 97.103, and 97.107 through 97.124 are amended by adding authority citations to read as follows:

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

4. A new Subpart D containing §§ 97.401 through 97.409 is added to read as follows:

Subpart D—Additional ED Protections for Children Who are Subjects in Research

97.401 To what do these regulations apply?
97.402 Definitions.
97.403 IRB duties.
97.404 Research not involving greater than minimal risk.
97.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
97.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.
97.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.
97.408 Requirements for permission by parents or guardians and for assent by children.
97.409 Wards.

Subpart D—Additional ED Protections for Children Who Are Subjects in Research

§ 97.401 To what do these regulations apply?

(a) This subpart applies to all research involving children as subjects conducted or supported by the Department of Education.

(1) This subpart applies to research conducted by Department employees.

(2) This subpart applies to research conducted or supported by the Department of Education outside the United States, but in appropriate circumstances the Secretary may, under § 97.101(i), waive the applicability of some or all of the requirements of the regulations in this subpart for that research.

(b) Exemptions in § 97.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption in § 97.101(b)(2) regarding educational tests is also applicable to this subpart. The exemption in § 97.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator or investigators do not participate in the activities being observed.

(c) The exceptions, additions, and provisions for waiver as they appear in § 97.101(c) through (i) are applicable to this subpart.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b)).

§ 97.402 Definitions.

The definitions in § 97.102 apply to this subpart. In addition, the following definitions also apply to this subpart:

(a) *Children* are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

(b) *Assent* means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

(c) *Permission* means the agreement of parent(s) or guardian to the participation of their child or ward in research.

(d) *Parent* means a child's biological or adoptive parent.

(e) *Guardian* means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b)).

§ 97.403 IRB duties.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research that satisfies the conditions of all applicable sections of this subpart.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b)).

§ 97.404 Research not involving greater than minimal risk.

ED conducts or funds research in which the IRB finds that no greater than minimal risk to children is presented, only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth in § 97.408.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

§ 97.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

ED conducts or funds research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds that—

(a) The risk is justified by the anticipated benefit to the subjects;

(b) The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

(c) Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in §97.408.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

§ 97.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.

ED conducts or funds research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not

likely to contribute to the well-being of the subject, only if the IRB finds that—

(a) The risk represents a minor increase over minimal risk;

(b) The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;

(c) The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition that is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and

(d) Adequate provisions are made for soliciting assent of the children and permission of their parents or guardians, as set forth in § 97.408.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

§ 97.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

ED conducts or funds research that the IRB does not believe meets the requirements of § 97.404, § 97.405, or § 97.406 only if—

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either that—

(1) The research in fact satisfies the conditions of § 97.404, § 97.405, or § 97.406, as applicable; or

(2)(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;

(ii) The research will be conducted in accordance with sound ethical principles; and

(iii) Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in § 97.408.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

§ 97.408 Requirements for permission by parents or guardians and for assent by children.

(a) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine that adequate provisions are made for soliciting the assent of the children, if in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even if the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with § 97.116.

(b) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by § 97.116, that adequate provisions are made for soliciting the permission of each child's parent(s) or guardian(s). If parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under § 97.404 or § 97.405. If research is covered by §§ 97.406 and 97.407 and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or if only one parent has legal responsibility for the care and custody of the child.

(c) In addition to the provisions for waiver contained in § 97.116, if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with Federal, State, or local law. The choice of an appropriate mechanism depends upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

(d) Permission by parents or guardians must be documented in accordance with and to the extent required by § 97.117.

(e) If the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

§ 97.409 Wards.

(a) Children who are wards of the State or any other agency, institution, or entity may be included in research approved under § 97.406 or § 97.407 only if that research is—

(1) Related to their status as wards; or

(2) Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

(b) If research is approved under paragraph (a) of this section, the IRB shall require appointment of an advocate for each child who is a ward, in addition to any other individual acting on behalf of the child as guardian or *in loco parentis*. One individual may serve as advocate for more than one child. The advocate must be an individual who has the background and experience to act in, and agrees to act in, the best interest of the child for the duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator or investigators, or the guardian organization.

(Authority: 5 U.S.C. 301; 20 U.S.C. 1221e–3, 3474; and 42 U.S.C. 300v–1(b))

[FR Doc. 97–31020 Filed 11–25–97; 8:45 am]
BILLING CODE 4000–01–P

federal register

Wednesday
November 26, 1997

Part III

Department of Defense

Corps of Engineers

Public Notice Concerning Changes to Nationwide Permit 26; Notice

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Public Notice Concerning Changes to Nationwide Permit 26

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice for public comment.

SUMMARY: In response to a court order issued on October 27, 1997, the Corps is requesting comments on three changes to Nationwide Permit (NWP) 26, which were published in the **Federal Register** on Friday, December 13, 1996 (61 FR 65874–65922). The Corps is requesting comments on the following changes to NWP 26: (1) The expiration of NWP 26 on December 13, 1998; (2) the prohibition against filling or excavating more than 500 linear feet of stream bed under NWP 26; and (3) the prohibition against using other NWPs with NWP 26 to authorize the loss of more than 3 acres of waters of the United States. The Corps is not requesting comments on any other issues related to the recent modification of NWP 26 or any other NWP. Within 90 days of the close of the comment period, the Corps will publish its final determination on these issues in the **Federal Register**.

DATES: Comments must be received by February 24, 1998.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson, CECW–OR, at (202) 761–0199.

SUPPLEMENTARY INFORMATION:

Background

In the June 17, 1996, **Federal Register**, the Corps published a notice requesting comments on the issuance, reissuance, and modification of the NWPs and announced a public hearing to invite the public to provide comments on the NWPs. The Corps proposed changes to several NWPs, including several changes to NWP 26. In the June 17, 1996, **Federal Register** Notice, the Corps did not specifically request comments on limiting filling or excavation of stream beds to 500 linear feet under NWP 26, restricting the use of other NWPs with NWP 26 to limit impacts to waters of the United States to 3 acres for a single and complete project, or issuing NWP 26 for a period shorter than 5 years, which is the maximum legal limit for any NWP.

In response to the June 17, 1996, **Federal Register** Notice, the Corps received over 500 comments concerning NWP 26. Based on comments from the public and other agencies, as well as Corps internal review of the implementation of NWP 26 over the past five years, several changes were made to NWP 26 to ensure that NWP would comply with a number of legal requirements. These changes were published in the **Federal Register** on December 13, 1996 (61 FR 65874–65922) and became effective on February 11, 1997. On March 6, 1997, a lawsuit was filed by the National Association of Home Builders, objecting to three of these changes. These three changes are: (1) The expiration of NWP 26 on December 13, 1998; (2) the prohibition against filling or excavating more than 500 linear feet of stream bed under NWP 26; and (3) the prohibition against using other NWPs with NWP 26 to authorize the loss of more than 3 acres of waters of the United States.

The Corps believes that the changes we made to NWP 26 were promulgated in full compliance with all legal requirements, and were necessary to ensure compliance with the requirements of the Clean Water Act. However, in view of the public interest in the three changes explained below and in order to avoid the time and expense of litigation, the corps volunteered to seek comments on the three changes cited above. Accordingly, on October 27, 1997, a court order was issued remanding the action to the Corps to request public comments on the changes to NWP 26 cited in the previous paragraph.

The public is invited to provide comments on these three changes to NWP 26 within 90 days of the date of this notice. The Corps is not requesting comments on any other issues related to the recent modification of NWP 26. Within 90 days of the close of the comment period, the Corps will publish its decision on these issues in the **Federal Register**. In the interim, all the terms and conditions of NWP 26 as published in the December 13, 1996, **Federal Register**, including the three changes that are the subject of this notice, will remain in effect pending a Corps decision. The following is a brief discussion of the three changes to NWP 26. For more details, see the Preamble to the December 13, 1996, **Federal Register** Notice, (61 FR 65874–65922).

(1) Expiration of NWP 26 on December 13, 1998

As a result of an internal evaluation of NWP 26 and consideration of all comments received in response to the June 17, 1996, **Federal Register** Notice, the Corps determined that modification of NWP 26 was necessary and that it should be replaced with activity-specific NWPs to ensure that no more than minimal impacts to waters of the United States, both individually and cumulatively, are authorized. Knowing that it will take up to two years to issue replacement NWPs, the Corps reissued NWP 26 for a two year period, which will expire on December 13, 1998. Section 404(e) of the Clean Water Act states that no general permit can be issued for a period of more than five years, thereby, allowing the Corps to issue an NWP for a period of less than five years. This two year period will allow the Corps to collect detailed information on the types of activities being authorized by NWP 26, the nature and extent of wetlands and other waters being affected by the NWPs, and potential effects of the NWPs on the Nation's federally listed threatened and endangered species.

In the December 13, 1996, **Federal Register** Notice, the Corps requested comments from the public regarding specific categories of activities that should be considered for new NWPs. Prior to the expiration of NWP 26 on December 13, 1998, the Corps will develop, propose, and issue activity-specific replacement NWPs, with appropriate limitations, to provide consistency with the "minimal adverse effects" mandate of section 404(e). The public will have an opportunity to comment formally on the proposed replacement permits once they are officially proposed in the **Federal Register**. We anticipate that the activity-specific replacement NWPs will be published for public review and comment in approximately March 1998.

(2) Prohibition Against Filling More Than 500 Linear Feet of Stream Bed

In response to the June 17, 1996, **Federal Register** Notice, a few commenters recommended using linear footage to quantify stream bed impacts for the purpose of NWP 26, instead of acreage. They believed that using acreage to quantify impacts to stream beds is inappropriate, because it can allow losses of long segments of streams. For example, filling a 5-foot wide stream bed over a distance of ½ mile will result in a loss of 0.30 acre of stream bed. If acreage were used to quantify the stream bed impacts, notification to the Corps would not be required and the work could result in more than minimal impacts if the stream bed provides important functions, such as spawning habitat for fish. Limitations of 200 to 500 linear feet of stream bed impacts were recommended by commenters.

We concurred with these commenters and placed a prohibition in NWP 26 against activities directly affecting (i.e., filling or excavating) more than 500 linear feet of stream bed. Therefore, filling or excavating more than 500 linear feet of stream bed was not authorized under the revisions to NWP 26. The threshold of 500 linear feet was chosen to maintain consistency within the NWP Program, because NWPs 12 and 13 have pre-construction notification thresholds of 500 linear feet. We believe that this additional limitation enhances the Corps ability to ensure that projects with more than minimal adverse impacts will not be authorized under NWP 26.

(3) Use of NWP 26 With Other NWPs Cannot Exceed 3 Acres of Impact

Many commenters recommended that the use of multiple NWPs for a single and complete project (a practice also referred to as "stacking") should be eliminated or restricted because it would allow the possibility of more than minimal adverse effects to result under the NWP Program.

Under certain circumstances, NWPs can be used in combination and result in only minimal individual and cumulative adverse environmental effects. NWP regulations provide for multiple use of NWPs, as long as each NWP is used only once for a single and complete project and the combined adverse effects are minimal. However, the use of more than one NWP for a particular project could potentially result in more than minimal adverse effects. Many NWPs are usually "stand alone" project authorizations. Generally, only seven of the 37 NWPs are used more than occasionally with certain other NWPs for authorizing projects. These seven NWPs are 3, 12, 13, 18, 19, 26, and 33. We believe that of those seven NWPs, those with the potential to have more than minimal impacts when used with certain other NWPs, are NWPs 18 and 26 in combination with each other and with NWPs 14 and 29. To ensure that multiple use of NWPs does not result in more than minimal adverse effects, the Corps has added a General Condition to the NWPs and restricted certain combinations of nationwide permits. General Condition 15 requires permittees to submit a pre-construction notification to the District Engineer when any NWP 12 through 40 is combined with any other NWP 12 through 40, as part of a single and complete project. NWP 14 was modified so that it cannot be combined with NWP 18 or NWP 26 for the purpose of exceeding the limitations of any of these three NWPs. For example, NWPs 14 and 26 cannot be combined to authorize the loss of 3⅓ acres of waters of the United States. Furthermore, NWP 18 cannot be combined with NWP 26 to increase the thresholds or the limitations of NWP 26. NWP 29 is already conditioned so that it cannot be used with NWP 14, NWP 18, or NWP 26. We have also limited the amount of authorized impacts when combining any NWP with NWP 29 or NWP 26. If another NWP is used with NWP 29 to authorize a single and complete project, the total acreage of impacts to water of the United States cannot exceed 0.5 acres. Whenever any other NWP is used in conjunction with NWP 26, the total acreage of impacts to waters of the United States, for all NWPs combined, cannot exceed 3 acres. Likewise, the Corps is only requesting comments on the prohibition against combining other NWPs with NWP 26 to exceed the 3-acre limitation of NWP 26.

Dated: November 13, 1997.

Charles M. Hess,

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

[FR Doc. 97–30278 Filed 11–25–97; 8:45 am]

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Wednesday
November 26, 1997

Part IV

Environmental Protection Agency

40 CFR Part 180

Cypermethrin and Zeta-Cypermethrin; Pesticide Tolerance; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300583; FRL–5755–3]

RIN 2070–AB78

Cypermethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes permanent tolerances for residues of cypermethrin (±)alpha-cyano-(3-phenoxyphenyl)methyl(±)cis,trans-3(2,2-dichloroethyenyl)-2,2-dimethylcyclopropane carboxylate in or on the commodities brassica, head and stem at 2.0 parts per million (ppm); brassica, leafy at 14.0 ppm; cattle, fat at 0.05 ppm; cattle, meat at 0.05 ppm; cattle, meat byproducts (mbyp) at 0.05 ppm; cottonseed at 0.5 ppm; goats, fat at 0.05 ppm; goats, meat at 0.05 ppm; goats, mbyp at 0.05 ppm; hogs, fat at 0.05 ppm; hogs, meat at 0.05 ppm; hogs, mbyp at 0.05 ppm; horses, fat at 0.05 ppm; horses, meat at 0.05 ppm; horses, mbyp at 0.05 ppm; lettuce, head at 10.0 ppm; milk at 0.05 ppm; onions, bulb at 0.10 ppm; pecans 0.05 ppm; sheep, fat at 0.05; sheep, meat at 0.05 ppm; and sheep, mbyp at 0.05 ppm. It also removes the time limitations for tolerances for cypermethrin on the same commodities expires on November 15, 1997. FMC Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300583, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk, identified by the docket control number, OPP–300583, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit VI. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: George T. Larocca, Product Manager (PM–13), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 15, 1984 (49 FR 24864), EPA established time-limited tolerances under section 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346 a(d) and 348 for residues of cypermethrin. These tolerances expire on November 15, 1997. On September 15, 1997, FMC Corporation requested that the time limitation for tolerances established for residues of the insecticide cypermethrin in these commodities be removed based on environmental effects data that they had submitted as a condition of the registration. FMC Corporation also submitted a summary of its petitions as required under the FFDCA, as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

In the **Federal Register** of September 25, 1997, (62 FR 50337) (FRL–5748–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 2F2623, 4F2986, 4F2986, 3F2824, 7F3498, 4F3011, and 4F4291) for tolerances by the FMC Corporation, 1735 Market St., Philadelphia, PA 19103. This notice included a summary of the petitions prepared by the FMC Corporation. There were no comments received in response to the notice of filing. The petitions requested that 40 CFR 180.418 be amended by removing the time limitations for tolerances of the insecticide cypermethrin ((±)alpha-cyano-(3-phenoxyphenyl)methyl(±)cis,trans-3(2,2-dichloroethyenyl)-2,2-dimethylcyclopropane carboxylate) in or on the commodities brassica, head and stem at 2.0 ppm; brassica, leafy at 14.0 ppm; cattle, fat at 0.05 ppm; cattle, meat at 0.05 ppm; cattle, mbyp at 0.05 ppm; cottonseed at 0.5 ppm; goats, fat at 0.05 ppm; goats, meat at 0.05 ppm; goats, mbyp at 0.05 ppm; hogs, fat at 0.05 ppm; hogs, meat at 0.05 ppm; hogs, mbyp at 0.05 ppm; horses, fat at 0.05 ppm; horses, meat at 0.05 ppm; horses, mbyp at 0.05 ppm; lettuce, head at 10.0 ppm; milk at 0.05 ppm; onions, bulb at 0.10 ppm; pecans 0.05 ppm; sheep, fat at 0.05; sheep, meat at 0.05 ppm; and sheep, mbyp at 0.05 ppm. Tolerances for livestock commodities were inadvertently not listed in the notice of filing, although the tolerance petition, PP2F2623 previously establishing these tolerances was listed. The livestock commodity tolerances were considered by EPA for risk assessment purposes.

The basis for time-limited tolerances that expire November 15, 1997, was given in the October 20, 1993, **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), as amended. It is current EPA policy to no longer establish time limitations on tolerances with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition actions meet that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section

408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no-observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low-dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate-term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single-oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, section 408 of the FFDCA requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the

assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cypermethrin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of cypermethrin in or on the commodities brassica, head and stem at 2.0 ppm; brassica, leafy at 14.0 ppm; cattle, fat at 0.05 ppm; cattle, meat at 0.05 ppm; cattle, mbyp at 0.05 ppm; cottonseed at 0.5 ppm; goats, fat at 0.05 ppm; goats, meat at 0.05 ppm; goats, mbyp at 0.05 ppm; hogs, fat at 0.05 ppm; hogs, meat at 0.05 ppm; hogs, mbyp at 0.05 ppm; horses, fat at 0.05 ppm; horses, meat at 0.05 ppm; horses, mbyp at 0.05 ppm; lettuce, head at 10.0 ppm; milk at 0.05 ppm; onions, bulb at 0.10 ppm; pecans 0.05 ppm; sheep, fat at 0.05; sheep, meat at 0.05 ppm; and sheep, mbyp at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cypermethrin are discussed in this unit.

1. *Acute toxicity.* The required battery of acute toxicity studies has been submitted and found adequate. The findings were as follows: oral toxicity, LD_{50} > 263 milligram/kilogram (mg/kg); dermal toxicity, LD_{50} > 2,460 mg/kg; inhalation toxicity LC_{50}, 2.5 mg/liter (L); primary eye irritation—Toxicity Category III; primary dermal irritation—Toxicity Category IV. Cypermethrin is considered to be a dermal sensitizer.

2. *Mutagenicity.* The Agency has reviewed several mutagenicity studies. Types include an Ames mutagenicity assay; a dominant lethal study, a mouse lymphoma mutagenicity assay, a Chinese hamster ovary/hypoxanthine quanine phosphoribose transferase (CHO/HGPRT) assay, and a bone marrow cytogenic study. The data base for mutagenicity is considered to be adequate. Based on the available mutagenicity studies, there are no concerns for mutagenicity at this time.

3. *Reproductive and developmental toxicity*—i. *Developmental toxicity study in the rat.* Cypermethrin was administered by gavage to rats at dose levels of 0, 17.5, 35, or 70 mg/kg/day on days 6–15 of gestation. The maternal lowest-observed effect level (LOEL) is 35 mg/kg/day, based on bodyweight. The maternal NOEL is 17.5 mg/kg/day. The developmental LOEL was > 70 mg/kg/day. The developmental NOEL is > 70 mg/kg/day. The developmental toxicity study in the rat was classified acceptable.

ii. *Developmental toxicity study in the rabbit.* Cypermethrin was administered to rabbits by gelatin capsule at dose levels of 0, 3, 10, or 30 mg/kg/day on days 6 to 18 inclusive of gestation. There were no effects on the does of any kind reported. The maternal LOEL was > 30 mg/kg/day. The maternal NOEL is > 30 mg/kg/day. There were no treatment related effects on either the skeletal or visceral structures reported. The developmental LOEL is > 30 mg/kg/day. The developmental NOEL was > 30 mg/kg/day. The developmental toxicity study in the rabbit is classified supplementary and does not satisfy the guideline requirement for a developmental toxicity study in the rabbit. The study was not considered upgradeable because the dose levels selected are too low.

iii. *Developmental toxicity study in the rabbit.* Cypermethrin was administered to 20 New Zealand White rabbits per dose group by gavage at dose levels of 0, 100, 450, or 700 mg/kg/day from days 7 through 19 of gestation. The does were sacrificed on day 29 of gestation. The maternal LOEL was 450 mg/kg/day, based on bodyweight gain. The maternal NOEL was 100 mg/kg/day. There were no indications of developmental toxicity. The NOEL and LOEL for developmental toxicity was > 700 mg/kg/day. This study in the rabbit was classified acceptable.

iv. *Three-generation reproduction study in rats.* Cypermethrin was administered to rats at dose levels of 0, 50, 150, or 1,000/750 ppm (reduced to 750 ppm after 12 weeks because of severe neurological symptoms). These dose levels correspond to 2.5, 7.5, or 50/37.5 mg/kg/day. Three successive generations were produced, each consisting of two separate breedings to produce six sets of litters. The LOEL is 150 ppm (7.5 mg/kg/day) based on consistent decreased bodyweight gain in both sexes. The NOEL was 50 ppm (2.5 mg/kg/day). The study was classified acceptable.

4. *Subchronic toxicity.* The data base for subchronic toxicity is considered to be complete except for a series 82–4 subchronic inhalation toxicity study of 90–days duration. This study is required if inhalation exposure is for periods greater than 21–days.

i. *Subchronic oral study in the rat.* Cypermethrin was administered to rats at dose levels of 0, 75, 150, or 1,500 ppm (corresponding to 0, 3.75, 7.5, or 75 mg/kg/day) for 90 days. The LOEL is 1,500 ppm (75 mg/kg/day) based on bodyweight. The NOEL was 150 ppm (7.5 mg/kg/day). This study did not satisfy the guideline requirement for a subchronic oral study (82–1) in rats, but did not require upgrading because an acceptable chronic feeding study with rats was available.

ii. *Subchronic oral study in the dog.* Cypermethrin was administered to beagle dogs at dose levels of 0, 5, 50, 500, or 1,500 ppm (corresponding to 0.125, 1.25, 12.5, and 37.5 mg/kg/day) for 13 weeks. The NOEL is 500 ppm (12.5 mg/kg/day). This subchronic toxicity study was classified supplementary.

iii. *21–Day dermal study in the rabbit.* Cypermethrin was applied at dose levels of control, 2, 20, or 200 mg/kg/day applied in 20% weight/weight (w/w) basis PEG 300 with daily applications for 3 weeks for a total of 15 applications. The LOEL is 200 mg/kg/day based on liver effects. The NOEL is 20 mg/kg/day. This subchronic dermal toxicity study was classified acceptable and satisfies the guideline requirement for a subchronic dermal study (82–2) in rabbit.

iv. *21–Day inhalation study in the rat.* Cypermethrin was administered to rats by nose only exposure at concentrations of 0, 0.01, 0.05, or 0.25 mg/L for 6 hours per day, 5 days per week for a total of 15 exposures. The LOEL was 0.05 mg/L based mainly on bodyweight decrease. The NOEL was 0.01 mg/L. This study was classified acceptable.

5. *Chronic toxicity/carcinogenicity*—i. *Chronic oral study in the dog.* Cypermethrin was administered to beagle dogs at dose levels of 0, 1, 5, or 15 mg/kg/day for 52 weeks. The LOEL was 5 mg/kg/day based on gastrointestinal effects. The NOEL is 1 mg/kg/day. This chronic toxicity study was classified acceptable.

ii. *Carcinogenicity study in the mouse.* Cypermethrin was administered to mice at dose levels of control-1, control-2, 100, 400, and 1,600 ppm (corresponding to 0, 0, 14, 57, or 229 mg/kg/day) for 97 weeks for males and 101 weeks for females. The LOEL was 400 ppm (57 mg/kg/day) based on liver weight. The NOEL was 100 ppm (14 mg/kg/day). This study was determined to be positive for induction of benign alveologenic neoplasms. This carcinogenicity study was classified acceptable and satisfies the guideline requirement for a carcinogenicity study (83–2) in mice.

iii. *Chronic feeding/oncogenicity study in the rat.* Cypermethrin was administered to rats at dose levels of control-1, control-2, 20, 150, or 1500 ppm (corresponding to 0, 0, 1, 7.5, or 75 mg/kg/day) for 2 years. The LOEL is 1,500 ppm (75 mg/kg/day) based on bodyweight. The NOEL was 150 ppm (7.5 mg/kg/day). Cypermethrin was not considered to be oncogenic in this study. A possible association with increased testicular interstitial tumors was not considered definite. This chronic toxicity/carcinogenicity study was classified as acceptable and satisfies the guideline requirement for a chronic oral feeding/carcinogenicity study (83–5) in rats.

6. *Metabolism.* Studies in rats, dogs, and mice are available to support the requirement of metabolism in mammals. Studies show that cypermethrin is readily absorbed from the gastrointestinal tract and extensively metabolized. It is mostly excreted in the urine. Studies submitted to the Agency were acceptable. No additional data are required.

7. *Neurotoxicity.* Additional data considered by the Agency included an acute delayed type neurotoxicity in hens, an acute neurotoxicity screening study in rats with a NOEL of 30 mg/kg and a LOEL of 100 mg/kg, and a subchronic neurotoxicity screening study in rats with a NOEL of 31 mg/kg/day and a LOEL of 77 mg/kg/day. Additional data will be required under a special Data Call-In (DCI) letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking EPA has a sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* To assess risk from acute dietary exposure, the Agency used a NOEL of 1.0 mg/kg/day based on increased incidence of passage of liquid stools at 5 mg/kg/day and above starting the first weeks of dosing in a the chronic-dog study.

2. *Short- and intermediate-term toxicity.* To assess risk from (non-food) short- and intermediate-term dermal exposure, the Agency used a NOEL of 5 mg/kg/day from the chronic-dog study, incorporating 25% dermal absorption. A dermal absorption rate of 25% was derived based on the weight-of-evidence available for structurally related pyrethroids. For exposure via inhalation, the Agency used a NOEL of 0.01 mg/L from the 21-day inhalation study in rats.

3. *Chronic toxicity.* EPA has established the RfD for cypermethrin at 0.01 mg/kg/day. This RfD is based on a NOEL of 1.0 mg/kg/day from the chronic-dog study with an uncertainty factor of 100.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992) the Carcinogenicity Peer Review Committee (CPRC) has classified cypermethrin as a Group C chemical, possible human carcinogen, based on increased incidence of lung adenomas in female mice, but did not recommend assignment of a cancer potency factor (Q^*1) for a linear quantitative cancer risk assessment. Instead, the CPRC recommended the RfD approach. Based on the CPRC's recommendation that the RfD approach be used to assess dietary cancer risk, a quantitative linear dietary cancer risk assessment was not performed. Human health risk concerns due to long-term consumption of cypermethrin residues are adequately addressed by the dietary risk evaluation chronic exposure analysis using the RfD.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.418) for the residues of cypermethrin. For the purposes of dietary risk assessment, residue data generated from residue field trials conducted at maximum application rates and minimum preharvest intervals were used. To assess secondary exposure from edible animal commodities, animal dietary burdens were calculated using mean field trial residue, adjusted for percent crop treated and applying appropriate processing factors for all feed items. Risk assessments were conducted by EPA to assess dietary exposures and risks from cypermethrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary exposure assessment used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent crop treated refinement. The acute exposure via dietary intake for the U.S. Population is estimated at 0.004438 mg/kg/day. The acute dietary risk estimated by as MOE at the 99.9th percentile for the U.S. population is 225. The acute dietary exposure for children is 0.005465 mg/kg/day with a resulting MOE of 183. EPA concludes that there is a reasonable certainty of no harm for MOEs of 100 or greater.

ii. *Chronic exposure and risk.* The chronic dietary exposure assessment incorporated anticipated residues, tolerance values, FDA and PDP monitoring data, and percent crop treated information. The RfD used was 0.01 mg/kg/day. For the U.S. population, the exposure was estimated at 0.000025 mg/kg/day. The risk assessment resulted in use of 0.3% of the RfD. For children 0.000042 mg/kg/day, which uses 0.4% of the RfD.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to consider available data and information on the anticipated residue levels of pesticides residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings:

a. That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues.

b. That the exposure estimate does not underestimate the exposure for any significant subpopulation.

c. Where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population.

In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for cypermethrin were derived from Federal and market basket survey data.

EPA considers these data reliable. A range of estimates supplied by this data and upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer based model for evaluating exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a Data Call-In (DCI) notice pursuant to section 408(f) of the FFDCA requiring submission of data on anticipated residues in conjunction with approval of the registration under FIFRA.

2. *From drinking water.* Studies show that cypermethrin is immobile in soil and does not leach into ground water. Drinking water residue levels were estimated using the PRZM1/EXAMS computer models in 1993 for comparative ecological risk assessment.

i. *Acute exposure and risk.* For the U.S. population, acute exposure is estimated at 0.000126 mg/kg/day (MOE = 7,965). For non-nursing infants < 1 year old, exposure is estimated at 0.000242 mg/kg/day (MOE = 4,138).

ii. *Chronic exposure and risk.* For the U.S. population, chronic exposure is estimated at 0.000005 mg/kg/day, or essentially 0% of the RfD. For non-nursing infants < 1 year old, exposure is estimated at 0.000021 mg/kg/day, or 0.2% of the RfD.

3. *From non-dietary exposure.* i. Cypermethrin is currently registered for use on lawns and carpets. Non-occupational exposure to cypermethrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Using surrogate data and conservative exposure scenarios, the Agency has estimated combined inhalation, dermal, and oral non-dietary exposure.

ii. *Short- and intermediate-term exposure and risk.* For the U.S. population, exposure is estimated at 0.0000515 mg/kg/day. For infants less than 1 year old, the exposure is estimated at 0.00259 mg/kg/day.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Four members of the insecticide class pyrethroids produce a common metabolite known as DCVA (3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid). These insecticides are cyfluthrin, cypermethrin, zeta-cypermethrin and permethrin. Although the residues of DCVA can be estimated, no toxicology data on the compound per se are available to directly conduct a hazard evaluation and thereby establish an appropriate endpoint for use in a joint risk assessment. To date, for the purpose of assessing the risk of the parent compound the toxicity of DCVA has been assumed to be equivalent to the parent compound. However, due to the different toxicological profiles of cyfluthrin, cypermethrin, permethrin, and zeta-cypermethrin, EPA does not believe that it would be appropriate to cumulate DCVA for these pesticides, or DCVA residues from one of these pesticides with the parent of another of these pesticides, in conducting the risk assessment for these pesticides.

Accordingly, EPA does not have, at this time, available data to determine whether cypermethrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that cypermethrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

The Agency has determined that an aggregate systemic oral and dermal exposure risk assessment is not appropriate due to difference in the toxicity endpoints observed between the oral (neurotoxicity) and dermal (hepatotoxicity) routes. An aggregate oral and inhalation risk assessment is appropriate due to the similarity of toxicity (neurotoxicity) observed in rats via these routes.

1. *Acute risk.* Aggregate acute risk represents the sum of acute food and acute drinking water exposure. For cypermethrin, the aggregate acute exposure is estimated at 0.004564 mg/kg/day, with a resulting MOE of 219 for the adult U.S. population.

2. *Chronic risk.* Aggregate chronic exposure is the sum of chronic exposure from food and chronic water. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to cypermethrin from food and water will utilize 0.3% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cypermethrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term and intermediate-term residential exposure. For cypermethrin, exposure is estimated at 0.000082 mg/kg/day, with a resulting MOE of 61,000 for the U.S. population.

E. Aggregate Cancer Risk for U.S. Population

Cypermethrin is classified as a weak Group C carcinogen based on the increased incidence of lung adenomas in female mice. An RfD approach was recommended for human risk assessment purposes. Therefore, a quantitative dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of cypermethrin are adequately addressed in the chronic exposure analysis. For the U.S. population, less than 1% of the RfD is occupied by aggregate chronic food and water exposure.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cypermethrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a three-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Section 408 of the FFDCA provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional 10-fold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest dose tested (70 mg/kg/day in rats and 700 mg/kg/day in rabbits).

iii. *Reproductive toxicity study.* An acceptable three-generation reproduction study in rats has been submitted. Offspring toxicity was observed only at the highest dietary level tested, (700/1,000 ppm; 50/37.5 mg/kg/day), while toxicity in parental animals was observed at the lower treatment levels. The parental systemic NOEL was 50 ppm (2.5 mg/kg/day) and the parental systemic LOEL was 150 ppm (7.5 mg/kg/day).

iv. *Pre- and post-natal sensitivity.* The developmental and reproductive toxicity data demonstrated no indications of increased pre- and post-natal sensitivity.

v. Based on the above, EPA concludes that reliable data support the use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* For children 1 to 6 years old, (most highly exposed subgroup), the aggregate acute exposure is estimated at 0.005572 mg/kg/day, with a resulting MOE of 179. EPA generally has no concern for MOEs over 100.

3. *Chronic risk.* Using conservative exposure assumptions, EPA has concluded that aggregate chronic exposure to cypermethrin from food and water is estimated at 0.000044 mg/kg/day for children 1 to 6 years old (most highly exposed subgroup) will utilize 0.4% of the RfD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term and intermediate-term residential exposure. The MOE for non-nursing infants < 1 year old (most highly exposed subgroup) is estimated at 1,900.

Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry, and research scientists in developing a screening and testing program and a priority setting scheme to implement the program. Congress has allowed 3 years from passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disruption effects.

III. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of cypermethrin in plants and animals is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is cypermethrin parent.

B. Analytical Enforcement Methodology

Adequate enforcement methodology Gas Chromatography with Electron Capture Detection (GC/ECD) is available in PAM II for enforcement of the tolerances.

C. Magnitude of Residues

Crop field trial residue data and animal feeding data from studies conducted at the maximum label rates for brassica, head and stem; brassica, leafy; cotton; lettuce, head; onions, bulb; and pecans show that the established cypermethrin tolerances on brassica, head and stem at 2.0 ppm; brassica, leafy at 14.0 ppm; cattle, fat at 0.05 ppm, cattle, meat at 0.05 ppm, cattle, mbyp at 0.05 ppm; cottonseed of 0.5 ppm; hogs, fat at 0.05 ppm, hogs, meat at 0.05 ppm, hogs, mbyp at 0.05 ppm; horses, fat at 0.05 ppm, horses, meat at 0.05 ppm, horses, mbyp at 0.05 ppm; lettuce, head at 10.0 ppm; milk at 0.05 ppm; onions, bulb at 0.10 ppm; pecans 0.05 ppm; sheep, fat at 0.05 ppm, sheep, meat at 0.05 ppm; and sheep, mbyp at 0.05 ppm will not be exceeded when the cypermethrin products labeled for these uses are used as directed.

D. International Residue Limits

The Codex tolerances for cypermethrin are: Brassica vegetables, 1 ppm; lettuce, 2 ppm; milk, 0.05 ppm; onions, bulb, 0.1 ppm; meat, fat basis, 0.2 ppm; mammalian edible mby, 0.05 ppm. Mexico has established a tolerance for cottonseed at 0.5 ppm. There are no Canadian tolerances established for cypermethrin. As indicated in Unit II. of this preamble, there are differences between the FFDCA section 408 tolerances and the Codex Maximum Residue Limits (MRLs) value for specific

commdities. These differences could be caused by differences in methods to establish tolerances, calculation of animal feed dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

IV. Conclusion

Therefore, permanent tolerances are established for residues of cypermethrin in or on the commodities brassica, head and stem at 2.0 ppm; brassica, leafy at 14.0 ppm; cattle, fat at 0.05 ppm; cattle, meat at 0.05 ppm; cattle, mbyp at 0.05 ppm; cottonseed at 0.5 ppm; goats, fat at 0.05 ppm; goats, meat at 0.05 ppm; goats, mbyp at 0.05 ppm; hogs, fat at 0.05 ppm; hogs, meat at 0.05 ppm; hogs, mbyp at 0.05 ppm; horses, fat at 0.05 ppm; horses, meat at 0.05 ppm; horses, mbyp at 0.05 ppm; lettuce, head at 10.0 ppm; milk at 0.05 ppm; onions, bulb at 0.10 ppm; pecans 0.05 ppm; sheep, fat at 0.05; sheep, meat at 0.05 ppm; and sheep, mbyp at 0.05 ppm.

V. Objections and Hearing Requests

New section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) of the FFDCA as was provided in the old section 408 and in section 409 of FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP Docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPP–300583 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number, OPP–300583. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**.

This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.418 is revised to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide cypermethrin (±)alpha cyano-(3-phenoxyphenyl)methyl(±)cis,trans-3(2,2-dichloroethenyl-2,2-dimethylcyclopropanecarboxylate in or on the following commodities:

Commodity	Parts per million
Brassica, head and stem	2.0
Brassica, leafy	14.0
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	0.5
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Lettuce, head	10.0
Milk	0.05
Onions, bulb	0.10
Pecans	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

(2) [Reserved]

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–30947 Filed 11–25–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300577; FRL–5754–8]

RIN 2070–AB78

Zeta-Cypermethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of zeta-cypermethrin in or on cabbage at 2.0 parts per million (ppm); cottonseed at 0.5 ppm; lettuce, head at 10.0 ppm; onions, bulb at 0.10 ppm; pecans at 0.05 ppm; and the fat, meat, and meat byproducts (mbyp) of cattle, goats, hogs, horses, and sheep at 0.05 ppm. It also removes time limitations for tolerances for residues of zeta-cypermethrin on the same commodities that expire on November 15, 1997. FMC Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective November 26, 1997. Objections and requests for hearings must be received by EPA on or before January 26, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300577, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk, identified by the docket control number, OPP–300577, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit VI. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Beth Edwards, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5400, e-mail: edwards.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On June 15, 1984, EPA established time-limited tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348 for residues of cypermethrin on cottonseed; fat, meat, and mbyp of cattle, goats, hogs, horses, poultry, and sheep; and milk (49 FR 24864). As additional crop tolerances were established, they were also made time-limited. These tolerances expire on November 15, 1997. FMC Corporation, on September 15, 1997, requested that the time limitation for tolerances established for residues of the insecticide zeta-cypermethrin in these commodities be removed based on environmental effects data that they had submitted as a condition of the registration. FMC Corporation also submitted a summary of its petition as required under the FFDCA, as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L 104–170).

In the **Federal Register** of September 25, 1997, (62 FR 50337) (FRL–5748–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of pesticide petitions (PP 2F2623, 4F2986, 3F2824, 7F3498, and 4F3011) for tolerances by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.418 be amended by removing the time limitation for tolerances for residues of the insecticide and pyrethroid, zeta-cypermethrin in or on cabbage at 2.0 ppm; cottonseed at 0.5 ppm; lettuce, head at 10.0 ppm; onions, bulb at 0.10 ppm; and pecans at 0.05 ppm. Animal commodities were not

included in the notice of filing but are being included in this final rule.

The basis for the time-limited tolerances, that expire November 15, 1997, was given in the October 20, 1993, **Federal Register** (58 FR 54094). These time-limited tolerances were predicated on the expiration of pesticide product registrations that were made conditional due to lack of certain ecological and environmental effects data. The rationale for using time-limited tolerances was to encourage pesticide manufacturers to comply with the conditions of registration in a timely manner. There is no regulatory requirement to make tolerances time-limited due to the conditional status of a product registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. It is current EPA policy to no longer establish time limitations on tolerance(s) with expiration dates if none of the conditions of registration have any bearing on human dietary risk. The current petition action meets that condition and thus the expiration dates associated with specific crop tolerances are being deleted.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no-observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low-dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate-term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single-oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, section 408 of the FFDCA requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of zeta-cypermethrin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for residues of zeta-cypermethrin in or on cabbage at 2.0 ppm; cottonseed at 0.5 ppm; lettuce, head at 10.0 ppm; onions, bulb at 0.10 ppm; pecans at 0.05 ppm; and the fat, meat, and mbyp of cattle, goats, hogs, horses, and sheep at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by zeta-cypermethrin are discussed in this unit.

1. Acute toxicity studies with technical zeta-cypermethrin: oral LD_{50} in the rat is 134.4 milligram (mg)/kilogram (kg) for males and 86.0 mg/kg for females—Toxicity Category II.

2. Acute toxicity studies with cypermethrin bridged to zeta-cypermethrin: dermal $LD_{50} > 2460$ mg/kg in rabbits and $LD_{50} > 4920$ in rats—Toxicity Category III; inhalation (LC_{50} 2.5 mg/liter (L) for females and > 2.5 mg/L in males—Toxicity Category III; primary eye irritation— not irritating—Toxicity Category IV; primary dermal irritation, primary irritation score (PIS) 0.71 —Toxicity Category IV; dermal sensitization—moderate sensitizer in two studies, negative in other studies; delayed type neurotoxicity in hens—no evidence of delayed type neurotoxicity in hens at dose levels of 0, 2,500, 5,000, or 10,000 mg/kg; neurotoxicity screen in rats—NOEL and lowest-observed effect level (LOEL) established as < 20 mg/kg—at 20 mg/kg decreased motor activity and gait abnormalities.

3. In a 90-day feeding study, rats were dosed at 0, 10, 50, 150, 250, 500, or 900 ppm (0, 0.6, 2.7, 8.4, 13.8, 28.2, or 55.7 mg/kg/day for males and 0, 0.6, 3.3, 9.6, 16.3, 32.2, or 65.2 mg/kg/day for females). The NOEL is 250 ppm (13.9 mg/kg/day) and the LOEL is 500 ppm (28.2 mg/kg/day) based on decreases in bodyweight and bodyweight gains and food consumption at 28.2 mg/kg/day and above and deaths; clinical signs of neurotoxicity; decreases in erythrocyte and leukocyte counts, hemoglobin, and hematocrit, and increases in blood urea nitrogen (BUN) at 55.7 mg/kg/day.

4. The 21-day dermal, subchronic oral study in the dog and the 21-day inhalation studies are bridged from cypermethrin.

In a subchronic toxicity study, dogs were dosed at 0, 5, 50, 500, or 1,500 ppm (corresponding to 0, 125, 1.25, 12.5, and 37.5 mg/kg/day) for 13 weeks. The LOEL is 1,500 ppm (37.5 mg/kg/day, based on clinical signs indicating neurotoxicity). The NOEL is 500 ppm (12.5 mg/kg/day).

In a 21-day dermal toxicity study, rabbits were dosed at 2, 20, or 200 mg/kg/day with daily applications for 3 weeks for a total of 15 applications. Five/sex/group were abraded prior to application of the test material. The LOEL is 200 mg/kg/day based on liver effects. The NOEL is 20 mg/kg/day.

In a 21-day subchronic inhalation toxicity study, rats were dosed by nose only exposure at concentrations of 0, 0.01, 0.05, or 0.25 mg/L for 6 hours per day, 5 days per week for a total of 15 exposures. Additional satellite groups of five/sex were included for recovery assessment and analysis of cypermethrin in the brain. The LOEL is 0.05 mg/L based mainly on bodyweight decrease. The NOEL is 0.01 mg/L.

5. The chronic/oncogenicity studies are bridged from cypermethrin.

In a chronic toxicity study, dogs were dosed at 0, 1, 5, or 15 mg/kg/day for 52 weeks. The LOEL is 5 mg/kg/day based on gastrointestinal effects. The NOEL is 1 mg/kg/day.

In a carcinogenicity study, mice were dosed at control-1, control-2, 100, 400, and 1,600 ppm (corresponding to 0, 0, 14, 57, or 229 mg/kg/day) for 97 weeks for males and 101 weeks for females. The LOEL is 400 ppm (57 mg/kg/day) based on liver weight. The NOEL is 100 ppm (14 mg/kg/day). This study was determined to be positive for induction of benign alveologenic neoplasms. Adequacy of dosing for carcinogenicity is based upon typically 9% decreases in males and 12% in females in the first months of the study.

In a chronic toxicity/carcinogenicity study, rats were dosed at control-1, control-2, 20, 150, or 1,500 ppm (corresponding to 0, 0, 1, 7.5, or 75 mg/kg/day) for 2 years. Satellite groups of 12/sex were sacrificed after 1 year of dosing. The LOEL is 1,500 ppm (75 mg/kg/day) based on bodyweight. The NOEL is 150 ppm (7.5 mg/kg/day). Cypermethrin was not considered to be

oncogenic in this study. A possible association with increased testicular interstitial tumors was not considered definite.

6. Zeta-cypermethrin was tested in a developmental toxicity study in rats at the following dose levels: 0, 5, 12, 25, or 35 mg/kg/day. Groups of 25 females were administered the test chemical by gavage on gestation days 6 through 15 in a volume of 5 milliliter (ml)/kg bodyweight. No developmental toxicity was observed at any dose level. The maternal NOEL is 12.5 mg/kg and the maternal LOEL is 25 mg/kg based on decreases in bodyweight and bodyweight gain and food consumption and clinical signs of toxicity, particularly neurotoxicity. The developmental NOEL is 35 mg/kg/day highest dose tested (HDT). The LOEL was not established.

7. The developmental toxicity study in the rabbit is bridged from cypermethrin.

In a developmental toxicity study, rabbits were dosed at 0 (empty capsule), 0 (capsule plus corn oil), 3, 10, or 30 mg/kg/day on days 6 to 18 inclusive of gestation. There were no effects of any kind reported on the does. The maternal LOEL is > 30 mg/kg/day. The maternal NOEL is > 30 mg/kg/day. There were no treatment related effects on either the skeletal or visceral structures reported. The developmental LOEL is > 30 mg/kg/day. The developmental NOEL is > 30 mg/kg/day.

In a developmental toxicity study, rabbits were dosed at 0, 100, 450, or 700 mg/kg/day from days 7 through 19 of gestation. The does were sacrificed on day 29 of gestation. The maternal LOEL is 450 mg/kg/day, based on bodyweight gain. The maternal NOEL is 100 mg/kg/day. There were no indications of developmental toxicity. The NOEL and LOEL for developmental toxicity is > 700 mg/kg/day.

8. Zeta-cypermethrin was tested in a two-generation reproduction study in groups of 30 male and 30 female rats at the following dose levels: 0, 7.5, 25, 100, 375, or 750 ppm (0, 0.5, 1.8, 7, 27, or 45 mg/kg/day). The parental and reproductive NOELs are 7 mg/kg/day and LOELs are 27 mg/kg/day based on decreased parental and pup weight, particularly during lactation, clinical signs of toxicity, and death at 45 mg/kg/day.

9. Zeta-cypermethrin was tested in a reverse mutation assay in salmonella typhimurium strains TA1535, TA1537, TA100, TA1538, and TA98 at 0, 100, 333, 1,000, 3,333, 5,000, or 10,000 microgram (µg)/plate. It gave a very weak positive response (two-fold increase in revertants/plate) in strain TA100 at 10,000 µg/plate without S–9 activation in two-separate experiments. Doses of 3,333 and 5,000 µg/plate gave 1.5 and 1.6-fold increases in revertants/plate, respectively. Strains TA98, TA1535, TA1537, and TA1538 treated in the presence and absence of mammalian S–9 activation were not affected. Zeta-cypermethrin is therefore considered a possible weak mutagen under the conditions of the assay.

10. Zeta-cypermethrin was tested in an *in vitro* mammalian cell gene mutation assay in Chinese hamster ovary (CHO) cells (CHO–K_1–BH_4, subclone D_1) at the following dose levels: 0, 1, 10, 25, 50, 100, 400, 700, or 1,000 µg/ml, both in the absence and presence of S–9 activation. No evidence of increased forward mutation rate at the hypoxanthine guanine phosphoribose transferase (HGPRT) locus was observed at any dose tested under the conditions of these assays. The solubility limit of the test compound in culture media was approximately 100 µg/ml.

11. Zeta-cypermethrin was tested in an *in vivo* rat bone marrow chromosomal aberration assay. Groups of 15 male and 15 female Sprague-Dawley rats were administered single doses by gavage with 0, 31.25, 62.5, or 125 mg/kg zeta-cypermethrin in corn oil. Five rats/sex were sacrificed at 6, 18, and 30 hours-post dosing. Cyclophosphamide was used as the positive control (60 mg/kg). No evidence of structural chromosomal aberrations was demonstrated at either 6, 18, or 30 hours-post dosing.

12. Zeta-cypermethrin was tested in an unscheduled deoxyribonucleic acid (DNA) synthesis assay in male Fischer 344 rat primary hepatocyte cells. The dose levels tested were 0, 14, 45, 140, 450, 1,400, or 4,500 µg/ml. No unscheduled DNA synthesis was observed at any dose level up to 4,500 µg/ml in the primary hepatocyte cultures under the conditions of the assay. Minimal cytotoxicity was observed at the highest doses. Incomplete solubility of the test compound in culture media was observed, particularly at the higher doses. The positive control gave clear positive responses. The study is acceptable for regulatory purposes.

13. The metabolism studies are bridged from cypermethrin.

Several studies with both rats, dogs, and mice are available to support the requirement for metabolism in mammals. Some of these studies assess individual cis- and trans-radiolabeled isomers and other studies assess the metabolism of cypermethrin with the label in either the cyclopropyl of the phenoxybenzyl ring. In general the following has been demonstrated from these studies:

Cypermethrin is readily absorbed from the gastrointestinal tract and extensively metabolized. It is mostly excreted in the urine and contains several characterized metabolites derived from conjugation of the hydrolysis products of the parent compound following cleavage of the esteratic linkage site. The following three executive summaries describe the metabolism of cypermethrin in rats.

First study—First group. Six/sex rats, Wistar strain rats, were dosed with a single dose 0.61 mg/animal of labeled cis-cypermethrin isomers in 0.5 ml of corn oil. The rats were individually housed in metabolism cages and their urine and fecal matter collected daily until sacrifice. Two rats of each sex were sacrificed after 24 and 72 hours and after 8 days. Samples of the blood and selected tissues were assessed for radioactivity content.

Second group. Three/sex rats were dosed with 0.615 mg/animal of labeled trans-cypermethrin in 0.8 ml of corn oil. In addition to the urine and fecal collections, expired air was also collected from one male and one female. Total recovery was from 97.2% to 100.5%. About 70% of cis- and 80% of trans-cypermethrin was excreted in 24 hours. Essentially all was excreted in 8 days. Most of the label was excreted in the urine (> 53%) with less in the feces and (< 20%) for the trans (males and females) and cis (males only) groups and < 1% in the air for all groups. A sex difference with respect to excretion in the urine from the cis-isomer was noted for females since about equal amounts (35%) were found in both the urine and feces. Several urinary and fecal metabolites were tentatively characterized.

Second study. One group of three/sex Wistar strain rats was dosed with a single-oral dose (approximately 1.3 mg/kg) of 14*C*-cyclopropyl labeled cypermethrin in corn oil (0.8 ml). The rats were then placed in glass metabolism cages and their urine and feces were collected. Special metabolism cages for trapping any radioactivity expired through their respiratory system were used for one male and one female rat. The rats were sacrificed after 3 days and their blood and selected tissues were assessed for radioactivity, 85.5% for males and 97.2% for females of 14*C* was excreted in 72 hours. The urine (55.8% for males and 69.4% for females) was the major route of excretion with the feces containing the balance. The air contained only 0.1% or less. Tissue retention was highest in the skin (1.2%) and liver (0.74% for males but only 0.18% for females) and fat (0.57 to 0.66%).

Third study. In a series of nine different studies, labeled cypermethrin (1 mg/kg or less) in corn oil or separated cis- or trans-cypermethrin isomers were given by gavage to single or groups of two or three Wistar strain rats. Their urine and in some cases fecal matter was collected at various intervals such as 18 hours to 3 days. In another set of experiments, labeled cypermethrin was administered to rats that were fitted with bile duct cannalulas and their bile collected for 4-5 hours while the rat was under anesthesia. Cis- and trans-14*C*-cyclopropyl labeled cypermethrin was demonstrated to form glucuronide conjugations of cis- and trans-acids and hydroxyacids. Only 1.6% or less of the total dose is excreted in the bile. Most of the cypermethrin in the feces was unmetabolized. The glucuronide conjugates in the urine were found to be unstable and subject to hydrolysis.

14. *Acute delayed type neurotoxicity-hens.* Cypermethrin was tested in the hen following a protocol similar to the series 81–7 guideline. The dose levels tested were 0, 2,500, 5,000, and 10,000 mg/kg but there was no indication of the delayed type neurotoxicity noted.

15. *Acute neurotoxicity screen-rats.* There are two acute neurotoxicity studies with cypermethrin.

First study. Rats were dosed with cypermethrin at dose levels of 0, 20, 60, or 120/100 mg/kg. The rats displayed gait, muscle effects, and choreoathetosis. Motor activity was decreased for all dose groups for males (estimated 45%, 66%, and 85% for the 20, 60, and 100 mg/kg dose group respectively) and gait abnormalities were present in the low-dose group. Body temperature was increased about 1 °C in the low-dose male group but decreased for the higher groups. Some 10 other parameters were affected at 60 mg/kg and/or above. These included: Salivation, urination, arousal, abnormal motor movement, forelimb, or hindlimb grip strength, landing foot splay, touch response, and tail pinch response. The LOEL and NOELs for neurotoxicity are < 20 mg/kg. At 20 mg/kg decreased motor activity and gait abnormalities resulted.

Second study. Rats were dosed with cypermethrin in corn oil as control, 30, 100, or 200 mg/kg. The rats were assessed at pretest, 4 hours after treatment and on days 7 and 14 for Functional Observational Battery (FOB) and motor activity. After day 14, five/sex were prepared for neurohistopathology. At 100 mg/kg, ataxia (two males and two females) and related conditions (staggered or impaired gait, decreased activity, splayed hindlimbs, and limp condition) and decreased motor activity (49%, $p < 0.001$ for males and 33%, $p < 0.01$ for females) resulted. In addition, some females had salivation, lacrimation and/or soiled fur. At 200 mg/kg, deaths resulted (one male and two females) as well as several other parameters being affected. The LEL is 100 mg/kg based primarily on ataxia and related conditions. The NOEL is 30 mg/kg.

The first study in Unit II. A.15. of this preamble is considered to define the neurotoxicity to cypermethrin because responses were noted at lower-dose levels. The second study used a variable and large dose of corn oil and a different strain of rat.

16. *Subchronic neurotoxicity screen in rats.* Rats were dosed with cypermethrin as control, 500, 1,300 or 1,700 ppm (31, 77, or 102 for males and 37, 95, or 121 for females mg/kg/day) for 90 days in a subchronic neurotoxicity study. At 1,300 ppm, females displayed ataxia (1/10), splayed hindlimbs (5/16), impaired gait (4/10), and decreased feces (4/10) as well as decreased bodyweight gain (–41%). Males had only decreased bodyweight gain (–27%) and increased landing foot splay. At 1,700 ppm, males showed ataxia (8/10) and additional related symptoms and females had decreased motor activity (–27%). The LEL is 1,300 ppm (77 mg/kg/day) based on several effects. The NOEL is 500 ppm (31 mg/kg/day).

Because the studies in Units II. A.15. and 16. of this preamble are screens, neurotoxicity studies will be required under a special Data Call-In (DCI) letter pursuant to section 3(c)(2)(B) of FIFRA. Although these data are lacking, EPA has sufficient toxicity data base to support these tolerances and these additional studies are not expected to significantly change its risk assessment.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, EPA recommends use of a NOEL of 0.5 mg/kg/day based on the NOEL of 1.0 mg/kg/day from the cypermethrin chronic toxicity study in dogs and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOEL of this study of 5.0 mg/kg/day was based on gastrointestinal disturbances observed in the first week of the study.

2. *Short- and intermediate-term toxicity.* For short- and intermediate-term MOE's, EPA recommends use of a NOEL of 2.5 mg/kg/day based on neurotoxic signs in dogs starting at week 1. The inhalation NOEL is 5.0 with a correction factor of 2. Dermal absorption rate was 25%. A dermal absorption rate of 25% was recommended based on the weight-of-the-evidence available for structurally related pyrethroids.

3. *Chronic toxicity.* EPA has established the RfD for zeta-cypermethrin at 0.005 mg/kg/day. This RfD is based on gastrointestinal disturbances in dogs with an uncertainty factor of 200 to account for differences in percent biologically active isomers in enriched product.

Since insufficient data on zeta-cypermethrin are available to establish an RfD, the data from cypermethrin were used in establishing an RfD for zeta-cypermethrin. The NOELs from the cypermethrin studies were divided by 2 as a correction factor, assuming the worst case that the biologically active isomers are the ones which carry most of the toxicity. The following paragraph summarizes the decision logic for establishing the RfD for zeta-cypermethrin from the cypermethrin data base.

In general, the most sensitive species for the 10 synthetic pyrethroids appears to be the dog. For zeta-cypermethrin the Agency does not have any toxicity data on the dog that can be compared with the dog studies conducted with cypermethrin. In addition, the Agency also does not have any chronic studies on zeta-cypermethrin that can be compared with those conducted with cypermethrin. Therefore, although a comparison of the LEL's from the zeta-cypermethrin studies with the corresponding LEL's from the cypermethrin studies does not show a pronounced difference in toxicity, for risk assessment purposes, the Agency has decided to use the toxicity endpoints from cypermethrin with a two-fold correction factor to account for the differences in the percentages of the more biologically active isomers in the enriched technical product (zeta-cypermethrin). This would also apply to the inhalation endpoint because the Agency has no inhalation studies with zeta-cypermethrin. The Agency is making a conservative assumption that most of the toxicity for cypermethrin will be from the four more biologically active isomers of zeta-cypermethrin. Based on previous documentation, the Agency is assuming that the percentages of the isomers are approximately as follows:

Cypermethrin, eight isomers with percentage compositions ranging from 11–14% and zeta-cypermethrin, eight isomers with four insecticidally less active ones at a concentration of 1% each. The remaining four isomers, two

of which are regarded as being the most insecticidally active, will be present at a concentration of 24% each.

4. *Carcinogenicity.* No carcinogenicity studies are available for zeta-cypermethrin. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992) the Carcinogenicity Peer Review Committee (CPRC) has classified cypermethrin as a weak Group C (possible human carcinogen) based on the increased incidence in lung adenomas in female CD-1 mice, but did not recommend assignment of a cancer potency factor (Q*1) for a linear quantitative cancer risk assessment. An RfD approach was recommended for human risk assessment purposes. It is assumed that zeta-cypermethrin would also test positively for lung adenomas in female CD-1 mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.418) for the residues of zeta-cypermethrin in or on a variety of raw agricultural commodities. Tolerances range from 0.05 ppm in animal commodities to 10.0 ppm in head lettuce. Registered uses include cabbage, cotton, head lettuce, onions, and pecans. Risk assessments were conducted by EPA to assess dietary exposures and risks from zeta-cypermethrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute dietary exposure assessment used Monte Carlo modeling incorporating anticipated residues and percent crop treated refinements. The acute dietary MOE at the 99.9th percentile for the overall U.S. population is 126. The MOE at the 99.9th percentile for children 1–6 years of age is 105. EPA concludes that there is a reasonable certainty of no harm for MOEs of 100 or greater. Therefore, the acute dietary risk assessment for zeta-cypermethrin indicates a reasonable certainty of no harm.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.005 mg/kg/day based on a NOEL of 1.0 mg/kg/day from the cypermethrin chronic dog study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on gastrointestinal disturbances observed in the first week of the study at the LOEL of 5.0 mg/kg/day. The chronic dietary exposure assessment used anticipated residues, monitoring data, and percent of crop treated information . The chronic dietary exposure estimate for the overall U.S. population was calculated to be 0.000018 mg/kg/day (0.4% RfD utilized) and for children 1–6 years was calculated to be 0.00027 mg/kg/day (0.5% RfD utilized).

EPA notes that the acute dietary risk assessments used Monte Carlo modeling (in accordance with Tier 3 of EPA June 1996 "Acute Dietary Exposure Assessment" guidance document) incorporating anticipated residues and percent of crop treated refinements. The chronic dietary risk assessments used anticipated residues and percent crop treated information.

Section 408(b)(2)(E) authorizes EPA to consider available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a timeframe it deems appropriate. Section 408(b)(2)(F) allows the Agency to use data on the actual percent of crop treated when establishing a tolerance only where the Agency can make the following findings:

a. That the data used are reliable and provide a valid basis for showing the percentage of food derived from a crop that is likely to contain residues.

b. That the exposure estimate does not underestimate the exposure for any significant subpopulation.

c. Where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population.

In addition, the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for zeta-cypermethrin were derived from Federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper-end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To meet the requirement for data on anticipated residues, EPA will issue a DCI notice pursuant to FFDCA section 408(f) requiring submission of data on anticipated residues in conjunction with approval of the registration under the FIFRA.

2. *From drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into ground water. Estimates of zeta-cypermethrin drinking water concentrations were generated with the PRZM1 and EXAMS computer models. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, EPA concludes that together these data indicate that residues are not expected to occur in drinking water.

i. *Acute exposure and risk.* The acute drinking water exposure and risk estimates are 0.000126 mg/kg/day (MOE of 3,982) and 0.000242 mg/kg/day (MOE of 2,069) for the overall U.S. population and non-nursing infants < 1 year old, respectively.

ii. *Chronic exposure and risk.* The chronic drinking water exposure and risk estimates are 0.000005 mg/kg/day (0.1% of RfD utilized) and 0.000021 mg/kg/day (0.4% of RfD utilized) for the overall U.S. population and non-nursing infants < 1 year old, respectively.

3. *From non-occupational non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only; therefore, no non-occupational, non-dietary exposure is expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Four members of the insecticide class pyrethroids produce a common metabolite known as DCVA (3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid). These insecticides are cyfluthrin, cypermethrin, zeta-cypermethrin, and permethrin. Although the residues of DCVA can be estimated, no toxicology data on the compound per se are available to directly conduct a hazard evaluation and thereby establish an appropriate endpoint for use in a joint risk assessment. To date, for the purpose of assessing the risk of the parent compound, the toxicity of the DCVA has been assumed to be equivalent to the parent compound. However, due to the markedly different toxicological profiles of cyfluthrin, cypermethrin, zeta-cypermethrin, and permethrin, EPA does not believe that it would be appropriate to cumulate DCVA residues from these pesticides, or DCVA residues from one of these pesticides with the parent of another of these pesticides, in conducting the risk assessment for these pesticides.

Accordingly, EPA does not have, at this time, available data to determine whether zeta-cypermethrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that zeta-cypermethrin has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The MOE calculated at the 99.9th percentile for the overall U.S. population is 122. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger. Therefore, the Agency has no acute aggregate concern due to exposure to zeta-cypermethrin through food and drinking water.

2. *Chronic risk.* Using the Anticipated Residue Contribution (ARC) exposure assumptions, EPA has concluded that aggregate exposure to zeta-cypermethrin from food and water will utilize 0.5% of the RfD for the U.S. population. The major identifiable subgroup with the highest-aggregate exposure is children, ages 1–6 years old, discussed in Unit II. F. of this preamble. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zeta-cypermethrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Based on zeta-cypermethrin not being registered for residential non-food sites, EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern (MOE less than 100), and that there is reasonable certainty that no harm will result from aggregate exposure to zeta-cypermethrin residues.

E. Aggregate Cancer Risk for U.S. Population

No carcinogenicity studies are available for zeta-cypermethrin. However, cypermethrin has been classified as a weak Group C carcinogen with no Q*1 based on the increased incidence in lung adenomas in female CD-1 mice. Based on the recommendation that the RfD approach be used, a quantitative dietary cancer risk assessment was not performed. Dietary risk concerns due to long-term consumption of cypermethrin are adequately addressed by the DRES chronic exposure analysis using the RfD. For the U.S. population, less than 1% of the RfD is occupied by aggregate chronic food and water exposure.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Section 408 of the FFDCA provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional 10-fold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a prenatal developmental toxicity study in rats, there was no evidence of developmental toxicity at the HDT (35 mg/kg/day). Maternal toxicity (ataxia, urine and feces stained fur, decreased bodyweight gain and food consumption) was observed at the maternal LOEL (25 mg/kg/day), and the maternal NOEL was established at 12.5 mg/kg/day. In

addition, an acceptable prenatal developmental toxicity study in rabbits conducted with cypermethrin was submitted.

iii. *Reproductive toxicity study.* In the two-generation reproduction study in rats, offspring toxicity (decreased pup weight gain during lactation) was observed at the same treatment level which resulted in parental systemic toxicity (NOEL = 100 ppm or 27 mg/kg/day; LOEL = 375 ppm or 45 mg/kg/day).

iv. *Pre- and post-natal sensitivity.* There is no evidence of additional sensitivity to young rats following pre- or post-natal exposure to zeta-cypermethrin.

v. *Conclusion.* The data base related to pre- and post-natal sensitivity is complete. Based on the information in Unit II. F. of this preamble, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* The acute aggregate risk assessment takes into account exposure from food and water. The MOE calculated at the 99.9th percentile for children age 1–6 is 102. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger. Therefore, the Agency has no acute aggregate concern due to exposure to zeta-cypermethrin through food and drinking water.

3. *Chronic risk.* Using conservative exposure assumptions, EPA has concluded that aggregate exposure to zeta-cypermethrin from food and water will utilize 0.6% of the RfD for children, ages 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to zeta-cypermethrin residues.

4. *Short- or intermediate-term risk.* Based on zeta-cypermethrin not being registered for residential non-food sites, EPA concludes that the aggregate short- and intermediate-term risks do not exceed levels of concern, and that there is reasonable certainty that no harm will result.

5. *Special docket.* The complete acute and chronic exposure analyses (including dietary, non-dietary, drinking water, and residential exposure, and analysis of exposure to infants and children) used for risk assessment purposes can be found in the Special Docket for the FQPA under the title "Risk Assessment for Extension of Tolerances for Synthetic Pyrethroids." Further explanation regarding EPA's decision regarding the additional safety factor can also be found in the Special Docket.

G. Endocrine Disrupter Effects

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry, and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolites found in plants and livestock also are formed in the rat. It was concluded that 3-phenoxybenzoic acid (PBA) and its conjugates are not of concern based on toxicology data for PBA. In the absence of toxicology data, the cis- and trans-isomers of DCVA are considered to be of comparable toxicity to the parent. In light of Codex Maximum Residue Limits (MRLs) including only the parent compound, the parent being recoverable by the Food and Drug Administration (FDA) multi-residue Methods I and II, and the DCVA is not likely to be measured by these methods, it was concluded that tolerances should be set in terms of cypermethrin only. Crop field trials should continue to include analyses for residues of cis- and trans-DCVA.

B. Analytical Enforcement Methodology

Adequate enforcement methodology Gas Chromatography/Electron Capture Detector (GC/ECD) is available in Pesticide Analytical Method II (PAM II) as Method I to enforce the tolerance expression.

C. Magnitude of Residues

Residue data from field trials and the FDA monitoring program (1992–1995) and the PDP monitoring program (1994) were used to estimate chronic dietary exposure. For the chronic analyses, mean residues from FDA monitoring were used for lettuce and onions (dry bulb). Residue field trial data were used for broccoli, cabbage, cotton, green onions, mustard greens, and pecans.

For acute dietary exposure analysis, field trial residue data, along with percent of crop treated data, were used in the Monte Carlo analysis.

D. International Residue Limits

Codex MRLs for cypermethrin have been established which are in harmony with the U.S. tolerances for meat and mbyp of cattle, goats, hogs, horses, and sheep (0.05 ppm); milk (0.05 ppm); and onions, bulb (0.10 ppm).

Codex MRLs have been established which exceed the U.S. tolerances for meat (fat basis) of cattle, goats, hogs, horses, and sheep (0.2 vs. 0.05 ppm).

Codex MRLs have been established which are below their U.S. counterparts for cabbage (brassica vegetables) (1.0 vs. 2.0 ppm) and lettuce, head (2.0 vs. 10.0 ppm).

No Canadian MRLs have been established for residues of cypermethrin.

Mexico has established a tolerance for residues of cypermethrin on cottonseed (0.5 ppm) which is in harmony with the U.S. tolerance.

As indicated in this unit, there are differences between the FFDCA section 408 tolerances and the Codex MRL values for specific commodities. These differences could be caused by differences in methods to establish tolerances, calculations of animal feed dietary exposure, and as a result of different agricultural practices. EPA will specifically address these differences when the pesticides are reregistered and the tolerances made permanent.

IV. Conclusion

Therefore, the tolerances are established for residues of zeta-cypermethrin (*s*-cyano(3-phenoxyphenyl) methyl (±) cis, trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on cabbage at 2.0 ppm; cottonseed at 0.5 ppm; lettuce, head at 10.0 ppm; onions, bulb at 0.10 ppm; pecans at 0.05 ppm; and fat, meat, and mbyp of cattle, goats, hogs, horses, and sheep at 0.05 ppm.

V. Objections and Hearing Requests

The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) of the FFDCA as was provided in the old section 408 and in section 409 of the FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 26, 1998 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP Docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPP–300577 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number, OPP–300577. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)(Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR7 629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.418 is amended by adding a new paragraph (a)(2) to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

(a) * * *

(2) Tolerances are established for residues of the insecticide zeta-cypermethrin (*s*-cyano(3-phenoxyphenyl) methyl (±) cis, trans 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the following commodities:

Commodity	Parts per million
Cabbage	2.0
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cottonseed	0.5
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Lettuce, head	10.0
Milk	0.05
Onions, bulb	0.10
Pecans	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05

* * * * *

[FR Doc. 97-30938 Filed 11-25-97; 8:45 am]
BILLING CODE 6560-50-F

federal register

Wednesday
November 26, 1997

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Normal and Transport Category Rotorcraft Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 29008; Amendment No. 27–34, 29–41]

Normal and Transport Category Rotorcraft Regulations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Technical amendments; confirmation of effective date.

SUMMARY: This document confirms the effective date for the technical amendments to the airworthiness standards for normal and transport category rotorcraft under CFR parts 27 and 29.

EFFECTIVE DATE: The rule is effective on November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mary June Bruner, FAA, Forth Worth, Texas 76193–0111, telephone (817) 222–5118.

SUPPLEMENTARY INFORMATION: The FAA published the technical amendments; request for comments in the **Federal Register** on August 29, 1997 (62 FR 46172). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. The technical amendments document advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice of intent to submit such an adverse comment were received within the comment period, the technical amendments would become effective on November 28, 1997. No adverse comments were received, and thus this notice confirms that the technical amendments will become effective on that date.

Issued in Washington, DC on November 21, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 97–31105 Filed 11–25–97; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 1090/P.L. 105–111

To amend title 38, United States Code, to allow revision of veterans benefits decisions based on clear and unmistakable error. (Nov. 21, 1997; 111 Stat. 2271)

H.R. 1840/P.L. 105–112

Law Enforcement Technology Advertisement Clarification Act of 1997 (Nov. 21, 1997; 111 Stat. 2273)

H.R. 2368/P.L. 105–113

Census of Agriculture Act of 1997 (Nov. 21, 1997; 111 Stat. 2274)

S. 714/P.L. 105–114

Veterans' Benefits Act of 1997 (Nov. 21, 1997; 111 Stat. 2277)

S. 830/P.L. 105–115

Food and Drug Administration Modernization Act of 1997 (Nov. 21, 1997; 111 Stat. 2296)

S. 923/P.L. 105–116

To amend title 38, United States Code, to prohibit interment or memorialization in certain cemeteries of persons committing Federal or State capital crimes. (Nov. 21, 1997; 111 Stat. 2381)

S. 1250/P.L. 105–117

To amend the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to prohibit an alien who is not lawfully present in the United States from receiving assistance under that Act. (Nov. 21, 1997; 111 Stat. 2384)

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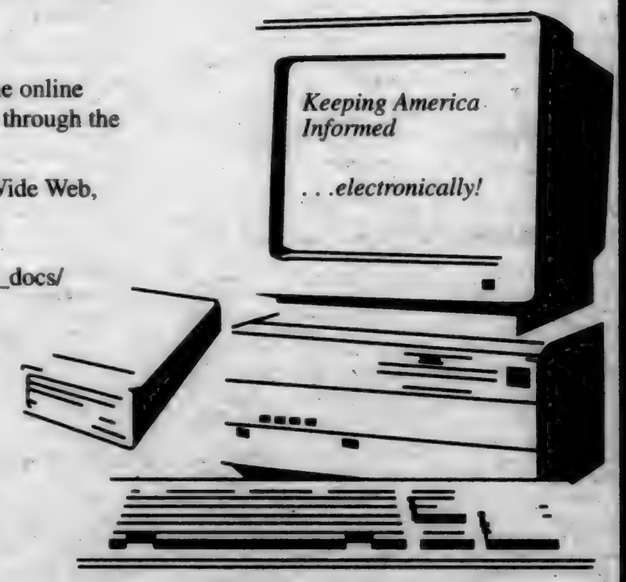
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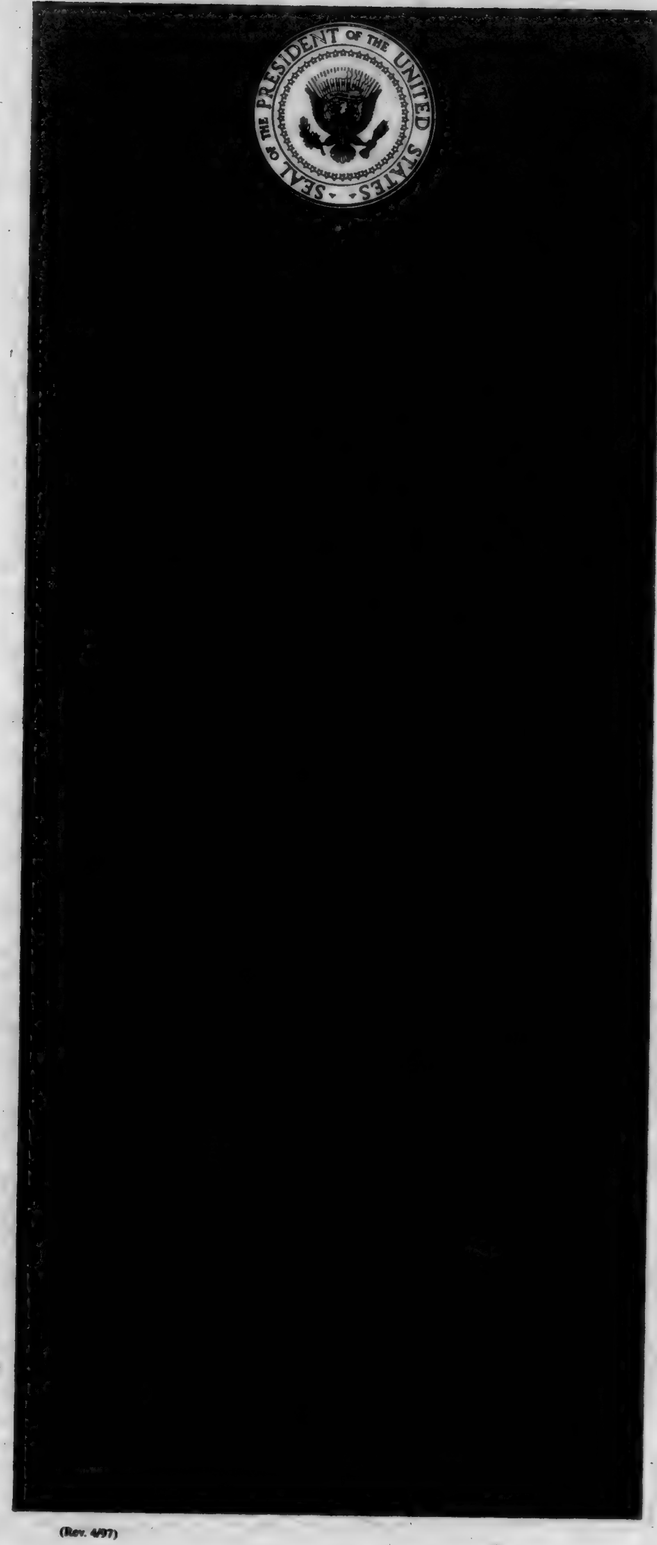
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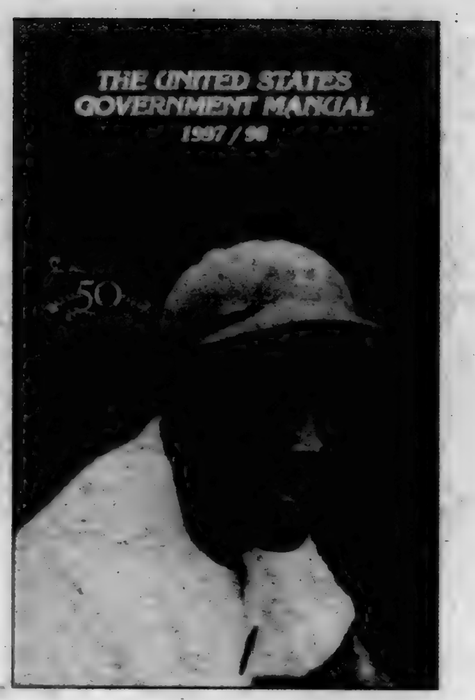
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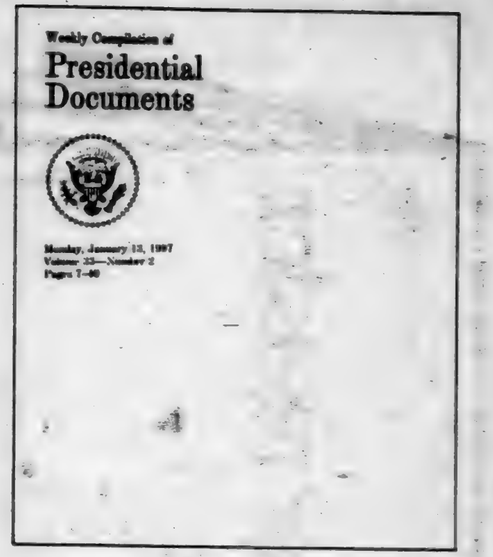
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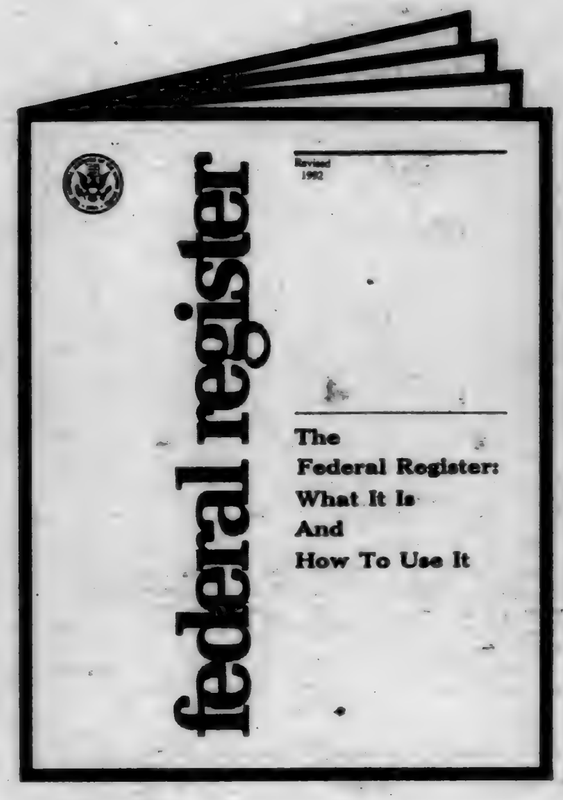
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Presidential Documents

Title 3—

The President

Executive Order 13068 of November 25, 1997

Closing of Government Departments and Agencies on Friday, December 26, 1997

By the authority vested in me as President of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments and agencies shall be closed and their employees excused from duty on Friday, December 26, 1997, the day following Christmas Day, except as provided in section 2 below.

Sec. 2. The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 26, 1997, for reasons of national security or defense or for other public reasons.

Sec. 3. Friday, December 26, 1997, shall be considered as falling within the scope of Executive Order 11582 and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

William J. Clinton

THE WHITE HOUSE,
November 25, 1997.

[FR Doc. 97–31456
Filed 11–25–97; 2:50 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 1607–93]

RIN 1115–AD33

Adjustment of Status; Certain Nationals of the People's Republic of China

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts, with one change, an interim rule published in the **Federal Register** on July 1, 1993, by the Immigration and Naturalization Service (Service), which implemented the Chinese Student Protection Act of 1992 (CSPA). Although the Service no longer accepts applications from CSPA principals, this rule finalizes the procedures by which the spouses and children of CSPA beneficiaries who have been temporarily residing in the United States may become lawful permanent residents of this country. It also removes the procedures for granting voluntary departure for certain dependents pursuant to recent legislative changes.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Pearl B Chang, Chief, Residence and Status Services Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12711 of April 11, 1990, provided temporary protection for certain nationals of the People's Republic of China (PRC) and their dependents who were in the United States on or after June 5, 1989, up to and including the date of Executive Order 12711. It permitted temporary deferral of enforcement of their departure from the United States and conferred eligibility for certain other benefits through January 1, 1994.

The CSPA, Public Law 102–404, dated October 9, 1992, was enacted to regularize the status of, and extended permanent protections to, most of the PRC nationals and their dependents who were covered by Executive Order 12711. It provides these persons with the opportunity to become lawful permanent residents through adjustment of status under section 245 of the Immigration and Nationality Act (Act), a procedure whereby persons in the United States in temporary immigration status may convert to lawful permanent resident status. Section 245 of the Act requires most persons seeking to adjust status to show that they meet strict eligibility requirements; however, the CSPA allows many of these requirements to be waived for eligible CSPA applicants. If the Service denies an application for adjustment of status under the CSPA, the applicant, if not an arriving alien, may renew his or her application in proceedings under 8 CFR part 240. See 8 CFR 245.2(a)(5)(ii). The CSPA application period lasted from July 1, 1993, until June 30, 1994.

The CSPA does not allow every person covered by Executive Order 12711 to become a lawful permanent resident of the United States. A qualified CSPA applicant must have initially entered the United States on or before April 11, 1990, and must otherwise be a person described in section 1 of the Executive Order 12711; must have resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent departures; and may not have spent more than 90 days in the PRC between April 11, 1990, and October 9, 1992. A qualified applicant must also meet the requirements for adjustment of status under section 245 of the Act, unless such requirements have been expressly waived by, or are waived at the discretion of, the Attorney General in accordance with the CSPA.

On July 1, 1993, at 58 FR 35832–35839, the Service published an interim rule with request for comments in the **Federal Register**. The rule established procedures for adjustment of status of persons meeting the requirements of the CSPA. The interim rule became effective on July 1, 1993.

All CSPA applications had to be filed before July 1, 1994. There was no provision in the CSPA for late filings. The CSPA program was a success. The Service was able to promptly adjudicate the great majority of CSPA applications. A total of 52,425 applicants were granted adjustment of status under the CSPA during fiscal years 1993, 1994, and 1995. A very small number of CSPA applications remain pending. The Service is publishing this final rule to respond to comments received during the comment period, to further clarify the Service's position on the interim rule, and to provide for certain dependents currently in the United States who are not yet eligible to file for adjustment of status.

Comments

Interested persons were invited to submit written comments on or before August 2, 1993. The Service received 349 properly addressed written comments during the comment period. The discussion that follows summarizes the issues that have been raised relating to the interim rule and provides the Service's position on the issues.

General

The majority of commenters were pleased with the enactment of the CSPA. A small number of writers, however, recommended that the law be rescinded. Their concerns included the economic and social consequences of increased immigration, the CSPA's possible encouragement of unlawful immigration, the delays in implementation of democratic reforms in the PRC caused by the permanent migration of potential supporters, and the possibility that many CSPA beneficiaries would not need the protections offered by this legislation. Other writers were disturbed by the likelihood that persons who had not been actively involved in the democratic movement in the PRC or who had been communist party supporters would be able to obtain lawful permanent residence under the CSPA

The Service's implementing regulations cannot be used to rescind or change statutory benefits provided by the CSPA. The provisions of this rule minimize the potential for abuse of the

benefits provided by the CSPA, by ensuring that only persons who meet the requirements enacted by Congress will become lawful permanent residents. Accordingly, the provisions of the rule have not been changed because of these recommendations.

Visa Number Allocation for CSPA Applicants

Many commenters were concerned about the interim rule's requirement that a CSPA applicant have an immediately available visa number under the worldwide third employment-based skilled worker preference category prior to approval of his or her adjustment application. Some writers urged the service to approve CSPA adjustments without regard to visa number availability, stating that any delay in granting permanent residency to qualified applicants would be contrary to the spirit and intent of the CSPA. Other commenters recommended that visa numbers for CSPA applicants be obtained from the refugee category or from a preference classification other than the third employment-based skilled worker category, since oversubscription by CSPA applicants could delay the immigration of urgently needed skilled workers.

Adjustments of status under the third employment-based skilled worker preference category are subject to several numerical limitations under the Act. The CSPA modifies the application of two of these restrictions; however, it does not waive all of the applicable statutory numerical limitations. The CSPA allows the Service to "consider," or accept a CSPA adjustment of status application for processing, without regard to whether an immigrant visa number is immediately available. It also allows applications to be approved without regard to the per-country numerical limitations of section 202(a)(2) of the Act, and provides for a subsequent gradual deduction of these numbers from the China per-country quota. It does not allow such applicants to be approved without regard to the worldwide numerical restrictions of sections 201 and 203 of the Act.

The CSPA clearly requires applicants to adjust status under the third employment-based skilled worker category. Section 2(a)(1) of the CSPA directs the Service to regard each CSPA applicant as having been approved for classification under section 203(b)(3)(A)(i) of the Act as a third employment-based skilled worker.

A review of the legislative history also supports the rule's interpretation of the CSPA. The House report accompanying the CSPA clearly shows that CSPA adjustments of status are intended to be placed within the worldwide quota of section 201 of the Act. See H.R. No. 826, 102d Cong., 2d Sess. 5–6 (1992). In the report, Representative Jack Brooks states.

> [S.] 1216 places the number of Chinese adjustments within the worldwide annual quota of section 201 of the Immigration and Nationality Act and deducts from the PRC's per country ceiling each year a portion of the number of Chinese who adjust under this act. Because the worldwide quota is not waived, applicants will be required to await the availability of a visa number * * *. *Id.*

In the discussion in the Senate, managers of the bill also explained that CSPA adjustments will be counted against the worldwide quota. See 138 Cong. Rec. S7150 (daily ed. May 21, 1992). During this discussion, Senator Slade Gorton stated:

> * * * A second change involves a provision to count those persons receiving permanent residency under new worldwide immigration levels as established by the Immigration Act of 1990. Additional provisions also address the need to count them under China's per country ceiling without adversely affecting ongoing immigration from China. *Id.* At S7150.

The Service has minimized any adverse impact of the CSPA upon the availability of immigrant visa numbers for skilled workers. With the assistance of the Department of State, the Service was able to significantly streamline CSPA application processing and approve more than three-quarters of CSPA adjustment of status applications during the final 3 months of fiscal year 1993. These procedural changes allowed CSPA applicants to use immigrant visa numbers which would not otherwise have been utilized by any immigrant, due to lack of demand.

The interim rule's provisions concerning immigrant visa number limitations reflect statutory requirements of the CSPA and the Act. Accordingly, the rule has not been changed in response to these comments.

Order of Approval and Priority Date Assignment

A number of comments addressed the interim rule's procedure for determining the order in which adjustments would be granted to eligible CSPA applicants. These commenters felt that the date the application was properly filed with the Service should not determine the order of approval and suggested alternative procedures. Some commenters wanted the Service to give preference to applications submitted by students because they felt that the CSPA was primarily intended to protect them. Other suggestions included approving applications based on the date the applicant arrived in the United States; giving priority to applications filed by heads of families; delaying the adjustment of Chinese who have the right to reside in third countries, such as Hong Kong; and giving priority to applications submitted by persons who had not returned to the PRC after their initial admission to the United States. A few commenters also wanted to know how the Service determines whether an application has been "properly filed."

The CSPA does not address the order in which qualified CSPA applicants should be allowed to adjust status. In the absence of a statutory directive, the Service elected to follow its standard practice by assigning each application a priority data based on the date on which the properly filed application was received by the Service, and by using this priority date to determine the order in which available visa numbers would be allocated and adjustments granted to qualified applicants. The Service has considered the alternatives suggested by these commenters; however, their proposals have not been adopted because they could not be efficiently implemented or because their implementation would unfairly delay the processing of other employment-based third preference skilled workers whose initial applications were filed before July 1, 1994.

Guidelines for determining when an application is considered to be properly filed are contained in the Service's regulations at 8 CFR 103.2(a)(7). An application is not considered properly filed if the application has not been properly signed, or unless a fee waiver has been granted, if the required fee is not attached.

Accordingly, the provisions of the rule have not been changed as a result of these comments.

Date of Arrival in the United States

Some commenters objected to the interim rule's requirement that eligible CSPA applicants must have been in the United States between June 5, 1989, and April 11, 1990. They pointed out that some persons who participated in the democratic movement may have been unable to leave the PRC or to enter the United States before the cut-off date.

This regulatory requirement reflects one of the three fundamental statutory requisites for CSPA eligibility. Section 2(b)(1) of the CSPA requires all eligible applicants to be persons described in section 1 of Executive Order 12711. Section 1 of Executive Order 12711 covers only persons who were in the United States on or after June 5, 1989, up to and including April 11, 1990.

There is no provision of the CSPA or Executive Order 12711 which would confer CSPA eligibility on persons who initially arrived in the United States after April 11, 1990.

Criteria for CSPA coverage were discussed several times in both the House and the Senate. The record contains no indication that Congress intended the Service to grant CSPA benefits to persons who are unable to meet this requirement. In the discussion on the final version of the bill as it passed in the House, supporters of the legislation addressed the fundamental requirements for CSPA eligibility. See 138 Cong. Rec. H7819–7820 (daily ed. Aug. 10, 1992). During this discussion, Congresswoman Nancy Pelosi explained:

> S. 1216 would allow Chinese nationals who were in the United States during the Tiananmen Square massacre to apply for permanent residency in the United States. To be eligible for permanent residency, the Chinese national must have first, been in the United States sometime between June 4, 1989 and April 11, 1990. *Id.* At H7820.

The Service had previously determined that a brief, casual, and innocent departure from the United States between June 5, 1989, and April 11, 1990, inclusive, would not preclude an individual from coverage under section 1 of Executive Order 12711 and eligibility for Executive Order 12711 benefits. As explained in the Supplementary Information to the interim rule, this same interpretation of the Executive Order 12711 requirements is applied when determining whether a CSPA applicant is a person described in section 1 of Executive Order 12711.

The requirement that an eligible applicant establish that he or she was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country, is based upon clear statutory requirements; accordingly, it has not been changed.

Physical Presence in the PRC

Many commenters discussed the prohibition on granting CSPA benefits to persons who had remained in the PRC for an aggregate of more than 90 days during the period between April 11, 1990, and October 9, 1992. Most of these writers recommended that the restriction be waived if circumstances beyond the applicant's control prevented his or her timely departure from the PRC, or if the applicant had obtained an advance parole prior to departing the United States. Other commenters felt that the rule should be modified to prohibit adjustment of status under the CSPA if the applicant traveled to the PRC for any reason after April 10, 1990; if the applicant stayed in the PRC for more than 30 days during the restricted period; or if the applicant stayed in the PRC for more than 90 days at any time after April 11, 1990. Some writers felt that the interim rule's restriction should be applied only if the applicant stayed in the PRC for more than 90 days on any single occasion.

The regulatory restriction on physical presence in the PRC is based on the third of the three fundamental statutory requisites for CSPA eligibility. Section 2(b)(3) of the CSPA states that the CSPA covers only a person who "was not physically present in the People's Republic China for longer than 90 days after such date [April 11, 1990] and before the date of the enactment of this Act [October 9, 1992]."

A review of the legislative history also supports the rule's provisions. The fundamental requirements for CSPA eligibility were discussed prior to passage of the final version of the bill by the House. See 138 Cong. Rec. H7819–7820 (daily ed. Aug. 10, 1992). During this discussion, Congresswoman Pelosi explained that to be eligible for CSPA benefits the applicant, inter alia, must have "*not been to China for more than 90 days after April 11, 1990.*" *Id.* At H7820 (emphasis added).

There is no indication in this discussion that Congress intended the Service to grant CSPA benefits to any person unable to meet basic eligibility requirements, or that the 90-day limitation should apply only to applicants who had remained in the PRC for more than 90 days on any one occasion.

If eligible, a person who has spent more than 90 days in the PRC may be able to request permission to remain in the United States under another provision of the Act. For example, a person who has reason to fear persecution upon return to his or her home country and believes that he or she meets the definition of "refugee" found in section 101(a)(42) of the Act may be eligible to apply under section 208 of the Act for asylum.

The interim rule's provisions concerning physical presence in the PRC during the restricted period are based on the statutory requirements of the CSPA. Accordingly, the final rule makes no changes to these provisions.

Entry Without Inspection

Some commenters objected to the interim rule's requirement that, in order to be eligible for adjustment of status under the CSPA, an applicant must establish that he or she was inspected and admitted or paroled into the United States upon his or her last arrival in this country. A number of writers felt that entry without inspection should not preclude adjustment of status under the CSPA because these persons also deserved the protections offered by the CSPA. Others felt that persons who reentered the United States with an advance parole after having initially entered the country without inspection should not be allowed to adjust status because they had violated the U.S. immigration laws.

The CSPA expressly provides for certain rules that shall apply to an eligible alien who applies for adjustment of status under section 245 of the Act. While the CSPA does provide an exemption from ineligibility under section 245(c) of the Act, which generally precludes adjustment if the applicant has been employed without authorization; is not in lawful status when seeking employment-based immigrant status; had failed to continuously maintain a lawful nonimmigrant status or otherwise violated the terms of a nonimmigrant visa; or was admitted to the United States as a crewman, in transit without visa status, in S visa status, or under the visa waiver programs of sections 212(l) or 217 of the Act, it does not exempt applicants from compliance with the requirements of section 245(a) of the Act that they be inspected and admitted or paroled into the United States. Since the CSPA specifically requires applicants to apply under section 245 of the Act; expressly waives a portion of the requirements for adjustment under section 245 of the Act (section 245(c) of the Act); and makes no mention of waiving the other requirements of section 245, the Service has determined that CSPA applicants must comply with the requirements of section 245(a) of the Act. To date, several courts have concurred with the Service's interpretation.

While the Service cannot waive the requirements of section 245(a) of the Act for CSPA applicants, it also cannot impose additional restrictions beyond those required by the statute. A person who was paroled into the United States upon his or her last arrival meets the requirements of section 245(a) of the Act regardless of whether he or she had previously entered this country in violation of the immigration laws.

The Service wishes to point out that the Supplementary Information to the interim rule contains a typographical error, which may have confused some readers. The sentence reading: "The CSPA also allows eligible applicants to

adjust status without regard to the provisions of section 245(a) of the Act." should have read: "The CSPA allows eligible applicants to adjust status without regard to the provisions of section 245(c) of the Act." See 58 FR 35835 (1993). The following paragraph and the interim rule's regulatory language correctly state that the requirements of section 245(a) of the Act have not been waived. The Service regrets any confusion caused by this typographical error, which does not necessitate any changes to the final rule.

The Service received a number of inquiries after the end of the comment period concerning the effect of a recently enacted law on eligibility under the CSPA. Specifically, section 245(i) of the Act allows otherwise qualified persons who entered the United States without having been inspected and admitted or paroled to be granted adjustment of status upon payment of an additional sum of $1000. This provision became effective on October 1, 1994, 3 months after the close of the CSPA application period. It is due to sunset on October 23, 1997. Since the new law applies only to applications filed after October 1, 1994, (see 8 CFR 245.10(e)) it has no effect on CSPA adjustment-of-status applications. Accordingly, the interim rule's requirement that an eligible CSPA applicant show that he or she entered the United States following an inspection and admission or parole has not been changed.

Ineligibility Under Section 245(d) of the Act

A small number of commenters felt that otherwise-eligible applicants should be allowed to adjust status under the CSPA without regard to the provisions of section 245(d) of the Act, or requested further clarification concerning this provision.

Section 245(d) of the Act prohibits the approval of an adjustment-of-status application filed under section 245 of the Act if the applicant is a person lawfully admitted to the United States on a conditional basis under section 216 of the Act based on a recent marriage to a citizen or lawful permanent resident of the United States. It also prohibits the approval of an adjustment-of-status application filed under section 245 of the Act if the applicant last entered the United States in K–1 or K–2 nonimmigrant status as a fiancé(e) of a U.S. citizen or as the child of a K–1 nonimmigrant fiancé(e). By regulation, the Service had created an exception only in cases where the adjustment application is based on the marriage to the U.S. citizen who filed the fiancé(e) petition (See 8 CFR 245.1(c)(6)). Since CSPA adjustment-of-status applications are filed under section 245 of the Act and the CSPA does not waive this restriction, the Service must deny a CSPA adjustment-of-status application if the adjustment is prohibited under section 245(d) of the Act. The prohibition on adjustment of status does not apply to a person whose conditional residency under section 216 of the Act has been terminated. See Matter of Stockwell, 20 I & N Dec. 309 (BIA 1991). Accordingly, no changes have been made as a result of these comments.

Waivers of Inadmissibility

Several commenters asked the Service to modify the interim rule's provisions concerning inadmissibility under section 212(a) of the Act. Some commenters were concerned that the elderly or persons first entering the labor market would be unable to meet public charge requirements and asked that a blanket waiver be provided. Other writers felt that inadmissibility for health reasons was unfair and asked the Service to automatically waive that basis for inadmissibility. A few commenters asked the Service to include stronger statements concerning ineligibility based on current or former communist party membership and not to waive inadmissibility on this basis unless the applicant has provided evidence that his or her membership has been terminated.

The CSPA provides two blanket waivers of inadmissibility under section 212(a) of the Act. It automatically waives inadmissibility under section 212(a)(5) of the Act because the applicant did not obtain a labor certification or failed to meet certain requirements applicable to foreign-trained physicians. It also provides a blanket waiver of the provisions of section 212(a)(7)(A) of the Act relating to documentary requirements for entry as an immigrant. The CSPA also allows most other grounds of inadmissibility under section 212(a) of the Act to be individually waived at the discretion of the Attorney General for purposes of ensuring family unity or if approval of the waiver is otherwise in the public interest. Both health-related and public charge inadmissibility may be waived for these reasons at the discretion of the Attorney General. There is, however, no statutory foundation for providing a blanket waiver of inadmissibility on this basis, nor does such a blanket waiver appear to be necessary. Inadmissibility based on communist party membership may also be individually waived at the discretion of the Attorney General for purposes of ensuring family unity, if approval of a waiver is otherwise in the public interest, or if the applicant qualifies for any of the waivers provided in section 212(a)(3)(D) of the Act. The Service will, of course, deny an adjustment-of-status application filed by any person who is a current or former communist party member who does not qualify for a waiver. An applicant who has terminated communist party membership is encouraged to provide evidence of the termination with his or her application.

Accordingly, the interim rule's provisions relating to inadmissibility under section 212(a) of the Act have not been changed.

Dual Nationality

A few commenters discussed whether persons who are nationals of both the PRC and a second country should be allowed to adjust status under the CSPA. One commenter felt that dual nationals should not be allowed to adjust status under the CSPA, while another writer felt that a CSPA applicant should not be bound by the country of nationality claimed or established at the time of entry for the duration of his or her stay in the United States. A third commenter wanted clarification of dual nationality as it applies to persons bearing Hong Kong travel documents.

Although the Service explained its position concerning dual nationality in the Supplementary Information to the interim rule, the interim rule's regulatory language merely requires CSPA principal applicants to be nationals of the PRC. As explained in the Supplementary Information, the Service would not necessarily preclude a person who is a dual national of the PRC and one or more other countries from satisfying the PRC nationality requirement under the CSPA. The Service has held for other purposes, however, that a person is bound by the nationality claimed at the time of entry into the United States for the duration of his or her stay and sees no reason to alter this practice for purposes of the CSPA. Accordingly, no changes have been made as a result of these comments.

Late Arriving Dependents

Most commenters discussed the benefits provided to family members in the United States who are unable to qualify for CSPA adjustment of status because they arrived in the United States after April 11, 1990. Many writers felt that these late arriving dependents (LADs) should be allowed to adjust status under the CSPA or should be granted benefits similar to those provided to qualified CSPA principals. They suggested that LADs be granted benefits such as: A waiver of per-country quota limitations; a waiver of the 2-year home-country residency requirement of section 212(e) of the Act; a waiver of the requirements of section 245(c) of the Act; placement under the second family-sponsored preference category; and establishment of a family unity program similar to that provided for the spouses and children of persons who adjusted status under the Immigration Reform and Control Act of 1986, Public Law 99–603. Some commenters objected to the rumored inclusion of LADs in the second employment-based preference category. Other writers asked that LADs be granted liberal approval of advance parole requests and employment authorization; excused from presenting birth and marriage certificates with an adjustment-of-status application; allowed to file adjustment-of-status applications at the Service Centers; permitted to apply for adjustment of status before the principal's CSPA adjustment application is approved; granted adjustment if the principal could have adjusted under the CSPA but chose to utilize another classification; and allowed to adjust status or to apply for immigrant visas in a third country, rather than being forced to return to the PRC.

As discussed in the Supplementary Information to the interim rule, the CSPA requires eligible applicants to meet three basic eligibility requirements. He or she: (1) Must have initially entered the United States on or before April 11, 1990, and must otherwise be a person described in section 1 of Executive Order 12711; (2) must have resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent departures; and (3) may not have spent more than 90 days in the PRC between April 11, 1990, and October 9, 1992. Persons who do not meet these requirements cannot adjust status under the CSPA or be granted CSPA benefits. The CSPA also provides no authority to waive any of the statutory requirements of the Act for persons who do not meet the eligibility requirements for CSPA adjustment of status. Section 203(d) of the Act, however, allows a spouse or child who is not otherwise entitled to an immigrant status and the immediate issuance of an immigrant visa to be eligible for the same preference immigrant classification and priority date if the relationship existed at the time the principal became a lawful permanent resident. A LAD who is the spouse or child of a CSPA principal may, therefore, use the principal's CSPA priority date under the third employment-based preference classification and seek immigrant visa issuance or adjustment of status when the priority date becomes current. LADs who were unable to maintain lawful nonimmigrant status have been allowed to remain in the United States in voluntary departure status pending the availability of the appropriate visa numbers.

The ability of the Attorney General to grant voluntary departure has been limited by the enactment of 240B of the Act which took effect on April 1, 1997. Section 240B of the Act limited the grant of voluntary departure in lieu of removal proceedings or before the conclusion thereof, to a period not to exceed 120 days including extensions. If such relief was granted at the conclusion of removal proceedings, the period may not exceed 60 days including extensions. Persons granted voluntary departure under such circumstances may not receive work authorization. However, if the grant of voluntary departure was given either during, or at the conclusion of, exclusion or deportation proceedings that were commenced prior to April 1, 1997, the Attorney General may grant voluntary departure for an unspecified period of time consistent with both Service regulations and policies. Persons granted voluntary departure under these circumstances may continue to receive employment authorization.

Although in recent months the third employment-based skilled worker category has once again become current, not all remaining LADs will be able to file for adjustment of status immediately. Recognizing that with the new restrictions on duration, voluntary departure is no longer an adequate option for such aliens, the Service may consider granting remaining LADs deferred action on a case-by-case basis. Accordingly, 8 CFR 245.9(m) has been amended to remove the reference to voluntary departure. This regulation is being adopted as a final rule without public comment because such comment is both impracticable and unnecessary. This change simply amends Service regulations to reflect a statutory change which severely curtails and, in the vast majority of cases, effectively nullifies part of the existing regulation.

In cases where an LAD requests that the Service grant deferred action, the Service will proceed according to section X of the Service's Standard Operating Procedures for Enforcement Officers: Arrest, Detention, Processing and Removal (1997). Specifically, a Service director may, in his or her discretion, recommend deferral of (removal). Deferred action recognizes that the Service has limited enforcement resources and that every attempt should be made administratively to use these resources in a manner which will achieve the greatest impact under the immigration laws. Deferred action does not confer any immigration status on an alien, nor is it in any way a reflection of an alien's lawful immigration status. It does not affect periods of unlawful presence previously accrued or accruing while in such "status" as defined in section 212(a)(9) of the Act, and does not alter the status of any alien who is present in the United States without being inspected and admitted. Under no circumstances does deferred action cure any defect in status under any section of the Act for any purpose. Since deferred action is not an immigration status, no alien has the right to deferred action. It is used solely for the administrative convenience of, and in the discretion of, the Service and confers no protection or benefit on an alien. Deferred action does not preclude the Service from commencing removal proceedings at any time against an alien. While in deferred action status, an alien may be granted work authorization pursuant to 8 CFR 274a.12(c)(14).

LADs who apply for adjustment of status in the United States while section 245(i) of the Act remains in effect may adjust status despite ineligibility under section 245(c) of the Act upon payment of the additional sum.

Other Dependents

Some commenters asked for further clarification about benefits available under the CSPA to sons and daughters who reach 21 years of age or marry. Other writers asked that family members living in the PRC be paroled into the United States or be issued nonimmigrant visas to immigrate to the United States.

A son or daughter who is over the age of 21 and meets the CSPA eligibility requirements, including arrival in the United States before April 11, 1990, may adjust status under the CSPA without regard to age or marital status at the time of adjustment. See 8 CFR 245.9(c)(2), which specifies only that he or she was unmarried and under the age of 21 on April 11, 1990. A spouse or child who does not meet the CSPA requirements may be eligible to adjust status as a family-based second preference immigrant. The CSPA, however, provides no authority for parole of family members into the United States, nor does it allow the use

of nonimmigrant visas to immigrate to this country.

Accordingly, no changes have been made as a result of these comments.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain nationals of the PRC to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 58 FR 35832 on July 1, 1993, is adopted as a final rule with the following change:

PART 245—ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

2. In § 245.9, paragraph (m) is revised to read as follows:

§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.

* * * * *

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Public Law 102–404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment-of-status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act.

Dated: October 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–31033 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 307, 308, 310, 318, 381, 416, and 417

[Docket No. 97–067N]

Livestock Carcasses and Poultry Carcasses Contaminated With Visible Fecal Material

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice on complying with food safety standards under the HACCP system regulations.

SUMMARY: The Food Safety and Inspection Service is publishing this notice to assure that the owners and operators of federally inspected slaughter establishments are aware that the Agency views its "zero tolerance" for visible fecal material as a food safety standard. Fecal material is a vehicle for microbial pathogens, and microbiological contamination is a food safety hazard that is reasonably likely to occur in the slaughter production process. In controlling microbiological contamination, a hazard analysis and critical control point plan for slaughter must be designed, among other things, to ensure that, by the point of post-mortem inspection of livestock carcasses or when poultry carcasses enter the chilling tank, no visible fecal material is present.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and Inspection Methods, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION: The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of livestock products and poultry products that are unwholesome, adulterated, or misbranded. A livestock product or poultry product is adulterated under any of a number of circumstances, including the following: if it bears or contains any poisonous or deleterious substance which may render it injurious to health, unless when the substance is not an added substance, the quantity in or on the article does not ordinarily render it injurious to health; if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food; or if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health (21 U.S.C. 453(g)(1), (g)(3), and (g)(4) and 601(m)(1), (m)(3), and (m)(4)). Both the FMIA and the PPIA include requirements for government inspection and prohibit transactions in products required to be inspected unless they have been "inspected and passed" or if they are adulterated (21 U.S.C. 458(a)(2) and 610(c)).

FSIS enforces a "zero tolerance" standard for visible fecal material on carcasses and carcass parts at inspected establishments that slaughter livestock or poultry. This standard is reflected in the Agency's regulations under the FMIA and the PPIA (9 CFR chapter III, subchapter A and subchapter C, respectively), which require (among other things) that establishments handle livestock carcasses and carcass parts to prevent contamination with fecal material and promptly remove contamination if it occurs (§ 310.18) and that establishments prevent poultry carcasses contaminated with visible fecal material from entering the chilling tank (§ 381.65(e)). When inspection program personnel observe fecal material at post-mortem livestock inspection or thereafter (*i.e.*, at or after the final rail) under the FMIA or when poultry carcasses are about to enter the chilling tank or thereafter (*i.e.*, at any point after the final pre-chiller wash) under the PPIA, they condemn affected carcasses and carcass parts unless the contamination is removed in accordance with regulatory requirements.

The Agency is publishing this notice to assure that the owners and operators of federally inspected slaughter establishments are aware that FSIS regards its zero tolerance for visible fecal material as a food safety standard under both the FMIA and the PPIA. Reiterating the Agency's position is particularly appropriate now, as federally inspected establishments prepare to comply with the hazard analysis and critical control point (HACCP) system regulations (part 417).[1]

The essence of FSIS's position is that fecal material is a vehicle for microbial pathogens, and microbiological contamination is a food safety hazard that is reasonably likely to occur in the slaughter production process (§ 417.2(a) and (b)). Consequently, HACCP plans must control for microbiological contamination at slaughter, and to meet the zero tolerance standard, an establishment's controls must (among other things) include limits that ensure that no visible fecal material is present by the point of post-mortem inspection of livestock carcasses or before poultry carcasses enter the chilling tank (§ 417.2(c)).

In the Pathogen Reduction-HACCP Systems final rule (61 FR 38806, July 25, 1996), FSIS explained the reasoning underlying its position on fecal contamination, and at the beginning of this year, FSIS addressed the role of its zero tolerance for visible fecal material on poultry carcasses in the final rule that codified the standard under the PPIA (62 FR 5139, February 4, 1997). Preparation for implementation of the HACCP system regulations has not changed the Agency's conclusions about the appropriateness of this standard, under the FMIA as well as the PPIA.

As the Agency stated in the Pathogen Reduction-HACCP Systems final rule (61 FR 38837):

> In slaughter establishments, fecal contamination of carcasses is the primary avenue for contamination by pathogens. Pathogens may reside in fecal material and ingesta, both within the gastrointestinal tract and on the exterior surfaces of animals going to slaughter. Therefore, without care being taken in handling and dressing procedures during slaughter and processing, the edible portions of the carcass can become contaminated with bacteria capable of causing illness in humans. Additionally, once introduced into the establishment environment, the organisms may be spread from carcass to carcass.
>
> Because the microbial pathogens associated with fecal contamination are the single most likely source of potential food safety hazard in slaughter establishments, preventing and removing fecal contamination and associated bacteria are vital responsibilities of slaughter establishments. Further, because such contamination is largely preventable, controls to address it will be a critical part of any slaughter establishment's HACCP plan. Most slaughter establishments already have in place procedures designed to prevent and remove visible fecal contamination.

As noted in the zero tolerance final rule and confirmed today with respect to livestock as well as poultry, establishments that process animals must adopt controls that they can demonstrate are effective in reducing the occurrence of microbial pathogens, including controls that prevent the fecal contamination of carcasses (62 FR 5140). Under the HACCP system regulations, critical control points to eliminate contamination with visible fecal material are predictable and essential components of all slaughter establishments' HACCP plans. Initial validation of a HACCP plan for slaughter and monitoring thereunder, as verified and documented in establishment records, must demonstrate the effective operation of the plan's controls on a continuing basis (§§ 417.3(a), 417.4, and 417.5).

FSIS personnel will continue to verify compliance with the zero tolerance standard in slaughter establishments that are subject to part 417 requirements. The Agency will use visual observations and other findings by FSIS personnel in evaluating the effectiveness of an establishment's preventive controls and corrective actions for fecal contamination (§§ 417.6 and 417.8). The presence of visible fecal contamination on livestock carcasses presented for post-mortem inspection or poultry carcasses entering the chilling tank will mean that establishment controls have failed; repeated failures will evidence that establishment corrective actions have failed to prevent recurrence and, thus, possible system inadequacy.

In addition to enforcing the zero tolerance for visible fecal material, FSIS will use the results of establishment testing for generic *E. coli* (*Escherichia coli* Biotype I, as already required by § 310.25(a) or § 381.94(a)) in assessing how well an establishment is controlling its slaughter and dressing processes to prevent fecal contamination. The pathogen reduction performance standards for *Salmonella* (§§ 310.25(b) and 381.94(b)), which FSIS will enforce through its own testing program, will complement the zero tolerance standard and *E. coli* testing.

Done at Washington, DC, on November 18, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–31176 Filed 11–26–97; 8:45 am]

BILLING CODE 3410–DM–P

[1] Part 417 requirements, as well as pathogen reduction performance standards for *Salmonella* in establishments that slaughter cattle, swine, chickens, or turkeys, prepare ground beef or fresh pork sausage, or process ground chicken or turkey (§§ 310.25(b) and 381.94(b)) will apply as of January 26, 1998, in establishments with 500 or more employees; January 25, 1999, in establishments with 10 or more but fewer than 500 employees (unless the establishment has annual sales of less than $2.5 million); and January 25, 2000, in establishments with fewer than 10 employees or annual sales of less than $2.5 million.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 363

RIN 3064–AC06

Independent Audits and Reporting Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations concerning annual independent audits and reporting requirements which implement section 36 of the Federal Deposit Insurance Act (FDI Act). Section 36 is generally intended to facilitate early identification of problems in financial management at larger insured depository institutions through annual independent audits, assessments of the effectiveness of internal controls and compliance with designated laws and regulations, and more stringent reporting requirements.

Section 2301 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) repealed section 36(e) of the FDI Act which required that each insured depository institution over a certain size have an independent public accountant perform specified procedures for determining compliance with designated safety and soundness laws. Accordingly, the FDIC is eliminating Schedule A to Appendix A, "Agreed Upon Procedures for Determining Compliance with Designated Laws".

Section 2301 of EGRPRA also permits the FDIC in certain circumstances to exempt institutions from the requirement that audit committees be comprised entirely of outside directors. It further permits the FDIC to designate certain information filed under section 36 as privileged and confidential and therefore not available to the public.

The FDIC is also making several technical changes to the Guidelines and Interpretations (Guidelines) published as an appendix to the annual independent audit rule. The changes delete certain filing requirements that have been determined to be unnecessary, and clarify ambiguities identified by the Corporation, financial institutions, and accountants since the audit rule was promulgated.

EFFECTIVE DATE: The final regulation is effective January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision (202) 898–8905, FDIC, 550 17th Street, N.W., Washington, DC 20429, or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street N.W., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added section 36, "Independent Annual Audits of Insured Depository Institutions," to the FDI Act (12 U.S.C. 1831m). As enacted, section 36 required the FDIC, in consultation with the appropriate federal banking agencies, to promulgate regulations requiring each insured depository institution over a certain asset size (covered institution) to have an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards and section 37 of the FDI Act (12 U.S.C. 1831n), and to provide a management report and an independent public accountant's attestation concerning the effectiveness of the institution's internal controls for financial reporting and its compliance with designated safety and soundness laws. Section 36 also requires each covered institution to have an independent audit committee. The audit committee of each large covered institution (total assets exceeding $3 billion) must meet certain additional requirements.

In June 1993, the FDIC published 12 CFR part 363 (58 FR 31332, June 2, 1993) to implement the provisions of section 36 of the FDI Act. Under part 363, the requirements of section 36 apply to each insured depository institution with $500 million or more in total assets at the beginning of any fiscal year that begins after December 31, 1992. Part 363 also includes Guidelines and Interpretations (Appendix A to part 363), which are intended to assist institutions and independent public accountants in understanding and complying with section 36 and part 363.

Section 314 of the Riegle Community Development and Regulatory Improvement Act of 1994 amended sections 36(i) and 36(g)(2) of the FDI Act (12 U.S.C. 1831m (i) and (g)(2)). The purpose of section 314(a) was to provide relief from certain duplicative reporting under section 36 of the FDI Act for sound, well managed insured depository institutions with over $9 billion in total assets which are subsidiaries of multibank holding companies. The regulation was amended effective April 1, 1996, to implement section 314.

Section 2301 of EGRPRA repealed section 36(e) and amended sections 36(a)(3) and 36(g)(1) of the FDI Act. Section 36(e) required that each covered institution have an independent public accountant perform specified procedures for determining compliance with designated safety and soundness laws. To comply with the repeal of section 36(e), the FDIC is removing Schedule A to Appendix A, "Agreed Upon Procedures for Determining Compliance with Designated Laws," and is making conforming changes to the regulation and the Guidelines.

The amendment to section 36(g)(1) of the FDI Act grants authority for each appropriate federal banking agency to permit a covered institution under its supervision to have an audit committee consisting of a majority of outside directors, instead of consisting entirely of outside directors, if the agency determines that the institution has encountered hardships retaining and recruiting a sufficient number of competent outside directors to serve on the committee. The amendment to section 36(a)(3) permits the FDIC and the appropriate federal banking agency to designate certain information filed under section 36 as privileged and confidential and not available to the public.

Since 1993 when part 363 was promulgated, no institution has requested relief from the FDIC because the institution had difficulty in recruiting or retaining outside directors for its audit committee nor has any institution requested confidential treatment of any otherwise public information filed under section 36. Because the banking agencies would consider such matters on a case-by-case basis, and to avoid additional burden, no implementing regulations are being promulgated.

II. Discussion of Amendment

The FDIC is amending part 363 to: conform it to the amended statute, update certain references, eliminate an unnecessary filing by independent public accountants, and align the filing requirements with the FDIC's current approach for supervising banking organizations.

The FDIC is deleting Schedule A to Appendix A, "Agreed Upon Procedures for Determining Compliance with Designated Laws", and Guideline 19 to conform the regulation to the amended statute which repealed the requirement that each covered institution have an independent public accountant perform specified procedures for determining compliance with designated safety and soundness laws. In addition, §§ 363.3(b) and 363.4 (a) and (b) have been amended to delete references to Schedule A and the independent public accountant's attestation on compliance with Designated Laws and Regulations (Designated Laws). Guidelines 8, 16, and 18 likewise have been revised.

Although section 2301 of EGRPRA repealed the statutory requirement that an independent public accountant provide an attestation report on the performance of agreed-upon procedures for determining an institution's compliance with Designated Laws, management is still required to file an annual report with the FDIC and appropriate federal and state banking agencies which includes a statement of its responsibility for complying with Designated Laws and an assessment of the institution's compliance with such laws and regulations. Revised Guideline 12 identifies the two categories of Designated Laws. Table 1 to Appendix A lists the specific federal laws and regulations within these categories.

The Introduction to the Guidelines and Interpretations has been amended to remove outdated language. Also, the references to documents which provide information on safeguarding of assets and standards for internal control in footnote 2 to Guideline 10 have been updated.

The FDIC has removed the provision in Guideline 16 that an accountant may elect to file a list of covered institutions that are audit clients in lieu of a peer review report for each client. The FDIC has found that the list of client institutions is not needed.

Revised Guideline 22 (previously numbered Guideline 23) has been amended to reflect the FDIC's current approach to supervising banking organizations which own more than one depository institution. In such cases, one FDIC region is designated to manage supervision of the entire organization. The amended guideline states that covered institutions filing under part 363 on a holding company basis should submit their reports to the appropriate FDIC regional office.

III. Public Comment Waiver and Effective Date

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (APA), requires that general notice of a proposed rulemaking be published in the **Federal Register**. 5 U.S.C. 553(b). An exception to the rule exists if the agency for good cause finds "* * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The FDIC is publishing the amendments to part 363 as a final rule without notice and comment because the amendments consist of only minor and technical changes. The FDIC finds that publication in this case is unnecessary.

IV. Paperwork Reduction Act

This regulation contains modifications to a collection of information that have been reviewed and approved by the Office of Management and Budget on November 5, 1997, under control number 3064–0113 pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The primary modification is the deletion, from Appendix A, of Schedule A "Agreed Upon Procedures for Determining Compliance with Designated Laws".

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, D.C. 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4001–B, 550 17th Street, NW, Washington, D.C. 20429. All comments should refer to "3064–0113".

The estimated reporting burden for the collection of information under part 363 is:

Number of Respondents: 420.

Number of Responses per Respondent: 3.

Total Annual Responses: 1,260.

Hours per Response: 32.

Total Annual Burden Hours: 40,320.

V. Regulatory Flexibility Act

The rule expressly exempts insured depository institutions having assets of less than $500 million, and, for that reason, is inapplicable to small entities. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the rule would not have a significant impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a federal agency issues a final rule. The FDIC will file the appropriate reports with Congress and the GAO as required by SBREFA.

Because the Office of Management and Budget has determined that the rule does not constitute a "major rule" as defined by SBREFA, the final rule will take effect on January 1, 1998.

List of Subjects in 12 CFR Part 363

Accounting, Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends Part 363 of title 12, chapter III, of the Code of Federal Regulations as follows:

PART 363—ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS

1. The authority citation for part 363 continues to read as follows:

Authority: 12 U.S.C. 1831m.

2. Section 363.3 is amended by revising paragraph (b) to read as follows:

§ 363.3 Independent public accountant.

* * * * *

(b) *Additional report.* Such independent public accountant shall examine, attest to, and report separately on, the assertion of management concerning the institution's internal control structure and procedures for financial reporting. The attestation shall be made in accordance with generally accepted standards for attestation engagements.

* * * * *

3. Section 363.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 363.4 Filing and notice requirements.

(a) *Annual reporting.* Within 90 days after the end of its fiscal year, each insured depository institution shall file with each of the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor, two copies of an annual report containing audited annual financial statements, the independent public accountant's report thereon, management's statements and

assessments, and the independent public accountant's attestation report concerning the institution's internal control structure and procedures for financial reporting as required by §§ 363.2(a), 363.3(a), 363.2(b), and 363.3(b), respectively.

(b) *Public availability.* The annual report in paragraph (a) of this section shall be available for public inspection.

* * * * *

4. Appendix A to part 363 is amended by revising the table of contents entry for item 18, by removing the table of contents entry for item 19, by redesignating table of contents entries 20 through 37 as 19 through 36, respectively, by revising the introduction and guidelines 8, 10, 12, 16, 18 to read as follows:

Appendix A to Part 363—Guidelines and Interpretations

Table of Contents

* * * * *

18. Attestation Report

* * * * *

Introduction

Congress added section 36, "Early Identification of Needed Improvements in Financial Management" (section 36), to the Federal Deposit Insurance Act (FDI Act) in 1991.

The FDIC Board of Directors adopted 12 CFR part 363 of its rules and regulations (the Rule) to implement those provisions of section 36 that require rulemaking. The FDIC also approved these "Guidelines and Interpretations" (the Guidelines) and directed that they be published with the Rule to facilitate a better understanding of, and full compliance with, the provisions of section 36.

Although not contained in the Rule itself, some of the guidance offered restates or refers to statutory requirements of section 36 and is therefore mandatory. If that is the case, the statutory provision is cited.

Furthermore, upon adopting the Rule, the FDIC reiterated its belief that every insured depository institution, regardless of its size or charter, should have an annual audit of its financial statements performed by an independent public accountant, and should establish an audit committee comprised entirely of outside directors.

The following Guidelines reflect the views of the FDIC concerning the interpretation of section 36. The Guidelines are intended to assist insured depository institutions (institutions), their boards of directors, and their advisors, including their independent public accountants and legal counsel, and to clarify section 36 and the Rule. It is recognized that reliance on the Guidelines may result in compliance with section 36 and the Rule which may vary from institution to institution. Terms which are not explained in the Guidelines have the meanings given them in the Rule, the FDI Act, or professional accounting and auditing literature.

* * * * *

Annual Reporting Requirements (§ 363.2)

* * * * *

8. *Management Report.* Management should perform its own investigation and review of the effectiveness of internal controls and compliance with the Designated Laws defined in Guideline 12. Management also should maintain records of its determinations and assessments until the next federal safety and soundness examination, or such later date as specified by the FDIC or appropriate federal banking agency. Management should provide in its assessment of the effectiveness of internal controls, or supplementally, sufficient information to enable the accountant to report on its assertion. The management report of an insured branch of a foreign bank should be signed by the branch's managing official if the branch does not have a chief executive or financial officer.

* * * * *

10. *Standards for Internal Controls.* Each institution should determine its own standards for establishing, maintaining, and assessing the effectiveness of its internal controls.[2]

* * * * *

12. *Compliance with Laws and Regulations.* The designated laws and regulations are the federal laws and regulations concerning loans to insiders and the federal and state laws and regulations concerning dividend restrictions (the Designated Laws). Table 1 to this Appendix A lists the designated federal laws and regulations pertaining to insider loans and dividend restrictions that are applicable to each type of institution.

Role of Independent Public Accountant (§ 363.3)

* * * * *

16. *Filing Peer Review Reports.* Within 15 days of receiving notification that the peer review has been accepted, or before commencing any audit under the Rule, whichever is earlier, two copies of the most recent peer review report, accompanied by any letter of comments and letter of response, should be filed by the independent public accountant (if not already on file) with the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429, where they will be available for public inspection. All corrective action required under any qualified peer review report should have been taken before commencing services under this Rule.

* * * * *

18. *Attestation Report.* The independent public accountant should provide the institution with an internal controls attestation report and any management letter at the conclusion of the audit as required by section 36(c)(1). If a holding company subsidiary relies on its holding company management report, the accountant may attest to and report on management's assertions in one report, without reporting separately on each subsidiary covered by the Rule. The FDIC has determined that management letters are exempt from public disclosure.

* * * * *

5. Appendix A to part 363 is amended by removing Guideline 19 and redesignating Guidelines 20 through 37 as 19 through 36, respectively.

6. Appendix A to part 363 is amended by revising newly designated Guideline 22 to read as follows:

* * * * *

Filing and Notice Requirements (§ 363.4)

22. *Place for Filing.* Except for peer review reports filed pursuant to Guideline 16, all reports and notices required by, and other communications or requests made pursuant to, the Rule should be filed as follows:

(a) FDIC: Appropriate FDIC Regional Office (Supervision), i.e., the FDIC regional office in the FDIC region in which the institution is headquartered or, in the case of a subsidiary institution of a holding company, the FDIC regional office that is responsible for monitoring the consolidated company. A filing made on behalf of several covered institutions owned by the same parent holding company should be accompanied by a transmittal letter identifying all of the institutions covered.

(b) Office of the Comptroller of the Currency (OCC): appropriate OCC Supervisory Office.

(c) Federal Reserve: appropriate Federal Reserve Bank.

(d) Office of Thrift Supervision (OTS): appropriate OTS District Office.

(e) State bank supervisor: the filing office of the appropriate state bank supervisor.

* * * * *

7. Schedule A to Appendix A of part 363 and the Tables to Schedule A are removed.

8. Table 1 is added to Appendix A to read as follows:

[2] In considering what information is needed on safeguarding of assets and standards for internal controls, management may review guidelines provided by its primary federal regulator; the FDIC's Division of Supervision Manual of Examination Policies; the Federal Reserve Board's Commercial Bank Examination Manual and other relevant regulations; the Office of Thrift Supervision's Thrift Activities Handbook; the Comptroller of the Currency's Handbook for National Bank Examiners; and standards published by professional accounting organizations, such as the American Institute of Certified Public Accountants' (AICPA) Statement on Auditing Standards No. 55, "Consideration of the Internal Control Structure in a Financial Statement Audit," as amended by Statement of Auditing Standards No. 78; the Committee of Sponsoring Organizations (COSO) of the Treadway Commission's *Internal Control—Integrated Framework*, including its addendum on safeguarding of assets; and other internal control standards published by the AICPA, other accounting or auditing professional associations, and financial institution trade associations.

TABLE 1 TO APPENDIX A

		Designated Federal Laws and Regulations Applicable to			
		National banks	State member banks	State nonmember banks	Savings associations
Insider Loans—Parts and/or Sections of Title 12 of the United States Code					
375a	Loans to Executive Officers of Banks	✔	✔	(1)	(1)
375b	Prohibitions Respecting Loans and Extensions of Credit to Executive Officers and Directors of Banks, Political Campaign, Committees, etc.	✔	✔	(1)	(1)
1468(b)	Extensions of Credit to Executive Officers, Directors, and Principal Shareholders.				✔
1828(j)(2)	Provisions Relating to Loans, Extensions of Credit, and Other Dealings Between Member Banks and Their Affiliates, Executive Officers, Directors, etc.			✔	
1828(j)(3)(B)	Extensions of Credit Applicability of Provisions Relating to Loans, Extensions of Credit, and Other Dealings Between Insured Branches of Foreign Banks and Their Insiders.	(2)		(3)	
Parts and/or Sections of Title 12 of the Code of Federal Regulations					
23.5	Application of Legal Lending Limits; Restrictions on Transactions With Affiliates.	✔			
31	Extensions of Credit to National Bank Insiders	✔			
215	Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders.	✔	✔	(4)	(5)
	Subpart B—Reports of Indebtedness of Executive Officers and Principal Shareholders of Insured Nonmember Banks.	✔	✔	(4)	(5)
337.3	Limits on Extensions of Credit to Executive Officers, Directors, and Principal Shareholders of Insured Nonmember Banks.			✔	
349.3	Reports by Executive Officers and Principal Shareholders			✔	
563.43	Loans by Savings Associations to Their Executive Officers, Directors, and Principal Shareholders.				✔
Dividend Restrictions—Parts and/or Sections of Title 12 of the United States Code					
56	Prohibition on Withdrawal of Capital and Unearned Dividends	✔	✔		
60	Dividends and Surplus Funds	✔	✔		
1467a(f)	Declaration of Dividends				✔
1831o	Prompt Corrective Action—Dividend Restrictions	✔	✔	✔	✔
Parts and/or Sections of Title 12 of the Code of Federal Regulations					
5.61	Payment of dividends; capital limitation	✔			
5.62	Payment of dividends; earnings limitation	✔			
6.6	Prompt Corrective Action—Dividend Restrictions	✔			
7.6120	Dividends Payable in Property Other Than Cash	✔			
208.19	Payments of Dividends		✔		
208.35	Prompt Corrective Action		✔		
325.105	Prompt Corrective Action			✔	
563.134	Capital Distributions				✔
565	Prompt Corrective Action				✔

[1] Subsections (g) and (h) only.
[2] Applies only to insured federal branches of foreign banks.
[3] Applies only to insured state branches of foreign banks.
[4] See 12 CFR parts 337.3 and 349.3.
[5] See 12 CFR part 563.43.

By Order of the Board of Directors.
Dated at Washington, D.C., this 12th day of November, 1997.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 97–30860 Filed 11–26–97; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–29–AD; Amendment 39–10223; AD 97–24–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0070 and 0100 series airplanes, that requires a one-time operational test of a certain pitot heating system, repair or replacement of failed elements, and repair or replacement of the pitot heating system with a new improved system. This amendment also requires installation of new power supply wiring with increased gauge thickness, and a circuit breaker with an increased amperage rating. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 Air Data Computer, or output of erroneous airspeed data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System.

DATES: Effective January 2, 1998.
The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from 95–NM–29–AD. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0070 and 0100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 3, 1997 (62 FR 4944). That action proposed to require a one-time operational test of the No. 1 pitot heating system, repair or replacement of failed elements, and repair or replacement of the pitot heating system with a new improved system. That action also proposed to require installation of new power supply wiring with increased gauge thickness, and a circuit breaker with an increased amperage rating.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Requests To Extend the Compliance Time for Replacement of Pitot Tube

Two commenters request that the compliance time, specified in paragraph (b)(2) of the proposed AD, for accomplishing the replacement of the pitot tube and associated electrical modifications be extended from the proposed 18 months to 24 months. The commenters state that such an extension will allow the replacement to be accomplished during a regularly scheduled heavy maintenance check for all but 7 of its affected airplanes, and thereby minimize any additional expenses that would be associated with special scheduling.

The FAA does not concur with the commenters' request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's and foreign airworthiness authority's recommendations as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required replacement within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required replacement without compromising safety. In addition, the commenters have not provided any data to substantiate why an extension of the compliance time would not compromise safety.

In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA has determined that further delay of this modification is not appropriate. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 129 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry will be affected by this AD.

The required operational check will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact for the operational check required by this AD on U.S. operators is estimated to be $7,740, or $60 per airplane.

The required replacement of the pitot heating system will take approximately 36 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $16,000 per airplane. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $16,160 per airplane.

For airplanes on which replacement of the pitot heating system has been accomplished previously, the required installation of the power supply electrical wiring and circuit breaker will take approximately 12 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $350 per airplane. Based on these figures, the cost impact is estimated to be $1,070 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–16 Fokker: Amendment 39–10223. Docket 95–NM–29–AD.

Applicability: Model F28 Mark 0070 and 0100 series airplanes, certificated in any category, and having the following serial numbers:

11244 through 11495, inclusive;
11497 through 11507, inclusive;
11509;
11511 through 11517, inclusive;
11519 through 11523, inclusive;
11527 through 11529, inclusive;
11532;
11536 through 11541, inclusive;
11543;
11545;
11547;
11549;
11551;
11553 through 11565, inclusive;
11567;
11570;
11573; and
11574.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 Air Data Computer (ADC #1) or output of erroneous airspeed data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System (AFCAS), accomplish the following:

(a) For airplanes that have type 853JB pitot tubes installed: Within 30 days after the effective date of this AD, perform an operational test of the No. 1 pitot heating system in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–30–015, Revision 2, dated January 25, 1995.

(1) If the pitot heating system passes the operational test, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, at the time specified.

(2) If any pitot tube heating element is found to be inoperative, prior to further flight, repair or replace the failed element with a serviceable element, in accordance with the Fokker 100 Aircraft Maintenance Manual (AMM).

(b) For airplanes on which Fokker Service Bulletin SBF100–30–017, dated August 23, 1995, has *not* been accomplished: At the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD, replace the type 853JB or type 853KK No. 1 pitot tube, with a type 853BR pitot tube; and install the inverter, current sensor, wiring, and circuit breaker; in accordance with Fokker Service Bulletin SBF100–30–019, dated June 20, 1996.

(1) For airplanes with the flight warning system (FWS) speed comparator not activated and with a type 853JB No. 1 pitot tube installed: Accomplish the replacement within 9 months after the effective date of this AD.

(2) For airplanes with the FWS speed comparator activated or with a type 853KK No. 1 pitot tube installed: Accomplish the replacement within 18 months after the effective date of this AD.

(c) For airplanes on which Fokker Service Bulletin SBF100–30–017, dated August 23, 1995, has been accomplished, either in service or factory-incorporated: Within 18 months after the effective date of this AD, replace the No. 1 pitot heating circuit breaker and modify the power supply electrical wiring, in accordance with Fokker Service Bulletin SBF100–30–020, dated June 20, 1996.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Fokker Service Bulletin SBF100–30–015, Revision 2, dated January 25, 1995; Fokker Service Bulletin SBF100–30–019, dated June 20, 1996; and Fokker Service Bulletin SBF100–30–020, dated June 20, 1996. Revision 2 of Fokker Service Bulletin SBF100–30–015 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 9, 15, 17, 18, 22, 35, 36, 38	2	January 25, 1995.
2, 12, 14, 16, 25, 26, 30–32, 37	1	September 14, 1994.
4–8, 10, 11, 13, 19–21, 23, 24, 27–29, 33, 34, 39	Original	July 7, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Netherlands airworthiness directive BLA 94–114(A), dated August 5, 1994.

(g) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31021 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–185–AD; Amendment 39–10218; AD 97–24–11]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires repetitive inspections of certain flanges and finger strips at rib 5.0 of the vertical stabilizer to detect fatigue cracking, and repairs, if necessary. This amendment also requires modifications that would strengthen the torsion box at rib 5.0 and prevent fatigue cracking; one of these modifications constitutes terminating action for the repetitive inspections. This amendment is prompted by reports indicating that, during full-scale fatigue testing, cracking has been found on the vertical stabilizer of the test article. The actions specified by this AD are intended to detect and prevent fatigue cracking in the subject area, which, if not corrected, could reduce the structural integrity of the vertical stabilizer.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on January 14, 1997 (62 FR 1866). That action proposed to require repetitive eddy current inspections to detect fatigue cracking of the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, and repair, if necessary. That action also proposed to require modification of rib 5.0 by the installation of a stiffener to the torsion box; this modification would be preceded by an eddy current inspection to detect fatigue cracking, and repair, if necessary. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements. In addition, that action proposed to require another modification of rib 5.0 by cold-expanding certain bolt holes on the torsion box.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Requests To Extend the Compliance Time

Two commenters request that the compliance time for accomplishing the proposed eddy current inspection and modification of rib 5.0 of the vertical stabilizer [required by paragraphs (b)(1) and (b)(2) of the proposed AD, respectively] be extended from "prior to the accumulation of 13,500 total landings, or within 6 months * * *" to "prior to the accumulation of 16,000 total landings or within 12 months." One of these commenters states that it is currently performing the subject inspection and modification during its F100 "Q" check visit, which is currently scheduled at 16,000 flight hours or 16,000 landings, whichever occurs first. The commenter also states that ten of its airplanes, which have accumulated between 10,972 and 14,976 flight cycles, have been inspected and modified. This commenter points out that no cracks have been detected on these airplanes. This commenter contends that accomplishment of the repetitive inspections required by paragraph (a) of the proposed AD at 2,000 flight cycle intervals will assure that the required level of safety is maintained.

The FAA does not concur with the commenters' request to extend the compliance time. The FAA points out that the proposed compliance time of paragraphs (b)(1) and (b)(2) of the AD was developed in consideration of not only the degree of urgency associated with addressing the unsafe condition, but such factors as the manufacturer's and the foreign airworthiness authority's [i.e., Rijksluchtvaartdienst (RLD)] recommendations, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The FAA also has consulted with the manufacturer and RLD and determined that 13,500 flight cycles represents the maximum number of flight cycles allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections and modification without compromising safety. The proposed compliance times are based on results of fatigue tests and analysis of the effects of the thrust reverser loads on adjacent structure.

In addition, the FAA finds that the commenters have not submitted any data to substantiate why a 2,500 flight-cycle extension of the compliance time would not compromise safety, nor have the commenters addressed whether further inspections would be necessary to ensure the long term operational safety. However, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for adjustments to the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 122 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this proposed AD.

Approximately 77 airplanes will be required to conduct repetitive inspections of the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer. It will take approximately 10 work hours per airplane to accomplish each required inspection. The average labor rate is $60 per work hour. Based on these figures, the cost impact of these inspections required by this AD on U.S. operators of these airplanes is estimated to be $46,200, or $600 per airplane, per inspection.

Approximately 77 airplanes also will be required to accomplish the installation of steel reinforcement in the torsion box at rib 5.0 of the vertical stabilizer. It will take approximately 170 work hours per airplane to accomplish this modification (including a pre-modification inspection). The average labor rate is $60 per work hour. Required parts will cost approximately $27,000. Based on these figures, the cost impact of this modification required by this AD on U.S. operators of these airplanes is estimated to be $2,864,400, or $37,200 per airplane.

Approximately 122 airplanes will be required to accomplish the cold expansion of holes in the torsion box at rib 5.0 of the vertical stabilizer. It will take approximately 17 work hours per airplane to accomplish this modification, or approximately 8 work hours per airplane if this modification is done at the same time as the installation of steel reinforcement. The average labor rate is $60 per work hour. Required parts will cost approximately $206. Based on these figures, the cost impact of this modification required by this AD on U.S. operators of these airplanes is estimated to be between $83,692 and $149,572, or between $686 and $1,226 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–11 Fokker: Amendment 39–10218. Docket 96–NM–185–AD.

Applicability: Model F28 Mark 0100 series airplanes having the serial numbers specified in Table 1 of this AD; certificated in any category.

TABLE 1.—SERIAL NUMBERS OF AIRPLANES SUBJECT TO THIS AD

11244 through 11460, inclusive
11463 through 11469, inclusive
11471
11474 through 11483, inclusive
11489 through 11491, inclusive
11497 through 11499, inclusive
11501
11502
11504
11506
11507
11512 through 11515, inclusive
11517
11520

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and prevent fatigue cracking in the vertical stabilizer, which consequently could reduce its structural integrity, accomplish the following

(a) For airplanes having serial numbers 11244 through 11419, inclusive, and 11421: Except as provided by paragraph (c) of this AD, prior to the accumulation of 8,500 total landings or within 30 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect fatigue cracking in the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, in accordance with Fokker Service Bulletin SBF100–55–019, Revision 1, dated May 19, 1993.

(1) If no cracking is detected, repeat this inspection thereafter at intervals not to exceed 2,000 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) For airplanes with serial numbers 11244 through 11419 inclusive, and 11421, accomplish the requirements of both paragraphs (b)(1) and (b)(2) of this AD:

(1) Except as provided by paragraph (c) of this AD, prior to the accumulation of 13,500 total landings, or within 6 months after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect fatigue cracking in the left-hand and right-hand flanges and finger strips at rib 5.0 of the vertical stabilizer, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–55–018, Revision 1, dated December 27, 1993.

(i) If no cracking is detected, prior to further flight, accomplish the requirements of paragraph (b)(2) of this AD.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, and

accomplish the requirements of paragraph (b)(2) of this AD.

(2) After accomplishing the requirements of paragraph (b)(1) of this AD, modify rib 5.0 of the vertical stabilizer by installing new stiffening, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–55–018, Revision 1, dated December 27, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) The following exceptions apply with regard to the requirements of paragraphs (a) and (b) of this AD:

(1) Accomplishment of the inspection specified in paragraph (a) and (b)(1) of this AD is not required if the modification specified in paragraph (b)(2) is accomplished prior to the accumulation of 7,300 total landings on the airplane.

(2) Compliance with AD 91–18–15, amendment 39–8018, is not required if the requirements of paragraph (b)(2) of this AD are accomplished prior to the accumulation of 8,000 total landings on the airplane.

(d) For all airplanes: At the applicable times specified in paragraph (d)(1) or (d)(2), modify the Hi-lok bolt holes at rib 5.0 of the vertical stabilizer by cold expansion, in accordance with Fokker Service Bulletin SBF100–55–023, dated January 3, 1995.

(1) For airplanes that have been modified in accordance with the requirements of paragraph (b) of this AD prior to the effective date of this AD: Modify prior to the accumulation of either 10,000 landings after in-service modification, or 10,000 landings after delivery with factory modification, as applicable; or within 30 days after the effective date of this AD, whichever occurs later.

(2) For all other airplanes: Modify concurrent with accomplishing the requirements of paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with the following Fokker service bulletins, which contain the following list of effective pages:

Referenced service bulletin and date	Page No.	Revision level shown on page	Date shown on page
SBF100–55–018, Revision 1, December 27, 1993.	1–4, 8–16, 18, 19, 21–23, 25–28	1	December 27, 1993.
	5–7, 17, 20, 24, 29–31	Original	May 19, 1993.
SBF100–55–019, Revision 1, May 19, 1993	1–3, 5, 9,	1	May 19, 1993.
	4, 6–8, 10–12	Original	August 11, 1992.
SBF100–55–023, January 3, 1995	1–17	Original	January 3, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive (BLA) 93–069 (A), dated June 1, 1993.

(h) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on November 19, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31029 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–189–AD; Amendment 39–10220; AD 97–24–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires a detailed visual inspection of the flap drive torque tubes in the wing root area to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes; and follow-on repetitive inspections or corrective action, if necessary. Accomplishment of certain replacements and modifications would constitute terminating action for the repetitive inspections. This amendment is prompted by reports of inadequate clearance between flap drive torque tubes and surrounding structures, and possible scoring damage to the tubes. The actions specified by this AD are intended to prevent failure of the torque tubes, which could result in an asymmetric flap condition and reduced controllability of the airplane.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on August 25, 1997 (62 FR 44917). That action proposed to require a detailed visual inspection of the flap drive torque tubes in the wing root area to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes; and follow-on repetitive inspections or corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–13 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10220. Docket 96–NM–189–AD.

Applicability: BAe Model ATP airplanes, constructor numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the torque tubes, which could result in an asymmetric flap condition and reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, conduct a detailed visual inspection of the flap drive torque tubes in the left and right wing root areas to detect inadequate clearance between the torque tubes and surrounding structure or scoring damage to the tubes, in accordance with Jetstream Service Bulletin ATP–27–80, dated April 23, 1996.

(1) If adequate clearance exists between all flap drive torque tubes and surrounding structure at the sites specified in the service bulletin, with no scoring damage to any of the tubes, no further action is required by this AD.

(2) If inadequate clearance exists between any flap drive torque tube and surrounding structure at the sites specified in the service bulletin, with no scoring damage to the tubes: Accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) At intervals not to exceed 250 hours time-in-service, repeat the detailed visual inspections required by paragraph (a) of this AD.

(ii) Within 2,000 hours time-in-service after the initial inspection required by paragraph (a) of this AD, modify the structure to gain the required minimum clearance in accordance with the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirement of paragraph (a)(2)(ii) of this AD.

(3) If any scoring damage to the torque tubes is detected, accomplish the requirements specified in paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this AD, as applicable, in accordance with the service bulletin, and at the time specified in the applicable paragraph.

(i) If only one torque tube on one side or both sides of the airplane is damaged, and the scoring is within the maximum allowable damage limits in the service bulletin: Within 250 hours time-in-service after any inspection required by this AD in which the damage was initially detected, modify the surrounding structure to gain the required minimum clearance and install a new torque tube.

(ii) If both torque tubes on the same side of the airplane are damaged, and the scoring is within the maximum allowable damage limits in the service bulletin: Prior to further flight after any inspection required by this AD in which damage was initially detected, modify the surrounding structure to gain the required minimum clearance and replace at least one of the damaged torque tubes with a new torque tube. Within 250 hours time-in-service after any inspection in which damage was initially detected, replace the remaining damaged torque tube with a new torque tube.

(iii) If any torque tube is damaged, and the scoring is more than the allowable damage limits described in the service bulletin: Prior to further flight, modify the surrounding structure to gain the required minimum clearance and replace the damaged tube(s) with a new torque tube(s).

(b) Accomplishment of the modification to gain the required minimum clearance between the torque tubes and surrounding structure and the replacement of damaged torque tube(s) with a new torque tube(s) constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Jetstream Service Bulletin ATP–27–80, dated April 23, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 003–04–96.

(f) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31027 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–157–AD; Amendment 39–10219; AD 97–24–12]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently requires a one-time inspection to determine the tension of the control cables of the thrust reversers, and to detect breakage, damage, wear, or signs of corrosion; and corrective actions, if necessary. This amendment requires that the inspections be repeated at certain intervals. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the control cables, which may lead to the inability of the thrust reverser to deploy and/or an uncommanded deployment of the thrust reverser while the airplane is in flight.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace (Operations) Ltd., trading as British Aerospace Airbus Ltd., P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–17–02, amendment 39–8997 (59 FR 41235, August 11, 1994), which is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, was published in the **Federal Register** on September 22, 1997 (62 FR 49458). The action proposed to require repetitive inspections of the control cables of the thrust reverser to determine the tension of the control cables of the thrust reversers, and to detect breakage, damage, wear, or signs of corrosion; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 42 Model BAC 1–11 200 and 400 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 94–17–02 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $7,560, or $180 per airplane, per inspection cycle.

The new actions that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $7,560, or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8997 (59 FR 41235, August 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–10219, to read as follows:

97–24–12 British Aerospace: Amendment 39–10219. Docket : 96–NM–157–AD. Supersedes AD 94–17–02, Amendment 39–8997.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser control cables, which may lead to the inability of the thrust reverser to deploy and/or an uncommanded thrust reverser deployment while the airplane is in flight, accomplish the following:

(a) Within 100 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, perform an inspection to determine the tension of the control cables of the thrust reverser, in accordance with British Aerospace, Alert Service Bulletin 76–A–PM6031, dated January 18, 1995. If the tension of any control cable is outside the limits specified in the alert service bulletin, prior to further flight, correct the tension of that cable in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 2,400 hours time-in-service or 12 months, whichever occurs first.

(b) Within 100 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, perform an inspection to detect breakage, damage, wear, or signs of corrosion (swelling) of the control cable of the thrust reverser, in accordance with British Aerospace Alert Service Bulletin 76–A–PM6031, dated January 18, 1995.

(1) If no discrepancy is found, prior to further flight, lubricate the cables in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 2,400 hours time-in-service or 12 months, whichever occurs first.

(2) If any control cable is damaged, is worn beyond the limits specified in the alert service bulletin, is corroded, or has a broken wire, prior to further flight, replace the discrepant cable with a serviceable cable, and lubricate the cables in accordance with the alert service bulletin. Thereafter, repeat the inspection at intervals not to exceed 2400 hours time-in-service or 12 months after the effective date of this AD, whichever occurs first.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with British Aerospace Alert Service Bulletin 76–A–PM6031, dated January 18, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace (Operations) Ltd., trading as British Aerospace Airbus Ltd., P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31028 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–126–AD; Amendment 39–10221; AD 97–24–14]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires inspection of the two-way check valve on the engine fire extinguishing system for discrepancies, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent discrepancies of the check valve, which could result in improper functioning of the engine fire extinguishing system.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on September 23, 1997 (62 FR 49634). That action proposed to require inspection of the two-way check valve on the engine fire extinguishing system for

discrepancies, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $720, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–14 Saab Aircraft AB: Amendment 39–10221. Docket 97–NM–126–AD.

Applicability: Model SAAB 2000 airplanes, having serial numbers –002 through –043 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent discrepancies of the check valve, which could result in improper functioning of the engine fire extinguishing system, accomplish the following:

(a) Within 2 months after the effective date of this AD, perform an inspection of the two-way check valve on the engine fire extinguishing system for discrepancies, in accordance with Saab Service Bulletin 2000–26–010, dated July 5, 1996. If any discrepancy is found, prior to further flight, install a new two-way check valve in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Saab Service Bulletin 2000–26–010, dated July 5, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–099, dated July 8, 1996.

(e) This amendment becomes effective on January 2, 1998.

Issued in Renton, Washington, on November 19, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31030 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 95N–0214]

Policy on 180-Day Marketing Exclusivity for Drugs Marketed Under Abbreviated New Drug Applications; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Clarification.

SUMMARY: The Center for Drug Evaluation and Research (CDER) of the Food and Drug Administration (FDA) is publishing this document to clarify the status of its practices governing 180 days of marketing exclusivity for generic drugs and the approval of abbreviated new drug applications (ANDA's) subject to patent litigation. This document is being published due to recent court decisions interpreting provisions of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments).

FOR FURTHER INFORMATION CONTACT: Jerry Phillips, Center for Drug Evaluation and Research (HFD–605), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5846.

SUPPLEMENTARY INFORMATION:

I. Background

The 1984 amendments included a provision, codified under section 505(j)(4)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(4)(B)(iv)), granting 180 days of marketing exclusivity to the first applicant to submit an ANDA containing a challenge to a listed patent. Regulations interpreting this provision were proposed in 1989 (54 FR 28872, July 10, 1989), and made final in 1994 (59 FR 50338, October 3, 1994). These regulations are codified under § 314.107(c) (21 CFR 314.107(c)).

The regulations state that for a generic drug to qualify for 180 days of marketing exclusivity, the first ANDA applicant submitting a certification under section 505(j)(2)(A)(vii)(IV) of the act (paragraph IV certification) to the listed patent must, in addition to submitting the certification, be sued for patent infringement and successfully defend that suit (§ 314.107(c)). This interpretation has been the subject of legal action in *Inwood Laboratories, Inc.* v. *Young*, 723 F. Supp. 1523 (D.D.C. 1989), *vacated as moot*, 43 Fed.3d 712 (D.C.Cir. 1989); *Mova Pharmaceutical Corp.* v. *Shalala*, 955 F. Supp. 128 (D.D.C. 1997), and *Granutec, Inc. et al.* v. *Shalala et al.*, No. 5:97–CV–485–BO(1)(E.D.N.C. July 3, 1997). Both the *Inwood* and *Mova* courts held that 180 days of marketing exclusivity should be granted to the first ANDA applicant who files a paragraph IV certification, regardless of whether the applicant is subsequently sued for patent infringement. The *Mova* decision has been appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

Following the *Mova* decision, in June 1997, the Office of Generic Drugs notified applicants with ANDA's for ranitidine hydrochloride (HCl) that the agency would acquiesce to the court's holding in *Mova*, pending an appellate decision. The agency determined that temporarily acquiescing to the court's holding in *Mova* would promote administrative uniformity in the application of section 505(j)(4)(B)(iv) of the act and would prevent forum shopping among disappointed ANDA applicants. Subsequently, the U.S. District Court for the Eastern District of North Carolina addressed the validity of § 314.107(c) in *Granutec* v. *Shalala*, and, in a holding contrary to the earlier *Mova* decision, ordered FDA to follow its regulations in approving ANDA's for ranitidine HCl. The *Granutec* decision was stayed and is on expedited appeal to the U.S. Court of Appeals for the 4th Circuit.

Because the uncertain state of the law makes it difficult for the industry to make business plans and other arrangements, CDER wishes to clarify its policy with respect to these exclusivity issues, pending their final resolution by the courts.

II. 180-Day Marketing Exclusivity

It is the agency's position that, given the uncertainty created by the conflict among the courts, the most reasonable policy is to apply the 180-day exclusivity provisions of the statute as set forth in § 314.107(c) to all ANDA's to which the regulation would, on its face, apply, whether they were submitted before or after the *Mova* decision. The only ANDA's to which the agency applied the *Mova* analysis, other than those ANDA's directly involved in the *Mova* litigation, were those for ranitidine HCl.

The regulations in § 314.107(c) were issued through notice and comment rulemaking with the active participation of the pharmaceutical industry and consumer groups. They are the product of careful consideration by the agency of the complex factors at issue in granting a period of exclusivity to generic drug applicants and in ensuring that the statute is implemented in a manner most consistent with its original purpose. These regulations will be applied until such time as the appellate courts complete their analyses of the agency's interpretation.

III. Approval of ANDA's After Judgment in the District Courts

The agency does not intend to acquiesce to the court's decision in *Torpharm* v. *Shalala*, Civil Action No. 97–1925 (JR) (D.D.C. Sept. 15, 1997), in which the court, finding that the term "the court" in section 505(j)(4)(B)(iii) of the act means district court, ordered FDA to approve an ANDA after the applicant had prevailed in patent infringement litigation in the district court, but before either the appeal was resolved or the 30-month stay had lapsed. The U.S. Court of Appeals for the District of Columbia has granted the appeal of *Torpharm* an expedited review. While *Torpharm* is pending on appeal, FDA will continue to interpret the statute as described in § 314.107(e), which defines "the court" as "the court that enters final judgment from which no appeal can be or has been taken."

Dated: November 7, 1997.

Roger Williams,

Deputy Center Director for Pharmaceutical Science.

[FR Doc. 97–31150 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 47 new animal drug applications (NADA's) from Rhone Merieux, Inc., and 54 NADA's from Merck Research Laboratories, Division of Merck & Co., Inc., to Merial Ltd.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Rhone Merieux, Inc., 7101 College Blvd., Overland Park, KS 66210, and Merck Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065 has informed FDA that it has transferred ownership of, and all rights and interests in, the approved NADA's to Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077.

Accordingly, the agency is amending the regulations in 21 CFR parts 510, 520, 522, 524, and 558 to reflect the change of sponsor. The agency is also amending § 510.600(c)(1) and (c)(2) to remove the sponsor name for Rhone Merieux, Inc., and Merck Research Laboratories, Division of Merck & Co., Inc., because the firm no longer is the holder of any approved NADA's. The drug labeler code assigned to Rhone Merieux, Inc., is being retained as the drug labeler code for Merial Ltd.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 558

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entries for "Rhone Merieux, Inc." and "Merck Research Laboratories, Division of Merck & Co., Inc." and by alphabetically adding a new entry for "Merial Ltd.," and in the table in paragraph (c)(2) by removing the entry for "000006" and by revising the entry for "050604" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * *
Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077	050604
* * *	* * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * *
050604	Merial Ltd., 2100 Ronson Rd., Iselin, NJ 08830–3077
* * *	* * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.100a [Amended]

4. Section 520.100a *Amprolium drinking water* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.100b [Amended]

5. Section 520.100b *Amprolium drench* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.100c [Amended]

6. Section 520.100c *Amprolium crumbles* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.300a [Amended]

7. Section 520.300a *Cambendazole suspension* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.300b [Amended]

8. Section 520.300b *Cambendazole pellets* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.300c [Amended]

9. Section 520.300c *Cambendazole paste* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.420 [Amended]

10. Section 520.420 *Chlorothiazide tablets and boluses* is amended in paragraph (a)(2) by removing "000006" and adding in its place "050604".

§ 520.462 [Amended]

11. Section 520.462 *Clorsulon drench* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.804 [Amended]

12. Section 520.804 *Enalapril tablets* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.1192 [Amended]

13. Section 520.1192 *Ivermectin paste* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.1193 [Amended]

14. Section 520.1193 *Ivermectin tablets and chewables* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.1194 [Amended]

15. Section 520.1194 *Ivermectin drench* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.1195 [Amended]

16. Section 520.1195 *Ivermectin liquid* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.1196 [Amended]

17. Section 520.1196 *Ivermectin and pyrantel pamoate chewable tablet* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.1197 [Amended]

18. Section 520.1197 *Ivermectin sustained-release bolus* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.2170 [Amended]

19. Section 520.2170 *Sulfabromomethazine sodium boluses* is amended in paragraph (c) by removing "000006" and adding in its place "050604".

§ 520.2380a [Amended]

20. Section 520.2380a *Thiabendazole top dressing and mineral protein feed block* is amended in paragraph (c)(2) by removing "000006" and adding in its place "050604".

§ 520.2380b [Amended]

21. Section 520.2380b *Thiabendazole drench or oral paste* is amended in paragraph (c) by removing "000006" and adding in its place "050604".

§ 520.2380c [Amended]

22. Section 520.2380c *Thiabendazole bolus* is amended in paragraph (c) by removing "000006" and adding in its place "050604".

§ 520.2380d [Amended]

23. Section 520.2380d *Thiabendazole, piperazine citrate suspension* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 520.2380f [Amended]

24. Section 520.2380f *Thiabendazole, piperazine phosphate powder* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

25. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1150 [Amended]

26. Section 522.1150 *Hydrochlorothiazide injection* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 522.1192 [Amended]

27. Section 522.1192 *Ivermectin injection* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 522.1193 [Amended]

28. Section 522.1193 *Ivermectin and clorsulon injection* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 522.1452 [Amended]

29. Section 522.1452 *Nalorphine hydrochloride injection* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 522.1885 [Amended]

30. Section 522.1885 *Prednisolone tertiary butylacetate suspension* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

31. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1193 [Amended]

32. Section 524.1193 *Ivermectin pour-on* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 524.1484g [Amended]

33. Section 524.1484g *Neomycin sulfate-thiabendazole-dexamethasone solution* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

§ 524.1883 [Amended]

34. Section 524.1883 *Prednisolone sodium phosphate-neomycin sulfate ophthalmic ointment* is amended in paragraph (b) by removing "000006" and adding in its place "050604".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

35. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.55 [Amended]

36. Section 558.55 *Amprolium* is amended in paragraph (a) by removing "000006" and adding in its place "050604".

§ 558.58 [Amended]

37. Section 558.58 *Amprolium and ethopabate* is amended in the table in paragraph (d)(1), in the "Limitations" column by removing "000006" each time it appears and adding in its place "050604".

§ 558.95 [Amended]

38. Section 558.95 *Bambermycins* is amended in paragraphs (d)(1)(ii)(*b*), (d)(1)(iii)(*b*), (d)(1)(iv)(*b*), (d)(1)(v)(*b*), and (d)(1)(xiii)(*b*)(2)(iii)(*b*) by removing "000006" and adding in its place "050604".

§ 558.235 [Amended]

39. Section 558.235 *Efrotomycin* is amended in paragraph (a) by removing "000006" and adding in its place "050604".

§ 558.300 [Amended]

40. Section 558.300 *Ivermectin* is amended in paragraphs (a)(1) and (a)(2) by removing "000006" and adding in its place "050604".

§ 558.615 [Amended]

41. Section 558.615 *Thiabendazole* is amended in paragraph (a) by removing "000006" and adding in its place "050604".

Dated: November 10, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–31148 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 96N–0248]

RIN 0910–AB19

Exemption From Preemption of State and Local Cigarette and Smokeless Tobacco Requirements; Applications for Exemption Submitted by Various State Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is granting exemptions from Federal preemption for certain cigarette and smokeless tobacco requirements in Alabama, Alaska, and Utah. These exemptions will permit those States to continue to enforce certain restrictions on the sale and distribution of cigarettes and smokeless tobacco that are more stringent than FDA counterpart restrictions under its regulations.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5321.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)), any State or local requirement applicable to a device is preempted if such requirement: (1) Is different from, or in addition to, any requirement applicable under the act to the device; and (2) relates to the safety or effectiveness of the device or any

other matter included in a requirement applicable to the device under the act.

In implementing section 521 of the act, FDA historically has interpreted that provision narrowly and has found it to have preemptive effect only for those State and local requirements that, in fact, clearly impose specific requirements with respect to specific devices that are manifestly in addition to analogous Federal requirements (see § 808.1(d) (21 CFR 808.1(d)). In addition, section 521 of the act "does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act" (§ 808.1(d)(2)).

Section 521(b) of the act and its implementing regulations provide that by regulation issued after notice and an opportunity for an oral hearing, FDA may exempt a State or local requirement from preemption under such conditions as the agency may prescribe if the requirement is: (1) More stringent than a requirement under the act that would be applicable to the device if an exemption were not in effect; or (2) required by compelling local conditions and compliance with the State or local requirement would not cause the device to be in violation of any requirement applicable under the act.

In the **Federal Register** of November 7, 1996 (61 FR 57685), FDA invited all State and local governments to submit applications for exemptions from preemption for those State and local requirements pertaining to cigarettes and smokeless tobacco that are preempted by the agency's final rule at part 897 (21 CFR part 897) restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents, and that meet the exemption criteria. In order to facilitate and expedite review, FDA stated that it would consider applications in two groups. Group 1 applications are those seeking exemptions from Federal preemption of State and local age and identification requirements. Group 2 applications are those seeking exemptions from Federal preemption of State and local access, labeling, and advertising requirements.

This final rule responds to Group 1 applications for exemptions from preemption for State and local requirements governing the sale and distribution of cigarettes and smokeless tobacco that are different from, or in addition to, FDA requirements under § 897.14(a) and (b). Section 897.14(a) prohibits the sale of cigarettes or smokeless tobacco to any person under age 18. Section 897.14(b) requires that retailers verify, by means of photographic identification containing the bearer's birth date, that the person purchasing the product is at least 18 years of age. No such verification is required for persons over the age of 26.

The November 1996, **Federal Register** notice stated that Group 1 applications should be submitted by December 9, 1996, and that Group 2 applications, for exemption from preemption from any of the requirements under part 897 other than § 897.14(a) and (b), should be submitted by May 6, 1997 (61 FR 57685 at 57686).

In the **Federal Register** of February 19, 1997 (62 FR 7390), FDA issued a proposed rule responding to Group 1 applications submitted by the States of Alabama, Alaska, Utah, and Washington. The proposal gave the public 30 days to submit written comments. The comment period later was reopened for an additional 2 weeks (see 61 FR 11349, March 20, 1996).

FDA proposed to grant exemptions from Federal preemption for requirements in the States of Alabama, Alaska, and Utah. Washington State requirements were not preempted and, therefore, no exemption needed to be granted. The Alabama Code, the Alaska Statutes, and the Utah Code Annotated prohibit the sale of cigarettes or smokeless tobacco to any person under the age of 19. The proposed rule explained that these requirements are different from the age restriction contained in the tobacco rule at § 897.14(a), which prohibits sales of cigarettes or smokeless tobacco to anyone under age 18. However, the proposal stated FDA's tentative conclusion that the higher minimum age for sale of these products will provide increased health benefits and will not impose significant burdens on retailers. Therefore, to the extent that these State requirements are preempted, FDA proposed to grant them exemptions from preemption.

II. Request for a Hearing

FDA received one request for a hearing. Section 521(b) of the act requires that FDA offer an opportunity for an oral hearing to present evidence that the agency should consider before granting or denying exemptions from preemption. The request for a hearing submitted under this rulemaking raised only legal and policy issues that may be addressed adequately without holding an oral hearing. Consequently, consistent with FDA's regulation at 21 CFR 12.24(b), FDA is denying the request. The legal and policy issues raised in the request for a hearing are addressed in section III of this document.

III. Discussion of Comments

FDA received no comments about the agency's action concerning the application submitted by the State of Washington for exemption from Federal preemption for: (1) Section 26.28.080 of the Revised Code of Washington (RCW)[1], a State law prohibiting any person from selling or giving tobacco products to persons younger than 18 years of age, and (2) section 314–10–050 of the Washington Administrative Code (WAC)[2], a State regulation requiring that purchasers of tobacco products provide proof of age by providing certain Government-issued forms of identification. As discussed in the proposal (62 FR 7390 at 7393), FDA determined that portions of the State of Washington statute and regulations are narrower in scope than the tobacco rule and therefore are not preempted. Because neither RCW 26.28.080 nor WAC 314–10–050 prohibits the distribution of free samples of cigarettes and smokeless tobacco to persons 18 years or older, these provisions are less stringent than the total prohibition against free samples in the tobacco rule at § 897.16(d). In addition, to the extent that the RCW 26.28.080 and WAC 314–10–050 apply to products other than cigarettes and smokeless tobacco, they are not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other requirements with respect to products other than cigarettes or smokeless tobacco (see § 808.1(d)). Finally, WAC 314–10–050 requires purchasers to present identification establishing the purchaser's age and specifies requirements for the type of identification that the purchaser must present. Because FDA has not established any specific counterpart regulations that place an affirmative duty on the purchaser to present identification or that require a specific type of photographic identification containing the bearer's birth date, WAC 314–10–050 is not preempted. Therefore, because RCW 26.28.080 and WAC 314–10–050 are not preempted, no exemption is necessary.

FDA received 15 comments on the proposed rule. Notably, none of the comments argued that FDA should deny the applications for exemption from preemption submitted by Alabama, Alaska, or Utah. In fact, several comments specifically urged that FDA grant these applications because active enforcement of the higher minimum age for sale in the three States has resulted in a decline in illegal sales of tobacco products to underage youths.

The remaining comments, while supporting FDA's proposal to grant exemptions from preemption for the Alabama, Alaska, and Utah requirements, argued that FDA misinterpreted the scope of preemption under 521(a) of the act by failing to find that all State and local requirements that are *less* stringent than Federal counterpart requirements are preempted. These comments urged FDA to reconsider its analysis of the Supreme Court decision in *Medtronic, Inc.* v. *Lohr*, 116 S. Ct. 2240 (1996), in light of *Papike* v. *Tambrands*, 107 F.3d 737 (1997), and argued that the agency's interpretation of the narrow scope of preemption under section 521(a) of the act would undermine State and local efforts to promote public health. A few comments stated that *more* stringent State or local restrictions should not be preempted because they safeguard the public health more than Federal counterpart restrictions do. Several comments argued that *Medtronic* is not dispositive of the extent to which 521(a) of the act preempts State or local tobacco control laws because the Medtronic Court determined whether 521(a) preempts general common law duties, not whether 521(a) would preempt a specific enactment of State or local law. Comments noted that, because State tobacco statutes are positive enactments of State law, they are precisely the type of requirement that is normally preempted by specific FDA requirements.

Comments relied on the recent Ninth Circuit decision, *Papike*, to support their interpretation of *Medtronic* and the scope of preemption under 521(a) of the act. The *Papike* court held that section 521(a) of the act preempts a State common law cause of action for failure to warn because FDA has established specific counterpart labeling regulations mandating the substantive content of the warning for the particular device and disease at issue in that case. The *Papike* court distinguished the case before it, which involved specific Federal requirements applicable to a specific device, from *Medtronic*, which involved general Federal requirements (good manufacturing practices and labeling requirements). (See *Papike* at 740.) Applying the reasoning in Papike, comments argued that specific Federal tobacco requirements preempt specific, and less stringent, State or local counterpart requirements.

FDA is not persuaded that it erred in its determination that 521(a) of the act preempts more restrictive, but not less restrictive, State or local counterpart requirements. First, FDA believes that the Supreme Court in *Medtronic* has addressed the very issue of whether less restrictive State or local requirements are preempted under section 521(a) of the act. As the agency stated in the proposed rule (62 FR 7390 at 7391), the *Medtronic* Court held that State requirements that are similar to, but narrower than, FDA requirements are not preempted under section 521 of the act. The Court reasoned that, while narrower State restrictions might be "different from" their more stringent Federal counterpart restrictions, "* * * such a difference would surely provide a strange reason for finding a preemption of a state rule insofar as it duplicates the federal rule" (*Medtronic*, 116 S.Ct. at 2255). Accordingly, FDA concludes that section 521(a) of the act does not preempt State or local restrictions to the extent that they are similar to, but narrower or less stringent than, counterpart FDA restrictions.

FDA disagrees with the comments' analysis of and reliance on *Papike*. The agency agrees that a determination of whether a State or Federal requirement is general or specific in nature is essential to any analysis of preemption under section 521(a) of the act. That determination, however, is not dispositive as to whether a particular State or local requirement is preempted. Rather, if there are specific Federal and State requirements applicable to the specific device at issue, the next question is whether the State requirement is different from, or in addition to, the Federal requirement. The Court in *Medtronic* concluded that a State or local requirement that is narrower than, or duplicative of, a counterpart Federal requirement, is not "different from" the Federal requirement and, consequently, is not preempted under section 521(a) of the act.

Several comments argued that FDA weakened the standard by which a narrower State or local requirement is found to be preempted. *Medtronic* held that State requirements are not preempted if they parallel Federal requirements or insofar as they duplicate Federal requirements (Id.). In the proposed rule (62 FR 7390 at 7391), FDA paraphrased this holding in stating that State or local requirements that are similar to, but narrower than, counterpart Federal requirements are not preempted. FDA believes that it has not weakened the *Medtronic* standard and that its application of the standard articulated by the Supreme Court in *Medtronic* is required by the Court's interpretation of the scope of preemption under section 521 of the act.

Other comments argued that, as a matter of policy, the finding that less stringent State or local requirements are not preempted weakens FDA's tobacco rule and undermines State and local public health initiatives to reduce tobacco use by children and adolescents.

First, the act clearly requires that a State or local enactment be "different from," or "in addition to" a counterpart FDA requirement to be preempted, and FDA regulations enumerate the types of evidence or information that the agency will consider in determining whether to grant an exemption from preemption (see 21 CFR part 808). While the agency is always open to receiving information regarding its decisions, including evidence that a State or local requirement impairs the agency's ability to enforce its regulations, preemption does not occur under section 521 of the act absent a showing that such a requirement is "different from," or "in addition to," a specific counterpart FDA requirement. Second, as a matter of policy, FDA believes that States and localities are able to determine whether, in light of the Supreme Court's interpretation of the scope of Federal preemption under 521(a) of the act, additional or new legislation is warranted. If narrower or less stringent State or local requirements were preempted, as comments suggest, those States and localities would be left with no State or local requirements at all. Therefore, contrary to the concern

[1] RCW 26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty.

Every person who sells or gives, or permits to be sold or given to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

[2] WAC 314-10-050 Sales to persons under 18 years of age.

(1) No person may sell or give or in any way provide tobacco products to any person under 18 years of age.

(2) Any person attempting to purchase tobacco products must present identification to show he/she is at least 18 years of age upon the request of any tobacco licensee, employee of tobacco licensee or enforcement officer as defined by RCW 7.8.040.

(3) All identification used to prove age must be officially issued and contain the bearer's age, signature and photograph. The only forms of identification which are acceptable as proof of age for the purchase of tobacco products are:

(a) A liquor control authority card of identification issued by a state of the United States or province of Canada,

(b) A driver's license, instruction permit or identification card issued by a state of the United States or a province of Canada,

(c) A United States military identification card,

(d) A passport, or

(e) A merchant marine identification card issued by the United States Coast Guard.

expressed by comments, the public health protection in those jurisdictions would be diminished, not enhanced.

A few comments urged that, rather than preempt more stringent State or local requirements, FDA should leave them intact. In that case, exemptions from preemption would not be required. Section 521 of the act clearly states that State or local restrictions that are "different from" or "in addition to" FDA restrictions are preempted. However, FDA will continue to consider applications for exemptions from preemption for more stringent State or local requirements that provide greater public health protection without imposing significant burdens on interstate commerce.

One comment urged FDA to refrain from issuing general determinations concerning whether a certain type of State or local requirement is preempted. Specifically, the comment disagreed with FDA's using as an example of a narrower restriction in the proposed rule State or local laws that hold retailers to a standard lower than strict liability for selling cigarettes or smokeless tobacco to persons under 18. This comment argued that, while as a general rule *Medtronic* holds that narrower State or local laws are not preempted under section 521(a) of the act, FDA should accept evidence that a specific State or local requirement, although narrower, is nonetheless "different" from the FDA requirement and preempted under the act.

FDA believes that it is important to provide States and localities with examples of how to apply the agency's interpretation of the scope of preemption under section 521 of the act, especially because the agency refined its interpretation of *Medtronic*. By providing an example FDA intends to assist States and localities in determining whether they need to apply for an exemption. FDA agrees with the comment that the agency must determine whether a particular requirement is preempted on a case-by-case basis considering, among other factors, the statutory, regulatory or other language, any judicial or administrative interpretations, and any information regarding implementation or enforcement of the requirement. Therefore, FDA remains open to receiving specific information regarding a particular State or local requirement and would consider the information in determining whether the requirement were preempted under section 521(a) of the act.

Several comments suggested that FDA preempt certain types of requirements, including State laws that hold retailers to a standard lower than strict liability for illegally selling tobacco products to minors, and State laws that prohibit using minors to aid in the inspection of tobacco retailers[3]. Comments argued that these types of requirements should be preempted because they frustrate the purpose of the tobacco rule by making it difficult for FDA to enforce the Federal requirements.

First, FDA continues to believe that under *Medtronic* State or local requirements holding retailers liable for knowingly or negligently selling cigarettes or smokeless tobacco to persons under age 18 are not preempted. As explained in the proposal (62 FR 7390 at 7391), State or local statutes that require proving a retailer's negligence or knowledge in an underage sale are similar to counterpart Federal requirements holding retailers strictly liable for illegally selling cigarettes or smokeless tobacco to minors, but they are narrower in scope than the tobacco rule's prohibition of sales to persons under age 18 and therefore are not preempted. Second, because FDA does not have before it a positive enactment to consider, the agency declines to issue an opinion on the preemptive effect of section 521 of the act on the types of requirements that prohibit the use of minors in inspections. Without a specific State or local enactment before the agency, including any legislative, administrative, judicial or enforcement history, the agency cannot determine the effect of either section 521(a) of the act or more general principles of Federal preemption.

Therefore, in response to applications received, FDA is granting exemptions from Federal preemption for certain State requirements in Alabama, Alaska, and Utah relating to cigarettes or smokeless tobacco.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 808 is amended as follows:

[3] To ensure that retailers are complying with the tobacco rule and refusing to sell cigarettes or smokeless tobacco to persons under age 18, FDA will conduct compliance checks, wherein an adolescent, accompanied by a State commissioned officer, will attempt to purchase cigarettes or smokeless tobacco.

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

2. Section 808.51 is added to subpart C to read as follows:

§ 808.51 Alabama.

To the extent that the age restriction on the sale, barter, and exchange of cigarettes and smokeless tobacco found in Alabama Code, section 13A–12–3, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

3. Section 808.52 is added to subpart C to read as follows:

§ 808.52 Alaska.

To the extent that the age restriction on the sale and exchange of cigarettes and smokeless tobacco found in Alaska Statutes, sections 11.76.100(a), is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

4. Section 808.94 is added to subpart C to read as follows:

§ 808.94 Utah.

To the extent that the age restriction on sales of cigarettes and smokeless tobacco found in the Utah Code Annotated, section 76–10–104, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

Dated: November 18, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–31213 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

RIN 1029–AB90

Implementation of the Debt Collection Improvement Act of 1996

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, by adjusting for inflation, certain civil money penalties authorized by the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, Room 117, South Interior Building, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone (202) 208–2701. E-Mail/Internet: adevito@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Debt Collection Improvement Act of 1996

B. Civil Money Penalties Affected by this Adjustment

II. Procedural Matters

A. Effect in Federal Program States and on Indian Lands

B. Effect on State Programs

C. Administrative Procedure Act

D. Executive Order 12866

E. Regulatory Flexibility Act

F. Unfunded Mandates Reform Act

G. Federal Paperwork Reduction Act

H. National Environmental Policy Act

I. Executive Order 12988 on Civil Justice Reform

I. Background

A. The Debt Collection Improvement Act of 1996

In an effort to maintain the deterrent effect of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (the Act) (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the Act requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter.

Under the amended Act, the inflation adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment which is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The amended Act further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (1) Should apply only to violations that occur after the date the increase takes effect, and (2) should not exceed 10 percent of the penalty indicated.

B. Civil Money Penalties Affected By This Adjustment

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. The regulations of the Office of Surface Mining Reclamation and Enforcement (OSM) implementing the CMP provisions of section 518 of SMCRA are located in 30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14. Sections 723.14 and 723.15 were promulgated on September 4, 1980 (45 FR 58783), sections 845.14 and 845.15 on August 16, 1982 (47 FR 35640), and sections 724.14 and 846.14 on February 8, 1988 (53 FR 3664). The CMPs have not been adjusted since the regulations were first issued. Since the cost-of-living adjustment described above would exceed 10 percent of the CMP, the adjustments being made to the CMPs by this rule are being limited to a 10 percent increase as directed by section 7 of the amended Act.

II. Procedural Matters

A. Effect in Federal Program States and on Indian Lands

The rule will apply through cross-referencing to the following Federal program states: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, respectively. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR 750.

B. Effect on State Programs

Section 518(i) of SMCRA and 30 CFR 840.13(a) require that the civil penalty provisions of each State program contain penalties which are "no less stringent than" those set forth in SMCRA. Following promulgation of the final rule, OSM will evaluate State programs approved under section 503 of SMCRA to determine any changes in those programs that will be necessary. When OSM determines that a particular State program provision should be amended in order to be made no less stringent than the revised Federal regulations, the particular States will be notified in accordance with the provisions of 30 CFR 732.17.

C. Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. OSM has determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking is consistent with the statutory authority set forth in the Debt Collection Improvement Act of 1996. In that Act, Congress required that the agency issue the inflation adjustment amendments contained in this rule and provided no discretion to the agency regarding either their substance or their issuance. These same reasons also provide OSM with good cause under 5 U.S.C. 553(d)(3) of the APA to have the regulation become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

D. Executive Order 12866

This rule is not considered a significant regulatory action under the provisions of Executive Order 12866. The rule adjusts OSM's CMPs according to the formula contained in the law. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to these regulations do not engage in prohibited activities and practices, and, as a result, OSM believes that the aggregate economic impact of these revised regulations will be minimal, affecting only those who may engage in prohibited behavior in violation of SMCRA. Consequently, the amount of the CMPs assessed under the revised schedule are not expected to exceed the threshold contained in Executive Order 12866 for an economically significant rule.

E. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed revision would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While some penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in issuance of a violation notice and the assessment of a CMP. The aggregate economic impact of this rulemaking on small business entities

should be minimal, affecting only those who violate the provisions of SMCRA.

F. Unfunded Mandates Reform Act

For purposes of compliance with the Unfunded Mandates Reform Act of 1995, this rule does not impose any obligations that individually or cumulatively would require an aggregate expenditure of $100 million or more by State, local, and Tribal governments and the private sector in any given year.

G. Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

H. National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the requirement to prepare an environmental document under the National Environmental Policy Act of 1969. This determination was made in accordance with the Departmental Manual (516 DM 2, Appendix 1.10).

I. Executive Order 12988 on Civil Justice Reform

The Department of the Interior has determined that this rule meets the requirements of sections (3)(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (61 FR 4729).

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: October 28, 1997.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 723, 724, 845, and 846 are amended as follows.

PART 723—CIVIL PENALTIES

1. The authority citation for Part 723 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

2. Section 723.14 is amended by revising the table to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

3. In Section 723.15, paragraph (b) is revised by changing the dollar amount "$750" to "$825."

PART 724—INDIVIDUAL CIVIL PENALTIES

4. The authority citation for Part 724 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

5. Section 724.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty shall not exceed $5,500 for each violation. * * *

PART 845—CIVIL PENALTIES

6. The authority citation for Part 845 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 100–202, Pub. L. 100–446, Pub. L. 101–410, and Pub. L. 104–134.

7. Section 845.14 is amended by revising the table to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484

Points	Dollars
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950
66	5,060
67	5,170
68	5,280
69	5,390
70	5,500

8. In Section 845.15, paragraph (b) is revised by changing the dollar amount "$750" to "$825."

PART 846—INDIVIDUAL CIVIL PENALTIES

9. The authority citation for Part 846 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34, Pub. L. 101–410, and Pub. L. 104–134.

10. Section 846.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty shall not exceed $5,500 for each violation. * * *

[FR Doc. 97–31267 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH73

Loan Guaranty: Electronic Payment of Funding Fee

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the VA loan guaranty regulations to require that all funding fees (including late fees and interest) for VA-guaranteed loans be paid electronically through the Automated Clearing House (ACH) program. The adoption of the ACH program will eliminate lost mail and eliminate data errors resulting from manual recording. Further accounting reconciliation will be reduced. In addition, banking costs will be reduced. This document also corrects a typographical error in the "Allowable fees and charges: manufactured home unit" section.

DATES: *Effective date:* January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: On May 7, 1997, VA published in the **Federal Register** (62 FR 24872) proposed regulations that would require mortgage lenders to pay all funding fees (including late fees and interest) for VA-guaranteed loans electronically through the ACH program effective January 1, 1998. The regulations provide three methods for making payments through the ACH program and specify the standard information the lender must provide the collection agent when submitting loan guaranty funding fees. Please refer to the May 7, 1997, **Federal Register** for a complete discussion of the proposed amendments.

Public comments were requested on the proposal. The comment period ended July 7, 1997. VA received one comment. The comment supported the proposal. The commenter, the Financial Management Service of the Department of the Treasury, stated "that the proposed rule change will bring significant cost savings to VA's internal operations and provide cash management savings to the Department of the Treasury."

Based on the rationale set forth in the proposal and this document, the proposed rule is adopted as a final rule without change.

Paperwork Reduction Act

Information collection and recordkeeping requirements associated with the final rule (38 CFR 36.4232, 36.4254, and 36.4312) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0474. The information collection subject to this rulemaking concerns the requirement that lenders provide VA information necessary to get set up on the ACH system to pay the funding fee electronically and the existing requirement that lenders provide VA certain standard information when submitting loan guaranty funding fees. Interested parties were invited to submit comments on the collection of information. However, no comments were received regarding the collection of information.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule implements a program that will enhance operations and be cost beneficial for all participating lenders. Lenders will be able to participate by having access to a personal computer, and personal computing is pervasive within the industry. Lenders will also have the option of paying funding fees by calling an operator who will enter the information into the ACH system for them. Funding fees represent actions that have insignificant impact on lenders. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

Approved: September 3, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4232, paragraph (e)(1) is amended by removing "(e)(4)" and adding, in its place, "(e)(5)"; paragraphs (e)(2) and (e)(3) are amended by removing "paragraphs (e)(4) and" and adding, in its place, "paragraph"; and by redesignating paragraph (e)(4) as paragraph (e)(5); by adding a new paragraph (e)(4); and by revising the parenthetical at the end of the section to read as follows:

§ 36.4232 Allowable fees and charges; manufactured home unit.

* * * * *

(e) * * *

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or central processing unit-to-central processing unit (CPU-to-CPU) transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900–0474 and 2900–0516.)

3. Section 36.4254 is amended by redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively; by adding a new paragraph (d)(4); and by adding a parenthetical at the end of the section to read as follows:

§ 36.4254 Fees and charges.

* * * * *

(d) * * *

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (d)(1) and (d)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0474.)

4. Section 36.4312 is amended by redesignating paragraph (e)(4) as paragraph (e)(5); by adding a new paragraph (e)(4); and by revising the parenthetical at the end of the section to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(e) * * *

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

* * * * *

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900–0474 and 2900–0516.)

[FR Doc. 97–30709 Filed 11–26–97; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 966

Rules of Practice in Proceedings Relative to Administrative Offsets Initiated Against Former Employees of the Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Judicial Officer of the Postal Service hereby revises the rules of procedure governing the conduct of hearings relative to administrative offsets initiated by the Postal Service. This revision transfers the authority to pursue a claim from the Postal Inspection Service to other Postal Service officials, and expands the types of debt that can be considered in these proceedings. Part 966 is renamed to reflect these changes.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Norman D. Menegat, (202) 268–2138.

SUPPLEMENTARY INFORMATION: Acting in accordance with authority delegated under 39 CFR 226.2(e)(1)(iv), the Judicial Officer revises as set forth below 39 CFR Part 966, the rules of practice governing proceedings relative to administrative offsets initiated by the Postal Service. The rules in this part apply to any hearing on the Postal Service's determination of the existence or amount of a debt owed the Postal Service by a former postal employee or on the terms of the Postal Service's proposed debt repayment schedule.

The purpose of the revision is to transfer the authority to pursue a claim against a former employee from the Postal Inspection Service to other Postal Service officials. Under the previous rules, the Inspection Service initially asserted a claim against the former employee, received and acted upon the former employee's request for reconsideration and represented the Postal Service in any hearing requested by the former employee under Part 966. Under the revised rules, the claim will be initially asserted by the Postal Service's Minneapolis Accounting Service Center. Reconsideration of the claim, if sought by the former employee, is to be requested from the former employee's Postmaster/Installation Head, and the General Counsel or that officer's designee will represent the Postal Service in any hearing under Part 966.

The types of debt that could be considered in these proceedings were previously limited to those "based on a loss from the mails or from Postal Service revenues." That limitation has been removed, and these procedures apply to debts the Postal Service determines the former employee owes, regardless of the basis of the debt. Additionally, the new rules provide that a former employee whose liability or offset schedule was finally determined while he or she was employed by the Postal Service may not obtain a hearing on the same debt or offset schedule under these procedures after separating from the Postal Service. The revised regulation includes other minor, clarifying changes, including that an oral hearing may be held by telephone or video conference as well as in person.

These revisions are changes in agency rules of procedure that do not substantially affect any rights or obligations of private parties. Therefore, it is appropriate for their adoption by the Postal Service to become effective immediately.

List of Subjects in 39 CFR Part 966

Administrative practice and procedure, Claims, Debt Collection Act, rules of practice, Postal Service.

Accordingly, the Postal Service revises 39 CFR Part 966 to read as set forth below:

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

Sec.
Sec. 966.1 Authority for rules.
Sec. 966.2 Scope of rules.
Sec. 966.3 Definitions.
Sec. 966.4 Petition for a hearing and supplement to petition.
Sec. 966.5 Effect of petition filing.
Sec. 966.6 Filing, docketing and serving documents; computation of time; representation of parties.
Sec. 966.7 Answer to petition.
Sec. 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.
Sec. 966.9 Opportunity for oral hearing.
Sec. 966.10 Initial decision.
Sec. 966.11 Appeal.
Sec. 966.12 Waiver of rights.
Sec. 966.13 Ex parte communications.

Authority: 39 U.S.C. 204, 401, 2601.

§ 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

(a) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment; and/or

(b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

§ 966.3 Definitions.

(a) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(b) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(c) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation. Postal Service Form 50.

(d) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(e) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(f) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(g) *Postmaster/Installation Head* refers to the top management official at a particular post office or installation when an alleged debt owed by a former employee was incurred, or to that official's successor, or to the department head who had general supervisory responsibility for a former employee at Area Offices or National Headquarters when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was a Postmaster/Installation Head, the term refers to the official to whom the Postmaster/Installation Head reported when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Inspection Service, the term refers to the former employee's immediate supervisor when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Office of Inspector General, the term refers to the Inspector General, or to the Inspector General's delegate.

(h) *Reconsideration* refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Postmaster/Installation Head at the request of a former employee alleged to be indebted to the Postal Service.

(i) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

§ 966.4 Petition for a hearing and supplement to petition.

(a) A former employee who is alleged to be responsible for a debt to the Postal Service may petition for a hearing under this part, provided:

(1) Liability for the debt and/or the proposed offset schedule has not been established under Part 452.3 or Part 462.3 of the Employee & Labor Relations Manual;

(2) He or she has received a Notice from the Minneapolis Accounting Service Center (or its successor installation) informing him or her of the debt and an offset schedule to satisfy the debt and of the right to request

reconsideration by the Postmaster/Installation Head; and

(3) He or she has requested and received reconsideration of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service.

(b) Within thirty (30) calendar days after the date of receipt of the Postmaster/Installation Head's written decision upon reconsideration, the former employee must file a written, signed petition, requesting a written or oral hearing, with the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

(c) The petition must include the following:

(1) The words, "Petition for Review Under 39 CFR Part 966";

(2) The former employee's name and social security number;

(3) The former employee's home address and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Postmaster/Installation Head's written decision upon reconsideration of the alleged debt, and a copy of the decision;

(5) A statement indicating whether the former employee requests an oral hearing or a decision based solely on written submissions;

(6) If the former employee requests an oral hearing, a statement describing the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the former employee expects to call; a summary of the testimony the witnesses are expected to present; the city requested for the hearing site, with justification for holding the hearing in that city; and at least three proposed dates for the hearing at least forty-five (45) days after the filing of the petition;

(7) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(8) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(d) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

§ 966.5 Effect of petition filing.

Upon receipt and docketing of the former employee's petition, the Recorder will notify the General Counsel that the petition has been filed and that a timely filed petition stays further collection action.

§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents required under this part must be filed by the former employee or the General Counsel in triplicate with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and General Counsel should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the General Counsel. If a former employee is represented by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States, further transmissions of documents and other communications with the former employee shall be made through his or her attorney rather than directly with the former employee.

§ 966.7 Answer to petition.

Within thirty (30) days after the date of receipt of the petition, the General Counsel shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim; a statement of whether the Postal Service concurs in, or objects to, an oral hearing, if the former employee requests one, with the reason(s) for the Postal Service's objection; a list of witnesses the Postal Service intends to call if an oral hearing is requested and the request is granted; a synopsis of the testimony of each witness; a statement of concurrence or objection to the proposed location and dates for the oral hearing; and a statement of the basis for the determination of debt or offset schedule if not contained in the relevant records or documents. If the former employee files a supplement to the petition, the General Counsel may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

§ 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.

(a) In processing a case under this part, the Hearing Official's authority includes, but is not limited to, the following:

(1) Ruling on all offers, motions, or requests by the parties;

(2) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(3) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);

(4) Determining if an oral hearing is necessary, the type of oral hearing that would be appropriate, and setting the place, date, and time for such hearing;

(5) Administering oaths or affirmations to witnesses;

(6) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable, and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial, or repetitious evidence is excluded;

(7) Establishing the record in the case;

(8) Issuing an initial decision or one on remand; and

(9) Granting, at the request of either party, reasonable time extensions.

(b) The Judicial Officer, in addition to possessing such authority as is described elsewhere in this part, shall possess all of the authority and responsibilities of a Hearing Official.

§ 966.9 Opportunity for oral hearing.

An oral hearing generally will be held only in those cases which, in the opinion of the Hearing Official, cannot be resolved by a review of the documentary evidence, such as when the existence, or amount, of a debt turns on issues of credibility or veracity. An oral hearing includes an in-person hearing, a telephonic hearing, or a hearing by video conference. When the Hearing Official determines that an oral hearing is not necessary, the decision shall be based solely on written submissions.

§ 966.10 Initial decision.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision.

(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

§ 966.11 Appeal.

The initial or tentative decision will become final and an order to that effect will be issued by the Judicial Officer thirty (30) days after issuance and receipt by the parties of the initial or tentative decision unless the Judicial Officer, in his discretion, grants review upon appeal by either party, or on his own motion. If an appeal is denied, the initial or tentative decision becomes the final agency decision upon the issuance of such denial. The Judicial Officer's decision on appeal is the final agency decision with no further right of appeal within the agency.

§ 966.12 Waiver of rights.

The Hearing Official may determine the former employee has waived his or her right to a hearing and administrative offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

§ 966.13 Ex parte communications.

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30010 Filed 11–26–97; 8:45 am]

BILLING CODE 7710-12-P

Proposed Rules

Federal Register
Vol. 62, No. 229
Friday, November 28, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AH61

Federal Employees Health Benefits Program: Disenrollment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations that are consistent with existing administrative procedures requiring employing offices to provide information about enrollees in the Federal Employees Health Benefits (FEHB) Program to the carriers of the FEHB plans in which they are enrolled. Carriers are also required to use the information provided by employing offices to reconcile their enrollment records. The proposed regulations would also regularize the conditions that would allow carriers to disenroll individuals when their employing office of record does not show them as enrolled in the carrier's plan and the carrier is otherwise unable to verify the enrollment. The purpose of these proposed regulations is to facilitate reconciliation of carrier and employing office enrollment records, especially in cases where the carrier has not previously received a notice showing an enrollment no longer is valid.

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Send written comments to Frank D. Titus, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Margaret Sears (202) 606–0004.

SUPPLEMENTARY INFORMATION: The proposed regulations are consistent with existing procedures that require employing offices to report to each carrier on a quarterly basis the names and certain other data about employees and other individuals serviced through its payroll office(s) who are enrolled in the carrier's plan. OPM would specify the format and the information to be contained in the report, such as the individual's Social Security Number and the amount of withholdings and contributions for that individual. Carriers would use the information to reconcile their enrollment records.

Currently, when the carrier receives a quarterly report, it is required by contract to compare the enrollees listed with its own record of enrollees for that payroll office. If the carrier records show an enrollee that is not listed by the payroll office, the carrier contacts the payroll office for an explanation. The payroll office provides documentation to resolve the discrepancy or gives the reason the employee is no longer in the plan or no longer on the payroll (for example, the employee canceled the enrollment, separated from Federal service, retired, changed plans, or transferred to a different agency) and the effective date of the change.

The proposed regulations would adopt as regulatory requirements the current administrative quarterly reporting requirement and the requirement for carriers to use the information to reconcile their enrollment records. If the payroll office of record with the carrier is unable to provide information about the enrollment, the proposed regulations would give the carrier the authority to disenroll the individual, after giving him or her the opportunity to respond. Carriers do not currently have the authority to disenroll individuals.

The proposed regulations also provide an administrative procedure for notifying the enrollee of the disenrollment. Under these procedures the carrier would be required to notify the enrollee that the employing agency of record did not show him or her as enrolled. The enrollee would have 31 days after the date of the notice to provide documentation showing that he or she was enrolled in the plan. If the enrollee did not provide such documentation within the required time frame, the carrier would disenroll him or her without further notice.

Under the proposed regulations the employee or annuitant could ask his or her employing office or retirement system to reconsider the carrier's decision to disenroll the enrollee. The employing office would be required to notify both the enrollee and the carrier of its determination, fully explaining its findings and conclusions.

We expect that few individuals would reach the end of this process without their actual enrollment status becoming clear. However, in the event that an individual was disenrolled under the proposed regulations and it is later discovered that another provision of the regulations should have been applied to the individual's circumstances, the disenrollment under this regulation would become void and the enrollment would be reinstated retroactively to the date of the disenrollment. For example, if it later became clear that the individual's enrollment should have continued because he or she retired under circumstances allowing continued enrollment, the disenrollment would become void.

The proposed regulations would allow a carrier to end a self only enrollment upon receipt of reliable information that the enrollee had died. A carrier may learn of the death of an enrollee when it processes the claim for hospital or physician costs incurred at the time of death. It may also learn of an enrollee's death when correspondence is returned by the Postal Service with the notation that the addressee is deceased. These would be considered reliable sources. Since proof of death is not required, the carrier would send notification of its action to the enrollee so that the enrollee, if still living, could so inform the carrier. The discovery that the report of death was in error would void the disenrollment.

The proposed regulations would allow a carrier to disenroll a child survivor annuitant when the child becomes age 22, unless the carrier has information indicating that the child is eligible for continued coverage because the child is incapable of self support due to a physical or mental disability. The proposed regulations include an administrative procedure under which the child can ask the retirement system to reconsider the carrier's decision to disenroll the child. The carrier is also required to provide the child with notice of his or her conversion right and possible eligibility for temporary continuation of coverage.

Finally, the proposed regulations allow the carrier to disenroll a former employee who notifies the carrier that he or she has separated from Federal employment under circumstances that do not entitle him or her to an immediate annuity. The carrier would be required to send the individual a written notice prescribed or approved by OPM.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect administrative procedures for Federal agencies and health benefit carriers that participate in the FEHB Program.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102(f) also issued under sec. 153 of Pub. L. 104–134; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In subpart A, § 890.110 is added to read as follows:

§ 890.110 Enrollment reconciliation.

(a) Each employing office must report to each carrier on a quarterly basis the names of the individuals who are enrolled in the carrier's plan in a format and containing such information as required by OPM.

(b) The carrier must compare the data provided with its own enrollment records. When the carrier finds in its aggregate enrollment records individuals whose names do not appear in the report from the employing office of record, the carrier must request the employing office to provide the documentation necessary to resolve the discrepancy.

3. In subpart C, § 890.308 is added to read as follows:

§ 890.308 Disenrollment.

(a)(1) Except as otherwise provided in this section, a carrier that cannot reconcile its record of an individual's enrollment with agency enrollment records must provide written notice to the individual that the employing office of record does not show him or her as enrolled in the carrier's plan and that he or she will be disenrolled 31 days after the date of the notice unless the enrollee provides appropriate documentation to resolve the discrepancy. Appropriate documentation includes, but is not limited to, a copy of the Standard Form 2809 (basic enrollment document), the Standard Form 2810 transferring the enrollment into the gaining employing office (or the equivalent electronic submission), copies of earnings and leave statements or annuity statements showing withholdings for the health benefits plan, or a document or other credible information from the enrollee's employing office stating that the employee is entitled to continued enrollment in the plan and that the premiums are being paid.

(2) If the carrier does not receive documentation required under paragraph (a)(1) of this section within the specified time frame, the carrier must disenroll the individual, without further notice.

(3) The enrollee may request his or her employing office to reconsider the carrier's decision to disenroll the individual. The request for reconsideration must be made in writing and must include the enrollee's name, address, Social Security Number or other personal identification number, name of carrier, reason(s) for the request, and, if applicable, retirement claim number.

(4) A request for reconsideration of the carrier's decision must be filed within 60 calendar days after the date of the carrier's disenrollment notice. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(5) After reconsideration, the employing office must issue a written notice of its final decision to the individual and the carrier. The notice must fully set forth the findings and conclusions on which the decision was based.

(6) If, at any time after the disenrollment has occurred, the employing office or OPM determines that another provision of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under paragraph (a)(2) of this section is void and coverage is reinstated retroactively.

(b) When a carrier receives, from any reliable source, information of the death of an enrollee with a self only enrollment, the carrier may take action to disenroll the individual on the date set forth in § 890.304(a)(1)(iv) or § 890.304(b)(4) of this part, as appropriate. The carrier must attempt to notify the affected individual or a family member of the disenrollment. If, at any time after the disenrollment has occurred, the employing office or OPM determines that another provision of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under this paragraph (b) is void and coverage is reinstated retroactively.

(c)(1) When a child survivor annuitant covered under a self only enrollment reaches age 22, the carrier may take action to disenroll the individual effective with the date set forth in § 890.304(c)(1) unless records with the carrier indicate that the child is incapable of self support due to a physical or mental disability. The carrier must provide the enrollee with a written notice of disenrollment prescribed or approved by OPM.

(2) The child survivor enrollee may request the retirement system to reconsider the carrier's decision to disenroll the individual. The request for reconsideration must be made in writing and include the enrollee's name, address, Social Security Number or other identifier, name of carrier, reason(s) for the request, and the survivor annuity claim number.

(3) A request for reconsideration of the carrier's decision must be filed with the retirement system within 30 calendar days from the date of the carrier's disenrollment notice. The time limit on filing may be extended when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(4) After reconsideration, the retirement system must issue a written

notice of its final decision to the individual and provide a copy to the carrier. The notice must fully set forth the findings and conclusions on which the decision was based.

(5) If, at any time after the disenrollment has occurred, the employing office or OPM determines that another provision of this part applies to the individual's enrollment or the carrier discovers or receives appropriate documentation showing that another section of this part applies to the individual's enrollment, the disenrollment under paragraph (c)(1) of this section is void and coverage is reinstated retroactively.

(d) When an enrollee notifies the carrier that he or she has separated from Federal employment and is no longer eligible for enrollment, the carrier must disenroll the individual, subject to the 31-day temporary extension of coverage and conversion right under § 890.401, on the last day of the pay period in which the separation occurred, if known, otherwise the carrier must disenroll the employee on the date the employee provides as the date of separation. The carrier must notify the enrollee of his or her right to convert to a nongroup contract with the carrier and possible eligibility to enroll under the temporary continuation of coverage provisions as set forth in subpart K of this part based on the termination of enrollment as provided under § 890.304(a)(1)(i).

[FR Doc. 97–31166 Filed 11–26–97; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 97–006P]

RIN 0583–AC33

Addition of Mexico to the List of Countries Eligible to Export Poultry Products Into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to add Mexico to the list of countries eligible to export poultry products into the United States. Reviews of Mexico's laws, regulations, and other materials show that its poultry processing system meets requirements equivalent to all provisions in the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Only poultry products that have been slaughtered in federally inspected establishments in the United States or in establishments in other countries eligible to export poultry to the United States and have then been processed in certified Mexican establishments would be permitted to be imported into the United States. All poultry products exported from Mexico to the United States must be reinspected at the U.S. ports-of-entry by FSIS inspectors.

This action would enable certified poultry processing establishments in Mexico to export processed poultry products into the United States.

DATES: Comments must be received on or before January 27, 1998.

ADDRESSES: Send an original and two copies of comments to: FSIS Docket Clerk, Docket #97–006P, Room 102, Cotton Annex, 300 C Street, SW, Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis, Director, International Policy Development Division, Office of Policy, Program Development and Evaluation; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend the poultry products inspection regulations to add Mexico to the list of countries eligible to export poultry products to the United States. Section 17 of the PPIA (21 U.S.C. 466) prohibits the importation into the United States of slaughtered poultry or poultry products unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient which renders them unhealthful, unwholesome, adulterated, or unfit for human food. Imported poultry products must be in compliance with the poultry products inspection regulations to ensure that they meet the standards provided in the PPIA. 9 CFR 381.196 establishes the procedures by which foreign countries wanting to export poultry or poultry products to the United States may become eligible to do so.

Section 381.196(a) requires authorities in a foreign country's poultry inspection system to certify that (1) the system provides standards equivalent to those of the United States and (2) the legal authority for the system and its implementing regulations are equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States in the following areas: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; and (6) official controls over condemned product.

Section 381.196 also requires a poultry inspection system maintained by a foreign country, with respect to establishments preparing products in that country for export to the United States, to ensure that those establishments and their poultry products comply with requirements equivalent to the provisions of the PPIA and the poultry products inspection regulations. Foreign country authorities must be able to ensure that all certifications required under Subpart T of the poultry product inspection regulations (Imported Poultry Products) can be relied upon before approval to export poultry and poultry products to the United States may be granted. Here, the government of Mexico would be responsible for establishing a system of controls to ensure that only poultry from eligible countries and establishments is used in poultry products processed in Mexico and destined for the United States. Besides relying on its initial determination of a country's eligibility, coupled with ongoing reviews to ensure that products shipped to the United States are safe, wholesome and properly labeled and packaged, FSIS randomly samples imported meat and poultry products for reinspection as they enter the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry and poultry products can be granted. This evaluation consists of two processes: a document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to operate its inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in

five risk areas. These five risk areas, which are the focus of the evaluation, are contamination, disease, processing, residues, and compliance/economic fraud. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, on-site reviews are scheduled using a multi-disciplinary team to evaluate all aspects of the country's delivery of its inspection program, including laboratories and individual establishments within the country.

Evaluation of the Mexican Inspection System

In 1988, following an in-depth evaluation of its meat inspection system, Mexico was granted eligibility to export fresh and further processed meat products subject to the Federal Meat Inspection Act to the United States. The government agency in Mexico responsible for inspecting meat for export to the United States also has authority over poultry inspection. Thus, the authorities operating the Mexican inspection system have for several years demonstrated their knowledge of the U.S. inspection system, and successfully provided inspection equivalence for fresh and processed meat.

In response to a request from the Mexican government for approval to export poultry to the United States, FSIS conducted a review of the Mexican poultry inspection system to determine if it was equivalent to the U.S. poultry inspection system. First, FSIS compared Mexico's poultry inspection laws and regulations with U.S. requirements. The study concluded that the requirements contained in Mexico's poultry inspection laws and regulations are equivalent to those mandated by the PPIA and implementing regulations. FSIS then conducted an on-site review of the Mexican poultry inspection system in operation. This review was conducted between May 28 and June 5, 1996. The FSIS review team concluded that Mexico's implementation of poultry processing standards and procedures was equivalent to that of the United States and that Mexico's official residue control laboratory was fully capable of testing poultry products. The parties have agreed to postpone final decision making regarding Mexico's implementation of slaughter processing standards and procedures until a later date. As a result, poultry processed in Mexican establishments approved to export to the United States must be slaughtered in the United States under USDA inspection or in establishments in other countries that are certified as eligible to export to the United States. The Mexican government has agreed to conduct its program in a way that ensures that only poultry from eligible countries and establishments is used in poultry products processed in Mexico destined for the United States.

All lots of poultry products exported to the United States from Mexico will be reinspected at the ports-of-entry for transportation damage, labeling, proper certification, general condition and accurate count. Other types of inspection will also be conducted, including examining the product for defects and performing laboratory analyses that will detect chemical residues on the product or determine whether the product is microbiologically contaminated.

Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be stamped "U.S. Refused Entry" and must be reexported, destroyed or converted to animal food.

Accordingly, FSIS is proposing to amend § 381.196 of the poultry products inspection regulations to add Mexico as a country from which poultry products may be eligible for import into the United States. As a country eligible to export poultry products into the United States, the government of Mexico would certify to FSIS those establishments wishing to export such products to the United States and operating according to U.S. requirements. FSIS would retain the right to verify that establishments certified by the Mexican government are meeting the U.S. requirements. This would be done through on-site reviews of the establishments while they are in operation.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) all state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant and has been reviewed by OMB under Executive Order 12866.

In accordance with 5 U.S.C. 603, FSIS has also conducted an initial regulatory flexibility analysis regarding the impact of the rule on small entities. However, FSIS does not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, FSIS is inviting comments concerning potential effects. In particular, FSIS is interested in determining the number and type of small entities that may incur benefits or costs from implementation of this proposed rule.

This proposed rule would add Mexico to the list of countries eligible to export poultry products into the United States. However, through use of required certificates, poultry imports from Mexico would be limited to only products derived from carcasses slaughtered under federal inspection in the United States or slaughtered under the inspection systems of other countries that are now eligible to export poultry to the United States. Currently, only Canada, Great Britain, France, Israel and Hong Kong are on the list of countries eligible to export poultry products into the United States. Any exports from Hong Kong are restricted to products slaughtered under federal inspection in the United States or slaughtered in the inspection systems of Canada, Great Britain, France or Israel.

With implementation of the proposed rule, FSIS expects to see some domestic poultry establishments shipping whole carcasses or parts of carcasses to certified Mexican establishments. These carcasses or parts of carcasses would then be cut-up, deboned or further processed in these Mexican establishments. Some processed poultry products, particularly higher valued products such as boneless breast meat, would then be shipped to markets in the United States. Products shipped to the United States could also include poultry sausage and other cooked products.

As this process unfolds, total pounds of poultry exports would go up. Because some further processed products would be shipped back to the United States, imports of poultry products would also increase. A corresponding decrease in domestic jobs associated with cutting and deboning operations would occur.

With implementation, poultry firms could lower overall processing costs by having labor-intensive cut-up and deboning operations performed in certified Mexican establishments where wages can be expected to be lower. However, FSIS believes the potential for any significant changes in overall production costs would be limited. First, cut-up and boning operations are currently conducted by relatively lower wage employees. The value added by these operations is relatively small. In 1996, wholesale prices of whole broilers

averaged $.61 per pound, whereas wholesale prices of cut-up broilers averaged $.66 per pound. Second, the potential for lowering production costs using lower wage employees would be offset by export fees, import fees and increased shipping/transportation costs.

Considering these factors, FSIS does not anticipate any measurable change in market prices for processed poultry products. Because of shipping and transportation costs, FSIS expects most of the change to be limited to firms located relatively close to the Mexican border. For the same reasons, FSIS does not expect to see increases in poultry imports from Mexico processed from birds slaughtered in other countries such as Canada and Great Britain. Currently, Mexico imports very little poultry from other countries. In 1996, Mexico imported approximately 396 million pounds of poultry and poultry products. More than 97 percent was imported from the United States.

FSIS does not believe this rule would offset enough product to affect domestic poultry prices. In 1996, U.S. poultry production was approximately 32.3 billion pounds on a ready-to-cook carcass weight basis. The United States exported approximately 386 million pounds to Mexico. With this rule, exports would likely increase more than imports on a pound basis. However, considering that imports would consist of value-added products, it is possible that the dollar value of imports will increase more than the value of exports.

As noted above, FSIS is requesting comments on the potential effect of this proposal on small entities. While most poultry is cut-up and boned in large firms, there are many small businesses involved in cut-up, boning and further poultry processing operations. Although changes in prices would affect these small businesses, FSIS does not expect measurable price changes for the reasons already discussed.

Paperwork Requirements

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export poultry or poultry products to the United States are required to provide information to FSIS certifying that its inspection system provides standards equivalent to those of the United States and that the legal authority for the system and its implementing regulations are equivalent to those of the United States's before they may start exporting such product to the United States. FSIS collects this information one time only. FSIS gave Mexico questionnaires asking for detailed information about the country's inspection practices and procedures to assist the country in organizing its materials. This information collection was approved under OMB number 0583–0094. The proposed rule contains no other paperwork requirements.

List of Subjects 9 CFR Part 381

Imports, Poultry and poultry products.

For the reasons set out in the preamble, 9 CFR part 381 would be amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.196 [Amended]

2. Section 381.196 would be amended by adding "Mexico" in alphabetical order to the list of countries in paragraph (b).

Done at Washington, DC, on: November 18, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–31177 Filed 11–24–97; 10:10 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328 series airplanes. This proposal would require a one-time inspection of the date stamp affixed to the wing deicing boots to determine the cure date, and replacement of the deicing boot with a new boot, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent delamination of the wing deicing boots, and resultant inflation of the deicing boots to a distorted aerodynamic shape during flight, which could result in reduced controllability of the airplane.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Deutsche Aerospace, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–154–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that it has received two reports indicating that, during routine inspections, a wing deicing boot was found to be delaminated. The cause of the delamination of certain boots (i.e., those having cure dates of January 31, 1994, or earlier) has been attributed to the curing process used during manufacture. This condition, if not detected and corrected in a timely manner, could allow a deicing boot to inflate to a distorted aerodynamic shape during flight, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–30–171, dated September 20, 1996, including Annexes 1 and 2 (undated), which describes procedures for performing a one-time visual inspection of the date stamp affixed to the wing deicing boots to determine the cure date; and replacement of the boot with a new boot, if the cure date is January 31, 1994, or earlier. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–320, dated November 7, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–154–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent delamination of the wing deicing boots and resultant inflation of the deicing boots to a distorted aerodynamic shape during flight, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a one-time visual inspection of the date stamp affixed to each wing deicing boot to determine the cure date, in accordance with Dornier Service Bulletin SB–328–30–171, dated September 20, 1996, including Annexes 1 and 2 (undated). If the cure date of any deicing boot is January 31, 1994, or earlier, or if the cure date of the deicing boot cannot be determined, prior to further flight, replace the deicing boot with a new deicing boot having a cure date later than January 31, 1994, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a wing deicing boot having a cure date of January 31, 1994, or earlier.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–320, dated November 7, 1996.

Issued in Renton, Washington, on November 20, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31157 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–231–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require deactivation of certain circuit breakers, and a revision to the Airplane Flight Manual (AFM) to provide operational procedures to prevent loss of electrical power following an engine flameout. This proposal also would require modifications of the electrical system, which would terminate the requirement for the AFM revision and allow reactivation of the circuit breakers. This proposal is prompted by the issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and to prevent power interruption to the attitude heading reference system (AHRS) that could result in the display of erroneous heading information.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S/A, Sao Jose dos Campos, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–231–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it received a report of one instance of substantial electrical power loss after flameout of the number 1 engine. The power loss was caused by activation of the system overload protection due to excessive loads on the remaining number 2 engine generator, which led to loss of certain flight and landing control systems. The DAC also advises that, due to power interruption for a few milliseconds to the attitude heading reference system (AHRS), erroneous heading information in both electronic horizontal situation indicators (EHSI) may be provided, without warning to the pilots, during an electrical emergency or when the electrical emergency switch is set to the "EMERGENCY" position. This condition, if not corrected, could result in generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and power interruption to the AHRS that could result in display of erroneous heading information.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–24–0008, Change 04, dated October 3, 1995, which describes procedures for modification of the electrical system.

This modification involves revising the electrical connections and wiring in the relay boxes and circuit breaker panels.

EMBRAER has also issued Service Bulletin 120–24–0051, Change 04, dated March 8, 1995, which also describes procedures for modification of the electrical system. This modification involves electrical load redistribution and introduction of a contactor to connect a direct current (DC) bus to the emergency bus.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directives (DAE) 93–24–01, dated December 31, 1993; 94–03–01R1, dated December 10, 1994, and 93–12–01R1, dated December 12, 1994, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

The proposed AD also would require a revision to the FAA-approved Airplane Flight Manual (AFM) to provide operational procedures in the event of loss of electrical power following an engine flameout.

Differences Between the Proposal and Related Brazilian AD

This proposed AD differs from the parallel Brazilian airworthiness directives in the following four respects:

1. It would not require (as DAE 93–24–01 and DAE 93–12–01R1 require) that the electrical emergency switch be set to the "EMERGENCY" position prior to takeoff for operations without auxiliary power units (APU); rather, it would require electrical loads to be reduced to below 400 amps. The FAA has determined that reduction of loads to below 400 amps prevents the unsafe generator overload condition.

2. It would require that the APU be operational for all flights into known or forecast icing conditions and during takeoff and landing. DAE 93–12–01R1 makes no limitation with respect to such icing conditions. The FAA has determined that the APU must be operational for flights into known or forecast icing conditions to ensure adequate electrical power for systems that are necessary for operation in such conditions.

3. It would extend the proposed compliance time for accomplishment of the modifications beyond that specified by DAE 93–12–01R1 and DAE 94–03–01R1. The FAA has determined that the compliance time specified in this proposed AD would allow the modifications to be accomplished during regularly scheduled maintenance.

4. It would not require the accomplishment of PART C of DAE 94–03–01R1, which requires revision of Section 4 ("Normal Procedures") of the AFM. The FAA has determined that Part C has been incorporated by a previously approved change to the AFM and need not be mandated.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revisions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revisions proposed by this AD on U.S. operators is estimated to be $13,620, or $60 per airplane.

It would take approximately 90 work hours per airplane to accomplish the proposed modifications at an average labor rate of $60 per work hour. Required parts would cost approximately $4,150 per airplane. Based on these figures, the cost impact of the modifications proposed by this AD on U.S. operators is estimated to be $2,167,850, or $9,550 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that 43 U.S.-registered airplanes are in compliance in accordance with the requirements of this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators is now $11,040 for accomplishment of the AFM revisions, and $1,757,200 for accomplishment of the modifications.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER): Docket 97–NM–231–AD.

Applicability: Model EMB–120, EMB–120RT, and EMB–120ER series airplanes; up to and including serial number 120291; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and to prevent power interruption to the attitude heading reference system (AHRS) that could result in the display of erroneous heading information, accomplish the following:

(a) For airplanes not equipped with an auxiliary power unit (APU); except serial numbers 120004, 120006 through 120024 inclusive, 120026 through 120030 inclusive, 120033 through 120035 inclusive, 120037, and 120040; on which Part I, II, or III of EMBRAER Service Bulletin 120–24–0008, Change 03, dated August 19, 1994, or Change 04, dated October 3, 1995, has not been accomplished: Within 3 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Trip (pull open) circuit breakers (CB) 534 (auxiliary generator 2 bus control) and CB 535 (auxiliary generator 1 bus control) located in the right-hand direct current (DC) relay box and left-hand DC relay box, respectively.

(2) Install circuit breaker collars to prevent the circuit breakers from closing.

(3) Install, near CB 534 and CB 535, a placard or tag with the following wording: "Do not close CB 534 or CB 535."

(b) For all airplanes: Within 30 days after the effective date of this AD, accomplish paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) Revise the Abnormal Procedures section of the FAA-approved Airplanese Gen Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"Section III—Abnormal Procedures:

Engine Failure

One Engine Inoperative Approach and Landing

If auxiliary power unit (APU) is not available

Electrical Load—Reduce to Below 400 Amps

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logotype lights, and taxi lights.

Caution

Should an unexpected electrical power loss occur during a rejected takeoff or landing run, remember:

—Emergency brake will be available

—Below 45 knots (KT), turn anti-skid off to recover one normal brake pair (inboard or outboard).

Electrical Failure

Short Circuit in the Relay Box Direct Current (DC) Bus 1

—Gen 1 off Bus, Bus 1 off. Emerg Bus off, Central Bus off, Batt off Bus and inverter 2 INOP lights illuminated on the electrical panel.

Note: In some cases, the Central Bus off light may not illuminate.

—ELEC light illuminated on the multiple alarm panel.

—CAUTION light flashing.

Caution: Do not try to Reset the Electrical System.

Electrical Emergency Switch—Emerg

Altitude—At or Below 25,000 FT

Airplane is limited to 25,000 ft since the left engine bleed is closed due to loss of the electrical power.

The engines or APU airstart and electrical crossfeed are not possible.

The equipment connected to the relay box DC BUS 1, DC BUS 1, radio master DC buses 1B and 1C are out. Land as soon as practical.

Note:

• For airplanes Pre-Mod SB 120–24–0008, the AHRS 1 and the equipment connected to the radio master DC BUS 1A are out too.

• For airplanes Post-Mod SB 120–33–0033 or S/N 120.273 and on:

—The emergency lights will be automatically turned on when the electrical system is in emergency operating mode.

—The emergency lights must be turned off, in order to save the emergency light batteries.

—The emergency lights must be turned on during approach or when necessary."

(2) Revise the Normal Procedures section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"Section IV—Normal Procedures: Before Takeoff

If APU is available:

APU Generator .....ON

Takeoff must be carried out with APU generator connected to the central DC bus, thus providing another source to avoid overload should one engine flame out.

If APU is not available:

Electrical Load.....Reduce to Below 400 Amps

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logotype lights, and taxi lights.

After Takeoff

If APU is available:

APU.....As Required

If APU is not available:

Electrical load—RESTORE

Windshield heating—AS REQUIRED

Emergency lights switch—OFF, then ARM

Approach

If APU is available:

APU Generator .....ON

Approach and landing must be carried out with APU generator connected to the central DC bus.

Before Landing

If APU is not available:

Electrical Load.....Reduce to Below 400 Amps

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logotype lights, and taxi lights.

Caution:

Do not set electrical emergency switch to emergency position during approach or landing."

(3) Revise the Limitations section (Section II) of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"Both starter/generators must operate normally prior to flight. The APU generator must operate normally prior to flight in known or forecast icing conditions. [Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(c) Within 12 months after the effective date of this AD, accomplish paragraph (c)(1) and (c)(2) of this AD, as applicable.

(1) For all airplanes except serial numbers 120004, 120006 through 120024 inclusive, 120026 through 120030 inclusive, 120033 through 120035 inclusive, 120037, and 120040; on which Part I, II, or III of EMBRAER Service Bulletin 120–24–0008, Change 03, dated August 19, 1994, or Change 04, dated October 3, 1995; has not been accomplished: Modify the electrical system in accordance with Part IV of EMBRAER Service Bulletin 120–24–0008, Change 04, dated October 3, 1995. After this modification is accomplished, the modification required by paragraph (a) of this AD may be removed and the affected circuit breakers reactivated.

(2) For all airplanes: Modify the electrical system in accordance with EMBRAER Service Bulletin 120–24–0051, Change 04, dated March 8, 1995. After this modification is accomplished, the AFM revisions required by paragraph (b) of this AD may be removed from the AFM.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directives 93–24–01, dated December 31, 1993; 94–03–01R1, dated December 10, 1994; and 93–12–01R1, dated December 12, 1994.

Issued in Renton, Washington, on November 20, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31156 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–274–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and F.28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and F.28 Mark 0100 series airplanes. This proposal would require modification of the wing leading edge torsion box. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent a possible ignition hazard due to accumulation of water and fuel between the front spar and auxiliary spar, which could result in increased risk of an in-flight fire.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–274–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and F.28 Mark 0100 series airplanes. The RLD advises that it has received a report indicating that water and fuel can accumulate in the area between the front spar and auxiliary spar (wing leading edge torsion box). Other electrical equipment installed in this area can provide an ignition source. This condition, if not corrected, could result in increased risk of an in-flight fire.

Explanation of Relevant Service Information

The manufacturer has issued Fokker Service Bulletin SBF100–57–034, dated December 20, 1996, which describes procedures for modification of the wing leading edge torsion box. The modification involves making a drain provision in the torsion box of the wing leading edge. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA No. 1996–153 (A), dated December 31, 1996, in order to assure the airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 129 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed action, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $30,960, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Aircraft B.V.: Docket 97–NM–274–AD.

Applicability: Model F.28 Mark 0070 and Model F.28 Mark 0100 series airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible ignition hazard due to accumulation of water and fuel between the front spar and auxiliary spar, which could result in increased risk of an in-flight fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the wing leading edge torsion box, in accordance with Fokker Service Bulletin SBF100–57–034, dated December 20, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1996–153 (A), dated December 31, 1996.

Issued in Renton, Washington, on November 20, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31160 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–249–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. This proposal would require a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure. This proposal also would require either repetitive leak tests of the seals of the bleed air system, or repair of any heat-damaged structure, as necessary; and replacement of corrujoint seals with new improved seals. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the leakage of hot air from the corrujoint seals of the low- and high-pressure check valves located in the stubwings, which could result in heat damage to the fuselage skin and stubwing structure, and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–249–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. The RLD advises that several operators of Fokker Model F28 Mark 0100 series airplanes have reported bleed air leakage at corrujoint seals at the 7th stage low-pressure and 12th stage high-pressure check valves, which are located in the stubwings (engine pylons). On a few airplanes, leakage of hot air from these joints has resulted in heat damage to the fuselage skin and stubwing structure, which required internal and external repairs to ensure structural integrity. Such heat damage, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–53–084, dated July 6, 1996, which describes the following procedures:

- An inspection of aircraft maintenance records to determine whether maintenance was accomplished on certain components for the bleed air system.
- A one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure.
- Repetitive leak tests of the seals of the bleed air system, or repair of any heat-damaged structure, as necessary.
- Replacement of corrujoint seals with new improved seals.

Fokker has also issued Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996, which describes procedures for the replacement of certain corrujoint seals at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new improved seals.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The RLD classified these service bulletins as mandatory and issued Dutch airworthiness directive BLA 1995–076/2 (A), dated August 30, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Fokker Service Bulletin SBF100–53–084, this proposed AD does not require an inspection of the maintenance records to determine whether maintenance was accomplished on certain components (check valves and corrujoint seals) of the bleed air system. The FAA has determined that such a records inspection is unnecessary; instead, this AD specifies applicability to those airplanes equipped with any corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891).

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 3 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $23,580, or $180 per airplane.

The FAA estimates that it would take approximately 7 work hours per airplane to replace the corrujoint seals, at an average labor rate of $60 per work hour. Required parts would cost approximately $80 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $65,500, or $500 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97–NM–249–AD.

Applicability: Model F28 Mark 0070 and Mark 0100 series airplanes; as listed in Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; if equipped with any corrujoint seal having part number (P/N) BE20061 (Rolls-Royce P/N 3405891); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the leakage of hot air from the corrujoint seals of low-and high-pressure check valves located in the stubwings, which could result in heat damage to the fuselage skin and stubwing structure and consequent reduced structural integrity, accomplish the following:

(a) Within 3,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, perform a one-time visual inspection of the fuselage skin in the left-and right-hand stubwings to detect heat damage; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(b) If no heat damage is found during the inspection required by paragraph (a) of this AD, prior to further flight, perform a leak test of each corrujoint seal at the 7th stage low-pressure and 12th stage high-pressure check valves of the left-and right-hand bleed air systems, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(1) If any leakage is found at a seal, prior to further flight, replace that seal with a new improved seal having part number EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(2) If no leakage is found at a seal, perform an additional leak test of that seal within 250 flight hours after the initial test.

(i) If no leakage is found during the additional test of the seal, within 3,000 flight hours after the additional test, replace the seal with an improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(ii) If any leakage is found during the additional test of the seal, prior to further flight, accomplish paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD.

(A) Replace the seal with a new improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(B) Inspect the fuselage skin in the applicable left-or right-hand stubwing to detect heat damage, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(c) If any heat damage is found during the inspection required by paragraph (a) or paragraph (b)(2)(ii)(B) of this AD, prior to further flight, perform a detailed inspection of the fuselage skin and stubwing structure to detect the extent of heat damage, in accordance with Parts 4 and 5 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Repair the affected structure, in accordance with Part 6 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996. And

(2) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left-and right-hand bleed air systems with new improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(d) As of the effective date of this AD, no person shall install a corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891) on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1995–076/2 (A), dated August 30, 1996.

Issued in Renton, Washington, on November 20, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31159 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–264–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. This proposal would require a one-time visual inspection to detect cracking of the brake torque tube lever, and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the brake torque tube lever, which could result in a disconnection between the brake pedal and brake system, and consequent reduced directional controllability of the airplane during landing.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–264–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes. The RLD advises that it has received a report of the failure of a brake torque tube lever, which occurred while the operator of a Fokker Model F28 Mark 0100 series airplane was attempting to set the parking brake. Subsequent inspection during routine maintenance on two other airplanes in the fleet revealed small cracks in the same lever. Such cracking, if not corrected, could result in failure of the captain's left-hand brake torque tube lever, which could result in a disconnection between the captain's left-hand brake pedal and left-hand brake system, and consequent reduced directional controllability of the airplane during landing.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–32–108, dated February 7, 1997, which describes procedures for a one-time visual inspection using a mirror or borescope to detect cracking of the captain's left-hand brake torque tube lever. The service bulletin also describes procedures for replacement of any cracked lever with a new or serviceable lever, or, as an alternative, replacement of the entire brake torque tube assembly with a new or serviceable assembly. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1997–025 (A), dated February 28, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the inspection proposed by this AD, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection of this AD on U.S. operators is estimated to be $23,580, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 97–NM–284–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the captain's left-hand brake torque tube lever, which could result in a disconnection between the captain's left-hand brake pedal and left-hand brake system, and consequent reduced directional controllability of the airplane during landing, accomplish the following:

(a) Perform a one-time visual inspection using a mirror or borescope to detect cracking of the brake torque tube lever having part number (P/N) D75669–001, in accordance with Fokker Service Bulletin SBF100–32–108, dated February 7, 1997, at the time specified in paragraph (a)(1) or (a)(2), as applicable, of this AD. If any crack is detected, prior to further flight, replace either the lever or the entire assembly with a new or serviceable component, in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes that have accumulated 15,000 or more total flight cycles as of the effective date of this AD: Inspect within 30 days after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1997–025 (A), dated February 28, 1997.

Issued in Renton, Washington, on November 20, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31161 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. For certain airplanes, this proposal would require replacing the bearings of the throttle control levers with new sealed bearings. For certain other airplanes, this proposal would require replacing the throttle control assemblies with new assemblies. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent asymmetric engine thrust on the airplane when the autothrottle is engaged, which could result in roll and yaw disturbances, and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4556, telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM–188-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that it received reports indicating that the throttle control levers were difficult to move. This excessive friction or seizure of throttle control levers has been attributed to lack of lubrication and dust contamination of the bearings. In the case of airplanes equipped with full authority digital engine control (FADEC), this condition can also be attributed to excessive roller wear. These conditions could lead to asymmetric throttle movements and engine thrust when the autothrottle is engaged. Such asymmetric movements, if not corrected, could result in roll and yaw disturbances, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–76–0018, dated October 12, 1995, as revised by Change Notice O.A., dated February 18, 1997 (for Model A300 series airplanes); and Service Bulletin A300–76–6010, dated October 12, 1995, as revised by Change Notice O.A., dated February 18, 1997 (for Model A300–600 series airplanes); and Service Bulletin A310–76–2013, dated October 12, 1995, as revised by Change Notice O.A., dated February 18, 1997 (for Model A310 series airplanes). These service bulletins describe procedures for replacement of the four bearings located on both throttle control levers with new sealed bearings. Replacement of these bearings will ensure a smooth and consistent operation of both throttles.

Airbus also has issued Service Bulletin A310–76–2014, Revision 2, dated January 6, 1997 (for Model A310 series airplanes); and Service Bulletin A300–76–6011, Revision 2, dated January 6, 1997 (for Model A300–600 series airplanes). These service bulletins describe procedures for replacement of two throttle control assemblies equipped with rollers with new throttle control assemblies equipped with bearings. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive (C/N) 96–270–209 (B), dated November 20, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 66 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that the proposed replacement of the bearings would be required to be accomplished on 57 airplanes. It would take approximately 24 work hours per airplane to accomplish that action, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement of the bearings proposed by this AD on U.S. operators is estimated to be $82,080, or $1,440 per airplane.

The FAA estimates that the proposed replacement of the throttle support assemblies would be required to be accomplished on 9 airplanes. It would take approximately 28 work hours per airplane to accomplish that action, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,138 per airplane. Based on these figures, the cost impact of the replacement of the throttle support assemblies proposed by this AD on U.S. operators is estimated to be $25,362, or $2,818 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–188–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97–NM–188–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding

applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric engine thrust on the airplane when the autothrottle is engaged, which could result in roll and yaw disturbances, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months or 3,500 flight hours after the effective date of this AD, whichever occurs first, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300, A300–600, and A310 series airplanes: Replace the four bearings located on both throttle control levers with new sealed bearings, in accordance with Airbus Service Bulletin A300–76–0018, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997 (for Model A300 series airplanes); Airbus Service Bulletin A300–76–6010, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A, dated February 18, 1997 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–76–2013, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997; as applicable.

(2) For Model A310 and A300–600 series airplanes equipped with full authority digital engine control (FADEC): Replace the two throttle support assemblies equipped with rollers with new throttle support assemblies equipped with bearings, in accordance with Airbus Service Bulletin A310–76–2014, Revision 2, dated January 6, 1997 (for Model A310 series airplanes); or Airbus Service Bulletin A300–76–6011, Revision 2, dated January 6, 1997 (for Model A300–600 series airplanes); as applicable.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A310–76–2014, Revision 1, dated March 25, 1996; or Airbus Service Bulletin A300–76–6011, Revision 1, dated March 25, 1996; are considered acceptable for compliance with the applicable action specified in paragraph (a)(2) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–270–209 (B), dated November 20, 1996.

Issued in Renton, Washington, on November 20, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31158 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA12

Financial Crimes Enforcement Network; Bank Secrecy Act Regulations; Exemptions From the Requirement to Report Transactions in Currency—Phase II; Extension of Comment Period; Request for Comments

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Proposed regulations; extension of comment period; request for additional comments.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") is extending the comment period for the proposed Bank Secrecy Act regulations relating to exemptions from the requirement to report transactions in currency, published on September 8, 1997. FinCEN is also soliciting comments regarding additional alternatives to the proposed requirement to estimate, and to file annual reports of, the aggregate currency deposits and withdrawals of certain customers, and regarding certain other matters.

DATES: Written comments on all aspects of the proposed rule are welcome and must be received on or before January 16, 1998.

ADDRESSES: *Written comments should be submitted to:* Office of Legal Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182, *Attention:* NPRM—CTR Exemptions, Phase II. Comments may also be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption in the body of the text, "Attention: NPRM—CTR Exemptions, Phase II." For additional instructions on the submission of comments, see Supplementary Information under the heading "Submission of Comments" in the notice of proposed rulemaking on this topic.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director (703) 905–3819, and Charles Klingman, Financial Institutions Policy Specialist, Office of Program Development FinCEN, (703) 905–3602; Stephen R. Kroll, Legal Counsel (703) 905–3534, Cynthia L. Clark, Acting Senior Counsel for Regulatory Affairs, (703) 905–3758, and Albert R. Zarate, Attorney-Advisor, Office of Legal Counsel, FinCEN, (703) 905–3807.

SUPPLEMENTARY INFORMATION: On September 8, 1997, FinCEN issued proposed regulations (62 FR 47156) to reform and simplify the process by which banks may exempt transactions of retail and other businesses from the requirement to report transactions in currency in excess of $10,000. As part of the simplified exemption system, the proposed regulations introduced two new classes of exempt persons: "non-listed businesses" and "payroll customers." To prevent abuse of the new system, however, the proposed regulations would require a bank initially to estimate and then to report annually the aggregate currency deposits and withdrawals of any non-listed business or payroll customer that the bank exempted. In the proposal, FinCEN solicited comments on a number of matters, including alternative ways to counter potential abuse of the proposed system.

FinCEN announced (62 FR 58909, October 31, 1997) that it would hold an open working meeting on November 7, 1997, in Washington, D.C. to discuss the proposed regulations. At the meeting a number of commenters expressed their views and concerns concerning a number of matters, including most importantly the requirement in the proposed rule that banks estimate when granting an exemption, and file annual reports of, aggregate currency deposits and withdrawals by non-listed businesses and payroll customers. The decision to extend the comment period, and the request for additional comments contained in this document, result from that meeting.

Annual Reporting of Aggregate Currency Transactions

In light of the comments made at the meeting, FinCEN does not believe that additional comments concerning the proposed estimation and aggregate currency reporting provision are necessary to complete the administrative record. Thus persons who attended the meeting, and other commenters, need not, if they do not wish to, file written comments regarding these provisions.

The comments made at the open meeting did indicate, however, that it is important that alternatives to annual aggregate currency reporting be brought forward by interested parties. The preamble to the proposed rule specifically sought comment on several such possible alternatives. FinCEN is considering an additional alternative about which it would like to receive specific comments.

The proposed alternative has two elements.

1. The initial designation of a non-listed business or payroll customer as an "exempt person" under the rule would include a specific statement by the bank of the manner in which it applies its "know-your-customer" standards to the tracking of currency deposits of commercial businesses. (The necessary statements could be made once for all exempt persons designated by a bank, as reflective of general bank policies.)

2. The annual renewal of the status of a non-listed or payroll customer as an exempt person would include a certification by the bank. The bank would certify that during the preceding year there was no transaction involving any accounts of the person at the bank that would have required the bank to file a suspicious transaction report with respect to that person under 31 CFR 103.21 (that is, no transaction had occurred with respect to the account that the bank knew, suspected, or had reason to suspect was described in 31 CFR 103.21(a)(2)(i), (ii), or (iii)).[1]

FinCEN specifically invites comment on this alternative and on ways to allow such an alternative to operate with clear lines and without uncertainty or unnecessary burdens. It also again invites suggestion of any other alternatives to the proposed requirement that a bank initially estimate and subsequently report annually the aggregate currency deposits and withdrawals of a non-listed business or payroll customer that the bank wishes to exempt.

Uniform Treatment of Accounts of Exempt Persons

FinCEN understands from comments at the November 7 meeting that banks are concerned about the use of the words "shall" in proposed 31 CFR 103.22(d)(5)(v) and "may" in proposed 31 CFR 103.22(d)(5)(vi). As stated in the notice of proposed rulemaking, the intent of the proposed rule is to reform and simplify the process by which banks may exempt transactions from the reporting requirements. FinCEN believes that relief would be better provided by making both provisions optional rather than mandatory, so that institutions may, but need not, treat all accounts of a person at a single institution as exempt. FinCEN would appreciate comments on whether such a change would improve the operation of the proposed rule.

Commingling

Other comments at the November 7 meeting indicated that banks were not exempting certain publicly traded businesses, such as grocery stores, under the first phase of exemptive relief, 31 CFR 103.22(h), because of the uncertainty about the treatment of currency deposits that commingle receipts from the sale of groceries with receipts from the sale of money services products such as money orders or money transmissions. FinCEN specifically solicited comments on this matter in the proposed rule, as it relates not only to the treatment of non-listed companies but also listed companies.

The extent to which segregation of funds is required in circumstances such as these is still under consideration, and FinCEN repeats here the request, made in the notice of proposed rulemaking, for comments on that issue. Any rule requiring a grocery store or similar entity that qualifies as a listed entity under 31 CFR 103.22(h)(2)(iii), (iv), or (v) to segregate money from the sale of money services products in order to secure treatment as an "exempt person" for any deposit, will not become effective until the effective date of the proposed regulations, when issued in final form.

Dated: November 24, 1997.

Stephen R. Kroll,

Federal Register Liaison Officer, Financial Crimes Enforcement Network.

[FR Doc. 97–31299 Filed 11–26–97; 8:45 am]

BILLING CODE 4820–03–P

[1] Under the proposed rule, non-listed businesses are businesses, otherwise eligible for exemption, whose stock is not listed on the nation's major securities exchanges. Payroll customers are businesses, otherwise eligible for exemption, that require cash withdrawals for payroll purposes.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42187K; FRL–5759–2]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the public comment period from December 1, 1997 to January 9, 1998, on the proposed rule published in the **Federal Register** of June 26, 1996 (61 FR 33178)(FRL–4869–1) requiring the testing of 21 hazardous air pollutants (HAPs) for certain health effects. This extension is needed to allow the Agency more time to amend the HAPs test rule proposal.

DATES: Written comments on the proposed rule must be received by EPA on or before January 9, 1998.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by docket control number (OPPTS–42187A; FRL–4869–1) to: Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically to oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For general information, Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document, all **Federal Register** support documents, and the eleven TSCA test guidelines are available from the EPA Home Page at the **Federal Register** — Environmental Documents entry under "Laws and Regulations" (http:// www.epa.gov/fedrgstr).

I. Background and General Information

On June 26, 1996 (61 FR 33178), EPA proposed health effects testing, under section 4(a) of TSCA, of the following hazardous air pollutants (HAPs): 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols (3 isomers: *ortho-*, *meta-*, *para-*), diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of enforceable consent agreements (ECAs). These PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs rule.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996, to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was for the purpose of allowing more time for the submission of PK proposals and adequate time for comments on the proposed rule to be submitted after the Agency had responded to the proposals. Due to the complexity of the issues raised by the eight PK proposals that the Agency received in response to the HAPs proposal and other issues related to test guidelines, EPA successively extended the public comment period (61 FR 67516, December 23, 1996 (FRL–5580–6); 62 FR 9142, February 28, 1997 (FRL–5592–1); 62 FR 14850, March 28, 1997 (FRL–5598–4); 62 FR 29318, May 30, 1997 (FRL–5722–1); 62 FR 37833, July 15, 1997 (FRL–5732–2)); to allow the Agency more time to respond to the PK proposals and to finalize the test guidelines to be referenced in the proposed HAPs test rule. EPA extended the comment period again (62 FR 50546, September 26, 1997 (FRL–5748–8)), to allow the Agency time to complete work on amending the proposed HAPs test rule to incorporate the new TSCA 799 test guidelines, revise the economic analysis in consideration of the new test guidelines, and to complete preliminary technical analyses for each PK proposal. This extension of the comment period is needed to allow the Agency more time to complete work on amending the proposed HAPs test rule.

EPA has completed preliminary technical analyses for each PK proposal submitted in response to the Agency's June 26, 1996 solicitation. These include the HAPs chemicals: hydrogen fluoride, 1,1,2-trichloroethane, ethylene dichloride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, diethanolamine, and ethylene glycol. Copies of these preliminary technical analyses have been sent to the submitters and placed in the public record for this action (OPPTS–42187B; FRL–4869–1). The Agency recognizes that submitters may need to revise their proposals based on EPA comments. If the Agency decides to proceed with the ECA process, EPA will announce, in the **Federal Register**, one or more public meetings to discuss the proposals and to negotiate ECAs. In that document, the Agency will solicit persons interested in participating in or monitoring negotiations to develop ECAs based on: the PK testing proposals or revisions thereof, EPA's preliminary technical analyses, and additional comments on EPA's preliminary technical analyses provided by the submitters. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

The Agency emphasizes that the submission of proposals to develop ECAs to conduct alternative testing using PK is no guarantee that EPA and the submitters will, in fact, conclude such agreements. Therefore, EPA urges all submitters of PK proposals to comment on the HAPs proposed rule as an activity separate from the PK proposal/ECA process.

On August 15, 1997, EPA promulgated eleven new TSCA test guidelines (62 FR 43820)(FRL–5719–5), codified at 40 CFR part 799, subpart H. These TSCA part 799 test guidelines were developed based on the Office of Pollution Prevention and Toxic Substances (OPPTS) harmonized guidelines that were developed from the OPPTS guideline harmonization process. In the original HAPs proposal and subsequent notices extending the comment period on the rule, EPA indicated that, for the purposes of this rulemaking and testing under TSCA section 4(a), the Office of Pollution Prevention and Toxics (OPPT) intends to reference final TSCA test guidelines developed from the OPPTS harmonized guidelines. The eleven TSCA test guidelines are included in the record for this rulemaking. EPA is amending the proposed HAPs test rule to reference the eleven new TSCA part 799 test guidelines and to seek comment on the guidelines as referenced in enforceable test standards in the forthcoming amended HAPs proposal. In addition, the amendment will provide a revised economic assessment and describe other changes and clarifications to the proposed test rule. This amendment to the proposed HAPs test rule will be published in the **Federal Register** as soon as possible but in any event no later than January 9, 1998.

II. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number (OPPTS–42187A; FRL–4869–1) (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–42187A; FRL–4869–1). Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 20, 1997.

Charles M. Auer,

Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, EPA is extending the comment period on the proposed rule to January 9, 1997.

[FR Doc. 97–31128 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CC Docket No. 92–237; DA 97–2439]

Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On November 21, 1997, the Network Services Division of the Commission's Common Carrier Bureau, released an Order extending the deadline for filing comments to the Further Notice of Proposed Rulemaking in this docket addressing carrier identification code use and assignment [62 FR 54817 (10/22/97)]. The Order is intended to grant the extension request filed by the North American Numbering Council (NANC) and to make the public aware of the extensions of the filing deadlines.

DATES: Comments must be filed on or before March 6, 1998, and reply comments must be filed on or before April 3, 1998.

ADDRESSES: Federal Communications Commission, Secretary, Room 222, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION:

Administration of the North American Numbering Plan, Carrier Identification Codes (CICs); Order [CC Docket No. 92–237; DA 97–2439]

[*Adopted:* November 20, 1997; *Released:* November 21, 1997]

1. On October 9, 1997, the Commission released a *Further Notice of Proposed Rulemaking and Order*[1] in this docket, addressing issues related to Feature Group D carrier identification code (CIC) use and assignment.[2] In the *FNPRM*, the Commission sought comment on, for example, the use and application of Feature Group D CICs, on the definition of "entity" used to determine who may receive a CIC, and on CIC conservation issues. In the *Order*, the Commission directed the North American Numbering Council (NANC) to present to the Commission, no later than December 15, 1997, the NANC's recommendations on the tentative conclusions and proposals in the *FNPRM*, including any alternatives to them. The Commission stated that NANC's recommendations (including any recommended rules or recommended resolutions of ambiguities or policy disputes) should address, for example, how to define "entity" and whether CIC conservation measures, such as a limit on CIC assignments per entity, a limit on the total number of four-digit CICs available for assignment, and mandatory CIC reclamation procedures, are needed to meet the Commission's numbering policy goals.

2. In a letter dated November 19, 1997, the North American Numbering Council (NANC), through its Chairman, Alan C. Hasselwander, requested extension of the deadlines set in the *FNPRM and Order*. Specifically, NANC asks that the deadline by which it must present recommendations to the Commission, as required by the *Order*, be extended from December 15, 1997, to February 19, 1998 (the day following NANC's February meeting). In addition, NANC requested that the time by which parties must file comments and reply comments in response to the *FNPRM* be extended from November 24, 1997, and December 22, 1997, respectively, to a period following the date for NANC's submission.

3. NANC states that at its November 18, 1997 meeting, the members unanimously agreed that such a delay is required. NANC also asserts that the delay "will allow NANC to assemble a diverse group of industry representatives to consider the questions raised in the Order and work diligently to find common ground." In support of its request that the time by which parties must file comments in response to the *FNPRM* be extended until after the deadline for NANC's submission, NANC states that "industry may achieve a more uniform position if NANC attempts to achieve consensus before interested parties have publicly stated their positions."

4. The Commission does not routinely grant extensions of time.[3] It is important, however, that the record be as complete as possible. A recommendation from NANC that reflects consensus based on a diverse group of industry views is desirable. Granting NANC's additional time to submit its recommendation to the Commission increases the likelihood that the recommendation will be comprehensive. Further, if delaying the pleading cycle until after NANC reports will allow NANC to achieve a more uniform view from a cross-section of the industry, because interested parties would not have publicly stated their positions in advance of NANC's opportunity to address them, the record in this proceeding will benefit. For these reasons, we grant NANC's request and, accordingly, we: (1) extend the period of time by which NANC must provide its recommendations to the Commission until February 19, 1998; and (2) extend the period of time by which parties must file comments and reply comments on the issues raised in the *FNPRM* until March 6, 1998, and April 3, 1998, respectively. We emphasize that the comments and reply comments on the *FNPRM* should address the proposals and tentative conclusions raised by the Commission in the *FNPRM*, and should not be limited to NANC's recommendations.

5. Accordingly, *it is ordered*, pursuant to Section 1.46 of the Commission's Rules, 47 CFR § 1.46, that the North American Numbering Council's request to extend the deadline by which it must present recommendations to the Commission in response to the *Order* issued in this proceeding on October 9, 1997, *is granted*, by extending the deadline until February 19, 1998.

6. *It is further ordered*, pursuant to Section 1.46 of the Commission's Rules, 47 CFR 1.46, that the North American

[1] Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Further Notice of Proposed Rulemaking and Order*, CC Docket No. 92–237, FCC 97–364 (released October 9, 1997) (62 FR 54817 (10/22/97) (*FNPRM and Order*).

[2] CICs are numeric codes that enable local exchange carriers (LECs) providing interstate interexchange access services to identify the interstate interexchange carrier (IXC) that the originating caller wishes to use to transmit its interstate call. LECs use the CICs to route traffic to the proper IXC and to bill for the interstate access service provided. CICs facilitate competition by enabling callers to use the services of telecommunications service providers either by presubscription or by dialing CAC, which incorporates that carrier's unique Feature Group D CIC.

[3] See 47 CFR 1.45.

Numbering Council's request to extend the deadlines by which parties must file comments and reply comments in response to the *Further Notice of Proposed Rulemaking* issued in this proceeding on October 9, 1997, IS GRANTED, by extending the deadline for filing comments until March 6, 1998, and by extending the deadline for filing reply comments until April 3, 1998.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division Common Carrier Bureau.

[FR Doc. 97–31248 Filed 11–26–97; 8:45 am]

BILLING CODE 8712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97–213, FCC 97–356]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 10, 1997, the Commission released a Notice of Proposed Rulemaking in CC Docket No. 97–213 to implement the portion of the Communications Assistance for Law Enforcement Act that requires Commission rulemaking. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Comments are due December 12, 1997; Reply Comments are due January 12, 1997. Written comments by the public on the proposed and/or modified information collections are due December 12, 1997. Written comments must be submitted by the OMB on the proposed and/or modified information collections on or before 60 days after the date of publication in the **Federal Register**.

ADDRESSES: In addition to filing comments with the Secretary, Federal Communications Commission, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: David Ward, Network Services Division, Common Carrier Bureau, (202) 418–2320. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Notice of Proposed Rulemaking in CC Docket No. 97–213, In the Matter of Communications Assistance for Law Enforcement Act, FCC 97–356, adopted October 2, 1997, and released October 10, 1997, as corrected in Erratum, CC Docket No. 97–213, rel. October 24, 1997. The record in this proceeding is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington, D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2000 M Street, N.W., Suite 140, Washington, D.C. 20037, phone (202) 857–3800.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Communications Assistance for Law Enforcement Act, NPRM.

CC Docket No: 97–213.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for profit.

Proposed requirement	Number of respondents	Estimated time per response	Total annual burden hours
Affidavits (proposed Sec. 64.1704(c))	3,500	2.45	8,575
Record keeping (proposed Sec. 64.1704)	3,500	4.9	17,150
Compliance Statements (proposed Sec. 64.1704)	3,500	1.0	3,500
List of Designated Personnel	3,500	5.0	17,500
Total Annual Burden Hours			46,725
Estimated Cost per Respondent: $700.			

Needs and Uses

The Communications Assistance for Law Enforcement Act (CALEA) requires the Commission to adopt rules that regulate the conduct and record keeping of lawful electronic surveillance. CALEA also requires the Commission to adjudicate petitions from telecommunications carriers and interested parties to the extent to which they must comply with CALEA's requirements, capability standards, and the reasonable achievability of law enforcement officials' capability requirements. The information submitted to the Commission by telecommunications carriers will be used to determine whether or not the telecommunications carriers are in conformance with CALEA's requirements. The information maintained by telecommunications carriers will be used by law enforcement officials to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders.

Analysis of Proceeding

1. In the *Notice of Proposed Rulemaking*, CC Docket No. 97–213, the Commission asks for comment on the identity and classes of carriers that should be included or excluded from the Communications Assistance of Law Enforcement Act's (CALEA's) definition of "telecommunications carrier." CALEA only applies to telecommunications carriers. Thus, if a carrier is not classified a telecommunications carrier, it does not have to conform to CALEA's requirements. CALEA grants the Commission the authority to include entities in the definition of "telecommunications carriers." The Commission also asks for comment on the criteria to determine which carriers and classes of carriers meet the definition of telecommunications carrier.

2. CALEA directs the Commission to rule upon petitions from carriers that contend that they cannot "reasonably achieve" compliance with CALEA's capability requirements. CALEA states that petitioners must be reimbursed by the Attorney General for the expense of CALEA compliance if the Commission determines that compliance is not reasonably achievable, or are deemed to be in compliance to the extent that the Attorney General agrees to reimburse the petitioner. In the *Notice of Proposed Rulemaking* (NPRM), the Commission asks for comment with respect to the statutory criteria established for determining whether compliance is "reasonably achievable."

3. CALEA directs the Commission to adopt rules to ensure the system security and integrity of lawful electronic surveillance conducted by telecommunications carriers. In the NPRM, the Commission asks for comment on the policies and procedures that telecommunications carriers must adopt to meet this requirement and on proposed reporting and record keeping rules to accomplish this requirement. The Commission also asks for comment on a proposal that provides small telecommunications carriers with a less burdensome reporting procedure.

4. CALEA contains a deadline when all telecommunications carriers must be in compliance with CALEA's capability requirements. CALEA authorizes the Commission to grant extensions to telecommunications carriers that petition the Commission. In the NPRM, the Commission asks for comment on the criteria for granting petitions for extensions to the statutory deadline.

List of Subjects in 47 CFR Part 64

Common carrier, Reporting and recordkeeping requirements, telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Title 47 of the Code of Federal Regulations, part 64, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended, 47 U.S.C. 201–204, 218, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Part 64 is proposed to be amended be revising subpart Q to read as follows:

Subpart Q—Telecommunications Carrier Interceptions pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Sec.

64.1700 Purpose.
64.1701 Scope.
64.1702 Definitions.
64.1703 Interception Requirements and Restrictions.
64.1704 Carrier Records.
64.1705 Compliance Statements.

§ 64.1700 Purpose.

Pursuant to the Communications Assistance for Law Enforcement Act, Pub. L. No. 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.), this subpart contains implementation and compliance rules to govern telecommunications carriers subject to CALEA. These rules are in addition to rules promulgated by the Department of Justice pursuant to CALEA requirements.

§ 64.1701 Scope.

The definitions included in this subpart shall be used solely for the purpose of implementing CALEA's requirements.

§ 64.1702 Definitions.

(a) *Telecommunications carrier.* The term "telecommunications carrier" means—

(1) A person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire; and

(2) Includes—

(i) A person or entity engaged in providing commercial mobile service (as defined in Section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)); or

(ii) A person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this title; but

(3) Does not include persons or entities insofar as they are engaged in providing information services.

(b) *Information services.* The term "information services"

(1) Means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

(2) Includes—

(i) A service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) Electronic publishing; and

(iii) Electronic messaging services; but

(3) Does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

(c) *Appropriate legal authorization.* The term "appropriate legal authorization" means:

(1) A court order signed by a judge of competent jurisdiction authorizing or approving interception of wire or electronic communications; or

(2) A certification in writing by a person specified in 18 U.S.C. 2518(7); or

(3) A certification in writing by the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

(d) *Appropriate carrier authorization.* The term "appropriate carrier authorization" means policies adopted by telecommunications carriers to identify carrier employees authorized to assist law enforcement in conducting communications authorizations.

(e) *Third party.* "Third party" means a person other than those authorized to receive a communication pursuant to 47 U.S.C. 605 of the Communications Act.

§ 64.1703 Interception requirements and restrictions.

An employee or officer of a telecommunications carrier shall assist in intercepting and disclosing to a third party a wire, oral, or electronic communication or shall provide access to call-identifying information only upon receiving a court order or other lawful authorization.

§ 64.1704 Carrier records.

(a) The officers of any telecommunications carrier shall ensure that the carrier maintains records of any assistance provided for the interception and disclosure to third parties of any wire, oral, or electronic communication or of any call-identifying information. The record will be made either contemporaneously with each interception, or not later than 48 hours from the time each interception begins, and shall include:

(1) The telephone number(s) or circuit number(s) involved;

(2) The date and time the interception started;

(3) The date and time the interception stopped;

(4) The identity of the law enforcement officer presenting the authorization;

(5) The name of the judge or prosecuting attorney signing the authorization;

(6) The type of interception (*e.g.*, pen register, trap and trace, "Title III" interception pursuant to 18 U.S.C. 2510 *et seq.* and collateral state statutes, Foreign Intelligence Surveillance Act ("FISA") 50 U.S.C. 1801 *et seq.*); and

(7) The names of all telecommunications carrier personnel involved in performing, supervising, and internally authorizing, the interception, and the names of those who possessed knowledge of the interception.

(b) A separate record shall be kept of any instances of interception, and of the identities of third parties to which disclosure of call-identifying information is made. In addition to the information listed in paragraphs (a) (1) through (7) of this section, these records will provide a complete discussion of the facts and circumstances surrounding the interception and disclosure. Each record shall be maintained in a secure location accessible only by authorized carrier personnel for a period of ten (10) years from its creation.

(c) The officers of any telecommunications carrier shall assure that any employee, agent, or officer of the carrier engaged in performing authorized interceptions for law enforcement personnel or having access to such information does not disclose to any other person any information about such activity. Any employee or officer who has access to such information shall sign a statement that provides as follows:

(1) The telephone number(s) or circuit identification number(s) involved;

(2) The name of each employee or officer who effected the interception and possessed information concerning its existence, and their respective positions within the telecommunications carrier;

(3) The date and time the interception started;

(4) The date and time the interception stopped;

(5) The type of interception (e.g., pen register, trap and trace, "Title III" interception pursuant to 18 U.S.C. 2510 *et seq.* and collateral state statutes, Foreign Intelligence Surveillance Act ("FISA") 50 U.S.C. 1801 *et seq.*);

(6) A copy or description of the written authorization for the employee and officer to participate in surveillance activity; and

(7) A statement that the employee or officer will not disclose information about the interception to any person, not properly authorized by statute or court order.

§ 64.1705 Compliance statements.

(a) Each telecommunications carrier having annual revenues from telecommunications operations in excess of the threshold defined in 47 CFR 32.9000 shall file with the Commission a statement of the policies, processes and procedures it uses to comply with the requirements of this subpart. These statements shall be filed with the Secretary, Federal Communications Commission, on or before [Date to be inserted in Final Rule], and shall be captioned, "Interception Procedures" filed pursuant to § 64.1704. Carriers seeking confidential treatment for any part of the statement shall clearly state the authority justifying such treatment pursuant to 47 CFR 0.459 and shall fully document all facts upon which that carrier proposes to rely in its request for confidential treatment.

(b) Any telecommunications carrier having annual revenues from telecommunications operations that do not exceed the threshold defined in 47 CFR 32.9000 may elect:

(1) To file the statement required in paragraph (a) of this section; or

(2) To certify that it observes procedures specified in the submission made pursuant to paragraph (a) of this section.

[FR Doc. 97–30902 Filed 11–26–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–97–1472; Notice 97–12]

RIN: 2105–AC68

Privacy Act Implementation: Coast Guard's Marine Safety Information System

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to amend its rules implementing the Privacy Act of 1974 to exempt from certain provisions of the Act the Coast Guard's Marine Safety Information System. Public comment is invited.

DATES: Comments are due December 29, 1997.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket OST–97–1472, Department of Transportation, C–55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9:00 AM to 5:00 PM ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156. Fax (202) 366–9170.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard's Marine Safety Information System (MSIS) collects selected information on commercial and/or documented vessels operating in US waters, and collects and manages the data needed to monitor the safety performance of maritime vessels and facilities, with which the Coast Guard comes into contact while performing its marine safety functions. It also monitors the identities of individuals and corporations that own or operate these vessels, and, if appropriate, aids the Coast Guard to develop law enforcement actions against such vessels, facilities, individuals, and corporations.

MSIS consolidates information from two other Coast Guard Privacy Act record systems: DOT/CG 561, Port Safety Reporting System (Individual Violation Histories), and DOT/CG 587, Investigation of Marine Safety Laws or Regulations. It also encompasses the automated, but not the manual, portions of DOT/C 591, Merchant Vessel Documentation System.

Because of the capability to retrieve information by the names or other unique identifiers of individuals, MSIS is subject to the Privacy Act, which imposes many restrictions on the use and dissemination of information in the system. However, because MSIS can be used for law enforcement purposes, it is exempted from some of these restrictions.

Privacy Act Exemption

All records in this system that fall within 5 U.S.C. 552a(k)(2) are exempt from the provisions of 5 U.S.C. 552a, subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). However, should at any time Exemption (j)(2) be deemed inapplicable, then under Exemption (k)(2), if a person is denied any right, privilege, or benefit to which he or she would otherwise be entitled to by Federal law as a result of keeping this material, the material must be released to the subject of the record, unless doing so would reveal the identity of a confidential source.

These records are exempt from subsection (c)(3) because the release of the accounting for disclosures made pursuant to subsection (b), including those permitted under the routine uses published for this system of records, would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he or she is the subject or investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants and would therefore present a serious impediment to law enforcement.

These records are exempt from subsection (d) because access to information contained in this records system would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, or the identity of witnesses and informants. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of an investigation, lead to the improper influencing of witnesses, the destruction of evidence, or disclose information which would constitute an unwarranted invasion of another individual's personal privacy.

To require the Coast Guard to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

These records are also exempt from subsections (e)(1), (e)(4)(G), (H), and (I) because of and to the extent that the records are exempt from the individual access provisions of subsection (d). The nature of the investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his activities. In such investigations, it is not feasible to rely upon information furnished by the individual concerning his or her own activities.

In a criminal investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would be able to avoid detection, influence witnesses improperly, destroy evidence, or fabricate testimony.

In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restriction of subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

In the course of criminal and other law enforcement investigations, cases and matters, the Coast Guard will occasionally obtain information concerning actual or potential violations of law which are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific inquiry. In the interests of effective law enforcement, it is necessary to retain such information in this system of records since it can aid in establishing pattern of criminal activity and can provide valuable leads for other law enforcement agencies.

These records are exempt from subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him or her dealing with an actual or potential criminal, civil, or regulatory investigation must be exempted because such notice to an individual would be detrimental to the successful conduction and/or completion of an investigation, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsection (f)(2) through (5) are inapplicable to the system of records to the extent that this system of records is exempted from subsection (d).

Analysis of Regulatory Impacts

This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969.

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12612 ("Federalism") and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not impose any unfunded

mandates as defined by the Unfunded Mandates Reform Act of 1995.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 10:

Penalties, Privacy.

Accordingly, DOT proposes to amend 49 CFR part 10 as follows:

PART 10—[AMENDED]

1. The authority citation to part 10 would remain as follows:

Authority: 5 U.S.C. 552a; 49 U.S.C. 322.

2. Part II.A of the appendix to part 10 would be amended by adding a new paragraph 15, to read as follows:

Appendix to Part 10—Exemptions

* * * * *

Part II. Specific exemptions.

A. * * *

* * * * *

15. Marine Safety Information System, maintained by the Operations Systems Center, U.S. Coast Guard (DOT/CG 588). The purpose of this exemption is to prevent persons who are the subjects of criminal investigations from learning too early in the investigative process that they are subjects, what information there is in Coast Guard files that indicates that they may have committed unlawful conduct, and who provided such information.

* * * * *

Issued in Washington, DC, on November 18, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–31171 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172 and 175

[Docket HM–224A; Notice No. 97–15]

RIN 2137–AC92

Hazardous Materials: Prohibition of Oxidizers Aboard Aircraft; Notice of Public Meeting and Reopening of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rules; public meeting and reopening of comment period.

SUMMARY: RSPA is inviting additional comments concerning proposals to prohibit the transportation of oxidizers in passenger-carrying aircraft and in inaccessible locations on cargo aircraft, as issued by RSPA in a notice of proposed rulemaking on December 30, 1996, and a supplemental notice of proposed rulemaking on August 20, 1997. RSPA and FAA will hold a public meeting on January 14, 1998, in Washington, DC. In addition, RSPA is reopening the comment period for Docket HM–224A until February 13, 1998.

DATES: *Comments.* Comments must be received by February 13, 1998.

Public meeting The public meeting will be held on January 14, 1998 beginning at 9:00 a.m.

ADDRESSES: *Comments.* Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, room 8421, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. Comments may also be submitted by e-mail to the following address: rules@rspa.dot.gov. The Dockets Unit is located in the Department of Transportation headquarters building (Nassif Building) at the above address on the eighth floor. Public dockets may be reviewed there between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Public meeting The public meeting will be held at the Federal Aviation Administration Auditorium, Third floor, 800 Independence Avenue, SW, Washington, D.C. 20591. Any person planning to present a statement at the public meeting should notify Diane LaValle, by telephone or by e-mail before January 9, 1998. Oral statements should be limited to 10 minutes in length.

FOR FURTHER INFORMATION CONTACT: Diane LaValle or John Gale, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590–0001. E-mail address: rules@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: On December 30, 1996, RSPA published a notice of proposed rulemaking in the **Federal Register** [61 FR 68955] which proposed to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to prohibit the carriage of oxidizers, including compressed oxygen, in passenger-carrying aircraft and in inaccessible locations on cargo aircraft. The December 30, 1996 notice of proposed rulemaking analyzed Class D cargo compartments. On August 20, 1997 a supplemental notice of proposed rulemaking was published in the **Federal Register** [62 FR 44374] which specifically analyzed the prohibition of oxidizers in other than Class D cargo compartments.

Nine associations requested that RSPA schedule a public meeting to more fully explore issues relating to the necessity and effect of the proposed ban on transportation of oxidizers aboard aircraft. RSPA believes the request has merit and will hold a public meeting on January 14, 1998 to provide an opportunity for oral comment on the proposed action. RSPA is also reopening the comment period to provide additional time for submission of written comments.

Issued in Washington, DC on November 21, 1997 under authority delegated in 49 CFR, Part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–31114 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–97–3148]

RIN 2127–AC62

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Crossover Lines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Termination of rulemaking.

SUMMARY: This document terminates a rulemaking in which the agency had considered amending Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, to limit fuel spillage experienced by vehicles equipped with a crossover fuel line. Upon reviewing the comments on its proposal, the agency concludes that the safety benefits of the proposed amendment are too small to justify its issuance.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Dr. William J.J. Liu, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C., 20590. Telephone: (202) 366–4923. FAX (202) 366–4329.

For legal issues: Ms. Nicole Fradette, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

A. Standard No. 301, Fuel System Integrity

Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, specifies requirements for the integrity of motor vehicle fuel systems, including the fuel tanks, lines and connections and emission controls. The standard's principal purpose is to reduce deaths and injuries from fires caused by fuel spillage during and after motor vehicle crashes. The standard currently applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and use fuel with a boiling point above 32° Fahrenheit. The only type of vehicle with a GVWR over 10,000 pounds to which the Standard applies is school buses.

B. California Highway Patrol Rulemaking Petition

On May 30, 1986, the California Highway Patrol (CHP) submitted a rulemaking petition requesting NHTSA to amend Standard No. 301 to establish requirements to protect fuel lines, crossover lines and bottom fittings on medium and heavy trucks [1] against breakage when struck by road debris. The petitioner believed that such requirements would reduce the frequency and magnitude of fuel spills caused when road debris damage the fuel tank, the shut-off valve, or the crossover line on medium and heavy trucks and truck tractors.

The CHP based its petition on data gathered from 142 diesel fuel spills that occurred on Southern California highways during 1984 and 1985. According to the petition, "one-third of the 142 spills were caused by an object on the road being struck by [a heavy vehicle's] front wheels and thrown against the tank or fuel lines." CHP stated that the major consequence of these diesel fuel spills was the cost to the State of cleaning the spill, investigating the leak, and undertaking traffic control. In addition, CHP stated that seven "secondary" crashes were caused by vehicles that struck a dropped fuel tank or skidded out-of-control on spilled fuel. Based on the above considerations, CHP requested that NHTSA issue standards that would protect fuel lines, crossover lines and bottom fittings against breakage from road debris.

On May 2, 1988, NHTSA published a notice granting the CHP petition to establish performance requirements for crossover lines, end fittings, and shut off valves. (53 FR 15578). In the grant notice, the agency stated that—

> The issues raised by the petitioner warrant further consideration. NHTSA plans to conduct research into the issue of heavy vehicle post-crash fires to determine whether rulemaking is appropriate on this issue.

C. Crossover Fuel Lines

The principal focus of the CHP petition was crossover fuel lines. These fuel lines are used on heavy vehicles with dual fuel tanks to enable the tanks to maintain a constant fuel level and to allow the engine to draw fuel from only one tank. The crossover line is typically one of the fuel system components closest to the ground. In this location, an unprotected crossover line is susceptible to being struck by road debris, or being snagged in crashes when the truck rides over another vehicle or highway structure.

Given the vulnerability of a crossover line, fuel spills can be prevented by routing the fuel line through a metal sleeve or attaching the fuel line to the rear of an angle iron or beam. Such means of protection have become increasingly common. Another way to prevent fuel spills is through the use of breakaway/frangible valves installed at the point where the line would otherwise be attached to each tank. These valves are designed to break before any other part of the line and to seal both sides of the break. [2] To date, relatively few motor vehicles have been equipped with these devices.

II. NHTSA Proposal

Following its grant of the CHP petition, NHTSA conducted a test program at its Vehicle Research and Test Center (VRTC) to develop an appropriate test procedure for crossover lines. On May 17, 1994, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 301 to limit fuel spillage experienced by vehicles equipped with a crossover fuel line (59 FR 25590). The proposal incorporated the VRTC test procedure, which is documented in a report submitted to the docket. [3]

The agency proposed that fuel leakage be limited to 30 grams (1 ounce) by weight, beginning with the onset of the application of a 11,100 Newtons (2,500 pounds) test force to the crossover fuel line and ending two minutes after the end of the test force application. NHTSA tentatively concluded that the proposed requirements would eliminate most of the fuel spillage from crossover line breakage and estimated that it would prevent one fatality and 55 injuries each year that occur in secondary crashes due to fuel spillage. NHTSA requested comments on whether there is a safety need for the proposal.

D. Society of Automotive Engineers and NHTSA Tests

While NHTSA analyzed the public comments on the NPRM, the agency also conducted a test program to evaluate and compare the proposed test procedure with a test procedure for crossover lines independently developed by the Society of Automotive Engineers (SAE). SAE had drafted Recommended Practice J1624, *Fuel Crossover Line*, to evaluate and set minimum strength requirements for crossover lines. The SAE draft Recommended Practice included a different test procedure than the proposed procedure. The Recommended Practice specifies a different and higher load level of 22,200 Newtons (5,000 pounds) compared to the 11,100-Newton (2,500 pound) load of the proposed procedure, and applies the load in a different manner.

The VRTC report concluded that the proposed test procedure and the SAE draft test procedure were both generally reasonable and practicable. [4] The report further stated that the draft SAE J1624 Recommended Practice included test procedures and requirements that were more rigorous than necessary to evaluate current crossover fuel lines. The report concluded that the SAE test procedure may result in much higher costs to manufacturers and consumers than fuel systems meeting the NHTSA tests. Although it favored the VRTC procedure over the SAE procedure, the report concluded that both procedures needed significant modifications before they could be incorporated into a Federal motor vehicle safety standard.

III. Comments

NHTSA received 15 comments on the NPRM proposing to prevent fuel spillage from crossover fuel lines. The commenters included nine vehicle manufacturers (Mack Trucks,

[1] Those trucks that have a GVWR greater than 10,000 pounds.

[2] These valves are referred to as frangible valves throughout the remainder of the document.

[3] "Testing to Develop Fuel System Integrity Standard," VRTC, March 1992.

[4] "Testing to Evaluate Two Proposed Fuel Crossover Line Protection Procedures," VRTC, June 1995.

Mitsubishi, Ford, PACCAR, Flxible, General Motors (GM), Navistar, Bugatti Automobili, and Lotus), four associations (the California Trucking Association (CTA), the National Truck Equipment Association (NTEA), American Trucking Associations (ATA), and the American Automobile Manufacturers Association (AAMA)), and two safety groups (the National Fire Protection Association (NFPA) and Advocates for Highway and Auto Safety (Advocates).

Commenters expressed differing views about the need to require crossover fuel line protection. Advocates, NFPA, CTA and Mitsubishi supported the proposal. Mack, ATA, NTEA, AAMA, GM, Ford, Bugatti, and Lotus opposed it. ATA, NTEA, and AAMA stated that they were not aware of any safety problem associated with fires resulting from crossover line failure. ATA stated that manufacturers have already recognized the need to provide fuel systems with greater resistance to fuel leakage and are voluntarily providing them. Mack, NTEA, and GM stated that there was a trend in the industry away from crossover fuel lines.

Commenters addressed other issues including harmonization with a SAE Recommended Practice, frangible valves, cost and application, leadtime, and the proposed test procedures and performance requirements.

IV. Agency Decision

After reviewing its own reports and the public comments on this proposal, NHTSA has decided not to issue a requirement for crossover fuel line protection and to terminate rulemaking on this issue.

To complete rulemaking on the proposed amendment, the agency would need to devote significant agency resources to refine the proposed test procedures. The agency believes such an expenditure of additional resources is not warranted, given the limited and uncertain benefits that could be obtained from such a requirement.

The comments show that the vehicle manufacturers have developed and implemented new designs that eliminate the need for crossover lines in many vehicles. The agency anticipates that the trend toward new systems that eliminate crossover lines will continue. In the interval since the NPRM was issued, the industry has significantly improved their design for those vehicles that will continue to use crossover lines. Based on information supplied by the industry, the agency estimates that less than 50 percent of trucks are still produced with crossover lines. Of these vehicles, 90 percent are equipped with substantial protective structures that are able to withstand the 2,500-pound test load proposed in the NPRM. Thus, the agency believes that the proposed requirement would affect fewer than five percent of the new truck population. The agency further believes that even fewer heavy trucks will be equipped with crossover lines in the future.

The agency estimated in the NPRM that the requirement would prevent one fatality and two nonfatal injuries per year due to fires (and 0.6 fatality and 55 nonfatal injuries due to secondary crashes caused by fuel spillage). In view of the trends in manufacturing practices noted above, the agency believes that these estimates overstate the benefits that would result in the future from the requirement.

In addition to the reduced benefits from the requirement, the per-vehicle costs would have been substantial ($50 or more per truck and $1,000 per test).

For the reasons set forth above, NHTSA has decided to terminate the rulemaking action to amend Standard No. 301 that would have required crossover fuel line protection.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[Signature page for RIN 2127–AC62]

(Termination of Rulemaking)

[FR Doc. 97–31263 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, 644, and 678

[I.D. 100697B]

Atlantic Highly Migratory Species; Scoping Document; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments; extension of comment period.

SUMMARY: NMFS announces the extension of the public comment period on the scoping document for Highly Migratory Species (HMS) fishery management. The public comment period is hereby extended from December 1, 1997, to January 9, 1998, to give members of the public additional time to review and comment on the issues and options that are discussed in the scoping document. Any written comments received by that date will be considered by NMFS in developing a set of alternatives for management measures.

DATES: Acceptance of written comments is extended from December 1, 1997, to January 9, 1998.

ADDRESSES: Written comments and requests for copies of the scoping document should be directed to the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD. 20910. PHONE:(301)713–2347. FAX: (301)713–1917. The scoping document is also available on the Internet at http://kingfish.ssp.nmfs.gov/sfa/.

FOR FURTHER INFORMATION CONTACT: Liz Lauck or Jill Stevenson, (301) 713–2347.

SUPPLEMENTARY INFORMATION: NMFS is considering management measures for the fisheries for Atlantic tunas, Atlantic swordfish, Atlantic shark, and Atlantic billfish to be included in a comprehensive Fishery Management Plan (FMP) for Atlantic tunas, swordfish and sharks, and an amendment to the Billfish FMP. Options for management may include long-term rebuilding programs, reallocation of quotas, recreational bag limits, commercial trip limits, minimum size restrictions, time/area closures, regional quotas, consistency between state and Federal regulations, gear restrictions, limited access, identification and protection of essential fish habitat, and permitting and reporting requirements.

Consistent with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS established an HMS Advisory Panel (AP) and a Billfish AP to assist in developing and amending FMPs for HMS species. In the case of any species identified as overfished, the APs will also assist in developing rebuilding programs. The scoping document, developed with input from the APs, outlines major issues and options under consideration.

NMFS has held a series of scoping meetings to gather public input on a broad range of issues and options that may be considered in addressing HMS issues (62 FR 54035, October 17, 1997). Public input is also sought through written comments that may be mailed or faxed to the Highly Migratory Species Management Division (see **ADDRESSES**). Based upon several requests from the public as well as the fact that extension of the comment period is not anticipated to delay development of the FMP, NMFS is extending the comment period on this scoping document from December 1, 1997 to January 9. 1998.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31190 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 112097E]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Tuesday, December 9, 1997, at 10 a.m., on Wednesday, December 10, 1997, at 8:30 a.m., and on Thursday, December 11, 1997, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Peabody Marriott, 8A Centennial Drive, Peabody, MA; telephone (978) 977-9700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Tuesday, December 9, 1997

After introductions the Council meeting will begin with the Multispecies Monitoring Committee Annual Report. The presentation will include landings projections for the 1997 fishing year, target total allowable catches (TACs) for the 1998 fishing year, options for reaching or maintaining the rebuilding plan fishing mortality objectives for cod, haddock, and yellowtail flounder stocks, and the status of fisheries for pollock, redfish, winter flounder, witch flounder, American plaice, windowpane flounder, and white hake.

Following the report, the Council's Groundfish Committee will discuss and seek approval of initial action on Framework Adjustment 25 to the Northeast Multispecies Fishery Management Plan (FMP). The adjustment would include measures to meet the 1998 fishing year rebuilding plan objectives (based on the report of the Multispecies Monitoring Committee) through the use of any of the following measures—area closures, trip limits, adjustments to days-at-sea (DAS) or gear modifications. The framework adjustment would also include measures to adjust the opening date of the Cultivator Shoal Whiting Exempted Fishery, require a raised footrope trawl in the Small Mesh Area 2 Exempted Fishery, restrict or prohibit the use of "streetsweeper" gear, and modify the regulations that now require vessel monitoring systems (VMS) on all individual DAS vessels. VMS options under consideration would include, but are not limited to, voluntary use of VMS, mandatory use only on vessels with DAS allocations over a specified level, or mandatory use only on vessels with specific violations. The framework may also prohibit fishing for regulated species in groundfish closed areas by vessels using exempted gears such as lobster pots, even when such vessels are fishing in the DAS program.

Wednesday, December 10, 1997

If necessary, the Council will continue consideration of Framework Adjustment 25. The Overfishing Definition Review Panel will present a preliminary report on new overfishing definitions developed to comply with the Sustainable Fisheries Act. Species to be discussed include Atlantic sea scallops, Georges Bank yellowtail flounder, monkfish, Atlantic mackerel, and possibly others. Prior to addressing sea scallop issues there will be reports from the Scallop Advisory Panel and the Scallop Plan Development Team (PDT). The Scallop Committee will then recommend final measures to be included in Amendment 7 to the Scallop Fishery Management Plan. Currently, the proposal contains a program to allow consolidation of DAS and the use of closed area management. There will also be further consideration of Framework Adjustment 10, an action to modify the scallop DAS schedule following the third-year review of the DAS scallop effort reduction program. There will be a review of committee discussions on VMS regulations and measures to allow scallop vessels to fish in the areas closed for groundfish conservation. After reports from the Herring Advisory Panel and PDT, the Herring Committee will seek approval of proposed fishery management plan objectives, as well as the array of management measures to be discussed at public hearings. Measures may include vessel/dealer/operator permits, spawning area closures, a target TAC, vessel size limits, prohibitions on directed mealing, area management, limits on fishing time, and possibly other measures.

Thursday, December 11, 1997

The Monkfish Advisory Panel and the Monkfish PDT will report to the Council, followed by consideration and approval of monkfish measures for Amendment 9 to the Northeast Multispecies FMP. There may be a request to the Secretary of Commerce to implement interim management measures for the monkfish fishery. The afternoon session will begin with reports from the Council Chairman, Executive Director, NMFS Regional Administrator, Northeast Fisheries Science Center, and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission (ASMFC). There will be a briefing on the recent Habitat Advisory Panel meeting and progress on the development of essential fish habitat information. This will be followed by an update on revisions to draft Amendment 10 to the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan to manage ocean quahogs in the Gulf of Maine.

The Chairman of the Council's Lobster Committee will review the ASMFC's final fishery management plan for American lobster and discuss options to address any concerns with the plan. There also may be consideration of future management strategies, if necessary, to meet the requirements of the Sustainable Fisheries Act. The meeting will adjourn after the conclusion of any other outstanding Council business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council actions will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 21, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31246 Filed 11–24–97; 3:18 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 229

Friday, November 28, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–98–001]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Regulations Governing the Grading of Poultry Products and Rabbit Products.

DATES: Comments on this notice must be received by January 27, 1998.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0259, Washington, DC 20050–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Grading of Poultry Products and Rabbit Products—7 CFR Part 70.

OMB Number: 0581–0127.

Expiration Date of Approval: April 30, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The regulations provide a voluntary program for grading poultry and rabbit products on the basis of U.S. standards and grades. In addition, the poultry and rabbit industries and users of the products have requested that other types of voluntary services be developed and provided under these regulations; e.g., contract and specification acceptance services and certification of quantity. This voluntary grading service is available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The service is paid for by the user (user-fee).

The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

To provide programs and services, section 203(h) of the AMA directs and authorizes the Secretary of Agriculture to inspect, certify and identify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

Because this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that cost of service be assessed and collected, there is no alternative but to provide programs on a fee-for-service basis and to collect the information needed to establish the cost.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program.

The information collected is used only by authorized representatives of the USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents. The Agency is the primary user of the information, and the secondary user is each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.09 hours per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 749.

Estimated Number of Responses per Respondent: 38.67.

Estimated Total Annual Burden on Respondents: 1,913 hours.

Copies of this information collection can be obtained from Shields Jones, Standardization Branch, at (202) 720–3506.

Send comments regarding, but not limited to, the following: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, to: Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250-0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 20, 1997.

D. Michael Holbrook,

Deputy Administrator, Poultry Programs.

[FR Doc. 97–31179 Filed 11–26–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–114–1]

Monsanto Co.; Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Tomato

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for a tomato line designated as 5345, which has been genetically engineered for resistance to certain lepidopteran insect pests. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this tomato line presents a plant pest risk.

DATES: Written comments must be received on or before January 27, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–114–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–114–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4882. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On October 14, 1997, APHIS received a petition (APHIS Petition No. 97–287–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for a genetically engineered, insect-resistant tomato line designated as 5345. The petition states that the subject tomato line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, tomato line 5345 has been genetically engineered to express a CrylA(c) insect control protein derived from the common soil bacterium *Bacillus thuringiensis* subsp. *kurstaki* HD–73 (Btk). The petitioner states that expression of the Btk delta-endotoxin protein protects the subject tomato line from damage caused by certain lepidopteran insect pests. Tomato line 5345 also expresses the NPTII protein which serves as a selectable marker in the plant transformation process. While the subject tomato line contains the *aad* gene, tests indicate that the AAD protein, which serves as a selectable marker in the laboratory prior to plant transformation, is not expressed in the plant. The added genes were introduced into the UC82B parental tomato plants by the *Agrobacterium tumefaciens* transformation system, and their expression is controlled in part by gene sequences derived from the plant pathogens cauliflower mosaic virus and *A. tumefaciens*.

The subject tomato line is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. Tomato line 5345 has been evaluated in field trials conducted since 1994 under APHIS notifications. In the process of reviewing the notifications for field trials of this tomato line, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which the genetically modified plant allows for a new or different use pattern for a pesticide, EPA must approve the new or different use. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. The EPA has granted exemptions from the requirement of a tolerance for residues of the CrylA(c) and NPTII proteins and the genetic material necessary for their production in all plants.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's insect-resistant tomato line 5345 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 20th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31222 Filed 11–26–97; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 29, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 10, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 FR 52969) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, Keene USARC, 682 Main Street, Keene, New Hampshire.
Janitorial/Custodial, Grenier Field USARC, Manchester, New Hampshire.
Janitorial/Custodial, Craft Bros. USARC, 11 St. Anselm's Drive, Manchester, New Hampshire.
Janitorial/Custodial, Paul A. Doble USARC, 125 Cottage Street, Portsmouth, New Hampshire.
Janitorial/Custodial, Raymond Bisson USARC, 70 Rochester Hill Road, Rochester, New Hampshire.
Janitorial/Custodial, Rainbow Bridge U.S. Plaza, Niagara Falls, New York.
Switchboard Operation, Veterans Affairs Medical Center, 423 East 23rd Street, New York, New York.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–31379 Filed 11–26–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 29, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which

they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies

(Requirements for the following activities: Naval Station, San Diego, CA; Naval Air Station, North Island, CA; Marine Corps Air Station, Miramar, CA; Marine Corps Air Station, Yuma, AZ; Naval Station, Ingleside, TX; Naval Air Station, El Toro, CA; Naval Air Weapons Command, Point Mugu, CA and the Naval Air Weapons Command, China Lake, CA)

NPA: Pacific Coast Community Services, Alameda, California.

Services

Grounds Maintenance, Veterans Affairs Medical Center, 601 Perdido Street, New Orleans, Louisiana, NPA: Goodwill Industries of Southeastern Louisiana, Inc., New Orleans, Louisiana.

Janitorial/Custodial, U.S. Customs Service, Canine Enforcement Training Center (Various Buildings), Front Royal, Virginia, NPA: Northwestern Workshop, Inc., Winchester, Virginia.

Janitorial/Grounds Maintenance, West Los Angeles Federal Building and U.S. Post Office, 11000 Wilshire Boulevard, Los Angeles, California, NPA: Exceptional Children's Foundation, Los Angeles, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–31380 Filed 11–26–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 29, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Gloves

M.R. 509
M.R. 415
M.R. 416
M.R. 417
M.R. 418
M.R. 514
M.R. 515

NPA: New York City Industries for the Blind, Long Island City, New York.

Service

Janitorial/Custodial, Naval Command Control & Ocean Surveillance Center, East Coast Division Complex (trailers/laboratories), Charleston, South Carolina. NPA: Goodwill Industries of Lower South Carolina, Inc., Charleston, South Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–31381 Filed 11–26–97; 8:45 am]

BILLING CODE 6353–01–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 5, 1997, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

Status

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 14, 1997 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arkansas, Ohio, Oklahoma, Pennsylvania, South Carolina, and South Dakota
VI. Future Agenda Items
10:00 a.m. Briefing on Asian Pacific Americans

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 97–31399 Filed 11–25–97; 12:29 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 80–97]

Foreign-Trade Zone 2—New Orleans, Louisiana Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting authority to expand its zone in the New Orleans, Louisiana area, within the New Orleans Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 18, 1997.

FTZ 2 was approved on July 16, 1946 (Board Order 12, 11 FR 8235, 7/31/46) and expanded on April 9, 1984 (Board Order 245, 49 FR 15006, 4/16/84); May 8, 1986 (Board Order 331, 51 FR 17783, 5/15/86); and, November 13, 1991 (Board Order 544, 56 FR 58682, 11/21/91). The zone project currently consists of the following sites: *Site 1* (19 acres)—at the Napoleon Avenue Wharf; New Orleans; *Site 2* (76 acres)—within the Almonaster-Michoud Industrial District (AMID) on the Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet, New Orleans; *Site 3* (700 acres)—Newport Industrial Park, adjacent to AMID, New Orleans; *Site 4* (159,000 sq. ft)—warehouse facility at 200 Crofton Road, adjacent to the New Orleans International Airport, Kenner (Jefferson Parish);. and, *Site 5* (23,500 sq. ft.)—warehouse facility at 2445–2447 Aberdeen Street, adjacent to the New Orleans International Airport.

The applicant is now requesting authority to expand the general-purpose zone to include two Mississippi River port terminal facilities at the Port of St. Bernard in St. Bernard Parish, adjacent to New Orleans: *Site 6* (136 acres)—Arabi Terminal and Industrial Park, at Mile Point 90.5 on the Mississippi River, Arabi; and, *Site 7* (216 acres)—Chalmette Terminal and Industrial Park, one mile downriver from the Arabi Terminal. Both sites are owned and operated by the St. Bernard Port, Harbor and Terminal District, and the entire Port site is an Enterprise Zone. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 27, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 11, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, Suite 2150, One Canal Place, 365 Canal Street, New Orleans, LA 70130

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 20, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–31284 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 79–97]

Foreign-Trade Zone 33—Pittsburgh, Pennsylvania Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting authority to expand its zone in the Pittsburgh, Pennsylvania area, within the Pittsburgh Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 17, 1997.

Zone 33 was approved on November 9, 1977 (Board Order 124, 42 F.R. 59398, 11/17/77) and expanded on March 16, 1981 (Board Order 172, 46 F.R. 18063, 3/23/81). The general-purpose portion of the FTZ project currently consists of two sites: *Site 1* (43 acres)—within the 500-acre RIDC Park West, Park West Drive, Findlay Township, Allegheny County; and, *Site 2* (3 acres)—S.H. Bell Company's London Metal Exchange warehouse facility, One Third Street, Allegheny County, Braddock.

The applicant is now requesting authority to expand both existing sites and to add two new general-purpose sites to its zone project as follows: *Site 1*—add 6 acres to the existing 43-acre Site 1 within the RIDC Park West complex (includes 3 acres that was previously transferred to Site 2 in 1994); *Site 2*—add 6 acres to the existing Site 2, covering the entire S.H. Bell Company's warehouse facility; *Proposed Site 3* (5,427 acres)—within the 10,000-acre Pittsburgh International Airport complex (includes an aviation fuel depot consisting of four storage tanks), approximately 10 miles from Pittsburgh; and, *Proposed Site 4* (140 acres)—Leetsdale Industrial Park, First and Center Avenues, Leetsdale. The proposed changes to Sites 1 and 2 would increase these sites to 49 acres and 9 acres respectively. With the changes, the new FTZ plan would cover some 5,625 acres with 25 buildings (1.4 mil. sq. ft.). The two additional sites would be used primarily for warehousing/distribution and air cargo activity. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 27, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 13, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Federal Building, Suite 2002, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 20, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–31283 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Certificate of Eligibility for Billfishes; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jill Stevenson, F/SF1, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

A Certificate of Eligibility for Billfishes is required under 50 CFR Section 644 to accompany all billfish except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the Atlantic Ocean management unit (described on the form). The certificate must accompany the billfish to any dealer or processor who subsequently receives or possesses the billfish. This collection is necessary to implement the Atlantic Billfish Fishery Management Plan whose objective is to reserve Atlantic billfish for the recreational fishery.

II. Method of Collection

Completion of certificate and recordkeeping.

III. Data

OMB Number: 0648–0216
Form Number: None assigned.
Type of Review: Regular submission.
Affected Public: Businesses and other for-profit (seafood importers, distributors).
Estimated Number of Respondents: 10 for completion of certificate and 250 for recordkeeping.
Estimated Time Per Response: 20 minutes for completion of certificate and 2 minutes for recordkeeping.
Estimated Total Annual Burden Hours: 117 hours.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 20, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31174 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.111497A]

Ecosystem Principles Advisory Panel; Advisory Panel Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of advisory panel meeting.

SUMMARY: Pursuant to section 406 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which requires NMFS to establish an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities, NMFS is announcing the date, time, and location of the second of three advisory panel meetings scheduled as follows:

DATES: The second advisory panel meeting will be held Monday, December 15, 1997, 9 a.m. to 6:15 p.m. and Tuesday, December 16, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Edmond Meany Hotel, 4507 Brooklyn Ave. NE, Seattle, Washington 98104.

FOR FURTHER INFORMATION CONTACT: Ned Cyr, Office of Science and Technology, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910; Telephone: (301)713-2363, Fax: (301)713-1875.

SUPPLEMENTARY INFORMATION: Section 406 of the Magnuson-Stevens Act requires NMFS to establish an advisory panel, no later than April 11, 1997, to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The panel will consist of no more than 20 individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems. The panel will also consist of representatives from the Regional Fishery Management Councils, states, fishing industry, conservation organizations, or others with expertise in the management of marine resources. The panel is required to submit a report to Congress by October 11, 1998, to include the following: an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities; proposed actions by the Secretary of Commerce and by Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and such other information as may be appropriate.

The first Advisory Panel meeting was held Wednesday, September 10 and Thursday, September 11, 1997, in Washington, DC.

Time will be allotted for public comments at the meeting. Persons planning to comment at the panel meeting should notify NMFS at least 2 weeks prior to the meeting (close of business Monday, December 1, 1997).

Special Accommodations

The review panel meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ned Cyr at (301) 713-2363 at least 10 days prior to the advisory panel meeting.

Dated: November 21, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31191 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111997B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of its Stone Crab Advisory Panel and Scientific and Statistical Committee via conference call on Monday, December 15, 1997, beginning at 8:30 a.m. eastern standard time.

ADDRESSES: A listening phone will be located at each of the following locations:

NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL; telephone: 813–570–5301;

NMFS Miami Laboratory, 75 Virginia Beach Drive, Room 200, Miami, FL; telephone: 305–361–4259.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, at the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The meeting is being held to review Draft Amendment 6 to the Stone Crab Fishery Management Plan. The amendment proposes to extend a moratorium on registration on commercial stone crab vessels by the Regional Administrator of NMFS for a period not to exceed 4 years. The purpose of the moratorium is to provide time for the state of Florida to implement a limited access system for the fishery and for the Council to develop and implement an amendment extending the limited access system to the exclusive economic zone.

Although other issues not contained in this agenda may come before the Panel/Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Panel/Committee action during this meeting. Panel/Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 8, 1997.

Dated: November 21, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31247 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102097D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of three applications (1071, 1081, 1093) and one modification (1044) for scientific research permits; issuance of modifications to two scientific research permits (1028, 1051).

SUMMARY: Notice is hereby given that the U.S. Forest Service, Pacific Southwest Research Station (USFS) in Arcata, CA (1071), the U.S. National Park Service, Redwood National and State Parks (NPS) in Orick, CA (1081), and the U.S. Geological Survey, Humboldt Cooperative Fishery Research Unit (USGS) in Arcata, CA (1093) have applied in due form for permits, and the National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) in Tiburon, CA (1044) has applied in due form for a permit modification authorizing takes of a threatened species for scientific research purposes. Notice is hereby also given that on November 12, 1997, NMFS issued Modification #1 of Permit #1028 to Mr. Steven Serfling, of Mote Marine Laboratory, and that on November 19, 1997, NMFS issued Modification #1 of Permit #1051 to Mr. Jorgen Skjeveland, of the U.S. Fish and Wildlife Service.

DATES: Written comments or requests for a public hearing on any of the applications or the modification request must be received on or before December 29, 1997.

ADDRESSES: The applications, permits, and related documents are available for review in the following offices, by appointment:

Applications for Permits 1071, 1081, and 1093, and modification request for permit 1044: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

Modification requests and Permits 1028 and 1051: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For Permits 1044, 1071, 1081, and 1093: Tom Hablett, Protected Resources Division, NMFS Santa Rosa Office (707–575–6066).

For Permits 1028 and 1051: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION: USFS (1071), NPS (1081), USGS (1093) and SWFSC (1044) have requested permits or modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227). NMFS has issued modifications to permits held by Mr. Steven Serfling, of Mote Marine Laboratory (1028), and by Mr. Jorgen Skjeveland, of the U.S. Fish and Wildlife Service (1051) under the authority of section 10 of the ESA and NMFS regulations governing ESA-listed fish and wildlife permits. USFS (1071) requests a five-year permit for takes of juvenile, threatened, southern Oregon/northern California coast (SONCC) coho salmon (*Oncorhynchus kisutch*) associated with fish population studies in the Eel and Van Duzen River Drainages within the Evolutionarily Significant Unit (ESU). The studies consist of juvenile coho salmon distribution for which ESA-listed fish are proposed to be taken. ESA-listed juvenile fish will be captured, anesthetized, handled (identified, and measured), allowed to recover from the anesthetic, and released. ESA-listed juvenile salmon indirect mortalities associated with the research are also requested.

NPS (1081) requests a five-year permit for takes of juvenile, threatened, SONCC coho salmon (*Oncorhynchus kisutch*) associated with fish population studies in NPS regulated drainages within the ESU. The studies consist of four assessment tasks for which ESA-listed fish are proposed to be taken: 1) Presence/absence, 2) population estimates, 3) habitat quality evaluation, and 4) spawner surveys. ESA-listed fish are proposed to be observed or captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

USGS (1093) requests a five-year permit for takes of adult and juvenile, threatened, SONCC coho salmon (*Oncorhynchus kisutch*) associated with defined fish population studies throughout the ESU. The studies consist of five assessment tasks for which ESA-listed fish are proposed to be taken: 1) Presence/absence, 2) population estimates, 3) spawner surveys, 4) genetic sampling, and 5) habitat quality evaluation. ESA-listed fish will be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also requested.

SWFSC (1044) requests a modification to its five-year permit to include takes of adult and juvenile, threatened, SONCC coho salmon (*Oncorhynchus kisutch*) associated with fish population and habitat studies throughout the ESU. The studies consist of five assessment tasks for which ESA-listed fish are proposed to be taken: 1) Presence/absence, 2) population estimates, 3) spawner surveys, 4) genetic sampling, and 5) habitat quality evaluation. ESA-listed fish will be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also requested.

Mr. Serfling is authorized under Permit 1028 to hold shortnose sturgeon (*Acipenser brevirostrum*) eggs and yolk-sac fry obtained from the Huntsman Marine Laboratory, in St. Andrews, New Brunswick, Canada, at Mote Marine Laboratory in Florida to determine the effects of toxins on egg viabilty and yolk-sac survival rates. These viability and survival rates will be compared against those of fish from the USFWS hatchery in South Carolina and the St. Johns, St. Marys and Altamaha Rivers in Florida and Georgia, the collection of which was previously permitted on March 6, 1997. The volume of eggs and fry will not exceed 1.0 liter in volume.

Mr. Skjeveland is authorized under Permit 1051 to take up to thirty (30) listed shortnose sturgeon from the Chesapeake Bay, an increase of 5 from the original permit, and to take up to thirty (30) listed shortnose sturgeon from the Delaware Bay/River estuary to determine the genetic relationship of these two stocks and to determine if there is migration back and forth between the Chesapeake and Delaware Canal. The sturgeon will be measured, tagged, tissue sampled, and released.

Issuance of these modifications, as required by the ESA, were based on a finding that such permits: (1) Were applied for in good faith, (2) would not operate to the disadvantage of the listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: November 21, 1997.

Nancy Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31246 Filed 11–26–97; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps: National, Indian Tribes, and U.S. Territories Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds for new and renewal grants, notice of availability of 1998 application guidelines.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of funds for new and renewal AmeriCorps program grants in the approximate amounts of: (1) $40 million for AmeriCorps National program grants (CFDA # 94.004); and (2) $4.5 million for AmeriCorps Indian Tribes and U.S. Territories program grants (CFDA # 94.004). The application forms and guidelines for completing new applications are contained in (1) the "AmeriCorps National 1998 Application Guidelines", and (2) the "1998 AmeriCorps Application Guidelines for Indian Tribes and U.S. Territories" respectively. Grantees in their first or second year of operation should contact their Corporation program officer for information about the renewal process.

DATES: Applicants for new AmeriCorps National grants must be received by 3:30 p.m. (E.S.T.), February 6, 1998. Notice regarding the renewal application deadline for AmeriCorps National grants will be provided to existing grantees at a later date. All AmeriCorps Indian Tribe and U.S. Territory applications must be received by 3:30 p.m. (E.S.T.), May 12, 1998.

ADDRESSES: All applications should be submitted to the Corporation for National Service, 1201 New York Avenue, NW, Box ACD (for AmeriCorps National), Box ITT (for AmeriCorps Indian Tribes and U.S. Territories), Washington, D.C. 20525. Facsimiles will not be accepted.

FOR FURTHER INFORMATION CONTACT: Copies of the "AmeriCorps National 1998 Application Guidelines" may be requested by calling (202) 606–5000, ext. 125. Copies of the "1998 AmeriCorps Application Guidelines for Indian Tribes and U.S. Territories" may be requested by calling (202) 606–5000, ext. 475. If potential applicants have questions about the AmeriCorps National application guidelines or the application process, they should contact the Corporation for National Service, AmeriCorps Direct, 1201 New York Avenue, NW, Washington, D.C. 20525. Phone: (202) 606–5000, ext. 125. If potential applicants have questions about the AmeriCorps Indian Tribes and U.S. Territories application guidelines or the application process, they should contact the Corporation for National Service, AmeriCorps Indian Tribes and U.S. Territories, 1201 New York Avenue, NW, Washington, D.C. 20525. Phone: (202) 606–5000, ext. 188. Organizations interested in applying for AmeriCorps National program funds may participate in a conference call on Monday, December 15, 1997, during which Corporation staff will provide technical assistance to potential applicants. The call will begin at 1:00 P.M. and end at 3:00 P.M. (E.S.T.). To register for this call, please contact Jimmie Bonah at (202) 606–5000, extension 286. The Corporation staff will also conduct conference calls to provide technical assistance to potential applicants seeking AmeriCorps Indian Tribes and U.S. Territories program funds on February 3, 1998, and February 10, 1998. Both calls will begin at 4:00 P.M. (E.S.T.). To register for these calls, please contact Pattie Howell at (202)–606–5000, extension 188. In addition, there will be technical assistance conferences for potential applicants seeking AmeriCorps Indian Tribes and U.S. Territories program funds on January 9, 1998, in Las Vegas, NV and on February 6, 1998 in Memphis, TN. To register for either of the conferences, please call Pattie Howell, at (202) 606–5000, ext. 188. The Corporation's T.D.D. number is (202) 565–2799.

SUPPLEMENTARY INFORMATION: The Corporation's requirements for AmeriCorps programs are set forth in the Corporation's authorizing statute (42 U.S.C. section 12501 *et seq.*), its implementing regulations (45 CFR part 2500 *et seq.*), and grant application guidelines. In addition to being thoroughly familiar with the statute and its implementing regulations, prospective applicants should read the application carefully because, in some cases, more specific information is provided there.

AmeriCorps Program Fund Availability.

AmeriCorps engages thousands of Americans on a full and part-time basis to help communities address their toughest challenges while earning support for college, graduate school, or job training.

A. AmeriCorps National

Approximately $40 million is available for new and renewal grants through the AmeriCorps National program competition.

(1) Eligible Applicants

National nonprofit organizations, Indian Tribes, public or private nonprofit organizations (including labor organizations), subdivisions of states, and institutions of higher education are eligible to apply for AmeriCorps National program funds. For the purpose of this grant process, a national nonprofit organization is any nonprofit organization whose mission, membership, activities, or constituencies are national in scope. However, an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible to apply, serve as a host site for Member placements, or act in any type of supervisory role in the program.

Eligible applicants that propose programs in more than one State are encouraged to seek funding directly from the Corporation. These applicants may operate programs directly or provide subgrants to local chapters or affiliates. The Corporation strongly encourages applicants that propose programs in a single State to apply to that State's Commission on National and Community Service.

(2) Estimated Amount and Quantity of Awards

The Corporation expects to make fewer than forty (40) awards for new and renewal AmeriCorps National operating programs in the Fiscal Year 1998 grant cycle. The grant size will vary by circumstance, need, and program model. The Corporation anticipates that it will not be able to fund AmeriCorps National programs at the same level as it has in the past because of a congressionally-imposed cap and a lack of available carryover funds. For this reason, grantees that have previously received AmeriCorps funding should consider significantly reducing the amount of requested support.

B. AmeriCorps Indian Tribes and U.S. Territories

Approximately $2.27 million is available for new and renewal AmeriCorps Indian Tribe program grants, and approximately $2.27 million is available for new and renewal AmeriCorps U.S. Territories program grants under a population-based formula.

(1) Eligible Applicants

Eligible applicants include Indian Tribes and U.S. Territories. For the purposes of this grant program an Indian Tribe is an (a) Indian Tribe, band, nation, or other organized group or community, including any Native village, as defined in 43 U.S.C. section 1602(c), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act," 26 U.S.C. section 1461 et seq.); (b) any Regional Corporation or Village Corporation, as defined in 43 U.S.C. section 1602 (g) or (j), respectively, that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and (c) any tribal organization controlled, sanctioned, or chartered by an entity described in (a) or (b) of this paragraph. For the purposes of this grant program, U.S. Territories are (a) American Samoa, (b) the Commonwealth of the Northern Mariana Islands, (c) Guam, and (d) the U.S. Virgin Islands.

(2) Estimated Amount and Quantity of Awards

Eligible applicants may apply for operating funds to establish AmeriCorps programs. The Corporation expects to make fewer than ten (10) AmeriCorps Indian Tribe program grants, and fewer than ten (10) AmeriCorps U.S. Territories program grants. The average award under each program will be under $300,000.

Dated: November 24, 1997.

Stewart A. Davis,

Acting General Counsel Corporation for National and Community Service.

[FR Doc. 97–31265 Filed 11–26–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including: A method for simulating an image in real time under turbulent atmospheric conditions; an armed-state detector for land mines; a lead-acid battery desulfator/rejuvenator and a natural computing system.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Device for and Method of Real-Time Simulation of Atmospheric Effects on an Image.

Inventors: Walter B. Miller, Jennifer C. Ricklin and Mikhail A. Vorontsov.

Patent Number: 5,663,832.

Issue Date: September 2, 1997.

Title: Armed-Stated Detector for Antitank Mines.

Inventor: John E.B. Tuttle.

Patent Number: 5,665,934.

Issue Date: September 1997.

Title: Lead-Acid Battery Desulfator/Rejuvenator.

Inventors: Carl Campagnuolo, Louis P. Jarvis, Anthony Pellegrino, Joseph DiCarlo and William Keane.

Patent Number: 5,677,612.

Issue Date: October 14, 1997.

Title: Natural Computer System.

Inventor: Somayajulu D. Karamchetty.

Patent Number: 5,680,557.

Issue Date: October 21, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Vaught, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, Maryland 20783–1197, tel: (301) 394–2952; fax

(301) 394–5815; e-mail: nvaught@arl.mil.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–31309 Filed 11–26–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Fossil Energy; National Coal Council Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1007, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 22, 1999. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy, on a continuing basis, regarding general policy matters relating to coal issues.

Council members are chosen to assure a well balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has members who represent interests outside the coal industry, including environmental interests, labor, research, academia, and minorities. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon in the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, and implementing regulations.

Further information regarding this advisory committee may be obtained from Rachel M. Samuel at (202) 586–3279.

Issued at Washington D.C. on: November 21, 1997.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 97–31255 Filed 11–26–97; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Fossil Energy; National Petroleum Council Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1007, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 22, 1999. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The Council also has members who represent interests outside the petroleum industry, including representatives from environmental, labor, research, academia, minorities, and State utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act and implementing regulations.

Further information regarding this advisory committee may be obtained from Rachel M. Samuel at 202/586–3279.

Issued at Washington, DC on November 21, 1997.

James N. Solit,

Advisory Committee, Management Officer.

[FR Doc. 97–31254 Filed 11–26–97; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Deviation From the Department of Energy Assistance Regulations

AGENCY: Department of Energy.

ACTION: Notice of class deviation.

SUMMARY: The Department of Energy (DOE), pursuant to 10 CFR 600.4, hereby announces two deviations from its Financial Assistance Rules for cooperative agreement awards to commercial organizations resulting from the Program Research and Development Announcement for Integrated Fuel Cell Systems and Components. The first deviation will allow for monthly submissions of financial and progress reports. The second deviation will allow for an original and four copies of technical reports. It is anticipated that approximately 20 cooperative agreement awards will be made to commercial entities.

SUPPLEMENTARY INFORMATION: In this notice, the Department of Energy announces that, pursuant to 10 CFR 600.4, the Deputy Assistant Secretary for Procurement and Assistance Management has made a determination of the need for a class deviation to the Department's Financial Assistance Rules. A deviation to 10 CFR 600.151(b) has been approved which provides that recipients of cooperative agreement awards resulting from the Program Research and Development Announcement for Integrated Fuel Cell Systems and Components for Transportation and Buildings, will be required to submit to DOE monthly instead of quarterly reports for the Milestone Report, Project Status Report, and Financial Status Report. The fuel cell program requires these reports on a monthly basis for the purpose of coordinating and comparing project performance and costs among fuel cell program-participants to avoid not only duplication of research effort, but to coordinate any shared testing equipment, and to provide timely and meaningful technical direction as required.

The deviation at 10 CFR 600.151(e) will allow for submission of an original and 4 copies of the Program Management Plan, Quarterly Technical Progress Reports, Topical Reports, and Final Technical Report. The program reviewers of the technical reports are located at both DOE Headquarters and Argonne National Laboratory.

Approval of these deviations ensures that the program goals and objectives are achieved and that public funds are conserved.

FOR FURTHER INFORMATION CONTACT: Richard Langston, (202) 586–8247.

Issued in Washington, DC on November 21, 1997.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 97–31253 Filed 11–26–97; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public L. No. 92–463, 86 Stat. 770), notice is given of a meeting of the Biological and Environmental Research Advisory Committee.

DATES AND TIMES: Tuesday, December 16, 1997, 8:30 a.m. to 5:30 p.m. and Wednesday, December 17, 1997, 8:00 a.m. to 12:00 p.m.

ADDRESS: American Geophysical Union 2000 Florida Avenue, NW., Washington, DC 20009

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen or Ms. Shirley Derflinger, Designated Federal Officers, Office of Energy Research, ER–70, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, Telephone: For Dr. David Thomassen (301) 903–9817, E-mail: david.thomassen@oer.doe.gov, or Ms. Shirley Derflinger (301) 903–0044, E-mail: shirley.derflinger@oer.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy on the many complex scientific and technical issues that arise in the development and implementation of the biological and environmental research program.

Tentative Agenda

Tuesday, December 16, 1997, and Wednesday, December 17, 1997

- Welcome Remarks.
- Opening of Meeting.
- Remarks from Director, Office of Energy Research.
- Update on Office of Biological and Environmental Research Activities.
- Review of Subcommittee Activities.
- New Business.
- Public Comment (10-minute rule).

Public Participation

The day and a half meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on November 21, 1997

Althea T. Vanzego,

Acting Deputy Committee Advisory Management Officer.

[FR Doc. 97–31252 Filed 11–26–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–88–000]

Koch Gateway Pipeline Company; Notice of Application

November 21, 1997.

Take notice that on November 13, 1997, Koch Gateway Pipeline Company (Koch Gateway), 600 Travis Street, Houston, Texas 77251–1478 filed, in docket No. CP98–88–000, an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the operation of the transmission lines on its Eugene Island System in Offshore, Louisiana at the maximum allowable operating pressure (MAOP) of 1200 psig. Koch Gateway asserts that this increase in MAOP will provide it with a more cost efficient method of utilizing its system by uprating existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Koch Gateway believes that increasing the MAOP from 1065 psig to 1200 psig will benefit the transportation of gas supplies currently connected to the system and also new supplies being developed near the system. Koch Gateway says these benefits include: (1) regain the higher throughput of volumes on this system; (2) greater capacity for shippers and producers; (3) maximized overall utilization and flexibility on Koch Gateway's system; and (4) an ability to capitalize on the growth potential served by the Eugene Island System.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 12, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31181 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–027]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 21, 1997.

Take notice that on November 18, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following

revised tariff sheet to be effective November 1, 1997:

Third Revised Sheet No. 7E.03

NGT states that the purpose of this filing is to correctly revise the contract demand level for a particular shipper, which revision should have been reflected in the October 31, 1997 filing in the above referenced docket, but was inadvertently omitted. The tariff sheet included in the instant filing sets forth the revised contract demand level. No revisions were made to the formula used in calculating the rate for the particular shipper.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Copies of this filing on on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31188 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–93–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

November 21, 1997.

Take notice that on November 17, 1997, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP98–93–000 a request pursuant to §§ 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to upgrade an existing delivery point, located in Wabasha County, Minnesota, to accommodate natural gas deliveries to Northern States Power Company-Minnesota (NSP), under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to upgrade an existing delivery point consisting of the replacement of the meter modules, located in Wabasha County, Minnesota, to accommodate natural gas deliveries to NSP under currently effective throughput service agreements. Northern asserts that NSP has requested the upgrade of the delivery point to provide increased natural gas service to the Lake City #1 town border station.

Northern declares the estimated peak day and annual volumes would be increased from 3,443 MMBtu to 3,620 MMBtu and from 513,972 MMBtu to 524,250 MMBtu, respectively. Northern states that the estimated cost to upgrade the delivery point is $25,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31182 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–124–000]

Philadelphia Gas Works; Notice of Issuance of Order

November 21, 1997.

Philadelphia Gas Works (PGW) submitted for filing a rate schedule under which PGW will engage in wholesale electric power and energy transactions as a marketer. PGW also requested waiver of various Commission regulations. In particular, PGW requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PGW.

On November 19, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PGW should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, PGW is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PGW's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 19, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31189 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–1–000]

The Peoples Gas Light and Coke Company; Notice of Petition for Rate Approval

November 21, 1997.

Take notice on November 12, 1997, The Peoples Gas Light and Coke Company (Peoples Gas) filed a petition for rate approval, pursuant to Section 284.123(b)(2) of the Commission's regulations, requesting that the Commission approve as fair and equitable rates for firm and interruptible transportation services. Concurrent with this petition for rate approval, Peoples Gas states that it has filed in Docket No. CP98–84–000 an application for a blanket certificate of public convenience and necessity to provide firm and interruptible transportation services.

Based on a straight fixed variable rate design, Peoples Gas proposes a cost-based firm transportation monthly reservation rate of $2.0690 per MMBtu. For interruptible service, Peoples Gas proposes a maximum commodity charge, based on a 100% load factor derivation of the firm transportation rate, of $0.0680 per MMBTU. Peoples Gas also proposes an authorized overrun charge equivalent to the interruptible transportation commodity charge of $0.0680 per MMBTU. These proposed maximum rates would be subject to discounting by Peoples Gas.

Peoples Gas states that it is an intrastate gas distribution company serving retail customers in the City of Chicago, Illinois. Peoples Gas states it is a public utility under the Public Utilities Act of Illinois and is subject to the jurisdiction of the Illinois Commerce Commission.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31187 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–5–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

November 21, 1997.

Take notice that on November 19, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 19, 1997:

Tenth Revised Sheet No. 825
Twelfth Revised Sheet No. 826
Sixteenth Revised Sheet No. 827
Eleventh Revised Sheet No. 828
Seventeenth Revised Sheet No. 829
Fifteenth Revised Sheet No. 830
Eighteenth Revised Sheet No. 831
Twentieth Revised Sheet No. 832
Twentieth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W. Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31183 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1794–002, et al.]

Southern Company Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 20, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER96–1794–002]

Take notice that on October 24, 1997, Southern Company Services, Inc., tendered for filing its refund report in the above-referenced docket.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power

[Docket No. DR98–04–000]

Take notice that on October 28, 1997, Allegheny Power, filed on behalf of West Penn Power Company, an Application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act. The proposed depreciation rates are for accounting purposes only. Allegheny Power states that the proposed West Penn new depreciation rates were approved for retail purposes by the Pennsylvania Public Utility Commission as of January 1, 1997. Allegheny Power requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1997.

Comment date: December 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Potomac Electric Power Company

[Docket No. ER98–929–000]

Take notice that on November 7, 1997, Potomac Electric Company (PEPCO), tendered for filing a letter informing the Commission that prior to the effective date of the settlement in this docket, PEPCO provided no transmission service at rates in excess of the settlement rates, and therefore, no refunds are due.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER98–456–000]

Take notice that on October 31, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with DPL Energy, Inc., under the NU System Companies' Sale for Resale, Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to DPL Energy, Inc.

NUSCO requests that the Service Agreement become effective October 28, 1997.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PP&L, Inc.

[Docket No. ER98–457–000]

Take Notice that on October 31, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 28, 1997, with Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (SCSI), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds SCSI as an eligible customer under the Tariff.

PP&L requests an effective date of October 31, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to SCSI and to the Pennsylvania Public Utility Commission.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Electric Power Company

[Docket No. ER98–458–000]

Take notice that on October 31, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with NorAm Energy Services, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER98–460–000]

Take notice that on October 31, 1997, Public Service Company of Colorado (Public Service), tendered for filing a new rate schedule for service to UtiliCorp United Inc. (UtiliCorp), to be included in its wholesale electric rate tariff. The new rate schedule is for additional partial requirements service to UtiliCorp.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER98–461–000]

Take notice that on October 31, 1997, Northeast Utilities Service Company (NUSCO), on behalf of its affiliates The Connecticut Light & Power Company and Public Service Company of New Hampshire, tendered for filing a request for a rate schedule change to the following rate schedule: CL&P FERC Rate Schedule No. 2.

NUSCO states that a copy of this filing has been mailed to The Reading Municipal Light Department and the Massachusetts Department of Public Utilities.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER98–462–000]

Take notice that on October 31, 1997, Southern California Edison Company (Edison), tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with the following entities:

Entity	FERC rate schedule number
1. City of Anaheim	130, 246.6, 246.8, 246.13, 246.29, 246.32.1, 246.33.1, 246.36.
2. City of Azusa	160, 247.4, 247.6, 247.8, 247.24, 247.29, 247.29.6.
3. City of Banning	159, 248.5, 248.7, 248.24, 248.29, 248.29.8, 248.37.
4. City of Colton	162, 249.4, 249.6, 249.8, 249.24, 249.29.
5. City of Riverside	129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.30, 250.35, 250.41, 250.44, 250.46, 250.50.
6. City of Vernon	149, 154.24, 172, 207, 272, 276.
7. Arizona Electric Power Cooperative	132, 161.
8. Arizona Public Service Company	185, 348.
9. California Department of Water Resources	112, 113, 181, 342.
10. City of Burbank	166.
11. City of Glendale	143.
12. City of Los Angeles Department of Water and Power.	102, 118, 140, 141, 163, 188.
13. City of Pasadena	158.
14. Coastal Electric Services Company	347.
15. Imperial Irrigation District	259, 268.
16. Metropolitan Water District of Southern California.	292.
17. M-S-R Public Power Agency	153, 339.
18. Northern California Power Agency	240.
19. Pacific Gas and Electric Company	117, 147, 256, 318.
20. PacifiCorp	275.
21. Rainbow Energy Marketing Corporation	346.
22. San Diego Gas & Electric Company	151.
23. Southern California Water Company	349.3.
24. Western Area Power Administration	120.

Edison requests that the revised rate for these services be made effective January 1, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER98–464–000]

Take notice that on October 31, 1997, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy) filed executed Retail Transmission Service Agency Agreements between GPU Energy and (1) NorAm Energy Management, Inc., dated October 22, 1997; (2) DuPont Power Marketing, Inc., dated October 22, 1997; (3) Energis Resources, Inc., dated October 22, 1997; (4) PP&L d/b/a PP&L EnergyPlus dated October 17, 1997; (5) GPU Advanced Resources dated October 14, 1997; (6) CNG Retail Services Corporation dated October 17, 1997; (7) Delmarva Power & Light Company d/b/a Conectiv Energy dated October 23, 1997; and (8) QST Energy Trading, Inc., dated October 23, 1997.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER98–465–000]

Take notice that on October 31, 1997, Northern Indiana Public Service Company, tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and The Energy Authority, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to The Energy Authority, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to The Energy Authority, Inc., pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98–467–000]

Take notice that on October 31, 1997, Virginia Electric and Power Company, tendered for filing three executed agreements with Old Dominion Electric Cooperative: an amended Interconnection and Operations Agreement, a Network Integration Transmission Agreement and a Network Operating Agreement.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–484–000]

Take notice that on October 31, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Eastern Group (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER96–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–485–000]

Take notice that on October 31, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Eastern Group (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER96–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–488–000]

Take notice that on October 31, 1997, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc., (collectively referred to as Cinergy), tendered for filing a Power Service Agreement between Cinergy and the city of Bristol, Virginia (Bristol) as a Service Agreement for a long-term market based sale in fulfillment of requirements imposed on Cinergy by Order dated November 15, 1996, in Docket No. ER96–2506–000 or, in the alternative, as an original rate schedule. Cinergy has requested an effective date of January 1, 1998, for the Power Service Agreement.

Copies of the filing have been served on the Bristol Virginia Utilities Board, the State Corporation Commission of Virginia and the parties to Docket No. ER96–2506–000.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER98–489–000]

Take notice that on October 31, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing the existing Exhibit VII and revised Exhibits VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (Interchange Agreement). The Interchange Agreement is NSP (Minnesota) FERC Rate Schedule No. 437 and NSP (Wisconsin) FERC Rate Schedule No. 73.

The NSP Companies request an effective date of January 1, 1998, sixty-two days after filing, without suspension. Copies of the filing letter and Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have also been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–490–000]

Take notice that on October 30, 1997, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC, membership applications of Cinergy Resources, Inc., GPU Advanced Resources, The Power Company of America, L.P., and UGI Power Supply, Inc. PJM requests an effective date of October 31, 1997.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–491–000]

Take notice that on October 31, 1997, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC, membership application of Horizon Energy. PJM requests an effective date of November 1, 1997.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–492–000]

Take notice that on October 31, 1997, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC, membership applications of DTE–Energy Trading and DTE–CoEnergy. PJM requests an effective date of November 1, 1997.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. San Diego Gas & Electric Company

[Docket No. ER98–497–000]

Take notice that on October 31, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing seven (7) Service Agreements for wholesale distribution service provided by SDG&E as a distribution service provider to SDG&E's combustion turbines. SDG&E requests that the proposed Service Agreements be made effective no later than January 1, 1998.

SDG&E states that the Service Agreements specify rates, terms, and conditions under which SDG&E will use its own distribution system to make wholesale sales of electric power to the California Independent System Operator or the California Power Exchange in the restructured California marketplace. The form of these Service Agreements was filed by SDG&E on August 15, 1997 in Docket No. ER97–4235–000.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Rocky Mountain Reserve Group

[Docket No. ER98–498–000]

Take notice that on October 31, 1997, Public Service Company of Colorado (PSCO), on behalf of itself, Black Hills Corporation operating as Black Hills Power and Light Company and the WestPlains Energy division of UtiliCorp United Inc., filed the Articles of Incorporation, Bylaws and Initial Policies for the Rocky Mountain Reserve Group.

PSCO requests an effective date of January 1, 1998.

Copies of the filing have been served on the regulatory commissions in Colorado, Nebraska, South Dakota, Utah and Wyoming.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER98–501–000]

Take notice that on October 31, 1997, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (collectively, the NU System Companies), hereby respectfully requests that the Commission grant the NU System Companies a 30 day extension of time to file the quarterly transaction report of NUSCO's activity under the NU System Companies' Tariff No. 7 for the quarter ending September 30, 1997.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Montaup Electric Company

[Docket No. ER98–502–000]

Take notice that on October 31, 1997, Montaup Electric Company (Montaup) filed revisions to its open access transmission tariff which (a) provide for retail transmission and subtransmission service within the service territory of the Pascoag, Rhode Island, Fire District, and (b) provide Pascoag with a revenue credit against its tariff payments for network transmission service in the amount of any revenues collected by Montaup for retail transmission and subtransmission service. Montaup requests that these tariff revisions be allowed to become effective on January 1, 1998.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company

[Docket No. ER98–503–000]

Take notice that on November 3, 1997, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New West Energy Corporation

[Docket No. ER98–504–000]

Take notice that on October 31, 1997, New West Energy Corporation (New West) tendered for filing, pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission, and requests that the Commission waive the 60-day notice requirement so that its FERC Electric Rate Schedule No. 1, can become effective on the first day following the filing.

New West intends to engage in electric power and energy transactions as a power marketer and, potentially, as a broker. In transactions where New West sells wholesale electric power and energy, it proposes to make such sales at rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in the application, New West is an affiliate of the Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER98–505–000]

Take notice that on November 3, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 34 to add eight (8) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of November 1, 1997, to Allegheny Energy Solutions, Inc., Avista Energy, Inc., DTE Energy Trading, Inc., Delmarva Power & Light Company, Energis Resources Incorporated, Horizon Energy Company, Penn Power Energy, and Woodruff Energy.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER98–556–000]

Take notice that on October 31, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing proposed formula rate tariff language to recover from PG&E's existing wholesale power customers a portion of the California Power Exchange (PX) Administrative Charge. PG&E requests that its filing be made effective at the same time the separately filed Restated PX Tariff is made effective.

This filing is part of the comprehensive restructuring proposal for the California electric power industry that is being filed with the Federal Energy Regulatory Commission. Copies of this filing have been served upon the California Public Utilities Commission and all other parties listed as PG&E's existing wholesale power customers in this filing.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Pacific Gas and Electric Company

[Docket No. ER98–557–000]

Take notice that on October 31, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing proposed formula rate tariff language to recover from PG&E's existing wholesale transmission customers and the Bay Area Rapid Transit District a portion of the California Independent System Operator (ISO) Grid Management Charge. PG&E requests that its filing be made effective at the same time the separately filed Restated ISO Tariff is made effective.

This filing is part of the comprehensive restructuring proposal for the California electric power industry that is being filed with the Federal Energy Regulatory Commission. Copies of this filing have been served upon the California Public Utilities Commission and all other parties listed as PG&E's existing transmission customers in this filing.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Central Maine Power Company

[Docket No. ES98–6–000]

Take notice that on November 10, 1997, Central Maine Power Company filed an application with the Commission pursuant to Section 204, of the Federal Power Act, seeking authority to issue and renew on or before February 29, 2000, Bank Loans, Commercial Paper and Medium-Term Notes maturing one year or less after the date of issuance in an aggregate face amount not exceeding $130,000,000 outstanding at any one time.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Aroostook Valley Electric Company

[Docket No. ES98–8–000]

Take notice that on November 13, 1997, Aroostook Valley Electric Company filed an Application under Section 204 of the Federal Power Act seeking authority to issue and renew on or before March 1, 2000, bank loans maturing one year or less after the date of issuance in an aggregate face amount not exceeding $5,000,000.

Comment date: December 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Long Island Lighting Company

[Docket No. OA98–5–000]

Take notice that Long Island Lighting Company (LILCO) on November 4, 1997, tendered an amended filing in the above-referenced docket to make certain modifications to LILCO's Power Sales Tariff (filed with the Commission on August 10, 1995, as amended on April 4, 1996) in order to comply with Order Nos. 888 and 888A and with LILCO's Open Access Transmission Tariff (OATT), the settlement rates, terms and conditions of which were approved by the Commission on May 14, 1997, in Docket No. OA96–38–000.

Copies of this filing have been served by LILCO on the New York State Public Service Commission and on the existing purchasers who have executed service agreements under LILCO's Power Sales Tariff and on prospective purchasers under LILCO's Tariff.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Co. and The Toledo Edison Company

[Docket No. OA98–6–000]

Take notice that on November 7, 1997, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company tendered for filing the Standards of Conduct for the FirstEnergy operating companies effective November 8, 1997. The FirstEnergy Standards of Conduct supersedes the individual Standards of Conduct previously submitted by Ohio Edison Company and Centerior Energy Corporation.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31180 Filed 11–25–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–030]

Montana Power Company; Notice of Extending Time to Comment on Draft EIS

November 21, 1997.

The Federal Energy Regulatory Commission issued a Draft Environmental Impact Statement (DEIS) considering issuance of a new license for the Missouri Madison Project. The notice of Availability of the DEIS

appeared in the **Federal Register** on October 3, 1997 (62 F.R. 51855).

In response to letters filed by the Madison Coalition requesting a technical workshop regarding modeling of thermal impacts associated with the Madison Development and additional time develop comments on the DEIS based on this workshop, I am extending the DEIS comment period, the comment period on the DEIS is extended from December 2, 1997, until February 23, 1998.

Anyone wishing to comment in writing on the DEIS must do so no later than February 23, 1998. Comments should be addressed to: Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Written correspondence should clearly show the following caption on the first page: Missouri-Madison Hydroelectric Project No. 2188–030.

For further information, please contact Mr. R. Feller at (202) 219–2796 or Mr. John McEachern at (202) 219–3056.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31185 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Waiver of Article 501

November 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Waiver of Article 501.

b. *Projects Nos.:* 1510–010 and 2677–011.

c. *Date filed:* October 29, 1997.

d. *Applicant:* City of Kaukauna, Wisconsin.

e. *Names of Projects:* Kaukauna, Badger-Rapide Croche.

f. *Location:* On the Fox River in Outagamie County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Peter D. Prast, P.E., Kaukauna Electric and Water Dept., 777 Island Street, P.O. Box 1777, Kaukauna, WI 54130–7077, (920) 766–5721.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Comment Date:* January 9, 1998.

k. *Description of Request:* The City of Kaukauna (City) states that it has complied with article 501 of the new licenses issued in 1989 for these projects. The City states that no substantial changes have occurred at the projects, resulting in the duplication of the previous report, with mere date changes, for each successive article 501 annual report. The City requests waiver of the reporting requirement.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 19 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31184 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revocation of Exemption

November 21, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection

a. *Type of Action:* Revocation of Exemption.

b. *Project No:* 4737–002.

c. *Licensee:* James Werner.

d. *Name of Project:* Trinity Alps Project.

e. *Location:* Trinity Alps Creek, Trinity County, CA.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. §§ 792–828c.

g. *Licensee Contact: (last known address)* James Werner, P.O. Box 480, Trinity Center, CA 96091–9707.

h. *FERC Contact:* Dean C. Wight, (202) 219–2675.

i. *Comment Date:* January 2, 1998.

J. *Description of Proposed Action:* The Commission proposes to revoke the exemption from licensing for the Trinity Alps Project pursuant to section 4.106(f) of the regulations (18 CFR 4.106(f)). The project has not been operational since 1988, and the Commission has been unable to contact the exemptee.

The Commission may require actions to dispose of project works and restore project lands. The Commission requests comments regarding such disposition and restoration from the Federal and state fish and wildlife agencies identified in section 4.38 of its regulation (18 CFR 4.38).

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Document—Any filing must bear in all capital letters the title "COMMENTS" "RECOMMENDATION FOR TERMS AND CONDITIONS", "PROTESTS", or "OR "MOTION TO INTERVENE", as applicable, and the Project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, if will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31186 Filed 11–26–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request Number 1597.02: Universal Waste Handlers and Destination Facilities, Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Universal Waste Handlers and Destination Facilities Reporting and Recordkeeping Requirements, EPA ICR Number 1597.02, OMB Control Number 2050–0145, current expiration date: 5/31/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below. Please note that this action does not create any new regulatory requirements for persons who manage universal waste.

DATES: Comments must be submitted on or before January 27, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–97–UWIP–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–97–UWIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway 1, 1235 Jefferson Davis Highway, first floor, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

Copies of the original ICR may be requested from the docket address and phone number listed above or may be found on the Internet. On the Internet, access the main EPA gopher menu and locate the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA/hazardous waste-RCRA Subtitle C/generators.

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/id/univwast.htm

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above in this section).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323. For technical information, contact Bryan Groce at 703–308–8750.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are waste handlers and destination facilities that collect and manage certain hazardous waste batteries, certain hazardous waste pesticides, and hazardous waste mercury-containing thermostats.

Title: Universal Waste Handlers and Destination Facilities Reporting and Recordkeeping Requirements, EPA ICR Number 1597.02, OMB Control Number 2050–0145, expiration date: 5/31/98.

Abstract: EPA promulgated the Universal Waste standards at 40 CFR part 273. The Universal Waste standards govern the collection and management of widely generated wastes known as universal wastes. EPA has identified hazardous waste batteries, certain hazardous waste pesticides, and hazardous waste thermostats as universal wastes. Other wastes may be added to the universal waste Federal program if EPA determines such regulation is appropriate. The regulations allow universal waste handlers to manage universal wastes under a reduced set of regulatory requirements. Destination facilities, on the other hand, (i.e., those facilities accepting universal waste for treatment, recycling, or disposal) remain subject to standards under 40 CFR parts 264 or 265.

The universal waste regulations at part 273 were promulgated by EPA under the authority of Subtitle C in RCRA. This information collection targets the collection of information for the following reporting or recordkeeping requirements: notification, labeling and marking, storage-time limitations, off-site shipments, tracking universal waste shipments, and petitions to include other waste categories at the federal level.

It is necessary for EPA to collect universal waste information to ensure that universal waste is collected and managed in a manner that is protective of human health and the environment. EPA requires, among other things, large quantity handlers of universal waste (LQHUWs) to notify the Agency for their universal waste management activities so that EPA can obtain general information on these handlers, and so that it can facilitate enforcement of the regulations at part 273. In addition, EPA requires universal waste handlers to record the date on which they begin storing universal waste on-site to ensure

that such accumulation is performed responsibly. EPA also requires certain universal waste handlers to track receipt of universal waste shipments as well as shipments sent off-site to ensure that universal waste is properly treated, recycled, and disposed. Finally, the submission of petitions in support of regulating other wastes or waste categories under part 273 helps EPA (1) to compile information on these wastes, and (2) to determine whether regulation as a universal waste is appropriate.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA would like to solicit comments to:

(I) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated number of likely respondents under this collection of information is 79,510 (78,973 Small Quantity Handlers of Universal Wastes (SQHUWs), 485 LQHUWs, and 52 Destination Facilities). The bottom line annual reporting and recordkeeping burden to respondents under this collection of information is 122,674 hours. The average annual public reporting burden per response for SQHUWs under this collection of information is 0 hours. The average annual public reporting burden per response for LQHUWs is estimated to range from 0 to 2.41 hours. The average annual public reporting burden per response for destination facilities is estimated to range from 0 to 2.41 hours. The average annual recordkeeping burden per response for SQHUWs under this collection of information is estimated to range from 1.12 to 1.62 hours. The average annual recordkeeping burden per response for LQHUWs is estimated to range from 5.82 to 6.82 hours. The average annual recordkeeping burden per response for destination facilities is estimated to be 115.37 hours. The total average annual burden cost for universal waste handlers, universal waste petitioners, and destination facilities is: $5,303,419 in labor costs; $1,212 in capital costs; and $244.25 in annual O&M costs (O&M costs include a purchase of service component). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 20, 1997.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 97–31271 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–4]

Request for Nominations to North American Free Trade Agreement– and U.S.–Mexico Border–Related Environmental Advisory Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) is inviting nominations to fill vacancies on two national advisory committees: the Governmental Advisory Committee to the U.S. Representative to the North American Commission for Environmental Cooperation and the Good Neighbor Environmental Board. The Agency is seeking qualified senior level decision makers from diverse sectors to be considered for appointments. Nominees for the Governmental Advisory Committee may come from state, local or tribal government entities anywhere in the U.S. Nominees for the Good Neighbor Environmental Board must come from governmental or nongovernmental entities in the states of Arizona, California, New Mexico or Texas.

DATES: Nominations will be accepted until close of business December 12, 1997.

ADDRESSES: Submit nominations to: Mr. Robert Hardaker, Team Leader for Environment and Trade, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency, 1601-F, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Hardaker, Designated Federal Officer, U.S. Environmental Protection Agency, 1601-F, Washington, DC 20460; telephone (202) 260–2477.

SUPPLEMENTARY INFORMATION: These two committees are Federal advisory committees operating under the Federal Advisory Committee Act, PL 92–463.

The Governmental Advisory Committee (GAC) advises the U.S. Government Representative to the North American Free Trade Agreement (NAFTA) Commission on Environmental Cooperation (CEC). The Commission on Environmental Cooperation (composed of the heads of the environmental agencies for Canada, Mexico and the U.S.; a Secretariat headquartered in Montreal, Canada; and a Joint Public Advisory Committee composed of members of the public from each country) was established to protect the North American environment and support the environmental goals of NAFTA. NAFTA also authorized each country to establish two public advisory committees to advise its representative to the CEC. The U.S. Governmental Advisory Committee (GAC) is composed of 10 representatives of state, local and tribal governments. The counterpart U.S. National Advisory Committee is composed of 12 representatives of nongovernmental organizations. USEPA is not currently soliciting for membership on the National Advisory Committee.

The Good Neighbor Environmental Board, created under the Enterprise for the Americas Initiative Act of 1992, advises the President and the Congress on approaches to sustainable development for the U.S.–Mexico border region that address environmental, natural resources, health, transportation, housing, and economic development issues, and that promote coordination of governmental activities along the U.S.–Mexico border. The Board consists of representatives from nongovernmental organizations, industry, academia, and state and local governments in the States of Arizona, California, New Mexico and Texas, as well as from eight U.S. Government agencies.

Members of these committees are appointed by the Administrator of USEPA for a term of one year with the possibility of reappointment. The Committees meet at least twice annually.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: November 14, 1997.

Greg Kenyon,

Acting Designated Federal Officer.

[FR Doc. 97–31276 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5486–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 17, 1997 Through November 21, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970452, Final EIS, DOE, NY, Disposal of the Defueled S3G and D1G Prototype Reactor Plants, Implementation, Located at the Knolls Atomic Power Laboratory Kesselring Site near West Milton, Saratoga County, NY, Due: December 29, 1997, Contact: Andrew S. Baitinger (518) 884–1234.

EIS No. 970453, Final EIS, MMS, AL, LA, MS, TX, Central Planning Area, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 169, 172, 175, 176 and 182, Lease Offering, Offshore Marine Environment and Coastal Counties/Parishes of AL, MS, LA and TX, Due: December 29, 1997, Contact: Archie Melancon (703) 787–1547.

EIS No. 970454, Revised Draft EIS, BLM, CA, Imperial Project, Open-Pit Precious Metal Mining Operation Utilizing Heap Leach Processes, Plan of Operations, Right-of-Way, Conditional Use Permit, US COE Permit and Reclamation Plan Approvals, El Centro Resource Area, California Area District, Imperial County, CA, Due: January 27, 1998, Contact: Douglas Romoli (909) 697–5237. The above Revised Draft EIS replaces Draft EIS #960511, filed with the US EPA on 10–25–96.

EIS No. 970455, Draft EIS, USA, NY, Seneca Army Depot Activity Disposal and Reuse, Implementation, Seneca County and the City of Geneva, Ontario County, NY, Due: January 12, 1998, Contact: Ltc. Rob Dow (703) 693–9217.

EIS No. 970456, Draft EIS, AFS, AK, Indian River Timber Sale(s) Project, Implementation, Tongass National Forest, Chatham Area, Sitka and Hoonah Ranger Districts, COE Section 10 and 404 Permit, NPDES and Coast Guard Bridge Permit, Chichagof Island, AK, Due: January 12, 1998, Contact: Linn Shipley (907) 747–6671.

Amended Notices

EIS No. 970442, Draft EIS, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, City of San Francisco, San Francisco County, CA, Due: January 05, 1998, Contact: Mary Doyle (650) 244–3024. Published FR 11–14–97—Review Period extended.

EIS No. 970444, Final Supplement, NOA, Snapper Grouper Fishery, Amendment 8 to the Fishery Management Plan, Regulatory Impact Review, South Atlantic Region, Due: December 29, 1997, Contact: Rolland A. Schmitter (301) 713–2239. Published FR 11–14–97—Review Period Reestablished.

EIS No. 970451, Draft EIS, DOE, CO, Rocky Flats Environmental Technology Site Management of Certain Plutonium Residues and Scrub Alloy Stored, Golden, CO, Due: January 05, 1998, Contact: Charles Head (202) 586–5151. Published FR 11–21–97 Correction to Title.

Dated: November 24, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–31249 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 10, 1997 Through November 14, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–FHW–K40227–CA Rating EC2, I–880 Interchange at Dixon Landing Road Reconstruction Improvements, Funding and COE Section 404 Permit, Fremont, Milpitas, Alameda and Santa Clara Counties, CA.

Summary: EPA expressed environmental concerns regarding the lack of full disclosure of alternatives impacts due to the proposed width of the overcrossing. EPA requested clarification of these issues and mitigation involving revegetation and restoring old road beds be discussed.

ERP No. D–NOA–E70000–GA Rating LO, State of Georgia Coastal Management Program, Comprehensive Coastal Land and Water Use Activities, Approval and Implementation, GA.

Summary: EPA had lack of objections with the proposed project. EPA did not identify any potential environmental impacts requiring substantial change to the proposal, and that the alternatives and their consequences were reasonably disclosed.

ERP No. D–SCS–G36146–OK Rating LO, Middle Deep Red Run Creek Watershed Plan, Implementation, Funding and Possible COE Section 404 Permit, Central Rolling Red Plains, Tillman, Comanche and Kiowa Counties, OK.

Summary: EPA had lack of objection to the selection of the Natural Resources Conservation Service's preferred alternative as described in the Draft EIS.

ERP No. D–USN–K11082–CA Rating EC2, San Diego Naval Training Center (NTC) Disposal and Reuse of Certain Real Properties, Implementation, City of San Diego, San Diego County, CA.

Summary: EPA expressed environmental concerns regarding biological and water resources cumulative impacts and environmental justice. EPA requested that these issues be clarified in the Final EIS.

Final EISs

ERP No. F–BOP–E60001–KY, United States Penitentiary Martin County, Construction and Operation, Possible Sites, Bizwell and Honey Branch Sites, located in Martin and Johnson Counties, KY.

Summary: EPA had lack of objections with the proposed project. All of EPA's

comments on the Draft EIS were sufficiently addressed in the Final EIS. The Federal Bureau of Prisons expressed their commitment to preserving wetlands.

ERP No. F–DOE–G06004–TX, Pantex Plant Continued Operation and Associated Storage of Nuclear Weapon Components, Implementation, Approvals and Permits Issuance, Carson County, TX.

Summary: EPA had lack of objections to the action as proposed. EPA's environmental concerns with the Draft EIS have been resolved.

ERP No. F–FAA–E11040–NC, Adoption—Camp Lejeune Marine Corps Base Camp, Expansion and Realignment for Additional Training Needs, Implementation, Onslow County, NC.

Summary: After reviewing the new information relating to airspace issues. EPA's initial concerns have not been resolved.

ERP No. F–FHW–G40144–AR, US 71 Relocation, Construction extending from US 70 in DeQueen to I–40 near Alma, AR, Funding and COE Section 404 Permit, Sevier, Polk, Scott, Sebastian and Crawford Counties, AR.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–USN–C10003–00, Relocatable over the Horizon Radar (ROTHR) System Construction and Operation, New and Updated Information on Fort Allen as Potential Site, Commonwealth of Puerto Rico and Chesapeake, VA.

Summary: EPA had no objection to the implementation of the proposed project. Based on the review of the Final EIS EPA does not anticipate that the proposed project will result in significant adverse environmental impacts, provided the mitigation measures are followed.

Dated: November 24, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–31250 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00228; FRL–5758–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will hold a meeting in December in Washington, DC. At this meeting, the (NAC/AEGL Committee) will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: arsenous trichloride, carbon tetrachloride, hydrogen cyanide, methyltrichlorosilane, phosgene, and trimethylchlorosilane. In addition, literature search results for sulfuric acid, sulfur dioxide, and sulfur trioxide will be discussed and the NAC/AEGL Committee may also evaluate public comments and subsequently establish "Interim AEGLs" for the chemicals anilne; arsine; chlorine; 1,2-dichloroethene; 1,1-dimethylhydrazine; 1,2-dimethylhydrazine; ethylene oxide; fluorine; hydrazine; methylhydrazine; nitric acid; and phosphine published in the **Federal Register** issue of October 30, 1997 (62 FR 58840) (FRL–5737–3), as corrected in the **Federal Register** issue of November 21, 1997 (62 FR 62309) (FRL–5757–5).

DATES: The NAC/AEGL Committee will be held on Monday, December 8, 1997, from 10 a.m. to 5 p.m.; Tuesday, December 9, 1997, from 8:30 a.m. to 5 p.m.; and Wednesday, December 10, 1997, from 8:30 a.m. to 1 p.m..

ADDRESSES: The meeting will be held in the Disabled American Veterans Building, 807 Maine Ave., Washington, DC (about 1/4 mile from the Waterfront Metro stop).

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1736, e-mail address: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet

Electronic copies of this notice and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax-On-Demand

Using a faxphone call (202) 401–0527 and select item 4800 for an index of items in this category.

II. Meeting Procedures

Oral presentations by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations, submission of data and/or written statements, or chemical-specific information should be directed to the DFO.

Another meeting of the NAC/AEGL Committee is expected to be held on March 10–12, 1998, (currently planned to be held at Oak Ridge National Laboratory, 1060 Commerce Park, Oak Ridge, TN 37830). It is anticipated that the chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: acrolein, chloroform, chloromethyl methy ether, peracetic acid, methyl isocyanate, nickel carbonyl, nitric oxide, and piperidineepichlorohydrin. Inquiries regarding the submission of data, written statements, or chemical-specific information on these chemicals should be directed to the DFO at the earliest possible date to allow for consideration of this information in the preparation of NAC/AEGL Committee materials.

List of Subjects

Environmental protection, Hazardous substances, Health.

Dated: November 20, 1997.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–31268 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–8]

Common Sense Initiative Council (CSIC); Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSIC Metal Finishing and Computers and Electronics Sector Subcommittee Meetings; open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Metal Finishing and Computers and Electronics Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. Both meetings are open to the public. Seating at both meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the announcements below.

(1) Metal Finishing Sector Subcommittee Meeting—December 16–17, 1997

The Metal Finishing Sector Subcommittee will hold an open meeting on Tuesday, December 16, 1997 and on Wednesday, December 17, 1997. The Subcommittee will meet both days from approximately 9:00 a.m. EDT to approximately 4:00 p.m. EDT. The meeting will be held at the Radisson Barcelo Hotel, 2121 P Street NW., Washington, DC. The hotel telephone number is 202–293–3100.

The Subcommittee will focus on implementation plans and issues associated with the Goals Program. We also anticipate having workgroup breakout sessions to discuss research and technology projects, risk assessment and characterization issues, the RCRA Bench marking Project, and training courses associated with the Metal Finishing Guidance Manual. An agenda will be available in early December.

For further information concerning meeting times and the agenda of this Metal Finishing Sector Subcommittee, please contact Bob Benson, Designated Federal Officer (DFO), at EPA by telephone on (202) 260–8668 in Washington, DC, by fax on (202) 260–8662, or by e-mail at benson.robert@epamail.epa.gov.

(2) Computers and Electronics Sector Subcommittee—January 14–15, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Computers and Electronics Sector Subcommittee on Wednesday, January 14, 1998, from 8:30 a.m. PST until 5:00 p.m. PST and on Thursday, January 15, 1998 from 8:30 a.m. PST to 3:00 p.m. PST, at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102. The telephone number is 415–392–7755 or 800–227–5480.

Both days, January 14 and 15, will be devoted partly to breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling"; and Integrated and Sustainable Alternative Strategies for Electronics) and partly to plenary sessions. The Subcommittee will discuss progress on projects including: BOLDER (Basic On-Line Disaster and Emergency Response); Beta-BOLDER, a project to test the BOLDER system transferability; Better BOLDER, a project to make the BOLDER facility emergency response plan information accessible to the public; CURE (Consolidated Uniform Report for the Environment), a project to submit environmental information on a single form; E-Works (Electronic Workers Health Project); Voluntary Program for Life Cycle Management of Electronic Products/ State Multi-Stakeholder Dialogue; SPECIE (Superior Performance for the Environment through Community Involvement and Engagement), a project to develop a printed resource guide to strengthen community collaboration; Evaluation of Models and Development of Best Practices for Electronic Equipment Recovery/San Francisco Recycling; Green Track, a project to offer regulatory flexibility or other incentives to encourage facilities to improve environmental performance beyond current regulatory requirements; Definition of "Legitimate Recycling"; a project to seek consensus-based decisions on the recycling of computer parts, and define electronics-related activities the sector would recommend EPA exempt from existing solid waste regulations. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning this meeting of the Common Sense Initiative's Computers and Electronics Sector Subcommittee, please contact John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street SW., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, U.S. EPA Region 9 on (415) 744–2266.

Inspection of Subcommittee Documents: Documents relating to the above Sector Subcommittee announcements, will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street SW., Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http://www.epa.gov/commonsense.

Dated: November 21, 1997.

Gregory Ondich,

Acting Designated Federal Officer.

[FR Doc. 97–31275 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5929–4]

National Advisory Council for Environmental Policy and Technology—Total Maximum Daily Load Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDLs and water related issues.

DATES: The three day public meeting will be held on January 21–23, 1998, in Salt Lake City, Utah. The full Committee meeting is scheduled to begin Wednesday, January 21, 1998, at 8:30 a.m and conclude at 5:30 p.m., and will be held at the Jewish Community Center, #2 Medical Drive, Salt Lake City, Utah. The meeting will reconvene at 8:30 a.m. on Thursday, January 22, 1998, at the Jewish Community Center and is scheduled to adjourn at 3:00 p.m. On Friday, January 23, 1998, the Committee will meet at the University Park Hotel and Suites, 480 Wakara Way, Salt Lake City, Utah, beginning at 8:30 a.m. and is scheduled to conclude at 4:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting and will both be held at the Jewish Community Center. The first will occur on Wednesday,

January 21, 1998, from 7:30 p.m. until 9 p.m. The second will occur on Thursday, January 22, 1998, from 3:30 p.m. until 5:00 p.m.

FUTURE MEETING DATES: The Committee has one remaining meeting scheduled on May 4–6, 1998, in Atlanta, Georgia.

ADDRESSES: Materials or written comments may be transmitted to the Committee through Hazel Groman, Designated Federal Officer, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, Designated Federal Officer for the Total Maximum Daily Load Committee, at 202–260–8798.

Dated: November 20, 1997.

Hazel Groman,

Designated Federal Officer.

[FR Doc. 97–31279 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5486–6]

Notice of Proposed Changes to Voluntary Environmental Impact Statement Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of changes to existing policy and opportunity for public comment.

SUMMARY: EPA is proposing changes in its Statement of Policy for Voluntary Environmental Impact Statements (EIS), which it adopted and published in the **Federal Register** (Vol. 39, No. 89/Tuesday, May 7, 1974/Notices/16186–16187). The proposed changes would update the EPA policy to reflect how Congress and the Courts have defined EPA's National Environmental Policy Act (NEPA) obligations and to ensure that EPA's voluntary practices regarding NEPA compliance are consistent with practices provided in the NEPA regulations issued by the Council on Environmental Quality (CEQ). The proposed changes will also encourage expansion of the increased discretionary use of voluntary EISs in circumstances where they can be particularly helpful for decision-making involving other federal agencies, cross-media issues, or other concerns such as environmental justice. The proposed changes will affect certain EPA standard-setting and cancellation procedures. EPA is soliciting comments on these proposed changes.

DATES: Submit written comments on or before January 27, 1998. After addressing any comments received, EPA will issue a final policy in the **Federal Register**.

FOR FURTHER INFORMATION AND TO SUBMIT WRITTEN COMMENTS CONTACT: Marguerite Duffy at (202) 564–7148; E-mail: duffy.marguerite@epamail.epa.gov; or Joseph Montgomery at (202) 564–7157; E-mail: montgomery.joseph@epamail.epa.gov; U.S. Environmental Protection Agency, Office of Federal Activities (2252–A), 401 M Street, SW, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Background

Unless otherwise exempted, Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (hereafter "NEPA"), implemented by Executive Orders 11514 and 11991 and the Council on Environmental Quality (CEQ) Regulations at 40 CFR parts 1500–1508, requires that Federal agencies prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the Federal agency decision-making process an appropriate and careful consideration of all environmental impacts of proposed actions. Accordingly, under CEQ regulations, where major Federal actions will have a significant effect on the quality of the human environment, a detailed environmental impact statement (EIS) is required; where it is believed that an action will have no significant impact, or where the level of impact is uncertain, agencies can prepare less detailed environmental assessments (EAs) to determine the level of impact and/or document a finding of no significant impact.

EPA is legally required to comply with the procedural requirements of NEPA for its research and development activities, facilities construction, wastewater treatment construction grants under Title II of the Clean Water Act, and EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources. The Agency is exempted by statute for actions taken under the Clean Air Act and for most Clean Water Act programs. EPA is also exempted from the procedural requirements of environmental laws, including NEPA, for Comprehensive Environmental Response, Compensation, and Liability Act response actions. For other programs, courts have consistently recognized that EPA procedures or environmental reviews under enabling legislation are functionally equivalent to the NEPA process and thus exempt from the procedural requirements in NEPA. However, as discussed below, it has been long-standing Agency policy to prepare EISs voluntarily for some actions.

EPA has long recognized the value of sound environmental analysis, the importance of public participation, and the desirability of integration of other environmental requirements across the range of its activities. EPA issued a "Statement of Policy" (Policy) in the **Federal Register** (Vol. 39, No. 89/Tuesday, May 7, 1974/Notices/16186–16187) expressing the belief that preparation of environmental impact statements would have beneficial effects for certain of its regulatory actions. EPA decided that, while it was not legally bound to do so by Section 102(2)(C) of NEPA, it would voluntarily prepare environmental impact statements for specific regulatory actions relating to the Clean Air Act (42 U.S.C. 1857 *et seq.*); Noise Control Act (42 U.S.C. 4901 *et seq.*); Atomic Energy Act (42 U.S.C. 2011 *et seq.*); the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*); and, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 135 *et seq.*, as amended by 7 U.S.C. 136 *et seq.*).

EPA believes that several aspects of the 1974 Voluntary EIS Policy have become outdated since its publication. EPA issued this Policy four years prior to CEQ promulgation of regulations implementing NEPA. CEQ's regulations state that while an EIS is required to document significant impacts, an EA will be adequate documentation to determine if an action will have no significant impact. EPA has gained extensive experience concerning what types of analysis will be useful to enhance environmental decision-making under particular circumstances. In addition, Congress, through statutory exemptions from NEPA requirements, and the Courts, through finding that EPA statutes provide an analysis functionally equivalent to what would be done under NEPA, have explicitly defined the legal role of NEPA analysis in EPA decision-making.

In October 1993, an EPA Workgroup on NEPA issued a report entitled "The National Environmental Policy Act and Environmental Protection Agency Programs." This Report recommended that EPA revise its "voluntary EIS" Policy to: (1) Make it a "voluntary NEPA" policy under which EPA would prepare analyses that would be appropriate under CEQ regulations. This revision would allow the Agency, as it could if it were governed by NEPA, to prepare "environmental assessments" and subsequent findings of no significant impact where warranted. Accordingly, as under NEPA, only major Federal actions with potential for having a significant effect on the quality of the human environment would require the more extensive environmental impact statements. This revision would enable the Agency to focus its efforts and limited resources on environmentally significant actions and also would be in keeping with the Administration's policy to streamline government by eliminating unnecessary paperwork and analysis and to focus its efforts on significant environmental problems. (2) The Report also recommended expanding the Policy's scope by encouraging EPA program managers to use voluntary EISs to address, among other things, issues involving multi-media impacts, indirect effects, environmental justice, large-scale ecological impacts, or where there is significant public controversy. EPA Administrator Browner has explained that the policy changes would "make EPA's existing voluntary EIS policy more flexible and encourage the expanded use by EPA managers of voluntary EISs as a means of involving the public, states, tribes, localities, and other Federal agencies in EPA decision-making provided that such voluntary EISs are not duplicative of existing procedures and do not significantly delay actions." Such changes would enhance appropriate use of voluntary EISs and also would be in keeping with the Administration's policy to streamline government by providing managers with one process for dealing with multiple issues and programs.

II. Proposed Changes to Existing Policy

Agency officials will be encouraged to consider, where appropriate and on a case-by-case basis, the use of voluntary EISs or EAs where they can provide additional benefits for public participation, environmental analysis, or cooperation with other Federal, state or local agencies, or tribal governments. For example, there are several areas where NEPA documents may be appropriate in individual cases: (1) Actions involving cumulative cross-media or ecosystem impacts; (2) actions involving environmental justice issues; (3) actions which also involve other Federal agencies which are addressing issues under the NEPA process; (4) actions involving special resources, such as endangered species or historic, archaeological, or cultural resources; and (5) public health risk.

The policy will be changed to modify voluntary EIS requirements for regulatory actions under the programs identified in the 1974 policy statement: standard setting under the Clean Air Act, the Noise Control Act, and the Atomic Energy Act; criteria and site designations under the Marine Protection, Research and Sanctuaries Act; and pesticide disposal regulations and pesticide cancellations under FIFRA. For these actions EPA will continue to fulfill its commitment to meeting the fundamental elements of NEPA through the Agency's Regulatory Development Process for rule-making, and through negotiated settlements with pesticide producers under FIFRA. This change will not preclude the voluntary preparation of an EIS in an individual case should it be determined that it would be beneficial.

III. Basis for Proposed Change

This proposed change is based on the following: (1) The need to update the Policy to parallel established procedures for implementation of NEPA which allow for the preparation of an EA (and a Finding of No Significant Impact) rather than requiring an EIS in all cases; (2) the need to streamline EPA operations in order to ensure that Agency resources are effectively used; (3) the need to foster increased utilization of NEPA processes for decision-making and promote use of the EA as a decision-making document for those actions that have less than significant impacts but which can benefit from an environmental analysis that leads to environmentally protective modifications of the proposed action; and (4) recognize that procedures for environmental impact analysis and public participation provided by the EPA regulatory development process have significantly changed since 1974.

Under the proposed new Policy, instead of preparing EISs for the regulatory actions listed in the 1974 Policy, EPA will routinely meet the fundamental elements of NEPA for rule-making actions through the Agency's Regulatory Development Process. This process, which has become considerably more developed over the last twenty years, includes the fundamental steps which would be carried out in a NEPA analysis: identification of environmental impacts; consideration of alternatives; compliance with other environmental statutes; and process for public participation, including public review and comment on draft regulations. The Agency also considers environmental justice impacts and impacts on endangered species, and cultural, archaeological, and historical resources in its regulation process. EPA's rule-makings involve detailed examination of environmental effects and are oriented towards achieving environmental protection in furtherance of EPA's unique mission of implementing statutes that are environmentally protective. The analysis and public participation provided in EPA's regulatory development process would make separate NEPA documents, i.e., preparation of EISs, redundant.

EPA rules, policy, and guidance are developed by the EPA program office which has lead responsibility for the relevant statute. Where appropriate, the lead program office also includes other interested program and staff offices. In addition to following the substantive and procedural regulatory requirements set out in the relevant statute, the lead program office must follow requirements in Executive Orders and legislation which prescribe the regulatory development process and must analyze a number of factors, including those which would be considered in an EIS analysis. These include: (1) Different regulatory alternatives, including use of market-based incentives, as well as different levels of environmental protection and technical feasibility; (2) cross-media impacts; (3) coordination with state/local standards; (4) applicable Federal laws or executive orders (such as the Endangered Species Act and Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"); (5) implementation and enforcement of the rule; and (6) economic impacts and impacts on state, local, and tribal governments.

As with the preparation of an EIS document, public participation is also a key part of the EPA regulatory development process. The Administrative Procedure Act and a number of environmental statutes require EPA to provide the members of the public with an opportunity to participate in the development of regulations affecting them. The Agency must provide an opportunity for public comment and must consider the views expressed, providing a summary of significant comments and what the Agency has done to address them. This includes publication of the proposed rule in the **Federal Register** and offering the public the opportunity to submit written comment, before **Federal Register** publication of the final rule, policy, or guidance. The lead program office involved in developing a

regulation, policy, or guidance must select the forms of participation best suited to the issues and audiences interested in that particular regulation. These can include: written comments submitted in response to notice of proposed rulemaking, policy, or guidance or an advance notice of proposed rulemaking; comment from established Federal Advisory Committee Act (FACA) groups that advise the Agency on policy issues; public briefing sessions or meetings held to elicit views on specific rules; and regulatory negotiation groups. Federal Executive Orders 12866 (Regulatory Planning and Review) and 12875 (Enhancing Intergovernmental Partnerships) as well as EPA policy require timely and meaningful intergovernmental consultation with affected states, localities and tribes. Planning for intergovernmental consultation should consider what governmental entities will be affected, how they may be affected, and what issues are likely to concern them. The lead program office is required to develop consultation plans to set out processes for public participation and intergovernmental consultation that will be followed for a rule-making.

An additional level of review for significant regulations is carried out by the Office of Management and Budget (OMB) under Executive Order 12866 to ensure that guidance, regulations, and policies are consistent with applicable law and the President's priorities. This process assures that, in deciding whether and how to regulate, agencies have assessed the costs and benefits of the various approaches to regulation when appropriate, including the alternative of not regulating (this corresponds to the "no action" alternative which would be considered in a NEPA document). As appropriate, this process also includes review of the regulation, policy or guidance by other Federal agencies to assure consistency with their policies and any planned actions and includes a process for resolution of Federal interagency disputes.

Public Comments

EPA seeks comment on these proposed changes to the existing Policy. To ensure full consideration, comments must be submitted within 60 days of publication of this Notice to the Contacts listed above.

Date: November 21, 1997.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 97–31251 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–7]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1807.01; National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient; was approved 11/07/97; OMB No. 2060–0370; expires 11/30/2000.

EPA ICR No. 1056.06; NSPS for Nitric Acid Plants—Subpart G; was approved 11/14/97; OMB No. 2060–0019; expires 11/30/2000.

EPA ICR No. 1711.02; Voluntary Customer Service Satisfaction Surveys; was approved 11/12/97; OMB No. 2090–0019; expires 10/31/99.

EPA ICR No. 1824.01; State Use of EPA's Policy on Compliance Incentives for Small Businesses or Comparable State Policy on Reducing Penalties for Small Entities; was approved 11/04/97; OMB No. 2020–0011; expires 04/30/98.

Short Term Extensions

EPA ICR No. 1723.01; Reporting and Recordkeeping Requirements for the Importation of Nonconforming Marine Engines; expiration date was extended from 01/31/98 to 05/31/98.

Change in Expiration Date

EPA ICR No. 1743.01; Application for Motor Vehicle Emission Certification of Air Revisions to the Federal Test Procedure (FTP); OMB No. 2060–0332; expiration date was changed from 04/30/98 to 11/30/97.

Dated: November 21, 1997.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 97–31274 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5929–7]

Notice of Proposed Administrative De Minimis Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Carroll & Dubies Superfund Site, Town of Deerpark, New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative agreement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (EPA) Region II announces a proposed administrative *de minimis* settlement pursuant to section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Carroll & Dubies Superfund Site (the "Site"), Town of Deerpark, Orange County, New York. This Site is on the National Priorities List established pursuant to section 105(a) of CERCLA, 42 U.S.C. 9605(a). This document is being published to inform the public of the proposed settlement and of the public's opportunity to comment.

This settlement, memorialized in an Administrative Order on Consent (Order), is being entered into by EPA and the Reynolds Metals Company (Respondent), and is the second and final *de minimis* settlement between these parties for this Site. The Respondent contributed a relatively minimal amount of hazardous substances to the Site and is eligible for a *de minimis* settlement under section 122(g) of CERCLA. Under the Order, the Respondent has agreed to pay EPA $14,154.03, toward the costs of certain past and future response actions at the Site. In exchange, Respondent will receive a covenant not to sue from EPA relating to liability for the Site under sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a).

DATES: EPA will accept written comments relating to the proposed settlement until December 29, 1997.

ADDRESSES: Comments should be addressed to Sharon E. Kivowitz, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866 and should refer to: In Re: Carroll & Dubies Superfund Site, Town of Deerpark, New York, EPA Index No. II–CERCLA–97–0211.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York, 10007–1866, (212) 637–3183, Attention: Sharon E. Kivowitz.

Dated: November 18, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–31269 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5929–1]

Deminimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Powell Road Landfill Site, Huber Heights, Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; *Deminimis* settlement.

SUMMARY: EPA is proposing to settle claims with certain *deminimis* potentially responsible parties (PRPs) regarding past and estimated future response costs at the Powell Road Landfill Site in Huber Heights, Ohio. EPA is authorized under section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1908, as amended (CERCLA), to enter into this settlement. The U.S. Department of Justice has approved this settlement, consistent with section 122(g)(4) of CERCLA. Total response costs for the Site are approximately $26,925,537: $4,735,237 in past costs incurred by certain PRPs in connection with the Remedial Design for the Site and EPA oversight through December 31, 1996; and $22,940,300 in estimated future costs, including future oversight. The estimated future costs figure was reduced by $750,000 to account for certain PRP generators who are insolvent or defunct. The settling PRPs will pay approximately $918,582 for response costs related to the Powell Road Site. EPA is proposing to approve this *deminimis* settlement because the monies recovered will deposited into the Powell Road Landfill Special Account within the EPA Hazardous Substances Superfund and shall be used to finance the response action that will be implemented and conducted by the major PRPs under a Remedial Action Consent Decree for the Site.

On May 13, 1997, EPA sent the *deminimis* settlement offer and Administrative Order on Consent (Consent Order) to 182 *deminimis* PRPs (170 commercial/industrial generators and 12 transporters). The Consent Order gives substantial releases from liability under CERCLA, including the United States' covenant not to sue for past and future liability, and contribution protection from suit by other PRPs at the Site. The Consent Order provides for settlement with generator PRPs who are, individually, responsible for less than .96% of the total volume of allocable hazardous waste sent to the Site; and transporter PRPs who are, individually, responsible for less than 1.34% of the total volume of allocable hazardous waste sent to the Site. 71 of the 182 *deminimis* PRPs executed binding certifications of their consent to participate in the *deminimis* settlement.

Settling *deminimis* PRPs will be required to pay their fair share of the past and estimated future response costs at the Site, including a 75% premium assessed against the estimated future response costs to account for potential cost overruns, the potential for failure of the selected response action to clean up the Site, and other risks. The settlement payment amount for each *deminimis* PRP is based upon each *deminimis* PRP's "adjusted weighted share" of waste that it contributed to the Site, expressed as a percentage of the total volume of allocable waste contributed to the Site by all PRPs. In order to promote a fair allocation of responsibility between the different types of PRPs, EPA developed an adjusted weighted share percentage for each PRP. This figure is based upon each PRP's actual volumetric contribution of waste to the Site, adjusted to account for the evidence linking the PRP to the Site and the nature of waste contributed by the PRP, and the PRP's usage of the Powell Road Site from 1959 to 1973, the period during which no documentation exists regarding the volume of waste contributed to the Site. The settlement payment amount for each *deminimis* generator was calculated by multiplying each *deminimis* generator's adjusted weighted share percentage by the portion of total site costs, including premium, allocated to the *deminimis* generator class (37.5% of total site costs or $16,338,098). The settlement payment amount for each *deminimis* transporter was calculated by multiplying each *deminimis* transporter's adjusted weighted share percentage by the portion of total site costs, including premium, allocated to the *deminimis* transporter class (10% of total site costs or $4,356,826).

DATES: Comments on this *deminimis* settlement must be received on or before December 29, 1997.

ADDRESSES: Written comments relating to this *deminimis* settlement, Docket No. V–W–97–C–401, should be sent to Constandina A. Kallos, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code: C–29A, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Copies of the Administrative Order on Consent and the Administrative Record for this Site are available at the following address for review. It is strongly recommended that you telephone Mike Bellot at (312) 353–6425 before visiting the Region 5 Office.

U.S. Environmental Protection Agency, Region 5, Superfund Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 97–31281 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–59286]

Proposed CERCLA Administrative De Micromis Settlement; Waste, Inc.

AGENCY: Environment Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative de micromis settlement concerning the Waste Inc., Superfund site in Michigan City, Indiana, with the settling parties included in the Supplementary Information portion of this document. The settlement is

designed to resolve fully each settling party's liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana; and

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900), Mon-Fri: 7:30 a.m.-5:00 p.m.

Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before December 29, 1997.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana;

La Porte County Health Department, 104 Brinckmann Avenue, Michgan City, Indiana;

Bethany Baptist Church, 215 Miller Street, Michigan City, Indiana; and

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Fri: 7:30 a.m.–5:00 p.m.

A copy of the proposed settlement may be obtained from John Tielsch, Assistant Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–29A, 312/353–7447. Comments should reference the Waste, Inc. site, Michigan City, Indiana, and EPA Docket No. V–W–98–C–438 and should be addressed to Sonja Brooks, Regional Hearing Clerk, U.S. Environmental Protection Agency, Mail Code R–19J, 77 West Jackson Blvd, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: John H. Tielsch, Assistant Regional Counsel, United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–29A, 312/353–7447.

SUPPLEMENTARY INFORMATION: The Settling Party's Signature List appears at the end of this document.

William E. Muno,

Director, Superfund Division, Region 5.

De Micomis Settlement at Waste, Inc. Site, Michigan City, Indiana Settling Party's Signature List

Addison-Wesley Educational Publishers, Inc. dba Scott Foresman
All Fabrics Care Center (Gleem)
All-Phase Electric Supply Co.
Aqua Systems of Indiana, Inc. Ohio, Inc. dba Macleon's Car Wash
Allegheny Teledyne Incorporated (Teledyne Casting Service)
Bethlehem Steel Corporation
Brunswick Corporation
Building Maintenance Co.
Carlisle Funeral Home
Central IL Steel Co.
Cheker Oil Company/Marathon Oil Co (Emmo Marketing Company)
Chicago Bridge & Iron Company
Cloverleaf Garage
Coca-Cola Bottling Co/Hondo, Inc.
Color Tile, Inc (DIP)
Consolidated Freightways
Compass Group USA, Inc. Successor to Canteen Corporetion
CSX Transportation, Inc. (Chessie System)
Customation Inc.
Dans Body Shop
Delco, Inc.
Department of Water Works
Devries Tire Co.
Dunes Optical
Dunham Bush
Froms Supply Co.
Gerwin/Leigh Products
Harmon Glass Company
IBM Corporation
ITT Continental Baking
J.J. Wright Chevrolet, Inc.
Kabelin Hardware Co. Inc.
L & R Body Shop
LaPorte County, IN
Lester Jones Motors
Long Beach Gulf—Long Beach
Lucent Technologies Inc. (AT&T)
Michigan City Area Chamber of Commerce
Michigan City Animal Hospital
Michigan City Dental Group
Michigan City Housing Authority
Michigan City Public Library
Michigan City Sanitary District
Mid City Supply Company
Mid Town Storage
Newcomb Printing Service, Inc.
Parts City, Inc.
New York Blower
Owens Motor Supply, Inc.
Parkwood Green Apartments
PDH Office Products (Pence-Dickens & Hester, Inc.)
Pepsi Cola General Bottlers, Inc.
Phillips Airport of Michigan City (Estate of Joseph A. Phillips) Roadway Express, Inc.
Sanlo Mfgr. Co.
Springlake RV Sales
Superior Marine Service
Tandy Corporation/Radio Shack
Tri-State Ptg.
Town of Long Beach
Vacuum Cleaner Center
W.R. Grace & Co.—Conn

[FR Doc. 97–31272 Filed 11–26–97; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections(s) being Reviewed by the Federal Communications Commission

November 20, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 27, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0108.

Title: Emergency Alert System, EAS Activation Report.

Form No.: FCC 201.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 1,300.

Estimated Time Per Response: .084 hours.

Frequency of Response: On occasion reporting requirement and upon system activation.

Cost to Respondents: N/A.

Total Annual Burden: 43 hours.

Needs and Uses: The Emergency Broadcast System (EBS) has been changed to the Emergency Alert System (EAS). The change required that all EBS collections/forms be revised to reflect the name change. The EAS Activation Report (FCC Form 201) is part of the EAS planning program. The program is a tri-agency agreement between the Commission, the NOAA National Weather Service, and the Federal Emergency Management Agency (FEMA) The FCC 201 postcard was recommended for use in the program by the National Industry Advisory Committee (NIAC). The postcard allows the three agencies to assess the success of the program and identify the areas of the country that need further assistance in developing their local EAS plan.

OMB Control No.: 3060–0629.

Title: Section 76.987, New Product Tiers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 500.

Estimated Time Per Response: .5 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: Postage and stationery costs are estimated to be $1 per filing. Therefore, 500 filings x $1=$500.

Total Annual Burden: The Commission estimates that approximately 500 NPT filings will be received in the next year. The average burden to cable operators to comply with this filing requirement is estimated to be .5 hours per filing. 500 filings x .5=250 total annual burden hours.

Needs and Uses: Section 76.987(g) states that within 30 days of the offering of a new product tier ("NPT"), operators shall file with the Commission, a copy of the new rate card that contains the following information on their basic service tiers ("BSTs"), able programming service tiers ("CPSTs"), and NPTs: (1) The names of the programming services contained on each tier; and (2) the price of each tier. Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

The information contained in NPT filings is used by the Commission to ensure that cable operators are complying with conditions set forth for NPTs, i.e., that operators are not making fundamental changes to what they offer on their tiers of service, and that subscribers are given due notice of NPT offerings.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31216 Filed 11–26–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 21, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 29, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov..

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0646.

Title: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On-occasion reporting requirement and third party disclosure.

Cost to Respondents: N/A.

Total Annual Burden: 1,000 hours.

Needs and Uses: In CC Docket 94–129, Report and Order (R&O), Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, (1995), the Commission adopted consumer protection mechanisms that were designed to curb widespread instances of slamming and associated deceptive or misleading marketing practices by many long distance carriers. In response to six petitions for reconsideration of the 1995 R&O, we amend our rules in three respects. First, we modify 47 CFR 64.1150(g) to clarify that interexchange carriers (IXCS) using letters of agency (LOAs) must fully translate their LOAs into the same language(s) as their associated promotional materials or oral descriptions and instructions. Second, we modify 47 CFR 64.1150(e)(4) to incorporate the terms interLATA and intraLATA, as well as interstate and intrastate, in order to remove all possible confusion or uncertainty about the scope of our rules, which are generally relevant to all jurisdictions. Third, we modify 47 CFR 64.1100(a) to clarify that IXCs must confirm orders for long distance service generated by

telemarketing using only one of four verification options. The information will be used to inform long distance carriers of their additional and continuing obligations to verify all orders for long distance service generated by telemarketing in accordance with the Commission's verification rules. The information received from the current collection was used to identify and strengthen the areas in which increased protection and/or clarification of our verification rules were needed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31288 Filed 11–26–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 97–2454]

North American Numbering Council; Meetings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 21, 1997, the Commission released a public notice announcing the December 15, and December 16, 1997, meetings and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next two meetings and their Agendas.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. *The fax number is:* (202) 418–7314. *The TTY number is:* (202)418–0484.

SUPPLEMENTARY INFORMATION: The next two meetings of the North American Numbering Council (NANC) will be held on Monday, December 15, from 1:00 p.m. until 5:00 p.m., and Tuesday, December 16, 1997, from 8:30 a.m until 5:00 p.m., EST at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC 20054. These meetings will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meetings. In addition, oral statements at either meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meetings. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The planned agenda for the December 15, 1997, meeting is as follows:

1. Number Pooling Management Group (NPMG) Report.
2. Industry Numbering Committee (INC) Report on Number Pooling.
3. Discussion and development of NANC recommendation on Number Pooling.

The planned agenda for the December 16, 1997, meeting is as follows:

4. Local Number Portability Administration (LNPA) Working Group Report: Follow-up activities for *Second Report and Order,* Local Number Portability, Docket 95–116, 62 FR 48774, September 17, 1997. LNP Implementation and General Oversight Update.
5. Wireline/Wireless Integration Task Force(WWITF) Status Report.
6. North American Numbering Plan Administration (NANPA) Working Group Report. Discussion of work plan development for NANC recommendation for entity to serve as toll free database administrator. NANPA Transition Planning Task Force and CO Code Transition Planning Task Force updates. Lockheed Martin-IMS, NANPA Transition Plan update to the NANC.
7. Cost Recovery Working Group Report. NECA, Billing and Collection Agent (B&C Agent) update.
8. Network Interconnection & Interoperability Form (NIIF) Committee Status Report: Progress update on Central Office (CO) Code and NPA Activation Issue.
9. Steering Group Report. Development of work plan for NANC's CICs recommendation to the FCC, under the *Further Notice of Proposed Rulemaking and Order,* In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs),CC Docket 92–237, FCC 97–364, 69 FR 54187, October 22, 1997.
10. Other Business.
11. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–31300 Filed 11–26–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, December 2, 1997 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), ant Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, December 4, 1997 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Audit: San Diego Host Committee/Sail to Victory '96.
Audit: Committee on Arrangements for the 1996 Republican National Convention.
Audit: Perot '96.
Federal Election Commission
Sunshine Act Notices for Meetings of December 2 and 4, 1997
Pete Wilson for President Committee, Inc.—Request for Oral Presentation.
Advisory Opinion 1997–18: California Reform Party Congressional Committee by John Evans, Treasurer.
Regulations: Year End Status Report.
Regulations: Who Qualifies as a "Member" of a Membership Association: Notice of Proposed Rulemaking.
"Self-coding" approach for FEC Disclosure Reports.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–31403 Filed 11–25–97; 12:30 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Privacy Act of 1974 and Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Federal Maritime Commission.

ACTION: Amendment of system of records to include new routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Federal Maritime Commission is issuing notice of our intent to amend the system of payroll records (FMC–21) to include new routine uses required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

DATES: Comments must be received on or before December 29, 1997. *Effective Date:* The proposed amendment will become effective January 7, 1998 unless comments dictate otherwise.

ADDRESSES: Comments may be addressed to Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573–0001. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission (202) 523–5725.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Changes To Routine Use of System of Records

Pursuant to Pub.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act"), the Federal Maritime Commission ("FMC") will disclose data from its Payroll Records System of Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in its Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for the purpose of establishing paternity and securing support. The Act amended 42 U.S.C. 653(n) to require quarterly wage reporting to the FPLS by federal employers of the name, social security number, and quarterly wages of each employee, effective October 1, 1997. The Act also added a new section, 42 U.S.C. 653a, which requires federal employers to provide information to the National Directory of New Hires established by 42 U.S.C. 653. Federal employers must report the name, address, and social security number of a new employee to the National Directory of New Hires effective October 1, 1997. Pursuant to the amendments to 42 U.S.C. 653 made by the Act, the enlarged FPLS will include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits, all effective October 1, 1997.

Also in accordance with the Act, effective October 1, 1998, the FPLS will be expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants in child support enforcement cases. When the Federal Case Registry is implemented, its files will be matched on an ongoing basis against the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the Office of Thrift Supervision ("OTS"), U.S. Department of Treasury, on behalf of the FMC to the FPLS include wages earned and income taxes to be paid both state and federal, and the following data elements relating to the employee—employee's name and social security number, date and state of hire, date of birth, address; and the following data elements relating to the Commission: Federal EIN (employer identification number), employer name and address.

The data to be disclosed by OTS on behalf of the FMC to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by OTS on behalf of the FMC to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Uses

The Federal Maritime Commission is amending these routine uses in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget had indicated that a "compatible use" is a use which is necessary and proper. *See* OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and, therefore, "compatible" uses under the Privacy Act requirements.

III. Effect of Proposed Changes on Individuals

The FMC will disclose information under the proposed routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act. Disclosure will be handled through the agency's personnel/payroll system provider, the Office of Thrift Supervision.

Accordingly, FMC–21, Payroll Records, most recently amended in the **Federal Register** on February 2, 1994 (59 FR 6643), is further amended to revise the routine uses description to read as follows.

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program state, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a "routine use," to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use":

1. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license grant or other benefit.

2. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

3. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator Service (FPLS) and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action.

4. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

5. To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

6. To an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

7. To officers and employees of a Federal agency for purposes of audit.

8. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

9. To officers and employees of the Office of Thrift Supervision in connection with administrative services provided to this agency under agreement with OTS.

10. To GAO for audit; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the state, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573–0001. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both. Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished to the city in response to written request from an appropriate city official to the Secretary at the above address.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with section 7 of the Privacy Act, Pub. L. 93–579.

* * * * *

Dated: November 24, 1997.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31257 Filed 11–26–97; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) announces an opportunity for public comment on the proposed extension of its collection of information by Form F–53, Federal Sector Labor Relations: Notice to Federal Mediation and Conciliation Service, OMB No. 3076–0005. Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., agencies are required to publish notice in the **Federal Register** regarding each proposed collection of information, including a proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits public comment on the extension for three (3) years of a existing collection of information relating to federal sector labor-management relations. No revisions or modifications of Form F–53 are contemplated. Form F–53 is scheduled to expire on November 30, 1997; however, OMB has granted the agency a short-term extension until February 19, 1998.

DATES: Comments should be submitted on or before January 27, 1998.

ADDRESSES: Written comments may be submitted by mail to: Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C., ATTN: Tammi Strozier. Comments may also be submitted by fax to (202) 606–5345, ATTN: Tammi Strozier. All written or faxed comments should bear the notation: Comments on Form F–53. A record has been established for this action. All submitted comments will be available for public inspection in Room 600, 2100 K Street, N.W., Washington, D.C. 20427, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on federal holidays.

FOR FURTHER INFORMATION CONTACT: General Counsel Elizabeth G. Watson, ATTN: Diane R. Liff, Special Counsel, Federal Mediation and Conciliation Service, (202) 606–3747; fax: (202) 606–5345; e-mail: drliff@fmcs.gov.

SUPPLEMENTARY INFORMATION: Copies of Form F–53 are available from the Office of General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C., 20427.

Pursuant to 5 U.S.C. 7119(a) and related implementing regulations, 29 CFR Part 1425, the Federal Mediation and Conciliation Service (FMCS) provides services and assistance to federal agencies and to the labor unions that represent agencies' employees in matters involving contract expiration or reopener negotiations, as well as mid-term or impact and implementation bargaining disputes. In addition, FMCS provides grievance mediation services to agencies and employee unions that jointly request it. Form F–53, Federal Sector Labor Relations: Notice to Federal Mediation and Conciliation Service, OMB No. 3076–0005, is a voluntary, one-page, collection of information submitted by federal agencies and labor unions to notify FMCS that such assistance is requested. Form F–53 permits FMCS to gather the desired information in a timely and uniform manner. The information advises FMCS of the parties involved, type of negotiation, number of employees, date of contract termination or reopening, and the names and phone numbers of contact persons. The information supplied by the parties is collected by the FMCS Notice Processing Unit (NPU) and distributed by NPU to the appropriate FMCS field office for assignment of a federal mediator. Parties are not required to use Form F–53 to request services or assistance. The entities affected by this action are approximately 600 federal agencies and labor unions. The form is filled out once per request, and the time required to fill it out is estimated to be 10 minutes or less. Approximately 1,000 forms are submitted annually. FMCS seeks a three (3) year extension without modification for Form F–53. Form F–53 is scheduled to expire on November 30, 1997; however, OMB has granted the agency a short-term extension until February 19, 1998.

REQUEST FOR COMMENTS: FMCS solicits comments on:

(1) The necessity of the collection of information for the proper performance of the functions of the agency;

(2) The accuracy of the agency's estimate of the burden on respondents of the collection of information;

(3) The clarity and utility of the information collected; and

(4) The manner by which the burden associated with respondents' collection of information could be minimized.

Dated: November 21, 1997.

Elizabeth G. Watson,

General Counsel.

[FR Doc. 97–31144 Filed 11–26–97; 8:45 am]

BILLING CODE 6732–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Michael D. Platt, Hardtner, Kansas, James L. Molz, Kiowa, Kansas, David C. Collins, and Roland C. Pederson, both of Burlington, Oklahoma; to acquire voting shares of B-K Agency, Inc. Hardtner, Kansas, and thereby indirectly acquire The Farmers State Bank, Hardtner, Kansas.

Board of Governors of the Federal Reserve System, November 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31314 Filed 11–26–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Wachovia Corporation, Winston-Salem, North Carolina; to merge with Ameribank Bancshares, Inc., Hollywood, Florida, and thereby indirectly acquire American Bank of Hollywood, Hollywood, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Century Bank Corp., Fairmount, Indiana; to become a bank holding company by acquiring 97.8 percent of the voting shares of Citizens Exchange Bank, Fairmount, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mississippi Valley Bancshares, Inc., Clayton, Missouri; to acquire 100 percent of the voting shares of Southwest Bank, Belleville, Illinois (in organization).

D. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Narragansett Financial Corp., Fall River, Massachusetts; to become a bank holding company by acquiring Citizens-Union Savings Bank, Fall River, Massachusetts. Comments on this application must be received by December 12, 1997.

Board of Governors of the Federal Reserve System, November 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31143 Filed 11–26–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Commerce Bancshares, Inc., and CBI-Kansas, Inc., both of Kansas City, Missouri; to acquire Pittsburg Bancshares, Inc., Pittsburg, Kansas, and thereby indirectly acquire City National Bank, Pittsburg, Kansas.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. American State Financial Corp., Lubbock, Texas, and American State Financial Corp Delaware, Wilmington, Delaware; to merge with Security Shares, Inc., Abilene, Texas, and thereby indirectly acquire Security State Bank, Abilene, Texas.

Board of Governors of the Federal Reserve System, November 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-31312 Filed 11-26-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire Advantage Bancorp, Inc., Kenosha, Wisconsin, and thereby indirectly acquire Advantage Bank, FSB, Kenosha, Wisconsin, and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-31142 Filed 11-26-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. North Fork Bancorporation, Inc., Melville, New York; to acquire New York Bancorp, Inc., New York, New York, and thereby indirectly acquire Home Federal Savings Bank, New York, New York, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-31313 Filed 11-26-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 30, 1997

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 30, 1997.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that growth of economic activity remains brisk. In labor markets, hiring continued robust over the summer months and the civilian unemployment rate, at 4.9 percent in August, remained near its low for the current economic expansion. Industrial production increased considerably further in July and August. Retail sales have risen sharply over recent months after a pause during the spring. Housing starts declined in July and August, but home sales have been strong. Business fixed investment has increased substantially further since mid-year and available indicators point to further sizable gains in coming months. After narrowing somewhat in the second quarter, the nominal deficit on U.S. trade in goods and services widened substantially in July. Inventory investment in July was well below the average pace in prior months of 1997. Price inflation has remained subdued and increases in labor compensation have been moderate in recent months.

Most market interest rates are about unchanged on balance since the day before the Committee meeting on August 19, 1997. Share prices in equity markets have increased considerably over the period, with some stock price indexes reaching new highs. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined somewhat on balance over the intermeeting period.

Growth of M2 appears to have moderated somewhat in September from a very rapid pace in August, while expansion of M3 remained very strong in both months. For the year through August, M2 expanded at a rate somewhat above the upper bound of its range for the year and M3 at a rate substantially above the upper bound of its range. Total domestic nonfinancial debt has continued to expand in recent months at a pace near the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1998, the Committee agreed on a tentative basis to set the same ranges as in 1997 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 5-1/2 percent. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, a somewhat higher federal funds rate would or a slightly lower federal funds rate might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with some moderation in the growth of M2 and M3 over coming months.

By order of the Federal Open Market Committee, November 20, 1997.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 97-31206 Filed 11-26-97; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of September 30, 1997, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST), December 8, 1997.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the November 10, 1997, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: November 25, 1997.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 97-31460 Filed 11-25-97; 2:53 pm]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations of Topics for Evidence-Based Practice Centers (EPCs)

The Agency for Health Care Policy and Research (AHCPR) invites a second round of nominations of topics for evidence reports on the prevention, diagnosis, treatment, and management of common diseases and clinical conditions, and where appropriate, the use of alternative/complementary therapies, and for technology assessments of specific medical procedures or health care technologies. AHCPR's first request for topic nominations was published in the **Federal Register** on December 23, 1996 (61 FR 67554-67556).

AHCPR serves as a science partner with private-sector and other public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to speed the translation of evidence-based research findings into improved clinical care. AHCPR supports Evidence-based Practice Centers (EPCs) to undertake scientific analyses and evidence syntheses on high-priority topics. The EPCs produce science syntheses—evidence reports and technology assessments—that provide the scientific foundation for public and private organizations to use in developing and implementing their own practice guidelines, performance measures, and other tools to improve the quality of health care and make decisions related to the effectiveness or appropriateness of specific health care technologies.

As a result of nominations received in response to AHCPR's December 1996 Federal Register notice, EPCs are developing an evidence report or a technology assessment on the following topics: (1) Testosterone suppression treatment of prostatic cancer; (2) evaluation of cervical cytology; (3) diagnosis and treatment of dysphagia/swallowing problems in the elderly; (4) evaluation and treatment of new onset of atrial fibrillation in the elderly; (5) diagnosis of sleep apnea; (6) treatment of attention deficit and hyperactivity disorder; (7) diagnosis and treatment of acute sinusitis; (8) rehabilitation of persons with traumatic brain injury; (9) prevention and management of urinary complications in paralyzed persons; (10) pharmacotherapy for alcohol dependence; (11) management of stable angina; and (12) treatment of depression with new drugs.

The process that AHCPR employs to select topics for analyses by the EPCs is described below.

Background

Under Title IX of the Public Health Service Act, AHCPR is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research and through promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–6 and 1320b–12). In carrying out these purposes, AHCPR, among other activities, has, in the past, arranged for

the development of clinical practice guidelines and has conducted assessments of health care technologies.

Through the creation of EPCs, AHCPR is better able to serve as a science partner with private-sector and other public organizations in addressing a greater number of health care topics and a broader range of clinical conditions and health problems. The EPCs provide a strong scientific foundation for private and public organizations to use in their own efforts to improve clinical practice. The EPCs conduct literature reviews and assess and synthesize scientific evidence to produce evidence reports and technology assessments. The reports and assessments will provide systems of care, provider societies, health plans, public and private purchasers, States, and others with a scientific foundation for development and implementation of their own practice guidelines, clinical pathways, review criteria, performance measures, and other tools to improve the quality of care in their own settings and populations. They may also be used to inform health care decisions, such as coverage or reimbursement policy, based on the effectiveness or appropriateness of specific services, procedures, or technologies.

Evidence-based Practice Centers (EPCs)

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand by health care providers, insurers, purchasers, health-related societies, and consumer organizations. Such topics may include the prevention, diagnosis and/or treatment of particular diseases or health conditions including, where appropriate, the use of alternative/complementary therapies, as well as the appropriate use of more commonly provided services, procedures, or technologies. AHCPR will widely disseminate the evidence reports and technology assessments produced by the EPCs.

Selection Criteria

Selection criteria for AHCPR evidence report and technology assessment topics include: (1) High incidence or prevalence in the general population or in subpopulations, including racial and ethnic minorities and other populations; (2) significance for the needs of the Medicare, Medicaid and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) potential to inform and improve patient or provider decisionmaking; (6) potential to reduce clinically significant variations in the prevention, diagnosis, treatment, or clinical management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the study or analysis of the topic; and (8) potential opportunities for rapid implementation. The topics selected also will complement AHCPR's efforts to build a balanced portfolio of evidence reports and technology assessments.

Nomination and Selection Process

Nominations of topics for AHCPR evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technology. Potential topics should be carefully defined and circumscribed so that within 6 to 12 months databases can be searched, the evidence reviewed, supplemental analyses performed, and final evidence reports or technology assessments produced. Topics selected will not duplicate current and widely available clinical practice guidelines or technology assessments, unless new evidence is available that suggests the need for revisions or updates.

Nominations should be brief (1–2 pages) and may be in the form of a letter. For each topic nominated, nominators should provide a rationale and any available supporting evidence reflecting the importance and clinical relevance of the topic and should indicate the potential usefulness of the evidence report or technology assessment within their professional practices or organizations. Information should include:

- A clearly defined topic, with specific questions to be answered that will establish the focus and boundaries of the report.
- The availability of data to study and, if available, any information on the incidence, prevalence, and/or severity of the particular disease or health condition including, if relevant, its significance for the Medicare and medicaid populations; or the frequency of use and cost of the procedure, treatment, or technology; an indication of how the evidence report or assessment might be used within the nominator's professional or organizational setting; and any known currently available technology assessments, practice guidelines, disease management protocols, or other tools or standards pertaining to the topic and their deficiencies, if any.
- References to significant differences in practice patterns and/or results; alternative therapies and controversies.

Nominators of selected topics may have the opportunity to serve as resources to EPCs as they develop evidence reports and technology assessments. Nominators may also be requested to serve as peer reviewers of draft evidence reports and assessments.

The AHCPR will review topic nominations and supporting information and determine final topics, seeking additional information as appropriate.

Materials Submission and Deadline

To be considered for the next group of evidence reports and technology assessments, topic nominations should be submitted by January 30, 1998 to: Douglas B. Kamerow, M.D., M.P.H., Director, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Willco Building, Suite 310, Rockville, Maryland 20852.

Nominations also will be accepted on an ongoing basis at the above address for topics for subsequent evidence reports and technology assessments.

All responses will be available for public inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. AHCPR will not reply to individual responses, but will consider all nominations in selecting topics. Topics selected will be announced, from time to time, in the **Federal Register** and AHCPR press releases.

For Additional Information

Additional information about topic nominations can be obtained by contacting: Jacqueline Besteman, EPC Project Officer, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Willco Building, Suite 310, Rockville, Maryland 20852; telephone (301) 594–4015; E-mail address: jbestema@ahcpr.gov.

Dated: November 21, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–31205 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0035]

Ashland Chemical Co.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6A4490) proposing that the food additive regulations be amended to provide for the safe use of polypropylene glycol with a molecular weight of 1,200 to 3,000 as a defoaming agent in water for sliced potatoes.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3167.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1997 (62 FR 5011), FDA announced that a food additive petition (FAP 6A4490) had been filed by Ashland Chemical Co., One Drew Plaza, Boonton, NJ 07005. The petition proposed to amend the food additive regulations in § 173.340 Defoaming agents (21 CFR 173.340) to provide for the safe use of polypropylene glycol with a molecular weight of 1,200 to 3,000 as a component of defoaming agents in wash water for sliced potatoes. Ashland Chemical Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 10, 1997.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval.

[FR Doc. 97–31215 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0479]

Parke-Davis et al.; Withdrawal of Approval of 18 New Drug Applications, 7 Abbreviated Antibiotic Applications, and 53 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 18 new drug applications (NDA's), 7 abbreviated antibiotic applications (AADA's), and 53 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 6–413	Super Anahist (neohetramine hydrochloride)	Parke-Davis, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 7–812	Inhiston-APC (aspirin 3.5 grains (gr), caffeine 0.5 gr, phenacetin 2.5 gr, pheniramine maleate 10 milligrams (mg).	Plough, Inc., P.O. Box 377, Memphis, TN 38151.
NDA 9–108	Rauval (rauwolfia serpentina) Tablets	Glenwood-Palisades, P.O. Box 369, One New England Ave., Piscataway, NY 08855.
NDA 11–760	Normacol (polycarbophil) Tablets	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NY 07033.
NDA 11–935	Actifed (pseudoephedrine hydrochloride and triprolidine hydrochloride) Syrup.	Glaxo Wellcome Inc., Five Moore Dr., Research Triangle Park, NC 27709.
NDA 11–936	Actifed (pseudoephedrine hydrochloride and triprolidine hydrochloride) Tablets.	Do.
NDA 11–950	Tacaryl (methdilazine hydrochloride) Syrup, 4 mg/15 milliliters (mL).	Westwood-Squibb Pharmaceuticals, Inc., 100 Forest Ave., Buffalo, NY 14213–1091.
NDA 12–939	Neutrapen (penicillinase injectable)	3M Pharmaceuticals, Bldg. 260–6A–22, 3M Center, St. Paul, MN 55144–1000.
NDA 15–438	Meprobamate Tablets USP, 200 mg, 400 mg	Zenith Goldline Pharmaceuticals, 140 Legrand Ave., Northvale, NJ 07647.
NDA 16–649	Feminone Tablets	Pharmacia & Upjohn, 7000 Portage Rd., Kalamazoo, MI 49001–0199.
NDA 17–369	Teldrin (chlorpheniramine maleate extended release) Spansules.	SmithKline Beecham Consumer Healthcare, 1500 Littleton Rd., Parsippany, NY 07054–3884.
NDA 17–906	Lactulose Syrup	Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062.
NDA 19–014	Benylin Decongestant Cough Formula (diphenhydramine hydrocholoride and pseudoephedrine hydrochloride).	Warner-Lambert Co., 170 Tabor Rd., Morris Plains, NJ 07950.
NDA 50–125	Tablets Remanden-250 (Potassium Penicillin G with Probenecid).	Merck & Co., Inc., BLA–30, West Point, PA 19486.
NDA 50–137	Cer-O-Cillin Sodium (crystalline sodium penicillin O).	Pharmacia & Upjohn

Application No.	Drug	Applicant
NDA 50-298	Pyopen (sterile carbenicillin disodium) Injection	SmithKline Beecham Pharmaceuticals, P.O. Box 7929, Philadelphia, PA 19101-7929.
NDA 50-375	Cremomycin Oral Suspension	Merck & Co., Inc.
NDA 50-566	Sterile Cefazolin Sodium Injection in PL146 Plastic Container.	Baxter Healthcare Corp., Rt. 120 and Wilson Rd., Round Lake, IL 60073-0490.
AADA 60-571	MYCOSTATIN (Nystatin) Ointment 100,000 USP units per gram (g).	Westwood-Squibb Pharmaceuticals, Inc.
AADA 60-634	Oxytetracycline Hydrochloride Capaules USP, 250 mg.	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
AADA 62-471	Gentamicin Sulfate Cream, USP 0.1%	Alpharma, U.S. Pharmaceuticals Div., Johns Hopkins Bayview Center, 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
AADA 62-496	Gentamicin Sulfate Ointment, USP 0.1%	Do.
AADA 62-583	Bacitracin (sterile)	Alpharma AS, U.S. Agent: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024.
AADA 62-584	Bacitracin Zinc (nonsterile)	Do.
AADA 63-250	Amoxicillin Trihydrate, nonsterile bulk	Ranbaxy Laboratories Ltd., U.S. Agent: Ranbaxy Pharmaceuticals, Inc., 4600 Marriott Dr., suite 100, Raleigh, NC 27612.
ANDA 70-136	Propranolol Hydrochloride Injection USP, 1 mg/mL (syringe).	SoloPak Laboratories, 1845 Tonne Rd., Elk Grove Village, IL 60007-5125.
ANDA 70-579	Allopurinol Tablets USP, 100 mg	Purepac Pharmaceutical Co.
ANDA 70-688	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/25 mg.	Do.
ANDA 70-695	Verapamil Hydrochloride Injection USP, 2.5 mg/mL (syringe).	SoloPak Laboratories
ANDA 70-800	Haloperidol Injection USP, 5 mg/mL (syringe)	Do.
ANDA 70-853	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/15 mg.	Purepac Pharmaceutical Co.
ANDA 70-854	Methyldopa and Hydrochlorothiazide Tablets USP, 250 mg/30 mg.	Do.
ANDA 71-000	Amantadine Hydrochloride Capsules USP, 100 mg.	Solvay Pharmaceuticals, Inc.
ANDA 71-123	Ibuprofen Tablets USP, 300 mg	Purepac Pharmaceutical Co.
ANDA 71-124	Ibuprofen Tablets USP, 400 mg	Do.
ANDA 71-125	Ibuprofen Tablets USP, 600 mg	Do.
ANDA 71-672	Naloxone Hydrochloride Injection USP, 0.02 mg/mL (syringe).	SoloPak Laboratories
ANDA 71-683	Naloxone Hydrochloride Injection USP, 0.4 mg/mL (syringe).	Do.
ANDA 72-110	Doxepin Hydrochloride Capsules USP, 100 mg	Purepac Pharmaceutical Co.
ANDA 72-330	Clorazepate Dipotassium Tablets, 3.75 mg	Do.
ANDA 72-331	Clorazepate Dipotassium Tablets, 7.5 mg	Do.
ANDA 72-332	Clorazepate Dipotassium Tablets, 15 mg	Do.
ANDA 72-386	Doxepin Hydrochloride Capsules USP, 75 mg	Do.
ANDA 72-387	Doxepin Hydrochloride Capsules USP, 150 mg	Do.
ANDA 80-493	Cortisone Acetate Tablets USP, 25 mg	Do.
ANDA 80-842	Rauwolfia Serpentina Tablets USP, 50 mg and 100 mg.	Do.
ANDA 80-845	Diphenhydramine Hydrochloride Capsules USP, 25 mg and 50 mg.	Eon Labs Manufacturing, Inc., 227-15 North Conduit Ave., Laurelton, NY 11413.
ANDA 84-138	Phendimetrazine Tartrate Tablets, 35 mg (Pink)	KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144-2555.
ANDA 84-141	Phendimetrazine Tartrate Tablets, 35 mg	Do.
ANDA 84-479	Dicyclomine Hydrochloride Syrup USP, 10 mg/5 mL.	Alpharma, U.S. Pharmaceuticals Div.
ANDA 84-932	Quinidine Sulfate USP, 200 mg (Tablets)	Solvay Pharmaceuticals, Inc.
ANDA 85-296	Quinidine Sulfate USP, 200 mg (Capsules)	Do.
ANDA 85-297	Quinidine Sulfate USP, 300 mg (Capsules)	Do.
ANDA 85-298	Quinidine Sulfate USP, 300 mg (Tablets)	Do.
ANDA 85-299	Quinidine Sulfate USP, 100 mg (Tablets)	Do.
ANDA 86-298	UNIPRES (Reserpine, Hydralazine Hydrochloride, and Hydrochlorothiazide Tablets, USP) 0.1 mg/25 mg/15 mg.	Do.
ANDA 86-622	Hydroxyzine Hydrochloride Injection USP, 25 mg/mL (syringe).	SoloPak Laboratories
ANDA 87-043	Heparin Sodium Injection USP, 1,000 units/mL (syringe).	Do.
ANDA 87-077	Heparin Sodium Injection USP, 5,000 units/mL (syringe).	Do.
ANDA 87-101	Isoetharine Inhalation Solution, USP 1%	Alpharma, U.S. Pharmaceuticals Div.

Application No.	Drug	Applicant
ANDA 87-107	Heparin Sodium Injection USP, 10,000 units/mL (syringe).	SoloPak Laboratories
ANDA 87-109	Nitroglycerin Extended-Release Capsules, 9 mg	KV Pharmaceutical Co.
ANDA 87-310	Hydroxyzine Hydrochloride Injection USP, 50 mg/mL.	SoloPak Laboratories
ANDA 87-344	Isosorbide Dinitrate Extended-release Capsules, 40 mg.	Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022-4731.
ANDA 87-363	Heparin Sodium Injection USP, 10,000 units/0.5 mL (syringe).	SoloPak Laboratories
ANDA 87-395	Heparin Sodium Injection USP, 5,000 units/0.5 mL (syringe).	Do.
ANDA 87-551	Cyanocobalamin Injection USP, 1,000 micrograms/mL (syringe).	Do.
ANDA 87-596	Hydroxyzine Hydrochloride Injection USP, 50 mg/mL and 100 mg/mL.	Do.
ANDA 87-903	Heparin Lock Flush Solution USP, 10 units/mL (syringe).	Do.
ANDA 87-905	Heparin Lock Flush Solution USP, 100 units/mL (syringe).	Do.
ANDA 88-120	Hydroxyzine Hydrochloride Tablets USP, 10 mg	Purepac Pharmaceutical Co.
ANDA 88-121	Hydroxyzine Hydrochloride Tablets USP, 25 mg	Do.
ANDA 88-122	Hydroxyzine Hydrochloride Tablets USP, 50 mg	Do.
ANDA 88-139	Chlorthalidone Tablets USP, 25 mg	Do.
ANDA 88-177	Hydralazine Hydrochloride Tablets, 25 mg	Do.
ANDA 88-520	Phenytoin Sodium Injection USP, 50 mg/mL (syringe).	SoloPak Laboratories
ANDA 88-532	Procainamide Hydrochloride Injection USP, 500 mg/mL (syringe).	Do.
ANDA 89-094	Trimethobenzamide Hydrochloride Injection USP, 100 mg/mL (syringe).	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective December 29, 1997.

Dated: November 17, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97-31214 Filed 11-26-97; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N-0451]

Microbial Safety of Produce; Grassroots and International Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing six grassroots meetings and one international meeting to discuss generally the President's recently announced initiative to ensure the safety of imported and domestic fruits and vegetables and other foods, and specifically the microbial safety of produce. The meetings are intended to give an overview of, and obtain input on the general draft guide entitled "Guide to Minimizing Microbial Food Safety Hazards for Fresh Fruit and Vegetables."

DATES AND TIME: For the domestic meetings see Table 1 in the **"SUPPLEMENTARY INFORMATION"** section of this document. For the international meeting see Table 2. Submit written comments by December 19, 1997. All the meetings will be held from 9 a.m. to 4 p.m.

ADDRESSES: For the domestic meetings see Table 1 in the **"SUPPLEMENTARY INFORMATION"** section of this document. For the international meeting see Table 2. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Copies of the "Guide to Minimizing Microbial Food Safety Hazards for Fresh Fruit and Vegetables" may be obtained from Joan E. Duy, Center for Food Safety and Applied Nutrition (HFS-335), Food and Drug Administration, 200 C St. SW., rm. 3812, Washington, DC 20204, 202-260-8920, FAX 202-205-4422, e-mail jduy@bangate.fda.gov.

FOR FURTHER INFORMATION CONTACT: *For general information on this document:* Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., rm. 3169, Washington, DC, 202-260-8920, FAX 202-205-4422, e-mail ceb@cfsan.fda.gov. Send registration information (including name, title, firm name, mailing address, telephone number and fax number if appropriate) to the contact person listed for the city in which you will attend.

SUPPLEMENTARY INFORMATION: On October 2, 1997, the President announced an initiative to ensure the safety of imported and domestic produce and other foods. This initiative is geared to optimize the microbial safety of domestic and imported fresh fruits and vegetables. As part of this initiative, the President directed the Secretary of the Department of Health and Human Services (DHHS), in partnership with the Secretary of the Department of Agriculture (USDA), and in cooperation with the agricultural community, to issue advice on good agricultural practices and good manufacturing practices for fresh fruits and vegetables. FDA will coordinate the effort for DHHS. As part of this effort, FDA plans to publish for public

comment a draft guide early in 1998, and a final guide later in 1998.

On November 17, 1997, at a public meeting in Washington, DC, FDA and USDA provided details on a broad, general draft approach on how to minimize microbial contamination through the control of water, manure, worker sanitation and health, field and facility sanitation, and transportation and handling. A draft guide entitled "Guide to Minimizing Microbial Food Safety Hazards for Fresh Fruit and Vegetables," will be available December 1, 1997, on FDA's World Wide Web Home Page (http//www.fda.gov).

The grassroots and the international meetings will include an overview of the President's initiative and a review of the general draft guide. The meetings are intended to obtain input into the draft guide. While all meetings are open to any interested parties, the grassroots meetings will focus specifically on domestic produce, and the international meeting will focus on imported produce.

Transcripts of the grassroots and international meetings may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximated 15 working days after each meeting at a cost of 10 cents per page. The transcripts of the grassroots and the international meetings will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

TABLE 1.—DOMESTIC MEETINGS

Meeting Address	Date	FDA Contact Person
GRAND RAPIDS: Amway Grand Hotel, Pearl and Monroe, Grand Rapids, MI..	December 1, 1997	Evelyn Denke, Food and Drug Administration, Detroit District Office (HFR–MW245), 1500 E. Jefferson Ave., Detroit, MI 48207–3179, 313–226–6158.
GENEVA: New York State Agricultural Experiment Station, 630 West North St., Geneva, NY..	December 3, 1997	Beverly Kent, Food and Drug Administration, Buffalo District Office, 599 Delaware Ave., Buffalo, NY 14202, 716–551–4461 ext. 3131.
WEST PALM BEACH: Clayton Hutchinson Agricultural Center, 559 North Military Trail, West Palm Beach, FL..	December 5, 1997	Lynn Isaacs, Food and Drug Administration, Florida District Office, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–648–6922 ext. 202.
SAN ANTONIO: Helotes 4–H Center, San Antonio, TX, 12132 Leslie Rd., Helotes, TX..	December 8, 1997	Sylvia Yetis, Food and Drug Administration, Dallas District Office (HFR–SW100), 3310 Live Oak St., Dallas, TX 75204, 214–655–5315 ext. 344.
SALINAS: Salinas Community Center, 490 North Main St., Salinas, CA..	December 10, 1997	Mary Acton, Food and Drug Administration, San Francisco District Office (HFR–PA150), 1431 Harbor Bay Pkwy., Alameda, CA 94502, 510–337–6765.
PORTLAND: Monarch Hotel, 12566 SE. 93d Ave., Clackamas, OR..	December 12, 1997	Debra Tucker, Food and Drug Administration, Portland District Office, 9780 SW. Nimus Ave., Beaverton, OR 97008, 503–671–9711 ext. 10.

TABLE 2.—INTERNATIONAL MEETING

Meeting Address	Date	FDA Contact Person
WASHINGTON, DC: Department of Health and Human Services, Hubert Humphrey Bldg., 200 and Independence, Washington, DC..	Monday, December 8, 1997	Marilyn Veek, Food and Drug Administration, Office of International Affairs (HFG–1), 5600 Fishers Lane, Rockville, MD 20857, 301–827–0906

Dated: November 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31366 Filed 11–25–97; 11:18 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 97F–0468]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite by removing the restrictions on the temperature of use in low density polyethylene films of thickness greater than 0.051 millimeter (mm) (0.002 inch (in)), provided that the film does not contain a total of tris(2,4-di-*tert*-butylphenyl)phosphite in excess of 0.062 milligram (mg) per in² of the food-contact surface.

DATES: Written comments on petitioner's environmental assessment by December 29, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4563) has been filed by Ciba Specialty Chemicals Corp., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of tris(2,4-di-*tert*-butylphenyl)phosphite by removing the restriction on the temperature of use in low density polyethylene films of thickness greater than 0.051 mm (0.002 in), provided that the film does not contain a total of tris(2,4-di-*tert*-butylphenyl)phosphite in excess of 0.062 mg per in² of the food-contact surface.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 4, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–31149 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of Bureau of Primary Health Care (BPHC)-Funded Providers' Level of Knowledge and Training Needs for Reducing Perinatal Transmission of HIV—NEW

The HIV/AIDS Bureau (HAB) intends to conduct a survey of 300 health care providers who work in BPHC-funded programs and who treat women of childbearing age. The specific topic area for this study relates to perinatal transmission of HIV.

The purpose of this survey is to determine:

—the specific training and learning needs of providers in BPHC-funded programs with regard to HIV/AIDS issues (especially perinatal transmission of HIV) and women of childbearing age.
—the preferred modes of training.
—the level of knowledge of, and adherence to, Government protocols for treating women of childbearing age and reducing the risk of perinatal transmission of HIV.
—the familiarity of practitioners with recent advances in HIV/AIDS treatments such as protease inhibitors and combined therapies.

Results from this research will be used to develop specific training curricula for these providers and to enhance educational and service delivery-related support for Bureau-funded providers and clinics.

The study will be done by mail, with phone follow-up if necessary to improve response rates. The estimate of burden is as follows:

Type of Respondent	[1]
Number of Respondents	300
Responses Per Respondent	1
Hours Per Response	.25
Total Burden Hours	75

[1] Physicians.

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before January 27, 1998.

Dated: November 21, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–31207 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data Collection and Reporting Requirements for Healthy Schools, Healthy Communities Program (OMB No. 0915–0188)—Extension, No Change—The Healthy schools, Healthy Communities (HSHC) Initiative was established in Fiscal Year 1994 by the HRSA Bureau of Primary Healthy Care (BPHC) in coordination with the HRSA Maternal and Child Health Bureau.

HSHC grantees are required to offer comprehensive primary care services to

children in school-based health centers. Grants are made to organizations that demonstrate that the communities they serve are subject to poverty and a wide range of health risks, including school failure and poor health. Many of these programs are located in medically underserved communities which are geographically and ethnically diverse. Programs are located in elementary, middle, high and k-12 schools.

The school-based health centers are collecting data through School HealthCare ONLINE!!! (SHO), a software program developed for school-based and school-linked health centers, Headstart through High School. Grantees abstract information from health center records on persons served, services provided, and health status, and enter the data into the SHO System.

The software system is programmed to generate user profiles (aggregate data only) which are submitted to the BPHC. BPHC uses the profiles to monitor program activities, assess where technical assistance is needed, and to respond to inquiries from Congress and others.

The SHO system is also programmed to produce expert files containing person-level information (stripped of personal identifiers) which are submitted to the national evaluator. The export data serves as the basis for the program evaluation and is used for analysis beyond the scope of the user profiles.

There will be no changes in the forms. Estimates of respondent burden are as follows:

Burden type	No. of respondents	Responses per respondent	Total annual responses	Hours per response	Response burden (hours)
SHO System data entry	26	600	15,600	0.2	3,120
User Profiles	26	4	104	0.5	52
Data Export Files	26	4	104	0.5	52
Total	26		15,808		3,224

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before January 27, 1998.

Dated: November 21, 1997.

Jane Harrison,

Acting Director.

Division of Policy Review and Coordination

[FR Doc. 97–31217 Filed 11–28–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Physician's Certification of Borrower's Total and Permanent Disability Form (OMB No. 0915–0204)—Extension and Revision

The Health Education Assistance Loan (HEAL) program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, State agencies, HEAL schools, and insurance companies, make HEAL loans which are insured by the Federal Government against loss due to borrower's death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational loans.

The HEAL borrower, the borrower's physician, and the holder of the loan completes the Physician's Certification form to certify that the HEAL borrower meets the total and permanent disability provisions.

The HEAL program is being phased out and no new loans will be made after September 30, 1998 unless reauthorization is enacted. We are, however, requesting a 3-year extension of the OMB approval of the HEAL Physician's Certification of Borrower's Total and Permanent Disability Form, HRSA–539 because this form will be used throughout the repayment period for existing loans. The Department uses this form to obtain information about disability claims which includes the following: (1) the borrower's consent to release medical records to the Department of Health and Human Services and to the holder of the borrower's HEAL loans, (2) pertinent information supplied by the certifying physician, (3) the physician's certification that the borrower is unable to engage in any substantial gainful activity because of a medically determinable impairment that is expected to continue for a long and indefinite period of time or to result in death, and (4) information from the lender on the unpaid balance. Failure to submit the required documentation will result in disapproval of a disability claim. The form is being revised to make submission of medical documentation mandatory rather than optional.

The estimate of burden for the Physician's Certification form is as follows:

Type of respondent	Number of respondents	Responses per respondent	Number of responses	Hours per response	Total burden hours
Borrower	100	1	100	5 min	8
Physician	100	1	100	30 min	50
Loan Holder	32	3.1	100	10 min	17
Total	232		300		75

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 21, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–31225 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)

Extension and Revision—This is a request for extension and revision of Office of Management and Budget (OMB) approval of the application form for the Nursing Education Loan Repayment Program (NELRP). The NELRP is authorized by 42 U.S.C. 297(n) (section 846 of the Public Health Service Act).

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay the nurses' indebtedness for nursing education. In exchange, the nurses agree to serve for a specified period of time in certain types of health facilities identified in the statute.

Nurse educational loan repayment contracts will be approved by the Secretary for eligible nurses who have incurred previous monetary indebtedness by accepting a loan for nursing education costs from a bank, credit union, savings and loan association, insurance company, Government agency or program, school, or other lender that meets NELRP criteria.

Approval is requested for the application form. The application form requires information from two types of respondents:

a. Applicants must provide information on the proposed service site and on all nursing education loans for which reimbursement is requested, and

b. Lenders must provide information on loan status for all loans accepted for repayment.

Two items are being added to the application form: race/ethnicity of the applicant (for statistical purposes only); and citizenship status. The estimates of average burden to complete the forms remains the same. Burden estimates are as follows:

Form/Regulatory requirement	Number of respondents	Responses per respondent	Hours per response	Total burden hours
NELRP Application	2,200	1	1	2,200
Loan Verification Form	*50	1	.25	13
Total	2,250			2,213

* The remainder of the loans are verified through credit reports.

Written comments and recommendations concerning the proposed information collection should be sent on or before December 29, 1997 to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 21, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–31208 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in

compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Deferment Request Form for NHSC and NHH Scholarship Programs (OMB NO. 0915–0179) Extension, No Change

We are requesting an extension of the OMB clearance for the Deferment Request Form and associated reporting requirements for the National Health Service Corps (NHSC) Scholarship Program and the Native Hawaiian Health (NHH) Scholarship Program. The NHSC/NHH Scholarship Programs are authorized by Section 338A and Section 338K of the Public Health Service (PHS) Act. The requirements for obligated service, found in Section 338C of the PHS Act, include provisions for deferment of the service obligation under certain circumstances.

Under these programs, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC or NHH program, students of other health professions (including mental health professionals) are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated Health Professions Shortage Areas (HPSA) of the United States. NHH scholarship recipients must be native Hawaiians and are assigned to sites in Hawaii. The minimum service obligation is 2 years.

Once scholarship recipients have completed their academic requirements, the law requires that selected types of recipients be allowed to defer their service obligation in order to complete an approved internship, residency, or other advanced clinical training.

The Deferment Request Form provides the information necessary for considering the period and type of training for which deferment of the service obligation will be approved for physicians and dentists.

In addition, these programs have two other reporting requirements for which no forms have been developed, including:

(1) Individuals who are in a deferment status are required to submit requests in writing for modifications to the deferment (e.g., extension of deferment or change of residency programs); and (2) Dentists, who can either begin their service obligation immediately after graduation or can be deferred for up to three years, are required to notify the program in writing of their *intent* to request deferment.

The estimated burden on respondents is as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Deferment Form	600	1	.5	300
Requests for Change of Deferment and Letters of Intent	100	1	1	100
Total	700			400

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 21, 1997.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 97–31209 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Program Requirements and Review Criteria for a Cooperative Agreement for a Center for Health Workforce Distribution Studies: A Federal-State Partnership Cooperative Agreement Program for Fiscal Year 1997

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for a fiscal year (FY) 1997 Cooperative Agreement for a Center for Health Workforce Distribution Studies: A Federal-State Partnership Cooperative Agreement Program. The cooperative agreement will be funded under the authority of section 792 (42 USC 295k) of the Public Health Service Act, which authorizes research on health professions personnel.

Research and studies for this cooperative agreement program will focus on the workforce distributional aspects of the legislation at the state (one or a few states) level for allied health personnel, dentists, nurses, physicians, and public health personnel as specified below.

Purpose

The purpose of this cooperative agreement for a Center for Health Workforce Distribution Studies is to support research and analysis at the State level for one State or a few States only, including issues regarding the impact of federal initiatives aimed at improving the training of health professionals and meeting national workforce goals pertaining to:

(1) Allied health data and distributional issues consistent with the (1995) recommendations of the National Commission on Allied Health and in close coordination with the activities of the Allied Health Data Collaborative Project;

(2) Distribution of dentists, with emphasis on trends relating to educational background (for example, those with postdoctoral training in advanced general dentistry and/or public health dentistry) and practice in settings principally serving residents of medically-underserved communities;

(3) The designation of nursing shortage areas at the State level and, through a pilot exploration of a model approach, build a methodologic bridge to other states for applicability across the Nation;

(4) The distribution of physicians, with emphasis on underserved areas and specialty services, including, for example OB/GYN, maternal and child health, general surgery, emergency medicine, and mental health; and addressing issues of substitution, using available tools such as the HRSA/Bureau of Health Professions (BHPr) Integrated Requirements Model (IRM), as applicable; and

(5) The establishment of collaboration(s) between schools of public health and state and local public health agencies to assess public health workforce supply and distribution and to develop educational strategies to address imbalances; and to develop the nature of workforce planning for public health personnel at the State level.

The cooperative agreement is to fund either the establishment and the operation of a new research center, or the operation of an existing research center, for the conduct of such research. The center must conduct high-quality research and disseminate findings to colleagues and policymakers at the institutional, Federal and State levels.

The successful applicant must have or establish the Center for Health Workforce Distribution Studies as an identifiable entity. This must be more than a set of discrete, investigator-initiated research projects proposed in one application. The center must have a director, a coherent, widely-recognized research agenda and researchers who function as a team. The principal investigator must be an experienced researcher who will be primarily responsible for the organization and operation of the center and will provide research leadership. The center's researchers must collectively possess multidisciplinary skills, and have experience in health services research. There must be sufficient core staff with significant time commitments to the center, although the center will of necessity share common resources with other components of the applicant institution, including technical, clerical, and administrative personnel, and library and computer resources.

The cooperative agreement funds will be available to provide basic support for the center, including: the development and implementation of the center's research agenda, administrative and research staff support, researcher time (although not necessarily 100% of researcher time), and dissemination of center research products through articles in peer-reviewed journals as well as center-sponsored publications. This cooperative agreement must not be the sole source of support for this type of enterprise. The applicant institution must demonstrate a commitment (including a matching contribution—see "Program Requirements" below) to support the organizational and management structure of the center, and its investigators should seek other funds for support of its research agenda.

Eligibility

Eligible applicants include public and non-profit private entities. The applicant must bring together allied/dental/ medical/nursing/public health schools and State agencies, must have experience in all five component areas, the assessment and evaluation of unmet need/underserved areas, and in issues of non-physician provider substitution, and must have access to the allied and public health workforce data base in the State. Development of a methodology for the assessment of nursing shortage areas and of public health requirements and supply in a State must involve a State agency.

A notice was published in the **Federal Register** at 62 FR 39532 on July 23, 1997, proposing program requirements and review criteria for this program. No comments were received within the 30 day comment period. Therefore, the program requirements and review criteria remain as proposed.

Final Program Requirements

The award recipient's institution must share in the cost of the program as follows: For each year funds are awarded under this program, the matching contribution shall be at least one-third of the amount of the Federal award for that year. Up to 50% of the recipient's matching contribution may be in the form of in-kind donations of faculty time, staff time, use of computers or other shared resources.

Applicants are urged to submit applications that address specific objectives of HRSA/BHPr. Health workforce surveillance reveals significant gaps in the Nation's health workforce ability to meet the population's needs. In some cases, these gaps are exacerbated by market forces. The BHPr attempts to address these in its four health workforce goals to improve the distribution, diversity, supply, and competence/quality. Specifically:

Distribution: there has been little progress in reducing the number of underserved areas, and access to generalist providers varies widely across states and counties;

Diversity: few health professions reflect the diversity of the Nation's population, also there is strong evidence that underrepresented minority providers are more likely to serve vulnerable populations;

Supply: shortages of some allied and public health providers coincide with a surfeit of specialist physicians;

Competence: most training is hospital-based and ill-suited to ambulatory health care delivery, which occurs in an increasingly managed care environment and requires skills in providing cost-effective quality care. Also, an aging population created an unmet need for geriatric training.

Final Review Criteria

Applications for this cooperative agreement will be evaluated on the basis of the following criteria:

(1) The qualifications and achievements of the proposed center's principal investigator and senior researchers, including level of productivity and quality of research in health workforce issues;

(2) Demonstration of an understanding of the particular subject areas of health professions workforce research that are relevant to Federal policies and evidence of ability to manage research in such areas;

(3) The appropriateness of the time commitments of the principal investigator and senior researchers;

(4) The strength of the applicant's plan to actively promote dissemination of research findings to all health professionals involved in health services research and to relevant national and state policymakers;

(5) The appropriateness of the proposed budget;

(6) The planned level of commitment to the center from the applicant institution, as evidenced by specific plans for the type of financial support that will be offered, and for support of the organizational structure of the center. Evidence of a prior institutional commitment to generalizable research in health workforce studies will also be sought;

(7) The past success and future potential of the proposed center's researchers in receiving funding from other sources; and

(8) The likely effectiveness of the organizational and management arrangements to operate the proposed center.

Additional Information

If additional programmatic information is needed, please contact:

Herbert Traxler, Ph.D., Office of Research and Planning, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–47, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6662 or 3148, FAX: (301) 443–8003, EMAIL: htraxler@hrsa.dhhs.gov.

Dated: November 21, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–31224 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HIV Care Grant Program

AGENCY: Health Resources and Services Administration.

ACTION: Notice of grants made to States and territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1997 funds have been awarded to States and territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability, and organization of health care and support services for individuals and families with HIV disease. The HIV Care Grant Program is authorized by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, as amended by the Ryan White CARE Act amendments of 1996, Public Law 104–146, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 104–208.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Anita Eichler, M.P.H., Director, Division of Service Systems, at (301) 443–0745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $230,695,000 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula that is determined by multiplying the amount appropriated for Title II, less any set-asides, by the distribution factor determined for the State. In addition to the Care Grants, $167,000,000 was also awarded for the AIDS Drug Assistance Program (ADAP) to help States increase the number of HIV patients receiving drugs, including combination therapies and new drugs, and to help pay for their increasing costs. Below are two tables. The first shows the distribution of funds for the Care Grant Program by State. The second shows the distribution of funds for the ADAP by State.

CARE GRANT AWARDS

State	Amount
Alabama	$2,838,265
Alaska	250,000
Arizona	2,045,462
Arkansas	1,395,995
California	31,548,137
Colorado	2,127,037
Connecticut	3,330,036
Delaware	1,322,724
District of Columbia	2,877,431
Florida	23,416,364
Georgia	7,214,630
Hawaii	1,158,830
Idaho	250,000
Illinois	9,606,747
Indiana	2,928,889
Iowa	624,726
Kansas	997,168
Kentucky	1,416,277
Louisiana	4,252,105
Maine	489,755
Maryland	5,923,285
Massachusetts	4,217,542
Michigan	3,405,991
Minnesota	1,037,082
Mississippi	1,879,985
Missouri	2,620,796
Montana	136,900
Nebraska	499,395
Nevada	2,043,859
New Hampshire	314,204
New Jersey	11,931,930
New Mexico	705,975
New York	34,972,364
North Carolina	4,803,070
North Dakota	100,000
Ohio	4,739,289
Oklahoma	1,554,105
Oregon	1,601,172
Pennsylvania	7,686,646
Rhode Island	1,054,706
South Carolina	4,509,988
South Dakota	100,000
Tennessee	3,908,471
Texas	14,636,207
Utah	852,251
Vermont	250,000
Virginia	8,235,047
Washington	2,830,277
West Virginia	492,843
Wisconsin	1,755,689
Wyoming	100,000
Guam	11,608
Puerto Rico	7,605,268
Virgin Islands	191,525

AIDS DRUG ASSISTANCE PROGRAM AWARDS

[State/Territory—FY 1997 Grant Award]

Alabama	$1,329,706
Alaska	112,917
Arizona	1,450,752
Arkansas	654,013
California	26,371,892
Colorado	1,607,932
Connecticut	2,790,394
Delaware	619,686
District of Columbia	2,613,341
Florida	17,898,632
Georgia	5,125,509
Hawaii	542,903
Idaho	112,917
Illinois	5,427,222
Indiana	1,372,162
Iowa	292,680
Kansas	568,196
Kentucky	663,046
Louisiana	2,717,224
Maine	229,446
Maryland	5,025,239
Massachusetts	3,310,714
Michigan	2,408,285
Minnesota	841,003
Mississippi	880,749
Missouri	1,965,652
Montana	64,137
Nebraska	233,963
Nevada	975,533
New Hampshire	214,993
New Jersey	9,448,859
New Mexico	377,583
New York	29,381,796
North Carolina	2,250,201
North Dakota	24,390
Ohio	2,577,208
Oklahoma	728,086
Oregon	1,148,136
Pennsylvania	5,258,299
Rhode Island	494,123
South Carolina	2,112,895
South Dakota	38,843
Tennessee	1,830,152
Texas	11,061,306
Utah	399,273
Vermont	92,140
Virginia	2,881,631
Washington	2,067,728
West Virginia	247,513
Wisconsin	823,839
Wyoming	37,940
Guam	N/A
Puerto Rico	5,315,209
Virgin Islands	N/A
Total	$167,000,000

Eligibility Criteria

In order to receive funding under Title II of the CARE Act, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the Title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the Title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with Title II assistance will be provided without regard to the ability of the individual to pay or the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuation of health insurance coverage, ensure that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and that information concerning such criteria will be made available to the public;
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under Title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under Title II; and
- The State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant funds to:

- Deliver or enhance HIV-related outpatient and ambulatory health and support services, including case management, substance abuse treatment and mental health treatment, and comprehensive treatment services, which include treatment education and prophylactic treatment for opportunistic infections, for individuals and families with HIV disease.
- Deliver or enhance HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.
- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private (or private for-profit providers or organizations if such entities are the only available providers of quality HIV care in the area) health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure health insurance coverage for low-income individuals with HIV disease.
- Provide therapeutics to treat HIV disease or prevent the serious deterioration of health arising from HIV disease in eligible individuals, including measures for the prevention and treatment of opportunistic infections.

A State must use not less than the percentage of its grant funds constituted by the ratio of the population in the State of infants, children, and women with AIDS to the general population in the State of individuals with AIDS to provide health and support services to infants, children, and women with such syndrome.

A State must take administrative or legislative action to require that a good faith effort be made to notify a spouse of a known HIV-infected patient that such spouse may have been exposed to HIV and should seek testing.

At least 75 percent of the fiscal year 1997 Title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure not later than 150 days after receipt of such amounts in the case of a the first fiscal year for which amounts are received, and within 120 days of the receipt of the grant by the State in succeeding fiscal years.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: November 21, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–31211 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration.

ACTION: Notice of grants made to eligible metropolitan areas.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1997 funds

have been awarded to the 49 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services, including case management, substance abuse treatment and mental health treatment, and comprehensive treatment services, which include treatment education and prophylactic treatment for opportunistic infections, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program is authorized by Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, as amended by the Ryan White CARE Act Amendments of 1996, Public Law 104–146, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 104–208.

FOR FURTHER INFORMATION, CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the Chief Elected Official (CEO) in their locality, and may obtain information on their CEO contact by calling Anita Eichler, M.P.H., Director, Division of Service Systems, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $429,377,900 was made available for the Title I HIV Emergency Relief Grant Program. Below is a table showing the total award of grants made to the 49 EMAs.

Grantee	Award
Atlanta, GA	$12,632,117
Austin, TX	3,337,861
Baltimore, MD	10,033,688
Bergen-Passaic, NJ	4,292,593
Boston, MA	9,033,443
Caguas, PR	1,431,210
Chicago, IL	15,741,071
Cleveland-Lorain-Elyria, OH	1,877,513
Dallas, TX	8,129,583
Denver, CO	4,668,572
Detroit, MI	6,087,121
Dutchess County, NY	776,847
Ft. Lauderdale, FL	8,312,185
Ft. Worth-Arlington, TX	1,902,232
Hartford, CT	2,661.473
Houston, TX	10,788,697
Jacksonville, FL	3,762,713
Jersey City, NJ	4,600,103
Kansas City, MO	2,884,537
Los Angeles, CA	30,227,296
Miami, FL	18,863,208
Middlesex-Somerset-Hunterdon, NJ	1,919,076
Minneapolis-St. Paul, MN	1,990,700
Nassau-Suffolk, NY	4,697,795
New Haven, CT	5,336,678
New Orleans, LA	4,727,682
New York, NY	92,459,373
Newark, NJ	11,612,530
Oakland, CA	5,905,961
Orange County, CA	4,401,330
Orlando, FL	4,319,349
Philadelphia, PA	13,465,328
Phoenix, AZ	3,380,053
Ponce, PR	2,183,463
Portland, OR	3,472,480
Riverside-San Bernardino, CA	5,986,979
Sacramento, CA	2,038,827
St. Louis, MO	3,506,350
San Antonio, TX	3,014,191
San Diego, CA	8,198,109
San Francisco, CA	37,194,634
San Jose, CA	1,992,602
San Juan, PR	10,550,845
Santa Rosa-Petaluma, CA	1,330,630
Seattle, WA	5,481,431
Tampa-St. Petersburg, FL	6,548,952
Vineland-Millville-Bridgeton, NJ	677,001
Washington, D.C.	15,838,868
West Palm Beach, FL	5,122,618

Eligible Grantees

Metropolitan areas which were eligible for grant awards under Title I were those areas for which, as of March 31, 1996, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS for the previous 5 years, and there was a population of at least 500,000 individuals, or, for which an award had been made prior to fiscal year 1997.

Grants were awarded to the chief elected official (CEO) of the city or urban county in each EMA that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under Title I, the CEO was required to establish or designate an HIV health services planning council that reflects in its composition the demographics of the epidemic in the EMA, with particular consideration given to disproportionately affected and historically underserved groups and subpopulations. The planning council is to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area; (4) participate in the development of the statewide coordinated statement of need initiated by the State public health agency responsible for administering State grants (Part B of Title XXVI of the Public Health Service Act); and (5) establish methods for obtaining input on community needs and priorities which may include public meetings, conducting focus groups, and convening ad-hoc panels. The planning council must include representatives of: health care providers, including federally qualified health centers; community-based and AIDS service organizations; social services providers; mental health and substance abuse providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including people with HIV disease or AIDS and historically underserved groups and subpopulations; non-elected community leaders; State government, including the State Medicaid agency and the agency administering the program under Part B of Title XXVI of the PHS Act; and grantees receiving categorical grants for early intervention services under Part C of Title XXVI of the PHS Act; grantees under section 2671 of the PHS Act, or, if none are operating in the area, representatives of organizations with a history of serving children, youth, women, and families living with HIV and operating in the area; and grantees under other federal HIV programs. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the preceding fiscal year. Funds received under Title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with any required political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that receive Title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That Title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with Title I assistance will be provided without regard to the ability of the individual to pay for such services or to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

o That the applicant has participated, or will agree to participate, in the statewide coordinated statement of need process where it has been initiated by the State public health agency responsible for administering grants under part B, and ensures that the services provided under the comprehensive plan are consistent with the statewide coordinated statement of need.

General Use of Grant Funds

EMAs must use the Title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, or private for-profit entities if such entities are the only available provider of quality HIV care in the area, for the purpose of delivering or enhancing—

o HIV-related outpatient and ambulatory health and support services, including case management, substance abuse treatment and mental health treatment, and comprehensive treatment services, which will include treatment education and prophylactic treatment for opportunistic infections, for individuals and families with HIV disease; and

o HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

In order to provide health and support services to infants, children, and women with HIV disease, including treatment measures to prevent the perinatal transmission of HIV, the EMA must use an amount of funding from the Title I grant not less than the percentage constituted by the ratio of the population in the EMA of infants, children, and women with AIDS to the general population of AIDS-infected individuals in the EMA.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–277, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or, in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

(The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.)

Dated: November 21, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–31210 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December, 1997.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 3, 1997; 9:00 a.m.–5:00 p.m., December 4, 1997; 9:00 a.m.–12:00 Noon

Place: Parklawn Building, Conference Room D, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, December 3, from 9:00 a.m. to 5:00 p.m. and on Thursday, December 4, from 9:00 a.m. to 12:00 p.m. Agenda items will include, but not be limited to: an update on the Vaccine Information Statements for newly added vaccines to the National Vaccine Injury Compensation Program (VICP); a discussion of potential legislative amendments to the VICP; a report on vaccines currently in clinical trials; a presentation on vaccine registries, and reports from the Department of Justice, the National Vaccine Program Office, and routine Program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on December 3 and before adjournment on December 4. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Room D on December 3 and 4. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: November 21, 1997.

Jane M. Harrison,

Committee Management Officer, HRSA.

[FR Doc. 97–31221 Filed 11–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Subcommittee.

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Date: December 11, 1997.

Time: 1:00 p.m.

Place: Via Teleconference, Building 38A, Room 609, at the National Institutes of Health, Bethesda, MD.

Contact Person: Rudy Pozzatti, Ph.D., Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The applications and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: November 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31230 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meetings

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel ZHG1 (G1).

Agenda/Purpose: To discuss a component of NHGRI's five-year plan.

Date: December 2–3, 1997.

Time: 8:30 a.m.–5:00 p.m.

Place: Chevy Chase Holiday, Chevy Chase, Maryland.

Note: Advanced registration required.

Contact Person: Elise A. Feingold, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 614, Bethesda, Maryland 20892, (301) 496–7531.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet extramural process requirements.

Name of Committee: National Human Genome Research Institute, Special Emphasis Panel ZHG1 (P1).

Agenda/Purpose: To consider the design issues associated with the development of a repository of cell lines that can be used in the discovery of single nucleotide polymorphisms in human DNA.

Date: December 8–9, 1997.

Time: 8:30 a.m.–5:00 p.m.

Place: Bethesda Marriott Hotel, Pooks Hill, Bethesda, Maryland.

Note: Advanced registration required.

Contact Person: Stephanie Reeves-Walker, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 614, Bethesda, Maryland 20892, (301) 496–7531.

Meeting Contact Person: Bettie Graham, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 614, Bethesda, Maryland 20892, (301) 496–7531.

Individuals who plan to attend these meetings and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Elise Feingold or Stephanie Reeves-Walker, (301) 496–7531, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: November 19, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31231 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: The Effects of Yoga on Peak Flow Rates in Pregnant Asthmatics (Teleconference).

Date: December 18, 1997.

Time: 3:30 p.m. (ET)—adjournment.

Place: 6100 Executive Boulevard, Room 5E03, Rockville, Maryland 20892.

Contact Person: Norman C. Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E03, Rockville, MD 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: November 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31227 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 9, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 21, 1997.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 97–31228 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Autism—related program projects.

Date: December 8–9, 1997.

Time: December 8:00 p.m.—10:00 p.m., December 9–8:30 a.m.—adjournment.

Place: Strathallan Hotel, Rochester, New York.

Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review research grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93–865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: November 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31229 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: November 25, 1997.

Time: 9:00 a.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–0617.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31234 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: November 24, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9C–16, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–16, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: November 25, 1997.

Time: 3:30 p.m.

Place: Parklawn, Room 9C–16, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–16, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31235 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

Name of SEP: National Library of Medicine Special Emphasis Panel

Date: December 1–3, 1997.

Place: City of Hope National Medical Center, 1500 East Duarte Road, Duarte, CA 91010.

Contact: Sharee Pepper, Ph.D., Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A. Rm. 5N–519, Bethesda, Maryland 20894, 301/496–4253.

Purpose/Agenda: To review IAMIS Phase II grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: November 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NLM.

[FR Doc. 97–31233 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 3, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Biological and Physiological Sciences.

Date: December 8, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4144, Telephone Conference.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda, Maryland 20892, (301) 435–1716.

Name of SEP: Behavioral and Neurosciences.

Date: December 9, 1997.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 5178, Telephone Conference.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

Name of SEP: Biological and Physiological Sciences.

Date: December 11–12, 1997.

Time: 7:30 p.m.

Place: Watergate Hotel, Washington, DC.

Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

Name of SEP: Chemistry and Related Sciences.

Date: December 12, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4168, Telephone Conference.

Contact Person: Dr. John Bowers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4168, Bethesda, Maryland 20892, (301) 435–1725.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 12, 1997.

Time: 11:00 a.m.

Place: NIH, Rockledge 2, Room 4190, Telephone Conference.

Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: December 17, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Chemistry and Related Sciences.

Date: December 18, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Ronald Dubois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892, (301) 435–1722.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Behavioral and Neurosciences.

Date: December 18, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Microbiological and Immunological.

Date: December 18, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5110, Telephone Conference.

Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1218.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: November 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31226 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences

Date: December 2, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5170, Telephone Conference.

Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5170, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Clinical Sciences

Date: December 3, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1153.

Name of SEP: Microbiological and Immunological Science

Date: December 4, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4178, Telephone Conference.

Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Clinical Sciences

Date: December 8, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4104, Telephone Conference.

Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4101, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Biological and Physiological Sciences

Date: December 9, 1997.

Time: 8:30 a.m.

Place: Doubletree Hotel, Rockville, MD.

Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1256.

Name of SEP: Biological and Physiological Sciences

Date: December 9, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4146, Telephone Conference.

Contact Person: Dr. Martin Padarathsingh, Scientific Review Administrator 6701 Rockledge Drive, Room 4146, Bethesda, Maryland 20892 (301 435–1717.

Name of SEP: Biological and Physiological Sciences

Date: December 11, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4146, Telephone Conference.

Contact Person: Dr. Martin Padarathsingh, Scientific Review Administrator, 6701 Rockledge Drive, Room 4146, Bethesda, Maryland 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences

Date: December 15, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5122, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Biological and Physiological Sciences

Date: December 17, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Clinical Sciences

Date: December 18, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4100, Telephone Conference.

Contact Person: Dr. Jeanne N. Ketley, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1789.

Name of SEP: Behavioral and Neurosciences

Date: February 18–20, 1997.

Time: 8:30 a.m.

Place: The Willard Hotel, Washington, DC.

Contact Person: Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, Maryland 20892, (301) 435–1278.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Date: November 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31232 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Notice of Meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center, December 1, 1997. The Executive Committee will meet on December 1 from 9:00 a.m. to approximately 12:30 p.m. in the Medical Board Room (2C116) of the Clinical Center (Building 10), 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to approximately 11:30 a.m. and will include the Director's update and a discussion with Arthur Anderson representatives regarding an evaluation of the Clinical Center financial management system.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 11:30 a.m. to adjournment for discussion of personnal matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Attendance by the public will be limited to space available.

FOR FURTHER INFORMATION, CONTACT: Ms. Maggi Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496–4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

This notice is being published less than fifteen days prior to this meeting due to scheduling conflicts.

Dated: November 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31236 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

PUBLIC HEALTH SERVICE

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS); Notice of Workshop on Strategies for Assessing the Implications of Malformed Frogs for Environmental Health

The Workshops will be held in the Conference Center, Building 101, South Campus, NIEHS, 111 Alexander Drive, Research Triangle Park, North Carolina 27709, on December 4–5, 1997, from approximately 8:30 a.m. to 5:00 p.m. on Thursday, December 4th and approximately 8:30 a.m. to 12 noon on Friday, December 5th.

Background

Over the last few years increasing numbers of malformed frogs have been reported in numerous states, across southern Canada, and in Japan. Early in 1997 the Minnesota Pollution Control Agency (MPCA) requested the assistance of the National Institute of Environmental Health Sciences, National Institutes of Health, and the National Toxicology Program with their investigation into the cause of the frog malformations occurring across Minnesota. A research plan has been implemented to determine whether there is a site-specific correlation between the malformations and contaminants determined by chemical analysis of water and sediment, laboratory bioassays, and field monitoring of frog populations. The causal factors have not yet been determined. However, evidence to date indicates that pond water and groundwater from affected sites are capable of producing frog embryo deformities in the laboratory.

Workshop Goals

- Review NIEHS/NTP findings and strategies for future study
- Assess the implications of NIEHS/MPCA and related findings for human and ecological health
- Provide an opportunity for discussion, input and perspective from the broader scientific community, industry, Federal, state, and local government officials, and the public

Workshop Topics

- Overview of Frog Deformities (Historical Perspective; Geographic Extent and Incidence; Affected State Perspectives; Possible Environmental Causes)
- Minnesota/NIEHS Cooperative Research Efforts
- Environmental Chemistry and Hydrogeology
- Ecological Health Issues: Human Health Issues; Monitoring Strategies (Federal and State)
- Future Directions

Invited speakers will address the topics listed above. Time will be provided for open discussion and comment.

Public Participation Encouraged and Welcome: The entire meeting will be open to the public with attendance limited only by space available.

To Register: Please provide the following information by mail or fax, or E-mail: Last Name, First Name, Middle Initial; Institution, Department, Title; Address, City, State/County, Zip Code; Daytime Phone, FAX Number, E-Mail Address. Forward to: NTP Liaison Office, P.O. Box 12233, MD: A3–01, Research Triangle Park, North Carolina 27709, USA [Tel: (919) 541–0530; FAX (919) 541–0295, E-mail: britton@niehs.nih.gov.

For further information, including a tentative agenda, contact the NTP Liaison Office as shown above.

Dated: November 13, 1997.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 97–31237 Filed 11–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–31]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: *Army*: Mr. Jeff Holste, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6318; (This is not a toll-free number).

Dated: November 20, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/28/97

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. S0015
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219740001
Status: Unutilized
Reason: Extensive deterioration

Bldg. S0016
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219740002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8002
Redstone Arsenal
Redstone Arsenal AL 35898–5000
Landholding Agency: Army
Property Number: 219740003
Status: Unutilized
Reason: Secured Area

Bldg. 502
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219740004
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 24301, 24302, 24312
Fort Rucker
Fort Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219740005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4106
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219740006
Status: Unutilized
Reason: Extensive deterioration

7 Bldgs.
Fort Rucker 1484, 1316, 3902, 4603, 4114, 4703, 5306
Ft. Rucker Co: Dale AL 36362–5000
Landholding Agency: Army
Property Number: 219740007
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. S–584
Sharpe
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219740008
Status: Unutilized
Reason: Secured Area

Colorado

Bldg. T–6006, Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219740009
Status: Excess
Reason: Extensive deterioration

Georgia

Bldg. T–814
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219740010
Status: Excess
Reason: Extensive deterioration

Bldg. T–822
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219740011
Status: Excess
Reason: Extensive deterioration

Bldg. T–158
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219740012
Status: Excess
Reason: Extensive deterioration

Bldg. T–290
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219740013
Status: Excess
Reason: Extensive deterioration

Bldg. T–9598
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219740014
Status: Excess
Reason: Extensive deterioration

Bldg. 735 Fort Gillem
Fort Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219740015
Status: Unutilized
Reason: Secured Area

Hawaii

Bldgs. S–311, S–313
Fort Shafter
Honolulu, Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219740016
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–1031
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219740017
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–1036
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219740018
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–1037
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219740019
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. T–125
Charles Melvin Price Support Ctr
Granite City Co: Madison IL 62040–
Landholding Agency: Army
Property Number: 219740020
Status: Unutilized
Reason: Floodway, Secured Area

Indiana

Bldg. 103B6
Newport Chemical Depot
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219740021
Status: Excess
Reason: Secured Area

Bldg. 104C
Newport Chemical Depot
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219740022
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 157
Newport Chemical Depot
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219740023
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 715
Newport Chemical Depot
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219740024
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 729C
Newport Chemical Depot
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219740025
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 1401C
Newport Chemical Depot
Newport Co: Vermillion IN 37966–
Landholding Agency: Army
Property Number: 219740026
Status: Excess
Reason: Secured Area, Extensive deterioration

Iowa

Bldg. 500–128
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219740027
Status: Unutilized
Reason: Secured Area

Kansas

Bldg. P–177
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740028
Status: Unutilized
Reason: Extensive deterioration
Bldg. P–417
Fort Leavenworth
Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219740029
Status: Unutilized
Reason: Other
Comment: sewage pump station

Kentucky

Bldg. T06092, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740030
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2342, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740031
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5715, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740032
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5717, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740033
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5723, Fort Campbell
Ft. Campbell KY 42223—
Landholding Agency: Army
Property Number: 219740034
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5858, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740035
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5952, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740036
Status: Unutilized
Reason: Extensive deterioration
Bldg. 7140, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740037
Status: Unutilized
Reason: Extensive deterioration
Bldg. 7573, Fort Campbell
Ft. Campbell KY 42223–
Landholding Agency: Army
Property Number: 219740038
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2318
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740039
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2320
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740040
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2321
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740041
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2422
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740042
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2442
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740043
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 1487, 2344, 2351
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740044
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 2345, 2348
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740045
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2347
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740046
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2353
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740047
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4402, 4404, 4408, 4410, 4413, 4414, 4417, 4418, 4422, 4423
Landholding Agency: Army
Property Number: 219740048
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4403, 4405–4407, 4409, 4411–4412, 4415–4416, 4419
Landholding Agency: Army
Property Number: 219740049
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4420–4421, 4424–4426, 4428–4429, 4432–4433, 4435
Landholding Agency: Army
Property Number: 219740050
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4427, 4430–4431, 4434, 4437, 4443–4444, 4446, 4450, 4454
Landholding Agency: Army
Property Number: 219740051
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4436, 4438, 4440–4442, 4445, 4447–4449, 4451
Landholding Agency: Army
Property Number: 219740052
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4452–4453, 4457–4459, 4461–4463, 4467, 4470
Landholding Agency: Army
Property Number: 219740053
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4455–4456, 4464–4466, 4469, 4471–4474
Landholding Agency: Army
Property Number: 219740054
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4475, 4477–4479, 4481–4483, 4485, 4487, 4489
Landholding Agency: Army
Property Number: 219740055
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4476, 4480, 4484, 4486, 4488, 4496–4499, 4503
Landholding Agency: Army
Property Number: 219740056
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4490–4491, 4493–4495, 4500–4502, 4505–4506
Landholding Agency: Army
Property Number: 219740057
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 4504, 4508, 4512
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740058
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Location: 4507, 4509–4511, 4513–4514, 4516–4517, 4519–4520
Landholding Agency: Army
Property Number: 219740059
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 4522–4523
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219740060
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 263
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740061
Status: Unutilized
Reason: Extensive deterioration
Bldg. 282
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740062
Status: Unutilized
Reason: Extensive deterioration
Bldg. 3602
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740063
Status: Unutilized
Reason: Extensive deterioration
Bldg. 3603
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740064
Status: Unutilized
Reason: Extensive deterioration
Bldg. 4705
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740065
Status: Unutilized
Reason: Extensive deterioration
Bldg. E5266
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219740066
Status: Unutilized
Reason: Extensive deterioration
Bldg. 177
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740067
Status: Unutilized
Reason: Extensive deterioration
Bldg. 218
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740068
Status: Unutilized
Reason: Extensive deterioration
Bldg. 595
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740069
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2044
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740070
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2046
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740071
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2122
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740072
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2126
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740073
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2127
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740074
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2202
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740075
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2215
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740076
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2466
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740077
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2803
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740078
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2804
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740079
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2813
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740080
Status: Unutilized
Reason: Extensive deterioration
Blvd. 2814
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740081
Status: Unutilized
Reason: Extensive deterioration
Blvd. 3170
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740082
Status: Unutilized
Reason: Extensive deterioration
Blvd. 3175
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740083
Status: Unutilized
Reason: Extensive deterioration
Blvd. 3182
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740084
Status: Unutilized
Reason: Extensive deterioration
Blvd. 3184
Fort George G. Meade

Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740085
Status: Unutilized
Reason: Extensive deterioration

Blvd. 3185
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740086
Status: Unutilized
Reason: Extensive deterioration

Blvd. 3186
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740087
Status: Unutilized
Reason: Extensive deterioration

Blvd. 3189
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219740088
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4702
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219740089
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldg. 917
Selfridge ANG Base
Selfridge MI 48045-
Landholding Agency: Army
Property Number: 219740090
Status: Unutilized
Reason: Secured Area

Bldg. 918
Selfridge ANG Base
Selfridge MI 48045-
Landholding Agency: Army
Property Number: 219740091
Status: Unutilized
Reason: Secured Area

Bldg. 919
Selfridge ANG Base
Selfridge MI 48045-
Landholding Agency: Army
Property Number: 219740092
Status: Unutilized
Reason: Secured Area

Montana

5 Bldgs.
Fort Harrison
T-106, T-108, T-109, T-208, T-209
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740093
Status: Untilized
Reason: Extensive deterioration

Bldg. T-502
Fort Harrison
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740094
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Harrison
T-503, T-504, T-505, T-506
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740095
Status: Unutilized
Reason: Extensive deterioration

Bldg. T-509
Fort Harrison
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740096
Status: Unutilized
Reason: Extensive deterioration

Bldg. T-518
Fort Harrison
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740097
Status: Unutilized
Reason: Extensive deterioration

Bldg. T-519
Fort Harrison
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740098
Status: Unutilized
Reason: Extensive deterioration

Bldg. T-520
Fort Harrison
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740099
Status: Unutilized
Reason: Extensive deterioration

Bldg. T-525
Fort Harrison
Ft Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740100
Status: Unutilized
Reason: Extensive deterioration

Bldg. T-526
Fort Harrison
Ft. Harrison Co: Lewis & Clark MT 59636-
Landholding Agency: Army
Property Number: 219740101
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Bldg. 19A
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806-5000
Landholding Agency: Army
Property Number: 219740108
Status: Unutilized
Reason: Extensive deterioration

Bldg. 24
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806-5000
Landholding Agency: Army
Property Number: 219740109
Status: Unutilized
Reason: Extensive deterioration

Bldg. 33B
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740110
Status: Unutilized
Reason: Extensive deterioration

Bldg. 98
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740111
Status: Unutilized
Reason: Extensive deterioration

Bldg. 130
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740112
Status: Unutilized
Reason: Extensive deterioration

Bldg. 164B
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740113
Status: Unutilized
Reason: Extensive deterioration

Bldg. 232C
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740114
Status: Unutilized
Reason: Extensive deterioration

Bldg. 266A
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740115
Status: Unutilized
Reason: Extensive deterioration

Bldg. 439
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740116
Status: Unutilized
Reason: Extensive deterioration

Bldg. 506C
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740117
Status: Unutilized
Reason: Extensive deterioration

Bldg. 506D
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740118
Status: Unutilized
Reason: Extensive deterioration

Bldg. 645
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740119
Status: Unutilized
Reason: Other
Comment: Explosives testing chamber

Bldg. 722
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740120
Status: Unutilized
Reason: Extensive deterioration

Bldg. 939
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740121
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1101
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740122
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1200
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740123
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1200A
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740124
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1619
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740125
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3043
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740126
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3056
Armament R&D Engineering Ctr
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219740127
Status: Unutilized
Reason: Extensive deterioration

North Carolina

18 Bldgs.
Fort Bragg
Misc. Areas
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740102
Status: Unutilized
Reason: Extensive deterioration

35 Bldgs.
Fort Bragg
Commissary Area
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740103
Status: Unutilized
Reason: Extensive deterioration

38 Bldgs.
Fort Bragg
Main Post
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740104
Status: Unutilized
Reason: Extensive deterioration

76 Bldgs.
Fort Bragg
Smoke Bomb Hill
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740105
Status: Unutilized
Reason: Extensive deterioration

273 Bldgs.
Fort Bragg
Old Division Area
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740106
Status: Unutilized
Reason: Extensive deterioration

227 Bldgs.
Fort Bragg
Coscom Area
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219740107
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 49
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219740128
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldg. T–4–37
Ft. Indiantown Gap
Annville Co: Lebanon PA 17002–5000
Landholding Agency: Army
Property Number: 219740129
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5–114
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740130
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–6–76
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740131
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8–78
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740132
Status: Unutilized
Reason: Extensive deterioration

Bldg. T9–9
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740133
Status: Unutilized
Reason: Extensive deterioration

Bldg. T9–63
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740134
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11–8
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740135
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11–11
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740136
Status: Unutilized
Reason: Extensive deterioration

Bldg. T24–36
Ft. Indiantown Gap
Annville Co: Lebanon PA 17003–5000
Landholding Agency: Army
Property Number: 219740137
Status: Unutilized
Reason: Extensive deterioration

South Carolina

Facility J8575
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219740138
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. P–97
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219740139
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Texas

Bldg. 675
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740140
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1170
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740141
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1208
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740142
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1301
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740143
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2324
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740144
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4204
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army

Property Number: 219740145
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4240
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740146
Status: Unutilized
Reason: Extensive deterioration

Bldg. 7178
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740147
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11046
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740148
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11125
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740149
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11129
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740150
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11264
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219740151
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldgs. 1402, 1604
Fort Eustis
Newport News VA 23604–
Landholding Agency: Army
Property Number: 219740152
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1506, 1511, 1513
Fort Eustis
Newport News VA 23604–
Landholding Agency: Army
Property Number: 219740153
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–2601
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740154
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–3408
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740155
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–5002
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740156
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–6245
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740157
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–6265
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740158
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–8503
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740159
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–11544
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219740160
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 1015
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219740161
Status: Unutilized
Reason: Extensive deterioration

Bldg. WT000, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740162
Status: Unutilized
Reason: Other
Comment: Sewage treatment

Bldg. HBC01, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740163
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC02, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740164
Status: Unutilized
Reason: Other
Comment: detached latrine

Bldg. HBC04, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740165
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC08, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740167
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC09, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740168
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC10, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740169
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC11, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740170
Status: Unutilized
Reason: Extensive deterioration

Bldg. HBC13, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740171
Status: Unutilized
Reason: Extensive deterioration

20 Tentpads, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740172
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

Bldg. 445
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740173
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 545, 546
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740174
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1418
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740175
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1559
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740176
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1726, 2506
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740177
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1830
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740178
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1850, 1856, 1861
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740179
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2437, 2537
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740180
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8004
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740181
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8215
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740182
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21113
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5163
Landholding Agency: Army
Property Number: 219740183
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs., Badger AAP
Paste Weight House
6805–01 thru 6805–05
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740184
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

10 Bldgs., Badger AAP
Roll House
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740185
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs., Badger AAP
Slitting & Carpet Roll
6802–02, 6802–3, 6802–5, 6802–7
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740186
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

2 Bldgs., Badger AAP
Press House
6810–04, 6810–07
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs., Badger AAP
Inspection House
6816–01 thru 6816–06, 6816–09
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740188
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 6826–01, Badger AAP
Supersonic Scanning House
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740189
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 6878–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740190
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 8008–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740191
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 9016–02, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 9045–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740193
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

13 Bldgs., Badger AAP
Latrines
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740194
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

Bldg. 9101–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740196
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

Bldg. 9591–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740197
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

Bldg. 9592–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740198
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

Bldg. 9593–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740199
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

Bldg. 9594–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740200
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

3 Bldgs., Badger AAP
Telpher System
0923–03, 0923–04, 0923–07
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740201
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

12 Bldgs., Badger AAP
Solvent Recovery House
1600–19 thru 1600–30
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740202
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

11 Bldgs., Badger AAP
Water Dry House
1650–20 thru 1650–30
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740203
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

5 Bldgs., Badger AAP
Air Dry House
1725–08 thru 1725–12
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740204
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.

8 Bldgs., Badger AAP
Rest House
1750–13 thru 1750–19, 1750–21
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740205
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material, secured area.
6 Bldgs., Badger AAP
Glaze House
1700–02 thru 1800–7
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740206
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area.
8 Bldgs., Badger AAP
Screening House
1850–01 thru 1850–08
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740207
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, secured area, Extensive deterioration.
4 Bldgs., Badger AAP
Screen Storehouse
1842–02 thru 1852–05
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740208
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
23 Bldgs., Badger AAP
Magazine Standard
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740209
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
6 Bldgs., Badger AAP
Hydro-Jet House
1996–13 thru 1996–18
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740210
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 3566–02, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740211
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Dehy Press House
4500–00, 5500–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740212
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Alcohol Pump House
4501–00, 5501–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740213
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Ether Still House
4502–00, 5501–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740214
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Ingredient Mix House
4506–00, 5506–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740215
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
4 Bldgs., Badger AAP
Mixer Macerator
4508–01, 4508–02, 5508–01, 5508–02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740216
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
6 Bldgs., Badger AAP
Block Press
4510–01 thru 4510–03, 5510–01 thru 5510–03
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740217
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
5 Bldgs., Badger AAP
Final Press
4513–01 thru 4513–03, 5513–01, 5513–02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740218
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
5 Bldgs., Badger AAP
Cutting House
4515–01 thru 4516–03, 5516–01, 5516–02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740219
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
5 Bldgs., Badger AAP
Loading Platform
4517–01 thru 4517–03, 5517–01, 5517–02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740220
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Hydraulic Station
4521–00, 5521–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740221
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
3 Bldgs., Badger AAP
Maintenance Shop
4549–00, 5549–00, 5045–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740222
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 4555–00, Badger AAP
ACR Bldg.
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740223
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
6 Bldgs., Badger AAP
Material Store
Baraboo Co: Sauk WI 53913–
Location: 4558–01, 4558–02, 4567–00, 5558–01, 5558–02, 5567–00
Landholding Agency: Army
Property Number: 219740224
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Acid Mix & Weigh
5002–00, 9002–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740225
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Acid Screaning
5007–00, 9007–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740226
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Acid Heat & Cir
5008–00, 9008–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740227
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
3 Bldgs., Badger AAP
Cellulose Drying House
5010–00, 5044–00, 9010–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740228
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Catch House
5011–00, 9011–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740229
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Nitrating House
5012–00, 9012–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army

Property Number: 219740230
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
18 Bldgs., Badger AAP
Steam Pressure Reducing Station
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740231
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Steam Pressure Reducing Station
000E–02, 000F–02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740232
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0021–03, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740233
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0202–04, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740234
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0204–B1, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740235
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0271–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740236
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
4 Bldgs., Badger AAP
0308–01, 0308–02, 0308–03, 0316–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740237
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0312–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740238
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Bldg. 0318–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740239
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0402–00, Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740240
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Waste Acid Disposal Plant
0420–04, 0420–06
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740241
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0425, Badger AAP
PH Recorder
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740242
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Storage Shed
0429–01, 0429–02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740243
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0534–00, Badger AAP
Fire Station #2
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740244
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 0701–00, Badger AAP
Ammonia Storage
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740245
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Nitric Circulator
0705–00, 0706–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740246
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Fume Exhaust
5013–00, 9013–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740247
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
NC Pump House
5014–00, 9014–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740248
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Boiling Tub House
5019–00, 9019–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740249
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
4 Bldgs., Badger AAP
Settling Pit
5020–00, 9020–00, 5025–00, 9025–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740250
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Beater House
5022–00, 9022–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740251
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Poacher & Blender
5024–00, 9024–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740252
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
4 Bldgs., Badger AAP
Final Wringer
5026–00, 5043–00, 9026–00, 9043–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740253
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Spent Acid Pump
5035–00, 9035–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740254
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Maintenance Shop
5037–00, 9037–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740255
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs., Badger AAP
Chemical Storehouse
5038–00, 9038–00
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740256
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 5555–00, Badger AAP
ACR Bldg. & Duct Work

Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740257
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 5557–03, Badger AAP
Change House
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740258
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
13 Bldgs., Badger AAP
Latrines
Baraboo Co: Sauk WI 53913–
Location: 6513–05, 11, 25, 26, 29, 45, 9063–06 thru 10, 13, 14
Landholding Agency: Army
Property Number: 219740259
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs. Badger AAP
Transfer Shed
6531–01, 02
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740260
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 6558–00, Badger AAP
Powerhouse #2
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740261
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs. Badger AAP
Gate House
6543–02, 6543–04
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740262
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 6543–05, Badger AAP
Gate House
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740263
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
3 Bldgs. Badger AAP
Inspection House
6543–11, 13, 14
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740264
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 6550–00, Badger AAP
Maint Ofc.
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740265
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs, Badger AAP
Inert Storage
6586–04, 05
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740266
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 6701–00, Badger AAP
NC Blender House
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740267
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
10 Bldgs, Badger AAP
Pre-Dry House
6709–14, 15, 16, 20, 22, 23, 24, 25, 26, 28
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740268
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
11 Bldgs, Badger AAP
Rest House
Baraboo Co: Sauk WI 53913–
Location: 6726–02, 6803–01, 02, 03, 04, 6812–08 17, 18, 19, 6828–07, 6862–02
Landholding Agency: Army
Property Number: 219740269
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 6739–00, Badger AAP
Bag Loading House
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740270
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
3 Bldgs, Badger AAP
Rest House
6804–01, 08, 14
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219740271
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

[FR Doc. 97–31070 Filed 11–26–97; 8:45 am]
BILLING CODE 4310–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Elvin Franks, Morehead City, NC, PRT–836847.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Randy Miller, Acton, CA, PRT–835827.

The applicant requests a permit to export and reimport one captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Randy Miller, Acton, CA, PRT–836809.

The applicant requests a permit to export and reimport one captive born Siberian tiger (*Panthera tigris altaica*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Applicant: The Cincinnati Zoo and Botanical Garden, Cincinnati, OH, PRT–836269.

The applicant requests a permit to export 10 tigers (*Panthera tigris*) to Safari World Public Company, Bangkok, Thailand for the purpose of enhancement of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director on or before December 29, 1997.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Texas A&M University, Galveston, TX, PRT–766146.

Permit Type: Take for Scientific Research.

Name and Number of Animals: Manatee (*Trichechus manatus*), 20.

Summary of Activity to be Authorized: The applicant has requested amendment and renewal of their permit to take captive manatees at facilities in Florida for the purpose of scientific research. The only amendments are staff-related.

Source of Marine Mammals: Captive manatees at facilities in Florida.

Period of Activity: Up to five years from issuance date of the permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of any of these complete applications, or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358-2281 and must be received on or before December 29, 1997. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: November 20, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–31200 Filed 11–26–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Conservation Agreement for the Wasatch Front and West Desert Populations (Utah) of Spotted Frog (Rana luteiventris) for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service announces the availability for public review of a Draft Conservation Agreement for the spotted frog (*Rana luteiventris*) in Utah. This species is a candidate for Federal listing pursuant to the Endangered Species Act of 1973, as amended. The Conservation Agreement was developed by the Utah Department of Natural Resources, with participation from the following parties: Bureau of Land Management; Utah Reclamation, Mitigation and Conservation Commission; Bureau of Reclamation; Central Utah Water Conservancy District; the Confederated Tribes of the Goshute Reservation; and the Service. The agreement focuses on eliminating or minimizing threats to the spotted frog and its habitat to the greatest extent possible and on restoring and maintaining populations of spotted frog throughout its historical range in Utah. The Service solicits review and comment from the public on the draft agreement.

DATES: Comments on the Draft Conservation Agreement must be received on or before December 29, 1997, to be considered by the Service during preparation of the final conservation agreement and prior to the Service's determination whether it will be a signatory party to the agreement.

ADDRESSES: Persons wishing to review the Draft Conservation Agreement may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments and materials regarding the Draft Conservation Agreement should also be directed to the same address. Comments and written materials will be available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Field Supervisor (see **ADDRESSES** section) (telephone 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The spotted frog belongs to the family of true frogs, the Ranidae. Adult frogs have large, dark spots on their backs and pigmentation on their abdomens ranging from yellow to red (Turner 1957). Spotted frogs along the Wasatch Front generally possess a salmon color ventrally, while West Desert and Sanpete County, Utah populations generally have a yellow to yellow-orange color ventrally. Spotted frogs in Utah are reported to have fewer and lighter colored spots (Colburn, U.S. Fish and Wildlife Service, pers. comm., 1992) than other populations. The spotted frog is closely associated with water (Dumas 1966, Nussbaum *et al.* 1983). Habitat includes the marshy edges of ponds, lakes, slow-moving cool water streams and springs (Licht 1974; Nussbaum *et al.* 1983; Morris and Tanner 1969; Hovingh 1987). The present distribution of the spotted frog includes a main population in southeast Alaska, Alberta, British Columbia, eastern Washington, northeastern Oregon, northern and central Idaho, and western Montana and Wyoming. Additional disjunct populations occur in northeastern California, southern Idaho, Nevada, Utah, and western Washington and Oregon.

On May 1, 1989, the Service received a petition from the Board of Directors of the Utah Nature Study Society requesting that the Service add the spotted frog (*Rana pretiosa*) to the List of Threatened and Endangered Species and to specifically consider the status of the Wasatch, Utah, population. The Service subsequently published a notice of a 90-day finding in the **Federal Register** (54 FR 42529) on October 17, 1990 and a notice of the 12-month petition finding in the **Federal Register** (58 FR 27260) on May 7, 1993. In the 12-month petition finding the Service found that listing of the spotted frog as threatened in some portions of its range was warranted but precluded by other higher priority listing actions. The Service found, based on geographic and climatic separation and supported by genetic separation, five distinct vertebrate populations of spotted frog. Listing of both the populations occurring in Utah, the Wasatch Front and West Desert populations, was found to be warranted but precluded and both populations were transferred from category 2 candidates to category 1. The Wasatch Front population was assigned a listing priority number of 3 because the magnitude of the threats were high and imminent, while the West Desert population was assigned a listing priority of 9 because of moderate to low threats.

In the 1997 Candidate Notice of Review (62 FR 49398) published on September 19, 1997, the Service, based on newly published genetic research (Green 1997), assigned a new scientific name (*Rana luteiventris*) and common name (Columbia spotted frog) to several populations of the spotted frog, including both the Wasatch Front and West Desert populations. Additionally, the listing priority number for the West Desert populations was raised from a 9 to a 6.

Shortly after notice of the 12-month petition finding was published, the Utah Department of Natural Resources initiated a monitoring program for the

species in Utah and began development of a Conservation Agreement, working cooperatively with other agencies, in an effort to reduce the threats affecting the spotted frog. The Draft Conservation Agreement focuses on identifying, reducing and eliminating significant threats to the species that warrant its listing as a threatened species, and on restoring and maintaining a minimum of nine populations throughout Utah. This will be accomplished through implementation of the following conservation actions: (1) Determining baseline spotted frog distribution and available habitat; (2) determining baseline spotted frog population, life history and habitat needs; (3) determining and maintaining genetic composition and integrity: (4) augmenting or expanding spotted frog populations and distribution through introduction or reintroduction; (5) enhancing and maintaining habitat; (6) selectively controlling nonnative species; (7) protecting and providing habitat for spotted frog; (8) monitoring populations and habitat; (9) developing mitigation protocols for proposed development projects and future habitat alteration; and (10) protecting spotted frog populations through the use of regulatory mechanisms.

Public Comments Solicited

The Service will use information received in its determination on whether it should be a signatory party to the agreement. Comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of any final document.

Author: The primary author of this document is Janet A. Mizzi (see **ADDRESSES** section) (telephone 801/524–5001).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Act of 1956, the Fish and Wildlife Service Coordination Act of 1964, and the National Memorandum of Understanding (94 (SMU–058)).

Dated: November 21, 1997.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 97–31292 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On September 5, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 172, Page 47040, that an application had been filed with the Fish and Wildlife Service by Charles Ball, Watertown, NY for a permit (PRT–833846) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Parry Channel population (now known as Lancaster Sound), Northwest Territories, Canada for personal use.

Notice is hereby given that on November 12, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 5, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 172, Page 47040, that an application had been filed with the Fish and Wildlife Service by Gary Dietrich, Bismarck, ND for a permit (PRT–833835) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on November 12, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 176, Page 47825, that an application had been filed with the Fish and Wildlife Service by Shannon Kollmeyer, Chelan, WA for a permit (PRT–833972) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken prior to April 30, 1994, from the Parry Channel population (now known as Lancaster Sound), Northwest Territories, Canada for personal use.

Notice is hereby given that on November 12, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 176, Page 47825, that an application had been filed with the Fish and Wildlife Service by Lynn Herbert, Myrtle Creek, OR for a permit (PRT–833971) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea population, Northwest Territories, Canada for personal use.

Notice is hereby given that on November 12, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On June 13, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 114, Page 32364, that an application had been filed with the Fish and Wildlife Service by Helmuth Pfennig, Beulah, ND for a permit (PRT–827717) to import a polar bear (*Ursus maritimus*) from Canada for the purpose of public display.

Notice is hereby given that on November 7, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 31, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 147, Page 41072, that an application had been filed with the Fish and Wildlife Service by the Lisbon Aquarium, c/o IDEA Co., Cambridge, MA for a permit (PRT–834423) to collect up to four Alaskan sea otters *(Enhydra lutris)* for export to the Lisbon Aquarium, Portugal for the purpose of public display.

Notice is hereby given that on September 15, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 7, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 152, Page 42588, that an application had been filed with the Fish and Wildlife Service by the Le Grand Aquarium, c/o IDEA Co., Cambridge, MA for a permit (PRT–832098) to collect up to two Alaskan sea otters *(Enhydra lutris)* for export to the Le Grand Aquarium, France for the purpose of public display.

Notice is hereby given that on September 15, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On September 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 176, Page 47825, that an application had been filed with the Fish and Wildlife Service by the Office of Marine Mammals Management, USFWS, Anchorage, AK for a permit (PRT–834120) to import specimen samples or carcasses of sea otters *(Enhydra lutris)* from the Russia Federation for the purpose of scientific research.

Notice is hereby given that on October 30, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Date: November 20, 1997.

Mary Ellen Amtower,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 97–31201 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Quality of life in southwestern Colorado and northwestern New Mexico.

OMB Approval Number: New Collection.

Abstract: This study is one part of an integrated study of public knowledge of, preferences for, and responses to tourism and recreation development on the Colorado Plateau. The correlated information is designed to assist Federal, state, and local land and resource managers in their management decisions by providing information about the knowledge, needs, and desires of the affected publics surrounding public lands. Natural resource land managers and county government officials in seven counties, working as partners in this research, can adjust management practices in response to citizens' knowledge and perceived values. The intended effect is to better inform managers and assist land managers in developing citizen involvement programs. This study is being conducted in partnership with the U.S. Forest Service, Bureau of Land Management, National Park Service, and as part of the Colorado Plateau Ecosystem Partnership Program (CPEPP). This study is part of a peer-reviewed research study plan of the Midcontinent Ecological Science Center in Fort Collins, Colorado and is part of the study plan of the CPEPP.

To build a picture of quality of life on the Colorado Plateau, we will measure the perceptions and preferences for the environment held by diverse residents at several locations in the region. Our objectives are to describe what resident populations perceive as the most salient elements of the region's natural landscapes, ecosystems, and human communities; what would have to be maintained, protected, or restored to attain conditions of community and ecosystem quality that residents desire. The first iteration of this research approach has been conducted by Utah State University for the Utah State Travel Council in partnership with the Canyon Country Partnership and U.S. Geological Survey. The goal of that study was to help achieve the Travel Council's specific directive to relate tourism planning to local residents' quality of life. For this second iteration, surveys will be administered to a stratified random sample of citizens living in six counties in Colorado (Archuleta, La Plata, Montezuma, Dolores, San Miguel, and San Juan) and in San Juan County, New Mexico. The sampling design is being developed in partnership with the combined U.S. Forest Service and Bureau of Land Management office in Durango, Colorado and Fort Lewis College.

Respondents will be given 12 exposure, one-time use, 35mm cameras and will be asked to photograph areas of their community that either add to or detract from their quality of life. Respondents will receive complete sets of their own photography, accompanied by a short mail-out survey instrument for the purposes of collecting demographic data and cross-check the quality of life factors reflected in the photographs.

Bureau Form Number: None.

Frequency: One time.

Description of Respondents: Individuals or households.

Estimated completion time: 25 minutes per respondent.

Number of respondents: 300 (400 cameras and mail-surveys).

Burden hours: 125 hours. (The burden hour estimate is based on a 70% return rate, with 15 minutes to take photographs and fill out the photo log and 10 minutes to complete the follow-up questionnaire.)

Dated: November 17, 1997.

Dennis B. Fern,

Chief Biologist.

[FR Doc. 97–31296 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–96–1320–01; COC 60941]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 60941; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive

comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by National King Coal, LLC requesting the Bureau of Land Management offer for competitive lease 194.79 acres of federal coal in La Plata County, Colorado.

DATES: The public hearing will be held at 7 p.m., December 18, 1997. Written comments should be received no later than December 30, 1997.

ADDRESSES: The public hearing will be held in the Federal Building, 701 Camino Del Rio, Room 110, Durango, Colorado 81301. Written comments should be addressed to the Bureau of Land Management, Area Manager, San Juan Basin Resource Area. Federal Building, Room 203, 701 Camino Del Rio, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Cal Joyner, Area Manager, San Juan Basin Resource Area Office at the address above, or by telephone at (970) 247–1289.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on December 18, 1997, at 7 p.m., in the Federal Building at the address given above.

An application for coal lease was filed by National King Coal, LLC, requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 34 N., R. 11 W., N.M.P.M.
Sec. 6, lots 1 to 5, inclusive, NESW, and NWSE;
Containing 194.79 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the December 18, 1997, public hearing should be received at the San Juan Resource Area Office prior to the close of business December 18, 1997. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the San Juan Resource Area Office at the above address prior to close of business on December 18, 1997.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the San Juan Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado, 80215.

Dated: November 20, 1997.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 97–31202 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(AK–810–0777–51)

Iditarod Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Iditarod Advisory Council Meeting.

SUMMARY: The Iditarod Advisory Council will conduct an open meeting Wednesday, January 7, 1998, and Thursday, January 8, 1998, from 9 a.m. to 4 p.m. each day. The purpose of the meeting is to discuss the formation of a non-profit organization to assist in the management of the Iditarod National Historic Trail. The meeting will be held at the BLM Anchorage District Office at 6881 Abbott Loop Road in Anchorage.

Public comments pertaining to management of the Iditarod National Historic Trail will be taken from 1–2 p.m. Wednesday, January 7. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESS: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson at (907) 271–5555.

Dated: November 18, 1997.

Nick Douglas,

Anchorage District Manager.

[FR Doc. 97–31204 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–923–1990–00]

Mining Claims Under the General Mining Laws; Surface Management: Forms of Legal Financial Guarantees Allowable Under Nevada State Law

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) amended the surface management regulations at 43 CFR subpart 3809 on February 28, 1997 (62 FR 9093). The amendment requires each BLM State Director to consult with the appropriate State authorities to determine which financial instruments in 43 CFR 3809.1–9(k) are allowable under State law. Nevada State law allows surety bonds, cash, irrevocable letters of credit, certificates of deposit, and negotiable United States Government securities or bonds as forms of financial guarantees related to reclamation requirements.

EFFECTIVE DATE: This list is effective December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Cynthia Dragon, Division of Minerals Management, BLM Nevada State Office, 850 Harvard Way, Reno, Nevada 89502–2055, Telephone: 702–785–6458.

SUPPLEMENTARY INFORMATION: The BLM has consulted with the Department of Conservation and Natural Resources, Division of Environmental Protection to determine which of the financial instruments in 43 CFR subpart 3809.1–9(k) are allowable under Nevada State law to satisfy the financial assurance requirements related to mining reclamation requirements. In addition to surety bonds, cash, irrevocable letters of credit, certificates of deposit, and negotiable United States Government securities, other forms of financial assurance may be obtained through the State of Nevada to satisfy financial assurance requirements relating to mining reclamation in Nevada.

Dated: November 3, 1997.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 97–31311 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–10102]

Termination of Recreation and Public Purpose Act Classification and Opening Order, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purpose Act Classification on 316.92 acres as this classification is no longer needed.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On May 19, 1978, 316.92 acres were classified as suitable for Recreation and Public Purposes. The classification is hereby terminated and the segregation for the following described lands is hereby terminated:

T. 1 N., R. 3 E., B.M.
Section 6: Lots 3–7, SE¼NW¼, E½SW¼.

The area described above aggregates 316.92 acres in Ada County.

At 9:00 a.m. on November 28, 1997, these lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m., on November 28, 1997, will be considered simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 9:00 a.m. on November 28, 1997 these lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described above under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 18, 1997.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 97–31287 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–931–1430–01; COC–28599, COC–28618, COC–28640, and COC–28641]

Public Land Order No. 7297; Partial Revocation of Two Executive Orders and Two Secretarial Orders; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Executive orders and two Secretarial orders insofar as they affect 322.62 acres of public lands withdrawn for waterpower purposes. These lands no longer have value for waterpower. The withdrawals will be revoked and the lands opened to disposal to allow for an exchange. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: February 27, 1998.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated May 27, 1913, which established Power Site Reserve No. 356, the Executive Order dated March 25, 1919, which established Power Site Reserve No. 715, the Secretarial Order dated September 14, 1943, which established Power Site Reserve No. 343, and the Secretarial Order dated August 12, 1937, which established Power Site Reserve No. 367, are hereby revoked insofar as they affect the following described public lands:

Sixth Principal Meridian

T. 2 N., R. 71 W.,
Sec. 26, lots 3 and 4.
T. 3 N., R. 71 W.,
Sec. 11, SE¼SW¼ and SE¼SE¼;
Sec. 13, lot 3;
Sec. 14, lots 1, 6, and 7.

The areas described aggregate 322.62 acres in Boulder County.

2. At 9 a.m. on February 27, 1998, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 27, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to lands withdrawn for power purposes, the provisions of the act are no longer applicable. The lands have been and will remain open to mineral leasing.

4. The State of Colorado, with respect to the lands described in paragraph 1, has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent

patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: November 14, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–31297 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–15602 01, IDI–15624 01]

Public Land Order No. 7298; Partial Revocation of Executive Orders Dated February 11, 1915 and August 31, 1917; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Executive orders insofar as they affect 80 acres of public lands withdrawn by the Bureau of Land Management for Powersite Reserve Nos. 475 and 654. The lands are no longer needed for these purposes and the revocations are needed to transfer the lands to the State of Idaho under State Indemnity Selection. This action will open the lands to surface entry. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Orders dated February 11, 1915 and August 31, 1917, which established Powersite Reserve Nos. 475 and 654 respectively, are hereby revoked insofar as they affect the following described lands:

Boise Meridian

a. Powersite Reserve No. 475 (IDI–15602 01)

T. 45 N., R. 2 W.,
Sec. 2, SE¼SW¼.

b. Powersite Reserve No. 654 (IDI–15624 01)

T. 45 N., R. 2 W.,
Sec. 2, SW¼SE¼.

The lands described aggregate 80 acres in Benewah County.

2. The State of Idaho was notified of their preference right for public highway rights-of-way or material sites, but waived their rights on these two parcels of land.

3. At 9 a.m. on December 29, 1997, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 29, 1997, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: November 14, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–31294 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–5700–77; NMNM 85612]

Public Land Order No. 7296; Withdrawal of National Forest System Land for Sacramento Peak Observatory; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,432.40 acres of National Forest System land from mining for a period of 20 years to protect the scientific value of the Sacramento Peak Observatory. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Lorraine J. Salas, BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005, 505–525–4388.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Sacramento Peak Observatory:

New Mexico Principal Meridian

Lincoln National Forest

T. 17 S., R. 11 E.,
Sec. 26, SW¼;
Sec. 27, W½NE¼, SE¼NE¼, NW¼ and S½;
Sec. 28, E½NE¼ and S½, unsurveyed;
Sec. 33, unsurveyed;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½.

The area described contains 2,432.40 acres in Otero County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: November 14, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–31308 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–03–4210–05, FL–ES–0419248]

Realty Action; Classification of Public Lands for Recreation and Public Purposes; Palm Beach County, Florida

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action for the classification of public lands for lease/conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public lands in Palm Beach County, Florida have been examined and found suitable for lease or conveyance pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*, and the regulations promulgated thereunder, title 43 Code of Federal Regulations, part 2912:

Tallahassee Meridian, Florida

T. 40 S., R. 43 E.
Sec. 31, Lot 13.
Totalling 26.35 acres

The Town of Jupiter plans to use these lands for recreational areas. The lands are not needed for Federal purposes. Lease/conveyance is consistent with current Bureau of Land Management land use planning and conveyance is deemed to be in the public interest.

The lease/patent, when issued, shall be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and to the following reservations to the United States:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests herein.

EFFECTIVE DATE: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons or parties may submit comments regarding the proposes lease/conveyance or classification of the lands to the Field Manager, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Any adverse comments will be reviewed by the District Manager. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, Realty Specialist, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39207 (601) 944–5435.

Dated: November 19, 1997.

Bruce Dawson,

Field Manager.

[FR Doc. 97–31310 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–080–08–1430–01; M84505.1]

Notice of Realty Action: Direct Sale of Public Land in Petroleum County

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Designation of public land, surface estate only, in Petroleum County, Montana, for direct sale.

SUMMARY: The following described public lands are suitable for disposal at no less than the appraised fair market value, by direct sale to Lloyd and Karen Carrell, under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713.

Principal Meridian Montana

T. 15 N., R. 29 E.,
Section 14, SW¼NE¼, SE¼NW¼;
Containing 80.00 acres.

The above-described land is also being considered for exchange under Serial No. MTM 84505. The land is currently occupied by inhabited and abandoned buildings connected with oil field operations.

Disposal of the public surface estate is in conformance with the Judith-Valley-Phillips Resource Management Plan, as amended. Disposal of public lands with relatively low public values will help meet the management goals for the area. The Bureau of Land Management has advised State and local officials regarding the proposed exchange/sale.

DATES: For a period of 45 days from the date of this notice, interested parties may submit written comments to Chuck Otto, Resource Area Manager, Bureau of Land Management, P.O. Box 1160, Lewistown, MT 59457. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information to the exchange/sale is available for review at the Lewistown District Office, P.O. Box 1160, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The sale will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. A reservation to the United States of all minerals, both locatable and leasable.

3. The sale must meet the requirements of 43 CFR 4110.4–2(b).

The sale is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated intended time of the sale is January 1998. The public interest will be served by disposal of this property.

Dated: November 17, 1997.

David L. Mari,

District Manager.

[FR Doc. 97–31170 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1020–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., November 17, 1997.

The plat representing the dependent resurvey of a portion of the west and north boundaries and subdivisional lines, the subdivision of section 6, and metes-and-bounds surveys in section 6, T. 9 N., R. 22 E., Boise Meridian, Idaho, Group 976, was accepted November 17, 1997.

The plats representing the dependent resurvey of a portion of the west boundary and the metes-and-bounds survey of the centerline of U.S. Highway No. 93 in section 31, T. 10 N., R. 22 E., Boise Meridian, Idaho, Group 976, was accepted November 17, 1997.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: November 17, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–31290 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[KM–952–07–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on December 12, 1997.

New Mexico Principal Meridian, New Mexico

T. 25 S., R. 3 E., accepted November 7, 1997, for Group 949 NM.

If a protest against this survey, as shown on the above plat is received prior to the date of official filing, the filing will be stayed pending

consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal afirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plat represents dependent resurveys, surveys, and subdivisions.

This plat will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: November 12, 1997.

John P. Bennett,

Chief Cadastral Surveyor For New Mexico.

[FR Doc. 97–31269 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Extension of Concession Contract

SUMMARY: Pursuant to the Act of October 9, 1965 (79 STAT. 969; 16 U.S.C. 20 et seq.), notice is hereby given that the National Park Service intends to extend a concession contract. This extension is necessary to allow the continuation of public services during the completion of the planning for the park. The following concession contract will be extended for a period of one year through December 31, 1998: LIBBEY MEMORIAL PHYSICAL MEDICINE CENTER, CC–HOSP004–88.

SUPPLEMENTARY INFORMATION: This concession contract will expire on or before December 31, 1997, unless extended. The National Park Service will not renew this contract for an extended period until planning can be conducted to determine the future direction for concession services at this park. The necessary planning process is expected to begin shortly and will affect the future of his concessions. The planning process is expected to take one year to complete. Until the planning process is completed, it will not be in the best interest of the National Park Service to enter into long-term concession contracts and permits. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of one year, beginning on or before January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Chief, Concessions Management, Midwest Region, George Frederick, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102 or at telephone number 402–221–3612.

Dated: November 21, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–31258 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Concession Contracts and Permits, Existing Extensions

AGENCY: National Park Service, Interior.

ACTION: Extension of concession contract/permit.

SUMMARY: Pursuant to the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), notice is hereby given that the National Park Service intends to extend a concession contract and permit. These extensions are necessary to allow the continuation of public services during the completion of the planning for the parks. The current concessionaires have performed their obligations to the satisfaction of the Secretary of the Interior and retain their rights of preference under this administrative action of extending the existing contract and permit.

The following concession contract and permit will be extended for a period of one year through December 31, 1998: AKER'S FERRY CANOE RENTAL, CC–OZAR012–88, and DUNE CLIMB STAND, CP–SLBE004–92.

SUPPLEMENTARY INFORMATION: This concession contact and permit will expire on or before December 31, 1997, unless extended. The National Park Service will not renew these contracts and permits for an extended period until planning can be conducted to determine the future direction for concession services at these parks. The necessary planning processes are expected to begin shortly and will affect the future of these concessions. The planning processes are expected to take one year to complete. Until the planning process is completed, it will not be in the best interest of the National Park Service to enter into long term concession contracts and permits. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of one year beginning on or before January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Chief, Concessions Management, Midwest Region, George Frederick, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102 or at telephone number 402–221–3612.

Dated: November 21, 1997.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 97–31259 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Alternative Design Scenarios; Air Force Memorial

ACTION: Announcement of a public open house to present draft alternative design scenarios for the development of the 25 acres of park land containing the site of the proposed United States Air Force memorial within the boundary of the George Washington Memorial Parkway in further compliance with the National Environmental Policy Act of 1969.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the presentation for public review, draft alternative design scenarios for the further development of the 25 acres of park land within the George Washington Parkway, in Arlington, Virginia, on North Meade Street, which contains the site of the proposed United States Air Force Memorial and the Iwo Jima Memorial and the Netherlands Carillon. Public comment on the draft design scenarios is requested to assist the National Park Service to identify and analyze such environmental issues as traffic, pedestrian and vehicular circulation, parking, access from the Rosslyn Metro station, landscaping, and protection of the vistas of and between the existing memorials. This is to ensure that the erection of the proposed Air Force Memorial will not detract from the other memorials, diminish other park resources, or intrude on the community.

A public open house to review and comment upon the draft alternative design scenarios will be held December 17, 1997 in the auditorium of the Arlington County Central Library, 1015 North Quincy Street, Arlington, Virginia between 7:00 p.m. and 9:30 p.m. Officials of the National Park Service and representatives of the Air Force Memorial Foundation will be in attendance to describe the draft alternative design scenarios, answer questions and receive comments.

The Air Force Memorial Foundation was authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor the men and women who have served in the United States Air Force and its predecessors. The memorial was authorized on December 2, 1993 by enactment of Public Law 103–163 and is being developed pursuant to the Commemorative Works Act, 40 U.S.C. Sec. 1001 *et seq.* This site was approved by the National Capital Memorial Commission on March 24, 1994, the National Park Service on July 8, 1994, the Commission of Fine Arts (CFA) on September 14, 1994, and the National Capital Planning Commission (NCPC) on May 4, 1995.

While the design concept for the memorial was approved by the CFA on February 15, 1996, and by the NCPC on March 7, 1996, the final design must still be approved by the Secretary of the Interior, the CFA and the NCPC. Compliance with Section 106 of the Historic Preservation Act of 1966 was initiated on March 15, 1996, with a determination of no adverse affect in which both Commonwealth of Virginia and the District of Columbia State Historic Preservation Offices have concurred. The next phase in planning is to produce a development concept plan.

For further information, please contact Mr. John G. Parsons, Associate Superintendent, Stewardship and Partnerships, National Capital Support Office at 202–619–7025. Written comments may be addressed to Mr. Parsons at National Park Service, National Capital Region, 1100 Ohio Drive, SW, Washington, DC 20242. Comments must be received by January 23, 1998.

Approved: November 20, 1997.

Emmons O. Larson,

Acting Regional Director, National Capital Field Area.

[FR Doc. 97–31261 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Amended Notice of Public Meeting.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and will provide advice and information to the AMWG. The AMWG will use this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis.

DATE AND LOCATION: The TWG public meeting will be held at the following time and location:

Phoenix, Arizona—Originally, the third in a series of TWG meetings was scheduled for December 11 and 12, 1997. However, this meeting has been rescheduled for December 10 and 11, 1997. This two-day meeting will begin at 9:30 a.m. on the first day and conclude at 4:00 p.m. on the second day. The meeting will be held at the LaQuinta Inn, 2510 W. Greenway Road, Phoenix, Arizona.

Any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meetings must provide written notice to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702; faxogram (801) 524–5499; E-mail at: bmoore@uc.usbr.gov at least five days prior to the meetings. Written comments will be provided to the TWG members at the meetings.

AGENDA: The agenda for this meeting will be as follows:

Welcome
Monitoring and Research Plans for Fiscal Year 1999
Maintenance and Beach/Habitat-Building Flows
Annual Report to Congress
Management Objectives
Resource Management Questions and Objections
Budget

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, telephone (801) 524–3702; faxogram (801) 524–5499; E-mail at: bmoore@uc.usbr.gov.

Dated: November 20, 1997.

Stephen V. Magnussen,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 97–31286 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Wednesday, December 10, 1997, 9 a.m.–4 p.m., Thursday, December 11, 1997, 9 a.m.–12 noon.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, P.O. Box 1749, Yakima, Washington, 98907; (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss the comments received on the Draft Yakima River Basin Water Conservation Plan. The Plan was made available for public review August 12, 1997, with comments to be provided to the Advisory Group by October 31, 1997.

Dated: November 18, 1997.

Walt Fite,

Designated Federal Official.

[FR Doc. 97–31155 Filed 11–26–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Overseas

Private Investment Corporation (OPIC) on December 16, 1997. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 16, 1997, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business December 3, 1997, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, N.W., 12th Floor, Washington, D.C. Notices and prepared statements should be sent to Harvey Himberg, Financial Management and Statutory Review Department, Overseas Private Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527.

Procedures

(a) *Attendance; Participation.* The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 3, 1997. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) *Prepared Statements.* Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 12, 1997. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) *Duration of Presentations.* Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) *Agenda.* Upon receipt of the required notices, OPIC will prepare an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) *Publication of Proceedings.* A verbatim transcript of the hearing will be compiled. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects which confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (P.L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: Harvey A. Himberg, Financial Management and Statutory Review Department, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527 (202) 336–8614 or by facsimile at (202) 218–0177.

Dated: November 21, 1997.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 97–31203 Filed 11–26–97; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

December 9, 1997 Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Tuesday, December 9, 1997, 1:00 p.m. (Open Portion); 1:30 p.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 pm to 1:30 pm; Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Testimonial
3. Approval of September 16, 1997 Minutes (Open Portion)
4. Meeting schedule through September, 1998

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM)

1. Finance Project in Jamaica
2. Insurance Project India
3. Approval of September 16, 1997 Minutes (Closed Portion)
4. Pending Major Projects
5. Report on OPIC's Small Business Initiative

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.Q04

Dated: November 24, 1997.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 97–31398 Filed 11–25–97; 12:28 p.m.]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Notice of information collection under review: Claims under the Radiation Exposure Compensation Act.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 27, 1998.

We are requesting written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

3. Enhance the quality, utility, and clarity of the information being sought;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to: Gerard W. Fischer, Assistant Director, Torts Branch, Civil Division, P.O. Box 146, Ben Franklin Station, Washington, D.C. 20044–0146. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, N.W., Washington D.C. 20530.

Overview of This Information Collection

1. *Type of Information collection:* Extension of a currently approved collection.

2 *Title of the Form/Collection:* Claims under the Radiation Exposure Compensation Act.

3. *Agency form number:* None. *Applicable component of the Department of justice sponsoring the collection:* The Radiation Exposure Compensation Unit, Constitutional and Specialized Torts Branch, Civil Division.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Individuals or households. *Other:* None. Information is needed to determine whether an applicant is eligible for a statutory compensation payment under the Radiation Exposure Compensation Act, 42 U.S.C. 2210 note (1994). Applicants are persons who reside near the Nevada Test Site, onsite participants in an atmospheric nuclear weapons test, and persons employed in underground uranium mines.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 annual respondents at 2.5 hours per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

Public comment on the proposed information is strongly encouraged.

Dated: November 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31260 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") of 1980

Notice is hereby given that a proposed Consent Decree in *United States* v. *Larry A. Bell, et al.*, Civil Action No. 3–96–CV–80047, was lodged on October 29, 1997, with the United States District Court for the Southern District of Iowa, Davenport Division.

The complaint alleges that defendants Larry A. Bell ("Bell") and Bell Cedaridge Development, Inc. ("Bell Cedaridge") are liable for the United States' approximately $740,000 in response costs at the Davenport Lead Superfund Site ("Site"), located at 5403 Ricker Hill Road, Davenport, Iowa, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The complaint also includes an *in rem* action to recover these costs, which are secured by a CERCLA lien against the Site, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l).

The Site, a partially-wooded lot owned by defendant Bell Cedaridge, was used as a disposal site for ebonite and other battery components in the early 1970s. As a result, on-Site soils were contaminated with lead at levels of up to 27,300 mg/kg. The United States Environmental Protection Agency ("EPA") incurred its approximately $740,000 in response costs in this case by conducting a removal action at the Site in 1993.

The only valuable asset owned by Bell and Bell Cedaridge is the Site itself, which is appraised at approximately $49,000. The Site is subject to an approximate $25,000 mortgage and the CERCLA lien that secures the United States' response costs. Under the proposed consent decree, defendants Bell and Bell Cedaridge shall sell the Site and pay to United States the proceeds from the sale, less costs of the sale and amounts paid to secured lienholders with lien interests superior to the United States' interest. In exchange, the United States will grant Bell and Bell Cedaridge a Covenant Not to Sue for the claims set forth in the complaint, and release the 107(l) lien attached to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Larry A. Bell*, et al., DOJ Ref. #90–11–2–1008.

The proposed consent decree may be examined at the office of the United States Attorney, District of Iowa, U.S. Courthouse Annex, 110 E. Court Avenue, Des Moines, Iowa 50304, (515) 284–6257; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7010; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requiring a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–31199 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Order Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *The Glidden Company*, Civil Action No. 3:96CV7198, has been lodged with the United States District Court for the Northern District of Ohio on November 17, 1997.

The Consent Decree resolves the claims alleged against defendant, The Glidden Company ("Glidden"), under the Clean Water Act ("Act"), 33 U.S.C. § 1251 *et seq.* The proposed Consent Decree provides that Glidden shall discharge process wastewaters from its facility at 300 Sprowl Road, Huron, OH, to the Erie County Sanitary Sewer System, and shall comply with the applicable National Pollutant Discharge

Elimination System ("NPDES") permit and with standards contained in the Consent Decree. The proposed decree also provides that Glidden shall perform a compliance program for the facility, and submit reports regarding its compliance with the Consent Decree. The proposed Consent Decree also provides for the payment by Glidden of a civil penalty of $1,555,000 for its alleged failures to comply with its NPDES permit and with an EPA Administrative Order.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *The Glidden Company*, D.J. Ref. 90–5–1–1–5062.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Northern District of Ohio, Four Seagate, Third Floor, Toledo, OH 43604–2624, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, IL 60604, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may also be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $9.50 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–31198 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Neville Land Company, et al.*, Civil Action No. 97–1683 (W.D. Pa.) was lodged on September 17, 1997.

The proposed decree resolves the claims of the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, for past response costs and certain responses actions at the Ohio River Park Superfund Site in Allegheny County, Pennsylvania. The decree obligates the Settling Defendants to reimburse $495,943.66 of the United States' past response costs and to perform the remedial action the U.S. Environmental Protection Agency has selected for the first operable unit at the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Neville Land Company, et al.*, DOJ Ref. # 90–11–3–1723.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $26.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. Attachments to the proposed consent decree can be obtained for additional amount.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–31197 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a consent decree that would resolve the liability of one of four defendants in *United States of America* v. *Jane A. Young, et al.*, Civil Action No. 95–4202–JPG (S.D. Ill.), was lodged with the United States District Court for the Southern District of Illinois on October 28, 1997.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of dredged and fill materials onto approximately 100 acres of wetlands, in Hamilton County, Illinois ("Site"), which is alleged to constitute "waters of the United States." The consent decree permanently enjoins Jane A. Young from taking any actions, or causing others to take any actions, which result in the discharge of dredged or fill material into waters of the United States. The consent decree further requires Jane A. Young to pay (a) A $5,000.00 civil penalty and (b) $28,000 into an interest-bearing Registry Account of the United States District Court for the Southern District of Illinois, to be used to conduct a wetland restoration at the Site if the United States obtains access to the Site through litigation or other means. In addition, the consent decree provides that if the United States is not able to obtain access to the Site to conduct a wetland restoration, all funds in the Registry Account (except for 10% of the interest that is to be paid to the Court) will be deposited by the Clerk of the Court into the United States Treasury.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Steven E. Rusak, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States of America* v. *Jane A. Young, et al.*, DJ Reference No. 90–5–1–6–580.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, United States Courthouse, 301 West Main Street, Benton, Illinois 62812.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 97–31282 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies

Notice is hereby given that, on April 23, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Center for Waste Reduction Technologies ("CWRT") and other participants in the Total Cost Accounting project filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities to the parties are: Center for Waste Reduction Technologies, New York, NY; American Institute of Chemical Engineers, New York, NY; Arthur D. Little, Inc., Cambridge, MA; The Dow Chemical Company, Midland, MI; Eastman Chemical Company, Kingsport, TN; General Electric Corporation, Schenectady, NY; ICI Americas, Inc., Wilmington, DE; Minnesota Mining and Manufacturing Co., St. Paul, MN; Monsanto Company, St. Louis, MO; Owens Corning, Toledo, OH; Rhone-Poulenc North America, Monmouth Junction, NJ; Rohm and Haas Company, Philadelphia, PA; SmithKline Beecham, King of Prussia, PA; Union Carbide Corporation, Danbury, CT; U.S. Department of Energy, Washington, DC.

The nature and objectives of this Joint Venture is to devise and develop tools, techniques, programs, or methods to support decision making and option selection in early stages of chemical manufacturing process development, and that can be used before and/or during the laboratory phase of a chemical process development project to aid in selecting chemistry and processing conditions, with emphasis on relative cost relationships and on the manufacture of products, or material substances, rather than on the provision of services.

Participating in this Joint Venture will remain open to qualified persons and organizations. The Participants intend to file additional written notifications disclosing all changes in membership. Information regarding participation in this joint venture may be obtained from: Center for Waste Reduction Technologies, 345 East 47th Street, New York, NY 10017–2395.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31195 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Label Alliance (DLA)—Study of Digital Printing and Packaging Technology

Notice is hereby given that, on September 3, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Digital Label Alliance, LLC ("DLA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The parties in this venture have added a member to the project, National Fiberstok Corporation d/b/a Label Art. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the membership of Label America, Inc., has been transferred to National Fiberstok Corporation d/b/a Label Art. National Fiberstok Corporation of Wilton, New Hampshire has been dropped from the venture.

No other changes have been made in either the membership or planned activity of the group. Membership in this group research project is no longer open. DLA intends to file additional written notification disclosing all changes in membership.

On December 30, 1996, DLA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 29, 1997 (62 FR 23267), which was the last notification filed with the Department which has appeared in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31338 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on May 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aculab, plc., Bucks, UNITED KINGDOM; CallScan, Ltd., Birmingham, ENGLAND; and Hewlett-Packard Company, Cupertino, CA, have become Principal Members. Communiq ASA, Sola, NORWAY; CTI Market Solutions, Menlo Park, CA; Electronic Telecommunications Research Institute (ETRI), Taejon, KOREA; Spectrum Signal Processing, Burnaby, CANADA; and VideoServer, Inc., Burlington, MA, have become Auditing Members. ITEC Telecom, Santafe De Bogota DC, COLUMBIA, has become a User Member.

Database Network Services is no longer a Principal Member.

Technology Marketing Partners (an Auditing Member) has changed its name to Vicorp.

No other changes have been made in the membership, nature or objectives of ECTF. Membership remains open, and ECTF intends to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 Fed. Reg. 22074).

The last notification was filed with the Department on February 14, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 6, 1997 (62 Fed. Reg. 52152).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31305 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—Geothermal Power Organization

Notice is hereby given that, on October 22, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the

Geothermal Power Organization ("GPO") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become new members of the GPO: Geothermal Power Company, Inc., Elmira, NY; FAS Engineering, Inc., Glendale, CA; and Unocal Corporation, El Segundo, CA.

No other changes have been made in either the membership or planned activities of the GPO. Participation in the GPO will remain open to qualified entities, and the GPO intends to file written notifications disclosing all changes in membership.

On May 29, 1997, GPO filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 23, 1997, (62 FR 39550).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–31307 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LCX Translational CMOS Logic Development Agreement

Notice is hereby given that, on September 9, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the partners to the LCX Translational CMOS Logic Development Agreement ("Agreement") have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in their membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Fairchild Semiconductor Corporation has joined the venture. National Semiconductor Corporation has withdrawn from the venture. Both changes in membership became effective June 20, 1997.

On September 7, 1994, the participants filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 17, 1994 (59 FR 59434).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31303 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Flexible Robotic Assembly for Powertrain Applications

Notice is hereby given that, on October 21, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are the Ford Motor Company, Dearborn, MI; Perceptron Inc, Plymouth, MI; Progressive Tool and Industries Company, Southfield, MI; and Micro Dexterity Systems, Memphis, TN.

The purpose of the joint venture is to develop and demonstrate flexible robotic assembly for powertrain applications. The activities of the joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31193 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on October 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: American Induction Heating Corporation, Fraser, MI; Cardell Corporation, Auburn Hills, MI; Dresser Instrument Division of Dresser Industries Inc., Milford, CT; I.Q. Plus Corporation, Willowdale, Ontario, CANADA; Quantum Consultants, East Lansing, MI. PRECARN Associates Inc., Nepean, Ontario, CANADA was approved for affiliate membership. The following companies have resigned from active membership in NCMS: Abrasive Technology, Inc., Westerville, OH; Browne & Sharpe Manufacturing Company, North Kingstown, RI; Continental Electronics Corporation, Dallas, TX; Cost Technology Inc., Beaverton, OR; GenRad, Inc., Concord, MA; Expansion Programs International, Inc., Cleveland, OH; Micro Engineering Solutions, Novi, MI; Netrologic, Inc., San Diego, CA; Onset BIDCO, Inc., Ann Arbor, MI; Oracle, Inc., Chelsea, MI; Poly Circuits, Inc., Bensenville, IL; Saginaw Machine Systems Inc., Troy, MI; Technology Integration, Inc., Ann Arbor, MI; Texel Inc., Quebec, CANADA; Thriller, Inc., Dearborn, MI; Utilase Systems, Inc., Detroit, MI. Organizations which have recently resigned from affiliate membership are: Oregon Advanced Technology Consortium, Wilsonville, OR; Southern Arkansas University Technical Branch, Camden, AR.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on July 8, 1997. This notice was published in the **Federal Register** on August 21, 1997 (62 FR 44488).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31194 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum E&P Research Cooperative

Notice is hereby given that, on August 26 and September 9, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Petroleum E&P Research Cooperative ("Cooperative") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Phillips Petroleum Company of Bartlesville, OK has become a new member of the Cooperative.

The Cooperative intends to undertake the following research projects: "Risk Assessment for Current Multilateral Systems" to provide a complete overview and a risk assessment of multilateral well completion systems currently in use particularly focusing on the Level III and Level IV type lateral well systems (mechanical integrity and pressure-sealed lateral wells, respectively); "Enhancing Well Value by Minimizing Damage from Drilling Fluids" to test and model the damage and cleanup performance of various drill-in fluids in simulated oil and gas wells, i.e., various screen and gravel pack configurations at temperature and pressure, with a special emphasis on the effect of solids; "Nuclear Magnetic Resonance Well Logging with Superconducting Magnets" to build and test the world's first superconducting NMR logging tool which can extend NMR imaging and spectroscopy into native reservoir formations surrounding a borehole, the initial phase targeting to design and evaluate a prototype cryogenic system and prototype coil for the magnet and considering the limitations imposed by the logging environment and experience gained from the current generation of permanent magnet based tools; and "Advanced Casing Lateral Juncture Technologies for Multi-Lateral Wells-Phase I" to identify novel concepts and, in particular, consider advanced technologies from other industries that may be used to meet the functional performance requirements for a high-pressure hydraulic seal with full-bore access at the casing-to-lateral juncture in multilateral wells.

The Cooperative was formed by a written agreement dated October 16, 1996, to develop new and improved technology to meet the needs of the exploration and production functions of the petroleum industry in areas where joint research is appropriate.

Membership in this group research project remains open, and the Cooperative intends to file additional written notification disclosing all changes in membership.

On January 16, 1997, Petroleum E&P Research Cooperative filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 13, 1997, (62 FR 6801).

The last notification was filed with the Department on August 22, 1997. The notice has not been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31304 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation ("POSC")

Notice is hereby given that, on October 16, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: Geological Survey of Denmark & Greenland, Copenhagen, DENMARK; Romanian Society of Geophysics, Bucharest, ROMANIA; Marathon Oil Company (Division of USX), Houston, TX; and Tecpetrol, Buenos Aires, ARGENTINA.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on July 23, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 10, 1997 (62 FR 47691).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31196 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

Notice is hereby given that, on October 8, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in its membership and performance date in its cooperative research project known as "Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor," or "JIP". The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, three new participants have joined the cooperative research project: CTI Alaska, Inc., Anchorage, AK; Gas Research Institute, Chicago, IL; and Mitsubishi Chemical Engineering Corporation, Tokyo, Japan. In addition, Southwest Research Institute, San Antonio, TX, has been a participant in JIP since the inception of the project, but was inadvertently not noted as such in the original and succeeding notifications. Also, participant Texaco, Inc., and Electric Power Research

Institute has withdrawn from participation in the project.

The remaining participants in the Joint Industry Program have agreed to extend the original twelve (12) month period of performance and revise the project completion date to December 31, 1997.

No other changes have been made in the planned research activities or the membership of the project. Membership in this group research project remains open and SwRI intends to file additional written notification disclosing all changes in membership.

On October 25, 1995, SwRI (Joint Industry Program, JIP) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 23, 1996 (61 FR 7020). The last notification was filed with the Department on March 15, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 23, 1996 (61 FR 17913).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31306 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Institution Near Glenville (Gilmer County), West Virginia

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons, has determined that, in order to meet increasing demands for additional inmate capacity, a new correctional facility is needed in its system.

The Bureau of Prisons proposes to construct and operate a medium security Federal Correctional Institution, with an adjacent minimum security satellite camp, in the greater Glenville, West Virginia area. The main medium security facility would be designed to have a rated capacity of approximately 1,152 inmates, and the minimum security component approximately 150–300. Several other sites in the region are currently under consideration. The potential site also would be used for road access, administration, programs and services, parking, and support facilities.

In the process of evaluating potential sites, several aspects will receive a detailed examination including utilities, traffic patterns, noise levels, visual intrusions, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives: In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

Scoping Process: Several informal public meetings have already been held on the proposed project, and during the preparation of the DEIS, there will be numerous other opportunities for public involvement. The public scoping meeting will begin at 7:00 p.m. on Tuesday, December 9, 1997, at the Gilmer County Recreation Center (Dining Hall) in Glenville, West Virginia. The meeting will be well publicized and is scheduled at a time that will make the meeting possible for the public and interested agencies or organizations to attend.

DEIS Preparation: Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be answered by: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons 320 First Street, N.W., Washington, D.C. 20534, Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, E-mail: ddorworth@BOP.gov.

Dated: November 17, 1997.

Jeff B. Ratliff,

Acting Chief.

[FR Doc. 97–30618 Filed 11–26–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collection: Davis-Bacon and Related Acts/Contract Work Hours and Safety Standards Reporting Requirements-Regulations, 29 CFR Part 5. Copies of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 1, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Contact Ms. Patricia A. Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–8713. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The subject regulation prescribes labor standards for federally financed and assisted construction contracts under the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA). Under DBRA, every contract subject to the Act must contain a provision (i.e., wage determination) stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics employed on the contract. In order for the Wage and Hour Division (WHD) of the Department of Labor (DOL) to establish minimum rates for classes of employees omitted from wage determinations, employers must submit a Report of Conformed Classifications and Wage Rates for review and approval. Further, the Act provides that "wages" may include ". . . costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers or mechanics . . .". Where a benefit plan is not of the conventional type described in the Act and/or common in the construction industry, it is necessary to determine whether the benefit is a "bona fide" benefit under the Act. Therefore, contractors must request approval of such fringe benefit plans from the Wage and Hour Division.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Act. The information will be used by Wage and Hour to establish minimum wage rates for classes of employees not listed in a wage determination, and to determine whether a fringe benefit is "bona fide" fringe benefit within the definition of the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Information Collection Requirements in Regulations, 29 CFR Part 5.

OMB Number: 1215–0140.

Affected Public: Business or other for-profit; Federal Government, State, Local or Tribal Government.

Requirement	Total Respondents	Frequency	Total Responses	Average Time per Response	Hours
Conformance Report	2,500	On occasion	2,500	.25 hour	625
Unfunded Fringe Benefit Plans	6	On occasion	6	1 hour	6
Totals	2,506		2,506		631

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $801.92.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 24, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–31238 Filed 11–26–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs, Division of Federal Employees' Compensation is soliciting comments concerning the following information collection: Claim for Compensation by Dependents Information Reports. Copies of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 1, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Contact Ms. Patricia A. Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–8713. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The forms in this clearance request are used by Federal employees and their dependents to claim benefits, prove continued eligibility for benefits, and to show entitlement to the remaining compensation of a deceased beneficiary under the Federal Employees' Compensation Act. There are nine forms in this clearance request; they are the CA–5; CA–5b; CA–1031; CA–1085; CA–1093; CA–1615; CA–1617; CA–1618, and CA–1074.

Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of the Federal Employees' Compensation Act. The information contained in these forms is used by the Division of Federal Employees' Compensation to determine entitlement to benefits under the Act, to verify dependent status and to initiate,

continue, adjust or terminate benefits based on eligibility criteria.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Compensation By Dependents Information Reports.

OMB Number: 1215–0155.

Affected Public: Individuals or households.

Report	Total respondents	Frequency	Total Responses	Average Min. per Response	Hours
CA–5	235	Once	235	90	253
CA–5b	70	Once	70	90	105
CA–1615	120	Once	120	30	60
CA–1617	600	Semiannually	600	30	300
CA–1085	450	Once	450	45	338
CA–1031	1,700	Annually	1,700	15	425
CA–1074	70	Once	70	60	70
CA–1093	50	Once	50	30	25
CA–1618	320	Semiannually	320	30	160
Totals	3,615		3,615		1,835

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $1,156.80.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 24, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–31239 Filed 11–26–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA970001 (Feb. 14, 1997)
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
MA970006 (Feb. 14, 1997)
MA970007 (Feb. 14, 1997)
MA970008 (Feb. 14, 1997)
MA970009 (Feb. 14, 1997)
MA970012 (Feb. 14, 1997)
MA970013 (Feb. 14, 1997)
MA970015 (Feb. 14, 1997)
MA970017 (Feb. 14, 1997)
MA970018 (Feb. 14, 1997)
MA970019 (Feb. 14, 1997)
MA970020 (Feb. 14, 1997)
MA970021 (Feb. 14, 1997)

New Jersey:
NJ970005 (Feb. 14, 1997)

New York:
NY970008 (Feb. 14, 1997)
NY970010 (Feb. 14, 1997)
NY970012 (Feb. 14, 1997)
NY970020 (Feb. 14, 1997)
NY970039 (Feb. 14, 1997)
NY970041 (Feb. 14, 1997)

Volume II

None

Volume III

None

Volume IV

Wisconsin:
WI970008 (Feb. 14, 1997)
WI970010 (Feb. 14, 1997)
WI970019 (Feb. 14, 1997)

Volume V

Kansas:
KS970004 (Feb. 14, 1997)
KS970005 (Feb. 14, 1997)
KS970067 (Feb. 14, 1997)

Texas:
TX970047 (Feb. 14, 1997)

Volume VI

Idaho:
ID970003 (Feb. 14, 1997)
ID970004 (Feb. 14, 1997)

Oregon:
OR970001 (Feb. 14, 1997)
OR970017 (Feb. 14, 1997)

Washington:
WA970001 (Feb. 14, 1997)
WA970002 (Feb. 14, 1997)
WA970005 (Feb. 14, 1997)
WA970008 (Feb. 14, 1997)

Volume VII

Arizona:
AZ970001 (Feb. 14, 1997)
AZ970002 (Feb. 14, 1997)
AZ970003 (Feb. 14, 1997)
AZ970005 (Feb. 14, 1997)
AZ970011 (Feb. 14, 1997)
AZ970013 (Feb. 14, 1997)
AZ970014 (Feb. 14, 1997)
AZ970016 (Feb. 14, 1997)
AZ970017 (Feb. 14, 1997)
AZ970018 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Services (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

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Signed at Washington, D.C. this 20th day of November 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–31044 Filed 11–26–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting In Whole or In Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register**. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: November 20, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–97–011–C.
FR Notice: 62 FR 11927.
Petitioner: Consol Pennsylvania Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to permit the maximum lengths of the loading machine, roof bolter, and section ventilation fan trailing cables supplying equipment from 480-volt alternating current systems to be increased to 600 feet considered acceptable alternative method. Granted for the Bailey Mine with conditions for the extended length, 480-volt, three-phase alternating current trailing cables, used to develop the three and four entry longwall development panels and the eleven-entry mains at the Bailey Mine.

Docket No.: M–97–014–C.
FR Notice: 62 FR 11927.
Petitioner: Genwal Resources, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage (2400 volts) operated equipment inby the last open crosscut at the working longwall sections considered acceptable alternative method. Granted for the Crandall Canyon Mine with conditions.

Docket No.: M–97–039–C.
FR Notice: 62 FR 23799.
Petitioner: Spruce Fork Coal Company, Inc.

Reg Affected: 30 CFR 75.503(b)(2).
Summary of Findings: Petitioner's proposal to use a spring loaded locking device, instead of padlocks to secure battery plugs to machine mounted receptacles, that would prevent the threaded lock on a plug from turning and becoming loose unintentionally considered acceptable alternative method. Granted for the Spruce Fork Mine No. 1 with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–97–041.
FR Notice: 62 FR 29370.
Petitioner: Pine Ridge Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load considered acceptable alternative method. Granted for the Robin Hood No. 9 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–97–043–C.
FR Notice: 62 FR 29371.
Petitioner: Peabody Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to attach a spring-loaded plug interlock to the plug receptacle which is permanently attached to the battery case, and in addition the spring-loaded plug interlock has been designed so that when the battery plugs are secured and the spring-loaded interlock released, the threaded ring securing the battery plugs cannot become loose considered acceptable alternative method. Granted for the Marissa Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–97–055–C.
FR Notice: 62 FR 29372.
Petitioner: Pen Coal Corporation.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to replace a padlock on battery plug connectors on mobile battery-powered machines with a threaded ring and a spring loaded device to prevent the plug connector from accidently disengaging while under load; and to instruct all persons on the requirements for operating or maintaining battery-powered machines considered acceptable alternative method. Granted for the Deep Mine No. 4 with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–002–C.
FR Notice: 61 FR 13882.
Petitioner: Ohio County Coal Company, Inc.
Reg Affected: 30 CFR 75.901(a).
Summary of Findings: Petitioner's proposal to operate its diesel powered generator (DPG) without an earth referenced ground considered acceptable alternative method. Granted for the Freedom Mine with conditions for the diesel powered generator located in the Freedom Mine.

Docket No.: M–96–007–C.
FR Notice: 61 FR 13883.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.364(b)(4).
Summary of Findings: Petitioner's proposal to establish a checkpoint and make a weekly examination where an extended probe would be used to examine the No. 3 Seal for methane and a smoke tube would be used to verify the direction of air flow; to have the person making the examination and tests record their initials, date and time in a record book which would be kept on the surface and made available for inspection by interested parties; and to maintain the checkpoint and all approaches to the checkpoint in safe condition at all times considered acceptable alternative method. Granted for the Shoemaker Mine with conditions for weekly examinations of the No. 3 seal which has been rendered inaccessible and hidden from full visibility by fallen roof material and entry deterioration near Browns Run Shaft at a safe location, 20 feet outby the seal.

Docket No.: M–96–009–C.
FR Notice: 61 FR 13883.
Petitioner: Peabody Coal Company.
Reg Affected: 75.1100–2(b).
Summary of Findings: Petitioner's proposal to install firehouse outlets with valves in the longwall gate entries every fourth cross-cut at intervals of approximately 440 feet instead of at intervals of 300 feet considered acceptable alternative method. Granted for the Camp No. 11 Mine with conditions for the increased interval between fire hose outlets on the water line installed alongside belt conveyors or in entries adjacent to belt conveyors.

Docket No.: M–96–010–C.
FR Notice: 61 FR 13883.
Petitioner: Monterey Coal Company.
Reg Affected: 30 CFR 75.1100–2(i)(1).
Summary of Findings: Petitioner's proposal to use the following emergency materials instead of emergency materials required by the mandatory safety standard: 112 Kennedy Metal Shopping Panels with associated head sills and twist clamps; 24 Kennedy Stopping Rib Angles; 3 rolls of tape; 3 twist tools; 2 rolls of brattice cloth; 3 stopping jacks; 3 picks; 3 shovels; 9 buckets of Celtite 10–12 (or equivalent material for stopping); and 5 tons of rock dust considered acceptable alternative method. Granted for the No. 1 Mine with conditions for emergency materials readily available at locations not exceeding 2 miles from each working section.

Docket No.: M–96–011–C.
FR Notice: 61 FR 13883.
Petitioner: Peabody Coal Company.
Reg Affected: 30 CFR 77.1304(a).
Summary of Findings: Petitioner's proposal to use waste petroleum-based lubrication oil recycled from equipment used at its mine for blending with diesel fuel oil to create ammonium nitrate/fuel oil (ANFO) for use as a blasting agent considered acceptable alternative method. Granted for the Hawthorn Mine with conditions for the collection, processing, and use of petroleum-based used oils, for blending with No. 2 diesel fuel (fuel oil), to sensitize ammonium nitrate prill, and the temporary storage and use of the resulting blasting agent (ANFO).

Docket No.: M–96–014–C.
FR Notice: 61 FR 17733.
Petitioner: Tennessee Energy Corporation.
Reg Affected: 30 CFR 75.1405.
Summary of Findings: Petitioner's proposal to use a 9-foot steel tongue with a hole on each end aligned with existing holes in the frame of the motor and flatcar and secured with a pin, to couple the motor to the flatcar instead of using automatic couplers considered acceptable alternative method. Granted for Mine No. 43 with conditions.

Docket No.: M–96–024–C.
FR Notice: 61 FR 20543.
Petitioner: West End Coal Company, Deep Mine.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Last Chance Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–96–025–C.
FR Notice: 61 FR 20543.
Petitioner: West End Coal Company, Deep Mine.
Reg Affected: 30 CFR 75.1200(d) & (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel considered acceptable alternative method. Granted for the Last Chance Slope Mine with conditions for the use of cross sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–96–027–C.
FR Notice: 61 FR 20543.
Petitioner: West End Coal Company, Deep Mine.
Reg Affected: 30 CFR 75.360.
Summary of Findings: Petitioner's proposal to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the Last Chance Slope Mine with conditions for examinations of seals (conducted from the gunboat) in the intake air haulage slope of this mine.

Docket No.: M–96–028–C.
FR Notice: 61 FR 20543.
Petitioner: West End Coal Company, Deep Mine.
Reg Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal to construct seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs considered acceptable alternative method. Granted for the Last Chance Slope Mine with conditions for seals installed in this mine.

Docket No.: M–96–029–C.
FR Notice: 61 FR 20544.
Petitioner: West End Coal Company, Deep Mine.
Reg Affected: 30 CFR 75.1100.
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the Last Chance Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–96–031–C.
FR Notice: 61 FR 20544.
Petitioner: Eighty-Four Mining Company.
Reg Affected: 30 CFR 75.1100–2(e).
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers or one portable fire extinguisher with twice the required capacity at each temporary electrical installation instead of using one fire extinguisher and rock dust at temporary electrical installations considered acceptable alternative method. Granted for Mine 84 with conditions for the temporary electrical installations provided the Petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations.

Docket No.: M–96–036–C.
FR Notice: 61 FR 33140.
Petitioner: Kade Coal Company, Inc.
Reg Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal to cover several entries at each abandoned mine opening with coarse refuse material during construction of a refuse fill considered acceptable alternative method. Granted for Mine No. 2 with conditions.

Docket No.: M–96–044–C.
FR Notice: 61 FR 33141.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.364(b)(1).
Summary of Findings: Petitioner's proposal to establish two check points, one inby and one outby the affected area; to maintain these check points in a safe condition at all times; to have a certified person test for methane and the quantity of air on a weekly basis at both check points; and to have the person making such examinations record the results with their initials and date in a record book kept on the surface and made accessible to interested parties considered acceptable alternative method. Granted for the Loveridge No. 22 Mine with conditions for the "unsafe to travel" 60-foot segment of the intake aircourse which has ventilated the battery charging station (old inside shop) near Sugar Run Shaft.

Docket No.: M–96–045–C.
FR Notice: 61 FR 33141.
Petitioner: Elk Run Coal Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking devices to secure battery plugs on mobile equipment instead of padlocks to maintain equipment in permissible condition in accordance with 30 CFR 18.41 considered acceptable alternative method. Granted for the Castle Mine; Bishop No. 2 Mine; Black King No. 1/ North Portal Mine; White Knight Mine; Laurel Eagle Mine; Laurel Alma Mine; and Black King No. 1 Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–047–C.
FR Notice: 61 FR 38785.
Petitioner: Pilgrim Mining Company, Inc.
Reg Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal to allow the use of a 150 KW diesel generator set, Serial Number 94–E5913 considered acceptable alternative method. At the request of the petitioner, previous MSHA docket numbers M–96–048–C through M–96–051–C were withdrawn and M–96–047–C was modified to include the mines covered by these petitions. Granted for the Pegasus Mine, 1–C Mine, White Cabin No. 1 Mine, White Cabin No. 2 Mine, Pilgrim Mine No. 3, and Voyager Mine No. 2 with conditions for the 480-volt, three-phase, 150 KW diesel powered generator set.

Docket No.: M–96–052–C.
FR Notice: 61 FR 38786.
Petitioner: Martin County Coal Corporation.
Reg Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal to allow the use of a 100 KW diesel generator set, Serial Number 94–E5260 considered acceptable alternative method. At the request of the petitioner, previous MSHA docket numbers M–96–053–C through M–96–056–C were withdrawn and M–96–052–C was modified to include the mines covered by these petitions. Granted for the Pegasus Mine, 1–C Mine, White Cabin No. 1 Mine, White Cabin No. 2 Mine, Pilgrim Mine No. 3, and Voyager conditions for the 480-volt, three-phase, 150–KW diesel powered generator set.

Docket No.: M–96–058–C.
FR Notice: 61 FR 38786.
Petitioner: Windsor Coal Company.
Reg Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells using specific techniques and procedures as outlined in the petition and to mine through the plugged oil or gas well considered acceptable alternative method. Granted for the Windsor Mine with conditions for mining through plugged oil or gas wells

penetrating the Pittsburgh No. 8 Coal Seam.

Docket No.: M–96–063–C.
FR Notice: 61 FR 38787.
Petitioner: Enlow Fork Mining Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to increase the maximum length of the loading machine, shuttle car, roof bolter, and section ventilation fan trailing cables to 900 feet while developing four-entry longwall panels; to provide training before alternative method is implemented to all miners designated to examine the integrity of seals and verify the short-circuit settings and proper procedures for examining trailing cables for damage considered acceptable alternative method. Granted for the Enlow Fork Mine with conditions.

Docket No.: M–96–065–C.
FR Notice: 61 FR 38787.
Petitioner: West Cameron Mining.
Reg Affected: 30 CFR 75.1200(d) & (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel considered acceptable alternative method. Granted for the Lenig Tunnel Mine with conditions for the use of cross sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–96–066–C.
FR Notice: 61 FR 38787.
Petitioner: West Cameron Mining.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the Lenig Tunnel Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–96–067–C.
FR Notice: 61 FR 38787.
Petitioner: West Cameron Mining.
Reg Affected: 30 CFR 75.1405.
Summary of Findings: Petitioner's proposal to use bar and pin or link and pin couplers on its underground haulage equipment considered acceptable alternative method. Granted for the Lenig Tunnel Mine with conditions.

Docket No.: M–96–069–C.
FR Notice: 61 FR 38788.
Petitioner: Cyprus Emerald Resources Corporation.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use a non-permissible pump in the longwall bleeder pump located near the No. 3 Bleeder shaft, No. 6 Return shaft, and all future and/or bleeder shafts as they are developed considered acceptable alternative method. Granted for the Emerald No. 1 Mine with conditions for a submersible pump installed in the No. 3 bleeder shaft.

Docket No.: M–96–070–C.
FR Notice: 61 FR 38788.
Petitioner: Consolidation Coal Company.
Reg Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal to use high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as a part of its longwall mining system considered acceptable alternative method. Granted for the Loveridge No. 22 Mine's longwall system with conditions.

Docket No.: M–96–071–C.
FR Notice: 61 FR 38788.
Petitioner: Genwal Resources, Inc.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt haulage entries as intake air courses to ventilate active working places and to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses considered acceptable alternative method. Granted for the Crandall Canyon Mine with conditions for use of belt air in two-entry mining systems.

Docket No.: M–96–072–C.
FR Notice: 61 FR 47192.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.382(a).
Summary of Findings: Petitioner's proposal to continue using its existing escape facilities in both the material and belt slopes considered acceptable alternative method. Granted for the Spartan Mine with conditions for the slope conveyor belt, operated as a mechanical escape facility in the mine's return air alternative escapeway.

Docket No.: M–96–073–C.
FR Notice: 61 FR 47192.
Petitioner: Left Fork Mining, Inc.
Reg Affected: 30 CFR 75.1103–4(a).
Summary of Findings: Petitioner's proposal to use one carbon monoxide monitoring device for monitoring a belt head and tailpiece when located adjacent to each other considered acceptable alternative method. Granted for the Straight Creek No. 1 Mine with conditions for the use of a carbon monoxide monitoring system that identifies the location of sensors in lieu of identifying belt flights.

Docket No.: M–96–074–C.
FR Notice: 61 FR 47192.
Petitioner: Boone Resources, Inc.
Reg Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal to clean out and plug oil and gas wells using specific techniques and procedures as outlined in the petition and to mine through the plugged oil or gas well considered acceptable alternative method. Granted for the Boone No. 1 Mine with conditions for plugging of gas wells and the mining-through of plugged gas wells.

Docket No.: M–96–088–C.
FR Notice: 61 FR 47193.
Petitioner: Stephen Shingara Jr. Coal Company.
Reg Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices considered acceptable alternate method. Granted for the No. 1 Slope Mine with conditions for the use of the gunboat without safety catches.

Docket No.: M–96–089–C.
FR Notice: 61 FR 47194.
Petitioner: Mountain Coal Company.
Reg Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers or one portable fire extinguisher with twice the required capacity at each temporary electrical installation instead of using one fire extinguisher and rock dust at temporary electrical installations considered acceptable alternative method. Granted for the West Elk Mine with conditions for the temporary electrical installations, provided the Petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations.

Docket No.: M–96–102–C.
FR Notice: 61 FR 57458.
Petitioner: CONSOL of Kentucky, Inc.
Reg Affected: 30 CFR 75.1101–8.
Summary of Findings: Petitioner's proposal to use a single overhead pipe system with 1/2-inch orifice automatic sprinklers located on 10-foot centers, to cover 50 feet of fire-resistant belt or 150 feet of nonfire-resistant belt with

actuation temperatures between 200 degrees and 250 degrees fahrenheit and with water pressure equal to or greater than 10 psi, so that the discharge of water would extend over the belt drive, belt take-up, electrical control, and gear reducing unit considered acceptable alternative method. Granted for the Mill Creek E–3 Mine with conditions for a single overhead pipe sprinkler system.

Docket No.: M–96–106–C.
FR Notice: 61 FR 57459.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime methane concentration at the equipment reaches 0.5 percent, either during operation or during a pre-shift examination considered acceptable alternative method. Granted for the Buck Mountain Slope Mine with conditions for the use of non-permissible electric drags and associated non-permissible electric components located within 150 feet from pillar workings.

Docket No.: M–96–108–C.
FR Notice: 61 FR 57459.
Petitioner: Maple Creek Mining, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use longwall panels with a maximum width not to exceed 1,000 feet and a maximum length not to exceed 14,000 feet considered acceptable alternative method. Granted for the Maple Creek Mine with conditions for the high-voltage equipment located in the Maple Creek Mine.

Docket No.: M–96–140–C.
FR Notice: 61 FR 64374.
Petitioner: Drummond Company, Inc.
Reg Affected: 30 CFR 75.1100–2(e).
Summary of Findings: Petitioner's proposal to use two portable fire extinguishers at each temporary electrical installation instead of using one fire extinguisher and 240 pounds of rock dust at each electrical installation considered acceptable alternative method. Granted for the Shoal Creek Mine with conditions for the temporary electrical installations.

Docket No.: M–96–143–C.
FR Notice: 62 FR 421.
Petitioner: Minton Hickory Coal Company.
Reg Affected: 30 CFR 75.380(f)(4)(i).
Summary of Findings: Petitioner's proposal to install two five pound or one ten pound portable fire extinguisher in the operator deck of each Mescher Tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; and to have the equipment operator inspect each fire extinguisher daily prior to entering the escapeway considered acceptable alternative method. Granted for the Mine No. 9 with conditions for Mescher three wheel tractors to be operated in the primary intake escapeway.

Docket No.: M–96–144–C.
FR Notice: 62 FR 421.
Petitioner: Minton Hickory Coal Company.
Reg Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen detectors instead of machine mounted methane monitoring systems on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted for Mine No. 9 with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal.

Docket No.: M–96–145–C.
FR Notice: 62 FR 421.
Petitioner: F–M Coal Company.
Reg Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal to use hand-held continuous-duty methane and oxygen detectors instead of machine mounted methane monitoring systems on permissible three-wheel tractors with drag bottom buckets considered acceptable alternative method. Granted for Mine No. 2 with conditions for the Mescher permissible three-wheel battery-powered tractors used to load coal.

Docket No.: M–96–147–C.
FR Notice: 62 FR 421.
Petitioner: Old Ben Coal Company.
Reg Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal to use contractors capable of dropping out at 40–60 percent the voltage loss on belt starting equipment in the Mine's New Main East and New Main South Development areas instead of using undervoltage release breakers for undervoltage protection considered acceptable alternative method. Granted for the Ziegler No. 11 Mine with conditions.

Docket No.: M–96–148–C.
FR Notice: 62 FR 421.
Petitioner: Jim Walter Resources, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to provide the high-voltage circuit from the longwall power center to the longwall controller with short circuit protection set at not more than 2,500 amperes or the value of current indicated in the Longwall Approval Plan and to permit a time delay of not more than 0.25 second for coordination with downstream short-circuit protection devices or the time delay specified in the Longwall Approval Plan considered acceptable alternative method. Granted for the No. 7 Mine with conditions.

Docket No.: M–96–149–C.
FR Notice: 62 FR 421.
Petitioner: Eighty-Four Mining Company.
Reg Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal to use non-permissible submersible pumps to dewater a pump in which it is installed; to operate the pumps on a 480-volt three-phase alternating-current electrical power circuit with power supplied from a resistor grounded wye transformer; and to protect the pumps with a line power ground fault, pilot combination unit considered acceptable alternative method. Granted for the Mine No. 84 with conditions for a submersible pump installed in return shafts or boreholes in Mine 84.

Docket No.: M–96–152–C.
FR Notice: 62 FR 422.
Petitioner: Road Fork Development Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking device to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations considered acceptable alternative method. Granted for the Extra Energy Company Mine, the Burnwell Energy Mine, the Pegs Branch Mine, and the Calloway Mine with conditions for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–165–C.
FR Notice: 62 FR 423.
Petitioner: Bar-K, Inc.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use a threaded ring and a spring loaded device on battery plug connectors on mobile battery-powered machines used inby the last open cross-cut to prevent the plug connector from accidently disengaging while under load instead of using a padlock considered acceptable alternative method. Granted for the Camp Creek No. 1 Mine and the Sugar Tree No. 1 Mine with conditions for the use of permanently installed spring-locked locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–196–C.
FR Notice: 62 FR 4334.
Petitioner: Freedom Energy Mining Company.

Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking device to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations considered acceptable alternative method. Granted for the No. 1 Mine with conditions for the use of permanently installed spring-locked locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–197–C.
FR Notice: 62 FR 4335.
Petitioner: Rockhouse Energy Mining Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking device to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations considered acceptable alternative method. Granted for the Rockhouse Mine No. 1 with conditions for the use of permanently installed spring-locked locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–198–C.
FR Notice: 62 FR 4335.
Petitioner: Solid Energy Mining Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking device to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations considered acceptable alternative method. Granted for Mine No. 1 with conditions for the use of permanently installed spring-locked locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–199–C.
FR Notice: 62 FR 4335.
Petitioner: Clean Energy Mining Company.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to use permanently installed spring-loaded locking device to secure battery plugs on mobile equipment to prevent unintentional loosening of the battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations considered acceptable alternative method. Granted for Mine No. 1 with conditions for the use of permanently installed spring-locked locking devices in lieu of padlocks on battery plugs.

Docket No.: M–96–202–C.
FR Notice: 62 FR 4335.
Petitioner: Blue Mountain Energy, Inc.
Reg Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal to use high-voltage 2,400-volt cables to power longwall mining equipment in the active pillar workings, to implement additional safety features, and to train all electrical personnel before the alternative method is implemented considered acceptable alternative method. Granted for Deserado Mine with conditions.

Docket No.: M–96–208–C.
FR Notice: 62 FR 11925.
Petitioner: Brookside Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime methane concentration at the equipment reaches 0.5 percent, either during operation or during a pre-shift examination considered acceptable alternative method. Granted for the Diamond Vein Slope Mine with conditions for the use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–95–008–C.
FR Notice: 60 FR 11680.
Petitioner: Rothermel Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal; to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section; and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for the No. 11 Vein Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–95–009–C.
FR Notice: 60 FR 11680.
Petitioner: Rothermel Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for the No. 11 Vein Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–95–010–C.
FR Notice: 60 FR 11680.
Petitioner: Rothermel Coal Company.
Reg Affected: 30 CFR 75.1200(d) & (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels considered acceptable alternative method. Granted for the No. 11 Vein Slope Mine with conditions for use of cross sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–95–011–C.
FR Notice: 60 FR 11680.
Petitioner: Rothermel Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for the No. 11 Vein Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–95–116–C.
FR Notice: 60 FR 52217.
Petitioner: Amax Coal Company.
Reg Affected: 30 CFR 75.364(b)(2).
Summary of Findings: Petitioner's proposal to establish evaluation points at crosscut #76 at the 3 South/4 East connection to monitor the air entering the Old 3 South/4 East and 5 East from the 3 South /4 East connection point and the Main South, and at crosscut #186 and #196 in the Main South to monitor the air exiting the area; to have a certified person test for methane and the quantity of air at each station on a weekly basis and to record their initials, date, time, and results of the examinations in a book kept on the surface and available to inspection by interested persons considered acceptable alternative method. Granted for the Wabash Mine with conditions for continuous monitoring using intrinsically safe sensors installed through appropriate electrical barriers of an Atmospheric Monitoring System (AMS) and weekly evaluation of portions of the air entering and leaving the dual sets of return entries of 5 East and 3 South/4 East return aircourse.

Docket No.: M–95–156–C.

FR Notice: 60 FR 57025 and 60 FR 64079.
Petitioner: Amax Coal Company and Clipmate Corporation.
Reg Affected: 30 CFR 77.1303(y)(1).
Summary of Findings: Petitioner's proposal to use a protected Rozdet open circuit detonator system at its Chinook Mine instead of shunted electrical detonators; to package and store the detonator at the mine in accordance with the U.S. Department of Transportation Report, Reference Number EX–9309092; and to provide instructions in each Rozdet package on the proper use of the Rozdet considered acceptable alternative method. Granted for the Chinook Mine with conditions for the use of protected open circuit detonators.

Docket No.: M–95–166–C.
FR Notice: 60 FR 64080.
Petitioner: Cyprus Plateau Mining Corporation.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to use belt entry in its longwall development entries as a return entry during longwall development and to use the belt entry as an intake entry during longwall retreat mining and in some mains during and after development; and to install carbon monoxide detectors as an early warning fire detection system in the longwall panel intake escapeway entry and the panel belt entry used as a return air course considered acceptable alternative method. Granted for the Willow Creek Mine with conditions for use of belt air in two-entry mining systems.

Docket No.: M–95–168–C.
FR Notice: 60 FR 64081.
Petitioner: Cyprus Plateau Mining Corporation.
Reg Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal to use the belt entry in its longwall development entries as a return entry during longwall development; and to install carbon monoxide detectors as an early warning fire detection system in the longwall panel intake escapeway entry and the panel belt entry used as a return air course considered acceptable alternative method. Granted for the Willow Creek Mine with conditions for use of a conveyor belt in a return air course during development of a two-entry mining system.

Docket No.: M–95–169–C.
FR Notice: 61 FR 8304.
Petitioner: Mackie J. Coal Company, Inc.
Reg Affected: 30 CFR 75.1710–1.
Summary of Findings: Petitioner's proposal to use self-propelled electric face equipment without cabs or canopies in mining heights of 48 inches or less considered acceptable alternative method. Granted for the Mine No. 4 with conditions for the two Fletcher and Lee Norse roof bolting machines, three Joy center drive shuttle cars, one Joy continuous mining machine, and two S & S scoops, in mining heights less than 48 inches.

Docket No.: M–95–173–C.
FR Notice: 61 FR 8305.
Petitioner: Genwal Resources, Inc.
Reg Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal to use belt air in a two-entry mining system and to install a low-level carbon monoxide detection system as an early warning fire detection system in the intake escapeway entry and the belt entry considered acceptable alternative method. Granted for the Crandall Canyon Mine with conditions for use of the conveyor belt in a return aircourse during development of a two-entry mining system.

Docket No.: M–95–175–C.
FR Notice: 61 FR 8305.
Petitioner: Philippi Development, Inc.
Reg Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal to increase the maximum length of its trailing cables to 900 feet for supplying power to shuttle cars, roof bolters and mobile roof supports considered acceptable alternative method. Granted for the Sentinel Mine with conditions for shuttle cars, roof bolters and mobile roof supports used in the Sentinel mine.

Docket No.: M–95–177–C.
FR Notice: 61 FR 8305.
Petitioner: McElroy Coal Company.
Reg Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its 4,160-volt longwall mining system considered acceptable alternative method. Granted for the McElroy Mine with conditions for McElroy Coal Company's, McElroy Mine's longwall system.

Docket No.: M–95–181–C.
FR Notice: 61 FR 8306.
Petitioner: Philippi Development, Inc.
Reg Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal to install carbon monoxide detectors as an early warning fire detection system in all belt entries used as intake air courses considered acceptable alternative method. Granted for the Sentinel Mine with conditions to allow air coursed through conveyor belt entries to be used to ventilate working places.

Docket No.: M–94–043–C.
FR Notice: 59 FR 24728.
Petitioner: Little Rock Coal Company.
Reg Affected: 30 CFR 75.364(b)(1), (4), and (5).
Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions less frequently considered acceptable alternative method. Granted for the Lykens Valley #1 Vein Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–94–048–C.
FR Notice: 59 FR 24728.
Petitioner: K & L Coal Company.
Reg Affected: 30 CFR 75.364(b)(1), (4), and (5).
Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions less frequently considered acceptable alternative method. Granted for the No. 1 Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–94–074–C.
FR Notice: 59 FR 35147.
Petitioner: Chestnut Coal Company.
Reg Affected: 30 CFR 75.364(b)(1), (4), and (5).
Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions less frequently considered acceptable alternative method. Granted for the No. 10 Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–94–091–C.
FR Notice: 59 FR 35149.
Petitioner: Shadle Coal Company.
Reg Affected: 30 CFR 75.364(b)(1), (4), and (5).

Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions less frequently considered acceptable alternative method. Granted for the Shadle Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–94–103–C.
FR Notice: 59 FR 40924.
Petitioner: H.L. & W. Coal Company.
Reg Affected: 75.364(b)(1), (4), and (5).

Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions less frequently considered acceptable alternative method. Granted for the No. 2 Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–93–060–C.
FR Notice: 58 FR 29640.
Petitioner: Quarto Mining Company.
Reg Affected: 30 CFR 75.380(d)(4).

Summary of Findings: Petitioner's proposal to reroute portions of the alternative and primary escapeways; to use the primary escapeway in case of an emergency; and if the escapeway is impassible to deenergize the longwall machinery and belt haulage while transporting injured persons considered acceptable alternative method. Granted for the Powhatan No. 4 Mine with conditions for the conveyor belt entry of each retreating longwall section.

Docket No.: M–93–110–C.
FR Notice: 58 FR 39238.
Petitioner: Wenrich Coal Company.
Reg Affected: 30 CFR 75.364(b)(1), (4), and (5).

Summary of Findings: Petitioner's proposal to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions less frequently considered acceptable alternative method. Granted for the Buck Mountain Slope Mine with conditions for 30 CFR 75.364(b)(4), to conduct examinations of the seals located along the return and bleeder air courses from the ladder on a weekly basis, not monthly as proposed by petitioner.

Docket No.: M–93–130–C.
FR Notice: 58 FR 39240.
Petitioner: M & S Coal Company.
Reg Affected: 30 CFR 75.332(b)(1) and (b)(2).

Summary of Findings: Petitioner's proposal to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria considered acceptable alternative method. Granted for the Buck Mountain Slope Mine with conditions for the quality of air used to ventilate the Buck Mountain Slope Mine.

[FR Doc. 97–31154 Filed 11–26–97; 8:45 am]
BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 12, 1998. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1–AU–97–11). Aircraft maintenance records.
2. Department of the Army (N1–AU–97–16). Routine opinions or comments issued by the Judge Advocate General pertaining to minor claims, investigations, or cases.
3. Department of the Army (N1-AU–97–17). Civilian misconduct files.
4. Department of the Army (N1-AU–97–20). Temporary Duty Travel records.
5. Department of the Army (N1-AU–97–28). Personal property shipping and storage records.
6. Department of the Army (N1-AU–97–29). Combined Federal Campaign records.
7. Department of the Army (N1-AU–97–31). Deoxyribonucleic Acid (DNA) registry records.
8. Department of the Army (N1-AU–98–2). Microfilm quality test reports.
9. Department of the Army (N1-AU–98–4). Routine Congressional correspondence.
10. Department of Commerce (N1–40–97–2). Budget preparation files, administrative management files, and other general administrative records.
11. Department of Commerce, National Institute of Standards and Technology (N1–167–97–1). Manufacturing Extension Partnership (MEP) program competition proposals.
12. Department of the Interior, Bureau of Land Management (N1–49–96–6). Routine administrative electronic records dealing with data verification, system documentation, tracking systems and data reported to higher levels.
13. Department of the Treasury, Internal Revenue Service (N1–058–97–4). Records maintained by the Information Systems organization Servicewide, including the Chief Information Officer.
14. Department of the Treasury (N1–58–97–13). Electronic systems used in tax administration activities (RCS 211).
15. The Corporation for National and Community Service (N1-362–97–1). Records maintained by the Office of General Counsel.
16. Defense Logistics Agency (N1–361–98–2). Automated document management records to be included with other Defense Automated Printing Service Records already approved for destruction.
17. National Bankruptcy Review Commission (N1–220–98–2). Audio and video tapes of media interviews with Commission members, staff, and outside observers.
18. Nuclear Regulatory Commission (N1–431–96–1). NUDOCS interim automated test/document search system.
19. Office of Personnel Management (N1–478–97–1). Office of General Counsel's chronological files.
20. Tennessee Valley Authority (N1–142–96–8). Health Services correspondence files relating to administrative and facilitative matters.
21. Tennessee Valley Authority (N1–142–98–1). Board Minutes (security copy will be preserved).
22. Tennessee Valley Authority (N1–142–98–3). Engineering and construction project maintenance records for generating plants.
23. Tennessee Valley Authority (N1–142–98–5). Employment applications for apprentice and secretarial non-hires.

Dated: November 19, 1997

Michael J. Kurtz,
Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–31162 Filed 11–26–97; 8:45 am]
BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Quarterly Meeting

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b (e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: January 26–28, 1997, 8:30 a.m. to 5:00 p.m.

Location: New Orleans Hilton Riverside, Poydras at the Mississippi River, New Orleans, Louisiana 70140; 504–561–0500.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficient, independent living, and inclusion and integration into all aspects of society.

Accomodations: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

Environmental illness: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

Open Meeting: This quarterly meeting of the National Council on Disability will be open to the public.

Agenda: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session
Return-to-work Initiative
Disability Data Collection
Youth Leadership Development Conference
Unfinished Business
New Business
Announcements
Adjournment
Hearing on Meeting the Unique Needs of Minority and Rural Children with Disabilities and their Families

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on November 25, 1997.

Ethel D. Briggs,
Executive Director.

[FR Doc. 97–31479 Filed 11–25–97; 3:43 pm]
BILLING CODE 6820–MA–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 11:00 a.m. Friday, November 21, 1997.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9 (B) (disclosure would significantly frustrate implementation of a proposed Agency action * * *).

MATTERS TO BE CONSIDERED: Budget.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated: Washington, DC November 20, 1997.

By direction of the Board:
John J. Toner,
Executive Secretary, National Labor Relations Board.
[FR Doc. 97–31397 Filed 11–25–97; 12:27 pm]
BILLING CODE 7545–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised and Expiring Information Collection; Forms RI 38–117, 38–118, and 37–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of a revised & expiring information collection. RI 38–117, Rollover Election, is used to collect information from each payee affected by a change in the tax code (Pub. L. 102–318) so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, explains the election. RI 37–22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Approximately 6,000 RI 38–117 forms will be completed annually. We estimate it takes approximately 30 minutes to complete the form. The annual burden is 3,000 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received within on or before December 29, 1997.

ADDRESSES: Send or deliver comments to:

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Janice R. Lachance,
Acting Director.
[FR Doc. 97–31167 Filed 11–26–97; 8:45 am]
BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Application to Act as Representative Payee.

(2) *Form(s) submitted:* AA–5, G–478.

(3) *OMB Number:* 3220–0052.

(4) *Expiration date of current OMB clearance:* 2/28/1998.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 20,300.

(8) *Total annual responses:* 20,300.

(9) *Total annual reporting hours:* 16,350.

(10) *Collection description:* Section 12 of the Railroad Retirement Act provides for the payment of benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The collection obtains information used by the Railroad Retirement Board for selection of a representative payee and verification of an annuitant's ability to manage payments.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.
[FR Doc. 97–31168 Filed 11–26–97; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–22899; 812–10563]

Bank Austria AG and Bank Austria Mortgage Corp.; Notice of Application

November 20, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act.

SUMMARY OF APPLICATION: Bank Austria AG, acting through its New York Branch ("Bank Austria"), and Bank Austria Mortgage Corp. ("Mortgage Corp.") request an order exempting Mortgage Corp., a real estate investment trust, from all provisions of the Act to permit Mortgage Corp. to hold certain real estate related assets of Bank Austria in order to obtain a more favorable tax treatment on the earnings from these assets.

FILING DATES: The application was filed on March 12, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is incorporated in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on December 16, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 565 Fifth Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Bank Austria is the largest bank in Austria, where its shares are publicly traded. Among its largest shareholders are Anteilsverwaltung-Zentralsparkasse, a mutual savings bank holding company affiliated with the municipal government of the City of Vienna, Austria, which holds 45% of the voting shares and the Republic of Austria, which holds 18.9% of the voting shares indirectly through a subsidiary. Bank Austria is exempt from the provisions of the Act under rule 3a–6.

2. Mortgage Corp. is a Delaware corporation that has not begun business activities and has not yet issued any stock. When stock is issued, Bank Austria will be the sole holder of Mortgage Corp.'s common stock and Mortgage Corp. will be a wholly-owned subsidiary of Bank Austria.

3. Currently, Bank Austria's New York and Grand Cayman Branches (together, the "New York Branch")[1] own a substantial amount of real estate related assets, the earnings from which are subject to United States federal, New York state, and New York City income taxation. In order to obtain more favorable tax treatment for the earnings from the real estate related assets, Bank Austria would operate Mortgage Corp. as a real estate investment trust ("REIT") for purposes of the Internal Revenue Code of 1986, as amended ("IRC"). To organize and capitalize Mortgage Corp., Bank Austria will acquire 100 shares of common stock and 109 shares of non-voting preferred stock (with a liquidation preference of $1,000 per share and a right to receive a cumulative dividend of 9 percent per year) ("Preferred Shares") from Mortgage Corp., with an aggregate value of $50 million. Thereafter, Mortgage Corp. will issue commercial paper, which will be fully guaranteed by Bank Austria, and use the proceeds to acquire approximately $1 billion of real estate related assets from the New York Branch.[2] The liquidation preference of the Preferred Shares will be de minimis compared to the net capital of Mortgage Corp. The New York Branch will continue to administer the transferred assets pursuant to a service contract. Bank Austria may, from time to time, make loans with a maximum aggregate outstanding principal amount of approximately $50 million in order to assist Mortgage Corp. in the management of its cash flow.

4. In order for Mortgage Corp. to qualify as a REIT under Section 856 of the IRC, its shares must be beneficially held by 100 or more persons.[3] Bank Austria therefore will transfer the Preferred Shares to no more than 109 employees of the New York Branch and the head office in Vienna, Austria, as a bonus. Mortgage Corp. will have 110 shareholders: 109 employees of Bank Austria will each hold one Preferred Share and Bank Austria will hold all the shares of common stock. No employee of Bank Austria will (i) receive more than one Preferred Share; (ii) deliver money or other property in return for his or her Preferred Share; or (iii) suffer a reduction of his or her other compensation or benefits as a result of the receipt of a Preferred Share. Because under the IRC, the preferred stock of a REIT must be freely transferable, the holders of Preferred Shares generally cannot be prevented from selling their Shares. Bank Austria will offer to buy from each holder his or her Preferred Share when his or her employment with Bank Austria terminates. A similar offer to buy also will be made when a shareholder receives a bona fide offer from someone who is not an employee of Bank Austria. In each case, if the offer to purchase is accepted, Bank Austria will purchase the Preferred Share at its appraised value. To the extent advisable in connection with the 100-shareholder requirement for REITs under the IRC, any Preferred Shares acquired in this manner by Bank Austria will, from time to time, be transferred as a bonus on the same terms described above to employees who do not then hold any Preferred Shares. Mortgage Corp. will maintain its own stock ledger and will not (i) register any purported transfer of a share of preferred stock to any person (other than Bank Austria) who already is a registered owner of a share or (ii) register a share of preferred stock in more than one name.

Applicants' Legal Analysis

1. Section 3(a)(1)(C) of the Act defines an "investment company" to include any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, "investment securities" include all securities except Government securities and those issued by majority-owned subsidiaries or employees' securities companies. Applicants state that, upon commencing operations, approximately 100% of Mortgage Corp.'s future assets (approximately $275 million), exclusive of Government securities and cash items, will consist of investment securities. Therefore, Mortgage Corp. may be deemed to be an investment company under section 3(a)(1)(C) of the Act.

2. Section 3(c)(5)(C) of the Act excepts from the definition of investment company any person who is not engaged in the business of issuing redeemable securities and who is primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Applicants state that this exception is unavailable to them because all or almost all of the assets to be held by Mortgagee Corp. would constitute partial-pool certificates which do not qualify as "interests in real estate" under section 3(c)(5)(C) of the Act.

3. Applicants state that Mortgage Corp. will be a wholly-owned subsidiary of Bank Austria, which is a foreign bank that is exempt from the provisions of the Act under rule 3a–6. Applicants also state that Mortgage Corp. will be organized for the purpose of holding certain real estate related assets of the New York Branch of Bank Austria. Moreover, applicants state that Preferred Shares of Mortgage Corp. will be given to a limited number of Bank Austria's employees as a bonus, at no cost, solely for the purpose of enabling Mortgage Corp. to rely on the REIT provisions under the IRC.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants request an exemption under section 6(c) from all provisions of the Act. Applicants assert that exempting Mortgage Corp. from the Act

[1] Bank Austria's Grand Cayman Branch is managed from New York.

[2] Approximately 90% of the real estate related assets currently have an AAA rating or are securities issued by the United States government. The assets will consist of approximately $800 million (or 80%) of Government securities (largely U.S. Treasury Notes and securities issued by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corp., the Government National Mortgage Association, and a small number of securities issued by the Student Loan Marketing Association). The remainder of the assets will consist mostly of collateralized mortgage obligations issued by privately-sponsored securitization vehicles. Bank Austria expects that in the future 80% or more of Mortgage Corp.'s assets will be of comparable quality.

[3] See 26 U.S.C. 856(a)(5) 1906.

is appropriate in the public interest because allowing Bank Austria to utilize a REIT to hold its real estate related assets in the United States will, under the IRC, allow the head office of Bank Austria to treat the earnings on those assets as not being effectively connected with a United States trade or business and to be taxed on those earnings on a pass-through basis, which will render Bank Austria's United States operations more efficient and less costly. In addition, applicants note that specific provisions of New York state tax law also provide more beneficial tax treatment to REITs than to certain other kinds of entities, including banks. Applicants believe that the combined effect of the treatment of REITs under the IRC and New York state tax law will lower their cost of doing business in the United States and encourage Bank Austria to continue investing in the United States, and perhaps expand its investment activities. Applicants state that the tax-treatment which Bank Austria seeks for its investments in the United States is generally available to REITs and no public interest is served by requiring Bank Austria to hold certain of its assets in its New York Branch rather than in a separate subsidiary.

6. Applicants submit that exempting Mortgage Corp. from the Act is consistent with the protection of investors. Applicants claim that the proposed use of Mortgage Corp. to restructure the manner in which Bank Austria holds its United States real estate related assets will not subject investors to any of the abuses addressed by the Act. Applicants state that all of Mortgage Corp.'s common stock will be owned by Bank Austria and that Preferred Shares will be given to a limited number of employees as a bonus in order to enable Mortgage Corp. to rely on the REIT provisions of the IRC. It is anticipated that there will be fewer than 100 holders of Preferred Shares who are residents of the United States.

7. Applicants submit that granting Mortgage Corp. the requested exemption is consistent with the policies and provisions of the Act. Applicants note that although the Act deals with companies which invest and reinvest in securities, it contains exemptions for some entities which would otherwise come within its purview, in particular entities that are wholly-owned subsidiaries of companies that are themselves exempt from the Act and through which exempt companies conduct their activities and entities that invest in real estate.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Mortgage Corp. will operate as a REIT and its investments will be limited to those permitted for a REIT under the IRC.

2. Mortgage Corp. will issue no securities other than shares of common stock to be held by Bank Austria, Preferred Shares to be given at no cost from time to time to employees of Bank Austria solely when necessary or advisable for maintaining a number of shareholders sufficient to rely on the REIT provisions of the IRC, commercial paper to finance or refinance any of its investments, and a credit agreement with Bank Austria in the approximate amount of $50,000,000. No participants in or syndication of the credit agreement will be made.

3. No employee will own more than one Preferred Share. Bank Austria will offer to buy at their appraised value Preferred Shares from its employees under the circumstances described in the application. Mortgage Corp. also will not permit there to be more than 109 holders of Preferred Shares at any time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 97–31152 Filed 11–26–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39341; File No. SR–CHX–97–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending the Exchange's Clearing the Post Policy for Cabinet Securities

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 23, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes, for a six-month pilot period, to amend interpretation and policy .02 of Rule 10 of Article XX and amend Rule 11 of Article XX relating to clearing the post for cabinet securities. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the period rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's existing clearing the post policy for cabinet securities for a six-month pilot period. The clearing the post policy is contained in interpretation and policy .02 of CHX Article XX, Rule 10.[2] The Exchange's clearing the post policies were previously contained in several Notices to Members which had been approved by the Commission.[3] These Notices to Members, and their corresponding Approval Orders, explain the Exchange's clearing the post requirements.

In general, the clearing the post policy requires a floor broker or market maker to clear the post by his or her physical presence at the post. The purpose of this proposed rule change is to permit a floor broker or market maker to clear the post in cabinet securities by phone. The bids and offers made to clear the post by phone will be audibly announced at the cabinet post through a speaker system maintained by the Exchange. This new policy will be effective for a six-month pilot period to permit the Exchange to determine the effectiveness of the new policy before implementing it on a permanent basis.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)[4] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–28 and should be submitted by December 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31240 Filed 11–26–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39340; File No. SR–GSCC–97–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change to Modify the Loss Allocation Process

November 21, 1997.

On July 8, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–97–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On July 23, 1997, GSCC filed with the Commission an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on September 19, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Generally, if a GSCC member were to default, after liquidating the defaulting member's positions and applying its collateral deposited with GSCC, GSCC would allocate any loss that it did not absorb from its own capital among members pro rata based on the extent of their recent activity with the defaulting member. In order to determine which members will be subject to loss allocation, GSCC would look at trading authority that was entered into GSCC's netting system during as many days as is necessary to reach a level of activity that is equal to or greater than five times the dollar value of the liquidated positions.

Pursuant to this proposed rule change, GSCC is limiting the amount to which any netting member that is not an interdealer broker is liable for loss allocation arising from blind brokered activity.[3] The new cap per loss event is equal to the lesser of $5 million or five percent of the total loss amount arising from blind brokered activity that is allocated to members that are not interdealer brokers as a group. To the extent that this cap is applicable, any amounts not collected from individual netting members will be reallocated to the entire netting membership pro rata based on each member's average daily clearing fund deposit requirement over the twelve month period prior to the insolvency.

GSCC states that the $5 million cap is intended to provide to all members the same level of protection that interdealer broker members currently have for blind brokered activity. The 5% limit is intended to ensure that no single member will be liable for an amount of loss for blind brokered activity that is significantly greater than the amount of loss allocated to other dealer members.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and Section 17A(b)(3)(D)[5] of the Act provides that the rules of a clearing agency must provide for equitable allocation of charges among its participants. Prior to the rule change, nonbroker members could be assessed for the entire loss resulting from blind brokered transactions even though they did not have any control or knowledge of their counterparty. Because in brokered transactions, dealers cannot select their counterparty, these members may not be able to limit their losses resulting from the counterparty's default. The rule change limits the member's liability but still provides the member with an incentive to minimize the risk of loss. Therefore, the Commission believes that the rule

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[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 39337 (November 19, 1997) granting immediate effectiveness to SR–CHX–97–30.

[3] Securities Exchange Act Release No. 33806 (March 23, 1994) 59 FR 15246 (Notice of Filing and Immediate Effectiveness of File No. SR–CHX–94–03); Securities Exchange Act Release No. 17766 (May 8, 1981) 46 FR 25745 (Order approving SR–MSE–81–3 and SR–MSE–81–5); and Securities Exchange Act Release No. 28638 (November 30, 1990) 55 FR 49731 (Order approving SR–MSE–90–7).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39066 (September 12, 1997), 62 FR 49280.

[3] Interdealer broker netting members already have a $5 million cap per loss event on their liability for loss allocation.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1(b)(3)(D).

change is consistent with a clearing agency's obligation to provide for equitable allocation of charges among its participants.

In addition, by spreading any losses resulting from a member default among a wider segment of GSCC's members, the rule change should decrease the likelihood that any one member will be disproportionately affected. Thus, the proposal may make it easier for GSCC to collect such funds should the need ever arise. Therefore, the Commission believes that this rule will enhance GSCC's ability to safeguard securities and funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Sections 17A(b)(3)(F) and 17A(b)(3)(D) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31153 Filed 11–26–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 8, 1997 [62 FR 47235].

DATES: Comments must be submitted on or before December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Crawford Ellerbe, 202/366–2643, Office of Maritime Labor, Training and Safety, Maritime Administration, MAR–250, Room 7302, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: U.S. Merchant Marine Academy Application for Admission and Pre-Candidate Application.

OMB Number: 2133–0010.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals desiring to become students at the U.S. Merchant Marine Academy.

Abstract: This collection consists of form KP–3–4 (Pre-Candidate Application), and KP–2–65 (U.S. Merchant Marine Academy Application for Admission). These forms are completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy and are reviewed by staff members of the Academy.

Estimated Annual Burden Hours: 12,500.

Number of Respondents: 2,500.

Needs and Users: The collected information is necessary to perform the reviews required in order to permit payment of Maintenance and Repair subsidy.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 20, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–31302 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity: Proposed Collection Comment Request

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below will be forwarded to the Office of Management and Budget (OMB) for review and comment. This notice describes the paperwork burden associated with this rule and allows for a 60-day comment period. The following information describes the nature of the information collection and its expected burden.

Although the May 17, 1988, proposed rule provided a 150-day comment period and the final rule is based on the comments received, paperwork reduction and recordkeeping were not addressed in that document. Therefore, as required by section 3507(d) of the Paperwork Reduction Act of 1995, the FAA has submitted a copy of the final rule to OMB for its review of these information collection requirements.

DATES: Submit any comments to OMB and FAA by January 27, 1998.

SUPPLEMENTARY INFORMATION:

Title: Retrofit of Improved Seats in Air Carrier Transport Category Airplanes.

Collection of Information: Only air carrier operators that wish to continue to operate aircraft equipped with older, approved seats that are in partial compliance with newer dynamic seat requirements must submit an application and supporting data to the FAA. The information needs to be submitted only once, within four years of the effective date of the final rule. The FAA estimates 100 applications will be submitted per year for four years, with 425 hours of reporting burden per application and an annual reporting burden of 42,500 hours for each of the four years. The total cost to respondents is estimated to be $850,000 per year for 2 years; this figure is derived by multiplying 42,500 × $20.00 per hour. Cost estimates were obtained from applicants. After four years, there will no longer be application/reporting requirements.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10102, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for Federal Aviation Administration and also to John Petrakis, Aircraft Engineering Division (AIR–120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591.

The FAA considers comments by the public on this proposed collection of information to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 21, 1997.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 97–31241 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Toledo Express Airport, Toledo, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Toledo Express Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark VanLoh, Director of Airports of the Toledo-Lucas County Port Authority, at the following address: Toledo Express Airport, 11013 Airport Highway, Box 11, Swanton, Ohio 43558.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Toledo-Lucas County Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jack D. Roemer, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Toledo Express Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 3, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by Toledo-Lucas County Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 27, 1998.

The following is a brief overview of the application.

PFC Application No.: PFC–97–03–C–TOL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: October 1, 2003.

Total estimated PFC revenue: $6,750,400.00.

Brief description of proposed projects:

(1) Noise Mitigation Project.

(2) Terminal Entrance Road Rehabilitation.

(3) Environmental Study—Runway 16/34 Extension.

(4) Runway 7/25 Rehabilitation.

(5) Terminal Building Expansion—Phase I.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Toledo-Lucas County Port Authority.

Issued in Des Plaines, Illinois, on November 20, 1997.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–31242 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3078]

Notice of Request for Renewal of an Existing Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection identified below under supplementary information.

DATES: Comments must be submitted by January 27, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address

[8] 17 CFR 200.30–3(a)(12).

between 10:00 a.m. and 5:00 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Mr. Mohan Pillay, Office of Engineering, (202) 366–4655, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Emergency Relief Funding Applications.

OMB Number: 2125–0525.

Background: 23 U.S.C. 125 requires States to submit an application for emergency relief (ER) funds to the Federal Highway Administration. The ER funds are established for the repair or reconstruction of Federal-aid highways and Federal roads which are found to have suffered serious damage by natural disasters over a wide area or serious damage from catastrophic failures. The information is needed for the FHWA to fulfill its statutory obligations regarding funding determinations on emergency work to repair highway facilities. The requirements covering the FHWA ER program are contained in 23 CFR part 668.

Respondents: State Highway Agencies.

Estimated Annual Burden on Respondents: The amount of time required depends on the nature of the event, the extent of damage, among other things, and varies widely among applications by the same State and among States. On the average, it is estimated to require approximately 150 hours of professional staff time (engineering) plus 50 hours of secretarial staff time (typing and editing) for a total of 200 hours per application. The estimated average annual burden for all respondents per year would be 7,200 hours (i.e., 36 applications times 200 hours per application).

Authority: 23 U.S.C. 125; 23 CFR 668.

Issued on: November 18, 1997.

Diana Zeidel,

Deputy Associate Administrator for Administration.

[FR Doc. 97–31173 Filed 11–26–97; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Henderson and Warren Counties, Illinois

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the construction of U.S. Route 34 as a four-lane highway. The proposed project will extend from east of the Village of Gulfport in Henderson County, Illinois to the vicinity of Monmouth in Warren County, Illinois.

FOR FURTHER INFORMATION CONTACT:

Dennis Johnson, Environmental Engineer, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600

Dale E. Risinger, District Engineer, Illinois Department of Transportation, 401 Main Street, Peoria, Illinois 61602–1111, Phone: (309) 671–3333.

SUPPLEMENTARY INFORMATION: The proposed action is the construction of a four-lane divided highway in Henderson and Warren Counties, Illinois which will be approximately 47 km (29 miles) in length. The project will begin just east of Gulfport, Illinois extending east through a corridor in the vicinity of U.S. Route 34, ending east of Monmouth, Illinois. The proposed project may bypass communities within its limits.

The proposed action will enhance traffic access, improve traffic circulation, provide safer and more efficient access to the urban area, provide a divided highway design for high operating speeds and continuity from the Illinois/Iowa border to I–74 in Galesburg, Illinois. Primary environmental resources which may be impacted are local property tax income, agricultural land and wetlands. Alternatives under consideration include: (1) Taking no action or (2) improvement of the existing two-lane roadway to a four-lane facility between Gulfport and U.S. Route 67 including improvement of the existing northwest bypass around Monmouth. Several proposed alignment alternatives will be evaluated.

The scoping process undertaken as part of this proposed project will include distribution of a scoping information packet, coordination with appropriate Federal, State, and local agencies, and review sessions as needed. A formal scoping information packet may be obtained from one to the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, a comprehensive public involvement program will be undertaken. A public meeting concerning the proposed action will be held in the study area prior to the public hearing. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public agency review and comment and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or Illinois Department of Transportation contact persons.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program)

Issued on: November 14, 1997.

Dennis Johnson,

Environmental Engineer, Springfield.

[FR Doc. 97–31291 Filed 11–26–97; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–97–2320; FHWA–96–46]

Achieving Interoperability in Intelligent Transportation Systems (ITS) With Dedicated Short Range Communications (DSRC)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice; extension of comment period.

SUMMARY: The FHWA published a notice in the **Federal Register** on January 6, 1997 (62 FR 791), in which the agency requested comments on three items of concern relating to the implementation of dedicated short range communication (DSRC) systems specified in the Intelligent Transportation Systems (ITS) National Architecture. These issues are paraphrased as follows:

(1) Should the FHWA require that DSRC systems purchased with Federal-aid highway funding meet draft standard specifications?

(2) Should the FHWA require that DSRC systems purchased with Federal-aid highway funding meet an escalating interoperability formula (e.g., start with national interoperability of all commercial vehicle operations (CVO) applications and gradually transition stepwise over time to national interoperability of all federally-funded DSRC applications)?

(3) Should a single DSRC standard be developed for all applications in ITS projects with Federal-aid highway funding?

The comment period for this notice was scheduled to close on February 1, 1997. The FHWA solicits further public comment on this issue; therefore, it is extending the comment period until January 27, 1998.

DATES: Comments must be received no later than January 27, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For technical and programmatic questions contact: Mr. Michael P. Onder, ITS Joint Program Office, (202) 366–2639. For legal questions contact: Ms. Beverly M. Russell, Office of the Chief Counsel, (202) 366–1355. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The ITS program of the United States Department of Transportation (USDOT) was established by the Congress in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914. In section 6053(b) of the ISTEA, the Congress directed the USDOT to develop and implement standards and protocols to promote widespread use and evaluation of ITS technology as a component of the nation's surface transportation systems. A precursor to the development of standards has been the formation of a National ITS Architecture. The architecture describes how system components should work and interact, and includes recommendations for which kinds of communication system media are used for data transmission among the various components.

The USDOT began an intensive National ITS Architecture development program in December 1994, and concluded with an architecture that supports 30 ITS user services in July 1996. The National ITS Architecture envisions a transportation system in which DSRC is the favored method of wireless communications between vehicles and roadside subsystems for CVO, for Electronic Toll and Traffic Management (ETTM), and for several other important, but less prevalent, ITS applications. In ITS reauthorization legislation, for fiscal years 1998 or 1999, it is expected that the USDOT will be directed to ensure conformance with the National ITS Architecture and its implementing standards for ITS deployment projects using Federal-aid highway funds, thus ensuring the highest effectiveness and benefits for the funds expended.

The Vehicle/Roadside Air Interface Problem

Currently, interoperability does not exist between the DSRC equipment of different manufacturers. The DSRC standards governing the wireless communication between the transponder and reader, and the message sets in this wireless air interface exchange that are required for interoperability, are not yet applied to ITS project deployment. Interoperability, in this case, is the ability of any given roadside reader or interrogation device to meaningfully query, send or receive, and process data from any given transponder mounted in a vehicle, regardless of which manufacturer produced either the reader or transponder. In order for wireless communication between vehicles and roadside—a fundamental enabling technology for ITS—to take place successfully, DSRC standards must be established at levels one and two of the International Standards Organization's Open Systems Interconnect (OSI) reference model, which deal with the "air interface" and the physical properties of the system. Furthermore, for the DSRC applications to be a viable alternative for commercial fleets, it is essential that interoperability exist on a nationwide basis.

Over the past several years, the DSRC industry has been unable to agree upon a viable path for DSRC standardization. If the FHWA continues to allow Federal-aid highway funds to be invested in noncompatible systems, the magnitude of the problem will continue to escalate. Unless the DSRC industry can identify a solution to the remaining areas of non-interoperability soon, the FHWA will be forced to seek a process to develop and apply a standard as an interoperability solution to support long term deployment of DSRC using Federal-aid highway funds, and therein halt the proliferation of non-interoperable DSRC systems.

Discussion of Comments

A total of 21 comments were received in response to the initial notice soliciting comments on January 6, 1997. These comments represent the opinions of 29 entities. The comments received in response to each question are described immediately after a restatement of each question. The first question is subdivided into three parts for clear delineation of the salient aspects of the responses. The remaining two questions are briefly stated with their respective responses from the public.

Questions and Responses

1(a). Should the FHWA require that the DSRC systems purchased with Federal-aid highway funds meet draft standard specification, such as that of the American Society for Testing Materials (ASTM) proposed Draft No. 6 DSRC standard and the Committee for European Normalization (CEN) draft documents N473, N474, and N505, prior to their formal adoption as industry standards in an effort to reduce the proliferation of non-interoperable systems?

The responses were evenly divided on the question of whether Federal-aid funds should be tied to conformance with draft standards.

Comments from manufacturers were divided. Those manufacturers with products that meet, or are close to meeting, the ASTM draft DSRC standards were in favor of using a draft standard rather than a fully adopted national standard. The majority of the manufacturers, and some of the public and user agencies, stated that the CEN pre-standards are not suitable for North America. It was suggested that current work on the ASTM standard covering North American use of the 902 and 928 megahertz (MHZ) band for the DSRC

capability should be completed and, then, a long-term transition to the 5.8 gigahertz (GHz) band should be developed.

A majority of the commenters from the public and user agencies rejected use of the ASTM draft DSRC standards. They stated that the existing ASTM draft DSRC standards are not interoperable and would not ensure interoperability.

A few system integrators commented that requiring conformance with the ASTM draft DSRC standards would force all manufacturers to support preparation of the final standard, thus accelerating the effort to establish and publish the national standards.

1(b). Should the FHWA include message set requirement, such as, the Commercial Vehicle Information Systems and Networks Dedicated Short Range Communications Interface Requirements of April 2, 1996 (The Johns Hopkins University-Applied Physics Lab)?

A majority of commenters agreed that message set requirements are needed in the DSRC standards.

Manufacturers commented that message set requirements should be part of the standard, but that they would rather work with a fully defined and adopted DSRC standard.

Comments from the public and user agencies varied depending on the particular DSRC application in use; however, a majority stated that message set requirements should be incorporated into the DSRC standard to the extent practicable.

The system integrators believed that including message set requirements as a portion of the DSRC standard is necessary and would help force commitment to reach an agreement on the DSRC standard.

1(c). Should compliance with specific draft DSRC standards be required for CVO application only; for both CVO and ETTM application; or for CVO, ETTM, and additional applications?

A slight majority of commenters favored requiring compliance with the ASTM draft DSRC standard for application to CVO and ETTM.

Comments from manufacturers were divided on adopting an ASTM draft DSRC standard. One half of this group stated that the availability of Federal-aid highway funds should be tied only to a fully defined and endorsed DSRC standard; while the other half supported the adoption of a specific ASTM draft standard. There was a divergence of views on the extent of applicability of a DSRC standard. Some stated that users of simple applications should not have to pay for the needs of complex applications. Others supported a single DSRC standard for all applications. Another group would adopt a single DSRC standard applicable to both CVO and ETTM applications.

Public and user agency responses were slightly varied, with all supporting application of a DSRC standard to CVO. A majority favored application of the DSRC standard to both CVO and ETTM. A few commenters favored a single DSRC standard for all DSRC applications.

Comments from the system integrators supported a widely applicable DSRC standard. This group supported immediate establishment of rules for use of the ASTM draft DSRC standard as a prerequisite for Federal-aid highway funding. According to the system integrators, even a draft DSRC standard could be used as a mechanism to move all parties to agreement on the final endorsed DSRC standard.

2. Should the FHWA require that DSRC systems purchased with Federal-aid highway funds meet an escalating interoperability formula? An example would be that, initially, all CVO applications must be nationally interoperable; later, all new (after some specified later date) ETTM systems and system upgrades must be interoperable with CVO applications; and, finally, all other new (after another specified even later date) and upgrading DSRC applications must be interoperable with CVO applications.

The FHWA believes that nationwide interoperability is critical for the efficient operation of vehicles using DSRC equipment crossing the nation, especially commercial vehicles, and, thus, requires a national focus. The ETTM programs, on the other hand, and possibly other DSRC applications are more focused on regional travel, with the exception of commercial carriers. Thus, it may not be practical to require all users of DSRC equipment to adhere immediately to a national DSRC standard. Instead, a transition to national interoperability may be the best approach.

A significant majority (60 percent) of all commenters favored use of a DSRC standard with an escalating interoperability formula as a prerequisite for use of Federal-aid highway funds.

A large majority of the DSRC equipment manufacturers and the DSRC system integrators responded favorably to the use of an escalating interoperability formula.

Comments from public and user agencies were divided on support for application of the escalating interoperability formulas as a prerequisite for use of Federal-aid highway funds. The public and user agencies strongly supported continued use of existing equipment, including both transponders and readers, when a DSRC standard is established.

3. Should a single DSRC standard be developed for all DSRC applications, or should separate standards be developed with an assumption that trucks and buses, and perhaps other users, would likely require separate technology to perform those functions?

The FHWA recognizes that the CVO and ETTM applications, as well as other DSRC applications, have different requirements that have also shaped the design and operation of the DSRC equipment. While it may be desirable to have a single DSRC standard, it may not be practical. A possible alternative measure would be to have a single DSRC standard with standard fields, such as, vehicle identifier and message set identifier, but with different message sets for each application.

A majority (64 percent) of all non-Federal respondents favored use of a single DSRC standard for all applications as a prerequisite for use of Federal-aid funds.

The DSRC equipment manufacturers and the DSRC system integrators unanimously favored development and endorsement of an appropriately designed single DSRC standard, and its use for all ITS applications of DSRC, as a prerequisite for use of Federal-aid highway funds.

Comments from the public and user agencies were more divided on their responses for and against a single DSRC standard. Some of the agencies seemed to favor a single DSRC standard with multiple applications under its umbrella, which would provide interoperability, but possibly with different optional features (such as, different message sets) for the different applications. This is differentiated from the scenario implied by those questions asked in the January 6 notice; namely, a single DSRC standard with all of its requirements applicable to all DSRC applications.

Conclusions

The USDOT has a strong desire to facilitate development and acceptance of standards that best serve the industry and the users of ITS technology. The USDOT is relying on the DSRC industry and users of ITS technology to come to agreement on the national DSRC standards. The FHWA has demonstrated its willingness to assist in this process by funding ASTM, a standards development organization, for this purpose. Also, the FHWA has been participating in all discussions sponsored by the Intelligent Transportation Society of America (ITS America) that have been taking place between DSRC users and manufacturers. The FHWA understands that significant progress has been made toward agreement on a broad DSRC standard in the ASTM Draft No. 7 DSRC standard, prepared with industry and user participation. It is clear that the DSRC industry and users have been striving to make progress on the national DSRC standards—many work on their own time and at their own expense. The USDOT is sincerely appreciative for this cooperative effort, and will continue to encourage the DSRC industry to do its part. The need for national interoperability for CVO applications is becoming more critical. Also, the total national investment in non-interoperable ETTM equipment continues to grow rapidly. The USDOT would prefer that the DSRC industry and users set the necessary DSRC standards through a consensus building process among the DSRC vendor and user communities, which the USDOT is sponsoring through ITS America. It is imperative that the DSRC standards be ready for ballot by the end of 1997. If the ballottable standard is not available by that time, for publication by June 1998, of the endorsed DSRC standards, a meeting will be held under the ITS America auspices between the USDOT, the DSRC users, and the manufacturers to determine the extent of the delay. If a significant impasse to progress remains at the conclusion of that meeting, the USDOT will initiate a rulemaking action to establish the necessary standards to allow interoperability between DSRC applications.

(Sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914; 23 U.S.C. 307 note; 49 CFR 1.48)

Issued on: November 19, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 97–31243 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–97–2907]

Outdoor Advertising Control

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The Nevada Department of Transportation (NVDOT) proposes to amend the Highway Beautification Federal/State Agreement dated January 21, 1972, between the United States of America represented by the Secretary of Transportation and the State of Nevada.

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Submit written, signed comments to FHWA Docket FHWA–97–2907, the Docket Clerk, U.S. DOT Docket Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope/postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Johnson, Chief, Program Services Division, Office of Real Estate Services, HRE–20, (202) 366–2020; or Mr. Robert Black, Office of Chief Counsel, HCC–31, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Highway Beautification Act of 1965 (HBA), codified at 23 U.S.C. § 131, requires States to provide effective control of outdoor advertising in the areas adjacent to both the Interstate System and Federal-aid primary system. States must provide effective control as a condition of receiving their full apportionment of Federal-aid Highway Funds. Effective control of outdoor advertising includes prohibiting the erection of new advertising signs except for certain categories of signs listed at § 131(c).

One of these sign categories, "off premise" signs, may be allowed by a State in zoned or unzoned commercial or industrial areas. Signs in such areas must conform to the requirements of an agreement between the State and the Federal Government which establishes size, lighting, and spacing criteria consistent with customary use. The agreement between Nevada and the FHWA was executed January 21, 1972.

The 1972 agreement states that the State of Nevada may permit signs to be erected no closer than 500 feet from an intersection outside "incorporated villages and cities." The amendment to the agreement, the exact language of which is set forth below, would use the term "urbanized area boundaries" as defined by 23 U.S.C. § 101(a) in place of "incorporated villages and cities."

In April 1980 the FHWA adopted a procedure to be followed if a State requested a change in the Federal/State agreement. A State must first submit its proposed change, along with the reasons for the change and the effects of such change, to the FHWA Division Office. The Division, Region, and headquarters offices all review and comment on the proposal. If the concept is approved, the State must then hold public hearings on the proposed change to receive comments from the public. If the State then wishes to amend the agreement, it must submit: (1) the justification for the change; (2) the record of the hearings; and (3) an assessment of the impact. These are summarized and published in the **Federal Register** for comments. Comments on the proposed amended agreement will then be evaluated by the FHWA. The FHWA will then decide if the agreement should be amended as proposed and will publish its decision in the **Federal Register**. An amended agreement will then be sent to the State for signature.

Nevada has completed the above procedure up to the point of publishing in the **Federal Register**. No negative comments were received in response to the State's public hearings on this proposed change, and several supportive comments were received. Nevada's formal request provides justification for the proposed revision to the 1972 Federal/State Agreement. The primary issue is that the term "urbanized area boundaries" would be more consistent with the Code of Federal Regulations (23 CFR 750, Subpart G) which speaks primarily of urban areas, rather than incorporated cities, towns, or villages. The change in the agreement is aimed primarily at effective control of billboards in Clark County (Las Vegas), Nevada, where a vast part of the metropolitan area is outside the incorporated city limits of Las Vegas. The State of Nevada believes that this change in the agreement could allow between 20 and 24 new billboard sites primarily in the Las Vegas area. The State maintains that this would result in minimal aesthetic impact because the urban areas are generally developed and contain numerous on-premise signs.

The Proposed Change

The Federal/State Agreement "For Carrying Out the National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System" made and entered on January 21, 1972, between the United States of America represented by the Secretary of Transportation acting by and through the Federal Highway

Administrator and the State of Nevada now reads at *Section III: STATE CONTROL*, Paragraph 2. b. *Spacing of Signs*, as follows: "Outside of incorporated villages and cities, no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet to be measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way."

The amended agreement would read as follows: "Outside of urbanized area boundaries, as defined by 23 U.S.C. 101(a), no structure may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. Said 500 feet to be measured along the Interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way."

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 19, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 97–31244 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3137; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1974 Alfa Romeo GTV Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1974 Alfa Romeo GTV passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1974 Alfa Romeo GTV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 29, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1974 Alfa Romeo GTV passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1974 Alfa Romeo GTV that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1974 Alfa Romeo GTV to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1974 Alfa Romeo GTV, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1974 Alfa Romeo GTV is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1974 Alfa Romeo GTV must be reinforced or replaced with U.S.-model components to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on November 21, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–31172 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3150]

General Motors Corporation; Denial of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) determined that certain of its 1996 J/L/N model cars fail to comply with the requirements of 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, "Controls and Displays," and filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Information Reports." GM also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on March 7, 1997, and an opportunity afforded for comment (62 FR 10618). This document denies the application.

The report submitted by GM states that the company has built cars in which some interior lights may come on while the car is moving, for a period that may last as long as half an hour. The only way the driver can turn them off is to remove the fuse because the light switch will not extinguish them. This is a noncompliance with S5.3.5 of FMVSS No. 101, which requires that sources of illumination forward of a transverse vertical plane 4.35 inches rearward of the manikin "H" point, with the driver's seat in its rearmost driving position, that are not used for controls and displays, are not a telltale, and are capable of being illuminated while a vehicle is in motion, have either (1) light intensity which is manually or automatically adjustable to provide at least two levels of brightness, (2) a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or (3) a means of being turned off.

GM's description of the noncompliance follows

"Vehicles involved: Certain of these 1996 makes and models (with estimated number of cars): Chevrolet Cavalier and Pontiac Sunfire (J cars) coupes and convertibles from start of production to January 16, 1996 (115,351 cars); Pontiac Grand Am, Oldsmobile Achieva, and Buick Skylark (N cars) from start of production to October 31, 1995 (74,902 cars); and Chevrolet Corsica and Chevrolet Beretta (L cars) from start of production to November 13, 1995 (61,736 cars).

Noncompliance: "These vehicles are equipped with interior lights that illuminate when a door is opened or when the driver activates a switch. Power to the lights is turned on and off by a control module, rather than by direct action of the door or light switches. One of the parts in the control module is a field effect transistor (FET).

Because of manufacturing variances in the FETs, the condition of the FET in some modules, in combination with the programming of the module, can cause a situation where the module will not turn on the lights when the door is opened. Five minutes later, there is a fifty percent chance that the lights will turn on. If that does not happen, there is an increasing chance at ten, fifteen, twenty, twenty-five, and thirty minutes that the lights will turn on. If the lights are turned on at one of those five minute increments, they will then remain on for up to thirty minutes, unless the fuse is removed to cut power to the module. Moving the light switch or ignition to "off" will not cause the module to turn off the lights.

In August 1995, GM found a 1996 N car in which the interior lights failed to turn on when a door was opened. In September, GM determined the cause of the problem and its supplier of FETs began inspecting 10% of them. In October, GM started its own screening of all incoming FETs. In January 1996, GM learned of and began investigating the potential for the lights to come on and stay on.

Even in the affected cars, this condition is intermittent. The incidence is higher during cold weather and in vehicles with interior light configurations that place a higher load on the circuit.

This table identifies the lights in these vehicles that are forward of a transverse vertical plane 4.35 inches rearward of the mannequin "H" point with the driver's seat in its rearmost driving position:

Chassis	Body type and options	Dome lamp	Map lights in rearview mirror	Footwell lamps
J	Coupe	X		
	Coupe and GT w/sunroof		X	
N	Convertible		X	
Base trim			X	

Chassis	Body type and options	Dome lamp	Map lights in rearview mirror	Footwell lamps
Uplevel trim	X		X	
With sunroof		X	X	
L	All			X

Based on GM's examination of cars and modules, no more than 9.5% of the vehicles with modules built before 100% inspection of FETs began have a FET that could lead to this problem.

Field experience indicates the actual incidence is much lower. Within the total estimated population of 251,991 cars that are potentially affected, GM has paid for replacement of the modules in just under one percent (2,464) under warranty (through October 31, 1996). For cars with modules made after the 100% inspection of FETs began, the rate is about 0.5%. Because the module performs several functions, there are other unrelated malfunctions that could lead to replacement of the module and, absent the FET problem, the rate of warranty replacements for cars of comparable age is 0.3%. Therefore the rates attributable to the FET estimated to be approximately 0.7 and 0.2% respectively.

GM has received no reports of accidents or injuries related to this condition.

To help assess the magnitude of the interior light during nighttime driving, GM measured the luminance values (light on windshield surface) from the driver's eye position in representative vehicles, with the exterior lights on (low beam) and with the interior lights both off and on. The test setup is shown in Attachment B.

The measurements were made in a darkened laboratory with a flat black surface ten feet ahead of the cars. A white paper target was placed on the windshield, so that the total light impinging on the windshield was measured, not just what was reflected from the glass surface. The instrument panel illumination was at the maximum setting. A Minolta Luminance Meter, Model LS–1200 (range: 0.001 to 299900 cd/m(2), was used.

These values are in foot-lamberts and are the average of two readings for each car:

Car	Interior lights off	Interior lights on
J coupe with sunroof	.03	.16
N coupe with sunroof	.03	.16
J convertible	.05	.12
N with base trim	.05	.23
J coupe	.03	.21
N with uplevel trim	.04	.38
L	.07	.14
Average	.04	.20

Attachment C shows the range of luminance levels for human vision and the zones of photopic, mesopic, and scotopic vision. Adaptation occurs when the luminance changes from one zone to another. The levels with the interior lights both off and on within the mesopic ("rod and cone") zone." [Attachments B and C are on file with the application in NHTSA's Docket Room.]

GM supported its application for inconsequential noncompliance with the following.

"1. Driving in total darkness, with no lights from other vehicles, no street lighting, and no light from buildings is the worst case, but it is also infrequent. Daylight is half of the day, but only 18.3% of vehicle trips and 20.2% of vehicle miles occur from 7:00 p.m. through 6:00 a.m. (From 1990 NPTS Databook, Nationwide Personal Transportation Survey, vol. II, figure 5.27). Based on 1993 data from the Federal Highway Administration, 1.045 billion of the annual 1.623 billion passenger car miles traveled were on "urban" roads, streets, and highways (from Highway Statistics 1993, Table VM–1).

2. As measured in GM's test, the change in luminance level that a driver would experience is small and, significantly, does not cross one of the adaptation boundaries.

3. Glare is an undesirable, but inevitable feature of night-time driving and drivers can successfully adapt to it. A recent report for NHTSA by Jan Theeuwes and John Alferdinck, *The Relationship Between Discomfort Glare and Driving Behavior*, DOT HS 808 452 (1996), shows that adaptation includes driving more slowly and investing more effort. Major sources of glare include the lights of other vehicles, street lights, and lights on building, parking lots, signs, and billboards adjoining streets and highways. The headlights of a nearby vehicle can easily be many times brighter than any of these interior lights.

4. On some of these cars, the only affected lights are in the footwells, below the instrument panel. While they are in the area covered by the standard, they are not in the driver's forward field of view and, as a matter of common sense, are less likely to be a source of troublesome glare. On other cars, map lights mounted in the rearview mirror assembly are involved. These lights point downward and are also much less likely to be a source of troublesome glare.

5. This condition cannot occur in 90.5% of the cars. Field data shows that the actual incidence is much lower.

6. Many drivers will be alerted to the presence of a problem because they will notice that the interior lights are not on when they enter their cars. Because the absence of interior lights when entering the cars at night is an inconvenience, drivers will be likely to return the cars to dealers for repair. Many cars are likely to be repaired before the driver experiences illumination of the interior lights during night-time driving.

7. GM has received no reports associating this condition with any kind of an accident or injury.

To reach the worst case condition, several low probability events have to coincide—the car has to be one of the 9.5% potentially affected, the car has to be driven at night, the illumination from external sources must be unusually low, and the condition must manifest itself. Further, even if this series of unlikely events occurs, data indicate the driver should be able to successfully adapt to the increased light, as he/she does on a regular basis to other sources of light. Therefore, because the expected coincidence of these events is extremely low and the effects on the driver are minimal; this condition is inconsequential to motor vehicle safety."

No comments were received on the application.

The purpose of S5.3.5 is to ensure the accessibility and visibility of motor vehicle controls and displays and to facilitate their selection under daylight and nighttime conditions, in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls. The operator of a GM vehicle that is noncompliant with FMVSS No. 101 in the manner described is likely to be confronted

unexpectedly with activation of the interior lamps while the vehicle is in motion. This would be likely to divert the driver's attention from the driving task. It would also create a level of interior glare for up to 30 minutes that would not otherwise occur. Compliance with S5.3.5 should remove interior glare from the driver's forward field of view.

GM conducted tests to compare the light on the windshield surface with the interior lights on and off. These tests were performed in a darkened laboratory with a black surface 10 feet ahead of the test vehicle. This is a simulation of the worst-case scenario for the increased glare, as there would be no other light sources from buildings, other cars, or street lamps. The contrast between the relatively dark surroundings and the interior lights would provide the most glare discomfort. GM found that when the interior lights were turned on, the luminance values ranged from two to over nine times greater (an average of five times greater) than when the interior lights were turned off. In the agency's opinion, this is excessive glare for many low-light driving scenarios and is the type of situation NHTSA sought to preclude with S5.3.5.

To justify granting its application, GM sought to persuade the agency that the likelihood of the noncompliance occurring is, in fact, small. For the noncompliance to happen, it argued that the vehicle must be one of the 9.5 percent that is affected, that it must be driven at night, that the light from external sources must be "unusually low," and that the condition must manifest itself. In GM's view, the probability of this series of events occurring is low.

NHTSA disagrees with this rationale, in part because it does not believe that the light from external sources must be "unusually low" for there to be an effect. NHTSA staff conducted a few informal tests using their own vehicles. Uniformly, when these individuals turned on the interior dome and map lights during night time driving, they found the light to be an impairment to their vision. These tests were conducted in relatively unlit areas as well as areas with some ambient light from street lamps and buildings. In all cases, the impediment to vision was significant. Further, to determine whether the conclusions made performing the informal tests would also be reached with the subject vehicles, agency staff examined a 1996 Chevrolet Cavalier. The vehicle was examined in a garage with moderate ambient light. This examination reinforced the agency's view that the noncompliance is detrimental to safety. The dome light and the two map lights (integrated with the dome light) not only created distracting reflections in the windshield, but also on the side windows and the interior rear view mirror. The tests that GM conducted only considered the light on a piece of paper attached to the windshield. This measurement does not consider these other reflections, which are distracting in nature. Based on NHTSA's judgment, the noncompliance could hinder vision in areas with ambient light that is more than "unusually low." NHTSA has concluded that a safety problem could occur as a result of the noncompliance in areas with higher glare from exterior light sources.

GM also believes that even if the interior lights turn on, the driver will be able to adapt successfully to the glare created, specifically arguing that the change in luminance level is small and does not cross one of the "adaptation boundaries." Attachment C of GM's petition contains a table showing three consecutive ranges of luminance values: photopic, mesopic, and scotopic. GM states that visual adaptation must occur when the luminance values go from one level to the next. It therefore asserts that, because the luminance values attained in its tests are all within the mesopic level, there will be an insignificant effect on the driver's vision.

NHTSA disagrees with this rationale as well. When comparing the luminance values a driver would experience with the interior lights both off and on, GM found a maximum increase of 900 percent with the lights on, with an average increase of 500 percent. While the range of the luminance values may remain within one of the adaptation levels, it is NHTSA's judgment that increasing the interior light in a vehicle by nine times will have a significant effect on the driver's vision. With such a large increase in glare, it could be difficult to operate a vehicle at night. This situation could be further exacerbated if an inexperienced or elderly driver were operating the vehicle. Inexperienced drivers may not yet be familiar with adapting to commonly-encountered glare, and the elderly may have lost their ability to cope with it effectively.

Finally, GM states that glare, although undesirable, is inevitable and drivers can successfully adapt to it. It cites in support a study by Jan Theeuwes and John Alferdinck, The Relationship Between Discomfort Glare and Driving Behavior, DOT HS 808 452 (1996). However, the authors of the study analyzed the effects of glare from sources such as other vehicles, building, signs, et al, on driving habits, and concluded that, to adapt to glare, drivers went more slowly and invested more effort. A study which is more on point was conducted by the University of Michigan Transportation Research Institute (UMTRI) in 1985 (UMTRI–85–31). This study measured the effects of various vehicle interior lighting systems on driver sight distance at night, and found that turning on the interior lighting systems of a vehicle could reduce forward sight distance by as much as 20 percent. Further, the effect was much more pronounced for rearward visibility, though the test data obtained couldn't be translated into rearward visibility distance. UMTRI did conclude that objects behind the test subjects, when viewed in the rearview mirror, are much more likely not to be visible when the interior lights are illuminated. This study shows that drivers will not completely adapt to the increased light created by interior lights during nighttime driving.

GM also stated that oncoming headlamps can be "many times brighter than any of these interior lights." NHTSA agrees that, to adapt to the glare, the drivers would naturally go more slowly and invest more effort in the task of driving because their vision is impaired. However, the agency sees inconsistencies when comparing the adaptation to the interior lights of the subject vehicles and to the external light sources mentioned in the study. The external light sources such as those from oncoming cars and street lights are inevitable because they provide necessary illumination of surroundings. A driver must learn to adapt to these forms of glare because they are very common. Conversely, the interior light illumination during night driving is not common. Since it is not the practice of drivers to drive at night with their interior lights on, it is unlikely that the driver of one of GM's noncompliant vehicles has ever had to cope with such a situation. Further, the nature of external light sources is that they are fairly transient. Because a vehicle is moving, the external glare is usually not constant, but a light source within the vehicle would provide constant internal glare, and up to 30 minutes of it.

In summary, NHTSA does not agree with GM's argument that the noncompliance reflects a rare problem that will create insignificant problems should it arise. Of the approximately 20,000 vehicles that have not yet been repaired, some will inevitably suffer this noncompliance at night. Moreover, NHTSA believes that this noncompliance has the potential to create an unsafe situation which is

consequential to motor vehicle safety even in conditions where there are external light sources.

Accordingly, for the reasons stated above, GM has not met its burden of persuasion that the noncompliance herein described is inconsequential to safety and its application is denied.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: November 21, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–31286 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3148]

Nissan Motor Corporation, U.S.A.; Denial of Application for Decision of Inconsequential Noncompliance

Nissan Motor Manufacturing Corporation USA, (Nissan) determined that certain Nissan Sentra 4-door sedans fail to comply with the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices and Associated Equipment," and filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Information Report." Nissan also applied to be exempted from the notification and remedy requirements of 49 U.S.C. 30118(d) and 30120(h) on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of an application was published on December 18, 1996, and an opportunity afforded for comment (61 FR 66744). This notice denies the application.

Paragraph S5.1.1 of Standard No. 108 requires that each motor vehicle shall be equipped with certain lamps and reflective devices designed to conform to applicable SAE Standards or Recommended Practices referenced in the Standard. The stop lamp function of a rear combination lamp assembly must meet the photometric performance requirements of SAE J586 FEB84. To determine photometric performance, measurements of light intensity are taken at 19 test points in a geometric grid. The grid is further broken down into five separate zones. The measured test point values that are located within a zone are added together to provide a zone total which must meet a minimum value.

Based on its tests, Nissan believes that the taillamp function of the combination lamps in certain Nissan Sentra 4-door sedans meet or exceed all test criteria and is in compliance with Standard No. 108. Further, the stop lamp function of certain rear combination lamp assemblies in those vehicles meet the requirements in Zones 1, 2, 4, and 5.

However, in certain lamps, the minimum requirements in Zone 3 for the stop lamp function were not met. The photometric results for the tested lamps of the Sentra 4-door sedan stop lamp function in Zone 3 are discussed in the decision portion of this notice, and are set forth in Nissan's application, which has been filed in the National Highway Traffic Safety Administration Docket Section.

According to Nissan, from December 11, 1995, through September 1996, the company manufactured approximately 65,000 1996 and 1997 model year Nissan Sentra 4-door sedans with combination tail/stop lamp assemblies that it determined did not comply with the stop lamp photometric requirements of SAE J586 FEB84 as incorporated by reference in Standard No. 108. J586 FEB84 defines 19 test points for stop lamps that must emit a specified range of light intensity. These test points are grouped into five zones and their intensities are summed to arrive at a total within each zone. Each zone's total has a required value, measured in candela, that must be met, with none of the test points falling below 60 per cent of its specified value.

Nissan stated that it discovered that the total candela of the five test points measured across Zone 3 in some lamps that it tested did not meet the required minimum of 380 candela for Zone 3. All other zone totals were within Standard No. 108's specifications for the stop lamp function, and all the Standard's criteria were met for the taillamp function.

Nissan supported its application for inconsequential noncompliance with the following:

> Nissan [we] believe the failure of the stop lamp portion of the rear combination lamp assembly to meet photometric requirements in one of five zones is inconsequential to motor vehicle safety for the following reasons:
>
> A NHTSA sponsored study titled "Driver Perception of Just Noticeable Difference[s] in [of Automotive] Signal Lamp Intensities" [DOT HS 808 209, September 1994] demonstrated a change in luminous intensity of 25 percent or less is not noticeable by most drivers. Since all of the stop lamps Nissan tested, except one, were closer to the standard than 25 percent, the noncompliance is likely undetectable to the human eye. The single worst case sample was 25.5 percent below the standard in zone 3 but exceeds the photometric requirements of zones one, two, four, and five and meets or exceeds all other FMVSS and SAE requirements.
>
> The stop lamp is more than five times brighter than the tail lamp. A following driver will have no problem detecting the moment of brake application.
>
> The two combination lamp assemblies are supplemented by a Center High Mounted Stop Lamp (CHMSL). The Sentra's CHMSL illuminates at over two times the minimum standard to provide not only strong warning of brake application to the following driver, but also vehicles further back in the traffic flow. Nissan believes the supplementary benefit of the bright CHMSL helps to compensate for any diminished stop lamp performance.
>
> The combination tail/stop lamp assemblies are mounted high in the vehicle's body near the beltline. This mounting location provides excellent line of sight visibility to a following driver.
>
> Nissan is not aware of any accidents, injuries, owner complaints or field reports related to this condition.

In similar situations NHTSA has granted the applications of various other petitioners. See, for example, 61 **Federal Register**, January 22, 1996 (petition by General Motors); 56 **Federal Register** 59971, November 26, 1991 (petition by Subaru of America); and 55 **Federal Register** 37601, September 12, 1990 (petition by Hella Inc).

No comments were received on the application.

NHTSA has carefully considered Nissan's arguments and the facts in this case. It is reassuring to have Nissan affirm that, in spite of the photometric failures, the stop lamp "is more than five times brighter than the tail lamp," as is the Sentra's mandated center highmounted stop lamp. However, this is no less than what Standard No. 108 already requires for the pair of stop lamps. Because the pair of stop lamps are mounted within the range of height from the road specified by Standard No. 108, the fact that they may be mounted near the beltline is regarded as a neutral safety factor for purposes of this discussion. In the final analysis, it appears to NHTSA that the company has understated the magnitude of the noncompliance in comparison with the data it has submitted, and that the severity of the noncompliance reflects flaws in Nissan's design and manufacturing process that cannot be overlooked regardless of compensating factors such as the location of other stop lamps and the conformance of the stop lamps in question with the other four zonal requirements.

The agency deems it relevant to its decision to deny Nissan's application to discuss briefly the accommodation that Standard No. 108 already makes for manufacturers by imposing less than the absolute performance requirements established by other Federal motor vehicle safety standards. As Nissan indicates, the first step in determining the photometric compliance of a lighting device with Standard No. 108 is to measure the candela at a number of discrete test points, and then compare them with the values (minimum or maximum) established by the standard. When NHTSA initially proposed in late 1966 that lamps "comply" with Standard No. 108, industry represented that it could not manufacture every lamp to meet every single test point without a substantial cost penalty unjustified by safety. NHTSA accepted this argument. In adopting Standard No. 108, the agency specified that lamps be "designed to comply" with applicable photometric specifications. On a number of occasions since, NHTSA has stated that it will not consider a lamp to be noncompliant if its failure to meet a test point is random and occasional. Thus, historically, there has never been an absolute requirement that every motor vehicle lighting device must meet every single photometric test point in order to comply with Standard No. 108.

NHTSA further accommodated the industry when Standard No. 108 adopted the SAE's zonal system as an alternative method of determining photometric compliance of certain lamps. Under this system, individual test points are grouped into a "zone" with nearby test points. The values are measured and added. If the sum equals or exceeds the total of the minimum required for all test points within the zone, the zone is judged to comply even if one or two of its test points fail to meet its individual candela specification, (as long as the failure is not less than 60 percent of the prescribed value.) Thus, an individual test point within a zone may fail by up to 40 percent.

Nissan asks that NHTSA go even further in accepting a lower level of performance, citing three instances in which it believes that the agency has granted inconsequentiality applications where failures of luminous intensity of less than 25 percent have occurred, the threshold at which it believes differences in light output become noticeable.

The agency has reviewed the cases cited by Nissan (GM, Subaru, Hella) in order to judge whether they afford a precedent for granting this inconsequentiality application. NHTSA has concluded that none of the cases are on point, and, further, that the agency should clarify the apparent misunderstanding of its comments regarding 25 percent luminous intensity differences.

GM determined that turn signal lamps on Buick Century passenger cars failed to meet Zone 3 by an average of 10 percent among the 17 lamps tested while the three compliant zones exceeded the light intensity requirements by at least 20 percent. Because the failures averaged far less than 25 percent, GM argued that they would not be detectable by the naked eye. However, NHTSA granted the application on the basis that, overall, the performance of the lamps would be consistent with that of lamps meeting the minimum requirements in every zone. In the case of Nissan, the magnitude of failure was considerably greater; a number of individual test point failures exceed 25 percent, up to 35.6 percent below the minimum requirement. Even using the zonal method, 18 of 34 zones tested fail to meet Standard No. 108, one zone failing by up to 25.5 percent.

Subaru discovered that amber front side reflex reflectors on some of its vehicles failed to meet Standard No. 108's performance requirements. Subaru contended that the luminance transmittance failures were all less than 20 percent of the minimum values specified by the standard. According to demonstrations that it had conducted, observers could not differentiate between the reflected light of complying and noncomplying reflectors at distances of 30-, 60, and 100 meters. NHTSA accepted this argument and granted the application. NHTSA notes that, in this instance, the inconsequential effect of the noncompliance was demonstrated by tests with observers, and that the failures were at individual test points and not zones, as in the Nissan noncompliance. Further, conformance of stop lamps is demonstrably more important to motor vehicle safety than that of front side reflex reflectors.

In the Hella case, NHTSA testing had discovered that eight of 18 combination stop/taillamps had exceeded the *maximum* candela permissible at certain test points for the taillamp function. Hella argued that none of its failures exceeded the maximum intensity by more than 20 percent. NHTSA granted the application on the basis that real-world voltages were typically lower than test voltages, and that any excessive candela values would be reduced upon installation and even further reduced as the lamp aged. In other words, the probability of the noncompliant lamps contributing to glare was reduced in the real world because, as installed and used, their noncompliant maxima may have been reduced to a level of near conformance. Again, the failure was small and was for test point failures rather than zone failures. The actual effect of real world voltages on the Nissan lamps is not known, but is of little consequence because, except for vehicle voltage, the effect of all external events such as dirt and age is to lower the lamp's intensity. This makes a dim stop lamp an even greater risk.

As stated, NHTSA wishes to clarify its occasional statements that differences in light output do not become noticeable until there is a differential of 25 percent between the light sources being compared. This language was based on a study conducted by NHTSA titled "Driver Perception of Just Noticeable Differences of Automotive Signal Lamps" (DOT HS808209). In outlining its rationale, Nissan seems to misunderstand the research done on "just noticeable differences" (JND). First, the research on JND is based on individuals looking at lamps from a single vantage point in front of the lamps, that is, comparing intensities of single test points.

It is not valid to use the JND justification for judging the effect of zonal intensity failures. Drivers do not look at zones when they observe lamps, they look at the lamp from very narrow angles based on the distance between their eyes and the distance to the lamp. Using the JND justification on zones would imply that drivers would be looking at lamps from all the test points in the zone simultaneously and somehow integrating the numerous intensities into some false representation of how intense the lamp should be. This is simply not the case. For this reason, the JND argument is not applicable to zone failures.

Because it is the central portion, Zone 3 is the most critical area of the stop lamp. It is aimed directly at the following traffic. With respect to Nissan's noncompliance, 104 of the 170 test points (the total number of test points from the group of lamps tested) in Zone 3 did not meet the minimum requirements. This shows that the noncompliances are very specific to one particular zone. It also suggests an apparent failure of quality control procedures rather than random test point noncompliances throughout all five zones. Occasional random noncompliances are to be expected in this very complicated design and manufacturing process. It is for this reason that the "designed to comply" provision is contained in the lighting standard. Further, NHTSA has always interpreted the "designed to comply" requirement to include well-defined quality control procedures.

On the vehicles that NHTSA tested, fourteen test points failed by more than 25 percent, with the worst case test point being over 35 percent. When using the zone compliance measurement, 16 out of the 34 zones tested failed to meet the minimum requirements, one zone failing the zone total by slightly over 25 percent. Again, the agency believes that these are not random, occasional failures of the type that NHTSA sometimes encounters in the course of its compliance testing. Instead, the pervasiveness of the failures is evidence of flaws in Nissan's design and manufacturing process.

To further support granting its application, Nissan staff brought two identical Sentras equipped with noncomplying lamps for NHTSA staff to examine. The stop lamps on these vehicles were examined both in a garage which was moderately lighted and outside in daylight where the skies were overcast. Nissan performed photometric testing on each vehicle before they were examined and found that on one vehicle, the left and right stop lamps produced a sum of 366 and 293 candela in Zone 3, respectively. On the other vehicle, the left and right stop lamps produced a sum of 384 and 330 candela in Zone 3, respectively. As previously stated, the required minimum for Zone 3 is 380 candela. NHTSA staff examined the vehicles from a number of different distances and angles for approximately five minutes in each setting.

Based on this examination, NHTSA staff did not see a stark difference between any of the stop lamps, although most of the staff members could determine that the lamp with the Zone 3 measurements of 293 candela was the dimmest. However, this type of examination does not convince NHTSA that the noncompliance is inconsequential to safety. In the real world, drivers following one of the subject vehicles would not always have the luxury of intently examining the vehicles from a number of angles for a long period of time. They would, in many cases, have to make split second judgments as to whether the vehicle in front of them has its brake lamps illuminated.

Through crash data analysis, NHTSA has found that many rear end crashes occur as a result of a driver's inattention to the area ahead of the vehicle. Drivers may be operating the radio, using a cellular phone, or any number of non-driving related activities. To see the vehicles in front of them, they must often rely on their peripheral vision. In these situations, it may not be readily apparent that one of the subject vehicles has its stop lamps illuminated. On the subject vehicles, even the stop lamps which comply with the minimum requirement for Zone 3, do so by a narrow margin. The worst failure among the noncompliant lamps was over 25 percent below the minimum for Zone 3. Because of this, the noncompliance has the potential to confuse following drivers as to whether it is a stop lamp or a tail lamp which they are seeing. In an emergency situation, when drivers compare the subject lamps with other nearby stop lamps or with their memory of a stop lamp, they may not make the correct judgment quickly enough. In certain situations, a fraction of a second may be all the time the driver has to make the necessary crash avoidance maneuver. This may not be ample time for the driver to discern whether the lamp is a tail lamp or a stop lamp. It is this added level of risk associated with these vehicles that must drive a decision regarding safety consequences.

This concern about risk of incorrect identification is supported by a 1986 study sponsored by NHTSA and conducted by the University of Michigan Transportation Research Institute (UMTRI–86–28). In this study, test subjects were presented with two lamps intended to simulate a U.S. tail lighting system. These lamps were illuminated to 18, 40, 60, 80, and 100 candela. After the lamps were illuminated to one of these levels, the test subject was asked to quickly determine, only by the brightness of the lamps, whether they were signaling braking or presence (vehicle's taillamps on). When the lamps were illuminated to 80 candela, the test subjects identified the lamps as signaling braking 90 percent of the time. When they were illuminated to 60 candela, the test subjects identified the lamps as signaling braking 74 percent of the time. Finally, when the lamps were illuminated to 40 candela, the test subjects identified the lamps as signaling braking only 39 percent of the time. Of the five test points in Zone 3, the standard requires that three have a minimum value of 80 candela and two have minimum value of 70 candela. Also, according to Nissan's test data submitted with its application, the lowest value obtained at any test points on the subject vehicles was 45.1 candela. These data lead NHTSA to believe that the Nissan noncompliance could lead drivers following the subject vehicles to mistake the stop lamps for tail lamps. Thus, the risk of being in a crash would be higher for the Nissan vehicles compared to vehicles with complying lamps.

In consideration of the foregoing, it is hereby found that the applicant has failed to meet its burden of persuasion that the noncompliance herein described is inconsequential to safety, and its application is denied.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50)

Issued on: November 21, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–31284 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–477 (Sub–No. 3X)]

Owensville Terminal Company, Inc.—Abandonment Exemption—in Edwards and White Counties, IL and Gibson and Posey Counties, IN

On November 7, 1997, Owensville Terminal Company, Inc. (OTC) filed with the Surface Transportation Board (Board) a petition [1] under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Browns-Poseyville line, between milepost 205.0 at or near Browns, IL, and milepost 227.5 near Poseyville, IN, a distance of 22.5 miles in Edwards and White Counties, IL, and Gibson and Posey Counties, IN. The line traverses U.S. Postal Service Zip Codes 62818, 62844, 47616, and 47633. The line includes the stations of Browns, milepost 205.0; Grayville, milepost 213.5; Griffin, milepost 219.9; and Stewartsville, milepost 225.4.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 25, 1998.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 18, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–477 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street N.W., Washington, DC 20423–0001, and (2) Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: November 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31223 Filed 11–26–97; 8:45 am]

BILLING CODE 4915–00–P

[1] This petition is a refiling of OTC's April 15, 1997 submission in STB Docket No. AB–477 (Sub-No. 1X). On August 1, 1997, the Board denied the petition without prejudice to OTC's filing an abandonment application. OTC did not adhere to the Board's directive in the August 1 decision in filing this petition for exemption. Consequently, although the Board is publishing notice of the filing of the instant petition based on representations made therein, OTC is advised that the petition may be rejected if opposition is received.

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub.L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund) within the Department of the Treasury is soliciting comments concerning the Bank Enterprise Award (BEA) Program.

DATES: Written comments should be received on or before January 27, 1998 to be assured of consideration.

ADDRESSES: Direct all comments to Jeannine Jacokes, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, Fax Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, D.C. 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Bank Enterprise Award Program.

OMB Number: 1505–0153.

Abstract: The purpose of the Community Development Banking and Financial Institutions Act of 1994 (Act) was to create the Fund to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). The Fund's BEA Program helps achieve this purpose through an incentive system for insured depository institutions to, among other things, increase their lending to and investment in CDFIs by rewarding participating institutions with awards.

Current Actions: The Fund is in the process of making minor technical revisions to its regulations (12 CFR part 1806), application and final report, in order to publish a Notice of Funds Availability (NOFA) for the third round of the BEA Program.

Type of review: Extension with change.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 70–75.

Estimated Time Per Respondent: Application: 10; Final Report: 7.

Estimated Total Annual Burden Hours: 1,240.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 1834a, 4701, 4704, 4713; 12 CFR part 1806.

Dated: November 28, 1997.

Maurice A. Jones,

Acting Deputy Director.

[FR Doc. 97–31285 Filed 11–26–97; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 18, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1130.

Form Number: IRS Form 8816.
Type of Review: Extension.
Title: Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
Description: Form 8816 is used by insurance companies claiming an additional deduction under IRC section 847 to reconcile their special loss discount and special estimated tax payments, and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 3,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 3,000.

Recordkeeping	6 hr., 42 min.
Learning about the law or the form.	53 min.
Preparing, copying, assembling, and sending the form to the IRS.	1 hr., 2 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 25,890 hours.
OMB Number: 1545–1151.
Form Number: IRS Form 8818.
Type of Review: Extension.
Title: Optional Form to Record Redemption of Series EE—U.S. Savings Bonds Issued After 1989.
Description: If an individual redeems U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds is excludable from income. The form can be used by the individual to keep a record of the bonds cashed so that he or she can claim the proper interest exclusion.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 25,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form	4 min.
Preparing the form	17 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 22,500 hours.
OMB Number: 1545–1288.
Form Number: IRS Form 8828.
Type of Review: Extension.
Title: Recapture of Federal Mortgage Subsidy.
Description: Form 8828 is needed to compute the section 143(m) tax on recapture of the Federal Subsidy from use of qualified mortgage bonds and mortgage credit certificates in cases where the financing is provided after 1990 and the home subject to the financing is sold during the first 9 years after financing was provided. IRS uses the information to determine that the proper amount of Federal subsidy is recaptured.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 1,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 4 hours.
Frequency of Response: Other (for year of sale of home).
Estimated Total Reporting/Recordkeeping Burden: 1,868 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–31163 Filed 11–26–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 19, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1554.
Form Number: IRS Form MTQ/941 and Schedule B (Form MTQ/941).
Type of Review: Revision.
Title: Montana Quarterly Tax Report/Employer's Quarterly Return (MTQ/941); and Employer's Record of Federal Tax Liability (Schedule B).
Description: Form MTQ/941 is used by employers to report payments made to employees subject to income and social security and Medicare taxes and the amounts of these taxes. The state of Montana and the Simplified Tax and Wage Reporting Systems (STAWRS) have formed a partnership to explore the potential or combining Montana's quarterly reports for state withholding, Old Fund Liability tax, and Unemployment Insurance with the Employer's Quarterly Federal Tax Return (Form 941). One form will satisfy both state and federal requirements and will make employer filing faster and easier.
Respondents: Business or other for-profit, Individual or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 175.
Estimated Burden Hours Per Respondent/Recordkeeper:

	MTQ/941†	Schedule B
Recordkeeping.	9 hr., 34 min	2 hr., 53 min.
Learning about the law or the form.	18 min	6 min.
Preparing the form.	28 min	9 min.

Frequency of Response: Quarterly.
Estimated Total Reporting/Recordkeeping Burden: 6,486 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–31164 Filed 11–26–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 21, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub.L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: New.
Form Number: IRS Form 8854.
Type of Review: New collection.
Title: Expatriation Information Statement.
Description: Internal Revenue Code (IRC) section 6039G and Notice 97–19 provide information reporting requirements for taxpayers who lose U.S. citizenship or cease to be taxed as U.S. lawful permanent residents. Form 8854 is used to report this information.
Respondents: Individual or households.
Estimated Number of Respondents/Recordkeepers: 11,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Part I	Parts I and II
Recordkeeping.	33 min	4 hr., 16 min.
Learning about the law or the form.	9 min	26 min.
Preparing the form.	37 min	3 hr., 46 min.
Copying, assembling, and sending the form to the IRS.	20 min	35 min.

Frequency of Response: Other (once).
Estimated Total Reporting/Recordkeeping Burden: 25,550 hours.
OMB Number: 1545–1447.
Regulation Project Number: CO–46–94 Final.
Type of Review: Extension.
Title: Losses on Small Business Stock.
Description: Records are required by the Service to verify that the taxpayer is entitled to a section 1244 loss. The records will be used to determine whether the stock qualifies as section 1244 stock.
Respondents: Individual or households, Business or other for-profit.
Estimated Number of Recordkeepers: 10,000.
Estimated Burden Hours Per Recordkeeper: 12 minutes.
Estimated Total Recordkeeping Burden: 2,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 97–31165 Filed 11–26–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

White House Conference Center; Meeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meeting.

SUMMARY: The agenda for the first meeting of the Commission to Study Capital Budgeting includes a discussion of organizational and process issues, including staffing requirements and the need for subcommittees; the work of the Commission, particularly the goals and objectives of the Commission, and the major issues and question requiring background research and evaluation; the schedule and location for the next and subsequent meetings of the Commission.

DATES: December 13, 1997.

TIME: 10:00 a.m. to 4:00 p.m.

ADDRESSES: White House Conference Center, Truman Room, 726 Jackson Place, N.W., Washington, D.C.

Meeting is open to the public. Limited seating capacity is available.

FOR FURTHER INFORMATION CONTACT: Maynard Comiez, Room 4449, Main Treasury, Washington, D.C. 20220, Telephone: (202) 622–2310.

Maynard Comiez,
Senior Economic Advisor/DFO.
[FR Doc. 97–31147 Filed 11–26–97; 8:45 am]
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Friday
November 28, 1997

Part II

Department of Energy

48 CFR Part 970
Acquisition Regulation: Department of Energy Management and Operating Contracts; Final Rule

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB–37

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) published a final rule amending the Department of Energy Acquisition Regulation (DEAR) to incorporate certain contract reform initiatives on June 27, 1997 (62 FR 34842). Among the initiatives is the implementation of DOE's diversity policy, which requires that contractors take appropriate action to develop and meet diversity performance goals as part of their business operations. DOE is adopting a diversity contract clause to ensure uniform implementation of this policy in its management and operating contracts.

EFFECTIVE DATE: December 29, 1997.

FOR FURTHER INFORMATION CONTACT: Gloria B. Smith, U.S. Department of Energy, Office of Economic Impact and Diversity, 1000 Independence Avenue, S.W., Washington, DC 20585–0901, (202) 586–8383, or Romulo L. Diaz, Jr., Esq., U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, S.W., Washington, DC 20585–0103, (202) 586–2902.

SUPPLEMENTARY INFORMATION:

I. Introduction

In its Strategic Plan for Diversity, which was published in 1994, the Department established goals for enhanced partnerships with small, minority and women-owned businesses; minority educational institutions (i.e., Historically Black Colleges and Universities; Hispanic serving educational initiatives; and Native American Institutions); employees; and communities. The Department's diversity goals were included in amendments to the DEAR published on June 27, 1997 (62 FR 34842, 34864, new § 970.2601(b)). The Department has articulated on numerous occasions its intent to evaluate contractor performance consistent with DOE policies and authorities as they may be interpreted and implemented in light of *Adarand Constructors Inc.* v. *Peña*, 115 S. Ct. 2097 (1995).

Notice of the Department's proposal to adopt a clause to be added at 48 CFR § 970.5204–81 for inclusion in all management and operating contracts was published for public comment in the **Federal Register** at 62 FR 44350 on August 20, 1997. Guidance for the preparation of a diversity plan by a for-profit contractor—originally developed for use with DOE's "Sample Contract Provisions for Department of Energy Performance Based Management Contracts (Model Contract) with For-Profit Contractors"—was reproduced for informational purposes as an appendix to the Department's proposal. (62 FR 44351) A public hearing on the proposed rulemaking was scheduled for September 4, 1997, and the public comment period closed on September 19, 1997. No comments were received on the proposal, nor were there any requests to speak at the public hearing. Accordingly, in order to implement the Department's diversity policy found at 48 CFR 970.2601(b), the final rule adopts without modification the clause previously proposed to be added at section 970.5204–81.

II. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Paperwork Reduction Act

DOE has determined that the clause requiring submission of a diversity plan by DOE contractors is necessary to implement the diversity policy enunciated at 48 CFR 970.2601(b). The information in the diversity plan, to be submitted initially upon award of a new contract and updated annually thereafter, will be used by DOE contracting officers to evaluate contractor performance and determine whether DOE's policy of developing innovative strategies to increase opportunities for small, minority and women-owned businesses and educational institutions is being advanced. Approximately 36 management and operating contractors will be subject to the diversity plan. The Department's best estimate is that the burden will average 40 hours per contractor; the total annual burden is estimated to be approximately 1440 hours.

Comments were solicited on the Department's need for this information in the proposed rule, whether the information would have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any other suggested methods for minimizing respondents' burden. No comments were received.

The Office of Management and Budget approved the diversity plan information collection on October 23, 1997, and assigned to it OMB Number 1910–4100. OMB approval for the information collection expires April 30, 1998.

An agency may not conduct or sponsor a collection of information unless the collection of information contains a currently valid OMB control number. 5 CFR 1320.5(b).

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR Part 1021, the Department has determined that today's regulatory action is categorically excluded from the need to prepare an environmental impact statement or an environmental assessment. Today's rule amends an existing rule without changing its environmental effect (Categorical Exemption A5).

D. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that rules be reviewed for any substantial direct effect on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this rulemaking will not have a substantial direct effect on the institutional interests or traditional functions of States.

E. Review Under Executive Order 12988

With regard to the review required by section 3(a) of Executive Order 12988, DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

F. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. §§ 601–612) requires that an agency prepare an initial regulatory flexibility analysis, and publish the analysis or a summary at the time of publication of general notice of proposed rulemaking for the rule. 5 U.S.C. § 603. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. § 605(b).

DOE certifies that requiring the inclusion of a clause in DOE contracts which requires the contractor to submit a plan that explains its approach and actions to promoting diversity, consistent with Departmental policy, would not have a significant economic impact on a substantial number of small entities. The diversity plan clause would be included in all DOE management and operating contracts, which historically have been cost reimbursement contracts. Thus, DOE believes that this rule will not have an adverse economic impact on any small entity.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The rule published today does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. § 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on November 21, 1997.

Federico Peña,

Secretary of Energy.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below:

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 162 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) and Sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

2. Subsection 970.2602–2 is amended by redesignating the current paragraph as paragraph (a), and by revising the title and adding a new paragraph (b) to read as follows:

970.2602–2 Contract clauses.

* * * * *

(b) The Contracting Officer shall insert the clause at 48 CFR (DEAR) 970.5204–81 Diversity Plan in management and operating contracts.

3. Subpart 970.52 is amended to add section 970.5204–81 to read as follows:

970.5204–81 Diversity Plan.

As prescribed in 48 CFR (DEAR) 970.2602–2(b), insert the following clause:

Diversity Plan

(December 1997)

The Contractor shall submit a Diversity Plan to the Contracting Officer for approval within 90 days after the effective date of this contract. The contractor shall submit an update to its Plan with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in Appendix __. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, and (5) economic development (including technology transfer).

[FR Doc. 97–31256 Filed 11–26–97; 8:45 am]

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Friday
November 28, 1997

Part III

Department of Education

34 CFR Parts 682 and 685
Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 682 and 685

RIN 1840–AC45

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations, 34 CFR Part 682, and the William D. Ford Federal Direct Loan (Direct Loan) Program regulations, 34 CFR Part 685, to modify requirements in these programs. These modifications eliminate certain differences in the requirements of the FFEL and Direct Loan programs and reduce burden.

DATES: Effective date: These regulations take effect July 1, 1998. However, affected parties do not have to comply with the information collection requirement in § 685.212 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB–3, room 3045, Washington, DC 20202–5346. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On September 25, 1997, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL Program and the Direct Loan Program in the **Federal Register** (62 FR 50462).

The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those changes can be found:

Sections 682.201 and 685.301 Students with Need of $200 or Less

The Secretary proposed to establish a provision that would allow, but not require, a school to choose not to originate a Direct Subsidized Loan for a student with a calculated need of $200 or less. (page 50462)

Sections 682.202(c)(5), 682.401(b)(10), and 685.202(c)(4) Refund of FFEL Program Origination Fees and Insurance Premiums and of Direct Loan Program Loan Fees

The Secretary proposed a new provision that would provide for the refund of the applicable portion of the origination fee, insurance premium, or loan fee that is attributable to that portion of loan funds that are returned by the school in order to comply with the Higher Education Act of 1965, as amended (HEA) or with applicable regulations. (page 50463)

Sections 682.402 and 685.212 Discharge of a Loan

The Secretary proposed to provide for the discharge of a borrower's or endorser's obligation to repay a Direct Consolidation Loan for a borrower who became totally and permanently disabled (or whose condition substantially deteriorated, so as to render the borrower totally and permanently disabled) after applying for all of the Consolidation Loan's underlying loans. The Secretary also proposed to clarify FFEL Program regulations that relate to this type of loan discharge. (page 50463)

Sections 682.604(g)(2) and 685.304(b)(2) Exit Counseling

The Secretary proposed to revise the FFEL and Direct Loan program regulations that govern exit counseling to allow a school to base the calculation of a student's "average anticipated monthly repayments" upon either the student's individual indebtedness or upon the average indebtedness of students who have obtained loans for attendance at that school or in the borrower's program of study. (page 50463)

These final regulations contain changes from the NPRM. These changes are fully explained in the Analysis of Comments and Changes elsewhere in this preamble.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, a number of parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—generally are not addressed.

General

Comments: The vast majority of commenters strongly supported the Secretary's efforts to eliminate the differences in the requirements of the FFEL and Direct Loan programs and to reduce burden. However, three commenters stated that the changes proposed in the NPRM provide a benefit to Direct Loan Program participants, but do not provide a significant benefit to FFEL Program participants. The commenters urged the Department to review other differences between the Direct Loan and FFEL Programs and to provide benefits for participants in both programs. One commenter proposed additional areas for the Secretary to consider changing to achieve better parity between the requirements in the two programs.

Discussion: The Secretary believes that FFEL Program participants will benefit from the changes made in these regulations. For example, the change to the exit counseling requirements will allow FFEL schools to use student-specific information to inform students of their anticipated average monthly repayments. This change will permit schools to use the most specific information they have in counseling borrowers. This change will also ensure that borrowers receive the best information available in planning for their repayment obligations. The other three revisions will clarify the FFEL Program regulations and ensure that a student borrowing in the FFEL Program receives the same terms, conditions, and benefits as a student borrowing in the Direct Loan Program.

In addition, a school that participates in both the FFEL and Direct Loan Programs will derive a significant benefit concerning its participation in both programs as a result of any change that reduces the differences between the programs. Elimination of these differences will make it easier for schools to administer the two programs and reduces the likelihood of confusion.

This final rule does not reduce benefits in the FFEL Program. Instead, the regulations help to implement § 455(a) of the HEA, which generally requires that the FFEL and Direct Loan Programs have the same terms, conditions, and benefits unless otherwise specified.

Changes: None.

Students With Need of $200 or Less (§§ 682.201 and 685.301)

Comments: Many commenters asked that a paragraph similar to the proposed § 685.301(a)(6) be included in FFEL Program regulations, to more clearly state a school's authority to choose not to certify a Stafford Loan of $200 or less and to include that amount in an unsubsidized Stafford Loan. One commenter also asked that the regulations for both programs specify that the authority to include the amount in an unsubsidized loan is subject to applicable annual and aggregate loan limits.

Discussion: The result of the changes made to §§ 682.201(a)(2) and 685.301 by these regulations will be essentially the same for schools participating in the FFEL Program as for schools participating in the Direct Loan Program. Schools in each program will be able to choose whether or not to certify or originate a subsidized loan for a student with need of $200 or less. However, fundamental differences between the two programs preclude making the regulatory text identical.

In the FFEL Program, the ability of a borrower to receive a subsidized loan of $200 or less rests, ultimately, with the lender, not with the school. For example, a school may certify a Stafford Loan for $100 but cannot compel a lender to actually make a loan of this amount to a borrower. However, in the Direct Loan Program, the school may act for the Department in determining whether or not a borrower may receive a subsidized amount of $200 or less.

As for the commenter's request to clarify that the amount of $200 or less that is provided to the student as an unsubsidized loan amount is subject to the applicable annual and aggregate loan limits, no change is needed. The FFEL and Direct Loan annual and aggregate unsubsidized loan limits include both subsidized and unsubsidized loan amounts. Therefore the unsubsidized amount has already been incorporated into the determination of the borrower's annual and aggregate amount. If a borrower is eligible to receive the $200 or less amount, and the school chooses not to certify or originate a subsidized loan for the amount, in all cases, the borrower remains eligible to receive those funds in an unsubsidized loan.

Changes: None.

Comments: Two commenters asked that paragraphs § 682.201(a)(2) (ii) and (iii) be removed, noting that the requirements in those paragraphs were specific to loans made under the Supplemental Loans for Students (SLS) Program, which has been repealed. The commenters contended that the provisions in the NPRM had made them unnecessary.

Another commenter expressed concern that, in many cases, the proposed revisions to § 682.201 would remove a dependent student's eligibility for a "base" unsubsidized Stafford Loan amount, as described at § 682.204(c). For example, the commenter noted that simply changing "SLS" to "unsubsidized Stafford" in § 682.201(a)(3) as proposed in the NPRM would provide that a dependent undergraduate student would be ineligible for the "base," as well as the "additional" unsubsidized amount unless the student's parents were precluded by exceptional circumstances from borrowing a PLUS loan.

Discussion: The Secretary agrees with the commenters. Paragraphs § 682.201(a)(2) (ii) and (iii) are no longer needed. Also, as noted by the commenter, § 682.201(a)(3) would appear to place a restriction upon a dependent undergraduate student's eligibility to receive unsubsidized Stafford loan funds. The Secretary did not intend to propose such a change, but intended only to clarify a school's authority to choose not to certify a subsidized Stafford loan for a student with need of $200 or less.

Changes: Section 682.201(a)(2) has been rewritten to reflect the elimination of paragraphs (ii) and (iii), and § 682.201(a)(3) is revised to more accurately describe a dependent undergraduate student's ability to receive a "base" unsubsidized Stafford loan amount.

Refund of FFEL Program Origination Fees and Insurance Premiums and of Direct Loan Program Loan Fees (§§ 682.202(c)(5), 682.209(i)(1), 682.401(b)(10), and 685.202(c)(4))

Comments: One commenter asked that the Secretary note in this Preamble that the purpose of the proposed changes to § 682.202(c)(5)(i) is to clarify that a refund of the origination fees must be credited to a student's loan balance by the lender even after 120 days, if there is an institutional delay in processing the refund.

Discussion: The commenter notes a valid example in which the refund of the origination fee would be credited against a borrower's loan balance. However, the revision to § 682.202(c)(5)(i) is intended to clarify the conditions under which the fee must be refunded, rather than the timeframe in which the refund must be made. The revision clarifies that the fee must be refunded by a credit against the borrower's loan balance in all cases in which the school is returning the funds to comply with its responsibilities under the HEA or applicable regulations.

This means that for a fee to be refunded by a credit under this provision, the return of funds by the school must be in keeping with the school's normal responsibilities under the HEA and applicable regulations, such as when a school is returning or repaying a title IV refund or overaward amount. The origination fee would *not* be refunded, however, if a school returned funds as a prepayment for the borrower later than 120 days after the date of the loan disbursement.

Changes: None.

Comments: Many commenters noted that language proposed in the NPRM for § 682.202 and § 682.401 would require a lender to refund to the borrower's account a portion of the origination fee and insurance premium any time that a payment was made by a borrower within 120 days of disbursement. The commenters noted that, under the proposed rules, if a borrower made a prepayment, an interest payment, or a scheduled payment on a loan within 120 days of disbursement, a lender would be required to return the applicable portion of the origination fee and insurance premium. These commenters stated that they believed that the corresponding Direct Loan Program regulations at § 685.202(c)(4) do not include this requirement.

The commenters requested that the same rule apply to the FFEL and Direct Loan Programs. The commenters also suggested that the return of a portion of the origination fee or insurance premium for a disbursement only be made when the funds are returned by a school to comply with the HEA or applicable regulations, and that a borrower returning funds within 120 days would only receive a refund of an origination fee or insurance premium when the borrower pays an amount equal to the full amount of the disbursement.

Discussion: As stated in the footnote in the preamble to the NPRM (62 FR at 50463), the changes to the FFEL regulations at § 682.202(c)(5) are a technical correction. The corresponding changes to §§ 682.401(b)(10)(vi)(B) and 682.209(i)(1) in this final rule are made as conforming changes to this technical correction.

The commenters are correct in noting that FFEL regulations require the return of a portion of the origination fee or

insurance premium when a borrower repays or returns funds within 120 days of disbursement. The commenters are not correct in claiming that a Direct Loan borrower must return the full amount of a disbursement in order to receive a refund of the loan fee. Though the language in the two regulations is slightly different, the substance of this requirement is the same in the FFEL and Direct Loan Programs. A borrower may repay or return a portion of a FFEL or Direct Loan Program disbursement to receive a partial refund of the fees.

However, the Secretary did not intend that a portion of an origination fee, insurance premium, or loan fee would be automatically refunded to a borrower within 120 days of disbursement if the borrower has a loan that is in repayment unless the borrower specifically instructs the Secretary or the lender, in writing, to use the payment to cancel all or a portion of the loan. If a borrower is in repayment and does not supply written instructions to the contrary, the payment made by the borrower is applied to the borrower's loan balance as provided at § 682.209(b) or § 685.211(a).

The regulatory language has been revised to reflect this clarification. Specifically, it has been revised to provide that, unless a borrower in repayment status instructs otherwise, any payment by that borrower is applied in accordance with regular payment application rules without any effect on the origination fee, insurance premium, or loan fee. The regulatory language has also been revised to provide that, unless a borrower who is *not* in a repayment status instructs otherwise, any payment by that borrower is applied to cancel all or a portion of the most recent disbursement, and correspondingly, all or a portion of the fees are returned.

For example, if a borrower who is in repayment status makes a regularly scheduled payment on a PLUS loan, within 120 days of the last disbursement, the fees are not refunded unless the borrower requests, in writing, that the funds be applied to cancel all or a portion of a recent disbursement. If the same borrower includes an amount greater than the scheduled payment amount with the regularly scheduled payment, the additional amount is applied to the borrower's loan balance under applicable regulations at § 682.209(b) or § 685.211(a). If the same borrower mails a check to the lender without including any instructions at all, the amount is applied to the borrower's loan balance under regulations at § 682.209(b) or § 685.211(a). In all cases, a borrower who is in repayment will not receive a proportional refund of fees unless the borrower requests in writing that the payment, or a portion of the payment, is intended to be applied to cancel all or a portion of a recent loan disbursement.

As another example, a borrower who has not yet entered repayment status on any loans is scheduled to make a payment of accruing interest on an unsubsidized loan within 120 days of disbursement. If the borrower *does not* provide written instructions concerning the application of the payment (whether on a payment coupon, in a written note, or in other written form), then a payment made within 120 days of disbursement is applied as a cancellation of part of the loan, and the appropriate portion of the fees is refunded to the borrower. If the borrower *does* provide written instruction that the payment is to be applied to the accruing interest (by including the return of a payment coupon, a written note, etc.), then the payment is applied to the interest, and no fees are refunded. However, if a borrower who is not in repayment status is making a payment to be applied to the accruing interest that includes an amount greater than the amount of the accrued interest, the excess amount is used to cancel a portion of the loan and the corresponding portion of the fees is refunded to the borrower.

Changes: The regulations have been revised to clarify that a borrower in repayment status on any loan must provide written instructions to prevent a payment made within 120 days of disbursement from being applied to the debt under the regular application of payment rules in § 682.209 or § 685.211. A borrower who is not in repayment status on any loan must provide written instructions to prevent a payment made within 120 days of a disbursement from being applied as a cancellation of all or part of the loan.

Also, a change is made in § 682.209(i)(1) to be consistent with corresponding changes at §§ 682.202(c)(5) and 682.401(b)(10)(vi)(B). Additional minor revisions have also been made to clarify this rule.

Comments: Several commenters suggested that the preamble for the final rule clarify that a lender in the FFEL Program may assume that any amount returned by a school was being returned pursuant to § 682.202(c)(5)(i) or § 682.401(b)(10)(vi)(B)(*1*) unless the school specifically advised otherwise. The commenters stated that this approach would provide for a more streamlined exchange of data between a school and a lender.

Discussion: The Secretary agrees with the commenters. Unless a school specifically states otherwise, a lender may assume that the amount being returned by the school is pursuant to § 682.202(c)(5)(i) or § 682.401(b)(10)(vi)(B)(*1*).

Changes: None.

Comments: One commenter asked that proposed § 682.202(c)(5)(iii) be expanded to provide more specific regulations regarding the standards for the non-delivery of loan funds that will require the return of an origination fee, similar to requirements provided in corresponding regulations for an insurance premium, at §§ 682.401(b)(10)(vi)(B)(*3*) and (*4*). The regulations for insurance premiums provide for different treatment of these fees depending on the disbursement method. Another commenter noted the same disparity, but recommended the opposite action, that §§ 682.401(b)(10)(vi)(B)(*3*) and (*4*) be revised to conform to the less specific language at § 682.202(c)(5)(iii).

Discussion: The Secretary agrees that § 682.202(c)(5)(iii) should be expanded to provide more details concerning when a loan will be considered to have not been delivered, thus requiring the return of the origination fee. This language was inadvertently omitted from previous regulations.

Changes: Section 682.202(c)(5) is revised to more closely correspond to provisions in paragraphs §§ 682.401(b)(10)(vi)(B)(*3*) and (*4*).

Discharge of a Loan (§§ 682.402 and 685.212)

Comments: Many commenters found the text of §§ 682.402 and 685.212 to be difficult to understand, and asked that it be revised to state the requirements more directly. Specifically, commenters proposed language to state more directly that a borrower is eligible for a total and permanent disability discharge if he or she meets the eligibility criteria for each of the underlying loans included in the consolidation loan. Another commenter supported the numbering and lettering format used, but believed that language currently in § 682.402(c) was clearer and suggested that this language be retained.

Discussion: The regulations must address the timing of the disability to the underlying loans, for the purpose of determining eligibility for the discharge of the consolidation loan, because the underlying loans no longer exist. Further, §§ 682.402(c)(1)(iii)(B) and 685.212(b)(3)(ii) provide criteria for the discharge of an underlying loan that was made under a federal education loan program other than the FFEL or Direct Loan Program. For example, the proposed requirements at §§ 682.402(c)(1)(iii)(B) and 685.212(b)(3)(ii) provide for the discharge of a consolidation loan that includes a Health Professions Student Loan (HPSL). Otherwise, to discharge a borrower's obligation to repay this consolidation loan, a separate determination would need to be made under regulations specific to the HPSL.

In light of the complexity of the issues, the Secretary believes that the regulations provide the best statement of the rules, but the Secretary will continue to review the language to determine if simpler wording can be developed.

Changes: Minor revisions are made to §§ 682.402(c)(1)(iii) and 685.212(b)(3) to simplify guidance and improve clarity.

Comments: Many commenters noted that changes proposed for §§ 682.402(c)(1)(iii)(A) and 685.212(b)(3)(i) require that *all* of a consolidation loan's underlying loans be individually dischargeable in order for a borrower to have an obligation to repay a consolidation loan discharged due to a total and permanent disability. These commenters strongly opposed this provision.

The commenters presented two options. The first, and the preferred option of most commenters, was to provide that a borrower's obligation to repay a consolidation loan be completely discharged if any one of the underlying loans meets the criteria for this type of discharge. Most commenters reasoned that this option would not result in a significant loss of funds to the government, given the limited number of borrowers who would meet these discharge criteria. One commenter reasoned that to do otherwise would punish a borrower for consolidating loans, would provide a disincentive for consolidating loans, would create significant servicing problems, and would be neither cost-efficient nor sensitive to the circumstances of a borrower.

The second option presented by commenters was to discharge a portion of a borrower's obligation to repay a consolidation loan that is consistent with the amount of the eligible underlying loan(s). The commenters noted that discharging a portion of a consolidation loan in this case would be consistent with rules providing a partial discharge of a consolidation loan based on a school's closure or a false certification. One commenter reasoned that the HEA does not preclude a partial discharge of a loan due to a total and permanent disability.

The commenters also noted that a borrower normally consolidates a loan as the result of financial difficulties, and in this case, consolidation would worsen rather than help a borrower's financial situation. Rather than becoming less likely to default, a borrower would become more likely to default.

Discussion: Under the proposed rule, (1) a borrower who receives a consolidation loan and then becomes totally and permanently disabled is eligible for a discharge of the obligation to repay the consolidation loan; and (2) a borrower who receives a number of loans and then becomes totally and permanently disabled, but consolidates those loans rather than applying for their discharge, is eligible for a discharge of the obligation to repay the consolidation loan.

In both cases noted above, a borrower is also considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan if the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled. In order to determine whether each loan included in a borrower's consolidation loan is eligible for a discharge, the borrower's circumstances related to each loan must be examined individually.

Conversely, a borrower *would not* be eligible for the discharge of the consolidation loan obligation if the borrower is not considered totally and permanently disabled for one or more of the underlying loans or if the borrower's condition did not substantially deteriorate after each underlying loan was made or after the consolidation loan itself was made. For example, a borrower who receives a number of loans, becomes totally and permanently disabled, but then becomes able to go back to school and receives another loan, and finally consolidates all of these loans is not eligible to receive a discharge of the obligation to repay the consolidation loan unless, for each underlying loan, (1) a condition existing at the time the borrower applied for the underlying loan substantially deteriorated so as to render the borrower totally and permanently disabled, or (2) the borrower had become disabled based on a condition that did not exist at the time the borrower applied for the underlying loan or the consolidation loan itself.

This proposed rule is not a change to current FFEL Program requirements. The requirements proposed in the NPRM, which specify that all of a borrower's underlying loans must qualify for a discharge in order for the consolidation loan to be discharged, are consistent with current § 682.402(c)(1), which provides that "the borrower must certify that the condition did not exist prior to the time the borrower applied for each of the underlying loans."

The commenters' proposal, that a borrower's obligation to repay a consolidation loan be completely discharged if one or more of its underlying loans meet the criteria, would enable a borrower to use the consolidation process to discharge an obligation to repay a loan that was not dischargeable prior to consolidation. For example, a borrower having one loan that is dischargeable and two subsequent loans that are not dischargeable, would be able to circumvent regulations and discharge all three loans by consolidating. The Secretary does not believe that borrowers who take out loans and do not qualify for a discharge of those loans should get a discharge merely by consolidating.

As to the commenters' second proposal for a partial discharge of a consolidation loan, the Secretary notes that partial discharge of a consolidation loan obligation is authorized due to a school closure or false certification because, in these cases, either the loan should not have been made or the borrower did not receive the benefit of the education or training for which the loan was intended. Thus, the basis for these types of discharge is the result of the school's action and beyond the control of the borrower, rather than related to the borrower's individual condition or actions.

Also, the Secretary notes that the school closure and false certification discharges were specifically designed to address past problems in the loan programs. They were enacted in 1992, but applied to loans made on or after January 1, 1986. The regulations provided for partial discharges of loans in these cases in recognition of the fact that borrowers whose loans were now subject to discharge may have taken out consolidation loans that also repaid other nondischargeable loans prior to 1992. The same type of situation does not exist in connection with the disability discharge. Thus, the Secretary declines to change the longstanding policy against partial discharges in these circumstances.

The commenter is correct that the proposed revision might provide a slight disincentive for consolidating loans. However, this disincentive would only affect borrowers who have loans which are eligible for discharge. It is in the borrower's best interest to have these loans discharged, rather than take out a new loan. Given the availability of

discharge information to borrowers, the Secretary estimates that the number of borrowers who will be affected by the proposed provision should be extremely small. That is, most borrowers will be aware of and will exercise their right to have the loan discharged due to a disability rather than consolidate the loan. However, the Secretary will continue to work to ensure that all borrowers are knowledgeable about their rights to both discharges and deferments. The Secretary intends to modify the language in the consolidation application materials to encourage applicants to review their discharge and deferment options prior to consolidating.

Changes: None.

Comments: Two commenters recommend removing the proposed requirements at §§ 682.402(c)(1)(iii)(C) and 685.212(b)(3)(iii), stating that they are unnecessarily burdensome. These provisions would require a borrower to supply the disbursement dates of the underlying loans at the request of the lender or the Secretary in order to receive a discharge of his or her obligation to repay the consolidation loan. One commenter notes that in some cases, this requirement may impose a record retention period upon a borrower that is greater than the retention period required for a school, a lender, or a guaranty agency, and asks that, if the information is necessary, it be stored in the borrower's loan record at the time the consolidation loan is disbursed. The other commenter proposes that a borrower be allowed to certify that eligibility requirements have been met rather than requiring the borrower to document that each underlying loan in the consolidation loan is eligible for discharge.

Discussion: In order for the Secretary or a lender to determine whether a borrower's obligation to repay a loan may be discharged due to a total and permanent disability under § 682.402(c)(1)(ii) or § 685.212(b)(2), the Secretary or lender must consider the relationship between the date that the loan was disbursed and the date that the borrower became totally and permanently disabled. Without that information, no determination may be made, and the borrower's obligation may not be discharged.

The Secretary believes that the required information will likely be available through the National Student Loan Data System (NSLDS), and that the borrower will not need to supply information about the underlying loans unless the borrower disputes the NSLDS record. However, if the Secretary or lender cannot make a determination, it is in the borrower's best interest to have the opportunity to supply the information, to assure that his or her request for a discharge may be processed as quickly as possible. Moreover, it is unclear how a borrower's burden for providing the disbursement dates differs significantly from a borrower's burden in certifying that he or she qualifies for this type of discharge: the borrower must be aware of the disbursement dates in order to sign the certification.

Changes: None.

Comments: Many commenters noted that language in FFEL regulations requiring a borrower to provide information about underlying loans "if the lender does not possess that information" is not included in regulations for Direct Loans. Most commenters proposed that the language be added to Direct Loan regulations, for consistency. However, one commenter proposed that the language be removed from FFEL regulations, for both consistency and to ensure that lenders may make determinations based on the most accurate information.

Discussion: The proposed § 682.402(c)(1)(iii)(C) prevents a lender from requesting information that it already possesses and also clarifies that it is the responsibility of the borrower to provide the necessary documentation if the lender does not have the information needed to determine eligibility for the discharge. This is not a change from current FFEL requirements.

A similar provision is not included at § 685.212(b)(3)(iii) because it is not necessary for the Secretary to regulate internal agency processes. However, the Secretary does not intend to request this documentation from the borrower unless the information is not contained in the Secretary's records.

Changes: None.

Exit Counseling (§§ 682.604(g)(2) and 685.304(b)(2))

Comments: Fourteen commenters supported the flexibility that would be provided by the revisions proposed to the exit counseling requirements. Most noted that supplying individualized information to a borrower would allow the borrower to make a more informed choice of a repayment plan, but felt that the flexibility and simplification of the exit counseling rules better served the needs of schools and borrowers. These commenters noted that adequate individualized information was available to a borrower from the Direct Loan Servicer or from the FFEL Program lender.

Three commenters argued that allowing a Direct Loan school to base information that a school provides to a borrower during exit counseling upon an average indebtedness would not provide timely or adequate information for a Direct Loan borrower to select a repayment plan or to request a deferment or forbearance. One of these commenters noted that the average indebtedness for students at a school or in a program may bear little relation to an individual borrower's loan balance. Two of these commenters recommended that the current requirement for individualized information be maintained in the Direct Loan Program and that the FFEL Program regulations be amended to require the use of individualized information for exit counseling.

One of these two commenters also recommended that this individualized information be provided to a borrower on an on-going basis. For example, the commenter reasoned that individualized information about a borrower's debt should be available each time a borrower considers applying for a loan, so that the borrower could make an informed decision. The third commenter recommended that the Secretary work to provide easy access to the individualized information to schools, and when that has been accomplished, to require a school to provide counseling based on this individualized information.

Discussion: The Secretary agrees with the commenters that it is important for borrowers to receive individualized information regarding their debt. However, the Secretary notes that the HEA only requires the dissemination of average information during exit counseling, and that individualized information is readily available to borrowers from a number of sources. Therefore, the exit counseling session may not be the most efficient method of providing this information.

In the Direct Loan Program, the Direct Loan Servicing Center provides specific repayment information to borrowers during the grace period. This information is mailed to borrowers along with documents they need to select a repayment plan. A borrower may also call the Direct Loan Servicer's toll-free telephone number and request information regarding the repayment amounts for that borrower under each of the Direct Loan repayment plans. If a borrower later decides that a different repayment plan better suits the borrower's needs, the borrower can generally change to another plan at any time.

Also, § 685.304(b)(2) (ii) and (iii) require schools to review available repayment options with a borrower and to provide the borrower with options concerning debt-management strategies. As was noted in the NPRM, to comply with § 685.304(b)(2) (ii) and (iii), a school that chooses not to provide the individualized repayment information to a student is expected to advise the student of the availability of the individualized repayment information at the student's Direct Loan servicer and of its usefulness in selecting the most appropriate repayment plan.

Further, the Department expects to begin to allow Direct Loan borrowers electronic access to their individual account information (last payment, account balance, etc.) via the Direct Loan Web site very soon. Initially, individual repayment option calculations will not be available, but borrowers may use their specific account information at the Department's new Direct Loan repayment calculator Web site. The repayment calculator enables borrowers to estimate repayment amounts under each repayment plan for any loan amount. Borrowers may use this information to decide whether to switch plans or even to estimate the amount they would repay based on how much they may plan to borrow during the course of their postsecondary education.

In the FFEL Program, most borrowers may receive this same type of individualized information from their lenders. Most lenders or loan servicers have developed processes like those in Direct Lending to provide FFEL borrowers with individualized loan repayment information by telephone, electronically, and by other means.

Given the current availability of borrower-specific repayment information through a number of resources, it would be unnecessarily burdensome to require a school participating in the Direct Loan Program or in the FFEL Program to provide individualized information during exit counseling. Rather, the Secretary believes that it is appropriate to allow a school the flexibility to choose the repayment counseling option that best meets its capabilities and the needs of its students.

Changes: None.

Comments: Several commenters noted that they assumed that a school would disclose to a student whether the repayment information provided was based on the student's actual indebtedness or upon an average.

Discussion: To "inform" a student, and thus to comply with the regulations, a school must provide the information to a student in a format that is understandable. If a school does not disclose whether the repayment information that it provides is based on the student's actual indebtedness or upon an average, then a student cannot understand or use the information properly, and the school has not complied with the provision.

Changes: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, were identified and explained in the preamble to the NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The potential costs and benefits of these final regulations were discussed in the preamble to the NPRM (62 FR 50462).

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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List of Subjects in 34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: November 21, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Programs; 84.033 and 84.268 Federal Direct Student Loan Program)

The Secretary amends Parts 682 and 685 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.201 is amended by removing the words "receive an SLS loan" in the introductory language of paragraph (a) and adding, in their place, "receive an unsubsidized Stafford loan"; by removing the acronym "SLS" in paragraph (a)(1) and adding, in its place, "unsubsidized Stafford"; by revising paragraph (a)(2); and by removing the words "SLS loan" in paragraph (a)(3) and adding, in their place, "additional unsubsidized Stafford loan amount, as described at § 682.204(d)" to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(a) * * *

(2) In the case of any student who seeks an unsubsidized Stafford loan for the cost of attendance at a school that

participates in the Stafford Loan Program, the student must have received a determination of need for a subsidized Stafford loan, and if determined to have need in excess of $200, have filed an application with a lender for a subsidized Stafford loan;

* * * * *

3. Section 682.202 is amended by revising paragraph (c)(5) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(c) * * *

(5) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan that is attributable to any portion of the loan—

(i) That is returned by a school to a lender in order to comply with the Act or with applicable regulations;

(ii) That is repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

(iii) For which a loan check has not been negotiated within 120 days of disbursement; or

(iv) For which loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school within 120 days of disbursement.

* * * * *

4. Section 682.209 is amended by revising paragraph (i)(1) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(i) * * *

(1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the borrower's loan balance consistent with the requirements of §§ 682.202 and 682.401.

* * * * *

5. Section 682.401 is amended by removing the word "account" in the introductory language of paragraph (b)(10)(vi)(B) and adding, in its place, "loan balance", and by revising paragraphs (b)(10)(vi)(B)(*1*) and (b)(10)(vi)(B)(*2*) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(*1*) The loan or a portion of the loan is returned by the school to the lender in order to comply with the Act or with applicable regulations;

(*2*) Within 120 days of disbursement, the loan or a portion of the loan is repaid or returned, unless—

(*i*) the borrower has no FFEL Program loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(*ii*) the borrower has a FFEL Program loan in repayment status, in which case the payment is applied in accordance with § 682.209(b) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan;

* * * * *

6. Section 682.402 is amended by revising paragraph (c)(1) and by removing the words "become totally and permanently disabled since applying for the Consolidation loan" in paragraph (k)(2)(iii) and adding, in their place, "is determined to be totally and permanently disabled under Sec. 682.402(c)", to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(c) *Total and permanent disability.* (1) (i) If a lender determines that an individual borrower has become totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is discharged.

(ii) Except as provided in paragraph (c)(1)(iii)(A) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(iii)(A) For a Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (c)(1) (i) and (ii) of this section for all of the loans that were included in the Consolidation Loan if those loans had not been consolidated.

(B) For the purposes of discharging a loan under paragraph (c)(1)(iii)(A) of this section, provisions in paragraphs (c)(1) (i) and (ii) of this section apply to each loan included in the Consolidation Loan, even if the loan is not a FFEL Program loan.

(C) If requested, a borrower seeking to discharge a loan obligation under paragraph (c)(1)(iii)(A) of this section must provide the lender with the disbursement dates of the underlying loans if the lender does not possess that information.

* * * * *

7. Section 682.604 is amended by revising paragraph (g)(2)(i) to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(g) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Stafford or SLS loans for attendance at that school or in the borrower's program of study.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

8. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

9. Section 685.202 is amended by revising paragraph (c)(4) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

* * * * *

(c) * * *

(4) Applies to a borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Repaid or returned within 120 days of disbursement, unless—

(A) The borrower has no Direct Loans in repayment status and has requested, in writing, that the repaid or returned funds be used for a different purpose; or

(B) The borrower has a Direct Loan in repayment status, in which case the payment is applied in accordance with § 685.211(a) unless the borrower has requested, in writing, that the repaid or returned funds be applied as a cancellation of all or part of the loan; or

(ii) Returned by a school in order to comply with the Act or with applicable regulations.

10. Section 685.212 is amended by revising paragraph (b) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(b) *Total and permanent disability.* (1) If the Secretary receives acceptable documentation that a borrower has become totally and permanently disabled, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan.

(2) Except as provided in paragraph (b)(3)(i) of this section, a borrower is not considered totally and permanently disabled based on a condition that existed at the time the borrower applied for the loan unless the borrower's condition substantially deteriorated after the loan was made so as to render the borrower totally and permanently disabled.

(3)(i) For a Direct Consolidation Loan, a borrower is considered totally and permanently disabled if he or she would be considered totally and permanently disabled under paragraphs (b) (1) and (2) of this section for all of the loans that were included in the Direct Consolidation Loan if those loans had not been consolidated.

(ii) For the purposes of discharging a loan under paragraph (b)(3)(i) of this section, provisions in paragraphs (b) (1) and (2) of this section apply to each loan included in the Direct Consolidation Loan, even if the loan is not a Direct Loan Program loan.

(iii) If requested, a borrower seeking to discharge a loan obligation under paragraph (b)(3)(i) of this section must provide the Secretary with the disbursement dates of the underlying loans.

* * * * *

11. Section 685.301 is amended by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively, and by adding a new paragraph (a)(6) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(a) * * *

(6) If a student has received a determination of need for a Direct Subsidized Loan that is $200 or less, a school may choose not to originate a Direct Subsidized Loan for that student and to include the amount as part of a Direct Unsubsidized Loan.

* * * * *

12. Section 685.304 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 685.304 Counseling borrowers.

* * * * *

(b) * * *

(2) * * *

(i) Inform the student of the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Direct Subsidized or Direct Unsubsidized Loans for attendance at that school or in the borrower's program of study.

* * * * *

[FR Doc. 97–31212 Filed 11–26–97; 8:45 am]

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federal register

Friday
November 28, 1997

Part IV

Department of Education

34 CFR Part 675
Federal Work-Study Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 675

RIN 1840–AC50

Federal Work-Study Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Work-Study (FWS) Program authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). The Secretary makes these changes in response to the President's "America Reads Challenge" by providing for an additional waiver of the FWS institutional-share requirement for tutors in a family literacy program that provides services to families with preschool age children or children who are in elementary school.

EFFECTIVE DATE: These regulations take effect on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, U.S. Department of Education, 600 Independence Avenue SW., Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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SUPPLEMENTARY INFORMATION:

Part 675—Federal Work-Study Programs

The Secretary is providing for an additional waiver of the FWS institutional-share requirement in § 675.26. The Secretary will authorize a Federal share of up to 100 percent of the compensation earned by a student during an award year if all of the following criteria are met—

1. The work performed by the student is for the institution itself, for a Federal, State, or local public agency, or for a private nonprofit organization; and

2. The student is employed as a tutor in a family literacy program that provides services to families with preschool age children or children who are in elementary school. "Preschool age children" means children from infancy to the time at which the State provides elementary education.

This regulatory change will provide an institution with additional flexibility needed to respond to the President's "America Reads Challenge," which is mobilizing resources to ensure that all children can read independently and well by the end of the third grade. The "America Reads Challenge" seeks to reinforce the importance of skill-building activities for children starting at infancy and of programs that encourage and support parent or caregiver involvement in these activities.

The Secretary previously added a waiver of the FWS institutional-share requirement for reading tutors of children that is effective for the 1997–98 award year. That previous change was made to provide institutions with the flexibility necessary to respond to the "America Reads Challenge." The new FWS waiver will provide a greater ability for institutions to help children achieve the reading goal by waiving the FWS institutional-share requirement for tutors, working in family literacy programs, who are providing literacy services to children from infancy through elementary school, or to their parents or caregivers. Those literacy services may include helping parents or caregivers who need assistance with their own literacy skills.

This new waiver for tutors working in family literacy programs is based on research that shows that children whose parents work with them on literacy skills during early childhood have a significantly better chance of meeting the reading goal for children. Unfortunately, not all parents or caregivers have the literacy skills necessary to work with their children to ensure that each child has the proper foundation for reading skills.

The Secretary is pleased with the positive feedback received from many institutions indicating that they intend to use the FWS Program to respond to the "America Reads Challenge." This investment in our youth is an investment in this country's future. The Secretary has also received comments from organizations that focus on family literacy indicating that the expansion of the waiver of the FWS institutional-share requirement to tutors involved in family literacy programs is very important in meeting the goal of children reading independently and well by the end of the third grade. This regulatory change responds to these requests.

The Secretary strongly encourages all institutions to employ FWS students as reading tutors for children and as tutors in family literacy programs that provide services to families with preschool age children or children who are in elementary school. The placement of students in these jobs is, in many instances, an important way for institutions to meet the community service expenditure requirement under the FWS Program, serve the needs of the community, and give the FWS students a rewarding and enriching experience. The new waiver of the FWS institutional-share requirement in § 675.26 for tutors in family literacy programs that provide services to families with preschool age children or children who are in elementary school does not require the institution to make a request for a waiver. Also, the institution has the option of still providing an institutional share and determining the amount of that share.

It is important to note that the Secretary continues the current exceptions that authorize a Federal share of 100 percent of the compensation earned by students employed as reading tutors of preschool age children or children who are in elementary school as well as students enrolled at eligible institutions under the Strengthening Institutions Program, the Strengthening Historically Black Colleges and Universities Program, or the Strengthening Historically Black Graduate Institutions Program.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goals that call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. These regulations further address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, the Secretary has determined that the benefits of the final regulations justify the costs.

Potential costs and benefits of the final regulations are discussed elsewhere in this preamble under the following headings: Supplementary Information and Goals 2000: Educate America Act.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Secretary is specifically authorized under section 443(b)(5) of the Higher Education Act of 1965, as amended (42 U.S.C. 2753(b)(5)) to determine, through the promulgation of regulations, that the Federal share of compensation for FWS students may exceed 75 percent if required in furtherance of the purposes of the program. The Secretary has made such a determination in this case. Revising § 675.26(d) will increase institutional flexibility and help to meet an important educational need for tutors in family literacy programs without imposing any burden on the affected parties. For these reasons, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the amendment to § 675.26(d) is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of postsecondary education. The provisions of these regulations provide added flexibility to institutions. Thus, no significant adverse economic impacts on small entities are expected to occur.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

The Federal Work-Study Program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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List of Subjects in 34 CFR Part 675

Loan programs—education, Student aid.

Dated: November 20, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

The Secretary amends chapter VI of Title 34 of the Code of Federal Regulations as follows:

PART 675—FEDERAL WORK-STUDY PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

2. Section 675.26 is amended by revising paragraph (d) to read as follows:

§ 675.26 FWS Federal share limitations.

* * * * *

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organization; and

(2)(i) The institution in which the student is enrolled—

(A) Is designated as an eligible institution under the Strengthening Institutions Program (34 CFR part 607), the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608), or the Strengthening Historically Black Graduate Institutions Program (34 CFR part 609); and

(B) Requests that increased Federal share as part of its regular FWS funding application for that year;

(ii) The student is employed as a reading tutor for preschool age children or children who are in elementary school; or

(iii) The student is employed as a tutor in a family literacy program that provides services to families with preschool age children or children who are in elementary school.

[FR Doc. 97–31169 Filed 11–26–97; 8:45 am]

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In the List of Public Laws printed in the **Federal Register** on November 25, 1997, Public Laws 105–104 and 105–105 were incorrectly printed. They should read as follows:

H.J. Res. 91/P.L. 105–104
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Chattahoochee-Flint River Basin Compact. (Nov. 20, 1997; 111 Stat. 2219)

H.J. Res. 92/P.L. 105–105

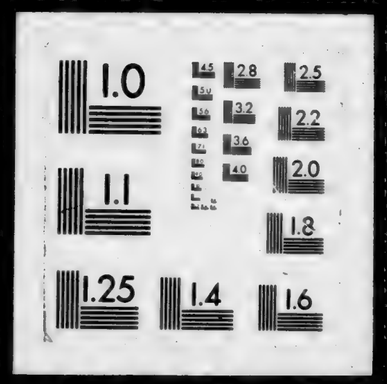
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12–1–97
Vol. 62 No. 230

federal register

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12–1–97
Vol. 62 No. 230
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Vol. 62, No. 230
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF25

Amendment to the Production Flexibility Contract Regulations; Extension of Comment Period

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; extension of the comment period.

SUMMARY: In the interim rule published in the **Federal Register** on October 23, 1997, (62 FR 55150), comments were requested by November 24, 1997. Interested parties have requested that the comment period be extended to provide additional time for comments.

DATE: This rule was effective on October 23, 1997. Comments on this rule must be received on or before December 1, 1997, to be assured of consideration.

ADDRESSES: Please submit written comments to Scotty M. Abbott, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517.

FOR FURTHER INFORMATION CONTACT: Scotty M. Abbott, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone 202–720–5422; Internet address: Sabbott@wdc.fsa.usda.gov.

Signed at Washington DC, on November 24, 1997.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–31382 Filed 11–28–97; 8:45 am]
BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0960]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation Z. The revisions implement an amendment to the Truth in Lending Act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 affecting the disclosure of a fifteen-year historical example of rates and payments. The amendment applies to variable-rate loans with a term exceeding one year and secured by the consumer's principal dwelling. The amendment allows creditors to provide a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment based on a $10,000 loan amount, in lieu of having to provide a fifteen-year historical example of index values.

DATES: *Effective date:* This rule is effective November 21, 1997. *Compliance date:* Compliance is optional until October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The credit transactions covered by TILA and Regulation Z fall into two categories—open- or closed-end credit transactions. Open-end credit is defined as a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge that may be computed from time to time on the outstanding unpaid balance, for example, credit extended by means of a credit card (§ 226.2(a)(20)). Closed-end credit is defined as any credit arrangement that does not fall within the definition of open-end credit (§ 226.2(a)(10)). A mortgage loan with a fixed maturity date is an example of closed-end credit.

II. Regulatory Provisions

Under Regulation Z, the timing and number of disclosures required for variable-rate loans vary depending on the term and security for the loan. For all variable-rate loans, disclosures are generally provided once—prior to consummation. However, if the loan exceeds a term of one year and is secured by the consumer's principal dwelling, creditors are required to provide disclosures at different times—a loan program disclosure when an application is received (or when a nonrefundable fee is paid, whichever occurs earlier), transaction-specific Truth in Lending disclosures prior to consummation, and disclosures subsequent to consummation when certain rate or payment changes occur. (*See* Regulation Z, 12 CFR 226.17(b), 18(f), 19, and 20(c).)

Disclosures provided at application for a variable-rate mortgage include the Board-prescribed *Consumer Handbook on Adjustable Rate Mortgages* (or a comparable substitute) and a loan program disclosure for each variable-rate program in which the consumer has expressed interest. The loan program disclosure consists of twelve separate items, including information such as the identification of the index or formula to be used for adjustments and a fifteen-year historical example of how changes in the index values or formula used to compute interest rates would have affected the interest rates and payments on a $10,000 loan.

On September 30, 1996, the Economic Growth and Regulatory Paperwork

Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (1996 amendment) amended the TILA by providing creditors the option to give a statement that the periodic payments may increase or decrease substantially together with the maximum interest rate and payment amount for a $10,000 loan amount in lieu of having to give the fifteen-year historical example.

The Board issued a proposal in January 1997 (62 FR 5183, Feb. 4, 1997). Sixty-nine comments were received. Based on comments and further analysis, the Board has adopted a final rule that implements the statutory changes. The final rule is discussed in detail in the section-by-section analysis below.

III. Section-by-Section Analysis

Subpart A—General

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain variable-rate transactions. Section 226.19(b) requires the historical example disclosure for loans exceeding a term of one year that are secured by a consumer's principal dwelling and in which the APR may increase after consummation (such as when the rate is tied to an index). The 1996 amendment refers to "residential mortgage transactions" to identify when the alternative disclosure option is available, but does not explicitly limit application of the alternative disclosure to loans that exceed a term of one year. "Residential mortgage transaction" is defined in Regulation Z (§ 226.2(a)(24)) as credit secured by the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling. Under this definition, the alternative disclosure option would not extend to refinance and second-mortgage transactions. The Board believes that the amendment was intended to apply to loans where the fifteen-year historical example is currently required, namely loans that exceed one year and are secured by the consumer's principal dwelling. Accordingly, the Board proposed to apply the alternative disclosure option to variable-rate loans with a term greater than one year and secured by the consumer's principal dwelling.

The majority of commenters strongly supported the Board's proposal to apply the amendment to loans where the fifteen-year historical example is currently required. Those commenters stated that an interpretation to apply the amendment only to "residential mortgage transactions"—primarily purchase-money mortgages—would result in increased regulatory burden on creditors by requiring two sets of disclosures.

The Board believes that the Congress did not intend to limit the flexibility in the 1996 amendment to purchase-money transactions nor to apply the provision to loans that do not currently require the historical example. The Board believes that the Congress intended to provide this option to all credit transactions secured by the consumer's principal dwelling, given that the committee report to the 1996 amendment broadly states the alternative disclosure option would be available to lenders in consumer credit transactions under closed-end plans. Pursuant to its authority under section 105(a) of the TILA, the Board has adopted a final rule that makes the alternative disclosure option available for any close-end credit transactions where the term exceeds one year and is secured by the consumer's dwelling. Section 105(a) provides that the Board's regulations "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith."

Paragraph 19(b)(2)(viii) currently sets forth the required historical example based on a $10,000 loan amount and paragraph 19(b)(2)(x) the required disclosure of the maximum interest rate and payment for a $10,000 loan amount. The proposal revised paragraph 19(b)(2)(viii) to set forth the historical example requirements in paragraph 19(b)(2)(viii)(A); and incorporated the substance of paragraph 19(b)(2)(x) on the maximum interest rate and payment disclosure in paragraph 19(b)(2)(viii)(B). If the creditor chose to disclose the maximum interest rate and payment in lieu of a historical example, a statement that the periodic payment may increase or decrease substantially must accompany the rate and payment amount. The proposal provided that the statement requirement may be satisfied by providing the disclosure required by paragraph 19(b)(2)(vi) that states, for example, "your monthly payment can increase or decrease substantially based on annual changes in the interest rate."

A question was raised about whether the proposed wording would allow creditors to provide both the historical example and the maximum interest rate and payment. The Board believes that the 1996 amendment allows creditors to substitute the maximum interest rate and payment for the historical example or to provide both disclosures. The commentary to paragraph 19(b)(2)(viii) has been revised accordingly. The commentary to paragraph 19(b)(2)(viii)(B) provides that the statement that must accompany the maximum rate and payment disclosure is not separately required if a similar disclosure is made pursuant to the requirement in paragraph 19(b)(2)(vi).

Regulation Z currently requires creditors to disclose a maximum interest rate using the most recent interest rate shown in the historical example. Because creditors are not required to provide the historical example under the 1996 amendments, creditors instead must use a "recent" interest rate as determined by the Board. The Board proposed to require creditors to calculate the maximum rate and payment based on an initial rate that was in effect within one year of the disclosure. A more frequent basis for updating the index or formula would place greater burden on creditors than currently exists under the regulation, whereas the Congress intended to reduce burden with the alternative. The Board solicited comment on whether there are circumstances in which the consumer benefit from updating the initial interest rate more frequently than annually would outweigh the compliance burden of producing the disclosures more frequently.

The majority of the commenters supported the proposal to base the maximum rate and payment on an interest rate in effect within one year of the disclosure. They believed that this was consistent with the current requirement regarding revisions to the historical example. Several commenters observed, however, that the proposed language would require creditors to update the maximum rate and payment twice a year and suggested adopting one of the timing rules already applicable to variable-rate transactions under § 226.19(b)(2). For example, the timing rules for revising the loan program disclosure in comment 19(b)(2)–5 permit creditors to update once a year, as soon as reasonably possible after the new index value becomes available. Similarly, comments 19(b)(2)(viii)–3 and –4 allow disclosures to use a margin or discount or premium used during the six months preceding preparation of the disclosures. Based on these comments and further analysis, the staff has revised the draft rule for determining the initial interest rate that will be used for the maximum rate and payment disclosure; it defines the initial interest rate as one in effect as of an identified month and year for the particular loan program. The final rule eliminates any requirement for creditors to update the maximum rate and payment disclosure more frequently than the loan program disclosure.

Commenters asked for clarification on whether the amount of a recent discount or premium is reflected in the alternative disclosure. Several commenters requested general clarification on how the initial rate was derived. Several commenters also suggested that all references to "the most recent rate" be deleted since it implies that creditors must continually update the information. Several commenters questioned whether an explanation of how the consumer may calculate the payments for the loan amount to be borrowed would be required absent the historical example.

Based on comments and further analysis, the Board believes that the initial and maximum interest rates and payments should reflect any offered discount or premium in order to reduce consumer confusion. References to "the most recent rate" have been deleted and replaced by "initial interest rate." A definition of the "initial interest rate" is provided and clarifies that it is based on the index plus margin, adjusted by the amount of any discount or premium.

Since the maximum rate and payment is based on a $10,000 loan amount, the Board believes that an explanation on how to calculate the payments for another loan amount would allow consumers to better understand the relationship of the maximum rate and payment disclosure to their particular transaction without placing undue burden on the creditors. Section 226.19(b)(2)(ix) has been revised to require the explanation under either alternative.

Appendix H to Part 226—Closed-end Model Forms and Clauses

The sample clauses and model forms to appendix H–4 and H–14 have been revised in response to comments.

Supplement I—Official Staff Interpretation

Revisions have been made to the Official Staff Commentary to conform with the amendments to Regulation Z.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation Z. Overall, the amendments are not expected to have any significant impact on small entities. The regulatory revisions required to implement the 1996 amendment reduce the number of disclosures required for variable-rate mortgages and ease compliance by providing creditors with the option of disclosing either a fifteen-year historical example or a maximum payment example.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. 5 CFR part 1320, Appendix A.1.

The respondents are individuals or businesses that regularly offer or extend consumer credit. The purpose of the TILA and Regulation Z is to promote the informed use of consumer credit by requiring creditors to disclose its terms and cost. Records must be retained by creditors for 24 months. The disclosure requirements revised by this final rule are found in 12 CFR 226.19 and part 226, appendix H.

The Board's Regulation Z applies to all types of creditors, not just state member banks. For purposes of the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation Z disclosures only for state member banks. The estimates of paperwork burden for institutions other than state member banks are provided by the federal agency or agencies that supervise those lenders.

The final rule is expected to decrease the ongoing annual burden of Regulation Z. There are 1,014 state member banks, making an estimated 5,750 closed-end credit disclosures each year on average, at 6.5 minutes per disclosure. The proportion of such loans that are mortgages with an adjustable rate is estimated to be small. It is estimated that the combined annual burden for state member banks under Regulation Z will decrease by approximately 10,000 burden hours to an average 6.4 minutes per disclosure. The Federal Reserve estimates an associated start-up cost of $160 per respondent to replace the fifteen-year historical example with the maximum rate and payment example. No comments specifically addressing the burden estimate were received.

The disclosures made by creditors to consumers under Regulation Z are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Disclosures relating to specific transactions or accounts are not publicly available.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for Regulation Z is 7100–0199.

The Federal Reserve has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden. Comments may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.19 is amended by:

a. Republishing the introductory text of paragraph (b)(2);

b. Revising paragraph (b)(2)(viii);

c. Revising paragraph (b)(2)(ix);

d. Removing paragraph (b)(2)(x); and

e. Paragraphs (b)(2)(xi), (b)(2)(xii), and (b)(2)(xiii) are redesignated as paragraphs (b)(2)(x), (b)(2)(xi) and (b)(2)(xii) respectively.

The revisions read as follows:

§ 226.19 Certain residential mortgage and variable-rate transactions.

* * * * *

(b) Certain variable-rate transactions.

* * *

* * * * *

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

* * * * *

(viii) At the option of the creditor, either of the following:

(A) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan

program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(B) The maximum interest rate and payment for a $10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment shown in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

* * * * *

3. In part 226, Appendix H is amended by revising the appendix heading, H–4(C) Variable-Rate Model Clauses, and H–14 Variable-Rate Mortgage Sample to read as follows:

Appendix H to Part 226—Closed-end Model Forms and Clauses

* * * * *

H–4(C)—Variable-Rate Model Clauses

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on [an index plus a margin] [a formula].

• Your payment will be based on the interest rate, loan balance, and loan term.

—[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]

—[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

—Information about the index [formula for rate adjustments] is published [can be found] _____.

—[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

How Your Interest Rate Can Change

• Your interest rate can change (frequency).

• [Your interest rate cannot increase or decrease more than _____ percentage points at each adjustment.]

• Your interest rate cannot increase [or decrease] more than _____ percentage points over the term of the loan.

How Your Payment Can Change

• Your payment can change (frequency) based on changes in the interest rate.

• [Your payment cannot increase more than (amount or percentage) at each adjustment.]

• You will be notified in writing _____ days before the due date of a payment at a new level. This notice will contain information about your interest rates, payment amount, and loan balance.

• [You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about your interest rates, payment amount, and loan balance.]

• [For example, on a $10,000 [term] loan with an initial interest rate of _____ [(the rate shown in the interest rate column below for the year 19 _____)] [(in effect (month) (year)], the maximum amount that the interest rate can rise under this program is _____ percentage points, to _____%, and the monthly payment can rise from a first-year payment of $_____ to a maximum of $_____ in the _____ year. To see what your payments would be, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000 ÷ $10,000 = 6; 6 × _____ = $_____ per month.)]

Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

Amount	$10,000
Term	_____
Change date	_____
Payment adjustment	(frequency)
Interest adjustment	(frequency)
[Margin] *	_____
Caps _____	[periodic interest rate cap]
_____	[lifetime interest rate cap
_____	[payment cap]
[Interest rate carryover]	
[Negative amortization]	
[Interest rate discount] **	
Index.....(identification of index or formula)	

*This is a margin we have used recently, your margin may be different.

**This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

Year	Index (%)	Margin (Percentage points)	Interest Rate (%)	Monthly Payment ($)	Remaining Balance ($)
1982					
1983					
1984					
1985					
1986					
1987					
1988					
1989					
1990					
1991					
1992					
1993					
1994					
1995					
1996					

Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000÷$10,000=6; 6×_____=$_____ per month.)

* * * * *

H–14—Variable-Rate Mortgage Sample

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on an index rate plus a margin.

• Your payment will be based on the interest rate, loan balance, and loan term.

—The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

—Information about the index rate is published weekly in the Wall Street Journal.

• Your interest rate will equal the index rate plus our margin unless your interest rate "caps" limit the amount of change in the interest rate.

How Your Interest Rate Can Change

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

• Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

• Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

• [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000÷$10,000=6; 6×106.03=$636.18 per month.)

• You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount	$10,000
Term	30 years
Payment adjustment	1 year
Interest adjustment	1 year
Margin	3 percentage points
Caps_____	2 percentage points annual interest rate
_____	5 percentage points lifetime interest rate
Index_____	Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.

Year (as of 1st week ending in July)	Index (%)	Margin* (percentage points)	Interest Rate (%)	Monthly Payment ($)	Remaining Balance ($)
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98
1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	**12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83
1991	6.40	3	***12.41	106.73	9,448.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52
1996	5.82	3	***12.41	106.73	8,700.37

*This is a margin we have used recently; your margin may be different.
**This interest rate reflects a 2 percentage point annual interest rate cap.
***This interest rate reflects a 5 percentage point lifetime interest rate cap.
Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000÷$10,000=6; 6×$106.73=$640.38.)

• You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

* * * * *

4. In Supplement I to Part 226, under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under paragraph *19(b) Certain variable-rate transactions*, the following amendments are made:

a. Paragraph 2, under the heading *"Paragraph 19(b)(2)"*, is revised.

b. Paragraph 1, under the heading *"Paragraph 19(b)(2)(v)"*, is revised.

c. The heading *"Paragraph 19(b)(2)(viii)"* is revised to read *"Paragraph 19(b)(2)(viii)(A)"*.

d. A new heading *"Paragraph 19(b)(2)(viii)"* and a new paragraph 1 is added below the new heading, and both are transferred immediately preceding *"Paragraph 19(b)(2)(viii)(A)."*

e. The heading *"Paragraph 19(b)(2)(x)"* is revised to read *"Paragraph 19(b)(2)(viii)(B)"* and the paragraph heading and text are transferred immediately preceding the heading "Paragraph 19(b)(2)(ix)."

f. Paragraphs 1 and 2, under the heading *"Paragraph 19(b)(2)(viii)(B)"* are revised and a new paragraph 5 is added.

g. Paragraph 1, under the heading *"Paragraph 19(b)(2)(ix)"* is revised.

h. The heading *"Paragraph 19(b)(2)(xi)"* is revised to read *"Paragraph 19(b)(2)(x)."*

i. The heading *"Paragraph 19(b)(2)(xii)"* is revised to read *"Paragraph 19(b)(2)(xi)."*

j. The heading *"Paragraph 19(b)(2)(xiii)"* is revised to read *"Paragraph 19(b)(2)(xii)."*

The revisions and additions read as follows:

Supplement 1 to Part 226—Official Staff Interpretations

* * * * *

Section 226.19—Certain Residential Mortgage Transactions.

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

Paragraph 19(b)(2).

* * * * *

2. *Variable-rate loan program defined.* i. Generally, if the identification, the presence or absence, or the exact value of a loan feature must be disclosed under this section, variable-rate loans that differ as to such features constitute separate loan programs. For example, separate loan programs would exist based on differences in any of the following loan features:

A. The index or other formula used to calculate interest rate adjustments.

B. The rules relating to changes in the index value, interest rate, payments, and loan balance.

C. The presence or absence of, and the amount of, rate or payment caps.

D. The presence of a demand feature.

E. The possibility of negative amortization.

F. The possibility of interest rate carryover.

G. The frequency of interest rate and payment adjustments.

H. The presence of a discount feature.

I. In addition, if a loan feature must be taken into account in preparing the disclosures required by § 226.19(b)(2)(viii), variable-rate loans that differ as to that feature constitute separate programs under § 226.19(b)(2).

ii. If, however, a representative value may be given for a loan feature or the feature need not be disclosed under § 226.19(b)(2), variable-rate loans that differ as to such features do not constitute separate loan programs. For example, separate programs would not exist based on differences in the following loan features:

A. The amount of a discount.

B. The amount of a margin.

* * * * *

Paragraph 19(b)(2)(v).

1. *Discounted and premium interest rate.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact. For example, if a creditor discounted a consumer's initial rate, the disclosure might state, "Your initial interest rate is not based on the index used to make later adjustments." (See the commentary to § 226.17(c)(1) for a further discussion of discounted and premium variable-rate transactions.) In addition, the disclosure must suggest that consumers inquire about the amount that the program is currently discounted. For example, the disclosure might state, "Ask us for the amount our adjustable rate mortgages are currently discounted." In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted variable-rate transaction, but need not disclose additional information regarding the buydown in its program disclosures. (See the commentary to § 226.19(b)(2)(viii) for a discussion of how to reflect the discount or premium in the historical example or the maximum rate and payment disclosure).

* * * * *

Paragraph 19(b)(2)(viii).

1. *Historical example and initial and maximum interest rates and payments.* A creditor may disclose both the historical example and the initial and maximum interest rates and payments.

Paragraph 19(b)(2)(viii)(A).

* * * * *

Paragraph 19(b)(2)(viii)(B).

1. *Initial and maximum interest rates and payments.* The disclosure form must state the initial and maximum interest rates and payments for a $10,000 loan originated at an initial interest rate (index value plus margin adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure. (See comment 19(b)(2)–5 on revisions to the loan program disclosure.) In calculating the maximum payment under this paragraph, a creditor should assume that the interest rate increases as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percentage point annual (and 5 percentage point overall) interest rate limitations or "caps," the maximum interest rate would be 5 percentage points higher than the initial interest rate disclosed. Moreover, the loan would not reach the maximum interest rate until the fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. If the loan program includes a discounted or premium initial interest rate, the initial interest rate should be adjusted by the amount of the discount or premium.

2. *Term of the loan.* In calculating the initial and maximum payments, the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)(A)–5.

If a historical example is provided under § 226.19(b)(2)(viii)(A), the terms to maturity or payment amortization used in the historical example must be used in calculating the initial and maximum payment. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

* * * * *

5. *Periodic payment statement.* The statement that the periodic payment may increase or decrease substantially may be satisfied by the disclosure in paragraph 19(b)(2)(vi) if it states for example, "your monthly payment can increase or decrease substantially based on annual changes in the interest rate."

Paragraph 19(b)(2)(ix).

1. *Calculation of payments.* A creditor is required to include a statement on the disclosure form that explains how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000. The example should be based upon the most recent payment shown in the historical example or upon the initial interest rate reflected in the maximum rate and payment disclosure. In transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under § 226.19(b)(2)(viii)(B). The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in appendix H–4(C).)

Paragraph 19(b)(2)(x).

* * * * *

Paragraph 19(b)(2)(xi).

* * * * *

Paragraph 19(b)(2)(xii).

* * * * *

5. In Supplement I to Part 226, under paragraph heading *Paragraph 19(b)(2)(viii)(A)*, all references in paragraphs 3 and 4 to "§ 226.19(b)(2)(viii)" are revised to read "§ 226.19(b)(2)(viii)(A)".

6. In Supplement I to Part 226, under paragraph heading *Paragraph 19(b)(2)(viii)(A)*, in paragraphs 6 and 7 the words "comment 19(b)(2)(x)" are revised to read "comment 19(b)(2)(viii)(B)" each place they appear.

7. In Supplement I to Part 226, under paragraph heading *Paragraph 19(b)(2)(viii)(B)*, in paragraphs 2, 3, and 4 the words "comment 19(b)(2)(viii)" are revised to read "comment 19(b)(2)(viii)(A)" each place they appear.

8. In Supplement I to Part 226, Appendix H—Closed-End Model Forms and Clauses, Paragraphs 6 and 18, are revised to read as follows:

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

6. *Model H–4(C).* This model clause illustrates the early disclosures required generally under § 226.19(b). It includes information on how the consumer's interest rate is determined and how it can change over the term of the loan, and explains changes that may occur in the borrower's monthly payment. It contains an example of how to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. The model clause also illustrates the disclosure of the initial and maximum interest rates and payments based on an initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure and illustrates how to provide consumers with a method for calculating the monthly payment for the loan amount to be borrowed.

* * * * *

18. *Sample H–14.* This sample disclosure form illustrates the disclosures under § 226.19(b) for a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year. The sample form shows a creditor how to adapt the model clauses in Appendix H–4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on the creditor's other closed-end variable-rate programs is available upon request. It includes information on how the interest rate is determined and how it can change over time. Section 226.19(b)(2)(viii) permits creditors the option to provide either a historical example or an initial and maximum interest rates and payments disclosure; both are illustrated in the sample disclosure. The historical example explains how the monthly payment can change based on a $10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. Index values are measured for 15 years, as of the first week ending in July. This reflects the requirement that the index history be based on values for the same date or period each year in the example. The sample disclosure also illustrates the alternative disclosure under § 226.19(b)(2)(viii)(B) that the initial and the maximum interest rates and payments be shown for a $10,000 loan originated at an initial interest rate of 12.41 percent (which was in effect July 1996) and to have 2 percentage point annual (and 5 percentage point overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 12.41 percent initial rate to 17.41 percent, and the monthly payment could rise from $106.03 to a maximum of $145.34. The loan would not reach the maximum interest rate until its fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed reflects the amortization of the loan during that period. The sample form also illustrates how to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $10,000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 21, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–31087 Filed 11–28–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29063; Amdt. No. 1835]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a

National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective December 4, 1997*

Miami, FL, Miami Intl, ILS RWY 27R, Amdt 13
Grand Rapids, MI, Kent County Intl, ILS RWY 35, Orig
St Louis, MO, Lambert-St Louis Intl, LOC BC RWY 6, Amdt 2B, CANCELLED
Billings, MT, Billings Logan Intl, ILS RWY 28R, Orig
Savannah, TN, Savannah-Hardin County, SDF RWY 19, Amdt 4
Savannah, TN, Savannah-Hardin County, NDB RWY 19, Orig
Burlington, VT, Burlington, Intl, ILS/DME RWY 33, Orig
Winchester, VA, Winchester Regional, LOC RWY 32, Amdt 4, CANCELLED
Winchester, VA, Winchester Regional, ILS RWY 32, Orig

* * * *Effective January 1, 1998*

Chandler, AZ, Chandler, Muni, VOR RWY 4L, Amdt 6
Chandler, AZ, Chandler, Muni, GPS RWY 4L, Orig
Half Moon Bay, CA, Half Moon Bay, GPS RWY 12, Orig
San Carlos, CA, San Carlos, GPS RWY 30, Orig
Steamboat Springs, CO, Steamboat Springs/Bob Adams Field, GPS–E, Orig
Bartow, FL, Bartow Muni, GPS RWY 9L, Amdt 1
Bartow, FL, Bartow Muni, GPS RWY 27R, Orig
Winter Haven, FL, Winter Haven's Gilbert, GPS RWY 4, Orig
Audubon, IA, Audubon County, NDB RWY 32, Amdt 5
Audubon, IA, Audubon County, GPS RWY 32, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 12, Amdt 7A, CANCELLED
Marshalltown, IA, Marshalltown Muni, VOR GPS RWY 30, Amdt 7A, CANCELLED
Pella, IA, Pella Muni, NDB OR GPS RWY 34, Amdt 7
Pella, IA, Pella Muni, GPS RWY 16, Orig
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27L, Amdt 1
Eveleth, MN, Eveleth-Virginia Muni, VOR/DME RNAV RWY 27, Amdt 3
Manchester, NH, Manchester, ILS RWY 35, Amdt 18
New York, NY, La Guardia, VOR/DME or GPS–H Amdt 1
Syracuse, NY Syracuse Hancock Intl, VOR OR TACAN RWY 32, Orig
Syracuse, NY Syracuse Hancock Intl, VOR/DME OR TCAN RWY 32, Amdt 1 CANCELLED
Syracuse, NY Syracuse Hancock Intl, NDB RWY 28, Amdt 28
Syracuse, NY Syracuse Hancock Intl, ILS RWY 10, Amdt 9
Syracuse, NY Syracuse Hancock Intl, ILS RWY 28, Amdt 32
Socorro, NM, Socorro Muni, NDB–A, Orig
Socorro, NM, Socorro Muni, NDB OR GPS RWY 15, Orig, CANCELLED
Currituck, NC, Currituck County, VOR/DME–A, Orig
Currituck, NC, Currituck County, GPS RWY 4, Orig
East Liverpool, OH, Columbiana County, VOR RWY 25, Amdt 4
East Liverpool, OH, Columbiana County, GPS RWY 25, Orig
Philadelphia, PA, Philadelphia International, RNAV OR GPS RWY 35, Amdt 3A, CANCELLED
Philadelphia, PA, Philadelphia International, GPS RWY 27L, Orig
Philadelphia, PA, Philadelphia International, GPS RWY 35, Orig
York, PA, York, NDB RWY 17, Amdt 5
York, PA, York, GPS RWY 17, Orig
York, PA, York, GPS RWY 35, Amdt 1
Zelienople, PA, Zelienople Muni, GPS RWY 17, Orig
Zelienople, PA, Zelienople Muni, GPS RWY 35, Orig
Galax/Hillsville, VA, Twin County, VOR/DME OR GPS RWY 18, Amdt 4, CANCELLED
Hot Springs, VA, Ingall Field, ILS RWY 24, Amdt 2
Charleston, WV, Yeager, ISL RWY 23, Amdt 28
Point Pleasant, WV, Mason County, VOR/DME OR GPS–A, Amdt 4, CANCELLED
Point Pleasant, WV, Mason County, GPS RWY 25, Orig

Note: The FAA published the following procedure in Docket No. 29035, Amdt No. 1826 to Part 97 of the Federal Aviation Regulations (VOL 62, FR No. 200, Page 53745, dated Thursday, October 16, 1997) under Section 97.33 effective January 1, 1998, which should read as follows:

London, OH, Madison County, GPS RWY 8, Orig

[FR Doc. 97–31358 Filed 11–28–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29064; Amdt. No. 1836]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on November 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach

Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC Number	SIAP
10/28/97	CO	Steamboat Springs	Bob Adams Field	FDC 7/6975	VOR/DME–C, Amdt 1
10/28/97	FL	Melbourne	Melbourne Intl	FDC 7/6995	GPS RWY 9L, Orig
10/28/97	PA	Clarion	Clarion Co	FDC 7/6976	VOR OR GPS–A Amdt 1
10/28/97	PA	Clarion	Clarion Co	FDC 7/6977	VOR/DME RNAV Rwy 6 Orig
10/28/97	PA	Connellsville	Connellsville	FDC 7/6978	LOC Rwy 5 Amdt 2
10/29/97	PA	Kutztown	Kutztown	FDC 7/6983	VOR–A Orig
10/29/97	PA	Erie	Erie Intl	FDC 7/7003	RADAR–1 Amdt 7
10/30/97	CO	Montrose	Montrose Regional	FDC 7/7056	VOR/DME Rwy 13, Amdt 8A
10/30/97	CO	Montrose	Montrose Regional	FDC 7/7057	VOR Rwy 13, Amdt 7A
10/30/97	CO	Montrose	Montrose Regional	FDC 7/7058	GPS Rwy 13, Orig
10/30/97	GA	Winder	Winder-Barrow	FDC 7/7044	VOR/DME RNAV OR GPS Rwy 23, Orig-A
10/30/97	VA	Quinton	Kent County	FDC 7/7048	VOR–A Orig
11/03/97	GA	Lawrenceville	Gwinnett County-Briscoe Field	FDC 7/7145	NDB or GPS Rwy 25 Orig-A
11/03/97	LA	Alexandria	Alexandria Intl	FDC 7/7082	ILS/DME Rwy 14, Amdt 1
11/03/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7071	NDB OR GPS Rwy 18, Amdt 1
11/03/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7074	RNAV RWY 18, Amdt 6
11/03/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7076	RNAV OR GPS Rwy 36, Amdt 3
11/05/97	AK	Anchorage	Anchorage Intl	FDC 7/7208	ILS Rwy 6R, Amdt 11
11/05/97	GA	Hampton	Clayton County-Tara Field	FDC 7/7193	VOR/DME–A Orig
11/05/97	GA	Lawrenceville	Gwinnett County-Brisco Field	FDC 7/7148	ILS RWY 25, Amdt 1
11/05/97	IA	Ankeny	Ankeny Regional	FDC 7/7212	NDB–A, Orig
11/06/97	CA	Merced	Merced Muni-Macready Field	FDC 7/7271	LOC BC Rwy 12 Amdt 9
11/06/97	CA	Merced	Merced Muni-Macready Field	FDC 7/7273	ILS Rwy 30 Amdt 13
11/06/97	CA	Merced	Merced Muni-Macready Field	FDC 7/7275	VOR or GPS Rwy 30 Amdt 17
11/06/97	IL	Belleville	MidAmerica Airport	FDC 7/7234	ILS Rwy 14R, Orig-A
11/06/97	MI	Grand Rapids	Kent County Intl	FDC 7/7243	VOR Rwy 17, Orig
11/06/97	MS	Clarksdale	Clarksdale/Fletcher Field	FDC 7/7231	PS Rwy 18, Orig
11/06/97	ND	Devils Lake	Devils Lake Muni	FDC 7/7233	ILS Rwy 31, Orig
11/06/97	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 7/7253	Converging ILS Rwy 36L, Amdt 3
11/06/97	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 7/7254	ILS Rwy 36L, Amdt 5
11/06/97	TX	Dallas Fort-Worth	Dallas-Fort Worth Intl	FDC 7/7255	ILS Rwy 36R, Amdt 2
11/06/97	TX	Dallas Fort-Worth	Dallas-Fort Worth Intl	FDC 7/7256	Converging ILS Rwy 36R, Amdt 1
11/06/97	WA	Spokane	Felts Field	FDC 7/7262	ILS/DME Rwy 21R, Orig
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7297	NDB or GPS Rwy 4 Amdt 10
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7298	VOR or TACAN Rwy 4 Amdt 11
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7299	ILS Rwy 4 Amdt 14
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7300	VOR or TACAN or GPS Rwy 22 Amdt 13
11/07/97	IN	Angola	Tri-State Steuben	FDC 7/7292	NDB Rwy 5, Amdt 6
11/07/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7313	ILS Rwy 18 Amdt 5
11/07/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7314	VOR or GPS Rwy 5 Amdt 10

[FR Doc. 97–31359 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29065; Amdt. No. 1837]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on November 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40105, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend §§ 97.23, 97.27, 97.33, and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

. . . Effective Jan. 1, 1998

Ozark, AL, Blackwell Field, VOR or GPS RWY 30, Amdt 6A CANCELLED
Ozark, AL, Blackwell Field, VOR RWY 30, Amdt 6A
Crookston, MN, Crookston Muni-Kirkwood Field, VOR or GPS RWY 31, Amdt 4A CANCELLED
Crookston, MN, Crookston Muni-Kirkwood Field, VOR RWY 31, Amdt 4A
Coshocton, OH, Richard Downing, VOR/DME RNAV or GPS RWY 22, Amdt 4 CANCELLED
Coshocton, OH, Richard Downing, VOR/DME RNAV RWY 22, Amdt 4
Marshall, TX, Harrison County, VOR/DME RNAV or GPS RWY 33, Amdt 1B CANCELLED
Marshall, TX, Harrison County, VOR/DME RNAV RWY 33, Amdt 1B

[FR Doc. 97–31360 Filed 11–28–97; 8:45 am]
BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Miscellaneous Revisions to the NASA Grant and Cooperative Agreement Handbook, Section A

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The NASA Grant and Cooperative Agreement Handbook regulation is published in the Code of Federal Regulations. This is a final rule to amend the Handbook to: Redefine certain grant terms to eliminate ambiguities; clarify definitions and proposal and certification requirements relative to action type; raise the subcontract consent level from $25,000 to $100,000; clarify when it is necessary to obtain a revised budget proposal for competitively selected research grants; reduce the level of detail required for proposed travel costs; waive the requirement for Grant Officer approval of competitively selected research grants where 50 percent or more of the proposed funding is for equipment or travel; and clarify the requirements for proposal and approval procedures to permit the direct charge of general purpose equipment.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Fortunat, NASA, Office of Procurement, Contract Analysis Division (Code HC), (202) 358–0426.

SUPPLEMENTARY INFORMATION:

Background

The NASA Grant and Cooperative Agreement Handbook is the NASA regulation for awarding and administering grants and cooperative agreements (14 CFR part 1260). Subpart A provides the text of provisions and special conditions and addresses NASA's authority, definitions, applicability, amendments, publications, deviations, pre-award requirements and post-award requirements.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paper Reduction Act.

List of Subjects in 14 CFR Part 1260

Grant programs—science and technology, Reporting and recordkeeping requirements, Research.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR Part 1260 is amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. 2.97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.), and OMB Circular A–110.

2. In section 1260.2, the definitions "Extension" and "Supplement" are removed, and the following definition "Amendment" is added in alphabetical order to read as follows:

§ 1260.2 Definitions.

* * * * *

Amendement. Any document used to effect modifications to grants and cooperative agreements. Amendments may be issued unilaterally at the discretion of the Grant Officer.

* * * * *

3. In section 1260.11, paragraphs (d) and (e)(1) are revised and paragraph (e)(3) is added to read as follows:

§ 1260.11 Evaluation and selection.

* * * * *

(d) *Equipment justification on travel justification.* Unless the proposal is selected using a competitive process, for example, a NASA Research Announcement or a Cooperative Agreement Notice, these ddcuments will be submitted by the technical office for grant officer approval when more than half of the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary.

(e) *Proposal budget evaluation.* (1) The technical officer will review the recipients' estimated cost for conformance to program requirements and funds availability. The results of this review shall be recorded in Column B of the proposed Budget Summary Form (Exhibit C). New budgets are not required when the program office recommended funding is within 20 percent of the proposed amount, provided specific proposed objectives have not been added or deleted. However, when equipment and/or subcontracts are involved, the cognizant program office is required to identify the cost element(s) affected by the change in funding level.

* * * * *

(3) The grant officer will address requests for direct charge of general purchase equipment in a negotiation summary and indicate whether the proposed purchase is approved as a direct cost.

* * * * *

4. Section 1260.13 is revised to read as follows:

§ 1260.13 Award procedures.

(a) *Award instruments*—(1) *Annual grant.* Grant may be awarded for a short term (e.g., on an annual basis).

(2) *Multiple year grant.* NASA policy is to make maximum use of multiple year grants to support research projects that may span several years. A multiple year grant is generally selected for a period of three years in keeping with NASA's policy calling for research to be peer reviewed at least every three years.

(i) If the decision to provide multiple year funding to a research proposal is made, the special condition in § 1260.52, "Multiple Year Grants", will be included in the award.

(ii) Periods approved under the Multiple Year Grants special condition in § 1260.52, and funded at the levels specified in the special condition, are not considered to be new awards. Therefore, new proposals, new proposal-related certifications (such as Drug Free Workplace and Debarment and Suspension) and new technical evaluations are not required.

(iii) If NASA program constraints or developments within the research project dictate a reduction in the funding level specified under a multiple year grant period, research may continue at the reduced level under the terms of the special condition; however, the recipient may rebudget under the grant provisions to keep the project within the funding actually provided.

(3) *Supplements.* A supplement to a grant may be issued at any time when work is introduced which is outside the scope of the approved proposal; or when there is a need for substantial unanticipated funding. Supplements require the submission of revised budget proposals and technical evaluations. Since Supplements will be performed within the existing period of performance, certifications will not normally be required.

(4) *Extensions.* Grant may be extended beyond the expiration date in accordance with § 1260.22, "Extensions", if additional time beyond the established period of performance is required to assure adequate completion of the original scope of work within the available funding.

(5) *Renewals.* Grant renewals provide for continuation of research beyond the original scope, period of performance and funding levels; therefore, new proposals, certifications and technical evaluations are required prior to the execution of a grant renewal. Continued performance within a period specified under the Multiple Year Grants special condition does not constitute a renewal. Peer review of the continuing research should be accomplished prior to selecting a research grant for renewal. The Multiple Year Grant special condition may be incorporated into renewals.

(b) *Funding arrangements.* While NASA normally provides full funding support for research grants, alternate methods of grant funding are as follows:

(1) *Cost sharing.* Since NASA grant recipients usually gain no measurable benefit from grants other than conducting research, cost sharing for research grants is not generally required. NASA may, however, accept cost sharing when voluntarily offered. Additionally, in instances when the Grant Officer determines that the recipient will benefit from research results through sales to non-Federal entities, cost sharing based upon this mutuality of interest will apply (see § 1260.123). When cost sharing is used, the Grant Officer shall insert a special condition substantially as shown in § 1260.54, "Cost Sharing."

(2) *Partial support.* NASA may provide partial support for a research project or conference where additional funding is being provided by other Federal agencies. If the grant also involves cost sharing by the recipient, the Grant Officer will ensure that the recipient's share does not include any Federal funds.

5. In § 1260.32 the clause heading and paragraphs (a) and (c) are revised and a bracket line is added at the end of the section to read as follows:

§ 1260.32 Subcontracts.

Subcontracts (November 1997)

(a) For all subcontracts over $100,000, the recipient shall provide the following to the NASA grant officer for approval:

(1) A copy of the proposed subcontract.

(2) The basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) The subcontract budget and basis for subcontract cost or price.

* * * * *

(c) All contracts awarded by a recipient, including small purchases, shall contain the provisions in appendix A of subpart B of this part.

[End of provision]

[FR Doc. 97–30972 Filed 11–28–97; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2130–97]

Organization; Approval of Charges Under the Economic Espionage Act of 1996

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Part 0 of Title 28, Code of Federal Regulations, to require that the United States may not file charges under the Economic Espionage Act of 1996 (EEA), or use a violation of the EEA as a predicate offense under any other law, without the personal approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General in charge of the Criminal Division (or the Acting Official in each of these positions if a position is filled by an Acting official).

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Bert Brandenberg, Director, Office of Public Affairs, U.S. Department of Justice, Washington, DC 20530, (202) 616–2777.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This rule is not a "significant regulatory action" under Executive Order 12866; accordingly, it has not been reviewed by the Office of Management and Budget. It is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Act of 1996. Finally, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organizations and functions (government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.64–5 is added to read as follows:

§ 0.64–5 Policy with regard to bringing charges under the Economic Espionage Act of 1996, Pub. L. 104–294, effective October 11, 1996.

The United States may not file a charge under the Economic Espionage Act of 1996 (EEA), Pub. L. 104–294, 110 Stat. 3488, 18 U.S.C. 1831 *et seq.*, effective October 11, 1996, or use a violation of the EEA as a predicate offense under any other law, without the personal approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General of the Criminal Division (or the Acting official in each of these positions if a position is filled by an Acting Official). Violations of this regulation are appropriately sanctionable and will be reported by the Attorney General to the Senate and House Judiciary Committees. Responsibility for reviewing proposed charges under the EEA rests with the Computer Crime and Intellectual Property Section, Criminal Division, which will consult with the Internal Security Section, Criminal Division, in cases involving charges under 18 U.S.C.

1831. This regulation shall remain in effect until October 11, 2001.

Dated: November 20, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–31192 Filed 11–28–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI92

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRLs). In a document published in the **Federal Register** on October 8, 1997 (62 FR 52503), VA issued an interim final rule which generally limited these loans to instances where the veteran's monthly mortgage payment will decrease, and generally required that the loans being refinanced be current in their payments. The interim final rule stated that it was effective on the date of publication. A subsequent administrative issuance delayed the effective date of the changes made by the interim final rule until December 1, 1997. This administrative issuance has caused uncertainty concerning the implementation of the interim final rule. Under these circumstances, this document rescinds the interim final rule and VA is rescinding the administrative issuance. We intend in the near future to publish a proposed rule to address the same issues that were addressed in the interim final rule. Further, the comments received in response to the interim final rule will be considered in the new rulemaking proceeding.

DATES: *Effective Date:* December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found good cause to dispense with notice and comment on this final rule and to dispense with a 30-day delay of its effective date. Such actions are impracticable, unnecessary, and contrary to the public interest. The issues raised by the interim final rule will be subjected to notice and comment in a future rulemaking proceeding. Further, the final rule is necessary to avoid uncertainty regarding the implementation of the interim final rule.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: November 25, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4306a, paragraphs (a)(6) and (a)(7) are removed and paragraphs (a)(3) through (a)(5) are revised, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(3) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, an amount equal to the sum of the amount referred to with respect to the loan under paragraph (a)(3)(i) of this section and the amount authorized by § 36.4336(a)(4);

(Authority: 38 U.S.C. 3710(a))

(4) The dollar amount of the guaranty of the 38 U.S.C. 3710(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712 the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3710(e)(1))

3. In § 36.4337, paragraph (a) is revised, to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

(a) *Use of standards.* Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

* * * * *

[FR Doc. 97–31369 Filed 11–28–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 036–1036; FRL–5929–3]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve an Iowa State Implementation Plan (SIP) revision pertaining to the Muscatine, Iowa, sulfur dioxide (SO_2) nonattainment area. This action will make federally enforceable state permits and related source specific emission limits and other conditions which will ensure attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on December 31, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

In the August 15, 1997 **Federal Register** (62 FR 43681), the EPA proposed to approve an Iowa SIP revision which pertained to the Muscatine, Iowa, SO_2 nonattainment area. The SIP was submitted to satisfy the requirements of section 110 and part D of title I of the Clean Air Act (Act).

No comments were received during the public comment period. Thus, the EPA is taking final action to approve the state's SIP revision.

The proposed approval discussed the state's submittal in detail. The SIP includes revised permits for three affected SO_2 sources in the Muscatine nonattainment area. These permits contain enforceable emission limits and conditions with compliance dates of March 15, 1996, for two of the sources and July 18, 1996, for the third. The permits result in actual and potential emission reductions intended to prevent any exceedances or violations of the SO_2 NAAQS.

The SIP also demonstrated the state's conformance with the nonattainment plan provisions of part D, section 172(c) of the Act and section 110.

There have been no exceedances or violations of the NAAQS at the Muscatine monitors since September 1995. The state has committed to continue operation of the three monitors in the Muscatine area, and will implement provisions of its contingency plan in the event of a NAAQS exceedance.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 5, 1997.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(65) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(65) On June 13, 1996, and April 25, 1997, the Director of the Iowa Department of Natural Resources (IDNR) submitted a revision to the State Implementation Plan (SIP) which included permits containing source specific emission limits and conditions for three sources in Muscatine, Iowa.

(i) Incorporation by reference.

(A) Grain Processing Corporation permits #95-A–374, #74-A–015-S, #79-A–194-S, #79-A–195-S, signed September 18, 1995.

(B) Muscatine Power and Water permits #74-A–175-S, #95-A–373 signed September 14, 1995.

(C) Monsanto Corporation permits #76-A–265S3, #76-A–161S3, signed July 18, 1996.

(ii) Additional material.

(A) Letters from Allan E. Stokes, IDNR, to Dennis Grams, Environmental Protection Agency, dated June 13, 1996,

and April 21, 1997, containing supporting SIP information.

[FR Doc. 97–31410 Filed 11–28–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ033–0007; FRL–5928–3]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County CO Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action constitutes EPA's response to the Ninth Circuit Court of Appeals' July 31, 1997 opinion in *DiSimone* versus *Browner*, No. 96–70974 (9th Cir. July 31, 1997). As a result of the opinion, EPA is restoring the contingency procedures in the carbon monoxide (CO) federal implementation plan (FIP) for the Maricopa County, Arizona nonattainment area (Phoenix) that it promulgated in accordance with Agency guidance issued prior to the 1990 Clean Air Act Amendments (CAAA). EPA is also withdrawing its approval of two contingency measures submitted by the State as revisions, pursuant to the 1990 CAAA, to the CO state implementation plan (SIP) for Phoenix.

EFFECTIVE DATE: This action is effective as of December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jan Taradash, Office of Regional Counsel (ORC–2), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California, 94105–3901, (415) 744–1335 or Sara Schneeberg, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5145.

SUPPLEMENTARY INFORMATION:

I. Background

In March 1990, the United States Court of Appeals for the Ninth Circuit vacated EPA's 1988 approval of the State of Arizona's SIP for the Phoenix CO nonattainment area and directed the Agency to promulgate a Federal implementation plan (FIP) under section 110(c) of the Clean Air Act (CAA) that included contingency procedures in accordance with its then existing guidance.[1] *Delaney* versus *EPA*, 898 F.2d 687 (9th Cir. 1990). In November 1990, the 1990 Amendments to the Clean Air Act (CAAA) were enacted which comprehensively revised the statute, including the provisions dealing with nonattainment areas and the deadlines and requirements for achieving attainment. EPA then filed in the Ninth Circuit a motion to recall the *Delaney* mandate, arguing, in part, that promulgation of the FIP under the pre-amended statute was inconsistent with both the structure and substantive provisions of the new law. EPA also argued that section 193, the general savings clause, of the 1990 Amendments did not preserve the Agency's pre-amendment FIP obligation.[2] The Ninth Circuit denied EPA's motion without opinion and EPA subsequently promulgated the FIP contingency procedures. 56 FR 5458 (Feb. 11, 1991).

In 1994 Arizona submitted to EPA contingency measures (an enhanced remote sensing program and a traffic diversion measure) adopted to satisfy the requirements of section 172(c)(9), a new provision added to the CAA by the 1990 Amendments.[3] In 1996, EPA approved these State measures as meeting the requirements of sections 110(a) and 172(c)(9) of the CAA and withdrew the FIP contingency procedures. 61 FR 51599 (Oct. 3, 1996). The Arizona Center for Law in the Public Interest (ACLPI) subsequently filed a petition for review of this action in the Ninth Circuit and the Court issued its opinion on July 31, 1997. *DiSimone* versus *Browner*, No. 96–70974 (9th Cir. July 31, 1997).

In its petition, ACLPI challenged EPA's action on several grounds, including that: (1) EPA violated section 193 by approving measures that did not insure equivalent or greater emission reductions than the FIP, and (2) the contingency measures approved by EPA did not comply with the requirements of section 172(c)(9). On these grounds, petitioners' requested that the court vacate EPA's approval of the state's contingency measures and withdrawal of the FIP contingency procedures, and direct EPA to restore the FIP contingency procedures.

In its opinion, the Court found that EPA's replacement of the court-ordered federal contingency provisions with state provisions under the new statutory scheme violated the *Delaney* mandate. Slip op. at 9023. The Court further found that EPA was precluded from litigating in *DiSimone* the issue of whether the amended Act authorized EPA's withdrawal of the FIP contingency procedures and approval of the State's contingency measures in their place. Slip op. at 9025. To support that conclusion, the Court reasoned that:

> [T]he issue presented in EPA's motion to recall the mandate [in *Delaney*] and the issue presented in this case [*DiSimone*] are indeed identical. The arguments advanced by EPA in both cases were that requiring the continued adherence to pre-Amendment guidelines would thwart Congressional intent and be inconsistent with the reclassification scheme introduced by the 1990 amendments. In addition, both the motion to recall the mandate and EPA's brief in this case addressed the General Savings Clause * * * as not applicable to the court's order in *Delaney*. Slip op. at 9026.

The Court also stated that the 9th Circuit panel denying EPA's motion to recall the mandate "decided against all of the arguments presented in EPA's motion because such a determination was necessary to deny the motion." Slip op. at 9027. The Court did not, however, indicate what specific relief sought by ACLPI it was granting. Instead, it merely granted the petition *"for the foregoing reasons."* (Emphasis added). Slip op. at 9028.

Because of the Court's exclusive reliance on *Delaney*, the restoration of the FIP contingency procedures is clearly compelled by its granting of ACLPI's petition. As to the State's contingency measures, nowhere in the opinion does the Court address the issue of whether the State's measures meet the requirements of sections 110(a) and 172(c)(9) of the CAA.[4] Thus there is no indication as to whether EPA's approval of these measures could remain in place in light of the restoration of the FIP.

However, throughout the opinion there is evidence that the gravamen of the Court's objection to EPA's action was the substitution of the State's contingency measures for the FIP contingency procedures.[5] Consequently EPA has concluded that the Court viewed the Agency's withdrawal of the FIP contingency procedures and approval of the State's contingency measures as interdependent. Because EPA does not intend to seek a rehearing from the Ninth Circuit, the Agency believes that, for the purpose of this action, it has no choice but to withdraw its approval of the State's measures in addition to restoring the FIP contingency procedures.[6]

II. Final Actions

A. Rule

For the foregoing reasons, EPA is taking final action to restore the federal contingency procedures for the Phoenix CO nonattainment area. Specifically, the Agency is restoring the phrase "After December 31, 1991 for the Maricopa CO nonattainment area or" to the contingency provisions at 56 FR 5471, col. 2 (Feb. 11, 1990). EPA is also, for the reasons discussed above, withdrawing its approval of the State's contingency measures as meeting the requirements of sections 110(a) and 172(c)(9) of the CAA.

At the time EPA approved the State's contingency measures and withdrew the FIP contingency procedures, the Agency also withdrew the list of highway projects potentially subject to delay that the Agency proposed on June 28, 1993 during the partial implementation of the FIP at that time. 58 FR 34547.[7] EPA is today reaffirming the withdrawal of that list because it is no longer current. During any future implementation of the FIP contingency procedures, EPA will propose an updated list of projects potentially subject to delay.

B. Effective Date and Notice and Comment Under the Administrative Procedures Act

Today's action will be effective on December 1, 1997. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. In today's action, EPA is simply implementing administratively a result that the Ninth Circuit Court of Appeals effectuated in its July 31, 1997 opinion in *DiSimone* v. *Browner*. Therefore an effective date prior to 30 days after the date of publication is warranted.

Similarly, while this document constitutes final agency action, EPA finds good cause to forego prior notice and comment under the APA, 5 U.S.C. 553(b). Notice and comment are unnecessary because no EPA judgment is involved in restoring the FIP contingency procedures and withdrawing the Agency's approval of the State's contingency measures pursuant to the Ninth Circuit's opinion in *DiSimone*.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice and comment rulemaking requirements under the good cause exception. Because this action is exempt from such requirements, as described above, it is not subject to the RFA.

C. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 2 U.S.C. 1501–1571, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by this rule.

EPA's withdrawal of its approval of the State's contingency measures does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action simply makes requirements that the State is already imposing no longer subject to federal enforcement. Restoration of the FIP contingency procedures puts back in place federal requirements that existed prior to their withdrawal by the Agency in 1996. To the extent that this action imposes any mandate on State, local, tribal governments or the private sector, EPA concludes that it would not result in estimated costs of $100 million or more. With regard to both actions, EPA is simply implementing administratively what the Ninth Circuit effectuated in its July 31, 1997 opinion in *DiSimone* v. *Browner*. Therefore EPA has not prepared a budgetary impact statement for this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

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[1] The CAA prior to the 1990 Amendments contained no statutory provision for contingency procedures or measures. As a result of this absence, EPA developed the guidance pursuant to which the FIP was promulgated. 46 FR 7187 (January 22, 1981).

[2] Section 193 provides, in pertinent part:

> No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

EPA did not advance in its motion an argument concerning the effect of section 193 on any subsequent replacement of the FIP contingency procedures with approved state measures.

[3] Section 172(c)(9) requires SIPs to provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress (RFP) or attain the national ambient air quality standard (NAAQS) by the applicable attainment date.

[4] In fact, ACLPI did not raise in its petition for review any issues relating to EPA's approval of the contingency measures under section 110(a).

[5] For example: "We hold that EPA acted in disobedience of an order of this court in withdrawing the federal plan and approving a state plan in its place. * * *" Slip op. at 9019; "Here, the issue to be foreclosed is whether, in light of the 1990 amendments to the Clean Air Act, EPA was permitted to approve a state implementation plan in place of the federal plan ordered by the *Delaney* panel." Slip op. at 9025.

[6] It should be noted that those measures no longer serve a contingency function because they were implemented when the Phoenix area was automatically reclassified from a "moderate" to a "serious" CO nonattainment area upon EPA's finding that the area had failed to meet the statutory attainment deadline of December 31, 1995. See 61 FR 39343 (July 29, 1996) and footnote 3. As a result of the reclassification, the State is required to submit a serious area SIP revision for Phoenix by February 26, 1998 that includes new contingency measures pursuant to CAA section 172(c)(9).

[7] For the full text of the FIP contingency procedures, see 56 FR 5471–5472.

Dated: November 20, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

§ 52.120 [Amended]

2. Section 52.120 is amended by removing and reserving paragraphs (c)(83) and (c)(85).

[FR Doc. 97–31278 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–5930–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is removing the final rule appearing at 56 **Federal Register** (FR) 67197 (December 30, 1991) insofar as it excluded hazardous waste treatment residue generated by Reynolds Metals Company (Reynolds), Gum Springs, Arkansas, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This decision to repeal the exclusion is based on an evaluation of waste-specific information provided by Reynolds and obtained by EPA either independently or from the Arkansas Department of Pollution Control and Ecology (ADPC&E) subsequent to the promulgation of the exclusion. After the effective date of this rule, future spent potliner waste generated at Reynolds' Gum Springs, Arkansas, facility will no longer be excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) and must be handled as hazardous waste in accordance with sections 260 through 266, 268 and 273 as well as any applicable permitting standards of section 270. This rule does not remove or affect EPA's reasoning or evaluation as it related to the modified EPA Composite Model for Landfills (EPACML).

EFFECTIVE DATE: December 1, 1997.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Review Room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6775 for appointments. The reference number for this docket is "F–97–ARDEL–REYNOLDS." The docket may also be viewed at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general and technical information concerning this notice, contact William Gallagher, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6775.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority for "Delisting"

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in sections 261.31 and 261.32. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations (CFR); and section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Reynolds was granted a final exclusion for K088 waste treatment residues on December 30, 1991 (*see* 56 FR 67197). In that rule, EPA also addressed the modified EPACML. The EPA believes its statements contained in that rule related to the EPACML remain accurate. Today's action is not intended to repeal or otherwise affect EPA's adoption or use of that model.

After evaluation of new data, EPA proposed, on July 31, 1997, repeal of the final rule issued December 30, 1991 (*see* 62 FR 41005). This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to repeal the Reynolds exclusion.

C. Subsequent Events

Under the RCRA Land Disposal Restrictions (LDR) Program certain hazardous wastes cannot be land disposed until they satisfy treatment standards promulgated by EPA (RCRA sections 3004 (d)–(g)). On April 8, 1996, EPA prohibited land disposal, of and established treatment standards for, spent potliners from aluminum production (K088 hazardous wastes, 61 FR 15566, April 8, 1996). At that time (and still today), Reynolds has the only commercially available treatment facility that is capable of meeting those LDR treatment standards. However, as discussed below in section II., EPA had concerns about concentrations of certain hazardous constituents in the leachate from Reynolds treatment process residue, especially because such treatment residues had been delisted and were being disposed in units which were not subject to RCRA subtitle C standards [62 FR 1994–62 FR 1995 (January 14, 1997)]. The EPA initially extended the national capacity variance until July 8, 1997. At that time, after reexamination, the Agency found that Reynolds was providing treatment and disposal capacity which is protective of human health and the environment (RCRA section 3004(h)(2)), and accordingly found that there is adequate treatment capacity for K088 wastes. [62 FR 37694 (July 14, 1997)]. The national capacity variance was further extended three months to allow generators to make necessary logistic arrangements (Id. at 37694).

The Agencys decision rested upon two principal factors. Reynolds process destroys most of the most hazardous constituent in K088 wastes—cyanide—immobilizes most of the toxic metals, and destroys all polycyclic aromatic hydrocarbons (62 FR 37694, 62 FR 37696). In addition, Reynolds disposal of treatment residue in units not subject to subtitle C regulation will end, and all future disposal must be in units which must comply with subtitle C standards (Id. at 37697). The immediate mechanism for addressing, the concerns about "protective" disposal capacity was the September 3, 1997, issuance of a unilateral administrative order under RCRA section 7003 (UAO), which required Reynolds to comply with RCRA Subtitle C management standards at its treatment facility in Gum Springs, and at its mining site located in Bauxite, Arkansas, where the treatment residue had been used as fill material in reclamation activities.[1] The company agreed to comply with the terms of the UAO in a letter to EPA dated September 5, 1997. At the Gum Springs facility, the UAO and amended UAO require Reynolds to: (1) Manage the kiln residue and the kiln residue leachate as a hazardous waste; (2) conduct 30-day compliance sampling of the kiln residue; (3) discontinue placement of the kiln residue into Cell #1 of the Reynolds on-site monofill, and initiate and complete construction of a clay cap on that cell that meets RCRA requirements; and (4) upgrade Cell #2 of the newly regulated monofill by, *inter alia*, installation of a double composite liner with leachate collection capabilities and to meet all RCRA subtitle C standards applicable to landfills. At the Hurricane Creek facility, the Order requires Reynolds to: (1) Control access to the E–40 mine pit; (2) conduct an environmental impact study; (3) submit a hydrogeological investigation plan; (4) submit a revised ground water monitoring plan; (5) complete one year of ground water monitoring, subject to continued monitoring; and (6) remove existing and discontinue construction of roadways which utilize kiln residue.

II. Repeal of Final Rule Granting Reynolds Delisting Petition

A. Highly Alkaline Nature of Reynolds Treatment Residue

As noted above, subsequent to issuing the final rule granting Reynolds delisting petition, EPA obtained additional information gathered after operations at the Gum Springs facility began. Specifically, EPA received and analyzed data regarding the actual leachate from cell #1 of the monofill at Gum Springs produced from residue generated by Reynolds K088 treatment process as well as data from Reynolds Hurricane Creek mining site. As explained in greater detail in the proposed rule, those data indicate that the monofill leachate contains levels of hazardous constituents significantly higher than the delisting levels [62 FR 41005, 62 FR 41007, (July 31, 1997)]. Those data also show that the leachate is corrosive with a pH in the range of 12.5–13.5 therefore making it a characteristically hazardous waste as defined by section 261.22. In light of those actual field data, EPA has concluded that the Agencys 1991 determination under section 260.22 that no other hazardous constituents or factors that could cause the K088 treatment residue resulting from Reynolds treatment process to be hazardous are present in the waste at levels of regulatory concern need to be revised.

Specifically, EPA now concludes that although significant treatment is occurring (see sections I.C. and II. B. 2.f.), the highly alkaline nature of the treatment residue is a factor which warrants retaining it as a hazardous waste. Mobility of arsenic and cyanide, remaining in the residue following treatment increases in a highly alkaline disposal environment such as that utilized by Reynolds. As a result, these compounds leach from the residue at hazardous levels. In addition, the leachate is a hazardous waste because it exhibits the hazardous waste characteristic of corrosivity. Therefore, based on this new data, the treatment residue should no longer be delisted.

B. Agency Response to Public Comments

General. The EPA received public comments from eight interested parties. The comments were received from two Arkansas private citizens, two Arkansas local government officials, one Arkansas environmental group, the Environmental Defense Fund, counsel from a consortium of aluminum producers in the northwest U.S., and Reynolds. No adverse comments were received regarding repeal of the delisting.

1. Issues Not Directly Related to the Proposed Repeal

Interested parties submitted comments related to the following areas which are not part of today's final action by EPA:

- Waste management and waste disposal issues;
- Permitting issues;
- Hazards to human health and the environment;
- Additional analyses/investigations;
- Land Disposal Restrictions/effectiveness of Reynolds' treatment process;
- Toxicity Characteristic Leaching Procedure;
- Perceived delays in EPA's decision-making; and
- Enforcement issues/unlawful disposal/Arkansas Department of Pollution Control & Ecology Consent Administrative Order/draft EPA RCRA section 7003 order.

Because these comments address issues that did not directly bear upon the decision to repeal the delisting exclusion, EPA will not respond to them as part of this rulemaking. Any additional observations provided in this document respecting those issues are simply informational and do not form a basis for a final action by EPA. Importantly, no commenter felt that the delisting exclusion should be retained.

a. Waste Management and Waste Disposal Issues. Several comments related to whether Reynolds' management of the leachate and residue was responsible, in light of the nature of the waste, whether the waste should remain in place or be immediately removed from Cell #1 of the landfill at Gum Springs or from the mine pit and a research and development landfill at the Hurricane Creek facility, and what oversight authority EPA will exercise to ensure that the State of Arkansas inspects and oversees the Reynolds operation. These are enforcement and oversight issues and are separate and distinct from today's final rule which merely repeals a previous exclusion. Although comments of this nature did not bear on the substance of today's rulemaking, EPA notes that investigations are being conducted under the UAO which pertain to some of these issues, and it is premature to comment on any potential future enforcement response by the Agency. The State is authorized to administer the RCRA program, and EPA will conduct additional oversight activities as appropriate.

b. Permitting Issues. A second broad group of comments related generally to permitting issues such as ecological and human health assessments, ground water and surface water monitoring, a health and safety plan for Reynolds' operations, landfill operations, incompatibility of the landfill liner and leachate collection system, commingling of waste from Cells #1 and #2, public participation in permitting, and siting issues. Again, these issues are not relevant to the question decided by today's final action whether to repeal a previous exclusion. Indeed, these concerns support EPA's decision to

[1] The Unilateral Administrative Order issued September 3, 1997 was amended on October 31, 1997.

again impose regulatory controls on the spent potlinor waste generated by Reynolds. The Agency believes that the permitting issues raised by the commenters are best addressed during the State's permitting process for the Reynolds Gum Springs facility.

c. Hazards to Human Health and Environment. Some commenters alleged that the Reynolds operation might be the cause of two eagle kills in the area and of adverse health effects being alleged by workers at the Hurricane Creek facility. Commenters were also concerned that the area's water supply be protected. The Agency believes that the imposition of hazardous waste management controls through the UAO and this repeal will help ensure that appropriate requirements apply to better protect human health and the environment. While no direct evidence linking the eagle kills to Reynolds' waste was provided by the commenter, the appropriate State and Federal agencies are investigating that concern as well as complaints of the workers.

d. Additional Analysis/Investigations. Other comments related generally to the need for additional analysis or investigation. Commenters requested information on the performance of toxicological assays and investigations of past and present threats to human health and the environment. The evaluation of the threats to human health and the environment and toxicological assays relate to the permitting and enforcement processes and should be raised as part of those processes. Again, the concerns only tend to support todays action: bringing the wastes back into the RCRA regulatory system for hazardous waste management.

e. Toxicity Characteristic Leaching Procedure (TCLP). Several comments generally addressed use of the TCLP to evaluate the residue. Commenters claimed that there was a failure of the testing system and analytical methods used to identify the potential problems with the residue. They also indicated that information regarding the potential failure of the testing program was in the Agencys possession since January 1992, and additionally addressed Reynolds development of replacement tests for the TCLP. Whether the TCLP correctly predicts behavior of the waste in a landfill is not the focus of EPAs decision today to repeal Reynolds delisting. As explained in the proposal, the Agencys decision to repeal is based, in part, on sampling results from actual landfill leachate, not on the results of a TCLP analysis of the residue itself. To the extent comments addressed the validity of the TCLP test method itself, revision or modification of the TCLP is beyond the scope of todays action.

f. Perceived Delays in EPAs Decision-Making. Commenters complained that the Agency did not respond timely in repealing the delisting and questioned why it took the Agency more than fourteen months to propose repeal of the delisting. They also comment that the Agency never sought copies of all the data in Reynolds possession concerning the performance of the treatment technology and generation of hazardous constituents in treated materials disposed at various locations. The Agency believed it appropriate to base its decision upon a reasoned evaluation of all available facts. It concluded that rather than acting precipitously, the Agency should gather enough information to allow an informed decision. To this end, it conducted separate sampling events at the two Reynolds facilities. The Agency then received and reviewed these results and proposed a decision. The EPA believed that it was necessary to accept public comment on the decision and therefore did not use an emergency rulemaking or direct final rule to repeal the delisting as some commenters suggested.

g. Enforcement Issues. Another group of comments raised issues with respect to EPAs enforcement authorities. These types of issues related to a draft of the RCRA 7003 order, the ADPC&E Consent Administrative Order (rescinded September 14, 1997), and allegations that the waste has been illegally disposed. These issues relate to EPAs exercise of its enforcement authority and its enforcement discretion, not to todays decision. However, as a point of information, the Agency is requiring further investigation regarding the disposal of wastes placed at the Hurricane Creek facility. Interim measures have already been implemented to control and monitor environmental concerns at the Hurricane Creek facility. The UAO requires Reynolds to close Cell #1 at the Gum Springs Landfill and the mine pit at Hurricane Creek by installation of an engineered clay cap, which is consistent with Superfund and RCRA presumptive remedies for closure of landfills.

Commenters also suggested that Reynolds may have illegally disposed of hazardous waste for a variety of reasons, for example, claims that the delisting is void by reason of certain perceived failures on Reynolds part. The EPA does not believe that there is a sufficient factual basis to find that the delisting was void because of Reynolds actions or perceived omissions. The decision whether to enforce the terms of the delisting rests within the Agencys discretion.

2. Comments Directly Pertaining to the Repeal of the Delisting

- Technical Corrections;
- Retroactive Application of Repeal;
- Interim Status of the Monofill;
- Public Participation/Notice and Comment;
- Delisting Violations; and
- Delisting vs. LDR issues.

a. Technical Corrections. Reynolds submitted comments which provided a number of clarifications and corrections to the proposed rule. It averred that EPA had inaccurately characterized use of the delisted kiln residue as "fill material" in an "unlined" mine pit. Further, Reynolds stated that the material was used in mine reclamation activities at the Hurricane Creek facility because the pH of the residue beneficially contributed to neutralization of acidic bauxite mining residues. It claimed that the material was placed in areas of the facility underlain by a substantial clay layer having a very low permeability exceeding EPAs design specifications for hazardous and non-hazardous landfills. The Agency does not adopt the position that the clay layer underlying the mine pit fulfills the EPA design requirements for composite liners for solid waste landfills (*see* section 258.40(b)), nor does it meet the composite liner requirements for hazardous waste landfills (*see* sections 264.301(c)(1), 265.301(a), and 265.19). The mine pit is not equipped with a complete composite liner system which combines an upper liner of a synthetic flexible membrane and a lower layer of soil at least two feet thick as exists in the solid waste landfill at the Gum Springs plant. Neither did Reynolds demonstrate that the method of placement was actually beneficial to neutralization of the acidic bauxite mine residues.

Reynolds further disagrees with EPAs evaluation of the leachate numbers as compared to the health-based numbers. Tables included in the proposed rule seemed to compare health-based limits to delisting levels and actual leachate levels. For clarification, delisting levels are obtained by multiplying health-based levels by a calculated dilution attenuation factor (DAF) (*see* 62 FR 41006 and 62 FR 41007).

Reynolds also complained of the absence of an articulation of EPAs sampling protocol, quality assurance and quality control data used in sampling at the Hurricane Creek and Gum Springs facilities. The EPAs sampling protocol, quality assurance and quality control information are available and will be placed in the record.

b. Retroactive Application of Repeal. One commenter questioned why the proposed repeal of the delisting only covered future generation of the residue and did not address the waste previously disposed at the Hurricane Creek or the Gum Springs site.

Generally, a rule may only have prospective application. *See Bowen* vs. *Georgetown University Hosp.*, 488 U.S. 204 (1988). Moreover, the residue generated during the effective time period of the delisting was not hazardous waste subject to RCRA subtitle C regulation; therefore, that residue could legally be disposed of as a solid waste. Because EPA is merely repealing the Reynolds delisting exclusion as of the effective date of todays rule, EPAs action will not, in itself, bring the residue generated during the operation of the delisting exclusion back within the RCRA subtitle C regulatory system. However, if Reynolds should actively manage (*i.e.*, treat, store, or dispose) the waste disposed of during the operation of the delisting subsequent to the effective date of this repeal, it would potentially have to manage it as a RCRA subtitle C hazardous waste. *See* 55 FR 8762–63 (National Contingency Plan preamble); and, *Chemical Waste Management, Inc.* vs. *EPA*, 869 F.2d 1526 (D.C. Cir. 1989).

c. Interim Status of Reynolds Landfill Cell #2. Several commenters expressed concern regarding Reynolds ability to obtain interim status as part of the delisting repeal. There was also concern that the Agency was granting Reynolds a *de facto* temporary permit to operate the new landfill cell. Commenters were concerned that a permitting decision was being made without the requisite public participation or public review and comment. Although this issue is not being decided in todays decision to repeal the delisting, it was addressed in the proposal, and thus the Agency feels compelled to offer an explanation.

First, interim status is not granted. It occurs by operation of law without resort to an administrative approval process. *See New Mexico* vs. *Watkins*, 969 F.2d 1122, 1130 (D.C. Cir. 1992). There is no statutory or regulatory provision for public comment and review of a facilitys claim of interim status. Moreover, the State of Arkansas, not EPA, has the authority to determine that the Reynolds facility does not qualify for interim status. Second, Reynolds already has interim status for portions of its facility and the original UAO may constitute a "new requirement" resulting in an expansion of that status, section 270.72(a)(6), and (Arkansas Pollution Control and Ecology Commission Regulation No. 23, section 270.72(a)(6)). Third, there are other provisions in the applicable Federal and State laws indicating that Cell #2 may qualify for interim status. This final rule to repeal the delisting exclusion, however, does not constitute a finding that Reynolds has met interim status, permitting or land disposal restriction requirements.

d. Notice and Comment. Four commenters requested that a public hearing be held to discuss issues relating to the Reynolds Metals Company. A number of issues tangential to repeal of the delisting were raised to support these requests. One commenter stated that there was an attempt by the Agency to bypass all of the legally mandated public notice, review, and comment protections by giving Reynolds a back door to Subtitle C interim status. This comment is addressed in the prior subsection. None of the commenters contested the decision to repeal the delisting but instead sought to raise additional issues. The Agency does not believe that it is appropriate to delay the pending repeal decision in order to discuss these issues that go beyond today's final action—the repeal of the delisting—in the context of a public hearing. It is important to note that a public hearing is not mandated by either RCRA or its implementing regulations as relates to today's decision. In providing the public the opportunity to comment on this action, EPA elected to adopt the procedures provided by section 260.20(d) for making a hearing request. That provision, as well as the Administrative Procedures Act, 5 U.S.C. 553 (which governs the Agency's general rulemaking process), provides that it is within the Agency's discretion to determine when a hearing is necessary. The EPA believes that a public hearing on the repeal of the delisting is not necessary and that comments germane to this action from interested parties are being adequately addressed through the notice and comment process.

e. Delisting Violations. Commenters assert that Reynolds has violated the terms of the original exclusion because it did not report information that was "true, accurate, or complete" as required by the certification requirements of Reynolds delisting exclusion. They also assert that Reynolds did not report information in its possession which indicated that landfill leachate contained elevated levels of arsenic, cyanide, fluoride, and pH. On this basis, the commenters contend that the delisting is void and has been void for some time prior to today's action. Any decision to take action with regard to an alleged violation is within EPA's enforcement discretion. The EPA does not currently believe that there is a sufficient factual basis to support a finding that violations have occurred that would void the delisting exclusion, *ab initio*. The exclusion explicitly outlines the information Reynolds was required to submit as part of the delisting. Historically, the Agency has not required submission of information about leachate from landfills where a delisted waste has been disposed, nor did it require Reynolds to report this information. Reynolds did report the monofill leachate data to the appropriate State solid waste offices. While it is unfortunate that this information was not brought to EPA's attention immediately, the delay in getting the data to EPA does not necessarily translate into a violation of the certification requirement contained in the Reynolds delisting. Furthermore, the delisting regulations as well as the exclusion provide that the determination whether the certification was false, inaccurate or incomplete lies in the sole discretion of the EPA. Based on current information, EPA does not believe a violation of the certification requirements occurred.

One commenter also stated that the proposed repeal does not include an evaluation of whether Reynolds has violated any solid waste regulations. Regulation of solid waste primarily belongs to the States; therefore, violation of the State's solid waste regulations should be addressed by the State. Inasmuch as this action relates to the limited determination that the Reynolds delisting exclusion should be repealed, further response is unnecessary.

f. Delisting vs. *LDR Determinations.* A commenter asked how EPA harmonizes the findings in the July 14 National Capacity Variance Final Rule, 62 FR 37694 (July 14, 1997) with those in the proposed repeal, particularly with respect to total cyanide, amenable cyanide, and mobilization of cyanide in the alkaline environment of the Reynolds monofill. The commenter states the substantial increases in leachable cyanide or cyanide amenable to being mobilized in the environment, and as discussed in the proposed repeal of Reynolds delisting, seem to contradict the conclusions reached in the July 14 Rule.

There is no contradiction. Land disposal treatment standards require "substantial treatment"; they do not mandate that a nonhazardous residue

result from treatment (*see* RCRA section 3004(m)(2), 42 U.S.C. 6924(m)(2)). Few residues from treated listed waste have been delisted even after being treated to satisfy LDR requirements (*see* 62 FR 37697). The fact that residue resulting from treatment using Reynolds' process remains hazardous does not mean that it has not been substantially treated. As shown in the July document, 90 percent of the cyanide is removed in the process, PAHs (polycyclic aromatic hydrocarbons) are completely destroyed and eleven metals are immobilized. Further, as the residue must be disposed of consistent with regulations applicable to hazardous wastes, land disposal of the residue will be protective of human health and the environment. As a result of today's rule, Reynolds' treatment residue will once again be subject to hazardous waste controls, notwithstanding the fact that it has been substantially treated.

C. Final Agency Decision

For reasons stated in both the proposal and this notice, EPA believes that exclusion of Reynolds' residue from the treatment of K088 spent potliner from the list of hazardous wastes contained in section 261.32 should be repealed. The EPA, therefore, is repealing the final rule published at 56 FR 67197 (December 30, 1991) granting Reynolds' petition for an exclusion from K088 hazardous waste listing contained in sections 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company, Gum Springs, Arkansas. As a result of today's rule, Reynolds must manage the treatment residue as a hazardous waste.

III. Effective Date

This rule will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. Although, in the proposed rule, EPA proposed making the final rule effective 60 days after publication in the **Federal Register** to allow Reynolds the opportunity to make arrangements with a hazardous waste disposal facility or claim interim status for its facility, the EPA has good cause to believe that no additional time is necessary for Reynolds to come into compliance with today's rule. In response to the UAO issued on September 8, 1997, Reynolds submitted a revised part A application to ADPC&E dated September 2, 1997, claiming the inclusion of the spent potliner monofill under their interim status for the Gum Springs facility and indicating their agreement to manage the material as a hazardous waste. The UAO is protective and provides that the waste will be disposed of safely, consistent with all hazardous waste requirements. Further, although other issues relating to Reynolds' treatment process may affect a broader audience, this rule affects only Reynolds. Reynolds commented on the proposal and, like other commenters, did not object to the repeal. The EPA finds that the good cause requirement contained in 5 U.S.C. 553 has been met, allowing this rule to be effective immediately upon its publication.

IV. Regulatory Impact Analysis Under Executive Order (E.O.) 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the E.O., which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The EPA has determined that today's final rule is not a significant rule under E.O. 12866 because it is a site-specific rule that directly affects only the waste treatment residue from the Reynolds' Gum Springs, Arkansas, facility.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

Today's rule will directly affect only the Reynolds Company therefore, no small entities will be adversely affected. The EPA certifies, pursuant to the provisions at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of the OMB to review certain information collection requests by Federal agencies. The EPA has determined that this rule will not impose any new recordkeeping or reporting requirements that would require OMB approval under the provisions of the Paperwork Reduction Act of 1980.

VII. Unfunded Mandate Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or Tribal governments or the private sector.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Because today's proposed rule directly affects only the Reynolds Gum Springs, Arkansas, facility, EPA finds that the rule does not impose any enforceable duty upon State, local, and Tribal governments. Thus, today's rule is not subject to the requirements of sections 203 and 205 of the UMRA.

List of Subjects in 40 CFR Part 261

Environmental protections, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 2002(a), 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 18, 1997.

Robert E. Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

Appendix IX to Part 261 Table 2—[Amended]

2. Appendix IX to part 261, Table 2—Wastes is amended by removing the entry "Reynolds Metals Company, Gum Springs, Arkansas" and its related text.

* * * * *

[FR Doc. 97–31404 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 97–23]

Simplification of Service Contract Filing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules to discontinue the requirement that service contracts be filed in double envelopes. This should reduce duplication and Commission and carrier costs, as well as facilitate the submission of service contract filings at the Commission.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

I. Background

The rules of the Federal Maritime Commission ("Commission"), at 46 CFR 514.7(g)(1)(i) and (ii), require service contracts to be filed in double envelopes. This requirement originated with the Commission's initial service contract rules, when all filings were in paper form and was intended to facilitate the separation of service contracts from their associated essential terms filings. Service contract essential terms are now filed electronically in the Commission's Automated Tariff Filing and Information system ("ATFI"). As a consequence, the double-envelope procedure has become superfluous.

The Commission received 38,747 service contract filings during fiscal year 1997. Each filing is now required to be "filed in single copy contained in a double envelope." This proposal will thus reduce by half the number of envelopes that must be filed with and handled by the Commission's staff. This will result in cost savings and processing efficiencies for the industry and Commission.

Because the removal of this obsolete requirement eliminates, rather than creates, a regulatory requirement, this revision is being promulgated as a final rule effective upon publication in the **Federal Register**.

This final rule does not impose any additional reporting or recordkeeping requirements from those which were previously approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, as amended. (OMB Control No. 3072–0055, expires May 31, 1998.)

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The subject final rule is not a major rule under the Small Business Regulatory Flexibility Act (5 U.S.C. 804(2)) because it will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

List of Subjects in 46 CFR Part 514

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707 and 1716), the Federal Maritime Commission amends Part 514 of Title 46 of the Code of Federal Regulations as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.7 is amended by revising paragraph (g)(1) to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(g) * * *

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in an envelope, which contains no other material, addressed to: "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573." The envelope shall state "This Envelope Contains a Confidential Service Contract." If multiple service contracts are filed in an envelope, the pages of each individual contract should be fastened together. The top of each page of a filed service contract shall be stamped "Confidential."

* * * * *

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–31320 Filed 11–28–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 240

[Docket No. RSOR–6, Notice No. 45; Docket No. RSOR–9, Notice No. 9]

RIN 2130–AA83

Alcohol/Drug Regulations: Technical Amendments; Qualifications for Locomotive Engineers: Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule containing technical amendments to its regulations on control of alcohol and drug use (49 CFR part 219), and amends its regulations on locomotive engineer qualifications (49 CFR part 240) to delete an outdated cross-reference to part 219 in part 240.

EFFECTIVE DATE: This rule is effective December 31, 1997.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Room 8201, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 632–3378) or Patricia V. Sun, Trial Attorney (RCC–11), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 632–3183).

SUPPLEMENTARY INFORMATION:

In addition to the technical amendments discussed below, this rule makes several editorial changes to correct typographical errors.

Section by Section Analysis

Section 219.5 Definitions

FRA is deleting the definition of "Field Manual" for the reasons discussed below.

Section 219.19 Field Manual

FRA is removing and reserving this section and deleting all references to its alcohol and drug testing field manual (including, as mentioned above, the definition in § 219.5 and a reference in § 219.205(c)(1)), since this 1985 publication is obsolete. At present, FRA has no plans to issue an updated manual.

Section 219.101 Alcohol and Drug Use Prohibited

Paragraph (a)(5)

FRA is adding a new paragraph to codify a 1995 interpretation which made clear that a railroad is prohibited from using an FRA alcohol test result that indicates an alcohol concentration below 0.02 as a basis for federal or company discipline.

Section 40.63(e) of the Department of Transportation's (DOT or the Department) alcohol testing procedures (contained in 49 CFR part 40 (part 40), which is incorporated by reference into part 219) states that in any case where the employee's breath alcohol concentration is less than 0.02, no further testing is authorized under Federal regulations. This is because levels below .02 are considered to be negative results (i.e., not persuasive evidence of alcohol use).

Testing conducted under federal authority is a search subject to the protections of the Constitution of the United States. For this reason, actions taken pursuant to federal rules must be supported by forensically sound evidence. After considering the limits of current technology, DOT determined that .02 was the lowest alcohol concentration measurement at which it could be confident in the result's accuracy. (This is analogous to the drug testing cutoff levels established by the Department of Health and Human Services (DHHS)).

FRA recognizes that railroads retain independent authority to test and discipline on their own. In § 219.1, FRA states that railroads may adopt more stringent standards under their own authority *that are not inconsistent with Part 219*, and in § 219.101(c), FRA accommodates longstanding industry zero tolerance policies by allowing railroads to impose an absolute prohibition on the presence of alcohol or drugs in the body fluids of their employees.

This does not mean, however, that railroads can use a federal test result below 0.02 as a basis for discipline, even under their own authority. For FRA purposes, if a federal test result indicates an alcohol concentration below .02, the test is negative and is not evidence of alcohol abuse. Therefore, a railroad cannot use the federal test result either as evidence in a company proceeding or as a basis for subsequent testing under company authority.

A railroad can take further action only if it has an independent basis for doing so. For example, if a supervisor reasonably suspects alcohol use because the employee smells of alcohol, and the federal test result is below .02, the railroad may use the supervisor's observations as an independent basis for further company testing. Before starting a separate company testing process, the railroad must ensure that the employee understands that the completed federal test was negative, and that no federal violation occurred. The railroad may then conduct a company test (for which use of an FRA or DOT form is *not* authorized), after making the employee aware that any subsequent actions, such as future testing or discipline, are taken under railroad authority only.

Prohibiting use of federal test results below .02 does not interfere with railroad authority. A railroad remains free to test or take further action *if* it has an independent basis for doing so. Commingling federal authority with an employer testing program is impermissible, however, since the employee must always know in advance what his or her procedures, rights and consequences are.

If an employee's test result is between .02 and .039, however, a railroad may take more stringent disciplinary action than the eight hour removal from covered service required under Part 219. In the preamble to its final rule on alcohol testing [February 15, 1994, at 59 FR 7452], FRA stated that "* * * the bifurcated system [which imposes different consequences for results of .04 or above BAC than for results between .02 and .039] does not preempt a railroad's independent authority to test and discipline under Rule G. As stated in § 219.1, railroads retain the latitude to adopt more stringent standards under their own authority. For instance, railroads retain their authority to discipline an employee under company policy for a .02–.039 test result conducted under FRA authority or to discipline an employee found to have violated Rule G based solely on supervisory observations."

The crucial distinction is that while a .02–.039 test result does not necessarily indicate impairment, it *does* indicate the presence of alcohol in the employee's system. Thus, a railroad may use a federal test result of .02–.039 as the basis for more stringent discipline under its own independent authority. A separate company test is therefore not required to impose discipline in addition to the federally mandated minimum of eight hours removal from covered service. Allowing a railroad to impose company discipline for a .02–.039 test result reinforces the rail industry's traditional Rule G prohibition against alcohol use since, as stated above, a .02 standard is the equivalent of zero tolerance because of the technological limitations of current alcohol testing technology.

Section 219.104 Responsive Action

Paragraph (a)(3)

FRA is amending § 219.104(a)(3)(ii) to remove references to pre-employment alcohol testing made obsolete by DOT's suspension of pre-employment alcohol testing on May 10, 1995 [60 FR 24765]. To implement DOT's decision, FRA suspended its pre-employment alcohol testing requirements by adding § 219.501(f) in 1995.

DOT explained the suspension's impact as follows: "[a]ny employer may [continue to] conduct pre-employment alcohol testing under its own authority. Because of this suspension, employers who wish to continue such testing may not claim a basis in Federal law or regulation for doing so, however."

Pre-employment drug testing was not affected by this suspension, however, and remains in effect.

Section 219.201 Events for Which Testing is Required

Paragraph (b)

For clarification, FRA specifies that accidents that would otherwise qualify but are clearly attributable to the actions of a trespasser or trespassers are exempt from mandatory post-accident testing. This exemption spells out what had previously been implied in this subpart, since crewmembers would normally be excluded from testing upon determination that they played no role in the cause or severity of the accident, or that the accident was attributable to vandalism. Consistent with the other exceptions, the trespasser exception holds railroad supervisors to the reasonable inquiry/good faith judgment standard of § 219.201(c) when making determinations.

Section 219.203 Responsibilities of Railroads and Employees

Paragraph (d)(2)

To ensure prompt notification 24 hours a day, railroads shall immediately call the duty officer at the National Response Center (NRC) at (800) 424–8802. The NRC will in turn notify FRA, and work with FRA to ensure compliance with part 219 post-accident testing requirements. Railroads shall also notify FRA by calling FRA's Alcohol and Drug Program Manager, Mr. Lamar Allen, at (202) 632–3378. If the accident occurs after business hours (8:00 a.m. to 4:30 p.m., E.S.T. or E.D.T.), the message will be recorded on voicemail.

This new policy ensures that notification will be made to a staffed phone number regardless of when an accident occurs.

Section 219.207 Fatality

Paragraph (b)

As discussed in § 219.203, FRA's notification policy has changed. This section is amended accordingly.

Section 219.209 Reports of Tests and Refusals

Paragraph (a)(2)

As discussed in § 219.203, FRA's notification policy has changed. This section is amended accordingly.

Section 219.303 Alcohol Test Procedures and Safeguards

Paragraphs (c)–(e)

The blood alcohol testing procedures in this section predate both the alcohol testing procedures in Part 40 and mandatory reasonable suspicion testing. In a final rule published on November 22, 1994 [59 FR 60562], FRA allowed Class II and Class III railroads to continue to use these procedures, but only until their deadlines (July 1, 1995 and January 1, 1996, respectively) for implementation of mandatory Federal reasonable suspicion testing under the Department's alcohol testing procedures. FRA is deleting its blood alcohol testing procedures, which have not been in effect since July 1, 1996. Currently, DOT does not authorize blood alcohol testing. FRA post-accident testing procedures and protocols remain unchanged.

Section 219.601 Railroad Random Drug Testing Programs

Paragraph (b)(2)(ii) and (iii)

When FRA implemented random drug testing in 1989, all railroads were required to test at a minimum annualized rate of 50 percent. In 1994, FRA instituted a performance-based system which allowed the Administrator to determine the random drug and alcohol testing rate for each year based upon the preceding year's reported industry-wide positive rate. New railroads, however, were still required to begin random drug testing at a minimum annual percentage rate of 50 percent of their covered employees, regardless of the minimum rate in effect for the rest of the industry at that time. FRA will now allow new railroads to implement random drug testing at the minimum rate set by the Administrator for the rail industry in the year in which they commence operations. (Since its inception, the minimum testing rate for random alcohol testing has been determined by the Administrator). Accordingly, paragraphs (b)(2)(ii) and (iii) are deleted.

In its random testing plan, a new railroad shall stipulate that its random alcohol and drug testing rates will be set in accordance with the annual minimum rates published by the Administrator yearly in the **Federal Register**.

Section 219.703 Drug Testing Procedures

Paragraph (d)

In its 1994 final rule mandating alcohol testing [59 FR 7358], DOT revised § 40.25(f)(10) to incorporate split sample collection procedures. As part of this revision, DOT deleted a provision in § 40.25(f)(10)(i)(B) on "shy bladder" situations, which had allowed the employer to discontinue the collection and conduct a subsequent collection at a later time. Now, in situations where an employee is unable to provide a complete specimen before his or her hours of service expire, Part 40 authorizes the employer only to discontinue the collection.

Previously, in random drug testing, when a covered service employee failed to provide a sufficient urine specimen within his or her hours of service, FRA allowed the employer the option of conducting a subsequent collection either immediately upon the expiration of the employee's required off-duty period, or on an unannounced basis within the next 30 days. FRA is deleting both of these options, to conform with Part 40.

Thus, if an employee's hours of service expire before completion of a random drug test, the railroad must discontinue the collection, and it is not counted as a completed random drug test. The employee has completed his or her obligations. This change does not affect post-accident and for cause testing, however, which are triggered by unanticipated events. As before, in these forms of testing a railroad may exceed hours of service if the railroad uses due diligence to complete testing and reports the excess hours of service.

Section 219.709 Retest

FRA removes and reserves § 219.709, which allowed an employee to make a written request for a retest within 60 days after his or her random drug test had been declared positive by the

railroad's Medical Review Officer (MRO). With the exception of post-accident testing, discussed below, all types of FRA testing (pre-employment, return to duty, follow-up, for cause, and random) now follow the split sample testing procedures contained in Part 40. Under § 40.25(f)(10)(ii)(E), the employee may request a test of his or her split sample in a second DHHS-certified laboratory within 72 hours of having been notified by the MRO of a verified positive drug test result.

For post-accident testing alone, FRA will continue to allow an employee the right to request a retest of his or her original sample(s) by making a written request within 60 days of the date on which the medical review officer declared the employee's test positive. FRA therefore retains § 219.211(i), which lists the procedures for requesting a retest of an employee's post-accident blood and urine samples.

Section219.803 Reporting Drug Misuse Prevention Program Results in a Management Information System

Paragraph (a)

FRA's Management Information System (MIS) requires railroads with 400,000 or more total manhours to submit annual reports summarizing the results of their alcohol and drug misuse prevention programs. To conform the reporting cutoffs for the two systems, FRA amends this section so that the cutoff for the drug program MIS is now identical to that for the alcohol program MIS, namely 400,000 or more total manhours. Formerly this section differed slightly, by requiring railroads with "more than 400,000 total manhours" to submit their drug program data.

Appendix B to Part 219—Designation of Laboratory for Post-Accident Testing

On December 1, 1995, in a final rule and notice of determination, FRA announced that it had awarded a contract to Northwest Toxicology, Inc. to conduct post-accident toxicological analysis [60 FR 61664]. Earlier this year, Northwest Toxicology, Inc. changed its corporate name to NWT Inc. FRA is amending Appendix B to conform with the new corporate name of its designated post-accident laboratory and to change a previously published incorrect daytime telephone number. For convenience, the address and corrected telephone numbers for NWT Inc. are reprinted below.

Section 240.119 Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol Drug Rules Compliance

Paragraph (d)(4)

Section 240.119(d)(4)(ii) in FRA's regulations on the qualification and certification of locomotive engineers allows railroads to use the blood alcohol testing procedures found in § 219.303 for return-to-service and follow-up alcohol testing. As explained above, this rule removes § 219.303(c)–(e), since FRA ceased to authorize use of these blood testing procedures as of January 1, 1996. Accordingly, the cross-reference in this section of Part 240 is deleted.

Regulatory Process Matters

This final rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034, and Executive Order 12866.

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1995, FRA has examined this rule and determined that it does not significantly change any previously approved information collection requirements. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612. There are insufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Small Business Regulatory Enforcement and Fairness Act of 1996 requires Federal agencies to consider the impact of regulatory actions on small entities, and to the extent possible, minimize the economic burdens of the Federal action on small entities. FRA has determined that the technical amendments set forth in this final rule will not impose burdens on small entities subject to the requirements of the rule.

FRA finds that prior notice and public comment on the rule would be impracticable, unnecessary, and contrary to the public interest, since the rule contains only technical and editorial changes.

List of Subjects in 49 CFR Parts 219 and 240

Alcohol and drug abuse, Railroad operating procedures, Railroad safety.

Accordingly, for the reasons stated above, FRA amends 49 CFR parts 219 and 240 as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

§ 219.5 [Amended]

2. Section 219.5 is amended by removing the definition for "Field Manual."

§ 219.9 [Removed]

3. Section 219.19 is removed and reserved.

4. In section 219.101, in paragraph (c), the phrase "form imposing" is corrected to read "from imposing," and a new paragraph (a)(5) is added as follows:

§ 219.101 Alcohol and drug use prohibited.

(a) * * *

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test shall be considered negative and is not evidence of alcohol misuse. A railroad shall not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so.

* * * * *

§ 219.104 [Amended]

5. In section 219.104, paragraph (a)(3)(ii) is amended by inserting the word "drug" each time after the word "pre-employment" appears and by removing the phrase "either an alcohol concentration equal to or greater than .04, or".

6. In section 219.201, paragraph (b) is amended by revising the second sentence to read as follows:

§ 219.201 Events for which testing is required.

* * * * *

(b) * * * No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

* * * * *

7. In section 219.203, paragraph (d)(2) is amended by revising the first sentence to read as follows:

§ 219.203 Responsibilities of railroads and employees.

* * * * *

(d) * * *

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood samples after having been acquainted with the requirements of this subpart, the railroad shall immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8802, and FRA at (202) 632–3378, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. * * *

* * * * *

§ 219.205 [Amended]

8. In section 219.205, paragraph (c)(1) is amended by removing the last sentence.

9. In section 219.207, paragraph (b) is revised as follows:

§ 219.207 Fatality.

* * * * *

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad shall immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8802 and FRA at (202) 632–3378 by providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

* * * * *

10. Section 219.207(d) is amended by removing the phrase "and/or" and adding in its place the word "and."

11. In § 219.209, paragraph (a)(1) is amended by revising the second sentence as follows:

§ 219.209 Reports of tests and refusals.

(a)(1) * * * Notification shall immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424–8802 and to the Office of Safety, FRA, at (202) 632–3378.

* * * * *

§ 219.303 [Amended]

12. Section 219.303 is amended by removing and reserving paragraphs (c) through (e).

§ 219.601 [Amended]

13. In § 219.601, paragraph (b)(2)(i) is amended by replacing the semi-colon with a period, paragraph (b)(2)(ii) is removed and reserved; and paragraph (b)(2)(iii) is removed.

§ 219.603 [Corrected]

14. In § 219.603, "§ 210.102" is corrected to read "§ 219.102".

§ 219.703 [Amended]

15. Section 219.703 is amended by removing paragraph (d).

§ 219.709 [Removed]

16. Section 219.709 is removed and reserved.

§ 219.803 [Amended]

17. Section 219.803(a) is amended by removing the phrase "with more than 400,000" and adding the phrase "that has 400,000 or more" in its place.

Appendix—B to Part 219 [Amended]

18. In Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing, the corporate name, address, and telephone number of the designated laboratory is revised to read as follows:

Appendix—B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

* * * * *

NWT Inc., 1141 E. 3900 South, Suite A–110, Salt Lake City, UT 84124, Telephone: (801) 268–2431 (Day), (801) 483–3383 (Night/Weekend).

PART 240—QUALIFICATIONS FOR LOCOMOTIVE ENGINEERS

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read as follows:

Authority: 49 U.S.C. Chs. 201–213; 49 CFR 1.49.

§ 240.119 [Amended]

2. In Section 240.119 amend paragraph (d)(3) by adding the words "alcohol and" before the words "drug tests" and remove paragraphs (d)(4) and (d)(5), and redesignate paragraph (d)(6) as paragraph (d)(4).

Issued in Washington, D.C. on November 20, 1997.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 97–31364 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

Docket No. 97102 1250–7275–02; I.D. 092297E

RIN 0648–AK46

Endangered Fish or Wildlife; Special Prohibitions; North Atlantic Right Whale Protection

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; temporary closure of fishery.

SUMMARY: NMFS issues this final rule to close the Mid-Atlantic and Northeast Coastal segments of the Atlantic pelagic drift gillnet fishery for swordfish, tuna, and shark through July 31, 1998. The swordfish portion of the Atlantic pelagic drift gillnet fishery has been closed since December 5, 1996, under an emergency Magnuson-Stevens Fishery Conservation and Management Act closure that expires on November 26, 1997. This action is necessary to avoid the likelihood that this fishery will jeopardize the continued existence of the northern right whale (*Eubalaena glacialis*), a species listed as endangered under the Endangered Species Act (ESA), until more long-term regulatory measures are issued.

DATES: This closure is effective from 0000 hours, local time, November 27, 1997 through 2400 hours, local time, July 31, 1998. The amendment to 50 CFR 222.34 is effective November 27, 1997 through July 31, 1998.

ADDRESSES: Copies of the May 29, 1997, Biological Opinion (BO), the August 29, 1997, amended BO, and an environmental assessment of this action may be obtained from Gregory Silber, Ph.D., Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D. or Michael Payne,

Office of Protected Resources, (F/PR2), NMFS, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2322; or by facsimile at 301–713–0376.

SUPPLEMENTARY INFORMATION: The Atlantic pelagic fishery (which includes the swordfish, tuna, and shark drift gillnet fishery) is managed by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires an agency to ensure that any agency action is not likely to jeopardize the continued existence of a threatened or endangered species.

One right whale entanglement has been documented in Atlantic pelagic drift gillnet gear. The potential exists for further entanglements in this gear because the geographic distribution of right whales, an endangered species, is close to or overlaps with that of the Atlantic drift gillnet fishery during part of the year.

On May 29, 1997, NMFS issued a BO which concluded that continued operation of the swordfish, tuna, and shark drift gillnet portions of the Atlantic pelagic fishery was likely to jeopardize the continued existence of the northern right whale. This BO identified reasonable and prudent alternatives for the use of drift gillnet gear that would avoid the likelihood of jeopardy for the northern right whale. Identification of these alternatives and a further description of the basis for this action are provided in the notice of proposed rulemaking (62 FR 59335, November 3, 1997).

On August 29, 1997, NMFS issued an amended BO identifying an additional reasonable and prudent alternative which would avoid jeopardy to the northern right whale from the Atlantic pelagic drift gillnet fishery. That alternative is 100–percent observer coverage with expanded time/area closures. The BO issued on August 29, 1997, requires that the driftnet fishery for swordfish, shark, and tunas be prohibited from operating from November 1 to July 31 to avoid jeopardy to northern right whales. NMFS is implementing the time/area closure component of the reasonable and prudent alternative developed through this consultation process.

NMFS, under emergency authority of the Magnuson-Stevens Act, closed the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, from December 1, 1996, through May 29, 1997 (61 FR 64486, December 5, 1996). NMFS extended that closure until November 26, 1997 (62 FR 30775, June 5, 1997).

There is not sufficient time to implement the alternatives identified in the BOs under the Magnuson-Stevens Act. Therefore, to provide necessary protection to the northern right whale, NMFS is implementing this measure under the authority of the ESA on a temporary basis pending development and implementation of a long-term management solution for this fishery consistent with alternatives identified in the BOs.

This rule prohibits vessels operating in the North Atlantic off the coast of the United States in waters south and east of the 100 fathom contour from having on board, fishing with, or otherwise possessing or controlling drift gillnet gear from November 1, 1997, through July 31, 1998, except as authorized under 50 CFR 229.32 (regulations implementing the Atlantic Large Whale Take Reduction Plan that allow for restricted drift gillnet operations targeting sharks in the Southeast United States (62 FR 39157, July 22, 1997)).

A final National Environmental Protection Act document analyzing this action has been prepared and is available to interested parties (see **ADDRESSES**).

This action closes the pelagic driftnet fisheries described in this document and is not intended to close coastal drift gillnet or other gillnet fisheries in Mid-Atlantic or Northeast coastal waters (as defined under 50 CFR 229.2).

Comments and Responses

NMFS received three letters of comment in response to the notice of proposed rulemaking.

One letter voiced support for the closure, support for the finding that the fishery may take right whales, and recognized that the closure comports with the southern closure recommended by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT). The second letter indicated that certain fisheries need to be closed in certain times of the year as part of a comprehensive effort to address the conservation needs of the northern right whale, and suggested that this action helped meet that need. The third letter voiced concerns about the validity and justification for the closure and recommended, for a variety of reasons, that the closure not be implemented. Specific comments and NMFS responses to them follow.

Comment: One letter noted that the swordfish stock is weakened, and urged NMFS to assess the impact of condensing the drift gillnet fishery into one season. In addition, the letter cautioned NMFS about the increase in longline fishing (as a consequence of fishers departing the drift gillnet fishery) and the potential environmental consequences (e.g., increased bycatch) of such a shift.

Response: NMFS has considered the impact of drift gillnetters converting to longline gear stated in the draft EA for the AOCTRP. NMFS has concluded that there will be negligible impact from the possible conversion of 15 drift gillnetters on the swordfish stock, while catches of marine mammals will decrease.

Comment: Two letters noted that NMFS has not yet implemented an AOCTRP and encouraged NMFS to do so in order to implement effective management of this and other fisheries in accordance with that plan.

Response: NMFS regrets that an AOCTRP has yet to be implemented. However, the complexity of the AOCTRT's draft plan, and the costs to the government to implement the draft plan, changes in stock assessments, concerns about impacts on right whales and other considerations have resulted in delays. NMFS has prepared a draft environmental assessment on the implementation of a AOCTRP, and an announcement of availability of the assessment for public comment was issued by NMFS on November 4, 1997 (FR 59657).

Comment: One letter indicated that due to NMFS' inability to implement the recommendations of the AOCTRT in a timely manner, further closure of the fishery is not warranted.

Response: This closure is necessary to adequately protect northern right whales. Closure of the fishery described in this rule is based on a consultation under section 7(a) of the ESA, not on requirements of the Marine Mammal Protection Act, or the broader marine mammal concerns to be addressed in the AOCTRP. The closure is implementing a reasonable and prudent alternative identified in a BO that resulted from that consultation.

Comment: One letter reiterated previous comments on a AOCTRP, in which the commenter recommended restricting fishing activities on Jeffrey's Ledge and the Great South Channel to reduce the possibility of right whale entanglement.

Response: As noted above, NMFS is working to implement the AOCTRP, and these and other comments are being considered in that process.

Comment: One letter stated that the conclusions of the BO issued on August 29, 1997, are flawed because the risks of a single, additional winter fishing season are not great, and, therefore, the proposed rule is not justified. Also, because the winter fishery involves only a single vessel, the impacts of allowing this vessel to fish will likely have minimal biological impacts.

Response: NMFS cannot predict how many vessels might participate in the winter fishery. As few as one vessel and as many as ten vessels have fished during the winter fishery although in recent years between one and three vessels have participated. The BO considered the potential for participation in the winter fishery in terms of the anticipated quota which is more directly related to the total number of sets than the number of vessels. Although this action is expected to affect a small number of vessels, perhaps only one, the fishery is such that each vessel is capable of putting out 1.5 miles (2.4 km) of net per set and, depending upon when the quota is reached, has the potential for up to an estimated 50 sets. Thus, NMFS believes that the possibility of right whale entanglement exists even in a small fishery.

Comment: One letter noted that the closure is not necessary because, in more than 25 years of operation by drift gillnet boats in the Mid-Atlantic swordfish fishery, there has never been a documented right whale encounter in the winter fishery.

Response: While no known right whale entanglements have occurred in the Mid-Atlantic portion of the fishery during the winter months for the 16 years for which NMFS has records for the operation of this fishery, one right whale is known to have been entangled in the fishery in July 1993. This indicates that such events do occur with this gear. Also, the timing and the area of observed fishing effort in the Mid-Atlantic during the winter occurs in or near areas of right whale aggregation and in their migration routes. Therefore, the risk associated with fishing in waters off the Mid-Atlantic is higher than fishing elsewhere due to its proximity to the right whale migration route.

In addition, entanglement of large whale species other than right whales has occurred in this fishery. This evidence suggests that there is a risk of interaction with this gear type whenever the distribution of right whales occurs in close proximity to fishing operations.

Photo-identification records indicate that 57 percent of all living right whales bear scars from encounters with fishing gear. It is possible that entanglements of right whales and other large whale species had occurred in this fishery in the past, but went undetected. Observer coverage for this fishery has ranged from 8 percent in 1989 to 87 percent in 1994. Observers have covered the majority of the fleet only in 1994, 1995, and 1996. Prior to 1994, however, observer coverage of the fishery was less than 50 percent.

Comment: One letter stated that if the closure was not in place, the fishery would open in late November, and the fishery would occur further north where the shelf is farther from shore. At that time of year and in that area there are no large concentrations of marine mammals.

Response: Historically, the fishery has not opened prior to January 1. Despite the fact that survey effort is low in many areas, right whale sightings have occurred in all months of the year in the waters of the continental shelf off the New England coast. These include sightings near the shelf break in October, November, and December. NMFS has determined that the greatest potential for interactions occurs during from November 1 through July 31, the period of this closure.

Comment: One letter underscored the economic hardship on the single vessel owner planning to fish in the winter. Specifically, a fisherman involved in the fishery expected the AOCTRP to be implemented; he outfitted his longline boat for winter drift net fishing and made other arrangements to fish in a fishery he assumed would be open. The same fisherman invested in pingers and was interested in determining if pingers were successful in reducing marine mammal mortality in this fishery.

Response: NMFS regrets the economic hardship on fishermen caused by this closure. NMFS' mission is to ensure that endangered species are not jeopardized and some economic consequences may result from management decisions made in pursuit of this mission. NMFS notes that implementation of the draft AOCTRP (something the commenter strongly supports) would likely entail restrictions to the fishery. Therefore, the economic hardship would also have to be endured under that scenario.

NMFS is encouraged by efforts to reduce marine mammal bycatch, including efforts that involve the use of pingers. Pingers have shown some success in reducing entanglement of some marine mammal species, and NMFS is encouraged by the interest in conducting pinger experiments in this fishery. However, the behavior of right whales indicates that they may be less responsive to noise than some other species, and the small sample size makes it difficult to design an experiment that would produce statistically significant results. NMFS notes that pinger experiments are much more likely to produce significant results with regard to common dolphins where expected interaction are much higher.

Finally, such experimentation would be most beneficial if it had fleet-wide participation. Data from an experiment with a small sample (i.e., one vessel and a relatively few fishing days) are of less value than experiments involving controls (e.g., side-by-side comparisons with gear not equipped with pingers) and replicates. That is, fleet-wide participation is needed to ensure samples adequate for meaningful comparisons and statistical analyses. In this same regard, no experiment has been designed for this fishery or its feasibility tested. Also, pingers are expected to be used in other fisheries, and worthwhile data are likely to come from pinger experiments in those fisheries. The vessel owner may be able to make the pingers he purchased available to participants in one of those fisheries.

Comment: The company owning the single active vessel was not notified of the possibility of the closure.

Response: NMFS provided notice of the conclusions of the BOs and provided notice of NMFS' intention to close the fishery by publication of the proposed rule. The commenter, the fishing community, and the general public were thereby notified that NMFS is developing a long-range management solution for the fishery.

Comment: The fishing community was not notified that two fishing seasons were combined into one by NMFS.

Response: In a final rule published in the **Federal Register** on October 24, 1997 (62 FR 55361), establishing regulations on annual quotas for the Atlantic swordfish fishery, NMFS indicated that "[o]n August 29, 1997, an amendment to the BO was issued, which identified a new reasonable and prudent alternative including time/area closures and 100–percent observer coverage. Pending implementation of a modification to the emergency closure, if such is warranted by the preferred option when identified, NMFS has taken action in this final rule to establish a single season quota for the driftnet swordfish fishery."

Changes From the Proposed Rule

Based on comments received, there were no substantive changes to the proposed rule. However, the regulatory text of the proposed rule contained an error. While the preamble to the proposed rule clearly stated that the closure would be effective on November

27, 1997, the regulatory text stated that the effective date of the closure would be November 1, 1997. The closure is in effect starting November 27, 1997. This change is reflected in the regulatory text of the final rule.

Classification

This final rule is necessary to protect the northern right whale in accordance with the requirements of the ESA.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for the Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received that changed the basis for the original certification. As a result, no Regulatory Flexibility Analysis has been prepared.

NMFS has determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the coastal zone management programs of the Atlantic and Gulf of Mexico states that have approved programs. This determination was submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

As noted above, this rule implements an alternative identified in a BO, and is necessary to avoid jeopardy to the northern right whale. Therefore, failure to implement the closure identified in this action expeditiously would be contrary to the public's interest. Also as noted above, the swordfish portion of the Atlantic pelagic drift gillnet fishery has been closed since December 5, 1996, under an emergency Magnuson-Stevens Fishery Conservation and Management Act closure. Thus, this portion of the fishery has not been active since that time. This action would have no impact on drift gillnetters directly fishing for sharks in the Southeast because participants in the directed shark fishery are covered by regulations implementing the Atlantic Large Whale Take Reduction Plan and would not be further restricted by this action. In addition, the fishery for large coastal sharks was closed on July 21, 1997, through December 31, 1997, because that fishery reached its allowable quota (62 FR 32942, July 21, 1997). Based on recent records and the lack of requests for observer coverage as required under the Marine Mammal Protection Act, there is no history of a directed gillnet fishery for tunas in the winter and early summer. NMFS will rapidly communicate the dates of this closure to fishing interests through the FAX network and NOAA weather radio. Accordingly, the Assistant Administrator for Fisheries finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30-day delay in the effective date normally required by section 553(d) of the Administrative Procedures Act.

This rule does not contain policies with federalism implications to warrant preparation of a federalism assessment under Executive Order 12612. In addition, this rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart D, § 222.32 also issued under 16 U.S.C. *et seq.*

2. In subpart D, a new § 222.34 is added to read as follows:

§ 222.34 Restrictions on taking right whales incidental to fishery operations.

From November 27, 1997, through July 31, 1998, it is unlawful for any person or vessel subject to the jurisdiction of the United States to have on board a vessel, to fish with, or otherwise to posses or control drift gillnet gear, as defined in 50 CFR 229.2, in the North Atlantic Ocean in waters off the coast of the eastern United States south and east of the 100 fathom contour except that such gear may be used in southeast waters, as defined under 50 CFR 229.2, if that gear is used in compliance with the requirements of 50 CFR 229.32(f).

[FR Doc. 97–31472 Filed 11–25–97; 4:32 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 230
Monday, December 1, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

[Docket No. PY–97–004]

Voluntary Poultry and Rabbit Grading Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary poultry and rabbit grading programs. The proposed revisions would simplify the definition about feathers on poultry, provide an alternative grademark for poultry and rabbit products, provide for the use of a "Prepared From" grademark to officially identify specialized products that originate from officially graded poultry, change the sample plan used by graders, and increase the lighting intensity required at grading stations. From time to time, sections in the regulations are affected by changes in poultry processing technology. This rule updates the regulations to reflect these changes.

DATES: Comments must be received on or before January 30, 1998.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0259, 1400 Independence Avenue, SW, Washington, D.C. 20250–0259. Comments received may be reviewed at this location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays. State that your comments refer to Docket No. PY–97–004.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, 202–720–3271.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities as defined in the RFA (5 U.S.C. 601). There are some 200 plants using the Agency's voluntary poultry grading services and many of them are small entities.

The definition *Free from protruding pinfeathers, diminutive feathers, or hairs* would be simplified by removing the words "pinfeathers" and "diminutive," words no longer commonly used when discussing feathers and poultry quality. Additionally, in the definition for *Ready-to-cook poultry*, the word "pinfeathers" would be changed to "feathers." These changes merely reflect current practices and should not have any additional economic impact on entities using voluntary poultry grading services.

One proposal would allow poultry and rabbit processors to use a shield displayed in three colors as an alternative form of the USDA grademark to officially identify USDA graded products. Similarly, another proposal would allow producers of products originating from A quality poultry, for which there are no U.S. grade standards, to use a "Prepared From" grademark on packaging materials. These proposals would give processors greater flexibility in packaging and marketing their products. Since it is at the processors' discretion to use these proposals, any economic impact caused by these proposals will be by the choice of the processors.

Changing the sampling plan would enable graders to select a more representative sample upon which to base grading decisions. The economic impact should be no greater than under the current sampling plan. Increasing the lighting intensity required at grading stations would enhance the grader's ability to visually evaluate products. Both proposals would provide processors with fairer, more accurate evaluations. Better lighting could also help avoid the economic burden of reprocessing product or diverting product unnecessarily downgraded because of inadequate lighting. The costs, if any, for increasing the lighting intensity should be minor.

For the above reasons, the Agency has certified that this action would have no economic impact on small entities.

Background and Proposed Changes

Poultry and rabbit grading are voluntary programs provided under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. They are designed to assist the orderly marketing of poultry and rabbits by providing for the official certification of quality, quantity, class, temperature, packaging, and other factors. Changing processing technology requires that the regulations governing poultry and rabbit grading be updated.

Freedom from feathers is one of the factors considered in poultry grading. The definition *Free from protruding pinfeathers, diminutive feathers, or hairs* (§ 70.1) would be revised by removing the words "pinfeathers" and "diminutive." These words are no longer commonly used when discussing feathers and poultry quality. Nor are they needed to achieve the quality standards set by the regulations. To be consistent, in the definition *Ready-to-cook poultry*, the word "pinfeathers" would be changed to "feathers."

The Agency is proposing to permit the use of alternative grademarks (§ 70.51) so processors can have additional flexibility in packaging and marketing their products. Processors wanting to use a USDA grademark to identify their consumer-pack USDA graded poultry and rabbit products would have the option of using the current grademark or a proposed grademark containing horizontal bands of three colors. Processors who use USDA Grade A poultry to produce specialized poultry products, for which there are no U.S. grade standards, would be permitted to use a "Prepared From" grademark on the specialized products. The proposal would also reorganize the section for clarity.

The regulations contain a sampling plan to guide graders when they select samples upon which to base grading decisions (§ 70.80(b)). The sampling plan would be changed so that the sample size more closely reflects the size of the lot being sampled, thereby fostering a more representative sample of each lot.

The regulations also specify the lighting intensity required at grading stations in the processing plants (§ 70.110). The lighting intensity would be increased from 50-foot candles to 100-foot candles to improve the graders ability to visually evaluate the products being graded. This is the same intensity required by USDA's Food Safety and Inspection Service at all of their inspection stations.

Effective December 4, 1995, the voluntary U.S. grade standards were removed from the Code of Federal Regulations (CFR) as part of the National Performance Review program to eliminate unnecessary regulations and to improve those that remain in force. The voluntary standards will continue to be administered by AMS and will maintain their existing numbering system. Hence the voluntary poultry and rabbit grade standards are referred to as AMS 70.200 *et seq.* and AMS 70.300 *et seq.*, respectively.

List of Subjects in 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

Accordingly, under the authority of Title 7, Chapter I, it is proposed that 7 CFR part 70 be amended as follows:

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

1. The heading for part 70 is revised to read as set forth above.

1a. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 70.1, the definition for *Ready-to-cook poultry* is amended by removing the word "pinfeathers" and adding in its place the word "feathers" and the definition for *Free from protruding pinfeathers, diminutive feathers, or hairs* is revised to read as follows:

§ 70.1 Definitions.

* * * * *

Free from protruding feathers or hairs means that a poultry carcass, part, or poultry product with the skin on is free from protruding feathers or hairs which are visible to a grader during an examination at normal operating speeds. However, a poultry carcass, part, or poultry product may be considered as being free from protruding feathers or hairs if it has a generally clean appearance and if not more than an occasional protruding feather or hair is evidenced during a more careful examination.

* * * * *

3. Section 70.51 would be revised to read as follows:

§ 70.51 Form of grademark and information required.

(a) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with poultry or rabbits, shall be deemed prima facia to constitute a representation that the product has been officially graded for the purposes of § 70.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded poultry and rabbit products shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The "Prepared From" grademark in Figure 5 of this section may be used to identify specialized poultry products for which there are no official U.S. grade standards, provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade A poultry carcasses, parts, or other products that comply with the requirements of AMS § 70.220. All poultry products shall be processed and labeled in accordance with 9 CFR part 381.

(b) *Information required on grademark.* (1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters "USDA" and the U.S. grade of the product it identifies, such as "A Grade," as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(3) The "Prepared From" grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(c) *Products that may be individually grade marked.* The grademarks set forth in Figures 2 through 4 of this section may be applied individually to ready-to-cook poultry, rabbits, and specified poultry food products for which consumer grades are provided in the U.S. Classes, Standards, and Grades for Poultry and Rabbits, AMS §§ 70.200 and 70.300 *et seq.*, respectively, or to the containers in which such products are enclosed for the purpose of display and sale to household consumers, only when such products qualify for the particular grade indicated in accordance with the consumer grades.

BILLING CODE 3410-02-P



Figure 1



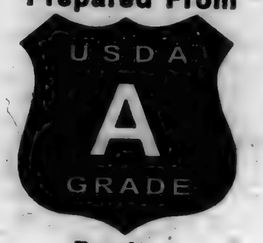
Figure 2



Figure 3



Figure 4



Poultry

Figure 5

BILLING CODE 3410-02-C

4. In § 70.80, the table would be revised to read as follows:

§ 70.80 General.

* * * * *

Containers in lot	Containers in sample
1–4	All.
5–50	4
51–100	5
101–200	6
201–400	7
401–600	8
For each additional 100 containers, or fraction thereof, in excess of 600 containers.	Include one additional container.

5. In § 70.110, paragraph (b) would be revised to read as follows:

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

* * * * *

(b) With respect to grading services, there shall be a minimum of 100-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

Dated: November 20, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–31178 Filed 11–28–97; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–287–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require repetitive inspections to detect any discrepancy in the sealwire of the fireguards of the engine fire shut-off system, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent inadvertent closure of the fire shut-off valves due to ineffective or absent sealwires, which could result in in-flight engine shutdown.

DATES: Comments must be received by December 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–287–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–287–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–287–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it received reports of inadvertent closure of the fire shut-off valves, which resulted in engine flameouts during flight. Investigation by the manufacturer indicated that the sealwires (safety wires) of the engine fireguards may have been missing, or may not have operated correctly. Inadvertent closure of the fire shut-off valves due to ineffective or missing

sealwires could result in in-flight engine shutdown.

Other Related AD

In 1982, the FAA issued AD 82–16–02, amendment 39–4424, applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, to require a one-time inspection of the sealwires and microswitches to detect discrepancies, and repair, if necessary.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F28/76–20, dated January 1, 1979, which describes procedures for repetitive inspections to detect any discrepancy in the sealwire of the fireguards of the engine fire shut-off system, and repair, if necessary. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA No. 1979–007/2 (A), dated February 28, 1997, in order to assure the airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 49 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,940, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Aircraft B.V.: Docket 97–NM–287–AD.

Applicability: Model F.28 Mark 1000, F.28 Mark 2000, F.28 Mark 3000, and F.28 Mark 4000 series airplanes; all serial numbers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent closure of the fire shut-off valves due to ineffective or absent sealwires, which could result in in-flight engine shutdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection of the engine fire shut-off system to detect any discrepancy in the sealwire of the fireguards, in accordance with Fokker Service Bulletin F28/76–20, dated January 1, 1979. If any discrepancy is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1979–007/2 (A), dated February 28, 1997.

Issued in Renton, Washington, on November 21, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31331 Filed 11–26–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require removal and replacement of the center screw of the crew seat belt buckle. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the center screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing.

DATES: Comments must be received by December 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230, Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–114–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report indicating that, during an inspection, the center fixing screw of the flight crew restraint system was found to be loose. Investigation revealed that, during assembly of the release buckles, the center fixing screw could be contaminated, which would prevent the securing Loctite from curing. This condition, if not corrected, could result in injury to the flightcrew during an emergency landing.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–25–196, dated November 12, 1996, which describes procedures for removal and replacement of the center screw of the crew seat belt buckle. (The Dornier service bulletin references Aerospace Restraint Company (ARC) Service Bulletin 1180002–25–01, dated October 11, 1996, as an additional source of service information for accomplishment of the removal and replacement.) Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 97–001, dated January 16, 1997, in order to assure the airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a 'significant regulatory action' under Executive Order 12866; (2) is not a 'significant rule' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 97–NM–114–AD.

Applicability: Model 328–100 series airplanes equipped with Aerospace Restraint Company (ARC) restraints having part number (P/N) 1180002–403–100, part serial number 0101 up to and including 0315 inclusive, 0328, and 0329; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove and replace the center screw of the crew seat belt buckle in accordance with Dornier Service Bulletin SB–328–25–196, dated November 12, 1996.

Note 2: The Dornier service bulletin references Aerospace Restraint Company (ARC) Service Bulletin 1180002–25–01, dated October 11, 1996, as an additional source of service information for accomplishment of the removal and replacement.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–001, dated January 16, 1997.

Issued in Renton, Washington, on November 21, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31332 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes. This proposal would require repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage.

DATES: Comments must be received by December 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–152–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes. The DGAC advises that it received a report indicating that, during full-scale fatigue testing on a Model A320 test article, fatigue cracks were found in the structure at the wing/fuselage joint area cruciform fitting. The cracking occurred after 104,720 and 116,536 simulated flights. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing/fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996, which describes procedures for repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective action, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–299–094(B), dated December 18, 1996, in order to assure the airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of actions specified in the service bulletin described previously.

Differences Between the Proposal and Relevant Service Information

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the wing/fuselage joint cruciform fittings. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all fittings that are found to be cracked must be repaired prior to further flight.

Cost Impact

The FAA estimates that 132 of U.S. registry would be affected by this proposed AD. It would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $63,360, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97–NM–152–AD.

Applicability: Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage, accomplish the following:

(a) Prior to the accumulation of 28,000 total landings, or within 60 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the crack that was detected and repaired was greater than 2.5 mm: Repeat the inspection prior to the accumulation of 32,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 32,000 landings.

(ii) If the crack that was detected and repaired was less than or equal to 2.5 mm: Repeat the inspection prior to the accumulation of 28,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 20,000 landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–209–094(B), dated December 18, 1996.

Issued in Renton, Washington, on November 21, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31333 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Parts 22, 51, and 53

[Public Notice 2853]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the fees for consular services that are proposed to take effect on February 1, 1998, and makes appropriate implementing and other related changes in affected portions of title 22 of the Code of Federal Regulations. Specifically, the rule makes changes in the Schedule of Fees for Consular Services ("Schedule of Fees" or "Schedule") published in 22 CFR section 22.1 and makes technical changes to 22 CFR Part 51 (concerning passport fees) and 22 CFR Part 53. The changes to the Schedule of Fees include adjustments to existing fees and a new processing fee for diversity visa applicants (see 22 CFR 42.33(i)), for which the proposed rule was published in the **Federal Register** on June 16, 1997. The primary objective of the proposed adjustments to the Schedule of Fees is to ensure that the Department recovers the costs of consular services through user fees to the maximum extent appropriate and permitted by law. As a result of new data on the cost of services, the passport fee is being lowered while most other fees are being increased. In addition, the proposed Schedule of Fees is being restructured and streamlined. Fees for antiquated services no longer performed are being removed and fees for other services are being consolidated or more appropriately located, making the proposed Schedule easier to read and understand. Consular services that will be performed for no fee are being added to the Schedule to facilitate tracking the costs of these services and to inform the public of all significant consular services provided by the Department.

DATES: Written comments must be received on or before December 31, 1997.

ADDRESSES: Interested persons are invited to submit comments to: Office of the Executive Director, Bureau of Consular Affairs, Room 4820A, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Sally Light, Office of the Executive Director, Bureau of Consular Affairs, telephone (202) 647–1148; telefax (202) 647–3677.

SUPPLEMENTARY INFORMATION:

Background

The majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701, and/or 22 U.S.C. 4219, which, as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services by embassies and consulates. Fees established under these authorities include fees for immigrant visas, for expedited passport processing, for fingerprints and FBI name checks, and for overseas consular services. In addition, a number of statutes address specific fees: Passport issuance fees are authorized by 22 U.S.C. 214, as are fees for the execution of passport applications. Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009–703–704 (Sept. 30, 1996), authorizes establishment of a diversity visa application fee to recover the full costs of the visa lottery conducted pursuant to Sections 203 and 222 of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1153, 1202. (The Department published a proposed rule establishing that fee on June 16, 1997.) Nonimmigrant visa reciprocity fees are authorized pursuant to Section 281 of the INA, 8 U.S.C. 1351. The establishment of a nonimmigrant visa processing fee for machine readable visas (commonly known as the "MRV fee") notwithstanding Section 281 of the INA is authorized by Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103–236, 108 Stat. 399 (April 30, 1994), as amended. Certain persons are exempted by law from payment of specific fees. (These statutory exemptions are noted in the fee schedule.) Various statutes also permit the Department to retain some of the consular fees it collects. These are, at present, the MRV fee, the passport expedite fee, the fingerprint fee, and the diversity visa lottery fee.

With the exception of nonimmigrant visa reciprocity fees, which are established based on the practices of other countries, all consular fees are established on a basis of cost recovery and in a manner consistent with general user charges principles, regardless of the specific statutory authority under which they are promulgated. The Department of State is required to review consular fees periodically to determine the appropriateness of each fee in light of applicable provisions of OMB Circular A–25, which addresses the establishment of user charges. Those guidelines state that services that directly benefit individuals, organizations, or groups should be paid for by the users rather than general taxpayers. Services performed for the primary benefit of the general public or the U.S. Government, however, should be supported by tax revenues. The changes set forth in the proposed Schedule of Fees reflect those guidelines. For example, new user fees have been added for a few consular services which directly benefit individuals but now are provided for no fee at taxpayer expense.

Consistent with OMB Circular A–25, from September 1995 to September 1996, the Department conducted a cost-of-service study to determine the direct and indirect costs associated with each consular service the Department provides, using fiscal year 1995 data. The study was supervised by the Bureau of Consular Affairs and performed with the assistance of an outside contractor. The contractor and Department staff surveyed and visited domestic and overseas consular sites handling approximately half of all consular services worldwide in FY 1995. In conducting the cost study, the contractor used the activity-based costing ("ABC") methodology, which measures the cost and performance of activities, resources, and cost objects related to the delivery of specific products and services. The ABC methodology was used to determine direct labor costs to deliver each identified consular service. The costs of materials and supplies, overhead support, and general and administrative support were also included, to ensure that the full cost of service was captured. This methodology resulted in a more accurate determination of the Department's costs in providing consular services, and will permit better management of such costs and services in the future. Detailed information concerning the methodology of the study is available from Bureau of Consular Affairs.

Based on this effort and subsequent follow-up work, the Department is now proposing adjustments to the Schedule of Fees as shown below. The Schedule will take effect in FY 1998. Future adjustments to the Schedule of Fees will be made as appropriate.

Because the proposed Schedule of Fees has been restructured and streamlined, a direct side-by-side comparison with the current schedule, last updated in 1991, is not possible. Instead, each fee on the proposed schedule is cross-referenced to the appropriate item number on the current fee schedule (22 CFR part 22.1) to facilitate comparison, or identified as a new fee. (These cross-references will not be included in the final rule.) Major changes in the schedule are discussed below.

Passports

The current fee schedule shows a fee of $10 to execute a passport application; a fee of $55 for issuance of a ten-year passport; and a fee of $40 for issuance of a five-year (child's) passport. The new schedule shows a $15 execution fee. Passport issuance fees are lowered, however, from $55 to $45 for first-time issuance to adults, and to $40 for renewals. The fee for issuance of five-year passports for minors will be lowered from $40 to $25 in all cases. Processing and issuance of a child's passport costs at least as much as an adult passport (because extensive identification checking is required). Rapid changes in the physical appearance of children and the potential for child custody issues also dictate issuance of a five- rather than ten-year validity passport to children under the age of 16. The shorter validity of a child's passport was the key factor in keeping the fee below that of an adult's passport notwithstanding the similar processing costs.

The new passport fees will fully recover the costs of passport application processing. In addition, consistent with long-standing Department practice, a portion of the fee will recover the cost of all emergency citizens services performed overseas, including assistance in cases of arrest, detention, death, or serious illness or accident abroad, and the costs of certain nonemergency citizens services, such as passport amendments and U.S. citizens registering their presence at overseas posts, that the Department believes are appropriately allocated to all passport users, and/or for which separate fees are impracticable. (Such reallocations are to all passports issued, whether first-time issuances or renewals.)

While the cost of overseas passport processing is high, the fee reduction is possible because the vast majority of passports are issued domestically. It generally costs the Department less to provide a service domestically than overseas, and there have been significant improvements in the efficiency and productivity of the Department's higher-volume domestic passport operations.

Passport Expedite Fee

The proposed Schedule increases the passport expedite fee from $30 to $35. This fee will recover the costs of guaranteeing a maximum turn-around time of three business days to qualified users. Expedited service will be provided, and the expedite fee will be charged, to all customers seeking in-person service at a U.S. Passport Agency, with one minor exception. The expedite fee will not be charged when the Department determines that the applicant is required to apply at a U.S. Passport Agency. This generally will be in complex citizenship cases where in-person services are necessary for adjudication of the application. The Department continues to encourage applicants to use lower-cost passport acceptance agents, drop boxes, and mail-in services whenever possible. A passport may be obtained for the basic processing and issuance fee by applying in the normal course of business, while the more expensive, expedited service is available for those with a special need for urgent issuance.

Adjudication of Citizenship for Undocumented Passport Applicants Born Overseas

A new fee is proposed for citizenship adjudication for previously undocumented passport applicants born overseas. The cost of these complex citizenship adjudications has until now been allocated to the passport fee. The Department has concluded that this service should instead be broken out of the passport fee and made the subject of a separate fee.

The Immigration and Naturalization Service (INS) currently charges $100 to adjudicate such citizenship cases in connection with an application for a certificate of citizenship. The Department has observed that previously undocumented applicants whose primary interest is in obtaining a citizenship adjudication, rather than a passport, often apply for a passport instead to avoid paying the INS citizenship adjudication fee. The Department's FY 1995 average cost to adjudicate citizenship is at least $80. These cases involve a different and often more complex adjudication process than passport applications of previously documented citizens; for example, additional interviews and evidence may be required and more complex legal issues may be involved. The proposed fee of $100 will equalize the INS and State Department fees for the same service and ensure full recovery of the Department's costs of providing this service. It also will

ensure that the actual users of the service, rather than all passport applicants, bear the cost of these complex citizenship adjudications.

Passport Waiver

The Department at present has a $100 fee for waiving the requirement that a U.S. citizen travel in or out of the United States on a U.S. passport. The proposed Schedule reallocates the cost of processing passport waivers to the passport fee, thereby making passport waivers a no-fee service. This reallocation is consistent with the fact that virtually all users of this service are or will be passport holders, and with the Department's general practice of allocating the cost of emergency consular services to the passport fee. In addition, the reallocation eliminates the administrative costs of collection and addresses concerns over the fairness of the separate fee expressed by many Americans whose passports have been lost or stolen. Those who must travel immediately despite the theft or loss of a passport, or because of a genuine emergency, will no longer be subject to a $100 fee in order to receive a passport waiver.

The Department is not, at this time, amending 22 CFR section 53.2(h), which provides for the collection of a fee for the waiver of the passport requirement as specified in the Schedule of Fees. Changes may be made to section 53.2(h) at a later time, however.

Report of Birth Abroad of a Citizen of the United States

The Department at present charges a $10 fee for issuance of a Report of Birth Abroad of a Citizen of the United States which is proof of U.S. citizenship (see 22 U.S.C. 2705). The average cost of providing this service is in fact considerably higher (close to $180), in part because of cases involving parents who lived overseas for long periods of time and whose prior residency in the United States must be confirmed. The proposed Schedule increases the fee for a Report of Birth Abroad of a Citizen of the United States to $40, and reallocates the remaining costs of this service to the passport fee. The resulting increase in passport fees is negligible. The Department believes that this combined approach (adjusting the fee to recover more of the costs of service from the actual users and reallocating the remaining costs to the passport fee) appropriately balances the policy of placing costs on actual users with the strong public policy interest in encouraging all U.S. citizens whose children are born abroad to obtain a Report of Birth Abroad of a Citizen of the United States when the child is born.

Emergency Overseas Assistance for American Citizens

The primary responsibility of U.S. consular officers overseas is the protection and welfare of American citizens. No-fee services performed in instances of arrest, missing persons, and destitution are listed on the proposed Schedule for the information of the American traveler. As noted in the discussion of the passport fee, the costs for these services will continue to be reallocated to the passport fee, consistent with long-standing Department practice. This ensures that any American traveling abroad may obtain emergency consular services without regard to ability to pay for the actual services rendered.

The current Schedule lists services relating to death and estates of Americans overseas in several sections. The proposed Schedule consolidates all death and estate services in one new section. Services related to the death of an American citizen are performed for no fee. The costs of these services have been reallocated to the passport fee.

Two death and estate fee items have been added to the proposed Schedule. The first is a $700 fee for services required for the transshipment of the remains of a foreign national through the United States. This service is performed infrequently but at a high cost, which is more appropriately paid by the next-of-kin rather than by the American taxpayer.

A fee for acting as provisional conservator of estates of U.S. citizens with a value of over $10,000 also has been added to the proposed Schedule. Consular officers will continue where necessary to take possession of and inventory all estates of Americans who die overseas. But overseeing the appraisal, sale, and final disposition of estates over $10,000, disbursing funds, and carrying out other legally related estate business is more appropriately handled by an attorney. Such estate services are performed for the benefit of the next-of-kin and should be paid for by the users rather than by the taxpayer.

Services Relating to Vessels and Seamen

The provision of consular services relating to vessels and seamen has fallen dramatically in recent years. Accordingly, maritime services have been consolidated into three fee items on the proposed Schedule of Fees to more accurately reflect the nature, volume, and cost of performing the services.

Documentary Services for American Citizens

Documentary services are listed in several sections of the current Schedule of Fees. The proposed Schedule consolidates all documentary services in one section. Current item 46, noting of a negotiable instrument, is performed so infrequently that it will no longer be listed as a separate service but will be charged for as a notarial service. Current item 75, typing a copy or extract of a document, has been dropped from the Schedule on the assumption that documents are now photocopied and/or certified rather than retyped.

The fee for notarial services is currently $10. In the new Schedule, it will be increased to $55, reflecting the high cost of performing such services overseas. For many years, the notarial fee has been held well below the actual cost of performing this service by reallocating part of the costs of performing notarials to the passport fee. Most notarials performed at embassies and consulates overseas are for the benefit of individual Americans and foreign nationals engaged in legal or business transactions, however. These are not emergency services and there is no particular public interest in ensuring that the service is obtained from a U.S. consulate. In many cases, the user can obtain the necessary notarial service from a local provider, but uses a U.S. consular officer because the fee is lower. Thus the artificially low fee for notarial services has the general effect of increasing the notarial workload of our overseas posts. The Department has concluded that the costs of this service should be recovered in full from the individuals for whom they are actually performed rather than in part from all passport holders.

In the case of certifications, however, for which the cost of service is approximately the same as for notarials, the Department proposes to continue to set the proposed fee below the actual cost of service, and to reallocate the remainder of the cost to the passport fee. Certifications are almost exclusively of official U.S. government documents issued by embassies and consulates overseas (e.g., reports of births and deaths occurring overseas). The need for such documents generally arises from the fact of an American citizen's travel abroad, and there is a significant public interest in certifying such documents' authenticity at a relatively minimal cost.

In addition, the Department has reviewed its existing exemptions from documentary service fees and is eliminating those that are not required by law or that do not serve any

significant public interest. Others are being modified or clarified.

Visas

The structure of the immigrant visa application processing and issuance fees remains the same, although the fees are being increased to reflect the actual costs of service. In addition, the Department is instituting an additional fee, in the nature of a surcharge, for diversity visa applicants. The final rule for the diversity visa fee was published in the **Federal Register** on August 8, 1997. This additional fee, which will recover the lottery costs from those lottery entrants who actually apply for diversity visas, was authorized by Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009–703–704 (Sept. 30, 1996). Administration of the lottery is part of the cost of allocating such visas, and it would be impracticable to impose a fee on all visa lottery entrants (technically, visa "petitioners", given the millions of entrants, the problems of collecting a uniform fee from individuals all over the world (who will have varying access to international currency), and the burden of having to collect and account for what would be a very small fee from a large number of persons.

Since 1994, the Department has collected a nonimmigrant visa (NIV) application processing fee from NIV applicants at posts issuing machine readable visas (MRVs), commonly known as the "MRV" fee. The MRV technology is now installed worldwide, as are improved information management systems for ensuring that all visa applicants are checked against the visa lookout system. The NIV/MRV application fee, originally set at $20, will increase to $45. This amount is based on the volume-weighted average cost of processing a nonimmigrant visa, including border crossing cards, crew visas, treaty trader/investor visas, fiancé visas, and petitions for intracompany transferee and temporary worker visas, using the new MRV and enhanced lookout technologies. The proposed new fee is significantly higher because the original $20 fee, in addition to being based on cost data available in 1991, did not include the costs of the new technology. The proposed Schedule of Fees continues to require that the fee be paid by virtually all NIV applicants, with only very limited exceptions (e.g., for diplomatic visas).

The NIV application processing fee is cost-based and is paid regardless of whether a visa is issued because it covers the cost of processing the visa application. Note that applicants who are issued a visa also may be charged an NIV issuance fee based on reciprocity with the host country (Item 57 in the proposed schedule). These reciprocal NIV issuance fees were not included in the Department's cost-of-service study because they are not cost-based but rather are determined in light of other countries' practices. The Department seeks to ensure that the total amount of U.S. nonimmigrant visa fees, including the NIV application processing fee and any issuance fees based on reciprocity, reflects the total of a foreign country's fees for comparable visas.

Under the current Schedule of Fees, visa processing fees for crewmen, who generally are manifested on a single crew list document, are based on the number of crew members on the document. In fact, each crew member's eligibility for a visa is reviewed as if he or she were applying for a nonimmigrant visa. This review requires the same amount of labor and processing time as a nonimmigrant visa application. To ensure full recovery of those costs, the nonimmigrant visa processing fee of $45 on the proposed Schedule will apply to each individual crew applicant. The separate entry on the Schedule for crewmen is therefore being eliminated.

The proposed Schedule includes new fees for two special visa-related services for aliens that currently are performed for no fee: (1) Legal permanent resident status may expire when an alien remains outside the United States for an extended period of time. Application for returning resident status is made at embassies and consulates overseas. Processing a returning resident application involves the same work as processing an immigrant visa. (2) Legal permanent resident aliens who have lost their alien registration cards may apply at an embassy or consulate for a transportation letter to re-enter the United States—a service that also requires a discernible amount of consular time. The cost of both of these services currently is paid by the American taxpayer. The proposed fees for these special services for aliens will more appropriately allocate the costs of performing them to the users. The proposed fee for the first service is $50 and the fee for the second service is $120.

Deletions

A number of services are being deleted from the Schedule; for example, Administration of Examinations, which is not a consular service, but rather a service to other agencies. It is frequently performed by administrative rather than consular officers. Similarly, Freedom of Information Services, which are performed by another office in the Department, has been deleted.

Amendments to 22 CFR Part 51, Subpart D (22 CFR 51.61 Through 51.67)

The Department is also making technical amendments to 22 CFR Part 51, Subpart D, which addresses passport fees. Although passport fees are listed in the Schedule of Fees published at 22 CFR 22.1, 22 CFR 51.61 also sets forth the current passport fees under the heading "statutory fees." The Department has decided not to include the specific amount of the fees in section 22 CFR 51.61, but instead to cross-reference to the Schedule of Fees. This will permit future adjustments to passport fees to be made more efficiently, since it will be necessary to amend only the Schedule of Fees as it appears in 22 CFR 22.1. The Department is similarly amending 22 CFR 51.67, which at present states the specific amount of the fee for expedited passport services.

In addition, 22 CFR 51.62 provides for the possibility of "regulatory fees," but does not set forth any services for which such fees are charged. The Department believes that the provision for "statutory" and "regulatory" fees in sections 51.61 and 51.62, respectively, reflects the fact that the precise amount of certain passport fees formerly was specified by statute while other passport-related fees could potentially be established by regulation pursuant to general statutory authorities. Now, however, the statutes that specifically provide for passport fees no longer set the actual amount of the fee to be charged. Instead, all fees are authorized by statutes that leave the precise amount to be set by regulation in accordance with user charges principles. As a result, the Department has concluded that sections 51.61 and 51.62 can now be combined into a single section, which will be section 51.61, setting forth the passport services for which fees will be charged. The remaining sections of Subpart D will be renumbered accordingly.

Finally, amendments are being made in Subpart D to conform that Subpart to other changes made in the Schedule of Fees and to modernize its provisions.

Amendment to 22 CFR Part 53

The title of 22 CFR Part 53 is being changed and the authority citation is being revised.

Regulatory Findings

This rule is not considered to be a major rule for purposes of E.O. 12291

nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule has been reviewed as required by E.O. 12988 and determined to be in compliance therewith. This rule is exempt from E.O. 12866 but has been reviewed internally by the Department to ensure consistency with the objectives thereof and by OMB in light of its public policy implications. OMB has determined that the rule would in any event not constitute a significant regulatory action under E.O. 12866.

List of Subjects

22 CFR Part 22

Consular services, Fees, Schedule of fees for consular services, Passports and visas.

22 CFR Part 51

Passports, fees.

22 CFR Part 53

Passport requirement and exceptions.

Accordingly, parts 22, 51, and 53 are proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 22 U.S.C. 214, 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is revised to read as follows:

22.1 Schedule of fees.

Item No.	Fee
Passport and Citizenship Services	
1. Passport Services. [former nos. 1, 3, 4]:[1]	
(a) Execution	$15.00.
(b) First-time issuance:.	
(1) Applicants age 16 or over	$45.00 plus expedited processing fee if applicable.
(2) Applicants under age 16	$25.00 plus expedited processing fee if applicable.
(c) Subsequent issuance (renewal):.	
(1) Applicants age 16 or over	$40.00 plus expedited processing fee if applicable.
(2) Applicants under age 16	$25.00 plus expedited processing fee if applicable.
(d) Expedited service (exclusive of express mail charges) not applicable overseas:.	
(1) Requested guaranteed 3-day service	$35.00.
(2) In-person service at a U.S. Passport Agency, unless the Department has determined that the applicant is required to apply at a U.S. Passport Agency.	$35.00.
2. Exemptions: The following applicants are exempted from passport fees: [former no. 5]:	
(a) Officers or employees of the United States proceeding abroad or returning to the United States in the discharge of their official duties, or their immediate family members (22 U.S.C. 214).	No fee.
(b) American seamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214).	No fee.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214).	No fee.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States (10 U.S.C. 2602(c)).	No fee.
(e) Peace Corps and Volunteer Leaders deemed to be employees of the United States for purposes of exemption from passport fees (22 U.S.C. 2504(a)).	No fee.
3. File search and verification of U.S. citizenship when applicant has not presented evidence of citizenship and previous records must be searched. (This fee will not be charged when the applicants' passport was stolen or when one of the exemptions in item 38 is applicable.) [former no. 10(a)].	$15.00.
4. Determination or adjudication of U.S. citizenship for applicants born overseas who have not presented a U.S. passport, Report of Birth Abroad of a Citizen of the United States, or Certificate of Naturalization or Citizenship from the Immigration and Naturalization Service. [new][2].	$100.00.
5. Passport amendments, to add current or new information, change a name, extend a previous passport time limitation, correct an administrative error, validate a passport for travel to restricted countries, or add extra pages. [former no. 6].	No fee.
6. Passport waiver (22 CFR 53.2(h), Passport requirement and exceptions). [former no. 12]	No fee.
7. Registration of a U.S. citizen at a U.S. Embassy or Consulate when documentary evidence of U.S. citizenship has been presented. [former no. 7].	No fee.
8. Report of Birth Abroad of a Citizen of the United States (includes new no. 4). [former nos. 8, 9(a)]	$40.00.
9. Issuance of Replacement Report of Birth Abroad of a Citizen of the United States by the Department of State in Washington. [former no. 9].	$40.00.
For fees relating to obtaining documents from passport files and related records, see Documentary Services, item 35 and succeeding.	
(Item nos. 10 through 14 vacant.)	
Overseas Citizens Services	
General Overseas Assistance:	
15. Arrest visits. [new]	No fee.
16. Assistance regarding the welfare and whereabouts of a U.S. citizen, including child custody inquiries. [new].	No fee.
17. Loan processing. [new]:.	
(a) Repatriation loans.	No fee.
(b) Emergency dietary assistance loans.	No fee.
(Item Nos. 18–20 vacant.)	
Death and Estate Services:	
21. Identification of remains and consultation with family members of a U.S. Citizen. [new]	No fee.
22. Assistance to the next-of-kin in making arrangements for shipping or other disposition of remains of a U.S. Citizen. [former no. 73].	No fee.
23. Affidavit attesting to preparation and packing of remains of a U.S. Citizen. [former no. 59]	No fee.
24. Issuance of consular mortuary certificate on behalf of a U.S. Citizen. [former no. 60]	No fee.
25. Assistance in transshipment of remains of a foreign national to or through the United States, including documentation covered by items 23 and 24. [new].	$700.00.
26. Preparation of Report of Death of an American Citizen Abroad, including sending copies to legal representative and closest known relative or relatives. [former no. 9(c)].	No fee.
27. Acting as a provisional conservator of estates of U.S. citizens (other than U.S. Government employees), including taking possession of, making an inventory, placing the official seal on the estate, overseeing the appraisal, sale and final disposition of the estate, disbursing funds, forwarding securities, etc.: [former no. 70, 71, 72]:.	
(a) Estates under $10,000	No fee.
(b) Estates $10,000 or more, for rendering services additional to taking possession, inventorying, and placing the official seal.	Consular time (item 70) and costs.
(Item nos. 28–29 vacant.)	
Services Relating to Vessels and Seamen:	
30. Shipping and seamen services, including recording of bill of sale of vessel purchased abroad, taking of application for certificate of American ownership, and investigation. [former no. 34].	Per service, $80.00.
31. Documentary services related to shipping, including issuance of certificate of American ownership. [former no. 35].	Per service, $650.00 plus costs incurred.
32. Services provided for an American vessel or American seamen. 22 U.S.C. 4206. [former no. 36]	No fee.
(Items nos. 33–34 vacant.)	
Documentary Services	
35. Notarials. [former nos. 45 (a) and (b)]	$55.00.
36. Certifications:	
(a) Certifying under official seal that a copy or extract made from an official or a private document is a true copy. [former nos. 45(c), 10(c)].	$20.00; each additional copy $10.00.
(b) Certifying under official seal a statement or extract from official files or a statement that no record of an official file can be located. [former no. 10(d)].	$20.00; each additional copy $10.00.
(c) Certifying the fact of issuance of a Report of Birth Abroad of a Citizen of the United States and certifying copies of documents relating to births, marriages, and deaths of citizens abroad issued by a U.S. Embassy or Consulate (obtainable from the Department of State, Washington, D.C.). [former no. 9].	$20.00; each additional copy $10.00.
37. Authentications:	
(a) Certifying to official character of a foreign notary or other official (i.e., authenticating a document). [former no. 45(d), 9(b)].	$32.00.
(b) Authenticating a federal, state, or territorial seal, or certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government, or any document submitted to the Department for that purpose. [former no. 45(f)].	$32.00.
38. Exemptions: Notarial, certification, and authentication fees (items 35, 36, and 37) or passport file search fees (item 3) will not be charged when the service is performed: [former nos. 11, 58]:	
(a) At the request of any federal government agency (unless substantial costs would be incurred)	No fee.
(b) At the request of any state or local government, the District of Columbia, or any of the territories or possessions of the United States (unless substantial costs would be incurred).	No fee.
(c) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining federal, state, or municipal benefits.	No fee.
(d) For American citizens outside the United States preparing ballots for any public election in the United States or any of its territories.	No fee.
(e) At the request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use.	No fee.
(f) At the request of a foreign government official when appropriate or as a reciprocal courtesy	No fee.
(g) At the request of U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or traveling officially in a foreign country.	No fee.
(h) With respect to documents whose production is ordered by a court of competent jurisdiction	No fee.
39. Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of federal court on behalf of an indigent party. [former no. 66].	No fee.
40. Providing seal and certificate for return of letters rogatory executed by foreign officials. [former no. 67]	$455.00.
41. Taking depositions or executing commissions to take testimony. [former no. 69]	Per hour, $200.00 plus costs incurred.
(Items nos. 42–49 vacant.)	
Visa Services	
50. Immigrant visa application processing fee. [former no. 20]	$260.00.

Item No.	Fee
51. Immigrant visa application surcharge for Diversity Visa Lottery. [former no. 19]	$75.00.
52. Immigrant visa issuance fee. [former no. 21]	$65.00.
53. Refugee case preparation and processing. [new]	No fee.
54. Nonimmigrant visa application processing fee. [former no. 26]	$45.00.
55. EXEMPTIONS from nonimmigrant visa application processing fee: [former no. 26]:	
(a) Applicants for A, G, C–2, C–3, and NATO visas	No fee.
(b) Applicants for J visas participating in official U.S. Government (USIA or USAID) sponsored educational and cultural exchanges.	No fee.
(c) Persons issued replacement machine readable visas when the original machine readable visa has not adhered to the passport or other travel document through no fault of the applicant.	No fee.
(d) Persons exempted by international agreement as determined by the Department	No fee.
(e) Persons travelling to participate in charitable activities as determined by the Department	No fee.
56. Visa fingerprinting. [former no. 28]	$25.00.
57. Nonimmigrant visa issuance fee, including border crossing cards. [former nos. 22, 24]	RECIPROCAL.
58. EXEMPTIONS from nonimmigrant visa issuance fee: [former no. 23]:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member.	No fee.
(b) An applicant transiting to and from the United Nations headquarters	No fee.
(c) An applicant participating in a U.S. government sponsored program	No fee.
59. Special visa processing services for aliens: [new]:	
(a) returning resident status	$50.00.
(b) transportation letter	$120.00.
(c) waiver of immigrant visa ineligibility (collected for INS; subject to change)	$95.00.
60. Filing immigrant visa petition (collected for INS; subject to change)	$80.00.
(Items Nos. 61–64 vacant.)	
Administrative Services	
65. Nonemergency telephone calls. [former no. 85]	Local long distance rate plus $10.00.
66. Setting up and maintaining a trust account for 1 year or less to transfer funds to or for the benefit of an American in need in a foreign country. [former no. 92].	$20.00.
67. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary. [former no. 94].	Costs incurred.
68. Emergency passport photo service. [former no. 13]	No fee.
69. Return check processing fee. [former no. 95]	$25.00.
70. Consular time charges as required by this schedule or for fee services performed away from the office or after-duty-hours. [former no. 93].	Per hour, $180.00 plus costs incurred.
71. Photocopies (provided other than pursuant to 22 CFR Part 171 or order of a court of competent jurisdiction). [former nos. 10(b), 76].	Per page, $1.00.
(Item nos. 72–80 vacant.)	

[1] Note: Former numbers will not appear in the Final rule.
[2] "New" designations will not appear in the Final rule.

§ 22.8 [Removed]

3. Section 22.8 is removed.

PART 51—[AMENDED]

4. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, 212, 213, 214, 214a, 216, 217a, 2671(d); 31 U.S.C. 9701; Sec. 129, Pub. L. 102–138, 105 Stat. 661; E.O. 11295, 36 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

5. Section 51.61 is revised to read as follows:

§ 51.61 Passport fees.

Fees, including execution fees, shall be collected for the following passport services in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1):

(a) A fee for each passport issued, which fee shall vary depending on whether the passport is issued to a first-time applicant or a renewal applicant and on the age of the applicant. The passport issuance fee shall be paid by all applicants at the time of application, except as provided in § 51.62(a).

(b) A fee for execution of the passport application, except as provided in section 51.62 (b), when the applicant is required to execute the application in person before a person authorized to administer oaths for passport purposes. This fee shall be collected as part of the passport issuance fee at the time of application and is not refundable (see 22 CFR 51.65). When execution services are provided by an official of a state or local government or of the United States Postal Service, the fee may be retained by that entity to cover the costs of service, pursuant to an appropriate agreement with the Department of State.

(c) A fee for expedited services, if any, provided pursuant to 22 CFR 51.66.

6. Section 51.62 is removed and sections §§ 51.63 through 51.66 are redesignated as §§ 51.62 through 51.65, respectively.

7. Newly redesignated § 51.63 is amended in paragraph (a) by changing "§ 51.63" to read "§ 51.62", and in paragraph (f) by changing "§ 51.67" to read "§ 51.66".

8. Newly redesignated § 51.66 is amended by revising paragraphs (a) and (c) to read as follows:

§ 51.66 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance, amendment, extension, or the addition of visa pages) may request expedited processing by a Passport Agency. All requests by applicants for in-person services at a Passport Agency shall be considered requests for expedited processing, unless the Department has determined that the applicant is required to apply at a U.S. Passport Agency.

* * * * *

(c) A fee shall be collected for expedited processing service in the amount prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1). This amount will be in addition to any other applicable fee and does not include urgent mailing costs, if any.

PART 53—PASSPORT REQUIREMENT AND EXCEPTIONS

9. The title of Part 53 is revised to read as set forth above.

10. The authority citation for part 53 is revised to read as follows:

Authority: 8 U.S.C. 1185; Proc. 3004, 18 FR 489, 3 CFR, 1949–1953 Comp., p. 180.

Dated: November 19, 1997.

Patrick F. Kennedy,

Acting Under Secretary for Management.

[FR Doc. 97–30838 Filed 11–28–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 901

RIN 0701–AA58

Appointment to the United States Air Force Academy

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force proposes to revise its regulation on processing nominations and appointments to the United States Air Force Academy (USAFA). The proposed revision changes admission age limit from 22 to 23, service obligation from 6 to 5 years, USAFA/OL–C to USAFA/RRA, changes high school AFJROTC unit into high school Honor AFJROTC unit and adds Northern Mariana Islands as a nominating source.

DATES: Comments must be received no later than January 30, 1998.

ADDRESSES: Comments should be submitted to HQ USAFA/RRA, 1040 Air Force Pentagon, Washington, DC 20330–1040.

FOR FURTHER INFORMATION CONTACT: Ms. Judith McCann, (703) 697–7116.

SUPPLEMENTARY INFORMATION: The Department of the Air Force proposes to revise 32 CFR Part 901 to reflect current policies. Part 901 is the Air Force guidance on processing nominations and appointments to the United States Air Force Academy (USAFA). This process directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by Title 10, U.S.C., Chapter 903 and Title 10, U.S.C., Chapter 8013. It implements DoD Directive 1322.22, August 24, 1994. This proposed rule, Air Force Instruction (AFI) 36–2019, revises and replaces AFI 36–2019, Appointment to the United States Air Force Academy, May 16, 1994, and Air Force Regulation 53–10, Appointment to the United States Air Force Academy, October 22, 1985.

List of Subjects in 32 CFR 901

Military academies.

For the reason stated in the preamble, the United States Air Force proposes to revise, 32 CFR part 901 as follows:

PART 901—APPOINTMENT TO THE UNITED STATES AIR FORCE ACADEMY

Sec.
901.0 Purpose.
901.1 Responsibilities.
901.2 Nominations and appointments.
901.3 Obligation of appointees.
901.4 Forms Prescribed.
Attachment 1 to Part 901—Eligibility Requirements for U.S. Air Force Academy Applicants
Attachment 2 to Part 901—Academy Nomination Categories
Attachment 3 to Part 901—Nomination Methods
Attachment 4 to Part 901—Appointment Vacancy Selection
Attachment 5 to Part 901—Appointee Obligations

Authority: 10 U.S.C., Chapter 903, and 10 U.S.C., 8013, except as otherwise noted.

§ 901.0 Purpose.

It provides instructions to Air Force members to process nominations and appointments to the United States Air Force Academy (USAFA). This instruction directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by Title 10, United States Code, Chapter 903 and Title 10, United States Code, Section 8013. System of Records F036 AFDPB, Air Force appointment, Separation records applies.

§ 901.1 Responsibilities.

The USAFA offers cadet appointments to candidates with the strongest potential to become successful career officers. USAFA offers appointments according to law and HQ USAF guidance. The President may appoint candidates to become cadets; however, appointments are conditional until the candidates enter the Academy.

(a) HQ USAFA/RRS evaluates applications as an initial step in the appointment process and as an aid to Members of Congress in screening their applicants for nomination.

(b) As part of the appointment process HQ USAFA/RRS will:

(1) Send each applicant a packet, with a request for the academic, athletic, leadership, and background information.

(2) Evaluate the application information and provide an analysis to appropriate congressional offices. This report indicates the applicant's potential to qualify for admission and assists Members of the Congress in selecting the best-qualified applicants for nomination.

(3) Advise qualified applicants to seek a nomination. Inform and encourage individuals whose evaluations reflect areas needing improvement to submit additional test scores or information in an effort to improve their qualifications.

(4) Schedule qualified applicants for a medical examination through the Department of Defense Medical Examination Review Board (DoDMERB) for military service eligibility. DoDMERB will notify the student directly of his or her medical status.

§ 901.2 Nominations and appointments.

(a) Eligibility and Nomination Categories. Statutory authority for nominations and appointments is Title 10, U.S.C., Chapter 903.

(1) Eligibility requirements for potential candidates are at attachment 1 to this part.

(2) Specific authorities may nominate eligible applicants for appointment vacancies.

(3) Each applicant must obtain a nomination in order to receive an appointment. Applicants may apply for a nomination in each category in which they are eligible. Nomination categories are at attachment 2 to this part.

(b) Notice of Nomination. The Associate Director of Admissions (HQ USAFA/RRS) acknowledges receipt of all nominations (see attachment 3 to this part).

(1) If a nominee is not in the Academy system, HQ USAFA/RRS will forward an application to the nominee.

(2) HQ USAFA/RRS will send a candidate kit to all applicants or nominees with qualifying potential for either the Academy or the USAFA Preparatory School.

(c) Appointment Selection.

(1) HQ USAFA/RRS will notify HQ USAFA/RRA, of all candidates selected for appointment (see attachment 4 to this part).

(2) To bring the Cadet Wing up to full strength, HQ USAFA/RRS may offer additional appointments from the qualified alternate pool.

(i) The first 150 appointments must come from individuals having nominations from Members of Congress.

(ii) Thereafter, three of every four additional appointments must come

from individuals having nominations from the Vice President, Members of the Congress, and U.S. possessions categories.

(3) If any of the annual quotas of cadets authorized in the Regular Airman, Reserve Airman, or Presidential nomination categories are not filled, HQ USAFA/RRS may offer appointments to candidates from the other two categories to fill the vacancies on a best-qualified basis.

(4) HQ USAFA/RRA, notifies Members of Congress and the Vice President of all offers of appointment from their nominees. After HQ USAFA/RRA notifies the congressional and Vice Presidential nomination sources and advises HQ USAFA/RRS of this notification, HQ USAFA/RRS will notify each appointee by letter, enclosing a USAFA Form 0–28, Acceptance Declination Certificate.

(5) On receipt of an acceptance statement for each unconditional offer of appointment, HQ USAFA/RRS forwards pertinent information from the completed candidate file to Cadet Examinations and Records (HQ USAFA/DFRR).

(6) HQ USAFA/RRS will hold accepted conditional offers of appointment until the conditional factor is resolved.

(i) HQ USAFA/RRS will then notify HQ USAFA/RRA of conditional status removal (from the offer of appointment) for notification of the nominating sources.

(ii) If the conditional status of appointment is not removed, HQ USAFA/RRS will notify HQ USAFA/RRA, who will in turn notify the applicable nominating sources of the withdrawal of the appointment.

(7) HQ USAFA/RRS completes appointment processing by:

(i) Forwarding an appointment kit which includes detailed reporting instructions to each appointee.

(ii) Arranging for the appointees' travel or by issuing invitation to travel orders.

(iii) Notifying the Directorate of Cadet Personnel (HQ USAFA/DPYC) of Regular airmen appointees.

Note: Regular airmen in technical school should complete all phases of training, if time permits, before reporting to the Academy. USAFA/DPYC will coordinate with HQ AFMPC/MPCRAC1 to set the reporting date.

(d) Nonselection for an Appointment.

(1) HQ USAFA/RRS will notify in writing each candidate who qualified as an applicant but was later disqualified (due to receipt of unfavorable or unvalidated information).

(2) HQ USAFA/RRS will notify in writing each candidate who is not offered an appointment by May 1.

Note: For active duty Air Force applicants, HQ USAFA/RRS will also notify the applicable Military Personnel Flight (MPF) of the member's appointment status.

§ 901.3 Obligation of appointees.

An appointee who enters the Air Force Academy from civilian status and takes the oath of allegiance as a cadet normally assumes a military service obligation of not less than 5 years nor more than 8 years under 10 U.S.C. 651.

(a) As a condition to appointment, cadets will fulfill the following obligations:

(1) Complete the Academy course of instruction unless disenrolled from the Academy by competent authority.

(2) Accept an appointment and upon graduation serve as a commissioned officer in a Reserve (after September 30, 1996) component of one of the armed services for a minimum of 5 years.

(3) Serve as a commissioned officer in the Reserve component until the 8th anniversary (if authorized to resign from the Regular component before the 8th anniversary of their graduation).

(4) Be subject to the separation policies in Air Force Instruction 36–2020, Disenrollment of U.S. Air Force Academy Cadets.

(b) HQ USAFA/DPYQ will ensure minor cadets sign an agreement with the parent's or guardian's consent to fulfill the above obligations.

(c) Cadet's Oath of Allegiance. On admission, each appointee (except foreign cadets) is required to take the Oath of Allegiance as written at attachment 5 to this part.

(1) If an appointee refuses to take and subscribe to the oath, the appointment is terminated.

(2) Cadets who enter the Air Force Academy from the regular or reserve component of the Air Force or as an enlisted member of the armed forces may not terminate any period of remaining obligated service because of the acceptance of that appointment. If such cadets fail to complete the Academy course of instruction, or are separated from service as cadets for any reason other than appointment as a commissioned officer or because of a physical disability, they will revert to enlisted status to serve any prior service obligation under 10 U.S.C. 516. However, all service as a cadet is counted toward fulfillment of the remaining period of obligated service.

§ 901.4 Forms prescribed.

(a) AF Form 1786, Application for Appointment to the USAF Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force.

(b) DD Form 1870, Nomination for Appointment to the United States Military Academy, Naval Academy, Air Force Academy.

(c) USAFA Form 0–28, Acceptance Declination Certificate.

Attachment 1 to Part 901—Eligibility Requirements for U.S. Air Force Academy Applicants

Note: This attachment provides the eligibility requirements for all applicants desiring to attend the USAFA.

A1.1. Each applicant must meet the following eligibility requirements:

A1.1.1. Age. Must be at least 17 and not have passed their 23rd birthday on July 1 of the year of entry into the Academy.

A1.1.2. Citizenship. Must be a citizen or national of the United States (except for students sponsored by foreign governments under 10 U.S.C. 9344). HQ USAFA/RRS will verify citizenship of all incoming cadets prior to administration of the oath of appointment, (i.e., birth or nationalization certificate). Facsimiles, copies, photographs or otherwise of birth certificate or certificate of citizenship must include proper certification as evidenced by the raised seal of the issuing authority.

A1.1.3. Domicile. Be domiciled within the boundaries of the constituency if nominated by an authority designated in the Congressional and U.S. Possessions categories.

A1.1.4. Personal Standards. Must exhibit the highest standards of moral character, personal conduct, and integrity. Applicants must explain or clarify any of the following circumstances:

A1.1.4.1. Applicant is or has been a conscientious objector.

A1.1.4.2. Any facts that indicate the applicant's appointment may be inconsistent with national security interests.

A1.1.4.3. Conviction by court-martial of other than a "minor offense" (MCM, 1984, Part V, paragraph 1e, page V–1) or conviction of a felony in a civilian court.

A1.1.4.4. Elimination from any officer training program or any preparatory school of the Army, Navy, or Air Force Academies for military inaptitude, indifference, or undesirable traits of character. This includes any person who resigned in lieu of impending charges or who was eliminated by official action.

A1.1.4.5. Habitual alcohol misuse or drug abuse which exceeds Air Force standards is disqualifying.

A1.1.4.6. Behavior, activity, or association showing the applicant's conduct is incompatible with exemplary standards of personal conduct, moral character, and integrity.

A1.1.5. Marital Status. Be unmarried and have no legal obligation to support a child, children, or any other person.

A1.1.6. Medical Examination. Must be medically qualified as determined by DoDMERB. The Air Force Academy Command Surgeon may grant waivers.

A1.1.7. Academic Examinations. Each applicant must achieve satisfactory results on the Scholastic Aptitude Test or the American College Testing (ACT) Test.

A1.1.8. Candidate Fitness Test (CFT).

Note: HQ USAFA/AH may grant waivers if the candidate clearly demonstrates an acceptable level of physical fitness.

Attachment 2 to Part 901—Academy Nomination Categories

Note: This attachment identifies the nomination categories available to individuals seeking an appointment to the USAFA.

A2.1. Congressional and US Possessions Categories. The nominating authorities listed below are authorized the following cumulative quotas:

Note: Nominating authorities will send DD Form 1870 to HQ USAFA/RRA, 1040 Air Force Pentagon, Washington, DC 20330–1040 for processing.

(Approved by the Office of Management and Budget under control number 0701–0028)

Nominating Authority	Authorized Quota
U.S. Senators	5
U.S. Representatives	5
District of Columbia	5
U.S. Delegate Guam	2
U.S. Delegate Virgin Islands	2
U.S. Delegate American Samoa (Applicants domiciled in American Samoa)	1
Governor of Puerto Rico (native)	1
Resident Commissioner of Puerto Rico (domiciled and native)	5
Resident Representative Northern Mariana Island	1
Vice-Presidential	5

(Nominates from nation at large with deadline to apply October 31)

A2.2. Military Related Nomination Categories:

A2.2.1. Presidential Competitive Category. This nomination category authorizes 100 appointments each year and is made by applicant order of merit. Individuals apply to HQ USAFA/RRS between May 1 and January 31. Applicants do not write directly to the President of the United States.

Note: For the purpose of this instruction, children are defined as natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday. To be eligible in this category, the applicant's parent must be or have been a Regular or Reserve member of the Armed Forces with the following restrictions:

A2.2.1.1. On active duty (other than for training) and served continuously on active duty for 8 years by July 1 of the year that the candidate would enter.

A2.2.1.2. Retired with pay or granted retired or retainer pay (children of reservists retired and receiving pay pursuant to of Title 10, United States Code, Chapter 67, are ineligible).

A2.2.1.3. Parent died after retiring with pay or died after being granted retired or retainer pay (children of such reservists who were retired and receiving pay pursuant to of Title 10, United States Code, Chapter 67, are ineligible).

A2.2.1.4. In accordance with 10 U.S.C. 9342, a person eligible for appointment consideration under the Children of Deceased or Disabled Veterans (CODDV) category is not eligible as a candidate in the Presidential category.

A.2.2.2. Children of Deceased or Disabled Veterans and Children of Military or Civilian Personnel in a Missing Status Category (CODDV). This category authorizes 65 cadets at USAFA at any one time. Individuals apply to HQ USAFA/RRS between May 1 and January 31. USAFA will offer appointments by order-of-merit. Eligibility requirements are delineated in 10 U.S.C., Chapter 9342(a)(1), and the Department of Veteran Affairs is the final determining agency for this category. Disabilities under this category must be a full 100 percent determination.

A.2.2.3. Honor Military and Honor Naval Schools, Air Force Reserve Officers' Training Corps (AFROTC), and Air Force Junior Reserve Officers' Training Corps (AFJROTC) Competitive Category. This category authorizes 20 appointments. USAFA will offer appointments by order-of-merit.

A.2.2.3.1. Honor Military and Honor Naval Schools may nominate five honor graduates, or prospective honor graduates, from each designated honor military and honor naval school. School authorities certify that each nominee is a prospective honor graduate or an honor graduate, and meets the basic eligibility requirements. School authorities submit nominations directly to the USAFA/RRS using specific nomination forms no later than January 31 of the entry year. Nominations are not limited to honor graduates of the current year. Eligible candidates apply to the administrative authority of the school involved.

A.2.2.3.2. AFROTC may nominate five students from each college or university AFROTC detachment to compete for appointment. Students must apply for nomination to the Professor of Aerospace Studies (PAS) who must certify that the applicants meet the basic eligibility requirements and have or will have satisfactorily completed at least 1 year of scholastic work at the time of admission. The president of the institution will nominate directly to HQ USAFA/RRS by January 31.

A2.2.3.3. Five students from each high school Honor AFJROTC detachment to compete for appointment. Students will apply for nomination to the Aerospace Science Instructor, who must certify that the applicants meet the basic eligibility requirements and have or will have successfully completed the prescribed AFJROTC program by the end of the school year. The principal of the high school may nominate five individuals directly to USAFA by January 31.

A2.2.4. Children of Medal of Honor Recipients Category. The child of any Medal of Honor recipient who served in any branch of the Armed Forces may apply for nomination directly to HQ USAFA/RRS between May 1 and January 31. If applicants meet the eligibility criteria and qualify for admission, they are admitted to the Academy. Appointments from this category are unlimited.

Note: For the purpose of this category, children are defined as natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

A2.2.5. Regular Airmen Category. This category is authorized 85 appointments each year and filled from candidates in order of merit. Any enlisted member of the Regular component of the Air Force may apply for nomination by January 31.

A2.2.5.1. Selectees must be in active duty enlisted status when appointed as cadets and must complete AF Form 1786, Application for Appointment to the USAF Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force, and submit it to their organization commander who determines if the applicant meets the basic eligibility requirements. If a candidate is not qualified, the organization commander will return the application to the applicant and explain why the applicant was disqualified.

A2.2.5.2. The organization commander will: advise the local Military Personnel Flight (MPF) to hold any reassignment action pending selection of an appointment. The MPF places the airman in assignment availability code (AAC) 05 and coordinates on AF Form 1786. Upon Academy notification, MPF will reassign applicants not selected. The initial application package from the technical training center MPF to HQ USAFA/RRS includes the following information on all pipe-line students: name, Social Security Number, Air Force specialty code, course graduation date, follow-on training, and end assignment.

A2.2.5.3. Complete an endorsement and forward AF Form 1786 through the MPF to HQ USAFA/RRS. The commander's endorsement must include a comprehensive statement of the applicant's character, ability, and motivation to become a career officer. The commander will use official records to verify statements in the application regarding component, length of service, and date of birth.

A2.2.6. Reserve Airmen Category. This category is authorized 85 appointments each year and filled from candidates in order of merit. The deadline for applications is January 31 of the entry year. Any enlisted member of the Air Force Reserve or Air National Guard of the United States (ANGUS) may apply for nomination by January 31 of the entry year. A reserve commissioned officer who satisfactorily completes 1 year of service in an active Reserve assignment by July 1 of the year in which admission is sought may apply in this category. (Reserve commissioned officers on extended active duty (EAD) may apply for vacancies in the Regular competitive category.) If selected, such candidates must have commissioned officer status terminated and be in the enlisted Air Force Reserve before appointment as Air Force Academy cadets. Cadets in this category who are separated from the Air Force Academy without

prejudice and under honorable conditions may apply for reappointment as Reserve commissioned officers. Reserve Airmen on EAD as a result of an honor suspension from the Air Force Academy Cadet Wing must reapply for admission under this category.

A2.2.6.1. Reserve category applicants must complete AF Form 1786 and submit it to their organization commander. The organization commander processes the application.

A2.2.6.2. A Reserve applicant is not placed on active duty for the purpose of processing him or her for a nomination or appointment to the Air Force Academy.

A2.3. Superintendant Competitive Category. The Superintendent may nominate up to fifty eligible applicants who have not secured a nomination to USAFA from any other nominating authority. USAFA will select highly qualified applicants in order-of-merit from the nationwide applicant pool of qualified alternates to fill the class.

A2.4. Foreign Students Competitive Category. 10 U.S.C. 9344 authorizes USAFA to provide instruction for as many as 40 foreign students at any one time. Foreign citizens must apply to their government. USAFA coordinates with US Embassies to ensure compliance with all admission and appointment requirements. HQ USAFA/RRA coordinates with HQ USAF, Department of Defense and State Department before forwarding nomination invitations to each country. The application must describe the applicant's background and must be received by USAFA by December 31 before their desired summer admission. Applicants in these categories must meet the eligibility and admissions requirements established for all Academy candidates except for US citizenship. They must be able to read, write, and speak English proficiently in a college environment.

Attachment 3 to Part 901—Nomination Methods

Note: This attachment provides information on the different methods to nominate candidates for appointment to the Academy.

A3.1. Nomination methods to fill quota vacancies in the Vice-Presidential, congressional, and U.S. Possessions Categories follow:

A3.1.1. The Principal Numbered-Alternate Method. The nominating authority indicates his or her personal preference by designating a principal nominee and numbering up to nine alternate nominees in order of preference. HQ USAFA/RRS must offer the appointment to the first fully qualified nominee. The order of preference must be honored; however, HQ USAFA/RRS may offer appointments in any sequence.

A3.1.2. The Principal Competitive-Alternate Method. The nominating authority designates his or her principal nominee and up to nine other nominees. HQ USAFA/RRS evaluates and ranks nominees by order-of-merit. If the principal nominee is fully qualified, HQ USAFA/RRS will offer this individual the appointment; otherwise, HQ USAFA/RRS will offer the appointment to the fully qualified alternate nominee ranked the highest.

A3.1.3. The Competitive Method. At the request of the nominating authority, the HQ USAFA/RRS evaluates the records of all the nominees, ranks them in order of merit, and offers the appointment to the highest ranked nominee.

Attachment 4 to Part 901—Appointment Vacancy Selection

Note: This attachment provides instructions for charging appointments to the appropriate nominating source.

A4.1. HQ USAFA/RRS charges appointees on behalf of the Secretary of the Air Force. HQ USAFA/RRA will audit all charges. Selection of the charged cadets from the nominees for each vacancy is accomplished as follows:

A4.1.1. Principal Nominee, Numbered-Alternate Method. If the Principal Nominee has accepted appointment, he or she is charged against their nominating source vacancy. Otherwise the highest ranked alternate accepting an appointment is charged. In instances where a candidate received principal nominations from two different congressional sources, the principal is normally charged to the Member of Congress who submitted the nomination first.

A4.1.2. Principal Nominee, Competitive-Alternate Method. If the Principal nominee has accepted appointment, he or she is charged against the nominating source vacancy. HQ USAFA/RRS evaluates alternates and ranks according to merit. If the Principal does not meet admission criteria, the highest ranking alternate accepting an appointment is charged.

A4.1.3. Competitive Nominee Method. HQ USAFA/RRS evaluates the group of competitive nominees, ranks according to merit, and charges the highest-ranked nominee accepting an appointment.

A4.1.4. Multiple Congressional Nominations. For candidates receiving numerous nominations, HQ USAFA/RRS normally charges the candidate to the congressional source. When a candidate is nominated by several congressional sources, HQ USAFA/RRS charges the candidate to the slate of the congressional member where the candidate ranks the highest, unless the candidate is the principal nominee or a numbered alternate.

A4.1.5. Other Sources of Nomination. HQ USAFA/RRS charges all other candidates not nominated by congressional, Vice-Presidential, or U.S. Possessions to that nominating source (Presidential, AFJROTC, AFROTC, CODDV, Medal of Honor, etc.).

A4.1.6. Qualified Alternates. To bring the Cadet Wing up to strength, the qualified alternates appointed according to § 901.2 (c)(2) are charged to the Secretary of the Air Force. Those candidates having congressional, Vice-Presidential, or U.S. Possessions nominations appear as a qualified alternate for that nominating source.

A4.1.7. Multiple Congressional and Other Sources of Nomination. For appointees who have multiple nominations, HQ USAFA/RRS determines the appointment category to which they are charged. Normally a cadet with both congressional and noncongressional nominations is charged to a congressional authority. HQ USAFA/RRS notifies HQ USAFA/RRA, of these assignments. HQ USAFA/RRA audits and verifies the charges, then notifies the Vice-President, nominating authorities in the Congress, and US Possessions of their charged appointees and other nominees who win appointments.

Attachment 5 to Part 901—Appointee Obligations

Note: This attachment provides the Oath of Allegiance which each Academy appointee must take as an obligation of service.

"I (name), having been appointed an Air Force cadet in the United States Air Force, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of which I am about to enter. So Help Me God."

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–31347 Filed 11–28–97; 8:45 am]

BILLING CODE 3901–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 14

RIN 1024–AC01

General Provisions and Rights-of-Way

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises existing regulations relating to the issuance of right-of-way permits across National Park Service (NPS) lands. The NPS has been using interim regulations since 1980. Those interim regulations have become dated and are in need of revision. This rulemaking is a complete revision of the interim regulations. It will provide a process for the review, consideration and approval, or denial, of requests for rights-of-way across all areas of the National Park System.

DATES: Written comments will be accepted through January 30, 1998.

ADDRESSES: Mail comments to the National Park Service, Ranger Activities Division, MS 650 (ROW), P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Dick S. Young, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690. Telephone (804) 898–7846.

SUPPLEMENTARY INFORMATION:

Background

The NPS is proposing to revise the existing regulations relating to the issuance of right-of-way permits across NPS lands found at 36 CFR 14. The NPS is currently using interim rules that were published in the **Federal Register** on July 11, 1980 (45 FR 47092) to allow telecommunication and other utility rights-of-way across NPS lands. Prior to that date, rights-of-ways across public lands, including areas of the National Park System, were administered under regulations promulgated by the Bureau of Land Management (BLM), found at 43 CFR part 2800. The passage, in 1976, of the Federal Land Policy and Management Act (43 U.S.C. 1761 *et seq.*, 90 Stat. 2743) required the revision of those regulations by the BLM. Regulations promulgated by the BLM in 1980 (45 FR 44518) deleted all references to the NPS.

In response, the NPS adopted, without substantive revision, those provisions found at 43 CFR part 2800 that applied to areas under the management and control of the NPS. These were promulgated as interim regulations on July 11, 1980 (45 FR 47092). This proposed regulation is the first revision of those interim regulations.

The period between 1980 and 1996 has seen many legislative and policy changes regarding right-of-way management. New language in the annual budget legislation, now codified at 16 U.S.C. 3a, has altered the way the NPS looks at fees and the recovery of costs. The intervening years have also allowed the NPS to accumulate experience with rights-of-way and other permitting instruments. While the interim regulations were satisfactory for parts of the process, there are many gaps and several deficiencies and inequities, all demanding the promulgation of new regulations. The regulations contained in this proposed rulemaking will correct the inefficiencies and provide necessary changes.

Key Issues

The NPS is proposing to update and revise right-of-way regulations that will provide a uniform process for the review, consideration and approval or denial of requests for rights-of-way across all areas of the National Park System. These regulations will establish procedures for the permitting of rights-of-way that are authorized at the discretion of the Secretary of the Interior and for rights-of-way authorized by individual park legislation. The regulations do not apply to those uses that are subject to or arise from property rights, such as easements.

These proposed regulations ensure compliance with the right-of-way authorities found in 16 U.S.C. 5, 79 and 23 U.S.C. 317. They reflect the Congressional mandate that activities inconsistent with national park values and purposes will not be authorized in areas of the National Park System, "except as may have been or shall be directly and specifically provided by Congress." See section 101(b) of the Act of March 27, 1978 (16 U.S.C. 1a–1, 92 Stat. 166). They also ensure compliance with applicable provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) and the National Environmental Policy Act of 1969 (43 U.S.C. 4321–4370).

These proposed regulations do not grant an interest greater than a permit revocable at the discretion of the Authorized Officer. The interim regulations state that the regulations do not give the holder any estate of any kind in fee in the lands of the United States. However, confusion over the nature of the privilege permitted by the regulations has arisen by the use of regulatory language normally associated with the transfer of property rights, terms such as "grant", "easement" and "license." These proposed regulations clarify that the permit issued by the NPS will not be construed as a grant of permanent interest in the real property of the United States.

In granting the discretionary uses the NPS, as an agency of the Federal government, must also follow the directive of Congress to recover all costs associated with providing benefits or services not accruing to the public at large (31 U.S.C. 9701). Accordingly, the fees authorized by the regulations have been adjusted to be comparable with prevailing industry standards and to better reflect the actual costs incurred by the NPS in issuing permits.

Rights-of-way for highways are part of the Federal Aid Highway System. Section 107(d) of Title 23 provides for transfer of lands or interest in lands to appropriate jurisdictions. Requests for such transfer of interest are subject to the provisions of 23 U.S.C. 317. The NPS and the Federal Highway Administration (FHA) have determined that such transfer should be accomplished through a highway easement deed. Highway easement deeds provide for reversion to the NPS of lands or interest in lands when such use is no longer required for highway purposes.

Section-by-Section Analysis

As currently codified in Title 36, part 14 consists of six subparts, labeled A–F. These proposed regulations revise and reorganize these subparts. A detailed discussion of these proposed revisions is presented below.

Subpart A—Right-of-Way Permits—General

Section 14.1 Purpose

This is a new section to clarify the purpose of the regulations of this part. It emphasizes that an applicant for a right-of-way permit must demonstrate that there is no feasible and prudent alternative to the proposed right-of-way. Also, the NPS will only permit those uses that will not be in derogation of the values and purposes for which the various areas have been established, except as may have been or will be directly and specifically provided by Congress.

Section 14.2 Applicability and Scope

This section replaces existing § 14.1, and addresses the following main topics as follows:

1. Park lands and waters subject to regulations. Proposed paragraph (a) will require a permit for rights-of-way over Federally owned lands and waters within the exterior boundaries of park areas. The authority to permit rights-of-way on lands and waters within the boundaries of a unit is provided for in the general legislation governing the management and preservation of the National Park System. (*See* 16 U.S.C. 1–3)

2. Regulations do not apply to NPS owned or operated rights-of-way. Proposed paragraph (b) clarifies that the regulations of this part do not apply to rights-of-way owned, controlled or operated by the NPS.

3. Requirements for no alternatives, derogation and statutory standards. Proposed paragraph (c) clarifies this part as applying only to those permits where there is no prudent or feasible alternate route outside the park, that the use will not be in derogation of park resources and values, and all applicable statutory standards are met.

4. Regulations of oil and gas pipelines. Proposed paragraph (d) clarifies that operations in connection with the exploration, development, production and transportation of non-Federal oil and gas within park units must continue to comply with regulations at 36 CFR part 9, Subpart B. Such activities, including transportation, do not invoke the 36 CFR part 14 regulations. This is due to the fact that owners of the non-Federal

oil and gas possess a vested property right interest that can only be extinguished through acquisition. Paragraph (d) also clarifies that the construction, operation and maintenance of new and existing petroleum product pipelines in park units that originate and terminate outside such units will comply with the requirements of 36 CFR part 9, Subpart B. If authorized by a park unit's enabling statute or other authority, a right-of-way permit may be issued following the procedures in the 36 CFR part 14 regulations.

5. Proposed paragraph (e) clarifies that applicants for access to Federal and non-Federal minerals and leases outside park boundaries must continue to comply with regulations at 36 CFR part 9.

6. Prohibitions of rights-of-way in wilderness areas. Proposed paragraph (f) clarifies that no rights-of-way will be permitted within NPS areas proposed for or designated as wilderness under the Wilderness Act of September 3, 1964 (78 Stat 890; 16 U.S.C. 1131–1136).

7. Regulations in NPS units in Alaska. Proposed paragraph (g) clarifies that applications for transportation and utility system corridors in Alaska, pursuant to Title 11 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA; 16 U.S.C. 3101 *et seq.*) must meet the requirements of regulations at 43 CFR part 36.

8. Approval of the Regional Director. Proposed paragraph (h) clarifies that new applications for rights-of-way over, under or through the lands and waters subject to NPS regulations must be submitted to the Authorized Officer and approved by the appropriate Regional Director of the NPS or a designee.

Section 14.3 Definitions

This section replaces existing § 14.2. The NPS proposes new definitions to clarify existing or proposed procedures within these regulations. Specific changes to existing definitions or definitions for newly proposed terms are discussed in detail below.

The NPS proposes to add a definition for *applicant*, to include any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations, submitting an application under this part.

A new definition of *construction* is added to include all temporary or permanent work done under the authority of a right-of-way permit from initiation until completion of the necessary activities to establish the use for which the permit is issued.

The NPS proposes to change the context of the phrase *right-of-way* by changing the definition to mean the Federally owned land authorized to be used or occupied under a right-of-way permit.

The new term *right-of-way* permit is defined as an authorizing document that, without conveying any title interest, provides permission to occupy and use Federal lands and waters within the NPS boundary under certain terms and conditions and for specified purposes that is revocable, terminable and unassignable.

Proposed for deletion from this part is the definition of *Secretary, Director, Regional Director, Superintendent and Park*, all of which are defined at § 1.4. Also proposed for deletion is *Project*, presently defined at § 14.2(f).

Section 14.4 Information Collection

This new section has been included to comply with the Paperwork Reduction Act of 1995.

The information collection requirements contained in § 14.21 of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

Subpart B—Terms and Conditions of Right-of-Way Permit

This Subpart replaces existing Subpart B, "Nature of Interest."

Section 14.10 Purpose

This Subpart describes the nature and limitations of the nonexclusive right-of-way permit to be granted.

Section 14.11 Nature of Right-of-Way Permit

This section replaces and expands existing § 14.6. Paragraph (a) emphasizes that the right-of-way permit does not grant a permanent interest in the premises nor should it be deemed as an abandonment by the United States. Further, the section clarifies the point that the permittee does not gain any estate in fee in the lands or any right whatever to take from Service lands any mineral, consolidated material, earth, stone or wood for construction or other purposes not specifically authorized. In addition, the terms "easement" and "license" have been removed here and throughout this part to avoid confusion.

Paragraph (b) has been added clarifying that an approved right-of-way permit will be limited to the specific use described in the permit and will not be construed to include the right of the permittee to authorize any other use within the right-of-way unless authorized in writing by the Authorized Officer. Furthermore, right-of-way permits may not be transferred or assigned to other parties without written permission from the Authorized Officer.

Paragraph (c) has been added to allow that additional right-of-way permits may be issued by the NPS within previously permitted rights-of-way. The holders of such permits do not have the right to impose charges for additional users of such rights-of-way.

Paragraphs (d) and (e) describes the maximum widths and expiration dates for right-of-way permits.

Section 14.12 Unauthorized Occupancy

This section replaces existing § 14.8. The text has been modified for clarification and simplification. Occupying or using Federal lands within a park area for constructing, maintaining, operating or removing any utility, highway or other facility, except where specifically authorized by permit according to this part, is prohibited and subject to the penalties established in § 1.3. By making § 14.12 subject to the penalties found at 36 CFR 1.3, § 1.3 will be amended to add part 14.

Section 14.13 Terms and Conditions

This section replaces and significantly reorganizes existing § 14.9. References to waiving requirements are deleted. The NPS proposes the addition and deletion of terms and conditions for clarity and resource protection purposes. These revisions are broadly summarized in the following chart:

Existing Old Section, 36 CFR	Proposed New Section, 36 CFR
§ 14.9(b),(c),(e) & (i)	§ 14.15
(d)	§ 14.13(a)(9)
(f)	§ 14.13(c)(d)(e)
(g)	Partly deleted, & § 14.13(c)
(h)	§ 14.13(a)(5)
(j)	Deleted
(k)	§ 14.13(a)(10)
(l)	§ 14.11; § 14.27
(m)	§ 14.13(i)

Paragraph (a) provides that right-of-way permits are subject to such relevant terms, conditions and additional special stipulations as may be required by the Authorized Officer. New subparagraphs 1 to 14 further specify the types of

requirements to be addressed in the terms and conditions of right-of-way permits, allow the Authorized Officer or a designee to enter and inspect the property and require reimbursement of costs and payment of all fees.

Paragraph (a) reinforces the requirement to comply with State and Federal requirements for public health and safety, environmental protection and siting, construction, operation and maintenance. When State standards are more stringent than the Federal standards, the State standards must be met. To protect archeological, paleontological and historical resources, a requirement is added that activities must be stopped and the Superintendent immediately notified upon discovery of such resources. All artifacts unearthed or discovered are the property of the United States and will be accessioned by the NPS according to the standards of the automated National Catalog System before relinquishing them to the United States.

Paragraph (a) also requires compliance with the specifications pertaining to restoration and rehabilitation of resources as listed in proposed § 14.15. The requirement is added to notify the Authorized Officer in writing not less than 10 working days prior to the start of construction, maintenance or repair on park lands. All work on park lands will be completed in accordance with the terms of the permit, as determined by the Authorized Officer or his representative.

New paragraph (b) establishes that a bond or other security may be required by the Authorized Officer.

Proposed paragraph (c) replaces in part existing paragraph (f) and requires the permittee to notify and compensate the United States for all damages caused to Federal lands or resources by the permittee. It also requires compensation by the permittee for injury, loss or damage arising from the occupancy or use of lands under the permit, including costs of fire suppression or clean up of petroleum or other product spills.

Paragraph (d) expands on existing paragraph (f) in a savings clause to hold the United States free from all liabilities and claims for damages.

New paragraph (e) requires the Authorized Officer to include a strict liability condition in new permits and specify maximum limitation on liability commensurate with the foreseeable risk or hazard associated with the use.

New paragraph (f) makes State and local governments liable to the extent of their laws, or to require at a minimum the repair of any damages or restitution in full.

New paragraph (g) deals with hazardous materials and toxic substances by restricting the use, generation or storage on the right-of-way; requires additional approval before any such use, generation or storage; requires immediate reporting of any leak, spill or release of such substances; requires the applicant to produce and submit to the Authorized Officer a completed emergency action plan.

New paragraph (h) replaces and revises existing paragraph (m) to indicate the authority of the United States to modify or discontinue any permit if it conflicts with authorized use and occupancy of lands under the management authority of the United States.

New paragraph (i) excludes members of or delegates to Congress or Resident Commissioners to any share or part of a right-of-way permit issued under this part.

New paragraph (j) states that failure to comply with the requirements of the permit may lead to its cancellation.

Section 14.14 Additional Terms and Conditions Specific to Electrical Transmission and Communication Lines

This is a new section that revises, simplifies and replaces existing Subpart E—Power Transmission Lines, General; Subpart F—Principles and Procedures, Power Transmission Lines; Subpart G—Radio and Television Sites; and Subpart H—Telephone and Telegraph Lines. Some of these terms and conditions have been moved to the general terms and conditions section at § 14.13. Other sections have been deleted because they are no longer applicable.

It is felt that § 14.13 adequately addresses the criteria that should be applied to any right-of-way permit, regardless of type. The authority for electrical and communication rights-of-way is the same as for other rights-of-way. Existing subparts E through H are repetitive and, except for the few specifics in this new § 14.14 applicable to communication and power lines, have been deleted.

Section 14.15 Rehabilitation and Revegetation Requirements

This new section consolidates existing requirements and establishes new requirements for the rehabilitation and revegetation of rights-of-way during various stages of construction, operation, maintenance and termination. Existing § 14.9 (b),(c),(e) and (i) are incorporated in this new section.

The rehabilitation and revegetation work must be conducted according to adopted NPS policies, guidelines, park standards and applicable vegetation management plans. The permit will be conditioned to require restoration, revegetation and curtailment of erosion of the surface of the land during construction and completion of construction. The permit will also be conditioned to minimize damage and aesthetic values and fish and wildlife habitat and otherwise protect the environment. Further, this section places restrictions on the cutting of vegetation and requires reimbursement to the park of market value for trees cut.

At the termination and rehabilitation stage of the proposed use, the permittee is required to participate in a pretermination conference with the Authorized Officer. Rehabilitation activities must restore natural resources to their pre-disturbance condition to the satisfaction of the Authorized Officer. The Authorized Officer may require rehabilitation and revegetation of the right-of-way to other than the original condition in previously disturbed areas if consistent with the management zones and park purposes prescribed in the park's enabling legislation and General Management Plan. If agreement cannot be reached between the Authorized Office and the permittee, the permittee may appeal the decision of the Authorized Officer following procedures found in § 14.31.

A bond, which is a permit requirement, will not be returned to the permittee until the Authorized Officer conducts a final inspection to determine that all work has been satisfactorily completed and that the revegetation of the site is properly established and self-generating. Failure to do so may result in forfeiture of all or part of the bond. The bond in this instance may be utilized to rehabilitate the site. The bond will never be deposited to the U.S. Treasury as miscellaneous receipts.

Subpart C—Procedures

Section 14.20 Preapplication

This section is renamed Preapplication. Information is given regarding the steps to be followed when seeking a right-of-way over, across or through lands and waters within the boundary of an area of the National Park System. The purpose of this section is to make the proponent aware of the application procedures and probable time requirements, clearances, other permits and licenses required for the use, environmental and management concerns, cost reimbursement, fees and bonding requirements, and special conditions applicable to the area.

Section 14.21 Application Filing

This section revises and expands existing 36 CFR 14.21 and includes existing 36 CFR 14.24, 14.25 and 14.28. Paragraph (a) indicates that the application is to be filed with the Authorized Officer and lists the basic information needed for evaluating the application. The information requested in subparagraphs 1 through 9 is needed in order for the Authorized Officer to determine the impacts of the proposed activity on park resources and to insure that the activity would not conflict with any Federal or State law.

Paragraph (b) requires applicants for rights-of-way to demonstrate their legally recognized right to utilize, transport, store or convey water.

Paragraph (c) replaces existing 36 CFR 14.25(a) regarding map and document requirements to accompany a right-of-way application.

Section 14.22 Timely Construction, Nonconstruction and Nonuse.

This section revises existing 36 CFR 14.29. The major revision places the emphasis on initiating work within two years instead of completing work within two years. Proof of construction completion is still required, with certain extensions possible. Completion of construction dates will be stipulated in the permit.

Section 14.23 Deviation From Approved Right-of-Way

This section replaces existing 36 CFR 14.31, and provides that no deviation from the approved right-of-way can be initiated by the permittee without approval from the Authorized Officer.

Section 14.24 Immediate Suspension of Activities.

This new section provides the Authorized Officer with the authority to issue immediately a temporary suspension of activities order within a permitted right-of-way to protect park resources, public health or safety or the environment. This may be done without an administrative hearing and may be conducted orally. The suspension order may be issued to the permittee or a contractor or subcontractor, or to any representative, agent or employee of the permittee. Activity must be suspended at once upon the issuance of such an order.

The order will remain in effect until it is lifted by the Authorized Officer in writing. By written request, the permittee may request that the suspension be lifted, providing reasons for the request. The Authorized Officer will act upon the permittee's request within five working days of the date the request is filed.

Section 14.25 Cancellation of Permit

This section replaces and revises existing 36 CFR 14.32 and 14.33. It addresses the causes that may result in the cancellation of a permit, rather than the temporary suspension of § 14.24. These include failing to comply with applicable laws and regulations, terms, conditions or stipulations of the permit; or abandoning the right-of-way as described in proposed § 14.22(b).

Before revoking a right-of-way permit pursuant to this section, the Authorized Officer will give the permittee written notice that such action is being contemplated and the reasons therefore and will allow the permittee an opportunity to comply with the terms of the permit.

Section 14.26 Disposition of Personal Property and Improvements Upon Termination of Rights-of-Way.

This section revises and replaces existing § 14.36. All references to monies due the United States and references to six-month limitations for removing property and improvements are deleted. The permittee is now provided with a reasonable amount of time for removal activities after termination, revocation or cancellation of a right-of-way permit. This section also reaffirms the responsibility of the permittee to restore the site to a condition satisfactory to the Authorized Officer. Further, if the permittee fails to remove such improvements or personal property within a reasonable time, as determined by the Authorized Officer, the improvements and personal property will become the property of the United States. However, the permittee will remain liable for all costs of removal of the improvements of personal property and for rehabilitation and revegetation of the right-of-way.

Section 14.27 Amendments

This section clarifies that a right-of-way permit may be amended any time by making a written request. If the amendment is approved, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations to reflect subsequent conditions, requirements or changes in market value.

Section 14.28 Renewal of Right-of-Way Permits

This section clarifies that a right-of-way permit may be renewed if authorized by law, if it is being used for authorized purposes and if it is consistent with the provisions of this part. In making such a renewal, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations, to reflect any subsequent conditions, requirements or changes in the market values imposed by Federal and State laws, regulations, and other management plans or land uses.

Section 14.29 Change in Administrative Jurisdiction Over Lands

This section revises existing 36 CFR 14.34. It clarifies that the NPS will not cancel an existing right-of-way permit on Federal lands transferred from the jurisdiction of another Federal agency to the jurisdiction of the NPS; provided, however, that the use does not change from that permitted at the time of the issuance of the original permit.

If a right-of-way permit transferred from another Federal agency to the jurisdiction of the NPS expires, and if the NPS has decided to renew the right-of-way, it must be renewed in accordance with these regulations. The permittee may make a new application for such authorized use as described in this part.

Section 14.30 Transfer of Right-of-Way Permit

This section replaces existing 36 CFR 14.35, 14.36 and 14.37. Any proposed transfer to another party of any right-of-way permit must be filed in accordance with § 14.21. Further, no transfer will be recognized and no further construction or uses permitted, unless and until the transfer is first approved by the Authorized Officer. The transferee must agree to comply with and to be bound by the terms and conditions of the right-of-way permit. All applications for transfer approval must be accompanied by an application fee in accordance with § 14.42(a) and an administrative processing fee in accordance with § 14.42(b).

Section 14.31 Appeal

This is a new section explaining the requirements and process associated with appeals.

Subpart D—Fees and Charges

Section 14.40 Purpose

All references to fees and charges are consolidated under this new Subpart. It places all information regarding fees together in a single, prominent location rather than being scattered throughout the text of the regulations. The numbering sequence and section names are changed from the existing regulations. There are two basic purposes for the four fees and payments delineated in this section. The fees

identified in paragraphs (a), (b) and (c) provide for the reimbursement of costs incurred by the United States in issuing the permit and monitoring the operation of the right-of-way. Paragraph (d) requires a fee, equal to fair market value, for use and occupancy of NPS lands.

The linear and nonlinear fee schedules for reimbursement of costs and monitoring of costs found in existing 36 CFR 14.22 are deleted.

Section 14.41 Exemptions

All references to exemptions from fees are consolidated in this subsection. Exemptions apply:

(a) To Federal agencies or where the use is for the sole and exclusive use and benefit of the NPS;

(b) To use and occupancy fees only, to State and local governments or agencies or instrumentalities thereof where the use is for governmental purposes (consistent with OMB Circular A–25) and for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 31). The proposed rule revises existing 36 CFR 14.22 by now requiring reimbursement of costs from these entities.

(c) To situations where the use of Federal lands is needed for highway purposes under 23 U.S.C. 317;

(d) When Federal law prohibits such fees.

Section 14.42 Reimbursement of Costs

This section reorganizes and replaces existing § 14.22 and retains its title. The reorganization is summarized in the following chart:

Existing Old Section, 36 CFR	*Proposed New Section, 36 CFR*
14.22(a)(1)	14.42(b)(1)
14.22(a)(2)	14.41
14.22(a)(3)	14.42(a)
14.22(a)(4)	14.42(b)(2)
14.22(a)(5)	14.42(b)(3)
14.22(a)(6)	14.42(b)(5)
14.22(a)(7)	14.42(b)(4)
14.22(a)(8)	14.42(b)(6)
14.22(a)(9)	Deleted
14.22(a)(10)	14.42(b)(7)
14.22(a)(11)	14.42(b)(8)
14.22(a)(12)	14.13
14.22(a)(13)	14.42(b)(9)
14.22(a)(14)	14.42(b)(10)
14.22(a)(15)	Deleted
14.22(b)(1)–(4)	14.42(c)(1),(2)

Paragraph (a) establishes a one-time non-refundable application payment of $100 rather than a variable payment based on mileage as in existing 36 CFR 14.22.

Paragraph (b)(1) revises existing § 14.22(a)(1) to add additional requirements that must be complied with by the NPS and makes the applicant responsible for costs associated with such compliance.

Paragraph (b)(2) establishes procedures for estimating costs and payment procedures. A clarification is made that the "processing payment" is based on an estimate of cost. It may be required in advance and later refunded or adjusted, based on an accounting of actual costs.

Paragraph (b)(3) requires applicants to pay additional amounts if estimated costs to the United States are exceeded.

Paragraphs (b)(4), (5) and (6) address costs to be borne by the applicant upon withdrawal of an application before completion of the approval process or upon permit denial. Any costs paid to the United States that exceed actual costs will be refunded by the Authorized Officer or future billings will be credited.

Paragraph (b)(7) requires all applicants for a permit determined by the Authorized Officer to be in competition with each other to reimburse the United States according to this section, except that costs not readily attributable to only one applicant will be borne by all applicants equally.

Paragraph (b)(8) allows the Authorized Officer to require security for costs in the section.

Paragraph (b)(9) requires that each party in a joint application for a permit be jointly and severally liable for costs under this section.

When more than one noncompeting application is received for a right-of-way permit found by the Authorized Officer to be for a common right-of-way system, paragraph (b)(10) makes each applicant jointly liable for costs according to this section.

New paragraph (c) addresses fees for inspection and monitoring, replacing existing 36 CFR 14.22(b)(1)–(b)(4). As mentioned above for proposed § 14.40, the linear and nonlinear fee schedules for reimbursement of costs and monitoring of costs in existing 36 CFR 14.22 are proposed for deletion. It has been found that often the tables caused an automatic charging of the minimums expressed in the tables without a thorough analysis of true expenditures of Government funds. Therefore, this paragraph requires the reimbursement of all costs incurred by the NPS or its agents in the processing and monitoring of a right-of-way permit. This change simplifies the discussion of monitoring and inspection fees.

Section 14.43 Fee for Use and Occupancy

This section revises existing 36 CFR 14.26 by stating the method for calculation of the charge for use and occupancy will be the fair market value, including but not limited to an appraisal. This section also amends the requirement for payment by stating that in situations where a lump sum payment is required by the Authorized Officer, the full sum must be submitted within 60 days of the issuance of the permit.

Fees for use and occupancy will be paid beyond termination or cancellation of the permit until equipment removal and site rehabilitation are completed in accordance to Subpart B.

The minimum charge policy for use and occupancy of lands and waters is also amended to be not less than $100 per year for any right-of-way permit issued.

Paragraph (e) revises existing 36 CFR 14.26(d) to clarify that if a charge required by this section is not paid when due, and such default will continue for 60 days after notice, action may be taken to cancel the permit. After default has occurred, any structures or personal property will be considered abandoned.

Paragraph (f) provides for the review of and adjustment of charges at intervals not less than five years.

Subpart E—Highway Easement Deeds

This Subpart replaces existing part 14, Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System). The title has been simplified to better describe the subject covered and to reinforce that rights-of-way interest for highways is conveyed through highway easement deeds.

Section 14.50 Rights-of-Way for Highway Purposes

This section revises and replaces existing 36 CFR 14.50. Paragraph (a) clarifies that right-of-way requests for highways over lands or interests in lands under the jurisdiction of the NPS may only be considered if the Secretary of Transportation, acting under the provisions of 23 U.S.C. 138, determines that there is no feasible and prudent alternative to the use of such land, and that any action will include all possible planning to minimize adverse impacts to NPS lands and resources.

Paragraph (b) sets up the procedures to be followed between the Secretary of Transportation and the Secretary of the Interior if the Secretary of Transportation determines that there is no feasible and prudent alternative for the use, and either no adverse impacts will occur, or such adverse impacts that might occur have been planned for. The Secretary of the Interior has four months to approve any deeded interest transfer.

Paragraph (c) outlines what the Secretary of Transportation will then do

when both Secretaries for Transportation and Interior agree on the request. When both Secretaries approve the request, the Secretary of Transportation will make the arrangements necessary to convey to the State or other person requesting such use, adequate rights-of-way and control of access thereto. The right-of-way interest will be conveyed through a highway easement deed.

The Secretary of the Interior does not possess the authority to issue rights-of-way for roads in parks under 36 CFR part 5 or 79. The only authority for granting such rights-of-way for roads is at 23 U.S.C. 317. Under 23 U.S.C. 317 authority, rights-of-way may be granted for highway purposes only for Federal aid primary or Federal aid secondary road networks, and for the Interstate and Defense Highway Systems.

Section (c) also deletes existing 36 CFR 14.50(b)(2) and 14.51 regarding no intent to vest in a State a right of appropriation of an interest in land, contrary to the discretion of the Secretary.

Section 14.51 Additional Rights-of-Way within Highway Rights-of-Way

This section revises existing 36 CFR 14.59, requiring a separate permit for any additional rights-of-way to be authorized within the same right-of-way, but not for highway purposes. Any relocation or change of any additional right-of-way made necessary by the highway will be accomplished at no expense to the United States.

Section 14.52 Termination of Highway Use

This section revises existing 36 CFR 14.52. When the lands are no longer needed, the control of the lands will revert to the NPS. Upon notification, the Secretary of the Interior will immediately notify the Secretary of Transportation and take the necessary action to revoke and abandon the highway easement deed and revest the NPS with clear and exclusive title of the unencumbered land.

Subpart F—[Reserved]

This Subpart is reserved for future terms and conditions governing the operation of valid R.S. 2477 highways across NPS areas.

Organizational Summary

The NPS has prepared the following organizational summary and distribution table to assist in the location and analysis of the proposed revisions to 36 CFR part 14:

Numbering

Existing Old Section, 36 CFR	*Proposed New Section, 36 CFR*
14.1	14.2
14.2	14.3
14.5	Deleted
14.6	14.11
14.7	Deleted
14.8	14.13
14.9	14.13, 14.15, 14.27
14.10	14.2
14.20	14.20
14.21	14.21
14.22	14.41, 14.42
14.23	Deleted
14.24	14.21
14.25	14.21
14.26	14.40, 14.43
14.27	Deleted
14.28	14.21
14.29	14.22
14.30	14.22
14.31	14.23
14.32	Deleted
14.33	14.25
14.34	14.30
14.35	14.31
14.36	14.31
14.37	14.31
14.38	14.27
14.50	14.50
14.51	Deleted
14.52	14.52
14.53	Deleted
14.54	Deleted
14.55	Deleted
14.56	Deleted
14.57	Deleted
14.58	14.14
14.59	14.51
14.60	Deleted
14.61	Deleted
14.70	Deleted
14.71	Deleted
14.75	Deleted
14.76	14.15
14.77	Deleted
14.78	Deleted
14.90	Deleted
14.91	Deleted
14.95	Deleted
14.96	Deleted
New Sections	
14.1	
14.4	
14.10	
14.15	
14.24	
14.28	
14.29	
14.40	
14.42	

Drafting Information: The primary authors of this proposed rule are Pat Bentley, Northeast Region, NPS, Philadelphia, PA; Jenness Coffey, Division of Wildlife and Vegetation, Washington, D.C.; Tony Sisto, Superintendent, Fort Vancouver, WA; Rick Wagner, Columbia Cascades Land Resources Program Office, Seattle, WA; Dick Young, Special Park Use Coordinator, Colonial National Historical Park, VA; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon a thorough analysis of the comments.

Paperwork Reduction Act

The collection of information as described in § 14.21 of this proposed rule has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

The public reporting burden for the collection of information in § 14.21 is estimated to average from 2–20 hours per response depending on the size of right-of-way applied for, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Specifically, the NPS needs the following information to issue a permit:

1. Name, address and telephone number of the company requesting a right-of-way permit.
2. Contact person representing the company.
3. Type of right-of-way permit requested.
4. Rehabilitation and revegetation requirements, if required.
5. Environmental assessment, if required.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Docket No. 1024–AC01, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1004–0060), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The overall economic effects of this rulemaking will be negligible. The updated fee schedules are consistent with fair business practices, are minor and are present to allow the recovery of costs by individual parks. There are no expected increases in costs of prices for consumers, the Federal government or geographic regions, and only minor increases for individual industries, State or local governments and agencies.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 8–4(2)).

The NPS has determined that this proposed rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 14

Electric power, Highways and roads, Public lands—rights-of-way.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 460 1–6a(e), 469(k); D.C. Code 8–137, 40–721 (1981).

2. Section 1.3 is amended by revising paragraph (a), to read as follows:

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in parts 1 through 7 and 12 through 14 of this chapter, within a park area not covered in paragraph (b) or (c) of this section, shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

* * * * *

3. 36 CFR part 14 is revised to read as follows:

PART 14—RIGHTS-OF-WAY

Subpart A—Right-of-Way Permits: General

Sec.
14.1 Purpose.
14.2 Applicability and scope.
14.3 Definitions.
14.4 Information collection.

Subpart B—Terms and Conditions of Right-of-Way Permit

14.10 Purpose.
14.11 Nature of right-of-way permit.
14.12 Unauthorized occupancy.
14.13 Terms and conditions.
14.14 Additional terms and conditions specific to electrical transmission and communication lines.
14.15 Rehabilitation and revegetation requirements.

Subpart C—Procedures

14.20 Preapplication.
14.21 Application filing.
14.22 Timely construction, nonconstruction and nonuse.
14.23 Deviation from approved right-of-way.
14.24 Immediate suspension of activities.
14.25 Cancellation of permit.
14.26 Disposition of personal property and improvements upon termination of right-of-way permit.
14.27 Amendments.
14.28 Renewal of a right-of-way permit.
14.29 Change in administrative jurisdiction over lands.
14.30 Transfer of right-of-way permit.
14.31 Appeal.

Subpart D—Fees and Charges

14.40 Purpose.
14.41 Exemptions.
14.42 Reimbursement of costs.
14.43 Fee for use and occupancy.

Subpart E—Highway Easement Deeds

14.50 Rights-of-way for highway purposes.
14.51 Additional uses within highway rights-of-way.
14.52 Termination of highway use.

Authority: 16 U.S.C. 5, 79; 23 U.S.C. 317.

Subpart A—Right-of-Way Permits: General

§ 14.1 Purpose.

The purpose of the regulations in this part is to:

(a) Prescribe the procedures by which an applicant may apply for a right-of-way permit and the terms and conditions under which the National Park Service may authorize and permit a right-of-way within a park area.

(b) Regulate, control and direct all authorized activities pursuant to a right-of-way permit or other legal instrument, to ensure that there is no feasible and prudent alternative to the proposed right-of-way and such activities are not exercised in derogation of the values and purposes for which the various park areas have been established, except as may have been or will be directly and specifically provided by Congress.

§ 14.2 Applicability and scope.

(a) The regulations contained in this part apply to authorized rights-of-way activities occurring upon, under, over, across or through federally owned lands or waters administered by the National Park Service within the exterior boundaries of park areas.

(b) The regulations contained in this part do not apply to right-of-way construction, operation and maintenance when said rights-of-way are owned, controlled or operated by the National Park Service.

(c) Unless otherwise provided for in law, permits issued pursuant to this part will only be for those rights-of-way permits where:

(1) There is no prudent or feasible alternative for the right-of-way outside the boundaries of a park area; and

(2) The use will not be in derogation of park resources and values and other applicable statutory standards authorizing rights-of-way permits are met.

(d) The regulations in this part do not apply to operations in connection with the exploration, development, production and transportation of non-Federally owned oil and gas originating in units of the National Park System.

Such operations are subject to regulations found at 36 CFR part 9, subpart B. The construction, operation and maintenance of rights-of-way for new and existing transpark petroleum product pipelines occupying park lands that originate and terminate outside a park unit, must comply with the requirements of 36 CFR part 9, subpart B. Where issuance of a right-of-way permit is specifically authorized by a park unit's enabling statue or other authority, such right-of-way must also comply with the procedures set forth in this part.

(e) The regulations in this part do not apply to applicants seeking access to Federal mineral leases or non-Federal minerals outside park boundaries. Those applicants must meet the requirements of 36 CFR part 9.

(f) No new right-of-way permit will be issued for activities within park areas on lands or waters proposed for or designated as wilderness under the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

(g) Applications for transportation and utility system corridors in Alaska pursuant to Title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3161 *et seq.*) must be made under regulations at 43 CFR part 36.

(h) Applications for a right-of-way permit for a park area will be submitted to the Authorized Officer for the park area. Pursuant to any statute applicable to lands and waters administered by the National Park Service and pursuant to the regulations in this part, right-of-way permits are subject to the approval of the Director. The Director may delegate this approval authority in writing.

§ 14.3 Definitions.

The following definitions apply to this part:

Applicant means any individual; any partnership, corporation, association or other business entity; and any Federal, State or local governmental entity, including a municipal corporation, submitting an application under this part.

Authorized Officer means a park area superintendent or a delegate appointed in writing by the superintendent.

Construction means any work, whether permanent or temporary in nature, under the authority of a right-of-way permit from initiation until completion of the necessary activities to establish the use for which the permit is issued.

Right-of-way means the land or water area in a park area authorized to be used or occupied under a right-of-way permit.

Right-of-way permit is an authorizing document that, without conveying any title interest, provides permission to occupy and use lands or waters within a park area under certain terms and conditions and for specified purposes, which is nonexclusive, revocable, terminable and unassignable.

§ 14.4 Information collection.

(a) The information collection requirements contained in § 14.21 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*, and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

(b) The NPS needs the following information to issue a permit:

(1) Name, address and telephone number of the company requesting a right-of-way permit.

(2) Contact person representing the company.

(3) Type of right-of-way permit requested.

(4) Rehabilitation and revegetation requirements, if required.

(5) Environmental assessment, if required.

(c) The public reporting burden for the collection of information in § 14.21 is estimated to average from 2–20 hours per response depending on the size of right-of-way applied for, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Docket No. 1024-AC01, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1004–0060), Washington, D.C. 20503.

Subpart B—Terms and Conditions of Right-of-Way Permit

§ 14.10 Purpose.

The purpose of this subpart is to describe the nature, limitations and the terms and conditions of a right-of-way permit issued in accordance with this part. This subpart does not apply to highway easement deeds that are addressed in subpart E of this part.

§ 14.11 Nature of right-of-way permit.

(a) A right-of-way permit is not a grant of permanent interest, an abandonment of use and occupancy of the premises by the United States or a waiver of any regulatory authority of the United States. The use permitted will not be greater than a right-of-way permit revocable at the discretion of the Authorized Officer, unless otherwise specifically authorized by statute. The permitted use does not give the permittee an estate in fee, limited estate, interest in the land or any right to take from a park area any mineral, consolidated material, earth, wood or stone for construction or other purposes not specifically permitted.

(b) A right-of-way permit will only be for the specifically described use approved in writing by the Regional Director. A right-of-way permit may not be transferred or assigned to another party except as otherwise provided in this part.

(c) A right-of-way permit does not limit the authority of the Regional Director to approve additional right-of-way permits within or adjacent to the permitted right-of-way, nor does it authorize a permittee to impose charges for the additional use of the right-of-way made subject to such right-of-way permits.

(d) The width or area of a right-of-way under this part is determined by the Authorized Officer and will not be greater than that required for the permitted use, nor exceed that authorized by law.

(e) A right-of-way permit will not be issued for a period longer than ten years, unless otherwise specified in the permit criteria.

§ 14.12 Unauthorized occupancy.

Occupying or using Federal lands within a park area for constructing, maintaining, operating or removing any utility, highway or other facility, except where specifically authorized by permit according to this part, is prohibited and subject to the penalties established in 36 CFR 1.3.

§ 14.13 Terms and conditions.

(a) The Authorized Officer will include in a right-of-way permit terms and conditions pertaining to the extent, duration, location, construction, operation, maintenance and termination of activities authorized by the permit and additional stipulations to include, but not be limited to, requirements for the permittee to:

(1) Comply with State and Federal laws and regulations applicable to the park area and the authorized use for which the right-of-way permit is issued.

(2) Ensure that construction or other activities concerning right-of-way permits will not violate applicable air and water quality standards or other standards established by or pursuant to applicable Federal or State law and regulations or Executive Order.

(3) Ensure compliance with applicable State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than applicable Federal standards.

(4) Ensure that the facilities and appurtenances constructed on the prescribed right-of-way are maintained and operated consistent with the purposes of the permit.

(5) Comply with other applicable statutes and regulations with respect to the occupancy and use of a park area as may be found by the Authorized Officer to be necessary as a condition to the approval of the right-of-way permit to render its use compatible with the public interest.

(6) Halt any activities and immediately notify the Authorized Officer upon discovery of archeological, paleontological or historical resources. The permittee must submit to the Authorized Officer a written report of any findings during the construction phase, and otherwise comply with the requirements of the National Historic Preservation Act, the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. All artifacts unearthed or discovered are the property of the United States and must be accessioned by the permittee according to the standards of the automated National Catalog System before relinquishing same to the United States.

(7) Comply with the specifications as listed in § 14.15 concerning restoration and rehabilitation of National Park System resources.

(8) Notify the Authorized Officer, in writing, no fewer than ten working days before the start of construction and initiate construction within two years of the date of permit approval.

(9) Initiate construction within two years of the date of permit approval, or some other time acceptable to the authorizing official, and establish a reasonable time for the disposition of personal property upon cancellation or termination of a right-of-way permit pursuant to § 14.26.

(10) Establish fire prevention systems and ensure initial suppression capability for wildland and structural fires on or near the park area to be occupied under the right-of-way permit. This may include sprinkler systems for structures and/or agreements with local fire agencies.

(11) Ensure nondiscrimination in the construction, operation and maintenance of the authorized use. The permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and will require an identical provision to be included in all authorized subcontracts.

(12) Operate and maintain safe practices during the construction, operation and maintenance of the authorized use and ensure occupational safety and the public health are not jeopardized.

(13) Ensure that the Authorized Officer has access to the area and facilities at any time without restriction.

(14) Agree to reimburse all costs to the government and to pay all fees according to subpart D of this part.

(b) A bond or other security satisfactory to the Authorized Officer may be required to secure the obligations imposed by the permit and applicable laws and regulations.

(c) A permittee will promptly notify the Authorized Officer of, and compensate the United States for, the full value of all injury, loss or damages to the lands and resources, or other property of the United States caused by the permittee, its contractors, agents or employees, as determined by the Authorized Officer, and will be responsible for costs incurred by the National Park Service that result from any fire suppression activities or cleanup of petroleum product or hazardous waste spills caused by the permittee.

(d) Upon accepting a right-of-way permit, a permittee agrees that such permit is issued upon the express condition that the United States, its agents and employees, will be free from all liabilities and claims for damages and/or suits for, or because of any injury or death to any person or property, whether to the person or property of the permittee, its agents or employees, or third parties, from any cause during the term of this permit occasioned by any occupancy or use of the permitted right-of-way, or any activity carried on by the permittee in connection therewith; and that the permittee agrees to indemnify, defend, save and hold harmless the United States, its agents and employees, from all liabilities, charges, expenses and costs because of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring, or damages growing out of the same.

(e) The Authorized Officer will include a condition imposing strict liability and specifying a maximum limitation on liability that, in the judgement of the Authorized Officer, is commensurate with the foreseeable risk or hazards associated with the permittee's use of park land.

(f) A permittee that is a State or local government or agency or instrumentality thereof, will be liable to the fullest extent its laws allow at the time the right-of-way permit is issued. When the power to assume liability is limited by law, the permittee will be required to repair damages or make restitution to the fullest extent of its powers at the time any damage or injury occurs.

(g) Hazardous materials and toxic substances; emergency action plan requirements. (1) The permittee will not use, generate or store on the right-of-way any toxic substance as defined by the Toxic Substances Control Act of 1976 (15 U.S.C. 2601–1692), or hazardous substance or hazardous waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601–9675), or the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901–6992k), except as provided in the permit.

(2) The permittee must request written approval from the Authorized Officer before the use, generation or storage of any toxic or hazardous substance or hazardous waste.

(3) The permittee must immediately notify the Authorized Officer of any leak, spill or release of such substances, in addition to any other reports as required under Federal and State law.

(4) The applicant or permittee must show to the satisfaction of the Authorized Officer that an emergency action plan, including plans for containment and cleanup of any spills, and any other conditions required by law, has been completed before the use, generation or storage of any toxic or hazardous substance or hazardous waste.

(h) A right-of-way permit may be subject to modification, adaptation or cancellation, without liability or expense to the United States, if the Authorized Officer determines such action to be necessary to avoid conflict with the uses for which the park area was established.

(i) No member of or delegate to Congress or Resident Commissioner will be admitted to any share or part of a right-of-way permit or to any benefit

that may arise from it, but this provision will not apply to this permit if made with a corporation for its general benefit.

(j) Failure to comply with any of the requirements of the permit may lead to cancellation of the permit by the Authorized Officer.

§ 14.14 Additional terms and conditions specific to electrical transmission and communication lines.

For an electrical transmission or communication line, a permittee will comply with the following terms and conditions in addition to those in § 14.13:

(a) The permittee will protect all surrounding communication and electrical transmission lines from contact, and all highways and railroads from obstruction, and maintain all transmission lines in such manner as not to menace life or property, in accordance with the National Electric Safety Code, which is available from: National Fire Protection Association, 1 Batterymarch park, Quincy MA 02269–9101. Telephone 617–770–3000.

(b) The permittee is responsible for avoiding, and liable to the extent of law for causing, any inductive or conductive interference between any transmission line or other works constructed, operated or maintained on the right-of-way, and any radio installation, telephone line or other communication facilities.

§ 14.15 Rehabilitation and revegetation requirements.

The permittee will rehabilitate and restore those areas disturbed through construction and/or maintenance activities authorized by the right-of-way permit to the satisfaction of the Authorized Officer. If the right-of-way is to be constructed in a disturbed area, then the Authorized Officer may require further rehabilitation and revegetation of the right-of-way in compliance with the parks enabling legislation and General Master Plan.

(a) The permittee will clear and keep cleared, as necessary, the lands within the right-of-way to the extent and manner directed by the Authorized Officer, and to dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance activities in an agreed upon manner.

(b) The permittee will not cut, destroy, or remove timber without first obtaining written permission from the Authorized Officer. The permittee will reimburse the United States for the market value of merchantable timber or other resources removed.

(c) The permittee will repair, rebuild or replace in kind any roads, fences and trails destroyed or damaged by construction activities, and to provide and maintain suitable crossings for all roads and trails that intersect the works authorized by the right-of-way permit.

(d) The permittee will meet additional standards as agreed upon by the permittee and the authorized officer.

(e) Bonding. The Authorized Officer may require the permittee to furnish an acceptable security by bond, guaranty, cash, certificate of deposit or other means for the costs of rehabilitation and revegetation. The Authorized Officer will not release the bond or security until a final inspection is conducted to determine that all rehabilitation requirements have been satisfactorily completed and that the revegetation of the right-of-way is properly established and self-generating. Failure to rehabilitate the site will result in the forfeiture of all or part of the bond. The bond in this instance will be utilized to rehabilitate the site. The bond will never be deposited to the U.S. Treasury as miscellaneous receipts.

(f) Termination. (1) Prior to termination of the right-of-way permit and implementation of rehabilitation and revegetation, the permittee will consult with the Authorized Officer to insure that the permittee fully understands and will comply with the agreed upon rehabilitation and revegetation measures as described in the permit.

(2) Failure of the permittee to initiate or complete rehabilitation within the time limits and to the standards imposed by this section will be grounds for forfeiture of all or so much of the bond or security as the Authorized Officer determines is necessary to achieve successful rehabilitation.

(3) Should the permittee disagree with the decision of the Authorized Officer, the permittee may follow the appeal process found in § 14.31.

Subpart C—Procedures

§ 14.20 Preapplication.

The applicant should contact the National Park Service office responsible for management of the park area before applying for a right-of-way permit. Information concerning application procedures, time requirements, clearances, other permits and licenses that may be required for the use, environmental and management concerns, cost reimbursement, fees and bonding requirements, and any other conditions applicable to the area will be provided.

§ 14.21 Application filing.

(a) Applications for a right-of-way permit must be filed with the Authorized Officer for that area. An application will comply with § 14.42, and will also include, but not be limited to, the following information:

(1) Name and address of the applicant and the applicant's authorized agent, if applicable.

(2) A description of the proposed use.

(3) A survey map or drawing acceptable to the Authorized Officer showing limits of the proposed use area as specified in paragraph (c) of this section.

(4) A statement of the possible environmental, social and economic impacts of the proposal and its alternatives.

(5) A statement describing possible impacts of the proposal and its alternatives on any known cultural, historic and archeological resources.

(6) A description of the alternatives, routes and modes considered by the applicant when developing the proposal, including alternate routes not using the park area and a written statement of why the route through the park area is otherwise necessary.

(7) Proof of the possession of or application for any Federal, State or other licenses, permits or other evidence of compliance for the proposed use.

(8) Certification that the applicant is a citizen of the United States, or in the case of a partnership, association or corporation, as being subject to the laws of any State or the United States and that the information submitted is correct to the best of the applicant's knowledge.

(9) Proposed beginning and completion dates for the proposed use.

(b) Evidence of right to use water. If the proposed use involves the storage, diversion or conveyance of water, the applicant will file a statement of the proper State official, or other appropriate evidence, showing a legally recognized right to utilize, transport, divert and/or store water. Where the State requires an applicant to obtain a right-of-way permit as a prerequisite to the issuance of evidence of a water right, a right-of-way permit may be issued conditioned upon the subsequent filing within a specified time of the required evidence of rights to use, transport, divert and/or store water from the State official. The right-of-way permit will terminate at the expiration of such specified period if the evidence is not produced.

(c) Maps. An applicant must submit with the permit application three copies of drawings and maps that are sufficiently accurate, to the satisfaction of the Authorized Officer, so that the right-of-way may be precisely located on the ground by any competent engineer or land surveyor, and, at a minimum:

(1) Show the park boundaries and prominent features in the vicinity of the requested use.

(2) Have an exactly located and described point of beginning and ending to locate accurately where the proposed use enters and exits the park area and to show also any prominent or significant park features the proposed use will pass, go through, under or over.

(3) Be of a scale appropriate to the proposed use, but large enough to show detail, with the scale(s) shown on the face of the drawing.

(4) Present the proposed use in strips using match lines rather than reduce the map scale, if the length of the proposed use is such that it cannot be shown as one continuous line on a standard engineering drawing.

§ 14.22 Timely construction, nonconstruction and nonuse.

(a) Unless otherwise provided by law, or otherwise specified in the permit, construction must begin within two years of the date the right-of-way permit is issued.

(b) Failure of the permittee to use or occupy the right-of-way for the purpose for which the permit was issued for any continuous two-year period will constitute a presumption of abandonment.

(c) The Authorized Officer will consider applications for an extension of the beginning date for construction or right-of-way rehabilitation upon receipt of the following:

(1) A request from the permittee 90 days before the termination of the two-year period under paragraph (a) of this section;

(2) A statement justifying the need for the extension including, but not limited to, the permittee's demonstrated intention to accomplish the permitted work, meet construction schedules and initiate rehabilitation efforts; and

(3) Documentation of evidence of extenuating circumstances beyond the control of the permittee that require the extension.

(d) Failure of the permittee to comply with the requirements of this section will result in cancellation of the permit.

(e) Completion of construction. (1) Construction must be completed within the period set forth in the permit.

(2) Within 90 days after completion of construction, or after all restoration, rehabilitation and revegetation requirements have been satisfied, whichever is later, the permittee will notify the Authorized Officer of completion and show, to the satisfaction of the Authorized Officer, that all applicable permit criteria have been met.

§ 14.23 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way will be initiated by the permittee without the prior written approval of the Authorized Officer. The Authorized Officer may require the filing of a new application in accordance with § 14.21 where, in the Authorized Officer's judgment, a deviation significantly changes the intent or purposes of the original right-of-way, or that has the potential to cause greater or substantially different impacts to park resources than the original approved use.

§ 14.24 Immediate suspension of activities.

(a) If the Authorized Officer determines that an immediate temporary suspension of activities within a permitted right-of-way is necessary to protect park resources, public health or safety, or the environment, the Authorized Officer may promptly suspend such permitted activities as deemed appropriate.

(b) The Authorized Officer may issue an immediate temporary suspension order orally, to be followed in writing, at the site of the activity to the permittee or a contractor or subcontractor of the permittee, or to any representative, agent or employee of the permittee. Any oral order will be followed with a written order.

(c) Upon the issuance of a suspension order, the permittee or on-site agent-in-charge must suspend all activity associated with the suspension order. An order of immediate suspension of activities will remain in effect until the Authorized Officer issues a written order permitting resumption of activities.

(d) Any time after an order of immediate suspension has been issued, the permittee may file a request with the Authorized Officer for permission to resume activities. The request will be in writing and will contain a statement of the facts supporting the request for resumption.

(e) The Authorized Officer will grant or deny the permittee's request to resume activities within five working days of the date the permittee's request is filed.

(f) The United States will not be liable for any claims arising from the immediate temporary suspension of the permittee's use.

§ 14.25 Cancellation of permit.

(a) The Authorized Officer may cancel a right-of-way permit upon a determination that the permittee has failed to comply with applicable laws, regulations or Executive Orders, or any special terms, conditions or stipulations of the right-of-way permit, or has abandoned the right-of-way as described in § 14.22.

(b) Before canceling a right-of-way permit pursuant to paragraph (a) of this section, the Authorized Officer will give the permittee written notice that such action is being considered and the reasons therefore, and will establish in such notice a deadline for the permittee to comply with the terms of the permit.

(c) No right-of-way permit will be canceled except on the issuance of a specific written order of cancellation by the Authorized Officer.

(d) No administrative proceeding will be required in those cases where the permit terminates under the terms specified within the permit.

§ 14.26 Disposition of personal property and improvements upon termination of right-of-way permit.

After termination of a right-of-way permit, the permittee will, unless otherwise directed in writing by the Authorized Officer, remove improvements or personal property and restore the site to a condition satisfactory to the Authorized Officer. If the permittee fails to remove such improvements or personal property, all improvements and personal property will become the property of the United States, but the permittee will nevertheless remain liable for all costs of removal of the improvements of personal property and for rehabilitation and revegetation of the right-of-way.

§ 14.27 Amendments.

(a) A right-of-way permit may be amended any time, either at the discretion of the Authorized Officer, or upon a written filing by the permittee requesting amendment of the permit. Such amendments shall be accomplished with the written and signed agreement of both parties.

(b) In making such amendments, the Authorized Officer may modify the terms, conditions or fees and charges of the permit, and impose new stipulations to reflect any changes in conditions, requirements or market values.

(c) The filing of a new application pursuant to § 14.21 may be required if the Authorized Officer determines that the requested amendments require significant deviation from the approved right-of-way permit.

§ 14.28 Renewal of a right-of-way permit.

(a) Upon written request to the Authorized Officer by the permittee, and within the six months before the stated date of expiration, the Authorized Officer may approve the renewal of any existing right-of-way permit in accordance with the provisions of this section and any other applicable laws and regulations in effect at the time of renewal, so long as the activity or facility will continue to be used for the purposes authorized.

(b) Before renewal, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations of the permit to reflect any changed conditions, requirements, land uses, market values or Federal and State laws, Federal Executive Orders, regulations or management plans.

§ 14.29 Change in administrative jurisdiction over lands.

(a) Except as otherwise provided for by law, a change in the administrative jurisdiction over the lands and waters from another Federal agency to the National Park Service will not cause an existing right-of-way permit, grant or other authorizing instrument to be canceled, if there is no change in the approved use.

(b) The holder of the permit, grant or other authorizing instrument must comply with all additional laws, executive orders and regulations applicable to the park area.

(c) When a right-of-way permit, grant or other authorizing instrument transferred from another Federal agency to the jurisdiction of the NPS expires, the holder of the permit, grant or authorizing instrument may apply for a right-of-way permit pursuant to this part, to the Authorized Officer to continue the use of the right-of-way. The renewal procedures of § 14.28 are not applicable to this section.

§ 14.30 Transfer of right-of-way permit.

(a) A proposal by the permittee to transfer any right-of-way permit to another party, in whole or in part, will be made in accordance with applicable provisions of § 14.21, as determined by the Authorized Officer.

(b) No transfer of a permit will be recognized, and no construction or uses allowed, until the transfer is first approved in writing by the Authorized Officer. Such transfer must be filed in accordance with applicable regulations at the time of transfer and must be supported by the stipulation that the transfer applicant agrees to comply with, and to be bound by, the terms and conditions of the right-of-way permit.

(c) All filings for transfer approval made pursuant to this section must be accompanied by an application fee in accordance with § 14.42(a) and an administrative processing fee in accordance with § 14.42(b).

§ 14.31 Appeal

Should the permittee disagree with a decision of the Authorized Officer in connection with the regulations in this part, the permittee may file a written statement to that effect with the Authorized Officer. The written statement will detail the reason(s) why the decision is contrary to, or in conflict with the facts, the law, these regulations, or is otherwise in error. No appeal will be considered unless it is filed with the Authorized Officer within thirty (30) days after the date of notification to the permittee of the action or decision. Upon receipt of such written statement, the Authorized Officer shall promptly review the action or decision and either reverse the original decision or prepare a separate statement, explaining that decision and the reasons, and forward the statement and record of appeal to the Regional Director of the geographic area in which the Authorized Office is located, for review and decision.

Subpart D—Fees and Charges

§ 14.40 Purpose.

The purpose of this subpart is to delineate and establish procedures for the payments of the unique fees and charges associated with a right-of-way permit. Payments are required pursuant to this subpart for the following categories:

(a) An application processing payment;

(b) A reimbursement for administrative and other appropriate costs incurred by the National Park Service;

(c) An annual payment for monitoring and inspection; and

(d) A fee for the use and occupancy of a park area at fair market value.

§ 14.41 Exemptions.

The regulations of this subpart do not apply to the following:

(a) Federal agencies, or where the right-of-way is for the sole and exclusive use and benefit of the National Park Service.

(b) For § 14.43 only, State and local governments or agencies or instrumentalities thereof, including counties, parishes, boroughs and other taxing districts, where the use is exclusively for respective governmental purposes and for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 31). Provided, however, that if an applicant derives revenue from charges levied on customers for services as would a profit making corporation or business, the applicant is not exempt from charges under this subpart.

(c) When Federal law specifically prohibits the charging of fees, or specifically establishes a different fee schedule, rate, structure or other procedure.

§ 14.42 Reimbursement of costs.

(a) Application payment. An applicant for a right-of-way permit must submit with each application a one-time payment of $100 to cover initial processing costs.

(b) Administrative processing. (1) An applicant for a right-of-way permit will reimburse the United States for administrative and other appropriate costs incurred by the National Park Service in processing the application.

(2) When an application is received, the Authorized Officer will provide the applicant an estimate, based upon the best available information, of costs expected to be incurred by the United States in processing the application. When the estimated costs exceed $2,500, the Authorized Officer will either require the applicant to remit the full payment of the estimated costs before processing the application, or require a bond or other security pursuant to paragraph (b)(8) of this section. Such payments may be subsequently refunded or adjusted as provided by paragraph (b)(6) of this section.

(3) Before the issuance of a right-of-way permit, the applicant will be required to pay any additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (b)(1) and (2) of this section.

(4) An applicant who withdraws an application for a permit before a decision is reached on the issuance of the permit is responsible for costs incurred by the United States in processing such application up to the date upon which the Authorized Officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement by the applicant of such incurred costs will be due within 30 days of receipt of notice of the amount due.

(5) An applicant whose application is denied is nevertheless responsible for paying the application and administrative costs incurred by the National Park Service in processing the application. Additional costs that have not been paid in accordance with paragraphs (b)(1), (2) and (3) of this section, are also due within 90 days of receipt of notice from the National Park Service of the amount due.

(6) If payment exceeds the actual costs incurred pursuant to paragraphs (b)(2) and (3) of this section, the National Park Service will refund the amount under the authority of 43 U.S.C. 1374, or may adjust future billings to credit the applicant's account for overpayment. Neither an applicant nor a permittee may adjust any billing by the National Park Service without prior written approval.

(7) When two or more applications for a right-of-way permit are filed that the Authorized Officer determines to be in competition, each applicant will reimburse the National Park Service according to paragraphs (b)(1) through (6) of this section, except that costs not readily attributable to only one of the applications, such as costs for an environmental impact statement, will be paid by each applicant in equal shares.

(8) The Authorized Officer may require an applicant to furnish security of an acceptable amount by bond, guaranty, cash, book entry deposits or other means, for costs under paragraphs (b)(1) through (7) of this section. The Authorized Officer may require such additional security or substitution of security as the Authorized Officer deems appropriate.

(9) When more than one person, partnership, corporation, association or other entity apply together for a right-of-way permit, each such applicant will be jointly and severally liable for costs under paragraphs (b)(1) through (6) of this section.

(10) When two or more noncompeting applications for right-of-way permits are received for what, in the judgment of the Authorized Officer, is a common right-of-way system, all applicants will be jointly and severally liable for costs under paragraphs (b)(1) through (6) of this section for the entire system, subject however, to the provisions of paragraphs (b)(8) and (9) of this section.

(c) Monitoring and inspection. (1) The permittee will make in advance an annual payment as determined by the Authorized Officer, to the National Park Service for monitoring and inspection of the right-of-way. Such payment will be sufficient to cover all costs by the National Park Service or its agents for monitoring the construction, operation, maintenance and termination of all right-of-way activities and facilities, and for the protection of surrounding lands.

(2) Within 30 days of receipt of a bill from the National Park Service for the estimated annual monitoring and inspection costs for the upcoming year, the permittee will remit such estimated payment to the National Park Service.

(3) In any year, if annual costs to the National Park Service exceed the estimate because of unforeseen circumstances, the permittee will be responsible for paying all such additional costs either as a one-time payment or as an adjustment of the next annual monitoring charge.

§ 14.43 Fee for use and occupancy.

(a) Once an application has been approved, payment in advance is required before the issuance of a right-of-way permit for the use and occupancy of lands and waters under the administration of the National Park Service. The charge for use and occupancy of lands and waters authorized by a right-of-way permit issued under this part will be the fair market value of the right-of-way as determined by the Authorized Officer using sound business management principles, including but not limited to an appraisal.

(b) Periodic or lump-sum payments may be required at the discretion of the Authorized Officer and as indicated in the terms and conditions of the permit.

(c) Upon the relinquishment or termination of a permit before the expiration of its term, annual fees must continue to be made under this section until completion of equipment removal and rehabilitation of the right-of-way pursuant to subpart B of this part.

(d) The charge for use and occupancy of lands and waters under the regulations of this part will not be less than $100.00 per year for any right-of-way permit issued.

(e) If a charge required by this section is not paid when due, and such default will continue for 60 days after notice, the Authorized Officer may cancel the permit. Upon cancellation, any structures or personal property remaining on the right-of-way will be considered abandoned and be disposed of according to § 14.26, unless written permission to remove has been granted by the Authorized Officer.

(f) At any time not less than five years after either the issuance of the permit or the last revision of charges thereunder, the Authorized Officer, after reasonable notice to the permittee, may review such existing charges and impose such new charges determined pursuant to paragraph (a) of this section, commencing with the following charge year.

Subpart E—Highway Easements Deeds

§ 14.50 Rights-of-way for highway purposes.

(a) Whenever a State highway department requests a right-of-way from the Secretary of Transportation for purposes of a highway that is part of the Federal aid primary or Federal aid secondary system, or is part of the National System of Interstate or Defense Highways, pursuant to Title 23, United States Code, over lands or interests in lands under the jurisdiction of the National Park Service, the Secretary of Transportation, acting under the provisions of 23 U.S.C. 138, must first determine that:

(1) There is no feasible and prudent alternative to the use of such land; and

(2) Such a program includes all possible planning to minimize adverse impacts to National Park Service lands and resources resulting from such use.

(b) Should the Secretary of Transportation, in consultation with the Secretary of the Interior, determine that there is no feasible and prudent alternative to the use, and that either no adverse impacts will occur, or such adverse impacts that might occur will be mitigated to the satisfaction of the National Park Service, then the Secretary of Transportation, acting pursuant to 23 U.S.C. 317(b), may file notice with the Secretary of the Interior. The Secretary of the Interior then has four months to review and certify to the Federal Highway Administration approval of such transfer of land and, if the request is approved, establish such conditions as determined necessary to protect the park area.

(c) If both the Secretary of Transportation and the Secretary of the Interior approve the request, the Secretary of Transportation will then arrange to convey to the State highway department, adequate rights-of-way and control of access thereto. Such right-of-way interest will be conveyed through a highway easement deed containing terms and conditions satisfactory to the Secretary of the Interior for the protection of park values and resources and in accordance to the purposes for which the park area was established.

§ 14.51 Additional uses within highway rights-of-way.

(a) Separate application by the State highway department or any other applicant must be made to the Authorized Officer to obtain authorization to use the park area for other purposes within such highway right-of-way. An applicant for an additional right-of-way permit must first obtain a written statement from the

State highway department indicating its approval and any stipulations it considers desirable for the additional right-of-way.

(b) Future relocation or change of the additional right-of-way made necessary by the State highway use will be accomplished at the expense of the additional right-of-way permittee.

§ 14.52 Termination of highway use

(a) If at any time the need for any such lands or materials for highway purposes pursuant to a highway easement deed will no longer exist, notice of the fact will be given by the State highway department to the Secretary of Transportation and such lands or materials will revert to the control of the Secretary of the Interior.

(b) Upon receipt of such notice, the Secretary of Transportation will immediately notify the Secretary of the Interior and take steps as necessary to revoke and abandon the highway easement deed and revest the Secretary of the Interior with clear and exclusive title of unencumbered land.

Dated: November 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the Office of the **Federal Register** on November 24, 1997.

[FR Doc. 97–31262 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–70–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96–6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment additional settlement proposals for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license and proposed regulations for implementing these rates.

DATES: Comments and Notices of Intent to Participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. 17 U.S.C. 118(c). The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates. 57 FR 60954 (December 22, 1992).

Section 118(b) provides that any copyright owner and any public broadcasting entity may negotiate the rates and terms for the compulsory license, or in the absence of a negotiated license,

> The Librarian of Congress shall, pursuant to Chapter 8, convene a copyright arbitration royalty panel to determine and publish in the **Federal Register** a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress * * *

Interested parties who submit proposals for adjusting the terms and rates for the section 118 license directly to the Librarian of Congress may petition the Librarian to submit these proposals to a public notice and comment proceeding, whereby copyright owners and users that would be affected by the proposals are given the opportunity to challenge them. 37 CFR 251.63. Any party who objects to the proposed terms and rates must submit, in turn, its challenges by a date certain, and must be entitled to participate in the CARP proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by an interested party who will not participate in a CARP proceeding, the Librarian may adopt the terms and rates of the proposals.

Accordingly, interested copyright owners and users of these works may file either a voluntary agreement or a joint proposal outlining the adjustments to the terms and rates for the section 118 license; or in the case of unaffiliated copyright owners,[1] the users may submit their proposals for the adjustment of the terms and rates of the section 118 license directly to the Librarian of Congress. See 62 FR 51619 (October 2, 1997). A joint proposal differs significantly from a voluntary settlement. The parties to a voluntary agreement represent all persons who would be affected by the agreement and the parties have the authority to bind their members. In a joint proposal, the parties to the agreement do not represent all persons who would be affected by the agreement, or if they do, at least one of the parties does not have the authority to bind its members.

II. This Proceeding

A. The Interested Parties

Seven parties filed notices of intent to participate with the Copyright Office in a proceeding to adjust the terms and rates of the section 118 license. Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, participated in the negotiations of the joint proposals which certain parties filed with the Office on October 1, 1997. The following parties represent users of copyrighted works in this proceeding:

Public Broadcasting Services (PBS)—a non-profit membership corporation which, among other things, represents the interests of its member noncommercial, educational broadcasting stations in rate setting and royalty distribution proceedings in the United States, Canada, and in Europe.

National Public Radio (NPR)—a non-profit membership organization dedicated to the development of a diverse noncommercial educational radio programming service.

National Religious Broadcasters Music License Committee (NRBMLC)—an organization that represents noncommercial educational radio broadcasters that are associated as members of National Religious Broadcasters.

The American Council on Education (ACE)—an association representing over 1,500 colleges, universities and associations in higher education, some of which operate noncommercial educational radio broadcast stations.

The National Federation of Community Broadcasters (NFCB)—a national membership organization representing over 85 independent, community based noncommercial radio broadcasters.

The following parties represent the owners of the copyrighted works:

American Society of Composers, Authors and Publishers (ASCAP)—a performing rights society which, among other things, licenses on a non-exclusive basis the right of nondramatic public performance of its members' copyrighted musical compositions.

Broadcast Music, Inc. (BMI)—a performing rights society which, among other things, licenses the non-exclusive right to perform publicly the copyrighted musical compositions of its writers and publisher affiliates.

SESAC, Inc.—a performing rights society which, among other things, licenses the non-exclusive right to perform publicly the copyrighted musical compositions of its writers and publisher affiliates.

National Music Publishers Association, Inc. (NMPA) and The Harry Fox Agency, Inc. (HFA)—NMPA is an organization representing the interests of over 600 commercially active American music publishers, and the HFA is a wholly owned subsidiary which acts as a licensing agent for over 17,000 publishers.

B. Chronology

On October 18, 1996, the Library published a notice in the **Federal Register** requesting comments from interested parties as to the need for a CARP proceeding to adjust the section 118 terms and rates. 61 FR 54459 (October 18, 1996). The notice also announced the dates of the voluntary negotiation period, a precontroversy discovery schedule, and an initiation date for a CARP. At the request of the parties, the Library vacated the schedule and instructed the parties to appear at the Library on May 1, 1997, to inform the Office of the progress of their settlement negotiations.

The parties appeared at the May 1 status conference and requested additional time. The Office granted this request, but scheduled another status meeting in order to monitor the progress of the negotiations. The staff from the Copyright Office met with the parties again on July 24, 1997, at which time the parties identified the need for a CARP proceeding. Subsequently, the Library announced a second schedule setting dates for the precontroversy discovery period and for convening the CARP. Order in Docket No. 96–4 CARP NCBRA (July 30, 1997).

In accordance with the precontroversy schedule, on September 2, 1997, the Copyright Office received proposed rates and terms for the payment of royalty fees to "unaffiliated copyright owners," from the National Religious Broadcasters Music License Committee (NRBMLC), the Public Broadcasting Service, and the National Public Radio. Because the identity of such copyright owners is not known, copyright users are unable to negotiate with them to reach private agreements, and their interests would not be represented if the matter were submitted to a CARP. Accordingly, on October 2, 1997, the Copyright Office published the proposed terms and rates for public comment. 62 FR 51619 (Oct. 2, 1997). The notice elicited no comments opposing the proposed rates for the "unaffiliated copyright owners."

Regulatory language implementing these proposals has been included in this document. Although further comment on the substance of these regulations is precluded, parties may file comments with the Copyright Office concerning the implementation of the proposals in the regulatory language.

Negotiations continued throughout the precontroversy settlement period. As a result, on October 1, 1997, certain parties filed notices of settlement and joint proposals for further adjusting the rates for the payment of the noncommercial compulsory license royalties, pursuant to 17 U.S.C. 118.

1. Notices of Settlement

SESAC, Inc., on behalf of its affiliated songwriters and music publishers, and the National Public Radio (NPR) and the Public Broadcasting Service (PBS), on behalf of the noncommercial educational broadcast stations they represent, reached an agreement on the rates and terms of a voluntary license between them covering the period January 1, 1998, through December 31, 2002. The Harry Fox Agency, Inc. (HFA), on behalf of its affiliated music publishers and other copyright proprietors, and NPR/PBS, on behalf of the noncommercial broadcast stations they represent in this proceeding, also reached an agreement between them covering the same period, January 1, 1998, through December 31, 2002.

These license agreements will be given effect in lieu of any determination by the Librarian of Congress, provided that the copies of the license agreements are filed with the Copyright Office within thirty days of the execution thereof. See 17 U.S.C. 118(b)(2). Accordingly, with respect to the use by PBS and NPR of musical compositions found in the SESAC repertory, or the use by PBS and NPR of copyrighted works whose owners are represented by The Harry Fox Agency, no regulations will be proposed.

2. Uncontested Proposal

The National Religious Broadcasters Music License Committee (NRBMLC) submitted an uncontested proposal as its direct case for adjusting the current rates and terms for the recording of nondramatic musical works by noncommercial radio stations "other than in an NPR produced radio program." See 37 CFR 253.7(b)(4). The NRBMLC proposes that no adjustment be made to the rates and terms, which were in effect for the previous cycle. NRBMLC contends that the current rates and terms are "reasonable and that no circumstances exist that would warrant modification of these rates." On November 18, 1997, NRBMLC filed an amendment to its proposal adopting the same rates for this provision that apply to the works of an "unaffiliated copyright owner" similarly situated. See 62 FR 51619 (October 2, 1997).

3. Joint Proposals

a. Performances of Musical Works by Public Broadcasting Entities Licensed to Colleges and Universities Not Affiliated with NPR. SESAC and ACE have submitted a joint proposal which would increase the rate which applies to public broadcasting entities licensed to colleges and universities not affiliated with NPR to $60 for 1998, subject to an annual cost of living adjustment thereafter. See 37 CFR 253.5(c)(3). ASCAP and ACE also submitted a joint proposal to the Librarian which proposes maintaining the current rate for college radio stations not affiliated with NPR, with an annual cost of living adjustment. See 37 CFR 253.5(c)(1). In addition, BMI, in its direct case, proposed "continuing its fee with respect to college and university radio stations not affiliated with NPR, subject to an annual cost of living adjustment permitted under 37 CFR 253.10 (1996)."

[1] An unaffiliated copyright owner is one whose interests are not represented by a performing rights society, or by any other organization participating in the proceeding.

Direct Case of BMI at 2. See 37 CFR 253.5(c)(2).

Both ASCAP and BMI propose that the 1998 rates consist of the current rate with an annual cost of living increase, based upon the annual change in the Consumer Price Index (CPI)—the methodology adopted by the former Copyright Royalty Tribunal in the 1987 rate adjustment proceeding and maintained in the 1992 rate adjustment proceeding. 52 FR 49010 (December 29, 1987) and 57 FR 60954 (December 22, 1992). Assuming no party challenges the ASCAP and BMI proposals, new rates for ASCAP and BMI will be calculated based upon the change in the CPI, during the period between the first CPI subsequent to December 1, 1996, and the last CPI published prior to December 1, 1997. These rates will be published at the time the final rules are published in the **Federal Register**. No similar adjustment is necessary for the rate jointly proposed by SESAC and ACE, since their proposed rate already reflects an upward adjustment for the coming year. In each subsequent year covered by the terms of these proposals, an annual cost of living adjustment will be made to the royalty rate for performing the musical compositions in the ASCAP, BMI, and SESAC repertory.

The parties to these joint proposals submit that the proposed annual compulsory license fees are made on a nonprejudicial and nonprecedential basis. As the Copyright Royalty Tribunal did in the 1987 rate adjustment proceeding, and again in the 1992 rate adjustment proceeding, the Librarian recognizes that the joint proposals do not reflect any assessment by any of the parties of the absolute or relative value of the right of performance of music in the ASCAP, BMI, or SESAC repertory by college radio stations.

b. Performances of Musical Compositions by Public Broadcasting Stations Other Than NPR or College Stations. Joint proposals were submitted to adjust the rates which apply to public broadcasting radio stations which are not licensed to colleges and universities and which are not affiliated with NPR. SESAC, BMI, and ASCAP, each submitted separate joint proposals with the National Religious Broadcasters Music License Committee (NRBMLC) and the National Federation of Community Broadcasters (NFCB). The proposals continue the general trend of annual adjustments reflected in the current regulations, 37 CFR 253.6(c)(1)(2)(3), and have been made on a nonprejudicial and nonprecedential basis.

Therefore, the Librarian recognizes that the joint proposals do not reflect any assessment by any of the parties of the absolute or relative value of the right of the performance of music in the ASCAP, BMI, or ASCAP repertory by community radio stations.

C. Comments and Notices of Intent To Participate

Any party who wishes to challenge the proposed rates must submit its written comments to the Librarian of Congress no later than close of business on December 31, 1997. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate. Failure to submit a Notice of Intent to Participate will preclude an interested party from participating in this proceeding and will preclude consideration of his or her written challenge. Any interested party that does submit a Notice of Intent to Participate will be contacted by the Librarian as to when his or her written direct case is due. It is the intention of the Librarian to include such parties in the CARP proceeding that shall commence on December 31, 1997.

The following proposed rules includes regulatory language to implement the proposals filed with the Library of Congress on September 2, 1997, and published in the **Federal Register** on October 2, 1997, for public comment pursuant to 37 CFR 251.63. The Copyright Office invites public comment on the proposed regulatory language implementing the earlier proposals, in addition to, the proposals discussed above. If no comments or Notices of Intent to Participate are received by close of business on the date for filing such comments, the proposed rates and terms shall become effective on January 1, 1998.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR part 253 as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is revised to read as follows:

§ 253.1 General.

This part 253 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1998, and ending on December 31, 2002. Upon compliance with 17 U.S.C. 118, and terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

3. Section 253.4 is amended by revising the introductory text, paragraph (a)(1) through (a)(8), and paragraph (c) to read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements, or compositions in the repertories of ASCAP, BMI or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(a) *Determination of royalty rates.* (1) For the performance of such a work in a feature presentation of PBS:

1998–2002 ..... $211.53

(2) For the performance of such a work as background or theme music in a PBS program:

1998–2002 ..... $53.59

(3) For the performance of such a work in a feature presentation of a station of PBS:

1998–2002 ..... $18.08

(4) For the performance of such a work as background or theme music in a program of a station of PBS:

1998–2002 ..... $3.81

(5) For the performance of such a work in a feature presentation of NPR:

1998–2002 ..... $21.44

(6) For the performance of such a work as background or theme music in an NPR program:

1998–2002 ..... $5.20

(7) For the performance of such a work in a feature presentation of a station of NPR:

1998–2002 ..... $1.52

(8) For the performance of such work as background or theme music in a program of a station of NPR:

1998–2002 ..... $.54

* * * * *

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP or BMI covering the license period January 1, 1998, to December 31, 2002, to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

* * * * *

4. In § 253.5, paragraph (c)(3) is revised to read as follows:

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(3) For all such compositions in the repertory of SESAC, $60 annually.

* * * * *

5. In § 253.6, paragraph (c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 1998, $375; in 1999, $390; in 2000, $405; in 2001, $420; in 2002, $440.

(2) For all such compositions in the repertory of BMI, in 1998, $375; in 1999, $390; in 2000, $405; in 2001, $420; in 2002, $440.

(3) For all such compositions in the repertory of SESAC, in 1998, $78; in 1999, $82; in 2000, $86; in 2001, $89; in 2002, $92.

(4) For the performance of any other such compositions, in 1998 through 2002, $1.

* * * * *

6. Section 253.7 is amended by revising paragraphs (a), (b)(1) (i) and (ii), and (b)(2), (4), and (5) to read as follows:

§ 253.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in 37 CFR subchapter B, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	1998–2002
Feature	$106.04
Concert feature (per minute)	31.84
Background	53.59
Theme:	
Single program or first series program	53.59
Other series program	21.75

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	1998–2002
Feature	$8.76
Concert feature (per minute)	2.30
Background	3.81
Theme:	
Single program or first series program	3.81
Other series program	1.52

* * * * *

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule "National Public Radio" programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	1998–2002
Feature	$11.48
Concert feature (per half hour)	16.85
Background	5.75
Theme:	
Single program or first series program	5.75
Other series program	2.29

(3) * * *

(4) For such uses other than in a NPR-produced radio program:

	1998–2002
Feature	$.74
Feature (concert)(per half	1.54
Background	.37

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002 shall be subject to the royalty rates established in this schedule.

* * * * *

7. In § 253.8, paragraphs (b)(1) and (f)(1) are revised as follows:

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

(A) For a featured display of a work.

1998–2002 ..... $64.78

(B) For background and montage display.

1998–2002 ..... $31.59

(C) For use of a work for program identification or for thematic use.

1998–2002 ..... $127.71

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule.

1998–2002 ..... $41.95

(ii) For such uses in other than PBS-distributed programs:

(A) For featured display of a work.

1998–2002 ..... $41.95

(B) For background and montage display.

1998–2002 ..... $21.51

(C) For use of a work for program identification or for thematic use.

1998–2002 ..... $85.76

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1998–2002 ..... $21.51

* * * * *

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: Second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, paragraph (a) is revised to read as follows:

§ 253.10 Cost of living adjustment.

(a) On December 1, 1998, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1997, to the most recent Index published prior to December 1, 1998. On each December 1, thereafter the Librarian of Congress shall publish a notice of change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1 of that year.

* * * * *

Dated: November 18, 1997.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–31295 Filed 11–26–97; 9:39 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96–4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a joint petition concerning the adjustment of the physical phonorecord and digital phonorecord delivery royalty rates and proposed regulations implementing these rates.

DATES: Comments and notices of intent to participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel; William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

How Were the Current Royalty Rates and Terms Established for the Making and Distribution of a Physical Phonorecord and a Digital Phonorecord Delivery?

The mechanical compulsory license, 17 U.S.C. 115, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee pays the statutory rate. Until its demise in 1993, the Copyright Royalty Tribunal had authority to adjust the statutory rates for the making and distribution of physical phonorecords, and did so in 1987, *see* 52 FR 22637 (June 15, 1987), setting the rates and terms for the mechanical compulsory license for at least the next ten years.

The Copyright Act provides that, during the tenth calendar year, any copyright owner or user whose royalty rates are specified by the statutory license may file a petition requesting an adjustment to the rates and terms. 17 U.S.C. 803(a) (1) and (3). This ten-year cycle makes 1997 a window year for commencing a proceeding to further adjust the mechanical phonorecord compulsory license royalty rates.

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recording Act of 1995 (Digital Performance Act), Pub. L. 104–39, 109 Stat. 336, which extended the mechanical license to digital phonorecord deliveries. Congress passed this Act to maintain and reaffirm the mechanical rights of songwriters and music publishers in an era of emerging technology which makes delivery of digital phonorecords possible. Among other things, the Digital Performance Act confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes digital transmissions which constitute "digital phonorecord deliveries." 17 U.S.C. 115(c)(3).

The Digital Performance Act sets the royalty rate for all digital phonorecord deliveries made or authorized under the section 115 compulsory license on or before December 31, 1997, at the current rate for the making and distribution of physical phonorecords: 6.95 cents for each work embodied in a phonorecord, or 1.3 cents per minute of playing time, or fraction thereof, whichever amount is larger. 37 CFR 255.5.

When Does the Current Digital Phonorecord Delivery Royalty Rate Expire and How is a New Rate Set?

The rate for the digital phonorecord deliveries expires on December 31, 1997. Accordingly, in the Digital Performance Act, Congress established a two-step process for adjusting the royalty rate, a negotiation period wherein the owners and the users attempt to reach their own voluntary licenses, and then if necessary, and upon the filing of a petition in 1997, the convening of a copyright arbitration royalty panel (CARP) to establish rates and terms for those persons who are not covered by voluntary licenses. 17 U.S.C. 115(c)(3)(C) and (D).

If interested parties reach a negotiated settlement, they may submit their proposals for adjusting the rates and terms for digital phonorecord deliveries directly to the Librarian of Congress. 37 CFR 251.63. This rule further provides that:

> The Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

37 CFR 251.63. This procedure applies to the adjustment of the compulsory license rates concerning both digital phonorecord and physical phonorecord deliveries.

Chronology—Current Rate Adjustment Proceeding

On July 17, 1996, the Copyright Office published a notice designating July 17, 1996, to December 31, 1996, as the period for the copyright owners and users to negotiate reasonable terms and rates for the delivery of a digital phonorecord. 61 FR 37312 (July 17, 1996). The notice also established a schedule for convening a CARP which would have established new rates for digital phonorecord deliveries before the current rate expired. In addition, the Office noted that 1997 was a window year for adjusting the royalty rates concerning the making and distribution of physical phonorecords, and requested comment from interested parties on the possibility of conducting a single CARP proceeding to adjust both the physical phonorecord and the digital phonorecord delivery rates, even though the physical phonorecord rates would not expire on December 31, 1997. 61 FR 37215.

According to the interested parties,[1] however, the proposed schedule did not allot sufficient time for negotiating a comprehensive joint proposal. Therefore, they filed a motion with the Office on November 8, 1996, requesting that the Office vacate the proposed schedule to allow them more time to continue their negotiations. The Office granted the moving Parties' motion and rescheduled the proceeding. 61 FR 65243 (December 11, 1996).

Although the new schedule extended the negotiation period by three months, the Parties thought the time still insufficient for conducting the necessary negotiations, and so, requested a meeting with the Office to discuss the difficulties associated with negotiating rates and terms for use of a new technology in a marketplace with little definition or clear direction. The Office granted their request and met with the Parties on January 9, 1997. At that meeting, the Parties again requested more time for conducting the negotiations on setting the rates and terms for the section 115 license, having acknowledged the need to establish the mechanical rate before they attempted to negotiate the rates for the digital delivery of phonorecords. After considering the difficulties confronting the Parties, the Office agreed to vacate the schedule. 62 FR 5057 (February 3, 1997).

The additional time for further negotiations proved to be beneficial, and on November 7, 1997, the National Music Publishers' Association, Inc. (NMPA), The Songwriters Guild of America (SGA), and the Recording Industry Association of America (RIAA) filed a joint petition with the Copyright Office outlining a proposal to adjust the physical phonorecord and digital phonorecord delivery royalty rates. NMPA, SGA, and RIAA, the organizations that represent the interests of copyright owners and copyright users in the current proceeding, were also the principal participants representing these interests in the 1980 and the 1987 mechanical rate adjustment proceedings. 46 FR 55276 (November 9, 1981) and 52 FR 22637 (June 15, 1987).

The Parties to the joint petition, having duly filed a proposal concerning the 1997 physical phonorecord and digital phonorecord delivery royalty rate adjustments, asked the Copyright Office to submit their proposal to a notice and comment proceeding to promulgate regulations to adjust the proposed rates and terms. Accordingly, pursuant to 17 U.S.C. 803(c) and 37 CFR 251.63(b), the Copyright Office invites public comment on the proposed rates and terms for adjusting the physical phonorecord and digital phonorecord delivery royalty rates, and on the regulatory language implementing the proposal.

[1] The interested parties are the Recording Industry Association of America, the National Music Publishers' Association, Inc., and The Harry Fox Agency, Inc. (collectively, "the Parties").

Comments and Notices of Intent to Participate

Any party who wishes to challenge the proposed rates and terms must submit his or her written comments to the Librarian of Congress no later than close of business on December 31, 1997. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate. Failure to submit a Notice of Intent to Participate will preclude the interested party from participating in a CARP proceeding to adjust the rates and terms, and will preclude consideration of his or her challenge. If no comments or Notices of Intent to Participate are received by close of business on the date for filing such comments, the proposed terms and rates shall become effective on January 1, 1998.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR part 255 as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

2. In § 255.3(a), the phrase "(b), (c), (d), (e), (f), (g), and (h)" is removed and the phrase "(b) through (m)" is added after the word "paragraphs".

3. In § 255.3(b), the phrase "(c), (d), (e), (f), (g), and (h)" is removed and the phrase "(c) through (m)" is added after the word "paragraphs".

4. In § 255.3(c), the phrase "(d), (e), (f), (g), and (h)" is removed and the phrase "(d) through (m)" is added after the word "paragraphs".

5. In § 255.3(d), the phrase "(e), (f), (g), and (h)" is removed and the phrase

"(e) through (m)" is added after the word "paragraphs".

6. In § 255.3(e), the phrase "(f), (g), and (h)" is removed and the phrase "(f) through (m)" is added after the word "paragraphs".

7. In § 255.3(f), the phrase "(g), and (h)" is removed and the phrase "(g) through (m)" is added after the word "paragraphs".

8. In § 255.3(g), the phrase "paragraph (h)" is removed and the phrase "paragraphs (h) through (m)" is added after the phrase "pursuant to".

9. In § 255.3(h), the phrase ", subject to further adjustment pursuant to paragraphs (i) through (m) of this section" is added after the word "larger".

10. Add new paragraphs (i), (j), (k), (l), and (m) to § 255.3 to read as follows:

§ 255.3 Adjustment of royalty rate.

* * * * *

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

11. Revise § 255.5 to read as follows:

§ 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) Except as provided in § 255.6, for every digital phonorecord delivery made on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

12. Add § 255.6 to read as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

(a) Except as provided in paragraphs (b) and (c) of this section, for every digital phonorecord delivery made on or after January 1, 1998, where the reproduction or distribution of the phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery (an "Incidental DPD"), the royalty rate payable with respect to each work embodied in the phonorecord shall be the Physical Rate. In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as "incidental" and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo, and no precedential effect shall be given to the characterization of a digital phonorecord delivery as "incidental" under this section or to the royalty rate payable under this section for any period prior to the period as to which the characterization of a digital phonorecord delivery as "incidental" or the royalty rates are to be established in such future proceeding.

(b) No royalty shall be payable for any "Transient Phonorecord" made in the course of any digital phonorecord delivery made on or after January 1, 1998: provided that a royalty shall be payable with respect to each work embodied in the phonorecord ultimately reproduced by or for the ultimate transmission recipient of such digital phonorecord delivery at the royalty rate prescribed under § 255.5 or the other paragraphs of this section, as applicable. Nothing in this paragraph shall limit or impair any rights or remedies of the copyright owner of a work against any person who makes reproductions from a Transient Phonorecord for any purpose other than to facilitate the transmission to the ultimate transmission recipient. For the purpose of this paragraph, a "Transient Phonorecord" is a transient phonorecord reproduced in temporary computer memory or digital storage intermediate to the communications system through which a digital phonorecord delivery is made, where such transient phonorecord is made in the ordinary operation of such system solely to facilitate the transmission to the ultimate transmission recipient. An example of a Transient Phonorecord is a phonorecord reproduced temporarily in a router intermediate to the Internet.

(c)(1) For every digital phonorecord delivery made on or after January 1, 1998, no royalty shall be payable where:

(i) The reproduction or distribution of the phonorecord is incidental to the promotion of a sound recording embodying a work,

(ii) The phonorecord is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and

(iii) The digital phonorecord delivery is made by the copyright owner of such work, either individually or collectively with other copyright owners of such works, or by an organization of copyright owners designated by such copyright owners as their common agent.

(2) The copyright owner of any work embodied in a sound recording may, without payment of any royalty to the copyright owner of the sound recording, make or authorize a digital phonorecord delivery where:

(i) The reproduction or distribution of the phonorecord is incidental to the promotion of the work embodied in the sound recording,

(ii) The phonorecord is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and

(iii) The digital phonorecord delivery is made by the copyright owner of such work, either individually or collectively with other copyright owners of such works, or by an organization of copyright owners designated by such copyright owners as their common agent.

13. Add § 255.7 to read as follows:

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1998 and every second year thereafter until 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 1999 and every second year thereafter until 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the provisions of this section, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

Dated: November 18, 1997.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–31293 Filed 11–26–97; 9:39 am]

BILLING CODE 1410-33-P

Notices

Federal Register
Vol. 62, No. 230
Monday, December 1, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Water & Oil Technologies, Inc., of Montgomery, Illinois, an exclusive license to U.S. Patent 4,871,556, issued 10/03/89, entitled "Inhibition of Warmed-Over Flavor and Preserving of Uncured Meat Containing Materials." Notice of Availability was published in the **Federal Register** on September 22, 1988.

DATES: (**Federal Register**) Comments must be received on or before January 30, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Water & Oil Technologies, Inc., has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 97–31383 Filed 11–28–97; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–105–1]

Availability of Horse Protection Strategic Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of the availability of the Animal and Plant Health Inspection Service Horse Protection Strategic Plan.

ADDRESSES: Copies of the Animal and Plant Health Inspection Service Horse Protection Strategic Plan are available and may be obtained either by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or electronically at http://www.aphis.usda.gov/ac. A copy of the strategic plan is also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect this document are requested to call the reading room in advance at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Watkins, Initiatives Coordinator, USDA, APHIS, Animal Care, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, (301) 734–4981.

SUPPLEMENTARY INFORMATION: The practice known as "soring" is the causing of pain in Tennessee Walking Horses and other gaited horses, in order to affect their performance. The Horse Protection Act (HPA) (11 U.S.C. *et seq.*) was enacted for the purpose of eliminating soring by prohibiting the showing, exhibition, transport or sale of sore horses. Exercising its rulemaking and enforcement authority under the HPA, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations regarding horse protection at title 9, chapter I, part 11, of the Code of Federal Regulations.

In 1995, APHIS initiated development of a Horse Protection Strategic Plan, designed to achieve the elimination of soring by strengthening APHIS's relationship with the walking horse industry. APHIS drafted a preliminary Strategic Plan, then convened three public meetings in 1996 to gather comments regarding the plan. The meetings were open forums attended by APHIS personnel, horse industry organization representatives, animal interest groups, and other individuals. APHIS considered all comments received at these forums, and revised its preliminary plan accordingly. We are giving notice that the final Horse Protection Strategic Plan is available to the public.

Done in Washington, DC, this 21st day of November, 1997.

Craig A. Reed,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31353 Filed 11–28–97; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Swamp Timber Sales and Associated Activities; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest (including salvage of beetle-killed lodgepole pine and windthrown trees), prescribed fire, watershed rehabilitation, year-round road restrictions, road obliteration, construction of temporary roads and reconstruction of specified roads in the Swamp Analysis Area on the Fortine Ranger District of the Kootenai National Forest. The Swamp Analysis Area is located approximately 30 air miles northeast of Libby, Montana, near the communities of Trego, Fortine and Eureka, Montana.

The proposed actions to harvest and reforest timber stands, improve stream and watershed conditions, reconstruct, rehabilitate or obliterate roads, restrict road access and underburn forest fuels and debris are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are: (1) To manage for a diversity of plant communities and age classes to meet the specific habitat requirements for a variety of plant and animal species; (2) to provide timber to support local, regional, and national needs; and (3) to manage for stable stream channels, viable and productive habitats for aquatic species, and water quality that meets or exceeds State of Montana water quality goals.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September, 1987, which provides overall guidance for forest management of the area. All activities associated with the proposal will be designed to maintain high quality wildlife, fisheries, and watershed objectives.

DATES: Written comments and suggestions should be postmarked or received by December 31, 1997.

ADDRESSES: The Responsible Official is Edward C. Monnig, District Ranger, Fortine Ranger District, P.O. Box 116, Fortine, Montana, 59918. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: Michael Liu, Project Leader, Fortine Ranger District. Phone: (406) 882–4451.

SUPPLEMENTARY INFORMATION: The Swamp Decision Area contains approximately 40,680 acres of land within the Kootenai National Forest in Lincoln County, Montana. All of the proposed projects would occur on National Forest lands in the Swamp, Beaver and Edna Creek drainages near Trego, Montana.

The legal location of the Swamp Decision Area is as follows: All or portions of Sections 1–3 and 11–12 of Township 32 North, Range 28 West; Sections 2–11 and 14–16 of Township 32 North, Range 27 West; Section 36 of Township 33 North, Range 28 West; Sections 1–4, 8–17, and 19–36 of Township 33 North, Range 27 West; Sections 1–11, 14–22, and 29–32 of Township 33 North, Range 26 West; Sections 24–26 and 34–36 of Township 34 North, Range 27 West; and Sections 17–36 of Township 34 North, Range 26 West; Principal Montana Meridian, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

The Forest Service proposes to harvest approximately 36,600 hundred cubic feet (CCF), the equivalent of 15 million board feet (MMBF), of timber through application of a variety of harvest methods on approximately 4780 acres of forest land within the Swamp Decision Area. Use of existing and temporary roads would be needed to access timber harvest areas. An estimated 47 miles of existing roads would be reconstructed to access timber harvest areas or improve watershed conditions. An additional 13 miles of road would be rehabilitated to improve watershed conditions. All temporary roads would be obliterated following completion of sale activities. An additional 16 miles of road no longer in use, would be obliterated by various methods, such as removal of culverts, recontouring, ripping and seeding, and installing barriers. The method of obliteration would be based on site specific conditions. An estimated 24 miles of existing road would be restricted year-round to improve watershed conditions, minimize future road maintenance costs, and to regulate overall open road density to improve big game security. The proposal also includes prescribed burning on approximately 500 acres to enhance wildlife habitat, and promote vegetative diversity. Prescribed burning would also be used to reduce fuels and prepare sites for natural or artificial reforestation on regeneration harvest units after completion of harvest operation.

More specifically management activities in this proposal include:

Regeneration Harvest

These activities emphasize development of a new stand of trees through harvest of existing live or dead trees. The following types of regeneration harvest are proposed: (1) Salvage of merchantable dead lodgepole pine and other species would be removed in one entry, leaving 6–10 live trees/acre. Approximately 126 acres would be harvested resulting in approximately 2,440 CCF (1 MMBF) of timber; (2) Seedtree/shelterwood harvest of all merchantable trees except for 6–10 trees/acre in seed tree or 20–40 trees/acre in shelterwood prescriptions. Some shelterwood trees could be removed in a second entry when the stand has been certified as regenerated. A total of approximately 299 acres would be harvested resulting in approximately 7296 CCF (3 MMBF) of timber; (3) Using a group shelterwood prescription some units would be harvested in 3–5 acre openings. Three entries would take place over a 20 year period, removing one-third of the stand with each entry. Leave trees would be left in the openings. Approximately 574 acres would be harvested and yield approximately 4636 CCF (1.9 MMBF) of timber; (4) Special shelterwood harvests would remove all merchantable trees except for 20–25 large diameter (>18″DBH) larch and Douglas fir trees/acre. The remaining shelterwood trees would be left in the unit to provide stand structure. Approximately 259 acres would be harvested yielding approximately 4,880 CCF (2 MMBF) of timber.

Intermediate Harvest

These activities emphasize active management of existing trees by thinning the stand. The following types of intermediate harvest prescriptions are planned: (1) Blowdown salvage and lodgepole pine salvage would remove merchantable dead trees while protecting desirable live trees in the stand. Approximately 1550 acres would be harvested yielding approximately 7857 CCF (3.2 MMBF) of timber; (2) Commercial thinning of merchantable and less dominant trees in the stand would occur to meet desired stand stocking levels. The largest and healthiest trees would be left in the stands. Approximately 1964 acres would be harvested resulting in approximately 9590 CCF (3.9 MMBF) of timber; (3) Harvest of post and pole sized lodgepole pine from approximately 170 acres is proposed. Larger healthy lodgepole pine and other species would be left on roughly a 12 by 12 spacing. No volume has been estimated at this time.

Underburning

Underburning is proposed on approximately 500 acres to reduce fuel loads, and improve stands for wildlife. The prescription would involve burning stands during spring and early summer for good smoke dispersion and safe burning conditions.

Watershed Rehabilitation

A number of watershed rehabilitation projects are proposed in the Swamp Decision Area. These include: two stream channel enhancement projects, two riparian enhancement projects and three projects to control cattle access to streams.

Road Reconstruction and Rehabilitation

Approximately 47 miles of existing road would be reconstructed to access harvest areas or improve watershed conditions. Approximately 13 miles would be rehabilitated to improve watershed conditions and 16 miles would be obliterated because they are no longer in use. Obliteration would be accomplished through removal of culverts, recontouring, or ripping and seeding the road bed.

Year-round Road Restrictions

Approximately 24 miles of road would be temporarily restricted year-round. These restrictions would help to improve watershed conditions to minimize future road maintenance costs and to improve big game security by reducing overall open road densities.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The proposed projects encompass seven predominant MA's; 11, 12, 13, 15, 16, 21 and 24. Briefly described, MA 11 (4% of the area) is managed to maintain or enhance the winter range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 12 (17% of the area) is designated to maintain or enhance big game summer range and produce a programmed yield of timber. MA 13 (9% of the area) is designated to provide special habitat necessary for old growth dependent wildlife. MA 15 (43% of the area) focuses upon timber production using various silvicultural practices while providing for other resource values such as soil, air, water, wildlife, recreation, and forage for domestic livestock. MA 16 (2% of the area) is managed to produce timber while providing for a pleasing view. MA 21 (1% of the area) is the designated as a special interest area and serves to provide protection or special management of unique, unusual, or important attributes (flora, fauna, geologic, etc.). MA 24 (4% of the area) is usually not productive ground and is managed to provide site protection and for any inherent wildlife resources. Timber harvest is proposed in MA's 11, 12, 15, 16 and 24.

This proposal includes openings greater than 40 acres to replicate historic disturbance patterns. If these large openings are included in the preferred alternative in the Draft EIS, a 60-day public review will be provided during the comment period on the Draft EIS. Approval of the Regional Forester for exceeding the 40-acre limitation for regeneration harvest would be required prior to the signing of the Record of Decision.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Preliminary Issues

The following preliminary issues have been identified for this proposal:

—*Road Management:* Specific roads would need to be restricted or obliterated to meet road densities for wildlife security and improve watershed conditions. Some individuals feel that these activities unfairly restrict public use and waste taxpayer dollars. Others feel restrictions are a benefit to wildlife and watershed conditions and should be implemented.

—*Timber Supply:* A continued supply of timber is a concern of both internal and external publics. The methods used to provide that supply as well as amount of timber harvested are components of this issue

—*Water Quality:* Road construction and reconstruction, cattle use, as well as timber harvest and prescribed burning are concerns of the public in relation to the issue of water quality.

Public Involvement and Scoping

On March 13, 1997 an advertisement was placed in the *Daily Inter Lake*, Kalispell, Montana, requesting public comment and information concerning the Swamp Analysis Area. In addition, on March 14, 1997 a letter was mailed to the approximately 216 individuals comprising the mailing list for the Swamp Analysis Area. Taking into account the comments received and information gathered during preliminary analysis, it was decided to prepare an EIS for the Swamp Timber Sales and Associated Activities. Comments received prior to this notice will be included in the documentation for the EIS.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft and Final EIS. Comments received on this proposal will be made part of the public record and may be included in the Draft and Final EIS. Names and addresses of commentors are subject to inquiries under the Freedom of Information Act and would be disclosed upon request. Comments on this proposal must be postmarked or received by December 31, 1997.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by June, 1998. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Final EIS is scheduled to be completed by August, 1998. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewers Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S.C. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Edward C. Monnig, District Ranger, Fortine Ranger District, Kootenai National Forest, P.O. Box 116, Fortine, Montana, 59918, is the Responsible Official. As the Responsible Official, I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: November 21, 1997.

Edward C. Monnig,

District Ranger, Fortine Ranger District.

[FR Doc. 97–31330 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, December 11, 1997, at the USDI Salem BLM Office; 1717 Fabry Rd SE; Salem, Oregon 97306; phone (503) 375–5642. The Advisory Committee meeting is scheduled for 9:00 a.m. to approximately 12:30 p.m. The tentative agenda includes: (1) Review of the Province timber sale monitoring results, (2) Review and critique of 1997 Willamette PAC activities and accomplishments, (3) Identifying and prioritizing topics for Willamette PAC meeting in 1998, and (4) Public forum.

This public forum is tentatively scheduled to begin at 10:00 a.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged. Written comments may be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: November 21, 1997.

Darrel L. Kenops,

Willamette Forest Supervisor.

[FR Doc. 97–31349 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity to Comment on the Applicants for the Little Rock Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic area formerly assigned to Arkansas Grain Inspection Service (Arkansas).

DATES: Comments must be postmarked, or sent by telecopier (FAX) by December 30, 1997.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1997, **Federal Register** (62 FR 51407), GIPSA asked persons interested in providing official services in the Little Rock area, formerly assigned to Arkansas, to submit an application for designation by October 30, 1997. There were two applicants: Memphis Grain Inspection Service, a currently designated official agency, located at Memphis, Tennessee, and contiguous to the Little Rock area, applied for designation to provide official services in the Little Rock area; and the former Arkansas agency reorganized and applied for designation to provide official services in the Little Rock area.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Effective November 1, 1997, until an official agency can be selected, requests for official services should be directed to GIPSA's Stuttgart, Arkansas, Field Office at 501–673–2508.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31335 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Champaign (IL) and Enid (OK) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Champaign-Danville Grain Inspection Departments, Inc. (Champaign), will end May 31, 1998, and the designation of Enid Grain Inspection Company, Inc. (Enid), will end June 30, 1998, according to the Act. GIPSA is asking persons interested in providing official services in the Champaign and Enid areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before December 30, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Champaign, main office located in Champaign, Illinois, to provide official inspection services under the Act on June 1, 1995, and Enid, main office located in Enid, Oklahoma, to provide official inspection services under the Act on July 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Champaign ends on May 31, 1998, according to the Act. The designation of Enid ends on June 30, 1998, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Indiana, is assigned to Champaign.

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41 (150); U.S. Route 41 (150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.

The following grain elevators, all in Illinois, located outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor Grain Company, McLain County F/S, and Pacific Grain Company, all in Farmer City, Dewitt County; and Monticello Grain Company, Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

Champaign's assigned geographic area does not include the following grain elevators inside Champaign's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Oklahoma, is assigned to Enid.

Adair, Alfalfa, Atoka, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

Interested persons, including Champaign and Enid, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Champaign area is for the period beginning June 1, 1998, and ending May 31, 2001. Designation in the Enid area is for the period beginning July 1, 1998, and ending May 31, 2001. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31337 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the State of Minnesota

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of the Minnesota Department of Agriculture (Minnesota) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1997, **Federal Register** (62 FR 35147), GIPSA asked persons interested in providing official services in the geographic area assigned to Minnesota to submit an application for designation. Applications were due by July 30, 1997. There were three applicants for the Minnesota area: Mid-Iowa Grain Inspection, Inc., applied for designation to provide official services in the Minnesota counties of Filmore, Houston, and Winona; Minnesota applied for designation to provide official services in the entire Minnesota area; and Sioux City Inspection and Weighing Service Company, applied for designation to provide official services in the Minnesota counties of Murray, Nobles, Pipestone, and Rock.

GIPSA requested comments on the applicants for the Minnesota area in the September 2, 1997, **Federal Register** (62 FR 46245). Comments were due by October 1, 1997. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Minnesota is better able to provide official services in the Minnesota area.

Effective January 1, 1998, and ending December 31, 2000, Minnesota is designated to provide official services in the geographic area specified in the June 30, 1997, **Federal Register**.

Interested persons may obtain services by contacting Minnesota at 612–341–7190.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31334 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the State of Mississippi

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of the Mississippi Department of Agriculture and Commerce (Mississippi) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1997, **Federal Register** (62 FR 35147), GIPSA asked persons interested in providing official services in the geographic area assigned to Mississippi to submit an application for designation. Applications were due by July 30, 1997. Mississippi, the only applicant for the Mississippi area, applied for designation to provide official services in the entire area currently assigned to them.

Since Mississippi was the only applicant for the Mississippi area, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Mississippi is able to provide official services in the geographic area for which they applied. Effective January 1, 1998, and ending December 31, 2000, Mississippi is designated to provide official services in the geographic area specified in the June 30, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Mississippi at 601–947–4095.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31336 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations—Unprocessed Western Red Cedar.

Agency Form Number: None.

OMB Approval Number: 0694–0025.

Type of Request: Extension of a currently approved collection of information

Burden: 36 hours.

Average Time Per Response: 25 minutes per response.

Number of Respondents: 35 respondents.

Needs and Uses: The information is collected as supporting documentation for the export of western red cedar logs. The Export Administration Act's prohibits the export of such logs from State or Federal lands. The information is used for export enforcement purposes to ensure that the logs are being shipped legally.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: November 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31341 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Request for Special Priorities Assistance.

Agency Form Number: BXA–999.

OMB Approval Number: 0694–0057.

Type of Request: Extension of a currently approved collection of information.

Burden: 600 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 1,200 respondents.

Needs and Uses: The U.S. must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt delivery of articles, products and materials to meet national security or emergency preparedness' requirements, the Defense Priorities Allocation System was developed. The information collected on BXA–999 from defense contractors and suppliers is needed for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation System Regulations. It is only used when there is difficulty in obtaining a needed item. The information provided is used by the appropriate agency is helping to resolve the problem.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: November 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31342 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Germany; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: David Genovese, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0498.

SUMMARY: On October 30, 1997, the Department of Commerce published in the **Federal Register** (62 FR 58705) a notice announcing the initiation of an administrative review of the antidumping duty order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, covering the period March 1, 1996, through August 31, 1997. This review has now been rescinded as a result of the withdrawal of the request for administrative review by the interested party.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1997, the Department of Commerce ("the Department") received a request from MAN Roland Druckmaschinen AG ("MRD") and MAN Roland Inc. ("MRA") to conduct an administrative review of MRD and MRA's U.S. sales, pursuant to 19 CFR 351.213(b)(2). On October 30, 1997, the Department published in the **Federal Register** (62 FR 58705) a notice announcing the initiation of an administrative review of the antidumping duty order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, covering the period March 1, 1996, through August 31, 1997.

Rescission of Review

On November 17, 1997, we received a timely request for withdrawal of the request for administrative review from MRD and MRA. Because there were no other requests for administrative review from any other interested party, in accordance with section 351.213(d)(1) of the Department's regulations, we have rescinded this administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: November 21, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–31438 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Silicon metal from Brazil; extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its final results in the administrative review of the antidumping order on silicon metal from Brazil. The review covers the period July 1, 1995, through June 30, 1996.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or James C. Doyle, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the final results to February 8, 1998, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from Joseph A. Spetrini to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 USC 1675(a)(3)(A)).

Dated: November 18, 1997.

Joseph Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–31437 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Recruitment for Additional Members for ETTAC.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) was rechartered on May 31, 1996, for two years pursuant to the provisions in Title IV of the Jobs through Trade Expansion Act, 22 U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, reporting directly to the Secretary of Commerce in his capacity as Chairman of the TPCC, as well as to other TPCC agencies. Members of the ETTAC have experience in exporting the full range of environmental technologies products and services.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance the Department is seeking additional candidates from small, medium-sized, and large businesses from the following subsectors of the environmental industry.

(1) Analytic Services
(2) Financial Services
(3) Trade Associations focused on the international market
(4) Air Pollution Control/Monitoring Equipment
(5) Process and Prevention Technologies
(6) Environmental Energy Sources
(7) Solid and Hazardous Waste Equipment and Management
(8) Engineering and Consulting

Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector. We are seeking CEO, President or Executive Vice President-level company candidates.

Please send a fact-sheet on your company that details your activity in the subsector as listed above, as well as a short biographical sketch on the executive who wishes to become a candidate. Materials can be faxed to the number listed below.

DEADLINE: This request will be open for three weeks from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; phone 202–482–5225. Materials may be faxed to 202–482–5665, attention Jane Siegel or Sage Chandler.

Dated: November 24, 1997.

Anne L. Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 97–31340 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971031261–7261–01]

Announcing Request for Computer Security and Privacy Issues

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Computer security and privacy issues are requested for input to the planning process for 1998 activities of the Computer System Security and Privacy Advisory Board. The Board advises the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Public input into this process is particularly encouraged and valued.

DATES: Comments are due January 30, 1998.

ADDRESSES: Comments should be sent to Executive Secretary, Computer System Security and Privacy Advisory Board, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001.

Comments received will be made publicly available at the Central Reference and Records Inspection Facility, Herbert C. Hoover Building, Room 6020, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Executive Secretary, Computer System Security and Privacy Advisory Board, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, or telephone [301] 975–3696.

SUPPLEMENTARY INFORMATION: The Computer System Security and Privacy Advisory Board was established pursuant to the Computer Security Act of 1987. Its charter specifies its mission and objectives as follows:

The Board shall identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy.

The Board shall advise the Secretary of Commerce and National Institute of Standards and Technology (NIST) on security and privacy issues pertaining to federal computer systems.

To report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

As part of the planning process for its 1998 work priorities, candidate computer security and privacy issues appropriate for the Board's consideration are sought. Public input into this process is particularly encouraged and valued. Candidate issues are solicited from the general public, privacy experts, academia, computer security experts, the information technology industry, and federal, state and local organizations.

To be more useful in the planning process, it would be helpful if issues suggested would be presented in the following format:

Issue Title:
Issue Summary:
Interested parties/Potential briefers:
(The names of specific organizations and contacts [on all sides of an issue] would be appreciated.)

Described potential options for Board Action:

Time criticality:
One time/continuing: (Is this an issue which the submittor suggests requires a one-time action or continuing study?)

Other appropriate comments:
Additional information regarding the Board's activities is available at the following website address: http://csrc.nist.gov/cspab/.

Since all submissions will be publicly available, comments should not contain proprietary information or information protected under the Privacy Act.

The next meeting of the Board is tentatively scheduled for December 9–11 at NIST. NIST will endeavor to make

any comments that are received by that date available at the meeting. All comments received will be made available at the Central Reference and Records Inspection Facility, Herbert C. Hoover Building, Room 6020, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

NIST and the Board extend their appreciation to all those providing public comment.

Dated: November 24, 1997.

Elaine Bunten-Mines,

Director Program Office

[FR Doc. 97–31367 Filed 11–28–97; 8:45 am]

BILLING CODE 3510-CN-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101497D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Offshore Cetacean Take Reduction Plan Environmental Assessment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of public comment period.

SUMMARY: On November 4, 1997, NMFS published a notice of availability of a draft Environmental Assessment (EA) on the alternatives being considered for implementation of the Atlantic Offshore Cetacean Take Reduction Plan. NMFS is hereby extending the public comment period for an additional 30 days.

DATES: Written comments must be received on or before January 4, 1998.

ADDRESSES: Copies of the draft EA or the draft Atlantic Offshore Cetacean Take Reduction Plan may be obtained from Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by calling (301) 713-2322.

Written comments should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, fax: 301/713–2322.

FOR FURTHER INFORMATION CONTACT: Victoria Cornish, Office of Protected Resources, (301) 713-2322.

SUPPLEMENTARY INFORMATION: On November 4, 1997, NMFS published a notice of availability of a draft EA on the alternatives being considered for implementation of the Atlantic Offshore Cetacean Take Reduction Plan. The notice indicated that comments must be received on or before December 4, 1997.

NMFS has since received a request to extend the public comment period for an additional 30 days. This request is made because at least 2 members of the Atlantic Offshore Cetacean Take Reduction Team will be out of the country for a large portion of the public comment period and would be unable to sufficiently review and comment on the EA. NMFS agrees that the current public comment period is not long enough to allow for sufficient public comment in lieu of other previous commitments by members of the team.

NMFS hereby extends the public comment period for an additional 30 days, until January 4, 1998.

Dated: November 24, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31315 Filed 11-28-97; 8:45 am]

BILLING CODE 31315-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497H]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Essential Fish Habitat (EFH) Technical Review Panel (TRP).

DATES: The meeting is scheduled to begin at 1:00 p.m. on Monday, December 15, 1997, and adjourn at 3:00 p.m. on Tuesday, December 16, 1997.

ADDRESSES: The meeting will be held at the at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, Louisiana 70130; telephone: 504–524–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: At this meeting, the TRP will review the technical accuracy and adequacy of preliminary drafts of Sections 4, 5, 6 and 7 of the Generic Amendment addressing EFH requirements in the fishery management plans of the Gulf of Mexico. EFH amendments are mandated by the recent passage of the Magnuson-Stevens Fishery Conservation and Management Act.

The TRP will review each section and provide updated information to the extent possible. Based on the review, the TRP will develop comments and recommendation for consideration by the Council.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Panel action during this meeting. Panel action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by December 8, 1997.

Dated: November 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31445 Filed 11–28–97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497A]

Longline Advisory Panel; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Longline Advisory Panel (AP) for the pelagic longline fishery for Atlantic highly migratory species (HMS) will hold its third meeting on Dec. 9, 1997, in Alexandria, VA to discuss the draft report on the future management options for the pelagic longline fishery.

DATES: The longline AP will meet on Dec. 9, 1997, from 9:30 a.m. to 5:30 p.m.

ADDRESSES: The AP meeting will be held at the Ramada Plaza Hotel in Alexandria, VA, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Liz Lauck, 1315 East-West Highway, Silver Spring, MD 20910, telephone: (301) 713–2347, Fax: (301) 713–1917.

SUPPLEMENTARY INFORMATION: The Longline AP was established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. The Longline AP will assist the Secretary of Commerce in preparing a study on the feasibility of implementing a comprehensive management system for the pelagic longline fishery for Atlantic HMS. The AP meeting is open to the public and will be attended by members of the AP; including appointed members, representatives of the five Fishery Management Councils that work with HMS, the Atlantic and Gulf states. The main agenda item for the longline AP will be a discussion of the draft report on the feasibility of implementing a comprehensive management system for the longline fishery.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jill Stevenson or Liz Lauck (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: November 24, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31441 Filed 11–25–97; 4:32 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497F]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee meeting as a Council Committee of the Whole, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board; its Committee Chairmen, and its Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, December 16, 1997 through Thursday, December 18, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Dunes Manor, 2800 Baltimore Avenue, Ocean City, MD; telephone: 1–800–523–2888.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On Tuesday, December 16, 1997, the Surfclam and Ocean Quahog Committee will meet from 10:00 a.m. until noon. The Demersal Species Committee, meeting as a Council Committee of the Whole together with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board will meet from 1:00–4:00 p.m. The Council Committee chairmen will meet from 4:00–5:00 p.m. On Wednesday, December 17, 1997, the Demersal Species Committee, meeting as a Council Committee of the Whole with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board will meet from 8:00 a.m. until noon. The Executive Committee will meet from noon until 1:00 p.m. The Council will meet from 1:00–5:00 p.m. On Thursday, December 18, 1997, the Council will meet from 8:00 a.m. until approximately 2:00 p.m.

The purpose of these meetings is as follows: possible Council adoption of Amendment 10 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP) (Maine ocean quahog fishery); discuss the 1998 Council's work schedule; adopt recommended recreational measures for summer flounder, scup, and black sea bass; revise Election Policy in the Statement of Operating Practices and Procedures (SOPPs); and discuss Council action on final provisions and the possibility of additional hearings on the Monkfish FMP. The Council will also receive a presentation on the sea scallop stock assessment by the Northeast Fisheries Science Center and possibly comment on Amendment 7 to the Sea Scallop FMP; possibly comment on International Commission for the Conservation of Atlantic Tunas proposed positions; and hear committee reports and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be closed at any time to discuss employment or other internal administrative matters.

Although other issues not contained in this agenda may come before this Council for discussion, in according with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31443 Filed 11–28–97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497G]

Pacific Fishery Management Council; Scheduled Teleconference

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scheduled teleconference.

SUMMARY: The Pacific Fishery Management Council's (Council) Budget Committee will hold a telephone conference call.

DATES: The conference call will be held on December 15, 1997, at 1:30 p.m. (Pacific Standard Time).

ADDRESSES: The telephone conference will originate from the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Larry Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the conference call is to adopt a budget for the operation of the Council during calendar year 1998. At it's November 4–7, 1997 meeting, the Council instructed the Budget Committee to confer after the amount available to the Regional Fishery

Management Councils was determined by Congress and NMFS. The amount available to the Pacific Council should be known well in advance of the December 15 conference call.

Members of the public wishing to listen to this conference or desiring further information should contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The teleconference is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the teleconference date.

Dated: November 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31442 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497B]

Marine Mammals; Scientific Research Permit No. 872–1397

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ann E. Bowles, Ph.D., Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109, has been issued a permit for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

SUPPLEMENTARY INFORMATION: On July 18, 1997, notice was published in the **Federal Register** (62 FR 38521) that a request for a scientific research permit to take (i.e., harass) up to 10 beached rehabilitated animals of each of three pinniped species annually: northern elephant seals (*Mirounga angustirostris*) Pacific harbor seals (*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*) had been submitted by the above-named individual. The proposed research will be conducted over a 5-year period at Hubbs-Sea World Research Institute and Sea World, San Diego, California. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Dated: November 25, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31444 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 55 FR 21047, published on May 22, 1990, and 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,046,972 dozen.
342/642	386,496 dozen.
347/348	1,764,380 dozen.
443	215,128 numbers.

Category	Twelve-month limit
447	11,599 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 24, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206 (September 19, 1997), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 1998 and extending through December 31, 1998:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31428 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	265,322 dozen.
410	935,894 square meters.
433	17,748 dozen.
434	15,059 dozen.
435	26,030 dozen.
443	166,724 numbers.
444	53,783 numbers.
448	23,004 dozen.
604	1,313,200 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 1, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31427 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68143, published on December 27, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 2, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
313	35,104,374 square meters.
314	6,936,923 square meters.
315	12,967,314 square meters.
317	42,063,668 square meters.
341	4,636,273 dozen of which not more than 2,529,123 dozen shall be in Category 341–Y [2].
369–D [3]	1,299,344 kilograms.
641	1,262,218 dozen.
647/648	414,548 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31431 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	680,313 dozen pairs.
338/339/638/639	1,341,400 dozen.
340/640	627,273 dozen of which not more than 530,770 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	787,663 dozen.
345/845	194,359 dozen.
347/348/647/648	1,447,873 dozen.
352/652	2,163,395 dozen.
445/446	53,134 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 16, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206 (September 19, 1997), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1998 and extends through December 31, 1998:

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31429 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	489,825 dozen.
360	3,537,627 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31425 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 340 is being increased for special shift, reducing the limit for Category 640.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 65197, published on December 11, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 2, 1997, you are directed to adjust the limits for the following categories, as provided for in the bilateral agreement between the Governments of the United States and the Kingdom of Nepal:

Category	Adjusted twelve-month limit [1]
340	344,605 dozen.
640	96,791 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31432 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously-restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Pakistan of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 334/634, 338, 339, 340/640, 363, 369–F/369–P and 369–S are being reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	8,193,116 square meters.
226/313	119,080,615 square meters.
237	398,483 dozen.
239pt. [1]	1,720,941 kilograms.
314	5,958,629 square meters.
315	78,725,628 square meters.
317/617	32,020,672 square meters.

Category	Twelve-month restraint limit
331/631	2,440,414 dozen pairs.
334/634	222,545 dozen.
335/635	363,476 dozen.
336/636	478,180 dozen.
338	4,625,578 dozen.
339	1,280,737 dozen.
340/640	626,093 dozen of which not more than 239,089 dozen shall be in Categories 340–D/640–D [2].
341/641	717,270 dozen.
342/642	355,011 dozen.
347/348	792,616 dozen.
351/651	318,786 dozen.
352/652	796,966 dozen.
359–C/659–C [3]	1,434,540 kilograms.
360	5,121,050 numbers.
361	5,954,709 numbers.
363	43,024,648 numbers.
369–F/369–P [4]	2,260,665 kilograms.
369–R [5]	11,157,534 kilograms.
369–S [6]	690,197 kilograms.
613/614	23,579,054 square meters
615	25,084,096 square meters.
625/626/627/628/629	77,147,475 square meters of which not more than 38,573,739 square meters shall be in Category 625; not more than 38,573,739 square meters shall be in Category 626; not more than 38,573,739 square meters shall be in Category 627; not more than 7,980,774 square meters shall be in Category 628; and not more than 38,573,739 square meters shall be in Category 629.
638/639	448,360 dozen.
647/648	850,073 dozen.
666–P [7]	764,048 kilograms.
666–S [8]	4,044,980 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Pakistan of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31433 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	198,744 dozen.
338/339	2,140,318 dozen.
410	2,689,107 square meters.
433	18,991 dozen.
434	10,358 dozen.
435	13,554 dozen.
443	225,885 numbers.
611	6,117,488 square meters.
645/646	313,404 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 25, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31424 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Romania of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 443 and 647 have been reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month limit
313	1,968,902 square meters.
314	1,476,676 square meters.
315	3,553,624 square meters.
333/833	140,743 dozen.
334	340,192 dozen.
335/835	178,276 dozen.
338/339	769,400 dozen.
340	335,838 dozen.
341/840	140,743 dozen.
347/348	600,508 dozen.
350	31,790 dozen.
352	214,071 dozen.
359pt.[1]	767,866 kilograms.
360	1,984,379 numbers.
361	1,322,920 numbers.
369pt.[2]	348,252 kilograms.
410	172,003 square meters.
433/434	9,527 dozen.
435	9,965 dozen.
442	11,541 dozen.
443	83,772 numbers.
444	41,970 numbers.
447/448	23,146 dozen.
604	1,641,933 kilograms.
638/639	704,843 dozen.
640	96,940 dozen.
647	92,290 dozen.
648	69,778 dozen.
666	140,538 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated January 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Romania of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31435 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 1998 through December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for 1998.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of 52,020 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 1997 shall be charged to the applicable category limit for that year (see directive dated September 19, 1996) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31430 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A Memorandum of Understanding (MOU) dated May 6, 1995, between the Governments of the United States and Ukraine establishes limits for certain wool textile products for the period January 1, 1998 through December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998

CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding dated May 6, 1995, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits of restraint:

Category	Twelve-month limit
435	90,100 dozen.
442	15,000 dozen.
444	65,000 numbers.
448	65,000 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in Category 435 exported during 1997 shall be charged to the applicable category limit for that year (see directive dated November 1, 1996) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive for Category 435.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 97–31426 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed the United Arab Emirates of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1998 period. The 1998 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,246,672 square meters.
226/313	2,131,840 square meters.
315	–0–.
317	34,390,917 square meters.
326	2,012,461 square meters.
334/634	254,068 dozen.
335/635/835	174,413 dozen.
336/636	220,192 dozen.
338/339	628,396 dozen of which not more than 418,930 dozen shall be in Categories 338–S/339–S[1].
340/640	389,572 dozen.
341/641	341,130 dozen.
342/642	271,008 dozen.
347/348	466,809 dozen of which not more than 233,404 dozen shall be in Categories 347–T/348–T[2].
351/651	194,786 dozen.
352	359,084 dozen.
361	–0–.
363	6,708,201 numbers.
369–S[3]	93,379 kilograms.
369–O[4]	662,361 kilograms.
638/639	254,068 dozen.
647/648	364,165 dozen.
847	228,662 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed the United Arab Emirates of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31434 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Draft Proposed Revisions to Delivery Specifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of, and Request for Public Comment on, Draft Proposed Revisions by the Chicago Board of Trade to Delivery Specifications on Corn and Soybean Futures Contracts.

SUMMARY: The Commodity Futures Trading Commission (Commission) on November 7, 1997, issued an Order changing and supplementing under section 5a(a)(10) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(10), the delivery terms of the corn and soybean futures contracts of the Board of Trade of the City of Chicago (CBT). The CBT previously had submitted proposed changes to the delivery specifications of its corn and soybean futures contracts in response to a December 19, 1996 notification to the CBT by the Commission that the CBT corn and soybean futures contracts no longer accomplish the objectives of that section of the Act. The Commission in its November 7 Order changed and supplemented the CBT proposal for its soybean futures contract by making changes relating to the delivery locations proposed by the CBT and for both its soybean and corn futures contracts by making changes relating to the locational price differentials proposed by the CBT, to a contingency rule proposed by the CBT and to a minimum net worth requirement for eligibility to issue shipping certificates proposed by the CBT. The November 7 Order also provided that the CBT was not precluded "from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts."

The CBT on November 18, 1997, provided to the Commission draft proposed revisions to the corn and soybean futures contracts which, although approved by the CBT Board of Directors, have not yet been presented to the CBT membership for its approval. Those draft proposed revisions contain delivery specifications different from those contained in the Commission's November 7 Order.

The Commission is providing notice of the CBT's draft proposed revisions in order to provide the public with an opportunity to comment to the Commission on them. The Commission has determined that publication of the CBT's draft proposed revisions for public comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received by January 15, 1998.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Corn and Soybean Delivery Points; Draft Proposed Revisions."

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Section 5a(a)(10) of the Act provides that, as a condition of contract market designation, boards of trade are required to:

> Permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market

an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, by letter dated December 19, 1996, commenced a proceeding under section 5a(a)(10) of the Act by issuing to the CBT a notification that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of "permit[ting] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification).

The CBT, on April 16, 1997, submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments. Those proposed rule amendments would have replaced the existing delivery system involving delivery of warehouse receipts representing stocks of grain stored at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[1] A shipping certificate would have provided for corn or soybeans to be loaded into a barge at one of the shipping stations located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois and additionally to be delivered in Chicago by rail or vessel. Delivery at all eligible locations would have been at par. The CBT's proposal would have eliminated the current delivery points on its corn and soybean futures contracts at Toledo, Ohio and St. Louis, Missouri and would have restricted firms eligible to issue shipping certificates to those meeting a minimum net worth requirement of $40 million, in addition to a number of other requirements.

The Commission published the substance of the CBT's proposed amendments in the **Federal Register** for public comment, receiving almost 700 comments, the largest number of comments ever received by the Commission on any issue before it. In addition, at the request of the CBT, the Commission held a public meeting on June 12, 1997, to accept oral and written statements by the CBT and interested members of the public. 62 FR 29107 (May 29, 1997).

On September 15, 1997, the Commission issued a proposed order, publishing its text in the **Federal Register** with a request for public comment. 62 FR 49474 (September 22, 1997). Over 230 commenters submitted comments to the Commission on the proposed order. In addition, the Commission held a public meeting on October 15, 1997, at which the CBT was afforded an opportunity to appear before the Commission and to be heard. Subsequently, the CBT filed written exceptions to the proposed order.

On November 7, 1997, the Commission issued a final Order to the CBT under section 5a(a)(10) of the Act. 62 FR 60831 (November 13, 1997) (November 7 Order or Order). The Commission's Order found that the CBT's proposal failed to meet the requirements of sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act because of (1) an inadequate amount of deliverable supplies of soybeans; (2) the failure to include required locational differentials; (3) the failure to provide an adequate rule for alternative deliveries if river transportation were obstructed; and (4) the substantial impediment to eligibility for issuing corn and soybean shipping certificates imposed by the CBT's proposed $40 million minimum net worth requirement.

Based on these findings, the Commission changed and supplemented the delivery locations for CBT's soybean futures contract by retaining the Toledo, Ohio switching district and the St. Louis/East St. Louis/Alton areas as delivery locations, with Toledo priced at par and the St. Louis/East St. Louis/Alton area priced at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois. The Commission also required that both corn and soybeans from shipping locations on the northern Illinois River be deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. With respect to both the CBT corn and soybean futures contracts, the Commission ordered that the contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed be changed and supplemented and that the $40 million minimum net worth eligibility requirement for issuers of shipping certificates be eliminated. The Commission ordered that the contract terms as changed and supplemented would apply beginning with contract months in the year 2000 and that the preexisting contract terms would apply to contract months in the year 1999.

The Commission's Order did not "preclude( ) the CBT from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts." 62 FR 60833. To the contrary, the Order provided that the CBT—

> Will continue to be free to propose revisions of the new terms to the Commission for its consideration under sections 5a(a)(10) and 5a(a)(12) or to submit a petition to the Commission to reconsider or to amend this Order. If the CBT believes that an alternative to the new terms and to its original proposal would better serve its business interests and would also meet the statutory requirements, the CBT should submit such a proposed rule revision or petition.

Id. at 60834.

By letter dated November 17, 1997, the CBT on November 18, 1997, notified the Commission that it would be submitting for Commission review such an alternative for contract months in the year 2000 and thereafter. Proposed revisions of the CBT corn and soybean futures contracts will be submitted to the CBT membership for its approval in mid-December 1997, and the CBT expects to submit the proposed revisions for Commission review and action upon membership approval. However, the CBT has requested that the Commission seek public comment at this time on the draft proposed revisions in anticipation of the CBT's receiving the requisite approval of its membership in order to expedite the Commission's consideration and review of them. The Commission has determined that publication of the draft proposed revisions at this time is in the public interest and will assist the Commission in its consideration of these issues.

II. CBT's Draft Proposed Revisions

CBT's draft proposed revisions for contract months in the year 2000 and thereafter would have the following terms. The soybean futures contract would call for shipping certificate delivery from shipping stations located along the entire Illinois River (extending from Chicago and including Burns Harbor, Indiana, to Grafton, Illinois at the river's mouth) and that portion of the upper Mississippi River from the mouth of the Illinois River to St. Louis. Delivery at Chicago/Burns Harbor would be at par, and delivery at other locations would be at the following premiums: shipping stations located along the Illinois River from river mile 304 at the junction of the Calumet Sag Channel and the Chicago Sanitary & Ship Canal to river mile 170 between Chillicothe and Peoria would be priced at a premium of 2 cents per bushel; shipping stations located from river mile 170 to the mouth of the Illinois River at Grafton would be priced at a premium of 3 cents per bushel; and shipping stations located at the St. Louis/East St. Louis/Alton delivery area would be priced at a premium of 5 cents per bushel.

The corn futures contract would retain the delivery locations contained in the Commission's November 7 Order: shipping stations located along that portion of the northern Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. Delivery at Chicago/Burns Harbor would be at par; delivery from shipping stations located along the Illinois River from river mile 304 at the junction of the Calumet Sag Channel and the Chicago Sanitary & Ship Canal to river mile 170 between Chillicothe and Peoria would be priced at a premium of 2 cents per bushel; and delivery from river mile 170 to river mile 151 at Pekin would be at a premium of 3 cents per bushel.

To qualify for regularity, a shipping certificate issuer would have to register to load a minimum of 3 barges per day at Chicago/Burns Harbor and at St. Louis/East St. Louis/Alton (for soybeans) and one barge per day at all other locations. In addition, a regular issuer would have to be capable of registering a minimum number of certificates equivalent to 30 barges (1,650,000 bushels) of corn or soybeans. A shipper would also have to have a net worth equivalent to four times the value of the certificates issued and could not issue certificates for an amount greater than 30 times its registered daily barge-loading capacity or, in the case of Chicago, its registered storage capacity. The contracts would also provide a contingency plan in case of obstructions to river traffic that would require a shipper to make the product available in a loaded barge with freight pre-paid to New Orleans at an Illinois or Mississippi River location below the obstruction. The receiver would be obligated to reimburse the shipper at a flat specified rate (detailed below) intended to cover the cost of shipping from the original shipping station to New Orleans.

The quality specifications, unit of trading, delivery months, last trading day, price basis, price fluctuation limits, and speculative position limits for the corn and soybean futures contracts would be the same as those for the respective existing futures contracts.

The terms of CBT's draft proposed revisions differ in a number of ways from the contract terms contained in the Commission's November 7 Order. In particular, for soybeans the draft proposed revisions would delete Toledo, Ohio as a delivery point, but add shipping stations on the Illinois River from Pekin to the river's mouth. In addition, for both corn and soybeans the draft proposed revisions would establish a fixed cents per bushel price differentials for all non-par locations within a specified "region," in contrast to the Commission's Order which established separate price differentials for each non-par location based on the difference between 150% of tariff rate applicable to that shipping station and 150% of tariff rate applicable to Chicago.

The CBT's draft proposed revisions would also establish a new regularity requirement on shipping certificate issuers which is not contained in the Commission's Order. Specifically, issuers would have to register a minimum number of shipping certificates equivalent to 30 barges (1,650,000 bushels) of corn or soybeans. In addition, the CBT's draft proposed revisions for soybeans would require issuers at St. Louis/East St. Louis/Alton to load three barges per day, rather than one barge per day as provided in the Commission's Order.

Finally, the reimbursement method for makers of delivery under the draft proposed revisions to the contingency rule would be different from that established in the Commission's Order. In particular, the draft proposed revisions would require shippers affected by a river obstruction to make the product available in a loaded barge with freight pre-paid to New Orleans at an Illinois or Mississippi river location below the obstruction. Under the Order, the shipper is merely required to provide the product at a shipping station below the obstruction. In addition, under the CBT's draft proposed revisions, the receiver would be obligated to reimburse the shipper at a fixed rate intended to cover the full cost of shipping the product from the original shipping station to New Orleans, set at 20 cents per bushel for Chicago/Burns Harbor issuers, 16 cents per bushel for northern Illinois River issuers, 12 cents per bushel for southern Illinois River issuers, and for soybeans only, 7 cents per bushel for St. Louis/East St. Louis/Alton issuers. Under the Commission's Order, reimbursement is made based on the difference in barge freight to New Orleans from the original shipping station and the alternative shipping station, calculated at 150% of the tariff rate applicable to the respective stations, and thus is the same as the method of establishing locational differentials between delivery locations under normal (non-contingency) situations.

The complete text of the CBT's draft proposed revisions for the corn and soybean futures contracts can be accessed through the Commission's internet web site, at http://www.cftc.gov., "What's Pending," and is also available by request from the Commission's Office of the Secretariat at the address noted above.

III. Procedure for Commission Review

The CBT's letter of November 17, 1997, indicated the CBT's intention to file its proposed revisions as applications for contract market designations and to request "fast track" review "pursuant to Section 5a(a)(12) of the Act and CFTC regulation rule 1.41." The Commission finds that upon submission by the CBT the proposed revisions will be ineligible for fast track consideration under the Commission's rules for the following reasons. The Commission has issued a final Order under section 5a(a)(10) of the Act relating to the contract terms of the CBT's corn and soybean futures contracts. The CBT's proposed revisions to that Order pose difficult economic and legal issues which cannot appropriately be addressed under the summary fast track procedures. Moreover, the Commission recognizes that the broad public interest in this issue requires that the public be given an adequate opportunity to comment on the proposed revisions. Therefore, the Commission will consider the proposed revisions, when submitted by the CBT, under the provisions of sections 5a(a)(10), 5a(a)(12) and 6 of the Act (and other provisions of the Act, as applicable) and not under the fast track procedures.

Even though the Commission finds that the CBT's proposed revisions will be ineligible for fast track review when submitted, it intends to act expeditiously on them. Moreover, the Commission believes that publication of the CBT's draft proposed revisions for a

[1] A shipping certificate is a negotiable instrument that represents a commitment by the issuer to deliver (e.g., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer.

comment period of forty-five days will provide sufficient time for public consideration of these issues and will look with disfavor upon requests for extension of the comment period.

Accordingly, for the above reasons, the Commission finds that publication of the CBT's draft proposed revisions is in the public interest and will assist the Commission in its consideration of these issues. Commenters are invited to analyze the following issues relating to the CBT's draft proposed revisions and to submit written data, views or comments relating to the draft proposed revisions:

1. Would available deliverable supplies of corn and soybeans be sufficient "to tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce," as required by the Act?

2. Would the price differentials for delivery at non-par locations appropriately reflect cash market price differentials for corn or soybeans at such locations relative to each commodity's value at the par delivery point of Chicago, Illinois?

3. Would the proposed load-out provisions calling for three barges per day at Chicago/Burns Harbor and at St. Louis/East St. Louis/Alton (for soybeans) and one barge per day at all other locations conform to commercial practices?

4. Under the contingency plan for river obstructions, the maker would be required to provide the product in loaded barges cif New Orleans. Would the reimbursement to makers of delivery reflect commercial practices? How does the reimbursement scheme relate to the locational price differentials for non-contingency conditions?

5. Would the minimum net worth requirements be necessary to ensure performance on the corn and soybean futures contracts? Do they unduly limit eligibility of firms to become issuers of shipping certificates?

Issued in Washington, D.C., this 26th day of November, 1997, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31534 Filed 11–28–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Minneapolis Grain Exchange Durum Wheat Futures Contract and an Application for Designation as a Contract Market in Durum Wheat Futures Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed rule amendments and an application for contract market designation.

SUMMARY: The Minneapolis Grain Exchange (MGE or Exchange) has proposed amendments to the dormant durum wheat futures contract, along with a proposal to reactivate trading in that futures contract pursuant to the provisions of Commission Regulation 5.2. In addition, the Exchange submitted an application for designation as a contract market in durum wheat futures options. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before December 16, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to MGE durum wheat.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: The proposed amendments and the designation application were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on January 2, 1998, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

The amended durum wheat futures contract would call for the delivery at par of shipping certificates representing 5,000 bushels of durum wheat meeting or exceeding specified quality requirements, including a minimum test weight of 60 pounds per bushel and a minimum protein content of 13 percent. Issuers of the proposed shipping certificates would be required to meet certain financial and other requirements, and must be approved by the MGE. Upon surrender of a shipping certificate, the issuer would be required to load the delivery durum wheat in rail cars at a location specified by the certificate issuer, with the issuer being obligated to pay the railroad freight costs to a point designated by the issuer located in the Minneapolis-St. Paul Switching District. Delivery by truck would also be permitted under specified conditions.

Shipping certificate receivers would be obligated to pay a premium charge of one-twelfth of one cent per bushel for each calendar day that the receiver holds the certificates.

Trading would be conducted in the contract months of March, May, July, September, and December. Prices would be quoted in dollars and cents per bushel. The minimum price fluctuation would be one-quarter (¼) cent per bushel. A maximum daily price fluctuation limit of 20 cents per bushel would be applicable to trading at all times in each contract month, except that such price limit would not be applicable to expiring contract months commencing on the first business day of such months.

Delivery of shipping certificates could be made on any business day of the contract month. Trading in an expiring contract month would end on the business day immediately preceding the last seven business day of that month.

Durum wheat options would trade in the same months as the futures contract. The last trading day for expiring option contract months would be the Friday that precedes the first notice day of the underlying futures contract month by at least five business days. The options for

such months would expire at 10:00 a.m. on the first Saturday following the last trading day. Thus, delivery on the futures contract would not be made until after the corresponding option had expired.

Copies of the proposed amendments and terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's Pending."

Other materials submitted by the MGE in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the MGE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 24, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–31318 Filed 11–28–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: National Defense Panel, DoD.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on December 8 & 9, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public from 0900–1700, December 8 & 9, 1997 in order for the Panel to discuss classified material.

DATES: December 8 & 9, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on December 8 & 9. During the closed sessions on December 8th & 9th from 0900–1700 the Panel will meet in Executive Session to write and review the NDP Report at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: November 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31325 Filed 11–28–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: National Defense Panel, DoD.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 24 & 25, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0900–1700, November 24 & 25, 1997 in order for the Panel to discuss classified material.

DATES: November 24 & 25, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on November 24 & 25. During the closed sessions on November 24th & 25th from 0900–1700 the Panel will meet in Executive Session to write and review the NDP Report at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This Notification also is written verification that the Panel was unable to provide notice of this meeting 15 days prior to the date of the meeting due to scheduling conflicts; finding it necessary to change meeting dates to ensure that all Panel members be in attendance.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: November 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 97–31326 Filed 11–28–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-

Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, December 4, 1997: 1:00 p.m.–5:00 p.m. and 7:00 p.m.–9:00 p.m. Friday, December 5, 1997: 8:30 a.m.–4:00 p.m.

ADDRESSES: Doubletree Hanford House, 802 George Washington Way, Richland, Washington.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Board will receive information on and discuss issues related to: the Tri-Party Change Package—200 Area Soils Remediation, Vadose Zone Characterization, and Maintaining Cleanup Progress at Hanford.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on November 24, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–31400 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, December 4, 1997: 6:00 p.m.–9:30 p.m.

ADDRESSES: Arvada Center for the Arts and Humanities, Studio 11A & 11B, 6901 Wadsworth Boulevard, Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Representatives from the Environmental Protection Agency and the Colorado Department of Public Health and Environment will discuss Rocky Flats' record in meeting cleanup targets for the year. In addition, the Department of Energy (DOE) will summarize the accomplishments of the company hired to perform cleanup work at the site, Kaiser-Hill. Each year, DOE selects a number of critical activities that need to be accomplished at Rocky Flats. Financial incentives are offered to the contractor if these activities can be completed during the year. DOE will outline how well Kaiser-Hill performed in these areas during 1997.

2. The Board has also set aside time during this meeting for informal discussions with members and others involved in Rocky Flats issues.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 24, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–31401 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Tennessee Valley Electric System Advisory Committee.

Date and Time: Wednesday, December 3, 1997, 1:00 P.M.–5:30 P.M.

Place: Opryland Hotel, Magnolia Area, Davidson Ballroom C, 2800 Opryland Drive, Nashville, Tennessee 37214.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Tennessee Valley Electric System Advisory Committee is to provide advice, information, and recommendations to the Secretary of Energy Advisory Board on the role of the Tennessee Valley Authority (TVA) in a restructured competitive electric industry. The Tennessee Valley Electric System Advisory Committee will prepare a report for submission to the Secretary of Energy Advisory Board.

Tentative Agenda

Wednesday, December 3, 1997

1:00–1:30 PM Opening Remarks
1:30–2:30 PM Committee Member Statements
2:30–3:45 PM Discussion of Issues for Committee Consideration
3:45–4:15 PM Determination of Working Group Assignments
4:15–5:15 PM Public Comment Period
5:15–5:30 PM Closing Remarks
5:30 PM Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Tennessee Valley Electric System Advisory Committee is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Nashville, Tennessee, the Tennessee Valley Electric System Advisory Committee welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Tennessee Valley Electric System Advisory Committee will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting in order to include complete information on the details of the meeting.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Tennessee Valley Electric System Advisory Committee may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 24, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–31387 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–363–002]

Egan Hub Partners, L.P.; Notice of Compliance Filing

November 24, 1997.

Take notice that on November 19, 1997, Egan Hub Partners, L.P., (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets to the filing, with an effective date of November 3, 1997.

Egan Hub states that the filing is being filed in compliance with an October 30, 1997, Letter Order of the Director, Office of Pipeline Regulation.

Egan Hub states that in compliance with that Letter Order the tariff sheets reflect the following: (i) Incorporates by reference GISB Standard 1.3.16, which relates to fuel reimbursement on nominations; (ii) includes in its tariff an internet address to its HTML page; (iii) conforms the electronic format of the tariff to the paper format of the tariff, including the inclusion in the electronic version of the tariff a sheet that had been omitted, as well as making editorial and pagination corrections; and (iv) conforms Egan Hub's filing to the redlining and strikeout provisions set forth in the Commission's Regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. A copy of this filing is on file with the Commission and is available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31374 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–011]

El Paso Natural Gas Company; Notice of Compliance Filing

November 24, 1997.

Take notice that on November 20, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective April 1, 1998:

Fourth Revised Sheet No. 210
Second Revised Sheet No. 210.01
Second Revised Sheet No. 211
First Revised Original Sheet No. 211A
Fourth Revised Sheet No. 215
Third Revised Sheet No. 217

El Paso states that the above tariff sheets are being filed to revise El Paso's pooling and intra-day scheduling and bumping procedures consistent with the Commission's November 5, 1997, order at Docket Nos. RP97–20–000, *et al.* and include revisions to intra-day scheduling required by the Commission's order issued on July 31, 1997, at Docket No. RP97–397–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31373 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–92–000]

Koch Gateway Pipeline Company, Notice of Request under Blanket Authorization

November 24, 1997.

Take notice that on October 28, 1997, Koch Gateway Pipeline Company, (Applicant), P.O. Box 1478, Houston, Texas 77251–1478, filed under Sections 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act to operate as a jurisdictional facility a 6-inch tap and dual 4-inch meter station. The station was previously installed, operated and placed in service under Section 311(a) of the Natural Gas Policy Act and Section 284.3(c) of the Commission's Regulations. Applicant makes such a request, all as more fully described in its pleading in this docket which is on file with the Commission and open to public inspection.

Applicant states that the certification of these facilities will allow Applicant to provide transportation services under its blanket transportation certificate to South East Alabama Gas District, a local distribution company in Escambia County, Alabama. Applicant states that use of the facilities for jurisdictional service will not affect its ability to serve other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31370 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–199–007]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1997.

Take notice that on November 20, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

MRT states that on July 25, 1997, it filed an uncontested Stipulation and Agreement (S&A) in the above captioned docket. On October 21, 1997, the Commission issued an order approving without modification the S&A.

MRT states that the purpose of the instant filing is to implement certain of the terms and provisions of the S&A, as provided therein, and to explain why the elimination of the definition of Receipt Point MDQ is relevant to the elimination of Flexible Contract Demand.

MRT states that a copy of this filing has been mailed to each of MRTs jurisdictional customers, parties on the service list in this proceeding, and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission an are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31372 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–94–000]

National Fuel Gas Supply Corporation; Notice of Amendment

November 24, 1997.

Take notice that on November 17, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in order to create additional firm transportation capacity from the Niagara Import Point to the Leidy Hub (1997 Niagara Expansion Project—Phase II), and permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that its 1997 Niagara Expansion Project—Phase II would provide an additional 23,000 Dth per day of firm winter-only capacity from the Niagara Import Point to the interconnection between the facilities of National Fuel and Transcontinental Gas Pipe Line Corporation at Leidy, Pennsylvania. It is stated that the additional firm winter-only transportation service will be provided pursuant to National Fuel's Rate Schedule FT and part 284 of the Commission's regulations. National Fuel contends that this additional capacity is subscribed on a long-term basis by Renaissance Energy U.S., Inc. (Renaissance), subject to the receipt of necessary regulatory approvals.

In order to provide this firm transportation service to Renaissance, National Fuel proposes to modify its existing Ellisburg Compressor Station in Potter County, Pennsylvania, including the abandonment and replacement of four compressor units (three 330 horsepower units and one 300 horsepower unit) with the installation of one 3,200 horsepower unit. National Fuel estimates that the project will cost $5.1 million.

National Fuel states that during each month within each winter period, it will charge Renaissance the maximum rate for FT service from the Niagara Import Point to the Leidy Hub. However, National Fuel contends that the revenues generated by such maximum rates, collected only over the winter period, will not fully recover the incremental cost of service for the project. Therefore, National Fuel proposes to amend its Rate Schedule FT to establish a reservation surcharge applicable to Renaissance, calculated to recover the differential. National Fuel proposes a reservation surcharge of $2.3565 per Dth.

National Fuel requests that the Commission make a determination that rolled-in rate treatment is appropriate for the costs and revenues associated with its 1997 Niagara Expansion Project—Phase II, other than the costs allocated to the proposed surcharge. National Fuel contends that if the Rate Schedule FT surcharge is approved and costs are allocated in the manner discussed in Section VIII of its application, the project would not increase the rates of any of National Fuel's firm shippers by more than 0.02 percent.

In addition, National Fuel requests waiver of Section 3.2 of its Rate Schedule FT to the extent necessary to permit National Fuel to accept a guaranty from Renaissance's parent company, Renaissance Energy Ltd. of the obligations of Renaissance under the service agreement to be executed by National Fuel and Renaissance.

National Fuel requests that the Commission issue an order granting the authorization requested herein on or before March 1, 1998, to allow for commencement of the new service as scheduled on November 1, 1998.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 15, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31371 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–010, and ER96–1663–011]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filing

November 24, 1997.

Take notice that on November 21, 1997, the California Independent System Operator Corporation filed for Commission approval in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the ISO Tariff and a motion for waiver of the 60 day notice requirement. The ISO requests that the proposed ISO Tariff amendments be made effective as of January 1, 1998. In addition, on November 21, the ISO filed for informational purposes its Revised Staging Plan No. 1.

The ISO states that the proposed tariff amendments, involving Settlements and billing, Ancillary Services and the ISO's financial security, are necessary for the January 1, 1998, operations of the ISO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31376 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–011; and ER96–1663–012]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filing

November 24, 1997.

Take notice that on November 21, 1997, the California Power Exchange Corporation (PX) filed for Commission approval in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the PX Tariff and a motion for waiver of the 60–day notice requirement. The PX requests that the proposed PX Tariff amendments be made effective as of January 1, 1998. In addition, on November 21, the PX filed for informational purposes its Revised Staging Plan No. 1.

The PX states that the proposed tariff amendments are necessary for January 1, 1998, operations of the tariff and involve PX Tariff modifications on, *inter alia*, security, Billing and Settlements, and conform the PX Tariff to software limitations on the PX's computer systems.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing

are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31377 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–4–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1997.

Take notice that on November 19, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective November 1, 1997.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that Appendix B attached to the filing contains explanations of the rate changes and details regarding the computation of the revised Rate Schedule LSS and GSS rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31375 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–2–000, et al.]

IES Utilities, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 21, 1997.

Take notice that the following filings have been made with the Commission:

1. IES Utilities, Inc.

[Docket Nos. DR98–2–000 and DR98–2–001]

Take notice that on October 20, 1997, and October 30, 1997, IES Utilities, Inc. (IES), of Cedar Rapids, Iowa, filed an Application and an Amended Application for Approval of Depreciation Rates pursuant to Rule 204 of the Commission's Rule of Practice and Procedure (18 CFR 385.204). The proposed depreciation rates are for accounting purposes only. IES states that its proposed new depreciation rates for distribution, transmission, and general plant were approved for retail purposes by the Iowa Utilities Board (IUB) as of October 22, 1994. IES requests that the Commission allow the proposed depreciation rates to become effective on October 22, 1994.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. DR98–3–000]

Take notice that on October 24, 1997, Louisville Gas and Electric Company (Louisville) of Louisville, Kentucky, filed an Application for Approval of Depreciation Rates. The proposed depreciation rates are for accounting purposes only. Louisville states that its proposed new depreciation rates for personal computers and software will bring the depreciable life into alignment with the stated Company policy of changing out personal computers every three years in order to take advantage of technological advancements. Louisville requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1997.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. DR98–5–000]

Take notice that on November 14, 1997, Tucson Electric Power Company (Tucson) filed an Application for Approval of Change in Depreciation Rates. This filing seeks Commission approval of a depreciation rate change Tucson made for book purposes effective March 31, 1996, pursuant to an order of the Arizona Corporation Commission. Tucson filed this Application in response to the Commission's order in *MidAmerican Energy Company (formerly Midwest Power Company)*, 79 FERC ¶ 61,169 (1997).

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Long Island Lighting Company

[Docket No. ER98–506–000]

Take notice that on November 3, 1997, Long Island Lighting Company (LILCO) filed Service Agreements for Non-Firm Point-to-Point Transmission Service between LILCO and Constellation Power Source, Inc., (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 27, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98–507–000]

Take notice that on November 3, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for New York State Electric & Gas Corporation (NYSEG). Boston Edison requests that the Service Agreement become effective as of October 1, 1997.

Edison states that it has served a copy of this filing on NYSEG and the Massachusetts Department of Public Utilities.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–508–000]

Take notice that on November 3, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service under the Pennsylvania Retail Pilot with West Penn Power dba/ Allegheny Power, PP&L, Inc., Horizon Energy, and Penn Power Energy pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER98–509–000]

Take notice that on November 3, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after October 4, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER98–510–000]

Take notice that on November 3, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after October 4, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER98–512–000]

Take notice that on November 3, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with American Electric Power Service Corporation, Electric Clearinghouse, Inc., Public Service Electric & Gas Company, Constellation Power Source, Inc., The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., and Duke Power, a division of Duke Energy Corporation under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon American Electric Power Service Corporation, Electric Clearinghouse, Inc., Public Service Electric & Gas Company, Constellation Power Source, Inc., The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., Duke Power, a division of Duke Energy Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER98–513–000]

Take notice that on November 3, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Enron Power Marketing, Inc., (Enron). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Enron.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER98–514–000]

Take notice that on November 3, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Tenaska Power Services Company (Tenaska). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Tenaska.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER98–515–000]

Take notice that on November 3, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Delmarva Power & Light Company (DP&L) and Florida Power Corporation (FPC), as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon DP&L, FPC and the South Carolina Public Service Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER98–516–000]

Take notice that on November 3, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which The Energy Authority will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 15, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER98–517–000]

Take notice that on November 3, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Oglethorpe Power Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 22, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER98–518–000]

Take notice that on November 3, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing PECO Energy Company (PECO) and Tennessee Valley Authority (TVA), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PECO, TVA and the South Carolina Public Service Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER98–519–000]

Take notice that on November 3, 1997, Western Resources, Inc., tendered for filing a firm transmission agreement between Western Resources and Utilicorp d.b.a. Missouri Public Service. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective October 28, 1997.

Copies of the filing were served upon Utilicorp dba Missouri Public Service and the Kansas Corporation Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER98–520–000]

Take notice that on November 3, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and PacifiCorp Power Marketing Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective October 29, 1997.

Copies of the filing were served upon PacifiCorp Power Marketing Inc., and the Kansas Corporation Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER98–521–000]

Take notice that on November 3, 1997, Florida Power Corporation (FPC), tendered for filing three separate service agreements between FPC and SCANA Energy Marketing, Inc., Oglethorpe Power Corporation, and Williams Energy Services Company for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No. 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement with SCANA Energy Marketing, Inc. is proposed to be effective October 29, 1997; the service agreement with Oglethorpe Power Corporation is proposed to be effective October 28, 1997; and the service agreement with Williams Energy Services Company is proposed to be effective October 17, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Company

[Docket No. ER98–524–000]

Take notice that on November 3, 1997, Boston Edison Company (Boston Edison), filed under Section 205 of the Federal Power Act an Interconnection and Operation Agreement (I&O Agreement) that Boston Edison will enter into in connection with voluntary divestiture of its fossil generation business under a Settlement Agreement filed on July 8, 1997, in restructuring proceedings before the Massachusetts Department of Public Utilities in Docket DPU 96–23.

Boston Edison requests the Commission to allow the I&O Agreement to become effective 60 days from the date of this filing, on January 3, 1998.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER98–526–000]

Take notice that on November 4, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 28, 1997, with CNG Retail Services Corporation under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds CNG Retail Services Corporation as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER98–527–000]

Take notice that on November 4, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 29, 1997, with Energis Resources Incorporated under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Energis Resources Incorporated as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–528–000]

Take notice that on November 4, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Horizon Energy Company (HEC), dated October 21, 1997. This Service Agreement specifies that HEC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and HEC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 21, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power & Light Company

[Docket No. ER98–529–000]

Take notice that on November 4, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with NIPSCO Energy Services, Inc., for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on November 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER98–531–000]

Take notice that on November 4, 1997, Florida Power & Light Company, filed a letter notice dated September 26, 1997, from Florida Keys Electric Cooperative Association, Inc., to FPL. This letter contains information provided pursuant to Section 11.1 of the Long Term Agreement to Provide Capacity and Energy by Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc., dated August 15, 1991. FPL requests that the proposed notice be made effective January 1, 1998.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER98–532–000]

Take notice that on November 4, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the New York State Electric & Gas Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the New York State Electric & Gas Corporation.

NUSCO requests that the Service Agreement become effective November 1, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. California Independent System Operator Corporation

[Docket No. ES98–9–000]

Take notice that on November 17, 1997, the California Independent System Operator Corporation (ISO) tendered for filing an Application under Section 204 of the Federal Power Act for authorization to issue securities and for certain waivers of Part 34 requirements.

The ISO requests authorization (1) to issue promissory notes to the ISO Restructuring Trust (ISO Trust) in exchange for the ISO's assets and for working capital; (2) to issue long-term bonds; and (3) for other evidences of indebtedness to be used for general corporate purposes.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. California Power Exchange Corporation

[Docket No. ES98–10–000]

Take notice that on November 17, 1997, the California Power Exchange Corporation (PX) tendered for filing an Application under Section 204 of the Federal Power Act for authorization to issue securities and for certain waivers of Part 34 requirements.

The PX requests authorization (1) to issue promissory notes to the PX Restructuring Trust (PX Trust) in exchange for PX's assets and for working capital; (2) to other evidences of indebtedness to be used for general Corporate purposes.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31378 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 21, 1997, 62 FR 62299.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 25, 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company has been added as Item CAG–1 on the Agenda scheduled for the November 25, 1997 meeting.

Item No.	Docket No. and company
CAG–1	RP96–312–000, Tennessee Gas Pipeline Company.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31540 Filed 11–26–97; 1:06 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 8 Through September 12, 1997

During the week of September 8 through September 12, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 20, 1997.
George B. Breznay,
Director, Office of Hearings and Appeals.

Decision List No. 50; Week of September 8 Through September 12, 1997

Appeals

Bruce Darrow Gaither, 9/8/97; VFA–0324

The Department of Energy denied a Freedom of Information Act Appeal filed by Bruce Darrow Gaither. In his Appeal, Gaither contested the adequacy of the search for responsive documents performed by the DOE's Freedom of Information and Privacy Act Division. After reviewing the scope of the search, the DOE concluded that the search was adequate.

Greenpeace USA, 9/11/97; VFA–0311

Greenpeace USA appealed a Determination issued to it in response to a request made under the Freedom of Information Act (FOIA) for information on contracts for technical assistance that DOE's Idaho Operations Office (ID) provided to California in the development of new commercial low-level radioactive waste management systems. ID withheld some documents under Exemptions 3, 4, and 6 of the FOIA. Material withheld under Exemption 3 was categorized as exempt under the National Defense Authorization Act of 1997 (NDAA), which generally prohibits the release of proposals. The DOE found on Appeal that some of the withheld material did not meet the NDAA's requirement of a solicitation for a competitive proposal. In addition, the DOE found that some material withheld was non-exempt. Accordingly, the Appeal was granted in part and the case was remanded to ID for further action.

Janice C. Curry, 9/9/97; VFA–0313

The DOE granted an Appeal by a former DOE contractor employee for documents related to her employment. The DOE found that the Office of Environmental Management (EM) did not adequately address the basis for its withholding of information under FOIA Exemption 6, and that EM's search for responsive documents was inadequate. The matter was, therefore, remanded to EM.

Ralph C. Elkins, 9/12/97; VFA–0317

Ralph C. Elkins appealed a denial by the Freedom of Information and Privacy Act Division of a request for his security clearance file that he submitted under the Privacy Act. The FOIA Division had not found the requested file. In considering the Appeal, the DOE found that the FOIA Division had conducted an adequate search for responsive documents, and it accordingly denied the Appeal.

Personnel Security Hearing

Personnel Security Hearing, 9/10/97; VSO–0151

A Hearing Officer issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found the individual had harassed his ex-spouse and three co-workers and that this conduct, as specified by Criterion L, indicated that he may not be honest, reliable or trustworthy or may be subject to pressure, coercion, exploitation or duress. The Hearing officer found that the individual had engaged in a number of harassing acts towards his ex-spouse and three co-workers and that he had not demonstrated sufficient evidence of reformation. The Hearing officer also found that the individual had been diagnosed by a psychiatrist as suffering from mixed personality disorder and depressive disorder and that in the psychiatrist's opinion these illnesses could cause a significant defect in judgment and reliability, as specified by Criterion H. Although the individual presented witnesses testifying that he did not exhibit the personality characteristics described by the DOE psychiatrist, the Hearing Officer concluded that he had not presented sufficient evidence to warrant rejection of the psychiatrist's opinion. Given the above findings, the Hearing Officer recommended that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Buttler County Commission, et al: RF272–76385, 9/10/97
Crude Oil Ref. Dist.: RB272–00117, 9/11/97
Empire Gas Corp./Howe Laundry: et al: RF335–00001, 9/12/97
Estate of Victor G. Zonver et al: RK272–01788, 9/11/97
Godwin Constsruction Co. et al: RF272–98611, 9/11/97
Worley's Asphalt & Paving Co. et al: RK272–04466, 9/11/97

Dismissals

The following submissions were dismissed.

American Building Components Co., Case No. RF272–57013
Arka, Inc., Case No. RF272–94509
Damar Worldwide, Inc., Case No. VEE–0048
Houston Slag Materials Company, Case No. RK272–04476
Midwest Paving Company, Case No. RG272–00836

[FR Doc. 97–31386 Filed 11–26–97; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Oil and Hazardous Substances Pollution Contingency Plan, EPA ICR No. 1463.03, OMB No. 2050–0096, expiring on January 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 30, 1998.

ADDRESSES: Community Involvement and Outreach Center, Office of Emergency and Remedial Response, 401 M Street, SW, Washington, DC 20460, Mail Code: 5204–G, 703–603–8889. Persons interested in obtaining a copy of the ICR without charge may call the telephone number above to request a free copy.

FOR FURTHER INFORMATION CONTACT: Lois Gartner, telephone number: 703–603–8889, facsimile number: 703–603–9100, e-mail address: gartner.lois@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those states and members of the public that voluntarily participate in the remedial phase of the Superfund process and those members of the public that voluntarily participate in community involvement activities during some or all phases of the Superfund process.

Title: National Oil and Hazardous Substances Pollution Contingency Plan (OMB Control No. 2050–0096, EPA ICR No. 1463.03) expiring on January 31, 1998.

Abstract: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund; 42 U.S.C. 9601 *et seq.*), as amended, establishes broad Federal authority to undertake removal and remedial actions in response to releases or threats of releases of hazardous substances and certain pollutants and contaminants into the environment. The NCP sets forth requirements for carrying out the response authorities established under CERCLA. In addition, the Government Performance and Results Act of 1993 requires EPA to determine and report to Congress on its effectiveness, including community involvement activities.

For states, this ICR addresses the record keeping and reporting provisions of the NCP that affect those states that voluntarily participate in the remedial phase of the Superfund program. (Record keeping and reporting requirements of the pre-remedial phase—except those tied to community involvement—have been addressed in the ICR prepared for the revisions to the Hazard Ranking System (HRS) (OMB Control No. 2050–0095). Record keeping and reporting provisions for the removal program—except, again, those tied to community involvement—also are not included in this ICR because the Federal government has the lead for removal actions.) Remedial responses under the Superfund program fall into the pre-remedial phase (during which the extent of site contamination is assessed) and the remedial phase (during which investigations are conducted to identify and characterize contaminants present and to determine viable remedies for a site, the remedy is chosen and the cleanup or construction is completed). The NCP includes the following reporting and record keeping provisions for the remedial phase of the Superfund program:

(1) States that voluntarily take the lead in remedial activities at Superfund sites must conduct the activities in a manner consistent with CERCLA (40 CFR 300.515(a)). Therefore, at a state-led site, the state must: develop a Remedial Investigation and Feasibility Study (RI/FS); prepare a Proposed Plan; issue a Record of Decision (ROD); complete community interviews; prepare a Community Involvement Plan (CIP), and provide information to the public; and

(2) States must identify and communicate potential state applicable or relevant and appropriate requirements (ARARs) at all Superfund sites within the state (40 CFR 300.400(g)).

In addition, this ICR addresses the record keeping and reporting provisions of the NCP that affect communities voluntarily providing their concerns to the lead agency about the Superfund process. This ICR also addresses the record keeping and reporting provisions imposed on communities when those communities provide feedback on community involvement activities tied to GPRA. Community involvement related to NCP requirements and GPRA reporting may occur during all phases of the Superfund process including, pre-remedial, remedial, removal (short-term response actions), and operation and maintenance (which may include such activities as ground water and air monitoring, inspection and maintenance of the treatment equipment remaining on site, and maintenance of any security measures or institutional controls.) Specifically, members of the community surrounding a Superfund site may participate in community interviews (40 CFR 300.43(c)) conducted by EPA in order to prepare a CIP or serve on Technical Assistance Grant (TAG) groups, as provided for in Superfund Amendments and Reauthorization Act (SARA) of 1986, as well as in Community Advisory Groups (CAG), as provided in Superfund Administrative Reforms. Community groups focused on the technical assistance provided through the Technical Outreach Services for Communities (TOSC) program may also participate. Participation may also take the form of attending informal and formal meetings, open houses and public availability sessions, responding to questionnaires and telephone interviews, and/or participation in focus groups.

EPA uses the information provided by the states to ensure state actions are consistent with the provisions of CERCLA and SARA and that their decisions are protective of human health and the environment. EPA uses the information gathered from private citizens to plan activities geared to educating them where necessary, keeping them informed of activities within the community, and ensuring they have had an opportunity to assume an active role in the decision making process that affects their community. EPA also uses information from private citizens to measure the effectiveness of community involvement activities, as required by GPRA, and to improve those activities as needed. EPA believes involvement of the members of the community surrounding a Superfund site is critical to ensuring effective site cleanups.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that 30 new sites will be added to the NPL each year over the three-year period of this ICR. Of those 30 sites, EPA estimates six will be state-led cleanups. It is estimated that states will incur an annual burden of 6,026 hours per site, for a cost of $178,100, of which $178,011 is reimbursed by EPA. States are reimbursed from the CERCLA Hazardous Susbstances Trust Fund (the Fund) for state-led activities via cooperative agreements with EPA as provided in CERCLA section 104(d)(1). States are not reimbursed from the Fund for identification of state ARARs. It is also estimated that communities will incur a collective annual burden of 539 hours per site, for a cost of $16,062 (assuming the value of their time at $29.57) or an estimated average annual burden of 11 hours per person. While EPA does not reimburse community members for their participation, this ICR nonetheless estimates the monetary value of burden their participation imposes on them.

The burden data in this section are based on estimates by EPA personnel knowledgeable of the remedial program's record keeping and reporting requirements and the costs and level of effort required to meet the requirements.

Estimated Unit Burdens to State Governments

A "unit" burden is the burden incurred by a respondent for performing an individual site-specific activity. States incur burdens at: (1) An estimated six new state-led sites per year for several reporting and record keeping activities; and (2) all of the estimated 30 NPL sites on an annual

basis with RI/FS starts for identifying and reporting ARARs.

The burden is calculated using a weighted average hourly rate of $29.57 multiplied times the number of hours to undertake a given activity. For purposes of this ICR, wage rates for state government personnel are estimated to be comparable to those for Federal government personnel. Labor rates for government workers reflect the median GS level salaries for managerial, technical and clerical positions. These rates include direct salary and fringe benefits (calculated at 60 percent of direct salary). The hourly rates, as of November 1997, are:

Management (GS 13, Step 1): $42.01/hour
Technical (GS 11, Step 1): $29.48/hour
Clerical: $17.92/hour

Based on these assumptions, the weighted hourly wage rate for state and Federal personnel is $29.57 [(0.1)*(42.01) +(0.8)*(29.48)+ (0.1)*(17.92)].

At a state-led site, states incur a burden for the following activities:

- Development of the RI/FS—5,200 hours/yr/site, $153,764.
- Development of the Proposed Plan—160 hours/yr/site, $4,731.
- Preparation of the ROD—360 hours/yr/site, $10,645.
- Development of the CIP—150 hours/yr/site, $4,435.
- Providing information to the public—153 hours/yr/site, $4,524.

At all sites, states incur a unit burden of three hours per site per year, or a cost of $88.71, for providing information on state ARARs.

Estimated Unit Burdens to Community Members

During their participation in the Superfund process, community members may perform any or all of the following activities (as with burden estimates for state activities, an hourly rate of $29.57 is used to estimate the value of community members' time):

- Participate in interviews—20 hours/yr/site, $591.
- Attend informal and formal meetings, open houses, and public information availability sessions—240 hours/yr/site, $7,096.
- Participate in community groups—160 hours/yr/site with such groups. $4,731.
- Respond to surveys—47 hours/yr/site, $1,389.
- Participate in focus groups—72 hours/yr/site with such groups, $2,129.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Please send comments to the address appearing in the **ADDRESSES** segment of this document.

Dated: November 20, 1997.

Elaine F. Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 97–31405 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives—Health-effects Research Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (EPA ICR Number 1696.02, OMB Control Number 2060–0297, expiration date: 1–31–98). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 30, 1998.

ADDRESSES: Fuels and Energy Division, Office of Mobile Sources, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, Washington, DC 20460. A paper or electronic copy of the ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, caldwell.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture or import gasoline or diesel fuel, or manufacture or import an additive for gasoline or diesel fuel.

Title: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers
OMB Control Number 2060–0297
EPA ICR Number 1696.02
Expiring: 1–31–98

Abstract: In accordance with the regulations at 40 CFR 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline and diesel fuel, and manufacturers (including importers) if additives for gasoline or diesel fuel, are required to have their products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR 79, subpart F, is the subject of this ICR. The information collection requirements for subparts A through D, and the supplemental notification requirement of Subpart F (indicating how the manufacturer will satisfy the research requirements) are covered by a separate ICR (EPA ICR Number 309.09, OMB Control Number 2060–1050). The health-effects information will be used to determine if there are any products whose evaporative or combustion emissions pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, all gasolines and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulphur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a "baseline" group. Oxygenates, such as ethanol and methyl tertiary butyl ether (MTBE), when used in gasoline at oxygen levels of at least 1.5 weight percent, define separate "nonbaseline" groups. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulphur fall into separate "atypical" groups. There are similar grouping requirements for diesel fuels and additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline and nonbaseline gasolines, diesel fuels, and additives. The research is structured into three tiers of requirements for each group. Tier 1 requires a health-effects literature search and emissions characterization. Voluminous Tier 1 data were submitted by API and others in 1997. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. The EPA has reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and the API consortium has been notified. However, the alternative requirements have not been finalized, and thus are not part of this ICR. A similar situation exists with the Ethyl Corporation and its manganese additive MMT. This ICR will be amended once those requirements are finalized. The API submitted Tier 2 data for diesel in 1997. Tier 3 provides for follow-up research, if necessary. No Tier 3 requirements have been established, and it is unlikely that any will be during the next three years. Thus, Tier 3 is not addressed in this ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are approximately 100 fuel manufacturers, 1300 additive manufacturers, 800 registered fuels, and 6000 registered additives. Due to the costs, it is likely that only limited additional Tier 1 research will be done. Future fuels and additives will almost exclusively be those that can group with existing Tier 1 data, and likely will come from manufacturers that have already paid for the Tier 1 research. It is estimated that new Tier 1 research will cost $500,000 per product, and that there will be only one Tier 1 submission over the next three years. Standard Tier 2 activity also will be very limited. The EPA has concluded that existing data cover Tier 2 for baseline diesel. Alternative Tier 2 requirements for baseline gasoline, the six major nonbaseline gasoline oxygenates, and the atypical gasoline additive MMT, are not covered by this ICR. It is estimated that new Tier 2 research will cost $500,000 per product, and that there will only be one Tier 2 submission over the next three years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 24, 1997.

Charles N. Freed,

Director, Fuels and Energy Division.

[FR Doc. 97–31407 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–3]

Sole Source Aquifer Designation of the Guemes Island Aquifer System; Skagit County, Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, and in response to a petition from the Guemes Island Property Owners Association, the U.S. Environmental Protection Agency (EPA) Region 10 Administrator has determined that the Guemes Island aquifer system, in Skagit County, Washington, is a sole or principal source of drinking water, and that if contaminated, would create a significant hazard to public health. As result of this action, all Federal financially-assisted projects proposed over the designated aquifer system will be subject to EPA review to ensure that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be effective for purposes of judicial review at 1:00 p.m. Eastern time on December 15, 1997.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Scott E. Downey, Environmental Protection Specialist, Ground Water Protection Unit, OW–137, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, 206–553–0682.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), Public Law 93–523, states:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a

commitment for Federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On August 1, 1994, EPA Region 10 received a petition from the President of the Guemes Island Properties Association requesting that EPA designate the Guemes Island aquifer system as a sole source aquifer (SSA). The petition expressed several reasons for interest in a designation, including concern that an increasing island population could adversely affect both ground water quality and quantity due to impacts from logging, road building, and onsite septic systems on aquifer recharge areas, and from the impact of ground water withdrawals from new wells; a desire to raise public awareness about the vulnerability of the aquifer system; a desire to raise awareness about existing and future problems of the water supply to Skagit County government; and the value of SSA status in future grant applications for further study of the island's ground water.

A detailed review of the petition by EPA was delayed for about three years due to work on an earlier designation request. In July of 1997, the Guemes Island review was completed and the area appeared to meet all criteria for SSA designation. The legal and technical basis for the proposal was outlined in an EPA publication titled: "Support Document for Sole Source Aquifer Designation of the Guemes Island Aquifer System," EPA 910/R–97–006.

II. Basis for Determination

Among the factors to be considered by EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water; and (2) whether contamination of the aquifer would create a significant hazard to public health.

EPA Region 10 has further interpreted the statutory language so that "sole or principal" means that the aquifer must supply at least 50 percent of the drinking water for the area. Furthermore, there should be no alternate drinking water source(s) which can physically, legally, and economically supply all those who depend upon the aquifer for drinking water, should it become contaminated. In addition, aquifer boundaries should be delineated based on sound hydrogeologic principles and the best available scientific information.

Although designation determinations are largely based on science-based criteria, the Regional Administrator may also consider the overall public interest and net environmental and public health benefits in making a sole source aquifer determination.

On the basis of information available to this Agency, the Region 10 Administrator has made the following findings:

(1) The aquifer system is the principal source of drinking water (close to 100%) for people on the island and there are no alternate sources which can physically, legally, and economically supply all those who depend upon the aquifer for drinking water, should it become contaminated. Potential alternate sources considered include surface water, water piped in from the mainland, bottled water, rainwater catchment, and reverse osmosis of seawater. None of these drinking water sources are considered by EPA to be feasible replacements for the entire aquifer system due to economic barriers or because these sources are not consumed or utilized for domestic purposes in significant quantities.

(2) Contamination of the aquifer system would create a significant hazard to public health. The aquifer system is vulnerable to contamination through its recharge zones from various sources and activities including onsite septic systems, stormwater runoff, animal wastes, and pumping wells which can cause intrusion of seawater into freshwater aquifers. Scientific information indicates there is a hydrogeologic interconnection between the aquifers underlying the island, and collectively, they may be considered as a single aquifer system. Because they are interconnected, there is the potential for cross- contamination from one aquifer to another.

Because the aquifer system is vulnerable to contamination and restoring ground water quality can be difficult or even impossible; and because the aquifer system is the principal source of drinking water for the area and there are no other sources which can economically supply all those who depend upon it for drinking water; EPA believes that contamination of the aquifer system would pose a significant hazard to public health.

These findings are based on information from various sources including the petition, EPA guidances, a U.S. Geological Survey report, public comments, the Skagit County Health Department, and the Washington State Department of Health.

III. Description of the Guemes Island Aquifer System

The following is a summary of information from the Support Document available upon request from EPA Region 10. Much of the hydrogeological information in the Support Document is taken from the petition and from "Hydrogeology and Quality of Ground Water on Guemes Island, Skagit County, Washington," U.S. Geological Survey (USGS) Water-Resources Investigations Report 94–4236, by Kahle and Olsen, 1995.

Guemes Island is a small island in Puget Sound, located north of the City of Anacortes in the western part of Skagit County, Washington. The total area of the island is approximately 8.2 square miles. The year-round population of the island is approximately 540, with a summer population which nears 2,200. The southeastern part of the island is hilly and composed of bedrock and fractured rock; the remainder is gently rolling and overlain by glacial drift.

There are eight distinct geologic units present on Guemes Island: consolidated bedrock, glacial deposits comprised of the Double Bluff Drift, Whidbey Formation, Vashon advance outwash, Vashon till, and Everson drift, and more recent units composed of peat and beach deposits. There is considerable variation in the thickness of individual units, and not all units are necessarily present at any one location. Glacial and recent deposits are at the land surface over most of the island, with bedrock exposed only on the southeastern end of the island. Highly permeable units within the glacial deposits also function as the main aquifers under the island. These units are hydraulically connected and thus perform as an aquifer system.

Ground water quality on Guemes Island is considered to be generally of good quality. The aquifer system underlying the island is considered to be vulnerable to contamination due to the highly heterogeneous nature of the sand and gravels making up the aquifers, and the inconsistent confining nature of the surficial confining unit and the Whidbey confining unit. Chlorides and nitrates are the contaminants of the most concern. High chloride concentrations in well water on the island are due to either the presence of relict seawater in aquifer materials, or seawater moving inward from Puget Sound (seawater intrusion). Excessive ground water withdrawal in a near-shore area can cause large local movement of the freshwater-seawater interface especially if the aquifer is thin. Nitrates in ground water can originate from septic tanks, animal wastes, and fertilizer.

The Guemes Island SSA boundaries are representative of an aquifer system that encompasses the entire Guemes Island area. The aquifer system is bounded on all sides by Puget Sound. The vertical extent of the aquifer system at depth includes all potable water-bearing geologic units underlying the island, including both the unconsolidated glacial deposits and the bedrock unit. Please see the Support Document for a more detailed hydrogeologic description.

IV. Project Reviews

The Safe Drinking Water Act authorizes EPA to review proposed Federal financially-assisted projects which have the potential to contaminate a designated SSA. Federal assistance may be denied if EPA determines that a project may contaminate the SSA through its recharge zone so as to create a significant hazard to public health. Outright denial of Federal funding is rare as most projects pose limited risk to ground water quality or can be feasibly modified to prevent ground water contamination. Proposed projects that are funded entirely by state, local, or private concerns are not subject to SSA review by EPA.

EPA does not review all possible Federal financially-assisted projects, but tries to focus on those projects which pose the greatest risk to public health. Memorandums of Understanding have been developed between EPA and various Federal funding agencies to help identify, coordinate, and evaluate projects. EPA relies to the maximum extent possible on existing local and state mechanisms to protect SSAs from contamination. Whenever feasible, EPA coordinates project reviews with local and state agencies that have a responsibility for ground water protection. Their comments are given full consideration in the Federal review process.

V. Public Participation and Response to Comments

The following is a summary of information from the "Response to Public Comments for the Guemes Island Sole Source Aquifer Proposal" available upon request from EPA Region 10.

EPA used various methods to notify and involve the public and others in the Guemes Island SSA designation process. The outreach effort included briefings to local and State government, distribution of EPA facts sheets, placing information in local libraries, a public advertisement in the local newspaper, and providing information for several newspaper and newsletter articles.

A public comment period was in effect from August 27 to October 11, 1997, and a public meeting was conducted on the island by EPA staff on September 19, 1997. The purpose of the meeting was to present information about the proposal, answer any questions, and take public comments directly from the island community or other interested parties. About 40 people attended the meeting. Written comments were accepted on the proposal until the end of the public comment period. All comments were reviewed and considered by EPA, but did not lead to any changes to EPA's determination that Guemes Island qualifies for SSA status.

During the comment period, EPA received fourteen written comments in the mail and ten oral comments at the public meeting. Of the written comments, ten persons expressed support for the designation, while four opposed it. Formal comments at the public meeting were evenly split with five persons supporting the designation and five opposed. Individuals submitted most of the comments, but a community organization and a State agency also commented.

The primary reason given for supporting the proposed action was a belief that the designation would increase protection of the island—s ground water. Many cited the educational benefit that SSA status would have on island residents and on Skagit County government on the source of the island's drinking water, its value and vulnerability, and the need for protection and conservation. Some people commented that protection of the island's ground water was important because there are no feasible alternate sources of drinking water. Some people felt that ground water would be better protected because of additional environmental review of proposed projects, or because it could hinder the siting of future landfills on the island. Some supported the designation because they felt that added protection of the island's drinking water could help to protect property values.

Several people opposed the designation because they did not want an increase of Federal involvement in local affairs. In response, the SSA program can increase Federal involvement, but only in a very limited way—if Federal assistance is proposed for a project, EPA can review the proposal and ask for changes if drinking water supplies are endangered. This review process is meant to support and enhance, rather than duplicate or supplant, local ground water protection measures. Many communities welcome the technical assistance and coordinating services they receive from EPA to protect their drinking water.

Some people commented that the designation would not contribute to further ground water protection. In response, the SSA program is not intended to be a comprehensive ground water protection program. EPA authority is limited to the review of Federal projects, which are likely to be minimal in number and scope for the island. However, there are many other benefits from an SSA designation, that can be locally-driven, such as greater awareness and stewardship of a community's drinking water supply. This can lead to an increase of both individual and local governmental actions to protect the resource.

Two persons commented that SSA designation was unnecessary because the island's ground water was not already contaminated. In response, the SSA program is a pollution prevention program. Experience has shown that it is much smarter, and considerably less expensive, to prevent ground water pollution in the first place, rather than trying to clean up a degraded water supply after a problem is discovered.

Two persons objected to the designation because they believed that the petitioner had requested a part of the island be excluded from the designated area. In response, the original petition correctly identified that at least one portion of the island (a bedrock tip area that discharges ground water to Puget Sound) could be viewed as a hydrogeologically separate part of the island. However, the petition specifically requested that the entire island be designated as a sole source aquifer. EPA concurred that it made better technical and programmatic sense to designate the entire island.

One person raised questions on the technical basis for the designation, claiming that the extent and accuracy of the data used in the petition and in EPA's Support Document was lacking and flawed. In response, EPA used the best available scientific information and best professional judgement and believes that the technical basis for the designation is based on sound hydrogeologic principles.

VI. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this final determination will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to Guemes Island.

The only affected entities will be those businesses, organizations, or

government jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer system so as to create a significant hazard to public health. EPA does not expect to review small isolated commitments of Federal financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated. Accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Major projects subject to this review will be proceeded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with SSA review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of a project to assure protection of the aquifer system.

Under Executive Order 12866, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increases in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets.

VII. Summary

This determination affects only the Guemes Island aquifer system located in Skagit County, Washington. As a result of this determination, all Federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

Dated: November 18, 1997.

Chuck Clarke,

Regional Administrator, U.S. Environmental Protection Agency, Region 10.

[FR Doc. 97–31273 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–5]

Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On September 11, 1995 (60 FR 47172), the EPA announced the establishment of the Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee under the Clean Air Act Advisory Committee (CAAAC). The CAAAC was established on November 8, 1990 (55 FR 46993) pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app I). The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a regional haze program.

DATES: Open Meeting: Notice is hereby given that the Subcommittee for Ozone, Particulate Matter and Regional Haze Implementation Programs will hold its next public meeting on Wednesday, December 17, 1997 (from 9:00 a.m. to 5:30 p.m.) and Thursday, December 18, 1997 (from 9:00 a.m. to 1:00 p.m.).

ADDRESSES: The public meeting will be held at the New Orleans Hilton Riverside, Poydras at the Mississippi River, New Orleans, Louisiana, telephone: (504) 561–0500.

FOR FURTHER INFORMATION CONTACT: For further information on the Subcommittee for Ozone, Particulate Matter and Regional Haze Implementation Programs, please contact Mr. William F. Hamilton, Designated Federal Officer, at 919–541–5498, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, NC 27711. When a draft agenda is developed, a copy can be downloaded from the: (1) Ozone/Particulate Matter/Regional Haze FACA Bulletin Board, which is located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN); (2) the OAQPS TTN Web Site (http://www.epa.gov/ttn); or (3) by contacting Ms. Denise M. Gerth at 919–541–5550.

Dated: November 21, 1997.

Henry Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–31406 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400121; FRL–5780–1]

Emergency Planning and Community Right-To-Know; Availability of Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has prepared several documents to assist industries to understand their compliance responsibilities in association with section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). One of the documents being made available today is a revision to the EPCRA section 313 Questions and Answers document, which provides guidance to commonly asked interpretive questions. In addition to this document, several industry-specific guidance documents have been developed for facilities in industry groups recently added to the list of industries covered under EPCRA section 313. These documents are intended to assist these recently added industries understand requirements under EPCRA section 313 and more easily determine if their facility is likely to have any reporting responsibilities. The industry-specific guidance documents for the recently added industry groups are intended for use for activities beginning on January 1, 1998, with reports due on or before July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Tim Crawford, 202-260-1715, e-mail: crawford.tim@epamail.epa.gov, for specific information regarding the industry-specific guidance documents or Sara Hisel McCoy, 202-260-7937, e-mail: hisel-mccoy.sara@epamail.epa.gov, for questions related to the Questions and Answers document. To receive a copy of these documents, please access EPA's Internet site at the following address: www.epa.gov/opptintr/tri, or you may contact the EPCRA Hotline and request a copy at Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll Free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll Free TDD: 1-800-535-7672.

SUPPLEMENTARY INFORMATION: A final rule adding certain industry sectors to the current list of facilities required to report under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as the Toxics Release Inventory (TRI) was published on May 1, 1997 (62 FR 23833) (FRL–5578–3). This action added certain facilities in the following seven industry groups: Metal Mining (SIC code 10); Coal Mining (SIC code 12); Electric Utilities (SIC codes 4911, 4931, 4939 each limited to facilities which combust coal and/or oil for purposes of generating power for distribution); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products-Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and Solvent Recovery Services (SIC code 7389). EPA has prepared guidance documents for each of these industry groups to assist them with determining their compliance requirements for activities beginning on January 1, 1998.

These documents were made available in draft form for public review and comment through a notice in the **Federal Register** (62 FR 37053) (FRL–5727–6). Several comments were received and many of the issues raised have been addressed in the documents being made available today. EPA also intends to issue an addendum to accompany these documents which will address many of the issues raised during the recent training sessions offered to the new industry groups along with some of the issues raised during the comment period which were not incorporated in the body of the documents themselves.

In addition, the 1997 version of the "EPCRA Section 313 Questions and Answers" document updates and significantly expands the 1990 version of the document. This updated document addresses various EPCRA section 313 interpretive guidance questions on various topics such as threshold determinations, waste management calculations and the Form A. In addition, the Questions and Answers document addresses questions on the revised interpretation of the term "otherwise use" and recent toxic chemical listing modifications. To make the document more user friendly, the Agency has added a glossary of relevant terms and an expanded key word index.

Dated: November 24, 1997.

Christine Augustyniak,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–31414 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, November 25, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Joseph H. Neely (Appointive) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: November 25, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–31499 Filed 11–26–97; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—December 4, 1997.

PLACE: 800 North Capitol Street, N.W.—Room 904, Washington, D.C.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 89–26—The Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd.—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31529 Filed 11–26–97; 11:27 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 3, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31530 Filed 11–26–97; 11:28 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Cooperative Agreement With the National Hispanic Religious Leaders Partnership for Community Health

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into an umbrella cooperative agreement with The National Hispanic Religious Leaders Partnership for Community Health (NHLRPCH). This cooperative agreement will establish the broad programmatic framework in which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist NHLRPCH to expand and enhance its activities relevant to health issues affecting the Hispanic community in areas such as access to health care, cultural competency, mental health, child abuse and youth health issues, substance abuse and prevention, and disease prevention/health promotion. It is anticipated that future activities will focus on programs and policies aimed at improving the overall health status of Hispanics in order to eliminate the health gaps which exist between Hispanics and others. OMH will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527.

Background

Assistance will be provided only to the National Hispanic Religious Leaders Partnership for Community Health. No other applications are solicited. NHLRPCH is the only organization capable of administering this cooperative agreement because it:

1. Established a regional and national infrastructure of Hispanic churches and para-church organizations dedicated to health care within the Hispanic community;

2. Operates established programs aimed at empowering communities and churches at the grassroots level and provides holistic ministries that serve the spiritual, social, economic and cultural needs of Hispanic communities;

3. Encompasses a network of comprehensive health services including: Mental health services, drug rehabilitation programs, youth projects, child abuse prevention, health education, women's centers, HIV/AIDS programs and community services centers;

4. Uses indigenous leadership within the Hispanic faith community;

5. Aims to secure improved access to health care through organizational, advocacy and networking activities.

This cooperative agreement will be awarded in FY 1998 for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Dr. Olivia Carter-Pokras, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 443–9923.

Dated: October 29, 1997.

Clay E. Simpson, Jr., MSPH, Ph.D,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 97–31322 Filed 11–28–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of Public Health and Science.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on January 29, 1998 from 8:00 AM to 4:30 PM and on January 30, 1998 from 8:00 AM to 3:30 PM. The meetings will take place in Room 800, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, DC 20201. The meeting will be entirely open to the public.

The Committee will consider the theoretical possibility that Creutzfeldt-Jakob disease (CJD) can be transmitted by blood transfusion. On January 29, 1998 the Committee will review information previously presented to it on April 25, 1997 and receive reports of scientific and clinical advances since then. The Committee will then receive a presentation of current and pending regulatory activities relevant to the theoretical possibility of CJD transmission, and hear invited comments from consumers and industry. At the conclusion of these presentations, the public will be invited to comment. On January 30, 1998 the Committee will consider what if any recommendations it would make to the Department on this matter.

Prospective speakers should notify the Executive Secretary of their desire to address the Committee and should plan for no more than 5 minutes of comment.

CONTACT: Stephen D. Nightingale, MD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–7560 e-mail SNIGHTIN@OSOPHS.HHS.GOV.

Dated: November 21, 1997.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 97–31321 Filed 11–28–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period beginning October 31, 1997 through October 31, 1999.

For further information, contact Henry Falk, M.D., Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, m/s F42, Building 101, Room 1122, Atlanta, Georgia 30341–3724.

Dated: November 24, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31351 Filed 11–28–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Epidemiology Program Office, Office of the Director, Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 8 a.m.–5:30 p.m., December 15, 1997; 8 a.m.–4 p.m., December 16, 1997.

Place: Westin Peachtree Plaza, 210 Peachtree Street, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters To Be Considered: Agenda items include (1) presentations and review of evidence tables and draft recommendations of interventions for the Vaccine Preventable Diseases and Motor Vehicle Occupant Injuries Chapters; (2) a discussion on the development of an explicit process to incorporate cost effectiveness into the development of the Guide; (3) a discussion on the role of the expert opinion in the development of the Guide; (4) organization of draft stand-alone topics and/or chapters; (5) a review of the plans to field test, and "roll out" sections of the Guide; and (6) a report from the Table of Contents Work Group regarding proposed introductory material "Front Matter" in the Guide.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Marguerite Pappaioanou, Chief, Community Preventive Service Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301. Persons wishing to reserve a space for this meeting should call 404/639–4301 by close of business on December 10, 1997.

Dated: November 24, 1997.

John C. Burckhardt,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31350 Filed 11–28–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0353]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Additives and Food Additive Petitions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1997 (62 FR 46500), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0016. The approval expires on November 30, 2000.

Dated: November 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31365 Filed 11–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–52]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–.2171; *Document No.:* HCFA–R–52 (OMB#0938–0386); *Use:* These conditions of coverage are needed to ensure proper distribution and effective utilization of ESRD treatment sources. In addition, the conditions maintain and improve the efficient delivery of care by physicians and dialysis facilities.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Federal Government; *Number of Respondents:* 2,976; *Total Annual Responses:* 2,976; *Total Annual Hours:* 100,937.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to

the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 19, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–31316 Filed 11–28–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–170 and R–108]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Lung Transplants; *Form No.:* HCFA–R–170 (OMB# 0938–0670); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of lung transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 1,910.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Liver Transplants; *Form No.:* HCFA–R–108 (OMB# 0938–0580); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of liver transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 12; *Total Annual Responses:* 12; *Total Annual Hours:* 1,880.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 20, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–31317 Filed 11–28–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: December 5, 1997 (Telephone Conference).

Time: 11:30 a.m. to adjournment.

Place of Meeting: Willco Building, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003.

Contact Person: Elsie Taylor, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–9787.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health.)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31416 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Therapeutic Strategies for Papillomavirus (Telephone Conference Call).

Date: December 17, 1997.

Time: 2:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Blvd., Solar Building, Room 1A1, Bethesda, MD 20892, (301) 402–0747.

Contact Person: Rosemary McCabe Hamill, Technical Evaluation Admin., 6003 Executive Boulevard, Solar Bldg., Room 3C03, Bethesda, MD 20892, (301) 496–0384.

Purpose/Agenda: To evaluate contract proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31417 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: December 15, 1997.

Time: 2:00 pm to adjournment.

Place: 6120 Executive Blvd., Rockville MD 20892, (telephone conference call).

Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 553b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31418 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 9, 1997.

Time: 5 p.m.

Place: Parkland, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: December 11, 1997.

Time: 10 a.m.

Place: Parkland, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93,282)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31419 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Genotypic and Phenotypic Heterogeneity in Dyslexia.

Date: December 15–16, 1997.

Time: December 15—6:00 p.m.–9:00 p.m.; December 16—8:00 a.m.–adjournment.

Place: Bowman Gray School of Medicine, Medical Center Boulevard, Winston-Salem, North Caroline 27157.

Contact Person: Scott F. Andres, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E03, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31420 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

Name of SEP: National Library of Medicine Special Emphasis Panel.

Date: December 9, 1997.

Place: Conference Call, 8600 Rockville Pike, Building 38A, Room 5N–519, Bethesda, MD 20894.

Contact: Sharee Pepper, Ph.D., Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5N–519, Bethesda, Maryland 20894, 301/496–4253.

Purpose/Agenda: To evaluate six research and two resource grant applications.

This notice is begin published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the

discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31421 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4307–N–01]

Draft Environmental Impact Statement; City of Porterville, CA; Section 108 Loan Guarantee Funded Infrastructure

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development gives notice that the City of Porterville, California, intends to prepare a Draft Environmental Impact Statement for a public infrastructure project to be located within the Urban Development Boundary of Porterville.

This Notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a "Cooperation Agency."

A Draft Environmental Impact Statement will be completed for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest on the Draft EIS and particularly on the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below.

DATES: Comments Due: December 16, 1997.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft Environmental Impact Statement to the following contact person: Ronald J. Mauck, City of Porterville, Department of Community Development and Services, 291 North Main Street, Porterville, CA 93257. Such comments should be received by the office within 15 days of the publication of this notice in the **Federal Register** and all comments so received will be considered prior to the preparation and distribution of the Draft Environmental Impact Statement.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data which the EIS should consider and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdictions by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency".

FOR FURTHER INFORMATION CONTACT: Ronald J. Mauck, City of Porterville, Department of Community Development and Services, 291 North Main Street, Porterville, CA 93257.

SUPPLEMENTARY INFORMATION: The proposed project involves installation of a variety of public infrastructure including, but not necessarily limited to, public streets (including curbs, gutters, sidewalks, and street lights), water and sewer trunk lines, highway on and off ramps, and storm drain lines. The primary objective of installing the infrastructure is to facilitate the development of new industrial and commercial employment centers to accomplish provision of new jobs, particularly low- and moderate-income jobs, within the community.

The City of Porterville anticipates acquiring Community Development Block Grant funds from the U.S. Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93–383) to repay a Section 108 Loan Guarantee from the U.S. Department of Housing and Urban Development in funding the proposed project.

The combined Environmental Impact Report/Environmental Impact Statement (EIR/EIS) will analyze potential environmental effects of five project alternatives. The alternatives described here are not intended to represent a final list of alternatives that may be considered, but are illustrative of varying options for investment of the Section 108 Loan Guarantee funds, enabling an evaluation of the full range of potential environmental impacts in the EIR/EIS. Development plans for the final selected project alternative will represent infrastructure facilities to be constructed and address related growth inducing effects which fall within the range of impacts identified within the EIR/EIS alternatives.

Alternatives

Alternative I would provide for extension of water and sewer trunk lines within Indiana Street and Teapot Dome Avenue connecting the existing City water and sewer infrastructure system with industrial designated lands along Teapot Dome Avenue and within the easterly sector of the Porterville Municipal Airport. Alternative I would also include development of a new highway interchange at the intersection of State Highway 65 and Teapot Dome Avenue. Approximately 200 acres of vacant and agricultural land currently designated by the City General Plan for future industrial development would ultimately be converted to urbanized use under Alternative I.

Alternative 2 would provide for extension of water trunk lines within South Newcomb Street from River Avenue south across the Tule River to a point just south of the intersection of South Newcomb Street and State Highway 190. Alternative 2 would also provide for the construction of South Newcomb Street to arterial width from Heritage Avenue south across the Tule River, inclusive of construction of a bridge across the river, to a point just south of the intersection of South Newcomb Street and State Highway 190. Street improvements would include curb, gutter, sidewalk, and streetlights. Approximately 200 acres of vacant land currently designated by the City General Plan for low-density residential uses would be ultimately converted to Industrial/Commercial Uses under Alternative 2.

Alternative 3 would provide for extension of sewer and trunk lines from Indiana Street north of Gibbons Avenue to the intersection of Indiana Street and Scranton Avenue then west along Scranton Avenue across State Highway 65 to the intersection of Scranton Avenue and South Newcomb Street. Construction of State Highway on and off ramps at the intersection of State Highway 65 and Scranton Avenue would also be provided by Alternative 3. Approximately 300 acres of vacant land designated for highway commercial uses and 200 acres of primarily vacant land designated for industrial uses would ultimately be converted to urbanized uses under Alternative 3.

Alternative 4 (the proposed Project Alternative) would provide for infrastructure improvements within two (2) distinctly separate locations. Alternative 4—Area No. 1 would provide for extension of water and sewer trunk lines in the vicinity of the Porterville Municipal Airport, improvement of Tea Pot Dome Avenue, and Newcomb and West Streets proximate to the Municipal Airport, improvements to the abandon runway located at the Municipal Airport, and installation of master planned storm drain improvements in the vicinity of the municipal airport. Alternative 4—Area No. 2 would provide for extension of water trunk lines in the vicinity of South Jaye Street, State Highway 65, and Gibbons Avenue. South Jaye Street would be extended as an arterial width Street from its southerly terminus to Gibbons Avenue. Alternative 4 would also accomplish installation of storm drain facilities in South Jay Street and Gibbons Avenue. Under Alternative 4, approximately 200 acres of primarily vacant land designated for industrial uses would ultimately be converted to urbanized use.

Alternative 5 is the No Project alternative, consideration of which is required by the California Environmental Quality Act (CEQA) and by the National Environmental Policy Act (NEPA). Under this alternative, the proposed infrastructure project would not occur precluding industrial/commercial development of any of the areas discussed in Alternatives 1–4.

Environmental effects of the proposed project: Land use and planning; population and housing; water impacts; air quality impacts; transportation and circulation impacts; biological resources impacts; energy and mineral resource impacts; hazards; noise impacts; demands on public services and utilities; aesthetic impacts; recreation impacts; and cumulative effects.

Need for the EIS

It has been determined that the project may constitute an action significantly effecting the quality of the human environment and an Environmental Impact Statement will be prepared by the City of Porterville in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environment issues;
2. Identify data which the EIS should address; and
3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

The Draft Environmental Impact Statement will be published and distributed about January 15, 1998, and a copy will be on file at the City of Porterville Department of Community Development and Services at 291 North Main Street, Porterville, CA 93257 and available for public inspection, or copies may be attained at the same address, upon request.

Scoping

This notice is part of the process used for scoping the EIS. Responses will help determine significant environmental issues, identify data which the EIS should address, and help identify cooperating agencies.

The Draft Environmental Impact Statement will be published upon completion and will be on file, and available for public inspection at the address listed below. Copies may also be obtained upon request, at the same address.

This Notice shall be effective for one year. If one year after the publication of the Notice in the **Federal Register** a Draft EIS has not been filed on the project, then the Notice for that project shall be cancelled. If a draft EIS is expected more than one year after the publication of this Notice, a new and updated Notice must be published.

Dated: November 20, 1997.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 97–31339 Filed 11–28–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Fall 1997 meeting of the Great Lakes Panel on Aquatic Nuisance Species, a committee of the Aquatic Nuisance Species Task Force, and its three subcommittees (Policy and Legislation, Information/Education, Research Coordination). Work plan elements, identification of priorities, and plans for fiscal year 1998 activities will be discussed during subcommittee meetings. The Panel meeting will highlight discussion of State aquatic nuisance species legislation related to the Panel's model State legislation project. Also featured at the meeting will be subcommittee reports, updates on aquatic nuisance species legislation and appropriations, the Great Lakes ballast water demonstration project, the Chicago Waterways nonindigenous species dispersal barrier project, model guidelines for ANS prevention and control, and reports from Panel members. The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements for consideration.

DATES: The three subcommittees of the Great Lakes Panel will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, December 17, 1997, and the full Panel will meet from 8:30 a.m. to 4:00 p.m. on Thursday, December 18, 1997.

ADDRESSES: The meeting will be held at the Holiday Inn—North Campus, 3600 Plymouth Road, Ann Arbor, Michigan. The telephone number of the Holiday Inn is 313–769–9800.

FOR FURTHER INFORMATION CONTACT: Michael J. Donahue or Matthew Doss, Great Lakes Commission, at 313–665–9135, or Robert A. Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces the Fall 1997 meeting of the Great Lakes Panel on Aquatic Nuisance Species and its subcommittees. The Panel is a committee of the Aquatic Nuisance Species Task Force established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Minutes of the meeting will be maintained by the Great Lakes Commission, 400 Fourth Street, Ann Arbor, Michigan 48103–4816, and the Executive Secretary, Aquatic Nuisance Species Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622, and will be available for inspection during regular business hours within 30 days following the meeting.

Dated: November 16, 1997.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 97–31324 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

San Francisco Bay/Inland Delta Biological Case Study Public Workshop

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the San Francisco Bay/Inland Delta Biological Case Study Public Workshop. The U.S. Fish and Wildlife Service is funding three biological case studies in fulfillment of the Biological Study requirements of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The studies provide the basis for reporting to Congress on whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the United States other than the Great Lakes. The Service strategy for fulfilling this requirement includes a public workshop after each Biological Case Study is completed to ensure broad and comprehensive review and input, especially with regard to impacts of aquatic nuisance species. Specifically, this workshop will include an update on San Francisco Bay and Inland Delta aquatic nuisance species invasions and associated impacts, provide a forum for stakeholders and interested parties to evaluate, comment on, and add to the San Francisco Bay/Inland Delta Biological Case Study, and provide an opportunity for participant to provide additional information and make associated recommendations. The workshop is open to the public. Interested persons may make oral statements at the meeting or submit written statements for consideration.

DATES: The Workshop will be held from 9:00 a.m. to 4:00 p.m. on December 10, 1997.

ADDRESSES: The Workshop will be held at the U.S. Army Corps of Engineers' Bay Model Visitor Center, 2100 Bridgeway, Sausalito, California.

FOR FURTHER INFORMATION CONTACT: Craig A. Czarnecki, U.S. Fish and Wildlife Service, by telephone at 703–358–2464 or E-mail at craig__czarnecki@fws.gov or Robert Peoples, U.S. Fish and Wildlife Service, by telephone at 703–358–2025 or E-mail at robert__peoples@fws.gov.

SUPPLEMENTARY INFORMATION: This notice announces the San Francisco Bay/Inland Delta Biological Case Study Public Workshop, being conducted in fulfillment of section 1102(a)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(a)(2)). Proceedings of the workshop will be prepared and maintained by the U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622.

Dated: November 17, 1997.

Rowan W. Gould,

Acting Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 97–31323 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–931–1430–01; Nev–064968]

Public Land Order No. 7299; Revocation of Public Land Order No. 3645; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes, in its entirety, a public land order that withdrew 3,114.88 acres of public land for the protection of deer winter range. The withdrawn land was subsequently included in legislation that transferred public land in Nevada to the National Forest System. The withdrawal is no longer needed for its intended purpose. This action will open the land to such forms of disposition as may by law be made of National Forest System land and to mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3645, which withdrew land for Jacks Valley Deer Winter Range, is hereby revoked in its entirety:

Mount Diablo Meridian

T. 14 N., R. 19 E.,
Sec. 1, W½ lot 1 of the NE¼, lot 1 of the NW¼, E½ lot 2 of the NW¼ (except lot 3), SW¼, and W½SE¼;
Sec. 2, SE¼NE¼, E½SW¼, and SE¼;
Sec. 11, NE¼, N½NW¼, SW¼NW¼, and SE¼;
Sec. 12, W½NE¼, W½, and SE¼;
Sec. 13;
Sec. 14, N½NE¼, SE¼NE¼, and SE¼;
Sec. 23, NE¼;
Sec. 24, N½ and NW¼SW¼.

The area described contains 3,114.88 acres in Douglas County.

2. At 9 a.m. on December 1, 1997, the land described above shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. S. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 24, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–31355 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–4212–11; COC39391]

Realty Action: Airport Conveyance of Public Land in Rio Blanco County, Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Rio Blanco County, Colorado, have been examined and found suitable for classification for conveyance to the Rio Blanco Board of County Commissioners under the authority of Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

Sixth Principal Meridian, Colorado

T. 1 N., R. 101 W.,
Section 6, lot 35.
Encompassing 2.94 acres.

The land in the proposed patent to the Rio Blanco Board of County Commissioners is not (1) within any National Park, National Monument, National Recreation Area, or similar area under the administration of the National Park Service; (2) within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; or (3) within any National Forest or Indian Reservation.

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the airport.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance of the land will be subject to valid existing rights, including right-of-way COC23972B. This right-of-way is twenty-five feet in width and consists of a buried pipeline.

4. At the discretion of the Secretary of Transportation, the land shall revert to the United States in the vent that the land is not developed for airport purposes or used in a manner consistent with the terms of the patent. If only a portion of the land conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that specific part shall, at the discretion of the Secretary, revert to the United States.

DATES: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, White River Resource Area, 73544 Highway 64, Meeker, Colorado.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation except mineral leasing laws, and rights-of-way. An airport lease was issued June 8, 1984, and remains in effect until title conveyance.

For a period of 45 days from the date of publication in the **Federal Register**, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an airport. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an airport. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Naomi Hatch, Realty Specialist, or Vern Rholl, Realty Specialist, White River Resource Area, 73544 Highway 64, Meeker, Colorado 81641, (970) 878–3601.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 97–31348 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing ferry services for the public at Fire Island National Seashore for a period of ten (10) years from date of contract execution.

EFFECTIVE DATE: January 30, 1998.

ADDRESS: Interested parties should contact National Park Service, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772 to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has waived its right of preference in renewal, and the contract will be awarded to the party that has submitted the best responsive offer. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Senior Concessions Program Manager, Boston Support Office, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 14, 1997.

Chrysandra L. Walter

Acting Regional Director, Northeast Region

[FR Doc. 97–31368 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Reclamation Information Collection Activities: Request for Comments

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation), as part of its continuing effort to reduce paperwork and respondent burdens, invites other Federal agencies, state, local or tribal governments which manage recreation sites at Reclamation projects; concessionaires, subconcessionaires and not-for-profit organizations who operate concessions on Reclamation lands; and, the public, to comment on proposed and/or continuing information collections as required under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Currently, comments are being solicited about Reclamation's intent to obtain information proposed to assess the relevance of recreation and concession activities at Reclamation projects.

DATES: Written comments must be submitted to the office listed in the addresses section on or before January 30, 1998.

ADDRESSES: Direct comments pertaining to the intent to collect recreation and concession information to: Bureau of Reclamation, Land, Recreation and Cultural Resources Office, D–5300, Attention: Mr. Kent Higgins, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: For additional information or a copy of the proposed Recreation Data Use Report, contact Mr. Higgins at the address provided or telephoning: (303) 236–3289, extension 246.

SUPPLEMENTARY INFORMATION: Reclamation is prepared to collect Reclamation-wide recreation and concession information in support of existing public laws including the Federal Water Project Recreation Act (Pub. L. 89–72) and the Land and Water Conservation Fund Act (Pub. L. 88–578) and to fulfill reports to the President and the Congress. This collection of

information will allow Reclamation to meet the requirements of the Government Performance and Results Act (GPRA), financial reporting requirements, and in pursuit of Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Collection of Reclamation-wide recreation and concessionaire information supports specific information required by the Land and Water Conservation Fund Act and the bureau's ability to accomplish 3 mission objectives, and 4 of 16 strategies identified in the multi year GPRA-based strategic plan.

The proposed three part Recreation Use Data Report is a reinstatement, with a significant reduction of annually required or updated information collection as compared to Reclamation's former annual Recreation and Wildlife Summary—OMB Clearance 1006–0002, which expired December 31, 1992. Collected information will be used by Reclamation and its region and area offices to fulfill annual assessments, requirements, and budget projects. Collected information will permit relevant program assessments of Reclamation managed or its recreation managing partners and/or concessionaires for the purpose of protecting the public interest and the resources managed by Reclamation. In addition, the collection information will fulfill congressional and financial reporting requirements.

Collection of Information

Title: Recreation Use Data Report
Part I. Recreation Facilities Report
Part II. Recreation Use Report
Part III. Concession Data Report

Type of Review: Recreation Use Data Report—Reinstated, with change.

Abstract: Collect Reclamation-wide recreation and concession information in support of existing public laws, financial reporting requirements, and Reclamation's mission. The information will further Reclamation's ability to evaluate program and management effectiveness of existing recreation and concessionaire resources and facilities and validate effective public use of managed recreation resources, located on Reclamation project lands in the 17 Western States. In addition and through use of the collection information, Reclamation will develop a set of recreation and concession management practices for comparison purposes against other known best business practices. Information collection primarily affects other Federal agencies, State, local or tribal governments or agencies who manage Reclamation's recreation resources and facilities and for-profit concessionaires, sub-concessionaires and nonprofit organizations located on Reclamation lands with associated recreation services. A portion of the information collected may include individual or group users of these managed recreation resources or concessionaires.

Frequency: Annual reporting.

Average Time per Response: 2 hours.

Part I. Recreation Facilities Report (40-minutes, by Reclamation and/or Managing Partners).

Part II. Recreation Use Report (40-minutes, by Reclamation and/or Managing Partners).

Part III. Concessions Data Report (40-minutes, by Reclamation and/or Managing Partners with concessionaire's information).

Estimated Number of Respondents: 535 (225 concessionaires, 310 Federal and nonfederal managing partners).

Estimated Burden Hours: 1070 hours.

Written comments are solicited to (1) evaluate whether the proposed information collection is essentially for the assessment of Reclamation's performance, including whether the information will have practical utility; (2) evaluate the accuracy of Reclamation's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and, (4) minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology.

Dated: November 21, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 97–31352 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Final Environmental Impact Statement and Planning Report, American River Water Resources Investigation, California

AGENCY: Bureau of Reclamation, U.S. Department of the Interior.

ACTION: Notice of availability of final environmental impact statement (FEIS) [FES 97 36].

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) as lead agency has prepared a FEIS and Planning Report for the American River Water Resources Investigation (ARWRI), California.

The purpose of the FEIS is to address the environmental impacts of meeting the future water needs for the local area through the year 2030. The FEIS describes the environmental effects of three alternatives, including no action. The proposed alternatives provide a means of action through which the water needs of the five-county area (El Dorado, Placer, Sacramento, San Joaquin, and Sutter) are met. The proposed alternatives exercise the provisions of several Federal laws as applicable to Reclamation. The FEIS also incorporates the Draft Environmental Impact Statement (DEIS) and includes all comments received on the DEIS and responses to those comments.

DATES: No decision will be made on the proposed action until 30 days after release of the FEIS. After the 30-day waiting period, Reclamation will complete a Record of Decision which states the action that will be implemented and which discusses all factors leading to the decision.

ADDRESSES: Copies of the FEIS may be requested from Reclamation at the following address: Central California Area Office, Attention: CC–400, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630–1799; telephone: (916) 988–1707. Copies of the FEIS are also available for inspection at the above address and at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, 2800 Cottage Way, Room E–1704, Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Bureau of Reclamation, Central California Area Office, Attention: CC–102, 7794 Folsom Dam Road, Folsom CA 95630; telephone: (916) 988–1707.
- Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights CA 95610–7632; telephone: (916) 967–7892.
- Placer County Water Agency, 144 Ferguson Road, Auburn CA 95603; telephone: (916) 823–4850.
- El Dorado County Water Agency, 330 Fair Lane, Building A, Placerville CA 95667; telephone: (916) 621–5392.
- Georgetown Divide Public Utility District, 6425 Main, Georgetown CA 95634; telephone: (916) 333–4356.
- El Dorado Irrigation District, 2890 Mosquito Road, Placerville CA 95667; telephone: (916) 622–4513.
- El Dorado County Planning Office, 2850 Fairlane Court, Placerville CA 95667; telephone: (916) 621–5355.
- California Department of Water Resources, Central District, 3251 S Street, Sacramento CA 94816–7017; telephone: (916) 445–5631.
- Sacramento City-County Office of Metropolitan Water Planning, County Office, 5770 Freeport Boulevard, Suite 200, Sacramento CA 95822; telephone: (916) 433–6276.
- San Joaquin County Department of Public Works, Flood Control Center, 1810 E. Hazelton Avenue, Stockton CA 95205; telephone: (209) 468–3000.

Libraries: Copies will also be available for inspections at the following public libraries:

- El Dorado County Library, Main Branch, 345 Fair Lane, Placerville CA 95667.
- Auburn-Placer County Library, 350 Nevada Street, Auburn CA 95603.
- Roseville Public Library, Main Library, 225 Taylor Street, Roseville CA 95678.
- Folsom Library, 300 Persifer Street, Folsom CA 95630.
- Sacramento Public Library, Central Branch, 828 I Street, Sacramento CA 95814.
- Sacramento County Library, 380 Civic Drive, Galt CA 95632.
- Stockton Public Library, 605 N. El Dorado Street, Stockton CA 95202.
- Lodi Public Library, 201 W. Locust Street, Lodi CA 95240.
- Manteca Public Library, 320 W. Center Street, Manteca CA 95336.
- Marysville-Yuba County Library, 303 Second, Marysville CA 95901.

FOR FURTHER INFORMATION CONTACT: Mr. Al Candlish, MP–120, U.S. Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento CA 95825–1898, telephone: (916) 978–5197.

SUPPLEMENTARY INFORMATION: Reclamation and the Sacramento Metropolitan Water Authority prepared a joint draft environmental impact report/environmental impact statement (DEIR/DEIS) for the ARWRI in February 1996. The SMWA has decided not to release a Final Environmental Impact Report at this time pursuant to the California Environmental Quality Act.

Dated: November 18, 1997.

Roger K. Patterson,

Regional Director.

[FR Doc. 97–31454 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Thursday, January 15, 1998, 1:00 to 4:00 p.m.

ADDRESSES: The meeting will be at the Doubletree Hotel, 1830 Hilltop Drive, Redding, CA 96001. Telephone: 530/221–8700.

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental and Natural Resource Division, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, California, 96019. Telephone: 916/275–1554.

SUPPLEMENTARY INFORMATION: Task Force members will be briefed on the Trinity River Mainstem Fishery Restoration Environmental Impact Statement and the U.S. Fish and Wildlife Service Trinity River Flow Study Report. The Task Force members will review and comment on draft language to reauthorize the program. The Task Force will also approve a priority list of additional projects for Fiscal Year 1998.

The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force in person or by mail before, during, or after the meeting. To the extent that time permits, the Task Force Chairman may allow public presentation of oral statements at the meeting.

Dated: November 18, 1997.

Roger K. Patterson,

Regional Director.

[FR Doc. 97–31453 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–94–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Voluntary Foreign Aid Advisory Committee; Notice of a Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: December 18, 1997 (8:30 a.m. to 1:00 p.m.).

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

This will be the first public meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA). Different panels of experts will help the committee determine their workplan and to select focus issues for this new term.

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY DECEMBER 15, 1997, THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must FAX their name, organization, birthdate and social security number for security purposes to Lisa J. Douglas (703) 741–0567 or Susan Saragi (202) 216–3039.

Dated: November 18, 1997.

Elise Storck,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 97–31346 Filed 11–28–97; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

SES Performance Review Board

AGENCY: Agency for International Development.

ACTION: Notice of Membership Roster for the Agency's Senior Executive Service (SES) Performance Review Board (PRB).

SUMMARY: This notice is to add the approved candidate listed below to the standing roster for service on the Agency's SES Performance Review Board. The member is as follows: John Wilkinson.

FOR FURTHER INFORMATION CONTACT: Melissa McCoy (202) 712–5872 or Teresa Spikes (202) 712–5638.

Dated: November 21, 1997.

Sherrie Hailsbeks,

Executive Secretary, Performance Review Board.

[FR Doc. 97–31345 Filed 11–28–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of Existing Collection; Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on September 2, 1997 at 62 FR 46376, allowing for an emergency review with 60-day public comment period. No comments were received by the INS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 31, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–876. Files and Forms Management—SAVE Program, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit, and Federal Government. The information gathered from employers using this form will assist the INS in allocating resources and priorities in conducting the three pilot programs mandated by Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 200,000 responses at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 300,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 415 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31343 Filed 11–28–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of Existing Collection: Pilot Program Limiting Issuance of Driver's License and Identification Cards to Illegal Aliens.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 2, 1997 at 62 FR 46377, allowing for an emergency review with 60-day public comment period. No comments were received by the INS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 31, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Pilot Program Limiting Issuance of Driver's License and Identification Cards to Illegal Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: States, Local or Tribal Governments. The information collection is contained in a public notice prescribing guidelines as required by Section 502 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, under which states may conduct pilot programs limiting issuance of driver's licenses and identification cards to illegal aliens, and inviting states to contact the INS to express interest in participating in such a pilot program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 54 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 108 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31344 Filed 11–28–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–90]

Communication Certification Laboratory, Application for Renewal of Recognition; (Authority: 29 CFR 1910.7)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces the application of Communication Certification Laboratory for renewal of its recognition as a NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 30, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Communication Certification Laboratory (CCL) has made application, pursuant to 29 CFR 1910.7, for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL). CCL previously received its recognition as a NRTL on June 21, 1991 (see 56 FR 28579), for a period of five years ending June 21, 1996. Appendix A to 29 CFR 1910.7 stipulates that the initial period of recognition of a NRTL is five years and that a NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. CCL applied for a renewal of its recognition on June 21, 1995 (see Exhibit 7), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

The address of the laboratory covered by this application is: Communication Certification Laboratory, 1940 West Alexander Street, Salt Lake City, Utah 84119.

CCL desires renewal of its recognition for the following test standards, for which CCL was previously recognized:

ANSI/UL 478 Information-Processing and Business Equipment
ANSI/UL 1012 Power Supplies
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment

The NRTL staff reviewed CCL's request, and performed an on-site review ("assessment") of the laboratory, and determined that CCL can be granted a renewal of its recognition as a NRTL.

Preliminary Finding

Based upon the recommendations of the staff, including the recommendation and on-site review ("assessment") report from the Lead Assessor dated August 28, 1997 (see Exhibit 8), the Assistant Secretary has made a preliminary finding that the CCL laboratory mentioned above, for which the renewal of recognition was requested, can meet the requirements as prescribed by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant having met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 30, 1998 and must be addressed to the Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N 3653, Washington, DC 20210. Copies of the CCL application letter, the laboratory survey reports, and all submitted comments, as received (Docket No. NRTL–1–90), are available for inspection and duplication at the

Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (CCL) satisfies the requirements for renewal of its recognition as a NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 18th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–31411 Filed 12–1–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

Intertek Testing Services NA, Inc., Expansion of Recognition; (Authority: 29 CFR 1910.7)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the application of Intertek Testing Services NA, Inc. for expansion of its recognition as a NRTL under 29 CFR 1910.7. In addition, this notice reflects the name change to Intertek Testing Services NA, Inc., resulting from a change of ownership of Inchcape Testing Services NA, Inc., the predecessor to Intertek.

EFFECTIVE DATE: This recognition will become effective on December 1, 1997 and will be valid until December 2, 2002, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that the recognition of Intertek Testing Services NA, Inc. (ITS) as a Nationally Recognized Testing Laboratory has been expanded to include the additional laboratory sites, and the site specific standards listed below. ITS applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL) for additional laboratory sites, pursuant to 29 CFR 1910.7, which was published in the **Federal Register** (62 FR 42829, 8/8/97). The notice included a preliminary finding that ITS could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 7, 1997. No comments were received concerning this request for recognition.

The addresses of the concerned laboratories are:

Intertek Testing Services NA Inc., 530 Garcia Avenue, Pittsburg, California 94565

Intertek Testing Services NA Ltd., 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada

Intertek Testing Services Hong Kong Ltd., 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong

Intertek Testing Services Taiwan Ltd., 14/F Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei, Taiwan

Background

Expansion of Recognition

On August 24, 1994, Intertek Testing Services NA Inc., as "Inchcape", made individual applications for expansion of its recognition as a Nationally Recognized Testing Laboratory. The applications were for the recognition of additional sites, and included facilities located in Taipei, Taiwan (see Exhibit 25A), and Kowloon, Hong Kong (see Exhibit 25B). On-site investigations of these facilities had been carried out previously as part of a large-scale overseas investigation of sites requested for recognition by several other NRTLs. On-site Review reports, dated December 15, 1994, of the investigation of the Taipei, Taiwan site [see Exhibit 25E(4)], and of the Kowloon, Hong Kong site, [see Exhibit 25E(3)], both carried out in September 1993, were prepared. On April 3, 1996, ITS applied for an expansion of its recognition for yet other sites including two former Warnock Hersey sites, now owned by ITS, in Pittsburg, California and Coquitlam, British Columbia (see Exhibit 25D). The test standards requested for these two sites were: ASTM E152—Fire Test Method for Door Assemblies, and ASTM E163—Standard Method of Fire Tests of Window Assemblies. In addition, ITS informed OSHA of the official transfer of ownership of the Warnock Hersey, Inc., "WHI" registered certification mark to ITS, which will be used by ITS to identify products certified at the two facilities and under the two test standards noted above (see Exhibit 25C).

Change of Name

OSHA was notified by letter, dated December 6, 1996, of a change in ownership of Inchcape Testing Services NA, Inc. (see Exhibit 25F). At the time, no change of corporate name was requested, although OSHA was informed that such a request would be made at a later date. Such a request for name change was made by letter dated April 14, 1997 (see Exhibit 25G). The requested name change was from Inchcape Testing Services NA, Inc. to Intertek Testing Services NA Inc. The abbreviation of the company name as "ITS" would continue to be used.

Final Decision and Order

Based upon a preponderance of the evidence, and the OSHA staff findings and recommendations, including the original and the February 26, 1997 On-Site Review Reports of the four facilities being recognized, OSHA finds that ITS has met the requirements of 29 CFR 1910.7 for expansion of its present recognition, and ITS's recognition is hereby expanded to include the additional sites, all subject to the conditions listed below. The recognition is limited to equipment or materials which, under 29 CFR part 1910, require or permit testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. The recognitions of the Coquitlam, B. C. and the Pittsburg, CA sites are further limited to the use of the following 2 test standards for the testing and certification of equipment or materials included within the scope of these standards.

Recognition of Test Standards for the Coquitlam and Pittsburg Sites

ITS has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ASTM E152—Standard Methods of Fire Tests of Door Assemblies

ASTM E163—Standard Method of Fire Tests of Window Assemblies

Conditions

Intertek Testing Services NA Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to ITS's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITS has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITS shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITS shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ITS will continue to meet the requirements for recognition in all areas where it has been recognized; and

ITS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 18th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–31412 Filed 11–28–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–96–1]

Permit-Required Confined Spaces (29 CFR 1910.146); Announcement of OMB Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; Announcement of the OMB Approval of Information Collection Requirements

SUMMARY: The Occupational Safety and Health Administration is announcing that the collections of information in the Permit-Required Confined Spaces standard, 29 CFR 1910.146, have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

DATES: Effective December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Bielaski, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8076, ext. 142.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 1996 (61 FR 2267), the Agency announced its intent to request renewal of its current OMB approval for 29 CFR 1910.146, Permit-Required Confined Spaces. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218–0203.

The approval expires on June 30, 1999. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Signed at Washington, D.C., this 18th day of November 1997.

John F. Martonik,

Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97–31413 Filed 11–28–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater Section B (Planning & Stabilization Category) to the National Council on the Arts will be held on December 12, 1997. The panel will meet from 4:00 p.m. to 6:00 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

The meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31446 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater Section A (Planning & Stabilization Category) to the National Council on the Arts will be held on December 10–12, 1997. The panel will meet from 9:30 a.m. to 5:30 p.m. on December 10, from 9:30 a.m. to 6:30 p.m. on December 11, and from 9:30 a.m. to 4:00 p.m. on December 12, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 9:30 a.m. to 11:30 a.m. on December 12, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:30 a.m. to 5:30 p.m. on December 10, from 9:30 a.m. to 6:30 p.m. on December 11, and from 11:30 a.m. to 4:00 p.m. on December 12, are for the purpose of Panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31447 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Museum Section (Creation & Presentation Category) to the National Council on the Arts will be held on December 16–19, 1997. The panel will meet from 9:00 a.m. to 6:30 p.m. on December 16–18, and from 9:00 a.m. to 3:00 p.m. on December 19, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on December 19, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on December 16–18 and from 11:00 a.m. to 3:00 p.m. on December 19, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31450 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, Partnership Agreements Section, to the National Council on the Arts will be held on January 24–14, 1998. The panel will meet from 9:00 a.m. to 6:30 p.m. on January 12, from 9:00 a.m. to 5:30 p.m. on January 13, and from 9:00 a.m. to 4:30 p.m. on January 14 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on January 14, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on January 12, from 9:00 a.m. to 5:30 p.m. on January 13, and from 9:00 a.m. to 2:30 p.m. on January 14, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31448 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, National Services Section, to the National Council on the Arts will be held on January 14, 1998. The panel will meet from 12:00 p.m. to 1:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31449 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–327]

Sequoyah Nuclear Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–77 issued to the Tennessee Valley Authority (TVA, the licansee) for operation of the Sequoyah Nuclear Plant, Unit 1, located in Soddy Daisy, Tennessee.

The proposed amendment would add a one-time allowance through operating Cycle 9 to Technical Specification (TS) Surveillance Requirement (SR) 4.4.3.2.1.b to perform stroke testing of the power-operated relief valves (PORVs) in Mode 5 rather than Mode 4, as currently required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of SQN Unit 1 in accordance with the proposed change to the TSs . . . does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The possibility of occurrence or the consequences for an accident or malfunction of equipment is not increased as the PORVs have been tested under representative conditions and are fully functional. As such, the PORVs are expected to open and close on demand. In addition, the block valves are still available to mitigate flow from the PORVs.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or the possibility for an accident or malfunction of a different type does not exist as the PORVs have been tested under representative conditions and are fully functional. No new failure modes have been introduced.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety has not been reduced. The PORVs are fully functional. However, literal compliance with the TS requires the block valves to be closed. The margin of safety will be increased if continued operation is allowed with the block valves open.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME & DATE: 2:00 p.m., Thursday, December 11, 1997.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes: September 15, 1997 Regular Meeting
III. Election of Vice Chairman
IV. Committee Appointments:
  a. Audit Committee
  b. Budget Committee
  c. Personnel Committee
V. Treasurer's Report
VI. Executive Director's Quarterly Management Report
VII. Personnel Committee Report: November 25, 1997, Closed Meeting
VIII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 97–31596 Filed 11–26–97; 2:42 pm]

BILLING CODE 7570–01–M

take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 31, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudication Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 11H 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 21, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 24th day of November 1997.

Ronald W. Hernan,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31423 Filed 11–28–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Regulatory Commission and Department of Energy; Public Meeting on NRC Regulatory Oversight of DOE Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) will hold a public meeting on Thursday, December 11, 1997, in Oakland, California, to address issues related to the recently established pilot program for NRC's external regulation of certain DOE facilities.

SUPPLEMENTARY INFORMATION: The Department of Energy and the Nuclear Regulatory Commission will hold a joint public meeting to provide information on this pilot project on Thursday, December 11, 1997, at 7:00 P.M. in Room N1–7 in the North Tower of the Oakland Federal Building, 1301 Clay Street, Oakland, California.

In June 1997, DOE and NRC agreed to pursue NRC external regulation of certain DOE facilities on a pilot program basis. A pilot program of NRC simulated regulation has been established to collect information on the desirability of NRC oversight and on whether to seek legislation to authorize such oversight. The DOE and the NRC expect to evaluate six to ten DOE facilities over the next two years under the pilot program. The Ernest O. Lawrence Berkeley National Laboratory (LBNL) has been chosen as one of the pilot sites.

The major areas of discussion at this meeting will be:

- The overall pilot program and background information.
- The LBNL Work Plan.
- Major issues affecting NRC oversight (generic and site-specific).

One of the main purposes of the meeting is to describe the process through which stakeholders may participate in the pilot program. Stakeholders will be invited to ask questions and submit comments relevant to the objectives of the pilot program and the process by which those objectives are proposed to be addressed at the Berkeley Laboratory. Issues raised by stakeholders will be addressed in the final report following the pilot evaluation at Berkeley. If you plan to attend this meeting, or if you cannot attend but would like to bring an issue to our attention, please contact Ms. Carol Powell at 510/637–1814.

Since 1994, the Department of Energy (DOE) has been considering whether there are advantages to be gained from external regulation of existing DOE facilities. Two advisory groups recommended that the Nuclear Regulatory Commission (NRC) be considered as the external regulator of nuclear and radiological safety at DOE sites. External regulation by the NRC may improve the efficiency and effectiveness of DOE's radiological safety programs. DOE facilities would be regulated consistent with other facilities of the same type engaged in similar activities, and the NRC could maintain complete independence because it has no responsibility for operating the facilities.

A number of background documents pertaining to the issue of NRC oversight of DOE facilities are available or will be made available prior to the meeting. These include:

- A Memorandum of Understanding between NRC and DOE, dated November 21, 1997.
- An NRC Commission Paper entitled, "Status Report of the Nuclear Regulatory Commission Task Force On Oversight of the Department of Energy, In Response to COMSECY–96–053–DSI 2 (SECY–97–206) dated September 12, 1997.
- NRC Staff Requirements Memorandum: COMSECY–96–053, "Oversight of the Department of Energy (DSI 2)," dated March 28, 1997.
- NRC Direction Setting Issue Paper "Oversight of the Department of Energy" (DSI 2) dated September 16, 1996.
- Report of the DOE Working Group on External Regulation, dated December 1996.
- Report of the DOE Advisory Committee on External Regulation of DOE Nuclear Safety, dated December 1995.

You may obtain copies of these documents by contacting Carol Powell at the Department of Energy, telephone number 510–637–1814, or from the joint DOE/NRC Web Site at http://www.nrc.gov/NRC/NMSS/doepilot.html. As additional documents are completed they will be added to the web site.

Dated at Rockville, Maryland, this 24 day of November, 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–31422 Filed 11–28–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Final Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of transmittal of Final Sequestration Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Alicia Kolaian, Budget Analysis Branch—202/395–4575.

Dated: November 26, 1997.

Sarah B. Richardson,

Public Information Officer, Office of Management and Budget.

[FR Doc. 97–31458 Filed 11–28–97; 8:45 am]

BILLING CODE 3110–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, December 8, 1997; 8:30 a.m., Tuesday, December 9, 1997.

PLACE: Costa Mesa, California, at the Westin South Coast Plaza Hotel, 686 Anton Boulevard, in the Santa Ana Room.

STATUS: December 8 (Closed); December 9 (Open).

MATTERS TO BE CONSIDERED:

Monday, December 8—1:00 p.m. (Closed)

1. Audit Committee Report and Review of Year-End Financial Statements.
2. Strategic Outsourcing.
3. A Strategic Alliance Program.

Tuesday, December 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 3–4, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Semiannual Report to Congress on Summary of Investigative Activities [Actions Under 39 U.S.C. 3005 and 3007].
4. Fiscal Year 1997 Audited Financial Statements.
5. Fiscal Year 1997 Annual Report of the Postmaster General.

6. Final FY 1999 Appropriation Request.
7. Capital Investments.
   a. Radio Frequency Identification (RFI) Project.
   b. Boise, Idaho, Processing & Distribution Center.
   c. Sioux Falls, South Dakota, Processing & Distribution Center.
   d. Church Street Station, New York, Renovation Project, Phase 2.
   e. Advanced Facer Canceler Systems.
   f. Barcode Readers for the Flat Sorting Machine 1000.
8. Briefing on the 1998 Stamp Program.
9. Report on the Pacific Area and Los Angeles Performance Cluster.
10. Tentative Agenda for the January 5–6, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–31597 Filed 11–26–97; 2:43 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22902; 812–10870]

Allied Capital Corporation, et al.; Notice of Application

November 21, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under sections 6(c), 12(d)(1)(J), 17(b), 57(c), and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act, and under section 12(h) of the Securities Exchange Act of 1934 (the "Exchange Act").

Summary of Application: The order would permit two business development companies ("BDCs"), a real estate investment trust, and the investment adviser to these entities, to merge into a third BDC. In addition, the order would permit the surviving BDC and its wholly-owned subsidiaries to file reports on a consolidated basis and to engage in certain transactions that would otherwise be permitted if the BDC and its subsidiaries were one company. The order also would permit asset coverage requirements for senior securities issued by the BDC and its BDC subsidiaries to apply on a consolidated basis. Further, the order would permit certain joint transactions between two of the BDC's subsidiaries and two private venture capital partnerships. The requested order would supersede any exemption granted to any applicant from provisions of the Act and the Etchange Act, effective as of the date of the merger.

Applicants: Allied Capital Corporation ("Allied I"), Allied Investment Corporation ("Investment I"), Allied Capital Financial Corporation ("Financial I"), Allied Capital Corporation II ("Allied II"), Allied Investment Corporation II ("Investment II"), Allied Financial Corporation II ("Financial II"), Allied Capital Lending Corporation ("Allied Lending"), Allied Capital SBLC Corporation ("Allied SBLC"), Allied Capital Advisers, Inc. ("Advisers"), and Allied Capital Commercial Corporation ("Allied Commercial").

FILING DATE: The application was filed on November 21, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., 9th Floor, Washington, DC 20006–2803.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Applicants are all Maryland corporations. Stock of Allied I, Allied II, Allied Lending, Allied Commercial, and Advisers (the "Participating Companies") trades over-the-counter on the Nasdaq Stock Market's National Market. Allied I, Allied II, and Allied Lending have each elected to be regulated as a BDC, as defined under section 2(a)(48) of the Act.[1] Allied Development Corporation ("Development"), Investment I, and Financial I are wholly-owned subsidiaries of Allied I and Investment II and Financial II are wholly-owned subsidiaries of Allied II. Development, Investment I and II, and Financial I and II are registered under the Act as closed-end management investment companies. Development is currently inactive. Investment I and II are licensed small business investment companies ("SBICs") under the Small Business Investment Act of 1958 (the "1958 Act"). Financial I and II are specialized small business investment companies ("SSBICs") under the 1958 Act. Allied Lending participates in the Small Business Administration's ("SBA") general business loan program pursuant to section 7(a) of the Small Business Act. Allied SBLC and Allied Capital Credit Corporation ("Allied Credit") are wholly-owned subsidiaries of Allied Lending. Allied SBLC is a BDC and a small business lending company ("SBLC") participating in the general business loan program pursuant to section 7(a) of the Small Business Act. Allied Credit is currently inactive. Allied Commercial is a real estate investment trust ("REIT") with three subsidiaries. Advisers is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and serves as the investment adviser to the other Participating Companies. Advisers has one wholly-owned subsidiary established for the purpose of holding an office building which it plans to sell.

2. Applicants have proposed a reorganization in which Allied I, Allied II, Allied Commercial, and Advisers (collectively, the "Acquired Companies") will merge into Allied Lending and become "ACC" (the "Consolidation"). ACC will be an adviser registered under the Advisers Act and will operate as an internally managed BDC. Investment I and Financial I will merge with Investment II and Financial II, with Investment I and Financial I as the surviving entities (respectively, the "Surviving SBIC Subsidiary" and the "Surviving SSBIC Subsidiary"). As part of the Consolidation, the SBLC Subsidiary will become the "Surviving SBLC Subsidiary." Prior to the Consolidation, Development will be merged with Allied I and Allied Credit will be merged into Allied Lending. In addition, prior to the Consolidation, Allied Commercial's three subsidiaries will be merged into "Equity Holdings LLC" and "Acceptance LLC," Allied Lending will establish a REIT subsidiary that will become a subsidiary of ACC following the Consolidation (the "Surviving REIT Subsidiary"), and Advisers' wholly-owned subsidiary will be liquidated or merged into "Property LLC," which will become a subsidiary of ACC following the Consolidation.

3. Following the Consolidation, ACC will have seven wholly-owned subsidiaries (the "Surviving Subsidiaries"): Equity Holdings LLC, Acceptance LLC, and Property LLC, and the Surviving SBLC, SBIC, SSBIC, and REIT Subsidiaries. Following the Consolidation, Surviving SBIC and SSBIC Subsidiaries will elect BDC status and will no longer operate as registered investment companies. Therefore, the Surviving SBIC, SSBIC, and SBLC Subsidiaries will all be BDCs (the "Surviving BDC Subsidiaries"). The Surviving REIT Subsidiary, Equity Holdings LLC, Acceptance LLC, and Property LLC will not be BDCs or registered investment companies. In addition, ACC may in the future create additional wholly-owned subsidiaries (the "Future Subsidiaries") which in some cases may be BDCs (the "Future BDC Subsidiaries").

4. The Consolidation will be effected pursuant to a merger agreement dated August 14, 1997, and amended and restated on September 19, 1997 (the "Merger Agreement"). The merger is anticipated to occur on December 31, 1997 (the "Effective Date"). On the Effective Date, each share of common stock of the Acquired Companies will be converted into shares of Allied Lending in the following amounts: (a) Each share of Allied I will be converted into 1.07 shares of Allied Lending; (b) each share of Allied II will be converted into 1.40 shares of Allied Lending; (c) each share of Allied Commercial will be converted into 1.60 shares of Allied Lending; and (d) each share of Advisers will be converted into 0.31 shares of Allied Lending (collectively, the "Exchange Ratios"). The Exchange Ratios were based on the relative market prices of the Participating Companies' stock, as discussed below. The exchange agent for the Consolidation will request that, as soon as possible after the Effective Date, shareholders of the Acquired Companies surrender their respective shares. Upon the surrender, the exchange agent will mail the shareholders a confirmation of ownership of ACC common stock. Shares of ACC common stock will be issued in book entry form.

5. The Consolidation will be conditioned on each Participating Company receiving a tax opinion from counsel stating that the Consolidation will be a tax-free event under the Internal Revenue Code of 1986, as amended (the "Code"). Each Participating Company will be responsible for a *pro rata* portion of expenses related to the Consolidation, based on each Company's total market capitalization as of August 13, 1997, except that each Company will pay the fees and expenses of the financial adviser it engaged to assist it with the Consolidation. Estimated total expenses in connection with the Consolidation are $672,000 for Allied I, $907,000 for Allied II, and $458,000 for Allied Lending. In addition, each of Allied I, Allied II, and Allied Lending have paid $120,000 for the services of its respective independent financial adviser.

6. In June 1997, Morgan Stanley & Co. Incorporated ("Morgan Stanley") was retained by each of the Participating Companies as the financial adviser to provide advice and assistance with respect to defining objectives, performing valuation analysis, structuring and planning the Consolidation. In addition, each Participating Company retained an independent financial adviser to render an opinion as to the fairness of the Exchange Ratios. Each Participating Company also obtained independent legal counsel to provide that Company's board of directors with legal advice concerning the directors' duties with respect to the consideration of the Consolidation.

7. In determining the relative value of each Participating Company, Morgan Stanley approached the Consolidation as a "merger of equals." In preparing its analysis, Morgan Stanley, among other things, reviewed the strategic rationale for the Consolidation; conducted due diligence sessions with the management of Advisers; developed an independent valuation model for each of the Participating Companies; developed stand-alone valuations of each of the Participating Companies using, among other things, market valuation parameters, discounted cash flow analysis of projected cash flows and analysis of each Participating Company's contribution to ACC; and analyzed the *pro forma* impact of the Consolidation on each Participating Company and its stockholders in terms of contributable earnings and market value.

8. Morgan Stanley also compared the historical price movement of the Participating Companies' stock from June 22, 1994 through July 16, 1997. Morgan Stanley advised the management of Advisers and the board of each of the Participating Companies that the thirty-day period from June 16, 1997 to July 15, 1997 was the most appropriate period over which to measure market value for purposes of developing the Exchange Ratios for each of the Participating Companies. Morgan Stanley considered that during this period, no unusual events had occurred that could have influenced the movement of the Participating Companies' stock prices. In addition, July 15, 1997 was chosen as the ending date because on July 16, 1997 management of Advisers began to contact the independent financial advisers, which increased the number of persons with knowledge of the proposed transaction. The market prices for the stock of the Participating Companies from June 16, 1997 to July 15, 1997 formed the basis for Morgan Stanley's recommendation on valuation.

9. During the period beginning on July 30 and ending on August 5, 1997, each of the Participating Companies held its regular quarterly board of directors meeting, including a session devoted exclusively to the Consolidation. At those meetings, the management of Advisers provided the reasons for the Consolidation and the business plan for ACC. In addition, Morgan Stanley gave its report on its valuation analysis. Following the Morgan Stanley presentation, the respective Participating Company's independent financial adviser indicated that, based on available information provided through that date and subject to further analyses and review, the applicable Exchange Ratio appeared to be fair to the shareholders from a financial point of view. Further, the respective Participating Company's independent legal counsel made a presentation concerning the duties of the board of directors to the applicable Participating Company and its shareholders in connection with the consideration of the Consolidation. No formal action on the merger proposal was sought or taken at these board meetings.

10. Between August 11 and 14, 1997, each Participating Company's board of directors met again to consider and approve the Merger Agreement. Each meeting was attended by the respective independent financial adviser and legal counsel for that Participating Company. The independent financial advisers

[1] Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a) (1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small companies whose securities typically are illiquid.

presented their opinions that the Exchange Ratio was fair, from a financial point of view, to the shareholders of the respective Participating Company. After considering the presentation of the respective independent financial adviser and after discussion, each of the boards, including the directors who are not interested persons of the Company under section 2(a)(19) of the Act or officers of or otherwise affiliated with any of the other Participating Companies ("Independent Directors"), unanimously approved its Participating Company's participation in the Consolidation and agreed to the terms of the Merger Agreement.

11. The boards of directors considered, among other things: (a) Information concerning the financial performance and condition, business operations, capital levels, asset quality and prospects of each Participating Company, and its projected future financial performance as a separate entity and on a combined basis; (b) current industry, economic, and market conditions and trends; (c) the importance of economies of scale to competing effectively; (d) the Consolidation's structure as a tax-free merger of equals; (e) the possibility that achieving cost savings and operating efficiencies as a result of the Consolidation might not be the same for each Participating Company; (f) the terms and conditions of the Merger Agreement; (g) the current and historical market prices of the common stock of each Participating Company; (h) the opinions of the respective independent financial adviser as to the fairness, from a financial point of view, of the respective Exchange Ratios; (i) the portfolio holdings, liabilities, management, strategic objectives, competitive positions, and prospects of the respective Participating Company; and (j) the impact of the Consolidation on the shareholders and portfolios of each Participating Company and on the employees of Advisers.

12. A proxy statement was filed with the Commission on September 26, 1997. Proxy statements were mailed to shareholders on October 14, 1997, and shareholder meetings are scheduled for November 26, 1997. At least two-thirds of the voting shares of each Participating Company will be required to approve the Consolidation.

13. Applicants request an order to permit the Consolidation. In addition, applicants request an order to permit ACC and its Surviving and Future BDC Subsidiaries (the "BDC Subsidiaries") to file reports on a consolidated basis and to engage in certain transactions that would otherwise be permitted if ACC and its BDC Subsidiaries were one company. The order also would permit modified asset coverage requirements for ACC and its BDC Subsidiaries on a consolidated basis and for the Surviving SBLC Subsidiary individually. Further, the order would permit certain joint transactions between the Surviving SBIC and SSBIC Subsidiaries and two private venture capital partnerships.

14. ACC will own all of the outstanding common voting stock or membership interests of the Surviving and Future Subsidiaries (the "Subsidiaries"). In addition, the following types of transactions may occur among ACC and the Subsidiaries:

(a) ACC may make additional investments in a Subsidiary, as a contribution to capital, purchase of additional stock, or loan.

(b) A Subsidiary may pay dividends and make other distributions to ACC. Each BDC Subsidiary and the Surviving REIT Subsidiary intend to qualify as a regulated investment company and a real estate investment trust, respectively, pursuant to Subchapter M of the Code. As such, each BDC Subsidiary and the Surviving REIT Subsidiary will be required to pay to ACC substantially all of its income in the form of a dividend in order not to incur any Federal income tax.

(c) A Subsidiary may make loans or other advances to ACC or another Subsidiary. None of the Subsidiaries will purchase or otherwise acquire any of the capital stock of ACC.

(d) One or more of ACC and the Subsidiaries may invest in the securities of the same unaffiliated issuer, together or at different times, and deal with such investments separately or jointly. In addition, ACC and the BDC Subsidiaries may engage in purchase or sale transactions with controlled portfolio affiliates of one another.

(e) ACC may purchase all or some of a portfolio investment held by a Subsidiary. Similarly, a Subsidiary may purchase all or some of a portfolio investment held by ACC or another Subsidiary.

(f) One or more of ACC and the Subsidiaries may enter into a financial arrangement with a third-party financial institution in which one or more of ACC and the Subsidiaries are co-borrowers or guarantors.

Applicants' Legal Analysis

A. The Consolidation

1. Section 57(a) generally prohibits, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes the investment adviser to, and any person under common control with, the BDC. Allied I, Allied II, and Commercial could be deemed to be affiliates of Allied Lending under section 57(b) because all are under common control by virtue of having a common investment adviser.

2. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and certain affiliated persons of the company as described in section 2(a)(3) of the Act. Affiliated persons under section 2(a)(3)(C) include persons under common control with the investment company. When the assets of Investment II and Financial II are transferred to Investment I and Financial I, respectively, all four investment companies will be under the common control of ACC.

3. Sections 57(c) and 17(b) of the Act provide that the SEC will exempt a proposed transaction from sections 57(a) and 17(a), respectively, if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and the proposed transaction is consistent with the policy of each registered investment company concerned and consistent with the general purposes of the Act. Applicants believe that the requested relief from sections 57(a) and 17(a) meets these standards for the reasons discussed below.

4. Applicants believe that the Consolidation will benefit shareholders of the Participating Companies. Applicants state that ACC's increased size, increased portfolio diversity, and mix of current and capital gain income will provide increased benefits for all shareholders. Applicants state that ACC will have the ability to diversify into larger and varied transactions, and that ACC's greater size will provide opportunity for lower-cost debt capital and institutional ownership of its common stock. In addition, applicants believe that the Consolidation will eliminate the need for costly duplication of efforts related to maintaining and reporting for five separate public entities. Applicants further believe that the mergers of Investment II and Financial II into Investment I and Financial I, respectively, will result in similar benefits.

5. Applicants assert that the role of the Independent Directors of Allied I and II and Allied Lending, Morgan Stanley's valuation analysis, the fairness opinions given by each independent financial adviser, and the representation by separate independent counsel of Allied I and II and Allied Lending ensure that no overreaching on the part of any person will occur in connection with the Consolidation. Applicants state that the Consolidation will be consistent with the public disclosures of each of the Participating Companies and with the general purposes of the Act, as will be the merger of Investment II and Financial II into Investment I and Financial I, respectively. Further, applicants state that the board of directors of each Participating Company has approved the transaction as being in the best interests of the Company.

6. Applicants note that during the process of considering and approving the Consolidation, the board of directors of each Participating Company specifically considered the participation of Advisers in the Consolidation. Applicants state that each board of directors concluded that ACC would be a better business model than a Participating Company would be individually, in part because ACC will be internally managed. Applicants note that with external management, Advisers must not only cover its costs, but must earn a profit for its shareholders and pay a corporate level income tax. Applicants also note that external management creates perceived conflicts of interest because the goals of an external adviser may conflict with the goals of the fund. Applicants state that the directors concluded that Advisers' participation in the Consolidation was fair from a financial point of view and that the management of Advisers will receive no financial benefit from the consolidation to the detriment of any of the other Participating Companies or their shareholders.

B. Operation as One Company

1. Section 12(d)(1)

a. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities a registered investment company or BDC (or company controlled by the registered investment company or BDC) may hold of other investment companies. Section 12(d)(1)(C) limits the amount of securities of a closed-end investment company that may be acquired by an investment company. Applicants state that any purchase of the voting stock of the Surviving SBLC Subsidiary or a Future BDC Subsidiary by ACC, or a contribution to capital of the Surviving SBLC Subsidiary or of a Future BDC Subsidiary by ACC, may violate section 12(d)(1).[2] In addition, applicants state that section 12(d)(1) may apply to each of the Subsidiaries with respect to their purchase or acquisition of debt securities issued by ACC or each other because each will be a BDC or an entity controlled by a BDC. Further, applicants state that the making of loans or advances by any of the Subsidiaries to ACC or to each other may violate section 12(d)(1).

b. Applicants request an exemption from sections 12(d)(1)(A) and (C) to permit: (a) the acquisition by ACC of any securities of the Surviving SBLC Subsidiary and the future BDC Subsidiaries; and (b) the acquisition by any of the Subsidiaries of any securities representing indebtedness of ACC or of any securities representing indebtedness issued by any of the other Subsidiaries. Applicants request the exemptions to the extent that the transactions would not be prohibited if each Subsidiary were deemed to be part of ACC and not a separate company.

c. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. For the following reasons, applicants believe that the proposal meets this standard.

d. Applicants assert that section 12(d)(1) is intended to prevent certain abuses associated with the pyramiding of investment companies, and that the holding company structure will not entail these types of abuses. Applicants state that these abuses include the investing fund exercising undue influence over the underlying funds, the layering of fees, and the creation of overly complex and confusing structures.

e. Applicants believe that ACC, as the sole shareholder of the Subsidiaries, will have no incentive to act contrary to the interests of a Subsidiary. Applicants also contend that the Consolidation will not result in investors incurring duplicative sales charges or advisory fees, and will result in a structure that is less complex than the current structure. Applicants also note that the parent/subsidiaries structure that will result from the Consolidation will serve a valid business purpose by facilitating more efficient public investment in the alternative asset class of small business debt securities.

2. Section 12(d)(3)

a. Section 12(d)(3) of the Act, made applicable to BDCs by section 60, generally makes it unlawful for any registered investment company to purchase any security issued by an investment adviser to an investment company. Applicants state that the Consolidation could be deemed to involve the purchase or acquisition by Allied I or II, Allied Lending, or ACC of securities issued by Advisers. Applicants request an exemption to permit the purchase of Advisers in connection with the Consolidation.

b. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets the section 6(c) standard for the reasons discussed below.

c. Applicants state that section 12(d)(3) was intended to limit the exposure of registered investment companies to the entrepreneurial risks associated with securities related business and to prevent potential conflicts of interest and reciprocal practices. Applicants state that the Consolidation does not present the potential for these abuses. Applicants believe that the procedures and policies adopted by ACC with respect to its investment advisory operations will ensure that ACC and the Subsidiaries are being operated and managed in the best interests of ACC and its shareholders. Applicants also note that ACC could engage directly in the business of investment management without the need for exemptive relief.

3. Section 18

a. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in section 18(a). Section 18(k) provides for modified asset coverage requirements for SBICs. Section 61 makes section 18, with certain modifications, applicable to a BDC.

b. Applicants believe that section 61 may require that ACC and the BDC Subsidiaries comply with the asset

[2] Rule 60a–1 under the Act exempts from sections 12(d)(1)(A) and (C) the acquisition by a BDC of the securities of a small business investment company licensed under the 1958 Act which is operated as a wholly-owned subsidiary of the BDC. Applicants state that, because the Surviving SBIC and SSBIC Subsidiaries are small business investment companies licensed under the 1958 Act, ACC's acquisition of shares of the Surviving SBIC and SSBIC Subsidiaries will be exempt from sections 12(d)(1)(A) and (C) under rule 60a–1 under the Act. Applicants state that sections 12(d)(1)(A) and (C) do not apply to the non-BDC Subsidiaries because they are not investment companies.

coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because ACC could be deemed to be an indirect issuer of any class of senior securities issued by the Subsidiaries. In addition, applicants believe that the Surviving SBLC Subsidiary may not be permitted to rely on the modified asset coverage requirements of section 18(k) because section 18(k) does not apply to an SBLC licensee but only to SBIC licensees.

c. Applicants request an exemption under section 6(c) (a) for the Surviving SBLC Subsidiary from sections 18(a)(1)(A) and (B), and (b) for ACC to permit senior securities issued by the Surviving BDC Subsidiaries that are excluded from the individual asset coverage ratio by section 18(k) or this order to be excluded from ACC's consolidated asset coverage ratio. Applicants believe the relief satisfied the section 6(c) standard for the following reasons.

d. Applicants state that the Surviving SBLC Subsidiary should be treated like an SBIC licensee because SBLCs and SBICs are analogous in their common purpose to assist small business in raising capital and both are subject to the regulation and oversight of the SBA. Applicants assert that policy rationale for the section 18(k) exemption is that the SBA's regulation of the permissible leverage of an SBA-licensed investment company is an effective substitute for the SEC's regulation of asset coverage for senior securities issued by a registered closed-end company or a BDC. Applicants state that SBICs, SSBICs, and SBLCs are SBA-licensed investment companies and subject to the SBA's substantive regulations of permissible leverage in their capital structure.

e. Applicants contend that if ACC applies the asset coverage requirements of section 18(a) on a consolidated basis, ACC should be able to apply the same exemptions available to the Surviving BDC Subsidiaries. Applicants also contend that to the extent that the Surviving BDC Subsidiaries on a stand-alone basis are entitled to rely on section 18(k) for an exemption from the asset coverage requirements of section 18(a), there is no policy reason to deny the parent the benefit of the exemption when the parent consolidates its assets with the Surviving BDC Subsidiaries when testing compliance with section 18(a).

4. Sections 2(a)(48) and 55(a)

a. Section 2(a)(48) of the Act generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a) (1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of these securities. Section 55(a) of the Act requires a BDC to have at least 70% of its assets invested in assets described in sections 55(a) (1) through (6) ("Qualifying Assets"). Qualifying Assets generally include securities issued by eligible portfolio companies as defined in section 2(a)(46) of the Act. Section 2(a)(46)(B) of this definition generally excludes (a) an investment company, as defined under section 3 of the Act, unless the company is an SBIC licensed by the SBA to operate under the 1958 Act and is a wholly-owned subsidiary of the BDC, and (2) a company that would be an investment company but for the exclusion from the definition of investment company in section 3(c) of the Act.

b. Applicants believe that the Surviving SBLC and REIT Subsidiaries may not be deemed eligible portfolio companies because the Surviving SBLC Subsidiary is not an SBIC licensed by the SBA but an SBLC, and the Surviving REIT Subsidiary may be an investment company but for the exclusion from the definition of investment company in section 3(c). Applicants request relief under section 6(c) from section 55(a) to permit ACC to treat the Surviving SBLC Subsidiary as an eligible portfolio company within the meaning of section 2(a) (46) solely to the extent that the Surviving SBLC Subsidiary may not qualify as an eligible portfolio company for reasons stated above. Further, applicants request relief from sections 2(a)(48) and 55(a) to permit the assets held by the REIT Subsidiary, rather than the REIT Subsidiary itself, to be treated as assets held by ACC for purposes of (1) determining whether ACC is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of sections 55(a), (2) determining whether ACC makes available managerial assistance to companies as described in section 2(a)(48), and (3) applying the 70% test in section 55(a). Applicants believe the relief satisfies the section 6(c) standard for the following reasons.

c. Applicants believe that relief for the Surviving Subsidiary is appropriate because the loans to be made by the SBLC will be made to the same category of small business borrowers that represent the type of securities included in the definition of Qualifying Assets. In addition, applicants note that the Surviving SBLC Subsidiary will invest all of its assets in Qualifying Assets and itself will be a BDC.

d. Applicants believe that relief for the REIT Subsidiary is appropriate because all of the voting securities of the REIT Subsidiary will be held by ACC and ACC will control the operations of the REIT Subsidiary, including the acquisition and disposition of its assets. Applicants also state the assets of the REIT Subsidiary will be held by the REIT Subsidiary and not directly by ACC only for bona fide business reasons that are unrelated to the policies underlying the Act and that do not reflect a substantive economic difference from the assets being held by ACC. Applicants therefore contend that the assets held by the REIT Subsidiary are, in economic effect, assets held by ACC, and should be treated as such in determining ACC's compliance with the relevant provisions of sections 2(a) (48) and 55(a) of the Act.

5. Sections 57(a) (1) and (2)

a. As discussed above, sections 57(a) (1) and (2) generally prohibit, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates as described in section 57(b) of the Act. Because they are under the common control of ACC, each Subsidiary will be an affiliated person of each other Subsidiary within the meaning of section 57(b).

b. Applicants request relief from sections 57(a) (1) and (2) under section 57(c) to exempt any transaction between ACC and any BDC Subsidiary and any transaction between any BDC Subsidiaries and any Subsidiary with respect to the purchase or sale of securities or other property. In addition, applicants request relief from sections 57(a) (1) and (2) to exempt any purchase or sale transaction between ACC and a controlled portfolio affiliate of a BDC Subsidiary and any purchase or sale transaction between a BDC Subsidiary and a controlled portfolio affiliate of ACC or of another BDC Subsidiary, but only to the extent that any such transaction would not be prohibited if the BDC Subsidiary were deemed to be part of ACC and not a separate company. For the following reasons, applicants believe that the requested relief satisfies the section 57(c) standard.

c. Applicants state that there may be cases when it is in the interest of ACC's shareholders for a BDC Subsidiary to invest in securities of an issuer that may be an affiliated person of ACC or for ACC to invest in securities of an issuer that may be an affiliated person of a BDC Subsidiary. Likewise, applicants state that a BDC Subsidiary may want to invest in securities of an issuer that is an affiliated person of another BDC Subsidiary. Applicants note that the relief would permit ACC and the BDC Subsidiaries to do what the Act would otherwise permit if they were one company.

6. Sections 21(b) and 57(a)(3)

A. Section 57(a)(3) generally prohibits the borrowing of money or other property by an affiliated person of a BDC, as described in section 57(b), from the BDC except as permitted in section 21(b). Section 21(b) (made applicable to BDCs by section 62) of the Act generally prohibits loans between BDCs and persons controlling or under common control with the BDC, except for loans to a company that owns all of the outstanding securities of the BDC. As described above, each Subsidiary will be under the common control of ACC and, therefore, will be affiliated under section 57(b) and subject to section 21(b).

b. Applicants request relief from section 57(a)(3) under section 57(c) to exempt any transaction between a BDC Subsidiary and another Subsidiary with respect to the borrowing of money or other property and any borrowing of money or other property by ACC from a BDC Subsidiary. Applicants also request relief from section 21(b) under section 6(c) to exempt the lending of money or other property by a BDC Subsidiary to ACC or another Subsidiary. For the following reasons, applicants believe that the requested relief satisfies the section 57(c) standard.

c. Applicants state that the proposed transactions will have no substantive economic effect because they will either be between ACC and its wholly-owned Subsidiaries, or be between Subsidiaries under the common ownership of ACC. Applicants note that the relief would permit ACC and its Subsidiaries to do what the Act would otherwise permit if they were one company.

7. Section 57(a)(4) and Rule 17d–1

a. Section 17(d) and rule 17d–1 make it unlawful for an affiliated person of a registered investment company or any affiliated person of an affiliated person, acting as principal, to participate in or effect any joint transaction in which the registered company or a company it controls participates, unless the transaction has been approved by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) provides that the rules and regulations under section 17(d) shall apply to transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standard set forth under rule 17d–1 governs applicants' request.

b. Applicants state that a joint transaction in which a BDC Subsidiary and ACC or another Subsidiary participates will be deemed to be prohibited under section 57(a)(4). Therefore, applicants request relief under section 57(i) and rule 17d–1 to permit any joint transaction in which a BDC Subsidiary and ACC or another Subsidiary participate to the extent that the transaction will not be prohibited if the BDC Subsidiary were deemed to be part of ACC and not a separate company.

c. In passing upon applications filed pursuant to rule 17d–1, the SEC considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that this standard is satisfied because the request would simply permit ACC and its Subsidiaries to conduct their operations as if they were one company.

C. Consolidated Reporting

1. Section 54 of the Act provides that a closed-end investment company may elect BDC treatment under the Act if the company has registered or filed a registration statement under section 12 of the Exchange Act for a class of its equity securities. Section 13(a) of the Exchange Act requires that issuers of securities registered under the Exchange Act file certain information and reports with the SEC. Applicants request an order that the BDC Subsidiaries be exempt from the reporting requirements of section 13(a) of the Exchange Act in order to permit them to file consolidated reports with ACC.[3]

2. Section 12(h) of the Exchange Act provides that the SEC may exempt an issuer from section 13 of the Exchange Act if the SEC finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, the exemption is not inconsistent with the public interest or the protection of investors. Applicants believe that the requested exemption meets this standard for the following reasons.

3. Applicants state that each BDC Subsidiary will have only one investor and no public investors and, therefore, there will be no trading in the securities of the BDC Subsidiaries. Applicants further state that the nature and extent of the activities of the BDC Subsidiaries will be fully disclosed through consolidated reporting in accordance with Commission rules and generally accepted accounting principles.

D. Co-Investing

1. Allied Venture Partnership ("Venture") and Allied Technology Partnership ("Technology") are private venture capital limited partnerships organized under the laws of the District of Columbia. They are not registered under the Act in reliance on the exemptions provided by sections 3(c)(1) and (7) of the Act. After the Consolidation, ACC will be the investment adviser to Venture and Technology.

2. In reliance on certain prior orders ("Prior Orders"), Allied I and its wholly-owned subsidiaries, and Allied II and its wholly-owned subsidiaries have co-invested with Venture and Technology.[4] Venture and Technology are fully invested in portfolio companies and are not expected to raise additional capital or to make new investments (other than possible "follow-on investments" as permitted by the Prior Orders). Venture and Technology are gradually liquidating their existing investments in portfolio companies and distributing the proceeds to their partners. The Prior Orders were subject to detailed conditions regarding liquidation transactions and follow-on investments ("Co-investing Conditions").

3. As noted above, section 57(a)(4) and rule 17d–1 generally prohibit joint transactions involving BDCs and certain of their affiliates unless the SEC has approved the transaction. Venture and Technology will be affiliated persons of the Surviving SBIC and SSBIC Subsidiaries within the meaning of section 57(b) because they all will be under the common control of ACC. Because many of the investments being liquidated are previous co-investments, the liquidation transactions could be deemed to constitute joint transactions otherwise prohibited by section 57(a)(4) and rule 17d–1. The Surviving SBIC and SSBIC Subsidiaries request an order

[3] Applicants state that there is no separate requirement under the Exchange Act that the BDC Subsidiaries register their shares because they do not have the requisite number of shareholders under the relevant provisions of the Exchange Act.

[4] Investment Company Act Release Nos. 14694 (Aug. 26, 1985) (notice) and 14725 (Sept. 17, 1985) (order); 15787 (June 9, 1987 (notice) and 15833 (June 30, 1987) (order; and 17124 (Sept. 1, 1989) (notice) and 17155 (Sept. 26, 1989) (order).

pursuant to section 57(i) and rule 17d–1 to permit them to participate in the liquidation transactions and possible follow-on investments with Venture and/or Technology, to the extent that the transactions may otherwise be prohibited by section 57(a)(4) and rule 17d–1.

4. Applicants believe that the transactions satisfy rule 17d–1(b)'s standard, as described above, and that the Co-investing Conditions are unnecessary, because ACC, the parent of the SBIC and SSBIC Subsidiaries, will be internally managed; Venture and Technology are in the process of liquidation and will not be engaging in a broad range of transactions; and Venture and Technology and the SBIC and SSBIC Subsidiaries will be treated on an equal basis in any transaction. Applicants also contend that the relief is consistent with rule 57b–1, which exempts from section 57(a)(4) any transactions in which the BDC controls the relevant affiliate. Applicants asset that the SBIC and SSBIC Subsidiaries should be deemed to control Venture and Technology, for purposes of rule 57b–1, because they are wholly-owned subsidiaries of ACC.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. ACC will at all times own and hold, beneficially and of record, all of the outstanding voting capital stock of the Subsidiaries.

2. No person will serve or act as investment adviser to any Subsidiary unless the directors and stockholders of ACC will have taken the action with respect thereto also required to be taken by the directors and sole stockholder of the Subsidiary.

3. The Consolidation will not be consummated unless it has been approved by the holders of a majority of outstanding common stock of Allied I, Allied II, and Allied Lending.

4. ACC will: (a) file with the Commission, on behalf of itself and the Subsidiaries, all information and reports required to be filed with the SEC under the Exchange Act and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to ACC and the Subsidiaries, these reports to be in satisfaction of any separate reporting obligations of the Subsidiaries; and (b) provide to its stockholders the information and reports required to be disseminated to ACC's stockholders, including information and financial statements prepared solely on a consolidated basis as to ACC and the Subsidiaries, these reports to be in satisfaction of any separate reporting obligations of the Subsidiaries. Notwithstanding anything in this condition, ACC will not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statements of the Subsidiaries required by rule 6–03(c) of Regulation S–X.

5. ACC and the Subsidiaries may file on a consolidated basis under condition 4 above only so long as the amount of ACC's total consolidated assets invested in assets other than (a) securities issued by the Subsidiaries or (b) securities similar to those in which the Subsidiaries invest, does not exceed ten percent.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–31395 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22901; File No. 812–10788]

The Western National Life Insurance Company, et al.; Notice of Application

November 21, 1997.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 ("1940 Act") approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants request an order approving the substitution of shares of the Salomon Brothers U.S. Government Securities Portfolio of WNL Series Trust (the "Salomon Portfolio") for shares of the Black Rock Managed Bond Portfolio of WNL Series Trust (the "BlackRock Portfolio") to fund individual fixed and variable deferred annuity contracts (the "Contracts") issued by Western National Life Insurance Company ("Western National").

APPLICANTS: Western National and WNL Separate Account A (the "Account").

FILING DATE: The application was filed on September 17, 1997.

HEARING OR NOTIFICATION OF HEARING: And order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 16, 1997, and accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Raymond A. O'Hara III, Esq., Blazzard, Grodd & Hasenauer, PC., 943 Post Road East, Westport, Connecticut 06880.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Western National, a stock life insurance company incorporated in Texas, is a wholly-owned subsidiary of Western National Corporation. American General Life Insurance Company ("AG Life"), a Missouri-domiciled life insurer, owns approximately 40% of Western National Corporation. In turn, AG Life is a wholly-owned subsidiary of American General Corporation, also a Texas corporation. Western National is the depositor of the Account.

2. The Board of Directors of Western National authorized the Account on November 9, 1994. The Account is registered under the 1940 Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933 ("Securities Act") (File No. 33–86464). The Account currently is divided into eight sub-accounts, each of which reflects the investment performance of a corresponding portfolio of WNL Series Trust (the "Trust").

3. The Trust was organized as a Massachusetts business trust on December 12, 1994. It is registered under the 1940 Act as an open-end management investment company. The Trust is a series investment company that is currently comprised of eight portfolios, two of which are the BlackRock and Salomon Portfolios. WNL Investment Advisory Services, Inc. ("WNL Advisory"), a subsidiary of Western National Corporation, is the investment adviser to the Trust.

4. WNL Advisory has engaged sub-advisors for each of the portfolios of the Trust. The Sub-Advisor for the BlackRock Portfolio is BlackRock Financial Management. The Sub-Adviser for the Salomon Portfolio is Salomon Brothers Asset Management, Inc.

5. The BlackRock Portfolio seeks to provide a high total return consistent with moderate risk of capital and maintenance of liquidity by investing primarily in the broad sector of the fixed-income market, including U.S. government and agency securities, corporate securities, private placements, and asset-backed and mortgage-related securities, including residential and commercial mortgage-backed securities. The Salomon Portfolio seeks a high level of current income by investing a substantial portion of its assets in debt obligations and mortgage-backed securities issued or guaranteed by the U.S. government and its agencies or instrumentalities and collateralized mortgage obligations backed by such securities.

6. Since their inception, WNL Advisory has voluntarily waived all or a portion of its advisory fees from the BlackRock and Salomon Portfolios. Currently, until May 1, 1998, WNL Advisory has undertaken to waive those portions of its advisory fees which are in excess of the amounts payable by it to the Sub-Advisors for the BlackRock and Salomon Portfolios. In addition, since inception, Western National has reimbursed portions of the expenses of the BlackRock and Salomon Portfolios. Currently, Western National has undertaken to bear until May 1, 1998, all operating expenses of both portfolios, excluding the compensation of WNL Advisory, that exceed .12% of the portfolios' average daily net assets. WNL Advisory is under no legal obligation to continue waiving its advisory fees nor is Western National under any obligation to continue reimbursing expenses. State Street Bank and Trust Company, the Trust's custodian and sub-administrator, also has waived certain fees with respect to both portfolios.

7. As a result of these fee waivers and expense limitation agreements, the expense ratio (annualized) for the BlackRock Portfolio for the year ending December 31, 1996 (from the date of inception of January 2) was .28%. In the absence of these waivers and expense limitation agreements, the expense ratio would have been 3.93%. For the six-month period ended June 30, 1997, the expense ratio (annualized) was .42%. In the absence of the waivers and expense limitation agreements, it would have been 4.38%. The (non-annualized) total returns for the BlackRock Portfolio for these twelve-month and six-month periods were 3.76% and 3.20%, respectively. In the absence of the fee waivers and expense limitation agreements, the total returns would have been lower.

8. As a result of the fee waivers and expense limitation agreements, the expense ratio (annualized) for the Salomon Portfolio for the year ending December 31, 1996 (from the date of inception of February 6) was .22%. In the absence of the fee waivers and expense limitation agreements, it would have been 5.26%. For the six-month period ended June 30, 1997, the expense ratio (annualized) was .35%. In the absence of these waivers and expense limitation agreements, it would have been 5.59%. The (non-annualized) total returns for the Salomon Portfolio for these twelve-month and six-month periods were 3.40% and 3.35%, respectively. These numbers would have been lower absent the fee waivers and expense limitation agreements.

9. As of June 30, 1997, the BlackRock Portfolio and Salomon Portfolio had $3.6 million and $2.5 million in net assets, respectively.

10. Applicants state that the BlackRock Portfolio is quite small when compared with many other similar investment portfolios of open-end management companies available as investment vehicles for variable annuity contracts. Furthermore, after experiencing slow sales, management of Western National determined that it was unlikely that the BlackRock Portfolio would grow to a sufficient size to promote consistent investment performance or to absorb operating expenses. As of September 30, 1997, shares of the BlackRock Portfolio were no longer available for sale and no transfers could be made into the BlackRock Portfolio Sub-Account (however, dollar cost averaging transfers to the BlackRock Portfolio Sub-Account will be permitted until the date of substitution).

11. Applicants propose that Western National substitute shares of the Salomon Portfolio for shares of the BlackRock Portfolio, by redeeming shares of the BlackRock Portfolio in cash and purchasing with the proceeds shares of the Salomon Portfolio.

12. The proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in the Account. Contract owners will not incur any fees or charges as a result of the proposed substitution nor will their rights or Western National's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Western National. In addition, the proposed substitution will not result in the imposition of any tax liability on Contract owners. The proposed substitution will cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution.

13. By supplements to the prospectus for the Account dated September 25, 1997, all owners and prospective owners were notified of the Applicants' intention to take the necessary actions, including seeking the order requested by the Applicants, to affect the substitution described herein. The supplement also apprised Contract owners that, from the date of the supplement until the date of the proposed substitution, owners may transfer any or all of their Contract value under a Contract invested in the Sub-Account for the BlackRock Portfolio to another Sub-Account of the Account, without that transfer counting as one of a limited number of transfers permitted in a Contract year free of charge. In addition, the supplement will inform Contract owners that for a period of 30 days following the proposed substitution, Western National will permit transfers of the cash value under a Contract invested in the Sub-Account for the Salomon Portfolio to any other Sub-Account of the Account without any limitation or charge being imposed.

14. In addition to the prospectus supplements distributed to owners and prospective owners of Contracts, within 5 days after the proposed substitution, all owners who were affected by the substitution will be sent a written notice informing them that the substitution was carried out and reiterating their right to make transfers from the Sub-Account for the Salomon Portfolio to any other Sub-Account of the Account for a period of 30 days without any limitation or charge being imposed.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides in pertinent part that "it shall

be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The legislative history of Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants state that Western Life has reserved the right to substitute securities held by the Sub-Accounts of the Account and that this right is disclosed in the Contracts and prospectus for the Contracts.

3. Applicants represent that the Salomon Portfolio is a suitable and appropriate investment vehicle for Contract owners. Applicants assert that the Salomon Portfolio has a lower advisory fee and a lower expense ratio than the BlackRock Portfolio. Applicants also assert that the Salomon Portfolio has a similar investment objective, and to date has experienced an investment return comparable to the BlackRock Portfolio. Applicants anticipate that after the proposed substitution, the Salomon Portfolio will provide Contract owners with comparable or more favorable investment results than would be the case if the proposed substitution did not take place.

4. Applicants represent that the Salomon Portfolio has similar investment policies to the BlackRock Portfolio, with each investing in many of the same types of fixed income securities.

5. Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to substitutions that have been approved by the Commission.

Conclusion

Applicants submit that, for the reasons summarized above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–31396 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39347; File No. SR–Amex–97–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Trading Differentials for Options Contracts

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend *Rules* 952 and 951C to adopt a procedure that would allow the Exchange to establish the minimum fractional change (or trading increments) for options. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange *Rule* 952 provides that the minimum fractional change for stock options trading at $3.00 or higher shall be one-eighth and for stock options trading under $3.00 shall be one-sixteenth. Additionally, *Rule* 951C provides that the minimum fractional change for stock index options shall be one-eighth for stock index options trading at a premium greater than $300.00 and stock index options less than $300.00 shall be one sixteenth. The Exchange now proposes to amend Rules 952 and 951C to give the Board of Governors the authority to establish the minimum fractional changes for options. Until such time as the Board determines to use its authority to change the minimum fractional changes the current rules described above will apply. The proposal will allow the Exchange to revise its minimum fractional changes quickly in response to changes adopted in the underlying stock markets and at the other options exchanges. When the Board of Governors has determined to change the minimum trading increments, the Exchange will designate such a change as a stated policy, practice, or interpretation with respect to the administration of Rules 952 and 951C within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission.

As derivatives securities, the prices of options are determined in reference to the prices of the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying its options.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Exchange Act Rel. No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Commission order approving a change in the minimum increment to 1/16 for securities listed on the American Stock Exchange); Exchange Act Rel. No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (Commission order approving a change in the minimum increment to 1/16 for Nasdaq-listed securities); and Exchange Act Rel. No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (Commission order approving a change in the minimum increment to 1/16th for NYSE listed-securities).

[4] 15 U.S.C. 78f(b).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–41 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31391 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39348; File No. SR–CBOE–97–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Change the Minimum Increment for Bids and Offers in Options

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 17, 1997, the Exchange submitted to the Commission an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.42 by adopting a procedure that would allow the Exchange to establish options trading differentials on an expedited basis. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Exchange Rule 6.42 to give the Board of Directors the authority to establish the minimum trading increments for option contracts. Currently, Rule 6.42 states that bids and offers shall be expressed in eighths of $1 unless a different increment is approved by the Floor Procedure Committee for an option contract of a particular series. An interpretation to the Rule states that bids and offers for all option series trading below $3 shall be expressed in sixteenths of a dollar. Until such time as the Board determines to make a change the current standards will apply.

The proposed change would allow the Exchange to change the trading increments on an expedited basis and thus, allow the Exchange to respond appropriately to changes in the minimum trading increment in the markets for the securities underlying CBOE options or to changes in the minimum trading increments for one of the other options exchanges. When the Board of Directors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission.

There has been a movement within the industry to reduce the minimum trading and quotation increments

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By adding the term "appropriate" before the term "Floor Procedure Committee" in the text of the rule, the amendment clarified that the decision to change the increments with respect to a particular class of options will be made by whichever Floor Procedure Committee has jurisdiction over trading in that option class. The amendment also replaced the original Exhibit 1 that was sent to the Commission with a revised Exhibit 1. See Letter from Timothy H. Thompson, CBOE, to Christine Richardson, Division of Market Regulation, Commission (Nov. 14, 1997) ("Amendment No. 1")

imposed by the various SROs.[4] As derivative securities, the prices of options are determined in reference to the prices of the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying CBOE options.

The proposed rule change would give the Exchange the flexibility to follow the suit of the principal exchanges for the underlying securities without having to continually update its rules but at the same time would give the Exchange the flexibility it needs to deviate from the minimum increments established by the principal markets for the underlying securities in the event that the CBOE's systems were not immediately able to handle such increments. The Exchange, therefore, believes the quality of the market for CBOE options will be enhanced by allowing for more accurate pricing of CBOE options.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–49 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31388 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

[4] See Exchange Act Rel. No. 38571 (May 5, 1997), 62 FR 25662 (May 9, 1997) (Commission order approving a change in the minimum increment to ½6th for securities listed on the American Stock Exchange); Exchange Act Rel. No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (Commission order approving a change in the minimum increment to 1/16th for Nasdaq-listed securities); and Exchange Act Rel. No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (Commission order approving a change in the minimum increment to ½6th for NYSE listed securities).

[5] 15 U.S.C. 78f(b).

[6] 17 CFR 200.30–3(a)(12).

[7] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39342; File No. SR–CHX–97–29]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to a Policy of the Specialist Assignment and Evaluation Committee

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 27, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXX, Rule 1, Interpretation and policy .01 to amend the current one-year pilot program concerning a policy of the Exchange's Committee on Specialist Assignment and Evaluation ("CSAE") relating to the time periods for which a co-specialist must trade a security before deregistering as the specialist for the security. This change would be in effect for the remainder of the current one-year pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 8, 1997, the Commission approved a rule change on a one year pilot basis relating to the time periods for which a co-specialist must trade a security before deregistering as the specialist for the security.[2] The pilot program currently expires on September, 1998. The purpose of the proposed rule change is to make a slight modification to this pilot program.

The Exchange's CSAE is responsible for, among other things, appointing specialists and co-specialists and conducting deregistration proceedings in accordance with Article XXX of the Exchange's rules.[3] Seven circumstances may lead to the need for assignment or reassignment of a security.[4] One such circumstance is by specialist request.

Currently, the CSAE will initiate a reassignment proceeding if it believes that such action is called for. Using this standard, the CSAE's policy under the current one year pilot program is as follows:

For a security that was awarded to a co-specialist in competition, such co-specialist is required to trade the security awarded in competition for one year before being able to deregister in the security if no other specialist will be assigned to the security after posting. Two-years must elapse before an intra-firm transfer of the issue (i.e., a transfer of the issue to another co-specialist in the same specialist unit) is normally permitted without posting.

For a security that was awarded to a co-specialist without competition, such co-specialist is required to trade the security awarded without competition for a three month period before being able to deregister in the security if no other specialist will be assigned to the security after posting. A six-month time period must elapse before an intra-firm transfer is normally permitted.

At this time, the Exchange believes that one aspect of the new policy should be amended and one aspect should be clarified. Specifically, the Exchange believes that the requirement that six months elapse before permitting an intra-firm transfer of an issue that was awarded without competition is too onerous. Instead, the Exchange believes that, where the security was awarded without competition, there should be no minimum time period before the intra-firm transfer will be considered by the CSAE without posting. Because the security was awarded without competition from any competing applicant from another specialist unit, no one would be disadvantaged if the security is transferred to another co-specialist in the same specialist unit without waiting for six months to elapse, provided the transfer is to a qualified co-specialist, which determination shall be made by the CSAE.

Without this change, a specialist unit might be tempted to return the security to the cabinet (which can be done after only three months) and having another co-specialist in the same unit apply to take it back out, or, for less profitable issues, not apply for the security in the first place. This change will further the Exchange's goal of increasing the depth and liquidity of the market by encouraging specialists to apply for issues that might otherwise remain in the cabinet.

Second, the Exchange would like to clarify the intra-firm transfer policy when a security is awarded with competition. While the two-year period is appropriate for permitting an intra-firm transfer without posting, the Exchange believes that a specialist unit should be given an opportunity for an intra-firm transfer after one year. As a result, for securities awarded with competition, after one year has elapsed, the CSAE will consider requests for an intra-firm transfer if the security is posted, in order to permit other specialist units and co-specialists to apply to trade the issue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to file number SR–CHX–97–29 and should be submitted by [insert date 21 days from the date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed CHX's proposed rule change and has concluded, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6(b)(5) in that it is designed to prevent fraudulent, manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest.[6]

The Commission finds that the amended policy, as proposed, should result in a reasonable balance between the interests of consistency and continuity with respect to the trading of an issue by a particular specialist and that of a specialist in having the flexibility to deregister in an unprofitable issue. Under the pilot program as approved in September, for a security that was awarded in competition, a co-specialist wishing to transfer that issue to another co-specialist in the firm before the two years had elapsed might find it easier to deregister after one year and have another co-specialist in the specialist unit apply for the issue again. Similarly, for a security that was awarded without competition, a co-specialist would deregister within three months to allow another co-specialist in the firm to apply for the security again rather than have to wait the full six months. The change will remove the need for deregistration prior to making an intra-firm transfer.

Overall, the Commission concludes that the proposed changes are minor but may encourage CHX specialists to register in additional securities that might otherwise remain in the cabinet. This, in turn, could add to the depth

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 39028 (September 8, 1997), 62 FR 48329.

[3] CHX Rules, Article IV, Rule 4.

[4] CHX Rules, Article XXX, Rule 1, Interpretation and Policy .01.

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission notes that is has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and liquidity of the market for such additionally listed securities.

Finally, the Commission notes that the proposed change to the pilot program does not alter the notification requirement to order entry firms, and the effective date of a specialist's deregistration.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication notice thereof in the **Federal Register**. This will permit the changes to be in effect for as much of the pilot program as possible thereby allowing CHX to better assess the effects of these changes to be assessed prior to the expiration of the pilot. In addition, the rule change that implemented the pilot program was published in the **Federal Register** for the full comment period and no comments were received. Accordingly, the Commission believes that it is consistent with Sections 6 and 19(b) of the Act [7] to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–97–29) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31394 Filed 11–28–97; 8:45 am]

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[7] 15 U.S.C. 78f and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CAR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39346; File No. SR–NASD–97–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees and Hearing Session Deposits for the Arbitration of Claims by Public Investors, Members and Associated Persons

November 21, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1997,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rules IM–10104, 10205 and 10332 of the NASD's Code of Arbitration Procedure ("Code") to increase the arbitrator honoraria and the arbitration filing fees and hearing session deposits for intra-industry and public investor arbitrations administered by NASD Regulation. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

IM–10104. Arbitrator's Honorarium

All persons [serving on panels of arbitrators pursuant to Rule 10104 of] *selected to serve as arbitrators pursuant to* the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session *(including a prehearing conference)* in which they participate [while in the performance of said duties].

The honorarium shall be $[150]*200* for [a single] *each hearing* session [, $225 for a double session], $50 for travel to a canceled hearing, and $[50]*75* per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing [is $75 per case] *shall be $125.*

10205. Schedule of Fees for Industry and Clearing Controversies

(a) At the time of filing a Claim, Counterclaim, Third Party Claim, or Cross-Claim in an industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Rule 10201, above, a party *who is a member* shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts stated in paragraph (k) unless such fee or deposit is specifically waived by the Director of Arbitration. *A party who is an associated person shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified for customer claimants in Rule 10332. If the associated person is a joint claimant with a member, the member shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified in paragraph (k) of this Rule.* Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the paragraph (k) below.

(b) No change.

(c) No change.

(d) No change.

(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee assessed *on a party who is a member* shall be $500. If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the hearing session deposit to be remitted by a party shall be *$1000* [$600]. These amounts may be adjusted by the Director of Arbitration or the panel of arbitrators may require *the maximum amount specified in the schedule* [$1,000].

(f) No change.

(g) No change.

(h) No change.

(i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over *$10,000,000* [$5,000,000].

(j) No change.

(k) Schedule of Fees

[1] The NASD submitted Amendment No. 1 to the proposed rule filing on November 14, 1997, the substance of which is incorporated into this notice and the proposed rule filing. *See* letter from John M. Ramsay, Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 12, 1997 ("Amendment No. 1").

SCHEDULE OF FEES

Amount in dispute (exclusive of interest and expenses)	Claim filing fee	Deposit for cases to be decided on the paper record (simplified[1])	Hearing Session Deposit	
			One arbitrator[2]	Three arbitrators[2][3]
$.01–$1,000	*$200* [500]	*$25* [75]	*$25* [300]	NA
$1,000.01–$2,500	*$300* [500]	*$50* [75]	*$50* [300]	NA
$2,500.01–$5,000	*$400* [500]	*$125* [75]	*$125* [300]	NA
$5,000.01–$10,000	$500	*$250* [75]	*$250* [300]	NA
$10,000.01–*$25,000*	*$750*	*$300*	*$450*	*NA*
$25,000.01–$30,000	*$1,000* [500]	NA	*$450* [300]	$–600
$30,000.01–$50,000	*$1,000* [500]	NA	*$450* [300]	$–600
$50,000.01–$100,000	*$1,000* [500]	NA	*$450*[3][300[4]]	*$750*[600]
$100,000.01–$500,000	*$1,000* [500]	NA	*$450*[3][300[4]]	$–*1,125*[750]
$500.000.01–*$1,000,000*	*$1,250*	*NA*	*$450*[3]	*$1,200*
$1,000,000.01–$5,000,000	*$2,000* [500]	NA	*$450*[3][300[4]]	*$1,200* [1,000]
[Over]$5,000,000.*01–$10,000.000.00*	*$2,500* [500]	NA	*$450*[3][300[4]]	*$1,200*[1,500]
Over $10,000,000	*$5,000*	*NA*	*$450*[3]	*$1,200*

[1] Simplified Arbitration (Without Hearing)]

[2] *The dispute is resolved by* o[O]ne a[A]rbitrator *per hearing session, including pre-hearing conferences.* [(Per hearing session)]

[3] *The dispute is resolved by* t[T]hree [or more] a[A]rbitrators *per hearing session.* [(Per hearing session)]

[4] *Fee applies only to* p[P]re-hearing c[C]onferences [Only] *with a single arbitrator.*

10332. Schedule of Fees for Customer Disputes

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee for a public customer shall be $250 and the non-refundable filing fee for an industry party shall be $500[.00]. The hearing session deposit to be remitted by a party shall be *$1000* [$600] or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed *the maximum amount specified in the schedule* [$1,000].

(f) No change.

(g) No change.

(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over *$10,000,000* [$5,000,000].

(i) No change

(j) No change

(k) Schedule of Fees

For purposes of the schedule of fees, the term "claim" includes Claims, Counterclaims, Third Party Claims, and Cross-Claims. Any such claim made by a customer *or associated person* is *treated as* a customer claim *for purposes of the schedule of fees.* Any such claim made by a member [or associated person of a member] is an industry claim.

CUSTOMER *or Associated Person* CLAIMANT

Amount in dispute (exclusive of interest and expenses)	Claim filing fee	Deposit for cases to be decided on the paper record (simplified [1])	Hearing session deposit	
			One arbitrator [2]	Three arbitrators [2][3]
$.01–$1,000	*$ 25* [15]	*$ 25* [15]	*$ 25* [15]	NA
$1,000.01–$2,500	$ 25	*$ 50* [25]	*$ 50* [25]	NA
$2,500.01–$5,000	$ 50	$125 [75]	*$125*[100]	NA
$5,000.01–$10,000	$ 75	*$250* [75]	*$250* [200]	NA
$10,000.01–*$25,000*	*$125* [100]	*$300* [NA]	*$450*	*NA*
$25,000.01–$30,000	*$150*	*NA*	*$450*[300]	$ 400
$30,000.01–$50,000	*$175* [120]	NA	*$450*[300]	*$ 600*[400]
$50,000.01–$100,000	*$225* [150]	NA	*$450*[3][300[4]]	*$ 750*[500]
$100,000.01–$500,000	*$300* [200]	NA	*$450*[3][300[4]]	*$1,125*[750]
$500,000.01–*$1,000,000*	*$375* [250]	NA	*$450*[3][300[4]]	*$1,200*[1,000]
$1,000,000.01–$3,000,000	*$500*	*NA*	*$450*[3]	*$1,200*
$3,000,000.01–$5,000,000	*$600*	*NA*	*$450*[3]	*$1,200*
[Over]$5,000,000.01–*$10,000,000*	*$800* [300]	NA	*$450*[3][300[4]]	*$1,200*[1,500]
Over $10,000,000	*$800*	*NA*	*$450*[3]	*$1,200*

[1] Simplified Arbitration (Without Hearing)].

[2] *The dispute is resolved by* o[O]ne a[A]rbitrator *per hearing session, including pre-hearing conferences.* [(Per Hearing Session)].

[3] *The dispute is resolved by* t[T]hree [or more] a[A]rbitrators *per hearing session.* [(Per hearing session)].

[4] *Fee applies only to* p[P]re-hearing c[C]onferences [Only] *with a single arbitrator.*

MEMBER [INDUSTRY] CLAIMANT

Amount in dispute (exclusive of interest and expenses) arbitrators [2] [3]	Claim filing fee	Deposit for cases to be decided on the paper record (simplified [1])	Hearing Session Deposit	
			One	Three arbitrator [1] [2]
$.01–$1,000	$200 [500]	$25 [75]	$25 [300]	NA
$1,000.01–$2,500	$300 [500]	$50 [75]	$50 [300]	NA
$2,500.01–$5,000	$400 [500]	$125 [75]	$125 [300]	NA
$5,000.01–$10,000	$500	$250 [75]	$250 [300]	NA
$10,000.01–$25,000	$750	$300	$450	NA
$25,000.01–$30,000	$1,000 [500]	NA	$450 [300]	$600
$30,000.01–$50,000	$1,000 [500]	NA	$450 [300]	$600
$50,000.01–$100,000	$1,000 [500]	NA	$450[3] [300 [4]]	$750 [600]
$100,000.01–$500,000	$1,000 [500]	NA	$450[3] [300 [4]]	$1,125 [750]
$500,000.01–$1,000,000	$1,250	NA	$450[3]	$1,200
$1,000,000.01–$5,000,000	$2,000 [500]	NA	$450[3] [300 [4]]	$1,200 [1,000]
[Over] $5,000,000.01–$10,000,000	$2,500 [500]	NA	$450 [300 [4]]	$1,200 [1,500]
Over $10,000,000	$5,000	NA	$450[3]	$1,200

[1] Simplified Arbitration (Without Hearing)]
[1] [2] The dispute is resolved by o[O]ne a[A]rbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]
[2] [3] The dispute is resolved by t[T]hree [or more] a[Arbitrators per hearing session. [(Per hearing session)]
[3] [4] Fee applies only to p[P]re-hearing c[C]onferences [Only] with a single arbitrator.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Introduction

NASD Regulation is proposing to amend the NASD's Code of Arbitration Procedure to increase the filing fees and hearing session deposits charged to public investors, member firms and associated persons for arbitrating disputes under the Code. In addition, NASD Regulation is proposing to increase the honoraria paid to arbitrators.[2]

In support of the proposed rule change, below is a discussion of NASD Regulation's arbitration program operating costs and revenue, new initiatives for improving the arbitration program, and a general description of filing fees, hearing session deposits and forum fees charged in arbitration proceedings. In addition, the development of the proposed fee increases is described. Finally, a narrative description of the proposed rule change is provided.

Operating Costs and Revenue. NASD Regulation's Office of Dispute Resolution ("Office"), and its predecessors, have been administering arbitrations for the Association since 1969. Since 1972 NASD Members have been required to submit disputes to arbitration upon the request of a customer, another member or an associated person. Submission of claims to arbitration by public investors was largely voluntary until 1987 and, as a result, the program handled a relatively small number of cases each year. Following the United States Supreme Court's 1987 decision in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 96 L.Ed.2d 185, 107 S.Ct. 2332, affirming the enforceability of customer predispute arbitration agreements, the arbitration caseload grew rapidly and the program now handles more than 6,000 cases annually.

The Office's operating costs have been funded from filing fees (charged to any party filing a claim in arbitration), forum fees (charged for each hearing session held in an arbitration and allocated by the arbitrators in the award to the parties), and, more recently, member surcharges (charged to any member named in a claim and to any member when an employee of the member is named in a claim). The difference between the revenue collected in fees and the cost of administering the program has been made up from the general member assessment revenue collected by the Association from all of its members. As the number of cases has grown, and the cost and complexity of administering arbitration proceedings have increased, NASD Regulation has sought to increase the fees in order to shift the costs of the program primarily to its member users. In 1994, for example, NASD Regulation began charging members a non-refundable fee if the member or an associated person of the member was named in an arbitration proceeding—the "member surcharge."

In spite of the effort to shift the costs to service users, the Office is not collecting sufficient user revenue to cover its costs. For example, as the table below illustrates, in 1996 the cost of the dispute resolution program exceeded fee revenue by $11.3 million. For 1997, even with the implementation of substantial increases in the member surcharge and an increase in revenue due to increases in the arbitration caseload, the cost will exceed revenue by $16 million. For 1998, even if the proposed changes are approved and implemented, the cost of the program will exceed revenue by $6.1 million.

TABLE 1.—REVENUES VS. EXPENSES
[In thousands of dollars]

	1995 Actual	1996 Actual	1997 Projected (with member surcharge increase effective 7/1/97)	1998 Projected (includes member surcharge and arbitrator honorarium increase, but without fee increase)	1998 Projected (with member surcharge, arbitrator honorarium increase and fee increases)
Revenue	$9,664	$13,275	$16,000	$23,110	$29,100
Expenses	$17,826	$24,617	$31,988	$35,128	$35,158
Net	($8,162)	($11,342)	($15,988)	($12,058)	($6,058)

The revenue shortfall in the program is currently made up from general assessment revenue; however, NASD Regulation is developing further increases in the member-user fees to close the budget gap. There will not be any further increases in fees charged to public investors in the foreseeable future.

New Initiatives to Improve the Arbitration Program. In January 1996, the NASD's Arbitration Policy Task Force ("Task Force") released its report on Securities Arbitration Reform. The Task Force's report made numerous recommendations to improve the arbitration process. Some of the recommendations, such as early appointment of arbitrators, have been implemented. Other recommendations, such as selecting arbitrators by a list selection method, involve significant technological changes and changes in the way the Office administers arbitration cases. And still others, like increasing arbitrator honoraria to attract and retain qualified arbitrators, involve permanent increases in the NASD's costs of operating the program.

Since the report was released, NASD Regulation has been engaged in a major effort to implement the numerous Task Force recommendations. The Office also has other initiatives underway to improve the arbitrator process. These include improving case processing and administration by, among other things, upgrading the computerized case tracking system and hiring additional staff. Some of the changes, such as increasing arbitrator honoraria and implementing list selection of arbitrators, will result in permanent increases in the cost to the NASD of administering the dispute resolution program, while others, such as improving case tracking, should result in savings. Implementing these changes will substantially improve the fairness and efficiency of the arbitration process. Finally, the growth rate in NASD Regulation's arbitration case load over the last ten years, and the increasing length and complexity of arbitration cases, are generating additional cost pressures on the Office in its continuing efforts to meet the needs of users of the dispute resolution services.[3]

The amendments to the fee schedules proposed in this rule change will serve to close some of the user revenue gap that currently exists in funding the Office's direct costs of providing arbitration services. However, the revenue from the proposed fee increases on public investors will not be used to fund the development of new systems or the implementation of the Task Force's recommendations. The exception to this is the early appointment of arbitrators, a Task Force recommendation that has already been implemented, and the proposed increases in arbitrator honoraria, which will be an increase in the Office's direct cost of administering arbitrations. Both of these initiatives directly benefit public investors, the first by improving the efficiency of arbitration, the second by attracting and retaining a higher caliber of willing, committed arbitrators.

General Description of Filing Fees, Hearing Session Deposits and Forum Fees. The fees and deposits for arbitration proceedings fall into three categories: (1) filing fees (including member surcharges);[4] (2) hearing session deposits; and (3) forum fees.

Filing fees are submitted by the party filing a claim. Filing fees are required for all claims, including cross-claims, counterclaims and third party claims. For example, if a public investor files a claim against two members, the investor pays a filing fee specified in Rule 10332 for public investor claimants based on the aggregate amount claimed. If one member then files a counterclaim against the public investor, the member pays the filing fee specified in Rule 10332 for industry claimants based on the aggregate amount claimed in the counterclaim. If the member then files a cross-claim against the other member firm respondent or a third party claim against another member, the member pays another filing fee as specified in Rule 10332 for industry claimants based on the aggregate amount claimed in the cross-claim and the member who is a third party respondent pays a member surcharge based on the aggregate amount claimed in the third party claim. The members each pay one member surcharge when they are brought into the case, whether through a claim, counter-claim, cross-claim or third party claim.

A hearing session deposit is required for arbitrations where hearings will be held and is intended as an advance payment for the Office's cost of conducting one hearing session. If the arbitrators determine that several

[2] This rule filing replaces SR–NASD–97–39, in which NASD Regulation originally proposed the amendments to the filing fees and hearing session deposits that are contained in this filing. As discussed below, in this filing NASD Regulation has modified some of the fee changes proposed in SR–NASD–97–39 to align the fees charged more closely with the Office of Dispute Resolution's ("Office") average costs of administering arbitration proceedings. In addition, the budget, revenue and cost figures used throughout this filing reflect the most current information about the arbitration process.

Since SR–NASD–97–39 was filed, the NASD has completed its 1998 budget process. The Office's revised 1998 revenue and expense figures from the 1998 Budget (set forth in Table 1) reflect significant savings resulting from the NASD's "Reinvesting for Our Future" program. This program required NASD departments to identify areas within their operations where savings could be achieved. In addition, the Office's 1997 revenue and cost experience through the end of September 1997, and including the new member surcharges implemented on July 1, 1997, caused NASD Regulation to revise the Office's projected 1998 revenues and costs. The revised revenue and cost projections are reflected in this rule filing.

[3] The number of cases filed with NASD Regulation's Office of Dispute Resolution in the first five months of 1997 is up 16 percent over the same period in 1996. The number of cases filed annually has risen from 2,886 in 1987 to an estimated 6,247 in 1997 based on the number of cases filed in the first nine months of 1997, a 116 percent increase. NASD Regulation projects that over 6,900 cases will be filed in 1998, an increase of 139 percent over 1987.

[4] Member surcharges imposed pursuant to Rule 10333, are intended to shift some of the costs of the dispute resolution program to the members who are actually named in cases and, therefore, are the primary users of the program.

hearing sessions may be necessary, Rule 10332(a) permits them to order the parties to make additional hearing session deposits. The cost of conducting a hearing session includes arbitrator compensation and travel expenses, hearing conference rooms, and staff work and expenses. All parties are required to pay the hearing session deposits specified in Rules 10205 and 10332. Any member firm filing a cross-claim, counterclaim, or third party claim against a public investor must pay the hearing session deposits specified for industry claimants in Rule 10332. In addition, if a case is settled or withdrawn more than eight days before a hearing is held, the hearing session deposit is refunded; in the Office's experience this occurs two-thirds of the time.

Forum fees are NASD Regulation's charges that are assessed by the arbitrators to the parties for conducting hearings where evidence and testimony is presented. The fees are based on the number of hearing sessions scheduled and conducted. Thus, forum fees can be assessed even if there is no final award. Forum fees assessed by the arbitrators are paid to NASD Regulation, not to the arbitrators, and the arbitrators' compensation is not affected by the amount of forum fees assessed or collected. The arbitrators can assess forum fees for each hearing session up to the maximum hearing session deposit that the party is required to pay under Rule 10332. For example, under the proposed rule change, the hearing session deposit for a public investor with a $100,000 claim is $750. Therefore, if an arbitration took four hearing sessions (two full days), the arbitrators could assess a maximum of $3,000 in forum fees.[5] The arbitrators can assess the forum fees evenly between the parties, or apportion the fees in any other manner, including assessing all forum fees against one party. The arbitrators can also determine to assess only part of the forum fees against one party (the respondent, for example) and not assess any forum fees against another party (the claimant, for example). Any forum fee assessed against any party is reduced by the amount of hearing session deposits already paid by the party.

Development of Proposed Fee Increases

As a result of the continuing growth of the program and the current and projected operating revenue shortfalls, NASD Regulation determined that changes to the funding mechanisms were necessary. Moreover, as discussed below, the fees collected under the current schedule do not come close to covering the NASD's costs of providing the arbitration service. In order to ensure that the changes were appropriate to the goals of the program and fair to its users, NASD Regulations established guidelines for fee increases and analyzed the program to identify the cost of each service.[6] In addition, NASD Regulation identified the member users of the program.

In 1996, case volume for the entire program (public investor and intra-industry arbitration) was analyzed to obtain a profile of the users of arbitration services and to project the impact of future fee changes upon member firms.[7] This analysis revealed that only 753 firms (14 percent) out of approximately 5,500 NASD member firms had been parties to arbitration cases. Of these 753 firms, 88 firms (12 percent) accounted for over 50 percent of the case volume. Each of these 88 firms reported revenues in excess of $100 million on their FOCUS filings.[8] In contrast, firms that reported revenues of less than $500,000 accounted for only 9 percent of NASD member firms and less than 3 percent of the total projected case load. Thus, a small number of large firms are involved in more than 50 percent of all arbitration cases. NASD Regulation considers these firms to be the primary and most frequent member users of the service and, therefore, believes it is appropriate for any fee changes to shift member costs to these member users. The proposed rule changes, including the changes to the member surcharge adopted in July 1997, largely accomplish this goal. In addition, any future changes to the fee structure will transfer any additional costs to these primary users of the program.

The Office has analyzed the overall flow of revenue from users of the arbitration services for the twelve months ending August 31, 1997. After calculating filing and other fees with forum fees actually paid by public investors and refunds received by public investors, the data show that public investors currently are assessed approximately $3.5 million of $15.3 million in fee revenue collected from users. This is 23 percent of the total fee revenue. Although the time periods are not directly comparable, the revenue contribution of public investors over the twelve months ended August 31, 1997 is less than 12 percent of the $29.8 million calendar year 1997 projected total cost of running the dispute resolution program. Public investors, however, file approximately 80 percent of the new claims filed with the Office each year. Moreover, even though some of these revenue contribution figures will vary because of differences in case volume, forum fee allocations and other factors, NASD Regulation believes that the total relative revenue contributions of public investors and members will not change substantially after the proposed fee changes are approved.

Overall, NASD Regulation expects that the fee changes proposed in this rule filing and the member surcharge changes implemented earlier in 1997 will generate approximately $11.5 million in additional revenue. The combination of increases in fees (filing fees, member surcharges and hearing session deposits) charged to members will generate $8.4 million in additional revenues (73 percent of total additional revenues to be generated by the fee changes). Even with this additional revenue, the Office will continue to incur operating shortfalls of more than $6.1 million.

Guidelines for Proposed Fee Increases. In developing the proposed rule change, NASD Regulation identified several important principles to guide its decisions on the appropriate fees for the arbitration service it provides:

- The current ratio of public investor fees to member fees should not change. Currently public investors pay approximately 23 percent of the arbitration service fees and members pay 77 percent.
- The fees should not create a financial barrier to prevent a public investor from seeking arbitration. The maximum fee charged to public investors should not exceed the direct costs of providing the service and public investors should be permitted to ask the Office to waive the fees in circumstances of financial hardship.
- The fees for a public investor to file a case in arbitration (the filing fee plus hearing session deposit) must be less or no more than the initial fee charged to the member named in the arbitration (the member surcharge).
- The revenue contribution plan should, to the extent possible, impose costs on the member firms that use the program.
- Any fee increases for public investors should be allocated to reduce the revenue shortfall for direct arbitration services alone. Additional fee increases to cover revenue shortfalls for other dispute resolution programs and indirect operating costs would be assessed to member users of the dispute resolution programs.

Activity-Based Cost Analysis. In order to understand better the costs of administering the dispute resolution program, NASD Regulation, assisted by the accounting firm of Coopers & Lybrand, conducted an activity-based costing study to identify more accurately the Office's current costs and link specific activity costs to the services provided. This study identified fifty-two separate arbitration service activities and determined the total direct cost of performing each activity.

In addition to providing the Office with a better understanding of particular activities and costs, the study also provided a program-wide perspective of the raw average costs and average fees collected in both simplified and standard arbitration cases. The study showed, on a per occurrence basis, the costs associated with activities such as: (1) receiving and processing claims; (2) analyzing and serving claims; (3) selecting arbitrators; (4) scheduling hearings; and (5) conducting hearing sessions. The analysis has permitted the Office to extrapolate its likely costs for 1998 and compare them to the revenue expected. This "Break-Even Analysis" is attached to this filing as Exhibit 2 and is discussed below.

The raw average costs for particular activities have been identified by breaking down the work of the Office into discrete functions, such as "Receiving Claims." The cost of performing these discrete functions is then identified by totaling the staff hours and other expenses devoted to the function. The number of occurrences of the function are then identified and counted. The number of times the receiving claims function occurs matches the number of claims filed with the Office each year. The number of occurrences of the function is then divided into the total cost to derive the per occurrence cost of the function, or the raw average cost. The average cost of each function can be multiplied by the number of times it occurs in each case and added to all of the other functional costs of a case to produce the average cost of a hypothetical case.

The costs associated with particular cases, however, fall along a wide spectrum depending on the nature of the case. Cases that are settled shortly after being filed usually cost little to administer. Cases that involve numerous and complex issues, numerous pre-hearing rulings and conferences with the arbitrators, lengthy hearings and, finally, an award are more costly to administer than other cases. The Office has also found that the larger the amount in dispute, the more costly the case is to administer because there are usually more parties involved (which makes communication more costly and time consuming), there are more motions and other disputes to resolve, and prehearing conference and hearing logistics are more complicated. This wide spectrum of costs is the reason that the Office imposes graduated fees in two stages: filing fees and forum fees (the latter are partly prepaid through hearing session deposits).

Finally, NASD Regulation notes that the activity-based cost analysis is a useful analytical tool for budgeting and planning; however, it should not be relied upon to produce guaranteed cost figures. The actual costs of providing the services can and will vary due to factors that are unpredictable and beyond NASD Regulation's ability to control.

Proposed Rule Changes

In view of the foregoing, NASD Regulation is proposing to amend the schedules of fees (including hearing session deposits) for both intra-industry and public investor disputes to support the improvement of the arbitration service administered by the Office and to shift the cost of administering the service to the users.

The filing fee and hearing session deposit changes proposed in this rule filing are discussed in four separate categories: (1) filing fees for claims by public investors against members ("Public Investor-Member Disputes"); (2) filing fees for claims by members against public customers ("Member-Public Investor Disputes") or other members or associated persons ("Intra-industry Disputes");[9] (3) hearing session deposits in all cases between public investors and members, and in intra-industry cases; and, (4) miscellaneous changes. Also discussed are NASD Regulation's proposed changes to the arbitrator honorarium schedule. NASD Regulation believes the changes, taken together, will maintain the current ratio of funding of the arbitration service between public investors and members.[10]

Filing Fees: Public Investor-Member Disputes. NASD Regulation is proposing to amend Rule 10332 to increase the filing fee for disputes between a public investor claimant and a member respondent by an average of 50 percent in most brackets (fees are based on the amount in dispute, and a range of amounts in dispute (e.g., $50,000.01 to $100,000) to which a particular fee applies is referred to as a bracket) and add three new brackets to graduate further the fee schedule. For example, the old bracket of fees for claims of $10,000.01 to $30,000 has been divided into two brackets; one from $10,000.01 to $25,000 with a new filing fee of $125 (versus $100 for the old bracket), and another from $25,000.01 to $30,000 with a new filing fee of $150. The old bracket was divided to take into account the new ceiling for simplified arbitration cases, which was raised from $10,000 to $25,000.[11] The largest filing fee increases are for the largest cases; the filing fee for claims of more than $10,000,000 is being raised 100 percent from $300 to $600.[12]

Using the costs identified in the activity-based costing study, NASD Regulation believes that in 1998 the average direct cost associated with processing a simplified arbitration case

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[5] Arbitrators assess forum fees in the award. The Office keeps track of the number of hearing sessions held, the hearing session charge to be applied and any other fees paid or incurred (such as filing or postponement fees and hearing session deposits) and advises the arbitrators. The arbitrators then determine how much of the fees, if any, each party will be responsible for paying, sometimes setting forth liability for the fees in percentages and specifying individual or joint and several liability for the fees. Finally, the award will set forth the specific amounts of fees owed by each party.

[6] The NASD Regulation Board of Directors formed a Subcommittee on Arbitration Fees to examine the current revenue, cost and fee structure, and to recommend changes. The Subcommittee was composed of three public members (James E. Burton, CalPERS; Bonnie Guiton Hill, Times-Mirror Corp.; and William S. Lepp, Esq., Lepp, Laurie, Libra, Abramson & Thomson, board member of the Public Investors Arbitration Bar Association and member of NASD Regulation's National Arbitration and Mediation Committee (NAMC)) and three securities industry members (Raymond E. Wooldridge, Southwest Securities Group, Inc., NAMC member and Chairman of NAMC's Finance Subcommittee, and former Vice-Chairman of NASD Regulation's Board of Directors; Philip S. Cottone, Rutherford, Brown & Catherwood, Inc., Chairman of NAMC and former member of NASD Regulation's Board of Directors; and O. Ray Vass, Merrill, Lynch, Pierce, Fenner & Smith, Inc., member of NASD Regulation's Membership Committee).

[7] *See* Table 3, *infra*, for a summary of the analysis.

[8] FOCUS Reports (Financial and Operational Combined Uniform Single Reports) are submitted to the NASD pursuant to SEC Rule 17a-5 by member firms to report on the member's net capital and general financial position.

[9] The proposed rule change treats associated persons of members like public customers for purposes of fees. *See* discussion, *infra*.

[10] For the twelve month period ending August 31, 1997, the net revenue contribution of public investors was approximately $3.5 million. (Net revenue contribution is calculated by identifying the fees paid, including hearing session deposits and postponement fees, less the refunds and reallocations through assessment of costs, such as forum fees.) The net revenue contribution of members was $11.8 million. NASD Regulation is projecting that the combined additional revenue generated by the proposed fee increases in this rule filing and the increased member surcharge already in effect will be approximately $11.6 million. While it is not possible to predict accurately the 1998 net revenue contributions of public investors and members, NASD Regulation intends for the proposed increases to maintain the same ratio of public investor/member net revenue contributions.

[11] *See* note 1, *supra*.

[12] *See* Table 2, *infra*.

from beginning to end will be approximately $412. For a standard case the cost from filing through all activities up to the prehearing conference will range from $353 through at least $630. The activity categories used to calculate average claim processing costs were: (i) receipt/assignment of cases; (ii) check processing; (iii) analyzing claims; (iv) serving claims; (v) processing answers; (vi) processing motions; (vii) processing counterclaims; and (viii) conducting discovery (except for prehearing conferences to resolve discovery issues). Activity costs that were not included, among others, were; (i) recruiting and training of arbitrators; (ii) qualifying arbitrators; (iii) mediation; and (iv) NASD corporate oversight and transfer pricing of services from other departments.

For a simplified arbitration case the proposed customer filing fee for a $10,000 claim is $75, plus a proposed $250 simplified arbitration fee, for a total of $325, versus average costs for simplified cases of $412. Because there are no hearings in such cases, much of the Office's cost is associated with activities from processing the claim up through presenting it to the arbitrator for a decision. By contrast, in cases where hearings are conducted, the hearings constitute by far the largest portion of the cost.

NASD Regulation is proposing filing fees designed to cover as much of the actual costs of the arbitration process from filing up to the prehearing conference as is possible without erecting barriers to entry into arbitration. For a standard case in which more than $100,000 is in dispute and three arbitrators are appointed, the proposed customer filing fee is $300, while the Office's average expenses for administering the case from filing up to the pre-hearing conference will be at least $477. The margins for large bracket cases are smaller, but the proposed fees do not exceed the actual average cost to provide the service.

NASD Regulation's "Break-even Analysis" (attached as Exhibit 2) illustrates how the Office's costs of administering an arbitration correlate to the revenues obtained through filing fees and hearing session deposits using 1998 figures and the proposed fee increases.[13] The analysis uses the activity categories identified in the activity-based costing study. For each type of activity the Office's total cost of performing the activity (serving claims, for example) is divided by the number of times the particular activity occurs to produce an approximate average cost for each occurrence of the activity. These activities and their costs are then charted sequentially as they would likely occur in a case to produce a hypothetical cumulative cost at each major stage of a case. This average cost is charted against the fee revenue received in a case. As noted above, however, NASD Regulation does not regard the analysis as a guarantee that in each case each step in the process will cost no more than the average predicted by the analysis.

The analysis shows that well before a prehearing conference is held the claim filing fee revenue has been used up and, after an award is rendered following a hearing, all of the fee filing revenue and forum fees that could be collected in a case have been expended. The analysis takes into account that some activities (processing motions, for example) will occur several times in a case. In addition, the costs of some activities (notably, holding hearings) vary greatly so that, although it is possible to establish an average cost for the activity, the cost of the activity in a particular case could be substantially higher or lower than the average. Finally, in the Office's experience, the cost of some activities tends to vary by the amount in dispute, with larger cases tending to cost more to administer at certain stages than smaller cases. The Office believes that the cost variance may result from the increased contentiousness of the litigants when there are significant damages in dispute and there are sometimes larger numbers of parties involved in cases where large amounts are in dispute.

While the proposed increases in filing fees and hearing session deposits are expected to generate $3.1 million in additional revenue from public investors, the increase will be spread over more than 5,000 cases and should not discourage claimants from seeking relief. For example, in cases where more than $50,000 is in dispute (approximately 16 percent of the public investor cases filed with the Office), the filing fee is increasing $75 from $150 to $225. The increase of $75 represents less than 2/10 of 1 percent of the amount in dispute.[14] The filing fee increases in other brackets are similarly small relative to the amount in dispute:

[13] Exhibit 2 to the proposed rule filing presents examples of how the proposed filing fees and forum fees would apply in particular types of cases and the Office's average costs of administering arbitration proceedings in such cases. The figures in the line "Net of revenues—cost" show the loss the Office will incur in the example when the Office's costs are subtracted from the revenues collected. Similarly, the final figure in each example shows how much the Office would lose in such cases after the Office's total costs are subtracted from the revenues collected, including forum fees. In addition, for comparison purposes, Exhibit 2 includes the current forum fees that would be charged for the type of case in each example. Because the cost figures set forth in Exhibit 2 are averages, parties should not regard them as predictive of the actual cost of administering their case.

[14] By contrast, the filing fees of the American Arbitration Association ("AAA") range from $300 to $4,000, depending on the amount in dispute. In addition, the AAA's rules require the parties to pay arbitrator honorariums and other costs of an arbitration proceeding.

TABLE 2.—PERCENTAGE INCREASE IN CUSTOMER FILING FEES

	Old filing fee	Proposed new filing fee	Dollar amount of increase	Percent increase	Increase as percent of amount in dispute
$.01–1,000.00	$15	$25	$10	66.67	1.000
$1,000.01–2,500	25	25	0	0.00	0.000
$2,500.01–5,000	50	50	0.000	0	0.000
$5,000.01–10,000	75	75	0	0.00	0.000
$10,000.01–25,000	100	125	25	25.00	0.250
$25,000.01–30,000	100	150	50	50.00	0.200
$30,000.01–50,000	120	175	55	45.83	0.183
$50,000.01–100,000	150	225	75	50.00	0.150
$100,000.01–500,000	200	300	100	50.00	0.100
$1,000,000.01–3,000,000	250	500	250	100.00	0.025
$500,000.01–3,000,000	250	375	125	50.00	0.025
$3,000.01–5,000,000	250	600	350	140.00	0.012
$5,000.01–10,000,000	300	600	300	100.00	0.005
Over $10,000,000	300	600	300	100.00	0.005

Filing Fees: Member-Public Investor Disputes and Intra-Industry Disputes. NASD Regulation also is proposing to amend Rule 10332 to increase the filing fees where a member files a claim against a public investor. The current filing fee is $500 for all brackets. NASD Regulation is proposing to substitute a graduated filing fee beginning at $200 for claims of $1,000 or less up to $5,000 for claims over $10,000,000. By graduating the fee schedule, the filing fees are assessed proportionately on the members based on the size of the claim. Thus, while the filing fees for large claims would increase substantially, the filing fees for small claims would actually decrease. The fairness of the fee schedule to members with small claims is enhanced by decreasing fees for claims of $5,000 or less.

NASD Regulation also is proposing to amend Rule 10205 to increase and graduate the filing fees for intra-industry disputes. Currently, the filing fees are $500 regardless of the amount in dispute. NASD Regulation is proposing to graduate the filing fee from $200 for claims of $1,000 or less up to $5,000 for claims exceeding $10,000,000 in order to make the filing fee fairer to claimants with small claims.

As noted above, in addition to the filing fee and hearing session deposit increases proposed in this rule filing, NASD Regulation has increased substantially the surcharge on members named as respondents in an arbitration proceeding.[15] Taken together, the surcharges and proposed fee increases on members in both public-investor and intra-industry cases are expected to generate $8.4 million in additional revenue, or 73 percent of the total revenue generated. The specific impact on members is shown below:

Table 3.—Impact of Fee Increases (Including Surcharges) on Member Firms

Capitalization of firm	Number of firms	Number of cases (est. 1998)	Percent of total	Estimated impact (1998)	Impact per firm
$1 Billion +	19	2495	36.18	$3,000,000	$157,895
$100 Million–$1 Billion	69	1062	15.40	1,300,000	18,841
$50 Million–$100 Million	48	531	7.70	650,000	13,542
$25 Million–$50 Million	83	751	10.90	900,000	10,843
$10 Million–$25 Million	117	766	11.11	950,000	8,120
$1 Million–$5 Million	303	1069	15.50	1,300,000	4,290
$500,000–$1 Million	49	111	1.61	150,000	3,061
Less Than $500,000	65	111	1.61	150,000	2,308
Total	753	6898	100.00	8,400,000	11,155

The average increase in cost to member firms for each case will be $1,218.

NASD Regulation is proposing increases in member-user contributions to the dispute resolution process because member firms have indicated that arbitration is their preferred forum for resolving public investor-member disputes through the predispute arbitration agreements that are typical of broker-customer business relationships. Accordingly, the proposed fee increases assess the costs on the actual users of the program.

Hearing Session Deposits. NASD Regulation also is proposing to amend Rules 10205 and 10332 to increase the hearing session deposits[16] for all cases by no more than 50 percent in most brackets (in the lowest brackets increases from $15 to $25, and $25 to $50, represent 67 and 100 percent

[15] Rule filing SR–NASD–97–40, filed for immediate effectiveness on June 12, 1997, and effective July 1, 1997, steeply graduated and increased the surcharge on members from a maximum of $500 under the old schedule to $3,600 under the new schedule.

[16] Hearing session deposits are required before NASD Regulation will schedule a hearing unless waived by the Director due to financial hardship. The amount deposited is offset against the actual hearing costs incurred. If a case is settled, dismissed, or withdrawn more than eight business days before a hearing was scheduled to occur, the hearing session deposit is refunded.

increases, respectively) and to add three new brackets to graduate further the hearing session deposit schedule. For example, the old bracket of fees for claims of $10,000.01 to $30,000 has been divided into two brackets, one from $10,000.01 to $25,000 with a new hearing session deposit of $450 [17] (compared to $300 for the old bracket) for a single arbitrator, and another from $25,000.01 to $30,000 with a new hearing session deposit of $450. In the $25,000.01 to $30,000 bracket the hearing session deposit for three arbitrators will be $600 (compared to $300 for the old bracket). The hearing session deposit for claims of $5,000,000.01 or more is being reduced to $1,200.

The proposed new hearing session deposits are based on the results of the activity-based costing study which showed that, for cases requiring hearings, NASD Regulation's projected average cost to provide hearings in 1998 will be approximately $1,200 per hearing session. The activities used in computing this cost include arbitrator expenses and compensation, hearing room expenses, taping expenses, and staff work and expenses. The Office's experience also shows, however, that the costs of conducting hearings varies significantly with the amount in dispute and the number of parties involved. This is because staff attorneys may need to attend some or all of the hearing sessions, staff coordination of logistics may be more difficult and complicated, and staff communication with the parties may be more involved and time-consuming. Moreover, the hearing session deposits have been graduated from a relatively low level for cases in lower brackets up to the actual average cost of conducting hearings because NASD Regulation believes that charging claimants the full cost of conducting hearings in relatively small cases could discourage some public investors from seeking relief.

In addition, the proposed rule change makes the hearing session deposits for particular brackets the same among all types of cases; public investor vs. member, member vs. public investor and intra-industry. This is being done because NASD Regulation believes the hearing session deposit, and by extension the forum fees, should not exceed the Office's actual costs, and such costs are, on average, approximately the same for all types of cases, even if they may vary by the amount in dispute or the number of parties involved. As a result of this change, the hearing session deposit will be the same without regard to whether a public investor or a member filed the initial claim.

Miscellaneous Changes. NASD Regulation is proposing to amend Rule 10205(a) to provide that if the claimant is an associated person, he or she will pay the filing fee and hearing session deposit specified for public customers. However, if the associated person is a joint claimant with a member, the member will pay the filing fee and hearing session deposit specified for industry claimants. NASD regulation is also proposing to amend Rules 10205(e) and 10332(e) to increase the hearing session deposit from $600 to $1000, or an amount specified by the Director or the arbitrators not exceeding the maximum hearing session deposit specified in the rules, for claims where the amount in dispute is not disclosed by the claimant in the Statement of Claim.[18]

Finally, Rules 10205(i) and 10332(h) are proposed to be amended to provide that the filing fees and hearing session deposits for large and complex cases brought under Rule 10334 [19] will be those specified for cases exceeding $10,000,000. There are a few significant and distinct costs associated with such cases, including the Administrative Conference, the number of hearing sessions, pre-hearing issues to be resolved and customized arbitration procedures that may be requested by the parties.

Arbitrator Honoraria. NASD Regulation is proposing to amend IM–10104 to increase the honoraria paid to arbitrators. The honorarium will be increased from $150 to $200 for each hearing session, with an additional $75 per day for the chairman of the panel. Thus, the Office's honorarium cost for a panel of three arbitrators for one hearing session is $675. The honorarium for a prehearing conference will be $200. The honorarium for a case not requiring a hearing will be $125.

[17] Under the new ceilings for single arbitrator claims without a hearing, claims up to $25,000 may be resolved by a single arbitrator on the pleadings alone. In such cases, a hearing session deposit is not required. Thus, the new $450 hearing session deposit for such cases only applies in the event the claimant requests a hearing.

[18] In cases where the claimant is seeking a remedy other than damages (recision, for example) and does not specify damages, the staff will attempt to establish the market value of the securities which are the subject matter of the claim before resorting to the default fee specified in paragraph (e) of the two rules.

[19] Rule 10334 (the rule for large and complex cases) has been extended for five years and the use of the procedures is now entirely voluntary. *See* Securities Exchange Act Release No. 39024 (September 5, 1997), 62 FR 47856 (September 11, 1997).

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act [20] in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility because it further graduates the fee schedules and requires users, especially member firm users, to absorb a reasonable share of the costs of operating the arbitration program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–79 and should be submitted by December 22, 1997.

[20] 15 U.S.C. 78o–3.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 97–31392 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39349; File No. SR–NASD–97–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Amend Its Rule 3230 Relating to Clearing Agreements

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 1997, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On November 20, 1997, the NASD Regulation filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from John M. Ramsay, Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 19, 1997 ("Amendment No. 1"). In Amendment No. 1, the NASD Regulation amended the proposal to: (1) Add a sentence to the rule relating to the responsibility of introducing members to notify clearing members of the specific reports needed by the introducing members to supervise its business; (2) clarify that failure to provide such notification would violate not only the proposed rule but also, the Association's supervisory rules; and (3) delete a series of questions directed to readers of the proposal. Commission staff has incorporated the changes set forth in Amendment No. 1 into the notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend the National Association of Securities Dealers, Inc.'s ("NASD" or "Association") Rule 3230 to: (1) establish standards for the disposition of written customer complaints received by clearing firms about introducing member firms relating to their functions and responsibilities under the clearing agreement; (2) govern how exception reports are made available to introducing firms and retained by clearing firms; and (3) permit introducing firms to write checks on their clearing firm's account. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

3230. Clearing Agreements

(a) All clearing or carrying agreements entered into by a member, except where any party to the agreement is also subject to a comparable rule of a national securities exchange, shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:

(1) Opening, approving and monitoring customer accounts;

(2) Extension of credit;

(3) Maintenance of books and records;

(4) Receipt and delivery of funds and securities;

(5) Safeguarding of funds and securities;

(6) Confirmations and statements;

(7) Acceptance of orders and execution of transactions;

(8) Whether, for purposes of the Commissioner's financial responsibility rules adopted under the Act, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing number; and

(9) the requirement to provide customer notification under paragraph [(d)](*g*) of this Rule.

(b)(1) In order for the introducing member to carry out its functions and responsibilities under the agreement, each clearing member must forward promptly any written customer complaint received by the clearing member regarding the introducing member or its associated persons relating to functions and responsibilities allocated to the introducing member under the agreement directly to: (A) the introducing member; and (B) the introducing member's examining authority designated under Section 17 of the Act ("DEA") (or, if none, to its appropriate regulatory agency or authority). The clearing or carrying agreement must specifically direct and authorize the clearing member to do so.

(2) The clearing member must also notify the customer, in writing, that it has received the complaint, and that the complaint has been forwarded to the introducing member and to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority). This written notice to the customer must also contain a statement that reads substantially as follows: "Please be aware that you retain the right, at your discretion, to transfer your account to another broker/dealer of your choice."

(c)(1) A clearing member, when it enters into a clearing agreement, must immediately, and annually thereafter, provide the introducing member a list or description of all reports (exception and other types of reports) which it offers to the introducing member to assist the introducing member in supervising its activities, monitoring its customer accounts, and carrying out its functions and responsibilities under the clearing agreement. The introducing member must notify promptly the clearing member, in writing, of those specific reports by the clearing member that the introducing member requires to supervise and monitor its customer accounts.

(2) The clearing member must retain as part of its books and records required to be maintained under the Act and the Association's rules, copies of the reports requested by or provided to the introducing member. For purposes of this Rule, the clearing member will be in compliance with the requirements of this paragraph it if retains the data from which the original report was produced, provided, the clearing member can, at the request of the DEA, either (A) recreate the report; or (B) provide the data and the data formatting that was used to prepare the report.

(3) Each year, no later than July 31, the clearing member must notify in writing the introducing member's chief executive and compliance officers of the reports offered to the introducing member and the reports requested by or supplied to the introducing member during the previous year ending June 30. The clearing member must also provide a copy of the notice to the introducing member's DEA.

(4) The clearing member must provide, at the request of the introducing member's DEA, any reports (or, if the reports are not available, information or data from which the

reports could have been prepared) that were offered to the introducing member but which the introducing member did not request.

(d) The clearing or carrying agreement may permit the introducing member to issue negotiable instruments directly to the introducing member's customers using instruments for which the clearing member is the maker or drawer. The clearing member may not grant the introducing member the authority to issue negotiable instruments until the introducing member has notified the clearing member in writing that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of such instruments.

[(b)]*(e)* Whenever a clearing member designated to the Association for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to the Association for review and approval.

[(c)]*(f)* Whenever an introducing member designated to the Association for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-regulatory organization for oversight with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) enters into a new clearing agreement with another clearing member, the introducing member shall submit the agreement to its local Association district office for review.

[(d)]*(g)* Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recent concerns about questionable sales practices and potentially fraudulent activity by certain introducing firms, and the handling of customer complaints about those firms by their clearing firms, caused the staffs of NASD Regulation and the New York Stock Exchange, Inc. ("NYSE") to examine the relationship between clearing firms and their client introducing firms. The examination resulted in proposals to amend the NASD's and NYSE's Rules relating to the content and approval of clearing agreements to specify requirements for handling customer complaints, for providing, requesting and retaining exception reports, and for issuing checks. The NYSE's proposal to amend their Rule 382 has been filed with the Commission.[4] The NASD believes its proposal to amend Rule 3230 discussed below is consistent with the current NYSE proposal to amend NYSE Rule 382.

While the Board of Directors of NASD Regulation ("Board") approved the proposed rule in recognition of the importance of maintaining consistency with the NYSE's proposal, the Board expressed strong concerns regarding the proposal, including those relating to two particular issues. First, the Board expressed concern that the proposed rules not change or be interpreted as changing the fundamental nature of the relationship between introducing and clearing firms, or otherwise affect rights, responsibilities or liabilities of the introducing or clearing firm under law or contract. Other than to establish limited requirements to enable the introducing member to carry out its responsibilities under its clearing or carrying agreement with the clearing member, the proposals are not intended to change the fundamental nature of the relationship between introducing and clearing firms, or otherwise affect any existing rights, responsibilities or liabilities under law or contract.

Second, the Board expressed concern that the requirement that the customer be notified by the clearing firm that he or she has the right to transfer his or her account to another firm may unfairly single out a particular category of complaints, create an unfair implication that each such complaint would warrant the customer's transferring his account, or otherwise operate inappropriately to distinguish this class of complaints from others. In recognition of the importance of maintaining consistency with the NYSE's proposal, the NASD requests that the SEC defer approval of the NYSE's proposal until the NASD and the SEC have had an opportunity to consider comments in response to the publication for comment of the NASD proposal in the **Federal Register**.

Description of Proposed Rule Change

Customer Complaints. It is generally the practice of clearing firms to forward to introducing firms customer complaints they receive relating to matters that are the responsibility of the introducing firm. Under NASD Rule 3070, a member is required to report to the Association any written customer complaint against it involving allegations of theft or misappropriation of funds or securities or of forgery. Recently, however, there have been instances where introducing firms may not have complied in a timely manner with the requirements of Rule 3070 when their clearing firms forwarded customer complaints to them. Thus, the Association does not get the reports in a timely manner and NASD Regulation staff is not aware of the customer complaints until long after the fact. Since there is no mechanism other than Rule 3070 designed to provide this information to NASD Regulation, such late reporting undermines the purpose of Rule 3070, which is to provide NASD Regulation with early warning indicators to generate a regulatory response to problems. In addition, receipt by clearing firms of large numbers of complaints regarding introducing firms may be indicative of sales practice problems requiring prompt regulatory attention.

To address this concern, proposed new paragraph (b) states that when a clearing firm receives a customer complaint about an introducing firm relating to the functions and responsibilities of the introducing firm, the clearing firm must forward the complaint to the introducing firm and send a copy of the complaint to the introducing firm's DEA. The requirement may provide an early warning to the DEA of potential problems at introducing firms. The proposed amendment also provides that the clearing agreement must expressly direct and authorize the clearing firm to forward the complaint to the introducing firm and send a copy of the complaint to the introducing firm's DEA.

[4] See Securities Exchange Act Release No. 39200 (October 3, 1997) 62 FR 53369 (October 10, 1997) (noticing File No. SR–NYSE–97–25).

In addition, the proposed rule provides that the clearing firm must notify the customer in writing that the complaint was received, and was forwarded to the introducing firm and to the introducing firm's DEA. This requirement will serve to alert the customer that the complaint has been received and forwarded to the appropriate entity (the introducing firm) for a response, and that the introducing firm's regulator has also been made aware of the customer's complaint. This written notice to the customer must also contain a statement that reads substantially as follows: "Please be aware that you retain the right, at your discretion, to transfer your account to another broker/dealer of your choice."

The requirement that the complaints be forwarded to the appropriate DEA is intended to provide notice to the DEAs of the types of complaints that are being received and to provide information that may be useful for examining or investigating particular conduct. It is not intended, however, to result in an investigation of each, or any proportion, of complaints that are received by the DEA.

Exception Reports. All NASD member firms are required under NASD and federal regulations to establish, maintain and enforce supervisory systems and procedures that are designed to address all areas of a member's business. A key aspect of these supervisory procedures is exception and other compliance reports that a member creates to help meet these supervisory responsibilities. In a fully disclosed clearing arrangement, the clearing member generally provides exception reports that are available to assist the introducing member in carrying out its supervisory obligations. In addition, officers and managers of introducing members should be on notice of the reports and information that were available to them in meeting their supervisory and monitoring obligations. Paragraph (c) of the proposed amendment addresses these issues.

Proposed new paragraph (c)(1) requires the clearing firm to provide its introducing firm, both at the commencement of the introducing/clearing arrangement and annually thereafter, a list or description of all exception or other reports which it offers to introducing firms to assist the introducing firm in supervising its activities, monitoring its accounts and carrying out its functions and responsibilities under the clearing agreement. Proposed new paragraph (c)(1) also requires the introducing member to notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts. Failure to provide notification would not only be a violation of this rule, but also of Rule 3010, which requires that members establish and maintain proper supervisory systems.

Even though the language of the proposed amendment requires the clearing firm to provide the introducing firm with a list or description of reports that it will provide, the staff recognizes that some clearing firms do not create such reports, but rather provide data and data formatting software to their introducing clients that allow the introducing firms to prepare their own reports. The proposal would permit compliance with the provision where clearing firms communicate with their introducing firms about the data and data formatting which they make available so that the introducing firms can determine which reports they will create in order to meet their supervisory and monitoring needs.

Paragraph (c)(2) requires the clearing firm to retain as part of its books and records, copies of any reports requested or provided to the introducing firm. The provision permits a clearing firm to meet the requirement if it retains the data that was used to prepare the report but only if the clearing member, at the request of the DEA, can recreate the report or provide the data and data formatting that was used to prepare the report. Similarly, if the clearing firm provided data and report formatting to the introducing firm, the clearing firm could provide the data and data formatting that was provided to the introducing firm to the DEA to fulfill this requirement.

Paragraph (c)(3) requires the clearing member, immediately after entering into the clearing agreement, to notify the introducing member's chief executive and compliance officers of the reports that it offers to the introducing member, and the reports requested by or supplied to the introducing firm. The clearing member must provide this notice each year thereafter as of June 30, to be provided no later than the following July 31.

Finally, paragraph (c)(4) requires the clearing member, at the request of the introducing member's DEA, to provide to the DEA reports that were offered to the introducing member but which the introducing member did not request. As with the record retention provision in paragraph (c)(2), this requirement may be met if the clearing member retains the data from which the original report was produced and then either recreates the report or provides the data and data formatting that was used to prepare the report.

Check Writing. Under proposed new Paragraph (d), the clearing agreement may permit the introducing firm to issue checks to the introducing firm's customers that are drawn on the clearing member's account upon written representation from the introducing firm that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of negotiable instruments. This rule is intended to protect customers by clearly establishing that the clearing member will be the maker or drawer of such instruments and, therefore, liable for any mistakes or fraud by the introducing firm in the making or drawing of the check. This provision is intended to establish that clearing firms are liable to the introducing firm's customer if the introducing firm misuses the authority and, thereby, to protect the customer with the clearing member's funds.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest in that the proposed rule change is designed to establish standards for the disposition of written customer complaints about introducing member firms, govern how exception reports are made available to introducing firms and retained by clearing firms, and permit introducing firms to write checks on their clearing firm's account.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or

[5] 15 U.S.C. 78o–3(b)(6).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In addition to any other issues that the public may wish to address, the Commission specifically requests comments on the following questions:

General

Will the respective obligations imposed on clearing and introducing firms by the proposal help introducing firms and regulators better address sales practice problems?

To what extent would the proposal discourage either introducing or clearing firms from agreeing to enter into new clearing relationships, or to renew existing ones, or affect the degree of care employed when entering into such a relationship?

Customer Complaints

How quickly are customer complaints that are directed to clearing firms and that concern introducing firms or their associated persons currently forwarded to introducing firms? What proportion of these complaints concerns matters identified in NASD Rule 3070(a)(2), *i.e.*, allegations of theft or misappropriation of funds or securities, or of forgery? What other types of complaints typically are received?

Why in general are complaint letters addressed to clearing firms rather than introducing firms, when they concern conduct of the introducing firms? Please address the extent to which this occurs because of confusion by customers over the relative responsibilities of the firms based on the contacts with the customer, such as confirmations, or for other reasons, *e.g.*, the failure to receive a response from the introducing firm?

Should the requirements of the proposed rule regarding customer complaints apply equally to complaints against a clearing firm sent by a customer to an introducing firm with whom the clearing firm has a clearing agreement?

Presently, copies of customer complaints that are received by securities firms are not required to be forwarded to the SEC or any self-regulatory organization ("SRO"). Rather, the firms are required to submit summaries of complaints to their SRO. To the extent that this requirement is imposed, should clearing firms be required to send summaries or actual complaint letters to the SROs?

Will the requirement that, upon the clearing firm's receipt of a customer complaint, the customer be notified by the clearing firm that he or she has the right to transfer his or her account to another firm serve a useful purpose, in informing customers that they are not tied to the introducing broker in the case of sales problems? Does it create an unfair implication that each such complaint would warrant the customer's transferring his account, or otherwise unfairly tarnish the introducing firm? To the extent that this type of information is useful to investors, does it make sense to provide this notice only in the circumstances identified?

Exception Reports

What compliance or cost burdens would result from the requirement that clearing firms retain copies of exception reports or data that is provided to introducing firms? To what extent is this data now stored, and for how long?

What are the relative costs and benefits of the requirements for annual reports to the executive and compliance officers of introducing firms as to the exception reports that were offered and supplied? Is it feasible for the clearing firm to provide reports to the DEAs that the introducing firm did not request?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NASD–97–76 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31393 Filed 11–26–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39344; File No. SR–NYSE–96–34]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change To Adopt a New Specialist Performance Measure

November 21, 1997.

I. Introduction

On December 3, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new specialist performance measure.[3]

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38150 (January 10, 1997), 62 FR 2704 (January 17, 1997). No comments were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on October 23, 1997.[4]

II. Description

The Exchange proposes to add on a one-year pilot basis, solely for use by the Allocation Committee in evaluating specialist performance, the concept of "adjusted stabilization" rates. Specialists are expected to stabilize stock price movements by buying and selling from their own accounts against the prevailing trend of the market. The current definition of stabilization is dealer purchases on minus and zero minus ticks, and sales on plus and zero plus ticks. The Exchange believes that certain trades outside of the definition of stabilization are not necessarily destabilizing. These would consist of proprietary zero plus tick purchases on the current bid (provided the current bid is below the offer at the time of the immediately preceding trade) and proprietary zero minus tick sales on the current offer (provided the current offer is above the bid at the time of the immediately preceding trade). Hence, the Exchange is grouping these trades with the trades within the current definition of stabilization to form an "adjusted stabilization" category for review by the Allocation Committee. Adjusted stabilization rate information would be provided, on a one-year pilot basis, solely to the Allocation Committee to assist it in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that it previously approved the portion of the proposed rule filing making permanent the Near Neighbor, Capital Utilization and Rule 103A pilot programs for measuring specialist performance. See Securities Exchange Act Release No. 38150 (January 10, 1997), 62 FR 2704 (January 17, 1997). This order approves the remaining portion of the proposed rule change to adopt a new specialist performance measure, "adjusted stabilization."

[4] Amendment No. 1 states that the new performance measure, adjusted stabilization, will be solely for use by the Allocation Committee, and that the information will be provided to the Allocation Committee on a one-year pilot basis. See letter from James E. Buck, Senior Vice President, NYSE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated October 22, 1997.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b) (5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[6]

The Commission believes that the proposed rule change is reasonable under the Act in that continuing to further develop objective measures of specialist performance, by adopting the "adjusted stabilization" measure, should help perfect the mechanism of a free and open market and protect investors and the public interest. The Commission believes that "adjusted stabilization" is a useful concept because it could reflect liquidity added to the market by specialists that is not otherwise captured by the current definition of stabilization, by reflecting the fact that on certain zero plus tick purchases or zero minus tick sales the specialist is not initiating either a transaction or a price change, but is adding depth to the market at prices at which transactions have already occurred.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 will ensure that the new measure of specialist performance is used solely by the Allocation Committee to help evaluate specialist performance and the depth and liquidity specialists add to the stocks they trade. Also, by providing for the new measure on a one-year pilot basis, the Exchange will be able to monitor the success of the new performance measure in helping to evaluate specialist performance. In addition, the substance of the proposed rule change was noticed for the full statutory period and no comments were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions on 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–34 and should be submitted by December 22, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the portion of the proposed rule change (SR–NYSE–96–34) involving the adoption of "adjusted stabilization" rate information as a specialist performance measure,[8] as amended, is approved on a one-year pilot basis through November 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31389 Filed 11–26–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b).

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s (b) (2).

[8] The Commission notes that this order only approves a portion of the proposed rule change. *See supra* note 3.

[9] 17 CFR 200.30–3(a) (12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39345; File No. SR–Phlx–97–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a Contingency Market Maker System for Foreign Currency Options

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1997,[1] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a contingency plan to trade foreign currency options ("FCOs") pursuant to a Market Maker System. The contingency Market Maker System would provide a modified trading system to ensure the continuity of FCO trading in the situation where a specialist unit is not available. In summary, the contingency Market Maker System would be contained in a new provision, Rule 1014(j), which states that assigned ROTs will be responsible for making markets and honoring the minimum guarantee (ten-

[1] The Exchange filed Amendment No. 1 to the proposed rule filing on November 4, 1997, the substance of which is incorporated into this notice. See letter from Philip H. Becker, Senior Vice President, General Counsel and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated November 4, 1997.

up) rule. Markets will be continuously disseminated and the responsibility to provide customers with minimum size guarantee markets pursuant to Rule 1033(a) shall apply. Assigned ROT participant organizations would be required to be available from the opening of trading on 50% of the trading days. An Exchange employee, assigned to be the Quote Monitor, would handle certain specialist-type functions. In addition, the proposed rule change amends Rule 1047, Commentary .01, to state that, in accordance with the FCO market maker system, the Quote Monitor is responsible for conducting trading rotations in the FCOs utilizing the market maker system. Further, the proposed rule change amends Rules 1017 and 1019 to clarify that orders would not be entrusted to a specialist respecting the FCO market maker system. Finally, the proposed rule change incorporates a disclaimer of liability into the proposal as proposed paragraph (j)(ii) of Rule 1014.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV blow. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has traded FCOs pursuant to a specialist system since 1982. Earlier this year, due to the resignation of a specialist unit in that FCO, the Exchange determined to delist options on the European Currency Unit ("EUC"), only offering such options pursuant to its customized facility under Rule 1069.[2] This situation prompted a review of the specialist system on the FCO trading floor and recognition that ensuring the continuity of FCO trading where a specialist cannot be promptly replaced may require a different system.

Thus, the purpose of this proposal is to adopt rules and procedures to govern situations where a specialist resigns from that function and no replacement specialist unit is immediately available for a particular FCO. As such, the proposal is a contingency plan, not intended as a permanent method of trading FCOs. As a contingency plan, it would be implemented until a specialist unit becomes available or the Exchange determined to take other action, such as request permanent approval of the market maker system or delist that FCO. Because the Phlx Board of Governors has already approved this proposal, the contingency plan would be implemented upon approval by the FCO Committee once the contingency occurs, or, depending upon the immediacy and circumstances, the chairperson of that Committee or their designee. In crafting this FCO contingency plan, the Exchange considered various methods of trading options, including the lead and primary market maker systems of other exchanges. The Exchange determined that such systems were intended for new products that required incentives for long-term commitment of time, personnel and capital, and are thus not appropriate for FCOs. Instead, the Exchange has determined to implement a pure market maker system. Thus, according to the Exchange, issues of trade allocation, book allocation or additional capital are not raised by the proposal, because existing ROTs would be acting as market makers under the proposal.

Currently, all ROTs on the foreign currency options floor are considered to be assigned in all FCOs. As such, no minimum number of ROTs is required for the proposed market maker system. Once the market maker system is implemented in a given situation, all assigned ROTs would be required to participate. To further assure adequate market maker participation, the proposal requires that assigned ROTs' participant organizations will be subject to an additional requirement of availability from the opening of trading on 50% of trading days. The Exchange intends to establish procedures requiring at least one ROT from each participant organization to be present throughout the trading day for 50% of the trading days during a specified period, thereby ensuring a minimum level of ROT presence on every trading day. Surveillance of this requirement would consist of a sign-in procedure in the trading crowd, with the Quote Monitor maintaining a log for Surveillance Department review. Failure to comply with this requirement would be considered a violation of proposed Rule 1014(j). In addition, floor brokers will be required to ensure the presence of an ROT in the trading crowd, pursuant to Rule 1063. Further, ROTs can be called into the crowd pursuant to Rule 1014 (b) and (c), and failure to honor such a request may result in disciplinary action.

ROTs will have market making responsibilities to replace certain specialist functions, such as updating markets and the components to pricing models. As ten-up markets would remain in effect, if the best bid/offer is established by someone other than an ROT and is not for at least ten contracts, participation for the additional contracts needed to meet the minimum ten contract requirement would be supplied at that same price by the assigned ROT(s). Thus, the essence of the proposed Market Maker System is ROT responsibility.

Certain specialist-type functions would be handled by the Quote Monitor, who would be an Exchange employee. Other options exchanges utilize exchange employees for similar functions.[3] The Exchange believes that the use of a Quote Monitor is appropriate and should facilitate disseminating firm markets in affected FCOs. The Quote Monitor would be responsible for establishing, monitoring, and updating FCO markets under the market maker system. The Quote Monitor would maintain the Auto-Quote System with input from the assigned ROTs, which shall automatically update these FCO markets, based on the spot value of the underlying foreign currency and the pricing model selected by the assigned ROTs in that FCO, pursuant to a procedure established by the Exchange. The Quote Monitor would be responsible for regularly requesting market quotations, as well as updated components to the relevant pricing model, such as interest rates and volatility levels, from assigned ROTs. Assigned ROTs would be required to voice markets in these FCOs in a loud and audible manner and update those markets, as well as other components relevant to the pricing model. The Quote Monitor would staff this position during all trading hours. The number of Quote Monitors will vary depending on the number of FCOs trading pursuant to the proposed Market Maker System. The Quote Monitor would also post bids and offers as instructed loudly and audibly by Floor Brokers. The Floor Broker would be responsible for the posted bid/offer until he or she had properly informed the Quote Monitor that it is withdrawn. The Floor Broker responsibilities applicable to markets maintained by the Quote Monitor are included in Rule 1063(e).

The implementation of the proposed market maker system would result in elimination of the specialist or limit order book, as the Quote Monitor's responsibilities would be directed at monitoring markets but not holding orders. Currently, FCO specialists maintain a specialist limit order book. Generally, smaller customer orders are placed on the book, but the book is not limited to customer orders. Depending upon the option and the market conditions, an FCO book's content varies. Orders on the book at the time of the implementation of the market maker system would be canceled, and could be re-entered for representation by floor brokers. The Exchange would announce the required cancellation of such orders by memorandum to FCO participants.[4]

The Exchange has been informed of a decreased use in the book. The Exchange believes this decreased use is a result of decreased FCO volume, increased costs and the more institutional nature of FCO trading. All of these factors were taken into account when determining to eliminate the book. The Exchange acknowledges that eliminating the book is a departure from the procedures of other exchanges employing a market maker system, who generally utilize an exchange employee to operate the book. Although the Exchange considered this approach, it was determined that venturing into the business of operating a limit order book was not appropriate for the Exchange to do on a sudden, contingency basis in light of both the liability as well as operational and staffing burdens. The Exchange also cites to the institutional nature FCO trading, including larger sizes, which diminishes reliance on the limit order book. Certain FLEX products currently trading on other exchanges do not offer a limit order book, in view of the institutional nature of FLEX options. In fact, FCO customized options, pursuant to Phlx Rule 1069, trade without a specialist or limit order book. The Exchange believes that this experience, coupled with the need for quick implementation of the contingency plan in order to provide a continuous auction market for FCOs, despite the absence of a specialist, outweighs the benefits of providing a limit order book.

Because the proposal replaces the specialist system with a market maker system, the Exchange proposes to amend certain other rules to clarify that a specialist's traditional responsibilities would not apply under the proposal. For instance, for purposes of Rule 1047, Trading Rotations, Halts and Suspensions, Commentary .01, new paragraph (e) would state that, in accordance with the FCO Market Maker System as defined in Rule 1014(j), the Quote Monitor is responsible for conducting trading rotations in those foreign currency options utilizing the Market Maker System. In addition, Rules 1017 and 1019 would clarify that orders would not be entrusted to a specialist respecting the FCO Market Maker System, as defined in Rule 1014(j).

Because the proposed Quote Monitor functions would involve a new type of activity by Exchange employees, a disclaimer of liability is incorporated into the provision as paragraph (j)(ii). Specifically, in no event shall the Exchange be liable to any person or organization or to its members, participants, member organizations or participant organizations (hereinafter referred to collectively as "members") or persons associated therewith for any loss, (including any indirect or consequential loss), expense, damages or claims arising out of any errors or omissions in the collection and dissemination of any foreign currency options quotations by a Quote Monitor.

The Complete text of the proposed rule change is available at the Commission and at the office of the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[5] in general, and in particular, with Section 6(b)(5),[6] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, as well as to protect investors and the public interest, by providing a contingency plan for the trading of FCOs without an assigned specialist unit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–35 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31390 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

[2] See Securities Exchange Act Release No. 38764 (June 24, 1997), 62 FR 35535 (July 1, 1997) (SR–Phlx–97–26). The proposal at hand is not intended to replace SR–Phlx–97–26, such that FCOs on the ECU would continue to be available only on a customized basis, pursuant to Rule 1060.

[3] See e.g., CBOE Rule 7.1.

[4] This procedure is similar to the current procedure used for equity index options when there is a change in contract terms or a transfer of the book. See Floor Procedure Advice A–6.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2981]

State of Illinois; Amendment #1

In accordance with information received from the Federal Emergency Management Agency dated November 14, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to November 26, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 17, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 19, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–31327 Filed 11–28–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending November 21, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3133.
Date Filed: November 18, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0024 dated October 28, 1997
South Atlantic-Europe Resos R1–21
Correction—PTC12 SATL–EUR 0026 dated October 31, 1997
Minutes—PTC12 SATL–EUR 0027 dated November 11, 1997
Tables—PTC12 SATL–EUR Fares 007 dated November 14, 1997
Intended effective date: April 1, 1998.

Docket Number: OST–97–3141. *Date Filed:* November 20, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0111 dated November 18, 1997 r1–4
PTC2 EUR 0112 dated November 18, 1997 r5–8
PTC2 EUR 0113 dated November 18, 1997 r9–10
PTC2 EUR 0114 dated November 18, 1997 r11
PTC2 EUR 0115 dated November 18, 1997 r12–17
PTC2 EUR 0116 dated November 18, 1997 r18–19
PTC2 EUR 0117 dated November 18, 1997 r20–21
PTC2 EUR 0118 dated November 18, 1997 r22–25
PTC2 EUR 0119 dated November 18, 1997 r26
PTC2 EUR 0120 dated November 18, 1997 r27
Expedited Europe Resolutions
Intended effective date: as early as December 15, 1997.

Docket Number: OST–97–3142.
Date Filed: November 20, 1997.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 898, Amend Mileage Manual, Telex amending Mail Vote, Intended effective date: December 1, 1997.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–31362 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 21, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the applications by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3151.
Date Filed: November 21, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1997.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for: (1) A new or amended certificate of public convenience and necessity to authorize it to provide scheduled foreign air transportation between New York, New York (JFK), on the one hand, and Sao Paulo and Rio de Janeiro, Brazil, on the other hand; and (2) allocation of seven U.S.-Brazil frequencies available for U.S.-Brazil combination services under the terms of the U.S.-Brazil Memorandum of Consultations signed November 18, 1997 ("November MOC").

Docket Number: OST–95–969.
Date Filed: November 21, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1997.
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, applies for renewal of Segment 1 of its Experimental Certificate of Public Convenience and Necessity for Route 378, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the terminal point Chicago, the intermediate points Los Angeles, San Francisco, Seattle or Honolulu, an intermediate point in Japan, and the coterminal points Shanghai, Guangzhou, and Beijing, China. Northwest requests renewal of Segment 1 of its Route 378 Certificate for a period of five years.

Docket Number: OST–97–3152.
Date Filed: November 21, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1997.
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, applies for renewal of its Experimental Certificate of Public Convenience and Necessity for Route 539, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the coterminal points Guam, Saipan, and Northern Mariana Islands and the terminal point Tokyo, Japan. Northwest requests renewal of Segment 1 of its Route 539 Certificate for a period of five years.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–31361 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–59]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 24, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28303.
Petitioner: United Parcel Service.
Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought: To permit the petitioner to substitute a qualified and authorized check airman in place of a Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least on flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in 14 CFR 121.424.

Dispositions of Petitions

Docket No.: 26029.
Petitioner: Airborne Express.
Sections of the FAR Affected: 14 CFR 121.503(b), 121.505(a), and 121.511(a).
Description of Relief Sought/Disposition: To permit the petitioner's pilots and flight engineers to complete certain transcontinental flight schedules before being provided with at least 16 hours of rest.
Grant, November 19, 1997, Exemption No. 5167D.

Docket No.: 27180.
Petitioner: EVA Airways Corporation.
Sections of the FAR Affected: 14 CFR 61.77 (a), and (b), and 63.23 (a) and (b).
Description of Relief Sought/Disposition: To permit the issuance of U.S. special purpose pilot authorizations and special purpose flight engineer certificates to airmen employed by the petitioner without those airmen meeting the requirement to hold a current foreign certificate of license issued by a foreign contracting State to the International Civil Aviation Organization, provided the airmen hold appropriate certificates issued by the Civil Aeronautics Administration, Republic of China.
Grant, November 19, 1997, Exemption No. 6689A.

[FR Doc. 97–31356 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Streamlining Software Aspects of Certification Industry Workshop

AGENCY: Federal Aviation Administration.

ACTION: Notice of Industry Workshop.

SUMMARY:

Background

In April 1997, the Federal Aviation Administration (FAA) initiated the Streamlining Software Aspects of Certification (SSAC) program. The overall goal of this program is to reduce the cost and time of certifying systems with software while maintaining or increasing system safety.

The purpose of this program is: (1) to determine scientifically if the time/expense burden yields the safety benefits; (2) to recommend improvements; and (3) to prototype those improvements.

The FAA assembled a team of experts to accomplish this purpose. The team is led by NASA Langley Research Center and includes software experts Dr. Nancy Leveson and Dr. John Knight.

Workshop Announcement

On January 7–8, 1998, an SSAC Industry Workshop will be held starting at 8:30 am. The workshop will be held at TRW Government Information Services Division at One Federal Systems Park Drive (Building FP1) in Fairfax, Virginia. The purpose of the SSAC Workshop is to enable the FAA and the SSAC research team to listen to industry's concerns about the software aspects of the certification process. The FAA is seeking industry participants who can relate their concerns through experience and involvement in the system certification process.

During the workshop, the SSAC team seeks input about: (1) the impact of DO–178B on each organization; (2) experiences with certification authorities; and (3) issues with the certification process believed to add cost and delay without affecting the quality of safety.

Upon conclusion of the workshop, the FAA will follow up by researching the issues voiced by industry, providing feedback, and sharing the results of this research effort. The key to the success of the workshop and the success of the SSAC program depends upon industry participation, input, and support.

Attendance is open to the appropriate industry participants. Persons wishing to receive additional information should contact the SSAC Assistant Program Manager, Bonnie Danner: TRW Government Information Services Division; One Federal System Park Drive; Fairfax, VA 22033–4416; 202–651–2254 (phone); or 202–484–1255 (fax).

Issued in Washington, DC on November 24, 1997.

Abbas Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–31357 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–68; Notice 9]

Reports, Forms and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can require collection of certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established under the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a proposed collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 30, 1998.

ADDRESSES: Comments must refer to the notice and docket numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided as the Proposed Part 577 Information Collection. It is requested, but not required, that one (1) original plus two (2) copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each NHTSA request for OMB approval of a collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 5110, Washington, DC 20590. The telephone number is (202) 366–2589.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document soliciting public comments in the **Federal Register**, with a 60-day comment period, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in the **Federal Register** document. Under OMB's regulations (found at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

Amendment to Part 577 Requirements for Notification of Dealers by Manufacturers of Motor Vehicles or Motor Vehicle Equipment with Safety-Related Defects or Noncompliances with Federal Motor Vehicle Safety Standards

Type of Request—Clearance for new collection.

OMB Clearance Number—Not applicable. New collection.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date for Approval—Three years after date of approval.

Summary of the Collection of Information—This collection of information applies to manufacturers of motor vehicles and items of motor vehicle equipment when it is decided that a vehicle or item of equipment they manufacture contains a safety-related defect or fails to comply with a Federal motor vehicle safety standard (FMVSS). Manufacturers are required by statute to notify dealers when it is decided that safety-related defects or noncompliances exist. The agency has proposed an amendment to 49 CFR Part 577, Defect and Noncompliance Notification, to establish a time limit within which the manufacturers must notify the dealers and to require that certain information about dealer rights and responsibilities with respect to the defective or noncomplying vehicles or equipment be included in the notification.

Description of the Need for Information and Proposed Use of the Information—Dealers of vehicles or equipment that are the subject of safety recalls need to receive notification of safety recalls from manufacturers promptly after the decision is made to recall, including information about the prohibition against selling from inventory vehicles that have been determined to be subject to recall. This prompt notification will minimize the likelihood that dealers will sell unsafe vehicles or equipment from their inventories before the defect or noncompliance is remedied. It is also necessary for dealers to be informed of their statutory rights vis a vis manufacturers so that they will not fail to participate in recalls due to erroneous beliefs about who must bear financial responsibility for providing the remedy for the defect or noncompliance.

Description of the Likely Respondents (Including Estimated Number) and Proposed Frequency of Response to the Collection of Information—The estimated number of vehicle and equipment manufacturers subject to this rule is 500. The agency estimates that in any given year the number of safety recalls is approximately 300, based on the average number of recalls per year from 1993 through 1996. A manufacturer is required to provide notification in compliance with this rule only if it is conducting a safety recall. The frequency of response to the collection of information depends on the number of safety recalls a manufacturer conducts.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The hour burden on respondents from the final rule will arise from the time manufacturers will spend in rewriting their dealer notification letters to include the additional information specified in the rule, and in writing letters to NHTSA to request a delay in providing dealer notification beyond the five days specified in the rule.

The agency estimates that the average time needed for a manufacturer to revise the language of a dealer notification letter to include the newly-required language will be ½ hour. This is based on the assumption that most manufacturers use a form letter as the basis for their dealer notification letters; and that those few that do not do so experience very few, if any, recalls in a year.

The total number of hours needed for all 500 potentially affected manufacturers to modify their dealer notification letters is 250 hours (500 manufacturers × ½ hour letter modification time). However, the agency estimates that in any given year that 85 percent of the 300 annual recalls are conducted by approximately 50 manufacturers who conduct more than one safety recall per year on a regular basis. The remaining 45 recalls per year (15 percent) are conducted by manufacturers who conduct recalls on an infrequent basis. In year one the agency estimates that all 50 of the manufacturers who conduct recalls on a regular basis along with 45 manufacturers who conduct recalls on an infrequent basis will have to modify their dealer notification letters, resulting in 95 out of the 500 affected manufacturers having to modify their dealer notification letters in year one. In years two through ten 45 of the remaining 405 remaining manufacturers who conduct recalls infrequently will have to modify their dealer notification letters each year. This would result in an annual hour burden of 47.5 hours for the first year (95 affected manufacturers × ½ hour letter modification time) and 22.5 hours for the second through tenth years (45 affected manufacturers per year × ½ hour letter modification time).

This burden will be a one-time occurrence because the rule will impose little or no time burden for recalls after the first one a manufacturer conducts after revising its dealer notification letter. Manufacturers are already required by statute to notify their dealers about safety recalls. This rule does not alter the information that a manufacturer is now required to provide to dealers about individual recalls.

The agency expects that for 20 percent of the safety recalls conducted annually—or about 60—the manufacturer will request a delay in sending dealer notification. The agency estimates that the average preparation time for such a letter will be about ½ hour. Accordingly, the total annual hour burden hours for preparing letters requesting a delay in providing dealer notification will be about 30 hours (60 recalls × ½ hour per recall).

The agency estimates that the total annual hour burden on respondents of the information collection requirement of this final rule will be 30 hours, plus a one-time burden of 250 hours, spread over a period of ten years.

The agency estimates that the hourly labor cost for manufacturers for revising the dealer notification letters will be $50. With the estimated ½ hour needed to revise the letter for each of 500 manufacturers, the total labor cost of revising the dealer notification letters would be $12,500. Since the number of safety recalls per year is approximately 300, not all manufacturers will incur the cost of revising the letter in the same year. If 95 manufacturers modify their dealer notification letters in year one and 45 of the remaining 405 manufacturers modify their dealer notification letters in years two through ten, the cost would be spread over a minimum of ten years. This would result in an annual cost burden of $2,375 for the first year and $1,125 per year for the second through tenth years.

As stated earlier, the burden is likely to be a one-time occurrence in most cases, since most manufacturers use form notifications that will only need to be revised once. After a manufacturer has revised its form notification, the cost of subsequent letters will be no greater than that for the notification that a manufacturer is presently required by statute to send to dealers.

The agency estimates that the labor cost to manufacturers for preparation of requests for delay of dealer notification will also be about $50 per hour. Thus, for 60 such requests per year, with an average preparation time of ½ hour each, the annual labor cost to manufacturers will be approximately $1,500.

In summary, the agency estimates that the total annual cost to respondents will be approximately $1,500, plus a one-time-only cost of $12,500, spread over a period of ten years.

There is no recordkeeping burden associated with this rulemaking.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: November 24, 1997.

Kenneth N. Weinstein,

Associate Administrator For Safety Assurance.

[FR Doc. 97–31363 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3156]

Notice of Receipt of Petition for Decision That Nonconforming 1973–1975 Volkswagen Type 181 ("The Thing") Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1973–1975 Volkswagen Type 181 ("The Thing") multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1973–1975 Volkswagen Type 181 ("The Thing") MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: U.S. Department of Transportation Dockets, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then

publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1973–1975 Volkswagen Type 181 ("The Thing") MPVs are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1973–1975 Volkswagen Type 181 ("The Thing") MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1973–1975 Volkswagen Type 181 ("The Thing") MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* inscription of appropriate words or symbols to identify the controls for the hazard warning signal, the windshield defrosting and defogging system, the lights. The petitioner states that the vehicle is equipped with an odometer that is labeled at the factory as being calibrated in kilometers, precluding the need for any alteration to comply with the standard.

Standard No. 103 *Defrosting and Defogging System:* replacement with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlights; (b) installation of U.S.-model front turn signal lamps; (c) installation of U.S.-model taillight assemblies.

Standard No. 111 *Rearview Mirror:* installation of a passenger side rearview mirror.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the seat belts in the front seating positions with U.S.-model components; (b) installation of U.S.-model seat belts in the rear seating positions.

Standard No. 209 *Seat Belt Assemblies:* replacement of all seat belt assemblies supplied with the vehicle.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–31439 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 97–3157]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Audi Avant Quattro Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996 Audi Avant Quattro passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1996 Audi Avant Quattro that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: U.S. Department of Transportation Dockets, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1996 Audi Avant Quattro passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1996 Audi A6 Quattro that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1996 Audi Avant Quattro to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1996 Audi Avant Quattro, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1996 Audi Avant Quattro is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1996 Audi Avant Quattro comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if they are not U.S.-model components. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–31440 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9:30 a.m., December 3, 1997, via conference call in the Association Administrator's Conference Room, SLSDC Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later

than December 1, 1997, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on November 24, 1997.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 97–31354 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33511]

Emons Transportation Group, Inc.—Continuance in Control Exemption—Penn Eastern Rail Lines, Inc.

Emons Transportation Group, Inc. (Emons), has filed a notice of exemption to continue in control of Penn Eastern Rail Lines, Inc. (PERL), upon PERL's becoming a Class III railroad. The transaction was expected to be consummated on or about November 20, 1997, the effective date of the exemption.

This transaction is related to STB Finance Docket No. 33512, *Penn Eastern Rail Lines, Inc.—Acquisition and Operation Exemption—Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.*, wherein PERL seeks to acquire and operate certain rail lines from Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.

Emons controls through stock ownership three other Class III rail carriers: Maryland and Pennsylvania Railroad Company, operating 26 miles of rail line between York and Hanover, PA; Yorkrail, Inc., operating approximately 16 miles of rail line between York and Porters Sideling, PA; and, St. Lawrence & Atlantic Railroad Company, operating between Portland, ME, and the Canadian border at Norton, VT.

Emons states that: (1) PERL will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect PERL with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C.10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33511, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading mustbe served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

Decided: November 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31385 Filed 11–28–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33512]

Penn Eastern Rail Lines, Inc.; Acquisition and Operation Exemption; Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.

Penn Eastern Rail Lines, Inc. (PERL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase of certain rail lines and assignment of certain leases on other rail lines) and operate approximately 45.24[1] miles of rail lines (the Subject Lines) of Lancaster Northern Railway, Inc. (LANO), Chester Valley Railway, Inc. (CVR), East Penn Railways, Inc. (EPRY), and Bristol Industrial Terminal Railway, Inc. (Bristol). PERL will become a Class III rail carrier.[2]

PERL, LANO, CVR, EPRY and Bristol have entered into an agreement providing for PERL's acquisition of all the rights, title and interests in the Subject Lines. PERL intends to consummate the purchase agreement and begin operations on or soon after November 20, 1997, the effective date of the exemption.

CVR owns and operates the Bridgeport Industrial Track, between the connection with the Consolidated Rail Corporation (Conrail) at approximately milepost 0.0 and milepost 2.14 at Henderson Road. This 2.14-mile rail line is located entirely within Bridgeport, Montgomery County, PA.

LANO owns and operates the Akron Secondary Track, between approximately milepost 0.05 at Sinking Spring, Berks County, PA, and the end of the track at Stevens, approximately milepost 12.94, in Lancaster County, PA.

EPRY operates four rail lines as follows: (1) The Perkiomen Branch, USRA Line No. 906, between milepost 22.38 at Pennsburg, PA, and milepost 38.23 at Emmaus Jct., Emmaus, PA, a distance of 15.85 miles, in Berks, Lehigh, and Montgomery Counties, PA; (2) the Colebrookdale Industrial Track (Boyertown Branch), USRA Line No. 909, between milepost 0.00 at Colebrookdale Jct. (Pottstown), PA and milepost 8.60 at Boyertown, PA, a distance of 8.60 miles, in Berks and Montgomery Counties, PA; (3) the Kutztown Branch, USRA line No. 910, between milepost 0.17 at Topton, PA, and milepost 4.29 at Kutztown, PA, a distance of 4.12 miles, in Berks County, PA; and (4) the Mt. Hope Industrial Branch, USRA Line No. 916, between milepost 0.36 and milepost 1.0, a distance of .64 miles, in Manheim, Lancaster County, PA. The lines were acquired by the Commonwealth of Pennsylvania in 1982 and were formerly operated by Blue Mountain and Reading Railroad Company.[3] They connect with Conrail at Emmaus, Pottstown, Topton and Manheim, PA.

Bristol leases and operates approximately 1 mile of rail line extending between a connection at Grundy and a point within the Bristol Industrial Park, in Bristol Township, Bucks County, PA.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33512, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

Decided: November 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31384 Filed 11–28–97; 8:45 am]

BILLING CODE 4915–00–P

[1] In the verified notice of exemption, PERL states that the total miles of rail line to be acquired and operated totals approximately 44 route miles, but other references in the notice, which identify the mileposts and the route miles for each specific segment of rail line, total approximately 45.24 route miles.

[2] This proceeding is related to STB Finance Docket No. 33511, wherein Emons Transportation Group, Inc., a noncarrier, has filed a notice of exemption to continue in control of PERL upon PERL's becoming a Class III rail carrier.

[3] See Blue Mountain and Reading Railroad Company—Modified Rail Certificate, Finance Docket No. 30305 (Sub-No. 1) (ICC served June 13, 1990).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–66

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Notice 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction.

DATES: Written comments should be received on or before January 30, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The Notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 377,500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 61,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 18, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–31402 Filed 11–28–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretations regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 22–97

Question Presented

May the Department of Veterans Affairs (VA) withhold monthly benefits from beneficiaries in situations where the payee refuses to participate in the Electronic Funds Transfer Program?

Held

The Secretary has authority under the DCIA to withhold monthly VA benefits to a recipient of Federal payments subject to the EFT program if the recipient has not complied with the statutory EFT requirements and is not entitled to a waiver of their application.

Effective Date: June 20, 1997.

VAOPGCPREC 23–97

Question Presented

Where a claimant has arthritis and instability of the knee, does 38 CFR 4.71a authorize multiple ratings under diagnostic codes 5003 and 5257?

Held

A claimant who has arthritis and instability of the knee may be rated separately under diagnostic codes 5003 and 5257.

Effective Date: July 1, 1997.

VAOPGCPREC 24–97

Question Presented

Is a veteran who is receiving compensation pursuant to 38 U.S.C. 1151 due to blindness in both eyes which resulted from the veteran's hospitalization, medical, or surgical treatment by VA, and not incurred or aggravated in the line of duty in the active military, naval, or air service, eligible for a special housing adaptation grant under chapter 21 of title 38, United States Code?

Held

A veteran with a disability that resulted from VA hospitalization or medical or surgical treatment who has been determined eligible for compensation "as if" such injury were service connected pursuant to 38 U.S.C. 1151 is not eligible for a special housing adaptation grant as a result of the disability caused by VA medical care.

Effective Date: July 3, 1997.

VAOPGCPREC 25–97

Question Presented

Should military retired pay that is paid directly to a veteran's ex-spouse by a military finance center pursuant to a divorce decree or garnishment order be considered income of the veteran for purposes of determining his or her entitlement to Department of Veterans Affairs (VA) need-based benefits?

Held

Whether military retired pay paid directly to a veteran's ex-spouse by a military finance center pursuant to a divorce must be included in the veteran's annual income for purposes of determining eligibility for need-based veterans' benefits is dependent upon the property rights of the parties in the military retired pay, as determined in the pertinent divorce decree and any related property settlement, interpreted in light of applicable state law. Where, in a divorce proceeding, military retired pay is treated as marital property and divided between the parties to the proceeding, only that portion of the retired pay which is determined to be the property of the veteran is countable as income of the veteran for purposes of determining entitlement for need-based veterans' benefits. Where no such division of property has occurred, the full amount of such retired pay is attributable to the veteran, regardless of whether all or a portion of the retired pay is paid directly to the veteran's ex-spouse pursuant to a voluntary or involuntary allotment or a garnishment order.

Effective Date: July 16, 1997.

VAOPGCPREC 26–97

Question Presented

Was the addition of a diagnosis of post-traumatic stress disorder (PTSD) to the rating schedule, effective April 11, 1980, "a liberalizing law, or a liberalizing [Department of Veterans Affairs (VA)] issue" of 38 CFR 3.114(a)?

Held

The addition of PTSD as a diagnostic entity in the schedule for rating mental disorders was a "liberalizing VA issue" for purposes of 38 CFR 3.114(a). However, an effective date prior to the date of claim cannot be assigned under section 3.114(a) unless the claimant met all eligibility criteria for the liberalized benefit on April 11, 1980, the effective date of the regulatory amendment adding the diagnostic code for PTSD, and such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

Effective Date: July 16, 1997.

VAOPGCPREC 27–97

Question Presented

Whether service on a naval vessel in the waters off the shore of Vietnam constitutes service in the Republic of Vietnam for purposes of 38 U.S.C. 101(29)(A), which defines the Vietnam era as the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

Held

Service on a deep-water naval vessel in waters off the shore of the Republic of Vietnam does not constitute service in the Republic of Vietnam for purposes of 38 U.S.C. 101(29)(A), as added by section 505 of the Veterans' Benefits Improvements Act of 1996, which provides that the term "Vietnam era" means the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

Effective Date: July 23, 1997

VAOPGCPREC 28–97

Question Presented

Whether a person insured under Service Disabled Veterans' Insurance, who does not receive a waiver of premiums pursuant to 38 U.S.C. 1912 because the insured died prior to the continuance of total disability for six consecutive months, is nonetheless eligible for supplemental Service Disabled Veterans' pursuant to 38 U.S.C. 1922A.

Held

A person insured under Service Disabled Veterans' Insurance, who does not qualify for a waiver of premiums pursuant to 38 U.S.C. 1912 because the insured died prior to the continuance of total disability for six months, is not eligible for supplemental Service Disabled Veterans Insurance pursuant to 38 U.S.C. 1922A.

VAOPGCPREC 29–97

Question Presented

Does 38 C.F.R. 3.105(e) apply to cases subject to the special settlement review under the provisions of the October 15, 1993, Stipulation and Order in *Fernando Giusti Bravo, et al* v. *U.S. Department of Veterans Affairs, et al.*, where there is no reduction of a service-connected disability rating which results in reduction or discontinuance of compensation payments currently being made?

Held

38 C.F.R. 3.105(e) applies to cases subject to the special settlement review under the provisions of the October 15, 1993, Stipulation and Order in *Fernando Giusti Bravo, et al.* v. *U.S. Department of Veterans Affairs, et al.* only where there is a reduction of service-connected disability rating which results in reduction or discontinuance of compensation payments currently being made. Thus, the provisions of section 3.105(e) which require VA to provide a proposed rating action and a 60-day pretermination notice are inapplicable where there is no reduction of a service-connected disability rating which results in reduction or discontinuance of compensation payments currently being made.

Effective Date: August 7, 1997.

VAOPGCPREC 30–97

Question Presented

What level of special monthly compensation (SMC) should be awarded to a claimant with nonservice-connected paraplegia who is entitled to compensation under 38 U.S.C. 1151 for disarticulation of the hips?

Held

Regardless of preexisting paraplegia, SMC is payable at the rate prescribed in 38 U.S.C. 1114(n) to a claimant who is entitled to compensation for bilateral disarticulation of the hips under 38 U.S.C. 1151.

Effective Date: August 29, 1997.

VAOPGCPREC 31–97

Question Presented

If the Board of Veterans' Appeals concludes upon reconsideration that the Department of Veterans Affairs Regional Office erred in determining the effective date of a reduction in compensation pursuant to 38 U.S.C. 5112(6) and 38 CFR 3.105(e), does that error render the decision reducing the rating void ab initio, requiring reinstatement of the prior rating?

Held

The reduction of a disability rating, if otherwise supportable, is not rendered void ab initio by virtue of error in the assignment of the effective date for it.

Effective Date: August 29, 1997.

VAOPGCPREC 32–97

Question Presented

When a claimant has service-connected, partial hearing loss in only one ear, should the hearing in the other ear be considered normal for purposes of rating the service-connected hearing loss?

Held

If a claimant has service-connected hearing loss in one ear and nonservice-connected hearing loss in the other ear, the hearing in the ear having nonservice-connected loss should be considered normal for purposes of computing the service-connected disability rating, unless the claimant is totally deaf in both ears.

Effective Date: August 29, 1997.

VAOPGCPREC 33–97

Question Presented

Are assets which are placed in an irrevocable special needs trust includable in the claimant's net worth for purposes of determining eligibility for improved pension?

Held

Assets transferred by a legally competent claimant, or by the fiduciary of a legally incompetent one, to an irrevocable "living trust" or an estate-planning vehicle of the same nature designed to preserve estate assets by restricting trust expenditures to the claimant's "special needs," while maximizing the use of governmental resources in the care and maintenance of the claimant, should be considered in calculating the claimant's net worth for improved-pension purposes.

Effective Date: August 29, 1997.

VAOPGCPREC 34–97

Question Presented

Does 38 U.S.C. 3104(b) or any other statute or regulation, e.g., Department of Labor Rehabilitation Act of 1973 and associated regulations, either require or preclude VA from assisting appellant in purchasing a computer and related materials for recreational activities?

Held

1. No statute or regulation, including section 702 of the Rehabilitation Act of 1973 and its associated regulations, either specifically directs VA to authorize or precludes VA from authorizing services and assistance of a recreational nature as a component of an eligible veteran's program of independent living services and assistance under 38 U.S.C. 3120.

2. VA has the authority, and responsibility, to provide all services and assistance deemed necessary on the facts of the particular case to enable an eligible veteran participating in such a program to live and function independently in his or her family and community without, or with a reduced level of, the services of others. This includes the authority to approve, when appropriate, services and assistance that are in whole or part recreational in character when the services are found to be needed to enable or enhance the veteran's ability to engage in family and community activities integral to the veteran's achieving his or her independent living program goals.

Effective Date: November 5, 1997.

By the Direction of the Secretary:

Robert E. Coy,

Acting General Counsel.

[FR Doc. 97–31329 Filed 11–28–97; 8:45 am]
BILLING CODE 8320–01–P–M

Corrections

Federal Register
Vol. 62, No. 230
Monday, December 1, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

Correction

In rule document 97–26578, beginning on page 52929, in the issue of Friday, October 10, 1997, make the following correction:

§ 17.4 [Corrected]

On page 52934, in the third column, in § 17.4(c)(7), in the fourth line, "11" should read "1".

BILLING CODE 1505-01-D

federal register

Monday
December 1, 1997

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Revised Test Protocol for Nontoxic Approval Procedures for Shot and Shot Coating; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AB60

Migratory Bird Hunting: Revised Test Protocol for Nontoxic Approval Procedures for Shot and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this action is to revise the current nontoxic shot approval procedures by establishing a tiered approval process. Shot or shot coating approval is considered at each tier. An environmentally benign shot or a minor modification of previously approved shot may receive nontoxic approval after the first tier contingent on existence of appropriate toxicological data and an ecological risk assessment. If not, further testing would be required.

DATES: This final rule takes effect December 31, 1997.

ADDRESSES: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C ST., NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul Schmidt, Chief, or Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management, 703/358–1714.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) is revising the existing nontoxic shot and shot coating approval procedures (50 CFR 20.134) by establishing a three-tier approval process. Shot or shot coating approval is considered at each tier. An environmentally benign shot or a minor modification of previously approved shot may receive nontoxic approval after the first tier contingent upon the existence of appropriate toxicological data and an ecological risk assessment. The Service has modified the existing regulation because:

1. From an ecosystem management perspective, in addition to waterfowl, we need to evaluate species such as invertebrates and fish as these provide a food base for many waterfowl species;

2. Since the original regulations were in effect, advancements in the field of ecological risk assessment can be applied to this process;

3. Reduction of time, expense and burden on the Federal Government and applicants can occur without risk to wildlife; and

4. From an animal welfare standpoint, reduction in numbers of test animals used can occur without risk to wildlife.

The original procedures were put in place in 1986 and the first submission requesting approval of nontoxic shot came in October of 1993. Our experience with this shot approval process has shown that the procedures need modification to accommodate situations where existing information can minimize the need for full testing. Thus, the Service and the U.S. Geological Survey—Biological Resources Division cooperatively have developed an alternative set of procedures for evaluating nontoxic shot and shot coatings to replace the testing requirements presently in effect. As with the current procedures, the new set of approval procedures carry the requirement that the applicant carry the burden of providing that the candidate shot or shot coating is nontoxic.

The system has three tiers, with each tier enhancing the information base on the candidate material. Those candidate materials where appropriate background information, toxicological data, ecological risk assessment, and reproductive effects information are available demonstrating the candidate material to be benign may receive nontoxic approval. Those candidate materials not approved as a result of subjecting them to the standards set at Tier 1 will be subject to the standards of Tier 2, Tier 3, or both.

Tier 1 sets out comprehensive and detailed requirements that must be provided to the Service in order to consider approval. After evaluation of Tier 1 information, the Service will determine to grant or deny approval, or require testing of Tier 2, Tier 3, or both.

The scope of Tier 1 includes: (1) Physical and chemical characterization of candidate shot or shot coating; (2) information on the toxicity of the candidate material; (3) an ecological risk assessment; and (4) effects on reproduction in water birds of the candidate material.

The scope of Tier 2 includes *in vitro* erosion rate testing, short-term (30-day) acute toxicity testing on mallards, and toxicity tests with invertebrates and early-life stage vertebrates to assess potential impacts on waterfowl habitat. The inclusion of lead shot (positive) and steel shot (negative) control groups in the waterfowl feeding studies is necessary to account for the experimental variability associated with: (1) Tests performed by different laboratories; (2) a series of tests performed within a given laboratory; and/or (3) an individual test, given changing conditions which are beyond control of the experimental protocol. Further, although the positive control group is essential to every shot ingestion study series, the Service has considered the documented history of the results of lead shot ingestion by waterfowl and reduced the numbers of birds required for that aspect of the protocol.

The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in mallards.

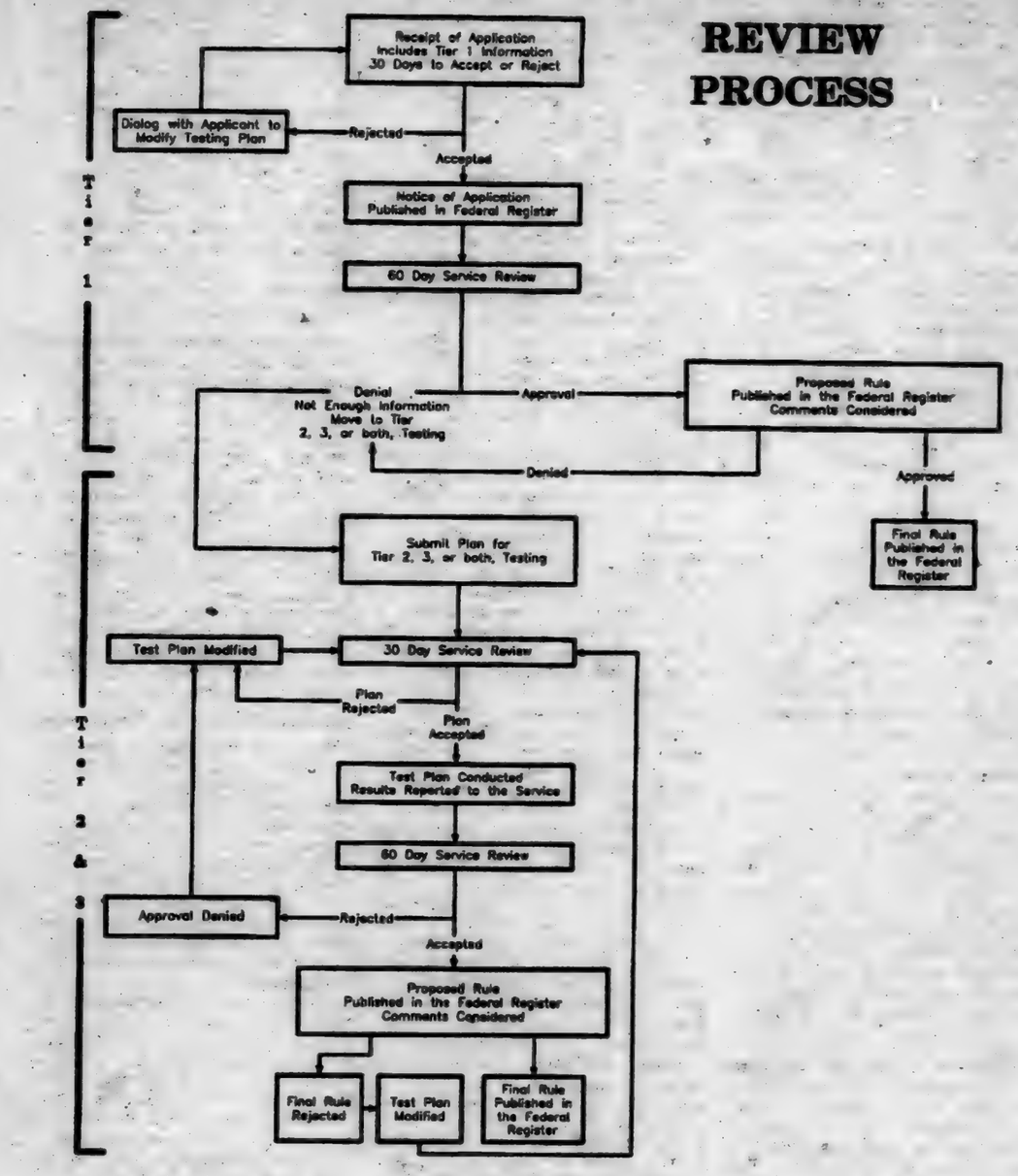
Modification of the experimental procedures to address the specific composition and erosion characteristics of the candidate shot or shot coating may be made by the Service, if necessary. If the candidate shot or shot coating is not metal or metalloid, the Service, with the applicant, may develop other equivalent testing procedures to evaluate the effects of the components of the candidate shot and/or shot coating.

Statistical analyses are to be performed on all data from each test. For the purpose of this section (20.134) the terms *significant* and *significantly* refer to a ($P \leq 0.05$) finding of significance.

Other conditions of final approval include residual lead levels and noninvasive field testing devices. The Service has established a maximum environmentally acceptable level of lead in shot as trace amounts of <1 percent (August 15, 1995, 61 FR 42492). Any shot manufactured with lead levels equal to or exceeding 1 percent are toxic and therefore, illegal. Further, the Service has established approval contingent upon the availability of a noninvasive field testing device (August 15, 1996, 61 FR 42492) to determine shot material in the shell in the field.

A schematic representation of the approval process follows:

BILLING CODE 4310–55–P



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BILLING CODE 4310–55–C

The intent of the shot and shot coating approval procedure is to ensure that, in addition to waterfowl, other natural resources will be protected. Furthermore, materials that toxicologically are innocuous will complete the procedures at lower cost and with less paperwork for both the Service and the applicant.

In summary, the purpose of this rule is to revise the current shot approval procedures and to include shot coatings.

Public Comment and Responses

The January 26, 1996, proposed rule published in the **Federal Register** (61 FR 2470) invited comments from interested parties. The closing date for receipt of all comments was May 10, 1996. During this 115-day comment period, the Service received five comment letters. A brief summary of those comments and the Service's response follows:

The National Institute of Environmental Health Sciences limited their comments to the toxicity testing (clinical observation, tissue analysis, and histopathology) of bismuth only, and as such, are not incorporated into the overall testing protocol.

The Missouri Department of Conservation asked if coatings of copper, nickel, and zinc on steel shot, which already are approved, will have "grandfathered" approval. Yes, they will. In December of 1986, based on a review and evaluation of information in an environmental assessment, the Director issued a Finding Of No Significant Impact and chose to approve the use of copper or nickel coating on steel shot. In May of 1993, based on information from the National Biological Survey (now the Biological Resources Division of the U.S.G.S.), the Service, and manufacturers, the Service issued an approval for zinc chloride and/or zinc chromed coating. These coatings will retain the Service's approval. However, the Service may reconsider both approvals at some future date if it is determined that the coatings may be creating toxicological problems for migratory birds.

The Wisconsin Department of Natural Resources requested deletion of "the requirement for assessing toxicity after complete absorption [because] we suspect that most substances that would pass all of the other tests would fail this test." This is a worst-case scenario assumed in the risk assessment, and not an actual toxicity test that the applicant must complete. To ensure that waterfowl will be protected, this analysis must be completed.

The National Wildlife Federation expressed concern that the Service's proposal to "scale back the testing procedures" will increase the potential for environmental harm. The Service's decision to revise the present testing protocol is based on scientific advancements in risk assessment, toxicity testing, and modeling. In actuality, the new test protocol is far more demanding and scientifically rigorous than the current three phase nontoxic shot approval process because it approaches the issue from an ecosystem management perspective incorporating recent advancements in science. The new test protocol will increase protection of the environment by incorporating an ecosystem approach and multi-species testing rather than just a single species test with mallards. The NWF also commented that "the USFWS argues that from an animal welfare standpoint, the numbers of test animals used can be reduced. In fact, it can be said that granting approval for a shot compound which has not been throughly tested makes the whole of the wild waterfowl population test animals." Under the current testing procedures, the entire ecosystem is the test subject because it ignores every environmental and biological component other than waterfowl. The Service is striving for a balanced ecosystem approach to testing without being overly burdensome. Instead of using large numbers of one species, the Service is incorporating the test with several different species. The NWF also stated that, "there are numerous cases (e.g., the pesticide DDT) in which the harmful effects of a product became apparent only after loss of reproductive viability of wildlife became chronic, by which time the environmentally harmful substance was widely dispersed throughout the ecosystem." Reproductive test data is an integral part of the new test protocol. We recognize the importance of reproductive testing, and its importance in determining the safety of a product. A reproductive assessment with no adverse or inconclusive results is required for final approval of a candidate material as nontoxic. "We [NWF] remain firmly opposed to granting full or final approval without completion of all three phases of testing. At a minimum, conditional approval should be granted only after the currently mandated phase one testing is complete." Granting of final approval will occur only when an applicant sufficiently has satisfied Tier 1 and shown the candidate material to be nontoxic. If Tier 1 testing results are inconclusive, completion of Tier 2, Tier 3, or both will be required showing the candidate material to be nontoxic. This does not mean that completion of each tier by each applicant is always necessary. For example, if toxicity or reproductive data on the candidate material and mallards already exists, it may be incorporated into the Tier 1 package and may be sufficient to determine that the shot and/or shot coating should be approved.

Safety Shot General Partner, Inc. reiterates their original concerns from their August 27, 1991, letter on the proposed protocol. Safety Shot states that "the proposed rule appears to address our concerns about timing issues and unreasonable testing."

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment (EA) in November, 1996. This EA is available to the public at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634-ARLSQ, 1849 C Street NW., Washington D.C. 20240. Based on review and evaluation of the information in the EA, the Service determined the action to amend 50 CFR 20.134 would not be a major Federal action that significantly would affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *" The Service completed a Section 7 consultation under the ESA for this rule. The conclusion of that consultation is that the long-term effect of the rule would be beneficial, and that the rule itself is not likely to adversely affect listed species. However, as the nature of substances to be reviewed is not known at this time, each application will be reviewed for potential effects to listed species. The result of the Service's consultation under Section 7 of the ESA is available to the public through the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634 ARLSQ, 1849 C Street NW., Washington D.C. 20240.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. Since this is a revision to existing procedures designed to reduce cost and time requirements in determining the toxicity of a candidate material, this rule will have no significant effect on small entities. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. The information collection requirements contained within this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned Clearance Number 1018–0067 which expires on 06/30/2000. The information must be provided in order to obtain the benefit of being approved as nontoxic shot. This information is being collected to evaluate an applicant's candidate material.

The likely respondents to this collection of information will be companies producing and/or marketing shot and/or shot coatings who wish to obtain approval of the candidate shot as nontoxic for use in hunting waterfowl and coots. In order to make this decision, the Service requires that applicants submit information collected about the toxicity of their candidate material to migratory birds and the environment. This data provides the bulk of the application. The information from scientific literature, risk assessment analysis, and toxicity studies, will be gathered and packaged by the applicant. The Service expects to receive one request each year. The annual burden of reporting and record keeping is estimated to be about 3,200 hours.

The principal economic effect of this rule will be to allow sport hunting retailers sales of more nontoxic shot types. This will provide some additional sales, however these sales are within a niche market and not likely to dislocate any other products. It is thought that these sales may slightly reduce some of the lead shot sales. The overall effect to hunting expenditures in general will be minor. This rule will accommodate situations where existing information can minimize the need for full testing thereby reducing the time, expense, and burden on the Federal Government and applicant without risk to wildlife. Therefore, this rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

The potential applicants are likely to be small entities, therefore, the economic effects as described in Executive Order 12866 are the same or similar to the economic impacts of annual hunting on small business entities. The economic impacts of annual hunting on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), was issued by the Service in 1995 (copies available upon request from Office of Migratory Bird Management). The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1991 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $10 and $59 million at small businesses in 1995. The approval of other nontoxic alternative shot to steel will have a minor positive impact on small businesses by allowing them to sell an additional nontoxic shot to the hunting public. However, the overall effect to hunting expenditures in general would be minor.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The primary authors of this rule are Cynthia M. Perry and Keith A. Morehouse, U.S. Fish and Wildlife Service, and Barnett Rattner, Biological Research Division of the U.S. Geological Survey.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, the Service amends part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742 a–j.

2. Amend § 20.134 by revising paragraph (b) as set forth below and removing paragraph (c):

§ 20.134 Nontoxic shot.

* * * * *

(b) *Application and review.* Tiered Strategy for Approval of Nontoxic Shot and Shot Coating. (1) All applications for approval under this section must be submitted with supporting documentation to the Director in accordance with the following procedures and must include at a minimum the supporting materials and information covered by Tier 1 in the tiered approval system as follows:

(2) *Tier 1.* (i)(A) Applicant provides statements of use, chemical characterization, production variability, volume of use of candidate material and shot sample as listed in paragraphs (b)(2)(i)(A)(*1*) through (*5*), (b)(2)(i)(B)(*1*) through (*5*), and (b)(2)(i)(C)(*1*) through (*3*) of this section. The candidate shot or shot coating may be chemically analyzed by the Service or an independent laboratory to compare the results with the applicant's descriptions of shot composition and composition variability. Rejection of the application will occur if it is incomplete or if the composition of the candidate material, upon analysis, varies significantly from that described by the applicant.

(*1*) Statement of proposed use, i.e., purpose and types.

(*2*) Description of the chemical composition of the intact material.

(*i*) Chemical names, Chemical Abstracts Service numbers (if available), and structures.

(*ii*) Chemical characterization for organics and organometallics for coating and core [e.g., empirical formula, melting point, molecular weight, solubility, specific gravity, partition coefficients, hydrolysis half-life, leaching rate (in water and soil), degradation half-life, vapor pressure, stability and other relevant characteristics].

(*iii*) Composition and weight of shot material.

(*iv*) Thickness, quantity (e.g., mg/shot), and chemical composition of shot coating.

(*3*) Statement of the expected variability of shot during production.

(*4*) Estimate of yearly volume of candidate shot and/or coated shot expected for use in hunting migratory birds in the U.S.

(*5*) Five pounds of the candidate shot and/or coated shot, as applicable, in size equivalent to United States standard size No. 4 (0.13 inches in diameter).

(B) Applicant provides information on the toxicological effects of the shot or shot coating as follows:

(*1*) A summary of the acute and chronic mammalian toxicity data of the shot or shot coating ranking its toxicity (e.g., LD50<5 mg/kg = super toxic, 5–50 mg/kg = extremely toxic, 50–500 mg/kg = very toxic, 500–5,000 mg/kg = moderately toxic, 5,000–15,000 = slightly toxic, >15,000 mg/kg = practically nontoxic) with citations.

(*2*) A summary of known acute, chronic, and reproductive toxicological data of the chemicals comprising the shot or shot coating with respect to birds, particularly waterfowl (include LD50 or LC50 data, and sublethal effects) with citations.

(*3*) A narrative description, with citations to relevant data, predicting the toxic effect in waterfowl of complete erosion and absorption of one shot or coated shot in a 24-hour period. Define the nature of toxic effect (e.g., mortality, impaired reproduction, substantial weight loss, disorientation and other relevant associated clinical observations).

(*4*) A statement, with supporting rationale and citations to relevant data, that there is or is not any reasonable basis for concern for shot or coated shot ingestion by fish, amphibians, reptiles or mammals. If there is some recognized impact on fish, amphibians, reptiles, or mammals, the Service may require additional study.

(*5*) Summarize the toxicity data of chemicals comprising the shot or shot coating to aquatic and terrestrial invertebrates, fish, amphibians, reptiles, and mammals.

(C) Applicant provides information on the environmental fate and transport, if any, of the shot or shot coating as follows:

(*1*) A statement of the alteration of the shot or shot coating, chemically or physically, upon firing. The statement must describe any alterations.

(*2*) An estimate of the environmental half-life of the organic or organometallic component of the shot or shot coating, and a description of the chemical form of the breakdown products.

(*3*) Information on the Estimated Environmental Concentration (EEC) assuming 69,000 shot per hectare (Bellrose 1959; Pain 1990) for:

(*i*) A terrestrial ecosystem, assuming complete dissolution of material in 5 cm of soil. What would be the EEC and would that EEC exceed existing clean soil standards? (Environmental Protection Agency [EPA] standards for the Use of Disposal of Sewage Sludge; 40 CFR Part 503). How does the estimated EEC relate to the toxicity threshold for plants, invertebrates, fish and wildlife?

(*ii*) An aquatic ecosystem, assuming complete dissolution of the shot or shot coating in 1 cubic foot of water. What is the estimated EEC, and how does it compare to the EPA Water Quality Criteria and toxicity thresholds in plants, invertebrates, fish and wildlife?

(D) Service evaluation of an application.

(*1*) In reviewing the submission, the Service will use an exceedence of 1 LD50/square foot as the level of concern (U.S.E.P.A. 1992) as a criteria in the risk assessment.

(*2*) In cooperation with the applicant, the Service will conduct a risk assessment using the Quotient Method (Environmental Protection Agency 1986): Risk = EEC/Toxicological Level of Concern Compare EEC in ppm to an effect level (e.g., LD50 in ppm. If $Q < 0.1$ = No Adverse Effects; If $0.1 \leq Q \leq 10.0$ = Possible Adverse Effects; If $Q > 10.0$ = Probable Adverse Effects.

(*3*) Upon receipt of the Tier 1 application, the Director will review it to determine if the submission is complete. If complete, the applicant is notified within 30 days of receipt that a thorough review of the application will commence. A *Notice of Application* will appear in the **Federal Register** announcing the initiation of review of a Tier 1 application. Complete review of a Tier 1 application will occur within 60 days of the date the *Notice of Application* is published in the **Federal Register**.

(E) If, after review of the Tier 1 data, the Service does not conclude that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the applicant is advised to proceed with the additional testing described for Tier 2, Tier 3, or both. A *Notice of Review* will inform the public that Tier 1 test results are inconclusive, and Tier 2, Tier 3, or both testing are required before further consideration.

(F) If review of the Tier 1 data results in a preliminary determination that the candidate material does not impose a significant danger to migratory birds, other wildlife, and their habitats, the Director will publish in the **Federal Register** a proposed rule stating the Service's intention to approve this shot or shot coating based on the toxicological report and toxicity studies. The rulemaking will include a description of the chemical composition of the candidate shot or shot coating, and a synopsis of findings under the standards required for Tier 1. If, at the end of the comment period, the Service finds no technical or scientific basis upon which to alter its conclusion, the candidate material will be approved by the publication of a final rule in the **Federal Register**. If, after receiving public comment, the Service determines that all available information does not establish that the shot and/or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, Tier 2, Tier 3, or both testing will be required and a *Notice of Review* will appear in the **Federal Register**. If only one of these two Tier tests are required, the Service will explain in the notice why the other is not required. If the applicant chooses not to proceed, the determination denying approval will appear in the **Federal Register**.

(ii) *Reserved.*

(3) *Tier 2.*

(i) If Tier 2 testing is required, the applicant must submit a plan that addresses paragraph (b)(3)(ii) requirements. The Director will review the Tier 2 testing plan submitted by the applicant within 30 days of receipt. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format or content. The Director shall apprise the applicant regarding what parts, if any, of the submitted testing procedures to disregard and any modifications to incorporate into the Tier 2 testing plan in order to gain plan approval. All testing procedures will be in compliance with the Good Laboratory Practices Standards (40 CFR part 160) except where they conflict with the regulations in this section or with a provision of an approved plan. The Director, or authorized representative, may elect to inspect the applicant's laboratory facilities and may decline to approve the plan and further consideration of the candidate shot if the facility does not meet the Good Laboratory Practices Standards. After the plan is accepted, Tier 2 testing will commence. Required analyses and reports, in accordance with the regulations in this section, must be sent to the Director. The applicant will ensure that copies of all the raw data and statistical analyses accompany the laboratory reports and final comprehensive report of this test.

(ii) Evaluation of the candidate shot or shot coating will first be in a standardized test under *in vitro* conditions (see paragraph (b)(3)(ii)(A)) that will assess its erosion and any release of components into a liquid medium in an environment simulating *in vivo* conditions of a waterfowl gizzard. Erosion characteristics are to be compared with those of lead shot and steel shot of comparable size. Following the erosion rate testing, the applicant must conduct a 30-day acute toxicity test in mallards, and a test to determine the candidate shot and/or shot coating effects on selected invertebrates and fish and include the results in the report for the Director.

(A) *In Vitro* Erosion Rate Test. Conduct a standardized *in vitro* test to determine erosion rate of the candidate shot or shot coating using the guidelines in Kimball and Munir (1971), unless otherwise provided by the Service.

(*1*) Typical test materials: Atomic absorption spectrophotometer; Drilled aluminum block to support test tubes; Thermostatically controlled stirring hot plate; Small Teflon®-coated magnets; Hydrochloric acid (pH 2.0) and pepsin; Capped test tubes; and Lead, steel and candidate shot/coated shot.

(*2*) Typical test procedures. Add hydrochloric acid and pepsin to each capped test tube at a volume and concentration that will erode a single #4 lead shot at a rate of 5 mg/day. Place three test tubes, each containing either lead shot; steel shot or candidate shot and/or coated shot, in an aluminum block on the stirring hot plate. Add a Teflon® coated magnet to each test tube and set the hot plate at 42 degrees centigrade and 500 revolutions per minute. Determine the erosion of shot or coated shot daily for 14 consecutive days by weighing the shot and analyzing the digestion solution with an atomic absorption spectrophotometer. Replicate the 14-day procedure five times.

(*3*) Typical test analyses. Compare erosion rates of the three types of shot by appropriate analysis of variance and regression procedures. The statistical analysis will determine whether the rate of erosion of the shot and/or shot coating is significantly greater or less than that of lead and steel. This determination is important to any subsequent toxicity testing.

(B) Acute Toxicity Test—Tier 2 (Short-term, 30-day acute toxicity test using a commercially available duck food.). Over a 30-day period, conduct a short-term acute toxicity test that complies with the guidelines described as follows or as otherwise provided by the Service:

(*1*) Typical test materials: 30 male and 30 female hand-reared mallards approximately 6 to 8 months old (mallards must have plumage and body conformation that resemble wild mallards); 60 elevated outdoor pens equipped with feeders and waterers; Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; Commercial duck maintenance mash; and Lead, steel and candidate shot.

(*2*) Typical test procedures. House mallards individually in pens and give *ad libitum* access to food and water. After 3 weeks, randomly assign to 3 groups (10 males and 10 females/group), dose with eight pellets of either No. 4 lead shot (positive control), steel shot (negative control), or the candidate shot or coated shot. Fluoroscope birds at 1 week after dosage to check for shot retention. Observe birds daily for signs of intoxication and mortality over a 30-day period. Determine body weight at the time of dosing, and at days 15 and 30 of the test. On days 15 and 30, collect blood by venipuncture, determine hematocrit, hemoglobin concentration and other specified blood chemistries. Sacrifice all survivors on day 30. Remove the liver and other appropriate organs from the sacrificed birds and from birds that died prior to sacrifice on day 30 for histopathological analysis. Analyze the organs for lead and compounds contained in the candidate shot or coated shot. Necropsy all birds to determine any pathological conditions.

(*3*) Typical test analyses. Analyze mortality among the specified groups with appropriate chi-square statistical procedures. Analyze physiological data and tissue contaminant data by analysis of variance or other appropriate statistical procedures to include the factors of shot type and sex. Compare sacrificed birds and birds that died prior to sacrifice whenever sample sizes are adequate for meaningful comparison.

(C) Daphnid and Fish Early-Life Toxicity Tests. Determine the toxicity of the compounds that comprise the shot or shot coating (at conditions maximizing solubility without adversely affecting controls) to selected invertebrates and fish. These methods are subject to the environmental effects test regulations developed under the authority of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), as follows:

(*1*) The first test, the *Daphnid Acute Toxicity Test* (conducted in accordance with 40 CFR 797.1300), is a guideline for use in developing data on the acute toxicity of chemical substances. This guideline prescribes an acute toxicity test in which Daphnid exposure to a chemical in static and flow-through systems, with the agencies assessing the hazard the compound(s) may present to an aquatic environment.

(*2*) The second test is the *Daphnid Chronic Toxicity Test* (conducted in accordance with 40 CFR 797.1330). This gathers data on the chronic toxicity of chemical substances in which Daphnids (*Daphnia* spp.) are exposed to a chemical in a renewal or flow-through system. The data from this test are again used to assess the hazard that the compound(s) may present to an aquatic environment.

(*3*) A third test, *Fish Early Life Stage Toxicity Test* (conducted in accordance with 40 CFR Section 797.1600), assesses the adverse effects of chemical substances to fish in the early stages of their growth and development. Data from this test are used to determine the hazard the compound(s) may present to an aquatic environment.

(iii) After the Tier 2 testing, the applicant will report the results to the Director. If, after review of the Tier 2 data, the Service determines that the information does not establish that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the applicant is advised to proceed with the additional testing in Tier 3. A *Notice of Review* advises the public that, in conjunction with Tier 1 data, Tier 2 test results are inconclusive and Tier 3 testing is required for continued consideration.

(iv) If review of the Tier 2 test data results in a preliminary determination that the candidate shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the Director will publish in the **Federal Register** a proposed rule stating the Service's intention to approve this shot and/or coating and why Tier 3 testing is unnecessary. The rulemaking will include a description of chemical composition of the shot or shot coating, and a synopsis of findings under the standards required at Tier 2. If, at the end of the comment period, the Service finds no technical or scientific basis upon which to deny approval, the candidate shot or shot coating approval is published as a final rule in the **Federal Register**. If, as a result of the comment period, the Service determines that the information does not establish that the shot and/or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, Tier 3 testing will be required and a *Notice of Review* published in the

Federal Register. If the applicant chooses not to proceed, the determination denying approval of the candidate shot or shot coating will appear in the **Federal Register**.

(4) *Tier 3.*

(i) If the Director determines that the Tier 1 or Tier 2 information is inconclusive, the Director will notify the applicant to submit a Tier 3 testing plan for conducting further testing as outlined in paragraphs (b)(4)(i) (A) and (B) of this section. Review, by the Director, of the Tier 3 testing plan submitted by the applicant will occur within 30 days of receipt. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format or content. The Director shall apprise the applicant regarding what parts, if any, of the submitted testing procedure to disregard and any modifications to incorporate into the Tier 3 plan in order to gain plan approval. All testing procedures should be in compliance with the Good Laboratory Practices Standards (40 CFR part 160), except where they conflict with the regulations in this section or with a provision of an approved plan. The Director, or authorized representative, may elect to inspect the applicant's laboratory facilities and may decline to approve the plan and further consideration of the candidate shot and/or shot coating if the facility is not in compliance with the Good Laboratory Practices Standards. After acceptance of the plan, Tier 3 testing will commence. Required analyses and reports must be sent to the Director. The applicant will ensure that copies of all the raw data and statistical analyses accompany the laboratory reports and final comprehensive report of this test.

(A) Chronic Toxicity Test—Tier 3 (Long-term toxicity test under depressed temperature conditions using a nutritionally-deficient diet). Conduct a chronic exposure test under adverse conditions that complies with the general guidelines described as follows unless otherwise provided by the Service:

(*1*) Typical test materials: 36 male and 36 female hand-reared mallards approximately 6 to 8 months old (Mallards must have plumage and body conformation that resembles wild mallards); 72 elevated outdoor pens equipped with feeders and waterers; Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; Whole kernel corn; and Lead, steel, and candidate shot or coated shot.

(*2*) Typical test procedures.

(*i*) Conduct this test at a location where the mean monthly low temperature during December through March is between 20 and 40 degrees Fahrenheit (−6.6 and 4.4 degrees centigrade, respectively). Assign individual mallards to elevated outdoor pens during the first week of December and acclimate to an *ad libitum* diet of whole kernel corn for 2 weeks. Randomly assign birds to 5 groups (lead group of 4 males and 4 females, 4 other groups of 8 males and 8 females/group). Dose the lead group (positive control) with one size No. 4 pellet of lead shot. Dose one group (8 males and 8 females) with eight size No. 4 pellets of steel shot (negative control) and dose the 3 other groups (8 males and 8 females/group) with one, four and eight size No. 4 pellets of candidate shot or coated shot.

(*ii*) Weigh and fluoroscope birds weekly. Weigh all recovered shot to measure erosion. Determine blood parameters given in the 30-day acute toxicity test. Provide body weight and blood parameter measurements on samples drawn at 24 hours after dosage and at the end of days 30 and 60. At the end of 60 days, sacrifice all survivors. Remove the liver and other appropriate organs from sacrificed birds and birds dying prior to sacrifice on day 60 for histopathological analysis. Analyze organs for lead and other metals potentially contained in the candidate shot or shot coating. Necropsy all birds that died prior to sacrifice to determine pathological conditions associated with death.

(*3*) Typical test analyses. Analyze mortality among the specified groups with appropriate chi-square statistical procedures. Any effects on the previously mentioned physiological parameters caused by the shot or shot coating must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot. Analyze physiological data and tissue contaminant data by analysis of variance or appropriate statistical procedures to include the factors of shot type, dose and sex. Compare sacrificed birds and birds that died prior to sacrifice whenever sample sizes are adequate for a meaningful comparison.

(B) Chronic Dosage Study—Tier 3 (Moderately long-term study that includes reproductive assessment). Conduct chronic exposure reproduction trial with the general guidelines described as follows unless otherwise provided by the Service:

(*1*) Typical test materials: 44 male and 44 female hand-reared first year mallards (Mallards must have plumage and body conformation that resemble wild mallards); Pens suitable for quarantine and acclimation and for reasonably holding 5–10 ducks each; 44 elevated, pens equipped with feeders, waterers and nest boxes; Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; Whole kernel corn, and commercial duck maintenance and breeder mash; and Lead, steel and candidate shot or coated shot.

(*2*) Typical test procedures. (*i*) Randomly assign mallards to 3 groups (Lead group = 4 males and 4 females; steel group = 20 males and 20 females; candidate shot/coated shot group = 20 males and 20 females) in December and hold in same-sex groups until mid-January (dates apply to outdoor test facility only and will reflect where in the U.S. tests are conducted). Tests conducted in the southern U.S. will need to be completed in low temperature units. After a 3-week acclimation period with ducks receiving commercial maintenance mash, provide birds with an *ad libitum* diet of corn for 60 days and then pair birds (one pair/pen) and provide commercial breeder mash. Dosing of the 3 groups with one pellet of No. 4 lead shot (positive control); eight pellets of No. 4 steel shot (negative control); and eight pellets of No. 4 candidate shot or coated shot will occur after the acclimation period (day 0) and redosed after 30, 60, and 90 days. Few, if any, of the lead-dosed birds (positive control) should survive and reproduce.

(*ii*) Fluoroscope birds 1 week after dosage to check for shot retention. Weigh males and females the day of initial dosing (day 0), at each subsequent dosing, and at death. Measure blood parameters identified in the 30-Day Acute Toxicity Test in this test using samples drawn at time of weighing. Note the date of first egg and the mean number of days per egg laid. Conclude laying after 21 normal, uncracked eggs are laid or after 150 days. Sacrifice adults after completion of laying period. Remove the liver and other appropriate organs from sacrificed birds and from other birds that died prior to sacrifice for histopathological analysis. Analyze organs and the 11th egg for compounds contained in the shot or shot coating. Necropsy all birds to determine any pathological conditions. Check nests daily to collect eggs. Discard any eggs laid before pairing. Artificially incubate eggs and calculate the percent shell thickness, percent eggs cracked, percent fertility (as determined by candling), and percent hatch of fertile eggs for each female. Provide ducklings with starter mash after hatching. Sacrifice all ducklings at 14 days of age. Measure survival to day 14 and weight of the ducklings at hatching and sacrifice. Measure blood parameters identified in the 30-Day Acute Toxicity Test using samples drawn at sacrificing.

(*3*) Typical test analyses.

(*i*) Any mortality, reproductive inhibition or effects on the physiological parameters in paragraph (b)(4) by the shot or shot coating must not be significantly greater than those caused by steel shot. Percentage data is subject to an arcsine, square root transformation prior to statistical analyses. Physiological and reproductive data is analyzed by one-tailed *t*-tests (α=0.05), or other appropriate statistical procedures by the applicant.

(*ii*) After conclusion of Tier 3 testing, the applicant must report the results to the Director. If after review of the Tier 3 data (completion 60 days after receipt of material) the Service determines that all of the information gathered and submitted in accordance with Tiers 1, 2, and 3, as applicable, does not establish that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the applicant will have the option of repeating the tests that the Director deems are inconclusive. If the applicant chooses not to repeat the tests, approval of the candidate shot or shot coating is denied. A *Notice of Review* will inform the public that Tier 3 results are inconclusive, the applicant's decision not to repeat Tier 3 testing, and the Service's subsequent denial of the shot or shot coating.

(*iii*) If review of either the initial or repeated Tier 3 test data results in a preliminary determination that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife and their habitats, the Director will publish in the **Federal Register** a proposed rule stating the Service's intention to approve this shot or shot coating and providing the public with the opportunity to comment. The rulemaking will include a description of the chemical composition of the shot or shot coating and a synopsis of findings under the standards required by Tier 3. If at the end of the comment period, the Service concludes that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, or their habitats, the shot or shot coating will be approved as nontoxic with publication of a final rule in the **Federal Register**.

(5) *Residual lead levels.* The Service's maximum environmentally acceptable level of lead in shot is trace amounts or <1 percent. Any shot manufactured with lead levels equal to or exceeding 1 percent are considered toxic and, therefore, illegal.

(6) *Field Detection Device.* Before approval of any shot for use in migratory game bird hunting, a noninvasive field testing device must be available for enforcement officers to determine the shot material in a given shell in the field.

Dated: November 3, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–31328 Filed 11–28–97; 8:45 am]

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Part III

The President

Presidential Determination No. 98–5—Proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy

Federal Register
Vol. 62, No. 230
Monday, December 1, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–5 of November 17, 1997

Presidential Determination on the Proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 17, 1997.

[FR Doc. 97–31666
Filed 11–28–97; 8:45 am]
Billing code 4710–01–M

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Federal Register

Monday
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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives; Boeing Model 747 Series Airplanes; Final Rule
14 CFR Part 39
Airworthiness Directives; Boeing Model 747-100, -200, and -300 Series Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-271-AD; Amendment 39-10230; AD 97-25-06]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires disconnection of the electrical connector to the scavenge pump of the center wing tank.

This AD also requires a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary. This amendment is prompted by findings from a design review and analysis of scavenge pumps installed on certain Boeing Model 747 series airplanes that was undertaken as part of an accident investigation. The actions specified in this AD are intended to prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor; these conditions could result in a fuel fire in the wheel well.

DATES: Effective December 16, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 1997.

Comments for inclusion in the Rules Docket must be received on or before January 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 97-NM-271-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; or G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM-140S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2864 or (425) 227-2689; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. The National Transport Safety Board (NTSB) has not yet determined the cause of that accident. In support of the subsequent accident investigation, the FAA recently conducted an engineering design review and analysis on certain Lear Romec scavenge pumps. Results of inspections on scavenge pumps removed from the center wing fuel tank of older Boeing Model 747 series airplanes indicated degradation of certain silicone insulating grommet material in electrical connectors of the pump due to the incompatibility of this material with fuel.

Damage to the electrical connector, which is part of the electrical motor assembly of the scavenge pump, could cause potential failures within the electrical motor assembly of the scavenge pump. Such failures could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor. These conditions could result in a fuel fire in the wheel well.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-28A2206, dated September 25, 1997, which describes procedures for disconnection of the electrical connector to the scavenge pump of the center wing tank. The alert service bulletin also describes procedures for a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in a fuel fire in the wheel well. This AD requires disconnection of the electrical connector to the scavenge pump of the center wing tank. This AD also requires a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM-271-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-25-06 Boeing: Amendment 39-10230. Docket 97-NM-271-AD.

Applicability: Model 747 series airplanes having line positions 001 through 971 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in a fuel fire in the wheel well, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 90 days after the effective date of this AD, disconnect the electrical connector to the scavenge pump of the center wing tank; and perform a one-time inspection of the pump to identify the part number of the electrical connector; in accordance with Boeing Alert Service Bulletin 747-28A2206, dated September 25, 1997.

(1) If an electrical connector having the correct part number (as specified in the alert service bulletin) is installed: Prior to further flight, reinstall the electrical connector. No further action is required by this AD.

(2) If an electrical connector having a part number other than the correct part number (as specified in the alert service bulletin) is installed: Prior to further flight, replace the scavenge pump with a new scavenge pump with an electrical connector having the correct part number (as specified in the alert service bulletin) in accordance with the Accomplishment Instructions of the alert service bulletin.

(b) If a scavenge pump with an electrical connector having the correct part number (as specified in Boeing Alert Service Bulletin 747-28A2206, dated September 25, 1997) is not available for installation: The airplane may be operated with the scavenge pump deactivated in accordance with the provisions and limitations specified in the FAA-approved Minimum Equipment List (MEL) and paragraph III.A.3. of the Accomplishment Instructions of the alert service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with Boeing Alert Service Bulletin 747-28A2206, dated September 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 16, 1997.

Issued in Renton, Washington, on November 26, 1997.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-31667 Filed 11-28-97; 10:56 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, -200, and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747–100, -200, and -300 series airplanes. This proposal would require the installation of components for the suppression of electrical transients and/or the installation of shielding and separation of the electrical wiring of the fuel quantity indication system (FQIS). This proposal is prompted by testing results, which revealed that excessive energy levels in the electrical wiring and probes of the fuel system could be induced by electrical transients. The actions specified by the proposed AD are intended to prevent electrical transients induced by electromagnetic interference (EMI) or electrical short circuit conditions from causing arcing of the FQIS electrical wiring or probes in the fuel tank, which could result in a source of ignition in the fuel tank.

DATES: Comments must be received by March 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this proposal may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-NM–272-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. In support of the subsequent accident investigation, the FAA participated in testing of the fuel quantity indication system (FQIS). Results of that testing revealed that excessive energy could be induced by high transient voltage levels in the electrical wiring and probes of the fuel system. These excessive levels occurred when the wiring of the FQIS was subjected to electrical transient testing. These electrical transients may be caused in the airplane when switching electrical loads in the wiring adjacent to the FQIS wiring.

The FQIS was tested to determine its performance in accordance with airplane electromagnetic interference (EMI) requirements. In this test, conductive debris, such as steel wool and lockwire, was used to bridge the FQIS probes to simulate debris that has been found during inspections of transport category airplanes. Results of this test indicated that transient voltage levels induced in the FQIS wiring and probes could be in excess of 800 volts, and the resulting energy levels in the FQIS wiring and probes could be greater than the energy required to ignite fuel vapor inside a fuel tank.

In addition, recent inspections of the fuel probe wiring in Model 747 fuel tanks revealed damaged wiring insulation, which exposed the conductors inside the fuel tank. This condition, together with the introduction of induced transients or short circuit conditions, increases the likelihood for potential ignition sources in the fuel tank.

The conditions described above, if not corrected, could result in excessive levels of energy in the FQIS wiring and a consequent potential source of ignition in the fuel tank.

FAA's Conclusions

While none of the above conditions have been identified at this time as the cause of the accident discussed previously, the FAA concludes that results of the tests and inspections that have been performed indicate that modifications are required to limit the energy level induced in the FQIS wiring and probes. Further, the FAA has determined that shielding and separation of the FQIS electrical wiring from adjacent wiring is necessary to provide protection from wire-to-wire electrical short circuit conditions, which are a potential source of ignition in the fuel tank.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the installation of components for the suppression of electrical transients and/or the installation of shielding and separation of the electrical wiring of the FQIS. The actions would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 650 Model 747–100, -200, and -300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 167 airplanes of U.S. registry would be affected by this proposed AD.

Since the manufacturer has not yet developed a modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or the cost of parts that would be required to accomplish the proposed modification. A further problem in developing a specific cost estimate is the fact that modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The proposed compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification.

However, based on similar modifications accomplished previously on other airplane models, the FAA can reasonably estimate that the proposed modification would require 40 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is estimated to be $10,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,070,800, or $12,400 per airplane.

As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding this economic aspect of proposal.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97-NM–272-AD.

Applicability: All Model 747–100, -200, and -300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent electrical transients induced by electromagnetic interference (EMI) or electrical short circuit conditions from causing arcing of the fuel quantity indication system (FQIS) electrical wiring or probes in the fuel tank, which could result in a source of ignition in the fuel tank, accomplish the following:

(a) Within 12 months after the effective date of this AD, install components for the suppression of electrical transients and/or install shielding and separation of the wiring of the FQIS, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 26, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31668 Filed 11–28–97; 10:56 am]

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 1, 1997

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Correction; published 11-17-97
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Exclusions; published 12-1-97
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Biomedical telemetry transmitters; published 10-30-97
FEDERAL MARITIME COMMISSION
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Lead ambient air quality monitoring; shift of focus from mobile sources to stationary point sources; comments due by 12-5-97; published 11-5-97
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Electronic operations; banking services delivered electronically; comments due by 12-2-97; published 10-3-97

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

In the List of Public Laws printed in the **Federal Register** on November 25, 1997, Public Laws 105–104 and 105–105 were incorrectly printed. They should read as follows:

H.J. Res. 91/P.L. 105–104

Granting the consent of Congress to the Apalachicola-Chattahoochee-Flint River Basin Compact. (Nov. 20, 1997; 111 Stat. 2219)

H.J. Res. 92/P.L. 105–105

Granting the consent of Congress to the Alabama-Coosa-Tallapoosa River Basin Compact. (Nov. 20, 1997; 111 Stat. 2233)

Last List November 26, 1997

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
●1, 2 (2 Reserved)	(869-032-00001-8)	$5.00	Feb. 1, 1997
●3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	[1] Jan. 1, 1997
●4	(869-032-00003-4)	7.00	Jan. 1, 1997
5 Parts:			
●1-699	(869-032-00004-2)	34.00	Jan. 1, 1997
●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
●1200-End, 6 (6 Reserved)	(869-032-00006-9)	33.00	Jan. 1, 1997
7 Parts:			
●0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
●27-52	(869-032-00008-5)	30.00	Jan. 1, 1997
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●210-299	(869-032-00010-7)	44.00	Jan. 1, 1997
●300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
●400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
●700-899	(869-032-00013-1)	31.00	Jan. 1, 1997
●900-999	(869-032-00014-0)	40.00	Jan. 1, 1997
●1000-1199	(869-032-00015-8)	45.00	Jan. 1, 1997
●1200-1499	(869-032-00016-6)	33.00	Jan. 1, 1997
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●1940-1949	(869-032-00019-1)	40.00	Jan. 1, 1997
●1950-1999	(869-032-00020-4)	42.00	Jan. 1, 1997
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●8	(869-032-00022-1)	30.00	Jan. 1, 1997
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●200-End	(869-032-00024-7)	33.00	Jan. 1, 1997
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●51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
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●200-219	(869-032-00031-0)	20.00	Jan. 1, 1997
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●13	(869-032-00036-1)	23.00	Jan. 1, 1997
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●100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
●170-199	(869-032-00061-1)	28.00	Apr. 1, 1997
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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December 17	January 2	January 16	February 2	February 17	March 17
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December 23	January 7	January 22	February 6	February 23	March 23
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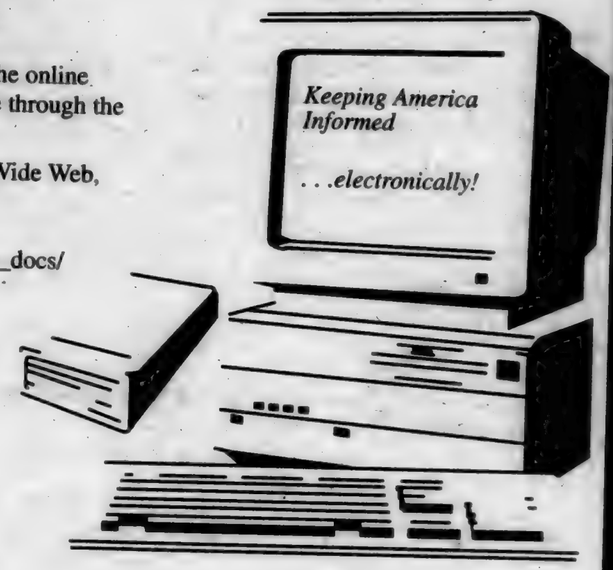
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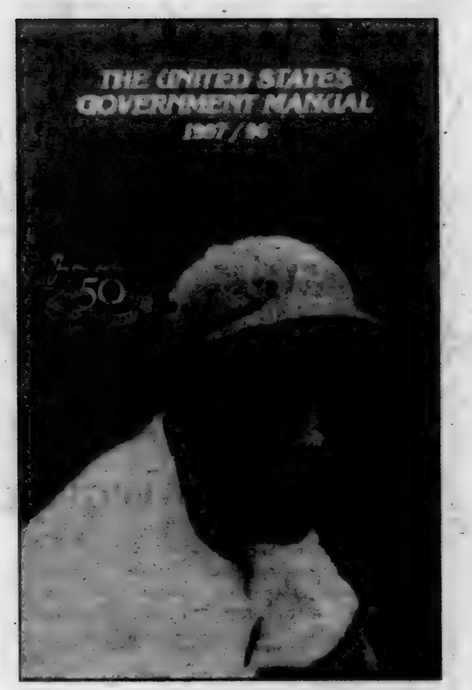
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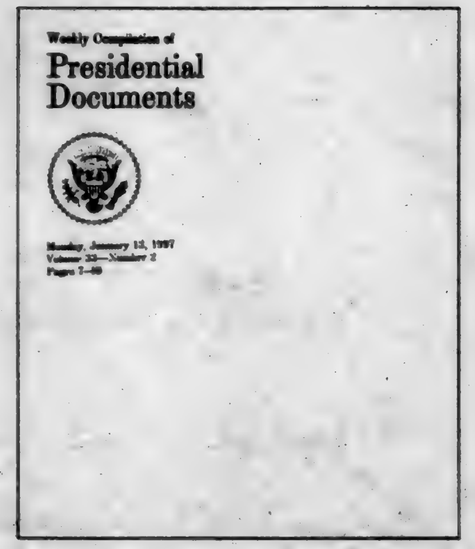
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12–2–97
Vol. 62 No. 231

Tuesday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 315

RIN 3206–AH82

Student Educational Employment Program

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for written comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations governing the Student Educational Employment Program. The regulations make no fundamental changes to the Program. The regulations recodify the two components of the Program; implement Executive Order 13024, which permits noncompetitive conversion of certain employees of the Student Educational Employment Program to term appointments; clarify certain definitions; and make related editorial changes to part 315.

DATES: Effective date: December 2, 1997. Written comments will be considered if received on or before January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Christina Gonzales Vay, 202–606–0830, FAX 202–606–0390, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On December 16, 1994, OPM published final regulations at 59 FR 64839 that consolidated 13 different student employment programs into one simplified program, the Student Educational Employment Program. The Student Educational Employment Program is comprised of two components, the Student Temporary Employment Program and the Student Career Experience Program. Each was assigned an excepted service appointing authority letter under Schedule B. The Student Temporary Employment Program was listed as 5 CFR 213.3202(a); the Student Career Experience Program was listed as 5 CFR 213.3202(b). Implementing regulations for the programs were listed separately under 5 CFR 213.3202 (c) and (d), which has caused confusion when citing the appropriate appointing authority.

We propose to rearrange the authorities so that the requirements for each program are listed under the appointing authority itself. The Student Temporary Employment Program will remain under 5 CFR 213.3202(a), and the Student Career Experience Program under 5 CFR 213.3202(b). Requirements and general instructions that apply to both components appear in each authority. Paragraphs (c) and (d) in § 213.3202 are reserved.

No fundamental changes are made to the Student Educational Employment Program; we are not entertaining any suggestions to change it. The Program will continue as it has for the last 2 years, with clarifications to three definitions.

Program Clarifications

- The current definition of "student" does not clearly address the situation of students who are accepted for enrollment but are not yet taking courses, taking correspondence course, or being home-schooled. We are amending the definition to make clear that individuals who are accepted for enrollment are considered to be students for the purpose of both programs. We are also clarifying that only those students who are in actual physical attendance at the school may participate in the Student Educational Employment Program. This is similar to the definition of "student" used in the past for summer employment.
- Under the Student Career Experience Program, the authority currently classifies students as trainees in the –99 series of an occupational group and does not address wage grade positions. We did not intend to limit Student Career Experience appointments to only positions under the General Schedule. Therefore, we are clarifying that agencies may appoint Student Career Experience eligibles to positions either under the General Schedule or the Federal Wage System.
- We are clarifying the definition of "break in program" to make clear that a break in program is authorized when a student is neither attending classes nor working at the agency.

Conversion to Term Appointments

On November 7, 1996, Executive Order 13024 authorized noncompetitive conversion of Student Career Experience employees to term appointments in the competitive service, in addition to career and career-conditional appointments authorized by Executive Order 12015. Before the term appointment expires, agencies may noncompetitively convert the term appointments to career or career-conditional appointments. This provides agencies an additional flexibility in managing its workforce. We are including this provision in the Student Career Experience appointment authority, and making conforming changes in part 315.

Documentation on SF–50, Notification of Personnel Action

For noncompetitive conversions from the Student Educational Employment Program to term, career, and career-conditional appointments, agencies should cite Legal Authority Code ZJM on the SF–50, Notification of Personnel Action. The legal authority is Executive Order 12015.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 533(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because this document merely recodifies paragraphs for greater clarity and ease of use. Also, the Executive Order permitting noncompetitive conversion to term appointments became effective on November 7, 1996. No substantive changes have been made in these regulations.

List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 213 and part 315 of title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364,

47 FR 22931, 3 CFR 1982 Comp., p. 185; and 38 U.S.C. 4301 *et seq.*

2. In § 213.104, paragraph (b)(3)(ii) is revised to read as follows:

§ 213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

* * * * *

(b) * * *

(3) * * *

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of § 213.3102 and paragraph (a) of § 213.3202, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

* * * * *

3. In § 213.3202, paragraphs (a) and (b) are revised, and paragraphs (c) and (d) are removed and reserved, to read as follows:

§ 213.3202 Entire executive civil service.

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High school diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree.

(2) *Definition of student.* A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking resident student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. A student must be in actual physical attendance at a school, as distinguished from a correspondence or home-schooled student. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) *Schedules.* Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) *Breaks in program.* A *break in program* is defined as a period of time when a program participant is working but is unable to go to school, *or* neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) *Employment of minors.* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) *Citizenship.* Agencies may appoint non-citizens provided that:

(i) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(ii) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(7) *Employment of relatives.* In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) *Financial need.* There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services' poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) *Training expenses.* Agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of the students' training expenses.

(10) *Appointments.* (i) Students are appointed to positions not to exceed 1 year. Appointments under this authority may be extended in one-year increments as long as the individual meets the definition of a student. Agencies may establish minimum academic requirements and on the job performance requirements for continuation in the program. Students under this appointment authority are excepted from the limitations under § 213.104.

(ii) The nature of the duties does not have to be related to the student's academic/career goals.

(iii) Students are not eligible for noncompetitive conversion to term, career, or career-conditional appointments. They may be converted to the Student Career Experience Program (refer to paragraph (a)(15) of this section).

(11) *Classification.* Classification of students is based on the occupational series for which they are hired. Grade level is to be set according to the criteria in the appropriate General Schedule (GS) or wage grade (WG) classification standard.

(12) *Qualifications.* Students may be evaluated either by agency-developed standards or by the OPM qualification requirements for the position to which appointed. Students are eligible for promotions. Promptions should be documented as a conversion to another excepted appointment, citing the same authority used for the original appointment and maintaining the original not-to-exceed (NTE) date.

(13) *Benefits.* (i) Students under this program are eligible for annual and sick leave and are generally ineligible for retirement coverage. Refer to § 831.201 and § 842.105 of this chapter for specific information.

(ii) For rules on health and life insurance coverage refer to § 870.202, § 890.102, and § 890.502 of this chapter.

(14) *Reductions-in-Force (RIF).* Students are covered by § 351.502 of this chapter for purposes of RIF. Students, provided they have completed at least 1 year of current continuous service, are in excepted service Tenure Group III.

(15) *Conversion to Student Career Experience Program.* (i) Students may be noncompetitively converted to the Student Career Experience Program whenever they meet the requirements of that program and the agency has an appropriate position available.

(ii) Work experience related to the student's academic program and career goals, gained while under the Student Temporary Employment Program, may be credited towards the 640 hour work experience necessary for noncompetitive conversion to a term, career, or career-conditional appointment.

(iii) Conversions are not subject to requirements of subparts C and D of part 302 of this chapter.

(b) *Student Educational Employment Program—Student Career Experience Program.* (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

(2) *Definition of student.* A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking resident student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. A student must be in actual physical attendance at a school, as distinguished from a correspondence or home-schooled student. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) *Schedules.* Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) *Breaks in program.* A *break in program* is defined as a period of time when a program participant is working but is unable to go to school, *or* neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) *Employment of minors.* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) *Citizenship.* (i) Agencies may appoint non-citizens provided that:

(A) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(B) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(ii) All students must be United States citizens at the time they are noncompetitively converted to a term, career, or career-conditional appointment.

(7) *Employment of relatives.* In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) *Financial need.* There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services' poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) *Training expenses.* Agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 of this chapter to pay all or part of the students' training expenses.

(10) *Appointments.* (i) Appointments are subject to all the requirements and conditions governing term, career, or career-conditional employment, including investigation to establish an appointee's qualifications and suitability.

(ii) Appointments of participants who have met all the requirements of the program may be noncompetitively converted to term, career, or career-conditional appointments at any time within 120 days after satisfactory completion of the requirements for his/her diploma, certificate, or degree.

(11) *Program requirements for noncompetitive conversion.* (i) Students may be noncompetitively converted from the Student Career Experience Program to a term, career or career-conditional appointment under Executive Order 12015 (as amended by Executive Order 13024) when students have:

(A) Completed within the preceding 120 days, at an accredited school, course requirements conferring a diploma, certificate, or degree;

(B) Completed at least 640 hours of career-related work (agencies have the option of increasing this requirement for some or all of its occupational fields), before completion of, or concurrently with, the course requirements;

(C) Been recommended by the employing agency in which the career-related work was performed; and

(D) Met the qualification standards for the targeted position to which the student will be appointed.

(ii) Conversions must be to an occupation related to the student's academic training and career related work experience.

(iii) The noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government.

(iv) Agencies who noncompetitively convert Student Career Experience Program participants to term appointments may also noncompetitively convert them to career or career-conditional appointments before the term appointments expire.

(12) *Agreement by all parties.* (i) The Student Career Experience Program is a formally structured program and requires a written agreement by all parties (agency, school, student) as to the:

(A) Nature of work assignments;

(B) Schedule of work assignments and class attendance;

(C) Evaluation procedures; and

(D) Requirements for continuation and successful completion of the program.

(ii) The work experience with the agency must be related to his/her academic/career goals.

(13) *Schedule.* Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that:

(i) Work responsibilities do not interfere with academic performance;

(ii) Completion of the educational program (awarding of diploma/certificate/degree) and the Student Career Experience Program are accomplished in a reasonable and appropriate timeframe;

(iii) The agency is informed and prepared for the student's periods of employment; and

(iv) Requirements for non-competitive conversion to term, career, or career-conditional employment are understood by all parties.

(14) *Classification.* Students whose positions are covered by the General Schedule will be classified as student trainees, to the –99 series of the appropriate occupational group. Students whose positions are covered by the Federal Wage System will be classified as student trainees, to the -01 series of the appropriate occupational group.

(15) *Qualifications.* Students may be evaluated by either agency-developed standards or by the OPM qualifications requirements for the target position. Any OPM test requirements are waived. Students are eligible for promotion.

(16) *Benefits.* (i) Students appointed under this program earn annual and sick leave *and* with no prior service or with less than 5 years of prior civilian service, are generally covered by the Federal Employees Retirement System (FERS) (see part 842 of this chapter).

(ii) For life insurance and health benefits coverage refer to § 870.202 and § 890.102 of this chapter.

(17) *Tuition assistance.* Agencies may use their training authority in 5 U.S.C. Chapter 41 and part 410 of this chapter to pay all or part of the students' training expenses.

(18) *Travel and transportation.* Agencies may pay for other expenses directly related to training, such as travel and transportation between duty station and school, for participants.

(19) *Reduction-in-force (RIF).* (i) Students are in excepted service Tenure Group II for purposes of § 351.502. They are accorded the same retention rights as excepted service employees.

(ii) They may qualify for severance pay if involuntarily separated under part 550, subpart G of this chapter.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

4. The authority citation for part 315 continues to read:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

5. In § 315.201, paragraph (b)(1)(ix) is revised to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(ix) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter, provided the student's appointment is converted to career or career-conditional appointment under Executive Order 12015, with or without an intervening term appointment, and without a break in service of one day.

* * * * *

[FR Doc. 97–31536 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206–AF99

Federal Employee Training

AGENCY: Office of Personnel Management.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations, which were published in the **Federal Register** of Tuesday, December 17, 1996 (61 FR 66189). The regulations implemented policies related to the training of Federal employees.

DATES: Effective on December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Lombard, 202–606–2431, email jmlombar@opm.gov, or fax 202–606–2394.

SUPPLEMENTARY INFORMATION:

Background

The final regulations subject to this correction affect the training of Federal employees. The subsection on reports contains an inaccurate reference about records of agency training plans, expenditures, and activities. The correction removes a reference to a non-existent subsection of the final regulations and adds, in its place, a reference to the correct subsection of the final regulations.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be corrected.

List of Subjects in 5 CFR Part 410

Education, Government employees.

Accordingly, 5 CFR part 410 is corrected by making the following correcting amendment:

PART 410—TRAINING

1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et. seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

§ 410.701 (Corrected)

2. In § 410.701, remove the reference to § 410.312, and add, in its place, § 410.311.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–31535 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AH51

Cost-of-Living Allowance (Nonforeign Areas)—Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing regulations that implement four changes in the nonforeign area cost-of-living allowance (COLA) program. One change removes obsolete references to hiring authorities no longer in use. A second change clarifies the application of COLA regulations to two pay systems linked to or equivalent to the Senior Executive Service. A third change clarifies the application of COLA regulations to employees under other pay systems. The fourth change extends nonforeign area post differentials to employees on long-term temporary assignments in the same manner as is provided by the Department of State for employees in foreign areas.

DATES: These regulations become effective on December 2, 1997. These regulations are applicable on the first day of the first pay period beginning on or after December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Paul B. Malerba at (202) 606–2838, FAX: (202) 606–4264, or EMAIL: cola@opm.gov.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLAs) when local living costs are substantially higher than those in the Washington, DC, area. These COLAs are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

The Office of Personnel Management (OPM) published proposed rules at 60 FR 13354 on March 20, 1997, concerning four regulatory changes in the COLA program. One change would remove obsolete references to hiring authorities no longer in use. A second change would clarify the application of COLA regulations to two pay systems linked to or equivalent to the Senior Executive Service. A third change would clarify the application of COLA regulations to employees under other pay systems. The fourth change would extend nonforeign area post differentials to employees on long-term temporary assignments in the same manner as is provided by the Department of State for employees in foreign areas.

OPM received three comments in response to the publication of the proposed regulations. One commenter endorsed the proposed changes in their entirety. The second commenter recommended including in section 591.201 (Definitions) the minimum length of time required for employees on temporary assignment to receive a differential. The third commenter recommended deleting the 25 percent limitation on allowances plus post differentials combined because there is no equivalent limitation under the Department of State program, and the purpose of OPM's proposed change was to parallel that program.

OPM is not adopting the second commenter's recommendation because the minimum period is not a term used throughout the regulations, but rather a criterion that is used only once in section 591.210(b). Therefore, it is not appropriate to include it in the definitions section. OPM is not adopting the third commenter's recommendation because by law nonforeign area COLA and post differentials combined cannot exceed 25 percent.

OPM notes that it published an interim rule at 60 FR 25423 on May 9, 1997, in response to changes made by the Federal Employee Travel Reform Act of 1996. The Act affects the status of employees who are assigned to work in another location for an extended period. The interim regulations clarify that the temporary duty station during such an extended assignment must be treated as the official duty station of the employee for purposes of determining the employee's location-based pay entitlements. The interim regulations added a definition of "official duty station" to 5 CFR 591.201 for purposes of paying allowances and differentials and changed the term "permanent duty station" to "official duty station" in 5 CFR 591.210(a) to make these terms consistent with those used in the regulations on locality-based comparability payments. The regulations also make conforming changes in § 591.201 and in paragraphs (b)(1) (redesignated paragraph (c)(1)), and (c) (redesignated paragraph (d)) of § 591.210. OPM has incorporated these changes in this final rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM amends 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.203, paragraphs (a)(1), (a)(3), (a)(6), and (b) are revised to read as follows:

§ 591.203 Agencies and employees covered.

(a) * * *

(1) General Schedule.

* * * * *

(3) Foreign Service (including the Senior Foreign Service).

* * * * *

(6) Senior Executive Service (including the Federal Bureau of Investigation—Drug Enforcement Administration Senior Executive Service).

* * * * *

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in other positions authorized by specific law applicable to such positions, consistent with the intent of 5 U.S.C. 5941.

3. In § 591.210, paragraph (f) is removed, paragraphs (b) through (e) are redesignated as (c) through (f), respectively, and a new paragraph (b) is added to read as follows:

§ 591.210 Payment of allowances and differentials.

* * * * *

(b) Payment of an allowance or differential will begin on the effective date of the change in the employee's official duty station to a duty station within the allowance or differential area or on the effective date of the appointment in the case of local recruitment. An employee who is detailed for temporary duty in a nonforeign area (i.e., the employee's official duty station is outside the nonforeign area) is eligible for a differential, but not an allowance, except that payment of a differential shall not begin until after 42 consecutive calendar days of temporary duty in the differential area. Payment of an allowance or differential will cease—

(1) On separation;

(2) On the effective date of assignment or transfer to a new official duty station outside the allowance or differential area; or

(3) On the ending date of a detail, in the case of an employee on detail to temporary duty in a differential area.

* * * * *

[FR Doc. 97–31537 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 454, and 457

General Crop Insurance Regulations, Various Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations; Canning and Processing Tomato and Rice Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and the Common Crop Insurance Regulations, Cotton, Coarse Grains (Corn, Grain Sorghum, and Soybeans), Dry Bean, ELS Cotton, Sugar Beet, and Sunflower Seed Crop Insurance Provisions, effective for the 1998 crop year only, for counties and states with a November 30 contract change date. FCIC is extending the contract change date to December 17, 1997.

The intended effect of this rule is to extend the contract change date, which

is the date by which all contract changes must be on file in the service office, in order to provide sufficient time for FCIC to publish a final rule amending the policy for insuring the above crops.

DATES: This interim rule is effective November 26, 1997.

Submit comments on or before December 29, 1997.

ADDRESSES: Written comments on this interim rule should be sent to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be not significant for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), there are no information collection requirements contained in this rule.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The extended contract change date included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, FCIC is required to have changes in policy provisions at the agent's office by November 30. If this date is not met, then the changes will not be applicable until the next crop year. This regulation merely extends that date so that companies will have more time to get the program changes to the insured. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This rule has been reviewed in accordance with Executive Order No. 12988 on Civil Justice Reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC herewith amends the General Crop Insurance Regulations; Canning and Processing Tomato and Rice Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and the Common Crop Insurance Regulations, Cotton, Coarse Grains (Corn, Grain Sorghum, and Soybeans), Dry Bean, ELS Cotton, Sugar Beet, and Sunflower Seed Crop Insurance Provisions to extend the contract change date to December 17, 1997. This action is taken in order to provide sufficient time for FCIC to make timely filing on changes in policy provisions.

The contract change date, included in the crop insurance policy, is the date by which all contract changes must be on file in the service office.

Kenneth D. Ackerman, Manager, FCIC has determined that the extension of the contract change date is necessary to provide sufficient time for FCIC to publish a final rule amending the above crop insurance policies for the 1998 crop year.

It is further determined that such extension will not be detrimental to any program recipient, and that publication of the extended contract change date as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon filing for public inspection at the Office of the Federal Register.

Lists of Subjects

7 CFR Part 401

Crop insurance, Canning and processing tomato, Rice.

7 CFR Part 454

Crop insurance, Fresh market tomato (guaranteed production plan).

7 CFR Part 457

Crop insurance, Cotton, Coarse grains (corn, grain sorghum, and soybeans), Dry bean, ELS cotton, Sugar beet, Sunflower seed.

Interim Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401, 454 and 457, to read as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 401.114 is amended by revising 10. Contract Changes to read as follows:

§ 401.114 Canning and processing tomato endorsement.

* * * * *

10. Contract Changes

The date by which contract changes will be available in your service office is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for counties with a February 15 cancellation date and December 31 preceding the cancellation date for all other counties.

* * * * *

3. Section 401.120 is amended by revising 9. Contract Changes to read as follows:

§ 401.120 Rice endorsement.

* * * * *

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for all other counties.

* * * * *

PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

4. The authority citation for 7 CFR part 454 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. In § 454.7(d), the insurance policy is amended by revising section 16. Contract Changes to read as follows:

§ 454.7 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Policy.

* * * * *

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for counties with a February 15 cancellation date, and by December 31 preceding the cancellation date for counties with an April 15 cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

6. The authority citation for 7 CFR part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

7. Section 457.104 is amended by revising 4. Contract Changes to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Common Crop Insurance Policy).

* * * * *

8. Section 457.105 is amended by revising 4. Contract Changes to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy).

* * * * *

9. Section 457.108 is amended by revising 4. Contract Changes to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Basic Provisions).

* * * * *

10. Section 457.109 is amended by revising 4. Contract Changes to read as follows:

§ 457.109 Sugar beet crop insurance provisions.

* * * * *

4. Contract Changes

In accordance with the provisions of section 4 (Contract Changes) of the Basic Provisions, the contract change date is April 30 preceding the cancellation date for counties with a July 15 or August 31 cancellation date and November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for all other counties.

* * * * *

11. Section 457.113 is amended by revising 4. Contract Changes to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Common Crop Insurance Policy).

* * * * *

12. Section 457.150 is amended by revising 4. Contract Changes to read as follows:

§ 457.150 Dry bean crop insurance provisions.

* * * * *

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions, the contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date.

* * * * * 4

Signed in Washington, D.C., on November 26, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–31544 Filed 11–26–97; 3:08 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, correction.

SUMMARY: The document contains a correction to the final rule that was published on Friday, March 28, 1997 (62 FR 14775–14780). The rule pertains to the insurance of fresh market tomatoes (dollar plan).

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured, include the current fresh market tomato (dollar plan) endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current fresh market tomato (dollar plan) endorsement to the 1997 and prior crop years.

Need for Correction

As published, the final regulation contained a technical error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on March 28, 1997, of the final regulation at 62 FR 14775–14780 is corrected as follows:

PART 457—[CORRECTED]

§ 457.139 [Corrected]

On page 14780, in the first column, in § 457.139, the paragraph following section 14(b)(4)(ii)(B) is corrected to read:

"(5) Multiplying the result of section 14(b)(4) by your share."

Signed in Washington D.C. on November 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–31545 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 32

RIN 3150–AF70

Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to permit NRC licensees to distribute a radioactive drug containing one microcurie of carbon-14 urea to any person for "in vivo" diagnostic use. The NRC has determined that the radioactive component of such a drug in capsule form presents an insignificant radiation risk and, therefore, regulatory control of the drug for radiation safety is not necessary. This amendment makes the drug more widely available and reduces costs to patients, insurers, and the health care industry. This action grants a petition for rulemaking (PRM–35–12) from Tri-Med Specialties, Inc. and completes action on the petition.

EFFECTIVE DATE: January 2, 1998.

ADDRESS: Copies of the public record, including the final regulatory analysis and any public comments received on the proposed rule, may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233 or e-mail at ANT@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. The Petition for Rulemaking.
II. Proposed Rule, Public Comments, and NRC Responses.
III. Summary of the Final Amendments.
IV. Description of the Final Amendments.
V. Agreement State Compatibility.
VI. Finding of No Significant Environmental Impact: Availability.
VII. Paperwork Reduction Act Statement.
VIII. Regulatory Analysis.
IX. Regulatory Flexibility Certification.
X. Small Business Regulatory Enforcement Fairness Act.
XI. Backfit Analysis.

List of Subjects

I. The Petition for Rulemaking

On October 6, 1994, the Commission docketed a petition for rulemaking (Docket No. PRM–35–12) from Tri-Med Specialties, Inc (Tri-Med). In a letter dated August 23, 1994, Tri-Med petitioned the NRC to amend its regulations "to allow for the general licensing and/or exemption for the commercial distribution by licensed pharmaceutical manufacturers of a capsule containing one micro-Curie (μCi) of C–14-urea for in vivo diagnostic testing." The purpose of this diagnostic test is to detect the presence of the bacterium Helicobacter pylori (H. pylori), a cause of peptic ulcers in humans.

Following the receipt of the petition, the NRC published for public comment a notice of receipt of petition for rulemaking in the **Federal Register** on December 2, 1994 (59 FR 61831). The comment period closed on February 15, 1995. The NRC received 315 public comment letters, of which 313 supported the petition (they were mostly form letters) and 2 letters opposed the petition.

II. Proposed Rule, Public Comments, and NRC Responses

A proposed rule was published on June 16, 1997 (62 FR 32552) that would permit NRC licensees to distribute capsules containing one microcurie C–14 urea to any person for "in vivo" diagnostic use. The public comment period closed on July 16, 1997.

In the preamble of the proposed rule, the NRC stated that, because the capsules present an insignificant radiological risk to the public and the environment, the NRC believes the capsules could be distributed for "in vivo" diagnostic use to persons exempt from licensing.

This change makes the drug more widely available and reduces costs to patients, insurers, and the health care industry.

The NRC received seven public comment letters on the proposed rule: three from industry, three from State agencies, and one from a physician associated with a university medical facility. Four commenters supported the rule, one opposed the rule, and two provided comments but did not explicitly state whether they supported or opposed the rule. Public comments and NRC's responses are presented below.

Comment 1: Under the proposed distribution, the NRC should not be forbidding research use of this drug by the same physicians who may use it clinically. Research use also should be permitted under this exemption because the radiological risk for using C–14 capsules is insignificant.

Response: The NRC did not change the final rule in response to this comment. A common rule entitled "Federal Policy for the Protection of Human Subjects; Notices and Rules" was promulgated by 16 Federal agencies on June 18, 1991 (56 FR 28002) and was intended to ensure the protection of human research subjects. This rule was adopted to implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1978, by Public Law 95–622. The Federal Policy requires that Federal agencies that conduct, fund, support, or regulate research involving human subjects ensure adequate protection of the rights of the human subjects. The Federal policy represents a societal determination that any research (including research involving radioactive material) must provide for the following minimal protections for the human subjects: (1) that the research is approved by an Institutional Review Board (IRB) and (2) that the human subject gives informed consent to participate in the research. Further, these protections must be provided regardless of whether or not there is any risk of consequences (including radiological consequences). This view is supported by the fact that during the public comment period of the common rule, a commenter suggested that all minimal risk research be exempt from the regulations; however, the final rule did not adopt this comment.

NRC did not participate in the promulgation of the common rule. Subsequently, the NRC adopted 10 CFR 35.6 that requires a licensee who conducts research involving human subjects using byproduct material to obtain informed consent from the human subjects and obtain prior approval by an IRB. Although the NRC did not adopt the common rule, the intention is to follow the essential requirements of the common rule. Because the common rule does not provide an exemption for research involving minimal risk, the Commission has determined that such research use should not be exempt from 10 CFR 35.6.

Comment 2: Two commenters expressed concerns that the proposed rule language, "not exceeding one microcurie," appeared to indicate that the upper limit of the radioactivity in a capsule is exactly one microcurie of C–14. Both stated that it is not possible to make the capsules to exactly one microcurie because of statistical deviations during the manufacturing process.

Response: The NRC agrees with the commenters. The proposed rule did not intend to limit the radioactivity of C–14 to exactly one microcurie. The final rule language has been modified to read "capsules containing one microcurie C–14 urea (allowing for nominal variation that may occur during the manufacturing process)."

Comment 3: One commenter stated that, when the total amount of energy released from complete decay of a radionuclide is considered, one microcurie of C–14 has the largest energy release, because of its long half-life, when compared to one microcurie of Tc–99m or I–131. The commenter concluded that, given the insignificant radiation risk from the diagnostic use of C–14 urea, the radiation risk from the diagnostic use of Tc–99m or I–131 also would be insignificant.

Response: In comparing the hazard significance of the one microcurie C–14 Urea diagnostic test to the extensive use of Tc–99m and I–131, the NRC did not evaluate the dose to the patient because this dose would be justified for medical reasons. Justification for retaining some licensing control on the medical use of Tc–99m and I–131 while exempting the one microcurie carbon-14 urea capsules relies on the relative occupational hazards to technicians and physicians administering the radiopharmaceuticals.

Administering an encapsulated dosage of one microcurie C–14 involves virtually no occupational dose due to the low energy beta radiation and minimal possibility for contamination of personnel or facilities. On the other hand dosages of Tc–99m and I–131 entail extracting 10s to 100s of millicurie amounts, often in liquid form, from shielded sources of even higher activity. The possibility of direct exposure to gamma radiation and the possibility of contamination requires that radiation protection measures be in place to maintain exposure to staff as low as is reasonably achievable.

Tc–99m and I–131, having relatively short half-lives, present minimal environmental hazard. C–14 as urea is excreted from the patient as carbon dioxide (CO_2) which diffuses into the atmosphere. Based on a calculation found in the regulatory analysis for this rule, the current world inventory of naturally occurring C–14 results in an average dose to members of the public of about 1.25 mrem/yr. A release of 0.6 curies of C–14 from the 600,000 tests expected to be administered annually, would result in an additional average annual dose of 2×10^{-7} mrem. Comparing this estimate to the EPA Clean Air Act reporting level of 1 mrem/year, this new test is environmentally insignificant.

Comment 4: Because of the small quantity of radioactive material in C–14 capsules, this product may be disposed of in the general trash. To avoid unnecessary concern for health risks in the disposal of the product, labels should contain a statement that the product may be disposed of in the general trash.

Response: In the final rule, the label requirements include a statement that the product may be disposed of in ordinary trash.

Comment 5: The Commenter agrees that the widespread use of this product will require uniform regulations and that Agreement States will need to make appropriate regulatory provisions to enable persons to receive the drug for "in vivo" diagnostic use. To avoid confusing licensees and users, these changes to NRC and Agreement State regulations should be made simultaneously. The commenter urges that the NRC take action to expedite the Agreement State regulatory changes.

Response: The NRC has urged the Agreement States to adopt compatible changes in their regulations expeditiously. However, under NRC's Adequacy and Compatibility Policy, Agreement States have up to three years to change their regulations for amendments or program requirements that are items of compatibility.

Comment 6: The NRC should address this rule in its ongoing effort to revise 10 CFR Part 35 in its entirety. The commenter believes that (1) this rule represents a piecemeal effort to respond to a narrow issue and (2) the issue of reduced regulation for medical use of C–14 capsules is applicable to the same extent for virtually the entire range of diagnostic radioisotopes.

Response: If this rule is combined with the overall 10 CFR part 35 revision, the C–14 capsules would only be available to authorized user physicians during the revision period. Thus, the NRC decided to proceed with this rule now because the benefits of making this capsule available to anyone, including primary-care physicians, outweigh the benefits of addressing this issue in the overall revision of 10 CFR part 35.

Comment 7: An appropriate function of the regulatory regime is to assure that personnel handling and administering radioactive drugs meet certain basic training and qualification requirements. The proposed exemption would impose no training or qualification requirements on users.

Response: The amount of radiation safety training needed for personnel depends on the level of radiation risk associated with the radioactive drug. Because C–14 capsules present insignificant radiation risk, radiation safety training for personnel handling and administering the capsule is not necessary, and thus, not required.

Comment 8: If the NRC promulgates the proposed rule in its present form, the exemption will divest the Agreement States of any authority to regulate this product under a general or specific license. Had the NRC instead simply proposed a general license, Agreement State agencies would retain the authority to adopt the general license or continue to require specific licensing.

Response: In the draft rulemaking plan, the NRC suggested using the general license approach. The NRC received nine comment letters from Agreement States on the draft rulemaking plan; three suggested that an exemption approach would be more appropriate because it would be less costly to the Agreement States and their

licensees than the general license approach.

Based on these comments, the NRC chose the exemption approach in the final rule plan as more cost-effective than a general license approach. The final rulemaking plan was revised accordingly and was provided to the Agreement States. No Agreement States expressed opposition to the NRC on the exemption approach.

Among the seven public comment letters received on the proposed rule, two were from Agreement States and one from a non Agreement State. All three supported the proposed rule.

Comment 9: The environmental assessment fails to consider the fact that another equally noninvasive, but nonradiological, diagnostic procedure (such as C–13 test) is available and provides a comparable alternative to the C–14 test. The apparent assumption underlying the environmental assessment is that in the absence of the C–14 test, the only alternative for the detection of H. pylori is invasive gastroendoscopy.

Response: Because the C–14 urea capsules are already available to authorized user physicians, the only regulatory issue in this rulemaking is whether the C–14 method should be made available to individuals who are not authorized users. The purpose of the environmental assessment is to consider and document whether the subject rule is expected to have any significant impact to the environment. In this environment assessment, the NRC has determined that the environmental impact is expected to be insignificant because of the extremely low radiological hazards associated with the use of capsules containing one microcurie C–14 urea. The presence of an additional non-invasive alternative procedure does not affect NRC's determination of no significant environmental impact.

Comment 10: NRC's policy in the past has been not to exempt byproduct material that is ingested. Any change in this policy would be a significant departure from existing NRC regulations.

Response: This change is a departure from existing NRC regulations. In the statement of consideration for the proposed rule, under the heading "Current NRC Regulations on Exemptions From Licensing," the NRC stated that, although two broad material exemptions (§ 30.14, "Exempt concentrations," and § 30.18, "Exempt quantities") exclude the transfer of byproduct material contained in any product designed for ingestion or inhalation by a human being, the C–14 capsules manufactured or prepared as a radioactive drug can be distributed to persons exempt from licensing for "in vivo" diagnostic use because the capsules present an insignificant radiological risk to the public and the environment. This exemption only applies to the diagnostic use of capsules containing one microcurie C–14 manufactured or prepared as a radioactive drug to make a clear distinction between this radioactive drug that is intended for ingestion by humans and other uses of C–14 urea and byproduct material distributed under §§ 30.14 and 30.18.

Comment 11: The ACMUI's (Advisory Committee on Medical Uses of Radioisotopes) conclusions that either an exemption or general license is appropriate for the C–14 product do not address the fundamental aspects of nuclear safety. Its judgment was based partially on the assumptions: (1) the product may only be dispensed by prescription, (2) the product is approved by the Food and Drug Administration, and (3) the office/facility using the product will be subject to Clinical Laboratory Improvement Amendment (CLIA) regulation.

Response: The transcript from the ACMUI meeting shows the Committee did include radiation safety in its considerations and did not consider it to be an issue. Further, as stated in the supplemental material supporting the proposed rule, there are no nuclear safety issues associated with the use of the C–14 capsules for clinical diagnostic testing. Therefore, use of either an exemption or general license is appropriate.

Comment 12: The exemption approach does not provide the NRC with flexibility to impose a limitation on the amount of C–14 capsules any physician can possess in an office. In the event there is a recall of the product, or a large amount of product becomes unusable, the NRC will have no control over the disposal of the product.

Response: It is not necessary to impose a possession limit on the amount of C–14 capsules because the radiation risk is insignificant. The earth's atmosphere contains an inventory of naturally occurring C–14 of about 3.8 million curies which is in addition to the huge inventory of about 240 million curies in the world's oceans. The small amount of C–14 released into the atmosphere from the use of this test would mix with the global inventory and would have no impact on public health. The current world inventory of naturally occurring C–14 results in an average dose to the public of about 1.25 mrem per year, and the release of 0.6 curies of C–14 from the total of 600,000 tests assumed to be administered annually would result in an additional average annual dose of 2×10^{-7} mrem. In the event that a recall is necessary, the manufacturer may use the same process for recalling any other non-radioactive drugs. If C–14 urea capsules are returned to the manufacturers, they will be disposed of in accordance with the manufacturer's possession license. A user, however, can dispose the C–14 urea capsules as ordinary trash. Medical users of the C–14 urea test would be unlikely to acquire significant quantities of capsules because they can be ordered within a few days. Thus, even under a recall, the impact of disposing of C–14 urea capsules into landfills by the user would also be insignificant.

Comment 13: It is essential that end users be adequately informed of the product's radioactive characteristics, so that some form of storage, use, and disposal precautions can be followed. Thus, the labeling must be conspicuously and prominently placed. The commenter suggested the following: (1) the phrase "conspicuously and prominently" in front of the proposed labeling "bears the words Radioactive Material" should be added, and (2) the NRC should require that the radioactive material legend, "Radioactive Material," be included on promotional brochures.

Response: Because the radiation risk from C–14 capsules is insignificant, regulatory control of the use, storage, and disposal of the drug for purpose of radiation safety is not necessary. In fact, the label accompanying C–14 capsules is required to indicate that the capsules may be disposed of by users as ordinary trash. Paragraph(a)(6) of § 32.21 requires that applicants submit copies of prototype labels and brochures for NRC approval. The NRC will ensure that the labels meet the requirements of § 32.21a before they are approved. Since paragraph (a) of § 32.21a specifies that the label must be durable and legible, the use of an additional phrase such as "conspicuously and prominently" is unnecessary. Promotional brochures are for information only; manufacturers are not required to indicate on the promotional brochures that C–14 is a radioactive material.

III. Summary of the Final Amendments

Final Amendment to 10 CFR Part 32

The regulations in 10 CFR part 32 are amended to add new §§ 32.21 and 32.21a, to provide requirements for a specific license to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution, capsules containing one microcurie of C–14 urea, as a radioactive drug, to be distributed to any person for "in vivo" diagnostic use. These requirements are consistent with the existing requirements on other items under the heading "Exemptions" in 10 CFR part 30. The amendment includes a reminder that licensees distributing the radioactive drug to persons exempt from licensing would not be relieved from other applicable Federal (e.g., FDA) or State requirements governing the manufacture and distribution of drugs.

The amendment requires that the manufacture or preparation of capsules containing one microcurie of C–14 urea be prepared by persons who meet the current NRC regulations to manufacture and commercially distribute radioactive drugs. The NRC believes regulatory control is needed to provide high confidence that the drug contains one microcurie of C–14 urea and does not contain any other radioactive contaminants.

Final Amendment to 10 CFR Part 30

The NRC has determined that the drug in capsule form presents an insignificant radiological safety and environmental risk, and that it is not necessary to regulate the use of this drug for its radioactive component. Therefore, the NRC can not justify requiring physicians, or any other person, to meet NRC training and experience criteria directed at the safe use of radioactive drugs, or to become an "authorized user." Hence, the capsules can be distributed to any person. However, other Federal or State agencies may limit the receipt and use of the capsules in accordance with their own requirements.

The regulations in 10 CFR part 30 are amended to add a new § 30.21, to permit any person to receive, possess, use, transfer, own, or acquire for "in vivo" diagnostic use, capsules containing one microcurie of C–14 urea without a license. The final regulation includes a reminder that persons receiving the capsules would not be relieved from other Federal or State law governing drugs. Further, in accordance with the NRC's provisions for research involving human subjects (10 CFR 35.6), the exemption permitting receipt and use of the capsules for "in vivo" diagnostic use does not extend to use of the capsules for research involving human subjects. Any person desiring to use the capsules for human research would still be required to submit an application for a specific license under part 35. The phrase "in vivo diagnostic use" was selected to describe the activity authorized in § 30.21 to differentiate it from the term "medical use" because:

(1) "Medical use" limits administration to authorized users; use of this drug would not be so limited; and

(2) "Medical use" includes the administration of the drug to a human research subject, which would continue to require a specific license pursuant to part 35 under this rulemaking.

Effects of the Final Amendments

The final amendments make the drug available to any person, for "in vivo" diagnostic use, without need for an NRC or Agreement State license. Because the receipt and use of the drug are exempt from NRC licensing, Agreement States need to make appropriate provisions in their regulations to recognize the exempt distribution of the drug, for "in vivo" diagnostic use. Thus after the manufacture and distribution of the drug, the NRC and the Agreement States will not regulate the use of the drug as long as its use is for "in vivo" diagnostic use. This means that, under NRC and Agreement State regulations, primary-care physicians do not need to be "authorized users" in order to administer the drug, and do not need to refer their patients to nuclear medicine physicians. This should result in cost savings to patients. Other Federal and State organizations with responsibilities for regulating drugs will determine and regulate who can receive and use the drug for "in vivo" diagnostic use. NRC will continue to regulate the use of the drug for research involving human subjects under a specific part 35 license.

IV. Description of the Final Amendments

The final amendments are the same as the proposed amendments except for two minor changes. Public comments suggested that the phrase "carbon-14 urea capsules not exceeding one microcurie" used in the proposed rule may be interpreted as an exact limit of one microcurie per capsule (See Comment 2 under the heading "Public Comment and NRC Responses). The final rule has been modified and the phrase "capsules containing one microcurie carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process)" is used. Another public comment suggested that labels should contain a statement that the product may be disposed of in the general trash. In the final rule, the label requirements include such a statement.

Manufacturer and Distributors

A new section is added to 10 CFR Part 32 to permit the distribution of the capsules to persons who are exempt from licensing.

Section 32.21 Radioactive Drug: Manufacture, Preparation, or Transfer for Commercial Distribution of Capsules Containing one Microcurie Carbon-14 Urea Each for "in Vivo" Diagnostic use for Humans to Persons Exempt From Licensing; Requirements for a License

Paragraph (a)

This paragraph establishes the requirements for approval of a license application to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution, capsules containing one microcurie carbon-14 urea each for "in vivo" diagnostic use, to persons exempt from licensing.

Paragraph (a)(1)

This paragraph limits issuance of an "exempt distribution license" for distribution of the capsules to persons exempt from licensing to only those who possess either a NRC or Agreement State "specific license" for possession and use of byproduct material.

Paragraph (a)(2)

To assure that the capsules contain one microcurie of carbon-14 and present no other radiological risks, this paragraph requires that the persons manufacturing and/or commercially distributing the capsules for "in vivo" diagnostic use must also meet the requirements of § 32.72(a)(2). Specifically, these persons must be:

(1) Registered with or licensed by the FDA as a drug manufacturer; or

(2) Registered with or licensed by a state agency as a drug manufacturer; or

(3) Licensed as a pharmacy by a State Board of Pharmacy; or

(4) Operating as a nuclear pharmacy within a Federal medical institution.

Paragraph (a)(3)

This paragraph requires applicants to provide evidence that each carbon-14 urea capsule contains one microcurie. The NRC's evaluation that the capsules would result in insignificant radiation risks was based on the capsules containing one microcurie of carbon-14 urea. Therefore, applicants must demonstrate that the activity of each carbon-14 capsule contains one microcurie, allowing for nominal variation that may occur during the manufacturing process.

Paragraph (a)(4)

This paragraph prohibits carbon-14 urea from being contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or

inhalation by, or topical application to, a human being except for the capsules as described in this section, because exempt distribution of this drug has only been evaluated for "in vivo" diagnostic use in the form of a capsule containing one microcurie of carbon-14 urea. There is no prohibition against the capsule being combined with food or beverage at the time of administration so that the capsule can be ingested by the patient.

Paragraph (a)(5)

Because the exempt distribution of this drug has only been evaluated for "in vivo" diagnostic use in the form of a capsule containing one microcurie of carbon-14 urea, this paragraph prohibits incorporation of the capsules into any manufactured or assembled commodity, product, or device intended for commercial distribution. Further, although the drug is being distributed to persons exempt from licensing, this paragraph requires the carbon-14 urea to be identified as radioactive because the drug is being used for its radioactive content; therefore, the end user must be provided with information that the drug contains a radioactive material.

Paragraph (a)(6)

As with any product approved for distribution to persons exempt from licensing, this paragraph requires persons who apply for a license to manufacture or commercially distribute these capsules to submit copies of prototype labels or brochures for NRC approval. This will allow the NRC to confirm that the labels or brochures meet the requirements of § 32.21a (a) and (b).

Paragraph (b)

This paragraph declares that the regulations do not relieve licensees or applicants from complying with applicable FDA, other Federal, and State requirements governing the manufacture and distribution of drugs.

Section 32.21a Same: Conditions of License

This section establishes the conditions required for a licensee to commercially distribute the capsules to persons exempt from licensing.

Paragraph (a)

To inform the end user of the identity of the radioisotope, the physical and chemical form, and the dosage of radioactivity, this paragraph establishes that the immediate container of each capsule or capsules must bear a durable, legible label that:

(1) Identifies the radioisotope, the physical and chemical form of the radioisotope, the quantity of radioactivity contained in each container at a specific date; and

(2) Bears the words "Radioactive Material."

The date requirement is consistent with labeling requirements for other radioactive drugs with a half life of greater than 100 days.

Paragraph (b)

This paragraph establishes that, consistent with the intended use of the capsules, the label affixed to the immediate container, or an accompanying brochure, must:

(1) State that the contents are exempt from NRC or Agreement State licensing requirements;

(2) Bear the words "Radioactive Material. For "In Vivo" Diagnostic Use Only. This Material Is Not To Be Used for Research Involving Human Subjects, and Must Not Be Introduced into Foods, Beverages, Cosmetics, or Other Drugs or Medicinals, or into Products Manufactured for Commercial Distribution. This Product May Be Disposed of in Ordinary Trash."

The intent of the requirement set out in Paragraph (b)(2) is to make clear that the capsule must remain in the form of a capsule and is not to be combined with one of the listed items such as food or beverages which would result in a radioactive product other than in the form of a capsule for commercial distribution. There is no prohibition against the capsule being combined with food or beverage at the time of administration so that the capsule can be ingested by the patient. This label also informs the user that this product may be disposed of in ordinary trash.

"In Vivo" Diagnostic use by Persons Exempt From Licensing

A new section is added to 10 CFR Part 30 to exempt any person from NRC or the Agreement State regulations to receive the drug for "in vivo" diagnostic use for humans.

Section 30.21 Radioactive Drug: Capsules Containing one Microcurie of Carbon-14 Urea for "in Vivo" Diagnostic use for Humans

Paragraph (a)

This paragraph provides an exemption to any person from the requirements for a license to receive, possess, use, transfer, own, or acquire capsules containing one microcurie of carbon-14 urea for "in vivo" diagnostic purposes. It should be noted that the "transfer" in this paragraph does not include "transfer for commercial distribution," which is covered in paragraph (c) of this section.

Paragraph (b)

This paragraph establishes that persons who desire to use the drug for research involving human subjects must apply for and receive a specific part 35 license. Such a license would ensure the protection of the rights of the human subjects by requiring that the research be approved by an IRB and that the human subjects give their informed consent to participate in the research.

Paragraph (c)

This paragraph specifies that a specific license is needed to manufacture, prepare, process, produce, package, repackage or transfer such capsules for commercial distribution.

Paragraph (d)

This paragraph declares that the regulations do not relieve end users from complying with applicable FDA, other Federal, or State requirements governing the receipt, administration, and use of drugs.

V. Agreement State Compatibility

Under the Atomic Energy Act, certain regulatory functions are reserved to the NRC. Among these are the distribution of products to persons exempt from licensing, as discussed in 10 CFR part 150. Hence, amendments related to the manufacture and commercial distribution of the capsules (10 CFR part 32) is a Division 4 item of compatibility (Category NRC under the new adequacy and compatibility policy). However, amendments related to possession and use (10 CFR part 30) are a Division 1 item of compatibility (Category B under the new adequacy and compatibility policy) because of the need for nationwide consistency in the use of products which are widely distributed. Therefore, the Agreement States will need to make appropriate provisions in their regulations to allow any person to receive capsules containing one microcurie of carbon-14 urea for "in vivo" diagnostic use in humans without need for a license.

VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the final rule is not a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required. The final rule establishes requirements for the manufacture and commercial distribution of carbon-14 urea capsules to persons exempt from licensing and establishes regulations to permit any person to receive the capsules without an NRC license. The Commission believes that the radioactive component of this drug presents an insignificant radiation risk and, therefore, regulatory control of the "in vivo" diagnostic use of the capsules for radiation safety is not necessary. It is expected that this final rule will not cause any significant increase in radiation exposure to the public or radiation release to the environment beyond the exposures or releases resulting from the use of the carbon-14 capsules under the current regulations. Also, it is expected that there will be no non-radiological impacts. One public comment on the draft environmental assessment has been received (See Comment 9 under the heading "Proposed Rule, Public Comments, and NRC Responses").

The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233 or e-mail at ANT@nrc.gov.

VII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0001, 3150–0017, and 3150–0120.

The public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0001, 3150–0017, and 3150–0120), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. Regulatory Analysis

The NRC has prepared a regulatory analysis for the final rule. The analysis examines the benefits and impacts considered by the NRC. No public comments on the draft regulatory analysis have been received during the public comment period. The regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the regulatory analysis are available from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233 or e-mail at ANT@nrc.gov.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The final rule permits physicians and other health care providers to use an additional diagnostic test without having to obtain an NRC license, thus, would provide cost savings to patients, insurers, and the health care industry. The final rule does not impose any additional obligations on entities that may fall within the definition of "small entities" as set forth in Section 601(3) of the Regulatory Flexibility Act; or within the definition of "small business" as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1995 (60 FR 18344).

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not "a major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

XII. List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and record keeping requirements.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30 and 32.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 68 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec.10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.18, 30.19, 30.20, 30.21, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, appendices A and C to this part.

* * * * *

3. A new § 30.21 is added under the undesignated center heading "Exemptions" to read as follows:

§ 30.21 Radioactive drug: Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(a) Except as provided in paragraphs (b) and (c) of this section, any person is exempt from the requirements for a license set forth in Section 81 of the Act and from the regulations in this part and part 35 of this chapter provided that such person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1μ Ci) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(b) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to part 35 of this chapter.

(c) Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for and receive a specific license pursuant to § 32.21 of this chapter.

(d) Nothing in this section relieves persons from complying with applicable FDA, other Federal, and State requirements governing receipt, administration, and use of drugs.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

4. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

5. In § 32.8, paragraph (b) is revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, and 32.210.

* * * * *

6. A new § 32.21 is added to read as follows:

§ 32.21 Radioactive drug: Manufacture, preparation, or transfer for commercial distribution of capsules containing carbon-14 urea each for "in vivo" diagnostic use for humans to persons exempt from licensing; Requirements for a license.

(a) An application for a specific license to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution capsules containing 37 kBq (1μ Ci) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each for "in vivo" diagnostic use, to persons exempt from licensing under § 30.21 of this chapter or the equivalent regulations of an Agreement State will be approved if:

(1) The applicant satisfies the general requirements specified in § 30.33 of this chapter, provided that the requirements of § 30.33(a)(2) and (3) of this chapter do not apply to an application for a license to transfer byproduct material manufactured, prepared, processed, produced, packaged, or repackaged pursuant to a license issued by an Agreement State;

(2) The applicant meets the requirements under § 32.72(a)(2) of this part;

(3) The applicant provides evidence that each capsule contains 37 kBq (1μ Ci) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process);

(4) The carbon-14 urea is not contained in any food, beverage, cosmetic, drug (except as described in this section) or other commodity designed for ingestion or inhalation by, or topical application to, a human being;

(5) The carbon-14 urea is in the form of a capsule, identified as radioactive, and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution; and

(6) The applicant submits copies of prototype labels and brochures and the NRC approves these labels and brochures.

(b) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing drugs.

7. A new § 32.21a is added to read as follows:

§ 32.21a Same: Conditions of license.

Each license issued under § 32.21 of this part is subject to the following conditions:

(a) The immediate container of the capsule(s) must bear a durable, legible label which:

(1) Identifies the radioisotope, the physical and chemical form, the quantity of radioactivity of each capsule at a specific date; and

(2) Bears the words "Radioactive Material."

(b) In addition to the labeling information required by paragraph (a) of this section, the label affixed to the immediate container, or an accompanying brochure also must:

(1) State that the contents are exempt from NRC or Agreement State licensing requirements; and

(2) Bear the words "Radioactive Material. For "In Vivo" Diagnostic Use Only. This Material Is Not To Be Used for Research Involving Human Subjects and Must Not Be Introduced into Foods, Beverages, Cosmetics, or Other Drugs or Medicinals, or into Products Manufactured for Commercial Distribution. This Material May Be Disposed of in Ordinary Trash."

Dated at Rockville, Maryland, this 24th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–31514 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF53

Changes to Nuclear Power Plant Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to delete certain security requirements associated with an internal threat. This action follows the NRC's reconsideration of nuclear power plant physical security requirements to identify those requirements that are marginal to safety, redundant, or no longer effective. This action will reduce the regulatory burden on licensees without compromising physical protection against radiological sabotage required for public health and safety.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1997, the NRC published a proposed rule in the **Federal Register** (62 FR 7721) that would revise the NRC's regulations associated with an internal threat to nuclear power plants that are contained in 10 CFR part 73, "Physical Protection of Plants and Materials." The five changes, which provide significant relief to licensees without compromising the physical security of the plants, involve changes to—

1. Search requirements for on-duty guards, § 73.55(d)(1);
2. Requirements for vehicle escort, § 73.55(d)(4);
3. Control of contractor employee badges, § 73.55(d)(5);
4. Maintenance of access lists for each vital area, § 73.55(d)(7)(i)(A); and
5. Key controls for vital areas, § 73.55(d)(8).

The Commission received 9 letters commenting on the proposed rule. Eight were from utilities and one was from an industry group. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Discussion

The public comments supported the proposed rulemaking in general. Seven of the nine commenters recommended additional relief from the vehicle escort provisions. One commenter recommended additional relief from the search requirements for armed guards. Two commenters recommended changes to the regulations without support that were outside the scope of this rulemaking.

For three of the changes in the proposed rule, only the language that had been changed was provided in the proposed rule language. The language that did not change in those paragraphs was inadvertently omitted. This language has been put back in the final rule. The three paragraphs affected are: search requirements for on-duty guards, § 73.55(d)(1); requirements for vehicle escort, § 73.55(d)(4); and maintenance of access lists for each vital area, § 73.55(d)(7)(i)(A).

The comments are discussed below.

Comment Resolution

1. Search Requirements for On-duty Guards (§ 73.55(d)(1))

Under the current regulations, armed security guards who leave the protected area as part of their duties must be searched for firearms, explosives, and incendiary devices upon re-entry into the protected area. Requiring a guard to go through an explosives detector or searching packages carried by the guard protects against the introduction of contraband. Because an armed guard carries a weapon onsite, passage of the guard through the metal detector, the principal purpose of which is to detect firearms, serves little purpose. The guard has to either remove the weapon while passing through the detector or be subject to a hands on search. Either approach makes little sense for the guard who is authorized to carry a weapon onsite. Further, removing and handling the guard's weapon could present a safety risk to the guard and other personnel. This rule will allow armed security guards who are on duty and have exited the protected area to reenter the protected area without being searched for firearms (by a metal detector).

Comment. All commenters supported this action. One commenter recommended that the words "on official business" be removed.

Response. The term "on official business" has been replaced by the term "on duty." The rationale given in the proposed rule to eliminate the searches would also apply when the guard reenters the protected area at other times, for example, after lunch where the lunch area is outside the protected area, as is the case at some facilities. The meaning of "on duty" is not meant to extend to "on call" or to personal activities.

The amended rule allows armed security guards who are on duty and have exited the protected area to reenter the protected area without being searched for firearms (by a metal detector). Note that the rule says "reenter." This means that the guards have been searched on their initial entry into the protected area. Unarmed guards and watchpersons will continue to meet all search requirements. All guards will continue to be searched for explosives and incendiary devices because they are not permitted to carry these devices into the plant.

2. Requirements for Vehicle Escort (§ 73.55(d)(4))

The present requirement that a searched, licensee-owned vehicle within the protected area must be escorted by a member of the security organization, even when the driver is badged for unescorted access, does not contribute significantly to the security of the plant. Under the current regulations, all vehicles must be searched prior to entry into the protected area except under emergency conditions. Also under the current regulations, all vehicles must be escorted by a member of the security organization while inside the protected area except for "designated licensee vehicles." "Designated licensee vehicles" are those vehicles that are limited in their use to onsite plant functions and remain in the protected area except for operational, maintenance, repair, security, and emergency purposes. Under the current requirement, all other vehicles that are not "designated licensee vehicles" must be escorted at all times while in the protected area even when they are driven by personnel with unescorted access.

Comment. Seven commenters were concerned that the proposed rule would only allow a vehicle to be unescorted when being operated by licensee employees having unescorted access. These commenters wanted this extended to contractor employees who are cleared for unescorted access as well.

Response. This change has been made. Since both licensee employees and contractor employees are subject to equivalent access authorization programs, the level of trustworthiness is deemed to be equivalent. There is no compelling reason to distinguish between the two. The amended rule eliminates the requirement for escort of licensee-owned or leased vehicles entering the protected area for work-related purposes provided these vehicles are driven by personnel who have unescorted access. This change provides burden relief to licensees without significantly increasing the level of risk to the plant.

Comment. Five comments were made that limiting unescorted vehicles to those that were licensee-owned was unduly restrictive, and wanted this extended to licensee-owned or leased vehicles. One commenter wanted it further extended to contractor- or vendor-owned or leased vehicles.

Response. The rule language was changed to allow for licensee-leased vehicles to be unescorted when driven by personnel who have unescorted access. The NRC staff recognizes that licensees may lease rather than buy vehicles. However, the staff believes that this provision should not be extended indiscriminately to contractor or vendor vehicles because licensees have no knowledge or control over how contractor or vendor vehicles may be used for purposes other than those for which the licensee has contracted.

3. Control of Contractor Employee Badges (§ 73.55(d)(5))

Contractor employees with unescorted access are required to return their badges when leaving the protected area. Current regulatory practice allows licensee employees to leave the protected area with their badges if adequate safeguards are in place to ensure that the proper use of the badge is not compromised or that a system such as biometrics is in place to ensure that only the proper person uses the badge for gaining access to the protected area. Because contractors and licensees are subject to the same programs required for unescorted access, there is no reason to employ more stringent badge control requirements for contractor employees.

This amended rulemaking allows contractor employees to take their badges offsite under the same conditions as licensee employees.

Comment. All commenters supported this provision.

Response. The final rule will be published as proposed, with a sentence added to ensure that the integrity of the access controls are not adversely affected.

Comment. One commenter wanted the physical differentiation between contractor and employee badges eliminated.

Response. This comment provided no reason for changing the current requirement of having employee and contractor badges distinguishable. Further the staff has no reason to make such a change. Because of this and the fact that this comment is outside the scope of this rulemaking this change is not being made.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A))

Maintaining separate access lists for each vital area and reapproval of these lists on a monthly basis is of marginal value. At many sites, persons granted access to one vital area also have access to most or all vital areas. Licensees presently derive little additional benefit from maintaining discrete lists of individuals allowed access to each separate vital area in the facility. Also, licensee managers or supervisors are required to update the access lists at least once every 31 days to add or delete individuals from these lists as appropriate. There is also a requirement to reapprove the list every 31 days. However, reapproval of all individuals on the lists at least every 31 days, to validate that the lists have been maintained accurately is unnecessarily burdensome.

This rulemaking replaces separate access authorization lists for each vital area of the facility with a single list of all persons who have access to any vital area. It also changes the requirement to reapprove the list at least once every 31 days to quarterly. Reapproval consists of a review to ensure that the list is current and that only those individuals requiring routine access to a vital area are included. Because a manager or supervisor must update the list, conducting this comprehensive reapproval every 31 days is of marginal value.

Comment. All commenters supported these provisions.

Response. The final rule will be published as proposed.

The Commission desires to remind licensees that they are responsible for properly controlling access, and that the changes to § 73.55(d)(7)(i)(A) do not remove their responsibility to establish procedures to ensure that persons no longer needing unescorted access are not granted such access.

5. Key Controls for Vital Areas (§ 73.55(d)(8))

Under the current regulations, licensees must change or rotate all keys, locks, combinations, and related access control devices at least once every twelve months. The rule also requires that these be changed whenever there is a possibility they have been compromised, or when an individual with access to the keys, locks, or combinations has been terminated for reasons of trustworthiness, reliability, or inadequate work performance. Additionally requiring such change every 12 months has been determined by the NRC to be only marginal to security.

This amended rule removes the requirement for changing access control devices at least every 12 months while retaining the requirement to make changes for cause, and when an access control device has been, or there is a suspicion that it may have been, compromised.

Comment. One commenter requested that the words "inadequate work performance" in the rule language be removed or defined.

Response. The NRC sees no need to define "inadequate work performance" because the term characterizes many factors and judgements involving removal for cause. Further, the comment is outside the scope of this rulemaking.

Regulatory Action

The final rule will be promulgated with the changes made to the proposed rule in response to the public comments. Two of the public comments were not accommodated because they requested changes to the regulations that were not put forward in the proposed rule.

Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by 100 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for further reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to BJS1@NRC.Gov; and to the Desk Officer, Office of information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

A discussion of each of the five changes in this final rule is provided above in the supplementary information section. The costs and benefits for each of the changes in this rulemaking are as follows.

1. Search Requirements for On-Duty Guards (§ 73.55(d)(1))

The regulatory burden on licensees will be reduced by eliminating unnecessary weapon searches of guards who are already allowed to carry a weapon on site, which will result in better utilization of licensee resources. There will be no reduction in plant security, and there is no reduction in the total size of the security force. Further, the potential safety risk to personnel caused by removing and handling a guard's weapon will be eliminated.

2. Requirements for Vehicle Escort (§ 73.55(d)(4))

The regulatory burden on licensees will be reduced by requiring fewer vehicle escorts, which will allow personnel to be utilized more effectively or for other purposes. Resources could be redirected to areas in which they will be more cost effective. The decrease in security will be marginal, because unescorted access will be restricted to vehicles owned or leased by the licensee being driven by personnel with unescorted access.

Assuming the number of such entries of licensee owned or leased vehicles driven by personnel having unescorted access is 10 per day per site, the average time needed for escort is 3 hours, and the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $330,000 (10 escorts/day/site × 365 days/year × 3 hrs/escort × $30/hr). With 75 sites, the savings to the industry per year will be approximately $24,000,000.

3. Control of Contractor Employee Badges (§ 73.55(d)(5))

The regulatory burden on licensees will be reduced by a more effective use of security personnel, who will no longer need to handle badges for contractor personnel who have unescorted access. There will be no reduction in plant security because adequate safeguards will be in place to ensure that badges are properly used and not compromised, and a system such as biometrics is in place to ensure that only the proper person uses the badge to gain access to the protected area.

Assuming that two security persons per working shift change, 5 shifts per day, one hour per shift are relieved from the duties of controlling contractor employee badges during an outage lasting 3 months. Further, assuming that the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $27,000 (10 hours/day × 90 days/year × $30 hr). With 75 sites, the savings to the industry per year will be approximately $2,000,000.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A))

The regulatory burden on licensees will be reduced because licensees will have to keep only one access list for all vital areas and reapprove it quarterly, rather than keep individual access lists for each vital area that must be reapproved monthly.

Assuming that the time to reapprove each of the individual lists is 1 hour per month, that a combined list will take 1.5 hours per month, that the average number of vital areas per site is 10, and that the cost of a clerk including overhead is $30 per hour (loaded), a rough estimate of the potential savings per site per year is about $3,400 [(1×10 vital areas/month × 12 months/yr-1.5×1 combined vital area/quarter × 4 quarters/yr) × $30/hr]. With 75 sites, the savings to the industry per year will be approximately $260,000.

5. Key Controls for Vital Areas (§ 73.55(d)(8))

The regulatory burden on the licensees will be reduced because fewer resources will be needed to maintain the system.

Assuming that, of approximately 60 locks that are changed each year under the current requirement, half of them were changed because an individual was removed for cause or the lock may have been compromised, 30 locks remain in need of change. Assuming that it takes a locksmith 10 hours to change all 30 locks at a cost (loaded) of $45 per hour, a rough estimate of the potential savings per site per year is about $450 (10 hrs/year × $45/hr). With 75 sites, the savings to the industry per year will be approximately $34,000.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act as amended, 5 U.S.C. 605(b), the Commission certifies that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This final rule will affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR part 121.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final amendment because this amendment will not impose new requirements on existing 10 CFR part 50 licensees. The changes to physical security are voluntary and should the licensee decide to implement this amendment, will be a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.55 is amended by revising paragraphs (d)(1), (d)(4), (d)(5), (d)(7)(i)(A), and (d)(8) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(d) * * *

(1) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals unless otherwise provided in this section must be made and authorization must be checked at these points. The search

function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee shall subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. Armed security guards who are on duty and have exited the protected area may reenter the protected area without being searched for firearms. When the licensee has cause to suspect that an individual is attempting to introduce firearms, explosives, or incendiary devices into protected areas, the licensee shall conduct a physical pat-down search of that individual. Whenever firearms or explosives detection equipment at a portal is out of service or not operating satisfactorily, the licensee shall conduct a physical pat-down search of all persons who would otherwise have been subject to equipment searches. The individual responsible for the last access control function (controlling admission to the protected area) must be isolated within a bullet-resisting structure as described in paragraph (c)(6) of this section to assure his or her ability to respond or to summon assistance.

* * * * *

(4) All vehicles, except under emergency conditions, must be searched for items which could be used for sabotage purposes prior to entry into the protected area. Vehicle areas to be searched must include the cab, engine compartment, undercarriage, and cargo area. All vehicles, except as indicated in this paragraph, requiring entry into the protected area must be escorted by a member of the security organization while within the protected area and, to the extent practicable, must be off loaded in the protected area at a specific designated materials receiving area that is not adjacent to a vital area. Escort is not required for designated licensee vehicles or licensee-owned or leased vehicles entering the protected area and driven by personnel having unescorted access. Designated licensee vehicles shall be limited in their use to onsite plant functions and shall remain in the protected area except for operational, maintenance, repair, security and emergency purposes. The licensee shall exercise positive control over all such designated vehicles to assure that they are used only by authorized persons and for authorized purposes.

(5)(i) A numbered picture badge identification system must be used for all individuals who are authorized access to protected areas without escort. An individual not employed by the licensee but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided that he or she displays a licensee-issued picture badge upon entrance into the protected area which indicates:

(A) Non-employee no escort required;

(B) Areas to which access is authorized; and

(C) The period for which access has been authorized.

(ii) Badges shall be displayed by all individuals while inside the protected area. Badges may be removed from the protected area when measures are in place to confirm the true identity and authorization for access of the badge holder upon entry into the protected area.

* * * * *

(7) * * *

(i) * * *

(A) Establish a current authorization access list for all vital areas. The access list must be updated by the cognizant licensee manager or supervisor at least once every 31 days and must be reapproved at least quarterly. The licensee shall include on the access list only individuals whose specific duties require access to vital areas during nonemergency conditions.

* * * * *

(8) All keys, locks, combinations, and related access control devices used to control access to protected areas and vital areas must be controlled to reduce the probability of compromise. Whenever there is evidence or suspicion that any key, lock, combination, or related access control devices may have been compromised, it must be changed or rotated. The licensee shall issue keys, locks, combinations and other access control devices to protected areas and vital areas only to persons granted unescorted facility access. Whenever an individual's unescorted access is revoked due to his or her lack of trustworthiness, reliability, or inadequate work performance, keys, locks, combinations, and related access control devices to which that person had access, must be changed or rotated.

* * * * *

Dated at Rockville, Maryland, this 24th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–31515 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB78

Loan Policies and Operations; Loan Sales Relief

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity for comment.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), issues a direct final rule amending its regulations relating to loan sales into a secondary market. This action conforms FCA regulations to recent statutory amendments to the Farm Credit Act of 1971, as amended, (Act) made by sections 206 and 208 of the Farm Credit System Reform Act of 1996 (1996 Act). These amendments provide that loans designated by Farm Credit System institutions for sale into a secondary market are not subject to minimum stock purchase or borrower rights requirements.

DATES: If no significant adverse comment is received on or before January 2, 1998, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received, the FCA will publish a notice of withdrawal of the regulations and indicate how the Agency expects to proceed with further rulemaking.

ADDRESSES: Comments may be submitted via electronic mail to "reg-comm@fca.gov" or facsimile transmission to (703) 734–5784. Comments also may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, (703) 883–4498, TDD (703) 883–4444;

or

William Larsen, Senior Attorney, Legal Counsel Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit System Reform Act of 1996[i] made significant changes in title VIII of the Act, which governs the secondary market for agricultural loans. The 1996 Act also provided regulatory relief to Farm Credit System (FCS) institutions. This rulemaking conforms FCA regulations with provisions of the 1996 Act that grant relief from minimum stock purchase requirements and borrower rights for Loans designated by FCS institutions for sale into a secondary market.[ii]

I. Changes Pursuant to Section 206 of The 1996 Act

Section 206 of the 1996 Act amended section 4.3A of the Act by granting relief from stock purchase requirements for loans designated for sale into a secondary market. As amended, section 4.3A of the Act establishes that an institution's bylaws may provide that: (1) For loans made on or after enactment of section 206 that are designated for sale into a secondary market, no voting stock or participation certificate (collectively, equity or equities) purchase requirement shall apply; and (2) for loans made before the enactment of section 206 that are sold into a secondary market, all equities purchased with respect to these loans shall, subject to the institution meeting its regulatory minimum permanent capital requirements, be retired. Section 206 further provides that if such designated loans are not sold into a secondary market within 180 days, the otherwise applicable equity purchase requirement shall then apply. However, an institution's bylaws may provide that if a designated loan is subsequently sold into a secondary market, the equities relating to the loan shall be retired.

Pursuant to these amendments to section 4.3A of the Act, the FCA is making conforming amendments to § 614.4335 pertaining to borrower stock requirements. Amended § 614.4335(a) provides that, in general, a borrower must meet the institution's minimum borrower stock purchase requirement as a condition of obtaining a loan. However, under amended § 614.4335(b), an institution's bylaws may provide that the institution's minimum borrower stock purchase requirement does not apply if a loan is designated, at the time the loan is made, for sale into a secondary market. Amended § 614.4335(b) also implements the statutory requirement that if a designated loan is not sold into a secondary market upon the expiration of 180 days, the minimum borrower stock purchase requirement will apply to the loan.

Further reflecting the 1996 Act amendments to section 4.3A of the Act, § 614.4335 is amended to add provisions concerning the retirement of borrower stock for loans sold into a secondary market. Amended § 614.4335(c)(2) states that an institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market. Thus, if the institution's bylaws so provide, if a designated loan is sold into a secondary market after 180 days, all outstanding stock with respect to the loan shall be retired. An institution's bylaws also may provide that all stock held by a borrower with respect to a loan made before the enactment of the 1996 Act and sold into a secondary market shall be retired.

Existing provisions of § 614.4335 that require an institution to meet minimum permanent capital requirements and specify the treatment of loans sold with or without recourse are not affected by the 1996 Act amendments and are redesignated to § 614.4335(c)(1). Finally, amended § 614.4335(d) provides that paragraphs (b)(1) and (c)(2) apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

II. Changes Pursuant to Section 208 of The 1996 Act

Section 208 of the 1996 Act amended section 4.14A of the Act by changing the definition of the term "loan" to exclude from that definition loans designated, at the time the loans are made, for sale into a secondary market. The effect of this statutory change is that the borrower rights provisions of the Act do not apply to loans designated, at the time the loans are made, for sale into a secondary market.[iii] As is the case with respect to the reattachment of stock purchase requirements under section 206 of the 1996 Act, if a designated loan is not sold into a secondary market within 180 days of designation, borrower rights become applicable unless and until the loan is subsequently sold into a secondary market.

The FCA is amending § 614.4336 in order to conform it to amended section 4.14A of the Act. Amended § 614.4336 sets forth treatment of borrower rights in three loan sale situations: (1) Loan sales to Farm Credit System institutions; (2) loans designated for sale into a secondary market; and (3) other loan sales. Under amended § 614.4336(a), a loan sold to another qualified lender retains borrower rights. Under amended § 614.4336(b), loans made on or after February 10, 1996, that are designated at the time they are made for sale into a secondary market are not subject to borrower rights, unless the loan is not sold within 180 days of the date of designation. After 180 days, borrower rights apply to a designated loan unless and until it is subsequently sold into a secondary market. Amended § 614.4336(c) retains the notice and relinquishment provisions that currently apply to loan sales to other lenders.

In addition to amending the definition of "loan" in section 4.14A of the Act to remove borrower rights protections from loans designated for sale into a secondary market, section 208(b) of the 1996 Act applied the amended definition of "loan" to section 8.9(b) of the Act, effectively removing the section 8.9(b) borrower rights protections that applied before a loan was sold into the secondary market for agricultural loans established by title VIII of the Act. This statutory change requires the removal of current § 614.4367(b) to conform FCA regulations to the amended Act. In its current form, § 614.4367(b) implemented section 8.9(b) of the Act by requiring certain disclosures for loans that will or may be pooled for sale into the secondary market. The required disclosures included notice that an applicant could refuse to have his or her loan pooled and thus retain statutory borrower rights.

Disclosure was also required that, within 3 days of commitment, the applicant had the right to refuse to allow the loan to be pooled. Because section 208 of the 1996 Act effectively provides that borrower rights do not apply to loans designated for sale into a secondary market, the disclosures and approvals required by § 614.4367(b) no longer apply. Accordingly, the FCA is removing paragraph (b) of § 614.4367 and redesignating the remaining paragraphs.

In the event that a designated loan is not sold into the secondary market within 180 days, the terms of the borrower's loan will change in two material respects. The borrower is required to purchase stock, which will increase the effective interest rate on the loan. The borrower will also be entitled to borrower rights under the Act. Institutions should ensure that borrowers fully understand their obligations and rights at the time the loan is made. The FCA has not included special disclosure obligations for loans designated for sale into the secondary market because the existing requirements of § 614.4367 are sufficient to ensure that borrowers are appropriately informed of: (1) Their obligation to purchase stock if the loan

is not sold as intended; (2) the change in the effective interest rate resulting from the stock purchase requirement; and (3) the borrower rights that will apply.

III. Direct Final Rulemaking

With the promulgation of these regulations, the FCA is using, for the first time, the "direct final" procedure for rulemaking. Direct final rulemaking permits agencies to adopt noncontroversial rules on an expedited basis, without going through the usual proposal and final stages of notice-and-comment rulemaking. Direct final rulemaking was recommended for promulgation of noncontroversial rules by the Administrative Conference of the United States (ACUS) in its Recommendation 95–4, adopted June 15, 1995. Vice President Gore also recommended direct final rulemaking in his report on the National Performance Review (NPR) as a means for agencies to streamline the rulemaking process. See "Improving Regulatory Systems," Accompanying Report of the NPR, September, 1993.

The FCA is committed to the use of innovative rule-making techniques to further its strategic goal of implementing effective and efficient regulations. The FCA believes that the use of direct final rulemaking in appropriate circumstances offers the means to streamline the rulemaking process for noncontroversial rules by reducing the time and resources needed for development, review, clearance, and publication, while still affording the public adequate opportunity to comment on or object to a rule.

In direct final rulemaking, the agency gives notice that a rule will become final at a specified future date unless the agency receives significant adverse comment on the rule during the comment period established in the rulemaking notice. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports this streamlined technique of rulemaking. Direct final rulemaking is justified under section 553(b)(B) of the APA. Section 553(b)(B) is the APA's "good cause" exemption for omitting notice and comment on a rule where an agency finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In direct final rulemaking, the agency finds that the rule is sufficiently straightforward and noncontroversial to make normal notice and comment unnecessary under the APA. However, rather than eliminating public comment altogether, as would be permissible under section 553(b)(B), the agency gives the public an opportunity to rebut the agency's conclusion that public input on the rule is unnecessary.

Notwithstanding this "good cause" rationale under section 553(b)(B), direct final rulemaking also meets the basic notice-and-comment requirements of the APA, although the timing and format of notice and opportunity for comment necessarily differs from a typical notice-and-comment rulemaking. If, during the comment period provided, the agency receives a significant adverse comment on a direct final rule, the agency commits to withdraw the rule and may either issue another direct final rule or promulgate the rule in proposed form. A significant adverse comment is defined as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment proceeding.

The FCA believes that the secondary market loan sale amendments fit the category of rules appropriate for direct final rulemaking. These changes merely conform the regulations to the 1996 Act. The changes remove or amend current regulatory requirements that do not reflect the changes in the Act. As such, the changes are straightforward and noncontroversial. For these reasons, the FCA does not anticipate that there will be significant adverse comment on this rulemaking. Nonetheless, in keeping with the procedures recommended by ACUS for direct final rulemaking, the FCA is providing a 30-day period from publication during which members of the public may comment on the rule. If significant adverse comment is received during the comment period, the FCA will publish a notice of withdrawal of the rule that will also indicate how further rulemaking will proceed. If no significant adverse comment is received, the FCA will publish its customary notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

2. Sections 614.4335 and 614.4336 are revised to read as follows:

§ 614.4335 Borrower stock requirements.

(a) *In general.* Except as provided in paragraph (b) of this section, a borrower shall meet the institution's minimum borrower stock purchase requirements as a condition of obtaining a loan.

(b) *Loans designated for sale into a secondary market.* (1) An institution's bylaws may provide that the institution's minimum borrower stock purchase requirements do not apply if a loan is designated, at the time it is made, for sale into a secondary market.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180-day period that begins on the date of designation, the institution's minimum borrower stock purchase requirements shall apply.

(c) *Retirement of borrower stock.* (1) *In general.* Borrower stock may be retired only if the institution meets the minimum permanent capital requirements imposed by the FCA pursuant to the Act or regulations and, except as provided in paragraph (c)(2) of this section, in accordance with the following:

(i) Borrower stock may be retired if the entire loan is sold without recourse, provided that when the loan is sold without recourse to another Farm Credit System institution, the borrower may elect to hold stock in either the selling or purchasing institution.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirements for the interest retained.

(iv) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(2) *Loans sold into a secondary market.* An institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market.

(d) *Applicability.* In the case of a loan sold into a secondary market under title VIII of the Act, paragraphs (b)(1) and (c)(2) of this section apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

§ 614.4336 Borrower rights in connection with loan sales.

(a) *Loan sales to Farm Credit System institutions.* Loans made by qualified lenders (as defined in section 4.14A(a)(6) of the Act) and interests in such loans that are sold to other qualified lenders are subject to the borrower rights provisions of title IV of the Act.

(b) *Loans designated for sale into a secondary market.* (1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, that is designated for sale into a secondary market at the time it is made.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180-day period that begins on the date of designation, the borrower rights provisions specified as inapplicable pursuant to paragraph (b)(1) of this section shall apply, *provided that* if the loan is subsequently sold into a secondary market, the borrower rights specified in paragraph (b)(1) of this section become inapplicable beginning on the date of the subsequent sale.

(c) *Other loan sales.* (1) Except for loans sold to another Farm Credit institution or designated for sale into a secondary market, a qualified lender must comply with one of the following two requirements before selling a loan or interest in a loan that is subject to the borrower rights provisions of title IV of the Act:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the purchaser of the loan will be obligated to accord the borrower the same rights qualified lenders must provide under the Act; or

(ii) Obtain from the borrower a signed written consent to the sale that explicitly states that the borrower relinquishes the statutory borrower rights. The consent to the loan sale and the relinquishment of the borrower rights shall have no effect until the loan is actually sold and shall be ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(2) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (c)(1)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(i) A full and complete description of the statutory rights that the borrower is asked to relinquish;

(ii) Any changes in the loan terms or conditions that will occur if the loan is not sold; and

(iii) The fact that the relinquishment of the statutory borrower rights will not become effective unless the loan is actually sold and shall become ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(3) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

Subpart K—Disclosure of Loan Information

§ 614.4367 [Amended]

3. Section 614.4367 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e) as paragraphs (b) through (d).

Dated: November 24, 1997.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 97–31569 Filed 12–1–97; 8:45 am]

BILLING CODE 6705–01–P

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[i] Pub. L. 104–105 (February 10, 1996).

[ii] Generally, for each loan made by a qualified lender, a borrower is subject to minimum stock purchase requirements of 2 percent of the loan or $1,000, whichever is less. The borrower rights provisions of the Act impose certain disclosure and other obligations on lenders.

[iii] The specific borrower rights under the Act that are affected by the section 4.14A definitional change include reconsideration of actions (sec. 4.14), restructuring distressed loans (sec. 4.14A), effect of restructuring on borrower stock (sec. 4.14B), review of restructuring denials (sec. 4.14C), protection of borrowers who meet all loan obligations (sec. 4.14D), and right of first refusal (sec. 4.36).

As enacted, the language of section 208 of the 1996 Act amending the definition of "loan" leaves no doubt that Congress intended to include the section 4.36 borrower's right of first refusal among the borrower rights that become inapplicable when a loan is designated for sale into a secondary market. This is consistent with section 8.9(a) of the Act, which specifically exempts loans pooled under title VIII from section 4.36 borrower rights. However, section 208 of the 1996 Act did not amend the introductory paragraph of section 4.14A(a), which limits the applicability of the section's definitions to those "used in this part [C of title IV]." Since section 4.36 is located in part G ("Miscellaneous") of title IV, it could technically be argued that the amended definition of "loan" does not apply to section 4.36. Notwithstanding this apparent drafting inconsistency, the FCA believes Congressional intent is clear and interprets the 1996 Act to exempt loans designated for sale into a secondary market from the section 4.36 borrower's right of first refusal.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93P–0445]

Food Labeling; Serving Sizes; Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category "Salt, salt substitutes, seasoning salts (e.g., garlic salt)" from a weight-based reference amount of 1 gram (g) to a volume-based reference amount of 1/4 teaspoon (tsp). This action is necessary to provide consistency with the agency's criteria for determining volume-based versus weight-based reference amounts for all product categories.

DATES: Effective January 1, 2000. This regulation applies to all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin January 2, 1998. Written comments on the information collection provisions should be submitted by January 2, 1998.

ADDRESSES: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St.

NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Nutrition Labeling and Education Act of 1990

On November 8, 1990, Congress passed the Nutrition Labeling and Education Act (the 1990 amendments). This statute amended the Federal Food, Drug, and Cosmetic Act (the act) in section 403(q)(1)(A)(i) to require that virtually all foods bear nutrition information that is based on a serving size that reflects the amount of food that is customarily consumed and that is expressed in a common household measure appropriate to the food (21 U.S.C. 343(q)(1)(A)(i), added to the act by section 2(a) of the 1990 amendments). The new law also directed FDA to adopt regulations that establish standards to define serving sizes (section 2(b)(1)(B) of the 1990 amendments).

After extensive notice-and-comment rulemaking, the agency published final rules implementing the 1990 amendments. In part, these rules established "reference amounts customarily consumed per eating occasion" (reference amounts) for use by industry as the basis for serving sizes for most foods. With regard to salt products, the agency concluded that 1 g was the appropriate reference amount for "Salt, salt substitutes, seasoning salts (e.g., garlic salt)" (58 FR 2229 at 2297, January 6, 1993).

In addition, in discussing a different food category, FDA outlined the circumstances in which a weight-based reference amount would not adequately reflect the amount of food customarily consumed per eating occasion (Comment 20, 58 FR 2229 at 2238). The agency stated that weight-based reference amounts are not appropriate when foods within a product category vary considerably in density, i.e., there is a density difference of 25 percent or more among the products in the category (see § 101.12(e) (21 CFR 101.12(e))), and when the customarily consumed amounts for different products are more uniform when expressed in volume than in weight.

B. Petition to Modify the Reference Amount for Salt Products

In November of 1993, FDA received a petition requesting that it change the reference amount for salt from a weight-based reference amount of "1 g" to a density-adjusted reference amount to be listed as "x g - 1/4 tsp." The petition included the results of a consumer study of consumption patterns of regular salt and low-density salt and analytical data comparing the physical properties (including density) of regular salt and low-density salt.

In response to a request from the agency, the petitioner submitted supplemental materials consisting of information regarding the protocol, data tabulation, and results of the consumer study it had submitted, including an independent evaluation of the results and conclusions.

FDA received one comment requesting that the agency reject the petition. The comment argued against granting the petition, questioned the consumer study data, and disagreed with the results and conclusions contained in the petition. The agency received comments from the petitioner that responded to the arguments presented in this comment.

After reviewing the information in the petition, the supplemental submission, and the comments, FDA determined that the petitioner had made a prima facie case that a volume-based reference amount of 1/4 tsp for salt is more appropriate than the weight-based reference amount of 1 g that FDA adopted in 1993. Therefore, in accordance with 21 CFR 10.30(e)(2)(i), in the **Federal Register** of July 21, 1995 (60 FR 37616), FDA issued a proposed rule (hereinafter referred to as "the proposed rule on salt products") to change the reference amount for "Salt, salt substitutes, seasoning salts (e.g., garlic salt)" from a weight-based reference amount of "1 g" to a volume-based reference amount of "1/4 tsp." The agency requested comments on whether low-density salt products should be required to disclose clearly that they contain more air than conventional or regular salt products, and, if so, on what kind of descriptive terms would convey this information in a manner that is clear and nonmisleading for consumers.

This final rule responds to the comments FDA received in response to the proposed rule on salt products.

II. Review of Comments

FDA received and reviewed four responses to the proposed rule on salt products, each of which contained one or more comments. Two responses were received before and two after the close of the comment period. The two late comments discussed data and reiterated arguments contained in other comments.

A. Consumer Study of Consumption Patterns of Regular Versus Low-Density Salt

1. One comment noted that the original questionnaires from the consumer study submitted by the petitioner were no longer available, so an independent assessment of the data is no longer possible. The comment objected to using results and relying on conclusions that were based on summaries of the questionnaires.

Before acting on the petition, FDA specifically requested and received additional study data and summary tables that were not contained in the original petition (Docket 93P–0448/REF 1)[1]. The agency reviewed the study data and assessed the quality of the study design and the independent verification process. The agency tentatively concluded that the consumer research was a reasonably well-controlled experiment that met the scientific standards for the type of studies that can be used to determine household salt consumption[2] (Ref. 1).

The study was conducted in 1982 by an independent company (Ref. 1). Furthermore, the study results were authenticated by a separate marketing consulting firm and by an independent consultant. Section 101.12(h) does not require submission of raw data questionnaires for serving size petitions. The agency is satisfied with these salt consumption data and results because the data were independently gathered and compiled, and the study results were independently verified. The comment presented no basis for questioning the work done on the study.

The agency concludes that the absence of the original questionnaires is not significant, and that it is appropriate to rely on the results of the consumer study to represent consumption of regular and low-density salts.

2. One comment objected to the short-term (3 weeks) nature of the consumer study, suggesting that it is likely that some consumers newly exposed to a low-density salt product would initially use less (by habit) and, eventually, could adjust the amount used to attain the desired salt flavor. The comment suggested that the adjustment period may not occur quickly and could be sufficient to distort the results of a 3-week study.

In an agency review of the petition, FDA considered concerns about the length of the study (a 6-week study period consisting of two consecutive 3-week periods, with each household receiving low-density salt during one of the two 3-week periods) (Ref. 1). FDA considered the possibility that a 3-week period might not be sufficient to estimate long term change in salt consumption when using a low-density salt product, and that salt consumption might change over a longer time period.

The agency noted in the review that the test product ratings revealed that the participants in the study did not report a sense of deprivation when using the low-density salt that would cause them to increase the volume of salt they consumed (Ref. 1). Consumption of both regular and low-density salts increased substantially over the course of the study (Ref. 1). The increases in consumption of the two types of salt were not significantly different.

The comment did not take issue with any of these findings of the study. The comment merely made general allegations about the length of the study and its ability to make valid findings.

FDA finds no merit to these general allegations given the findings of the study. Both the absence of a sense of deprivation in those using the low-density salt and the fact that the increase in consumption of low-density salt was consistent with the increase in consumption of regular salt suggest that the level of consumption of this product is likely to persist. Therefore, FDA can find nothing in this study to support the view that its results were not representative of long-term use of low-density salt.

3. One comment stated that the petitioner sponsored two studies and combined the data to determine the amount of low-density salt used. The comment asserted that, by combining the data from two studies, the consumption figures for each individual study have been irretrievably blended, and the amounts of low-density salt used in each of the two separate studies are not available. The comment stated that FDA should be concerned about this unconventional handling of data because reporting combined data suggests that direct consumption comparisons did not support the conclusions desired by the study's sponsor.

FDA does not agree that the petitioner submitted data from two studies, or that the data from separate studies were incorrectly combined. The agency notes that in 1982, the petitioner conducted one study of 320 households of salt users, using a multi-level design. The comment misinterpreted the two levels of the research design to be two separate studies. On one level of the design, data from 208 households in the sample were used to compare consumption of low-density salt that was labeled as regular salt to consumption of regular salt labeled as such. On another level, data from 112 of the households in the sample were used to compare consumption of low-density salt that was labeled as reduced-sodium salt to consumption of low-density salt that was labeled as regular salt. Thus, the study provided data describing consumption of three forms of salt: (1) Low-density salt labeled as reduced-sodium salt; (2) low-density salt labeled as regular salt; and (3) regular salt labeled as such.

Based on the study results, FDA has determined that the available data and information are adequate to verify that all data that describe consumption of low-density salt are similar and are considerably lower on a weight basis than those that describe consumption of regular salt. The data show that, for 320 households, the average amounts consumed per household over the 3-week period of the survey were as follows: (1) 170.51 g for low-density salt labeled as reduced-sodium salt; (2) 168.8 g for low-density salt labeled as regular salt; and (3) 285.75 g for regular salt labeled as such. The petitioner stated, and FDA verified, that participants used significantly less (41 percent) low-density salt than regular salt.

Thus, FDA concludes that there was a single study that provided adequate data to determine comparative consumption of low-density salt and regular salt, and that the procedures used in analysis of the data were valid.

B. Weight-Based Versus Volume-Based Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)

4. One comment objected to using the findings of the consumer study as the basis for changing from a weight-based to a volume-based reference amount. The comment stated that conclusions drawn from the data submitted in the petition do not demonstrate that salt consumption is more uniform when expressed in terms of volume than in terms of weight. The comment also objected to FDA's policy of establishing volume-based reference amounts whenever a 25-percent density variance is established by the manufacturer of a single product. The comment contended that this policy is an invitation to any food manufacturer to extend a product with 25 percent or more air and thereby to become eligible for special regulatory treatment.

Another comment supported a volume-based reference amount for salt, noting that some seasoning salts that are lighter in density than regular salt must declare the serving size as "1/2 tsp." The comment stated that the proposed change to "1/4 tsp" would "make seasoning salt usage more consistent overall regardless of the density of the salt or salt blend," would standardize information for spices and seasonings, and would be consistent with the current reference amount for spices and herbs (which is 1/4 tsp or 0.5 g if not measurable by tsp). The comment did not provide data to support the density differences among various seasoning salts.

The 1990 amendments require that nutrition information be based on a serving size that reflects the amount of food customarily consumed, expressed in a common household measure appropriate to the food. As stated in the final rule on serving sizes (Comment 20, 58 FR 2229 at 2238), FDA used weight-based reference amounts except in those instances in which it was demonstrably inappropriate to do so. The agency outlined the circumstances in which a weight-based reference amount would not adequately reflect the amount of food customarily consumed per eating occasion. FDA provided for volume-based reference amounts in cases in which: (1) The product can easily be measured by volume; (2) the density of foods within the product category varies widely; and (3) the amount customarily consumed is more uniform when expressed as a volume than as a weight. For products meeting these criteria, volume-based reference amounts ensure that serving sizes will more accurately reflect the amounts customarily consumed in accordance with the requirements of the statute.

FDA has applied this approach to all products that meet the three criteria listed previously (e.g., to mixed dishes measurable with a cup (Comment 20, 58 FR 2229 at 2238), to peanut butter (Comment 108, 58 FR 2229 at 2263), and to waffles (Comment 138, 58 FR 2229 at 2263)). This policy provides for serving sizes that accurately reflect consumption, the regulatory standard. It

[1] The agency filed these materials in Docket 93P–0448, where they are identified as "REF 1." As discussed further in section II.D. of this document, Exhibit E was removed from the original submission.

[2] In this document, the agency is citing relevant material to Serving Sizes; Reference Amount for Salt and Salt Substitutes, Seasoning Salts (e.g., Garlic Salt) that originally appeared in Ref. 2 of the proposed rule on salt products that appeared in the **Federal Register** of July 21, 1995 (60 FR 37616 at 37620). (See Docket No. 93P–0448.) For the convenience of the reader the materials are contained in "Ref. 1" of this document.

does not represent special regulatory treatment of aerated food products as one comment asserted.

As stated in the proposed rule on salt products (60 FR 37616 at 37618) and acknowledged in the comments, salt products can be measured by volume. Furthermore, the density difference between regular salt and low-density salt is significant (33 percent) and demonstrates that the densities of products within the category vary widely.

In determining whether people consume similar volumes, rather than similar weights, of regular and low-density salt, FDA first considered the consumer study data submitted. FDA reviewed the mean and standard error for the consumption of regular salt labeled as such, low-density salt labeled as regular salt, and low-density salt labeled as reduced-sodium salt (Ref. 1). The agency noted that, on a per household basis, consumption of the low-density salt product was 41 percent lower by weight than consumption of the regular salt product. Because low-density salt is 33 percent lower in density than regular salt, FDA calculated that consumption of the low-density salt product was 11 percent lower by volume than consumption of the regular salt product (Ref. 2). Thus, because the percent discrepancy is less on a volume basis than on a weight basis (11 percent versus 41 percent), the study data support that salt consumption is more consistent when expressed on a volume rather than on a weight basis.

Based on the standard that FDA established in 1993 on whether to use a weight-based or a volume-based reference amount and on the consumer study data that were not available to the agency in 1993, FDA concludes that a volume-based reference amount is appropriate for salt, salt substitutes, and seasoning salts because, in addition to the fact that salt products can be measured by volume and vary widely in density, such a reference amount more accurately reflects consumption of salt and salt products and provides greater consistency in the labeling of all salts, salt substitutes, seasoning salts, spices, and herbs.

5. One comment stated that, although most recipes and cookbooks list specific volume measurements for salt, other recipes and cooking instructions state that the user should "salt to taste" or "correct the seasoning." The comment included several articles and studies supporting FDA's initial position that a weight-based reference amount is appropriate because many consumers salt "to taste." These studies indicated that: (1) Many shoppers (56 percent) modify recipes, and more than half cook without recipes at times; (2) table salt practices vary with some people adding salt before tasting (by habit) and some adding salt after tasting (to taste); (3) when people were restricted from using table salt, some compensated by increasing the salt added during cooking; and (4) when individuals were provided meals containing little or no salt, the table salt usage increased.

The comment also objected to statements made by the petitioner comparing solubility and taste of regular salt and low-density salt. The comment noted that the petitioner submitted no sensory data with the petition. The comment included study data from a taste panel that showed that four out of five respondents reported that biscuits and scrambled eggs made with regular salt tasted saltier than biscuits and scrambled eggs made with the same volume of low-density salt.

The comment concluded that nothing was presented in the petition to alter the logic of FDA's initial determination that people use ingredients such as salt or sugar "to attain the level of sweetness or saltiness they desire" (58 FR 2229 at 2260). The comment concluded that the reference amount for salt products should be based on weight to maintain the same level of saltiness.

FDA has reviewed the studies, articles, and cookbook information cited in the comments. It appears that there is considerable variability in how consumers use salt. The information supports that some consumers do salt or cook "to taste" (Refs. 3 through 5). People who salt to taste (e.g., tasting soup during preparation) are likely to use similar weights of low-density salt and regular salt. A weight-based reference amount would accurately reflect this type of use.

However, the same information supports that other consumers salt "by habit" (e.g., two shakes of a salt shaker) or cook according to recipe directions (e.g., by volume as specified in a recipe) (Refs. 3 through 5). These people would be likely to use similar volumes of low-density salt and regular salt because measurements of salt in recipes are specified by volume, and because the amount of salt delivered by salt shakers (i.e., the number of granules) is strongly influenced by the hole size of the salt shaker (Ref. 5). A volume-based reference amount would accurately reflect these types of uses.

FDA also reviewed the taste panel study data that were submitted in the comment comparing the taste of biscuits and eggs made with regular salt to that of biscuits and eggs made with the same volume of low-density salt. These data were ambiguous. Findings, which were included in the comment, showed that while some participants rated the biscuits and eggs made with regular salt as more salty, many reported no difference in taste, and some rated the products made with low-density salt as having a more desired, "moderate" salty taste.

Based on the studies and articles cited previously, when consumers at home use recipes similar to those used for the test panel, it is likely that some people will alter the recipes to produce the level of "saltiness" desired, which would support a weight-based reference amount. However, others will be likely to prepare the recipes as directed and thus will consume the same number of biscuits regardless of which salt is used in their preparation, which would support a volume-based reference amount.

FDA considered sensory (e.g., taste) issues in terms of their impact on consumption, the statutory standard. FDA agrees that sensory attributes (e.g., taste) may affect the amounts of regular and low-density salt used. However, the articles and studies submitted with the comments and the study data from the taste panel are ambiguous and can be interpreted to support salt use either by weight or by volume. Thus, FDA concludes that the sensory data are inconclusive in demonstrating whether similar weights or similar volumes of regular and low-density salt are customarily consumed.

C. Descriptive Labeling to Differentiate Salt and Low-Density Salt

In the proposed rule on salt products (60 FR 37616 at 37619), FDA requested comments on whether low-density salt products should be required to clearly disclose that they contain more air than conventional salt products. The agency noted that § 101.12(e), which applies to discrete products like waffles, requires that the aerated version bear a descriptive term indicating that air has been incorporated (e.g., whipped, aerated). FDA stated that some product categories that have volumetric reference amounts contain products with common or usual names that clearly indicate that air has been incorporated into the product (e.g., whipped peanut butter, whipped dessert topping). Some products in other product categories with volumetric reference amounts do not bear such descriptive terms (e.g., pudding, ice cream).

The agency stated that because regular salt and low-density salt have similar appearances, terms such as "whipped salt" or "aerated salt" could be confusing to consumers. Therefore, FDA requested comments on what kind of descriptive terms would be clear and nonmisleading for consumers.

6. One comment stated that some kind of differential labeling (e.g., "aerated salt" or "fluffed salt") should be required to prevent misbranding and to allow consumers to make an informed purchasing decision.

FDA agrees that descriptive labeling is needed on low-density salt to ensure that consumers understand how this product differs from regular crystalline salt and are fully informed about important product characteristics. Section 101.3 (21 CFR 101.3) establishes requirements for the statement of identity of a food. Section 101.3(c) requires that when a food is marketed in various optional forms, the particular form shall be considered to be a necessary part of the statement of identity. Terms such as "low-density salt" or "flaked salt crystals" would meet these requirements because they describe the characteristic that distinguishes low-density salt from regular crystalline salt. This information must appear as part of the statement of identity on the principal display panel under § 101.3.

As stated in the second paragraph of section II.C of this document, FDA expressed concern in its proposed rule on salt products, that, because low-density salt looks similar to regular salt, some terms (e.g., "aerated" or "whipped") might be confusing to consumers. However, if manufacturers conduct consumer studies that demonstrate that terms such as "aerated," "fluffed," or "whipped" are understood by consumers as distinguishing low-density salt from regular salt, these additional terms or descriptions could also be used. FDA concludes that the statement of identity for a low-density salt product must not be false or misleading and must include a description of the form of the salt. If a product does not bear such a statement of identity, it would be subject to regulatory action under section 403(i)(1) of the act.

D. Marketing Strategy Information

7. One comment stated that some of the relevant data were not included as part of the public record. The comment noted that a volume-based reference amount accommodates a misleading marketing strategy for low-density salt. Consequently, the comment contended that the materials contained in Exhibit E of the supplemental materials[1], which were identified as pertaining to marketing strategies and which were removed from the supplemental materials before filing the materials in the docket, need to be made publicly available to ensure informed comment before any final action is taken.

All relevant data and information were included as part of the public record. The agency does not agree that materials pertaining to marketing strategies (Exhibit E in the supplemental materials) needed to be made publicly available to ensure informed comment. The material contained in Exhibit E does not contain any information relevant to a decision on the determination of a reference amount and serving size for salt products, and the agency did not use any of the material contained in Exhibit E during its deliberations. Marketing strategies fall within the definition of confidential commercial information (e.g., valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged). Thus, these materials are not available for public disclosure under 21 CFR 20.61.

III. The Final Regulation

FDA determined in 1993 that volume-based reference amounts are appropriate when: (1) Products are bulk products that can be measured by volume (final rule for serving sizes, comment 20, 58 FR 2229 at 2238; and comment 108, 58 FR 2229 at 2263); (2) there are significant differences in densities among the products within a product category, such that a range of densities are represented within the product category (see discussions on aerated products (§ 101.12(e)) and peanut butter (final rule for serving sizes, 58 FR 2229 at 2263)); and (3) the amount customarily consumed is more uniform when expressed in terms of volume; that is, there is some indication or likelihood that similar volumes, rather than similar weights, of both low- and high-density products within the same product category are customarily consumed (proposed and final rules for serving sizes, 56 FR 60394 at 60406, November 27, 1991; and 58 FR 2229 at 2238).

Although the sensory data, discussed in section II.B of this document, indicate that there is variability in how salt products are used, the evidence from the consumer study of consumption patterns for regular and low-density salt, outlined and discussed in sections II.A and B of this document, supports that people consume more similar volumes than weights of salt products. Because of this fact and the facts that the products within the category can be measured volumetrically, and the density differences among products within the same product category are significant, FDA concludes that it is appropriate for the reference amount for salt and salt products to be expressed as a volume rather than as a weight. Therefore, the agency is changing the reference amount for salt and salt products in § 101.12(b), Table 2, from "1 g" to "1/4 tsp."

IV. Effective Date

Compliance with this final regulation, including any required labeling changes, may begin January 2, 1998, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 2000, shall fully comply.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule on salt products (60 FR 37616 at 37619). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Analysis under Executive Order 12866

FDA has examined the economic implications of the final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this final rule is not a significant rule as defined by Executive Order 12866.

FDA received one comment which objected to the agency's tentative finding that there is no cost to industry. The comment explained that some labels would need to be modified and requested a 1 year phase in period to allow industry to exhaust current label inventories.

FDA agrees that some labels will need to be modified at a small cost to industry—approximately $600 per label on average. Based on information submitted by the comment, there are

167 labels that will need to be relabeled as a result of this rule (Ref. 6). Although FDA recognizes that there may be more items requiring relabeling than those with which the agency is familiar, the number is not likely to be large. If there are approximately 200 labels affected by this rule, then the costs will be $120,000.

In the section IV of this document, FDA stated that this final rule has a compliance date in accordance with the uniform compliance date for food labeling requirements which is not sooner than 1 year following publication of this rule.

VII. Small Entity Analysis

FDA has examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities.

FDA is not aware that any of the items that will require relabeling are produced by small entities, defined as fewer than 500 employees. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant impact on a substantial number of small entities.

VIII. The Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Serving Sizes; Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt).

Description: Section 403(q)(1)(A) and (q)(1)(B) of the act requires that the label or labeling of a food bear information that provides the serving size that is appropriate to the food and the number of servings per container. FDA has issued regulations in § 101.9(d)(3) (21 CFR 101.9(d)(3)) that require the nutrition facts panel on the label of a food product disclose information on serving size and on servings per container. FDA has also issued regulations in § 101.9(b) that provide that the serving size shall be determined based upon the "Reference Amounts Customarily Consumed Per Eating Occasion" that are prescribed in § 101.12(b).

This final rule revises the value for the reference amount customarily consumed per eating occasion for the food category "Salt, salt substitutes, seasoning salts (e.g., garlic)." This value is used by food producers to determine the serving sizes and number of servings to be listed on packages of salt, salt substitutes, and seasoning salts (e.g., garlic). As a result, manufacturers and other producers of certain of these products will be required to change the serving sizes and number of servings per container that they disclose in the nutrition facts panel for their products.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

21 CFR Section	No. of Respondents	Total No. of Responses	Hours per Response	Total Hours	Total Operating Costs
101.12(b)	5	200	1	200	$120,000

There are no capital or maintenance costs associated with this collection of information.

FDA believes that the burden associated with the disclosure on the label of serving size and number of servings that would be required by this final rule will be a one-time burden created by the need for firms to have to change the statement of serving size and number of servings on the labels for their products. Because firms already list the serving size for salt, salt substitutes, and seasoning salts (e.g., garlic) in terms of "1/4 teaspoons," FDA believes that the only firms that will have to revise their labels as a result of the regulation codified in this document are those that market low-density salt products. As noted in Table 1 of this document, FDA estimates that there are less than five firms producing salt, salt substitutes, and seasoning salts (e.g., garlic) that will need to change the labels for their products. FDA estimates that these firms will require an average of 1 hour per product to comply with the requirements of this final rule. Further, as noted in Table 1 of this document, the final rule would result in a one-time operating cost of $120,000.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection requirements of this final rule to OMB for review. Interested persons are requested to send comments regarding information collection by January 2, 1998, to the Office of Information and Regulatory Affairs, OMB (address above), ATTN: Desk Officer for FDA.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Brenda M. Derby, CFSAN, FDA, to Ellen M. Anderson, CFSAN, FDA, June 20, 1994.

2. Bender, Mary M., and Ellen M. Anderson, memorandum to file, August 28, 1997.

3. Mittelmark, Maurice B., and Barbara Sternberg, "Assessment of Salt Used at the Table: Comparison of Observed and Reported Behavior," *American Journal of Public Health*, 75:1215–1216, 1985.

4. Gilbert, Linda, contributing ed., "Leisure Cooking Still Popular," *Food R & D*, February 1985.

5. Greenfield, H., J. Maples, and R. B. H. Wills, "Salting of Food—A Function of Hole Size and Location of Shakers," *Nature*, 301:331, 1983.

6. Letter from Marlene L. McKone, McCormick & Company, Inc., to Ellen M. Anderson, CFSAN, FDA, September 26, 1997.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.12 is amended in paragraph (b), in Table 2, under the "Product category" column, under the "Miscellaneous Category" by revising the entry for "Salt, salt substitutes, seasoning salts (e.g., garlic salt)" to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1, 2, 3, 4]

Product category	Reference amount	Label statement[5]
* * *	* *	* *
Miscellaneous category:		
* * *	* *	* *
Salt, salt substitutes, seasoning salts (e.g., garlic salt).	1/4 tsp	1/4 tsp (___ g); ___ piece(s) (___ g) for discrete pieces (e.g., individually packaged products).
* * *	* *	* *

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e, heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; fresh and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

* * * * *

Dated: November 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31462 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97P–0206]

Food Labeling: Health Claims; Dietary Sugar Alcohols and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its decision to amend the regulation that authorizes a health claim on sugar alcohols and dental caries to include the sugar alcohol erythritol among the substances that may be the subject of the claim. Based on its review of evidence submitted with a comment on the proposal, and the evidence described in the proposal, the agency has concluded that there is significant scientific agreement that erythritol does not promote dental caries. Therefore, FDA has decided to amend the sugar alcohol and dental caries health claim to include erythritol. FDA is announcing this action in response to a petition filed by the Cerestar Holding B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co. (the petitioners).

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 1997 (62 FR 36749), the agency proposed to amend the regulation that authorizes a health claim on sugar alcohols and dental caries (§ 101.80 (21 CFR 101.80)) to include the sugar alcohol erythritol among the substances that may be the subject of the claim. FDA issued the proposed rule in response to a petition filed under section 403(r)(3)(B)(i) and (r)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i) and (r)(4)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall issue regulations authorizing health claims only if he or she determines, based on the totality of publicly available scientific evidence (including evidence

from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c) (21 CFR 101.14(c))). Section 403(r)(4) of the act sets out the procedures that FDA is to follow in health claim rulemakings.

Section 101.80(c)(2)(ii) sets out the circumstances in which a sugar alcohol is eligible to be the subject of a health claim. Section 101.80(c)(2)(ii)(A) states that the food must meet the requirement for a sugar free food set out in 21 CFR 101.60(c)(1)(i). Section 101.80(c)(2)(ii)(B) lists the sugar alcohols that are eligible to bear the claim, xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, or a combination of these. Section 101.80(c)(2)(ii)(C) states that:

> When fermentable carbohydrates are present in the sugar alcohol-containing food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption or up to 30 minutes after consumption as measured by the indwelling plaque pH test found in "Identification of Low Caries Risk Dietary Components," * * * which is incorporated by reference * * *.

At the time that it adopted § 101.80, the agency stated that for other sugar alcohols to be included in § 101.80(c)(2)(ii)(B), a petitioner must show how the substance conforms to the requirements of §§ 101.14(b) and 101.80 (61 FR 43433 at 43442, August 23, 1996). FDA stated "For those substances that are to be consumed at other than decreased dietary levels, the petitioner must demonstrate to FDA's satisfaction that the substance is safe and lawful under the applicable food safety provisions of the act (§ 101.14(b)(3)(ii))." Likewise, the petitioner would need to provide evidence that the sugar alcohol will not lower plaque pH below 5.7. Therefore, before a claim can be made for a new sugar alcohol, it must be shown to meet the requirements for § 101.80. When this is demonstrated, FDA will take action to add the substance to the list in this regulation, which has been renumbered as § 101.80(c)(2)(ii)(B) (61 FR 43433 at 43442).

FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on erythritol and dental caries. The agency summarized this evidence in the proposed rule (62 FR 36749).

Based on the available evidence, FDA tentatively concluded that the use of erythritol in food is safe and lawful, and that this substance meets the plaque pH and other requirements of § 101.80. Consequently, FDA proposed to amend § 101.80(c)(2)(ii)(B) to include erythritol as one of the sugar alcohols that is eligible to bear the sugar alcohol and dental caries health claim. FDA did not propose to make any other changes to § 101.80.

In response to the proposal, the agency received one comment from a manufacturer. The comment supported the proposed amendment to § 101.80 to include erythritol.

Given the absence of any evidence to the contrary, FDA is confirming the tentative conclusions that it reached in the proposal. Based on these conclusions, FDA is amending § 101.80 to add erythritol to the substances listed in § 101.80(c)(2)(ii)(B) that may be the subject of the claim.

II. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (62 FR 36749). The proposed rule incorrectly cited a claim of categorical exclusion under previous 21 CFR 25.24(a)(11). The agency reviewed the information submitted by the petitioner in an environmental assessment prepared under 21 CFR 25.31a(b)(5). Based on this information, the agency determined that there is no significant impact on the human environment and that an environmental impact statement is not required. No new information or comments have been received that would affect the agency's previous determination. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Executive Order 12866 Analysis

FDA has examined the impacts of the final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this rule is not a significant rule as defined by Executive Order 12866.

The authorization of health claims about the relationship between erythritol and dental caries results in either costs or benefits only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. This rule will not require that any labels be redesigned, or that any product be reformulated.

This final health claim will allow manufacturers to highlight the benefits of the sugar alcohol erythritol in addition to other sugar alcohols for which FDA has already approved a health claim. The benefit of establishing this health claim is to provide for new information in the market regarding the relationship of erythritol and dental caries and to provide consumers with the assurance that this information is truthful, not misleading, and scientifically valid.

IV. Small Entity Analysis

FDA has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the economic impact of that rule on small entities.

Small entities will incur costs only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe that the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

VI. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cerestar Holding B. V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., "Petition to amend the regulation for 21 CFR 101.80 to authorize a noncariogenicity dental health claim for the sugar alcohol erythritol (1,2,3,4-butanetetrol)," April 4, 1997, [CP1].

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.80 is amended by revising paragraph (c)(2)(ii)(B) to read as follows:

§ 101.80 Health claims: dietary sugar alcohols and dental caries.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The sugar alcohol in the food shall be xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, erythritol, or a combination of these.

* * * * *

Dated: November 21, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–31587 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA–97–3155]

RIN 2127–AG21

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Point System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the agency's National Driver Register (NDR) regulations to implement a recent amendment to the National Driver Register Act of 1982, as amended. The amendment authorizes the Commandant of the Coast Guard to request and receive information from the National Driver Register (NDR) regarding the motor vehicle driving records of any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment of any of the foregoing, and any member of a uniformed service who is assigned to the Coast Guard). This interim final rule establishes the procedures for such individuals to request, and for the Commandant to receive, NDR information.

DATES: This interim final rule becomes effective on December 2, 1997. Comments on this interim final rule are due no later than February 2, 1998.

ADDRESSES: Written comments should refer to the docket number and be submitted (preferably in ten copies) to: Department of Transportation—Dockets, Room PL–401, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590. (Docket hours are from 10:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Holden, Chief, Traffic Records and Driver Register Division, NTS–32. National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590; telephone (202) 366–4800 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The National Driver Register (NDR) is a central file of information on individuals whose licenses to operate a motor vehicle have been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highways or driving while impaired by alcohol or other drugs.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause in any other State. Because the NDR is a nationwide index, chief driver licensing officials need to submit only a single inquiry to obtain this information.

State chief driver licensing officials also are authorized under the Act to request NDR information on behalf of other authorized NDR users for transportation safety purposes. The NDR Act authorizes the following entities to receive NDR information for limited transportation purposes: the National Transportation Safety Board and the Federal Highway Administration for accident investigation purposes; employers and prospective employers of motor vehicle operators; the Federal Aviation Administration (FAA) regarding any individual who holds or has applied for an airman's certificate; air carriers regarding individuals who are seeking employment with the air carrier; the Federal Railroad Administration (FRA) and employers or prospective employers of locomotive operators; and the U.S. Coast Guard regarding any individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document. The Act also provides that individuals can learn whether information about themselves is on the NDR file and can receive any such information.

On October 19, 1996, Pub. L. 104–324 was enacted into law. Section 207 of that Act contained an amendment to the NDR Act of 1982, as amended (49 U.S.C. 30305), authorizing the Commandant of the Coast Guard to request and receive NDR information regarding any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment of any of the foregoing, and any member of a uniformed service who is assigned to the Coast Guard).

Procedures for Requesting and Receiving NDR Information

The procedures that the Commandant of the Coast Guard would use to receive NDR information on these Coast Guard members would be the same as those used by the U.S. Coast Guard to receive information regarding individuals who hold or who have applied for a license, certificate of registry, or a merchant mariner's document.

The Commandant of the Coast Guard may not initiate a request for NDR information. Rather, the individual member or applicant must do so. To initiate a request, the individual must either complete, sign and submit a request for an NDR file search, or

authorize the Commandant of the Coast Guard to request the NDR file search by completing and signing a written consent. The request or written consent must state that NDR records are being requested; state specifically who is authorized to receive the records; be dated and signed by the individual (the member or applicant); and specifically state that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies "probable" matches that require further inquiry for verification, that it is recommended (but not required) that the Commandant of the Coast Guard verify matches with the state of record, and state that individuals have the right to request NDR records regarding themselves to verify the accuracy of any information on the file pertaining to them.

The Commandant of the Coast Guard may receive such information and shall make the information available to the individual. The Commandant will not receive any information that was entered in the Register more than three years before the date of the request, unless the information relates to a revocation or suspension still in effect on the date of the request.

In accordance with Pub. L. 104–324, requests to transmit NDR information to the Commandant are to be submitted through a State chief driver licensing official. Such requests may be submitted through the chief driver licensing official of any state that participates in the NDR's Problem Driver Pointer System (PDPS). Currently, all 50 States participate in the NDR PDPS, and the District of Columbia is in the process of connecting to the PDPS system.

The NDR response would be sent to the chief driver licensing official who will provide it to the Commandant and will indicate whether a match (probable identification) was found and, if so, the response will identify the State in which the full substantive record can be found (the State of record). The agency encourages the Commandant to obtain the substantive data relating to the match from the State of record to determine whether the person described in the record is in fact the subject individual before taking further action.

Interim Final Rule

This document is published as an interim final rule. Accordingly, the changes to part 1327 described above are fully in effect and binding upon the date of the document's publication. No further regulatory action by NHTSA is necessary to make these changes effective.

In an effort to establish the procedures to permit Coast Guard members to submit requests to the NDR and the Commandant of the Coast Guard to receive NDR information as soon as possible, these regulatory changes have been made in an interim final rule, without prior notice and opportunity for comment. In addition, the changes made to the regulation in this interim final rule simply reflect the statutory amendments enacted by Pub. L. 104–324. Further, the procedures that have been established in this interim final rule for requesting that NDR information be provided to the Commandant of the Coast Guard are nearly identical to the procedures already being followed by the States, by airmen, by seamen/merchant mariners, and by others in the field of transportation safety. Those procedures were established by a rulemaking process during which notice and an opportunity to comment were provided.

NHTSA requests comments on these regulatory changes. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, NHTSA will publish a document responding to the comments and, if appropriate, will further amend the provisions of part 1327.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by February 2, 1998. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments received after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a document responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all documents will be placed in Docket NHTSA–97–3155 in Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. The changes in this interim final rule merely reflect amendments contained in Pub. L. 104–324. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements had been approved through September 30, 2000, under OMB No. 2127–0001.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1327

Highway safety, Intergovernmental relations, National Driver Register, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter III of title 23 of the CFR is amended as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for Part 1327 is revised to read as follows:

Authority: Pub.L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

2. Section 1327.3 is amended by redesignating paragraphs (a) through (w) as paragraphs (b) through (x) and by adding a new paragraph (a) to read as follows:

§ 1327.3 Definitions.

(a) *Any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve* includes a cadet or an applicant for appointment or enlistment of any of the foregoing and any member of a uniformed service who is assigned to the Coast Guard.

* * * * *

§ 1327.5 [Amended]

3. Section 1327.5 is amended by removing the period at the end of paragraph (c)(2) introductory text and adding in its place the words ", or regarding any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve.".

4. Section 1327.6 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 1327.6 Conditions and procedures for other authorized users of the NDR.

* * * * *

(e) * * *

(1) To initiate an NDR file check, the individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document or the individual who is an officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve shall either:

* * * * *

Issued on: November 25, 1997.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 97–31436 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–59–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 97–6]

Registration of Claims to Copyright: Group Registration of Serials

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; policy announcement.

SUMMARY: This announcement notifies the public of an amendment that slightly modifies the administrative procedures for qualifying to use the group registration of serials option. Under the amendment, the letter currently addressed to the General Counsel's Office should instead be addressed to "Group Periodicals Registration."

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In 1990, the Copyright Office adopted a new registration procedure which permitted group registration of serial publications under certain conditions. 55 FR 50556 (1990). This procedure is part of the regulations of the Copyright Office at 37 CFR Chap. II, §§ 202.3(b)(5) and 202.20(c)(2)(xvii). The primary requirement for an applicant to become eligible to use the group registration procedure is for the applicant to establish two complimentary subscriptions of the individual serial title for the Library of Congress. In order to encourage compliance, the regulations required that the applicant submit a letter to the General Counsel's Office, stating that the complimentary subscriptions had been entered.

In administering the group registration procedure, the letter submitted has been addressed to the General Counsel's Office. In the future this letter should be addressed to: Library of Congress, "Group Periodicals Registration," Washington, D.C. 20540–4161. In the future, the Copyright Acquisitions Division, will maintain the file of these letters relating to group registration of serials. Questions or requests for information relating to deposits for group registration of serials should be directed to the Chief of the Copyright Acquisitions Division (202) 707–7125. All other conditions relating to this procedure will continue without modification.

List of Subjects in 37 CFR Part 202

Registration of claims to copyright, Claims to copyright, Copyright registration.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

2. The second sentence of § 202.3(b)(5)(ii) is revised to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(5) * * *

(ii) * * * The letter should be sent to Library of Congress,'Group Periodicals Registration,' Washington, D.C. 20540–4161.

* * * * *

Dated: November 26, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–31548 Filed 12–1–97; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA35–1–7305a; FRL–5928–2]

Approval and Promulgation of Air Quality Implementation Plans, Louisiana; Reasonable Available Control Technology for Emissions of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is conditionally approving in part, and fully approving in part, revisions to the Louisiana State Implementation Plan (SIP). The revisions incorporate regulations to control Volatile Organic Compound (VOC) emissions from major stationary sources by means of Reasonable Available Control Technology (RACT). The major stationary source category controlled by the conditionally approved regulation is Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch processes. The major stationary source categories controlled by the fully approved regulations are SOCMI reactors, SOCMI distillation, and industrial cleanup solvents. The intended effect of these rules is to reduce VOC emissions into the ambient air and thereby reduce ground-level ozone concentrations. Both EPA's full and conditional approval of these regulations makes them federally enforceable.

The full approval of the revisions to the SIP to control VOC emissions from the batch processes source category is contingent upon the State of Louisiana submitting a revision of the single unit operation exemptions of the SOCMI batch processing rule. If the State fails to submit a revision to the batch processing rule within one year of the conditional approval of these SIP revisions, the conditional approval will convert to a disapproval.

In the proposed rules section of today's **Federal Register**, the EPA is proposing and seeking public comment on the same conditional and final approvals of the Louisiana SIP that are discussed in this notice. If adverse comments are received on these approvals, the EPA will withdraw the direct final rule and address the comments received in a subsequent final rule, based on the related proposed rule. No additional opportunity for public comment will be provided.

DATES: This action is effective on February 2, 1998 unless adverse or critical comments are received by January 2, 1998. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Region 6, Dallas, 1445 Ross Avenue, Texas 75202–2733, telephone: (214) 665–7214.

Air Quality Division, Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, telephone: (504) 765–7247.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–2174.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background of VOC RACT Rule Requirements

Section 172 of the Clean Air Act (the Act) as amended in 1990, entitled *Nonattainment Plan Provisions in General*, requires that states adopt RACT rules for major stationary sources of VOCs located in ozone nonattainment areas. The RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility as defined in 44 FR 53761 (September 17, 1979). In accordance with section 108 of the Act, the EPA publishes Control Technique Guideline (CTG) documents in order to assist the States in developing RACT rules for source categories. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT.

Sections 182(b)(2) and 182(c) of the Act as amended in 1990 require States to adopt RACT rules for three general groups of major stationary sources of VOCs located in ozone nonattainment areas designated as moderate or above. The first group consists of sources covered by an existing CTG (a CTG issued prior to the enactment of the 1990 Act amendments). The second group consists of sources covered by a CTG issued after the enactment of the 1990 Act amendments. These CTGs are referred to as "post-enactment" CTGs. The third group consists of major sources not covered by a CTG. These sources are referred to as "non-CTG" sources.

Under section 302(j), the Act defines major source as any source which has the potential to emit 100 tons per year or more of any air contaminant unless otherwise expressly provided. Under section 182(c), a major source is defined as any source which is located in an area designated as a serious ozone non-attainment area and has the potential to emit 50 tons per year or more of VOCs. Therefore, in the Baton Rouge five parish serious ozone nonattainment area, a major source definition is the potential to emit 50 tons per year or more of VOCs.

Under section 183 of the Act as amended in 1990, entitled *Federal Ozone Measures*, the EPA is required to issue CTGs for 13 source categories by November 15, 1993. Two specific source categories are listed under section 183: aerospace coatings and solvents, and shipbuilding operations. The other 11 categories are listed in 57 FR 18077 (April 28, 1992) and are as follows:

1. SOCMI distillation.
2. SOCMI reactors.
3. Wood furniture.
4. Plastic parts business machines.
5. Plastic parts coating (other).
6. Offset lithography.
7. Industrial wastewater.
8. SOCMI batch processing.
10. Volatile Organic Liquid (VOL) storage tanks.
11. Clean-up solvents.

To date, CTGs have been published for four of the thirteen source categories: SOCMI distillation, SOCMI reactors, wood furniture, and shipbuilding. As described in a January 20, 1994 memorandum from John Seitz, Director of the EPA's Office of Air Quality Planning and Standards, the EPA plans to make available Alternative Control Technology (ACT) documents for the CTG source categories for which CTG documents have not yet been published. These ACT documents provide much of the same information as the CTG documents, however, instead of establishing a presumptive norm for RACT rule, these documents provide options for control.

On April 28, 1992 (57 FR 18077), the EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG. For post-enactment CTGs, the amended Act requires States to submit RACT rules in accordance with the schedule specified in the corresponding CTG document. If the EPA failed to issue a CTG by November 15, 1993, the responsibility shifted to the State to submit a non-CTG RACT rule for those sources by November 15, 1994.

B. Negative Declarations

In agreement with EPA policy, if there are no major sources of VOC emissions in a CTG source category located in a nonattainment area, the State should submit a formal statement of the nonexistence of such major sources, i.e., a negative declaration. On April 6 and June 20, 1994, the State of Louisiana submitted letters of negative declaration for the following CTG source categories: aerospace coatings and solvents, shipbuilding operations, offset lithography, plastic parts—business machines, plastic parts—other, and wood furniture. The EPA approved these letters on October 30, 1996, in 61 FR 55894. A CTG document was published in April 1996, for wood furniture which lowered the threshold for a source to be considered major in the wood furniture source category to 25 tons per year or more in an ozone nonattainment area. On January 28, 1997, the State of Louisiana submitted a letter of negative declaration for the wood furniture category based on the lower major source threshold.

II. State Submittal

On December 15, 1995, the State of Louisiana submitted to the EPA five sets of rules which require six source categories to apply RACT to VOC emissions from major stationary sources located in the Baton Rouge ozone nonattainment area. In Louisiana, the following five parishes areas are designated as serious: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The applicable source categories are VOL tank storage, SOCMI reactors, SOCMI distillation, SOCMI batch processes, industrial wastewater, and industrial cleanup solvents. The rules also apply to Pointe Coupee Parish and Calcasieu Parish, formerly serious and marginal ozone nonattainment areas, respectively. These rules were published in the *Louisiana Register* on April 20, September 20, and November 20, 1995.

No action is being taken on the industrial wastewater portion of the December 15, 1995, submittal. The EPA has identified provisions which are deficient with respect to EPA guidance. In short, the EPA has concerns with the rule provisions which are followed to determine the characteristics of the wastewater stream, and the testing requirements for biological treatment units.

The EPA has previously approved Louisiana's RACT rule for VOL tank storage, 33 Louisiana Administrative Code (LAC) 2103, on October 22, 1996 (61 FR 57470) as part of the 15% rate of progress plan submitted to the EPA on December 15, 1995.

III. Analysis of State Submittal

A. Industrial Cleaning Solvents

Chapter 21 of 33 LAC has been amended to include Section 2157, (33 LAC 2157) *Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.* Section 2157 is intended to incorporate regulations which represent RACT for the cleanup solvents CTG-source category.

Facilities affected are those which emit or have the potential to emit 50 tons per year or more of VOCs, and which use solvents in one or more of the following nine solvent-cleaning operations: spray gun cleaning, spray booth cleaning, large manufactured components cleaning, equipment cleaning, floor cleaning, line cleaning, parts cleaning, tank cleaning, and small manufactured components cleaning. Geographically, these rules apply to the five parish Baton Rouge ozone nonattainment area, and Pointe Coupee and Calcasieu Parishes.

To assist State agencies in developing rules to limit emission of VOCs which result from industrial cleaning with organic solvents, in February 1994, the EPA published the ACT document titled *Industrial Cleaning Solvents* (EPA–453/R–94–015). The ACT document does not provide a model regulation or a recommended emission limit representing RACT. The ACT document does provide considerable information on feasible RACT options which States can use to define their own RACT levels.

The ACT document recommends the application of an accounting system which tracks the use, fate, and associated costs (purchase and disposal) of the cleanup solvents. The accounting system should utilize the Unit Operations System (UOS) approach. A UOS is defined as the ensemble of equipment around which a material balance is performed and includes all possible points/sources from which losses to the atmosphere could occur as a result of them being cleaned. Completion of the material balance around a UOS requires measurement of all input and output VOC-based liquid solvent streams. The difference between these streams may be assumed to have evaporated as solvent emissions. The UOS ensembles for the nine solvent-operations listed above are described in Appendix C of the ACT document.

Another control option discussed in the ACT document is to require major sources to conduct intensive, short-term studies of solvent types and uses. The study would review purchase records, distribution sources, cleanup operations, recycling records and waste disposal records. The study would identify potential VOC usage reductions such as cleaning solvent changes and equipment changes.

Utilizing the information gained from the implementation of the UOS accounting system, the ACT document recommends the State require major sources to submit individual solvent reduction plans.

Section 2157 of 33 LAC incorporates, as requirements, the control options outlined in the above listed ACT document. The regulation is approvable as RACT for the cleanup solvents CTG-source category.

Section 2157 of 33 LAC, requires affected facilities to implement the following actions: conduct a three-month intensive study of solvent types and usage, utilize accounting on a unit operation system and, submit plans to the administrative authority to reduce VOC emissions. As an alternative to submitting reduction plans, the owner or operator of affected facilities may report the controls and/or work practices deemed to be Maximum Achievable Control Technology.

These submitted plans become State enforceable upon approval. A violation of 33 LAC 2157 occurs if the affected facility does not meet the state-approved solvent reduction target.

B. Batch Processes

1. EPA Analysis

Chapter 21 of 33 LAC has been amended to include Section 2149, (33 LAC 2149) *Limiting Volatile Organic Compound Emissions from Batch Processing.* Section 2149 is intended to incorporate regulations which represent

RACT for the batch processing CTG-source category.

Facilities affected are those which emit or have the potential to emit 50 tons per year or more of VOCs, and fall into one of the following Standard Industrial Classification code categories: plastic materials and resins (2821), pharmaceuticals (2833 and 2834), gum and wood chemicals (2861), cyclic crudes and intermediates (2865), industrial organic chemicals (2869), and agricultural chemicals (2879). Geographically, these rules apply to the five parish Baton Rouge ozone nonattainment area, and Pointe Coupee and Calcasieu Parishes.

To assist State agencies in developing rules to limit emission of VOCs which result from batch processes, in February 1994, the EPA published the ACT document titled *Control of Volatile Organic Compound Emissions from Batch Processes* (EPA–453/R–93–017). The ACT document provides a model regulation representing RACT, as well as providing considerable information on emissions, controls, control options, and costs that States can use in developing RACT regulations.

In developing a batch processing RACT regulation, the State of Louisiana closely followed the model rule provided in the ACT. The purpose of most of the changes from the model rule is to make the regulations more explicit. All changes are insignificant except the change to single-unit operation exemptions as discussed below.

As a change to the model rule's single unit operation exemptions, the State replaced the 500-pound annual emission exemption with the following annual emission exemptions for specific unit operations: 1800 lbs. for reactors, 1200 lbs. for holding tanks, and 8700 lbs. for centrifuges. No justification for the revised levels of these thresholds was provided. Furthermore, by deleting the general single unit operation exemption and including only three specific unit operation exemptions, all other unit operations not listed would not be exempt for analyses no matter how low the level of annual emissions.

2. State Commitment of Revision

On June 17, 1997, the LDEQ submitted a letter committing to revise, within one year of the date of the publication of this **Federal Register** conditional approval, the single unit operation exemptions of the batch processing rule.

The revision would eliminate the individual process single unit operation exemptions and set the overall single unit operation exemption to 500 lb./yr. or less. The revision would also incorporate language which more explicitly defines the control requirements.

3. EPA Conclusion

With the exception of the single unit operation exemption as discussed above, 33 LAC 2149, incorporates as requirements, the control options outlined in the above listed ACT document. With the letter committing to revise Section 2149(b)(2), *single unit operation exemptions*, the regulation is conditionally approvable as RACT for the batch processing CTG source category.

C. SOCMI Distillation and Reactors

Chapter 21 of 33 LAC, has been amended to include Section 2147, (33 LAC 2147) *Limiting Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry*. Section 2147 is intended to incorporate regulations which represent RACT for both the SOCMI reactors and SOCMI distillation source categories.

Facilities affected are those which emit or have the potential to emit 50 tons per year or more of VOCs, and have the Standard Industrial Major Code 28 classification, *Chemicals And Allied Products*. Geographically, these rules apply to the five parish Baton Rouge ozone nonattainment area, and Pointe Coupee and Calcasieu Parishes.

To assist State agencies in developing rules to limit emission of VOCs which result from batch processes, in August 1993 the EPA published the CTG document entitled *Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry*. As well as providing considerable information on emissions, controls, and costs that the States can use in developing RACT regulations, the CTG provides a model regulation representing RACT. In developing a SOCMI distillation and reactor regulation, the State of Louisiana closely followed the model rule provided in the CTG. The purpose of most of the changes from the model rule is to make the regulations more explicit. All changes are unsubstantive except the change made to the flow rate exemption as discussed below.

As a change to the model rule flow-rate exemption, the State raised the minimum control flow rate from 0.0085 to 0.011 standard cubic meters per minute. This change was made to the model rule to be consistent with the new source performance standards for reactor processes, 40 CFR 60.700(c)(4). In this way, the RACT rule will not be more stringent than the performance standards for new sources for reactor processes. The EPA finds this revision acceptable.

Section 2149 of 33 LAC incorporates as requirements, the control options outlined in the above listed CTG document. The regulation is approvable as RACT for the SOCMI reactor and SOCMI distillation source categories.

IV. Final Action

By this action, the EPA is conditionally approving in part and fully approving in part the revisions to the Louisiana SIP submitted on December 15, 1995. The EPA is conditionally approving the revisions to the SIP to control VOC emissions utilizing RACT from the SOCMI batch processing source category. The EPA is fully approving in the revisions to the SIP to control VOC emissions utilizing RACT from the following major source categories: SOCMI distillation, SOCMI reactor, and clean-up solvents. The EPA is also approving the letter of negative declaration for the wood furniture major source category from the LDEQ dated January 21, 1997.

The full approval of the revision to control VOC emissions utilizing RACT from the batch processing source category is contingent upon the State of Louisiana submitting a revision to the single unit operation exemptions rule. If the State fails to submit a revision to the batch processing rule within one year of the conditional approval of these SIP revisions, the conditional approval will convert to a disapproval.

With the approval of these rules, the applicable requirements relating to RACT rules of the 12 of the 13 CTG source categories have been met. The industrial wastewater source category is the only remaining CTG source category for which no action has been taken. This source category will be handled in a separate rulemaking action.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on February 2, 1998, unless, by January 2, 1998, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based the proposed rule in today's **Federal Register**, which incorporate by reference the discussion in this direct final action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 2, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**.

This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(74) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(74) Revisions to the Louisiana Department of Environmental Quality Regulation Title 33, Part III, Chapter 21,

Control of Emission of Organic Compounds, submitted by the Governor on December 15, 1995.

(i) Incorporation by reference.

(A) LAC, Title 33, Part III, Chapter 21, Section 2147, Limiting Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry, adopted in the Louisiana Register on April 20, 1995 (LR 21:380).

(B) LAC, Title 33, Part III, Chapter 21, Section 2149, Limiting Volatile Organic Compound Emissions from Batch Processing, adopted in the Louisiana Register on April 20, 1995 (LR 21:387).

(C) LAC, Title 33, Part III, Chapter 21, Section 2151, Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing, adopted in the Louisiana Register on April 20, 1995 (LR 21:391).

(ii) Additional material.

(A) Letter of negative declaration for wood furniture dated January 21, 1997, from the State of Louisiana Department of Environmental Quality.

3. Section 52.994 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.994 Conditional approvals.

* * * * *

(b) *Reasonable Available Control Technology for the Synthetic Organic Chemical Manufacturing Industry Batch Processing Source Category.* A letter dated June 17, 1997 from the Assistant Secretary of the Louisiana Department of Environmental Quality to the EPA Regional Administrator commits the State to make corrections in LAC 33.III.2149.A.2.b to restore the general single unit operation exemption to 500 pounds per year or less. The State commits to make the above rule change within one year from the **Federal Register** publication of the conditional approval of the batch processing Reasonable Available Control Technology rule.

[FR Doc. 97–31406 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 64, 70, and 71

[FRL–5928–5]

RIN 2060–AD18

Compliance Assurance Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; availability of guidance document.

SUMMARY: On October 22, 1997 (62 FR 54900), EPA published a final Compliance Assurance Monitoring Rule (CAM). The final rule preamble described a Guidance Development Process in which the Agency would develop non-prescriptive examples of the types of monitoring that can be used to satisfy part 64 for various types of control devices and emissions units. In order to provide an opportunity for source owners or operators and other interested parties to submit suggestions, review drafts and generally clarify the part 64 requirements, a *Draft* CAM Technical Guidance Document is now available. The Agency emphasizes that the development of example monitoring approaches in this guidance document is intended to assist both regulated industry and permitting authorities to streamline permit review in those instances where a source owner or operator proposes monitoring based on one of the examples. These examples should not be considered as an implied limitation on the owner or operator's ability to propose a different approach that the owner or operator can demonstrate satisfies the part 64 requirements or on the permitting authority's authority to require additional monitoring. A final CAM Technical Guidance Document should be available by the end of March 1998.

DATES: Comments on the Draft CAM Technical Guidance Document should be received no later than January 5, 1998.

ADDRESSES: Comments should be sent to: Dan Bivins, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, MD–19, RTP, NC 27711, or to: Bivins.Dan@epamail.epa.gov

The Draft CAM Technical Guidance Document is available on U.S. Environmental Protection Agency's EMTIC Homepage on the Technology Transfer Network (via the Internet at "http://ttnwww.rtpnc.epa.gov/html/emticwww/index.htm", 24 hours a day, 7 days a week , except Monday, 8–12 a.m. EST).

FOR FURTHER INFORMATION CONTACT: Dan Bivins at (919) 541–5244.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–31576 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180

[OPP–300589; FRL–5758–7]

Pyrimethanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an import tolerance for residues of the fungicide 4,6-dimethyl-N-phenyl-2-pyrimidinamine expressed as pyrimethanil in or on the raw agricultural commodity (RAC) wine grapes at 5.0 ppm. AgrEvo USA Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting the tolerance.

DATES: This regulation becomes effective December 2, 1997. Objections and requests for hearings must be received by EPA on or before February 2, 1998.

ADDRESSES: Written objections, and hearing requests identified by the docket control number, OPP–300589, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300589, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300589]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1997 (62 FR 41379) (FRL–5732–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a(e), announcing the filing of a pesticide tolerance petition (PP 4E4384) by AgrEvo USA Company, Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808. The notice included a summary of the petition prepared by AgrEvo USA Company. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide 4,6-dimethyl-N-phenyl-2-pyrimidinamine expressed as pyrimethanil in or on the raw agricultural commodity wine grapes at 5.0 parts per million (ppm).

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines if the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure of the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is more commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA to pose a reasonable certainty of no harm. EPA generally uses the RfD to evaluate chronic risks posed by pesticide exposure. For shorter term risks, which could occur for residential uses of a pesticide, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor. The MOE is a measure of how close the exposure comes to the NOEL.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this risk assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this reassessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However,

for cases in which high-end exposure can reasonably be expected from multiple sources (e.g., frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risks assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticide. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. Review of this regional data allows EPA to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of pyrimethanil and to make the determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for pyrimethanil on wine grapes at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyrimethanil are discussed below.

1. A battery of acute toxicity studies resulted in an acute oral LD_{50} = 4,149 milligrams/kilograms (mg/kg) (males) and 5,971 mg/kg (females); an acute dermal LD_{50} >5,000 mg/kg for both sexes; an acute inhalation LC_{50} >1.98 mg/L; slight eye irritation; no dermal irritation; and a finding that pyrimethanil is not a sensitizer.

2. A subchronic oral toxicity study in rats fed pyrimethanil at dose levels of 0, 80, 800, or 8,000 ppm for 13 weeks. Those doses were equivalent to daily intake of 0, 5.4, 54.5, 529.1 milligrams/kilograms/day (mg/kg/day) for males and 0, 6.8, 66.7, 625.9 mg/kg/day for females. A supplementary control and a high dose (8,000 ppm) group were similarly treated for 13 weeks then maintained off-dose for 28 days to investigate the reversibility of any findings. Treatment of pyrimethanil did not affect mortality, clinical signs, water intake, ophthalmology, hematology, blood chemistry, or macroscopic pathology.

Under the conditions of this study, the No Observed Effect Level (NOEL) was estimated to be 80 ppm (equivalent to a daily intake of 5.4 mg/kg/day for males and 6.8 mg/kg/day for females). The Lowest Observed Effect Level (LOEL) was estimated to be 800 ppm (54.5 mg/kg/day for males and 66.7 mg/kg/day for females). The LOEL is based on decreased body weight gains in females, changed coloration of urine specimens, and increased incidence of hypertrophy of centrilobular hepatocytes in males.

3. A subchronic oral toxicity in mice fed technical pyrimethanil at dose levels of 0, 80, 900, or 10,000 ppm for 13 weeks. Those doses were equivalent to 0, 12, 139, or 1,864 mg/kg/day for males and 0, 18, 203, or 2,545 mg/kg/day for females, respectively. There were no treatment-related effects in mortality, clinical signs, water intake, or hematological parameters.

The NOEL was estimated to be 900 ppm, equivalent to daily intake of 139 and 203 mg/kg/day for males and females, respectively. The LOEL was estimated to be 10,000 ppm, equivalent to daily intake of 1,864 and 2,545 mg/kg/day for males and females, respectively. The LOEL is based on decreased body weight gains, clinical chemistry data, necropsy, and histopathological findings.

4. A subchronic oral toxicity study in dogs dosed with technical pyrimethanil by gavage at dose levels of 0, 6, 80, or 1,000/800 mg/kg/day for 13 weeks. The highest dose was reduced from 1,000 mg/kg/day to 800 mg/kg on day 7 due to persistent vomiting seen in all dogs receiving 1,000 mg/kg. Concentrations of dosing suspension (0.5% (w/v) methyl cellulose in distilled water) were within ranges of 82.5% to 121.7% of nominal. There were no treatment related effects on mortality, organ weights, necropsy findings, histopathological, ophthalmoscopical, or hematological parameters.

Under the conditions of this study, the NOEL was estimated to be 6 mg/kg. The LOEL was estimated to be 80 mg/kg. The LOEL is based on the increased incidence of vomiting and diarrhea, salivation, cream coloration of feces, hypoactivity, and decreased water consumption.

5. A chronic oral toxicity study in dogs dosed with pyrimethanil by gavage at doses of 0, 2, 30, or 400/250 mg/kg/day for 12 months. Administration of the test material at 400 mg/kg/day caused a high incidence of vomiting/emesis during week 1 of the study. For this reason, the dose regimen was decreased to 250 mg/kg/day on day 8 of the study. At this dose (250 mg/kg) vomiting was decreased to about 1% in all animals.

Based on the results of this study, the NOEL is 30 mg/kg/day and the LOEL is 250 mg/kg/day, based on the decrease in body weight, food consumption, feed efficiency, and water consumption, reduced clotting times, and increases in white blood cells, (mainly neutrophils).

6. A carcinogenicity feeding study in mice fed technical pyrimethanil at dose levels of 0, 16 ppm (males 2.0, females 2.5 mg/kg/day), 160 ppm (males 20.0, females 24.9 mg/kg/day), or 1,600 ppm (males 210.9, females 253.8 mg/kg/day) for 80 weeks resulted in a dose-related increase in the percentage (24%, 38%, 40%, and 67% in control, low-, mid-, and high-dose males, respectively) of deaths occurring prior to week 56 in males but there was no dose-related adverse effect on survival in either sex and adequate numbers of mice (both sexes) were available at study termination.

Treated males displayed a higher incidence of urinary bladder distension at necropsy, and urogenital tract lesions were increased at the high-dose level compared to the control values. Since all urogenital tract tissues of the low- and mid-dose males were not examined, a dose-response cannot be determined. The NOEL for systemic effects can be set at 1,600 ppm (males 210.9, females 253.8 mg/kg/day), the highest dose tested (HDT). There was no increase in the incidence of any tumor type in either sex.

7. A combined chronic toxicity/carcinogenicity study in rats fed pyrimethanil at dose levels of 0, 32, 400, or 5,000 ppm for 52 weeks (interim kill) or 104 weeks (main study). Those doses were equivalent to daily intake of 0, 1.3, 17, or 221 mg/kg/day for males and 0, 1.8, 22, or 291 mg/kg/day for females.

At the interim kill (52 weeks), relative liver/body weight ratios of animals given 5,000 ppm were siginificantly higher than controls. Necropsy revealed dark thyroids in 5,000 ppm treated animals only. Microscopic pathology showed minimal to moderate hypertrophy of centrilobular hepatocytes in animals given 5,000 ppm. In the thyroid gland, at 5,000 ppm, there were higher incidences of minimal to slight colloid depletion and hypertrophy of the follicular epithelium in males and females. A single focus of follicular hyperplasia was seen in males only. There were minimal to moderate intra-epithelial depositions of brown pigment (lipofuscin).

At the terminal kill (104 weeks), at 5,000 ppm, an increase of absolute liver weight was observed in males only while increases of relative liver/body weight ratios were seen in both sexes. Non-neoplastic findings included minimal to slight hypertrophy of centrilobular hepatocyes. There were higher incidences of eosinophilic foci in the liver of males and females compared with controls. Minimal to moderate focal cystic degeneration of the liver was also observed in males and females. In the thyroid gland, colloid depletion and hypertrophy of the follicular epithelium was seen in males and females compared to controls. Depositions of intra-cytoplasmic brown pigment (lipofuscin) within the thyroid follicular epithelium were seen only in animals given 5,000 ppm (38/50 males and 47/50 females).

The only tissue showing a higher incidence of tumors than controls was the thyroid gland with benign follicular cell adenomas in both sexes. A pairwise comparison for the incidence in high dose (5,000 ppm) treated males was not statistically higher than the control. The incidence in both sexes was higher than the historical control range. A positive trend of the incidence for both sexes was noted. In addition, thyroid follicular cell adenocarcinomas were seen in animals treated at 32 ppm (males) and 5,000 ppm (1 male only); however, the incidence was within the historical control range.

At 400 ppm, a statistically significant increase of serum GGT level in males only was observed at week 102. Increased absolute liver weight (the relative liver/body weight ratio was comparable to control) in males was reported in the terminal necropsy findings. However, these parameters are considered to be of no toxicological significance because no corresponding significant histopathological finding was seen.

No treatment-related significant effects were seen in animals given 32 ppm.

Under the condition of this study, the NOEL was estimated to be 400 ppm. (equivalent to 17 mg/kg/day for males and 22 mg/kg/day for females). The LOEL was estimated to be 5,000 ppm (equivalent to 221 mg/kg/day for males and 291 mg/kg/day for females). The LOEL was based on decreased body weight gains, increased serum cholesterol and GGT levels, increased relative liver/body weight ratios, necropsy, and histopathological findings.

8. An oral development toxicity study in rats gavaged with pyrimethanil suspensions (1% (w/v) aqueous methyl cellulose at doses of 0, 7, 85, or 1,000 mg/kg/day from gestation days 6 through 15. Maternal toxicity (hunched body posture, emaciation, and hair loss) were noted in high-dose animals. Treatment-related, statistically significant decreases in body weights and body weight gains were observed in high-dose animals. Except for statistically significant decreased in mean litter weight and mean fetal weight of high-dose animals, all other caesarian section data were comparable to control values. The maternal NOEL was 85 mg/kg/day and the LOEL was 1,000 mg/kg/day (limit dose), based on decreases in mean body weight, mean body weight gain, mean litter weight, and mean fetal weight. The developmental NOEL was 1,000 mg/kg/day (limit dose). The developmental LOEL was not established.

9. A developmental toxicity (teratology) study in rabbits gavaged with pyrimethanil at doses of 0, 7, 45, or 300 mg/kg/day on gestation day 7 through 19. At 7 mg/kd/day, no treatment-related maternal or developmental effects were observed. The maternal NOEL is 7 mg/kg/day and the maternal LOEL is 45 mg/kg/day based on the slight increase in the number of females with reduced production and size of fecal pellets. The developmental NOEL is 45 mg/kg/day and the LOEL is 300 mg/kg/day based on decreased fetal weight, increased incidence of fetal runts, increase in retarded ossification of fetal bones, increase in fetuses with 13 thoracic vertebrae, and 13 pairs of ribs.

10. A reproduction toxicity study in rats fed pyrimethanil at dose levels of 0, 32, 400, or 5,000 ppm (males: 0, 1.9, 23.1, or 294 mg/kg/day; females: 0, 2.2, 27.4, 343 mg/kg/day) during premating, gestation, and lactation periods. No treatment-related differences were noted in the necropsy findings of parental animals and their offspring. Treatment-related decreases in mean body weights were limited to high-dose parental animals and their offspring.

The NOEL for reproductive toxicity is 5,000 ppm (294 mg/kg/day, males; 343

mg/kg/day, females), the highest dose tested. The NOEL for developmental/systemic toxicity is 400 ppm (23.1 mg/kg/day, males; 343 mg/kg/day, females); the LOEL was established at 5,000 ppm (294 mg/kg/day, females), based on decreased pup body weights on lactation day 21.

11. Studies on gene mutation and other genotoxic effects: A bacterial mutation assay with *s. typhimurium*; a bacterial mutation assay with *E. Coli*; a mouse micronucleus assay; an *in vitro* metaphase chromosomal aberration assay (human lymphocytes); an *in vivo* unscheduled DNA synthesis assay (rats) showed no evidence of mutagenic activity.

12. A metabolism study showed that the majority (≈90%) of the administered dose of ^{14}C-pyrimethanil following 14 days of repeated oral exposure to unlabeled pyrimethanil (5/sex) at a dose level of 10 mg/kg was eliminated within 24 hours, and the major route of elimination was via the urine (≈72%). Approximately 17-18% of the dose was eliminated via feces. Radiolabeled pyrimethanil was detected only in the liver, kidney, and blood at study termination (24 hours post dose). The highest residue was displayed in the liver in both sexes. There was no significant sex difference. The overall recovery of radiolabeled pyrimethanil was ≈91%.

13. A metabolism study showed that the majority of a radiolabeled dose of pyrimethanil (≈97% low dose; 65% high dose) administered following single oral exposures of rats to dose levels of 11.89 or 800 mg/kg of pyrimethanil was eliminated within 24 hours, and the major route of elimination was via the urine (low dose 74%-76%; high dose 65%-67%). Approximately 21%-23% of the low dose and ≈15%-18% of the high dose was eliminated via the feces. The highest residues were displayed in the liver, kidney, thyroid, and blood at the high dose. The overall recovery of radiolabeled pyrimethanil following single-dose exposure was >94% at the high dose and >101% at the low dose. No sex differences were observed. Since tissue levels were measured at only one time point, no statement regarding bioaccumulation can be made.

14. A metabolism study in rats administered ^{14}C-pyrimethanil orally once a day over a period of 28 days (10 mg/kg), with periodic sacrifices at days 1, 3, 5, 8, 11, 17, 23, 28, and 32 for residue analysis of organs/tissues showed detectable levels of radiolabeled pyrimethanil in adrenals, blood, kidney, liver, spleen, and thyroid. Blood and liver displayed detectable levels of radiolabeled pyrimethanil after a single dose (24-hour sample). Four days after the last dose, detectable levels of radiolabeled pyrimethanil were found in the liver, kidney, and thyroids. It appeared that the levels in the blood, kidney, and thyroid continued to increase with increased exposure time, while the level in the adrenal appeared to reach a plateau, and levels in the liver appeared to decline.

B. Toxicological Endpoints

1. *Acute toxicity.* To assess acute dietary exposure, the Agency used a NOEL of 45 mg/kg/day and a LOEL of 300 mg/kg/day from a developmental toxicity study in rabbits for evaluating acute risk to females 13+, the subpopulation of concern.

2. *Chronic toxicity.* A RfD of 0.2 mg/kg was established based on a long-term rat toxicity study with a NOEL of 400 ppm and an uncertainty factor of 100.

3. *Carcinogenicity.* Pyrimethanil was classified as a Group C chemical - possible human carcinogen. The Agency's Carcinogenicity Peer Review Committee (CPRC) chose a non-linear approach (MOE) based on a NOEL of 17 mg/kg/day for increased incidences of thyroid tumors in rats. The MOE methodology was selected because of thyroid tumors associated with administration of pyrimethanil in the rat which may be due to a disruption in the thyroid-pituitary status.

4. *Toxicity endpoints for non-dietary exposure.* A toxicity endpoint for non-dietary exposure is not required as the Agency is only considering the import tolerance on wine grapes.

C. Exposure and Risks

1. *From food and feed uses.* This is the first tolerance for residues of pyrimethanil in or on a raw agricultural commodity. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyrimethanil as follows:

i. *Acute dietary exposure and risk.* An acute dietary endpoint for females 13+ and the general public were assessed because of potential oral consumptions. For the subpopulation of concern, females 13+, the estimated acute Margin of Exposure (MOE) of 405 demonstrates no acute dietary concern.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis was 0.20 mg/kg/day. A tolerance of 5.0 ppm in or on wine grapes was used. Using the tolerance level residue (5.0 ppm) and assuming that 100% of the crop is treated, the risk assessment resulted in use of less than 1% of the RfD for the general population and all 22 subgroups, including infants under 1 year and children under 13 years of age. No feed items are associated with wine grapes and therefore, secondary residues are not expected. In the best judgement of the Agency, the pyrimethanil chronic dietary risk does not exceed the level of concern.

2. *From drinking water.* Since this is an import tolerance and there are no U.S. registrations for this chemical, there are not risks associated with drinking water.

3. *From non-occupational non-dietary exposure.* As stated, this is an import tolerance and there are no U.S. registrations, therefore no non-occupational non-dietary exposure and risk are expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether pyrimethanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrimethanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyrimethanil does not have a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determinations of Safety for U.S. Population

1. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyrimethanil from food will utilize less than 1% of the RfD for the U.S. population and the 22 subgroups, including infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyrimethanil residues.

2. *Acute risk.* Acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The estimated MOE value of 450 does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from acute dietary exposure.

E. Aggregate Cancer Risk for the U.S. Population

This chemical has been classified as a Group C - chemical (possible human carcinogen) and a non-linear methodology (MOE) was applied for the estimation of human cancer risk. Cancer MOEs are estimated by dividing the carcinogenic NOEL of 17 mg/kg/day from the rat chronic feeding study by the chronic exposure (TMRC). The cancer MOE was estimated for the U.S. population as 40,380. The estimated MOE does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from exposures to residues of pyrimethanil.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyrimethanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. The developmental and reproductive toxicity data base for pyrimethanil is considered to be complete. The data base includes an acceptable 2-generation reproduction study in rats and acceptable pre-natal developmental toxicity studies in rats and rabbits. The data did not suggest any additional sensitivity to the embryo or neonate following *in utero* or early post-natal exposure to pyrimethanil. The maternal NOEL was 65 mg/kg/day and the developmental NOEL was 1,000 mg/kg/day (highest dose tested) in the rat developmental toxicity study. In the developmental toxicity study in rabbits, the maternal NOEL was 7 mg/kg/day and the developmental NOEL was 45 mg/kg/day. Results from the 2-generation reproduction toxicity study in rats indicated a reproductive toxicity NOEL of 294 mg/kg/day for males and 343 mg/kg/day for females (highest dose tested). The developmental toxicity NOEL was established at 23.1 mg/kg/day for males and 27.4 mg/kg/day for females. The developmental and reproductive NOEL are at least 1,000 fold higher than the RfD (0.2 mg/kg/day), and should be protective for infants and children. No additional safety factors are warranted.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyrimethanil from food will utilize less than 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrimethanil residues.

III. Other Considerations

A. Metabolism in Plants and Animals.

The metabolism in plants is adequately understood for the purposes of this use of pyrimethanil on wine grapes. The residue of regulatory concern is the parent compound only, pyrimethanil. Since it has been determined that secondary residues in livestock commodities are not likely to result from this use, metabolism of pyrimethanil in animals is not relevant to this requested use on wine grapes.

B. Analytical Enforcement Methodology

The method accepted by EPA for enforcement of pyrimethanil in wine grapes is AgrEvo USA's Method (R2/2) Analytical Method for the Determination of Residues of Pyrimethanil in Wine by HPLC (MRID # 433450-10). This method is available from the Docket under docket control number [OPP–300589] at the address stated above.

C. Magnitude of Residues.

Fifty-seven field trials consisting of different applications and concentrations of pyrimethanil were performed in Italy, Germany, South Africa, France, Spain, and Greece. HPLC/UV was the analytical method used for residue determination. Grape and wine samples were stored at -20 °C and 4 °C, respectively, until analysis. Maximum storage period was 9 months and 12 months for wine and grape samples, respectively. The storage period, as indicated by the storage stability data, is considered adequate for storage samples. Residues of pyrimethanil for grapes ranged from 0.74 to 4.14 ppm. The maximum value of 4.14 ppm was obtained after a maximum total application rate of 4 kg ai/Ha and a PHI of 26 days. Additionally, one study showed a maximum residue for grapes of 6.2 ppm (PHI = 0 days, Total application rate = 2.4 kg ai/Ha) and another maximum residue of 9.5 ppm (PHI = 26 days, Total application rate = 3.0 kg ai/Ha). However, most of the residue in wine grapes were less than 4.14 ppm. For

grape must, residues ranged from 0.41 to 1.3 ppm. For wine, residues ranged from <0.05 to 1.8 ppm.

A processing study was conducted in Fresno, California in which one application of pyrimethanil (40 SC) was made at a nominal rate of 1 kg ai/Ha at each of the following growth stages: flowering, grape closure, color change, and 21 days pre-harvest. Applications were made by airblast ground rig sprayer and all plots were harvested at normal harvest time.

Residues of pyrimethanil in whole grapes concentrated in all processed commodities produced from those grapes except juice. Raisins and juice are considered to be the only processed commodities. Raisin waste, wet and dry grape pomace are not considered processed commodities for the purposes of this petition in/on wine grapes. However, since this petition is for wine grapes and not for table grapes, a tolerance in/on raisins is not needed at this time. For future tolerance petitions in grapes grown for fresh consumption, a tolerance will be required for raisins.

D. Codex Considerations

There are no Mexican, Canadian, or Codex listings for residues of pyrimethanil; therefore, there are no harmonization issues.

IV. Conclusion

Therefore, the tolerance is established for pyrimethanil in or on wine grapes at 5.0 ppm.

V. Objections and Hearing Requests.

The new FFDCA section 408(g) provides essentially the same process for persons to "Object" to a tolerance regulation issued by EPA under the new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period of filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use its current procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number OPP–300589 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section (408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility At (RFA) (5 U.S.C.601 *et. seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: November 21, 1997.

Linda A. Travers,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

b. Section § 180.518 is added to read as follows:

§ 180.518 Pyrimethanil; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

(e) *Import.* Import tolerances are established for residues of the fungicide 4,6-dimethyl-N-phenyl-2-pyrimidinamine expressed as pyrimethanil in or on the following raw agricultural commodity:

Commodity	Parts per million
Wine grapes	5.0 ppm

[FR Doc. 97–31552 Filed 12-1-97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[HCFA–1911–IFC]

RIN 0938–AI35

Medicare+Choice Program; Collection of User Fees From Medicare+Choice Plans and Risk-Sharing Contractors

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule with a request for comments establishes the methodology that will be employed to assess fees applicable to Medicare risk-sharing contractors for fiscal year (FY) 1998. Under section 4002 of the Balanced Budget Act of 1997, these contractors must contribute their pro rata share of costs relating to beneficiary enrollment, dissemination of information, and certain counseling and assistance programs. The Medicare+Choice regulation to be published in June of 1998 will implement this requirement for Medicare+Choice plans.

DATES: *Effective Date:* These regulations are effective on January 1, 1998.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 2, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1911–IFC, P.O. Box 7517, Baltimore, MD 21207–5187.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA–1911–IFC@hcfa.gov. E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1911–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Randy Ricktor, (410) 786–4632, Marty Abeln, (410) 786–1032.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), added a new section 1857(e)(2) to the Social Security Act (the Act), that establishes a fee requirement that Medicare+Choice plans must contribute their pro rata share, as determined by the Secretary, of costs relating to enrollment and dissemination of information and certain counseling and assistance programs. Section 4002(b) of the BBA makes this requirement applicable to those managed care plans with risk sharing contracts under section 1876 of the Act. Any amounts collected are authorized to be appropriated only for the purpose of carrying out section 1851 of the Act (relating to enrollment and dissemination of information) and section 4360 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 103–66, OBRA 1990), relating to the health insurance counseling and assistance program.

For any Federal fiscal year (FY), the fees authorized under section 1857(e)(2)(B) of the Act are contingent upon enactment in an appropriations act of a provision specifying the aggregate amount of fees the Secretary is directed to collect in that fiscal year. The BBA fees collected during any FY are to be credited as offsetting collections. Under section 1857(e)(2)(D), the fees authorized under section 1857(e)(2)(B) are not to be established at any amount greater than the lesser of the estimated costs to be incurred by the Secretary in the FY in carrying out the activities described in sections 1851 of the Act and 4360 of the OBRA 1990; or $200 million in Federal fiscal year 1998; $150 million in fiscal year 1999; and $100 million in fiscal year 2000 and

each subsequent fiscal year (or such amounts as may be specified in appropriations bills). The appropriations bill for FY 1998, permits the Secretary to collect no more than $95 million in FY 1998. We estimate that the costs to be incurred in carrying out the activities described in sections 1851 and 4360 will exceed the full limit of $95 million for FY 1998. Therefore, we will collect the full $95 million amount provided for in the FY 1998 appropriation bill.

II. Discussion of Possible Approaches to Collecting Medicare+Choice Fees

Risk Contracting Plans

The BBA authorizes the collection of fees from both Medicare+Choice plans and existing managed care plans with risk sharing contracts under section 1876 of the Act. Under section 4002 of the BBA Medicare risk contracting plans may continue to contract with HCFA through December 31, 1998. Effective, January 1, 1999, all risk contracting plans are required to contract with HCFA only as Medicare+Choice plans. We do not expect final regulations for the Medicare+Choice program to be effective before June 1998. Until the Medicare+Choice program regulations are published the only organizations subject to the BBA fees will be Medicare risk contracting plans. Regulations implementing the BBA fees for Medicare+Choice plans will be included as part of the larger Medicare+Choice regulation to be published in June of 1998. In the June regulation we will describe how we will continue to assess the BBA fees from Medicare risk contracting plans during FY 1998 and how Medicare+Choice plans will be included in the FY 1998 assessment of $95 million. The June 1998 regulation will also describe the BBA assessment methodology for future fiscal years. It should be noted that any new Medicare risk contracts and Medicare+Choice plans (during the FY 1998 assessment period) will be subject to the FY 1998 BBA fee assessment. Since we anticipate that Medicare risk contracting plans will necessarily be responsible for a substantial portion of the FY 1998 BBA fees the following background is provided regarding the size and scope of the Medicare risk contracting program.

As of October 1, 1997, there were 279 active Medicare risk plans with each having an average enrollment of 28,000 Medicare beneficiaries. There is great range in the size of Medicare risk plans, with the smallest risk plans having less than 500 enrolled beneficiaries, up to the largest risk plan having almost 300,000 enrolled beneficiaries. Enrollment in risk contracting plans is not evenly distributed, in fact, almost 50 percent of beneficiaries enrolled in Medicare risk contracting plans are concentrated in only 10 percent of the risk plans. A Medicare risk contracting plan is paid a capitation payment (that varies depending on the geographic location of the plan) for each enrolled beneficiary in its plan, thus the range of total Medicare payments received by risk plans also varies greatly. The typical risk contracting plan is paid about $12 million each month. Medicare's monthly payments to all risk contracting plans exceed $2 billion a month, with payments to some of the largest risk contracting plans averaging over $100 million a month.

Approaches to Assessing Fees

A number of approaches were considered in selecting a methodology for assessing the BBA fees which would be consistent with the goals of the Medicare+Choice program and also equitable in terms of financial impact on current Medicare risk contracting plans as well as new Medicare+choice plans. In order to ensure that the selected fee assessment methodology meets the Medicare+Choice goals and is equitably applied to all eligible plans, we identified the specific criteria described below.

The following criteria were used in selecting the BBA fee assessment methodology:

- The fee assessment should serve to support the goal of promoting enrollment growth in Medicare+Choice plans. In particular, the fee assessment should not present a barrier to the entry of new or small plans (e.g., low enrollment plans in rural areas) into the Medicare+Choice program.
- The fees should be equitably applied to all eligible plans on a basis which is balanced by their Medicare revenue from the Federal government.
- The methodology for assessing the fees should be as simple as possible, and implemented in a manner that minimizes the financial impact on plans and the administrative costs to HCFA.

We considered four general approaches which might be used in assessing the BBA fees:

- The first and most direct approach considered was to divide the total annual BBA fee cost equally among all the eligible plans. While this approach would be simple to implement and administer it was rejected because it clearly imposes a disproportionate financial burden on small plans, as they would be paying the same amount of BBA fees as the largest plans. In addition, an equal fee assessment could serve as a prohibitive financial barrier restricting entry of new low enrollment plans into the Medicare+Choice program.
- As a second general approach, we evaluated assessing the BBA fees based on the number of beneficiaries enrolled in a particular plan. Specifically, under this approach a fixed per capita rate would be assessed on a per member month basis. Thus, a fixed dollar amount would be deducted from the capitation payment of each beneficiary enrolled in the plan. For example, at a total enrollment level of 5 million beneficiaries, the assessment of a $95 million BBA fee (over a nine month collection period) would result in a deduction of approximately $2.09 from the monthly capitation payment for each beneficiary enrolled in an eligible plan. Collecting fees under this approach would mean that each plan's assessment is directly related to the number of beneficiaries enrolled in the plan. Thus, this method equitably links the BBA fee assessment with the size of the plan as determined by beneficiary enrollment. However, this method does not adjust for the geographic variation in the monthly capitation payment paid to plans, which range from approximately $367 per member month in the lowest payment areas (typically rural) up to a maximum of $762 per member month in the highest capitation payment areas (typically urban).
- A third approach considered was to assess the BBA fee as a fixed percentage of the total monthly payment to each plan. This approach is financially equitable since any plan's assessment is based specifically on the total capitation dollars an eligible plan receives from the Federal government. Thus, the more dollars a plan is paid the greater the BBA fee assessment. Generally, this approach would impose a slightly higher cost on eligible plans located in the higher capitation payment areas. Alternatively, this approach would not disproportionately effect those plans in the lowest payment areas which tend to be smaller plans in rural areas.
- A fourth approach considered was establishing a flat base fee assessment (a percentage of the overall fee) that each eligible plan would pay, coupled with a variable assessment that would be determined by the size of the plan. We evaluated such an approach because of concern that assessing fees based solely on size (determined either by beneficiary enrollment or dollars paid to the plan), would mean that smaller and new plans with limited enrollment might not be contributing their fair share toward the annual BBA fee assessment. However, upon evaluating various fixed dollar amounts as a base fee assessment we recognized that any fixed amount would have to be very small in order to not present an excessive financial burden for small plans or create an entry barrier for new low enrollment plans. For example, at the $95 million national fee level, if all plans were assessed an annual fee of $15,000 combined with a variable cost, we estimated that for small plans (500 or fewer members) the $15,000 annual fee amount (combined with the variable assessment) would result in these plans being assessed from 1 to 5 percent of the total capitation payments small plans receive from the Medicare program. This result is in contrast to the other assessment approaches discussed above under which all plans would be assessed less than 1 percent of the payments they receive from the Medicare Program.

Conclusion

Based on the selection criteria, we have chosen the third methodology (described above) which calls for the BBA fees to be assessed as a fixed percentage of the total monthly calculated Medicare payments eligible plans receive from Medicare. Assessing fees on this basis in FY 1998 will require the deduction of only a very small percentage of any plan's total annual Medicare payments (less than one-half of one percent). Accordingly, we believe this approach best meets the goals of supporting the Medicare+Choice program as well as being equitable to current Medicare risk contracting plans and future Medicare+Choice plans.

III. Provisions of the Interim Final Rule

In summary the provisions of this interim final rule are as follows:

- Section 1857(e)(2) of the Act provides for the collection of fees from each eligible organization with a risk-sharing contract its share of the fees for administering section 1851 of the Act relating to enrollment and dissemination of information and section 4360 of the OBRA 1990 relating to the health insurance counseling and assistance program in accordance with the specified requirements. (§ 417.472(h))
- The aggregate amount of fees for a fiscal year are the lesser of the estimated costs to be incurred by HCFA in that fiscal year to carry out the activities described in section 1851 of the Act and section 4360 of the OBRA 1990, or, if less, the amount set forth in the DHHS appropriation for the fiscal year. (§ 417.472(h)(1)).
- We establish a fee percentage rate and collect the fees over nine consecutive months beginning with January of the fiscal year or until the $95 million assessment limit has been reached. The aggregate amount of fees we are authorized to collect in FY 1998 is $95 million. We will begin collecting the BBA fees for fiscal year 1998 from eligible plans starting January 1, 1998. The three months from October thru December will be used by HCFA to make any necessary adjustments regarding the fees collected from plans in the previous assessment period.

The percentage BBA fee assessment for FY 1998 is .428 percent. This percentage rate is based on the total estimated Medicare payment amount to all eligible plans on January 1, 1998. The percentage amount is calculated by multiplying the projected total January payment amount by nine (months in the assessment period) and then dividing this figure into the total FY 1997 BBA fee assessment of $95 million. We estimate that we will pay all risk contracting plans $2,464,524,000 in January of 1998. We then multiplied $2,464,524,000 times nine (the projected assessment period) which equals $22,180,716,000. A $95 million total BBA fee represents .428 percent of the $22,180,716,000 figure. Accordingly, during the nine month assessment period we will deduct .428 percent of each eligible plan's total calculated monthly payment as its portion of the BBA fee. Adjustments for retroactive enrollments and disenrollments to our enrollment system subsequent to November are not considered or factored into the calculation for the fee determination. (§ 417.472(h)(2))

- An eligible organization with a risk contract's pro rata share of the annual fee is determined based upon the organization's monthly calculated Medicare payment amount during the preceding nine consecutive months beginning with January. We will calculate each monthly pro rata share for an eligible plan by multiplying the established BBA fee percentage by the total monthly calculated Medicare payment amount to plans as recorded in our payment system on the first day of the month. We recognize that retroactive changes to enrollment and disenrollment dates are normal business transactions and occur on a routine basis. However, we have determined that the overall dollar impact on plans of these enrollment and disenrollment changes do not represent a material amount to warrant an adjustment to the organization's pro rata share of the BBA fee assessment. (§ 417.472(h)(3))
- We will collect the fees by offset against the organization's monthly Medicare payment. Beginning with the January payment, we will withhold the organization's share of fees and deduct the amount from the total payment made to the organization for that month. (§ 417.472(h)(4))
- We will stop collecting the BBA fee from plans when the $95 million has been assessed. We will not collect more than the $95 million FY 1998 assessment from eligible plans.
- Should delays occur in determining the aggregate amount of fees for a fiscal year we may adjust the assessment time period and fee percentage amount if: (1) it becomes evident that the full aggregate amount of fees cannot be collected within the allotted assessment time period; or (2) for any other reason the assessment cannot be started in January. In addition, if the annual fee limit is reached in any month prior to the end of the assessment period, we will cease collecting fees. (§ 417.472(h)(5))

Medicare demonstrations with a section 1876 risk sharing contract will also be subject to the annual fee assessment.

IV. Regulatory Impact Statement

A. Background

We have examined the impact of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation would not have a significant economic impact on a substantial number of small entities. Most Medicare risk contracting plans are not considered to be small entities within the meaning of the RFA.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50

beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Balanced Budget Act of 1997 directs HCFA to collect the BBA fees from Medicare risk contracting plans, and from Medicare+Choice plans, in order to finance an annual informational campaign for Medicare beneficiaries. These collections begin in fiscal year 1998, and are limited, in the aggregate, to amounts stipulated in the BBA and determined by the Congress in appropriations legislation. This interim final rule discusses the regulatory alternatives that HCFA considered in establishing user fee charges to these organizations.

Although we view the anticipated results of this interim final regulation as beneficial to the Medicare program as well as to Medicare beneficiaries, we recognize that some of the provisions could be controversial and may be responded to unfavorably by some affected entities. We also recognize that not all of the potential effects of these provisions can be anticipated, and that it may be impossible to quantify meaningfully some of the potential effects, particularly the economic impact of the informational campaign on individual Medicare+Choice plans. It is clear that all existing Medicare risk contracting plans and future Medicare+Choice plans will be affected by these provisions to varying degrees. In selecting our regulatory options, we have attempted to identify a methodology that is consistent with the legislative intent of the BBA while being equitable to current Medicare risk contracting plans and new Medicare+Choice plans. For the aforementioned reasons, we have prepared the following voluntary analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards of analysis set forth by the RFA.

B. Anticipated Effects

1. Effects on the Medicare Trust Funds

The user fees outlined in this regulation to be collected by HCFA are established as a result of enactment of the BBA. We have determined that the estimated costs to be incurred in carrying out the activities described in section 1851 of the Act and section 4360 of the OBRA 1990 will exceed the limit contained in the FY 1998 appropriations bill. Therefore, the maximum amount to be collected by HCFA will be the amount authorized in the appropriation bill.

Under any regulatory approach to collect these user fees, we would collect the same aggregate amount of BBA fees. This is because we collect the lesser of the amount of estimated costs or the amount specified in appropriations legislation.

2. Effects on Risk-sharing Plans

Assessing BBA fees based on the payment plans receive from the Medicare program distributes the impact of these fees in direct proportion to the amount of money the plan is receiving from the Federal government. It should also be noted that Medicare risk contracting plans and Medicare+Choice plans will benefit from the Secretary's enrollment and information activities, which will be financed through the BBA fee assessment. Accordingly, we believe that assessing the BBA fees as a fixed percentage of total Medicare payments to plans is the most equitable approach.

3. Effects on Medicare Beneficiaries

Medicare beneficiaries are certain to benefit from the informational campaign financed by these user fee collections. They are not, however, directly affected by the regulatory approach to establishing BBA fee charges to risk contracting plans and are therefore not directly impacted by the provisions of this interim final rule.

C. Alternatives Considered

We considered several alternatives in assessing BBA fees on Medicare risk contracting plans and discussed them elsewhere in this preamble.

The first alternative was to simply equally divide the total annual user fee cost among all the eligible plans. With approximately 280 plans currently subject to the fees, this approach would mean for example, that in FY 1998, with a total assessment of $95 million, each of the eligible plans would be assessed more than $339,000. The regulatory impact of this alternative, which we rejected, results in a disproportionate financial burden on smaller plans.

As a second general approach, we evaluated assessing the BBA fees based on the number of beneficiaries enrolled in a particular plan. Specifically, under this approach a fixed per capita rate would be assessed on a per member month basis. Thus, a fixed dollar amount would be deducted from the capitation payment of each beneficiary enrolled in the plan. For example, given a constant enrollment level of 5 million beneficiaries, the assessment of a $95 million dollar BBA fee would result in a deduction of approximately $2.09 from the monthly capitation payment for each beneficiary enrolled in a risk contracting plan over a nine month assessment time frame. Collecting fees under this approach means that each plan's assessment is directly related to the number of beneficiaries enrolled in the plan. Thus, this approach can be considered equitable since it directly links the BBA fee assessment with the size of the plan. However, the method does not adjust for the wide geographic variation in the monthly capitation payment paid to plans, which ranges from approximately $367 per member month in the lowest payment areas up to a maximum of $782 per member month in the highest capitation payment area.

A third alternative which we considered and accepted was to assess the BBA fee through a fixed percentage deduction from the plan's aggregate monthly capitation payments.

A fourth alternative reviewed in assessing user fees is a combination of a flat annual fee with a variable component. That is, there would be a base fee assessment that each eligible plan would pay, plus an additional assessment based on a variable element such as plan enrollment or total plan payment. We rejected the regulatory approach of a base assessment with additional variable assessments as we have determined that a flat fee of more than a nominal amount (e.g., $15,000 in FY 1998) will result in a disproportionate impact on smaller plans.

As noted above we decided to impose fees based on a percentage of the total dollar amount of capitation payments a plan is receiving from the Medicare program. Collecting the BBA fees under this approach means that each plan's assessment will be directly related to the total dollars the plan is receiving from the Federal government. Thus, eligible plans which are receiving the largest payments (based on number of enrollees and monthly payment levels) from the Federal government will pay the largest share of the fees. Conversely, smaller plans will have an assessment directly related to their smaller size. We also found this approach met the criteria we had established for the selection of the BBA Fee assessment methodology. Specifically, we determined that an assessment based on percentage of plan payment is: consistent with the intent of the Medicare+Choice program in that it does not pose barriers to the participation of new plans and those with small enrollment levels; the approach is equitable for current Medicare risk contracting plans (large and small) and finally; the approach is simple for eligible plans and for HCFA to administer.

D. Conclusion

Since the number of plans over which the BBA fee collections will be spread is likely to continue to rise with increased participation in the Medicare+Choice program in future years, we believe the regulatory impact of any reasonable selected option for imposition of fees on Medicare risk contracting plans and ultimately Medicare+Choice plans will not be significant. In accordance with our stated objective of choosing the assessment methodology which best supports the goals of the Medicare+Choice program and is equitable to current risk contracting plans we have selected the option to impose fees based on total plan payment assessed on a monthly basis. Assessing fees based on the total Medicare dollars paid to plans over a nine month time frame will represent only a small percentage of any plan's total payment from the government. In subsequent fiscal years, BBA fees as a percentage of Medicare payments will likely represent an even smaller percentage of the Medicare payments as the number of eligible plans increase and the existing plans experience enrollment growth. In addition, it should also be noted that the information campaign (financed by the BBA fees) will be designed to reach all Medicare beneficiaries and it is likely that, to the extent that this encourages growth in the Medicare+Choice program, larger more experienced plans will be well positioned to take advantage of an expanding market. The economic impact of this regulatory option measured in terms of the BBA fees as a percentage of overall plan revenues from the Federal government is very small. The consequence of a fee assessment based on a percentage of total payment is a distribution of the BBA fee burden proportional to the size of the plan. We have concluded this is the most equitable approach for all eligible plans in assessing the BBA fees.

In accordance with the provisions of Executive Order 12866, this final regulation was reviewed by the Office of Management and Budget.

V. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive the notice-and-comment procedure with respect to this rule because it is impracticable to employ such a procedure in this instance, because it is unnecessary, and because the delay in promulgating this rule would be contrary to the public interest. Even if we did not find good cause for a waiver of prior notice and comment, section 1856(b)(1) of the Act expressly authorizes the Secretary to publish final rules without prior notice and comment implementing provisions in the new Part C of Title XVIII including the fees provided for in section 1857(e)(2) of the BBA.

Issuing a proposed rule with a comment period before issuing a final rule would be impracticable because it would allow for less time for HCFA to collect the full $95 million amount allowed by Congress in the appropriations bill for FY 1998. An abbreviated assessment period would increase the financial impact on those plans subject to the BBA fees in FY 1998.

For these reasons, we find good cause to waive publishing a proposed rule and to issue this final rule with comment period. We invite written comments on this final rule and will consider comments we receive by the date and time specified in the **DATES** section of this preamble. Although we cannot respond to comments individually, if we change this rule as a result of our consideration of timely comments, we will respond to such comments in the preamble of the amended rule.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and record keeping requirements.

42 CFR Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

2. In § 417.470, paragraph (a) is revised to read as follows:

§ 417.470 Basis and Scope.

(a) *Basis.* This subpart implements those portions of section 1857(e)(2) of the Act pertaining to cost sharing in enrollment-related costs and section 1876(c), (g), (h), and (i) of the Act that pertain to the contract between HCFA and an HMO or CMP for participation in the Medicare program.

* * * * *

3. Section 417.472 is amended by adding a new paragraph (h) to read as follows:

§ 417.472 Basic contract requirements.

* * * * *

(h) *Collection of fees from risk contracting plans.* HCFA is authorized to charge and directed to collect from each eligible organization with a risk-sharing contract its share of fees for administering section 1851 of the Act relating to enrollment and dissemination of information and section 4360 of the Omnibus Budget Reconciliation Act of 1990 relating to the health insurance counseling and assistance program in accordance with the requirements of paragraphs (h)(1) through (5) of this section.

(1) The aggregate amount of fees for a fiscal year are the lesser of the estimated costs to be incurred by HCFA in that fiscal year to carry out the activities described in section 1851 of the Act and section 4360 of the Omnibus Budget Reconciliation Act of 1990, or, if less, the amount set forth in the DHHS appropriation for the fiscal year.

(2) HCFA establishes a fee percentage rate and collects the fees over nine consecutive months beginning with January of the fiscal year. The percentage rate is determined by multiplying the total of the estimated January 1998 payments to all eligible plans by nine (months in the assessment period) and dividing this figure into the total fee assessment as determined in paragraph (h)(1) of this section. Adjustments for retroactive enrollments and disenrollments to HCFA's enrollment system subsequent to November are not considered or

factored into the calculation for the fee determination.

(3) An eligible organization with a risk contract's pro rata share of the annual fee is determined based upon the organization's monthly calculated Medicare payment amount during the preceding nine consecutive months beginning with January. HCFA calculates each monthly pro rata share for an organization by multiplying the established BBA fee percentage by the total monthly calculated Medicare payment amount to plans as recorded in HCFA's payment system on the first day of the month.

(4) HCFA offsets the fees against the organization's monthly Medicare payment. Beginning with the January payment, HCFA withholds the organization's share of fees and deducts the amount from the total payment made by HCFA to the organization for that month. HCFA will stop collecting the FY 1998 BBA fee from eligible plans when $95 million has been assessed.

(5) Should delays occur in determining the amount of fees specified in paragraph (h)(1) of this section or the fee percentage rate specified in paragraph (h)(2) HCFA may adjust the assessment time period and fee percentage amount.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 26, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: November 26, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–31710 Filed 12–1–97; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–195; RM–8967]

Radio Broadcasting Services; Geneseo, IL and DeWitt, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Connoisseur Communications of Quad Cities, L.P., substitutes Channel 285C3 for Channel 285A at Geneseo, Illinois, reallots Channel 285C3 from Geneseo to DeWitt, Iowa, and modifies Station WGEN–FM's license accordingly. *See* 61 FR 51075, September 30, 1996. Channel 285C3 can be reallotted to DeWitt in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) southeast to avoid short-spacings to the licensed sites of Station WXRX(FM), Channel 285A, Belvidere, Illinois, and Station WXCL(FM), Channel 285A, Pekin, Illinois, at petitioner's requested site. The coordinates for Channel 285C3 at DeWitt are North Latitude 41–42–50 and West Longitude 90–27–20. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–195, adopted November 12, 1997, and released November 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 285A at Geneseo.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding DeWitt, Channel 285C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–31512 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–243; RM–8925]

Radio Broadcasting Services; Chugwater, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 258A at Chugwater, Wyoming, as the community's first local aural transmission service. *See* 61 FR 65509, December 13, 1996. Channel 258A can be allotted to Chugwater in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 258A at Chugwater are North Latitude 41–45–36 and West Longitude 104–49–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 5, 1998. A filing window for Channel 258A at Chugwater, Wyoming, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–243, adopted November 5, 1997, and released November 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Chugwater, Channel 258A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–31511 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA Docket No. RAR–5, Notice No. 1]

RIN 2130–AB21

Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule increases from $6,500 to $6,600 the monetary threshold for reporting railroad accidents/incidents involving railroad property damage that occur on or after January 1, 1998. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts. The reporting threshold was last changed in 1996.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 25, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3386); or Nancy L. Goldman, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION:

Background

Rail equipment accidents/incidents are collisions, derailments, explosions, fires, acts of God, and other events (including grade crossing accidents) involving the operation of standing or moving on-track equipment that results in damages higher than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. 49 CFR 225.19 (b), (c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). *Id.*

As revised in 1996, paragraphs (c) and (e) of § 225.19 of title 49, Code of Federal Regulations, provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted every year in accordance with the procedures outlined in appendix B to part 225, to reflect cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

New Reporting Threshold

One year has passed since the accident/incident reporting threshold was last revised. 61 FR 60632 (Nov. 29, 1996). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and decreased costs for material. FRA has determined that the current reporting threshold of $6,500, which applies to rail equipment accidents/incidents that occur during calendar year 1997, should be increased to $6,600, effective January 1, 1998, and §§ 225.5 and 225.19 are being amended accordingly. Appendix B has also been amended to reflect the most recent cost figures and the calculations made to determine the new threshold for calendar year 1998. Finally, the alcohol and drug regulations (49 CFR part 219) are amended throughout to reflect that the reporting threshold for calendar year 1998 is $6,600.

Notice and Comment Procedures

In this rule, FRA merely adjusts the reporting threshold based on the formula adopted, after notice and comment, in the final rule published June 18, 1996, 61 FR 30959, 30969, and discussed in detail in the final rule published November 29, 1996, 61 FR 30632. FRA further finds that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA further finds that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA concludes that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered "nonsignificant" under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will have no new significant direct or indirect economic impact on small units of government, business, or other organizations. To the extent that this rule has any impact on small units, the impact will be positive because the rule is decreasing, rather increasing, their reporting burden.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This final rule will not have any identifiable environmental impact.

Federalism Implications

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

The Final Rule

In consideration of the foregoing, FRA amends parts 219 and 225, Title 49, Code of Federal Regulations as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; and 49 CFR 1.49(m).

2. By amending § 219.5 by revising the first sentence in the definition of *Impact accident* and by revising the definitions of *Reporting Threshold* and *Train accident* to read as follows:

§ 219.5 Definitions.

* * * * *

Impact accident means a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. * * *

* * * * *

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter. The reporting threshold for calendar years 1991 through 1996 is $6,300. The reporting threshold for calendar year 1997 is $6,500. The reporting threshold for calendar year 1998 is $6,600.

* * * * *

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a "rail equipment accident" involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998), including an accident involving a switching movement.

* * * * *

3. By amending § 219.201 by revising the introductory text of paragraphs (a)(1) and (a)(2), and by revising paragraph (a)(4) to read as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) *Major train accident.* Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) that involves one or more of the following:

* * * * *

(2) *Impact accident.* An impact accident (*i.e.*, a rail equipment accident defined as an "impact accident" in § 219.5 of this part that involves damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) resulting in—

* * * * *

(4) *Passenger train accident.* Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) involving a passenger train.

* * * * *

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49(c), (g), and (m).

2. By amending § 225.19(c) by removing the phrase "and $6,500 for calendar year 1997)" and by adding in its place ", $6,500 for calendar year 1997, and $6,600 for calendar year 1998)".

3. By revising § 225.19(e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(e) The reporting threshold is $6,300 for calendar years 1991 through 1996. The reporting threshold is $6,500 for calendar year 1997; this threshold dollar amount will remain in effect until December 31, 1997. For calendar year 1998 the reporting threshold is $6,600. The procedure for determining the reporting threshold for calendar year 1998 appears as appendix B to part 225.

4. Part 225 is amended by revising appendix B to read as follows:

Appendix—B to Part 225—Procedure for Determining Reporting Threshold

1. Data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series Reports are used in the calculation. The equation used to adjust the reporting threshold uses the average hourly earnings reported for Class I railroads and Amtrak and an overall railroad equipment cost index determined by the BLS. The two factors are weighted equally.

2. For the wage component, LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, final data covering the 12-month period ending with the month of June are obtained from BLS. The 12 monthly figures are totaled and divided by 12 to produce monthly averages to be used in computing the projected annual (12-month) average for the next calendar year.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest $100.

7. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5 \frac{(Wn - Wp)}{Wp} + 0.5 \frac{(En - Ep)}{100} \right\}$$

Where:

Prior Threshold = $6,500 (for rail equipment accidents/incidents that occur during calendar year 1997)

Wn = New average hourly wage rate ($) = 17.990833

Wp = Prior average hourly wage rate ($) = 17.55500

En = New equipment average PPI value = 135.91666

Ep = Prior equipment average PPI value = 136.78667

9. The result of these calculations is $8,553. Since the result is rounded to the nearest $100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 1998 is $6,600.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–31455 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 112597A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast sub-zone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

DATES: Effective 12:01 a.m., local time, November 28, 1997, through June 30, 1998, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast sub-zone of 865,000 pounds (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear.

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone has been reached. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, November 28, 1997.

The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

Classification

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31582 Filed 11–26–97; 3:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 231
Tuesday, December 2, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF16

1998-Crop Peanut National Poundage Quota, 1998-Crop Additional Peanuts National Average Support Level and Minimum Commodity Credit Corporation (CCC) Export Edible Sales Price for the 1998 and Subsequent Crops of Additional Peanuts

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, (the 1938 Act) as amended, requires that the national peanut poundage quota for the 1998 crop be announced by December 15, 1997. The Agricultural Act of 1949, (the 1949 Act), as amended, requires that the additional support level be announced not later than February 15, 1998. The minimum CCC export edible sales price for additional peanuts is usually announced at the same time as the price support level. This proposed rule suggests a national poundage quota figure in the range between 1,133,000 short tons (st) and 1,175,000 st, proposes that the national average additional price support level for the 1998 crop peanuts be set between $132 per st and $175 per st, and that the minimum CCC sales price for 1998 and subsequent crops of additional peanuts for export edible use be set between $350 to $400 per st or by formula.

DATES: Comments must be received by December 9, 1997, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays, in Room 5750-South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases —10.051.

Executive Order 12998

This rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1998-crop peanut national poundage quota, and 7 CFR part 1446 to set forth the 1998-crop national average support level for additional peanuts and the minimum CCC sales price for 1998 crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358–1(a)(1) of the 1938 Act, as amended by the Federal Agricultural Improvement and Reform Act of 1996 (1996 Act), requires that the Secretary set a basic national quota for peanuts for each of the 1996 through 2002 marketing years (MY) at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) of the 1938 Act provides that a temporary allocation of quota pounds for the MY only in which the crop is planted shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. The MY for 1998-crop peanuts will be from August 1, 1998 through July 31, 1999. Producers will vote in a referendum on December 1-4, 1997 to determine whether they approve marketing quotas for MY 1998 to MY 2002.

The national poundage quota for MY 1997 was set at 1,133,000 st. This rule proposes that the national poundage quota for MY 1998 be set between 1,133,000 st and 1,175,000 st based on the following data:

	Short tons	
	97.8% production	94.3% production
Domestic Edible Use:		
Domestic food	933,000	933,000
On farm and local sales	9,000	9,000
Related Uses:		
Crushing residual	123,000	123,000
Shrinkage and other losses	37,500	37,500
Transfer to quota	5,000	5,000
Subtotal	1,107,500	1,107,500
Allowance for underproduction	25,500	67,500
Totals	1,133,000	1,175,000

The estimate of 1998 domestic food use was developed in two steps. First, total domestic edible utilization of 1,088,000 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 155,000 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e)(1) of the 1938 Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent of ICEC's MY 1998 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspections data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, which is excluded from quota determinations under amendments to the 1938 Act made by the 1996 Act.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given lot of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1998 domestic edible use production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic edible use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 359a(d)(2)(B)(iv) of the 1938 Act and is believed to be a fair estimate of such shrinkage for purposes of this determination, taking into account all factors.

Segregation 2 and 3 loan transfers to quota loan represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas, yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support loans at a discounted quota loan rate.

In addition, an allowance has been made for underproduction. Under past legislation, only 92 percent of the quota had been marketed. Prior to the 1996 crop, at the national level, any unmarketed pounds up to 10 percent of the national marketing quota could be added to the farms basic quota for that crop year. Under the 1996 Act any quota pounds not marketed cannot be carried forward and would be a loss of potential income for producers, therefore, it is expected that somewhat more than 92 percent of the quota will be marketed in MY 1998. In MY 1996 about 97.3 percent was marketed and in MY 1997 about 97.5 percent of quota is expected to be marketed. It is anticipated that about 94 to 98 percent of the MY 1998 quota will be marketed.

The lowest proposed 1998 quota level, as set forth above, reflects expected growth in domestic consumption of peanut products through government purchases, new uses and a small increase in demand resulting from lower peanut support prices in recent years. This level essentially reflects the assumption that about 97.8 percent of the quota will be marketed and adds increased demand for edible peanuts. The higher range proposal takes into account the possibility that marketings of quota could fall as low as the 94.3 percent level. This range appears to be a fair estimate of possible market conditions.

Disappearance of peanuts into primary products has been relatively flat over the last year. Overall demand, including imports, is projected to increase about 1.5 percent. However, government support purchases in MY 1996 have increased about 45 percent from 22,750 st farmer stock (fs) in MY 1995 to 32,200 st (fs) in MY 1996.

A significantly larger quota option than those presented would lower the price received by growers from first buyers and could reduce costs to consumers for peanut products slightly. However, it is assumed that a substantial increase in quota would be needed to lower the average grower price to a level near the average national support price. A quota in the neighborhood of 1,500,000 tons would likely result in sufficient quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than $610 per ton.

This option only becomes viable if one assumes greater responsiveness in demand to additional supplies. One must assume a significant growth in demand because of a lower price to justify this option.

The cost of overestimating demand would be high. Assuming the demand for greater supplies of peanuts is slight, this level of quota could result in a surplus and a loss on loan placements for more than 300,000 tons of peanuts. These peanut losses would be around $400 a ton. Losses of up to $120 million would occur and result in producer assessments of over $100 per ton the following year. This level of assessment would lower the effective price received by producers for quota peanuts in MY 1999 to $500 per ton or less.

Buybacks worked well in MY 1996. Buyback is a term used to describe a marketing transaction in which a producer places additional peanuts under price support loan at the additional loan rate and a handler simultaneously purchases the same peanuts at the quota support level from the marketing associations for domestic edible use. To bolster stocks in MY 1996, the peanut industry bought back over 100,000 tons of additional peanuts. In MY 1997, it is anticipated that the peanut industry will again use the buyback provisions to purchase about 100,000 tons in order to continue building stocks. Depending on stock levels at the beginning of MY 1998, the peanut industry may again use buybacks to build stocks.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1997 price support level for additional peanuts was announced at $132 per st on February 14, 1997. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, was set at $610 per st by the 1996 Act and is codified at 7 CFR section 1446.103. Regulations pertaining to price support loan levels for additional peanuts are found in 7 CFR section 1446.310.

The range for the MY 1998 price support level for additional peanuts is recommended to be within the range of $132 per st and $175 per st. Additional loan peanuts are sold out of inventory in order to recoup the price support loan principal, interest and related costs. In the proposed price range, if the edible peanut market deteriorated to a point that the entire loan inventory was sold as oil stock, anticipated revenues should be adequate to ensure no losses to CCC from the sale or disposal of

additional peanuts. The statutory factors have been analyzed as set out below:

1. The domestic use of peanut oil during MY 1998 is forecast to be 105,000 st, up 2,500 st from MY 1997 projected domestic use. MY 1998 peanut oil beginning stocks are expected to be 35,000 st, down about 19 percent from MY 1997. The MY 1998 average peanut oil price is expected to be $0.395 per pound, down $0.018 per pound from MY 1997.

2. The domestic use of peanut meal during MY 1998 is forecast to be 150,000 st, unchanged from MY 1997 projected domestic use. MY 1998 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1997. The MY 1998 average peanut meal price is expected to be.$152.50 per st, down $12.50 per st from MY 1997.

3. The domestic disappearance of soybean oil during MY 1998 is forecast to be 7,262,500 st, up 1.6 percent from projected MY 1997 domestic disappearance. MY 1998 soybean oil beginning stocks are expected to be 890,000 st, up 11.3 percent from MY 1997. The MY 1998 average soybean oil price is expected to be $0.230 per pound, down $0.003 per pound from MY 1997.

4. The domestic disappearance of cottonseed oil during MY 1998 is forecast to be 515,000 st, unchanged from projected MY 1997 domestic disappearance. MY 1998 cottonseed oil beginning stocks are expected to be 42,500 st, up 1.2 percent from MY 1997. The MY 1998 average cottonseed oil price is expected to be $0.250 per pound, down $0.01 per pound from MY 1997.

5. The domestic disappearance of soybean meal during MY 1998 is forecast to be 29,000,000 st, up 3.6 percent from projected MY 1997 domestic disappearance. MY 1998 soybean meal beginning stocks are expected to be 250,000 st, up 25 percent from MY 1997. The MY 1998 average soybean meal price is expected to be $187.50 per st, down $20.00 per st from MY 1997.

6. The domestic disappearance of cottonseed meal during MY 1998 is forecast to be 1,635,000 st, down 0.3 percent from projected MY 1997 domestic disappearance. MY 1998 cottonseed meal beginning stocks are expected to be 52,000 st, down 16.1 percent from MY 1997. The MY 1998 average cottonseed meal price is expected to be $140.00 per st, down $15.00 per st from MY 1997.

7. The world use of peanuts for MY 1997 is expected to be 13.05 million metric tons, down 10.4 percent from MY 1996. World peanut production for MY 1997 is forecast to be 24.58 million metric tons, down 7.8 percent from MY 1996. Ending stocks for MY 1997 are forecast at 0.51 million metric tons, up 4.5 percent from 1996.

MY 1997 begins with record oil stocks and large imports of oil during MY 1996. Yet, peanut oil prices are projected to be 41.3 cents per pound. Based on the supply use situation at the beginning of MY 1997 and projections for MY 1998, there are conflicting signals in the supply price relationship in the peanut oil market that suggest caution in setting the additional peanut support level. Also, based on the 1996/97 and 1997/98 marketing seasons, producers are expected to place about 10,000 st of quota peanuts and 140,000 st of additional peanuts under price support loan.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is expected to be announced on or before February 15, 1998, the same time that the additional peanut support level for the 1998 crop is announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts.

This proposed rule follows the publication of an advance notice of proposed rule making of August 18, 1997 published in the **Federal Register** (62 FR 43955) soliciting comments relative to the method for determining the minimum export edible sales price for additional peanuts and relative to what that price should be. Ten comments were received relative to the method for determining the minimum export edible sales price for additional peanuts and relative to what the price should be. Seven of the comments were from organizations representing producers. The seven producer organizations commenting favored maintaining the $400 per st minimum price. Three comments were from organizations representing shellers. The three sheller organizations commenting favored reducing the minimum export edible sales price or establishing it by formula.

Grower groups which favored setting the minimum export edible sales price at $400 per st in 1998, argued (1) a fixed price for the CCC export edible sales price has worked well for 12 consecutive years, (2) a lower CCC export edible sales price would result in lower grower revenues, (3) the decision of when and at what price to contract is complex and a formula could create even more uncertainty and (4) a lack of a publicly available data series creates problems and concerns for using a formula.

Sheller groups, which favored either a formula or a reduced minimum sales price argued that new pricing would: (1) Increase U.S. competitiveness in world edible peanut markets and (2) increase U.S. flexibility in marketing peanuts. One such proposal would base the minimum export sales price at 10 percent above the current oil value of peanuts and adjust the price monthly. Another sheller group recommended setting the minimum export edible sales price at between $350 and $375 per st in 1998 and that the price be reset annually to account for volatility in export edible peanut markets.

It is proposed that the minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established within the range of $350 to $400 per st or be set by formula. The objective of the level set or method used is to encourage exports while providing price stability for additional peanuts sold under contract. It should assure handlers that CCC will not undercut their export-contracting efforts with offerings of additional peanuts for export edible sale below the contract price of the contract additional peanuts.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, it is proposed that 7 CFR parts 729 and 1446 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 is amended by revising paragraph (c) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota (excluding seed) for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota (excluding seed) for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota (excluding seed) for quota peanuts for marketing year 1998 will be set between 1,133,000 and 1,175,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

4. Section 1446.310 is amended by adding a new paragraph (c) to read as follows:

§ 1446.310 Additional peanut support levels.

* * * * *

(c) The national support rate for additional peanuts for the 1998 crop will be at a level which shall be between $132 per short ton and $175 per short ton.

5. Section 1446.311 is amended by adding new paragraph (c) to read as follows:

§ 1446.311 Minimum CCC sales price for certain peanuts.

* * * * *

(c) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1998 and subsequent crops will be between $350 and $400 per short ton or set by formula as announced by the Director of the Tobacco and Peanuts Division, FSA.

Signed at Washington, DC, on November 26, 1997.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–31573 Filed 11–26–97; 3:08 pm]

BILLING CODE 3410–05–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Regulations No. 22]

RIN 0960–AE35

Permit the Department of State (DOS) and the Immigration and Naturalization Service (INS) to Collect Information Needed to Assign Social Security Numbers (SSNs) to Aliens

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rule.

SUMMARY: We are proposing to provide a description of how DOS and INS will provide the SSA with information, collected as part of the immigration process, to enable SSA to assign SSNs and issue SSN cards to lawfully admitted aliens. We also propose: to amend the rule on the presumption of authority of a nonimmigrant alien to accept employment to include circumstances where a Form I–94, "Arrival-Departure Record," has not been issued by INS; to remove outdated rules on school and alien legalization enumeration; to remove outdated rules on the application for a nonwork SSN; and to specifically acknowledge the requirement to complete a Form SS–5, "Application For A Social Security Card," to obtain a duplicate SSN card.

DATES: To be sure that your comments are considered, we must receive them no later than February 2, 1998.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to "regulations@ssa.gov", or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–0001, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules.

SUPPLEMENTARY INFORMATION:

Background

Currently, SSA assigns an SSN to an alien when the individual submits to an SSA field office a completed Form SS–5 and documentary evidence of age, identity, and lawful admission for permanent residence or other authority of law permitting work in the United States (U.S.). Any applicant age 18 and older applying for an original SSN must appear for an in-person interview at any SSA field office.

The second phase of the National Performance Review (NPR), the Federal Reinventing Government effort, was announced by the President and Vice President on December 19, 1994. It was designed to focus attention on what each agency does, examining its mission and looking at its programs and functions to see if there are ways to provide better service to the public and, at the same time, do business in a more cost-effective manner, i.e., "make government work better and cost less." Each agency was asked to assemble a team to review its own programs and functions.

SSA's team worked closely with a team of representatives from the NPR and the Office of Management and Budget (OMB) to develop proposals for consideration. One of these proposals was for INS to assist SSA in enumerating aliens. On April 11, 1995, the President formally approved SSA's reinvention proposals and officially announced them the next day. When we began developing this proposal with INS, we found that we needed to include DOS to take into consideration those aliens who enter the U.S. via foreign service posts.

Proposed Changes

These proposed rules describe the process by which elements of DOS and INS would collect and then forward enumeration information to SSA. Based on agreements among the three agencies (SSA, DOS, and INS), DOS and INS will collect this information, and INS will electronically transmit the information to SSA. DOS and INS will modify their forms to collect this information, and INS will retain the forms, which will be made available to SSA when necessary.

Assigning SSNs to aliens when they enter the U.S., based on information collected by DOS and INS as part of the immigration process, would improve the integrity of the SSN process. There is widespread counterfeiting of INS documents, and SSA employees must be familiar with a variety of INS documents and determine if those presented are valid. By having INS transmit enumeration information directly to SSA, the potential for SSA employees to inadvertently accept inappropriate and/or counterfeit documents will be reduced.

This initiative also supports SSA's goal of providing world class service to customers by making the means of dealing with SSA as easy and convenient as possible by providing options for service delivery. Aliens who currently must first contact INS and subsequently contact SSA would be able to accomplish both transactions in a single contact.

Further, the proposed changes would provide for increased overall Federal government efficiency. The new process would reduce the overall cost to the government of administering the enumeration process for aliens because it would eliminate duplicate work done by DOS, INS and SSA.

Because the involvement of the DOS and INS would improve the integrity of the SSN process for aliens, SSA is eliminating the mandatory in-person interview for aliens age 18 and older for whom INS forwards enumeration information to SSA. SSA will continue to interview aliens who apply for SSNs at SSA offices. This supports a 1995 recommendation from the Office of the Inspector General concerning transferring to INS and DOS the FO interview workload for noncitizens applying for an original SSN.

As part of the INS alien legalization program required under the Immigration Reform and Control Act of 1986, INS accepted applications and evidence for SSNs from legalization applicants and forwarded the applications to SSA for assignment of SSNs. Once the legalization program ended on September 30, 1991, INS notified SSA that it was discontinuing the agreement and has since referred all aliens to SSA field offices to apply for SSN cards. These proposed rules eliminate references in the regulations to procedures which are no longer in effect.

The Tax Reform Act of 1986 required taxpayers to show the Taxpayer Identification Number (TIN) for any dependent age 5 and older listed on tax returns due on or after January 1, 1988. In general, SSNs serve as TINs. In an effort to lessen the burden on SSA field offices, SSA offices initiated school enumeration projects. Subsequent legislation required TINs for all dependents claimed on tax returns, regardless of age, so that most children have been assigned SSNs long before reaching school age and school enumeration projects are no longer practical. These proposed rules eliminate the reference to SSA entering into agreements with school authorities.

Currently, an alien lawfully in the United States without employment authorization, who wants to obtain an SSN, must provide evidence documenting a valid nonwork reason for needing an SSN, e.g., to receive a Federally-funded benefit or enlist in the uniformed services. Another reason, currently shown in our rules, is the Internal Revenue Service (IRS) requirement relating to the use of SSNs for tax purposes.

However, on July 1, 1996, IRS began assigning Individual Taxpayer Identification Numbers (ITINS) to aliens who are otherwise not eligible for SSNs but who need TINs for tax purposes. Therefore, needing an SSN for IRS reporting tax purposes is no longer a valid nonwork reason for SSA to assign an SSN, and we propose to eliminate such references.

We also propose to amend our regulations on presumption of authority of a nonimmigrant alien to accept employment. As currently written, the regulations do not address the authority of a nonimmigrant alien to accept employment if INS has not issued the alien a Form I–94, which is generally issued by INS to a nonimmigrant alien upon arrival in the United States. Under certain circumstances, INS may grant employment authorization to an alien who has not been issued a Form I–94, e.g., an alien whose lawful alien status is pending, so that the individual may work during the period the application for lawful alien status is pending. The proposed rules clarify that a nonimmigrant alien who has not been issued a Form I–94, which reflects a classification permitting work, must present a current employment authorization document (EAD) or other document authorized by INS which permits the alien to work. Such authority must be established before an SSN card which is valid for work purposes can be issued.

Additionally, we propose to specifically acknowledge the requirement to complete a Form SS–5 to obtain a duplicate SSN card. Although the completion of this form has been a longstanding requirement, our current rules do not specifically refer to it, as they do so in the sections in this subpart relating to applying for an original SSN (see § 422.103) or a corrected SSN card (see § 422.110).

Explanation of Revisions

We propose changes to §§ 422.103, 422.107 and 422.110 to implement the initiative for DOS and INS to collect information to assign SSNs to aliens and a change to paragraph § 422.103(e) to provide a specific rule on the requirement to complete a Form SS–5 in the case of applying for a duplicate SSN card.

We propose changes to §§ 422.104(b) and 422.107(a) to eliminate the references to IRS tax purposes as a valid nonwork reason for SSA to assign an SSN and to § 422.105 to address the authority of a nonimmigrant alien to accept employment if INS has not issued the alien a Form I–94.

Additionally, we propose to eliminate references in § 422.106 to procedures concerning legalization applicants and SSA agreements with school authorities which are no longer in effect and to amend § 422.107 to eliminate the interview requirement for aliens for whom INS forwards enumeration data to SSA.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the OMB and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, we have prepared an assessment of the potential costs and benefits of this regulatory action.

Currently, SSA employees review evidence and process applications for all aliens who are issued SSN cards. INS estimates 1.8 million work-authorized aliens enter the United States yearly. SSA processes about 2 million enumeration actions for aliens annually. In fiscal year 1996, SSA issued 1 million original SSN cards to work-authorized aliens and 774,000 replacement cards to work-authorized aliens. In addition, SSA issued 325,000 original and 40,000 replacement SSN cards to aliens without work authorization. We estimate that the current process costs SSA about 385 workyears in the field for this workload.

Having DOS and INS collect enumeration information for aliens and having INS electronically transmit that information to SSA will provide overall government savings. Aliens who currently first contact DOS (at the foreign service post), INS (at the port-of-entry), and subsequently contact SSA (at an SSA field office) for an SSN card now will be able to apply for an SSN card via their contacts with DOS and/or INS. This proposed process will also improve the integrity of the enumeration process and reduce the potential for assigning an SSN based on a fraudulent INS document.

DOS and INS already collect, as part of the immigration process, some of the information that SSA needs to assign an SSN. This proposed process will eliminate duplicate collection of information by SSA of the data elements already collected by DOS and/or INS for immigration purposes and provide for better overall government efficiency. DOS and INS will collect the information needed to assign an SSN on a immigration form, adding questions to collect the information that SSA needs to assign an SSN, but which is not collected for immigration purposes. These agencies will archive the immigration form which documents the alien's request for an SSN and retrieve it upon SSA's request.

INS will be reimbursed for the time spent collecting data not needed for immigration purposes. With the proposed changes, INS has previously estimated that its costs will be about $6 million per year, and SSA would agree to reimburse INS for its costs. DOS has indicated that it will not ask for reimbursement.

SSA's annual cost for original and replacement SSN cards for those aliens for whom DOS and INS will collect SSN information would be about $12 million or 232 workyears. This leaves a net savings to SSA of about $6 million per year if the INS estimate is accurate. The estimated savings are based on the difference between the current SSA interviewing and information collection costs and the expected INS costs for those aliens who would be subject to the processes described by the agreements among SSA, DOS, and INS.

Initially, INS and DOS will be able to collect information for SSA to enumerate about 60 percent of all lawfully admitted aliens who need SSNs. INS estimates that it will be at least several years before it will be able to collect that information for the other 40 percent.

We considered outstationing SSA employees at INS offices. In some regions, SSA field offices, working with local INS offices, have implemented this arrangement as an interim measure until INS is able to electronically provide enumeration data centrally to SSA. Outstationing is not a viable alternative to the proposed procedures since it does not result in savings to SSA and since it cannot reach aliens at all ports-of-entry.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and Federal agencies. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

SSA is imposing no additional reporting or record keeping requirements subject to OMB clearance in these proposed rules.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social security.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart B of 20 CFR 422 is proposed to be amended as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

2. Section 422.103 is amended by adding paragraphs (b)(3) and (c)(3) and revising paragraph (e) to read as follows:

§ 422.103 Social security numbers.

* * * * *

(b) * * *

(3) *Immigration form.* SSA may enter into an agreement with the Department of State (DOS) and the Immigration and Naturalization Service (INS) to assist SSA by collecting enumeration data as part of the immigration process. Where an agreement is in effect, an alien need not complete a Form SS–5 with SSA and may request, through DOS or INS, as part of the immigration process, that SSA assign a social security number and issue a social security number card to him/her. Requests for SSNs to be assigned via this process will be made on forms provided by DOS and INS.

(c) * * *

(3) *Request on immigration document.* Where an alien has requested a social security number as part of the immigration process described in paragraph (b)(3) of this section, INS will electronically transmit to SSA's central office in Baltimore, MD, the data elements collected for immigration purposes, by both INS and DOS, that SSA needs to enumerate the alien along with other data elements as agreed upon by SSA and DOS or INS. The data elements received by SSA will be used to establish the age, identity, and lawful alien status or authority to work of the alien. Using this data, SSA will assign a social security number to the alien and send the social security number card to him/her at the address the alien provides to DOS or INS.

* * * * *

(e) *Replacement of social security number card.* In the case of a lost or damaged social security number card, a duplicate card bearing the same name and number may be issued. In the case of a need to change the name on the card, a corrected card bearing the same number and the new name may be issued. In both cases, a Form SS–5 must be completed. A Form SS–5 can be obtained from any Social Security office or from one of the sources noted in paragraph (b) of this section. For evidence requirements, see § 422.107.

3. Section 422.104 is amended by revising paragraph (a)(3) and paragraph (b) to read as follows:

§ 422.104 To whom social security numbers are assigned.

(a) * * *

(3) An alien who is legally in the United States but not under authority of law permitting him or her to engage in employment, but only for a valid nonwork purpose. (See § 422.107.)

(b) *Persons without evidence of alien status.* A social security number may be assigned for a nonwork purpose to an alien who cannot provide the evidence of alien status as required by § 422.107(e), if the evidence described in that paragraph does not exist and if the alien resides either in or outside the United States and a social security number is required by law as a condition of the alien's receiving a federally-funded benefit to which the alien has established entitlement.

* * * * *

4. Section 422.105 is revised to read as follows:

§ 422.105 Presumption of authority of nonimmigrant alien to accept employment.

A nonimmigrant alien shall be presumed to have permission to engage in employment if the alien presents a

Form I–94 issued by the Immigration and Naturalization Service (INS) that reflects a classification permitting work. (See 8 CFR 274a.12 for Form I–94 classifications.) A nonimmigrant alien who has not been issued a Form I–94, or whose Form I–94 does not reflect a classification permitting work, must submit a current document authorized by the INS that verifies authorization to work has been granted, e.g., an employment authorization document, to enable SSA to issue an SSN card that is valid for work purposes.

5. Section 422.106 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and by revising paragraph (a) to read as follows:

§ 422.106 Filing applications with other government agencies.

(a) *Agreements.* In carrying out its responsibilities to assign social security numbers, SSA enters into agreements with the United States Attorney General, other Federal officials, and State and local welfare agencies. An example of these agreements is discussed in paragraph (b) of this section.

* * * * *

6. Section 422.107 is amended by revising paragraph (a) and the seventh sentence of paragraph (e) to read as follows:

§ 422.107 Evidence requirements.

(a) *General.* An applicant for an original social security number card must submit documentary evidence which the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a duplicate or corrected social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original, duplicate, or corrected social security number card is also required to submit evidence to assist us in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met. An in-person interview is required of an applicant who is age 18 or older applying for an original social security number except for an alien who requests a social security number as part of the immigration process as described in § 422.103(b)(3). An in-person interview may also be required of other applicants. All documents submitted as evidence must be originals or certified copies of the original documents and are subject to verification with the custodians of the original records.

* * * * *

(e) *Evidence of alien status.* * * * If the applicant requests the number for a nonwork purpose and provides evidence documenting that the number is needed for a valid nonwork purpose, the number may be assigned and the card issued will be annotated with a nonwork legend. * * *

* * * * *

7. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

(a) *Form SS–5.* An individual who wishes to change the name or other personal identifying information previously submitted in connection with an application for a social security number card may complete and sign a Form SS–5 except as provided in paragraph (b) of this section. The person must prove his/her identity and may be required to provide other evidence. (See § 422.107 for evidence requirements.) A Form SS–5 may be obtained from any local social security office or from one of the sources noted in § 422.103(b). The completed request for change in records may be submitted to any SSA office, or, if the individual is outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. foreign service post or U.S. military post. If the request is for a change in name, a new social security number card with the new name and bearing the same number previously assigned will be issued to the person making the request.

(b) *Assisting in enumeration.* SSA may enter into an agreement with officials of the Department of State and the Immigration and Naturalization Service to assist SSA by collecting as part of the immigration process information to change the name or other personal identifying information previously submitted in connection with an application or request for a social security number card. If the request is for a change in name, a new social security card with the new name and bearing the same number previously assigned will be issued.

[FR Doc. 97–31459 Filed 12–1–97; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[OH–242–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio permanent regulatory program (hereinafter referred to as the "Ohio program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to the provisions of the Ohio rules pertaining to attorney fees. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [e.s.t.] December 17, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15520, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square, Columbus, OH 43224, Telephone: (614) 265–1076

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated June 24, 1997 (Administrative Record No. OH–2173–00), Ohio submitted a proposed amendment to its program pursuant to SMCRA and in response to a required amendment at 30 CFR 935.16. Ohio submitted letters of clarification on August 19, 1997 (Administrative Record No. OH–2173–07), and October 14, 1977 (Administrative Record No. OH–2173–08). The proposed amendment was announced in the July 7, 1997, **Federal Register** (62 FR 36248). The revision to Ohio Revised Code 1513.13(E)(2) was inadvertently omitted from the notice. Ohio proposes to require that if a final order relating to Chapter 1513 is issued under section 1513.13 and becomes the subject of judicial review, at the request of any party, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the court to have been necessary and reasonably incurred by the party for or in connection with their participation in the judicial proceedings may be awarded to either party, in accordance with (E)(1) of section 1513.13 as the court, on the basis of judicial review, considers proper.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revision to the State's regulations that was submitted on June 24, 1997 (Administrative Record No. OH–2173–00), with the addition noted above. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determination

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1997.

John A. Hollbrook, II,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–31578 Filed 12–1–97; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–018–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information for Montana's proposed rules pertain to permit requirements and a notice of intent to prospect. The amendment is intended to revise the Montana program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 17, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, WY, 82601–1918, Telephone: (307) 261–5776.

Steve Welch, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT, 59620–0091, Telephone: (406) 444–4964.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

II. Proposed Amendment

By letter dated March 5, 1996, Montana submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–15–01). Montana submitted the proposed amendment at its own initiative. The provisions of the Administrative Rules of Montana that Montana proposed to revise were: 26.4.410, permit renewal; 26.4.1001, permit requirement; and 26.4.1001A, notice of intent to prospect.

OSM announced receipt of the proposed amendment in the April 10, 1996, **Federal Register** (61 FR 15910), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–15–04). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 10, 1996.

During its review of the amendment, OSM identified concerns relating to the requirements for prospecting permits and notices of intent to prospect at 26.4.1001(1)(a) and 26.4.1001A(1) and (1)(b)(ii). OSM notified Montana of the concerns by letter dated December 6, 1996 (Administrative Record No. MT–15–09). Montana responded in a letter dated November 6, 1997, by submitting additional explanatory information (Administrative Record No. MT–15–12).

Specifically, Montana has submitted a proposed statute revision contained in another rulemaking (SPATS No. MT–017–FOR; Administrative Record No. MT–14–11) to address OSM's concerns with permit requirements and a notice of intent to prospect. Instead of revising the proposed rules, Montana explains that proposed changes to the statute at Montana Code Annotated (MCA) 82–4–226(8) to require a permit for prospecting when more than 250 tons of coal would be removed, would resolve OSM's identified deficiency.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–31579 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA35–1–7305b; FRL–5928–3]

Approval and Promulgation of Air Quality Implementation Plans, Louisiana; Reasonable Available Control Technology for Emissions of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA proposes to conditionally approve in part, and fully approving in part, revisions to the Louisiana State Implementation Plan (SIP). The revisions incorporate regulations to control Volatile Organic Compound emissions from major stationary sources by means of Reasonable Available Control Technology. The major stationary source category controlled by the conditionally approved regulation is batch processes. The major stationary source categories controlled by the fully approved regulations are Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactors, SOCMI distillation, and industrial cleanup solvents. The intended effect of these rules is to reduce VOC emissions into the ambient air and thereby reduce ground-level ozone concentrations.

In the Rules and Regulations Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 2, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–31409 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AK 19–1707; FRL–5923–8]

Clean Air Act Reclassification; Anchorage, Alaska, Carbon Monoxide Nonattainment Area

AGENCY: Environmetnal Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to find that the Municipality of Anchorage, Alaska, carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standards (NAAQS) under the Clean Air Act (CAA). The CO nonattainment occurred after Anchorage received a one year extension from the mandated attainment date of December 31, 1995 for moderate nonattainment areas to December 31, 1996. This proposed finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. Final action on this proposed finding would result in the Anchorage CO nonattainment area being reclassified by operation of law as a serious nonattainment area. The result of such a reclassification would be that the State must submit a new State implementation plan (SIP) providing for attainment of the CO NAAQS by no later than December 31, 2000, the CAA attainment deadline for serious CO areas.

DATES: Written comments on this proposal must be received by January 2, 1998.

ADDRESSES: Written comment should be addressed to Ms. Montel Livingston, Environmental Protection Agency, Office of Air Quality (OAQ 107), Docket AK 17–1705, 1200 6th Avenue, Seattle, WA 98101. Information supporting this action is available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation (ADEC), 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: John Pavitt, Alaska Air Coordinator, EPA Alaska Operations Office, 907/271–3688.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

The CAA Amendments of 1990 were enacted on November 15, 1990. Under Section 107(d)(1)(C) of the CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Anchorage area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO nonattainment

areas with a design value between 9.1–16.4 parts per million (ppm), such as the Anchorage area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). States containing CO moderate nonattainment areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.[1]

B. Attainment Date Extensions

If the State did not have the two consecutive clean years of data necessary to show attainment of the NAAQS, section 186(a)(4) of the CAA provides that EPA may approve a one year attainment date extension if the State has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of CO NAAQS at any monitoring site in the nonattainment area in the year preceding 1996, the extension year.

The Anchorage nonattainment area had two exceedances in 1994. However, because the Anchorage nonattainment area had only one exceedance in 1995, Anchorage qualified for a one year attainment date extension to 1996. Two consecutive years of clean data are required in order to attain the CO NAAQS. EPA granted the extension and the action was published in the **Federal Register** on June 28, 1996 (61 FR 33676).

C. Reclassification to a Serious Nonattainment Area

1. EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining whether the Anchorage area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying areas which it determines failed to attain the standard and therefore must be reclassified as serious by operation of law. EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.[2] Section 179(c)(1) of the CAA states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995, based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.[3] EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard recorded in the Anchorage area in 1994, 1995, and 1996, this notice addresses only the air quality status of the Anchorage area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average per year per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same year constitutes a violation of the CO NAAQS. Anchorage had two exceedances of the CO NAAQS in 1994, one exceedance win 1995 (one exceedance does not constitute a CO violation because a violation of the CO NAAQS means two exceedances of the 8-hour CO NAAQS at a given monitoring site within the same year), and three CO exceedances in 1996 (its non-attainment extension year).

2. SIP Requirements for Serious CO Areas: CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the "General Preamble for the Implementation of Title I of the CAA Amendments of 1990" that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the CAA. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the "Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans," July 1992. If the Anchorage area is reclassified to serious, the State would have to submit a SIP revision to EPA within 18 months of reclassification that, in addition to the attainment demonstration, includes: (1) a forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures in the moderate area plan for the Anchorage area must be implemented.

II. This Action

By today's action, EPA is proposing to find that the Anchorage CO nonattainment area failed to demonstrate attainment of the CO NAAQS by December 31, 1996, the CO attainment extension date. This proposed finding is based upon air quality data showing exceedances of the CO NAAQS during 1996.

Ambient Air Monitoring Data: The following table lists the monitoring sites in the Anchorage CO nonattainment area where the 8-hour CO NAAQS was exceeded during 1996, based on data validated by the Alaska Department of Environmental Conservation and entered into the AIRS data base.

[1] The moderate area SIP requirements are set forth in section 187(a) of the CAA Amendments of 1990 and differ depending on whether the area's design value is below or above 12.7 ppm. The Anchorage area has a design value above 12.7 ppm. 40 CFR 81.302.

[2] See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

[3] See memorandum from William G. Laxton, Director, Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990. See also Shaver memorandum.

ANCHORAGE CARBON MONOXIDE EXCEEDANCES OF THE 8-HOUR STANDARD—1996

Monitoring site	8-hour CO reading (PPM)	Date	Max 8-hour reading	Second-max 8-hour reading	Number exceedances 8-hour standard
Spenard & Benson	10.1	1/22/96			
	9.5	12/27/96			
	9.6	12/31/96			
		Year—1996	11.0	9.6	3
Seward Hwy & Benson	10.0	1/22/96			
	9.5	12/27/96			
	9.5	12/31/96			
		Year—1996	10.8	10.5	3

Because the 1996 exceedances are valid for use in determining the attainment status of the Anchorage area, EPA is proposing to find, based on the 1996 CO violations discussed above, that the area did not attain the CO NAAQS by its extension year deadline of December 31, 1996. If EPA finalizes this finding, by operation of law Anchorage will be reclassified a serious CO nonattainment area.

III. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities." The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local or tribal government or communities.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. As discussed in section III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in and of themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

V. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Anchorage nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 12, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–30242 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Negotiated Rulemaking Committee on the Shared Risk Exception; Meetings

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Meeting of Negotiated Rulemaking Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document announced the dates and location for the sixth and seventh set of meetings by the Negotiated Rulemaking Committee on the Shared Risk Exception. The purpose of this committee is to negotiate the development of an interim final rule addressing the shared risk exception to the Federal health care programs' anti-kickback provisions, as statutorily-mandated by section 216 of the Health Insurance Portability and Accountability Act of 1996.

DATES: The next series of meetings will be held from 9:00 a.m. to 5:00 p.m. on December 16, 17 and 18, 1997. The seventh series of meetings will be held on January 20, 21 and 22, 1998 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Both the December and January meetings will be held at the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Inquires regarding these meetings should be addressed to Joel Schaer, OIG Regulations Officer, Office of Counsel to the Inspector General, Room 5518, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201; or call (202) 619–0089.

SUPPLEMENTARY INFORMATION: The Negotiated Rulemaking Committee on the Shared Risk Exception has been established to provide advice and make recommendations to the Secretary of Health and Human Services with respect to the text or content of an interim final rule that will establish standards relating to the exception to the anti-kickback statute for risk-sharing arrangements, set forth in section 1128B(b)(3)(E) of the Social Security Act. The exception was enacted by section 216 of Pub. L. 104–191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 216 of HIPAA provides that the Secretary will promulgate regulations that establish standards for the exception using an expedited negotiated rulemaking process.

During the scheduled December and January meetings, the committee will continue to discuss issues relating to the development of the interim final rule and to generate and discuss options for resolving those issues.

The meetings will be open to the public without advanced registration. A summary of all proceedings of these meetings and relevant matters and other material will also be available for public inspection at the address listed above from the hours of 8:30 a.m. to 5:00 p.m., or can be accessed through the OIG web site located at http://www.dhhs.gov/progorg/oig.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: November 21, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–31473 Filed 12–1–97; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–233, RM–9162]

Radio Broadcasting Services; East Brewton, AL and Navarre, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of 550–AM, permittee of Station WZEW(FM), Channel 239A, East Brewton, Alabama, requesting the substitution of Channel 239C3 for Channel 239A at East Brewton, the reallotment of Channel 239C3 to Navarre, Florida, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Petitioner is requested to provide additional information to establish Navarre's status as a community for allotment purposes. Coordinates used for requested Channel 239C3 at Navarre, Florida, are 30–26–52 and 86–51–55.

The petitioner's modification proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, we will not accept competing expressions of interest in the use of Channel 239C3 at Navarre, Florida, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before January 12, 1998, and reply comments on or before January 27, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, Jr., Esq., Post Office Box 403, Westfield, MA 01086.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–233, adopted November 12, 1997, and released November 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–31513 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971112268–7269–01; I.D. 102997A]

RIN 0648–AK13

Fisheries of the Exclusive Economic Zone off Alaska; Revised Management Authority for Pelagic Shelf Rockfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 46 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) which has been submitted by the North Pacific Fishery Management Council (Council) for Secretarial review. Amendment 46 would remove black and blue rockfish from the complex of species managed under the FMP. The State of Alaska (State) would regulate fishing for these species by vessels registered under Alaska law. This action is necessary to allow the State to implement more responsive, regionally-based, management of these species than is currently possible under the FMP. The intended effect of this action is to repeal duplicative Federal regulations, provide for more responsive State management and prevent localized overfishing of black and blue rockfish stocks.

DATES: Comments on the proposed rule must be received by January 16, 1998.

ADDRESSES: Comments should be submitted to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed Amendment 46 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 46 for Secretarial review and a Notice of Availability (NOA) of the FMP amendment was published on November 5, 1997 (62 FR 59844), with comments on the FMP amendment invited through January 5, 1998. All written comments received by January 5, 1998, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendment.

Black rockfish (*Sebastes melanops*) and blue rockfish (*S. mystinus*) currently are managed as part of the pelagic shelf rockfish assemblage (PSR) under the FMP. The Council is concerned that recent expansion of a fishery for these species in the central GOA may result in unsustainable black and blue rockfish catches.

Two problems with Federal management of black and blue rockfish have been identified by the Council. First, the total allowable catch (TAC) for all PSR species is based on a triennial trawl survey. Survey catches are dominated (93 percent to over 99 percent) by the underexploited dusky rockfish. This leads to the development of acceptable harvest levels for the PSR assemblage that are sustainable for stronger PSR stocks such as dusky rockfish, but that may be inappropriate for weaker black and blue rockfish stocks. Second, the trawl survey only samples fish on or near a smooth bottom. However, most black and blue rockfish occur in rocky nearshore reef habitats that are not sampled by this survey. Small-area harvest guidelines, developed using more selective sampling methodologies, are necessary to prevent localized depletion of these territorial, slow-growing, long-lived species. The current management system cannot accommodate this.

Currently, both species are taken chiefly in State waters (78 percent in 1996). Under current management, the State's closure of the rockfish fishery in State waters is often followed by a reported shift in effort to PSR species in adjacent Federal waters. Transferring management of these species to the State should result in more effective conservation measures in both nearshore and offshore waters while eliminating duplicative Federal management.

At its June 1997 meeting, the Council adopted Amendment 46 to the FMP. If this amendment were approved, the State could regulate State-registered vessels fishing for black and blue rockfish. The black and blue rockfish fishery is not large, and all vessels participating in it are registered under the laws of the State. Typically, the vessels are small, and operators would be unable to land their catch outside the State. Insurance and safety concerns also make it unlikely that vessels in the fishery would not be registered with the State. Thus, it is unlikely that any vessel harvesting black or blue rockfish in Federal waters would not be subject to State regulations.

Black and blue rockfish are also taken as bycatch in other federally managed fisheries, especially the halibut Individual Fishing Quota and Pacific cod jig fisheries. By removing black and blue rockfish from the FMP, the State could impose on State registered vessels fishing in the Federal fisheries only such additional State measures, like bycatch retention limits for blue and black rockfish, as are consistent with the applicable Federal fishing regulations for the fishery in which the vessel is operating. The Council's intent is not to give the State authority to indirectly regulate other federally managed fisheries through State implementation of gear restrictions, area closures, or other bycatch control measures.

To manage directed fishing closures for FMP groundfish effectively, NMFS must know whether these species are taken in a directed groundfish fishery or as bycatch in a nongroundfish fishery. Because other groundfish are often taken at the same time as black and blue rockfish, NMFS would continue to require reporting of retained black and blue rockfish when they are landed at the same time as other FMP groundfish.

Classification

At this time, NMFS has not determined that Amendment 46 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

NMFS prepared an EA/RIR that describes the impact this proposed rule, if adopted, would have on small entities. A copy of the RIR is available from the Council (see **ADDRESSES**). Based on the economic analysis in the RIR, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities:

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3 million as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit-enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant negative impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent or resulted in compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities.

NMFS assumes that most catcher vessels participating in the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act. During 1996, in the GOA, 1,416 catcher vessels participated in the GOA groundfish fishery. Of those, 302 vessels, or 21 percent, landed black rockfish and would presumably be affected by the proposed action

During 1996, vessels participating in the fishery landed 973,443 lb (441.6 mt) of black rockfish. Most of these landings were by vessels participating in the directed jig-gear fishery. Based on an average price paid of $0.35/lb ($771.61 mt) for Western and Central GOA landings, and $0.40/lb ($881.84/mt) for Eastern GOA landings, the 1996 value of these landings is estimated to be about $344,000.

Removing black and blue rockfish from the PSR TAC should encourage the development of a small vessel fishery targeting under exploited-black and blue rockfish stocks in the Western and Eastern GOA. At the same

time, the State will be able to more effectively manage potentially overexploited stocks in the Central GOA and increase their long-term yield. Finally, elimination of duplicative Federal regulations may ease the regulatory burden on small-vessel fishermen and reduce compliance costs. Transferring management of black and blue rockfish to the State may result in short-term restrictions on jig fishermen, but because both species are predominately taken in State waters, most fishermen must already comply with State regulations. Thus, it is not anticipated that the action would meet or exceed any of the criteria for a significant economic impact.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 20, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, a definition of "rockfish" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Rockfish means:

(1) For the Gulf of Alaska: Any species of *Sebastes* or *Sebastelobus* except *Sebastes melanops*, the black rockfish, and *Sebastes mystinus*, the blue rockfish.

(2) For the Bering Sea and Aleutian Islands Management Area: Any species of *Sebastes* or *Sebastelobus*.

* * * * *

3. In § 679.21, paragraph (e)(3)(iv)(D) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e)* * *

(3)* * *

(iv)* * *

(D) *Rockfish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

* * * * *

4. In § 679.23, paragraph (d)(1) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(d)* * *

(1) *Directed fishing for trawl rockfish.* Directed fishing for rockfish with trawl gear is authorized from 1200 hours, A.l.t., on the first day of the third quarterly reporting period of a fishing year through 2400 hours, A.l.t., December 31, subject to other provisions of this part.

* * * * *

5. In § 679.50, paragraph (c)(2)(iv) is revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c)* * *

(2)* * *

(iv) *Rockfish fishery.* In a retained aggregate catch of rockfish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

* * * * *

6. In Table 3 to part 679, the reference to footnote 1 and footnote 1 are removed, and footnotes 2 and 3 are redesignated footnotes 1 and 2 respectively.

7. In Table 10 to part 679, footnote 2 is revised to read as follows:

Table 10 to part 679—Current Gulf of Alaska Retainable Percentages

* * * * *

[2] Aggregated Rockfish means any rockfish except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.

* * * * *

[FR Doc. 97–31583 Filed 12–1–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 231

Tuesday, December 2, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 25, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West, M.O. 985.

OMB Control Number: 0581–0065.

Summary of Collection: Information is collected to nominate committee members, to determine compliance, to levy assessments and to prepare reports.

Need and Use of the Information: The information is used to regulate Marketing Order 985.

Description of Respondents: Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 264.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually; Biennially.

Total Burden Hours: 195.

National Agricultural Statistics Service

Title: Cotton Ginnings.

OMB Control Number: 0535–0220.

Summary of Collection: Information collected includes bales of cotton ginned and to be ginned, lint cotton and cottonseed produced and cottonseed sold to oil mills.

Need and Use of the Information: The information is used to help prepare monthly and annual cotton production estimates and production cost estimates.

Description of Respondents: Business or other for-profit.

Number of Respondents: 11,610.

Frequency of Responses: Reporting: Semi-annually; Annually; September–January.

Total Burden Hours: 1,168.

Animal and Plant Health Inspection Service

Title: Request for Credit Account Approval for Reimbursable Services.

OMB Control Number: 0579–0055.

Summary of Collection: Information is collected from applicants for reimbursable inspection services.

Need and Use of the Information: The information is needed to support requests for credit accounts for reimbursable overtime and import/export services and to provide information to prepare billings for such services performed.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government.

Number of Respondents: 480.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Rural Housing Service

Title: 7 CFR 1951–C, "Offset of Federal Payments to USDA Borrowers".

OMB Control Number: 0575–0119.

Summary of Collection: Borrowers may respond to administrative, salary, or IRS offset by a written request for records, a written offer to repay, or a written request for an approval.

Need and Use of the Information: The information will be used to promulgate the policies and procedures of the Federal Collection Act of 1996.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 9,325.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,488.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–31563 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA–97–15]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Report Forms Under the Federal Milk Marketing Order Program.

DATES: Comments on this notice must be received by February 2, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact William F. Newell, Order Operations Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box

96456, Room 2753–S, Washington, D.C., 20090–6456; Telephone (202) 720–3869 or Fax (202) 720–4844.

SUPPLEMENTARY INFORMATION:

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives)

OMB Number: 0581–0032.

Expiration Date of Approval: May 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal Milk Marketing Order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The data are needed to administer the classified pricing system and related requirements of each Federal Order.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .87 hours per response.

Respondents: Milk Handlers and Milk Marketing Cooperatives.

Estimated Number of Respondents: 772.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Burden on Respondents: 23,858 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, P.O. Box 96456, Washington D.C. 20090–6456. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 25, 1997.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 97–31570 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Title I, P. L. 480 Agreements With the Private Trade

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation ("CCC") invites proposals for "agricultural market development plans" to be considered by CCC in connection with approval of agreements under Title I of the Agricultural Trade Development and Assistance Act of 1954, ("Pub. L. 480"). Agricultural market development plans must be submitted by developing countries or private entities in conjunction with agricultural trade organizations.

DATES: Comments on this notice must be received by February 2, 1997.

FOR FURTHER INFORMATION CONTACT: Director, Program Development Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4506, South Building, Washington, D.C. 20250; telephone: (202) 720–4221; Facsimile: (202) 690–0251.

SUPPLEMENTARY INFORMATION: Under Title I of Pub. L. 480, CCC finances, on concessional credit terms, the sale and exportation of agricultural commodities to developing countries. As a result of amendments made by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, CCC may now also enter into Title I, Pub. L. 480 agreements with private entities. When selecting agreements to be entered into under Title I, Pub. L. 480, whether with a developing country or private entity (hereafter "participant"), CCC must give priority to agreements providing for the export to developing countries that:

(1) Have the demonstrated potential to become commercial markets for competitively priced United States agricultural commodities;

(2) Are undertaking measures for economic development purposes to improve food security and agricultural development, alleviate poverty, and promote broad-based equitable and sustainable development; and

(3) Demonstrate the greatest need for food.

Section 102(c)(2) of Pub. L. 480 provides that CCC shall consider a developing country for which an agricultural market development plan has been approved as having the demonstrated potential to become a commercial market. The purpose of this Notice is to invite interested parties to submit agricultural market development plans to CCC for its consideration in selecting Title I, Pub. L. 480 agreements. In order to be considered, an agricultural market development plan must be submitted by a developing country or private entity in conjunction with an "agricultural trade organization." An agricultural trade organization is a non-profit organization that promotes the sale and export of U.S. agricultural commodities. The terms "agricultural commodities" and "developing country" are defined in section 402 of Pub. L. 480. The agricultural market development plan must describe a project or program for the development and expansion of a commercial market for a United States agricultural commodity in a developing country, and the economic development of the country. Local currency realized from the sale of commodities received by a participant may be used to fund the agricultural market development plan.

Interested parties desiring to submit an agricultural market development plan to CCC should submit an agricultural market development plan, or a concept paper to the Director, Program Development Division, Foreign Agricultural Service at the following address: Director, Program Development Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4506, South Building, Washington, D.C. 20250.

The agricultural market development plans or concept papers should outline the following points that will ultimately be incorporated into a final agricultural market development plan:

- A description of the project or program for the development and expansion of a commercial market for a U.S. agricultural commodity on a generic basis in a developing country, and the economic development of the country;
- An indication of funding sources to implement the project or program, *e.g.*, private industry or host government funds, in addition to local currency sales proceeds;
- Whether CCC funds would be necessary for reimbursement of administrative costs incurred by agricultural trade organizations in implementing and administering agricultural market development plans (CCC will not provide funds for administrative costs incurred in connection with the development of an agricultural market development plan at any stage of its development.);
- A results-oriented means of measuring the success of the project or program; and
- A plan for graduating the project or program away from the use of any federal funds.

In addition to the above items, an agricultural market development plan or concept paper should also include information regarding:

- Credit terms that may be desired by a participant in connection with the underlying Title I, Pub. L. 480 agreement;
- The agricultural commodity to be purchased;
- The administrative capabilities of the agricultural trade organization to implement an agricultural market development plan;
- If the participant is a private entity, a description of security to be provided CCC to support repayment to CCC of the financing extended;
- A description of any other organizations that will be used in completing the project or program and how such organizations will be used;
- A planned budget summary of funds or commodities used in lieu of funds, in support of the project or program.

Interested parties have considerable latitude to exercise creativity in constructing proposals. In evaluating project proposals, CCC will consider the following factors:

- The organizational ability of the participant to complete the project or program;
- The size, in both budget and scope, of the proposed project or program, and the level of U.S. and private resources available;
- Anticipated cost to CCC in terms of initial financing and repayment terms;
- The likelihood of the market becoming a commercial market for U.S. agricultural commodities.

CCC will notify interested parties as to whether it determines that the submission describes a desirable agricultural market development plan and, if so, work with the organization to develop a final plan. After CCC approval of a final agricultural market development plan, CCC will develop and implement a Title I, Pub. L. 480 agreement with the participant designated in the plan. The Title I, Pub. L. 480 agreement will incorporate a requirement to use local currency proceeds to implement the plan.

Signed at Washington D.C. on November 24, 1997.

Lon Hatamiya,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 97–31480 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing an opportunity for the public to comment on its intention to request an extension for a currently approved information collection. The information collection is used to determine whether a State's central filing system for notifying farm product buyers of liens on farm products can be certified by the Secretary.

DATES: Comments on this notice must be received by February 2, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Gerald Grinnell, Industry Analysis Staff, GIPSA, USDA, STOP 3647, 1400 Independence Avenue SW., Washington, DC 20250–3647 or FAX 202 690–1266, telephone: 202 720–7455.

SUPPLEMENTARY INFORMATION: Under Section 1324 of the Food Security Act of 1985 (Act) (7 U.S.C. 1631), States implementing central filing systems for notification of liens on farm products must have such systems certified by the Secretary of Agriculture as being in compliance with the Act. GIPSA has been delegated responsibility for certifying such systems. The information collection being submitted for extension is used by GIPSA to determine whether a State's central filing system can be certified. Nineteen States currently have certified central filing systems.

Title: "Clear Title" Regulations to implement section 1324 of the Food Security Act of 1985.

OMB Number: 0580–0016.

Expiration Date of Approval: March 31, 1998.

Type of Request: Intent to extend a currently approved information collection.

Abstract: The information is needed to carry out the Secretary's responsibility for determining whether a State's central filing system for notification of buyers of farm products of any mortgages or liens on the products meets certification requirements under section 1324 of the Food Security Act of 1985.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response.

Respondents: States seeking certification of central filing systems to notify buyers of farm products of any mortgages or liens on the products.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.

Copies of this information collection can be obtained from Cathy McDuffie, the Agency Support Services Specialist, at (301) 734–5190.

Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Gerald Grinnell, Industry Analysis Staff, GIPSA, USDA, STOP 3647, 1400 Independence Avenue SW., Washington, DC 20250–3647 or FAX 202–690–1266, telephone: 202 720–7455.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done at Washington, DC this 25th day of November 1997.

James R. Baker,

Administrator.

[FR Doc. 97–31565 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Whole Dry Peas, Split Peas, and Lentils

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the voluntary United States Standards for Whole Dry Peas, Split Peas, and Lentils by eliminating the classes Persian and Mixed lentils and establishing a new class, Miscellaneous peas, and a new grading factor for lentils, Inconspicuous Admixture. GIPSA is changing these standards to facilitate the marketing of peas and lentils.

Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. . . ." The Grain Inspection, Packers and Stockyards Administration (GIPSA) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) published a notice in the **Federal Register** on August 15, 1997 (62 FR 43695), that it was proposing to eliminate the classes Persian and Mixed lentils, and to establish a new class, Miscellaneous peas, and a new grading factor for lentils, Inconspicuous Admixture.

GIPSA received no comments in response to that notice.

Since these changes to the standards were recommended and reviewed by the affected trade and are consistent with current practices in the trade, they will become effective on August 1, 1998, the beginning of the next marketing season.

The United States Standards for Whole Dry Peas, Split Peas, and Lentils do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture. The revised United States Standards for Whole Dry Peas, Split Peas, and Lentils are available either by accessing GIPSA's Home Page on the Internet at: www.usda.gov/gipsa/strulreg/standard/beans or by contacting the Audiovisual, Regulatory and Training Staff, GIPSA, USDA, STOP 3649, 1400 Independence Avenue, SW., Washington, DC 20250–3649; telephone (202) 720–1734; FAX (202) 720–4628.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: November 25, 1997.

James R. Baker,

Administrator.

[FR Doc. 97–31564 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:30 p.m. on Wednesday, December 17, 1997, at the Providence Marriott Hotel, One Orms Street, Providence, Rhode Island 02096. The purpose of the meeting is for the Committee to plan for a future briefing on the project concept, "An Examination of the Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert Lee, 401–863–1693, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 19, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–31477 Filed 12–1–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Wednesday, December 17, 1997, at the Library of Virginia, 800 East Broad Street, Richmond, Virginia 23221. The purpose of the meeting is (1) to welcome new members and returning members; (2) present an administrative orientation and report on the status of the Commission and its State Advisory Committees; and (3) discuss a draft report of its project, "The Treatment of Blacks on the Peninsula."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roger A. Galvin, 703–838–0083, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 19, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–31476 Filed 12–1–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 95–2A006."

The Water and Wastewater Equipment Manufacturers Association ("WWEMA") original Certificate was issued on June 21, 1996 (61 FR 36708, July 12, 1996), and previously amended on May 20, 1997 (62 FR 29104). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Water and Wastewater Equipment Manufacturers Association ("WWEMA"), 101 E. Holly Avenue, Suite 14, Sterling, Virginia 22170.

Contact: Randolph J. Stayin, Partner.

Telephone: (202) 289–1313.

Application No.: 95–2A006.

Date Deemed Submitted: November 26, 1997.

Proposed Amendment: WWEMA seeks to amend its Certificate to:

1. Add the following company as a new "Member" of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Conservatek Industries, Inc. of Conroe, Texas;

2. Delete ABB Kent Meters, Inc. of Ocala, Florida and Galaxy Environmental Corporation of Warminster, Pennsylvania as Members of the Certificate; and

3. Change the listing of the company name for the current Member "Capital Controls Co., Inc." to the new listing "The Capital Controls Group".

Dated: November 26, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–31543 Filed 12–1–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. # 112497C]

Marine Mammals; Permit No. 917 (P77#32)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 917 submitted by The Northeast Fisheries Science Center, National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543–1097, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

SUPPLEMENTARY INFORMATION: On September 17, 1997, notice was published in the **Federal Register** (62 FR 48822) that an amendment of permit no. 917, issued May 12, 1994 (59 FR 25892), had been requested by the above-named organization. The original permit authorized a number of studies on several cetacean species as well as gray and harbor seals in the northeastern U.S. and Canadian waters over a five-year period. The research activities include: vessel surveys, aerial surveys and photogrammetry, photo-identification studies, and the collection of biopsies. The research also includes import and export of cetacean tissue samples taken via projectile dart for genetic analyses. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The permit was amended to authorize the increased number of biopsy samples to be collected from 25 to 50 annually from humpback whales, and 25 to 100 annually from common dolphins (*Delphinus delphis*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), bottlenose dolphins (offshore stock, *Tursiops truncatus*), and striped dolphins (*Stenella coeruleoalba*).

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 24, 1997.

Ann D. Terbush, Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31581 Filed 12–1–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 22, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31687 Filed 11–28–97; 11:24 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, December 17, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31688 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 19, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31689 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 12, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31690 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 5, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31691 Filed 11–28–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 15, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31692 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 8, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31693 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 3:00 p.m., Tuesday, December 16, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral Presentation by the Chicago Mercantile Exchange on the petition for exemptions for the dual trading prohibition.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31694 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, December 18, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral Presentation by the Chicago Board of Trade on the petition for exemptions from the dual trading prohibition.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31695 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission Finding That Shortens Periods for Issuing News Release on Cadet Heaters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission finds that certain heaters made by Cadet present a potential hazard to consumers and that, to protect the public health and safety, the customary manufacturer comment and notification periods preceding public release of certain information shall be shortened.

FOR FURTHER INFORMATION CONTACT: Renae Rauchschwalbe, Division of Corrective Actions, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0608 ext. 1362.

SUPPLEMENTARY INFORMATION:

A. Background

In October 1997, the Consumer Product Safety Commission and Cadet Manufacturing Company, Inc. issued a joint news release about the recall and retrofit of certain hazardous heaters. However, Cadet is not conducting the corrective action described in the news release. Therefore, the Commission has issued its own news release to inform consumers about the situation.

B. Statutory and Regulatory Provisions

Under section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b)(1), the Commission must provide manufacturers or private labelers with at least 30 days advance notice before disseminating information that identifies the manufacturer's product. In addition, section 6(b)(2) of the CPSA, 15 U.S.C. 2055(b)(2), requires at least 10 days additional notice if the manufacturer or private labeler claims that the information to be released is inaccurate. However, the Commission may provide lesser periods of notice, in both cases, if "the Commission finds that the public health and safety requires a lesser period of notice."

Under the CPSA and the Commission's regulations, the Commission must publish its "public health and safety" findings in the **Federal Register**. 16 CFR §§ 1101.23 (b) and (c) and 1101.25 (b) and (c). Disclosure of the information in the news release may be made concurrently with the filing of the Federal Register notice, and need not await its publication.

C. Commission Finding

The Commission finds that the public health and safety requires less notice than the periods of time specified in section 6(b) of the Consumer Product Safety Act. The Cadet heaters, which present to the public the serious risks of burns, smoke inhalation, and electrocution, should not be used until they are properly and adequately repaired. The onset of cold weather in most of the country underscores the urgency of informing consumers of the risks inherent in the use of these particular heaters. Therefore, the Commission authorizes issuance of a news release 24 hours after Cadet has been provided an opportunity to comment on it, and an additional 24 hours after Cadet has been notified that the Commission intends to issue the release over Cadet's accuracy objections (if Cadet submits comments and if the Commission, after evaluating the comments, decides to issue the release).

Dated: November 25, 1997.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 97–31500 Filed 11–26–97; 9:12 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 25, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: REINSTATEMENT.

Title: 1999 National Study of Postsecondary Faculty (NSOPF—99): Faculty Questionnaire.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden and Recordkeeping:

Responses: 500.

Burden Hours: 391.

Abstract: The third cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructors. The study will provide information about faculty in postsecondary institutions which is key to learning about the quality of education and research in these institutions. This study will expand the information about faculty and

instructional staff in two ways—allowing comparisons to be made over time and examining critical issues surrounding faculty that have developed since the first two studies. This clearance request covers field test and full scale activities for the second phase of the study—collection of information from a nationally representative sample of faculty and instructional staff at postsecondary institutions. This information, together with information collected in the first phase of the study (1850–0665) on the institutions themselves, will provide a source of descriptive, analytical, trend and policy relevant research on the way postsecondary education functions.

Office of the Under Secretary

Type of Review: NEW.
Title: Guidance for Reporting on Waivers Granted by the U.S. Department of Education.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 20.
Burden Hours: 100.
Abstract: The Department is required by statute to collect reports from state education agencies on the uses of waivers in their states. The purpose of this guidance is to assist states in meeting the statutory requirements. Information from this collection will be used to monitor the progress of waiver recipients in improving teaching and learning and to inform the Department's annual report to Congress on waivers.

[FR Doc. 97–31495 Filed 12–1–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Intent To Solicit Comments for Financial Assistance Awards

AGENCY: Department of Energy.

ACTION: Notice of intent to solicit comments for financial assistance awards.

SUMMARY: The U.S. Department of Energy's Office of Geothermal Technologies, Advanced Drilling Systems Research Program, via the Idaho Operations Office (DOE–ID), is soliciting comments on its draft solicitation for cost-shared cooperative agreements, industry-government Research & Development projects to develop advanced drilling technologies and transfer the results to industry. These new developments can then be used by the U.S. geothermal industry to solve technical problems.

Comments regarding the draft solicitation are welcome from potential developers, owners and operators of geothermal facilities, including utilities, as well as from manufacturers, universities, and other non-industry groups.

DATES: Comments to the draft solicitation should be sent to the point of contact shown below by January 8, 1998. A copy of the draft solicitation in its full text can be found at the following internet address: *http://www.inel.gov/doeid/solicit.html* under Current Solicitations.

ADDRESSES: Comments regarding the draft solicitation or requests to be placed on the final solicitation mailing list shall be submitted in writing to: Ms. Peggy Brookshier, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1220, Idaho Falls, Idaho 83401–1563, e-mail: *brookspa@inel.gov*, Tele: (208) 526–1403, Fax: (208) 526–5964.

It is the agency preference that all submitted comments be received by e-mail. All written comment responses must include name, title, organization, address, phone number, fax number, e-mail address.

A **Federal Register** notice soliciting applications will be published at a later date upon issuance of the final solicitation.

FOR FURTHER INFORMATION CONTACT: Michael K. Barrett, Contracting Officer at (208) 526–5743 or Peggy Brookshier, Program Manager at (208) 526–1403; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

SUPPLEMENTARY INFORMATION: The solicitation will be issued pursuant to 10 CFR 600.6(a) with no eligibility restrictions. The statutory authority for the issuance of this solicitation is Pub. L. 93–410, the Geothermal Energy Research, Development & Demonstration Act of 1974. The catalog of Federal Domestic Assistance Number for this program is 81.087.

This notice is also intended to promote the formation of industry partnerships, to stimulate interaction among potential participants, and to encourage organizations to investigate creative solutions. Funding for phase I will be available to support several awards for a period of approximately six to twelve months. Funding for phase II will be available to support one or more awards, for a period of 12–24 months. Applications may include Federally Funded Research and Development Centers, but only as lower tier participants with funding for their expected costs provided through their existing arrangements with the Government.

THE PURPOSE OF THIS NOTICE IS TO SOLICIT COMMENTS FOR INCLUSION IN THE FINAL ISSUANCE OF THE SOLICITATION. PLEASE DO NOT SEND APPLICATIONS AT THIS TIME.

Issued in Idaho Falls, ID, November 24, 1997.

B.G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 97–31555 Filed 12–1–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Revised Draft Request for Proposals for Waste Acceptance and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Request for Comments on a Revised Draft Request for Proposals.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) is responsible under the Nuclear Waste Policy Act of 1982, as amended (NWPA), for accepting and transporting spent nuclear fuel (SNF) from commercial nuclear reactor sites to a federal facility for storage or disposal. The Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (10 CFR part 961) details the arrangements between the Department of Energy (DOE) and the owners and generators of SNF (Purchasers) for the Department to accept the SNF at the Purchasers' sites for transport to a federal facility. Section 137(a)(2) of the NWPA requires the utilization of private industry to the "fullest extent possible" in the transportation of SNF.

OCRWM anticipates seeking competitive proposals for commercial SNF acceptance and transportation services, including the provision of storage equipment, in accordance with the final version of this revised draft Request for Proposals (RFP). In May 1996, OCRWM published in the **Federal Register** (61 FR 26508) and the *Commerce Business Daily*, a Request for Expression of Interest and Comments on a previous draft Statement of Work for these services. In July 1996, comments were received from interested parties at a presolicitation conference. In December 1996, OCRWM issued a draft RFP that requested comments on all aspects of its proposed contracting approach embodied in that draft document. In February 1997, OCRWM held another presolicitation conference to receive additional comments and questions on the first draft RFP. The draft RFP has been extensively revised to reflect the public review and comments received as a result of these activities. Comments and suggestions included input from industry, utilities, and other interested parties.

DOE is seeking further comments on all aspects of the proposed contracting approach embodied in this revised draft RFP to use the innovative powers of the marketplace for meeting DOE's mission objectives.

DATES: Comments in response to this Notice should be received by the Department no later than February 13, 1998.

ADDRESSES: Written comments should be sent to: Contracting Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Attn: HR–542, Draft RFP Number DE–RP01–98RW00320, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Contracting Officer (DOE HR–542), (202) 426–0067 or (202) 426–0076, (fax) 202–426–0168.

SUPPLEMENTARY INFORMATION:

Comments

OCRWM is interested in receiving comments relating to this revised draft RFP, especially with regard to the following areas:

1. Contracting refinements concerning financing and business aspects, as in structuring the procurement to provide sufficient financial incentive and appropriate risk balancing mechanisms between DOE and contractors in order for industry to provide efficient waste acceptance and transportation services.
2. Mitigation of delays which may occur during Phase C that are beyond the control of the contractor and/or the Department.
3. Technical details associated with the logistics of waste acceptance and transportation services.
4. Potential extensions of the contract durations of Phase A and Phase B for up to one year each.
5. Mechanisms and refinements for economic price adjustments over the duration of the contract period.
6. Any other areas, terms or conditions that DOE should consider in formulating this acquisition.

DOE will consider and may utilize all information, recommendations, and suggestions provided in response to this Notice. Respondents should not provide any information that they consider to be privileged or confidential or which the respondent does not want disclosed to the public. DOE does not intend to respond to comments, either to individual commentors or by publication of a formal Notice. Several RFP reference documents have been placed in the DOE Forrestal Building Public Reading Room that are listed in the revised draft RFP. Also, copies of all comments received as a result of this notice will be placed in the DOE Public Reading Room at the end of the comment period, as were copies of previous comments received on the December 1996 draft RFP. Each submittal should consist of one original and three photocopies.

This Notice should not be construed as: (1) a commitment by the Department to enter into any agreement with any entity submitting comments in response to this Notice, (2) a commitment to issue any RFP concerning the subject of this Notice, or (3) an RFP.

DOE anticipates that the revised draft RFP will be available on the internet within two weeks of the date of this Notice on the "Current Business Opportunities at Headquarters Procurement Operations" Home Page located at address http://www.pr.doe.gov./solicit.html. It will also be available on the OCRWM Home Page, Waste Acceptance, Storage and Transportation Section, located at http://www.rw.doe.gov/. Interested parties that do not have the electronic capability to download the revised draft RFP may submit a written request to the Contracting Officer at the address listed above. Offerors who have previously submitted written comments on the December 1996 draft RFP or placed their names on the mailing list at the OCRWM Spent Nuclear Fuel Transportation Workshop held on August 12–13, 1997, in Reston, Virginia, will be mailed a copy of the revised draft RFP.

Issued in Washington, DC, on November 24, 1997.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 97–31554 Filed 12–1–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–80–000]

NorAm Gas Transmission Company, Notice of Request Under Blanket Authorization

November 20, 1997.

Take notice that on November 14, 1997, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–80–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to abandon and construct certain facilities in Union County, Arkansas, under NorAm's blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm states that it would abandon 6,647 ft. of 2-inch plastic pipe on Line HM–2, 7,401 ft. of 2 to 8-inch coupled steel pipe on Line HM–1 and three inactive delivery taps. NorAm states further that it would reconfigure its delivery facilities to Arkla at Smackover, Arkansas and abandon deteriorated and unreliable facilities.

NorAm indicates that the estimated cost of the facilities to be abandoned is $49,721 and the estimated cost of the new facilities to relocate the delivery meter is $59,513.

No service, it is said, would be abandoned as a result of the proposal.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31482 Filed 12–1–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–95–000]

NorAm Gas Transmission Company; Notice of Application

November 25, 1997.

Take notice that on November 19, 1997, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas, 77002, pursuant to Section 7(c) of the Natural Gas Act (NGA), filed an application with the Commission in Docket No. CP98–95–000 for a certificate of public convenience and necessity to upgrade and operate a compressor facility, located on NorAm's Line J, at its design horsepower level, in order to create additional capacity on Line J, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Specifically, NorAm proposes to operate the Solar Centaur T–4700 turbine unit, which was recently installed at NorAm's existing Round Mountain Compressor Station located on Line J in Conway County, Arkansas, at its design capacity rather than the 4,000 horsepower at which it is currently operating.[1] NorAm states that the upgrade compressor, when operating at its design capability, will create approximately 3,100 MMBtu per day of additional capacity on Line J.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 16, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

[1] The original compressor was a T–4002 unit, and the operation of the new T–4700 compressor has been limited to the design capability of the original unit.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NorAm to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31483 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1982–017]

Northern States Power Company; Notice of Meeting to Discuss a Settlement Process for Relicensing Northern States Power Company's Lower Chippewa River Hydroelectric Projects

November 25, 1997.

On December 3, at 1:00 p.m. Central Standard Time, Commission staff from the Office of Hydropower Licensing will attend a meeting for the proposed relicensing of the Holcombe Hydroelectric Project and Northern States Power Company's other lower Chippewa River hydroelectric projects. The meeting will be held at Northern States Power Company's Western Avenue Service Center, located at 1400 Western Avenue in Eau Claire, WI.

The purpose of this meeting is to discuss a settlement process and to organize a negotiation team.

For further information, please contact Mark Pawlowski at (202) 219–2795, or Lloyd Everhart at 715–839–2692.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31484 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Notice of 1998 Schedule of Meetings To Discuss Settlement for Relicensing of the St. Lawrence–FDR Power Project

November 25, 1997.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence–FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE–FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of the 1998 schedule of meetings for the CCP Team and Subcommittee to continue settlement negotiations. The subcommittee will forward any tentative settlement agreements to the CCP Team for discussion. The meetings will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

1. The CCP Team will meet: January 30, 1998, April 21–22, 1998, May 28–29, 1998, and June 23–24, 1998.

2. The Ecological Subcommittee will meet: January 15–16, 1998, February 27, 1998, March 26, 1998, April 20, 1998, and May 27, 1998.

3. The Land Management and Recreation Subcommittee will meet: January 28, 1998, February 26, 1998, and March 25, 1998.

4. The Socioeconomic Subcommittee will meet: January 29, 1998, February 25, 1998, and March 24, 1998.

If you would like more information about the CCP Team and the relicensing process, as well as the subcommittees, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6172 (fax), EMAIL.Ytathat@P3GATE.USA.COM

Mr. Keith Silliman, New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), EMAIL:Silliman@ALBANY.NET

Mr. Thomas Russo, Ms. Patti Leppert-Slack, Federal Energy Regulatory Commission, (202) 219–2700 (Tom), (202) 219–2767 (Patti), (202) 219–0205 (fax), EMAIL: Thomas.Russo@FERC. FED. US, EMAIL: Patricia.LeppertSlack@FERC. FED. US

Further information about the NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at http://www.stl. nypa.gov/index.html. Information about the Federal Energy Regulatory Commission can be obtained at http://www. ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31485 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

November 25, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, December 10, 1997, at 10:00 a.m. and Thursday, December 11, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purposes of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kathleen M. Dias at (202) 208–0524 or Michael D. Cotleur at (202) 208–1076.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31481 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–55–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1997.

Take notice that on November 20, 1997, Transwestern Pipeline Company (Transwestern) submits for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 20, 1997:

Eighth Revised Sheet No. 1
Fifth Revised Sheet No. 1A
Third Revised Sheet No. 116
First Revised Sheet No. 116A
First Revised Sheet No. 116B
First Revised Sheet No. 116C
Second Revised Sheet No. 117
First Revised Sheet No. 117A
First Revised Sheet No. 117B
Second Revised Sheet No. 118
First Revised Sheet No. 119A
Fifth Revised Sheet No. 126
Fourth Revised Sheet No. 127
Seventh Revised Sheet No. 128
Fifth Revised Sheet No. 129
First Revised Sheet No. 129A
Second Revised Sheet No. 130
Second Revised Sheet No. 138
First Revised Sheet No. 139
Fourth Revised Sheet No. 140
First Revised Sheet No. 142
Third Revised Sheet No. 143

Transwestern states that these tariff sheets are being filed to simplify and shorten Transwestern's form of Service Agreement under Rate Schedules FTS–1 (including the Form D applicable to capacity release) and ITS–1.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31541 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5830–9]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the

proposed information collections as described below.

DATES: Comments must be submitted on or before February 2, 1998.

ADDRESSES: U.S. EPA, 401 M St., S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: NSPS subpart Ka: Everett Bishop, phone number, 202–564–7032; facsimile, 202–564–0050; or by e-mail at Bishop.Everett@epamail.epa.gov. NSPS subpart O and NSPS subpart UU: John Dombrowski, (202) 564–7036; Facsimile number, (202) 564–0009; E-mail address "dombrowski.john@epamail.epa.gov". NSPS subpart QQ: Ginger Gotliffe at (202) 564–7072 or via e-mail (gotliffe.ginger@epamail.epa.gov). NSPS subpart BBB: Maria Malave at (202) 564–7027 or via e-mail (MALAVE.MARIA@EPAMAIL.EPA.GOV.) or send a fax to (202) 564–0050 her attention. NESHAP subpart C and MACT subpart X: Jane Engert, (202) 564–5021; FAX (202) 564–0050; e-mail: engert.jane@epamail.epa.gov; NESHAP subpart F: Dawn Banks-Waller, (202) 564–7034; Facimile number, (202) 564–0009; Email address "banks-waller.dawn@epamail. epa.gov". MACT subpart W: Sally Sasnett at (202) 564–7074(phone); 202 564–0009 (Fax) or sasnett.s@epamail .epa.gov (e-mail).

NSPS Subpart Ka (Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.)

Supplementary Information:

Affected entities: Entities potentially affected by this action are those which have storage vessels containing petroleum liquids which have a storage capacity greater than 151,416 liters that were constructed, reconstructed or modified commencing after May 18, 1978 and prior to July 23, 1984.

Title: 40 CFR Part 60, NSPS Subpart Ka (Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.) OMB Control Number 2060–0121, expiring on 5/31/98.

Abstract: The EPA is charged under Section 111 of the clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section ill(a) (1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every 4 years. In addition, Section 114 (a) states that:

> * * * the Administrator may require any owner or operator subject to any requirement of this Act to, (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from VOL storage vessels cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS have been promulgated for this source category.

The control of emissions of VOC from storage vessels requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions are the result of evaporation of volatile organic liquids contained in the vessels. These standards rely on the enclosure of the tanks by fixed or floating roofs, or a vapor recovery system or equivalent control device.

(2) *Description and Practical Utility of the Information Collection Activity.* In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Generally, this information will be readily available because it is needed for plant records. As a result, there should be no additional burden from these requirements.

The format of the rule is that of an equipment standard. A performance test is not required because conducting a performance test is not feasible for floating roofs. Floating roofs are subject to visual inspections and periodic measurements. Flares must meet the General Provisions at section 60.18(f). The owner/operator must notify the date of construction or reconstruction no later than 30 days after such date, notify 60 days prior to a physical or operational change to an existing facility which may increase emissions, record occurrences of any start-up, shutdown or malfunction, record gap measurements: primary seals every five years, secondary seals every year, report within 60 days if seal gap measurements exceed regulatory limits (§ 60.112a), provide notice 30 days prior to seal gap measurement, provide information on vapor recovery system including emissions data, operations design and maintenance plan and record whenever the liquid is changed, type of petroleum liquid, period of storage and maximum true vapor).

Information generated by notifications, recordkeeping, and reporting requirements is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment used to achieve compliance. Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. If the information were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by the new, modified, or reconstructed sources subject to the regulation. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the recordkeeping requirements, the standards could be enforced only through continuous onsite inspection by regulatory agency personnel. Consequently, not collecting the information results in (1) greatly increased resource requirements for enforcement agencies or (2) the inability to enforce the standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of informatiofi, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Based upon the data the Agency had from the last ICR, the burden was estimated as follows: notifying and reporting roof gaps is 5 hours, recording primary seal measurements is 18 hours, recording secondary seal measurements is 90 hours and fill/refill records is 5 hours. The frequency of response is one time and 183 respondents are estimated to be subject to these requirements. The average annual O&M cost for complying with NSPS Subpart Ka is estimated to be $3,578 per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart O: Sewage Treatment Plant Incineration

Supplementary Information

Affected entities: Entities potentially affected by this action are those which incinerate wastes containing more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants or each incinerator which charges more than 1000 kg (2205 lb) per day municipal sewage sludge (dry basis) and which commenced construction or modification after June 11, 1973.

Title: NSPS Subpart O: Sewage Treatment Plant incineration, OMB Control Number 2060–0035, expires June 30, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.150, et seq., Subpart O, New Source Performance Standards (NSPS) for sewage sludge treatment plant incinerators. This information notifies EPA when a source becomes subject to the regulations, informs the Agency if a source is in compliance when it begins operation, and informs the Agency if the source remained in compliance during any period of operation. In the Administrator's judgment, particulate matter emissions from sewage treatment plant incinerators cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

The control of emissions of particulate matter from sewage treatment plant incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Particulate matter emissions from sewage treatment plant incinerators are the result of the physical and chemical characteristics of the sludge feed and fuel use, the excess air rate, the temperature profile within the incinerator, the pressure drop across the control device, and operating procedures. These standards rely on the reduction of particulate matter emissions by wet scrubbers.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards, that are protective of public health, are being met on a continuous basis, as required by the Clean Air Act.

The standards require recordkeeping to document information relating to the continuous monitoring of: the pressure drop across the emission control device, the amount of oxygen in the incinerator exhaust gases upstream of the emissions control device, devices which measure temperature profiles, feed rates and fuel uses (for sources over the .75 lb/ton input cutoff), and document information relating to the daily results of grab samples each day of incineration to determine moisture and volatile content of the sludge. Specifically, incinerators from which particulate emission rate measured during the performance test is less than or equal to 0.38 g/kg of dry sludge input (0.75 lb/ton), shall be exempted from continuously monitoring and recording the following: incinerator temperature, fuel flow, sludge feed rate, and sludge moisture and volatiles content.

The standards require initial notification reports with respect to construction, modification, reconstruction, startups, shutdowns, and malfunctions. The standards also require reports on initial performance tests.

Under the standard, the data collected by the affected industry is retained at the facility for a minimum of two (2) years and made available for inspection by the Administrator.

The information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor particulate emissions directly, thus ensuring continuous compliance with the standards. The semiannual reporting requirement for scrubber pressure drop and average oxygen content provide good indications of a source's compliance status. There is a direct correlation between particulate removal efficiencies, pressure drop across the scrubber, and elevated oxygen levels in the incinerator exhaust gases. For this reason, the Agency is requiring all sludge incinerators to continuously monitor and record pressure drop across the scrubber and oxygen levels in the incinerator exhaust gases. Other incinerator operating variables such as fuel use, incinerator temperature, and sludge quality have also been found by EPA to affect measures of particulate removal efficiencies.

The Agency considers that information on continuous sludge feed rates is necessary to evaluate cases for potential periods of increased particulate emissions (as indicated by changes in either scrubber pressure drop or oxygen content). Furthermore, an increase in the sludge feed rate, especially accompanied by increased moisture and volatile content, requires a proportional increase in the specific fuel consumption. Hence, excess emissions could potentially occur when sludge feed rates are above specific fuel consumption rates. Therefore, should either the fuel use increase, incinerator temperature increase, sludge moisture content increase, or sludge volatile content decrease compared to the values observed at the time of a performance test, it is reasonable to suspect that increased emissions of particulate matter could result. By requiring this information, EPA or other agencies to which enforcement authority is delegated will be given the means to identify those facilities that should be more frequently subjected to on-site inspections. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Public reporting and recordkeeping burden for this collection is estimated to average 106 hours per respondent per year. It is estimated that approximately 72 sewage treatment plants that are equipped with sludge incinerators are currently affected by the NSPS. It is estimated that an additional 3 sources will become subject to the standard each year over the next three years. Therefore, the ICR will apply to an average of 72 + 5.0, or 77 sources over the next 3 years. For the purpose of this cost analysis, it is assumed that 50 percent of the 77 sewage sludge plants (includes estimated increase) would fall under the size threshold (.75 lb/ton sludge input) and thereby are exempt from monitoring incinerator temperature profiles, sludge feed rates, fuel use, and moisture and volatile contents of the sludge. Likewise, it is assumed that 50 percent of all the facilities would be required to file annual excess emissions reports. Reports of excess monitoring data are assumed to require 40 person hours per year to prepare. Reports indicating no excess would take 8 hours to prepare. Other assumptions used in estimating the burden hours include: there will be 18 plants (respondents) in 5 years equal to 3.6 respondents per year, and 20 percent of initial performance tests must be repeated due to failure. The burden to respondents has been minimized by requiring the collection of only that information which the Agency considers essential to ensure that sewage sludge incinerators subject to the NSPS are properly maintained and operated on a continuing basis. In addition, the monitoring, recordkeeping, and reporting requirements have been designed to reduce the incidence of reporting for plants that achieve compliance at emission rates well below the existing NSPS emission limit. Thus, those plants that are less likely to exceed the existing emission limit will be less burdened by the requirements. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The average annual burden to industry from these recordkeeping and reporting requirements is estimated at 8181.3 person-hours and $360,795.33. The specific frequency for some of the information collection activities within this request are: initial performance tests, 72 hrs/event; repeat performance tests (estimated at 20%), 72 hrs/event; notify of construction or reconstruction, 2 hrs/event; notify of anticipated start-up, 2 hrs/event; notify of actual startup, 2 hrs/event; notify of demonstration of CMS, 40 hrs/event; notify of initial performance test, 2 hrs/event; excess emissions reports, excess reports, 40 hrs/event; non-excess Reports, 8 hrs/event; records of startups, shutdowns, malfunctions, etc., 1.5 hrs/event; record operating parameters of CMS, non-exempted facilities, 1.5 hrs/event and exempted Facilities: 0.5 hrs/event.

NSPS Subpart QQ

Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart QQ for the graphic arts industry, or each publication rotogravure printing press (not including proof presses) and for which construction, modification, or reconstruction commenced after October 28, 1980.

Title: NSPS Subpart QQ: Standards of Performance for the Graphic Arts Industry—Publication Rotogravure Printing, OMB number 2060–0105, expires April 30, 1998.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

* * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from the graphic arts industry, publication rotogravure printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Graphic Arts Industry were proposed on October 28, 1980, and promulgated on November 8, 1982. These standards apply to each publication rotogravure printing press (not including proof presses) for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards prohibit the discharge into the atmosphere from any affected facility VOC equal to more than 16 percent of the total mass of VOC solvent and water used at that facility during any one performance averaging period.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction (40 CFR 60.7(a)(1)); notification of the anticipated and actual dates of startup (40 CFR 60.7(a)(2) and (a)(3)); notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate (40 CFR 60.7(a)(4)); and the notification of the date of the initial performance test (40 CFR 60.7). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility (40 CFR 60.7(b)). Test reporting requirements apply only to the initial performance test. A written report must be furnished to the Administrator describing the results of the initial performance test (40 CFR 60.8(a), 60.433(e)(6)). These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping specific to publication rotogravure operations include: performance test records and all other information required by this part/subpart recorded in a permanent file suitable for inspection. The file shall be maintained for at least two years. (40 CFR 60.7(f), and 60.434 (a)). This other information includes: the amount of solvent and water used, solvent recovered, and estimated emission percentage for each performance averaging period. The performance averaging period for monitoring of proper operation and maintenance is a calendar month or 4 consecutive weeks. In order to calculate corrected volumes and mass quantities, temperatures and liquid densities determined during the most recent performance test are used, or the owner can measure temperature to determine actual liquid densities for each performance period.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be 45 new affected facility over the three years of the existing ICR and that there were approximately 165 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart QQ are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup ((1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual report (4 person-hours). Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 8277 person hours.

NSPS Subpart UU: Asphalt Processing & Asphalt Roofing Manufacturers

Supplementary Information

Affected entities: Entities potentially affected by this action are each saturator and each asphalt storage facility at asphalt roofing plants, and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants.

Title: NSPS Subpart UU: Asphalt processing and asphalt roofing manufacturers; EPA ICR #0661.05; OMB Control #2060–0002; expiring July 31, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60, New Source Performance Standards (NSPS), Subpart UU. The respondents of the recordkeeping and reporting requirements are asphalt processing and roofing manufacturers (SIC Codes 2911, 2951, and 2952) which commenced construction, modification, or reconstruction after November 18, 1980, or May 26, 1981 as appropriate. Owners and operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping and reporting requirements specific to asphalt processing and roofing manufacturers consist mainly of temperature measurements. Owners or operators of affected facilities are required to continuously monitor and record the temperature of the gas at the inlet of the pollution control device if that control device is an electrostatic precipitator or a high velocity air filter. If the pollution control device is an afterburner, the owner or operator is required to continuously monitor and record the temperature in the combustion zone of the afterburner. If the control device is not one of the three mentioned above, the owner or operator is required to provide to the Administrator information describing the operating parameters, which indicate proper operation and maintenance of the device. The industry is exempted from periodic reporting of excess emissions.

Therefore, the recordkeeping requirements for asphalt processing and

roofing manufacturing consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results; including temperature measurements. Records of startups, shutdowns, and malfunctions should be noted as they occur. Additional records to be maintained include all continuous monitoring system performance evaluations, all continuous monitoring system calibration checks, and adjustments and maintenance performed on these systems or devices. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

The reporting requirements for this industry currently include the initial notifications listed, and the initial performance test results. For performance test reports, owners or operators must report the operating temperature of the control device during the test. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and not the operating conditions under which compliance was achieved. If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by new, modified, or reconstructed sources subject to the regulations. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, or the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements are also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Public reporting and recordkeeping requirements over the next three years for this collection is estimated at 3033 person-hours per year. It is estimated that approximately 46 facilities are currently affected and that an additional 3 new plants will become subject to the standards over the next three years. It is assumed that the facility operates for 250 days per year. The average annual burden to industry over the next three years of the ICR is estimated to be $92,361.

The breakdown of this burden is as follows. The reporting requirements are estimated to be 89 person-hours per year, at a cost of $2716. This includes reading instructions (2 hrs.), creating and gathering information through the initial performance tests (48 hrs.), reference Method 9 test (9.6 hrs.), and repeating performance tests (9.6 hrs.). There are several areas under writing reports: notification of construction or reconstruction (4 hrs.), notification of anticipated start/up (4 hrs.), notification of actual start/up (4 hrs.), notification of initial performance test (4 hrs.), report of CMS demonstration (4 hrs.), and report of performance test (4 hrs.). Excess emission reports, applications, and surveys and studies are not applicable to this ICR.

The recordkeeping requirements are estimated to be 2944 person-hours per year, at a cost of $89,644. The burden in this area for reading instructions, planning and implementing activities are included under reporting requirements. The estimated time to enter information for recording startups, shutdowns, malfunctions, etc. is 69 hours. The estimated time to enter information for maintaining the records of operating the parameters of the continuous monitoring system (CMS) is 2875 hours. Development of the record system, training personnel, and conducting audits are not applicable to this ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart BBB: Rubber Tire Manufacturing

Supplementary Information

Affected entities: Entities potentially affected by this action are facilities in rubber tire manufacturing plants: each undertread cementing operations, sidewall cementing operations, each tread end cementing operations, each bead cementing operations, each green tire spraying operations, each Michelin-A operations, each Michelin-B operations, and each Michelin-C-automatic operations, commencing construction, modification or reconstruction after January 20, 1993, the date of proposal.

Title: National Emission Standards (NSPS) for Rubber Tire Manufacturing, Part 60, Subpart BBB; OMB No. 2060–0156; EPA No. 1158.06; Expiration date April 30, 1998.

Abstract: In addition to the monitoring, recordkeeping and notification requirements specified in the General Provisions in § 60.7(a), (b), (d), (f), and (h), owners or operators are to comply with the requirements specified in NSPS Subpart BBB. These specific requirements are: Install, calibrate, maintain, and operate a control device and monitor process parameters, as specified in § 60.544. Maintain records of operating parameters of monitoring device results for catalytic or thermal incinerators, or carbon absorbers; monthly VOCs use, number of days in compliance period, and other information needed to verify results of monthly tests; and of, formulation data or results of Method 24 analysis of water-based sprays containing less than 1.0 percent of VOC; as specified in § 60.545. Report on the initial compliance report that includes initial performance test results, monthly schedule to be use in making compliance determinations, design and equipment specifications and compliance method; the initial and annual formulation data or method 24 results to verify VOC content of water based-sprays; and on the semiannual reports of each monthly exceedance of applicable emission limit and monitoring device exceedance of acceptable limits; as specified in § 60.546.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1995 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. A burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be 9 new affected facilities over the three years of the existing ICR and that there were approximately 26 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart BBB are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (240 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (2 person-hours), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual exceedance report (8 person-hours), Annual report of formulation data/Method 24 results (2 person-hours), and Report of change in operating parameters (3 person-hours). We assume to estimate the reporting requirement burden that: (1) one-third of the sources report exceedance reports each month, (2) 80 percent of sources use water-based sprays and submit the annual report of formulation data, (3) 20 percent of all sources will have to report operational parameter changes, and (4) sources operate 250 days per year. Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 10,914.6 person-hours.

NESHAP Subpart C: Beryllium

Supplementary Information

Affected entities: Entities potentially affected by this action are extraction plants, foundries, incinerators, propellent plants, and machine shops which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste.

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart C—Beryllium (OMB Control Number 2060–0092; expiration date, 3/30/98).

Abstract: Beryllium and many of its compounds are considered to be among the most toxic and hazardous of the nonradioactive substances in industrial use. Consequently, EPA promulgated standards in 1973 to control airborne releases from affected facilities such that ambient air concentrations would not exceed 0.01 micrograms per cubic meter. Alteration of a beryllium product by burning, grinding, cutting, or other physical means can, if uncontrolled, produce a significant hazard in the form of dust, fumes, or mist. Approximately 200 operations, such as machine shops, ceramic plants, propellant plants, extraction plants, and foundries, comprise the major users of beryllium that could cause emission to the atmosphere. All sources known to have caused, or to have the potential to cause, dangerous levels of beryllium in the ambient air are covered by the Beryllium NESHAP. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The only recordkeeping and reporting requirements under this regulation are associated with the initial performance test. This is a one-time-only demonstration at start-up that a source's emissions are below the limit of 10 grams of beryllium per 24-hour period. Such a demonstration is required only of new sources and those that have modified, reconstructed, or otherwise altered their operations. It is estimated that three such sources will come on line over the next three years (one facility per year). These new, modified, or reconstructed facilities must submit initial notifications of construction, anticipated date of start-up, actual start-up date, and the date and results of the initial performance test. It is expected that the notifications (total of 4) would take two hours each to prepare; the initial performance test would take 24 hours to conduct; and it would take 4 hours to complete the performance test report. The burden for each new source would therefore be 36 hours. The total annual cost associated with this information collection would be $1,292, based on a technical wage rate of $35.89 per hour ($17.09 per hour + 110% overhead). This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart F: Vinyl Chloride

Supplementary Information

Affected entities: Entities potentially affected by this action are exhaust gases and oxychlorination vents at ethylene dichloride (EDC) plants; exhaust gases at vinyl chloride monomer (VCM) plants; and exhaust gases, reactor opening losses, manual vent valves, and stripping residuals at polyvinyl chloride (PVC) plants. The standards also apply to relief valves and fugitive emission sources at all three types of plants.

Title: NESHAP Subpart F: National Emissions Standards for Hazardous Air Pollutants for Vinyl Chloride, OMB Control Number 2060–0071, expiration 6/30/98.

Abstract: The owner/operator must make the following one-time-only reports: application for approval of construction or modification; notification of startup; application of waiver of testing (if desired by source); application for equivalency (if desired by source); and an initial report. The initial report includes a list of the equipment installed for compliance, a description of the physical and functional characteristics of each piece of equipment, a description of the methods which have been incorporated into the standard operation procedures for measuring or calculating emissions, and a statement that the equipment and procedures are in place and are being used. Generally, the one-time-only reports are required of all sources subject to NESHAP. The record keeping and other reporting requirements, are specific to this NESHAP. To fulfill the record keeping requirement, sources detect leaks in accordance with an approved leak detection and elimination program, which generally consists of an area VC monitoring system and a portable hydrocarbon detector to find small leaks of VC and to pinpoint major VC leaks indicated by the area system. Action taken to repair leaks must also be recorded and kept on file. Excess stack emissions are generally recorded automatically by a continuous emission monitor. Reactor operation parameters (temperature and pressure) are also recorded automatically by a device that continuously monitors these parameters. Owners and operators are also required to submit quarterly reports of reactor opening losses (PVC plants only), stripping residuals (PVC plants only), and excess emissions. They are also required to report within 10 days of each relief valve discharge and manual vent valve discharge. The information generated by the monitoring, record keeping and reporting requirements described above is issued by the Agency to ensure that facilities affected by the NESHAP continue to operate the control equipment and use proper practices to achieve compliance with NESHAP. Notification startup indicates enforcement personnel when a new facility has been constructed and is thus subject to the standards. If information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NESHAP is achieved and maintained by the sources subject to the regulation. EPA uses this information to directly determine the compliance status of sources in lieu of on-site surveillance. The burden to respondents has been minimized by requiring the collection of only that information which the Agency considers essential that PVC, EDC, and VCM plants are properly maintained and operated on a continuous basis. Certain reports required by State or local agencies may duplicate information required by the recommended standards. In such cases, a copy of the report submitted to the State or local agency can be sent to the Administrator in lieu of the report required by the recommended standard. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 255 hours per reporting response and 1.25 hours for recordkeeping. To minimize the burden, much of the information the EPA would need to determine compliance is recorded and stored at the facility. Minimal reporting is necessary unless a violation occurs. Owners or operators of the affected facilities described must make the following one-time-only reports: application of construction or reconstruction, 2 hours; notification of the anticipated and actual dates of startup 2 hours; application for waiver of testing, 8 hours; application of equivalency, 40 hours; initial report, 24 hours; quarterly report, 50 hours; MVV/RVD report, 8 hours; initial performance test, 60 hours. It is assumed 20% of performance tests will be repeated due to failure. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Specific vinyl chloride recordkeeping includes records of reactor parameters and emissions, .25 hour. It is assumed

the plant operates 365 days a year. Records of leaks detected is one hour per week. Recordkeeping includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

MACT Subpart W: Epoxy Resins and Non-Nylon Polyamides

Supplementary Information

Affected entities: Entities potentially affected by this action are those which manufacture polymers and resins from epichlorohydrin.

Title: National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production, Information Collection Request, OMB control number 2060–0290, expires July 31, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 63.1–15, Subpart H, and 63.520 –528, Subpart W, hazardous air pollutants from process vents, storage vessels, waste water systems and equipment leaks. The standards require recordkeeping and reporting to document process information related to the source's ability to comply with the standards. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control is being properly applied. Respondents are owners or operators of new and existing facilities that manufacture polymers and resins from epichlorohydrin. Source categories include basic liquid epoxy resin (BLR) producers and epichlorohydrin-modified non-nylon polyamide resins also known as wet strength resins (WSR).

Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAPs) from stationary sources. The sources subject to these provisions emit the HAPs epichlorohydrin, and in lesser amounts, hydrochloric acid and methanol. In the Administrator's judgment, hazardous air pollutant (HAP) emissions in this industry cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare. Therefore, NESHAPs have been promulgated for this source category as required under section 112 of the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are approximately thirteen facilities which must comply with these provisions, three are plants that produce basic liquid epoxy resins and ten are producers of wet strength resins. The growth rate for this industry is so low that no new plants are expected in the next three years. The average burden per facility per year is estimated to be 1483 hours. This includes 1050 hours for daily wastewater monitoring, and additional hours for record-keeping, reporting and notifications related to compliance status, leak detection and repair, startup/shutdown and malfunction events, process changes, emissions exceedances, and construction/reconstruction and startups. Because this is not a new information collection, it assumes that most facilities will have already developed the record-keeping and reporting mechanisms to maintain and report the required data except for process additions or changes.

MACT Subpart X: Secondary Lead Smelters

Supplementary Information

Affected entities: Entities potentially affected by this action are owners or operators of secondary lead smelters that operate furnaces to reduce scrap lead metal and lead compounds to elemental lead.

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP)—Secondary Lead Smelters (OMB Control Number 2060–0296; expiration date March 30, 1998)

Abstract: The EPA is required under Section 112(d) of the 1990 Clean Air Act, to regulate emissions of 189 hazardous air pollutants (HAPs). The pollutants emitted from secondary lead smelters include both metal and organic HAPs identified in this list of 189 pollutants. In the Administrator's judgment, such emissions cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health. Consequently, NESHAP for this source category were promulgated on June 23, 1995.

Certain records and reports are necessary to enable the Administrator to identify sources subject to the standard and to ensure that the standard, which is based on maximum achievable control technology (MACT), is being achieved. The information will be used by Agency enforcement personnel to: (1) identify sources subject to the standard; (2) ensure that MACT is being properly applied; (3) ensure that emission control devices are being properly operated and maintained on a continuous basis to reduce HAP emissions from furnaces and process fugitive sources; and (4) ensure that fugitive dust controls are being fully implemented. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other

forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are 23 sources currently subject to this standard, and no additional sources are anticipated during the next three years. Since most of the reporting requirements are one-time-only activities for new sources, these will not apply to the 23 existing facilities and consequently, have not been included in estimating the respondent burden for this ICR. The total annual burden for all recordkeeping and monitoring requirements plus the preparation of semi-annual reports is estimated to be 5,686 hours technical, 285 hours managerial, and 568 hours clerical. The total annual cost associated with this ICR is $231,561 or approximately $10,000 per facility per year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 25, 1997.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 97–31575 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5960–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance, with section 113(g) of the Clean Air Act, as amended (Act), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (EPA) on November 19, 1997, to address a lawsuit filed by the Sierra Club. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), concerns, among other things, EPA's alleged failure to meet a mandatory deadline under section 112(f)(1) of the Act, 42 U.S.C. 7412(f)(1). Section 112(f)(1) of the Act relates to a report to Congress on the risk to public health remaining, or likely to remain, from sources subject to hazardous air pollutant regulation under section 112 of the Act, 42 U.S.C. 7412, after the application of technology-based standards under section 112(d) of the Act, 42 U.S.C. 7412(d). The proposed partial consent decree provides that no later than March 24, 1998, the Administrator shall sign a notice of availability of the proposed report, and that no later than February 1, 1999, the Administrator shall sign the letter transmitting the final report to Congress.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed partial consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final partial consent decree will establish the deadlines listed above for specific actions under section 112(f)(1) of the Act.

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on November 19, 1997. Copies are also available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Diane E. McConkey at the address above and must be submitted on or before January 2, 1998.

Dated: November 24, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–31571 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00514; FRL–5759–4]

Pesticide Environmental Stewardship Program Regional Workshops; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The Pesticide Environmental Stewardship Program (PESP) is a voluntary partnership between the pesticide user community and EPA. EPA, in conjunction with the National Foundation for IPM Education, will hold two meetings in December to allow PESP members to discuss pesticide risk reduction issues of common interest and to exchange ideas on risk reduction techniques. Further, the meetings will serve as an introduction to PESP for organizations considering membership and for other parties interested in pesticide risk reduction. Both meetings are open to the public.

DATES: The meetings will be held on December 4, 1997, from 8:30 a.m. to 6 p.m and December 8, 1997, from 8:30 a.m to 6 p.m.

ADDRESSES: The meeting on December 4 will be held at Skamania Lodge, Stevenson, WA. The meeting on December 8 will be held at the University Club, University of California, Davis, CA.

FOR FURTHER INFORMATION CONTACT: By mail: Frank W. Ellis, Jr., Office of Pesticide Programs (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor, 2800 Crystal Drive, Arlington, VA, 703–308–8107; e-mail: ellis.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Begun in 1994 with 23 charter partners, PESP has grown to include 77 partners encompassing interests as diverse as almond growers in California, villages in the Northeast and utility rights-of-way managers throughout the country and 15 supporters encompassing interests as diverse as major food processors and stormwater management agencies. Partner organizations represent pesticide users. Supporter organizations influence pesticide use or have an interest in pesticide issues.

In 1996, a National PESP Workshop was held in the Washington, DC area. At that workshop, many participants suggested that regional workshops be held to provide for more one-on-one contact between members in smaller groups. These workshops are in response to that request. The Agency anticipates holding additional regional workshops in the future.

Topics to be discussed at the workshops include: The development and implementation of risk reduction strategies; results from funded PESP projects; and the PESP grant process. There will be time for open discussion among the participants. A separate session will be held immediately following the general session for any organizations interested in joining the program.

List of Subjects

Environmental protection.

Dated: November 25, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, ffice of Pesticide Programs.

[FR Doc. 97–31735 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–7]

Notice Of Public Meeting on Drinking Water Analytical Methods

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on December 16, 1997, for the purpose of summarizing the findings and other information discussed during the Protozoan Method Development Workshop held on October 20–22 in Arlington, VA. EPA will present its programmatic and regulatory needs for improved protozoan methods, describe a possible approach for defining method performance criteria, present current status on the development of an improved near-term *Cryptosporidium* analytical method, and discuss possible methods that may be available for future regulations.

EPA is inviting all interested members of the public to attend the meeting, which will be held at RESOLVE, 1255 23rd Street, NW, Suite 275, Washington, D.C. For further information regarding agenda or other aspects of the meeting, members of the public are requested to contact Crystal Rodgers of EPA's Office of Ground Water and Drinking Water at (202) 260–0676 or by e-mail at rodgers.crystal@epamail.epa.gov.

Dated: November 25, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–31572 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5931–1]

Science Advisory Board; Notification of Public Teleconference Meeting

December 18, 1997.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee, will conduct a public teleconference meeting on Thursday, December 18, 1997, between the hours of 12:00 and 2:00 pm, Eastern Time. The meeting will be coordinated through a conference call connection in Room 2103 of the Mall at the Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260–8414 by December 12, 1997.

In this meeting the Executive Committee plans to review reports from several of its Committees. Expected reports include: (1) *Environmental Engineering Committee (EEC)—a) Review of the Toxic Release Inventory; and b) Review of the Waste Research Strategy;* (2) *Ecological Processes and Effects Committee (EPEC)—Review of the Ecological Research Strategy.* Please contact Ms. Tillery-Gadson a week prior to the meeting to confirm that a given report will be reviewed.

Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; and via the INTERNET at barnes.don@epamail.epa.gov. Copies of the relevant documents are available from the same source.

Dated: November 25, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–31577 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50836; FRL–5758–9]

Receipt of an Application for an Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: This notice announces receipt of an application (EUP No. 524-EUP-II) from Monsanto Company requesting an experimental use permit for a genetically engineered microbial plant-pesticide CryIA(c) expressed in tomato plant cells. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before January 2, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, PM 90, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS #1, 2805 Crystal Drive, Arlington, VA, telephone: (703) 308–8682, e-mail: nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has received an application from Monsanto Company of St. Louis Missouri for an experimental use permit (EUP). This EUP application is assigned EUP No. 524-EUP-II. The proposed experiment involves the field testing of the transgenic plant-pesticide CryIA(c) expressed in tomato plant cells. The program will involve field testing of a maximum of 500 acres of transgenic plantings in California, Florida, Georgia, and Puerto Rico. CryIA(c) is currently registered for use on cotton (EPA registration number 524–478). CryIA(c) is currently exempted from the requirements of a tolerance under 40 CFR 180.1154 and 180.1155; therefore, a tolerance exemption is not needed for this product.

Testing will be conducted in the following states: California, Florida, Georgia, and Puerto Rico. The purpose of this EUP is to test the efficacy of this active ingredient against target pests, conduct research for the better understanding of resistance management, development of IPM logistics, evaluate agronomic performance and continue plant breeding activities, and test marking potential of the fruit. The total acreage testing will be no more than 500, and only a maximum of 138.9 grams of the active ingredient CryIA(c) will be shipped, in the form of tomato seed and/or transplants.

Plantings grown for agronomic evaluation will be sold to processors. Seeds will be saved for future research or planting by Monsanto.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPP–50836" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–50836." Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: November 21, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–31550 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 24, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 2, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0192.

Title: Section 87.103, Posting station license.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit; individuals or households; not-for-profit institutions; state, local, or tribal governments.

Number of Respondents: 47,800.

Estimated Time Per Response: 0.25 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: N/A.

Total Annual Burden: 11,950 hours.

Needs and Uses: The recordkeeping requirement contained in Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended. The information is used by the FCC Compliance and Information Bureau personnel during inspections and investigations to insure the particular station is licensed and operated in compliance with applicable rules, statutes, and treaties. In the case of aircraft stations, the information may be utilized for similar purposes by appropriate representatives of foreign governments when the aircraft is operated in foreign nations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31471 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1997–16]

Filing Dates for the California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on January 13, 1998, to fill the U.S. House seat in the Twenty-Second Congressional District held by the late Congressman Walter Capps. Should no candidate achieve a majority vote, a Special Runoff Election will be held on March 10, 1998, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees required to file reports in connection with the Special General Election on January 13 should file a 12-day Pre-General Election Report on January 2, 1998. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on January 2, a Year-End Report on January 31, a Pre-Runoff Report on February 26, and a consolidated Post-Runoff & April Quarterly Report on April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on January 2, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through December 24, 1997; a Year-End Report on January 31, 1998, with coverage dates from December 25 through December 31, 1997; a Pre-Runoff Report on February 26, 1998, with coverage dates from January 1 through February 18, 1998; and a consolidated Post-Runoff & April Quarterly Report on April 9, 1998, with coverage dates from February 19 through March 31, 1998.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on January 2, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through December 24; a Year-End Report on January 31, with coverage dates from December 25 through December 31; and a Post-General Report on February 12, with coverage dates from January 1 through February 2, 1998.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on February 26, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through February 18, and a consolidated Post-Runoff & April Quarterly Report on April 9, with coverage dates from February 19 through March 31, 1998.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
If Only the Special General is Held (01/13/98), Committees Must File:			
Pre-General	12/24/97	12/29/97	[3]01/02/98
Year-End	12/31/97	01/31/98	01/31/98
Post-General	02/02/98	02/12/98	02/12/98
If Two Elections Are Held, But a Committee is Involved Only in the Special General (01/13/98)			
Pre-General	12/24/97	12/29/97	[3]01/02/98
Year-End	12/31/97	01/31/98	01/31/98
Committees Involved in the Special General (01/13/98) and Special Runoff (03/13/98) Must File			
Pre-General	12/24/97	12/29/97	[3]01/02/98
Year-End	12/31/97	01/31/98	01/31/98
Pre-Runoff	02/18/98	02/23/98	02/26/98
Post-Runoff and April Quarterly[4]	03/31/98	04/09/98	04/09/98
Committees Involved in the Special Runoff (03/10/98) Only Must File			
Pre-Runoff	02/18/98	02/23/98	02/26/98
Post-Runoff and April Quarterly[4]	03/31/98	04/09/98	04/09/98

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] The date has been adjusted because the computed date would have fallen on a Federal holiday.
[4] Committees should file a consolidated Post-Runoff and April Quarterly Report by the filing date of the Post-Runoff Report.

Joan D. Aikens,

Vice Chairman, Federal Election Commission.

[FR Doc. 97–31484 Filed 12–1–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962.

Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011279–005.

Title: Caribbean and Central America Discussion Agreement.

Parties:

Central America Discussion Agreement
Southeastern Caribbean Discussion Agreement
Hispaniola Discussion Agreement
U.S./Jamaica Discussion Agreement
Venezuela American Maritime Association
Caribbean Shipowners Association
Aruba Bonaire Curacao Liner Association
Inter-American Freight Conference
Venezuelan Discussion Agreement
Puerto Rico/Caribbean Discussion Agreement.

Synopsis: The proposed modification changes the name of the Agreement to the Western Hemisphere Discussion Agreement, expands the Agreement's geographic scope to include South America, deletes the Panam discussion Agreement as a party, and adds both the Inter-American Freight Conference and the Venezuela Discussion Agreement as parties to the Agreement.

Agreement No.: 206–011596.

Title: APL/MOL/HMM Reciprocal Slot Exchange Agreement.

Parties:

American President Lines, Ltd. ("APL")
Hyundai Merchant Marine Co., Ltd. ("HMM")
Mitsui O.S.K. Lines, Ltd. ("MOL")

Synopsis: The proposed Agreement authorizes HMM to use up to an annualized average of 6000 TEUs of space per week on vessels operated by either APL or MOL, and for APL and MOL to use up to an annualized average of 7000 TEUs per week on vessels operated by HMM in the trade between the Pacific Coast of the United States and the Far East. The parties may also interchange empty containers and agree upon sailing schedules, service frequency and the number, type and size of vessels to be used.

Agreement No.: 232–011597.

Title: CAGEMA Gulf Express Slot Charter Agreement.

Parties:

Caribbean General Maritime Ltd. ("CAGEMA")
Compagnie Maritime D'Affretement ("CMA")

Synopsis: The proposed Agreement would permit CAGEMA to charter space to CMA in the trade between U.S. South Atlantic and Gulf ports, and inland points via such ports, and Freeport, the Bahamas. The parties may also agree upon the type and size of vessels CAGEMA will operate in the trade as well as CAGEMA's sailing schedules, port rotation, and ports to be served. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 25, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31490 Filed 12–1–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Frontier International Forwarders, 6073 N.W. 167 Street, Suite C–10, Miami, FL 33015, Officer: Leylani del Valle, President

Superior Freight Services, Inc., 2600 East 81st Street, Bloomington, MN 55425, Officers: Todd A. Nelson, President; Paul J. Goff, Vice President

Wimpex, Inc., 2983 Center Court, Eagan, MN 55121, Officers: Mark Culley, President; Chris Mady, Vice President

Globe Express Services, Ltd., 3801–F1 Beam Road, Charlotte, NC 28217, Officers: Edouard T. Rassie, President; Antoine G. Bikhazi, Vice President.

Dated: November 26, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31562 Filed 12–1–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Hoosac Financial Services, Inc., North Adams, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of North Adams Hoosac Savings Bank, North Adams, Massachusetts.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. SNB Bancorp, Pine Plains, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Stissing National Bank of Pine Plains, Pine Plains, New York.

2. Millbrook Bank Systems, Inc., Millbrook, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Millbrook, Millbrook, New York.

3. HUBCO, Inc., Mahwah, New Jersey; to merge with Poughkeepsie Financial Corp., Poughkeepsie, New Jersey, and thereby indirectly acquire Bank of The Hudson, FSB, Poughkeepsie, New Jersey.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of Glacier Bank, Kalispell, Montana, a *de novo* bank. In addition, an existing subsidiary of Glacier Bancorp, Inc., Glacier Bank, FSB, Kalispell, Montana, will be merged into Glacier Bank and Glacier Bank will become a state member bank.

Board of Governors of the Federal Reserve System, November 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31468 Filed 12–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Credit Commercial de France, S.A., Paris, France; to acquire International Finance Corporation, Parjs, France, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31467 Filed 12–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC or Commission) has submitted information collection requirements associated with the Mail or Telephone Order Merchandise Trade Regulation Rule, 16 CFR Part 435, to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The FTC previously solicited comments from the public concerning these information collection requirements, and provided the information specified in 5 CFR 1320.5(a)(1)(iv). 62 FR 46498 (September 3, 1997). No comments were received. The current OMB clearance for these requirements expires on December 31, 1997. The FTC has requested that OMB extend the PRA clearance through December 31, 2000.

DATES: Comments must be filed by January 2, 1998.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20530, ATTN: Edward Clarke, Desk Officer for the Federal Trade Commission. Comments may also be sent to Elaine W. Crockett, Attorney, Office of the General Counsel, Room 598, 6th St. and Pennsylvania Ave., N.W. 20580, telephone: (202) 326–2453; fax: (202) 326–2477; e-mail ecrockett@ftc.gov

SUPPLEMENTARY INFORMATION:

Title: Mail or Telephone Order Merchandise Trade Regulation Rule, 16 CFR Part 435—(OMB Control Number 3084–0106)—Extension

The Mail Order Merchandise Rule was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship mail order merchandise on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The Rule took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission therefore amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by fax or by computer through the use of a modem.

Generally, the Rule requires a merchant to: (1) have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised, and if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

Under the notice provisions in the Rule, a merchant who is unable to ship within the promised shipment time or 30 days must notify the consumer of a revised date and of his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the Rule requires the merchant to make a refund and the consumer paid by credit card, it also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action resulting in a charge.

Burden statement: In its 1995 PRA submission to OMB, the FTC estimated that 1,897 large businesses and 68,663 small businesses were covered by the Rule, for a total of 70,560 businesses. As stated in the agency's 1995 submission, the conditional nature of some of the Rule's requirements makes it difficult to quantify the exact PRA burden involved. Nonetheless, the agency estimated that, at that time, 70,560 businesses spent an average of 229.78 hours per year on compliance with the Rule, for a total estimate of 16,213,300 burden hours. In the September 3, 1997,

Federal Register notice, we calculated that established businesses would need 150 hours annually toward maintenance of associated computer programs. We have now reduced that figure further after determining that most maintenance and upkeep of computer systems would be part of ordinary business practice in the industry. The OMB regulation that implements the PRA defines "burden" to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

No provisions in the Mail or Telephone Order Merchandise Rule have been amended or changed in any manner. All of the Rule's requirements relating to disclosure and notification remain the same. We have, however, reduced the 1995 total burden estimate for the following reasons.

Most of the 1995 estimated burden hours were associated with one-time start up tasks associated with establishing implementing standard systems and processes. This is because the Rule had recently been amended (in 1994) to include the telephone order industry. The mail order industry, in contrast, had been subject to the basic provisions of the Rule since 1976. Thus, most of the 230 burden hours that we estimated per firm related to the development and installation of computer systems to handle telephone ordering, and not to the maintenance of such systems.

As noted above, the OMB regulation that implements the PRA defines "burden" to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2). In past rulemaking proceedings, industry trade associations and individual witnesses have testified that compliance with the Rule is now widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations with respect to timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders encourages repeat purchase behavior that is essential to the survival of direct mail or telephone order businesses.

Also, the industry is highly automated; notices are produced mechanically and little labor is involved. Nonetheless, even for established businesses, there may be some burden attributable strictly to the existence of the rule. For example, some merchants rely on contractors to handle orders and must therefore monitor how the contractor complies with the Rule. This entails reviewing consumer complaints to determine whether appropriate delay notification is being provided. The Rule allows merchants to use as much or as little time as necessary to assure that notification and disclosure requirements are being met. Companies employ a broad range of energy, time, and resources for performing these tasks. Also, while established companies spend some time maintaining existing compliance systems, their expenditures are only a fraction of those by new businesses required to establish entirely new systems. An exact figure is difficult to quantify; however, based on staff's familiarity with the industry, we have determined that the average among the industry is unlikely to be more than 50 hours per year.

Staff responsible for the Rule have also estimated that approximately 1,000 additional companies have entered the market since 1995 (for a total of 71,560 incumbent firms) and that, due to escalating sales, approximately 1,000 new companies will enter the market during the coming year. We estimate that these 1,000 new companies will each expend 230 hours per year (the 1995 figure of 229.78 rounded to 230) to establish compliance measures associated with system start-up, although it could be argued once again that most of these efforts would be undertaken even absent the Rule. Nonetheless, we have estimated the total burden imposed by the disclosure and notification requirements at approximately 3,808,000 hours (1,000×230=230,000)+ (71,560×50+3,578,000).

Debra A. Valentine,

General Counsel.

[FR Doc. 97–31728 Filed 12–1–97; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

Proposed Collection; GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals (GSBCA), GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0221).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning GSA Board of Contract Appeals Rules Procedure. A request for public comments was published at 62 FR 49518, September 22, 1997. No comments were received.

DATES: Comment Due Date: January 2, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, (202) 501–0272.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0221, concerning the GSA Board of Contract Appeals Rules Procedure. The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, and cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 86; *annual responses:* 86; *average hours per response:* .20; *burden hours:* 10.2.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: November 24, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 97–31487 Filed 12–1–97; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the Genetics Subcommittee, National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Genetics Subcommittee of the National Bioethics Advisory Commission. The subcommittee members will continue addressing issues concerning genetics and genetic testing. The meeting is open to the public and opportunities for statements by the public will be provided.

DATES: Tuesday, December 9, 1997, 7:30 a.m. to 3:30 p.m.

LOCATION: The subcommittee will meet at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Tentative Agenda

The subcommittee will continue discussion on issues surrounding tissue samples including what they are, how they are collected and stored; the moral decisions involved in donation; religious, ethnic, and cultural differences in attitudes; and other related issues.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the subcommittee will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned on a first come first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record.

Persons needing assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: November 25, 1997.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–31463 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of December 1997:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: December 10–11, 1997, 8:00 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open December 10, 1997, 8:00 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications for research and demonstration projects on the use of measurements in improving the quality of health care. Applications are sought in three areas: (1) methods and measures to allow translation of scientific information about medical care into quality measures and strategies to improve clinical practice; (2) studies of the relationship between organizational change and quality measurement and improvement in health care; and (3) studies of the use of information derived from measurement about quality of care by consumers, patients, employers, providers, and insurers to make decisions.

Agenda: The open session of the meeting on December 10 from 8:00 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed sessions, the Panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Sheila S. Simmons, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1452 ext. 1627.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: November 25, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–31589 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Exposure Registry (0923–0006)—Extension—The information collected is part of the Agency for Toxic Substances' on-going National Exposure Registry (NER)—a database composed of a listing of persons, along with health and demographic information, with documented exposure to selected toxic substances subregistries). The NER was

created in response to a Congressional Superfund mandate to create a registry of persons with exposure to hazardous substances and a registry of persons with illness or health problems as a result of exposure to hazardous substances. The mandate was created because there is little or no information available about the potential health effects of low-level, long-term exposure to hazardous substances on a general population—such as is found at waste sites. Unlike most occupationally exposed populations, this environmentally-exposed population has extremely vulnerable components such as pregnant women, the elderly, those with compromised health, and children.

Since the adverse health effects are not known, neither is the latency period for the potential health effects. Therefore, the NER is a longitudinal project: a baseline and biennial follow-ups that will continue until all parties involved agree the established criteria for ending that chemical specific subregistry have been met. The questionnaire is administered (usually in a personal interview) at baseline; the same questionnaire is administered (using computer assisted interviews) to each registrant longitudinally. The data is compared to national norms at each collection and intrafile comparisons are made over multiple collections. Other than their time to participate, there is no cost to respondents. The period requested is for 3 years.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Established Registrants	7,333	1	0.25	1,833
New Registrants	4,300	1	.5	2,150
Total				3,983

Dated: November 25, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31533 Filed 12–1–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received on or before January 2, 1998.

Proposed Projects

1. Health Hazard Evaluations/ Technical Assistance and Emerging Problems (0920–0260)—Reinstatement—In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, the National Institute for Occupational Safety and Health (NIOSH) responds each year to approximately 400 requests for health hazard evaluations to identify potential chemical, biological, or physical hazards at the workplace. Approximately half of these requests require that NIOSH conduct a "short-term" field study to adequately address the issues raised by the requestor. Since 1970, more than 10,000 of these studies have been completed. The main purpose of these studies is to help employers and employees identify and eliminate occupational health hazards. Ninety-five percent of these investigations respond to specific requests for assistance from employers, employees, employee representatives, or other government agencies. The remaining investigations are short-term field investigations initiated by NIOSH because it received information that a chemical, biological, or a physical agent may be hazardous to workers. In these studies, NIOSH determines whether they warrant more detailed studies. Approximately 50% of the field investigations involve interviews or the administration of a questionnaire to the workers. Each questionnaire is specific to that worksite and its suspected diseases and/or hazards; however, questionnaires are derived from standard medical evaluation techniques. NIOSH distributes interim and final reports of the investigations, excluding personal identifiers, to requesters, employers, employee representatives, the Department of Labor (OSHA and MSHA), and, as appropriate, other state and federal agencies. Following the completion of field investigations, NIOSH plans to administer telephone follow-back questionnaires to employer and employee representatives at each site to assess program effectiveness and identify areas for improvement. Because of the large volume of investigations conducted each year, the need to quickly respond to requests for assistance, and the diverse nature of these investigations, NIOSH requests clearance for data collection in these investigations. The total annual burden hours are 4,095.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Employees (initial interviews)	4,200	1	.25
Employees (questionnaires, interviews)	5,250	1	.50
Employees (follow-back questionnaires)	420	1	.50
Employers (follow-back questionnaires)	420	1	.50

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31532 Filed 12–1–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Temporary Assistance for Needy Families (TANF) Tribal Plan.

OMB No.: 0970–0157.

Description: This information collection is authorized by section 412 of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act. It consists of an outline of how an Indian tribe's Temporary Assistance for Needy Families (TANF) program will be administered and operated. It will be used to determine whether the plan is approvable and that the Indian tribe is eligible to receive a TANF grant.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	(1)
Number of Respondents	18
Number of Responses per Respondent	1
Average Burden Hours per Response	60
Total Burden Hours	1,080

[1] Tribal Plan.

Estimated Total Annual Burden Hours: 1,080.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 25, 1997.

Robert Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–31466 Filed 12–1–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for State Data to Determine the Tribal Family Assistance Grant Amount.

OMB No.: New request.

Description: This information collection will be used to request data from States that will be used to determine the amount of Tribal Family Assistance Grants. The data requested is the data required to be used by Section 412(a)(1)(B) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	(1)
Number of respondents	18
Number of responses per respondent	1
Average burden hours per response	42
Total burden hours	756

[1] Request.

Estimated Total Annual Burden Hours: 756.

Additional Information:

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, *Attn:* Ms. Kristie Guillory.

Dated: November 24, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–31469 Filed 12–1–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0260]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the information collection by January 2, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–31, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Customer/Partner Satisfaction Surveys

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research relating to regulated articles and to conduct educational and public information programs relating to the responsibilities of the agency. Executive Order 12862, entitled "Setting Customer Service Standards," directs Federal agencies that "provide significant services directly to the public" to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." FDA is seeking OMB

clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys will be voluntary. This request covers customer service surveys of regulated entities, such as food processors; cosmetic, drug, biologic and medical device manufacturers; consumers; and health professionals. The request also covers partner surveys of State and local governments.

FDA will use the information gathered through these surveys to identify strengths and weaknesses in service provided to customers and partners and to make improvements in it. The surveys will assess timeliness, appropriateness, accuracy of information, courtesy, and problem resolution in the context of individual programs.

In the **Federal Register** of July 15, 1997 (62 FR 37923), FDA invited comments on this proposed collection of information. FDA received no comments in response to this notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Hours per Response	Total Hours
Mail/telephone surveys	29,040	1	0.09	2,614
Total	29,040	1	0.09	2,614

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on experience with other surveys FDA has conducted, and they have been adjusted downward since the July 15, 1997, notice because the agency plans to conduct fewer surveys than previously anticipated. In addition, the agency does not believe that focus groups will be necessary for effective implementation of Executive Order 12862.

Dated: November 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31586 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Reinstatement Approval under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: The collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act. Copies of the proposed information collection requirement, related forms, and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

DATES: Comments must be submitted on or before January 2, 1998.

ADDRESSES: Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: The Service has submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (16 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES) (27 UST 108), the Marine Mammal Protection Act (16 U.S.C. 1374), and the Wild Bird Conservation Act of 1992, contained, or will be contained in Service regulations in Chapter I, Subchapter B of Title 50 of the Code of Federal Regulations (CFR). Common permit application and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of the various statutes in separate parts as identified below.

The Service has redesigned the standard license/permit application form 3–200 to assist persons in applying for Service permits issued under Subchapter B. Under the present clearance, the Service consolidated all requirements in one submission, and they were assigned OMB Approval Number 1018–0022, the Federal Fish and Wildlife License/Permit and Related Reports. In an attempt to take the application process more "user friendly," and to aid the public in commenting on specific license/permit requirements without having to comment on the entire package, similar types of permits have been grouped together and numbered. The permits have been divided into four groups: migratory bird permits, law enforcement, endangered species and Office of Management Authority. The application to apply for Service permits issued under Subchapter B of 50 CFR, will still require completion of the Service form 3–200, which has been revised and renumbered and is now Service form 3–200–1. In addition to the permit application, attachments are often necessary to provide additional information required for each specific type of permit, and these attachments have been assigned numbers, e.g., 3–200–2.

The information to be supplied on the application form and the attachments will be used to review the application and allow the Service to make decisions, according to criteria

established in various Federal wildlife conservation statutes and regulations on the issuance, suspension, revocation, or denial of permits. The obligation to respond is, "required to obtain a benefit." An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number. The following requirements are included in this submission:

1. *Native Endangered/Threatened Species—Incidental Take.* The regulations in 50 CFR 17.22[b][1] & [3] and 17.32[b][1] & [3], and the parts listed below, implement the Endangered Species Act (ESA), except for those provisions in the ESA concerning the Convention on International Trade in Endangered Species of Fauna and Flora, for which regulations are provided in Part 23 of this subchapter. The ESA provides for the protection of listed species through establishments of programs for their recovery and through prohibition of harmful activities.

The ESA also provides for a number of exceptions against "take" of listed species. The Federal regulations cited above have been promulgated to guide implementation of these exceptions to the "take" prohibitions through permitting programs. Form 3–200–56, was developed to facilitate collection of information required by these regulations.

Form 3–200–56 addresses applications and reporting requirements for Incidental Take Permits under Section 10[a][1][B] of ESA. These permits will allow "take" of listed species that is incidental to otherwise lawful non-federal actions. Take authorized under this permit program would otherwise be prohibited by the ESA.

2. *Native Endangered and Threatened Species—Recovery and Interstate Commerce.* Service form number 3–200–55 addresses application and reporting information requirements for Interstate Commerce and for Scientific Research permits under Section 10[a][1][A] of the ESA. Interstate Commerce permits allow transport and sale of listed species across State lines as part of breeding programs enhancing the survival of the species. Scientific Research permits allow "take" of listed species as part of research and management actions, enhancement of propagation or survival, or zoological exhibition, or educational purposes, or special purposes consistent with the ESA designed to benefit the species involved. Detailed descriptions of the proposed taking, its necessities for success of the proposed action, and benefits to the species resulting from the proposed action are required under the implementing regulations cited above. Take authorized under this permit program would otherwise be prohibited by the ESA.

3. *Safe Harbor and Candidate Conservation Agreements.* The ESA provides number of exceptions to its prohibitions against "take" of listed species. Regulations have not been promulgated at 50 CFR 17.22 (endangered species) and 17.32 (threatened species) to guide implementation of these exceptions to the "take" prohibitions through permitting programs. However, a proposed rule was published in the **Federal Register** on June 12, 1997 (62 FR 32189). (NOTE: The current Part 17.22[c] and 17.32[c] will be redesignated 17.22 [e] and 17.32[e], respectively, to allow insertion of the new subsections). Currently, Part 17.22 [a] and [b] contain application requirements, issuance, criteria, and permit conditions for permits for scientific research, enhancement of propagation and survival, and incidental take. The regulations for which this information collection clearance is sought, have not yet been promulgated.

Service form number 3–200–54 addresses application requirements for permits for enhancement of survival through safe harbor and candidate conservation agreements. The permittee will be required to notify the Service of any transfer of lands subject to the Safe Harbor Agreement so that any landowners may be offered the opportunity to continue the actions which the original landowner agreed to and thus he or she may be offered the same legal assurances. A major incentive for landowner participation in the Safe Harbor program is the long-term certainty the program provides, including the certainty that the incidental takes authorization will stay with the land when it changes hands. The Service also requires the permittee/landowner to notify the Service as far in advance as possible when he or she expects to incidentally take any species covered under the permit and provide the Service with an opportunity to translocate affected individual specimens if possible and appropriate.

Description of respondents: Individuals and households.

BURDEN ESTIMATE FOR THE FEDERAL FISH AND WILDLIFE LICENSE/PERMIT—ENDANGERED SPECIES

Permit/report	Number of respondents	Completion time	Annual burden
Safe Harbor & Candidate Agreements, 3–200–54	50	2.5	125
Annual Report	150	5.0	750
Native E/T Species Recovery & Comm. 3–200–55	525	2.0	1,050
Annual Report	100	2.0	200
Native E/T Species Incidental Take 3–200–56	100	2.5	250
Annual Report	350	5.0	1,750
Totals	1,275		4,125

Dated: November 25, 1997.

Gerry A. Jackson,

Acting Assistant Director—Ecological Services.

[FR Doc. 97–31491 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–933–1990–00]

Notice of Availability of the Finding of No Significant Impact and the Programmatic Environmental Assessment for Selected Actions for Mining Claim Use and Occupancy in Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), and Use and Occupancy Under the Mining Laws regulations (43 CFR 3715), the Bureau of Land Management (BLM) has prepared an environmental assessment (EA) that evaluates the impacts of typical mining claim and/or millsite occupancies. This EA describes and analyzes the proposed action, consisting of seven typical occupancy scenarios, and the no action option. The BLM provided a 30-day comment period. Analysis and response to the comments received have been incorporated into the present document and the final Finding of No Significant Impact (FONSI).

DATES: Copies of the EA and the Finding of No Significant Impact will be provided to any person, agency, or other interested parties, upon request.

ADDRESSES: Requests for copies should be addressed to: Bureau of Land Management, Arizona State Office, AZ-933, 222 North Central Avenue, Phoenix, AZ 85004–2203.

FOR FURTHER INFORMATION CONTACT: Ralph Costa, Mining Engineer, Arizona State Office. Telephone: (602) 417–9349.

Dated: November 19, 1997.

Gary D. Bauer,

Associate State Director.

[FR Doc. 97–31474 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–067–7122–6606); CACA–35511]

Environmental Statements; Availability, Etc.; Imperial Project Proposed Gold Mining/Processing Operation; Imperial County

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of the Imperial Project Draft Environmental Impact Statement on the Imperial Project Proposed Gold Mining/Processing Operation, Imperial County.

SUMMARY: Notice is hereby given of the availability of the joint Draft Environmental Impact Statement/Impact Report (DEIS/EIR) prepared by the Bureau of Land Management and the County of Imperial for a 60-day public review.

DATES: Written comments must be received no later than January 27, 1998.

ADDRESSES: Written comments should be addressed to the Area Manager, Attn: Imperial Project, El Centro Resource Area, 1661 South Fourth St., El Centro, California 92243.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli (909) 697–5237.

SUPPLEMENTARY INFORMATION: The Imperial Project is a proposal by Glamis Imperial Corporation (a sister corporation of the former project applicant Chemgold Inc.) to develop an open-pit, gold mining operation utilizing a heap leach process. Located in eastern Imperial County, California, approximately 45 miles northeast of El Centro, California and 20 miles northwest of Yuma, Arizona, the proposed project area comprises approximately 1,625 acres. Up to 150 million tons of ore would be leached, and 300 million tons of waste rock would be deposited at the proposed waste rock stockpiles or the mined-out portions of the three planned open pits. The maximum average mining rate would be 130,000 tons per day. Five alternatives besides the proposed action were analyzed in the DEIS/EIR. Impacts on air quality, noise, groundwater, vegetation, desert tortoise among other resources were analyzed. Impacts on cultural resources and Native America values were identified. Two public hearings have been scheduled:

December 10, 1997 at 7:00 p.m., Comfort Inn, 8000 Parkway Drive, La Mesa, CA

December 11, 1998 at 7:00 p.m., Barbara Worth Country Club, 2050 Country Club Dr., Holtville, CA

Comments, including names and street addresses of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Dated: November 24, 1997.

Alan Stein,

Acting District Manager.

[FR Doc. 97–31478 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Approved Collections

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of approval of information collections (1010–0006 and 1010–0050).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, this notice informs the public and other Federal agencies of the approval by the Office of Management and Budget (OMB) of two collections of information. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

ADDRESSES: Direct all correspondence to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, VA 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of these collections of information.

SUPPLEMENTARY INFORMATION: Titles: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way; and 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf. OMB Control Numbers: 1010–0050 and 1010–0006.

Abstract: On July 24, 1997 MMS published a final rule on Pipeline Right-of-Way Applications and Assignment Fees; Requirements for Filing of Lease Transfers (RIN 1010–AC04, 62 FR 39773). The final rule became effective on September 22, 1997. In the preamble to the final rule, MMS stated that the information collection aspects of the rule had been submitted to OMB for approval and would not take effect until OMB approved the collections. On August 25, 1997, OMB approved both of the related collections of information with expiration dates of August 31, 2000. The information collection aspects of the final rule are effective with the final rule.

Bureau Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: November 21, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–31475 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 22, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 17, 1997.

Patrick Andrus,

Acting Keeper of the National Register.

Florida

Marion County, Ocala Union Station, 31 NE First Ave., Ocala, 97001557.

Georgia

Dooly County, Lilly Historic District, Roughly bounded by CSX RR tracks, and Church, Montezuma, Third, and School Sts., Lilly, 97001558.

Massachusetts

Essex County, Peabody Institute, 15 Sylvan St., Danvers, 97001559.

Worcester County, Hope Cemetery, 119 Webster St., Worcester, 97001560.

New Jersey

Burlington County, New Jersey Manual Training and Industrial School for Colored Youth, N of Burlington Rd., W of I–295, Bordentown, 97001563.

North Carolina

Mecklenburg County, Potts Plantation, (Rural Mecklenburg County MPS), S of Davidson, SW of Cornelius, between NC 2693 and NC 115, Cornelius vicinity, 97001561.

Watauga County, Wilson—Vines House, 3400 Rush Branch Rd., Beaver Dam vicinity, 97001562.

Ohio

Auglaize County, Fountain Hotel, The, 100–110 W. Spring St., St. Marys, 97001564.

Tennessee

Marion County, RyeMabee, 224 E. Main St., Monteagle, 97001565.

Montgomery County, Tip Top, 15 Trahern Ter., Clarksville, 97001566.

Utah

Utah County, Bringhurst, William and Ann, House, (Springville MPS), 306 S 200 W, Springville, 97001567.

Deal, Roe A. and Louise R., House, (Springville MPS), 39 E 200 N, Springville, 97001568.

Deal—Mendenhall Hall, (Springville MPS), 163 E 200 N, Springville, 97001569.

Johnson, Mont and Harriet, House, (Springville MPS), 153 E 400 N, Springville, 97001570.

Johnson—Kearns Hotel, (Springville MPS), 94 W 200 S, Springville, 97001571.

Kindred, Nephi and Annie, House, (Springville MPS), 188 W Center, Springville, 97001573.

Meneray, William H. and Sarah D., House, (Springville MPS), 190 S 200 W, Springville, 97001574.

Oakley, Ami and Amanda, House, (Springville MPS), 219 E 400 N, Springville, 97001575.

Packard, Milan and Margaret, House, (Springville MPS), 10 W 100 S, Springville, 97001576.

Reynolds, Henry T. and Rebecca, House, (Springville MPS), 270 W 200 S, Springville, 97001577.

Senior Hotel, (Springville MPS), 296 S Main St., Springville, 97001578.

Strang, James P. and Lydia, House, (Springville MPS), 306 S 200 W, Springville, 97001579.

Ward, Patrick L. and Rose O., House, (Springville MPS), 511 S Main St., Springville, 97001580.

Yard—Groesbeck House, (Springville MPS), 157 W 200 S, Springville, 97001581.

Wisconsin

Sauk County, Thompson House Hotel, 200 Ash St., Baraboo, 97001583.

[FR Doc. 97–31461 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

Emergency Notice of Additional Agenda Item

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 2, 1997 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

ADDITIONAL AGENDA ITEM:

6. The Chairman's proposal for Fiscal Year 1998 Expenditure Plan and Fiscal Year 1999 Budget Request.

In accordance with 19 CFR 201.35(d)(2), the Commission is hereby giving notice of the addition of an agenda item for the Commission meeting being held Tuesday, December 2, 1997, at 2:30 p.m. By unanimous consent, the Commission has authorized issuance of the Government in the Sunshine Notice, and hereby announces that earlier announcement of same was not possible.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 26, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31719 Filed 11–28–97; 12:32 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–26]

Anthony P. Dalton, M.D. Revocation of Registration

On June 19, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anthony P. Dalton, M.D. (Respondent), of Viroqua, Wisconsin, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BD0469254, and deny any pending applications for renewal of his registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Wisconsin.

On July 21, 1997, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On July 21, 1997, Judge Bittner issued an Order for Prehearing Statements. Thereafter, on July 25, 1997, the Government filed a Motion for Summary Disposition,

alleging that effective January 30, 1996, the Medical Examining Board of the State of Wisconsin (Board) terminated a stay of an earlier suspension of Respondent's license to practice medicine in the State of Wisconsin, and therefore, Respondent is not authorized to handle controlled substances in that state.

By Order dated July 29, 1997, Judge Bittner gave Respondent the opportunity to file a response to the Government's motion by August 19, 1997. No such response was filed by Respondent.

On September 18, 1997, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of Wisconsin; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on October 22, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that on December 14, 1995, the Board issued its Final Decision and Order, suspending Respondent's Wisconsin medical license for a period of not less than four years, with the provision for successive three-month stays of the suspension conditioned upon compliance with certain conditions and limitations on the license. Subsequently, the Board ordered that the stay of the suspension of Respondent's medical license be terminated, and his license was suspended effective January 30, 1996. Thereafter, on March 1, 1996, and February 3, 1997, the Board denied petitions filed by Respondent for the reinstatement of the stay of suspension of his medical license. Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Wisconsin.

The Acting Deputy Administrator finds that in light of the fact that Respondent is not currently licensed to practice medicine in the State of Wisconsin, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. Respondent did not file a response to the Government's motion, and therefore does not dispute that he is not currently authorized to practice medicine or handle controlled substances in the State of Wisconsin.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of Wisconsin, the state where he is registered with DEA. Therefore, Respondent is not entitled to a DEA registration in that state.

The Acting Deputy Administrator further finds that under the circumstances, Judge Bittner properly granted the Government's Motion for Summary Disposition. It is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See Phillip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers*, AFL–CIO, F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BD0469254, previously issued to Anthony P. Dalton, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 2, 1998.

Dated: November 20, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–31470 Filed 12–1–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; guarantee of payment.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 30, 1997. If granted, the emergency approval is only valid for 180 days. *All* comments and/or questions pertaining to this pending request for emergency approval *Must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. During the 60-day regular review *All* comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of current information collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–510. Office of Detention and Deportation, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Section 253 of the Immigration and Nationality Act (Act) provides that the master or agent of a vessel or aircraft shall guarantee payment for expenses incurred for an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in Section 255 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents at .083 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 25, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31498 Filed 12–1–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mountain Coal Company

[Docket No. M–97–117–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1906(e) and (f) (transport of diesel fuel) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use 1700 gallons of diesel fuel that would be transported at one time on a diesel fuel transportation unit with the tank permanently fixed to the unit, with a total capacity no greater than 1700 gallons of diesel fuel. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Arch of Kentucky

[Docket No. M–97–118–C]

Arch of Kentucky, P.O. Box 787, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 75.360(b)(9) (preshift examination) to its 37 Mine (I.D. No. 15–04670) located in Harlan County, Kentucky. The petitioner requests a variance for three different isolated locations involving dewatering pumps and the associated electrics located at the 95 and 96 Crosscuts—Main Track Heading, the 150 Crosscut—Main Track Heading, and the 34 Crosscut L–14. The petitioner proposes to have the electrical installations ventilated by a separate intake split of air that would be ventilated directly into the return where no employees regularly work in the vicinity or by the electrical installations; to install a carbon monoxide detection sensor at each location that would be monitored at all times while employees are underground and to implement the preshift requirement in the event the carbon monoxide system becomes inoperative, until the system is repaired; and to inspect the electrical installations for hazardous conditions on a weekly basis. The petitioner states that the excessive travel to the three locations specified in this petition would result in a diminution of safety because the fireboss is traveling alone each shift for long distances to remote areas of the mine.

3. The Pittsburg & Midway Coal Mining Company

[Docket No. M–97–119–C]

The Pittsburg & Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Sebree #1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. The petitioner requests a variance to allow the use of a spring-loaded device with specific fastening characteristics with its fastening configuration to secure plugs and electrical-type connectors to batteries and to the permissible mobile-powered equipment, which the batteries serve, instead of using a padlock. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Island Creek Coal Company

[Docket No. M–97–120–C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1905–1(g) (diesel fuel piping system) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petitioner requests a variance to permit the transportation of diesel fuel from a surface diesel fuel oil storage tank directly into the fuel tank of individual units of underground diesel equipment. The petitioner has listed specific procedures in this petition for implementing its alternative method of transporting fuel from the surface to underground diesel equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Consol of Kentucky, Inc.

[Docket No. M–97–121–C]

Consol of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Ridge No. 8 Mine (I.D. No. 15–17972) located in Floyd County, Kentucky. The petitioner requests a variance to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet

of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 to 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi; to locate the sprinklers not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; to conduct a test using the specific procedures outlined in this petition during the installation of each new system, during any subsequent repair or replacement of any critical part, and annually to ensure proper operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Company

[Docket No. M–97–122–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380(f)(4) (escapeways; bituminous and lignite mines) to its Blacksville No. 2 Mine (I.D. No. 46–01968), Humphrey No. 7 Mine (I.D. No. 46–01453), and Loveridge No. 22 Mine (I.D. No. 46–01433) all located in Monongalia County, West Virginia; to its Dilworth Mine (I.D. No. 36–04281) located in Greene County, Pennsylvania; and its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. The petitioner proposes to use fire resistant hydraulic fluid instead of fire suppression on mobile equipment operated in the primary escapeway. The petitioner proposes to operate mobile equipment in a primary escapeway using fire resistant fluid, and to equip such equipment with a 20 pound dry chemical fire extinguisher; to have a qualified person examine batteries, electrical cables and brake equipment on a weekly basis; to maintain dry chemical fire extinguishers on the mobile equipment operated in the primary escapeway in usable and operative condition; to instruct mobile equipment operators to conduct a pre-operational check of the equipment prior to operation in the primary escapeway; and to instruct mobile equipment operators on an annual basis on the fire-fighting plan, the use of dry chemical fire extinguishers, and the requirements of any decision and order issued on this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Del Rio, Inc.

[Docket No. M–97–123–C]

Del Rio, Inc., P.O. Box 2218, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Mine DR #7 (I.D. No. 15–17607), and its Mine DR #8 (I.D. No. 15–17951) both located in Bell County, Kentucky. The petitioner proposes to use a 9 foot steel tongue to couple the motor to the flatcar instead of using automatic couplers. The petitioner states that due to mining heights, flatcars instead of regular supply cars are being used in their mine to haul supplies. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. BR&D Enterprises, Inc.

[Docket No. M–97–124–C]

BR&D Enterprises, Inc., P.O. Box 2218, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Mine BR&D #1, (I.D. No. 15–17907), and its Mine BR&D #2 (I.D. No. 15–17908) both located in Bell County, Kentucky. The petitioner proposes to use a 9 foot steel tongue to couple the motor to the flatcar instead of using automatic couplers. The petitioner states that due to mining heights, flatcars instead of regular supply cars are being used in their mine to haul supplies. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Island Creek Coal Company

[Docket No. M–97–125–C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petitioner proposes to use a spring-loaded metal locking device instead of padlocks to secure battery charging plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars. The petitioner has outlined in this petition specific procedures for implementation of its alternative method of using a spring-loaded locking device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Bass Energy, Inc.

[Docket No. M–97–126–C]

Bass Energy, Inc. P.O. Box 206, Bruceton Mills, West Virginia 26525 has filed a petition to modify the application of 30 CFR 75.380(d)(4)(i) (escapeways; bituminous and lignite mines) to its Mine No. 1 (I.D. No. 46–01162) located in Upshur County, West Virginia. Due to adverse roof conditions along the beltlines, the petitioner has installed additional roof support to protect the affected areas which has caused the walkway to be narrowed down to less than four feet at specific beltline locations. The petitioner states that where possible, the escapeway has been re-routed to another entry with common air and properly marked, start-stop switches have been installed inby and outby where individuals would have to cross the beltline, and that close clearance signs have been posted to caution individuals of the narrow walkway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Genwal Resources, Inc.

[Docket No. M–97–127–C]

Genwal Resources, Inc., P.O. Box 1420, 195 North 100 West, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner requests a variance to permit the use of a water sprinkler system with a single overhead pipe system and automatic sprinklers located not more than 10 feet apart so that the water discharged from the sprinklers will cover 50 feet of fire resistant belt, or 150 feet of non-fire resistant belt adjacent to the belt drive; and to permit automatic sprinklers to be located not more that 10 feet apart so that water discharged from the sprinkler(s) will cover the drive motor(s), belt take-up electrical controls, and gear reducing unit for each belt drive. The petitioner proposes to conduct a functional test to ensure proper operation during the installation of each new system and during subsequent repair or replacement of any critical part; and to submit to the District Manager proposed revisions to their Part 48 training plan that would specify initial and refresher training for compliance to this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1998. Copies of these petitions are available for inspection at that address.

Dated: November 20, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–31580 Filed 12–1–97; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–165)]

NASA Advisory Council; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Tuesday, December 16, 1997, 9:00 a.m. to 3:30 p.m.; and Wednesday, December 17, 1997, 9:00 a.m. to 3:00 p.m.

ADDRESSES: NASA Headquarters, Room 9H40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2096.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Science Enterprise Overview
—Technology Development in the Space Science Enterprise
—Earth Science Enterprise Overview
—NRC Report on Space Shuttle Meteoroid/Debris Risk Management
—Astrobiology
—Student Opportunities for Access to Space
—Faster, Better, Cheaper
—Committee and Task Force Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 25, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 97–31528 Filed 12–1–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 27, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on November 24, 1997 to the following applicants:

Alexandra C. Brown and Maria Uhle—Permit No. 98–016
Philip R. Kyle—Permit No. 98–018
Gary Miller—Permit No. 98–019

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–31584 Filed 12–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by December 31st. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to the Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant	Permit Application: 98–020.
Howard E. Evans, Veterinary College, Cornell University, Ithaca, NY 14853.	
Activity for Which Permit is Requested	
Take and Import into the United States	
The applicant will be leading a Cornell Adult University tour on a cruise ship in the Antarctic Peninsula and applicant proposes salvage carcasses and remains of penguins, birds or seals as study materials. These materials will be imported to the U.S. and stored in the Cornell University Collections for use as teaching aides or in research.	
Location	
Various sites within the Antarctic Peninsula Area	
Dates	
January 7, 1998 to January 21, 1998	
2. *Applicant*	Permit Application: 98–021.
Rennie S. Holt, Chief Scientist, AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92093.	
Activity for Which Permit is Requested	
Taking, Import into the United States, and Enter Site of Special Scientific Interest. The applicant will be conducting ship-supported and land-based studies in the region of the Antarctic Peninsula. Studies encompassing census surveys, attendance, energetics, foraging, and long term monitoring (censusing/tagging) of Antarctic fur seals (*Arctocephalus gazella*) will be initiated at the newly established AMLR Program campsite at Cape Shirreff, Livingston Island and continued at their existing camp on Seal Island. Up to 80 adult and 1180 pups will be captured and tagged. In addition up to 40 female/pup pairs will be captured to quantify the foraging costs of maternal investment in pups associated with changes in foraging strategies observed. Energetic costs and benefits of different foraging patterns can be determined by simultaneous measurements of energy expenditure (isotope), food intake (isotope), dive depth, duration, time of day and dive frequency (via TDR's), swim speed (TDR), and foraging location (satellite transmitter). Attendance information collected from these instrumented females will address issues such as (a) prey availability and subsequent impact on females and pups, and (b) attendance-related factors of pup growth. Milk extraction and gastric lavage/intubation will be used for energetic studies, providing trophic information. In addition the applicant proposes to salvage bones and carcasses of dead seals for importation to the U.S. These materials will be stored at the Southwest Fisheries Science Center for education and research purposes.	
Location	
Cape Shirreff, Livingston Island (SSSI #32), Byers Peninsula (SSSI #6), South Shetland Island, Antarctic Peninsula.	
Dates	
January 1, 1998 to April 1, 2001.	

Nadene G. Kennedy,
Permit Officer.
[FR Doc. 97–31585 Filed 12–1–97; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension*: New.

2. *The title of the information collection*: Joint NRC/EPA Survey of Sewage Sludge/Ash.

3. *The form number if applicable*: None.

4. *How often the collection is required*: This is a one-time collection.

5. *Who will be required or asked to report*: Selected publicly owned treatment works (POTWs), and Agreement States.

6. *An estimate of the number of responses*: 600 POTWs for the questionnaire and 300 POTWs for sample collection, plus 30 Agreement States for reporting of licensees associated with Zip Codes.

7. *An estimate of the total number of hours needed annually to complete the requirement or request*: An average of 1 hour per respondent for questionnaire and 6 hours each for selected respondents for collecting samples, plus 8 hours each for 30 Agreement States. The total burden is 2,640 hours.

8. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

9. *Abstract*: The survey will obtain national estimates of high probability occurrences of elevated levels of radioactive materials in sludge and ash at POTWs, estimate the extent to which radioactive contamination comes from either NRC/Agreement State licensees or from naturally-occurring radioactivity, and support possible rulemaking decisions by NRC and EPA. NRC and EPA will send questionnaires to selected POTWs. Based on the results of that survey, NRC and EPA will identify approximately 300 POTWs from which samples of sewage sludge/ash will be taken and analyzed. Results of the full survey will be published for use by Federal agencies, States, POTWs, local POTW officials and other interested parties.

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance packages are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by January 2, 1998. Norma Gonzales, Office of Information and Regulatory Affairs (3150-) NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 24th day of November 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,
NRC Clearance Officer.
[FR Doc. 97–31518 Filed 12–1–97; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 97–087]

Finis Scott Bandy; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Finis Scott Bandy was formerly employed by Omaha Public Power District (OPPD) as an instrumentation and control technician at OPPD's Fort Calhoun Station nuclear power plant, Blair, Nebraska. OPPD holds license No. DPR–40, issued August 9, 1973, by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of the Fort Calhoun Station (FCS) in accordance with the conditions specified therein.

II

In August 1996, the NRC inspected access authorization files during an NRC security inspection at FCS. The NRC raised a question about arrest information that Mr. Bandy had supplied to OPPD during the course of 1993, in connection with his application for unescorted access to the plant. The information in question pertained to whether Mr. Bandy had been arrested for theft of personal property, as certain documents in his file appeared to indicate, or had been arrested for excessive speed while driving, as Mr. Bandy claimed. As a result of the NRC's questions, OPPD agreed to interview Mr. Bandy in the presence of the NRC inspector. During the interview, Mr. Bandy denied that he had been arrested for theft and asserted that the only charge he was aware of involved excessive speed while driving.

Based on further questions about the accuracy of Mr. Bandy's statements and the information provided by him, Mr. Bandy's unescorted access to FCS was temporarily suspended on August 22, 1996. On August 26, 1996, OPPD terminated Mr. Bandy's employment and revoked his unescorted access to FCS. OPPD then conducted an investigation and determined that: (1) The only charge brought against Mr. Bandy in 1991 was a charge of theft of personal property; (2) copies of court records provided to OPPD by Mr. Bandy had been altered to make it appear that the charge had been for speeding; and (3) Mr. Bandy made false statements when questioned about his criminal history in 1993 by OPPD and in 1996 when questioned by OPPD and the NRC during its inspection. The NRC's investigation of this matter concluded that Mr. Bandy deliberately falsified criminal history information submitted to OPPD in 1993, and provided false information to OPPD and an NRC inspector when questioned about this in August 1996.

On July 22, 1997, the NRC issued a Demand for Information to Mr. Bandy, seeking information as to why the NRC should not conclude that he engaged in deliberate misconduct and, if so, why the NRC should not prohibit his involvement in NRC-licensed activities. On July 29, 1997, Mr. Bandy contacted the NRC's Office of Enforcement, indicated that he had no interest in being involved in NRC-licensed activities, and indicated that he would be willing to consent to an order prohibiting his involvement in NRC-licensed activities. On August 19, 1997, the NRC sent a letter to Mr. Bandy formally seeking his consent to a confirmatory order prohibiting his involvement in NRC-licensed activities for five years. Mr. Bandy failed to respond to this letter or to NRC efforts to contact him.

III

Based on the above, the NRC has concluded that Mr. Bandy engaged in deliberate misconduct in 1993 and in August 1996, by: (1) Deliberately falsely stating to OPPD during the course of 1993 that he had been convicted in 1991 of excessive speeding while driving when, in fact, he had been convicted of theft of personal property, and by deliberately altering copies of court records that were provided to OPPD; and (2) deliberately falsely stating in August 1996 to OPPD and an NRC inspector that he had been convicted in 1991 of excessive speeding while driving. These actions constituted a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately submitting to the NRC or a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. In this case, the information that Mr. Bandy provided regarding his personal history was material because licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Bandy's actions in deliberately providing false information to the licensee and to the NRC constitute deliberate violations of Commission regulations. His conduct raises serious doubt about his trustworthiness and reliability; particularly whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Bandy were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Bandy be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Bandy is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bandy's conduct described above is such that the public health, safety and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, It is hereby ordered, effective immediately, that:

1. Finis Scott Bandy is prohibited from involvement in activities licensed by the NRC for a period of 5 years. NRC-licensed activities are those that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Finis Scott Bandy is currently involved with another employer in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For the five-year period after the above period has expired, Mr. Bandy will notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, within 20 days of the first time he accepts employment in NRC-licensed activities, as defined in Paragraph IV.1 above. In the notification, he will include a statement of his commitment to comply with regulatory requirements and address why the NRC should have confidence that he will comply with regulatory requirements, and the name, address and telephone number of his employer or entity where he will be involved in licensed activities.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Bandy of good cause.

V

In accordance with 10 CFR 2.202, Mr. Bandy must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bandy, or any other such person adversely affected, relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Bandy. If a person other than Mr. Bandy requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bandy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bandy may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order, on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 19th day of November 1997.

For The Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–31521 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Entergy Operations Inc., (the licensee) for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would increase the Spent Fuel Pool storage capacity and increase the maximum fuel enrichment from 4.9 w/o (nominal weight percent) to 5.0 w/o U–235. This proposed modification will be accomplished by removing the existing racks in the Spent Fuel Pool and replacing them with higher density racks. The neutron absorber (BORAL) for the new racks, has been licensed by the NRC for use in other nuclear power plant spent fuel storage applications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis of the safety issues concerning the expanded pool storage capacity, the following previously postulated accident scenarios have been considered:

a. A spent fuel assembly drop in the Spent Fuel Pool.

b. Loss of Spent Fuel Pool cooling flow.

c. A seismic event.

d. An accidental drop of a fully loaded fuel shipping cask.

The probability that any of the accidents in the above list can occur is not significantly increased by the modification itself. The probabilities of a seismic event or loss of Spent Fuel Pool cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly or shipping cask drops are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations remains unchanged, since the same equipment (i.e., Spent Fuel Handling Machine and Cask Handling Crane) and procedures will be used. A new offset handling tool will be required to access some storage rack cells located adjacent to the pool walls. The grapple mechanism, procedures, and fuel manipulation methods will be very similar to those used by the standard fuel handling tool on the Spent Fuel Handling Machine. Therefore, this tool does not represent a significant change in the methods used to lift or move fuel in the Fuel Handling Building. Since the methods used to move loads during normal operations remain nearly the same as those used previously, there is no significant increase in the probability of an accident.

During rack removal and installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies required to be performed to support the modification (e.g., removal and installation of racks) will be performed in the same manner as during normal refueling operations. Shipping cask movements will not be performed during the modification period.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the Spent Fuel Pool have been re-evaluated for the proposed change. The results show that the postulated accident of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The resulting structural damage to a falling assembly and/or a stored assembly has been determined to remain unchanged. The minimum subcriticality margin, Keff less than or equal to 0.95, will be maintained. The structural damage to the Fuel Handling Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks remains unchanged. The resulting structural damage to these items subsequent to this event is not influenced by the proposed changes. The radiological dose at the exclusion area boundary will increase due to the changes in fuel enrichment and burnup. The previously calculated doses to the thyroid and whole body were 0.47 and 0.11 rem, respectively. The new thyroid and whole body doses based on the proposed change will be 0.553 and 0.304, respectively. These dose levels are extremely small when compared to the levels required by 10 CFR 100.. Therefore, the increase in dose is not considered a significant increase in consequence. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the same previously evaluated accidents.

The consequences of a loss of Spent Fuel Pool cooling have been evaluated and found to have no increase. The concern with this accident is a reduction of Spent Fuel Pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation would lead to fuel failure and subsequent significant increase in offsite dose. Loss of spent fuel pool cooling at Waterford 3 is mitigated by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to re-establish cooling or supply an alternative water source (such as fire water). Evaluation of this accident usually includes determination of the time to boil. This time period is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is commonly used as a gage for establishing the comparison of consequences before and after a refueling project. The heat up rate in the Spent Fuel Pool is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number of assemblies and higher fuel burnups. The heat up rate established for the limiting normal heat load conditions prior to reracking was 5.41°F per hour. This would result in the pool temperature increasing from the maximum normal temperature of 140 °F to boiling in a period of 13.3 hours. The heat up rate established for the limiting normal heat load conditions subsequent to the proposed changes has been determined as 13.6 °F per hour. This would result in the pool temperature increasing from the maximum normal temperature of 140 °F to boiling in a period of 5.3 hours.

This time to boil comparison was made for limiting normal heat load conditions. However, the end of this period of time does not represent the onset of any significant increase in offsite doses. As stated above, this consequence would result subsequent to fuel being uncovered through unchecked boiling and resulting water level drop of approximately 24.5 feet from normal surface to the top of the fuel storage racks. This depth is conservative, since the top of active fuel is below this level. Subsequent to the proposed changes under limiting normal heat loads the time lapse between the onset of unchecked boiling and uncovering of the racks has been determined to exceed 50 hours.

As stated above in the safety assessment, subsequent to reracking, the time to boil after loss of forced cooling in the most severe scenario is 2.89 hours (the ensuing rate of evaporative loss would not result in the fuel being uncovered until after an additional 34 hours, which is 168 hours after reactor shutdown). However, the design basis limiting pool heat load under these conditions actually decreases after the proposed modification, because of conservatisms previously used to determine the heat load for this condition. Therefore, the calculated time to boil in this most severe scenario will increase subsequent to the proposed modification. In the unlikely event that all pool cooling is lost, sufficient time will be available subsequent to the proposed changes for the operators to provide alternate means of cooling (i.e., fire water) before fuel is uncovered. Therefore, the proposed changes represents no increase in the consequences of loss of pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and found safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations

subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel Handling Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

The consequences of a spent fuel cask drop into the Cask Storage Pit have been analyzed along with the new rack storage configuration. This evaluation concluded that there is no increase in consequences. Administrative controls, appropriate changes in load paths, and crane travel limits will continue to preclude handling heavy loads above stored fuel. Therefore, casks impacting stored fuel is not a postulated event. Potential damage to the cask and contained fuel remain unchanged, since the pertinent parameters for this analysis (i.e., lift height, weight, impact zone configurations, etc.) are not affected by the new rack configurations. The floor was reanalyzed to assess the effect of the additional loading from higher density fuel storage. It was determined that the floor remains intact with minor local crushing of concrete. The liner plate would sustain limited damage, which is repairable. Leakage would be limited to flow through the leak chase system and would be collected at the sump. The Fuel Handling Building integrity would not be compromised; therefore, there would be no release of contaminated pool water outside of the building. Makeup water from the Condensate Storage Pool and/or the Refueling Water Storage Tank would be adequate to offset loss of water inventory due to any leakages. This accident does not result in any increase in offsite or Fuel Handling Building doses. Thus, the proposed changes do not represent any increase in the consequences of a postulated spent fuel cask drop.

Therefore, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

To assess the possibility of new or different kind of accidents, a list of the critical parameters required to ensure safe fuel storage was established. Safe fuel storage is defined here as providing an environment which would not present any significant threats to workers or the general public. In other words, meeting the requirements of 10 CFR 100 and 10 CFR 20. Any new events which would modify these parameters sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered a new or different accident. The criticality and radiological safety evaluations were reviewed to establish the list of critical parameters. The fuel configuration and the existence of the moderator/coolant were identified as the only two parameters which were critical to safe fuel storage. Significant modification of these two parameters represents the only possibility of an unsafe storage condition. Once the two critical parameters were established, an additional step was taken to determine what events (which were not previously considered) could result in changes to the storage configuration or moderator/coolant presence during or subsequent to the proposed changes. This process was adopted to ensure that the possibility of any new or different accident scenario or event would be identified.

Due to the proposed changes, the following events were considered as the only events which might represent a new or different kind of accident:

a. An accidental drop of a rack module during construction activity in the pool.

b. Draining the Cask Storage Pit and Refueling Canal through the floor drains.

c. Fuel assembly mispositioning accident in Region 2.

A construction accident resulting in a rack drop is an unlikely event. A new rack lifting rig will be introduced to lift and suspend all but one of the racks using the existing Fuel Handling Building Cranes. Either a new temporary hoist or a combination of one of the existing 15 ton cranes and a lifting bag will be used to lift one of the existing eighty cell racks that is adjacent to the east wall of the Spent Fuel Pool. The cranes, hoists and lifting rig have been or will be designed using the guidance of NUREG–0612 and ANSI N14.6. The postulated rack drop event is commonly referred to as a "heavy load drop" over the pools. Heavy loads will not be allowed to travel over any racks containing fuel assemblies. The danger represented by this event is that the pool structure will be compromised leading to loss of moderator/coolant, which is one of the two critical parameters identified above. However, although the analysis of this event has been performed and shown to be acceptable, the question of a new or different type of event is answered by determining whether heavy load drops over the pool have been considered previously. The postulated drop of a pool gate was previously evaluated and represents a heavy load drop similar to a rack drop. All movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (i.e. plant procedures, NUREG–0612, etc.). Therefore, the rack drop does not represent a new or different kind of accident.

The Cask Storage Pit and Refueling Canal both have floor drains which will be plugged (a welded closed cover plate) prior to installation of the new storage racks in each of the respective areas. The plugs will preclude any water loss through the drain system. Therefore, draining the Cask Storage Pit and Refueling Canal through the floor drains is not a postulated event.

Fuel assembly mispositioning in Region 2 is an unlikely event, since locating assemblies which do not meet the burnup criteria will be administratively controlled. Administrative controls will consist of developing a checkerboarding storage pattern in the Region 2 racks prior to storage or placement of the non-compliant fuel in Region 1 racks. The Region 2 mispositioning event represents a change from the previously analyzed condition, since Waterford 3 currently has only Region 1 style storage. Therefore, a new fuel storage configuration is possible. However, the event does not represent a new or different kind of accident, since fuel assembly mispositioning is possible with the existing racks through controlled or uncontrolled (assembly drop) lowering of an assembly adjacent to the outside of the storage racks. This condition was previously evaluated and found to be acceptable. The new event was evaluated using similar techniques with similar acceptance criteria and was shown to remain acceptable. Therefore, due to the similarity of this new event with that which was previously analyzed it is not considered to represent a new or different kind of accident.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. Involve a significant reduction in the margin of safety.

The function of the Spent Fuel Pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the Spent Fuel Pool.

EOI has addressed the safety issues related to the expanded pool storage capacity in the following areas:

a. Material, mechanical, and structural considerations.

b. Nuclear criticality.

c. Thermal-hydraulic and pool cooling.

The mechanical, material and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled "Review and Acceptance of Spent Fuel Storage and Handling Applications". The rack materials used are compatible with the spent fuel assemblies and the Spent Fuel Pool environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped assembly and tensile loads from a stuck assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded Spent Fuel Pool meets the appropriate NRC guidelines and the ANSI standards (GDC 62, NUREG 0800, Section 9.1.2, NRC Guidance entitled, "Review and Acceptance of Spent Fuel Storage and Handling Applications", Reg. Guide 1.13, and ANSI ANS 8.17). The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than, 0.95 under all accident conditions, including uncertainties. This criterion is the same as that used previously to establish criticality safety evaluation acceptance and remains satisfied for all analyzed accidents. Therefore, the accepted margin of safety remains the same.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The pool temperature will not exceed 140 °F during the worst single failure of a cooling pump. The maximum local water temperature in the hot channel will remain below the boiling point. The fuel will not undergo any significant heat-up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (5.3 hours for the limiting normal heat load) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the onset of pool boiling. The thermal limits specified for the evaluations performed to support the proposed change are the same as those which were used in the previous evaluations. Therefore, the accepted margin of safety remains the same.

Thus, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 2, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to N.S. Renolds, Esq., Winston & Stran, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

For further details with respect to this action, see the application for amendment dated March 27, 1997, as supplemented on April 3, and November 13, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 20th day of November 1997.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31517 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow for a one-time scheduler exemption from the containment local leak rate testing requirements of Title 10 of the *Code of Federal Regulation* (10 CFR) part 50, Appendix J, Option A, Sections III.D.2.(a) and III.D.3. Appendix J requires these tests to be performed at every refueling outage with the interval not to exceed 2 years. The temporary scheduler exemption would extend the interval for Type B and Type C local leak rate testing (LLRT) of containment penetrations beyond the 2-year limit of 10 CFR Part 50, Appendix J. Instead of performing the tests within the 2-year interval, NNECO would perform the tests prior to containment integrity being required for startup from the current refueling outage.

The proposed action is in accordance with the licensee's application for exemption dated October 16, 1997.

The Need for the Proposed Action

The proposed action is needed to postpone testing to maximize the use of limited resources during the current outage to allow for improving the Millstone Unit 1 Appendix J program. The postponement would also allow NNECO to avoid any additional radiation exposure and expense in testing a number of penetrations and valves more than once during the current refueling outage.

Environmental Impacts of the Proposed Action

The proposed exemption would postpone the next Type B and Type C tests until prior to restart from the current refueling outage (Refueling Outage Cycle 15). The NRC staff has reviewed the proposed exemption and concluded that the Type B and Type C tests are not required to ensure that offsite doses will be acceptable. This conclusion is based on the licensee's facility remaining shut down until after the Type B and Type C tests are performed. As long as Millstone Unit 1 remains shut down, containment integrity is not required and, therefore, testing for containment integrity is not required.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on October 30, 1997, the staff consulted with the Connecticut State official, Kevin Scott of the Department of Environmental Protection, Radiation Control Section, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 16, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 25th day of November 1997.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Deputy Director for Licensing, Special Projects Office, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31519 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 1, 8, 15, and December 22, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 1

There are no meetings the week of December 1.

Week of December 8—Tentative

Thursday, December 11

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7)

3:00 p.m.—Affirmation Session (Public Meeting) (if needed)

Friday, December 12

9:00 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200)

Week of December 15—Tentative

Wednesday, December 17

2:00 p.m.—Briefing on Integration and Evaluation of Results from Recent Lessons-Learned Reviews (including 50.59 Process Improvements) (Public Meeting) (Contact: Eileen McKenna, 301–415–2189)

3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

Thursday, December 18

10:00 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of December 22—Tentative

There are no meetings the week of December 22.

* The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at

http://www.nrc.gov/SECY/smj/schedule@htm

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 26, 1997.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 97–31729 Filed 11–28–97; 2:48 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Extension of Comment Period

The Nuclear Regulatory Commission issued Draft Regulatory Guide DG–1070, "Sampling Plans Used for Dedicating Simple Metallic Commercial Grade Items for Use in Nuclear Power Plants," for public comment in September 1997 (see 62 FR 52166). This draft guide is being developed to describe methods acceptable to the NRC staff for complying with the NRC's regulations with regard to quality assurance requirements when using a sampling plan for dedicating simple metallic commercial grade items for unrestricted use in nuclear power plants.

The Nuclear Energy Institute has requested a 60-day extension of the comment period. The NRC hereby grants NEI's request and extends the comment period from December 1, 1997, to January 30, 1998.

Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments may also be submitted via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415–5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of November 1997.

For the Nuclear Regulatory Commission.

John W. Craig,

Deputy Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 97–31516 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, January 15, 1998
Thursday, January 29, 1998
Thursday, February 12, 1998
Thursday, February 26, 1998
Thursday, March 12, 1998
Thursday, March 26, 1998

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: November 21, 1997.

Phyllis G. Hauerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–31538 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2990]

California

Yuba County and the contiguous counties of Butte, Nevada, Placer, Plumas, Sierra, and Sutter in the State of California constitute a disaster area as a result of damages caused by a severe fire which occurred on September 27–28, 1997. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 20, 1998 and for economic injury until the close of business on August 20, 1998 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 299005 and for economic injury the number is 967000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 20, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–31496 Filed 12–1–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 10:30 am–3:30 pm, on Thursday, December 4, 1997, at U.S. Small Business Administration, Charleston Branch Office, 4th Floor Conference Room, 405 Capitol Street, Charleston, WV, 25301 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Jayne Armstrong, State Director, U.S. Small Business Administration, 168 West Main Street, Clarksburg, WV, 26301, (304) 623–5631.

Gene Carlson,

Associate Administrator, Office of Communications & Public Liaison.

[FR Doc. 97–31497 Filed 12–1–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2655]

Bureau of Political-Military Affairs; Determination Under the Arms Export Control Act

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Acting Secretary of State has made a determination pursuant to Section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: November 19, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–31465 Filed 12–1–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice No. 2659]

Secretary of State's Advisory Committee on Private International Law (ACPIL); Study Group on Electronic Commerce Meeting Notice

The Department of Commerce and the Department of State's Advisory Committee Study Group on Electronic Commerce will cosponsor a meeting Monday, December 15 in Washington, DC, from 9:30 a.m. to 4:30 p.m. at the Department of Commerce. The purpose of the meeting is to review international and national developments concerning computer-based signature and message integrity systems, and consider possible approaches to international rules and related domestic concerns. In particular, consideration will be given to meetings on these and related topics at the United Nations Commission on International Trade Law (UNCITRAL), the OECD and other international bodies.

The Advisory Committee will also consider, where relevant, recent developments at the National Conference of Commissioners on Uniform State Laws (NCCUSL), legislative initiatives by states within the U.S., and programs of various federal agencies.

Issues that may be reviewed by the Advisory Committee include, but are not limited to, prior U.S. views encouraging international bodies to examine all forms of electronic signatures, and to encompass both regulated/licensed systems as well as unregulated private sector systems; whether rules for signature systems should distinguish between commercial and consumer transactions; possible rules on risk allocation, attribution and reliance; whether third party assurance providers, such as certifying authorities, should have to meet minimum levels of assurance; what role information security standards should play in this process; whether rules are needed on incorporation by reference; what types of rules for cross-certification between different countries are feasible; whether agreement should be sought on underlying rules for accreditation, and if so, in what international bodies, and other related issues. Jurisdictional issues will also be discussed as appropriate.

Participants may wish to review the recently completed UNCITRAL Model Law on Electronic Commerce, available with a Guide to Enactment from U.N. document outlets as Doc. V.97–22269, May 1997, or from the Office of the Legal Adviser at the address below, which covers the legal effect and validity of computer messages in commercial transactions; functional equivalents of signatures, writing, etc.; attribution of messages; time and place where communications are deemed to have taken place, and other matters.

The meeting is open to the public up to the capacity of the meeting room, and members of the public may participate subject to rulings of the Chair. The meeting will be held at the Department of Commerce in Conference Room 5855; entry to the Commerce Department should be through the main entrance on 14th Street between Constitution and Pennsylvania Avenues. Participants should register in advance since space may be limited. Please advise either the Office of Legal Adviser (L/PIL) at the State Department by calling Rosie Gonzales at (202) 776–8420 or by fax 776–8482, or e-mail at: pildb@his.com., or Brian Hengesbaugh at the Commerce Department, Office of Chief Counsel for International Commerce, (202) 482–4602 or fax (202) 482–4076, of your name and government agency identification, or affiliation and address, as well as telephone and fax number, and e-mail if available.

Members of the public who cannot attend are welcome to request available documentation and to comment in writing on this topic, including any recommendations for possible U.S. positions to be put forward at international meetings on electronic signatures. For documentation or additional information contact Harold Burman at the State Department Office indicated above. The mailing address is: Office of the Legal Adviser, Suite 355

South Building, 2430 E Street, NW., Washington, DC 20037–2800.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 97–31662 Filed 12–1–97; 8:45 am]

BILLING CODE 4710–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–23]

WTO Dispute Settlement Proceeding Regarding U.S. Antidumping Duties on Dynamic Random Access Semiconductors (DRAMS) of One Megabyte or Above From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1), the Office of the United States Trade Representative (USTR) is providing notice that the government of Korea has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine the continuing imposition by the United States of antidumping duties on dynamic access memory semiconductors (DRAMS) of one megabyte or above from Korea. Specifically, on July 16, 1997, in its final determination in the administrative review of an antidumping order on DRAMS from Korea, the Department of Commerce determined not to revoke the order. 62 FR 39809 (July 24, 1997). Commerce declined to revoke the order because it found that one of the regulatory criteria for revocation had not been satisfied; namely, based on the evidence before it, Commerce was not satisfied that future dumping of DRAMS by the Korean producers in question was "not likely."

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 5, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: Korea DRAMS Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Office of the General Counsel (202) 395–3582.

SUPPLEMENTARY INFORMATION: By letter dated November 6, 1997, the Government of Korea requested the establishment of a panel to examine the Department of Commerce's continuing imposition of an antidumping order on DRAMS of one megabyte or above from Korea. Although there currently are no scheduled meetings of the WTO Dispute Settlement Body (DSB) during the remainder of 1997, it is possible that a meeting could be scheduled during this time and that the DSB could establish a panel before the end of 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Government of Korea and Legal Basis of Complaint

In its request for the establishment of a panel, the Government of Korea has identified as the measures at issue (1) the July 16 determination by Commerce; and (2) the U.S. Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) and the relevant Commerce regulations (19 CFR Part 353 (1997), both as applied and on their face. The Government of Korea alleges that these measures are inconsistent with several provisions of the WTO agreements, including the following specific allegations:

- Commerce's final determination not to revoke the antidumping order, after findings of no or *de minimis* dumping margins, and respondent companies' certification that they would not dump in the future and agreement to reinstatement in the order in the event they were to dump the merchandise in the future, is inconsistent with Article 11 of the Antidumping Agreement and Article VI of GATT 1994;
- The "not likely" criterion under Commerce's regulations gives Commerce wide discretion in deciding on revocation, and allows Commerce to maintain an order in an arbitrary and unjustifiable manner despite the absence of dumping for several years, respondents' certification not to dump in the future, and the agreement to reinstatement of the order in the event they dump DRAMS in the future. This criterion, both as applied in Commerce's final determination and on its face, is inconsistent with Article 11 of the Antidumping Agreement and Article VI of GATT 1994 and exceeds the scope of those agreements;
- The negative standard of the "not likely" criterion and Commerce's practice as applied in the final determination shifted the burden of proof from the United States to the respondents in contradiction of Article II of the Antidumping Agreement;
- The United States has failed to publish promptly, and in such a manner as to enable governments and traders to become acquainted with them, objective and specific factors regarding the "not likely" criterion, and Commerce impermissibly accepted and rejected data in a biased fashion inconsistent with Article X of GATT 1994 and Articles 11 and 17 of the Antidumping Agreement;
- The U.S. maintenance of the antidumping order on DRAMS without considering whether the injury to the U.S. industry would be likely to continue or recur if the duty were removed is inconsistent with Article 11 of the Antidumping Agreement;
- Commerce's decision regarding the products subject to the order is inconsistent with Articles 2 and 3 of the Antidumping Agreement because it included products that were never found to have been dumped or to have caused injury, and it arbitrarily excluded products that were like products to those investigated;
- Commerce's final determination not to revoke the order based on unverified information from the petitioner and mere conjecture without any substantial data, and Commerce's failure to give adequate consideration to information submitted by the Korean respondents in the administrative review is inconsistent with Articles 2, 6 and 17.6(I) of the Antidumping Agreement and Article VI of GATT 1994;
- Commerce's selection of the period of review for the "not likely" criterion was improper and not objective, and therefore is inconsistent with Article 17.6(I) of the Antidumping Agreement and Article X of GATT 1994;
- Commerce's final determination is inconsistent with Article I of GATT 1994 in that it denied to the Korean respondents the revocation of the antidumping order after three consecutive reviews finding no or *de minimis* dumping margins, and after those respondents certified that they would not dump in the future, and after they agreed to the reimposition of the order if dumping occurred, even though Commerce revoked antidumping orders in the same circumstances involving other Members;
- Commerce's standard for determining whether to revoke antidumping orders is impossible to meet in proceedings involving cyclical industries such as the DRAMS industry, and, therefore, both on its face and as applied in the final determination, is inconsistent with Article 11 of the Antidumping Agreement;
- The margin of dumping established by the United States to be *de minimis* in administrative review proceedings is inconsistent with Article 5.8 of the Antidumping Agreement; and
- The refusal by the United States to revoke the antidumping order in light of Korea's data collection proposal is inconsistent with Article I of GATT 1994, given the U.S. acceptance of such proposals and consequent revocation of antidumping orders in similar cases involving other Members.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter in accordance with 15 CFR 2007. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–23 ("U.S.-Anti-Dumping Duties on DRAMS from Korea") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–31524 Filed 12–1–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burden. The **Federal Register** (FR) Notice with a 60-day comment period soliciting comments on information collection 2125–0571 was published on July 22, 1997 [62 FR 39300] and the FR Notice for 2125–0572 was published on July 22, 1997 [62 FR 39301].

DATES: Comments must be submitted on or before (Insert 30 days from date of publication).

FOR FURTHER INFORMATION CONTACT: Contact Mr. Thomas Vining, Office of Motor Carriers, (202) 358–7028, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; for information collections 2125–0571 and 2125–0572.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Request for Revocation of Authority Granted.

OMB Number: 2125–0571.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Motor Carriers, Freight Forwarders, and Brokers.

Form(s): OCE–46.

Abstract: The Secretary of Transportation is authorized to promulgate regulations that provide for the registration of for-hire motor carriers of regulated commodities under 49 U.S.C. 13902, for surface freight forwarders under 49 U.S.C. 13903, and for property brokers under 49 U.S.C. 13904. The Secretary has adopted regulations to implement these registration procedures. Under Title 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation determines appropriate by regulation. Subsection (c) of 49 U.S.C. 13905 provides that, on application of the registrant, the Secretary may amend or revoke a registration. Authority pertaining to these registrations has been delegated to the FHWA.

Form OCE–46 allows transportation entities to apply voluntarily for revocation of their registration in whole or in part. The form asks for the registrant's docket number, name and address, and the reasons for the revocation request.

Estimated Annual Burden Hours: 400 hours.

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers under 49 U.S.C. 13902(c).

OMB Number: 2125–0572.

Affected Public: Foreign Motor Carriers.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Form(s): OP–2.

Abstract: Basic licensing procedures for registering foreign motor carriers to operate across the border into the United States are found at 49 U.S.C. 13902(c). Related regulations appear at 49 CFR 368. The FHWA carries out this registration program under authority delegated by the Secretary of Transportation. Form OP–2 is used by foreign motor carriers to apply for registration with the FHWA. The form requests information on the motor carrier's location, the form of business, ownership and control, and proposed operations.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department,

including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 25, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–31510 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Global Air Cargo, Inc. For Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 97–11–39) Docket OST–97–2683.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Global Air Cargo, Inc., fit, willing, and able, and (2) awarding it a certificate to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than December 10, 1997.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–97–2683 and addressed to Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT:

Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: November 25, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–31509 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 121–29A]

Proposed Revised Advisory Circular—Carry-On Baggage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed revision to Advisory Circular (AC) 121–29, Carry-On Baggage.

SUMMARY: The proposed Advisory Circular (AC) provides guidance about the information that should be contained in a certificated air carrier's approved carry-on baggage program and updates, provides clarification, and additional information to AC 121–29, Carry-On Baggage.

DATES: Comments must be received on or before March 2, 1998.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commenters should give special attention to definition of proper stowage of carry-on baggage. Commenters must identify file number AC 121–29A.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS–203, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS–203, at the above address, telephone (202) 267–3735 or (202) 267–8166 (6:00 a.m. to 3:30 p.m. est).

SUPPLEMENTARY INFORMATION: FAA personnel, certificated air carriers, airline personnel, and the public have asked the FAA to clarify existing policy found in AC 121–29, 14 CFR section 121.589, and in the model carry-on baggage programs. The FAA agrees that additional policy guidance is needed because of changes in the airline industry, such as reduction in personnel in the gate area. In addition, revisions to AC 121–29 are needed to add material that was otherwise omitted and to clarify certain confusing sections of the original guidance. The inclusion of an example of an acceptable definition of proper stowage should not be construed as invalidating any previously approved carry-on baggage programs.

Issued in Washington, DC, on November 25, 1997.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

[FR Doc. 97–31520 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held December 16, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve Proposed Final Draft, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System II (TCAS II) Airborne Equipment, RTCA Paper No. 336–97/SC147–691, Prepared by SC–147; (4) Discuss/ Take Position on: a. Future of Special Committee 147; b. Committee Milestones; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public present a written statement to the committee at any time.

Issued in Washington, DC, on November 24, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31505 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held December 17, 1997, from 1:00 p.m. until 5:00 p.m. The meeting will be held in Conference Room 8ABC (8th floor) of the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20036.

The agenda will include: (1) Co-chairs' Introductory Remarks; (2) Review/Approval of Summary of the Previous Meeting; (3) Review/ Discussion of European Civil Aviation Conference Air Traffic Management 2000+ Strategy Board Initiative; (4) Overview of the FAA Administrator's National Airspace System Modernization Task Force Initiative; (5) Free Flight Select Committee Report; (6) Other Business—Review Suggested Dates for 1998 Steering Committee Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairs, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 25, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31506 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#98–02–C–00–IDA) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Idaho Falls Municipal Airport; Submitted by the City of Idaho Falls, Idaho Falls, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Idaho Falls Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 2, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James Thorsen, A.A.E., Director of Aviation, at the following address: City of Idaho Falls, 2140 North Skyline Drive, Idaho Falls, ID 83402–4906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Idaho Falls Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary E. Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#98–02–C–00–IDA) to impose and use PFC revenue at Idaho Falls Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 25, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Idaho Falls, Idaho Falls Municipal Airport, Idaho Falls, Idaho, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1998.

Proposed charge expiration date: December 1, 2000.

Total requested for use approval: $820,404.00.

Brief description of proposed project: Rehabilitation of runway 2/20; Airport master plan; Aircraft rescue and fire fighting station; Mandatory runway lighting/signage and apron; Snow removal equipment; Runway 17/35 lighting system replacement and ramp reconstruction.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Idaho Falls Municipal Airport.

Issued in Renton, Washington on November 25, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–31507 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 1997, there were eight applications approved. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Richland-Lexington Airport Commission, Columbia, South Carolina.

Application Number: 97–02–U–00–CAE.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved For Use In This Decision: $587,186.

Charge Effective Date: November 1, 1993.

Estimated Charge Expiration Date: September 1, 2008.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved For Use: Runway/taxiway 11/29 overlay.

Decision Date: October 6, 1997.

For Further Information Contact: E.C. Hunnicutt, Atlanta Airports District Office, (404) 305–7145.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.
Application Number: 97–06–C–00–ORD.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $1,470,500.
Earliest Charge Effective Date: June 1, 2004.
Estimated Charge Expiration Date: July 1, 2004.
Class of Air Carriers Not Required To Collect PFC's: Air taxi operations.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).
Brief Description of Projects Approved For Collection At ORD And Use At Gary Regional Airport:
Terminal renovations program.
Automated weather observation system.
General aviation apron overlay/expansion.
Decision Date: October 8, 1997.
For Further Information Contact: Louis H. Yates, Chicago Airports District Office, (847) 294–7335.

Public Agency: County of Dukes County, Vineyard Haven, Massachusetts.
Application Number: 97–01–C–00–MVY.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $737,960.
Earliest Charge Effective Date: January 1, 1998.
Estimated Charge Expiration Date: December 1, 2005.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Project Approved For Collection And Use: Construct terminal building.
Decision Date: October 16, 1997.
For Further Information Contact: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: City of Modesto, California.
Application Number: 97–04–U–00–MOD.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue To Be Used In This Decision: $44,400.
Charge Effective Date: August 1, 1994.
Estimated Charge Expiration Date: April 1, 1999.
Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.
Brief Description of Projects Approved For Use:
Runway 10R/28L pavement overlay.
Relocate runway 10R/28L edge lights.
Decision Date: October 17, 1997.
For Further Information Contact: Marlys Vanderveide, San Francisco Airports District Officer, (415) 876–2806.

Public Agency: City of Des Moines, Iowa.
Application Number: 97–02–C–00–DSM.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $3,574,928.
Earliest Charge Effective Date: December 1, 1997.
Estimated Charge Expiration Date: July 1, 1999.
Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.
Brief Description of Projects Approved for Collection and Use:
Land acquisition for runway extension and road relocation; and grading and construction of relocated road.
Terminal concourse chiller update.
Reconstruct terminal apron (phase I and II).
Decision Date: October 21, 1997.
For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: Dothan-Houston County Airport Authority, Dothan, Alabama.
Application Number: 97–01–C–00–DHN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $5,515,948.
Earliest Charge Effective Date: February 1, 1998.
Estimated Charge Expiration Date: December 1, 2028.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Passenger terminal building.
Aircraft parking apron.
Security fencing.
Terminal access road relocation.
Delayed baggage delivery/pick-up area.
Directional/informational signage.
Decision Date: October 21, 1997.
For Further Information Contact: Roderick T. Nicholson, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Santa Barbara, California.
Application Number: 97–01–C–00–SBA.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved In This Decision: $2,572,182.
Earliest Charge Effective Date: January 1, 1998.
Estimated Charge Expiration Date: January 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Santa Barbara Municipal Airport.
Brief Description of Projects Approved for Collection and Use:
Safety area grading and mitigation.
Relocate beacon and airfield lighting equipment panels.
Rehabilitate runway 7/25 and associated taxiway edge lighting systems.
Improve airfield drainage and storm water systems.
Construct helipads.
Design for taxiways A, F, and G overlay and pavement rehabilitation.
Expand general aviation ramp.
General aviation asphalt cement ramp rehabilitation.
Purchase airport sweeper.
Replace terminal area waste transfer station.
Rehabilitate precast concrete general aviation ramp.
Remodel terminal building to comply with the Americans with Disabilities Act.
Rehabilitate airfield signage and electrical system.
Construct additional square footage in aircraft rescue and firefighting (ARFF) station.
Rehabilitate taxiway B south of taxiway A.
Reconstruct concrete general aviation ramp.
Sealcoat taxiway C transition, portions of taxiway C, runway 15R/33L, and runway 15 holding area.
Install security access control system.
Design for grading and drainage system.

Overlay runway 15L/33R and connector taxiways.
Construct runway 7/25 blast pads.
Sealcoat taxiway H and J.
Reconstruct taxiway C apron transition west of runway 15R/33L.
Construct six helipads.
Reconstruct the northerly portion of taxiway B.
Overlay and construct porous friction course on runway 7/25, and stabilize shoulders on taxiways C and F.
Brief Description of Projects Approved for Collection Only:
Master plan implementation, aviation facilities plan project/extend runway safety areas.
Master plan implementation, aviation facilities plan project/extend taxiway A and safety areas.
Brief Description of Project Withdrawn: Design and construct airline terminal access road.
Determination: This project was withdrawn by the public agency prior to submittal of the application to the FAA. It was addressed in the carrier consultation meeting and included in the PFC application; however, it was marked "Project deleted from PFC application."
Decision Date: October 27, 1997.
For Further Information Contact: John P. Milligan, Western Pacific region Airports Division, (310) 725–3621.

Public Agency: City of Tyler, Texas.
Application Number: 97–02–C–00–TYR.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $976,449.
Earliest Charge Effective Date: March 1, 1998.
Estimated Charge Expiration Date: January 1, 2003.
Class of Air Carriers Not Required To Collect PFC'S: None.
Brief Description of Projects Approved For Collection and Use:
Decision Date: October 27, 1997.
Terminal area study.
Overlay taxiway F.
ARFF building.
Wind cones.
PFC administration costs.
Sealcoat runway 13/31 and associated taxiways A, C, and D.
Airport sanitary sewer capacity improvements.
Decisison Date: October 27, 1997.
FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

AMENDMENTS TO PFC APPROVALS

Amendment no, city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
93–02–I–04–BDL, Windsor Locks, CT	07/16/97	$12,257,000	$9,257,000	11/01/98	11/01/98
97–06–I–01–BDL, Windsor Locks, CT	07/16/97	12,602,000	15,602,000	11/01/98	11/01/98
94–01–C–01–BMI, Bloomington, IL	10/03/97	3,855,012	6,276,133	05/01/10	12/01/10

Issued in Washington, DC, on November 25, 1997.
Eric Gabler,
Manager, Passenger Facility Charge Branch.
[FR Doc. 97–31508 Filed 12–1–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–97–3165]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 2, 1998.
FOR FURTHER INFORMATION CONTACT: William J. Aird, Division of Ports, Office of Ports and Domestic Shipping, MAR–831, Room 7201, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–1901 or fax 202–366–6988. Copies of this collection can also be obtained from that office.
SUPPLEMENTARY INFORMATION:

Title of Collection: Port Facility Conveyance Information.
Type of Request: Extension of currently approved information collection.
OMB Control Number: 2133–0524.
Form Number: No form is required for this collection.
Expiration Date of Approval: September 30, 1998.
Summary of Collection of Information: Pub. L. 103–160 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for development or operation of a port facility. The information collection will allow the Maritime Administration to approve the conveyance of property and administer the port facility conveyance program.
Need and Use of the Information: The information collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment/reuse plan, (2) the redevelopment/reuse plan is viable and is in the best interest of the public, and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.
Description of Respondents: Eligible port entities.
Annual Responses: 20 responses.
Annual Burden: 2200 hours.
Comments: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By Order of the Maritime Administrator.

Dated: November 26, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–31561 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Sec. 5a Application No. 61]

National Classification Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Extension of deadlines for filing comments.

SUMMARY: The Surface Transportation Board is granting a 3-week extension of the deadlines for filing opening and reply comments in this proceeding. All other dates and deadlines remain the same.

DATES: Opening comments are now due by January 29, 1998. Reply comments are now due by February 26, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate (still due by November 28, 1997) and comments, referring to "Section 5a Application No. 61," to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. Opening and reply comments must be served on the persons identified as "parties of record" on the service list.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: This proceeding involves the issue of whether, under 49 U.S.C. 13703(d) and (e), it is in the public interest to renew the bureau agreement of the National Classification Committee, which administers the National Motor Freight Classification. For additional information, see the notice published in the **Federal Register** on November 13, 1997.

Decided: November 25, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31629 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33509]

Colorado, Kansas & Pacific Railway Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

Colorado, Kansas & Pacific Railway Company (Colorado), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company and to operate approximately 121.9 miles of rail line between milepost 747.5, near Towner, and milepost 869.4, near NA Junction, in Kiowa, Crowley, and Pueblo Counties, CO (Line).[1]

The transaction was expected to be consummated on or about November 17, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33509, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Ren, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31556 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Line was the subject of an application for abandonment in Docket No. AB–3 (Sub-No. 130), *Missouri Pacific Railroad Company—Abandonment—Towner-NA Junction Line in Kiowa, Crowley, and Pueblo Counties, CO*, and discontinuance of trackage rights operations in the embraced Docket No. AB–8 (Sub-No. 38), *The Denver and Rio Grande Western Railroad Company—Discontinuance of Trackage Rights—Towner-NA Junction Line in Kiowa, Crowley and Pueblo Counties, CO*. The abandonment and discontinuance were granted in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSC Corp., and The Denver and Rio Grand Western Railroad Company*, Finance Docket No. 32760 (STB served Aug. 12, 1996). Colorado indicates that the abandonment was never consummated.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33412]

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., Harold F. Parmly, and Anacostia Rail Holdings Company—Continuance in Control Exemption—Pacific Harbor Line, Inc.

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly (Gilbertson, *et al.*), noncarrier individuals, and Anacostia Rail Holdings Company (ARC), a noncarrier holding company (collectively Applicants), have filed a verified notice of exemption to continue in control of Pacific Harbor Line, Inc. (PHL) upon PHL's becoming a Class III rail carrier.

The transaction was expected to be consummated on or after November 15, 1997.

This transaction is related to STB Finance Docket No. 33411, *Pacific Harbor Line, Inc.—Operation Exemption—Port of Los Angeles*, in which PHL seeks to acquire operating rights within the City of Los Angeles' Port of Los Angeles (POLA) to provide switching service on track owned by POLA.

Applicants own and control two existing Class III common carriers by rail: Louisville & Indiana Railroad Company, operating in Southern Indiana and Northern Kentucky; and the New York & Atlantic Railway Company, operating within the State of New York. With the exception of R. Lawrence McCaffrey, Jr., each of Gilbertson, *et al.* is an officer and/or director of the Chicago SouthShore & South Bend Railroad Corporation (CSS), a Class III common carrier by rail, operating in Northern Illinois and Northern Indiana. In addition, Gilbertson *et al.* are minority shareholders in CSS's corporate general partner SouthShore Corporation, a noncarrier.

Applicants state that: (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33412, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mark H. Sidman, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

Decided: November 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31559 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33411]

Pacific Harbor Line, Inc.—Operation Exemption—Port of Los Angeles

Pacific Harbor Line, Inc. (PHL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire operating rights from the City of Los Angeles, a municipal corporation, acting through its Board of Harbor Commissioners (LA). PHL will acquire the right to operate within LA's Port of Los Angeles (POLA) to provide switching services on track owned by POLA.[1]

The transaction was expected to be consummated in phases on or after November 15, 1997.

This transaction is related to STB Finance Docket No. 33412, *Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., Harold F. Parmly, and Anacostia Rail Holdings—Continuance in Control Exemption—Pacific Harbor Line, Inc.*, in which Peter A. Gilbertson, H. Terry Hearst, Bruce Lieberman, R. Lawrence McCaffrey, Jr., Harold F. Parmly and Anacostia Rail Holdings Company have filed a notice of exemption to continue in control of PHL upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33411, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mark H. Sidman, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: November 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31558 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to the terms of an operating agreement, PHL's operating rights will be for a term of three years, subject to extension, modification, and earlier termination.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33525]

Sierra Railroad Company—Acquisition and Operation Exemption—Sierra Pacific Industries

Sierra Railroad Company, a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 12 miles of rail line in Amador County, CA, known as the Amador Branch, from Sierra Pacific Industries (Sierra Pacific). The Amador Branch extends from milepost 0.0, in Ione, to milepost 12.0, at Martell.[1]

The transaction is scheduled to be consummated on December 1, 1997.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33525, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James F. Flint, Esq., Grove, Jaskiewicz and Cobert, 1730 M Street, NW., Suite 400, Washington, DC 20036.

Decided: November 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31560 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Amador Branch includes a yard and repair shops at Martell as well as additional spur trackage at the Sierra Pacific mill and particle board plant located at milepost 11.6.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 43X)]

Soo Line Railroad Company—Abandonment Exemption—in St. Louis County, MN

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 3.04–mile line of railroad known as the West Duluth Line, between milepost 465.43+ and milepost 468.43+ in West Duluth, in St. Louis County, MN. The line traverses United States Postal Service Zip Code 55802.

Soo has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 22, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Larry D. Starns, Esq., Leonard, Street & Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Soo has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 5, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Soo's filing of a notice of consummation by December 2, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31557 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 74–13]

Premium-Class Travel, Authority Delegation

Dated: November 24, 1997.

1. Purpose. This Directive establishes policy and responsibilities for the approval of premium-class transportation accommodations, in accordance with Chapters 301 and 304 of the Federal Travel Regulation (FTR) (41 CFR (Code of Federal Regulations) parts 301 and 304) and White House and Office of Management and Budget (OMB) guidance on perquisites.

2. Definitions. The terms "premium-class," "first-class," "reasonably available," and "security reasons" are defined in FTR 301.3 (41 CFR 301.3).

3. Scope.

a. This Directive applies to all bureaus, the Departmental Offices (DO), and the Office of Inspector General (OIG) for travel by officers and employees of the Department when they travel in support of the Department's programs, including programs funded from sources other than appropriations, e.g., fees or assessments. It also applies to travel paid for by a non-Federal source pursuant to FTR Chapter 304 (41 CFR part 304), and to travel by persons other than employees whose travel is on an invitational basis and paid for by the Department.

b. Neither this Directive nor the restrictions on premium-class travel apply to travel:

(1) for which an employee is reimbursed by certain tax exempt organizations or a State, county, or municipality, incident to attendance at meetings, pursuant to 5 U.S.C. 4111;

(2) which is accepted by an employee pursuant to 5 U.S.C. 7342, concerning foreign gifts and decorations; or

(3) for a partisan purpose in the case of an employee who is exempt from the statutory prohibitions on partisan political activity, and the travel is not paid for with Government funds.

4. Policy. It is the policy of the Department of the Treasury that:

a. prior authorization by the Assistant Secretary for Management and Chief Financial Officer is required for first-class travel in all bureaus, except for U.S. Secret Service (USSS) agents on protective missions;

b. first-class travel shall not be authorized, unless no other commercial service is reasonably available, or such travel is necessary for reasons of disability or physical impairment, or for security reasons, as these terms are defined in FTR 301–3.3 (41 CFR 301–3.3); and

c. first-class airline accommodations shall not be authorized or approved when obtained as an accommodations upgrade through the redemption of frequent traveler benefits accumulated while traveling on official business, unless the first-class accommodations are justified independently under the FTR (41 CFR part 301).

5. Responsibilities For First-Class Travel. The Deputy Assistant Secretary (Administration), Heads of Bureaus, and the Inspector General:

a. shall submit Treasury Department Form (TD F) 70–02.6, "First-Class Travel Request and Authorization," by mail or facsimile (FAX) to the Assistant Secretary for Management and Chief Financial Officer at least ten working days prior to travel for review and authorization, unless extenuating circumstances or emergency situations make advance authorization impossible. If advance authorization cannot be obtained, the traveler shall obtain written authorization at the earliest possible time;

b. except as specifically permitted under paragraph 6., shall not authorize, pay for, or reimburse employees or others for the use of first-class travel accommodations without the prior authorization of the Assistant Secretary for Management and Chief Financial Officer; and

c. shall submit an annual report on all approved first-class travel that began during the fiscal year to the Deputy, Chief Financial Officer (DCFO), Office of Accounting and Internal Control, DO, (Attention: Travel Program Coordinator). The report is due to the General Services Administration by November 30 of each year. See FTR 301–3.3(e) (41 CFR 301–3.3) for data collection and submission requirements. Negative reports are required in writing.

6. Exceptions.

a. The Director, USSS, is delegated authority to approve first-class travel accommodations solely with respect to Secret Service agents' protective details when necessary for security reasons. Such approval does not require the advance or subsequent authorization by the Assistant Secretary for Management and Chief Financial Officer. The Director may redelegate this authority, in writing, only to the Deputy Director.

b. To the extent that information is protected from disclosure by statute or Executive Order, data shall be submitted by the Director, USSS, in accordance with FTR 301–3.3(e)(4) (41 CFR 301–3.3(e)(4)), as prescribed in paragraph 5.c. herein.

7. Other Premium-Class Travel Accommodations. The Deputy Assistant Secretary (Administration), Heads of Bureaus, and the Inspector General are delegated authority to approve premium-class other than first-class transportation accommodations when such accommodations meet the criteria in FTR 301–3.3 (41 CFR 301–3.3). This authority may be redelegated, in writing, only to the principal deputy, with the exception of:

a. the USSS, who may redelegate to the Assistant Special Agent in Charge (ASAIC), Office of Administration; and

b. the U.S. Customs Service, who may redelegate to the U.S. Customs Service Assistant Commissioners, Offices of Investigations and Internal Affairs for covert investigative assignments only. Use of premium-class other than first-class accommodations shall be approved only when use of such accommodations is clearly consistent with the criteria in the FTR; the justification on the travel authorization should address any additional costs involved. Approval of business-class accommodations by a non-Federal source shall be in accordance with FTR Chapter 304 (41 CFR part 304). Further, in situations where the business-class travel accommodations are provided by a non-Federal source on a reimbursement, rather than an in-kind basis, the use of premium-class other than first-class must be justified independently and in accordance with the criteria in FTR 301–3.3 (41 CFR 301–3.3). The use of premium-class other than first-class airline accommodations for "security purposes or exceptional circumstances" as permitted by FTR 301–3.3(d)(5)(iv) (41 CFR 301–3.3(d)(5)(iv)) shall be strictly limited to those situations where their use is essential to the successful performance of the agency's mission.

8. Supply of Forms. TD F 70–02.6 may be obtained from the Records Management and Resources Branch, DO, or by submitting a printing requisition through the bureau forms control manager to the DCFO, Office of Accounting and Internal Control, DO.

9. Authorities.

a. President's Memorandum of February 10, 1993, "Restricted Use of Government Aircraft."

b. OMB Bulletin 93–11, "Fiscal Responsibility and Reducing Perquisites," dated April 19, 1993.

c. FTR Chapter 301–3 (41 CFR 301.3), "Use of Commercial Transportation," and Chapter 304 (41 CFR Part 304), "Payment from a Non-Federal Source for Travel Expenses."

d. 5 U.S.C. 4111, "Acceptance of Contributions, Awards, and Other Payments."

e. 5 U.S.C. 7342, "Receipt and Disposition of Foreign Gifts and Decorations."

10. Cancellation. Treasury Directive 74–13, "Premium-Class Travel," dated October 26, 1994, is superseded.

11. Expiration Date. This Directive expires three years after the date of issuance unless superseded or canceled by that date.

12. Offices of Primary Interest. Office of Accounting and Internal Control; Office of the Deputy Chief Financial Officer; Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 97–31526 Filed 12–1–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 16–21]

Disposal of Obligations, Including Bonds, Notes or Other Securities; Authority Delegation

Dated: November 25, 1997.

1. Delegation. By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, the Commissioner, Bureau of the Public Debt, is delegated the authority to dispose of obligations, including bonds, notes or other securities, acquired by the Secretary of the Treasury for the United States Government or delivered by an executive agency pursuant to 31 U.S.C. 324, and to perform any functions necessary to effect such disposition. The Commissioner, Bureau of the Public Debt, shall be responsible for referring to the Fiscal Assistant Secretary any matters on which action should be appropriately taken by the Fiscal Assistant Secretary.

2. Redelegation. The Commissioner, Bureau of the Public Debt, may redelegate this authority, and it may be exercised in the individual capacity and under the individual title of each official receiving such authority.

3. Authorities.

a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 324.

4. Cancellation.

a. Treasury Directive 16–21, "Disposal of Obligations, Including Bonds, Notes or Other Securities," dated May 3, 1995, is superseded, except as provided below.

b. Any matter being processed on the date of this Directive by the Commissioner, Financial Management Service, that requires the disposal of obligations, including bonds, notes or other securities, may be completed under the authority delegated to the Commissioner, Financial Management Service, in the May 3, 1995, Directive, if the Fiscal Assistant Secretary so directs.

5. Expiration Date. This Directive expires three years from the date of issuance unless cancelled or superseded by that date.

6. Office of Primary Interest. Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 97–31527 Filed 12–1–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Property at the James H. Quillen Veterans Affairs Medical Center at Mountain Home, Tennessee

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation and intent to execute an Enhanced-Use Lease.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the James H. Quillen Veterans Affairs Medical Center at Mountain Home, Tennessee (the Medical Center), for an Enhanced-Use Lease development. The Department intends to enter into a long-term lease of real property at the Medical Center with the State of Tennessee (through the East Tennessee State University—ETSU) in order to transfer the long-term maintenance and development responsibilities of 31 acres of land (including 9 buildings) to the State of Tennessee. The Enhanced-Use lease will

supersede existing leases of buildings and land between VA and the State of Tennessee wherein VA is required to provide and fund all maintenance and capital improvements on behalf of ETSU. The property will continue to be used exclusively as a teaching facility by ETSU's James H. Quillen College of Medicine. As consideration for the long-term use of VA's capital assets, VA will receive a combination of benefits: the cost avoidance and/or revenue generation which will result in more operational funding being available for direct patient care. VA will also receive the benefit of an improved affiliation as the result of greatly improved medical school facilities.

FOR FURTHER INFORMATION CONTACT: Bob Eidson, Capital Assets Manager, Office of the Director (00B), James H. Quillen VA Medical Center at Mountain Home (Johnson City), Tennessee 37684, (423)–926–1171, extension 7112.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec. 8161 *et seq.*, specifically provides that the Secretary may enter into an Enhanced-Use Lease if the Secretary determines that at least part of the use of the property will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Dated: November 20, 1997.

Approved:

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–31487 Filed 12–1–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
December 2, 1997

Part II

Department of Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), or Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 1998–99 award year (July 1, 1998 through June 30, 1999) because the institution returned more than 10 percent of its allocation for that program for the 1996–97 award year (July 1, 1996 through June 30, 1997).

DATES: *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1996–97 award year to be considered for a waiver of the allocation reduction for its 1998–99 award year allocation, it must mail or hand-deliver its waiver request and any supporting information or documents on or before February 13, 1998. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Institutional Financial Management Division at one of the addresses indicated in the following section.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail.* The waiver request and any supporting information or documents delivered by mail must be addressed to Ms. Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) A dated shipping label, invoice, or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. An institution that submits a waiver request and any supporting information or documents after the closing date will not be considered for a waiver of the allocation reduction being applied to its allocation under any of the campus-based programs for award year 1998–99.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Ms. Sandra K. Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A waiver request for the 1998–99 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under sections 413D(e)(2), 442(e)(2), and 462(j)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the second succeeding award year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program. The institution must provide a written waiver request and any supporting information or documents by the established February 13, 1998 closing date. The waiver request must be signed by an appropriate institutional official, and above the signature the official must include the statement: "I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education." If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Ms. Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9751.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed in the preceding paragraph.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: November 19, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–31493 Filed 12–1–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 2, 1997

Part III

Federal Trade Commission

"Made in USA" and Other U.S. Origin Claims; Notice

FEDERAL TRADE COMMISSION

"Made in USA" and Other U.S. Origin Claims

AGENCY: Federal Trade Commission.

TITLE: Enforcement Policy Statement on U.S. Origin Claims.

ACTION: Notice of Issuance of Enforcement Policy Statement on U.S. Origin claims.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has conducted a comprehensive review of "Made in USA" and other U.S. origin claims in product advertising and labeling. Historically, the Commission has held that a product must be *wholly domestic* or *all or virtually all* made in the United States to substantiate an unqualified "Made in USA" claim. As part of its review, which began in 1995, the Commission sought public comment and conducted a two-day public workshop.

On May 7, 1997, the Commission solicited public comment on Proposed Guides for the Use of U.S. Origin Claims ("Proposed Guides"). Under the Proposed Guides, a marketer making an unqualified U.S. origin claim would have been required to have a reasonable basis substantiating that the product was *substantially all* made in the United States. To give further guidance as to what constitutes a reasonable basis for making a "Made in USA" claim, the Proposed Guides set forth two "safe harbors" under which an unqualified U.S. origin claim would not be considered deceptive.

The Proposed Guides also addressed qualified claims, claims regarding specific processes and parts, multiple-item sets, and changes in cost and sourcing. They also would have authorized specific origin claims for certain products that are both sold domestically and exported.

After extensively reviewing comments received regarding the Proposed Guides, the Commission has determined not to adopt the Proposed Guides. Instead, the Commission will continue to enforce the Commission's current "all or virtually all" standard. The Enforcement Policy Statement on U.S. Origin Claims that appears at the end of this notice outlines the Commission's enforcement policy in this area and provides additional guidance to marketers wishing to make an unqualified "Made in USA" claim under the "all or virtually all" standard. The statement also provides guidance on the use of qualified claims.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Beth M. Grossman, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, telephone 202–326–3019, or Kent C. Howerton, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, telephone 202–326–3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission regulates claims of U.S. origin, such as "Made in USA," pursuant to its statutory authority under section 5 of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices." Cases brought by the Commission beginning over 50 years ago established the principle that it was deceptive for a marketer to promote a product with an unqualified "Made in USA" claim unless that product was wholly of domestic origin.[1] In two 1994 cases, the Commission rearticulated this standard to require that a product advertised as "Made in USA" be "all or virtually all" made in the United States.[2] Whether the standard was called "wholly domestic" or "all or virtually all," however, unqualified claims of domestic origin have been treated as claims that the product was in all but *de minimis* amounts made in the United States.[3]

In a July 11, 1995 press release, the Commission announced that it would undertake a comprehensive review of U.S. origin claims and examine whether the Commission's traditional standard for evaluating such claims remained consistent with consumer perceptions and continued to be appropriate in today's global economy.[4] On October 18, 1995, the Commission published a notice in the **Federal Register** soliciting public comment on various issues related to this review, and announcing that Commission staff would conduct a public workshop on this topic. 60 FR 53922 (1995).[5] Contemporaneous with the solicitation of public comment, the Commission commissioned a two-part study to examine consumer understandings of U.S. origin claims. On March 26 and 27, 1996, representatives of industry, consumer groups, unions, government agencies, and others participated in the public workshop, which focused on consumer perception of U.S. origin claims and a discussion of the costs and benefits of various alternative standards for evaluating such claims. Following the workshop, the Commission, in a notice published on April 26, 1996, extended the period for clarifying or rebuttal comments until June 30, 1996, and set forth additional questions for comment. 61 FR 18600 (1996).

After reviewing the consumer perception evidence, the public comments, and the workshop proceedings, the Commission proposed, in a notice published on May 7, 1997, to adopt Guides for the Use of U.S. Origin Claims and sought public comment on the Proposed Guides until August 11, 1997. 62 FR 25020. Under the Proposed Guides, a marketer making an unqualified claim of U.S. origin, at the time it makes the claim, would have to possess and rely upon a reasonable basis that the product is *substantially all* made in the United States. To assist manufacturers in complying with this standard, the Proposed Guides also set forth two alternative "safe harbors" under which an unqualified U.S. origin claim would not be considered deceptive. The first safe harbor encompassed products that were last substantially transformed in the United States and whose U.S. manufacturing costs constituted 75% of total manufacturing costs ("75% U.S. content safe harbor"). The second safe harbor applied to products that have undergone two levels of substantial transformation in the United States: *i.e.*, the product's last substantial transformation took place in the United States, and the last substantial transformation of each of it significant inputs took place in the United States ("two levels of substantial transformation safe harbor").[6] The Proposed Guides also addressed various qualified claims, claims regarding specific processes and parts, multiple-item sets, and the effects of changes in costs and sourcing. They further provided for an alternative origin claim for certain products that are both sold domestically and exported.

In response to the Proposed Guides, the Commission received 1,057 written comments.[7] After reviewing the public comments, the Commission has decided that it will not adopt the Proposed Guides, but instead will continue to enforce the Commission's current "all or virtually all" standard. In conjunction with this decision, the Commission is issuing an Enforcement Policy Statement on U.S. Origin Claims which provides additional guidance to marketers seeking to make "Made in USA" and similar claims. The Enforcement Policy Statement appears at the end of this notice.

II. Summary of Comments On Proposed Guides

A. General Information

The total of 1,057 comments represented 1,165 commenters, including 963 individual consumers, 24 members of Congress, 2 consumer organizations, 1 non-profit organization, 90 manufacturers or other corporations, 29 trade associations, 29 labor unions and union representatives, 23 state and local government representatives (including a coalition of 16 state Attorneys General), and 4 others.

B. Comments Supporting the All or Virtually All Standard

The vast majority of the individual consumers as well as 130 other commenters opposed the Proposed Guides as setting too low a standard and/or expressly supported the current "all or virtually all" standard. These included a coalition of 16 Attorneys General,[8] 13 members of Congress,[9] 5 state legislators,[10] 1 state General Assembly,[11] 1 City Council,[12] 6 trade associations,[13] 2 consumer groups,[14] 29 labor unions or union representatives,[15] 58 manufacturers and other corporations,[16] and 3 other

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[1] *See, e.g., Windsor Pen Corp.*, 64 F.T.C. 454 (1964); *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940).

[2] This language was first used in the cases of *Hyde Athletic Industries*, File No. 922–3236 (consent agreement accepted subject to public comment Sept. 20, 1994) and *New Balance Athletic Shoes, Inc.*, Docket No. 9268 (complaint issued Sept. 20, 1994). In light of the decision to review the standard for U.S. origin claims, the Commission later modified the complaints in those cases to eliminate the allegations based on the "all or virtually all" standard. Consent agreements based on these revised complaints were issued on December 2, 1996 (*New Balance*) and December 4, 1996 (*Hyde*).

[3] In this notice, the Commission refers to its traditional standard as the "all or virtually all" standard.

[4] The Commission initiated its review in part because of comments from the public on the consent agreement the Commission had accepted (subject to final action) with Hyde, and letters from more than 40 members of Congress who wrote to the Commission or Chairman Robert Pitofsky urging that the Commission review and revise its standard.

[5] A follow-up notice published on December 19, 1995 announced that the public workshop would be held on March 26 and 27, 1996, and stated that the record would be held open for post-workshop public comments until April 30, 1996. 60 FR 65327 (1995).

[6] "Substantial transformation" is a U.S. Customs Service term that refers to a manufacturing or other process that results in a new and different article of commerce, having a new name, character, and use that is different from that which existed prior to the processing. *See* 59 FR 141 (1994).

[7] This number reflects those comments received at the time this notice was prepared; additional comments on this matter continue to be submitted to the Commission. The comments have been filed on the Commission's public record as Document Nos. B21902700001, B21902700002, *etc.* The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, *e.g.*, AGs, #462, at 2. All written comments submitted (including those received after the preparation of this notice), as well as a list of commenters (through #1057), are available for public inspection on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, DC 20580. In addition, the comments received, and other materials relevant to this review, are available to the public through the Commission's World Wide Web site (*http://www.ftc.gov*).

[8] This comment was submitted by the Attorneys General of Connecticut, California, Florida, Iowa, Illinois, Michigan, Missouri, North Carolina, New Jersey, Nevada, New York, Pennsylvania, Rhode Island, Tennessee, Washington, and Wisconsin ("AGs"), #462. In addition, Jeremiah Nixon, Attorney General of Missouri ("Nixon") submitted a separate comment, #63.

[9] U.S. Sen. Dale Bumpers ("Bumpers"), #74; U.S. Rep. Mark W. Neumann and U.S. Rep. Tom Latham ("Neumann/Latham"), #75; U.S. Rep. James A. Traficant, Jr. ("Traficant"), #231; U.S. Rep. Peter J. Visclosky ("Visclosky"), #236; U.S. Rep. Earl F. Hilliard ("Hilliard"), #242; U.S. Sen. Carl Levin ("Levin"), #254; U.S. Rep. Virgil H. Goode, Jr. ("Goode"), #24; U.S. Rep. Sherrod Brown ("Brown"), #599; U.S. Rep. Bob Franks and U.S. Rep. John D. Dingell ("Franks/Dingell"), #670, ("Dingell"), #694 (noting his past opposition to weakening the all or virtually all standard and requesting that the Commission respond to specific questions about the Proposed Guides; with attached response from the Commission's staff); U.S. Rep. John Olver ("Olver"), #671A; U.S. Rep. Bruce F. Vento ("Vento"), #735. U.S. Rep. Tom Campbell ("Campbell") submitted a comment conveying the concerns of constituents, but did not take a position himself. Campbell, #283. A number of other members of Congress forwarded comments from their constituents.

[10] North Carolina Rep. William S. Hiatt ("Hiatt"), #196; North Carolina Sen. Fountain Odom ("Odom"), #290; Illinois Rep. Michael J. Boland ("Boland"), #466; North Carolina Rep. Wayne Goodwin ("Goodwin"), #506; Pennsylvania Rep. Richard D. Olasz ("Olasz"), #623.

[11] New Jersey General Assembly ("NJ Assembly"), #740.

[12] City of Titusville, FL ("Titusville"), #1047.

[13] American Export Ass'n ("American Export"), #201; The American Hand Tool Coalition ("American Hand Tool"), #622; American Iron & Steel Institute ("AISI"), #636; Tile Council of America, Inc. ("TCA"), #618; American Textile Manufacturers Institute ("ATMI"), #615; Crafted with Pride in USA Council, Inc. ("Crafted With Pride"), #469. Despite the exclusion of textile products from the Proposed Guides, four additional trade associations filed comments urging the Commission to maintain the existing standards under the Textile Products Identification Act, 15 U.S.C. 70, for "Made in USA" claims for garments and other textile products. American Apparel Manufacturers Ass'n ("AAMA"), #697; Clothing Manufacturers Ass'n of USA ("CMA"), #624; Garment Contractors Ass'n of Southern California ("GCASC"), #695; Knitted Textile Ass'n ("KTA"), #634.

[14] National Consumers League ("NCL"), #640; Wisconsin Citizen Action ("WI Citizen Action"), #991.

[15] Alabama AFL–CIO ("Alabama AFL–CIO"), #242; Connecticut Employees Union Independent, Local 511, AFL–CIO ("CEUI Local 511"), #870; East Central Ohio Building & Construction Trades Council, AFL–CIO ("Construction Trades"), #687; Food & Allied Service Trades Dept., AFL–CIO ("FAST"), #545; Hotel Employees & Restaurant Employees Local 74, AFL–CIO ("HERE Local 74"), #255; Int'l Ass'n of Firefighters, West Hartford Fire Fighters Ass'n, Local 1241 ("Firefighters Local 1241"), #742; Int'l Ass'n of Machinists & Aerospace Workers, Air Transport Lodge 1056 ("Machinists Lodge 1056"), #558; Int'l Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO ("Boilermakers"), #514; Int'l Brotherhood of Electrical Workers, Local 1040, AFL–CIO ("IBEW Local 1040"), #745; Int'l Brotherhood of Electrical Workers, Local 540, AFL–CIO ("IBEW Local 540"), #686; Int'l Union, United Automobile, Aerospace & Agriculture Implement Workers of America—UAW ("UAW"), #615; Montana State AFL–CIO ("MT AFL–CIO"), #450; Permian Basin Central Labor Union, AFL–CIO ("PBCLU"), #396, #418; Seattle Professional Engineering Employees Ass'n ("SPEEA"), #830, #944; UAW—Region 9A ("UAW Region 9A"), #682; Union Label & Service Trade Department, Plumbers & Steamfitters Local 565, AFL–CIO ("Plumbers & Steamfitters Local 565"), #209; Union Label & Service Trades Department, AFL–CIO ("AFL–CIO/ ULSTD"), #606; Union of Needletrades, Industrial & Textile Employees, AFL–CIO, CLC ("UNITE"), #696; United Food & Commercial Workers, Local 26, AFL–CIO ("UFCW Local 26"), #697; United Paperworkers Int'l Union, AFL–CIO, CLC ("Paperworkers"), #253; Communications Workers of America, Local 3104, AFL–CIO ("CWA Local 3104"), #668; Hartford Federation of School Secretaries ("School Secretaries"), #843; Int'l Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Furniture Workers Division, AFL–CIO ("Furniture Workers"), #506; UAW Local 977, Buy American Committee ("UAW Local 977"), #651; UAW, Amalgamated Local 644 ("UAW Local 644"), #54; UAW, Local 145 ("UAW Local 145"), #913; United Steelworkers of America, Local 9189, AFL–CIO ("Steelworkers Local 9189"), #995; United Steelworkers of America, Rubber/Plastic Industry Conference, Local 2, District 1, AFL–CIO, CLC ("Steelworkers Local 2"), #1017; Brewery and Soft Drink Workers, Liquor Drivers, and New and Used Car Workers, Teamsters Local Union 1040 ("Teamsters Local 1040"), #1052.

[16] A&E Manufacturing Co. ("A&E"), #991; ABCO Industries, Inc. ("ABCO"), #743; American Sigma ("American Sigma"), #661; Ben Forman & Sons, Inc. ("Forman"), #159; BOYT ("BOYT"), #959; Calibre, Inc. ("Calibre"), #991; Centerville Lumber Co. ("Centerville"), #152, #734; Cheraw Yarn Mills, Inc. ("Cheraw"), #716; Danaher Tool Group ("Danaher"), #991; D.E. Williams Co. ("Williams"), #1031; Duchess Industries ("Duchess"), #512; Durand Int'l ("Durand"), #471; Dyersburg Corp. ("Dyersburg"), #720; Dynacraft Industries, Inc. ("Dynacraft"), #646; Elco Textron ("Elco"), #970; Equity Services of Connecticut, Inc. ("Equity Services"), #1001; Exidyne Instrumentation Technologies, Inc. ("Exidyne"), #731; Federal Forging Tools ("Federal"), #654; Friend Laboratory ("Friend"), #34; GBW Manufacturing, Inc. ("GBW"), #1014; Gee Kay—Knit Products ("Gee Kay"), #1034; Herker Industries ("Herker"), #991; Inman Mills ("Inman"), #981; Jackson Products ("Jackson"), #880; Joshua L. Baily & Co., Inc., ("Baily"), #53; Kenosha Leatherette & Display Co. ("Kenosha"), #991; Kern Special Tools Co., Inc. ("Kern"), #739; Madewell Machine Works Co., Inc. ("Madewell"), #958; March Instruments, Inc. ("March"), #46; Matco Tools ("Matco"), #600; Merit Abrasives ("Merit"), #628; Murphy & Co.("Murphy"), #64; Newco Valves ("Newco"), #198; NTP-Republic ("NTP"), #699; Nucor Steel ("Nucor"), #992; Piedmont Clarklift, Inc. ("Piedmont"), #741; Protexall, Inc. ("Protexall"), #917; Regal-Beloit Corp. ("Regal-Beloit"), #614; Richland Mills ("Richland"), #628; Schofield ("Schofield"), #51; SGS Tool Co. ("SGS"), #221; Sharpe Manufacturing Co. ("Sharpe"), #630; Sheffield Steel Corp. ("Sheffield"), #935; SideMarica LLC ("SideMarica"), #246; Snap-on Tools ("Snap-on"), #685, #732, #733, #991; Spectronics Corp.

Continued

commenters.[17] In addition to the individual consumer comments, 7 individual commenters or groups submitted petitions urging the Commission to retain the "all or virtually all" standard that were signed by a total of more than 11,000 individuals.[18] Last, the Commission received over 200 telephone calls from individual consumers who stated their opposition to the Proposed Guides.[19]

In addition, over 200 members of the House of Representatives have cosponsored House Concurrent Resolution 80 ("Resolution"), opposing the Proposed Guides and urging the Commission to retain the "all or virtually all" standard.[20] The Resolution states that lowering the current standard "will be a misrepresentation to consumers in the United States who presently believe products bearing the 'Made in USA' label were all or virtually all made in the United States," and that American consumers are "entitled to purchase products with the understanding that the labels on these products reflect consistent definitions." Accordingly, the Resolution "urges the Federal Trade Commission to refrain from lowering this standard at the expense of consumers and jobs in the United States." The Made in USA Coalition, comprised of 3 consumer groups, 32 labor unions, 15 businesses, and 11 agriculture organizations, and a primary backer of the House Resolution, submitted a comment expressly supporting it.[21] In addition, members of the Senate recently introduced Senate Concurrent Resolution 52, which also supports the retention of the "all or virtually all" standard. Similarly, the New Jersey General Assembly and the Titusville (Florida) City Council adopted resolutions that ask the Commission to maintain the traditional standard.[22]

The consumer commenters overwhelmingly opposed the Proposed Guides and generally supported an "all or virtually all" standard or advocated a specific percentage, usually 90% or, more often, 100%. Many commenters stated that "'Made in USA' means what it says" or expressed similar sentiments. Several commenters asserted that changing the current standard would confuse consumers who wish to buy American products, leaving them unable to determine whether a product was truly made in the United States. Individual consumers also stated that they buy American products to support fellow Americans and expressed concern that lowering the standard would lead to a loss in American jobs. The following comments exemplify the individual consumer comments:

> The concept of "Made in the USA" has been specific and definite for the last 50 years. Please leave it as it is. If manufacturers want to say an item is "Made in the USA"; then, make sure it is exactly that. "Made in the USA" should mean that an item is 100% manufactured in the United States of America and not in another country.[23]
>
> If a product is only partially made in our Country, I want to know. I do not wish to purchase items made in other countries and falsely labeled "Made in America." I want the entire truth on the label. I don't want to be tricked into buying an item I think is made here when in fact it is not.[24]
>
> We are opposed to any change that would increase the percentage of foreign labor or materials in those goods or products bearing the "Made in the USA" label. The American people recognize goods or products bearing this label as being superior in workmanship and quality. These goods and products are produced by American workers * * * Any action by the FTC to modify the "Made in USA" label standard will lead to the loss of American jobs.[25]

Other commenters echoed the consumers' concerns and cited additional reasons for keeping the "all or virtually all" standard. Several opponents of the Proposed Guides expressed concern that altering the current standard would deceive, or at least confuse, consumers.[26] Some of these commenters argued that the consumer perception evidence before the Commission does not support lowering the standard.[27] Some commenters additionally asserted that consumer attitudes and preferences towards "Made in USA" products have not been altered by a change in the economy, or, if anything, have been made stronger.[28]

Other advocates of the "all or virtually all" standard warned that changing the standard in the way proposed by the Commission would harm the American manufacturing base, because companies would have less incentive to use U.S. labor and U.S. product components. These commenters concluded that American jobs would be jeopardized as companies increasingly would rely on less expensive foreign sources.[29] Many commenters also stated that weakening the standard would

("Spectronics"), #631; Spray Cotton Mills ("Spray Cotton"), #672; Sterling Handling Equipment, Inc. ("Sterling"), #625; Taytronics Corp. ("Taytronics"), #744; Vaughn & Bushnell Manufacturing Co. ("Vaughn & Bushnell"), #151, #616; Victoria Vogue, Inc. ("Victoria"), #1045; The Warren Featherbone Co. ("Featherbone"), #1015; Waukesha Industrial Supply ("Waukesha"), #991; Weldbend Corp. ("Weldbend"), #597; Wolfe Dye & Bleach Works, Inc. ("Wolfe"), #1057. Wright Tool Co. ("Wright"), #262, #652; Yeoman's Chicago Corp. ("Yeoman's"), #216. See also Eastman Kodak Co. ("Kodak"), #619 (supporting 85% standard).

[17] Made in USA Coalition ("MUSA Coalition"), #596; Donald P. Selkirk (submitted as Executive Producer, The Donald P. Selkirk Show, WPON Radio, Bloomfield Hills, MI) ("Selkirk"), #186; Women V.I.P.s ("WVIP"), #1042.

[18] Brown, #599 (petition containing approximately 9,300 signatures submitted by U.S. Rep. Sherrod Brown); John Moore ("John Moore"), #195 (petition signed by 26 individuals); UAW Local 977, #651 (petition containing approximately 2,000 signatures submitted by a union representative); Ellen Sofranski ("Sofranski"), #703 (petition signed by 28 individuals); Employees of Danaher Tool Group ("Danaher Employees"), #829 (petition containing 181 names submitted by employees of Danaher Tool Group); David Micola ("Micola"), #966 (petition containing 151 names submitted by an individual who is a sheet metal worker); Richard Moran, Jr. ("Moran"), #1029 (petition signed by 26 individuals).

[19] These telephone calls have not been memorialized or codified on the record because many of them were phone mail messages without the name, telephone number, or address of the caller.

[20] This number includes at least 13 members of Congress who were among those who had earlier written to the Commission or submitted public comments asking the Commission to lower the "all or virtually all" standard. See supra note 4. The Resolution was submitted to the Commission by U.S. Representatives Bob Franks and John D. Dingell. Franks/Dingell, #670.

[21] MUSA Coalition, #596.

[22] NJ Assembly, #740 (Assembly Resolution No. 163); Titusville, #1047 (Resolution No. 39–1997).

[23] Kenneth Fletcher ("Fletcher"), #178, at 1.

[24] Margaret A. Stem ("Stem"), #203, at 1.

[25] Edwin and Beverly Emmons ("Emmons"), #288, at 1.

[26] See, e.g., Baily, #53; Nixon, #63; Traficant, #231; Crafted With Pride, #469; ATMI, #613; Vaughan & Bushnell, #616; Weldbend, #597; Exidyne, #731; UAW, #615.

[27] See, e.g., American Hand Tool, #622; UAW, #615; Dynacraft, #646; AGs, #462; Weldbend, #597; Bumpers, #74.

[28] See, e.g., Vento, #735 at 1 ("The decline of America's manufacturing base and the difficulty of ascertaining a product's origin in the global marketplace, has in fact rendered the Made in USA claim more valuable and significant to American consumers wishing to buy American."); AISI, #636, at 1 (It is "highly likely that the vast majority of U.S. consumers would be *unaware* of a change in the standard, and would continue to believe that items labeled 'Made in USA' were held to the current standard."); NCL, #640, at 3 (the fact that the economy is increasingly globalized may cause consumers to place even a greater value on unqualified 'Made in USA' claims); Bumpers, #74, at 1–2 ("Even if fewer products are wholly 'Made in the USA,' it does not follow that the meaning of the phrase has changed—rather, that fewer products may meet the standard."); UNITE, #696, at 3 ("no credible evidence * * * that American consumers expect the 'Made in USA' label to mean that products were produced somewhere else").

[29] *E.g.*, SGS, #221, at 1 (U.S. jobs will be in jeopardy if Commission adopts proposed standard); Alabama, #242, at 1 (American workers are already badly injured by unfair exportation of jobs by their employers); Boilermakers, #514; Plumbers & Steamfitters Local 565, #209, at 1 ("purchasing products displaying the 'Made in U.S.A.' label is the first line of defense for American workers to protect their jobs"). *See also* PBCLU, #418; AFL–CIO/ULSTD, #608; Vaughan & Bushnell, #616; AISI, #636; UAW Region 9A, #682; Chenaw, #716; Bumpers, #74; Yeomans, #216; Odom, #290.

deny manufacturers whose products were, in fact, "all or virtually all" made in the United States the marketing advantage attributable to labeling products "Made in USA."[30]

A number of commenters opposed to the Proposed Guides also contended that it is not necessary to change the standard in order to permit sellers of products made with some foreign parts or labor to inform consumers of their products' U.S. content. These commenters argued that the current standard allows marketers to make qualified claims for products that are made with some foreign parts or labor as long as those claims are truthful and substantiated.[31]

In addition, some of the commenters supporting the "all or virtually all" standard specifically criticized the particular safe harbors proposed by the Commission, arguing that neither proposed safe harbor would ensure that a product complies with the proposed "substantially all" standard and with consumer expectations regarding "Made in USA" claims.[33]

Specifically, several commenters argued that the 75% U.S. content safe harbor (expressed as a percent of total manufacturing costs), in addition to being too low to meet consumer expectations, would allow a "Made in USA" claim for products with far less than even 75% U.S. content (in terms of, for example, the percentage of components). UAW, for example, contended that lower foreign labor costs would lead to underestimating the actual amount of foreign content in a product.[34] In addition, the American Hand Tool Coalition argued that, because the Proposed Guides do not necessarily require marketers to take into account materials several steps back in the manufacturing process or to take into account foreign content that is not "significant" (which is left undefined), marketers may fail to account for all foreign costs.[35]

A number of commenters also specifically criticized the two levels of substantial transformation safe harbor, arguing that this safe harbor does not guarantee that "substantially all" of the labor and value of the product is of domestic origin.[36] A few of these commenters expressed concern that, because this safe harbor does not take into account the cost of U.S. processing or inputs, products could be labeled "Made in USA" even though foreign content accounted for a significant percentage of their value.[37] Two commenters additionally argued that consumers would be misled by the two levels of substantial transformation safe harbor, because it is too imprecise to ensure that "substantially all" the value of a product is of U.S. origin. UAW stated that "[t]he variation from product to product in the impact of the double transformation test would prevent consumers from having a real sense of the U.S. content of the product that is being presented as 'Made in USA.'"[38] Similarly, the American Hand Tool Coalition contended that this safe harbor leads to conflicting or unpredictable results, in part, because the Proposed Guides define substantial transformation to include two tests that are not consistent for all products—the case-by-case analysis that Customs applies to products from most countries and the tariff shift regulations that Customs applies to products from NAFTA countries.[39]

Finally, some commenters supported a percentage content standard greater than the 75% safe harbor proposed by the Commission, but less than 100%. For example, a coalition of 16 state Attorneys General, as well as a few manufacturers, who were generally supportive of an "all or virtually all" standard, recommended that the Commission require that a product have at least 90% actual U.S. content in order to bear an unqualified "Made in USA" label.[40] Another commenter, Eastman Kodak, favored an 85% standard, stating that although the "all or virtually all" standard affords the best guarantee against consumer deception or confusion, "legitimate disadvantages [may be placed] on businesses who are very heavily committed to maintaining manufacturing processes here but cannot ignore the economic realities of using at least some foreign components" or who must import items which are not made, or raw materials which are not found, in the United States.[41] According

[30] *E.g.*, Weldbend, #597, at 1 (the Proposed Guides "would force most of Weldbend's fittings and flanges—made all or virtually all of American materials by American workers—to share their hard-earned 'Made in USA' labels with competitors' products having less than 50-percent U.S. content value"). *See also* Vento, #735; Matco, #600; Duchess, #512; Merit, #628; Sharpe, #630; Spectronics, #631; Federal, #654; Exidyne, #731; NTP, #699; Formann, #159; Traficant, #231.

[31] *See, e.g.*, NCL, #640; Visclosky, #236; Traficant, #231; Boilermakers, #514; FAST, #545; UNITE, #696; Schofield, #51; AFL–CIO/ULSTD, #608. In addition, a few individual consumers also suggested that marketers can make qualified claims for their products. *See, e.g.*, Matthew Fogarty ("Fogarty"), #997 (for products with less than 100% U.S. content, should specify percentage of U.S. content, such as "Materials 50% Made in USA, Assembled in Guam"); Anthony J. Jordan ("Jordan"), #160 (supports disclosing the specific percentages of U.S. and foreign materials and labor); Lawrence P. Kosel ("Kosel"), #207 (supports disclosing on labels the percentage of the product made in America, such as "70% made in America"); Arthur Lazur ("Lazur"), #119 (should state percentage or exact materials made in USA; or that assembled, but not manufactured, in USA); R.W. and Susan Marchand ("Marchand"), #107 (for products partially produced in USA, should identify percentage made in USA); Debra Newman ("Debra Newman"), #123 (supports qualified claims such as "Made in USA of imported parts" or "Assembled in [name of country] from US parts"); Alan D. Shrom ("Shrom"), #141 (should state on the product if it is assembled in USA of foreign materials); Robert Lebensold ("Lebensold"), #942 ("Made in U.S.A. of imported materials" might be okay).

[33] AGs, #462; AFL–CIO/ULSTD, #608; UAW, #615; Durand, #471; Vaughan & Bushnell, #616; American Hand Tool, #622. *See also* Matco, #600, American Sigma, #611; Sharpe, #630, Federal, #654; Exidyne, #731, and NTP, #699 (all submitting comments nearly identical to the American Hand Tool Coalition's comment).

[34] For example, UAW pointed out that "[t]he difference in rates of worker compensation between the U.S. and countries such as China allows for the possibility that 75 percent of the manufacturing costs could be U.S. value, but that the product would be 'substantially' made abroad." UAW, #615, at 2. *See also* Durand, #471, at 1 (stating that the percentage content safe harbor would seriously harm its business because "[c]heap labor imports of stems and bowls to be fused in the U.S. can easily be estimated to meet the 75% manufacturing cost requirement * * *"); AFL–CIO/ULSTD, #608, at 1–2 (under the 75% content safe harbor, products can be labeled "Made in USA," even though major components were produced abroad, if those components were imported from countries with lower wages); AGs, #462, at 5 (the Commission's approach of measuring foreign content by comparing the percentage of costs attributable to foreign parts and labor to those attributable to U.S. parts and labor "fails to compensate for the disparity in costs between the United States and many developing countries").

A related point was made by the American Hand Tool Coalition, which argued that varying labor costs in certain countries would lead to inconsistent labeling results for similar products, *e.g.*, if one manufacturer sources parts from China and a second manufacturers sources the same parts from Germany, the percentage U.S. content will differ even if the manufacturers perform the same U.S. processing at the same cost, because China is a much lower cost market than Germany. American Hand Tool, #622, at 22.

[35] American Hand Tool, #622, at 18–19.

[36] *See, e.g.*, AFL–CIO/ULSTD, #608; UAW, #615; American Hand Tool Coalition, #622; Durand, #471.

[37] AFL–CIO/ULSTD, #608, at 2 (under the second safe harbor, a product "could be assembled in the U.S. of components put together in the U.S. of parts made overseas that account for more than 25% of the product's value"); American Hand Tool, #622, at 26; AGs, #462, at 6. *See also* UAW, #615, at 3 (citing Example 1 under the second safe harbor in the Proposed Guides as an example of when a product can be labeled "Made in USA" even if imported components accounted for 80% or 90% of the value of the final product); Weldbend, #597, at 1–2 (for products such as pipe fittings and flanges, the two levels of substantial transformation safe harbor would allow products with 100% foreign materials and one-half to two-thirds of their value of foreign origin to be marketed as "Made in USA").

[38] UAW, #615, at 3.

[39] American Hand Tool, #622, at 25.

[40] AGs, #462, at 1,7. *See also* Sterling, #625, at 1 (supporting a 90% standard); March, #48, at 1 (supporting a 90% standard).

[41] Kodak, #619, at 2–3 (consumer perception evidence justifies lowering the U.S. content requirement to 85%; this standard, along with last

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to this commenter, changing the standard might benefit consumers, because American companies would be motivated "to offer the best quality at the best price without sacrificing the 'American' identity of their goods."

C. Comments Supporting The Proposed Guides and/or Other Standards

A few individual consumers and 62 additional commenters favored modifying the "all or virtually all" standard, including 10 members of Congress,[42] 32 manufacturers and other corporations,[43] 17 trade associations,[44] 1 nonprofit organization,[45] and 1 other commenter.[46] Many of these commenters asserted that the vast changes in the international economy since the Commission first applied the "all or virtually all" standard necessitate that the standard be altered. Thus, several commenters asserted that the Proposed Guides "better reflect[ed] the practical realities of U.S.-manufactured products in today's global economy" [47] and provided U.S. manufacturers with greater flexibility in making "Made in USA" claims in light of these realities.[48] Several of these commenters stated that consumers' expectations have kept pace with the change in the economy. According to these commenters, a lower standard is therefore consistent with consumer perception.[49]

A number of commenters disputed the claim by supporters of the all or virtually all standard that lowering the standard would lead to fewer jobs in the United States, arguing that, on the contrary, the strictness of the "all or virtually all" standard deprives American manufacturers of a selling tool that could help preserve American jobs.[50] These commenters contended that American manufacturers are at a competitive disadvantage compared to manufacturers in countries where labor rates and other production costs fall below U.S. standards.[51] Although being able to promote their products as "Made in USA" would help to even out this disadvantage, they argued, many manufacturers' products cannot meet the current standard, either because of cost reasons or because some materials and components are no longer available from domestic sources.[52] According to these commenters, if domestic manufacturers cannot claim that their products are "Made in USA," American jobs would be jeopardized, because these companies would have little incentive to stay in the United States.[53] For example, New Balance Athletic Shoes, Inc. stated:

> New Balance agrees with the sentiment, expressed in many of the public comments filed to date, that the FTC ought to take action to preserve the "Made in USA" label, support U.S. jobs, and encourage manufacturers to maintain their manufacturing facilities in this country, as well as help to level the playing field for domestic manufacturers. The "patriotic" response, however, is not to enforce an "all, or virtually all" standard that is unreachable for the vast majority of U.S. manufacturers, but to articulate a standard that those manufacturers—the companies who are providing jobs for U.S. workers—can meet so that they can compete more fairly with imports that have tremendous advantages.[54]

Other commenters asserted that, because the proposed standard would make the "Made in USA" claim more attainable, manufacturers would be encouraged to strive to maintain or increase domestic content in their products in order to make the "Made in USA" claim.[55] Several commenters noted that the proposed standard would allow them to make unqualified "Made in USA" claims for their products, although they cannot make such claims under the current standard. According to Wolverine, for example: "As currently proposed, the FTC's guides would, for the first time, afford the opportunity for hundreds of thousands of American workers to see their contributions in factories throughout the United States create products which will appropriately carry the unqualified designation as having been 'Made in America.'" [56]

Some of the commenters favoring a change in the standard expressed their support for the safe harbors for unqualified U.S. origin claims set forth in the Proposed Guides.[57] Other commenters, however, while expressing general support for the Proposed Guides, asked the Commission to revise one or both of the proposed safe harbors and offered specific advice as to how this should be done.[58] For example, a few commenters expressly supported one proposed safe harbor, but urged the Commission to eliminate the other.[59] Several other commenters stated that, although the Commission's 75% U.S. content safe harbor is an improvement over the current "all or virtually all" standard, the Commission should lower the U.S. content percentage even further. The Luggage & Leather Goods Manufacturers of America, for example, asked the Commission to lower the standard to 50%, because the luggage and leather goods industry "has been forced to increase its reliance on foreign materials and components. As domestic industry has grown smaller, so has its supplier base. Therefore, domestic producers often have no choice but to source certain components off shore * * *." [60] In addition, a few commenters suggested alternative ways to calculate domestic content.[61]

A number of commenters argued that the Commission's proposed second safe harbor, which would have allowed an unqualified U.S. origin claim where a product undergoes two levels of substantial transformation in the United States (the product's last substantial transformation took place in the United States, and the last substantial transformation of each of its significant inputs took place in the United States), is too burdensome. Several, for example, urged the Commission to apply only one level of substantial transformation (*i.e.*, requiring that only the final substantial transformation of the product be performed in the United States) rather than two, or suggested other modifications to this safe harbor.[62]

In addition, a number of commenters urged the Commission to replace the Proposed Guides altogether with a lower standard. As was the case during the Commission's earlier public comment period on this issue, many commenters, for example, asked the Commission to replace the "all or virtually all" standard with a substantial transformation standard or with the NAFTA Preference Rules.[63] One commenter recommended that the Commission apply a case-by-case, reasonable basis approach to all country-of-origin claims.[64]

Finally, several commenters asked the Commission to modify the Proposed Guides to specifically address certain situations not expressly discussed in the Proposed Guides [65] or to exempt certain types of products.[66]

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substantial transformation in the United States, would serve consumers' interests).

[42] U.S. Rep. Susan M. Collins, U.S. Rep. John F. Kerry, U.S. Rep. Joseph I. Leiberman, and U.S. Rep. Olympia J. Snowe ("Collins/Kerry/Leiberman/Snowe"), #606; U.S. Rep. Joseph Moakley, U.S. Rep. William Delahunt; U.S. Rep. Martin Meehan; U.S. Rep. Joseph Kennedy, U.S. Rep. Barney Frank ("Moakley/Delahunt/Meehan/Kennedy/Frank"), #671; U.S. Rep. Michael G. Oxley ("Oxley"), #955. The comment from Rep. Moakley *et al.* was also signed by U.S. Rep. John Olver. In a subsequent letter, however, Rep. Olver stated that his signature was "inadvertently attached" to this comment and that he did not believe that the FTC's traditional standard for "Made in USA" labels should be altered. Olver, #671A.

[43] Franzus Co., Inc. ("Franzus"), #301; Converse, Inc. ("Converse"), #363, #470; Genfoot America, Inc. ("Genfoot"), #463; DeBon Leather ("DeBon"), #472; Carter Footwear, Inc. ("Carter"), #595; The Leather Specialty Co. ("Leather Specialty"), #598; Detroit Edge Tool Co. ("Detroit Edge"), #601; Belair Time Corp. ("Belair"), #602; Maytag Corp. ("Maytag"), #605; Oneida Ltd. ("Onedia"), #607; Jules Jurgensen Watches ("Jurgensen"), #609; Toyota Motor Sales, USA ("Toyota"), #610; Timex Corp. ("Timex"), #612; Wolverine Worldwide, Inc. ("Wolverine"), Inc., #621; Jamesleo Corp. ("Jamesleo"), #627; Central Tools, Inc., ("Central"), #629; Ronda Watch Corp. and Progress Watch Corp. ("Ronda/Progress"), #632; Benrus Watch Co. ("Benrus"), #633; New Balance Athletic Shoe Co., Inc. ("New Balance"), #635; The Stanley Works ("Stanley"), #647; The Timken ("Timken"), #648; The Gates Corp. ("Gates"), #649; Allegiance Healthcare Int'l, Inc. ("Allegiance"), #653; Minnesota Mining & Manufacturing ("3M"), #700; Imation Corp. ("Imation"), #643; Gary's Leather Creations ("Gary's"), #678; Sacoche Int'l, Inc. ("Sacoche"), #701; NIBCO Inc. ("NIBCO"), #738; Samsonite Corp. ("Samsonite"), #828; Whirlpool Corp. ("Whirlpool"), #957.; Hartmann Luggage & Leather Goods Group ("Hartmann"), #1013, Savannah-Luggage Works ("Savannah"), #1039.

[44] Writing Instrument Manufacturers Ass'n, Inc. ("WIMA"), #187; Rubber & Plastic Footwear Manufacturers Ass'n ("RPFMA"), #264; Luggage and Leather Goods Manufacturers of America, Inc. ("LLGMA"), #464; Ass'n of Home Applicance Manufacturers ("AHAM"), #473; Int'l Mass Retail Ass'n ("IMRA"), #594; Footwear Distributors and Retailers of America ("FDRA"), #603; Int'l Electronics Manufacturers and Consumers of America ("IEMCA"), #604; Footwear Industries of America, inc. ("FIA"), #617; National Food Processors Ass'n ("NFPA"), #620; The National Council on Int'l Trade Development ("NCITD"), #638; Joint Industry Group ("JIG"), #639; Electronics Industries Ass'n ("EIA"), #641; Japan Machinery Exporters' Ass'n ("JMEA"), #642; Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers ("Domestic Steel Wire Rope"), #644; The Specialty Cable Manufacturers Subcommittee ("Specialty Cable Subcommittee"), #645; Ass'n of Int'l Automobile Manufacturers ("AIAM"), #650; Consumer Electronics Manufacturers Association ("CEMA"), #1041 (attaching a letter to members of Congress signed by officers of EIA, LLGMA, IMRA, FIA, the Automotive Parts and Accessories Association, and the American Association of Exporters and Importers urging the members not to cosponsor H. Con. Res. 80 and supporting the FTC's proposed guidelines as offering a "realistic approach" to "Made in USA" labeling).

[45] Made in the USA Foundation ("MUSA Foundation"), #730.

[46] JBC International (a consulting firm) ("JBC"), #637.

[47] *See, e.g.*, Carter, #595, at 1; *see also* Stanley, #647; Jurgensen, #609; AIAM, #650; Wolverine, #621; AHAM, #473; AIAM, #650; JBC, #637; EIA, #641; Belair, #602; FIA, #617.

[48] *See, e.g.*, NCITD, #638; Carter, #595; New Balance, #635; LLGMA, #464; FIA, #617.

[49] *See e.g.*, AHAM, #473, at 2 (although consumer perception studies indicate that consumers are still interested in whether a product is "Made in USA," this "rarely signifies to the consumer that the product is 100 percent or 'all or virtually all' composed of U.S. made parts and assembled in the U.S."); Timken, #648, at 1 ("Global sourcing of components is by now so well-known that consumers recognize the fact that 'USA' merchandise may contain a small foreign content"); AIAM, #650, at 3 ("Given the fact that consumer perception data is consistent with the global marketplace, it would seem arbitrary to ignore it in fashioning Guides to prevent consumer deception.") *See also* Maytag, #605; FIA, #617; Converse, #363; WIMA, #187; Allegiance, #653.

[50] See, e.g., Belair, #602; AHAM, #473; Jules Jurgensen, #609; New Balance, #635.

[51] See, e.g., LLGMA #464, at 2–3 ("Foreign goods dominate the market and thousands of U.S. jobs have been lost to imports. This is because the cost structure of major foreign suppliers of luggage and leather goods is far below our own * * * Foreign suppliers in these countries utilize very cheap labor and have minimal environmental and workplace standards * * * It is crucial that the remaining luggage and leather goods manufacturers be able to market the unique 'Made in USA' label to have any hope of competing with low labor cost countries."); New Balance, #635, at 4–6 (it has become increasingly difficult to keep and expand U.S. manufacturing facilities in the face of competition from cheap imports, and the impossibility of obtaining needed components within the United States); Converse, #470; DeBon, #472; Leather Specialty, #598. Belair, #602; Jules Jurgensen. #609; Ronda/Progress, #632; Sacoche, #701.

[52] See, e.g., AHAM, #473 at 1; New Balance, #635, at 2.

[53] See, e.g., Collins/Kerry/Leiberman/Snowe, #606, at 1 ("To impose a standard which (numerous manufacturers) cannot meet is one more encouragement for businesses to abandon U.S. manufacturing for cheap overseas labor."); LLGMA, #464, at 3 ("If the FTC continues to impose unrealistic country of origin marking requirements, the decline of the U.S. luggage and leather goods industry and its migration off shore will be hastened."); Moakley/Delahunt/Meehan/Kennedy/Frank/Olver, #671, at 2 ("If the standard is so high that it cannot be met, manufacturers will have no incentive even to try.")

[54] New Balance, #635, at 2–3.

[55] See, e.g., Allegiance, #653, at 1 (the ability to capitalize on consumer preference for "Made in USA" products favorably influences a company's decision to continue producing in the United States); Maytag, #605; NIBCO, #738.

[56] Wolverine, #621, at 2. See also Detroit, #601; Imation, #643; Benrus, #633; Ronda/Progress, #632; NIBCO, #738.

[57] Collins/Kerry/Leiberman/Snowe, #606; Moakley/Delahunt/Meehan/Kennedy/Frank/Olver, #671, Oxley, #955; Allegiance, #653, Belair, #602; Benrus, #633; Carter, #595; Detroit, #601; Gary's; #678; Gates, #649; Genfoot, #463; Hartman, #1013; Imation, #643; Jurgensen, #609; Maytag, #605; New Balance, #635; NIBCO, #738; Oneida, #607; Timex, #612; Timken, #648; IMRA, #594; WIMA, #187.

[58] Converse, #363, #470; DeBon, #472; Jamesleo, #627; Rhonda/Progress, #632; Sacoche, #701; Samsonite, #823; Whirlpool, #957; Wolverine, #621; JBC, #637; AHAM, #473; AIAM, #650; FDRA, #603; LLGMA, #464; RPFMA, #264; IEMCA, #604; JIG, #639; NCITD, #638; EIA, #641.

[59] Some commenters objected to the percentage content safe harbor and argued that the Commission should only apply to two levels of substantial transformation safe harbor. See, e.g., JBC, #637, at 1 (percentage content rules can be "consciously manipulated, affected by exchange rates, and otherwise made administratively impossible to enforce."); JIG, #639; AIAM, #650. In contract, two commenters supported the percentage content safe harbor, but not the two levels of substantial transformation safe harbor. MUSA Foundation, #730, at 2 (the two levels of substantial transformation safe harbor "opens up a very wide loophole"); Central Tools, #629.

[60] LLGMA, #464, at 2. See also FIA, #617, at 3 (a product that contains more than 50% U.S. content clearly qaualifies as "substantially all" made in the United States); RPFMA, #264; at 2 (70% justified by consumer perception evidence); Converse, #363, at 1 (preferring a 70% standard); Leather Specialty, #598, at 2 (supporting a 50% standard); Wolverine, #621, at 5 (supporting a majority U.S. content safe harbor or, at least no higher than 70%); AIAM, #650, at 1 (favoring substantial transformation standard or lowering U.S. content safe harbor at least to 70%); Savannah, #1039 (supporting a 50% standard). Cf. DeBon, #472, at 1, Jamesleo, #627, at 1, and Sacoche, #701, at 1 (all three asserting that the 75% standard would be relatively difficult for many U.S. manufacturers to meet, but not recommending a specific percentage).

[61] See, e.g., LLGMA #464, at 3–4 (the NAFTA regional content net cost formula should be used to calculate domestic content); Stanley, #647, at 6–8 (the Commission should not adopt "arbitrary" percentage for U.S. content, but if it does, it should make clear that the percentage of total manufacturing costs relates to cost of fabrication only); Dynacraft, #646, at 7–8 (opposes lowering the standard, but if the Commission adopts the Proposed Guides, the Commission should base the percentage content standard on actual manufacturing costs); EIA, #641, at 2 (the percentage cost safe harbor should only look one step back in the manufacturing process); AHAM, #473, at 2 (the Commission should provide the option of using Generally Accepted Accounting Principles of cost accounting as an alternative method for calculating percentage content).

[62] *See, e.g.*, NCITD, #638, at 2 (favoring the use of the NAFTA marking rules for single substantial transformation as the second safe harbor, rather than requiring two levels of substantial transformation); Stanley, #647, at 9–11 (favoring only one level of substantial transformation for products involving processes other than assembly); 3M, #700, at 1–2 (arguing that two levels of substantial transformation creates too great an administrative cost for U.S. corporations); EIA, #641, at 7 (this safe harbor may be unduly restrictive, depending upon the meaning of term "significant;" Commission should modify the concept of "all significant components" with a requirement that the final components transformed in the United States constitute most of the total component value). *But see* Timex, #612, at 4 (the Commission may want to consider adding a cost threshold, such as 51% U.S. costs, to the two levels of substantial transformation safe harbor, to guard against consumer deception).

[63] *See, e.g.*, AHAM, #473 (NAFTA Preference Rules); IEMCA, #604 (substantial transformation); Maytag, #605 (NAFTA Preference Rules); NFPA, #620 (substantial transformation); Ronda/Progress, #632 (substantial transformation); Domestic Steel Wire Rope, #644 (substantial transformation); Speciality Cable Subcommittee, #645 (substantial transformation); National Electrical Manufacturers Ass'n ("NEA"), #702 (substantial transformation); NFPA, #620, at 2 (substantial transformation); JMEA, #662, at 2–3 (standards of the World Trade Organization and U.S. Customs); *see also* JIG, #639 and NCITD, #638 (supporting the Proposed Guides, but preferring a substantial transformation standard); NEMA, #702 (urging substantial transformation standard for industrial products).

[64] Toyota, #610.

[65] For example, one commenter requested that the Commission amend the Guides to specifically permit manufacturers rebuilding or remanufacturing automotive parts in the United States to designate their products "Made in USA" if the products originally were used in the United States, regardless of where the products originally were manufactured. Automotive Parts Rebuilders Ass'n ("APRA"), #698, at 1–3. *See also* NFPA, #620, at 2 (if Proposed Guides apply to processed foods, Proposed Guides should include references to raw agricultural products and processed or manufactured food products in cost and other definitions and include processed food product examples); Wolverine, #621, at 6–8 (Commission should authorize "Made in USA" claims for products assembled or processed in accordance with subheading 9802.00.8040, HTSUS); Carter, #595, at 1–2 (asking the Commission to explain how it will treat certain qualified claims under the Proposed Guides, *e.g.*, when a qualified claim indicates that some or all of the parts are of U.S. origin, do those parts have to meet the standard for an unqualified "Made in USA" claim?).

[66] Two commenters asked the Commission to apply the Proposed Guides only to consumer goods, not to industrial products, arguing that industrial products are produced to the specifications (including country of origin) of a sophisticated

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D. Commenters' Discussion of Other Issues

Several commenters discussed additional issues raised in the **Federal Register** notice soliciting comments on the Proposed Guides. These issues included whether the Commission should treat unqualified "Assembled in USA" claims the same as unqualified "Made in USA" claims, whether the Commission should recognize a separate "Origin: USA" claim in limited instances for domestically-sold products that also are exported for sale, and whether the Commission should eliminate its traditional presumption that products that do not bear any country-of-origin marking are understood by consumers to be made in the United States. These comments are discussed below.

1. "Assembled in USA" Claims

In the **Federal Register** notice announcing the Proposed Guides, the Commission solicited comment on whether a product that does not meet the standard for unqualified U.S. origin claims should nonetheless be permitted to be labeled or advertised as "Assembled in USA" without further qualification; and if so, under what circumstances, i.e., what processing should it undergo in the United States to support the unqualified claim. Five commenters contended that the claim should be interpreted similarly to an unqualified "Made in USA" claim, and must therefore be qualified (e.g., "Assembled in USA from imported parts") if it does not meet the standard for unqualified "Made in USA" claims. According to these commenters, consumers understand "Assembled in USA" to mean the same thing as "Made in USA."[67] Two commenters, on the other hand, contended that consumers perceive the two claims differently. The coalition of state Attorneys General, for example, suggested that "while the term 'maks' connotes a process of creation the term 'assemble' is generally understood to mean the final process of fitting or joining together pre-existing parts."[68] These commenters favored permitting an unqualified "Assembled in USA" claim where a "Made in USA" claim would be inappropriate.[69]

In addition, three of these commenters addressed the circumstances under which they believed an "Assembled in USA" claim should be permitted. Two commenters favored authorizing the use of unqualified "Assembled in USA" claims for products that have been last substantially transformed in the United States.[70] Another commenter supported requiring at least 50% U.S. content to ensure more than minimal or simple assembly operations; even at that level, however, the commenter recommended requiring that the claim be qualified to disclose whether foreign components were used.[71]

2. "Origin: USA" Claims

In the Proposed Guides, the Commission proposed allowing marketers to use a "lesser mark"—"Origin: USA"—in certain, limited circumstances. Such a mark would have allowed manufacturers to uniformly label products for sale in both the United States and abroad, when a foreign country may require that a product exported from the United States be marked with an indication of U.S. origin, while that same product would not be permitted to bear an unqualified U.S. origin claim when sold in the United States. Use of the lesser mark would have been subject to certain restrictions, including that consumer products sold in the United States would have to include, in some manner, an additional disclosure of the existence of any substantial foreign content. The commenters addressing this issue were evenly divided as to whether marketers should be allowed to use a "lesser mark" or specific claim such as "Origin: USA."[72]

A number of commenters supporting the option of using an "Origin: USA" label argued that such a claim would benefit manufacturers who export U.S. products, as well as consumers, for example, by eliminating the need to separately label domestic and exported products and to maintain packaging plants in foreign countries for the sole purpose of meeting conflicting country-of-origin labeling standards;[73] by encouraging U.S. manufacturers to manufacture and sell more U.S. products if they can export the products for sale in foreign markets without the added costs associated with the Commission's historic restrictions on U.S. origin statements;[74] and by reducing the price of consumer goods sold in the United States, because of the cost savings to U.S. manufacturers.[75] At least one commenter who supported the use of the lesser mark asserted that additional disclosure requirements for consumer goods sold in the United States would not be necessary to prevent consumer deception.[76] Another commenter suggested alternative lesser marks to avoid the burden and expense of additional labeling for U.S. sales while providing additional information to U.S. consumers.[77]

On the other hand, other commenters argued that whatever benefits an "Origin: USA" mark would provide would not justify the potential confusion caused by the lesser mark, as consumers were likely to confuse "Origin: USA" labels with "Made in USA" labels.[78] Even the additional disclosures required on consumer goods sold in the United States, some of these commenters stated, would not be sufficient to prevent consumer deception or might even increase consumer confusion.[79] Some commenters also asserted that a lesser mark is unnecessary,[80] arguing that if a foreign country's marking rules require the origin of a product to be "USA," then the manufacturer can identify the United States as the assembly point and further qualify the origin, *e.g.*, "Assembled in USA from Components of U.S. and Foreign Origin," or apply separate labels or marks, depending upon the destination of the goods.[81] In addition, one commenter who supported a substantial transformation standard for unqualified "Made in USA" claims found the alternative of using an "Origin: USA" claim to be inadequate. This commenter contended that the lesser mark would provide little or no benefit because the additional disclosure requirements for U.S. sales of consumer products would create a dual marking requirement.[82] Last, even some commenters supporting use of a lesser mark were unsure whether the lesser mark "Origin: USA" would be an acceptable marking to foreign customs officials.[83]

3. Rebuttable Presumption for Unmarked Products

As explained in the prior **Federal Register** notice, the Commission has historically employed a rebuttable presumption that goods not labeled with any country of origin are understood by consumers to be made in the United States. As a result, the Commission required that foreign origin be disclosed if unmarked goods contained a significant amount of foreign content. Based on the facts that manufacturing and the sourcing of components have become increasingly global in nature and that consumers appear to be increasingly aware that goods they buy are produced throughout the world, the Commission announced in the **Federal Register** notice that it no longer was appropriate to presume that reasonable consumers will interpret the absence of a foreign country-of-origin mark, by itself, as a representation that the product was made in the United States. The Commission, therefore, determined to cease using this presumption, but instead explained that it would require disclosure of foreign origin on unmarked goods only if there is some evidence that, with respect to the particular type of product at issue, a significant minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are domestic.[84]

Although the Commission did not specifically solicit comments on this determination,[85] four commenters submitted their views concerning the current need for the presumption. Three commenters urged the Commission not to eliminate the presumption, arguing, among other reasons, that it was appropriate for the producer of an unmarked product to have the burden of proving that the lack of a country-of-origin indication was not deceptive.[86] The other commenter agreed with the Commission that the presumption should be eliminated, and, indeed, urged the Commission to go further and clearly indicate that an unmarked good, in and of itself, would not be considered deceptive simply for the fact of being unmarked.[87]

III. Analysis

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, proscribes "unfair or deceptive acts or practices" in or affecting commerce. An advertisement, label or other promotional material will be found to be deceptive if it contains a representation or omission that is likely to mislead consumers acting reasonably and that representation or omission is material. In applying the principles of Section 5 and the Commission's traditional deception analysis to U.S. origin claims, the Commission has, throughout its review, focused first and foremost on consumers' understanding of such claims.[88]

The considerable evidence available to the Commission concerning consumer understanding of "Made in USA" claims was discussed at length in the Commission's May 7, 1997 **Federal Register** notice. As explained in that notice, the Commission itself, as part of its overall review of U.S. origin claims, commissioned a two-part study in 1995 (referred to as the "1995 Copy Test" and "1995 Attitude Survey," respectively) to look at consumer perception of such claims.[89] In addition, the Commission had previously conducted a more limited study of these issues in 1991 as part of a subsequently closed investigation ("1991 Copy Test").[90] The results of these studies indicated that many consumers expected that a product advertised or labeled as "Made in USA" had a high amount of U.S. content, but that a significant number of these were willing to accept a product with at least some foreign content and that, as a result, there was a range of values at which most consumers would find a "Made in USA" claim appropriate. In addition, the studies suggested that many consumers appeared to have only a general sense of what "Made in USA" means and did not necessarily have in mind a highly

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customer. JIG, #639; NEMA, #702. *But see* Kern, #730, at 2 (the "'creative' use of the 'Made in the USA' designation has caused considerable confusion in my [tool] company's local and national marketplace of normally well informed industrial customers and has had a negative financial impact on my company and its employees").

[67] *See* Gates, #649, at 3–3 ("Assembled in USA" claim should identify country of origin of major component parts); Timken, #648, at 3–4 (because of similarity between "Made" and "Assembled" and the importance of assembly to respondents in Commission's survey, unqualified "Assembled in USA" mark is inappropriate); IMRA, #594; FDRA, #603; Timex, #612.

[68] AGs, #462, at 5.

[69] Id., #462, at 4–5 (treating terms differently would allow manufacturers to market their products effectively, using easily understood unqualified claims that would not sacrifice truth in advertising); AIAM, #650, at 1–2, 5–6. *See also* Toyota, #610, at 6–7 (if Commission concludes that a bright line test is necessary for "Made in USA" claims, it should allow "assembled in" or "built in" claims based only on substantial transformation).

[70] AGs, #462, at 6; Toyota, #610, at 6–7.

[71] Gates, #649, at 2–3.

[72] Seven commenters supported use of a "lesser mark." LLGMA, #464, at 4; IMRA, #594, at 4–5 (strongly supports as a short-term solution until WTO adopts origin-marking requirements; the Commission should prohibit use of the "Origin: USA" claim in advertising, because the issue faced by exporters is purely a labeling issue, and could be abused in advertising); FIA, #617, at 8–9; Wolverine, #621, at 8; JBC, #637, at 3–4; JIG, #639, at 4; NEMA, #702, at 1–3. Seven commenters opposed the use of such a mark. FDRA, #603, at 2–4; Timex, #612, at 1, 5–6; NFPA, #620, at 3–4; American Hand Tool, #622, at 29–31; Timken, #648, at 4–5; Gates, #649, at 3–4; Wright, #262, at 2.

[73] JBC, #637, at 3–4; JIG, #639, at 4 (cost of maintaining separate packaging facilities in foreign markets for sole purpose of complying with conflicting country-of-origin markings and Commission's "all or virtually all" standard for U.S. origin claims adds 10% to 30% per product; cost of special labels and/or relabeling U.S. product in United States for export adds 10% to 15% per product); NEMA, #702, at 2–3.

[74] JIG, #639, at 4.

[75] Id., #639, at 6.

[76] JBC, #637, at 3–4.

[77] FIA, #617, at 8–9 (suggesting lesser mark "Origin: USA (for export)" to allow manufacturers to avoid burden and expense of additional labeling while alerting consumers that the article is labeled for export; alternatively, lesser mark "Origin: USA (with non-U.S. content)" to provide U.S. consumers with relevant information while eliminating additional labeling requirements).

[78] *See, e.g.*, Timken, #648; American Hand Tool, #622; Gates, #649; Timex, #612.

[79] FDRA, #603, at 2–3 ("Origin: USA" label likely would prove deceptive even if appropriate qualifying language appears on a hangtag or packaging because consumers would not locate or read the qualifying language); Timex, #612, at 5 (consumer likely would decide to purchase a watch without seeing package containing additional disclosures because watches are frequently displayed without packaging, and packaging products are pulled from a cabinet or shelf once the consumer has made purchasing decision); American Hand Tool, #622, at 29 (strongly opposed the "Origin: USA" label); Gates, #649, at 4 (the meaning of a lesser mark, even where qualified by the phrase "substantial foreign content," would be uncertain to consumers).

[80] Wright, #262, at 2 (marking is the last or near to last operation performed; it is practical to run large lots and carry most inventory in an unmarked condition, involving only a relatively small cost penalty); American Hand Tool, #622, at 29–31 (little need for lesser mark; Commission found little evidence that companies routinely face conflicting labeling requirements or that "Made in USA" claim causes such conflicts); Gates, #649.

[81] Gates, #649, at 3–4. *See also* Timex, #612, at 5 (a qualified marking such as "Assembled in USA; Philippines movement" for watches would satisfy the marking requirements of almost every other country—most of which identify the place of origin of a watch as the place of final assembly; this qualified claim would therefore resolve—for watches—the concerns that prompted the Commission to consider an "Origin: USA" marking).

[82] NFPA, #620, at 4 (economic burden of sticker labeling or hangtags similar to creation of additional labeling inventory, and handling requirements might be even more burdensome).

[83] *See, e.g.*, NEMA, #702, at 2 (a number of countries have indicated either that they would not accept an "Origin: USA" mark or that they are not sure); JIG, #639, at 5 ("Origin: USA" likely would not be acceptable to customs officials in at least Australia, New Zealand, and Canada).

[84] 62 FR at 25047.

[85] The Commission's determination on this point was not part of the Proposed Guides, but was included in the **Federal Register** notice accompanying the Guides because it addressed a related topic that had been raised at the public workshop.

[86] Timken, #648, at 5–6; Gates, #649, at 4 (also asserting that the presumption is a valuable remedy to counter the incentive for foreign producers to import unmarked products, *e.g.*, the producers of automotive belts, who may have the incentive to import unmarked belts contrary to antidumping duty orders and U.S. Customs marking regulations). *See also* Onaida, #607, at 1–2 (arguing that the presumption is particular necessary in catalog sales where the consumer cannot inspect the item prior to purchase, and expressing its concern that without the presumption, attempting to show that a significant minority of consumers believes an unmarked product is domestic would be unworkable).

[87] IMRA, #594, at 5–6.

[88] To the extent they are not inconsistent with consumer understanding, other considerations, such as the compliance burdens placed on businesses, have been considered by the Commission as part of its general obligation to act in the public interest.

[89] This study is available as Document No. B212883 on the Commission's public record.

[90] Document No. B213001 on the Commission's public record.

detailed conception of what it meant for a product to be "Made in USA."

In the 1995 Attitude Survey, participants were presented with a series of scenarios and asked whether they agreed or disagreed with a "Made in USA" label on a product in those circumstances. In the scenarios, the percentage of the product's cost that was U.S. in origin varied from 10% to 90%; in addition, participants were either told that the product was assembled in the United States, told that it was assembled abroad, or not told the site of assembly. The Attitude Survey indicated that a "Made in USA" label would likely be misleading to most consumers when a product contained 50% or less U.S. content or was assembled abroad. However, where a product was assembled in the United States, a significant majority of consumers agreed that a "Made in USA" claim would be appropriate if the product contained either 70% U.S. content (67% of respondents) or 90% U.S. content (75% of respondents), suggesting that there is a range of standards likely to be considered acceptable and nonmisleading by most consumers.

As in the 1995 Attitude Survey, in the 1991 Copy Test, the Commission had also found evidence that many consumers expected a product called "Made in USA" to have a high amount of U.S. content. In that study, of the participants who were asked "when you see the phrase 'Made in USA' on a product or in an ad, how much of the product was made in the United States?" approximately 77% said that all or almost all of the product so labeled was made in the United States. Nonetheless, the answers to a follow-up question attenuated this result somewhat. When asked whether they meant parts or labor or both parts and labor, only 77% of the respondents (82% of those who answered "all or almost all") said both parts and labor, while 14% said labor only, and 9% said only parts.[91]

The 1995 Copy Test attempted to explore further issues of what consumers included in their definitions of Made in USA, but the results were less than definitive. For example, in the 1995 FTC Copy Test, when respondents were shown a "Made in USA" claim and asked an open-ended question about what the claim meant, 63.5% said simply that the claim meant "Made in USA."[92] Moreover, when asked specifically whether the claim suggested or implied anything about where the product was assembled, only 49% said that it did (almost all of whom said it meant the product was assembled in the United States); only 28% of those asked about an unqualified "Made in USA" claim said it suggested or implied anything about where the parts were made; and only 11% said it implied anything about how much of the parts were made in the United States. Indeed, a total of 34% of respondents stated that a "Made in USA" claim did not suggest or imply anything about any of these factors—assembly, parts, or how much of the total cost of the product was incurred in the United States. This suggests that many consumers may not have in mind a highly developed definition of "Made in USA"; in any event, the data are not definitive. In addition, the available consumer perception evidence suggests that, to the extent that consumers do define Made in USA, they may do so in a variety of different ways. For example, in each of the Commission-sponsored surveys, there is evidence, albeit inconclusive, of a minority of consumers who, rather than expecting a high amount of both U.S. parts and labor, view "Made in USA" claims as referring only to where a product was put together. Thus, 28.5% of respondents to the 1995 Copy Test answered that "Made in USA" implied that a product was assembled in the United States but that it did not imply that a product's parts were necessarily U.S. made; 20% of respondents in the 1995 Attitude Survey agreed that a "Made in USA" label would be appropriate for a product that was assembled in the United States but whose costs were only 10% U.S.; and 14% of those asked in the 1991 copy test indicated that "Made in USA" referred only to labor, not parts.

The Commission has thus been presented with evidence that suggests that many consumers expect that "Made in USA" labels connote a high amount of U.S. content, as well as that many of these consumers do not have a detailed conception of what it means for a product to be "Made in USA." Moreover, the evidence suggests that no single standard is likely to correspond to the views of all consumers, and that there is a range of points along the spectrum that would likely satisfy a significant majority of consumers. Based on this evidence, the Commission initially proposed a "substantially all" standard. Although this was not the only possible standard consistent with the data, it was, the Commission believed, a high threshold for "Made in USA" claims that would at the same time provide some flexibility to U.S. manufacturers operating in an increasingly global economy. Moreover, although nominally less stringent than the existing standard, the proposed "substantially all" standard and the associated guides provided strict constraints with respect to the sort of details that the consumer perception studies were unable to address but that can have a great deal of practical effect in determining whether a product can meet the standard for "Made in USA" claims (however that standard is denominated)—*e.g.*, how far back in the manufacturing process marketers were required to look, or what sorts of costs should be included in the calculation of U.S. content.

Nonetheless, the record currently before the Commission does not support adoption of the "substantially all" standard and the accompanying guides proposed in May. The vast majority of those commenting, including, significantly, a large number of individual consumers as well as a number of U.S. manufacturers, opposed the proposed standard, perceiving it, contrary to the Commission's intent, as significantly weakening the standard for "Made in USA" claims. The submissions of these commenters suggest that the Commission may have underestimated the benefits such individuals or corporations derive from the current standard and the costs they believe they will incur if the standard is changed. An overwhelming number of consumers told the Commission, through written comments, telephone calls, and petitions, that they prefer buying U.S.-made goods; they want to be able to rely on a simple and clear standard; and, they feel very strongly that the current standard should be retained. The comments also underscore the fact, noted as well in the Commission's May **Federal Register** notice, that consumer awareness of the globalization of the economy has not necessarily changed consumers' beliefs about those products actually labeled "Made in USA." Thus, the Commission concludes that the better course, and one equally consistent with the consumer perception evidence, is to retain and continue to enforce the Commission's traditional all or virtually all standard.

[91] There was no attempt in this survey to breakdown these categories further—i.e., to look at whether the respondents who said that "Made in USA" referred to parts also thought that it referred to the materials that went into those parts; or whether those who said "Made in USA" referred to labor meant only final assembly labor or also any labor that went into making the parts.

[92] During the Commission's earlier comment period on this matter, a number of commenters suggested that the fact that many consumers said that "Made in USA" means "Made in USA" showed that consumers understood "Made in USA" claims as referring only to where a product "came into being," i.e., where it underwent its final assembly or processing. See 62 FR at 25037. By contrast, in response to the Commission's May notice, some commenters suggested that the response that "Made in USA" means "Made in USA" showed that consumers expected a product labeled "Made in USA" to be 100% "Made in USA." The Commission continues to believe, however, that there is inadequate evidence upon which to infer either meaning from this tautological definition.

IV. Enforcement Policy Statement

The "all or virtually all" standard—and its earlier equivalent, the "wholly domestic" standard—was developed through case law and advisory opinions that were largely limited to discussions of single products, and the standard has never been more generally defined. Indeed, throughout this review process, commenters, particularly those businesses that must comply with the requirements for "Made in USA" claims, have entreated the Commission to provide more guidance on what this standard (or any other standard the Commission were to adopt) requires. For that reason, the Commission in retaining the "all or virtually all" standard, is at the same time issuing an Enforcement Policy Statement on U.S. Origin Claims. The Enforcement Policy Statement sets forth the general principles to which the Commission will adhere in enforcing the requirement that goods promoted as "Made in USA" must be all or virtually all made in the United States. The Enforcement Policy Statement is intended to give general guidance on making and substantiating U.S. origin claims. It is not designed, however, to answer all questions that may arise on this topic. Given the complex and varied factual scenarios that present themselves in this area, and the wide range of products for which U.S. origin claims may be made, there are necessarily issues that will continue to be more appropriately resolved on a case-by-case basis.

The Enforcement Policy Statement addresses a range of basic issues related to U.S. origin claims. It includes introductory information on the scope of the products and claims to which the Statement applies and of the respective responsibilities of the FTC and the U.S. Customs Service in regulating country-of-origin claims; an explanation of the Commission's authority to act against deceptive practices and how the Commission is likely to interpret express and implied U.S. origin claims; a discussion of unqualified U.S. origin claims and the factors that the Commission will consider in determining whether such a claim is substantiated, *i.e.*, whether a product is "all or virtually all" made in the United States; and guidance on using qualified claims where a product does not meet the "all or virtually all" standard. The Enforcement Policy Statement is intended to be self-explanatory; nonetheless, a few matters that may be of particular interest are highlighted below.

Substantiating U.S. Origin Claims: The All or Virtually All Standard. The Enforcement Policy Statement sets forth the requirement that where a product is labeled or advertised as "Made in USA," the marketer should possess and rely upon a reasonable basis that the product is all, or virtually all, made in the United States. A product that is "all or virtually all" made in the United States is described typically as one in which all significant parts and processing that go into the product are of U.S. origin, *i.e.*, where there is only a *de minimis*, or negligible, amount of foreign content. In order to provide further guidance, the Enforcement Policy Statement discusses three factors that the Commission will likely consider in evaluating whether a product is all or virtually all made in the United States: whether the final assembly or processing of the product took place in the United States; the portion of the total manufacturing cost of the product that is attributable to U.S. parts and processing; and how far removed from the finished product any foreign content is.

There was widespread agreement among commenters who addressed the issue (both in response to the May 7, 1997 **Federal Register** notice and to the Commission's earlier requests for public comment), whatever standard they otherwise supported, that a product should have to undergo its final processing in the United States in order to be called "Made in USA." This view is confirmed by the consumer perception evidence, which indicates that the country of final assembly is highly significant to consumers in evaluating where a product is "made." Accordingly, the Enforcement Policy Statement indicates that a product promoted as "Made in USA" must have undergone its final assembly or processing in the United States; in particular, the product must, at minimum, have been last substantially transformed in the United States (this also ensures that no product required to be labeled with a foreign country-of-origin under the Customs Service's rules would be permitted to make a "Made in USA" claim).

The Enforcement Policy Statement also indicates that, in determining whether a product is appropriately represented to be "Made in USA," the Commission will consider what portion of the total cost of manufacturing the product is attributable to U.S. parts and processing. Obviously, the greater the percentage of U.S. costs, the more likely the product will be considered all or virtually all made in the United States. As discussed above, there were a great many commenters who criticized the 75% safe harbor put forth as part of the Commission's earlier proposal as overly lax and likely to deceive many consumers, and the Commission agrees that the record as a whole does not support adoption of such a safe harbor. The Commission, however, believes that, as a matter of enforcement policy, it is appropriate to allow for some small but reasonable amount of tolerance in enforcing the "all or virtually all" standard. Some commenters have called for the Commission to define this tolerance level with a bright line percentage standard so as to provide greater certainty to marketers. Nonetheless, the Commission has concluded that any such certainty is likely to be illusory and no single percentage standard will be appropriate for all products in all circumstances.[93] Instead, the Commission will look at U.S. manufacturing costs in the context of the other factors outlined here and in light of the nature of the product and consumers' expectations. In general, the Commission concludes that it will not be in the public interest to bring a law enforcement action where the proportion of U.S. costs of the product is extremely high.

Finally, the Enforcement Policy Statement indicates that, in evaluating whether any foreign content is significant enough to prevent a product from being considered all or virtually all made in the United States, the Commission will also examine how far removed the foreign content is from the finished product. In other words, foreign parts or materials that are incorporated several steps back in the manufacturing process are generally less

[93] For example, in some cases, the percentage of manufacturing costs attributable to foreign parts and process may not reflect the true extent of foreign content. Where only a small amount of domestic processing takes place and the bulk of the work on the product is performed abroad, or a significant component is manufactured abroad, it may be possible that, because of lower costs for foreign parts and labor, foreign costs may be disproportionately low relative to the amount of foreign production. Similarly, as the American Hand Tool Coalition noted, a product made with inputs from a high-cost country (such as Germany) will reflect a higher degree of foreign content (in terms of cost) than would a product made with identical inputs supplied from a low-cost country (such as China). In such circumstances, it may be preferable to look more generally at the significance of the foreign inputs rather than evaluate their extent entirely in terms of cost.

likely to be significant than are parts or materials that are immediate inputs into the final product.

Many commenters implicitly recognized this point. The Attorneys General, for example, suggested that raw materials be excluded from the calculation of foreign content, suggesting that "a company that designs and manufacturers a plastic product entirely within the U.S.A. but uses petroleum from a foreign county, could fairly claim that the product was made in the U.S.A. with no foreign component parts."[94] Some other supporters of the "all or virtually all" standard, even those who supported including all basic materials in the analysis, also appeared to acknowledge that there should be limits as to how far back a manufacturer must go in accounting for foreign materials. For example, a number of commenters, arguing that steel must be included in the evaluation of a product's origin, did not also suggest that a manufacturer should be required to go as far back as the iron ore used in the steel.[95] On the other hand, commenters also recognized that raw materials can sometimes be relevant to the determination as to whether a product is all or virtually all made in the United States, especially when the raw materials are only one step back from the finished product and are integral components of that article. For example, the Tile Council of America, arguing that the Commission must include raw materials in the evaluation of whether a product is made in the United States, stated that "the quality and reliability benefits of tile 'Made in the USA' are the result of both the domestic sourcing of raw materials and the domestic manufacturing process. Tile manufactured in the United States of clay dug in Mexico * * * clearly [does] not meet the 'Made in USA' expectations of U.S. consumers."[96]

Thus, the Enforcement Policy Statement indicates that raw materials, per se, will be neither automatically included nor excluded from the Commission's evaluation of whether a product is all or virtually all made in the United States. Instead, here, too, the Commission's analysis will depend on the percentage of the cost of the product the raw materials constitute and how far removed from the finished product the raw materials are, and, because, some raw materials are naturally nonoccurring in this country, whether the raw material is indigenous (and available in commercial quantities) in the United States.

Qualified U.S. Origin Claims and "Assembled in USA". Few commenters directly addressed the use of qualified U.S. origin claims, although those that did commented favorably, suggesting that qualified claims can provide valuable information to consumers.[97] The Commission has always permitted marketers to use appropriately qualified claims where their products would not meet the standard for an unqualified "Made in USA" claim, and that continues to be the case. The Enforcement Policy Statement addresses various types of qualified claims, including claims about the U.S. origin of specific processes or parts and comparative U.S. origin claims, and indicates that all such claims must be truthful and substantiated and that qualifications and disclosures should be clear, prominent and understandable. Comparative U.S. origin claims may be a particularly useful vehicle for those manufacturers who wish to draw a distinction between the domestic content of their products and those of competitors who engage in less domestic manufacturing or use fewer U.S. made parts.

As discussed above, the Commission specifically solicited comment in its May 7, 1997 **Federal Register** notice on one particular alternative claim, "Assembled in USA." The Commission asked for comment on whether a product that does not meet the standard for an unqualified U.S. origin claims should nonetheless be permitted to be promoted as "Assembled in USA," and, if so, under what circumstances. Upon review of the responses and further reflection, the Commission has concluded that "assembled" has a common meaning sufficiently distinct from "made" so that in many instances it will be appropriate for marketers to promote a product as "Assembled in USA" without further qualification.[98] Specifically, the Enforcement Policy Statement states that such a claim may be used where a product has undergone its principal assembly in the United States and that assembly is substantial; it also indicates that a product should have been last substantially transformed in the United States if it is to be labeled or advertised as "Assembled in USA."

V. Issues Not Addressed by the Enforcement Policy Statement

A. Origin: USA

As explained above, in the Proposed Guides, the Commission sought comment on the use of a separate "lesser mark" for products that faced conflicting marking requirements when sold domestically and exported. Several commenters praised the proposal as likely to save U.S. businesses, and consumers, money while others contended that such a mark was unnecessary and likely to confuse consumers. Upon reviewing the record, the Commission finds that, at the present time, there is inadequate evidence of the extent of both the problems purportedly caused by conflicting labeling requirements (*e.g.*, to what extent conflicting marking requirements actually occur, how frequently multiple labeling is actually required) as well as of the degree to which a lesser mark such as "Origin: USA" is likely to alleviate these problems (*e.g.*, whether relabeling would have been required in any event because of language differences, whether foreign customs services will accept this mark). As a result, the Commission has concluded that the benefits to be gained through establishment of this mark are as yet too speculative to outweigh the more obvious costs in potential confusion between such a mark and "Made in USA." Accordingly, the Commission has not adopted "Origin: USA" (or any other lesser mark) in the Enforcement Policy Statement.

B. Goods With No Country-of-Origin Marking

In the May 7, 1997 **Federal Register**, the Commission indicated that it would no longer employ its historical rebuttal presumption that unmarked goods will be understood by reasonable consumers to have been made in the United States, but instead would look at an array of factors on a case-by-case basis. Although a few commenters disagreed with this change in policy, the Commission continues to believe that this course is appropriate and more in keeping with the Commission's traditional deception analysis that is widely applied to other representations and omissions.

ENFORCEMENT POLICY STATEMENT ON U.S. ORIGIN CLAIMS

I. Introduction

The Federal Trade Commission ("FTC" or "Commission") is issuing this statement to provide guidance regarding its enforcement policy with respect to the use of "Made in USA" and other U.S. origin claims in advertising and labeling. The Commission has determined, as explained below, that unqualified U.S. origin claims should be substantiated by evidence that the product is all or virtually all made in the United States. This statement is intended to elaborate on principles set out in individual cases and advisory opinions previously issued over the course of many years by the Commission. This statement, furthermore, is the culmination of a comprehensive process in which the Commission has reviewed its standard for evaluating U.S. origin claims. Throughout this process, the Commission has solicited, and received, substantial public input on relevant issues. The Commission anticipates that from time to time, it may be in the public interest to solicit further public comment on these issues and to assess whether the views expressed in this statement continue to be appropriate and reflect consumer perception and opinion, and to determine whether there are areas on which the Commission could provide additional guidance.

The principles set forth in this enforcement policy statement apply to U.S. origin claims included in labeling, advertising, other promotional materials, and all other forms of marketing, including marketing through digital or electronic means such as the Internet or electronic mail. The statement, moreover, articulates the Commission's enforcement policy with respect to U.S. origin claims for all products advertised or sold in the United States, with the exception of those products specifically subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act,[99] the Wool Products Labeling Act,[100] or the Fur Products Labeling Act.[101] With respect to automobiles or other passenger motor vehicles, nothing in this enforcement policy statement is intended to affect or alter a marketer's obligation to comply with the requirements of the American Automobile Labeling Act [102] or regulations issued pursuant thereto, and any representation required by that Act to appear on automobile labeling will not be considered a deceptive act or practice for purposes of this enforcement policy statement, regardless of whether the representation appears in labeling, advertising or in other promotional material. Claims about the U.S. origin of passenger motor vehicles other than those representations required by the American Automobile Labeling Act, however, will be governed by the principles set forth in this statement.

II. Background

Both the FTC and the U.S. Customs Service have responsibilities related to the use of country-of-origin claims. While the FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices, foreign-origin markings on products (*e.g.*, "Made in Japan") are regulated primarily by the U.S. Customs Service ("Customs" or "the Customs Service") under the Tariff Act of 1930. Specifically, Section 304 of the Tariff Act, 19 U.S.C. 1304, administered by the Secretary of the Treasury and the Customs Service, requires that all products of foreign origin imported into the United States be marked with the name of a foreign country of origin. Where an imported product incorporates materials and/or processing from more than one country, Customs considers the country of origin to be the last country in which a "substantial transformation" took place. A substantial transformation is a manufacturing or other process that results in a new and different article of commerce, having a new name, character and use that is different from that which existed prior to the processing. Country-of-origin determinations using the substantial transformation test are made on a case-by-case basis through administrative determinations by the Customs Service.[103]

The FTC also has jurisdiction over foreign origin claims in packaging insofar as they go beyond the disclosures required by the Customs Service (*e.g.*, claims that supplement a required foreign origin marking, so as to represent where additional processing or finishing of a product occurred). In addition, the Commission has jurisdiction over foreign-origin claims in advertising, which the U.S. Customs Service does not regulate.

Where Customs determines that a good is not of foreign origin (i.e., the good undergoes its last substantial transformation in the United States), there is generally no requirement that it be marked with any country of origin. For most goods, neither the Customs Service nor the FTC requires that goods made partially or wholly in the United States be labeled with "Made in USA" or any other indication of U.S. origin.[104] The fact that a product is not required to be marked with a foreign country of origin does not mean that it is permissible to promote that product as "Made in USA." The FTC will consider additional factors, beyond those considered by the Customs Service in determining whether a product is of foreign origin, in determining whether a product may properly be represented as "Made in USA."

This statement is intended to address only those issues related to U.S. origin claims. In developing appropriate country-of-origin labeling for their products, marketers are urged also to consult the U.S. Customs Service's marking regulations.

III. Interpreting U.S. Origin Claims: The FTC's Deception Analysis

The Commission's authority to regulate U.S. origin claims derives from Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, which prohibits "unfair or deceptive acts or practices." The Commission has set forth its interpretations of its Section 5 authority in its Deception Policy Statement,[105] and its Policy Statement Regarding Advertising Substantiation Doctrine.[106] As set out in the Deception Policy Statement, the Commission will find an advertisement or label deceptive under Section 5, and therefore unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material. In addition, objective claims carry with them the implication that they are supported by valid evidence. It is deceptive, therefore, to make a claim unless, at the time the claim is made, the marketer possesses and relies upon a reasonable basis substantiating the claim. Thus, a "Made in USA" claim, like any other objective advertising claim, must be truthful and substantiated.

A representation may be made by either express or implied claims. "Made in USA" and "Our products are American made" would be examples of express U.S. origin claims. In

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[94] AGs, #462, Attachment at 10.

[95] *See, e.g.*, Weldbend, #597; Vaughan & Bushnell, #616; American Iron & Steel Institute, #636.

[96] TCA, #618, p. 3.

[97] *See, e.g.*, American Hand Tool, #622; Traficant, #231 Visclosky, #236; NCL, #640; Matco, #600.

[98] AGs, #462, at 4–5.

[99] 15 U.S.C. 70.

[100] 15 U.S.C. 68.

[101] 15 U.S.C. 69.

[102] 49 U.S.C. 32304.

[103] For goods from NAFTA countries, determinations are codified in "tariff shift" regulations. 19 CFR 102.

[104] For a limited number of goods, such as textile, wool, and fur products, there are, however, statutory requirements that the U.S. processing or manufacturing that occurred be disclosed. *See, e.g.*, Textile Fiber Products Identification Act, 15 U.S.C. 70(b).

[105] Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983); reprinted in Cliffdale Associates, Inc., 103 F.T.C. 110, appendix (1984).

[106] 49 FR 30,999 (1984); reprinted in Thompson Medical Co., 104 F.T.C. 648, appendix (1984).

identifying implied claims, the Commission focuses on the overall net impression of an advertisement, label, or other promotional material. This requires an examination of both the representation and the overall context, including the juxtaposition of phrases and images, and the nature of the transaction. Depending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin. For example, assume that a company advertises its product in an advertisement that features pictures of employees at work at what is identified as the company's U.S. factory, these pictures are superimposed on an image of a U.S. flag, and the advertisement bears the headline "American Quality." Although there is no express representation that the company's product is "Made in USA," the net impression of the advertisement is likely to convey to consumers a claim that the product is of U.S. origin.

Whether any particular symbol or phrase, including an American flag, conveys an implied U.S. origin claim, will depend upon the circumstances in which the symbol or phrase is used. Ordinarily, however, the Commission will not consider a marketer's use of an American brand name[107] or trademark,[108] without more, to constitute a U.S. origin claim, even though some consumers may believe, in some cases mistakenly, that a product made by a U.S.-based manufacturer is made in the United States. Similarly, the mere listing of a company's U.S. address on a package label, in a nonprominent manner, such as would be required under the Fair Packaging and Labeling Act,[109] is unlikely, without more, to constitute a "Made in USA" claim.

IV. Substantiating U.S. Origin Claims: The "All or Virtually All" Standard

Based on its review of the traditional use of the term "Made in USA," and the record as a whole, the Commission concludes that consumers are likely to understand an unqualified U.S. origin claim to mean that the advertised product is "all or virtually all" made in the United States. Therefore, when a marketer makes an unqualified claim that a product is "Made in USA," it should, at the time the representation is made, possess and rely upon a reasonable basis that the product is in fact all or virtually all made in the United States.[110, 111]

A product that is all or virtually all made in the United States will ordinarily be one in which all significant parts[112] and processing that go into the product are of U.S. origin. In other words, where a product is labeled or otherwise advertised with an unqualified "Made in USA" claim, it should contain only a de minimis, or negligible, amount of foreign content. Although there is no single "bright line" to establish when a product is or is not "all or virtually all" made in the United States, there are a number of factors that the Commission will look to in making this determination. To begin with, in order for a product to be considered "all or virtually all" made in the United States, the final assembly or processing of the product must take place in the United States. Beyond this minimum threshold, the Commission will consider other factors, including but not limited to the portion of the product's total manufacturing costs that are attributable to U.S. parts and processing; and how far removed from the finished product any foreign content is.

A. Site of Final Assembly or Processing

The consumer perception evidence available to the Commission indicates that the country in which a product is put together or completed is highly significant to consumers in evaluating where the product is "made." Thus, regardless of the extent of a product's other U.S. parts or processing, in order to be considered all or virtually all made in the United States, it is a prerequisite that the product have been last "substantially transformed" in the United States, as that term is used by the U.S. Customs Service " i.e., the product should not be required to be marked "made in [foreign country]" under 19 U.S.C. 1304.[113] Furthermore, even where a product is last substantially transformed in the United States, if the product is thereafter assembled or processed (beyond de minimis finishing processes) outside the United States, the Commission is unlikely to consider that product to be all or virtually all made in the United States. For example, were a product to be manufactured primarily in the United States (and last substantially transformed there) but sent to Canada or Mexico for final assembly, any U.S. origin claim should be qualified to disclose the assembly that took place outside the United States.

B. Proportion of U.S. Manufacturing Costs

Assuming the product is put together or otherwise completed in the United States, the Commission will also examine the percentage of the total cost of manufacturing the product that is attributable to U.S. costs (i.e., U.S. parts and processing) and to foreign costs.[114] Where the percentage of foreign content is very low, of course, it is more likely that the Commission will consider the product all or virtually all made in the United States. Nonetheless, there is not a fixed point for all products at which they suddenly become "all or virtually all" made in the United States. Rather, the Commission will conduct this inquiry on a case-by-case basis, balancing the proportion of U.S. manufacturing costs along with the other factors discussed herein, and taking into account the nature of the product and consumers' expectations in determining whether an enforcement action is warranted. Where, for example, a product has an extremely high amount of U.S. content, any potential deception resulting from an unqualified "Made in USA" claim is likely to be very limited, and therefore the costs of bringing an enforcement action challenging such a claim are likely to substantially outweigh any benefit that might accrue to consumers and competition.

C. Remoteness of Foreign Content

Finally, in evaluating whether any foreign content is significant enough to prevent a product from being considered all or virtually all made in the United States, the Commission will look not only to the percentage of the cost of the product that the foreign content represents, but will also consider how far removed from the finished product the foreign content is. As a general rule, in determining the percentage of U.S. content in its product, a marketer should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content. In other words, a manufacturer who buys a component from a U.S. supplier, which component is in turn made up of other parts or materials, may not simply assume that the component is 100% U.S. made, but should inquire of the supplier as to the percentage of U.S. content in the component.[115] Foreign content that is incorporated further back in the manufacturing process, however, will often be less significant to consumers than that which constitutes a direct input into the finished product. For example, in the context of a complex product, such as a computer, it is likely to be insignificant that imported steel is used in making one part of a single component (e.g., the frame of the floppy drive). This is because the steel in such a case is likely to constitute a very small portion of the total cost of the computer, and because consumers purchasing a computer are likely, if they are concerned about the origin of the product, to be concerned with the origin of the more immediate inputs (floppy drive, hard drive, CPU, keyboard, etc.) and perhaps the parts that, in turn, make up those inputs. Consumers are less likely to have in mind materials, such as the steel, that are several steps back in the manufacturing process. By contrast, in the context of a product such as a pipe or a wrench for which steel constitutes a more direct and significant input, the fact that the steel is imported is likely to be a significant factor in evaluating whether the finished product is all or virtually all made in the United States. Thus, in some circumstances, there may be inputs one or two steps back in the manufacturing process that are foreign and there may be other foreign inputs that are much further back in the manufacturing process. Those foreign inputs far removed from the finished product, if not significant, are unlikely to be as important to consumers and change the nature of what otherwise would be considered a domestic product.

In this analysis, raw materials[116] are neither automatically included nor automatically excluded in the evaluation of whether a product is all or virtually all made in the United States. Instead, whether a product whose other parts and processing are of U.S. origin would not be considered all or virtually all made in the United States because the product incorporated imported raw materials depends (as would be the case with any other input) on what percentage of the cost of the product the raw materials constitute and how far removed from the finished product the raw materials are.[117] Thus, were the gold in a gold ring, or the clay used to make a ceramic tile, imported, an unqualified "Made in USA" claim for the ring or tile would likely be inappropriate.[118] This is both because of the significant value the gold and the clay are likely to represent relative to the finished product and because the gold and the clay are only one step back from the finished articles and are integral components of those articles. By contrast were the plastic in the plastic case of a clock radio that was otherwise all or virtually all made in the United States found to have been made from imported petroleum, the petroleum is far enough removed from, and an insignificant enough input into, the finished product that it would nonetheless likely be appropriate to label the clock radio with an unqualified U.S. origin claim.

V. Qualifying U.S. Origin Claims

A. Qualified U.S. Origin Claims Generally

Where a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures should be sufficiently clear, prominent, and understandable to prevent deception. Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut the effectiveness of the qualification will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

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[107] This assumes that the brand name does not specifically denote U.S. origin, *e.g.*, the brand name is not "Made in America, Inc."

[108] For example, a legal trademark consisting of, or incorporating, a stylized mark suggestive of a U.S. flag will not, by itself, be considered to constitute a U.S. origin claim.

[109] 15 U.S.C. 1451 *et seq.*

[110] For purposes of this Enforcement Policy Statement, "United States" refers to the several states, the District of Columbia, and the territories and possessions of the United States. In other words, an unqualified "Made in USA" claim may be made for a product that is all or virtually all manufactured in U.S. territories or possessions as well as in the 50 states.

[111] In addition, marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (e.g., "Our products are Made in USA") when only some products in the product line are, in fact, made in the United States. Although not the focus of this Enforcement Policy Statement, this is a principle that has been addressed in Commission cases both within and outside the U.S. origin context. See, e.g., Hyde Athletic Industries, FTC Docket No. C–3695 (consent order December 4, 1996) (complaint alleged that respondent represented that all of its footwear was made in the United States, when a substantial amount of its footwear was made wholly in foreign countries); New Balance Athletic Shoes, Inc., FTC Docket No. 9268 (consent order December 2, 1996) (same); Uno Restaurant Corp., FTC Docket No. C–3730 (consent order April 4, 1997) (complaint alleged that restaurant chain represented that its whole line of thin crust pizzas were low fat, when only two of eight pizzas met acceptable limits for low fat claims); Häagen-Dazs Company, Inc., FTC Docket No. C–3582 (consent order June 7, 1995) (complaint alleged that respondent represented that its entire line of frozen yogurt was 96% fat free when only certain flavors were 96% fat free).

[112] The word "parts" is used in its general sense throughout this enforcement policy statement to refer to all physical inputs into a product, including but not limited to subassemblies, components, parts, or materials.

[113] It is conceivable, for example, that occasionally a product imported into the United States could have a very high proportion of its manufacturing costs be U.S. costs, but is nonetheless not considered by the U.S. Customs Service to have been last substantially transformed in the United States. In such cases, the product would be required to be marked with a foreign country of origin and an unqualified U.S. origin claim could not appropriately be made for the product.

[114] In calculating manufacturing costs, manufacturers should ordinarily use as their measure the cost of goods sold or finished goods inventory cost, as those terms are used in accordance with generally accepted accounting principles. Such costs will generally include (and be limited to) the cost of manufacturing materials, direct manufacturing labor, and manufacturing overhead. Marketers should also note the admonishment below that, in determining the percentage of U.S. content, they should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content.

[115] For example, assume that a company manufactures lawn mowers in its U.S. plant, making most of the parts (housing, blade, handle, etc.) itself from U.S. materials. The engine, which constitutes 50% of the total cost of manufacturing the lawn mower, is bought from a U.S.-supplier, which, the lawn mower manufacturer knows, assembles the engine in a U.S. factory. Although most of the parts and the final assembly of the lawn mower are of U.S. origin and the engine is assembled in the United States, the lawn mower will not necessarily be considered all or virtually all made in the United States. This is because the engine itself is made up of various parts that may be imported and that may constitute a significant percentage of the total cost of manufacturing the lawn mower. Thus, before labeling its lawn mower "Made in USA," the manufacturer should look to its engine supplier for more specific information as to the engine's origin. For instance, were foreign parts to constitute 60% of the cost of producing the engine, then the lawn mower would contain a total of at least 30% foreign content, and an unqualified "Made in USA" label would be inappropriate.

[116] For purposes of this Enforcement Policy Statement, the Commission considers raw materials to be products such as minerals, plants or animals that are processed no more than necessary for ordinary transportation.

[117] In addition, because raw materials, unlike manufactured inputs, may be inherently unavailable in the United States, the Commission will also look at whether or not the raw material is indigenous to the United States, or available in commercially significant quantities. In cases where the material is not found or grown in the United States, consumers are likely to understand that a "Made in USA" claim on a product that incorporates such materials (e.g., vanilla ice cream that uses vanilla beans, which, the Commission understands, are not grown in the United States) means that all or virtually all of the product, except for those materials not available here, originated in the United States. Nonetheless, even where a raw material is nonindigenous to the United States, if that imported material constitutes the whole or essence of the finished product (e.g., the rubber in a rubber ball or the coffee beans in ground coffee), it would likely mislead consumers to label the final product with an unqualified "Made in USA" claim.

[118] Nonetheless, in these examples, other, qualified claims could be used to identify truthfully the domestic processing that took place. For example, if the gold ring was designed and fabricated in the United States, the manufacturer could say that (e.g., "designed and fabricated in U.S. with 14K imported gold"). Similarly, if the ceramic tile were manufactured in the United States from imported clay, the manufacturer could indicate that as well.

Within these guidelines, the form the qualified claim takes is up to the marketer. A marketer may make any qualified claim about the U.S. content of its products as long as the claim is truthful and substantiated. Qualified claims, for example, may be general, indicating simply the existence of unspecified foreign content (e.g., "Made in USA of U.S. and imported parts") or they may be specific, indicating the amount of U.S. content (e.g., "60% U.S. content"), the parts or materials that are imported (e.g., "Made in USA from imported leather"), or the particular foreign country from which the parts come ("Made in USA from French components").[119]

Where a qualified claim takes the form of a general U.S. origin claim accompanied by qualifying information about foreign content (e.g., "Made in USA of U.S. and imported parts" or "Manufactured in U.S. with Indonesian materials"), the Commission believes that consumers are likely to understand such a claim to mean that, whatever foreign materials or parts the product contains, the last assembly, processing, or finishing of the product occurred in the United States. Marketers therefore should avoid using such claims unless they can substantiate that this is the case for their products. In particular, such claims should only be made where the product was last substantially transformed in the United States. Where a product was last substantially transformed abroad, and is therefore required by the U.S. Customs Service to be labeled "Made in [foreign country]," it would be inappropriate, and confusing, to use a claim such as "Made in USA of U.S. and imported parts."[120]

[119] These examples are intended to be illustrative, not exhaustive; they do not represent the only claims or disclosures that would be permissible under Section 5 of the FTC Act. As indicated, however, qualified claims, like any claim, should be truthful and substantiated and should not overstate the U.S. content of a product. For example, it would be inappropriate for a marketer to represent that a product was "Made in U.S. of U.S. and imported parts" if the overwhelming majority of the parts were imported and only a single, insignificant part was manufactured in the United States; a more appropriate claim would be "Made in U.S. of imported parts."

[120] On the other hand, that the last substantial transformation of the product takes place in the United States may not alone be sufficient to substantiate such a claim. For example, under the rulings of the U.S. Customs Service, a disposable razor is considered to have been last substantially transformed where its blade is made, even if it is thereafter assembled in another country. Thus, a disposable razor that is assembled in Mexico with a U.S.-made blade and other parts of various origins would be considered to have been last substantially transformed in the United States and would not have to bear a foreign country-of-origin marking. Nonetheless, because the final assembly of the razor occurs abroad, it would be inappropriate to label the razor "Made in U.S. of U.S. and imported parts." It would, however, likely be appropriate to label the razor "Assembled in Mexico with U.S.-made blade," "Blade made in United States, razor assembled in Mexico" or "Assembled in Mexico with U.S. and imported parts."

B. Claims About Specific Processes or Parts

Regardless of whether a product as a whole is all or virtually all made in the United States, a marketer may make a claim that a particular manufacturing or other process was performed in the United States, or that a particular part was manufactured in the United States, provided that the claim is truthful and substantiated and that reasonable consumers would understand the claim to refer to a specific process or part and not to the general manufacture of the product. This category would include claims such as that a product is "designed" or "painted" or "written" in the United States or that a specific part, e.g., the picture tube in a television, is made in the United States (even if the other parts of the television are not). Although such claims do not expressly disclose that the products contain foreign content, the Commission believes that they are normally likely to be specific enough so as not to convey a general claim of U.S. origin. More general terms, however, such as that a product is, for example, "produced," or "manufactured" in the United States, are likely to require further qualification where they are used to describe a product that is not all or virtually all made in the United States. Such terms are unlikely to convey to consumers a message limited to a particular process performed, or part manufactured, in the United States. Rather, they are likely to be understood by consumers as synonymous with "Made in USA" and therefore as unqualified U.S. origin claims.

The Commission further concludes that, in many instances, it will be appropriate for marketers to label or advertise a product as "Assembled in the United States" without further qualification. Because "assembly" potentially describes a wide range of processes, however, from simple "screwdriver" operations at the very end of the manufacturing process to the construction of a complex, finished item from basic materials, the use of this term may, in some circumstances, be confusing or misleading to consumers. To avoid possible deception, "Assembled in USA" claims should be limited to those instances where the product has undergone its principal assembly in the United States and that assembly is substantial. In addition, a product should be last substantially transformed in the United States to properly use an "Assembled in USA" claim. This requirement ensures against potentially contradictory claims, i.e., a product claiming to be "Assembled in USA" while simultaneously being marked as "Made in [foreign country]." In many instances, this requirement will also be a minimum guarantee that the U.S. assembly operations are substantial.

C. Comparative Claims

U.S. origin claims that contain a comparative statement (e.g., "More U.S. content than our competitor") may be made as long as the claims are truthful and substantiated. Where this is so, the Commission believes that comparative U.S. origin claims are unlikely to be deceptive even where an unqualified U.S. origin claim would be inappropriate. Comparative claims, however, should be presented in a manner that makes the basis for the comparison clear (e.g., whether the comparison is being made to another leading brand or to a previous version of the same product). Moreover, comparative claims should not be used in a manner that, directly or by implication, exaggerates the amount of U.S. content in the product, and should be based on a meaningful difference in U.S. content between the compared products. Thus, a comparative U.S. origin claim is likely to be deceptive if it is made for a product that does not have a significant amount of U.S. content or does not have significantly more U.S. content than the product to which it is being compared.

D. U.S. Customs Rules and Qualified and Comparative U.S. Origin Claims

It is possible, in some circumstances, for marketers to make certain qualified or comparative U.S. origin claims (including claims such as that the product contains a particular amount of U.S. content, certain claims about the U.S. origin of specific processes or parts, and certain comparative claims) even for products that are last substantially transformed abroad and which therefore must be marked with a foreign country of origin. In making such claims, however, marketers are advised to take care to follow the requirements set forth by the U.S. Customs Service and to ensure, for purposes of section 5 of the FTC Act, that the claim does not deceptively suggest that the product is made with a greater amount of U.S. parts or processing than is in fact the case.

In looking at the interaction between the requirements for qualified and comparative U.S. origin claims and those for foreign origin marking, the analysis is slightly different for advertising and for labeling. This is a result of the fact that the Tariff Act requires foreign origin markings on articles or their containers, but does not govern claims in advertising or other promotional materials.

Thus, on a product label, where the Tariff Act requires that the product be marked with a foreign country of origin, Customs regulations permit indications of U.S. origin only when the foreign country of origin appears in close proximity and is at least of comparable size.[121] As a result, under Customs regulations, a product may, for example, be properly marked "Made in Switzerland, finished in U.S." or "Made in France with U.S. parts," but it may not simply be labeled "Finished in U.S." or "Made with U.S. parts" if it is deemed to be of foreign origin.

In advertising or other promotional materials, the Tariff Act does not require that foreign origin be indicated. The Commission recognizes that it may be possible to make a U.S. origin claim in advertising or promotional materials that is sufficiently specific or limited that it does not require an accompanying statement of foreign manufacture in order to avoid conveying a broader and unsubstantiated meaning to consumers.

[121] 19 CFR 134.46. Specifically, this provision provides that:

"In any case in which the words 'United States,' or 'American,' the letters U.S.A., any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by 'Made in,' 'Product of,' or other words of similar meaning."

In a **Federal Register** notice announcing amendments to this provision, the Customs Service indicated that, where a product has a foreign origin, any references to the United States made in the context of a statement relating to any aspect of the production or distribution of the product (e.g., "Designed in USA," "Made for XYZ Corporation, California, U.S.A.," or "Distributed by ABC, Inc., Colorado, USA") would be considered misleading to the ultimate purchaser and would require foreign country-of-origin marking in accordance with the above provision. 62 FR 44211, 442213 (Aug. 20, 1997).

Whether a nominally specific or limited claim will in fact be interpreted by consumers in a limited matter is likely to depend on the connotations of the particular representation being made (e.g., "finished" may be perceived as having a more general meaning than "painted") and the context in which it appears. Marketers who wish to make U.S. origin claims in advertising or other promotional materials without an express disclosure of foreign manufacture for products that are required by Customs to be marked with a foreign country of origin should be aware that consumers may believe the literal U.S. origin statement is implying a broader meaning and a larger amount of U.S. content than expressly represented. Marketers are required to substantiate implied, as well express, material claims that consumers acting reasonably in the circumstances take from the representations. Therefore, the Commission encourages marketers, where a foreign-origin marking is required by Customs on the product itself, to include in any qualified or comparative U.S. origin claim a clear, conspicuous, and understandable disclosure of foreign manufacture.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Roscoe B. Starek, III, Regarding Enforcement Policy Statement on U.S. Origin Claims

File No. P89–4219

Today the Commission restores the "Made in USA" standard to the highly demanding level that we affirmed in 1994. The Commission's action reinstates the longstanding principle that an unqualified U.S. origin claim is a claim that the product is made entirely in the United States except for a *de minimis* or negligible amount of foreign content. By explaining the factors that the Commission will consider in assessing whether an unqualified "Made in USA" claim is deceptive, and whether the public interest warrants enforcement action, the Policy Statement provides guidance that should reduce the costs of making "Made in USA" claims that comply with Section 5 of the FTC Act. The current state of consumer perception and the benefits and costs of various "Made in USA" standards have been exhaustively investigated. With the issuance of this Policy Statement, I expect to see the traditional "Made in USA" standard enforced, now that we no longer labor under the self-imposed moratorium that consumed several years while we explored various policy options.

The broad review initiated by a majority of the Commission in 1995 produced a reasonable alternative approach based on copy test evidence showing that significant minorities of consumers took contradictory meanings from unqualified "Made in USA" claims. As I stated when we proposed the Guides for comment, the "substantially all" standard created by the Guides appeared to strike the correct balance between contradictory consumer understandings of "Made in USA" so as to minimize overall consumer injury from deception. Today's action illustrates the value of seeking public comment when the Commission elects to fashion a compromise through an expansive review similar to a rulemaking, rather than base its findings of deception on evidence and interpretations tested during litigation and the pursuit of negotiated orders.

Intense public interest in "Made in USA" claims inspired more individual consumer comments than we have received in almost any other comment period during my tenure at the Commission. These comments—which demonstrate that consumers who believe that "Made in USA" means all or virtually all made in the United States are highly motivated to act on their belief—justify redrawing the balance that the proposed Guides attempted to strike. These consumers want to be able to rely on a simple and clear standard, and their awareness of the globalization of the economy evidently has not changed their beliefs about domestic origin claims. The Policy Statement also wisely confines the Commission's guidance to general principles and, as I clearly prefer, leaves for case-by-case resolution more complex issues that may turn on variations in claims and products.

[FR Doc. 97–31531 Filed 12–1–97; 8:45 am]

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December 2, 1997

Part IV

Department of Education

21st Century Community Learning Centers Program; Notices

DEPARTMENT OF EDUCATION

RIN 1850–ZA01

21st Century Community Learning Centers Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces priorities for the 21st Century Community Learning Centers Program, administered by the Office of Educational Research and Improvement (OERI). The Secretary may use these priorities in fiscal year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on stimulating and expanding significant learning programs available to children and youth beyond regular school hours. The absolute priority is also designed to ensure wide and effective use of program funds to support centers that provide expanded learning opportunities for children and youth in a safe and drug-free environment, and to engage the support of citizens in those efforts. Two competitive priorities concern serving early adolescents and middle school students and services related to core academic subjects.

DATES: These priorities take effect January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Carol J. Mitchell or Amanda Clyburn, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Room 504, Washington, DC 20208–5644. E-mail addresses are: carol__j.__mitchell@ed.gov or amanda__clyburn@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in alternate formats (e.g., Braille, large print, audiotape, or computer diskette) on request to either contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The 21st Century Community Learning Centers Act authorizes the Secretary to award grants to rural and inner-city public elementary or secondary schools, or consortia of those schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social service, cultural and recreational needs of a rural or inner-city community.

A Community Learning Center established in a local public school can, among other things, be a stimulating, safe, supervised and cost-effective after-school, weekend or summer haven for children and youth—and their families. As reported in the recent Department of Education (ED) publication "Keeping Schools Open as Community Learning Centers: Extending Learning in a Safe, Drug-free Environment Before and After School," recent research shows that a stimulating environment of this type can improve thinking and language performance of participating children and youth. Research also indicates that these programs reduce crime, delinquency, and victimization of children and youth. However, although the number of after-school child care programs has grown over the last 20 years, there are still far too few communities that offer effective, organized and extended opportunities for learning outside the regular school day. Of the 49,000 before- and after-school programs available in the United States in 1991, only about a third were housed in public schools. And, for in-school and out-of-school care programs, only a tiny percent served older children and youth. In 1995, there were 23.5 million school-age children with parents in the workforce. But as recently as the 1993–94 school year, only 3.4 percent of children in public elementary and combined schools were enrolled in any of the estimated 18,000 before- or after-school programs at public schools. Seventy percent of all public elementary and combined schools did not have before- or after-school programs.

The needs and demands are clear: a 1994 survey of parents found that 56 percent think that many parents leave their children alone too much after school, and a 1989 survey of school principals found that 84 percent agreed that there is a need for before- and after-school programs. But even though the number of after-school programs is growing, the demand is growing faster, as thousands of parents who currently care for their children during the day are encouraged to enter the workforce.

After-school programs are well positioned to reduce the incidence of drug use and violence and their detrimental effects on learning. Research by the Federal Bureau of Investigation indicates that the hours between 3 and 6 p.m. are when youth aged 12 to 17 are most at risk of committing or of being victims of violent acts. After-school programs located at Community Learning Centers will give youth a safe and supervised place to go during these hours.

The absolute priority supports centers that have a goal of providing learning opportunities for students in a safe and drug-free environment. For example, before- and after-school programs can be a place in which tutors provide reading help to younger children or in which mentors guide older children to take challenging mathematics and science courses that pave the way to college, and help them succeed in those courses. However, programs applying for assistance are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), and should propose an array of inclusive and supervised services that include extended learning opportunities (such as enriched instruction, tutoring or homework help) but may also include safety and drug-abuse prevention programs, recreational, musical and artistic activities; and opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home. Although the absolute priority requires that children and youth be served, applicants may propose projects that also serve and involve other members of the community.

The competitive priorities authorize ED to give a preference to applicants that propose to serve the academic needs of participating children and youth. These can include services that will assist students who need additional support to master reading and literacy skills, both by directly providing reading services as well as tutoring and mentoring programs in supervised locations. For younger children who are not reading as well as they should, Community Learning Centers can provide extended time in which to overcome the obstacles that have in the past prevented them from becoming good readers. The competitive priorities will also encourage schools to develop strategies to address the needs of students who can benefit from additional enrichment or challenge in mathematics or science, or who are not performing as well as they should. Community learning centers can provide extended hours for students to learn and review basic concepts they may have missed during class, to delve deeper into a more challenging curriculum, or to participate in enjoyable hands-on activities and experiments.

Funding of particular projects depends on the availability of funds, the priorities, the quality of the applications received, and the requirements in the law for equitable representation nationally and within States of rural and inner-city programs. The first cycle of awards will be made from fiscal year 1998 funds. If applications of high quality remain unfunded, additional awards may be made in fiscal year 1999 or future fiscal years, pending availability of funds. The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

On September 30, 1997, the Assistant Secretary published a notice of proposed priorities (NPP) for this program in the **Federal Register** (62 FR 51089–51091). There are no differences between the NPP and this notice of final priorities.

Analysis of Comments

In response to the Assistant Secretary's invitation to comment on the proposed priorities, eighteen parties representing concerned individuals and members of organizations submitted comments. An analysis of the comments follows. Major issues are grouped according to subject or proposed priority. Minor editorial changes—and comments recommending changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Population to be Served

Comments: One commenter believed that only "at-risk" students were to be served by this program and suggested that ED explain more clearly that all children are eligible to participate. However, another commenter believed two new priorities were needed to ensure that the needs are met for (1) students from low-income families and (2) students considered "at-risk."

Discussion: The 21st Century Community Learning Centers Act authorizes the Secretary to make grants to rural and inner-city public elementary and secondary schools, or consortia of those schools. The term "at-risk" is not mentioned in the legislation or in the proposed priorities, but it is implied, by limiting eligibility to "rural" or "inner-city" communities, that the program will provide services to high-needs neighborhoods. The legislation is also clear that Centers must be open to all the members of the community. The Secretary does not believe that additional priorities need to be established to assist students in either of these categories.

Changes: None.

Eligible Applicants and Collaboration

Comments: One commenter believed that only public schools and public school systems were eligible to carry out programs under this legislation and desired more emphasis on non-traditional service providers who are not part of the public school system. Another commenter believed that existing community-based organizations that have played a leading role in providing after-school programs should be made eligible for grants under this program. Another commenter felt that priority should be given to projects with a set category of community partners and a built-in governance system that allows for family and community decision making and involvement in partnership with the schools. Several other commenters recommended specific language either requiring or giving priority to community collaboration projects.

Discussion: While the authorizing legislation specifically states that only rural or inner-city public elementary and secondary schools, or consortia of those schools, are eligible to receive a grant under this program, it also states that these entities "should collaborate with other public and nonprofit agencies and organizations, local businesses, educational entities (such as vocational and adult education programs, community colleges, and universities), recreational, cultural, and other community and human service entities, for the purpose of meeting the needs of, and expanding the opportunities available to, the residents of the communities served by such schools." By statute, applications must include "a description of the collaborative efforts to be undertaken by community-based organizations, related public agencies, businesses, or other appropriate organizations." The notice of proposed priorities stated that "although the proposed absolute priority requires that children and youth be served, applicants may propose projects that also serve and involve other members of the community." For instance, community-based organizations can, under this statute, provide youth development services within the public schools.

Changes: None.

Proposed Competitive Priority 1: Serving Early Adolescents and Middle-School Students

Comments: One commenter thought this priority's focus would come too late for at-risk children between the ages of 7 and 11 and fail to block their downward spiral. Another thought that lowering the priority age-range to at least fourth grade was necessary for insuring continuity between elementary and middle-school. A third commenter felt lowering the range to pre-kindergarten to grade 3 would be more preferable.

Discussion: The authorizing statute provides that 21st Century Community Learning Centers must be open to all children in inner-city and rural neighborhoods where Centers have been established. While the program may serve all children, statistics show that children between the ages of 12–17 are at-risk of committing or being victims of violent acts between the hours of 3 p.m. and 6 p.m., and that available after-school programs tend to serve younger rather than older children. Therefore, the Secretary has given a competitive priority to serving the early adolescent population.

Changes: None.

Proposed Competitive Priority 2: Assisting in Meeting or Exceeding State and Local Standards in Core Academic Subjects Such as Reading, Mathematics or Science

Comments: Two commenters thought this priority too narrow in its focus on cognitive competencies and should be broadened to include social, physical, emotional and moral competencies as well.

Discussion: The Secretary recognizes the importance of well-rounded programs for after-school enrichment. The authorizing legislation requires programs to offer a range of services to benefit members of the community; these services can include social, physical, nutritional and other activities. Because the statute does not specifically require activities that focus on academic subjects, the Secretary believes a competitive priority is necessary to encourage applications for after-school programs that will offer enhanced learning opportunities, help children reach or exceed State and local academic standards, and provide some continuity between the school day and after-school activities.

Changes: None.

Duration of Services

One commenter encouraged ED to give priority to applications that propose year-round programming.

Discussion: The Secretary believes the quantity and scheduling of extended time proposed by an applicant are matters for local decision.

Changes: None.

Measurable Goals

Comments: One commenter believed that an application's proposed measurable goals and objectives be made a priority for funding. However, another commenter urged ED not to hold programs to an expectation of

showing measurable change. The latter commenter noted that "effecting such change requires complex, comprehensive, intense and long term interventions."

Discussion: Two of the selection criteria that will be used by reviewers to rate applications will address the issue of program impact. These are (under *Quality of Project Services*) the "likely impact of the services to be provided by the proposed project on the intended recipients of those services," and (under *Quality of Project Evaluation*) the "extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies." In addition to locally designed evaluations of program effects, the Government Performance and Results Act requires ED to develop performance indicators for the 21st Century Community Learning Centers program at the national level.

Changes: None.

PRIORITIES

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority.

Activities to Expand Learning Opportunities

The Secretary funds *only* those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

Competitive Priorities: Under 34 CFR 75.105(c)(2)(i), the Secretary gives preference to applications that meet one or both of the two competitive priorities in the next two paragraphs. The Secretary awards up to five (5) points for each competitive priority addressed in an application (for a maximum of 10 points if an application addresses both competitive priorities). These points are in addition to the 100 points an application may earn under the selection criteria which will be published in the application package.

Competitive Priority 1—Projects that propose to serve early adolescents and middle-school students.

Competitive Priority 2—Projects designed to assist students to meet or exceed State and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Executive Order 12866: This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, the Secretary has determined that the benefits of the priorities justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these final priorities without impeding the effective and efficient administration of the program.

Summary of potential costs and benefits: There are no identified costs associated with this notice of final priorities. Announcement of these priorities will not result in costs to State and local governments or to recipients of grant funds.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8247.

Dated: November 25, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program)

[FR Doc. 97–31567 Filed 12–1–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.287]

21st Century Community Learning Centers; Notice Inviting Applications for New Awards for Fiscal Year 1998

Purpose of Program: The 21st Century Community Learning Centers Program was established by Congress to award grants to rural and inner-city public schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social services, cultural and recreational needs of the community. School-based community learning centers can provide a safe, drug-free, supervised and cost-effective after-school, weekend or summer haven for children, youth and their families.

Eligible Applicants: Only rural or inner-city public elementary or secondary schools, consortia of those schools, or LEAs applying on their behalf, are eligible to receive a grant under the 21st Century Community Learning Centers Program. An LEA with many interested schools is encouraged to submit a consortium application on their behalf. Applicants must demonstrate that they meet the statutory program purpose as being either a "rural" or "inner-city" school or a consortium of those schools.

Deadline for Transmittal of Applications: March 9, 1998

Deadline for Intergovernmental Review: May 8, 1998

Applications Available: December 16, 1997

Available Funds: $40 million

Estimated Range of Awards: $35,000—$200,000 per Center. Awards to consortia or LEAs involving multiple Centers will be adjusted to reflect the number of Centers included.

Estimated Average Size of Awards: $100,000 (per Center)

Estimated Number of Awards: 200–300, depending on how many awards will assist multiple Centers.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86, and (b) 34 CFR part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 28247).

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition. In addition, the Secretary gives preference to applications that meet the following competitive priority. (34 CFR 75.105(c)(2)(ii) and 34 CFR 299.3(a)). The Secretary selects an application that meets this competitive priority over an application of comparable merit that does not meet this competitive priority.

Competitive Priority—Projects that will use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

SUPPLEMENTARY INFORMATION: The 21st Century Community Learning Centers Program is authorized under Title X, Part I (20 USC 8241) of the Elementary and Secondary Education Act. Grantees under this program are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 USC 8245), as listed below:

(1) Literacy education programs;
(2) Senior citizen programs;
(3) Children's day care services;
(4) Integrated education, health, social service, recreational, or cultural programs;
(5) Summer and weekend school programs in conjunction with recreation programs;
(6) Nutrition and health programs;
(7) Expanded library service hours to serve community needs;
(8) Telecommunications and technology education programs for individuals of all ages;
(9) Parenting skills education programs;
(10) Support and training for child day care providers;
(11) Employment counseling, training, and placement;
(12) Services for individuals who leave school before graduating from secondary school, regardless of the age of such individual; and
(13) Services for individuals with disabilities.

Applicants should propose an array of inclusive and supervised services that include extended learning opportunities (such as instructional enrichment programs, tutoring, or homework assistance) but may also include recreational, musical and artistic activities; opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home, or safety and substance-abuse prevention programs. Grants awarded under this program may be used to plan, implement, or expand community learning centers.

GEOGRAPHIC DISTRIBUTION: In awarding grants, the Secretary assures an equitable distribution of assistance among the States, among urban and rural areas of a State, and among urban and rural areas of the United States.

FOR APPLICATIONS OR INFORMATION CONTACT:

To Obtain an Application Package: Written requests should be mailed to: Amanda Clyburn, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave., NW, Washington, DC 20208–5644, Attn: 21st Century Center Learning Centers. Requests may also be e-mailed to Amanda Clyburn (amanda__clyburn@ed.gov) or faxed to (202) 219–2198.

FOR FURTHER INFORMATION CONTACT: Carol J. Mitchell or Amanda Clyburn, U. S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Washington DC 20208–5644. E-mail addresses are: carol__j.__mitchell@ed.gov or amanda__clyburn@ed.gov respectively. Fax number is (202) 219–2198.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8246.

Dated: November 25, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and LeFlore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones (Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area, (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego, San Francisco (Hayview, Hunter's Pointer), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warrent Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Quachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Areas (Braxton, Clay, Fayette, Nichols, and Roane Counties)
Wisconsin: Milwaukee

[FR Doc. 97–31568 Filed 12–1–97; 8:45 am]
BILLING CODE 4000–01–P

federal register

Tuesday
December 2, 1997

Part V

Department of Education

Bilingual Education; State Grant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Bilingual Education: State Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program and the application requirements that apply to this competition are contained in section 7134 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7454)).

Purpose of Program: This program provides grants to State educational agencies to—(1) assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation; and (2) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population. However, a State is exempt from the requirements to collect data if it did not, as of October 20, 1994, have a system in place for collecting the data.

Eligible Applicants: State Educational Agencies.

Deadline for Transmittal of Applications: January 9, 1998.

Deadline for Intergovernmental Review: March 10, 1998.

Available Funds: $5,720,000.

Estimated Range of Awards: $100,000–$550,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 28248).

Description of Program

Funds under this program are to be used to assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation. In addition, grantees are required to collect data on the State's LEP population and the educational programs and services available to that population unless a grantee's State did not, as of October 20, 1994, have a system for collecting data in place. However, a State that develops a system for collecting data on the educational programs and services available to all LEP students in the State subsequent to October 20, 1994 must meet this requirement. A grantee may also use funds provided under this program for the training of State educational agency personnel in educational issues affecting limited English proficient children and youth.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.209 and 75.210 and section 7134 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Providing for the education of children and youth with limited English proficiency.* (20 points) The Secretary reviews each application to determine how well the applicant effectively provides, through its own programs and other Federal education programs, for the education of limited English proficient children within its State.

(2) *Need for project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(3) *Quality of the project design.* (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(C) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(4) *Quality of project services.* (15 points) (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(C) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(5) *Quality of project personnel.* (10 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources.* (5 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The extent to which the budget is adequate to support the proposed project.

(C) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on October 7, 1997 (62 FR 52448 through 52450).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.194Q, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and one copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Washington, DC 20202–4725, or

(2) Hand-deliver the original and one copy of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA Number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Instructions for the Application Narrative.

d. Estimated Public Reporting Burden Statement.

e. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

f. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

g. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

h. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

i. Notice to All Applicants.

j. Checklist for Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit *one original* signed application, including ink signatures on all forms and assurances, and *one* copy of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 600 Independence Avenue, SW., room 5623, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9907. Individuals

who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7454.

Dated: November 24, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Public Reporting Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528 (Expiration date: April 30, 1998). The time required to complete this information collection is estimated to average 60 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Room 5623, Mary E. Switzer Building, Washington, DC 20202–6510.

Instructions for the Application Narrative

Abstract

The narrative section should begin with an abstract that includes a short description of the LEP population in the State, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving American's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U. S. Department of Education, Washington, DC 20202–4651.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (SF 424).
2. Budget Information Form (ED Form No. 524).
3. Itemized budget for each year.
4. Assurances—Non-Construction Programs Form (SF 424B).
5. Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
7. Disclosure of Lobbying Activities Form (SF–LLL).
8. Information that addresses section 427 of the General Education Provisions Act. (See the above section entitled "Notice to all Applicants" (OMB No. 1801–0004).)
9. Table of Contents.
10. Application narrative, including abstract.
11. One original and one copy of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 4 0
TITLE: Bilingual Education: State Grant Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independense Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of

receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT NAME	PR/AWARD NUMBER AND / OR PROJECT
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ___ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:*	
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

[FR Doc. 97–31566 Filed 12–1–97; 8:45 am]
BILLING CODE 4000–01–C

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federal register

Tuesday
December 2, 1997

Part VI

General Services Administration

41 CFR Chapter 301

Federal Travel Regulation; Maximum Per Diem Rates; Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 68]

RIN 3090–AG43

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases/decreases the maximum lodging amounts in certain existing per diem localities, adds new per diem localities, deletes a number of previously designated per diem localities, and adds information to encourage employees to stay in a fire-safe approved accommodation. The meals and incidental expenses (M&IE) amounts remain the same.

DATES: This final rule is effective on January 1, 1998, and applies for travel performed on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **FEDERAL REGISTER** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble 41 CFR chapter 301 is revised to read as follows:

PART 301–7—PER DIEM ALLOWANCES

1. The authority citation for Part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5701–5709.

2. Appendix A to chapter 301 is revised to read as follows:

APPENDIX A TO CHAPTER 301—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under § 301–7.3(a) of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

It is the policy of the Government, as reflected in the Hotel Motel Fire Safety Act of 1990 (Pub. L. No. 101–391, September 25, 1990), referred to as "the Act" in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, employees are encouraged to stay in a facility which is fire-safe, i.e., an approved accommodation, when commercial lodging is required. Lodgings that have met the Government requirements are listed on the U. S. Fire Administration's Internet site at http://www.usfa.fema.gov/hotel/index.htm.

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2, 3]					
CONUS, Standard rate		$50		$30		$80
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302–2, 302–4, and 302–5 of this subtitle.)						
ALABAMA						
Birmingham	Jefferson	64		38		102
Gulf Shores	Baldwin.					
(May 1–September 30)		104		34		138
(October 1–April 30)		60		34		94
Huntsville	Madison	64		34		98
Mobile	Mobile	62		38		100
Montgomery	Montgomery	67		30		97
ARIZONA						
Casa Grande	Pinal.					
(January 1–April 30)		61		30		91
(May 1–December 31)		54		30		84
Chinle	Apache.					
(April 1–October 31)		93		30		123
(November 1–March 31)		60		30		90
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area..					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2, 3]					
(April 1–October 31)		79		34		113
(November 1–March 31)		59		34		93
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County.	111		38		149
Kayenta	Navajo.					
(April 1–October 31)		105		30		135
(November 1–March 31)		68		30		98
Phoenix/Scottsdale	Maricopa.					
(October 1–May 14)		106		38		144
(May 15–September 30)		72		38		110
Prescott	Yavapai	59		34		93
Sierra Vista	Cochise	56		30		86
Tucson	Pima County; Davis-Monthan AFB.					
(November 1–May 31)		85		34		119
(June 1–October 31)		67		34		101
Yuma	Yuma	64		30		94
ARKANSAS						
Little Rock	Pulaski	61		30		91
CALIFORNIA						
Clearlake	Lake	65		34		99
Death Valley	Inyo	93		42		135
Eureka	Humboldt	76		34		110
Fresno	Fresno	70		34		104
Los Angeles	Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.	109		42		151
Mammoth Lakes/Bridgeport	Mono	83		42		125
Merced	Merced	54		34		88
Modesto	Stanislaus	63		34		97
Monterey	Monterey	94		38		132
Napa	Napa.					
(April 1–October 31)		116		42		158
(November 1–March 31)		103		42		145
Oakhurst/Madera	Madera	61		30		91
Oakland	Alameda, Contra Costa and Marin	111		34		145
Ontario	San Bernardino	66		38		104
Palm Springs	Riverside.					
(November 1–May 31)		81		38		119
(April 1–October 31)		50		38		88
Palo Alto/San Jose	Santa Clara	116		42		158
Point Arena/Gualala	Mendocino	120		42		162
Redding	Shasta	53		34		87
Redwood City/San Mateo	San Mateo	87		38		125
Sacramento	Sacramento	81		38		119
San Diego	San Diego	93		38		131
San Francisco	San Francisco	120		42		162
San Luis Obispo	San Luis Obispo	66		38		104
Santa Barbara	Santa Barbara	98		34		132
Santa Cruz	Santa Cruz.					
(June 1–September 30)		87		38		125
(October 1–May 31)		51		38		89
Santa Rosa	Sonoma	64		38		102
South Lake Tahoe	El Dorado (See also Stateline, NV.)	96		38		134
Stockton	San Joaquin	55		34		89
Tahoe City	Placer	94		38		132
Visalia	Tulare	55		38		93
West Sacramento	Yolo	88		30		118
Yosemite Nat'l Park	Mariposa.					
(April 1–October 31)		87		42		129
(November 1–April 30)		59		42		101
COLORADO						
Aspen	Pitkin	145		42		187
Boulder	Boulder.					
(May 1–October 31)		92		38		130
(November 1–April 30)		70		38		108
Colorado Springs	El Paso.					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
(April 1–October 31)		76		30		106
(November 1–March 31)		63		30		93
Cortez	Montezuma.					
May 1–September 30)		57		30		87
October 1–April 30)		50		30		80
Denver	Denver, Adams, Arapahoe and Jefferson	92		34		126
Durango	La Plata.					
(June 1–October 31)		100		34		134
(November 1–May 31)		50		34		84
Fort Collins/Loveland	Larimer	55		30		85
Glenwood Springs	Garfield	69		34		103
Grand Junction	Mesa	56		30		86
Gunnison	Gunnison.					
(June 1–September 30)		62		30		92
(October 1–May 31)		50		30		80
Keystone/Silverthorne	Summit	170		42		212
Montrose	Montrose	60		30		90
Pueblo	Pueblo.					
(June 1–September 30)		67		30		97
(October 1–May 31)		57		30		87
Steamboat Springs	Routt.					
(December 1–March 31)		97		34		131
(April 1–November 30)		50		34		84
Telluride	San Miguel.					
(November 1–March 31)		129		38		167
(April 1–October 31)		110		38		148
Trinidad	Las Animas.					
(June 1–September 30)		67		30		97
(October 1–May 31)		50		30		80
Vail	Eagle.					
(November 1–March 31)		226		42		268
(April 1–October 31)		99		42		141
CONNECTICUT						
Bridgeport/Danbury	Fairfield	96		38		134
Hartford	Hartford and Middlesex	91		30		121
New Haven	New Haven	87		30		117
New London/Groton	New London.					
(June 1–October 31)		87		34		121
(November 1–May 31)		50		34		84
Putnam/Danielson	Windham	84		30		114
Salisbury/Lakeville	Litchfield	69		34		103
Vernon	Tolland	54		30		84
DELAWARE						
Dover	Kent.					
(May 1–September 30)		60		34		94
(October 31–April 30)		54		34		88
Lewes	Sussex.					
(June 1–September 14)		123		38		161
(September 15–May 31)		92		38		130
Wilmington	New Castle	93		38		131
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia.)		126		42		168
FLORIDA						
Altamonte Springs	Seminole	81		34		115
Bradenton	Manatee.					
(January 1–May 14)		76		30		106
(May 15–December 31)		50		30		80
Cocoa Beach	Brevard	84		34		118
Daytona Beach	Volusia.					
(February 1–August 31)		90		34		124
(September 1–January 31)		54		34		88
Fort Lauderdale	Broward.					
(December 15–April 30)		104		34		138
(May 1–December 14)		72		34		106

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
Fort Myers	Lee.					
(January 1–April 30)		96		34		132
(May 1–December 31)		53		34		87
Fort Pierce	Saint Lucie.					
(December 1–April 30)		61		30		91
(May 1–November 30)		50		30		80
Fort Walton Beach	Okaloosa	80		30		110
Gainesville	Alachua	64		34		98
Gulf Breeze	Santa Rosa	65		34		99
Jacksonville	Duval County; Naval Station Mayport	73		30		103
Key West	Monroe.					
(December 15–April 30)		147		42		189
(May 1–December 14)		94		42		136
Kissimmee	Osceola	74		30		104
Lakeland	Polk	63		30		93
Miami	Dade.					
(December 15–April 30)		89		42		131
(May 1–December 14)		71		42		113
Naples	Collier.					
(December 15–April 30)		126		38		164
(May 1–December 14)		65		38		103
Orlando	Orange	77		34		111
Panama City	Bay.					
(March 1–September 14)		77		30		107
(September 15–February 29)		59		30		89
Pensacola	Escambia	59		34		93
Punta Gorda	Charlotte.					
(December 15–April 14)		76		34		110
(April 15–December 14)		54		34		88
Saint Augustine	Saint Johns	65		34		99
Sarasota	Sarasota.					
(December 15–April 30)		89		34		123
(May 1–December 14)		52		34		86
Stuart	Martin.					
(January 1–April 30)		69		34		103
(May 1–December 14)		63		34		97
Tallahassee	Leon	66		34		100
Tampa/St. Petersburg	Hillsborough and Pinellas.					
(January 1–April 30)		103		38		141
(May 1–December 14)		81		38		119
Vero Beach	Indian River.					
(January 15–April 30)		63		30		93
(May 1–January 14)		50		30		80
West Palm Beach	Palm Beach.					
(January 1–April 30)		94		38		132
(May 1–December 31)		67		38		105
GEORGIA						
Albany	Dougherty	58		30		88
Athens	Clarke	58		34		92
Atlanta	Clayton, De Kalb, Fulton, Cobb and Gwinnett	97		38		135
Augusta	Richmond	70		30		100
Columbus	Muscogee	63		30		93
Conyers	Rockdale	65		30		95
Macon	Bibb	86		30		116
Savannah	Chatham	71		34		105
IDAHO						
Boise	Ada	68		34		102
Coeur d'Alene	Kootenai.					
(May 1–September 30)		56		34		90
(October 1–April 30)		50		34		84
Idaho Falls	Bonneville	56		34		90
Ketchum/Sun Valley	Blaine	87		38		125
McCall	Valley	59		34		93
Stanley	Custer.					
(June 1–September 30)		57		34		91
(October 1–May 31)		50		34		84

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
ILLINOIS						
Aurora	Kane	56		30		86
Champaign/Urbana	Champaign	56		34		90
Chicago	Du Page, Cook and Lake	120		42		162
Elgin	King	59		30		89
Joliet	Will	52		30		82
Peoria	Peoria	54		34		88
Rock Island	Rock Island	85		30		115
Rockford	Winnebago	65		38		103
Springfield	Sangamon	55		30		85
INDIANA						
Bloomington/Crane	Monroe and Martin	56		34		90
Carmel	Hamilton.					
(June 1–September 30)		82		38		120
(October 1–May 31)		73		38		111
Fort Wayne	Allen	52		30		82
Indianapolis	Marion County; Fort Benjamin Harrison	79		38		117
Lafayette	Tippecanoe	54		34		88
Michigan City	La Porte	57		30		87
Muncie	Delaware	52		30		82
Nashville	Brown.					
(June 1–October 31)		117		30		147
(November 1–May 31)		65		30		95
South Bend	St. Joseph	61		30		91
Valparaiso/Burlington Beach	Porter	65		30		95
IOWA						
Bettendorf/Davenport	Scott	60		30		90
Cedar Rapids	Linn	52		34		86
Des Moines	Polk	68		30		98
KANSAS						
Kansas City	Johnson and Wyandotte (See also Kansas City, MO.).	88		42		130
Wichita	Sedgwick	62		34		96
KENTUCKY						
Covington	Kenton	64		34		98
Florence	Boone	59		30		89
Lexington	Fayette	62		34		96
Louisville	Jefferson	71		38		109
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	67		34		101
Bossier City	Bossier Parish	60		30		90
Gonzales	Ascension Parish	57		30		87
Lake Charles	Calcasieu Parish	83		30		113
New Orleans	Parishes of Jefferson, Orleans, Plaquemines and St. Bernard.	88		42		130
Opelousas	St. Landry	62		30		92
Shreveport	Caddo Parish	60		34		94
St. Francisville	West Feliciana	88		30		118
MAINE						
Bangor	Penobscot.					
(July 1–October 31)		59		30		89
(November 1–June 30)		50		30		80
Bar Harbor	Hancock.					
(July 1–September 14)		138		34		172
(September 15–June 30)		63		34		97
Bath	Sagadahoc.					
(June 1–September 30)		61		30		91
(October 1–June 30)		52		30		82
Calais	Washington.					
(July 1–September 30)		59		30		89
(October 1–June 30)		50		30		80
Kennebunk/Sanford	York.					
(May 1–September 30)		91		34		125
(October 1–April 30)		59		34		93
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH.).					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
(June 1–October 31)		81		34		115
(November 1–May 31)		57		34		91
Portland	Cumberland.					
(July 1–October 31)		86		38		124
(November 1–June 30)		63		38		101
Rockport	Knox.					
(June 15–October 31)		102		34		136
(November 1–June 14)		58		34		92
Wiscasset	Lincoln.					
(July 1–September 14)		100		30		130
(September 15–June 30)		64		30		94
MARYLAND						
(For the counties of Montgomery and Prince George's, see District of Columbia.)						
Annapolis	Anne Arundel	96		38		134
Baltimore	Baltimore and Harford	110		38		148
Columbia	Howard	92		42		134
Frederick	Frederick	56		38		94
Grasonville	Queen Annes	59		34		93
Hagerstown	Washington	54		30		84
Lexington Park/St. Leonardtown.	Saint Mary's	59		34		93
Lusby	Calvert	59		34		93
Ocean City	Worcester.					
(May 1–September 30)		145		42		187
(October 1–April 30)		50		42		92
Salisbury	Wicomico	58		34		92
St. Michaels	Talbot.					
(April 1–November 30)		130		38		168
(December 1–March 31)		103		38		141
MASSACHUSETTS						
Andover	Essex	78		38		116
Boston	Suffolk	116		42		158
Cambridge/Lowell	Middlesex.					
(April 1–November 30)		127		34		161
(September 15–May 31)		116		34		150
Greenfield/South Deerfield	Franklin	55		30		85
Hyannis	Barnstable.					
(July 1–September 30)		104		38		142
(October 1–June 30)		55		38		93
Martha's Vineyard	Dukes.					
(June 1–October 31)		159		42		201
(November 1–May 31)		92		42		134
Nantucket	Nantucket.					
(June 1–October 31)		149		42		191
(November 1–May 31)		92		42		134
Northampton	Hampshire	68		30		98
Pittsfield	Berkshire	52		34		86
Plymouth	Plymouth.					
(June 15–October 31)		92		30		122
(November 1–June 14)		70		30		100
Quincy	Norfolk	77		34		111
Springfield	Hampden	67		30		97
Taunton/New Bedford	Bristol	64		30		94
Worcester	Worcester	61		30		91
MICHIGAN						
Ann Arbor	Washtenaw	75		30		105
Charlevoix	Charlevoix.					
(June 1–September 30)		70		30		100
(October 1–May 31)		50		30		80
Detroit	Wayne	89		38		127
East Lansing/Lansing	Ingham	72		30		102
Flint	Genesee	57		30		87
Frankfort	Benzie	76		30		106
Gaylord	Otsego	59		34		93
Grand Rapids	Kent	62		34		96
Holland	Ottawa	64		30		94
Kalamazoo	Kalamazoo	54		30		84

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
Leland	Leelanau.					
(May 1–September 30)		100		30		130
(October 1–April 30)		53		30		83
Mackinac Island	Mackinac.					
(June 1–September 30)		94		38		132
(October 1–May 31)		61		38		99
Manistee	Manistee.					
(June 1–September 30)		63		30		93
(October 1–May 31)		50		30		80
Midland	Midland	58		30		88
Mount Pleasant	Isabella	56		30		86
Muskegon	Muskegon	61		30		91
Ontonagon	Ontonagon	55		30		85
Petoskey	Emmet.					
(June 1–October 31)		56		34		90
(November 1–May 31)		50		34		84
Pontiac/Troy	Oakland	93		38		131
Sault Ste Marie	Chippewa.					
(June 1–October 31)		77		34		111
(November 1–May 31)		60		34		94
South Haven	Van Buren.					
(May 1–September 30)		85		30		115
(October 1–April 30)		54		30		84
Traverse City	Grand Traverse.					
(May 1–September 30)		97		34		131
(October 1–April 30)		58		34		92
Warren	Macomb	61		30		91
MINNESOTA						
Duluth	St. Louis.					
(June 1–September 30)		66		38		104
(October 1–May 31)		57		38		95
Minneapolis/St. Paul	Anoka, Hennepin, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount.	91		38		129
Rochester	Olmsted	68		30		98
MISSISSIPPI						
Biloxi/Gulfport/Pascagoula/Bay St. Louis.	Harrison, Jackson, and Hancock	79		34		113
Jackson	Hinds	65		34		99
Ridgeland	Madison	55		34		89
Robinsonville	Tunica	51		30		81
Vicksburg	Warren	56		30		86
MISSOURI						
Branson	Taney.					
(May 1–October 31)		68		30		98
(November 1–April 30)		54		30		84
Cape Girardeau	Cape Girardeau	54		30		84
Hannibal	Marion	55		30		85
Jefferson City	Cole	52		30		82
Kansas City	Clay, Jackson and Platte (See also Kansas City, KS.).	88		42		130
Lake Ozark	Miller	55		34		89
Osage Beach	Camden	55		34		89
Springfield	Greene	53		34		87
St. Louis	St. Charles and St. Louis	75		42		117
MONTANA						
Great Falls	Cascade	52		30		82
Polson/Kalispell	Lake	54		30		84
West Yellowstone Park	Gallatin	52		30		82
NEBRASKA						
Lincoln	Lancaster	51		30		81
Omaha	Douglas	67		34		101
NEVADA						
Elko	All points in Elko County excluding Wendover	57		30		87
Incline Village	All points in the Northern Lake Tahoe area within Washoe County.					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
(June 1–September 30)		119		38		157
(October 1–May 31)		76		38		114
Las Vegas	Clark County; Nellis AFB	80		38		118
Reno	All points in Washoe County not covered under Incline Village per diem locality.	57		34		91
Stateline	Douglas (See also South Lake Tahoe, CA.)	96		38		134
Winnemucca	Humboldt	51		30		81
NEW HAMPSHIRE						
Concord	Merrimack.					
(June 1–October 31)		68		30		98
(November 1–May 31)		50		30		80
Conway	Carroll.					
(June 1–October 31)		81		34		115
(November 1–May 31)		54		34		88
Durham	Strafford.					
(May 1–October 31)		71		30		101
(November 1–April 30)		63		30		93
Hanover	Grafton and Sullivan.					
(June 1–October 31)		113		38		151
(November 1–May 31)		86		38		124
Laconia	Belknap	70		30		100
Manchester	Hillsborough	73		30		103
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME.).					
(June 1–October 31)		81		34		115
(November 1–May 31)		57		34		91
NEW JERSEY						
Atlantic City	Atlantic	84		38		122
Cherry Hill/Camden/Moorestown	Camden	74		38		112
Flemington	Hunterdon	80		34		114
Freehold/Eatontown	Monmouth County; Fort Monmouth	89		34		123
Millville	Cumberland	54		34		88
Newark	Bergen, Essex, Hudson, Passaic and Union	94		42		136
Ocean City/Cape May	Cape May.					
(May 15–September 30)		165		30		195
(October 1–May 14)		95		30		125
Parsippany/Dover	Morris County; Picatinny Arsenal	118		38		156
Piscataway/Edison	Middlesex	105		38		143
Princeton/Trenton	Mercer	87		38		125
Tom's River	Ocean.					
(June 1–September 30)		69		34		103
(October 1–May 31)		63		34		97
NEW MEXICO						
Albuquerque	Bernalillo	70		34		104
Farmington	San Juan	53		34		87
Gallup	McKinley	58		30		88
Los Alamos	Los Alamos	81		34		115
Santa Fe	Santa Fe.					
(May 1–October 31)		122		42		164
(November 1–April 30)		83		42		125
Taos	Taos	66		34		100
NEW YORK						
Albany	Albany	68		38		116
Batavia	Genesee.					
(May 1–September 30)		67		34		101
(October 1–April 30)		50		34		84
Binghamton	Broome	54		34		88
Buffalo	Erie	78		38		116
Corning	Steuben	59		30		89
Elmira	Chemung	53		30		83
Glens Falls	Warren.					
(June 1–October 31)		74		38		112
(November 1–May 31)		63		38		101
Ithaca	Tompkins	56		30		86
Kingston	Ulster	52		34		86
Lake Placid	Essex.					
(June 1–November 14)		75		34		109

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
(November 15–May 31)		59		34		93
New York City	The boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties.	198		42		240
Niagara Falls	Niagara.					
(May 15–October 31)		65		34		99
(November 1–May 14)		50		34		84
Nyack/Palisades	Rockland	53		34		87
Owego	Tioga	63		30		93
Palisades/Nyack	Rockland	61		30		91
Plattsburgh	Clinton	58		34		92
Poughkeepsie	Dutchess	74		30		104
Rochester	Monroe	65		42		107
Saratoga Springs	Saratoga.					
(May 1–October 31)		104		38		142
(November 1–April 30)		56		38		94
Schenectady	Schenectady	52		34		86
Syracuse	Onondaga	71		34		105
Tarrytown/White Plains	Westchester	114		42		156
Utica	Oneida	66		34		100
Waterloo/Romulus	Seneca	69		30		99
Watertown	Jefferson	59		30		89
Watkins Glen	Schuyler	60		30		90
West Point	Orange	57		30		87
NORTH CAROLINA						
Asheville	Buncombe	52		34		86
Charlotte	Mecklenburg	71		38		109
Fayetteville	Cumberland	82		30		112
Greensboro/High Point	Guilford	67		34		101
Kill Devil/Duck/Outerbanks	Dare.					
(May 1–September 30)		118		34		152
(October 1–April 30)		50		34		84
Morehead City	Carteret.					
(April 1–August 31)		64		30		94
(September 1–March 31)		50		30		80
New Bern/Havelock	Craven	84		30		114
Research Park/Raleigh/Durham/Chapel Hill.	Wake, Durham and Orange	96		38		134
Wilmington	New Hanover.					
(March 1–September 30)		65		30		95
(October 1–February 29)		55		30		85
Winston–Salem	Forsyth	80		34		114
NORTH DAKOTA (See footnote 5)						
OHIO						
Akron	Summit	72		34		106
Cambridge	Guernsey.					
(June 1–October 31)		61		30		91
(November 1–May 31)		50		30		80
Canton	Stark	58		30		88
Cincinnati/Evendale	Hamilton and Warren	76		34		110
Cleveland	Cuyahoga	83		38		121
Columbus	Franklin	81		34		115
Dayton/Fairborn	Montgomery and Greene; Wright-Patterson AFB	74		30		104
Elyria	Lorain.					
(May 1–September 30)		89		30		119
(October 1–April 30)		54		30		84
Fairfield/Hamilton	Butler	58		30		88
Geneva	Ashtabula	75		30		105
Jackson	Jackson and Pike	54		30		84
Lancaster	Fairfield	53		30		83
Norwalk/Bellevue	Huron.					
(May 1–September 30)		73		30		103
(October 1–April 30)		50		30		80
Port Clinton/Oakharbor	Ottawa.					
(June 1–September 30)		89		30		119
(October 1–May 31)		50		30		80
Sandusky	Erie.					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
(May 1–September 30)		109		30		139
(October 1–April 30)		50		30		80
Springfield	Clark	56		34		90
Toledo	Lucas	57		34		91
OKLAHOMA						
Norman	Cleveland	59		30		89
Oklahoma City	Oklahoma	65		30		95
Tulsa/Bartlesville	Osage, Tulsa and Washington	54		30		84
OREGON						
Ashland/Medford	Jackson.					
(June 1–October 31)		83		38		121
(November 1–May 31)		50		38		88
Beaverton	Washington	68		38		106
Bend	Deschutes	70		30		100
Clackamas/Milwaukie	Clackamas	65		30		95
Coos Bay	Coos	60		30		90
Florence/Eugene	Lane.					
(July 1–September 30)		72		34		106
(October 1–June 30)		52		34		86
Gold Beach	Curry.					
(May 15–October 31)		69		30		99
(November 1–May 14)		50		30		80
Klamath Falls	Klamath	69		38		107
Lincoln City/Newport	Lincoln.					
(June 1–October 31)		85		38		123
(November 1–May 31)		58		38		96
Portland	Multnomah	89		38		127
Salem	Marion	56		30		86
Seaside	Clatsop	59		30		89
PENNSYLVANIA						
Allentown	Lehigh	66		34		100
Beaver Falls	Beaver	54		30		84
Chester/Radnor	Delaware	99		42		141
Gettysburg	Adams.					
(May 1–October 31)		72		34		106
(November 1–April 30)		53		34		87
King of Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA.).	84		38		122
Lancaster	Lancaster	63		34		97
Mechanicsburg	Cumberland	65		30		95
Mercer	Mercer	52		30		82
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County.	113		38		151
Pittsburgh	Allegheny	90		38		128
Reading	Berks	57		30		87
Scranton	Lackawanna	61		34		95
Warminster	Bucks County; Naval Air Development Center	54		34		88
Valley Forge/Malvern	Chester	95		38		133
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville.	59		34		93
Newport/Block Island	Newport and Washington.					
(May 1–October 14)		111		42		153
(October 15–April 30)		81		42		123
Providence	Providence	83		42		125
SOUTH CAROLINA						
Aiken	Aiken	70		30		100
Charleston	Charleston and Berkeley	100		34		134
Columbia	Richland	55		30		85
Greenville	Greenville	74		38		112
Hilton Head	Beaufort.					
(March 1–September 30)		128		34		162
(October 1–February 29)		69		34		103
Myrtle Beach	Horry County; Myrtle Beach AFB.					
(May 1–September 30)		141		34		175
(October 1–April 30)		60		34		94

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
Spartanburg	Spartanburg	54		30		84
SOUTH DAKOTA						
Custer	Custer.					
(June 1–September 30)		64		30		94
(October 1–May 31)		50		30		80
Hot Springs	Fall River.					
(May 1–September 30)		70		30		100
(October 1–April 30)		50		30		80
Rapid City	Pennington.					
(June 1–August 31)		84		30		114
(September 1–May 31)		50		30		80
Sioux Falls	Minnehaha	56		30		86
Sturgis	Meadeence.					
(June 15–August 31)		86		30		116
(September 15–April 30)		50		30		80
TENNESSEE						
Chattanooga	Hamilton	62		30		92
Gatlinburg	Sevier.					
(May 1–November 30)		85		34		119
(December 1–April 30)		61		34		95
Knoxville	Knox County; city of Oak Ridge	59		34		93
Memphis	Shelby	79		30		109
Murfreesboro	Rutherford	52		30		82
Nashville	Davidson	91		38		129
Townsend	Blount.					
(May 1–October 31)		77		30		107
(November 1–April 30)		50		30		80
TEXAS						
Abilene	Taylor	55		30		85
Amarillo	Potter	59		30		89
Austin	Travis	85		34		119
College Station/Bryan	Brazos	61		30		91
Corpus Christi/Ingelside	Nueces and San Patricio	62		30		92
Dallas/Fort Worth	Dallas and Tarrant	94		42		136
Eagle Pass	Maverick	57		34		91
El Paso	El Paso	56		30		86
Fort Davis	Jeff Davis	62		30		92
Galveston	Galveston	68		42		110
Granbury	Hood	53		30		83
Houston	Harris County; L.B. Johnson Space Center and Ellington AFB.	79		38		117
Killeen/Temple	Bell	59		30		89
Lajitas	Brewster.					
(September 1–May 31)		64		30		94
(June 1–August 31)		51		30		81
Lubbock	Lubbock	60		34		94
McAllen	Hidalgo	69		30		99
Midland/Odessa	Ector and Midland	52		30		82
Plano	Collin	58		34		92
San Antonio	Bexar	91		34		125
Tyler	Smith	60		30		90
Victoria	Victoria	54		30		84
Waco	McLennan	64		30		94
UTAH						
Bullfrog	Garfield	85		34		119
Cedar City	Iron.					
(June 1–September 30)		67		30		97
(October 1–May 31)		50		30		80
Moab	Grand	77		30		107
Park City	Summit.					
(December 1–March 31)		145		42		187
(April 1–November 30)		92		42		134
Provo	Utah	60		34		94
Salt Lake City/Ogden	Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot.	83		38		121
VERMONT						
Burlington/St. Albans	Chittenden and Franklin	68		34		102

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate[4] (c)
Key city[1]	County and/or other defined location[2,3]					
Manchester	Bennington	75		34		109
Middlebury	Addison	83		34		117
Montpelier	Washington	86		30		116
Rutland	Rutland.					
(December 15–March 31)		62		30		92
(April 1–December 14)		52		30		82
White River Junction	Windsor.					
(June 1–October 31)		113		30		143
(November 1–May 31)		86		30		116
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia.)						
Blacksburg	Montgomery	52		30		82
Charlottesville*		55		42		97
Harrisonburg	Harrisburg	54		30		84
Lexington*		52		30		82
Lynchburg*		65		34		99
Richmond*	Chesterfield and Henrico Counties; also Defense Supply Center.	77		38		115
Roanoke*	Roanoke	51		34		85
Virginia Beach*	Virginia Beach (also Norfolk, Portsmouth and Chesapeake)*.					
(May 1–September 30)		107		38		145
(October 1–April 30)		64		38		102
Wallops Island	Accomack.					
(June 1–October 14)		61		30		91
(October 15–May 31)		50		30		80
Williamsburg*	Williamsburg (also Hampton, Newport News, York County, Naval Weapons Station, Yorktown)*.					
(April 1–October 31)		99		34		133
(November 1–March 31)		59		34		93
Wintergreen	Nelson	101		42		143
*Denotes independent cities.						
WASHINGTON						
Anacortes/Mt. Vernon/Whidbey Island	Skagit and Island	54		34		88
Bellingham	Whatcom	54		34		88
Bremerton	Kitsap	66		30		96
Friday Harbor	San Juan.					
(June1–October 31)		129		38		167
(November 1–May 31)		74		38		112
Lynnwood/Everett	Snohomish	77		34		111
Ocean Shores	Grays Harbor.					
(April 1–September 30)		73		34		107
(October 1–March 31)		50		34		84
Olympia/Turnwater	Thurston	64		30		94
Port Angeles	Clallam.					
(May 15–September 30)		71		34		105
(October 1–May 14)		50		34		84
Port Townsend	Jefferson.					
(April 15–October 31)		63		30		93
(November 1–April 14)		53		30		83
Seattle	King	116		38		154
Spokane	Spokane	74		38		112
Tacoma	Pierce	83		30		113
Vancouver	Clark	62		34		96
WEST VIRGINIA						
Berkeley Springs	Morgan	89		30		119
Charleston	Kanawha	52		30		82
Martinsburg	Berkeley	62		30		92
Morgantown	Monongalia	71		30		101
Parkersburg	Wood	57		30		87
Wheeling	Ohio	59		34		93
WISCONSIN						
Appleton	Outagamie	57		30		87
Brookfield	Waukesha	74		38		112
Eau Claire	Eau Claire	54		34		88
Green Bay	Brown	61		30		91

Per diem locality				
Key city [1]	County and/or other defined location [2,3]	Maximum lodging amount (includes applicable taxes) (a)	+ M&IE rate (b)	= Maximum per diem rate [4] (c)
La Crosse	La Crosse	52	34	86
Lake Geneva	Walworth.			
(May 1–October 31)		69	34	103
(November 1–April 30)		51	34	85
Madison	Dane	72	34	106
Milwaukee	Milwaukee	77	34	111
Oshkosh	Winnebago	57	34	91
Plymouth/Sheboygan	Sheboygan	52	30	82
Racine/Kenosha	Racine and Kenosha.			
(June 1–September 30)		57	34	91
(October 1–May 31)		50	34	84
Rhinelander/Minocqua	Oneida	57	30	87
Sturgeon Bay	Door.			
(June 1–September 14)		77	30	107
(September 15–May 31)		50	30	80
Wisconsin Dells	Columbia.			
(June 1–September 14)		77	38	115
(September 15–May 31)		57	38	95
WYOMING				
Cody	Park.			
(May 1–September 30)		86	30	116
(October 1–April 30)		50	30	80
Jackson	Teton.			
(June 1–October 14)		105	42	147
(October 15–May 31)		76	42	118
Thermopolis	Hot Springs	54	30	84

[1] Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

[2] Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

[3] When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the two rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual review.

[5] The standard CONUS rate of $80 ($50 for lodging and $30 for M&IE) applies to all per diem localities in the State of North Dakota.

Dated: November 26, 1997.

David J. Barram,

Administrator of General Services

[FR Doc. 31590 Filed 12–1–97; 8:45 am]

Billing Code 6820–34–F

federal register

Tuesday
December 2, 1997

Part VII

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation Related Onshore and Offshore Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–5930–1]

RIN 2050–AC82

Oil Pollution Prevention and Response; Non-Transportation Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to revise the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements, found at 40 CFR part 112, to reduce its information collection burden. Proposed revisions would: give facility owners or operators flexibility to use alternative formats for SPCC Plans; allow the use of certain records maintained pursuant to usual and customary business practices, or pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to be used in lieu of records mandated by the SPCC requirements; reduce the information required to be submitted after certain spill events; and extend the period in which SPCC Plans must be reviewed and evaluated. EPA also proposes to amend the Facility Response Plan (FRP) requirements, found at 40 CFR 112.20, for two purposes. First, EPA proposes to provide a method to calculate storage capacity when certain facilities have tanks which contain mixtures of process water/waste water with 10% or less of oil. This calculation is for the sole purpose of determining whether a facility has sufficient capacity to subject it to the requirement in § 112.20 to prepare an FRP. Second, EPA proposes to amend the FRP requirements to clarify that the Integrated Contingency Plan format may be acceptable for an FRP. EPA believes that none of the proposed changes will have an adverse impact on public health or the environment. This is so because the proposal would maintain the same standards of environmental protection that the rule now affords while reducing its information collection burden.

DATES: Comments must be submitted on or before February 2, 1998.

ADDRESSES: Written comments on the proposed rule should be submitted in triplicate, by U.S. mail, to the Superfund Docket, at 401 M St., S.W., Washington, D.C. 20460 (mail code 5203G). The docket is physically located at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. Comments physically delivered to EPA by any means other than U.S. mail should go to the Arlington address. The docket number for the proposed rule is #SPCC–7. Comments may also be sent electronically to EPA at "superfund.docket@epamail.epa.gov." Files should be sent in ascii format. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Appointments to review the docket can be made by calling 703–603–9232. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769; or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, D.C. metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, D.C. metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. Introduction
II. Request for Comment and Discussion of Proposed Revisions
III. Summary of Supporting Analyses

I. Introduction

A. Regulated Entities

Entities Potentially Regulated by this Proposal Include:

Category	NAICS codes
Petroleum and Coal Products Manufacturing	NAICS 324.
Petroleum Bulk Stations and Terminals	NAICS 42271.
Crude Petroleum and Natural Gas Extraction	NAICS 211111.
Transportation (including Pipelines), Warehousing, and Marinas	NAICS 482–486/488112–48819/4883/48849/492–493/71393.
Electric Power Generation, Transmission, and Distribution	NAICS 2211.
Other Manufacturing	NAICS 31–33.
Gasoline Stations/Automotive Rental and Leasing	NAICS 4471/5321.
Heating Oil Dealers	NAICS 454311.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	NAICS 2121/2123/213114/213116.
Heavy Construction	NAICS 234.
Elementary and Secondary Schools, Colleges	NAICS 6111–6113.
Hospitals/Nursing and Residential Care Facilities	NAICS 622–623.
Crop and Animal Production	NAICS 111–112.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. It lists the types of entities of which EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act) requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. 33 U.S.C. 1321(j)(1)(C). The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency (EPA or the Agency). Executive Order (E.O.) 12777, section 2(b)(1), 56 FR 54757 (October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same E.O., the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT),

and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. (E.O. 12777 § 2(I) regarding authority to redelegate.) The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related facilities and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

C. Background of this Rulemaking

Part 112 of 40 CFR outlines requirements for both prevention of and response to oil spills. The prevention aspect of the rule requires preparation and implementation of the Spill Prevention, Control, and Countermeasure (SPCC) Plans. It was originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground oil storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or buried underground oil storage capacity greater than 42,000 gallons. Regulated facilities are also limited to those that, because of their location, could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines.

The SPCC requirements have been amended a number of times. On August 29, 1974, the regulation was amended to set out the Agency's policies on civil penalties for violation of section 311 requirements. 39 FR 31602. On March 26, 1976, the rule was again amended, primarily to clarify the criteria for determining whether or not a facility is subject to regulation. 41 FR 12567. Other revisions made in the March 26, 1976, rule clarified that the SPCC Plan must be in written form and specified the procedures for development of SPCC Plans for mobile facilities.

Implementation of the regulation since the 1976 revision indicated the need for other changes, primarily to clarify and simplify the rule. Therefore, on May 20, 1980, the Agency proposed further revisions to the SPCC rule. 45 FR 33814. The 1980 proposal was never finalized because the Agency believed these proposed changes needed additional justification. However, continuing experience with administering the program provided that justification and demonstrated a need for clarifications to 40 CFR 112.7. Accordingly, on October 22, 1991, the Agency proposed certain changes to 40 CFR 112.7 similar to those proposed in 1980. 56 FR 54612.

The October 1991 proposed revisions involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. To date, the proposal has not been finalized.

On November 4, 1992 (57 FR 52705), the Agency promulgated a revision to the civil penalty provisions for violations occurring prior to the enactment of the Oil Pollution Act of 1990 (OPA). On March 11, 1996, EPA rescinded that penalty provision because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646.

On February 17, 1993, the Agency again proposed further clarifications of and technical changes to the SPCC rule, and facility response plan requirements to implement OPA. 58 FR 8824. The proposed changes to the SPCC prevention requirements included clarifications of certain requirements, contingency plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. The facility response plan requirements of the 1993 proposal were promulgated on July 1, 1994, (59 FR 47384) and codified at 40 CFR 112.20–21. To date, the prevention requirements in the 1993 proposal have not been finalized.

In 1996, EPA concluded a survey of SPCC facilities. EPA used the results of that survey to help develop this proposed rule. The survey results are part of the administrative record for this rulemaking.

The purpose of this proposal is to reduce the information collection burden now imposed by the prevention requirements in the SPCC rule and the response requirements in the FRP rule without creating an adverse impact on public health or the environment. It supplements the 1991 and 1993 proposals. The earlier proposals remain pending, except for the withdrawal in this notice of the proposed 1991 definition of "SPCC Plan." A revised definition of that term is being reproposed today. EPA will, after considering public comments, promulgate a rule finalizing this proposal. In that rule, EPA will also finalize the 1991 and 1993 proposals. EPA is not seeking additional comments on either the 1991 or 1993 proposals.

II. Request for Comment and Discussion of Proposed Revisions

A. Request for Comment

EPA proposes to reduce the information collection burden of the SPCC rule through program changes. In connection with these proposed changes, EPA requests public comment on new standards, technologies, or approaches that have been developed since the enactment of OPA which would reduce the burden of other SPCC rule requirements, without compromising environmental protection. EPA requests comments on these possible measures in order to discover additional ways to reduce the information collection burden of the rule. Conversely, EPA also seeks comments on measures not now required that would enhance the environmental protection the SPCC rule provides. Both of these requests for public comments are for the purpose of securing information to develop possible future rules or policies, and are not for the purpose of developing a final rule implementing this proposed rule. Lastly, for purposes of developing a final rule, EPA is considering whether any change is justified in the level of storage capacity which subjects a facility to the requirement to prepare an SPCC Plan. Currently, a facility with a total aboveground storage capacity of 1,320 gallons or less of oil, but that has a single container with a capacity in excess of 660 gallons of oil is subject to SPCC requirements. EPA is considering eliminating the provision in the current rule that requires a facility having a container with a storage capacity in excess of 660 gallons to prepare an SPCC Plan, as long as the total capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aggregate aboveground storage capacity greater than 1,320 gallons, thereby eliminating the need for facilities with less than that capacity to prepare an SPCC Plan. EPA invites public comment on this issue and supporting data where available.

B. Proposed Program Revisions

Specific proposed revisions are discussed below.

40 CFR 112.2

On October 22, 1991, EPA proposed a definition for "SPCC Plan or Plan." 56 FR 54612, 54632. Today, EPA is withdrawing that proposal in favor of a revised definition. The proposed rule would describe an SPCC Plan, and would allow an Integrated Contingency Plan or a State plan that meets all the requirements of part 112 to be counted as an SPCC Plan, if it is sequentially cross-referenced from the requirement in § 112.7 to the page(s) of the equivalent requirement in the other plan. The Regional Administrator may accept any other format if it: (1) meets all regulatory requirements in the SPCC rule; and, (2) is sequentially cross-referenced by SPCC rule provision to the page(s) of the equivalent requirement in the other plan. The proposed change would allow facilities new flexibility in formatting an SPCC Plan. A new facility developing an SPCC Plan would have the opportunity to use the most convenient acceptable format. Existing facilities could also elect to use one of the proposed alternative formats. EPA contemplates that at least two types of formats could be used in addition to the format prescribed in § 112.7, and would amend the rule to include those formats as acceptable examples. The formats are discussed below.

Integrated Contingency Plans or ICPs. One format that would be allowed is an Integrated Contingency Plan (ICP) prepared in accordance with the notice published at 61 FR 28642, June 5, 1996. The intent of the ICP is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan.

The ICP was developed for facilities to integrate emergency response plan requirements. EPA does not contemplate that the use of an ICP or other format would reduce the information collection burden, but it would simplify compliance with multiple applicable statutes and rules.

State Plans and Requirements. Approximately 20 States have oil spill prevention requirements pursuant to State law. Included in those requirements is often the responsibility to prepare an SPCC-like plan. The proposed rule would allow an owner or operator of a facility flexibility to prepare a State SPCC-like plan in lieu of a Federal SPCC Plan if the State plan meets all the regulatory requirements contained in part 112. Like ICPs, State plans would also have to be cross-referenced sequentially from the Federal SPCC requirement in part 112 to the plan page(s) containing the equivalent requirement. In cases where an owner or operator of a facility chooses to prepare a State plan containing only some of the elements required in the Federal plan, the State plan would have to: (1) contain elements that are equal to or more stringent than Federal SPCC requirements; (2) be sequentially cross-referenced by SPCC rule provision to the page(s) of the equivalent Plan provision; and, (3) be supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

40 CFR 112.4(a)

Section 112.4(a) requires that an owner or operator of a facility subject to the SPCC rule provide certain information to EPA after a discharge of 1,000 gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single event, or when two reportable spills of any size occur within any twelve month period. Reportable spills are defined at 40 CFR 110.3. 61 FR 7419, February 28, 1996. EPA proposes to reduce the information that an owner or operator must report pursuant to § 112.4(a). The Agency proposes to require that the owner or operator would report: (1) the name of the facility; (2) the name(s) of the owner or operator of the facility; (3) the location of the facility; (4) a description of the facility, including maps, flow diagrams, and topographical charts; (5) the cause of the spill(s), including a failure analysis of system or subsystem in which the failure occurred; (6) corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements; (7) additional preventive measures taken or contemplated to minimize the possibility of recurrence; and, (8) such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event. EPA would eliminate from the rule the need to always submit: (1) the date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments. EPA believes that the information that would be eliminated from a post-spill report is not always necessary in order to accurately assess the spill or to require appropriate corrective action. The Regional Administrator would still retain discretion to require information that is specified by the current rule in a post-spill report, or any other information as he/she finds necessary. The reporting requirements under 40 CFR part 110 would still apply to any discharge of oil to navigable waters or adjoining shorelines that is "harmful" as specified in § 110.3.

40 CFR 112.5(b)

An owner or operator of a facility subject to the SPCC regulations must review and evaluate a facility's SPCC plan at least once every three years from the date the facility becomes subject to 40 CFR part 112. EPA is proposing to extend the period in which an owner or operator must conduct this review and evaluation from at least once every three years to at least once every five years. EPA is proposing this change because it believes that it would have the effect of reducing the record keeping burden, thus saving time and money for facilities, while causing no harm to the environment. A facility owner or operator would still have to amend an SPCC Plan whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of oil into or upon the navigable waters of the United States or adjoining shorelines. 40 CFR 112.5(a). Therefore, absent such changes, an SPCC plan should continue to provide adequate protection against discharges for a five year period.

In its 1991 proposal to amend the SPCC rule, EPA solicited comments on whether owners or operators of facilities should have to affix a signed and dated statement to the SPCC Plan indicating that the triennial review has taken place and whether or not amendment of the Plan is required. EPA did not at that time propose a rule change. 56 FR 54612, 54616, 54629, October 22, 1991. Today, EPA is implementing that request for comments with a proposed rule change that would provide that an owner or operator must certify completion of the review and evaluation. An owner or operator, for purposes of this certification, includes any person with authority to fully implement the Plan, e.g., a facility manager. The certification would entail little additional information collection burden as it would merely note completion of the review and evaluation process at least once every five years. See 5 CFR 1320.7(j)(1). It would be maintained with the Plan at the facility, and would provide EPA with written proof that the owner or operator has complied with the rule.

40 CFR 112.7 Introduction

EPA is proposing to amend the introduction to § 112.7 so that its language conforms to the newly proposed definition of an SPCC Plan in § 112.2. See the above discussion. The change to the introduction would merely track language in proposed § 112.2 to allow facilities flexibility to use certain alternative formats in lieu of the format prescribed in the SPCC rule, such as the ICP format, certain State formats, or other formats acceptable to the Regional Administrator.

40 CFR 112.7(e)(2)(iii)(D)

EPA is proposing to amend § 112.7(e)(2)(iii)(D), which applies to bulk storage tanks (onshore), excluding production facilities. Section 112.7(e)(2)(iii) authorizes the drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypasses the in-plant treatment system if four conditions are met. 40 CFR 112.7(e)(2)(iii)(A)–(D). The change would allow the use of records recording stormwater bypass events which are required to be kept under a National Pollutant Discharge Elimination System (NPDES) permit. In the NPDES regulations, "bypass" is defined to mean the "intentional diversion of waste streams from any portion of a treatment facility." 40 CFR 122.41(m)(1)(i).

The NPDES regulations set forth conditions that all NPDES permits must contain. 40 CFR 122.21. One of these NPDES "standard conditions" allows for excusable bypasses under certain conditions. 40 CFR 122.41(m)(2), (3), and (4). One of the conditions is that the permittee must provide notice of the bypass event. 40 CFR 122.41(m)(3). Under 40 CFR 122.41(j)(2), the permittee must maintain records of all such bypass events for at least three years from the date of the report. These permit conditions for notification and record keeping serve the same objective as the SPCC rule requirement in § 112.7(e)(2)(iii)(D), and the documentation is therefore acceptable to satisfy the SPCC requirement. Furthermore, the proposed change would reduce the information collection burden imposed by the SPCC rule. Owners or operators would no longer be required to maintain duplicate records of the same event pursuant to different regulatory programs.

This proposed change would also affect the information collection burden imposed by § 112.7(e)(5)(ii)(A). This section requires inspection of diked areas in onshore oil production facilities prior to drainage as provided in § 112.7(e)(2)(iii)(B), (C), and (D). By the cross reference to the record keeping requirements in § 112.7(e)(2)(iii)(D), the requirement to maintain adequate records of such events is included. Therefore, when those records of bypass event notification are maintained at onshore oil production facilities pursuant to NPDES permitting conditions as discussed above, duplicative record keeping under part 112 would be unnecessary.

40 CFR 112.7(e)(2)(vi)

Section 112.7(e)(2)(vi) requires periodic integrity testing of aboveground tanks, taking into account tank design (floating roof, etc.), and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. It further requires maintenance of comparison records when appropriate. Tank supports and foundations should be included in these inspections. In addition, the rule requires that the outside of the tank should be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

EPA proposes to amend § 112.7(e)(2)(vi) to provide that usual and customary business records would suffice to meet the record keeping requirements of the section. Among such usual and customary business records are those maintained pursuant to API Standards 653 and 2610.

API Standard 653 concerns tank inspection, repair, alteration, and reconstruction. It is considered the predominant standard for aboveground tank inspection and its provisions are based on tank design principles found in API Standards 620 and 650. API Standard 653 calls for owners or operators of tanks and associated systems to maintain a complete record file consisting of construction, repair/alteration history, and inspection history records. Construction records include nameplate information, drawings, specifications, construction complete reports, and any results of material tests and analyses. Repair/alteration history includes all data accumulated on a tank from the time of its construction with regard to repairs, alterations, replacements, and service changes. Inspection history includes all measurements taken, the condition of all parts inspected, and a record of all examinations and tests.

API Standard 2610 concerns design, construction, operation, maintenance, and inspection of terminal and tank facilities. It incorporates the requirements of many different standards for tanks into one document. The Standard recommends that records should be kept of the activities conducted pursuant to the Standard. It recommends that periodic inspection and preventive maintenance should be conducted on all transfer systems to control leaks. Accurate inventory records may be maintained and periodically reconciled for indication of possible leakage from tanks and piping systems. It further calls on the operator to keep complete maintenance records for all equipment within a terminal.

40 CFR 112.7(e)(8)

EPA proposes to amend § 112.7(e)(8) to provide that usual and customary business records, such as records maintained pursuant to API Standards 653 and 2610, would suffice to meet the requirements of the section. The revision would have the effect of reducing the information collection burden of the SPCC rule. See the discussion concerning usual and customary business practices above.

The section requires that inspections required by part 112 be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of inspections, signed by the appropriate supervisor or inspector, must be made a part of the SPCC Plan and maintained for a period of three years.

40 CFR 112.20(f)(4)

The owner or operator of any non-transportation-related onshore facility that, because of its location could be expected to cause substantial harm to the environment by discharging oil in harmful quantities into or on the navigable waters of the United States or adjoining shorelines, is required to prepare and submit a facility response plan to EPA. To determine whether a facility could cause substantial harm, an owner or operator of a facility must review the criteria listed in Appendix C of the rule and base his/her determination on those criteria. A facility that transfers oil over water to or from vessels and that has a total oil capacity greater than or equal to 42,000 gallons would meet the substantial harm criteria and be required to prepare and submit a response plan as required by § 112.20 to the appropriate Regional Administrator. Any other facility with a capacity of one million gallons or more would evaluate the criteria in 40 CFR 112.20(f)(1)(ii)(A)–(D) and work through the flowchart in Appendix C to determine whether it is a substantial harm facility.

EPA proposes to add a new paragraph to § 112.20(f) to provide a method to calculate the oil storage capacity of aboveground tanks containing a mixture of process water/waste water with 10% or less of oil. EPA is proposing this change because it believes that the harm due to spills from tanks that contain 90% or more of process water/waste water is roughly proportional to their oil content. Discharges from tanks containing process water/waste water and 10% or less oil will cause less harm to the environment than tanks containing a greater proportion of oil. Facilities that are required to prepare and submit facility response plans must do so because of the substantial harm that discharges of oil from those facilities might cause. That substantial harm is predicated, at least in part, on a storage capacity determination. If there is a smaller percentage of oil in a tank, there will be less likelihood of great harm. Therefore, EPA believes that the entire capacity of process water/waste water tanks with 10% or less of oil should not be counted in the capacity necessary to subject a facility to the requirement to prepare a facility response plan. Only the oil portion of the storage capacity in process water/waste water of 10% or less oil would be counted. EPA believes that an oil threshold capacity to determine substantial harm calculations of 10% or less in tanks containing process water/waste water is a reasonable one. It is reasonable because it exempts lower risk facilities, from which discharges would not reach substantial harm levels, from having to prepare facility response plans.

The proposed rule change, however, would have no effect on the calculations necessary to determine whether to prepare an SPCC Plan. Calculation of capacity under the SPCC rule of tanks containing mixtures of process water/waste water and oil would continue to be done as it is now. No change is necessary in SPCC capacity calculations because SPCC Plans are designed for prevention purposes, not response. While harm might result from discharges from these SPCC facilities, it would not reach the substantial harm level. Finally, this proposed change would not apply to the oil capacity determination for substantial harm saline process water/waste water from oil drilling, production, or workover facilities because discharges from such facilities have a greater likelihood of causing environmental damage than facilities that do not handle saline water.

Pursuant to the proposed rule, a facility owner or operator would determine the percentage of oil in the process or waste water in a tank. If the percentage of oil varies over a period of time, the owner or operator would use the highest percentage of oil for purposes of the capacity calculation. If the capacity of oil is 10% or less, the owner or operator would multiply the percentage of oil by the capacity of the tank or container. If appropriate, the owner or operator would then add the volume of oil calculated to the total capacity of any other oil storage tank or container with 100% oil or mixtures of oil and process or waste water above the 10% amount to determine its total capacity for the substantial harm determination of § 112.20(f).

40 CFR 112.20(h)

EPA proposes to amend § 112.20(h) to clarify that an Integrated Contingency Plan (ICP) prepared in accordance with the notice published at 61 FR 28642, June 5, 1996 is an acceptable format for a facility response plan. The ICP was developed for facilities to integrate emergency response plan requirements. The intent of the ICP is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan. Like the proposed requirements for SPCC Plans, the FRP rule already provides for cross-referencing. Similarly, an owner or operator who uses the ICP format must meet all of the regulatory requirements of the FRP rule for that format to be an acceptable substitute for the present FRP format.

EPA does not contemplate that the use of an ICP or other format would reduce the information collection burden of the FRP rule, but it would simplify compliance with multiple applicable statutes and rules.

Appendix C

EPA also proposes to amend Appendix C to this part to reflect changes proposed in § 112.20(f)(4). EPA also proposes to amend section 2.1 of Appendix C to state the correct capacity that subjects a facility to FRP requirements if it transfers oil over water to or from a vessel. That capacity in section 2.1 of Appendix C should read "greater than or equal to 42,000 gallons * * *" as specified in § 112.20(f)(1)(i).

III. Summary of Supporting Analyses

A. Executive Order 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The E.O. defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this proposed rule is a "significant regulatory action" because it raises novel legal or policy issues. Such issues include proposed measures which would relieve some facilities of regulatory mandates and could change the manner in which facilities comply with remaining mandates. Therefore, this action was submitted to OMB for review. Changes made in responses to the OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a significant adverse impact on a substantial number of small entities. EPA has determined that this proposed rule would not have a significant adverse impact on a substantial number of small entities because it would impose few if any new burdens, and overall would substantially reduce existing burdens on small businesses. Therefore, I certify that this proposed rule is not expected to have a significant adverse impact on a substantial number of small entities. Thus, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared by EPA (EPA ICR no. EPA 0328.06 and 1630.04) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, D.C. 20460 or by calling 202–260–2740. These ICRs are also available for viewing or downloading at EPA's ICR Internet site at http://www.epa.gov/icr.

EPA does not collect the information required by the Oil Pollution Prevention regulation (i.e., the SPCC Plan) on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC Plan data to ensure that facilities comply with the regulation. This includes design and operation specifications, and inspection requirements. EPA reviews SPCC Plans: (1) When facilities submit the Plans because of certain oil discharges, and (2) as part of EPA's inspection program. Note however, that the proposed rule would eliminate the necessity to submit the entire Plan after certain discharges, and merely retain the requirement that it be maintained at the facility. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. Preparation of the information for affected facilities is required pursuant to section 311(j)(1) of the Act as implemented by 40 CFR part 112.

Through this rulemaking, EPA proposes to reduce the reporting and record keeping burden for facilities regulated under the SPCC regulation by: (1) expanding the format of an acceptable SPCC plan to include plans prepared to meet State or other Federal standards (i.e., State plans, Integrated Contingency Plans, etc.); (2) extending the period of time that a facility must review its Plan from at least once every three years to at least once every five years; and (3) reducing the reporting requirements in the event of certain reportable oil spills and the record keeping requirements relating to certain discharges of rainwater from a diked area. In addition to the program changes outlined above, EPA is also proposing to decrease the information collection burden calculated for the SPCC rule so that the information collection burden incurred by persons in the normal course of their business activities would no longer be attributed to the part 112 burden.

To quantify the effect of these proposed changes on reducing burden to the regulated community, EPA relied, in part, on data gathered through the 1995 SPCC survey. EPA developed a series of analyses using the survey data including the paper EPA produced in 1996 entitled "Effectiveness of EPA's SPCC Program on Spill Risk." The results of the analysis show that compliance with several specific SPCC provisions appears to reduce both the number and the amount of oil that migrates outside of a facility's boundaries. Facility practices such as tank leak detection, spill overfill protection, pipe external protection, and secondary containment, also appear to reduce the number and magnitude of oil spills. The results also indicate that a facility's compliance with even one SPCC measure may serve as a general indicator of a facility owner's/operator's awareness of the importance of other spill prevention and control measures.

The net annual public reporting and record keeping burden for this collection of information, as proposed, for newly regulated facilities is estimated to range from 37.1 to 53.5 hours, with an average burden of 39.2 hours, including time for reviewing instructions and gathering the data needed. The net annual public reporting and record keeping burden for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range from 3.7 to 9.5 hours, with an average burden of 4.0 hours. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including frequency of oil discharges and facility modification. Under the proposed rule, an estimated 446,498 existing and newly regulated facilities are subject to the information collection requirements of this proposed rule during the first year of the information collection period. The net annualized capital and start-up costs average $0.3 million, and net annualized labor and operation and maintenance costs are $49.8 million.

The present information collection burden of the SPCC rule averages 2,557,194 hours per year for the information collection period. Through this rulemaking EPA proposes to reduce that burden by approximately 864,471 hours. This proposed reduction would result in an average annual burden of 1,692,723 hours.

In addition to the modifications the Agency is proposing to make to the SPCC rule, the Agency is also proposing to modify the information collection requirements of the Facility Response Plan (FRP) regulation as part of this rulemaking effort. The FRP rule (40 CFR 112.20–112.21) requires that owners and operators of facilities that could cause "substantial harm" to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. Each FRP is submitted to the Agency, which in turn, reviews and approves plans from facilities identified as having the potential to cause "significant and substantial harm" to the environment from oil discharges. Other low-risk, regulated facilities are not required to prepare FRPs but are required to document their determination that they do not meet the "substantial harm" criteria.

Through this rulemaking, EPA proposes to reduce the reporting and record keeping burden for facilities regulated under the FRP rule by adding a paragraph to § 112.20(f) to provide a method to calculate the oil storage capacity of aboveground tanks containing a mixture of process water/waste water with 10 percent or less of oil. EPA also proposes to amend § 112.20(h) to clarify that an Integrated Contingency Plan prepared in accordance with the notice published at 61 FR 28642, June 5, 1996, is an acceptable format for an FRP; and to amend section 2.1 of Appendix C to state the correct capacity that subjects a facility to FRP requirements if it transfers oil over water or to or from a vessel.

The Agency anticipates that only the first proposed change will have an appreciable impact on the burden to the regulated community. The Agency expects that the number of facilities subject to the requirements to develop an FRP and maintain the plan on a year-to-year basis will slightly decrease as a result of the proposed process water/waste water calculation. In the current ICR, EPA estimated that 5,400 facilities would be required to develop and submit FRPs and 4,482 of these facilities were large facilities (i.e., facilities with storage capacity greater than one million gallons). Of these 4,482 facilities, EPA estimated that approximately 250 facilities in the industrial manufacturing category would be excluded from the FRP requirements as a result of the proposal. Although these facilities have

already incurred costs to develop an FRP, the facilities would no longer incur costs associated with maintaining the Plan or retaining outside response contractors in the event of an oil spill. The Agency has previously estimated that it requires approximately 118 hours for facility personnel in a large, consumption facility to comply with the annual, subsequent-year reporting and record keeping requirements of the FRP rule after adjusting for compliance with other Federal and State regulations. The present information collection burden of the FRP rule averages 376,599 hours a year. Through this rulemaking EPA proposes to reduce that burden by approximately 24,190 hours. This proposed reduction would result in an annual average burden of 352,409 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates and the supporting analyses used to develop burden estimates, and any suggested methods for further minimizing respondent burden, including the use of automated collection techniques. Send comments on the Information Collection Request to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, D.C. 20460 or E-mail farmer.sandy@epamail.epa.gov; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 2, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by January 2, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Differentiation Between Classes of Oils

Pursuant to Public Law 104–55, 33 U.S.C. 2720, enacted November 20, 1995, most Federal agencies (including EPA) must, in the issuance or enforcement of any regulation or the establishment of any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease, consider differentiating between and establishing separate classes for animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin (as opposed to petroleum and other oils and greases). EPA has considered whether differentiation between and establishment of separate classes of oils is appropriate for this proposed rule and concluded that it is not. This conclusion is based on the fact that the EPA proposal would reduce the information collection burden for all classes of facilities. Achievement of that goal does not require differentiation among classes of oils.

E. Unfunded Mandates

Pursuant to section 202 of the Unfunded Mandates Reform Act (the Act) of 1995, enacted March 22,1995, Federal agencies must prepare a statement to accompany any rule in which the estimated costs of State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Section 205 of the Act requires agencies to select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires an agency to establish a plan for informing and advising any small government that may be significantly impacted by the rule. Small governments would not be significantly impacted by this proposed rule, therefore, it is not necessary to establish a plan pursuant to section 203. In fact, the proposed rule would reduce the information collection burden on small governments that have facilities which are subject to the SPCC rule.

EPA has determined that this proposed rule does not include a Federal mandate that would result in estimated costs of $100 million or more either to State, local, or tribal governments in the aggregate, or to the private sector in any one year. This determination is based on the fact that the proposed rule would impose no new mandates, and would reduce costs to the private sector, while imposing no new costs on State, local, or tribal governments. Thus today's proposal is not subject to the requirements of sections 202 and 205 of the Act.

F. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are developed or adopted by voluntary consensus standard bodies. In those cases where the Act applies and where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

Without necessarily deciding whether the Act applies here, EPA invites comment on the potential use of voluntary consensus standards in this rulemaking. In particular, as noted above, EPA proposes to amend 40 CFR 112.7(e)(2)(vi) and (e)(8) to provide that the records maintained pursuant to usual and customary business practices would suffice to meet the recordkeeping requirements of the sections. While not specifically referenced in the proposed regulation, usual and customary business records would include those maintained pursuant to American Petroleum Institute (API) Standards 653 and 2610. The Agency proposes this flexible approach to be consistent with the goal of reducing the recordkeeping requirements of this regulation. EPA invites public comment on the Agency's proposal as well as identification and information about other standards, and in particular, voluntary consensus standards, which the Agency should consider.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Petroleum, Reporting and record keeping requirements, Tanks, Water pollution control, Water resources.

Dated: November 24, 1997.

Carol Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 112 is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.2 is amended by adding the definition "Spill Prevention, Control, and Countermeasure Plan; SPCC Plan; or Plan" in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Spill Prevention, Control, and Countermeasure Plan; SPCC Plan; or *Plan* means the document required by § 112.3 that details the equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill. The Plan is a written description of the facility's compliance with the procedures in this part. It is prepared in writing and in accordance with the format specified in § 112.7, or in the format of a plan prepared pursuant to State law, or in another format acceptable to the Regional Administrator. If an owner or operator of a facility chooses to prepare a plan using either the Integrated Contingency Plan format or a State format or any other format acceptable to the Regional Administrator, such plan must meet all of the requirements in § 112.7, and be sequentially cross-referenced from the requirement in § 112.7 to the page(s) of the equivalent requirement in the other plan.

* * * * *

3. Section 112.4 is amended by revising paragraphs (a)(1) through (a)(8) to read as follows:

§ 112.4 Amendment of SPCC Plans by Regional Administrator.

(a) * * *

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Corrective action and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(5) Description of the facility, including maps, flow diagrams, and topographical maps;

(6) The cause(s) of such spill(s), including a failure analysis of system or subsystem in which the failure occurred;

(7) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

(8) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

* * * * *

4. Section 112.5 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

* * * * *

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3(a), (b), or (c) shall certify completion of a review and evaluation of the SPCC Plan at least once every five years from the date such facility becomes subject to this part. * * *

* * * * *

5. Section 112.7 is amended by revising the last sentence of the introductory text; and by revising paragraph (e)(2)(iii)(D), and the last sentence of paragraphs (e)(2)(vi), and (e)(8) to read as follows:

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

* * * The complete SPCC Plan shall follow the sequence outlined below, unless it is in another format acceptable to the Regional Administrator, such as one described in § 112.2, and include a discussion of the facility's conformance with the appropriate guidelines listed:

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(D) Adequate records are kept of such events, such as records required pursuant to permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

* * * * *

(vi) * * * Records of inspections maintained pursuant to usual and customary business practices will suffice for purposes of this paragraph.

* * * * *

(8) * * * Records of inspections maintained pursuant to usual and customary business practices will suffice for purposes of this paragraph.

* * * * *

6. Section 112.20 is amended by adding paragraph (f)(4) and by revising the first sentence of paragraph (h) to read as follows:

§ 112.20 Facility response plans.

* * * * *

(f) * * *

(4) To determine the capacity of a facility storing process water/waste water with oil concentrations of 10% or less, for purposes of paragraphs (f)(1)(i) and (ii) of this section (except for saline process water/waste water from an oil drilling, production, or workover facility), the following calculations shall be used:

(i) Determine the percentage of oil in the process water/waste water of a tank or container. If the percentage of oil varies over a period of time, the highest percentage shall be used;

(ii) If the percentage of oil is 10% or less, multiply the percentage of oil by the capacity of the tank or container;

(iii) If appropriate, add the amount calculated in paragraphs (f)(4)(i) and (4)(ii) of this section to the total capacity of any other oil tank or storage container containing 100% oil or mixtures of oil and process water/waste water above 10%;

(iv)(A) A facility that transfers oil over water to or from vessels and has a storage capacity of oil greater than or equal to 42,000 gallons will be considered a facility that could cause substantial harm to the environment by discharging oil to the navigable waters or adjoining shorelines.

(B) A facility with a capacity of 1 million gallons or greater shall continue through the criteria in appendix C of this part to determine whether the facility could cause substantial harm to the environment by discharging oil to the navigable waters or adjoining shorelines.; and

(v) A facility that has completed the calculations required by this paragraph and does not meet the substantial harm threshold will not have to prepare and submit a response plan unless directed to do so by the Regional Administrator.

* * * * *

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. * * *

* * * * *

7. Appendix C to part 112 is amended by revising section 2.0 and the first sentence of section 2.1 to read as follows:

Appendix C to Part 112—Substantial Harm Criteria

* * * * *

2.0 Description of Screening Criteria for the Substantial Harm Flowchart

A facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit a facility-specific response plan to EPA in accordance with appendix F to this part. To determine the capacity of a facility storing process water/waste water with oil concentrations of 10% or less (except for saline process water/waste water from an oil drilling, production, or workover facility), the respondent shall use the method prescribed in § 112.20(f)(4). A description of the screening criteria for the substantial harm flowchart is provided below:

2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil.

A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. * * *

* * * * *

[FR Doc. 97–31374 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
December 2, 1997

Part VIII

The President

Presidential Determination No. 98–4—Assistance Program for the New Independent States of the Former Soviet Union

Federal Register
Vol. 62, No. 231
Tuesday, December 2, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–4 of November 14, 1997

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (o) under the heading "Assistance for the New Independent States of the Former Soviet Union" in Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, for fiscal year 1996 (Public Law 104–107) and fiscal year 1997 (Public Law 104–208), I hereby determine that it is important to the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 14, 1997.

[FR Doc. 97–31772
Filed 12–1–97; 9:09 am]
Billing code 4710–10–M

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H.R. 2159/P.L. 105–118

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Nov. 26, 1997; 111 Stat. 2386)

H.R. 2267/P.L. 105–119

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Nov. 26, 1997; 111 Stat. 2440)

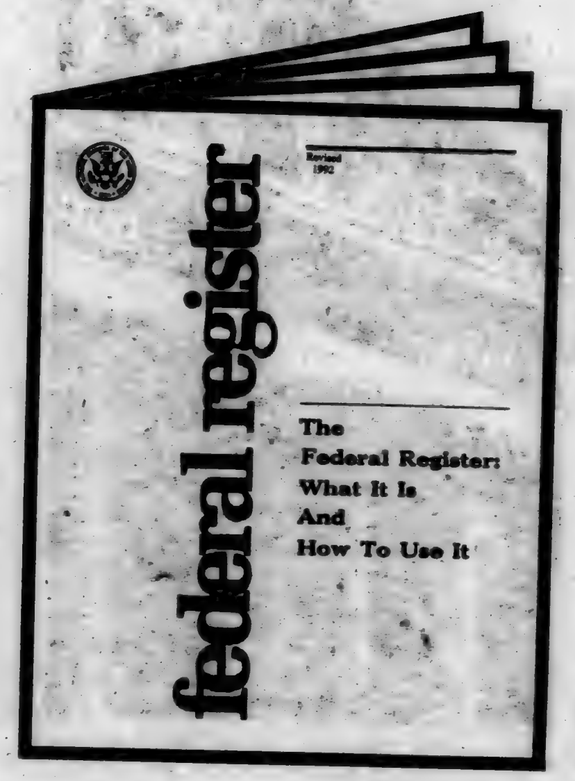
H.J. Res. 103/P.L. 105–120

Waiving certain enrollment requirements with respect to certain specified bills of the One Hundred Fifth Congress. (Nov. 26, 1997; 111 Stat. 2527)

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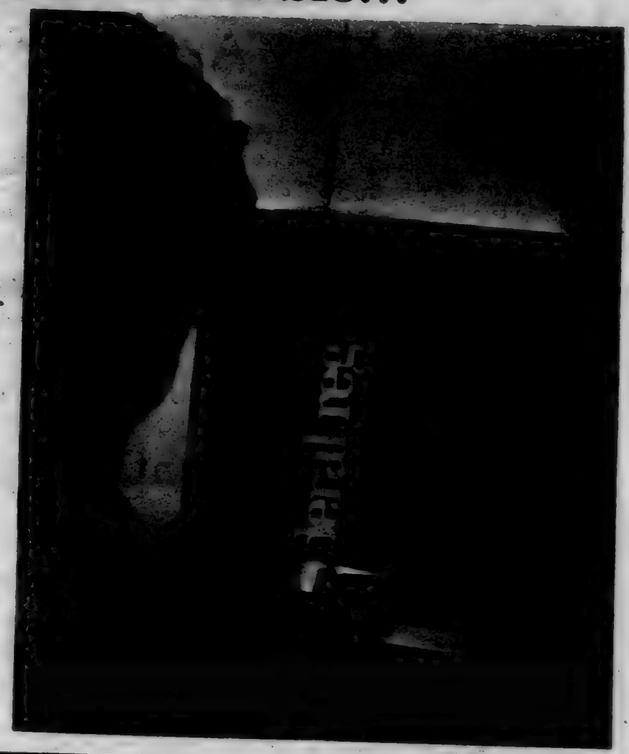
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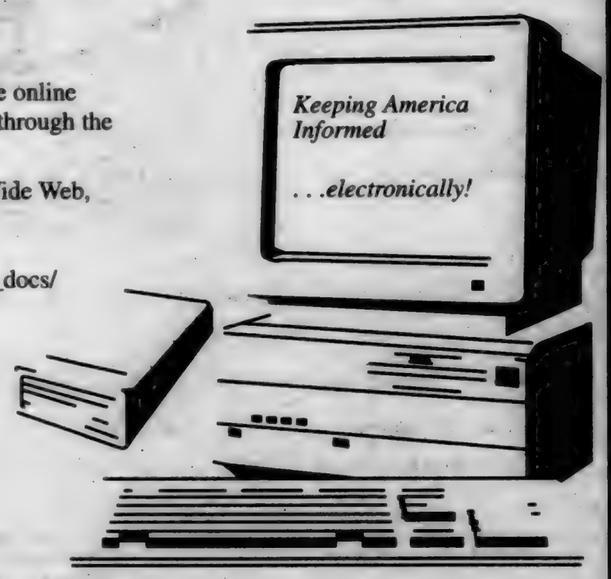
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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 62, No. 232
Wednesday, December 3, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN 3150–AF87

Criticality Accident Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule with opportunity to comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide light-water nuclear power reactor licensees with greater flexibility in meeting the requirement that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area where the material is handled, used, or stored. This action is taken as a result of the experience gained in processing and evaluating a number of exemption requests from power reactor licensees and NRC's safety assessments in response to these requests that concluded that the likelihood of criticality was negligible.

EFFECTIVE DATE: The final rule is effective February 17, 1998, unless significant adverse comments are received by January 2, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff.

Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Stan Turel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, e-mail spt@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) is amending its regulations to provide persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of paragraph (a) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with certain requirements that would be incorporated into 10 CFR Part 50. These are generally the requirements that the NRC has used to grant specific exemptions to the requirements of 10 CFR 70.24. In addition, the NRC is revising the current text of the section relating to seeking specific exemptions from regulations in 10 CFR 70.24(d) which provided that a licensee could seek an exemption to all or part of 10 CFR 70.24 for good cause because it is redundant to 10 CFR 70.14(a). A modified 10 CFR 70.24(d) is being added to provide that the requirements in paragraph (a) through (c) of 10 CFR Part 70.24 do not apply to holders of a construction permit or operating license for a nuclear power reactor issued pursuant to 10 CFR Part 50, or combined licenses issued under 10 CFR Part 52, if the holders comply with the requirements of 10 CFR 50.68 (b).

The Commission's regulations in 10 CFR 70.24 require that each licensee authorized to possess more than a small amount of SNM maintain a criticality monitoring system "using gamma- or neutron-sensitive radiation detectors which will energize clearly audible alarm signals if accidental criticality occurs" in each area in which such material is handled, used, or stored. The regulation also specifies sensitivity requirements for these monitors and details the training that licensees must conduct in connection with criticality monitor alarms. The purpose of this section is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted and would take appropriate action.

Most nuclear power plant licensees were granted exemptions from 10 CFR 70.24 during the construction of their plants as part of the 10 CFR Part 70 license issued to permit the receipt of the initial core. Generally, these exemptions were not explicitly renewed when the 10 CFR Part 50 operating license, which now contained the combined Part 50 and Part 70 authority, was issued. The requirements in 10 CFR 70.24 prescribe the attributes required of the monitoring and alarm system. Compliance with these requirements may be unnecessary for commercial power reactors where the conditions which could lead to a criticality event are so unlikely that the probability of occurrence of an inadvertent criticality is negligible. The NRC anticipated that the regulation might be unnecessary for some licensees and included in 10 CFR 70.24(d) an invitation to any licensee to seek an exemption to the entire section or part of the section for good cause. A large number of exemption requests have been submitted by power reactor licensees and approved by the NRC based on safety assessments which concluded that the likelihood of criticality was negligible. Because of the experience gained in processing these exemption requests, the NRC concluded that the regulations should be amended to provide this flexibility without requiring licensees to go through the exemption process.

Discussion

At a commercial nuclear power plant, the reactor core, the fresh fuel delivery area, the fresh fuel storage area, the spent fuel pool, and the transit areas among these, are areas where amounts of SNM sufficient to cause a criticality exist. In addition, SNM may be found in laboratory and storage locations of these plants, but an inadvertent criticality is not considered credible in these areas due to the amount and configuration of the SNM. The SNM that could be assembled into a critical mass at a commercial nuclear power plant is only in the form of nuclear fuel. Nuclear power plant licensees have procedures and the plants have design features to prevent inadvertent criticality. The inadvertent criticality that 10 CFR 70.24 is intended to address could only occur during fuel-handling operations.

In contrast, at fuel fabrication facilities SNM is found and handled routinely in various configurations in addition to fuel. Although the handling of SNM at these facilities is controlled by procedures, the variety of forms of SNM and the frequency with which it is handled provides greater opportunity for an inadvertent criticality than at a nuclear power reactor.

At power reactor facilities with uranium fuel nominally enriched to no greater than five (5.0) percent by weight, the SNM in the fuel assemblies cannot go critical without both a critical configuration and the presence of a moderator. Further, the fresh fuel storage array and the spent fuel pool are in most cases designed to prevent inadvertent criticality, even in the presence of an optimal density of unborated moderator. Inadvertent criticality during fuel handling is precluded by limitations on the number of fuel assemblies permitted out of storage at the same time. In addition, General Design Criterion (GDC) 62 in Appendix A to 10 CFR Part 50 reinforces the prevention of criticality in fuel storage and handling through physical systems, processes, and safe geometrical configuration. Moreover, fuel handling at power reactor facilities occurs only under strict procedural control. Therefore, the NRC considers a fuel-handling accidental criticality at a commercial nuclear power plant to be extremely unlikely. The NRC believes the criticality monitoring requirements of 10 CFR 70.24 are unnecessary as long as design and administrative controls are maintained.

Because the NRC considers an inadvertent criticality to be unlikely at a nuclear power reactor, by this rulemaking it is granting nuclear power reactor licensees a choice—either meet the criticality monitoring requirements of 10 CFR 70.24 or in lieu of those criticality monitoring requirements meet certain criteria related to procedures, plant design, and fuel enrichment. These criteria are incorporated into section 50.68(b) of 10 CFR Part 50 by this direct final rule.

The three changes in the requirements are as follows:

(1) Section 50.68(a) provides that each holder of a construction permit or operating license for a nuclear power reactor issued under Part 50, or a combined license for a nuclear power reactor issued under Part 52 shall comply with either 10 CFR 70.24 or the seven requirements in section 50.68(b).

(2) Section 50.68(b) provides that each licensee as described in 50.68(a) shall comply with the seven listed requirements in lieu of maintaining a monitoring system capable of detecting a criticality as described in 10 CFR 70.24.

(3) The revised section 70.24(d) provides that the requirements in 10 CFR 70.24 (a) through (c) do not apply to holders of a construction permit or operating license for a nuclear power reactor issued pursuant to 10 CFR Part 50, or combined licenses issued under 10 CFR Part 52, if the holders comply with the requirements of paragraph (b) of 10 CFR 50.68.

Procedural Background

Because NRC considers these amendments to its rules to be noncontroversial and routine, public comment on these amendments is unnecessary. The amendments to the rules will become effective on February 17, 1998. However, if the NRC receives significant adverse comments on the companion proposal published concurrently in the proposed rules section of this **Federal Register** by January 2, 1998, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendments. Such comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Findings

Upon review of this rulemaking, that the changes and additions addressed by this rulemaking do not significantly affect the environmental cost-benefit balance that otherwise would justify the licensing of a light-water nuclear power reactor. The basis for this finding is that this rule is a codification of practices in place and does not significantly affect the cost-benefit balance for a light-water reactor.

Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. The new addition and amendment to the regulations contain no units.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Electronic Access

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0009 and 3150–0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The structure of the current 10 CFR 70.24 is overly broad and places burden on a licensee to identify those areas or operations at its facility where the requirements are unnecessary, and to request an exemption if the licensee has sufficient reason to be relieved from the requirements. This existing structure has the potential to result in a large number of recurring exemption requests.

To relieve the burden on power reactor licensees of applying for, and the burden on the staff of granting recurring exemptions, this amendment permits power reactor facilities with nominal fuel enrichments no greater than 5 weight percent U–235 to be excluded from the scope of 10 CFR 70.24, provided they meet specific requirements being added to 10 CFR Part 50. This amendment is a result of the experience gained in processing and evaluating a number of exemption requests from power reactor licensees and NRC's safety assessments in response to these requests that concluded that the likelihood of criticality was negligible.

The only other viable option to this amendment is for the NRC to do nothing and allow the licensees to continue requesting exemptions. If nothing is done, the licensees will continue to incur the costs of submitting exemptions and NRC will incur the costs of reviewing them. Under this rule, an easing of burden on the part of licensees results by their not having to request exemptions. Similarly, the NRC will not need to review and evaluate these exemption requests, resulting in an easing of burden for the NRC.

This rule is not a mandatory requirement, but an easing of burden action which results in regulatory efficiency. Also, the rule does not impose any additional costs on licensees, has no negative impact on the public health and safety, but will provide certain licensees savings, and savings to the NRC as well. Hence, the rule is shown to be cost beneficial.

The foregoing constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensees of nuclear power plants. These licensees, companies that are dominant in their service areas, do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 5 U.S.C. 601, or the size standards adopted by the NRC (10 CFR 2.810).

Backfit Analysis

The Commission has determined that a backfit analysis is not needed. This rule is a codification of practices in place by the NRC and is not a modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures of organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable NRC staff position (10 CFR Chapter I).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 70.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.68 is added under the center heading "Issuance, Limitations, and Conditions of Licenses and Construction Permits" to read as follows:

§ 50.68 Criticality accident requirements.

(a) Each holder of a construction permit or operating license for a nuclear power reactor issued under this part, or a combined license for a nuclear power reactor issued under part 52 of this chapter shall comply with either 10 CFR 70.24 of this chapter or requirements in paragraph (b).

(b) Each licensee shall comply with the following requirements in lieu of maintaining a monitoring system capable of detecting a criticality as described in 10 CFR 70.24:

(1) Plant procedures may not permit handling and transportation at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

(2) The estimated ratio of neutron production to neutron absorption and leakage (k-effective) of the fresh fuel in the fresh fuel storage racks shall be calculated assuming the racks are loaded with fuel of the maximum permissible U–235 enrichment and flooded with pure water and must not exceed 0.95, at a 95 percent probability, 95 percent confidence level.

(3) If optimum moderation of fresh fuel in the fresh fuel storage racks occurs when the racks are assumed to be loaded with fuel of the maximum permissible U–235 enrichment and filled with low-density hydrogenous fluid, the k-effective corresponding to this optimum moderation must not exceed 0.98, at a 95 percent probability, 95 percent confidence level.

(4) If no credit for soluble boron is taken, the k-effective of the spent fuel storage racks loaded with fuel of the maximum permissible U–235 enrichment must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with pure water. If credit is taken for soluble boron, the k-effective of the spent fuel storage racks loaded with fuel of the maximum permissible U–235 enrichment must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with borated water, and the k-effective must remain below 1.0 (subcritical), at a 95 percent probability, 95 percent confidence level, if flooded with pure water.

(5) The quantity of SNM, other than nuclear fuel stored on site, is less than the quantity necessary for a critical mass.

(6) Radiation monitors, as required by GDC 63, are provided in storage and associated handling areas when fuel is present to detect excessive radiation levels and to initiate appropriate safety actions.

(7) The maximum nominal U–235 enrichment of the fresh fuel assemblies is limited to no greater than five (5.0) percent by weight.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for 10 CFR Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d) The requirements in paragraph (a) through (c) of this section do not apply to holders of a construction permit or operating license for a nuclear power reactor issued pursuant to part 50 of this chapter, or combined licenses issued under part 52 of this chapter, if the holders comply with the requirements of paragraph (b) of 10 CFR 50.68 of this chapter.

Dated at Rockville, Maryland this 14th day of November, 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–31733 Filed 12–2–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–99–AD; Amendment 39–10229; AD 96–24–17 R1]

RIN 2120–AA64

Airworthiness Directives; The Don Luscombe Aviation History Foundation Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document clarifies information in airworthiness directive (AD) 96–24–17, which applies to Don Luscombe Aviation History Foundation (Luscombe) Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F airplanes. AD 96–24–17 currently requires installing new inspection holes, modifying the wing tip fairings, and inspecting the wing spars for intergranular corrosion. The actions specified in AD 96–24–17 are intended to prevent wing spar failure from intergranular corrosion, which could result in structural failure of the wings and loss of control of the airplane. The AD was published with an Appendix providing an alternative method of compliance. Since issuance of AD 96–24–17, the FAA has re-examined the Appendix and has determined that clarification of certain inspections procedures is needed. This action clarifies the procedures specified in the Appendix of AD 96–24–17.

DATES: Effective January 27, 1997.

The incorporation by reference of the Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, revised November 21, 1995, as listed in the regulations, was previously approved by the Director of the Federal Register as of January 27, 1997 (61 FR 66900, December 19, 1996).

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5233; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

On November 25, 1996, the FAA issued AD 96–24–17, Amendment 39–9841 (61 FR 66900, December 19, 1996), which applies to Luscombe Models 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F airplanes. This AD currently requires installing a total of four additional wing inspection holes in the metal covered wings to assist in conducting a more thorough examination of the wing spars, modifying the wing tip fairing so that it is removable, and providing easier access to the interior of the wings. A one time inspection for intergranular corrosion is required for both metal covered and fabric covered wings on these Luscombe 8 series airplanes in the areas of the front and rear spar extrusions of the wing installations.

Need for the Correction

AD 96–24–17 was published with an Appendix that provided an alternative method of compliance. The FAA has received reports that certain portions of the Appendix need clarification. Therefore, the FAA re-examined the procedures specified in the Appendix and has clarified items 2, 4, 6, 7, and 8, as well as clarifying a note regarding additional wing support.

Correction of Publication

This document clarifies the Appendix to AD 96–24–17, and adds the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD, as corrected, is being printed in its entirety for the convenience of affected operators. The effective date of the AD remains January 27, 1997, which is the effective date of the AD as originally issued.

Since this action only clarifies the Appendix instructions, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that prior notice and opportunity for public comment are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13, is amended by removing Airworthiness Directive (AD) 96–24–17, Amendment 39–9841 (61 FR 66900, December 19, 1996), and by adding a new AD to read as follows:

96–24–17 R1. The Don Luscombe Aviation History Foundation (formerly The Luscombe Aircraft Company): Amendment 39–10229; Docket No. 95–CE–99–AD. Revises AD 96–24–17, Amendment 39–9841.

Applicability: Models 8, 8A, 8B, 8C, 8D, 8E, 8F, and T–8F airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 12 calendar months after January 27, 1997 (the effective date of AD 96–24–17), unless already accomplished (compliance with AD 96–24–17).

To prevent wing spar failure from intergranular corrosion, which could result in structural failure of the wings and loss of control of the airplane, accomplish the following:

(a) For airplanes with metal covered wings:

(1) Install two additional wing inspection holes (left wing and right wing) using the Don Luscombe Aviation History Foundation (DLAHF) Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs "1B Metal Covered Wings.", (a), (a1.) through (a9.), and (b.) of The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, revised November 21, 1995; and,

(2) Modify the wing tip fairing using the DLAHF Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs "1B Metal Covered Wings.", (c), and (c1.) through (c5.) of The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, revised November 21, 1995.

(b) For all affected airplanes, inspect one time for intergranular corrosion in the areas of the front and rear spar extrusions of the wing installations and if corrosion is found, prior to further flight, replace the corroded part in accordance with the Compliance Procedures section, paragraph "1A. Fabric Covered Wings." or paragraph "2. Inspect" of The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, revised November 21, 1995, whichever paragraph is applicable to the wing construction of the airplane.

(c) For airplanes with metal covered wings, an alternative method of compliance for the required modification in paragraphs (a)(1) and (a)(2) of this AD can be accomplished in accordance with the procedures contained in the Appendix to this AD, unless already accomplished (compliance with AD 96–24–17).

Note 2: Although not required by this AD, the FAA recommends inspection of the spars for other forms of corrosion which may be a result of nest residue from rodent, bird, or insect infestation within the cavity of the wing. Advisory Circular 43–4A, Corrosion Control for Aircraft, dated July 25, 1991, contains the recommended maintenance procedures for treatment of such corrosion.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance (AMOC) or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office. AMOC's approved in accordance with AD 96–24–17, are considered approved as AMOC's with this AD, including:

(1) DLAHF Service Recommendation #2, dated December 15, 1993, Revised: September 9, 1997, is an AMOC for the wing modifications, wing-tip modifications, corrosion inspection and replacement requirements, and general inspection/modification requirements of paragraphs (a)(1), (a)(2), (b), and (f) of this AD, respectively.

(2) J. Norris Luscombe Service Recommendation #97–1, Revision dated September 10, 1997, is an AMOC for the alternative inspection procedures in the Appendix to this AD.

(3) DLAHF Service Recommendation #7, dated October 23, 1997 (no revision), is an AMOC for the wing modifications, wing-tip modification, corrosion inspection and replacement requirements, and general inspection/modification requirements of paragraphs (a)(1), (a)(2), (b), and (f) of this AD, respectively.

Note 3: Information concerning the existence of AMOC's with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) The inspections and modifications required by this AD shall be done in accordance with The Don Luscombe Aviation History Foundation Recommendation #2, dated December 15, 1993, REVISED November 21, 1995. This incorporation by reference was previously approved by the Director of the Federal Register as of January 27, 1997 (61 FR 66900, December 19, 1996). Copies may be obtained from The Don Luscombe Aviation History Foundation, P.O. Box 63581, Phoenix, Arizona 85082. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10229) becomes effective on January 27, 1997.

Appendix to AD 96–24–17 R1

I. Alternative Inspection Procedures for Luscombe Model 8, 8A, 8B, 8C, 8D, 8E, 8F, T–8F Airplanes That Have Not Accomplished the Inspection in Accordance With the Procedures in the Don Luscombe Aviation History Foundation Recommendation #2, Dated December 15, 1993; Revised November 21, 1995

1. Remove ALL existing wing root fairings, wing inspection hole covers, and wing strut cover plates on both the right and left wing.

2. Loosen the rear wing spar root attach bolts on both the right and left wings (one each wing) to permit a small wing angulation.

3. Perform a visual inspection of the extruded rear spar aft face of the left and right wing.

4. Inspect the face of the aft rear spar from the root to the spliced sheet metal tip spar at the wing root fairing location.

Note: In the location under the forward spars, support both wings at normal height by any stable means, such as a ladder and padded lashed block. This will support the wing as the wing strut is removed. Avoid excess vertical angulation of the wing as this may stress the wing root attach point.

5. To permit removal of the wing strut, unbolt the wing strut and remove the strut carefully.

6. Using suitable light and the access gained by the wing strut hole, visually inspect the front of the rear spar and the rear of the front spar for abnormal bulges or erupted spar surfaces. (See also Note 2 in the body of AD 96–24–17 R1).

7. Remove the wing tip fairing by drilling out the rivets (using a #30 drill or smaller), and inspect the spars for abnormal bulges or erupted spar surfaces in the "U channel attach area" of each spar, and the outer lengths to the splices of the sheet metal spar extrusions. (See Note 2 in the body of AD 96–24–17 R1).

Note: Inspection of the front of the front spar may be performed by using the existing inspection holes and a "light trolley" on the upper aileron cable. The light trolley is made from a standard clear 110 volt bathroom night light connected to a candelabra socket lamp extension cord. Attach the light trolley to the upper aileron cable with a tie wrap, connect a wire of suitable length to the tie wrap and use this as a means to move the light along the face of the spar.

8. Replace rivets through the skin and front/rear spars with AN426 flush rivets to secure former, spar and skin. Install at least 6 rivnuts (3 on top/3 on bottom) through the skin and former. Reattach wing tip fairings with #8/32 rivnuts or #8/32 × 1/2 machine screws, through the fairing, skin, and formers.

9. Reassemble the wing strut on inspected wing, protecting the root joint by avoiding excess vertical deflection. Check the lock nuts for wear and replace as necessary.

Torque the strut ends and wing root bolts using adequate torque (do not over torque the attach fittings).

10. If evidence of intergranular corrosion is detected, remove and replace the corroded part with an airworthy part.

11. Upon completion of the inspection, replace the wing root fairings, wing inspection hole covers and wing strut covers.

Issued in Kansas City, Missouri on November 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31680 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–22–AD; Amendment 39–10225; AD 97–25–02]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Mitsubishi Heavy Industry (Mitsubishi) MU–2B series airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: January 21, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone (316) 946–4162; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Mitsubishi Heavy Industry (Mitsubishi) MU–2B series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35696).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

> Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received from the manufacturer, Mitsubishi Heavy Industries, Inc.

Comment Issue No. 1: Change the "Explanation of the Provisions of the Proposed AD" Section of the NPRM

Mitsubishi explains that the statement "Since an unsafe condition has been identified that could exist or develop on other Mitsubishi MU–2B airplanes of the same type design," is misleading in that it leads the reader to believe that there is a design flaw with the MU–2B series airplanes. Mitsubishi includes proposed language to replace this phrase.

The FAA concurs that this statement could be misleading. This language is not repeated in the final rule so therefore no change is needed at this time. The FAA will keep Mitsubishi's comments in mind while drafting future AD's. No changes have been made to the final rule as a result of this comment.

Comment Issue No. 2: The Model MU–2B–26A Excluded From the NPRM

Mitsubishi states that the Model MU–2B–26A airplanes are excluded from the NPRM, and asks if this was an oversight on the FAA's part. Mitsubishi feels that these airplanes should be included in the AD.

Mitsubishi is correct in assuming that excluding the Model MU–2B–26A airplanes from the NPRM was an oversight. To add these airplanes in this rulemaking action would require the FAA to reopen the comment period and delay final rule action for all of the MU–2B series airplanes. The FAA will address the Model MU–2B–26A airplanes in a future rulemaking action. No changes have been made to the final rule as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 437 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–25–02 Mitsubishi Heavy Industries: Amendment 39–10225; Docket No. 97–CE–22–AD.

Applicability: Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

> Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10225) becomes effective on January 21, 1998.

Issued in Kansas City, Missouri, on November 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31675 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–33–AD; Amendment 39–10224; AD 97–25–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 58, 60, 90, 100, 200, and 300 Series and Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Raytheon Aircraft Company (Raytheon) 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes (formerly referred to as Beech 58, 60, 90, 100, 200, and 300 series and Beech Model 2000 airplanes). This AD requires replacing certain AlliedSignal Aerospace outflow/safety valves in the pressurization system with new or serviceable valves. The AD results from a report of cracking and consequent failure of the affected outflow safety valves in the pressurization system. Investigation has revealed problems during the manufacturing process of certain AlliedSignal outflow/safety valves. The actions specified by this AD are intended to prevent outflow/safety valve cracking and consequent failure, which could result in rapid decompression of the airplane.

EFFECTIVE DATE: January 11, 1998.

ADDRESSES: Service information that applies to the proposed AD may be obtained from AlliedSignal Aerospace, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170. This information also may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–33–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michael D. Imbler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would

apply to all Raytheon 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 4, 1997 (62 FR 41901). The NPRM proposed to require replacing any of the following AlliedSignal outflow/safety valves with new or serviceable valves:

Valve model	Valve serial numbers	Airplane models installed in
103570–26	80–223, 80–225 through 80–227, 80–229, and 80–230	2000.
103598–2	16–808, 39–2434, 45–747, 87–1600, and 116–1238	60(A), C90, and E90.
103598–15	128–11	58P.
103648–1	11–4913 through 11–4916, 12–3832, 20–3006, 22–4950, 12–3912, 30–3076, 39–2412, 41–4918, 41–4919, 61–3300, 101–4920, 101–4922 through 101–4924, 101–4926 through 101–4931, 101–4933, 101–4935, 101–4936, 101–4938, 101–4940, 101–4941, 121–3683, 121–4942, 129–2904, and 129–2920.	60, 90, A90, B90, C90, E90, 100, A100, and B100.
103648–3	21–1827, 71–1828, 71–1829, and 120–1823 through 101–1826	58P.
103648–4	10–4664 through 10–4667, 11–223, 11–3093, 11–3161, 11–4717 through 11–4721, 12–795, 12–3641, 12–4760, 15–4368, 21–3182, 21–3208, 21–4722 through 21–4728, 21–4730, 21–4732, 22–3688, 22–3706, 22–3733, 22–3736, 24–4232, 24–4241, 24–4252, 24–4255, 27–4498, 32–3756, 32–3777, 32–4761, 32–4762, 37–1087, 37–1113, 38–2417, 41–3227, 41–3237, 41–3261, 41–3274, 41–4733, 41–4734, 42–1475, 42–3830, 42–3838, 42–3840, 42–3850, 42–3851, 42–3877, 42–3882, 42–3883, 42–3890, 48–1557, 49–181, 50–2804, 51–4735, 51–4736, 59–2090, 60–2896, 61–3301, 61–4737, 61–4738, 62–3907, 62–3968, 62–3981, 62–2155, 70–2960, 71–4739, 71–4740, 72–3988, 72–3991, 72–3999, 74–4288, 74–4289, 74–4293, 74–4296, 76–4441, 77–4556, 77–4567, 79–2189, 79–2218, 79–2223, 81–3415, 87–1197, 87–1585, 89–2288, 95–4404, 99–2358, 99–2365, 99–2369, 99–2385, 99–2403, 99–2430, 104–4336, 107–1297, 110–3033, 111–3462, 111–3482, 111–3515, 111–4755, 116–4468, 116–4470, 119–2507, 119–2520, 120–3043, 120–3048, 120–3057, 120–4687 through 120–4692, 121–3562, 126–4490, 128–1776, and 129–4639.	200.
103648–5	10–325, 12–760, 12–799, 20–236, 21–1734, 21–1741 through 21–1744, 21–1746, 40–365, 21–1762; 41–1763, 60–243, 61–605, 77–1590, 90–461, 100–1712 through 100–1718, 100–1720 through 100–1726, 100–1728 through 100–1731, 105–149, 105–285, 109–1613, 109–1620, 116–1488, 121–1764, 126–1502, and 126–1511.	C90–1, C90A, and F90.
103648–6	101–1830, 101–1831, and 110–1822.	58P and 90.
103648–7	11–208, 14–1206, 17–2204, 21–2817, 21–2818, 21–2827, 21–2828, 22–2832, 23–1030, 23–1058, 24–1211, 24–1232, 25–1634, 30–2719, 31–346, 42–843, 51–397, 51–398, 51–409, 54–1253, 74–1320, 77–2349, 86–2136, 103–1129, 110–1171, 112–961, 112–1000, 113–1172, 113–1192, 114–1538, 118–2569, 119–2607, 119–2614, 101–2796 through 100–2806, and 100–2808 through 100–2815.	B200 and 300.
103648–13	12–410, 12–464, 12–465, and 70–386 through 70–400	300 and B300.

The NPRM resulted from a report of cracking and consequent failure of the affected outflow safety valves in the pressurization system. Investigation has revealed problems during the manufacturing process of certain AlliedSignal outflow/safety valves.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received on the proposal. No comments have been received regarding the FAA's estimate of the cost impact upon the public.

Comment Disposition

Raytheon states that the FAA made the following typographical errors in the Applicability section of the NPRM:

—Model B300 airplane serial numbers were referenced as F1–1 through F1–72 instead of FL–1 through FL–72; and

—Model 200T airplane serial numbers were referenced as B–1 through BT–32 instead of BT–1 through BT–32.

Raytheon requests that the FAA include the correct serial number designations for these airplanes in the final rule.

The FAA concurs with the commenter. The FAA inadvertently referenced the wrong serial numbers for the Models 200T and B300 airplanes. The final rule will reflect the correct serial number designations for these airplanes.

Similar Actions Required on the Affected Airplanes

On August 12, 1996, the FAA issued AD 96–17–10, Amendment 39–9719 (61 FR 42996, August 20, 1996), which requires replacing the outflow/safety valves with serviceable valves on certain Raytheon Model 400, 400A, MU–300–10, and 2000 airplanes, and 200, B200, 300, and B300 series airplanes. The FAA inadvertently included the Raytheon 200, B200, 300, and B300 series and Model 2000 airplanes in the applicability of AD 96–17–10. These airplanes are certificated under part 23 of the Federal Aviation Regulations (14 CFR part 23), and the FAA has determined that these airplanes should be addressed in this AD along with certain other Raytheon airplanes certificated under 14 CFR part 23. The Raytheon Models 400, 400A, and MU–300–10 airplanes are certificated under part 25 of the Federal Aviation Regulations (14 CFR part 25). The FAA is revising AD 96–17–10 in another action to retain the requirements for the airplanes certificated under 14 CFR part 25.

Compliance Time of This AD

The FAA has determined that an interval of 4 months is an appropriate compliance time to address the identified unsafe condition in a timely manner. This compliance time was deemed appropriate after considering the safety implications, the average utilization rate of the affected fleet, and the availability of the replacement parts. In addition, this compliance time will coincide with the compliance time originally included in AD 96–17–10 of 18 months after the effective date (effective date: September 24, 1996 plus 18 months = March 24, 1998). The 4-month compliance time of this AD will coincide with the compliance time included in AD 96–17–10. Both actions will be required around March 1998.

Cost Impact

The FAA estimates that 2,386 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. AlliedSignal will provide parts at no cost to the owner/operator. Based on these figures, the total cost impact of this AD on US operators is estimated to be $1,717,920, or $720 per airplane. The FAA knows of no affected airplane owner/operator that has already accomplished the required action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–25–01 Raytheon Aircraft Company: Amendment 39–10224; Docket No. 97–CE–33–AD.

Applicability: 58, 60, 90, 100, 200, and 300 series and Model 2000 airplanes (all serial numbers), certificated in any category. The following charts present airplane models and serial numbers that are equipped with AlliedSignal Aerospace outflow safety valves as referenced in either AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995; Service Bulletin 103648–21–4022, Revision 1, dated May 30, 1995; or Service Bulletin 103598–21–4024, Revision 1, dated May 30, 1995.

—The airplanes presented in the charts are affected by paragraph (a) of this AD.

—All airplanes are affected by paragraph (b) of this AD.

AIRPLANE MODELS AND SERIAL NUMBERS THAT ARE EQUIPPED WITH ALLIEDSIGNAL OUTFLOW VALVES

Models	Serial numbers
58P and 58PA	TJ–3 through TJ–497.
60 and A60	P–3 through P–246 with Kit No. 60–5024–1 S incorporated.
B60	P–247 through P–307 with Kit No. 60–5024–3 S incorporated.
B60	P–308 through P–596.
65–90, A90, B90, C90, and C90A	LJ–1 through LJ–1302.
E90	LW–1 through LW–347.
F90	LA–2 through LA–236.
100 and A100	B–1 through B–94, B–100 through B–204, and B–206 through B–247.
B100	BE–1 through BE–137.
200 and B200	BB–2, and BB–6 through BB–1419.
200C and B200C	BL–1 through BL–23, BL–25 through BL–57, and BL–61 through BL–137.
200T	BT–1 through BT–32.
200CT and B200CT	BN–1 through BN–4.
300	FA–1 through FA–220, and FF–1 through FF–19.
B300	FL–1 through FL–72.
B300C	FM–1, FM–2, and FM–3.
2000	NC–4 through NC–53.
H90 (T44A)	LL–1 through LL–61.
A100 (U–21F)	B–95 through B–99.
A100–1 (U21J)	BB–3, BB–4, and BB–5.
A200 (C12–A/C)	BD–1 through BD–30, and BC–1 through BC–75.
A200 (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
A200CT (FWC–12D)	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (C–12F)	BP–52 through BP–63.
A200CT (RC–12G)	FC–1, FC–2, and FC–3.
A200CT (RC–12H)	GR–14 through GR–19.
A200CT (RC–12K)	FE–1 through FE–9.
B200C (C–12F)	BL–73 through BL–112, and BL–118 through BL–123.
B200C (UC–12F)	BU–1 through BU–10.
B200C (RC–12F)	BU–11 and BU–12.
B200C (UC–12M)	BV–1 through BV–10.
B200C (RC–12M)	BV–11 and BV–12.
B200C (C–12F)	BP–64 through BP–71.
B200CT (FWC–12D)	FG–1 and FG–2.

APPLICABLE OUTFLOW SAFETY VALVES WITH APPLICABLE AIRPLANE MODELS

Valve model	Valve serial numbers	Airplane models installed in
103570–26	80–223, 80–225 through 80–227, 80–229, and 80–230	2000.
103598–2	16–808, 39–2434, 45–747, 87–1600, and 116–1238	60(A), C90, and E90.
103598–15	128–11	58P.
103648–1	11–4913 through 11–4916, 12–3832, 20–3006, 22–4950, 12–3912, 30–3076, 39–2412, 41–4918, 41–4919, 61–3300, 101–4920, 101–4922 through 101–4924, 101–4926 through 101–4931, 101–4933, 101–4935, 101–4936, 101–4938, 101–4940, 101–4941, 121–3683, 121–4942, 129–2904, and 129–2920.	60, 90, A90, B90, C90, E90, 100, A100, and B100.
103648–3	21–1827, 71–1828, 71–1829, and 120–1823 through 101–1826	58P.
103648–4	10–4664 through 10–4667, 11–223, 11–3093, 11–3161, 11–4717 through 11–4721, 12–795, 12–3641, 12–4760, 15–4368, 21–3182, 21–3208, 21–4722 through 21–4728, 21–4730, 21–4732, 22–3688, 22–3706, 22–3733, 22–3736, 24–4232, 24–4241, 24–4252, 24–4255, 27–4498, 32–3756, 32–3777, 32–4761, 32–4762, 37–1087, 37–1113, 38–2417, 41–3227, 41–3237, 41–3261, 41–3274, 41–4733, 41–4734, 42–1475, 42–3830, 42–3836, 42–3840, 42–3850, 42–3851, 42–3877, 42–3882, 42–3883, 42–3890, 48–1557, 49–181, 50–2804, 51–4735, 51–4736, 59–2090, 60–2896, 61–3301, 61–4737, 61–4738, 62–3907, 62–3968, 62–3981, 62–2155, 70–2960, 71–4739, 71–4740, 72–3988, 72–3991, 72–3999, 74–4288, 74–4289, 74–4293, 74–4296, 76–4441, 77–4556, 77–4567, 79–2189, 79–2218, 79–2223, 81–3415, 87–1197, 87–1585, 89–2288, 95–4404, 99–2356, 99–2365, 99–2369, 99–2385, 99–2403, 99–2430, 104–4336, 107–1297, 110–3033, 111–3462, 111–3482, 111–3515, 111–4755, 116–4468, 116–4470, 119–2507, 119–2520, 120–3043, 120–3048, 120–3057, 120–4687 through 120–4692, 121–3562, 126–4490, 126–1776, and 129–4639.	200.
103648–5	10–325, 12–760, 12–799, 20–236, 21–1734, 21–1741 through 21–1744, 21–1746, 40–365, 21–1762, 41–1763, 60–243, 61–605, 77–1590, 90–461, 100–1712 through 100–1718, 100–1720 through 100–1726, 100–1728 through 100–1731, 105–149, 105–285, 109–1613, 109–1620, 116–1488, 121–1764, 126–1502, and 126–1511.	C90–1, C90A, and F90.
103648–6	101–1830, 101–1831, and 110–1822	58P and 90.
103648–7	11–208, 14–1206, 17–2204, 21–2817, 21–2818, 21–2827, 21–2828, 22–2832, 23–1030, 23–1058, 24–1211, 24–1232, 25–1634, 30–2719, 31–346, 42–843, 51–397, 51–398, 51–409, 54–1253, 74–1320, 77–2349, 86–2136, 103–1129, 110–1171, 112–961, 112–1000, 113–1172, 113–1192, 114–1538, 118–2569, 119–2607, 119–2614, 101–2798 through 100–2806, and 100–2808 through 100–2815.	B200 and 300.
103648–13	12–410, 12–464, 12–465, and 70–386 through 70–400	300 and B300.

Note 1: The above outflow/safety valves are referenced in AlliedSignal Aerospace Service Bulletin 103570–21–4012, Revision 1, dated May 30, 1995; Service Bulletin 103648–21–4022, Revision 1, dated May 30, 1995; and Service Bulletin 103598–21–4024, Revision 1, dated May 30, 1995. In addition, Beechcraft Service Bulletin 2484, Revision 1, dated October, 1995, references the AlliedSignal service bulletins.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent outflow/safety valve cracking and consequent failure, which could result in rapid decompression of the airplane, accomplish the following:

(a) For the airplanes referenced in the "Airplane Models and Serial Numbers That Are Equipped with AlliedSignal Outflow Valves" table that is included in the "Applicability" section of this AD: Within the next 4 months after the effective date of this AD, replace (with a new or serviceable valve) any outflow/safety valve that does not have one of the following:

(1) The valve identification plate MOD RECORD stamped "PCA" (Poppet Change Accomplished); or

(2) A valve with an inked ATD Quality Assurance "Functional Test (FT)" stamp that is dated June 1992, or later.

(b) For all airplanes: As of the effective date of this AD, no person may install on any affected airplane any outflow/safety valve that is referenced in the "Applicable Outflow Safety Valves With Applicable Airplane Models" table that is included in the "Applicability" section of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.198 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to AlliedSignal Aerospace, Technical Publications, Department 65–70, P.O. Box 52170, Phoenix, Arizona 85072–2170; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10224) becomes effective on January 11, 1998.

Issued in Kansas City, Missouri, on November 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31676 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–19–AD; Amendment 39–10227; AD 97–25–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208, 208A, 208B, 425, and 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Cessna Aircraft Company (Cessna) Models 208, 208A, 208B, 425, and 441 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: January 21, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–19–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone (316) 946–4162; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 208, 208A, 208B, 425, and 441 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35708). The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

> Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 854 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–25–04 Cessna Aircraft Company: Amendment 39–10227; Docket No. 97–CE–19–AD.

Applicability: Models 208, 208A, 208B, 425, and 441 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

> Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10227) becomes effective on January 21, 1998.

Issued in Kansas City, Missouri, on November 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31676 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–20–AD; Amendment 39–10226; AD 97–25–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, 300, 1900, and 2000 series airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit lifting or positioning the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent nose down pitch and a descent rate leading to aircraft damage and injury to personnel caused by the power levers being positioned below the flight idle stop or the power levers being lifted while the airplane is in flight.

EFFECTIVE DATE: January 21, 1998.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: William Schinstock, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone (316) 946–4162; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to the following was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35704): Raytheon Models 65–90, 65–A90, 65–A90–1, 65–A90–3, 65–A90–4, B90, C90, C90(SE), C90A, C90B, E90, F90, H90, 99, 99A, A99, A99A, B99, C99, 100, A100, A100A, A100C, B100, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200T, B200CT, 300, B300, B300C, 1900, 1900C, 1900D, and 2000 airplanes.

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit lifting or positioning the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

> Do not lift the power levers in flight. Lifting the power levers in flight or moving the power levers in flight below the flight idle position could result in nose down pitch and a descent rate leading to aircraft damage and injury to personnel.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 3,093 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate can accomplish this AD, as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9), the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM or POH.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–25–03 Raytheon Aircraft Company: Amendment 39–10226; Docket No. 97–CE–20–AD.

Applicability: Models 65–90, 65–A90, 65–A90–1, 65–A90–3, 65–A90–4, B90, C90, C90(SE), C90A, C90B, E90, F90, H90, 99, 99A, A99, A99A, B99, C99, 100, A100, A100A, A100C, B100, 200, 200C, 200CT, 200T, A200, A200C, A200CT, B200, B200C, B200T, B200CT, 300, B300, B300C, 1900, 1900C, 1900D, and 2000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent nose down pitch and a descent rate leading to aircraft damage and injury to personnel caused by the power levers being positioned below the flight idle stop or the power levers being lifted while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

> Do not lift the power levers in flight. Lifting the power levers in flight or moving the power levers in flight below the flight idle position could result in nose down pitch and a descent rate leading to aircraft damage and injury to personnel.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10226) becomes effective on January 21, 1998.

Issued in Kansas City, Missouri, on November 25, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31682 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket OST–96–1639]

RIN 2105–AC56

Fair Displays of Airline Services in Computer Reservations Systems (CRSs)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is adopting two rules to further ensure that travel agents using computer reservations systems (CRSs) can obtain a fair and complete display of airline services. One rule will require each CRS to offer one display that lists flights without giving all on-line connections a preference over interline connections; the other rule will bar systems from creating displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting services in ranking flights. The Department believes that these rules are necessary to promote airline competition and ensure that travel agents and consumers can obtain a reasonable display of airline services. The Department is not now adopting

another display requirement that it had proposed—a requirement that any display offered by a system be based on criteria rationally related to consumer preferences—and will instead consider that proposal further as part of the Department's overall reexamination of its CRS rules. The Department is acting on the basis of informal complaints made by Frontier Airlines, Alaska Airlines, and Midwest Express Airlines.

DATES: These rules are effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, D.C. 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Airline travellers in the United States usually buy airline services through travel agencies, and travel agents almost always use a CRS to determine what airline services and fares are available and to make bookings. When a travel agent asks a CRS to show what services are available in a particular city-pair market, the system will display a listing of such services created according to the system's editing and ranking criteria for displays. Each of the CRSs operating in the United States is entirely or predominantly owned by one or more airlines or airline affiliates that would have the ability and incentive to use the systems to prejudice the competitive position of other airlines if the systems were not regulated. A prime method for prejudicing competition would be the use of display criteria that gave the services operated by the owner airline or airlines a higher display position than the position given competing airline services, even if the latter better met the consumer's travel needs. Since travel agents are more likely to book a flight when it has a better display position, display bias causes the airlines benefited by the bias to obtain more bookings than would be obtained if the display were neutral. To prevent the systems' airline owners from injuring airline competition through display bias (and other misuses of the systems), we adopted rules prohibiting display bias and other harmful CRS practices. 14 CFR part 255.

Our rules on display bias do not prohibit all potentially unfair and deceptive display practices, although they do specifically prohibit ranking and editing displays on the basis of carrier identity and impose certain other requirements on displays in order to limit the potential for bias. 14 CFR 255.4. When we last reexamined our CRS rules, there then seemed to be no need to engage in stricter regulation of displays. More recent experience indicates that further regulation is necessary. We therefore issued a notice of proposed rulemaking in this proceeding which proposed three additional display rules: a rule requiring each system to offer at least one display that did not give on-line connections a preference over interline connections, a rule requiring each display to be rationally related to consumer preferences, and a rule requiring each system to either give single-plane flights (such as one-stop flights) a display preference over connecting flights or to use elapsed time as a substantial element in the selection of flights from the database (for convenience, we will refer to these proposals respectively as the "on-line preference rule", the "consumer preference rule", and the "elapsed time rule"). 61 FR 42208 (August 14, 1996).

After considering the comments on our proposal, we have determined to adopt the on-line preference and elapsed time rules but to consider the consumer preference rule further in our upcoming reexamination of the CRS rules, a proceeding begun by our publication of an advance notice of proposed rulemaking, 62 FR 47606 (September 10, 1997). Although we are not adopting the consumer preference rule now, that does not mean that systems may create unfair or deceptive displays as long as they comply with our rules' existing requirements. We have the authority under 49 U.S.C. 41712 to take enforcement action against unfair and deceptive practices in the marketing of airline transportation, including deceptive CRS displays, whether or not we adopt the proposed consumer preference rule. As we stated in the notice of proposed rulemaking, "Other CRS editing and ranking abuses, if not covered by the rule, could be pursued in an enforcement context under the general prohibition against unfair and deceptive practices and unfair methods of competition in 49 U.S.C. 41712." 61 FR at 42215.

In this proceeding we are relying in part on the findings published in our 1991–1992 rulemaking, 57 FR 43780 (September 22, 1992) and 56 FR 12586 (March 26, 1991); the findings made in the earlier rulemaking conducted by the Civil Aeronautics Board, the agency that had been responsible for airline CRS issues; and on our staff's last study of the CRS business, *Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems*, prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990) ("*Marketing Practices*"). That study and our rulemaking notices present a detailed analysis of CRS operations and their impact on airline competition and consumers. We are also relying on the pleadings filed in Docket 48671 in connection with Galileo's use of its exemption authority to change the displays of single-plane flights in its Apollo CRS in a way that assertedly benefits the interests of Galileo's principal owners, United Air Lines and US Airways, at the expense of competing airlines like Alaska Airlines and Midwest Express Airlines, and misleads travel agents using the Apollo system and their customers.

Legal Authority for Adopting the Proposed Rules

We are adopting these rules, like our other CRS rules, under our statutory authority to prohibit unfair methods of competition and unfair or deceptive practices in the sale of air transportation. 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act (codified then as 49 U.S.C. 1381). We may adopt rules regulating CRS displays under both parts of the authority granted by 49 U.S.C. 41712, that is, in order to eliminate practices that prejudice airline competition and practices that are likely to mislead consumers and their travel agents.

The statute, modelled on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, allows us to define practices that do not violate the antitrust laws as unfair methods of competition if they violate the spirit of the antitrust laws. The statute also gives us broad authority to prohibit deceptive practices in the sale of air transportation. We may prohibit practices that in our judgment tend to deceive a significant number of consumers without proof of actual deception, as the Seventh Circuit held in affirming the Civil Aeronautics Board's original CRS rules. *United Air Lines*, 766 F.2d 1107, 1113 (7th Cir. 1985).

We are adopting additional display rules in order to prevent travel agency customers from being deceived and to keep the airlines controlling the systems from using their control over CRS displays to unreasonably prejudice the competitive position of other airlines. The rules will strengthen airline competition by ensuring that CRS displays provide a reasonable and fair ranking of airline services. When a CRS offers a display that ranks airline services deceptively or unfairly for the benefit of its airline owners, the CRS makes it more difficult for airlines to compete on the basis of price and service with the airlines controlling the system. The revenue loss estimates provided by Alaska and Midwest Express with respect to Apollo's changed displays, if accurate, suggest that an unreasonable and unfair display can cause substantial damage to competing airlines. 61 FR at 42212.

When consumers book airline flights on the basis of information provided by an unfair or deceptive display of airline services, they are likely to book inferior airline services because the display has hidden services that would better meet their travel needs. Our notice of proposed rulemaking discussed in particular how Apollo's treatment of single-plane flights has the potential to have that effect. 61 FR at 42212–42213. Our statute gives us the authority to prohibit conduct which has the potential to cause this kind of consumer deception.

The CRS Industry and CRS Displays

As we explained in the notice of proposed rulemaking, we have imposed regulations on CRSs because of their predominant role in the marketing of airline services. Travel agencies sell about seventy percent of all airline tickets, and travel agents almost always use a CRS to investigate airline service options for their customers and to make bookings. Each travel agency office, moreover, usually relies entirely or predominantly on one CRS. 61 FR at 42209; 57 FR at 43782–43783.

Each of the four CRSs operating in the United States is predominantly owned by one or more airlines or airline affiliates (airlines that directly or indirectly hold CRS ownership interests are referred to as "vendor airlines"). The parent corporation of American Airlines owns the largest system, Sabre. Apollo, the second largest system, is operated by Galileo International, which is owned by United Air Lines, US Airways, Air Canada, and several European airlines. Both Sabre and Galileo have some public shareholders. Worldspan is owned by Delta Air Lines, Northwest Airlines, Trans World Airlines, and Abacus, a group of Asian airlines. System One is controlled by Amadeus, a major European CRS firm, in which Continental Air Lines has an ownership interest. 61 FR at 42209.

Many different airline service options are available in most markets. In addition, each screen in the display can only display around seven lines of information. If a travel agent wants to see additional service options, the agent must call up additional screens of information. As a result, a system must have some method for editing and ranking airline flights in constructing its displays. A system's choices of editing and ranking practices are important to airline competition, because a flight's display position affects the number of bookings made on the flight. Travel agents are more likely to book a flight when it has a higher display position and are most likely to book the first flight listed. The first flight in a display is booked more frequently in part because it is likely to be the flight that best meets the customer's needs, but, as the airlines owning the systems have long known, the flight will also be booked more often merely because of its better display position. 61 FR at 42209.

Because CRSs are essential for airline marketing, the airlines owning each system have an incentive to use it to prejudice the competitive position of rival airlines. Giving their own flights a better display position than the flights operated by competing airlines would be an effective method of distorting airline competition if there were no CRS rules. Thus, before CRS displays were regulated, each of the airline-owned systems biased its displays in favor of the owner airline. Consumers obviously suffer when a system hides or eliminates information on potentially attractive service options. 61 FR at 42209.

An airline that "participates" in a system—that is, that contracts with the system to make its flights saleable through the system—has little, if any, ability to cause the system to display its flights on a non-discriminatory basis. With a few exceptions, Southwest Airlines being the main one, all airlines must participate in each system in order to avoid losing a significant share of the bookings made by the travel agencies using that system. Each system in effect has a monopoly over electronic access to the great majority of its travel agency subscribers. 57 FR at 43783–43784.

Finally, while travel agencies have the right under our rules to use third-party software to create more useful displays for their employees and customers, relatively few agencies appear to be modifying the displays provided by their CRSs. As a result, the system's choice of editing and ranking criteria is likely to establish the display seen by most travel agents. 61 FR at 42215.

Regulatory Background

The Civil Aeronautics Board ("the Board") adopted the original CRS rules in large part to prevent display bias. The Board determined that rules on display bias were necessary because travel agencies and their customers could neither prevent the systems from offering biased displays nor offset the effect of bias. The airlines participating in a system also did not have the power to keep the systems from biasing their displays. 49 FR 32540, 32543–32544, 32547–32548 (August 15, 1984).

The Board's principal rule against display bias prohibited each system from using carrier identity as a factor for editing and ranking airline services. Although the Board did not prescribe general editing and ranking criteria for CRS displays, the Board adopted several specific rules governing CRS displays in order to reduce each system's ability to create displays that would favor its airline owner or owners. These rules included requirements to use a minimum number of connect points in constructing displays of connecting services for any market. Section 255.4, adopted at 49 FR 32540.

Several of the airlines controlling CRSs responded to the Board's rules by finding new ways of improving the display position of their own flights at the expense of the flights of competing airlines. In particular, since the Board's rules applied only to each system's principal display, not to other displays offered by a CRS, some systems created biased secondary displays in order to regain the benefits of display bias. The Department later obtained each system's agreement not to offer biased secondary displays. *Marketing Practices* at 81–82.

The Board's prohibition of carrier-specific display criteria, however, did not prevent a system from giving its airline owners' flights a better display position by choosing facially-neutral display criteria that matched the predominant characteristics of their airline operations. A system's use of such criteria would benefit other airlines that had similar operating strategies, but it would harm those airlines that chose different strategies. 61 FR at 42209–42210, citing the Justice Department's Comments on the Advanced Notice of Proposed Rulemaking. Nonetheless, the systems' choices of such criteria would not necessarily harm consumers or prejudice airline competition.

At the beginning of the 1990s we held a rulemaking to reexamine the Board's rules. 57 FR 43780 (September 22, 1992) and 56 FR 12586 (March 26, 1991). We readopted them with several changes designed to promote competition in the airline and CRS businesses, including some changes strengthening the rules on CRS displays, although we did not adopt other changes proposed by commenters. We rejected arguments that we did not need to regulate CRS displays, including the argument that the systems' competition for travel agency subscribers would prevent display bias. 56 FR at 12602. And we pointed out how display criteria could

affect airline bookings by noting that American's request to reduce the use of elapsed time by other systems as a ranking factor could be explained by internal documents showing that the use of elapsed time tended to give American's flights a poorer display position. 56 FR at 12610–12611.

We did adopt additional rules where systems used display criteria that injured competition and consumers. Thus we amended the rules to prohibit biased secondary displays. 57 FR at 43802. We also adopted additional rules governing the display of connecting services. Some systems had arbitrarily limited the number of connect points that non-owner airlines could designate and imposed unreasonable and burdensome procedural requirements on requests to add connect points in constructing displays of connecting services. Our new rules prohibited such practices and increased the number of connect points that had to be used in displaying services in individual markets. We also reaffirmed each system's obligation to use non-discriminatory criteria for selecting connect points for displays. 56 FR at 12612–12613; 57 FR at 43807–43808.

In other areas we determined that the systems' practices did not appear to be causing substantial competitive harm and on that basis concluded that additional display rules were unnecessary. 56 FR at 12609; 57 FR at 43803. We recognized, as the Department of Justice pointed out, that vendors could be choosing seemingly neutral display criteria to improve the display position of their own flights. The systems' choice of display criteria nonetheless did not seem to be distorting competition. 56 FR at 12609; 57 FR at 43803. We also believed that the systems' competition for travel agency subscribers appeared to make additional display regulation unnecessary, since travel agency demands seemed to cause vendors to offer alternative displays. 57 FR at 43803. We did not propose or adopt a rule prescribing the ranking and editing criteria that must be used in CRS displays, in part for these reasons, in part because we doubted that there was a single best way for displaying airline services. 56 FR at 12609; 57 FR at 43803.

After considering whether to bar systems from giving on-line connections a preference over interline connections, we determined not to take such action. We noted, on the one hand, that travellers generally preferred on-line service, so the preference was consistent with consumer demands. On the other hand, the systems' use of the preference could overstate travellers' usual preference for on-line service. The on-line preference additionally appeared to place smaller airlines at a competitive disadvantage. 56 FR at 12609–12610. However, no U.S. airline asked us to prohibit the preference, and Alaska Airlines filed comments supporting it. 57 FR at 43804. At that time, however, all of the systems had at least one display that did not use an on-line preference, and Sabre had no display that used an on-line preference. 57 FR at 43803.

Finally, we declined to adopt the proposal by the Orient Airlines Association that we require each system to demonstrate that its ranking and editing criteria met consumer demands. We thought that that specific proposal was unwise, since it could require us to review and second-guess system decisions on display criteria. We also considered the proposal unnecessary, since it "would be unlikely to lead to significant changes in the vendors' display algorithms." 57 FR at 43803. But, while we chose not to require vendors to demonstrate that they were basing their algorithms on consumer preferences, we expressly stated that the vendors would not have unlimited discretion to select display criteria. An airline dissatisfied with a vendor's algorithm could complain to us. 57 FR at 43803.

The Origins of Our Proposed Display Rules

We proposed the new display rules in this proceeding primarily in response to two informal complaints, one about the systems' on-line preference and the other about Apollo's treatment of single-plane flights.

Frontier Airlines had complained that Apollo gave an unreasonable preference to on-line connections. Frontier additionally charged that Apollo's treatment of connections between code-sharing partners (two airlines using one airline's code for both airlines' service) as on-line connections worsened the impact of the preference. The on-line preference injured Frontier's ability to compete in Denver markets where Frontier offered jet service in competition with a commuter airline operating under United's code and using turboprop aircraft, for Apollo treated connections between the commuter airline and United at Denver, United's hub, as on-line connections, while connections between Frontier and United at Denver were treated as interline connections and given a lower display position. Since United was the hub airline at Denver and thus provided most of the service beyond Denver, the display position of connections between Frontier and United under the on-line preference made it harder for Frontier to compete for travellers using Denver as a connecting point on their journeys. The connections between Frontier and United received such a low display position that many travel agents (and their customers) allegedly did not learn of Frontier's services. 61 FR at 42211–42212.

The other complaint—made by Alaska Airlines, Midwest Express Airlines, and the American Society of Travel Agents ("ASTA"), the largest travel agent trade association—concerned Apollo's treatment of single-plane flights. They complained that Apollo's displays made it harder to find single-plane flights that were superior to connecting services given a better display position by Apollo. This benefited the hub-and-spoke operations of Apollo's major U.S. owners, United and US Airways, at the expense of airlines like Alaska Airlines and Midwest Express Airlines that did not operate a hub-and-spoke route system. As we explained in detail in our notice of proposed rulemaking, the Apollo displays had that effect because they relied heavily on displacement time (the time difference between the traveller's requested departure time and the departure time of the flight being displayed) in ranking flights. 61 FR at 42212–42213.

We discussed several examples of Apollo displays that showed that Apollo's algorithm harmed airline competition and consumers by causing displays to list relatively inconvenient connecting services before more attractive single-plane flights. 61 FR at 42213. In addition, we pointed out that ASTA, the largest travel agency trade association, alleged that the Apollo displays "make it harder for travel agents to find flights meeting the priority goals of air travel consumers." ASTA, moreover, stated that it had "never heard or seen an argument that would overcome the consumer benefits of one-stop single-plane service over on-line connections and * * * only a compelling reason (which is difficult to imagine) would warrant displacing such superior services in favor of on-line connections of longer elapsed time." According to ASTA, "[t]ravel agents should not have to search through five screens of information to find a one-stop single plane service with superior elapsed times to intervening connections," and "[t]his waste of time is a disservice to agents and their clients with no apparent offsetting benefit." Furthermore, when single-plane flights receive the poor display position cited in Alaska's examples, "the existence of the one-stop flight may not become known to the agent at all." ASTA Reply (December 19, 1994) at 2–3, Docket 48671, quoted at 61 FR 42213.

We found Galileo's defense of the displays unpersuasive. Galileo argued that travel agents would be hurt if all single-plane flights were listed before all connecting services, because an agent must then scroll through the complete listing of single-plane flights before seeing any connecting services, even though few, if any, of the single-plane flights leave at the time desired by the agency customer. Galileo had provided no evidence that travel agents had complained when its displays listed all single-plane flights before displaying any connections, and in any event few markets have many single-plane flights. Order 94–8–5 at 16, cited at 61 FR 42213.

The Apollo displays therefore appeared to conflict with consumer preferences, since travellers tend to prefer the single-plane flights because they typically require less travel time than connecting services and because they avoid the inconveniences and risks of missed connections and lost baggage that can arise when travellers use connecting services. 61 FR at 42212. The displays also appeared to prejudice airline competition. Alaska thus estimated that it could lose $15 million in potential revenues each year as a result of the new Apollo displays, while Midwest Express estimated that its annual revenue losses would equal several million dollars. *See* Order 94–8–5 (August 3, 1994) at 17. Although we issued an order questioning the fairness of the displays, Order 94–8–5 (August 3, 1994), Galileo chose not to eliminate the features that generated the complaints from Alaska and others. 61 FR at 42212–42213.

Our Rulemaking Proposals

Galileo's conduct suggested to us that travel agent and consumer desires did not adequately check unreasonable CRS displays, thus allowing systems to create displays serving the interests of their airline owners while possibly denying the system's users reasonable displays of airline services. 61 FR at 42211. In addition to the concerns raised by Apollo's current displays, it seemed possible that other systems might adopt similar displays. We therefore decided to consider changing the CRS display rules to give non-vendor airlines (and travel agents) a greater assurance that they can obtain displays of airline services that are neither unfair nor deceptive.

We did not intend, however, to limit each system's ability to offer different displays to travel agents, since travel agents were likely to disagree on the factors that should be emphasized in editing and ranking airline services, in part because different travel agency customers would have different travel preferences, nor did we intend to tightly regulate CRS algorithms. 61 FR at 42213–42214.

We proposed the on-line preference rule, the consumer preference rule, and the elapsed time rule because we tentatively found that those rules would promote airline competition and enable travel agents and their customers to obtain fairer displays of airline services and that the proposals would not unduly burden the systems.

Rule Requiring a Display Without an On-Line Preference

Our proposed requirement that each system offer a display without an on-line preference would eliminate the ability of one of the large airlines owning a CRS to force the system to use an on-line preference in all displays of domestic airline services. This change should benefit airlines like Frontier that depend more on obtaining interline passengers. While one of the two displays offered by Apollo for services within North America did not have an on-line preference, the combination of that display's downgrading of single-plane flights and its heavy reliance on displacement time as the basis for selecting flights from the data base made the display difficult to use. Our proposed rule would require Sabre to recreate a display without an on-line preference for services within North America, since all of Sabre's current displays for such services used an on-line preference (at the time of our last rulemaking, none of Sabre's displays had an on-line preference, as noted above). 61 FR at 42214.

We recognized that an on-line preference was usually consistent with the preferences of many travellers, but we pointed out that it also benefited the airlines with CRS ownership interests. Each of those U.S. airlines was among the largest U.S. airlines and operated a hub-and-spoke route system—each operated a large number of flights connecting over a hub and relatively few point-to-point flights that do not either depart from or arrive at a hub. An airline operating a hub-and-spoke route system has little interest in capturing interline traffic, since its route structure and flight schedules are designed to keep travellers on its own connecting flights when nonstop and single-plane flights are unavailable. Such an airline benefits from CRS displays that show on-line connections before interline connections. 61 FR at 42211–42212.

The on-line preference could harm consumers in some cases, even though consumers usually prefer on-line connections. The on-line preference makes it harder for travel agents to find interline connections, which sometimes may offer the best service for consumers. For example, many consumers might find Frontier's faster jet service more attractive than the service offered by United's commuter airline affiliate. 61 FR at 42212.

In addition, as we discussed in our last rulemaking, the systems' on-line preferences may well overstate the attractiveness of on-line connections. Even without an on-line preference, on-line connections should normally appear before interline connections in a display that uses elapsed time as a principal ranking factor, because the airline offering on-line connecting service usually coordinates the flight arrival and departure times to minimize layover time at the intermediate airport. 56 FR at 12609. Since on-line connections do not necessarily offer the best service, however, the systems' use of algorithms that always give on-line connections a preference over interline connections will at times interfere with a travel agent's ability to find the best service for the agent's customers.

The Consumer Preference Rule

Our second rule proposal—the consumer preference rule—would require each system's display criteria to be rationally related to consumer preferences. We expected that such a rule would keep systems from offering unjustifiable displays. That would help both smaller airlines like Alaska and Midwest Express, which could not influence system decisions on displays, and consumers and their travel agents, who would no longer find it unreasonably difficult to see the best airline service. We expected that the rule would force Apollo to change its algorithms, for Apollo's current displays appeared to be contrary to the proposed rule's requirements. 61 FR at 42214.

We did not intend to engage in a detailed regulation of CRS displays if we adopted this proposed requirement. We expected to take enforcement action only when a system was using an algorithm that was likely to mislead a significant number of consumers by causing services that would best meet their travel needs to be displayed after significantly inferior services and if the display's criteria appeared designed to improve the display position of the services of the system's airline owners. We doubted that we would consider

complaints that a display violated this proposed rule if the system could show that its display criteria were consistent with the preferences of a substantial portion of travellers. 61 FR at 42214.

Elapsed Time Rule

As an alternative to, or in addition to, the consumer preference rule, we also proposed a rule specifically prohibiting the kinds of unfair displays created by Apollo's algorithm. That rule would prohibit an algorithm that neither used elapsed time as a significant factor in selecting service options from the database nor gave single-plane flights a preference over connections in ranking services in displays. In proposing this rule, we noted that adopting such a limited rule could be reasonable, since we had only received specific complaints about Apollo's editing and ranking criteria. We expected that this rule would require Apollo to change its displays, since its current displays do not use elapsed time as a factor in selecting flights from the database yet give single-plane flights no preference over connecting services. If Apollo used elapsed time as a significant factor in selecting flights from the database, single-plane flights would usually receive a better display position since such flights generally require less travel time than connecting services. This proposal accordingly would no longer cause connecting services to be given a better display position over single-plane flights requiring substantially less travel time. 61 FR at 42215.

Comments

In their comments Sabre, American, Galileo, Apollo Travel Services, United, Worldspan, Delta, TWA, and AAA opposed the proposals, primarily on the ground that further regulation of CRS displays is assertedly unnecessary. These parties generally argued that systems responded to subscriber demands in constructing their displays and could not offer a display that travel agents considered bad. Several of these parties additionally contended that no further CRS rules should be adopted until we complete our pending study of the CRS business. United and Apollo Travel Services argued that Apollo's treatment of single-plane services was reasonable.

Continental supported the on-line preference and consumer preference rules, and Amadeus supported the latter proposal. Alaska supported a rule requiring systems to list all single-plane flights before connecting services and to use elapsed time in ranking flights; Alaska also supported the consumer preference rule. Midwest Express agreed with Alaska that we should require single-plane flights to be displayed before connecting services, and it supported the elapsed time rule. Reno supported the on-line preference rule and argued that we should require systems to use elapsed time in ranking flights. Frontier believed that our proposals are inadequate, and it urged us to regulate display practices relating to code-sharing, for example, by requiring systems to treat connections between code-share partners as interline connections.

The Need To Regulate CRS Displays

For the reasons given below, we have determined to adopt the on-line preference rule and the elapsed time rule while deferring action on the consumer preference rule. Before explaining our basis for these specific decisions, we will discuss the overall objections made by some commenters to the rule proposals.

Several of the parties opposing our proposals contend that no additional regulation of CRS displays is necessary. They argue in particular that market forces—the demands of travel agencies for displays that allow them to respond efficiently and accurately to customer information requests—make it unnecessary and even counterproductive for us to impose new rules on displays.

We disagree with these contentions. As noted above, we found in our last rulemaking that the systems' competition for travel agency subscribers did not eliminate the need for display rules. 56 FR at 12602. No one has given us evidence refuting that finding. Despite the systems' competition with each other for subscribers, the systems tend to select display criteria that benefit the interests of their airline owners. The Apollo algorithms exemplify that. As explained in our notice of proposed rulemaking, Apollo has created displays that often show less convenient connecting services before more desirable single-plane flights. Apollo has never offered a satisfactory justification for these displays. The displays, moreover, seem to provide no offsetting advantages for travel agents and their customers. They do, however, provide obvious benefits for Apollo's owner airlines. If market forces determined the nature of CRS displays, as argued by the parties opposing our proposals, we doubt that Apollo would offer such displays. ASTA, after all, has continuously supported the complaints by Alaska, Midwest Express, and others about the Apollo displays.

Furthermore, the parties opposing our proposals have not presented a detailed analysis showing that subscriber demands have influenced CRS algorithms. While systems offer more than one display as a result of travel agency demands, the commenters opposing our proposals cited no other instances where a system changed its displays as a result of travel agency desires.

Even if subscriber demands at times influence CRS display choices, the systems nonetheless appear to have a significant ability to ignore them. Furthermore, even if travel agents were satisfied with the displays offered by the systems, their customers and non-vendor airlines suffer when systems offer displays that do not enable travel agents to efficiently find the best service for travellers.

We also note that the parties opposing the proposals have not denied that display position affects travel agent bookings and that the airlines owning the systems (directly or indirectly) have an incentive to use displays to benefit their own services. We note in that regard that the stronger opposition to our display rule current proposals has come not from the systems but from their airline owners.

American and United contend that industry developments have eliminated the need for more CRS regulation. They claim that airlines and consumers now have other options for the electronic communication of information and booking transactions, primarily the Internet. American Comments at 2–3; United Reply at 17.

We recognize, of course, that the Internet has given airlines new ways to communicate with consumers that bypass CRSs and travel agents, but, as American notes, relatively few consumers currently book airline travel through the Internet. American Comments at 2. As long as travel agencies remain the predominant method by which travellers obtain information on airline services and book seats, CRS regulation will remain essential for airline competition and ensuring that consumers receive accurate and fair advice on available service options. While travel agents can access airline information through Internet sites, as United claims, we believe that the greater efficiency of using CRSs will cause travel agents to continue relying on CRSs as the tool for giving customers information on the services offered by airlines in a market. We note, moreover, that some of the Internet booking services cited by American, such as the Microsoft website, use a CRS for providing

information and transaction capabilities to consumers. The impact of the Internet, however, is an issue that we intend to consider in detail in our upcoming examination of the CRS rules. 62 FR at 47610.

American also cites the rise of low-fare airlines that have by-passed CRS participation. American Comments at 3. In general, however, the low-fare airlines seem to have decided that CRS participation is necessary, as shown by the recent decisions of Western Pacific and ValuJet to distribute their services through CRSs and the earlier decisions by Frontier and Reno to use CRSs for distribution. 62 FR at 47608.

Sabre, citing the public's ownership of twenty percent of its stock, alleges that rules are unnecessary since it is no longer owned entirely by one airline. Sabre Comments at 4. We disagree. AMR, American's parent corporation, continues to own eighty percent of Sabre's stock and obviously has the ability to control Sabre's operations, subject to Sabre's obligations to its public shareholders.

Some parties opposing further display regulation additionally claim that our proposals represent a radical departure from our past policy of keeping our hands off CRS displays. According to them, in all earlier rulemakings we refused to engage in detailed regulation of CRS displays since we recognized that overseeing displays was unnecessary and likely to cause harm. *See, e.g.*, United Comments at 4–5. We think that these commenters have mischaracterized our past decisions on CRS displays.

We have, of course, been cautious about regulating CRS displays, since regulations can be burdensome and counter-productive. But a major predicate for our decision against adopting additional rules in our last major CRS rulemaking was our determination that the systems' choice of display criteria did not appear to be causing significant competitive harm. 57 FR at 43802, 43803. We have always recognized that the airlines controlling the systems have the incentive and some ability to create displays that favor their own services at the expense of competing services. 57 FR at 43802. We have also adopted specific display rules when that appeared necessary to prevent systems from offering misleading displays, such as our rule imposing detailed rules on the systems' choice of connecting points in constructing displays. Our recent experience with Apollo's displays suggests that the systems can and will adopt displays that cause competitive harm when doing so benefits their airline affiliates.

The Need To Act on the Display Proposals

We think that the record shows that the on-line preference and elapsed time rules should be adopted now to prevent on-going harm to consumers and airline competition. This is particularly true since Galileo ignored our past suggestion to create a more reasonable display and has resisted all complaints from airlines and travel agents about the current Apollo displays.

Several of the opponents argue, however, that we should delay a decision on our display proposals until the completion of our CRS study and our forthcoming reexamination of the CRS rules. Sabre Comments at 1–2; Delta Comments at 2–4. Their arguments in favor of delay are unpersuasive.

First, the record in this proceeding is adequate to enable us to make a final decision on the two rules we are adopting here. All of the parties have had an ample opportunity to address the issues in this proceeding by filing comments and reply comments on our notice of proposed rulemaking. Thus there is no need for us to delay our decision here until the completion of our CRS study.

Furthermore, deferring a decision on the on-line preference and elapsed time rules until the completion of the study and the major rulemaking would lead to a significant delay in remedying the competitive and consumer injury being addressed by these rules. We have decided to defer consideration of the consumer preference rule, but our immediate concerns with CRS displays should be resolved through the adoption of the on-line preference and elapsed time rules, thus making a final decision on the consumer preference rule less urgent. We are just beginning the reexamination of the CRS rules, and that proceeding will take substantial time to complete, as did our last major reexamination of the CRS rules. Midwest Express points out, moreover, that three years have passed since we originally questioned the fairness of the Apollo displays and that Galileo has not eliminated their problems. Midwest Express Comments at 12. This makes any further delay in resolving this issue unreasonable to the airlines and travel agents harmed by the display practices at issue.

The Need for Rules

Several parties contend that the notice of proposed rulemaking presents no case for adopting additional rules applicable to all systems, since the notice focuses on problems created by Apollo's current displays. Since there seems to be no apparent dissatisfaction with any other system's displays, these commenters contend that we should not adopt new rules covering all of the systems. In their view, we should take enforcement action against Galileo to compel it to correct its displays. Delta Comments at 8–9; TWA Comments at 3.

While our notice focused on the apparent problems with the Apollo displays, we noted the possibility that other systems might adopt algorithms that produce similarly misleading displays. We think that this potential for unreasonable displays is sufficient to justify the adoption of the additional rules creating unambiguous standards in these areas. We do not believe that we must wait until additional abuses occur before we can adopt rules. *Cf. GTE Service Corp.* v. *FCC*, 474 F.2d 724, 731–732 (2d Cir. 1973); *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470, 486–487 (2d Cir. 1971). And at this time the only system whose displays of services within North America all include an on-line preference is Sabre. We also note that the two rules will apparently affect only Sabre and Apollo, and Sabre will incur only the relatively small expense of recreating a display of North American services that, like Sabre's existing display of overseas services, has no on-line preference (by "overseas" in this rule we mean services not entirely within North America, such as transatlantic and transpacific services). Finally, the adoption of the elapsed time rule should promptly eliminate the problems with Apollo's displays, given the terms of the rule and the statements made in this proceeding by Galileo and United.

The Adoption of the On-Line Preference Rule

We have determined to adopt the first of our three proposals, the rule requiring each system to offer a display without an on-line preference. We are not requiring the display without the on-line preference to be the default display or the primary display, although it must be at least as easy to use as every other display offered by a system.

While consumers usually prefer on-line service, there are situations where interline connections may better meet a consumer's travel needs. In addition, the on-line preference gives an advantage to the hub-and-spoke services operated by larger airlines over the services of smaller airlines that have less extensive route systems. The on-line preference may also overstate consumer preferences for on-line

service. These problems will be alleviated if each system must offer a display without an on-line preference as an option for travel agents.

Our notice of proposed rulemaking described how the on-line preference makes it more difficult for consumers and their travel agents to learn about connections between United and Frontier's jet service, since the preference causes the connections between United and the service offered by United's code-sharing partners to receive a better display position. 61 FR at 42211–42212. Reno Air's comments provide additional examples where the on-line preference causes systems to give a lower display position to services that would better meet consumer needs than the on-line connections given a better display position. Reno, for example, stated that a traveller seeking to fly from Newark to Reno after 12:30 p.m. would see an Apollo display listing seventeen on-line connections before a connection between an American flight and a Reno flight, yet that connection arrives earlier than any of the on-line connecting services listed above it in the display and arrives more than four hours earlier than nine of them. Reno Comments at 3.

The cost of implementing this rule will be small. The only system that will have to create a new display is Sabre, which estimates the cost of doing so at $120,000. Sabre Comments at 5. We note, however, that the rule will only require Sabre to conform its display of services within North America with its display of overseas services, since the latter has no on-line preference. In addition, as noted above, Sabre previously offered displays without an on-line preference for North American services. 61 FR at 42210–42211.

We are not persuaded by the arguments against this rule. In particular, we think the adoption of this rule is consistent with the usual preference of travellers for on-line service. As we have explained, on-line connections should tend to receive a better display position than interline connections, since the airline operating the on-line connections normally coordinates the schedules to provide for more efficient service and shorter layovers for passengers. 61 FR at 42212. *See also* Reno Comments at 2. If, on the other hand, an on-line connection does not offer these advantages, as shown by Reno's examples, then we see no reason why every display offered by a system should give the on-line connection a better display position if there are interline connections offering more convenient arrival times and shorter layovers for travellers.

We also disagree with Sabre's argument that we should not adopt this rule since Sabre assertedly would offer a display without an on-line preference if travel agencies demanded it. Sabre Comments at 5. The systems, however, have never adopted display algorithms in response only to travel agency demands and instead tend to choose display criteria that benefit the system's airline owner or affiliate. Given the display shortcomings that can result from the on-line preference, notwithstanding consumer preferences for on-line service, we think the requirement to offer a display without an on-line preference is necessary to ensure that travel agents can access more useful displays and to better enable airlines to compete on service and price.

Deferral of Consumer Preference Rule

We have decided at this time to defer acting on the proposed rule that would require display criteria to be rationally related to consumer preferences. A number of parties, including some non-vendor airlines, asserted that this proposal was too vague to be useful. *See, e.g.,* Sabre Comments at 6–7; American Comments at 5–7; Galileo Comments at 3–6; United Comments at 15–16; Delta Comments at 14–15; AAA Comments at 3–4; Midwest Express Comments at 2. On the other hand, ASTA, one system, and some airlines supported it. Amadeus Comments at 2–3; Alaska Comments at 2; Continental Comments at 2–3.

We have determined that the proposal would better be considered as part of our overall reexamination of the rules. We also believe that the most serious current display problem—Apollo's treatment of single-plane services—should be eliminated by our adoption of the elapsed time rule. Thus there appears to be no immediate need to act on this proposal. We do intend, however, to consider the proposal further in the upcoming rulemaking, so no one should construe our deferral as a decision to abandon it. In that rulemaking we can consider modifications to the proposal that may potentially make it more effective and enforceable. In addition, even without the rule, we may still take action against anticompetitive or deceptive displays under our authority to prohibit unfair and deceptive practices in the marketing of airline transportation.

The Elapsed Time Rule

We are adopting the rule requiring systems to give single-plane flights a preference over connecting services if they do not make substantial use of elapsed time in selecting flight options from the database. We proposed this rule as an alternative to the consumer preference rule, since it would provide clearer standards for displays and eliminate the problems caused by Apollo's current displays. 61 FR at 42215.

Galileo and United state that our adoption of this proposal will substantially alleviate the dissatisfaction with Apollo's current displays. Galileo Comments at 6–7; United Comments at 3, 14. United thus states, "United is confident that an adjustment of the Apollo display algorithm to incorporate elapsed time as a factor in selecting flights from the database will fully resolve the situations discussed in the Notice where the Department tentatively finds that the current algorithm produces unreasonable results." United Comments at 14.

United and Apollo Travel Services have tried to defend the Apollo displays. Their arguments are unconvincing. United relied primarily on the argument that single-plane flights are not invariably faster than connecting services and cited numerous examples of markets where there are some connecting services requiring less travel time than some single-plane flights. United Comments at 10–12; United Reply. While we assume that United's examples are accurate, in general single-plane flights should have a shorter elapsed travel time than connecting services. Furthermore, the examples of Apollo displays discussed in our notice of proposed rulemaking show that all too often Apollo gives a better display position to connecting services that require much more travel time than competing single-plane flights. 61 FR at 42213. Many other examples of similarly unreasonable Apollo displays exist. Alaska Comments at 7–10; Midwest Express Comments at 7–9; Reno Comments at 4–5.

United's argument, moreover, wrongly ignores the other advantages offered consumers by single-plane flights—a reduced risk of lost luggage and the elimination of the possibility of missed connections. Alaska Comments at 3. Furthermore, even if United's position is correct, our rule is consistent with it, since the rule encourages systems to make greater use of elapsed time in creating their displays.

United also argues that the Apollo algorithm can give travel agents notice on the first screens that additional airlines serve a market. United Comments at 7–9, citing our example of the Orange County-Seattle market. United's claim is unreasonable. Apollo's display of Orange County-Seattle services gives a high display position to America West's connecting service, whose connection between an Orange County-Phoenix flight and a Phoenix-Seattle flight would enable a traveller to reach Seattle from Orange County. America West's connecting services benefit from the weight given displacement time in constructing the display. Other airlines, unlike America West, offer single-plane service in the market. The better display position given connecting services like those offered by America West causes the single-plane flights to be given a poorer position, even though they are likely to be preferred by most travellers. Few travellers would be interested in learning about America West's service in the market, when the single-plane flights offer a more convenient and faster way to reach Seattle. Moreover, in other cases the Apollo algorithm keeps travel agents from learning that an airline serves a market (and does so with single-plane flights that are often more convenient). Midwest Express Reply at 7, n. 4.

United also tried to defend the Apollo algorithm on the basis that the algorithm takes into account displacement time, a factor allegedly important to travellers because departure time is a major consideration in selecting service. United Comments at 8. We think United has overstated the importance of displacement time. *See* Reno Comments at 4. More importantly, the Apollo algorithm gives too little weight to elapsed time, a factor that it is usually more important to travellers. *See, e.g.,* Amadeus Comments at 6. And, as shown, ASTA, the travel agents' major trade association, has repeatedly complained that Apollo's current displays provide misleading and poor rankings of airline services. Though United claimed that ASTA's opinion is entitled to less weight than AAA's position, United Reply at 2, n. 1, we disagree, and in any event AAA did not even allege that Apollo's current displays are reasonable or useful.

Equally unpersuasive is Apollo Travel Services' claim that the Apollo displays cannot cause problems because travel agents can easily obtain an alternative display with a few keystrokes. Apollo Travel Services Comments at 7. Travel agents, as we have repeatedly noted, are often pressed for time and therefore unwilling to take additional steps to obtain better displays. *See, e.g.,* 57 FR at 43786; *Marketing Practices* at 69.

American and Sabre contend that this rule will be too vague, since it requires systems to use elapsed time as a "significant factor" in selecting flights from the database if single-plane flights are not given a preference over connecting flights in displays. American Comments at 8–9; Sabre Comments at 8. This objection is not substantial enough to defeat our proposal, since the rule will give systems some guidance. We are reluctant to be more precise, since that would be contrary to our long-standing wish to avoid regulating ranking and editing criteria in detail.

TWA objected to the proposal on the ground that Apollo allegedly does not have integrated displays and thus would not be covered by the rule. TWA Comments at 7. TWA has overlooked the definition of integrated displays given in our rules, 14 CFR 255.3. While we sometimes use the term "integrated display" to refer to displays that do not show all services within a category of services, such as non-stop flights, before another category of services, such as connecting flights, in this instance we are using the definition already given by the rules.

Alaska and Midwest Express asked us to modify our proposal so that it would require systems to always place single-plane flights above connecting services. Alaska Comments at 1; Midwest Express Comments at 1–2. We proposed to give systems the option either of displaying all single-plane flights before connections or of using elapsed time as a significant factor in selecting flights from the database. We did not propose a rule requiring systems to always give a better display position to single-plane flights. In addition, we have not received complaints about a Sabre display that does not give single-plane flights a preference over connecting flights; that display uses elapsed time in selecting flights from the database. United also observes that some single-plane flights are routed in a manner which does not give travellers convenient service. United Comments at 12, citing an Alaska San Diego-Seattle-Portland flight. However, if Alaska and others wish us to address this matter further in our overall reexamination of the rules, we will, of course, consider their comments.

Despite the objection of one commenter, we believe this rule is consistent with the systems' agreement not to rank nonstop flights on the basis of elapsed time, since the use of that factor had encouraged airlines to submit unrealistic flight schedules to the systems. *See* 56 FR at 12610. We have not prohibited the use of elapsed time in ranking connecting services, and we do not believe our rule will undermine the systems' agreement on the ranking of nonstop flights. Our concern in adopting this rule involves displays that sometimes list more convenient single-plane flights after less convenient connecting services.

Finally, United has proposed revising the language of the proposed rule so that it imposes an affirmative obligation on systems. United Comments at 15. We think that proposal is reasonable, so we will adopt it. As used in the revised language, "or" means "or" and "and".

Alternatives to Rulemaking

We explained in our notice of proposed rulemaking that consumers, travel agencies, and non-vendor airlines could not avoid the harm caused by displays that injure consumers and airline competition. Travel agents could only overcome Apollo's predetermined ranking of airline services either by taking the time to search through multiple screens or by requesting with additional keystrokes a display that lists single-plane flights before connecting services, but this additional work will be unattractive for many agents due to the time pressures of their job. Indeed, vendor airlines have an incentive to create displays giving their flights a better display position precisely because they know that travel agents often will not override the system's primary ranking of airline flights. Travel agencies also have little ability to switch systems if they become dissatisfied with the poor displays offered by the system they are currently using. 61 FR at 42215.

Travel agency customers have no independent ability to offset the harm caused by unreasonable CRS displays. They rely on the travel agent to tell them what services are available and do not usually see the display used by the agent. Since few agency offices use more than one system, travellers have no ability to ask the agent to use a different system. *Ibid.*

Similarly, non-vendor airlines have little control over an agent's use of CRS displays and no bargaining leverage with any system over display algorithms. *Ibid.*

While some of the commenters challenged these points, as discussed above, we are not persuaded by their objections. Among other things, we do not believe that the use of the Internet by consumers (and travel agents) is widespread enough to substantially reduce the impact of CRS practices on airline competition and the quality of information given consumers on airline service options. Moreover, many Internet sites use a CRS as a booking engine.

Rules Suggested by the Parties

Several of the parties suggested other rules. Frontier, for example, argues that we should require major airlines to

code-share and offer joint fares on a non-discriminatory basis with other airlines at their hubs, that we should require elapsed time to be the basis for ranking flights, or that we should prohibit code-sharing. Frontier Comments at 5. Amadeus (supported by Continental) urges us to regulate the displays offered by on-line computer services and Internet sites. Amadeus Comments at 8–15. Reno alleges that other CRS practices, such as high booking fees, injure airline competition. Reno Comments at 6–7.

We may adopt only the rules proposed by our notice of proposed rulemaking, so we could not adopt any of these suggested additional changes without first issuing a new notice of proposed rulemaking. Since we have begun a proceeding for the overall reexamination of our CRS rules, including the display rules, we think that the parties' additional proposals would best be considered in that proceeding. We note, moreover, that the advance notice specifically asks parties to comment on the Internet issue raised by Amadeus and the booking fee issue raised by Reno. 62 FR at 47610.

Regulatory Assessment

The two rules we are adopting are a significant regulatory action under section 3(f) of Executive Order 12866 and have been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits under section 6(a)(3) of that order. The rules are also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

We tentatively found that the proposed rules would benefit consumers, travel agents, and non-vendor airlines and that they would not impose significant costs on the systems. We asked commenters to give us more detailed information on the costs and benefits of the proposed rules. 61 FR at 42216.

The two rules that we are adopting should benefit airline competition and consumers. They will provide airlines a greater opportunity to obtain passengers on the basis of the quality of their service and their fares by reducing the possibility that unreasonable CRS display positions will determine the number of bookings received by an airline. In addition, the rules should make travel agency operations more efficient by enabling travel agents to find the best service with less work. The rules will benefit consumers by making it more likely that travel agencies will recommend more convenient airline service. By promoting airline competition, the rules will produce additional savings and other benefits for consumers.

The Department does not have enough information to enable it to quantify the potential benefits of the rule. However, giving travel agents and their customers a better ability to find the best available airline service can result in substantial consumer savings, as the Justice Department noted in its comments in our last CRS rulemaking. 56 FR 12606. Moreover, Alaska and Midwest Express have estimated that Apollo's display reduces their revenues by millions of dollars each year. If their estimates are valid, Apollo's current displays are also causing many travellers to take connecting services instead of one-stop flights that may be more convenient.

While we expect the two rules to provide significant benefits, we do not expect them to impose significant costs on the systems. The only system that provided an estimate on its programming expenses is Sabre, which states that the required creation of a display without an on-line preference will cost it $120,000. Sabre, however, until recently offered a display of North American services without an on-line preference; our rule will only require it to use the same criteria on this point as its displays of overseas services, which have no on-line preference. Galileo did not estimate the cost of the programming changes needed to comply with the elapsed time rule. We doubt that its reprogramming costs will be significant.

The Department does not believe that there are any alternatives to this proposed rule which would accomplish the goal of giving each participating carrier a greater opportunity to have its services fairly displayed in CRSs. These rules do not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

In our notice of proposed rulemaking we stated the reasons for proposing the additional CRS display rules and the objectives and legal basis for those proposals. We tentatively found that the proposals would give smaller airlines a better opportunity to obtain a fair display position in CRSs and thereby enable them to obtain more bookings and compete more successfully with larger airlines. We also determined that the proposals would benefit smaller travel agencies by making it easier for them to serve their customers more efficiently and to give them better advice on airline service options.

Several commenters submitted their views on the proposed rules' impact on small business entities. We considered their comments in deciding whether to make our proposals final.

We have determined to make final our tentative findings that the rule proposals would benefit smaller airlines and travel agencies. As explained earlier, the proposed rules will give smaller airlines a better opportunity to compete and will make it easier for travel agencies to serve their customers.

Our rules contain no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities. The rule will enable travel agencies to operate more efficiently and will give smaller airlines a greater assurance that their services will be fairly displayed by the systems, as explained above. The rule will impose no requirements on smaller airlines or travel agencies and will not other wise increase their costs.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, P.L. No. 96–511, 44 U.S.C. Chapter 35.

The rules we are adopting will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 14 CFR Part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 is revised to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712, recodifying 49 U.S.C. 1301, 1302, 1324, 1381, 1502 (1992 ed.).

2. Section 255.4(a) is revised to read as follows:

§ 255.4 Display of information.

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) Each integrated display offered by a system must either use elapsed time as a significant factor in selecting service options from the database or give single-plane flights a preference over connecting services in ranking services in displays.

* * * * *

Issued in Washington, DC on November 26, 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97–31674 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–62–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

Federal Sector Equal Employment Opportunity

CFR Correction

In title 29 of the Code of Federal Regulations, parts 900 to 1899, revised as of July 1, 1997, on page 275, in § 1614.204, in paragraph (d)(1), in the fourth line, "shall be" should read "shall not be".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–082]

RIN 2115–AE47

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Brielle Railroad Bridge across the New Jersey Intracoastal Waterway, Manasquan River at mile 0.9, in Point Pleasant, New Jersey. Beginning January 12 through March 13, 1998, this deviation allows the bridge to remain closed to navigation between the hours of 8 a.m. to 9:45 a.m.; 10 a.m. to 11:45 a.m.; 1 p.m. to 2 p.m.; and 2:15 p.m. to 3:30 p.m., Monday through Friday excluding holidays. This closure is necessary to facilitate extensive repairs and maintain the bridge's operational integrity while still providing for the reasonable needs of navigation.

DATES: The deviation is effective from 8 a.m. on January 12, 1998 until 3:30 p.m. on March 13, 1998.

SUPPLEMENTARY INFORMATION: The Brielle Railroad Bridge is owned and operated by New Jersey Transit (NJ Transit). On October 7, 1997, a letter was forwarded to the Coast Guard by NJ Transit requesting a temporary deviation from the normal operation of the bridge to implement extensive repairs. Presently, the draw is required to open on signal at all times. These repairs entail replacement or reinforcement of stringers, floor beams, laterals and bearings. Removing the existing rivets and installing bolts is a major portion of the work. To perform these repairs, and use equipment and labor safety, maintaining the drawbridge span in the closed position is needed part of the time.

Discussions with marine interests revealed that approximately four commercial party vessels transit through the bridge during the winter months. However, these vessels normally depart between the hours of 6 a.m. and 8 a.m. Vessels engaged in half day transits return around noon, with full day transits returning at 6 p.m. Therefore, these vessels are not expected to be negatively impacted by the temporary deviation.

From January 12 until March 13, 1998, this deviation allows the draw of the Brielle Railroad Bridge to remain closed to navigation between the hours of 8 a.m. to 9:45 a.m.; 10 a.m. to 11:45 a.m.; 1 p.m. to 2 p.m.; and 2:15 p.m. to 3:30 p.m., Monday through Friday excluding holidays.

Dated: November 12, 1997.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–31738 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI94

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1997–98 academic year should be increased by 6% over the rates payable for the 1996–97 academic year. The

regulations dealing with these rates are amended accordingly.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 6% in the 1996–97 academic year. Accordingly, this revision changes 38 CFR 21.5820 and 21.5822 to reflect a 6% increase in the rates payable in the 1997–98 academic year.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30 day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 17, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

Approved: November 13, 1997.

Norman G. Lezy,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Personnel Policy).

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H, continues to read as follows:

Authority: 10 U.S.C. chapter 107, Pub. L. 96–342.

§ 21.5820 [Amended]

2. In § 21.5820, paragraph (b)(1) is amended by removing "1996–97" and adding, in its place, "1997–98", and by removing "$2,927" and adding, in its place, "$3,103"; paragraph (b)(2)(ii) is amended by removing "1996–97" and adding, in its place "1997–98"; paragraph (b)(2)(ii)(A) is amended by removing "$325.22" and adding, in its place, "$344.78", and by removing "$162.61" and adding, in its place, "$172.39"; paragraph (b)(2)(ii)(B) is amended by removing "$10.84" and adding, in its place, "$11.49", and by removing "$5.42", and adding, in its place, "$5.75"; paragraph (b)(2)(ii)(C) is amended by removing "increased" both times it appears and adding, in its place, "decreased"; paragraph (b)(3)(ii) is amended by removing "1996–97" and adding, in its place, "1997–98"; paragraph (b)(3)(ii)(A) is amended by removing "$325.22" and adding, in its place, "$344.78", and by removing "$162.61" and adding, in its place, "$172.39"; paragraph (b)(3)(ii)(B) is amended by removing "$10.84" and adding, in its place "$11.49", and by removing "$5.42" and adding, in its place, "$5.75"; and paragraph (b)(3)(ii)(C) is amended by removing "increased" both times it appears and adding, in its place, "decreased".

§ 21.5822 [Amended]

3. In § 21.5822, paragraph (b)(1)(i) is amended by removing "$729" and adding, in its place, "$773" and by removing "1996–97" and adding in its place, "1997–98"; paragraph (b)(1)(ii) is amended by removing "$364.50" and adding, in its place, "$386.50" and by removing "1996–97" and adding, in its place, "1997–98"; paragraph (b)(2)(i) is amended by removing "1996–97" and adding, in its place, "1997–98" and by removing "$729" and adding, in its place, "$773"; and paragraph (b)(2)(ii) is amended by removing "1996–97" and adding, in its place, "1997–98" and by removing "$364.50", and adding, in its place, "$386.50".

[FR Doc. 97–31627 Filed 12–2–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH91

Veterans Education: Approval of Correspondence Programs or Courses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the VA-administered educational assistance and educational benefits regulations concerning approval of programs of education pursued exclusively by correspondence and the correspondence portion of correspondence-residence courses for Department of Veterans Affairs (VA) training. A number of changes are made to conform to statutory changes. The regulations are also amended to require that the educational institution offering a correspondence program or course certify to the State approving agency (SAA) that at least 50 percent of those pursuing the program or course require six months or more to complete it based on the six-month period immediately preceding the educational institution's application for approval. The certification is to enable the SAA to determine whether the program or course meets the statutory requirement that at least 50 percent of those pursuing the program or course require six months or more to complete it. The regulations are also amended to expressly provide that the SAA may periodically review the program or course approvals already granted and that this determination would be based on the records of the school for a two-year period reasonably related to the date on which such review is conducted. These periods are appropriate to determine compliance with the statutory requirements. Further, due to the deletion of the statutory basis for its adoption, the requirement that the program or course must require not less than six hours preparation per week over any 26-week period is deleted, and related requirements for SAAs are changed. In addition, this document clarifies that the provisions concerning enrollments in the program or course apply not only to eligible veterans, spouses, and surviving spouses, but also to reservists. Other changes are made for purposes of clarity.

DATES: Effective Date: January 2, 1998.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 1, 1997 (62 FR 35464), VA proposed to amend the "Administration of Educational Assistance Programs" regulations which are set forth in 38 CFR 21.4001 *et seq.* It was proposed to amend the regulations at §§ 21.4256 and 21.4279 to reflect amended statutory provisions contained in the Veterans' Benefits Improvement Act of 1994, Public Law 103–446. These provisions:

- Require that programs of education offered exclusively by correspondence or the correspondence portion of a correspondence-residence course may be approved for VA training only if they are offered by an accredited educational institution;
- Negate the prior regulatory requirement providing that the normal period required to complete a program of education by correspondence or the correspondence portion of a combination correspondence-residence course may not be less than six months; and
- Impose a requirement that at least 50 percent of those pursuing the program or course shall require six months or more to complete it.

In addition to these statutory requirements, VA proposed to:

- Require an SAA when reviewing an application for a new correspondence program or course approval to determine whether it meets the course completion requirements based on the six-month period immediately preceding the educational institution's application for approval;
- Permit SAAs to review periodically correspondence program or course approvals already granted to determine whether the completion requirement was met by examining a prior two-year period reasonably related to the date on which such review is conducted.
- Remove the regulatory requirement that a correspondence program or course must require at least six hours of preparation per week over any 26-week period;
- Require that correspondence-residence courses would have to meet the same course completion criteria as correspondence programs, including the time periods during which the SAA will determine whether the course completion criterion have been met; and
- Clarify that the provisions concerning enrollments in correspondence courses apply not only to eligible veterans, spouses, and surviving spouses, but also to reservists.

Interested persons were given 63 days to submit comments. We received no comments. Accordingly, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule.

Paperwork Reduction Act of 1995

Information collection and recordkeeping requirements associated with this final rule (38 CFR 21.4256(a)(1), 21.4256(b)(3), and 21.4279) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control numbers 2900–0575 and 0576. These regulations require that an educational institution offering a program of education by correspondence or the correspondence portion of a correspondence-residence course would have to certify to the SAA that at least 50 percent of those pursuing the program or course require six months or more to complete it in order to have that program or course approved for VA training. There is no VA form to collect this information; therefore, there is no corresponding form number.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Regulatory Flexibility Act

The Secretary of Veterans Affairs certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although it is possible that small entities could be among the educational institutions affected by this rulemaking, this final rule would have only a minuscule effect on any educational institution. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this final rule are 64.117, 64.120, and 64.124. This final rule will also affect the Montgomery GI Bill—Selected Reserve program, for which there is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 30, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart D, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D, is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. Section 21.4256 is revised to read as follows:

§ 21.4256 Correspondence programs and courses.

(a) *Approval of correspondence programs and courses.* (1) An educational institution desiring to enroll veterans under 38 U.S.C. chapter 30 or 32, spouses and/or surviving spouses under 38 U.S.C. chapter 35, and/or reservists under 10 U.S.C. chapter 1606 in a program of education to be pursued exclusively by correspondence, or in the correspondence portion of a combination correspondence-residence

course, may have the program or course approved only when the educational institution meets the requirements of §§ 21.4252(e), 21.4253, and 21.4279, as applicable.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0575)

(Authority: 38 U.S.C. 3672(e))

(2) The application of an educational institution for approval of a program of education to be pursued exclusively by correspondence or the correspondence portion of a combined correspondence-residence course must demonstrate that the program or course is satisfactory in all elements. The educational institution must certify to the State approving agency that at least 50 percent of those pursuing the program or course require six months or more to complete it. For applications for approval that are pending approval by the State approving agency on February 2, 1995, and for applications received by the State approving agency after that date, the required certification shall be based on the experience of students who completed the program or course during the six-month period immediately preceding the educational institution's application for approval.

(Authority: 38 U.S.C. 3672(e))

(3) State approving agencies have the authority to review periodically the length of time needed to complete each approved correspondence program or approved correspondence-residence course in order to determine whether the program or course should continue to be approved. In implementing this authority, a State approving agency will examine the results over a prior two-year period reasonably related to the date on which such a review is conducted.

(Authority: 38 U.S.C. 3672(e))

(b) *Enrollment agreement.* (1) An educational institution offering a program of education to be pursued exclusively by correspondence must enter into an enrollment agreement with the veteran, spouse, surviving spouse, or reservist who wishes to receive educational assistance from VA while pursuing the program. The enrollment agreement shall disclose fully the obligations of the institution and the veteran, spouse, surviving spouse, or reservist, and shall display in a prominent place on the agreement the conditions for affirmance, termination, refund, and payment of the educational assistance by VA.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(a)(1), 3686(b))

(2) A copy of the agreement shall be given to the veteran, spouse, surviving spouse, or reservist when it is signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(3) The agreement shall not be effective unless the veteran, spouse, surviving spouse, or reservist after the expiration of 10 days after the agreement is signed, shall have signed and submitted to VA a written statement, with a signed copy to the institution, specifically affirming the agreement.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0576)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(c) *Mandatory refund policy.* (1) Upon notification of the educational institution by the veteran, spouse, surviving spouse, or reservist of an intention not to affirm the enrollment agreement, any fees paid by the individual shall be returned promptly in full to him or her.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(2) Upon termination of enrollment under an affirmed enrollment agreement for training in the accredited course by the veteran, spouse, surviving spouse, or reservist, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or $50, whichever is less, may be charged him or her. When the individual terminates the agreement after completion of less than 25 percent of the lessons of the course, the institution may retain the registration fee plus 25 percent of the tuition. When the individual terminates the agreement after completing 25 percent but less than 50 percent of the lessons, the institution may retain the registration fee plus 50 percent of the tuition for the course. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(3) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, spouse, surviving spouse, or reservist than the pro rata basis as provided in paragraph (b)(2) of this section, such established policy will be applicable.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(4) Any institution that fails to forward any refund due to the veteran, spouse, surviving spouse, or reservist within 40 days after receipt of a notice of termination or disaffirmance, shall be deemed, prima facie, to have failed to make a prompt refund as required by this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

3. In § 21.4279, paragraph (a) introductory text and paragraph (a)(4) are revised, and paragraph (a)(5) is added, to read as follows:

§ 21.4279 Combination correspondence-residence program.

(a) *Requirements for pursuit.* A program of education may be pursued partly in residence and partly by correspondence for the attainment of a predetermined and identified objective under the following conditions:

* * * * *

(4) The educational institution offering the course is accredited by an agency recognized by the Secretary of Education; and

(5) The State approving agency has approved the correspondence-residence course and has verified compliance with the requirement of 38 U.S.C. 3672(e) and § 21.4256(a) that at least 50 percent of those pursuing the correspondence-residence course require six months or more to complete it.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0575.)

(Authority: 38 U.S.C. 3672(e))

* * * * *

[FR Doc. 97–31628 Filed 12–2–97; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document describes the numerous amendments consolidated in the Transmittal Letter for Issue 53 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. These amendments reflect changes in mail preparation requirements and other miscellaneous rules and regulations not previously published in the **Federal Register**.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Bennett, (202) 268–6350.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual (DMM), incorporated by reference in title 39, Code of Federal Regulations, part 111, contains: the basic standards of the U.S. Postal Service governing its domestic mail services; descriptions of the mail classes and special services and conditions governing their use; and standards for rate eligibility and mail preparation. The document is amended and republished about every 6 months, with each issue sequentially numbered.

DMM Issue 53, the next edition of the DMM, is scheduled for release on January 1, 1998. That issue will include changes in Preferred postage rates for Periodicals and Standard Mail (A). The final rule containing the rates for these changes was published on July 25, 1997, in the **Federal Register** (62 FR 39946–39950), as approved on June 2, 1997, by the Board of Governors pursuant to its authority under 39 U.S.C. 3625(f), to implement rate changes effective at 12:01 a.m. on October 5, 1997 (Resolution No. 97–9).

DMM Issue 53 will also include the new weight limit for Bound Printed Matter. The final rule to increase the weight of Bound Printed Matter from 10 pounds to 15 pounds was published on October 1, 1997, in the **Federal Register** (62 FR 51372–51373), as approved on September 8, 1997, by the Board of Governors, to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Classification Changes, Bound Printed Matter, Docket No. MC97–3. This weight increase takes effect at 12:01 a.m. on October 5, 1997.

DMM Issue 53 will include the standards for the new Bulk Parcel Return Service (BPRS) and Shipper Paid Forwarding (SPF). BPRS, which takes effect on October 12, 1997, lowers the average cost of return service for machinable parcels weighing less than 1 pound. SPF, which allows mailers to pay forwarding postage directly through the use of the tracking capabilities of the existing electronic Address Change Service, takes effect on January 4, 1998. The new standards for BPRS and SPF were published on October 15, 1997, in the **Federal Register** (62 FR 53539–53541) as approved on October 6, 1997, by the Board of Governors on the Recommended Decision of the Postal Rate Commission in Docket No. MC97–2.

The following excerpt from section I010, Summary of Changes, of the transmittal for DMM Issue 53 covers the minor changes not previously described in final rules or in other interim or final rules published in the **Federal Register**. Announcements of these minor changes were first published in various issues of the Postal Bulletin, an official biweekly document published by the Postal Service. In addition, the revised contents of DMM Issue 53 are also presented.

Domestic Mail Manual Issue 53 Summary of Changes

Consolidation of Processing of Form 3510

D230.3.11, D230.6.2, E214.3.2, E214.3.4, E214.3.6, E214.3.7, E214.3.8, E270.8.1 and E270.9.1 amend the processing of Form 3510, Application for Additional Entry, Reentry, or Special Rate Request for Periodicals Publication. In order to improve customer satisfaction and to better utilize resources, postal processing of Form 3510 is being consolidated at the Memphis Rates and Classification Service Center (RCSC). Effective October 9, 1997 (PB 21956 (10–09–97)).

Content Identifier Numbers

Exhibit M032.1.3a changes certain international mail content identifier numbers (CINs) for barcoded tray and sack labels. Effective July 3, 1997 (PB 21949 (7–3–97)).

Envelopes and Pieces Sealed on All Sides

C810.1.0 and C810.7.5 clarify acceptable characteristics of automation letter-size mailpieces. Effective October 23, 1997 (PB 21957 (10–23–97)).

Folded Self-Mailers—Additional Options

C810.7.2 and C810.7.3 allow mailers to prepare letter-size self-mailers with the final fold positioned as the right side (leading edge) of the piece and to claim an automation rate. In addition, other tabbing form designs for self-mailers have been approved for automation rates. Effective June 5, 1997 (PB 21947 (6–5–97)).

Labeling List Changes

L002, L003, L005, L601, L602, L603, L604, and L801 are amended to reflect changes in mail processing operations. Effective July 3, 1997 (PB 21949 (7–3–97)).

L002, L004, L005, L102, L601, L602, L603, L604, L801, and L803 are amended to reflect changes in mail processing operations. Effective October 9, 1997 (PB 21956 (10–9–97)).

Non-Machinable Surcharge—Parcel Post

E620.2.5 clarifies that a non-machinable surcharge applies only to certain listed pieces of Parcel Post if pieces are mailed at the inter-BMC/ASF Parcel Post rates and no special handling fee is paid. Effective August 28, 1997 (PB 21953 (8–28–97)).

Post Office Box and Caller Service—McLean, VA 22103 ZIP Code Redesignated as Group C

Exhibit D910.5.3 and Exhibit D920.4.1 remove the entry "McLean, VA 22103" from the Group B category for post office box service and caller service to a Group C category. Effective June 8, 1997 (PB 21948 (6–19–97)).

Reusable Mailpieces—Optional Preparation

C010.6.3 and C010.6.4 incorporate optional preparation standards for reusable mailpieces that originate as permit imprint mailings. Effective August 14, 1997 (PB 21952 (8–14–97)).

List of Subjects in 39 CFR Part 111

Postal Service.

In consideration of the foregoing, 39 CFR part 111 is amended as set forth below:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. The table at the end of § 111.3(f) is amended by adding at the end thereof a new entry to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

(e) * * *

Transmittal letter for issue	Dated	Federal Register publication
53	January 1, 1998	62 FR [INSERT PAGE NUMBER].

3. Section 111.5 is revised to read as follows:

§ 111.5 Contents of the Domestic Mail Manual.

A—ADDRESSING

A000 Basic Addressing
A010 General Addressing Standards
A040 Alternative Addressing Formats
A060 Detached Address Labels (DALs)

A800 Addressing for Automation

A900 Customer Support
A910 Mailing List Services
A920 Address Sequencing Services
A930 Other Services
A950 Coding Accuracy Support System (CASS)

C—CHARACTERISTICS AND CONTENT

C000 General Information
C010 General Mailability Standards
C020 Restricted or Nonmailable Articles and Substances
C021 Articles and Substances Generally
C022 Perishables
C023 Hazardous Matter
C024 Other Restricted or Nonmailable Matter
C030 Nonmailable Written, Printed, and Graphic Matter
C031 Written, Printed, and Graphic Matter Generally
C032 Sexually Oriented Advertisements
C033 Pandering Advertisements
C050 Mail Processing Categories

C100 First-Class Mail

C200 Periodicals

C300 Express Mail

C600 Standard Mail

C800 Automation-Compatible Mail
C810 Letters and Cards
C820 Flats
C830 OCR Standards
C840 Barcoding Standards

D—DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information
D010 Pickup Service
D020 Plant Load
D030 Recall of Mail
D040 Delivery of Mail
D041 Customer Mail Receptacles
D042 Conditions of Delivery
D070 Drop Shipment
D071 Express Mail and Priority Mail
D072 Metered Mail

D100 First-Class Mail

D200 Periodicals
D210 Basic Information
D230 Additional Entry

D500 Express Mail

D600 Standard Mail

D800 Other Delivery Services
D910 Post Office Box Service
D920 Caller Service
D930 General Delivery and Firm Holdout

E—ELIGIBILITY

E000 Special Eligibility Standards
E010 Overseas Military Mail
E020 Department of State Mail
E030 Mail Sent by U.S. Armed Forces
E040 Free Matter for the Blind and Other Handicapped Persons
E050 Official Mail (Franked)
E060 Official Mail (Penalty)
E070 Mixed Classes
E080 Absentee Balloting Materials

E100 First-Class Mail
E110 Basic Standards
E120 Priority Mail
E130 Nonautomation Rates
E140 Automation Rates

E200 Periodicals
E210 Basic Standards
E211 All Periodicals
E212 Qualification Categories
E213 Periodicals Mailing Privileges
E214 Reentry
E215 Copies Not Paid or Requested by Addressee
E216 Publisher Records
E230 Nonautomation Rates
E240 Automation Rates
E250 Destination Entry
E270 Preferred Periodicals

E500 Express Mail

E600 Standard Mail
E610 Basic Standards
E611 All Standard Mail
E612 Additional Standards for Standard Mail (A)
E613 Additional Standards for Standard Mail (B)
E620 Nonautomation Nonpresort Rates
E630 Nonautomation Presort Rates
E640 Automation Rates
E650 Destination Entry
E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail
E652 Parcel Post
E670 Nonprofit Standard Mail

F—FORWARDING AND RELATED SERVICES

F000 Basic Services
F010 Basic Information
F020 Forwarding
F030 Address Correction, Address Change, FASTforward℠, and Return Services

G—GENERAL INFORMATION

G000 The USPS and Mailing Standards
G010 Basic Business Information
G011 Post Offices and Postal Services
G013 Trademarks and Copyrights
G020 Mailing Standards
G030 Postal Zones
G040 Information Resources
G041 Postal Business Centers
G042 Rates and Classification Service Centers
G043 Address List for Correspondence
G090 Experimental Classifications and Rates
G091 Barcoded Small Parcels
G092 Nonletter-Size Business Reply Mail
G900 Philatelic Services

L—LABELING LISTS

L000 General Use
L002 3-Digit ZIP Code Prefix Matrix
L003 3-Digit ZIP Code Prefix Groups—3-Digit Scheme Sortation
L004 3-Digit ZIP Code Prefix Groups—ADC Sortation
L005 3-Digit ZIP Code Prefix Groups—SCF Sortation

L100 First-Class Mail
L102 ADCs—Presorted Priority Mail

L800 Standard Mail
L601 BMCs—Machinable Parcels
L602 BMCs—DBMC Rates
L603 ADCs—Irregular Parcels
L604 Originating ADCs—Irregular Parcels

L800 Automation Rate Mailings
L801 AADCs—Letter-Size Mailings
L802 BMC/ASF Entry—Periodicals and Standard Mail (A)
L803 Non-BMC/ASF Entry—Periodicals and Standard Mail (A)

M—MAIL PREPARATION AND SORTATION

M000 General Preparation Standards
M010 Mailpieces
M011 Basic Standards
M012 Markings and Endorsements
M013 Optional Endorsement Lines
M014 Carrier Route Information Lines
M020 Packages and Bundles
M030 Containers
M031 Labels
M032 Barcoded Labels
M033 Sacks and Trays
M040 Pallets
M041 General Standards
M045 Palletized Mailings
M050 Delivery Sequence
M070 Mixed Classes
M071 Basic Information
M072 Express Mail and Priority Mail Drop Shipment
M073 Combined Mailings of Standard Mail Machinable Parcels
M074 Plant Load Mailings

M100 First-Class Mail (Nonautomation)
M120 Priority Mail
M130 Presorted First-Class Mail

M200 Periodicals (Nonautomation)

M500 Express Mail

M600 Standard Mail (Nonautomation)
M610 Single-Piece and Nonautomation Standard Mail (A)
M620 Enhanced Carrier Route Standard Mail
M630 Standard Mail (B)

M800 All Automation Mail
M810 Letter-Size Mail
M820 Flat-Size Mail

P—POSTAGE AND PAYMENT METHODS

P000 Basic Information
P010 General Standards
P011 Payment
P012 Documentation
P013 Rate Application and Computation
P014 Refunds and Exchanges
P020 Postage Stamps and Stationery
P021 Stamped Stationery
P022 Adhesive Stamps
P023 Precanceled Stamps
P030 Postage Meters and Meter Stamps
P040 Permit Imprints
P070 Mixed Classes

P100 First-Class Mail

P200 Periodicals

P500 Express Mail

P600 Standard Mail

P700 Special Postage Payment Systems
P710 Manifest Mailing System (MMS)
P720 Optional Procedure (OP) Mailing System
P730 Alternate Mailing Systems (AMS)
P750 Plant-Verified Drop Shipment (PVDS)
P760 First-Class or Standard Mail Mailings With Different Payment Methods

R—RATES AND FEES

R000 Stamps and Stationery

R100 First-Class Mail

R200 Periodicals

R500 Express Mail

R600 Standard Mail

R900 Services

S—SPECIAL SERVICES

S000 Miscellaneous Services
S010 Indemnity Claims
S020 Money Orders and Other Services
S070 Mixed Classes

S500 Special Services for Express Mail

S900 Special Postal Services
S910 Security and Accountability
S911 Registered Mail
S912 Certified Mail
S913 Insured Mail
S914 Certificate of Mailing
S915 Return Receipt
S916 Restricted Delivery
S917 Return Receipt for Merchandise
S920 Convenience
S921 Collect on Delivery (COD) Mail
S922 Business Reply Mail (BRM)
S923 Merchandise Return Service
S924 Bulk Parcel Return Service
S930 Handling

I—INDEX INFORMATION

I000 Information
I010 Summary of Changes
I020 References
I021 Forms Glossary
I022 Subject Index

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–31599 Filed 12–2–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5931–3]

Petition by the Commonwealth of the Northern Mariana Islands for Exemption From Anti-Dumping and Detergent Additization Requirements for Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice of direct final decision.

SUMMARY: The Environmental Protection Agency ("EPA" or "the Agency") is granting a petition by the Commonwealth of the Northern Mariana Islands ("CNMI") for exemption from the anti-dumping requirements for gasoline sold in the United States after January 1, 1995. This action is being taken because of CNMI's unique geographic location and economic factors. If the gasoline anti-dumping exemption were not granted, CNMI would be required to import gasoline from a supplier meeting the anti-dumping requirements adding a considerable expense to gasoline purchased by the CNMI consumer. CNMI is in full attainment with the national ambient air quality standard for ozone. This action is not expected to cause harmful environmental effects to the citizens of CNMI. EPA is not granting CNMI's petition for exemption from the fuel detergent additization requirements that all gasoline sold in the U.S. after January 1, 1995 contain fuel detergents. CNMI did not show that these requirements were unreasonable or infeasible due to any unique local factors. The fuel detergent additization requirements are designed to prevent the build-up of deposits in gasoline engines and fuel supply systems. By controlling such desposits in CNMI's vehicles, harmful engine exhaust emissions will be reduced.

This action is being taken as a direct final decision because EPA believes that this decision is noncontroversial. The effects of this decision are limited to the Commonwealth of the Northern Mariana Islands.

DATES: This action will be effective on February 2, 1998, unless the Agency receives adverse or critical comments by January 2, 1998. If the Agency receives adverse comments, EPA will publish in the **Federal Register** timely notice withdrawing this action. In a separate action published in the **Federal Register** today, EPA is concurrently proposing approval of CNMI's petition for reasons discussed in this document. All correspondence should be directed to the addresses shown below.

ADDRESSES: Any persons wishing to submit comments should submit them (in duplicate, if possible) to the two dockets listed below, with a copy forwarded to Marilyn Winstead McCall, U. S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, S.W. (Mail Code: 6406J), Washington, DC 20460.

Materials relevant to this petition are available for inspection in public docket A–96–11 at the Air Docket Office of the EPA, room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m. Monday through Friday. A duplicate public docket, A–NM–96 has been established at U.S. EPA Region IX, 75 Hawthorne Street, (Mail Code: A–2–1), 17th Floor, San Francisco, CA 94105, (415) 744–1225, and is available between the hours of 8:30 a.m. to noon, and 1 p.m. to 5 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall at (202) 564–9029.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulated Entities

Entities potentially affected by this action are those involved with the production, distribution, and sale of conventional gasoline and gasoline detergent additives for gasoline used in CNMI. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, detergent blenders, gasoline truckers, gasoline retailers and wholesale purchaser-consumers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this decision. Other types of entities not listed could also be affected. To determine whether your organization is affected by this decision, you should carefully examine the applicability requirements in § 80.90, § 80.125, and § 80.161, Subparts E, F, and G of title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person

listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Summary of CNMI's Petition

On July 12, 1995, the Honorable Froilan C. Tenorio, Governor of the Commonwealth of the Northern Mariana Islands, petitioned the Agency for an exemption from the requirements of regulations promulgated at 40 CFR 80 that require conventional gasoline meet certain anti-dumping specifications and detergent additization requirements. On December 15, 1993, EPA promulgated regulations on the production and sale of reformulated gasoline and gasoline that is not required to be reformulated, or "conventional" gasoline. For conventional gasoline, the gasoline produced by a refiner or importer is required to cause no more motor vehicle emissions than gasoline produced by that refiner or importer in 1990. This is commonly called the "anti-dumping" program. On October 14, 1994, and July 15, 1996, EPA promulgated regulations requiring that all gasoline contain fuel detergents. The fuel detergent additization regulations require that all gasoline sold or dispensed in the United States contain additives to prevent accumulation of deposits in vehicle engines and fuel supply systems, and that volumetric additive reconciliation records ("VAR") and product transfer documents ("PTD") be maintained by certain persons who add the required detergent to the gasoline and transfer the product to other persons. Since CNMI is in attainment for ozone, it is not required to offer reformulated gasoline. However, providers of gasoline in CNMI such as those listed in the table above are required to provide conventional gasoline that meets the anti-dumping provisions and the detergent additization requirements beginning January 1, 1995.

C. Statutory Provisions

Section 211(k) of the Clean Air Act requires that gasoline be reformulated to reduce motor vehicle emissions of toxic and tropospheric ozone-forming compounds, and that this reformulated gasoline be sold in the nine largest metropolitan areas with the most severe summertime ozone levels and other ozone nonattainment areas that opt into the program. Section 211(k)(8) prohibits conventional gasoline sold in the rest of the country from becoming any more polluting than it was in 1990. This requirement ensures that refiners do not "dump" fuel components into conventional gasoline that cause environmentally harmful emissions and that are restricted in reformulated gasoline. This requirement is referred to as the "anti-dumping" standards for conventional gasoline.[1]

Section 211(l) states that "no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems." This requirement is commonly referred to as the "fuel additization" or "detergent additization" regulation. The CNMI is defined as a state in these regulations.[2]

Section 325 of the Act provides that, upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act. It states that "such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant."

EPA previously granted CNMI an exemption from the sulfur content requirements for motor vehicle diesel fuels as specified in sections 211 (i) and (g) of the Act on May 19, 1994. That exemption was effective on July 18, 1994. A more in-depth description of CNMI's geographical, meteorological and economic characteristics are discussed in the notice of direct final decision granting that petition (*see* 59 FR 26129, May 19, 1994).

D. CNMI's Geographical, Meteorological, and Demographic Characteristics

CNMI consists of fourteen islands of volcanic origin located in the western part of the Pacific Ocean. The islands are part of the Mariana Archipelago (the southernmost island of which is Guam, a separate territory of the United States) and extend generally in a north-south orientation for 388 nautical miles, with a total dry land area of 176.5 square miles. The largest and most populated of the islands is Saipan (population approximately 40,000). Most of the remainder of the population is split between the islands of Tinian and Rota, each having a population of slightly more than 2,000 persons. CMNI is 5,280 miles from the mainland United States, 1,440 miles east of Manila, 1,150 miles south of Tokyo, and 108 miles north of Guam.

CNMI has a tropical climate, with consistently warm and humid weather. Prevailing winds blow from the east 55% of the time and from the northeast 25% of the time. The trade winds are strongest and most constant during the dry season when wind speeds average 15 to 25 miles per hour. In addition, during the rainy season, the islands are periodically hit by westward moving typhoons and heavy storm systems with wind speeds exceeding 100 miles per hour.

CNMI is in attainment with all primary and secondary ambient air quality standards (NAAQS), including the standard for ozone. The developed and populated areas of Saipan are located predominantly on the western side of the island. CNMI's petition states that, as a result, the winds from the east regularly disperse most air pollutants emitted from sources on the island over the Philippine Sea.

E. Economic Factors in CNMI

All motor vehicle gasoline is imported to CNMI and supplied by refineries in Singapore and Australia. Transportation costs dictate that the markets supplying gasoline to CNMI be limited to the Far East. It is estimated that there are 20,000 to 30,000 gasoline-powered vehicles in CNMI. Most are relatively new as the harsh, corrosive environment of CNMI tends to shorten a car's operational life. Average vehicle usage is estimated to be less than 1,000 miles per month.[3]

CNMI is significantly less affluent than the mainland United States. The annual per capita income in CNMI is less than $7,200[4] compared to a national average of $14,420[5]. Moreover, due to relatively high transportation costs, retail gasoline prices are already significantly higher in CNMI than in the continental U.S., ranging, in July 1995, from an average of about $1.60 per gallon on the island of Saipan to more than $1.80 per gallon on the islands of Rota and Tinian. For the same period, the national weekly average for a gallon of gasoline was approximately $1.18.[6]

[1] 40 CFR part 80, subparts E and F.

[2] 40 CFR part 80, subparts A and G.

[3] Letter dated August 7, 1996, from Eric Murdock, Hunton & Williams, Washington, D.C., supporting CNMI's petition.

[4] Final Rule, "Commonwealth of the Northern Mariana Islands; Petition for Exemption from the Diesel Fuel Sulfur Requirements," 59 FR 26129, (May 19, 1994).

[5] Guam Department of Commerce.

[6] "U. S. Sees Higher Gasoline Demand and Prices," *The New York Times*, April 11, 1996.

II. Clarification and Rationale for Exemption

A. Anti-Dumping Requirements (Subparts E and F)

Clarification

Section 211(k)(8) requires that average per gallon emissions of VOC, CO, NO_X, and toxics due to conventional gasoline produced by a refiner or importer not increase over 1990 levels for each refiner or importer. Since VOC and CO emission increases are expected to be controlled through other regulatory programs, the anti-dumping provisions are limited to regulating emissions of toxics and NO_X emissions.

Pursuant to Section 211(k)(8) of the Act, EPA adopted the regulations in Subpart E to address exhaust benzene, total exhaust toxics and NO_X emissions from conventional gasoline use. Under a simple emissions model, applicable from January 1, 1995 to January 1, 1998, a limit is set for sulfur, olefins and T90 as well as exhaust benzene. A more complex emissions model is required beginning January 1, 1998, with limits set on exhaust toxics and NO_X. All the limits are set as annual averages.

Compliance is measured by comparing emissions of a refiner's or importer's conventional gasoline against those of a baseline gasoline—either a baseline based on the quality of a refiner's 1990 gasoline or on a statutory baseline specified by the Clean Air Act. Subparts E and F require a refiner or importer that establishes a baseline to hire an independent auditor to verify its baseline parameters. EPA requires each refiner or importer to maintain records and to report to EPA certain information pertaining to production of conventional gasoline by February 1996, and every subsequent year. CNMI's petition states that importers would be required to demonstrate compliance with the anti-dumping requirements using the statutory baseline.

Rationale for Exemption From Anti-dumping Requirements

The burden of compliance with these requirements in CNMI will fall principally on the two major gasoline importing and marketing companies who import gasoline to CNMI. These companies also import the gasoline that is supplied in Guam. Therefore the gasoline supplied in CNMI is expected to have the same properties in terms of the anti-dumping parameters as the gasoline sold in Guam.[7]

Transportation costs dictate that the markets supplied by these refineries be limited to the Far East. These refineries have no reason to produce reformulated gasoline or conventional gasoline that meets the anti-dumping requirements. One importer states that the demand for gasoline in CNMI represents less than 1% of the total gasoline production of the Singapore refineries.

As in Guam, Singapore refineries currently supply CNMI's gasoline. Therefore, the quality is the same in CNMI as in Guam. Singapore refineries differ from the configurations of typical mainland U.S. refineries in that they do not have catalytic cracking capability (that is, the Singapore refineries do not employ fluid catalytic cracking or "FCC" units). As a result of these differences in plant configuration, the properties of the gasoline produced by the Singapore refineries would be expected to be quite different in some respects from the properties of gasoline produced by the typical mainland U. S. refinery (i.e., "baseline" conventional gasoline). Specifically, gasoline produced at the Singapore refineries would typically have lower concentrations of sulfur and olefins and relatively higher concentrations of benzene and aromatics.

As a result of these differences, the gasoline produced at the Singapore refineries cannot consistently satisfy the anti-dumping requirements when compared to statutory baseline gasoline, particularly for the winter season. This is not the result of any "dumping" of components restricted in reformulated gasoline; it is a reflection of differences in the quality of the gasoline produced in Singapore compared to that typically produced in the mainland U.S.

The two importers of gasoline to CNMI have indicated that the gasoline normally imported from the Singapore refineries is likely to contain benzene and aromatic concentrations that exceed the statutory baseline levels. Approximately 12,000,000 gallons of gasoline are consumed annually in CNMI.[8] As previously stated, the quality of the gasoline imported to CNMI is the same as that imported to Guam. If CNMI is not granted an exemption from the anti-dumping requirements, EPA calculates that gasoline, meeting the statutory baseline, could result during a compliance period in emitting approximately 4 tons of total toxic emissions in CNMI.

A simple cost effectiveness analysis indicates that the cost-effectiveness of reducing the total toxic emissions would be over $200,000 per ton.[9] In EPA's Regulatory Impact Analysis for Reformulated Gasoline,[10] the Agency estimated that reducing total toxic emissions from combustion and use of gasoline under the reformulated gasoline program would cost approximately $55,000 per ton. Therefore, the cost effectiveness of using another gasoline supplier to reduce air toxics emissions in CNMI is several times higher than EPA's estimate for nationwide control of toxics in the federal reformulated gasoline program.

CNMI's petition states that overall compliance with the anti-dumping and fuel detergent requirements would require capital expenditures of $143,000 and annual operating costs of $212,500. These costs are entirely associated with gasoline and will therefore result in increases in the retail price of gasoline, estimated by the companies to be at least 1 to 2 cents per gallon.

In addition, the anti-dumping requirements could force importers to obtain gasoline from distant refineries, adding substantially to the transportation costs and resulting in a price increase at the retail level of as much as another 10 cents per gallon. The CNMI consumer is already paying a significantly higher price for gasoline than the consumer on the U. S. mainland. An additional 10 cents or more per gallon for gasoline would pose a significant economic burden to CNMI residents.

B. Fuel Additization Requirements—(Subpart G)

Clarification

Section 211(l) requires that, beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. EPA promulgated a rule on October 14, 1994, under which all gasoline (reformulated and conventional) sold or transferred to gasoline retail outlets or wholesale purchaser consumer facilities and all gasoline sold or transferred to ultimate consumers must be additized with a fuel

[7] Letters dated August 7, 1996 and October 8, 1996, from Eric Murdock, Hunton & Williams, Washington, D.C., supporting CNMI's petition.

[8] Letter dated October 8, 1996, from Eric Murdock, Hunton & Williams, Washington, D.C., supporting CNMI's petition.

[9] Computed from values in Guam petition based on proportional relationship (see 61 FR 53854 10/16/96).

[10] See Regulatory Impact Analysis for Reformulated Gasoline, EPA Air Dockets A–92–01 and A–92–12, 401 M Street, S.W., Washington, D.C. 20460.

detergent additive registered with the EPA, starting January 1, 1995. On July 5, 1996, EPA published a supplemental rule requiring testing and certification of the fuel detergents (61 FR 3510).

Fuel deposits in motor vehicle engines and fuel supply systems and their impacts on vehicle performance have been studied for many years. Fuel injector and intake valve deposits have been shown to have significant adverse effects on drivability, exhaust emissions and, in some cases, on fuel economy. Deposits in fuel injectors may undercut the effectiveness of engines' oxygen sensors in ensuring the best fuel/air ratio to control emissions. Carburetor deposits can cause improper enrichment of the fuel/air mixture, which can result in rough idling, stalling, poor acceleration, reduced fuel economy and higher emissions of hydrocarbons, carbon monoxide, and, in some cases, nitrogen oxides. The mechanisms by which intake valve deposits increase emissions are less clear. Adsorption and desorption of fuel on the intake valves can lead to improper fuel/air ratios across the cylinders, thereby interfering with the ability of the oxygen sensor to regulate proper mixture composition. Intake valve deposits might also increase emissions by interfering with the proper preparation and delivery of the fuel air mixture resulting in combustion inefficiency.

Under the current additization program, the detergent additive must be registered under 40 CFR Part 79, and must be added in concentration equal to or exceeding the level specified by the additive manufacturer as being effective in preventing deposits. Each facility where detergent additization is performed is required to create and maintain volumetric additive reconciliation (VAR) records to demonstrate that the gasoline has been additized to the proper concentration. Product transfer documentation (PTD) is required whenever title or custody to any gasoline or detergent is transferred, other than when additized gasoline is sold or dispensed at a retail outlet or wholesale purchaser-consumer facility to the consumer. Each gasoline refiner, importer, carrier, distributor, oxygenate blender or detergent blender who owns, leases, operates, controls or supervises the facility (including a truck or individual storage tank) is subject to these requirements.

Rationale for Denying Exemption

CNMI's petition states that of the two importers of gasoline, only one importer adds a detergent additive to all of the grades of gasoline that it sells in CNMI. The importer using detergents in all the gasoline it imports to CNMI adds a detergent additive (RT2276) to both grades it imports at a concentration of 19.1 gallons to every 42,000 gallons of gasoline. As mentioned in the notice of direct final decision on Guam's petition for exemption from the anti-dumping and gasoline detergent additization regulations, all importers and marketers of Guam's gasoline are now adding detergents to Guam's gasoline.[11] EPA, believes, therefore, that it is also feasible for the importer and its marketers not using detergents to add detergents to the gasoline it imports for consumption in CNMI.

Capital costs of compliance with the anti-dumping and additization requirements would be approximately $143,000, of which amount, the majority would be required for the additization requirements. Approximately $5,000 of this amount would be required for software modifications for the VAR and PTD requirements (for the importer that is not already adding detergents to its gasoline). Annual operating expenditures would amount to more than $212,000—approximately one-half of that amount would be required for operating expenses for the additization requirements for the two importers. These costs are comparable to the costs computed for the three importers of gasoline to Guam as described in the notice of direct final decision on Guam's petition for exemption from the anti-dumping and detergent additization requirements of conventional gasoline.[12]

EPA believes that the costs in CNMI of compliance with the requirements of Subpart G would be the same as compared to compliance costs in Guam. The Guam petition stated that the compliance cost would add between .6 to 1.4 cents to the cost of a gallon of gasoline. EPA estimated that the average incremental cost to consumers of compliance with the detergent requirements for the mainland United States would be 0.1 cent a gallon [13] with this cost being partially compensated for by the increased fuel economy and decreased maintenance requirements which improved deposit control is expected to provide. Over 90 percent of the total estimated cost of the program is associated with the price of the additional additive amounts needed to bring all gasoline up to the effective detergency levels which most of U.S. gasoline already contains. EPA believes that the cost to CNMI consumers will, most likely, closely parallel that projected for consumers in the mainland U.S.

Transportation costs associated with shipping detergent additive which complies with federal detergency requirements to CNMI are likely to be somewhat higher than in the mainland U.S. However, EPA believes that this differential in cost will have minimal effect due to the small volume of detergent additive estimated to be needed to achieve proper additization (approximately 0.4 to 0.6 gallons of detergent to 1,000 gallons of gasoline). In addition, EPA's estimate of the cost to the consumer of the detergent program assumed the average motorist drives 10,000 to 15,000 miles per year and consumes 400 to 600 gallons of gasoline. Given CNMI's small size, the average motorist would tend to drive less than the average motorist on the mainland which would tend to reduce the cost to a CNMI consumer relative to EPA's estimate. CNMI's petition states that average miles driven per year are less than 12,000. All things considered, the cost to the consumer of up to six dollars a year estimated for the U.S. as a whole, holds for CNMI as well. EPA believes that this would not be an unreasonable economic burden for the CNMI consumer. This is generally consistent with EPA's estimate of the cost of compliance with the detergent requirements for the mainland United States. In addition, one supplier is already adding detergents to all of the gasoline it imports to CNMI. Therefore only one importer's gasoline is not currently being additized.

Compliance costs associated with the record keeping (VAR and PTD) requirements of the detergent rule are the primary additional costs to be considered herewith. As in the Guam petition [14] EPA estimates that compliance with the record keeping requirements of Subpart G would add only a small portion—less than 1 cent—to the cost of a gallon of gasoline. EPA believes that this would not be an unreasonable economic burden for the CNMI consumer.

Start-up costs could be higher in CNMI than in other markets on the mainland where detergent additization has been an ongoing process for several years. EPA does not believe that start-up of this program will be significantly more difficult or expensive in CNMI compared to the rest of the U.S. Further, once compliance programs are established, the annual cost of compliance will be comparable to that in other areas. In summary, the small

[11] 61 Fed. Reg. 53854 (October 16, 1996).

[12] 61 FR 53854 (October 16, 1996).

[13] Final Rule on the Certification Standards for Deposit Control of Gasoline Additives, July 5, 1996, 61 FR 35353.

[14] 61 FR 53854 (October 16, 1996).

added cost to CNMI consumers, the fact that one of the two importers is now adding detergents to its gasoline, and the fact that the CNMI gasoline suppliers also supply Guam's gasoline of the same quality (see 61 FR 53854 (October 16, 1996)) which contains detergents lead EPA to conclude that an exemption from the requirements of Subpart G is not warranted.

III. Final Action

A. Anti-Dumping Provisions for Conventional Gasoline

EPA has decided to exempt the Commonwealth of the Northern Mariana Islands from compliance with the anti-dumping standards for conventional gasoline under section 211(k)(8). The Agency believes that compliance with the gasoline anti-dumping requirements is unreasonable given the significantly increased costs to consumers in CNMI in achieving compliance. These increased costs are directly attributable to CNMI's location and resulting inability of importers to comply with the anti-dumping requirements without significantly greater costs than those expected for importers in the U.S. mainland. Gasoline price increases of the magnitude expected to result from compliance with subparts E and F could be especially burdensome for the many citizens of CNMI whose incomes are modest.

In addition, despite its geographic remoteness from the mainland, compliance with the anti-dumping provisions might require that CNMI import conventional gasoline from the U.S. mainland, greatly increasing the cost of conventional gasoline. EPA finds that these economic factors are unique to the Commonwealth of the Northern Mariana Islands.

This exemption will apply to all persons in CNMI subject to the anti-dumping requirements in section 211(k)(8) of the Act, and subparts E and F of 40 CFR Part 80. This exemption is retroactive to January 1, 1995, and applies only to gasoline imported to CNMI for use in CNMI. EPA reserves the right to review and reopen this exemption in the future if conditions change to warrant such an action.

B. Fuel Detergent Additization

EPA is denying the petition from the Commonwealth of the Northern Mariana Islands for an exemption from the fuel detergent additization requirement that, after January 1, 1995, all conventional gasoline contain registered fuel additives that control fuel deposits as established in 40 CFR part 80, subpart G. CNMI has not demonstrated that unique local factors exist such that compliance with the detergent additization and record keeping requirements would be either infeasible or unreasonable.

IV. Public Participation and Effective Date

The Agency is publishing this action as a direct final decision because it views it as noncontroversial and limited to the Commonwealth of the Northern Mariana Islands. EPA anticipates no adverse or critical comments. Representatives of automobile and petroleum industry associations have indicated that their constituents will not be adversely affected by this direct final decision and therefore the Agency expects no adverse comments from the members of those associations. Similarly, the Agency does not expect adverse comments from the environmental community or state and local governments, since the environmental impact is very minimal.

This action will become effective February 2, 1998. If the Agency receives adverse or critical comments by January 2, 1998, EPA will publish a subsequent **Federal Register** document withdrawing this decision. In the event that adverse or critical comments are received, EPA is also publishing a notice of proposed decision in a separate action today, which proposes the same action contained in this direct final decision. Any adverse comments received by the date listed above will be addressed in a subsequent final decision. That final decision will be based on the relevant portion of the proposed final decision that is published today in the proposed rules section of this **Federal Register** and that is identical to this direct final decision. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 2, 1998.

This procedure allows the opportunity for public comments and opportunity for oral presentation of data as required under section 307(d) of the Act. This procedure also provides an expedited procedure for final action where a decision is not expected to be controversial and no adverse comment is expected.

V. Executive Order 12866

Under Executive Order 12866,[15] the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[16]

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

[15] 58 FR 51736 (October 4, 1993).

VI. Impact on Small Entities

This action either eases or leaves unchanged requirements otherwise applicable to affected entities. Thus, EPA has determined that it will not result in a significant adverse impact on a substantial number of small entities.

VII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This decision would not have a significant impact on a substantial number of small entities because the overall impact of this decision is a net decrease in requirements on all entities including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

[16] *Id.* at section 3(f)(1)-(4).

IX. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the exemption in this notice does not include a federal mandate that may result in estimated costs of $100 million or more to those entities mentioned above. This federal action approves a request for exemption by petitioners in CNMI to reduce the cost of implementing the Clean Air Act. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this decision and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the decision in today's **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

XI. Electronic Copies of Decision

A copy of this action is available on the Internet at www.epa.gov/OMSWWW under the title: "EPA Decision to Grant Conventional Gasoline Anti-dumping Exemption to the Commonwealth of the Northern Mariana Islands."

XII. Statutory Authority

Authority for the action described in this notice is in section 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act as amended.

Dated: November 25, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–31736 Filed 12–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300574; FRL–5754–1]

RIN 2070–AB78

Sodium Chlorate; Exemption From Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of sodium chlorate in or on wheat. This action is in connection with crisis exemptions declared by the states of Arkansas and Mississippi under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat in Arkansas and Mississippi. This regulation establishes an exemption from the requirement of a tolerance for residues of sodium chlorate in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The exemption will expire and is revoked on July 31, 1998.

DATES: This regulation is effective December 3, 1997. Objections and requests for hearings must be received by EPA on or before February 2, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300574], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300574], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300574]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing an exemption from the requirement of a tolerance for residues of the defoliant/desiccant sodium chlorate, in or on wheat. This exemption will expire and is revoked on July 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked exemption from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption from tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. New section 408(c)(2)(B) requires EPA to take into account, among other relevant conditions, the considerations set forth in 408(c)(2)(C) and (D). Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Sodium Chlorate on Wheat and FFDCA Tolerances

On May 27 and June 6, 1997, the states of Mississippi and Arkansas, respectively, availed themselves of the authority to declare the existence of a crisis situation within each state, thereby authorizing use under FIFRA section 18 of sodium chlorate on wheat as a defoliant or desiccant to aid in the harvest of wheat. A cool, wet spring delayed the wheat harvest in these states. Continued heavy rains resulted in the need for a harvest aid to desiccate winter weeds which developed in the thin stands of an already diminished wheat crop.

As part of its assessment of these crisis exemptions, EPA assessed the potential risks presented by residues of sodium chlorate in or on wheat. In doing so, EPA considered the new safety standard in FFDCA section 408(c)(2), and EPA decided that an exemption from the requirement for a tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this exemption from the requirement of a tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this exemption from the requirement of a tolerance will expire and is revoked on July 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide remaining in or on wheat after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this exemption earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this exemption from the requirement of a tolerance is being approved under emergency conditions EPA has not made any decisions about whether sodium chlorate meets EPA's registration requirements for use on wheat or whether a permanent exemption from the requirement of a tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this exemption serves as a basis for registration of sodium chlorate by a State for special local needs under FIFRA section 24(c). Nor does this exemption serve as the basis for any State other than Arkansas and Mississippi to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for sodium chlorate, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g., frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1-6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of sodium chlorate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited exemption from the requirement of a tolerance for residues of sodium chlorate on wheat. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance exemption follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sodium chlorate are discussed below.

1. *Acute toxicity.* No acute dietary endpoint was identified. This conclusion was based on a developmental toxicity study in which rats were dosed at the limit dose of 1,000 mg/kg/day without any ill effects to the dams or their fetuses.

2. *Short - and intermediate - term non-dietary toxicity.* The available acute dermal and inhalation studies are of dilute mixtures with other active ingredients. The Toxicity Categories were III for the dermal studies, and IV for the inhalation studies. Aqueous sodium chlorate has been used as an antiseptic wash for the skin and mucous membranes. Considering the low toxicity of sodium chlorate, non-dietary exposure is not a concern.

3. *Chronic toxicity.* EPA has not established an RfD for sodium chlorate. For purposes of this exemption, based upon available toxicity data, an RfD for sodium chlorate of 0.1 milligrams/kilogram/day (mg/kg/day) was used. This RfD is based on a 90-day oral toxicity study in rats with a NOEL of 100 mg/kg/day and an uncertainty factor of 1,000 (10-fold each for inter and intra-species extrapolation, and use of a less-than-chronic endpoint) based on anemia, reticulocytosis, and depressed adrenal weights at the LOEL of 1,000 mg/kg/day.

4. *Carcinogenicity.* Sodium chlorate is used as a desiccant. Because it is chemically similar to chlorine dioxide and chlorite which are not carcinogenic, and dietary exposure is virtually eliminated by hydrolysis during cooking, carcinogenicity is not a concern.

B. Exposures and Risks

1. *From food and feed uses.* Exemptions from the requirement of tolerances have been established (40 CFR 180.1020) for the residues of sodium chlorate, in or on a variety of raw agricultural commodities, including corn, rice, safflower, and sorghum. Risk assessments were conducted by EPA to assess dietary exposures and risks from sodium chlorate as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure.

ii. *Chronic exposure and risk.* Field trial residue values were non-detectable at the limit of detection of 2 ppm, even at the 2× rate. The risk assessment assumed that 100% of all wheat commodities will contain sodium chlorate residues and those residues would all be at 2 ppm, which results in an overestimate of human dietary exposure. Additionally, residues of sodium chlorate would likely be substantially reduced through hydrolysis during cooking, although this reduction was not taken into account for this conservative risk assessment.

2. *From drinking water.* There is no established Maximum Concentration Level for residues of sodium chlorate in drinking water. No drinking water health advisory levels have been established for sodium chlorate.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary NOELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause sodium chlorate to exceed the RfD if the exemption being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with sodium chlorate in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the exemption is granted.

3. *From non-dietary exposure.* Sodium chlorate is currently registered for use on the following residential non-food sites: wood treatment, outdoor turf, and ornamental perennials, shrubs, and trees. The available acute dermal and inhalation studies are of dilute mixtures with other active ingredients. The Toxicity Categories are III for the dermal studies, and IV for the inhalation studies. Aqueous sodium chlorate has been used as an antiseptic wash for the skin and mucous membranes. Agricultural workers would be exposed to aqueous solutions containing a low percentage of sodium chlorate. Considering the low toxicity of sodium chlorate, non-dietary exposure is not a concern.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether sodium chlorate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sodium chlorate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not

assumed that sodium chlorate has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the very conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to sodium chlorate from food will utilize 3% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years old) discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sodium chlorate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sodium chlorate residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of sodium chlorate, EPA considered data from developmental toxicity studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter-and intra-species variability)) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* In the developmental study in rats, the maternal (systemic) NOEL was >1,000 mg/kg/day. The developmental (fetal) NOEl was also >1,000 mg/kg/day.

iii. *Pre- and post-natal sensitivity.* Sodium chlorate is not a developmental toxicant in rats. EPA has already applied an additional 10-fold uncertainty factor (resulting in a total 1,000-fold uncertainty factor) to the NOEL used to set the RfD. This additional 10-fold uncertainty factor should be adequate to protect infants and children.

2. *Chronic risk.* Using the very conservative exposure assumptions described above, EPA has concluded that aggregate exposure to sodium chlorate from food will utilize from 1% of the RfD for nursing infants up to 6% for children 1-6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sodium chlorate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sodium chlorate residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of sodium chlorate in plants is adequately understood. The residue of concern is sodium chlorate and sodium chloride. The nature of the residue in animals is not applicable due to no reasonable expectation of transfer of residues to meat/milk/poultry/eggs.

B. Analytical Enforcement Methodology

Analytical methods for detecting and measuring the levels of the pesticide residue are not needed. The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for sodium chlorate.

C. Magnitude of Residues

No detectable residues were found in wheat grain or straw from wheat treated at the 2× rate. Considering that no detectable residues were found in wheat grain, it is unlikely that significant residues will occur in the processed fractions of wheat. There is no likelihood of transfer of residues to meat/milk/poultry/eggs. Therefore, magnitude of the residue data in those commodities is not required.

D. International Residue Limits

No CODEX, Canadian, or Mexican maximum residue levels have been established for residues of sodium chlorate.

E. Rotational Crop Restrictions

Considering the phytotoxic nature of sodium chlorate, which would preclude the planting of a crop soon after treatment of a previous crop, coupled with the fact that residues are below the limit of quantitation shortly after application to target crops, EPA does not believe measurable residues would be detected in rotational crops. For the purposes of this section 18 use, rotational crop tolerances and/or plant back restrictions will not be necessary.

VI. Conclusion

Therefore, the exemption from the requirement of a tolerance is established for residues of sodium chlorate in wheat.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300574] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited exemption from the tolerance requirement under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1997.

Linda A. Travers,
Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1020 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.

* * * * *

(b) A time-limited exemption from the requirement of a tolerance is established for residues of the defoliant/desiccant in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The exemption will expire and is revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/ revocation date
Wheat	NA	7/31/98

[FR Doc. 97–31547 Filed 12–2–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket No. 96–162; FCC 97–352]

Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of Section 601(d) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Report and Order*, the Commission modifies the current structural separation requirement for the provision of cellular service by the Bell Operating Companies (BOCs), and adopts a new requirement that all incumbent local exchange carriers (LECs) provide in-region broadband CMRS, including cellular services, through a CMRS affiliate, subject to the Commission's accounting and affiliate transactions rules. Rural telephone companies will be exempt from this requirement; however, a competing carrier, interconnected with the rural carrier, may petition the Commission to remove the exemption, or the Commission may do so on its own motion, where the rural telephone company has engaged in anti-competitive conduct, such as discrimination. Companies serving fewer than two percent of the nation's subscriber lines that seek to provide broadband CMRS may petition the Commission for suspension or modification of the requirement that broadband CMRS be provided through a separate affiliate. These safeguards are adopted to address concerns that recent developments in the CMRS market, such as direct competition among telecommunications carriers and the development of fixed wireless services, may increase the incentive for anti-competitive behavior by incumbent LECs. The separate affiliate requirement will sunset on January 1, 2002, unless the Commission determines that the competitive conditions in the local exchange market are such that continuation of these safeguards is in the public interest.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: David Krech, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–0620. For additional information concerning the information collections contained in this Order contact Dorothy Conway at (202) 418–7349, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Report and Order* in WT Docket No. 96–162, adopted September 30, 1997, and released October 3, 1997 (erratum released October 29, 1997), clarification Order (FCC 97–389) adopted October 24, 1997, and released October 27, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. Synopsis of the *Report and Order*:

I. Background

1. *Safeguards Under Section 22.903 for BOC Provision of Cellular Service.* Section 22.903 of the Commission's rules comprises two principal parts: the requirement that BOCs provide cellular service through a structurally separate corporation; and a series of restrictions on the separate affiliate, including restrictions on use and ownership of landline transmission facilities and requirements for the independent operation of the separate cellular affiliate through separate books of account, officers, operating, marketing, installation, and maintenance personnel and utilization of separate computer and transmission facilities in the provision of cellular service. This requirement was adopted in order to preserve the competitive potential of the non-wireline cellular provider, the Commission required the wireline carrier to provide its cellular service through a structurally separate affiliate, *i.e.*, an independent corporation with separate officers, separate books of account, and separate operating, marketing, installation, and maintenance personnel. The Commission also prohibited the wireline carrier's cellular affiliate from owning facilities for the provision of landline telephone service. These structural separation requirements were intended to prevent wireline carriers from using their market power in the local exchange market to engage in anti-competitive practices, such as improper cost allocation between the wireline carrier and its cellular affiliate and discrimination by the wireline carrier in favor of its cellular affiliate. The Commission also prohibited the wireline carrier's cellular affiliate from owning facilities for the provision of landline telephone service.

2. *Section 22.903 Separate Affiliate Not Required for LEC Provision of personal communications services (PCS) and specialized mobile radio (SMR).* Section 22.903 applies only to BOC provision of cellular service. Structural safeguards are not required for LEC, including BOC, provision of other CMRS, such as broadband PCS. *See* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90–314, *Second Report and Order*, 58 FR 59174 (Nov. 8, 1993), *recon.*, 59 FR 32830 (June 24, 1994) (*Broadband PCS Second Report and Order*); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Service, GN Docket No. 93–252, *Report and Order*, 59 FR 18493 (April 19, 1994) (*CMRS Second Report and Order*). In addition, non-BOC LECs may provide cellular service without structural safeguards.

3. *Cincinnati Bell.* In *Cincinnati Bell Telephone* v. *FCC*, 69 F.3d 752 (6th Cir. 1995) the Sixth Circuit found that the Commission had failed to justify adequately the conclusion in the *Broadband PCS Second Report and Order* that the record was insufficient to repeal section 22.903. The Court held that, in light of the decision that all LECs, including BOCs, could provide broadband PCS without establishing a structurally separate affiliate, the Commission was required—but had failed—to give a reasoned explanation for the disparate treatment of BOC provision of cellular and PCS, as well as the disparity in BOC and non-BOC provision of cellular service.

4. *NPRM.* In the *NPRM, Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96–162, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order*, 61 FR 46420 (Sept. 3, 1996), the Commission observed that the BOCs currently retain market power in the local exchange market because they control bottleneck facilities and serve the vast majority of customers within their service areas, and other carriers must seek interconnection from the BOC. To address this issue, the Commission proposed two alternatives to the existing structural safeguards for BOC cellular operations, and asked commenters to submit information regarding the costs of the structural separation requirement: (1) to retain the structural separations requirements of section 22.903 for BOC provision of in-region cellular service, but sunset the restrictions for a particular BOC when that BOC receives authorization to provide interLATA service originating in any in-region state; or (2) to eliminate the structural safeguards of section 22.903 immediately in favor of uniform safeguards for all Tier 1 LEC provision of broadband CMRS. With respect to both options, the Commission proposed to replace section 22.903 with safeguards similar to those adopted in the *Competitive Carrier Fifth Report and Order* proceeding. *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79–252, *Fifth Report and Order*, 49 FR 34824 (Sept. 4, 1984) (*Competitive Carrier Fifth Report and Order*). In that order, the Commission concluded that, in order to qualify for treatment as a nondominant carrier, an independent local exchange company must provide interstate interexchange services through a separate affiliate that (1) has separate books of account; (2) does not jointly own transmission or switching facilities with that local exchange company; and (3) acquires any services from the affiliated local exchange carrier at tariffed rates, terms, and conditions. In addition, the Commission subjected the affiliate to the Commission's joint cost and affiliate transaction rules. In the *NPRM*, the Commission proposed a similar framework of safeguards for Tier 1 LECs providing in-region broadband CMRS

II. Report and Order

A. General Issues Regarding Incumbent LEC Provision of CMRS

5. Section 22.903 was intended to apply only to cellular service; however, the anti-competitive practices it was meant to address are by their nature not unique to cellular service, but can occur any time a competing service provider requests interconnection with a local exchange network. That is because LECs that own CMRS subsidiaries have the incentive to engage in such anti-competitive practices in order to benefit their own CMRS subsidiaries and to protect their local exchange monopolies from wireless competition. At the same time, LEC control of bottleneck local exchange facilities, upon which competing CMRS providers must rely, gives LECs the opportunity to engage in anti-competitive behavior.

6. Improper cost allocation occurs when a LEC shifts costs from its CMRS subsidiary to its regulated local exchange service. Cost shifting has the effect of both subsidizing the LEC's CMRS subsidiary, thus giving the subsidiary a substantial competitive advantage over non-LEC affiliated CMRS providers, and of raising the costs borne by the LEC's captive local exchange ratepayers. *See* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order in CC Docket No. 96–149 and Third Report and Order in CC Docket No. 96–61*, 62 FR 35974 (Jul. 3, 1997) (*Dom/Nondom Order*).

7. Requiring LECs to create a separate affiliate for the provision of CMRS services helps deter the LECs' incentive and ability to engage in anti-competitive practices and facilitates their detection. Arm's length transactions between LECs and their CMRS affiliates and the requirement that agreements be reduced to writing will help the Commission and competing CMRS providers to detect, and address, competitive abuses. Ease of detection will, in turn, deter a LEC from engaging in such abuses in the first place.

8. The Commission observes that in the past structural separation requirements were applied in the wireless context only to BOC provision of cellular service. In the *Broadband PCS Second Report and Order* and the *CMRS Second Report and Order* the Commission concluded that nonstructural accounting safeguards were sufficient to protect against improper cost allocations and interconnection discrimination by LECs providing PCS or other CMRS. Not only did the Commission, prior to divestiture, apply structural separation in the wireless context only to cellular service, but in formulating rules for cellular service, the Commission applied the structural separation rules only to the BOCs, and not to the non-BOC LECs, in the provision of cellular service. The Commission believes that the rules should treat similar services consistently and that any structural separation requirements should be uniform to avoid disparate treatment. Thus, the choices for achieving regulatory symmetry are either to extend the section 22.903 structural safeguards for BOC provided cellular service to all LECs and all CMRS services, or to eliminate section 22.903 in favor of less restrictive safeguards applicable to the provision of all broadband CMRS.

B. Separate Affiliate Requirements for In-Region Incumbent LEC Provision of CMRS

9. Anti-competitive interconnection practices, particularly discriminatory behavior, pose a substantial threat to full and fair competition in the CMRS marketplace, and all LECs, not just the BOCs, have the ability and incentive to engage in anti-competitive behavior. There are ways to lessen the threat of discrimination, predatory price squeezes, and cost misallocation that are less burdensome than the requirements currently imposed by section 22.903. For example, accounting safeguards, section 251 of the Communications Act, 47 U.S.C. 251, and related interconnection rules, and price cap regulation all serve to protect local exchange ratepayers from bearing the costs and risks of the telephone companies' other nonregulated activities and reduce the likelihood that LECs will raise interconnection rates in order to effect a predatory price squeeze. Such mechanisms do not, however, eliminate the possibility of interconnection discrimination.

10. In this *Report and Order*, the Commission requires that incumbent LECs offering in-region broadband CMRS services do so through a separate corporate affiliate. The CMRS affiliate must: (1) maintain separate books of account, and must maintain the books, records, and accounts in accordance with generally accepted accounting principles; (2) not jointly own transmission or switching facilities with the affiliated LEC that the affiliated LEC uses for the provision of local exchange services in the same in-region market; and (3) acquire any services from the affiliated LEC on a compensatory arm's length basis, as required by our affiliate transactions rules. The affiliate will be subject to the Commission's joint cost and affiliate transaction rules. Title II common carrier services or services, facilities, or network elements provided pursuant to sections 251 and 252 that are acquired from the affiliated LEC must be available to all other carriers, including CMRS providers, on the same terms and conditions.

11. *Applicability of Safeguards to Out-of-Region CMRS Operations.* The Commission's concerns regarding incumbent LEC provision of CMRS services extend only to the provision of in-region CMRS services because concerns regarding discrimination in interconnection arrangements are not present outside of an incumbent LEC's wireline service territory. In addition, the geographic separation between an incumbent LEC's in-region service area and out-of-region CMRS mitigates the potential for undetected improper allocation of costs. With regard to interconnection, the lack of control of "bottleneck" local facilities means that an incumbent LEC providing CMRS "out-of-region" is similar to any other provider of CMRS.

12. The Commission is not requiring any LEC to provide out-of-region CMRS offerings through a separate affiliate. To the extent there is potential for incumbent LECs that provide out-of-

region CMRS to engage in anti-competitive behavior or cost misallocations such potential is adequately addressed through accounting requirements and other non-structural safeguards.

13. The Commission also recognizes that CMRS license areas and incumbent LEC wireline service areas are not generally congruent. Moreover, non-BOC incumbent LECs, particularly smaller companies, do not necessarily have distinct service areas but may have discrete patches of coverage over a large area. With respect to CMRS, on the other hand, licensees typically have a well-defined geographic service area (*e.g.*, major trading area (MTA), basic trading area (BTA)) under our rules. The Commission observes that an incumbent LEC's incentives and ability to act anti-competitively are significantly attenuated where the area served by its bottleneck wireline facilities is a small fraction of the area served by its wireless operations. Indeed, in situations where there is de minimis overlap between the incumbent's wireline service area and its CMRS license area, that incumbent LEC is close to offering "out-of-region" services. Therefore, the Commission is applying "in-region" CMRS structural safeguards only to an incumbent LEC whose wireline service area substantially overlaps its CMRS license area. The Commission defines "in-region" CMRS to be a CMRS offering where 10 percent or more of the population covered by the CMRS service area is within the incumbent LEC's wireline service area. The Commission concludes that the standard 10 percent attribution criteria should apply with respect to ownership relationships between an incumbent LEC and an in-region CMRS licensee.

14. *Applicability of Safeguards to All Broadband CMRS Services and All In-Region Incumbent LECs.* The separate affiliate rules adopted herein will apply to all in-region LEC broadband CMRS operations because all incumbent LECs have the incentive and ability to discriminate against unaffiliated broadband CMRS providers of every type—not just cellular operators—where there is sufficient overlap between the incumbent LEC's wireline service area and the CMRS service area. Thus, limited safeguards applicable to all in-region incumbent LECs for all broadband CMRS services are necessary to promote competitive communications markets and to achieve regulatory symmetry.

15. Increased competition and convergence of services in the CMRS market has heightened the need for regulatory symmetry among commercial mobile radio services and among different kinds of CMRS providers. In applying a separate affiliate requirement to all in-region incumbent LEC provision of CMRS and not just BOC provision of cellular service, the Commission is imposing certain costs on, and limiting flexibility for, independent LECs, which were not previously subject to these requirements or to any of the other requirements of section 22.903. Nevertheless, the competitive concerns regarding the ownership and control of bottleneck facilities are significant so long as there is a substantial geographic overlap between the incumbent LEC's wireline local telephone service area and the LEC's CMRS service area. When that overlap passes the 10 percent overlap threshold, the benefits of preventing the competitive harm inherent in the incumbent LEC-CMRS relationship significantly outweigh the costs imposed by safeguards. To the extent that incumbent LECs are concerned that imposition of a separate affiliate requirement will impair their ability to offer integrated wireline and wireless services, the rules permit the creation of certain bundled and integrated service packages, either through an incumbent LEC's offering facilities and services to the CMRS affiliate on nondiscriminatory terms, or solely through the CMRS affiliate that is able to offer competitive local exchange service. Absent a separate affiliate requirement, it would be more difficult for the Commission and competitors to detect and prevent cost misallocation, discrimination and other anti-competitive behavior by incumbent LECs. Particularly with respect to interconnection, a separate affiliate requirement is an effective way to afford the requisite degree of "transparency" to enable competitors and the Commission to detect discrimination in interconnection. Without a separate affiliate requirement, non-affiliated CMRS providers would have greater difficulty determining whether their interconnection arrangements with the LEC are comparable to those between the LEC and its CMRS provider.

16. The Commission recognizes that this decision represents a departure from prior decisions in the *Broadband PCS Second Report and Order* and *CMRS Second Report and Order* where the Commission declined to impose structural safeguards for broadband PCS providers affiliated with LECs, and for LECs with CMRS affiliates, respectively. The Commission similarly declined to impose structural safeguards in the *SMR Wireline Order*, in which we permitted wireline carriers to obtain SMR licenses without restriction. The Commission's decision in this Report and Order strikes a different balance between the interest in fostering efficient provision of CMRS and the commitment to prevent unlawful discrimination and other anti-competitive practices by incumbent LECs than our decisions in the *Broadband PCS Second Report and Order, CMRS Second Report and Order, SMR Wireline Order,* and *Cellular Reconsideration Order.* These earlier decisions were not based on a full analysis of the competitive harms that might result from LEC provision of SMR, PCS, and cellular, particularly with respect to discrimination against unaffiliated competitors requesting interconnection.

17. *Basis for Level of Safeguards.* These structural safeguards are substantially similar to those recently adopted with regard to independent LEC provision of in-region interstate, domestic, interexchange service, and are similar to the separate affiliate requirements the Commission adopted in the *Competitive Carrier Fifth Report and Order.* These safeguards provide an adequate measure of transparency between an incumbent LEC's wireline and in-region CMRS operations so as to prevent improper cost allocations and to ensure that competing CMRS providers are receiving nondiscriminatory treatment. The affiliate transactions rules and the requirement of separate books of account are useful to detect and address potential misallocation of costs and/or assets between a LEC and its CMRS affiliate. Any transaction between the incumbent LEC and its CMRS affiliate becomes subject to the Commission's affiliate transactions rules, which serve to prevent cost misallocation. The Commission concludes that, while price cap regulation may reduce the incentive for misallocation of costs of the nonregulated wireless services, it does not entirely eliminate that incentive. The Commission's requirement that any services and facilities provided by the incumbent LEC to its CMRS affiliate must also be available to independent CMRS operators on the same prices, terms, and conditions ensures that these transactions between the incumbent and its CMRS affiliate will be arms-length transactions. The Commission anticipates that interconnection arrangements between the incumbent LEC and its CMRS affiliate will be undertaken pursuant to tariff or through section 251 negotiated or arbitrated interconnection agreements that are available to all CMRS carriers.

18. *Differences between In-Region Incumbent LEC-CMRS Safeguards and Current BOC Cellular Safeguards.* In two critical respects, the requirements adopted herein are less stringent than the section 22.903 restrictions. First, the CMRS separate affiliate does not need to have separate officers and employees from the incumbent LEC. Second, the CMRS separate affiliate is permitted to own its own wireline local exchange facilities, and the CMRS affiliate may operate as a competitive local exchange carrier in its region. The only restriction on the wireline LEC activities of the CMRS affiliate is that the affiliate may not jointly own transmission and switching facilities that the affiliated LEC uses for the provision of local exchange service in the region. This safeguard is generally consistent with the proposal made in the *NPRM.* This does not preclude the CMRS affiliate from using the affiliated incumbent LEC's central office, switch, roof space or other facilities—the incumbent LEC and the CMRS affiliate are merely precluded from jointly owning such facilities. This does not preclude the affiliate from jointly using the LEC's landline facilities to provide integrated service (subject to applicable interconnection and other regulations). Such transactions between the CMRS affiliate and the incumbent LEC for joint use would be subject to the affiliate transaction rules and the requirement that any facilities or services an incumbent LEC makes available to its CMRS affiliate also be made available to independent CMRS operators on the same rates, terms, and conditions.

C. In-Region Safeguards Applicable to Rural and Certain Mid-Sized Incumbent LECs

19. In the 1996 Act Congress expressed particular concern about burdens placed on small and rural LECs. In determining where to draw the appropriate balance between concerns about burdens on LECs other than the largest LECs, Congress, in section 251 of the Communications Act, excluded two groups of LECs from the same good faith negotiation, interconnection, unbundling, resale, network disclosure and physical collocation requirements imposed on other LECs. First, rural telephone companies are exempt from the above-referenced section 251 requirements until such company receives a *bona fide* request for interconnection and the state commission acts to terminate the exemption. Second, local exchange carriers with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide may petition a state commission for suspension or modification of requirements in section 251 (b) and (c).

20. The Commission finds that it is appropriate and equitable to exempt rural telephone companies from the separate affiliate requirement. A competing carrier, interconnected with the rural telephone company may petition the Commission to remove the exemption, or the Commission may do so on its own motion, where the rural telephone company has engaged in anti-competitive conduct, such as discrimination. We also find, consistent with Congress's treatment of LECs in section 251, that incumbent LECs with fewer than two percent of the nation's subscriber lines, may petition the Commission for suspension or modification of the separate affiliate requirement. The Commission will grant such a petition where petitioner can show that suspension or modification of the separate affiliate requirement is necessary to avoid a significant adverse economic impact on users of telecommunications services generally, or to avoid a requirement that would be unduly economically burdensome. In addition, petitioners must demonstrate that suspension or modification of the requirement is consistent with the public interest, convenience and necessity. Some LECs, especially rural telephone companies, might not have the resources to comply with the separate affiliate requirements and still provide CMRS. By reducing the regulatory burden on rural LECs the Commission will encourage the development of wireless services in areas where otherwise there may be no wireless service at all. Rural telephone companies may find it economical to use CMRS licenses to provide fixed wireless services in remote areas as an alternative means of extending the local exchange network to unserved or hard to serve areas. Moreover, under section 309(j)(3) of the Communications Act, 47 U.S.C. § 309(j)(3), the Commission is required to promote the development and rapid deployment of new technologies, products, and services for benefit of the public, including those residing in rural areas, and to disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Thus, foregoing a separate affiliate requirement for rural incumbent LECs and allowing these carriers to minimize any additional costs and reporting requirements promotes the goals set by Congress in section 309(j).

21. For similar reasons, the Commission will permit carriers serving fewer than two percent of the nation's subscriber lines to petition the Commission for suspension or modification of the separate affiliate requirement.

D. Joint Marketing

22. *Overview.* Section 601(d) of the 1996 Act provides: "Notwithstanding section 22.903 of the Commission's regulations (47 CFR 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services."

23. While section 601(d) negates section 22.903(e), the Commission retains authority to determine the permissible scope of LEC/CMRS joint marketing, including the rules to define the relationship between the affiliated entities engaged in such joint marketing. Section 601(d) expressly permits a BOC to market jointly and sell CMRS in conjunction with several types of landline services. Nothing in the plain language of section 601(d) prohibits or circumscribes the Commission from imposing conditions on, or defining the permissible scope of, such joint marketing. The authority to engage in joint marketing and sale of landline and CMRS services is expressly made subject to the provisions of section 272, which include separate affiliate requirements. The Commission requires that all incumbent LECs, other than LECs exempt from the separate affiliate rules, engaging in joint marketing of local exchange and exchange access and CMRS services, do so subject to the affiliate transactions rules (*i.e.*, governing the transaction between the company's wireline and wireless affiliates). Such CMRS activity will be classified as nonregulated under the Commission's accounting rules, and must be conducted on a compensatory, arm's-length basis. These agreements must be reduced to writing and must be made available for public inspection upon request. Pursuant to the procedures set forth in Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96–150, *Report and Order,*

62 FR 2927 (Jan. 21, 1997), concerning making agreements available for public inspection, the CMRS affiliate, at a minimum, must provide a detailed written description of the terms and conditions of the transaction on the Internet within ten days of the transaction through the company's home page. The broad access of the Internet will increase the availability and accessibility of this information to interested parties, while imposing a minimum burden. The Commission also requires that the description of the terms and conditions of the transaction be sufficiently detailed to allow evaluation of compliance with the accounting rules. This information must also be made available for public inspection at the principal place of business of the parties, and must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports.

E. Resale

24. The Commission's analysis with respect to authority to impose conditions on resale is necessarily quite similar to the analysis of such authority with respect to joint marketing. Section 601(d) clearly permits LECs to resell CMRS provided by their wireless affiliates, and as discussed above, the Commission retains authority to place conditions on, or define the scope of, resale of wireline and CMRS services. There is a considerable amount of CMRS spectrum capacity available in the open market. In addition, broadband CMRS providers (including LEC affiliates) are prohibited from restricting resale of their services or discriminating against resellers. In this environment, there is no reason to be particularly concerned about the terms and conditions in which the CMRS affiliate makes available CMRS to its incumbent LEC parent for resale. Therefore, the Commission does not believe it is appropriate to impose any further regulation upon incumbent LEC resale of its CMRS affiliate's CMRS, aside from other Commission rules such the accounting and affiliate transaction rules.

25. With respect to joint billing and collection, which is not currently prohibited under § 22.903, and other collateral activities that are currently prohibited under § 22.903, including joint installation, maintenance, and repair for BOC cellular and wireline local exchange services, the Commission is not imposing any restrictions at this time. Carriers must adhere to other applicable Commission rules such as accounting and affiliate transactions rules.

F. Customer Proprietary Network Information

26. Section 22.903(f) of the Commission's rules, 47 CFR 22.903(f), states that BOCs must not provide to their cellular separate affiliate any customer proprietary information, unless such information is publicly available on the same terms and conditions. The 1996 amendments to the Communications Act address telecommunications carriers' use, disclosure and permission of access to Customer Proprietary Network Information (CPNI) in general. Specifically, section 222(c)(1), 47 U.S.C. 222(c)(1), provides: "PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories." Section 222(c)(2), 47 U.S.C. 222(c)(2), provides that, "[a] telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer." Section 222(c)(3), 47 U.S.C. 222(c)(3), allows a local exchange carrier to use, disclose, or permit access to aggregate customer information for purposes other than those described in section 222(c)(1) only if the LEC provides such information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request.

27. The Commission recently initiated a separate proceeding to consider the formulation of CPNI regulations pursuant to section 222 that would apply to all telecommunications carriers. *See* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96–115, *Notice of Proposed Rulemaking*, 61 FR 26483 (May 28, 1996) (*CPNI NPRM*). In the *CPNI NPRM*, the Commission sought comment on whether § 22.903(f) is inconsistent with section 222 of the Communications Act. The Commission also sought comment on whether § 22.903(f) should be eliminated even if the rule is consistent with section 222, on the grounds that § 22.903(f) is superfluous in light of section 222.

28. Based on the record, the ability to use CPNI obtained from the wireline monopoly service for marketing purposes is clearly a competitive advantage the BOC CMRS providers would be very interested in utilizing, and other carriers are equally anxious to obtain. So that the Commission does not prejudge any aspect of the CPNI rulemaking, however, the appropriate interpretation of the scope of section 222's CPNI protections is deferred to CC Docket No. 96–115. Accordingly, pending the decision in the CPNI proceeding, the Commission will not eliminate § 22.903(f) at this time, nor will § 22.903(f) be extended to non-BOC LECs and to all CMRS. The Commission will take appropriate action regarding § 22.903(f) upon resolution of the section 222 proceeding.

29. As described above, section 222 provides general requirements regarding a telecommunications carrier's use, disclosure and permission of access to CPNI. These statutory provisions are self-executing. Consequently, the requirements of section 222 are applicable to the provision of CPNI by all incumbent LECs to their CMRS affiliates. (We note that section 222 applies to all telecommunications carriers and not just incumbent LECs. For the purposes of this Report and Order, however, we address only the issue of section 222 as it applies to incumbent LECs and their CMRS affiliates. This in no way limits the statutory obligations of other telecommunications carriers under section 222.) Specifically, we expect all incumbent LECs and their CMRS affiliates to comply with the limitations on use, disclosure, and access to CPNI set forth in section 222(c) in their provision of CMRS and LEC services respectively. Further, we expect BOCs to continue to comply with § 22.903(f) of the Commission's rules with respect to BOC provision of CPNI to their cellular affiliates.

G. Network Information Disclosure

30. Section 251(c)(5) of the Communications Act, 47 U.S.C. 251(c)(5), imposes a duty on incumbent LECs to provide reasonable public notice of changes to the network necessary for the transmission and routing of services using that LEC's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks. The Commission tentatively concluded that no specific Part 22 rule pertaining to network information disclosure by the BOCs would be necessary or appropriate due to the requirement in section 251(c)(5). Incumbent LECs are required to "provide public notice of changes in the information necessary for the transmission and routing of services" using the incumbent LEC's CMRS facilities or networks, pursuant to section 251(c)(5). The Communications Act imposes on incumbent LECs the duty to provide reasonable public notice of changes in the information needed to transmit and route services using a LEC's facilities or networks. Incumbent LECs must provide reasonable public notice of any other changes that would affect the interoperability of those facilities or networks. Section 51.325(c) of the Commission's rules, 47 CFR 51.325(c), provides that until public notice has been given, an incumbent LEC may not disclose information about planned network changes to "separate affiliates, separated affiliates, or unaffiliated entities." Accordingly, the Commission adopts the conclusion in the *NPRM* that no specific Part 22 rule pertaining to network information disclosure by the BOCs is needed.

VI. Conclusion

31. In this proceeding, the Commission has modified the rules to reflect the Congressionally mandated goal of consistent treatment of like services and to afford telecommunications providers flexibility in structuring service offerings in response to changing consumer demand. In so doing, the Commission has considered the increasing convergence of regulated wireline services and nonregulated wireless services and consumer demand for "one-stop shopping" for telecommunications customers. At the same time, the Commission is mindful of concerns that incumbent wireline providers, seeking to offer wireless services, may take advantage of their wireline market power to allocate costs improperly, discriminate against competitors, or engage in a predatory price squeeze, all to the detriment of consumers. The Commission believes that the approach adopted in this Report and Order, including requiring incumbent LECs to offer in-region broadband CMRS through a separate CMRS affiliate, appropriately balances the LECs' need for flexibility in an evolving marketplace with competitors' concerns regarding the incentive for anti-competitive behavior by incumbent LECs. Further, the goals of section 22.903 are fulfilled through the separate CMRS affiliate requirement and through other factors in the marketplace, including increasing competition and convergence, accounting safeguards, price cap regulation, new interconnection requirements and other existing rules. Rural telephone companies are exempt from the separate affiliate requirement, and companies serving fewer than two percent of the nation's subscriber lines that seek to provide broadband CMRS without forming a separate affiliate may petition the Commission for suspension or modification of that requirement.

32. The separate affiliate requirement will sunset on January 1, 2002, unless the Commission determines that the competitive conditions in the local exchange market are such that continuation of these safeguards is in the public interest.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 96–162. The Commission sought written comments on the proposals in the *NPRM*, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) for the Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

1. Need for and Purpose of the Action

The Report and Order in this docket sets forth a consistent regulatory framework for the provision of commercial mobile radio services (CMRS) by incumbent local exchange carriers (LECs) and their affiliates. This framework will treat all broadband CMRS, including cellular services, uniformly and is narrowly tailored to address specific concerns about potential anti-competitive use of bottleneck wireline local exchange facilities.

2. Issues Raised in Response to the IRFA

The Commission sought comment generally on the IRFA. No comments were submitted specifically in response to the IRFA.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities having fewer than 1,500 employees. This FRFA discusses generally the total number of small telephone entities potentially affected by this Report and Order.

The rules adopted in this Report and Order apply to all incumbent LECs offering in-region broadband CMRS. Incumbent LEC is defined in section 251(h)(1) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 251(h)(1), with respect to an area, as "the local exchange carrier that (A) on the date of enactment of the Telecommunications Act of 1996, provided local exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 CFR 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)." Rural telephone companies are exempt from the structural safeguards imposed in this Report and Order; however, a competing carrier, interconnected with the rural telephone company, may petition the Commission to remove the exemption, or the Commission may do so on its own motion, where the rural telephone company has engaged in anti-competitive conduct. In addition, companies serving fewer than two percent of the nation's subscriber lines may petition the Commission for

suspension or modification of the separate affiliate requirement.

Small incumbent LECs subject to these rules are either dominant in their field of operation or are not independently owned and operated, and, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns." Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

The United States Bureau of the Census ("the Census Bureau") reports that at the end of 1992 there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, wireless carriers, operator service providers, pay telephone operators, and resellers. It seems certain that some of the 3,497 telephone service firms may not qualify as small incumbent LECs because they are not incumbent LECs or they are not independently owned and operated. It seems reasonable to conclude that fewer than 3,497 telephone service firms would qualify as small incumbent LECs that may be affected by this Report and Order.

The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small entities or small incumbent LECs based on these statistics. As it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as small businesses under the SBA definition. Consequently, the Commission estimates that using this methodology there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules adopted in this Report and Order.

Neither the Commission nor the SBA has developed a definition of small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone companies. The most reliable source of information regarding the number of LECs nationwide of which the Commission is aware appears to be the data collected annually in the *TRS Worksheet*. According to the most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services. As some of these carriers have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Report and Order.

4. Reporting, Recordkeeping, and Other Compliance Requirements

The rule adopted in this Report and Order requires incumbent LECs offering in-region broadband CMRS services to do so through a separate corporate affiliate. The CMRS affiliate must:

(1) Maintain separate books of account, and must maintain the books, records, and accounts in accordance with generally accepted accounting principals (GAAP);

(2) Not jointly own transmission or switching facilities with the affiliated LEC that the affiliated LEC uses for the provision of local exchange services in the same in-region market; and

(3) Acquire any services from the affiliated LEC on a compensatory arm's length basis, as required by our affiliate transactions rules. The affiliate will be subject to the Commission's joint cost and affiliate transaction rules. Title II common carrier services or services, facilities, or network elements provided pursuant to sections 251 and 252 that are acquired from the affiliated LEC must be available to all other carriers, including CMRS providers, on the same terms and conditions.

This rule may require incumbent LECs to have additional reporting and recordkeeping with respect to transactions with the CMRS affiliate.

Affiliate transactions. Some incumbent LECs may now be required to comply with the affiliate transactions rules in Part 32 of the Commission's rules if they offer broadband CMRS through a separate affiliate and conduct transactions with the CMRS affiliate. Prior to the adoption of the rule in this Report and Order, the Commission required the BOCs to establish a separate affiliate for provision of cellular services, otherwise a separate affiliate was not required for LEC provision of broadband CMRS. Therefore, LECs that previously did not have a separate affiliate for broadband CMRS, and thus did not have affiliate transactions, will now have to establish a separate affiliate and comply with the Commission's affiliate transactions rules.

Joint marketing agreements. The rule adopted in this Report and Order requires all incumbent LECs and the CMRS affiliates engaging in joint marketing of local exchange and exchange access and CMRS to reduce all such agreements to writing and make the agreements available for public inspection upon request at the principal place of business of the affiliate and the incumbent LEC. The documentation also must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports. The affiliate must also provide a detailed written description of the terms and conditions of the transaction on the Internet within ten days of the transaction through the affiliate's home page.

5. Steps Taken To Minimize Burdens on Small Entities and Significant Alternatives Considered

The Commission sought to minimize burdens on small entities by providing an exemption for rural telephone companies. Rural telephone companies are exempted from the separate affiliate requirement; however, a competing local exchange carrier, interconnected with the rural telephone company, may petition the Commission to remove the exemption, or the Commission may do so on its own motion, if the rural telephone company has engaged in anti-competitive conduct.

The Commission sought to minimize burdens on small entities by permitting incumbent LECs with fewer than two percent of the nation's subscriber lines to petition the Commission for suspension or modification of the separate affiliate requirement. The Commission will grant such a petition if the incumbent LEC can demonstrate that suspension or modification of the separate affiliate requirement is necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly burdensome, and consistent with the public interest, convenience, and necessity.

The Commission considered and rejected the proposals in the *NPRM*: (1) to retain, but sunset, section 22.903 of the Commission's rules, or (2) to require all Tier 1 (or Class A) LECs providing in-region broadband CMRS to file a safeguards plan. Neither of the proposals in the *NPRM* would impose additional regulation on Class B LECs. The Commission instead decided to impose structural separation regulations on all incumbent LECs providing broadband CMRS because anti-competitive interconnection practices, particularly discriminatory behavior, pose a substantial threat to full and fair competition in the CMRS marketplace, and all incumbent LECs have the ability and incentive to engage in anti-competitive behavior. The Commission observed that increased competition in the CMRS market and the possibility that CMRS in the future may substitute for wireline local loops may actually increase incumbent LECs' incentive to discriminate against unaffiliated CMRS providers. The Commission concluded that it was appropriate to apply structural safeguards to all incumbent LECs. As described above, however, the Commission has considered, and taken measures to address, the additional burdens these requirements might have on rural telephone companies and on those entities serving two percent of the nations' subscriber lines.

6. *Report to Congress*

The Commission shall send a copy of this Final Regulatory Flexibility Analysis with this Report and Order in a report to Congress pursuant to section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A).

B. Paperwork Reduction Act

This *Report and Order* contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, has submitted this to Office of Management and Budget (OMB) for emergency approval under the Paperwork Reduction Act of 1995, Pub. L. No. 104–13.

Paperwork Reduction Act Comment Filing Procedures. Written comments by the public on the proposed and/or modified information collections are due on or before January 2, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 2, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

Further Information: For additional information concerning the information collections contained in this *Notice of Proposed Rulemaking* contact Dorothy Conway at (202) 418–7349 or via the Internet at dconway@fcc.gov.

Supplementary Information

Title: Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services and Implementation of section 601(d) of the Telecommunications Act of 1996.

Type of Review: Revision of currently approved Collection.

Respondents:

Number of Respondents: We estimate up to 19.

Estimated Time Per Response: The average burden on the applicant is 6056 hours for the information necessary to maintain books of account of incumbent LEC's in-region CMRS affiliate separate from LEC's local exchange and other activities. The average burden on the applicant is 72 hours to conduct arms length transactions between the incumbent LEC and the CMRS affiliate. The average burden on the affiliate is 1 hour for making the written contracts available for public inspection at their principal place of business and posting a written description of the terms and conditions of the transaction in the Internet.

Total burden = 116,456 hours.

We estimate that up to five respondents may have to establish separate affiliates and thus would incur start-up costs.

Estimated Cost Per Respondent: $200,600.

Total Respondent Costs: $1,003,000.

Needs and Uses: The Commission imposes the recordkeeping collection to ensure that incumbent LECs providing broadband CMRS in-region through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations.

C. Authority

33. The above action is authorized under the Communications Act, 4(i), 303(r), 309(c), 309(j), and 332, 47 U.S.C. 154(i), 303(r), 309(c), 309(j), and 332, as amended.

D. Ordering Clauses

34. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), Part 22 of the Commission's Rules, 47 CFR Parts 20 and 22, is amended in the rule changes.

35. It is further ordered that the rules adopted in this *Report and Order* will be effective February 11, 1998.

List of Subjects in 47 CFR Parts 20 and 22

Communication common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations part 20 is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 4, 251–52, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–52, 303, and 332 unless otherwise noted.

2. Section 20.20 is added to read as follows:

§ 20.20 Conditions applicable to provision of CMRS service by incumbent Local Exchange Carriers.

(a) *Separate affiliate.* An incumbent LEC providing in-region broadband CMRS shall provide such services through an affiliate that satisfies the following requirements:

(1) The affiliate shall maintain separate books of account from its affiliated incumbent LEC. Nothing in this section requires the affiliate to maintain separate books of account that comply with part 32 of this chapter;

(2) The affiliate shall not jointly own transmission or switching facilities with its affiliated incumbent LEC that the affiliated incumbent LEC uses for the provision of local exchange service in the same in-region market. Nothing in this section prohibits the affiliate from sharing personnel or other resources or

assets with its affiliated incumbent LEC; and

(3) The affiliate shall acquire any services from its affiliated incumbent LEC for which the affiliated incumbent LEC is required to file a tariff at tariffed rates, terms, and conditions. Other transactions between the affiliate and the incumbent LEC for services that are not acquired pursuant to tariff must be reduced to writing and must be made on a compensatory, arm's length basis. All transactions between the incumbent LEC and the affiliate are subject to part 32 of this chapter, including the affiliate transaction rules. Nothing in this section shall prohibit the affiliate from acquiring any unbundled network elements or exchange services for the provision of a telecommunications service from its affiliated incumbent LEC, subject to the same terms and conditions as provided in an agreement approved under section 252 of the Communications Act of 1934, as amended.

(b) *Independence.* The affiliate required in paragraph (a) of this section shall be a separate legal entity from its affiliated incumbent LEC. The affiliate may be staffed by personnel of its affiliated incumbent LEC, housed in existing offices of its affiliated incumbent LEC, and use its affiliated incumbent LEC's marketing and other services, subject to paragraphs (a)(3) and (c) of this section.

(c) *Joint marketing.* Joint marketing of local exchange and exchange access service and CMRS services by an incumbent LEC shall be subject to part 32 of this chapter. In addition, such agreements between the affiliate and the incumbent LEC must be reduced to writing and made available for public inspection upon request at the principle place of business of the affiliate and the incumbent LEC. The documentation must include a certification statement identical to the certification statement currently required to be included with all Automated Reporting and Management Information Systems (ARMIS) reports. The affiliate must also provide a detailed written description of the terms and conditions of the transaction on the Internet within 10 days of the transaction through the affiliate's home page.

(d) Exceptions. (1) *Rural telephone companies.* Rural telephone companies are exempted from the requirements set forth in paragraphs (a), (b) and (c) of this section. A competing telecommunications carrier, interconnected with the rural telephone company, however, may petition the FCC to remove the exemption, or the FCC may do so on its own motion, where the rural telephone company has engaged in anticompetitive conduct.

(2) *Incumbent LECs with fewer than 2 percent of subscriber lines.* Incumbent LECs with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may petition the FCC for suspension or modification of the requirements set forth in paragraphs (a), (b) and (c) of this section. The FCC will grant such a petition where the incumbent LEC demonstrates that suspension or modification of the separate affiliate requirement is

(i) Necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly economically burdensome, and

(ii) Consistent with the public interest, convenience, and necessity.

(e) *Definitions.* Terms used in this section have the following meanings:

Affiliate. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. For purposes of this section, the term "own" means to own and equity interest (or the equivalent thereof) of more than 10 percent.

Broadband Commercial Mobile Radio Service (Broadband CMRS). For the purposes of this section, "broadband CMRS" means Domestic Public Cellular Radio Telecommunications Service (part 22, subpart H of this chapter), Specialized Mobile Radio (part 90, subpart S of this chapter), and broadband Personal Communications Services (part 24, subpart E of this chapter).

Incumbent Local Exchange Carrier (Incumbent LEC). "Incumbent LEC" has the same meaning as that term is defined in § 51.5 of this chapter.

In-region. For the purposes of this section, an incumbent LEC's broadband CMRS service is considered "in-region" when 10 percent or more of the population covered by the CMRS affiliate's authorized service area, as determined by the 1990 census figures, is within the affiliated incumbent LEC's wireline service area.

Rural Telephone Company. "Rural Telephone Company" has the same meaning as that term is defined in § 51.5 of this chapter.

(f) *Sunset.* This section will no longer be effective after January 1, 2002.

Title 47 of the Code of Federal Regulations part 22, subpart H is amended as follows:

Subpart H—Cellular Radiotelephone Service

3. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

4. Section 22.903 is revised to read as follows:

§ 22.903 Conditions applicable to former Bell Operating Companies.

Ameritech Corporation, Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, U.S. West Inc., their successors in interest and affiliated entities (BOCs) may engage in the provision of cellular service only in accordance with the conditions in this section and § 20.20 of this chapter, unless otherwise authorized by the FCC. BOCs may, subject to other provisions of law, have a controlling or lessor interest in or be under common control with separate corporations that provide cellular service only under the following conditions:

(a) Through (e) [Reserved].

(f) *Proprietary information.* BOCs must not provide to any such separate corporation any customer proprietary information, unless such information is publicly available on the same terms and conditions.

(g) Reserved.

[FR Doc. 97–31713 Filed 12–2–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970808229–7277–02; I.D. 062797A]

RIN 0648–AJ55

Fisheries of the Northeastern United States; Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures contained in Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). Approved measures of Amendment 10 include a continuation of the moratorium for commercial vessels; minimum mesh-size requirements throughout the body, extension, and codend of trawl nets for the directed summer flounder fishery; removal of the requirement that a vessel land summer flounder during a 52-week period in order to retain a moratorium permit; and a prohibition of the transfer of summer flounder at sea. This action is intended to enhance the rebuilding of the summer flounder resource in accordance with the objectives of the FMP.

DATES: All measures are effective on January 1, 1998, except that the baseline date for measuring vessel upgrades in § 648.4(a)(3)(i)(C)(*1*) and (*2*) is effective January 2, 1998 and the gear restrictions in § 648.104(a)(1) are effective June 3, 1998.

ADDRESSES: Copies of Amendment 10, the environmental assessment, and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION:

Background

Amendment 10 was prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the amendment was published in the **Federal Register** on September 3, 1997 (62 FR 46470), and the proposed rule to implement Amendment 10 was published in the **Federal Register** on September 19, 1997 (62 FR 49195). The notice of availability and the proposed rule solicited public comments through November 3, 1997. All comments received by the end of the comment period, whether specifically directed to Amendment 10 or to the proposed rule, were considered in the approval decision on Amendment 10.

Amendment 10 proposed a number of changes to the summer flounder regulations. Details concerning the development of Amendment 10 were provided in the notice of proposed rulemaking and are not repeated here.

NMFS, on behalf of the Secretary of Commerce, has approved the measures that (1) modify the commercial minimum mesh size, (2) continue the moratorium on entry of additional commercial vessels, (3) remove the landing requirements applicable to permit retention, (4) modify the vessel replacement criteria, (5) allow federally permitted charter and/or party vessels to possess fillets less than the minimum size if in possession of a permit to do so issued by their state, and (6) prohibit transfer of summer flounder at sea. Amendment 10 also contains measures adopted by the Commission as part of its interstate management process. Defined as a compliance criterion, this measure would require states to document all summer flounder commercial landings in their state that are not otherwise included in the Federal monitoring of permit holders. This management measure is not part of the Federal regulatory process and is, therefore, not detailed in this rule. Details of this measure are described in Amendment 10, which is available from the Council (see **ADDRESSES**).

In addition, the Council re-evaluated in Amendment 10 the commercial quota system implemented by Amendment 2. During the public hearings for Amendment 10, the Council and Commission proposed several alternative quota allocation systems, with the status quo being the preferred alternative. After receiving and considering public comments, the Council and Commission voted to maintain the existing state-by-state commercial quota allocation system. The Council and Commission felt that the current system allows states the most flexibility in managing their quotas by implementing state subquotas and trip limits.

Disapproved Measure

After a review of Amendment 10, NMFS found that the *de minimus* status provision was not consistent with national standard 7, raised questions of consistency with national standard 1, and appeared inconsistent with other applicable law. This measure would require an annual examination of state landings to determine whether landings in that state during the preceding year for which data are available were less than 0.1 percent of the overall annual quota. This determination was to be based on landings for the last preceding year for which data are available. If a state met the 0.1 percent criterion, it would be granted *de minimus* status. This provision is intended to provide a small bycatch fishery in a state where summer flounder would otherwise be discarded. A state's failure to close its fishery when its quota is harvested would prevent the attainment of the fishing mortality rate goals in the FMP, since vessels without Federal permits fishing exclusively in that state's waters could continue to land summer flounder. This would result in overfishing and would render the measure inconsistent with national standard 1.

If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision would encourage owners of vessels that have not traditionally landed in that state to land amounts of summer flounder much greater than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested.

Further, the standard established to determine *de minimus* status (examination of landings data for the last year for which data are available) would not allow for an accurate calculation of qualification. Landings in the intervening time period in the state under consideration for *de minimus* status could well exceed the threshold for such status. Thus, such a determination would not reflect accurately the true status of the state. The *de minimus* measure would impose an administrative burden or cost to make this annual determination, without conferring any demonstrable administrative or conservation benefit. This contravenes the requirements of national standard 7. It is unclear whether a *de minimus* state must close its state fishery when its quota is harvested.

For the reasons stated above, this measure would impose an administrative burden or cost to make this determination, without conferring any demonstrable administrative benefit. This contravenes the requirements of national standard 7. Further, the failure of a state to close its fishery when its quota is harvested would result in overfishing and would render the measure inconsistent with national standard 1. As a result of this review, NMFS has disapproved the *de minimus* measure.

Comments and Responses

Two comments on Amendment 10 were received. One comment was received from the North Carolina Division of Marine Fisheries (NCDMF) and another from a member of the fishing industry.

Comment 1: The NCDMF wrote to support all of the provisions in Amendment 10, including the state-by-state commercial quota allocation system, which, according to the comment, allows states to manage their fisheries in accordance with historical management practices such as trip limits, bycatch limits, and seasonal

closures. Although supportive of Amendment 10, NCDMF suggested that the revised minimum mesh-size requirement in the amendment should be implemented immediately upon approval because mesh of that size is available. NCDMF notes that a large portion of the annual summer flounder quota is taken during the first 6 months of the season, and delayed implementation of the measure will negate the desired conservation effect for the 1998 fishery.

Response: Amendment 10 specified that the Council would determine the date of effectiveness of the revised minimum mesh requirement based upon an assessment of the availability of net construction materials, which would help to alleviate any localized shortages of twine that might otherwise occur. The Council found that mesh is not available on a coastwide basis and recommended the 6-month delay. NMFS concurs.

Comment 2: A member of the fishing industry indicated dissatisfaction with the minimum mesh-size requirements of Amendment 10. The commenter wrote that the mesh-size requirements will inflict financial hardship on day boat trawlers of western Long Island, New York, and northern New Jersey because they will have to purchase new nets to fish for scup and black sea bass, rather than just changing codends to fish for these species as they currently do. The commenter disputed the justification given in Amendment 10 for requiring 5.5–inch (14.0–cm) mesh in the body, extension, and codend of summer flounder trawl nets by stating that the practice of constricting the codend of summer flounder nets to circumvent the minimum mesh-size regulations is not a problem. Also, the commenter expressed concern that if Amendment 10 is adopted, summer flounder will be the only species that requires regulated mesh in areas of the net other than the codend. Finally, the commenter was opposed to the fact that the minimum mesh-size regulations are not applicable to vessels in the summer flounder small-mesh exemption program.

Response: Current scup and black sea bass minimum mesh-size regulations apply only throughout the codend of the net. However, the black sea bass regulations allow the Council, in future years, to require minimum mesh size to be applied throughout the entire net. Also, it is not clear that the requirement will necessarily result in a need to purchase new nets to fish for scup and black sea bass. A fisher may still use the same net, albeit with a 5.5–inch (14.0–cm) mesh extension and body, to fish for these two species by changing only the codend to conform with the appropriate regulations. The reason for the change in the mesh regulations is that the Council is concerned about the "choking off" or the constriction of codends in trawl nets in the summer flounder fishery. The Council was concerned that continued poor compliance with mesh-size regulations would result in higher fishing mortality rates and in a decreased rate of stock recovery for summer flounder. Applying the minimum mesh-size throughout the codend, extension, and body of the net will eliminate this problem.

Summer flounder is not the only species where minimum mesh- size regulations apply to portions of the net other than the codend. There is ample precedence for this requirement. Most notably, the Northeast multispecies regulations require that vessels fishing under a multispecies day-at-sea use 6–inch (15.2– cm) square or diamond mesh throughout the entire net.

The minimum mesh-size requirements do not apply to vessels issued a summer flounder exemption permit, and fishing from November 1 to April 30 in the "exemption area" because the exemption is designed to allow vessels to retain a bycatch of summer flounder while operating in other small-mesh fisheries. The exemption allows for the prosecution of a traditional small- mesh fishery while minimizing discards of summer flounder. The existence of the exemption program is re-evaluated annually after a review of sea sampling data, and re-authorized if appropriate.

Changes From the Proposed Rule

NMFS notes that the Council recommended that May 13, 1997, be the baseline date for measuring vessel upgrades at the time of replacement. However, the baseline date was not specified when the Council held public hearings on Amendment 10, although it is a necessary adjunct required for administration of the replacement upgrade provision. Therefore, in order for all potentially affected fishery participants to have an equal notice of the baseline date, NMFS noted in the proposed rule its intent to link the baseline date to the rulemaking. However, the proposed rule was inconsistent in its description of the date proposed. In one section it proposed to use September 19, 1997—the date the proposed rule was published. In another, it proposed to use the date 30 days following publication of the final rule. NMFS received no comments on this matter. Therefore, this final rule establishes January 2, 1998 as the baseline, because, as a general matter, rules are to have prospective effect and some members of industry may have relied on that date rather than September 19, 1997.

In § 648.4, paragraph (a)(3)(i)(C)(*3*) is added, which indicates that a vessel's horsepower, length, gross registered tonnage (GRT), and net tonnage (NT) may be increased through replacement only once. If length, GRT, or NT is increased, an increase in the other two specifications must be performed at the same time, and this type of increase may be done separately from a horsepower increase. This provision is contained in Amendment 10, but was inadvertently omitted from the proposed rule. As such, a prior notice and opportunity for comment was provided through the notice of availability for Amendment 10. It has been added to this final rule to reflect the Council's intent.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The final rule implements Amendment 10 by revising a number of the regulations implementing the FMP and its amendments and by adding a number of new regulations. No public comments were received about the Council's economic analysis for Amendment 10 as it pertains to Regulatory Flexibility Act nor the certification made by the Assistant General Counsel for Legislation and Regulation of the Department of Commerce, that this rule would not have a significant economic impact on a substantial number of small entities, as mentioned in the proposed rule.

The final rule modifies the commercial minimum mesh size requirement, continues the moratorium on entry of additional commercial vessels, modifies the vessel replacement criteria, removes provisions that pertain to the expiration of the moratorium permit, and prohibits transfer of summer flounder at sea. Amendment 10 examined alternate state commercial quota allocation mechanisms. However, no change was made to the existing state-by-state system.

The requirement that minimum mesh size be applied throughout the net impacts an estimated 42 percent of the participants in the summer flounder fishery (443 of the 1,063 permit holders); the other 620 are already subject to requirements for minimum mesh throughout the net because they hold northeast multispecies vessel permits. Therefore, a substantial number of small entities (42 percent) are impacted by this rule. However, the compliance costs associated with the measure are not significant under the Regulatory Flexibility Act. Costs were broken down into trip or variable costs (e.g., fuel, ice, food) and yearly or fixed costs (e.g., gear, insurance, engine and gear repair, electronic equipment expenses). Labor costs were not included in the analysis because labor is generally paid as a percentage of the total revenues after certain expenses are subtracted. Compliance costs are less than 1 percent of the total annual costs for offshore vessels and 1.45 percent for the smaller inshore vessels. Compliance costs reflect the cost of the gear conversion ranging from $775 for inshore vessels to $1,354 for offshore vessels versus annualized vessel costs ranging from $39,695 for vessels 5–50 in gross registered tonnage to $171,692 for vessels greater than 150 gross registered tons.

According to the Council, specific data are not available for quantitative analysis of other new measures (e.g., modification of vessel replacement criteria and prohibition of transfer of summer flounder at sea) in Amendment 10. A qualitative analysis conducted by the Council indicates that those measures would have no significant impact on a substantial number of small entities because of their implementation. The National Marine Fisheries Service (NMFS) reviewed this analysis, and since most measures proposed in Amendment 10 are administrative in nature, NMFS concurs that the new measures would result in no significant economic impacts on small entities. Additionally, the prohibition of transferring summer flounder at sea and the vessel replacement criteria, would make the FMP consistent with the Multispecies Fishery Management Plan, and therefore would create no additional impacts for industry participants who also participate in that fishery. Meanwhile, a qualitative examination of the effects of the extension, indefinitely, of the moratorium on new vessels and maintaining the state-by-state allocation system for the coastwide quota for the commercial fishery, indicates that these measures will not result in a significant economic impact on a substantial number of small entities. These measures should not cause more than 2 percent of the vessels or dealers to cease business operations, result in a loss of 5 percent or more of ex-vessel revenues for 20 percent or more of the participating vessels, nor change compliance costs. If the moratorium was allowed to expire then it's conceivable that enough new vessels would enter the fishery, so that a significant number of vessels already in the fishery would incur a loss of 5 percent or more in ex-vessel revenues. Similarly, if the state-by-state allocation of the commercial quota was not continued, then the states might lose enough flexibility so that some vessels would gain in ex-vessel revenues, but a substantial number of small entities might experience a significant loss in ex-vessel revenues.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Rolland Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(3)(i)(B)(*2*) is removed and reserved, and paragraphs (a)(3)(i)(C), (a)(5)(i)(A)(*2*), (a)(5)(i)(C), (a)(5)(ii)(A)(*2*), (a)(5)(ii)(C), (a)(6)(i)(A)(*2*), (a)(6)(i)(C) are revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(3) * * *

(i) * * *

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must meet the following criteria:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a moratorium permit as of January 2, 1998.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel that was initially issued a moratorium permit as of January 2, 1998.

(*3*) A vessel's horsepower may be increased through replacement only once. A vessel's length, GRT, and NT may be increased through replacement only once. If any of these specifications is increased, any increase in the other two must be performed at the same time. This type of increase may be done separately from a horsepower increase.

* * * * *

(5) * * *

(i) * * *

(A) * * *

(*2*) The vessel is replacing such a vessel and the replacement vessel meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

* * * * *

(ii) * * *

(A) * * *

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* See paragraph (a)(5)(i)(C) of this section.

* * * * *

(6) * * *

(i) * * *

(A) * * *

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* See paragraph (a)(5)(i)(C) of this section.

* * * * *

3. In § 648.13, paragraph (d) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel.

4. In § 648.14, paragraph (j)(9) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j) * * *

(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer flounder permit and fishes exclusively in state waters.

* * * * *

5. In § 648.103, paragraph (c) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller that the size specified if all state requirements are met.

6. In § 648.104, paragraph (a)(1) is revised, and paragraph (f) is added to read as follows:

§ 648.104 Gear restrictions.

(a) * * * (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5–inch (14.0–cm) diamond or 6.0–inch (15.2–cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

* * * * *

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.100.

[FR Doc. 97–31708 Filed 11–28–97; 2:01 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970429101–7101–01; I.D. 111097A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments and Closures from the U.S.-Canadian Border to the U.S.-Mexican Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments and closures; request for comments.

SUMMARY: NMFS announces the following inseason adjustments and closures in the recreational salmon fisheries. The regulation regarding compliance with minimum size or other special restrictions for the recreational salmon fishery off Washington, Oregon, and California, was modified from the annual management measures, beginning July 1, 1997. This action was necessary to allow recreational anglers to fish in accordance with management intent. For the recreational salmon fishery in the area from the Queets River to Leadbetter Point, WA, the bag limit was modified to two fish per day, and the area closure was rescinded so that the fishery was open 0 to 200 miles off shore, effective August 13, 1997, through September 4, 1997. This action was intended to liberalize measures for dampening chinook harvest associated with the small coho subarea quota due to sufficient numbers of fish remaining in the overall chinook quota north of Cape Falcon, OR. The recreational salmon fisheries were closed in the following areas: From the U.S.-Canadian border to Cape Alava, WA, at 2400 hours local time (l.t.), July 23, 1997; from Cape Alava to the Queets River, WA, at 2400 hours l.t., August 3, 1997; from the Queets River to Leadbetter Point, WA, at 2400 hours l.t., September 4, 1997; and from Leadbetter Point, WA, to Cape Falcon, OR, at 2400 hours l.t., August 7, 1997. These actions were necessary to conform to the 1997 management measures and was intended to ensure conservation of chinook and coho salmon.

DATES: Inseason adjustment from the U.S.-Canadian border to the U.S.-Mexican border effective 0001 hours l.t. July 1, 1997, through 2400 hours l.t., November 16, 1997. Inseason adjustment from the Queets River to Leadbetter Point, WA, effective 0001 hours l.t., August 13, 1997, through 2400 hours l.t., September 4, 1997. Closure from the U.S.-Canadian border to Cape Alava, WA, was effective at 2400 hours l.t., July 23, 1997, through 2400 hours l.t., September 25, 1997, at which time the season remains closed under the terms of the preseason announcement of the 1997 management measures. Closure from Cape Alava to the Queets River, WA, 2400 hours l.t., August 3, 1997, through 2400 hours l.t., September 25, 1997, at which time the season remains closed under the terms of the preseason announcement of the 1997 management measures. Closure from the Queets River to Leadbetter Point, WA, 2400 hours l.t., September 4, 1997, through 2400 hours l.t., September 25, 1997, at which time the season remains closed under the terms of the preseason announcement of the 1997 management measures. Closure from Leadbetter Point, WA, to Cape Falcon, OR, 2400 hours l.t., August 7, 1997, through 2400 hours l.t., September 25, 1997, at which time the season remains closed under the terms of the preseason announcement of the 1997 management measures. Comments will be accepted through December 17, 1997.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator (Regional Administrator), Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this action is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Inseason Adjustment From the U.S.-Canadian Border to the U.S.-Mexican Border

In the annual management measures for ocean salmon recreational fisheries (62 FR 24355, May 5, 1997), NMFS announced in Table 2 note C.4. that "All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught."

This regulation was problematic for recreational anglers. The area between Point Reyes and Pigeon Point, CA, from July 1 through September 1, was subject to a daily bag limit of the first two fish, and no size limits applied. Adjacent areas to the north (Point Arena to Point Reyes, CA) and to the south (Pigeon Point to the U.S.-Mexican border) were open during this period and were subject to a daily bag limit of two fish and a minimum size limit for chinook salmon. Given the proximity of fishing ports to the management boundaries separating these areas with different minimum size restrictions, recreational anglers leaving port in one management area who chose to fish in the adjacent area could have been in violation when landing their catch in their home port. It was not the intent to prohibit such activities by recreational anglers. The modification maintains the requirement that fish must meet the minimum size or other special requirements for the area being fished, but rescinds the requirement that they must also meet the minimum size or other special requirements for the area in which they are landed. Therefore, Table 2 note C.4. was modified to read "All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught."

Modification of limited retention regulations is authorized by 50 CFR 660.409(b)(1)(ii). The Regional Administrator consulted with representatives of the Pacific Fishery Management Council (Council), the Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game regarding this adjustment. The states of Washington, Oregon, and California have been managing the recreational fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to July 1, 1997, by telephone hotline numbers (206) 526–6667 and (800) 662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to modify the limited retention regulations before the July 1, 1997, opening of the season between Point Reyes and Pigeon Point, CA, NMFS determined that good cause existed for the action to be taken without affording a prior opportunity for public comment.

Inseason Adjustment From the Queets River to Leadbetter Point, WA

In the annual management measures for ocean salmon fisheries, NMFS announced that the recreational fishery in the subarea between the Queets River and Leadbetter Point, WA, would open July 21 and continue through the earlier of September 25 or attainment of the 14,000 coho subarea quota. Inseason management would be used to sustain season length and keep harvest within a guideline of 3,000 chinook. The recreational bag limit would be two fish per day, and the area from 0 to 3 miles off shore would be closed.

Concern was expressed that this year's relative abundance of coho to chinook might be lower and that the chinook guideline could be achieved first, thus leaving a large portion of the coho quota unharvested. To optimize angler opportunity to fish on the available coho stocks, it was necessary to dampen the harvest of chinook at the beginning of the season by setting an area closure of 0 to 3 miles off shore and changing the bag limit to two fish, only one of which may be a chinook (62 FR 43484, August 14, 1997).

The best available information on August 11 indicated that there were a sufficient number of fish in the overall chinook quota north of Cape Falcon, OR, such that the above measures were no longer needed. Hence, beginning at 0001 hours l.t., August 13, 1997, the daily bag limit for the recreational fishery in the subarea from Queets River to Leadbetter Point, WA, was reestablished back to two fish, and this area closure was rescinded so that the fishery was open from 0 to 200 miles off shore.

Modification of recreational bag limits and closed areas is authorized by regulations at 50 CFR 660.409(b)(1)(iii) and (v). The Regional Administrator consulted with representatives of the Council and the WDFW regarding this adjustment. The State of Washington managed the recreational fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 0001 hours l.t., August 13, 1997, by telephone hotline numbers (206) 526–6667 and (800) 662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to liberalize the bag limit and area closure for this fishery, NMFS determined that good cause existed for this action to be taken without affording a prior opportunity for public comment.

Closures From the U.S.-Canadian Border to Cape Falcon, OR

Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, the Secretary will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1997 management measures for ocean salmon fisheries, NMFS announced that the recreational fishery in the area from the U.S.-Canadian border to Cape Alava, WA, would open on July 21 and continue through September 25, or attainment of the 550 chinook salmon subarea quota, whichever occurred first. Cape Alava to the Queets River, WA, would open on July 21 and continue through September 25, or attainment of the 800 coho salmon subarea quota, whichever occurred first. Queets River to Leadbetter Point, WA, would open on July 21 and continue through September 25, or attainment of the 14,000 coho salmon subarea quota, whichever occurred first. Leadbetter Point, WA, to Cape Falcon, OR, would open on July 21 and continue through September 25, or attainment of the 17,500 coho salmon subarea quota, whichever occurred first.

Throughout the season the best available information was used to determine when the salmon quotas had been reached based on catch and effort data and projections. To provide for an orderly shutdown of the recreational fishery in these areas, closure was made effective for: U.S.-Canadian border to Cape Alava, WA, at 2400 hours l.t., July 23; Cape Alava to the Queets River, WA, at 2400 hours l.t., August 3; Queets River to Leadbetter Point, WA, at 2400 hours l.t., September 4; and Leadbetter Point, WA, to Cape Falcon, OR, at 2400 hours l.t., August 7. The Regional Administrator consulted with representatives of the Council, the WDFW, and the ODFW. The states of Washington and Oregon managed the recreational fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notification procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to the actual closure times and dates, by telephone hotline number 206–526–6667 and 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS determined that good cause existed for this action to be taken without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31679 Filed 12–2–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334–7025–02, I.D. 112597C]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 1997 Pacific halibut prohibited species catch (PSC) limit for trawl gear in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 26, 1997, until 1200 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) established the 1997 Pacific halibut PSC limit for vessels using trawl gear at 2,000 metric tons (mt). The Administrator, Alaska Region, NMFS (Regional Administrator), has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 1997 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the 1997 trawl Pacific halibut PSC limit. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to public interest. The fleet has taken the 1997 trawl Pacific halibut PSC limit in the GOA. Further delay would only result in the 1997 trawl Pacific halibut PSC limit being exceeded and disrupt the FMP's objective of limiting trawl Pacific halibut mortality. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31595 Filed 11–26–97; 3:13 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 112497E]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 1998

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 1998. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), January 20, 1998, through 2400 hours, A.l.t., June 30, 1998. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., January 2, 1998.

ADDRESSES: Comments should be mailed to the Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 1998 effective from January 20, 1998, through June 30, 1998.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.20 and 675.21;

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At its September 1997 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1993–1997. Based on this and other information presented below, the Council recommended halibut and red king crab bycatch rate standards for the first half of 1998. These standards are unchanged from those specified for the past 4 years. The Council's recommended bycatch rate standards are listed in Table 1.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1998 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery and quarter	1998 [1]
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock:	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock:	
Qt 1	7.5
Qt 2	5.0
BSAI Yellowfin sole:	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl:	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock:	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl:	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole:	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl:	
Qt 1	2.5
Qt 2	2.5

[1] 1998 bycatch rate standard.

Bycatch Rate Standards for Pacific Halibut

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The recommended halibut bycatch rate standards for the BSAI "bottom pollock" fishery continue to approximate the average annual rates observed on trawl vessels participating in this fishery during 1993 (7.49 kg halibut/mt groundfish). Though the average bycatch rate has decreased since that time, the recommended halibut bycatch rate standards remain at a relatively high level to discourage unacceptably high halibut bycatch rates. During the first quarter of 1997, the average halibut bycatch rate in this fishery was only 1.35 kg halibut/mt groundfish. The pollock roe season begins January 20 and ends April 15. In 1997, the inshore and offshore component fisheries for pollock were closed 3 to 8 weeks prior to April 15, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until September 1, the start of the pollock nonroe season. Directed fishing for pollock by vessels participating in the community development quota program could continue after the end of roe season. However, the community development quota pollock fishery did not resume until just prior to September 1. As in past years, the directed fishing allowances specified for the 1998 pollock roe season likely will be reached before the end of the roe season on April 15.

Data available on halibut bycatch rates in the yellowfin sole fishery during the first and second quarters of 1997 showed an average bycatch rate of 6.1 and 5.0 kg halibut/mt of groundfish, respectively. As in past years, the Council has presumed that a bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue to encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

For the "other trawl" fisheries, a 30-kg halibut/mt of groundfish bycatch rate standard was recommended for the BSAI and a 40-kg halibut/mt of groundfish bycatch rate standard was recommended for the GOA. Observer data collected from the 1997 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 8.9 and 10.1 kg halibut/mt of groundfish, respectively. Observer data collected from the 1997 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 20.3 and 63.7 kg halibut/mt of groundfish, respectively.

With the exception of the GOA second quarter "other trawl" fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries generally have been lower than the Council's recommended bycatch rate standards for these fisheries. The Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries, including the second quarter GOA fishery, would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries. Furthermore, these standards would provide some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for those vessels using large mesh sizes, but observer data do not exist on which to base a revised bycatch rate standard. The Council recommended maintaining the current bycatch rate standards for the "other trawl" fisheries until observer data becomes available that would provide a basis for bycatch rate standards for vessels using large mesh trawl gear.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the yellowfin sole fishery in Zone 1 during the first and second quarters of 1997 averaged 0.07 and 0.13 crab/mt of groundfish, respectively. The average bycatch rates of red king crab experienced in the "other trawl" fishery during the first and second quarter of 1997 were 0.40 and 0.02 crab/mt groundfish, respectively. The low 1997 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch. The yellowfin sole and Pacific cod fisheries were closed in Zone 1 on May 13 and April 23, respectively,

because *C. bairdi* Tanner crab bycatch allowances were reached.

During 1997 through October, the total bycatch of red king crab by vessels participating in the yellowfin sole and "other trawl" fisheries is estimated at 48,000 crab, considerably less than the 100,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 1998 red king crab bycatch rates in Zone 1 will be similar to those experienced in 1997 and that the red king crab bycatch limit will remain unchanged.

In spite of anticipated 1998 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at this level to avoid unusually high crab bycatch rates while providing some leniency to those vessel operators who choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 1998 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in § 679.2 and § 679.21(f)(5), the 1998 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through January 31;
Month 2: February 1 through February 28;
Month 3: March 1 through March 28;
Month 4: March 29 through May 2;
Month 5: May 3 through May 30;
Month 6: May 31 through June 27;
Month 7: June 28 through August 1;
Month 8: August 2 through August 29;
Month 9: August 30 through October 3;
Month 10: October 4 through October 31;
Month 11: November 1 through November 28; and
Month 12: November 29 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: November 26, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31707 Filed 12–2–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970611133–7263–02; I.D. 052997B]

RIN 0648–AJ36

Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/Improved Utilization

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This final rule requires all vessels fishing for groundfish in the Bering Sea and Aleutian Islands Management Area (BSAI) to retain all pollock and Pacific cod beginning January 3, 1998, and all rock sole and yellowfin sole beginning January 1, 2003. This final rule also establishes a 15-percent minimum utilization standard for all at-sea processors beginning January 3, 1998, for pollock and Pacific cod and, beginning January 1, 2003, for rock sole and yellowfin sole. This action is necessary to respond to the fishing industry's socioeconomic needs that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

DATES: Effective January 3, 1998.

ADDRESSES: Copies of Amendment 49 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

At its September 1996 meeting, the Council adopted Amendment 49 to the FMP and recommended that NMFS prepare a rulemaking to implement the amendment. A notice of availability of Amendment 49 was published in the **Federal Register** on June 5, 1997 (62 FR 30835), and invited comment on the amendment through August 4, 1997. A proposed rule to implement Amendment 49 was published in the **Federal Register** on June 26, 1997 (62 FR 34429). Comments on the proposed rule were invited through August 11, 1997. A total of twelve letters of comment on the amendment and/or the proposed rule were received. Nine letters of comment were received by the end of the comment period on Amendment 49. Of these nine, two comments opposed Amendment 49, and seven comments supported approval but recommended changes to the proposed rule. Of the three letters of comment received after the end of the comment period on the amendment but before the end of the comment period on the proposed rule, two opposed Amendment 49 and implementation of the proposed rule. One supported approval of Amendment 49 but recommended changes to the proposed rule. Comments on both the amendment and the proposed rule are summarized and responded to in the Response to Comments section below.

Upon reviewing the reasons for Amendment 49 to the FMP and the comments on the proposed rule to implement it, NMFS determined that this action is necessary for the conservation and management of the groundfish fishery of the BSAI. NMFS approved Amendment 49 on September 3, 1997, under section 304(a) of the Magnuson-Stevens Act. Additional information on this action may be found in the preamble to the proposed rule and in the EA/RIR/FRFA.

The Council also adopted a parallel Amendment 49 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) in June 1997 and recommended that NMFS prepare a rulemaking to extend the Improved Retention/Improved Utilization (IR/IU) program to the GOA. A proposed rule to implement Amendment 49 in the GOA was published in the **Federal Register** on August 18, 1997 (62 FR 43977) with comments invited through October 2, 1997.

Response to Comments

Comment 1: The IR/IU program will severely disadvantage small entities to the benefit of large at-sea and shoreside processors. These impacts will be highly allocative and are an inappropriate result of an FMP amendment that has no conservation purpose but is intended solely to respond to the socioeconomic needs of the fishing industry.

Response: The purpose of this amendment is to reduce discards. The EA/RIR/FRFA prepared for Amendment 49 concluded that the action could impose significant economic impacts on a substantial number of small entities. The extent of the impact for a particular operation will be directly proportional to the level of discards of the four IR/IU species. Vessels or fisheries that currently discard IR/IU species at high rates will face a substantially greater burden than vessels or fisheries with lower discard rates of IR/IU species. The impact on a particular operation also is expected to vary inversely with the size and configuration of the operation, with larger processors more likely to have the space and infrastructure necessary to retain and process IR/IU species. Catcher/processors face greater space constraints than onshore processors, and are limited in their ability to expand due to vessel moratorium, license limitation, and U.S. Coast Guard load line requirements. As a result, the impacts of the IR/IU program are expected to fall most heavily on catcher/processors, especially smaller factory trawlers that lack the capacity to produce fishmeal.

During development of Amendment 49, the Council considered and rejected alternatives that might have mitigated impacts on smaller factory trawlers. Alternatives that would have established exemptions or phase-in periods based on vessel size were rejected because they would have diluted expected reductions in bycatch and discards and because they were thought to favor sectors of the industry with high discard rates. The Council believed that an inevitable and appropriate consequence of any discard reduction program is that the compliance burden would be proportionate to the current bycatch and discard rate of a particular operation.

NMFS currently is assisting with industry efforts to develop more selective fishing gear and fishing techniques to reduce the adverse economic impacts of Amendment 49. NMFS approved a large-scale fishing experiment in the BSAI during August 1997 to test experimental trawl gear designed to reduce pollock bycatch in flatfish trawl fisheries. Initial results from the experiment have been promising and will be made available to the public in late 1997. These and other efforts may assist the industry in significantly reducing the effects of Amendment 49 on certain trawl fisheries. Amendment 49 provides incentives for the Alaska groundfish industry to develop innovative solutions for reducing bycatch that also could be applicable to other fisheries throughout the United States and the world.

Comment 2: The EA/RIR/IRFA does not calculate net economic benefits or contain a cost benefit analysis as required under E.O. 12866.

Response: The Office of Information and Regulatory Affairs of the Office of Management and Budget has concurred with NMFS' determination that this rule is not significant for purposes of Executive Order 12866. Accordingly, the requirements of section 6(a)(3)(B) and (C), e.g., formal benefit/cost analysis, are not applicable to this regulatory action. However, the requirements of section 1(b), The Principles of Regulation, are applicable, including principle 6 which requires "each agency [to] assess both the costs and the benefits of the intended regulation and recognizing that some costs and benefits are difficult to quantify, propose, or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." NMFS has fully complied with this requirement.

NMFS has noted repeatedly during the 4 years of analysis for Amendment 49 that the cost data necessary to conduct a rigorous, quantitative net benefit analysis are not available. When the industry has been invited to provide such data, it has declined to do so. Therefore, NMFS prepared an analysis on the basis of the best available scientific information. This largely gross revenue analysis was supplemented with qualitative assessments of the probable response of the affected sectors, the probable environmental response, as well as the potential price and market response, to the proposed action. Review and advice was sought from the Council's Advisory Panel and Scientific and Statistical Committee as well as other experts, from within the industry and outside the industry, in an effort to test the conclusions of the analysis against their respective experience and expertise. Given the limitations on data, these experts consistently affirmed the analytical approach as well as the findings of the analysis. The EA/RIR/FRFA meets the rigor with which benefits and costs of amendments to the FMP have been analyzed, historically.

Comment 3: The IR/IU program may not satisfy Magnuson-Stevens Act provisions that require management programs "to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." If no restrictions are placed on the production of fishmeal, many operations will have little incentive to reduce their bycatch of undersize fish and unwanted species. To satisfy this requirement, the program must demonstrate that such reductions are the result of increased avoidance of the types of unwanted pollock, Pacific cod, rock sole, and yellowfin sole that fishermen currently harvest. If the proposed program simply causes industry to retain and use bycatch without increasing the avoidance of these fish, the statutory requirement to minimize or avoid bycatch will remain unfulfilled.

Response: The Magnuson-Stevens Act defines the term "bycatch" as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards." Because the IR/IU program requires 100 percent retention of the four IR/IU species, bycatch of these species, as defined in the Magnuson-Stevens Act, will largely be eliminated in the groundfish fisheries of the BSAI.

With respect to the issue of "avoidance," the IR/IU program will provide significant incentives for all sectors of the industry to avoid unwanted harvest of IR/IU species. While operations that have the capacity to produce fishmeal may face less immediate incentives to avoid unwanted harvest of IR/IU species, the EA/RIR/FRFA concluded that the IR/IU program will provide an incentive for all sectors of the industry, including those with fishmeal processing capacity, to avoid the unwanted harvest of IR/IU species. This is so because processing fishmeal draws resources away from the production of higher value products. However, most catcher/processors and motherships with fishmeal processing capacity were designed to operate in the midwater pollock fishery. When participating in that fishery, these vessels already retain nearly 100 percent of their pollock and have little unwanted harvest of other groundfish

species. Consequently, the IR/IU program is expected to have less impact on these operations.

Operations that participate in less selective bottom trawl fisheries and that do not have the capacity to produce fish meal will have a significant incentive to avoid the harvest of unwanted or untargeted IR/IU species due to the cost of holding less valuable species in lieu of more valuable species. The Council expects that the economic incentive produced by the IR/IU program will generate innovative gear and fishing techniques as operators develop methods to comply with full retention requirements in a cost-effective manner. Currently, an association of factory trawlers configured for head-and-gut (H&G) processing is testing experimental fishing gear designed to reduce unwanted harvests of pollock and Pacific cod in flatfish fisheries.

The Council considered and rejected various proposals to limit production of fishmeal. Such proposals were considered to be unreasonably restrictive and of questionable benefit. A limit on fishmeal production would impose substantial additional costs on operations that have developed fishmeal plants for the purpose of processing fish waste, yet such limits would not increase benefits to the nation.

Comment 4: Section 313(f) of the Magnuson-Stevens Act requires that in implementing section 303(a)(11), the Council shall "submit conservation and management measures to lower, on an annual basis, for a period of not less than 4 years, the total amount of economic discards occurring in the fisheries under its jurisdiction." If the proposed IR/IU program is to satisfy this requirement, it must meet two criteria. First it must demonstrate annual reductions in the total amount of economic discards over a 4-year period. The proposed IR/IU program will result in a 1-year reduction in economic discards of pollock and Pacific cod, with no further reductions scheduled until 5 years later when a one time reduction in rock sole and yellowfin sole will be required. To satisfy the statutory requirement, the Council must identify where and how reductions in economic discards are to occur in years two, three, and four.

Response: See response to comment 3. The IR/IU program prohibits economic discards of pollock and Pacific cod beginning January 1, 1998, making additional reductions unnecessary for those species. With respect to bycatch of other species, the IR/IU program is but one element of the Council and NMFS's ongoing efforts to reduce bycatch and is not intended to reduce all forms of bycatch occurring in the groundfish fisheries off Alaska. Other existing bycatch reduction programs include time and area closures, prohibited species catch limits, gear restrictions, support for gear research, and the vessel incentive program. Additional bycatch reduction programs are also under consideration by the Council.

Comment 5: The IR/IU proposal does not meet the goals identified by the Council's problem statement. Amendment 49 will fail to meet the Council's first goal to assure the long-term health of the fish stocks. The EA/RIR/IRFA concludes that the program, as designed, will fail to provide any conservation or positive environmental impact while most likely resulting in a decrease of long-term economic benefits to the nation. Of the industry sectors operating in the North Pacific, only the pollock and crab fleets lack a long-term stable fisheries-based economy due to limited stocks. This plan does nothing to address the waste of crab in the directed crab fisheries and will simply encourage more meal production rather than increase the supply of pollock available for surimi and fillet production.

Amendment 49 also will fail to meet the Council's second goal: reducing bycatch, minimizing waste, and improving utilization of fish resources. While some short attention was paid to defining waste, the EA/RIR/IRFA did not sufficiently analyze the real question raised by the program: Will we expend more resources and receive less benefit from our fish resources by implementing the proposal? The proposed IR/IU program will encourage continued economic loss and waste by (1) allowing fish that are currently discarded to be turned into meal, and (2) encouraging the use of resources to produce products worth less than the cost of production.

Response: See response to comments 3 and 4. Amendment 49 is only one of many efforts by the Council to reduce bycatch and ensure the long-term health of fish stocks. The Council is considering other efforts to reduce groundfish and crab bycatch including time and area closures, prohibited species catch limits, research into more selective fishing gear, and a vessel incentive program. The EA/RIR/FRFA prepared for Amendment 49 concluded that the program would provide a net benefit to the nation through a reduction in discards and improved utilization of species once they are harvested. The Council concurred in this conclusion as demonstrated by its unanimous vote to adopt Amendment 49.

Comment 6: While both of NMFS's **Federal Register** notices and the EA/RIR/IRFA analysis conclude that there will be no environmental benefit resulting from Amendment 49, Council on Environmental Quality (CEQ) regulations implementing NEPA still require the preparation of an environmental impact statement (EIS) for this major Federal action. CEQ regulations state that events which trigger an EIS include such indirect effects as changes in the use of ecosystems, and changes in historic and social effects, whether or not they are indirect or cumulative (40 CFR 1508.8(b)). An action also is significant when the effect on the human environment is highly controversial (40 CFR 1508.27(b)(4)) or is precedent setting (40 CFR 1508.27(b)(6)). The fact that the primary stated goal of the program is to avoid public censure of "waste" at the national level implies that this proposal is controversial. The EA/RIR/IRFA finds that the IR/IU program will significantly disadvantage an historic user group and is even intended solely for the purpose of meeting social needs. It certainly stands to establish a precedent for the nation. In other words, the EA/RIR/IRFA's findings clearly and unambiguously demonstrate that the IR/IU program is a major Federal action significantly impacting the human environment; therefore NEPA requires the preparation of an EIS.

Response: NMFS has determined that Amendment 49 will not affect significantly the quality of the human environment. Therefore, the preparation of an EIS on the final action is not required under section 102(2)(c) of NEPA or CEQ's implementing regulations. This finding of no significant impact is contained in the EA/RIR/IRFA for Amendment 49. Nevertheless, NMFS is currently preparing a broader EIS on the groundfish fisheries of the BSAI. This EIS will consider the impacts of the current groundfish management system including the IR/IU program.

Comment 7: The IRFA was flawed in that several reasonable traditional alternatives, currently used by NMFS and the State, were summarily rejected without discussion by the Council and were not analyzed in the IRFA. The Regulatory Flexibility Act (RFA) requires a description of "any significant alternatives . . . which minimize any significant economic impact" (5 U.S.C. 603(c)). The IRFA doesn't even mention an industry proposal to exempt unmarketable undersize fish from the proposed rule. Minimum size limits are currently used in the halibut, crab, herring, and salmon fisheries. The Council has refused to consider industry proposals to only require retention of fish greater than 1.0 or 1.5 lb citing enforcement concerns. A minimum size standard applied to the IR/IU program would make this an effective program for reducing waste. The EA/RIR/IRFA itself bases its cost/benefit calculations on a set of minimum marketable sizes. Amendment 49, as proposed, should not be approved by NMFS, but should, instead, be returned to the Council for serious consideration of a viable alternative to mitigate the impact on the small H&G catcher/processors. The fact that, in effect, only one alternative was considered for improved retention is a serious defect in the analysis, and the fact that improved retention was considered a different option than improved utilization are disturbing attempts at arguing that three options were considered rather than one option and the *status quo*. Because the option of using traditional size restrictions is available, this alternative should be considered as viable for the purposes of analysis even if the Council did not intend to select that alternative.

Response: A wide variety of alternatives was considered during development of the IR/IU program. These alternatives were analyzed in a series of Council documents beginning with an Implementation Issues Analysis dated September 11, 1995. These documents were incorporated by reference into the final EA/RIR/FRFA. The Council considered and rejected minimum size limits for retention of IR/IU species because an exemption allowing the discard of undersize fish would have diluted the incentives for vessel operators to avoid the bycatch of juvenile fish in the first place. See also response to comment 12.

The RFA as supplemented contains the required discussion of alternative that will have less impact on small entities and the reasons such alternatives were rejected.

Comment 8: Much of the "full utilization" achieved by shore-based plants results from the production of fishmeal. The Environmental Protection Agency (EPA) has stated that shoreside pollock fishmeal processors lead the industry in terms of pollutant discharges. In contrast, the EPA found that discharges of seafood wastes to deeper unimpounded offshore waters by mobile at-sea processors do not create the same kinds of problematic waste piles as do shore-based processors (U.S. EPA, Response to Comments, Seafood Processors in Alaska, NPDES General Permit No. AK–G52–0000 (1995)). An IR/IU program that allows meal to meet the increased utilization standard creates a pollution concern. Any IR/IU program should be designed to avoid or minimize rather than increase the impact of processing wastes on the ocean ecosystem.

Response: The potential environmental degradation resulting from shore-based groundfish processing varies on a case-by-case basis depending on the form of the discharged material and the location of the discharge. For this reason, the EPA no longer regulates shore-based surimi and fishmeal processors in the BSAI under the general permit cited in the comment. In general, fishmeal processing transforms the waste stream from solid to liquid form, which may have greater or lesser impacts on the environment depending on the location of the discharge. In many instances, liquid waste from fishmeal processing may have less impact on the environment than solid waste because it disperses more rapidly. As a result, the EPA now regulates each shore-based surimi and fishmeal processor under a separate NPDES permit which establishes limits on both solid and liquid waste discharges. Shore-based processors must continue to operate under the terms of their NPDES permits once the IR/IU program becomes effective.

Comment 9: If fishermen are required to retain and market juvenile, diseased, or damaged fish, the reputation of Alaska seafood products on the world market will be damaged.

Response: The final rule does not place restrictions on types of products a vessel may produce from IR/IU species, nor does it restrict the industry to production of products for human consumption. Small, damaged, or diseased fish may be processed into fishmeal, fish oil, minced fish, or other products not intended for human consumption. Operations with the capacity to produce fishmeal will have little difficulty processing fish that may not be fit for human consumption. Operations without the capacity to produce fishmeal may find it more difficult to handle such fish. However, NMFS does not expect processors to deliberately undermine the marketability of their food grade products by including fish that may be unsuitable for that purpose. NMFS expects that most operators will comply with the IR/IU program by developing a range of products and use below food grade fish to produce products not intended for human consumption.

Comment 10: Amendment 49 should allow for the live release of bycatch, as encouraged by the Magnuson-Stevens Act. Vessel operators using longline, pot, and jig gear have the ability to carefully release bycatch. While pollock and Pacific cod have closed swim bladders and may not survive release, flatfish have open swim bladders and will survive.

Response: Longline, pot, and jig vessels do not encounter bycatch of rock sole and yellowfin sole in quantities sufficient to warrant a special exemption for those gear types. NMFS catch statistics indicate that longline, pot, and jig vessels operating in the BSAI encounter only negligible amounts of rock sole and yellowfin sole. Longline bycatch of these species averages 0.0 percent for rock sole and 0.2 percent for yellowfin sole as a percentage of total catch. Bycatch of these species by pot and jig vessels is virtually unreported. Consequently, a full retention requirement for rock sole and yellowfin sole is expected to have a negligible effect on vessels using longline, pot, and jig gear.

Comment 11: The final rule should contain exemptions for diseased, contaminated, parasite-ridden, or damaged fish. Contaminated, diseased, parasite-ridden, or damaged fish are inevitably encountered in the course of fishing and processing activities. Retention of such fish is in conflict with Food and Drug Administration (FDA) Hazard Analysis Critical Control Point (HACCP) requirements. In fact, the HACCP plans drafted by many companies actually require the discard of fillet products with large amounts of parasites in them.

Response: NMFS recognizes that some fish may enter a processing facility that may be below food grade (see response to comment 9). However, the final rule does not limit the type of products a processor may produce from its retained catch, nor does it establish a minimum recovery rate for each fish. The 15-percent minimum utilization rate requirement in the final rule applies to a vessel's aggregate production from each IR/IU species during a fishing trip, rather than each individual fish. Many processors in the BSAI currently utilize damaged and parasite ridden fish in a variety of products such as fishmeal, fish oil, minced fish, and bait that are not intended for human consumption.

Federal HACCP regulations require processors to address food safety hazards in their HACCP plans. However, nothing in the HACCP regulations requires processors to discard fish that are below food grade. Such fish may be utilized in a variety of non-food products. Seafood processors that currently rely on discarding of whole fish to comply with

HACCP requirements will need to modify their HACCP plans to comply with the provisions of the IR/IU program.

The Council and NMFS considered and rejected various exemptions for damaged and parasite-ridden fish for a variety of reasons. An exemption allowing discards of fish that are damaged in the course of handling and processing could undermine the effectiveness of the IR/IU program and render it unenforceable. NMFS believes that such an exemption would provide an incentive for processors to deliberately damage quantities of IR/IU species that they would prefer not to retain and process for economic reasons.

NMFS does not have statistics on the percentage of fish that are rendered unsuitable for food products as a result of parasites. Various parasites are commonly encountered in BSAI groundfish catches, and processors have developed various techniques for parasite removal during processing. An exemption that would allow discarding of fish with parasites could undermine the effectiveness of the IR/IU program and allow wholesale discards of marketable fish because some form of parasite is likely to be encountered in most pollock and Pacific cod.

The Council and NMFS recognize that retention of damaged fish may pose a problem for certain sectors of the industry. Processors with the capacity to produce fishmeal are unlikely to be affected because damaged and parasite-ridden fish are suitable for fishmeal processing. Processors without fishmeal plants may find it more difficult to produce marketable products from damaged fish. To address these concerns, the Council voted to establish an IR/IU implementation committee composed of representatives from industry, conservation groups, and management agencies. This IR/IU implementation committee will be charged with examining problems that surface during implementation of the IR/IU program and providing the Council and NMFS with recommendations for changes and modifications to the program that may prove necessary. NMFS intends to work closely with the Council and industry during implementation of Amendment 49 to further refine aspects of the program as problems become apparent during implementation.

Comment 12: The proposed IR/IU program should contain exemptions for undersize fish. Most fish processing equipment is limited to processing fish within certain size ranges. For technological reasons, some processors may be unable to process fish that fall outside these size parameters. A minimum size standard would increase the net economic benefits to the nation as a result of the IR/IU program by not imposing costs on industry to process unmarketable undersize fish.

Response: Processors with fishmeal plants will have no difficulty processing undersize or juvenile fish. However, NMFS recognizes that processors without fishmeal plants may be forced to process undersize fish into products of little or no value, such as whole frozen fish. During early development of the IR/IU program, the Council considered and rejected exemptions for juvenile fish because an exemption allowing the discard of undersize fish would not have provided vessel operators an incentive to avoid the bycatch of juvenile fish in the first place. The intent of the IR/IU program is to provide industry with incentives to develop more selective fishing techniques, and that objective is also underscored in the Magnuson-Stevens Act. To that end, NMFS is currently sponsoring research into more selective fishing gear such as larger mesh codends and trawl escape panels, and believes that fishing selectivity will improve as vessel operators endeavor to avoid bycatch of juvenile fish. To the extent that vessel operators are able to avoid the capture of juvenile fish in the first place, the impacts of the full retention requirement will be reduced.

Comment 13: The IR/IU program should not require the retention and utilization of previously-caught fish which may be brought on board a vessel through fishing or retrieval of lost gear. For example, last year a vessel retrieved a codend that had been lost in a pollock fishery 4 months earlier. The codend was still full of pollock (approximately 80 mt). The fish had begun to putrefy and the gas caused the codend to float to the surface. The vessel that retrieved the codend had to bring the fish on board to dump the codend. According to the proposed rule, that vessel would have been required to retain all pollock brought on board the vessel without distinction as to their condition or the circumstances involved. During the yellowfin sole fishery, dead yellowfin sole commonly are caught that had been previously discarded by other vessels. Under the IR/IU program, discard of IR/IU species may be required for a vessel to comply with directed fishing closures. Vessels should not be required to retain and utilize dead and putrefying fish that were previously caught and discarded by other vessels.

Response: NMFS agrees. The final rule has been modified to allow for the discard of previously caught fish. Vessel operators should not log previously caught fish as part of their round-weight catch of an IR/IU species. NMFS daily fishing logbooks and daily cumulative production logbooks already provide discard code 97 for previously discarded (decomposed) fish taken with trawl gear in current fishing efforts. This code also should be used when logging discards of previously caught IR/IU species.

Comment 14: Since the purpose of the IR/IU program is to reduce waste in the groundfish fishery, NMFS should review the advisability of maintaining the current restrictions on the amount of pollock roe a vessel is allowed to have on board at any point in time. Those restrictions were adopted as an indirect method of prohibiting the practice of roe-stripping. Although well intended, and supported by industry at the time they were initially imposed, the current regulations have actually resulted in the discarding of roe during time periods of peak roe recovery. Such a result is incongruous in light of current efforts to reduce waste in the fishery—especially in view of the discarding restrictions incorporated in Amendment 49. NMFS should reconsider the need for the roe retention limits once IR/IU regulations go into effect and, if possible, increase the amount of retainable roe so as to avoid situations where vessels are required to discard the most valuable of all products produced by the pollock fishery.

Response: NMFS agrees. The current regulations governing retention of pollock roe were adopted by NMFS in 1990 to implement Amendment 13/19 to the groundfish fishery management plans for the BSAI and GOA. Amendment 13 to the BSAI FMP states:

> Roe-stripping is prohibited, and the Regional Director is authorized to issue regulations to limit this practice to the maximum extent practicable. It is the Council's policy that the pollock harvest shall be utilized to the maximum extent possible for human consumption.

Among the options considered by the Council during analysis of Amendments 13/19 was an option that would have required full utilization of pollock, a more restrictive option than the prohibition on roe stripping that was adopted by the Council at that time. The IR/IU program established by Amendment 49 in effect implements the more restrictive roe-stripping prohibition originally rejected by the Council for Amendment 13. Consequently, previously adopted regulations that limit roe-stripping through maximum retainable percentages may be redundant and unnecessary. For that reason, NMFS intends to work with the Council and the Council's IR/IU implementation committee to determine if existing limits on roe retention continue to serve a purpose after implementation of the IR/IU program.

Comment 15: The IR/IU program should contain a provision to allow trawlers to bleed codends when necessary for vessel safety. On occasion a vessel may accidentally harvest more fish than can be safely brought on board. Vessel operators should not be faced with either bringing the fish on board and risking the safety of the entire crew and vessel, or violating IR/IU regulations by discarding the portion of the catch that cannot be brought on board safely.

Response: The Council's IR/IU industry committee considered and rejected proposals to allow codend bleeding. The IR/IU committee believed that this practice should stop, and that a prohibition on bleeding codends would provide an incentive for fishermen to fish in a more cautious manner when their holds are near capacity. In addition, many catcher vessels have the capacity to carry excess catch on deck safely, although fish retained in such a manner (without refrigeration) may not be desired by the processor to which they are delivering. NMFS Enforcement and the U.S. Coast Guard generally are not in a position to evaluate whether a particular instance of discarding was motivated by legitimate safety concerns or by economic reasons. Nevertheless, should a vessel operator believe it necessary for the safety of the vessel to bleed a codend, the amount of discards should be entered into the vessel's daily fishing log along with a description of the extenuating circumstances. NMFS will review such instances on a case-by-case basis with consideration given to the extent of the violation and possible mitigating circumstances.

Comment 16: The IR/IU program should provide a buffer between maximum retainable bycatch (MRB) percentages under the directed fishing standards and the IR/IU minimum retention requirements. Under the proposed rule, the combination of these two standards results in a single point (20 percent for pollock and Pacific cod and 35 percent for rock sole and yellowfin sole) that a vessel operator must achieve to comply with both standards simultaneously. Without onboard scales, no catcher vessel can retain precisely 20 percent of an IR/IU species. This is true for both vessels that partially sort their catch on board and for those that pump fish directly into refrigerated seawater. This situation is an untenable position for a catcher vessel and differs greatly from the situation for a catcher/processor, which may meet both standards by monitoring the number of cases of product on board and maintaining appropriate ratios. If MRB requirements take precedence over IR/IU requirements then the proposed rule should lower the retention standard when an IR/IU species is closed to directed fishing to provide a range of 15 to 20 percent for pollock and Pacific cod and 25 to 35 percent for rock sole and yellowfin sole within which catcher vessels could retain or discard IR/IU species at their option.

Response: The Council, through its IR/IU industry committee, considered and rejected a proposal to provide a buffer between IR/IU retention requirements and MRB amounts. The IR/IU industry committee recommended, instead, that this issue be reexamined once the program is underway and that possible solutions could be developed at that time if necessary.

When an IR/IU species is closed to directed fishing, the IR/IU program does not require a vessel operator to retain exactly the MRB amount for that species. Rather, the program simply requires the retention of all catch of that species up to the MRB amount in effect for that species. A vessel operator who maintains a bycatch rate below the MRB percentage in effect for an IR/IU species will avoid the difficult scenario described in the comment. The avoidance of bycatch is an underlying objective of the Magnuson-Stevens Act and one objective of the IR/IU program is to encourage vessel operators to simply avoid the harvest of IR/IU species when those species are closed to directed fishing. To that end, NMFS is actively promoting the development of more selective gear technologies and is assisting industry efforts to identify and avoid areas with high bycatch rates. NMFS believes that attempts should first be made to avoid excessive bycatch of IR/IU species closed to directed fishing before retention standards are relaxed to accommodate discards of such bycatch.

Comment 17: The 15-percent minimum utilization rate standard in the proposed rule depends on accurate estimates of a vessel's total catch. We are concerned that measurement error by observers in the calculation of total catch of each IR/IU species may make a vessel accountable for processing more fish than it actually caught. Due to the vagaries of species composition sampling, an observer's estimate of total catch of an IR/IU species during a specific haul may differ from the vessel's actual catch by a significant percentage. Based on our experience with the accuracy of species composition sampling, this "phantom fish" problem could occur to a significant degree.

Response: NMFS recognizes the problems associated with calculating the total catch of each IR/IU species on a haul-by-haul basis. However, the IR/IU program does not depend on observer estimates of total catch of each IR/IU species for monitoring and enforcement of the 15-percent minimum utilization rate. Instead, each processor is required to log its total catch weight of each IR/IU species on a haul-by-haul basis. NMFS logbooks will be revised to accommodate collection of this data. When verifying compliance with the 15-percent minimum utilization rate, a catcher/processor's logged round-weight catch of an IR/IU species will be compared against the weight of products produced from that IR/IU species.

At this point, NMFS has not established specific guidelines or procedures for measurement of the round-weight catch of IR/IU species on board vessels. Vessel operators are free to measure their round-weight catch of each IR/IU species in the manner they determine to be most appropriate to their circumstances. When observers are present, vessel operators are free to use the observer's estimate of total catch, or they may independently measure the round-weight catch of each IR/IU species.

NMFS chose not to base monitoring and enforcement of the 15-percent utilization standard on observer estimates of round-weight catch because not all vessels have 100-percent observer coverage, and observers, when present, may not sample every haul. If observer estimates were used to monitor compliance with the IR/IU program, then vessels without observer coverage would, in effect, be exempt from the program. Nevertheless, NMFS may use observer data as well as any additional information that may be available to verify the accuracy of a vessel's logged round-weight catch of IR/IU species. The deliberate under-logging of round-weight catch to evade minimum utilization requirements is a violation of NMFS recordkeeping and reporting requirements and would be subject to enforcement action.

Comment 18: As indicated in the EA/RIR/IRFA, implementation of the IR/IU program requires parallel State of Alaska (State) regulations for onshore processors. In the absence of parallel State regulations, catcher vessels will be placed in an untenable position if onshore processors refuse to accept their

catch and Federal regulations prohibit them from discarding at sea. Therefore, implementation of the IR/IU program should be delayed until State IR/IU regulations are in place.

Response: The State is currently developing a parallel IR/IU program that would establish retention and utilization requirements for onshore processors, and require onshore processors to accept deliveries of IR/IU species. The Alaska Department of Fish and Game (ADF&G) has indicated that under existing State statutes that prohibit roe stripping and waste of pollock, the State has authority to implement IR/IU regulations to govern onshore processing of pollock. ADF&G has indicated that the State is proceeding with implementation of IR/IU regulations to govern onshore processing of pollock that would be effective January 3, 1998. However, ADF&G has indicated that parallel IR/IU regulations to govern onshore processing of Pacific cod may not be in place until mid-1998 because a statutory change is necessary before the State can regulate onshore processing of Pacific cod.

At the September 1997 Council meeting, NMFS met with representatives for catcher vessel operators and concluded that parallel State regulations for pollock will address the concerns of the catcher vessel fleet on an interim basis provided the State also proceeds with parallel State regulations for Pacific cod. Catcher vessel operators are most concerned about being able to deliver pollock bycatch to processors that have not traditionally processed pollock in the past. Catcher vessel operators indicate that they are much less concerned about finding onshore markets for Pacific cod.

Comment 19: The EA/RIR/IRFA clearly concludes that adoption of parallel IR/IU regulations by the State is critical to the success of the program. The State, acting through the Commissioner of Fish and Game, recently argued in Alaska Superior Court that regulations allowing the roe stripping of salmon and discard of 100 percent of the salmon carcasses were legal under the Alaska anti-waste statute (*Callaghan* v. *Alaska*, No. 3AN–96–8963 Civ., Slip Op. (3d Super. Ct. Alaska July 14, 1997)). In *Callaghan*, the State Attorney General justified the discard of salmon citing the Commissioner of Fish and Game's finding that harvesters "might not harvest these salmon because of lack of markets." In finding for the State, the Court relied in part on a finding by the Commissioner of Fish and Game that "catching and processing the entire fish would result in a financial loss" (*Id.* at 8). In short, the State prevailed arguing that (1) it is not waste to discard unmarketable fish, and (2) ADF&G and the State Attorney General are justified in not enforcing the State of Alaska anti-waste laws. We believe, therefore, that NMFS cannot reasonably conclude that the State of Alaska will implement or enforce parallel IR/IU regulations for onshore processors. Without implementation and enforcement of parallel State regulations, the IR/IU program should be disapproved.

Response: See response to comment 18. Throughout Council development of the IR/IU program, the State has expressed its intent to promulgate parallel IR/IU regulations for onshore processors. The State was a principal proponent of the IR/IU program throughout the Council process, and NMFS has no reason to believe that the State will fail to follow through with its commitment to implement parallel IR/IU regulations for onshore processors.

Comment 20: NMFS' ability to determine if the proposed IR/IU program satisfies the law and meets the intent of the Council depends on its ability to monitor and measure the extent to which vessels avoid bycatch. However, the proposed program includes no such monitoring mechanism. In fact, throughout the proposed amendment, and also the proposed rule, limitations and difficulties associated with monitoring, enforcement, and compliance with the program are prominent. There is no explicit discussion of a monitoring system geared to assess the efficacy of the program. Further, at the June 1997 Council meeting, representatives of NMFS recognized that the program does not include suitable methods by which to measure its success in meeting stated intent or satisfying legal requirements.

This lack of a monitoring program is directly counter to the draft regulations NMFS will soon propose to help Councils implement bycatch reduction requirements. The proposed revisions to the guidelines for Magnuson-Stevens Act national standards include the following section for bycatch reduction requirements:

Implementation and monitor selected [bycatch reduction] management measures. Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, implementation plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordinating data management for cost efficiency and avoidance of duplicate effort.

Response: Monitoring and evaluation of the IR/IU program will be accomplished primarily through the use of existing sources of data on the catch, retention, and utilization of IR/IU species in the BSAI. The groundfish fisheries of the BSAI are among the most extensively monitored fisheries in the United States and are subject to the most extensive observer coverage requirements of any fishery in the United States. NMFS's groundfish monitoring program gathers data from a variety of sources including observer reports, industry-submitted weekly production reports, NMFS daily fishing logbooks, and ADF&G fish tickets. These data sources will enable NMFS to assess the effectiveness of the IR/IU program on a fleet-wide basis. Where necessary, existing data collection programs are being adjusted to accommodate the collection of data necessary for monitoring the IR/IU program. For example, NMFS catcher vessel daily fishing logbook, catcher/processor daily fishing logbook and mothership cumulative production logbooks are being revised to accommodate the collection of round-weight catch data for IR/IU species on a haul-by-haul basis.

Changes From the Proposed Rule

Four changes were made from the proposed rule in response to comments:

1. A provision was added at § 679.27(h) to allow for the discard of previously caught fish.

2. The prohibition on discard of products from IR/IU species at § 679.27(e) was revised to allow the discard of products when necessary to comply with a directed fishing closure.

3. The definition of "fishing trip" at § 679.2 was revised to specify that it applies to the IR/IU program as well as to directed fishing closures.

4. The proposed rule contained separate utilization requirements based on a fishing trip for catcher/processors and a reporting week for motherships. In the final rule, these were combined into a single utilization standard based on a fishing trip for both catcher/processors and motherships.

Summary of the Final Rule and Guide to Compliance

The following section in question-and-answer format describes and summarizes the requirements of the final rule and is intended to serve as a compliance guide for vessel owners and operators.

Who Must Comply With IR/IU Regulations?

If you own or operate a vessel fishing for groundfish in the BSAI or processing groundfish harvested in the BSAI, you must comply with the IR/IU regulations regardless of your vessel's size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate onshore processing of fish, these requirements do not apply to onshore processors. Parallel regulations to extend IR/IU requirements to onshore processors will be issued by the State of Alaska.

Which Species Must Be Retained?

The IR/IU program defines four groundfish species as IR/IU species: pollock, Pacific cod, rock sole, and yellowfin sole. Retention and utilization requirements apply to pollock and Pacific cod beginning January 3, 1998. The requirements will apply to rock sole and yellowfin sole beginning January 1, 2003. The purpose of the 5-year delay for rock sole and yellowfin sole is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

What Are the Retention Requirements for Catcher Vessels When Directed Fishing Is Open?

The retention requirements for all vessels are set out in table format at § 679.27(c)(2). If you own or operate a catcher vessel, and directed fishing for an IR/IU species is open, you must retain all fish of that species brought on board your vessel until the fish are lawfully transferred or sold to an authorized party such as a processor operating with a Federal processor permit. This requirement applies to all IR/IU species you have caught as well as all IR/IU species you have received via transfer from another vessel.

What Are the Retention Requirements for Catcher Vessels When Directed Fishing Is Closed?

If you own or operate a catcher vessel and an IR/IU species is closed to directed fishing, you must retain all fish of that species up to the MRB amount in effect for that species. If your catch of an IR/IU species exceeds the MRB amount in effect for that species, your catch in excess of the MRB amount must be discarded. Because the MRB amount for a vessel is a running total based on the retained catch of species open to directed fishing, you may find it necessary to discard excess bycatch of an IR/IU species during the early part of a fishing trip and may not subsequently encounter any additional bycatch of that IR/IU species during the fishing trip. In such an instance, you would be in compliance with the IR/IU program even though the percentage of that IR/IU species in your delivery may be below the MRB and you discarded catch of that species earlier in the fishing trip.

The simplest way to simultaneously comply with directed fishing closures and the IR/IU retention requirements is to avoid excessive bycatch of IR/IU species that are closed to directed fishing. If you catch less than the MRB percentage for an IR/IU species, you simply retain your entire catch of that species and avoid the difficulty associated with calculating how much fish to discard. While NMFS encourages vessel operators to avoid bycatch of IR/IU species that are closed to directed fishing, at times avoidance may be difficult. Vessel operators who frequently exceed the MRB amount in effect for an IR/IU species are encouraged to develop appropriate catch measurement techniques, such as measured fish-hold volumes or on-board scales. At this point, NMFS has not established standards for measurement of catch on catcher vessels and intends to seek input from industry on appropriate and cost-effective measurement techniques.

What Are the Retention Requirements for Catcher/Processors When Directed Fishing Is Open?

If you own or operate a catcher/processor and directed fishing for an IR/IU species is open, you must retain a primary product from all fish of that species brought on board your vessel until such products are lawfully transferred to an authorized party. This includes all fish you have caught as well as all fish you have received via transfer from another vessel. You may use any primary product, except roe, to meet this minimum retention requirement. The IR/IU program does not limit or define the types of primary products that must be produced from each IR/IU species, provided that all primary and ancillary products are logged in your daily cumulative production logbook (DCPL). In addition, whole fish may be considered a product for the purpose of this program provided that they are logged as whole fish in your DCPL.

What Are the Retention Requirements for Catcher/Processors When Directed Fishing Is Closed?

If you own or operate a catcher/processor and an IR/IU species is closed to directed fishing, you must retain a primary product from all fish of that species brought on board your vessel up to the point that the round-weight equivalent of primary products from that species equals the MRB amount for that species. The simplest way to meet this requirement is to avoid bycatch of an IR/IU species that is closed to directed fishing so that your production from that species does not approach the MRB percentage in effect for that species.

To monitor your vessel's compliance, you must track, on a running basis, both the round-weight equivalent of primary products from your basis species, i.e., those species open to directed fishing, and the round-weight equivalent of your primary products from the IR/IU species closed to directed fishing. As long as the round-weight equivalent of your primary products from the IR/IU species closed to directed fishing is at or below the MRB amount in effect for that species, you must retain a primary product from all catch of that species. If during the course of a fishing trip you find that you have exceeded the MRB amount for an IR/IU species, you are permitted to discard product from that species, if necessary, to bring your operation into compliance with the directed fishing closure. This is the only instance in which you are permitted to discard products from IR/IU species.

What Is the Definition of a Fishing Trip?

The definition of a fishing trip used to monitor compliance with the IR/IU program is the same definition of a fishing trip currently used to monitor compliance with directed fishing closures. You are engaged in a fishing trip from the time you begin or resume harvesting, receiving, or processing groundfish in an area until: (1) You offload or transfer all fish or fish product from your vessel; (2) you enter or leave an area where a different directed fishing prohibition applies; or (3) you come to the end of a weekly reporting period, whichever comes first. This definition of fishing trip applies to catcher vessels, catcher processors, and motherships.

What Are the Retention Requirements for Motherships?

The retention requirements for motherships and catcher/processors are identical. No distinction is made between IR/IU species that you have caught and IR/IU species you have received through transfer or delivery from another vessel.

Under What Circumstances May IR/IU Species Be Released Before They Are Brought on Board?

The intentional discard of IR/IU species prior to bringing them on board

your vessel, such as bleeding codends or shaking fish off longlines, is prohibited. However, NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or accidently dropping off longlines, will not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

What if I Must Bleed a Codend for the Safety of My Vessel?

The IR/IU program contains no exemption to allow the bleeding of codends for safety reasons. NMFS urges vessel operators to fish in a cautious manner when their fish holds are near capacity to avoid catching more fish than can be retained safely. If you believe that circumstances require you to bleed a codend or otherwise discard IR/IU species for the safety of your vessel, you must log the amount of discard in your daily fishing logbook (DFL) and describe the circumstances surrounding the incident. Failure to log such an incident is a violation of NMFS recordkeeping and reporting requirements. NMFS will review such incidents on a case-by-case basis with consideration given to the extent of the violation and possible mitigating circumstances.

Must I Retain Bycatch of Decomposed Fish Previously Discarded by Other Operations?

You may discard any bycatch of previously discarded fish. When you encounter such fish, they should not be recorded in your logbook as part of your round-weight catch of an IR/IU species. Discards of previously discarded fish should be logged using discard code 97, which is for discards of previously discarded, i.e., decomposed, fish taken with trawl gear in current fishing efforts.

May I Discard Any Products Produced From IR/IU Species?

Discard of retained products from an IR/IU species is prohibited unless discarding of product is necessary to comply with a directed fishing closure.

May I Discard Fish or Products Transferred From Another Vessel?

The retention requirements of the IR/IU program apply to all fish brought on board your vessel, regardless of whether they were harvested by your vessel or transferred from another vessel. You are prohibited from discarding any products produced from IR/IU species that were transferred to you from another vessel.

May I Use IR/IU Species as Bait?

IR/IU species may be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (e.g., chumming) is prohibited.

How Is the 15-Percent Minimum Utilization Rate Calculated When Directed Fishing Is Open?

If directed fishing for an IR/IU species is open, your total weight of retained or lawfully transferred products produced from IR/IU species harvested or received by your vessel during a fishing trip must equal or exceed 15-percent of your round-weight catch of that species during the same fishing trip.

How Is the 15-Percent Minimum Utilization Rate Calculated When Directed Fishing Is Closed?

When directed fishing for an IR/IU species is closed, your total weight of retained or lawfully transferred products produced from IR/IU species harvested or received by your vessel during a fishing trip must equal or exceed either 15-percent of the MRB amount in effect for that species or 15-percent of the round-weight catch of that species, whichever is lower. You are only required to utilize those fish that you are required to retain under the retention requirements of the IR/IU program. For example, if you have minimal bycatch of an IR/IU species closed to directed fishing (below the MRB amount), your total weight of retained products must equal or exceed 15-percent of your round-weight catch of that species. If your bycatch of an IR/IU species closed to directed fishing is high enough that you are forced to discard a portion of your catch to avoid exceeding the MRB amount, the 15-percent utilization rate would be applied against the MRB amount and not against your total catch of that species prior to discarding. You must simultaneously comply with both the retention and utilization requirements of the IR/IU program. Compliance with one standard in the absence of the other would be a violation.

How Do Utilization Requirements Differ Between Catcher/Processors and Motherships?

The only difference between the utilization requirements for catcher/processors and motherships is that the 15-percent minimum utilization rate is applied during the course of a fishing trip for catcher/processors and during the course of a reporting week for motherships. For the purpose of the IR/IU program, NMFS has defined the term "fishing trip" in the same manner as it is defined for the purpose of monitoring directed fishing closures.

How Do I Calculate My Round-Weight Catch of IR/IU Species?

If you operate a catcher vessel or catcher processor, you must record the round-weight catch of all IR/IU species on a haul-by-haul basis. If you operate a mothership, you must record the round weight of all IR/IU species received on a delivery-by-delivery basis. If you have an observer aboard your vessel, you are free to use the observer's estimates of round-weight catch of each IR/IU species, but you are not required to do so. At this point, NMFS has not established specific guidelines or procedures for measurement of the round-weight catch of IR/IU species on board vessels. Vessel operators are free to measure their round-weight catch of each IR/IU species in the manner they determine to be most appropriate to their circumstances. However, NMFS may verify the accuracy of a vessel's reported round-weight catch of IR/IU species by comparison to observer data and by any other means that may be available. Deliberate under-logging of the round-weight catch of an IR/IU species is a violation of NMFS recordkeeping and reporting requirements and is subject to enforcement action.

What Changes to Recordkeeping and Reporting Requirements Are Included in the IR/IU Program?

This final rule includes changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Beginning January 3, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks are required to log the round-weight catch of pollock and Pacific cod in the NMFS catcher vessel DFL or catcher/processor DCPL on a haul-by-haul or set-by-set basis. Motherships are required to log the receipt round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement will extend to rock sole and yellowfin sole. These changes are necessary to provide vessel operators and enforcement agents with round-weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

Additional Technical Changes to Existing Regulations

The definition of "fishing trip" at § 679.2 is revised to specify that it applies to the IR/IU program as well as to directed fishing closures. This change is necessary to clarify the meaning of the term "fishing trip" as it applies to the IR/IU program.

The definition of "round weight or round-weight equivalent" at § 679.2 is revised by restricting the definition to "round-weight equivalent". The term "round weight" is already defined by NMFS in regulations appearing at 50 CFR part 600 and does not need to be re-defined in regulations at § 679.2.

The prohibition on discard of pollock product at § 679.20(g)(5)(ii) is revised to allow the discard of product when necessary to comply with a directed fishing closure. This change is necessary to prevent a conflict with the regulations at § 679.20(i) that implement the IR/IU program.

Regulations at § 679.50 (c) and (d), which specify observer coverage requirements for motherships based on "round weight or round-weight equivalent" of groundfish processed, are revised by removing the term "round weight." Observer coverage requirements for motherships during a calendar month would be based only on the round-weight equivalent of groundfish processed. This change is necessary because the terms "round weight" and "round-weight equivalent" would no longer be synonymous under the final rule.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 49 is necessary for the conservation and management of the groundfish fishery of the BSAI and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0213.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An FRFA has been prepared for this action and consists of the EA/RIR/FRFA and the preambles to the proposed and final rules implementing this action. The analysis examines the economic effects of this final rule by fishery and gear type and makes the following conclusions: (1) The economic effects of the final rule on vessels using longline, jig, and pot gear would not be significant; (2) the economic effects of the final rule on trawl catcher vessels and shore-based processors would not be significant; and (3) the economic effects of the final rule on trawl catcher/processor operations may or may not be significant depending upon the fishery as well as the size and processing capacity of the vessel in question.

Under the category of trawl catcher/processors, the economic effects on vessels participating in the pollock, sablefish, Greenland turbot, rockfish, and Atka mackerel fisheries would not be significant. However, the economic effects on vessels participating in the Pacific cod, rock sole, yellowfin sole, flathead sole and "other" flatfish fishery would be significant. The reason is that the bycatch of IR/IU species in these fisheries is substantial. The quantity of additional retained catch that operators in these fisheries would be required to handle under the final rule would impose significant operational costs on these fisheries, taken as a whole. This is especially true for products for which markets are limited or undeveloped (e.g., small Pacific cod, male rock sole, and H&G pollock). Current prices for these products may be insufficient to cover the costs of their production.

In general, the impacts on any individual factory trawler operation would vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets and market access, as well as the specific composition and share of the total catch of the four IR/IU species. The burden would tend to fall most heavily upon the smallest, least diversified operations among the current fleet. In addition, the groundfish vessel moratorium, proposed license limitation program, and U.S. Coast Guard load-line requirements severely limit reconstruction to increase vessel size and/or processing capacity. These restrictions are expected to further limit the ability of smaller catcher/processors to adapt to the proposed IR/IU program.

NMFS data indicate that in 1995, 44 at-sea processors participated in the BSAI Pacific cod trawl fishery (4 motherships and 40 catcher/processors); 38 at-sea processors participated in the BSAI rock sole fishery (2 motherships and 36 catcher/processors); 48 at-sea processors participated in the BSAI yellowfin sole fishery (4 motherships and 44 catcher/processors); 19 catcher/processors participated in the flathead sole fishery; and 23 at-sea processors participated in the "other" flatfish fishery (1 mothership and 22 catcher/processors).

In selecting its preferred alternative for Amendment 49, the Council minimized the economic impact of the IR/IU program on small entities in a variety of ways. First, the Council adopted 5-year delay in the effective date for rock sole and yellowfin sole to provide industry with sufficient time to develop more selective fishing techniques and/or markets for fish that are currently being discarded. Second, the Council rejected utilization alternatives that would have limited product forms or placed limits on fishmeal production, in order to allow industry more flexibility in complying with the utilization requirements of the IR/IU program. Finally, the Council rejected monitoring alternatives that would have imposed substantial costs in the form of increased observer coverage requirements or required a full time compliance monitor aboard all vessels. For reasons set forth in this preamble above, alternatives that would have further minimized economic impacts on small entities were rejected.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the groundfish fisheries of the BSAI.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of "IR/IU" and "IR/IU species" are added in alphabetical order, paragraph (1) in the definition of "Fishing trip" is revised and the definition and heading of "Round weight or round-weight equivalent" are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means: (1) With respect to groundfish directed fishing closures or the IR/IU program, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until:

(i) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;

(ii) The offload or transfer of all fish or fish product from that vessel;

(iii) The vessel enters or leaves an area where a different directed fishing prohibition applies; or

(iv) The end of a weekly reporting period, whichever comes first.

* * * * *

IR/IU means the improved retention/improved utilization program set out at § 679.27.

IR/IU species means any groundfish species that is regulated by a retention or utilization requirement set out at § 679.27.

* * * * *

Round-weight equivalent means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

* * * * *

3. In § 679.5, paragraphs (c)(3)(ii)(G) and (e)(2)(ii)(F) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(G) The round-weight catch of pollock and Pacific cod.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(F) The receipt round weight of pollock and Pacific cod.

* * * * *

4. In § 679.20, paragraph (g)(5)(ii) is revised to read as follows:

§ 679.20 General Limitations.

* * * * *

(g) * * *

(5) * * *

(ii) *No discard of processed product.* Any pollock product that has been processed may not be discarded at sea unless such discarding is necessary to meet other requirements of this part.

* * * * *

5. Section 679.27 is added to subpart B to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

(a) *Applicability.* The owner or operator of a vessel that is required to obtain a Federal fisheries or processor permit under § 679.4 must comply with the IR/IU program set out in this section while fishing for groundfish in the BSAI, fishing for groundfish in waters of the State of Alaska that are shoreward of the BSAI, or when processing groundfish harvested in the BSAI.

(b) *IR/IU species.* The following species are defined as "IR/IU species" for the purposes of this section:

(1) Pollock.

(2) Pacific cod.

(3) Beginning January 1, 2003, rock sole.

(4) Beginning January 1, 2003, yellowfin sole.

(c) *Minimum retention requirements*—(1) *Definition of retain on board.* Notwithstanding the definition at 50 CFR 600.10, for the purpose of this section, to retain on board means to be in possession of on board a vessel.

(2) The following table displays minimum retention requirements by vessel category and directed fishing status:

If you own or operate a	And	You must retain on board until lawful transfer
(i) Catcher vessel	(A) Directed fishing for an IR/IU species is open	all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited	all fish of that species brought on board the vessel up to the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited	no fish of that species.
(ii) Catcher/processor	(A) Directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited	no fish or product of that species.
(iii) Mothership	(A) Directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) Directed fishing for an IR/IU species is prohibited	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) Retention of an IR/IU species is prohibited	no fish or product of that species.

(d) *Bleeding codends and shaking longline gear.* Any action intended to discard or release an IR/IU species prior to being brought on board the vessel is prohibited. This includes, but is not limited to bleeding codends and shaking or otherwise removing fish from longline gear.

(e) *At-sea discard of product.* Any product from an IR/IU species may not be discarded at sea, unless such discarding is necessary to meet other requirements of this part.

(f) *Discard of fish or product transferred from other vessels.* The retention requirements of this section apply to all IR/IU species brought on board a vessel, whether harvested by that vessel or transferred from another vessel. At-sea discard of IR/IU species or products that were transferred from another vessel is prohibited.

(g) *IR/IU species as bait.* IR/IU species may be used as bait provided that the deployed bait is physically secured to authorized fishing gear. Dumping of unsecured IR/IU species as bait (chumming) is prohibited.

(h) *Previously caught fish.* The retention and utilization requirements of this section do not apply to incidental catch of dead or decomposing fish or fish parts that were previously caught and discarded at sea.

(i) *Minimum utilization requirements.* If you own or operate a catcher/processor or mothership, the minimum utilization requirement for an IR/IU species harvested in the BSAI is determined by the directed fishing status for that species according to the following table:

If * * *	then your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must * * *
(1) directed fishing for an IR/IU species is open,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited,	equal zero.

6. In § 679.50, paragraphs (c)(1)(i), (c)(1)(ii), (c)(3) introductory text, (d)(1), and (d)(2) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c) * * *

(1) * * *

(i) A mothership of any length that processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

* * * * *

(d) * * *

(1) Processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) Processes 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

[FR Doc. 97–31711 Filed 12–2–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 232
Wednesday, December 3, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE26

Industry Codes and Standards; Amended Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) regulations require that nuclear power plant owners construct Class 1, Class 2, and Class 3 components in accordance with the rules provided in Section III, Division 1, "Requirements for Construction of Nuclear Power Plant Components," of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code), inspect Class 1, Class 2, Class 3, Class MC (metal containment) and Class CC (concrete containment) components in accordance with the rules provided in Section XI, Division 1, "Requirements for Inservice Inspection of Nuclear Power Plant Components," of the ASME BPV Code, and test Class 1, Class 2, and Class 3 pumps and valves in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code.

The NRC proposes to amend 10 CFR 50.55a to revise the requirements for construction, inservice inspection (ISI), and inservice testing (IST) of nuclear power plant components. For construction, the proposed rule would permit the use of Section III, Division 1, of the ASME BPV Code, 1989 Addenda through the 1996 Addenda, for Class 1, Class 2, and Class 3 components with six proposed limitations and a modification.

For ISI, the proposed amendment would require licensees to implement Section XI, Division 1, of the ASME BPV Code, 1995 Edition with the 1996 Addenda, for Class 1, Class 2, and Class 3 components with five proposed limitations. Licensees would be permitted to implement: Code Case N–513 which addresses flaws in low and moderate energy Class 3 piping; Code Case N–523 which addresses the temporary use of mechanical clamps in Class 2 and 3 piping; and Subsection IWE and Subsection IWL, 1995 Edition with the 1996 Addenda.

The proposed rule would expedite implementation of Appendix VIII, "Performance Demonstration for Ultrasonic Examination Systems," to Section XI, Division 1, with three proposed modifications. An expedited implementation schedule would also be required for a proposed modification to Section XI which addresses volumetric examination of the Class 1 high pressure safety injection (HPSI) system in pressurized water reactors (PWRs).

For IST, the proposed amendment would require licensees to implement the 1995 Edition with the 1996 Addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) for Class 1, Class 2, and Class 3 pumps and valves with one limitation and one modification. 10 CFR 50.55a has been clarified with respect to which pumps and valves are to be included in a licensee's IST program. Licensees would be permitted to implement: Code Case OMN–1 with one modification in lieu of stroke time testing; Appendix II (which is an alternative to the check valve condition monitoring program provisions contained in Subsection ISTC of the OM Code) with three proposed modifications; and Subsection ISTD for the IST of snubbers. Finally, based upon supporting information received since the last rulemaking, the modification presently in § 50.55a for containment isolation valve inservice testing has been deleted.

The Statement of Considerations concludes by clarifying the NRC position regarding ASME Code Interpretations, and discussing NRC Direction Setting Issue Number 13 (DSI–13) with regard to NRC endorsement of industry codes and standards.

DATES: Submit comments by March 3, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemaking and Adjudications Staff. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, 20852, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request or telefax to 301–415–2260 or from Frank C. Cherny, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6786, or Wallace E. Norris, Division of Engineering Technology, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6796. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded via the interactive rulemaking website as established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Frank C. Cherny, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6786, or Wallace E. Norris, Division of Engineering Technology, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6796.

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1. Background

The NRC is proposing to amend 10 CFR 50.55a, which defines the requirements for applying industry codes and standards to nuclear power plants. Section 50.55a presently requires that nuclear power plant owners (1) construct Class 1, Class 2, and Class 3 components in accordance with the rules provided in the 1989 Edition of Section III, Division 1, "Requirements for Construction of Nuclear Power Plant Components" of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code), (2) inspect Class 1, Class 2, and Class 3 components in accordance with the rules provided in the 1989 Edition of Section XI, Division 1, "Requirements for Inservice Inspection of Nuclear Power Plant Components," of the ASME BPV Code with certain limitations and modifications, (3) inspect Class MC (metal containment) and Class CC (concrete containment) components in accordance with the rules provided in the 1992 Edition with the 1992 Addenda of Section XI, Division 1, with certain modifications, and (4) test Class 1, Class 2, and Class 3 pumps and valves in accordance with the rules provided in the 1989 Edition of Section XI, Division 1, of the ASME BPV Code with certain limitations and modifications. Every 120 months licensees are required to update their ISI and IST programs to meet the version of Section XI incorporated by reference into § 50.55a and in effect 12 months prior to the start of a new 120-month interval.

The NRC proposes to amend 10 CFR 50.55a to revise the requirements for construction, ISI, and IST of nuclear power plant components. For construction, the proposed rule would permit the use of Section III, Division 1, of the ASME BPV Code, 1989 Addenda through the 1996 Addenda, for Class 1, Class 2, and Class 3 components. Six proposed limitations to the implementation of Section III are included which address the issues of engineering judgement, Section III materials, weld leg dimensions, seismic design, quality assurance, and independence of inspection. A modification has been included addressing the applicable Code version for new construction.

For ISI, the proposed amendment would require licensees to implement Section XI, Division 1, of the ASME BPV Code, 1995 Edition with the 1996 Addenda, for Class 1, Class 2, and Class 3. Five proposed limitations to the implementation of Section XI are included which address the issues of engineering judgement, quality assurance, Class 1 piping, Class 2 piping, and reconciliation of replacement items. Licensees would be permitted to implement Code Case N–513 which addresses flaws in low and moderate energy Class 3 piping, and Code Case N–523 which addresses the temporary use of mechanical clamps in Class 2 and 3 piping. Licensees would also be permitted to implement Subsection IWE and Subsection IWL, 1995 Edition with the 1996 Addenda.

The proposed rule would expedite implementation of Appendix VIII, "Performance Demonstration for Ultrasonic Examination Systems," to Section XI, Division 1. Three proposed modifications to the implementation of Appendix VIII are included to address the issues of personnel qualification, specimen set cracks, and specimen set microstructure. An expedited implementation schedule would also be required for a proposed modification to Section XI which addresses volumetric examination of the Class 1 high pressure safety injection (HPSI) system in pressurized water reactors (PWRs).

For IST, the proposed amendment would require licensees to implement the 1995 Edition with the 1996 Addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) for Class 1, Class 2, and Class 3 pumps and valves. 10 CFR 50.55a has been clarified with respect to which pumps and valves are to be included in a licensee's IST program. A proposed limitation is included which addresses the issue of quality assurance (QA). A proposed modification to the implementation of the OM Code is included which addresses stroke time testing. Licensees would be permitted to implement Code Case OMN–1 with one modification in lieu of stroke time testing. In addition, Appendix II to the OM Code is an alternative to the check valve condition monitoring program provisions contained in Subsection ISTC of the OM Code. Three proposed modifications to the implementation of Appendix II are included which supplement the appendix check valve condition monitoring program. Licensees would be permitted to use Subsection ISTD for the IST of snubbers. Finally, based upon supporting information received since the last rulemaking, the modification presently in § 50.55a for containment isolation valve inservice testing has been deleted.

The mechanism for endorsement of the ASME standards, which has been used since the first endorsement in 1971, has been to incorporate by reference the ASME BPV Code rules into § 50.55a. The regulation identifies which editions and addenda of the BPV Code have been approved for use by the NRC. On August 6, 1992 (57 FR 34666), the NRC published a final rule in the **Federal Register** to amend 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." This final rule amended § 50.55a to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section III, Division 1, and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of Section XI, Division 1, of the BPV Code, with specified modifications. The amendment imposed an augmented examination of reactor vessel shell welds. The amendment also separated the requirements for IST of pumps and valves from those for ISI of other components by placing the requirements for inservice testing in a

separate paragraph. For IST of pumps and valves, the regulation, through its incorporation by reference of the 1989 Edition of Section XI, endorsed Part 1, "Requirements for Inservice Performance Testing of Nuclear Power Plant Pressure Relief Devices," Part 6, "Inservice Testing of Pumps in Light-Water Reactor Power Plants," and Part 10, "Inservico Testing of Valves in Light-Water Reactor Power Plants," of ASME/ANSI OMa–1988 to ASME/ANSI OM–1987.

On August 8, 1996 (61 FR 41303), the NRC published a final rule in the **Federal Register** to amend 10 CFR 50.55a to incorporate by reference for the first time ASME Section XI, Division 1, Subsection IWE, "Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants," and Subsection IWL, "Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants." Subsection IWE provides criteria for visual inspection of the surface of metal containments, the steel liners of concrete containments, pressure-retaining bolts, and seals and gaskets. Subsection IWL provides criteria for visual inspection of concrete pressure-retaining shells and shell components and for the examination of unbonded post-tensioning systems.

2. Summary of Proposed Revisions to § 50.55a

The revisions to § 50.55a which would result from adoption of the 1989 Addenda through the 1996 Addenda have been divided into three groups based on the proposed implementation schedule (i.e., 120-month update, expedited, and voluntary). For each of these groups, it is indicated in parentheses whether or not particular items are considered a backfit under 10 CFR 50.109 as discussed in Section 8. Backfit Analysis. This section provides a list of each revision and its implementation schedule, followed by a discussion of the proposed revisions.

2.1 List of Each Revision and Implementation Schedule

120-Month Update [in accordance with § 50.55a(g)(4)(i) and § 50.55a(f)(4)(i)]
Section XI (Not A Backfit)
Class 1, 2, and 3 Components, Including Supports
Limitations
Engineering Judgement
Quality Assurance
Class 1 Piping
Class 2 Piping
Reconciliation of Quality Requirements
OM Code (Not A Backfit)
Class 1, 2, and 3 Pumps and Valves
Clarification of Safety-Related Valves Limitation
Quality Assurance
Modification
Stroke Time Testing
Expedited Implementation [after 6 months from the date of the final rule—Backfit]
Section XI
Appendix VIII (including three modifications)
Personnel Qualification
Specimen Set Cracks
Specimen Set Microstructure
Class 1 Piping Volumetric Examination
Voluntary Implementation [may be used when final rule published]
Section III (Not A Backfit)
Class 1, 2, and 3 Components
Limitations
Engineering Judgement
Section III Materials
Weld Leg Dimensions
Seismic Design
Quality Assurance
Independence of Inspection
Modification
Applicable Code Version for New Construction
Section XI (Not A Backfit)
Subsections IWE and IWL, 1995 Edition with the 1996 Addenda
Flaws in Class 3 Piping; Mechanical Clamping Devices
Limitation on Scope
OM Code (Not A Backfit)
Code Case OMN–1
Limitation on Length of Test Interval
Appendix II (including three modifications)
Valve Opening and Closing Functions
Limitation of Length of Initial Test Interval
Condition Monitoring Program
Subsection ISTD
Containment Isolation Valves

2.2 Discussion

2.3 120-Month Update

2.3.1 Section XI

2.3.1.1 Class 1, 2, and 3 Components, Including Supports

Section 50.55a(b)(2) together with § 50.55a(g)(4) of the proposed rule would require that licensees implement the 1995 Edition with the 1996 Addenda of Section XI, Division 1, for Class 1, Class 2, and Class 3 components and their supports. Five proposed limitations would be included to address NRC positions on the use of Section XI.

2.3.1.2 Limitations

2.3.1.2.1 Engineering Judgement

The first proposed limitation to the implementation of Section XI would address an NRC position with regard to the Foreword in the 1992 Addenda through the 1996 Addenda of the BPV Code. That Foreword addresses the use of "engineering judgement" for ISI activities not specifically considered by the Code. Proposed paragraph 50.55a(b)(2)(xi) would require that when a licensee relies on engineering judgement for activities or evaluations of components or systems within the scope of § 50.55a that are not directly addressed by the BPV Code, the licensee must receive NRC approval for those activities or evaluations pursuant to 10 CFR 50.55a(a)(3).

2.3.1.2.2 Quality Assurance

The second proposed limitation to the implementation of Section XI pertains to the use of NQA–1 with Section XI. Section XI references the use of either NQA–1 or the Owner's Appendix B Quality Assurance Program (10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Processing Plants") as part of its individual requirements for a QA program. At present, § 50.55a endorses the 1989 Edition of the ASME Code which references NQA–1–1979 for Section XI. The 1996 Addenda of the ASME Code references NQA–1–1992 for Section XI.

The NRC has reviewed the requirements of NQA–1, 1986 Addenda through the 1992 Addenda, that are part of the incorporation by reference of Section XI, and has determined that by itself, NQA–1 would not adequately describe how to satisfy the requirements of 10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," since there are various aspects of operational phase QA and administrative controls which are not addressed by NQA–1.

10 CFR 50.34(b)(6)(ii) requires that "The information on the controls to be used for a nuclear power plant or a fuel reprocessing plant shall include a discussion of how the applicable requirements of Appendix B will be satisfied." This information is required to be submitted to the NRC as part of the Final Safety Analysis Report (FSAR). Standard Review Plan (SRP) 17.2, "Quality Assurance During the Operations Phase," states that "The QA program description presented in the FSAR must discuss how each criterion of Appendix B will be met." Further, the SRP states "The acceptance criteria include a commitment to comply with the regulatory positions presented in the appropriate issue of the Regulatory Guides including the requirements of ANSI Standard N45.2.12 and the Branch Technical Position listed in subsection V of SRP Section 17.1. Thus, the commitment constitutes an integral part of the QA program description and requirements." The NRC has determined that the provisions of NQA–1, 1986 Addenda through the 1992 Addenda, would not satisfy the criteria specified in SRP 17.2 for describing how the requirements of Appendix B will be satisfied for operational activities. There are numerous areas where American National Standards Institute (ANSI) standards or NRC regulatory positions, which have been long-standing cornerstones of an Owner's QA Program, are either nonmandatory or missing altogether from the NQA–1 provisions. However, the Owner's Section XI QA Program, which has been approved by the NRC, is adequate. Thus, the Commission has determined that the requirements of NQA–1, 1986 Addenda through the 1992 Addenda, are acceptable for use in the context of Section XI, as permitted by IWA–1400, provided the licensee utilizes its 10 CFR Part 50, Appendix B, QA program in conjunction with Section XI. Changes to a licensee's QA program shall be made in accordance with 10 CFR 50.54(a). Further, where NQA–1 and Section XI do not address the commitments contained in the licensee's Appendix B QA program description, such commitments shall be applied to Section XI activities. Proposed § 50.55a(b)(2)(xii) contains the requirement addressing licensee's commitments related to Section XI.

2.3.1.2.3 Class 1 Piping

The third proposed limitation to the implementation of Section XI would require licensees to use the rules for Section XI IWB–1220, "Components Exempt from Examination," that are contained in the 1989 Edition in lieu of the rules in the 1989 Addenda through the 1996 Addenda. These later Code addenda contain provisions of Code Cases N–198–1, "Exemption from Examination for ASME Class 1 and Class 2 Piping Located at Containment Penetrations;" N–322, "Examination Requirements for Integrally Welded or Forged Attachments to Class 1 Piping at Containment Penetrations;" and N–324, "Examination Requirements for Integrally Welded or Forged Attachments to Class 2 Piping at Containment Penetrations;" which were found to be unacceptable. Because the NRC had previously determined the Code cases to be unacceptable, they were not endorsed in any revision of Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability—ASME Section XI, Division 1." The provisions of Code Case N–198–1 were determined by the NRC to be unacceptable because industry experience has shown that welds in service-sensitive BWR stainless steel piping, many of which are located in Containment Penetrations, are subjected to an aggressive environment (BWR water at reactor operating temperatures) and will experience Intergranular Stress Corrosion Cracking. Exempting these welds from examination could result in conditions which reduce the required margins to failure to unacceptable levels. The provisions of Code Cases N–322 and N–324 were determined to be unacceptable because some important piping was exempted from inspection. Access difficulties was the basis in the Code cases for exempting these areas from examination, but the NRC developed the break exclusion zone design and examination criteria utilized for most containment penetration piping expecting not only that Section XI inspections would be performed but that augmented inspections would be performed. These design and examination criteria are contained in Branch Technical Position MEB 3–1, an attachment of NRC Standard Review Plan 3.6.2, "Determination of Rupture Locations and Dynamic Effects Associated with the Postulated Rupture of Piping." Thus, proposed § 50.55a(b)(2)(xiii) would require licensees to use the rules for IWB–1220 that are contained in the 1989 Edition in lieu of the rules in the 1989 Addenda through the 1996 Addenda.

2.3.1.2.4 Class 2 Piping

The fourth proposed limitation to the implementation of Section XI, contained in § 50.55a(b)(2)(xiv), would confine implementation of Section XI IWC–1220, "Components Exempt from Examination," IWC–1221, "Components Within RHR (Residual Heat Removal), ECC (Emergency Cool Cooling), and CHR (Containment Heat Removal) Systems or Portions of Systems," and IWC–1222, "Components Within Systems or Portions of Systems Other Than RHR, ECC, and CHR Systems," 1989 Addenda through the 1996 Addenda. The provisions of Code Case N–408–3, "Alternative Rules for Examination of Class 2 Piping," were incorporated into Subsection IWC in the 1989 Addenda. These provisions contain rules for determining which Class 2 components are subject to volumetric and surface examination. The NRC had previously determined that the provisions of the Code Case were acceptable if the licensee defined the Class 2 piping subject to volumetric and surface examination and received approval prior to implementation. Approval was required to ensure that safety significant components in the Residual Heat Removal, Emergency Core Cooling, and Containment Heat Removal systems are not exempted from appropriate examination requirements. Thus, the requirements contained in IWC–1220, IWC–1221, and IWC–1222, 1989 Addenda through the 1996 Addenda, for determining the components subject to examination and establishing examination requirements for Class 2 piping may be used if the licensee defines the Class 2 piping subject to volumetric and surface examination, and submits this information to the NRC for approval pursuant to § 50.55a(a)(3).

2.3.1.2.5 Reconciliation of Quality Requirements

The fifth proposed limitation to the implementation of Section XI addresses reconciliation of replacement items [§ 50.55a(b)(2)(xx)(A)] and the definition of Construction Code [§ 50.55a(b)(2)(xx)(B)]. Changes to IWA–4222, "Reconciliation of Owner's Requirements," in the 1995 Addenda would permit a replacement item produced at a facility not having a 10 CFR Part 50, Appendix B qualified program to be used in safety-related applications. With regard to the definition of Construction Code, a new definition of Construction Code appeared in IWA–9000, "Glossary," in the 1993 Addenda. Due to the changes made in IWA–4200 in the 1995 Addenda, the change in definition could result in standards being utilized which do not contain any QA requirements, or contain QA requirements that do not fully comply with Appendix B. Thus, when implementing the 1995 Addenda through the 1996 Addenda, § 50.55a(b)(2)(xx)(A) would require reconciliation of replacement items to the original QA requirements. Section 50.55a(b)(2)(xx)(B) would require a licensee to reconcile replacement items to the Construction Code and to the QA requirements as described in the Owner's QA program.

Section XI Article IWA–4000 provides rules and requirements for the repair and replacement of pressure retaining components and their supports. Versions of IWA–4000 previous to the 1995 Addenda permitted a licensee to purchase a replacement item to the standards of the original Construction Code or a later version, provided that the technical requirements of an item such as design and fabrication, as well as the nontechnical requirements (identified as administrative requirements in IWA–4222) such as QA

and Authorized Inspection of the later version were reconciled with those of the original Construction Code and Owner's Requirements. Reconciliation ensures that the replacement item meets certain standards of quality so that it is satisfactory for the specified design and operating conditions. In the 1995 Addenda, the provisions of Code Case N–554, "Alternative Requirements for Reconciliation of Replacement Items," were incorporated into an extensive rewrite of IWA–4200. As a result of these changes to IWA–4200, specifically IWA–4222(a)(2), the nontechnical requirements for Class 1, 2, and 3 safety-related replacement items would no longer need to be reconciled which may result in noncompliance with 10 CFR Part 50, Appendix B. NRC regulations require that any item which performs a safety-related function must meet Appendix B. Appendix B invokes, among other things, controls on suppliers of safety-related items. By not requiring reconciliation of the administrative requirements, the provisions in IWA–4222(a)(2) of the 1995 Addenda through the 1996 Addenda, would allow vendors having a QA program which does not meet Appendix B to be utilized, and may result in noncompliance with Appendix B. These deficiencies could be resolved if the Code provided for commercial grade item dedication in accordance with 10 CFR Part 21, "Reporting of Defects and Noncompliance." However, IWA–4222 does not address commercial grade dedication. In addition, it should be pointed out that a separate Code Case which provides an alternative for a specific provision in IWA–4200, Code Case N–567, "Alternative Requirements for Class 1, 2, and 3 Replacement Components," was modified to require the reconciliation of nontechnical requirements before the Code Case was approved. Therefore, an inconsistency exists between the Code and a Code Case. Thus, when implementing the 1995 Addenda through the 1996 Addenda, § 50.55a(b)(2)(xx)(A) would require reconciliation of replacement items to the original QA requirements.

The provisions of the Code in IWA–4222(a)(2) discussed above address newly manufactured replacement parts. A further limitation on the use of Article IWA–4200 in the 1995 Addenda through the 1996 Addenda is contained in § 50.55a(b)(2)(xx)(B). IWA–4222(b) addresses the use of items from a facility which was shutdown or for which construction was halted. IWA–4222(b) permits the use of either the administrative requirements of the Construction Code of the item being replaced or the administrative requirements of the Construction Code of the item being used for replacement. However, the definition of "Construction Code" was changed in the 1993 Addenda. In versions of Section XI previous to the 1993 Addenda, Construction Code was defined in IWA–9000, "Glossary," as "the body of technical requirements that governed the construction of the item." Included in the body of technical requirements that governed the construction of the item was a requirement to reconcile the Owner's specification requirements, which included NRC regulatory requirements, and applicable Owner design and procurement specifications that invoke technical and nontechnical requirements (e.g., 10 CFR Part 50, Appendix B). In the 1993 Addenda, the definition became nationally recognized Codes such as ASME, Specifications such as the American Society of Testing and Materials (ASTM), and designated Code Cases. Either definition of Construction Code would include the original Construction Codes for the design and construction of piping, such as B31.1, "Power Piping," and B31.7, "Nuclear Piping," and those for the design and construction of storage tanks, such as the American Petroleum Institute (API) 620, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks," and API 650, "Welded Steel Tanks for Oil Storage." However, many of these standards utilized for construction do not contain any QA requirements, or they contain QA requirements that do not fully comply with Appendix B. Therefore, in order to satisfy Appendix B, QA requirements similar to or meeting Appendix B were invoked in the Owner's original procurement documents. Thus, when implementing IWA–4200 (including subparagraphs IWA–4221, IWA–4222, IWA–4223, IWA–4224, and IWA–5224), § 50.55a(b)(2)(xx)(B) would require a licensee to reconcile replacement items to the Construction Code and to the QA requirements as described in the Owner's QA program.

2.3.2 OM Code (120-Month Update)

2.3.2.1 Class 1, 2, and 3 Pumps and Valves

The proposed amendment to § 50.55a(f)(4) would require that IST of pumps and valves be performed in accordance with the ASME "Code for Operation and Maintenance of Nuclear Power Plants" (OM Code). A proposed new section, § 50.55a(b)(3), would specify the editions and addenda of the OM Code that have been incorporated by reference into § 50.55a. Paragraph 50.55a(b)(3) together with § 50.55a(f)(4) of the proposed rule would require that licensees implement the 1995 Edition with the 1996 Addenda of the OM Code. Existing § 50.55a(f)(1) has been modified to clarify which pumps and valves are to be included in the IST program. One proposed limitation to implementation of the OM Code addressing QA, and one proposed modification of the OM Code addressing stroke time testing have been included.

2.3.2.2 Background—OM Code

Until 1990, the ASME Code requirements addressing IST of pumps and valves were contained in Section XI Subsections IWP (pumps) and IWV (valves). The provisions of IWP and IWV were last incorporated by reference into § 50.55a in a final rulemaking published on August 6, 1992 (57 FR 34666). In 1990, the ASME published the initial edition of the OM Code which provides rules for IST of pumps and valves. The requirements contained in the 1990 Edition are identical to the requirements contained in the 1989 Edition of Section XI Subsections IWP (pumps) and IWV (valves). The ASME Board on Nuclear Codes and Standards has transferred responsibility for rules on IST from Section XI to the OM Committee. As such, the Section XI rules for inservice testing of pumps and valves that are presently incorporated by reference into NRC regulations are no longer being updated by Section XI.

The ASME 1990 Edition of the OM Code consists of one section (Section IST) entitled "Rules for Inservice Testing of Light-Water Reactor Power Plants." This section is divided into four subsections, ISTA, "General Requirements," ISTB, "Inservice Testing of Pumps in Light-Water Reactor Power Plants," ISTC, "Inservice Testing of Valves in Light-Water Reactor Power Plants," and ISTD, "Examination and Performance Testing of Nuclear Power Plant Dynamic Restraints (Snubbers)." The IST of snubbers is governed by plant technical specifications and, thus, has never been included in § 50.55a. Therefore, this proposed rule only requires implementation of Subsections ISTA, ISTB, and ISTC. However, § 50.55a(b)(3)(v) would permit licensees to implement Subsection ISTD of the 1996 Addenda by making a change to their technical specifications in accordance with applicable NRC requirements.

2.3.2.3 Clarification of Safety-Related Valves

The existing § 50.55a(f)(1) has been interpreted by some licensees to mean that all safety-related pumps and valves regardless of ASME Code Class (or equivalent) were to be included in the IST program. The NRC proposes to modify this paragraph to clarify that the provisions of § 50.55a(f)(1) apply only to pumps and valves in steam, water, air, and liquid radioactive waste systems that perform a function to shut down the reactor, maintain the reactor in a safe shutdown condition, mitigate the consequences of an accident, or provide overpressure protection for such systems.

2.3.2.4 Limitation

2.3.2.4.1 Quality Assurance

The limitation to the implementation of the OM Code pertains to the use of NQA–1, "Quality Assurance Requirements for Nuclear Facilities," with the OM Code. The OM Code references the use of either NQA–1 or the Owner's Appendix B Quality Assurance Program as part of its individual requirements for a QA program. At present, § 50.55a endorses NQA–1–1979 for the OM Code. The 1996 Addenda also endorses NQA–1–1979. Thus, the 1996 OM Code has not endorsed a later version of NQA–1. Because this rulemaking would incorporate the OM Code by reference into § 50.55a for the first time, a limitation is included to address the same issues discussed previously in the Section XI section on QA.

The NRC has determined that the provisions of NQA–1, 1979 Addenda, would not adequately describe how to satisfy the requirements of Appendix B as satisfied by § 50.34(b)(6)(ii). Further, there are various aspects of operational phase QA and administrative controls which are not addressed by NQA–1. There are numerous areas where American National Standards Institute (ANSI) standards or NRC regulatory positions, which are specified in SRP 17.2, are either nonmandatory or missing altogether from the NQA–1 provisions. However, the Owner's QA Program, which has been approved by the NRC, is adequate. Thus, the NRC has determined that the requirements of NQA–1–1979, that are part of the incorporation by reference of the OM Code, is acceptable for use in the context of the OM Code, as permitted by ISTA 1.4, provided the licensee utilizes its 10 CFR Part 50, Appendix B, QA program in conjunction with the OM Code. Changes to licensee's QA program shall be made in accordance with 10 CFR 50.54. Further, where NQA–1 and the OM Code do not address the commitments contained in the licensee's Appendix B QA program description, such commitments shall be applied to OM Code activities. Proposed § 50.55a(b)(3)(i) addresses licensee's commitments related to the OM Code.

2.3.2.5 Modification

2.3.2.5.1 Stroke Time Testing

Proposed § 50.55a(b)(3)(ii) would require that the stroke time testing requirement of Subsection ISTC of the OM Code applicable for motor-operated valves (MOVs) be supplemented with programs that licensees have previously committed to perform, prior to issuance of this amendment to § 50.55a, for demonstrating the design basis capability of MOVs. Stroke time testing of MOVs has been specified in ASME Section XI and is currently required by § 50.55a(f). This same testing is required by the OM Code. This testing is a useful tool and complements other tests used to verify MOV function. Variation in measured stroke times can indicate valve degradation. Additionally, periodic stroking provides valve exercise and some measure of on-demand reliability. However, as discussed in NRC Generic Letter (GL) 89–10 "Safety-Related Motor-Operated Valve Testing and Surveillance" dated June 28, 1989, it is now recognized that the stroke time testing alone is not sufficient to provide assurance of MOV capability under design-basis conditions.

Subsequent to licensees implementing programs pursuant to GL 89–10, the NRC issued Generic Letter 96–05, "Periodic Verification of Design-Basis Capability of Safety-Related Motor-Operated Valves," on September 18, 1996. This generic letter requested licensees to establish a program, or to ensure the effectiveness of their current program, to verify on a periodic basis that safety-related motor-operated valves continue to be capable of performing their safety functions within the current licensing bases of the facility. Prior to issuance of this rule, licensees have made licensing commitments pursuant to GL 96–05 that have been reviewed by the NRC staff. Most licensees have committed to participate in the Joint Owners Group (JOG) Program on MOV Periodic Verification. The JOG program includes three phases: (1) licensees will establish an interim static diagnostic testing program developed by JOG with a test frequency based on margin and safety significance; (2) JOG will coordinate a dynamic testing program over the next 5 years that includes approximately 150 MOVs with participating licensees each testing a few MOVs three times over this interval; and (3) based on the results of the dynamic testing program, JOG will establish a long-term periodic test program. Proposed § 50.55a(b)(3)(ii) would require that licensees supplement the stroke time testing requirements of the OM Code with these commitments.

2.4 Expedited Implementation

2.4.1 Appendix VIII

The proposed rule would require that licensees expedite implementation of mandatory Appendix VIII, "Performance Demonstration for Ultrasonic Examination Systems," to Section XI, 1995 Edition with the 1996 Addenda. Three proposed modifications would be included to address NRC positions on the use of Appendix VIII. Licensees would be required to implement Appendix VIII, including the modifications, for all examinations of the pressure vessel, piping, nozzles, and bolts and studs which occur after 6 months from the date of the final rule. The proposed rule would not require any change to a licensee's ISI schedule for examination of these components, but would require that the provisions of Appendix VIII be used for all examinations after that date rather than the ultrasonic testing (UT) procedures and personnel requirements presently being utilized by licensees.

Appendix VIII provides the requirements for performance demonstration for ultrasonic testing (UT) procedures, equipment, and personnel used to detect flaws and size flaws. Its requirements are applicable to all UT performed for Class 1, Class 2, and Class 3 items (i.e., reactor vessel, nozzles, piping, and bolting and studs). These requirements are also to be utilized when implementing the augmented inservice inspection program for reactor vessel shell welds presently required by § 50.55a(g)(6)(ii)(A). The NRC has reviewed the 1995 Edition with the 1996 Addenda of Appendix VIII and has determined that the provisions contained in this appendix should be used with three modifications (addressed below). This mandatory appendix would normally be adopted as part of the routine 120-month update specified in § 50.55a(g)(4), but because of the importance of the Appendix VIII program, the NRC has determined that its requirements should be implemented after 6 months from the date of the final rule. The performance demonstration requirements in Appendix VIII would

substantially improve the ability of an examiner to detect and characterize flaws in examined components. UT procedures and personnel requirements are presently contained in Section XI but, as detailed in the documented evaluation required by § 50.109(a)(4), personnel qualified to Appendix VIII are significantly better at detecting flaws. The industry's Performance Demonstration Initiative (PDI) established a process in accordance with Appendix VIII for reactor vessel, nozzle, piping, and bolting examinations. PDI has received considerable support from the industry, and every licensee has contributed financially. The majority of the cost of PDI was in setting up the samples, which has been completed. Proposed § 50.55a(g)(6)(ii)(C)(*1*) would require licensees to utilize the improved requirements in Appendix VIII for all examinations of reactor vessels (including nozzles), piping, and bolting performed after 6 months from the date of the final rule. To date, the PDI program has qualified over 300 individuals for piping and five teams for vessel examinations. Thus, the NRC does not believe that a 6-month implementation period would result in hardship.

2.4.1.1 Modifications

2.4.1.1.1 Appendix VIII Personnel Qualification

The first proposed modification of Appendix VIII relates to its requirement that ultrasonic examination personnel meet the requirements of Appendix VII, "Qualification of Nondestructive Examination Personnel for Ultrasonic Examination," to Section XI. Appendix VII first appeared in Section XI in the 1988 Addenda and was incorporated by reference into § 50.55a in a final rule published on August 6, 1992 (57 FR 34666). The NRC believes that the requirement in Appendix VII–4240 for personnel to receive a minimum of 10 hours of training on an annual basis is inadequate. Proposed § 50.55a(b)(2)(xvii) would require that all personnel qualified for performing ultrasonic examinations in accordance with Appendix VIII receive 40 hours of annual training which includes laboratory work and examination of flawed specimens. Signals can be difficult to interpret, and as detailed in the regulatory analysis for this rulemaking, experience and studies indicate that the examiner must practice on a frequent basis to maintain the capability for proper interpretation. In addition, these studies have shown that this capability begins to diminish within approximately 6 months if skills are not maintained. Thus, 10 hours of annual training is not sufficient practice to maintain skills. The NRC believes that a minimum of 40 hours of annual training, not 10 hours, is required to maintain an examiner's abilities in this highly specialized skill area. The NRC expects that licensees would distribute the training over the course of the year to ensure that interpretation skills do not diminish.

2.4.1.1.2 Appendix VIII Specimen Set Cracks

The second proposed modification of Appendix VIII would require that all flaws in the specimen sets used for performance demonstration for piping, vessels, and nozzles be cracks. For piping, Appendix VIII requires that all of the flaws in a specimen set be cracks. However, for vessels and nozzles, Appendix VIII would allow as many as 50% of the flaws to be notches. For the purpose of demonstrating nondestructive examination (NDE) capabilities, notches are not realistic representations of service induced cracks. An inspector cannot properly interpret service induced cracks by qualifying with specimens containing notches. Notches are easier to detect than flaws because notches have a higher amplitude and simpler signal characteristics. Notches are easier to interpret and, in fact, the probability of detecting notches can be much higher than the probability of detecting cracks under similar conditions. In addition, Appendix VIII provides a screening test that uses a relatively small sample size containing few flaws. If some of the flaws are replaced by notches that are unrealistic, the screening test becomes ineffective. Because of these considerations, the flaws in the specimen sets utilized for piping by EPRI for the PDI are all cracks. The regulatory analysis for this rulemaking contains a detailed discussion of the importance of using cracks in the specimens. Thus, proposed § 50.55a(b)(2)(xiii) would require that all flaws in the specimen sets used for performance demonstration be cracks.

2.4.1.1.3 Appendix VIII Specimen Set Microstructure

The third proposed modification of Appendix VIII would require that all specimens for single-side tests contain microstructures like the components to be inspected and flaws with non-optimum characteristics consistent with field experience that provide realistic challenges to the UT technique. Appendix VIII does not distinguish specimens for two-sided examinations from those used for single-sided examination.

Appendix VIII was originally developed using UT lessons learned from two-sided examinations of welds. This UT experience provided the input for designing specimens and selecting, locating, and characterizing flaws. Studies have shown that defect characteristics such as shape, size, depth, tilt angle, skew angle, roughness, and crack tip affect the probability of detecting a particular flaw. For example, it was demonstrated in one particular study (Reference 22 in the documented evaluation) that a particular flaw was over three times more reflective in one direction, thus easier to detect, than in the opposite direction. Specimens designed for two-sided examination may not have defects which are appropriate for single-sided performance demonstration; i.e., the specimens may not adequately test an examiners proficiency in detecting flaws. Therefore, in order to proceed with the effort of qualifying UT systems (equipment, procedures, and personnel) for single-sided examinations, proposed § 50.55a(b)(2)(xx) would require the industry to develop sets of specimens that contain microstructures similar to the types found in the components to be inspected and flaws with non-optimum characteristics, such as skew, tilt, and roughness, consistent with field experience that provide realistic challenges for single-sided performance demonstration.

2.4.2 Generic Letter on Appendix VIII

A draft generic letter was published in the **Federal Register** (61 FR 69120) for public comment on December 31, 1996, to alert the industry to the importance of using equipment, procedures, and examiners capable of reliably detecting and sizing flaws in the performance of comprehensive examinations of reactor vessels and piping. The generic letter stated that even though the need for improvement clearly existed, the staff had reached the conclusion that immediate backfitting of Appendix VIII in advance of this proposed rulemaking was not warranted. This conclusion was based on consideration of defense-in-depth measures, Code margins in component design, leakage monitoring systems, and also that Appendix VIII was already being applied to selected piping subject to intergranular stress corrosion cracking. The NRC received 16 comment letters on the generic letter.

The comments generally were very similar and can be summarized in the following five items: (1) it is inappropriate to request licensees to voluntarily commit to a program in a generic letter; (2) the urgency for licensee's to voluntarily commit to implementing Appendix VIII is inconsistent with the statement in the generic letter that a safety concern does not exist that would warrant immediate backfitting in advance of the rulemaking; (3) the performance-based qualification program of Appendix VIII should be approved an alternative to the current ASME Code, and Appendix VIII as implemented by PDI should be recognized as an acceptable alternative for Appendix VIII; (4) the NRC should provide guidance on incorporating Appendix VIII and/or PDI into plant-specific ISI programs; and (5) the generic letter would request that licensees update their UT ISI and augmented inspection commitments to a Code edition not yet referenced in the regulations.

With regard to the first comment, the NRC disagrees that it is inappropriate to request licensees to voluntarily commit to a program in a generic letter. This is one mechanism available to the NRC for alerting licensees, for example, to degraded conditions which may unacceptably affect the function of safety-related components. The second comment takes the generic letter statement out of context. What the generic letter actually stated was that a safety concern did not exist to warrant immediate backfitting in advance of the rulemaking because of defense-in-depth measures, Code margins in design, and that Appendix VIII was already being applied to selected piping subject to intergranular stress corrosion cracking. The NRC strongly disagrees that Appendix VIII and Appendix VIII as implemented by PDI should be alternatives to the present Code rules. As detailed in the documented evaluation for backfitting Appendix VIII, it has been demonstrated that examiners previously considered qualified under Section XI generally have marginal UT skills. This was evident from the discouragingly low percentage of examiners initially satisfying the screening criteria for detecting flaws under the PDI program. Comment four regarding guidance on incorporating Appendix VIII into present ISI programs, and comment five regarding Code edition are automatically resolved in a rulemaking format.

At the time the generic letter was issued, this proposed rulemaking was still under development. The purpose of the generic letter was to alert the industry to the (1) generally poor performance in detecting flaws and (2) the Commission's intent to endorse Appendix VIII via rulemaking. Publication of a final rule would obviate the need for the generic letter.

2.4.3 Class 1 Piping Volumetric Examination

A proposed modification of Section XI would require licensees of pressurized water reactor plants to supplement the surface examination of Class 1 High Pressure Safety Injection Systems (HPSI) piping as required by Examination Category B–J of Table IWB–2500–1 for nominal pipe sizes (NPS) between 4 (inches) and 1+ (inches), with a volumetric (ultrasonic) examination. This requirement is proposed because (1) inside diameter cracking of HPSI piping in the subject size range has been previously discovered (as detailed in NRC Generic Letter 85–20, "High Pressure Injection/Make-Up Nozzle Cracking in Babcock and Wilcox Plants," and in NRC Information Notice 97–46, ("Unisolable Crack in High-Pressure Injection Piping,"), (2) failure of this line could result in a small break loss of coolant accident while directly affecting the system designed to mitigate such an event, and (3) volumetric examinations are already required by the Code for Class 2 portions of this system (Table IWC–2500–1, Examination Category C–F–1) within the same NPS range. Thus, not only are the requirements between Class 1 and Class 2 inconsistent (with the Class 1 portions being subject to less stringent testing requirements as compared with Class 2 portions of the same type of piping), but operating experience has shown that these reactor coolant pressure boundary (RCPB) pipe examinations need to be more comprehensive. Proposed § p50.55a(b)(2)(xv) would require licensees to supplement the Section XI required surface examination for the Class 1 portion of the HPSI system with volumetric examination in order to ensure the integrity of the reactor coolant pressure boundary as required by General Design Criteria (GDC) 14, 10 CFR Part 50, Appendix A, or similar provisions in the licensing basis for these facilities, and Criteria II and XVI of 10 CFR Part 50, Appendix B. Licensees would be required to perform the volumetric examination during any ISI program inspection of the HPSI system performed after 6 months from the date of the final rule. Utilization of licensee's existing ISI schedules will result in the volumetric examinations being implemented in a reasonable period of time while not impacting lengths of outages or requiring facility shutdown solely for performance of these examinations.

2.5 Voluntary Implementation

2.5.1 Section III

The NRC has reviewed the 1989 Addenda, 1990 Addenda, 1991 Addenda, 1992 Edition, 1992 Addenda, 1993 Addenda, 1994 Addenda, 1995 Edition, and 1996 Addenda of Section III, Division 1, for Class 1, Class 2, and Class 3 components, and has determined that they are acceptable for voluntary use with six proposed limitations. In addition, § 50.55a would be modified to ensure consistency between § 50.55a and NCA–1140.

The version of Section III utilized by licensees is chosen prior to construction. Section 50.55a permits licensees to use the original construction code during the operational phase or voluntarily update to a later version which has been endorsed by § 50.55a. Accordingly, the proposed limitations to Section III become effective only when a licensee voluntarily updates to a later version. The modification would only apply to a applicant for a new construction permit.

2.5.1.1 Limitations

2.5.1.1.1 Engineering Judgement

The first proposed limitation to the implementation of Section III would establish an NRC restriction with regard to the Foreword in the 1992 Addenda through the 1996 Addenda of the BPV Code. That Foreword addresses the use of "engineering judgement" for construction activities not specifically considered by the Code. Proposed paragraph 50.55a(b)(1)(i) would require that when a licensee relies on engineering judgement for activities or evaluations of components or systems within the scope of § 50.55a that are not directly addressed by the BPV Code, the licensee must receive NRC approval for those activities or evaluations pursuant to § 50.55a(a)(3).

2.5.1.1.2 Section III Materials

The second proposed limitation to the implementation of Section III pertains to a reference to Section II, "Materials," Part D, "Properties." Section II, Part D, contained many printing errors in the 1992 Edition. These errors were corrected in the 1992 Addenda. Proposed § 50.55a(b)(1)(ii) would require that Section II, 1992 Addenda, be applied when using the 1992 Edition of Section III. The limitation is necessary to ensure that users of the Code use the design stresses intended by the ASME Code.

2.5.1.1.3 Weld Leg Dimensions

The third proposed limitation to the implementation of Section III would

correct a conflict in the design and construction requirements in Subsection NB (Class 1 Components), Subsection NC (Class 2), and Subsection ND (Class 3) of Section III, 1989 Addenda through the 1996 Addenda of the BPV Code. Two equations in NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1 were modified in the 1989 Addenda and are no longer in agreement with Figures NB–4427–1, NC–4427–1, and ND–4427–1. This change results in a different weld leg dimension depending on whether the dimension is derived from the text or calculated from the figures. Thus, to ensure consistency, proposed § 50.55a(b)(1)(iii) would require that licensees use the 1989 Edition for the above referenced paragraphs and figures in lieu of the 1989 Addenda through the 1996 Addenda.

2.5.1.1.4 Seismic Design

The fourth proposed limitation to the implementation of Section III pertains to new requirements for piping design evaluation contained in the 1994 Addenda through the 1996 Addenda of the BPV Code. The NRC has determined that changes to subarticles NB–3200, "Design by Analysis," NB–3600, "Piping Design," NC–3600, "Piping Design," and ND–3600, "Piping Design," of Section III for Class 1, 2, and 3 piping design evaluation for reversing dynamic loads (e.g., earthquake and other similar type dynamic loads which cycle about a mean value) are unacceptable. The new requirements are based on the premise that loads such as earthquake loads are not capable of producing collapse or gross distortion of a component. The requirements, in part, are based on General Electric evaluations of the test data performed under sponsorship of the Electric Power Research Institute (EPRI) and the NRC. However, NRC evaluations of the data do not support the changes and indicate lower margins than those estimated in earlier evaluations. The ASME has established a special working group to reevaluate the bases for the seismic design for piping. Thus, in proposed § 50.55a(b)(1)(iv), licensees would be permitted to use articles NB–3200, NB–3600, NC–3600, and ND–3600, in the 1989 Addenda through the 1993 Addenda, but would be prohibited from using these requirements in the 1994 Addenda through the 1996 Addenda.

2.5.1.1.5 Quality Assurance

The fifth proposed limitation to the implementation of Section III pertains to the use of NQA–1, "Quality Assurance Requirements for Nuclear Facilities," with Section III. Section III references NQA–1 as part of its individual requirements for a QA program by integrating portions of NQA–1 into the QA program defined in NCA–4000, "Quality Assurance." At present, § 50.55a endorses the 1989 Edition of the ASME Code which references NQA–1–1986 for Section III. The 1996 Addenda of the ASME Code references NQA–1–1992 for Section III.

The NRC has reviewed the requirements of NQA–1, 1986 Addenda through the 1992 Addenda, that are part of the incorporation by reference of Section III, and has determined that the provisions of NQA–1 are acceptable for use in the context of Section III activities. Portions of NQA–1 are integrated into Section III administrative, quality, and technical provisions which provide a complete QA program for design and construction. NQA–1 by itself would not adequately describe how to satisfy the requirements of 10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants." The additional criteria contained in Section III, such as nuclear accreditation, audits, and third party inspection, establishes a complete program and satisfies the requirements of Appendix B (i.e., the provisions of Section III integrated with NQA–1). Because licensees may voluntarily choose to apply later provisions of Section III, proposed § 50.55a(b)(1)(v) contains a limitation which would require that the edition and addenda of NQA–1 specified by NCA–4000 of Section III be used in conjunction with the administrative, quality, and technical provisions contained in the edition of Section III being utilized.

2.5.1.1.6 Independence of Inspection

The sixth proposed limitation to the implementation of Section III would prohibit licensees from using subparagraph NCA–4134.10(a), "Inspection," in the 1995 Edition through the 1996 Addenda. Prior to this edition and addenda, NCA–4134.10(a) required that the provisions of NQA–1, "Quality Assurance Program Requirements for Nuclear Facilities," Basic Requirement 10, "Inspection," and Supplement 10S–1, "Supplementary Requirements for Inspection," be utilized without exception. In the 1995 Edition, NCA–4134.10(a) was modified so that paragraph 2 of Supplement 10S–1 and the requirements for independence of inspection were no longer required. Supplement 10S–1, 2.1, states that "Inspection Personnel shall not report directly to the immediate supervisors who are responsible for performing the work being inspected." Subparagraph 2.2 states "Each person who verifies conformance of work activities for purposes of acceptance shall be qualified to perform the assigned task." By exempting Supplement 10S–1 paragraph 2 from the requirements of NCA–4134.10, Section III could promote noncompliance with 10 CFR 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," Criterion 1, "Organization." This criterion requires that persons performing QA functions report to a management level such that authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations, are provided. Thus, in proposed § 50.55a(b)(1)(vi), licensees would be permitted to use the provisions contained in NCA–4134.10(a), in the 1989 Addenda through the 1994 Addenda, but would be prohibited from using these provisions in the 1995 Edition through the 1996 Addenda.

2.5.1.2 Modification

2.5.1.2.1 Applicable Code Version for New Construction

The proposed modification of Section III addresses a possible conflict between NCA–1140 and § 50.55a for new construction. NCA–1140 of Section III requires that the length of time between the date of the edition and addenda used for new construction and the docket date of the nuclear power plant be no greater than three years. Paragraph 50.55a(b)(1) requires that the edition and addenda utilized be incorporated by reference into the regulations. The possibility exists that the edition and addenda required by the ASME Code to be used for new construction would not be incorporated by reference into § 50.55a. In order to resolve this possible discrepancy, the NRC proposes to modify existing §§§ 50.55a(c)(3)(i), 50.55a(d)(2)(i), and 50.55a(e)(2)(i), to permit an applicant for a construction permit to use the latest edition and addenda which has been incorporated by reference into § 50.55a(b)(1) if the requirements of the ASME Code and the regulations cannot simultaneously be satisfied.

2.5.2 Section XI (Voluntary Implementation)

Licensees would be permitted to update from the 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL to the 1995 Edition with the 1996 Addenda. In addition, licensees could implement Code Case N–513, "Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping," and Code Case N–523–1, "Mechanical Clamping Devices for Class 2 and 3 Piping."

2.5.2.1 Subsection IWE and Subsection IWL

Many of the provisions in Section XI Subsection IWL, "Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants," pertaining to the inspection of the tendons of concrete containments were based on guidance contained in Regulatory Guide 1.35, "Inservice Inspection of Ungrouted Tendons in Prestressed Concrete Containments." A final rule published on August 8, 1996 (61 FR 41303) incorporated by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, "Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants," and Subsection IWL. At that time, there were several key positions in the regulatory guide addressing the trending of prestress losses, unanticipated tendon elongation, grease leakage, and excessive water in the sampled sheathing filler grease not addressed in Subsection IWL because the ASME Code committees had not yet completed consideration of these positions. Due to the importance of these positions, the final rule addressed them in paragraphs 50.55a(b)(2)(ix)(A) through 50.55a(b)(2)(ix)(D)(3). In addition, the final rule contained § 50.55a(b)(2)(ix)(E) which addressed the occurrence of degradation in inaccessible areas of containments.

Since publication of the 1992 Addenda, the ASME Code committees have completed their consideration of those regulatory guide positions. Most have been incorporated into subsequent edition and addenda, and the 1995 Edition with the 1996 Addenda addresses all of the modifications listed above except grease leakage and degradation in inaccessible areas. Thus, licensees would be required to utilize the modifications presently in § 50.55a addressing grease leakage and degradation in inaccessible areas. The NRC has determined that the provisions contained in Subsection IWE and Subsection IWL, 1995 Edition with the 1996 Addenda Code, in conjunction with the modifications, would be acceptable.

The final rule published on August 8, 1996 (61 FR 41303) incorporated Subsection IWE and Subsection IWL into § 50.55a for the first time. The final rule contained a requirement for licensees to develop and implement a containment ISI program within five years. Each plant had a pre-existing ISI program to address Class 1, Class 2, and Class 3 components. The rule left it to the licensee's discretion whether to have two separate ISI programs, or merge the containment ISI program with the pre-existing program.

It has been over a year since the final rule was issued, and some licensees have begun the development of a containment ISI program to comply with the required 5-year implementation period. This containment ISI program will be based on the 1992 Edition with the 1992 Addenda as required by the final rule. However, other licensees have indicated that they will request NRC approval pursuant to § 50.55a(a)(3) to use later editions and addenda of Subsection IWE and Subsection IWL before this proposed rule becomes final. Thus, to provide flexibility, § 50.55a(b)(2)(vi) has been modified. Licensees would be permitted to implement either the presently required 1992 Edition with the 1992 Addenda, or the latest containment examination provisions; i.e., 1995 Edition with the 1996 Addenda.

For those licensees implementing the 1992 Edition with the 1992 Addenda, all of the modifications contained in paragraphs 50.55a(b)(2)(ix)(A) through 50.55a(b)(2)(ix)(D)(3) must be applied as presently required by § 50.55a. Licensees wishing to implement the 1995 Edition with the 1996 Addenda would be required to apply paragraphs 50.55a(b)(2)(ix)(A), 50.55a(b)(2)(ix)(D)(3), and 50.55a(b)(2)(ix)(E). Paragraph § 50.55a(b)(2)(ix) would thus be modified. According to § 50.55a(g)(6)(ii)(B)(1), the containment examinations performed during the 5-year implementation period are those examinations which are required by Subsection IWE during the first period of what will be the first containment inspection interval. (Since Subsection IWL is based on a 5-year schedule, standard Section XI periods do not apply for the examination of concrete containments and their post-tensioning systems). With completion of the first period examinations, the second period of the first containment ISI interval would begin. The end of the third period completes the first containment ISI interval, a containment ISI 120-month update has been completed, and the second containment ISI interval would begin.

As licensees have begun developing their containment ISI programs, the NRC has received requests to clarify the implementation schedule for ISI of concrete containments and their post-tensioning systems. The current wording of § 50.55a(g)(6)(ii)(B)(2) requiring licensees to implement "the inservice examinations which correspond to the number of years of operation which are specified in Subsection IWL" has created confusion regarding whether the first examination of concrete is required to meet the examination schedule in Section XI, Subsection IWL, IWL–2410, which is based on the date of the Structural Integrity Test (SIT), or may be performed at any time between September 9, 1996 and September 9, 2001. According to § 50.55a(g)(6)(ii)(B)(2) of the final rulemaking, the first examination of concrete may be performed at any time between September 9, 1996, and September 9, 2001. The date of the first examination of concrete is not conditional upon compliance with Subsection IWL–2410 or the SIT. The purpose of the italicized words is to maintain the present 5-year schedule for examination of the post-tensioning system as operating plants transition to Subsection IWL. For operating reactors, there is no need to repeat the 1, 3, 5-year implementation cycle.

Section 50.55a(g)(6)(ii)(B)(2) also stated that the first examination performed shall serve the same purpose for operating plants as the preservice examination specified for plants not yet in operation. The affected plants are presently operating, but they will be performing the examination of concrete under Subsection IWL for the first time. Because the plants are operating, a Section XI preservice examination cannot be performed. Therefore, the first concrete examination is to be an inservice examination which will serve as the baseline (the same purpose for operating plants as the preservice examination specified for plants not yet in operation). With completion of this first examination of concrete, the second five-year Subsection IWL ISI period would begin. Likewise, examinations of the post-tensioning system at the nth year (e.g., the 15th year post-tensioning system examination), if performed to the requirements of Subsection IWL, are to be performed to the ISI requirements, not the preservice requirements.

The NRC has also been requested to clarify the schedule for future examinations of concrete and their post-tensioning systems at both operating and new plants. There is no requirement in Subsection IWL to perform the examination of the concrete and the examination of the post-tensioning system at the same time. The examination of the concrete under Subsection IWL and the examination of

the liner plates of concrete containments under Subsection IWE may be performed at any time during the 5-year expedited implementation. This examination of the concrete and liner plate provides the baseline for comparison with future containment ISI. Coordination of these schedules in future examinations is left to each licensee. New plants would be required to follow all of the provisions contained in Subsection IWL, i.e., satisfy the preservice examination requirements and adopt the 1, 3, 5-year examination schedule ISI schedule.

2.5.2.2 Flaws in Class 3 Piping

Proposed § 50.55a(b)(2)(xvi) would permit licensees to use Code Case N–513, "Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping," and Code Case N–523–1, "Mechanical Clamping Devices for Class 2 and 3 Piping." Section XI contains repair methods for pipes with a flaw exceeding acceptable limits. These repairs restore the integrity of the flawed piping. There are certain cases, however, where a Section XI Code repair may be impractical for a flaw detected during plant operation (i.e., a plant shutdown would be required to effect the Code repair). For many safety-related piping systems, immediate repair is required regardless of plant status. However, it has been determined that under certain conditions, temporary acceptance of flaws, including through-wall leaking, of low and moderate energy Class 3 piping is acceptable provided that the conditions are met, and the repair is effected during the next outage. At present, licensees must request NRC staff approval to defer Section XI Code repair for these Class 3 moderate energy (200 xF, 275 psig) piping systems. The NRC has reviewed Code Case N–513 and Code Case N–523–1 and has determined that Code Case N–523–1 is acceptable. Code Case N–513 is acceptable except for the scope and Section 4.0.

Section 1.0(a) of the Scope to Code Case N–513 limits the use of the requirements to Class 3 piping. However, Section 1.0(c) would allow the flaw evaluation criteria to be applied to all sizes of ferritic steel and austenitic stainless steel pipe and tube. Without some limitation on the scope of the Code Case, the flaw evaluation criteria could be applied to components such as pumps and valves, original construction deficiencies, and pressure boundary leakage; applications for which the criteria should not be utilized. Thus, the NRC has determined that the Code Case shall not be applied to: (1) components other than pipe and tube, such as pumps, valves, expansion joints, and heat exchangers; (2) the discovery and repair of flaws or deficiencies remaining from original construction; (3) leakage through a flange gasket; (4) threaded connections employing nonstructural seal welds for leakage prevention (through seal weld leakage is not a structural flaw, thread integrity must be maintained); and (5) degraded socket welds. A proposed limitation would be added in § 50.55a(b)(2)(xvi)(B) which would preclude the use of Code Case N–513 for these applications.

The first paragraph of Section 4.0 of Code Case N–513 contains the flaw acceptance criteria. The criteria provide a safety margin based on service loading conditions. The second paragraph of Section 4.0, however, would permit a reduction of the safety factors based on a detailed engineering evaluation. No criteria or guidance is given for justifying a reduction, or limiting the amount of reduction. The acceptance criteria of the first paragraph are based on sound principles. The second paragraph would allow ever finer calculation until the available margins became unacceptably low. A limitation would be added in proposed § 50.55a(b)(2)(xvi)(A) requiring that when implementing Code Case N–513, the specific safety factors in the first paragraph of Section 4.0 be satisfied. The use of Code Case N–513, with the limitations, and Code Case N–523–1 would obviate the need for licensees to request approval for deferring repairs, thus saving NRC and licensee resources.

2.5.3 OM Code (Voluntary Implementation)

Licensees would be permitted to implement Code Case OMN–1 in lieu of stroke time testing as required in Subsection ISTC. Licensees would also be permitted to implement Appendix II as an alternative to the condition monitoring program provisions contained in Subsection ISTC. However, licensees choosing to implement Appendix II would be required to apply the three proposed modifications to Appendix II to supplement check valve condition monitoring. In addition, licensees would be permitted to use Subsection ISTD for the IST of snubbers.

2.5.3.1 Code Case OMN–1

An alternative to the provisions contained in § 50.55a(b)(3)(ii) is included in proposed § 50.55a(b)(3)(iii) which would permit licensees to voluntarily implement ASME Code Case OMN–1, "Alternative Rules for Preservice and Inservice Testing of Certain Electric Motor Operated Valve Assemblies in LWR Power Plants." The NRC has determined that for motor-operated valves, Code Case OMN–1 is acceptable in lieu of Subsection ISTC, except for leakage rate testing (ISTC 4.3) which must continue to be performed. As indicated in Attachment 1 to GL 96–05, the Code case meets the intent of the generic letter, but with certain limitations which were discussed in the generic letter. The NRC supports the OMN–1 maximum motor-operated valve test interval of 10 years based on current knowledge and experience, but believes it prudent to require that licensees evaluate the information obtained for each motor-operated valve during the first five years of use of the Code case, or three refueling outages (whichever is longer) to validate assumptions made in justifying a longer test interval. These limitations on the use of OMN–1 would be added to the rule as a modification in § 50.55a(b)(3)(iii)(A). Thus, Code Case OMN–1 is acceptable in lieu of Subsection ISTC, other than leakage rate testing requirements, with the modification that five years or three refueling outages (whichever is longer) from initial implementation of Code Case OMN–1, the adequacy of the test interval for each motor-operated valve must be evaluated and adjusted as necessary.

In addition, as noted in GL 96–05, licensees are cautioned when implementing Code Case OMN–1 that the benefits of performing a particular test should be balanced against the potential adverse effects placed on the valves or systems caused by this testing. Code Case OMN–1 specifies that an IST program should consist of a mixture of static and dynamic testing. While there may be benefits to performing dynamic testing, there are also potential detriments to its use (i.e., valve damage). Licensees should be cognizant of this for each MOV when selecting the appropriate method or combination of methods for the IST program.

2.5.3.2 Appendix II

Paragraph ISTC 4.5.5 of Subsection ISTC permits the Owner to use Appendix II, "Check Valve Condition Monitoring Program," of the OM Code, as an alternative to the testing or examination provisions of ISTC 4.5.1 through ISTC 4.5.4. If an Owner elects to use Appendix II, the provisions of Appendix II become mandatory. However, upon reviewing the appendix, the NRC has determined that the requirements in Appendix II must be supplemented. The first area that the NRC believes requires supplementation is the demonstration of acceptable valve performance. Appendix II requires no testing or examination of the check valve obturator movement to both the open and closed positions. Testing or examination of the check valve obturator in one direction only cannot assure the unambiguous detection of a functionally degraded check valve. The valve obturator must be tested or examined in both the opening and closing directions to assess its condition and confirm acceptable performance. Proposed § 50.55a(b)(3)(iv)(A) would require bi-directional testing of check valves.

Length of test interval is the second area of Appendix II where the NRC believes the rules must be supplemented. Appendix II was first incorporated into the OM Code in the 1996 Addenda. Thus, the operating experience database does not yet exist to support long term test intervals for the condition monitoring concept. Under the current check valve IST program, most valves are tested quarterly during plant operation. The interval for certain valves has been extended to refueling outages. Under the appendix, a licensee would be able to extend the interval without limit. A policy of prudent and safe interval extension dictates that any additional interval extension must be limited to one fuel cycle, and this extension must be based on sufficient experience to justify the additional time. Interval changes or extensions must be justified and limited within the existing performance and experience database. Condition monitoring and the current experience data base may qualify some valves for an initial extension to every other fuel cycle, while trending and evaluation of the data may dictate that the testing interval for some valves be reduced. Extensions of IST intervals must consider plant safety and be supported by trending and evaluating both generic and plant-specific performance data to ensure the component is capable of performing its intended function over the entire IST interval. Proposed § 50.55a(b)(3)(iv)(B) would limit the time between the initial test or examination and second test or examination to two fuel cycles or three years (whichever is longer), with additional extensions limited to one fuel cycle, and the total interval would be limited to a maximum of 10 years. An extension or reduction in the interval between tests or examinations would have to be supported by trending and evaluation of performance data.

The final area in Appendix II which the Commission believes should be supplemented is the requirement applicable to a licensee who discontinues a condition monitoring program. A licensee who discontinues use of Appendix II, under IST 4.5.5 is required to return to the requirements of IST 4.5.4. However, the NRC believes the requirements of IST 4.5.1 through IST 4.5.4 must be also met. Hence, if the monitoring program is discontinued, proposed § 50.55a(b)(3)(iii)(C) would require a licensee to implement the provisions of IST 4.5.1 through IST 4.5.4.

2.5.3.3 Subsection ISTD

The IST of dynamic restraints or snubbers is governed by plant technical specification and, thus, has never been included in § 50.55a. However, the NRC has reviewed Subsection ISTD, 1995 Edition with the 1996 Addenda, and has determined that the provisions for IST of snubbers are an acceptable alternative to the requirements contained in the plant technical specifications. Subsection ISTD, 1996 Addenda, includes new provisions for service life monitoring of snubbers. The new provisions require that the service lives of snubbers be predicted and evaluated to ensure that the service life will not be exceeded before the next scheduled refueling outage. These new provisions simply formalize preventative maintenance practices presently found in most plants. Because the IST of snubbers is governed by plant technical specifications, Subsection ISTD is not included in the proposed mandatory requirements of the rulemaking, but licensees may choose to voluntarily implement Subsection ISTD, 1995 Edition with the 1996 Addenda, by processing a change to their technical specifications. This proposed modification is contained in § 50.55a(b)(3)(v).

2.5.3.4 Containment Isolation Valves

The proposed amendment would delete the existing modification in § 50.55a(b)(2)(vii) for IST of containment isolation valves (CIVs), which was added to the regulations in a rulemaking effective on August 6, 1992 (57 FR 34666). That rulemaking incorporated by reference, among other things, the 1989 Edition of ASME Section XI, Subsection IWV that endorsed Part 10 of ASME/ANSI OMa1988 for valve inservice testing. A modification to the testing requirements of Part 10 related to CIVs was included in the rulemaking indicating that paragraphs 4.2.2.3(e) and 4.2.2.3(f) of Part 10 were to be applied to CIVs. As noted in the "Supplementary Information" for the August 6, 1992 rulemaking, the ASME Operations and Maintenance (OM) Committee had initiated action to: (1) perform a comprehensive review of OM Part 10 CIV testing requirements and acceptance standards; and (2) develop a basis document that would provide, as a minimum, a documented basis for not including the requirements for analysis of leakage rates and corrective actions in Part 10 for those CIVs that do not provide a reactor coolant system pressure isolation function. The NRC made a commitment via the Supplementary Information to reevaluate the need for the modification to Section XI, Subsection IWV, following review of this OM Committee basis document. This basis document was transmitted to the NRC in a letter from Steve Weinman, Secretary, OM Committee, to Eric S. Beckjord, Director, Office of Nuclear Regulatory Research, dated February 16, 1994. The NRC has determined that the requirements of 10 CFR 50, Appendix J, ensure adequate identification analysis, and corrective actions for leakage monitoring of CIVs, and that the existing modification in § 50.55a(b)(2)(vii) should be deleted. The regulatory analysis for this proposed rule contains a detailed discussion of the basis document findings and the NRC staff evaluation.

2.6 ASME Code Interpretations

The ASME issues Interpretations to clarify provisions of the BPV and OM Codes. Requests for Interpretations are submitted by users, and after appropriate committee deliberations and balloting, responses are issued by the ASME. Generally, the NRC agrees with these interpretations. When the NRC incorporates by reference specific editions and addenda into its regulations, the NRC has a certain understanding of those editions and addenda. Because an Interpretation is issued subsequent to issuance of the provision to which it refers, the Interpretation may affect that understanding. While the NRC acknowledges that the ASME is the official interpreter of the Code, the NRC will not accept ASME interpretations that, in NRC's opinion, are contrary to NRC requirements or may adversely impact facility operations. Interpretations have been issued which in some cases, conflicted with or were inconsistent with NRC requirements. These resulted in enforcement actions. Of particular concern are Code Interpretations that may be implemented following initiation of enforcement action by the NRC. ASME Code Interpretations were discussed in Part 9900, Technical Guidance, of the NRC Inspection Manual. Part 9900 provides that licensees should exercise caution when applying Interpretations as they are not specifically part of the

incorporation by reference into § 50.55a and have not received NRC approval.

2.7 DSI–13

Since 1992, when the Commission last revised § 50.55a to endorse new ASME Code Editions and addenda (57 FR 34666), several developments have occurred which have raised some fundamental issues with respect to the Commission's endorsement of ASME Codes. First, on October 21, 1993, Entergy Operations, Inc. submitted a request that would relieve it from updating its ISI and IST programs to the last ASME Code edition and addenda incorporated by reference into § 50.55a. The underlying premise of the request was that a licensee should not be required to upgrade its ISI and IST program without considering whether the costs of the upgrade are warranted in light of the increased safety afforded by the updated Code edition and addenda. Though the request was later withdrawn, the underlying premise resulted in NRC reconsideration of the 120-month update. Requiring Code updates every 120-months is still under active consideration. However, the proposed rule has been prepared under the traditional approach; i.e., licensees would be required to update their ISI and IST programs every 120-months to the latest edition and addenda incorporated by reference into § 50.55a. If a decision is reached subsequent to publication of the proposed rule that is adverse to this approach, this position will be corrected prior to publication of the final rule.

Second, the National Technology Transfer and Advancement Act of 1995, PL 104–113, was signed into law on March 7, 1996. The Act directs federal agencies to achieve greater reliance on technical standards developed by voluntary consensus standards development organizations. Finally, the Commission commenced a Strategic Assessment and Rebaselining Initiative. One of the issues addressed in this effort was Direction Setting Issue (DSI) 13, which raised the question, "In performing its regulatory responsibilities, what consideration should the NRC give to industry activities." A draft paper addressing DSI–13 was published for public comment on September 16, 1996, after which the Commission held public meetings to facilitate understanding of the issues and receive comments on the DSI–13 draft paper. Based on the public comments, the Commission has directed the NRC Staff to address how industry initiatives should be evaluated, and to evaluate several issues related to NRC endorsement of industry codes and standards. As part of this evaluation, the Staff is addressing issues relevant to the NRC's endorsement of the ASME Code, including periodic updating, the impact of 10 CFR 50.109 (the Backfit Rule), and streamlining the process for NRC review and endorsement of the ASME Code.

2.8 Steam Generators

ASME Code requirements for repair of heat exchanger tubes by sleeving were added to Section XI in the 1989 Addenda. Minimum Code requirements for tube sleeving was added to the Code so that licensees would not have to develop sleeving programs and have them approved by the NRC on a case-by-case basis. The NRC has reviewed the Code requirements for sleeving and determined that they are acceptable. However, it should be recognized that there are other relevant requirements, and that a considerable amount of effort is presently being expended due to the number of occurrences of degraded steam generator tubing. For example, licensees are required by either 10 CFR 50.55a(f) or by the plant technical specifications to perform periodic inservice inspections and to repair (e.g., sleeving) or remove from service (by installing plugs in the tube ends) all tubes found to contain flaws exceeding the plugging limit (i.e., tube repair criteria). In addition, current technical specifications contain operational leakage limits. Licensee's have frequently found it necessary to implement measures beyond minimum Code and technical specification requirements to ensure adequate tube integrity when significant degradation problems are encountered. Thus, the NRC determination that the sleeving requirements are acceptable should be kept in perspective.

3. Finding of No Significant Environmental Impact

Based upon an environmental assessment, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not have a significant effect on the quality of the human environment and therefore an environmental impact statement is not required.

The proposed rule is one part of a regulatory framework directed to ensuring pressure boundary integrity and the operational readiness of pumps and valves. The proposed rule incorporates provisions contained in the BPV Code and the OM Code for the construction, inservice inspection, and inservice testing of components used in nuclear power plants, has been updated to incorporate improved technology and methodology. Therefore, in the general sense, the proposed rule would have a positive impact on the environment.

The proposed rule would impose the Section XI 1995 Edition with the 1996 Addenda. As most of the technical changes to this edition/addenda merely incorporate improved technology and methodology, imposition of these requirements is not expected to either increase or decrease occupational exposure. However, imposition of paragraphs IWF–2510, Table IWF–2500–1, Examination Category F–A, and IWF–2430, would result in fewer supports being examined which would decrease the occupational exposure compared to present support inspection plans. It is estimated that an examiner receives approximately 100 millirems for every 25 supports examined. Adoption of the new provisions is expected to decrease the total number of supports to be examined by approximately 115 per unit per interval. Thus, the reduction in occupational exposure is estimated to be 460 millirems per unit each inspection interval or 50.14 rems for 109 units.

The proposed rule would impose Appendix VIII to Section XI, 1995 Edition with the 1996 Addenda, BPV Code, for the first time and would expedite its implementation. Appendix VIII provides rules for the performance demonstration of ultrasonic examination systems, procedures, and personnel. Implementation of this appendix should result in a decrease in occupational exposure. Appendix VIII qualified procedures and personnel should reduce repeat ultrasonic testing (UT), which could reduce occupational exposure. In addition, flaws should be detected at an earlier stage of growth resulting in less extensive repair operations, which could further reduce occupational exposure.

The proposed rule would incorporate by reference into the regulations the 1995 Edition with the 1996 Addenda of the OM Code. Imposition of the OM Code is not expected to either increase or decrease occupational exposure. The types of testing associated with the 1995 Edition with the 1996 Addenda of the OM Code are essentially the same as the OM standards contained in the 1989 Edition of Section XI referenced in a final rule published on August 6, 1992 (57 FR 34666).

Actions required of applicants and licensees to implement the proposed rule are of the same nature as those applicants and licensees have been performing for many years. Therefore, this action should not increase the potential for a negative environmental impact.

The NRC has sent a copy of the Environmental Assessment and the proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment are available from Frank C. Cherny, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6786, or Wallace E. Norris, Division of Engineering Technology, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6796.

4. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this information collection is estimated to average 67 person-hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for further reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by Internet electronic mail at BJS1@NRC.Gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by January 2, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

5. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC. The Commission requests public comment on the draft analysis. Single copies of the analysis may be obtained from Frank C. Cherny, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6786, Wallace E. Norris, Division of Engineering Technology, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6796.

6. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

7. Backfit Analysis

The Nuclear Regulatory Commission (NRC) regulations, 10 CFR 50.55a, requires that nuclear power plant owners (1) construct Class 1, Class 2, and Class 3 components in accordance with the rules provided in Section III, Division 1, "Requirements for Construction of Nuclear Power Plant Components," of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code), (2) inspect Class 1, Class 2, Class 3, Class MC (metal containment) and Class CC (concrete containment) components in accordance with the rules provided in Section XI, Division 1, "Requirements for Inservice Inspection of Nuclear Power Plant Components," of the BPV Code, and (3) test Class 1, Class 2, and Class 3 pumps and valves in accordance with the rules provided in Section XI, Division 1. Licensees are required to update every 120 months to the version of Section XI incorporated by reference into § 50.55a 12 months prior to the start of a new ten year interval.

The proposed amendment to § 50.55a would require licensees to update ISI in accordance with Section XI of the ASME BPV Code and IST in accordance with the ASME OM Code. Licensees would be required to implement the 1995 Edition with the 1996 Addenda of (1) Section XI, Division 1 for Class 1, Class 2, Class 3, Class MC, and Class CC components; (2) the "Code for Operation and Maintenance of Nuclear Power Plants" (OM Code) for Class 1, Class 2, and Class 3 pumps and valves; and (3) Appendix VIII, "Performance Demonstration for Ultrasonic Examination Systems," to Section XI, Division 1. As permitted by § 50.55a(a)(3), licensees may voluntarily update to the 1989 Addenda through the 1996 Addenda of Section III of the BPV Code, with limitation. In addition, the modification for containment isolation valve inservice testing that applied to the 1989 Edition of the BPV Code has been deleted. Licensees will continue to be required to update their ISI and IST programs every 120 months to the version of Section XI and the OM Code incorporated by reference and in effect at least 12 months prior to the start of a new 120-month interval.

The NRC position on the routine 120-month update to § 50.55a has consistently been that 10 CFR 50.109 does not require a backfit analysis of the routine 120-month update to § 50.55a. The basis for the NRC position is that, (1) Section III, Division 1, update applies only to new construction (i.e., the edition and addenda to be used in the construction of a plant are selected based upon the date of the construction permit and are not changed thereafter, except voluntarily by the licensee), (2) licensees understand that § 50.55a requires that they update their inservice inspection program every 10 years to the latest edition and addenda of Section XI that were incorporated by reference in § 50.55a and in effect 12 months before

the start of the next inspection interval, and (3) endorsing and updating references to the ASME Code, a national consensus standard developed by the participants (including the NRC) with broad and varied interests, is consistent with both the intent and spirit of the backfit rule (i.e., NRC provides for the protection of the public health and safety, and does not unilaterally impose undue burden on applicants or licensees). Finally, to ensure that any interested member of the public that may not have had an opportunity to participate in the national consensus standard process is able to communicate with the NRC, proposed rules are published in the **Federal Register**.

The provisions for IST of pumps and valves were originally contained in Section XI Subsections IWP and IWV. Section XI, 1989 Edition was incorporated by reference in the August 6, 1992 rulemaking (57 FR 34666). The 1990 OM Code standards, Parts 1, 6, and 10 of ASME/ANSI–OM–1987, are identical to Section XI, 1989 Edition. This proposed amendment is an administrative change simply referencing the 1995 Edition with the 1996 Addenda of the OM Code. Therefore, imposition of the 1995 Edition with the 1996 Addenda of the OM Code is not a backfit.

Appendix VIII, "Performance Demonstration for Ultrasonic Examination Systems," to Section XI would be used to demonstrate the qualification of personnel and procedures for performing nondestructive examination of welds in components of systems that include the reactor coolant system and the emergency core cooling systems in nuclear power facilities. Appendix VIII would greatly enhance the reliability of detection and sizing of cracks and flaws, and it delineates a method for qualification of the personnel and procedures. The appendix would normally be imposed by the 120-month update requirement, but because of its importance, implementation of Appendix VIII is being expedited by the rulemaking. Because of the expedited implementation schedule, the imposition of Appendix VIII is being considered a backfit. Licensees would be required to implement Appendix VIII, including the modifications, for all examinations of the pressure vessel, piping, nozzles, and bolts and studs which occur after 6 months from the date of the final rule. The proposed rule would not require any change to a licensee's ISI schedule for examination of these components, but would require that the provisions of Appendix VIII be used for all examinations after that date rather than the UT procedures and personnel requirements presently being utilized by licensees.

The NRC has concluded, on the basis of the documented evaluation required by § 50.109(a)(4), that imposition of Appendix VIII, which would greatly enhance the overall level of assurance of the safety and reliability of ultrasonic examination techniques in detecting and sizing flaws, is necessary to bring the facilities described into compliance with GDC 14, 10 CFR Part 50, Appendix A, or similar provisions in the licensing basis for these facilities, and Criteria II and XVI, of 10 CFR Part 50, Appendix B.

The modification to Section XI to require licensees to supplement the surface examination of the Class 1 portion (RCPB) of the HPSI system with volumetric examination would ensure the integrity of the reactor coolant system pressure boundary and maintenance of emergency core cooling system operability. The operability of this system is necessary to ensure the protection of the public health and safety, and the NRC has concluded, on the basis of the documented evaluation required by § 50.109(a)(4), that licensees must supplement the Section XI required surface examination for the Class 1 portion of the HPSI system with volumetric examination in order to ensure the integrity of the reactor coolant pressure boundary as required by GDC 14, 10 CFR Part 50, Appendix A, or similar provisions in the licensing basis for these facilities, and Criteria II and XVI, of 10 CFR Part 50, Appendix B. Volumetric examination would be required during any ISI program inspection of the HPSI system performed after 6 months from the date of the final rule.

GDC 14, "Reactor coolant pressure boundary," (RCPB) or similar provisions in the licensing basis for these facilities, specify that the RCPB be designed, fabricated, erected, and tested so as to have an extremely low probability of abnormal leakage, or rapidly propagating failure, and of gross rupture. There has recently been an occurrence of gross rupture in the Class 1 portion of a HPSI system, and a number of occurrences of abnormal leakage in the RCPB in other plants.

Imposition of Appendix VIII and the HPSI volumetric examination is also necessary to bring the facilities described into compliance with Criteria II, "Quality Assurance Program," and Criteria XVI, "Corrective Actions," of Appendix B to 10 CFR Part 50. Criteria II requires, in part, that a QA program shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality and the need for verification of quality by inspection and test. Evidence indicates that there are shortcomings in the qualifications of personnel and procedures in ensuring the reliability of the examinations. These safety significant revisions to the Code include specific requirements for UT performance demonstration, with statistically based acceptance criteria for blind testing of UT systems (procedures, equipment, and personnel) used to detect and size flaws. Criteria XVI requires that measures shall be established to assure that conditions adverse to quality, such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected. In analyzing the occurrences of pipe break and leakage, it is apparent that the RCPB is subject to certain types of degradation. Information gathered by the NRC staff indicates that many licensees have not reacted to this serious safety concern by performing more comprehensive examinations. The NRC believes that there is a basis for reasonably concluding that such degradation could occur in virtually all PWRs. Because of the serious degradation which has occurred, and the belief that additional occurrences of noncompliance with GDC 14, and Criteria II and XVI will be reported, the NRC has determined that imposition of Appendix VIII and volumetric examination of the HPSI system 6 months after the final rule has been published under the compliance exception to § 50.109(a)(4)(i) is appropriate, therefore, a backfit analysis is not required and the cost-benefit standards of § 50.109(a)(3) do not apply. A complete discussion is contained in the documented evaluation.

The rationale for application of the backfit rule and the backfit justification for the various items contained in this proposed rule are contained in the regulatory analysis and documented evaluation. The regulatory analysis and documented evaluation are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the regulatory analysis and documented evaluation are available from Frank C. Cherny, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6786, or Wallace E. Norris, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–6796.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by removing and reserving paragraphs (b)(2)(vii) and (g)(4)(iv), adding paragraphs (b)(2)(xi) through (b)(2)(xx), (b)(3), (g)(6)(ii)(A)(*6*), and (g)(6)(ii)(C), and revising the introductory text of paragraph (b), paragraph (b)(1), the introductory text of paragraph (b)(2), paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(viii), the introductory text of paragraph (b)(2)(ix), paragraphs (c)(3), (d)(2), (e)(2), the introductory text of paragraph (f), paragraphs (f)(1), (f)(2), (f)(3)(iii), (f)(3)(iv), the introductory text of paragraph (f)(4), paragraphs (g)(1), (g)(3)(i), the introductory text of paragraph (g)(4), paragraphs (g)(6)(ii)(A)(*1*), (g)(6)(ii)(A)(*2*), and Footnotes 5 and 7 to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) The ASME Boiler and Pressure Vessel Code, and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in the following paragraphs, were approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017. They are also available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1995 Edition and addenda through the 1996 Addenda, subject to the following limitations and modifications:

(i) Engineering judgement. When a licensee relies on engineering judgment for activities or evaluations of components or systems within the scope of 10 CFR 50.55a that are not directly addressed by the ASME Boiler and Pressure Vessel Code, the NRC must approve the activities or evaluations pursuant to 10 CFR 50.55a(a)(3).

(ii) Section III Materials. When applying the 1992 Edition of Section III, licensees shall apply the 1992 Edition with the 1992 Addenda of Section II of the ASME Boiler and Pressure Vessel Code.

(iii) Weld leg dimensions. When applying the 1989 Addenda through the 1996 Addenda of Section III, licensees shall not apply paragraph NB–3683.4(c)(1), Footnote 11 to Figure NC–3673.2(b)–1, and Figure ND–3673.2(b)–1, and shall continue to use the requirements in the 1989 Edition for this paragraph and figures.

(iv) Seismic design. Licensees may use Articles NB–3200, NB–3600, NC–3600, and ND–3600 through the 1993 Addenda, subject to the limitation specified in (b)(1)(iii) of this section. Licensees shall not use the provisions in the 1994 Addenda through the 1996 Addenda for these Articles.

(v) Quality assurance. When applying editions and addenda later than the 1989 Edition of Section III, the requirements of NQA–1, "Quality Assurance Requirements for Nuclear Facilities," 1986 Edition through the 1992 Addenda are acceptable for use provided that both NQA–1 and the quality assurance provisions specified in NCA–4000 are used in conjunction with the administrative, quality, and technical provisions contained in the edition and addenda of Section III being utilized.

(vi) Independence of inspection. Licensees shall not apply NCA–4134.10(a) of Section III, 1995 Edition with the 1996 Addenda, and shall use NCA–4134.10(a), 1994 Addenda.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1995 Edition and addenda through the 1996 Addenda, subject to the following limitations and modifications:

* * * * *

(iv) Pressure-retaining welds in ASME Code Class 2 piping (applies to Tables IWC–2520 or IWC–2520–1, Category C–F).

(A) Appropriate Code Class 2 pipe welds in Residual Heat Removal Systems, Emergency Core Cooling Systems, and Containment Heat Removal Systems, must be examined. When applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME Code, the extent of examination for these systems must be determined by the requirements of paragraph IWC–1220, Table IWC–2520 Category C–F and C–G, and paragraph IWC–2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda.

(B) For a nuclear power plant whose application for a construction permit was docketed prior to July 1, 1978, when applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME Code, the extent of examination for Code Class 2 pipe welds may be determined by the requirements of paragraph IWC–1220, Table IWC–2520 Category C–F and C–G and paragraph IWC–2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda of Section XI of the ASME Code or other requirements the Commission may adopt.

* * * * *

(vi) Effective edition and addenda of Subsection IWE and Subsection IWL, Section XI. Licensees shall use either the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of Subsection IWE and Subsection IWL as modified and supplemented by the requirements in § 50.55a(b)(2)(ix) and § 50.55a(b)(2)(x).

(vii) [Reserved]

(viii) Section XI References to OM Part 4, OM Part 6 and OM Part 10 (Table IWA–1600–1). When using Table IWA–1600–1, "Referenced Standards and Specifications" in the Section XI, Division 1, 1987 Addenda, 1988 Addenda, or 1989 Edition, the specified "Revision Date or Indicator" for ASME/ANSI OM Part 4, ASME/ANSI Part 6, and ASME/ANSI Part 10 shall be the OMa–1988 Addenda to the OM–1987 Edition. These requirements have been incorporated into the 1990 Edition of the OM Code which is incorporated by reference in paragraph (b)(3) of this section.

(ix) Examination of concrete containments. Licensees applying Subsection IWL, 1992 Edition with the 1992 Addenda, shall apply all of the modifications in this paragraph. Licensees choosing to apply the 1995 Edition with the 1996 Addenda shall apply paragraphs (b)(2)(ix)(A), (D)(3), and (E) of this section.

* * * * *

(xi) Engineering judgment. When a licensee relies on engineering judgment for activities or evaluations of components or systems within the scope of 10 CFR 50.55a that are not directly addressed by the ASME Boiler and Pressure Vessel Code, the NRC must approve the activities or evaluations pursuant to 10 CFR 50.55a(a)(3).

(xii) Quality Assurance. When applying Section XI editions and addenda later than the 1989 Edition, the requirements of NQA–1, "Quality Assurance Requirements for Nuclear Facilities," 1979 Addenda through the 1989 Edition are acceptable as permitted by IWA–1400 of Section XI, provided the licensee utilizes its 10 CFR Part 50, Appendix B, quality assurance program, in conjunction with Section XI requirements. Changes to licensee's quality assurance program shall be made in accordance with 10 CFR 50.54(a). In addition, where NQA–1 and Section XI do not address the commitments contained in the licensee's Appendix B quality assurance program description, such commitments shall be applied to Section XI activities.

(xiii) Class 1 piping. Licensees shall not apply IWB–1220, "Components Exempt from Examination," of Section XI, 1989 Addenda through the 1996 Addenda, and shall apply IWB–1220, 1989 Edition.

(xiv) Class 2 piping. Prior to applying the provisions of IWC–1220, "Components Exempt from Examination," IWC–1221, "Components Within RHR, ECC, and CHR Systems or Portions of Systems," and IWC–1222, "Components Within Systems or Portions of Systems Other Than RHR, ECC, and CHR Systems," 1989 Addenda through the 1996 Addenda, licensees shall define the Class 2 piping subject to volumetric and surface examination, and submit this information for approval by the NRC staff pursuant to § 50.55a(a)(3) prior to implementation.

(xv) Class 1 piping volumetric examination. When performing weld examinations of High Pressure Safety Injection Systems, as required by Table IWB–2500–1, Examination Category B–J, Item Numbers B9.20, B9.21, and B9.22, all licensees of pressurized water reactor facilities shall perform volumetric examination of the Class 1 portion of the system after [insert 6 months from the date of the final rule].

(xvi) Flaws in Class 3 piping moderate energy (200 xF, 275 psig) piping. Licensees may use the provisions of Code Case N–513, "Evaluation Criteria for Temporary Acceptance of Flaws in Class 3 Piping," Rev 0, and Code Case N–523–1, "Mechanical Clamping Devices for Class 2 and 3 Piping." Licensees choosing to apply Code Case N–523–1 shall apply all of its provisions. Licensees choosing to apply Code Case N–513 shall apply all of its provisions subject to the following:

(A) When implementing Code Case N–513, the specific safety factors in paragraph 4.0 must be satisfied.

(B) Code Case N–513 shall not be applied to:

(*1*) Components other than pipe and tube, such as pumps, valves, expansion joints, and heat exchangers;

(*2*) The discovery and repair of flaws or deficiencies remaining from original construction;

(*3*) Leakage through a flange gasket;

(*4*) Threaded connections employing nonstructural seal welds for leakage prevention (through seal weld leakage is not a structural flaw, thread integrity must be maintained); and

(*5*) Degraded socket welds.

(xvii) Appendix VIII personnel qualification. All personnel qualified for performing ultrasonic examinations in accordance with Appendix VIII shall receive 40 hours of annual training that includes laboratory work and examination of flawed specimens.

(xviii) Appendix VIII specimen set cracks. All flaws in the specimen sets used for performance demonstration for piping, vessels, and nozzles shall be cracks.

(xix) Appendix VIII specimen set microstructure. All specimens for single-side tests shall contain microstructures of the type found in components to be inspected, and flaws with non-optimum characteristics consistent with field experience that provide realistic challenges to the UT techniques.

(xx) Reconciliation of Quality Requirements. The following limitations apply when implementing Section XI, IWA–4200, 1995 Addenda through the 1996 Addenda:

(A) Licensees shall not apply IWA–4200, of Section XI, 1995 Addenda through the 1996 Addenda, for reconciliation of the administrative requirements for replacement items, and shall reconcile the administrative requirements with the original Construction Code and the Owner's requirements as required by the 1995 Edition.

(B) Licensees shall not apply the definition of Construction Code in IWA–9000, "Glossary," 1993 Addenda through the 1996 Addenda, and shall apply the definition of Construction Code in IWA–9000, 1992 Edition.

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, and include addenda through the 1996 Addenda and editions through the 1995 Edition subject to the following limitations and modifications:

(i) *Quality Assurance.* When applying editions and addenda of the OM Code, 1990 and later, the requirements of NQA–1, "Quality Assurance Requirements for Nuclear Facilities," 1979 Addenda, are acceptable as permitted by ISTA 1.4 of the OM Code, provided the licensee utilizes its 10 CFR Part 50, Appendix B, quality assurance program, in conjunction with the OM Code requirements. Changes to licensee's quality assurance program shall be made in accordance with 10 CFR 50.54(a). In addition, where NQA–1 and the OM Code do not address the commitments contained in the licensee's Appendix B quality assurance program description, such commitments shall be applied to OM Code activities.

(ii) Stroke time testing. Licensees shall comply with the provisions on stroke time testing in OM Code ISTC 4.2, 1995 Edition with the 1996 Addenda, and the programs developed under their licensing commitments for demonstrating design basis capability of motor-operated valves.

(iii) Code Case OMN–1. As an alternative to § 50.55a(b)(3)(ii), licensees may use Code Case OMN–1, "Alternative Rules for Preservice and Inservice Testing of Certain Electric Operated Valve Assemblies in LWR Power Plants," Rev. 0, 1995 Edition with the 1996 Addenda, in conjunction with ISTC 4.3, 1995 Edition with the 1996 Addenda. Licensees choosing to apply the Code case shall apply all of its provisions.

(A) The adequacy of the test interval for each valve shall be evaluated and adjusted as necessary but not later than five years or three refueling outages (whichever is longer) from initial implementation of ASME Code Case OMN–1.

(B) [Reserved]

(iv) Appendix II. The following modifications apply when implementing Appendix II, "Check Valve Condition Monitoring Program," of the OM Code, 1995 Edition with the 1996 Addenda:

(A) Valve opening and closing functions must be demonstrated when flow testing or examination methods (nonintrusive, or disassembly and inspection) are used;

(B) The initial interval for tests and associated examinations shall not exceed two fuel cycles or 3 years, whichever is longer; any extension of this interval shall not exceed one fuel cycle per extension with the maximum interval not to exceed 10 years; trending and evaluation of existing data shall be used to reduce or extend time the interval between tests.

(C) If the Appendix II condition monitoring program is discontinued, then the requirements of ISTC 4.5.1 through 4.5.4 shall be implemented.

(v) Subsection ISTD. Licensees may use Subsection ISTD, OM Code, 1995 Edition with the 1996 Addenda, by making a change to their technical specifications in accordance with applicable NRC requirements. Licensees choosing to apply the subsection shall apply all of its provisions.

(c) * * *

(3) The Code Edition, Addenda, and optional Code Cases to be applied to components of the reactor coolant pressure boundary must be determined by the provisions of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but:

(i) The edition and addenda applied to a component must be those which are incorporated by reference in paragraph (b)(1) of this section, and, in case of conflict between paragraph (b)(1) of this section and paragraph NCA–1140, the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section shall be applied,

(ii) The ASME Code provisions applied to the pressure vessel may be dated no earlier than the Summer 1972 Addenda of the 1971 edition,

(iii) The ASME Code provisions applied to piping, pumps, and valves may be dated no earlier than the Winter 1972 Addenda of the 1971 edition, and

* * * * *

(d) * * *

(2) The Code Edition, Addenda, and optional Code Cases6 to be applied to the systems and components identified in paragraph (d)(1) of this section must be determined by the rules of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler Vessel and Pressure Code, but:

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section, and, in case of conflict between paragraph (b)(1) of this section and paragraph NCA–1140, the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section shall be applied,

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition, and

(iii) The ASME Code Cases6 must have been determined suitable for use by the NRC.

(e) * * *

(2) The Code Edition, Addenda, and optional Code Cases6 to be applied to the systems and components identified in paragraph (e)(1) of this section must be determined by the rules of paragraph NCA–1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but:

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section, and, in case of conflict between paragraph (b)(1) of this section and paragraph NCA–1140, the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section shall be applied,

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition, and

(iii) The ASME Code Cases must have been determined suitable for use by the NRC.

(f) Inservice testing requirements. Requirements for inservice inspection of Class 1, Class 2, Class 3, Class MC, and Class CC components (including their supports) are located in § 50.55a(g).

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, pumps and valves must meet the test requirements of paragraphs (f)(4) and (f)(5) of this section to the extent practical. Pumps and valves which are part of the reactor coolant pressure boundary must meet the requirements applicable to components which are classified as ASME Code Class 1. Other pumps and valves in steam, water, air, and liquid-radioactive-waste systems that perform a function to shut down the reactor or maintain the reactor in a safe shutdown condition, mitigate the consequences of an accident, or provide overpressure protection for such systems (in meeting the requirements of the 1986 Edition, or later, of the Boiler and Pressure Vessel or OM Code), must meet the test requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda6 in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to limitations and modifications listed therein.

(3) * * *

(iii)(A) Pumps and valves, in facilities whose construction permit was issued before [insert effective date of the final rule], which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda6 applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit is issued on or after [insert effective date of the final rule], which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing

operational readiness set forth in editions and addenda of the ASME OM Code referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

(iv)(A) Pumps and valves, in facilities whose construction permit was issued before [insert effective date of rule], which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda6 applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(B) Pumps and valves, in facilities whose construction permit is issued on or after [insert effective date of the final rule], which are classified as ASME Code Class 2 and 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in editions and addenda of the ASME OM Code referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the inservice test requirements, except design and access provisions, set forth in the ASME OM Code and addenda that become effective subsequent to editions and addenda specified in paragraphs (f)(2) and (f)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

* * * * *

(g) * * *

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued before January 1, 1971, components (including supports) must meet the requirements of paragraphs (g)(4) and (g)(5) of this section to the extent practical. Components which are part of the reactor coolant pressure boundary and their supports must meet the requirements applicable to components which are classified as ASME Code Class 1. Other pressure vessels, piping, pumps and valves, and their supports in steam, water, air, and liquid-radioactive-waste systems that provide pressure boundary integrity for systems that perform a function to shut down the reactor or maintain the reactor in a safe shutdown condition, or mitigate the consequences of an accident, must meet the requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

* * * * *

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda6 applied to the construction of the particular component.

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components. Components which are classified as Class MC pressure retaining components and their integral attachments, and components which are classified as Class CC pressure retaining components and their integral attachments must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of the ASME Boiler and Pressure Vessel Code and Addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitation listed in paragraph (b)(2)(vi) and the modifications listed paragraph (b)(2)(ix) and (b)(2)(x) of this section, to the extent practical within the limitation of design, geometry and materials of construction of the components.

* * * * *

(iv) [Reserved]

(6) * * *

(ii) * * *

(A)(*1*) All previously granted reliefs under § 50.55a to licensees for the extent of volumetric examination of reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB in applicable edition and addenda of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, during the inservice inspection interval in effect on September 8, 1992 are hereby revoked, subject to the specific modification in § 50.55a(g)(6)(ii)(A)(*3*)(*iv*) for licensees that defer the augmented examination in accordance with § 50.55a(g)(6)(ii)(A)(*3*).

(*2*) All licensees shall augment their reactor vessel examination by implementing once, as part of the inservice inspection interval in effect on September 8, 1992, the examination requirements for reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB of the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, subject to the conditions specified in § 50.55a(g)(6)(ii)(A)(*3*) and (*4*). The augmented examination, when not deferred in accordance with the provisions of § 50.55a(g)(6)(ii)(A)(*3*), shall be performed in accordance with the related procedures specified in the Section XI edition and addenda applicable to the inservice inspection interval in effect on September 8, 1992, and may be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on September 8, 1992. For the purpose of this augmented examination, "essentially 100%" as used in Table IWB–2500–1 means more than 90 percent of the examination volume of each weld, where the reduction in coverage is due to interference by another component, or part geometry.

* * * * *

(*6*) Augmented examinations of reactor vessel shell welds that are performed in accordance with § 50.55a(g)(6)(ii)(A) after [insert 6 months from the date of the final rule] must be performed in accordance with § 50.55a(g)(6)(ii)(C).

* * * * *

(C) *Application of Appendix VIII to Section XI Examinations.*

(*1*) All reactor vessel (including nozzles) ultrasonic examinations, all piping ultrasonic examinations, and all bolting ultrasonic examinations performed after *insert 6 months from the date of the final rule* must be performed in accordance with Appendix VIII of Section XI, Division 1, 1995, Edition with the 1996 Addenda of the ASME Boiler and Pressure Vessel Code.

(*2*) [Reserved]

* * * * *

[5] For ASME Code Editions and Addenda issued prior to the Winter 1977 Addenda, the Code Edition and Addenda applicable to the component is governed by the order or contract date for the component, not the contract date for the nuclear energy system. For the Winter 1977 addenda and subsequent editions and addenda the method for determining the applicable Code editions and addenda is contained in Paragraph NCA–1140 of Section III of the ASME Code.

* * * * *

[7] For purposes of this regulation the proposed IEEE–279 became "in effect" on August 30, 1968, and the revised issue IEEE–279–1971 became "in effect" on June 3, 1971. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017. Copies are available for inspection at the NRC Library, Two White Flint North, 11545, Rockville Pike, Rockville, Maryland 20852–2738.

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Dated at Rockville, MD this 27th day of October 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–31588 Filed 12–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN 3150–AF87

Criticality Accident Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to provide light-water nuclear power reactor licensees with greater flexibility in meeting the requirement that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area where the material is handled, used, or stored. This action is taken as a result of the experience gained in processing and evaluating a number of exemption requests from power reactor licensees and NRC's safety assessments in response to these requests that concluded that the likelihood of criticality was negligible.

DATES: Comments on the proposed rule must be received on or before January 2, 1998.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudication Staff. Hand deliver comments to 11555 Rockville Pike, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Stan Turel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, e-mail spt@nrc.gov.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on February 17, 1998. However, if the NRC receives significant adverse comments on the direct final rule by January 2, 1998, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address in a Final Rule the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

Electronic Access

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is considering adopting the following amendments to 10 CFR Parts 50 and 70.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for 10 CFR Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.68 is added under the center heading "Issuance, Limitations, and Conditions of Licenses and Construction Permits" to read as follows:

§ 50.68 Criticality accident requirements.

(a) Each holder of a construction permit or operating license for a nuclear power reactor issued under this part, or a combined license for a nuclear power reactor issued under part 52 of this chapter shall comply with either 10 CFR 70.24 of this chapter or requirements in paragraph (b).

(b) Each licensee shall comply with the following requirements in lieu of maintaining a monitoring system capable of detecting a criticality as described in 10 CFR 70.24:

(1) Plant procedures may not permit handling and transportation at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

(2) The estimated ratio of neutron production to neutron absorption and leakage (k-effective) of the fresh fuel in the fresh fuel storage racks shall be calculated assuming the racks are loaded with fuel of the maximum permissible U–235 enrichment and flooded with pure water and must not exceed 0.95, at a 95 percent probability, 95 percent confidence level.

(3) If optimum moderation of fresh fuel in the fresh fuel storage racks occurs when the racks are assumed to be loaded with fuel of the maximum permissible U–235 enrichment and filled with low-density hydrogenous fluid, the k-effective corresponding to this optimum moderation must not exceed 0.98, at a 95 percent probability, 95 percent confidence level.

(4) If no credit for soluble boron is taken, the k-effective of the spent fuel storage racks loaded with fuel of the maximum permissible U–235 enrichment must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with pure water. If credit is taken for soluble boron, the k-effective of the spent fuel storage racks loaded with fuel of the maximum permissible U–235 enrichment must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with borated water, and the k-effective must remain below 1.0 (subcritical), at a 95 percent probability, 95 percent confidence level, if flooded with pure water.

(5) The quantity of SNM, other than nuclear fuel stored on site, is less than the quantity necessary for a critical mass.

(6) Radiation monitors, as required by GDC 63, are provided in storage and associated handling areas when fuel is present to detect excessive radiation levels and to initiate appropriate safety actions.

(7) The maximum nominal U–235 enrichment of the fresh fuel assemblies is limited to no greater than five (5.0) percent by weight.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for 10 CFR Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d) The requirements in paragraph (a) through (c) of this section do not apply to holders of a construction permit or operating license for a nuclear power reactor issued pursuant to part 50 of this chapter, or combined licenses issued under part 52 of this chapter, if the holders comply with the requirements of paragraph (b) of 10 CFR 50.68 of this chapter.

Dated at Rockville, Maryland this 14th day of November, 1997.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 97–31732 Filed 12–2–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–22–AD]

Airworthiness Directives; Eurocopter France (Formerly Aerospatiale, Society Nationale Industrielle, Sud Aviation) Model SA–365N, SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France (formerly Aerospatiale, Society Nationale Industrielle, Sud Aviation) Model SA–365N, SA–365N1, AS-365N2, and SA–366G1 helicopters. This proposal would require an inspection of the transmission deck for cracks; repair of any cracked transmission decks; and replacement of the transmission deck support beams (support beams) with redesigned support beams. This proposal is prompted by several reports of cracks in the transmission deck and support beams. The actions specified by the proposed AD are intended to detect cracks that reduce the strength of the main gearbox strut attachment and could result in failure of the main gearbox mounting, and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 2, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 96–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–SW–22–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 96–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France recently notified the FAA that an unsafe condition may exist on Eurocopter France SA–365N, SA–365N1, AS–365N2, and SA–366G1 helicopters. The DGAC advises that cracks were discovered in one of the two support beams under the transmission deck and in the transmission deck itself.

Eurocopter France has issued Telex Service No. 10011, dated February 24, 1995, which specifies checks for cracks in the transmission deck and transmission deck support beams, to be accomplished within 50 hours following receipt of the Telex Service. The Telex Service applies to affected aircraft that have 4,000 or more flying hours. The DGAC classified this service bulletin as mandatory and issued AD 95–067–038(B), and AD 95–068–017(B), both dated April 12, 1995, in order to assure the continued airworthiness of these helicopters in France.

Subsequently, Eurocopter France issued Eurocopter Service Bulletin 05.00.36 on November 14, 1995. Eurocopter Service Bulletin 05.00.36 recommends replacement of the current transmission support beams, part numbers (P/N) 365A21–3365–49 and 365A21–3365–CY with redesigned support beams P/N 365A21–3365–JE–01 and 365A21–3365–JF–01, at major maintenance intervals specified by the service bulletin.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–365N, SA–365N1, AS–365N2, and SA–366G1 helicopters of the same type design registered in the United States, the proposed AD would require inspections of the transmission deck, repair of any cracks that are found, and replacement of the support beams, P/N 365A21–3365–49 and 365A21–3365–CY, with redesigned support beams, P/N 365A21–3365–JE–01 and 365A21–3365–JF–01. For Model AS–365N2 helicopters, the inspections must be accomplished before or upon the accumulation of 2,000 hours time-in-service (TIS), or within 50 hours TIS after the effective date of this AD, whichever occurs later. For Model SA–365N, SA–365N1, and SA–366G1 helicopters, the inspections must be accomplished upon the accumulation of 4,000 hours TIS, or within 50 hours TIS after the effective date of this AD, whichever occurs later. The support beams must be replaced with reinforced beams whether or not cracks are found in the transmission deck or the currently installed support beams. If cracks are found in the transmission deck; the repairs must be accomplished.

After any cracks that are found in the transmission deck have been repaired and after replacing the support beams, clean, prime, and paint the affected areas of the transmission deck and the replacement support beams in accordance with the referenced service information.

The FAA estimates that 137 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,096,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France (Formerly Aerospatiale, Society Nationale Industrielle, Sud Aviation): Docket No. 96–SW–22–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, and SA–366G1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks that reduce the strength of the main gearbox strut attachment and could result in failure of the main gearbox mounting, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model SA–365N, SA–365N1, and SA–366G1 helicopters, on or before attaining 4,000 hours time-in-service (TIS), or within 50 hours TIS after the effective date of this AD, whichever occurs later; and for Model SA–365N2 helicopters, on or before attaining 2,000 hour TIS, or within 50 hours TIS after the effective date of this AD, whichever occurs later; perform the following:

(1) Inspect the transmission deck for cracks using a dye-penetrant inspection method, in accordance with paragraph BB of Eurocopter France Telex Service No. 10011, dated February 24, 1995. If a crack is found in the transmission deck, repair prior to further flight.

Note 2: A FAA-approved repair solution can be initiated by contacting the American Eurocopter Technical Support Department, ATTN: Manager, telephone: 972–641–3460, fax: 972–641–3527.

(2) Replace the currently installed transmission deck support beams, part numbers (P/N) 365A21–3365–49 and 365A21–3365–CY, with reinforced transmission deck support beams, P/N 365A21–3365–JE–01 and 365A21–3365–JF–01, in accordance with the Accomplishment Instructions in Eurocopter France Service Bulletin No. 05.00.36, Rev. 1, dated December 16, 1996.

(b) After completion of paragraphs (a)(1) and (a)(2) of this AD, clean, prime and paint the affected areas of the transmission deck and the reinforced support beams in accordance with paragraph BB 2A of Eurocopter France Telex Service No. 10011, dated February 24, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 95–068–017(B) and AD 95–067–038(B), both dated April 12, 1995.

Issued in Fort Worth, Texas, on November 24, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–31614 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–72–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models B200, B200C, and B200T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Models B200, B200C, and B200T airplanes (formerly referred to as Beech Models B200, B200C, and B200T airplanes). The proposed AD would require replacing the wiring for the engine fire detector system with fire resistant wiring. The proposed AD is the result of the discovery during aircraft production of the potential for the existing engine fire detector system wiring on the affected airplanes to fail because of high heat and/or fire. The actions specified by the proposed AD are intended to prevent failure of the engine fire detector system if high heat and/or fire stopped an electrical signal between the engine fire detectors and the engine fire warning annunciator lights located in the cockpit, which could result in passenger injury in the event of an airplane fire.

DATES: Comments must be received on or before February 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Raytheon recently advised the FAA that an unsafe condition could exist on certain Raytheon Models B200, B200C, and B200T airplanes. Raytheon reports that the current wiring on a certain engine fire protection system could fail under certain conditions. When the engine fire detector system was changed from an optical system to a heat sensing system, the engine fire detector wiring was not furnished with the engine fire detector. The wiring for these new systems consisted of four wires that were routed from the engine firewall connector to the engine fire detector connector as part of each engine's wire harness assembly.

In May 1997, Raytheon issued Engineering Change Record 9896 and Engine Fire Detector Harness Kit, part number 101–3208–1, which specifies the design and provides the procedures for replacing the existing engine fire protector system wiring with fire resistant wiring.

Aircraft equipped with the heat sensing fire protector system before this change order and modification were developed utilize non-fire resistant wiring. This condition, if not corrected, could result in failure of the engine fire detector system if high heat and/or fire stopped an electrical signal between the engine fire detectors and the engine fire warning annunciator lights located in the cockpit, which could result in passenger injury in the event of an airplane fire.

Relevant Service Information

Raytheon has issued Mandatory Service Bulletin No. 2701, Issued: May, 1997, which specifies the incorporation of Engine Fire Detector Harness Kit, part number 101–3208–1. This kit consists of the parts and instructions to replace the wiring for the engine fire detector system with fire resistant wiring.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the service information previously referenced, the FAA has determined that AD action should be taken to prevent failure of the engine fire detector system if high heat and/or fire stopped an electrical signal between the engine fire detectors and the engine fire warning annunciator lights located in the cockpit, which could result in passenger injury in the event of an airplane fire.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models B200, B200C, and B200T airplanes (formerly referred to as Beech Models B200, B200C, and B200T airplanes) of the same type design, the FAA is proposing an AD. The proposed AD would require replacing the wiring for the engine fire detector system with fire resistant wiring by incorporating Engine Fire Detector Harness Kit, part number 101–3208–1. Accomplishment of the proposed modifications would be required in accordance with the service information previously referenced.

Cost Impact

The FAA estimates that 77 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed modification, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $18,480, or $240 per airplane. These figures are based on the presumption that no owner/operator of the affected airplanes has incorporated the proposed modification.

Raytheon has informed the FAA that approximately 40 kits have been shipped from the Raytheon Aircraft Authorized Service Center. Presuming that each of the 40 kits is incorporated on an affected airplane, this would reduce the cost impact of the proposed AD by $9,600 from $18,480 to $8,880.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97–CE–72–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
B200	BB–1439, BB–1444 through BB–1447, BB–1449, BB–1450, B–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1512;
B200C	BL–139 and BL–140;
B200C (C–12R)	BW–1 through BW–5; and
B200T	BT–35 through BT–38.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the engine fire detector system if high heat and/or fire stopped an electrical signal between the engine fire detectors and the engine fire warning annunciator lights located in the cockpit, which could result in passenger injury in the event of an airplane fire, accomplish the following:

(a) Replace the existing engine fire protection system wiring with fire resistant wiring by incorporating Engine Fire Detector Harness Kit, part number 101–3208–1. Accomplish this replacement in accordance with the instructions included with the above kit, as referenced in Raytheon Mandatory Service Bulletin No. 2701, Issued: May, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 26, 1997.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31681 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–14]

Proposed Revocation of Class E Airspace; Minneapolis, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to remove the Class E airspace area at Minneapolis City County Airport, Minneapolis, KS. The VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 34 was canceled on August 14, 1997. This was the only SIAP to Minneapolis City County Airport and was canceled due to lack of evidence as to the need by the community and absence of utilization by other users in the local area. In addition, there is not an Airport Layout Plan (ALP) or an engineer's drawing available. The Director, Division of Aviation for Kansas, concurred with canceling the SIAP. The intended effect of this rule is to remove Class E airspace extending upward from 700 feet above the surface for Minneapolis City County Airport, Minneapolis, KS.

DATES: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Airspace Docket No. 97–ACE–14, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ACE–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRPM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA proposes to amend 14 CFR part 71 (part 71) to remove the Class E airspace extending upward from 700 feet above the surface at the Minneapolis City County Airport, Minneapolis, KS. The area will be removed from appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 16, 1997, and effective September 17, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE KS E5 Minneapolis, KS [Removed]

* * * * *

Issued in Kansas City, MO, on October 7, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31705 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–11]

Proposed Revocation of Class E Airspace; Wrangell, AK, and Petersburg, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revoke the Class E surface area airspace at Wrangell, AK, and Petersburg, AK. Plans to develop Required Navigation Performance (RNP) instrument approach procedures at these airports have been cancelled or delayed indefinitely. Consequently, the surface areas at Wrangell Airport and Petersburg James A Johnson Airport are no longer necessary for air traffic operations. Adoption of this proposal would result in the affected airspace reverting to Class G.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 97–AAL–11, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov; Internet: http://www.alaska.faa.gov/at or at http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Background

In May 1996, rulemaking actions were initiated to create surface area airspace at the Wrangell Airport and the Petersburg James A Johnson Airport to support new RNP instrument approach procedures. Alaska Airlines planned to develop RNP approaches to runways 27 and 9 at Wrangell Airport, and for runways 4 and 22 at Petersburg James A Johnson Airport. These new RNP approaches were to be designed with minimums below 700 feet Above Ground Level (AGL). The establishment of surface areas at both airports was requested and the Notice of Proposed Rulemaking (NPRM) was published June 24, 1996 (61 FR 32372). No comments to the NPRM were received and the Final Rule was published October 16, 1996 (61 FR 53844), establishing new surface areas for Wrangell Airport and Petersburg James A Johnson Airport. After the Juneau Sectional Aeronautical Chart, 37th edition, was published on April 24, 1997, the FAA received one Congressional Inquiry and additional letters of concern and objections to the surface areas at both airports. Letters have been received from Sunrise Aviation INC., Nordic Air, Temsco Helicopters INC., Pacific Wing INC., Taquan Air, and Hawkair Aviation Services LTD objecting to the establishment of these surface areas without an apparent purpose and usage. Alaska Airlines has indicated to the FAA their RNP instrument approach development for Wrangell Airport and Petersburg James A Johnson Airport has been delayed and development of new RNP approaches is not scheduled in the immediate future.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AAL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light

of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to remove the Class E airspace at Wrangell, AK, and Petersburg, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas for an airport are published in paragraph 6002 of FAA Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is to be amended as follows:

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport

* * * * *

AAL AK E2 Petersburg, AK [Removed]

* * * * *

AAL AK E2 Wrangell, AK [Removed]

* * * * *

Issued in Anchorage, AK, on November 5, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–31697 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5931–4]

Petition by the Commonwealth of the Northern Mariana Islands for Exemption From Anti-Dumping and Detergent Additization Requirements for Conventional Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Proposed notice of decision.

SUMMARY: The Environmental Protection Agency ("EPA" or "the Agency") is proposing to grant a petition by the Commonwealth of the Northern Mariana Islands ("CNMI") for exemption from the anti-dumping requirements for gasoline sold in the United States after January 1, 1995. This action is being taken because of CNMI's unique geographic location and economic factors. If the gasoline anti-dumping exemption were not granted, CNMI would be required to import gasoline from a supplier meeting the anti-dumping requirements adding a considerable expense to gasoline purchased by the CNMI consumer. CNMI is in full attainment with the national ambient air quality standard for ozone. This action is not expected to cause harmful environmental effects to the citizens of CNMI. EPA is not granting CNMI's petition for exemption from the fuel detergent additization requirements that all gasoline sold in the United States after January 1, 1995 contain fuel detergents. CNMI did not show that these requirements were unreasonable or infeasible due to any unique local factors. The fuel detergent additization requirements are designed to prevent the build-up of deposits in gasoline engines and fuel supply systems. By controlling such desposits in CNMI's vehicles, harmful engine exhaust emissions will be reduced.

DATES: Comments on this proposed final decision must be received in writing by January 2, 1998.

ADDRESSES: Materials relevant to this petition are available for inspection in public docket A–96–11 at the Air Docket Office of the EPA, room M–1500, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7548, between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket, A–NM–96, has been established at U.S. EPA Region IX, 75 Hawthorne Street (Mail Code: A–2–1), 17th Floor, San Francisco, CA 94105, (415) 744–1225, and is available between the hours of 8:30 a.m. to noon, and 1 p.m. to 5 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

Comments should be submitted (in duplicate if possible) to the two dockets listed above, with a copy forwarded to Marilyn Winstead McCall, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (Mail Code: 6406J), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall at (202) 233–9029.

SUPPLEMENTARY INFORMATION: For more detailed information on this proposal, please see EPA's Notice of Direct Final Decision published in the Final Rules section of this **Federal Register** which approves CNMI's petition for exemption from the gasoline anti-dumping regulations, but does not approve CNMI's petition for exemption from the fuel detergent additization regulations. The Agency views this final decision as a noncontroversial action for the reasons discussed in the Notice of Direct Final Decision published in today's **Federal Register**, and because it believes the effects of this decision are limited to the Commonwealth of the Northern Mariana Islands. If no adverse or critical comments are received in response to this proposed decision, no further action is contemplated in relation to this decision. If EPA receives adverse or critical comments, EPA will withdraw the Notice of Direct Final Decision by publishing an appropriate document in the **Federal Register**, and all public comments received will be addressed in a subsequent document. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

Dated: November 25, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–31737 Filed 12–2–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 232
Wednesday, December 3, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: December 9, 1997; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Thomas at (202) 401–3736.

Dated: December 1, 1997.

David W. Burke,

Chairman.

[FR Doc. 97–31789 Filed 12–1–97; 11:49 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Cut-to-Length Steel Plate From Mexico; Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On September 25, 1997, in response to a request from the respondent, the Department of Commerce initiated an administrative review of the countervailing duty order on cut-to-length steel plate from Mexico. The review covers the period January 1, 1996 through December 31, 1996. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the respondent has withdrawn its request for review.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Constance Cunningham, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1997, the Department received a request for an administrative review of the countervailing duty order from Altos Hornos de Mexico S.A. de C.V. ("AHMSA"), for the period January 1, 1996 through December 31, 1996. On September 25, 1997, the Department published in the **Federal Register** (62 FR 50292) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review. On November 4, 1997, AHMSA withdrew its request for review.

The applicable regulation, 19 CFR 351.213(d)(1), stipulates that the Secretary may permit a party that requested an administrative review to withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the respondent has withdrawn its request within the 90 day period. No other interested party requested a review, and we have received no other submissions regarding AHMSA's withdrawal of its request for review. Therefore, we are rescinding this review of the countervailing duty order on cut-to-length steel plate from Mexico.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: November 21, 1997.

Louis Apple,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–31601 Filed 12–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–806]

Extruded Rubber Thread From Malaysia; Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On September 25, 1997, in response to a request from the respondents, the Department of Commerce initiated an administrative review of the countervailing duty order on extruded rubber thread from Malaysia. The review covers the period January 1, 1996 through December 31, 1996. In accordance with 19 CFR 351.213(d)(1), the Department is now rescinding this review because the respondents have withdrawn their request for review.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Constance Cunningham, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1997, the Department received a request for an administrative review of the countervailing duty order from the Government of Malaysia, Heveafil Sdn. Bhd., Filmax Sdn. Bhd., Rubberflex Sdn. Bhd., Filati Lastex Sdn. Bhd., and Rubfil Sdn. Bhd. for the period January 1, 1996 through December 31, 1996. On September 25, 1997, the Department published in the **Federal Register** (62 FR 50292) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review. On November 5, 1997, the respondents withdrew their request for review.

The applicable regulation, 19 CFR 351.213(d)(1), stipulates that the Secretary may permit a party that requested an administrative review to withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, the respondents have withdrawn their request within the 90 day period. No other interested party requested a review, and we have received no other submissions regarding the respondents' withdrawal of their request for review. Therefore, we are rescinding this review of the countervailing duty order on extruded rubber thread from Malaysia.

This notice is published in accordance with 19 CFR 351.213(d)(4).

Dated: November 21, 1997.

Louis Apple,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–31602 Filed 12–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on January 15, 1998 from 10:30 a.m. to 3:00 p.m. at the U.S. Department of Commerce in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, D.C. 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c) (4) and (9) (B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: November 21, 1997.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 97–31624 Filed 12–2–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Section 211.273, Substitutions for Military or Federal Specifications and Standards, and related clause in DFARS 252.211–7005; OMB Number 0704–0398.

Type of Request: Extension.

Number of Respondents: 257.

Responses Per Respondent: 3.

Annual Responses: 771.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 771.

Needs and Uses: The information collection permits offerors to propose Single Process Initiative (SPI) processes in lieu of military or Federal specifications and standards cited in DoD solicitations for previously developed items. The information will be used by the Government to identify and verify Government acceptance of an SPI process as a valid replacement for a military or Federal specification or standard cited in a solicitation. Respondents are offerors responding to DoD solicitations for previously developed items that cite military or Federal specifications or standards when the offeror has a management or manufacturing process that has been previously accepted by DoD, under SPI, as a valid replacement for a military or Federal specification or standard.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 26, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31605 Filed 12–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Submarine of the Future

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Submarine of the Future will meet in closed session on December 5, 1997 at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, Virginia; and on December 22, 1997 and January 5–6, 1998 at SAIC, 8301 Greensboro Drive, McLean, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will assess the nation's need for attack submarines in the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31606 Filed 12–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Underground Facilities

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Underground Facilities will meet in closed session on December 17–18, 1997 and January 28–29, 1998, at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31607 Filed 12–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Nuclear Deterrence

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence will meet in closed session on December 17–18, 1997 at Headquarters, Strategic Command, Offutt AFB, Omaha, Nebraska.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31608 Filed 12–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Technology Base of the 21st Century

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Technology Base of the 21st Century will meet in closed session on December 16–17, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the issues involved in assuring that the U.S. has adequate/appropriate technology base from which to develop sustained military superiority for the 21st century; such a base includes technology developed by DoD, but also access to technology developed elsewhere as well as an assured stream of scientists and engineers that will develop technology and build military materiel. Many internal and external changes influence DoDs options.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31609 Filed 12–2–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: December 9, 1997.

Time of Meeting: 0830–1630.

Place: Boeing Helicopter Factory, Mesa, AZ.

Agenda: The Army Science Board's (ASB) Issue Group Study on "Army Avionics Modernization Methodologies" will meet for discussions on the Boeing avionics modernization methodologies, Army avionics science and technology programs, and open systems architecture. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–31630 Filed 12–2–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: December 11 & 12, 1997.

Time of Meeting: 0800–1600, December 11, 1997. 0800–1400, December 12, 1997.

Place: USA John F. Kennedy Special Warfare Center & School, Fort Bragg, NC.

Agenda: The Army Science Board's (ASB) Issue Group Study on "Human Behavior in Combat" will visit the Walter Reed Army Institute of Research to discuss various human and organizational behavior issues with the Department of Neuropsychiatry. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–31631 Filed 12–2–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: December 15–19, 1997.

Time of Meeting: 0830–1600 (both days).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's (ASB) Ad Hoc Study on "Independent Assessment of the Technical Maturity of the Aerostat Demonstration Program" will meet for briefings and discussions on advanced JLENS sensor concepts. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–31633 Filed 12–2–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 26, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.
Title: Annual Report of Independent Living Services for Older Individuals who are Blind.
Frequency: Annually.
Affected Public: Individuals or households; State, local or Tribal Gov't; SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 55.
Burden Hours: 440.
Abstract: Section 752(I)(2)(A) of the Rehabilitation Act Amendments of 1992 (Attachment A) requires each grantee under this program to submit an annual report to the Commissioner of the Rehabilitation Services Administration (RSA) on essential demographic, service and outcome information. The information collected by RSA will be used to evaluate the program, including the new Government Performance and Results Act (GEPRA) requirements, and make recommendations to Congress. It provides RSA with a uniform and efficient method of monitoring the program for compliance with statutory regulatory requirements and to determine substantial progress required for funding of all non-competing continuation discretionary grants. The respondents are State Vocational Rehabilitation Agencies.

Office of Postsecondary Education

Type of Review: New.
Title: Application for Strengthening Historically Black Colleges and Universities Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 115.
Burden Hours: 2,106.
Abstract: The information is required to institutions of higher education designated as Historically Black Colleges and Universities and Qualified Graduate Programs, Title II, Part B of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities and to determine dollar share of Congressional appropriation.

[FR Doc. 97–31663 Filed 12–2–97; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Biological and Environmental Research Advisory Committee Renewal (Previously Health and Environmental Research Advisory Committee)

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C.A. App. 2, and section 101–6.1015(a), title 41, of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee, previously named the Health and Environmental Research Advisory Committee, has been renewed for a two-year period beginning in November 1997. The Committee will provide advice to the Director, Office of Energy Research, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research.

The renewal of the Biological and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. No. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Mrs. Rachel M. Samuel, at (202) 586–3279.

Issued in Washington, D.C. on November 21, 1997.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 97–31709 Filed 12–2–97; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4730–000]

Alpha Energy Corporation; Notice of Filing

November 26, 1997.

Take notice that on November 20, 1997, Alpha Energy Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31646 Filed 12–2–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4442–000]

Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company; Notice of Filing

November 26, 1997.

Take notice that on November 14, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (collectively, "CSW Operating Companies") submitted for filing an amendment to their September 2, 1997 filing in the above referenced proceeding. The amendment contains unexecuted network integration transmission service agreement between WTU and PSO/SWEPCO.

The CSW Operating Companies state that a copy of this filing has been served on the Public Utility Commission of Texas, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and all parties to Docket No. ER97–4442–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31645 Filed 12–2–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–181–007]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

November 26, 1997.

Take notice that on November 21, 1997, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

1st Revised 2nd Revised Sheet No. 386
First Revised Sheet No. 386A

CNG requests effective dates of June 1, 1997 for Sheet No. 386, and November 10, 1997, for Sheet No. 386A.

CNG states that the purpose of this filing is to comply with the directives of the Commission's November 12 Letter Order: to adopt certain GISB standards verbatim in the tariff or to add these standards to Section 31 of its General Terms and Conditions, and to provide a status report on further development of CNG's electronic communication systems as required by the Commission's September 15, 1997, order in the above-referenced proceedings.

CNG states that copies of its filing have been mailed to all parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31655 Filed 12–2–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–459–000]

Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; Notice of Filing

November 26, 1997.

Take notice that on November 21, 1997, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively ComEd), tendered for filing revisions to its standards of conduct.

ComEd states that copies of its filing have been mailed to each person designated on the official service listed in this proceeding and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31634 Filed 12–2–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1238–001]

CSW Power Marketing, Inc.; Notice of Filing

November 26, 1997.

Take notice that on June 19, 1997, CSW Power Marketing, Inc. tendered its revised statement of policy and code of conduct with respect to the relationship with CSW Operating Companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31642 Filed 12–2–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–86–000]

Granite State Gas Transmission, Inc.; Notice of Request Under Blanket Authorization

November 26, 1997.

Take notice that on November 19, 1997, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, MA. 01581–5039, filed in the above docket a request pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations, under the Natural Gas Act (18 CFR 157.205

and 157.211(a)(2)) for authorization under Granite State's blanket certificate issued in Docket No. CP82–515–000 pursuant to Section 7 of the Natural Gas Act, to construct and operate new metering and associated appurtenant facilities for use in providing deliveries of transportation gas to a new bakery owned and operated by J.J. Nissen, Inc. (Nissen), in Biddeford, Maine, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State indicates that Nissen, a large commercial bakery, is constructing a new plant adjacent to Granite State's pipeline in Biddeford, Maine. Granite State has an existing delivery point for deliveries for the account of Northern Utilities, Inc., at the Biddeford Industrial Park. The new delivery point will be constructed next to the existing delivery point in Granite State's existing right-of-way. The facility will include a 4-inch turbine meter, two 2-inch Fisher regulators, a 4-inch Safeco filter and miscellaneous piping and fencing.

According to Granite State, the estimated cost of the new delivery point is $74,900, which will be reimbursed by Nissen. Granite State further states that it will provide interruptible transportation for deliveries to Nissen at the new delivery; maximum daily deliveries are estimated to be 500 Dth. Granite State states that the construction and operation of the new delivery point is not prohibited by its tariff and that the interruptible transportation service for Nissen will not adversely affect Granite State's ability to provide its maximum daily delivery obligations for its firm transportation shippers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 97–31639 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–97–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

November 26, 1997.

Take notice that on November 19, 1997, Great Lakes Gas Transmission Company Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP98–97–000 under Section 7(c) of the Natural Gas Act, for authority to construct and operate 3.9 miles of 36-inch loop pipeline in Kittson and Itasca Counties, Minnesota, along with a side tap in St. Louis County, Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that the estimated cost of the proposed facilities is $6,597,000 and that they will be used to transport 6,000 dekatherms per day (dth/d) for the City of Duluth, Minnesota (Duluth) and 500 dth/d for Northwest Natural of Cass County, Inc. (Northwest). Great Lakes states that its agreement with Northwest provides for firm transportation between the Canadian border near St. Vincent, Minnesota (Emerson interconnect) and Great Lake's Carlton, Minnesota delivery point. Great Lake's agreement with Duluth provides for firm transportation between the Emerson interconnect and either the Carloton delivery point or the new line tap to be located in St. Louis County, Minnesota. Great Lakes proposes to place the facilities in service on November 1, 1999.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 17, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Great Lakes to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31640 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1827–001]

Illinois Power Company; Notice of Filing

November 26, 1997.

Take notice that on November 14, 1997, Illinois Power Company ("Illinois Power"), filed an amendment to its compliance filing in the above-captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before December 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31643 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–005]

Koch Gateway Pipeline Company; Notice of Filing

November 26, 1997.

Take notice that on November 21, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, certain revised tariff sheets, to become effective December 1, 1997:

Koch states that the above referenced tariff sheets are being filed to move into effect the revised rates, pursuant to the Commission's directives in this proceeding.

Koch also states that it has served copies of the instant filing upon each affected customer, interested state commission's and other parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31657 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–175–006]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 1997.

Take notice that on November 24, 1997, Mojave Pipeline Company (Mojave) tendered for filing a compliance filing pursuant to the Commission's Order on Initial Decision issued November 3, 1997 in this proceeding.

Mojave states that the filing contains workpapers demonstrating that the calculation of the adjusted cost of service in compliance with the order results in rates higher than the currently effective tariff rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31653 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–57–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 1997.

Take notice that on November 21, 1997, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1998:

Twelfth Revised Sheet Number 156
Eleventh Revised Sheet Number 157

Northern Border proposes to decrease the Maximum Rate from 3.744 cents per 100 Dekatherm-Miles to 3.735 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 2.279 cents per 100 Dekatherm-Miles to 1.616 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31660 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–275–009]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 1997.

Take notice that on November 21, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to become effective on December 1, 1997:

Sixth Revised Sheet No. 54
Sixth Revised Sheet No. 61
Sixth Revised Sheet No. 62
Sixth Revised Sheet No. 63
Sixth Revised Sheet No. 64

Northern states that the above-listed tariff sheets are being filed to establish the Mainline fuel retention percentages and unaccounted-for percentage on Northern's system to be effective from December 1, 1997 through May 31, 1998, as agreed to by the active parties in these dockets at a settlement conference on November 13, 1997.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31656 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–6–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreement

November 26, 1997.

Take notice that on November 21, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance (1) a non-conforming service agreement with Kimball Energy Corporation (Kimball) effective November 1, 1997, and (2) First Revised Sheet No. 364 of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective November 1, 1997.

Northwest states that the service agreement is non-conforming because it includes provisions that establish priorities of service for Kimball that are subordinate to other firm shippers. The tariff sheet is submitted to add such agreement to the list of non-conforming service agreements contained in Northwest's tariff, and to remove from the list the service agreement with U.S. Gas Transportation, Inc., which has expired.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31647 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–220–016]

Northwest Pipeline Corporation; Notice of Refund Report

November 26, 1997.

Take notice that on November 21, 1997, Northwest Pipeline Corporation (Northwest) filed a refund report pursuant to Section 5.1 of its Stipulation and Agreement of Settlement (Settlement) filed on November 14, 1995 in its Docket No. RP94–220 general rate proceeding. The Settlement was accepted and approved by the Commission on February 16, 1996.

Northwest states that the refund covers the period from November 1, 1996 through February 28, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 4, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31651 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–705–001]

Promark Energy, Inc., Notice of Filing

November 26, 1997.

Take notice that on March 31, 1997, Promark Energy, Inc. tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31641 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92–132–056]

Tennessee Gas Pipeline Company; Notice of Refund Report

November 26, 1997.

Take notice that on November 24, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the Refund Report in the captioned proceeding related to the period between October 1, 1994 and August 13, 1997.

Tennessee states that in accordance with the Commission's directive in its October 23, 1997 Order in this docket that it has netted the amounts it is owed by Flagg under its contract for service to Flagg against the refunds owed. Tennessee submits that as a result of such netting, no refunds are owed to Flagg.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests must be filed on or before December 4, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31649 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92–132–057]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 1997.

Take notice that on November 24, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following Revised Tariff Sheets, to become effective commencing October 1, 1994:

Third Substitute First Revised Sheet No. 26
Second Substitute Second Revised Sheet No. 26
Substitute First Revised Substitute Second Revised Sheet No. 26
Substitute First Revised Third Revised Sheet No. 26
Substitute Fifth Revised Sheet No. 26
Substitute Sixth Revised Sheet No. 26
Substitute Seventh Revised Sheet No. 26
First Revised Seventh Revised Sheet No. 26
Second Substitute Ninth Revised Sheet No. 26
Third Substitute Alternate First Revised Sheet No. 181
Substitute Second Revised Sheet No. 181
Second Substitute Third Revised Sheet No. 181
Fourth Revised Sheet No. 181

Tennessee states that the filing is being made in compliance with the Commission's determination in its October 23, 1997 Order in this docket that the rate which Tennessee was charging Flagg Energy Development Corporation (Flagg) was not just and reasonable and with its requirement that Tennessee file tariff sheets in order to "reinstate the prior rate for Flagg."

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31650 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–56–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 26, 1997.

Take notice that on November 21, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 15, 1998:

Fourth Revised Sheet No. 405A
Fourth Revised Sheet No. 405B
Fourth Revised Sheet No. 405C

Tennessee states that these tariff sheets set forth revisions to Tennessee's tariff provisions concerning the net present value (NPV) system for awarding generally available capacity on its system. Tennessee states that each of the tariff revisions is intended to facilitate the awarding of capacity to the party which values it the most.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 24026, in accordance with 18 CFR Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31659 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–513–000]

Texaco Natural Gas Company v. Sea Robin Pipeline Company; Notice of Technical Conference

November 26, 1997.

The filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday, December 11, 1997, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31658 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3113–002]

Texas Utilities Electric Company; Notice of Filing

November 26, 1997.

Take notice that, on November 14, 1997, Texas Utilities Electric Company ("TU Electric") tendered for filing an open-access Tariff for Transmission Service To, From and Over Certain HVDC Interconnections ("TFO Tariff") and amendments to four transmission service agreements with Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company, previously designated as Rate Schedule FERC Nos. Two through Five, in compliance with the Commission's October 15, 1997 "Order Accepting Revised Transmission Tariffs for Filing, As Modified, and Granting Waiver of Notice Requirements".

Copies of the filing were served on all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 9, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31644 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–58–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 26, 1997.

Take notice that on November 21, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing. The referenced tariff sheets are proposed to be effective December 21, 1997.

Transco states that the purpose of the instant filing is to revise certain of Transco's currently effective tariff sheets to (i) correct various spelling, punctuation, wording, and reference errors, (ii) provide for a daily capacity release rate for volumetric releases associated with the Maiden Lateral surcharge, (iii) change Section 5.2(g) of the General Terms and conditions to more accurately reflect Transco's practice when making metering adjustments and (iv) update the Form of Service Agreements to include an effective time of 9:00 a.m. Central clock time and to change the effective and termination date fields to be usable for the year 2000 and beyond, all as further described in Attachment 1 to the filing.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31661 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR98–2–000]

Ultramar Diamond Shamrock Corporation, Complainant v. SFPP, L.P., Respondent; Notice of Complaint

November 26, 1997.

Take notice that on November 21, 1997, pursuant to Rule 206 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.206, Sections 9, 13, and 15 of the Interstate Commerce Act (ICA), 49 U.S.C. app. §§ 9, 13, and 15 (1994), and Section 1803 of the Energy Policy Act of 1992, Ultramar Diamond Shamrock Corporation (Ultramar Diamond) filed a complaint against SFPP, L.P. (SFPP), as part of Ultramar Diamond's motion to intervene in Docket No. OR98–1–000.

Ultramar Diamond asserts that SFPP violated and continues to violate Section 1(5), 2, 3(1), 4, 6, and 8 of the ICA by: (a) establishing and charging unjust and unreasonable rates for its jurisdictional services; (b) charging unduly discriminatory or preferential rates and charges for its jurisdictional services; and (c) assessing untariffed rates and charges for jurisdictional interstate services. 49 U.S.C. app. §§ 1(5), 2, 3(1), 4, 6, and 8 (1994).

Ultramar Diamond requests that the Commission (1) examine the rates and charges collected by SFPP for its jurisdictional interstate service, (2) • order refunds to Ultramar Diamond to the extent the Commission finds that such rates or charges were unlawful, (3) determine just, reasonable, and nondiscriminatory rates for SFPP's jurisdictional interstate service; and award Ultramar Diamond reasonable attorneys' fees in accordance with the ICA, including Sections 8, 9, 15, and 16 of the ICA, and such other relief as may be appropriate in this proceeding.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before December 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before December 22, 1997.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31648 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–136–008]

Williams Natural Gas Company; Notice of Refund Report

November 26, 1997.

Take notice that on November 21, 1997, Williams Natural Gas Company (WNG) tendered for filing a report of refunds made to customers on November 6 and 11, 1997.

WNG states that pursuant to Commission order issued October 22, 1997, in Docket No. RP95–136–007, it is filing a report of additional refunds to KMGA and City Utilities of Springfield, including applicable interest through November 6, 1997. In addition to amounts withheld for past due PODB penalties in Docket No. RP95–136, WNG states that it also refunded to KMGA amounts WNG had withheld for past due PODB penalty amounts from the GRI refund made August 22, 1996, in Docket No. RP96–143.

On November 11, 1997, WNG states that it also made refunds to certain other customers whose refund in RP95–136 was offset by past due PODB penalty amounts.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 4, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31652 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–387–004]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 1997.

Take notice that on November 21, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 1, 1997:

Substitute First Revised Sheet Nos. 103 and 112

Second Substitute First Revised Sheet No. 229B

WNG states that this filing is being made to comply with the October 22, 1997, order on rehearing in Docket No. RP96–387–002. WNG was required to file within 30 days of the date of issuance of the order revised tariff sheets to: (1) continue the existing 5% tolerance level at receipt points, and (2) continue the existing tariff provision under Rate Schedules TSS and STS that the ⅓–⅔ ratio of flowing supplies to storage withdrawals applies only when deliveries are at the MDTQ.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commissions Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31654 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–6–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 24, 1997.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. DR98–6–000]

Take notice that on November 14, 1997, Interstate Power Company (Interstate), filed an Application for approval of depreciation rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. KLT Power Inc.

[Docket No. EG98–1–000]

On November 21, 1997, KLT Power Inc. (Applicant), whose business address is 1201 Walnut, Kansas City, MO 64106 filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: December 15, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

3. U.S. Power & Light, Inc.; Bonneville Fuels Management Corporation; Energy Marketing Services, Inc.; Preferred Energy Services, Inc.; Monterey Consulting Associates, Inc.; and Thicksten Grimm Burgum, Inc.

[Docket Nos. ER96–105–008] ER96–659–007; ER96–734–004; ER96–2141–005; ER96–2143–004; and ER96–2241–005 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On November 7, 1997, U.S. Power & Light Inc., filed certain information as required by the Commission's February 6, 1995, order in Docket No. ER96–105–000.

On November 13, 1997, Bonneville Fuels Management Corporation filed certain information as required by the Commission's February 8, 1996, order in Docket No. ER96–659–000.

On November 7, 1997, Energy Marketing Services, Inc., filed certain information as required by the Commission's February 13, 1996, order in Docket No. ER96–734–000.

On November 7, 1997, Preferred Energy Services, Inc., filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2141–000.

On November 10, 1997, Monterey Consulting Associates, Incorporated filed certain information as required by the Commission's August 8, 1996, order in Docket No. ER96–2143–000.

On November 7, 1997, Thicksten Grimm Burgum, Inc., filed certain information as required by the Commission's September 16, 1996, order in Docket No. ER96–2241–000.

4. Eclipse Energy Inc.; Cenerprise, Inc.; TexPar Energy, Inc.; J.L. Walker and Associates, Alliance Power Marketing; Inc., Mid-American Power LLC; and AC Power Group, Inc.

[Docket Nos. ER94–1099–014, ER94–1402–014, ER95–62–011, ER95–1261–009, ER96–1818–007, ER96–1858–006, and ER97–2867–001 (consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 24, 1997, Eclipse Energy Inc., filed certain information as required by the Commission's June 15, 1994, order in Docket No. ER94–1099–000.

On October 15, 1997, Cenerprise, Inc., filed certain information as required by the Commission's December 7, 1994, order in docket No. ER94–1402–000.

On October 7, 1997, Tex Par Energy, Inc., filed certain information as required by the Commission's December 27, 1994, order in Docket No. ER95–62–000.

On October 7, 1997, J.L. Walker and Associates filed certain information as required by the Commission's August 7, 1995, order in Docket No. ER95–1261–000.

On October 7, 1997, Alliance Power Marketing, Inc., filed certain information as required by the Commission's June 17, 1996, order in Docket No. ER96–1818–000.

On October 24, 1997, Mid-American Power LLC filed certain information as required by the Commission's July 16, 1996, order in Docket No. ER96–1858–000.

On October 20, 1997, AC Power Group, Inc., filed certain information as required by the Commission's July 8, 1997, order in Docket No. ER97–2867–000.

5. Cataula Generating Co., L.P.

[Docket No. ER97–1686–003]

On October 30, 1997, Cataula Generating Co., L.P. (Cataula), 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed a Notification of Change in Status to reflect its plans under § 203 of the Federal Power Act to take part in a transaction by which it will become a wholly-owned indirect subsidiary of PG&E Corporation (PGC). Cataula also provided notice that an affiliate, USGen New England, Inc., has entered into agreements with New England Power Company and Narragansett Electric Company to purchase certain generation assets and jurisdictional facilities.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. TransCanada Energy Ltd.

[Docket No. ER95–692–010]

Take notice that on November 6, 1997, TransCanada Energy Ltd. (TCE), 111–5th Avenue S.W., Calgary, Alberta Canada T2P 3Y6, filed a Notification of Change in Status to reflect the plans of one affiliate, TransCanada OSP Holdings Ltd, to purchase an indirect interest in public utilities and the plans of another affiliate, TransCanada Power Marketing Ltd., to acquire USGen New England, Inc., Rights and obligations under certain power purchase and sales contracts.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31715 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4367–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

November 25, 1997.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER97–4367–000]

Take notice that on November 6, 1997, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Long-Term Firm Point-To-Point Transmission Service Agreement and a Network Integration Transmission Service Agreement between Black Hills Corporation and PacifiCorp's Transmission Function under PacifiCorp's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to PacifiCorp's Merchant Function, Black Hills Corporation, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket No. ER98–533–000]

Take notice that on November 4, 1997, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement with Energis Resources under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to Energis Resources.

NUSCO requests that the Service Agreement become effective October 31, 1997.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER98–534–000]

Take notice that on November 4, 1997, Minnesota Power & Light Company (MP) tendered for filing a report of short-term transactions that occurred during the quarter ending September 30, 1997, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER98–535–000]

Take notice that on November 4, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing NP Energy Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon NP Energy Inc., and the Public Utilities Commission of Ohio.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PJM Interconnection, L.L.C.

[Docket No. ER98–536–000]

Take notice that on November 4, 1997, PJM Interconnection, L.L.C. (PJM), tendered for filing 43 executed service agreements for non-firm point-to-point service under the PJM Open Access Tariff. Because the agreements were filed more than 30 days after service commenced, PJM requests an effective date of November 5, 1997 for the agreements, and states that it has refunded to customers the time value of any revenues that PJM collected prior to this date.

Copies of this filing were served upon the parties to the service agreements, the regional transmission owners in PJM, and each of the state utility commissions in the PJM service area.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Western Energy Marketers, Inc.

[Docket No. ER98–537–000]

Take notice that on November 4, 1997, Western Energy Marketers, Inc. (Western), tendered for filing a Petition For Acceptance Of Initial Rate Schedule, Waivers, and Blanket Authority. The Petition requests acceptance of Western Rate Schedule FERC No. 1, under which Western will engage in wholesale electric power and energy transactions as a marketer, the granting of certain blanket approvals, including the authority to sell electricity at market based rate; and the waiver of certain Commission Regulations.

Western is not currently subject to any state regulatory commission nor is it selling power to any person pursuant to the proposed rate schedule. Accordingly, no copies have been served on other parties.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Bruin Energy, Inc.

[Docket No. ER98–538–000]

Take notice that on November 4, 1997, Bruin Energy, Inc. (Bruin), petitioned the Commission for acceptance of Bruin Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Bruin intends to engage in wholesale electric power and energy purchases and sales as a marketer. Bruin is not in the business of generating or transmitting electric power. Bruin is a wholly-owned subsidiary of Mack Oil Company, Inc., which, through its affiliates, distributes petroleum products.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–540–000]

Take notice that on November 3, 1997, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy) filed executed Retail Transmission Service Agency Agreements between GPU Energy and (1) Southern Energy Trading and Marketing, Inc., dated October 31, 1997, and (2) DTE-CoEnergy, L.L.C., dated October 31, 1997.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Company

[Docket No. ER98–541–000]

Take notice that on November 4, 1997, Central Illinois Public Service Company (CIPS), submitted an executed umbrella short-term firm transmission service agreement, dated October 9, 1997, establishing LG&E Energy Marketing Inc., as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 9, 1997, for the service agreement with LG&E Energy Marketing Inc. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on LG&E Energy Marketing Inc., and the Illinois Commerce Commission.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central and South West Services, Inc. As Agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electronic Power Company

[Docket No. ER98–542–000]

Take notice that on November 4, 1997, Central and South West Services, Inc., as agent for Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO), and Southwestern Electric Power Company (SWEPCO) (the CSW Operating Companies) filed with the Federal Energy Regulatory Commission a Market-Based Rate Power Sales Tariff to sell power at market-based rates, an application for blanket authorizations and for certain waivers of the Commission's Regulations. The CSW Operating Companies intend to engage

in transactions in which the CSW Operating Companies sell electricity at rates and on terms and conditions that are negotiated with the purchasing party.

The CSW Operating Companies have requested expedited action on its filing so that the Commission may accept the CSW Operating Companies' rate schedule for filing to become effective as soon as possible. The CSW Operating Companies have also served a copy of the application on the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission, and the Oklahoma Corporation Commission.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Deseret Generation & Transmission Cooperative

[Docket No. ER98–543–000]

Take notice that on November 4, 1997, Deseret Generation & Transmission Cooperative (Deseret), tendered for filing a Notice of Termination of Rate Schedule FERC No. 6 (Power Sale Agreement with PacifiCorp). Rate Schedule FERC No. 6, will terminate by its own terms on December 31, 1997. PacifiCorp has recently informed Deseret that it intends to allow the agreement to terminate by its own terms.

Deseret requests that this notice become effective on December 31, 1997.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–544–000]

Take notice that on November 3, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 26 to add ConAgra Energy Services, Inc., DTE Energy Trading, Inc., and Horizon Energy Company to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000. The proposed effective date under the Service Agreements is November 1, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–549–000]

Take notice that on November 5, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and QST Energy Trading (QST), dated November 3, 1997. This Service Agreement specifies that QST has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and QST to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 3, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–550–000]

Take notice that on November 5, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and DTE Co-Energy (DTE), dated November 3, 1997. This Service Agreement specifies that DTE has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and DTE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 3, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER98–551–000]

Take notice that on November 5, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Public Service Electric and Gas Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 6, 1997.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Carolina Power & Light Company

[Docket No. ER98–552–000]

Take notice that on November 5, 1997, Carolina Power & Light Company (Carolina), tendered for filing an executed Service Agreement between Carolina and the following Eligible Entity: Northeast Utilities Service Company. Service to the Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1, for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United, Inc.

[Docket No. ER98–553–000]

Take notice that on November 5, 1997, UtiliCorp United, Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Marshall Board of Public Works. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Marshall Board of Public Works pursuant to the tariff, and for the sale of capacity and energy by Marshall Board of Public Works to Missouri Public Service.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–554–000]

Take notice that on November 5, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Allegheny Energy Solutions, AES Power, Inc., NorAm Energy Management, Inc., and Southern Energy Retail Trading and Marketing, Inc. PJM requests an effective date of October 28, 1997.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Montaup Electric Company

[Docket No. ER98–555–000]

Take notice that on November 3, 1997, Montaup Electric Company (Montaup), tendered for filing Waiver of Forecast Billing Rate Filing for Purchased Capacity Adjustment Clause for Calendar Year 1998.

Comment date: December 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–558–000]

Take notice that on November 5, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated November 3, 1997, with New Energy Ventures, LLC (NEV) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds NEV as an eligible customer under the Tariff.

PP&L requests an effective date of November 5, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NEV and to the Pennsylvania Public Utility Commission.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp

[Docket No. ER98–559–000]

Take notice that on November 5, 1997, PacifiCorp, tendered for filing the Pacific Northwest Coordination Agreement dated June 18, 1997.

PacifiCorp states that the Pacific Northwest Coordination Agreement dated June 18, 1997, is intended by the Parties signing the Pacific Northwest Coordination Agreement dated June 18, 1997, to replace the Pacific Northwest Coordination Agreement dated September 15, 1964, which expires by its terms on June 30, 2003. PacifiCorp further states that the Pacific Northwest Coordination Agreement dated June 18, 1997, is an agreement providing for the sale and exchange of capacity and energy from hydroelectric and/or thermal resources, and for storage of water for hydroelectric generation, all for the purpose of coordinating and maximizing productive and ecologically sound use of the hydroelectric potential of the Columbia River hydroelectric system.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. San Diego Gas & Electric Company

[Docket No. ER98–560–000]

Take notice that on November 5, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, pursuant to 18 CFR 35.13, Service Agreements (Service Agreements) with the following entities for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888A:

1. Kansas City Power & Light Company
2. Minnesota Power Company
3. PECO Energy Company—Power Team
4. Western Resources
5. Williams Energy

SDG&E filed the executed Service Agreements with the Commission in compliance with applicable Commission Regulations. SDG&E also provided Sheet No. 114 (Attachment E) to the Tariff, which is a list of current subscribers. SDG&E requests waiver of the Commission's notice requirement to permit an effective date of December 15, 1997.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Atlantic City Electric Company

[Docket No. ER98–562–000]

Take notice that on November 5, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Ontario Hydro, New Energy Ventures, LLC (New Energy), and NP Energy, Inc. (NP) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreements be accepted to become effective on November 6, 1997.

Atlantic Electric states that a copy of the filing has been served on Ontario Hydro, New Energy, and NP.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. TransCanada Power Marketing Ltd.)

[Docket No. ER98–564–000]

Take notice that on November 5, 1997, TransCanada Power Marketing Ltd. (TCPM), tendered for filing pursuant to Rule 205 of the Commission's rules of Practice and Procedure, 18 CFR 385.205, a Petition requesting Commission approval for (1) TCPM's FERC Electric Rate Schedule No. 1; (2) a blanket authorization for TCPM to make wholesale sales of electric power at market rates; and (3) a waiver of certain Commission Regulations.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PacifiCorp

[Docket No. ER98–565–000]

Take notice that on November 6, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the annual facilities charge calculation under, PacifiCorp Rate Schedule FERC No. 298.

PacifiCorp requests that an effective date of December 31, 1997, be assigned to the annual facilities charge calculation.

Copies of this filing were supplied to Southern California Edison Company, Pacific Gas & Electric Company, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public

Utilities Commission of the State of California.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. PacifiCorp

[Docket No. ER98–567–000]

Take notice that on November 6, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with Flathead Electric Cooperative, Inc., under PacifiCorp's FERC Electric Tariff, Original Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. PacifiCorp

[Docket No. ER98–568–000]

Take notice that on November 6, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revisions to PacifiCorp's Rate Schedule FERC No. 236. These revisions include a Letter Agreement, dated September 29, 1997, and the Second Restated and Amended Power Sales Agreement dated September 29, 1997, between PacifiCorp and Black Hills Corporation.

Copies of this filing were supplied to PacifiCorp's Merchant Function, Black Hills Corporation, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Montaup Electric Company

[Docket No. ER98–569–000]

Take notice that on November 6, 1997, Montaup Electric Company (Montaup) filed 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. 4. The service agreements under both tariffs are between Montaup and following companies:

1. Aquila Power Corporation (Aquila)
2. Constellation Power Source, Inc. (CPS)
3. Duke/Louis Dreyfus LLC (DLDLLC)

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of November 6, 1997.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Southern Indiana Gas and Electric Company

[Docket No. ER98–571–000]

Take notice that on November 6, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for market based rate power sales under its Market Based Rate Tariff wit the following entities:

1. ConAgra Energy Services, Inc.
2. Southern Minnesota Municipal Power Agency

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Southern Indiana Gas and Electric Company

[Docket No. ER98–572–000]

Take notice that on November 6, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with the following entities:

1. Sonat Power Marketing L.P.
2. Southern Energy Trading and Marketing, Inc.

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Aurora Power Resources, Inc.

[Docket No. ER98–573–000]

Take notice that on November 6, 1997, Aurora Power Resources, Inc. (APRI), petitioned the Commission for acceptance of APRI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. APRI intends to engage in wholesale electric power and energy purchases and sales as a marketer. APRI is not in the business of generating or transmitting electric power. APRI is a privately held corporation.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–574–000]

Take notice that on November 6, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Wheeled Electric Power Company (WEP), dated October 31, 1997. This Service Agreement specifies that WEP has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and WEP to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 31, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. MAC Power Marketing L.L.C.

[Docket No. ER98–575–000]

Take notice that on November 6, 1997, MAC Power Marketing L.L.C. (MAC Power), petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting MAC Power's FERC Electric Rate Schedule No. 1.

MAC Power intends to engage in power marketing transactions, purchasing and reselling electricity at wholesale. MAC Power does not own or control electric generating or transmission facilities or have any franchised service territories. MAC Power is a subsidiary of Marubeni America Corporation, a trading company.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–576–000]

Take notice that on November 6, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of American Energy Solutions. PJM requests an effective on the day after received by FERC.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–577–000]

Take notice that on November 6, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of New Energy Ventures, L.L.C. PJM requests an effective on the date after received by FERC.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Florida Power Corporation

[Docket No. ER98–578–000]

Take notice that on November 6, 1997, Florida Power Corporation (FPC), tendered for filing a service agreement between Electric Clearinghouse, Inc., and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective October 10, 1997.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31714 Filed 12–2–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[NCEA–CD–97–1015; FRL–5931–2]

Air Quality Criteria for Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Call for information.

SUMMARY: The National Center for Environmental Assessment, of the U.S. Environmental Protection Agency (EPA), is undertaking to update and revise, where appropriate, the EPA's Air Quality Criteria for Carbon Monoxide (CO) as required under sections 108 and 109 of the Clean Air Act.

Since completion of the 1991 criteria document for carbon monoxide, the EPA has continued to follow the scientific literature and compile information that may be relevant to the next periodic review of the National Ambient Air Quality Standards for CO (CO NAAQS). Interested parties are invited to assist the EPA in developing and refining its scientific information base to help ensure that all relevant information is considered in updating the Air Quality Criteria for CO. Identification of new information in the following areas will be particularly useful: effects of exposure on laboratory animals and humans; effects on the global climate; chemistry and physics; sources and emissions; transformation and transport in the environment; and ambient concentrations.

To be considered for inclusion in the criteria document and in the next periodic review of the CO NAAQS, submitted information should have been published, accepted for publication, or presented at a public scientific meeting.

DATES: All communications and information should be submitted by December 31, 1997.

ADDRESSES: Communications should be addressed to the Project Manager for CO, National Center for Environmental Assessment (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Diane H. Ray, National Center for Environmental Assessment (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–3637; facsimile: 919–541–1818; e-mail: ray.diane@epamail.epa.gov.

Dated: November 25, 1997.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 97–31734 Filed 12–2–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66247; FRL 5755–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 1, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time,

request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 36 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1 — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00647	D.Z.N. Diazinon 1% M.E. Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000100–00648	D.Z.N. Diazinon 1/2% ME Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000100–00649	D.Z.N. 2.0 M.E.C.	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000100–00652	D.Z.N. MG–2	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000100 TX–83–0017	Geigy Diazinon 14G (14.3% Granular) Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000200–00152	Devoe All-Weather Penetrating Clear Wood Preservative F	3-Iodo-2-propynyl butylcarbamate
000264 WA–85–0008	Mocap Nematacide-Insecticide 10% Granular	*O*-Ethyl *S,S*-dipropyl phosphorodithioate
000352 ID–95–0009	Du Pont Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 ID–95–0019	Du Pont Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 OR–81–0033	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 OR–84–0020	Vydate L Insecticide Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 WV–96–0001	Du Pont Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000769–00714	SMCP 1% Dursban Granular	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
001022–00271	Weed-Free G	5-Bromo-3-sec-butyl-6-methyluracil 3-(3,4-Dichlorophenyl)-1,1-dimethylurea
001621–00016	Tanglefoot Bird Repellent	Polybutene
002155–00053	T.B.H. Formula No. 6	5-Bromo-3-sec-butyl-6-methyluracil
002155–00099	Eradicate Concentrate	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
004822–00294	Raid Fogger Plus A	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004822–00334	Johnson Raid Formula D46 Roach Baits	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004822–00377	Raid Fumigator F	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004822–00381	Raid Flea Killer VII Plus Egg Stop Formula	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		(3-Phenoxyphenyl)methyl *d-cis* and *trans*2,2-dimethyl-3-(2-methylpropenyl)cyclopro
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004822–00438	Rapid Flea Killer Plus Carpet Spray II	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
005383–00018	Troysan Polyphase Anti-Mildew	3-Iodo-2-propynyl butylcarbamate
005383–00051	Troysan Polyphase Anti-Mildew P–80	3-Iodo-2-propynyl butylcarbamate
005383–00052	Troysan Polyphase Anti-Mildew P–40	3-Iodo-2-propynyl butylcarbamate
005383–00076	Troysan Polyphase P–20 S	3-Iodo-2-propynyl butylcarbamate
005813–00013	Clorox Toilet Bowl Cleaner	Hydrogen chloride (hydrochloric acid, anhydrous)

TABLE 1 — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride
		Dioctyl dimethyl ammonium chloride
010182–00115	Paraquat Concentrate 3	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010352–00049	Aqucar 536 Water Treatment Microbiocide	Glutaraldehyde
010827–00063	Ind-Sol 288 Liquid Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
034704 WA–90–0034	Dimethoate 2.67 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
034913–00021	Weed Blast 4-H Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
045639–00049	Mitac EC	*N'*-(2,4-Dimethylphenyl)-*N*-(((2,4-dimethylphenyl)imino)methyl)-*N*-methylmethanimidamide
045639–00074	Carzol SP	*m*-(((Dimethylamino)methylene)amino)phenyl-*N*-methylcarbamate, hydrochloride
062719 NM–87–0006	Treflan TR-10 Granules	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha)
068608 AZ–94–0012	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2 — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000200	Glidden Co., Product Safety & Toxicology, 16651 Sprague Rd., Strongsville, OH 44136.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000769	SureCo Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
001022	IBC Mfg. Co, c/o Sangeeta V. Khattar, 5966 Heisley Rd., Mentor, OH 44060.
001621	Tanglefoot Co., 314 Straight Ave., S.W., Grand Rapids, MI 49504.
002155	I. Schneid, 1429 Fairmont Ave. N.W., Atlanta, GA 30318.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005383	Lewis & Harrison, Agent For: Troy Chemical Corp., 122 C St., NW., Ste 740, Washington, DC 20001.
005813	The Clorox Co., c/o PS&RC, Box 493, Pleasanton, CA 94566.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010352	Union Carbide Corp., Box 670, Bound Brook, NJ 08805.
010827	Chemical Specialties Inc., P.O. Box 312, San Marcos, TX 78666.
034704	Cherie Garner, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
034913	Landis International Inc., Agent For: SSI Mobley Co., Inc., Box 5126, Valdosta, GA 31603.
045639	Agrevo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
062719	DowElanco, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
068608	John Nelson, University of Arizona, 37860 W. Smith Enke Rd., Maricopa, AZ 85239.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 1, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 17, 1997.

Connie A. Haaser,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–31415 Filed 12–2–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–774; FRL–5751–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–774, must be received on or before January 2, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505W), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 4W55 4th floor, CS1, 2800 Crystal Drive, Arlington VA, (703) 308-8373, e-mail: alston.traver@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–774] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-774] and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. GlobeTech Industries Corporation

PP 7E4810

EPA has received a pesticide petition (PP 7E4810) from GlobeTech Industries Corporation, 57 Pratt Street, Suite 504, Hartford, CT 06103 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Crezasin when used as an inert ingredient in pesticide formulations applied to growing crops.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

The toxicity of Crezasin has been studied in Russia and the territories of the Former USSR for a period of 20 years on insects (bees, silkworms,) birds (chickens, ducks, turkeys), rabbits, dogs, sheep, swine and cattle and on an international level with companies from Japan, Mongolia, France, USA, Bulgaria, Hungary, and Poland. The results of experiments on the toxic effects of Crezasin on different animals indicate that the preparation has low toxicity with weakly defined cumulation and has a high index of safe application, LD_{50}= 3,600 +/- 320 milligrams/kilogram in laboratory female mice and LC_{50}= 6,570 +/- 150 milligrams/kilogram in laboratory female rats. The 50% lethal concentration (LC_{50}) of Crezasin in water for Daphnia is 221.5 milligrams/liter.

B. Aggregate Exposure

The usage pattern for Crezasin includes an economical effect on a limited number of agriculture cultures including potatoes, tomatoes, grapes and cereal grains (wheat, barley and oats). Practical usage of Crezasin is for the treatment of seeds and foliar spraying of plants. Rates of seed treatment of agricultural crops is between 2 - 10 grams per metric tons of seeds. Applications higher than 10 grams/ton can result in a reduced economic benefit of usage. For spraying of growing plants, the recommended dosage rates are between 0.32 x 10^{-4} moles/liter (100 mg/liter) and 0.06 x10^{-4} moles/liter (20 mg/liter) of Crezasin, with working solution rates up to 166 liters/acre (400 liters/hectare). Application rates higher than 10^{-4} moles/liter have resulted in a reduced economic benefit. The usage of Crezasin in ornamental plants, lawn care and other decorative public landscaping has not resulted in an economical or biological benefit, and thus its usage would not be found in these applications.

Relating to the mobility and persistence in soils. Crezasin is considered easily soluble in water at 100 grams/liter at pH 7, 25 degrees C. Crezasin is considered moderately stable in water, at pH 7, 25 degrees C, 50% hydrolysis of Crezasin in water is observed in 8.59 days, 95% hydrolysis is observed in 43.5 days. The constant of hydrolysis in neutral water is: C_1^{25} = 0.05 day^{-1}. The persistence of Crezasin in soils, pH 5 - 8, organic matter content 1% - 4%, at 20 degrees C: 50% Crezasin degradation is observed in 16 days and 90% degradation is observed in 23.5 days.

C. Safety Determination

Based on the very low level of substance toxicity, relatively short period of environmental fate and its usage pattern which results in low concentration usage, Crezasin exhibits very minimal risk exposure both in dietary and non-occupational exposures to children.

D. International Tolerances

There are no Codex maximum residue levels established for residues of Crezasin.

2. GlobeTech Industries Corporation

PP 7E4811

EPA has received a pesticide petition (PP 7E4811) from GlobeTech Industries Corporation, 57 Pratt Street, Suite 504, Hartford, CT 06103. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Mival when used as an inert ingredient in pesticide formulations applied to growing crops.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

The toxicity of Mival has been studied in Russia and the territories of the Former USSR for a period of 20 years on insects (bees, silkworms,) birds (chickens, ducks, turkeys), rabbits, dogs, sheep, swine and cattle and on an international level with companies from Japan, Mongolia, France, USA, Bulgaria, Hungary, and Poland. The results of experiments on the toxic effect of Mival on different animals indicate that the preparation has low toxicity with weakly defined cumulation and has a high index of safe application, LD_{50}= 2,300 +/- 240 milligrams/kilogram in laboratory mice and LD_{50}= 4,150 +/- 520 milligrams/kilogram in laboratory rats. In reservoir waters, the unaffecting dosage to the chemical characteristics of water and microbiological plant and animal life is 10 milligrams/liter.

B. Aggregate Exposure

The usage pattern for Mival includes an economical effect on a limited number of agriculture cultures including cotton, potatoes, tomatoes, corn, and cereal grains (wheat, barley and oats). Practical usage of Mival is for the treatment of seeds and foliar spraying of plants. Rates of seed treatment of agricultural crops is between 2 - 10 grams per metric tons of seeds. Applications higher than 10 grams/ton can result in a reduced economic benefit of usage for all cultures. For spraying of growing plants, the recommended dosage rates are between 10^{-4} moles/liter (225 mg/liter) and 2 x 10^{-4} moles/liter (450 mg/liter) of Mival, with working solution rates up to 100 liters/acre.). Application rates higher than 2 x10^{-4} moles/liter have resulted in a reduced economic benefit. The usage of Mival in ornamental plants, lawn care and other decorative public landscaping has not resulted in an economical or biological benefit, and thus its usage would not be found in these applications.

Relating to the mobility and persistence in soils. Mival is considered easily soluble in water at 1 gram/liter at pH 7, 20 degrees C. Usage of Mival in concentrations higher the 1 gm/liter must be accompanied by an acceptable solvent. Based on the usage requirements of Mival, such concentrations will lead to a negating effect of the biological benefits of its usage on plants. Mival is considered unstable in water, at pH 7, 25 degrees C, 50% hydrolysis of Mival in water is observed in 10-12 hours, 90% hydrolysis is observed in 48 hours. The constant of hydrolysis in neutral water is: C_1^{25} = 9.73 +/- 0.02 liter*mole*sec. The persistence of Mival in soils, pH 5 - 8, organic matter content 1% - 4%, at 20 degrees C: 50% Mival degradation is observed in 5 days, and 90% degradation is observed in 21 days.

C. Safety Determination

Based on the very low level of substance toxicity, relatively short period of environmental fate and its usage pattern, Mival exhibits very minimal risk exposure both in dietary and non-occupational exposures to children.

D. International Tolerances

There are no Codex maximum residue levels established for residues of Mival.

[FR Doc. 97–31549 Filed 12–2–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–780; FRL–5756–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–780, must be received on or before January 2, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James Tompkins (PM 25).	Rm. 239, CM #2, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–780] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 1997

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Valent U.S.A. Corporation

PP 7F4873

EPA has received a pesticide petition (PP 7F4873) from Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of clethodim in or on the raw agricultural commodities tuberous and corm vegetables (crop subgroup 1-C) at 1.0 parts per million (ppm), potato flakes/granules at 2.0 ppm, sunflower seed at 5.0 ppm, sunflower meal at 10.0 ppm, canola seed at 0.5 ppm, and canola meal at 1.5 ppm. The crop subgroup 1-C tolerance should replace the 0.5 ppm tolerance that already exists for clethodim in/or potato tubers which was based on data from Canada. The proposed analytical method for these commodities is EPA-RM-26D-3, a high-performance liquid chromatography (HPLC) method. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Clethodim is used for postemergent control of grasses in a wide variety of crops including cotton, soybeans, sugar beets, onions, tomatoes, etc. Plant metabolism studies have been performed in carrots, soybeans, and cotton. Studies were performed with clethodim radiolabeled in the ring structure and in the side chain to follow both parts of the molecule.

The major metabolic pathway in plants is initial sulfoxidation to form clethodim sulfoxide followed by further sulfoxidation to form clethodim sulfone; elimination of the chloroallyloxy side chain to give the imine sulfoxide and sulfone; and hydroxylation to form the 5-OH sulfoxide and 5-OH sulfone. Clethodim sulfoxide and clethodim sulfone conjugates were also detected as major or minor metabolites, depending on plant species and subfractions. Once cleaved from clethodim, the chloroallyloxy moiety udergoes extensive metabolism to eliminate the chlorine atom and incorporate the three-carbon moieties into natural plant components.

Based on these metabolism studies, the residues of concern in crops are clethodim and its metabolites containing the cyclohexene moiety, and their sulfoxides and sulfones.

2. *Analytical method.* Adequate analytical methodology is available for detecting and measuring levels of clethodim and its metabolites in crops. For most commodities, the primary enforcement method is EPA-RM-26D-3, an HPLC method capable of distinguishing clethodim from the structurally related herbicide sethoxydim. However, for milk natural interferences prevent adequate quantitation of clethodim moieties and the common-moiety method (RM-26B-2) is the primary enforcement method with EPA-RM-26D-3 as the secondary method if needed to determine whether residues are clethodim or sethoxydim. Both of these methods have successfully undergone petition method validations at EPA.

3. *Magnitude of residues.* Clethodim is the active ingredient in SELECT 2 EC Herbicide (EPA Reg. No. 59639-3) and SELECT Herbicide (also known as PRISM and ENVOY Herbicides, EPA Reg. No. 59639-78). Tolerances have been established for residues in cotton, soybean, sugar beet, onion (dry bulb), and animal commodities, and tolerances are expected soon for alfalfa, peanut, dry bean, and tomato commodities. A summary of available field residue data for the pending tolerances on tuberous and corm vegetables (crop subgroup 1-C), sunflower, and canola commodities is presented below.

In 17 field trials, potatoes were treated with two post-emergent applications of 0.25 lb. a.i./A each, approximately 14–days apart, and harvested approximately 30 days after the last application. Trials were performed in EPA Regions 1, 2, 3, 5, 9, 10, and 11. Residues for potato tuber samples ranged from < 0.1 ppm to 0.80 ppm total clethodim. The highest average field trial (HAFT) residue was 0.775 ppm. The average residue value for all trials, excluding samples less than the limit of detection, was 0.42 ppm. Two processing studies were also performed for potatoes. Residues were found to concentrate in flakes, but not wet peel or chips. The average concentration factor for flakes was 2.4. Since potato is the only representative crop for crop subgroup 1-C per 40 CFR 180.41, these data support time-limited tolerances of 1.0 ppm in tuberous and corm vegetables (crop subgroup 1-C) and 2.0 ppm in flakes/granules.

In 8 field trials, sunflowers were treated with two post-emergent applications of 0.25 lb. a.i./A each. Sunflower seeds were harvested 56 to 72 days after the last application. Trials were performed in EPA Regions 5, 7, and 8. Residues for sunflower seed samples ranged from 0.46 ppm to 4.4 ppm total clethodim. The highest average field trial (HAFT) residue was 4.2 ppm. The average residue level was 1.6 ppm. A processing study was also performed for sunflowers. Residues were found to concentrate in meal, but not in refined oil. The concentration factor for meal was 2.1. These data support tolerances of 5.0 ppm in sunflower seed and 10.0 ppm in sunflower meal.

In 18 field trials, canola or rape was treated with one post-emergent application of 0.11 to 0.32 lb. a.i./A and harvested approximately 70 to 98 days after the application. Most of the trials were performed in Canada in growing regions adjacent to the U.S. areas where canola is grown. These data were used to support a maximum residue level in Canada and are being cited in order to harmonize maximum residue levels between the U.S. and Canada and remove the existing trade barrier. Residues in canola seed samples ranged from < 0.05 ppm to 0.54 ppm. The highest average field trial (HAFT) residue was 0.505 ppm. The average residue value for all trials, including samples less than the limit of detection at one-half the limit, was 0.162 ppm. A processing study was also performed for canola and residues were found to concentrate in meal, but not in crude oil. Since the highest residues were the result of application rates higher than those proposed for the U.S., these data support tolerances of 0.5 ppm in canola seed and 1.5 ppm in canola oil.

B. Toxicological Profile

1. *Acute toxicity.* Clethodim Technical is slightly toxic to animals following acute oral (Toxicity Category III), dermal (Toxicity Category IV), or inhalation exposure (Toxicity Category IV under current guideline interpretation). Clethodim is a moderate eye irritant (Category III), a severe skin irritant (Category II), and does not cause skin sensitization in the modified Buehler test in guinea pigs. In addition, an acute oral no-observed effect level (NOEL) has been determined in rats to be 300 milligrams/kilograms (mg/kg). Since this NOEL is significantly higher than the lowest chronic NOEL of 1 mg/kg/day, chronic exposures are expected to be of the most concern and this summary will focus on repeated exposures.

2. *Genotoxicty.* Clethodim Technical did not induce gene mutation in microbial in vitro assays. A weak response in an in vitro assay for chromosome aberrations was not confirmed when clethodim was tested in an in vivo cytogenetics assay up to the maximally tolerated dose level, nor was the response observed in vitro using technical material of a higher purity. No evidence of unscheduled DNA synthesis was seen following in vivo exposure up to a dose level near the LD_{50} (1.5 g/kg). This evidence indicates that clethodim does not present a genetic hazard to intact animal systems.

3. *Reproductive and developmental toxicity.* No reproductive toxicity was observed with Clethodim Technical at feeding levels up to 2,500 ppm. Developmental toxicity was observed in two rodent species, but only at maternally toxic dose levels. In rats, the developmental NOEL was 300 mg/kg/day while the maternal toxicity NOEL was only 150 mg/kg/day. In rabbits, the developmental NOEL was >300 mg/kg/day and the maternal NOEL was only 25 mg/kg/day. Valent therefore does not

consider clethodim to be a reproductive or developmental hazard. These studies also indicate that clethodim does not adversely affect endocrine function.

4. *Subchronic toxicity.* High doses of Clethodim Technical cause decreased body weights, increased liver size (increased weight and cell hypertrophy), and anemia (decreased erythrocyte counts, hemoglobin, or hematocrit) in rats and dogs. No observable effect levels have been determined to be 100 mg/kg/day for a 4-week dermal study in rats, 200 to 1,000 ppm for 4- or 5-week feeding studies in rats or mice, 500 ppm in a 13-week feeding study in rats, and 25 mg/kg/day in a 90-day oral study in dogs.

5. *Chronic toxicity and oncogenicity.* In chronic studies conducted in rats, mice, and dogs, compound-related effects noted at high doses included decreased body weight, increased liver size (liver weight and hypertrophy), and anemia (decreased hemoglobin, hematocrit, and erythrocyte count). Bone marrow hyperplasia was observed in dogs at the highest dose tested. No treatment-related increases in incidence of neoplasms were observed in any study. Chronic NOELs were 200 ppm for an 18-month feeding study in mice and 500 ppm for a 24-month study in rats. The lowest NOEL is from the 1-year oral dog study and is 1 mg/kg/day clethodim technical. Based on this study and a 100-fold safety factor, the reference dose (RfD) for clethodim was determined to be 0.01 mg/kg/day. Valent believes that clethodim is not carcinogenic. These studies also indicate that clethodim does not adversely affect endocrine function.

6. *Animal metabolism.* The *in vivo* metabolism of clethodim in rats was tested at a high dose (468 mg/kg), low dose (4.4 mg/kg), and a low dose (4.8 mg/kg) following 14-days of treatment with Clethodim Technical. A single oral dose of [14C]-clethodim was given to each rat and expired carbon dioxide and excreta were collected over the next 2- and 7-days, respectively, to determine radiolabel recovery. Several organs and tissues, and the remaining carcass, were collected after sacrifice to determine radiolabel recovery. In all treatment groups, nearly all of the radiolabel was eliminated in the urine (87-93%), feces (9-17%), and carbon dioxide (0.5-1%) and less than 1% of the dose was recovered in the organs and tissues after 7- days.

Elimination was rapid as most of the recovered dose was eliminated within 48 hours. The low dose groups eliminated clethodim slightly faster than the high dose group, and repeated exposure to clethodim prior to radiolabel dosing did not affect the rate of elimination or distribution of recovered radiolabel. There were no apparent sex differences with respect to elimination or distribution of metabolites.

The primary excretory metabolites were identified as clethodim sulfoxide (48-63%), clethodim *S*-methyl sulfoxide (6-12%), clethodim imine sulfoxide (7-10%), and clethodim 5-hydroxy sulfoxide (3-5%). Minor metabolites included clethodim oxazole sulfoxide (2-3%), clethodim trione sulfoxide (1%), clethodim (1%), clethodim 5-hydroxy sulfone (0.3-1%), clethodim sulfone (0.1-1%), aromatic sulfone (0.2-0.7%), and *S*-methyl sulfone (0-0.4%).

7. *Dermal penetration.* The dermal penetration of SELECT 2 EC Herbicide, the end-use product, was tested on unabraded, shaved skin of rats. Single doses of approximately 0.05, 0.5, and 5.0 mg of radiolabeled (14C-clethodim) SELECT 2 EC Herbicide, were applied topically to 10 cm^2 sites on the dorsal trunk. After 2, 10, or 24 hours, urine, feces, volatiles, scrubbings of the skin, skin at treatment site, blood, several tissues, and the carcass were collected and counted for radioactivity. Clethodim was found to be slowly absorbed through the skin in a time-dependent manner. The percent of dose absorbed increased with length of exposure and decreased with increasing dose. 10-hour absorption rates ranged from 7.5% to 30.0%. Most of the absorbed material was found in the urine and carcass, and most of the unabsorbed material was found in the skin scrubbings indicating that material was still on the skin surface.

8. *Metabolite toxicology.* 2 metabolites of clethodim, clethodim imine sulfone (RE-47719) and clethodim 5-hydroxy sulfone (RE-51228), have been tested in toxicity screening studies to evaluate the potential impact of these metabolites on the toxicity of clethodim. In general, these metabolites were found to be less toxic than Clethodim Technical for acute and oral toxicity studies; reproduction and teratology screening studies; and several mutagenicity studies.

C. Aggregate Exposure

1. *Dietary exposure—*i. *Food.* Clethodim is approved for use in the production of commercial agricultural crops including cotton, soybeans, sugar beets, and onions (dry bulb). Approval is expected soon for several additional crops. Dietary exposures are expected to represent the major route of exposure to the public. Since chronic exposures are of more concern than acute exposures for clethodim, this summary will focus primarily on chronic issues. Chronic dietary assessments for clethodim have been conducted by the registrant for all currently approved crops, all pending crops, and the crops proposed in this petition (tuberous and corm vegetables, sunflower, and canola).

In Valent's assessment, anticipated residues were used for all crop and animal commodities. Anticipated residue levels were the mean levels found in crop field trial data after treatment with the maximum recommended rate and harvested at minimum allowable intervals. These values are, therefore, slightly conservative. An assessment was performed assuming 100% of crop treated (still conservative) as well as assuming a more realistic percent of crop treated based on market survey data for existing uses or market projections for proposed uses. Adjusting for percent of crop treated is justified because most of treated commodities are combined in central locations and broadly distributed to the public; none of the clethodim tolerances or uses are limited to specific regions in the U.S.; and the primary concern is with chronic dietary exposure which minimizes the variance of single serving residues. The results of these assessments are summarized below in the Safety Determination section and indicate that chronic dietary exposures for existing and proposed uses of clethodim are well below the reference dose in either case.

ii. *Drinking water.* Since clethodim is applied outdoors to growing agricultural crops, the potential exists for clethodim or its metabolites to leach into groundwater. Drinking water, therefore, represents a potential route of exposure for clethodim and should be considered in an aggregate exposure assessment.

Based on available studies used in EPA's assessment of environmental risk for clethodim (memo from E. Brinson Conerly dated June 26, 1990), clethodim itself was classified as mobile in soil, but very non-persistent, representing a minimal groundwater concern. Metabolites of clethodim were also classified as mobile, but are slightly more persistent (half-lives up to 30-days versus up to 3-days for parent). Regarding clethodim metabolites, the Agency concluded that the "potential for groundwater contamination may be somewhat higher than for clethodim but would still be expected to be relatively low in most cases due to their moderately low persistence".

There is no established Maximum Concentration Level for residues of clethodim in drinking water under the Safe Drinking Water Act.

Based on this information, Valent believes that clethodim appears to represent an insignificant risk for exposure through drinking water.

2. *Non-dietary exposure.* Clethodim is currently approved for the commercial production of agricultural crops including soybeans, cotton, sugar beets, onions, and ornamental plants as well as for use on non-crop areas. The new uses proposed in this notice of filing are all agricultural crops. While there is a potential for clethodim to be used in non-crop areas (e.g. around parks and rights-of-way) where the public does spend some time, the likelihood of significant exposure is very small. First, this grass herbicide cannot be sprayed on lawns where the public does spend significant amounts of time, but instead must be used where there is no crop or around ornamental plants that are tolerant to the chemical. The public does not spend significant amounts of time in these areas. And second, clethodim is not persistent in the environment so the potential for public exposure is short term. Therefore, Valent believes that the potential for non-occupational exposure to the general public, other than through the diet or drinking water, is insignificant.

D. Cumulative Effects

There is one other pesticide compound registered in the United States, sethoxydim, which is structurally related to clethodim and has similar effects on animals. Sethoxydim is approved for use on a variety of agricultural crops, in non-crop areas, and around the home. This chemical should be considered in an aggregate exposure assessment along with clethodim. Dietary exposure is expected to represent the major route of exposure for sethoxydim as well as for clethodim.

The reference dose for sethoxydim is 0.09 mg/kg/day based on the 1–year dog feeding study NOEL and a 100-fold safety factor. This in on the same order of magnitude as clethodim, 0.01 mg/kg/day, which is also based on a 1–year dog study and a 100-fold safety factor.

A discussion of the cumulative effects from clethodim and sethoxydim exposures is presented below in the Safety Determination section.

E. Safety Determination

1. *U.S. population.* Using the dietary exposure assessment procedures described above for clethodim, chronic dietary exposures resulting from existing and proposed uses of clethodim were compared to the reference dose (RfD) of clethodim. In Valent's conservative assessment (using anticipated residues and assuming 100% treated for all crops), exposure for the U.S. population would occupy 13.6% of the RfD and non-nursing infants (< 1–year) are most highly exposed with total exposure occupying 32.3% of the RfD. Exposure to children 1 to 6 years old would occupy 27.1% of the RfD. In Valent's realistic analysis (using anticipated residues and estimated percent of crop treated for all crops), exposure for the U.S. population would occupy only 0.6% of the RfD and non-nursing infants are still the highest and would be at only 1.6% of the RfD.

For sethoxydim, recent EPA dietary assessments have been performed in conjunction with the extension of several time-limited tolerances. In a Final Rule published in the **Federal Register** of April 11, 1997 (62 FR 17735) (FRL-5598-7), EPA estimated that exposure to all existing tolerances for sethoxydim would occupy 36% of the sethoxydim RfD for the U.S. population and 72% of the RfD for the most exposed subpopulation of children aged 1– to 6-years. The assumptions used were conservative and the final rule stated that "actual risks using more realistic assumptions would likely result in significantly lower risk estimates."

Since clethodim and sethoxydim have similar toxicological effects in mammals, the contributions to the individual reference doses may need to be considered in an aggregate exposure assessment. The EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Directly summing the results of the conservative sethoxydim and the conservative clethodim contributions to RfD would be approaching 100%. However, reliable information is not available to indicate that directly summing the percent of RfD for these two chemicals is the most appropriate thing to do. Since using realistic assumptions for clethodim, including adjustment for percent of crop treated, result in large decreases in dietary risk (about 20-fold) Valent expects that the sethoxydim risk estimates would also be reduced significantly. Therefore, Valent believes that the cumulative chronic dietary risk of sethoxydim and clethodim is likely to be well below the 100% level for all population subgroups.

Regarding drinking water exposures, sethoxydim is similar to clethodim representing a minimal risk for leaching into groundwater due to its rapid degradation in the environment. There is no established Maximum Concentration Level for residues of sethoxydim in drinking water under the Safe Drinking Water Act.

Regarding non-occupational exposures, sethoxydim is registered for use in non-crop areas and around the home and may have some potential for exposure to the general public. However, as discussed for clethodim, sethoxydim cannot be applied to grass where public contact is expected and sethoxydim is not persistent in the environment. Valent therefore expects that non-occupational exposures to the public be minimal for sethoxydim.

In summary, dietary exposure for clethodim and sethoxydim are each expected to occupy less than 10% of their RfD's when anticipated residue levels and percent of crop treated values are considered. Exposures through the drinking water or other non-occupational routes are expected by Valent to be minimal. Collectively, Valent believes that the aggregate risks associated with the uses of these two chemicals is small and demonstrates a reasonable certainty of no harm to the public.

2. *Infants and children.* As discussed above, dietary exposure for clethodim and sethoxydim is greatest for children ages 1–6-years or non-nursing infants less than 1–year old. However, using a realistic approach to estimating exposures, exposures are expected to be below 10% of the RfD for each chemical even for infants and children. The databases for clethodim and sethoxydim are complete relative to current pre- and post-natal toxicity testing requirements including developmental toxicity studies in two species and multi-generation reproduction studies in rats. Reproduction and developmental effects have been found in toxicology studies for clethodim and sethoxydim, but the effects were seen at levels that were also maternally toxic. This indicates that developing animals are not more sensitive than adults. FQPA requires an additional safety factor of up to 10 for chemicals which represent special risks to infants or children. Clethodim and sethoxydim do not meet the criterion for application of an additional safety factor for infants and children. Valent believes that this demonstrates a reasonable certainty of no harm to children and infants from the proposed uses of clethodim.

F. International Tolerances

Although some have been proposed, there are no Mexican or Codex tolerances or maximum residue limits established for clethodim on potatoes, sunflower, or canola commodities. In

Canada, there are maximum residue limits established for potato tubers at 0.5 ppm and canola oil at 0.1 ppm. The use rates proposed for the use on tuberous and corm vegetables (crop subgroup 1-C) may exceed the 0.5 ppm level in tubers so a higher level is necessary. In Canada, canola oil is the only canola commodity considered for a residue limit since this is the commodity consumed by humans. In the U.S., a tolerance is not being proposed for the processed commodity canola oil since concentration did not occur in the processing study. Consequently, residue in oil up to 0.5 ppm would be allowed in the U.S. However, the residue data indicate that residues in oil are not expected to exceed 0.1 ppm and Valent does not believe this would represent a barrier against exporting U.S.-treated canola oil into Canada.

2. Zeneca Ag Products

PP 6F4609

EPA has received a pesticide petition (PP 6F4609) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850. proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of diquat dibromide in or on the raw agricultural commodity dried shelled pea and bean (except soybean) subgroup (seed) at 0.80 ppm. The proposed analytical method is a spectrophotometric method measuring absorption following derivitisation of the diquat with alkaline sodium dithionite. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of diquat in plants is adequately understood. The residue of concern in plants is diquat per se. No further plant metabolism data are necessary for this proposed use.

2. *Analytical method.* The method of analysis is a spectrophotometic method measuring absorption following derivitisation of the diquat with alkaline sodium dithinoite.

3. *Magnitude of residues.* Dry Pea - Six residue field trials were conducted during 1994 in California, Idaho, Oregon, Texas, and Washington. The seed samples were analyzed for the active ingredient diquat. Diquat residues in dry pea seed ranged from 0.05 to 0.56 ppm.

Lentil - Five residue field trials were conducted during 1994 in Idaho, North Dakota, and Washington. The seed samples were analyzed for the active ingredient diquat. Diquat residues in lentil seed ranged from < 0.05 to 0.54 ppm.

Dry Bean - Eight residue field trials were conducted during 1994 in California, Colorado, Idaho, Michigan, Minnesota, North Dakota, Nebraska, and New York. The bean seed were analyzed for the active ingredient diquat. Diquat residues were less than the limit of quantitation (<0.05 ppm) in all the bean seed samples.

B. Toxicological Profile

1. *Acute toxicity.* In studies using laboratory animals, diquat dibromide has been shown generally to be of moderate toxicity. It can cause slight to severe eye irritation and has been placed in Toxicity Category II for acute dermal eye irritation effects. It is slightly acutely toxic by the oral and inhalation routes and has been placed in Toxicity Category III for these effects. Diquat dibromide causes slight dermal irritation and has been placed in Toxicity Category IV for this effect. It is not a skin sensitizer.

2. *Genotoxicty.* Diquat dibromide was negative for mutagenicity in the following test: 1 gene mutation (Ames), 2 structural chromosome aberration (mouse micronucleus and dominant lethal in mice) and 1 other genotoxic effects (unscheduled DNA synthesis in rat hepatocytes *in vitro*). Diquat was positive in 1 gene mutation test (mouse lymphoma cell assay) and in 1 chromosome aberration test (human blood lymphocytes, depending on the concentration of diquat dibromide and the presence or absence of the metabolic activation system). EPA has concluded that Diquat does not appear to present a mutagenicity concern in (in vivo) studies and for heritable risk considerations based on available information.

3. *Reproductive and developmental toxicity.* In a rat multigeneration study, diquat was fed at dose levels equivalent to 0, 16, 80 or 400/240 ppm of diquat cation. There was evidence of toxicity in both adults and offspring at 400/240 ppm diquat. A low incidence of toxicity was seen at 80 ppm in the adult rats only. Based on the findings, the NOEL and LOEL for systemic toxicity are 16 ppm (0.8 mg/kg/day) and 80 ppm (4 mg/kg/day), respectively, expressed as diquat cation. The NOEL and LOEL for reproductive toxicity are 80 ppm (4 mg/kg/day) and 400/240 ppm (20/12 mg/kg/day) respectively, expressed as diquat cation.

In a developmental toxicity study in rabbits, diquat dibromide was administered by gavage at dose levels of 0, 1, 3, or 10 mg/kg/day. There was no evidence to suggest that diquat was teratogenic to the rabbit at any dose level tested. Based on the findings, the NOEL and LOEL for maternal toxicity are 1 mg/kg/day and 3 mg/kg/day, respectively, expressed as diquat cation. The developmental toxicity NOEL and LOEL are, respectively, 3 mg/kg/day and 10 mg/kg/day, expressed as diquat cation.

In a developmental toxicity study in the rat, diquat dibromide was administered by oral gauge dose levels of 0, 4, 12 or 40 mg/kg/day. Diquat was not a rat teratogen at any of the dose levels tested. Maternal toxicity and foetotoxicity were in evidence at 40 mg/kg/day with mild and transient maternal toxicity persisting to the lowest dose level tested (4 mg/kg/day). The developmental toxicity NOEL and LOEL are, respectively, 12 mg/kg/day and 40 mg/kg/day expressed as diquat cation.

4. *Subchronic toxicity.* A supplemental subchronic dermal toxicity study using rabbits exposed to technical diquat dibromide at doses of 0, 20, 40, 80, or 160 mg/kg/day with a toxicological NOEL and LOEL for systemic toxicity, for both sexes, of 20 mg/kg/day and 40 mg/kg/day, respectively.

A repeated dermal toxicity study using rats exposed to technical diquat dibromide at doses of 0, 5, 20, 40 or 80 mg/kg of body weight/day with a toxicological NOEL and LOEL for systemic toxicity, for both sexes, of 5 mg/kg/day and 20 mg/kg/day, respectively.

An inhalation study using rats resulted in increase in lung weight, lung/body weight and lung/brain weight, lung lesions, and mottling and reddening of the lungs in females; however, all effects except the latter were reversible. A second inhalation study using rats showed no effects on any of the parameters examined at a dose of 0.1 µg/l. Based on both studies the NOEL and LOEL on inhalation exposure are 0.1µg/L and 0.49 µg/L, respectively.

5. *Chronic toxicity.*— i. *2–Year rat study.* - A chronic feeding carcinogenicity study was conducted on rats which were fed diets containing 0, 5, 15, 75 or 375 ppm of diquat cation. The systemic NOEL for both sexes was 15 ppm (0.58 mg/kg/day for males and 0.72 mg/kg/day for females, expressed as diquat cation); and the systemic LOEL was 75 ppm (2.91 mg/kg/day for males and 3.64 mg/kg/day for females, expressed as diquat cation).

ii. *1–Year dog study.* - A chronic dog study was conducted on beagles which were fed diets containing 0, 0.5, 2.5, or 12.5 mg/kg/day, expressed as diquat cation. The systemic NOEL for both sexes was 0.5 mg/kg/day and systemic LOEL was 2.5 mg/kg/day.

iii. *2–Year mice study.* - A chronic feeding/carcinogenicity study was conducted on mice which were fed diets containing 0,30,100 or 300 ppm, expressed as diquat cation. The systemic NOEL for both sexes was 30 ppm. The systemic LOEL was 100 ppm. Zeneca believes that diquat was not carcinogenic in this study.

The carcinogenic potential of diquat dibromide was evaluated by the Health Effects Division Reference Dose (RfD)/ Peer Review Committee on March 31, 1994. The Committee classified diquat dibromide into Group E (evidence of noncarcinogenicity for humans, based on a lack of evidence of carcinogenicity in acceptable studies with two animal species, rat and mouse.

6. *Animal metabolism.* The reregistration requirements for animal metabolism are fulfilled. The qualitative nature of the residue in animals is adequately understood based on acceptable poultry, ruminant, and fish metabolism studies. There are no animal feed items associated with this proposed use. The diquat metabolism and magnitude of residue in animals is not germane to this petition.

7. *Metabolite toxicology.* The qualitative nature of the residue in plants is adequately understood based on an acceptable potato metabolism study and rat bioavailabilty study. The terminal residue of concern in plants is diquat per se. The qualitative nature of the residue in animals is adequately understood.

C. Aggregate Exposure

Diquat is a non-selective, contact herbicide with both food and non-food uses. As such, aggregate non-occupational exposure would include exposures resulting from consumption of potential residues in food and water, as well as from residue exposure resulting from non-crop use around trees, shrubs, lawns, walks, driveways, etc. Thus, the possible human exposure from food, drinking water and residential uses has been assessed below.

1. *Dietary exposure*— i. *Food.* Acute dietary - The EPA did not identify an acute toxicity endpoint of concern for diquat in the Reregistration Eligibility Decision (RED) document, and determined that an acute dietary risk assessment is not required for this chemical.

ii. *Chronic dietary.* For purposes of assessing the potential chronic dietary exposure, Zeneca has estimated the aggregate exposure based on Theoretical Maximum Residue Contribution (TMRC) for all existing tolerances and the proposed tolerances of diquat on dry beans and dry peas at 0.8 ppm. The TMRC is obtained by multiplying the tolerance level residues (existing and proposed) by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting this exposure assessment: 100% of the crops were treated, the RAC residues would be at the level of the tolerance, and certain processed food residues would be at anticipated (average) levels based on processing studies. In addition, residues of diquat in tap water at the Maximum Contaminant Level (MCL) of 0.02 ppm was included in the dietary assessment. These conservative assumptions result in a "worst-case" risk assessment and a significant overestimate of actual human exposure. An assessment was also performed using Anticipated Residues Contributions (ARC) derived from field trial data for sorghum, soybeans, potatoes, dry beans and peas. The ARC assessment also included percent crop treated data as cited in the July 1995 Diquat RED, as well as market projections for dry beans and peas. The resulting TMRC for the US population is 0.002946 mg/kg body weight/day (58.9% of the RfD). For this same group, the Anticipated Residue Contribution (ARC) is 0.000711 mg/kg body weight/day (14.2% RfD). For children ages 1 to 6 and non-nursing infants the TMRC was 0.004571 mg/kg body-weight/day (91.4% RfD) and 0.003620 mg/kg body-weight/day (72.4% RfD), respectively. For these same groups the ARC was 0.001513 mg/kg body-weight/day (30.3% RfD) for children ages 1 to 6, and 0.002795 mg/kg body-weight/day (55.9% RfD) for non-nursing infants. None of the subgroups assessed exceeded 100% of the RfD.

iii. *Drinking water.* In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at, include drinking water (whether from groundwater or surface water), is exposure through pesticide use in gardens, lawns, etc (residential uses).

The lifetime health advisory and maximum contaminant level (MCL) set by EPA for diquat are the same and given as 0.02 parts per million (ppm) as required under the Drinking Water Regulations under the Safe Drinking Water Act. Drinking water which meets the EPA standard is associated with little to no risk and should be considered safe. Inclusion of MCL level residues of diquat in water in the dietary assessment demonstrated a safe exposure level to all subgroups in the US population. The Agency no longer establishes tolerances for residues in potable water; the tolerance for diquat dibromide has been replaced with a designated maximum contaminant level goal (MCLG) of 0.02 ppm for residues of diquat in potable water.

The primary route of environmental dissipation of diquat is strong adsorption to soil particles. Diquat does not hydrolyse or photodegrade and is resistant to microbial degradation under aerobic and anaerobic conditions. There were no major degradates isolated from any of the environmental fate studies. When used as an aquatic herbicide, diquat is removed from the water column by adsorption to soil sediments, aquatic vegetation, and organic matter. Adsorbed diquat is persistent and immobile, and is not expected to be a ground-water contaminant. The environmental fate data base for diquat is complete for reregistration of diquat dibromide.

2. *Non-dietary exposure.* As a non-selective, contact herbicide, homeowner use of diquat will consist primarily of spot spraying of weeds around trees, shrubs, walks, driveways, flower beds, fence lines, etc. The potential for exposure following application as a spot treatment in residential gardens, driveway edges, patios, etc. is low due to the limited frequency and duration of exposure. The exposures which would result from the use of diquat are determined to be of an intermittent nature. Any exposures to diquat would result from dermal exposure. These exposures are not expected to pose any acute toxicity concerns. Based on the US EPA National Home and Garden Pesticide Use Survey (RTI/5100/17-01F, March 1992), the average homeowner is expected to use non-selective herbicides only about four times a year. Thus, these exposure have not been factored into a chronic exposure assessment. Also, diquat has extremely low skin permeation, is not volatile, presenting

no inhalation risk, and has rapid and strong binding characteristics to leaf surfaces and soil. The Agency concludes that non-occupational and non-dietary exposure to diquat will not be significant and has not been aggregated with dietary exposures in estimating chronic risk.

D. Cumulative Effects

The only other compound in the bipyridilium chemical family is paraquat dichloride. Since diquat dibromide and paraquat dichloride have different toxicological endpoints and therefore do not have a common mode of action, there is no need for an assessment of cumulative effects.

E. Safety Determination

1. *U.S. population.* The proposed uses utilize 58.9% of the RfD for the general U.S. population, based on the assumptions of 100% crop treated, MCL level residues in tap water and all residues at tolerance levels; 72.4% of the RfD for non-nursing infants under 1-year old, 19.6% of the RfD for nursing infants under 1-year old; 91.4% of the RfD for children 1-6 years old; and 71.5% of the RfD for children 7-12 years old. An additional risk assessment for residential uses is unnecessary because there is no evidence for toxicological concern via the dermal or inhalation routes of exposure. Given diquat's strong binding characteristics, exposure via drinking water is highly unlikely. Zeneca concludes that there is reasonable certainty that no harm will occur from aggregate exposure to diquat.

2. *Infants and children.* FFCDA section 408 provides that EPA shall apply an additional ten fold margin of exposure for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure will be safe for infants and children. EPA believes that reliable data support using the standard margin of exposure (usually 100 x for combined inter- and intra-species variability) and not the additional tenfold margin of exposure when EPA has a complete data base under existing guidelines and when the severity of the potential effect in infants and children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin of exposure.

Risk to infants and children was determined by the use of a rat multigeneration reproduction study and developmental toxicity studies in rabbits and rats. The reproduction study provides information on potential effects from exposure on the reproductive capability of mating parents and on systemic toxicity. The developmental studies provide information on the potential for adverse effects from exposure on the developing organism during prenatal development.

The toxicological data base for evaluating pre- and post-natal toxicity for diquat is considered to be complete. In the rat reproduction study, systemic toxicity to the mating parents was observed at 4 and 20/12 mg diquat cation/kg body weight/day, and reproductive effects in the form of decreased pups per litter and decreased body weight gain were seen at 20/12 mg/kg/day. Given that the effects seen in the pups and litters were at doses that clearly affected the parents at this dose level and below, diquat is considered not to affect reproductive performance without significantly compromising the health of the parental animals.

Developmental effects in the rat and rabbit studies, including decreased body weights, kidney and liver effects, and delayed ossification, were only observed at the highest doses tested and are considered to be related to the significant maternal toxicity exhibited at these dose levels. There was no evidence in these studies that diquat caused teratogenic effects.

Furthermore, the RfD is currently based on effects seen at 0.5 mg/kg/day in the dog. Effects seen at maternally toxic doses in the rat developmental study were 80 times higher, and in the rabbit study were 20 times higher than the level on which the RfD is based. Thus, Zeneca does not believe the effects seen in these studies are of such a concern to require an additional safety factor. Accordingly, Zeneca concludes that the RfD has an adequate margin of protection for infants and children and there is reasonable certainty that no harm will occur to infants and children from aggregate exposure to diquat.

F. International Tolerances

Codex lists diquat cation in dry beans and peas at 0.2 ppm. Diquat is listed in Canada in beans and peas at 0.1 ppm. There are no Mexican maximum residue limits for diquat on dry beans or peas.

3. E.I. DuPont de Nemours and Co., Inc.

PP 7F4849

EPA has received a pesticide petition (PP 7F4849) from E.I. DuPont de Nemours and Co., Inc. (DuPont), Barley Mill Plaza, P.O. Box 80063, Wilmington, DE 19880-0038. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of for azafenidin, 2-[2,4-dichloro-5-(2-propynyloxy) phenyl]-5,6,7,8-tetrahydro-1,2,4-triazolo [4,3-*a*] pyridin-3(*2H*)-1 in or on the raw agricultural commodities of the crop grouping of citrus, grapes, sugarcane and sugarcane molasses. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by gas chromatography using mass selective detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of azafenidin in citrus, grapes and sugarcane is adequately understood for the purposes of registration. Metabolic pathways in grapefruit, grapes and sugarcane are similar, consisting of rapid O-dealkylation and production of hydroxyl derivatives, with subsequent formation of glucuronide and sulfate.

2. *Analytical method.* The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by gas chromatography using mass selective detection.

3. *Magnitude of residues.* DuPont proposes establishing tolerances for residues azafenidin, 2-[2,4-dichloro-5-(2-propynyloxy)phenyl]-5,6,7,8-tetrahydro-1,2,4-triazolo[4,3-*a*]pyridin-3(*2H*)-1 (Milestone*) in or on the agricultural commodities of the crop grouping of citrus at 0.1 ppm, grapes at 0.02 ppm, sugarcane at 0.02 ppm and sugarcane molasses at 0.1 ppm .

B. Toxicological Profile

1. *Acute toxicity.* Technical azafenidin has been placed in acute toxicology category III based on overall results from several studies. Results from the following studies indicate toxicology category III: acute dermal toxicity (LD_{50} > 2,000kg; rabbits) and eye irritation (effects reversible within 72 hours; rabbits). Acute oral toxicity (LD_{50} > 5,000 mg/kg; rats), acute inhalation toxicity (LC_{50} > 5.4 mg/L, rats) and skin irritation (slight effects resolved within 48 hours; rabbits) results were assigned toxicology category IV. Technical azafenidin is not a dermal sensitizer.

An acute neurotoxicity study was conducted in rats administered azafenidin via gavage at 0, 100, 300 or 900 mg/kg. Azafenidin was not neurotoxic at any dose. The systemic NOEL was 100 mg/kg for males and females based on reduced food consumption and body weights at 300 mg/kg and above.

2. *Genotoxicty.* Technical azafenidin was negative for genotoxicity in a battery of *in vitro* and *in vivo* tests. These tests included the following: mutagenicity in bacterial (Ames test) and mammalian (CHO/HGPRT assay) cells; *in vitro* cytogenetics (chromosomal aberration in human lymphocytes); *in vivo* cytogenetics (bone marrow micronucleus assay in mice); and unscheduled DNA synthesis in rat primary hepatocytes.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study was conducted in rats with dietary technical azafenidin concentrations of 0, 5, 30, 180 or 1,080 ppm. The NOEL was 30 ppm (1.7 to 2.8 mg/kg/day for P_1 and F_1 males and females and their offspring). This was based on the following effects at 180 ppm (10.1 to 17.8 mg/kg/day for P_1 and F_1 males and females and/or their offspring): slight reductions in mean body weights for F_1 males and females; reductions in mean gestation body weight gain and implantation efficiency; slightly increased gestation lengths; decreased offspring survival, body weights and other indices of offspring health; and increased incidence of diarrhea among F_1 parental males.

A developmental study was conducted in rats administered technical azafenidin by gavage at 0, 3, 8, 16 or 24 mg/kg/day. Azafenidin was not teratogenic. The NOEL was 16 mg/kg/day based on the following observations at 24 mg/kg/day: reduced maternal body weight, increased resorptions, reductions in litter size and fetal weights and increased sternebral variations. The maternal effects consisted of transient body weight reductions; however, the nature of these effects suggested that fetal resorptions contributed to these weight reductions.

A developmental study was conducted in rabbits administered technical azafenidin by gavage at 0, 12, 36, 100 or 300 mg/kg/day. Azafenidin was not teratogenic. The NOELs for maternal and offspring toxicity were 12 and 100 mg/kg/day, respectively. The maternal NOEL was based on reduced body weight at 36 and 100 mg/kg/day and mortality at higher doses. Excessive maternal toxicity at 300 mg/kg/day precluded a Crop field trial residue data from citrus, grape and sugarcane studies show that the proposed tolerances on these commodities will not be exceeded when Milestone* is used as directed. Assessment of developmental effects at this level. However, the developmental NOEL was considered to be 100 mg/kg/day since there were no indications of fetal toxicity up to and including this dose level.

4. *Subchronic toxicity.* A 90–day study in mice was conducted at dietary concentrations of 0, 50, 300, 900 or 1,500 ppm. The NOEL was 300 ppm (47.2 and 65.8 mg/kg/day for male and female mice, respectively). This was based on reduced body weight gain in males and microcytic and hypochromic anemia in males and females at 900 ppm (or 144 and 192 mg/kg/day for males and females, respectively).

Technical azafenidin was administered in the diets of rats at 0, 50, 300, 900 or 1,500 ppm for 90 days. The NOEL was 300 ppm (24.2 and 28.2 mg/kg/day for male and female rats, respectively). This was based on methemoglobinemia and microcytic and hypochromic anemia in males and females at 900 ppm (or 71.9 and 83.8 mg/kg/day for male and female rats, respectively).

Dogs were administered technical azafenidin in their diets at 0, 10, 60, 120 or 240 ppm for 90–days. The NOEL was 10 ppm (0.34 and 0.33 mg/kg/day for males and females, respectively). This was based on enlarged hepatocytes and increased serum alkaline phosphatase and alanine aminotransferase activities at 60 ppm (2.02 and 2.13 mg/kg/day for male and female dogs, respectively).

A 90–day subchronic neurotoxicity study was conducted in rats at 0, 50, 750 or 1,500 ppm. There were no neurological effects observed in this study. The NOEL for systemic toxicity was 50 ppm (3.0 mg/kg/day) and 750 ppm (54.5 mg/kg/day) for male and female rats, respectively. These were based on reduced food consumption and body weights and increased incidences of clinical signs of toxicity at the higher doses.

A 28–day dermal study was conducted in rats at 0, 80, 400 or 1,000 mg/kg/day. There was no dermal irritation or systemic toxicity among males or females at the highest dose tested. The NOEL was > 1,000 mg/kg/day.

5. *Chronic toxicity.* An 18–month mouse study was conducted with dietary concentrations of 0, 10, 30, 300 or 900 ppm technical azafenidin. This product was not oncogenic in mice. The systemic NOEL was 300 ppm (39.8 and 54.1 mg/kg/day for males and females, respectively). This was based on hepatotoxicity among males and reduced body weights and food efficiency among females at 900 ppm (or 122 and 163 mg/kg/day for males and females, respectively).

A 2–year chronic toxicity/oncogenicity study was conducted in rats fed diets that contained 0, 5, 15, 30, 300 or 900 ppm technical azafenidin. This product was not oncogenic in rats. The systemic NOEL was 300 ppm (12.1 and 16.4 mg/kg/day males and females, respectively). The NOEL was defined by microcytic, hypochromic and hemolytic anemia and mortality at 900 (or 35.2 and 50.2 mg/kg/day for male and female rats, respectively).

Technical azafenidin was administered for 1–year to dogs at dietary concentrations of 0, 5, 10, 120 and 360 ppm. The NOEL was 10 ppm (0.30 mg/kg/day for males and females). This was based on observations of altered hepatocyte morphology, hydropic degeneration and elevated alanine aminotransferase and alkaline phosphatase at 30 ppm (0.86 and 0.87 mg/kg/day for male and female dogs, respectively) and above.

6. *Animal metabolism.* The metabolism of azafenidin in animals (rat and goat) is adequately understood and is similar among the species evaluated. Azafenidin was readily absorbed following oral administration, extensively metabolized and rapidly eliminated in the urine and feces. The terminal elimination half-life in plasma was 40 hours in rats. Less than 1% of the administered dose was present in rat tissues at 120 hours. There were no volatile metabolites of azafenidin. The major metabolic pathways in the rat and goat consisted of rapid O-dealkylation and production of hydroxyl derivatives, subsequent formation of glucuronide and sulfate conjugates and elimination of these conjugates in feces and urine. There was no evidence of accumulation of azafenidin or its metabolites in the tissues of either species or in the goat's milk.

7. *Metabolite toxicology.* There is no evidence that the metabolites of azafenidin identified in animal or plant metabolism studies are of any toxicological significance. The existing metabolism studies indicate that the metabolites formed are unlikely to accumulate in humans or in animals that may be exposed to these residues in the diet. The fact that no quantifiable residues were found in edible portions of treated crops further indicates that exposures to and accumulation of metabolites are unlikely.

C. Aggregate Exposure

1. *Food—*i. *Acute dietary exposure.* Since there were no acute affects appropriate for assessment of the general population, the NOEL of 16 mg/

kg/day from the rat developmental toxicity study was used to assess acute dietary risk for females 13–years of age and older. Exposures were estimated using the DEEM computer software (version 5.03b, Novigen Sciences, Inc, 1997). The proposed azafenidin tolerances for the raw agricultural commodities and processed fractions that were used in the calculations included: grapes, 0.02 ppm; citrus, 0.1 ppm; and sugarcane - 0.02 ppm for cane sugar and 0.1 ppm for molasses. The following exposures indicate margins of exposure > 11,000 at the 95th percentile and provides a reasonable certainty that no harm to the individual or the developing child will occur under these conservative exposure assumptions (i.e., all labeled crops are treated, residues are present at the proposed tolerances and there is no reduction of residues prior to consumption of these food commodities).

Subpopulations	Exposure - 95th Percentile (mg/kg/day)	MOE*
13+/Pregnant; Not Nursing.	0.000868	86,800
13+/Nursing	0.001384	11,561
13 - 19/ Not Pregnant; Not Nursing.	0.001119	14,561
20+/Not Pregnant; Not Nursing.	0.000832	0.19,231
13 - 50 Years ..	0.000938	17,056

* MOE - Margin of Exposure = NOEL from rat developmental study (16 mg/kg/day) divided by the 95th percentile exposure.

ii. *Chronic dietary exposure.* A Reference Dose (RfD) of 0.003 mg/kg/day has been proposed based on the NOEL from the most sensitive chronic study (NOEL of 0.3 mg/kg/day from the 1–year dog study) and applying a 100-fold uncertainty factor. General and subpopulation exposures were estimated using the DEEM computer software (version 5.03b, Novigen Sciences, Inc, 1997). The following proposed azafenidin tolerances for the raw agricultural commodities and processed fractions were used in the calculations: grapes, 0.02 ppm; citrus, 0.1 ppm; and sugarcane - 0.02 ppm for cane sugar and 0.1 ppm for molasses. Exposure assessments assumed 100% of the crops were treated with azafenidin, that residues were present at the tolerance level and that no residues were removed prior to consumption of treated crops. These assessments indicated adequate margins of exposure for all subpopulations and that only 21% or less of the RfD was utilized by any group. For example, the TMRCs were 0.000237 mg/kg/day (7.9% RfD) for the general population and 0.000619 mg/kg/day (20.6% RfD) for the subpopulation with the highest potential exposure, children ages 1 through 6 years.

2. *Drinking water.* Other potential dietary sources of exposure of the general population to pesticides are residues in drinking water. There is no Maximum Contaminant Level established for residues of azafendidin. The petitioner is reporting to the Environmental Fate and Groundwater Branch of EPA (EFGWB) the interim results of a prospective groundwater monitoring study conducted at a highly vulnerable site. Based on the preliminary results of this study the petitioner does not anticipate residues of azafenidin in drinking water and exposure from this route is unlikely. However, given that less than 21% of the RfD is attained by the TMRC for the population subgroup with the highest theoretical dietary exposure (children 1-6 years of age), there is ample allowance for safe exposure to azafenidin via drinking water should it ever be detected.

3. *Non-dietary exposure.* Azafenidin is proposed for use in weed control in selective non-food crop situations including certain temperate woody crops, and in non-crop situations including industrial sites and unimproved turf areas. Azafenidin is not be used in on residential temperate woody plantings, or on lawns, walkways, driveways, tennis courts, golf courses, athletic fields, commercial sod operations, or other high maintenance fine turf grass areas, or similar areas. Any non-occupational exposure to azafenidin is likely to be negligible.

C. Cumulative Effects

The herbicidal activity of azafenidin is due to its inhibition of an enzyme involved with synthesis of the porphyrin precursors of chlorophyll, protoporphyrinogen oxidase. Mammals utilize this enzyme in the synthesis of heme. Although there are other herbicides that also inhibit this enzyme, there is no reliable information that would indicate or suggest that azafenidin has any toxic effects on mammals that would be cumulative with those of any other chemicals. In addition there is no valid methodology for combining the risks of adverse effects of overexposures to these compounds.

D. Safety Determination

1. *U.S. population.* Based on the completeness and reliability of this azafenidin toxicology database and using the conservative aggregate exposure assumptions presented earlier, it has been concluded that azafenidin products may be used with a reasonable certainty of no harm relative to exposures from food and drinking water. A chronic RfD of 0.003 mg/kg/day has been proposed from the NOEL of the most sensitive chronic dietary study and the use of a 100-fold uncertainty factor. The TMRC determined for proposed tolerances in citrus, grapes and sugar cane utilized only 7.9% of the RfD (an exposure of 0.000237 mg/kg/day). Although there was no data to accurately assess potential exposures through drinking water, the small fraction of the RfD utilized for food by the general and subpopulations indicate that is unlikely that aggregate exposures will exceed acceptable limits. In addition, the use patterns and physical chemical properties of azafenidin suggest that the potential for significant concentrations in drinking water are remote. It has been concluded that the aggregate exposure for the proposed tolerances on citrus, grapes and sugar cane provide a reasonable certainty of no harm to the general population. Because of effects observed in the rat developmental toxicology study, an acute safety determination based on margins of exposure was calculated from the NOEL of 16 mg/kg/day. The subpopulation potentially at risk was considered to be females 13–years of age and older. However, based on the MOEs presented previously of >11,000 at the 95th exposure percentile, it was concluded that these potential dietary exposures represented a reasonable certainty of no harm for this group. An MOE of 100 or greater is generally considered protective.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of azafenidin, data from the previously discussed developmental and multigeneration reproductive toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during pre-natal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from pre-natal and post-natal exposures to the pesticide. The rat reproduction and developmental studies indicated developmental effects in this species at exposures that produced minimal maternal effects. A clear dose-response and developmental NOEL has been defined for these effects. FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. The additional uncertainty factor may increase the MOE from the usual 100- up to 1,000-fold. Based on current toxicological data requirements, the database for azafenidin relative to pre- and post-natal effects for children is complete. In addition, the NOEL of 0.3 mg/kg/day in the 1–year dog study and upon which the RfD is based is much lower than the NOELs defined in the reproduction and developmental toxicology studies. Conservative assumptions utilized to estimate aggregate dietary exposures of infants and children to azafenidin (0.000619 mg/kg/day) demonstrated that only 20.6% of the RfD was utilized for the proposed tolerances. Based on these exposure estimates and the fact that MOEs in excess of 1,000-fold exist relative to the NOELs in the rat reproduction study (NOEL = 1.7 mg/kg/day and MOE = 2,746) and the rat developmental toxicity study (NOEL = 16 mg/kg/day and MOE = 25,848), the extra 10-fold uncertainty factor is not warranted for these groups. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposures to azafenidin].

E. International Tolerances

There are no established Canadian, Mexican or Codex MRLs for azafenidin. Compatibility is not a problem.

[FR Doc. 97–31542 Filed 12–2–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2240]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 28, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed December 18, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Investigation of Special Access Tariffs of Local Exchange Carriers (CC Docket No. 85–166, Phase I).

Number of Petitions Filed: 1.

Subject: Amendments of Parts 73 and 74 of the Commission's Rules To Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit (MM Docket No. 96–58).

Number of Petitions Filed: 4.

Subject: Anthony T. Easton (WT Docket No. 97–199).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31502 Filed 12–2–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010689–068.
Title: Transpacific Westbound Rate Agreement ("TWRA").
Parties:
American President Lines, Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Synopsis: The proposed modification authorizes the parties to consider and act upon proposals and recommendations of the Equipment Interchange Discussion Agreement (FMC Agreement No. 202–011284) with respect to activities within the scope of the TWRA agreement.

Dated: November 26, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31670 Filed 12–2–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 203–011075–041
Title: Central America Discussion Agreement
Parties:
Concorde Shipping, Inc.
Global Reefer Carriers Ltd.
Dole Fresh Fruit
King Ocean Central America, S.A.
Crowley American Transport, Inc.
Seaboard Marine, Ltd.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
NPR, Inc.
Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720), has requested additional information from the parties to the Agreement as required by the Act. This action extends the review period as provided in section 6(c) of the Act

Dated: November 28, 1997.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31671 Filed 12–2–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 16, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Andrew Godby, Melvin Godby, Sr., Custodian; Bill David Godby, David H. Godby, Custodian; Christopher L. Godby, David H. Godby, Custodian; The Clell Dean Godby Living Trust, Clell Dean Godby, Trustee; David H. Godby; Joshua H. Godby; Melodie Godby; Melvin M. Godby, Sr.; Melvin M. Godby, Jr.; Vicki Godby; Clellan Prewitt; and Leora Prewitt, all of Somerset, Kentucky; to acquire voting shares of First Commerce Bancorp, Inc., Somerset, Kentucky, and thereby indirectly acquire Cumberland Security Bank, Inc., Somerset, Kentucky.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jack L. Grimmett, Jr. and Robert B. Grimmett, Pauls Valley, Oklahoma; to acquire voting shares of Valley Bancshares, Inc., Pauls Valley, Oklahoma, and thereby indirectly acquire Pauls Valley National Bank, Pauls Valley, Oklahoma.

2. Alan C. Porter, Chester Nebraska; Warren V. Porter, Houston, Texas; and Timothy H. Porter, Olathe, Kansas; to acquire voting shares of Chester Insurance Agency, Inc., Chester, Nebraska, and thereby indirectly acquire State Bank of Chester, Chester, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Western Bank, Las Cruces, Employee Stock Ownership Plan, Western Bank, Bruce Streett, Samuel Goldman, and Kelly Dunn, Trustees, all of Las Cruces New Mexico; to acquire voting shares of Western Bancshares of Las Cruces, Inc., Carlsbad, New Mexico, and thereby indirectly acquire Western Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, November 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31664 Filed 12–2–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Lakeland Bancorp, Inc., Oak Ridge, New Jersey; to acquire 100 percent of the voting shares of Metropolitan State Bank, Montville, New Jersey.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Citizens Financial Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Trust Company of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, November 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31665 Filed 12–2–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, December 8, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 28, 1997

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31769 Filed 11–28–97; 4:41 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P, (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 62 FR 36823, July 9, 1997) is amended to reflect changes in Chapters PC, PE and PF within Part P, Program Support Center, Department of Health and Human Services (HHS). The Program Support Center (PSC) is transferring several information technology functions within the *Information Technology Service (PF)* to other Services within the PSC. The *Division of Systems and Network Management* is abolished and its functions are being transferred to the *Administrative Operations Service, Division of Technical Support*. The functions of the *Division of Information Systems and Technology* are being amended and the Division is being transferred to the *Financial Management Service*.

Under *Part P, Section P–20, Functions*, change the following:.

Under *Chapter PF, Information Technology Service (PF)*, delete the titles and functional statements for the *Division of Systems and Network Management (PFC)* and the *Division of Information Systems and Technology (PFH) in their entirety.*

Under *Chapter PE, Administrative Operations Service (PE)*, delete item (9) in its entirety and insert a new item (9) as follows: "(9) a wide range of voice, data, and video services."

Delete the functional statement in its entirety for the *Division of Technical Support (PEF)* and insert the following: "The Division manages the Telecommunications Improvement Project and provides a variety of support services for HHS and other customers located in the Washington, D.C. Metropolitan Area and nationwide. (1) Provides the following: voice, data, and video services; visual aids and graphic art services; photography services; library services; printing and reproduction, including operation of copy centers; mail and messenger services; support services for conference room facilities; and (2) carries out printing management and records management responsibilities for the PSC."

Under *Chapter PC, Financial Management Service (PC)*, after the statement for the *Division of Financial Operations (PCE)*, add the following title and functional statement:

Division of Information Systems and Technology (PCF) (1) Provides fee-for-service information technology (IT) support to HHS OPDIVs and other Government agencies. Services include providing information from the HHS personnel/payroll system and providing technological support in utilizing evolving IT areas; (2) provides analysis, design, development, implementation and ongoing support of information reporting in various areas, such as personnel and payroll; and (3) provides analysis, design, development, implementation and support in utilizing evolving technology.

This reorganization is effective upon date of signature.

Dated: November 21, 1997.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 97–31718 Filed 12–2–97; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–372]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440 and 441; *Form No.:* HCFA–372 (OMB# 0938–0272); *Use:* States request waivers in order for beneficiaries to have the option of receiving hospital services in their homes. States with an approved waiver under section 1915(c) of the Act are required to submit the HCFA–372 or HCFA–372(S) annually in order for HCFA to: (1) verify that State assurances regarding waiver cost-neutrality are met, and (2) determine the waiver's impact on the type, amount and cost of services provided under the State plan and health and welfare of recipients.; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 50; *Total Annual Responses:* 223; *Total Annual Hours:* 16,725.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 24, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–31623 Filed 12–2–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1024–N]

Medicare Program; December 15, 1997, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 15, 1997, from 8:30 a.m. until 5 p.m. E.S.T.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kang, M.D., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and

carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Derrick K. Latos, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D.

Council members will receive an update on documentation guidelines, physician practice expense, private contracting, physician self referral rules, privacy and confidentiality, regional labaratory carriers, and other issues related to implementation of the Balanced Budget Amendment.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Executive Director by 12 noon, December 4, 1997, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, December 10, 1997. Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, December 10, 1997. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 27, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 97–31594 Filed 12–2–97; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Transgenic Mice That Express Human Cytochrome P450 Genes

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company to effectively pursue the development and characterization of transgenic mice that express human cytochrome P450 genes CYP2D6 and CYP3A4. The National Cancer Institute has data suggesting that these animals may be useful in drug development, carcinogen bioassays for risk assessment, and the determination of genetic regulatory mechanisms.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Robert Dell'Orco, Ph.D., Technology Development and Commercialization Branch, National Cancer Institute, Executive Plaza South, Suite 450, 6120 Executive Blvd., Rockville, MD 20852, tel: 301–496–0477, fax: 301–402–2117.

DATES: In view of the important priority of developing new drugs for the treatment of cancer and methods for determining carcinogenic risk, interested parties should notify this office in writing not later that january 2, 1998. Respondents will then be provided an additional 30 days for filing of formal proposals.

SUPPLEMENTARY INFORMATION: "Cooperative Research and Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate on the specific research project described below.

The National Cancer Institute seeks an agreement with a pharmaceutical or biotechnology company for joint development and evaluation of transgenic mice that express human cytochrome P450 genes CYP2D6 and CYP3A4 in a tissue specific manner that reflects the expression in humans. These two human P450 enzymes are involved in the metabolism of over 75% of the drugs that are now on the market; however, these two enzymes are poorly conserved between rodents and humans. This poor conservation precludes the use of unmodified rodent model systems for the analysis of new drugs with respect to their metabolism by these two enzymes. The development of a human P450 transgenic mouse system will allow for the determination of human metabolism and toxicity of new drugs, the prediction of drug interactions, and the definition of pharmacokinetic parameters in an intact animal system. Additionally, such a system would avoid the utilization of human liver tissue samples which forms the basis of the current methods used in the pharmaceutical industry. The animal model would also form the basis of carcinogen bioassays for human risk assessment and allow for the analysis of P450 gene regulation. In the proposed studies, the animals will be used to determine the tissue specific degradation of drugs. Drugs known through in vitro metabolism studies to be metabolized by CPY2D6 and CYP3A4 will be administered to the transgenic mice, and their pharmacokinetics will be studied.

The Laboratory of Metabolism has many years of experience in cloning and characterizing human P450 genes. More recently, the laboratory has developed a series of knockout and transgenic mice to study various aspects of the role of cytochrome P450 enzymes in carcinogenesis and drug metabolism; and the development of transgenic mice with the human CYP2D6 and CYP3A4 enzymes is a continuation of the laboratory's commitment to this research area. The Laboratory of Metabolism is interested in establishing a CRADA with a company to assist in the continuing development of transgeic animals containing human cytochrome P450 enzymes to study known drug substrates and proprietary drug candidates. The Government will provide all available expertise and information to date giving the company full access to existing data and data developed pursuant to the CRADA.

The successful company will provide the necessary scientific, financial and organizational support to characterize and test the animals.

Background information is available from the above-referenced address. Patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement.

The CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner will enjoy rights of first negotiation for licensing Government rights to any inventions arising within the scope of the agreement. The license option and commercialization of inventions shall not conflict with NIH Guidelines for the availability of transgenic/knockout animals (http://www1.od.nih.gov/wals/transgen.html).

The expected duration of the CRADA will be 2 years.

The role of the Laboratory of Metabolism in this CRADA will be as follows:

1. Isolate and characterize genomic clones of human CYP2D6 and CYP3A4.
2. Generate mice by standard injections of oocyte pronuclei and screen founders.
3. Characterize tissue specificity of expression.
4. Jointly publish research results.

The role of the Collaborator will be:

1. Characterize in vitro metabolism using hepatic microsomal fractions.
2. Evaluate in vivo pharmacokinetics with probe substrates and proprietary compounds.
3. Analyze the role of CYP2D6 and CYP3A4 on bioavailability and efficacy of test compounds.
4. Jointly publish research results.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. Ability to collaborate with NCI on further research and development of this technology. Demonstration of experience and expertise in this or related areas of technology and the ability to provide intellectual contribution to the ongoing research and development. Ability to accomplish objectives according to an appropriate timetable to be outlined in the Collaborator's proposal.
2. Willingness to comply with NIH IRP Guidelines for the Availability of Transgenic/Knockout Animals (http://www1.od.nih.gov/wals/transgen.html). The proposal should specifically address the methods by which the animals will be made available.
3. Demonstration of the resources (facilities, personnel and expertise) necessary to perform research, development and commercialization of this technology.
4. Commitment of reasonable effort and resources on research, development and commercialization of this technology.
5. Expertise in the commercial development, production, marketing and sales of products related to this area of technology.
6. The level of financial support the Collaborator will supply for CRADA-related Government activities.
7. A willingness to cooperate with the National Cancer Institute in the publication of research results.
8. An agreement to be bound by the DHHS rules involving human subjects, patent rights and ethical treatment of animals.
9. A willingness to accept the legal provisions and language of the NIH model CRADA with modifications to address selection criteria #2 and other minor modifications.
10. Provisions for distribution of patent rights to any inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an option to negotiate an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: November 21, 1997.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, NIH.

[FR Doc. 97–31638 Filed 12–2–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Cancer Genetics Network—Informatics and Information Technology Group.

Date: December 9–10, 1997.

Time: December 9—7:30 p.m. to Recess. December 10—8:00 a.m. to Adjournment.

Place: Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald Lovinger, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630C, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7987.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31636 Filed 12–02–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP):

Name of SEP: Informatics Support for Breast and Colon Cancer Cooperative Family Registries.

Date: December 8, 1997.

Time: 9:00 a.m. to Adjournment.

Place: Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130

Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7421.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396; Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31637 Filed 12–2–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Molecular Basis of Male Infertility.

Date: December 1–2, 1997.

Time: December 1—6:00 p.m.—9:00 p.m. December 2—8:00 a.m.—adjournment.

Place: Marriott Hotel at Medical Center, 6580 Fannin Street, Houston, TX.

Contact Person: Ms. Anne Krey, Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: November 25, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31635 Filed 12–2–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in December 1997.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. *Telephone:* (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee name: SAMHSA Special Emphasis Panel II.

Meeting Date: December 15, 1997.

Place: Holiday Inn, Chase Room, 5520 Wisconsin Avenue, Bethesda, MD 20815–4495.

Closed: December 15, 1997 9:00 a.m.—Adjournment.

Contact: Michael Backenheimer, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–4783 and FAX: (301) 443–3437.

Dated: November 26, 1997.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 97–31673 Filed 12–2–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–836807.

Applicant: Denise Freitag, Potomac, MD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–836777

Applicant: Kentucky Department of Fish and Wildlife, Frankfort, KY

The applicant requests a permit to import American peregrine falcons (*Falco peregrinus anatum*) from Canada for release as part of the Kentucky's peregrine falcon restoration program for the purpose of enhancement of the survival of the species. This notice covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 26, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–31720 Filed 12–2–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 84895]

Opening of Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Parcels of land which were segregated for Phase II of exchange MTM 84895 are no longer under consideration for exchange. This order terminates the exchange segregation and opens the following described lands to the public land laws and mining laws, subject to other segregations of record:

Principal Meridian, Montana

T. 3 N., R. 26 E.,
Sec. 32, S½SE¼.
T. 5 N., R. 28 E.,
Sec. 28, NE¼ and NE¼SE¼;
Sec. 34, NE¼NE¼.
T. 6 N., R. 28 E.,
Sec. 34, NE¼NE¼.
T. 4 N., R. 31 E.,
Sec. 24, NE¼NE¼.
T. 6 N., R. 31 E.,
Sec. 34, N½NE¼ and W½SE¼.
T. 4 N., R. 32 E.,
Sec. 18, lot 3 and NE¼SW¼.

Containing 635.46 acres in Yellowstone County.

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 255–2949.

Dated: November 21, 1997.

James Binando,

Chief, Branch of Land Resources, Division of Resources.

[FR Doc. 97–31723 Filed 12–2–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 30355]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes to withdraw 9,880 acres of National Forest System lands to protect the Roosevelt Lake expansion lands and associated recreational developments. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments should be received on or before March 3, 1998.

ADDRESSES: Comments should be sent to the Phoenix Area Manager, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068.

FOR FURTHER INFORMATION CONTACT: Larry Koontz, BOR Phoenix Area Office, 602–395–5672.

SUPPLEMENTARY INFORMATION: On November 14, 1997, a petition was approved allowing the Bureau of Reclamation to file an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights.

Gila and Salt River Meridian

Tonto National Forest

T. 5 N., R. 10 E.,
Sec. 1, NE¼NE¼.
T. 4 N., R. 11 E.,
Sec. 2, W½NW½, NW¼SW¼, and SE¼SW¼;
Sec. 3, NE¼;
Sec. 11, NW¼NE¼ and SE¼NE¼;
Sec. 12, SE¼SW¼;
Sec. 13, N½NE¼.
T. 5 N., R. 11 E.,
Sec. 5, SW¼NE¼, NW¼NW¼, SE¼NW¼, NE¼SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 6, S½NW¼NE¼, SW¼NE¼, NW¼, NE¼SW¼, and SE¼; Sec. 7, NE¼ and N½SE¼;
Sec. 8, E½E½, NW¼NE¼, and W½NW¼;
Sec. 14, S½SW¼ and SW¼SE¼;
Sec. 15, SW¼SW¼;
Sec. 16, SW¼NE¼, SW¼, and S½SE¼;
Sec. 17, E½NE¼ and NE¼SE¼;
Sec. 22, N½N½;
Sec. 23, W½NE¼, N½NW¼, NW¼SE¼, and SE¼SE¼;
Sec. 24, S½SW¼;
Sec. 25, W½NE¼, NE¼NW¼, and N½SE¼;
Sec. 28, SW¼NW¼ and SE¼SE¼;
Sec. 34, NW¼NW¼ and SE¼NW¼.
T. 6 N., R. 11 E.,
Sec. 31, S½NW¼SW¼, SW¼SW¼, W½SE¼SW¼, and E½SE¼SE¼;
Sec. 32, SW¼SW¼.
T. 4 N., R. 12 E.,
Sec. 2, S½ and S½N½;
Sec. 3;
Sec. 4, W½SW¼;
Sec. 5, E½NE¼;
Sec. 9, N½NE¼;
Sec. 10, N½N½;
Sec. 12, W½NE¼, N½NW¼, SE¼NW¼;
Sec. 36, E½NE¼.
T. 5 N., R. 12 E.,
Sec. 30, W½SW¼;
Sec. 31, W½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, S½S½.
T. 3 N., R. 13 E.,
Sec. 1, SW¼NE¼;
Sec. 2, N½, SW¼, W½SE¼, excluding private lands within Roosevelt Lake Estates;
Sec. 3, E½E½;
Sec. 4, NW¼NE¼ and N½NW¼;
Sec. 11, W½NE¼, E½NW¼, and SW¼NW¼;
Sec. 12, NE¼NE¼.
T. 4 N., R. 13 E.,
Sec. 17, S½N½ and N½SE¼;
Sec. 21, N½N½ and S½NE¼;
Sec. 22, S½NE¼ and NW¼;
Sec. 23, NE¼SW¼ and N½SE¼;
Sec. 25, W½NE¼, SE¼NE¼, and NW¼;
Sec. 31, S½NE¼ and NW¼;
Sec. 32, SW¼NW¼, N½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼.
T. 3 N., R. 14 E.,
Sec. 3, SE¼SW¼ and SW¼SE¼;
Sec. 4, SW¼NW¼;
Sec. 5, N½NE¼ and NW¼NW¼;
Sec. 6, E½NE¼;
Sec. 9, NE¼;
Sec. 10, N½NW¼, SW¼NW¼, and NW¼NE¼.
T. 4 N., R. 14 E.,
Sec. 30, NW¼SW¼;
Sec. 31, NW¼NE¼, E½SE¼, and SE¼NE¼.

The areas described aggregate 9,880 acres in Gila County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Phoenix Area Manager of the Bureau of Reclamation.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: November 20, 1997.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–31724 Filed 12–2–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Washington State in the Possession of the Yale Peabody Museum of Natural History, New Haven, CT

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from Washington State in the possession of the Yale Peabody Museum of Natural History, New Haven, CT.

A detailed assessment of the human remains was made by Yale Peabody Museum professional staff in consultation with representatives of the Jamestown Band of S'Kallam Indians.

In 1873, human remains representing three individuals were donated to the Yale Peabody Museum of Natural History by Dr. T.T. Minor. These human remains were recovered near Port Townsend, WA. No known individuals were identified. No associated funerary objects are present.

Based on cranial deformation, these individuals have been determined to be Native American. No diagnostic artifacts that would indicate the antiquity of these remains exist in the Peabody Museum's collections. No information about the circumstances of recovery of these remains or the nature of their interment exists in the Peabody Museum's records. Consultation evidence provided by representatives of the Jamestown Band of S'Klallam Indians indicates that the Port Townsend, WA area is within the traditional territory of the Jamestown Band of S'Klallam Indians.

Based on the above mentioned information, officials of the Yale Peabody Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Lastly, officials of the Yale Peabody Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Jamestown Band of S'Klallam Indians.

This notice has been sent to officials of the Jamestown Band of S'Klallam Indians, the Port Gamble Indian Community of the Port Gamble Reservation, the Makah Indian Tribe of the Makah Reservation, the Swinomish Indians of the Swinomish Reservation, and the Tulalip Tribes of the Tulalip Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Richard Burger, Director, Yale Peabody Museum of Natural History, 170 Whitney Avenue, P.O. Box 208118, New Haven, CT 06520–8118; telephone: (203) 432–3752, before January 2, 1998. Repatriation of the human remains to the Jamestown Band of S'Klallam Indians may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: November 19, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–31712 Filed 12–2–97; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–368–371 (Final)]

Certain Steel Wire Rod From Canada, Germany, Trinidad and Tobago, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada, Trinidad and Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the respective governments of these countries.[2] The Commission also determines pursuant to the Act that subsidized imports from Germany are negligible, and its investigation of such imports is thereby terminated (19 U.S.C. § 1671d(b)(1)).

Background

The Commission instituted these investigations effective February 26, 1997, following receipt of a petition filed with the Commission and the Department of Commerce by Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Texas, Inc., Beaumont, TX; and Northwestern Steel & Wire, Sterling, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain steel wzire rod from Canada, Germany, Trinidad and Tobago, and Venezuela were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 20, 1997 (62 FR 44288). The hearing was held in Washington, DC, on October 16, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On October 22, 1997, the Department of Commerce ("Commerce") published notice in the **Federal Register** of the suspensions of its countervailing duty investigations on steel wire rod from Trinidad and Tobago (62 FR 54960) and Venezuela (62 FR 54966) based on agreements it concluded with these countries; however, at the same time Commerce indicated that it was continuing its investigations, pursuant to requests by petitioners. Accordingly, the Commission determined to continue its investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford dissenting with respect to Canada and Venezuela.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 26, 1997. The views of the Commission are contained in USITC Publication 3075 (November 1997), entitled "Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela: Investigations Nos. 701–TA–368–371 (Final)."

Issued: November 28, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31717 Filed 12–2–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, Section 122(d) (2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and Section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notice is hereby given that proposed consent decrees in *United States, et al.* v. *Alcan Aluminum, Inc., et al.*, Civil Action No. 88–4970, and in *United States* v. *Air Products and Chemicals, Inc., et al.*, Civil Action No. 97–7140, were lodged on November 21, 1997, with the United States District Court for the Eastern District of Pennsylvania. The proposed consent decrees, which together are intended to comprise a global settlement with respect to remaining issues involving the Kline Township location of the Site, would settle actions that the United States brought on behalf of the United States Environmental Protection Agency under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9606, 9607(a), to compel environmental response actions to be taken and for recovery of response costs incurred by the United States in connection with the McAdoo Associates Superfund Site, located in Schuylkill County, Pennsylvania, in or near the Borough of McAdoo ("the Site"). The consent decrees would also resolve the claims of some of the settling defendants against other of the settling defendants arising out of this and an earlier settlement related to the Site in *United States and Commonwealth of Pennsylvania* v. *Air Products and Chemicals, Inc., et al.*, Civil Action No. 87–7352 (E.D. Pa.) (consent decree entered June 3, 1988) ("the 1988 decree"). Under the terms of the proposed consent decrees, (1) the United States will recover on behalf of the EPA Hazardous Substance Superfund, from those settling defendants that did not settle with the United States under the 1988 decree ("the Alcan parties"), the sum of $970,000, plus a designated share of interest that has accrued on funds that the Alcan parties paid into an escrow account pending finalization of a 1992 consent decree, whose entry was vacated by the United States Court of Appeals in *United States* v. *Alcan Aluminum, Inc.*, 25 F. 3d 1174 (3d Cir. 1994); (2) those settling defendants that settled under the 1988 decree ("the Air Products parties") will receive $1.2 million from the Alcan parties and from the escrow account to resolve the Air Products parties' claims for contribution against the Alcan parties ($170,000), and to resolve the Air Products parties' reauthorized claim for reimbursement from the EPA Hazardous Substance Superfund under the 1988 decree ($1.03 million); (3) the Air Products parties will perform a groundwater monitoring remedy selected by EPA under a Record of Decision for the Site issued on September 30, 1991 for Operable Unit Two (OU2) at the Site; and (4) the settling defendants will pay the United States and the Commonwealth of Pennsylvania's past costs relating to OU2 at the Site (totaling $75,000 and $5,000, respectively).

The consent decrees include a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, and under Section 7003 of RCRA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Alcan Aluminum, Inc., et al.*, DOJ Ref. Nos. 90–11–3–142A and 90–11–3–142E. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decrees may be examined at the office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $33.50 (25 cents per page reproduction costs) payable to the Consent Decree Library (or $89.75 for a copy that includes all signature pages and exhibits).

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–31722 Filed 12–2–97; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on November 12, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that Sun Company, Inc., has terminated its membership in PERF.

No other changes have been made in either the membership or planned activities of PERF. Membership in PERF remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on February 15, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on March 27, 1996 (61 FR 13517–18).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–31721 Filed 12–2–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 11, 1997, 10:00 am, U.S. Department of Labor, Seminar Room 5, 200 Constitution Ave., N.W., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, D.C., this 25th day of November 1997.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 97–31672 Filed 12–2–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 39–97

UIPL 39–97, dated September 12, 1997, advises States of the Department of Labor's interpretation of the Reed Act provisions of Title IX of the Social Security Act and transmits updated instructions and requirements related to the use of "Reed Act" funds as transferred to State accounts in the Unemployment Trust Fund.

Dated: November 26, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

Classification: UI
Correspondence Symbol: TEUFA
Date: September 12, 1997.
Directive: Unemployment Insurance Program Letter No. 39–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: The Reed Act Provisions of Title IX of the Social Security Act

1. *Purpose.* To transmit updated instructions and requirements related to the use of "Reed Act" funds as transferred to State accounts in the Unemployment Trust Fund (UTF).

2. *References.* Sections 303(a)(2), 303(a)(4), 303(a)(5), 303(a)(8), 901(c), 903, 904 and 1201 of the Social Security Act (SSA); the Balanced Budget Act of 1997 (BBA), P.L. 105–33; Sections 3304(a)(3), 3304(a)(4) and 3306(f) of the Federal Unemployment Tax Act (FUTA); 29 CFR Part 97; OMB Circular No. A–87; Part IV, Sections 3000–3040 of the *Employment Security Manual* (*ES Manual*); UIPL Nos. 5–90, 11–90 and 12–91; GAL Nos. 4–83, 5–94 and 2–96; and Section III, Chapter 2 of *ET Handbook No. 401.*

3. *Background.* The Unemployment Insurance Service (UIS) is issuing "basic" program letters for certain program areas to provide comprehensive instructions to States in a single document. This program letter provides guidance to States in accounting for their use of Reed Act funds in accordance with standards established by the Secretary of Labor. This directive is a consolidation of instructions from the *ES Manual* and previous UI program and administration letters related to Reed Act funds and now supersedes the *ES Manual* sections referenced above. These instructions may later be included as a part of a Handbook issuance.

4. *Action Required.* SESA administrators are requested to provide these instructions to the appropriate staff.

5. *Inquires.* Inquires should be directed to your Regional Office.

6. *Rescission.* Part IV, Sections 3000–3040 of the *Employment Security Manual.*

7. *Attachments.*

I. The Reed Act Provisions of Title IX of the Social Security Act;

II. Draft Language for State Laws.

Attachment I—The Reed Act Provisions of Title IX of the Social Security Act

A. Introduction

1. *Definition—Background.* The term "Reed Act" refers to a part of the Employment Security Financing Act of 1954, and is used in honor of Congressman Daniel A. Reed of New York, chairman of the House Ways and Means Committee at the time. This legislation amended Titles IX and XII of the Social Security Act (SSA) and established the basic structure of the Unemployment Trust Fund (UTF). The amendments to Title IX, among other things, provided, under certain conditions, for the transfer of excess funds in the Employment Security Administration Account (ESAA) in the UTF to the individual State accounts in the UTF (Section 903(a)(1), SSA). These transferred funds are commonly referred to as "Reed Act" funds. To date, only three Reed Act distributions—in 1956, 1957, and 1958—totalling $136 million, have been made to State accounts.

Under the SSA, the primary purpose of Reed Act funds is the payment of "cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration" (Section 903(c)(1), SSA). However, subject to conditions specified in Section 903(c)(2), SSA, a State is permitted, at its discretion, to use Reed Act funds for "the administration of its unemployment compensation law and public employment offices". (See Part E. for exception for use of Reed Act amounts allocated for fiscal years 2000, 2001, and 2002.)

Title III, SSA, governs the use of Federal grant funds for the administration of the unemployment compensation (UC) programs by States. Section 302(a), SSA, addresses the uses of UC granted funds as follows:

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made.

Section 303(a)(8), SSA, requires, as a condition of receiving UC administrative grants, that State laws include provision for: the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law.

Section 901(c)(1), SSA, authorizes to be made available for expenditure out of the employment security administration account, for each fiscal year—

(A) such amounts * * * as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law).

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n).

State employment security agencies (SESAs) include both UC and public employment (ES) offices and, to the extent that they operate State activities provided for only under title III, SSA, and the Wagner-Peyser Act, will hereafter be called the "employment security program". Reed Act funds may be used to pay the administrative expenses of the employment security program. (See Part E. for exception for use of Reed Act amounts allocated for fiscal years 2000, 2001, and 2002.)

Initially, Reed Act funds were available for administrative expenses up to 5 years from the date they were first credited to a State's account. Through amendments, the time period for administrative use was later extended to 10, 15, 25, and 35 years, and then eliminated effective October 1, 1991.

2. *Relationship to Trust Fund Operations.* Reed Act funds become a part of a State's unemployment fund, as defined in Section 3306(f) of the Federal Unemployment Tax Act (FUTA), on the date they are transferred to the State's account in the UTF. Such funds retain legal status as a part of the State's unemployment fund and must be accounted for as part of the fund until expended for unemployment compensation or administrative expenses of the State's employment security program. As such, Reed Act funds are subject to the "immediate deposit" and "limited withdrawal" standards (Sections 303(a)(4) and (5), SSA; Sections 3304(a)(3) and (4), FUTA) applicable to all State unemployment fund money.

B. Mechanics of a Reed Act Distribution

1. *Conditions Necessary for Making Transfers.* Whenever the Secretary of Labor has reason to believe that conditions which are necessary for a Reed Act transfer will occur in the next fiscal year, the Secretary, after consultation with the Secretary of the Treasury, shall report to Congress with a recommendation for appropriate action (Section 902(c), SSA). Section 903(a)(1) provides that a transfer of Reed Act funds will occur if the following conditions exist in the Federal accounts of the UTF at the end of a Federal fiscal year (that is, September 30):

a. The balance of funds in the extended unemployment compensation account (EUCA) and the Federal unemployment account (FUA) have reached their statutory ceilings, and all general revenue advances and related interest to these accounts have been repaid, and

b. There remains in the employment security administration account (ESAA) an amount in excess of the account's statutory ceiling.

The excess amount in the ESAA is then transferred to State accounts in the UTF at the beginning of the following Federal fiscal year, as explained below.

2. *Amounts Transferred to State Accounts.* Each State's share of the amount to be transferred is based on the proportion of wages subject to FUTA attributable to the State during the preceding calendar year to the aggregate amount of wages subject to FUTA during the same year for all States. The exact share for each State is derived by applying its computed ratio or percentage to the total amount to be transferred. (See Part B.3. for exception for calculating State shares with respect to amounts for Federal fiscal years ending in 1999, 2000, and 2001.) The Secretary of Labor determines the amount of each State's share and certifies it to the Secretary of the Treasury. (Section 903(a)(2), SSA.)

3. *Special Distribution with Respect to Federal Fiscal Years 1999, 2000, and 2001.* The Balanced Budget Act of 1997 (BBA) amended Section 903 of the SSA to cap the total amount of Reed Act transfers made with respect to Federal Fiscal years ending in 1999, 2000, and 2001 at $100,000,000 per year. Each State's share of the amount to be transferred will be based on the ratio of the amount of "funds to be allocated to such State for such fiscal year pursuant to the base allocation formula under title III", SSA, to "the total amount of funds to be allocated to all States for such fiscal year pursuant to the base allocation formula under Title III." (Section 903(a)(3), SSA.)

4. *Limitations on Transfers.* All States share in a Reed Act transfer. However, under Section 903(b), SSA, the total amount of a State's share may not be credited to its UTF account in the following two instances:

a. The Secretary of Labor finds that on October 1 of the year in question, a State is not eligible for certification under Section 303, SSA, *or* the law of the State is not approvable under Section 3304, FUTA.

In this instance, the State's share of Reed Act funds is credited to the FUA and held in reserve. If the Secretary of Labor certifies that the State is eligible for certification under Section 303, SSA, and/or that its law is approvable under Section 3304, FUTA, before the end of the fiscal year, the State's Reed Act share is then transferred to its account. However, such delayed credits, although designated for the State, earn interest for the State only from the date credited, because they are not a part of the State's individual account until credited. If certification and/or approval is not received before the end of the fiscal year, the amount that would have been transferred to the State's account remains in the FUA and becomes unrestricted as to its use as a part of that account.

b. On October 1, a State has an outstanding balance of advances under Title XII, SSA. (See Part C.2.)

The State's Reed Act share is reduced (but not below zero) by the balance of unpaid Title XII advances. The amount of the reduction is transferred to or retained in the FUA and serves to reduce the State's balance of outstanding advances. If the State's Reed Act share has not been reduced to zero, the remaining amount is credited to its UTF account.

C. Use of Reed Act Funds for UC Benefit Payments

1. *Use under Normal Circumstances.* Section 903(c)(1), SSA, imposes no requirements on a State's use of Reed Act funds for benefit payments. For this purpose, funds are withdrawn from the State's UTF account as are any other funds in the account. Logically, a State would first expend other available funds for benefits in order to preserve its Reed Act balance, which can be used for either benefits or, under specified conditions, administrative expenses. Therefore, the Department of Labor (DOL) assumes that as long as the balance of funds in a State's UTF

account exceeds its unexpended balance of Reed Act allocations, the total unused Reed Act balance remains within the account. (See Part E. for exceptions for use of amounts allocated for fiscal years 2000, 2001, and 2002.)

2. *Use upon Obtaining a Title XII Advance.* Section 1201, SSA, provides a system of "Title XII" advances to States with temporarily depleted unemployment compensation reserves. One of the requirements for a State to qualify for an advance is that the amount of the advance be determined by considering all other amounts available in the State's unemployment fund for benefit payment. (Section 1201(a)(3)(B), SSA.) This includes, as explained below, unobligated Reed Act funds. Therefore, upon obtaining a Title XII advance, a State's unexpended Reed Act funds become subject to expenditure for benefits without regard to whether they have been appropriated or, except as provided below, obligated for an administrative expense. (See Part E. for exceptions for use of amounts transferred with respect to Federal fiscal years 1999, 2000, and 2001.)

3. *Procedures to Set Aside Obligated Amounts* Amounts validly obligated, under appropriations made consistently with the Reed Act, are considered to be unavailable for any other purpose, including the payment of benefits upon obtaining a Title XII advance. To assure availability for expenditure when obligations mature, Reed Act funds, which are properly obligated for an administrative expense *prior* to obtaining an advance, may be made unavailable for benefit payment *if* the State elects to set aside such amounts in a UTF Reed Act "sub-account". This set aside provision does not apply to appropriated funds prior to actual obligation, because an appropriation specifies only the purpose for which funds may be expended and does not create transactions which require a payment of money. Funds residing in a Reed Act sub-account are not considered available for benefits and are not taken into account by DOL or Treasury for Title XII purposes, if properly set aside in such a sub-account. The procedures to set aside obligated amounts are as follows:

a. To establish an initial credit to a sub-account a State must:

1. Review each current Reed Act obligation under which there is an unexpended balance and validate the:
—Date of enactment of the enabling appropriation (see part D.1.),
—Date and amount of each obligation (see part D.2.), and
—Unexpended balance of each obligation amount;

2. Prepare a letter certifying the amount of unexpended Reed Act obligations as of the end of the month being used to establish the initial credit. This amount must agree with transactions reported on Form ETA 8403, *Summary of Financial Transactions—Title IX Funds ("Reed Act" Money)* submitted for the same month. (The total of column III(b) less the total of column IV(a) must equal the amount of unexpended obligations.) As documentation, attach a summary sheet identifying each appropriation under which there is an unexpended obligation amount. For each appropriation, indicate the purpose, dollar amount, enactment date, legislative bill number, and the current total dollar amount obligated.

The letter and attachment should be addressed to: U.S. Department of Labor, Employment and Training Administration, Attention: TEUFA, 200 Constitution Avenue, N.W., Rm C–4512, Washington, D.C. 20210.

DOL will then certify the same to U.S. Treasury, subject to review of the State's documentation.

b. To provide for on-going maintenance of the sub-account, a State must:

1. Certify to DOL by letter on a monthly basis all new obligation amounts and all deobligated amounts. The letter must specify the effective date of each obligation or deobligation and identify the corresponding appropriation(s) and/or related obligation(s) by amount and effective date. The letter must be received by the tenth business day of the month following the month in which the transaction occurred and be accompanied by a Form ETA 8403 for the appropriate month:

2. When requisitioning funds from the State's UTF account, specifically identify withdrawal amounts requested from the Reed Act sub-account;

3. Include all Reed Act sub-account transactions on Form ETA 8403 for the month in which the transaction(s) occur; and

4. Include all Reed Act redeposits and withdrawals on each month's written confirmation letter to Treasury of UTF account activities.

As new obligations are made or as obligations are cancelled, the amounts obligated or deobligated will be certified in a similar manner and credited or deducted from the State's Reed Act sub-account. Withdrawals to pay Reed Act obligations, as specified by State requisitions, will be charged against the Reed Act sub-account.

4. *Restoration of Funds Used for Benefits.* Each expenditure of Reed Act funds, whether for benefits or administrative costs, reduces the amount available for appropriation in accordance with Section 903(c)(2), SSA. Under certain conditions described in Section 903(c)(3), SSA, funds used to pay benefits may be restored to availability for administrative purposes:

- The Governor of a State must submit a request for restoration of such funds to the Secretary of Labor,
- Funds to be restored must have been used for benefits,
- The amount to be restored does not exceed the balance in the State's UTF account, and
- The State's unemployment fund must be free of outstanding Title XII advances when the request is made.

a. Determining amount to be restored. States which used Title XII advances must determine the amount of Reed Act funds used for benefits. A "pre-approved" amount of a Title XII advance is designated for a State for a specific month. However, other than the amount set aside in a Reed Act sub-account, U.S. Treasury procedures take into account a State's entire UTF account balance (including Reed Act funds which have not been set aside in a Reed Act sub-account), which must be reduced to zero prior to calculating the actual amount of an advance and transferring it to the State.

- The balance of Reed Act funds (not set aside in a Reed Act sub-account) in the State's account on the date in the first month any portion of a Title XII advance was actually used is the amount of Reed Act funds used for benefits and eligible for restoration.
- If, after an initial advance and the resulting expenditure of Reed Act funds for benefits, funds are recovered through amortization (see Part F.) and deposited in a State unemployment fund in any subsequent month as Reed Act redeposits, then such redeposited amounts are also considered to have been used for benefits if the State uses any portion of a Title XII advance during that month. However, if the State does not use any portion of a subsequent advance in a month in which a redeposit is made, the redeposited amount remains in the State's account as Reed Act funds but must be used only to pay benefits while there is an outstanding balance of advances.

Example: On February 1, 1997, a State has a $500,000 balance of Reed Act money in its account in the UTF, none of which has been set aside in a Reed Act sub-account. A Title XII advance in the amount of $5,000,000 has been approved for use by the State during February. On February 9, the balance in the State's account is $700,000 and the State requests a withdrawal of $2,000,000. To transfer the State's requisition of $2,000,000, the U.S. Treasury first deducts the remaining $700,000 from the State's account (which includes the $500,000 Reed Act balance), thereby reducing the State's account balance to zero; it then adds to the account $1,300,000 from the $5,000,000 Title XII advance for February, which it transfers to the State along with the original $700,000. At this time, the $500,000 in Reed Act money is deemed to have been used for benefits. During March and April, the State redeposits $100,000 to its UTF account received as amortization payments on a Reed Act financed building. This money is available for obligation for administrative expenses after the State repays all advances, because under Section 903(c)(2), SSA, Reed Act funds may not be obligated while there is a outstanding balance of Title XII advances. If the State does not borrow again and repays all outstanding Title XII advances, the Governor may request restoration of the $500,000 used for benefits in February 1997. If the State borrows again in April, the $100,000 would also be used for benefits. Therefore, after all advances are repaid, the Governor may request restoration of the $500,000 used for benefits in February 1997 and the $100,000 used for benefits in April 1997.

b. Procedures for restoration of funds. States desiring restoration of Reed Act funds must prepare and submit:

- Form ETA 8403, indicating when funds were used for benefits by showing dates (month, year) in column I and the appropriate amounts as negative figures in column II of the report; and
- A letter from the Governor of the State to the Secretary of Labor (1) stating that the State's unemployment fund is free of Title XII obligations and contains funds at least equal to the amount to be restored, and (2) specifying amounts to be restored pursuant to Section 903(c)(3), SSA.

If the Secretary of Labor determines that:

- Amounts requested for restoration: (1) were used to pay benefits and (2) do not exceed the amount in the State's UTF account, and
- All Title XII advances were repaid as of the request date;

then the Secretary will notify the Governor that the restoration is approved. Restoration shall be effective on the first day of the month following the date of the Secretary's notice.

D. Use of Reed act funds for Administrative Purposes

1. *Legal Requirements.* Reed Act funds may be used for administrative expenses of the employment security program only if a State adheres to the requirements specified in Section 903(c)(2), SSA. (See Part E. for exception for use of amounts allocated for fiscal years 2000, 2001, and 2002.)

The State legislative body must authorize the use of Reed Act money by specific appropriation. The appropriation law: (1) Must specify the purpose and the amount of the appropriation, (2) may not authorize obligation of funds after the close of the two-year period which began on the date of enactment of the law, and (3) must limit the amounts which may be obligated to the balance of unobligated Reed Act funds in the State's unemployment fund. Funds must be withdrawn from the State's unemployment fund and expended after the date of enactment and must be accounted for in accordance with standards established by the Secretary of Labor. (See Attachment II, *Draft Language for State Laws* in appropriating Reed Act funds for administrative purposes.)

2. *Guidelines for Use.*

a. *Specificity and Limitation Requirements of an Appropriation Act.* A State appropriation act authorizing the use of Reed Act funds must (1) limit the use of funds appropriated exclusively to administrative expenses of the employment security program and (2) specify the purpose for which the funds are appropriated and the amount appropriated for each purpose. For example, the purpose of an appropriation law might be: "To conduct a special, statewide, intensive audit of employer payrolls in the construction industry".

When a State agency is administering other programs in addition to the employment security program (e.g., a disability insurance program), no part of the expenses of administering the other programs may be paid with Reed Act funds. When funds are appropriated for a purpose for which only a part is related to employment security, the appropriation law must specify the employment security share and the amount of Reed Act funds to be used.

Although an appropriation of Reed Act funds may exceed the balance of available Reed Act funds at the time of the appropriation (see part D.2.c.), the appropriation law must specify that the amount which may be obligated at any time may not exceed the balance of Reed Act funds available *at the time of obligation* in the State's unemployment fund.

b. *Two-Year Limit for Obligating Funds.* The two-year time limit imposed by Section 903(c)(2)(B), SSA, within which Reed Act funds appropriated by State law must be obligated begins on the date of enactment of the appropriation law, not the date as of which funds were transferred to the State's UTF account. The appropriation law must be worded so that it is clear that funds appropriated are not available for obligation after the two-year period. The term, "date of enactment", as used in Section 903(c)(2), SSA, means the date on which an act passed by the State legislature becomes law. The determination of the date when such an act becomes law is a question for the appropriate State authority. In some instances, State courts have held that the effective date of an act is the date of enactment. However, the substitution of "effective date" for the term "date of enactment" in Reed Act legislation should be avoided, since an interpretation of State law will be required to determine whether the appropriation law meets the requirements of Section 903(c)(2)(B), SSA, if "effective date" is used. The general rule is that the date of enactment is the date on which the act is approved by the Governor of the State. Money is "obligated" and an "obligation" is created when an order is placed, a contract is awarded, or other transactions are entered into which require a current or future payment of money. The use of the term "obligate" instead of "expenditure" in Reed Act appropriations is recommended for consistency with Section 903(c)(2)(B). The use of such terminology also allows greater flexibility in handling Reed Act funds; money obligated before the expiration of the two-year limit may be expended any time afterward.

c. *Appropriation in Anticipation of Future Reed Act Availability.* A State legislature is not prohibited from *appropriating* Reed Act funds in anticipation of a future availability of Reed Act funds. However, such funds may not be obligated prior to becoming available even though they have been properly appropriated by act, the enactment date of which precedes the date of funds becoming available.

d. *ETA Administrative Requirements Not Applicable.* Although Reed Act funds may be used for an administrative expense of the employment security program, Section 903(c)(2), SSA, does not, as do Sections 303(a) and 303(a)(8), SSA, require that the expenditure be for a purpose or in an amount found necessary for proper and efficient administration by the Secretary of Labor. Further, since Reed Act funds are not granted funds, the administrative requirements related to the use of grant funds at 29 Code of Federal Regulations (CFR) Part 97 and OMB Circular No. A–87 (60 *Federal Register* 26484 (May 17, 1995)) with respect to the expenditure of Wagner-Peyser Act and Title III funds (granted funds) are not applicable to the expenditure of Reed Act funds.

Nevertheless, Reed Act funds must be expended consistent with Sections 903(c) (1) and (2), SSA. Further, where Wagner-Peyser and granted funds are to be used to reimburse Reed Act expenditures for certain permissible purposes, DOL prior approval may be required for such use of granted funds. (See part F.)

c. *Restrictions on Withdrawal of Funds.* Reed Act funds may not be withdrawn from a State's unemployment fund for administrative expenses, and expenses may not be incurred until after the enactment date of the appropriation law. In addition, funds may not be withdrawn prior to obligation. The withdrawal of Reed Act funds must adhere to the U.S. Treasury-State Agreement under the Cash Management Improvement Act of 1990 (CMIA).

Funds may be withdrawn only in amounts necessary to pay mature obligations. (Section 303(a)(5), SSA; Section 3304(a)(4), FUTA.) An obligation is mature when payment is due either by reimbursement of expenses or contractual agreement for advance payments. Reed Act funds withdrawn may be mingled with other administrative funds (granted funds) if separate book accounts are maintained by the State agency to identify the balance of Reed Act funds at all times.

3. *Use of Reed Act Interest Credits.* Since Section 903(c)(2)(D), SSA, limits the amount which may be obligated for administration to amounts transferred to the State's account, interest credits attributable to the amount of Reed Act funds in the State's UTF account may not be appropriated, obligated, expended, or disbursed for administrative purposes.

4. *Investment of Reed Act Funds Not Permissible.* Except as provided under the CMIA, investment is not one of the purposes for which money withdrawn from a State unemployment fund may be used. Since Reed Act funds are a part of the State's unemployment fund, a State law which permits investment of such funds is inconsistent with Section 303(a)(5), SSA, and Section 3304(a)(4) of FUTA. It was the intent of Congress, as indicated by Section 904, SSA, that money in the UTF may be invested only by the Secretary of Treasury. This intent is effectuated only by assuring that Reed Act moneys remain in the UTF.

E. Use of Reed Act Funds Allocated for Fiscal Years 2000, 2001, and 2002

The BBA of 1997 amended paragraph (2) of Section 903(c) of the SSA, by adding the following sentence: "Any amount allocated to a State under this section for fiscal year 2000, 2001, or 2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph."

Unlike previous Reed Act transfers, States are prohibited from using Reed Act funds allocated for these three years for the payment of UC benefits or the administration of State public employment offices. However, States may, among other uses, use these Reed Act funds for purchasing real property for UC purposes and may amortize these purchases against UC grant funds. (See Parts G. and H.) Additionally, the restrictions applicable to Reed Act funds in section 903(c)(2), SSA, are not applicable to amounts allocated for fiscal years 2000, 2001, and 2002. This means that the amounts transferred to States for these three years may be used without obtaining an appropriation from the State's legislative body, as discussed in Parts D.1. and D.2., above. States must amend their UC laws to prohibit the use of Reed Act funds allocated for fiscal years 2000, 2001, and 2002 for the payment of UC benefits and may further amend their UC laws to authorize the use of such funds for UC administrative purposes without a specific appropriation from their State legislatures. (See Attachment II, *Draft Language for State Laws.*)

F. Use of Reed Act Funds for Voter Registration Activities

Under the National Voter Registration Act (NVRA) of 1993, States are permitted to designate State UC and ES offices as voter registration agencies. Reed Act funds may be used to pay for the administration of a State's UC law and public employment office. Since, under the SSA, voter registration activities are not necessary for the administration of the State's UC law, Reed Act funds may not be used for those activities. However, since Section 7(a)(3)(B) of the Wagner-Peyser Act authorizes SESAs to use ES grant monies for "developing linkages between services funded under this Act and related Federal or State legislation", if an ES office is designated as a voter registration agency under the NVRA, then voter registration activities of that ES office are legitimate ES administrative expenses chargeable to ES grants. Therefore, Reed Act funds may be used to pay for these voter registration activities.

Note: As illustrated in F., the use of Reed Act funds for SESA administrative expenses is permissible for purposes other than those specifically mentioned in this discussion.

G. Use of Reed Act Funds to Acquire Real Property

1. *Acquisition of Real Property Deemed an Expense of Administration.* Reed Act funds may be used to acquire land and to purchase or construct a building for use and occupancy by the State employment security agency consistent with Section 903(c)(2), SSA. This is an expense of employment security administration. The following are special conditions applicable to this use of Reed Act funds:

a. *Space.* Since Reed Act funds may be used only for employment security purposes, such funds may be used to pay only for that part of the land and building space costs which are directly related to employment security purposes, e.g., that part of the cost of a building as is represented by the proportion of the total space occupied and used by the employment security agency for employment security purposes, including the cost of agency functions and other agency programs and activities which jointly benefit Wagner-Peyser Act and unemployment compensation programs.

Reed Act funds may not be used to pay for more land or building space than is needed for employment security purposes. However, funds may be used to purchase or construct a building large enough to provide space for future expansion that reasonably can be anticipated at the time of purchase or construction.

b. *Rental of Space.* Extra space which is available through the purchase or construction of a building large enough for reasonable expansion purposes may be leased until the time it is required for agency use. Income from the lease may be deposited in the State's UTF account but may not be credited as Reed Act funds. Income from a lease may not be credited as Reed Act funds because only amounts transferred to the State's account under Section 903(a)(1), SSA, have "Reed Act" status. If the cost of the space is being amortized with grant funds, the income from the lease must be prorated between the State's UTF account and use to reduce the State's grant costs, in accordance with 29 CFR 97.25, and the annual grant agreement.

2. *Disposition of Real Property and Subsequent Use of Proceeds.* Real property acquired with Reed Act funds, which has not been amortized with grant funds (see part F.), may be sold or otherwise disposed of without obtaining DOL approval or disposition instructions. When unamortized real property is no longer needed for its originally authorized employment security purpose, States are expected to use good business judgment in disposing of such property. Proceeds from such disposal must be returned to the State's UTF account. The proceeds will be credited as Reed Act funds up to the amount of the original expenditure, because only amounts transferred to the State's account under Section 903(a)(1), SSA, have Reed Act status.

When real property acquired with Reed Act funds and wholly or partially amortized with grant funds is no longer needed for its originally authorized employment security purposes, it must be sold, exchanged for replacement property, or otherwise disposed of as directed by DOL disposition instructions (29 CFR Part 97.31(c)). Example A illustrates the sale of real property which was purchased with both non-Federal funds and Reed Act funds, with a portion of the Reed Act funds have been amortized with DOL grant funds.

Example A: Thirty-five years ago, $1 million of Reed Act funds and $1 million of other non-Federal funds were used to acquire real property at the cost of $2 million for employment security purposes. Over the years, seventy percent (70%) of the Reed Act funds were amortized with DOL grant funds. Today, the real property is being sold for $6 million. The distribution of the respective equities is based on the following computations.

Share of Each Fund Source Based on Adjusted Contributions to Cost:			
Other Funds ($2,000,000 less $1,000,000)	$1,000,000	=	50%
DOL Grant Funds (70% x $1,000,000)	700,000	=	35%
Reed Act Funds ($1,000,000 less $700,000)	300,000	=	15%
Total Cost	2,000,000		100%
Equity in Property by Fund Source:			
Other Funds equity (50% x $6,000,000)			$3,000,000
DOL equity (35% x $6,000,000)			2,100,000
Reed Act equity (15% x $6,000,000)			900,000
Total Sale Proceeds (29 CFR 97.31(c)(2).)			6,000,000

See Part F.1. for an explanation of how DOL (Federal) equity was created in the property.

a. *Replacement.* A State may use proceeds from the sale of real property as an offset to the purchase price of a replacement property. In a replacement transaction, it is not necessary to make another appropriation of Reed Act funds to obtain the replacement property if the use of such funds conforms in all respects to the original appropriation authorizing the acquisition of the disposed property and is permissible under State law. In the interpretation of State Reed Act appropriations, the State is the final arbiter of its State law. Such transactions may not result in a new obligation of Reed Act funds. If the property being replaced is worth more than the replacement, the excess cash proceeds received or equivalent cash shall be handled as in Part 2.b.

b. *Use of Cash Proceeds.* The Reed Act share of cash proceeds received from the sale or other disposition of real property must immediately be deposited in the State's account in the UTF (Section 303(a)(4), SSA, and Section 3304(a)(3), FUTA). Similarly, any portion of the Reed Act proceeds from a disposition that is not used for replacement property must be immediately deposited in the State's UTF account. However, only proceeds equivalent to the original cost of the property may be credited to the State's account as Reed Act funds. Earnings or profit resulting from real estate transactions may not be credited as Reed Act funds because only amounts transferred to a State as provided in Section 903(a)(1), SSA, have "Reed Act" status. The remainder of cash proceeds, if any, must be used for the payment of unemployment benefits or other expenditures consistent with the withdrawal standard. Failure to immediately deposit the applicable proceeds into the UTF may be cause for the Secretary of Labor to commence conformity/compliance proceedings and to assess interest on the amount outstanding. Example B illustrates the proper distribution of the Reed Act share of sales proceeds in Example A.

Example B:

Distribution of Reed Act Share of Sales Proceeds:	
Reed Act contribution to acquisition cost	$1,000,000
Less: Adjusted grant funds contribution to (amortization of) acquisition cost	700,000
Adjusted Reed Act Contribution	300,000
Reed Act equity in sales proceeds	900,000
Less: Adjusted Reed Act contribution (credited to UTF as Reed Act funds)	300,000
Balance of Reed Act equity (credited to UTF for payment of unemployment compensation and other expenditures consistent with the withdrawal standard)	600,000

H. Reimbursement of Reed Act Expenditures From Granted Funds

1. *Extent of Reimbursement.* UI and ES grant funds may be used to reimburse the State's Reed Act expenditures to the extent that the costs meet the requirements for use of funds authorized by the Wagner-Peyser Act and Title III. (29 CFR Part 97; OMB Circular No. A–87.) To date, reimbursement through amortization arrangements has been authorized for:

- the cost of obtaining land and constructing or purchasing a building for employment security purposes (real property),
- capital improvements to State-owned office buildings, to the extent such buildings are used for employment security purposes, and
- the acquisition of automatic data processing (ADP) installations.

Reed Act funds expended for the above purposes may be amortized with grant funds because these expenditures meet the administrative requirements related to the use of grant funds at 29 CFR Part 97 and OMB Circular No. A–87 with respect to the expenditure of Wagner-Peyser Act and Title III funds.

The amortization of Reed Act expenditures for the acquisition of real property and capital improvements with grant funds creates Federal equity. "Federal equity" means the Federal government owns a share of the fair market value of real property. Therefore, when the property ceases to be used for employment security purposes, DOL recaptures the Federal equity. The value of the Federal equity is based on the adjusted contribution of UI and ES grant funds to the acquisition cost of the property and any capital improvements that materially increase the value or useful life of real property.

2. *Deposit and "Reappropriation" of Reimbursed Reed Act Funds.* Grant funds used to reimburse a State for Reed Act expenditures must be deposited immediately to the State's UTF account (Section 303(a)(4), SSA; Section 3304(a)(3), FUTA), and credited to Reed Act funds used in the project. Where a reimbursement relates to a particular project within an appropriation involving two or more years of Reed Act allocations, the reimbursement is applied first to the earliest Reed Act allocation used in the project and thereafter to the next earliest in consecutive order. Reimbursed funds may be "reappropriated" by the State legislature for other Reed Act administrative purposes.

I. Unemployment Trust Fund (UTF) Transactions

1. *Withdrawal of Reed Act Funds.* U.S. Treasury requirements and procedures for withdrawal of Reed Act funds from a State's UTF account for payment of benefits and administrative expenses are the same as for regular benefit funds through Treasury's on-line requisition system. To withdraw Reed Act funds which have not been "set aside" in a Reed Act sub-account, the State must include the amount being withdrawn in the total requisition for regular benefits. There is a specific line on the electronic requisition screen for withdrawal of Reed Act funds which have been "set aside" in a Reed Act sub-account. The total amount of administrative Reed Act funds being withdrawn and the account and location of its deposit must be noted in the "special instructions" section of the screen.

2. *Deposit of Reed Act Fund Reimbursements.* As noted in part F.2., grant funds used to reimburse Reed Act expenditures must be returned immediately to the State's UTF account. The following are procedures for deposit of such reimbursements:

- The State agency must prepare a voucher against the administrative fund account in the amount of the reimbursement to be made.
- The "payee designation" must be the State employment security agency, or whatever designation is appropriate to permit deposit to the clearing account.
- After deposit to the clearing account, the reimbursement must be included in the next transfer of funds from the clearing account to the State's UTF account.

The same procedures for depositing reimbursement amounts will be used for returning any Reed Act funds which have been withdrawn for an administrative purpose but not used. (See part D.2.e.)

J. Accounting for Reed Act Funds

1. *Accounting Records.* Each State agency will maintain an accounting system with respect to Reed Act funds which will provide information for required DOL reports. The accounting records will contain:

a. Date and amount of each allocation or transfer of Reed Act funds to the State's UTF account, identified by fiscal year and totalled.

b. Date and amount of each expenditure of Reed Act funds for benefits and the fiscal year in which the funds charged with such expenditure were transferred to the State's account.

c. For each appropriation of Reed Act funds for costs of administration:

- Date of enactment of the appropriation law;
- Amount appropriated by the appropriation law;
- Date and amount of each obligation and expenditure of Reed Act funds with respect to each project authorized by the appropriation law and the Reed Act funds against which each obligation is charged;
- Date and amount of each withdrawal from the UTF account with respect to each project authorized by the appropriation law;
- Date and amount of each return (and credit) to the UTF account of withdrawals not expended;
- Date and amount of all receipts from the sale or other disposition of an employment security building financed with Reed Act funds or the lease of space therein;
- Date and amount of each reimbursement of Reed Act funds by way of amortization with grant funds with respect to each project authorized by the appropriation law; the crediting of each reimbursement to the UTF account, and the balance which remains to be reimbursed (or amortized); and
- Total of funds obligated pursuant to each appropriation, the total unobligated balance of each appropriation, and total charges against Reed Act funds.

d. Control totals for each transaction recorded for each appropriation in c. above.

e. Each entry in the records must be supported by appropriate documentation, and reference to such documentation must be made in the records.

2. *Approval of Vouchers.* Each obligation and voucher for expenditure of Reed Act funds appropriated for expenses of employment security administration must be approved by the administrative head of the State agency or a duly authorized agent. All such documents or certified duplicates or copies thereof will be filed in the administrative office of the State agency.

K. Reed Act Funds Reporting Requirements

All transactions involving Reed Act funds must be reported on Form ETA 8403, *Summary of Financial Transactions—Title IX Funds ("Reed Act" Money)* in accordance with instructions in ET Handbook No. 401, Section III, Chapter 2. Redeposits to and withdrawals from the UTF account are also reported on lines 14 and 41, respectively, of Form ETA 2112, *UI Financial Transaction Summary.* Instructions for Form ETA 2112 are contained in ET Handbook No. 401, Section II, Chapter 1.

L. OMB Approvals

Reporting requirements for Form ETA 8403, *Summary of Financial Transactions—Title IX Funds ("Reed Act" Money)* and Form ETA 2112, *UI Financial Transaction Summary* are approved by the Office of Management and Budget (OMB) under OMB Approval No. 1205–0154 (expiration date: February 28, 2000). OMB Approval is being sought for procedures to request restoration of Reed Act funds used for benefits (part C.5.b.) and procedures to establish and provide on-going maintenance to a Reed Act "sub-account" (part C.4.). When approval is received for these collections, notification will be issued.

Note: States are not required to respond to these collections of information unless a currently valid OMB approval number is in effect.

Attachment II—Draft Language for State Laws

I. Draft Statutory Language

The following language will allow States to use either of the Reed Act appropriation alternatives provided after this draft statutory language.

(f) *Money credited under Section 903 of the Social Security Act.*

(1) Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to Section 903 of the Social Security Act may not be requisitioned from this State's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this State's unemployment compensation law and public employment offices. Such money may be requisitioned pursuant to Section [insert section referring to withdrawals from the Unemployment Trust Fund] for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this State's unemployment compensation law and public employment offices but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purpose(s) for which such money is appropriated and the amount(s) appropriated therefor. Such appropriation is subject to the following conditions:

(A) The period within which such money may be obligated is limited to a period ending not more than two years after the date of the enactment of the appropriation law; and

(B) the amount which may be obligated is limited to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds, (ii) the aggregate of the amounts used by this State pursuant to this Act and charged against the amounts transferred to the account of this State.

(2) For purposes of subsection (1)(B), the amounts obligated under an appropriation for the above-described administrative purposes shall be charged against transferred amounts at the exact time the obligation is entered into.

(3) The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(4) Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the employment security administration fund from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be immediately expended, shall be returned promptly to the account of this State in the Unemployment Trust Fund.

(5) Notwithstanding paragraph (1), moneys credited with respect to Federal fiscal years 1999, 2000, and 2001, shall be used soley for the administration of the UC program and are not subject to appropriation by the legislature.

II. Draft Appropriation Language

Two suggested Reed Act appropriation bills are presented. Either bill may be used with the draft statutory language presented earlier. The first permits States with statutory Reed Act provisions to incorporate the requirements of Section 903(c)(2), SSA, by simply referencing these statutory provisions. This approach may be better for States where the Reed Act appropriation may be contained in a larger appropriation act or where State appropriation law limits the content of any single appropriation bill. The second details the requirements of Section 903(c)(2) and is similar to Reed Act appropriation bills recommended by this Department in the past. Since Reed Act moneys transferred with respect to Federal fiscal years 1999, 2000, and 2001, need not be appropriated by the State legislature, States need not follow this draft language for such moneys.

Alternative 1

AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY [Name of State employment security agency]

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [Name of State]

SEC. 1. There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of $_____, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction] and subject to the requirements of Section [reference section of State code containing Reed Act provisions] of the State Code, for the purpose of acquiring land and erecting a building thereon for the use of [name of State employment security agency] and for such improvements, facilities, paving, landscaping, and fixed equipment[1] as may be required for its proper use and for operation by the [name of State employment security agency].

SEC. 2. Section 1 shall take effect and be in force from and after passage.

Alternative 2

AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY [Name of State employment security agency]

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [Name of State]

SEC. 1. There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of $_____, or so much thereof as may be necessary, to be used, under the direction of the [name of State employment security agency or the agency responsible for building construction], for the purpose of acquiring land and erecting a building thereon for the administration of this State's unemployment compensation law and public employment offices and for such improvement, facilities, paving, landscaping, and fixed equipment[2] as may be required for its proper use and operation.

SEC. 2. No part of the money hereby appropriated may be obligated after the expiration of the 2-year period beginning on the date of the enactment[3] of this act.

SEC. 3. The amount obligated[4] pursuant to this act shall not exceed at any time the amount by which (a) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the account of this State.

SEC. 4. This Act shall take effect and be in force from and after passage.

[FR Doc. 97–31669 Filed 12–2–97; 8:45 am]
BILLING CODE 4510–30–M

[1] "Fixed equipment" refers to such things as a central heating and/or air conditioning plant which becomes an integral part of the building and may be included in the cost of the building reimbursable out of granted funds.

[2] See footnote [1] above.

[3] The Department of Labor recommends that the phrase "date of enactment" be used here, since Section 903(c)(2)(B) of the Social Security Act requires that use of the appropriated money be limited to a 2-year period beginning with such date.

[4] Section 903(c)(2)(D) requires that this limitation be applied to money obligated, even though a State may choose to apply the 2-year limitation to expenditures.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR-97-10]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information regarding the recording of occupational injuries and illnesses has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT:

Stephen Newell, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone (202) 219-6463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 22, 1997 (62 FR 19,621), the Agency announced its intent to request renewal of its current OMB approval for 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents and 1904.17; Annual OSHA Injury and Illness Survey of Ten or More Employers). In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218-0176. The approval expires 12/31/1998. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: November 25, 1997.

Stephen A. Newell,

Director, OSHA Office of Statistics.

[FR Doc. 97-31604 Filed 12-2-97; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

[Docket 70-7001]

Notice of Amendment to Certificate of Compliance GDP-1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: October 6, 1997.

Brief description of amendment: The amendment proposes to revise Technical Safety Requirement (TSR) 2.3.4.7 and TSR 2.4.4.2, Criticality Accident Alarm System (CAAS) for Product and Tails Withdrawal and Cascade Facilities, to provide a cross reference for the Required Actions in order to assure all necessary Required Actions are performed when the C-310 CAAS is inoperable.

Basis for finding of no significance: 1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed changes are related to human factors and do not change any requirements. There are no associated effluent releases. Thus, they will not affect any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes do not change or add any new requirements. The changes provide a cross reference between TSRs to ensure all required actions are performed when necessary. The changes do not relate to controls used to minimize occupational radiation exposures; therefore, the changes will not increase exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed changes are administrative and serve only to relate the components of the CAAS in C-310. The changes do not change the current TSRs, only link separate sections more clearly. Therefore, the proposed changes do not represent an increase in the potential for, or radiological or chemical consequences from, previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed changes to the TSRs do not add or change any TSR requirements. Therefore, the changes would not create new operating conditions or new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes attempt to rectify the situation in which an operator could overlook the linkage between the two TSRs that both contain required actions related to the CAAS. By including a cross reference, the changes try to ensure all required actions are performed. These changes do not decrease the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP-1 becomes effective 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP-1: The Amendment will provide cross references for two Technical Safety Requirements for the Criticality Accident Alarm System in Building C-310.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 25th day of November 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-31731 Filed 12-2-97; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 97th meeting on December 16-18, 1997, in Room T-2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, December 16, 1997—8:30 A.M. until 6:00 P.M.

Wednesday, December 17, 1997—8:30 A.M. until 6:00 P.M.

Thursday, December 18, 1997—8:30 A.M. until 4:00 P.M.

A. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss developments at the Yucca Mountain project, resources, rules under development, a pilot program for regulating certain Department of Energy facilities, and other items of mutual interest.

B. *HLW Issue Resolution Status Reports and Acceptance Criteria*—The NRC staff will update the Committee on the progress of staff reviews related to the high-level waste key technical issues.

C. *Meet with the Commission*—The Committee will prepare for and meet with the Commission on items of mutual interest. These issues will include: ACNW priorities for FY 98, performance assessment capability in the NRC high-level radioactive waste program, application of probabilistic risk assessment methods to performance assessment in the NRC high-level waste program, and the implementation of the defense-in-depth concept in the revised 10 CFR Part 60. The meeting is currently scheduled for December 18, 1997 from 10:00 a.m. until 11:30 a.m.

D. *Low-Levels of Ionizing Radiation*—The Committee will review the latest developments in the biological effects of low-levels of ionizing radiation with members of the NRC staff and other interested individuals.

E. *Yucca Mountain Site Characterization*—The Committee will discuss site characterization activities at the Yucca Mountain site with a representative of the Department of Energy.

F. *10 CFR Part 61, Licensing Requirements For Land Disposal of Radioactive Waste*—The Committee's staff will present a short tutorial on the Commission's low-level waste regulations to the Committee.

G. *Preparation of ACNW Reports*—The Committee will discuss planned reports, including comments on ACNW priorities and strategic planning, and other topics discussed during the meeting as the need arises.

H. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion

picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

The ACNW meeting dates for Calendar Year 1998 are provided below:

ACNW meeting No.	1998 ACNW meeting date
.....	No Meeting in January.
98	February 24–26, 1998.
99	March 24–26, 1998.
100	April 21–23, 1998.
.....	No Meeting in May
101	June 10–12, 1998.
102	July 21–23, 1998.
.....	No Meeting in August.
103	September 22–24, 1998 (Las Vegas, NV).
104	October 20–22, 1998.
.....	No Meeting in November.
105	December 15–17, 1998.

Dated: November 26, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–31730 Filed 12–2–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 7, 1997, through November 20, 1997. The last biweekly notice was published on November 19, 1997 (62 FR 61836).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 2, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 6, 1997.

Description of amendments request: The proposed amendments change the Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP) Units 1 and 2 to allow three 18-month diesel generator (DG) surveillance requirements (SR) to be performed during both plant operation (Operational Conditions 1 and 2) and shutdown (Operational Conditions 3, 4, and 5) rather than, as currently required, only during shutdown. The first SR is an inspection of the DG involving a partial disassembly. The second ensures that non-critical DG protective functions are bypassed on an Emergency Core Cooling system actuation signal. The third verifies that the DG operates for greater than or equal to 60 minutes while loaded to at least 3500 kw, which bounds the maximum expected post-accident diesel generator loading. The proposed amendments additionally remove an expired footnote from the BSEP Unit 2 DG TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.92 provides standards for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Carolina Power & Light Company has reviewed these proposed license amendment requests and has concluded that their adoption would not involve a significant hazards consideration. The basis for this determination follows.

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendments add a footnote to SR 4.8.1.1.2.d to allow performance of SR 4.8.1.1.2.d.1, SR 4.8.1.1.2.d.4, and SR 4.8.1.1.2.d.5 in OPERATIONAL CONDITION 1, 2, 3, 4, or 5 rather than only during shutdown. The footnote requires the unit to be in OPERATIONAL CONDITION 3, 4, or 5 when performing SR 4.8.1.1.2.d.2, SR 4.8.1.1.2.d.3, SR 4.8.1.1.2.d.6, and SR 4.8.1.1.2.d.7 for its associated diesel generators. No such limitation is placed on SR 4.8.1.1.2.d.1, SR 4.8.1.1.2.d.4, or SR 4.8.1.1.2.d.5.

There is no relaxation of any limiting condition for operation (LCO) and no decrease in surveillance requirements as a result of the proposed amendments. As such, the proposed license amendments will not affect the ability of the diesel generators to perform their intended safety function. Performance of SR 4.8.1.1.2.d.1, SR 4.8.1.1.2.d.4, and

SR 4.8.1.1.2.d.5, during power operations, will not adversely affect overall nuclear safety. Diesel generator capacity is such that any three of the four diesel generators can supply the required loads for the safe shutdown of one unit and a design basis accident on the other unit without relying on offsite power. The diesel generator is not tied to the emergency bus (E bus) during performance of SR 4.8.1.1.2.d.1 or SR 4.8.1.1.2.d.4, Therefore, performance of SR 4.8.1.1.2.d.1 and SR 4.8.1.1.2.d.4, during power operation, will not affect the operability of any other safety-related systems nor will it create any perturbations of the electrical distribution system that could challenge plant operation.

Performance of SR 4.8.1.1.2.d.5, during power operation, will not adversely affect overall nuclear safety. SR 4.8.1.1.2.d.5 is performed in a similar manner to SR 4.8.1.1.2.a.5, which requires that, at least once per 31 days on a staggered test basis, a diesel generator be synchronized to the E bus and loaded to 1750 kw for 15 minutes. The critical portions of these surveillances are when the diesel generators are being synchronized to the E bus or disconnected from the E Bus. As such, performance of SR 4.8.1.1.2.d.5 during power operation does not create an additional opportunity of a perturbation of the electrical distribution system that could challenge plant operation than currently exists as a result of the performance of SR 4.8.1.1.2.a.5. The existing design of the electrical distribution system ensures that a grid problem will not result in failure of a diesel generator when it is synchronized to the E bus. The E buses are normally supplied by offsite power, via a 4160 V balance of plant (BOP) bus, through a master/slave breaker combination. When performing SR 4.8.1.1.2.d.5, the diesel generator is started in manual mode and synchronized to the E bus. With a diesel generator synchronized to the E bus, the diesel generator is protected from a potential overload condition. Class 1E protective relaying, at the E bus, is aligned to the trip circuit of the slave breaker to protect the diesel from an overload condition should the normal source of power be lost. These relays sense E bus voltage, E bus frequency, and directional power from the E bus to the BOP bus. Actuation of any of these relays, with the diesel in manual, will trip the slave and master breakers to separate the diesel generator from the BOP bus. This separates the diesel generator from the potential overload condition. In addition, either a loss of offsite power or loss of coolant accident results in the diesel generator output breaker opening, E bus loads stripping, and the diesel generator reverting to automatic mode. This allows the diesel generator to tie back to the E bus and carry the E bus loads.

The proposed license amendments reflect the clarification, previously made to Bases Section 3/4.8, "Electrical Power Sources," in SR 4.8.1.1.2.d itself. Accordingly, SR 4.8.1.1.2.d.2, SR 4.8.1.1.2.d.3, SR 4.8.1.1.2.d.6, and SR 4.8.1.1.2.d.7 are performed for diesel generator 1 or 2 with BSEP, Unit No. 1 in OPERATIONAL CONDITION 3, 4, or 5 and for diesel generator 3 or 4 with BSEP, Unit No. 2 in OPERATIONAL CONDITION 3, 4, or 5. Defining the term "during shutdown" as "OPERATIONAL CONDITION 3, 4, or 5" is consistent with the current TS requirements of SR 4.8.1.1.2.d. TS Table 1.2, "OPERATIONAL CONDITIONS," defines five OPERATIONAL CONDITIONS for the BSEP. There are two OPERATIONAL CONDITIONS applicable to power operation with the unit critical (i.e., POWER OPERATION and STARTUP) and three OPERATIONAL CONDITIONS applicable to a subcritical, shutdown unit (i.e., HOT SHUTDOWN, COLD SHUTDOWN, and REFUELING). Therefore, "during shutdown" and "in OPERATIONAL CONDITION 3, 4, or 5" have equivalent meaning.

Eliminating the expired BSEP, Unit No. 2 footnote to SR 4.8.1.1.2.d.1 is an administrative change and, therefore, cannot increase the probability or consequences of an accident previously evaluated.

Based on the above, the proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license amendments to allow performance of SR 4.8.1.1.2.d.1, SR 4.8.1.1.2.d.4, and SR 4.8.1.1.2.d.5 in OPERATIONAL CONDITION 1, 2, 3, 4, or 5, rather than only during shutdown, do not affect the operation or response of any plant equipment, including the diesel generators, or introduce any new failure mechanism. Plant systems and equipment will continue to respond in accordance with design and as analyzed. There will not be a malfunction of a new or different type introduced by the proposed license amendments.

The proposed license amendments reflect the clarification, previously made to Bases Section 3/4.8, in SR 4.8.1.1.2.d itself. Accordingly, SR 4.8.1.1.2.d.2, SR 4.8.1.1.2.d.3, SR 4.8.1.1.2.d.6, and SR 4.8.1.1.2.d.7 are performed for diesel generator 1 or 2 with BSEP, Unit No. 1 in OPERATIONAL CONDITION 3, 4, or 5 and for diesel generator 3 or 4 with BSEP, Unit No. 2 in OPERATIONAL CONDITION 3, 4, or 5. Defining the term "during shutdown" as "OPERATIONAL CONDITION 3, 4, or 5" is consistent with the current TS requirements of SR 4.8.1.1.2.d. TS Table 1.2, "OPERATIONAL CONDITIONS," defines five OPERATIONAL CONDITIONS for the BSEP. There are two OPERATIONAL CONDITIONS applicable to power operation with the unit critical (i.e., POWER OPERATION and STARTUP) and three OPERATIONAL CONDITIONS applicable to a subcritical, shutdown unit (i.e., HOT SHUTDOWN, COLD SHUTDOWN, and REFUELING). Therefore, "during shutdown" and "in OPERATIONAL CONDITION 3, 4, or 5" have equivalent meaning.

Eliminating the expired BSEP, Unit No. 2 footnote to SR 4.8.1.1.2.d.1 is an administrative change and, therefore, cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

Based on the above, the proposed license amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

Bases Section 3/4.8, "Electrical Power Systems," states that the operability of the alternating current (ac) and direct current power sources and associated distribution systems during operation ensures that sufficient power will be available to supply the safety-related equipment required for the safe shutdown of the facility and the mitigation and control of accident conditions within the facility. Diesel generator capacity is such that any three of the four diesel generators can supply the required loads for the safe shutdown of one unit and a design basis accident on the other unit without relying on offsite power. Performance of SR 4.8.1.1.2.d.1, SR 4.8.1.1.2.d.4, and SR 4.8.1.1.2.d.5 during power operation will not affect the operability of any other safety-related systems, nor will it create any perturbations of the electrical distribution system that could challenge plant operation. Class 1E protective relaying, at the E bus, protects the diesel from an overload condition should the normal source of power be lost while performing SR 4.8.1.1.2.d.5. There is no relaxation of any LCO as a result of the proposed license amendments. If an additional ac power source becomes inoperable during the performance of SR 4.8.1.1.2.d.1, SR 4.8.1.1.2.d.4, and SR 4.8.1.1.2.d.5, the units will be placed in the appropriate OPERATIONAL CONDITION in accordance with TS 3.8.1.1, "A.C. Sources Operating." Therefore, the diesel generators' ability to perform their intended safety function, as described in Section 8.3.1.1.6.1 of the BSEP Updated Final Safety Analysis Report, is not adversely affected by the proposed license amendments.

The proposed license amendments are consistent with the guidance of Generic Letter 91–04, "Changes In Technical Specification Surveillance Intervals To Accommodate A 24-Month Fuel Cycle," which concludes that TSs need not restrict surveillances to only being performed during shutdown provided that performance of the surveillance during power operations does not adversely affect safety.

The proposed license amendments reflect the clarification, previously made to Bases Section 3/4.8, in SR 4.8.1.1.2.d itself. Accordingly, SR 4.8.1.1.2.d.2, SR 4.8.1.1.2.d.3, SR 4.8.1.1.2.d.6, and SR 4.8.1.1.2.d.7 are performed for diesel generator 1 or 2 with BSEP, Unit No. 1 in OPERATIONAL CONDITION 3, 4, or 5 and for diesel generator 3 or 4 with BSEP, Unit No. 2 in OPERATIONAL CONDITION 3, 4, or 5. Defining the term "during shutdown" as "OPERATIONAL CONDITION 3, 4, or 5" is consistent with the current TS requirements of SR 4.8.1.1.2.d. TS Table 1.2, "OPERATIONAL CONDITIONS," defines five OPERATIONAL CONDITIONS for the BSEP. There are two OPERATIONAL CONDITIONS applicable to power operation with the unit critical (i.e., POWER OPERATION and STARTUP) and three OPERATIONAL CONDITIONS applicable to a subcritical, shutdown unit (i.e., HOT SHUTDOWN, COLD SHUTDOWN, and REFUELING). Therefore, "during shutdown" and "in OPERATIONAL CONDITION 3, 4, or 5" have equivalent meaning.

Eliminating the expired BSEP, Unit No. 2 footnote to SR 4.8.1.1.2.d.1 is an administrative change and, therefore, cannot involve a significant reduction in a margin of safety.

Based on the above, the proposed license amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: James E. Lyons.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 6, 1997.

Description of amendments request: The proposed amendments to Technical Specification (TS) Limiting Conditions for Operation (LCO) 3.3.5.5, Instrumentation for Control Room Emergency Ventilation System (CREVS) and 3.7.2, Control Room Emergency Ventilation System, and associated Bases for the Brunswick Steam Electric Plant (BSEP) Units 1 and 2 would be limited in duration (approximately 3 months) and would allow operation of both BSEP units to continue while upgrades to the control building ventilation system, including new air conditioning (AC) units, are being installed. Part of the planned work requires opening the ductwork at the evaporative (i.e. cooling) coils. Temporary barriers will be constructed to preserve the leakage integrity of the control room pressure boundary; however, the temporary barriers will not be seismically qualified. While the permanent AC units are out of service, temporary AC units will be utilized. During the upgrade installation, the AC for the control room will not be protected from certain external events (e.g., seismic events, environmental hazards such as tornadoes and hurricanes, radiological sabotage, and missile hazards), as required by the system design and licensing basis, and will not fully meet single failure criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any component of any of the barriers to radiation release, any of the systems which protect the core from overheating, nor any system used to shut down the reactor. The proposed changes do not affect any of the chlorination system piping or the tank car, which would be the initiating components of a chlorine release event. The proposed changes affect the CREVS and CREVS instrumentation, neither of which are accident or event causing systems. Therefore, the proposed changes do not increase the probability of an accident or toxic gas release previously analyzed in the Updated Final Safety Analysis Report (FSAR).

The proposed changes do not affect the ability of the CREVS to mitigate the consequences of a design basis accident or event involving a release of radioactive material. In addition, the proposed changes do not significantly affect the ability of the system to mitigate the consequences of a toxic gas release. The following measures will be taken to minimize the consequences of accidents and events:

Temporary isolation barriers will be constructed to provide integrity of the duct during design basis radiation release events. These temporary barriers will ensure that 10 CFR Part 50, General Design Criterion 19 for Control Room operator doses is met for all design basis radiation release accidents.

During the time that the temporary barrier is used, the chlorine tank car will be removed from the exclusion area. Analyses have shown that with the chlorine tank car outside of the exclusion area, there is no threat to Control Room habitability. Removal of the chlorine tank car from the exclusion area is the current Technical Specification requirement for inoperability of the Control Room chlorine isolation mode.

The temporary condensing units for the Control Room Air Conditioning system will be installed to high quality standards, and a spare condensing unit will be provided such that two units can be maintained functional. These units will each be powered from a separate division of Class 1E power. The operation of the units will be monitored to ensure that they are in good operating order.

If two or more of the condensing units should fail, instructions have been provided to the operators for increased monitoring of temperatures, and mitigating actions are available to the operators if temperatures rise above a predetermined limit.

Therefore, the consequences of an accident or an event involving a release

of radiation, toxic gas, or smoke will not be significantly increased. In addition, the change will not significantly affect the consequences of a seismic event or other severe natural phenomena, as previously analyzed in the Updated FSAR.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve adjustments to the LCO requirements for CREVS relative to protection from severe natural phenomena. The proposed changes do not introduce any new modes of plant operation. The proposed changes do not involve any new modes of system operation, except that temporary condensing units will be used in place of the permanent condensing units. The temporary condensing units will interface with the permanent Control Building Heating Ventilation and Air Conditioning system in a similar manner to the permanent system. The piping connections to the permanent system will be the same, and the controls interface will be the same. No new cross-ties will be created and no new piping will be run though the habitability boundary. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The proposed changes do not represent a significant change in the assumptions and inputs to the analyses for Control Room operator doses. No increase in the doses to the Control Room operators is expected after a seismic event or tornado, since the integrity of existing barriers to release of radioactive material are not affected. Therefore, this change does not result in a significant reduction in the margin of safety for a radiological event.

The proposed change does not represent a change to the leakage criteria for the Control Room, or the Control Room ventilation ductwork, following either a toxic gas or external smoke event. The bounding analysis remains valid, unless the failure is caused by a tornado or seismic event. Due to the low probability of such an event occurring during the short time frame involved in this modification, the occurrence of such an event is not of significant concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: James E. Lyons.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Nuclear Plant, Charlevoix County, Michigan

Date of amendment request: September 19, 1997 (Accession No. 9709240373).

Description of amendment request: The amendment request propose changes to the Facility Operating License and technical specifications (TS) to reflect the permanent cessation of power operations and permanent transfer of nuclear reactor fuel to the spent fuel pool (SFP). In particular, Consumers Energy requests to change: safety limits; limiting safety system settings; limiting control system settings; limiting conditions for operation; surveillance requirements; design features; and administrative controls. On November 12, 1997, Consumers Energy provided supplemental information regarding their no significant hazards determination, as requested by NRC request for additional information letter dated October 12, 1997. By letters dated June 26 and September 23, 1997, the licensee certified permanent cessation of power operations and permanent removal of all fuel from the reactor, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change provides the applicable requirements to assure safe storage of spent nuclear fuel during decommissioning following the permanent cessation of power operations at the Big Rock Point Nuclear Plant (BRP) on August 30, 1997 [see Consumers Energy letter to NRC dated June 26, 1997] and permanent removal of all fuel from the reactor vessel on September 20, 1997 [see Consumer Energy letter to NRC dated September 23, 1997]. Decommissioning activities conducted using these controls do not present undue risk to the public, and do not impact common defense and security. As such, these changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No accidents previously evaluated in the Updated Final Hazards Summary Report (UFHSR) will have their probability of occurrence increased because the proposed controls effectively preclude the occurrence of criticality, fuel temperature exceeding limits, or fuel handling accidents. The probability of plant accidents associated with power operations have been significantly reduced. Accidents associated with spent fuel handling, including cask and single bundle drop and spent fuel cooling capability loss events, are still pertinent and were reviewed using new data on pool inventory and revised 10 CFR 20 radiological limit determinations. The probability of occurrence of accidents associated with storing 441 spent fuel assemblies in the SFP (current license limit) have not been affected by the changes in the proposed TSs.

The consequences of a fuel handling and cask drop accidents were evaluated based on the removal of all fuel from the reactor and loading spent nuclear fuel in the SFP. The removal of all fuel from the reactor vessel to storage in the SFP and the subsequent decay of the fuel in the pool result in no increase in the probability of these accidents and continuously reduced consequences from these accidents.

Analyses using the techniques in Branch Technical Position APCSB 9–2 provide the heat rate from a freshly-removed full core off-load in the SFP whose racks are filled with a total of 441 fuel assemblies as the most limiting cooling condition. Existing cooling equipment under the current TSs provide sufficient cooling to preclude spent fuel pool temperatures reaching 150 degrees-Fahrenheit with a complete loss of spent fuel cooling for 72 hours. This precludes entry into an unanalyzed condition for the SFP and provides 3 days to recover cooling flow of "approximately 30" gallons per minute. Since this specification change is intended for implementation following 93 days after shutdown (approximately November 30, 1997), this analysis justifies the allowance of 24 hours to re-establish cooling flow provided in specification 3.1.2.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The permanent cessation of power operation and removal of fuel from the reactor eliminates the possibility of the following categories of accidents and transients to create a hazard to the health and safety of the public: increase in heat removal by the secondary system; increase in reactor coolant inventory; decrease in heat removal by the secondary system; decrease in reactor coolant inventory; reactivity and power distribution anomalies; anticipated transient without scram; and, single loop operation. These revised TSs, in combination with requirements in the UFHSR, provide assurance that fuel handling and spent fuel cask drop accident, which represent the remaining specific pertinent accidents analyzed in the "radioactive release from a subsystem of component" category, will not occur. Because the revised TSs related to fuel handling, spent nuclear fuel storage, and handling of the spent fuel cask satisfy current license and UFHSR requirements, no new accidents are created.

3. Involve a significant reduction in a margin of safety.

The safety margins for analyzed accidents are maintained because the containment structures and redundant control established by the plant remain in place until the decay of spent fuel has reduced the source term to levels that analysis confirms do not require the containment features. ninety three days after permanent cessation of operations, the spent nuclear fuel at BRP will have decayed to the point where the added margin from this decay more than compensates for the removal of the containment as a safety feature, and allows relaxed controls for the cooling of the SFP.

The Big Rock Point Plant Safety Committee has reviewed this Facility Operating License and TS change request and has determined this change does not involve an unreviewed safety question and, therefore, involves no significant hazards consideration. The proposed change has been reviewed by the BRP Nuclear Performance Assessment Department.

The NRC staff has reviewed the licensee's analysis, as provided by licensee letters dated September 19 and November 12, 1997, and, based on this review, it appears that the three standards or 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room: North Central Michigan College, 1515 Howard Street, Petosky, MI 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Seymour H. Weiss.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 11, 1993; supplemented August 26, November 29, December 6, 1993, October 3, 1995, February 27, and September 3, 1997 (TSC 93–03).

Description of amendment request: The proposed changes would replace the present Electrical Power Systems section of the Technical Specifications, Sections 3.7 and 4.6, by consolidating and rearranging the present specifications, incorporating new specifications, and formating the section similar to the Babcock and Wilcox Standard Technical Specifications. The proposed changes would address such concerns as Keowee hydro station operability, Lee gas turbine operability, overhead and underground emergency power path operability, Keowee and Keowee main step-up transformer outage requirements, surveillance requirements of various components and systems, Oconee distribution system requirements, protective instrumentation system requirements, operability of 125 VDC Vital Instrument and Control power and limiting condition for operation, inverter requirements, Oconee shutdown requirements related to various components, Keowee unit extended outage, dc power operability requirements, battery cell parameter requirements, and various editorial and related Bases changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

Duke Power Company (Duke) [currently Duke Energy Corporation] has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the changes proposed within this amendment request. Changes included in this amendment request are provided to assure availability of electrical power systems for mitigation of Design Basis Accidents (DBAs). As described within the technical justification, the following types of changes are included:

(1) Editorial and administrative changes associated with reformatting the Technical Specification requirements;

(2) Additional restrictions not presently included in the Technical Specifications such as the addition of requirements for electrical power systems during cold shutdown and refueling, for the 230 kV switchyard degraded grid protection system and to delete the special inoperability period for the Keowee CX transformer;

(3) Technical changes to current requirements to provide clarity and operational flexibility. These changes maintain the ability of the electrical power systems to mitigate the consequences of DBAs without a significant reduction in availability. These changes include the definition of emergency power paths to include the associated DC sources and auxiliary transformers, the combination of special inoperability periods for "planned" and "unplanned" reasons, and the ability to use the Keowee special inoperability period more than once in a three year period; and

(4) Relocation of requirements which are unnecessary for the mitigation of DBAs to licensee controlled documents. Relocated requirements include surveillance requirements for the External Grid Trouble Protection system.

Based on the above and the technical justification * * *, there is no significant increase in the probability of DBA as a result of this change, nor is there a significant increase in the consequences of a DBA as a result of this change since the proposed amendment assures availability of electrical power systems.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed changes make no physical changes to the plant configuration and do not adversely affect the performance of any equipment. Operation of ONS [Oconee Nuclear Station] in accordance with these Technical Specifications will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

Margins of safety associated with these Technical Specifications have been evaluated. These changes include editorial and administrative changes associated with reformatting the Technical Specification requirements, additional restrictions not presently included in the Technical Specifications, technical changes to current requirements which maintain the ability of the electrical power systems to mitigate the consequences of DBAs, and relocation of requirements which are unnecessary for the mitigation of DBAs to licensee controlled documents. The design basis of auxiliary electrical systems is to supply the required ES [emergency system] loads of one Unit and safe shutdown loads of the other two units. The proposed amendment does not affect any safety limits, setpoints, or design parameters and assures the continued availability of electrical power systems; thus preserving the existing margin of safety. Therefore, there will be no significant reduction in any margin of safety.

Duke has concluded based on the above, and the technical justification * * * that there are no significant hazards considerations involved in this amendment request.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: November 4, 1997.

Description of amendment request: The proposed amendment would change Item 6.a.2, "4.16 Emergency Bus (Start Diesel)," of Table 3.3–4 of Technical Specification 3.3.2.1. The proposed change would reduce the trip setpoint for starting the emergency diesel generators on emergency bus undervoltage from a trip setpoint of greater than or equal to 83 percent with a 12-cycle delay time to greater than or equal to 75 percent of nominal bus voltage with a time delay of less than 0.9 second including auxiliary relay times. The proposed change would also reduce the allowable value from greater than or equal to 81 percent of nominal bus voltage to greater than or equal to 74 percent of nominal bus voltage with a time delay of less than 0.9 second including auxiliary relay times.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change replaces the current Engineered Safety Feature setpoint, allowable value and delay time for the diesel generator start on loss of power function. An analysis has been performed to develop the new values to minimize the diesel generator starts when a Reactor Coolant Pump (RCP) is being started or a fast bus transfer occurs. The heat generated by an increase in motor current, in response to reduced voltage, will be less than the heat generated during motor starting. The analysis results show that bus voltages may dip below the allowable setpoint value and then recover to the pick-up setpoint within the proposed delay time without stalling motors.

The proposed change does not affect the design and reliability of any plant equipment; therefore, the probability of occurrence of a previously evaluated accident is not increased. The operation of the plant will not be changed as a result of this proposed amendment, except that fewer diesel generator starts will be initiated.

This function anticipates the loss of voltage to protect equipment connected to the 4.16 Kv emergency bus. The UFSAR [Updated Final Safety Analysis Report] accident analyses do not take credit for this function; therefore, the consequences of an accident previously evaluated is not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the trip setpoint, allowable value and delay time will continue to ensure that the safety-related equipment connected to the emergency bus is adequately protected from a low voltage condition. These setting changes will minimize the diesel generator starts due to voltage drops when an RCP is started or a fast bus transfer occurs.

The new setpoint and time delay allow normal voltage drops to occur during expected plant operations without causing any thermal damage to safety-related equipment. The performance of the safety system will remain unchanged and will not alter any plant equipment, performance requirements or safety analysis. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in a margin of safety since an analysis has been performed to verify that safety-related equipment connected to the emergency bus is adequately protected from a low voltage condition with the proposed settings. The proposed changes do not affect the UFSAR design bases, accident assumptions, or technical specification bases. In addition, the proposed changes do not affect release limits, monitoring equipment or plant operating practices. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Entergy Operations, Inc., et al., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 28, 1997.

Description of amendment request: The amendment would (1) revise the frequency of conducting five Surveillance Requirements (SRs) and (2) add a 10 CFR Part 50, Appendix J Testing Program for Primary Containment Systems in the Technical Specifications (TSs) for Grand Gulf Nuclear Station, Unit 1 (GGNS). The five SRs are the following: SR 3.6.1.1.1 for primary containment, SR 3.6.1.2.1 for primary containment air locks, and SRs 3.6.1.3.5, 3.6.1.3.8, and 3.6.1.3.9 for primary containment isolation valves. The proposed revisions for each of the five SRs are to delete the references to SR 3.0.2 not being applicable and change the surveillance frequency from being "in accordance with 10 CFR 50, Appendix J, as modified by approved exemptions" to "in accordance with 10 CFR Part 50, Appendix J, testing program." The testing program would be added to Section 5.0, Administrative Controls, of the TSs. Changes to the Bases of the TSs were also provided in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

[On April 26, 1995, the licensee was granted an exemption to Appendix J of 10 CFR Part 50 that allowed performance-based containment leak rate testing. This exemption will expire on the startup from Refueling Outage 9, currently scheduled for the spring of 1998. The licensee's proposed changes to the TSs are to adopt Option B, Performance-Based Requirements, that is now in Appendix J, but was not in Appendix J in 1995 when the exemption was granted. The technical findings that support the rulemaking for Option B are in NUREG–1493, "Performance-Based Containment Leak Rate Test Program," dated September 1995. The licensee stated in its submittal that its current containment leak rate testing program meets the requirements of Option B.]

Two initiating events were identified which could be affected by the proposed changes [in the submittal of October 28, 1997]. An interfacing system LOCA [(loss-of-coolant accident)] could be caused by significant leakage of both normally closed isolation valves in systems with high pressure/low pressure interfaces. Interfacing systems LOCAs were considered for the LPCI, LPCS, HPCS, and RCIC systems [(i.e., low pressure coolant injection, low pressure core spray, high pressure core spray, and reactor core isolation cooling)]. Because the frequency for testing of these valves will not be changed under this proposal, there is no increase in the probability or consequences of an accident [previously evaluated].

The second event evaluated was a LOCA outside containment. In this case the probability for failure of the MSIVs [(main steam isolation valves)] and the feedwater isolation valves were calculated and combined with the frequency of a pipe break outside containment and the conditional probability of a core melt given a LOCA. The increase in core damage is extremely small and therefore does not significantly increase the probability of any previously evaluated accident. Further, because the testing frequency for MSIVs and feedwater isolation valves are not being changed, the LOCA outside containment events can be discounted.

Failure of, or leakage through[,] a containment barrier can[,] however, increase the consequences of those accidents previously evaluated. Because the leakage probability for two valves in series to fail is very small and because all lines isolated by a single containment isolation valve always have a water seal and cannot act as a release pathway unless the integrity of the connected system is compromised, there is no significant increase in the consequences of any previously evaluated accident.

Containment bypass can also increase the consequences of [previously] evaluated accidents. Accident sequences involving containment have been shown to be relatively insignificant by the GGNS IPE [(Individual Plant Examination)]. The potential for [containment] bypass was analyzed. The analysis showed that the probabilities for bypass were dominated by failure to close scenarios. Many programs are in place at GGNS to monitor containment component performance[,] and to ensure that proper maintenance and repairs are made during the service life of the containment. Other routine surveillances are performed periodically to ensure that the valves will close on demand. In fact, all valves that are required to close for containment isolation and that are not maintained closed at all times during power operations are stroke tested quarterly or[,] at a minimum, during each refueling outage in accordance with ASME [(American Society of Mechanical Engineers) Boiler and Pressure Vessel Code,] Section XI, Subsection IWV.

[Based on the above, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.]

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The request involves the reduction in the local leak rate and the integrated leak rate testing frequencies [in accordance with Option B of Appendix J to 10 CFR Part 50]. Extending the test frequencies has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. The method of performing the test is not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change.

[Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

III. The proposed change does not involve a significant reduction in a margin of safety.

The only margin of safety that has the potential of being impacted by the proposed changes involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to La which is defined by the GGNS TSs to be 0.437 percent by weight of the containment air [volume] per 24 hours at [the containment pressure of] 11.5 psig (Pa). The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (11.5 psig, Pa).

To provide additional conservatism, the measured overall integrated leakage rate is further limited to less than or equal to 0.75 La during performance of the periodic integrated leakage rate test and to less than or equal to 0.60 La for type B and C leakage rate tests [of Appendix J]. This is done to account for the possible degradation of the containment leakage barriers between [the Appendix J] tests. This acceptance criteria ensures that an acceptable margin of safety is being maintained and will not be altered by the proposed changes. The preservation of this margin will continue to provide for potential degradation of the leakage barriers between tests.

No change in the method of testing is being proposed. The tests will continue to be done at full pressure (Pa) or greater [pressure]. The test pressure for primary containment isolation valves will continue to be applied in the same direction as would be required for the valve to perform its safety function (unless a different direction can be shown to be equivalent or conservative). Primary containment penetrations

which require Type B leakage rate tests will be performed in the same manner as before. The Type A test [of Appendix J] will continue to be performed at full pressure (Pa). Other programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment[,] and systems and components penetrating the primary containment.

No change in the owners allowable leakage rate is being proposed. These conservative leakage rates ensure that[,] if every penetration were at its maximum allowable leakage rate, the total containment leakage would still be below 0.60 La. The effect of multiple penetration barriers is not considered which provides further conservatism.

The assessment of risk analysis for the proposed changes concluded that the overall risk impact of the changes are neutral and essentially negligible. Any containment isolation barrier allowed to be tested at less frequent intervals [through performance-based testing of proposed Option B of Appendix J] will have demonstrated enhanced performance which minimizes the potential for increased leakage. The assessment further shows that there is reasonable assurance that an acceptable level of performance for the containment isolation function can be maintained. The overall risk impact for the proposed changes are small enough to be almost indeterminate. No change to the leakage rate specified in the TSs is being proposed.

[The proposed changes to the TSs are in accordance with Option B of Appendix J of 10 CFR Part 50.]

[Therefore, the proposed changes do not involve a significant reduction in a margin of safety.]

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Project Director: David A. Wigginton, Acting.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee, Atomic Power Station, Lincoln County, Maine

Date of amendment request: September 30, 1997.

Description of amendment request: The proposed amendment would eliminate certain license conditions of the Maine Yankee operating license that are no longer appropriate in the permanently defueled condition of the plant. These conditions include restrictions on the Fire Protection Program and implementation of leakage reduction, airborne iodine monitoring, secondary water chemistry, and cooling water discharge monitoring programs. By letter dated August 7, 1997, the licensee certified permanent cessation of power operations and permanent removal of fuel from the reactor vessel. Most of the provisions of the Maine Yankee operating license were established to ensure protection of the public health and safety during power operations. Maine Yankee has proposed to eliminate those license requirements that are not relevant to the permanently defueled plant condition to allow the Maine Yankee staff to focus on those provisions which are still appropriate during decommissioning.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The purpose of the proposed change is to eliminate requirements which are not appropriate in the permanently defueled plant condition. Since the plant has permanently ceased operation and will be maintained in a defueled condition, many provisions of the license related to operation of the plant are no longer appropriate. Elimination of these unnecessary requirements allows the plant staff to focus on those requirements which continue to be appropriate to the existing plant condition. The proposed change does not affect those Chapter 14 accidents which are appropriate to the current plant conditions: fuel handling accident, spent fuel cask drop, and radioactive liquid waste system leaks and failures, and therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of this proposed change is to eliminate requirements which are not appropriate in the permanently defueled plant condition. Since the plant has permanently ceased operation and will be maintained in a defueled condition, many provisions of the license related to operation of the plant are no longer appropriate. Elimination of these unnecessary requirements allows the plant staff to focus on those requirements which continue to be appropriate to the existing plant conditions. This proposed change does not affect storage of spent fuel and, therefore, does not create the possibility of a new or different accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The purpose of the proposed change is to eliminate requirements which are not appropriate in the permanently defueled plant condition. Since the plant has permanently ceased operation and will be maintained in a defueled condition, many provisions of the license related to operation of the plant are no longer appropriate. Elimination of these unnecessary requirements allows the plant staff to focus on those requirements which continue to be appropriate to the existing plant conditions. This proposed change does not affect storage of spent fuel and, therefore, does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, P.O. Box 408, Wiscasset, ME 04578.

NRC Project Director: Seymour H. Weiss.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: October 20, 1997.

Description of amendment request: The proposed amendment would replace in their entirety the existing Technical Specifications incorporated in Facility Operating License No. DPR–36 as Appendix A. Maine Yankee developed the revised Technical Specifications, titled Permanently Defueled Technical Specifications, to reflect the permanently shutdown and defueled status of the plant. Changes are proposed to the definitions, limiting conditions for operation, surveillance, and administrative control sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). A summary of the licensee's review is presented below:

The proposed change does not,

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

This proposed change is consistent with the improved Standard Technical Specifications. The relocation of requirements from the technical specifications to the licensee controlled documents is consistent with the criteria set forth in 10 CFR 50.36 for the content of technical specifications. The removal of definitions, generic LCO actions and generic surveillance requirements has no impact on facility structures or equipment or the methods of operation of such structures or equipment. The deletion of design features and safety limits not applicable to the permanently shutdown and defueled status of the Maine Yankee reactor has no impact on the remaining applicable design basis accidents. The removal of LCO and Surveillance specifications which are related only to the operation of the nuclear reactor or only to the prevention, diagnosis or mitigation of transients or accidents primarily involving the reactor, do not affect the remaining applicable accidents previously evaluated. The critical safety functions involving core reactivity control, reactor heat removal, reactor coolant system inventory control and containment integrity are no longer necessary at the Maine Yankee facility. The postulated accidents involving damage to the reactor coolant system, main steam lines, main feed lines, steam generators or the reactor core and the subsequent release of radioactive material are no longer applicable at the Maine Yankee facility. Spent fuel pool cooling and makeup related equipment and support equipment including electrical power systems are not required to be continuously available since there is time available to effect repairs or establish alternate sources of makeup flow in the event of a loss of cooling and makeup flow to the spent fuel pool. The effect of radioactive decay since the shutdown of the reactor has reduced the consequences of the fuel handling accident to levels below those previously analyzed. The relevant parameters associated with spent fuel pool (level and boron concentration) that make up the initial conditions assumed in applicable analysis are included in the technical specifications. The deletion and modification of provisions of administrative controls do not directly affect the design of structures or equipment necessary for the safe storage of irradiated fuel or the methods used for handling and storage of such fuel in the spent fuel pool. The changes to the administrative controls are, in fact, administrative in nature and do not affect any accident applicable to the safe storage of irradiated fuel or the permanently shutdown and defueled condition of the reactor. Therefore, the proposed changes to the Maine Yankee Technical Specifications do not involve any increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no impact on facility structures or equipment affecting the safe storage of irradiated fuel or the methods of operation of such structures or equipment or handling and storage of such fuel. These changes are consistent with the improved Standard Technical Specifications and add to the clarity and ease of use of the proposed PDTS. The removal of technical specifications which are related only to the operation of the nuclear reactor or only to the prevention, diagnosis or mitigation of transients or accidents primarily involving the reactor, can not result in different or more adverse failure modes or accidents than previously evaluated because the reactor is permanently shutdown and defueled. The proposed deletion of provisions of the Maine Yankee Technical Specifications do not affect systems credited in the existing accident analyses for the remaining applicable postulated accidents at the Maine Yankee facility. The proposed technical specifications continue to require proper control and monitoring of safety significant parameters and activities. The proposed restrictions on boron concentration and level in the spent fuel pool are fulfilled by normal operating conditions and preserve initial conditions assumed in the analyses of postulated DBA's. Therefore, the proposed changes to the MYTS does not create the possibility of a new or different accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The deletion of provisions in the technical specifications which are not related to the storage of irradiated fuel or which are inconsistent with the scope of the improved Standard Technical Specifications will not affect the analyses of the design basis accidents remaining applicable to the Maine Yankee facility. The postulated design basis accidents involving the reactor are no longer possible due to the permanently defueled status of the Maine Yankee reactor. The requirements for systems, structures and components which have been deleted from the Maine Yankee Technical Specifications are not credited in the existing accident analysis for the remaining applicable postulated accidents and therefore do not contribute to the margin of safety associated with the accident analysis. Therefore, the proposed changes to the Maine Yankee Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, P.O. Box 408, Wiscasset, ME 04578.

NRC Project Director: Seymour H. Weiss.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: October 15, 1997.

Description of amendment request: The proposed change to Technical Specification 3/4.4.3, Pressurizer, would replace the pressurizer maximum water inventory requirement with a pressurizer maximum indicated level requirement. The proposed amendment would also modify the associated Bases section and make editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The Technical Specification maximum pressurizer inventory requirement in Technical Specification 3.4.3 is being changed to use the numerical value for the Reactor Trip setpoint on pressurizer high water level in Technical Specification Section 2.2. This changes the requirement from a volume to a level requirement, is consistent with the Improved Standard Technical Specifications for Westinghouse plants, and represents a more restrictive level requirement than the current technical specification. The bases change clarifies that the 89% level requirement only assures that there is a steam bubble in the pressurizer. Also, the bases change states that pressurizer level is maintained by automatic and procedural controls to provide assurance that the design basis analyses are valid. These changes do not modify plant operation. Lowering the maximum level requirement so that it is numerically consistent with the reactor trip setpoint, while clarifying the bases of the requirement, [cannot] involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware modifications associated with the change. The change does not modify the way that the plant is operated. The change modifies neither accident mitigation nor system response post-accident.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The change places a lower maximum pressurizer level requirement for the pressurizer. The change imposes the numerical setpoint value for the reactor trip on pressurizer high water level as the restriction on the pressurizer level. The change to the bases clarifies that the 89% level requirement only ensures the existence of a steam bubble and not the validity of the design basis analyses. The design basis non-LOCA [loss-of-coolant accident] analyses use the current programmed pressurizer level and the LOCA analysis uses 62% level for full power. Those events that are analyzed to address pressurizer filling concerns are initiated assuming a higher initial pressurizer water level that accounts for 6% level uncertainty. The bases change makes it clear that the pressurizer level required to assure the validity of the design basis analyses is maintained by the automatic and procedural controls and not the less than or equal to 89% level in the requirement.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, bases on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 11, 1997.

Description of amendment request: The proposed amendment to Technical Specifications (TS) 3.9.1.2 and 3.9.13 and their Bases will allow crediting soluble boron for maintaining k-effective at less than or equal to 0.95 within the spent fuel pool (SFP) rack matrix following a seismic event of a magnitude greater than or equal to an operating basis earthquake (OBE).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

There is one spent fuel pool accident condition discussed in Chapter 15 of the FSAR [final safety analysis report]. The FSAR discusses a fuel handling accident which drops a fuel assembly onto the fuel racks during fuel movement. Degradation of the Boraflex panels in a post-seismic condition will have no effect on the probability of a fuel assembly drop onto the stored fuel, or the fuel racks. Changing the way Boraflex responds to a seismic event will have no impact on the probability of a seismic event. A misplaced fuel assembly can be postulated in the MP3 [Millstone Unit 3] fuel pool as a result of either equipment malfunction or operator error. Degradation of the Boraflex panels will have no effect on the probability of a fuel misplacement event. Therefore, the degradation of Boraflex in a post-seismic condition does not involve an increase in the probability of an accident previously evaluated.

A fuel handling accident could cause a radioactive release of fission gases, resulting in dose consequences. This radioactive release of fission gases is due to the failure of a certain number of fuel pins which are postulated to fail during the fuel handling accident. The number of fuel pins which are postulated to fail in this event is not changed by the degradation of the Boraflex panels in a post-seismic condition. There are no criticality issues with this fuel handling accident for the reason described next. Although conservative, should a fuel handling accident occur during or after a seismic event, even with no Boraflex credit, the proposed 1750 ppm [parts per million] of soluble boron is sufficient to ensure that K-effective of the SFP is maintained at less than or equal to 0.95. The 1750 ppm boron requirement also bounds any criticality concerns for a fuel handling or dropped load event due to the no Boraflex assumption. Therefore, this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The change in the way Boraflex responds to a seismic event with the presence of 1750 ppm boron does not create a new accident. The use of soluble boron in the spent fuel pool is safe. There is no possibility of a dilution event during or following a seismic event up to the magnitude of an SSE [safe shutdown earthquake]. The normally filled piping systems in the vicinity of the spent fuel pool are fire protection, hot water heating, hot water preheating, domestic water, and component cooling. In addition, the roof drain system piping runs through the building. An engineering review of these systems has determined that the majority of the systems are leak tight and meet NU's [Northeast Utilities'] commitment to seismic II/I criteria for a seismic event up to and including an SSE. The analysis was performed consistent with the original design criteria for seismic II/I piping as documented in section 3.9.2 of the Millstone 3 Safety Evaluation Report (SER) Number 4.

Portions of fuel building piping systems that may not be leak tight following an SSE, and that would not leak into the spent fuel pool based on location of the potential leak, are not possible sources of dilution.

Two lines in the Hot Water Preheating system will be modified to meet the leak tight seismic II/I criteria and will not be possible sources of dilution.

A new pipe support will be added to the roof drain piping to meet the seismic II/I criteria. With the new support installed, one portion of the drain piping will still not meet leak tight requirements. The inlet opening on the roof feeding this portion of the piping will therefore be capped. Since the location of the potential cracking in the drain piping lies above the connection to the balance of the drain piping, and the system is not under pressure, water flowing from other portions of the drain system will not flow up to and out of the potentially cracked portion. This precludes a possible source of dilution.

Non borated water sources that are connected to the SFP will be isolated following a seismic event of greater than or equal to an OBE to prevent dilution. Therefore there is no possibility of a SFP boron dilution accident coincident with or following a seismic event up to an SSE, and credit for soluble boron is acceptable to meet the K-effective limit of 0.95 for the SFP. The crediting of soluble boron in the spent fuel pool to control K-effective following a seismic event does not create a new accident as boron dilution of the pool can be prevented by closing and administratively controlling the opening of dilution paths to the pool and initiating routine sampling requirements on SFP boron. At present the crediting of soluble boron following a fuel misplacement event is allowed for [in] the Millstone 3 [TS]. Analysis has shown that a seismic event of greater than an OBE level earthquake can cause Boraflex damage which can be more limiting than a fuel misplacement event. As such, the minimum boron requirement in the fuel pool will be increased from 800 ppm to 1750 ppm. As such, no new accident has been created because the crediting of boron following a malfunction/accident has always been allowed.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety, as defined by MP3 Technical Specifications, is to ensure that the K-effective of the MP3 SFP is maintained less than or equal to 0.95 at all times. The proposed change does not credit soluble boron during normal operations, but allows crediting soluble boron at a new higher concentration for control of K-effective during malfunction conditions. There is no reduction in the margin of safety as the result of the degradation of Boraflex following a greater than OBE seismic event, because soluble boron will compensate for the loss of Boraflex. A value of 1750 ppm of soluble boron in the SFP at all times ensures that K-effective of the MP3 SFP is maintained less than or equal to 0.95 at all times, including this new malfunction of degraded Boraflex following a greater than OBE seismic event.

Eliminating the credit for the reactivity [hold-down] effect of Boraflex panels in conjunction with 1750 ppm boron will have no effect on the probability of a seismic event. As the probability of a seismic event has not changed there is no increase in the probability of an accident or malfunction due to a seismic event. Following a seismic event, operators are presently required to make inspections of the plant to determine post seismic event plant conditions. As a result of this change, inspections will be required to review the status of the spent fuel pool and isolate potential dilution paths following a seismic event of greater than or equal to [an] OBE. These actions are consistent with present guidance in the seismic response procedure and do not create an undue burden on the operator. To compensate for the potential loss of Boraflex after a seismic event, the SFP is now required to be [] borated at all times to at least 1750 ppm to maintain the proper post seismic K-effective condition. As such, there is no mitigation equipment that has to operate in the spent fuel pool following a seismic event.

Although the Boraflex in the fuel racks is assumed to fail in a seismic event greater than an OBE, the presence of soluble boron in the fuel pool water will compensate for the loss of Boraflex. Surveillance requirements on SFP boron will ensure that there will be boron present in the SFP and ensure that the SFP is not diluted below the minimum required boron concentration during normal operation.

As the presence of SFP soluble boron during and after a seismic event maintains k-effective less than 0.95 there is no effect on the consequences of any accidents evaluated. As there are no new accidents created, there are no changes in the consequences of previously analyzed accidents, and there is no effect on the consequences of any accident. There is no reduction in the margin of safety as the result of the degradation of Boraflex following a greater than OBE seismic event, because during normal operations k-effective remains less than 0.95 without reliance on soluble boron, and during malfunction and accident conditions soluble boron can be used to compensate for the loss of Boraflex to maintain K-effective less than 0.95.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 3, 1997.

Description of amendment request: Omaha Public Power District (OPPD) proposes to change the Fort Calhoun Station Unit No. 1 Technical Specifications (TS) by revising TS Surveillance Requirement 3.9, "Auxiliary Feedwater System," to clarify what flow paths are required to be tested. Additionally, OPPD proposes to revise the auxiliary feedwater pumps' surveillance requirements to delete the specific discharge pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change to TS 3.9(2) is proposed to delete the specific discharge pressure specified for the Auxiliary Feedwater (AFW) pumps' surveillance. The developed head of the motor-driven and steam turbine-driven AFW pumps is verified quarterly. These tests are in addition to those required by TS 3.3, which implements ASME Section XI Inservice Testing (IST) to evaluate a pump's performance against its pump curve to determine operability. The IST program is controlled by TS 3.3, and requires that testing of ASME Code Class 1, Class 2, and Class 3 pumps shall be performed in accordance with Section XI of the ASME Boiler and Pressure Vessel Code, as required by 10 CFR 50.55a(g), except where specific written relief has been granted by the NRC. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3.9(4) and the Basis Section only clarify the AFW flow paths that are required to be tested. The proposed change follows the recommendations of NUREG–0635, "Generic Evaluation of Feedwater Transients and Small Break Loss-of-Coolant Accidents in Combustion Engineering Designed Operating Plants," Recommendation GS–6(2). No physical changes are proposed, information is being added to clarify the testing required to meet the recommendations of NUREG–0635, therefore these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration or changes in operating modes. The proposed change to delete the specific discharge pressure of the AFW pumps from the TS is consistent with the ASME Code Section XI requirements that are controlled by TS 3.3. Testing requirements of TS 3.3 require testing of ASME Code Class 1, Class 2, and Class 3 pumps in accordance with Section XI of the ASME Boiler and Pressure Vessel Code, as required by 10 CFR 50.55a(g), except where specific written relief has been granted by the NRC. The clarifications being provided to describe the flow paths only provide additional information for testing required to meet the recommendation of NUREG–0635.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not result in any physical alterations to the plant configuration or changes to the application of setpoints or limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 4, 1997.

Description of amendment request: The amendments would change the Emergency Diesel Generator (EDG) Technical Specification (TS) 3/4.8.1 to (1) delete 18-month surveillance requirement 4.8.1.1.2.d.1, and (2) eliminate the accelerated testing requirement of Table 4.8–1. Both changes have been approved on other nuclear power facilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deleting the requirement for an 18 month diesel inspection is consistent with the improved Standard Technical Specifications (NUREG–1433) and does not result in any changes to the existing plant design. The Salem preventive maintenance program utilizes diesel generator performance history, engineering analyses and manufacturer's recommendations as appropriate for determining diesel generator inspection requirements. The Technical Specifications will continue to contain surveillance requirements that demonstrate the functional capability of the diesel generators. The change does not impact the ability of the diesel generators or the AC electrical power sources to perform their function, nor result in a significant increase in the consequences of any accident previously evaluated. The diesel generators will continue as designed.

PSE&G has implemented the provisions of the maintenance rule for EDG's, including the appropriate regulatory guidance. This provides a program which assures EDG performance. The elements of this program include the performance of detailed root cause analysis of individual failures, effective corrective actions taken in response to individual failures, and implementation of preventive maintenance consistent with the Maintenance Rule. Additionally, the proposed changes (elimination of accelerated diesel generator testing requirements of TS 4.8.1.1.a in lieu of monthly testing and deletion of special reporting requirements for diesel failures), do not delete the surveillance requirements but rather set their frequency at every 31 days. Monitoring the effectiveness of EDG maintenance and continuing surveillance testing will ensure that the diesel generators will perform their intended functions and will minimize failures. As is noted in the recommendations of GL [Generic Letter] 94–01, because PSE&G is monitoring and maintaining EDG performance in accordance with the provisions of 10 CFR 50.65, there is no longer a need for special reporting requirements.

Since the changes do not affect the assurance of diesel generator reliability or operability as discussed above, there is no significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

This request does not result in any change to the plant design or does it involve a significant change in current plant operation. The diesel generators are inspected utilizing diesel generator operating history, engineering analyses and manufacturer's recommendations as appropriate, and the remaining surveillance requirements continue to demonstrate the functional capability of the diesel generators.

Changing the surveillance of frequency of TS 4.8.1.2.a to 31 days the existing frequency as determined by Table 4.8–1, does not create a new or different kind of accident. Deleting of special reporting requirements, appropriate in light of the monitoring and maintenance in conformance with 10 CFR 50.65, and reliance on the reporting requirements of 10 CFR 50.72 and 10 CFR 50.73, does not create the possibility of a new or different kind of accident.

The proposed changes do not result in any change to the plant design nor do they involve a significant change in current plant design. No new failure modes will be introduced. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed request does not adversely impact the reliability of the diesel generators. As stated above, the diesel generator operating history, engineering analyses and the manufacturer's recommendations will be utilized as appropriate to perform diesel generator inspections. Additionally, other Technical Specification surveillance requirements will continue to demonstrate the functional capability of the diesel generators. The diesel generators will continue to perform their design functions.

Noting the monitoring and maintenance being performed in conformance with 10 CFR 50.65, revision of the frequency of surveillance testing of 4.8.1.1.2.a does not adversely impact the reliability of the diesel generators. Deletion of the special reporting requirements of 4.8.1.1.4 does not impact the operability or the reliability of the diesel generators.

This request does not involve an adverse impact on diesel generator operation or reliability. Since the diesel generator function is not affected by the proposed change, this request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: October 16, 1997.

Description of amendments request: The proposed amendments would revise the Farley Nuclear Plant (FNP) Units 1 and 2 Technical Specifications (TS) to increase the allowable number of charging pumps capable of injecting into the reactor coolant system (RCS) when the temperature of one or more of the RCS cold legs is 180°F or less. The amendments would also modify the FNP TS to allow a maximum of two charging pumps to be capable of injecting into the RCS during pump swap operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3.1.2.3 allow two charging pumps to be capable of injecting into the reactor coolant system (RCS) for a period not to exceed 15 minutes while RCS cold leg temperature is at or below 180 degrees F. The intent is to allow the operator to start a second pump long enough to ensure that it operates properly and then to promptly secure the pump that was originally running. This order of pump operation will allow seal injection flow to be maintained to the RCS pumps number one seal continuously, thus preventing loss of pressure to the seals and maintaining filtered water flow through the seals. The proposed revised bases address the potential for [an] RCS mass addition transient. Guidance is given to prevent the charging pump swap from being conducted while the RCS is in a condition conducive to an overpressure transient. The RCS should be in a non water solid condition and the residual heat removal (RHR) relief valves must be operable or the RCS must be vented while the pump swap evolution is in progress. The proposed revision to TS 3.1.2.3 allows 15 minutes to have two pumps capable of injecting into the RCS, although two pumps will be running only momentarily, the remaining time is needed to perform the charging pump circuit breaker racking operations needed to render one of the two pumps incapable of injecting into the RCS. The proposed actions statement 3.1.2.3b directs that immediate action be taken to render all but one pump inoperable should the allotted 15 minutes be exceeded. This action is more appropriate than is currently specified. These proposed changes include sufficient controls to prevent an RCS overpressurization event.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change involves no change to the physical plant. It allows for a very limited and controlled operational change. The change increases the potential for a mass addition transient while the RCS is [at or] below 180 degrees F; however, sufficient controls are proposed to prevent a cold overpressure event.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change includes controls sufficient to prevent a significant reduction in the possibility or consequences of an accident. The proposed change specifies that the pump swap evolution be performed under conditions that will prevent an adverse plant transient. In addition, the proposed revision provides appropriate operator action that does not currently exist. This change is consistent with NUREG 1431, Standard Technical Specifications-Westinghouse Plants.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Project Director: Herbert N. Berkow.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 4, 1997.

Brief description of amendment: The proposed amendment revises the description of the electrical controls for Operating Reactor Building Recirculation System Fan/Cooler contained in the Final Safety Analysis Report and Improved Technical Specification Bases.

Date of publication of individual notice in the **Federal Register**: November 13, 1997 (62 FR 60921).

Expiration date of individual notice: December 15, 1997.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1997.

Brief description of amendment: The proposed amendment revises Operating License No. DPR–72, License Condition 2.C.(5) and deletes the requirement for installation and testing of flow indicators in the emergency core cooling system.

Date of publication of individual notice in the **Federal Register**: November 12, 1997 (62 FR 60733).

Expiration date of individual notice: December 12, 1997.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1997.

Brief description of amendment: The proposed amendment involves revisions to the Crystal River 3 Technical Specifications (TS) relating to decay heat removal requirements in Mode 4.

Date of publication of individual notice in the **Federal Register**: November 12, 1997 (62 FR 60735).

Expiration date of individual notice: December 12, 1997.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1997.

Brief description of amendment: The proposed amendment involves revisions to the Crystal River 3 Technical Specifications (TS) relating to the methodology for post-loss of coolant accident boron precipitation prevention.

Date of publication of individual notice in the **Federal Register**: November 12, 1997 (62 FR 60731).

Expiration date of individual notice: December 12, 1997.

Local Public Document Room location: Coastal Region Library, 8619 W., Crystal River, Florida 34428.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Duke Energy Corporation, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: May 27, 1997.

Brief description of amendment: The amendment deletes references to steam generator tube sleeving and repair criteria that will not be used for the Westinghouse Model D5 steam generators in use at Catawba Unit 2. Also, unused paragraph numbers have been deleted and a typographical error has been corrected.

Date of issuance: November 13, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 154.

Facility Operating License No. NPF–52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33122).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 7, 1997.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications (TSs) by modifying TS 3.3.3.7.3, and Surveillance Requirements (SR) 4.3.3.7.3 for the broad range gas detection system. Also it makes some changes to the Bases in section 3/4.3.3.7 to incorporate information associated with the existing toxic gas monitors.

Date of issuance: November 14, 1997.

Effective date: November 14, 1997, to be implemented within 60 days.

Amendment No.: 135.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 15, 1997 (62 FR 53660).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 6, 1996.

Brief description of amendment: The proposed change will amend the Allowable Values of parameters in Table 3.3–4 of Waterford Steam Electric Station, Unit 3, (Waterford 3) Technical Specifications (TSs) to make it consistent with the identical parameters in Table 2.2–1 of TSs for Waterford 3. The proposed change will add Mode 4 to surveillance requirements of Table 4.3–2, Item 5.c (Safety Injection System Automatic Actuation Logic) that was inadvertently removed. Finally, the proposed change removes a reference to TS 3.3.3.2 in Surveillance Requirements TS 4.10.2.2 and 4.10.4.2 since Incore Detectors has been removed from the TSs.

Date of issuance: November 20, 1997.

Effective date: November 20, 1997, to be implemented within 60 days.

Amendment No.: 136.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 5, 1996 (61 FR 28615).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 23, 1996, as supplemented by letters dated October 1 and 15, 1996, and January 28, 1997.

Brief description of amendments: The amendments reflect the approval of the transfer of the authority to operate South Texas Project, Units 1 and 2, under the licenses to a new operating company, South Texas Project Nuclear Operating Company.

Date of issuance: November 17, 1997.

Effective date: November 17, 1997.

Amendment Nos.: Unit 1—Amendment No. 93; Unit 2—Amendment No. 80.

Facility Operating License Nos. NPF–76 and NPF–80. The amendments revised the Technical Specifications and the operating licenses.

Date of initial notice in **Federal Register**: November 7, 1996 (61 FR 57719).

The additional information contained in the supplemental letter dated January 28, 1997, was clarifying in nature and thus, it was within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 17, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 5, 1997.

Brief description of amendment: Technical Specification Surveillance 4.8.4.1 requires periodic testing of lower voltage circuit breakers for all containment penetration conductor overcurrent protective devices. The amendment modifies the requirements for determining the operability of lower voltage circuit breakers by using the manufacturer's curve of current versus time to test delay trip elements, clarifies the use of two pole in series testing, and expands the Bases description of the testing.

Date of issuance: November 14, 1997.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 153.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 4, 1997 (62 FR 30637).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike,

Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: May 15, 1997, as supplemented August 29, October 20, October 24, and October 28, 1997.

Brief description of amendments: The amendments revise certain Technical Specification (TS) limitations on reactor coolant system leakage and steam generator tube surveillance, and implement a voltage-based repair criteria per requirements of NRC Generic Letter 95–05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking." In addition, the amendments correct a typographical error in TS Section 4.12.c.

Date of issuance: November 18, 1997.

Effective date: November 18, 1997, with full implementation of the Technical Specifications within 30 days. License Condition 5 of Appendix B shall be implemented immediately upon issuance of the amendments.

Amendment Nos.: 133 and 125.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the licenses and the Technical Specifications.

Date of initial notice in **Federal Register**: August 13, 1997 (62 FR 43371).

The August 29, October 20, October 24, and October 28, 1997, supplements provided clarifying information that did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 19, 1997, as supplemented September 17, 1997.

Brief description of amendment: The amendment revised the Ginna Station Improved Technical Specifications to correct an error in the required accumulator borated water volume specified in Surveillance Requirement 3.5.1.2.

Date of issuance: November 10, 1997.

Effective date: November 10, 1997.

Amendment No.: 69.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52587).

The September 17, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: October 24, 1996, as supplemented June 16 and October 2, 1997.

Brief description of amendment: This amendment revised the minimum critical power ratio safety limit to reflect the 10 CFR Part 21 condition reported by General Electric in their letter to the NRC dated May 24, 1996.

Date of issuance: November 7, 1997.

Effective date: November 7, 1997.

Amendment No.: 91.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 12, 1997 (62 FR 6569). The June 16 and October 2, 1997, supplemental letters provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 25th day of November 1997.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31522 Filed 12–2–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 13e–1, SEC File No. 270–255, OMB Control No. 3235–0305; Rule 12g3–2, SEC File No. 270–104, OMB Control No. 3235–0119; Trust Indenture: Act Rules, SEC File No. 270–115, OMB Control No. 3235–0132.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

"Purchase of Securities by issuer thereof under the Securities Exchange Act of 1934". Rule 13e–1 under the Exchange Act is designed to provide shareholders and the marketplace with relevant information concerning issuer repurchases during a tender offer for its securities by a third party. Public companies are the respondents. An estimated 20 respondents will file submissions annually at an estimated 13 hours per response for a total annual burden of 260 hours.

"Securities Exchange Act of 1934—Rule 12g3–2." Rule 12g3–2 provides an exemption for certain foreign securities. It affects approximately 1,800 foreign issuer respondents at an estimated one burden hour per response for a total annual burden of 1,800 hours.

"Requirements as to Form and Content of Applications, Statements and Reports under the Trust Indenture Act of 1939." Rules 7a–15 through 7a–37 under the Trust Indenture Act of 1939 ("TIA") provides guidance for complying with requirements under the TIA. Persons and entities subject to TIA requirements are the respondents. No information collection burdens are imposed directly by these rules so they are assigned only one burden hour for administrative convenience.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 25, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31616 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22904/812–10606]

Acorn Investment Trust; Notice of Application

November 24, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order (i) under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act; (ii) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1); and (iii) under section 17(d) of the Act and rule 17d–1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicant requests an order to permit Acorn Investment Trust ("Acorn") to enter into deferred compensation arrangements with its trustees who are not interested persons of Acorn.

Filing Dates: The application was filed on April 7, 1997 and amended on August 22, 1997. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Acorn Investment Trust, 227 West Monroe Street, Suite 3000, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Acorn is a registered open-end management investment company organized as a Massachusetts business trust. Acorn currently offers three series: Acorn Fund, Acorn International, and Acorn USA (the "Acorn Funds," together with any additional series offered by Acorn in the future, the "Funds"). Wagner Asset Management, L.P. serves as investment adviser to the Funds. Acorn requests that the relief apply to the Funds and any successors in interest to Acorn or any existing or future series thereof.[1]

2. Acorn's board of trustees ("Trustees") currently consists of nine persons, seven of whom are not "interested persons" of Acorn within the meaning of Section 2(a)(19) of the Act ("Eligible Trustees"). Each Eligible Trustee receives an annual retainer plus an additional fee for each board meeting and each pricing committee meeting attended. Acorn's Trustees have approved a deferred compensation plan for the Eligible Trustees (the "Plan"). The purposes of the Plan is to permit the Eligible Trustees to defer any or all of their compensation from Acorn for federal income tax purposes. An Eligible Trustee's election to defer any or all of such compensation will continue in effect for each calendar year unless the Eligible Trustee delivers to the administrator of the Plan a written revocation or modification of the election.

3. If an Eligible Trustee elects to defer compensation pursuant to the Plan, compensation will be credited to a book reserve account established by Acorn (the "Deferral Account"), as of the date the compensation otherwise would have been payable to the Eligible Trustee. Each Eligible Trustee may elect to have his or her compensation treated as if it had been invested and reinvested in shares of one or more of the Funds or of any unaffiliated money market fund with which the Funds enjoy exchange privileges ("Shares"), and may from time to time change his or her designation of Shares.[2]

4. The compensation credited to a Deferral Account for each Eligible Trustee will be treated as if it had been invested in the Shares at the current net asset value ("NAV") of the Shares on the date the compensation is credited to the Deferral Account. Thereafter, the value of the Deferral Account will fluctuate as the NAV of the Shares fluctuates, and will also reflect the value of the assumed reinvested dividends or capital gains distributions in additional Shares. It is intended that each Fund may purchase Shares in amounts equal to the deemed investment of the Deferral Accounts of the Eligible Trustees.[3] If a Fund purchases Shares, the Shares will be held solely in the name of that Fund. When a Fund purchases Shares, liabilities created by the credits to the Deferral Accounts under the Plan are expected to be matched by an equal amount of assets (i.e., a direct investment in the Shares).

5. The Plan provides that each Fund's respective obligation to make payments of amounts accrued in each of the Deferral Accounts will be a general obligation of that Fund, and payments made pursuant to the Plan will be made from that Fund's general assets and property. No Fund will be liable for any other Fund's respective obligation to make payments under the Plan. Each Eligible Trustee will be a general unsecured creditor of a Fund. The Plan also provides that a Fund will not be under an obligation to purchase, hold, or dispose of any investments under the Plan. If a Fund chooses to purchase investments to cover its obligations under the Plan, such investments will

[1] For purposes of the application, "successors in interest" is limited to entities that result from a reorganization due to change of legal domicile or a change in form of business organization, e.g., partnership to corporation.

[2] The Plan may be amended in the future to permit an Eligible Trustee to have the return on the compensation measured by the return on shares of an investment company other than one of the Acorn Funds or an unaffiliated money market fund.

[3] Acorn's purchase of Shares will be made for the benefit of Acorn and not for the benefit of participating Eligible Trustees.

continue to be a part of the general assets and property of that Fund. Applicants state that the number of Shares purchased under the Plan will be *de minimis* in relation to the size of each Fund.

6. Under the Plan, amounts credited to an Eligible Trustee's Deferral Account generally will become payable in cash when an Eligible Trustee retires from the board. An Eligible Trustee may elect to receive payment in a lump sum or in equal annual installments over a period of five years. If an Eligible Trustee dies prior to the commencement of the distribution from the Deferral Account, the balance of the Deferral Account will be distributed to the Eligible Trustee's designated beneficiary in a lump sum as soon as practicable. If an Eligible Trustee dies after the commencement of such distribution, but prior to the complete distribution of the Deferral Account, the balance will be distributed to the beneficiary over the remaining distribution period. The Trustees, in their sole discretion, may accelerate the distribution of the Deferral Account. In all other events, the Eligible Trustee's right to receive distributions from the Deferral Account will be non-transferable.

7. The Plan also permits an Eligible Trustee to apply to the Plan administrator at any time for a full or partial withdrawal on the basis of "hardship or unforeseen emergency" as defined in the Plan. The Plan has reserved the right to accelerate or extend payment of amounts in the Deferral Account at any time after the termination of the Eligible Trustee's service as a trustee or in the event of a change in control of Acorn's investment adviser. In addition, in the event of liquidation, dissolution, or winding up of Acorn or the distribution of all or substantially all of Acorn's assets and property to its shareholders, or in the event of a merger or reorganization of Acorn (unless prior to such merger or reorganization, the Trustees determine that the Plan shall survive the merger or reorganization), all unpaid amounts in the Deferral Accounts will be paid in a lump sum to the Eligible Trustees on the effective date of such liquidation, dissolution, winding up, distribution, merger, or reorganization.

Applicant's Legal Analysis

1. Applicant requests an order under (i) section 6(c) of the Act to exempt Acorn from the provisions of sections 13(a)(2), 18(f)(1), 22(f), and 22(g) to the extent necessary to permit Acorn to implement the Plan; (ii) sections 6(c) and 17(b) of the Act to exempt Acorn from the provisions of section 17(a) to permit each Fund to sell securities of which it is the issuer to other Funds in connection with the Plan; and (iii) section 17(d) of the Act and rule 17d–1 to permit Acorn and the Eligible Trustees to effect certain transactions incident to the Plan.

2. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing senior securities. In addition, section 13(a)(2) of the Act requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Section 18(g) of the Act defines "senior security" to include "any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness." Applicant states that the plan does not possess any of the characteristics of senior securities that led to the enactment of sections 13(a)(2) and 18(f)(1). Applicant states that Acorn will not be "borrowing" from its Eligible Trustees, and liabilities created by credits to the Deferral Accounts under the Plan are expected to be offset by equal amounts of assets of Acorn that would not otherwise exist if the compensation was paid on a current basis. Applicant asserts that the Plan will not induce speculative investments by Acorn or provide opportunity for manipulative allocation of the expenses and profits of Acorn. Applicant also asserts that the control of Acorn will not be affected, and the Plan will not confuse investors.

4. Section 22(f) prohibits restrictions on the transferability of negotiability of redeemable securities issued by an open-end investment company unless the restrictions are disclosed in its registration statement and do not contravene SEC rules and regulations. Applicant asserts that the restriction on the transferability of benefits under the Plan is clearly described in the Plan, is included in the Plan primarily to benefit the Eligible Trustees, and would not adversely affect the interests of Acorn's shareholders.

5. Section 22(g) generally prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. Applicant believes that section 22(g) is primarily concerned with the dilutive effect on the equity and voting power of the common stock of an investment company if securities are issued for consideration not readily valued. Applicant asserts that interests under the Plan will not entitle the Eligible Trustees to vote as shareholders or participate in the profit and gain of Acorn. In addition, applicant asserts that the Eligible Trustees' interests in the Plan are non-transferable, and an Eligible Trustee's right to receive payments under the Plan is not granted in return for services. Thus, applicant contends that the Plan merely provides for the deferral of compensation and any rights under the Plan should be viewed as being "issued" in return for Acorn not being required to pay the compensation on a current basis.

6. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Applicant submits that the Funds and other investment companies that have the same investment adviser may be "affiliated persons" within the meaning of section 2(a)(3) of the Act. Applicant states that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they are associated or to acquire controlling interests in such enterprises. Applicant believes that an exemption from this provision would facilitate the matching of its liability for deferred compensation with the value of the Shares chosen by the Eligible Trustees.

7. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, (b) the transaction is consistent with the policy of each registered investment company concerned, and (c) the transaction is consistent with the general purposes of the Act. Applicant submits that the terms of the proposed transactions under the Plan that involve the acquisition of Shares by Funds are fair and reasonable to all parties, are consistent with the Act and the Funds' policies, and meet all the standards of section 17(b) of the Act. Applicant further submits that the requested relief from various provisions of the Act meets the standards for an exemption set forth in section 6(c) of the Act.

8. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17–d provides that the SEC will consider whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicant asserts that the Eligible Trustees will neither directly nor indirectly receive benefits that would otherwise inure to Acorn or its shareholders because (a) a Fund may choose to invest in Shares, (b) amounts credited to the Deferral Account will be adjusted to reflect income, gains, and losses relating to the investment of the assets of such Fund, and (c) such income, gains, or losses will be identical to what any shareholder in that Fund would receive whose shares were not subject to the Plan. Applicants contend that deferral of an Eligible Trustee's compensation in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the compensation were paid on a current basis and then invested in the Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31620 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22912; 812–10948]

AFC (USA) I, Inc.; Notice of Application

November 26, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF THE APPLICATION: Applicant, AFC (USA) I, Inc., requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company, Airbus Finance Company Limited.

FILING DATES: The application was filed on November 13, 1996, and amended on July 17, 1997 and November 24, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Catharine Ennis, George's Dock House, 2nd Floor, International Financial Services Center, Dublin 1, Ireland.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549, (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation formed in July, 1996. All of applicant's outstanding voting securities are owned by Airbus Finance Company Limited ("AFC"). AFC, a limited liability company incorporated under the laws of Ireland, provides sales financing support to the customers of Airbus Industrie G.I.E. ("Airbus Industrie").[1] AFC and Airbus Industrie are each owned indirectly by Aerospatiale S.N.I., Daimler-Benz A.G. ("Daimler-Benz"), British Aerospace plc ("BAe"), and Construcciones Aeronauticas S.A. ("CASA").

2. Applicant was organized to engage in financing activities to provide funds for use in the operations of AFC. Applicant proposes to obtain funds through the offer and sale of its debt securities in the United States and European or other overseas markets, and to lend the proceeds to AFC.

3. Due to the nature of capital markets, applicant may, from time to time, issue securities in amounts in excess of the amounts required by AFC at any given time. However, at least 85% of the cash or cash equivalents raised by applicant will be loaned to AFC as soon as practicable, but in no event later than six months after applicant's receipt of the cash or cash equivalents. Amounts that are not loaned to AFC will be invested in government securities, securities of AFC or a company controlled by AFC (or, in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), or debt securities which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

4. Any issuance of debt securities by applicant to the public in the United States will be unconditionally guaranteed by AFC as to the timely payment of principal, interest, and premium, if any (a "Guarantee"). Guarantee will provide each holder of debt securities issued by applicant a direct right of action against AFC to enforce AFC's obligations under the Guarantee without first proceeding against applicant.

5. Until AFC has achieved a specified long-term debt rating at or above investment grade (the "AFC Rating"), any debt securities issued by applicant to the public in the United States also will be unconditionally guaranteed on a separate basis by each of Aerospatiale S.N.I., Daimler-Benz, BAe, and CASA, or any additional or substitute indirect owner of AFC as to the timely payment of principal of, interest, and premium, if any, on the debt securities.

6. In the future applicant may obtain funds through the offer and sale of non-voting preferred stock. Applicant will guarantee such stock with a guarantee complying with rule 3a–5(a)(2) under the Act.

Applicant's Legal Analysis

1. Rule 3a–5 under the Act provides an Exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Rule 3a–5 is premised on the notion that it is appropriate to exempt a finance subsidiary from all provisions of the Act when the primary purpose of the finance subsidiary is to finance the business operations of its parent

[1] Applicant represents that AFC does not constitute a "partnership" or "joint venture" within the meaning of rule 3a–5(a)(4) under the Act and is substantially equivalent to a U.S. corporation for the purposes of rule 3a–5(b)(2) under the Act.

company or other subdiaries of its parent and when the purchaser of the finance subsidiary's securities ultimately looks to the parent and not to the finance subsidiary for repayment.[2] Rule 3a–5(b)(2)(i) defines "parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a) of Act.

2. AFC is not a "parent company" within the definition in rule 3a–5(b)(2)(i) because AFC meets the definition of investment company in section 3(a) of the Act and is excepted from that definition by section 3(c)(6) of the Act. Applicant, therefore, is unable to rely on rule 3a–5 and seeks an exemption from all provisions of the Act.

3. In the release adopting rule 3a–5, the Commission stated that it may be appropriate to grant exemptive relief to the finance subsidiary of an issuer exempted from the definition of investment company under section 3(c) of the Act, but only on a case-by-case basis upon an examination of all relevant facts.[3] According to the adopting release, the concern was that a company could be considered not an investment company under section 3(c) of the Act and still be engaged primarily in investment company activities.[4]

4. Section 6(c) of the Act provides, in pertinent part, that the SEC may, conditionally or unconditionally, exempt any person or class of persons from any provision or provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that AFC is not engaged primarily in investment company activities, but that its principal activity is the provision of sales financing for Airbus Industrie customers. In addition, if AFC were itself to issue the securities that are to be issued by applicant and use the proceeds for its own purposes or advance them to its subsidiaries, AFC would not be subject to regulation under the Act. While AFC has chosen instead to use applicant as a financing vehicle, the Guarantee ensures that holders of applicant's securities will have direct recourse against AFC. Accordingly, applicant submits that the relief requested satisfies the section 6(c) standard.

Applicant's Condition

Applicant agrees that the order granting the requested relief shall be subject to the condition that:

Applicant will comply with all of the provisions of rule 3a–5 under the Act, except that AFC will not meet the portion of the definition of "parent company" in rule 3a–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act and is engaged primarily, directly or through majority owned subsidiaries, in one or more of the businesses described in section 3(c)(5)(A) and/or section 3(c)(5)(B) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31666 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* Investment Company Act Release No. 14275 (Dec. 14, 1984) (release adopting rule 3a–5 under the Act).

[3] *Id.* at 49443.

[4] *Id.*

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (American Restaurant Partners, L.P., Class A Units of Limited Partnership Interests) File No. 1–9606

November 26, 1997.

American Restaurant Partners, L.P. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the preambles and resolutions adopted by the general partners of the Company authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons for the proposed withdrawals, and the facts supporting the withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company considered the facts set forth below and determined that the withdrawal would be in the best interests of the holders of the Security.

The Company's decision to withdraw the Security from listing and registration on the Amex is based on a change in the federal income tax laws that will, effective January 1, 1998, subject the Company to taxation as a corporation if the Company's Security remains listed on the Exchange. Under a grandfather clause that expires December 31, 1997, the Company is sheltered from the Internal Revenue Code provisions which tax publicly traded limited partnerships as corporations. To avoid taxation as a corporation, the Company must immediately withdraw its Security from listing and registration on the Amex so that the Security is no longer traded on an established securities market by the end of 1997.

The Company has represented that it intends to establish a qualified matching service in accordance with Department of Treasury regulations so that holders of the Security may exchange their interests. The Company has further represented that it may put into effect a redemption and repurchase agreement to provide holders of the Security with another means for exchanging their interests.

The Company shall continue to send annual and quarterly reports containing financial statements to holders of the Security so long as it is obligated to do so under the Act.

By letter dated November 12, 1997, the Amex informed the Company that the Exchange has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

Any interested person may, on or before December 18, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–31617 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22910; 812–10638]

First American Funds, Inc., et al.

November 25, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(d) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would supersede a prior order to permit certain registered investment companies to invest excess cash in money market funds advised by the same adviser for cash management purposes. The order also would amend a prior order permitting a fund of funds to purchase shares of certain investment companies in the same group of investment companies in excess of the limits of section 12(d)(1).

Applicants: First American Funds, Inc. ("FAF"), First American Strategy Funds, Inc. ("FASF"), First American Investment Funds, Inc. ("FAIF"), including each current series and each subsequently created series of FAF, FASF and FAIF, U.S. Bank National Association or any other entity controlling, controlled by, or under common control with U.S. Bank National Association ("U.S. Bank"), and other registered investment companies or their series that are now or in the future advised by U.S. Bank.

Filing Dates: The application was filed on April 29, 1997 and amended on October 1, 1997. Applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. FAF, FASF, and FAIF, Oaks, Pennsylvania 19456; U.S. Bank, 601 Second Avenue South, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. FAIF is a registered open-end management investment company that currently offers twenty-three series, each of which is a variable net asset value fund. FAF is a registered open-end management investment company that currently offers three series, each of which is a money market fund subject to the requirements of rule 2a–7 under the Act. Each existing series of FAF and any future money market portfolio of FAF or FAIF or of other registered investment companies advised by U.S. Bank are referred to collectively as "Money Market Funds." Each existing series of FAIF and any future variable net asset value portfolio of FAIF or FAF or of other registered investment companies advised by U.S. Bank are referred to collectively as "Non-Money Market Funds." The Money Market Funds and the Non-Money Market Funds are referred to as the "Funds."

2. FASF is a registered open-end management investment company that currently offers four series, each of which is a variable net asset value fund. Under an existing order ("Fund of Funds Order"),[1] FASF operates as a "fund of funds," the principal investments of which are shares of certain series of FAIF and FAF ("Underlying Portfolios").

3. U.S. Bank, a wholly owned subsidiary of U.S. Bancorp ("USBC"), a bank holding company, serves as investment adviser for each series of FAIF, FAF and FASF. U.S. Bank has retained Marvin & Palmer Associates, Inc. ("Marvin & Palmer") as a sub-adviser for FAIF's International Fund (U.S. Bank, Marvin & Palmer, and any future sub-adviser to any Fund are referred to collectively as the "Investment Advisers"). First Trust National Association (the "Custodian") a wholly owned subsidiary of USBC, serves as custodian for the assets of each series of FAIF, FAF, and FASF.

4. Pursuant to an exemptive order, the Non-Money Market Funds can invest in the money market series of FAF in excess of the limits of section 12(d)(1) of the Act, so long as each Fund's aggregate investment in the money market fund does not exceed the greater of 5% of the Fund's total net assets or $2.5 million ("Cash Sweep Order").[2]

5. Applicants request an order that would (a) supersede the Cash Sweep Order to permit (i) each of the Funds ("Investing Funds") to use the cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the Money Market Funds, provided that no Investing Fund will have more than an aggregate of 25% of its total assets invested in all Money Market Funds at any time, and (ii) the Money Market Funds to sell their shares to, and to redeem their shares from, the Investing Funds; and (b) amend the Fund of Funds Order to permit FASF to invest in shares of Underlying Portfolios that will in turn invest in shares of the Money Market Funds to the extent permitted by the order sought in this application ("Amended Cash Sweep Order").[3] Because the Amended Cash Sweep Order will allow the Underlying Portfolios to invest greater amounts in the Money Market Funds than is allowed under the Cash Sweep Order, condition 2 to the Fund of Funds Order would be amended to allow FASF to continue to invest in the Underlying Portfolios.[4]

6. Each of the Funds has, or may have, Uninvested Cash held by its Custodian.

[1] *First American Investment Strategy Funds, Inc.*, Investment Company Act Release Nos. 22173 (Aug. 26, 1996) (notice) and 22241 (Sept. 23, 1996) (order).

[2] *First American Investment Funds, Inc.*, Investment Company Act Release Nos. 21722 (Jan. 30, 1996) (notice) and 21784 (Feb. 27, 1996) (order).

[3] The Amended Cash Sweep Order also would delete conditions 3 and 6 in the Fund of Funds Order.

[4] The fund of funds series of FASF are not "Investing Funds" as defined in the application, therefore any investment by them in the Money Market Funds would be under the Fund of Funds Order and subject to the conditions of that Order.

Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new cash received from investors.[5] By investing Uninvested Cash in the Money Market Funds, applicants believe that the Investing Funds will be able to reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash and further diversify their holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. The perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex fund structures.

2. Applicants' request would permit the Investing Funds to use Uninvested Cash to acquire shares of Money Market Funds in excess of the percentage limitations set our in section 12(d)(1)(A). Applicants propose that each Investing Fund be permitted to invest in shares of the Money Market Funds so long as no Investing Fund will have more than an aggregate of 25% of its total assets invested in all Money Market Funds at any time. Applicants' request also would permit Money Market Funds to sell their securities to Investing Funds in excess of the percentage limitations set out in section 12(d)(1)(B). Applicants state that relief permitting an Investing Fund to invest up to 25% of its total net assets in shares of the Money Market Funds is appropriate because at any given time, 25% or more of an Investing Fund's total assets may be comprised of Uninvested Cash. Applicants also request amendment of condition 2 to the Fund of Funds Order to permit the FASF funds to continue to invest in shares of Underlying Portfolios, which in turn invest in shares of the Money Market Funds, in reliance on the Amended Cash Sweep Order.

3. Section 12(d)(1)(J) provides that the SEC can exempt any persons or transactions from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. For the following reasons, applicants believe the proposed transactions satisfy this standard.

4. Applicants believe that none of the concerns underlying section 12(d)(1) are presented by the proposed transactions. Applicants state that, because the Investment Advisers and their affiliates will not derive any investment advisory or other fees in connection with the Investing Funds' purchase or sale of shares of the Money Market Funds, the Investment Advisers are not susceptible to undue influence in their management of the Money Market Funds because of threatened redemptions from the Money Market Funds or loss of fees.

5. Applicants maintain that the proposed arrangement would not result in the inappropriate layering of either sales charges or investment advisory fees. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under rule 12b–1 under the Act, or service fee. In addition, each Investment Adviser will credit to the respective Investing Fund, or waive, the investment advisory fees that it earns based on the Investing Fund's investments in the Money Market Funds to the extent the fees are based upon the Investing Fund's assets invested in shares of the Money Market Funds.

6. Regarding the complexity of the proposed structure, applicants note that the net asset value of each current Money Market Fund is, and has been since its inception, maintained at a constant $1.00 per share. Therefore, applicants submit that the value of the Investing Funds' investments in the Money Market Funds will be easily determinable. In addition, applicants maintain that the Fund of Funds Order already permits FASF to invest in Underlying Portfolios, which invest in Money Market Funds, provided that the Underlying Portfolios comply with certain conditions. As a result, applicants submit that no additional complexity will be created by amending the Fund of Funds Order to reflect the Amended Cash Sweep Order.

7. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, or under common control with, the investment adviser. Under section 2(a)(3), each series within FAIF, FASF, and FAF may be deemed to be under common control with each of the others, and thus an affiliated person of each of the other series of FAIF, FASF, and FAF. As a result, section 17(a) would bar the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of the shares by the Money Market Funds.

8. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit, for the reasons discussed below, that their request for relief satisfies these standards.

9. Applicants submit that the proposed transactions will not involve overreaching because the Investing Funds retain their ability to invest their Uninvested Cash directly in money market instruments, as authorized by their respective investment objectives and policies, if they believe they can obtain a higher return or for any other reason. Similarly, each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of directors determines that the sales would adversely affect its portfolio management and operations. In addition, applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder.

10. Section 17(d) and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company unless the SEC has issued an order authorizing the arrangement. In determining whether to grant an exemption under rule 17d–1, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants. Applicants state that each Investment Fund, by purchasing shares of the Money Market Funds, each Investment Adviser, by managing the assets of the Investing Funds, and each of the Money Market Funds, by selling shares to the Investing Funds, could be deemed to be participants in a joint enterprise. Applicants assert that investments by the Investing Funds in shares of the Money Market Funds will be on the same basis and will be indistinguishable from that of any other participant or shareholder and that the transactions will be consistent with the Act. In addition, applicants state that the proposed transactions may result in cost savings for the Investing Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealer's Rules of Conduct).

2. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1) of the Act.

3. Each of the Investing Funds will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in all Money Market Funds taken as a group does not exceed 25% of the Investing Fund's total assets.

4. Each Fund shall be advised by U.S. Bank or a person controlling, controlled by, or under common control with U.S. Bank.

5. Investment by an Investing Fund in shares of a Money Market Fund will be consistent with each Investing Fund's respective investment restrictions and policies as set forth in its prospectuses and statements of additional information.

6. The applicants will cause the Investment Advisers, in their capacities as advisers for the Money Market Funds, to remit to the respective Investing Fund, or waive, an amount equal to all investment advisory fees received by them under their respective advisory agreements with the Money Market Funds to the extent such fees are based upon the Investing Fund's assets invested in shares of the Money Market Funds. Any of these fees remitted or waived will not be subject to recoupment by the Funds' Investment Advisers at a later date.

7. FASF may continue to rely on the Funds of Funds Order, subject to compliance with the conditions it contains, except for conditions 3 and 6, which are deleted. Condition 2 to the Fund of Funds Order is amended to read as follows: "No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Underlying Portfolio other than a Money Market Fund acquires securities of another investment company under exemptive relief from the Commission permitting the Underlying Portfolio to purchase securities of an affiliated money market fund for short-term cash management purposes."

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31619 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

[5] Uninvested Cash does not include cash collateral received in connection with the Investing Funds' securities lending activities.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22906; File No. 812–10752]

Fortis Benefits Insurance Company, et al.; Notice of Application

November 24, 1997.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Limited Maturity Bond Portfolio of the Neuberger & Berman Advisers Management Trust ("N & B Bond Portfolio") for shares of the Strong Advantage Fund II series ("Strong Advantage Portfolio") of the Strong Variable Insurance Funds, Inc. ("Strong Funds") and the substitution of shares of the Federated Fund for U.S. Government Securities II portfolio of Federated Insurance Series ("Federated Government Portfolio") for shares of the Strong Government Securities Fund II series of the Strong Funds ("Strong Government Portfolio").

Applicants: Fortis Benefits Insurance Company ("Fortis Benefits") and Variable Account D of Fortis Benefits Insurance Company (the "Variable Account").

Filing Date: The application was filed on August 11, 1997, and amended on October 31, 1997 .

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 19, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Fortis Benefits, a stock life insurance company organized under the laws of Minnesota, is qualified to sell life insurance contracts in the District of Columbia and all states except New York. Fortis Benefits is an indirect wholly-owned subsidiary of Fortis, Inc., which is owned, indirectly, 50% by Fortis AMEV and 50% by Fortis AG. Fortis AMEV is a diversified financial

services company headquartered in Utrecht, the Netherlands. Fortis AG is a diversified financial services company headquartered in Brussels, Belgium. Fortis AMEV and Fortis AG have merged their operating companies under the trade name of Fortis. Fortis Benefits is the depositor and sponsor of the Variable Account.

2. The Variable Account is a segregated investment account of Fortis Benefits and was established under the insurance laws of Minnesota. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account issues flexible premium deferred combination variable and fixed annuity contracts on either a group basis or as individual contracts ("Contracts", and owners of which are referred to as "Holders"). Interests in the Variable Account are offered through the sale of the Contracts and are registered under the Securities Act of 1933 ("1933 Act"). The Contracts are structured to allow Holders to elect an interest accumulation option through a fixed account (the "Fixed Account") or a variable return accumulation option through the Variable Account, or a combination of these two options.

3. The Variable Account is divided into subaccounts ("Subaccounts"). Assets held in each Subaccount pursuant to the Contracts are invested exclusively in one of the funds or portfolios available for investment. The portfolios are registered investment companies available for purchase only as a funding vehicle for variable life insurance and variable annuities issued by Fortis Benefits and other insurance companies (the "Portfolios"). For Holders who were issued Contracts on or after December 1, 1996, there are 22 Subaccounts available for investment. The Strong Advantage Portfolio and the Strong Government Portfolio are not available for investment to Holders issued Contracts on or after December 1, 1996. For Holders issued Contracts before December 1, 1996, there are 30 Subaccounts available for investment, including the Strong Advantage Portfolio and the Strong Government Portfolio.

4. Strong Funds is registered under the 1940 Act as a diversified, open-end management investment company and currently issues seven series of shares, each of which is a separate open-end diversified investment management company. Each series of the Strong Funds is managed by Strong Capital Management.

5. Neuberger & Berman Advisers Management Trust is registered under the 1940 Act as a diversified, open-end management investment company and currently is comprised of seven portfolios, each of which is a separate open-end diversified management investment company. Each portfolio invests all of its net assets in its corresponding series of Advisers Managers Trust, an open end management investment company, in each case receiving a beneficial interest in that series. The corresponding series for the N & B Bond Portfolio is AMT Limited Maturity Bond Investment. AMT Limited Maturity Bond Investments invests in securities in accordance with an investment objective, policies and limitations identical to those of the N & B Bond Portfolio. The investment performance of the N & B Bond Portfolio will directly correspond with the investment performance of AMT Limited Maturity Bond Investments. This master/feeder fund structure is different from that of many investment companies which directly acquire and manage their own portfolio of securities. AMT Limited Maturity Bond Investment is managed by Neuberger & Berman Management Incorporated.

6. Federated Insurance Series is registered under the 1940 Act as a diversified management investment company. The Federated Government Portfolio is a diversified investment portfolio of the Federated Insurance Series.

7. Applicants are seeking to substitute shares of the N & B Bond Portfolio for shares of the Strong Advantage Portfolio and to substitute shares of the Federated Government Portfolio for shares of the Strong Government Portfolio.

8. Applicants represent that as of June 30, 1997, the assets attributable to Holders of the Subaccounts holding shares of the Strong Advantage Portfolio and the Strong Government Portfolio were relatively small, $152,580 and $96,408, respectively.

9. Applicants represent that as of June 30, 1997, the total net asset value of the Strong Advantage Portfolio and Strong Government Portfolio were relatively small, $192,723 and $96,453 , respectively.

10. Applicants represent that there has been a decrease in net asset value during 1997, as of June 30, 1997. From December 31, 1996 to June 30, 1997, the Strong Advantage Portfolio has decreased in size from $587,615 to $192,723 and the Strong Government Portfolio has decreased from $199,328 to $96,453.

11. The investment objective of the Strong Advantage Portfolio is to seek current income with a very low degree of share price fluctuation, which is pursued by investing in very short term, investment grade debt obligations. The investment objective of the Strong Government Portfolio is to seek total return by investing for a high level of current income with a moderate degree of share price fluctuation, which is pursued by normally investing at least 80% of total assets in U.S. government securities.

12. The investment objective of the N & B Bond Portfolio is to seek the highest current income consistent with low risk to principal and liquidity and secondarily, total return. The investment objective of the N & B Bond Portfolio is pursued by investing in a diversified portfolio of short to intermediate term U.S. government and agency securities and debt securities issued by financial institutions, corporations and others, primarily investment grade. The investment objective of the Federated Government Portfolio is to seek current income, which is pursued by normally investing at least 65% of total assets in securities issued or guaranteed as to payment of principal and interest by the U.S. government, its agencies or instrumentalities.

13. For several reasons, Applicants believe that it is not in the best interests of the Holders to continue to utilize the Strong Advantage Portfolio and Strong Government Portfolio (collectively, the "Replaced Portfolios") as investment options and further believe that the Applicants can better serve the interest of the Holders by utilizing investment alternative that may be better suited to their needs and interests.

14. Applicants represent that the proposed substitution of shares of the N & B Bond Portfolio for shares of the Strong Advantage Portfolio and the proposed substitution of shares of the Federated Government Portfolio for shares of the Strong Government Portfolio involve the substitution of Portfolios whose objectives, policies and restrictions are sufficiently similar to those of the Replaced Portfolios so as to continue fulfilling Holders' objectives and risk expectations.

15. Applicants represent that the performance of each Portfolio in which Holders will be invested following the proposed substituon is comparable or superior to the investment performance of the replaced Portfolios. The following chart sets forth the comparative average annual total returns for the periods listed below for the Replaced Portfolios and the N & B Bond Portfolio and the Federated Government Portfolio.

AVERAGE ANNUAL TOTAL RETURN FOR SPECIFIED PERIODS

[In percent]

Portfolios	For 6 months, ending 6/30/97	For year ending 12/30/96	For five years, ending 12/30/96	Since inception** through 12/30/96
Strong Advantage Portfolio	*2.30	4.92	N/A	5.24
N & B Bond Portfolio	*2.96	4.31	5.32	N/A
Strong Government Portfolio	*2.60	N/A	N/A	−0.41
Federated Government Portfolio	*3.01	4.20	N/A	5.62

*Not Annualized.
** Strong Advantage Portfolio, inception date 11/30/95. Strong Government Portfolio, inception date 1/31/96. Federated Government Portfolio, inception date 3/28/94.

16. Applicants represent that the ratio of expenses to net assets for the Subaccounts in which Holders will be invested after the substitution will be no greater than the ratio of expenses to net assets, after reimbursements and waivers, for the Subaccounts proposed to be eliminated. Therefore Holders will not be exposed to higher expenses following the substitution. The investment advisers to the Strong Advantage Portfolio, the Strong Government Portfolio and the Federated Government Portfolio have arrangements under which each may voluntarily waive a portion of their fees or reimburse the Portfolios for certain operating expenses. The investment adviser to the N & B Bond Portfolio has contractually agreed, subject to termination on 60 days prior written notice, to limit certain of the N & B Bond Portfolio's operating expenses by reimbursing certain expenses that exceed 1% of the average daily net asset value of the N & B Bond Portfolio. The following chart summarizes the ratio of expenses to net assets for the Portfolios for the year ended December 31, 1996 before and after reimbursements and waivers.

RATIO OF EXPENSES TO NET ASSETS FOR THE YEAR ENDED DECEMBER 31, 1996

[In percent]

Portfolio	Total expenses after reimbursements and waivers	Total expenses before reimbursements and waivers
Strong Advantage Portfolio	2.00	2.87
N & B Bond Portfolio	0.78	0.78
Strong Government Portfolio	*1.70	*3.90
Federated Government Portfolio	0.80	1.81

*Calculated on an annualized basis (commenced operations on January 31, 1996).

17. Applicant states that the small amount of assets attributable to Holders of the Subaccounts holding shares of the Replaced Portfolios, the relatively small total net asset values of the Replaced Portfolios, the relatively small overall size of the Replaced Portfolios with the decrease in net asset value during the first 6 months of 1997 and the fact that the Replaced Portfolios are not available as investment options to Holders of Contracts issued after December 1, 1996, will tend to strain the ability of the Replaced Portfolios to maintain an acceptable expense ratio compared to the larger N & B Bond Portfolio and the Federated Government Portfolio (collectively, the "Substitute Portfolios"). Accordingly, the proposed substitution is expected to confer economic benefits to Holders by virtue of the enhanced asset size and the reduced expense ratios of the Substitute Portfolios.

18. The comparative total net assets as of June 30, 1997 were $252,284,067 for the N & B Bond Portfolio, compared to $192,723 for the Strong Advantage Portfolio, and $44,369,652 for the Federated Government Portfolio, compared to $96,453 for the Strong Government Portfolio.

19. Applicants state that since the N & B Bond Portfolio and the Federated Government Portfolio are available for investment under the Contracts, all of the affected Holders have received a current prospectus relating to the N & B Bond Portfolio and the Federated Government Portfolio.

20. Applicants state that notice will be sent to Holders 30 days prior to the proposed substitution which informs them that Fortis Benefits has filed an application for an order allowing Applicants to undertake the substitution described in their application and that they may elect at any time prior to the close of business on the closing date of the transactions to transfer their interest in either or both of the two current Subaccounts to any other Subaccount or to the Fixed Account, without charge. The notice will also inform Holders of the approximate date of the substitution. Once the substitution is completed, a confirmation will be mailed to the Holders reflecting the transfer of the Contract value from the Subaccount investing in the Strong Advantage Portfolio to the Subaccount investing in the N & B Bond Portfolio and/or the transfer of Contract value from the Subaccount investing in the Strong Government Portfolio to the Subaccount investing in the Federated Government Portfolio. The confirmation will be sent within 5 days of the substitution.

21. Applicants represent that the substitution will be effected by redeeming all shares held by the Variable Account in the Strong Advantage Portfolio and the Strong Government Portfolio and an equivalent purchase of shares in the N & B Bond Portfolio and the Federated Government Portfolio, respectively, at net asset value on the same date. The values under each Contract will be identical immediately before and after the transactions. All administrative and other costs of the transactions will be borne by Fortis Benefits. There will be no tax consequences to Holders and no adverse tax consequences to the Variable Account or Fortis Benefits relating to the transactions. The proposed substitution will not be counted as a transfer for the purpose of any restrictions on the number of transfers that may now or in the future apply to Holders. The proposed substitution will not alter the insurance benefits or other rights or benefits of Holders or the contractual obligations of Fortis Benefits.

Applicants' Legal Analysis

1. Section 26(b) provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) of the 1940

Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of the Replaced Portfolios with the Substitute Portfolios.

3. The Contracts provide that Fortis Benefits retains the right to make certain changes, if, in its judgment, they would best serve the interests of the Holders or would be appropriate in carrying out the purposes of the Contracts. Examples of the changes Fortis Benefits may make are to transfer assets in any Subaccount to another Subaccount, or to one or more separate accounts, or to add, combine or remove Subaccounts in the Variable Account or to substitute, for the Portfolio shares held in any Subaccount, the shares of another Portfolio or the shares of another investment company or any other investment permitted by law.

4. Applicants submit that the proposed substitution will meet the requirements of Section 26(b) for the following reasons:

(a) The investment objectives of the Replaced Portfolios are sufficiently similar to those of the Substitute Portfolios, respectively, to be appropriate for substitution.

(b) The investment performance of the Substitute Portfolios is comparable or superior to the investment performance of the Replaced Funds.

(c) The comparative ratio of expenses to net assets (following reimbursement) for the Substitute Portfolios will be no greater than that of the Replaced Portfolios.

(d) The proposed substitution will result in the investment of assets, currently in Portfolios which have not increased to a level which would make each investment alternative viable for Holders, into substantially larger and more stable underlying Portfolios.

Conclusion

For the reasons stated above, Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31622 Filed 12-2-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26785]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 25, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation, et al.

[70-9113]

Central and South West Corporation ("CSW"), a registered holding company, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and its wholly-owned service company subsidiary, Central and South West Services, Inc. ("CSW Services"), 212 East 6th Street, Tulsa, Oklahoma 74119, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c) and 13(b) of the Act and rules 42, 54 and 87-91 thereunder.

CSW owns all of the outstanding shares of common stock of four public utility subsidiaries (collectively, "Operating Companies"): Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company. Together, these Operating Companies provide electric service to approximately 1.7 million customers in a widely diversified area covering 152,000 square miles in portions of Arkansas, Louisiana, Oklahoma and Texas.[1]

CSW requests authorization to adopt and implement a stockholder rights plan ("Rights Plan") under which CSW's Board of Directors ("Board") would declare a dividend of one right ("Right") for each outstanding share of CSW Common Stock, par value $3.50 per share ("Common Stock"), payable to stockholders of record on a date to be established ("Record Date").[2] The Rights will be created by and issued under a rights agreement ("Rights Agreement") to be entered into by CSW and CSW Services, as Rights Agent.[3] The Rights created under the proposed Rights Agreement would entitle the holders to purchase one-tenth of a share of Common Stock at a price of $50 per whole share of Common Stock, subject to adjustment (Purchase Price").[4] This is equivalent to $5 per one-tenth of one share of Common Stock. CSW states that the Purchase Price represents the Board's estimation of the long-term value of the Common Stock. The Board has adopted and approved the Rights Agreement subject to the receipt of an appropriate order from the Commission in this filing. Upon receipt of such an order, the Rights will be distributed as a dividend to the holders of CSW's outstanding shares of Common Stock.[5]

Initially, the Rights would not be exercisable and would trade as an integral part of the outstanding shares of Common Stock. Subject to certain rights of CSW to redeem[6] or exchange shares of Common Stock for[7] the Rights, the Rights would become exercisable (i.e., Common Stock could be purchased at the Purchase Price pursuant to the Rights) and Rights Certificates representing the Rights would be distributed and would trade independently of the outstanding shares of Common Stock upon the occurrence of the following triggering events ("Triggering Events"): the earlier to occur of (i) 10 days after the first public announcement that any person or group ("Acquiring Person") has acquired beneficial ownership of 15% or more of CSW's outstanding Common Stock ("Acquisition Event") and (ii) 10 business days (unless extended by the Board of Directors) after any person or group has commenced a tender or exchange offer which would, upon its consummation, result in such person or group becoming an Acquiring Person ("Offer Event") (the earlier of (i) and (ii) is hereafter referred to as the "Distribution Date").

When the Triggering Event is an Acquisition Event, the holders of the Rights (other than an Acquiring Person and certain transferees thereof whose Rights will become void) would immediately have the right to receive, for each Right exercised, Common Stock having a market value equal to two times the Purchase Price then in effect ("Discount Purchase Right"). When the Triggering Event is an Offer Event, the holders of the Rights (other than an Acquiring Person and certain transferees thereof whose Rights will become void) would be entitled to the Discount Purchase Right once a person or group commencing the tender or exchange offer becomes an Acquiring Person.

In the event that, on or after the Distribution Date: (i) CSW is acquired by another person or entity not controlled by CSW ("Acquiror") in a merger or other business combination transaction in which CSW Common Stock is exchanged for securities or other property; or (ii) 50% or more of CSW's consolidated assets or earnings power is sold or transferred to an Acquiror, each holder of a Right (except Rights which previously have been voided as discussed above) will thereafter be entitled to receive, for each Right exercised, common stock of the Acquiror having a market value equal to two times the Purchase Price then in effect.

CSW states that the proposed Rights Plan is intended to deter hostile takeover attempts and/or attempts to acquire CSW in a manner or on terms which the Board determines are not in the best interests of all stockholders by enabling the Board to provide CSW stockholders with adequate time to assess properly a takeover bid without undue pressure. The Rights Plan is also intended to confront a potential acquiror with the possibility that the exercise of Rights by stockholders will substantially increase the number of shares of Common Stock outstanding and therefore the cost of acquiring control of CSW. CSW states that the Rights Plan will operate to maximize and preserve the value of CSW for its stockholders, in the event of an attempted hostile or unwanted takeover, but is not designed to prevent a proxy contest to replace members of the Board or frustrate a fair offer for the entire company which is in the best interests of stockholders.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31618 Filed 12-2-97; 8:45 am]

BILLING CODE 8010-01-M

[1] CSW also has numerous nonutility subsidiaries, including CSW Energy, Inc., which develops and operates independent power and cogeneration projects; CSW International, Inc., which pursues investments in energy ventures internationally, and which, indirectly, owns all the outstanding share capital of SEEBOARD p.l.c., one of 12 regional electricity companies in the United Kingdom; CSW Credit, Inc., which purchases the accounts receivable of the Operating Companies and certain non-affiliated electric utilities; CSW Communications, Inc., which provides communication services to the Operating Companies and certain non-affiliates; CSW Leasing, Inc., which invests in leveraged leases; EnerShop, Inc., which provides energy management services; and CSW Services, which performs, at cost, various accounting, engineering, tax, legal, financial electronic data processing, centralized economic dispatching of electric power and other services to CSW and its subsidiaries.

[2] As of June 30, 1997 there were 212,235,310 shares of Common Stock outstanding.

[3] The services of CSW Services, as Rights Agent, will be provided at cost. CSW expects that such charges, if any, will be *de minimis*. As Rights Agent, CSW Services practically has no active duties unless the Rights become, if ever, exercisable, at which time the Rights Agent performs or causes to be performed services similar to a stock transfer agent. CSW Services is the transfer agent for the Common Stock.

[4] The Purchase price payable, and the number of shares of Common Stock (or other securities or property, as the case may be) issuable upon exercise of the Rights are subject to adjustment from time to time to prevent dilution. Prior to the date on which the Rights become exercisable, the Board may make such equitable adjustments as it deems appropriate in the circumstances in lieu of any adjustment otherwise required by the foregoing. No adjustment in the Purchase Price will be required until the time at which cumulative adjustments require an adjustment of at least 1% in the Purchase Price. No fractional shares of Common Stock will be issued and, in lieu thereof, a cash payment will be made based on the market price of the Common Stock on the last trading day prior to the date of exercise.

[5] Any of the provisions of the Rights Agreement may be amended by the Board without the consent of the holders of the Rights; provided, however, that on or after the Distribution Date (as defined below), the Rights Agreement may not be amended in any manner that would adversely affect the interests of the holders of the Rights.

[6] The Rights may be redeemed, as a whole, at a Redemption Price of $.01 per Right, subject to adjustment, at the direction of the Board, at any time prior to the earlier of: (i) 10 days after the first public announcement that any person has become an Acquiring Person (as defined below); and (ii) the date of final expiration of the Rights. The Rights will expire on the tenth anniversary of the Record Date, unless earlier redeemed or exchanged by CSW.

[7] At any time after any person or group shall have become an Acquiring Person and before any person (other than CSW and certain related entities), together with its affiliates and associates, shall have become the beneficial owner of 50% or more of the outstanding shares of Common Stock, the Board may direct the exchange of shares of Common Stock for all or any part of the Rights (other than Rights of an Acquiring Person which become void) at the exchange rate of one share of Common Stock per Right, subject to adjustment.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26784]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 24, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 18, 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Co.

[70-8597]

Central Power and Light company ("CPL"), 539 North Carancahua Street, Corpus Christi, Texas, 78401, a wholly owned electric utility subsidiary company of Central and South West Corporation, a registered public utility holding company, has filed a post-effective amendment, under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act, to an application-declaration filed under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and rules 44 and 51 under the Act.

By orders dated June 15, 1995 (HCAR No. 26309), July 26, 1995 (HCAR No. 26339), and August 28, 1996 (HCAR No. 26565) ("Orders"), CPL was authorized to incur obligations, through December 31, 1997, in connection with the issuance by the Matagorda County

Navigation District No. One ("District") of up to $325 million in Pollution Control Revenue Refunding Bonds ("Refund Bonds") and of up to $150 million in Pollution Control Revenue Bonds and/or Solid Waste Revenue Bonds ("New Bonds") (collectively, "Bonds"). CPL to date has issued $160.635 million of Refund Bonds and no New Bonds, leaving $164.365 million of Refund Bonds and $150 million of New Bonds to be issued.

CPL now requests an extension of the authorization to issue the remaining Refund Bonds and New Bonds, pursuant to the terms and conditions set forth in the Orders, through December 31, 2002.

The Orders stated that the purpose of the Refund Bonds was to re-acquire all or a portion of five types of previously issued Pollution Control Revenue Bonds ("Old Bonds") and that the purpose of the New Bonds was to reimburse CPL for expenditures qualified for tax-exempt financing or to provide for current solid waste expenditures.

The Old Bonds were issued to finance pollution control and solid waste disposal facilities for the South Texas Project Electric Generating Station ("Plant"). CPL owns a 25.2% undivided interest in the Plant. The Old Bonds were issued pursuant to Indentures of Trust with NationsBank of Texas, N.A., the Bank of New York, and Texas Commerce Bank, N.A.

CPL had entered into Installment Sale Agreements ("Sale Agreements") to provide for the issuance of the Old Bonds. In connection with the issuance of the Bonds, the Orders authorized CPL to amend the Sale Agreements, enter into agreements with similar terms, and/or enter into new installment sale agreements.

The Orders provided that the Bonds were to bear a fixed or floating interest rate, were authorized to be secured with First Mortgage Bonds, and were to mature between one and forty years. The interest rate, redemption provisions and other terms and conditions applicable to the Bonds were to be determined through negotiation between CPL and one or more investment banking firms that were to purchase or underwrite the Bond ("Firms").

The Orders authorized CPL to issue First Mortgage Bonds, to secure the Bonds, subject to applicable indenture restrictions, under a Supplemental Indenture to its Mortgage Indenture dated November 1, 1943 to the First National Bank of Chicago and A.H. Bohm. The optional redemption provisions, the sinking-fund provisions, and the limitation on dividends relative to the First Mortgage Bonds were authorized to deviate from the SEC Statement of Policy Regarding First Mortgage Bonds.

The Orders anticipated that the Bonds would be sold by the District pursuant to a Bond Purchase Agreement between the District and one or more Firms. The Orders authorized CPL to enter into negotiations with the Firms with respect to the interest rate, redemption provisions and other terms and conditions applicable to the Bonds.

Finally, the Orders authorized the use by CPL of interest rate swaps and other interest rate risk management devices.

Eastern Utilities Associates, et al.

[70–8609]

Eastern Utilities Associates, P.O. Box 2333, Boston, Massachusetts, 02107, a registered holding company; its public utility subsidiaries—Blackstone Valley Electric Company, Washington Highway, Lincoln, Rhode Island, 02865; Newport Electric Corporation, 12 Turner Road, Middletown, Rhode Island 02840; Eastern Edision Company, P.O. Box 2333, Boston, Massachusetts, 02107; and Montaup Electric Company, P.O. Box 2333, Boston, Massachusetts, 02107;—and its non-utility subsidiaries—EUA Service Corporation, P.O. Box 543, West Bridgewater, Massachusetts, 02379; EUA Cogenex Corporation, P.O. Box 2333, Boston, Massachusetts, 02107; and TransCapacity Limited Partnership, 83 Pine Street, Suite 101, West Peabody, Massachusetts, 01961 ("EUA Companies")—have filed a post-effective amendment to an application filed under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rule 54 under the Act.

By order dated June 15, 1995 (HCAR No. 26308), the EUA Companies were authorized, through December 15, 1997, to contribute 150,000 common shares of EUA stock, or to contribute cash to purchase 150,000 common shares from EUA or on the open market, to an Employees' Savings Plan ("Plan"). The Plan, established in 1981, meets the requirements of the Employee Retirement Income Security Act of 1974 and is qualified and exempt under the Internal Revenue Code.

The EUA Companies now seek authorization to contribute to the Plan up to 200,000 common shares of EUA stock, or to contribute cash to purchase up to 200,000 common shares on the open market, through December 15, 1999.

Columbia Gas System, Inc.

[70–9127]

The Columbia Gas System, Inc. ("Columbia"), 12355 Sunrise Valley Drive, Suite 300, Reston, Virginia, 20191–3458, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 13 of the Act and rule 54 under the Act.

Columbia seeks authorization to provide consulting services to associate and non-associate companies, and to engage in activities contemplated by the Gas Related Activities Act of 1990 ("GRAA"), on an international basis. In addition, Columbia seeks authorization to invest up to $5 million to acquire oil and natural gas leasehold interests in southern Ontario, Canada ("Canadian Interests").

Columbia would both provide consulting services and engage in GRAA activities ("Activities") through one or more, direct or indirect, to-be-formed non-utility subsidiaries ("Foreign Energy Subsidiaries"). The Foreign Energy Subsidiaries, in turn, might form one or more special-purpose subsidiaries to invest, directly or indirectly, in corporations, limited liability companies, partnerships or other entities that derive substantially all of their revenues from foreign consulting services or activities under the GRAA.

Columbia seeks authorization for the Foreign Energy Subsidiaries to engage in preliminary development activities in connection with foreign gas-related activities but asks the Commission to reserve jurisdiction over specific gas-related activities apart from the acquisition of the Canadian Interests.

Columbia seeks authorization to invest up to $5 million, through the Foreign Energy Subsidiaries, to acquire the Canadian Interests offered for sale by Paragon Petroleum Corporation ("Paragon"), a Canadian corporation. On October 17, 1997, Columbia Natural Resources, Inc. entered into a letter of intent with Paragon to acquire the Canadian Interests. This transaction is expected to close by December 31, 1997.

Columbia requests that the Commission authorize participation in the money pool by those direct and indirect subsidiaries that are formed in connection with the specific authorization sought in this application-declaration.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31621 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22913]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 26, 1997.

The following is a notice of applications for derigistration under section 8(f) of the Investment Company Act of 1940 for the month of November, 1997. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 10–4, 450 Fifth Street, N.W., Washington, D.C. 20549.

Crabbee Huson Real Estate Investment Fund, Inc. [File No. 811–6262]

Oregon Municipal Bond Fund, Inc. [File No. 811–4464]

Crabbee Huson Income Fund, Inc. [File No. 811–5836]

Crabbee Huson Equity Fund, Inc. [File No. 811–5837]

Crabbee Huson Asset Allocation Fund, Inc. [File No. 811–5838]

U.S. Government Money Market Fund, Inc. [File No. 811–5839]

U.S. Government Income Fund, Inc. [File No. 811–5840]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On October 1, 1996, each applicant, an Oregon corporation, transferred its assets and liabilities to a new portfolio of Crabbe Huson Funds, a Delaware business trust, based on the relative net asset value. Each applicant thus merged into an identically named portfolio of Crabbe Huson Funds, except that the Oregon Municipal Bond Fund merged into the Crabbe Huson Tax-Exempt Fund. The approximate expenses related to each transaction, which were borne by the respective applicant, were as follows: Crabbe Huson Real Estate Fund, $14,393; Oregon Municipal Bond Fund, $13,007; Crabbe Huson Income Fund, $11,473; Crabbe Huson Equity Fund, $201,845; Crabbe Huson Asset Allocation Fund, $53,348; U.S. Government Money Market Fund, $31,382; U.S. Government Income Fund, $10,233.

Filing Dates: Each application was filed on February 24, 1997, and amended on June 23, 1997.

Applicants' Address: 121 S.W. Morrison, Suite 1400, Portland, Oregon 97204.

Leahi Investment Trust [File No. 811–5321]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 31, 1997, applicant transferred its assets to First Hawaii Municipal Bond Fund ("First Hawaii"), a series of First Pacific Mutual Fund, Inc., based on the relative net asset value per share of each fund. The approximate expenses incurred in connection with the merger were $40,000 and were borne by the investment advisers to applicant and First Hawaii.

Filing Dates: The application was filed on September 2, 1997, and amended on November 13, 1997.

Applicant's Address: Ward Plaza, Suite 129, 210 Ward Avenue, Honolulu, Hawaii 96814.

First Prairie Diversified Asset Fund [File No. 811–4210]

First Prairie Money Market Fund [File No. 811–4212]

First Prairie Municipal Money Market Fund [File No. 811–4213]

Prairie Municipal Bond Fund [File No. 811–5414]

First Prairie U.S. Treasury Securities Cash Management Fund [File No. 811–6405]

First Prairie Cash Management Fund [File No. 811–6406]

Prairie Intermediate Bond Fund [File No. 811–6595]

Prairie Funds [File No. 811–7231]

Prairie Institutional Funds [File No. 811–7235]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Each applicant transferred its assets and liabilities to a series of Prairie Funds, The Woodward Funds, or Prairie Institutional Funds, based on the relative net asset value per share of each fund.

On March 4, 1995, First Prairie Diversified Asset Fund reorganized into Prairie Managed Assets Income Fund, a series of Prairie Funds. This applicant paid approximately $10,000 in expenses related to the reorganization.

On May 20, 1995, First Prairie Money Market Fund's Money Market Series reorganized into Prairie Money Market Fund, a series of Prairie Funds, and its Government Series reorganized into Prairie U.S. Government Money Market Fund, a series of Prairie Funds. This applicant paid approximately $35,000 in expenses related to the reorganization.

On May 20, 1995, First Prairie Municipal Money Market Fund reorganized into Prairie Municipal Money Market Fund, as series of Prairie Funds. This applicant paid approximately $20,000 in expenses related to the reorganization.

On September 14, 1996, Prairie Municipal Bond Fund, Inc. reorganized into Woodward Municipal Bond Fund, a series of The Woodward Funds. First Chicago NBD Corporation, the parent company of applicant's co-investment advisers, paid approximately $207,027 in expenses related to the reorganization.

On January 17, 1995, First Prairie U.S. Treasury Securities Cash Management Fund reorganized into U.S. Government Securities Cash Management Fund, a series of Prairie Institutional Funds. This applicant paid approximately $7,000 in expenses related to the reorganization.

On January 17, 1997, First Prairie Cash Management Fund reorganized into Cash Management Fund, a series of Prairie Institutional Funds. This applicant paid approximately $3,000 in expenses related to the reorganization.

On September 21, 1996, Prairie Intermediate Bond Fund reorganized into Woodward Income Fund, a series of The Woodward Funds. First Chicago NBD Corporation, the parent company of applicant's co-investment advisers, paid approximately $176,133 in expenses related to the reorganization.

On August 23, 1996, Prairie Managed Assets Fund, Prairie Growth Fund, Prairie Bond Fund, and Prairie International Equity Fund, each a series of Prairie Funds, reorganized into a corresponding series of The Woodward Funds. On September 14, 1996, Prairie U.S. Government Money Market Fund, Prairie Money Market Fund, and Prairie Municipal Money Market Fund, each a

series of Prairie Funds reorganized into a corresponding series of The Woodward Funds. On September 21, 1996, Prairie Managed Assets Income Fund, Prairie Equity Income Fund, Prairie Special Opportunity Fund, Prairie International Bond Fund and Prairie Intermediate Municipal Bond Fund, each a series of Prairie Funds, reorganized into a corresponding series of The Woodward Funds. First Chicago NBD Corporation, the parent company of applicant's co-investment advisers, paid approximately $1,888,347 in expenses related to the reorganization.

On July 15, 1996, Prairie Cash Management Fund, Prairie Treasury Prime Cash Management Fund, and Prairie U.S. Government Securities Cash Management Fund, each a series of Prairie Institutional Funds, reorganized into a corresponding series of The Woodward Funds. First Chicago NBD Corporation, the parent company of applicant's co-investment advisers, paid approximately $995,137 in expenses related to the reorganization.

Filing Dates: Each application was filed on June 27, 1997, and amended on October 20, 1997, and November 14, 1997.

Applicants' Address: Three First National Plaza, Chicago, Illinois 60670.

Target Income Fund, Inc. [File No. 811–6542]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 13, 1997, applicant completed a liquidation and sale of all of its investment assets to Concord Growth Corporation, a commercial finance services firm unaffiliated with applicant. On April 3, 1997, applicant completed a tender offer where each shareholder received its pro rata share of the aggregate net asset value of applicant. Applicant paid approximately $25,000 in expenses related to the liquidation.

Filing Dates: The application was filed on July 24, 1997, and amended on October 23, 1997.

Applicant's Address: 26691 Plaza Drive, Suite 222, Mission Viejo, CA 92691.

Neuberger & Berman Genesis Fund, Inc. [File No. 811–5562]
Neuberger & Berman Manhattan Fund, Inc. [File No. 811–1363]
Neuberger & Berman Partners Fund, Inc. [File No. 811–1601]
Neuberger & Berman Selected Sectors Fund, Inc. [File No. 811–691]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On August 2, 1993, each applicant transferred its assets and liabilities to a new, identically named portfolio of the Neuberger & Berman Equity Funds, based on the relative net asset value per share of each fund. The approximate expenses of each merger, which were shared by the transferring and acquiring funds, were as follows: Neuberger & Berman Genesis Fund, $40,000; Neuberger & Berman Manhattan Fund, $141,000; Neuberger & Berman Partners Fund, $147,000; Neuberger & Berman Selected Sectors Fund, $84,000. In effect, the shareholders of each applicant paid the expenses related to the transaction because the relevant acquiring fund had no assets or shareholders prior to the transaction and its shareholders therefore were substantially the same as applicants' shareholders.

Filing Dates: The applications were filed on April 1, 1996, and amended on October 23, 1996.

Applicants' Address: 605 Third Avenue, New York, NY 10158–3698.

JP Investment Grade Bond Fund, Inc. [File No. 811–3544]
JP Capital Appreciation Fund, Inc. [File No. 811–3543]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 1996, each applicant sold substantially all of its assets to Oppenheimer Fund, Inc. All expenses of the sale were paid by Oppenheimer Fund, Inc. and the management of each applicant; shareholders paid no expenses in connection with the sale.

Filing Date: Both applications were filed on November 10, 1997.

Applicants' Address: 100 North Greene Street, Greensboro, North Carolina 27401.

Bankers National Variable Account C [File No. 811–4373]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant, a separate account organized as a unit investment trust, liquidated its holdings in Conseco Series Trust and made liquidating distributions to its security holders between December 10, 1991 and March 5, 1992. All expenses associated with Applicant's liquidation and dissolution were borne by Applicant's depositor.

Filing Dates: The application was filed on July 12, 1994, and amended and restated on October 15, 1997.

Applicant's Address: 11815 N. Pennsylvania Street, Carmel, IN 46032.

Jackson National Capital Management Funds [File No. 811–6611]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 1996, applicant distributed its assets to its public shareholders of record at the net asset value per share. On December 23, 1996, applicant distributed all remaining assets to Jackson National Life Insurance Company, the sole remaining shareholder of record. Applicant's liquidation expenses totaled approximately $89,000 and were borne by Applicant's investment adviser.

Filing Dates: The application was filed on May 19, 1997, and amended on October 14, 1997.

Applicant's Address: 5901 Executive Drive, Lansing, Michigan 48911.

John Hancock Series, Inc. [File No. 811–5254]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 1996, applicant on behalf of its series John Hancock Emerging Growth Fund transferred all of its assets to a new, identically named series of John Hancock Series Trust ("Series Trust"), based on the relevant net asset value per share of each fund. Reorganization expenses of approximately $225,106 were borne equally by applicant and the Series Trust.

Filing Date: The application was filed on July 7, 1997.

Applicant's Address: 101 Huntington Avenue, Boston, Massachusetts 02199–7603.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31685 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39350; File No. SR–NASD–97–81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Changes to the Rule 1010 Series, the Rule 9000 Series, and the Rule 9000 Series To Reflect Changes in the Corporate Organization of the National Association of Securities Dealers, Inc. and Its Subsidiaries

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1997, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory subsidiary NASD Regulation, Inc. ("NASD Regulation" and collectively, the "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to amend (a) Article V of the NASD Regulation By-Laws; (b) the Rule 1010 Series; (c) the Rule 8000 Series; (d) the Rule 9000 Series; and (e) certain other rules of the Association, generally to conform such rules to the corporate restructuring of the Association and to make clarifying and technical changes to such rules.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

BY-LAWS OF NASD REGULATION, INC.

Article V—National Adjudicatory Council

Sec. 5.1 Through 5.10

No change.

Sec. 5.11 The National Adjudicatory Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceeding decisions should be called for review by the National Adjudicatory Council under the Rules of the Association and to perform any other function authorized by the Rules of the Association. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the National Adjudicatory Council. The number of Non-Industry members shall equal or exceed the number of Industry members. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members.

* * * * *

RULES OF THE ASSOCIATION

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

1010. Membership Proceedings

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

No change;

(b) "Associated Person"

The term "Associated Person" means a *natural person registered under the Rules of the Association or a* sole proprietor, partner, officer, director, branch manager, or natural person occupying a similar status or performing similar functions who will be or is anticipated to be associated with the Applicant, or [any] *a* natural person engaged in the investment banking or securities business who will be or is anticipated to be directly or indirectly controlling or controlled by the Applicant, whether or not any such person is registered or exempt from registration under the NASD By-Laws or the Rules of the Association.

(c) "Department"

No change.

(d) "Director"

The term "Director" means a member of the NASD Regulation Board[, excluding the Chief Executive Officer of the NASD].

* * * * *

(l) "Subcommittee"

The term "Subcommittee" means a subcommittee of the National [Business Conduct Committee] *Adjudicatory Council* that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

1012. General Provisions

(a) Service of Notices and Decisions; Filing by Applicant

No change.

(b) Ex Parte Communications

(1) Unless on notice and opportunity for an Applicant and Interested Association Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rules of the Association:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Association Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, [a Director,] a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof, or an Association employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, [a Director,] a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof, or an Association employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(2) A Governor, [a Director,] a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof, or an Association employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

(3) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National [Business Conduct Committee] *Adjudicatory Council* under Rule 1015.

(c) Recusal or Disqualification

A Governor[, a Director,] or a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his

[1] Amendment Nos. 1 and 2 to this proposed rule filing were filed on November 12, 1997 and November 18, 1997, respectively. The changes contained in these amendments have been included in this Notice. *See* Letter Amendment No. 1 from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 12, 1997; Letter Amendment No. 2 from Alden S. Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 18, 1997. Several additional technical amendments are also included in this Notice. Telephone conversation between Sharon Zakula, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Office of Market Supervision, Commission (November 20, 1997).

or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the NASD Board shall have authority to direct the disqualification of a Governor, and [the Vice Chair] *a majority* of the *Governors of the* NASD Board *excluding the Chair* shall have authority to direct the disqualification of the Chair of the NASD Board.

(2) The Chair of the [NASD Regulation Board] *National Adjudicatory Council* shall have authority to direct the disqualification of a [Director] *member of the Council or a member of a Subcommittee appointed pursuant to Rule 1015*, and the Vice Chair of the [NASD Regulation Board] *Council* shall have authority to direct the disqualification of the Chair of the [NASD Regulation Board] *National Adjudicatory Council*.

[(3) The Chair of the National Business Conduct Committee shall have authority to direct the disqualification of a member of the Committee or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Committee shall have authority to direct the disqualification of the Chair of the National Business Conduct Committee.]

[(d) Separation of Review Functions

A Director shall not participate or advise in the decision of a Governor with respect to the review of a membership proceeding under the Rule 1010 Series, and a Governor shall not participate or advise in the decision of a Director with respect to the review of a membership proceeding under the Rule 1010 Series.]

[(e)]*(d)* Computation of Time

No change.

1013. Application and Membership Interview

(a) Filing of Application

(1) No change.

(2) The second part of the application shall be filed with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business and shall include the following information and documents:

* * * * * *

(C) [evidence of all registrations and licenses required by the Commission, state securities authorities, the Municipal Securities Rulemaking Board, the National Securities Clearing Corporation, and self-regulatory organizations, and] a copy of any decision by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

* * * * *

1014. Department Decision

* * * * *

(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National [Business Conduct Committee, the NASD Regulation Board] *Adjudicatory Council*, the NASD Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by the Department under Rule 1017;

(2) removed or modified by a decision constituting final action of the Association issued under Rule 1015 or 1016; or

(3) stayed by the National [Business Conduct Committee, the NASD Regulation Board] *Adjudicatory Council*, the NASD Board, or the Commission.

(g) Final Action

No change.

1015. Review by National [Business Conduct Committee] *Adjudicatory Council*

(a) [Request]*Initiation of Review*

(1) *Request by Applicant*

Within 25 days after service of a decision under Rule 1014, 1017, or 1018, an Applicant may file a written request for review with the National [Business Conduct Committee] *Adjudicatory Council*. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall send by first-class mail a copy of the request to the district office where the Applicant filed its membership application.

(2) *Notice of National Adjudicatory Council*

A decision issued under Rule 1014, 1017, or 1018 shall be subject to a call for review by any member of the National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 within 30 days after service of the decision. If the National Adjudicatory Council calls a decision for review, a written notice of review shall be served promptly on the Applicant by first-class mail. The written notice of review shall state the specific grounds for the review and whether a hearing is directed. If a decision is called for review by any member of the National Adjudicatory Council or the Review Subcommittee the decision shall be reviewed by the National Adjudicatory Council. The National Adjudicatory Council simultaneously shall send by first-class mail a copy of the notice to the district office where the Applicant filed its membership application.

(b) Transmission of Documents

Within ten days after receipt of a request for *or notice of* review, the Department shall:

(1) transmit to the National [Business Conduct Committee] *Adjudicatory Council* copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Membership Application Docket

The Department shall promptly record in the Association's membership application docket each request for *or notice of* review filed with the National [Business Conduct Committee] *Adjudicatory Council* under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) Appointment of Subcommittee

The National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee defined in Rule 9120* shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of at least two members. One member shall be a current member of the National [Business Conduct Committee] *Adjudicatory Council*. The remaining member or members shall be current or past Directors or past Governors.

(e) Powers of Subcommittee

If a hearing is requested *or directed*, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(f) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the receipt of the request or service of the notice by the National [Business Conduct Committee] *Adjudicatory Council*. The National [Business Conduct Committee] *Adjudicatory Council* shall send written notice of the date and time of the hearing to the Applicant by facsimile or commercial courier not later than 14 days before the hearing.

(2) Counsel

No change.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National [Business Conduct Committee] *Adjudicatory Council*. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

No change.

(5) Failure to Appear at Hearing

If an Applicant fails to appear at a hearing for which it has notice, the National [Business Conduct Committee] *Adjudicatory Council* may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National [Business Conduct Committee] *Adjudicatory Council* may withdraw a dismissal entered pursuant to this subparagraph.

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee of the National [Business Conduct Committee] *Adjudicatory Council* may direct the Applicant or the Department to submit additional information and to file briefs. Any additional information or brief submitted shall be provided to all parties before the National [Business Conduct Committee] *Adjudicatory Council* renders its decision.

(h) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National [Business Conduct Committee and all other Directors] *Adjudicatory Council* within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the membership proceeding shall be considered.

(i) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

No change.

(3) Issuance of Decision After Expiration of Call for Review Periods

The National [Business Conduct Committee] *Adjudicatory Council* shall provide its proposed written decision to the NASD [Regulation Board, and, if such decision is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation] *Board. The NASD* Board may call the membership proceeding for review pursuant to Rule 1016[(a). The]. *If the* NASD Board [may] *does not* call the membership proceeding for review [pursuant to Rule 1016(b). If neither the NASD Regulation Board nor the NASD Board calls the membership proceeding for review], the proposed written decision of the National [Business Conduct Committee] *Adjudicatory Council* shall become final. The National [Business Conduct Committee] *Adjudicatory Council* shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National [Business Conduct Committee] *Adjudicatory Council* shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the National [Business Conduct Committee] *Adjudicatory Council* remands the membership proceeding.

(4) Failure To Issue Decision

If the National [Business Conduct Committee] *Adjudicatory Council* fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the National [Business Conduct Committee] *Adjudicatory Council* to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the National [Business Conduct Committee] *Adjudicatory Council* to serve its written decision immediately or to show good cause for an extension of time. If the National [Business Conduct Committee] *Adjudicatory Council* shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by [Boards] *NASD Board*

[(a) Discretionary Review by the NASD Regulation Board

(1) Call For Review By Director

A Director may call a membership proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (2).

(2) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 1015, a Director shall have not less than seven days to determine if the membership proceeding should be called for review. A Director shall call a membership proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, The NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office,

the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(3) Review at Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in subparagraph (2), the NASD Regulation Board shall review the membership proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may direct the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the membership proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 1015(i)(2).

(5) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the membership proceeding for review pursuant to paragraph (b). If the NASD Board does not call the membership proceeding for review, the proposed written decision of the NASD Regulation Board shall become final. The NASD Regulation Board shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that a final written decision will be served within 15 days after such date. The NASD Regulation Board shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the NASD Regulation Board remands the membership proceeding.

(6) Failure To Issue Decision

If the NASD Regulation Board fails to serve its final written decision within the time prescribed in subparagraph (5), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the NASD Regulation Board to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the NASD Regulation Board to serve its written decision immediately or to show good cause for an extension of time. If the NASD Regulation Board shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.]

[(b) Discretionary Review by the NASD Board]

[(1)]*(a)* Call for Review by Governor

A Governor may call a membership proceeding for review by the NASD Board if the call for review is made within the period prescribed in subparagraph (2).

[(2) Seven Day Period; Waiver]*(b) 15 Day Period; Waiver*

[(A) Membership Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the membership proceeding under paragraph (a), a] *A* Governor shall make his or her call for review at the next meeting of the NASD Board that is at least [seven] *15* days after the date on which the NASD Board receives the proposed written decision of the *National Adjudicatory Council* [NASD Regulation Board].

[(B) Membership Proceeding Not Called For by NASD Regulation Board

If no Director of the NASD Regulation Board called the membership proceeding for review under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.]

[(C) Waiver]

By unanimous vote of the NASD Board, the NASD Board may shorten the period [in subparagraph (A) or (B)] to less than [seven] *15* days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] *15* day period [in subparagraph (A) or (B)], vote to extend the period [in subparagraph (A) or (B)] to more than [seven] *15* days.

[(3)]*(c)* Review At Next Meeting

If a Governor calls a membership proceeding for review within the time prescribed in [subparagraph (2)] *paragraph (b),* the NASD Board shall review the membership proceeding not later than the next meeting of the NASD Board. The NASD Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

[(4)]*(d)* Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse [: (1)] the proposed written decision of the [NASD Regulation Board, or (2) if the NASD Regulation Board did not call the membership proceeding for review under paragraph (a), the proposed written decision of the National Business Conduct Committee] *National Adjudicatory Council.* Alternatively, the NASD Board may remand the membership proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 1015(i)(2).

[(5)]*(e)* Issuance of Decision

The NASD Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d–3, unless the NASD Board remands the membership proceeding.

1017. Removal or Modification of Business Restriction

* * * * *

(f) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National [Business Conduct Committee, the NASD Regulation Board] *Adjudicatory Council*, the NASD Board, or the Commission.

(g) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the National [Business Conduct Committee's] *Adjudicatory Council's* decision shall be subject to discretionary review by [the NASD Regulation Board and] the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Association.

(h) Removal or Modification of Restriction on Department's Initiative

No change.

1018. Change in Ownership, Control, or Operations

* * * * *

(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National [Business Conduct Committee, the NASD Regulation Board] *Adjudicatory Council*, the NASD Board, or the Commission.

(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such a review, and the National [Business Conduct Committee's] *Adjudicatory Council's* decision shall be subject to discretionary review by [the NASD Regulation Board and] the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for review, the Department's action shall constitute the final action of the Association.

* * * * *

[4615. Automated Submission of Trading Data Requested by Association

(a) A member shall submit the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association.

(1) If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cause to be submitted the following information:

(A) Clearing house number, or alpha symbol as used by the member submitting the data;

(B) Clearing house number(s) or alpha symbol(s) as may be used from time to time, of the member(s) on the opposite side of the transaction;

(C) Identifying symbol assigned to the security;

(D) Date transaction was executed;

(E) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or if an options contract, whether open long or short or close long or short;

(F) Transaction price;

(G) Account number; and

(H) Market center where transaction was executed.

(2) If the transaction was effected or caused to be effected by the number for any customer account, such member shall submit or cause to be submitted the following information:

(A) The data described in subparagraphs (1)(A) through (H) above; and

(B) Customer name, address(es) branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).

(C) If transaction was effected for another member whether the other member was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.

(3) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by the Association.

(4) The Association may grant exceptions from the requirement that the data prescribed in subparagraphs (1) and (2) above be submitted to the Association in an automated format, in such cases and for such time periods as it deems appropriate.]

* * * * *

[5107. Automated Submission of Trading Data

Every Association member and approved affiliate that participates in Nasdaq International as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. As used in paragraphs (a) through (d) hereof, the terms "participating firm" and "firm" include both Association members and approved affiliates that utilize the Service.

(a) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in which such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale, or short sale;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:

(1) The data described in subparagraphs (1) through (8) of paragraph (a);

(2) Customer name, address(es), branch office number, registered representative number; whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and

(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.

(c) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.

(d) The Association may grant exceptions from the requirement that the data prescribed in paragraphs (a) and (b) above be submitted to the Association in an automated format, in such cases and for such time periods as it deems appropriate.]

* * * * *

[6730. Automated Submission of Trade Data

Each member shall submit the trade data specified in Rule 4615 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-Nasdaq

securities that are the subject of a request for information made by the Association.]

* * * * *

Investigations and Sanctions

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8000. INVESTIGATIONS AND SANCTIONS

8100. GENERAL PROVISIONS

8110. Availability of Manual to Customers

[Every member of the Association shall keep in its main office and each of its branch offices] *Members shall keep and maintain* a current copy of the [Association's Manual and all amendments to it. Upon request, a member shall make the Manual and amendments available to any customer for examination.] *NASD Manual in a readily accessible place and shall make it available for examination by customers upon request.*

8120. Definitions

No change

[2] This table of contents is provided for convenience only, and is not a part of the amended Rules of the Association submitted for approval in this rule filing.

8200. INVESTIGATIONS

8210. Provision of Information and Testimony and Inspection and Copying of Books

* * * * *

(d) [Receipt of] Notice

A notice under this Rule shall be deemed [to have been] received by the member or person to whom it is directed by [the mailing thereof to the] *mailing or otherwise transmitting the notice to the last known* business address of [such] *the* member or *the last known residential address of the* person as reflected in the Central Registration Depository[, unless]. *If* the Adjudicator or Association staff responsible for [serving] *mailing or otherwise transmitting the notice to* the member or [associated] person has actual knowledge that the address *in the Central Registration Depository* is out of date[. In such case,] *or inaccurate, then* a copy of the notice shall be [served on the member at its last known address, or in the case of an associated person, at the associated person's] *mailed or otherwise transmitted to: (1) the last known business address of the member or the* last known residential address [and] *of* the [business address] *person as reflected* in the Central Registration Depository [of the member with which the person is employed or affiliated], *and (2) any other more current address of the member or the person known to the Adjudicator or Association staff who is responsible for mailing or otherwise transmitting the notice.*

* * * * *

8211. Automated Submission of Trading Data Requested by the Association

(a) A member shall submit the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cuase to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the member submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the member for any customer account, such member shall submit or cause to be submitted the following information:

(1) The data described in subparagraphs (b) (1) through (8) above;

(2) The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and

(3) If thee transaction was effected for another member, whether the other member was acting as principal or agent.

(d) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by the Association.

(e) Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) dbove be submitted to the Association in an automated format for good cause shown.

8212. Automated Submission of Trading Data for the Nasdaq International Service Requested by the Association

(a) Every Association member and approved affiliate that participates in the Nasdaq International Service as defined in the Rule 5100 Series ("Nasdaq International") as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. In this rule the terms "participating firm" and "firm" include both Association members and approved affiliates that utilize the Service.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in whch such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale or short sale;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:

(1) The data described in subparagraphs (b)(1) through (8);

(2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and

(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.

(d) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.

(e) Pursuant to the Rule 9600 Series, the Association may exempt a person from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.

8213. Automated Submission of Trading Data for Non-Nasdaq Securities Requested by the Association

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-Nasdaq securities as defined in the rule 6700 Series that are the subject of a request for information made by the Association. Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to the Association in an automated format for good cause shown.

8220. Suspension for Failure to Provide Requested Information

8221. Notice

(a) Notice to Member

If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the National [Business Conduct Committee] *Adjudicatory Council* may provide written notice to such member specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension from membership.

(b) Notice to Person Associated with Member

If a person associated with a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, the National [Business Conduct Committee] *Adjudicatory Council* may provide written notice to such person specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.

(c) Service of Notice

The National [Business Conduct Committee] *Adjudicatory Council* shall serve the member of *person* associated [person] *with a member* with such notice via personal service or commercial courier.

8222. Hearing

(a) Request for Hearing

Within five days after the date of service of a notice issued under Rule 8221, a member or *person* associated [person] *with a member* served with a notice under Rule 8221(c) may file with the National [Business Conduct Committee] *Adjudicatory Council* a written request for an expedited hearing before a subcommittee of the National [Business Conduct Committee] *Adjudicatory Council*. The request shall state with specificity why the member or associated person believes that there are insufficient grounds for suspension or any other reason for setting aside the notice issued by the National [Business Conduct Committee] *Adjudicatory Council.*

(b) Hearing Procedures

(1) Appointment of Subcommittee

If a hearing is requested, the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee described in Rule 9120* shall appoint a subcommittee to conduct the hearing and decide whether the member or *person* associated [person] *with a member* should be suspended. The subcommittee shall be composed of a member of the National [Business Conduct Committee] *Adjudicatory Council* and one or more [current or past] *former* members of the NASD Regulation Board *and the NASD Board.*

(2) Time of Hearing

The hearing shall be held within 20 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or *person* associated [person] *with a member* with written notice of the date and time of the hearing via commercial courier or facsimile and notify the appropriate department or office of NASD Regulation of the date and time of the hearing. The appropriate department or office of NASD Regulation (hereinafter "appropriate department or office" in the Rule 8220 Series) shall be the department or office that issued the request for the information, report, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.

(3) Transmission of Documents

Not later than seven days before the hearing, the subcommittee shall serve the member or *person* associated [person] *with a member* via commercial courier with all documents that were considered in connection with the National [Business Conduct Committee's] *Adjudicatory Council's* decision to issue a notice under Rule 8221.

(4) Counsel

The member or *person* associated [person] *with a member* and the appropriate department or office may be represented by counsel at a hearing conducted under this Rule.

(5) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the member or *person* associated [person] *with a member* and the appropriate department or office shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the subcommittee.

(6) Witnesses

No change.

(7) Additional Information

At any time during its consideration, the subcommittee may direct the member or *person* associated [person] *with a member* or the appropriate department or office to submit additional information. Any additional information submitted shall be provided to all parties before the subcommittee renders its decision.

(8) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. The member or *person* associated [person] *with a member* may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the subcommittee within a reasonable time determined by the subcommittee. Upon notice to the participants in the hearing, the subcommittee may order corrections to the transcript as requested or sua sponte.

(9) Record

The record shall consist of all documents that were considered in connection with the National [Business Conduct Committee's] *Adjudicatory Council's* decision to issue a notice under Rule 8221, the notice issued under Rule 8221, the request for hearing filed under Rule 8222, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Subcommittee. The Office of the General Counsel of NASD Regulation shall be the custodian of the record.

(10) Failure to Appear at Hearing

If a member or *person* associated [person] *with a member* fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice of the National [Business Conduct Committee] *Adjudicatory Council* issued under Rule 8221 shall become the final action of the Association. Upon a showing of good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.

8223. Decision

(a) Subcommittee

No change.

(b) NASD Board of Governors

(1) Call for Review by Governor

No change.

(2) Review and Decision

If a Governor calls the suspension proceeding for review within the time prescribed in subparagraph (1), the NASD Board of Governors shall conduct a review not later than its next meeting. The NASD Board of Governors may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the NASD Board of Governors meeting, the NASD Board of Governors shall serve a final written decision on the member or *person* associated [person] *with a member* via commercial courier or facsimile. The decision shall state the disposition of the suspension proceeding, and if a suspension is imposed, state the grounds for the suspension and the conditions for terminating the suspension.

* * * * *

8225. Termination of Suspension

A suspended member or *person* associated [person] *with a member* may file a written request for termination if the suspension on the ground of full compliance with the notice issued under Rule 8221 or, if applicable, the conditions of a decision under Rule 8223, with the head of the appropriate department or office. The head of the appropriate department or office shall respond to the request in writing within five days after receipt of the request. If the head of the appropriate department or office grants the request, he or she shall serve the member or *person* associated [person] *with a member* with written notice of the termination of the suspension via commercial courier or facsimile. If the head of the department or office denies the request, the suspended member or *person* associated [person] *with a member* may file a written request for relief with the National [Business Conduct Committee] *Adjudicatory Council*. The National [Business Conduct Committee] *Adjudicatory Council* shall respond to the request in writing within ten days after receipt of the request. The National [Business Conduct Committee] *Adjudicatory Council's* response shall be served on the member or *person* associated [person] *with a member* via commercial courier or facsimile.

8226. Copies of Notices and Decisions to Member

No change.

8227. Other Action Not Foreclosed

No change.

8300. SANCTIONS

8310. Sanctions for Violation of the Rules

(a) Imposition of Sanction

After compliance with the Rule 9000 Series, the Association may impose one or more of the following sanctions on a member or *person* associated [person] *with a member* for each violation of the federal securities laws, rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or Rules of the Association, or may impose one or more of the following sanctions on a member or *person* associated [person] *with a member* for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of the Association:

(1) censure member or person associated with a member;

(2) impose a fine upon a member or person associated with a member;

(3) suspend the membership of a member or suspend the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act;

(4) expel a member, cancel the membership of a member, or revoke or cancel the registration of a person associated with a member;

(5) suspend or bar a member or person associated with a member from association with all members; or

(6) impose any other fitting sanction.

(b) Assent To Sanction

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for appeal, review, or relief pursuant to the Rule 9000 Series.

IM–8310–1. Effect of a Suspension, Revocation, Cancellation, or Bar

If the Association or the Commission issues an order that imposes a suspension, revocation, or cancellation of the registration of a person associated with a member or bars a person from further association with any member, a member shall not allow such person to remain associated with it in any

capacity, including a clerical or ministerial capacity. If the Association or the commission suspends a person associated with a member, the member also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the *person* associated [person] *with a member* might have earned during the period of suspension.

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Code of Procedure

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[3] This table of contents is provided for convenience only, and is not a part of the amended Rules of the Association submitted for approval in this rule filing.

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9000. CODE OF PROCEDURE

9100. Application and Purpose

9110. Application

No change.

9120. Definitions

(a) "Adjudicator"

The term "Adjudicator" means: (1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision; (2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or (3) a natural person who serves on a body, board, committee, or group described in (1) or (2). The term includes a *Review* Subcommittee as defined in paragraph (z), *a Subcommittee as defined in paragraph (bb),* an Extended Proceeding Committee as defined in paragraph [(k)]*(l),* and a Statutory Disqualification Committee as defined in paragraph [(y)]*(aa).*

* * * * *

(d) "Counsel to the National [Business Conduct Committee] *Adjudicatory Council"*

The term "Counsel to the National [Business Conduct Committee] *Adjudicatory Council"* means an attorney of the Office of the General Counsel of NASD Regulation *who is* responsible for advising the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee,* a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the National [Business Conduct Committee.] *Adjudicatory Council.*

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation, except that the term excludes the Department of Market Regulation with respect to the actions of: (1) authorizing a complaint under Rule 9211; (2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216; (3) determining whether to contest an offer of settlement under Rule 9270; and (4) authorizing the filing of an appeal under Rule 9311.

(f) "Director"

The term "Director" means a member of the Board of Directors of NASD Regulation[, excluding the Chief Executive Officer of the NASD.].

[(f)]*(g)* "District Committee"

The term "District Committee" means a district committee elected pursuant to the NASD Regulation By-Laws or a resolution of the NASD Regulation Board.

[(g)]*(h)* "Document"

The term "Document" means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

[(h)]*(i) "Extended Hearing"*

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

[(i)]*(j)* "Extended Hearing Panel"

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

[(j)]*(k)* "Extended Proceeding"

The term "Extended Proceeding" means a disciplinary proceeding described in Rule 9331(a)(2).

[(k)]*(l)* "Extended Proceeding Committee"

The term "Extended Proceeding Committee" means an appellate Adjudicator that is [appointed by the National Business Conduct Committee and] constituted under Rule 9331[(a)(2)] to participate in the National [Business Conduct Committee's] *Adjudicatory Council's* consideration of a disciplinary proceeding that is classified as an "Extended Proceeding" and governed by the Rule 9300 Series.

[(l)]*(m)* "General Counsel"

The term "General Counsel" means the General Counsel of NASD Regulation, or his or her delegatee, who shall be a person who reports to the General Counsel of NASD Regulation and is an Associate General Counsel, an Assistant General Counsel, or a person who has substantially the same or equivalent duties and responsibilities as an Associate General Counsel or an Assistant General Counsel.

[(m)]*(n)* "Governor"

The term "Governor" means member of the Board of Governors of the NASD.

[(n)]*(o)* "Head of Enforcement"

The term "Head of Enforcement" means the individual designated by the President of NASD Regulation to manage the Department of Enforcement, or his or her delegate *in the Department of Enforcement.*

(p)[(o)] "Hearing Officer"

The term "Hearing Officer" means an employee of NASD Regulation who is an attorney and who is appointed by the Chief Hearing Officer to act in a adjudicative role and fulfill various adjudicative responsibilities and duties in the Rule 9200 Series regarding disciplinary proceedings brought against members and associated persons.

[(p)]*(q)* "Hearing Panel"

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9500 Series to conduct a proceeding.

[(q)]*(r)* "Interested Association Staff"

The term "Interested Association Staff" means, in the context of:
(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:
(A) the Head of Enforcement;
(B) [a] *an employee of the* Department of Enforcement [employee] who reports, directly or indirectly, to the Head of Enforcement;
(C) an Association employee who directly participated in the authorization of the complaint; or
(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;
(2) a proceeding under the Rule 9410 Series:
(A) the head of the Department of Member Regulation;
(B) a Department of Member Regulation employee who reports, directly or indirectly, to the head of the Department of Member Regulation;
(C) an Association employee who directly participated in the authorization of or the initial decision in the proceeding; or
(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or
(3) a proceeding under the Rule 9510 or 9520 Series:
(A) the head of the department or office that issues the notice or is designated as a Party;
(B) an Association employee who reports, directly or indirectly, to such person;
(C) an Association employee who directly participated in the initiation of the proceeding; or
(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or[.]
[(r)]*(4) a proceeding under the Rule 9600 Series:*
(A) the head of the department or office that issues the decision granting or denying an exemption or is designated as a Party;
(B) an Association employee who reports, directly or indirectly, to such person;
(C) an Association employee who directly participated in the exemption proceeding; or
(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports.

(s) "Market Regulation Committee"

The term "Market Regulation Committee" means the committee of NASD Regulation designated to consider the federal securities laws and rules and regulations adopted thereunder and various Rules of the Association and policies relating to:
(1) the quotations of securities;
(2) the execution of transactions;
(3) the reporting of transactions; and
(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules (Rule 4000 Series), other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

[(s)]*(t)* "NASD Board"

The term "NASD Board" means the Board of Governors of the NASD.

[(t)]*(u)* "NASD Regulation Board"

The term "NASD Regulation Board" means the Board of Directors of NASD Regulation.

[(u)]*(v)* "Panelist"

The term "Panelist" as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

[(v)](w) "Party"

With respect to a particular proceeding, the term "Party" means:
(1) in the Rule 9200 Series and the Rule 9300 Series, the Department of Enforcement or a Respondent;
(2) in the Rule 9410 Series and the Rule 9520 Series, the Department of Member Regulation or
(A) a member that is the subject of a notice under Rule 9412;
(B) a member that is the subject of a notice or files an application under Rule 9522;
[or]
(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513*; or*[.]
[(w)]*(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.*

(x) "Primary District Committee"

The term "Primary District Committee" means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

[(x)]*(y)* "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

(z) "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the National Adjudicatory Council pursuant to Article V of the NASD Regulation By-Laws.

(aa)[(y)] "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of the National [Business Conduct Committee] *Adjudicatory Council* [that is composed of current members of the NASD Regulation Board] that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National [Business Conduct Committee] *Adjudicatory Council* pursuant to the Rule 9520 Series.

[(z)]*(bb)* "Subcommittee"

The term "Subcommittee" means an Adjudicator that is [appointed by the National Business Conduct Committee]:
(1) constituted [by] *under* Rule 9331(a) to participate in the National [Business Conduct Committee's] *Adjudicatory Council's* consideration *of an appeal or a review* of a disciplinary proceeding pursuant to the Rule 9300 Series; [or]
(2) constituted under the Rule 9410 Series *or Rule 9630* to conduct a review proceeding.

* * * * *

9140. Proceedings

9141. Appearance and Practice; Notice of Appearance

(a) Representing Oneself

No change.

(b) Representing Others

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current[,] *a Notice of Appearance. The Notice of Appearance is* a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

9142. Withdrawal by Attorney or Representative

No change.

9143. Ex Parte Communications

(a) Prohibited Communications

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Association Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to [a Governor, a Director, or] an Adjudicator who is participating in a decision with respect to that proceeding, or to an Association employee who is participating or advising in the decision of [a Governor, a Director, or] an Adjudicator with respect to that proceeding; and

(2) No [Governor, Director, or] Adjudicator who is participating in a decision with respect to a proceeding, or no Association employee who is participating or advising in the decision of [a Governor, a Director, or] an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(b) Disclosure of Prohibited Communication

[A Governor, a Director, or an] *An* Adjudicator who is participating in a decision with respect to a proceeding, or an Association employee who is participating or advising in the decision of [a Governor, a Director, or] an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

(1) all such written communications;

(2) memoranda stating the substance of all such oral communications; and

(3) all written responses and memoranda stating the substance of all oral responses to all such communications.

(c) Remedies

No change.

(d) Timing

No change.

(e) Waiver of Ex Parte Prohibition

No change.

9144. Separation of Functions

(a) Interested Association Staff

Except as counsel or a witness in a proceeding or as provided in the Rule 9400 Series, Interested Association Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Association Staff regarding a decision or otherwise participating in a decision of Interested Association Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the National [Business Conduct Committee] *Adjudicatory Council.*

(b) Separation of Adjudicators

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a disciplinary proceeding to the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. [A Director] *Except for the Chair of the National Adjudicatory Council, a Governor* is prohibited from participating in a discussion or *a* decision relating to the above referenced acts with the *Review Subcommittee or the* Adjudicators referenced above[, a Governor, or the NASD Board. A Governor is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Adjudicators referenced above, a Director, or the NASD Regulation Board].

(c) Waiver of Prohibitions of Separation of Functions

No change.

9145. Rules of Evidence; Official Notice

No change.

9146. Motions

* * * * *

(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition

(1) No change.

(2) In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee,* a Subcommittee or, if applicable, an Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council.* A motion for disposition of a cause of action shall be decided by the National [Business Conduct Committee] *Adjudicatory Council*, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the [Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the National Business Conduct Committee.] *Review Subcommittee.*

(3) No change.

(k) Motion for Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and other Association staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for *in camera* inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. [A Hearing Officer) *An Adjudicator* does not have the authority to issue a protective order that would limit in any manner the use by the staff of the Association of such Documents or testimony in the Association staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. [A Hearing Officer] *An Adjudicator* does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Association is subject to a subpoena requiring that the Documents or testimony be produced.

(l) General

No change.

9147. Rulings on Procedural Matters

The NASD Board, the [NASD Regulation Board, the National Business Conduct Committee] *National Adjudicatory Council,* a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

9148. Interlocutory Review

No change.

9150. Exclusion From Rule 9000 Series Proceeding

(a) Exclusion

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the National [Business Conduct Committee] *Adjudicatory Council* of such exclusion under Rule 9280(c).

(b) Other Proceedings Not Precluded

No change.

9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) NASD Board

The Chair of the NASD Board shall have authority to order the disqualification of a Governor, and [the Vice] *a majority of the NASD Board excluding the* Chair of the NASD Board, shall have authority to order the disqualification of the Chair [of the NASD Board;]:

[(b) NASD Regulation Board]*(b) National Adjudicatory Council, Review Subcommittee, or Certain Subcommittees*

[The Chair of the NASD Regulation Board] *The Chair of the National Adjudicatory Council* shall have authority to order the disqualification of *a member of the National Adjudicatory Council or the Review Subcommittee, a member of* [Director and the Vice Chair of the NASD Regulation Board shall have authority to order the disqualification of the Chair of the NASD Regulation Board;

(c) National Business Conduct Committee or Certain Subcommittees

The Chair of the National Business Conduct Committee shall have authority to order the disqualification of a member of the National Business Conduct Committee,] a Subcommittee appointed pursuant to the Rule 9410 Series or *The Rule 9600 Series,* a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and the Vice Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall have the authority to order the disqualification of the Chair of the National [Business Conduct Committee;] *Adjudicatory Council;*

[(d)]*(c)* Rule 9331 Subcommittee or Extended Proceeding Committee

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

[(e)]*(d)* Rule 9514 Hearing Panel

The NASD Regulation Board or Nasdaq Board shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b).

[(f)]*(e)* Panelist of Hearing Panel or Extended Hearing Panel

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 9200 Series shall be governed by Rule 9234;

[(g)]*(f)* Hearing Officer

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233; and

[(h)]*(g)* NASD Regulation Staff As Adjudicator

The President of NASD Regulation shall have authority to order the disqualification of a member of the staff of the Department of Member Regulation participating in a Rule 9410 Series decision.

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

9211. [Issuance] *Authorization* of Complaint

(a) Complaint

(1) If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may authorize [and issue a complaint as set forth in Rule 9212] *a complaint.*

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the Department of Enforcement to *authorize and* issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

[(3) At the time of authorization and issuance of a complaint, the Department of Enforcement may propose:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(r), that the Chief Hearing Officer select a Market Regulation Committee Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.]

(b) Commencement of Disciplinary Proceeding

No change.

9212. Complaint[-]*Issuance*—Requirements, Service, Amendment, Withdrawal, and Docketing

(a) Form, Content, Notice, Docketing, and Service

(1) If a complaint is authorized, the Department of Enforcement shall issue the complaint. Each complaint shall be in writing and signed by the Department of Enforcement. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Department of Enforcement on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Department of Enforcement may propose:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120 (s), that the Chief Hearing Officer select a Market Regulation Committee Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.

* * * * *

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

No change.

9214. Consolidation of Disciplinary Proceedings

(a) Initiated by Chief Hearing Officer

No change.

(b) Initiated by a Party

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more disciplinary proceedings, the party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, *pursuant to Rule 9133,* shall serve the same upon the Parties [pursuant to Rule 9133] *in each of the cases proposed to be consolidated.* The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, *and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.*

(c) Impact on Hearing Panel or Extended Hearing Panel

No change.

9215. Answer to Complaint

(a) Form, Service, Notice

[Each] *Pursuant to Rule 9133, each* Respondent named in a complaint shall [answer and] serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent [pursuant to Rule 9133], and at the time of service *shall* file such answer with the Office of Hearing Officers pursuant to Rule 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the Receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

* * * * *

(e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be extended to 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have [15] *14* days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

(f) Failure to Answer, Default

If a Respondent does not file an answer *or make any other filing or request related to the complaint* with the Office of Hearing Officers within the time required, the [Hearing Officer shall order the] Department of Enforcement [to] *shall* send a second notice to such Respondent requiring an answer within 14 days after service of the second notice[, or within such longer period as the Hearing Officer in his or her discretion may order]. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) enter a default decision against the Respondent pursuant to Rule 9269. If no answer is filed with the Office of Hearing Officers within the time required [by the second notice], the allegations of the complaint may be considered admitted by such Respondent and a default decision may be issued by the Hearing Officer. A Respondent may, for good cause shown, move the National [Business Conduct Committee] *Adjudicatory Council* to set aside a default.

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d–1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Department of Enforcement has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National [Business Conduct Committee] *Adjudicatory Council,* the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2)(A) If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

(i) Any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel, the National [Business Conduct Committee] *Adjudicatory Council,* or any member of the National [Business Conduct Committee] *Adjudicatory Council,* in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) Any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(B) If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date of the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* or the General Counsel may accept such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* may reject such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council.*

(4) If the letter is accepted by the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee,* or the General Counsel, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the [Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the National Business Conduct Committee] *Review Subcommittee or the National Adjudicatory Council,* NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d–1(c)(2)

(1) Notwithstanding Rule 9211, NASD Regulation or the National [Business Conduct Committee] *Adjudicatory Council* may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d–1(c)(2), impose a fine (not to exceed $2,500) and/or a censure on any member or associated person with respect to any rule listed in IM–9216. If the Department of Enforcement has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before the Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National [Business Conduct Committee] *Adjudicatory Council,* the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2)(A) If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel, the National [Business Conduct Committee] *Adjudicatory Council,* or any member of the National [Business Conduct Committee] *Adjudicatory Council,* in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(ii) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) if a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under subparagraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* or the General Counsel may accept such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* may reject such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council.*

(4) If the letter is accepted by the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee,* or the General Counsel, it shall be deemed final and the Association shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d–1(c)(2). If the letter is rejected by the [Chair and the Vice Chair of the National Business

Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or by the National Business Conduct Committee] *Review Subcommittee or the National Adjudicatory Council*, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

IM–9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d–1(c)(2)

• Rule 2210(b) and (c) and Rule 2220 (b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.

• Rule 3360—Failure to timely file reports of short positions on Form NS–1.

• Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.

• *Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.*

9220. Request for Hearing; Extensions of Time, Postponements, Adjournments

9221. Request for Hearing

(a) Respondent Request for Hearing

With the filing of any Respondent's answer, such Respondent may: (1) request a hearing; (2) propose an appropriate location for the hearing; and (3) propose, if the complaint alleges at least one cause of action involving a violation of a statute or rule described in Rule 9120 [(r)*(s)*, that the Chief Hearing Officer select a Market Regulation Committee Panelist for a Hearing Panel or, if applicable, an Extended Hearing Panel as described in Rule 9231. If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

* * * * *

9230. Appointment of Hearing Panel, Extended Hearing Panel

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel

(a) Appointment

No change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) currently serves or previously served on a District Committee;

(B) previously served on the National [Business Conduct Committee] *Adjudicatory Council*;

(C) previously served on a disciplinary subcommittee of the National *Adjudicatory Council or the National* Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or,

(D) previously served as a Director, a director of the Nasdaq Board of Directors, or a Governor, but does not serve currently in any of these positions.

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120 [r]*(s)*, the Chief Hearing Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(c) Extended Hearing Panel

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matters shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of the Association, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120 [r]*(s)*, the Chief Hearing Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(d) Observer

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

9232. Criteria for Selection of Panelists and Replacement Panelists

(a) Chief Hearing Officer Selection Alternatives

No change.

(b) Criteria for Selection of Panelist from Market Regulation Committee

The Chief Hearing Officer may select one but not more than one Panelist from the Market Regulation Committee, as provided in Rule 9231, to serve in a disciplinary proceeding if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120[(r)]*(s)*.

* * * * *

9235. Hearing Officer Authority

(a) Hearing Officer Authority

No change.

(b) Authority in the Absence of Hearing Officer

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

9240. Pre-hearing Conference and Submission

9241. Pre-hearing Conference

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(d) Scheduling

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after [service] *filing* of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

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9250. Discovery

9251. Inspection and Copying of Documents in Possession of Staff

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(g) Failure to Make Documents Available—Harmless Error

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Department of Enforcement, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*, shall determine whether the failure to make the document available was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9252. Requests for Information

No change.

9253. Production of Witness Statements

(a) Availability

A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement produce for inspection and copying [a] *any* statement of any person called or to be called as a witness by the Department of Enforcement that pertains, or is expected to pertain, to his or her direct testimony [, including statements] *and* that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. § 3500. The production shall be made at a time and place fixed by the Hearing Officer and shall be made available to all Parties. Such production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) Failure to Produce—Harmless Error

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Department of Enforcement, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*, shall determine whether the failure to provide any statement was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

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9270. Settlement Procedure

(a) When Offer Allowed; No Stay of Proceeding

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement [30 or fewer days] before the hearing on the merits [is scheduled to begin, or] *has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement* after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

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(d) Waiver

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, and Extended Hearing Panel, and any right of appeal to the National [Business Conduct Committee] *Adjudicatory Council*, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the General Counsel, the National [Business Conduct Committee] *Adjudicatory Council*, or any member of the National [Business Conduct Committee] *Adjudicatory Council*, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussion regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement before a hearing on the merits has begun, the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the National [Business Conduct Committee] *Adjudicatory Council* with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement after a hearing on the merits has begun, the Department of Enforcement shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the National [Business Conduct Committee] *Adjudicatory Council* to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* or the General Counsel may accept such offer of settlement and order of acceptance or refer them to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* may reject such offer of settlement and order of acceptance or refer them to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council.*

(3) If the offer of settlement and order of acceptance are accepted by the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee*, or the General Counsel, they shall become final and the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified),] *Adjudicatory Council. The Review Subcommittee* or the General Counsel shall communicate the acceptance to the Hearing Officer who shall thereafter issue the order.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement opposes it, the offer of settlement is contested. When the Department of Enforcement opposes an offer of settlement, the Respondent's written offer and the Department of Enforcement's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Department of Enforcement and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the National [Business Conduct Committee] *Adjudicatory Council* to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* may accept or reject such offer of settlement and order of acceptance or refer them to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council.*

(3) If the offer of settlement and order of acceptance are accepted by the National [Business Conduct Committee or the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), the National Business Conduct Committee or the Chair or the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council or the Review Subcommittee, the National Adjudicatory Council or the Review Subcommittee* shall communicate the acceptance to the Hearing Officer who shall thereafter issue the order.

(g) Final Disciplinary Action of Association

No Change.

(h) Rejection of Offer of Settlement

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the [Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee] *Review Subcommittee, or the National Adjudicatory Council*, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the [Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee] *Review Subcommittee, or the National Adjudicatory Council*, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(i) Disciplinary Proceeding With Multiple Respondents

No change.

(j) No Prejudice From Rejected Offer of Settlement

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the [Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee] *Review Subcommittee, or the National Adjudicatory Council*, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

9280. Contemptuous Conduct

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(c) National [Business Conduct Committee] *Adjudicatory Council* Review of Exclusions

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the National [Business Conduct Committee] *Adjudicatory Council*. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the National [Business Conduct Committee] *Adjudicatory Council* and served on all Parties within five days after the service to the motion to vacate. The National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the National [Business Conduct Committee. The National Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee. The* review proceedings shall be conducted on the basis of the written record without oral argument.

(d) Adjournment

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the [National Business Conduct Committee's review] *review by the National Adjudicatory Council or the Review Subcommittee* of an exclusion order in paragraph (c). In the event that the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL [BUSINESS CONDUCT COMMITTEE, NASD REGULATION AND NASD BOARDS] *ADJUDICATORY COUNCIL AND NASD BOARD*; APPLICATION FOR COMMISSION REVIEW

9310. Appeal to or Review by National [Business Conduct Committee] *Adjudicatory Council*

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

No change.

(B) Effect

An appeal to the National [Business Conduct Committee] *Adjudicatory Council* from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the National [Business Conduct Committee] *Adjudicatory Council* issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the NASD Regulation or NASD Boards, until a decision is issued pursuant to Rule 9351 or Rule 9352.

(c) Notice of Appeal Content and Signature Requirements

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and service the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

(1) The name of the disciplinary proceeding;

(2) The disciplinary proceeding docket number;

(3) The name of the Party on whose behalf the appeal is made;

(4) A statement on whether oral argument before the National [Business Conduct Committee] *Adjudicatory Council* is requested; and

(5) A brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

(d) Notice of Cross-Appeal

No change.

(e) Waiver of Issues Not Raised

The National [Business Conduct Committee] *Adjudicatory Council* may, in its discretion, deem waived any issued not raised in the notice of appeal or cross-appeal. The National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the National [Business Conduct Committee] *Adjudicatory Council* if such issue was not previously set forth in the notice of appeal.

(f) Withdrawal of Notice of Appeal or Cross-Appeal

No change.

9312. Review Proceeding Initiated By National [Business Conduct Committee] *Adjudicatory Council*

(a) Call for Review

(1) Rule 9268 Decision

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the National [Business Conduct Committee] *Adjudicatory Council* or, pursuant to authority delegated from the National [Business Conduct Committee] *Adjudicatory Council*, by any member of the Review Subcommittee [of the National Business Conduct Committee. The Review Subcommittee shall be composed of two to four persons who are current members of the National Business Conduct Committee. At least 50 percent of the persons making up the Review Subcommittee shall be Non-Industry Directors]. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such [decision shall be reviewed by the National [Business Conduct Committee] *Adjudicatory Council.*

(2) Rule 9269 Decision

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the General Counsel, on his or her own motion within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the National [Business Conduct Committee] *Adjudicatory Council.*

(b) Effect

Institution of review by a member of the National [Business Conduct Committee] *Adjudicatory Council* on his or her own motion, a member of the Review Subcommittee on his or her own

motion, or the General Counsel, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the National [Business Conduct Committee] *Adjudicatory Council* issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the NASD [Regulation or NASD Boards] *Board*, until a decision is issued pursuant to Rule 9351 [or Rule 9352].

(c) Requirements

(1) If a member of the National [Business Conduct Committee] *Adjudicatory Council*, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

(C) a brief statement of the findings, conclusions, or sanctions with respect to which the National [Business Conduct Committee] Adjudicatory Council, the Review Subcommittee, or the General Counsel determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the National [Business Conduct Committee's] *Adjudicatory Council's* authority under Rule 9346 to review any issues raised in the [decision rendered pursuant to Rule 9268 or Rule 9269.] *record*. The National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the National [Business Conduct Committee] *Adjudicatory Council* if such issue was not previously set forth in the notice of review.

(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal

If the review of a disciplinary proceeding by the National [Business Conduct Committee] *Adjudicatory Council* is terminated before the National [Business Conduct Committee] *Adjudicatory Council* issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) a member of the National [Business Conduct Committee or of] *Adjudicatory Council or* the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day the Association receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

(2) No change.

9313. Counsel to National [Business Conduct Committee] *Adjudicatory Council*

(a) Authority

A Counsel to the National [Business Conduct Committee] *Adjudicatory Council* shall be appointed by the General Counsel for each disciplinary case on appeal or review. A Counsel to the National [Business Conduct Committee] *Adjudicatory Council* shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

(1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the National [Business Conduct Committee] *Adjudicatory Council* in accordance with Rule 9267;

* * * * *

(b) Review

A Party seeking the review of a decision of a Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, may make a motion to the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee*, a Subcommittee or, if applicable, an Extended Proceeding Committee.

9320. [Transmission] *Transmission* of Record; Extensions of Time, Postponements, Adjournments

9321. Transmission of Record

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the National [Business Conduct Committee] *Adjudicatory Council* may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the National [Business Conduct Committee] *Adjudicatory Council*, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the National [Business Conduct Committee] *Adjudicatory Council* is complete.

9322. Extensions of Time, Postponements, Adjournments

(a) Availability

At any time prior to the issuance of a decision pursuant to Rule 9349, the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee*, a Subcommittee or, if applicable, and Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may shorten a period so prescribed only with the consent of the Parties. The National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee*, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may postpone or adjourn a hearing only with the consent of the Parties.

(b) Limitations on Postponements, Adjournments, and Changes in Location

Oral argument shall begin at the time and place ordered, unless the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee*, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* shall consider, in addition to any other relevant factors:

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9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) Appointment by National [Business Conduct Committee] *Adjudicatory Council*

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be [current or] former Directors[,] or [former] Governors.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee deems material, the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be [current or] former Directors[,] or [former] Governors. The [Chair of the National Business Conduct Committee] *Review Subcommittee* shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 1000 Series.

(b) Function

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a recommendation to the National [Business Conduct Committee] *Adjudicatory Council* regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

9332. Disqualification and Recusal

(a) Recusal, Withdrawal of Member or Panelist

If at any time a member of the National [Business Conduct Committee] *Adjudicatory Council, including a member of the Review Subcommittee*, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the National [Business Conduct Committee] *Adjudicatory Council* determines that the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* might reasonably be questioned, the member, the Panelist, or the Counsel to National [Business Conduct Committee] *Adjudicatory Council* shall notify the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council*, and the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair or Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall appoint a replacement Panelist. In the event that a [Counsel to the National Business Conduct Committee] *member of the Review Subcommitte* withdraws, is incapacitated, or is otherwise unable to continue service after assignment, *the Chair or Vice Chair of the National Adjudicatory Council shall appoint another member of the National Adjudicatory Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the National Adjudicatory Council withdraws, is incapacitated, or is otherwise unable to continue service after assignment*, the General Counsel shall assign a replacement Counsel to the National [Business Conduct Committee] *Adjudicatory Council.*

(b) Motion for Disqualification

A Party may move for the disqualification of a member of the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee*, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the National [Business Conduct Committee] *Adjudicatory Council.* All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the Council to the National [Business Conduct Committee] *Adjudicatory Council* might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

(1) When the Party learned of the facts believed to constitute the disqualification; or

(2) When the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the National [Business Conduct Committee] *Adjudicatory Council.*

(c) Disposition of Disqualification Motions: Challenges to Single Member of National [Business Conduct Committee] *Adjudicatory Council or Review Subcommittee*, Single Panelist of Subcommittee or Extended Hearing Committee, *or* Counsel to the National [Business Conduct Committee] *Adjudicatory Council*

Motions for disqualification of a member of the National [Business Conduct Committee] *Adjudicatory Council, including a member of the Review Subcommittee*, a Panelist of a Subcommittee or an Extended

Proceeding Committee, or a Counsel to the National [Business Conduct Committee] *Adjudicatory Council* shall be decided by the Chair or Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council*, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. *If a member of the Review Subcommittee is disqualified, the Chair or Vice Chair of the National Adjudicatory Council shall appoint another member of the National Adjudicatory Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] Adjudicatory Council* shall appoint a replacement Panelist. If a Counsel is disqualified, the General Counsel shall assign a replacement Counsel to the National [Business Conduct Committee] *Adjudicatory Council.*

(d) Disposition of Disqualification Motions: Challenges to Multiple *Members or* Panelists

(1) National [Business Conduct Committee] *Adjudicatory Council*

If a Party files a motion to disqualify more than one member of the National [Business Conduct Committee] *Adjudicatory Council*, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the National [Business Conduct Committee] *Adjudicatory Council* shall consider the review or appeal of the disciplinary matter.

(2) *Review Subcommittee*

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair or the Vice Chair of the National Adjudicatory Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair or Vice Chair of the National Adjudicatory Council shall appoint other members of the National Adjudicatory Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the members being replaced.

(3) Subcommittee; Extended Proceeding Committee

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall appoint replacement Panelists.

9340. Proceedings

9341. Oral Argument

(a) Request for Oral Argument

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the National [Business Conduct Committee's] *Adjudicatory Council's* notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

(b) Discretion to Proceed With or Without Oral Argument

No change.

(c) Notice Regarding Oral Argument

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may provide for a shorter notice period, except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may provide for a shorter notice period only with the consent of the Parties.

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9342. Failure to Appear at Oral Argument

No change.

9343. Disposition Without Oral Argument

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* in connection with the appeal, cross-appeal, or call for review.

9344. Failure to Participate Below; Abandonment of Appeal

(a) Failure to Participate Below

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* may dismiss the appeal and remand the matter for further proceedings, or may [hear evidence and consider the matter] *order that the appeal proceed.* If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National [Business Conduct Committee] *Adjudicatory Council* on the basis of the record and other documents, as provided in Rules 9346 and 9347. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

(b) Abandonment of Appeal

If an appealing Party fails to advise the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National [Business Conduct Committee or the Chair and the Vice Chair of the National business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council or the Review Subcommittee* may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of the Association. If a cross-appealing Party fails to advise the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National [Business Conduct Committee or the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council or the Review Subcommittee* may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the National [Business Conduct Committee] *Adjudicatory Council* may withdraw any dismissal entered pursuant to this Rule.

9345. Subcommittee or Extended Proceeding Committee Recommended Decision to National [Business Conduct Committee] *Adjudicatory Council*

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the National [Business Conduct Committee and all other Directors not later than seven days] *Adjudicatory Council* before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the disciplinary proceeding shall be considered.

9346. Evidence in National [Business Conduct Committee] *Adjudicatory Council* Proceedings

(a) Scope of Review

Except as otherwise set forth in this paragraph, the National [Business Conduct Committee's] *Adjudicatory Council's* review shall be limited to consideration of: (i) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National [Business Conduct Committee] *Adjudicatory Council;* and (ii) any oral argument permitted under this Code. A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the National [Business Conduct Committee] *Adjudicatory Council* may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

(b) Leave to Introduce Additional Evidence

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* for leave to introduce additional evidence by motion filed not later than 30 days after service of such Party's notice of appeal or cross-appeal or not later than 35 days after service upon the Party by the National [Business Conduct Committee] *Adjudicatory Council* of a notice of review. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence

No change.

(d) Discretion Regarding Review of Additional Evidence

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* may permit the evidence to be introduced into the record on review, or the National [Business Conduct Committee] *Adjudicatory Council* may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

(e) Requirements for Submitting Additional Documentary Evidence

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council*, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may specify.

(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council.*

9347. Filing of Papers in National [Business Conduct Committee] *Adjudicatory Council* Proceedings

(a) Briefs; Reply Briefs; Requirements

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief

shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee,* or Counsel to the National [Business Conduct Committee] *Adjudicatory Council,* exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee,* or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council, the Review Subcommittee,* or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may not shorten a period previously established for the filing of briefs except with the consent of the Parties.

9348. Powers of the National [Business Conduct Committee] *Adjudicatory Council* on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the National [Business Conduct Committee] *Adjudicatory Council* may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The National [Business Conduct Committee] Adjudicatory Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction.

9349. National [Business Conduct Committee] *Adjudicatory Council* Formal Consideration; Decision

(a) Decision of National [Business Conduct Committee] *Adjudicatory Council,* Including Remand

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the National [Business Conduct Committee] *Adjudicatory Council,* after considering all matters presented in the appeal or review, and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The National [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the National [Business Conduct Committee] *Adjudicatory Council* may remand the disciplinary proceeding with instructions. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to paragraph (b).

(b) Contents of Decision

No change.

(c) Issuance of Decision After Expiration of Call for Review Period

The National [Business Conduct Committee] *Adjudicatory Council* shall provide its proposed written decision to the NASD [Regulation Board, and, if the disciplinary proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation] *Board. The NASD* Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the NASD Board does not call the disciplinary proceeding for review, the proposed written decision of the [NASD Regulation Board] *National Adjudicatory Council* shall become final, and the [NASD Regulation Board] *National Adjudicatory Council* shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless the [NASD Regulation Board] *National Adjudicatory Council* remands the proceeding.

[The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9352. If neither the NASD Regulation Board nor the NASD Board calls the disciplinary proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless the National Business Conduct Committee remands the proceeding.]

9350. Discretionary Review by NASD Board[s]

9351. [Discretionary Review by NASD Regulation Board]

(a) Call for Review by Director

A Director may call a disciplinary proceeding for review by the NASD Regulation Board, if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9349, a Director shall have not less than seven days to determine if the disciplinary proceeding should be called for review. A Director shall call a disciplinary proceeding for review by notifying the General Counsel. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the NASD Regulation Board shall review the disciplinary proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply), to file briefs in connection with the NASD Regulation Board review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. The NASD Regulation Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the NASD Regulation Board may remand the disciplinary proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9352.

9352.] Discretionary Review by NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven] *15* Day Period; Waiver

(1) *A* [Disciplinary Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the disciplinary proceeding under Rule 9351, a] Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] *15* days after the date on which the NASD Board receives the proposed written decision of the [NASD Regulation Board.] *National Adjudicatory Council.*

[(2) Disciplinary Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the disciplinary proceeding for review under Rule 9351, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3)]*(2)* Waiver

By a unanimous vote for the NASD Board, the NASD Board may shorten the period in subparagraph (1) [or (2)] to less than [seven] *15* days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] *15* day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) [or (2)] to more than [seven] *15* days.

(c) Review at Next Meeting

No change.

(d) Decision of NASD Board, Including Remand.

After review, the NASD Board may affirm, modify, or reverse [: (1)] the proposed written decision of the [NASD Regulation Board; or (2) if the NASD Regulation Board did not call a disciplinary proceeding for review under Rule 9351, the proposed written decision of the National Business Conduct Committee] *National Adjudicatory Council.* The NASD Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the NASD Board may remand the disciplinary proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9349 (b)(1) through (6).

* * * * *

9400. LIMITATION PROCEDURES UNDER RULES 3130 AND 3131

9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties

* * * * *

9413. Department of Member Regulation Consideration

(a) Request for Hearing

No change.

(b) Stay

A request for hearing shall stay the notice of limitations served under Rule 9412 unless the National [Business Conduct Committee] *Adjudicatory Council* orders otherwise.

* * * * *

(j) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the National [Business Conduct Committee] *Adjudicatory Council* calls the notice for review under Rule 9414(a)(2), the limitations specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes the limitations pursuant to Rule [9418(b)] *9417(b).*

9414. National [Business Conduct Committee] *Adjudicatory Council* Review

(a) Initiation of a Review

(1) Application by Member

A member aggrieved by a decision issued under Rule 9413 may file a written application for review by the National [Business Conduct Committee] *Adjudicatory Council.* The application shall state the specific grounds for the review and whether oral argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision. The member may withdraw its application for review at any time by filing a written notice with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rules 9135, 9136, and 9137.

(2) Motion of National [Business Conduct Committee] *Adjudicatory Council*

A decision issued under Rule 9413 shall be subject to a call for review by any member of the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee [described in Rule 9312(a)(1)] within 30 days after service of the decision. If a member that receives a notice under Rule 9412 does not request a hearing under rule 9413, the notice shall be subject to a call for review by any member of the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee within 30 days after the effective date of the notice. If the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee calls a decision or notice for review, a written notice of review shall be served promptly on the member pursuant to Rules 9132 and 9134. The notice of review shall state the specific grounds for the review and whether an oral argument is ordered. If a decision is called for review by a member of the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee, the National [Business Conduct Committee] *Adjudicatory Council* shall review the decision.

(3) Stay

Unless otherwise ordered by the National [Business Conduct Committee] *Adjudicatory Council,* the initiation of a review under this paragraph shall stay the decision of the Department of Member Regulation or an uncontested notice until a decision constituting final action of the Association is issued.

(4) Transmission of the Record

If a review is initiated under this paragraph, the Department of Member Regulation shall assemble and prepare an index of the record, transmit the record and index to the National [Business Conduct Committee] *Adjudicatory Council*, certify to the National [Business Conduct Committee] *Adjudicatory Council* that the record is complete, and serve a copy of the record and index on the member.

(5) Ex Parte Communications

The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when Association staff has knowledge that a member intends to file a written application for review or that the National [Business Conduct Committee] *Adjudicatory Council* intends to review a decision on its own motion under this Rule.

(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the National [Business Conduct Committee] *Adjudicatory Council*, and the remaining member or members shall be current or former [Directors of the NASD Regulation Board or former Governors of the NASD Board.] *member of the National Adjudicatory Council or a former Director or Governor.*

* * * * *

(5) Recommendation

The Subcommittee shall present a recommended decision in writing to the National [Business Conduct Committee and all other Directors] *Adjudicatory Council* not later than seven days before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the proceeding shall be considered.

(c) Decision

(1) Decision of National [Business Conduct Committee] *Adjudicatory Council*, Including Remand

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, or reverse the Department of Member Regulation's decision or remand the proceeding with instructions. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

* * * * *

(E) if any limitations are imposed: (i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule [9417] *9416* if the member fails to comply with any of the limitations; and (ii) the conditions for terminating the limitations.

(3) Issuance of Decision After Expiration of Call for Review Period

The National [Business Conduct Committee] *Adjudicatory Council* shall provide its proposed written decision to the NASD [Regulation Board, and, if the proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation] *Board. The NASD* Board may call the proceeding for review pursuant to Rule 9415. [The] *If the* NASD Board [may] *does not* call the proceeding for review [pursuant to Rule 9416. If neither the NASD Regulation Board nor the NASD Board calls the proceeding for review], the proposed written decision of the National [Business Conduct Committee] *Adjudicatory Council* shall become final, and the National [Business Conduct Committee] *Adjudicatory Council* shall serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. [The decision shall constitute the final action of the Association, unless the National Business Conduct Committee remands the proceeding.]

[9415. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call a proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9414, a Director shall have not less than seven days to determine if the proceeding should be called for review. A Director shall call a proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls a proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee or remand the proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9414(c)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9416. If the NASD Board does not call the proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service.] The decision shall constitute the final action of the Association, unless the [NASD Regulation Board] *National Adjudicatory Council* remands the proceeding.

[9416]*9415.* Discretionary Review by the NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven] *15* Day Period; Waiver

[(1) Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the proceeding under Rule 9415, a] *A* Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] *15* days after the date on which the NASD Board receives the proposed written decision of the *National Adjudicatory Council*. [NASD Regulation Board.

(2) Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the proceeding for review under Rule 9415, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

] By a unanimous vote of the NASD Board, the NASD Board may shorten the period [in subparagraph (1) or (2)] to less than [seven] *15* days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] *15* day period [in subparagraph (1) or (2)], vote to extend the period [in subparagraph (1) or (2)] to more than [seven] *15* days.

(c) Review at Next Meeting

No change.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse [: (1)] the proposed written decision of the [NASD Regulation Board, or (2) if the NASD Regulation Board did not call the proceeding for review under Rule 9415, the proposed written decision of the National Business Conduct Committee] *National Adjudicatory Council*. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9414(c)(2).

(e) Issuance of Decision

No change.

[9417] *9416.* Enforcement of Sanctions

* * * * *

(c) No Stay of Sanctions

Unless otherwise ordered by the National [Business Conduct Committee] *Adjudicatory Council*, a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).

(d) Decision .

No change.

[9418] *9417.* Additional Limitations; Reduction or Removal of Limitations

(a) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional limitations by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional limitations by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through [9417] *9416* shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional limitations.

(b) Reduction or Removal of Limitations

No change.

[9419] *9418.* Application to Commission for Review[; Other Action Not Foreclosed

(a)] The right to have any action taken by the Association pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of the action taken by the Association, unless the Commission otherwise orders.

9419. Other Action Not Foreclosed

[(b)] Action by the Association under the Rule 9410 Series shall not foreclose action by the Association under any other Rule.

[9420. Approval of Change in Business Operations That Will Result in a Change in Exemptive Status under SEC Rule 15c3–3

Deleted].

9500. SUSPENSION, CANCELLATION, BAR, DENIAL OF ACCESS, AND ELIGIBILITY PROCEDURES

9510. Procedures for Summary and Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition

9511. Purpose and Computation of Time

(a) Purpose

(1) No change.

(2) The Association also may take the following actions, after notice and opportunity for hearing:

(A) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article [II] *III*, Section 3 of the NASD By-Laws;

(B) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit a required report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article [V] *VI*, Section [2] *3* of the NASD By-Laws;

(C) cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article [VI] *VII*, Section 2 of the NASD By-Laws; and

(D) limit or prohibit any member, associated person, or other person with respect to access to services offered by the Association or a member thereof if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access or such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

* * * * *

9513. Initiation of Proceeding for Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition

(a) Notice

Association staff shall initiate a proceeding authorized under Section 3 of Article [II,] *III*, Section [2] *3* of Article [VI] *VII* of the NASD By-Laws, or Rule 9511(a)(2)(D), by issuing a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

(b) Effective Date

For any cancellation, suspension, or bar under Section 3 of Article [II] *III* of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person. For any cancellation or suspension under Section [2] *3* of Article [V] *VI* or Section 2 of Article [VI] *VII* of the NASD By-Laws, the effective date shall be at least 15 days after service of the notice on the member or

associated person. For any limitation or prohibition on access to services offered by the Association or a member thereof pursuant to Rule 9511(a)(2)(D), the effective date shall be upon receipt of the notice with respect to services to which the member, associated person, or other person does not have access and shall be at least seven days after service of the notice with respect to services to which the member, associated person, or other person already has access.

9514. Hearing and Decision

(a) Request

No change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a Director of NASD Regulation, and the remaining member or members shall be [a] current or former [Director] *Directors* of NASD Regulation or [a former Governor of the NASD] *Governors*. The President of NASD Regulation may not serve on the Hearing Panel.

(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a [Director] *Director* of Nasdaq, and the remaining member or members shall be [a] current or former [Director] *Directors* of Nasdaq or [a former governor of the NASD] *Governors*. The President of Nasdaq may not serve on the Hearing Panel.

* * * * *

9515. Discretionary Review by the NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven] *15* Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] *15* days after the date on which the NASD Board receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board, the NASD Board may shorten this period. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the period, vote to extend the period.

* * * * *

9522. Initiation of Eligibility Proceedings

(a) Notice of Disqualification or Ineligibility

(1) Issuance

No change.

(2) Notice to Member

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief with the National [Business Conduct Committee] *Adjudicatory Council* within ten days after service of the notice.

(3) Notice to Associated Person

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that a member may apply for relief on behalf of itself and such person by filing a written application for relief with the National [Business Conduct Committee] *Adjudicatory Council* within ten days after service of the notice.

(4) Service

No change.

(b) Application by Member

A member shall file a written application for relief from the eligibility requirements of the Association with the National [Business Conduct Committee] *Adjudicatory Council* if the member:

(1) determines that it is subject to a statutory disqualification or otherwise is no longer eligible for membership;

(2) determines that a person associated with it is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or

(3) wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

(c) Form of Application for Relief

No change.

(d) Withdrawal of Application

A member may withdraw its application for relief at any time by filing a written notice with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rules 9135, 9136, and 9137.

(e) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Association staff has initiated the eligibility proceeding and Association staff has knowledge that a member intends to file a written application for relief with the National [Business Conduct Committee] *Adjudicatory Council*.

9523. National [Business Conduct Committee] *Adjudicatory Council* Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

If a member files an application for relief, the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* shall appoint a Hearing Panel composed of two or more members, who shall be current or former [Directors] *members* of the [NASD Regulation Board] *National Adjudicatory Council* or former *Directors or* Governors [of the NASD Board]. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Notice of Hearing

No change.

(3) Transmission of Documents

* * * * *

(ii) Not less than ten days before the hearing, the Department of Member Regulation, [who] *which* shall act as a Party in the eligibility proceeding, and the member and its current or prospective associated person shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or commercial courier.

* * * * *

(9) Recommendation

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the National [Business Conduct Committee and all other Directors] *Adjudicatory Council* not later than seven days before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the eligibility proceeding shall be considered.

(b) Decision

(1) Decision of the National [Business Conduct Committee] *Adjudicatory Council*

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National [Business Conduct Committee] *Adjudicatory Council* may grant or deny the request for relief, and, if relief is granted, impose conditions on the member and its current or prospective associated person. Alternatively, the National [Business Conduct Committee] *Adjudicatory Council* may remand the eligibility proceeding. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

No change.

(3) Issuance of Decision After Expiration of Call for Review Period

The National *Adjudicatory Council* [Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the eligibility proceeding is not called for review by the NASD Regulation Board, the NASD Board. The NASD Regulation Board may call the eligibility proceeding for review pursuant to Rule 9524. The NASD Board may call the eligibility proceeding for review pursuant to Rule 9525. If neither the NASD Regulation Board nor the NASD Board calls the eligibility proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision on the member, the current or prospective associated person, and Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute final action of the Association, unless the National Business Conduct Committee remands the eligibility proceeding.

9524. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call an eligibility proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9523, a Director shall have not less than seven days to determine if the eligibility proceeding should be called for review. A Director shall call an eligibility proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls the eligibility proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the eligibility proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the eligibility proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9523(b)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the eligibility proceeding for review pursuant to Rule [9525] *9524*. If the NASD Board does not call the eligibility proceeding for review, the proposed written decision of the [NASD Regulation Board] *National Adjudicatory Council* shall become final, and the [NASD Regulation Board] *National Adjudicatory Council* shall serve its written decision on the member, the current or prospective associated person, and Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute [the] final action of the Association, unless the [NASD Regulation Board] *National Adjudicatory Council* remands the eligibility proceeding.

[9525] *9524*. Discretionary Review by the NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven Day Period; Waiver] *15 Day Period; Waiver*

[(1) Eligibility Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the eligibility proceeding under Rule 9524, as a] *A* Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] *15* days after the date on which the NASD Board receives the proposed written decision of the *National Adjudicatory Council* [NASD Regulation Board.

(2) Eligibility Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the eligibility proceeding for review under Rule 9524, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

] By a unanimous vote of the NASD Board, the NASD Board may shorten the period [in subparagraph (1) or (2)] to less than [seven] *15* days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] *15* day period [in subparagraph (1) or (2)], vote to extend the period [in subparagraph (1) or (2)] to more than [seven] *15* days.

(c) Review at Next Meeting

No change.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse [: (1)] the proposed written decision of the [NASD Regulation Board, or (2) if the NASD Regulation Board did not call an eligibility proceeding for review under

Rule 9524, the proposed written decision of the National Business Conduct Committee] *National Adjudicatory Council*. Alternatively, the NASD Board may remand the eligibility proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9523(b)(2).

(e) Issuance of Decision

No change.

[9526] *9525*. Application to Commission for Review

The right to have any action taken pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) File with General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, *3010*, 3210, 3350, *8211*, *8212*, *8213*, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with *the appropriate department or staff of the Association and provide a copy of the application to* the Office of General Counsel of NASD Regulation.

* * * * *

9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. *The Notice of appeal shall be filed with the Office of General Counsel of NASD Regulation, with a copy of the notice also provided to the appropriate department or staff of the Association.* The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. The National [Business Conduct] *Adjudicatory Council* [Committee] may order oral argument. If the Applicant does not want the National [Business Conduct Committee's] *Adjudicatory Council's* decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National [Business Conduct Committee] *Adjudicatory Council* shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National [Business Conduct Committee] *Adjudicatory Council*.

(d) Appointment of Subcommittee

Following the filing of a notice of appeal, the National [Business Conduct Committee shall] *Adjudicatory Council or Review Subcommittee may* designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National [Business Conduct Committee] *Adjudicatory Council* a disposition of all matters on appeal.

(e) Decision

After considering all matters on appeal and the Subcommittee's recommendation, the National [Business Conduct Committee] *Adjudicatory Council* shall affirm, modify, or reverse the decision issued under Rule 9620. The National [Business Conduct Committee] *Adjudicatory Council* shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decisions shall be effective upon service and shall constitute final action of the Association.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Association is proposing changes to the Rule 1010 Series, the Rule 8000 Series, the Rule 9000 Series, and various other rules to conform the rules to the changes adopted by the NASD Board to reorganize the NASD, NASD Regulation, and Nasdaq. The proposed rule amendments are intended to conform the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series to reflect the terms of the corporate reorganization that the NASD Board of Governors approved on June 26, 1997.[4]

Among other things, the corporate reorganization modifies the structure of the NASD Board. As a result, the structure of the NASD Regulation Board, and the Nasdaq Board and certain committees of NASD Regulation and Nasdaq will also change. Of all the structural changes approved by the NASD Board and the two subsidiary boards, two are most related to the operations described in the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series and are the impetus for a number of the rule changes described below.

First, the adjudicatory functions currently performed by the National Business Conduct Committee ("NBCC"), a committee of the NASD Regulation Board, will be performed instead by the National Adjudicatory Council ("NAC"). The proposed NAC members will be appointed by the NASD Regulation Board, but, except for the NAC Chair, will not be members of the NASD Regulation Board or the NASD Board.

Second, the process for reviewing a disciplinary proceeding has been streamlined. Under the proposal, if a disciplinary proceeding is subject to discretionary review at an executive level, such discretionary review will be performed solely by the NASD Board. In contrast, the Association's current practice requires that both the NASD Regulation Board and the NASD Board have an opportunity to review a disciplinary proceeding before the Association may issue a final decision. Although the regulatory responsibility of the NASD Regulation Board to engage in a review of a disciplinary proceeding has been eliminated, all directors of NASD Regulation will continue to play a vital role in the review of disciplinary proceedings, because, under the new board structure, all directors of the NASD Regulation Board also sit as Governors on the NASD Board.

As a result of these structural changes, the Association is proposing changes to Article V of the NASD Regulation By-Laws, the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series. First, the references to the adjudicatory functions currently performed by the NBCC have been redesignated as those performed by the proposed NAC. Second, the Association proposes amendments to the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series to delete the discretionary review function of the NASD Regulation Board in a Series of rules in which such function is currently set forth. Finally, other changes are proposed in this rule filing to clarify or simplify the rules that were approved on August 7, 1997, as part of SR–NASD–97–28.[5] Such changes are described later in detail.

(a) Changes to Article V of NASD Regulation By-Laws. The Association is proposing to add a new Section 5.11 to Article V of the NASD Regulation By-Laws. This section will set the quorum requirements and composition of the Review Subcommittee, a subcommittee of the new NAC. As described in greater detail below, the Review Subcommittee shall perform those functions in membership and disciplinary proceedings that are set forth in the membership and disciplinary procedure rules.

(b) Changes to the Rule 1010 Series. The Rule 1010 Series is entitled "Membership, Registration and Qualification Requirement." The Association is proposing changes to the Rule 1010 Series in order to reflect the changes required pursuant to the corporate reorganization approved by the NASD Board while SR–NASD–97–28 was under consideration by the Commission.

First, in order to reflect the changes proposed as part of the corporate reorganization, the Association will amend the Rule 1010 Series generally by deleting each reference to the term, "National Business Conduct Committee," and substituting the term, "National Adjudicatory Council."

Second, in current Rule 1016, the NASD Regulation Board has the authority to review an NBCC decision following an appeal or review proceeding regarding an applicant whose request for NASD membership has been denied, granted without restriction, or granted but is subject to one or more restrictions set forth in Rule 1014(b)(2). This change parallels the authority of the NBCC to call any disciplinary proceeding decision for review in the Rule 9000 Series. The Association is proposing to eliminate the discretionary review authority of the NASD Regulation Board in current Rule 1016 for the purpose of making the review process more efficient. Generally, this change means that an applicant will receive a final decision of the Association regarding membership status at least 30 days before the applicant would have received such notification under the current Rule 1010 Series. The NASD Board will continue to have the authority now set forth in Rule 1016.

(c) Changes to the Rule 8000 Series. The Rule 8000 Series is entitled "Investigations and Sanctions." Several changes to the Rule 8000 Series were approved by the Commission on August 7, 1997, in SR–NASD–97–28. The Association is now proposing additional changes to the Rule 8000 Series in order to reflect the changes required pursuant to the corporate reorganization approved while SR–NASD–97–28 was under consideration by the Commission. In addition, the Association is proposing changes to Rule 8110 regarding the availability of the NASD Manual and Rule 8210(d) regarding notices sent under the Rule. Finally, the NASD is proposing to move three rules requiring that certain persons provide the Association with information to the Rule 8000 Series from other rule series.

First, in order to reflect the changes proposed as part of the corporate reorganization, the Association will amend the Rule 8000 Series generally by deleting each reference to the term, "National Business Conduct Committee," and substituting the term, "National Adjudicatory Council," and make other conforming changes discussed above to reflect the corporate reorganization.

Second, the Association proposes minor changes to Rule 8110 and Rule 8210(d). Rule 8110 requires a member to maintain an NASD Manual. If approved, the proposed change to Rule 8110 would allow a member to comply with the obligation of Rule 8110 to maintain a copy of the NASD Manual in its offices, including branch offices, by allowing the member to maintain an electronic version of the NASD Manual, among other options, in such offices.

Third, the proposed change to Rule 8210(d) is intended to clarify how the Association will determine if a member or a person subject to the Rule 8000 Series obligation to provide information to the Association upon request receives a notice sent by the Association. Additional addresses at which a person may be served have been added to the list to provide additional safeguards to potential recipients of such notices.

Fourth, the Association proposes to renumber three rules, Rule 4615, Rule 5107, and Rule 6730, as proposed Rule 8211, proposed Rule 8212, and proposed Rule 8213. Each of these rules requires certain persons to provide information to the Association. The Rule 8000 Series, by Rule 8210, contains the general requirement that a member or another person must provide information to the Association when requested to do so. The rules, in the current form and as renumbered proposed rules, set forth the same type of obligation as to specific types of information. The Association believes that members and other persons will be more aware of these information sharing obligations by placing the three current rules in the Rule 8000 Series. The Association also proposes minor, technical changes to such renumbered rules, as described below.

Rule 4615 requires a member to submit automated trading data upon request to the Association. The Association does not propose to amend the text of current Rule 4615, renumbered as Rule 8211, except as follows. The Association proposes to add an explicit reference to the Rule 9600 Series to identify the Rule 9600 Series as the avenue by which a member may seek a good cause exemption and to set forth clearly that "good cause" is the standard for seeking an exemption. The other amendments proposed are technical (*e.g.*, the paragraphs and subparagraphs of the rule are renumbered and a redundant clause is stricken).

Proposed Rule 8212, now Rule 5107, requires a member and an approved affiliate that participates in Nasdaq International as a Service market maker or an order-entry firm to submit certain trading data. The minor changes the Association proposes to the existing rule text include amending the title to clarify that the proposed Rule 8212 obligation is to provide information on trading data for the Nasdaq International Service transactions, adding a reference to the Rule 9600 Series as the appropriate rule series under which a member may seek a good cause exemption from the obligations of the rule, and stating explicitly that "good cause" is the standard for obtaining an exemption.

[4] The Commission recently approved a comprehensive amendment of the NASD By-Laws, the NASD Regulation By-Laws, the Nasdaq By-Laws, and the Delegation Plan containing the terms of the corporate reorganization. *See* Securities Exchange Act Release No. 39326 (November 14, 1997) (File No. SR–NASD–97–71).

[5] *See* Securities Exchange Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997).

Proposed Rule 8212, now Rule 6730, requires a member to submit certain types of trade data pursuant to proposed Rule 8211 (current Rule 4615) in automated format. Proposed Rule 8213 differs from current Rule 6730 in that the Association proposes to clarify the title of the rule, make an explicit reference to the Rule 6700 Series, and add a sentence at the end of the rule referring a member to the Rule 9600 Series in order to request exemptive relief.

The Association notes that its proposal to move Rule 4615, Rule 5107, and Rule 6730 to the Rule 8000 Series will not affect the Association's ability to seek information pursuant to any other Association rule under which the Association may do so from persons subject to the rule. For example, under proposed Rule 4623, Nasdaq is proposing to request information from electronic communications networks ("ECNs") and the changes the Association is proposing with respect to the Rule 8000 Series are not intended to have any impact on the Association's proposal to gather information under proposed Rule 4623.

(d) Changes to the Rule 9000 Series. The Rule 9000 Series is entitled the "Code of Procedure." The Rule 9000 Series was comprehensively changed pursuant to the Commission approval of SR–NASD–97–28 on August 7, 1997.[6] The Association is now proposing additional changes to the Rule 9000 Series in order to reflect the changes required pursuant to the corporate reorganization approved while SR–NASD–97–28 was under consideration by the Commission. In addition, the Association is amending Rule 9102(d), Rule 9844(b), and Rule 9347 (a–b), to clarify the role of the Review Subcommittee of the NAC. Finally, the Association is proposing minor changes to several other Rules, including Rule 9120, Rule 9141, Rule 9214, Rule 9215, Rule 9216, Rule 9231, Rule 9235, Rule 9241, Rule 9270, and 9312.

(1) Changes Related to the Corporate Reorganization. In order to reflect the changes proposed as part of the corporate reorganization, the Association will amend the Rule 9000 Series generally by deleting each reference to the term, "National Business Conduct Committee," and substituting the term, "National Adjudicatory Council."

In addition, there are several proceedings described in the current Rule 9000 Series in which the NASD Regulation Board has the authority to review a disciplinary or other decision of the NBCC relating to the proceeding (*e.g.*, Rule 9351, relating to a Rule 9300 Series disciplinary proceeding that has been appealed to or reviewed by the proposed National Adjudicatory Council, and Rule 9415, relating to a Rule 9400 proceeding used to regulate the activities of a member experiencing financial or operational difficulties). The Association is proposing to eliminate such authority. Generally, if this proposed change is approved by the Commission, persons subject to disciplinary and other proceedings in which the discretionary review function of the NASD Regulation Board is eliminated will be notified of the final decision of the Association approximately 30 days earlier than such persons would be notified under the current Rule 9000 Series.

In order to reflect the increased role of the Review Subcommittee of the NAC in the administration of disciplinary proceedings during the appeal or review stages, the Association is proposing to amend several rules in the Rule 9300 Series, or other rules relating to a Rule 9300 Series appeal or review proceeding, by granting authority to the Review Subcommittee to make a number of decisions, and deleting from the same rules the authority of the Chair and Vice Chair of the proposed NAC (formerly, the NBCC) to make such decisions. In addition, in proposed amendments to Rule 9216 and Rule 9270, the Review Subcommittee is substituted for the Chair and the Vice Chair of the NAC (formerly, the NBCC) in: (a) Rule 9216(a), relating to the review and acceptance of letters of acceptance, waiver, and consent; (b) Rule 9216(b), relating to the review and acceptance of minor rule plan violation letters; and, (c) Rule 9270, relating to the review and acceptance of offers of settlement. As a result of the restructuring of the NBCC as the NAC and the proposed changes in procedural operations, the Association believes that it is more appropriate for either the full disciplinary committee, the proposed NAC, or by delegation, the smaller Review Subcommittee, balanced as to Industry and Non-Industry members, to make certain decision and rulings within the authority of the NBCC (the proposed NAC) that had been delegated previously to the Chair and the Vice Chair of the NBCC. Each of the above changes are reflected in amendments to a number of Rules in the Rule 9000 Series.

(2) Rule 9100 Series, Rule 9200 Series, and Rule 9300 Series—Other Changes. The Association proposes to add a new definition, "Department of Enforcement," in Rule 9120, as new paragraph (e) and renumber all other paragraphs. The definition of "Department of Enforcement" is being added because a substantial number of Association disciplinary proceedings are conducted cooperatively by the Department of Enforcement and the Department of Market Regulation. In some cases, staff of the Department of Market Regulation will perform many of the functions of the complaining Party by delegated authority.

Proposed paragraph (e) provides that the Department of Enforcement means the Department of Enforcement itself, and for most purposes under the Code, its delegatee, the Department of Market Regulation as well. Although the Department of Market Regulation would have delegated authority to prosecute a disciplinary matter after authorization of the complaint by the Division of Enforcement, however, it would not have authority to authorize a disciplinary proceeding under Rule 9211, determine the terms of a letter of acceptance, waiver, and consent, or of a minor rule violation plan letter under Rule 9216 (a) and (b), or authorize the filing of a notice of appeal under Rule 9311.

The Association purposes many other minor changes to Rule 9120 which reflect renumbering or a change in the term, "National Business Conduct Committee" to the term, "National Adjudicatory Council." In addition, certain definitions contain technical corrections to add references to proceedings in the Rule 9600 Series. Finally the Association is proposing to amend the definition of "Review Subcommittee." The Association proposes to delete the definition from the Rule 9300 Series, locate it in Rule 9120, and amend it to clarify the composition of the Review Subcommittee and other terms of the Review Subcommittee by a cross reference to new Article V, Section 5.11 of the NASD Regulation By-Laws.

The Association proposes to amend Rule 9141(b) to clarify that the written notice one is required to file under that provision is a "notice of appearance." Rule 9141(b) indicates that when a Respondent is represented by a third party, a written notice stating the name of the representative, among other things, shall be filed. The proposed change to paragraph (b) would make explicit that the written notice is a notice of appearance, and that the notice of appearance must be filed in each case. This procedure will avoid any misunderstanding as to who the representative is for a particular Respondent.

[6] *See* Release No. 34–38908, *supra* note 5.

The Association proposes to amend Rule 9214(b) to clarify that when the consolidation of two or more cases is being considered, all Parties to all such cases will be served with all papers filed and all orders issued. The proposed amendment also makes explicit that when a Party moves to consolidate two or more cases, the Chief Hearing Officer will decide which panel will hear the case and will issue an order accordingly.

The Association proposes to amend Rule 9215 in paragraph (a) to clarify that service of an answer occurs under Rule 9133, in paragraph (e) to change a 15 day period to a 14 day period, which is consistent with other periods in the Code, and in paragraph (f) to permit the Department of Enforcement to send a second notice to a Respondent who fails to file an answer. Paragraph (a) includes a reference to Rule 9133 which could be read as incorrectly stating that service of the complaint is made pursuant to Rule 9133. The amendment to paragraph (a) clarifies that service of an answer must be made pursuant to Rule 9133.

Currently, paragraph (e) of Rule 9215 provides for an extension of time for the Respondent to file an answer to an amended complaint. The time period is 14 days if the Respondent has not filed an answer to the original complaint and 15 days if the Respondent has filed an answer to the original complaint. The Association is proposing to make both periods 14 days, to eliminate confusion.

Rule 9215(f) provides that if a Respondent does not file an answer within the time period of the original complaint, the Hearing Officer will direct the Department of Enforcement to send a second notice of the complaint to the Respondent. Subsequently, the Hearing Officer may treat a failure to respond to the second notice as a default. In those cases in which the Respondent has filed an extension request or a letter or some other document with the Office of Hearing Officers, and subsequently fails to file an answer, it is unnecessary to have the Department of Enforcement send a second notice before a default is declared because the earlier filing by the Respondent is evidence that the Respondent received the original complaint. If there is evidence in the form of a communication to the Office of Hearing Officers that Respondent received the original complaint and failed to file an answer, the Association believes that there should be no requirement that a second notice of the complaint be sent before a default judgment can be entered. In addition, in the interests of efficiency, in those cases in which the Respondent does not file anything, the Department of Enforcement on its own initiative should send the second notice without an order from the Office of Hearing Officers. Therefore, the Association is proposing to amend Rule 9215 (f) to (i) delete the requirement that the Office of Hearing Officers order the Department of Enforcement to send the second notice when required, and (ii) delete the requirement to send a second notice before declaring a default if the Respondent has made a filing with the Office of Hearing Officers but has failed to answer the complaint in a timely manner.

The Association proposes to amend IM–9216, which follows Rule 9216(b), the provision allowing a person to resolve some rule violations by submitting a minor rule violation plan letter ("MRV") to the Association. In IM–9216, the Association lists the rules that the Association may resolve violations of by using an MRV. The Association proposes to add Rule 4615, Rule 6730 and Rule 5107 to IM–9216 (as renumbered proposed Rules 8211 through proposed Rules 8213).

The Association inadvertently omitted Rule 4615 and Rule 6730 in IM–9216 in the submission of the proposed Rule 9000 Series in SR–NASD–97–28. Prior to August 7, 1997, when SR–NASD–97–28 was approved by the Commission, old Rule IM–9217, the former provision listing rule violations appropriate for resolution by an MRV included Rule 4615 and the Rule 6730 Series, which included Rule 6730. The Association also proposes to add Rule 5107 (proposed as Rule 8212) to IM–9216 because it is similar to Rule 4615 and Rule 6730. Rule 5107, like Rule 4615 and Rule 6730, is a "blue sheeting" rule, requiring the same type of information to be submitted as do the Rules 4615 and Rule 6730.

The Office of Hearing Officers has determined that without express authority in the Code of Procedure the Chief Hearing Officer would be unable to appoint persons to serve as observers to observe a disciplinary proceeding. Rule 9231 (b) and (c) currently provides that a Hearing Panel or an Extended Hearing Panel shall consist of a Hearing Officer and two Panelists, except in extraordinary circumstances relating to the prior disqualification or recusal of a Panelist as set forth in Rule 9234. The Association is proposing to add paragraph (d) to Rule 9231 to assure that, for training purposes only, the Chief Hearing Officer could appoint an observer to observe a disciplinary proceeding. Under paragraph (d), the Chief Hearing Officer could designate a person as an observer to a Hearing Panel or an Extended Hearing Panel if the person is eligible to be appointed as a Panelist. The Function is being established to provide future Panelists with the opportunity to observe a disciplinary proceeding hearing for training purposes.

The Association proposes to amend Rule 9235 to allow the Chief Hearing Officer or the Deputy Chief Hearing Officer to issue an order in a disciplinary proceeding in the event a Hearing Officer is unavailable. The Association is proposing to add new paragraph (b) to state explicitly that, in the event the appointed Hearing Officer is temporarily unavailable and exigent circumstances require action by the Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer may temporarily function as the appointed Hearing Officer in a proceeding until the appointed Hearing Officer is available.

The Association is proposing to amend Rule 9241 to trigger the 21 day period in the rule from the filing of an answer, rather than from the service of the answer. The Office of Hearing Officers knows when as answer has been filed; it may not know for a period of time whether the answer has been served.

The Association is proposing to amend Rule 9270(a) to allow a Hearing Officer to determine if an offer of settlement made before a hearing on the merits has begun should stay the hearing. Currently, a Hearing Panel must issue such decisions if the offer of settlement is filed within 30 days prior to the date the hearing is scheduled to begin. The specific change would provide that if a settlement motion is filed prior to the commencement of a hearing, the Hearing Officer has the authority to determine whether the hearing should be stayed. In contrast, if the settlement motion is filed after commencement of a hearing, the panel, rather than the Hearing Officer, has the authority to determine whether the hearing should be stayed.

In Rule 9312(e), the Association proposes to clarify that the National Adjudicatory Council's authority to review a case extends to any issue raised in the "record" of the disciplinary proceeding, rather than the "decision" as the Code now provides.

(3) Rule 9600 Series—Other Changes. The Association is proposing to amend the Rule 9600 Series under the Code of Procedure to require a member seeking an exemption from proposed Rule 8211, 8212, and 8213 (current Rule 4615, Rule 5107, and Rule 6730, discussed, *supra*, as changes to the Rule 8000 Series), to follow the procedures outlined in the

recently adopted Rule 9600 Series. Currently, the exemptive authority under Rule 4615, Rule 5107, and Rule 6730 is a generalized authority vested in the Association.

In addition, to eliminate delays in processing a request for an exemption, the Association proposes to modify Rule 9610. Proposed Rule 9610 requires a person seeking exemptive relief to file a written application with "the appropriate department or staff of the Association, and provide a copy of the application to the Office of General Counsel of NASD Regulation," rather than filing the application only with the Office of the General Counsel of NASD Regulation. The same change is proposed in Rule 9630(a), which deals with filing a notice of an appeal of a decision regarding exemptive relief.

2. Statutory Basis

(a) The Association is requesting that the proposed rule change be effective within 45 days of SEC approval, but not later than January 1, 1998.

(b) The Association believes that the proposed rule change is consistent with Section 15A(b)(6), (7), and (8) of the Act.[7] The proposed rule change is consistent with Section 15A(b)(6) of the Act in that it will promote just and equitable principles of trade by providing fair procedures and standards for membership admission, and fair procedures and consistent treatment for requesting information from members or other persons who are obligated to provide the Association with information. The proposed rule change is consistent with Section 15A(b)(7) in that it furthers the statutory mandate that the Association establish rules providing that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members, fair procedures for admitting or denying membership to any person seeking membership to the Association, fair procedures for barring any person from becoming associated with a member of the Association, and fair procedures for prohibiting or limiting the association of any person with respect to access to services offered by the Association or a member thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the proposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice if the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–81 and should be submitted by December 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31523 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39369; File No. SR–NASD–97–51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change Regarding the Transfer of Securities of Issuers Listed on the Nasdaq Stock Market That Are Held Pursuant to a Direct Registration Program

November 26, 1997.

I. Introduction

On July 16, 1997, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NASD–97–51) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The rule change will amend Rules 4200, 4310, 4320, and 4460 of the National Association of Securities Dealers, Inc. ("NASD") to require Nasdaq issuers that elect to offer a direct registration program[2] to shareholders to participate, either directly or through the issuer's transfer agent, in an electronic link with a securities depository registered under Section 17A of the Act.[3] Notice of the proposal was published in the **Federal Register** on September 23, 1997.[4] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

In 1994, the Commission requested comments on the establishment of a transfer agent operated direct registration system ("DRS") for securities which would allow investors to have their securities registered in book-entry form directly on the books of the issuer and to receive a statement of ownership instead of a certificate.[5] Since issuance of the Concept Release, a basic structure for DRS has been developed and implemented by a joint committee of representatives of the Securities Industry Association, the Securities Transfer Association, the Corporate Transfer Agents Association, and the registered securities depositories. Using DRS, investors have a new way, in addition to holding a certificate or holding in street name at a broker-dealer, to hold their securities positions.

A key component of DRS is the electronic linkage of issuers or their transfer agents with broker-dealers through registered securities depositories. Assuming an issuer and its transfer agent participate in DRS, this link allows a broker-dealer to deliver to a transfer agent on customer's request that his purchased securities be registered on the books of the issuer in book-entry form. The linkage also provides for the book-entry movement between broker-dealers and issuers of customers' existing positions.

The Depository Trust Company ("DTC") has received Commission approval of its procedures implementing DRS.[6] Under DTC's procedures, to participate in DRS a transfer agent needs to become a DRS "limited participant" at DTC.[7]

Therefore, Nasdaq proposed to amend NASD's rules to establish a qualification requirement for all securities to be included in Nasdaq that if the issuer establishes a direct registration program it shall participate in an electronic link with a securities depository in order to facilitate the electronic transfer of securities held pursuant to the direct registration program. The electronic link may be direct or through the issuer's transfer agent.

III. Discussion

Section 15A(b)(6) of the Act[8] requires that the rules of a national securities association be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission believes that the proposed rule change is consistent with Section 15A(b)(6) because it requires Nasdaq issuers participating in DRS to establish a link with a registered securities depository before operating DRS services. This requirement should increase cooperation among Nasdaq issuers, their transfer agents, broker-dealers, and DTC.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–97–51) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31684 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39358; File No. SR–PCX–97–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Extension of the Exchange's Specialist Evaluation Pilot Program

November 25, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 17, 1997,[1] the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to extend its pilot program regarding the evaluation of its equity specialists until January 1, 1999. In addition, the Exchange is proposing to implement certain changes to the pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 3, 1997, the Commission approved a six-month extension of the pilot program for the evaluation of equity specialists.[2] The reason for the extension was to allow the PCX more time to evaluate the impact of the SEC's new order handling rules on the performance criteria and to determine an appropriate overall passing score and individual passing scores for each criterion. The Exchange now is proposing to extend the pilot program until January 1, 1999. The PCX has established an overall passing score and individual passing scores for each criterion and has determined when specialists that do not attain the minimum passing scores should meet with the Equity Allocation Committee ("EAC"). The Exchange is also proposing to replace the "Bettering the Quote" criterion with Price Improvement and to lower the weighting of the Specialist Evaluation Questionnaire from 15% to 10% so that Price Improvement can be given a weight of 10%. Since the Bettering the Quote criterion is now measured against the NBBO instead of the primary market, the PCX believes it is no longer

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[7] 15 U.S.C. § 78o–3.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] New section (j) of NASD Rule 4200 defines a *direct registration program* as any program by an issuer, directly or through its transfer agent, whereby a shareholder may have securities registered in the shareholder's name on the books of the issuer or its transfer agent without the need for a physical certificate to evidence ownership.

[3] 15 U.S.C. 78q–1.

[4] Securities Exchange Act Release No. 39062 (September 16, 1997), 62 FR 49719.

[5] Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 63652 ("Concept Release").

[6] Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 [File No. SR–DTC–96–15].

[7] According to DTC, a party wishing to be a "limited participant" must: (1) be registered as a transfer agent with the SEC; (2) participate as a transfer agent in DTC's Fast Automated Securities Transfer ("FAST") program; (3) provide "direct mail service" on transfers; and (4) communicate with DTC through a computer-to-computer interface using DTC's CCF platforms. *Id.* The Philadelphia Depository Trust Company has received Commission approval of similar DRS procedures. Securities Exchange Act Release No. 37933 (November 8, 1997), 61 FR 59260 [File No. SR–Philadep–96–14]

[8] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

[1] See letter from Jeffrey S. Norris, Manager, Regulatory Development, PCX, to Heather Seidel, Attorney, Market Regulation, Commission, dated November 24, 1997 ("Amendment No. 1"). The substance of Amendment No. 1 is incorporated into the notice.

[2] See Securities Exchange Act Release No. 38712 (June 3, 1997), 62 FR 17941 (July 8, 1997).

a viable criterion. Previously, the "Bettering the Quote" criterion was measured against the primary market, which provided opportunities for the specialist to better the primary market quote. However, since the NBBO by definition is the best market, it does not provide the same opportunities for specialists to better the quote, especially when the PCX is the NBBO. The PCX believes that Price Improvement is a meaningful criterion that should be given a 10% weighting, which should be accomplished by lowering the Specialist Evaluation Questionnaire weighting to 10%. This will allow the Exchange to achieve its goal of providing its specialists with a more objective rating system. The description of the Price Improvement criterion as well as the overall passing score and individual passing scores are as follows:

a. Price improvement. "Price Improvement" measures the number of trades involving market and marketable limit orders that improve the NBBO if the NBBO quote spread at the time the original order is *received* is greater than or equal to two trading differentials, but less than or equal to eight trading differentials for that security. The execution price for stopped market or marketable limit orders will be compared with the guaranteed price (which is the NBBO at the time the order was received).

Orders completely or partially executed will be considered for price improvement. All *one-sided* market or marketable limit orders [3] with an NBBO quote spread greater than ⅛ point are eligible for price improvement. Only agency orders entered or received by an exchange are eligible for price improvement. Orders with time-in-force designations such as good until canceled (GTC), good through day of entry (DAY), immediate or cancel (IOC), and good until executed will be eligible for price improvement. In addition, stocks, rights, warrants, preferred stock, when issued, and when distributed equity securities will be eligible for price improvement.

The following types of orders will not be considered under the category of price improvement: all preopening market and limit orders, limit order executions out of the limit book (i.e., booked orders), electronically entered limit orders whose price falls in between the NBBO, non-regular-way trades (i.e., cash, next day and seller's option), negotiated trades or trades identified as crosses, bonds, orders designated as possible duplicates (POSS DUPE) or try to stop (TTS), canceled orders, odd-lot market and odd-lot limit orders, orders designated as all or none (AON), all tick sensitive executions (i.e., buy minus, sell plus, sell short, etc.), market quotations under 200 shares, and principal and program trade account types.[4]

Specialists will be measured on the percentage of trades that are price improved. The following table gives the parameters and corresponding point values:

Percent of eligible trades improved	Points
40 +	10
36–39.99	9
32–35.99	8
28–31.99	7
24–27.99	6
20–23.99	5
16–19.99	4
12–15.99	3
8–11.99	2
4–7.99	1
Below 4	0

Limit order executions out of the limit book (i.e., booked orders) were not included because they are filled as the market moves toward them, not when they are outside of the NBBO. Electronically entered limit orders whose price falls in between the NBBO were excluded because these are not executable at the time they are entered, unless the specialist chooses to fill them. Non-regular-way trades (i.e., cash, next day and seller's option) and negotiated trades are not included because they are negotiated and the price does not necessarily depend upon the NBBO. Trades identified as crosses were excluded because specialists do not participate in crosses, by definition. Bonds and orders designated as possible duplicates (POSS DUPE) were not included because they are entered manually. Canceled orders were excluded because orders cannot be improved upon if they are not allowed to be executed. Odd-lot market and odd-lot limit orders were not included because they are executed automatically in the background, and the specialist never has the opportunity to improve upon them. Orders designated as all or none (AON) and all tick sensitive executions (i.e., buy minus, sell plus, sell short, etc.) were excluded because they are conditional orders. Market quotations under 200 shares were not included because they are usually computer generated and the specialists generally have no opportunity to improve them. Principal orders were excluded because they cannot be sent via PCOAST. Program trades were not included because they involve a large portfolio of stocks and derivative index products, which are not generally routed to a regional exchange for execution.

b. Overall Passing Score. The PCX has established an overall passing score of 60 as the minimum standard that each specialist must attain each quarter. A specialist will have to obtain better than a passing score in each individual criterion (see minimum passing scores shown below) to obtain a minimum passing score of 60. Any specialist who falls below the minimum passing score will have to appear before the EAC and will be subject to the following restrictions: no new allocations and no trading in alternate specialist stocks for the quarter following the quarter that the specialist was evaluated. Such specialists will have the right to request the lifting of one or more of the restrictions based upon mitigating circumstances. Any specialist who does not attain a passing score in any three out of four quarters will also be subject to other restrictions imposed by the EAC, including reallocation of one or more stocks. The EAC will evaluate the effectiveness of the overall passing score and will adjust it accordingly.

c. Individual Criterion Passing Scores. The PCX has established individual passing scores for each individual criterion based upon third quarter 1997 evaluation results. The third quarter of 1997 was the first evaluation period that the Trading Between the Quote, Book Display Time, and Quote Performance calculations were based upon the NBBO instead of the primary market. In addition, the evaluation results in the third quarter were based upon one-sixteenth trading increments instead of one-eighth increments. As a result of the NBBO changes and the change to sixteenths, individual passing scores in the affected criteria were lower than in previous quarters. Previous quarter scores were not used to determine individual criterion passing scores because of the aforementioned changes. The EAC will evaluate the effectiveness of the individual passing scores and will adjust them accordingly. The individual passing scores for each criterion are as follows:

Evaulation criterion	Passing score
Turnaround Time	12.0
Holding Orders Without Action	7.5
Trading Between the Quote	5.0
Executions in Size Greater Than NBBO	2.0
Specialist Evaluation Questionnaire Survey	5.0
Book Display Time	10.5
Equal or Better Quote Performance	1.0
Post 1 P.M. Parameters	3.0
Price Improvement	4.0

Any specialist who does not attain a minimum passing score in a particular criterion for two or more consecutive quarters or more will be subject to the following:

1. If a specialist does not attain an overall passing score in any particular individual criterion for *2 consecutive quarters*, the specialist will have to appear before the EAC. The EAC will meet with the specialist with the intent of helping the specialist to improve the score.

2. If a specialist does not attain an overall passing score in any particular individual criterion for *3 out of 4 consecutive quarters*, the specialist will either not be permitted to trade any alternate specialist stocks or not be able to apply for any new stocks for one quarter. The Equity Allocation Committee will decide which restriction will apply.

3. If a specialist does not attain an overall passing score in any particular individual criterion for *4 out of 5 consecutive quarters, 5 out of 6 quarters, etc.*, the specialist will be subject to both the alternate specialist and no new stock restrictions for one quarter. The EAC may also, at its discretion, impose other restrictions, including reallocating one or more of the specialist stocks.

The EAC will have the discretion not to impose any of these restrictions if there are mitigating circumstances.

The PCX intends to file a rule change to PCX 5.37 to reflect all of the aforementioned changes to its Specialist Evaluation Pilot Program.

The Commission has requested that the Exchange file a report regarding the Exchange's experience with the Pilot, for the period from April 1, 1997 to September 30, 1997, and this report has been filed under separate cover.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–43 and should be submitted by December 24, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31615 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

[3] The regional exchanges have agreed to the following definition for marketable limit orders: A marketable limit order to buy is priced at or above the NBBO offer, a marketable limit order to sell is priced at or below the NBBO bid.

[4] Preopening market and limit orders were excluded because all such orders are entered prior to there being a market that is trading, so there is no market to improve upon.

[5] 15 U.S.C. 78f(b).

SMALL BUSINESS ADMINISTRATION

Senior Executive Service Performance Review Board Members

ACTION: Listing of personnel serving as members of this agency's Senior Executive Service Performance Review Boards.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires that Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB;

1. Chris Sale, Chief Operating Officer;
2. John Whitmore, Deputy to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development;
3. Mary K. Swedin, Assistant Administrator for Congressional and Legislative Affairs;
4. John Gray, Associate Deputy Administrator for Economic Development;
5. Carolyn J. Smith, Assistant Administrator for Human Resources;
6. Herbert Mitchell, Deputy Associate Administrator for Disaster Assistance;
7. Mark Stephens, Deputy General Counsel;
8. John Smith, District Director (Chicago);
9. Erline Patrick, Assistant Administrator for Equal Employment Opportunity and Civil Rights Compliance;
10. Darryl Dennis, Counselor to the Administrator;
11. Charles Anderson, District Director (Miami);
12. Monika Harrison, Associate Administrator for Business Initiatives;
13. Judith Roussel, Associate Administrator for Government Contracting;
14. Mark Quinn, District Director (San Francisco);
15. Larry Wilson, Chief Financial Officer;
16. Jeanne Saddler, Counselor to the Administrator.

Dated: November 24, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–31525 Filed 12–2–97; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 97-4(9)]

Chavez v. Bowen; Effect of a Prior Final Decision That a Claimant is Not Disabled, And of Findings Contained Therein, On Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Acting Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 97-4(9).

EFFECTIVE DATE: December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Ninth Circuit. This Social Security Acquiescence Ruling will apply to all determinations and decisions made on or after December 3, 1997. If we made a determination or decision on your application for benefits between April 19, 1988, the date of the Court of Appeals decision, and December 3, 1997, the effective date of this Social Security Acquiescence Ruling, you may request application of the Ruling to your claim if you first demonstrate, pursuant to 20 CFR 404.985(b) or 416.1485(b), that application of the Ruling could change our prior determination or decision.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: September 17, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Acquiescence Ruling 97-4(9)

Chavez v. *Bowen*, 844 F.2d 691 (9th Cir. 1988)—Effect of a Prior Final Decision That a Claimant is Not Disabled, And of Findings Contained Therein, On Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Issue: Whether, in making a disability determination or decision on a subsequent disability claim with respect to an unadjudicated period, where the claim arises under the same title of the Social Security Act (the Act) as a prior claim on which there has been a final decision by an Administrative Law Judge (ALJ) or the Appeals Council that the claimant is not disabled, the Social Security Administration (SSA)[1] must: (1) apply a presumption of continuing nondisability and, if the presumption is not rebutted by the claimant, determine that the claimant is not disabled; and (2) if the presumption is rebutted, adopt certain findings required under the applicable sequential evaluation process for determining disability, made in the final decision by the ALJ or the Appeals Council on the prior disability claim.[2]

Statute/Regulation/Ruling Citation: Sections 205(a) and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and 902(a)(5)), 20 CFR 404.900, 404.957(c)(1), 416.1400, 416.1457(c)(1).

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)

Chavez v. *Bowen*, 844 F.2d 691 (9th Cir. 1988)

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, ALJ hearing and Appeals Council).

Description of Case: Mr. Chavez first applied for disability insurance benefits on June 1, 1982. On March 30, 1983, an ALJ awarded Mr. Chavez a closed period of disability from March 3, 1981, through May 1982. In determining that disability had ended, the ALJ found that, although Mr. Chavez could not perform his past relevant work, he was able to engage in a wide range of at least light substantial gainful activity. Mr. Chavez did not appeal this decision. Therefore, it became final and binding.

On July 18, 1983, Mr. Chavez filed another application for disability insurance benefits. In a decision dated May 10, 1984, an ALJ found that Mr. Chavez could perform work-related activities except for work involving constant standing, walking, and lifting, and carrying more than 20 pounds. The ALJ then found that Mr. Chavez's past work as a backhoe operator did not require excessive standing and lifting and that his impairments therefore did not prevent him from resuming his past work. The decision made no reference to the findings of the first ALJ. This decision became the final decision of the Secretary.

Upon appeal, the district court granted the Secretary's motion for summary judgment. The district court found that substantial evidence supported the finding that the claimant could perform light work and, therefore, was not disabled. Mr. Chavez appealed this decision to the United States Court of Appeals for the Ninth Circuit.

Holding: The Ninth Circuit stated that:

The principles of res judicata apply to administrative decisions, although the doctrine is applied less rigidly to administrative proceedings than to judicial proceedings. The claimant, in order to overcome the presumption of continuing nondisability arising from the first administrative law judges's findings of nondisability, must prove "changed circumstances" indicating a greater disability. (Citations omitted.)

The court then found that Mr. Chavez's "attainment of 'advanced age' constitutes a changed circumstance precluding the application of res judicata to the first administrative law judge's ultimate finding against disability." In addition, the court concluded that "[t]he first administrative law judge's findings concerning the claimant's residual functional capacity, education, and work experience are entitled to some res judicata consideration in subsequent proceedings."

Statement As To How Chavez Differs From Social Security Policy

Under SSA policy, if a determination or decision on a disability claim has become final, the Agency may apply administrative res judicata with respect to a subsequent disability claim under the same title of the Act if the same parties, facts and issues are involved in both the prior and subsequent claims. However, if the subsequent claim involves deciding whether the claimant is disabled during a period that was not adjudicated in the final determination or decision on the prior claim, SSA considers the issue of disability with respect to the unadjudicated period to be a new issue that prevents the application of administrative res judicata. Thus, when adjudicating a subsequent disability claim involving an unadjudicated period, SSA considers the facts and issues *de novo* in determining disability with respect to the unadjudicated period. SSA does not adopt findings from the final determination or decision on the prior disability claim in determining whether the claimant is disabled with respect to the unadjudicated period. Further, under SSA policy, a prior final determination or decision that a claimant is not disabled does not give rise to any presumption of a continuing condition of nondisability. When a subsequent claim involves an unadjudicated period, the determination or decision as to whether a claimant is disabled with respect to that period is made on a neutral basis, without any inference or presumption that a claimant remains "not disabled."

The United States Court of Appeals for the Ninth Circuit held that a final decision by an ALJ that a claimant is not disabled gives rise to a presumption that the claimant continues to be not disabled after the period adjudicated, and that this presumption of continuing nondisability applies when adjudicating a subsequent disability claim with an unadjudicated period arising under the same title of the Act as the prior claim. In order to rebut the presumption of continuing nondisability, a claimant must prove "'changed circumstances' indicating a greater disability." In addition, the court indicated that where the claimant rebuts the presumption by proving a "changed circumstance," principles of res judicata require that certain findings contained in the final decision by the ALJ on the prior claim be given some res judicata consideration in determining whether the claimant is disabled with respect to the unadjudicated period involved in the subsequent claim. The court concluded that where the final decision by the ALJ on the prior claim, which found the claimant not disabled, contained findings of the claimant's residual functional capacity, education, and work experience, SSA may not make different findings in adjudicating the subsequent disability claim unless there is new and material evidence relating to the claimant's residual functional capacity, education or work experience.

Explanation of How SSA Will Apply The Chavez Decision Within The Circuit

This Ruling applies only to disability cases involving claimants who reside in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision on the subsequent claim at the initial, reconsideration, ALJ hearing or Appeals Council level. It applies only to cases involving a subsequent disability claim with an unadjudicated period arising under the same title of the Act as a prior claim on which there has been a final decision by an ALJ or the Appeals Council that the claimant is not disabled.

When adjudicating the subsequent claim involving an unadjudicated period, adjudicators will apply a presumption of continuing nondisability and determine that the claimant is not disabled with respect to that period, unless the claimant rebuts the presumption. A claimant may rebut the presumption by showing a "changed circumstance" affecting the issue of disability with respect to the unadjudicated period, e.g., a change in the claimant's age category under 20 CFR 404.1563 or 416.963, an increase in the severity of the claimant's impairment(s), the alleged existence of an impairment(s) not previously considered, or a change in the criteria for determining disability.

If the claimant rebuts the presumption, adjudicators then must give effect to certain findings, as explained below, contained in the final decision by an ALJ or the Appeals Council on the prior claim, when adjudicating the subsequent claim. For this purpose, this Ruling applies only to a finding of a claimant's residual functional capacity, education, or work experience, or other finding required at a step in the sequential evaluation process for determining disability provided under 20 CFR 404.1520, 416.920 or 416.924, or a finding required under the evaluation process for determining disability provided under 20 CFR 404.1578, as appropriate, which was made in the final decision on the prior disability claim. Adjudicators must adopt such a finding from the final decision on the prior claim in determining whether the claimant is disabled with respect to the unadjudicated period unless there is new and material evidence relating to such a finding or there has been a change in the law, regulations or rulings affecting the finding or the method for arriving at the finding.

[FR Doc. 97-31501 Filed 12-2-97; 8:45am]

BILLING CODE 4190-29-F

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

[2] Although *Chavez* was a title II case, similar principles also apply to title XVI. Therefore, this Ruling extends to both title II and title XVI disability claims.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-116]

Cancellation of Public Hearing in Section 302 Investigation: Honduran Protection of Intellectual Property Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On October 31, 1997, the United States Trade Representative (USTR) initiated an investigation under section 302(b) of the Trade Act of 1974 with regard to acts, policies, and practices of the Government of Honduras with respect to the protection of intellectual property rights, and proposed to determine that these acts, policies and practices are actionable under section 301(b) and that the appropriate response is a partial suspension of tariff preference benefits accorded to Honduras under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs (62 FR 60299 of November 7, 1997). The annex to that notice set forth a list of articles of Honduras which could be subject to the suspension of tariff preference benefits. The USTR also invited interested persons to submit written comments and to participate in a public hearing on December 4, 1997, concerning the proposed determinations and action. Due to a lack of response, the December 4, 1997 hearing is hereby canceled. Written comments are still due by December 10, 1997.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: David Morrissy, Office of Trade and Development, Office of the United States Trade Representative, (202) 395–6971, or William Busis, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3150.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–31603 Filed 12–2–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (97–03–C–00–BUF) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Buffalo Niagara International Airport, Buffalo, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 2, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Carol J. Sampson, Senior Grants Specialist, for the Niagara Frontier Transportation Authority at the following address: Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Niagara Frontier Transportation Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530 (Telephone 516–227–3800). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 20, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Niagara Frontier Transportation Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 6, 1998.

The following is a brief overview of the application.

Application number: 97–03–C–00–BUF.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2006.

Proposed charge expiration date: March 31, 2011.

Total estimated PFC revenue: $6,509,194.

Brief description of proposed projects:

Use Only Projects

—Purchase One (1) Front End Loader
—Strengthen Pavement
—Taxiway C & Perimeter Road
—Overlay Taxiways D&F
—Conduct Pavement Study
—Rehabilitate and Overlay Runway 14/32

Impose & Use Projects

—Relocate Airport Beacon
—Construct Aircraft & Glycol Storage Facility
—Rehabilitate Aircraft Deicing Area
—Renovate Common-Use Gate Positions and Holdrooms
—Rehabilitate Storm Drain
—Purchase Snow Removal, Safety, Police and Aircraft Rescue and Fire Fighting (ARFF) Emergency Equipment

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the offices of the Niagara Frontier Transportation Authority.

Issued in Jamaica, New York, on November 25, 1997.

Thomas Felix,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 97–31699 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the Fifth Meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fifth meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). MVSRAC established this Subcommittee at the April 1992 meeting to examine research questions regarding crashworthiness of vehicles under 10,000 pounds GVW.

DATES AND TIME: The meeting is scheduled for December 15, 1997, from 10:00 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in room 9230 of the U.S. Department of Transportation building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The topic of discussion for this meeting of the MVSRAC Crashworthiness Subcommittee is the agency's Advanced Air Bag Technology Research Program. The agenda will include status reports on both the agency's research activities and on the activities of the Advanced Air Bag Technology Working Group. The Advanced Air Bag Technology Working Group was established by the MVSRAC Crashworthiness Subcommittee with the goal of presenting technical information and data to the Crashworthiness Subcommittee.

The meeting is open to the public, and participation by the public will be moderated by the Subcommittee Chairperson.

A public reference file (Number 88–01—Crashworthiness Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Information Services in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–4862, telefax: (202) 366–5930.

Issued: November 28, 1997.

Joseph N. Kanianthra,

Acting Chairperson, Crashworthiness Subcommittee, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 97–31743 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on December 17, 1997, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on December 8, 1997. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by December 10, 1997, to the address given below. If sufficient time is available, questions received after the December 10 date will be answered at the meeting in the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by December 10 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Clarion Inn, Detroit Metro Airport, 9191 Wickham Road, Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the December 17, 1997, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., S.W., Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This nineteenth meeting in the series will be held on December 17, 1997.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on December 8, 1997. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers listed elsewhere in this notice or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. NHTSA asks that the suggestions be limited to six, in priority order, so that the presentations at the December 17 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations.

Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by close of business December 8, 1997.

Specific R&D topics are:

Fiscal Year 1998 R&D Research Efforts,

International Harmonized Research Activities (IHRA),

On-line tracking system for NHTSA's research projects, and

Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Automatic lifesaving system—improved triage, transport, and treatment decisionmaking for automatic collision notification technologies,

Status of advanced air bag research,

Demonstration of CD ROM for child restraint/vehicle compatibility,

Preparation of new dummies for assessment of advanced air bag technology,

Status of research on restraint systems for rollover protection,

Improved frontal crash protection (program status, problem identification, offset testing),

Advanced glazing research,

Vehicle aggressivity and fleet compatibility,

Upgrade side crash protection,

Upgrade seat and occupant restraint systems,

Child safety research (ISOFIX),

Child restraint/air bag interaction (CRABI) dummy testing,

Truck crashworthiness/occupant protection,

National Transportation Biomechanics Research Center (NTBRC),

Head and neck injury research,

Lower extremity injury research,

Thorax injury research,

Human injury simulation and analysis,

Refinements to the Hybrid III dummy, and

Advanced frontal test dummy.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),

Intelligent vehicle initiative,

Status and plans for anti-lock brake system (ABS) research,

Truck tire traction,

Human factors guidelines for crash avoidance warning devices,

Drowsy driver monitoring,

Driver workload assessment,

Rearend collision avoidance system guidelines,

Road departure collision avoidance system guidelines,

Intersection collision avoidance system guidelines, and

Lane change/merge collision avoidance system guidelines.

National Center for Statistics and Analysis (NCSA) topic is: Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than close of business on December 10, 1997, will be answered. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection at NHTSA's Technical Information Services, Room 5108, 400 Seventh St., S.W., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA's Technical Information Services. The Technical Information Services section is open to the public from 9:30 a.m. to 4:00 p.m. The transcript will also be available on NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons on (202) 366–4862 or by telefax on (202) 366–5930 by close of business December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930.

Issued: November 26, 1997.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 97–31698 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety User Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that the fiscal year 1998 user fee assessments for pipeline facilities will be mailed to pipeline operators on or about December 15, 1997. The fees to be assessed for natural gas transmission, hazardous liquid and liquefied natural gas (LNG) are indicated below:

Natural gas transmission pipelines: $67.98 per mile (based on 291,765 miles of pipeline).

Hazardous liquid pipelines: $59.59 per mile (based on 155,558 miles of pipeline).

LNG is based on the number of plants and total storage capacity:

Total storage capacity (bbl)	Assessment/plant
<10,000	=$1,250
10,000–100,000	=$2,500
100,000–250,000	=$3,750
250,000–500,000	=$5,000
>500,000	=$7,500

Section 60301 of Title 49, United States Code, authorizes the assessment and collection of pipeline user fees to fund the pipeline safety activities conducted under 49 U.S.C. 60101 *et seq.* The Research and Special Program Administration (RSPA) assesses each operator of regulated interstate and intrastate natural gas transmission pipelines (as defined in 49 CFR Part 192), and hazardous liquid pipelines carrying petroleum, petroleum products, anhydrous ammonia and carbon dioxide (as defined in 49 CFR Part 195) a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has in service. Onshore pipelines excluded from regulation by 49 CFR Part 195 are not included in this mileage. Operators of LNG facilities are assessed based on total storage capacity (as defined in 49 CFR Part 193).

In accordance with the provisions of 49 U.S.C. 60301, Departmental resources were taken into consideration for determining total program costs. The apportionment ratio between gas and liquid pipeline programs (as shown below) is a result of the shift of program resources to the hazardous liquid program because of increased emphasis on environmental protection:

Year(s)	General program costs (gas)	General program costs (liquid)
1986–1990.	80%	20%.
1991–1992.	75%	25%.
1993	75% (¾ yr.) 60% (¼ yr.)	25% (¾ yr). 40% (¼ yr).
1994	60%	40%.
1995	75%	25%.
1996	65%	35%.
1997–1998.	55%	45%.

In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Issued in Washington, D.C. November 28, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–31742 Filed 12–2–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub-No. 65X)]

Boston and Maine Corporation—Abandonment Exemption—in Carroll County, NH

Boston and Maine Corporation (B&M) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon an approximately 10.80-mile line of railroad on the Conway Branch between milepost B–111.0 and milepost B–121.80 in Ossipee, Carroll County, NH. The line traverses United States Postal Service Zip Codes 03814, 03864 and 03468.

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 2, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 15, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John R. Nadolny, Esq., Boston and Maine Corporation, Law Department, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&M has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 8, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by December 3, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31768 Filed 12–2–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1988). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Customs Service

Extension of National Customs Automation Program Test Regarding Remote Location Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces that Customs is permitting an extension to continue the second prototype of Remote Location Filing (RLF). This notice also invites public comments concerning any aspect of the current test, informs interested members of the public of the eligibility requirements for voluntary participation, describes the basis for selecting participants, and establishes the process for developing evaluation criteria. To participate in the prototype test, the necessary information, as outlined in this notice, must be filed with Customs and approval granted. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program. The **Federal Register** (61 FR 60749) notice, dated November 29, 1996, continues to apply except as specifically noted herein.

Based on our experience in second prototype of RLF, we have made modifications to the sections detailing the Eligibility Criteria and the Prototype Two Applications. The changes will effect parties who wish to apply for participation in the extension of the second prototype of RLF. Current participants may continue their participation without reapplying.

EFFECTIVE DATE: The extension of the second prototype will commence no earlier than January 1, 1998, will continue, and be concluded, no earlier than December 31, 1998, by a notice in the **Federal Register**. Comments concerning any aspect of the remote filing prototype test must be received on or before January 2, 1998.

ADDRESSES: Written comments regarding this notice, and information submitted to be considered for voluntary participation in the prototype should be addressed to the Remote Filing Team, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Room 5.2 A, Washington, D.C. 20229–0001.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Joseph Palmer (202) 927–0173, Jackie Jegels (202) 927–0201, or Patricia Welter (305) 869–2780.

For operational or policy issues: Jennifer Engelbach (202) 927–2293, or Don Luther (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414). These define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for remote location filing (section 414).

The Remote Location Filing (RLF) prototype will allow an approved participant to electronically file a formal or informal consumption entry with Customs from a location within the United States other than the port of arrival (POA), or from within the port of arrival with a requested designated exam site (DES) outside of the POA. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)), implements the testing of NCAP components. See, T.D. 95–21 (60 FR 14211, March 16, 1995).

Since June 1994, the Customs Remote Team has shared the Customs RLF concept through many public meetings and concept papers, as well as posted information on the Customs Electronic Bulletin Board (CEBB), the Customs Administrative Message System, and the Customs web page at "http://www.customs.treas.gov/imp-exp/comm-imp/remote/toc.htm." Pursuant to § 101.9, Customs Regulations, Customs has been testing the RLF concept. On

April 6, 1995, Customs announced in the **Federal Register** (60 FR 17605) its plan to conduct the first of at least two prototype tests regarding RLF. The first test, Prototype One, began on June 19, 1995. On February 27, 1996, Customs announced in the **Federal Register** (61 FR 7300) that it was permitting an extension and expansion of the RLF Prototype One until the implementation of Remote Prototype Two. On November 29, 1996, Customs announced in the **Federal Register** (61 FR 60749) its plan to conclude the first prototype test on December 31, 1996, and conduct a second prototype test of RLF commencing no earlier than January 1, 1997. In today's document, Customs is announcing that it will permit an extension of the RLF Prototype Two.

The first remote location prototype test was offered in the Automated Commercial System (ACS). Although the second remote prototype test was originally scheduled to be tested in the Automated Commercial Environment (ACE), the success of Prototype One precipitated the second test under ACS with a larger participant pool.

The first RLF prototype (Prototype One) concluded December 31, 1996. Prototype One was conducted with a very limited number of participants at limited locations. It was conducted with minimal system changes thereby requiring Customs to intervene manually in tracking and processing. All procedures and processes were closely coordinated with all selected and affected parties. The intent of Prototype One was to test such operational issues as communication, cargo movement and release, and service to and from remote locations. Prototype One tested features such as filing from a remote location, alternate exam location, and entry summary workload distribution.

The second RLF prototype (Prototype Two) commenced January 1, 1997, and will be extended to conclude no earlier than December 31, 1998. Prototype Two is an expanded version of Prototype One with more ports and trade participants. In order to expand the prototype Customs has trained additional ports and allowed Customhouse Brokers to apply as participants. Prototype Two will continue to operate with minimal system changes. The intent of this prototype is to test such operational issues as communication, cargo movement and release, and service to and from remote locations. This prototype will further test features such as filing from a remote location and alternate exam location.

Additional prototypes of RLF are being developed by Customs to determine the systemic and operational design of the final RLF program which will allow all filers to participate in this type of entry process at a national level. Prototype participants must recognize that these prototypes test the benefits and potential problems of RLF for Customs, the trade community, and other parties impacted by this program.

Description of RLF Program

The RLF program will be determined by the experiences of the planned remote prototypes and with other Customs initiatives such as the Reorganization, ACE, Trade Compliance Redesign, and Year 2000 programming. The Customs RLF team's objectives are:

(1) To work with the trade community, other agencies, and other parties impacted by this program in the design, conduct and evaluation of a second prototype test of RLF;

(2) To obtain experience through prototype tests of RLF for use in the design of operational procedures, automated systems, and regulations; and

(3) To implement RLF on a national level in conjunction with the Trade Compliance Redesign, and the Automated Commercial Environment.

Description of Proposed Test

Prototype Two commenced January 1, 1997, and will run until concluded, no earlier than December 31, 1998, by a notice in the **Federal Register**. Prototype Two will evaluate the operational impact and procedures for a larger participant base, testing filing from a remote location, and alternate location examinations.

Regulatory Provisions Suspended

Certain provisions in Part 111, and Part 141, of the Customs Regulations will be suspended during this prototype test. This will allow brokers to file remotely to service ports, designated as "broker districts" in accordance with a general notice published in the **Federal Register** (60 FR 49971, dated September 27, 1995), where they currently do not hold permits, and to allow for the movement of cargo from its port of arrival to a designated examination site in another port.

Eligibility Criteria

To qualify, a participant must have proven capability to provide electronically, on an entry-by-entry basis, the following: entry; entry summary; invoice information (when required by the Customs Service) using EIP; and payment of duties, fees, and taxes through the Automated Clearinghouse (ACH).

The following additional requirements and conditions apply:

1. Participants must be operational on ACH 30 days before applying for Prototype Two.
2. Participants must be operational on EIP before applying for Prototype Two.
3. The requested Customs locations must have operational experience with EIP, and have received RLF training.

RLF Trained Locations

The following are locations currently operational under the RLF Prototype Two test: (POA indicates a port trained as a port of arrival, and DES indicates a port trained as a designated examination site).

Port	POA	DES
Atlanta	✔	✔
Baltimore	✔	✔
Buffalo	✔	✔
Champlain-Rouses Point	✔	✔
Charleston	✔	✔
Chicago	✔	✔
Dallas/Ft. Worth	✔	✔
Detroit	✔	✔
Houlton, ME	✔	✔
Houston	✔	✔
Jacksonville	✔	✔
JFK	✔	✔
Laredo/Eagle Pass	✔	✔
Los Angeles	✔	✔
NY/Newark Area	✔	✔
New York Seaport	✔	✔
Norfolk/Richmond	✔	✔
Portland, ME	✔	✔
Port Huron	✔	✔
Rochester	(1)	✔
San Diego/Otay Mesa	✔	✔
San Francisco/Oakland	✔	✔
Savannah	✔	✔
Seattle	✔	✔
Utica/Syracuse	✔	✔

[1] Not available.

Future RLF Trained Locations

As the prototype continues and trade interest warrants, ports which are not currently trained in EIP and RLF processing will be trained. Announcements on newly trained ports will be placed on the CEBB and Administrative Message System. One criteria for selecting a port for training will be interest from the trade. Participants who would like to expand their participation to a non-trained port, should send the following information to the Remote Filing Team, at U.S. Customs Service, 1300 Pennsylvania Avenue, N.W. Room 5.2 A, Washington, D.C. 20229–0001:

a. Company name;
b. Contact name and phone number;
c. Importer name;
d. Port(s) of interest; and
e. The estimated number of entries a month.

4. Participants must maintain a continuous bond which meets or exceeds the national guidelines for bond sufficiency.
5. Only entry types 01 (consumption) and 11 (informal) will be accepted.
6. Cargo release must be certified from the entry summary (EI) transaction with the exception of immediate delivery explained in #7.
7. RLF participants will be allowed to file Immediate Delivery releases for direct arrival road and rail freight at the land border using paper invoices under Line Release, Border Cargo Selectivity (BCS), or Cargo Selectivity (CS). This must be done in accordance with 19 CFR 142.21(a). Submission of all line items at the time of release will be required of Northern Border filers if the release is effected using BCS or CS. If an examination is required for a line release transaction, the filer must submit all relevant line item information through BCS or CS. Under BCS and CS, the examination will be performed at the port of arrival using paper invoices. If the filer wishes the examination to be performed at an alternate site, full entry summary information (an EI transaction in ABI) with electronic invoice must be transmitted.
8. Participants will not be allowed to file a RLF entry involving cargo that has already been moved using in-bond procedures.
9. Participants will be required to use other government agency interfaces where available.
10. When necessary, cargo will be examined at the Customs port of arrival, or, at Customs discretion, a filer's requested DES, which must be the Customs port nearest the final destination. The scheduling (approval) of merchandise for examination at a DES that is not at the port of arrival will be considered a conditional release under permit that automatically obligates the importer's bond pursuant to 19 CFR 113.62 for an immediate redelivery to the DES. This **Federal Register** Notice advises the importer of record for such merchandise that this movement is a redelivery and he/she will not receive an individual notice of redelivery, Customs Form 4647, and that the redelivery clause of the importers bond is automatically triggered whenever Customs decides to examine the merchandise at a DES that is not at the port of arrival.
11. If a notice of redelivery is not complied with, or delivery to unauthorized locations, or delivery to the consignee without Customs permission occurs, the obligors agree to pay liquidated damages in the amount specified pursuant to the bond in 19 CFR 113.62 (f).

Customs will work with all participants to ensure that:

(1) Customs contacts and problem solving teams are established, and

(2) Procedures for remote entry and entry summary processing are prepared.

Prototype Two Applications

This notice solicits applications for participation in Remote Location Filing Prototype Two. There are two distinct application procedures, which depend upon the status of the applicant. The first is a one-step application process for importers applying on their own behalf as well as for brokers acting on behalf of specific clients. The second is a two-step process for brokers applying on their own behalf.

All applications must initially be submitted to the U.S. Customs Service, 1300 Pennsylvania Avenue, N.W. Room 5.2 A, Washington, D.C. 20229–0001. Applications will be accepted up to 30 days before the close of the Prototype Two extension.

Since this is an extension of Remote Prototype Two, current participants may continue their participation without reapplying. Note that participation in RLF Prototype Two is not confidential, and that lists of participants will be made available to the public.

Importers / Brokers on Behalf of Clients

These applications must be submitted to the U.S. Customs Headquarters (address cited above) with the following information:

1. Importer name and, if applicable, broker name, address, and filer code;
2. Supplier name, address, and manufacturer's number;
3. Types of commodities to be imported;
4. Other agency requirements;
5. Site(s) from which the applicant will be transmitting the electronic information;
6. Port name and port code for port(s) of arrival;
7. Port name and port code for designated examination site(s) located nearest the final destination(s);
8. Monthly volume anticipated;
9. Electronic Invoicing Program status and starting date;
10. Electronic Payment (ACH) status and starting date; and
11. Main contact person and telephone number.

Brokers as Applicants

This application process will be done in two steps. During the first step, the broker must submit the following information to U.S. Customs Headquarters (address cited above):

1. Broker name, address, filer code and IRS#;
2. Electronic Invoicing Program status and starting date;
3. Electronic Payment (ACH) status and starting date;
4. Site(s) from which the broker will be transmitting the electronic information;
5. Type of protocol: AII, EDIFACT or both; and
6. Point of contact.

Once a broker has received written approval from U.S. Customs Headquarters to proceed with the second step of the application process, the broker must submit the following information to the Port Director(s) overseeing each requested POA and DES location for each client (importer):

1. Participating client name, telephone number and Importer Number;
2. Supplier name, address, and manufacturer's number;
3. Types of commodities to be imported;
4. Other agency requirements;
5. Site(s) from which the applicant will be transmitting the electronic information;
6. Port name and port code for port(s) of arrival;
7. Port name and port code for designated examination site(s) located nearest the final destination(s);
8. Monthly entry volume anticipated;
9. Carriers used and their Automated Manifest System (AMS) status;
10. Main contact person and telephone number of filer; and
11. Certification that a copy of this application letter has been provided to the Client named in item 1.

Basis for Participant Selection

The basis for applications approved by Customs Headquarters will be EIP operational experience, electronic abilities, available electronic interfaces with other agency's import requirements, and operational limitations. For application scenarios requesting a DES outside of the POA, the compliance rate of the parties involved will be taken into consideration.

The basis for applications being approved or denied by the Port Director(s) will involve issues such as impact on available resources, commodity requirements and if the port has been trained in EIP/RLF.

The Port Director has 10 working days after the receipt of the information required in the second step of the application process to provide written approval or denial to the applicant. If the Port Director denies the application,

that denial is effective for 10 working days. After that, a new request may be submitted to the Port Director at the Port of Arrival and the Designated Examination Site. If the applicant does not receive a reply from the Port Director within 10 working days from the date of submission, the application should be considered denied. Those applicants not selected for participation by U.S. Customs Headquarters will be sent a letter of denial. They will, however, be invited to comment on the design, conduct, and evaluation of this prototype.

Also, it is emphasized that if a company is interested in filing remotely, it must first be operational with EIP. For information on EIP, please contact your ABI Client Representative.

Dismissal From Prototype Two

If a filer attempts to submit data relating to restricted merchandise or merchandise subject to quota, anti-dumping duties, countervailing duties, or other non-eligible data through the Electronic Invoice Program, the filer may be expelled from the program, prevented from participation in future RLF prototypes, and may be subject to liquidated damages and/or penalties under Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

Test Evaluation Criteria

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, and establish baseline measures and evaluation methods and criteria. Evaluations of the prototype will be conducted and the final results will be published in the **Federal Register** as required by § 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been identified.

1. Baseline measurements will be established through data queries and questionnaires.

2. Reports will be run through use of data query throughout the prototype.

3. Questionnaires will be distributed during and after the prototype period. Participants are required to complete the questionnaires in full and return them within 30 days of receipt.

Customs may evaluate any or all of the following items:

- Workload impact (workload shifts, volume, etc.);
- Policy and procedural accommodation;
- Trade compliance impact;
- Alternate exam site issues (workload shift, coordination/communication, etc.);
- Problem solving;
- System efficiency; and
- The collection of statistics.

The trade will be responsible for evaluating the following items:

- Service in cargo clearance;
- Problem resolution;
- Cost benefits;
- System efficiency;
- Operational efficiency; and
- Other items identified by the participant group.

Dated: November 26, 1997.

Audrey Adams,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 97–31683 Filed 12–2–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–111–80]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–111–80 (TD 8019), Public Inspection of Exempt Organization Returns (§ 301.6104(b)–1).

DATES: Written comments should be received on or before February 2, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Public Inspection of Exempt Organization Returns.

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80.

Abstract: Internal Revenue Code section 6104(b) authorizes the IRS to make available to the public the returns required to be filed by exempt organizations. The information requested in section 301.6104(b)–1(b)(4) of this regulation is necessary in order for the IRS not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 22.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 25, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–31593 Filed 12–2–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting Cancellation

The Department of Veterans Affairs notice that a meeting of the Advisory Committee on Minority Veterans to be held on December 8, 1997, through December 10, 1997, in Washington, DC, is hereby canceled. The notice appeared in the **Federal Register** on November 13, 1997, on page 60938.

If you have any questions, please contact Mr. Anthony Hawkins, Department of Veterans Affairs, at (202) 273–6708.

Dated: November 25, 1997.

By direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–31626 Filed 12–2–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 232
Wednesday, December 3, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP85–221–007]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

Correction

In notice document 97–30998, appearing on page 63142, in the issue of Wednesday, November 26, 1997, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–155–008]

Mobile Bay Pipeline Company; Notice of Compliance Filing

Correction

In notice document 97–29812 beginning on page 60894 in the issue of Thursday, November 13, 1997 the docket number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300581; FRL–5755–5]

RIN 2070–AB78

Lambda-Cyhalothrin; Pesticide Tolerance

Correction

In rule document 97–30939, beginning on page 63002, in the issue of Wednesday, November 26, 1997, make the following corrections:

1. On page 63002, in the first column, in the **DATES** section, in the fourth line, "January 28, 1998." should read "January 26, 1998."

2. On page 63010, in the third column, in the docket line, "97–30959" should read "97–30939".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 200

[Docket No. 96N–0048]

Sterility Requirements for Inhalation Solution Products

Correction

In proposed rule document 97–25130, beginning on page 49638, in the issue of Tuesday, September 23, 1997, in the third column, in the **DATES** section, in the sixth and seventh lines, "March 23, 1998." should read "1 year after its date of publication in the **Federal Register**."

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 213a and 299

[INS No. 1807–96]

RIN 1115–AE58

Affidavits of Support on Behalf of Immigrants

Correction

In rule document 97–27605, beginning on page 54346, in the issue of Monday, October 20, 1997, make the following correction:

§ 213a.2 [Corrected]

On page 54353, in the first column, in § 213a.2(a)(2)(i), in the sixth line "before" should read "after".

BILLING CODE 1505-01-D

federal register

Wednesday
December 3, 1997

Part II

Office of Personnel Management

Science and Technology Reinvention Laboratory Personnel Demonstration Project at the Naval Sea Systems Command Warfare Centers; Notice

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Reinvention Laboratory Personnel Demonstration Project at the Naval Sea Systems Command Warfare Centers

AGENCY: Office of Personnel Management.

ACTION: Notice of approval of Demonstration Project final plan.

SUMMARY: The National Defense Authorization Act of fiscal year 1995 (P.L. 103–337) authorizes the Secretary of Defense, with Office of Personnel Management (OPM) approval, to conduct a Personnel Demonstration Project at Department of Defense (DoD) laboratories designated as Science and Technology Reinvention Laboratories. The legislation requires that most requirements of Section 4703 of Title 5 shall apply to the Demonstration Project. Section 4703 requires OPM to publish the project plan in the **Federal Register**.

DATES: This Demonstration Project may be implemented by the Warfare Centers beginning on March 3, 1998.

FOR FURTHER INFORMATION CONTACT:

Warfare Centers: Shirley Scott, Deputy Demonstration Project Manager, NSWCDD, HR Department, 17320 Dahlgren Road, Dahlgren, VA 22448, 540–653–4623.

OPM: Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E. Street, NW, Room 7460, Washington, DC 20415, 202–606–1138.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, at least 19 studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. The Warfare Centers' Personnel Demonstration Project involves a simplified classification system for GS employees, performance development and incentive pay systems, a streamlined reduction-in-force system, and a simplified examining and appointment process.

2. Overview

Twenty-three letters were received and one individual commented on the **Federal Register** notice at the Public Hearing. These comments brought several new perspectives to the attention of those responsible for implementing, overseeing, and evaluating the project. The comments highlighted instances of miscommunication and misunderstanding with the present system as well as the project interventions. Further, they underscored the importance of providing training to employees and supervisors on the Demonstration Project. The substance of all comments received has been conveyed to the Warfare Centers' Executive Group and the Commanding Officers and Executive Directors of the seven Warfare Center Divisions in the event that local policies, processes and training sessions may benefit from such perspectives. A summary of all comments received, along with accompanied responses, is provided below.

(A). General Management Issues

Comments: Several comments expressed concern over a Demonstration Project which provides additional flexibility to supervisors and suggested that these flexibilities will allow for or promote abuses and compromises of the merit system. With the feeling that many supervisors currently do not properly execute supervisory responsibilities or utilize the authority and tools provided under the current system, these employees fear a new system that gives supervisors additional flexibility over their career and pay. Several comments mentioned that no checks or oversight seem apparent and that management accountability is lacking under the Project.

Response: The Warfare Centers acknowledge that the Personnel Demonstration Project provides increased authority and responsibility to supervisors, particularly in those areas impacting employees' pay. The Office of Personnel Management's (OPM's) experience with other Personnel Demonstration Projects, including the "China Lake" Project, does not support the assumption that increased supervisory discretion and authority leads to merit system abuses. However, the Warfare Centers are sensitive to the concerns expressed by many of the comments and are committed to holding supervisors accountable for the proper use of increased authorities and flexibilities. To assist supervisors in carrying out their new responsibilities, the Demonstration Project currently requires that supervisors be trained on the new system and receive feedback from a number of sources, including employees, on their supervisory skills and leadership behaviors. Aggregate data from the feedback process will be made available to the top management of the Warfare Center Divisions and will be used to monitor and identify further supervisory development and training needs. Additionally, extensive independent evaluations of the Personnel Demonstration Project will be conducted by OPM's Personnel Resources and Development Center (PRDC) over the first five years of the project. The results of these evaluations will provide the Warfare Centers with information as to whether specific provisions of the project need to be modified, continued as is, or curtailed.

(B). Career Path and Broad Bands

Comments received on this aspect of the Personnel Demonstration Project were related to several subtopics.

(1) Assignment of Occupations to Career Paths

Comments: Several comments were submitted raising concern about the identification of occupations to career paths. These comments expressed a belief that such segmentation of the workforce is counterproductive to a teaming environment and may lead to a form of career path or series-based discriminatory actions. For the most part, these comments were specifically related to the assignment of GS–346, Logistician positions, to the Administrative/Technical (NT) Career Path.

Response: The Career Paths selected for the Warfare Centers' Personnel Demonstration Project are substantially similar to those used in the "China Lake" Personnel Demonstration Project with a few modifications made to further streamline the classification and compensation processes. The Warfare Centers' Personnel Demonstration Project groups positions by occupations under one of three Career Paths—Scientific/Engineering (ND); Administrative/Technical (NT); and General Support (NG). Each career path covers occupations similarly treated in regard to type of work, typical career progression, and qualification requirements. Using these criteria, positions designated as Logistician, GS–346 series, are assigned to the Administrative/Technical (NT) Career Path.

(2) Band Levels and Salary Ranges

Comments: Two individuals expressed concern that the proposed broad banding structure reduces the number of formal promotion events, removes the social distinctions between project leaders and workers, and results in a loss of status currently associated with the General Schedule grade level. Another individual offered an opinion that a system which includes seventeen broad bands is contrary to the stated objective of making "the distinctions between levels easier to discern and more meaningful." Others perceive that the proposed broad banding system serves to unfairly discriminate against women and minorities in that these groups of employees are predominately assigned to the Administrative and Technical (NT) and General Support (NG) Career Paths whose full performance levels are lower than that assigned to the Scientific and Engineering (ND) Career Path. Comments also questioned the use of a salary overlap between the broad bands and raised concern over the reallocation of pay upon conversion for special salary rate employees.

Response: The Warfare Centers recognize there may be a concern over the perceived loss of status and frequency of promotions that result from a broad banding system. Broad banding systems, by their very nature, serve to reduce the number of formal promotion events and to remove some of the distinctions among positions common to the General Schedule classification system. Results of the "China Lake" project did not indicate that this was a continuing concern of the workforce during the life of the project. The key objectives of the Warfare Centers' Broad Banded Classification System are to simplify the current classification system, reduce distinctions between levels of work, and provide managers greater flexibility to make assignments as work needs warrant.

The grouping of General Schedule grades into broad bands under each of the three career paths was based on the typical career progressions and full performance level of positions under the current General Schedule system. In addition, the salary progression of each career path is reflective of typical salary progression present in the non-Federal sector. It was not based on non-merit factors such as race, sex, gender, age, or national origin. Experience of the "China Lake" Project, used as a model for the Warfare Centers' Personnel Demonstration Project, did not support the concerns. To assist the Warfare Centers in monitoring this important issue, data on band level, salary, and workforce demographics, supplemented by perceptual data, are included in the planned evaluation strategy. Evaluation results will alert the Warfare Centers of any unintended outcomes of the broad banded classification system and will serve as the basis for decisions to modify, continue as currently stated, or to curtail the Demonstration Project.

The salary range of each broad band, with the exception of Band I of each career path and ND VI, has been extended to cover the salary range of the next lower General Schedule grade. The extended salary range serves to replicate the overlap found in the current General Schedule system and was included to facilitate assignment and pay setting flexibilities and to control costs that would otherwise occur upon promotions. The pay special salary rate employees receive under the current system is in many cases encompassed within the salary range of the broad banding system. The special provisions for reallocating the pay of special salary rate employees were included in the project to avoid payment of an unintended windfall.

(3) Lack of Salary Progression for GS–13 Scientists and Engineers

Comment: Several comments were received on the lack of salary progression for those individuals who will convert into the Personnel Demonstration Project at the top end of the recognized full performance level, in particular Scientists and Engineers at the GS–13 level. One individual suggested a modification to the Project to have a salary range extending beyond step 10 of the GS–13 grade level.

Response: This issue results from high grade controls that impact on all of the Science and Technology Reinvention Laboratory Personnel Demonstration Projects. Any negative impact under the Demonstration Project will be no greater than that under the current General Schedule system.

(C). Performance Appraisal and Performance Development System

Comment: Concern was expressed over the proposed change to a two level (pass/fail) rating system stating that such a system would de-motivate employees. Others expressed concern about the lack of specificity in the requirements for setting and communicating performance expectations, i.e., timing, format, documentation requirements. Additionally, comments were made that the non-adverse reduction to a lower band level would be perceived by employees as an adverse action.

Response: Since the initial development of the Personnel Demonstration Project, the Office of Personnel Management has modified its regulations governing Performance Appraisal Systems granting agencies the option of adopting a two level rating system. The planned evaluation of this Demonstration Project will assist in providing data on the merits of a pass/fail system.

The current performance appraisal system prescribes documentation of performance standards and elements, includes a requirement for periodic (mid-year) performance discussions, and establishes the format for specified documentation requirements. Yet, as acknowledged by the comments, many perceive the current system as not working despite these requirements. The Warfare Centers believe it is essential that employees fully understand performance expectations and will focus significant training for supervisors to that end. This training will cover setting and communicating performance expectations, providing feedback, and communicating the linkage between performance expectations and the incentive pay process. Furthermore, the Divisions will determine documentation requirements which meet their specific organizational needs, values, and cultures.

The reduction in band level may be taken only after an employee has been placed on and failed a Performance Plan. Safeguards have been provided in the Demonstration Project to ensure the decision to use the non-adverse assignment to a lower band is well documented, used appropriately, and allow employees avenues of redress.

(D). Incentive Pay System

Comment: A number of comments raised concern over the subjective nature of the incentive pay criteria leaving the employee's salary progression largely at the discretion of the supervisor. Additionally, several viewed the criteria as being outside the control of the employee and bearing little relationship to the employee's actual performance. Several raised concern on management's ability to adjust the size of the incentive pay fund in an attempt to maintain or lower labor rates or delay the need for a reduction-in-force. Also one comment expressed concern that the incentive payout would be limited to granting bonus pay in lieu of salary increases, thus negatively impacting the employee's retirement pay.

Response: The Warfare Centers recognize that employee perceptions of the success of the overall Personnel Demonstration Project will largely be governed by their perceptions of the how well the Warfare Centers manage the incentive pay system. A key flexibility to the Demonstration Project is to provide the Divisions the authority to manage an incentive pay system which best meets their needs in terms of culture, values, and financial situations. The specific criteria and process for incentive pay decisions as

well as the size of the incentive pay fund are some of the many aspects of the Project which have been delegated to the Warfare Centers Division and will not be defined at the Warfare Center level. The project provides for supervisory training which will stress the importance of establishing, interpreting, and communicating incentive pay criteria to help employees understand what is expected in order to receive incentive pay. Additionally, in exercising these authorities, each Warfare Center Division will be prepared to communicate the criteria, process, and decisions on the use of the incentive pay fund to its workforce.

(E). Reduction-in-Force

Comment: Two comments included a concern that the revised Reduction-In-Force system would provide management the ability to target individuals and stated a belief that this targeting would be in violation of veterans' preference rights or laws precluding discrimination based on age. Additional comments raised concern about the impact of the revised competitive area definition. This is seen as limiting placement considerations and as a major threat to job security.

Response: In developing the Personnel Demonstration Project, the Warfare Centers adopted as one of the guiding principles the preservation of veterans' preference laws. Extensive review of the project interventions was conducted to ensure that no aspect of veterans' preference entitlement has been adversely impacted. Additionally, simulated reduction-in-force scenarios were conducted to ensure that at a minimum the proposed changes did not adversely impact on veterans, women, minorities and other protected groups when compared with the current reduction-in-force system. The Personnel Demonstration Project, including the revised reduction-in-force changes, may be implemented within local bargaining units only through the collective bargaining process. In the event that full agreement is not reached prior to the need to conduct a reduction-in-force, the competitive area was redefined to ensure that Demonstration Project participants and non-Demonstration Project participants do not compete unfairly for placement considerations.

(F). Miscellaneous Comments

Additional comments received on the Project Proposal requested that the project remove the ceiling on overtime rates. One comment perceived an inconsistency in the assignment of "non-professional technicians" to the Administrative/Technical (NT) career path and the exemption from overtime provisions based on professional criteria. Another comment communicated refusal to waive any portion of rights conveyed to citizens by the U.S. Constitution.

Response: The Personnel Demonstration Project covers those interventions which the Warfare Centers believe to be fundamentally critical to successful mission execution and organizational excellence and was not intended to address all problems associated with the current General Schedule system. Together the interventions proposed provide the Warfare Centers with the ability to obtain, develop, incentivize, and retain high performers while being responsive to business considerations and overall workforce costs. The project does not modify the overtime provisions and the definitions of exemption criteria under the Fair Labor Standards Act covered by Title 5, CFR Part 551. This Demonstration Project has been developed under the authority granted to agencies in Section 4703 of Title 5. Individual permission is not needed to implement the Project. There is no authority nor intent to waive individual constitutional rights.

3. Demonstration Project Clarifications

To clarify how classification appeals are to be processed under the personnel demonstration project, additional language was incorporated into section III.B.1. In addition, minor editorial and technical clarifications were made to improve the final version of the personnel demonstration project.

Office of Personnel Management.

Janice R. Lachance,

Director.

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I. Executive Summary

The Naval Surface Warfare Center and the Naval Undersea Warfare Center, designated as Science and Technology Reinvention Laboratories, wish to conduct a Personnel Demonstration Project similar in nature to that of the 1980 Demonstration Project approved for the Naval Weapons Center, China Lake, and Naval Ocean Systems Center, San Diego. The Warfare Centers' project includes the following key project components: A Broad Banding Classification and Pay System for "white collar" employees; a Performance Development System; an Incentive Pay System; a new Reduction-in-Force (RIF) system; and a Competitive Examining and Appointment System. The Warfare Centers' project addresses an organization which is substantially larger (over 23,000 employees), has greater diversity of mission than previous projects, and has extensive union involvement at all major sites. In addition, the project plan has been developed with on-going involvement of the various unions represented in the Warfare Centers.

II. Introduction

A Purpose

The overall goal of the Demonstration Project is to implement a Human Resource Management System that facilitates mission execution and organization excellence and responds to today's dynamic environment of downsizing, restructuring and closures by obtaining, developing, utilizing, incentivizing and retaining high performing employees; and adjusting workforce levels to meet program and organizational needs. The system to be demonstrated has the flexibilities to accommodate and support wide-ranging activity missions, strategies and cultures. It is responsive to business considerations and permits a high degree of control over workforce costs. Clearly, it is more streamlined and understandable for those who will use it as well as those affected by it. Most importantly, it is focused not just on the needs of the organization, but also on the needs of the people who are the organization.

These objectives reflect the Federal and DoD goals of creating a government that works better and costs less, and a flexible system that can reduce, restructure or renew to meet diverse mission needs, expand or contract a workforce quickly, respond to workload exigencies, and contribute to quality

products, people and workplaces. The objectives also align with the Federal and DoD values and guiding principles of empowering employees to get results, maximum flexibility tempered with accountability, innovation and continuous improvement, caring for people during downsizing, and vital partnerships and teaming with all the stakeholders in the process.

B. Problems With Present System

The Warfare Centers find the current Federal Personnel System to be cumbersome, confusing, and unable to provide the flexibility necessary to respond to the current mandates of downsizing, restructuring, and possible closure while trying to maintain a high level of mission excellence. The present system—a patchwork of laws, regulations, and policies—often inhibits rather than supports the goals of developing, recognizing, and retaining the employees needed to realign the organization with its changing fiscal and production requirements.

The current Civil Service General Schedule (GS) system has 15 grades with 10 levels each and involves lengthy, narrative, individual position descriptions, which have to be classified by complex, OPM-mandated position classification standards. Because these standards have to meet the needs of the entire federal government, they are often not relevant to the needs of the Warfare Centers and are frequently obsolete. Distinctions between levels are often not meaningful. Currently, standards do not provide for a clear progression beyond the full performance level, especially for science/engineering occupations where career progression through technical as well as managerial career paths is important.

In addition, there are limited mechanisms for dealing with an employee who has been promoted out of his/her level of expertise or who, after a successful career, has been unable to gain the skills required of a new work environment. In most cases, the only possible action may be a reduction in grade. Under the current system a demotion to a lower grade is considered an adverse action even if there is no loss in pay. Under the proposal, a reduction in band level without a loss in pay will not be considered an adverse action.

Performance Management systems require additional emphasis on continuous, career-long development in a work environment characterized by an ever increasing rate of change. Since past performance and/or longevity are the factors on which pay raises are currently assessed, there is often no positive correlation between compensation and performance contributions nor value to the organization. These limited criteria do not take into account the future needs of the organization nor other culturally relevant criteria which an organization may wish to use as incentives.

The present Reduction in Force (RIF) process is highly complicated and relatively unresponsive to requirements for rapid work force restructuring and retention of employees with mission appropriate skills. RIF is confused by an augmented service credit for performance that is based in a performance appraisal system fraught with contention. Round I adds complexity, confusion, and uncertainty. Cost savings expected from RIF are drastically reduced by the inordinate administrative costs of the process and the likelihood that the employee ultimately separated will be at a lower grade than the originally targeted position. Additionally there is the expense of retained grade and retained pay. Current RIF procedures impact negatively on morale because of the high number of people affected and frequent misunderstandings of a complicated system that leaves affected employees wondering why they have been "targeted."

And finally, the complexity of the current examining system creates delays in hiring. Line managers find the complexity limiting as they attempt to accomplish timely recruitment of needed skills. To compete with the private sector for the best talent available, they need a process which is streamlined, easy to administer, and allows for timely job offers.

C. Changes Required/Expected Benefits

The proposed Demonstration Project responds to problems in the classification system with a Broad Banding Classification system for GS employees; to problems in the current performance management system with a Performance Development and Incentive Pay System; to the problems of the existing RIF procedures with a streamlined RIF system; and to problems of complicated hiring and examining procedures with a simplified examining and appointment process.

D. Participating Organizations/Mission

Both the Naval Surface Warfare Center and the Naval Undersea Warfare Center will participate in the project. The Warfare Centers are comprised of a total of seven Divisions with 14 major sites nationwide. The sites are diverse in employment profiles and size and have bargaining unit populations ranging from a small percentage to more than half of the workforce. These organizations operate throughout the full spectrum of research, development, test and evaluation, engineering and fleet support.

The Warfare Centers are Defense Business Operations Fund (DBOF) activities. Under DBOF, the cost of operating is paid by billing customers for work performed. The Warfare Centers seek to maximize management flexibility to control expenditures since the continued economic viability of a DBOF activity depends in large measure on remaining cost competitive with other organizations.

E. Participating Employees

This Demonstration Project will involve civilian personnel at all Warfare Center sites. There are 14 major sites (over 200 civilian personnel) and many smaller sites. Currently 23,697 civilians are employed as shown in Figure 1. The intent of the plan is to cover all civilian appropriated fund employees at all sites with the exception of the members of the Senior Executive Service. While the Demonstration Project, and its five components, cover all General Schedule (GS) employees, the Federal Wage System (FWS) employees are included only for purposes of changes in the Performance Development, Reduction-In-Force and Competitive Examining systems. Likewise, Senior Level (SL) and Scientific and Technical (ST) employees are covered only under the Incentive Pay, Performance Development and Reduction-In-Force systems. The Demonstration Project may be implemented incrementally throughout the Warfare Centers. The Demonstration Project will be implemented in bargaining units when those units so request and a negotiated agreement is reached. Approximately fifty percent of the workforce is represented by unions.

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Naval Surface Warfare Center (NSWC)							
DIVISIONS	P	A	T	C	W	O	Total
Dahlgren	2,617	558	583	288	334	160	4,540
Indian Head	802	365	382	122	380	90	2,141
Crane	1207	768	1,395	167	1,146	136	4,819
Pt. Hueneme	925	753	399	192	21	32	2,322
Carderock	2,324	453	653	216	345	136	4,127
NSWC Total	7,875	2,897	3,412	985	2,226	554	17,949
Naval Undersea Warfare Center (NUWC)							
Newport	2,308	416	404	259	125	11	3,523
Keyport	711	425	279	70	706	34	2,225
NUWC Total	3,019	841	683	329	831	45	5,748
Warfare Centers Total							23,697

key: P = Professional A= Administrative T=Technical C=Clerical W=Wage O=Other
data a/o 4/8/96

FIGURE 1

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F. Employee/Labor Participation

One of the keys to developing a project plan sensitive to the multiplicity of management and employee needs has been the involvement of a Steering Committee composed of representatives from the Warfare Center Divisions and six national unions having bargaining units at the Warfare Center sites. The American Federation of Government Employees (AFGE), Metal Trades Council (MTC), International Association of Machinists (IAM), National Association of Government Employees (NAGE), the National Federation of Federal Employees (NFFE) and Fraternal Order of Police (FOP) represent more than half of the more than 25,000 employees in a variety of occupational groups at Warfare Center sites across the United States. Appendix A further describes the employee/union participation in this effort. The Steering Committee developed a project plan capable of meeting the seemingly differing, sometimes conflicting, goals of management and the unions. The Steering Committee substantially altered the original concept to address those needs in order to provide a viable implementation framework capable of meeting the wide variety of cultures and needs across the Warfare Center spectrum. The Steering Committee is also working to foster the establishment of partnerships within the Warfare Centers.

The Steering Committee agreed to the following language with respect to the implementation of the Demonstration Project in the Warfare Center bargaining units. "Essential to the success of the Demonstration Project within a collective bargaining unit is the explicit choice of the parties to freely enter into the project with mutual agreement on all provisions associated with the project. To that end, either party will have the option NOT to enter the project up to the point where both parties sign a collective bargaining agreement covering the Demonstration Project and, if required, that agreement is ratified and approved. Further the parties may include in the contract provisions for evaluating, modifying and leaving the project during the life of the contract." Any disputes or impasses that arise in connection with the negotiation on the implementation of the Demonstration Project will be subject to mediation but not binding impasse procedures. For any bargaining subsequent to adoption of the Demonstration Project, the parties shall use impasse procedures defined in 5 U.S.C. 7119 unless alternative impasse procedures have been negotiated. In the event Executive Order 12871 is no longer in effect, the parties within the Demonstration Project will continue to negotiate issues covered by 5 U.S.C. 7106(b)(1) to the extent those issues impact on the provisions of the Demonstration Project. Within bargaining units, violations of provisions of the Demonstration Project may be covered by the negotiated grievance procedure.

This Demonstration Project was developed with management and union input through a collaborative process; however, it was agreed that union participation did not necessarily constitute full and complete endorsement of all details of the project. The Project will be implemented in bargaining units only after there is full agreement through the collective bargaining process.

While understanding that each bargaining unit will make its own choice about participating in the Demonstration Project, the Steering Committee has endeavored to create a project plan to fulfill the mutual interests of management and employees while supporting the long term objective of vital, competitive Warfare Centers capable of developing and delivering the best possible technology to their customers.

III. Methodology

A. Project Design

An overarching objective in the project design has been the development of a personnel system that provides a maximum opportunity for local "tailoring" to meet the variety of requirements of organizations engaged in missions ranging from theoretical research into submarine vulnerability and survivability to the storage of torpedoes. While the Divisions seek to recruit and retain world class engineers and scientists in order to remain viable as laboratories, they must also meet the development and motivational needs of an extraordinarily diverse workforce; i.e., employees ranging from small arms repairers in Crane, Indiana to program analysts in Newport, Rhode Island. In order to accomplish that end, the goal is to begin the process of delegating decision making to the people who know the most about what they need and how to get their work accomplished: the Divisions and sites.

While much of the Demonstration Project will be applied uniformly, there are decisions which will be delegated to the Divisions and activities so that the needs and cultures of those organizations may be taken into account. Decisions at the local level will be made through the collective bargaining process.

B. Personnel System Changes

1. Classification/Pay

A fundamental element of the system is a simplified white collar classification and pay component. The proposed broad banding scheme reduces the fifteen GS grade levels and the Senior Level (SL) and Scientific & Technical (ST) pay levels, into five to six broad pay bands. (See Figure 2) GS occupations are further broken down into three separate career paths: Scientific and Engineering (ND), Administrative and Technical (NT), and General Support (NG).

The OPM-developed classification standards are replaced by a small number of one-page, generic benchmark standards developed within the Demonstration Project. These standards also serve as the core of the position description and replace lengthy individually tailored position descriptions. These generic level descriptions encompass multiple series and provide maximum flexibility for the organization to assign individuals consistent with the needs of the organization, established level or rank that the individual has achieved, and the individual's qualifications. Career progression between levels will occur by promotion, and pay progression within levels will occur through incentive pay.

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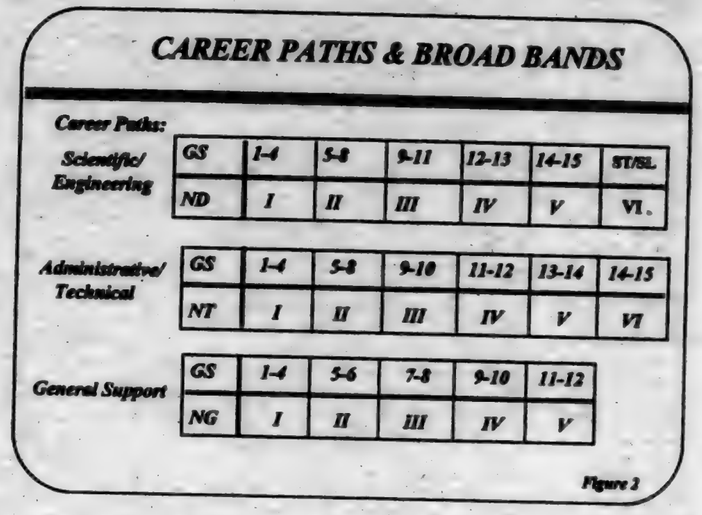


Figure 2

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The Warfare Centers' long experience with industrial funding will ensure their ability to control costs, an essential requirement in today's environment.

a. Career Paths. The Warfare Centers request exemption from the current GS classification system and substitute career paths and band levels. The designated career paths are: Scientific and Engineering (ND), Administrative and Technical (NT), and General support (NG). Like the China Lake system, the GS classification series would be retained. More detailed descriptions of the career paths and the classification series for each path are provided below. The breakdown of occupational series to career paths reflects only those occupations which currently exist within the two Warfare Centers. Additional series may be added as a result of changes in mission requirements or OPM recognized occupations. These additional series will be placed in the appropriate career path consistent with the established career path definitions.

SCIENTIFIC AND ENGINEERING: Professional engineering positions and scientific positions in the physical, biological, mathematical, and computer sciences; and student positions for training in these disciplines. Series and titles included in the path are: 0401, General Biological Science Series; 0403, Microbiology Series; 0408, Ecology Series; 0440, Genetics Series; 0460, Forestry Series; 0471, Agronomy Series; 0499, Biological Science Student Trainee Series; 0801, General Engineering Series; 0803, Safety Engineering Series; 0804, Fire Protection Engineering Series; 0806, Materials Engineering Series; 0807, Landscape Architecture Series; 0808, Architecture Series; 0810, Civil Engineering Series; 0819, Environmental Engineering Series; 0830, Mechanical Engineering Series; 0840, Nuclear Engineering Series; 0850, Electrical Engineering Series; 0854, Computer Engineering Series; 0855, Electronics Engineering Series; 0861, Aerospace Engineering Series; 0871, Naval Architecture Series; 0892, Ceramic Engineering Series; 0893, Chemical Engineering Series; 0894, Welding Engineering Series; 0896, Industrial Engineering Series; 0899, Engineering and Architecture Student Trainee Series; 1301, General Physical Science Series; 1306, Health Physics Series; 1310, Physics Series; 1313, Geophysics Series; 1320, Chemistry Series; 1321, Metallurgy Series; 1330, Astronomy and Space Science Series; 1350, Geology Series; 1360, Oceanography Series; 1372, Geodesy Series; 1386, Photographic Technology Series; 1399, Physical Science Student Trainee Series; 1515, Operations Research Series; 1520, Mathematics Series; 1529, Mathematical Statistician Series; 1530, Statistician Series; 1550,

Computer Science Series; 1599, Mathematics and Statistics Student Trainee Series.

ADMINISTRATIVE AND TECHNICAL: Professional or specialist positions in such administrative, technical and managerial fields as finance, procurement, human resources, computer, legal, librarianship, public information, safety, social sciences, and program management and analysis; nonprofessional technician positions that support scientific and engineering activities through the application of various skills and techniques in electrical, mechanical, physical science, biology, mathematics, and computer fields; and student positions for training in these disciplines. Series and titles included in this path are: 0018, Safety and Occupational Health Management Series; 0020, Community Planning Series; 0028, Environmental Protection Specialist Series; 0080, Security Administration Series; 0099, General Student Trainee Series; 0101, Social Science Series; 0110, Economist Series; 0132, Intelligence Series; 0170, History Series; 0180, Psychology Series; 0185, Social Work Series; 0187, Social Services Series; 0188, Recreation Specialist Series; 0201, Personnel Management Series; 0205, Military Personnel Management Series; 0212, Personnel Staffing Series; 0221, Position Classification Series; 0230, Employee Relations Series; 0233, Labor Relations Series; 0235, Employee Development Series; 0260, Equal Employment Opportunity Series; 0299, Personnel Management Student Trainee Series; 0301, Miscellaneous Administration and Program Series; 0334, Computer Specialist Series; 0340, Program Management Series; 0341, Administrative Officer Series; 0342, Support Services Administration Series; 0343, Management and Program Analysis Series; 0346, Logistics Management Series; 0391, Telecommunications Series; 0399, Administration and Office Support Student Trainee Series; 0501, Financial Administration and Program Series; 0505, Financial Management Series; 0510, Accounting Series; 0560, Budget Analysis Series; 0599, Financial Management Student Trainee Series; 0602, Medical Officer Series; 0610, Nurse Series; 0690, Industrial Hygiene Series; 0802, Engineering Technician Series; 0809, Construction Control Series; 0818, Engineering Drafting Series; 0856, Electronics Technician Series; 0895, Industrial Engineering Technician Series; 0899, Engineering and Architecture Student Trainee Series; 0905, General Attorney Series; 0950, Paralegal Specialist Series; 0962, Contact representative; 1001, General Arts and Information Series; 1010, Exhibits Specialist Series; 1015, Museum Curator Series; 1016, Museum Specialist and Technician Series; 1020, Illustrating Series; 1035, Public Affairs Series; 1060, Photography Series; 1071, Audiovisual Production Series; 1082, Writing and Editing Series; 1083, Technical Writing and Editing Series; 1084, Visual Information Series; 1101, General Business and Industry Series; 1102, Contracting Series; 1103, Industrial Property Management Series; 1104, Property Disposal Series; 1150, Industrial Specialist Series; 1152, Production Control Series; 1173, Housing Management Series; 1176, Building Management Series; 1199, Business and Industry Student Trainee Series; 1222, Patent Attorney Series; 1311, Physical Science Technician Series; 1410, Librarian Series; 1412, Technical Information Services Series; 1420, Archivist Series; 1521, Mathematics Technician Series; 1601, General Facilities and Equipment Series; 1640, Facility Management Series; 1654, Printing Management Series; 1670, Equipment Specialist Series; 1701, General Education and Training Series; 1710, Educational and Vocational Training Series; 1712, Training Instruction Series; 1810, General Investigating Series; 1811, Criminal Investigating Series; 1910, Quality Assurance Series; 2001, General Supply Series; 2003, Supply Program Management Series; 2010, Inventory Management Series; 2030, Distribution Facilities and Storage Management Series; 2032, Packaging Series; 2050, Supply Cataloging Series; 2101, Transportation Specialist Series; 2130, Traffic Management Series; 2150, Transportation Operations Series; 2181, Aircraft Operations Series.

GENERAL SUPPORT: Assistant and clerical positions providing support in such fields as budget, finance, supply, human resources; positions providing support through application of typing, clerical, or secretarial knowledge and skills; positions providing specialized facilities support such as guards, police officers and firefighters; and student positions for training in these disciplines. This path includes the following series and titles: 0019, Safety Technician Series; 0029, Environmental Protection Assistant Series; 0081, Fire Protection and Prevention Series; 0083, Police Series; 0085, Security guard Series; 0086, Security Clerical and Assistance Series; 0134, Intelligence Aid and Clerk Series; 0186, Social Services Aid and Assistant Series; 0189, Recreation Aid and Assistant Series; 0203, Personnel Clerical and Assistance Series; 0204, Military Personnel Clerical and Technician Series; 0303, Miscellaneous Clerk and Assistant Series; 0304, Information Receptionist Series; 0305, Mail and File Series; 0318, Secretary Series; 0322, Clerk-Typist Series; 0326, Office Automation Clerical and Assistance Series; 0332, Computer Operation Series; 0335, Computer Clerk and Assistant Series; 0344, Management Clerical and Assistance Series; 0350, Equipment Operator Series; 0351, Printing Clerical Series; 0356, Data Transcriber Series; 0361, Equal Opportunity Assistance Series; 0382, Telephone Operating Series; 0390, Telecommunications Processing Series; 0392, General Communications Series; 0394, Communications Clerical Series; 0399, Administration and Office Support Student Trainee Series; 0462, Forestry Technician Series; 0503, Financial Clerical and Assistance Series; 0525, Accounting Technician Series; 0530, Cash Processing Series; 0540, Voucher Examining Series; 0544, Civilian Pay Series; 0561, Budget Clerical and Assistance Series; 0640, Health Technician; 0647, Diagnostic Radiologic Technologist Series; 0675 Medical Records Technician Series; 0679, Medical Clerk Series; 0698, Environmental Health Technician Series; 0945, Clerk of Court Series; 0986, Legal Clerical and Assistance Series; 1087, Editorial Assistance Series; 1105, Purchasing Series; 1106, Procurement Clerical and Technician Series; 1107, Property Disposal Clerical and Technician Series; 1411, Library Technician Series; 1531, Statistical Assistant; 1702, Education and Training Technician Series; 2005, Supply Clerical and Technician Series; 2091 Sales Store Clerical Series; 2102, Transportation Clerk and Assistant Series; 2131, Freight Rate Series; 2135, Transportation Loss and Damage Claims Examining Series; 2151, Dispatching Series.

b. Broad Bands and Levels of Responsibility. A fundamental purpose of broad banding is to make the distinctions between levels easier to discern and more meaningful. In that regard, the 15 GS grade levels are reduced to no more than six band levels, each representing a defined level of work. Within each career path, bands typically include the following categories of positions: student trainee and/or entry level, developmental, full performance level, and expert and/or supervisor/manager.

With fewer band levels than GS grades, the level of responsibility reflected in each band typically encompasses the responsibilities of two or more GS grade levels. For example, the responsibilities of a band level covering work at the full performance level may represent a synthesis of GS–11 and GS–12 responsibilities. For the NT career path, the responsibilities associated with the top two bands do not precisely align with equivalent GS levels. Some GS–14 level responsibilities band best with GS–13 while others band best with GS–15.

Although Band VI of the ND career path covers SL and ST positions, this does not represent a requested change in the basis for classification or allocation of billets for these positions. The authority to allocate new billets, classify positions and set initial pay for assignment to SL and ST positions within the Warfare Centers will be retained at the Assistant Secretary of the Navy (Manpower and Reserve Affairs) level. (Accordingly, classification appeal procedures for such positions are not affected by the provisions of this demonstration project.) The intent of including these positions in the ND career path was two fold: (1) to emphasize the dual career progression for scientists and engineers in nonsupervisory and nonmanagerial career paths; and (2) to include SL and ST employees in all other aspects of the Demonstration Project, i.e., performance development, incentive pay and reduction-in-force systems. Consistent with our goal of developing, recognizing, and retaining employees needed to meet our changing organizational needs, the Demonstration Project seeks the authority to manage its SL and ST workforce under the same performance development and incentive system as other employees. This includes the authority at the Division level to adjust the pay of SL and ST employees up to Level IV of the Executive Schedule. Incentive pay decisions will be made against criteria relevant to the needs of the organization including the criticality and difficulty of the position, critical skills, and current salary level of the employees.

c. Simplified Classification Process. A limited number of Warfare Center one-page generic, level descriptors that also serve as the core of preclassified position descriptions will be created within the Demonstration Project. Those descriptions may be further tailored with an addendum to provide information on Fair Labor Standards Act (FLSA) coverage, selective placement factors, specialized knowledge/skills/abilities, etc. Within the Demonstration Project, the term "classification of a position" for positions covered by broad banding is defined as the placement of a position in its appropriate career path, occupational series, and band level based on the application of standards (referred to as level descriptions or benchmark standards) established at the Warfare Center level. Line managers will be meaningfully involved in the classification process to make it more relevant to their organization's needs.

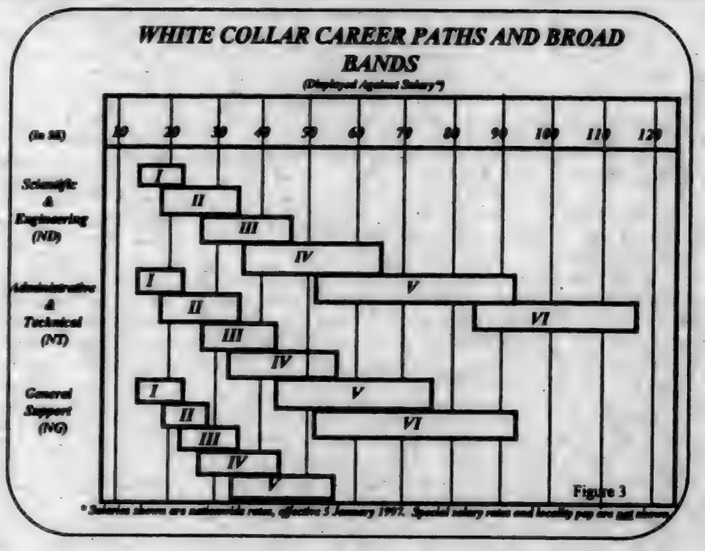
d. Classification Appeals. (Classification appeal procedures for SL and ST employees placed in Band VI of the ND career path remain as currently provided for and are not affected by the appeal procedures described in this demonstration project.) An employee may appeal the career path, series, or broad band level of his or her position at any time. When doing so, the employee must formally raise the areas of concern to the supervisor in the immediate chain of command. If an employee is not satisfied with the supervisor response, he or she may then appeal to the DOD appellate level via the employee's chain of command and the Warfare Centers' Demonstration Project Office. Only after DOD has rendered a decision under the provisions of this demonstration project, may an employee file an appeal with the Office of Personnel Management. Appellate decisions from OPM are final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Time periods for case processing under Title 5 apply.

An employee may not appeal the demonstration project classification criteria, the accuracy of the level descriptor, or the pay setting criteria; the assignment of occupational series to a career path; the title of a position; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure. The evaluation of a classification appeal under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the servicing human resources organization and will include copies of the employee's level descriptor, the addendum, and a copy of the Warfare Centers' classification criteria along with other documents or information required by the Office of Personnel Management.

e. Simplified Assignment Process. Today's environment of downsizing and workforce transition mandates that the organization has maximum flexibility to assign individuals. Broad banding can be used to address these needs. As a result of the assignment to a particular level descriptor, the organization will have maximum flexibility to assign an employee within broad descriptors consistent with the needs of the organization, and the individual's qualifications and rank or level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level and area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the currently level descriptor. Such assignments within the coverage of the generic descriptors are accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows a broader latitude in assignments and further streamlines the administrative process and system.

f. Broad Bands and Salary Ranges. The basis for the Demonstration Project pay system is each band level having a basic salary range that exactly corresponds to salaries of three or more GS grade levels. This continued linkage with the GS system will result in adjustments to the salary ranges through future general and locality pay increases under the General Schedule System. To more closely replicate the salary overlap found in the current GS system, there is a one grade extended salary overlap with each lower band for bands II and above. (See Figure 3) The one exception is the band for ST and SL positions (ND VI). The pay range for these positions will be 120% of the minimum rate of basic pay for GS–15 up to Level IV of the Executive Schedule. The purpose of the salary overlap is twofold. First, it is to provide pay setting flexibilities and cost containment opportunities in promotions. This reduces the instances of nondiscretionary promotion pay increases of greater than 6% that may otherwise be required to advance pay to the lower end of the next higher band level. The second purpose is to facilitate an assignment back to the next lower level without loss in pay when appropriate.

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g. Locality Pay and Special Salary Rates. For each band level., the basic annual rate of pay will be adjusted to reflect the appropriate locality pay percentage. The maximum locality rate for each band level will be referred to as a "locality pay point." When the special salary rates authorized under the GS system exceed the locality pay point, the top of the applicable band will be extended to the maximum special salary rate authorized for that series and geographic location. Placement within this special rate extension will be restricted to employees in an occupation and location covered by that special rate. An employee will be considered a special rate employee only if his/her basic pay falls within the extension, i.e., the basic pay exceeds the locality pay point. Consistent with the intent of locality pay, special salary rate employees, as defined above, will not be eligible for locality pay adjustments. When the locality pay point overtakes the employee's rate of basic pay through general or locality pay increases, the employee will no longer be considered a special salary rate employee. In this instance, the employee's total adjusted basic pay will be increased to the new locality pay point. The employee's new adjusted salary will then be reallocated into a new basic pay and a locality pay adjustment rate. Pay retention provisions and adverse action procedures will not apply to the reallocation of the employee's salary as the employee's total adjusted salary will remain the same.

h. Pay Administration. The following definitions and policies will apply to the movement of employees within the Demonstration Project from one career path or band level to another, or placement in a Demonstration Project Career Path from the GS, FWS, or other personnel systems:

ADVANCED IN-HIRE RATE: Upon initial appointment, the individual's pay may be set anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed.

Geographic Movement Within the Demonstration Project: An employee covered by broad banding who moves to a new duty station in a different geographic area and continues to be an employee covered by the Warfare Center Demonstration Project will have his/her pay in the new area computed as explained below. In all cases, the geographic movement is processed before any other simultaneous pay action (e.g., promotion, reassignment, downgrade, change in series, etc.) effective on the same day.

1. Regular Range Employees. An employee paid at a rate below the locality pay point for his or her band level will receive no change in his or her rate of basic pay upon geographic movement. The employee's locality pay adjustment will be recomputed using the newly applicable locality pay percentage, which may result in a higher or lower locality pay adjustment and, thus, a higher or lower adjusted rate (locality rate or special rate, as applicable). Exception: For employees who would be eligible for a special rate under the GS system and who are in the regular range of a band with a special rate extension, the new adjusted salary following a geographic move may not be less than the old adjusted salary multiplied by the factor derived by dividing the new adjusted band maximum by the old adjusted band maximum.

2. Special Rate Extension Employees. For an employee being paid at a rate in a special rate extension, the new adjusted salary following a geographic move is equal to the old adjusted salary multiplied by the factor derived by dividing the new adjusted band maximum by the old adjusted band maximum; however the new adjusted rate may not be less than the applicable locality pay point in the new area.

3. Pay Protection Provision. A special pay protection provision applies to employees who (a) were entitled to a special rate immediately before conversion into the Demonstration project, (b) continue to meet the GS special rate eligibility conditions, and (c) are paid at a rate that equals or exceeds the dollar amount of the pre-conversion special rate. For these employees, the new adjusted rate following a geographic move may not be less than the dollar amount of the employee's pre-conversion special rate. Adverse action and pay retention provisions of Title 5, United States Code, will not apply to any reduction in basic pay due solely to the operation of the above rules.

PROMOTION: Within the Demonstration Project Broad Banding system a promotion will be defined as the movement of an employee from a lower to a higher band level in the same career path, or from one career path to another wherein the band in the new career path has a higher maximum salary than the band from which the employee is moving.

After the implementation of the Demonstration Project, for an employee moving from the GS, a promotion will be defined as placement in a band level which incorporates a GS grade level which is higher than the employee's current grade.

For an employee moving from the FWS, a promotion will be defined as placement in the Demonstration Project in a band level where the representative rate of the highest GS grade covered (i.e., step 04 adjusted rate of the highest GS grade) is higher than the representative rate of the employee's current FWS grade (i.e., step 02).

Promotions will follow basic federal merit promotion policy that provides for competitive and non-competitive promotions. Except for promotions from the FWS to positions covered by the Demonstration Project broad banding system, an employee will normally receive an increase of six percent upon promotion unless a higher increase is necessary to raise the employee's salary to the minimum salary of the new band. The employee's total adjusted pay (basic pay and locality pay; if any) will be used in determining the amount of the promotion increase and in setting the employee's adjusted pay in the higher band. Decisions not to increase pay or for increases of other than six percent or to the minimum level of the band must be approved at the Division level, unless otherwise delegated to lower levels. In no situation may an employee's salary upon promotion be established lower than the minimum salary range of the new band.

Factors to be used to help determine the amount of the increase may include, but are not limited to, the employee's directly related experience which may be of immediate use in the new position; the employee's current pay; and the relationship to salaries of other similarly qualified employees.

REASSIGNMENT: For movement within the Demonstration Project Broad Banding system, a reassignment will be movement to a position covered by the same band level, or from one career path to another when the salary range of the new band level and the employee's current band level remains the same.

For an employee moving from the GS, a reassignment will be defined as placement in the Demonstration Project in a band level where the highest GS grade covered is the same as the employee's current GS grade.

For an employee moving from the FWS, a reassignment will be defined as placement in the Demonstration Project in a band level where the representative rate of the highest GS grade covered (i.e., step 04 adjusted rate of the highest GS grade included in that broad band) is the same as the representative rate of the employee's current FWS grade.

DEMOTION OR CHANGE TO LOWER BAND LEVEL: For movement within the Demonstration Project Broad Banding system, a demotion will be defined as the movement of an employee from a higher band to a lower band within the same career path, or from one career path to another where the band in the new career path has a lower maximum salary than the band from which the employee is moving.

For an employee moving from the GS, a demotion will be defined as placement in the Demonstration Project in a band level where the highest GS grade covered is lower than the employee's current GS grade.

For employees moving from the FWS, a demotion will be defined as placement in the Demonstration Project in a band level where the representative rate of the highest GS grade covered (i.e., step 04 adjusted rate of the highest grade included in that pay band) is lower than the representative rate of the employee's current FWS grade.

SALARY ADJUSTMENT: A salary adjustment is defined as an increase in an employee's base pay (by other than the incentive pay process) within the employee's current band level to an amount which does not exceed the top of the band. The salary adjustment may be used to adjust the pay of individuals who have acquired a level of education that would otherwise make the employee qualified for an appointment at a higher level and would be used in lieu of a new appointment. For example, this authority may be used to adjust the pay of graduate level Cooperative Education (COOP) students or employees who have obtained an advanced degree, e.g., Ph.D.

OTHER: Current provisions for Highest Previous Rate, Pay Retention (except as otherwise noted), Special Recruitment and Relocation Bonuses, Retention Allowances and Accelerated Promotions will continue. The use of OPM's Operating Manual for "Qualification Standards For General Schedule Positions" will continue with minor modifications; "Band" will be substituted for "Grade" where appropriate and the time in grade requirement will be eliminated.

2. Performance Development System

The philosophical base of this Demonstration Project is that employees are valued and trusted and are the organization's most critical assets. Accordingly, the primary objectives of the Demonstration Project are to: develop employees to meet the changing needs of the organization; to help employees achieve their career goals; to improve performance in current positions; to retain high performers, and to improve communication with customers, colleagues, managers and employees. The system focuses on continuous performance improvement and minimizes administrative requirements. On-going dialogue between the employee and supervisor is fundamental to this development focus, and Performance Development Resources are provided as part of the system to facilitate this dialogue and assist with diagnosis of performance issues. The emphasis on continued improvement is carried over into the process for addressing performance problems. The proposed system substitutes an early intervention which focuses immediately on a formal performance plan designed to support the employee's success. A determination of unacceptable performance is made only if the employee does not meet the requirements for acceptable performance detailed in that plan. The following paragraphs describe the key components of the Performance Development System. Figure 4 depicts the relationship of these components and their linkage with the Incentive Pay System.

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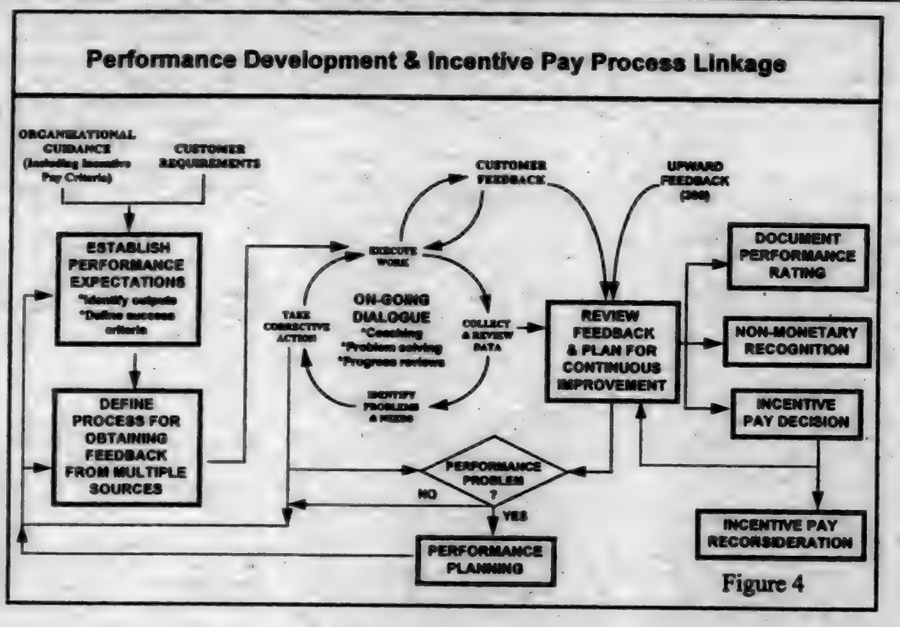


Figure 4

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a. Performance Development Resources (PDR). At the heart of the performance development system is the concept of providing organizational resources to support the development process. While the design of these resources will be delegated to each Division, they will typically consist of a pool of people, including union representatives, who act as a support system to identify or help provide for the needs of employees and managers in the development process. Current limitations regarding union involvement in discussions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate procedures for the Performance Development Resources.

The PDR will be available to facilitate communications around expectations and needs, and help supervisors and employees seek agreement throughout all aspects of the performance development process. Should performance problems arise, the PDR will be particularly useful in diagnosing issues impacting performance (e.g., employee skills, attitudes and motivation, clarity of job expectations, systemic issues, access to information and resources, relationships with co-workers and supervisor, etc.) and identifying options for addressing these issues (e.g., development opportunities, tools or equipment to support improved performance, reassignment of the employee to a position that better matches his/her capabilities and interests, etc.) They will also make referrals to others who may be helpful, and identify systemic or organization wide issues which may be affecting performance.

Supervisors are expected to utilize the PDR for assistance in preventing and alleviating performance problems. Employees may also use the PDR to assist them in correcting self-identified performance problems, in development planning to enhance their career opportunities consistent with the needs of the organization, and to facilitate communication and feedback with their supervisors, etc.

b. Two Level Rating System. The system employs a two level rating system: "acceptable" and "unacceptable" performance. "Acceptable" performance is defined as "performance that fulfills the requirements for which the position exists." An employee's performance may not be determined "unacceptable" unless the employee has been placed on and failed a performance plan. Employee performance ratings will be documented annually.

c. Establishing Performance Expectations. Clear, mutually understood performance expectations that are linked to organizational goals, strategies and values are fundamental to successful individual and organizational performance. The outcome of this component of the Performance Development System is clear communication of the products and/or services to be delivered by the employee(s), and the success criteria against which those outputs will be assessed. Documentation of outputs and success criteria is expected when necessary to facilitate mutual understanding of performance expectations.

The most effective means of creating a common understanding is through a process in which the supervisor and employee(s) discuss requirements and establish performance goals and expectations. Employees and supervisors are expected to actively participate in these discussions to seek clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these goal setting discussions will vary based on the nature of work performed, but will occur at least annually. More frequent, task specific, discussions of expectations may be more appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations may be appropriate, however expectations for individual contributions to the team goals should always be clearly specified. Either the supervisor, the employee, or the union may enlist the assistance of the Performance Development Resources to facilitate effective dialogue with regard to these issues.

Documentation of performance expectations is a helpful mechanism for ensuring clarity of understanding and providing a focus for later discussions on progress and developmental needs. As a minimum, formal documentation of expectations is required when an employee begins a new or substantially different job. Documentation in other situations is based on the needs and desires of the employee and supervisor, and may rely on other existing documentation (e.g., project plans, process documentation, customer requirements, etc.) No prescribed format is required for such documentation; the employee and supervisor are encouraged to seek agreement on what form of documentation will meet their needs and who will be responsible for producing it. The assistance of the Performance Development Resources may be enlisted by either party to support their efforts to reach agreement. In bargaining units, documentation procedures will be subject to bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate procedures for documenting performance discussions.

d. On-going Performance Dialogue. To facilitate performance development, employees and supervisors will engage in on-going dialogue. Ideally this dialogue will occur as part of normal day-to-day interactions for the purpose of ensuring a common understanding of expectations, reviewing whether expectations are being met, providing support in identifying resources or solving problems, providing coaching on complex or sensitive issues, providing information to increase the understanding of the project context, and keeping the supervisor informed of progress. In addition to this on-going interaction, however, it is expected that periodically a more formal dialogue will occur focused on reviewing progress, discussing customer feedback, exploring process improvements that could remove obstacles to effective performance, and identifying developmental needs to support continual improvement and career growth. The employee and supervisor should seek agreement on the frequency and form for both the formal and informal dialogues to ensure they will meet their needs. Either the supervisor, the employee or the union may call upon the Performance Development Resources to facilitate communications or conflict resolution around these issues. In cases where work is accomplished by a team, team meetings may be an appropriate forum for some of this interaction, however team discussions do not eliminate the need for the supervisor to have some form of individual dialogue with each employee.

The expected outcomes from this on-going dialogue component are plans to support the continuous improvement of individual and organizational performance. Documentation of these discussions and resulting plans is encouraged to the extent that it contributes to clarity of understanding and facilitates later review of progress on continuous improvement efforts. The nature and content of such documentation is based on the needs and desires of the employee and supervisor. No prescribed format is required for such documentation; the employee and supervisor are encouraged to seek agreement on what form of documentation will meet their needs and who will be responsible for producing it. The assistance of the Performance Development Resources may be enlisted by either party to support their efforts to reach agreement.

In bargaining units, these procedures are subject to bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate procedures for ongoing performance dialogues and for documenting performance discussions.

e. Feedback from Multiple Sources. The primary purpose of feedback in the Performance Development System is to provide employees with information regarding how well their performance is meeting customer requirements in order to help the employees continually improve their performance. The outputs expected from this component are data and customer feedback which enable review of performance against success criteria. These data provide input to the review and continuous performance improvement planning discussed as part of the on-going dialogue component.

The responsibility for employee development and continuous improvement is jointly held between the supervisor and employee. They are expected to work together to identify internal and external customers and to define and implement a process by which the employee can regularly receive feedback. A variety of mechanisms may be appropriate, such as customer surveys, process measures which track customer requirements, an discussions with customers. Supervisors are expected to facilitate this process and work with employees to interpret the feedback and establish improvement goals. Performance Development Resources may be helpful during this process. Their assistance may be requested by the supervisor, the employee or the union. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties within the Demonstration Project from developing appropriate mechanisms and procedures for obtaining feedback from multiple sources.

Managers and supervisors are also expected to obtain feedback from their customers, including their employees, and to use that feedback as a basis for establishing both personal and organizational performance development goals. The use of an anonymous instrument is appropriate for providing feedback to supervisors and managers on the impact of their behavior. The use of these instruments will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees. When necessary, supervisors and managers may choose to use the Performance Development Resources to help support their own developmental needs.

f. Performance Plan. When an employee has continued performance difficulties, the organization will provide a formal Performance Plan to support the supervisor and employee in resolving Performance Plan to support the supervisor and employee in resolving the performance problems. Use of the Performance Development Resources will be an integral part of this effort. Supervisors are expected to call on the Resources for assistance in preventing or alleviating performance problems before the need for formal action arises. When there is an indication that performance is not consistently meeting customer requirements, supervisors are expected to call on the Resources to analyze the causes of the difficulty and develop an approach for resolving it. Development of a formal Performance Plan is indicated if and when it is determined that the employee's performance (vs. system performance) is a contributor to the problem informal intervention has

not been successful in correcting the problem. Use of the Performance Development Resources is expected throughout the period of the Performance Plan in an attempt to facilitate a solution to the problem. The Performance Plan must be written, and will clearly document organizational expectations for successful job performance, specify accountability, identify developmental resources to correct any skill deficiencies, define the time frame of the performance plan, specify organizational support that will be provided and how performance results will be monitored. In addition, the Plan will clearly specify the potential consequences if performance is not acceptable. Periodic discussions between the supervisor and employee must occur during the time frame of the Performance Plan to review progress; these discussions must be documented. Current limitations regarding union involvement in decisions concerning assigning, directing, removing or reducing in grade employees will not prevent the parties within the Demonstration Project from developing appropriate procedures and documentation in connection with Performance Plans. (NOTE: Nothing in this subsection will preclude action under Title 5, United States Code, Chapter 75, when appropriate.)

g. Accountability for Performance. An employee will be given a rating of "unacceptable" only if and when the employee is unable to successfully complete the Performance Plan. When an employee's performance is rated as "unacceptable," one of four actions will be taken: (1) removal from the Federal Service, (2) placement in a lower band level with a corresponding reduction in pay (demotion), (3) reduction in pay while remaining in the same band level, or (4) placement in a lower band level with no reduction in pay (demotion).

For the third category of action, the amount of reduction in pay will be up to, but may not exceed, the maximum amount of incentive pay (see below) that the employee could be eligible to receive during the current payout period, i.e., up to the equivalent of 4 continuing pay points as of the most recent payout cycle. Following the pay reduction, the objection is to restore performance and may commensurate with it. A formal Development Plan will be established to maximize the opportunity for success in the assignment by clearly identifying performance expectations and defining a plan to achieve them within an appropriate time frame, not to exceed 12 months. The activity's Performance Development Resources will be utilized throughout this process. If and when performance improves during the period in which the employee is otherwise ineligible for incentive pay, some or all of the reduced pay may be restored. Such restoration is not retroactive and is separate and apart from incentive pay.

For the fourth category of action, the employee may be moved to the next lower band level provided no loss in pay results and the employee's pay does not exceed the top of the lower bank level. Within the Demonstration Project, this would not be considered an adverse action and would not be appealable through a statutory appeals process except for preference eligible employees. Employees will be provided with a written notice of the decision and preference eligibles will be notified of their right to appeal the action to the Merit Systems Protection Board. Current limitations regarding union involvement in decisions concerning reducing employees in grade will not prevent the parties within the Demonstration Project from developing procedures for the non-adverse reduction in band level. The decision to reduce an employee to a lower band level with no reduction in pay will be subject to review under existing grievance or alternative dispute resolution procedures.

3. Incentive Pay System

The Incentive Pay System provides a mechanism for encouraging and rewarding performance contributions and other outcomes resulting from the continuous improvement focus of the performance development system.

INCENTIVE PAY FOR EMPLOYEES COVERED BY BROAD BANDING: Supervisors will conduct an annual review of each employee's salary and decide how total compensation should be adjusted to reflect the employee's performance contribution to the organization. The adjustment may be made as a continuing increase to base pay and/or as a one-time cash bonus to adjust total compensation. The philosophical foundation for incentive pay is described below:

Principles of Incentive Pay

Background: One of the outcomes of pay banding is an expanded range of pay progression opportunities for employees. This is accomplished through "incentive pay." Incentive pay is awarded to people based on the value of their performance contributions to the organization. With this comes the necessity to insure that pay decisions are consistent with the needs and values of the organization. At the same time, they must be seen as fair and equitable. While the Demonstration Project provides discretion for Warfare Center Divisions to substantially define the criteria and process for managing incentive pay, it is appropriate that there be general Project-wide principles that provide a policy framework for division decisions. The following are those principles.

PRINCIPLE: "The organization succeeds through the collective contributions of people in all occupations."

The Warfare Centers perform critical missions for the Navy in support of national defense. These missions require the collective efforts of all their people. While certain positions and occupations are highly visible, it is the whole organization as a team pulling in the same direction and towards the same goals that enables the Centers to excel. In that regard, no occupational groups are to be effectively excluded from opportunities for incentive pay and other forms of recognition. Rather, there is an expectation that incentive pay generally will be distributed proportionally to the various career paths. Further, all people who are making positive performance contributions as demonstrated by acceptable performance will share in incentive pay. Amounts and time intervals will be set by Divisions/sites.

PRINCIPLE: "Pay should be commensurate with value of performance to the organization."

In general, an individual's total pay (base pay, plus any incentive pay) should be commensurate with the value of the performance contributions to the organization. Contributions may be based on past and/or potential performance consistent with criteria defined by the Warfare Center Divisions. In that regard, there should be relative pay equity between people whose contributions to the organization are of equal value. Consistent with this principle, as the value of a person's contribution increases, compensation should likewise increase. It follows that as an individual's compensation increases, there is a corresponding increase in expected performance contributions.

Typically, when a person is hired, or promoted to a higher band level, and pay is at or near the lower end of that band, there are expected successive increases in pay toward the mid range of that band. This pay growth is reflective of a learning curve upon entering a new position, and the corresponding increasing value to the organization. Pay progression through the mid range occurs with progressively higher levels of performance contributions. Beyond that, extraordinary contributions are expected for pay to increase through the upper levels of the band.

a. Eligibility. All employees who are making positive performance contributions as demonstrated by acceptable performance will share in incentive pay with the amounts and time intervals set by the Divisions and sites. Employees receiving an unacceptable rating since the last incentive payout are ineligible for the next incentive pay consideration.

b. Incentive Pay Pool. Payments under the Incentive Pay System are made from the incentive pay pool. Within the incentive pay pool, there are separate funds for continuing pay increases and bonus payments. The incentive pay pool is not used to fund promotions between pay bands. It is also not used to fund general pay increases, special rate increases, or locality pay increases; rather, employees will continue to receive any such increases (as applicable under the Plan) consistent with other employees outside the demonstration project.

The incentive pay pool will be operated within the parameters of the overall finance system governing the Warfare Centers. As a Defense Business Operating Fund (DBOF) activity, the Warfare Centers are 100-percent industrially funded and operate as "not-for-profit" competitors within the Department of Defense. Under DBOF, the Centers are reimbursed for their work by their customers through billings based on stabilized rates. The assistant Secretary of the Navy for Financial Management and Comptroller oversees the establishment of these stabilized rates through reviews of Biannual Financial Management Budget submissions, which are highly visible at all Command levels. This funding process imposes a discipline in controlling costs (including salary expenditures for the Warfare Centers that is not present under appropriated funded organizations.

The size of the continuing pay fund is based on appropriate factors, including the following:

a. Historical spending for within-grade increases, quality step increases, and in-level career promotions (with dynamic adjustments to account for changes in law or in staffing factors e.g., average starting salaries and the distribution of employees among job categories and band levels);

b. Labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the organization; and

c. The fiscal condition of the organization.

Given the implications of base pay increases on long-term pay and benefit costs, the amount of the continuing pay fund will be derived after a cost analysis with documentation of the mission-driven rationale for the amount. Any decision to substantially reduce the amount of funds devoted to continuing pay increases would typically occur only in lieu of more drastic cost cutting measures (e.g., RIF or furlough). As part of the evaluation of the project, average salary (base pay) will be tracked over time using two comparison groups: (1) The original two Navy Demonstration labs in China Lake and San Diego, and (2) a comparison group constructed using OPM's Central Personnel Data File.

The size of the bonus pay fund will be based on appropriate factors, including the following:

a. Historical spending for performance awards, special act awards, and awards for beneficial suggestions;

b. The organization's fiscal condition and financial strategies; and

c. Employee retention rates.

The decision process for defining the size of the incentive pay pool and the two funds within that pool will be established at the Division/site level. The design of the decision process, insofar as it affects bargaining unit employees, will be subject to collective bargaining.

d. Delegated Criteria Setting. The criteria and process for incentive pay will be substantially defined at the Division/site level. The incentive pay decision may be based on some combination of past, present and future performance. Examples of criteria may include criticality of skills, difficulty of position, criticality of position, individual or team contributions, suggestions for improving system or organization processes, length and/or quality of experience, current total compensation, etc. The criteria and process for incentive pay distribution for bargaining unit employees are subject to collective bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties from developing the criteria and process for incentive pay decisions. (Note: The movement of an employee within a band based on the execution of an incentive pay decision is not a "classification" action.)

e. Pay Points. The payout process will utilize a point system to distribute incentive pay increases. A maximum of four (4) points will be available, thus each employee performing in an acceptable manner will be eligible to receive 0, 1, 2, 3 or 4 pay points in the form of continuing pay, bonus pay or some combination.

FOR FWS EMPLOYEES, cash awards continue to be available under the existing Incentive Awards system based on performance and special acts.

f. Communication and Documentation. It is important that employees understand what is expected in order to receive a pay increase. Supervisors will interpret organizational criteria for their employees to clarify how it applies to their work and have periodic assessment discussions with employees to prevent surprise decisions at the time of payout. These assessment discussions should normally be held separately from performance development dialogues. Supervisors and employees are encouraged to seek agreement on their documentation needs. In addition, supervisors are expected to document their payout recommendation decisions and to discuss their decision rationale with employees. In bargaining units, documentation procedures will be subject to bargaining. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties from developing documentation procedures for the communication and documentation of incentive pay discussions and decisions.

g. Reconsideration of Incentive Pay Decisions. Employees will have the opportunity for a reconsideration of incentive pay decisions. While the specific purpose of the reconsideration is to address employee concerns about such decisions, the process is also intended to facilitate communication and understanding between employees and supervisors/managers concerning performance contributions and their impact on pay decisions. In addition, the process seeks to identify possible systemic problems that need to be addressed. In that regard, reconsideration is considered a positive and integral component of an effective incentive pay system by providing a mechanism to support continuous improvement. Accordingly, employees will not be discouraged from requesting reconsideration. Neither will they be subjected to reprisal or stigma. The specific process for reconsideration will be defined at the Division/site level. Current limitations regarding union involvement in decisions concerning assigning and directing employees will not prevent the parties from developing procedures for the reconsideration of incentive pay decisions. That process will include, but will not necessarily be limited to, the following characteristics: It should be administratively streamlined; provide expedited resolution; maintain appropriate confidentiality; be fair and impartial; address assertions of harmful error involving issues of process and procedure; and ensure that management payout decisions reflect reasonableness in judgment in evaluating applicable criteria.

h. Guidance on Managing Incentive Pay. Each Division is expected to develop policies and criteria to guide the implementation of the incentive pay system which are consistent with their mission, strategies and organizational values, and supportive of the Naval Sea

Systems Command and Warfare Center strategic plans. Some Divisions may rely on individual management judgment based on general guidance, while other Divisions may define a more mechanical process based on highly objective criteria. Additional guidance may be provided by major organizational components (e.g., departments or directorates) to tailor or interpret the command-level criteria for their specific mission and strategies. Each major organizational component will have authority to manage the incentive pay allocation derived from the salaries of employees in that component. Departments/Directorates may further delegate authority to mange a prorated portion of the fund to the next lower echelon. Supervisors and managers within the unit will be assessing the nature of each employee's contribution, consistent with the organization's policy and criteria as reflected in the written guidance. They will then make recommendations to a second level reviewer regarding the number of pay points to be awarded to each employee (i.e., 0 to 4 points) and the nature of incentive pay (i.e., continuing pay and/or bonus pay). Decisions regarding approval/disapproval of recommendations will be made at the organizational level to which authority has been delegated to manage the pay pool; typically this will be the second or third level reviewer. In cases where work is accomplished by a team, the team members may be involved in formulating the recommendation for distribution of incentive pay.

4. Reduction-In-Force (RIF)

Flexible and responsive alternatives are needed to restructure an organization in a short period of time. The current RIF system is complicated, costly, and relatively unresponsive to the needs of the organization.

The proposed RIF system will have a single round of competition to replace the current "two round" process. Once the position to be abolished has been identified, the incumbent of that position may "displace" another employee when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing. Retention standing is based on tenure, veterans' preference, length of service, and performance. However, there will be no augmented service credit based on performance ratings. An employee rated as unacceptable during the 12 month period preceding the effective date of a RIF may only displace an employee rated unacceptable during that same period. The same "undue disruption" standard currently utilized will serve as the criteria to determine if an employee is fully qualified. The displaced individual may similarly displace other employees. If/when there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated.

Displacement is limited to one broad band level below the employee's present level. A preference eligible employee with a compensable service connected disability of 30 percent or mre may displace up to two broad band levels (or the equivalent of five General Schedule grades) below the employee's present level. Employees not covered by broad banding (FWS), may "displace" up to three grades/intervals (five grades/intervals for preference eligibles with a service connected disability of 30 percent or more).

The new system will eliminate retained grade but will preserve retained pay.

All positions included in the Demonstration Project within an activity at a specific geographic location will be considered a separate competitive area.

5. Competitive Examining and Distinguished Scholastic Appointments

The Warfare Center needs a process which will allow for the rapid filling of vacancies, is less labor intensive, and is responsive to our needs. Restructuring the examining process and providing an authority to appoint candidates meeting distinguished scholastic achievements will help achieve these goals. When a Division implements the Demonstration Project for some portion of their workforce, this component may be available for all occupations. This will eliminate the imposition of multiple examining and appointment systems on the public and will strengthen efficiencies gained under the Demonstration Project. To further minimize resource requirements and the complexities inherent in administering two different sets of examining and hiring processes, this component may also be applied to GS and FWS positions in activities for which the Warfare Center Divisions provide human resource services.

a. Delegated Examining Authority. The Warfare Centers propose to demonstrate a streamlined examining process for both permanent and non-permanent positions. This authority will be further delegated to the Division level. This authority will apply to all positions with exception of positions in the Senior Executive Service, to Senior Level (ST/SL) positions, to the Executive Assignment System or positions of Administrative Law Judge. This authority will include the coordination of recruitment and public notices, the administration of the examining process, the administration of veterans' preference, the certification of candidates, and selection and appointment consistent with merit principles.

b. Description of Examining Process: The primary change in the examining process to be demonstrated is the grouping of eligible candidates into three Quality Groups using numerical scores and the elimination of consideration according to the "rule of three".

For each candidate, minimum qualifications will be determined using OPM's Operating Manual for "Qualification Standards For General Schedule Positions"/"Job Qualification Systems For Trades and Labor Occupations (Handbook X–118C)" including any selective placement factors identified for the position. Candidates who meet basic (minimum) qualifications will be further evaluated based on knowledge, skills and abilities which are directly linked to the position(s) to be filled. Based on this assessment, candidates will receive a numerical score of 70, 80, or 90. No intermediate scores will be granted except for those eligibles who are entitled to veterans' preference. Preference eligibles meeting basic (minimum) qualifications will receive an additional 5 or 10 points (depending on their preference eligibility) which is added to the minimum scores identified above. Candidates will be placed in one of three quality groups based on their numerical score, including any veterans' preference points: Basically Qualified (score of 70 and above), Highly Qualified (score of 80 and above), or Superior (score of 90 and above). The names of preference eligibles shall be entered ahead of others having the same numerical rating.

For scientific/engineering and professional positions at the equivalent of GS–9 and above, candidates will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, i.e., other than scientific/engineering and professional positions at the equivalent of GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

In selecting the top candidate, selecting officials should be provided with a reasonable number of qualified candidates from which to choose. All candidates in the highest group will be certified. If there is an insufficient number of candidates in the highest group, candidates in the next lower group may be certified in rank order. When two or more groups are certified, candidates will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass over or objection procedures.

c. Distinguished Scholastic Achievement Appointment: The Warfare Centers further propose to establish a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level to professional positions at the equivalent of GS–7 through GS–11, and GS–12 positions involved in research.

At the undergraduate level, candidates may be appointed to positions at a pay level no greater than the equivalent of GS–7 step 10 provided they meet the minimum standards for the position as published in OPM's operating manual, Qualification Standards for General Schedule Positions, plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and, the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualifications Standards for the occupational series. Appointments may also be made at the equivalent of GS–9 through GS–12 on the basis of graduate education and/or experience for those candidates with a grade point average of 3.5 or better (on a 4.0 scale) for graduate level courses in the field of study required for the occupation.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current objection procedures. Priority must also be given to displaced employees as may be specified in OPM and Department of Defense regulations.

Distinguished Scholastic Achievement Appointments will enable the Warfare Centers to respond quickly to hiring needs with eminently qualified candidates possessing distinguished scholastic achievements.

C. Project Implementation

While many of the basic elements of each component of the project will be implemented uniformly at all sites through policies established at the Warfare Center level, a number of policies, procedures, or processes will be delegated to the Division and/or site levels. This permits the system to be operationally defined, within a Warfare Center directed framework, to fit the culture and needs of the local organizations. In bargaining units, the project will be implemented only after there is full agreement through the collective bargaining process.

D. Entry Into/Exit From the Project

1. Initial Conversion of Current Workforce

For the most part, current GS/GM employees will be converted automatically from their current grades to the appropriate career paths and band levels. However, the Warfare Centers consider it essential to the success of the project that employees, upon entering the project, feel that they are not losing a pay entitlement accrued under the GS system. Accordingly, the current employees of the Warfare Centers will be "made whole" through a one year "buy-in" period. On the day of conversion, employees typically will receive base pay increases for prorated step increase equivalents. Employees at the 10th step or receiving a retained rate are not eligible for the increase. Further, during the first 12 months following conversion, employees will receive pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent.

Additionally, in many cases, employees who are today covered by a local or national special salary rate will no longer be considered a special rate employee under the Demonstration Project and will thus gain eligibility for full locality pay. To control conversion costs and to avoid a salary increase windfall for these employees, the adjusted salaries of these employees will not change. Rather, the employees will receive a new basic pay rate computed by dividing their adjusted basic pay by the locality pay factor for their area. A full locality adjustment will then be added to the new basic pay rate. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in total salary.

2. New and Transfer Employees

New hires, including employees transferring from other Federal activities, will be converted into the Demonstration Project in the career path and at the level and pay consistent with the duties and responsibilities of the position and individual qualifications.

3. Exit From the Demonstration Project

Employees who leave the Demonstration Project broad banding system to accept federal employment in the traditional Civil Service system will have their pay set by the gaining activity. To assist activities in setting pay and in determining whether such placement constitutes a promotion, reassignment, or change to lower grade, the employee's band and salary level will be converted to a General Schedule equivalent grade prior to leaving the Demonstration Project in the following manner:

Employees who exit the Demonstration Project will be tentatively converted to a GS grade most comparable to the employee's current Demonstration Project level and salary. In instances where the current salary is in the area between two overlapping GS grades within the same level, the converted grade is either (1) the higher of the two overlapping GS grades if the current salary meets or exceeds Step 4 of the higher GS grade, or (2) the lower of the overlapping grades if the current salary is less than Step 4 of the higher GS grade. In those instances where the current salary falls below the established GS salary range for the lowest GS grade covered by the Demonstration Project band level, the converted grade is the lowest GS grade level in that band. In those situations where an employee has not been promoted or placed in a lower pay band while covered by the Demonstration Project, the employee will be converted at a level which is no lower than the GS grade held immediately prior to entering the Demo project. This converted GS grade is the GS equivalent grade and is not necessarily the grade the employee will have upon transfer or reassignment outside the Demonstration Project. If the employee is receiving a retained rate under the Demonstration Project, the employee's GS-equivalent grade is the highest grade encompassed in his or her bank level. The Warfare Center will coordinate with OPM to describe a procedure for determining the GS-equivalency pay rate for an employee retaining a rate under the Demonstration Project.

An employee's pay within the converted GS grade is set by converting the Demonstration project adjusted rate of pay to a rate on the highest applicable adjusted rate range for the converted GS grade (including locality rates and special rates, as applicable). For example, if the highest applicable adjusted rate range under the GS pay system for a particular employee is a special rate range, the adjusted project rate (locality rate or special rate) is converted to the lowest special rate in that range that equals or exceeds the project rate; from this converted special rate, the employee's unadjusted GS rate and locality rate would be derived. This pay conversion is done before processing any geographic movement or other pay-related action coinciding with the employee's conversion out of the Demonstration project.

When an employee transfers to another activity, the employee's rating of record will be transferred. When the gaining activity uses other than a two level performance system, the employee may be provided a supplementary performance assessment using the gaining organizations appraisal criteria. If the employee requests such an appraisal, the employee will be responsible for providing the criteria to the supervisor for completion. Gaining organizations are not bound to use this supplementary performance appraisal in any formal actions.

Service under the Demonstration Project is creditable for within-grade increase purposes upon conversion back to the GS system. Incentive Pay increases (including a zero increase) under the Demonstration Project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

E. Project Duration

The initial implementation period for the Project will be five years. At that time, the entire Demonstration project will be reexamined to determine whether to continue, modify or terminate the Project.

IV. Evaluation Plan

Chapter 47 (Title 5 U.S.C.) requires that an evaluation system be implemented to measure the effectiveness of the proposed personnel management interventions. An evaluation plan for the entire laboratory Demonstration program covering 24 DOD labs was developed by a joint OPM/DOD Evaluation Committee. A Comprehensive evaluation plan was submitted to the Office of Defense Research & Engineering in 1995 and subsequently approved. (Proposed Plan for Evaluation of the Department of Defense S&T Laboratory Demonstration Program, Office of Merit Systems Oversight & Effectiveness, June 1995). The overall evaluation effort will be coordinated and conducted by OPM's Personnel Resources and Development Center (PRDC). The primary focus of the evaluation is to determine whether the waivers granted result in a more effective personnel system than the current as well as an assessment of the costs associated with the new system.

The present personnel system with its many rigid rules and regulations is generally perceived as an impediment to mission accomplishment. The Demonstration Project is intended to remove some of those barriers and therefore, is expected to contribute to improved organizational performance. While it is not possible to prove a direct causal link between intermediate and ultimate outcomes (improved personnel system performance and improved organizational effectiveness), such a linkage is hypothesized and data will be collected and tracked for both types of outcome variables.

An intervention impact model (Appendix B) will be used to measure the effectiveness of the various personnel system changes or interventions. Additional measures will be developed as new interventions are introduced or existing interventions modified consistent with expected effects. Measures may also be deleted when appropriate. Activity specific measures may also be developed to accommodate specific needs or interests which are locally unique.

The evaluation model for the Demonstration Project identifies elements critical to an evaluation of the effectiveness of the interventions. The overall evaluation approach will also include consideration of contact. variables that are likely to have an impact on project outcomes: e.g., HRM regionalization, downsizing, cross-service integration, and the general state of the economy. However, the main focus of the evaluation will be on intermediate outcomes, i.e., the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment and customer satisfaction.

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with perceptual data will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the Demonstration project is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of data will be collected as part of the evaluation: (1) workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews and focus groups; (4) local activity histories; and, (5) core measures of laboratory effectiveness.

V. Waivers of Law and Regulation

A. Waivers to Title 5, United States Code

Chapter 33, Section 3317(a): Competitive service, certification from register (in so far as "rule of three" is eliminated under the Demonstration project).

Chapter 33, Section 3318(a): In so far as "rule of three" is eliminated under the Demonstration Project. Veterans preference provisions remain unchanged.

Chapter 43, Section 4301: Definitions.

Chapter 43, Section 4302: Establishment of performance appraisal systems.

Chapter 43, Section 4303: Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level or reduced in band level without a reduction in pay based on unacceptable performance. For employees who are reduced in band level without a reduction in pay, Sections 4303(b) and 4303(e) (2) and (3) do not apply.

Chapter 43, Section 4303(b)(1)(A)(ii): Requirement for critical elements.

Chapter 51, Section 5101–5111: Purpose, definitions, basis, classification of positions, review, authority—To the extent that white collar employees will be covered by broad banding. Pay category determination criteria for Federal Wage System positions remain unchanged.

Chapter 53, Section 5303; 5302 (1), (8), and (9); Section 5303; and Section 5304: Pay Comparability System. (To the extent necessary to allow Demonstration project employees covered by broad banding to be treated as General Schedule employees and to allow basic rates of pay under the Demonstration project to be treated as scheduled rates of basic pay.) (This waiver does not apply to Federal Wage System (FWS) employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Section 404 of the Federal Employees Pay Comparability Act of 1990 (P.L. 101–509): Special Pay Adjustments for Law Enforcement Officers in Selected Cities. (To the extent necessary to allow law enforcement officers under the Demonstration project to be treated as law enforcement officers under the General Schedule.)

Chapter 53, Section 5305: Special Pay Authority.

Chapter 53, Section 5331–5336: General Schedule Pay Rates.

Chapter 53, Section 5362: Grade Retention.

Chapter 53, Section 5363: Pay Retention. (Only to the extent necessary to (1) replace "grade" with "band level"; (2) allow Demonstration Project employees to be treated as General Schedule employees; (3) provide that pay retention does not apply to conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (4) provide that pay retention does not apply to reductions in basic pay due solely to the operation of the pay setting rules for geographic movement within the Demonstration Project.) (This waiver does not apply to FWS employees who continue to be covered by these provisions, as appropriate. This waiver does not apply to SL/ST employees unless they move to a GS equivalent position under conditions that trigger entitlement to pay retention.)

Chapter 53, Section 5371: Health Care Positions. (Only to the extent necessary to allow Demonstration project employees to hold positions subject to chapter 51 of title 5. (This waiver does not apply to FWS employees.)

Chapter 55, Section 5545(d): Hazardous Duty Differential. (Only to the extent necessary to allow Demonstration project employees covered by broad banding to be treated as General Schedule employees.) (This waiver does not apply to FWS and SL/ST employees.)

Cgapter 57, Sections 5753, 5754, and 5755: Recruitment; Relocation Bonuses; Retention Allowances; Supervisory Differentials: (Only to the extent necessary to allow employees and positions under the Demonstration project covered by broad banding to be treated as employees and positions under the General Schedule.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Chapter 59, Section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental United States or Alaska (Only to the extent necessary to provide that COLA's paid to employees under the Demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 71, Section 7106(a)(2): In so far as provision on assigning and directing, documenting performance discussions, Performance Development Resources, Performance Plans, criteria and process for incentive pay, and communication and documentation requirements for incentive pay and reconsideration of incentive pay decisions; and, in so far as provision on reducing employees in grade may prevent the parties from negotiating procedures for non-adverse assignment of employees to a lower pay band.

Chapter 71, Section 7119(b)(1): In so far as provision for either party to request impasse proceedings would be contrary to provisions of the Demonstration project.

Chapter 75, Section 7512(3); To the extent necessary to (1) replace "grade" with "band level"; and, (2) exclude reductions in band level not accompanied by a reduction in pay taken under Chapter 43.

Chapter 75, Section 7512(4): Adverse Action. (Only to the extent necessary to provide that adverse action provisions do not apply to—(1) conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions of general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (2) reductions in basic pay due solely to the operations of the pay setting rules for geographic movement within the Demonstration project.)

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through .605: Time in grade restrictions are eliminated in the Demonstration project.

Part 332, Section 332.401(b): Only to the extent that for non-professional or non-scientific positions equivalent to GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) qualification requirements will be entered at the top of the highest group certified without the need for further assessment.

Part 332, Section 332.402: "Rule of three" will not be used in the Demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligibles.

Part 351, Section 351.402(b): Competitive area to the extent that the Demonstration project will be a separate competitive area within the activity.

Part 351, Sections 351.403 (a) and (b): Competitive levels to the extent that there is no requirement for the establishment of competitive levels in the Demonstration project.

Part 351, Section 351.404 (a) and (b): Retention register to the extent that the requirement to establish separate retention registers by competitive level is eliminated.

Part 351, Section 351.501(a)(3): For order of retention, delete "as augmented by credit for performance" under Section 351.504.

Part 351, Section 351.504: Credit for performance to the extent that the Demonstration project eliminates service credit for performance.

Part 351, Section 351.601 through .608: References to competitive levels are eliminated.

Part 351, Section 351.701 (b) and (c) Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of "white collar" Demonstration Project employees is restricted to no more than one broad band level below the employee's current level, except that for a preference eligible with a compensable service connected disability of 30 percent or more, the limit is two broad band levels (or the equivalent of five General Schedule grades) below the employee's present level.

Part 430, Subpart B: Performance appraisal for General Schedule, Prevailing Rate and certain other employees: Employees under the Demonstration project will not be subject to the requirements of this subpart.

Part 432: Modified to the extent that an employee may be removed, reduced in band level with a reduction in pay, reduced in pay without a reduction in band level and reduced in band level without a reduction in pay based on unacceptable performance. Also modified to delete referenced to critical element. For employees who are reduced in band level without a reduction in pay, Sections 432.105 and 432.106(a) do not apply, except that such sections continue to apply to preference eligible employees.

Part 432, Section 432.104 and .105: Proposing and Taking Action Based on Unacceptable Performance: In so far as references to "critical elements" are deleted and adding that the employee may be "reduced in grade or pay or removed" if performance does not improve to acceptable levels after a reasonable opportunity. In addition, requirements waived to the extent that a reduction in band level is taken based on skill utilization criteria when there is no reduction in pay.

Part 511, Section 511.201: Coverage of and exclusions from the General Schedule (To the extent that White Collar positions are covered by broad banding. Pay category determination criteria for Federal Wage System positions remain unchanged)

Part 511, Section 511.601: Classification appeals—modified to the extent that white collar positions established under this demonstration project, although specifically excluded from Title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, Section 511.603(a): Right to appeal—substitute "band" for grade.

Part 511, Section 511.607(b): Non Appealable Issues—add to the list of issues which are neither appealable nor reviewable, "the assignment of series under this demonstration project to appropriate career paths."

Part 530, Subpart C: Special Salary Rates.

Part 531, Subparts B, D, and E: Determining The Rate of Basic Pay, Within-Grade Increases, and Quality Step Increases. (Except that the provisions relating to highest previous rate under Parts 531.202 and 531.203 are waived only to the extent necessary to work in a broad banding system.)

Part 531, Subpart C and F: Special Pay Adjustments for Law Enforcement Officers and Locality-Based Comparability Payments. (Only to the extent necessary to allow Demonstration Project employees covered by broad banding to be treated as General Schedule employees and to allow basic rates of pay under the Demonstration project to be treated as scheduled annual rates of pay.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Part 536: All provisions pertaining to grade retention.

Part 536, Section 536.104: Pay Retention. (Only to the extent necessary to (1) Replace "grade" with "band level"; (2) allow Demonstration Project employees to be treated as General Schedule employees; (3) provide that pay retention does not apply to—conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (4) provide that pay retention does not apply to reductions in basic pay due solely to the operation of the pay setting rules for geographic movement within the Demonstration Project.) (This waiver does not apply to FWS employees who continue to be covered by these provisions, as appropriate. This waiver does not apply to SL/ST employees unless they move to a GS equivalent position under conditions that trigger entitlement to pay retention.)

Part 550, Section 550.703: Severance Pay. (Modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."). (This waiver does not apply to FWS employees.)

Part 550, Section 550.902, definition of "employee": Hazardous Duty Pay. (Only to the extent necessary to treat Demonstration project employees covered by broad banding as General Schedule employees.) (This waiver does not apply to FWS and SL/ST employees.)

Part 575, Subparts A, B, C, and D: Recruitment Bonuses, Relocation Bonuses, Retention Allowances, and Supervisory Differentials. (Only to the extent necessary to allow employees and positions under the Demonstration project covered by broad banding to be treated as employees and positions under the General Schedule.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential-Nonforeign Areas. (To the extent necessary to allow Demonstration project employees covered by broad banding to be treated as employees under the General Schedule.) (This waiver does not apply to FWS employees. This waiver does not apply to SL/ST employees who continue to be covered by these provisions, as appropriate.)

Part 752: Section 752.401(a)(3): To the extent necessary to (1) Replace "grade" with "band level"; and (2) exclude reductions in band level not accompanied by a reduction in pay taken under Chapter 43.

Part 752: Section 752.401(a)(4): Adverse Action. (Only to the extent necessary to provide that adverse action provisions do not apply to—(1) conversions from General Schedule special rates to Demonstration project pay and reallocations of Demonstration project pay rates within special rate extensions to locality adjusted pay rates due to promotions or general or locality pay increases, as long as the employee's total rate of pay is not reduced; and (2) reductions in basic pay due solely to the operation of the pay setting rules for geographic movement within the Demonstration Project.

VI. Cost

The goal of this Demonstration Project is the implementation of a system in which payroll costs and resource utilization can be controlled consistent with the organization's larger fiscal strategies. This is especially critical in our industrially funded (DBOF) environment. The continued economic viability of the DBOF activities depends in large measure on controlling expenditures and remaining cost competitive with other organizations. This Demonstration Project proposes a system of pay incentives and processes that are flexible and can operate in harmony with the organization's operational needs and the financial needs of the larger organization. The costs of project implementation will be borne by the Divisions/sites.

Costs associated with the development of the Demonstration Project include software automation, training and project evaluation. All funding will be provided through the Warfare Centers budget. Training costs will be approximately $192K per thousand employees. The timing of the expenditure will be site specific and dependent upon the implementation schedules. Because automation requirements will be minimized as a result of system similarities to existing Navy Demonstration Projects, costs are estimated at $100K for the first two years of project implementation. Evaluation costs are estimated at approximately $60K per year.

VII. Project Oversight and Management

Project oversight and management will be carried out by the Warfare Centers' Executive Group, composed of the Commanders and Technical Directors of the two Warfare Centers. They will be assisted by the Demonstration Project Management Office and the Steering Committee. (See Figure 5)

The Steering Committee, chaired by a senior executive or senior Navy officer appointed by the Executive Group, is comprised of a senior member of each Division of the Warfare Centers, and a member from the American Federation of Government Employees, Metal Trades Council, International Association of Machinists, National Association of Government Employees, National Federation of Federal Employees, and Fraternal Order of Police. This group serves as an advisory body to the Executive Group which makes final decisions on the Demonstration Project proposal and implementation. The role of the Steering Committee is to aggregate and analyze incoming data from formal and informal evaluations and make recommendations. It may also include facilitating information sharing, mediating impasses, and promotion of partnership roles.

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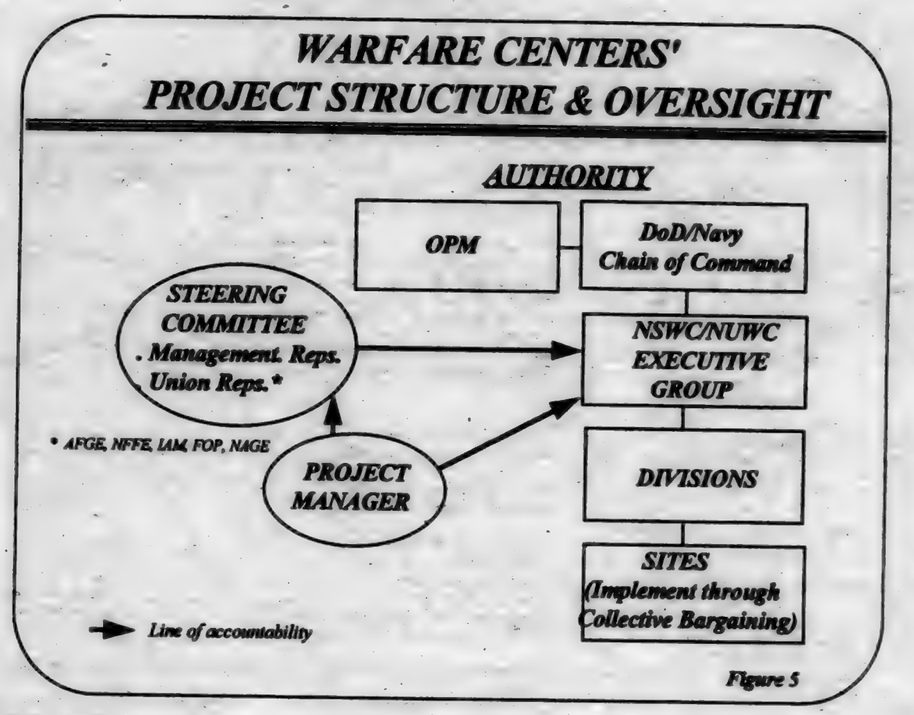


Figure 5

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Appendix A—Employee/Union Involvement Methodology

From the inception of the Naval Sea Systems Command Warfare Centers' Personnel Demonstration Project, employee involvement in crafting the Project Proposal was viewed as essential to producing a plan that considered the needs of all parties. National union representatives participated as members of the steering Committee which developed the Personnel Demonstration Project Proposal and will be overseeing its implementation. While the process that produced the Project Proposal was a collaborative one, union participation did not necessarily constitute full and complete endorsement of all details of the Proposal.

At the Warfare Centers' various Divisions and sites, employees and unions are involved through a variety of communications strategies. Within the Divisions, communications teams composed of a cross section of the workforce have been formed for the purpose of disseminating information about the project as well as a focal point for employee questions. Further, Divisions are establishing groups or committees to help guide the implementation of the Project throughout the organization. This model of broad participation is envisioned to continue throughout the life of the Demonstration Project.

Unions Represented

Dahlgren, VA: American Federation of Government Employees

White Oak, MD: American Federation of Government Employees; Metal Trades Council

Panama City, FL: National Federation of Federal Employees

Crane, IN: American Federation of Government Employees; Fraternal Order of Police

Louisville, KY: International Association of Machinists & Aerospace Workers

Carderock, MD: Metal Trades Council; Federal Firefighters Association Pattern Maker Association

Annapolis, MD: National Federation of Federal Employees

Philadelphia, PA: Metal Trades Council; Fraternal Order of Police, International Association of Firefighters

Ft. Lauderdale, FL: American Federation of Government Employees

Port Hueneme, CA: National Association of Government Employees; Federal Union of Scientists and Engineers
Indian Head, MD: American Federation of Government Employees; International Association of Firefighters; International Association of Machinists and Aerospace Workers
McAlester, OK: American Federation of Government Employees
Keyport, WA: Metal Trades Council
Newport, RI: National Association of Government Employees; Federal Union of Scientists and Engineers
New London, CT: National Association of Government Employees

Appendix B—Project Evaluation and Oversight

Intervention Impact Model—DOD Lab Demonstration Program

Intervention and expected effects	Measures	Data sources
1. COMPENSATION		
a. Broad banding:		
Increased organizational flexibility	Perceived flexibility	Attitude survey.
Reduced administrative workload, paperwork reduction.	Actual perceived time savings	Personnel office data, PME results, attitude survey.
Advanced in-hire rates	Starting salaries of banded v. non-banded employees	Workforce data.
Slower pay progression at entry levels—increased pay potential.	Progression of new hires over time by band, career path—mean salaries by band, career path, demographics.	Workforce data.
Increased satisfaction with advancement	Employee perceptions of advancement	Attitude survey.
Increased pay satisfaction	Pay satisfaction, internal/external equity	Attitude survey.
Improved recruitment	Offer/acceptance ratios	Personnel office data.
	Percent declinations	
No change in high grade (GS–14) distribution	Number/percentage of high grade salaries pre/post banding.	Workforce data.
b. Conversion buy-in: Employee acceptance	Employee perceptions of equity, fairness	Attitude survey.
	Cost as a percent of payroll	Workforce data.
2. PERFORMANCE MANAGEMENT		
a. Cash awards/bonuses:		
Reward/motivate performance	Perceived motivational power	Attitude survey.
To support fair and appropriate distribution of awards.	Amount and number of awards by career path, demographics.	Workforce data.
	Perceived fairness of awards	Attitude survey.
	Satisfaction with monetary awards	Attitude survey.
b. Performance/contribution based pay progression:		
Increased pay-performance link	Perceived pay-performance link	Attitude survey.
	Perceived fairness of ratings	Attitude survey.
Improved performance feedback	Satisfaction with ratings	Attitude survey.
	Employee trust in supervisors	Attitude survey.
	Adequacy of performance feedback	Attitude survey.
Decreased turnover of high performers	Turnover by performance rating category	Workforce data.
Increased turnover of low performers:		
Differential pay progression of high/low performers.	Pay progression by performance rating category, career path.	Workforce data.
Alignment of organizational and individual performance expectations and results.	Linkage of performance expectations to strategic plans/goals.	Performance expectations, strategic plans.
	Performance expectations	Attitude survey/focus groups.
	Perceived involvement	
Increased employee involvement in performance planning and assessment.	Performance management procedures	Attitude survey/focus groups. Personnel regulations.
c. New appraisal process:		
Reduced administrative burden	Employee and supervisor perception of revised procedures.	Attitude survey.
Improved communication	Perceived fairness of process	Focus group.
d. Performance development:		
Better communication of performance expectations	Feedback and coaching procedures used	Focus groups.
	Time, funds spent on training by demographics	Personnel office data.
Improved satisfaction and quality of workforce	Organizational commitment	Training records.
	Perceived workforce quality	Attitude surveys. Attitude survey.
3. "WHITE COLLAR" CLASSIFICATION		
a. Improved classification systems with generic standards:		
Reduction in amount of time and paperwork spent on classification.	Time savings	Personnel office data.
	Reduction of paperwork/number of personnel actions (classification/promotion)	
Ease of use	Managers' perceptions of time savings, ease of use, improved ability to recruit.	Attitude survey.
Improved recruitment of employee with appropriate skills.	Perceived quality of recruits	Focus groups/interviews.
	GPA's of new hires, education levels	Personnel office data.

Intervention and expected effects	Measures	Data sources
b. Classification authority delegated to managers:		
Increased supervisory authority/accountability	Perceived authority	Attitude survey.
Decreased conflict between management and personnel staff.	Number of classification disputes/appeals pre/post	Personnel records.
	Management satisfaction with service provided by personnel office.	Attitude survey.
No negative impact on internal pay equity	Internal pay equity	Attitude survey.
c. Dual career ladder:		
Increased flexibility to assign employees	Assignment flexibility	Focus groups, surveys.
	Sup/non-sup ratios	Workforce data.
Improved internal mobility	Perceived internal mobility	Attitude survey.
Increased pay equity	Perceived pay equity	Attitude survey.
Flatter organization	Supervisory/non-supervisory ratios	Workforce data.
Improved quality of supervisory staff	Employee perceptions of quality of supervisors	Attitude survey.
4. STAFFING/RECRUITMENT		
Competitive examining and categorical grouping:		
Improved hiring process	Management satisfaction with hiring process, time to hire, perceived quality of new hires.	Attitude survey.
Increased quality of hires	GPA's of new hires, education levels	Personnel office data (from issue of Form 52 to referral of candidates).
Increased timeliness	Time to fill positions	Attitude survey.
No negative impact on fairness of process, openness to competition.	Candidate/employee satisfaction.	
5. RIF		
Modified RIF:		
Prevent loss of high performing employees with needed skills.	Separated employees by demographics, performance	Workforce data. Attitude survey/focus groups.
Contain cost and dieruption	Satisfaction with RIF process	Attitude survey/focus groups.
	Cost comparisons of traditional v. modified RIF	Rightsizing and documenting systems/personnel office/budget data.
	Time to conduct RIF	
	Number of appeals/reinstatements	
6. COMBINATION OF ALL INTERVENTIONS		
All:		
Improved organizational effectiveness	Combination of personnel measures	All data sources.
Improved management of R&D workforce	Employee/Management satisfaction	Attitude survey.
Improved planning	Planning procedures	Strategic planning documents.
Improved cross functional coordination	Perceived effectiveness of planning procedures	Attitude survey. Organizational charts.
	Actual/perceived coordination	Attitude survey.
Increased product success	Customer satisfaction	Customer satisfaction surveys.
Cost of innovation	Project training/development costs (staff salaries, contract cost). Training hours per employee)	Demo project office records. Contract documents.
7. CONTEXT		
a. Regionalization:		
Reduced servicing ratios/cost	HR servicing ratios average cost per employee served	Attitude survey.
No negative impact on service quality	Service quality, timeliness	Workforce data. Attitude survey/focus groups.
b. GPRA: Improved organizational performance	Other measures to be developed	As established.

[FR Doc. 97–31625 Filed 12–2–97; 8:45 am]
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December 3, 1997

Part III

Department of Health and Human Services

Food and Drug Administration

Final Guidance on Industry-Supported Scientific and Educational Activities; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0434]

Final Guidance on Industry-Supported Scientific and Educational Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guidance entitled "Final Guidance on Industry-Supported Scientific and Educational Activities" (hereinafter referred to as the final guidance). The agency sought public comment on a draft version of this final guidance entitled "Draft Policy Statement on Industry-Supported Scientific and Educational Activities" (hereinafter referred to as the draft policy statement), which was published in the Federal Register on November 27, 1992; and on November 18, 1994, on a related citizen petition. The agency considered the comments received and, where appropriate, revised the draft policy statement to create the final guidance. The final guidance describes how industry may support scientific and educational activities without being subject to regulation under the Federal Food, Drug, and Cosmetic Act (the act). The full text of the guidance is published in this document.

DATES: Written comments on the guidance may be submitted at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
For general questions about the guidance: Ilisa B. G. Bernstein, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380, or via e-mail at IBernste@oc.fda.gov;
Regarding biological products: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–200), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via e-mail at stifano@cber.fda.gov;
Regarding medical device products: Byron L. Tart, Center for Device Evaluation and Radiologic Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639, or via e-mail at bxt@cdrh.fda.gov;
Regarding human prescription drugs: Norman A. Drezin, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, rm. 17B–17, Rockville, MD 20857, 301–827–2831, or via e-mail at drezinn@cder.fda.gov;
Regarding prescription animal drugs: Edward L. Spenser, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722, or via e-mail at espenser@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 27, 1992 (57 FR 56412), FDA published the draft policy statement. As the agency noted in the introduction to the draft policy statement, these activities may be subject to regulation under the labeling and advertising provisions of the act when they provide information on FDA-regulated products marketed by the supporting companies.

As the introduction also noted, FDA traditionally has not sought to regulate industry-supported scientific and educational activities that are otherwise independent and nonpromotional. Industry-supported scientific and educational activities that are not independent and nonpromotional are not per se illegal, but they are subject to regulation.

FDA published the draft policy statement in response to requests from industry for guidance in this area. Prior to publishing the draft policy statement, the agency engaged in an extensive outreach effort with scientific and health care professionals, industry, consumer groups, and other Government agencies in an attempt to strike a proper balance between the need for industry-supported dissemination of current scientific information and the need to ensure that promotional activities by industry meet the requirements of the law.

Recognizing the importance and delicacy of this balance, the agency invited comments with regard to all issues raised in the draft policy statement.

The agency received 152 comments, which included comments from academic and organized medicine, health care professionals, industry and trade associations, public relations and advertising firms, and commercial continuing education providers. FDA thoroughly considered these comments and revised the draft policy statement where appropriate. In the Federal Register of November 18, 1994 (59 FR 59820), the agency sought comment on a citizen petition (Docket No. 92N–0434/CP1) requesting that the agency withdraw the draft policy statement. The agency received about 60 comments in response to this notice.

I. Highlights of the Final Guidance

In response to comments, the agency has made several revisions to the draft policy statement. First, the draft policy statement has been modified to clarify that it is providing guidance on what the agency would look at in determining independence. In doing so, rather than enumerating the elements of a written agreement, the final guidance presents the ideas contained in the elements as factors the agency will consider in evaluating activities and determining independence. Additionally, the text of "Other Factors in Determining Independence" indicia that were listed in section II.B. of the draft policy statement (57 FR 56412 at 56414) are now included in the factors the agency will consider in evaluating activities and determining independence. Second, although the final guidance has been modified to place less emphasis on a written agreement between the supporting company and the provider, the agency continues to believe that a written agreement is one way to document what measures were taken by the parties to maintain the independence of the program.

In the final guidance, only 1 of the 10 elements of the written agreement presented in the draft policy statement remains unchanged. The "Statement of Purpose" (section II.A.1. of the draft policy statement) has been deleted because the final guidance lists the factors the agency will consider, rather than a suggested written agreement. The text of the "Control of Content and Selection of Presenters and Moderators" (section II.A.2. of the draft policy statement) has been modified slightly, but remains substantially unchanged. In the "Disclosure of Financial Relationships" (section II.A.3. of the draft policy statement) a factor has been added indicating that when an activity includes discussion of unapproved uses, there should be general disclosure of that fact. Additionally this discussion has been renamed "Disclosures," and all factors that describe a disclosure are listed under this heading. The discussion concerning "Supporting Company Involvement in Content" (section II.A.4. of the draft policy statement) has been incorporated into the factor concerning "Control of Content and Selection of Presenters and Moderators" of the final guidance. The discussion of "Ancillary Promotional Activities" (section II.A.5. of the draft policy statement) has been narrowed so as to limit promotional activities only in the room in which an activity takes place. The discussions concerning "Objectivity and Balance" (section II.A.6.), "Limitations on Data" (section II.A.7. of the draft policy statement), and "Discussion of Unapproved Uses" (section II.A.8. of the draft policy statement) have been deleted from the final guidance. The "Opportunities for Debate" (section II.A.9. of the draft policy statement) has been renamed "Opportunities for Discussion" to clarify its intent. The "Schedule of Activities" discussion (section II.A.10. of the draft policy statement) has also been deleted from the final guidance.

Much of the draft policy statement's section entitled "Other Factors in Determining Independence" appears in the final guidance, with a few modifications. First, the discussions concerning the "Provider" (section II.B.1. of the draft policy statement) has been modified slightly, deleting the statement that discussed whether persons who are involved in promotion of a company's products may function in the role as an independent provider. The discussion concerning industry representatives help in logistical assistance (section II.B.2.a. of the draft policy statement) has been deleted from final guidance. The "Suggestion of Presenters" discussion (section II.B.2.b. of the draft policy statement) has been incorporated, in part, into the factor concerning "Control and Content and Selection of Presenters and Moderators" in the final guidance. The discussion concerning "Focus on a Single Product" (section II.B.3.a. of the draft policy statement) has been incorporated into the factor entitled "Focus of the Program" in the final guidance. The discussions concerning "Multiple Performances" (section II.B.3.b. of the draft policy statement), "Audience Selection" (section II.B.4.c.), "Dissemination" (section II.B.5.), and "Complaints" (section II.B.6.) remain substantially unchanged. The "Gifts" (section II.B.4.a.) and "Emphasis on Noneducational Activities" (section II.B.4.b.) discussions have been deleted from the final guidance. Finally, the discussion concerning "Misleading Title" (section II.B.4.d. of the draft policy statement) has been incorporated into the factor concerning "Focus of the Program" in the final guidance.

In general, these revisions are intended to better focus the final guidance on the agency's core concerns—that the provider develop the subject program independent from the influence of the supporting company, and that there is disclosure of relationships between and among the supporting company, provider, presenters, and products discussed that may be relevant to an assessment of the information presented. Thus, while the number of changes may be significant, they do not change the fundamental intent of the final guidance to distinguish industry-supported scientific and educational activities that are free from supporting company influence from those that are not.

II. Summary and Responses to Comments Received

A. General Comments

1. Several comments disputed the agency's assertion that industry-supported scientific and educational activities traditionally have been viewed by the agency as subject to regulation under the act. They maintained that regulation of these activities is an unwarranted expansion of agency authority and that the agency should specifically articulate the basis for its regulatory authority.

FDA has long regulated drugs and devices (including biological products and animal drugs) based on the "intended uses" for such products. Under section 201 of the act (21 U.S.C. 321), which defines the terms "drug" and "device," the intended use of an article determines whether the article is a drug or device. In general, under the act and the Public Health Service Act, a sponsor who wishes to market any new drug or biological product must demonstrate to FDA that the product is safe and effective for each of its intended uses. (See sections 505(a) and 512(a) of the act (21 U.S.C. 355(a) and 360b(a)) and section 351 of the Public Health Service Act.) A sponsor who wishes to market a new medical device must either demonstrate to FDA that there is a reasonable assurance that the device is safe and effective for each of its intended uses or that it is substantially equivalent to (meaning, in part, that it has the same intended use as) another device for which such a showing is not required. (See sections 510(k), 513(f) and (i), and 515(a) of the act (21 U.S.C. 360(k), 360c(f) and (i), and 360e(a)).) The package insert or product manual (approved professional labeling) which, for approved and/or licensed products, physically accompanies the product, sets forth the uses for which the product has been demonstrated to be safe and effective.

The "intended use" of a drug or device refers to the objective intent of the persons legally responsible for the labeling of the product. This intent is determined by such persons' expressions or by the circumstances surrounding the distribution of the article including, for example, labeling claims, advertising matter, or oral or written statements by such persons or their representatives. (See 21 CFR 201.128 and 801.4.) The agency, thus, regulates products based not only on information provided "with" the product (approved professional labeling), but also based on information disseminated by or on behalf of manufacturers in other contexts, such as scientific and educational meetings and symposia, books, reprints of articles from scientific journals, in part because all of these activities/materials can create new intended uses for the products, which must be reflected in the approved labeling of the products.

The agency's focus on the manufacturer's characterization of its product in the marketplace is best reflected in the statutory requirement that a drug or device shall be deemed to be misbranded unless its labeling bears adequate directions for use. (See section 502(f)(1) of the act (21 U.S.C. 352(f)(1)).) The courts have agreed with the agency that section 502(f)(1) of the act requires information not only on how a product is to be used (e.g., dosage and administration), but also on all the intended uses of the product. (See *Alberty Food Products Co.* v. *United States*, 185 F.2d 321 (9th Cir. 1950) (drug product was misbranded because its labeling failed to state the intended use of the drug (arthritis and rheumatism) as suggested by the company in newspaper advertisements); 21 CFR 201.5)) As previously described, oral statements and materials presented at industry-supported scientific and educational activities may provide evidence of a product's intended use. If these statements or materials promote a use that is inconsistent with the product's approved labeling, the product is misbranded under section 502(f)(1) of the act for failure to bear labeling with adequate directions for all intended uses. If it is a device, it is also adulterated because the listing of unapproved uses in the labeling or advertising of an approved device results in an adulterated medical device under section 501(f) of the act, and misbranded under section 502(o) of the act because premarket notification was not provided as required under section 510(k) of the act.

FDA also finds support for its policy of examining a broad array of information disseminated by companies in the general grant of authority over labeling and advertisements. Section

201(m) of the act defines the term "labeling" to include all "written, printed, or graphic" materials "accompanying" a regulated product. The Supreme Court has agreed with the agency that this definition is not limited to materials that physically accompany a product. If the material supplements, explains, or is otherwise textually related to a product, it is deemed to accompany the product for purposes of section 201(m) of the act. (See *Kordel* v. *United States*, 335 U.S. 345 (1948).)

The agency has adopted a similar interpretation of the term "advertisement," which appears in section 502(n) of the act (prescription drug advertisements) and 502(r) of the act (restricted device advertisements). Although the act does not define the term "advertisement," section 502(n) and (r) of the act indicates that advertisements do not include materials regulated as labeling. In addition, the legislative histories of the 1938 act and the 1962 amendments to the act support a broad construction of what constitutes "advertising." Thus, the agency interprets the term "advertisement" to include information (other than labeling) that originates from the same source as the product and that is intended to supplement or explain the product. Prescription drug and restricted device advertisements that do not comply with section 502(n), (q), or (r) of the act, or regulations issued thereunder, cause a prescription drug or restricted device to be misbranded.

2. Some comments contended that the policy will adversely affect the availability and quality of continuing education for health care professionals. They maintained that the perception of regulatory risk on the part of supporting companies, as well as administrative and financial burdens resulting from compliance with the policy, will cause companies that have supported educational programs to redirect funds to lower risk, more efficient activities.

The agency recognizes the importance of continuing education for health care professionals and recognizes, as well, the traditional role of industry in supporting such activities. With this final guidance, the agency has attempted to address concerns raised by supporting companies, to describe factors the agency will consider in determining whether an industry-supported activity is independent and not generally subject to regulation, and to accommodate industry's need for predictability in these activities. The agency believes that the flexibility accorded companies in the final guidance and in the agency's responses to these comments should provide a reasonable basis for continued support for these activities. Decisions by companies involving allocation of resources for promotion and education are, of course, affected by a variety of factors. The agency cannot ensure that companies will provide a given level of support for professional education within the health care community.

B. The First Amendment

3. Several comments contended that the Draft Policy Statement on Industry-Supported Scientific and Educational Activities (Draft Policy Statement) infringes upon the First Amendment to the Constitution. Some comments claimed that the Draft Policy Statement infringed protections afforded to commercial speech.

The agency has considered the First Amendment in developing its policies on industry-supported scientific and educational activities, and believes that the Draft Policy Statement and the Final Guidance are consistent with the First Amendment's protection of freedom of expression. In producing these policy statements (guidance), FDA has sought to accommodate the need for industry-supported scientific and educational activities and the statutory mandate to regulate promotional activities (labeling and advertising) for drugs and devices in accordance with the act and the Public Health Service Act.

1. The Regulation of Drugs and Devices

FDA's guidance on industry-supported scientific and educational activities describes the agency's regulation of drugs and medical devices; it is not intended to regulate speech. It provides insight into the factors FDA will consider when evaluating an industry-supported activity to determine whether it should be subject to regulation as labeling or advertising, and, if so, to ensure that the activity does not misbrand or adulterate the subject drug or device. There are three bases for this conclusion.

First, the guidance applies only to those company-supported activities that relate to the supporting company's product(s) or to competing product(s). A company-supported activity that does not relate to the company's product, a competing product, or suggest a use for the company's product would not be subject to regulation as a promotional activity.

Second, the guidance distinguishes between company-supported activities that are independent of the promotional influence of the supporting company and those that are not. As explained in the guidance, the agency does not seek to regulate industry-supported activities that are independent and nonpromotional.

Third, the regulation of drugs and devices has an unavoidable effect on speech. As explained more fully in response to Comment A.1, the act mandates that FDA regulate products as drugs or devices (including biological products and animal drugs) based on the "intended uses" for such products.

Under section 201 of the act which defines, among other things, the terms "drug" and "device," the intended use of an article determines whether the article is a drug or device. In general, under the act and the Public Health Service Act, a sponsor who wishes to market any new drug or biological product must demonstrate to FDA that the product is safe and effective for each of its intended uses (sections 505(a) and 512(a) of the act and section 351 of the Public Health Service Act). A sponsor who wishes to market a new medical device must either demonstrate to FDA that there is a reasonable assurance that the device is safe and effective for each of its intended uses or that it is substantially equivalent to (meaning, in part, that it has the same intended use as) another device for which such a showing is not required (sections 510(k), 513(f) and (i), and 515(a) of the act). In addition, all drugs and devices must bear labeling with adequate directions for each intended use. If labeling for a drug or device fails to contain adequate directions for each intended use, the drug or device is deemed to be misbranded (section 502(f)(1) of the act) and subject to seizure or other enforcement actions. For approved or licensed products, the requirement that products bear labeling with adequate directions for use is met by inclusion of the products' FDA-approved professional labeling (package insert or product manual) that sets forth the uses for which the product has been approved/cleared as safe and effective.

The intended use of a drug or device refers to the objective intent of the persons legally responsible for the labeling of the product.

The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or *oral or written statements by such persons or their representatives.*

(21 CFR 201.128 and 801.4) (emphasis added); see e.g., *Coyne Beahm, Inc., et al.* v. *United States Food and Drug Administration, et al.*, 958 F. Supp. 1060 (M.D.N.C. 1997).

Accordingly, oral statements and materials presented at industry-supported scientific and educational activities may provide evidence of a product's intended use. If these statements or materials promote a use that has not been approved by the agency (and therefore does not appear in the product's approved labeling), the product is misbranded under section 502(f)(1) of the Act for failure to bear labeling with adequate directions for all intended uses (21 CFR 201.5; *Alberty Food Products Co.* v. *United States*, 185 F.2d 321 (9th Cir. 1950)). The product may also be misbranded if its labeling[1] or advertising is false or misleading (section 502(a), (n), and (q) of the act). If it is a device, it is also adulterated because the listing of unapproved uses in the labeling or advertising of an approved device results in an adulterated medical device under section 501(f) of the act, and misbranded under section 502(o) of the act because premarket notification was not provided as required under section 510(k) of the act.[2] Thus, FDA's regulation of intended uses for drugs and devices is essential to the regulation of such products. The safety and effectiveness of drugs and devices cannot be evaluated in isolation from consideration of their intended uses.

The Supreme Court "has recognized the strong governmental interest in certain forms of economic regulation, even though such regulation may have an incidental effect on rights of speech * * *" (*NAACP* v. *Claiborne Hardware Co.*, 102 S.Ct. 3409, 3425 (1982)). (See also *Ohralik* v. *Ohio State Bar Association*, 98 S.Ct. 1912, 1919 (1978) (the government "does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity").) Similarly, several lower courts have recognized that in certain areas of extensive Federal regulation (securities, antitrust, transportation, trade, and labor), the Government may regulate communications of the regulated parties without offending the First Amendment. In particular, *SEC* v. *Wall Street Publishing Institute, Inc.*, 851 F.2d 365 (D.C. Cir. 1988), *cert. denied*, 109 S.Ct. 1342 (1989), is most analogous to FDA's regulation of industry-supported scientific and educational activities.

The defendant in *Wall Street Publishing* published a stock market magazine that included feature articles profiling individual companies and portraying the subject firms as appealing investment prospects. Some of the articles were written by the featured company itself, others were written by public relations firms paid by the featured companies, and still others were written by the editors of the magazine, who were paid by the featured companies. Because these arrangements were not disclosed in the magazine, the Securities Exchange Commission (SEC) sought to enjoin the publisher for violations of section 17(b) of the Securities Act of 1993, 15 U.S.C. 77q(b), which makes it unlawful to describe a security for consideration without disclosing the existence of the consideration. The publisher challenged the injunction on, among others, First Amendment grounds.

The court rejected the SEC's characterization of the feature articles as commercial speech and upheld the government's efforts to regulate the magazine based on "the federal government's broad powers to regulate the security industry" (*Id.* at 372 (footnote omitted)). According to the court, "[w]here the federal government extensively regulates a field of economic activity, communication of the regulated parties often bears directly on the particular economic objectives sought by the government, and regulation of such communications has been upheld" (*Id.* (citations omitted)). This holding stems from the fact that "[i]f speech employed directly or indirectly to sell securities were totally protected, any regulation of the securities market would be infeasible* * *." (*Id.* at 373; see also *Id.* at 374 n.9 ("Requiring disclosure of a material fact in order to prevent investor misunderstanding is the very essence of federal securities regulation.")).

The court noted that:

[R]egulation of the exchange of information regarding securities is subject only to limited First Amendment scrutiny. Speech relating to the purchase and sale of securities, in our view, forms a distinct category of communications in which the government's power to regulate is at least as broad as with respect to the general rubric of commercial speech * * * in areas of extensive federal regulation * * * we do not believe the Constitution requires the judiciary to weigh the relative merits of particular regulatory objectives that impinge upon communications occurring within the umbrella of an overall regulatory scheme. *Id.* at 373. See also *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9, 46 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977) ("[R]ules restricting speech do not necessarily abridge freedom of speech."); *SEC* v. *Suter*, 732 F.2d 1294 (7th Cir. 1984).

As with securities regulation, the Federal Government exerts extensive authority over the sale and promotion of drugs and devices. Moreover, as previously explained, the Government's ability to regulate speech about these products, like its need to regulate speech concerning the sale of securities, is essential to the regulation of drugs and devices. Yet the regulation of drugs and devices, unlike the regulation of securities, clearly encompasses more than economic activity; it protects consumer health and safety in an area where harm to the public can be direct and immediate.

Accordingly, First Amendment defenses have been raised and rejected in a number of FDA enforcement actions. "Freedom of speech does not include the freedom to violate the labeling provisions of the Federal Food, Drug, and Cosmetic Act" (*United States* v. *Articles of Food * * * Clover Club Potato Chips*, 67 F.R.D. 419, 424 (D. Idaho 1975)). The First Amendment does not prohibit the seizure and condemnation of a book that is used to misbrand a product (*United States* v. *8 Cartons, Containing "Plantation 'The Original' etc. Molasses"*, 103 F. Supp. 626, 628 (W.D.N.Y. 1951); *United States* v. *Articles of Drug*, 32 F.R.D. 32, 35 (S.D. Ill. 1963); but cf. *United States* v. *24 Bottles * * *"Sterling Vinegar and Honey"*, 338 F.2d 157 (2d Cir. 1964) (book not used in immediate connection with sale of product is not labeling and does not misbrand product)).

In conclusion, the act requires that FDA regulate drugs and devices based on their "intended use." The term "intended use" is broadly defined to capture the manner in which a company characterizes its product in the marketplace. The agency thus must examine the various means by which manufacturers and their representatives provide information about their products to health care professionals and consumers, including statements and materials presented at industry-supported scientific and educational activities, to determine whether the products are being improperly promoted, and therefore misbranded or adulterated. Accordingly, FDA's ability to regulate the communications at such activities is essential to the regulation of drugs and devices. In view of the fact that the regulation of drugs and devices is an area of extensive federal regulation, the agency may regulate the communications at industry-supported

[1] Section 201(m) of the act defines the term "labeling" to include all "written, printed, or graphic" materials "accompanying" a regulated product. (See *Kordel* v. *United States*, 335 U.S. 345, 349–350 (1948).)

[2] It is a violation of the act to, among other things, introduce or deliver for introduction into interstate commerce a misbranded or adulterated drug or device, or to cause the misbranding or adulteration of a drug or device while it is held for sale after shipment in interstate commerce. (See e.g., sections 301(a) and (k) of the act.)

scientific and educational activities without violating the First Amendment.

2. Commercial Speech

Assuming, contrary to the analysis just presented, that industry-supported scientific and educational activities constitute protected speech, they are commercial speech and FDA's regulation of such activities does not violate the First Amendment. Although the Supreme Court has furnished little explicit guidance as to how to determine whether speech is commercial, it has provided some suggestion as to what factors are relevant when making a commercial speech determination. (See *Bolger* v. *Youngs Drug Products*), 103 S.Ct. 2875 (1983) (concluding that informational pamphlets are commercial speech based on a combination of three characteristics (conceded to be advertisements, reference to a specific product, and economic motivation), but not suggesting that each of these characteristics is a necessary element of commercial speech); *S.U.N.Y.* v. *Fox*, 109 S.Ct. 3028 (1989) (speech which proposes a commercial transaction); *Cincinnati* v. *Discovery Network*, 113 S.Ct. 1505 (1993) (speech which proposes a commercial transaction).) Furthermore, the Court has made clear that speech which does more than propose a commercial transaction (linking a product to a current public debate or containing discussions of important public issues) is not necessarily transformed into noncommercial speech (*Central Hudson Gas & Electric Corp.* v. *Public Serv. Comm'n*, 100 S.Ct. 2343 (1980); *Bolger*, 103 S.Ct. at 2880–2881).

Applying the characteristics suggested in *Bolger* (advertisement, reference to a specific product, economic motivation) or the test used in *Fox* and *Discovery Network* (speech which proposes a commercial transaction), industry-supported scientific and educational activities are commercial speech. The guidance at issue only applies to activities that make reference to a specific product, and as explained below, the activities are economically motivated and propose a commercial transaction. Drug and device companies sponsor such programs not only to encourage scientific exchange, education, and corporate goodwill, but more importantly, to convince the audience to prescribe, purchase, or otherwise use the products mentioned. A company-sponsored program that discusses use of a company product carries with it, at the least, an implicit solicitation, and in many cases an explicit one (cf. *Central Hudson*, 100 S.Ct. at 2352 (suggesting that most businesses are unlikely to underwrite promotions that are of no interest to consumers); *National Commission on Egg Nutrition* v. *FTC*, 570 F.2d 157 (7th Cir. 1977) (advertisement by egg industry trade association claiming no relationship between eggs, cholesterol, and heart disease constitutes commercial speech)).

Indeed, a review of the medical literature on industry-supported scientific and educational activities demonstrates that such activities are economically motivated and propose a commercial transaction. It is significant to note that the number and cost of drug company-supported symposia have increased significantly over the years. In 1974, 16 drug companies sponsored 7,519 symposia, at a cost of 6.5 million dollars. Roughly comparable figures showed that in 1988 the same companies sponsored 34,688 symposia at a cost exceeding 85.9 million dollars.[3] It is reasonable to conclude that drug companies would not spend such large sums of money if they did not view these programs as an effective means to promote their products. Numerous reports in the medical literature support this conclusion.

In an article entitled "Physicians and the Pharmaceutical Industry: An Alliance with Unhealthy Aspects," *36 Perspectives in Biology and Medicine* 376–394, 385 (Spring 1993), author Robert C. Noble describes industry-sponsored symposia as, "*an effective method for marketing new drugs,*" and explains that, "*[t]he symposium, like the promotional dinner, is frequently given a neutral title that disguises any promotional purpose * * **" (emphasis added). (See also Lisa Bero, Alison Galbraith, and Drummond Rennie, "The Publication of Sponsored Symposiums in Medical Journals," *New England Journal of Medicine*, 327:1135–1140, 1992 (demonstrating that published symposia were promotional and not peer-reviewed, and those that were sponsored by a single company focused on single products, had misleading titles, and featured unapproved drugs).)

It has also been suggested that drug companies will not provide financial support for scientific and educational activities unless those activities in some way promote the supporting company's products. An editorial by Stephen E. Goldfinger, in the *New England Journal of Medicine*, addressed the growing support and influence of the drug industry in the education of physicians. According to Dr. Goldfinger:

> The most acceptable kind of educational backing is the least available: donations to providers of continuing medical education that are unrestricted with respect to program topics, speakers, or the backgrounds of the invited registrants. When I have suggested this model to pharmaceutical directors who proclaim a genuine interest in supporting continuing medical education, the usual response is a quizzical smile followed by a gentle reminder of the value of confining our discussion to the realm of the possible. At a minimum, that realm usually requires the topic to be an area "of interest" to the sponsor, meaning an area related to a product line in need of promotion.

Stephen E. Goldfinger, "A Matter of Influence" (Editorial), *New England Journal of Medicine*, pp. 1408–1409, 1409 (May 28, 1987).

Similarly, 2 years later, Eugene M. Bricker, wrote in the same journal that:

> Most of the medical-service industry's marketing exercises are intended to be both educational and promotional, and some are indeed broadly educational and of excellent quality. This does not alter the fact that promotion is their basic objective; companies would not subsidize marketing methods unless they were rewarding.

Eugene M. Bricker, "Industrial Marketing and Medical Ethics" (Editorial), *New England Journal of Medicine*, pp. 1690–1692, 1691 (June 22, 1989). (See also Kenneth Miller, William A. Gouveia, Michael Barza, et al., "Undesirable Marketing Practices in the Pharmaceutical Industry" (Letter to the Editor), *New England Journal of Medicine*, p. 54 (July 4, 1985) (Physician and pharmacist members of a hospital pharmacy committee expressing concern that drug company grants to support educational functions, such as talks by visiting speakers, are sometimes clearly linked to a request for the admission of a drug to the hospital's formulary or increased use of the product).)

Moreover, the results of a study by Marjorie A. Bowman and David L. Pearle, "Changes in Drug Prescribing Patterns Related to Commercial Company Funding of Continuing Medical Education," *Journal of Continuing Education in the Health Professions*, 8:13–20, 1988, confirm that industry-supported scientific and educational activities propose a commercial transaction. Doctors Bowman and Pearle analyzed the drug prescribing patterns of physicians attending three different continuing medical education (CME) courses, each of which was subsidized heavily by a single, but different drug company. The course topics were directly related to a set of similar drugs from the same class. Immediately prior to and 6 months after each course, the physician attendees were asked to identify the frequency of prescriptions written for the set of drugs. Despite the presumed independence of CME course content, in all three courses the rate of prescribing for the drug of the sponsoring company increased the greatest in absolute terms, while prescribing rates for the other drugs discussed in the program either decreased or did not increase as much. Thus, company funding of such programs does appear to influence physicians' drug prescribing behavior in favor of the sponsoring company's product. (See also Jerry Avorn, Milton Chen, and Robert Hartley, "Scientific and Commercial Sources of Influence on the Prescribing Behavior of Physicians," *American Journal of Medicine*, 73:4–8, 1982 (demonstrating that commercial sources have greater influence over prescribing behavior than scientific sources of information); Robert S. Stern, "Drug Promotion for an Unlabeled Indication—The Case of Topical Tretinoin," *New England Journal of Medicine*," 331:1348–1349, 1994 (demonstrating that reports of company-sponsored studies and promotional efforts, including symposia, were associated with a large increase in prescribing for an unapproved indication).)

Thus, if industry-supported scientific and educational activities constitute protected speech, that speech is "commercial speech" for purposes of constitutional analysis.

3. The Central Hudson Analysis

Over the past few decades, the Supreme Court has afforded commercial speech limited constitutional protection (*Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 96 S.Ct. 1817 (1976); *Central Hudson*, 100 S.Ct. at 2343; *44 Liquormart, Inc.* v. *Rhode Island*, 116 S.Ct. 1496 (1996)). In *Central Hudson*, the Supreme Court established a four-prong test to determine whether limitations on commercial speech are constitutional. The test inquires: (1) Whether the speech concerns lawful activity and is not misleading; (2) whether the asserted government interest is substantial; (3) whether the limitation directly advances the governmental interest asserted; and (4) whether the limitation is not more extensive than is necessary to serve that interest (*Central Hudson*, 100 S.Ct. at 2351). Subsequently, in *S.U.N.Y.* v. *Fox*, 109 S.Ct. 3028 (1989), the Court clarified that the fourth prong of the *Central Hudson* test is not a "least restrictive means" requirement; rather it requires that the restriction be "narrowly tailored" to serve the asserted government interest. Narrow tailoring means "a fit that is not necessarily perfect, but reasonable" between means and ends (*Id.* at 3035).

FDA's guidance on industry-supported scientific and educational activities satisfies all four prongs of the *Central Hudson* test.

a. The first prong. Commercial speech that is false or misleading, or that concerns illegal activity, is not protected by the First Amendment and may be banned (*Zauderer* v. *Office of Disciplinary Counsel*, 105 S.Ct. 2265, 2275 (1985); *Ibanez* v. *Board of Accountancy*, 114 S.Ct. 2084, 2088 (1994)). Commercial speech is misleading when it is either inherently likely to deceive or when experience has shown that the speech has in fact been deceptive (In *Re R.M.J.*, 102 S.Ct. 929, 937 (1982)). Regulation of commercial speech that is not misleading, or that is only potentially misleading, must satisfy the remaining prongs of the *Central Hudson* test.

As previously discussed, industry-supported scientific and educational activities that promote an unapproved product, or promote an approved product for an unapproved use, create an unlawful product—a misbranded or adulterated drug or device. Accordingly, industry-supported activities that promote unlawful products "concern illegal activity" and may be prohibited.

Although FDA believes that most industry-supported scientific and educational activities are not inherently misleading, they are clearly potentially misleading. The potential to mislead the listener (a health care professional) at such an activity is heightened because the listener must not only determine whether the information presented is scientifically sound, but also whether, or to what extent, the supporting company has influenced the presentation.

Evidence of bias in the content of industry-supported CME programs was demonstrated in a study conducted by Marjorie A. Bowman. Dr. Bowman analyzed the content of two CME programs on calcium channel blocker drugs (approved for treating high blood preasure) that were funded by different drug companies. In each case, the program speakers mentioned positive effects more often in connection with the sponsoring company's drug and negative effects more often with competitors' drugs.[4] A second study that analyzed the publication of industry-sponsored symposia in medical journals concluded that the symposia were promotional in nature and not peer-reviewed, and those that were sponsored by single pharmaceutical companies focused on single drug products, had misleading titles, and featured unapproved drugs.[5] Additionally, there are numerous reports in the medical literature describing deceptive practices in the design and delivery of industry-supported symposia. See e.g., Robert C. Noble, "Physicians and the Pharmaceutical Industry: An Alliance with Unhealthy Aspects," *36 Perspectives in Biology and Medicine* 376–394 (Spring 1993); "Pushing Drugs to Doctors," *Consumer Reports*, 57:87, Feb. 1992 (reporting on drug industry marketing practices that mislead doctors).

The potential to present misleading information at industry-supported activities is a particular concern when unapproved uses are addressed. Usually, unapproved uses have not been vigorously evaluated, or if they have been studied, the results are inconclusive. Thus, unapproved uses tend to lack the same degree of certainty and confidence as FDA approved uses. In fact, the data that can identify risks associated with the unapproved use often do not exist, and therefore complete information about the risks of the new use cannot be provided. This lack of data, of course, does not make all discussions about unapproved uses misleading. However, it is important that the audience understand the limitations on data supporting unapproved uses. The disclosure of such limitations, as recommended in the Final Guidance, will help ensure that the audience understands the uncertainty associated with unapproved uses and not be misled into thinking that such uses are safe and effective.

b. The second prong. FDA's guidance on industry-supported scientific and educational activities serves the substantial Government interest of protecting the health and safety of its citizens by helping to ensure the dissemination of truthful and nonmisleading information about drugs and medical devices. The Supreme Court has repeatedly held that the Government's "interest in the health, safety, and welfare of its citizens constitutes a substantial interest" (*Posadas de Puerto Rico Associates* v. *Tourism Co.*, 106 S.Ct. 2968, 2977

[3] Senate Labor and Human Resources Committee, Congressional Research Service, Survey of selected pharmaceutical firms, Washington, DC, Government Printing Office, 1991.

[4] Marjorie A. Bowman, "The Impact of Drug Company Funding on the Content of Continuing Medical Education," *Mobius*, 6:66–69, January 1986.

[5] Lisa Bero, Alison Galbraith, and Drummond Rennie, "The Publication of Sponsored Symposiums in Medical Journals," *New England Journal of Medicine*, 327:1135–1140, 1992.

(1986); *Rubin* v. *Coors*, 115 S.Ct. 1585, 1591 (1995)).

In order to protect and promote the public health, Congress granted FDA broad statutory authority to ensure that promotional activities (labeling and advertising) for drugs and devices are truthful and not misleading. Section 502(a) of the act provides that a drug or device is deemed to be misbranded if its labeling is false or misleading in any particular, and under section 502(q) of the act a restricted medical device is misbranded if its advertising is false or misleading in any particular. A prescription drug is misbranded under section 502(n) of the act unless the manufacturer, packer, or distributor includes in all advertisements with respect to that drug, "a true statement of * * * information in brief summary relating to side effects, contraindications, and effectiveness * * *."[6] Similarly, a restricted device is misbranded under section 502(r) of the act unless the manufacturer, packer, or distributor includes in all advertisements with respect to that device, "a true statement of * * * the intended uses of the device and relevant warnings, precautions, side effects, and contraindications * * *." Moreover, section 201(n) of the act specifically explains that if an article is alleged to be misbranded because the labeling or advertising is misleading, there shall be taken into account not only representations or suggestions made in the labeling or advertising, but also the extent to which the labeling or advertising fails to reveal material facts. The dissemination of false or misleading information about drugs and devices can induce physicians to choose therapies that deprive patients of reliable treatment and cause severe morbidity, life-threatening adverse effects, or death.

FDA's guidance also serves to protect the public health by preserving the integrity of the premarket approval process, a second substantial government interest. As explained earlier, by enacting the act, Congress established a premarket approval and clearance process whereby manufacturers must establish that their drugs and devices are safe and effective for each of their intended uses before they can be marketed and promoted for those uses. Manufacturers of drugs and devices are not permitted to promote unapproved products or unapproved uses of approved products, either directly or indirectly, such as through industry-supported scientific and educational activities. This regulatory requirement is an important incentive for manufacturers to conduct studies to determine whether their products are safe and effective. If premarket approval were not required for each intended use and manufacturers were free to promote products for any use, manufacturers would have little reason to do scientific research and to present their data to FDA. Additionally, it is important to note that the approval of a drug or device for one use does not provide assurance that the product is safe or effective for a different use or use in a different patient population. Consequently, the promotion of unapproved uses raises significant safety concerns, which are more fully discussed below.

c. The third prong. FDA's guidance on industry-supported scientific and educational activities directly advances the government's substantial interests. "[A] governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree" (*Edenfield* v. *Fane*, 113 S.Ct. 1792, 1800 (1993)).

FDA's guidance directly advances the Government's interest of protecting the health and safety of its citizens by helping to ensure the dissemination of truthful and nonmisleading information about drugs and devices. The guidance includes a number of suggestions on the design and conduct of industry-supported scientific and educational activities so that they will be free from the promotional influence of the supporting company and not misleading. Such suggestions include, for example, meaningful disclosure of the company's funding of the program and any significant relationship between the provider (an entity, other than a regulated company, that produces the activity or program), presenter, and supporting company; giving the provider full control over the content of the program and selection of speakers; avoiding involvement of the sales or marketing departments of the supporting company in audience selection decisions; and not having promotional activities in the meeting room. Industry-supported activities that are designed and carried out in this manner are less likely to result in the dissemination of false, misleading, or biased information that can adversely affect public health.

On a number of occasions, FDA has become aware of and taken action against industry-supported scientific and educational activities that were false or misleading, and that could have caused harm to patients. For example, a few years ago, agency staff viewed two videotaped presentations on treating gallstone disease that were broadcast nationwide on a cable television network intended for physicians. The videos were produced and paid for by a major drug company and prominently featured a drug marketed by the company for the chemical dissolution of certain gallstones. The programs encouraged doctors to prescribe this drug *instead* of surgery to treat gallstone disease. These representations and suggestions were false or misleading because: (1) The drug is approved only for dissolving certain types and sizes of gallstones in patients for whom surgery is not medically appropriate, or for patients who refuse surgery, and (2) surgery is more effective and is the preferred treatment for almost all patients with gallstone disease.

These industry-sponsored presentations could have caused many physicians to make inappropriate and potentially harmful treatment decisions. After FDA notified the sponsoring company that the programs were false or misleading, the company agreed to take appropriate corrective action.

In a more recent example, a major drug company sponsored a misleading symposium on cyclosporine drug products (approved to prevent organ rejection in kidney, liver, and heart transplant patients), held in conjunction with the annual meeting of the American Society of Transplant Physicians. The sponsoring company's "pioneer" (nongeneric) cyclosporine drug product was about to lose patent protection and face competition from lower-priced generic cyclosporine products at the time of the symposium.

An investigation by FDA revealed that the sponsoring company and its agent specifically requested that one invited speaker revise his abstract to remove any references to the impending availability of generic cyclosporine products, to delete or revise sections of text that did not support switching stable patients to the sponsoring company's product, and to make other revisions to his presentation. Despite the speaker's insistence on including his abstract as originally written, the sponsoring company again asked the speaker to revise his abstract and presentation. When the speaker again refused to revise his abstract, it was not included in the program materials disseminated during the symposium.

The sponsoring company's actions to control the content of the symposium resulted in a misleading presentation in that: (1) The sponsoring company implied that the speakers were speaking without editorial input or influence from the sponsoring company, and (2) the sponsoring company foreclosed a full discussion of all cyclosporine drug products. The sponsoring company's efforts undermined the unbiased exchange of scientific information, may have caused physicians to unnecessarily switch stable patients to the company's product, and likely resulted in greater than necessary expenditures by patients. This might not have been the case had the sponsoring company, consistent with the agency's longstanding policy as articulated in the Draft Policy Statement, not influenced the content of the program.

FDA's guidance also directly advances the Government's interest of protecting the public health by preserving the integrity of the premarket approval process. The act requires sponsors to establish that their drugs and devices are safe and effective for their intended uses before they can be marketed and promoted. Consistent with this statutory scheme, FDA has consistently prohibited the promotion of unapproved products and unapproved uses of approved products. As explained earlier, this preserves the incentive for sponsors to conduct the adequate and well-controlled clinical investigations that are necessary to demonstrate whether products are safe and effective for each of their intended uses, and prevents patients from being exposed to unnecessary harms. There are, unfortunately, several examples of harms associated with the promotion of unapproved uses.

For example, several manufacturers of calcium channel blockers (drugs approved to treat a type of chest pain known as angina) attempted to promote these products for use in patients who had recently suffered heart attacks, called acute myocardial infarctions (post-AMI patients). The use of calcium channel blockers in post-AMI patients is not an approved use, and the agency successfully thwarted these promotional efforts. Many studies of post-AMI calcium channel blocker use have failed to show benefits, and some studies suggest that they may cause harm, particularly in patients with poor heart function. Given the many patients who suffer an AMI each year, the loss of life could have been in the thousands if the manufacturers had promoted this use.

In another example, certain approved anti-arrhythmic drugs were illegally promoted for unapproved uses in post-AMI patients. Included in these promotional activities were industry-sponsored lectures, presentations, and other publicity events. Use of anti-arrhythmic drugs for this unapproved use was substantial and growing until a clinical study (the CAST study) was conducted to evaluate definitively the safety and effectiveness of this use. The study produced a highly unexpected result in that the treatment with anti-arrhythmic drugs produced a 2.5-fold increase in mortality. It is estimated that tens of thousands of deaths were associated with this unapproved use.[7]

More detailed information on the preceding examples and additional examples involving drugs, biologics, and devices are contained in an FDA **Federal Register** notice requesting comments on a citizen petition submitted by the Washington Legal Foundation (see 59 FR 59820, November 18, 1994).

FDA's guidance on industry-supported scientific and educational activities protects the integrity of the premarket approval process because it dissuades manufacturers from using such activities as a means to promote unapproved products and unapproved uses; thereby encouraging scientific research and eliminating unnecessary harms to patients. At the same time, however, the agency acknowledges that drug and device manufacturers have an important role in legitimate scientific and educational discussions, including discussions of unapproved products and unapproved uses. Accordingly, the guidance recognizes that discussions of unapproved uses at industry-sponsored activities may be appropriate, and suggests that the provider include a general disclosure to the audience as to whether any unapproved uses will be discussed. This disclosure accommodates the need for industry-supported discussion on unapproved uses, yet helps ensure that the information presented is not misleading so as to be misconstrued as discussion of an approved use.

d. The fourth prong. The agency believes that the guidance is "narrowly tailored" and a reasonable approach to protect the health and safety of consumers by discouraging the dissemination of misleading or biased information, and by maintaining the integrity of the premarket approval process. The "Factors Considered in Evaluating Activities and Determining Independence," in section II.A. of the Final Guidance, are "reasonable means" of distinguishing industry-supported activities that are intended to be promotional from those that are intended to be nonpromotional and free from the supporting company's influence and bias.

The Supreme Court has expressed a willingness to defer the fourth-prong determination to the regulating body. (See *Fox*, 109 S.Ct. at 3035; *United States* v. *Edge Broadcasting Co.*, 113 S.Ct. 2696, 2707 (1993).) Since *Fox*, the Court has applied the "reasonable fit" standard to uphold the regulation of commercial speech. (See *Edge*, 113 S.Ct. at 2705; *Florida Bar* v. *Went For It, Inc.*, 115 S.Ct. 2371, 2380 (1995).) Moreover, the courts have granted greater leeway and upheld reasonable regulation of commercial speech with regard to potentially harmful activities. (See *Edge*, 113 S.Ct. 2696 (upholding Federal prohibition of lottery advertising on radio in nonlottery State); *Anheuser-Busch, Inc.* v. *Schmoke*, 63 F.3d 1305 (4th Cir. 1995), *cert. denied*, 65 U.S.L.W. 3723 (April 28, 1997) (No. 96–1428) (upholding restrictions on outdoor advertising of alcoholic beverages); *Penn Advertising of Baltimore, Inc.* v. *Mayor and City Council of Baltimore*, 63 F.3d 1318 (4th Cir. 1995), *cert. denied*, 65 U.S.L.W. 3723 (April 28, 1997) (No. 96–1428) (upholding restrictions on outdoor advertising of cigarettes).) Certainly, with regard to the regulation of potentially dangerous drugs and medical devices, FDA is entitled to the same, if not greater, deference.

FDA's guidance on industry-supported scientific and educational activities is narrowly tailored. The guidance applies only to those industry-supported activities that relate to the supporting-company's product(s) or to competing product(s). It is directed to the regulated sponsors of such activities (drug and device manufacturers) rather than the participating professionals. It does not apply at all to independent scientists and organizations (e.g., universities, medical societies, professional groups), which may freely participate in or sponsor scientific or educational activities. Additionally, the agency has made clear that it does not seek to regulate all industry-supported scientific and educational activities under the labeling and advertising provisions of the Act. As explained in the guidance, FDA has not regulated and does not intend to regulate industry-supported activities that are

[6] The prescription drug advertising regulations, issued under section 502(n) of the act, provide that an advertisement does not satisfy the requirement that it present a "true statement" of information in brief summary if it is false or misleading with respect to side effects, contraindications, or effectiveness (see 21 CFR 202.1(e)(5)(i)). In addition, the regulations list 33 ways in which prescription drug advertisements may be false or misleading (see 21 CFR 202.1(e)(6) and (e)(7)).

[7] *More Information for Better Patient Care: Hearing on S. 1477 Before the Senate Comm. on Labor and Human Resources*, 104th Cong. 51, 78–79 (1996) (statement of Thomas J. Moore, Senior Fellow, Center for Health Policy Research, George Washington University).

independent of the promotional influence of the supporting company.

The Final Guidance suggests that the provider ensure:

[M]eaningful disclosure, at the time of the program, to the audience of: (1) the company's funding of the program; (2) any significant relationship between the provider, presenters or moderators, and the supporting company (e.g., employee, grant recipient, owner of significant interest or stock); and (3) whether any unapproved uses of products will be discussed.

These disclosures are fully consistent with the First Amendment. (See *Virginia Board of Pharmacy*, 96 S.Ct. at 1830 n. 24 ("They may also make it appropriate to require that a commercial message appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive."); In *Re R.M.J.*, 102 S.Ct. at 926 ("a warning or disclaimer might be appropriately required * * * in order to dissipate the possibility of consumer confusion or deception."); Zauderer, 105 S.Ct at 2282 and n.14 (holding that disclosure requirements do not violate the First Amendment as long as they are reasonably related to the state's interest in preventing deception, and indicating that disclosure requirements are one of the acceptable less restrictive alternatives to actual suppression of speech).)

The agency's suggested disclosures are reasonably related to ensuring that the audience is in a position to fully evaluate the information presented, in order to avoid being misled, confused, or deceived. The guidance suggests that the disclosures be "meaningful" and "to the audience." It does not specify how or when during the activity the disclosures should be delivered, or what should be said. Furthermore, as explained previously, the guidance suggests that the provider disclose whether any unapproved uses of products will be discussed. It recognizes that discussions of unapproved uses may be appropriate.

Finally, in response to comments, the agency made revisions to the Draft Policy Statement (reflected in the Final Guidance) that are additional evidence of "narrow-tailoring." The most significant change was to place less emphasis on the elements of a written agreement between the supporting company and the provider, and instead provide guidance on what the agency will consider in evaluating activities and determining independence (Factors Considered in Evaluating Activities and Determining Independence). The Final Guidance makes clear that the list of factors is not exhaustive and that other factors may be appropriate for consideration in a particular case. The supporting company and the provider are free to adopt alternative approaches to help ensure that activities are independent and nonpromotional.

4. Conclusion

FDA strongly believes that the Draft Policy Statement and the Final Guidance on Industry-Supported Scientific and Educational Activities do not abridge the First Amendment because the agency's ability to regulate such activities is essential to the regulation of drugs and devices, and the regulation of drugs and devices is an area of extensive Federal regulation. If however, such activities are considered protected speech, they are commercial speech. The guidance satisfies all prongs of the *Central-Hudson* test, and thus, does not violate the First Amendment.

C. Scope

4. Several comments from the medical device industry argued that medical devices should be exempt from the policy. Some comments recommended, in the alternative, that there be a separate policy specific to medical devices. They argued that the policy initiative resulted from an effort to address abuses in the pharmaceutical industry, and that such abuses are not characteristic of the educational programs supported by medical device companies. Moreover, they maintained that educational programs for devices are more in the nature of hands-on training programs and thus present unique issues that would make compliance with a number of provisions of the draft policy statement (e.g., multiple presentations, audience selection) impractical or impossible.

The agency declines to exempt medical devices from the final guidance. The statutory concepts of labeling, advertising, and intended use do not differ for drugs and medical devices. "Hands-on" training sessions sponsored by device manufacturers are inherently product-specific and generally do not fall within the description of independent and nonpromotional educational programs that are contemplated by the final guidance. Training provided or supported by device manufacturers related to labeled uses would present no difficulty for the sponsor. Industry-supported training for off-label uses, however, will ordinarily be viewed by the agency as violative of the act.

5. Several comments from the animal drug industry and the veterinary community contended that animal drugs should be exempt from the policy. They argued that the animal drug industry is not prone to the same abuses as the human drug industry, that the process by which continuing education programs are provided to veterinarians is not comparable to the process by which continuing education is provided to other health care professionals, and that the administrative burdens and resulting expense imposed by the policy would restrict the availability of educational programs for veterinarians.

The agency acknowledges that the processes by which continuing education is provided for veterinary health care professionals differs in many ways from continuing education for other health care professionals. Nevertheless, the basic principles embodied in the final guidance, the importance of independence, disclosure, and educational design and intent apply to veterinary continuing medical education just as they apply to other industry-sponsored professional education.

6. Several comments addressed the scope of activities that are affected by the policy. Some comments contended that the scope of the policy has been appropriately narrowed to scientific and educational activities directed to health care professionals. They supported the exclusion of activities directed at business, policy, or other nonhealth care professional groups. Other comments argued that the scope should be narrowed further to encompass only those industry-supported educational activities directed to health care professionals who are involved in prescribing or administering regulated products. Several comments expressed concern that the scope of activities to which the policy applies, beyond live presentations, is unclear. They expressed concern about the extent to which the policy applies to presentations in electronic and other media. They contended that the policy should set forth the limitations of its application and, moreover, should expressly exempt written materials from the scope of its application.

Although this final guidance is intended to address industry-supported scientific and educational activities directed to health care professionals, the agency anticipates that presentations to other audiences may lend themselves to the principles described in this final guidance. It is understood that a large majority of health care professionals participate in the diagnostic and therapeutic management of patients and are, therefore, in a position to either prescribe, influence prescribing, or monitor the effectiveness of regulated medical products. Information presented at continuing education programs may have a significant impact on these health care professionals.

There is no basis for applying a substantially different policy to industry-supported educational or scientific activities that are broadcast, electronically recorded, or disseminated via other emerging media.

7. One comment requested that the agency clarify that the policy applies generally to continuing medical education and also to industry-supported educational activities directed to health care professionals. The comment was concerned that the reference to continuing medical education, in the first sentence of the first paragraph of the background section of the draft policy statement, suggests that the scope of the policy may be limited to continuing medical education.

The agency agrees with the comment and has revised the language to refer to "continuing education for health care professionals."

8. One comment was concerned that the language in the background section of the draft policy statement implies that only independent activities, as described in the draft policy statement, can be considered educational activities. The comment stated that accredited educational activities that are not free from company influence, yet *not* inconsistent with approved labeling for any company product discussed, will no longer be regarded as legitimate educational activities.

The final guidance is not intended to distinguish between education and promotion and does not suggest that company influenced activities are illegitimate or noneducational. To clarify this intent, FDA has added a sentence to the background section, which states that the agency recognizes that industry-supported activities can be both nonpromotional and educational. The final guidance is intended to distinguish between industry-supported activities that the agency does not intend to regulate because they are otherwise independent of company influence and those that are subject to regulation because of the substantive influence of the supporting company. Company-influenced activities that provide information to health care professionals on regulated products may be educational in nature. They are, nevertheless, subject to regulation and, thus, must be consistent with approved labeling.

9. Some comments were concerned that the policy narrows or eliminates the ability of companies to engage in scientific exchange as provided for in § 312.7(a) (21 CFR 312.7(a)) (human drugs) and § 511.1(b)(8)(iv) (21 CFR 511.1(b)(8)(iv)) (animal drugs). The comments contended that the draft policy statement seems to subject company-controlled scientific exchange to regulation because it is not an independent activity. They contended that appropriate company-controlled scientific exchange should be expressly exempted from regulation in the policy.

This final guidance seeks to clarify the distinction between the concepts of promotion/commercialization and industry-supported scientific exchange set forth in §§ 312.7(a) (human drugs) and 511.1(b)(8)(iv) (animal drugs). Programs supported by companies that are not otherwise independent scientific or educational activities are subject to regulation as product promotion/commercialization.

10. Several comments contended that the policy is fundamentally flawed in that it institutionalizes industry support for continuing education activities for health care professionals. One comment argued that part of the definition of continuing medical education should be that it is nonsubsidized. Other comments recommended that the agency encourage multiple-source funding for educational activities to minimize the potential for bias as the policy may not be adequate to prevent the subtle bias inherent in a single sponsor situation.

The "institutionalization" of industry support for continuing education predates the agency's draft policy statement. The agency has sought to avoid, through its policy, undue interference with the availability of continuing education. Although FDA shares the concerns of some health care professionals that substantial reliance on industry funding may result in bias in continuing education, such should be addressed by the profession rather than by the agency. Although enlisting multiple sponsors would likely reduce the potential for bias toward any one product, the agency believes that this approach may not be practical, in all instances, for all FDA-regulated products.

D. Background: Promotion, Education, and Independence

11. Some comments objected to language in the background section of the draft policy statement indicating that, in assessing whether an industry-supported activity is independent, the agency will examine whether and to what extent the company "is in a position to influence" the presentation. They contended that the correct inquiry is whether a company has actually influenced a presentation, not whether a company was in a position to influence the presentation.

The agency cannot, in all cases, presume a provider to be independent merely because there is no documented attempt by the supporting company to influence the program. Business relationships or other relationships may influence a provider. A provider whose continued existence depends on the funding and goodwill of a supporting company may, for practical purposes, be in the same position as a company employee, who depends on his or her salary. Whether or not a company is in a position to influence the presentation is important in determining whether the activity is independent.

12. One comment objected to the first sentence of the fifth paragraph to the background section of the draft policy statement; this sentence indicated that, in assessing whether an activity is independent, the agency will examine whether and to what extent the company is in a position to "otherwise use the presentation as an advertising vehicle." The comment contended that this language is ambiguous as to what might cause the agency to conclude that a supporting company has otherwise used a presentation as an advertising vehicle.

The agency agrees that clarification may be helpful. Accordingly, FDA has revised the text to state that the agency will examine whether and to what extent the company is in a position to "otherwise transform an ostensibly independent program into a promotional vehicle."

13. One comment suggested that the example provided in the parenthetical statement in the fifth paragraph to the background section of the draft policy statement (57 FR 56412 at 56413) be changed from "if the provider believes that future financial support from the company depends upon producing programs that promote the company's product" to "if the provider *has reason to believe* * * *."

The agency agrees with the suggested change and has revised that section of the final guidance accordingly.

E. Policy: Scientific and Educational Activities Supported by Industry

The draft policy statement, in discussing FDA policy generally, stated that the agency "has not regulated and does not intend to regulate under the labeling and advertising provisions of the act industry-supported scientific and educational activities that are independent of the influence of the supporting company" (57 FR 56412 at 56413). The agency further stated that

"companies and providers who wish to ensure that their activities will not be subject to regulation should design and carry out their activities based on a written agreement * * * that the provider will be solely responsible for designing and conducting the activity * * *."

14. Some comments contended that to make the provider solely responsible for design and conduct of an educational activity excessively restricts supporting company involvement. They suggested revising the text to make the provider "ultimately" responsible for design and conduct of an educational activity.

In order to maintain the concept of independence described in this final guidance, it is important to retain the concept of provider "sole responsibility" for the design and conduct of the activity. This guidance is not designed to restrict companies from continuing to provide programs for health care professionals, but to distinguish between activities that are otherwise independent from the promotional influence of the supporting company and those that are not. A provider who merely adopts a company-designed presentation has not functioned as a truly independent educational provider.

1. Written Agreement—Generally

Although the draft policy statement did not require a written agreement, it did state that a written agreement can "play an important role in helping to ensure that an industry-sponsored activity comes within the safe harbor traditionally recognized by the agency for independent scientific and educational activities" (57 FR 56412 at 56413). The draft policy statement also described 10 elements the agency would anticipate in such written agreement.

As discussed in comment 15 of section II.E.1. of this document, the final guidance was modified to place less emphasis on a written agreement, but states that a written agreement is one way to document what measures were taken by the parties to maintain the independence of an activity.

15. Several comments suggested that a written agreement between the provider and supporting company was required and overly burdensome, both substantively and administratively. These comments identified a number of possible consequences including, foremost, that the written agreement would function as a disincentive for industry to support continuing education, resulting in fewer and lower quality educational activities. Several comments objected to the written agreement in general as overly restrictive and intrusive, containing too many elements, unwieldy, and/or impractical. The comments suggested, among other things, that there should be no requirement at all, that the agreement should provide only that the provider exercises final control and that the agreement should provide only that the program be objective, balanced, and scientifically rigorous, and that there be disclosure with all other details left to the parties. Other comments recommended that the agency develop a "generic" written agreement, or alternatively, provide guidance to national accrediting organizations as to the content of acceptable standardized written agreements. Still other comments were supportive of the concept of a written agreement, did not anticipate that written agreements would be unduly burdensome, and moreover, maintained that the written agreement would improve the process of developing meaningful educational activities. Some comments suggested that, for their purposes, the fact that clear guidance, which distinguishes regulated from nonregulated activities exists, may be more important than what the guidance actually contains. The comments complained that the lack of guidance, and resulting uncertainty as to the regulatory consequences of industry support for scientific and educational activities, have made industry reluctant to provide support for these activities.

As noted earlier, the agency has clarified its intention that a written agreement between the supporting company and the provider is recommended, and *not* required. The final guidance recognizes that a written agreement is one way of documenting the measures taken by the provider and the supporting company to ensure independence of an activity. The agency does not anticipate that a written agreement would be an undue burden for any of the parties involved in continuing education for health care professionals. Moreover, the agency anticipates that such agreements will enhance, rather than detract from, the quality of industry-supported educational activities.

16. One comment contended that failure to abide by the terms of a written agreement should subject the parties to additional penalties beyond those currently provided for in the act.

The agency believes that its existing statutory authority is sufficient to address industry-supported activities that are subject to regulation and may be violative.

2. Statement of Purpose

The draft policy statement's "Statement of Purpose" section (section II.A.1.) advised that the company and the provider should agree that the program "is for scientific or educational purposes and not for the purpose of promoting any product and that any discussion of the company's products will be objective, balanced and scientifically rigorous" (57 FR 56412 at 56413).

FDA has deleted the "Statement of Purpose" section because the elements of a written agreement are no longer described in the final guidance.

3. Control of Content/Selection of Presenters

The draft policy statement stated that the provider would be responsible for exercising full control over the planning of the program's content, including the selection of presenters and moderators. The draft policy statement indicated that companies should "play no role in the selection of presenters or moderators other than responding to provider requests" for such persons, but that companies could make unsolicited suggestions of speakers to "nationally recognized accrediting organizations that compile lists of speakers * * *" (57 FR 56412 at 56413). The draft policy statement specified further details regarding requests for speakers, such as having companies agree to provide, where reasonably possible, the names of more than one suggested presenter and to "disclose all known significant financial and other relationships between the company and suggested presenter." The draft policy statement stated that providers should agree to seek suggestions for presenters from sources other than the company, to make independent judgments on appropriate presenters, and to select presenters "representing an appropriate diversity of legitimate medical opinion on the topic under discussion when the format permits * * *" (57 FR 56412 at 56413). Additionally, the draft policy statement stated that providers should agree to disclose whether a presenter was suggested by the company. The final guidance includes a factor concerning "Control of Content and Selection of Presenters and Moderators" (section II.A.), which contains most of the concepts described in the draft policy statement.

17. Several comments objected to the provision in the draft policy statement concerning presenters suggested by the supporting company. The comments objected in particular to the statement that the provider agrees to disclose when it has selected a presenter suggested by the supporting company. These comments contended that such disclosure is unnecessary because it unfairly raises the specter of bias as to that presenter and, moreover, the "Disclosure of Financial Relationships" element of the draft policy statement (section II.A.3.) provides for adequate disclosure of any significant relationship between the presenter and the supporting company. Other comments contended that the supporting company should under no circumstances be permitted to suggest presenters.

As stated in the draft policy statement, there is a perceived need on the part of some providers for assistance from supporting companies in identifying appropriate speakers. The agency is unwilling, at this time, to infer undue influence by the supporting company if it responds to a request from such a provider. Health care professionals are entitled to know the nature of any involvement by supporting companies in educational efforts. However, the agency agrees with the comment that disclosure of any significant relationship between the provider, supporting company, and presenters or moderators would be sufficient. The possibility of unwarranted bias against presenters suggested by industry should be dealt with in the open environment of scientific exchange. Accordingly, the final guidance does not address specific disclosure of the supporting company's suggestions for speakers or moderators.

18. Some comments objected to the statement that a supporting company, when responding to a provider request for suggestions of presenters, agree to disclose all known significant financial and other relationships between the suggested presenter and the supporting company. They argued that this provision is burdensome and redundant in light of the disclosure obligation in the "Disclosure of Financial Relationships" section of the draft policy statement (section II.A.3.).

The agency believes that a presenter's significant relationships with a supporting company are, like a presenter's qualifications, essential to a provider's informed decision as to the appropriateness of a suggested presenter. Although the final guidance does not specifically state that the agency will consider whether the supporting company disclosed such relationships, it is suggested that this type of disclosure be made.

The agency does not agree that this disclosure is redundant with the "Disclosures" section of the final guidance (section II.A.) because the two provisions serve different purposes. The disclosure made by the supporting company when suggesting a speaker is to assist the provider in evaluating the appropriateness of the suggestion. The "Disclosures" section of the final guidance is to inform the audience, at the time of the program, of the presenter's relationship with the supporting company in order to provide the audience a perspective from which to evaluate the information conveyed by the presenter. The agency does not view the supporting company's disclosure when suggesting a presenter as more comprehensive than the disclosure to the audience in the "Disclosures" section.

4. Disclosure of Financial Relationships

The draft policy statement suggested that, as part of the written agreement, the provider agrees to "ensure meaningful disclosure" of the company's funding of the activity and "any significant relationship between the provider and the company and between individual presenters or moderators and the company * * *" (57 FR 56412 at 56413). In the final guidance, this provision is incorporated in the general "Disclosures" section.

19. Several comments sought clarification as to what is meant by "meaningful" disclosure and "significant" relationships. Several comments also contended that this provision is an administrative burden, and that it places a disproportionate burden on the provider, as opposed to the supporting company and presenters.

Significant relationships are relationships that may give rise to actual or perceived conflicts of interest. The concept of disclosure of relationships that may give rise to conflicts of interest has specific and well-understood application to medical and scientific discourse (e.g., in publication and in the peer-review process). The agency envisions that this provision can be satisfied by disclosing the existence of and characterizing significant relationships, and need not include further detail such as the amount of compensation or funding received. Thus, this disclosure should impose only a minimal burden on providers, presenters, and supporting companies. Where there is a question as to whether a relationship is significant, providers, presenters, and supporting companies should disclose the existence of the relationship.

Meaningful disclosure is disclosure that is reasonably calculated to reach the relevant audience in a manner that will alert them to potential biases. The provider should determine how to ensure that disclosure is meaningful.

20. One comment contended that significant relationships between the supporting company and providers and presenters should preclude any characterization of the activity as an independent educational activity inasmuch as disclosure is not adequate to cure the taint of influence.

It is neither practical nor justified to make a potential conflict of interest an absolute bar to participation in an independent educational activity. Disclosure of such potential conflicts is a workable means to address the potential for bias in medical and scientific contexts, and there is no reason to believe that it will be any less workable in addressing the potential for bias in the context of industry-supported scientific and educational activities.

21. Another comment argued that disclosure is the only element of the written agreement that should be retained, that company involvement should be permitted, and that it should be left to the judgment of the audience as to how to evaluate the content of the program.

While disclosure may be deemed by some in the health care profession a proper solution to concerns about bias, the agency's concerns are not wholly satisfied by disclosure. Under the act, the regulated industry cannot promote its products for unapproved uses, or otherwise promote drugs, biologics, or medical devices in ways not consistent with approved labeling, even in the context of unbiased presentations in which the company's role is fully disclosed. Discussions of unapproved uses, or other matters not consistent with approved labeling, should occur in a context of independent scientific or educational activity produced by organizations and individuals who are not involved in marketing the products. Thus, disclosure alone is not adequate to ensure independence in industry-supported scientific and educational activities as it does not insulate such activities from the substantive influence of supporting companies.

5. Supporting Company Involvement in Content

The draft policy statement suggested, as part of the written agreement, that a company agree not to engage in scripting, targeting of points for emphasis, or other activities that are designed to influence a program's content. The draft policy statement indicated, however, that companies could provide "limited technical assistance * * * in preparing slides or

audiovisual materials * * *" (57 FR 56412 at 56413). In the final guidance, this discussion is included in the "Control of Content and Selection of Presenters and Moderators" factor. Although discussion regarding "limited technical assistance" is not included in the final guidance, as discussed in the response to comment 22 of section II.E.5. of this document, technical assistance is a concern.

22. Several comments recommended that the agency more clearly define the limits of permissible technical assistance. Some comments argued that the policy should preclude all technical assistance, as to permit such assistance opens the door to influence. Other comments raised concerns that the policy is overly restrictive as to technical assistance in which supporting companies may engage. Several comments argued that supporting companies should be allowed to script, target points for emphasis, and provide unlimited technical assistance so long as such influence does not unfairly bias the program.

The agency continues to believe that the supporting company should not engage in activities that could influence the presentation's content. Activities such as scripting and targeting points for emphasis can have a direct effect on the presentation's direction, balance, and overall message. A company-designed and financed presentation, even if approved by an independent provider, remains, in the agency's view, an activity that is not independent.

In addition, because the agency shares the concern that technical assistance may open the door to influence, the agency suggests that the supporting company should provide limited technical support only in response to an unsolicited request for assistance from either the provider or a presenter.

6. Ancillary Promotional Activities

The draft policy statement indicated that the written agreement should include an agreement by supporting companies to not have any promotional activities or promotional exhibits "in the same room or in an obligate path to the educational activity, unless the exhibit is within an area that is designated for general exhibits and includes exhibits from different companies marketing alternative or competing therapies." Additionally, providers would agree that no advertisements for the supporting company's products would appear in any materials disseminated in the program room (57 FR 56412 at 56413). The final guidance states that one factor the agency will consider is whether there are promotional activities in the meeting room.

23. Many comments were concerned about the scope of this element on ancillary promotional activities by supporting companies, specifically the language on promotional activities occurring in an obligate path to the educational activity. These comments asserted that this aspect of the policy was, in general, unduly restrictive; contrary to the normal practice of placing exhibits in advantageous locations; it would have a disproportionate effect on smaller, sole-sponsored, local meetings to the extent that it may make supporting companies reluctant to fund local continuing education activities; and it placed FDA, inappropriately, in the position of influencing meeting facility layout, including routes of ingress and egress into meeting facilities. As a consequence, the comments argued that certain facilities would become more or less attractive venues for educational activities on the basis of physical layout alone. One comment contended that the discussion regarding ancillary promotional activities is overly permissive and blurs the distinction between independence and promotion, which the comment viewed as contrary to the stated purpose of the policy. Another comment argued that the close juxtaposition of an independent educational activity and a promotional activity may sharpen rather than blur the desired distinction.

The agency is persuaded that the language in the draft policy statement regarding promotional activities in an obligate path to the educational activity should be deleted from the final guidance. This provision is problematic in that its application may turn on the physical layout of a building, and thus may favor certain facilities and providers. Moreover, the agency is not convinced that this is necessary to preserve the distinction between an independent educational activity and a promotional activity. The agency gives some credence to one comment's observation that the close juxtaposition of an independent educational activity and a promotional activity may be as likely to sharpen as to blur the desired distinction between independent and promotional activities. Because its contribution to preserving the distinction between an independent activity and a promotional activity is uncertain, there is not adequate justification for this provision in light of its differential impact on affected parties. Consequently, the final guidance has been revised to suggest that ancillary promotional activities should not take place in the actual meeting room.

24. Several comments interpreted the draft policy statement as precluding a sole exhibitor from having a promotional exhibit at either a sole or multi-sponsored educational activity. The comments objected that this would cause the issue to turn on whether other exhibitors chose to exhibit.

These comments misinterpret the draft policy statement. The provision on ancillary promotion would not preclude sole exhibitors from exhibiting at either sole-sponsored or multi-sponsored programs. The final guidance, as revised, merely suggests that promotional activities (sole exhibitors or otherwise) not take place in the meeting room. Companies are otherwise free to exhibit at sole or multi-sponsored programs without threatening the independent status of the activity.

7. Objectivity and Balance and Limitations on Data

The draft policy statement contained two sections, entitled "Objectivity and Balance" and "Limitations on Data" as part of the suggested written agreement. Under "Objectivity and Balance" a provider would agree to take steps to ensure that data are objectively selected and presented, that both favorable and unfavorable information about a product are fairly represented, and that there is a "balanced discussion of the prevailing body of scientific information" about a product and reasonable, alternative treatment options. In "Limitations on Data" the provider would agree to have "meaningful disclosure" of any limitations or uncertainty on data. Neither of these elements are included as factors in the final guidance.

25. Several comments maintained that these two sections would place excessive regulatory burdens on providers because providers would be obliged to screen presentations in advance and would appear to be responsible for the behavior of presenters who are, to an extent, beyond the provider's control. Other comments argued that these sections are inconsistent with the concept of independence because they effectively regulate content in an ostensibly independent program in a manner similar to the fair balance requirement in FDA's advertising regulations. Some comments argued that these elements are necessarily subjective in practice and that, among other things, time limitations, venue, and educational objectives may influence the extent to which a program is considered balanced or discusses data limitations. Other comments maintained that these elements state only that which should reasonably be expected in legitimate, independent scientific discourse and thus are not appropriately the subject of a regulatory policy. They maintained that having these elements as part of the written agreement is paternalistic because it does not credit the audience with the intelligence and means to require objectivity and balance and to put presented data in its appropriate context. Still other comments supported these elements.

The agency is persuaded that these elements are not necessary to help ensure that sponsored programs are nonpromotional and independent of the supporting company's influence, and that there is adequate disclosure of relationships and information that is relevant to the audience's assessment of information presented. The agency is also persuaded that objectivity, balance, and disclosure of data limitations are commonly understood to be elements of typical, independent scientific discourse. The agency is convinced that these issues should be left to providers, presenters, and accreditors of educational activities and, therefore, these elements are not included as factors the agency will consider in determining independence.

8. Discussion of Unapproved Uses

The draft policy statement suggested that if unapproved uses are discussed, the written agreement include an agreement by the provider that presenters disclose that the product is not approved in the United States for the use under discussion. The final guidance states that the agency will consider whether there is meaningful disclosure, at the time of the program, to the audience of whether any unapproved uses of products will be discussed.

26. Several comments contended that this element is inconsistent with the concept of an independent program, burdensome, and would limit scientific exchange. Several comments added that the ultimate content of presentations is beyond the control of providers and that it would be cumbersome to flag discussion of unapproved products or uses throughout a program or presentation. Comments from the oncology community argued that this aspect of the written agreement would be especially burdensome for oncology educational programs because it would likely apply to the bulk of product uses discussed. One comment suggested using a general disclaimer in the program materials that not all products or product uses to be discussed are approved uses in the United States, rather than requiring presenters to specifically identify those unapproved uses.

The agency is persuaded that this disclosure, as presented in the draft policy statement, has the potential to be burdensome and unwieldy in practice, particularly in specialty areas where a high percentage of product use is for unapproved uses. Therefore, the final guidance does not include as a separate factor that providers have presenters disclose that a particular product or use is unapproved.

The agency, however, believes that the fact that a program may include discussion of products or product uses that are not approved is a matter that warrants disclosure. This fact, along with acknowledgment of the supporting company's funding of a program, is important to an audience's assessment of the information presented. The agency believes that a less burdensome disclosure than that proposed in the draft policy statement would suffice. The agency agrees with the comment that a single, general disclosure as to whether a program, or individual presentations in a program, will include discussion of products or product uses that are not approved would be adequate to address the agency's concern. Therefore, FDA has deleted the "Discussion of Unapproved Uses" element from the final guidance, and the factor discussing "Disclosures" has been revised to suggest that the provider ensure meaningful disclosure, at the time of the program, to the audience of whether any unapproved uses of products will be discussed. Ideally, such disclosure should occur in conjunction with disclosure of the supporting company's financial support for the program. This disclosure could take the form of a statement in the program materials or be delivered verbally at the start of the program.

27. Several comments contended that presenters should be permitted to report on foreign regulatory status, and pending U.S. applications and supplements for products discussed.

Nothing in this final guidance should be construed as barring presenters from discussing the foreign regulatory status of a product, or indicating that a product being discussed is the subject of a pending new drug application or supplement in the United States.

9. Opportunities for Debate

The draft policy statement included an element that the provider agree, in the case of live presentations, to provide "meaningful opportunities for scientific debate or questioning" during the program (57 FR 56412 at 56414). The final guidance includes a similar factor entitled "Opportunities for Discussion."

28. Several comments contended that it is not always practical to provide meaningful opportunities for debate because such opportunities may be contingent on the size of the program, time constraints, willingness of an audience to participate, and other factors unrelated to a program's independence. These comments maintained that an opportunity for debate should be a goal of an independent program, but not included in all activities. Other comments asked the agency to clarify what is meant by "meaningful opportunities" for debate.

The agency agrees that opportunities for debate should be a goal of an independent program, but it is not practical or appropriate in all activities. Factors unrelated to a program's independence could intercede to preclude an opportunity for meaningful debate. The agency's inquiry concerning this factor likely would be whether a program format reasonably afforded an opportunity for discussion, and such opportunity was nonetheless not provided. This finding may suggest an intent to insulate from peer scrutiny the data and ideas presented. As with the other factors in this final guidance, a finding that a meaningful opportunity for discussion was denied may suggest that a program was not independent despite representations to the contrary.

Certain comments seeking clarification of what is meant by a "meaningful opportunity for scientific debate or questioning" seem to have inferred a more stringent concept than was intended. The goal contemplated is no more than a reasonable opportunity for the type of question and answer session typical of continuing education activities. The agency has changed the word "debate" to "discussion" to reflect this less structured intent.

10. Schedule of Activities

The draft policy statement suggested that the company and provider agree to, and record in the written agreement, the dates, times, and locations of all presentations (57 FR 56412 at 56414).

29. Several comments contended that it is overly burdensome to have a supporting company and provider identify all presentations to be held. They maintained that this is problematic in that not all future programs may be anticipated at the time a provider and supporting company enter into an arrangement. Several comments maintained that the fact of multiple presentations of the same program should not be viewed as

suggesting possible promotional intent so as to warrant higher scrutiny. Some comments argued that it is desirable to repeat certain programs for public health reasons, that demand for additional programs suggests that a program is valuable, and that repeat presentations are desirable as they are the most efficient way to disseminate valuable information. Some comments contended that there should be a distinction between multiple programs that were agreed to in advance of any presentation and those that were agreed to after the fact, and only the later should be subject to higher scrutiny.

The agency is convinced that it may be difficult for a supporting company and provider to document the dates, times, and locations of all presentations in advance and, therefore, has removed this element from the final guidance. The agency, however, remains convinced that, in some circumstances, the fact of multiple presentations may be an indicator of supporting company influence. The agency agrees that multiple presentations of the same program are more troublesome when a supporting company agrees to fund additional programs after having viewed the initial program. This opportunity to view a program in advance of a decision to fund additional programs provides an obvious degree of control over content of multiple presentations. Thus, these programs would be viewed with greater scrutiny.

F. Other Factors in Determining Independence

The draft policy statement stated that if, notwithstanding the presence of a written agreement, a question is raised regarding product promotion, FDA would consider several "possible indicia of company influence." These factors included, among others, an examination of the relationship between the provider and supporting company, the provider's involvement in the company's sales or marketing, logistical assistance provided by the company, the program's focus (whether the program concentrated on a single product), and gifts to encourage attendance (57 FR 56412 at 56414). The draft policy statement also indicated that "no individual factor is likely by itself to stimulate an action based on lack of independence." Many of the factors that were discussed in the "Other Factors in Determining Independence" section of the draft policy statement (section II.B.) have been retained in the final guidance.

30. Several comments advised deleting this entire section from the policy. Another comment contended that the articulated factors undercut the protection afforded by the policy by permitting post hoc review of a provider's decisions for indications of possible influence.

The agency believes that it is important to consider the actual conduct of the parties in determining whether a supporting company has acted to transform an educational activity into a promotional presentation for its products. By including this discussion in the "Factors Considered in Evaluating Activities and Determining Independence" (section A. of the final guidance), the agency believes that there will be less concern regarding post hoc review.

1. Relationship Between Provider and Supporting Company

The draft policy statement noted that legal, business, or other relationships between the company and the provider might place the company in a position whereby it could influence the content of the activity. This discussion is contained in the final guidance as a factor the agency will consider.

31. Some comments contended that there should be clarification of the types of relationships that predispose a supporting company to influence content. Some comments argued that "influence" is too expansive or vague a term, and that, a more appropriate inquiry would be supporting company "control."

As discussed in response to comment 14 of section II.E. of this document, a company-designed presentation does not become independent merely because it is approved by a provider who has final editorial control. The agency believes that "influence" is the most appropriate term to describe the basic concept of independence. The final guidance does, however, identify several types of relationships that may predispose a supporting company to influence content (e.g., legal relationships, business relationships, a provider that is owned by, or is not viable without the support of the supporting company).

32. One comment contended that legal, business, or other relationships should not be at issue where "a provider has documented independence through accreditation from a major accrediting organization."

There is no basis for assuming that accreditation of the provider by a major accrediting organization will, in and of itself, ensure that the provider will not be subject to influence as a result of a relationship with the supporting company.

2. Provider Involvement in Sales or Marketing

The draft policy statement listed, as another factor in determining independence, the provider's involvement in advising or assisting in the sales or marketing of a company's product. The discussion in the draft policy statement stating that "individuals who are involved in promotion of a company's products may not function in the role of independent provider, but could be selected by an independent provider to function as a speaker or moderator" (57 FR 56412 at 56414) has been deleted. The remaining discussion is listed in the final guidance as a factor the agency will consider.

33. Some comments identified situations where this provision may be interpreted so as to preclude institutional providers and/or companies from interacting due to minor or unrelated involvement with the supporting company.

The primary concern of the agency, as reflected in the draft policy statement, is with relationships that may affect the provider's independence. A relationship between a provider member or employee and a supporting company will not, in and of itself, imply influence by the company. If, however, company employees or individuals acting on behalf of the company are actively involved in provider decisions on the content of provider activities sponsored by the company, there may be a reason to question the provider's independence.

34. Some comments contended that this provision does not adequately distinguish between advertising agencies involved in sales and advertising, and communications companies involved in education, which also may be viewed as a marketing function, nor does it allow for the existence of advertising and communications (or education) divisions within the same company.

FDA acknowledges that certain providers are often involved in both promotional activities and independent educational activities. The involvement of a provider in both types of activities does, however, raise questions about whether an educational activity is, in fact, being utilized as part of a promotional campaign.

While the final guidance does not preclude the use of the same provider in a promotional effort and an independent educational activity, such an arrangement poses obvious difficulties. Companies choosing to engage a provider in both activities should be especially concerned about the assignment of provider personnel to the different activities. The agency will not ordinarily regard provider personnel who serve as company agents for company promotional activities to be independent for other company-sponsored scientific or educational activities.

3. Provider's Demonstrated Failure to Meet Standards

The draft policy statement identified, as a factor in determining independence, the provider's record of failure to meet standards of independence, balance, objectivity, or scientific rigor when putting on ostensibly independent educational programs (57 FR 56412 at 56414). This discussion is listed in the final guidance as a factor the agency will consider.

35. Some comments sought clarification as to what is meant by, or what criteria support a conclusion of, "demonstrated failure to meet standards" on the part of a provider. Some comments contended that this is an unworkable requirement as supporting companies are not in a position to know of a provider's past failures to meet standards in its educational programs.

It is not unreasonable to expect due diligence on the part of companies when contracting with providers. In exercising due diligence, supporting companies should conduct a reasonable evaluation of all information readily available about a provider.

4. Logistical Assistance

Another factor in determining independence contained in the draft policy statement was the extent of logistical assistance provided by the supporting company. The draft policy statement specifically mentioned that "significant contact" between industry representatives and presenters might indicate an attempt to influence a presentation (57 FR 56412 at 56414). As discussed in comment 36 of section II.F.4. of this document, this discussion has been deleted from the final guidance.

36. Several comments argued that the logistical assistance element was too ambiguous a standard as it is not clear what is meant by "significant contact." Some comments argued that, notwithstanding any ambiguity, significant contact between a presenter and a supporting company representative should not be an indicator of influence as the agency's inquiry should focus on actual attempts to influence or control the content of a presentation. They maintained that supporting company representatives have ongoing relationships with presenters that would make compliance with a generalized "significant contact" standard problematic.

While the agency believes that the "significant contact" standard is amenable to clarification, it need not be, as the agency is persuaded that its inquiry concerning contacts between a presenter and a supporting company in conjunction with a sponsored program should focus on attempts to influence, rather than on volume or nature of contacts. A supporting company, among other factors for determining independence, should not script, target points for emphasis, or engage in other activities that are designed to influence the content of a program. The agency believes that factor alone is adequate to address the agency's concern as to contact between a supporting company representative and a presenter in conjunction with a sponsored program. Therefore, discussion of the logistical assistance provision has been deleted from the final guidance.

5. Suggestion of Presenters

The draft policy statement acknowledged that some providers perceive a need to ask the supporting company to suggest presenters. The draft policy statement stated that if a company suggests presenters who "are or were actively involved in promoting the company's products or who have been the subject of complaints or objections with regard to presentations that were viewed as misleading or biased in favor of the company's products," FDA might infer promotional intent on the company's part (57 FR 56412 at 56414). This discussion has been incorporated, in part, into the factor concerning "Control of Content and Selection of Presenters and Moderators" in the final guidance.

37. Some comments contended that a supporting company may not be in a position to know if a presenter it suggests has been the subject of complaints with regard to presentations viewed as biased in favor of the company's products. They maintained that this provision should expressly indicate that supporting companies are only accountable for knowingly suggesting presenters that have been the subject of such complaints.

The agency believes that the company should be familiar with the presenter's background and should be willing to make a reasonable inquiry before recommending the name of a presenter to the provider. In the final guidance, this discussion has been incorporated in the factor concerning "Control of Content and Selection of Presenters and Moderators."

38. Some comments contended that there should be no inference of promotional intent arising from a supporting company's suggestion of a presenter who has been involved in promoting a company's products. They argued that actual influence of, rather than intent to influence, an activity is the relevant inquiry, that the scope of activities that may be viewed as involvement in product promotion is unclear, and that any relationship between the presenter and the supporting company can be adequately addressed through disclosure.

The agency is concerned about the ability of a supporting company to hire an individual to engage in promotional activities for the company and to actively support the appearance of the same individual as a presenter in an independent educational activity sponsored by the company. The agency does not agree that a retrospective finding of actual influence, which may be extremely difficult to document, is the relevant inquiry. The issue is whether the company is in a position to influence program content by suggesting a presenter who is a paid product promoter. The suggestion by supporting companies of presenters selected from their company maintained list and/or their marketing consultants may be viewed as an attempt to influence the content of the program. The agency will not ordinarily infer such intent when a provider independently selects a presenter who has been involved in product promotion for a supporting company. Disclosure cannot overcome the lack of independence that will ordinarily result from companies suggesting promoters as presenters in such programs.

6. Focus on a Single Product

The draft policy statement indicated that one factor in determining independence might be whether the program content was focused on a single product marketed by the supporting company or a competing product except when existing treatment options were so limited as to preclude any meaningful discussion of alternative therapies. The draft policy statement noted that each treatment option did not have to be discussed with equal emphasis, but that emphasis on newer or more beneficial treatments should be provided "in the context of a discussion of all reasonable and relevant options" (57 FR 56412 at 56414). This discussion has been incorporated in the factor concerning the "Focus of the Program" in the final guidance.

39. Some comments contended that focus on a single product should not be regarded as a factor that may suggest lack of independence, as single product programs are useful, especially during a product's launch phase, and choice of topic should be at the provider's discretion and should confer no negative inference.

FDA agrees that single product programs may be useful, especially during a product's launch phase. However, the agency also recognizes that single-product programs raise unique concerns about the independence of a program, because such programs inherently lack the presentation of competing therapeutic modalities.

40. Several comments contended that to suggest that a program emphasizing a single product do so in the context of a discussion of all reasonable and relevant options is unreasonable or impossible given the time constraints of a typical educational activity.

The final guidance does not suggest that a program emphasizing a single product do so in the context of a discussion of all reasonable and relevant options. However, the agency will consider, as one of several factors, a program's focus on a particular therapy when other reasonable and relevant options are either not discussed or are de-emphasized.

7. Multiple Presentations

The draft policy statement indicated that multiple performances of the same program might result in a higher level of agency scrutiny than single-performance programs (57 FR 56412 at 56414). The final guidance states that the agency will consider whether multiple presentations of the same program are held.

41. Several comments contended that multiple presentations should not be viewed as suggesting promotional intent so as to warrant higher scrutiny. They argued that it is desirable to repeat certain programs for public health reasons, that the demand for multiple programs suggests that a program is a valuable one, and that repeat presentations are desirable as they are the most efficient way to disseminate valuable information. Some comments contended that there should be a distinction between multiple programs that were agreed to before the fact and those that were scheduled after the fact. They contended that only the latter should be subject to a higher level of scrutiny.

Multiple presentations are just one of a number of factors the agency considers in determining the level of scrutiny to be applied. Footnote 4 of the draft policy statement explicitly recognized that repeat presentations can serve public health interests and that Public Health Service components sometimes actively encourage multiple presentations on selected urgent topics. FDA agrees that an agreement to conduct multiple presentations arrived at prior to commencement of the initial presentation raises fewer questions than an agreement arrived at after commencement. The opportunity of a sponsor to view the initial presentation before agreeing to fund additional presentations provides an obvious degree of control over content of multiple presentations.

42. Some comments sought clarification of the scope of activities that may be deemed multiple presentations. The comments described examples such as a single broadcast to multiple sites via electronic media, and a multiple presentation at a single location for the purpose of accommodating several nursing shifts.

A single broadcast to multiple sites would be regarded as a single presentation because the sponsoring company could not apply added control to the additional sites. Thus, the presentation at each site enjoys an equal degree of independence. This is only slightly less true for multiple presentations to accommodate several shifts on the same day, especially when the multiple presentations have been contracted for in advance. Of course, the delay might be 1 or 2 weeks to accommodate those who might have been on a different rotation or 1 or 2 months to accommodate newly hired employees. FDA believes that any increased opportunity for a sponsoring company to deny funding for subsequent presentations or to edit them will raise a question with regard to independence.

8. Gifts

The draft policy statement indicated that one factor in determining independence might be gifts or inducements (other than token gifts) provided to encourage attendance (57 FR 56412 at 56414). The final guidance does not contain this factor.

43. One comment argued that this provision should be deleted because it merely duplicates the Accreditation Council for Continuing Medical Education (ACCME) guidelines.

ACCME-accredited programs do not represent the full range of activities to which this final guidance applies, and moreover, providers of ACCME-accredited programs may not, in all instances, comply with ACCME-guidelines. Nonetheless, this factor has been deleted from the final guidance because, upon reconsideration, the agency is not convinced that the use of gifts or inducements to encourage attendance is a reliable factor in determining independence.

9. Emphasis on Noneducational Activities

The draft policy statement indicated that an emphasis on noneducational activities (such as leisure or recreational activities) would be another factor in determining independence (57 FR 56412 at 56414). The final guidance does not contain this factor.

44. Some comments contended that the agency's concern over whether the announcement and promotion of an educational activity focuses more on the educational content than on leisure or recreational activities ancillary to the activity is vague and that the agency should provide objective criteria for assessing this issue. One comment contended that this provision appears to create a weaker standard than that of the AMA guidelines on gifts to physicians as it seems to indicate that a program announcement or promotion that focuses equally on education and leisure would be appropriate. They urged that the language be changed to require that the program announcement and promotion focus "predominantly" or "almost exclusively" on the educational aspects of the program.

The agency continues to view the AMA guidelines as an appropriate standard for health care professionals. Although the agency agrees that program promotion, including program announcements, should focus predominantly on the educational content of the program, it does not consider greater focus on leisure or recreational activities as reason to believe that the program may be lacking independence.

10. Audience Selection

Under the draft policy statement, another factor in determining independence was whether the supporting company's sales or marketing departments generated the invitation or mailing lists for supported activities, or whether such lists were intended to reflect sales or marketing goals (such as rewards for high prescribers of the company's products or to influence "opinion leaders") (57 FR 56412 at 56414). This discussion is listed in the final guidance as a factor the agency will consider.

45. Several comments objected to limitations on supporting company involvement in selecting or otherwise generating audiences for educational activities. Some maintained that supporting company-generated mailing lists should be permitted. Some maintained that providers should be permitted to enlist the aid of the supporting company's sales representatives to generate audiences by distributing program invitations, or by other means, and that this involvement should not suggest a lack of independence unless a supporting company is solely responsible for generating an audience.

The agency continues to view company involvement in audience selection and/or solicitation for attendance as undermining program independence. The involvement of company sales representatives in the invitation process creates an opportunity for a sales presentation on the product that is likely to be discussed at the program. This may invite a discussion of unapproved uses in a promotional context, thus making the educational program a part of the company's promotional campaign. In addition, supporting company involvement in the audience selection process invites the development of lists that target health care professionals who are deemed important to attend by the supporting company. It also invites the selection of a large number of "peer influence" professionals who are likely to be strong supporters of the company's products. This provides an opportunity for bias and indirect influence on the content of the program, and it allows the program to be used as a promotional vehicle for targeted health care professionals.

46. Some comments contended that the selection of "opinion leaders" as a target audience should not raise an issue inasmuch as such physicians are deemed important by genuinely independent providers as well as companies. They argued that opinion leaders are likely the most efficient purveyors of information derived from educational activities that, by their very nature, are accessible to only a limited number of physicians.

The focus on opinion leaders is a standard promotional tactic to speed acceptance of a new product so as to more rapidly increase market share. The agency's understanding of educational needs assessments by providers is that educational programs generally are not directed to specific opinion leaders. It is the agency's understanding that there is no such policy on the part of major accrediting organizations such as ACCME. It is reasonable to question whether a program that targets "opinion leaders" may do so for promotional purposes. This inference of possible promotion, however, is only one of many factors to be considered should a question be raised concerning an educational activity purported to be independent.

47. One comment contended that supporting companies should be permitted to furnish providers with complete specialty and subspecialty mailing lists.

The agency would not object to a supporting company furnishing a provider with complete specialty or subspecialty mailing lists.

11. Misleading Title

The draft policy statement indicated that a program's title might demonstrate a lack of independence if the title failed to fairly represent the scope of the presentation (57 FR 56412 at 56414). This discussion has been incorporated in the factor concerning the "Focus of the Program" in the final guidance.

48. One comment argued that, where the title is under the direction and control of the provider, it is not the proper subject of a promotional inference as to the supporting company.

Although the title of a program may ostensibly be under the direction and control of the provider, the agency has observed that a misleading title may reflect a lack of independence and a desire on the part of the provider to promote the supporting company's products under the guise of education. For example, a program entitled "New Approaches to Hypertension" that focuses on a single product manufactured by the sponsoring company may suggest to the agency that the program is designed to promote the company's product. A misleading title is not, in and of itself, dispositive with regard to the issue of promotional intent. It is only one of a number of factors to be considered by the agency.

12. Dissemination

Under the draft policy statement, if information about the supporting company's product presented in the scientific or educational activity is further disseminated after the initial program or publication, by or at the company's behest, other than in response to an unsolicited request or through an independent provider, this would be another indication of possible company influence (57 FR 56412 at 56414). This discussion has been incorporated into the final guidance as a factor the agency will consider.

49. Some comments maintained that the independence of an educational activity is enduring and that the public health is better served by making written, printed, or graphic program materials readily available to health care professionals.

Written, printed, or graphic materials containing product information and disseminated by, or on behalf of, a product manufacturer are generally viewed as promotional labeling. If, on the other hand, the materials are prepared and disseminated by the provider for educational purposes, or the materials are disseminated by the company in response to an unsolicited request, this would not generally be considered as a possible indication of company influence.

50. One comment contended that footnote 6 of the draft policy statement (which noted that repeat performances are permitted when the decision is made by the provider, possibly with review by a nationally recognized professional organization) should be deleted, as it appears to be more restrictive for repeat presentations than other provisions in the draft policy statement.

The agency believes that footnote 6 of the draft policy statement is consistent with other provisions of the draft policy statement. As suggested in the text of the draft policy statement, multiple performances may cause the agency to exercise greater scrutiny. However, a decision made by the provider that multiple presentations are warranted provides some assurance that there is a genuine professional need for repetition of the program. Nevertheless, FDA no longer believes that this footnote is necessary and has deleted it from the final guidance.

51. One comment suggested that the reference to "publication" in section II.B.5 of the draft policy statement be struck as this appears not relevant to the range of activities contemplated by the policy.

FDA agrees with the comment and has removed the reference to "publication" from the final guidance.

13. Complaints

Another factor for determining independence under the draft policy statement concerned complaints from the provider, presenters, or attendees regarding attempts by the company to influence content (57 FR 56412 at 56414). This discussion has been incorporated into the final guidance as a factor the agency will consider.

52. Some comments contended that complaints should be independently substantiated before becoming a basis for the agency inferring promotional intent and that the agency should clarify the mechanism for reporting complaints.

In general, the agency will not infer promotional intent by a supporting company without an investigation that substantiates, to the agency's satisfaction, a complaint or allegation.

The agency declines to establish a formal mechanism for reporting complaints. FDA receives information through various means, both formal (as in requests for meetings) and informal (such as letters and telephone calls). The agency will exercise its judgment and discretion in deciding whether to take action on a complaint.

G. FDA Reliance on Major Accrediting Organizations

The draft policy statement acknowledged that accrediting organizations can play an important role in ensuring that industry-sponsored activities are independent and nonpromotional. The draft policy statement indicated that FDA would seek to rely to the extent possible on major accrediting organizations to monitor company-supported educational activities conducted by their accredited providers (57 FR 56412 at 56414). In the final guidance, this section has been renamed "FDA's Cooperation With Major Accrediting Organizations" and it states that the agency will continue to work with major accrediting organizations to monitor company-supported educational activities conducted by their accredited providers.

53. Some comments questioned the extent of FDA's intent to rely on, and to defer to, major accrediting organizations.

Although FDA recognizes the valuable role that accrediting organizations can play in ensuring that industry-supported educational activities are independent and nonpromotional, FDA cannot rely exclusively on such organizations. The ultimate responsibility for monitoring inappropriate promotion in these programs lies with FDA. Accordingly, the final guidance has been revised to clarify that FDA intends to work with major accrediting organizations to monitor company-supported educational activities conducted by their accredited providers.

III. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above). Requests and comments are to be identified with the docket number found in brackets in the heading of this document. Comments may be submitted at any time and will be used to determine whether to revise the guidance further.

Dated: November 24, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

The text of the final guidance follows:

BILLING CODE 4160-01-F

Guidance for Industry

Industry-Supported Scientific and Educational Activities

U.S. Department of Health and Human Services
Food and Drug Administration
Office of Policy
November 1997

Guidance for Industry[1]

Industry-Supported Scientific and Educational Acivities

I. Background: Promotion, Education, and Independence

Two important sources of information on therapeutic products (human and animal drugs, biological products, and medical devices regulated by the Food and Drug Administration (FDA)) for health care professionals are: (1) Activities (programs and materials) performed by, or on behalf of, the companies that market the products; and (2) activities, supported by companies, that are otherwise independent from the promotional influence of the supporting company. Although both provide valuable and sometimes vital information to health care professionals, the programs and materials performed and disseminated by companies are subject to the labeling and advertising provisions of the Federal Food, Drug, and Cosmetic Act (the act), whereas the truly independent and nonpromotional industry-supported activities have not been subject to FDA regulation.[2]

This jurisdictional line is important because the constraints on advertising and labeling,[3] when applied to scientific and educational activities, can restrict the freedom of participants to discuss their data or express their views. In particular, discussions of unapproved uses, which can be an important component of scientific and educational activities, are not permissible in programs that are or can be (because the provider is not functionally independent) subject to substantive influence by companies that market products related to the discussion. Thus, the agency, has traditionally sought to avoid regulating activities that are produced

[1] This guidance has been prepared by FDA's Intra-Agency Working Group on Advertising and Promotion. This guidance represents the Agency's current thinking on industry-supported scientific and educational activities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the industry. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

[2] In this context, the terms "independent" and "nonpromotional" are not mutually exclusive. The agency views independence as an indication of whether an activity is nonpromotional.

[3] These provisions require the company to ensure that the content does not promote unapproved uses, and that discussions of the company's products are not false or misleading and do not lack fair balance.

independently from the influence of companies marketing the products. The agency recognizes that industry-supported activities can be both nonpromotional and educational.

Demarcating the line between activities that are performed by or on behalf of the company, and thus, subject to regulation, and activities that are essentially independent of their influence has become more difficult due to the increasing role industry has played in supporting postgraduate and continuing education for health care professionals.

The agency traditionally has recognized the important public policy reasons not to regulate all industry-supported activities as advertising or labeling. To permit industry support for the full exchange of views in scientific and educational discussions, including discussions of unapproved uses, FDA has distinguished between those activities supported by companies that are nonpromotional and otherwise independent from the substantive influence of the supporting company and those that are not. Those activities that have been deemed by the agency to be independent from influence by the supporting company and nonpromotional have not been treated as advertising or labeling, and have not been subjected to the agency's regulatory scrutiny.

In determining whether an activity is independent of the substantive influence of a company, the agency examines whether and to what extent the company is in a position to influence the presentation of information related to its products or otherwise transform an ostensibly independent program into a promotional vehicle. FDA is concerned that companies may influence the content of educational programs both directly and indirectly. Directly, by being involved in the selection of speakers or in the treatment of topics. Indirectly, through the nature of the relationship between the company and the provider (e.g., if the provider has reason to believe that future financial support from the company depends upon producing programs that promote the company's products.)

FDA is responsible for seeing that scientific and educational activities that are not intended to be promotional are designed to be truly independent from substantive influence by the marketers of regulated products. The agency recognizes, however, that the primary responsibility for overseeing the process of postgraduate and continuing professional education and scientific exchange lies with the scientific and health

care communities and accrediting organizations. Accordingly, FDA will work closely with scientific and professional health care communities and accrediting organizations to help ensure that provider activities are independent.

The agency is providing this guidance to describe the agency's enforcement policy with regard to scientific and educational activities supported by industry. The guidance seeks to clarify the distinction drawn by the agency between scientific and educational activities that FDA considers nonpromotional and those that the agency considers promotional, and to provide guidance on how industry may support such activities without subjection to regulation under the labeling and advertising provisions of the act.

This guidance applies only to those company-supported activities that relate to the supporting company's products or to competing products. A company-supported educational activity or part thereof that does not relate to the company's products or a competing product, or suggest a use for the company's products, would not be considered a promotional activity under this guidance.

II. Guidance: Industry-Supported Scientific and Educational Activities

FDA has not regulated and does not intend to regulate, under the labeling and advertising provisions of the act, industry-supported scientific and educational activities that are independent of the influence of the supporting company. Companies and providers who wish to ensure that their activities will not be subject to regulation should design and carry out their activities free from the supporting company's influence and bias, based on the factors considered in evaluating activities and determining independence, as described below. These factors are provided to furnish guidance on the design and conduct of such activities, so that they will be educational and nonpromotional in nature. These factors will be considered as part of an overall evaluation of an activity; no individual factor is likely by itself to stimulate an action based on lack of independence.

A. Factors Considered in Evaluating Activities and Determining Independence

FDA will consider the following factors in evaluating programs and activities and determining independence:

(1) Control of Content and Selection of Presenters and Moderators

The agency will consider whether the provider has maintained full control over the content of the program, planning of the program's content, and over the selection of speakers and moderators. In so doing, the agency will look at whether the supporting company has engaged in scripting, targeting points for emphasis, or other actions designed to influence the program's content. In addition, the agency will consider if the company has suggested speakers who are or were actively involved in promoting the company's products or who have been the subject of complaints or objections with regard to presentations that were viewed as misleading or biased in favor of the company's products.

(2) Disclosures

The agency will consider whether there was meaningful disclosure, at the time of the program, to the audience of: (1) The company's funding of the program; (2) any significant relationship between the provider, presenters or moderators, and the supporting company (e.g., employee, grant recipient, owner of significant interest or stock); and (3) whether any unapproved uses of products will be discussed;

(3) The Focus of the Program

The agency will consider whether the intent of the company and the provider is to produce an independent and nonpromotional activity that is focussed on educational content and free from commercial influence or bias. The agency will also consider whether the title of the activity fairly and accurately represents the scope of the presentation.

The agency also will look at the focus of the activity to determine if the central theme is based on a single product marketed by the company or a competing product, except when existing treatment options are so limited as to preclude any meaningful discussion of alternative therapies. This is not to suggest that each treatment option must be discussed with precisely equal emphasis. However, emphasis on a newer or, in the view of the presenter, more beneficial treatment modality should be provided in the context of a discussion of all reasonable and relevant options.

(4) Relationship Between Provider and Supporting Company

The agency will consider whether there are legal, business, or other relationships between the company and the provider that could place the company in a position whereby it may exert influence over the content of the activity (e.g., a provider that is owned by, or is not viable without the support of, the company supporting the activity).

(5) Provider Involvement in Sales or Marketing

The agency will consider whether individuals employed by the provider and involved in designing or conducting scientific or educational activities are also involved in advising or otherwise assisting the company with respect to sales or marketing of the company's product.

(6) Provider's Demonstrated Failure to Meet Standards

The agency will consider whether the provider has a history of conducting programs that fail to meet standards of independence, balance, objectivity, or scientific rigor when putting on ostensibly independent educational programs.

(7) Multiple Presentations

The agency will consider whether multiple presentations of the same program are held.[5]

(8) Audience Selection

The agency will consider whether invitations or mailing lists for supported activities are generated by the sales or marketing departments of the supporting company, or are intended to reflect sales or marketing goals (e.g., to reward high prescribers of the company's products, or to influence "opinion leaders").

(9) Opportunities for Discussion

In the case of a live presentation, the agency will consider whether there was an opportunity for meaningful discussion or questioning provided during the program.

[5] FDA recognizes that some repeat programs can serve public health interests. The Department of Health and Human Services sometimes actively encourages multiple presentations on selected urgent topics.

(10) Dissemination

The agency will consider whether information about the supporting company's product presented in the scientific or educational activity is further disseminated after the initial program, by or at the behest of the company, other than in response to an unsolicited request or through an independent provider as discussed herein.

(11) Ancillary Promotional Activities

The agency will consider whether there are promotional activities, such as presentations by sales representatives or promotional exhibits, taking place in the meeting room.

(12) Complaints

The agency will consider whether any complaints have been raised by the provider, presenters, or attendees regarding attempts by the supporting company to influence content.

B. Additional Considerations

The foregoing list of factors is not intended to be exhaustive and other factors may be appropriate for consideration in a particular case.

One means of documenting the measures taken to ensure independence of an activity is to have a written agreement between the provider and the supporting company. This document should reflect that the provider will be solely responsible for designing and conducting the activity, and that the activity will be educational, nonpromotional, and free from commercial bias. While not required, a written agreement, coupled with the factors described above, can provide valuable evidence as to whether an activity is independent and nonpromotional.

III. FDA'S Cooperation With Major Accrediting Organizations

FDA recognizes the important role accrediting organizations can play in ensuring that industry-sponsored educational activities are independent and nonpromotional. The agency also recognizes the importance of avoiding undue Government interference in postgraduate and continuing education for health

care professionals, as the agency seeks to ensure that company promotional activities meet applicable legal requirements. Thus, the agency will continue to work with major accrediting organizations to monitor company-supported educational activities conducted by their accredited providers.

[FR Doc. 97–31741 Filed 12–2–97; 8:45 am]
BILLING CODE 4160–01–C

federal register

Wednesday
December 3, 1997

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 179
Irradiation in the Production, Processing, and Handling of Food; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket Nos. 86F–0507 and 86F–0509]

Irradiation in the Production, Processing and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; denial of request for stay of effective date and for a hearing; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is denying the requests for a hearing that it has received on the final rule that amended the food additive regulations to authorize the use of sources of ionizing radiation for the control of food-borne pathogens in poultry. After reviewing the objections to the final rule and the requests for a hearing, the agency has concluded that the objections do not raise issues of material fact that justify a hearing or otherwise provide a basis for revoking the amendment to the regulation. FDA is also denying the request for a stay of the effective date of the amendment to the food additive regulations.

DATES: Effective date confirmed: May 2, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3093.

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I. Introduction

In the **Federal Register** of May 2, 1990 (55 FR 18538), FDA issued a final rule permitting the use of ionizing radiation for the control of food-borne pathogens in poultry (the "poultry final rule"). This regulation, codified under 21 CFR 179.26, was issued in response to petitions filed by Radiation Technology, Inc. (RTI) (Docket No. 86F–0507), and the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS) (Docket No. 86F–0509). In the **Federal Register** of March 3, 1987 (52 FR 6391), FDA published a notice announcing the filing of the petition submitted by RTI (FAP 8M3422), and in the **Federal Register** of February 20, 1987 (52 FR5343), FDA published a notice announcing the filing of the petition submitted by USDA, FSIS, (FAP 7M3974). FDA based its decision on data contained in both petitions and in its files.

II. Objections, Requests for a Hearing, and Request for a Stay

Section 409(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(f)), provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, specifying with particularity the provisions of the order "deemed objectionable, stating reasonable grounds therefor," and may request a public hearing based upon such objections. FDA may deny a hearing request if the objections to the regulation do not raise genuine and substantial issues of fact that can be resolved at a hearing.

Under 21 CFR 171.110 of the food additive regulations, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a) each objection: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) on which a hearing is requested must specifically so state; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) requesting a hearing must include a detailed description and analysis of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the poultry final rule, FDA received several identical letters with multiple signatures and two submissions from Food and Water, Inc. (FWI), within the 30-day objection period. The submissions sought revocation of the final rule and requested a hearing. One of FWI's objections also requested that the regulation be stayed pending a public hearing of the scientific issues. The other FWI submission also requested an extension of the "comment" [sic] period.

III. Standards for Granting a Hearing

Specific criteria for deciding whether to grant or deny a request for a hearing are set out in § 12.24(b). Under the regulation, a hearing will be granted if the material submitted by the requester shows, among other things, that: (1) There is a genuine and substantial factual issue for resolution at a hearing; a hearing will not be granted on issues of policy or law; (2) the factual issue can be resolved by available and specifically identified reliable evidence; a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions; (3) the data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the requestor; a hearing will be denied if the data and information submitted are insufficient to justify the factual determination urged, even if accurate; and (4) resolution of the factual issue in the way sought by the person is adequate to justify the action requested; a hearing will not be granted on factual issues that are not determinative with respect to the action requested (e.g., if the action would be the same even if the factual issue were resolved in the way sought).

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing" (*Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980) *reh. den.*, 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621 (1973)). An allegation that a hearing is necessary to "sharpen the issues" or to "fully develop the facts" does not meet this test (*Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982)). If a hearing request fails to identify any factual evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, a court is authorized to issue summary judgment without an evidentiary hearing whenever it finds that there are no genuine issues of material fact in dispute and a party is entitled to judgment as a matter of law (see Rule 56, Federal Rules of Civil Procedure). The same principle applies in administrative proceedings (see § 12.28).

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held (*Pineapple Growers Association* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982)). Where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing (*Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960)). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information (see *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971)). In other words, a hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue" (*Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977)). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy (see *Citizens for Allegan County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. Cir. 1969); *Sun Oil Co.* v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958)).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality can be validly applied to the administrative process. In explaining why these principles "self-evidently" ought to apply to an agency proceeding, the D.C. Circuit wrote:

> The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.

Retail Clerks Union, Local 1401, R.C.I.A. v. *NLRB*, 463 F.2d 316, 322 (D.C. Cir. 1972). (See *Costle* v. *Pacific Legal Foundation, supra* at 1106. See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1966).)

In sum, a hearing request must present sufficient credible evidence to raise a material issue of fact and the evidence must be adequate to resolve the issue as requested and to justify the action requested.

IV. Analysis of Objections and Response to Hearing Requests

The objections to the poultry final rule can be categorized into two broad areas—those objecting to FDA's safety determination, and those objecting to FDA's finding of no significant environmental impact (FONSI). FDA addresses each of the objections below, as well as the data and information filed in support of each, comparing each objection and the information submitted in support of it to the standards for granting a hearing in § 12.24.

A. Safety of Irradiation to Control Microorganisms in Poultry

1. FDA's Determination of Safety

Under 21 CFR 170.3(i), safety of a food additive means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use. FDA's regulations reflect the Congressional judgment that the additive must be properly tested and such tests carefully evaluated, but that the additive need not, indeed cannot, be shown to be safe to an absolute certainty. The House Report on the Food Additives Amendment of 1958 stated: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess., 1958).

The poultry final rule discussed in detail FDA's evaluation of the safety of ionizing radiation for use to control food-borne pathogens in poultry (55 FR 18538). In concluding that irradiation doses up to 3 kiloGray (kGy) used on poultry had been shown to be safe, FDA reviewed three major animal feeding studies—a multigenerational feeding study in rats, a chronic feeding study in rats, and a 1-year feeding study in dogs. These studies provided the basis for FDA's conclusion regarding toxicological safety of the use of ionizing radiation in poultry. All three studies were conducted at Centraal Instituut Voor Voedingsonderzoek (CIVO); in each study, irradiated chicken constituted 35 percent (by dry weight) of the test diet. FDA concluded that the CIVO studies were of high quality, and that they provided no evidence of any adverse effects attributable to consumption of diets containing chicken irradiated at 3 or 6 kGy.[1]

FDA also reviewed all other data in its files relevant to the safety of irradiated chicken, including several in vitro and in vivo mutagenesis and genetic toxicity studies conducted using irradiated chicken. Such tests are often used to screen for possible association of carcinogenicity with a test substance by looking for positive mutagenic responses (genotoxicity). The agency concluded that several of these tests were well conducted and demonstrated the lack of mutagenic effects from the irradiated chicken. The agency noted deficiencies in other genetic toxicity tests that prevented reliance on such tests as a basis for a safety assessment but none of the tests provided evidence of a mutagenic effect.

In sum, the agency concluded on the basis of all the evidence, including the toxicological information before it, that poultry irradiated at up to 3 kGy was safe (55 FR 18538 at 18543).

2. Objections

a. *Letters.* FDA received several letters with multiple signatures that were substantially identical in content. This group of letters asserted that FDA's safety decision regarding the use of ionizing radiation on poultry was based solely on tests in mice, rats, and dogs, and raised a concern that studies in FDA's files, other than those described previously, used chicken that was irradiated under conditions that are different from those in the regulation issued by FDA. This group of letters states that human epidemiology studies should be conducted to establish the safety of the use of radiation, and that public hearings should be held. None of the letters included any information to support this objection.

Because these submissions provided no information to support their assertion regarding FDA's safety review, they provide no basis for FDA to reconsider its decision to issue the poultry final rule. Moreover, these submissions provide no basis for

[1] FDA also reviewed a carcinogenicity study in mice, conducted by Bio-Research Laboratories Ltd., in which the test diet contained 50 percent irradiated chicken. The agency noted that the mouse study results raised no concern that irradiated chicken is carcinogenic. However, FDA did not rely on this study because there were deficiencies in the data and report.

granting a hearing because a hearing request must include specifically identified reliable evidence that can lead to resolution of a factual issue in dispute. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (§ 12.24(b)(2)). Therefore, FDA is denying the hearing requested by these letters.

b. *Objections by FWI.* In one of its submissions, FWI contends that "FDA has failed to demonstrate that there is a 'reasonable certainty' that irradiation of poultry at 300 krad [3 kGy] is not harmful, and that therefore the Agency's approval is arbitrary and capricious." FWI gives four reasons for its contention.

i. *Power of the CIVO chronic rat feeding study.* First, FWI raises an issue about the statistical power of the chronic feeding study in rats conducted by CIVO. Specifically, FWI asserts that this feeding study was inadequate for determining safety because the study did not have sufficient statistical power to demonstrate that the cancer risk from consumption of irradiated chicken would be less than one in a million. FWI stated: "In accordance with procedures applied to food additives generally, testing must be of such sensitivity that even a small incremental risk of cancer cannot escape detection, namely one per million, extrapolated to a typical human consumer." FWI provided the results of statistical analyses regarding the power of the test. In a background statement in its submission, FWI also stated that "(g)iven the evidence that the formation of genotoxic radiolytic products can and does occur, a petitioner seeking approval of irradiation of poultry * * * should bear the burden of establishing the magnitude of expected cancer risk, or that it is below a stated level." In support of its objection, FWI submitted only a table entitled "Identification of Genotoxic Radiolytic Products in Irradiated Organic Media or Food," but this table contained no information on genotoxicity data from irradiated poultry. FWI's objection did not dispute FDA's conclusion that the evidence demonstrated that irradiated poultry was not mutagenic (55 FR 18538 at 18540).

Neither FDA's guidelines nor generally accepted scientific procedures suggested for food additive testing recommend that carcinogenicity testing be sufficiently sensitive to detect an increased cancer risk of one in one million.[2] FWI provided no information to support its contention, either by reference to FDA's regulations or to any other requirement. Thus, FDA concludes that this objection raises no issue of fact that can be resolved at a hearing. Instead, the objection simply states FWI's preference for a policy regarding carcinogenicity testing. A hearing will not be granted on issues of policy or law (§ 12.24(b)(1)).

In addition, FDA does not dispute FWI's contention that the statistical power of this test is such that it cannot detect an increased cancer risk of one in one million. However, FWI did not demonstrate why prevailing on this factual issue would be adequate to justify the action requested (§ 12.24(b)(4)).

Additionally, FWI suggested that to increase sensitivity of the testing the radiation dose should have been increased tenfold or that concentrated extracts of all radiolytic products formed by irradiating chicken should have been fed.[3] Once again, FWI submitted no information to establish that the testing it recommended is required to demonstrate safety, or even that such testing would be valid to assess safety. Nor did FWI provide any information concerning how one can conduct such a study or how one can interpret the findings in the context of poultry irradiated at a dose not to exceed 3 kGy. Because FWI provided no evidence to consider in support of its assertion, FDA is denying the request for a hearing on this point because a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions (§ 12.24(b)(2)).

ii. *Addition of ethoxyquin to irradiated chicken in the CIVO studies.* In the CIVO studies, the researchers removed water from the chicken by drying over hot air, in order to preserve the chicken for the time needed to complete the testing. Prolonged contact with hot air causes lipids (fats) to be oxidized to lipid peroxides, thereby rendering the food rancid and unpalatable. Prolonged storage can also lead to rancidity. Thus, the researchers added ethoxyquin, an antioxidant, to the chicken to prevent rancidity. Preventing rancidity by this means is of importance for a product dried and stored, as in the test.

In its second contention, FWI states that the CIVO studies were seriously compromised because the addition of the antioxidant ethoxyquin to the chicken decreased the levels of lipid peroxides in the irradiated chicken to levels comparable to those in unirradiated chicken. FWI contends that these decreased levels would interfere with the observation of toxicity from the lipid peroxides that were formed in higher amounts during the hot air drying of irradiated chicken than in the unirradiated chicken.

In the poultry final rule, FDA noted that ethoxyquin had been incorporated into both the control diets and the test diets in the CIVO studies. The agency acknowledged (55 FR 18538 at 15839 and 15840) that FDA reviews of the CIVO studies had raised the question of whether the addition of ethoxyquin could compromise the study and that this issue needed to be resolved before FDA could reach a safety decision. After careful consideration, FDA concluded that the addition of ethoxyquin to prevent rancidity of the chicken fat did not confound the results of the study.

The effect of ethoxyquin is to retard, during storage, the normal oxidation to peroxides of the fatty content of the diet. Importantly, ethoxyquin cannot reverse oxidation that has already taken place. In the CIVO studies, ethoxyquin was added after irradiation of the meat. Therefore, its presence would not alter the effects of radiation on the food (including any potential effects on the formation of lipid peroxides), as might occur if ethoxyquin had been added beforehand and were present during irradiation.[4]

FWI did not dispute FDA's explanation in the final rule as to why addition of ethoxyquin did not compromise the CIVO studies, and provided no information to contradict the agency's conclusion. Further, FWI did not show that FDA failed to consider important information that would have altered the agency's conclusion on this issue. Therefore, FDA is denying this objection and request for a hearing because a hearing will not be held if there is no factual issue that can be resolved by available and specifically identified reliable evidence (§ 12.24(b)(2)).

iii. *Adequacy of all CIVO studies—other issues.* In its objection, FWI also refers to "* * * additional concerns regarding all the CIVO studies (storage of the irradiated chicken for periods far in excess of those anticipated for human consumers; possibly excessive supplementation of diets with vitamins A and E) and for the chronic feeding study in particular as noted in memoranda provided by the FDA * * *." FWI submitted no information to substantiate these concerns. FWI stated, however, that the short amount of time available to file objections following issuance of the poultry final rule precluded a detailed examination of the issues raised by these studies.[5]

FDA is denying FWI's request for a hearing to the extent that it is based on these particular contentions because FWI's request identified no particular factual issue in dispute and also because FWI provided no specific evidence that could be considered at such a hearing. As noted, a hearing will not be granted on the basis of mere allegations or descriptions of positions or contentions (see § 12.24(b)(1) and (b)(2)).

iv. *Compliance with the Bureau of Foods Irradiated Food Committee (BFIFC) report of 1980.* Finally, FWI asserts that the irradiated poultry final rule did not comply with all the recommendations of the BFIFC report issued in 1980. FWI also expressed disagreement with recommendations in that report.

The BFIFC report is an internal document prepared by FDA scientists that provides recommendations for evaluating the safety of irradiated foods based on the known effects of radiation on foods and on the capabilities of toxicological testing. The report was made available to the public for comment in the **Federal Register** of March 27, 1981 (46 FR 18992). While the report and the comments received on it have aided FDA's thinking regarding the safety testing of irradiated foods, the report established no requirements. FDA cited the BFIFC report in a footnote in the poultry final rule (55 FR 18538 at 18541) to illustrate how the toxicological data the agency considered (much of which was submitted before issuance of the BFIFC report) compared to the recommendations in the report.

Consistent with section 409 of the act, FDA's decision on the safety of irradiation of poultry was based on the entire record of that proceeding. Further, as discussed in the poultry final rule, in reaching its conclusion that irradiation of poultry under conditions specified in the regulation does not present a toxicological hazard (55 FR 18538 at 18541), FDA evaluated both studies submitted in the petitions as well as other studies of irradiated chicken available in agency files. Although FWI alleged that some of the studies that FDA evaluated did not comply with recommendations in the BFIFC report, FWI did not present any evidence that these alleged inconsistencies, even if true, would have led to a different conclusion concerning the safety of irradiation of poultry. Therefore, FDA is denying this objection and request for a hearing because it raises no factual issue that, even if resolved in the way sought by the objection, would justify the action requested (§ 12.24(b)(4)).

B. Environmental Issues

1. FDA's Finding of No Significant Impact

In reaching its decision to permit the irradiation of poultry at up to 3 kGy, the agency carefully considered the environmental effects of this action, as required under the National Environmental Policy Act (NEPA). After carefully reviewing the environmental assessment (EA) submitted by FSIS for FAP 7M3974 and environmental information submitted by RTI for FAP 8M3422, FDA concluded that this particular action would not have a significant impact on the human environment, and that an environmental impact statement was not required. The agency's FONSI and the evidence supporting it, including material from both the FSIS' EA and the submissions from RTI, were placed on display at FDA's Dockets Management Branch.

A key element in the EA and in FDA's FONSI is the regulatory controls exerted by various regulatory bodies, such as the Nuclear Regulatory Commission (NRC), the Occupational Safety and Health Administration, the Department of Transportation, the Environmental Protection Agency, FDA itself, and various State and local authorities. These controls are designed to ensure that any substances that may be lawfully emitted into the environment will not pose a significant environmental impact. These controls and regulations were cited in the materials considered by FDA, which material formed the basis of its FONSI.

2. Objections by FWI

In its second objection, FWI contends that FDA's FONSI is "inadequate." FWI requested the preparation of an Environmental Impact Statement (EIS) and an open public hearing on the existing and potential dangers of the irradiation industry. Specifically, FWI maintained that the agency's FONSI is inadequate because it:

* * * relies strictly on information submitted by those who stand to gain from the approval of poultry irradiation; * * * extensively cites materials submitted by Martin Welt, a convicted felon with a criminal record of deceiving federal regulatory agencies; * * * completely disregards the fact that there have already been numerous irradiation accidents and, thus, must be deemed inadequate.

The objection also states that:

In documents released by FSIS within the past year, initially there is no mention of

[2] In fact, it would not be feasible to conduct such testing in laboratory animals for substances ordinarily consumed at anything other than trivially low levels in the diet. Generally, to increase the power of a test one must increase the amount of test substance fed or increase the number of animals in each group. For example, the standard approach to assess low levels of carcinogenic risk is to feed a substance in large amounts, determine the risk at such a high dose, and extrapolate to lower doses using a linear extrapolation model. Using such a model to detect an increased risk of one in one million from a substance and assuming that the study design could detect a 10 percent cancer incidence at a high dose, one would have to feed an animal 100,000 times the amount it would consume under realistic conditions. This clearly cannot be done with a diet of chicken. Alternatively, testing thousands of animals per group would overwhelm normal laboratory capabilities.

Under FDA guidelines, testing of a food additive is generally conducted at levels no higher than 5 percent of the diet for nonnutritive substances. This level can be higher for a nutritive substance, however, provided it does not cause a significant nutritional deficit (Ref. 1). As noted previously and discussed in detail in the poultry final rule, the CIVO studies fed chicken irradiated at the maximum dose allowed by the regulation, as well as at twice that dose, in amounts equivalent to 35 percent of the diet (by dry weight). Moreover, based on its review of the mutagenicity data, FDA concluded that there was no basis to suspect that irradiated chicken would be carcinogenic.

[3] Irradiation doses typically can be raised only marginally higher than would be used in practice before they produce effects that would change food significantly, often producing an unpalatable product that animals will not eat. Special processing conditions can be used to minimize such effects, however, such as irradiating food in the frozen state in the absence of air. In the poultry final rule, FDA cited tests conducted at a dose approximately 10 times higher than the CIVO studies, which studies showed no adverse effects related to irradiation (55 FR 18539 at 18540). FDA relied primarily on the CIVO studies, however, because FDA would not expect irradiation of poultry at a dose below 3 kGy to be conducted using the processing conditions required for the higher dose.

Extracts of irradiated foods have not been relied on primarily for testing because radiolytic products of food do not differ in any particular chemical or physical properties from other components of food that would allow them to be specifically extracted from food. Additionally, radiolytic products are typically identical to substances that occur naturally in foods. Therefore, FDA is not aware of how one could prepare an extract that would ensure the presence of all radiolytic products while excluding the presence of other similar components of food that did not result from irradiation. The only way to ensure that all radiolytic products are present is to feed the irradiated food itself.

[4] Moreover, ethoxyquin would not be needed for poultry irradiated and stored under typical commercial conditions. Commercial needs would require processing and storage practices that would prevent development of rancidity in order to provide a marketable product. Thus, the agency does not expect that high levels of lipid peroxides will be present in foods that are sold for human consumption.

[5] With respect to the limited time available for objections, FDA notes that the notice of filing for FAP 8M3422, which petition contained these studies, was published more than 3 years prior to FDA's decision. Thus, all safety information in the petition, including the CIVO studies, was available to FWI under the Freedom of Information Act for a significant period of time (21 CFR 171.1(h)(1)).

irradiation as a potential research area; and then, later, the FSIS declares that alternatives to the irradiation solution need not be discussed when considering the environmental impact of the technology. This contradiction alone warrants a hearing and should prove the need for a full Environmental Impact Statement.

Finally, the objection also requested an extension of the comment period, asserting that:

FDA: * * * received the original petition (FAP 7M3974) seeking approval for poultry irradiation in February, 1977 (sic) and, thus, it has taken your agency more than 13 years to come to your final decision. You are now granting the public a mere 30 days to comment on a ruling that took your agency more than 13 years to decide upon.

FDA notes that FWI misinterprets the statutory 30-day objection period, which is specified in section 409(f) of the act, as an opportunity for comment. The poultry final rule issued in the **Federal Register** of May 2, 1990, was a final rule and the opportunity for comment ended at that time. As noted in section I of this document, the agency had announced in the **Federal Register** of February 20, 1987, the filing of FAP 7M3974 and the filing of FAP 8M3422 in the **Federal Register** of March 3, 1987. Thus, FWI had notice of the filing of the petitions and had ample time to comment. The time to submit objections is established by statute (section 409(f) of the act), and thus, is not a deadline established by FDA. However, because the submission from FWI was submitted within the objection period, FDA is considering it as an objection.

In the following discussion, FDA addresses each of FWI's points outlined previously, as well as the data and information filed in support of each, comparing each to the standards for a hearing in § 12.24.

a. *Information submitted by interested parties.* The mere fact that information has been submitted by a party with an interest in an issue under agency consideration is not sufficient reason to reject that information.[6] In fact, each petitioner is required by FDA regulations to submit an EA as part of its food additive petition unless the action sought by the petitioner qualifies for a categorical exclusion. In assessing the potential environmental impact that could result from the approval of use of a food additive, including the use of sources of radiation in food processing, FDA critically evaluates the information submitted in the petitioner's EA, consistent with the applicable agency regulations (part 25 (21 CFR part 25)).

FWI has failed to submit any evidence that would call into question the validity of any of the specific information submitted by the petitioners and relied upon by FDA. FWI is merely asserting its opinion that an EA submitted by a petitioner is inherently inadequate. Accordingly, the agency is denying FWI's request for a hearing because a hearing will not be granted on issues of policy or law (§ 12.24(b)(4)), nor will one be granted on the basis of mere allegations or denials or general descriptions of positions or contentions (§ 12.24(b)(1)).

b. *Petitioner convicted of crimes.* In its objection, FWI also contends that the agency's FONSI is inadequate because "* * * it extensively cites materials submitted by Martin Welt, a convicted felon with a criminal record of deceiving federal regulatory agencies." FWI did not provide any specific information to question the reliability or accuracy of the environmental information contained in FAP 8M3422[7] or FAP 7M3974. To support its objection, FWI submitted a copy of the government's sentencing memorandum in *United States* v. *Welt*, Criminal #88–87, U.S. District Court, District of New Jersey, 1988, (dated August 30, 1988, from Samuel A. Alito, Jr., United States Attorney, to the Honorable Maryanne Trump Barry, United States District Court, District of New Jersey, with attachments).

A food additive regulation is a conclusion that use of the additive in compliance with the conditions of use specified in such regulation is safe; a food additive regulation is not a license for an individual petitioner. Similarly, the FONSI is a conclusion that use of the additive under the proposed conditions of use, which includes compliance with applicable Federal, State, and local regulations, will not result in a significant impact on the human environment. The fact that Martin Welt (once the president of one of the petitioners) is a convicted felon is not in dispute. However, Dr. Welt's status is wholly irrelevant to the agency's evaluation of the potential environmental impact of the poultry final rule. FDA evaluated the environmental information supplied by RTI and the EA submitted by FSIS in an independent, scientific and critical fashion. It is the quality of the data and conclusions drawn from the information provided that are important. FWI raised no allegation as to the accuracy or credibility of the submitted information, nor did it identify any information FDA ignored or misinterpreted in issuing its FONSI. Accordingly, FDA is denying FWI's request for a hearing on this issue because a hearing will not be granted on factual issues that are not determinative to the action requested (see § 12.24(b)(4)).

c. *Accidents at irradiation facilities.* FWI also objected to the agency's FONSI on the grounds that the EA prepared by USDA "fails to mention the numerous irradiation accidents which have already occurred in the U.S.—many of which have resulted in environmental, worker and product contamination." FWI contends that should the poultry industry widely adopt the use of irradiation, the need for irradiation facilities will be greatly expanded and that there are additional risks inherent in such an expanded irradiation industry. In support of its objection, FWI submitted the following:

1. A document entitled "Fact Sheet—Radiation Sterilizers, Inc. (RSI) Incident, prepared by James L. Setser."

2. A document entitled "Summary—First Interim Report of the RSI Incident Evaluation Task Force," June 1989.

3. A document entitled "Statement Before the Incident Evaluation Task Force for the Governor of Georgia," prepared by Judith H. Johnsrud, Research Director, Food and Water, Inc., October 17, 1988.

4. A list of "Irradiation incidents at large scale gamma irradiation facilities, 1974 to 1988," compiled by Brion Sprinsock, National Coalition to Stop Food Irradiation.

5. A transcript of the morning session of the U.S. Nuclear Regulatory Commission Irradiator Workshop held on May 24, 1988.

FDA's action in issuing a food additive regulation permitting the irradiation of poultry at up to 3 kGy allows licensed irradiation processors to include poultry among the products treated at their facilities. Such irradiation of poultry is subject, however, to all applicable regulations, including local, State, and Federal safety regulations. FDA's FONSI is a statement that irradiation of poultry, in compliance with all applicable regulations, will not have a significant impact on the environment. It is entirely reasonable for FDA to evaluate the environmental effects of this food additive approval on the basis that facilities will operate in compliance with applicable safety rules. To assume that facilities will not operate in such compliance would be highly speculative and essentially be a requirement that FDA perform a worst-case analysis when evaluating the potential environmental impact of an agency action. This is simply not what NEPA requires (see *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 355 (1989)).

Importantly, the poultry final rule, in and of itself, does not permit any additional building or operation of irradiation facilities, and thus, does not directly result in any increased risk of accidents at such facilities. Before an irradiation facility is built, other regulatory agencies with oversight regarding its site design, location, licensing, and radiation control procedures (such as the NRC) must issue permits. The evaluation of the environmental impact of the construction and operation of these facilities is, under NEPA, the responsibility of the licensing agency or agencies. FDA's environmental evaluation in this case, and thereby FDA's FONSI, was not intended to reassess the environmental impact issues that are the responsibility of other regulatory agencies. In fact, under NEPA, an agency is not required to assess the environmental impact of a portion of a project where a second agency has jurisdiction over such portion (see *State of N.C.* v. *City of Virginia Beach*, 951 F.2d 596 (4th Cir. 1991)).

Accordingly, even if there have been accidents at irradiation facilities, or even if there would be an increased risk of such accidents as a result of the poultry final rule, these facts have no bearing on FDA's EA of its action. Thus, FDA is denying a hearing on this issue because a hearing will not be granted on factual issues that are not determinative with respect to the action requested (§ 12.24(b)(4)).

d. *Alleged contradiction.* FWI also objects to FDA's FONSI on the grounds of an alleged contradiction between information in FSIS's EA and other FSIS documents and cites an article from *The Food and Drug Letter* (April 28, 1989) in support of its objection. According to FWI, FSIS declared in its EA that alternatives to irradiation need not be discussed when considering the environmental impact of the technology and yet, in the article in *The Food and Drug Letter*, did not mention irradiation as one of the research areas for potentially solving the bacterial problem.

The material cited by FWI does not support its contention. In preparing an EA, petitioners are required, under § 25.31a(a)(11), to consider alternatives to the proposed action if potential adverse environmental impacts have been identified for the proposed action (§ 25.31a(a)(11)). After evaluating the FSIS' EA, the agency found that irradiation of poultry in compliance with existing laws and regulations will not lead to a significant impact on the environment. Because no adverse impacts are expected, the agency did not require, and FSIS did not address, alternatives to the proposed action under format item 11 of the EA. It should also be noted that, contrary to FWI's contention, FSIS did not claim in its EA that irradiation is the only solution to food-borne pathogens.

The article referred to by FWI from *The Food and Drug Letter* discusses areas identified by FSIS for future research for potential solutions to the problem of microbial contamination in poultry; at that time, irradiation had already been a subject of research as a potential solution to this problem. Thus, there is no contradiction between the statements made by FSIS in its EA and in the article in *The Food and Drug Letter*.

In order to justify a hearing on this issue, FWI would need to provide credible evidence that challenges FDA's conclusion that the irradiation of poultry in compliance with existing regulations will not lead to a significant impact on the environment (see § 12.24(b)(2)). FWI has not done so and, thus, has failed to meet a threshold burden of tendering evidence that suggests a need for a hearing (*Costle* v. *Pacific Legal Foundation*, *supra*, 445 U.S. at 214).

V. Summary and Conclusions

The safety of poultry irradiated at up to 3 kGy has been thoroughly tested and the data have been reviewed by the agency. As discussed previously, FDA concluded that the available studies establish the safety of poultry irradiated at doses up to 3 kGy for human consumption.

The petitioner has the burden to demonstrate safety before FDA can approve the use of a food additive. Nevertheless, once the agency makes a finding of safety in an approval document, the burden shifts to an objector, who must come forward with evidence that calls into question FDA's conclusion (*American Cyanamid Co.* v. *FDA*, 606 F2d. 1307, 1314–1315 (D.C. Cir. 1979)).

None of those objecting to the final rule has identified any information in the record that was misconstrued by FDA to support the objector's claim that the agency incorrectly concluded that consumption of poultry irradiated at up to 3 kGy is safe. Nor has any objector established that the agency overlooked significant information in reaching its conclusion. Indeed, none of the objections presented any relevant evidence that has not already been carefully reviewed and weighed by the agency. The agency has determined that the objections do not raise any genuine and substantial issue of fact that would justify an evidentiary hearing on any of the objections raised (§ 12.24(b)). Accordingly, FDA is overruling the objections and is denying the requests for a hearing. In addition, FWI's request for a stay of the effectiveness of the May 2, 1990, regulation until a hearing is held is moot because FDA is denying all hearing requests.

FDA is confirming May 2, 1990, as the effective date of the regulation.

VI. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Bureau of Foods, "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," Appendix III, p. 18, 1982.

Dated: November 26, 1997.

Michael A. Friedman

Lead Deputy Commissiner for the Food and Drug Administration.

[FR Doc. 97–31739 Filed 12–2–97; 8:45 am]

BILLING CODE 4160–01–F

[6] Moreover, the agency notes that, the USDA, one of the petitioners, does not stand to gain from the approval of poultry irradiation, contrary to FWI's contention that the environmental information was submitted by those who do.

[7] Dr. Martin Welt was the president of RTI when it submitted FAP 8M3422. As the responsible company official, he signed the environmental information submitted in that petition. At the time FDA issued its final rule, Dr. Welt was no longer part of RTI management.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 94F–0289]

Irradiation in the Production, Processing and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a source of radiation to treat refrigerated or frozen uncooked meat, meat byproducts, and certain meat food products to control foodborne pathogens and extend product shelf-life. This action is in response to a petition filed by Isomedix, Inc.

DATES: Effective December 3, 1997; written objections and requests for a hearing by January 2, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3093.

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I. Introduction

In a notice published in the **Federal Register** of August 25, 1994 (59 FR 43848), FDA announced that a food additive petition (FAP 4M4428) had been filed by Isomedix, Inc., 11 Apollo Dr., Whippany, NJ 07891, proposing that part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of a source of radiation to treat the fresh or frozen raw edible tissue of domesticated mammalian human food sources for purposes of reduction of parasites and microbial pathogens, and extension of product shelf-life.

Several letters, from members of academia and from a trade group, were received in response to the filing of the petition. The letters urged FDA to approve irradiation of beef and other meats, and expressed the belief that the use of irradiation could benefit public health and improve the safety of meat by controlling foodborne pathogens. Because the letters expressed general support for the agency's action, but provided no substantive information, these comments will not be addressed further.

The comments illustrate, however, a heightened public awareness of the health threat posed by pathogens in or on meat. Among these, *Escherichia coli* O157:H7, *Salmonella* sp., and *Clostridium perfringens* are of primary concern from a public health standpoint; *E. coli* O157:H7 because of the severity of the illness associated with the organism, and *Salmonella* and *C. perfringens* because of the high number of outbreaks and individual cases of foodborne illness associated with these pathogens (Refs. 1 and 2).[1]

Although proper handling practices and cooking to recommended internal temperatures are effective interventions in preventing foodborne illness associated with meat products, much effort has gone into the development of other interventions aimed at reducing microbial pathogens. Irradiation has been proposed as one such additional tool.

The subject petition requests that FDA amend the food additive regulations to authorize the use of ionizing radiation to "control microbial pathogens in raw, fresh-chilled, and frozen intact and comminuted edible tissue of the skeletal muscle and organ meat of domesticated mammalian food sources; with concomitant control of infectious parasites, and, extension of acceptable edible/marketable life of chilled/refrigerated and defrosted meat through the reduction in levels of spoilage microorganisms." The petition also specifies that the proposed foods are to be "primarily from bovine, ovine, porcine, and equine sources." The petition requests that a maximum dose of 4.5 kiloGray (kGy) be established for the irradiation of fresh (chilled, not frozen) meat, and that a maximum dose of 7.0 kGy be established for the irradiation of frozen meat.

In this final rule, FDA is adding refrigerated and frozen uncooked meat, meat byproducts (e.g., edible organs such as the liver and the kidneys) and certain meat food products (e.g., ground beef and hamburger) to the list of foods that are authorized (under § 179.26(b)) for treatment with ionizing radiation. In addition, FDA is establishing 4.5 kGy as the maximum permitted dose for irradiation of refrigerated meat, meat byproducts, and certain meat food products; and 7.0 kGy as the maximum permitted dose for irradiation of frozen meat, meat byproducts and certain meat food products.

The foods that are set forth in the regulation below are all subject to the Federal Meat Inspection Act (21 U.S.C. 601, *et seq.*), and are defined by the U.S. Department of Agriculture/Food Safety and Inspection Service (USDA/FSIS) in title 9 of the Code of Federal Regulations. These foods include meat, as defined by USDA/FSIS in 9 CFR 301.2(rr),[2] meat byproducts, as defined by USDA/FSIS in 9 CFR 301.2(tt),[3] and certain meat food products[4] from among those defined by USDA/FSIS in 9 CFR 301.2(uu).

In the text of this document, the term "meat" will be used to refer collectively to meat, meat byproducts, and applicable meat food products. When, in the text of this document, the discussion is also applicable to foods that might, in common usage, be referred to as a meat or as a type of meat (e.g., chicken, turkey, or fish), but that do not conform to the definitions of meat, meat byproducts, or meat food products in title 9 of the Code of Regulations, the term "flesh food(s)" will be used instead.

[1] *E. coli* O157:H7 causes hemorrhagic colitis, a severe illness, the symptoms of which include high fever, vomiting, and bloody diarrhea, with consequent dehydration. In patients with weakened or immature immune systems, the infection can progress to hemolytic uremic syndrome (HUS), a life-threatening kidney disease with a mortality rate of 6 percent (Ref. 3). The number of outbreaks in the United States reported to be associated with *E. coli* O157:H7 has increased from 4 in 1992 to 30 in 1994; *E. coli* O157:H7 has been estimated to cause more than 20,000 infections and 250 deaths each year (Ref. 4).

Salmonella sp. are a leading reported cause of foodborne bacterial diseases (Ref. 5) and have been reported to be associated with 48 percent of beef-related outbreaks (Ref. 2). *C. perfringens* is also an important agent of foodborne microbial disease, with a projected incidence of 652,000 cases and 7.6 deaths per year. During 1973 to 1987, beef accounted for 30 percent of all *C. perfringens* type A food poisoning outbreaks (Ref. 6).

[2] *Meat.* (1) The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, or in the diaphragm, or in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(2) The product derived from the mechanical separation of the skeletal muscle tissue from the bones of livestock using the advances in mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical conformation such that they are recognizable, such as loin and rib bones, when they emerge from the machinery) which meets the criteria of no more than 0.15 percent or 150 mg/100 gm of product for calcium (as a measure of bone solids content) within a tolerance of 0.03 percent or 30 mg.

[3] *Meat byproduct.* Any part capable of use as human food, other than meat, which has been derived from one or more cattle, sheep, swine, or goats. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

[4] Specifically, those meat food products within the meaning of 9 CFR 301.2(uu), with or without nonfluid seasoning, that are otherwise composed solely of intact or ground meat and/or meat byproducts (e.g., ground beef as in 9 CFR 319.15(a); hamburger as in 9 CFR 319.15(b); certain defatted beef or pork products as in 9 CFR 319.15(e) and 9 CFR 319.29(a), respectively; mechanically separated (species) as in 9 CFR 319.5).

II. Evaluation of Safety

Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), a source of radiation used to treat food is defined as a food additive:

> * * * The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) * * *.

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the evidence establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 (the Amendment) is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This concept of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)).

The legislative history of the Amendment clearly reflects that Congress recognized that it is impossible to establish with complete certainty the absolute harmlessness of any chemical substance. The concept of safety contained in the Amendment has, as its focus, the reduction of uncertainty about the safety of an additive to the point where the agency can reasonably conclude that no harm will result from its proposed use.

The statute does not prescribe the safety tests to be performed but leaves that determination to the discretion and scientific expertise of FDA. Not all food additives require the same amount or type of testing. The amount and type of testing required to establish the safety of an additive will vary depending on the particular additive and its intended use.

In this particular case, the additive is not, literally, added to food. Instead, a source of radiation is used to process or treat food such that, analogous to other food processes, its use can affect the characteristics of the food. In the subject petition, the intended technical effect is a change in the microbial load of the food, specifically, a reduction in the numbers of microorganisms, both pathogenic and nonpathogenic, in or on meat. It is important to realize, however, that the petitioner is not required to show, nor is FDA permitted to consider, that irradiation of meat has benefits, health or otherwise, for consumers of irradiated meat. The legislative history of the Amendment is clear on this point:

> The question of whether an additive produces such [a technical] effect (or how much of an additive is required for such an effect) is a factual one, and does not involve any judgement on the part of the Secretary whether such effect results in any added 'value' to the consumer of such food or enhances the marketability from a merchandising point of view.

S. Rept. 2422, 85th Cong., 2d sess. 7 (1958). Accord: H. Rept. 2284, 85th Cong., 2d sess. 6 (1958)

Thus, in evaluating the safety of a source of radiation to treat meat intended for human consumption, FDA cannot consider the possible benefits to consumers or to food processors. Instead, the agency must identify the various effects that can result from irradiating this food and assess whether any of these effects may pose a human health risk. In this regard, three areas of concern need to be addressed: potential toxicity, nutritional adequacy, and potential microbiological risk. Each of these areas is discussed in detail in section III of this document.

III. Evaluation of Safety of the Petitioned Use of a Source of Radiation

The petitioner submitted a large number of published articles and other study reports containing data and information in the areas of radiation chemistry,[5] dietary consumption patterns, toxicology, nutrition, and microbiology. FDA has reviewed the data and studies submitted in the petition, as well as other information in its files relevant to the safety and nutritional adequacy of meat treated with ionizing radiation. Specifically, the agency evaluated information concerning:

1. Studies of the radiation chemistry of food components and whole foods, including chemical analyses of irradiated flesh foods.

2. Toxicity studies of flesh foods, including studies of irradiated beef, pork, horse meat, chicken, and fish.

3. Studies of nutrient levels in, and information regarding dietary consumption patterns of, irradiated flesh foods.

4. Studies of the effects of irradiation on both pathogenic and nonpathogenic microorganisms.

A. General Framework

To determine whether the use of a food additive is safe, FDA typically considers the chemical identity and amount of the additive that will be ingested in light of what is known regarding its toxicity. In the case of substances added directly to food, the agency estimates the amount of the additive that will be ingested from the proposed use levels of the additive in particular foods or food types along with consideration of consumption patterns of those foods. Information about the chemical structure of an additive and an assessment of the likely consumption levels of the additive, together with information obtained from toxicological testing, forms the basis for evaluating safety.

In the case of food irradiation, the effects of this form of processing on the characteristics of the treated foods are a direct result of the chemical reactions induced by the absorbed radiation. Research has established that the types and amounts of products generated by radiation-induced chemical reactions (hereinafter referred to as "radiolytic products") depend on the chemical constituents of the food and on the conditions of irradiation. Information regarding the chemical structures and the amounts of radiolytic products in particular food types, together with the information obtained from toxicological testing, forms a sound basis for evaluating the toxicological safety of an irradiated food.

In the case of food irradiation, the nutritional adequacy and the microbiological safety of the treated foods must also be evaluated. Research has shown that the principles of radiation chemistry govern the extent of changes both in the nutrient levels and in the microbial load of irradiated foods. Key factors include the specific nutrient or microorganism of interest, the food, and the conditions of irradiation.

[5] The term "radiation chemistry" refers to the chemical reactions that occur as a result of the absorption of ionizing radiation. Like all chemical reactions, these radiation-induced reactions depend on the nature of the reactants and on the energy supplied to the system. In the context of food irradiation, the radiation-induced reactions depend on the chemical constituents of the food and such factors as the ambient atmosphere (which also contains potential reactants), the physical state of the food, the ambient temperature, and the radiation dose. Radiation-induced chemical reactions can affect the detailed chemical composition of the food and the cellular components of the microorganisms in or on the food.

B. Radiation Chemistry

Scientists have compiled an enormous body of data regarding the effects of ionizing radiation on different foods under various conditions of irradiation. Because of the complexity in the composition of any food and the large numbers of specific radiation-induced reactions that can occur, the agency will limit its discussion here to the broad principles that are applicable to this decision.[6] These broad principles provide the basis for extrapolation and generalization from data obtained in specific foods irradiated under specific conditions to draw conclusions regarding foods of a similar type irradiated under different, yet related, conditions.

1. Factors Affecting the Radiation Chemistry of Foods

Apart from the chemical composition of the food itself, the factors, or irradiation conditions, that are most important in considering the radiation chemistry of a given food include the radiation dose, the physical state of the food (e.g., the solid or frozen versus the liquid or nonfrozen state), and the ambient atmosphere (air, reduced oxygen, vacuum, etc.).

With respect to dose, the amounts of radiolytic products generated in a particular food have been shown to be directly proportional to the radiation dose (Refs. 7, 8, and 9). Thus, it is entirely sound to extrapolate from data obtained at high radiation doses to draw conclusions regarding the amounts of radiolytic products expected to be generated at lower doses.

The radiation chemistry of food is also strongly influenced by the physical state of the food. If all other conditions, including dose and ambient atmosphere, are the same, the extent of chemical change that occurs in a particular food in the frozen state is less than the change that occurs in the same food in the nonfrozen state. This is a result of the reduced mobility, in the frozen state, of the initial products of irradiation (free radicals, which are highly energetic, unstable molecules). Because of their reduced mobility, these free radicals tend to recombine to form the original substance rather than to diffuse through the food to react with other components of the food matrix and thereby form different substances (Refs. 9 and 10). Thus, both the types and the amounts of radiolytic products are affected by the physical state of the food, and, for a given food, higher radiation doses are needed to effect the same degree of chemical change in frozen versus nonfrozen food. Higher radiation doses are also needed to accomplish the same antimicrobial technical effect in a frozen food versus a nonfrozen food of the same type.

The formation of radiolytic products in a given food is also affected by the ambient atmosphere. Irradiation in an atmosphere of high oxygen content generally produces both a greater variety, and greater amounts, of radiolytic products in the food than would be produced in an atmosphere of lower oxygen content. This is because irradiation initiates certain oxidation reactions, reactions that occur with greater frequency in foods with high fat content (Refs. 11 and 12). The final products of radiation-induced oxidation reactions in foods are similar to those produced by oxidation reactions induced by other processes (e.g., storage or heating in air).

In general, the types of products generated by irradiation are similar to those produced by other food processing methods. Radiation-induced chemical changes, if sufficiently large, however, may cause changes in the organoleptic properties of the food. Because food processors wish to avoid undesirable effects on taste, odor, color, or texture, there is an incentive to minimize the extent of these chemical changes in the food. Thus, irradiation is often conducted under reduced oxygen levels or on food in the frozen state.

2. Radiation Chemistry of the Major Components of Flesh Foods

The major components of all foods are water, carbohydrates, proteins, and lipids. Flesh foods, as a group, have very little carbohydrate content, and are comprised primarily of water, proteins, and lipids. The radiation chemistry of these components is well established.

In foods of relatively high water content, such as flesh foods, free radicals produced by radiolysis of water form the majority of the initial products of the radiation-induced chemical reactions. These free radicals, in turn, react with the other components of the food to form the final, stable, radiolytic products.

With respect to proteins, several types of reactions can occur as a result of irradiation. One type of reaction is the breaking of a small number of peptide bonds to form polypeptides of shorter length than the original protein (Refs. 13 and 14).[7] Radiation-induced aggregation or cross-linking of individual polypeptide chains can also occur; these processes result in protein denaturation (Refs. 13 through 16). In irradiated flesh foods, most of the radiolytic products derived from proteins have the same chemical composition but are altered in their secondary and tertiary structures. These changes are similar to those that occur as a result of heating, but in the case of irradiation, such changes are far less pronounced and the amounts of reaction products generated are far lower.

A third type of reaction that can occur when proteins are irradiated involves the reaction of amino acids in the polypeptide chain with the free radicals produced from water, without the breaking of peptide bonds (Refs. 17 and 18). The compounds produced by such reactions, like the other radiolytic products derived from proteins, are similar or identical to those found in foods that have not been irradiated. The radiolytic products resulting from this third type of reaction occur in very small amounts; various studies have established that there is little change in the amino acid composition of flesh foods irradiated at doses below 50 kGy (Refs. 19 and 20), a dose approximately seven times greater than the highest dose set forth in the regulation below.

The radiation chemistry of lipids (fats) is also well established.[8] Numerous studies have been performed with various oils and fats and also on the lipid fraction of irradiated foods (see, e.g., Refs. 21 through 25). A variety of radiolytic products derived from lipids have been identified, including fatty acids, esters, aldehydes, ketones, alkanes, alkenes, and other hydrocarbons (Refs. 7, 22, 23, 25, and 26a through 26c).[9] All of these types of compounds are also found in foods that have not been irradiated. These types of compounds are also produced by heating foods, and, in the case of heating, are produced in amounts far higher than the trace amounts that result from irradiating foods (Refs. 23 and 27).

In summary, the results obtained from chemical analyses of irradiated flesh foods establish that there would be very small amounts of individual radiolytic products generated by radiation doses comparable to those proposed in the petition. In addition, most of these radiolytic products are either the same as, or structurally very similar to, compounds found in foods that have not been irradiated. Because of their structural similarities to compounds found in foods that have not been irradiated, these radiolytic products would be expected to be toxicologically similar to such compounds as well. Thus, the available information regarding the radiation chemistry of the major components of flesh foods supports the proposition that there is no reason to suspect a toxicological hazard due to consumption of an irradiated flesh food.

3. Flesh Foods as a Generic Class

As noted above, flesh foods are comprised primarily of water, proteins, and lipids.[10] While the proportions of the individual amino acids in the proteins and the individual fatty acids in the lipid fraction vary somewhat among the different flesh foods, the same chemical components provide the basis for any chemical reactions in flesh foods caused by the absorption of ionizing radiation. Because of this, the same compounds (in slightly varying proportions) will constitute the majority of radiolytic products in all irradiated flesh foods.

The large number of studies on the radiation chemistry of food and food components, taken together, support this conclusion regarding commonality in the chemistry and predictability of the types and amounts of radiolytic products (see, e.g., Refs. 14, 18, and 30). Accordingly, it is scientifically sound to generalize from the data obtained in studies of a variety of specific irradiated flesh foods to draw conclusions regarding the irradiation of flesh foods as a class (Ref. 30). Because of the foregoing, FDA has determined that, to evaluate the safety of foods that are the subject of this petition (i.e., meat and meat byproducts as defined in 9 CFR 301.2(rr) and (tt), and certain meat food products from among those defined in 9 CFR 301.2(uu)), it is entirely appropriate to consider the available data from all flesh foods, irradiated under a variety of conditions. Details of the agency's analysis are presented below.

C. Toxicological Considerations

As discussed previously, all of the available information from the results of chemical analyses suggests that there is no reason to suspect a toxicological hazard due to consumption of an irradiated food. However, while chemical analyses have not identified the presence of any particular radiolytic products in amounts that would raise a toxicological concern, the agency notes that the large body of data from studies where irradiated flesh foods were fed to laboratory animals provides an independent way to assess toxicological safety. Thus, the agency has also examined all the available data from toxicological studies that are relevant to the safety of irradiated meat, namely, all of those with flesh foods.

This includes the data relied on by the agency in its previous evaluation of the safety of poultry irradiated at doses up to 3 kGy (discussed in the Federal Register of May 2, 1990 (55 FR 18538)), as well as additional data in FDA files from studies of irradiated meat, poultry, and fish. The agency's analysis incorporates the principle that toxicological data collected from studies on foods irradiated at high doses can be applied to the toxicological evaluation of foods of the same generic class receiving lower doses (Refs. 14 and 30). The agency's analysis also takes into account the known effects of other conditions of irradiation, such as the physical state of the food and the ambient atmosphere, to compare the results of different studies. A summary of that analysis is presented below.

1. Toxicity Studies of Flesh Foods Relied Upon by FDA in Previous Safety Evaluations

In the early 1980's, as part of a regulatory initiative on irradiation of minor dry ingredients (e.g., spices and seasonings) and foods irradiated at low doses, the agency conducted a review of all toxicological studies of irradiated foods that were available at that time. In order to come to timely closure on that rulemaking, the agency limited its analysis to whether individual studies could stand alone to support a safety decision and to whether the studies showed any evidence of toxicity attributable to irradiation. The agency found no evidence of toxicity that could be attributed to irradiation of food and amended its regulations to authorize the use of irradiation on foods at low doses (no greater than 1 kGy) and on minor dry ingredients at doses no greater than 30 kGy (51 FR 13376 at 13378, April 18, 1986).

However, FDA concluded that it could not, at that time, expand approval to higher doses for foods other than minor dry ingredients because most of the individual studies had limitations in design or conduct. The agency did not attempt to determine whether the available toxicological studies, taken as a whole, could complement each other and thus compensate for weaknesses in any individual study or whether additional information could be obtained to supplement the available reports. In addition, FDA had not, at that time, assessed the nutritional and microbiological ramifications of irradiating major dietary components at doses above 1 kGy.

Although, as noted, many of the animal feeding studies were not fully adequate by modern toxicology standards, the agency found that several studies were fully adequate in design and conduct and could stand alone in support of safety. One of these studies examined the effects of feeding an irradiated flesh food to animals; specifically, rats were fed beef stew or evaporated milk, each food irradiated at 27.9 and 55.8 kGy (51 FR 13376 at

[6] Several books provide more detailed discussions of radiation chemistry with references to the large number of original research studies, particularly in the area of food irradiation. Sources that can be consulted for further information include, but are not limited to: *Radiation Chemistry of Major Food Components*, edited by P. S. Elias and A. J. Cohen, Elsevier, Amsterdam, 1977; *Recent Advances in Food Irradiation*, edited by P. S. Elias and A. J. Cohen, Elsevier, Amsterdam, 1983; and Diehl, J. F., "Chemical Effects of Ionizing Radiation," Ch. 3 in *Safety of Irradiated Foods*, Marcel Dekker, New York, 1995.

[7] Proteins are composed of amino acids joined by peptide bonds. The characteristic sequence of amino acids in a particular protein is known as the primary structure. The extent and nature of the coiling or pleating of different segments of the protein is known as the secondary structure. The three dimensional shape of the coiled or pleated protein is known as the tertiary structure. Denaturation refers to structural changes that result in a loss of biological properties; these are usually changes in the secondary or tertiary structures.

[8] The fat in meat is composed primarily of triglycerides, each molecule of which contains three fatty acids. The predominant fatty acids in the triglycerides of flesh foods are oleic, palmitic, linoleic, and stearic acid.

[9] One major effort to determine whether radiolytic products in a flesh food presented any risk to human health is described in a report entitled "Evaluation of the Health Aspects of Certain Compounds Found in Irradiated Beef," prepared by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology under contract with the U.S. Army ("the FASEB/LSRO report" and supplements, Refs. 28a through 26c).

This report presented the results of chemical analyses performed on frozen beef irradiated under vacuum at a dose of 56 kGy. Sixty-five volatile radiolytic products were identified, most of which originated from the lipid fraction. This study established that these 65 radiolytic products were either identical or structurally similar to substances found in foods that have not been irradiated, and that these individual radiolytic products were produced in very small amounts (generally 1 to 700 parts per billion of irradiated beef), even at a radiation dose eight times higher than the highest dose requested in the petition.

[10] The proximate composition of flesh foods does not vary widely. Beef and lamb, for example, are composed of approximately 17 to 20 percent protein, 15 to 25 percent fat, and 56 to 65 percent water, depending on the cut. Chicken, depending on the cut and whether the skin is included, is approximately 18 to 25 percent protein, 5 to 19 percent fat, and 57 to 75 percent water. Fish, depending on the species, is approximately 16 to 27 percent protein, 1 to 20 percent fat, and 60 to 75 percent water.

The predominant fatty acids in the triglycerides of flesh foods are oleic, palmitic, linoleic, and stearic acid. The saturated fatty acids (palmitic and stearic acid) contribute approximately 8 to 12 percent of the fat content in both beef and lamb. The fat in chicken (skin on) and pork is composed of approximately 2 to 9 percent saturated fatty acids. The amino acid content of flesh foods also does not vary widely. In beef, pork, lamb, and chicken, tryptophan contributes the smallest weight percentage and lysine the greatest weight percentage to the amino acid content (see Refs. 28 and 29).

13384).[11] The data showed that no treatment-related adverse effects were observed with either irradiated food.

Subsequent to the agency's review of all animal feeding studies, discussed above, FDA further evaluated a series of feeding studies of irradiated poultry, obtaining additional information on some of the studies and analyzing the results in greater detail.[12] The agency has previously discussed the findings of, and its conclusions regarding, these studies in its decision authorizing the irradiation of poultry at doses no greater than 3 kGy (55 FR 18538, May 2, 1990).[13] Briefly, the agency concluded that three animal feeding studies of high quality (a multigeneration study in rats, a chronic study in rats, and a 1-year study in beagle dogs), in which chicken was irradiated at 3 or 6 kGy and administered at a level of 35 percent of the diet, showed no evidence of adverse toxicological effects attributable to irradiation (55 FR 18538 at 18539 and 18540). At that time, the agency also reviewed all other toxicity data on irradiated poultry and found the results to be consistent with a conclusion that irradiated poultry does not present a toxicological hazard.[14]

[11] Although the agency cited this as one study, it would be more accurately described as one report where the results of two chronic feeding studies of irradiated beef stew, one in rats and one in dogs, and two chronic studies of irradiated evaporated milk, also one in rats and one in dogs, were described. The two studies in rats were fully accepted by the agency. The two studies in dogs were not fully accepted in the agency's early review solely because of the small number of animals used.

[12] The earlier review had not fully accepted some of these studies because the reports did not contain a complete discussion of all relevant details. In addition, FDA had not fully addressed the possible significance of the use of an antioxidant to prevent rancidity from developing during drying of the meat for storage. The agency subsequently concluded that the studies were acceptable after receiving additional information from the laboratory, and after determining that the antioxidant could not have changed the effects due to irradiation because it was added after the chicken was irradiated (see 55 FR 18538 at 18539 and 18540).

[13] Following publication of the final rule, FDA received several letters and two submissions within the 30-day objection period. The submissions sought revocation of the final rule and requested a hearing. Elsewhere in this issue of the **Federal Register**, FDA is denying the objections and requests for a hearing because they do not raise issues of material fact that justify a hearing or otherwise provide a basis for revoking the final rule.

[14] The agency evaluated several other studies in which animals were fed radiation-sterilized chicken and one in which mice were fed chicken irradiated at 7 kGy. No treatment-related adverse effects were seen in any of these studies (55 FR 18538 at 18540). However, because, in the studies of radiation-sterilized chicken, the conditions of irradiation were different from what would be used in commerce under the regulation sought by the petitioner, and because of deficiencies in the data from the study of chicken irradiated at 7 kGy, FDA did not rely explicitly on these studies.

In summary, the agency has previously found that the following toxicological studies of irradiated flesh foods, tested in fully adequate animal feeding studies, demonstrated no adverse health effects that could be attributed to irradiation: beef (as a component of stew) irradiated at doses of 27.9 and 55.8 kGy and tested in a chronic study in rats; chicken irradiated at doses of 3 kGy and 6 kGy and tested in a three generation reproduction study in rats, a chronic study in rats, and a 1-year study in dogs.

2. Additional Analyses of Toxicity Data

In 1980, a Joint FAO/IAEA/WHO Expert Committee[15] concluded that irradiation of any food commodity at an average dose of up to 10 kGy presents no toxicological hazard (Ref. 31). Based in part on the Expert Committee's conclusion regarding the absence of toxicological hazard (as well as conclusions on the nutritional adequacy and microbiological safety of irradiated foods), the Codex Alimentarius Commission (Codex), in 1984, recommended that member nations adopt the Codex finding that the "wholesomeness of foods irradiated so as to have absorbed an overall average dose of up to 10 kGy, is not impaired" (Ref. 32). FDA did not adopt the Codex recommendation in its 1986 rulemaking because, as noted, it had not yet analyzed the issues of nutritional adequacy and microbiological safety in a sufficiently comprehensive way and had not pursued the analysis of toxicity data beyond the examination of individual studies.

Subsequently, WHO, at the request of one of its member States, conducted a new review and analysis of the safety data on irradiated food (Ref. 33). WHO considered the extent to which data on one food type can be extrapolated to other foods and the extent to which individual studies of irradiated foods can be integrated into one large database to be evaluated as a whole, as opposed to separate evaluations of a series of individual studies.

This review included all the studies in FDA's files that the agency considered as reasonably complete, as well as those studies that appeared to be acceptable but had deficiencies interfering with interpretation of the data (see 51 FR 13376 at 13378). The WHO review also included data from USDA and from the Federal Research Centre for Nutrition at Karlsruhe, Germany. WHO explicitly documented, in detail, the data relied on for its conclusion that the integrated toxicological database is sufficiently sensitive to evaluate safety and that no adverse toxicological effects due to irradiation were observed in the dose ranges tested (Ref. 33).

[15] FAO is the Food and Agriculture Organization of the United Nations, IAEA is the International Atomic Energy Agency, and WHO is the World Health Organization.

FDA has previously reviewed the individual studies that are cited in the WHO report and found no evidence of toxicity attributable to irradiation. FDA has now also reexamined these studies to determine whether the integrated toxicological database derived from this body of work, together with the information regarding radiation-induced chemical changes, establishes the toxicological safety of meat irradiated under the conditions set forth in the regulation below.

FDA finds that, while many of these studies cannot individually establish safety,[16] they still provide important information that, evaluated collectively, supports a conclusion that there is no reason to believe that irradiation of flesh foods presents a toxicological hazard (Refs. 34a and 34b). The overwhelming majority of studies reported no adverse toxicological effects due to consumption of irradiated flesh foods; equally important, the few effects observed were not reproduced in other studies.[17] In addition, FDA notes that many of the feeding studies were conducted using flesh foods irradiated at doses far higher than those proposed in the petition, providing some exaggeration in terms of the amounts of radiolytic products consumed.

Details regarding the important features of both WHO's and FDA's recent analyses are presented below. FDA has evaluated all relevant data to ensure that any potential evidence of toxicity would not be overlooked. However, because of the large number of studies in the total database, this document focuses on the types of

[16] For example, the number of animals used in many of the early studies is smaller than that commonly used today. Complete histopathology was not always done or reported. For some studies, the data are available only in brief summary form.

[17] If the radiolytic products in flesh foods irradiated under test conditions were of any toxicological significance, consistent effects, particularly in those tests where the foods were irradiated at comparable doses and under comparable conditions, should have been observed. It is also important to note that at the time many of these studies were conducted, scientists did not fully understand the nutritional ramifications of modifying an animal's diet by feeding it large amounts of foods not normally consumed by laboratory animals. The few adverse effects observed in certain of the studies are consistent with what one could expect based on the nutritional composition of the test diet (Refs. 33 and 35).

studies of irradiated flesh foods that provide the greatest opportunity for detecting a treatment-related effect rather than attempting an exhaustive discussion of all the available studies.[18] In addition, this document concentrates on those studies that were conducted at radiation doses greater than, or comparable to, the doses requested in the subject petition.

3. Chronic Feeding Studies

Both FDA and WHO evaluated chronic studies in which various flesh foods, irradiated at doses ranging from 6 to 74 kGy, were fed to animals (Ref. 36). These include those studies, discussed previously, on which FDA has relied in previous safety evaluations of irradiated foods. The studies in which no adverse effects were reported include the following: (1) Studies in which rats were fed beef irradiated at 56 kGy; pork at 56 kGy; chicken at 6 kGy; fish at 6 kGy; horse meat at 6.5 kGy; fish at 56 kGy; beef stew at 56 kGy; a mixture of beef, pork, fish, and other foods at 28 kGy; pork brain and egg at 93 kGy; and pork at 74 kGy; (2) studies in which mice were fed chicken irradiated at 59 kGy; bacon and bacon fat at 56 kGy; chicken at 7 kGy; fish and beef at 56 kGy; pork brain and egg at 93 kGy; and pork and chicken at 56 kGy; and (3) studies in which dogs were fed chicken irradiated at 59 kGy; chicken, beef, and jam at 56 kGy; bacon and cabbage at 56 kGy, beef at 56 kGy; and chicken at 6 kGy.

In addition to the studies listed above, four chronic studies reported observations that merit further discussion. FDA has concluded that the effects reported in these four studies were either not attributable to irradiation or were otherwise not of toxicological significance.

In one study (Ref. 37), weanling rats fed a mixture of radiation-sterilized (56 kGy) chicken stew and irradiated (6 kGy) cabbage for 19 days were reported to have reduced levels of alkaline phosphatase in duodenal tissue. However, this effect was not seen in weanling rats fed either (but not both) radiation-sterilized chicken stew or irradiated cabbage for 19 days and was not seen in other rats that were fed the irradiated chicken stew/cabbage mixture for 150 days. Additionally, no adverse histopathological findings that would indicate a toxic effect were reported. FDA concludes that the observed decrease in alkaline phosphatase levels in weanlings is not of toxicological significance for three reasons: (1) The effect observed in weanling rats was not observed in rats maintained on the same diet into adulthood, (2) the effect was not reproduced when either of the two irradiated foods was fed individually, and (3) no other reported observations indicate a toxic effect (Ref. 38).

In a second study (Ref. 39), a diet composed of a mixture of nine foods, including bacon, beef, ham, and fish was radiation-sterilized (56 kGy) and fed to rats. This study reported a decreased weight gain for third generation females, but not for males. FDA has concluded that this effect cannot be attributed to irradiation because it was accompanied by breeding problems that significantly reduced the sizes of the groups of rats fed the control diet as well as the groups of rats fed the irradiated diet, an observation that is indicative of overall dietary deficiencies unrelated to radiation treatment (Ref. 35).

A third study (Ref. 40) reported a significant increase in heart lesions (auricular dilatations) in mice fed radiation-sterilized (56 kGy) pork and chicken. FDA has determined that this effect cannot be attributed to the irradiated flesh foods because a replicate study with nearly 5,000 mice of the same strains showed no such lesions. (Refs. 34a and 38).

Finally, a chronic study in dogs fed irradiated (8 kGy) soft shell clams reported a decrease in blood urea nitrogen (BUN) in the males but not in the females (Ref. 41). FDA has concluded that the decreased BUN levels in this study were not of toxicological significance for the following reasons. FDA notes that, while an elevated BUN level could be a sign of kidney malfunction (urea is a metabolite of protein excreted by the kidney), a decrease in BUN level may simply indicate less protein consumed. No significant findings were reported, however, with respect to clinical chemistry parameters other than BUN levels, or in the histopathological examinations. Moreover, given that the normal range of BUN levels in dogs is quite wide, the observed decrease in BUN level is likely to represent an artifact of the low statistical power of the study and is not of toxicological significance (Ref. 38).

In summary, a large number of chronic feeding studies have been conducted in rats, mice, and dogs with flesh foods irradiated at doses between 6 and 74 kGy. In these studies, no toxic effects that can be attributed to radiation treatment were consistently observed.

4. Reproduction and Teratology Studies

FDA has also reviewed the following reproduction/teratology studies (Ref. 42) in which flesh foods, irradiated at doses of 6 kGy or higher, were fed to laboratory animals: (1) Studies in which rats were fed pork irradiated at 56 kGy; chicken and green beans irradiated at 59 kGy; and fish irradiated at 6 kGy (two separate studies with fish); (2) a multigeneration reproduction study and a teratology study in which mice were fed chicken irradiated at 59 kGy and 45 kGy, respectively; (3) two studies in which dogs were fed beef irradiated at 56 kGy; (4) a study in which hamsters were fed chicken irradiated at 45 kGy; and (5) a study in which rabbits were fed chicken irradiated at 45 kGy.

All of these studies, except one, showed no adverse effects. In one of the two studies in which fish irradiated at 6 kGy was fed to rats ("the Shillinger study," Ref. 43), rats in the treated group were reported to have an increased incidence of testicular atrophy and prolonged estrous cycles, among other findings. The authors reported no significant difference between experimental and control groups with regard to such standard indices of reproductive function as time of first births, fertility index, number of offspring in the litter, or weight of offspring at birth or at 1 month of age. In addition, no toxic effects on the growth or development of three generations were reported. The authors stated that some of the findings point to a protein deficiency.[19] However, the second reproduction study with fish irradiated at the same dose ("the Hickman study," Ref. 44) reported no adverse effects. FDA has concluded that the effects reported in the Shillinger study are not attributable to irradiation for three reasons: (1) The irradiated fish was stored under inappropriate conditions, (2) the results of measurements of blood protein levels

[18] Chronic toxicity studies and reproductive toxicity studies are generally considered to be the most sensitive tools for detecting treatment-related toxicological effects when there is no basis, *a priori*, to expect a particular adverse effect. This is because treatment over the lifetime of the animal in a chronic study allows the longest time for a subtle effect to be manifested, and because the developing organism in reproduction and teratology studies can be particularly sensitive to toxic effects.

[19] Although the irradiated fish was not irradiated at a sterilizing dose or treated to inactivate enzymes that could lead to decomposition, it was stored under refrigeration for up to 2 months. Fish fed to the control group, however, was stored frozen until incorporated into the diet. Irradiated fish, stored under refrigeration, had greater opportunity to undergo decomposition or other spoilage before consumption. The authors did not report addition of vitamins or minerals to the diets and did not report actual nutrient levels in the diet. The authors also reported a higher incidence of pneumonia and parasitic infections in the treated group, varying blood and liver enzyme activities in the different generations, and a lower albumin/globulin ratio (a sign of protein deficiency) in the treated group.

are consistent with a nutritionally inadequate diet, and (3) similar effects were not seen in the Hickman study.

In summary, the agency concludes that the available studies of irradiated flesh foods show no adverse effects on reproductive or developmental endpoints that can be attributed to radiation treatment.

5. Genetic Toxicity Studies

Although chronic feeding studies are the primary basis for assessing potential carcinogenicity of a substance, genetic toxicity tests are often used to screen for possible carcinogenic effects. A large variety of genetic toxicity studies with irradiated chicken, ham, beef, or fish have been conducted (Ref. 45). All of these studies report that no genotoxic effects were observed. FDA agrees that these studies demonstrate that irradiated flesh foods are not genotoxic.

6. Summary of the Toxicological Assessment

As noted previously, chemical analyses and toxicity studies provide independent means for assessing whether there is a reasonable certainty that irradiation of meat will not present a toxicological hazard. Chemical analyses are used to identify substances produced by irradiation that might present a risk. Animal feeding studies and genetic toxicity studies are used to determine whether toxicants may be present in irradiated foods, even if not identified, at levels that would be harmful.

The agency has carefully reviewed the data and information submitted in the petition. The agency has also considered all the available data and studies in its files regarding the radiation-induced chemical changes in flesh foods and the toxicological effects of irradiated meat and other irradiated flesh foods (e.g., chicken and fish) when consumed in the diet.

All the available results of chemical analyses of irradiated flesh foods support the conclusion that a toxicological hazard due to consumption of irradiated flesh foods is highly unlikely, because no substance resulting from irradiation has been found at levels that would suggest any reason for toxicological concern. The results of the available toxicological studies of irradiated flesh foods also demonstrate that a toxicological hazard is highly unlikely because no toxicologically significant adverse effects attributable to consumption of irradiated flesh foods were observed in any of these studies. Thus, the results of the chemical analyses and the toxicological studies are entirely consistent. The agency therefore concludes, based on all the evidence before it, that irradiation of meat under the conditions set forth in the regulation does not present a toxicological hazard.

D. Nutritional Considerations

The nutritional adequacy of an irradiated food may be affected by radiation-induced reductions in the amounts of essential nutrients in the food. FDA has carefully reviewed the data and information submitted in the petition, as well as other information in its files, to determine whether irradiation would have an adverse effect on the nutritional value of meat.

1. Nutrients in Meat

Flesh foods are consumed primarily as sources of protein. The so-called "red meats," beef in particular, are also rich sources of iron and phosphorus. Flesh foods, including red meats, also contribute significantly to the dietary intake of B vitamins, except for thiamine.

Most individual flesh foods, including meats, provide only a minor portion of the dietary intake of thiamine (Ref. 46). The exception to this rule is pork, which contributes approximately 9 percent of the thiamine in the American diet (Refs. 46 and 47). The largest contributors to thiamine intake in the human diet, however, are grains in various foods (e.g., cereals; flour in bread, other baked goods, and pasta) and legumes.

2. Effects of Irradiation on the Nutrients in Meat

It is well known that the nutrient value of the macronutrients in the diet (proteins, fats, and carbohydrates) is not significantly altered by irradiation at the petitioned doses (Refs. 19, 48, and 49). Minerals (e.g., iron, phosphorus, and calcium) are also unaffected by irradiation (Refs. 48 and 49).

Levels of certain vitamins may be reduced, however, as a result of irradiation. The extent to which this occurs depends on the specific vitamin, the food type, and the conditions of irradiation. Not all vitamin loss is significant, however. The extent to which a reduction in a specific vitamin level is significant depends on the relative contribution from the food in question to the dietary intake of the vitamin.

Most of the nutrition-related studies submitted in the petition presented analyses of vitamin levels in irradiated flesh foods. These studies covered a wide range of foods, vitamins, and irradiation conditions. Most of these studies focused on the levels of B vitamins because, as noted, meats and certain edible organs (e.g., the liver and the heart) are better sources of B vitamins than of other vitamins, such as vitamins C or D, for example. For the same reason, FDA's evaluation of the nutritional adequacy of irradiated meat and meat byproducts, which considered all relevant vitamins, focused on the effects of irradiation on the levels of B vitamins. In FDA's evaluation, thiamine levels received particular attention because thiamine is one of the vitamins most susceptible to radiation (Refs. 46 and 50).

In general, the available studies have reported insignificant effects on the levels of B vitamins other than thiamine when flesh foods were irradiated at dose levels comparable to those proposed in the subject petition (Refs. 50, 51, and 52). For example, pork irradiated at a dose of 6.7 kGy showed no detectable loss in cobalamin level and, when irradiated at 5 kGy, showed no detectable loss in niacin level ("the first Fox study," Ref. 47). Similar results have been obtained in studies of the effects of irradiation on other B vitamins such as pyridoxine and pantothenic acid (Ref. 52).

Another recently conducted study by Fox et al., ("the second Fox study," Ref. 53) compared radiation-induced reductions in B vitamin levels in beef, lamb, pork, and turkey, all of which were irradiated at 5 °C in the presence of oxygen, conditions which would tend to maximize vitamin loss. The authors reported that, even under such conditions, losses of riboflavin resulting from irradiation were virtually undetectable at radiation doses up to 3 kGy and that the losses did not differ significantly among the various flesh foods. The average incremental loss of riboflavin at radiation doses above 3 kGy was reported to be 2.5 percent per kGy, which was judged by the authors as insignificant. FDA agrees that this reduction in riboflavin is insignificant in the context of the total diet (Refs. 46 and 51).

Losses in thiamine levels resulting from irradiation were also measured in the second Fox study. Thiamine losses were detectable at all irradiation doses tested and differed among the flesh foods tested, but the range was fairly narrow: from a low of 8 percent loss per kGy in lamb to a high of 16 percent loss per kGy in beef. The incremental thiamine loss in pork was approximately 11 percent per kGy above 3 kGy when irradiated at 5 °C in the presence of oxygen. These results were consistent with the results of the first Fox study in which pork irradiated at 4.5 kGy at 0 °C (frozen) sustained losses in thiamine levels of circa (ca.) 40 percent (Ref. 47).

Other studies of the effect of irradiation on thiamine levels in flesh foods, conducted under a variety of irradiation conditions, show losses ranging from approximately 10 to 50 percent over a dose range of 0.6 to 7.3 kGy (Refs. 46, 52, 54, and 55), which is comparable to the dose range that could, in actual practice, be used under the limitations set forth in the regulation. It is important to note that the highest thiamine losses (ca. 50 percent for some, but not all, flesh foods) have occurred when foods were irradiated at the higher doses in this range (ca. 7 kGy), in the nonfrozen state, and/or in the presence of oxygen.

Irradiation of meat is likely to be carried out on products that are in prepackaged form. Meat is commonly packaged under vacuum or reduced oxygen levels at the wholesale level and stored and shipped either refrigerated or frozen (Ref. 2). As discussed previously, irradiation of food in the frozen state (or at reduced temperatures) and under reduced oxygen levels tends to minimize vitamin losses (Ref. 48). Thus, irradiation of most meat, which is likely to be carried out in an atmosphere of reduced oxygen content and at low temperature or in the frozen state, will tend to result in thiamine losses that are far less than 50 percent.

Nevertheless, the agency has conducted an "extreme case" assessment of the potential effect on the dietary intake of thiamine that would result if all flesh foods (i.e., meat, poultry, and fish) were irradiated under conditions that would tend to maximize thiamine loss (i.e., such that thiamine levels in all these foods would be reduced by 50 percent). The agency has determined that even in such extreme and unlikely circumstances, the average thiamine intake would still be above the recommended daily allowance (RDA) and, thus, there would be no deleterious effect on the total dietary intake of thiamine as a result of irradiating flesh foods, including meat (Ref. 46).

3. Summary of the Nutritional Assessment

As discussed, FDA has concluded that the effects of irradiation on thiamine, under the conditions set forth in the regulation below, will not result in an adverse effect on the dietary intake of thiamine. Because the effects of irradiation on B vitamins other than thiamine are far less than the effects on thiamine, FDA also concludes that there will be no deleterious effect on the total dietary intake of these other B vitamins (e.g., riboflavin, niacin, cobalamin). In addition, as noted, irradiation does not affect mineral levels, nor, at the doses set forth in the regulation, the nutritional quality of the protein in meat.

FDA therefore concludes, based on all the evidence before it, that irradiation of meat under the conditions set forth in the regulation below will not have an adverse impact on the nutritional adequacy of a person's diet.

E. Microbiological Considerations

Irradiation at the doses requested in the petition will reduce, but not entirely eliminate, the microorganisms in or on meat. Further, because different microorganisms are affected by irradiation to different degrees, irradiation of meat will change the relative amounts of different microorganisms present (the microbiological profile). The microbiological profile and the storage conditions of meat influence the growth patterns of the various microorganisms found in or on this food. Because microorganisms remaining in food after irradiation processing can multiply, FDA has assessed whether irradiation of meat under the conditions set forth in the regulation is likely to alter the growth patterns of any surviving microorganisms in such a way as to result in an increased microbiological hazard (from increased growth of pathogens) compared to meat that has not been irradiated.

1. Microbiological Profile of Raw Meat

Meat is a nutrient-rich substrate that can support the growth of a variety of microorganisms. During the initial processing steps (e.g., slaughter, skinning, cutting of primals) these microorganisms are diverse. They include a wide variety of nonpathogenic spoilage bacteria, including organisms from the *Pseudomonas-Moraxella-Acinetobacter* group, *Lactobacillus* sp., and others. Pathogenic (illness-causing) microorganisms, including *Salmonella* sp., *E. coli* O157:H7, *Listeria monocytogenes*, *Staphylococcus aureus*, and others, have also been isolated from raw meat, generally at relatively low levels (see Refs. 2, 56, and 57).

Spores[20] of certain other pathogenic microorganisms have been isolated from raw meat as well. The most commonly occurring spores in meat are those of *C. perfringens* (Refs. 2 and 6). Spores of *Clostridium botulinum* have also been isolated from raw meat; the available data indicate that both the incidence and the numbers of *C. botulinum* spores are extremely low (Refs. 58, 59, and 60).

Fungal species (i.e., yeasts and molds) have also been isolated from the surfaces of raw meat, presumably as a result of airborne contamination. Various parasites, including *Toxoplasma gondii* and *Trichinella spiralis*, both of which can cause serious foodborne illness, may also be found in meat.

2. Effects of Irradiation on Microorganisms in or on Meat

The petitioner provided reports and published articles describing the effects of irradiation on the microorganisms in or on flesh foods. These reports and published articles provide data on several microorganisms of relevance, including various species of *Salmonella*; *E. coli* O157:H7; *C. perfringens*; *S. aureus*; *L. monocytogenes*; *Bacillus cereus*; *Campylobacter jejuni*; and the protozoan parasite *T. gondii*. Taken together, the available reports and published articles establish that the radiation dose necessary to reduce the initial population of any of the bacterial pathogens by 90 percent (i.e., the "D value") ranges from 0.1 kGy to just under 1 kGy. For any individual pathogen, the D value varies depending on such factors as the specific food, physical state (frozen versus nonfrozen) of the food, temperature, and ambient oxygen level.

The D value for *Salmonella*, for example, ranges from approximately 0.4 kGy to 0.8 kGy, depending on the microbial strain and the other factors mentioned above (Refs. 61, 62, 63, and 64). *E. coli* O157:H7 is more radiation sensitive than *Salmonella*, with a D value range of approximately 0.2 to 0.4 kGy, depending on the type of flesh food and the conditions of irradiation (Refs. 62, 63, and 65). Other studies of a variety of different pathogens in different flesh foods yield comparable results.[21]

[20] Spores are the so-called "resting stage" of certain bacteria in which the bacterial cell becomes enclosed in a tough, resistant coat as a response to adverse environmental conditions. On return to less adverse conditions, the spore can germinate and revert to the normal vegetative form of the organism. Under favorable conditions, the vegetative cells can multiply and, in the case of certain spore-forming bacteria, produce toxin. Growth rates of the vegetative cells are influenced by several factors including temperature, ambient oxygen level, pH, and the size of the spore inoculum (numbers of spores present).

[21] For example, the D values of both *L. monocytogenes* and *S. aureus* fall in the range of 0.40 to 0.48 kGy when irradiated in beef, pork, or lamb at 5 °C (see, e.g., Refs. 62 and 66). *C. jejuni* is more radiation sensitive, with D values in the range of 0.16 to 0.24 kGy depending on the particular meat and the conditions of irradiation (see, e.g., Refs. 63 and 67).

T. gondii tissue cysts are inactivated at a radiation dose of approximately 0.4 kGy (Ref. 68).

D values for the principal nonpathogenic microorganisms (spoilage bacteria) commonly found in or on meat cover a wide range, from approximately 0.3 to 2.0 kGy (Refs. 69, 70, and 71). *Lactobacillus* sp. are among the more radiation-resistant nonpathogenic spoilage bacteria; the D values for these bacteria range from approximately 1 to 2 kGy, depending on the microbial strain and the conditions of irradiation (Ref. 71).

In the case of spore-forming bacteria, the spores and vegetative cells are affected by irradiation to different degrees. Spores are generally more resistant to the effects of radiation than vegetative cells. For example, the D values for vegetative cells of various strains of *C. perfringens* range from 0.6 to 0.8 kGy (Refs. 72 and 73), comparable to the D values for most of the pathogens discussed above, while the D values for the spores of *C. perfringens* range from 1.2 to 1.8 kGy (Ref. 74). The spores of *C. botulinum* are more radiation-resistant; the D values for the spores of various strains of *C. botulinum* range from approximately 2 to 4 kGy (Refs. 60 and 74).

The agency has reviewed the data and information described previously as well as other information in its files and has determined that irradiation at doses of up to 4.5 kGy for refrigerated product and doses of up to 7.0 kGy for frozen product will significantly reduce the number of pathogenic microorganisms in or on meat (Ref. 75). Under the conditions set forth in the regulation below, reductions in *Salmonella* levels, for example, could be approximately 100,000-fold in refrigerated beef irradiated at 4.5 kGy. Because *E. coli* is more sensitive to the effects of irradiation, reductions in the levels of that microorganism would be even greater in beef irradiated under these same conditions. The levels of most spoilage microorganisms on meat will also be significantly reduced at the petitioned doses, resulting in an extension of the shelf-life of the product.

However, while irradiation at the petitioned doses significantly reduces the numbers of many pathogenic and spoilage bacteria, its effect in reducing the numbers of relatively radiation-resistant spores of other pathogenic bacteria (e.g., *C. botulinum*, with D values of approximately 2 to 4 kGy), is less. Therefore, FDA has carefully examined the effects of radiation-induced changes in the microbiological profile of meat on the growth patterns of surviving microorganisms to determine whether the microbiological safety of meat irradiated under the conditions set forth in the regulation would be adversely affected. In FDA's evaluation, *C. botulinum* received particular attention both because *C. botulinum* spores are the most radiation-resistant of the pathogens found in meat and because the illness induced by botulinal toxin is so severe.

3. Growth Patterns of Microorganisms in or on Raw Meat

As noted previously, meat is a substrate that can, in principle, support the growth of a variety of microorganisms. The conditions under which meat is stored (e.g., temperature, ambient atmosphere, pH) influence the growth patterns of different microorganisms, however, affecting both the types and numbers of different microorganisms that are likely to be found in or on meat at any given time.

Meat is chilled and subsequently stored under refrigeration (generally 37 to 45 °F) immediately following the initial processing steps. During cold storage, the predominant microorganisms are the spoilage bacteria, primarily *Pseudomonas* sp., that are capable of growth at these temperatures. If the chilled meat is packaged in an environment of reduced oxygen content, other spoilage bacteria, such as *Lactobacillus* sp., *Brochothrix thermosphacta*, and other lactic acid-producing microorganisms, predominate (Refs. 2 and 56).

The growth of *C. perfringens*, *Salmonella*, and *E. coli* is well controlled by cooling meat quickly after slaughter and maintaining the product at refrigerated temperatures during subsequent transport and storage. None of these pathogens is normally capable of growth in meat stored under refrigeration. In addition, competition with the more numerous and faster-growing spoilage bacteria that predominate at refrigeration temperatures further inhibits the growth of these pathogens. Both *Salmonella* and *E. coli* O157:H7 are capable of significant growth, however, in meat stored above refrigeration temperatures ("temperature abuse" conditions; above 50 °F). Temperature control is thus a primary tool in reducing the growth of, and consequently, the risk from, these pathogens.

Growth of *C. botulinum* is influenced by several factors in addition to temperature, including the availability of oxygen, pH of the food, and the numbers of *C. botulinum* spores in relation to the types and numbers of competing microorganisms. Temperature control is, however, the single most important factor in controlling the growth of the strains of *C. botulinum* that have been most frequently (albeit still rarely and in low numbers) isolated from meat in the United States (Refs. 59, 60, and 76) In this regard, the same temperature control regimen used to control the growth of other pathogens such as *Salmonella*, *E. coli* O157:H7, and *C. perfringens* also works well to inhibit growth of, and toxin production by, *C. botulinum* in meat. Temperature abuse can lead to growth and toxin production by *C. botulinum*; however, this typically takes several weeks to occur, even at temperatures of approximately 60 °F. By this time, signs of spoilage (e.g., putrid odor, slimy texture), produced primarily by the faster-growing and more numerous nonpathogenic spoilage bacteria, are evident. The objectionable odor and texture of spoiled meat is a signal that typically inhibits consumers from eating the product. Reports of botulism resulting from consumption of such meat are rare and, generally, have been limited to ethnic groups that favor these foods (see Refs. 59, 76, and 77).

In summary, maintaining meat at low storage temperatures is the primary method for controlling the growth of pathogenic microorganisms and, thus, for reducing the risk of disease from pathogenic microorganisms in or on meat.

4. Effects of Irradiation on Growth Patterns of Microorganisms in or on Meat

As noted above, radiation-induced changes in the microbiological profile of meat have the potential to affect the growth patterns of the various microorganisms in or on meat. FDA has evaluated whether irradiation would result in significantly altered microbial growth patterns in meat (e.g., significantly increased growth of pathogens) such that irradiated meat would present an increased microbiological hazard compared to meat that had not been irradiated. The agency has reviewed data and information submitted in the petition, as well as other information in its files, regarding the effects of irradiation, temperature abuse conditions, and ambient oxygen levels on the microbiological profile of meat.

Because *C. botulinum* spores are the most resistant to the effects of irradiation and would thus be more likely to survive irradiation than other pathogens and most spoilage bacteria, and because the illness associated with botulinal toxin is so severe, FDA, in its evaluation, focused particularly on the effects of irradiation on the probability of significantly increased growth of, and subsequent toxin production by, *C. botulinum*.

With respect to most of the significant pathogens found in or on meat, other than *C. botulinum* (e.g., *Salmonella* and *E. coli* O157:H7), FDA concludes that the probability of significant growth of these pathogens in irradiated meat stored under adequate temperature control is extremely remote for two reasons. First, these pathogens typically require temperatures of 50 °F or higher for significant growth. Second, as noted above, most of the pathogens in or on meat are more sensitive to the effects of irradiation than many of the common spoilage microorganisms (e.g., *Lactobacillus*, with D values of 1 to 2 kGy). Because these pathogens are sensitive to the effects of irradiation, FDA expects that irradiation under the conditions set forth in the regulation below will reduce the numbers of these pathogens to a far greater extent than it will reduce the numbers of the faster-growing spoilage microorganisms that compete with, and inhibit the growth of, pathogens at refrigeration temperatures.

Nevertheless, FDA has also considered the effects of temperature abuse on growth of these pathogens (e.g., *Salmonella*, *E. coli* O157:H7, *C. perfringens*) in irradiated meat. In one of the studies submitted in the petition (Ref. 72), pork was packaged and irradiated at 1.75 kGy under a modified atmosphere containing no oxygen following inoculation with high levels of any one of several pathogens. In this study, the authors reported that growth of these pathogens (*Salmonella*, *E. coli*, and *C. perfringens*, among others), was, in fact, decreased by irradiation even when temperature conditions were favorable for growth (approximately 60 °F).

With respect to *C. botulinum*, FDA concludes that the probability for significant growth of, and toxin production by, *C. botulinum* in irradiated meat stored under adequate temperature control (properly refrigerated or frozen) is extremely remote for several reasons. First, as noted, *C. botulinum* spores occur with extremely low frequency and in extremely low numbers in meat; these numbers will be further reduced by irradiation at the petitioned doses. Research has established that the size of the spore inoculum (numbers of spores present in the food) is an important factor in the growth of, and toxin production by, *C. botulinum*; reduced numbers of spores generally result in a decreased probability that growth sufficient for toxin production will occur (Ref. 59).

Second, most strains of *C. botulinum* that have been found in meat do not grow and produce toxin under refrigeration conditions appropriate for transport and storage of flesh foods. The available data show that growth and subsequent toxin production by *C. botulinum* in meat requires significantly elevated temperatures (50 to 55 °F, or higher) (Refs. 59, 60, and 77). Even under reduced ambient oxygen levels (conditions that favor the growth of *C. botulinum*), elevated temperatures are still required for significant growth and toxin production. Irradiation does not enable *C. botulinum* to grow at refrigeration temperatures; elevated temperatures on the order of 50 to 55 °F are required, whether meat is irradiated or not. Nevertheless, the agency has also considered whether, in the absence of temperature control, irradiation could increase the likelihood that *C. botulinum* could grow and produce toxin without the signs of spoilage familiar to the consumer that discourage consumption of spoiled meat.

One study submitted in the petition (Ref. 78) investigated the effect of irradiation, at a dose of 3 kGy, on the patterns of microbial growth and spoilage in vacuum-packaged pork loins stored under conditions of proper refrigeration (2 to 4 °C to simulate wholesale storage, and 5 to 7 °C to simulate retail storage) and under conditions of severe temperature abuse (24 to 25 °C). Shelf-life of pork stored under refrigeration conditions was extended by irradiation. The authors found that both irradiated pork and pork that had not been irradiated spoiled rapidly under conditions of severe temperature abuse and that the same types of microorganisms were responsible for spoilage in both irradiated pork and pork that had not been irradiated. The authors concluded that the concurrent and similar increases that they observed in the numbers of *lactobacilli* and other bacteria in the temperature-abused, vacuum-packaged irradiated pork indicated that sufficient spoilage organisms survived irradiation to bring about spoilage after severe temperature mishandling. FDA concurs in these conclusions (Ref. 77).

In several other studies submitted in the petition ("the Lambert studies," Refs. 79a through 79c), pork was packaged and irradiated at a dose of 1 kGy under reduced ambient oxygen levels following inoculation with high levels of *C. botulinum* spores. In these studies, storage at elevated temperatures, equivalent to approximately 60 °F, was required for *C. botulinum* to grow and produce toxin; no toxin was detected in pork stored at approximately 41 °F . The authors concluded that irradiation at 1 kGy significantly delayed toxin production by *C. botulinum* (Refs. 79a and 79b). The authors of these studies also reported that signs of spoilage in the irradiated pork appeared at least 1 week before, and under certain conditions, up to 5 weeks before, toxin was detected (Ref. 79a).

The data and information in the Lambert studies show that even when the levels of *C. botulinum* spore inoculum are high and the ambient oxygen level low (conditions that, as noted, would tend to increase growth and toxin production), toxin production was preceded by signs of spoilage in the irradiated meat. These data also demonstrate that storage at sustained elevated temperatures, for several weeks, are required for growth of, and toxin production by, *C. botulinum* in irradiated pork.

Third, other data and information also show that various species of other microorganisms commonly found on meat, particularly spoilage bacteria (e.g., *Lactobacillus* sp.[22] and others), survive irradiation in sufficient numbers to grow and inhibit growth of, and toxin production by, *C. botulinum* in both refrigerated and temperature-abused irradiated meats (Refs. 71, 80, and 81).

5. Summary of the Microbiological Assessment

FDA has reviewed the data and information submitted in the petition and has considered all the available data and information in its files relevant to an assessment of the microbiological safety of the irradiation of meat. In particular, FDA has carefully examined the effects of radiation-induced changes in the microbiological profile of meat on the growth patterns of any surviving microorganisms, including *C. botulinum*, to determine whether the microbiological safety of meat would be adversely affected by irradiation under the conditions set forth in the regulation below.

As discussed previously in this document, the agency has determined that irradiation of meat and meat byproducts under the conditions set forth in the regulation below will not result in any additional health hazard from *C. botulinum* (Ref. 75). Likewise, as discussed previously, FDA has also determined that irradiation will not result in any additional hazard from common pathogens other than *C. botulinum*. Therefore, the agency concludes, based on all the evidence before it, that irradiation of meat under

[22] In the case of *Lactobacillus*, production of lactic acid, which lowers the pH of the meat, is a contributing factor in inhibiting the growth of various pathogens, including *C. botulinum* (see, e.g., Refs. 59 and 71).

the conditions set forth in the regulation below will not result in a microbiological hazard.

IV. Current Good Manufacturing Practice Considerations

As noted, the proper processing, handling, and storage of meat and meat byproducts, irradiated or not, are necessary to ensure their safety. With respect to the processing and handling of both meat and poultry, USDA/FSIS has recently established specific requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products and thus, to reduce the incidence of foodborne illness associated with these products (61 FR 38806, July 25, 1996). Among other things, these new regulations require that each meat and poultry establishment develop and implement written standard operating procedures for sanitation (Sanitation SOP's, SSOP's) and that each establishment also develop and implement a system of preventive controls, known as HACCP (Hazard Analysis and Critical Control Points), which is designed to improve the safety of their products.

FSIS has stated that it intends to use HACCP systems as a framework for the modernization of the meat and poultry inspection system (61 FR 33806). HACCP systems are not intended to replace good manufacturing practices (GMP's), but rather to be used as the basis of an approach to food safety that focuses on hazard prevention and control. HACCP, GMP's, SSOP's, and other tools and interventions all have a place in ensuring the safety of meat. FSIS has stated that it anticipates that the adoption of HACCP systems by the meat industry as a whole will significantly increase the safety of meat products and reduce the risk of foodborne illness (61 FR 33806).

A. Temperature control

As noted previously, proper temperature control is critical in ensuring the safety of meat, meat byproducts, and meat food products, whether or not they are irradiated. FDA's regulations regarding CGMP's (part 110 (21 CFR part 110)) stipulate that the temperature of refrigerated foods not exceed 45 °F (§ 110.80(b)(3)(i)). With respect to meat products specifically, FDA's Model Food Code, which is offered for adoption by States and other government entities that exercise primary regulatory authority over food service, retail food stores, and food vending machine operations, recommends that meat products be stored at 41°F or less. There are no data or other information that suggest that, in order to ensure their safety, irradiated meat products require different temperature controls than meat products that have not been irradiated.

Moreover, FSIS, under its regulatory authority over meat processing plants, can establish specific requirements with respect to temperature control of irradiated meat, meat byproducts, and meat food products.[23] FDA concludes that its regulation should allow for flexibility in this regard. Therefore, the regulation does not establish specific requirements with respect to temperature control of irradiated meat, meat byproducts, and meat food products.

B. Consideration of the Need for Establishment of a Minimum Dose

FDA has established, in § 179.25, general provisions defining CGMP for the use of irradiation in the treatment of food. This regulation discusses requirements such as recordkeeping and the need for a scheduled process for food irradiation. Among other things, § 179.25 also requires that "Food treated with ionizing radiation shall receive the minimum radiation dose reasonably required to accomplish its intended effect * * *." (Section 179.25(b).)

FDA notes that the minimum dose necessary to control pathogenic organisms on food can vary with the particular microorganism, the specific food, and with the microbial load on the food. In its decision to permit the irradiation of poultry at doses up to 3 kGy, FDA explicitly considered these facts and noted that FSIS, based on its regulatory authority over poultry processing plants, could establish a minimum dose, consistent with CGMP, for controlling pathogenic organisms in or on the products processed in such plants. The agency also concluded that FSIS should be free to do so without having to submit a new petition for an amendment to the regulation, as long as any requirements complied with the applicable sections of part 179.

Similarly, with respect to the processing of meat, meat byproducts, and meat food products, FDA is not establishing a minimum required dose. The agency concludes that different doses could be appropriate, in different circumstances, for achieving the desired technical effect and that FDA's regulation should allow for flexibility in this regard. Moreover, FSIS, under its regulatory authority over meat processing plants, can establish a minimum dose, consistent with GMP, for controlling pathogenic organisms in or on the products processed in these plants. FSIS should be free to do so without having to submit a petition for an amendment to FDA's regulation, as long as any FSIS requirements comply with the applicable sections of part 179.

V. Labeling

Meat, meat byproducts, and meat food products are subject to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*). Therefore, the labeling of these products irradiated under the conditions set forth in the regulation must comply with any requirements imposed by USDA/FSIS under its authority to approve the labeling of such products.

VI. Conclusion of Safety

FDA has evaluated the data in the petition and other material in its files relevant to the proposed use of a source of radiation to treat meat, meat byproducts, and certain meat food products. Based on all the evidence before it, FDA concludes that irradiation of these products under the conditions set forth in the regulation below will not present a toxicological hazard, will not present a microbiological hazard, and will not adversely affect the nutritional adequacy of such products. Therefore, the agency concludes that irradiation of meat, meat byproducts, and meat food products under the conditions set forth in the regulation below is safe. Accordingly, FDA has determined that part 179 should be amended.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the listed contact person. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

[23] In the preamble to the rule that established the new requirement for the development and implementation of HACCP systems in meat and poultry plants, FSIS addressed the need for cooling and chilling requirements for raw meat and poultry. In the final rule, FSIS stated that, with respect to regulation of time and temperature control, it would be best to have, as a performance standard, a maximum temperature for products being shipped into commerce, and at which raw products in commerce must be maintained. This standard would be applicable to all persons who handle such product before the product reaches the consumer. FSIS concluded, however, that development of such a performance standard required the acquisition of additional information, and indicated that it would engage in further rulemaking in this area.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Objections

Any person who will be adversely affected by this regulation may at any time on or before January 2, 1998 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following sources are referred to in this document. References marked with an asterisk (*) have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. References without an asterisk are not on display; they are available as published articles and books.

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List of Subjects in 21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and record keeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

1. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 373, 374.

2. Section 179.26 is amended in the table in paragraph (b) by adding a new entry "8." under the headings "Use" and "Limitations" to read as follows:

§ 179.26 Ionizing radiation for the treatment of food.

* * * * *

(b) * * *

Use	Limitations
* * *	* * *
8. For control of foodborne pathogens in, and extension of the shelf-life of, refrigerated or frozen, uncooked products that are meat within the meaning of 9 CFR 301.2(rr), meat byproducts within the meaning of 9 CFR 301.2(tt), or meat food products within the meaning of 9 CFR 301.2(uu), with or without nonfluid seasoning, that are otherwise composed solely of intact or ground meat, meat byproducts, or both meat and meat byproducts..	Not to exceed 4.5 kGy maximum for refrigerated products; not to exceed 7.0 kGy maximum for frozen products.

* * * * *

Dated: November 26, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 97–31740 Filed 12–2–97; 8:45 am]

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federal register

Wednesday
December 3, 1997

Part V

Department of Education

Strengthening Institutions, Hispanic-Serving Institutions, and Endowment Challenge Grant Programs Eligibility, Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA NO: 84.031]

Reopening of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year 1997; Eligibility for the Strengthening Institutions, Hispanic-Serving Institutions, and Endowment Challenge Grant Programs

SUMMARY: On November 27, 1996 (61 FR 60254), January 13, 1997 (62 FR 1739), and May 16, 1997 (62 FR 27130), the Department of Education (ED) published in the **Federal Register** closing dates for the receipt of applications from institutions that wished to be designated as eligible institutions under the Strengthening Institutions, Hispanic-Serving Institutions and Endowment Challenge Grant Programs for Fiscal Year 1997. An eligible institution under these programs may not apply for a grant at this time but they may receive a waiver. The FSEOG and FWS Programs are student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended.

Some institutions, that were only interested in receiving a waiver of the non-Federal share requirement under the FSEOG and FWS Programs, did not submit an institutional eligibility application before those deadline dates. As a result, ED is reopening the closing date for that limited purpose. Thus, an institution that seeks designation as an eligible institution for Fiscal Year 1997 under the Strengthening Institutions, Hispanic-Serving Institutions and Endowment Challenge Grant Programs, solely for the purpose of obtaining a waiver of the non-Federal share requirement under the FSEOG and FWS Programs for the 1997–98 award year, may submit an application to ED for that purpose through December 31, 1997. An institution may apply under this reopened closing whether or not it submitted a previous application.

Applicants should base any waiver request of the needy student criterion on the corrected Base Year Low-Income Levels table included as an errata sheet with the eligibility application package and published in the **Federal Register** on May 16, 1997 (62 FR 27130).

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: December 31, 1997.

APPLICATIONS AVAILABLE: November 26, 1997.

FOR APPLICATIONS OR INFORMATION CONTACT: Blanca Westgate or Jane Wrenn, Strengthening Institutions Program, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Suite CY–80, Portals Building), Washington, DC 20202–5335. Telephones: (202) 708–8816, 708–8839 or 708–8866. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Authority: 20 U.S.C.1057, 1059c and 1065a.

Dated: November 24, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–31494 Filed 12–2–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
December 3, 1997

Part VI

The President

Proclamation 7056—World AIDS Day, 1997

Federal Register
Vol. 62, No. 232
Wednesday, December 3, 1997

Presidential Documents

Title 3—

The President

Proclamation 7056 of December 1, 1997

World AIDS Day, 1997

By the President of the United States of America

A Proclamation

For more than 15 years, America and the world have faced the challenges posed by HIV and AIDS. This devastating disease respects no borders and does not discriminate. In every city, town, and community, we have lost sons and daughters, brothers and sisters, mothers and fathers, life partners and friends. HIV and AIDS have affected us all, regardless of income, region, gender, race, religion, sexual orientation, or age. Sadly, both the number of people living with AIDS and the number of new HIV infections is rising worldwide. This year, as we observe the tenth World AIDS Day, we recognize with particular concern the toll HIV and AIDS continue to take on our children and youth.

The statistics are heartbreaking. In America alone, more than 7,500 children under the age of 13 have been diagnosed with AIDS. Every hour of every day, two more Americans under the age of 21 become infected with HIV. Around the world, more than 1 million children are living with HIV and AIDS. Twelve hundred children die of AIDS each day, even as 1,600 more become infected with the HIV virus. Compounding this tragedy is the terrible reality that many of the world's young people who are living with HIV and AIDS do not have access to the life-extending drugs and medical protocols that our scientists and doctors have developed. There is also a critical shortage of prescription drugs suitable for children suffering from pediatric HIV and AIDS. Of the 14 approved drugs for adults and adolescents, only five are approved for children.

From the earliest days of my Administration, we have sought to meet the challenges posed by AIDS with increased resources and action. I am proud of our success, with the cooperation of the Congress, in dramatically increasing funding for AIDS prevention measures and research. Such programs and research have helped to slow the spread of HIV and AIDS and have made possible the production of new drugs that are extending the lives of people with HIV and AIDS here at home and around the world.

But our progress against the scourge of AIDS has not been the result of government action alone. We have been able to make these great strides in understanding and treating HIV and AIDS thanks in large part to the hard work and commitment of thousands of researchers, health care providers, and clinical trial participants. I am proud as well of the resounding response of courage, compassion, responsibility, and love that the AIDS crisis has brought forth from our people. The lesbian and gay community, particularly in the early years of this epidemic, energized existing organizations and created new institutions to respond to the unmet needs of those living with HIV and AIDS. Educators and activists, members of religious and civic groups, business and labor organizations, and tens of thousands of other men and women of goodwill have joined together to comfort the afflicted and bring an end to this disease.

We can rejoice in our progress, but we cannot rest. In May, I announced a new HIV vaccine initiative, and I am pleased that the global community has joined together in making the development of this vaccine a top international priority. Within 10 years, we hope to have the means to stop

this deadly virus. But until we reach that day, I call on every American to remain with us on our crusade to eradicate this terrible epidemic and care for those living with AIDS along the way. As we mark World AIDS Day this year, we must continue to provide care for the sick and ensure that all have access to the treatment they need. And one of our most important tasks now is to strengthen our efforts to educate young people about HIV and AIDS and to make available to them and others at high risk effective prevention programs. By giving our children real hope for a future free from the shadows of HIV and AIDS, we can best commemorate the many loved ones we have already lost to the disease during its long and tragic course. May their enduring memory light our journey toward a vaccine for HIV and a final cure for AIDS.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 1997, as World AIDS Day. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of the other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to defeating HIV and AIDS and to helping those who live with the disease. I encourage every American to participate in appropriate commemorative programs and ceremonies in workplaces, houses of worship, and other community centers and to reach out to protect our children and to help all people who are living with AIDS.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-31893
Filed 12-2-97; 11:02 am]
Billing code 3195-01-P

federal register

Wednesday
December 3, 1997

Part VII

Office of Management and Budget

Cancellation Pursuant to Line Item Veto Act; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cancellation Pursuant to Line Item Veto Act; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998

December 2, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed the message on December 2, 1997. Under the Act, the message is required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

Clarence C. Crawford,

Associate Director for Administration.

THE WHITE HOUSE,
Washington,
December 2, 1997.

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amount of discretionary budget authority, as specified in the attached report, contained in the "Departments of Commerce, Justice, and State, and Related Agencies Appropriations Act, 1998" (H.R. 2267). I have determined that the cancellation of this amount will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachment, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton.

The Honorable Newt Gingrich,
Speaker of the House of Representatives,
Washington, D.C. 20515.

THE WHITE HOUSE,
Washington,
December 2, 1997.

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amount of discretionary budget authority, as specified in the attached report, contained in the "Departments of Commerce, Justice, and State, and Related Agencies Appropriations Act, 1998" (H.R. 2267). I have determined that the cancellation of this amount will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachment, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

William J. Clinton.

The Honorable Albert Gore, Jr.,
President of the Senate,
Washington, D.C. 20510.

Cancellation No. 97–82.

CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

Report Pursuant to the Line Item Veto Act, P.L. 104–130

Bill Citation: "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998" (H.R. 2267).

1(A). Dollar Amount of Discretionary Budget Authority: $5,000 thousand for a cooperative agreement with Montana State University for a research program on green buildings on page 37 of the enrolled bill (H.R. 2267) and on page 142 of House Report 105–405 (Joint Explanatory Statement of the Committee of Conference), dated November 13, 1997.

1(B). Determinations: This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs: H.R. 2267 provides $5 million for a cooperative agreement with Montana State University (MSU) for research on green buildings. This project circumvents the National Institute of Standards and Technology's (NIST) research selection process and meets no clear agency need. NIST labs do not provide large, open-ended research grants to external facilities. With the proposed research conducted entirely at MSU, NIST has no leverage to oversee its quality or relevance. Similar grants in FY 1994 and FY 1997 were not requested by the Administration, and have shown no demonstrated benefits to NIST's mission. By diverting scarce resources to a non-federal facility, this project damages NIST's ability to chose projects for their national benefit and technical merit. As the proposed demonstration lab does not meet NIST's research needs and is far from existing facilities, this project's benefits would accrue primarily to Montana State University.

1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation: As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

Outlay changes

[In thousands of dollars]

Fiscal year:	
1998	
1999	−3,850
2000	−1,050
2001	−100
2002	
2003–07	
Total	−5,000

1(F). Adjustments to Non-Defense Discretionary Spending Limits

Budget authority: −$5,000 thousand in FY 1998.

Outlays: The estimated outlay effect for each year is shown above.

Evaluation of Effects of These Adjustments upon Sequestration Procedures: If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

2(A). Agency: Department of Commerce.

2(A). Bureau: National Institute of Standards and Technology.

2(A). Governmental Function/Project (Account): Research and Development (Scientific and Technical Research and Services).

2(B). States and Congressional Districts Affected: Montana, At Large.

2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above: Montana: five.

[FR Doc. 97–31971 Filed 12–2–97; 4:36 pm]

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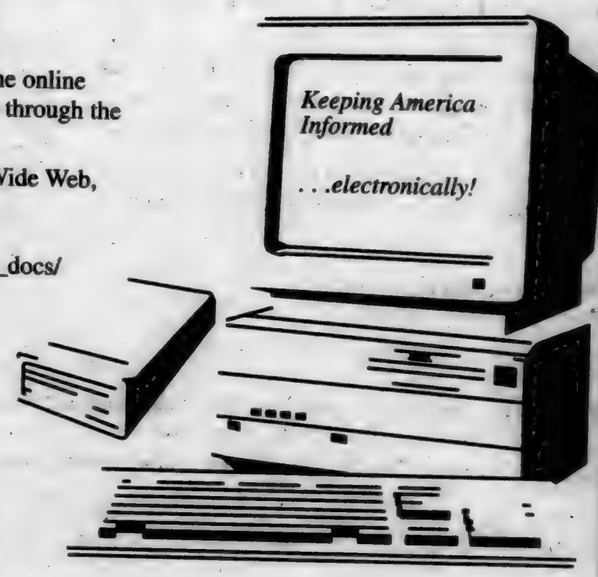
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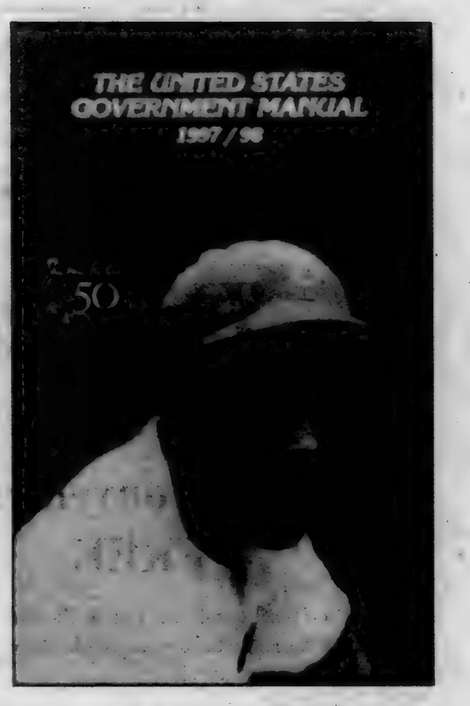
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Presidential Documents

Title 3—

The President

Proclamation 7057 of December 1, 1997

National Drunk And Drugged Driving Prevention Month, 1997

By the President of the United States of America

A Proclamation

Driving is a privilege enjoyed by millions of Americans. It offers us freedom, mobility, and the chance to discover what lies over the next hill or around the next bend in the road. But driving also brings with it serious responsibilities. Among the most important of these is a driver's responsibility to stay sober. Tragically, many Americans ignore this responsibility.

Drunk or drugged drivers are a menace not only to themselves, but also to the communities in which they drive. Last year alone, they killed more than 17,000 of their fellow citizens and injured thousands more. Research has shown that teenage drivers and those aged 21 to 34 are most likely to drive under the influence of alcohol or other drugs.

We must reaffirm our commitment to educate these and all drivers about the dangers of operating a vehicle after consuming alcohol or drugs, and we must strengthen law enforcement efforts that will prevent impaired drivers from getting behind the wheel in the first place. We must also work together as a national community to make drunk and drugged driving socially unacceptable, and continue to support educational programs and legislation that teach all our citizens the terrible risks of drunk and drugged driving. By doing so, we can prevent thousands of deaths and injuries each year and protect our families, our friends, and ourselves from becoming victims of this deadly behavior.

I am proud of the "Zero Alcohol Tolerance" legislation that 45 States and the District of Columbia have adopted, making it illegal for drivers under the age of 21 who have been drinking to drive a motor vehicle. I call upon all Americans, including policymakers, community leaders, State officials, parents, educators, health and medical professionals, and other concerned citizens to continue to support such legislation and to work together to save lives. I challenge American businesses to take a stand against impaired driving both on and off the job and to remember that an alcohol- and drug-free workplace is the right and responsibility of every worker. Finally, in memory of the thousands who have lost their lives to drunk and drugged drivers, I ask all motorists to participate in "National Lights on for Life Day" on Friday, December 19, 1997, by driving with vehicle headlights illuminated. In doing so, we will call attention to this critical national problem and remind others on the road of their responsibility to drive free of the influence of drugs and alcohol.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1997 as National Drunk and Drugged Driving Prevention Month. I urge all Americans to recognize the dangers of impaired driving; to take responsibility for themselves and others around them; to prevent anyone under the influence of alcohol or drugs from getting behind the wheel; and to help teach our young people about the importance and the benefits of safe driving behavior.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97-31946
Filed 12-3-97; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-038-3]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules that amended the gypsy moth quarantine and regulations by adding Wisconsin to the list of States quarantined because of gypsy moth and by adding areas in Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas. These changes affect eight areas in Ohio, eight areas in Virginia, six areas in West Virginia, and four areas in Wisconsin. The interim rules were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth.

EFFECTIVE DATE: Affirmation effective December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, suite 4C10, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247, or e-mail cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

We recently published two interim rules amending the gypsy moth quarantine and regulations. In the first interim rule, effective and published in the **Federal Register** on May 30, 1997 (62 FR 29286-29287, Docket No. 97-038-1), we amended § 301.45(a) of the regulations by adding Wisconsin to the list of States quarantined because of gypsy moth. We also amended § 301.45-3(a) of the regulations, which lists generally infested areas, by adding Guernsey and Ottawa Counties in Ohio; Appomattox, Brunswick, Campbell, Charlotte, Halifax, Lunenburg, Mecklenburg, and Pittsylvania Counties in Virginia; Webster County in West Virginia; and Brown, Door, Kewaunee, and Manitowoc Counties in Wisconsin to the list of generally infested areas.

In the second interim rule, effective and published in the **Federal Register** on July 9, 1997 (62 FR 36645-36646, Docket No. 97-038-2), we amended § 301.45-3(a) of the regulations by adding Belmont, Coshocton, Harrison, Holmes, Monroe, and Tuscarawas Counties in Ohio; and Doddridge, Harrison, Lewis, Tyler, and Upshur Counties in West Virginia to the list of generally infested areas.

These actions were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth.

Comments on the first interim rule (Docket No. 97-038-1) were required to be received on or before July 29, 1997. Comments on the second interim rule (Docket No. 97-038-2) were required to be received on or before September 8, 1997. We did not receive any comments on either interim rule. The facts presented in the interim rules still provide a basis for the rules.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This action affects the interstate movement of regulated articles and outdoor household articles from and through gypsy moth regulated areas in Ohio, Virginia, West Virginia, and Wisconsin. There are several types of restrictions that apply to these newly quarantined areas in these States. These restrictions will have their primary impact on persons moving outdoor household articles, nursery stock, logs and wood chips, and mobile homes interstate from a generally infested area to any area that is not generally infested.

Under the regulations, outdoor household articles (OHA) may not be moved interstate from a generally infested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of any life stage of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

With two exceptions, regulated articles (for example, logs, pulpwood, and wood chips; mobile homes; and nursery stock) may not be moved interstate from a generally infested area to any area that is not generally infested unless they are accompanied by a certificate or limited permit issued by an inspector. The first exception is that a regulated article may be moved from a generally infested area without a certificate if it is moved by the USDA for experimental or scientific purposes and is accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service. The second exception is that logs, pulpwood, and wood chips may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of any lifestage of the gypsy moth. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving mobile homes and nursery stock interstate from a generally infested area to any area that is not generally infested may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Documents self-issued under a compliance agreement avoid these delay costs but result in costs associated with salary and recordkeeping for the self-inspections.

When inspection of regulated articles or outdoor household articles reveals gypsy moth, treatment is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, $50 to $100 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for qualified certified applicators located in generally infested areas. It is estimated that these businesses will average $50 to $150 per month in additional income per business. A few of the newly quarantined counties contain large urban areas that may have several hundred shipments annually containing outdoor household articles that will require inspection to move interstate from the generally infested area. Thus, there will likely be a need to train additional qualified certified applicators in those areas.

Entities in the newly quarantined areas that will incur the most costs from the interim rules will be establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 60 such establishments move approximately 165 shipments of trees and shrubs each year from the newly quarantined areas. All of these establishments are believed to be small entities. These establishments will need to be inspected, either by an inspector or through self-inspection under a compliance agreement. If the inspection reveals signs of gypsy moth, the establishment will have to be treated in order to ship regulated articles outside the generally infested area. We estimate that annually, approximately 5 of these establishments will require treatment, and that the average area to be treated will be 20 acres. At an average treatment cost of $10 to $20 per acre, the average total annual cost to each establishment would be $200 to $400.

The Christmas tree industry and establishments that sell other forest products and that move their products interstate will also bear direct costs from the interim rules. There are approximately 689 farms that sell forest products and Christmas trees in the newly quarantined areas. These account for 9.4 percent of the total number of such farms in Ohio, Virginia, West Virginia, and Wisconsin. All of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect these farms and issue certificates and permits. We estimate that less than four percent of all these farms will be found to contain gypsy moth and, therefore, require treatment in order to ship trees. It is expected that, in most cases, Christmas tree farms will be free of gypsy moth and Christmas tree growers will meet the requirements for certification by having inspectors certify that the tree farms are free from gypsy moth. This alternative is less costly than inspecting or treating each individual shipment of trees and will thus minimize the economic impact of the change to the regulations for the newly quarantined areas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, two interim rules that amended 7 CFR part 301 and that were published at 62 FR 29286–29287 on May 30, 1997, and 62 FR 36645–36646 on July 9, 1997.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 26th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31755 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–108–1]

Brucellosis in Cattle; State and Area Classifications; Arkansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class A to Class Free. We have determined that Arkansas meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Arkansas.

DATES: Interim rule effective on December 3, 1997. Consideration will be given only to comments received on or before February 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–108–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–108–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B06, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Arkansas was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Arkansas, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Arkansas from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Arkansas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Arkansas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective on December 3, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Arkansas from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Arkansas, as well as buyers and importers of cattle from this State.

There are an estimated 32,553 cattle herds in Arkansas that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $3 per head.

Therefore, we believe that changing the brucellosis status of Arkansas will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding "Arkansas," immediately after "Arizona," and paragraph (b) is amended by removing "Arkansas,".

Done in Washington, DC, this 26th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31756 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 97–23]

RIN 1557–AB41

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), in order to more accurately reflect the OCC's costs of

supervising banks, is amending its assessment regulation to impose a surcharge on banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating) and on Federal branches and agencies of foreign banks that receive a rating of 3, 4, or 5 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality). This amendment will enable the OCC to distribute more equitably the costs it incurs when supervising institutions that are experiencing significant problems. The OCC also is eliminating the annual franchise fee on banks that are registered as municipal and/or government securities dealers.

EFFECTIVE DATE: December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Madsen, Deputy Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874–5130; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2,700 national banks and 64 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The OCC funds the activities that further this mission by imposing assessments, fees, and other charges on banks within its jurisdiction, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank and Federal branch and agency a semiannual assessment according to a formula that is described in 12 CFR 8.2. In general, the OCC calculates the semiannual assessment by using a marginal rate that declines as an institution's asset size grows. The OCC also reduces assessments charged to a "non-lead bank" (which, generally speaking, refers to a national bank that is not the largest national bank owned by the same company) by a percentage determined in accordance with each assessment. For example, the OCC reduced the assessment for non-lead national banks that was due January 31, 1997, by 12 percent.

The marginal rate structure (which applies a declining marginal rate as bank asset size grows) and the assessment reduction for non-lead national banks reflect the OCC's cost savings resulting from the economies of scale realized in the examination and supervision of large institutions and non-lead banks. However, the current assessment regulation does not reflect the *increased* costs that the OCC incurs when supervising a bank whose condition requires special attention. As a result, healthy banks subsidize banks that are experiencing significant problems. The imposition of a surcharge on banks requiring additional OCC resources, discussed in the section that follows, addresses this concern.

Discussion of the Final Rule

Surcharge

In the proposed rule (62 FR 54747 (October 21, 1997)), the OCC sought comment on the addition of new paragraphs (a)(7) and (b)(5) to § 8.2, pursuant to which the OCC would impose a surcharge equal to 25 percent of the amount of the assessment that otherwise would be due from (a) national banks that receive a UFIRS rating of 3, 4, or 5 and (b) Federal branches and agencies of foreign banks that receive a ROCA rating of 3, 4, or 5. This proposal stemmed from OCC cost data, which show that there is a significant increase in supervision costs once an institution's rating moves from 2 to 3 and that these increased costs continue while the bank is rated 3, 4, or 5. To reflect this increase in costs of supervising a bank rated 3 or worse, the OCC proposed to use a UFIRS or ROCA rating (as appropriate) of 3 as the threshold for applying the surcharge. Using the most recently available data, the surcharge would affect approximately 94 national banks and Federal branches and agencies of foreign banks, resulting in an aggregate annual increase in assessments for these banks of approximately $983,000.

The OCC received three comments on the proposal, all of which were generally supportive of imposing the surcharge. The first commenter acknowledged that banks rated a 3, 4, or 5 require greater supervisory attention and concluded that the fee structure should reflect this. This commenter observed, however, that the surcharge might worsen the financial condition of institutions having to pay the surcharge. The second commenter, while supporting the imposition of a surcharge, suggested that the OCC (a) raise the surcharge for all banks rated a 3, 4, or 5 to some percentage higher than 25%, (b) increase the amount of the surcharge the worse a bank's condition becomes, and (c) charge banks a higher assessment the longer they fail to improve their condition. The third commenter agreed that banks rated a 3, 4, or 5 should pay a surcharge, but suggested that the OCC adopt a sliding scale that would impose a higher surcharge the worse a bank's rating became. This commenter also suggested that the OCC consider charging banks by the hour for examinations, but then noted that such an approach would raise the possibility of disputes over the number and qualifications of examiners used and the length of examinations.

The OCC believes, based on available cost data, that a 25% surcharge is an appropriate step toward minimizing the extent to which healthy banks subsidize banks requiring additional supervision without having counterproductive results. The data do not at this point support increasing the assessment surcharge in the other ways proposed by the commenters. Accordingly, the OCC, acting pursuant to 12 U.S.C. 482, adopts the proposed surcharge without change. The OCC will continue to review its cost data and make further adjustments to the assessment calculation as appropriate.

The OCC will use the date of the most recent Report of Examination to determine whether a surcharge should be imposed. If a bank is rated 3, 4, or 5 in the most recent exam report that is dated before the end of the relevant assessment period, a surcharge will be applied. Thus, for instance, if a bank is downgraded from a 2 to a 3 and receives this rating in an exam report dated on or before December 31, that bank would have to pay the surcharge with the assessment that is due by the following January 31. If, however, the exam report is dated January 1, in this example the bank would not have to pay the surcharge with the payment due the following January 31 but would have to pay the surcharge with all subsequent assessments until it is upgraded.

Assessments of a Bank That Owns Another Bank

In the preamble to the proposed rule, the OCC sought comment on the proper method of calculating the assessments of national banks that own other banks. This issue stems from a recent change in the Consolidated Report of Condition and Income (Call Report) instructions [1] pursuant to which the assets of a subsidiary bank are reported on a consolidated basis in the Call Report of its parent bank. Given that the subsidiary bank also must file a Call Report, the current assessment regulation, which bases assessments on assets reported in a bank's Call Report, has the unintended effect of double-counting at least some of the assets of the subsidiary bank.

[1] See 62 FR 8078 (February 21, 1997).

The OCC received two comments on this issue. Both commenters suggested that subsidiary bank assets be subtracted from consolidated parent bank assets in determining the supervisory assessment base for the parent bank. The OCC agrees that it is appropriate to subtract the assets of the subsidiary bank for purposes of calculating the assessment of the parent bank. However, given the small number of banks that own other banks and the wide divergence in circumstances of these banks, the OCC has determined that it is appropriate to address this situation on a case-by-case basis instead of adopting a regulation that attempts to cover all situations. In order to ensure that these banks are assessed fairly, the OCC will inform the affected institutions in each semiannual assessment notice that they may submit information to the OCC demonstrating what the appropriate adjustment should be to the top-tier bank's total assets. The OCC then will review the information and adjust the assessment accordingly.

Removal of Annual Franchise Fees (§ 8.15)

The OCC also is removing § 8.15 from the current rule, which states that national banks that are registered or on file as municipal and/or government securities dealers shall pay an annual franchise fee covering each dealer activity. National banks engage in a wide variety of activities requiring an equally wide variety of supervisory activities. Rather than impose special fees on a few activities or, conversely, attempt to segregate and define all different types of supervisory activities and costs, the OCC has determined that it is more efficient and simpler for the industry for the OCC to recover its costs by imposing only one fee, namely, the semiannual assessment. Thus, the special fee charged to those banks that are registered as municipal and government securities dealers will be removed.

Adoption of Final Rule Removing Annual Franchise Fees

The OCC has determined that notice and comment is not required before removing § 8.15. The rule involves agency practice and procedure and thus is exempt under 5 U.S.C. 553(b)(A) from the prior notice requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). The determination of how fees are imposed is internal to the OCC, since the Comptroller is required by 12 U.S.C. 482 to recover expenses but is not required to follow specific calculations or formulae when making this determination. As a result, the OCC may revise its assessment structure as necessary to meet its expenses. In addition, the rule is exempt pursuant to 5 U.S.C. 553(b)(B) from the prior notice requirements because delaying adoption of the final rule pending receipt of comments would be unnecessary and contrary to the public interest. The rule confers a benefit on national banks that are registered as municipal and/or government securities dealers by eliminating the franchise fee.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes that certification and a short, explanatory statement in the **Federal Register** along with the final rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While the rule requires national banks, Federal branches, and Federal agencies of all sizes that receive a UFIRS or ROCA rating of 3, 4, or 5 to pay an assessment surcharge, this will not create a significant or disparate impact on small institutions. The assessments for the 69 national banks, Federal branches, and Federal agencies with total assets of under $100 million that currently are rated 3, 4, or 5 would increase, in the aggregate, by approximately $357,683 per year, which is equal to approximately $5,184 per institution. Accordingly, a regulatory flexibility analysis under section 604 of the RFA is not required.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. The increase in the assessments of institutions rated a 3, 4, or 5 will be less than $1.0 million in the aggregate. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 93a, 481, 482, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. Section 8.2 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b) * * *

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

§ 8.15 [Removed]

3. Section 8.15 is removed.

Dated: December 1, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–31667 Filed 12–2–97; 11:32 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516, 543, 545, 552, 556, 563

[No. 97–121]

RIN 1550–AA83

Application Processing

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: As a part of its on-going effort to review and streamline its regulations, the Office of Thrift Supervision (OTS) is issuing a final rule revising its comment procedures for specified applications and notices (collectively, applications). In addition to reorganizing the regulation, the OTS has expanded the comment period on these applications, set forth the information that a comment should contain, and replaced existing provisions requiring the OTS to conduct an oral argument on applications under certain circumstances, with provisions for informal and formal meetings. Under the final rule, the OTS will conduct an informal meeting ordinarily upon the request of a commenter, but also on its own initiative. Thereafter, upon the request of any participant to an informal meeting, the OTS will conduct a formal meeting. The OTS may also conduct a formal meeting on any application on its own initiative.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, Regulations and Legislation Division, (202) 906–7275, Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, (202) 906–6962, Office of Chief Counsel; or Diana L. Garmus, Director, Corporate Activities Division, (202) 906–5683, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS regulations governing applications for permission to organize a federal stock or mutual savings association, to establish or relocate a branch office of a federal savings association, and to engage in a transaction that is subject to the Bank Merger Act require applicants to follow the public comment and review procedures at existing § 543.2 (e) and (f).

Currently, § 543.2 provides an opportunity for the public to submit communications in favor or in protest of applications, and permits the applicant to respond to any protest. When a protest is timely submitted, meets specified criteria and includes a request for oral argument, or if an applicant timely requests an oral argument, the regulation requires the OTS to conduct an oral argument on the merits of the application. The OTS may also hold an oral argument in the absence of any protests, if it determines that these additional proceedings are desirable.

On April 9, 1997, the OTS published a notice of proposed rulemaking revising these procedures.[1] In addition to reorganizing the regulations, the OTS proposed to amend its existing procedures to expand the comment period on applications, prescribe the information that comments must contain in order to be considered when the OTS evaluates applications, and replace existing provisions that require the OTS to conduct an oral argument on applications under certain circumstances, with provisions for discretionary conferences. The OTS believed that these changes would make the application processing procedures easier to understand and apply. Additionally, the OTS concluded that the discretionary conference procedures would align OTS regulations more closely with those of the other federal banking agencies in accordance with section 303 of the Community Development and Regulatory Improvement Act of 1994.

II. Summary of Comments and Description of Final Rule

A. General Discussion of the Comments

The public comment period on the proposed rule closed on June 9, 1997. Eight commenters responded to the proposal: four community advocacy groups, two trade associations, one federal savings association, and one professional records and information management association.

As a general matter, the four community advocacy groups opposed the elimination of mandatory oral arguments and supported the extension of the public comment period. Conversely, the trade associations and the federal savings association supported the proposed conference procedures and opposed the extension of the public comment period. The information management association expressed unqualified support for the proposal. Specific comments are discussed where appropriate in the section by section analysis below.

[1] 62 FR 17110 (April 9, 1997).

B. Section by Section Analysis

The final rule adds new Subparts C and D to part 516. The new subparts use plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations more readily understandable. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of "you") and sentences in the active voice.

Although commenters did not have the opportunity to comment on the plain language format prior to its use in this final rule, the OTS believes that the benefits of the format justify its use. Moreover, the use of the plain language format has not altered the substance of the regulation. The OTS welcomes comments on the plain language format, and suggestions on how to improve this format. The OTS is committed to converting more of its regulations to the plain language format in order to reduce regulatory burden. The recently issued OTS final rule on subsidiaries uses this plain English drafting format. See 12 CFR Part 559 (1997).

Subpart C—Comment Procedures

Section 516.100—What Does This Subpart Do?

Section 516.100 of the final rule provides that Part 516, Subpart C contains the procedures governing the submission of public comments on certain types of applications or notices pending before the OTS. Subpart C applies whenever a regulation incorporates the procedures, or where otherwise required by the OTS. This section is based on § 516.5(a)(1) of the proposed rule.

Section 516.110—Who May Submit a Written Comment?

Section 516.110 provides that any person may submit a written comment supporting or opposing an application. This provision is also based on proposed § 516.5(a)(1).

Section 516.120—What Information Should I Include in My Comment?

Under the existing rules, a protest is considered "substantial" if it is submitted in writing within the comment period, and states a reason for the protest that is consistent with one of the regulatory bases for denying an application. To be a substantial protest, a comment must include the specific information required at existing § 543.2(e)(2) and (4). Under the current rules, the term "substantial" serves a purely ministerial purpose—a means of separating comments that contain the required information (and, thus, may serve as the basis for a request for an oral argument) from those that do not.[2]

The proposed rule at § 516.5(a)(3) described the information that a comment must contain in order to be considered by the OTS. Under the proposed rule, the comment was required to recite all relevant facts, including any economic or financial data supporting the commenter's position. Comments opposing an application were required to address at least one of the bases for denial of the application as set forth in the relevant regulations, recite relevant facts and supporting data addressing these relevant bases, and address any adverse effects on the commenter or community that may result from approval of the application.

One commenter supported this proposed provision, noting that it provides important guidance to the public. Another commenter argued that the comment content criteria give the OTS too much discretion to reject comments that do not meet the technical content requirements. Commenters argued that these requirements should not be construed in an overly burdensome way.

The OTS will review and consider all comments it receives regardless of whether the comment meets all of the regulatory criteria. The sole intent of the proposed content requirements was to guide commenters in providing information that would assist the OTS in understanding the basis for the comment. While the OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments.

The OTS has revised the comment content provisions at § 516.120 to emphasize that the OTS will not reject a comment that does not meet all of the content criteria, and has made other changes to enhance the rule's clarity. Under the final rule, a comment should recite relevant facts, including any demographic, economic, or financial data, supporting the commenter's position. If the commenter opposes an application, the comment should also address at least one of the relevant regulatory reasons for which the OTS may deny an application, recite any relevant facts and supporting data addressing these reasons, and address how the approval of the application could harm the commenter or any community.

If a commenter wishes to request an informal meeting under the revised procedures discussed in detail below, the commenter must file a request for the meeting with the comment. To ensure that the OTS will have sufficient notice of the questions to be discussed at the informal meeting, requests should describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues. *See* final § 516.120(b).

Section 516.130—Where Do I File My Comment?

Section 516.130 provides that public commenter must file its comment with the OTS office(s) set forth at § 516.1(c). If an informal meeting is requested, the commenter must simultaneously send a copy of the request to the applicant. This provision was not included in the proposed rule, but has been added to improve the clarity of the final rule.

Section 516.140—Where Do I File My Comment?

Under the current rules, a commenter must file a comment within 10 days of the publication of a public notice of the filing of the application. This time period may extended to 17 days after publication, if a request for extension is filed within the 10-day period. Proposed § 516.5(a)(2) replaced the existing 10-day comment period with a 25-day comment period.

Three commenters supported the proposed 25-day comment period, noting that this is a clearly defined period and gives all prospective commenters an adequate time to submit appropriate comments. Two commenters urged the OTS to lengthen the comment period to 30 days arguing that a 30-day comment period is used by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the OTS in merger and acquisition applications. Two commenters thought that the comment period should be shorter. One argued that 15 days is sufficient. Another argued that the OTS should provide a 17-day comment period, at least for applications involving associations that have an "outstanding" or "satisfactory" rating under the community Reinvestment Act (CRA) and that are eligible for expedited treatment.

The OTS is adopting the proposed 25-day comment period. The OTS continues to believe that this expanded time period, without an automatic extension, is more workable and less confusing. The OTS cannot adopt a 30-day comment period without substantially revising other application processing requirements. In accordance with section 410 of the Competitive Equality Banking Act of 1987, § 516.2(c)(1) requires the OTS to request additional information, deem an application complete, or decline to process an application within 30 days of receipt of an application. The OTS believes it is necessary to have at least five days to review comments within this 30-day review period.

Under the proposed rule, the 25-day comment period would have begun on the date that the *notice* of application is published, a date that may precede the filing of the application. One commenter argued that the comment period should start on the day the application is submitted to the OTS. The commenter noted that this change would give community groups access to the application for the full comment period. The OTS agrees that commenters should have access to the application for the full comment period. Accordingly, under the final rule at § 516.140(a), the comment period begins on the date that the application is filed.

Under the proposed rule at § 516.5(a)(2), the OTS would grant extensions of the 25-day comment period on a case-by-case basis. The OTS would consider a late-filed comment if the OTS determined that the comment addressed a significant regulatory concern and, within the 25-day comment period, the commenter demonstrated good cause why it was unable to submit a timely comment. The length of any extension would be determined on a case-by-case basis.

Commenters generally supported this provision. However, several commenters urged the OTS to define good cause to include specified circumstances, to set specific time frames for extensions and to make other changes. One commenter objected that the unlimited discretion accorded to the OTS under the proposed extension provision would create procedural confusion.

The final rule continues to provide the OTS with maximum flexibility to address the unique circumstances of each extension request. For example, one commenter may need only an additional 24 hours to copy or mail documents. Another commenter may be

[2] The existing oral argument procedures and the new meeting procedures are discussed below.

awaiting pertinent public data and may require a longer opportunity to obtain and analyze the data. Accordingly, the final regulation at § 516.140 does not prescribe the duration of the extension period or the circumstances that would constitute good cause. Rather, the OTS will make these determinations on a case-by-case basis.

One commenter suggested that the OTS should encourage applicants and commenters to make joint requests for extensions of the comment period. One of the underlying purposes of the comment procedures is to promote dialogue and collaboration among the parties. Since joint extension requests will advance voluntary resolution of conflicts, the OTS encourages and generally will grant all jointly filed extension requests.

Under the existing procedures at § 543.2(e)(3), applicants may file an answer to any protest within 10 days after the last date for filing of comments. The proposed rule eliminated this provision. Instead, the OTS stated that it would generally provide an appropriate opportunity to respond by forwarding the comments to the applicant and requesting a response.

Two commenters noted that the OTS failed to set a deadline for the applicant's response. One commenter suggested that OTS should provide at least 10 days for response. The other suggested that the OTS adopt the FRB practice of requiring applicants to respond within eight business days.

It is unnecessary to establish a regulatory deadline for an applicant's response to comments. The OTS will continue to require applicants to respond to issues raised in comments the same way that it resolves other issues raised in applications. The OTS will, where appropriate, request the applicant to respond within 30 days to the issues raised in the application. See existing § 516.2(c).

Section 516.150—Will I Have Additional Opportunities to Discuss the Applications?

Under the existing rules at § 543.2(f), the OTS must conduct an oral argument if the applicant or anyone filing a substantial protest makes a timely request for the argument or if the OTS considers an oral argument desirable. The proposed rule would have replaced the mandatory oral argument provisions. Proposed § 516.5(b)(1) would have required additional proceedings only where the OTS determined that the proceedings would assist in the disposition of the application or would assist in the resolution of any issues raised by the application. Rather than an oral argument, the proposed rule permitted the OTS to arrange a conference between the applicant, commenters, and others. The proposed rule did not prescribe procedures for the conference. Instead, the proposed rule permitted the OTS to select the procedures appropriate to the application on a case-by-case basis.

Three commenters supported the conference procedures contained in the proposed rule. These commenters concluded that the conference procedures were more efficient and flexible than the current oral argument procedures.

Four community group commenters opposed the deletion of the mandatory oral argument. These commenters asserted that oral arguments: (1) Do not unduly delay the application process; (2) are conducive to fully informed decision making by the OTS; (3) are not hard to understand or apply; (4) ensure that consumer issues are adequately considered; and (5) promote dialogue and exchange between the association and commenters.[3]

The OTS continues to believe that formal oral arguments before a presiding officer are not necessary or productive in most cases.[4] More often, comments can best be resolved in a less formal setting, such as a meeting or a telephone call. Accordingly, the final rule states that the OTS generally will conduct an informal meeting on applications upon the request of any commenter.

[3] In the proposed rule, the OTS noted that the discretionary conference procedures would be more consistent with the rules of the other federal banking agencies. One commenter argued that this rationale is not convincing since the other banking regulators often have supplemental procedures for gathering information. The only such procedure cited by the commenter, however, was the OCC's policy of conducting expedited CRA examinations upon request. The OTS has addressed these targeted examinations below at Section II.D.3.

[4] Two commenters argued that the OTS's proposed deletion of the mandatory oral hearing requirement was inconsistent with congressional intent expressed in section 2612 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). This section specifically requires the FRB to hold a hearing where a bank holding company seeks to acquire a thrift. EGRPRA, however, does not provide a similar legal right when a bank holding company acquires a commercial bank. The commenters argued that EGRPRA's retention of hearings in thrift acquisitions reflects Congress' view that the agency should provide hearings in all applications involving savings associations. The OTS disagrees. The hearing requirement in section 2612 of EGRPRA, by its own terms, is limited to specified proceedings before another regulatory agency. There is no legislative history in EGRPRA mandating a broader application. If Congress intended to require hearings whenever a savings association is involved in any application proceeding before any banking regulator, the OTS believes that Congress would have manifested this intent more clearly.

Additionally, if an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, the final rule provides that the OTS will conduct a formal meeting before a presiding officer upon the filing of a request. The OTS may also conduct a formal meeting on any application on its own initiative. The new OTS informal and formal meeting procedures are based upon the OCC's related rule governing meetings and hearings at 12 CFR 5.11.

Thus, the final rule at § 516.150 states that the OTS may provide a commenter with additional opportunities to discuss the application in informal or formal meetings. The new procedures are contained in a new subpart D to part 516. The sections of this new part are discussed below.

Subpart D—Meeting Procedures

Section 516.160—What Does This Subpart Do?

Subpart D establishes the procedures governing informal and formal meetings. It applies whenever a regulation incorporates the procedures in the subpart, or when otherwise required by OTS.

Section 516.170—What Procedures Govern Informal Meetings on Applications?

Section 516.170 establishes the OTS informal meeting procedures. Under § 516.170(a), the OTS may arrange an informal meeting to clarify and narrow the issues and to facilitate the resolution of the issues. If a commenter has filed a written request containing the information described at § 516.120(b), the OTS will arrange a meeting. The OTS may also arrange a meeting upon its own initiative. The purpose of the informal meeting is to promote dialogue and to seek to achieve the voluntary resolution of issues. The OTS will inform the applicant and commenters requesting a meeting of its decision on a request for a meeting, or its decision to hold a meeting on its own initiative. See final § 516.170(b).

One commenter suggested that the final rule should require the OTS to announce its decision on the informal meeting before the expiration of applicable approval time frames specified in §§ 516.2 and 516.3. The purpose of the informal meeting is to address and resolve issues relevant to the disposition of the application. An informal meeting would, thus, be pointless if it is held after approval time frames lapse and the application is deemed approved. Because the announcement of the decision on a meeting obviously must precede the approval of the application, the OTS has not added the suggested provision.[5]

The OTS will invite the applicant and the commenter filing the request to the informal meeting. The OTS may also invite any other interested persons to attend. The OTS will inform meeting participants of the date, time, location and format for the meeting a reasonable time in advance of the meeting. See final § 516.170(c). The OTS may select any format for the meeting. See final § 516.170(d). An informal meeting may encompass an array of forums including, but not limited to, an informal telephone conference call or a face-to-face meeting.

One commenter suggested that any announcement of additional proceedings should identify all persons invited to the conference and the substance of the comments received. The commenter asserted that this procedure would allow the applicant to prepare for, and to contact appropriate persons before the conference. The OTS does not follow a specific format for informing participants of the informal meeting. Rather, the OTS will advise participants using an appropriate method for the meeting. For example, if the OTS determines that an issue may be resolved in a telephone conference, the OTS would not necessarily issue a written notice. Instead, the OTS might place an advance telephone call informing the participants of the date and time of the conference call. By contrast, where another type of meeting is selected, the notice may include some or all of the elements identified by the commenter.

The OTS anticipates that informal meetings will be adequate to facilitate the resolution of issues in most proceedings. However, the OTS recognizes that it may encounter situations where formal meetings may be necessary. Accordingly, the final rule recognizes that an informal meeting may progress to a formal meeting before a presiding officer under § 516.180. Accordingly, within three days after the informal hearing, any participant in the informal meeting may request the OTS to hold a formal meeting. See final § 516.170(e). The participant making the request should describe the nature of the issues or facts to be presented and the reasons why a formal meeting is necessary to make an adequate presentation of the facts or issues. The request must be filed with the OTS and copies must be sent to other participants in the informal meeting.

[5] Where an application is subject to a completeness review under § 516.2(c), the OTS will generally advise applicants and commenters of the informal meeting before deeming the application complete.

Section 516.180—What Procedures Govern Formal Meetings on Applications?

If a participant in the informal meeting files a request for a formal meeting under § 516.170(e), the OTS will grant the request. Additionally, the OTS may hold a formal meeting on its own initiative, if it determines that written submissions and informal meetings are insufficient to adequately present issues or facts to the OTS, or that a formal meeting would otherwise benefit the decisionmaking process. The OTS may limit the issues considered at the formal meeting to issues it deems relevant or material. See final § 516.180(a).

The OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, the OTS will not grant a request for a formal meeting, unless an informal meeting has been conducted under § 516.170. However, there may be occasions where the informal meeting may be unnecessary. Under these or other circumstances, the OTS may elect to use its authority to conduct a formal meeting on its own initiative.

The OTS will announce formal meetings by issuing a Notice of Formal Meeting. The Notice will state the subject and date of the filing, the time and place of the formal meeting, and the issues to be addressed. The OTS will send the Notice to the applicant and any commenter requesting a formal meeting. The OTS may invite other interested persons to participate in the formal meeting by sending the Notice to such persons. See final § 516.180(b).

Paragraph (c) addresses who may participate in a formal meeting. A person receiving a Notice must notify the OTS of its intent to participate in the formal meeting within ten days after the OTS issues the Notice. At least five days before the formal meeting, all participants must provide the names of their witnesses and copies of their proposed exhibits to the OTS, the applicant and any other person designated by the OTS.

Section 516.180 (d) and (e) govern the conduct of the formal meeting. Under § 516.180(e), the OTS will appoint a presiding officer to conduct a formal meeting. The presiding officer is responsible for all procedural questions not governed by § 516.180. Subject to the rulings of the presiding officer, the participants may make opening statements and present witnesses, material and data. All presenters of documentary material must furnish copies of the material to the OTS and to each other participant. The OTS will arrange for a transcript of the formal meeting. Each participant must bear the cost of the transcript that it requests for its use. See final § 516.180(d). Section 516.180(e)(2) provides that certain rules governing the conduct of formal meetings and presentation of evidence do not apply to formal meetings held under § 516.180.

The rule does not address such procedural issues as whether the formal meeting will be public or private. Two commenters advocated the addition of a provision mandating public hearings whenever a public meeting is requested. These commenters noted that public hearings provide opportunities for all citizens to offer their views, including senior citizens, public housing residents and others. These commenters also noted that this change would align OTS procedures more closely to those of the other banking agencies.

Commenters have always had the ability to request public hearings on issues involving the application, and the OTS has had the discretion whether or not to hold such hearings.[6] The ability of members of the public to request public hearings, and the OTS's discretion to hold public hearings, is not affected by this final rule. The final rule would continue to permit the agency to hold a public formal meeting.

Section § 516.190—Will a Meeting Affect Application Processing Time Frames?

The proposed rule at § 516.5(b)(2) stated that if the OTS timely notifies the applicant that it intends to hold a conference, the OTS would temporarily suspend applicable time periods for automatic approval of the application. Two commenters supported this provision.

The final rule at § 516.190 adopts the proposed rule with minor editorial changes. The final rule provides for suspension of application processing time frames if the OTS has arranged an informal or formal meeting. The time periods will resume when the OTS determines that a record has been developed that sufficiently supports a determination on the issues raised in the comments.

C. Conforming Amendments to Related Provisions

The proposed rule included conforming amendments to §§ 543.2, 545.92, 545.95, 552.2–1, 552.2–2 and 556.5. Commenters had the following comments on these conforming changes.

[6] See Op. Chief Counsel (November 24, 1993).

1. Duplicative Publication Requirements

One commenter observed that the publication of notice provisions in proposed §§ 543.2(d)(1), 545.92(d)(1), 552.2–1(a)(1) and 563.22(e) are unnecessarily duplicative. The commenter urged the OTS to consolidate these provisions into a single regulation under Part 516. The commenter noted that this approach would streamline the OTS regulations and more closely conform OTS regulations to the procedural regulations of the other banking agencies.

The OTS agrees that the cited publication requirements are unnecessarily duplicative and has consolidated §§ 543.2(d)(1), 545.92(d)(1), 552.2–1(a)(1) and 563.22(e)(1) into a new subpart under Part 516. New Subpart B uses the same plain language drafting techniques as used in Subparts C and D.

The proposed rules would have required an applicant to publish the notice of the filing of the application no earlier than three days before and no later than the date of the filing of the application. See proposed §§ 543.2(d)(1), 545.92(d)(1) and 552.2–1(a)(1). Various commenters suggested that this three-day publication requirement should be modified to require publication as soon as possible after filing of the application, or extended to require publication within 7, 10, or 30 days of the filing of the application.

The OTS has concluded that the proposed three day requirement may be too onerous under certain circumstances, such as where local newspapers are published on a weekly basis. Unfortunately, uniformity with the other bank regulatory agencies on this issue is impossible, since each bank regulatory agency has established different publication requirements.[7] Nonetheless, the OTS has decided to adopt the FRB's practice of requiring the filing of the application within seven days after the publication of the newspaper notice. See final § 516.60. This change does not affect the 30-day comment period. As noted above, the final rule has been revised so that the comment period begins on the date that the application is filed rather than the date of the newspaper notice. See final § 516.140(a).

[7] The OCC requires publication on the date of filing or as soon as possible thereafter. 12 CFR 5.8(a). The FDIC generally requires publication no earlier than 30 days before filing, and no later than the date of filing. 12 CFR 303.6(f)(1)(ii). The FRB generally requires filing within seven days of publication. 12 CFR 262.3(b).

2. Posting Requirement

Section 545.95 addresses changes of permanent locations and redesignations of home and branch offices by federal associations. The current rule requires an applicant to post a notice of the application for 17 days from the date of the publication of the newspaper notice—a period that is equal to the extended comment period under current application processing procedures. The proposal would have required the applicant to post a notice of an application for 25 days from the date of first publication. This time period would more closely track the 25-day revised comment period.

One commenter argued that § 545.95 unnecessarily duplicates the Federal Deposit Insurance Act ("FDIA") provisions on branch closures, which require posting for 30 days and sending customer notices 90 days before closure.[8] See FDIA Section 42 (12 U.S.C. 1831r–1). The purposes of the two posting requirements differ. The posting requirement under § 545.95 is intended to allow customers the opportunity to comment on a proposed application to change an office location or redesignate a home or branch office. The FDIA posting requirement, on the other hand, is intended to provide notice to customers of the proposed date of closing of a branch and to identify where customers may obtain services following that date. Since the purposes of the two notices differ, both requirements will continue to be applicable. However, the OTS would not object if an institution were to combine the two notices, provided the combined notice clearly complies with the notification, posting and timing requirements under § 545.95 and the FDIA. Any combined posting should indicate that consummation of the transaction is contingent on OTS review.

3. Branching by Federal Savings Associations

The OTS policy statement on branching by federal savings associations is found at § 556.5. The OTS proposed to revise this section to include a cross citation indicating that the procedures for commenting on applications are set forth in Part 516 and Part 563e.

A commenter asserted that the proposed amendment was confusing and suggested the deletion of the cross-reference to Part 563e. The OTS modified this reference to specifically cite the applicable regulations at 12 CFR 563e.29 (c) and (d).

[8] This commenter also questions whether the posting requirement has any applicability for short distance relocations. The posting requirement at § 545.95(b)(1)(ii) does not apply to short distance relocations. *See* existing § 545.95(c).

D. Related Issues

1. Availability of Applications

Two commenters offered a number of suggestions designed to improve the availability of OTS information on applications. The OTS has been working on this issue for some time. The agency began publishing a list of pending applications on its web site on August 12, 1997. The list is updated daily and is available at http://www.ots.treas.gov under "Public Information" and "Industry Data." Additionally, major new applications are highlighted under the "Significant New Applications" page.

2. Publication of OTS Decisions on Applications

One commenter urged the OTS to publish its decisions on applications. The commenter noted that this change would conform the OTS practices to those of the FRB which publishes its decisions in the Federal Reserve Bulletin.

While the OTS will not publish the text of its decisions, it intends to continue its current practice of simultaneously informing the applicant and any commenters of the disposition of an application. In addition, the OTS intends to modify its web site to indicate whether applications have been granted or denied. If a commenter or any other member of the public wishes to obtain a copy of the public portion of an OTS decision, it may do so by contacting the OTS's Information Services Division.

3. Targeted CRA Exams

One commenter suggested that OTS should implement the OCC's policy of conducting targeted CRA examinations when CRA issues are raised by a commenter and the issues were not addressed in the last examination.

The OTS conducts regular CRA examinations on a set cycle. In most cases, the OTS has a timely assessment of CRA performance available in connection with processing an application. Where an applicant's CRA record is not current, however, the OTS may conduct a targeted CRA review to obtain the information necessary to access performance.

III. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

The OTS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act. One commenter disagreed with this certification. The commenter argued that the proposal would make it substantially more difficult for small communities to comment on applications because these communities rarely have CRA expertise.

The OTS disagrees. The final rule should make it easier for small entities, including small communities, to comment on applications. The final rule provides guidance as to the content of the comments to be filed and expands the time period for the receipt of such comments. Thus, the final rule should provide small entities with a greater opportunity to file comments. Moreover, the rule permits commenters to participate in informal and formal meetings with the applicant and the OTS.

Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will enable the OTS to process applications received from all applicants, including small savings associations and other small entities, more expeditiously. It also allows all entities, including small entities, a longer period in which to submit comments on applications.

V. Paperwork Reduction Act of 1995

The information collection requirements contained in this rule are found at 12 CFR 516.50–80, 516.100–190, 543.2, 545.92, 545.95, 552.2–1, and 563.22. All of the collections of information, except those found in §§ 516.50–80 and §§ 516.100–190, have been previously approved by the Office of Management and Budget and the burden under them remains unchanged under this rule (OMB Control Nos. 1550–0005, 1550–0006, and 1550–0016). The requirements in new §§ 516.50–80 and §§ 516.100–190 were previously found in several of the sections mentioned above. New §§ 516.50–80 and §§ 516.100–190 do not add any additional burden and the new citations will be added to the approved packages under OMB Control Nos. 1550–0005, 1550–0006, and 1550–0016 by Paperwork Reduction Act Change Worksheet.

Respondents/recordkeepers are not required to respond to the collections of information unless the collection displays a currently valid OMB control number.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule simplifies existing procedures and should reduce regulatory burden. The OTS has determined that the final rule will not result in expenditures by state, local or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Effective Date

Section 553(d) of the Administrative Procedure Act ("APA") requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d)(1) of the APA, however, permits an agency to waive the normal 30-day delay in effective date for good cause or when a rule relieves a restriction.

The final rule is exempt from the 30-day delayed effective date requirement. Initially, we note that the 30-day delayed effective date requirement applies only to substantive rulemaking. Today's rule is primarily a procedural rule that regulates the manner in which applicants and commenters present their viewpoints on pending applications to the OTS. Moreover, to the extent that the rule may have any impact on the rights or interest of any party, the rule relieves restrictions by streamlining the public comment process.

List of Subjects

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision amends title 12, chapter V, of the Code of Federal Regulations as set forth below:

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

1. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

2. Existing §§ 516.1, 516.2 and 516.3 are redesignated as subpart A, and the subpart heading is added to read as follows:

Subpart A—Application Processing Guidelines

§ 516.2 [Amended]

3. Section 516.2(c)(6) is removed and reserved.

4. Subpart B, consisting of §§ 516.50 through 516.80, is added to read as follows:

Subpart B—Publication Requirements

Sec.

516.50 Who must publish a public notice of an application?
516.60 When must I publish the public notice?
516.70 Where must I publish the public notice?
516.80 What language must I use in my publication?

Subpart B—Publication Requirements

§ 516.50 Who must publish a public notice of an application?

This subpart applies whenever an OTS regulation requires an applicant ("you") to follow the public notice procedures in this subpart.

§ 516.60 When must I publish the public notice?

You must publish a public notice of the application no earlier than seven days before and no later than the date of filing of the application.

§ 516.70 Where must I publish the public notice?

You must publish the notice in a newspaper having a general circulation in the following communities:

(a) The community in which your home office(s) are located, or if you are filing an application for permission to organize, the community in which your home office will be located; and

(b) If you are filing a branch application, the community to be served by the branch office.

§ 516.80 What language must I use in my publication?

(a) *English.* You must publish the notice in a newspaper printed in the English language.

(b) *Other than English.* If the OTS determines that the primary language of a significant number of adult residents of the community is a language other than English, the OTS may require that you simultaneously publish additional notice(s) in the community in the appropriate language(s).

5. Subpart C, consisting of §§ 516.100 through 516.150, is added to read as follows:

Subpart C—Comment Procedures

Sec.

516.100 What does this subpart do?
516.110 Who may submit a written comment?
516.120 What information should I include in my comment?
516.130 Where do I file my comment?
516.140 When do I file my comment?
516.150 Will I have additional opportunities to discuss the application?

Subpart C—Comment Procedures

§ 516.100 What does this subpart do?

This subpart contains the procedures governing the submission of public comments on certain types of applications or notices ("applications") pending before the OTS. It applies whenever a regulation incorporates the procedures in this subpart, or where otherwise required by the OTS.

§ 516.110 Who may submit a written comment?

Any person ("you") may submit a written comment supporting or opposing an application.

§ 516.120 What information should I include in my comment?

(a) Your comment should recite relevant facts, including any demographic, economic, or financial data, supporting your position. If you file a comment opposing an application, your comment should also:

(1) Address at least one of the reasons a relevant regulation lists as to why the OTS may deny an application;

(2) Recite any relevant facts and supporting data addressing these reasons; and

(3) Address how the approval of the application could harm you or any community.

(b) If you wish to request an informal meeting under § 516.170, you must file a request with your comment. You should describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

§ 516.130 Where do I file my comment?

You must file your comment with the OTS office(s) set forth at § 516.1(c). If you request an informal meeting under § 516.170, you must simultaneously send a copy of the request to the applicant.

§ 516.140 When do I file my comment?

(a) *General.* Except as provided in paragraph (b) of this section, you must file a written comment with the OTS within 25 days after the application is filed with the OTS.

(b) *Late-filed comments.* The OTS will consider your late-filed comment if:

(1) Within the comment period, you demonstrate to the OTS good cause why you could not submit a timely comment; and

(2) The OTS concludes that your comment addresses a significant regulatory concern and will assist in disposing of the application.

§ 516.150 Will I have additional opportunities to discuss the application?

The OTS may provide you with additional opportunities to discuss the application in informal or formal meetings under subpart D of this part.

6. Subpart D, consisting of §§ 516.160 through 516.190, is added to read as follows:

Subpart D—Meeting Procedures

516.160 What does this subpart do?
516.170 What procedures govern informal meetings on applications?
516.180 What procedures govern formal meetings on applications?
516.190 Will a meeting affect application processing time frames?

Subpart D—Meeting Procedures

§ 516.160 What does this subpart do?

This subpart contains informal and formal meeting procedures. It applies whenever a regulation incorporates the procedures in this subpart, or when otherwise required by the OTS.

§ 516.170 What procedures govern informal meetings on applications?

(a) *When will the OTS arrange an informal meeting?* The OTS may arrange an informal meeting with the applicant, commenters, or any other interested persons to clarify and narrow the issues and to facilitate the resolution of the issues. If a commenter has filed a written request for an informal meeting containing the information described at § 516.120(b), the OTS will arrange an informal meeting. The OTS also may arrange an informal meeting on its own initiative.

(b) *What action will the OTS take on an informal meeting request?* The OTS will inform the applicant and commenters requesting an informal meeting of the OTS decision on a request for an informal meeting, or of its decision to hold an informal meeting on its own initiative.

(c) *How will the OTS inform the informal meeting participants of the date, time, location and format for the informal meeting?* The OTS will invite the applicant and the commenter filing the request for the informal meeting. The OTS may also invite any other interested persons to attend. The OTS will inform the participants of the date, time, location, and format for the informal meeting a reasonable time in advance of the informal meeting.

(d) *What procedures will govern the conduct of the informal meeting?* The OTS may hold informal meetings in any format, including a telephone conference or face-to-face meeting.

(e) *Will there be an additional opportunity to discuss the application?* Within three days after the informal meeting, any participant in the informal meeting may request the OTS to hold a formal meeting under § 516.180. The participant should describe the nature of the issues or facts to be presented and the reasons why a formal meeting is necessary to make an adequate presentation of the facts or issues. The participant must file the request with the OTS and send copies of the request to other participants in the informal meeting.

§ 516.180 What procedures govern formal meetings on applications?

(a) *When will the OTS hold a formal meeting?* The OTS will not grant a request for a formal meeting unless an informal meeting has been conducted under § 516.170. The OTS will grant all requests for a formal meeting filed under § 516.170(e). The OTS may also hold a formal meeting on its own initiative, if it determines that written submissions and informal meetings are insufficient to adequately present issues or facts to the OTS, or that a formal meeting would otherwise benefit the decisionmaking process. The OTS may limit the issues considered at the formal meeting to issues that the OTS deems relevant or material.

(b) *How will the OTS announce the formal meeting?* The OTS will issue a Notice of Formal Meeting that will state the subject and date of the filing, the time and place of the formal meeting and the issues to be addressed. The OTS will send the Notice to the applicant and any person requesting a formal meeting under § 516.170(e). The OTS may also invite other interested persons to participate in the formal meeting by sending the Notice to such persons.

(c) *Who may participate in the formal meeting?* A person receiving a Notice must notify the OTS of its intent to participate within ten days after the OTS issues the Notice. At least five days before the formal meeting, all participants in the formal meeting must provide the names of their witnesses and copies of proposed exhibits to the OTS, the applicant, and any other person designated by the OTS.

(d) *Will the formal meeting be transcribed?* The OTS will arrange for a transcript. Each participant must bear the cost of any copies of the transcript it requests for its use.

(e) *What procedures govern the conduct of the formal meeting?* (1) The OTS will appoint a presiding officer to conduct the formal meeting. The presiding officer is responsible for all procedural questions not governed by this section. Subject to the rulings of the presiding officer, a participant may make opening statements and present witnesses, material and data. If a participant presents documentary material, it must furnish copies of the material to the OTS and to each other participant. The OTS may keep the formal meeting record open for additional information for up to 14 days following the receipt of the transcript.

(2) The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*) and the OTS Rules of Practice and Procedure in Adjudicatory Proceedings (12 CFR part 509) do not apply to formal meetings under this section.

§ 516.190 Will a meeting affect application processing time frames?

If the OTS has arranged a meeting, it will suspend applicable application processing time frames, including the time frames for deeming an application complete and the applicable approval time frames specified in § 516.2 or 516.3. The time period will resume when the OTS determines that a record has been developed that sufficiently supports a determination on the issues raised in the comments.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

7. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

8. In § 543.2, paragraph (c) is removed and reserved and paragraphs (d)(1), (d)(3), (d)(4), (e), (f) and (h)(1) are revised to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(d) * * *

(1) The applicant must publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

* * * * *

(3) The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(4) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(e) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(f) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

* * * * *

(h) * * *

(1) Applications for permission to organize an interim Federal savings association are not subject to paragraphs (d), (e), (f) or (g)(2) of this section.

* * * * *

PART 545—OPERATIONS

9. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

10. In § 545.92, paragraphs (d), (e) heading, (e)(2) and (f) are revised, and paragraphs (i) and (j) are removed to read as follows:

§ 545.92 Branch offices.

* * * * *

(d) *Processing of applications/notices.* Processing of applications and notices shall be subject to the following procedures:

(1) *Publication.* (i) A federal savings association must publish a public notice of the branch application or notice in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the savings association shall transmit copies of the public notice and publisher's affidavit of publication to the OTS.

(iii) The application or notice and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Submission of application or notice.* A Federal savings association must comply with § 556.5 of this chapter and shall file the application required under § 516.3(b)(2) of this chapter or the notice required under § 516.3(a) of this chapter within three days after the publication of the public notice under paragraph (d)(1) of this section.

(3) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

(e) *Approval of branch application.*

* * * * *

(2) An application shall be deemed to be approved 30 days after notification that the application is complete, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter, or the OTS objects to the application on the grounds set forth under paragraph (e)(1) of this section.

(f) *Approval of branch notice.* A notice filed by a Federal savings association that qualifies for expedited treatment shall be deemed to be approved 30 days after its filing with the OTS, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter; the OTS objects to the application on the grounds set forth in paragraph (e)(1) of this section; or the OTS determines to

process the filing as an application under § 516.3(a)(3) of this chapter. If the OTS suspends the applicable processing time frames, the savings association may not open a branch until the OTS provides a notification of its approval.

* * * * *

11. In § 545.95, paragraph (a) and paragraph (b)(1)(ii) are revised to read as follows:

§ 545.95 Change of office location and redesignation of offices.

(a) *Eligibility.* A Federal savings association may change the permanent location of its home office or any approved branch office, or redesignate a home or branch office subject to the appropriate expedited or standard treatment procedures for establishing a branch office set forth in § 545.92 of this part.

(b) * * *

(1) * * *

(ii) The applicant shall post notice of the application for 25 days from the date of first publication in a prominent location in the office to be closed or redesignated.

* * * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

12. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

13. Section 552.2–1 is amended by revising paragraph (a) to read as follows:

§ 552.2–1 Procedure for organization of Federal stock association.

(a) *Application for permission to organize.* Applications for permission to organize a Federal stock association are subject to this section and to § 543.3 of this chapter. Recommendations by employees of the OTS regarding applications for permission to organize are privileged, confidential, and subject to § 510.5 (b) and (c) of this chapter. The processing of an application under this section shall be subject to the following procedures:

(1) *Publication.* (i) The applicant shall publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the applicant shall transmit copies of the public notice and publisher's affidavit of publication to the OTS in the same manner as the original filing.

(iii) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Notification to interested parties.* The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(3) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

* * * * *

14. Section 552.2–2 is amended by revising paragraph (a) to read as follows:

§ 552.2–2 Procedures for organization of interim Federal stock association.

(a) Applications for permission to organize an interim Federal savings association are not subject to subparts B, C and D of part 516 of this chapter or § 552.2–1(b)(3) of this part.

* * * * *

PART 556—STATEMENTS OF POLICY

15. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

16. Section 556.5 is amended by revising paragraph (c)(4) to read as follows:

§ 556.5 Branching by Federal savings associations.

* * * * *

(c) * * *

(4) *Comment procedures.* Comments on applications for branches must be submitted in writing and factually documented. Comment procedures are set forth in subpart C of part 516 of this chapter, § 563e.29 (c) and (d) of this chapter, the OTS Application Processing Handbook, and other supervisory guidance issued by the OTS.

* * * * *

PART 563—OPERATIONS

17. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

18. Section 563.22 is amended by revising paragraphs (e)(1), (e)(4) and (f)(3) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e)(1) Unless the OTS finds that it must act immediately in order to prevent the probable default of one of the savings associations involved, the applicant must publish a public notice of the application in accordance with the procedures specified in subpart B of part 516 of this chapter. In addition to initial publication, the applicant must publish on a weekly basis during the period allowed for furnishing reports under paragraph (e)(2) of this section.

* * * * *

(4) Commenters may submit comments on the application in accordance with the procedures set forth in subpart C of part 516 of this chapter, except that comments may be submitted at any time during the period described in paragraph (e)(2) of this section. The OTS may arrange informal or formal meetings in accordance with the procedures set forth in subpart D of part 516 of this chapter.

* * * * *

(f) * * *

(3) The OTS suspends the applicable processing time frames under § 516.190 of this chapter;

* * * * *

Dated: November 26, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 97–31612 Filed 12–3–97; 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: On June 12, 1997, the NCUA Board issued comprehensive final amendments to the NCUA Rules and Regulations on investment and deposit activities. Two new provisions will result in a number of credit unions having to significantly change the way they do business with broker-dealers, which was not NCUA's intention. In addition, there are a few minor errors in the regulatory language. This document revises the two broker-dealer provisions to make them consistent with NCUA's intent and corrects the minor errors.

DATES: The interim rule is effective January 1, 1998. Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, (703) 518–6360, or Daniel Gordon, Senior Investment Officer, Office of Investment Services, (703) 518–6620, or at the above address.

SUPPLEMENTARY INFORMATION: The comprehensive final rule amendments to 12 CFR part 703 were published on June 18, 1997 (62 FR 32989).

Broker-Dealers

Section 703.50(a) of the final rule requires that any broker-dealer used by a federal credit union be either a federally regulated depository institution or registered with the Securities and Exchange Commission (SEC). NCUA particularly was concerned about credit unions doing business with entities that sell only certificates of deposit (CDs), as these entities are not subject to comprehensive regulatory oversight. NCUA does not wish to force credit unions to stop doing business with legitimate CD brokers, however, and has determined that a credit union has sufficient control over the transaction when it purchases a CD or share certificate directly from the issuing bank, credit union, or other depository institution. Under the rule, as amended by this document, a federal credit union can use a CD broker to find an institution offering high rates, and may compensate the broker for that service, but it must send the funds directly to the institution and not through the broker or other third party.

Safekeeping

Section 703.60(c) provides that a federal credit union may not allow a selling broker-dealer to safekeep its securities. NCUA's intent was to ensure that the credit union was the beneficial owner of securities it purchased. NCUA did not intend to change the way most federal credit unions do business. NCUA believes that the regulations and oversight of the SEC and depository institution regulators provide adequate protection for credit unions and is amending the rule to require only that safekeepers be entities regulated by such agencies.

Corrections

Section 703.80(a) of the final rule provides that before a federal credit union purchases or sells a security, except for new issues it purchases at par, it must obtain a price quotation on the security from at least two broker-dealers or from an industry-recognized information provider. NCUA added the requirement to ensure that federal credit unions are aware of the market prices of securities they buy and sell. The exception recognizes that the selling price of a new issue is, by definition, the market price.

Although NCUA intended to exempt all new issues of securities from the pricing requirement, new issues of some securities are sold at a discount from their face value, not at par. NCUA is correcting this oversight by adding that a federal credit union need not obtain two prices, or a price from an industry-recognized information provider, for a new issue of a security purchased at original issue discount.

NCUA also is correcting three other minor errors with this document.

Interim Final Rule

The new amendments to Part 703 take effect January 1, 1998. If the provisions discussed above are not revised before then, credit unions will have to unnecessarily change the way they do business. NCUA has determined that, in this case, the Administrative Procedure Act notice and comment procedures are impracticable and contrary to the public interest. 5 U.S.C. 553(b)(3)(B). Accordingly, NCUA is issuing this document as an interim final rule, with an effective date of January 1, 1998. NCUA is requesting comments, however, to determine whether further changes to the provisions are warranted.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small credit unions, defined as those having less than $1 million in assets. NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

This interim final rule does not change the paperwork requirements of Part 703.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This interim final rule applies only to federal credit unions, and as such, has no direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 703 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

2. Amend § 703.50 as follows:

§ 703.50 [Amended]

a. In paragraph (a), by removing "You" at the beginning of the paragraph and adding the phrase "Except as provided in paragraph (c) of this section, you" in its place; and

b. Add paragraph (c) to read as follows:

§ 703.50 What rules govern my dealings with entities I use to purchase and sell investments ("broker-dealers")?

* * * * *

(c) The requirements of paragraph (a) of this section do not apply when you purchase a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

3. Amend § 703.60 by revising paragraph (c) to read as follows:

§ 703.60 What rules govern my safekeeping of investments?

* * * * *

(c) Any safekeeper you use must be regulated and supervised by either the Securities and Exchange Commission or a federal or state depository institution regulatory agency.

* * * * *

§ 703.80 [Amended]

4. Amend § 703.80 by adding the phrase "or at original issue discount" after the word "par" and before the comma in paragraph (a) introductory text.

§ 703.100 [Amended]

5. Amend § 703.100 by adding the word "security" between the words "priority" and "interest" in paragraph (k)(2).

§ 703.150 [Amended]

6. Amend § 703.150 by adding the word "investment" in place of the word "security" each time it appears in the definitions of "Adjusted trading" and "Pair-off transaction."

[FR Doc. 97–31504 Filed 12–3–97; 8:45 am]
BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; delay of compliance.

SUMMARY: On March 7, 1997, the NCUA Board issued final amendments to part 704 of the NCUA Rules and Regulations, which governs corporate credit unions. The effective date of the final amendments is January 1, 1998. While the effective date remains the same, this document delays mandatory compliance with the final amendments until May 1, 1998. The delay gives corporate credit unions more time to meet the capital, staff, and infrastructure requirements of the new regulation.

DATES: Mandatory compliance with part 704, as published at 62 FR 12929 (March 19, 1997), is delayed until May 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Robert F. Schafer, Director, Office of Corporate Credit Unions, at the above address or telephone (703) 518–6640; or Edward Dupcak, Director, Office of Investment Services, at the above address or telephone (703) 518–6620.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–31503 Filed 12–3–97; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–05]

Removal of Class D Airspace, Marshall Army Airfield, Ft. Riley, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule which removed the Class D airspace area at Marshall Army Airfield, Ft. Riley, Kansas. The control tower at Marshall Army Airfield is not in operation and will not be operational in the foreseeable future.

EFFECTIVE DATE: The direct final rule published at 62 FR 17052 became effective 0901 UTC July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 9, 1997 (62 FR 17052). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on July 17, 1997. No adverse comments were received, and thus this document confirms that the direct final rule became effective on that date.

Issued in Kansas City, MO, on October 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31706 Filed 12–3–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–22]

Amendment to Class E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lambert-St. Louis International Airport, St. Louis, MO. The FAA has developed an Instrument Landing System (ILS) Runway (RWY) 6 Standard Instrument Approach Procedure (SIAP) and a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 17 SIAP to serve the Lambert-St. Louis International Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs. The Class E airspace for St. Louis Regional, St. Charles County Smartt, and Spirit of St. Louis Airports are enlarged to conform to requirements of FAA Order 7400.2D. The intended effect of this rule is to provide Class E airspace for aircraft executing ILS RWY 6 and VOR/DME RWY 17 SIAPs, and to conform with the requirements of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC April 23, 1998.

Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–22, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed ILS RWY 6 and VOR/DME RWY 17 SIAPs at St. Louis, MO. Additional controlled Class E airspace extending upward from 700 feet AGL is needed at Lambert-St. Louis International Airport, MO, in order to contain the new SIAPs within controlled airspace. A review of airspace for St. Louis Regional, St. Charles County Smartt, and Spirit of St. Louis Airports indicates they do not meet the criteria for 700 feet AGL Class E airspace as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile increment. The areas for St. Louis Regional, St. Charles County Smartt, and Spirit of St. Louis are enlarged and included in the description of the amended Class E airspace for Lambert-St. Louis International Airport. The amended Class E airspace for Lambert-St. Louis International Airport will contain the new SIAPs in controlled airspace, comply with the requirements of FAA Order 7400.2D, and thereby facilitate separation of aircraft under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–22." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 St. Louis, MO [Revised]

Lambert-St. Louis International Airport
(Lat. 38°44'52"N, long. 90°21'36"W)
Spirit of St. Louis Airport, MO
(Lat. 38°39'43"N, long. 90°39'00"W)
St. Louis Regional Airport, Alton, IL
(Lat. 38°53'25"N, long. 90°02'46"W)
St. Charles County Smartt Airport, St. Charles, MO
(Lat. 38°55'47"N, long. 90°25'48"W)
St. Louis VORTAC
(Lat. 38°51'39"N, long. 90°28'57"W)
Foristell VORTAC
(Lat. 38°41'40"N, long. 90°58'17"W)
ZUMAY LOM
(Lat. 38°47'17"N, long. 90°16'44"W)
OBLIO LOM
(Lat. 38°48'01"N, long. 90°28'29"W)
Civic Memorial NDB

(Lat. 38°53'32"N, long. 90°03'23"W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 12R ILS Localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 30L ILS localizer southeast course extending from the airport to 8.7 miles southeast of the airport and within a 6.6-mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.6-mile radius area to 8.3 miles west of the airport and within a 6.4-mile radius of St. Charles County Smartt Airport, and within a 6.9-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9-mile radius to 7 miles north of the airport and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on October 17, 1997.

Herman J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31704 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–23]

Amendment to Class E Airspace; Crete, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Crete Municipal Airport, Crete, NE. A review of the airspace for Crete Municipal Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. This amendment to the Class E airspace at Crete, NE, excludes the Class E airspace within the Lincoln and Seward, NE, airspace. The intended effect of this rule is to provide controlled Class E airspace in accordance with FAA Order 7400.2D, and exclude the Class E airspace at Crete, NE, from Class E airspace at Lincoln and Seward, NE.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before January 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–23, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: A review of the airspace for Crete Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace as required in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. The amendment to Class E airspace at Crete, NE, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related pects of the rule that might suggest a ed to modify the rule. All comments ubmitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–23." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE NE E5 Crete, NE [Revised]

Crete Municipal Airport, NE

(Lat. 40°37'07" N., long. 96°55'32" W.)

Crete NDB

(Lat. 40°37'27" N., long. 96°55'39" W.)

Lincoln VORTAC

(Lat. 40°55'26" N., long. 96°44'31" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Crete Municipal Airport and within 2.6 miles each side of the 016° bearing from the Crete NDB extending from the 6.4-mile radius to 7.4 miles north of the airport and within 2.6 miles each side of the 172° bearing from the Crete NDB extending from the 6.4-mile radius to 7.4 miles south of the airport and within 2.6 miles each side of the 205° radial of the Lincoln VORTAC extending from the 6.4-mile radius to 7.9 miles southwest of the airport, excluding that airspace within the Lincoln, NE, Class E5 airspace and the Seward, NE, Class E5 airspace.

* * * * *

Issued in Kansas City, MO, on October 17, 1997.

Herman J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31703 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–26]

Amendment to Class E Airspace; Atchison, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Amelia Earhart Airport, Atchison, KS. A review of the airspace for Amelia Earhart Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The FAA has developed a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 16 Standard Instrument Approach Procedure (SIAP) to serve the Amelia Earhart Airport. Additional controlled airspace 700 feet AGL is needed to accommodate this SIAP and comply with the criteria of FAA Order 7400.2D. The enlarged area will contain the new VOR/DME RWY 16 SIAP in controlled airspace and comply with the requirements of FAA Order 7400.2D. The intended effect of this rule is to provide Class E airspace for instrument operations and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before January 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Airspace Docket Number 97–ACE–26, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a VOR/DME RWY 16 SIAP to serve the Amelia Earhart Airport, Atchison, KS. The amendment to Class E airspace at Atchison, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment will comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an

adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Document number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ACE–26." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1950–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE KS E5 Atchison, KS [Revised]

Amelia Earhart Airport, KS
(Lat. 39°34'14" N., long. 95°10'40" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Amelia Earhart Airport.

* * * * *

Issued in Kansas City, MO, on October 7, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31702 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–27]

Amendment to Class E Airspace; Lexington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lexington/Jim Kelly Field, Lexington, NE. A review of the airspace for Lexington/Jim Kelly Field indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with FAA Order 7400.2D and provide controlled Class E airspace for aircraft executing instrument approaches. Editorial revisions have been made to reflect a change in the airport name and ARP.

DATES: *Effective date:* 0901 UTC, April 23, 1998. *Comment date:* Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Airspace Docket Number 97–ACE–27, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: A review of the airspace for Lexington/Jim Kelly Field indicates it does not meet the criteria for 700 feet AGL Class E airspace as required by FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Lexington, NE, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under IFR. The name of the airport has been changed from Lexington Municipal Airport to Lexington/Jim Kelly Field. The ARP coordinates have been revised. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ACE–27." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1950–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE NE E5 Lexington, Lexington/Jim Kelly Field, NE [Revised]

Lexington/Jim Kelly Field, NE
(Lat. 40°47'26" N., long. 99°46'33" W.)
Darr NDB
(Lat. 40°50'40" N., long. 99°51'22" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Lexington/Jim Kelly Field and within 2.6 miles each side of the 311° bearing from the Darr NDB extending from the 6.6-mile radius to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO, on October 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31701 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Rules of Practice and Procedure; Amendments to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its November 19, 1997 business meeting, the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure for clarification and conformance with existing Commission interpretations and practices.

EFFECTIVE DATE: November 19, 1997.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: On October 22, 1997 the Commission held a public hearing on proposed amendments to its Rules of Practice and Procedure as noticed in the **Federal Register**, Vol. 62, No. 168, August 29, 1997 and Vol. 62, No. 200, October 16, 1997. In response to comments received on that proposal, the Commission made several modifications to its initial proposal, providing further clarification, correcting typographical errors and revising language concerning assessment of Hearing costs.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR Part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.0 Introduction is revised to read as follows:

§ 410.0 Introduction.

(a) The Delaware River Basin Compact requires the Commission to formulate and adopt a Comprehensive Plan and Water Resources Program. In addition, the Compact provides in Section 3.8 that no project having a substantial effect on the water resources of the Basin shall be undertaken unless it shall have been first submitted to and approved by the Commission. The Commission is required to approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan. Section 3.8 further provides that the Commission shall provide by regulation for the procedure of submission, review and consideration of projects and for its determinations pursuant to Section 3.8.

(b) The Comprehensive Plan consists of all public and those private projects and facilities which the Commission has directed be included therein. It also includes those documents and policies which the Commission has determined should be included with the Comprehensive Plan as being needed to insure optimum planning, development, conservation, use, management and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is subject to periodic review and revision as provided in Sections 3.2 and 13.1 of the Compact.

(c) The Water Resources Program is based upon the Comprehensive Plan. It is required to be updated annually and to include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs. The Commission's review and modification of the Water Resources Program is conducted pursuant to the provisions of Articles 3.2 and 13.2 of the Compact.

(d) The Commission's Rules of Practice and Procedure govern the adoption and revision of the Comprehensive Plan, the Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 and other actions of the Commission mandated or authorized by the Compact.

(e) These Rules of Practice and Procedure extend to the following areas of Commission responsibility and regulation:

Article 1—Comprehensive Plan.
Article 2—Water Resources Program.
Article 3—Project Review Under Section 3.8 of the Compact.
Article 4—(Reserved).
Article 5—Appeals or Objections to Decisions of the Executive Director in Water Quality Cases.
Article 6—Administrative and Other Hearings.
Article 7—Penalties and Settlements in Lieu of Penalties.
Article 8—Public Access to the Commission's Records and Information.
Article 9—General Provisions.

(f) These rules are subject to Commission revision and modification from time to time as the Commission may determine. The Commission reserves the right to waive any Rule of Practice and Procedure it determines should not be applicable in connection with any matter requiring Commission action. All actions by the Commission, however, shall comply fully with the applicable provisions of the Compact.

3. Subpart A—Comprehensive Plan is revised to read as follows:

Subpart A—Comprehensive Plan

Sec.
401.1 Scope.
401.2 Concept of the Plan.
401.3 Other agencies.
401.4 Project applications and proposed revisions and changes.
401.5 Review of applications.
401.6 Proposed revisions and changes.
401.7 Further action.
401.8 Public Projects under Article 11 of the Compact.
401.9 Custody and availability.

§ 401.1 Scope.

This subpart shall govern the submission, consideration, and inclusion of projects into the Comprehensive Plan.

§ 401.2 Concept of the Plan.

(a) The Comprehensive Plan shall be adopted, revised and modified as provided in Sections 3.2 and 13.1 of the Compact. It is the Commission's responsibility to adopt the Comprehensive Plan, after consultation with water users and interested public bodies, for the immediate and long-range development and uses of the water resources of the Basin. The Plan shall include the public and private projects and facilities which the Commission determines are required for the optimum planning, development, conservation, utilization, management and control of the water resources of the Basin to meet present and future needs. In addition to the included projects and facilities, the Comprehensive Plan consists of the statements of policies, and programs that the Commission determines are necessary to govern the proper development and use of the River Basin. The documents within the Comprehensive Plan expressing the Commission's policies and programs for the future, including the means for carrying them out, may be set forth through narrative text, maps, charts, schedules, budgets and other appropriate means.

(b) Specific projects and facilities and statements of policy and programs may be incorporated, deleted or modified from time to time to reflect changing conditions, research results and new technology. The degree of detail described in particular projects may vary depending upon the status of their development.

§ 401.3 Other agencies.

Projects of the federal agencies affecting the water resources of the Basin, subject to the limitations in Section 1.4 of the Compact, shall be governed by Section 11.1 of the Compact. Projects of the signatory states, their political subdivisions and public corporations affecting the water resources of the Basin, shall be governed by the provisions of Section 11.2 of the Compact.

§ 401.4 Project applications and proposed revisions and changes.

(a) Applications for inclusion of new public projects and the deletion or alteration of previously included public projects may be submitted by signatory parties and agencies or political subdivisions thereof. Owners or sponsors of privately owned projects may submit applications for the inclusion of new private projects and the deletion or alteration of previously included private projects in which the applicant has an interest. The Commission may also receive and consider proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization, or group. Any application or proposal shall be submitted in such form as may be required by the Executive Director to facilitate consideration by the Commission.

(b) Applications for projects shall include at least the following information:

(1) Purpose or purposes, including quantitative measures of physical benefit anticipated from the proposal;

(2) The location, physical features and total area required.

(3) Forecast of the cost or effect on the utilization of water resources;

(4) Relation to other parts of the existing Comprehensive Plan;

(5) A discussion of conformance with Commission policies included in the Comprehensive Plan; and

(6) A discussion of the alternatives considered.

§ 401.5 Review of applications.

Following staff study, examination, and review of each project application, the Commission shall hold a public hearing upon notice thereon as provided in paragraph 14.4(b) of the Compact and may take such action on a project application as it finds to be appropriate.

§ 401.6 Proposed revisions and changes.

Proposals for changes and additions to the Comprehensive Plan submitted by any agency of the signatory parties or any interested person, organization or group shall identify the specific revision or change recommended. In order to permit adequate Commission consideration of any proposal, the Executive Director may require such additional information as may be needed. Review or consideration of such proposals shall be based upon the recommendation of the Executive Director and the further direction of the Commission.

§ 401.7 Further action.

The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan (March 28, 1962). Such review may include consideration of proposals submitted by the signatory parties, agencies or political subdivision thereof or other interested parties. The amendments, additions, and deletions adopted by the Commission will be compiled and the Plan as so revised shall be made available for public inspection.

§ 401.8 Public Projects under Article 11 of the Compact.

(a) After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of this part.

(b) Any public project not having a substantial effect on the water resources of the Basin, as defined in subpart C of this part, may proceed without reference to Article 11 of the Compact.

§ 401.9 Custody and availability.

The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, description and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

4. Subpart C—Project Review Under Section 3.8 of the Compact is revised to read as follows:

Subpart C—Project Review Under Section 3.8 of the Compact

Sec.
401.31 Scope.
401.32 Concept of 3.8.
401.33 Administrative agreements.
401.34 Submission of project required.
401.35 Classification of projects for review under Section 3.8 of the Compact.
401.36 Water supply projects—Conservation requirements.
401.37 Sequence of approval.
401.38 Form of referral by State or Federal agency.
401.39 Form of submission of projects not requiring prior approval by State or Federal agencies.
401.40 Informal conferences and emergencies.
401.41 Limitation of approval.

§ 401.31 Scope.

This subpart shall govern the submission and review of projects under Section 3.8 of the Delaware River Basin Compact.

§ 401.32 Concept of 3.8.

Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the Compact provides:

"No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission,

review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction."

§ 401.33 Administrative agreements.

The Executive Director is authorized and directed to enter into cooperative Administrative Agreements with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:

(a) To facilitate the submission and review of applications and the determinations required under Section 3.8 of the Compact;

(b) To avoid unnecessary duplication of staff functions and hearings required by law; and

(c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law.

§ 401.34 Submission of project required.

Any project which may have a substantial effect on the water resources of the Basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to whether the project impairs or conflicts with the Comprehensive Plan, as follows:

(a) Where the project is subject to review by a state or federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other state or federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal, which may have a substantial effect on the water resources of the Basin, may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the "A List" classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approved for the purposes of Section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission; provided, however, that this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

§ 401.35 Classification of projects for review under Section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons;

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(4) The construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the Basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state;

(8) Periodic maintenance dredging;

(9) Encroachments on streams within the Basin caused by:

(i) Floating docks and anchorages and buoys and navigational aids;

(ii) Temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures;

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan;

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan, or in, on, under or across any stream within the Basin; unless such lines would involve significant disturbance of ground cover affecting water resources;

(14) Landfill projects, unless no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan;

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action;

(i) Where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or

(ii) When a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

(16) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

(17) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater;

(18) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

(19) Temporary or short term projects determined to have non-substantial impact on the water resources of the Basin by the Executive Director.

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with this part for determination as to whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

(1) Impoundment of water;

(2) Withdrawal of ground water;

(3) Withdrawal of water from impoundment or streams;

(4) Diversion of water into or out of the Basin;

(5) Deepening or widening of existing stream beds, channels, anchorages, harbors or tuning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat;

(6) Discharge of pollutants into surface or ground waters of the Basin;

(7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines;

(8) Facilities for the direct discharge to surface or ground waters of industrial wastewater;

(9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;

(10) Change in land cover on major ground water infiltration areas;

(11) Hydroelectric power projects, including pumped storage projects;

(12) Projects or facilities of Federal, state and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the Basin;

(13) Draining, filling or otherwise altering marshes or wetlands;

(14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;

(15) Landfills and solid waste disposal facilities affecting the water resources of the Basin;

(16) State and local standards of flood plain regulation;

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and

(18) Any other project that the Executive Director may specify direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin, such project may be referred by the state of federal agency to the Commission for action under this part.

(d) Except as otherwise provided by § 401.39 the sponsor shall submit an application for review and approval of a project included under paragraph (b) of this section through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executor, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.

§ 401.36 Water supply projects—Conservation requirements.

Maximum feasible efficiency in the use of water is required on the part of water users throughout the Basin. Effective September 1, 1981 applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water-conserving practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawal from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water-conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water-conserving devices and procedures; and

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to paragraph (a) of this section shall be subject to any applicable limitations of public utility regulations of the

signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water in excess of an average of one million gallons per day shall contain

(1) A report of the water-conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and

(2) A contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan shall estimate the impact of the water conservation measures upon consumptive and non-consumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

§ 401.37 Sequence of approval.

A project will be considered by the Commission under Section 3.8 of the Compact either before or after any other state or federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

§ 401.38 Form of referral by State or Federal agency.

Upon approval by any State or Federal agency of any project reviewable by the Commission under this part, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

(a) The Commission will rely on the appropriate agency in each state to review and regulate the potability of all public water supplies. Applications before the Commission should address the impact of the withdrawal, use and disposal of water on the water resources of the Basin.

(b) The Commission will rely on signatory party reviews as much as possible and generally the Commission will not review the performance standards of individual components of treatment processes but will require compliance with all policies in the Comprehensive Plan including all applicable Water Quality Standards.

§ 401.39 Form of submission of projects not requiring prior approval by State or Federal agencies.

Where a project does not require approval by any other State or Federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) *Exhibits to accompany application.* The application shall be accompanied by the following exhibits:

(1) Abstract of proceedings authorizing project, where applicable;

(2) General map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal;

(3) Section of the United States Geological Survey topographic map showing the territory and watershed affected;

(4) Maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project;

(5) Written report of the applicant's engineer showing the proposed plan of operation of a structural project;

(6) Map of any lands to be acquired or occupied;

(7) Estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out; and

(8) Analyses and conclusions of regional water supply and wastewater investigations.

(b) *Letter of transmittal.* The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.

(c) Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies of photographic prints or reproduction may be used.

§ 401.40 Informal conferences and emergencies.

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal conference may be scheduled to explain, supplement or review an application.

(b) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in this part.

§ 401.41 Limitation of approval.

(a) Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.

Subpart D—[Removed and Reserved.]

5. Subpart D is removed and reserved.

6. Subpart E is revised to read as follows:

Subpart E—Review in Water Quality Cases

Sec.
401.71 Scope.
401.72 Notice and request for hearing.
401.73 Form of request.
401.74 Form and contents of report.

401.75 Protection of trade secrets; Confidential information.
401.76 Failure to furnish report.
401.77 Informal conference.
401.78 Consolidation of hearings.

§ 401.71 Scope.

This subpart shall apply to the review, hearing and decision of objections and issues arising as a result of administrative actions and decisions taken or rendered by the Executive Director under the Compact and the regulations in this chapter. Any hearings shall be conducted pursuant to the provisions of subpart F of this part.

§ 401.72 Notice and request for hearing.

The Executive Director shall serve notice of an action or decision by him under the Compact and the regulations in this chapter by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for such a hearing shall be filed with the Secretary of the Commission not more than 30 days after service of the Executive Director's determination. Failure to file such a request within the time limit shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

§ 401.73 Form of request.

(a) A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

(b) When the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 30 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the person or entity filing the request for hearing at the place indicated in the request.

§ 401.74 Form and contents of report.

(a) *Generally.* A request for a report under this subpart may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) *Waste loading.* In cases involving objections to an allocation of the assimilative capacity of a stream, wasteload allocation for a point source, or load allocation for a new point source, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics and outfall configuration in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any in-plant control or recovery process for which credit is claimed;

(5) The chemical and toxicological characteristics including the processes and/or indirect discharges which may be the source of the chemicals or toxicity;

(6) An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Compact and the regulations in this chapter, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

(7) Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as to represent adequately the strength and volume of waste that is discharged; and

(8) Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

§ 401.75 Protection of trade secrets; Confidential information.

No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by this part shall be confidential for the purposes of Section 1905 of Title 18 of the United States Code which provides:

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than $1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791.

§ 401.76 Failure to furnish report.

The Executive Director may, upon five days' notice to the objector dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

§ 401.77 Informal conference.

Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

§ 401.78 Consolidation of hearings.

Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

7. Subpart F is revised to read as follows:

Subpart F—Administrative and Other Hearings

Sec.
401.81 Hearings generally.
401.82 Authorization to conduct hearings.

401.83 Hearing Officer.
401.84 Hearing procedure.
401.85 Staff and other expert testimony.
401.86 Record of proceedings.
401.87 Assessment of costs; Appeals.
401.88 Findings, report and Commission review.
401.89 Action by the Commission.
401.90 Appeals from final Commission action; Time for appeals.

§ 401.81 Hearings generally.

(a) *Scope of subpart.* This subpart shall apply to contested cases required to be held under subparts C and E of this part, to the conduct of other administrative hearings involving contested cases and to proceedings which Commission regulation or the Commission directs be conducted pursuant to this subpart.

(b) *Definition of contested case.* "Contested case" means a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved. Such a proceeding may involve personnel matters, project applications and docket decisions but shall not extend to the review of any proposed or adopted rule or regulation of the Commission.

(c) *Requests for hearings.* Any person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this subpart provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision. Any request filed more than thirty days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this subpart, whether timely filed or not, shall be submitted by the Secretary to the Commissioners for their information.

(d) *Optional joint hearings.* Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a Hearing Officer designated pursuant to this subpart may also serve as a Hearing Officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a Hearing Officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the Hearing Officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

(e) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a "hearing docket" which shall be posted in public view at the office of the Commission.

(f) *Notice of hearing.* Notice of any hearing to be conducted pursuant to this subpart shall comply with the provisions of Section 14.4(b) of the Compact relating to public notice unless otherwise directed by the Commission.

§ 401.82 Authorization to conduct hearings.

(a) *Written requests for hearings.* Upon receipt of a written request for a hearing pursuant to this subpart, the Executive Director shall review the record available with regard to the action or decision for which a hearing is requested. Thereafter, the Executive Director shall present the request for a hearing to the Commission for its consideration. The Commission shall grant a request for a hearing pursuant to this subpart if it determines that an adequate record with regard to the action or decision ins not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commissioner that the Commission has found that an administrative hearing is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the Compact or other applicable law or court rule.

(b) *Commission directed hearings.* This subpart shall be applicable to any proceeding which Commission regulation or the Commission directs be conducted in accordance with the provisions, of this subpart.

§ 401.83 Hearing Officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other Hearing Officer as the Chairman may designate, except as provided in paragraph (b) of this section.

(b) *Wasteload allocation cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which the discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a Hearing Officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the Chairman.

§ 401.84 Hearing procedure.

(a) *Participation in the hearing.* In any hearing, the person requesting the hearing shall be deemed an interested party and shall be entitled to participate fully in the hearing procedure. In addition, any person whose legal rights may be affected by the decision rendered in a contested case shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning a contested case or desiring to present comments concerning the subject matter of the Hearing for inclusion in the record may submit a written statement to the Commission. Any interested party may request the right to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all written statements submitted shall be included within the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(b) *Powers of the Hearing Officer.* The Hearing Officer shall:

(1) Rule upon offers of proof and the admissibility of evidence, regulate the course of the hearings, hold conferences for the settlement or simplification of procedures or issues, and shall schedule submission of documents, briefs and the time for the hearing.

(2) Cause each witness to be sworn or to make affirmation.

(3) Limit the number of times any witness may testify, limit repetitious examination or cross-examination of witnesses or the extent to which corroborative or cumulative testimony shall be accepted.

(4) Exclude irrelevant, immaterial or unduly repetitious evidence, but the interested parties shall not be bound by technical rules of evidence and all relevant evidence of reasonably probative value may be received.

(5) Require briefs and oral arguments to the extent determined necessary which shall be included as part of the record unless otherwise ordered by the Hearing Officer.

§ 401.85 Staff and other expert testimony.

(a) *Presentation on behalf of the Commission.* The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) *Expert witnesses.* An interested party may submit in writing to the Hearing Officer the report and proposed testimony of an expert witness. No expert report or proposed testimony, however, shall be included in the record if the expert is not available for examination unless the report and proposed testimony shall have been provided to the Commission and all interested parties prior to the hearing and the Commission and interested parties have waived the right of cross-examination.

(c) The Executive Director may designate for inclusion in the record those records of the Commission which the Executive Director deems relevant to a decision in a contested case or to provide an understanding of applicable Commission policies, regulations or other requirements relating to the issues in the contested case. The designation of such Commission documents shall be provided to all interested parties prior to the hearing.

§ 401.86 Record of proceedings.

A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

§ 401.87 Assessment of costs; Appeals.

(a) Whenever a hearing is conducted under this subpart, the costs thereof, as defined in this subpart, shall be assessed by the Hearing Officer to the party requesting the hearing unless apportioned between the interested parties where cost sharing is deemed fair and equitable by the Hearing Officer. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of a hearing room and other related expenses.

(b) Upon scheduling of a matter for hearing, the Secretary shall furnish to the applicant and/or interested parties a reasonable estimate of the costs to be incurred under this section. The applicant and/or interested parties may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(c) An appeal of the assessment of costs may be submitted in writing to the Commission within ten (10) days of the assessment. A copy of the appeal shall be filed with the Secretary and served on all interested parties. The filing of said appeal shall not stay the Hearing.

§ 401.88 Findings, report and Commission review.

(a) The Hearing Officer shall prepare a report of his findings and recommendations. In the case of an objection to a waste load allocation, the Hearing Officer shall make specific findings of a recommended allocation which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the Hearing Officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

(b) The Executive Director, in addition to any submission to the Hearing Officer, may also submit to the Commission staff comments upon, or a response to, the Hearing Officer's findings and report and, where appropriate, a draft docket or other recommended Commission action. Interested parties shall be served with a copy of such submission and may have not less than ten (10) days to respond before action by the Commission.

§ 401.89 Action by the Commission.

(a) The Commission will act upon the findings and recommendations of the Hearing Officer pursuant to law.

(b) Commission Counsel shall assist the Commission with its review of the hearing record and the preparation of a Commission decision to the extent directed to do so by the Chairman.

(c) The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the Hearing Officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. All such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

§ 401.90 Appeals from final Commission action; Time for appeals.

Any party participating in a hearing conducted pursuant to the provisions of this subpart may appeal any final Commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of final Commission action.

Dated: November 21, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–31486 Filed 12–3–97; 8:45 am]

BILLING CODE 6360–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 255

RIN 3220–AA44

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) revises part 255 of its regulations, currently entitled "Recovery of Erroneous Payments", to clarify and update its regulations with respect to recovery of overpayments. The revisions more clearly identify the individuals from whom recovery may be sought and under what circumstances recovery of an overpayment of benefits will be made. The revisions also cover the circumstances under which such recovery may be waived, and the circumstances under which such recovery may be terminated or suspended under the Board's authority concerning administrative relief from recovery.

DATE: Effective December 4, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 255 of the Board's regulations has not been revised since 1967. Although section 10 of the Railroad Retirement Act of 1974 (45 U.S.C. 231i) includes provisions for recovery and waiver of overpayments of benefits which are substantially the same provisions included in the Railroad Retirement Act of 1937 (45 U.S.C. 228i, superseded), internal procedures dealing with overpayments of benefits have been developed which should properly be included in the regulations of the Board. In addition, in the Board's view, waiver should not be available with respect to certain types of overpayments and this proposed rule reflects those proposals.

The title of part 255 is revised to "Recovery of Overpayments". The title, "Recovery of Erroneous Payments", mistakenly implies that all such payments were caused by "fault". Overpayments can and do occur through no fault of the recipients of such payments. The purpose of part 255 is to set out regulations to govern those instances where more than the correct amount of benefits has been paid, regardless of whether or not "fault" exists.

Section 255.1 replaces previous § 255.1, which sets out statutory provisions, with an introductory statement to summarize what is included in part 255.

Section 255.2 defines "overpayment" using essentially the same language that is used in previous § 255.2 which defined "erroneous payments".

Section 255.3 states the general rule that overpayments shall be recovered in all cases except where recovery is waived under § 255.10 or administrative relief from recovery is granted under § 255.16 or where collection is suspended or terminated under these regulations or the Federal Claims Collection Standards.

Section 255.4 replaces previous § 255.4, which simply stated in a summary manner the methods by which erroneous payments may be recovered, with a detailed description of those individuals from whom overpayments may be recovered.

Sections 255.5–255.8 set out the methods by which an overpayment of benefits may be recovered. These methods include recovery by cash payment (§ 255.5), recovery by setoff from any subsequent payment determined to be payable on the basis of the same record of compensation (§ 255.6), recovery by deduction in the computation of a residual lump-sum death benefit payable under the Railroad Retirement Act (§ 255.7), and recovery by actuarial adjustment of an annuity (§ 255.8). These sections are substantially similar to previous §§ 255.5–255.8. However, § 255.8, unlike its predecessor, provides that an actuarial adjustment is not effective until the overpaid annuitant negotiates the first check which reflects the actuarially adjusted rate.

Section 255.9 provides that where recovery of an overpayment is by setoff which can be effected within 5 months and the individual from whom recovery is sought is an enrollee under Medicare Part B, the individual's monthly Medicare premium will be paid and the balance of the annuity amount will be applied toward recovery of the overpayment. This section is new and is intended both to save the agency the administrative costs of billing an annuitant for his or her Part B Medicare premium where his or her annuity would be offset in its entirety to recover an overpayment and also to avoid a lapse of Medicare coverage.

Section 255.10 sets out the general requirements for waiver of recovery of an overpayment as set forth in the Railroad Retirement Act and replaces the present §§ 255.10 and 255.11.

Section 255.11 defines "fault" and gives examples of when an individual is or is not at fault based upon past agency decisions. Section 255.12 defines when recovery is contrary to the purpose of the Railroad Retirement Act, based upon past agency decisions. Section 255.13 defines when recovery is against equity or good conscience.

Sections 255.14 and 255.15 are new sections which describe special situations where waiver of recovery of an overpayment is not available or is limited. Specifically, § 255.14 provides that waiver is not available under certain circumstances when recovery can be made from an accrual of social security benefits. Section 255.15 provides that when considering waiver to an estate of an individual, recovery will never be found to be contrary to the purpose of the Railroad Retirement Act.

Section 255.16 sets out internal Board policy governing those situations where recovery of an overpayment may not be waived under section 10(c) of the Railroad Retirement Act, thus extinguishing the debt, but where recovery will not be sought for equitable reasons.

Section 255.17 is new and explains how an overpayment is recovered when that overpayment was made to a representative payee under part 266 of this chapter.

Sections 255.18 and 255.19, which deal with compromise, suspension, or termination of the collection of overpayments are substantively identical to previous §§ 255.14 and 255.15 with the exception that references to the Federal Claims Collection Standards (4 CFR Chapter 2) have been added.

This rule was published as a proposed rule on December 28, 1995, (60 FR 67108). The Labor Member of the Board dissented from publication of the proposed rule. His reasons for doing so were published in the supplementary information section of the proposed rule (60 FR 67109). Comments on the proposed rule were invited by January 29, 1996.

Four comments were received; one from an individual, two from individuals representing railway labor organizations and one from an association of retired railroad workers. All of the commenters expressed agreement with the views of the Labor Member set forth in the proposed rule. (60 FR 67109). In addition, the Board received the joint comments of rail labor and rail management.

Two commenters requested that the Board adopt the Labor Member's suggestion to include in the regulation a rule under which an individual who is overpaid because of an incorrect annuity rate caused by Board error and where the rate continues for at least 5 months after the Board has been put on notice of the error, would be presumed to be without fault for any payments after the fifth month.

In response to these comments and suggestions from rail labor and management the Board has added a new paragraph (3) to § 255.11(e) which provides that an individual shall not be considered at fault with respect to an overpayment caused by the agency's failure to reduce his or her annuity after he or she has put the Board on notice of an event which, had the Board acted, would have triggered the reduction.

Another commenter criticized section 255.12(c)(2), which permits the Board to consider non-liquid assets in determining whether an overpaid individual has the financial ability to repay the overpayment. The commenter stated that one should not have to sell his or her tangible personal property or real estate to repay an overpayment. The Board believes that it is not unreasonable to require an individual who has received an overpayment of benefits and who has substantial equity in real estate or significant holdings in tangible personal property such as precious metals, antiques, or art work to liquidate or borrow against such holdings to repay the overpayment he or she received where such repayment would not affect his or her ability to meet ordinary and necessary living expenses. However, the Board has revised § 255.12(c)(2) to provide that an individual does not have to sell his or her principal residence in order to repay the debt.

A commenter also objected to Example 1 under section 255.12. In the commenter's view, the example indicated that future medical expenses could not be taken into consideration when determining whether an individual is financially able to repay the overpayment. In response to this comment and the suggestions of rail labor and rail management this example has been revised to better explain how medical expenses will be considered in determining whether waiver is appropriate.

Another comment was directed toward section 255.15 which provides that waiver is not available to an estate. The commenter argues that waiver should be available to an estate where recovery of the overpayment would be against equity or good conscience. Based on this comment and the suggestions of rail labor and rail management, the Board has modified the wording of section 255.15 to provide that recovery from an estate will never be contrary to the purpose of the Railroad Retirement Act, but could be against equity and good conscience.

Finally, another commenter criticized proposed section 255.16 which provides that *de minimis* overpayments (overpayments under $500) shall not be waived. The commenter argued that many of these overpayments are the result of Board computational error and that the administrative costs of pursuing such small amounts—not to mention the ill will caused—would suggest that overpayments this small should automatically be waived. Based on this comment and the views of rail labor and management, the Board has removed this section.

In addition to the comments discussed above, two persons requested the Board to delay final action on this regulation to allow railroad labor and railroad management to reach agreement on the substance of the rule. The Board notes that the promulgation of regulations is the sole province of the Board, and although, any agreement resulting from negotiations between the parties is not controlling with respect to the Board's actions, the Board has considered and adopted various suggestions made by rail labor and management in adopting this rule.

The Office of Management and Budget determined that this is a significant regulatory action for purposes of Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 255

Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, title 20, chapter II, part 255 of the Code of Federal Regulations is revised as follows:

PART 255—RECOVERY OF OVERPAYMENTS

Sec.

255.1 Introduction.
255.2 Overpayments.
255.3 When overpayments are to be recovered.
255.4 Persons from whom overpayments may be recovered.
255.5 Recovery by cash payment.
255.6 Recovery by setoff.
255.7 Recovery by deduction in computation of death benefit.
255.8 Recovery by adjustment in connection with subsequent payments.
255.9 Individual enrolled under supplementary medical insurance plan.
255.10 Waiver of recovery.
255.11 Fault.
255.12 When recovery is contrary to the purpose of the Railroad Retirement Act.
255.13 When recovery is against equity or good conscience.
255.14 Waiver not available when recovery can be made from accrual of social security benefits.
255.15 Waiver to an estate.
255.16 Administrative relief from recovery.
255.17 Recovery of overpayments from a representative payee.
255.18 Compromise of overpayments.
255.19 Suspension or termination of the collection of overpayments.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231i.

§ 255.1 Introduction.

Section 10 of the Railroad Retirement Act provides for the recovery of an overpayment of benefits to an individual. This part explains when an overpayment must be recovered, from whom an overpayment may be recovered, and when recovery of the overpayment may be waived or administrative relief from recovery granted, and circumstances under which the overpayment may be compromised, or circumstances under which recovery of the overpayment may be suspended or terminated.

§ 255.2 Overpayments.

An overpayment, within the meaning of this part, is made in any case in which an individual receives a payment under the Railroad Retirement Act, all or part of which payment he or she is not entitled to receive.

§ 255.3 When overpayments are to be recovered.

Overpayments shall be recovered in all cases except those in which recovery is waived under § 255.10 of this part or administrative relief from recovery is granted under § 255.16 of this part, or where the overpayment is compromised or recovery is terminated or suspended under §§ 255.18 or 255.19 of this part.

§ 255.4 Persons from whom overpayments may be recovered.

(a) *Overpaid individual.* The Board may recover an overpayment from the individual to whom the overpayment has been made by any method permitted by this part, or by the Federal Claims Collection Standards (4 CFR chapter 2) (Example 1 of this section). If the overpaid individual dies before recovery is completed, then recovery may be effected by recovery from the estate or the heirs of such individual.

(b) *Other than overpaid individual.* The Board may recover an overpayment from a person other than the overpaid individual if such person is receiving benefits based upon the same record of compensation as the overpaid individual under a statute administered by the Board. In such a case, the Board will ordinarily recover the overpayment by setoff against such benefits as are provided for in § 255.6 of this part (Example 2 of this section). However, the Board may ask for a cash refund of the overpayment.

(c) *Individual not in the same household.* Recovery under paragraph (b) of this section may be made from an individual who was not living in the same household, as defined in part 216 of this chapter, as the overpaid individual at the time of the overpayment, if the individual from whom recovery is to be made either was aware that benefits were being paid incorrectly or benefitted from the overpayment. (Example 3 of this section).

(d) *Examples.* This section may be illustrated by the following examples:

Example (1). An employee receiving a disability annuity returns to work without notifying the Board. The Board discovers that the employee is working and determines that the employee has recovered from his disability and has been overpaid. The Board requests that the employee repay the overpayment by cash refund either in one lump sum or in installment payments. If the employee refuses, the Board may refer the debt to a collection agency or the Department of Justice for civil suit or may collect the debt in any other manner permitted by law.

Example (2). The employee in Example 1 agrees to refund the overpayment by cash installment payments. However, the employee dies before repaying the total amount of the overpayment. At his death the employee's widow, who was living with the employee at the time the overpayment was incurred, becomes entitled to a widow's annuity. The Board may recover the remainder of the overpayment from any benefits due the widow.

Example (3). C, a child of a deceased employee by his first marriage, is receiving a disability annuity on the employee's record of compensation. W, the employee's second wife, is receiving a widow's annuity on the employee's record of compensation. C lives with his mother, the employee's first wife. C marries without notifying the Board. Marriage terminates a child's annuity. W is not aware of C's marriage. Upon discovery of C's marriage, the Board demands that C refund the overpaid annuities; C refuses. Even though W is receiving an annuity based upon the same record of compensation as that of C, the Board will not recover the overpayment from W because she is not in the same household as C, was not aware of the incorrect benefits paid, and did not benefit from them.

§ 255.5 Recovery by cash payment.

The Board shall have the right to require that an overpayment to an individual be immediately and fully repaid in cash by that individual. However, if the Board determines that the individual is financially unable to pay the amount of the indebtedness in a lump sum, payment may be accepted in regular installments in accordance with the Federal Claims Collection Standards, found in 4 CFR chapter 2. These standards provide that whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than 3 years.

§ 255.6 Recovery by setoff.

An overpayment may be recovered by setoff from any subsequent payment determined to be payable under any statute administered by the Board to the individual who received the overpayment. An overpayment may be recovered from someone other than the overpaid individual by setoff from a subsequent payment determined to be payable to that other individual on the basis of the same record of compensation as that of the overpaid individual.

§ 255.7 Recovery by deduction in computation of death benefit.

In computing the residual lump sum provided for in part 234, subpart D, of this chapter, the Board shall include in the benefits to be deducted from the applicable percentages of the aggregate compensation provided for in that part all overpayments, whether waived under § 255.10 of this part or otherwise not recovered, that were paid to the employee or to his or her spouse or to his or her survivors with respect to the employee's employment.

§ 255.8 Recovery by adjustment in connection with subsequent payments.

Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

Example. An annuitant agrees to recovery of a $5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The $5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the $5,000 would be considered fully recovered.

§ 255.9 Individual enrolled under supplementary medical insurance plan.

Where recovery of the overpayment is by setoff as provided for in § 255.6 of this part, and where recovery of the overpayment by such means will be accomplished within a period of 5 months, and the individual from whom recovery is sought is an enrollee under Part B of Title XVIII of the Social Security Act (Supplementary Medical Insurance Benefits for the Aged and Disabled), an amount of such individual's monthly benefit which is equal to his or her obligation for supplementary medical insurance premiums will be applied toward payment of such premiums, and the balance of the monthly benefit will be applied toward recovery of the overpayment.

§ 255.10 Waiver of recovery.

There shall be no recovery from any person in any case where more than the correct amount of annuities or other benefits has been paid to an individual or where payment has been made to an individual not entitled thereto if in the judgment of the Board:

(a) The overpaid individual is without fault, and

(b) Recovery would be contrary to the purpose of the Railroad Retirement Act or would be against equity or good conscience.

§ 255.11 Fault.

(a) Before recovery of an overpayment may be waived, it must be determined that the overpaid individual was without fault in causing the overpayment. If recovery is sought from other than the overpaid individual but the overpaid individual was not without fault, then waiver is not available. However, see § 255.16 of this part for provisions as to when administrative relief from recovery may be granted in such circumstances.

(b) Fault means a defect of judgment or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a standard of reasonable care taken to comply with the entitlement provisions of this chapter. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive.

(c) Whether an individual is at fault in causing an overpayment generally depends on all circumstances surrounding the overpayment. Among the factors the Board will consider are: the ability of the overpaid individual to understand the reporting requirements of the Railroad Retirement Act or to realize that he or she is being overpaid (*e.g.*, age, education, comprehension, physical and mental condition); the particular cause of non-entitlement to benefits; and the number of instances in which the individual may have made erroneous statements.

(d)(1) Circumstances in which the Board will find an individual at fault include but are not limited to:

(i) Failure to furnish to the Railroad Retirement Board information which the individual knew or should have known to be material;

(ii) An incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts); and

(iii) Failure to return a payment which the individual knew or should have known was incorrect.

(2) Where any of the circumstances listed in paragraph (d)(1) are found to have occurred, the individual shall be presumed to be not without fault. This presumption may be rebutted, but the burden of presenting evidence to rebut the presumption is on the individual.

(3) For purposes of paragraph (d)(1)(i), furnishing information to the Social Security Administration or any other agency shall not be considered to constitute furnishing information to the Railroad Retirement Board.

(4) For purposes of this section, an error on the part of the agency shall not extinguish fault on the part of the individual.

(e) Circumstances in which the Board will find an individual not at fault include but are not limited to:

(1) The overpayment is the result of Board error of which the overpaid individual was not aware and could not reasonably have been expected to be aware (Example 1 of this section).

(2) The overpayment is the result of an adjustment to the overpaid individual's annuity because of entitlement of another individual to an annuity on the same record of compensation as that of the overpaid individual (Example 2 of this section).

(3) The overpayment is the result of the Board's continuing to pay an individual after he or she has notified the Board of an event which caused or should have caused a reduction in his or her benefit; provided that continued payment of the unreduced benefit led the individual to believe in good faith that he or she was entitled to the payments subsequently received.

(f) The application of this section may be illustrated by the following examples:

Example (1). The Board makes a mathematical error in the computation of an employee's annuity, thus giving the employee a higher rate than he or she is entitled to but which is sufficiently close to the estimated rate given the employee at the time he or she applied for the annuity that the employee believed, in good faith, that the amount was correct. The employee is not at fault in causing the overpayment in this case. The overpayment may be waived if the requirements of § 255.12 or § 255.13 of this part are met.

Example (2). The widow and four minor children of a railroad employee are receiving benefits from the Board under the family maximum. Another minor child not living in the same household as the above individuals is also determined to be the child of the deceased employee. The widow was not aware of the existence of this child. An award of benefits to this child causes a reduction in benefits to the other individuals under the family maximum benefit provision of the Social Security Act. Because of normal administrative delay this reduction does not take place for a period of 2 months after its effective date. The widow and her children are without fault with respect to this overpayment. The overpayment may be waived if the requirements of § 255.12 or § 255.13 of this part are met.

§ 255.12 When recovery is contrary to the purpose of the Railroad Retirement Act.

(a) The purpose of the Railroad Retirement Act is to pay retirement and survivor annuities and other benefits to eligible beneficiaries. It is contrary to the purpose of the Act for an overpayment to be recovered from income and resources which the individual requires to meet ordinary and necessary living expenses. If either income or resources, or a combination thereof, are sufficient to meet such expenses, recovery of an overpayment is not contrary to the purpose of the Act.

(b) For purposes of this section, income includes any funds which may reasonably be considered available for the individual's use, regardless of source, including inheritance prospects. Income to the individual's spouse or dependents is available to the individual if the spouse or dependent lived with the individual at the time waiver is considered. Types of income include but are not limited to:

(1) Government benefits, such as Black Lung, Social Security, Workers' Compensation, and Unemployment Compensation benefits;

(2) Wages and self-employment income;

(3) Regular incoming payments, such as rent or pensions; and

(4) Investment income.

(c) For purposes of this section, resources may include:

(1) Liquid assets, such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds and the like;

(2) Non-liquid assets (except an individual's primary residence) at their fair market value; and

(3) Accumulated, unpaid Federal benefits.

(4) For purposes of paragraphs (c)(1) and (2) of this section, assets concealed or improperly transferred on and after the date of notification of the overpayment, other than cash expended to meet ordinary and necessary living expenses, shall be included.

(d) Whether an individual has sufficient income and resources to meet ordinary and necessary living expenses depends not only on the amount of his or her income and resources, but also on whether the expenses are ordinary and necessary. While the level of expenses which is ordinary and necessary may vary among individuals, it must be held at a level reasonable for an individual who is living on a fixed income. The Board will consider the discretionary nature of an expense in determining whether it is reasonable. Ordinary and necessary living expenses include:

(1) Fixed living expenses such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (*e.g.*, life, accident, and health insurance), taxes, installment payments, etc.;

(2) Medical, hospital, and other similar expenses;

(3) Expenses for the support of others for whom the individual is legally responsible; and

(4) Miscellaneous expenses (*e.g.*, newspapers, haircuts).

(e) Where recovery of the full amount of an overpayment would be made from income and resources required to meet ordinary and necessary living expenses, but recovery of a lesser amount would leave income or resources sufficient to meet such expenses, recovery of the lesser amount is not contrary to the purpose of the Act.

(f) This section may be illustrated by the following examples:

Example (1). A remarried widow, W, is overpaid $6000 due to receipt of benefits on the wage records of both her late husbands. It has been determined that she is without fault. Her financial disclosure statement reveals monthly income greater than monthly expenses, and assets of $12,000, $10,000 of which is in cash. She claims to be saving these funds for future medical expenses, because she has a progressive disease. While it is not necessarily contrary to the purposes of the Act to recover the overpayment in these circumstances, the legitimate medical expenses associated with the disease must be considered.

Example (2). A disability annuitant, D, is overpaid $33,000 because of simultaneous entitlement to workers' compensation payments. He is determined to be without fault. He claims he has assumed financial responsibility for his adult child and her children. A claimed expense for which the annuitant has no legal obligation to pay does not make recovery contrary to the purposes of the Act.

§ 255.13 When recovery is against equity or good conscience.

(a) Recovery is considered to be against equity or good conscience if a person, in reliance on payments made to him or her or on notice that payment would be made, relinquished a significant and valuable right (Example 1 of this section) or changed his or her position to his or her substantial detriment (Example 2 of this section).

(b) An individual's ability to repay an overpayment is not material to a finding that recovery would be against equity or good conscience but is relevant with respect to the credibility of a claim of detrimental reliance under paragraph (a) of this section.

(c) This section may be illustrated by the following examples:

Example (1). After being informed by the Board that he had been credited with sufficient years of railroad service to retire at age 60, an employee quit his railroad job and applied for benefits under the Railroad Retirement Act. He receives benefits for six months when it is discovered that he had insufficient railroad service to retire at age 60 and was not entitled to the benefits he received. His annuity was terminated. Because the employee gave up his seniority rights when he quit his railroad job, he cannot get his job back. It is determined that the employee was not at fault in causing the overpayments. In this situation recovery of the overpayment would be against equity or good conscience because the overpaid individual gave up a valuable right.

Example (2). A widow, having been awarded annuities for herself and her daughter, entered her daughter in a private school. The widow did not have substantial assets and her income, apart from the annuities she received in the amounts payable, would not have been sufficient for her to have undertaken the obligation to send her daughter to private school. In order to pay for the schooling she took out a loan and used the monthly annuities to pay interest and principal on the loan. After the widow and her daughter had received payments for almost a year, the deceased employee was found not to have been insured under the Railroad Retirement Act. Therefore, all payments to the widow and child were erroneous and the annuities were terminated. It is determined that the widow was not at fault in causing the overpayment. Having incurred a financial obligation (the school loan) toward which the benefits had been applied, the widow was in a worse position financially than if she and her daughter had never been entitled to benefits. In this situation, the recovery of the overpayment would be against equity or good conscience.

§ 255.14 Waiver not available when recovery can be made from accrual of social security benefits.

Where the overpayment is the result of a reduction of benefits payable under the Railroad Retirement Act due to the overpaid individual's entitlement to social security benefits and recovery of such overpayment may be made by offset against an accrual of social security benefits, it shall not be considered to be against equity or good conscience or contrary to the purpose of the Railroad Retirement Act to recover the overpayment by offset against the accrual. Consequently, in such a case recovery of an overpayment is not subject to waiver consideration.

§ 255.15 Waiver to an estate.

It shall never be considered contrary to the purpose of the Railroad Retirement Act to recover an overpayment from the estate of an overpaid individual.

§ 255.16 Administrative relief from recovery.

(a) Where the Board seeks to recover an overpayment from someone other than the overpaid individual, as provided for in § 255.4 of this part, and where waiver of recovery, as provided for in § 255.10 of this part, is not available because the overpaid individual was at fault as defined in § 255.11 of this part, the Board may forego recovery of the overpayment where the individual from whom recovery is sought was not at fault in causing the overpayment and where recovery is contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part.

(b) Application of administrative relief from recovery with respect to a given person from whom recovery may be made shall have no effect on the authority of the Board to recover the overpayment from anyone else from whom recovery may be sought.

(c) This section may be illustrated by the following examples:

Example (1): An employee, through his own fault, causes an overpayment in his annuity. The employee dies before the overpayment can be recovered from him and he leaves no estate. A widow's annuity is payable on the employee's compensation record. The widow was not at fault in causing the overpayment. The Board may recover the remainder of the overpayment by setoff against the widow's annuity. However, it may forego recovery under this section if such recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part. Since this is not a waiver of the overpayment, the Board is free to recover the overpayment from the widow at a later date, for example, if an accrual of benefits should become payable, or if it determines that such recovery would not be against the purpose of the Railroad Retirement Act.

Example (2): A representative payee for a retarded child, through her own fault, causes an overpayment in the child's annuity. The overpaid amounts were used for the benefit of the child. The representative payee dies before the overpayment can be recovered from her and she leaves no estate. The Board may not waive the remainder of the overpayment with respect to the child since for purposes of waiver the representative payee is considered the overpaid individual (see § 255.17 of this part) and the overpaid individual was at fault. However, if the child was not at fault in causing the overpayment and recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part, then the Board may forego recovery of the overpayment from the child's annuity under this section.

§ 255.17 Recovery of overpayments from a representative payee.

(a) *Joint liability.* In general, if an overpayment is made to an individual receiving benefits as a representative payee (see part 266 of this chapter) the Board may recover the overpayment from either the representative payee or the beneficiary, or both. If the beneficiary is currently receiving benefits, either in his or her own right or through a representative payee, the Board will generally propose to recover the overpayment by setoff against those benefits as provided for in § 255.6 of this part. If the beneficiary is not currently receiving benefits but the representative payee is receiving benefits, then the Board will generally propose to recover the overpayment by setoff against those benefits.

(b) *Waiver of overpayments.* For purposes of § 255.10 of this part (Waiver of recovery), if it is determined that the representative payee was at fault in causing the overpayment there may be no waiver of the overpayment either as to the representative payee or the beneficiary. However, if the beneficiary was not at fault in causing the overpayment he or she may be eligible for administrative relief from recovery under § 255.16 of this part.

(c) This section may be illustrated by the following examples:

Example (1). M is receiving a child's annuity as a representative payee for her disabled son, S. With M's knowledge S marries. Although both M and S know that marriage terminates the child's annuity, neither of them informs the Board of this event. Both M and S are liable for any overpayment caused. Waiver is not available since M would be considered at fault in causing the overpayment. Administrative relief from recovery is not available to S since he would also be considered at fault.

Example (2). R is a representative payee for B, who resides in a skilled-care facility. R is found to be at fault in causing an overpayment of benefits to B. The Board may recover the overpayment from either R or B. Waiver is not available because R was at fault in causing the overpayment. However, if B was not at fault in causing the overpayment he or she may be entitled to administrative relief from recovery under § 255.16 of this part.

§ 255.18 Compromise of overpayments.

(a) This section sets forth the principal standards which the Board applies in exercising its authority under 31 U.S.C. 3711 to compromise an overpayment. In addition, the Board may compromise an overpayment under the Federal Claims Collection Standards set forth in 4 CFR part 103.

(b) An overpayment may be compromised only if it is in the best interest of the agency. Circumstances and factors to be considered are:

(1) The overpayment cannot be collected because of the overpaid individual's inability to pay the full amount of the overpayment within a reasonable time;

(2) The overpaid individual refuses to pay the overpayment in full and it appears that enforced collection procedures will take an inordinate amount of time or that the cost of collecting does not justify the enforced collection of the full amount; or

(3) There is doubt that the Board could prove its case in court for the full amount claimed because of a bona fide dispute as to the facts or because of the legal issues involved.

§ 255.19 Suspension or termination of the collection of overpayments.

This section sets forth the principal standards which the Board applies in approving the suspension or termination of the collection of an overpayment. In addition the Board may suspend or terminate collection under the Federal Claims Collection Standards set forth in 4 CFR part 104.

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable; or

(4) The claim is legally without merit or cannot be substantiated by the evidence.

Dated: November 21, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–31726 Filed 12–03–97; 8:45 am]

BILLING CODE 7905–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–111; CC Docket No. 93–23; FCC 97–399]

Non-U.S.-Licensed Satellites Providing Domestic and International Service in the United States

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Communications Commission (Commission) adopts a new standard for foreign participation in the U.S. satellite services market consistent with the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures we establish will provide opportunities for foreign entities to deliver satellite services in this country. The liberalized market conditions that will result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

DATES: These amendments contain information collection requirements which are not effective until approved by the Office of Management and Budget, subject to 5 U.S.C. 801(a)(3). FCC will publish a document in the **Federal Register** announcing the effective date. Public and agency comments on the modifications to the information collections are due on or before February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Haller at (202) 418–0760, Tania Hanna at (202) 418–0762, or Laurie Sherman at (202) 418–0429 of the International Bureau. For additional information concerning the information collections contained in this Report and Order, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 96–111; CC Docket No. 93–23; FCC 97–399, adopted November 25, 1997 and released November 26, 1997. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, DC 20036, telephone: 202–857–3800; facsimile: 202–857–3805.

This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before February 2, 1998; OMB notification of action is due February 2, 1998. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

This Report and Order contains modifications to approved collections and has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Judy Boley at (202) 418–0214. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, Paperwork Reduction Project, OMB No. 3060–0678, Washington, D.C. 20554. For further information contact Judy Boley, (202) 418–0214.

OMB Approval Number: 3060–0678.

Title: Commission's Rules and Regulations for Satellite Applications and Licensing Procedures.

Form Number: 312.

Type of Review: Revision of existing collections.

Respondents: Businesses or other for profit organizations, including small businesses, governments.

Number of Respondents: 1,310.

Estimated Time Per Response: The Commission estimates that all respondents will hire an attorney or legal assistant to complete the form. The time to retain these services is 2 hours per respondent.

Total Annual Burden: 2,620 hours.

Estimated Costs Per Respondent: This includes the charges for hiring an attorney, legal assistant, or engineer at $150 an hour to complete the submissions. The estimated average time to complete the Form 312 is 11 hours per response. The estimated average time to complete space station submissions is 20 hours per response. The estimated average time to prepare submissions using non-U.S. licensed satellites is 22 hours per response. The estimated average time to complete the ASIA submission is 24 hours per response. Fee amounts vary by type of service and application. Total fee estimates for industry are approximately $5,800,000.00.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in evaluating applications requesting authority to operate pursuant to part 25 of the Commission's rules. The information will be used to determine the legal, technical, and financial ability of the applicants and will assist the Commission in determining whether grant of such authorizations are in the public interest.

Summary of Report and Order

1. In this Report and Order, the Commission takes an historic step by implementing the market opening commitments made by the United States in the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).[1] The WTO Basic Telecom Agreement, which will take effect on January 1, 1998,[2] is the culmination of the efforts of the United States and 68 other WTO Members to bring competition to global markets for telecommunications services, including satellite services. The WTO Basic Telecom Agreement is centered on the principles of open markets, private investment, and competition. It covers nations that account for 90 percent of worldwide telecommunications services revenues. By opening markets worldwide, the WTO Basic Telecom Agreement will allow new entrants to deploy innovative, cost-effective technologies, and thereby advance the growth of satellite services around the globe.

2. The Commission is optimistic that global implementation of the WTO Basic Telecom Agreement will result in significant worldwide benefits to consumers and providers. At the same time, it recognizes that much work needs to be done to ensure that the promise of the WTO Basic Telecom Agreement is fulfilled. With this Report and Order and the companion Foreign Participation in the U.S. Telecommunications Market Report and Order,[3] the Commission has implemented the letter and the spirit of the market opening commitments made by the United States. The Commission expects that foreign entities will begin to enter and compete in the U.S. market soon after January 1, 1998. The Commission also expects that U.S. providers will likewise be able to enter and compete in previously-closed foreign markets.

3. Under the terms of the WTO Basic Telecom Agreement, the United States has committed to allow foreign suppliers to provide a broad range of basic telecommunications services, including satellite services, in the United States. In return, most of the world's major trading nations have made binding commitments to move from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services. In this Report and Order, the Commission implements the United States' commitments to provide access to the U.S. market for satellite services by establishing a framework for assessing applications by non-U.S. licensed satellite systems to serve the United States.

4. The common sense policies and rules the Commission adopts will produce substantial public interest benefits for U.S. consumers. First, they will facilitate greater competition in the U.S. satellite services market. Enhanced competition in the U.S. market, in turn, will provide users more alternatives in choosing communications providers and services, as well as reduce prices and facilitate technological innovation. In addition to encouraging a more competitive satellite market in the United States, this new environment will spur development of broader, more global satellite systems. These advancements will foster greater global community benefits by providing users, ranging from individual consumers and businesses to schools and hospitals, increased access to people, places, information, and ideas worldwide.

5. In the companion Foreign Participation Order, the Commission takes parallel steps to carry out the market opening commitments made by the United States in the WTO Basic Telecom Agreement. That order establishes a framework for facilitating entry into the U.S. market by foreign entities for provision of telecommunications services (other than satellite services). As in the companion order, in this Report and Order the Commission adopts for satellite services an approach that encourages foreign entry. Both decisions are guided by the common objective of promoting competition in the U.S. market, and achieving a more competitive global market for all basic telecommunications services.

6. While the United States was negotiating the WTO Basic Telecom Agreement, the Commission was exploring measures to increase opportunities for foreign entry in the United States satellite services market. The Commission began this proceeding in May 1996 by issuing a Notice of Proposed Rulemaking.[4] The NPRM proposed a uniform framework for permitting foreign-licensed satellite systems to serve the United States. Adopted when only a few of the world's satellite markets were open to competition by U.S. providers, the NPRM proposed to evaluate the effective competitive opportunities (ECO) in the country in which the foreign satellite was licensed (the ECO-Sat test) prior to granting an application to serve the United States. After the conclusion of the WTO Basic Telecom Agreement, the Commission issued a Further Notice of Proposed Rulemaking revising its proposals based on the market-opening changes that should result from the Agreement.[5] Both the NPRM and the FNPRM reflect the Commission's continuing objective to foster development of innovative satellite communications services for U.S. consumers through fair and vigorous competition among multiple service providers, including foreign-licensed satellites.

7. Specifically, in this Report and Order, the Commission adopts a framework under which it will consider requests for access by non-U.S. licensed satellites[6] into the United States. As required by Title III of the Communications Act of 1934, as amended (Communications Act), we will examine all requests to determine whether grant of authority is consistent with the public interest, convenience and necessity.[7] In making this determination, we will consider public interest factors such as the effect on competition in the United States, spectrum availability, eligibility and operating requirements, as well as national security, law enforcement, and trade and foreign policy concerns raised by the Executive Branch. The Commission adopts a presumption that entry by WTO Member satellite systems will promote competition in the U.S. satellite services market. Opposing parties may rebut the presumption by showing that granting the application would cause competitive harm in the U.S. satellite services market. Although we find that license conditions will generally provide sufficient protection against anticompetitive conduct, we recognize the possibility that circumstances might arise in which conditions might not adequately constrain the potential for anticompetitive harm in the U.S. market. In such cases, the Commission reserves the right to attach additional conditions to a license grant, or in the exceptional case in which grant would lose a very high risk to competition, deny an application.

8. The Commission will apply the presumption that entry will promote competition to affiliates of intergovernmental satellite organizations (IGO) licensed by WTO Members. For applications from COMSAT to provide U.S. domestic service via INTELSAT or Inmarsat, the Commission will require COMSAT to waive its immunity from suit and demonstrate that the service will enhance competition in the U.S. market. For satellites licensed by non-WTO Members and for all satellites providing Direct-to-Home (DTH), Direct Broadcasting Satellite (DBS), and Digital Audio Radio Services (DARS), we will examine whether U.S. satellites have effective competitive opportunities in the relevant foreign markets to determine whether allowing the foreign-licensed satellite to serve the United States would satisfy the competition component of the public interest analysis.

9. This new framework is based on consideration of over 100 comments submitted from parties around the world over the course of more than a year, is grounded in the public interest requirements of the Communications Act and the procompetitive principles of the WTO Basic Telecom Agreement, sets forth clear criteria for entry into the United States by various types of non-U.S. satellites, delineates the applicable Commission rules and describes in detail the procedures for applications to provide service in the United States using a non-U.S. licensed satellite. This framework will largely replace the Commission's current approach of reviewing applications involving non-U.S. licensed satellites based on the individual circumstances before it. The Commission expects that our new framework will encourage and ease entry by non-U.S. satellites into the U.S. market and that the occasional request the Commission receives today involving a non-U.S. licensed satellite will become more common. At the same time, the Commission plans to continue to look carefully at market opening measures enacted by the rest of the world.

10. *Policy Objectives.* The purpose of this Report and Order is to establish a new framework to facilitate competitive entry in the U.S. satellite services market by non-U.S. licensed satellites, consistent with the WTO Basic Telecom Agreement. Providing opportunities for non-U.S. licensed satellites to deliver services in this country should bring U.S. consumers the benefits of enhanced competition and afford greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.

11. *WTO Members.* The Commission adopts an open entry standard for applicants seeking to access satellite systems licensed by WTO Members to provide satellite services covered under the WTO Basic Telecom Agreement. An open entry policy will enable U.S. consumers to enjoy the benefits of increased competition in U.S. markets. The Commission presumes that entry will enhance competition in light of the fact that so many WTO Members have committed to lifting entry restrictions and adopting competitive safeguards. Where necessary to constrain the potential for anticompetitive harm in the U.S. market for satellite services, the Commission reserves the right to attach conditions to a grant of authority, and in the exceptional case in which an application poses a very high risk to competition, to deny an application.

12. *Non-WTO Members.* The Commission continues to be concerned about effective competitive opportunities for U.S. satellite systems in non-WTO Member markets. It finds that the market conditions that existed when the Commission proposed to adopt an ECO-Sat test, which determines whether there are effective competitive opportunities for U.S. satellites in the foreign market, have not changed sufficiently with respect to countries that are not members of the WTO. The Commission therefore finds that it will serve the goals of our international satellite policy to apply the ECO-Sat test in the context of applications from non-WTO Member entities and encourage such countries to open their markets to competition.

13. *Services Not Covered by the WTO Basic Telecom Agreement.* The Commission finds that circumstances that existed when it proposed to adopt an ECO-Sat test have not changed sufficiently with respect to DTH services, DBS services, and DARS. Commitments made as part of the WTO Basic Telecom Agreement were not sufficient to enable it to adopt a presumption of entry for these services. The Commission will apply the ECO-Sat test to applications to provide these services through all satellite systems, whether or not they are systems of WTO Members.

14. *Intergovernmental Satellite Organizations (IGOs) and IGO Affiliates.* Prior to acting on any application from COMSAT to provide domestic service via INTELSAT or Inmarsat, the Commission will require COMSAT to make an appropriate waiver of its immunity from suit, including suit under the U.S. antitrust laws. The Commission will then look to COMSAT to show that entry into the domestic market would promote competition and would otherwise be in the public interest. The Commission will treat IGO

[1] The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 336 (1997) (the "Fourth Protocol to the GATS"). These results, as well as the basic obligations contained in the GATS, are referred to in this summary as the "WTO Basic Telecom Agreement."

[2] See ¶3 of the Fourth Protocol to the GATS.

[3] Foreign Participation in the U.S. Telecommunications Market Report and Order, FCC 97–398 (released November 26, 1997) (Foreign Participation Order).

[4] In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S. licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Notice of Proposed Rulemaking, 11 FCC Rcd 18178 (1996), 61 FR 32398 (June 24, 1996) (*NPRM*).

[5] Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Further Notice of Proposed Rulemaking, FCC 97–252 (released July 18, 1997), 62 FR 40494 (July 29, 1997) (FNPRM).

[6] The phrase "non-U.S." licensed satellite system or operator means one that does not hold a commercial space station license from the Commission. By contrast, a "U.S." satellite system or operator means one whose space station is licensed by the Commission.

[7] 47 U.S.C. 301, *et. seq.*

affiliates that are licensed by WTO Members as it would similar systems licensed by WTO Members. In evaluating the competition component of an application involving an IGO affiliate, the Commission will consider any potential anticompetitive or market distorting consequences of a continued relationship or connection between an IGO and its affiliate.

15. *Additional Public Interest Factors and Operating Requirements.* In evaluating requests to serve the United States using a non-U.S. satellite, the Commission also will consider additional public interest factors, including spectrum availability, eligibility requirements such as legal, technical and financial qualifications, operating requirements, and national security, law enforcement, foreign policy and trade policy concerns. In applying these factors, the Commission will treat non-U.S. satellites as it would U.S. licensed satellites at the request stage, as well as after a system is operational. Thus, non-U.S. systems will be required to comply with the same financial, technical and legal qualifications, observe the prohibition against exclusive service arrangements and comply with other generally-applicable service rules.

16. *Access Procedures.* In implementing this framework, the Commission will not require space stations licensed by another country or administration to obtain separate and duplicative U.S. space station licenses. Rather, the Commission will license earth stations in the United States to operate with these satellites. Further, the Commission will permit operators of existing or planned non-U.S. space stations to participate in U.S. space station processing rounds, where the Commission considers competing applications to operate space stations that will offer a specific satellite service in particular frequency bands. In addition, earth station entities may file an earth station application either in a processing round or separately where the non-U.S. satellite is already in orbit.

17. This Report and Order contains a modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before February 2, 1998. OMB comments are due on or before February 2, 1998. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

18. Written comments by the public on the proposed and/or modified information collections are due to Commission on or before February 2, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov. NOTE: OMB is required to make a decision concerning the modified collection of information contained in this Report and Order between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Final Regulatory Flexibility Analysis

19. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in IB Docket No. 96–111.[8] After the conclusion of the WTO Basic Telecom Agreement, the Commission released the FNPRM requesting comment on the proposals in the FNPRM, including the IRFA.[9] The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[10]

[8] See *supra* n.4.

[9] See *supra* n.5.

[10] See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act (CWAAA) of 1996, Public Law 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

I. Need for, and Objectives of, the International Satellite Services Report and Order

20. In this Report and Order, the Commission promulgates rules for non-U.S. licensed satellites to provide satellite services in the United States. This action will advance the growth of global satellite services and create greater competition in the U.S. satellite market. Enhanced competition in the U.S. market will benefit U.S. consumers, including small businesses, by increasing the availability of various satellite services, providing more alternatives in the selection of communications services, reducing prices, and facilitating technological innovation. The Commission adopts these rules in part to reflect the liberalized market environment that will result from the WTO Basic Telecom Agreement. Specifically, the Commission adopts an open entry standard for applicants seeking to access satellite systems from WTO Members providing satellite services covered by the U.S. Schedule of Commitments under the WTO Basic Telecom Agreement (Fixed Satellite Services and Mobile Satellite Services (MSS)).[11] The Commission presumes that entry will be competitive in these cases. The Commission reserves the right, however, to attach conditions to a grant of authority or, in exceptional circumstances, where conditions may not adequately constrain the potential for anticompetitive harm in the U.S. market, to deny an application. In deciding whether to grant non-WTO country satellites access to the U.S. market or whether to allow any non-U.S. satellite to provide non-covered services in the United States, the Commission adopts the "ECO-Sat test." This test requires that U.S. satellite operators have "effective competitive opportunities" in the foreign market before allowing a satellite licensed by that country access into the United States.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. No comments were filed in direct response to the questions posed in the IRFA in either the NPRM or the FNPRM. In reply comments to the NPRM, however, NATSAT argues that the Commission should not apply the ECO-Sat test to applications filed on or before July 15, 1996 by "designated entities" to resell MSS service in the United States.[12] It claims that such an exemption would be consistent with the directive Section 309(j) to ensure that small businesses and minority entrepreneurs have the chance to participate in the provision of spectrum-based services. In the Report and Order, the Commission does not adopt an ECO-Sat test with respect to WTO-Member satellites providing WTO-covered services. Thus, small entities may access a large percentage of non-U.S. satellites without conducting an ECO-Sat analysis. Moreover, an ECO-Sat analysis is a minimal burden when compared to the possibility that unrestricted entry by foreign-licensed satellite systems would distort competition in the United States market.

[11] Non-covered services are those not contained in the U.S. Schedule of Commitments in the WTO Basic Telecom Agreement—Direct to Home (DTH), Direct Broadcast Service (DBS) or Digital Audio Service (DARS).

III. Description and Estimate of the Number of Small Entities Subject to the Rules

22. The Commission has not developed its own definition of "small entity" for purposes of licensing satellite-delivered services. Accordingly, we rely on the definition of "small entity" provided under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified.[13] A "small entity" under these SBA rules is defined as an entity with $11.0 million or less in annual receipts.

IV. Summary of Projected Reporting, Record Keeping and Other Compliance Requirements

23. This Report and Order requires foreign-licensed systems serving the United States to comply with the same public interest standards that the Commission applies to U.S. satellites. First, foreign-licensed satellite systems must comply with the same technical requirements as a U.S.-licensed satellite system. Without examining its technical compatibility with U.S.-licensed satellites, a foreign-licensed satellite system may cause unacceptable interference with U.S. systems and possible service disruptions to customers.[14] Second, the Commssion requires foreign-satellite system applicants to comply with our financial rules, established under Section 308(b) of the Communications Act.[15] Reserving orbit locations or spectrum for future satellites without examining whether the operator is financially qualified to build a system, which often costs hundreds of millions of dollars, could block entry by other United States or foreign companies that have the financial capability to proceed, ultimately delaying service to the public. Third, foreign-licensed satellite systems must comply with the Commissions legal qualifications consistent with Sections 308 and 309 of the Communications Act.[16] The purpose of requiring compliance with legal requirements is to ensure that entities providing satellite services in the United States will abide by Commission rules. For example, certain information may provide relevant indicia of compliance. Violations of law by an applicant, particularly those relating to credibility, may be evidence that it will not comply with Commission rules. Thus, it is vital that the Commission obtain assurance that an applicant will follow the rules that the Commission has established over the years to maximize the development of efficient, compatible, and innovative satellite systems.

[12] NATSAT NPRM Reply Comments at 11–15 citing 47 U.S.C. § 309(j).

[13] 1987 Standard Industrial Classification Manual; 13 CFR part 121.

[14] Report and Order at Section III.B.3.b.

[15] *Id.*

V. Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

24. The Commission will apply the same rules to foreign-licensed systems as have been applied to U.S. licensed systems. This approach will not impose any additional burdens on foreign-licensed satellite systems, small or large. Earth station operators seeking to access a non-U.S. satellite will be required to provide the same information regarding the satellite that U.S. satellite applicants must provide. This information is needed to ensure that transmissions from the space station into the United States do not cause technical interference into existing U.S. operations and that other Commission public interest objectives are met. The Commission expects, however, that the satellite information will be provided by the satellite operator to the earth station applicant because of their mutual business objectives. Thus, there will be no economic impact on small businesses because there are no additional burdens being imposed. Certain information will not be required. First, where the international technical coordination process has been completed between the United States and the foreign satellite, additional technical information about that foreign satellite is not necessary. This is because the United States and the relevant foreign administration exchange extensive technical data about their respective systems during the course of the bilateral negotiations that lead up to a coordination agreement. This technical information is sufficient for us to determine whether the foreign satellite complies with Commission technical rules. The Commission finds that this new framework will benefit small businesses because earth station entities will have greater choice of space stations to access and opportunity to benefit from the other advantages of a more competitive market, such as reduced prices. In addition, small, local programmers will have access to a more competitive selection of satellite service providers. In this regard, our measures will advance the small business goals of Section 257 of the 1996 Act.

[16] *Id.*

25. *Report to Congress:* The Commission will send a copy of the Report and Order including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A summary of the Report and Order and this FRFA will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

26. This Report and Order contains new or modified information collections. A request for clearance of the information collections proposed in the FNPRM was submitted to Office of Management and Budget (OMB) and approved on October 13, 1997.[17] The changes to the approved information collection adopted in this Report and Order will be submitted to OMB and will become effective upon approval by OMB.

Conclusion

27. In this Report and Order, the Commission adopts a new framework for foreign participation in the U.S. satellite services market, consistent with the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures the Commission establishes will provide opportunities for non-U.S. entities to deliver satellite services in this country. The liberalized market conditions that should result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various

[17] See OMB No. 3060–0678.

satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

Ordering Clauses

28. Accordingly, *it is Ordered* that, pursuant to Sections 1, 2, 4(i), 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303(r), 308, 309, and 310, the policies, rules and requirements discussed herein *are adopted* and part 25 of the Commission's rules, 47 CFR part 25, *is amended* as set forth below.

29. *It is further ordered* that authority is delegated to the Chief, International Bureau as specified herein, to effect the decisions as set forth above.

30. *It is further ordered* that the Commission's Office of Managing Director shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

31. *It is further ordered* that the amendments to part 25 of the Commission's rules, 47 CFR part 25, FCC Form 312 and the Commission's policies, rules and requirements established in this *Report and Order* shall take effect January 5, 1998, or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507, whichever is later. The Commission will publish a notice, following publication of this Report and Order in the **Federal Register**, announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 25 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.113 Construction permits, station licenses, launch authority.

* * * * *

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S. licensed space stations. * * *

* * * * *

3. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S. licensed satellites for domestic services. * * *

* * * * *

4. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(d) Transmissions of signals or programming to non-U.S. licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. * * *

* * * * *

5. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251 through 25.256 of this part.

* * * * *

(j) Receive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from INTELSAT space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86–214 (released May 19, 1986) available through the International Reference Center, FCC, 2000 M St. NW., Washington, DC 20554.

6. A new § 25.137 is added to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

(a) Earth station applicants or entities filing a "letter of intent" requesting authority to operate with a non-U.S. licensed space station to serve the United States must attach an exhibit with their FCC Form 312 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

(1) The country in which the non-U.S. licensed space station is licensed; and

(2) All countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no practical or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest. This paragraph shall not apply with respect to requests for authority to operate using a non-U.S. licensed satellite that is licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement.

(b) Earth station applicants, or entities filing a "letter of intent," requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with part 25 and part 100 of this Chapter. If the non-U.S. licensed space station is in orbit and operating, the applicant need not include the financial information specified in §§ 25.114 (c)(17) and (c)(18) of this part. If the international coordination process for the non-U.S.

licensed space station has been completed, the applicant need not include the technical information specified in §§ 25.114 (c) (5 through 11) and (c)(14) of this part, unless the technical characteristics differ from the characteristics established in that process.

(c) A non-U.S. licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it is:

(1) In orbit and operating;

(2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union.

[FR Doc. 97–31800 Filed 12–3–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 233
Thursday, December 4, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 610

RIN 0578–AA22

Technical Assistance

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: Section 342 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) expands the membership and roles of State Technical Committees established pursuant to Section 1261 of the Food Security Act of 1985 (the 1985 Act), as amended. Under Section 1261, the Secretary must establish a technical committee in each State to assist in making technical considerations related to the implementation of the 1985 Act's conservation provisions. Consistent with the 1985 Act, the United States Department of Agriculture (USDA) uses these State Technical Committees in an advisory capacity.

This proposed rule sets forth the policies and procedures for the use of State Technical Committees by the USDA, the membership criteria, and the responsibilities assigned to these Committees. It also amends § 610.2 to reflect the responsibilities assigned to the Natural Resources Conservation Service (NRCS) beyond that of soil conservation. This proposed rule amends § 610.2 to acknowledge the NRCS mission to promote the long-term sustainability of all agricultural lands, including cropland, grazing land, pastureland, rangeland, and forestland.

DATES: Comments must be received by January 5, 1998.

ADDRESSES: All comments concerning this proposed rule should be addressed to: Gary Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890; Attention: State Technical Committee. Fax (202) 720–1838. This rule may also be accessed, and comments submitted, via Internet. Users can access the NRCS Federal Register homepage and submit comments at: http://astro.itc.nrcs.usda.gov:6500.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, Conservation Operations Division, Natural Resources Conservation Service; phone: (202) 720–9476; Fax: (202) 720–4265; E-mail: denise__c.coleman@usda.gov, Attention: State Technical Committee.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to Sec. 6(a)(3) of Executive Order 12866, the NRCS has conducted an economic analysis of the potential impacts associated with this proposed rule. Because it is not possible to measure all costs or benefits of State Technical Committee involvement in the decision-making process using strict benefit-cost techniques, a cost effect analysis was used. This analysis estimates that no material adverse effects on the economy, a sector of the economy, agricultural productivity, competition, jobs, the environment, public safety, or State, local, or tribal governments or communities are expected from implementation of this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule because USDA is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

NRCS has determined that this proposed rule is within the categorical exclusion for advisory and consultative activities under 7 CFR 1b.3(a)6; therefore, an environmental assessment was not conducted.

Paperwork Reduction Act

This proposed rule does not require identical collection of information. As a result, the Paperwork Reduction Act provisions do not apply.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, the effects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this proposed rule as not major, therefore, pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354 a risk assessment was not required.

Background and Purpose

Section 1261 of the Food Security Act of 1985, as amended, sets out the membership and roles of the State Technical Committees. The Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6901 *et seq.*) exempts State Technical Committees from provisions of the Federal Advisory Committee Act (5 U.S.C. App.2).

NRCS proposes that State Technical Committee membership be expanded to consist of individuals who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. USDA believes the membership expansion of State Technical Committees, which creates new sources of local conservation expertise, is a positive step. However, NRCS believes that the ultimate responsibility of the State Conservationist is to ensure that all interests are adequately represented on the Committee.

As a result of the passage of the 1996 Act, eligibility for State Technical Committee membership was expanded to include the private sector. In addition to these members, NRCS proposes to add additional agencies and groups based on their historical relationship with USDA and State Technical Committees. These member agencies

and groups included the following: Environmental Protection Agency, Bureau of Indian Affairs, U.S. Geological Survey, U.S. Army Corps of Engineers, State Farm Service Agency Committee, and Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State.

The State Technical Committees shall include one representative from each of the following agencies or groups, unless the agency or group declines membership:

- NRCS, as Chairperson;
- Farm Service Agency;
- State Farm Service Agency Committee;
- Forest Service;
- Cooperative State Research, Education, and Extension Service;
- Rural Development;
- Fish and Wildlife Service;
- Bureau of Land Management;
- Bureau of Indian Affairs;
- U.S. Geological Survey;
- U.S. Army Corps of Engineers;
- Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State;
- State departments and agencies which the NRCS State Conservationist deems appropriate, including a member from each of the following:

—State fish and wildlife agency;
—State forester or equivalent official;
—State water resources agency;
—State department of agriculture;
—State association of soil and water conservation districts;
—State coastal zone management agency; State soil and water conservation agency; and
—Other Federal, State, tribal and local agency representatives with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

In addition to other Federal, State, tribal, and local agency and group membership, the State Technical Committees will include members from the following private interests, including:

- Agricultural producers with demonstrable conservation expertise;
- Nonprofit organizations with demonstrable conservation expertise;
- Persons knowledgeable about conservation techniques and programs; and
- Agribusiness.

To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

In accordance with the preceding paragraphs, the NRCS State Conservationist determines the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee may submit to the NRCS State Conservationist for that State a request which explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the NRCS State Conservationist concerning membership on the committee are final and not appealable to any other individual or group.

State Technical Committee meetings are open to the public. This rule proposes that the State Conservationist provide public notice of meetings that consider issues relating to particular conservation programs. The State Conservationist will publish a meeting notice no later than 7 calendar days prior to the meeting. Notification may exceed this 7 day minimum where State open meeting laws exist and require a longer notification period. NRCS proposes that this notice be published in one or more newspaper(s), including Tribally-recommended publications, to achieve statewide notification. The State Conservationist will schedule and conduct the meetings, although meetings may be requested by any USDA agency as needed.

In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and refine specific issues. The State Conservationist, may assemble certain members to discuss, examine, and focus on a particular technical or programmatic topic. In such situations, where subcommittee meetings occur, public notification and participation are not necessary. Nevertheless, decisions resulting from these subcommittee sessions shall be made only in a general session of the State Technical Committee, where the public is notified and invited to attend.

The State Technical Committees have no implementation or enforcement authority. However, the Committees' advisory capacity extends to many of the USDA conservation programs. As set forth in Section 1262 of the 1985 Act (16 U.S.C. 3862(c)), the responsibilities of the State Technical Committee include recommendations on matters such as:

- The technical aspects of wetland protection, restoration, and mitigation requirements;
- Guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;
- Highly erodible land exemptions and appeals;
- Wetland and highly erodible land conservation compliance exemptions and appeals;
- Methods to address common weed and pest problems and programs to control weeds and pests found on acreage enrolled in the Conservation Reserve Program (16 U.S.C. 3831–3836);
- Guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands;
- Criteria and priorities for state initiatives under the Environmental Quality Incentives Program (EQIP) under chapter 4 of subtitle D; and

Section 1262 of the 1985 Act (16 U.S.C. 3862(c)(8)) also provides that State Technical Committees may offer recommendations on other matters determined appropriate by the NRCS State Conservationist. USDA will seek State Technical Committee recommendations including, but not limited to, the following:

- The establishment of the Wildlife Habitat Incentives Program (WHIP), as set forth in Section 387 of the 1996 Act (16 U.S.C 3836a);
- The development of a Wetland Reserve Program (WRP) (16 U.S.C. 3837) wetland restoration plan;
- Program assistance to Environmental Quality Incentive Program (EQIP) participants with significant statewide resource concerns outside a priority area, 7 CFR part 1466;
- Eligible conservation practices for an EQIP priority area or for significant statewide resource concerns outside a priority area, 7 CFR part 1466;
- Criteria to be used in defining a large confined livestock operation under EQIP, 7 CFR part 1466;
- Suggestions on how often producers' EQIP applications are ranked and selected, 7 CFR part 1466;
- Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area, 7 CFR part 1466;
- Statewide program guidelines applicable to WRP easement compensation, restoration planning, priority ranking, and related policy matters, 7 CFR part 1467;
- Determination of cost share and incentive payment limits for participants subject to environmental requirements or with significant statewide resource concerns outside a

priority area, under the EQIP provision, 7 CFR part 1466;

• Identification of any categories of conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values as described in 7 CFR part 12; and

• Types or classes of wetland that are not eligible for mitigation exemption, under the Wetland Conservation provisions, 7 CFR part 12.

Technical Assistance

The NRCS delivers the majority of the technical assistance provided to private landowners pursuant to 7 CFR 610.2. Section 610.2 has not yet been revised to provide for the responsibilities assigned to the NRCS beyond that of soil conservation (16 U.S.C 2005). To reflect the broader mission of NRCS, particularly as it relates to technical assistance provided to private grazing land (16 U.S.C. 2005b), NRCS is amending § 610.2 to acknowledge that one of NRCS' missions is to improve the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland so that the long-term sustainability of the resource base is achieved.

List of Subjects in 7 CFR Part 610

Soil conservation, Technical assistance, Water resources.

Accordingly part 610 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 610—[AMENDED]

1. The authority for part 610 is revised to read as follows:

Authority: 16 U.S.C. 590a–f, 590q, 2005, 2005b.

2. Section 610.2 is revised to read as follows:

§ 610.2 Scope.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to provide assistance to:

(1) Reduce soil losses from erosion;

(2) Help solve soil, water, and agricultural waste management problems;

(3) Bring about adjustments in land use as needed;

(4) Reduce damage caused by excess water and sedimentation; and

(5) Improve the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is the technical agency of the U.S. Department of Agriculture for providing assistance to conservation districts and other organizations in planning and carrying out their conservation programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

3. A new Subpart C is added to read as follows:

Subpart C—State Technical Committees

Sec.

610.21 Purpose and scope.

610.22 State Technical Committee membership.

610.23 State Technical Committee meetings.

610.24 Responsibilities of State Technical Committees.

§ 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and utilizing the advice of State Technical Committees. USDA will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. These State Technical Committees are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). The NRCS shall establish in each State a technical committee to assist in making technical recommendations relating to the implementation of conservation provisions. This subpart sets forth the membership guidelines and responsibilities of the State Technical Committees.

§ 610.22 State Technical Committee membership.

(a) State Technical Committees shall include members who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. The State Conservationist is to ensure that all interests are equally represented. Committee membership includes one representative from the following agencies or groups, if willing to serve:

(1) NRCS, as Chairperson;

(2) Farm Service Agency;

(3) State Farm Service Agency Committee;

(4) Forest Service;

(5) Cooperative State Research, Education, and Extension Service;

(6) Rural Development;

(7) Fish and Wildlife Service;

(8) Environmental Protection Agency;

(9) Bureau of Land Management;

(10) Bureau of Indian Affairs;

(11) U.S. Geological Survey;

(12) U.S. Army Corps of Engineers;

(13) Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State;

(14) State departments and agencies which the NRCS State Conservationist deems appropriate, including a member from each of the following:

(i) State fish and wildlife agency;

(ii) State forester or equivalent official;

(iii) State water resources agency;

(iv) State department of agriculture;

(v) State association of soil and water conservation districts;

(vi) State soil and water conservation agency;

(vii) State coastal zone management agency; and

(15) Other Federal, State, tribal, and local agency personnel with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

(b) In addition to agency membership, State Technical Committees shall contain members from the following private interests, including:

(1) Agricultural producers with demonstrable conservation expertise;

(2) Nonprofit organizations with demonstrable expertise;

(3) Persons knowledgeable about economic and environmental impacts of conservation techniques and programs; and

(4) Agribusiness.

(c) To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist determines membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit to the State Conservationist of that particular State a request which explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the State Conservationist concerning membership on the committee are final and not appealable to any other individual or group within USDA.

§ 610.23 State Technical Committee meetings.

(a) The State Conservationist of each State chairs the State Technical Committee. State Technical Committees shall provide public notice of meetings that consider issues related to conservation programs. The State Conservationist shall publish a meeting notice no later than 7 calendar days prior to the meeting. Notification may exceed this 7-day minimum where State open meeting laws exist and require a longer notification period. The State Conservationist shall publish this notice in at least one or more newspaper(s), including Tribally-recommended publications, to attain statewide circulation.

(b) The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency as needed.

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart shall meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations.

(b) The State Technical Committee shall provide, in writing to the implementing USDA program agency, recommendations, data, and technical analyses, which reflect the professional information and judgment of the State Technical Committee. Such information, analyses, and recommendations shall be provided in a manner that will assist in determining matters of fact, technical merit, or scientific question.

(c) The implementing agency reserves the authority to accept or reject the Committee's recommendations; however, the implementing agency shall give strong consideration to the Committee's suggestions.

Signed in Washington, D.C. on November 28, 1997.

Thomas A. Weber,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 97–31727 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–16–P

EXPORT–IMPORT BANK OF THE UNITED STATES

12 CFR Parts 404 and 405

Comprehensive Revision of Export-Import Bank of the United States Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed comprehensive revisions of the Export-Import Bank's Freedom of Information Act (FOIA) and Privacy Act regulations. The regulations are intended to supersede the Export-Import Bank's current FOIA and Privacy Act regulations, found at 12 CFR parts 404 and 405, respectively. The Export-Import Bank (Ex-Im Bank) is proposing the following revisions in order to provide more "user-friendly" regulations that are consistent with current law, including the Electronic Freedom of Information Act Amendments of 1996. The proposed regulations also include updated fee schedules.

DATES: Submit comments on or before February 2, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Howard A. Schweitzer, Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW, Room 963, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Howard A. Schweitzer, (202) 565–3229.

SUPPLEMENTARY INFORMATION: This is a comprehensive revision of 12 CFR part 404 (Ex-Im Bank's current FOIA regulations) and 12 CFR part 405 (Ex-Im Bank's current Privacy Act regulations). The proposed part 404 contains Ex-Im Bank's regulations for the FOIA, found in subpart A, and the Privacy Act, found in subpart B. The proposed part 404 does not contain any regulations concerning "appearance and testimony by Ex-Im Bank officers and employees," currently found at 12 CFR 404.8. Ex-Im Bank is removing and reserving part 405 for publication of new regulations entitled "production and disclosure in federal or state proceedings."

The proposed FOIA regulations, in addition to setting forth Ex-Im Bank's basic FOIA policy and procedure, include provisions, found in § 404.7, to implement Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information." The regulations also set forth a revised "schedule of fees," found in § 404.8. The proposed changes include increases in the hourly fees for clerical and professional time to $16.00 and $32.00, respectively, and a decrease in duplication charges, from $.25 to $.10 per photocopy. New provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) can be found in § 404.3 (public reference facilities), § 404.5 (time for processing), and § 404.8(d) (material withheld). The proposed regulations also establish, in § 404.11 (administrative appeal), the Ex-Im Bank Assistant General Counsel for Administration as the appellate authority for administrative appeals under the FOIA.

The proposed Privacy Act regulations, set forth Ex-Im Bank's basic Privacy Act policy and procedures. The regulations also include the following provisions concerning matters not previously addressed: § 404.19 (notice of subpoenas and emergency disclosures); § 404.20 (request for accounting of record disclosures); § 404.21 (submission of social security and passport numbers); § 404.22 (contracting record systems); and § 404.26 (employee standards of conduct).

Regulatory Flexibility Act

The Ex-Im Bank President and Chairman, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Under the Privacy Act, agencies may recover only duplication costs. Thus, fees assessed by Ex-Im Bank under these regulations will be nominal. Also, Ex-Im Bank receives, on average, less than two hundred FOIA and Privacy Act requests per year, and only one in four of those requests is made by a small entity.

Certification

In accordance with the Regulatory Flexibility Act, I hereby certify that the proposed Freedom of Information Act and Privacy Act regulations of the Export-Import Bank of the United States will not have a significant economic impact on a substantial number of small entities.

James A. Harmon,

President and Chairman.

Dated: November 20, 1997.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with the Executive Order. The Office of Management and Budget has determined that this rule is not a "significant regulatory action," as defined by the Executive Order.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a "major rule," as defined by the Small Business Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

12 CFR Part 404

Administrative practice and procedure, Freedom of Information, Privacy.

12 CFR Part 405

Administrative practice and procedure, Privacy.

For the reasons stated in the preamble, Ex-Im Bank proposes to amend 12 CFR Chapter IV as follows:

1. 12 CFR part 404 is revised to read as follows:

PART 404—INFORMATION DISCLOSURE

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

404.1 General provisions.
404.2 Definitions.
404.3 Public reference facilities.
404.4 Request requirements.
404.5 Time for processing.
404.6 Release of records under the Freedom of Information Act.
404.7 Confidential business information.
404.8 Initial determination.
404.9 Schedule of fees.
404.10 Fee waivers or reductions.
404.11 Administrative appeal.

Subpart B—Protection of Privacy and Access to Records Under the Privacy Act of 1974

Sec.

404.12 General Provisions.
404.13 Definitions.
404.14 Requirements of request for access.
404.15 Initial determination.
404.16 Schedule of fees.
404.17 Appeal of denials of access.
404.18 Requests for correction of records.
404.19 Request for accounting of record disclosures.
404.20 Notice of court-ordered and emergency disclosures.
404.21 Submission of social security and passport numbers.
404.22 Government contracts.
404.23 [Reserved.]
404.24 [Reserved.]
404.25 [Reserved.]
404.26 Employee standards of conduct.
404.27 Other rights and services.

Authority: 5 U.S.C. 552 and 552a. Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235. Section 404.21 issued under Pub. L. 93–579 sec. 7.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 404.1 General Provisions.

(a) *Purpose.* This subpart establishes policy, procedures, requirements, and responsibilities for administration of the Freedom of Information Act (FOIA), 5 U.S.C. 552, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Policy.* It is Ex-Im Bank's policy to honor all requests for the disclosure of its records, provided that disclosure would not adversely affect a legitimate public or private interest and would not impose an unreasonable burden on Ex-Im Bank. However, this subpart also recognizes that the soundness of many Ex-Im Bank programs depends upon the receipt of reliable commercial, technical, financial, and business information relating to applicants for Ex-Im Bank assistance and that receipt of such information depends on Ex-Im Bank's ability to hold such information in confidence. Consequently, except as provided by applicable law, information provided to Ex-Im Bank in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* All record requests made to Ex-Im Bank shall be processed under this subpart, except that information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart. Requests made by individuals under the Privacy Act of 1974 which are processed under subpart B of this part also shall be processed under subpart A.

(d) *Ex-Im Bank Internet site.* Ex-Im Bank maintains an Internet site at "http://www.exim.gov." The site contains information on Ex-Im Bank functions, activities, and programs, and transactions. Web site visitors have access to Board of Directors and Loan Committee meeting minutes, country information, and Ex-Im Bank press releases, among other information. Ex-Im Bank encourages all prospective FOIA requesters to visit the site prior to submission of a FOIA request.

(e) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee, may be delegated to a duly designated alternate.

(f) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

All other requesters—requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

Appeal—a written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Business information—trade secrets or other potentially confidential commercial or financial information, provided to Ex-Im Bank by a business submitter.

Business submitter—any person who provides business information to Ex-Im Bank.

Commercial use request—a request for a use or purpose that furthers the commercial, trade or profit interest of the requester.

Direct costs—expenditures incurred in the search, review, and duplication of records in response to a FOIA request. These are based upon the salary of the employee performing the work and the cost of operating any necessary equipment.

Educational institution—a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

Final determination—the written decision by the Assistant General Counsel for Administration on an appeal.

Initial determination—the initial written determination by Ex-Im Bank regarding disclosure of requested records.

Non-commercial scientific institution—an institution that is operated for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and that is not operated solely for purposes of furthering a business, trade or profit interest.

Person—an individual, partnership, corporation, association or organization other than a Federal government agency.

Record—all papers, memoranda or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by Ex-Im Bank and preserved as evidence of the activities of Ex-Im Bank. "Record" does not include publications which are available to the public through the **Federal Register**, sale or free distribution.

Redaction—the process of removing non-disclosable material from a record so that the remainder may be released.

Representative of the news media—a person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists shall qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

Request—any record request made to Ex-Im Bank under the FOIA.

Requester—any person making a request.

Review—the process of examining a record to determine whether any portion is required to be withheld. It includes redaction, duplication, and any other preparation for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

Search—the process of identifying and collecting records pursuant to a request.

Trade secrets—all forms and types of financial, business, scientific, technical, economic or engineering information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes.

Unusual circumstances—the need to search for and collect requested records from facilities that are separate from Ex-Im Bank headquarters; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation with another agency having a substantial interest in the determination of the request.

Working days—all calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.3 Public reference facilities.

Ex-Im Bank maintains a public reading room which contains the Ex-Im Bank records that the FOIA requires to be made available for public inspection and copying. The records available under this section include copies of records released pursuant to the FOIA that Ex-Im Bank determines have, or are likely to, become the subject of subsequent requests for substantially the same records. Requesters shall be responsible for the cost of duplicating such material in accordance with the provisions of § 404.9(e). Persons desiring to use the reading room should contact the Ex-Im Bank Freedom of Information and Privacy Office, either in writing at the address at § 404.1(f) or by telephone at (202) 565–3946 or (800) 565–3946, to arrange a time to inspect the available records. Ex-Im Bank also provides electronic access to reading room records created after November 1, 1996.

§ 404.4 Request requirements.

(a) *Form.* Requests must be made in writing and must be signed by, or on behalf of, the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.1(f) and should contain both the return address and telephone number of the requester.

(b) *Description of records requested.* Each request must describe the records sought in sufficient detail so as to enable a professional employee of Ex-Im Bank familiar with the subject matter of the request to locate the record with a reasonable amount of effort. A request shall not be deemed to have been received until such time as the request adequately identifies the records sought. To the extent practicable, a description should include relevant dates, format, subject matter, and the name of any person to whom the record is known to relate. A general request for records with no accompanying date restriction, either express or implied, shall be deemed to be a request for records created within the preceding twelve months.

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for the requested records or a request for a fee waiver (see § 404.10) before the request shall be deemed to have been received. A fee statement may specify the maximum amount a requester is willing to pay for processing the request.

(1) Whenever a requester submits a FOIA request that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of paragraph (c) of this section. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees under § 404.9 shall be deemed an agreement to pay up to $50.00. If Ex-Im Bank estimates that the fees for a request will exceed $50.00, then Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(d) *Written notice of amendment.* The requester must provide any amendment to the original request in writing to Ex-Im Bank.

(e) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

§ 404.5 Time for processing.

(a) *General.* Ex-Im Bank shall respond to requests within twenty working days of the date of receipt of the request unless unusual circumstances exist. Ex-Im Bank shall provide written notice to the requester whenever such unusual circumstances necessitate an extension. If the extension is expected to exceed ten working days, then Ex-Im Bank shall offer the requester the opportunity to:

(1) Alter the request so that it may be processed within the time limit; or

(2) Propose an alternative, feasible time frame for processing the request.

(b) *Date of receipt.* A request shall be deemed to have been received on the date that the request is received in the Freedom of Information and Privacy Office, provided that the requester has met all the requirements of § 404.4. Ex-Im Bank shall notify the requester of the date on which a request was officially received.

(c) *Order of processing.* Ex-Im Bank ordinarily shall process requests according to their order of receipt.

(d) *Expedited processing.* A request for expedited processing must be included in the original request for records and may be granted at the discretion of Ex-Im Bank based upon the requester's demonstration of:

(1) An imminent threat to the life or physical safety of an individual; or

(2) In the case of a requester who is a representative of the news media, an urgency to inform the public concerning actual or alleged Federal Government activity. Ex-Im Bank shall provide notice of its determination on expedited processing to the requester. A requester may file an administrative appeal, as set forth at § 404.11, based on a denial of a request for expedited processing. Ex-Im Bank shall grant expeditious consideration to any such appeal.

§ 404.6 Release of records under the Freedom of Information Act.

(a) *Creation of records.* A reasonable request for material not in existence may be honored at Ex-Im Bank's discretion when tabulation or compilation will not significantly burden Ex-Im Bank, its programs or its activities.

(b) *Discretionary release.* Consistent with federal government policy, material technically qualifying for exemption from disclosure under 5 U.S.C. 552(b) may be made available when disclosure would not adversely affect legitimate public or private interests, violate law or impose an unreasonable burden on Ex-Im Bank. This policy does not, however, create any right enforceable in a court of law.

(c) *Segregable records.* Whenever it is determined that a portion of a record is exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after redaction of the exempt material. If segregation would render the document meaningless, Ex-Im Bank shall withhold the entire record.

(d) *Date for determining responsive records.* Only those records within Ex-Im Bank's possession and control as of the date of receipt of a request shall be deemed to be responsive to a request.

§ 404.7 Confidential business information.

(a) *Scope.* This section applies to all business information, as defined in § 404.2. Such information shall only be disclosed pursuant to a FOIA request in accordance with this section.

(b) *Submitter designation.* All business submitters should designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of any submission that they consider to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(c) *Pre-disclosure notice to the business submitter.* Whenever Ex-Im Bank receives a FOIA request seeking disclosure of business information, Ex-Im Bank shall provide prompt written notice to the submitter of such information. This notice shall include a description or a copy of the records containing the business information. Such notice shall not be required, however, if:

(1) Ex-Im Bank determines that the records shall not be disclosed;

(2) The records have been published or otherwise made available to the public; or

(3) Disclosure of the records is required by law.

(d) *Opportunity to object to disclosure.* The business submitter shall have ten working days from and including the date of the notification letter to provide Ex-Im Bank with a detailed statement of any objection to disclosure of the records. A submitter located outside the United States shall have twenty working days to object to disclosure. Ex-Im Bank may extend the time for objection upon timely request from the submitter and for good cause shown. A statement of objection must specify all grounds under the FOIA for withholding the information.

(e) *Notice to the requester.* The Freedom of Information and Privacy Office shall notify the requester in writing whenever a business submitter is afforded the opportunity to object to disclosure of records pursuant to paragraph (c) of this section.

(f) *Disclosure of confidential business information.* Ex-Im Bank shall consider any objections raised by the business submitter prior to making its disclosure decision.

(g) *Notice of intent to disclose.* Whenever Ex-Im Bank determines to disclose business information over the objection of a business submitter, Ex-Im Bank shall notify the business submitter, in writing, of such determination, the reasons for the decision, and the expected disclosure date. This notification—which shall be provided at least ten days prior to the planned disclosure date and which shall include a copy or description of the records at issue—is intended to afford the submitter the opportunity to seek judicial relief.

(h) *Notice to requester of disclosure date.* If Ex-Im Bank determines to disclose records over a business submitter's objection, then Ex-Im Bank shall notify the requester of the expected disclosure date.

(i) *Appeal.* Whenever Ex-Im Bank determines to disclose, pursuant to an administrative appeal, business information which initially was withheld from disclosure under 5 U.S.C. 552(b)(4), Ex-Im Bank shall notify the business submitter. Such notice shall be in writing and shall be provided ten working days prior to the proposed disclosure date. It shall include a copy or description of the records at issue and a statement of Ex-Im Bank's reasons for disclosure.

(j) *Notice of FOIA lawsuit.* Ex-Im Bank shall promptly notify the submitter or requester whenever a requester or submitter brings suit against Ex-Im Bank seeking to compel or restrict the release of business information covered by this section.

(k) *Exception.* Notwithstanding the foregoing provisions of this part, Ex-Im Bank may, upon request or on its own initiative, publicly disclose the parties to transactions for which Ex-Im Bank approves support, the amount of such support, the identity of any U.S. participants involved, a general description of the related U.S. exports, and the country to which such exports are destined.

§ 404.8 Initial determination.

(a) *Authority to grant or deny requests.* The Freedom of Information and Privacy Office shall be responsible for search, review, and the Initial Determination.

(b) *Referrals to other government agencies.* A requested record in Ex-Im Bank's possession which was created or classified by another federal government agency shall be referred to such agency for direct response to the requester. The Freedom of Information and Privacy Office shall notify the requester of any such referral, the number of documents so referred, and the name and address of each agency to which the request has been referred.

(c) *Notification of Ex-Im Bank action.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny the request.

(1) If the decision is made to grant a request, then Ex-Im Bank shall promptly disclose the requested records and shall inform the requester of any fee payable under § 404.9.

(2) A denial is a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; or a determination that what has been requested is not a record subject to the FOIA. Whenever Ex-Im Bank withholds information, such notice shall include:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for any non-disclosure; and

(iii) A statement that any denial may be appealed under § 404.11 and a brief description of the requirements of that section.

(d) *Material withheld.* Ex-Im Bank shall make reasonable efforts to inform the requester of the volume of material withheld pursuant to a full or partial denial and the extent of any redaction. Ex-Im Bank shall not, however, indicate the extent of any denial when doing so could harm an interest protected by an applicable exemption.

§ 404.9 Schedule of fees.

(a) *General.* Ex-Im Bank shall charge fees to recover the full allowable direct costs it incurs in processing requests. Ex-Im Bank shall attempt to conduct searches in the most efficient manner to minimize costs for both Ex-Im Bank and the requester.

(b) *Categories of requesters.* Fees shall be assessed according to the status of the requester. The specific schedule of fees for each requester category (each as defined in § 404.2) is prescribed as follows:

(1) *Commercial use requesters.* Ex-Im Bank shall charge the full costs for search, review, and duplication.

(2) *Educational and non-commercial scientific institution requesters.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(3) *Representatives of the news media.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(4) *All other requesters.* Ex-Im Bank shall charge for the cost of search, review, and duplication, except that 100 pages of duplication and two hours of professional search time shall be furnished without charge.

(c) *Search and review fees.* Ex-Im Bank shall charge the following fees for search and review:

(1) *Clerical.* Hourly rate—$16.00.

(2) *Professional.* Hourly rate—$32.00.

(3) *Computer Searches.* Hourly rate—based upon the salary of the employee performing the work and the cost of operating any equipment.

(d) *Administrative appeals.* Ex-Im Bank shall not charge for administrative review of an exemption applied in an initial determination. Ex-Im Bank shall charge, however, for search and review pursuant to an administrative appeal if the appeal is based on a claim other than the application of an exemption in the initial determination.

(e) *Duplication.* Ex-Im Bank shall charge $.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of duplication. When duplication charges are expected to exceed $50.00, Ex-Im Bank shall seek the requester's consent to be responsible for the estimated charges unless a requester has already expressed a willingness to pay duplication fees in excess of $50.00. Ex-Im Bank shall also offer the requester the opportunity to alter the request in order to reduce duplication costs.

(f) *Fees for searches that produce no records.* Fees shall be payable as provided in this section even though searches and review do not generate any disclosable records.

(g) *Aggregating requests.* A requester, or a group of requesters acting in concert, shall not file multiple requests, seeking portions of a record or similar or related records, in order to avoid payment of fees. Ex-Im Bank shall aggregate any such requests and charge as if the requests were a single request.

(h) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge $25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

(i) *Restrictions.* (1) Ex-Im Bank shall waive a final fee of $5.00 or less.

(2) Whenever Ex-Im Bank estimates that the fees are likely to exceed $250.00, Ex-Im Bank shall notify the requester of the likely cost and shall require an advance payment of an amount up to the full estimated charges.

(3) Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such a requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request. The administrative time limits for the new request—set forth in § 404.5—shall begin to run only after Ex-Im Bank has received the payments described in this section.

§ 404.10 Fee waivers or reductions.

(a) *General.* Upon request, Ex-Im Bank shall consider a discretionary fee waiver or reduction of the fees chargeable under § 404.9.

(b) *Form of request for fee waiver.* Ex-Im Bank shall deny a request for a waiver or reduction of fees that does not clearly address each of the following:

(1) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(2) An explanation of the reasons why the public will benefit from such use; and

(3) If specialized use of the records is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(d) *Burden of proof.* In all cases, the requester has the burden of presenting sufficient evidence or information to justify the fee waiver or reduction. The requester may use the procedures set forth in § 404.11 to appeal a denial of a fee waiver request.

(e) *Employee requests.* Fees of less than $50.00 shall be waived in connection with any request by an employee, former employee, or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

§ 404.11 Administrative appeal.

(a) *General.* Whenever a request for records, a fee waiver or expedited processing has been denied, the requester may appeal the denial within thirty working days of the date of Ex-Im Bank's issuance of notice of such action. Any denial under this subpart must be appealed according to this section before a requester is eligible to seek judicial review.

(b) *Form.* Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address at § 404.1(f). Both the envelope and the appeal letter should be clearly marked in capital letters: "FREEDOM OF INFORMATION ACT APPEAL." Failure to properly mark or address the appeal may slow its processing. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) The return address and telephone number of the appellant.

(c) *Processing schedule.* Appeals shall not be deemed to have been received until the Assistant General Counsel for Administration receives the appeal. Ex-Im Bank shall notify the requester of the date on which an appeal was officially received. The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of

an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days if unusual circumstances exist, provided that the Assistant General Counsel for Administration notifies the requester in writing.

(d) *Ex-Im Bank decision.* A final determination which affirms an adverse initial determination shall set forth the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed on appeal, the request shall be remanded to the Freedom of Information and Privacy Office to be processed promptly in accordance with the decision on appeal, subject to § 404.7(i). Subpart B—Protection of Privacy and Access to Records Under the Privacy Act of 1974

§ 404.12 General provisions.

(a) *Purpose.* This subpart establishes policies, procedures, requirements, and responsibilities for administration of the Privacy Act of 1974, 5 U.S.C. 552a, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Relationship to the Freedom of Information Act.* The Privacy Act applies to records contained in a systems of records, as defined in § 404.13. If an individual submits a request for access to records and cites the Privacy Act, but the records sought are not contained in a Privacy Act system of records, then the request shall be processed only under subpart A of this part, Procedures for Disclosure of Records Under the Freedom of Information Act. All requests properly processed under subpart B shall also be processed under subpart A of this part.

(c) *Appellate authority.* The Ex-Im Bank Assistant General Counsel for Administration is the appellate authority for all Privacy Act requests.

(d) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee may be delegated to a duly designated alternate.

(e) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.13 Definitions.

For purposes of this subpart, the following definitions shall apply:

Appeal—a written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Final determination—the written decision by the Assistant General Counsel for Administration on an appeal.

Individual—a citizen of the United States or an alien lawfully admitted for permanent residence.

Initial determination—the initial written determination in response to a Privacy Act request.

Record—any item, collection or grouping of information about an individual which is maintained within a system of records and which contains the individual's name or an identifying number, symbol or other identifying particular assigned to the individual.

Redaction—the process of removing non-disclosable material from a record so that the remainder may be released.

Request for access—a request to view a record.

Request for accounting—a request for a list of all disclosures of a record.

Request for correction—a request to modify a record.

Requester—an individual who makes a request under the Privacy Act.

Review—the process of examining a record to determine whether any portion is required to be withheld.

Search—the process of identifying and collecting records pursuant to a request.

System of records—a group of any records under the control of an agency from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

Working days—all calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.14 Requirements of request for access.

(a) *Form.* Requests for access must be made in writing and must be signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester.

(b) *Description of records sought.* A request for access must describe the records sought in sufficient detail so as to enable Ex-Im Bank personnel to locate the system of records containing the records with a reasonable amount of effort. To the extent practicable, such description should include the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept. A requester may include his or her Social Security number in the request in order to facilitate the identification and location of the requested records.

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for processing the request or a request for a fee waiver (see § 404.16(d)).

(1) Whenever a requester submits a request for access which does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this section. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees shall be deemed an agreement to pay up to $25.00. If Ex-Im Bank estimates that the fees for a request will exceed $25.00, then Ex-Im Bank shall notify the requester. Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(3) Whenever the estimated fee chargeable under this section exceeds $25.00, Ex-Im Bank reserves the right to require a requester to make an advance payment prior to processing the request.

(4) Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request.

(d) *Verification of identity.* An individual who submits a request for access must verify his or her identity. The request must include the requesters full name, current address, and date and place of birth. In addition, such requester must provide a notarized statement attesting to his or her identity.

(e) *Verification of guardianship.* When a parent or guardian of a minor or the guardian of a person judicially determined to be incompetent submits a request for access to records which relate to the minor or incompetent, such parent or guardian must establish:

(1) His or her own identity and the identity of the subject of the record in accordance with paragraph (d) of this section; and

(2) Parentage or guardianship of the subject of the record, either by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing guardianship.

(f) *Written notice of amendment.* The requester must provide any amendment to the original request in writing to Ex-Im Bank.

(g) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

(h) *Date of receipt.* Requests for access shall be deemed to have been received on the date that the request is received by the Freedom of Information and Privacy Office, provided that all the requirements of this section have been met. Ex-Im Bank shall notify the requester of the date on which it officially received a request.

§ 404.15 Initial determination.

(a) *Time for processing.* The Freedom of Information and Privacy Office shall respond to valid requests for access within twenty working days of the date of receipt of the request letter. The time for response may be extended an additional ten working days for good cause, provided that the Freedom of Information and Privacy Office notifies the requester in writing.

(b) *Notice regarding request for access.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny a request for access.

(1) If the request is granted, then the notice shall either include the requested records, in releasable form, or shall describe the manner in which access to the record will be granted. The notice also shall inform the requester of any processing fee.

(2) A denial is a determination to withhold any requested record in whole or in part or a determination that the requested record does not exist or cannot be located. If the request is denied, then the denial notice shall state:

(i) The name, signature, and title or position of the person responsible for the denial;

(ii) The reasons for the denial; and

(iii) The procedure for appeal of the denial under § 404.17 and a brief description of the requirements of that section.

(c) *Form of record disclosure.* Ex-Im Bank shall grant access to the requested records either by providing the requester with a copy of the record or, at the requester's option, by making the record available for inspection at a reasonable time and place. If Ex-Im Bank makes the record available for inspection, such inspection shall not unreasonably disrupt Ex-Im Bank operations. In addition, the requester must provide a form of official photographic identification—such as a passport, driver's license or identification badge—and any other form of identification bearing his or her name and address prior to inspection of the requested records. Records may be inspected by the requester in the presence of another individual, provided that the requester signs a form stating that Ex-Im Bank is authorized to disclose the record in the presence of both individuals.

§ 404.16 Schedule of fees.

(a) *Search and review.* Ex-Im Bank shall not charge for search and review.

(b) *Duplication.* Ex-Im Bank shall charge $.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication.

(c) *Minimum fee.* Ex-Im Bank shall waive final fees of $5.00 or less.

(d) *Fee waivers.* Ex-Im Bank may waive fees whenever it is determined to be in the public interest. Fees of less than $50.00 shall be waived in connection with any request by an employee, former employee or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

(e) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge $25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

§ 404.17 Appeal of denials of access.

(a) *Appeals to the Assistant General Counsel for Administration.* Whenever Ex-Im Bank denies a request for access or for waiver or reduction of fees, the requester may appeal the denial to the Assistant General Counsel for Administration within 30 working days of the date of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: "PRIVACY ACT APPEAL." Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied; and

(4) The Ex-Im Bank identification number assigned to the request.

(b) *Final determination.* The disposition of an access appeal shall be made in writing within twenty working days after the date of receipt of the appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing. A decision affirming the denial of a request for access shall include a brief statement of the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

§ 404.18 Requests for correction of records.

(a) *Form.* Requests for correction must be made in writing and signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. The request must identify the particular record in question, state the correction sought, and set forth the justification for the correction. The requester also must verify his or her identity in accordance with the procedures set forth at § 404.14 (d) and (e). Both the envelope and the request for correction itself should be clearly marked in capital letters: "PRIVACY ACT CORRECTION REQUEST."

(b) *Initial determination.* The Freedom of Information and Privacy Office shall respond to valid correction requests within ten working days of receipt of the request letter. If Ex-Im Bank grants the request for correction, then the Freedom of Information and Privacy Office shall advise the requester of his or her right to obtain a copy, in releasable form, of the corrected record. A denial notice shall state the reasons for the denial and shall advise the requester of the right to appeal. Ex-Im Bank shall not charge for processing requests for correction.

(c) *Appeal of denial of request for correction.* Whenever Ex-Im Bank denies a request for correction, the requester may appeal the denial to the Assistant General Counsel for Administration within thirty working days of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address set forth in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: "PRIVACY ACT CORRECTION APPEAL." Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter must include:

(1) A copy of the denied request or a description of the correction sought;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) Any information said to justify the correction.

(d) *Final determination on correction appeal.* (1) The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing.

(2) A decision affirming the denial of a request for access shall advise the appellant of the:

(i) Reasons for affirming the denial;

(ii) Right to seek judicial review; and

(iii) Right to file a statement of disagreement, as provided in paragraph (e) of this section.

(3) If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

(e) *Statement of disagreement.* Upon denial of a correction appeal, the appellant shall have the right to file a statement of disagreement with Ex-Im Bank, setting forth his or her reasons for disagreeing with the Agency's action. The statement should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and must be received within thirty working days of Ex-Im Bank's issuance of the denial notice. A statement of disagreement must not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for editing. Upon receipt of a statement of disagreement under this section, the Freedom of Information and Privacy Office shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate that a Statement of Disagreement has been filed. Ex-Im Bank may also append to the disputed record a written statement regarding Ex-Im Bank's reasons for denying the request to correct the record.

(f) *Notices of correction or disagreement.* In any disclosure of a record for which Ex-Im Bank has received a statement of disagreement, Ex-Im Bank shall clearly note any portion of the record which is disputed and shall provide a copy of the statement of disagreement. Ex-Im Bank also may provide its own statement regarding the disputed record. In addition, whenever Ex-Im Bank corrects a record or receives a statement of disagreement, Ex-Im Bank shall advise any person or agency to which it previously disclosed such record of the correction or statement, provided that an accounting of such disclosure exists.

§ 404.19 Request for accounting of record disclosures.

(a) *Required information.* With respect to each system of records under Ex-Im Bank control, Ex-Im Bank shall maintain an accurate accounting of the date, nature, and purpose of each external disclosure of a record and the name and address of all persons, organizations, and agencies to which disclosure has been made. Ex-Im Bank shall retain this accounting for at least five years or the life of the record, whichever is longer.

(b) *Form.* An individual may obtain an accounting of all disclosures of a record, provided that such individual establishes his or her identity as the subject of such record in accordance with the procedures set forth at § 404.14 (d) and (e). A request for an accounting must be made in writing and signed by the requester. The request should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. Both the envelope and the request itself should be clearly be marked in capital letters: "PRIVACY ACT ACCOUNTING REQUEST." Failure to properly mark or address the request may slow its processing. The request shall not be deemed to have been received by Ex-Im Bank until the Freedom of Information and Privacy Office receives the request. The letter must clearly identify the particular record for which the accounting is requested.

(c) *Initial determination.* The Freedom of Information and Privacy Office shall notify the requester whether the request will be granted or denied within ten working days of receipt of a valid request for an accounting. Ex-Im Bank shall not charge for processing such a request.

(d) *Exceptions.* Ex-Im Bank shall not be required to provide an accounting to an individual when the accounting relates to:

(1) A disclosure made to an employee within the agency;

(2) A disclosure made under the FOIA; or

(3) A disclosure made to a law enforcement agency for an authorized law enforcement activity in response to a written request from such agency which specified the law enforcement activity for which the disclosure was sought.

§ 404.20 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Assistant General Counsel for Administration shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after Ex-Im Bank's receipt of the order, except that in a case in which the order is not a matter of public record, notice shall be given only after the order becomes public. Such notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* If a record has been disclosed by Ex-Im Bank under compelling circumstances affecting the health or safety of any person, then, within ten working days, the Assistant General Counsel for Administration shall notify the subject individual of the disclosure at his or her last known address. The notice of such disclosure shall be in writing and shall state the:

(1) Nature of the information disclosed;

(2) Person, organization or agency to which it was disclosed;

(3) Date of disclosure; and

(4) Compelling circumstances justifying the disclosure.

§ 404.21 Submission of social security and passport numbers.

(a) *Policy.* Ex-Im Bank recognizes the importance of assessing, to the extent reasonably possible, the risks associated with transactions supported by Ex-Im Bank. It is often difficult to assess risks related to individuals and non-publicly trade entities. Therefore, when an individual or a non-publicly traded entity applies for participation in an Ex-Im Bank program or is proposed as a guarantor for an Ex-Im Bank transaction, Ex-Im Bank may request social security and/or U.S. passport numbers from such individual or from the principals of such entity. Ex-Im Bank shall not require submission of this information, and unwillingness or inability to provide a social security or passport number shall not affect Ex-Im Bank's decision on an application for Ex-Im Bank assistance.

(b) *Use.* Ex-Im Bank shall use social security and passport numbers to assess the creditworthiness of Ex-Im Bank program participants and as a mechanism for enforcing agreements with Ex-Im Bank. Such information shall not be disclosed, except as warranted by law and regulation.

(c) *Notice.* Whenever Ex-Im Bank requests a social security or passport number, Ex-Im Bank shall place an appropriate Privacy Act notification on the form used to collect the information.

§ 404.22 Government contracts.

(a) *Approval by Assistant General Counsel for Administration.* Ex-Im Bank shall not contract for the operation of a system of records or for an activity which requires access to a system of records without the express, written approval of the Assistant General Counsel for Administration.

(b) *Contract clauses.* Any contract authorized under paragraph (a) of this section shall contain the standard contract clauses required by the Federal Acquisition Regulation (48 CFR 24.104) to ensure compliance with the requirements imposed by the Privacy Act. The division within Ex-Im Bank which is responsible for technical supervision of the contract shall be responsible for ensuring that the contractor complies with the Privacy Act contract requirements.

(c) *Contractor status.* Any contractor that operates an Ex-Im Bank system of records or engages in an activity which requires access to an Ex-Im Bank system of records shall be considered an Ex-Im Bank employee for purposes of this subpart. Ex-Im Bank shall supply any such contractor with a copy of the regulations in this subpart upon entering into a contract with Ex-Im Bank.

§§ 404.23–404.25 [Reserved]

§ 404.26 Employee standards of conduct.

(a) *Ex-Im Bank responsibilities.* Ex-Im Bank shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Ex-Im Bank also shall notify its employees that they have a duty to:

(1) Protect the security of records;

(2) Ensure the accuracy, relevance, timeliness, and completeness of records;

(3) Avoid the unauthorized disclosure, either verbal or written, of records; and

(4) Ensure that Ex-Im Bank maintains no system of records without public notice.

(b) *Employee responsibilities.* Except as otherwise permitted by the Privacy Act, Ex-Im Bank employees shall:

(1) Not collect information of a personal nature from individuals unless an employee is authorized to collect such information to perform a function or discharge a responsibility on behalf of Ex-Im Bank;

(2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of official responsibilities;

(3) Collect information about an individual directly from that individual, whenever practicable;

(4) Inform each individual from whom information protected by the Privacy Act is collected of:

(i) The legal authority that authorizes Ex-Im Bank to collect such information and whether disclosure is mandatory or voluntary;

(ii) The principal purposes for which Ex-Im Bank intends to use the information;

(iii) The routine uses Ex-Im Bank may make of the information; and

(iv) The practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Make reasonable efforts, prior to disseminating any record about an individual, to ensure that such records are accurate, relevant, timely, and complete;

(7) Maintain no record concerning an individual's religious or political beliefs or activities, or his membership in associations or organizations, unless:

(i) The individual has volunteered such information for his own benefit;

(ii) A statute expressly authorizes Ex-Im Bank to collect, maintain, use or disseminate the information; or

(iii) The individual's beliefs, activities or membership are pertinent to and within the scope of an authorized law enforcement or correctional activity;

(8) Notify the Assistant General Counsel for Administration of the existence or development of any system of records that has not been disclosed to the public;

(9) When required by the Act, maintain an accounting in the prescribed form of all disclosures of records by Ex-Im Bank to agencies or individuals;

(10) Not disclose any record to anyone for any use, unless such disclosure is permitted by the Act;

(11) Maintain and use records with care to prevent the inadvertent disclosure of records; and

(12) Notify the Assistant General Counsel for Administration of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit Ex-Im Bank to maintain.

(c) *Review of systems of records.* Not less than once each year, the Ex-Im Bank Chief Information Officer shall review the systems of records maintained by Ex-Im Bank to ensure that Ex-Im Bank is in compliance with the provisions of the Privacy Act regarding publication of systems of records.

§ 404.27 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

PART 405—[REMOVED AND RESERVED]

2. 12 CFR part 405 is removed and reserved.

Dated: November 24, 1997.

Kenneth W. Hansen,

General Counsel, Federal Register Liaison Officer.

[FR Doc. 97–31775 Filed 12–3–97; 8:45 am]

BILLING CODE 6690–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would add a new provision to the disclosure statement in regulations relating to NCUA approval of mergers or conversions of federally-insured credit unions to non credit union status. Credit unions would be required to disclose in plain English on the cover page of the disclosure statement specific facts relating to the proposed transaction's impact on the members.

DATES: Comments must be received by February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1994, the NCUA Board issued an interim final rule, part 708a, and request for comments. 59 FR 48790 (September 23, 1994). The rule established that the NCUA Board must approve any merger or conversion of a federally insured credit union to a non credit union institution. On March 1, 1995, the NCUA Board issued a final rule setting forth the procedures and disclosure requirements for these transactions. 60 FR 12659 (March 8, 1995). One of the issues addressed in the final rule was the requirement that a uniform member notice be sent to the members as part of the disclosure. Nine of the ten commenters supported a uniform notice. The reasons given were that a uniform notice would provide clear and consistent guidelines for merging credit unions, ensure that important information is not withheld from the members and require less individual review. The NCUA Board agreed with these goals, but believed that they could be accomplished more effectively through a listing of the information that must be included in the notice to members, rather than a form that may become outdated or not apply to all transactions. The final rule did not require a uniform notice.

The NCUA Board has had an opportunity to review Disclosure Statements under this rule and now, agrees with the commenters that certain key information should be routinely provided to the members in plain English. Although most of the information is currently being provided, it is buried in a multi-page Disclosure Statement, often in excess of fifteen pages. Further, it is stated in a way that is difficult to understand.

Proposal

To ensure that the members understand the proposed transaction's impact, the Board proposes requiring credit unions to provide in plain English on the cover page of the Disclosure the following information: (1) The institution will no longer be democratically controlled with each member having one equal vote. The larger depositors will have more votes than the smaller depositors; (2) This action would enable the credit union to further change its organizational structure in the future. For example, if the institution were to convert to a stock institution, the members will lose their equity ownership interest. Any future decision to convert to a stock institution would be made by a vote of the members. The weight a member's vote carries will be based on the amount of the member's deposit; and (3) The board of directors may receive financial benefits not available to other members. For example, after waiting the two years required by NCUA's regulation, Board members could be compensated and they could obtain stock under terms not available to other members.

In the event these statements do not apply to a particular transaction, they may be modified as necessary.

The NCUA Board is interested in receiving comments on the proposed uniform disclosure requirements.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that it is highly unlikely that small credit unions would be engaged in a merger or conversion to a noncredit union institution. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will apply to all federally insured credit unions. The proposed amendments are not designed or intended to interfere with the state regulation of state-chartered institutions. However, existing statutory requirements mandate the Board approve transactions of this nature for all federally insured credit unions. Recognizing the interests of states and state regulators in supervising state chartered credit unions, the rule governing transactions of this nature includes a provision that allows federally insured state chartered credit unions, on a case-by-case basis, to obtain a waiver from NCUA's rule and follow state procedures if those procedures are determined to adequately address the concerns of NCUA's rule. With this provision in the rule, the NCUA Board has determined that the proposed amendments are not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed amendment requires the credit union to provide to its members information that is provided by NCUA in the proposal. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 708a as follows:

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS TO NON CREDIT UNION STATUS: NCUA APPROVAL

1. The authority citation for part 708a is revised to read as follows:

Authority: 12 U.S.C. 1766, 1785.

2. Amend Appendix A to part 708a to revise paragraph (2)(m) to read as follows:

Appendix A to Part 708a—Notice to Members of Special Meeting, Disclosure and Ballot

* * * * *

(2) * * *

(m) The cover of the Disclosure Statement must contain the following statement in bold, appropriately modified to the extent that this statement does not accurately describe the transaction:

PLEASE READ THIS DISCLOSURE DOCUMENT. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR CREDIT UNION.

If the credit union converts to a savings bank, the institution will no longer be democratically controlled with each member having one equal vote. As explained in this Disclosure, the larger depositors will have more votes than the smaller depositors.

This action would enable the credit union to further change its organizational structure in the future. For example, if the institution were to convert to a stock institution, you would lose your equity ownership interest. Any future decision to convert to a stock institution would be made by a vote of the members, however, the weight your vote carries will be based on the amount of your deposit in the institution.

If the credit union converts to a savings bank, your board of directors may receive financial benefits not available to other members. For example, Board members could be compensated and they could obtain stock on terms not available to other members, after waiting the two years required by credit union regulation.

* * * * *

[FR Doc. 97–31501 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board propose to amend the disclosure forms in NCUA's regulations relating to mergers and voluntary termination or conversion of insured status in mergers of federally-insured credit unions. The amendments inform the members that, if their credit union converts to nonfederal insurance, the private insurance fund insuring their accounts is not backed by the full faith and credit of the United States government. It also informs the members that, if their credit union terminates insurance, their shares, excluding those covered for one year, are no longer insured by the federal government or any other entity.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, requires credit unions that are not federally insured to advise their members on "all periodic statements of account, on each signature card, and on each passbook, certificate or deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the Federal government does not guarantee that depositors will get back their money." 12 U.S.C. 1831t(b)(1). Clearly, a member of a credit union being asked to vote on a proposal that would replace federal insurance with private insurance is entitled to a similar disclosure. Currently, NCUA's regulations do not require disclosure of this information.

Proposal

Sections 708(b).301 (a)(1) and (b)(1) contain the form notices that are sent to the members if a credit union is seeking to terminate federal insurance. The proposal would amend the notices by clarifying to the members that if the credit union fails, their shares are no longer insured by the federal government or any other entity.

Sections 708b.302(a)(1), (a)(2), (b)(1) and (b)(2) contain the form notices and ballots that are sent to the members if a credit union is seeking to convert from federal to nonfederal insurance. The proposal would add a sentence to the notice and ballot explaining that the insurance provided by the NCUA is backed by the full faith and credit of the United States government and that the private insurance the member will receive if the credit union converts is not backed by the United States government.

The Board believes this information must be disclosed in order for the member to make an informed vote on the proposed transaction. Disclosure of this information is consistent with the disclosure requirements Congress imposes on credit unions lacking federal insurance.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reasons for this determination are that the proposed rule requires the addition of two sentences to the disclosure form used by credit unions converting to nonfederal insurance. The addition of these two sentences will not increase the costs of the conversion and therefore will not create a financial burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will apply to all federally insured credit unions. The proposed amendments are not designed or intended to interfere with the state regulation of state-chartered institutions. However, the Board is modeling this proposal on federal legislation that specifically applies to state-chartered credit unions. The NCUA Board has determined that the proposed amendments are not likely to have any direct effect on states, the relationship between the states, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed amendment requires the credit union to provide to its members information that is provided by NCUA in the proposal. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

List of Subjects in 12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 708b as follows:

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

1. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1766, 1785, 1786, 1789.

2. In § 708b.301, paragraph (a)(1) is amended by revising the second paragraph of the *Notice of Proposal to Terminate Federal Insurance* and paragraph (b)(1) is amended by revising the third paragraph of the *Notice of Proposal to Merge and Terminate Federal Insurance* to read as follows:

§ 708b.301 Termination of insurance.

(a) * * *

(1) *Notice of Proposal to Terminate Federal Insurance*

* * * * *

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

* * * * *

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured. Accounts in the *merging* Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

* * * * *

3. In § 708b.302, paragraph (a)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Convert to Nonfederally-Insured Status*, paragraph (a)(2) is amended by adding a sentence at the end of the second paragraph of the ballot, paragraph (b)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status* and paragraph (b)(2) is amended by adding a sentence at the end of the second paragraph of the ballot to read as follows:

§ 708b.302 Conversion of insurance.

(a) * * *

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

[FR Doc. 97–31502 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 211

RIN 3220–AB23

Creditable Railroad Compensation

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to amend its regulations to limit the crediting of pay for time lost to periods prior to the judgment or agreement establishing that payment or in the case of pay for time lost not attributable to a judgment or settlement, prior to the date of payment.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611, telephone 312–751–4513, TTD 312–751–4701.

SUPPLEMENTARY INFORMATION: Payments made for periods during which an employee is absent from the active service of an employer are considered to be "pay for time lost" and creditable compensation under the Railroad Retirement Act. Pay for time lost includes pay received due to an injury or due to loss of earnings attributable to the employee being placed in a position paying less money. Employers are required to allocate pay for time lost to the months in which the time was actually lost. Pursuant to section 211.3 of the current regulations, the Board will accept an allocation of pay for time lost for periods after the judgment or settlement, and after the payment is made. The practice has been costly to the railroad retirement system in that taxes under the Railroad Retirement Tax Act are imposed on railroad compensation at the time of payment up to the maximum taxable amount for the year in which the payment is made. Accordingly, if a personal injury suit is settled in 1997 and the railroad agrees to pay the employee $300,000 to be allocated as pay for time lost over the period 1997 through 2002 with $50,000 being designated to each year as pay for time lost, the employee would receive six years of retirement credit, but taxes would cover only one year of those additional credits.

There is no requirement in the statute that pay for time lost be creditable prospectively and, in the view of the majority of the Board, to allow prospective crediting of pay for time lost cannot be justified in view of the additional, potentially large costs to the system.

Section 1(h)(2) of the Railroad Retirement Act requires that pay for time lost must be paid with respect to an identifiable period of absence. This language, in the view of a majority of the Board, suggests that pay for time lost should be credited only to a known period of absence in the past. It is impossible to predict whether or not an employee will remain absent from work in the future as a result of injury; accordingly, there is no truly identifiable period for prospective crediting of pay for time lost. Moreover, to allow parties to private litigation to pass on a portion of the costs of litigation to a Federal benefit program simply makes no sense.

Based on its review of the statutory language and the legislative history, a majority of the Board, Labor Member dissenting, proposes to amend its regulations to prohibit crediting of pay for time lost beyond the date of the judgment or settlement or, in the absence of a judgment or settlement, beyond the date of payment. The proposed regulation excepts from these restrictions the crediting of deemed service months pursuant to section 3(i)(4) of the Railroad Retirement Act. That section provides that an employee who has performed service for compensation in less than twelve months of a calendar year, but has received compensation in excess of the amount that may be credited to the months of actual service, may have the excess credited to an additional month or months in that same year.

The Labor Member has made a proposal that he believes resolves the financial problem with the existing procedure by requiring that taxes be paid in each of the years for which pay for time lost credit is sought. While the majority appreciates the Labor Member's efforts in attempting to resolve the problems with the current policy, the majority does not believe that the payment of taxes will fully fund the additional benefit payment and believes that the better approach would be to scrap what it believes to be a bad policy rather than tinker with it.

Employees who negotiate prospective pay for time lost credits do so because without the additional credits they would not meet the service requirement of 20 years for an occupational disability annuity. Accordingly, without the prospective pay for time lost credits, no benefits would be payable to these employees until they reach age 60 or become totally and permanently disabled. Railroad retirement taxes paid for several years of pay for time lost will not cover the additional costs to the system of the occupational disability annuities that otherwise would not have been paid. Moreover, under the regulations, a month of pay for time lost credit may be granted based on an allocation of compensation to the month of at least 10 times the employee's daily wage rate. Accordingly, taxes would be payable on an allocation of as little as fifty percent of the employee's normal monthly compensation, but the employee would receive a full month credit for retirement purposes. The Labor Member's proposal does nothing to address this shortfall. The majority simply does not believe that it is appropriate to use trust fund moneys to subsidize the costs of private litigation.

Finally, the majority views the Labor Member's proposal as, in effect, allowing employees to purchase retirement credit. In the view of the majority, this is simply bad policy.

Views of the Labor Member of the Board

Section 1(h) of the Railroad Retirement Act authorizes the crediting of pay for time lost as compensation insofar as the employee and his or her railroad employer agree to that crediting in connection with an on-the-job injury. That provision thereby encourages the settlement of disputes and permits the allocation of loss between parties, in whatever way those parties themselves see fit and so negotiate, see 211.3(b) of the Board regulation 20 CFR § 211.3(b).

The majority, by limiting the employer's ability to provide for future lost wages as the result of an on-the-job injury, as proposed in this rule, interferes with an employer's and employee's ability to settle Federal Employers' Liability Act (FELA) claims. This needless intrusion into FELA disputes by the Board will only increase litigation of disputes which could easily have been settled. It also prevents personal injury settlements from achieving the goal of making injured employees, as far as possible, whole.

The majority of the Board states that pay for time lost is being credited prospectively, after the date of settlement or judgment (or, in the absence of a settlement or judgment, after the date of payment), without taxes under the Railroad Retirement Tax Act being paid for those payments. This can be true where pay for time lost in the future is compensated for by a lump sum payment at the time of settlement. The Labor Member notes the majority says the current procedures are costly, but never states what that cost is, as requested by OMB. Nevertheless, the Labor Member has a proposal, explained below, that directly addresses this concern.

The majority also suggests that the statute, by providing that pay for time lost may only be credited to an identifiable period of lost time, precludes prospective crediting of pay for time lost. This view reads more into the statute than is actually there. The Labor Member agrees with the majority that pay for time lost may be credited only to an identifiable period of lost time. That, he notes, does not mean that the statute precludes, in any way, the crediting of pay for time lost to a period of lost time after the date of settlement where agreed to by the parties. This was recognized by the Board as early as 1947 in an opinion by the Board's General Counsel, L–47–146. Indeed, the cases where pay for time lost is allocated into the future are generally those where the employee is so badly injured that he or she will never again be able to work in the railroad industry. The only way the employee may be made whole in such cases is by paying the employee for future lost wages and providing the retirement credits that would accrue from such future lost wages. As noted above, the Labor Member believes that the past policy of allowing the crediting of pay for time lost into the future has facilitated out-of-court settlement of disputes and has served the interests not only of employees, but also of employers. Although it is the opinion of the Labor Member that the past policy is good policy, he believes that the problem with prospective crediting of pay for time lost noted by the majority can be addressed by simply prohibiting pay for time lost in the future to be paid in the form of a lump sum. The Labor Member proposes that prospective crediting of pay for time lost be limited to periodic payments made in the year or years for which the credit is sought and where the employment taxes are paid with respect to those payments. Such payments are in the nature of wage continuation payments or dismissal payments which are clearly compensation under the Act, see 20 CFR 211.9.

For example, John Doe and ABC Railroad enter into a settlement agreement in July 1996 pursuant to which John Doe retains an employment relationship with ABC Railroad through 1998 and ABC Railroad agrees to pay John Doe pay for time lost in the amount of $150,000 for the years 1996 ($50,000), 1997 ($50,000), and 1998 ($50,000). ABC issues a check to John Doe in 1996 for $50,000, minus the employee tax under the Railroad Retirement Tax Act, and pays the employer tax and the withheld employee tax under the Railroad Retirement Tax Act. ABC Railroad makes the same payments to John Doe on January 1, 1997 and January 1, 1998. John Doe would, under the Labor Member's proposal, receive credit for pay for time lost in 1996, 1997, and 1998. If ABC Railroad were to pay the $150,000 in a lump sum in 1996, John Doe would receive credit only in 1996. The payments in the

above example would be reported on the Employer's Annual Report of Compensation required under 20 CFR 209.6 along with other wages paid to other employees that year. Pay for time lost payments would be indistinguishable from regular wages. The Labor Member believes that his proposal would address the concern of the majority by fully funding the prospective pay for time lost credits while continuing to allow railroad employees and railroad employers to use pay for time lost allocations in a positive way to resolve disputes.

With the modification he suggested, the Labor Member feels there is no further justification in the majority's position on this regulation. The majority has indicated that it is better to scrap a "bad" regulation rather than "tinker" with it. The Labor Member believes that making employees who are injured in service to the rail industry whole is not tinkering. It is a moral obligation.

The majority also believes that the Labor Member's proposal amounts to allowing employees to purchase retirement credits. This is true. It would be allowed, however, for only those employees who have demonstrated through long years of service a career commitment to the rail industry, and then, only when they have been severely injured or otherwise incapacitated while performing rail service. Finally, it would be further limited to only those in the foregoing category who receive compensation from a settlement based on a conviction of both the railroad and the employee that the railroad would probably be found negligent in causing the employee's injury.

The majority points out that the additional tax paid for several years of pay for time lost will not finance the additional benefits which would be paid under the Labor Member's proposal. The Labor Member believes that this is true but irrelevant. Completely aside from the obligation to make injured employees whole, whatever the cost, is the well established, clearly understood, and universally accepted feature of social insurance programs that the contributions paid by a disabled participant will rarely ever finance the actual benefits paid to such individual. Covering the cost of such eventualities from contributions of the remaining participants, including the negligent railroads, is the purpose of an insurance program. Disability benefits would virtually never be paid by any program under the condition laid down in this regulation by the Board majority.

The majority notes that ten times the employee's daily rate of pay is too low an amount for a month of compensation. The Labor Member points out that an employee who is not injured need perform only one hour of service to get a month of railroad retirement credit. However, whenever low compensation months are used to obtain additional service, the compensation average on which the annuity is based is depressed, producing a lower benefit. In any event, the ten times daily pay rate rule has been set by regulation by a previous Board after full and careful review of the issue. The issue ought not be reopened now.

Finally, the Labor Member notes that the majority references "employees who *negotiate*" pay for time lost. This terminology clearly acknowledges that, under current procedures, prospective credit can be given only when the railroads have agreed to do so. Thus, the railroads already control the use of this procedure through their right to simply refuse to go along with prospective crediting. Therefore, there is no need for the regulation change herein proposed by the Board majority.

The Office of Management and Budget has determined that this is a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 211

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 continues to read as follows:

Authority: 45 U.S.C. 231(f).

2. Section 211.3 is amended by adding paragraph (c):

§ 211.3 Compensation paid for time lost.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, pay for time lost may not be credited to any period after the date of the judgment or settlement agreement providing pay for time lost. If the payment is not the result of a judgment or settlement, pay for time lost may not, except as provided in paragraph (c)(2) of this section, be credited to any period after the date of payment.

(2) Pay for time lost may be creditable as deemed service under section 3(i)(4) of the Railroad Retirement Act in the year in which either the judgment or settlement occurred or in the case of pay for time lost not attributable to a judgment or settlement, in the year in which the payment occurred.

Dated: November 21, 1997.
By Authority of the Board.
For the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 97–31725 Filed 12–3–97; 8:45 am]
BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105160–97]

RIN 1545–AV17

Qualified Nonrecourse Financing Under Section 465(b)(6); Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 465(b)(6) regarding qualified nonrecourse financing.

DATES: The public hearing originally scheduled for Wednesday, December 10, 1997, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 465 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, August 13, 1997 (62 FR 43295), announced that the public hearing on proposed regulations under section 465 of the Internal Revenue Code would be held on Wednesday, December 10, 1997, beginning at 10:00 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Wednesday, December 10, 1997 is cancelled.

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).
[FR Doc. 97–31806 Filed 12–3–97; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA43

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Waiver of Collection of Payments Due From Certain Persons Unaware of Loss of CHAMPUS Eligibility

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule authorizes the waiver of collection of payments due from individuals who lost their CHAMPUS eligibility when they became eligible for Medicare Part A, due to disability or end stage renal disease.

DATES: Written comments will be accepted until February 2, 1998.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Health Affairs), 1B657 Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of Health Services Financing Policy, (703) 697–8975.

SUPPLEMENTARY INFORMATION: Formerly, under Title 10 United States Code, Section 1086(d), a beneficiary lost eligibility for CHAMPUS when he or she became eligible for Medicare Part A, including when eligibility was due to disability or end stage renal disease. Payments made after the beneficiary attained eligibility for Medicare Part A were erroneous payments and subject to collection under the Federal Claims Collection Act. In 1991, Congress amended 10 U.S.C. 1086(d) to provide that those persons eligible for Medicare by reason of disability or end stage renal disease who are enrolled in the supplementary medical insurance program under Medicare Part B retain eligibility for CHAMPUS, secondary to Medicare coverage. Section 743 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, provides authority, effective February 10, 1996, to waive the collection of erroneous civilian health care benefits from a person under age 65 who lost eligibility for civilian care due to eligibility for Medicare as a result of disability or end stage renal disease. The period of this waiver authority begins January 1, 1967, and ends on the later of July 1, 1996, or the termination date of any special enrollment Medicare period established by law for such person.

Since most payments made under CHAMPUS are paid directly to participating providers of care, and not to the beneficiary, the proposed rule also provides for the waiver of collection of such payments made to participating providers. These providers are paid based on a contractual agreement of benefits by the beneficiaries. If the claim for these benefits cannot be paid due to ineligibility of the beneficiary, the beneficiary indebtedness to the provider would remain. Thus, the authority to relieve disabled CHAMPUS beneficiaries from the indebtedness arising from these erroneous payments does not depend upon who actually received the payments.

Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any significant regulatory action, defined as one which would have an annual effect on the economy of $100 million or more, or have other significant effects.

The Regulatory Flexibility Act requires that each federal agency prepare a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. This proposed rule is not significant regulatory action under E.O. 12886, nor would it have a significant impact on small entities. The changes set forth in the proposed rule are minor revisions to the existing regulation. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This is a proposed rule. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.11 is amended as follows:

a. By revising paragraphs (b)(1) and (g) heading.

b. By redesignating paragraphs (g)(3), (g)(4), (g)(5), (g)(6), (g)(7), (g)(8) and (g)(9) as paragraphs (g)(4), (g)(5), (g)(6), (g)(7), (g)(8), (g)(9) and (g)(10), respectively.

c. By adding paragraph (g)(3) and revising newly redesignated paragraph (g)(10).

The additions and revisions read as follows:

§ 199.11 Overpayments recovery.

* * * * *

(b) * * *

(1) *Federal statutory authority.* The Federal Claims Collection Act (31 U.S.C. 3701 et seq.) provides the basic authority under which claims may be asserted pursuant to this section. It is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR parts 101 through 105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed $20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims. Section 743 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106, 110 Stat. 186) authorizes the waiver (see paragraph (g)(3) of this section) of collection of overpayments otherwise due from a person after the termination of the person's CHAMPUS eligibility, because the person became eligible for Medicare Part A by reason of disability or end-stage renal disease.

* * * * *

(g) *Compromise, waiver, suspension or termination of collection actions arisings under the Federal Claims Collection Act.*

* * * * *

(3) *Waiver of collection of erroneous payments due from certain persons unaware of loss of CHAMPUS eligibility.* (i) The Director, OCHAMPUS may waive collection of payments otherwise due from certain persons as a result of health benefits received under this Part after the termination of the person's eligibility for such benefits. Waiver may be granted if collection of such payments would be against equity and good conscience and not in the best interest of the United States. These criteria are met by a finding that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the person who received the erroneous payment or any other person having an interest in obtaining such waiver.

(ii) *Persons eligible for waiver.* The following persons are eligible for waiver:

(A) A person who:

(*1*) Is entitled to Medicare Part A by reason of disability or end stage renal disease;

(*2*) In the absence of such entitlement, would have been eligible for CHAMPUS under section 1086 of title 10, United States Code; and

(*3*) At the time of the receipt of such benefits, was under age 65.

(B) Any participating provider of care who received direct payment for care provided to a person described in paragraph (g)(3)(ii)(A) of this section pursuant to an assignment of benefits from such person.

(iii) The authority to waive collection of payments under this section shall apply with regard to health benefits provided during the period beginning January 1, 1967, and ending on the later of: the termination date of any special enrollment period for Medicare Part B provided specifically for such persons; or July 1, 1998.

* * * * *

(10) *Effect of compromise, waiver, suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title 11 bankruptcy case and totaling $600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed for inclusion in the debtor's gross income for that year. Any action taken under this paragraph (g) regarding the compromise of a federal claim, or waiver or suspension or termination of collection action on a federal claim is not an initial determination for purposes of the appeal procedures of § 199.10.

* * * * * * *

Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31610 Filed 12–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

36 CFR Part 327

Shoreline Use Permits, Flotation

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Supplementary proposed rule.

SUMMARY: The Corps published a proposed rule in the April 15, 1997, issue of the **Federal Register**, concerning flotation materials to be used on all new docks and boat mooring buoys. Comments received during the 45 day comment period prompted the Corps to conduct further study and give additional consideration to flotation requirements. As a result, the Corps is withdrawing this amendment and proposing a new amendment.

An amendment to the Guidelines for Granting Shoreline Use Permits was also part of the proposed rule published on April 15, 1997. This language reduced onerous requirements on individuals who have requested waivers due to obvious limiting health conditions by giving Operations Project Managers flexibility to take special circumstances of the applicant into consideration when issuing a shoreline management permit. No negative comments were received during the comment period and this amendment will be issued as a final rule at a later date, probably in conjunction with the flotation amendment, once the flotation issue is resolved.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: HQUSACE, CECW–ON, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 761–0247.

SUPPLEMENTARY INFORMATION: The Corps published a final rule providing policy and guidance on the management of shorelines of Corps of Engineers managed Civil Works projects in the **Federal Register** on July 27, 1990, (55 FR 30690–30702), last amended in the **Federal Register** on July 1, 1992 (57 FR 29219–29220).

Two amendments to the regulation were published as a proposed rule in the **Federal Register** on April 15, 1997 (62 FR 18307–18308). An amendment to Paragraph 2.c(9) of Appendix A, Section 327.30, Guidelines for Granting Shoreline Use Permits, gave operational project managers flexibility to take special circumstances of the applicant into consideration when issuing a permit. This language reflected the Corps desire to accommodate basic access for those individuals who have requested waivers due to either obvious limiting health conditions or those documented by a doctor's certification. No negative comments were received regarding this amendment during the comment period. Therefore, this portion of the April 15, 1997 proposed rule will be promulgated as a final rule at a later date.

Paragraph 14, Appendix C, of Section 327.30, also published in the April 15, 1997, proposed rule, reflected the Corps amended flotation requirements for all new docks and boat mooring facilities. The Corps received 28 letters concerning flotation during the comment period of this proposed rulemaking. The comments prompted the Corps to conduct further study and give additional consideration to flotation requirements. Accordingly, the flotation portion of the proposed rule published on April 15, 1997, is withdrawn and a new amendment is proposed.

Procedural Requirements

Executive Order (E.O.) 12866

The Secretary of the Army has determined that this proposed revision is not a "major" rule within the meaning of Executive Order (E.O.) 12866. If approved, this revision will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Collection of Information

This proposed rule contains no collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 12612

The Corps has analyzed this proposed rule under principles and criteria in E.O. 12612 and has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The Corps has determined that this proposed rule does not have "significant" taking implications. The proposed rule does not pertain to taking of private property interests, nor does it impact private property.

NEPA Statement

The Corps has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

List of Subjects in 36 CFR Part 327

Lakeshore management, Public lands.

For the reasons set forth in the preamble, we propose to withdraw the amendment to 36 CFR Part 327, Appendix C published at 62 FR 18307 (April 15, 1997) and to amend 36 CFR Part 327, as follows:

PART 327 —RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for 36 CFR Part 327 continues to read as follows:

Authority: 16 U.S.C. 460d and 460*l*–6a.

2. Appendix C to § 327.30 is amended by revising paragraph 14 to read as follows:

Appendix C to § 327.30—Shoreline Use Permit Conditions

* * * * *

14. Flotation for all docks and boat mooring buoys shall be of materials manufactured for marine use. Flotation will be 100% warranted for a minimum of 8 years to not sink, become waterlogged, crack, peel, fragment or be subject to loss of beads. Flotation materials will resist puncture and penetration and will not be subject to damage by animals. Flotation will be fire resistant. Any flotation which is within 40 feet of a line carrying fuel shall be 100% impervious to water and fuel. Reuse of plastic, metal or other previously used drums or containers for encasement or flotation purpose is prohibited. Existing flotation is authorized until it has severely deteriorated and is no longer serviceable, at which time it shall be replaced with approved flotation. For any floats installed after the effective date of this specification, repair or replacement is required when it no longer performs its designated function or fails to meet the specifications for which it was originally warranted.

* * * * *

Dated: November 21, 1997.

For the Commander.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 97–31776 Filed 12–3–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board.

49 CFR Chapter X

[STB Ex Parte No. 574]

Safe Implementation of Board-Approved Transactions

AGENCY: Surface Transportation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board seeks comments from all interested persons on the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction.

DATES: Notices of intent to participate are due by December 24, 1997. Shortly thereafter, a list of participants will be issued. Comments are due by January 19, 1998. Replies are due by February 12, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and pleadings referring to STB Ex Parte No. 574: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

Once the list of participants has been issued by the Board, send one copy of each comment and each reply to each party on the list of participants.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [TDD for the hearing impaired: (202) 565–1695].

SUPPLEMENTARY INFORMATION: The rail transportation policy (RTP) (49 U.S.C. 10101), which was adopted in the Staggers Rail Act of 1980 and amended in the ICC Termination Act of 1995, establishes the basic policy directives against which all of the statutory provisions we administer must be weighed. The RTP provides, in relevant part, that, "[i]n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation system" * * * [by allowing rail carriers to] operate transportation facilities without detriment to the public health and safety * * *." The rail transportation policy applies to all transactions subject to Board jurisdiction.

Over the years, the Board and its predecessor, the Interstate Commerce Commission (ICC), have considered the issue of safety along with other relevant issues in individual cases. For example, the ICC and the Board, in consultation with the Federal Railroad Administration (FRA), which has primary responsibility over railroad safety enforcement, have routinely considered safety in their environmental review of all rail mergers, acquisitions, line constructions, and similar transactions. In 1993, the ICC denied an application because the agency believed that no conditions could sufficiently mitigate the unsafe conditions arising out of the proposed construction of the rail line in *Construction and Operation—Indiana and Ohio Ry. Co.*, 9 I.C.C.2d 783 (1993). In a similar vein, we routinely address safety issues, with the advice of the FRA, in the context of rail embargoes.[1]

Recently, in a pending railroad merger proceeding, we undertook to address safety issues in a more systematic way. Specifically, in response to a request in the ongoing Conrail Acquisition proceeding by the FRA, we required the applicant railroads in that case to prepare detailed plans addressing how they propose to integrate their operations to ensure continued safety if the merger is approved by the Board. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 52 (STB served Nov. 3, 1997) (Conrail Acquisition). In our decision, we explained that the railroads' submissions would be made part of the environmental record in that proceeding and dealt with in the ongoing environmental review process in that case. We stated that the railroads' submissions, which are due to be filed December 3rd, will be incorporated in a separate section of the Draft Environmental Impact Statement (DEIS) that is to be issued by the end of the year. We requested the FRA to provide us with its analysis of the plans, and invited comments from all other interested persons, during the 45-day comment period that will be provided on the DEIS. After review of these analyses and comments, the Board's environmental staff will address safety implementation issues in the Final

[1] In the embargo context, for example, a shipper might dispute a railroad's contention that it is temporarily unable to provide service because of unsafe operating conditions. The Board, in a recent decision, declared that, in such situations, it would secure an inspection from an FRA-certified safety inspector before directing service over a line embargoed for safety reasons. *Service Obligations Over Excepted Track*, STB Ex Parte No. 564 (STB served Oct. 22, 1997).

Environmental Impact Statement for the proposed Conrail Acquisition. We will then consider the full environmental record, including the information concerning Applicants' safety implementation plans, in arriving at our decision in the Conrail Acquisition proceeding.

The approach outlined above will assure our ability to fully address safety implementation issues in the proposed Conrail Acquisition proceeding. Having developed a vehicle by which to evaluate the impact on rail safety of one transaction, we believe it is appropriate to consider the advisability of promulgating a rule to extend this process to other rail transactions subject to the Board's jurisdiction. Accordingly, we seek public comment on the question of how the Board should proceed in this regard in exercising its jurisdiction over such transactions.

We are aware that the FRA has suggested that rules of general applicability might be appropriate for future mergers. In our view, the process adopted in STB Finance Docket No. 33388, which provides for full utilization of the expertise of both the Board and the FRA, establishes a mechanism for handling future merger cases. It might also have wider applicability to other types of transactions subject to the Board's jurisdiction; alternatively, different procedures for implementing the Board's responsibilities under the RTP to consider matters bearing on the safe implementation of transactions might be preferable outside the merger area. The administrative process permits the Board to proceed either by rule or on a case-by-case basis, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

Accordingly, because the questions at issue here are significant and of broad interest, we are initiating *sua sponte* this proceeding to address the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction. We specifically seek the views of the FRA and of any other interested persons on these issues. We seek public comments on whether we should proceed broadly or on a case-by-case basis, and on specific standards and procedures that the Board could adopt by rule to assure the safe implementation of rail transactions subject to our jurisdiction. Parties filing comments should indicate whether their specific recommendations would apply to all transactions or only to certain types and, if the latter, which ones.

Depending on the nature of the submissions presented, we will determine at a future date whether to propose formal rules, issue a policy statement, or proceed on a case-by-case basis, as we have done in the Conrail Acquisition proceeding.

Decided: November 26, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31795 Filed 12–3–97; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register

Vol. 62, No. 233

Thursday, December 4, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists; Notice of Meeting

AGENCY: Forest Service, USDA.

SUMMARY: The Forest Service announces a meeting of the Committee of Scientists on December 19, 1997, subject to appointment of the Committee members by the Secretary of Agriculture. The Committee of Scientists is composed of 12 members and a Committee chair. The Committee of Scientists has been chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements to the Forest Service's land management planning process (62 FR 43691, August 15, 1997).

The purpose of the meeting is to discuss the organization of the Committee and to review the tasks and responsibilities detailed in the charter. The meeting is open to public attendance. Persons in attendance who wish to bring comments to the attention of the Committee may file written statements with the Committee before or after the meeting.

DATES: The meeting will be held December 19, 1997. The meeting will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn O'Hare International, 5440 North River Road, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT:

Jonathan Stephens, Ecosystem Management Coordination Staff, Forest Service, telephone: (202) 205–0948.

Dated: December 1, 1997.

Ronald E. Stewart,

Acting Chief.

[FR Doc. 97–31857 Filed 12–2–97; 10:27 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases, and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on November 17, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Kevin G. Tiernan, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On November 17, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

FBI Documents: Postponed in Part

124–10086–10003; 1; 10/2017
124–10170–10010; 1; 10/2017
124–10003–10387; 1; 10/2017
124–10003–10417; 4; 10/2017
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Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

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124–10296–10002; 124–10300–10094

After consultation with appropriate Federal agencies, the Review Board announces that the following Central Intelligence Agency records are now being opened in full: 104–10055–10130; 104–10059–10384; 104–10061–10092; 104–10062–10132; 104–10062–10292; 104–10086–10035; 104–10086–10042; 104–10086–10046; 104–10086–10047; 104–10086–10049; 104–10086–10053; 104–10086–10057; 104–10086–10058; 104–10086–10067; 104–10086–10069; 104–10086–10073; 104–10086–10075; 104–10086–10131; 104–10086–10137; 104–10086–10144; 104–10086–10149; 104–10086–10155; 104–10086–10156; 104–10086–10157; 104–10086–10158; 104–10086–10159; 104–10086–10160; 104–10086–10161; 104–10086–10184; 104–10086–10186; 104–10086–10202; 104–10086–10204; 104–10086–10211; 104–10086–10214; 104–10086–10255; 104–10086–10299; 104–10086–10300; 104–10086–10302; 104–10086–10304; 104–10086–10306; 104–10086–10308; 104–10086–10312; 104–10086–10314; 104–10086–10317; 104–10086–10318; 104–10092–10188; 104–10092–10197; 104–10092–10203; 104–10093–10385; 104–10093–10386; 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104–10105–10200; 104–10105–10232; 104–10105–10233; 104–10105–10238

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassinations records are now being opened in full: 180–10075–10332; 180–10096–10370

After consultation with appropriate Federal agencies, the Review Board announces that the following National Security Agency records are now being opened in full: 144–10001–10000; 144–10001–10001; 144–10001–10002; 144–10001–10003; 144–10001–10004; 144–10001–10005; 144–10001–10006; 144–10001–10007; 144–10001–10008; 144–10001–10009; 144–10001–10010; 144–10001–10011; 144–10001–10012; 144–10001–10013; 144–10001–10014; 144–10001–10015; 144–10001–10016; 144–10001–10017; 144–10001–10018; 144–10001–10019; 144–10001–10020; 144–10001–10021; 144–10001–10022; 144–10001–10023; 144–10001–10024; 144–10001–10025; 144–10001–10048; 144–10001–10079; 144–10001–10152; 144–10001–10157; 144–10001–10160; 144–10001–10181; 144–10001–10182; 144–10001–10184; 144–10001–10187; 144–10001–10190; 144–10001–10192; 144–10001–10194; 144–10001–10196; 144–10001–10198; 144–10001–10208; 144–10001–10211; 144–10001–10220; 144–10001–10221; 144–10001–10223; 144–10001–10224; 144–10001–10225; 144–10001–10226; 144–10001–10228; 144–10001–10231; 144–10001–10232; 144–10001–10233; 144–10001–10234; 144–10001–10235; 144–10001–10237; 144–10001–10238; 144–10001–10239; 144–10001–10240; 144–10001–10241; 144–10001–10243; 144–10001–10244; 144–10001–10245; 144–10001–10247; 144–10001–10248; 144–10001–10250; 144–10001–10254; 144–10001–10255; 144–10001–10257; 144–10001–10258; 144–10001–10259; 144–10001–10262; 144–10001–10265; 144–10001–10266; 144–10001–10267

After consultation with appropriate Federal agencies, the Review Board announces that the following Warren Commission records are now being opened in full: 179–10002–10029; 179–10002–10057; 179–20001–10134; 179–20001–10135; 179–20001–10284; 179–20001–10346; 179–20001–10349; 179–20002–10318; 179–20002–10321; 179–20002–10431; 179–20003–10000; 179–20003–10047; 179–20003–10103; 179–20003–10192; 179–20003–10193; 179–20003–10217; 179–30001–10202; 179–30001–10204; 179–30001–10205; 179–30001–10207; 179–30001–10211; 179–30001–10213; 179–30001–10220; 179–30001–10221; 179–30001–10223; 179–30001–10255; 179–30001–10257; 179–30001–10262; 179–30001–10263; 179–30001–10264; 179–30001–10277; 179–30001–10278; 179–30001–10303; 179–30001–10311; 179–30001–10323; 179–30001–10340; 179–30001–10345; 179–30001–10347; 179–30001–10378; 179–30001–10383; 179–30001–10387; 179–30001–10428; 179–30001–10429; 179–30001–10432; 179–30001–10433; 179–30001–10435; 179–30001–10437; 179–30001–10439; 179–30001–10443; 179–30001–10444; 179–30001–10447; 179–30001–10449; 179–30001–10459; 179–30002–10003; 179–30002–10004; 179–30002–10006; 179–30002–10010; 179–30002–10013; 179–30002–10014; 179–30002–10028; 179–30002–10040; 179–30002–10046; 179–30002–10050; 179–30002–10060; 179–30002–10062; 179–30002–10075; 179–30002–10077; 179–30002–10128; 179–30002–10129; 179–30002–10130; 179–30002–10132; 179–30002–10133; 179–30002–10134; 179–30002–10135; 179–30002–10140; 179–30002–10141; 179–30002–10154; 179–30002–10156; 179–30002–10157; 179–30002–10164; 179–30003–10271; 179–30003–10279; 179–30003–10283; 179–40001–10202; 179–40001–10256; 179–40001–10414; 179–40002–10021; 179–40002–10038; 179–40002–10080; 179–40002–10093; 179–40002–10102; 179–40002–10112; 179–

40003–10020; 179–40003–10068; 179–40003–10263; 179–40003–10275; 179–40004–10330; 179–40004–10403; 179–40005–10079; 179–40005–10167; 179–40005–10287; 179–40005–10410; 179–40006–10262; 179–40006–10316; 179–40007–10263; 179–40010–10045; 179–40010–10067; 179–40010–10070

Dated: December 1, 1997.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–31804 Filed 12–3–97; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Management and Oversight of the National Estuarine Research Reserve System.

Agency Form Number: None.

OMB Approval Number: 0648–0121.

Type of Request: Reinstatement of a previously approved collection.

Burden: 14,345 hours.

Number of Respondents: 27 (43 responses per year).

Avg. Hours Per Response: Ranges between 2 and 2,000 hours depending on the requirement.

Needs and Uses: The National Estuarine Research Reserve System (NERRS) consists of carefully selected estuarine areas of the United States that are designated, preserved, and managed for research and educational purposes. Information from states is needed to review their proposals for site designations, to evaluate state requests for funding of the development of management plans and Environmental Impact Statements, and to ensure that the national standards continue to be met.

Affected Public: State, local or tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 28, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31777 Filed 12–3–97; 8:45 am]

BILLING CODE: 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Archival Tag Recovery.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Review.

Burden: 7 hours.

Number of Respondents: 13

Avg. Hours Per Response: 30 minutes.

Needs and Uses: To investigate the migratory patterns of Atlantic bluefin tuna, a program has been undertaken to implant archival tags. In the event a fish with an archival tag is captured, applicable regulations could require its immediate release under certain conditions. In order to provide for maximum likelihood of data recovery, a regulation will be issued to exempt the harvest of fish with archival tags from other applicable requirements. Persons that harvest a tuna containing a tag are requested to provide certain information about the tuna (size, weight, location, etc.).

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503. A clearance has been requested by December 19, 1997.

Dated: November 26, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31778; Filed 12–3–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of New Shipper Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper administrative review of the antidumping duty order on brake rotors from the PRC. In accordance with 19 C.F.R. 351.214(d), we are initiating this administrative review.

EFFECTIVE DATE: December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4194 or 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to the provisions codified at 19 CFR part 351 (1997).

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from China National Industrial Machinery Import & Export Company ("CNIM"), Lai Zhou Auto Brake Equipments Factory ("LABEF"), Longkou Haimeng Machinery Co., Ltd. ("Haimeng"), Qingdao Gren Co. ("GREN"), Yantai Winhere Auto-Part Manufacturing Co., Ltd. ("Winhere"), and Zibo Luzhou Automobile Parts Co., Ltd. ("ZLAP") in accordance with 19 CFR 351.214(d), for new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") which has an April anniversary date. CNIM, LABEF, Haimeng, GREN, Winhere, and ZLAP ("the respondents") have certified that each entity did not export brake rotors to the United States during the period of investigation ("POI"), and that each is not affiliated with any exporter or producer which did export brake rotors during the POI.

On October 29, 1997, the Coalition for the Preservation of American Brake Drums and Rotors Aftermarket Manufacturers ("the petitioner") alleged that there were insufficiencies and inconsistencies in respondents' requests. The petitioner claimed that the respondents did not meet the legal requirements of 19 CFR 351.214 and 351.221, and requested that the Department decline to initiate new shipper reviews.

On October 31, 1997, the respondents submitted supplemental responses to the petitioner's comments, and rectified the deficiencies pointed out by the petitioner. Therefore, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper reviews as requested.

It is the Department's usual practice in cases involving non-market economies to require that companies seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly we will issue a separate rates questionnaire to the above-named respondents and seek additional information from the PRC government (as appropriate), allowing 30 days for response. If the responses from the respondents and the PRC government provide sufficient indication that the companies named are not subject to either *de jure* or *de facto* government control with respect to their exports of brake rotors, the review will proceed as to such companies. If, on the other hand, one or more respondents do not demonstrate their eligibility for a separate rate, then that or those PRC entities will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate, and the review of any such companies will be terminated.

Initiation of Reviews

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on brake rotors from the PRC. We intend to issue the final results of these reviews not later than 270 days after the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A–570–846: China National Industrial Machinery Import & Export Co., Lai Zhou Auto Brake Equipments Factory, Longkou Haimeng Machinery Co., Ltd., Qingdao Gren (Group) Co., Yantai Winhere Auto-Part Manufacturing Co., Ltd.	03/01/97–9/30/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies. This action is in accordance with 19 CFR 351.214(d).

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: November 28, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 97–31801 Filed 12–3–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent Licenses

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: this is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of field of use co-exclusive and exclusive licenses to the Government's interest, in the United States, to practice the inventions embodied in the following U.S. Patent and U.S. Patent Applications:

(1) U.S. Patent No. 5,634,718; issued June 3, 1997; titled "Particle Calorimeter with Normal Metal Base Layer," NIST Docket No. 94–005; the availability of the invention for licensing was published in the **Federal Register**, Vol. 60, No. 55 (March 22, 1995);

(2) U.S. Patent Application No. 08/702,133; filed August 26, 1996; titled "Superconducting Transition-Edge Sensor;" NIST Docket No. 96–033; the availability of the invention for licensing was published in the **Federal Register**, Vol. 62, No. 89 (May 8, 1997);

(3) U.S. Patent Application No. 08/811,939; filed March 5, 1997; titled "Microcalorimeter X-ray Detectors with X-ray Lens;" NIST Docket No. 96–034; the availability of the invention for licensing was published in the **Federal Register**, Vol. 62, No. 203 (October 21, 1997); and

(4) U.S. Patent Application No. 08/900,982; filed July 25, 1997; titled "Mechanical Support for a Two Pill Adiabatic Demagnetization Refrigerator," NIST Docket No. 96–035; the availability of the invention for licensing was published in the **Federal Register**, Vol. 62, No. 203 (October 21, 1997).

The grant of field of use co-exclusive licenses to invention (1) above is contemplated to both Quantum Design, Inc., having a placer of business in San Diego, California, and to Noran Instruments, Inc., having a place of business in Middleton, Wisconsin. The grant of field of use exclusive licenses to inventions (2), (3), and (4) above is contemplated to Noran Instruments, Inc., having a place of business in Middleton, Wisconsin.

The prospective co-exclusive and exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Comments must be received in writing no later than February 2, 1998.

ADDRESSES: Comments on the Prospective Grants must be submitted to: Ernest Graf, National Institute of

Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Ernest Graf, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective co-exclusive and exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive and exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

(1) US Patent No. 5,634,718 describes the use of a normal metal absorber in a microcalorimeter, which gives significant advantages in increased detector speed and uniformity. Claims in the patent include use of a normal metal absorber in measuring energy events with particles or photons other than x-rays, construction using a thermally insulating membrane, normal metal superconductor (NS) contacts for thermal isolation, normal metal insulator superconductor (NIS) tunnel junctions, superconducting quantum interference device (SQUID) readout, ridge structures for fast heat diffusion, multiple temperature sensors for position readout and greater uniformity, and electronic heat pulses for calibration.

(2) US Patent Application 08/702,133 describes a reliable and manufacturable method of producing a superconducting film with a transition temperature that is tunable and in the range of interest (from approximately 50 to 300 mK). The superconducting components to the bilayers are Al and Ti. Al-based bilayers are readily manufacturable, produce reproducible transition temperatures, and can be readily incorporated with microfabrication technology.

(3) U.S. Patent Application No. 08/811,939 describes the combined use of polycapillary optics with microcalorimeter detectors. The invention enables present-day microcalorimeter spectrometers with areas under 0.1 mm^2 to have collection solid angles that are large enough for many practical applications. Although the construction of larger area detectors without capillary optics may be possible in the future, the use of x-ray optics has fundamental advantages because they enable the use of small detectors, which consequently have faster count rates and higher resolution.

(4) U.S. Patent Application No. 08/900,982 describes a practical implementation of dual Kevlar ™ string mechanical supports that are needed in a two pill refrigerator. The invention makes the supports easier to manufacture, assemble, and maintain in the field.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the inventions for purposes of commercialization. NIST anticipates that such a CRADA will be conducted on a cost recovery basis. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

Copies of the patent and patent applications may be obtained from NIST at the foregoing address.

Dated: November 25, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–31781 Filed 12–3–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Proposed Comprehensive, Long Range Preservation Plan for the MONITOR National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: In section 4 of Public Law 104–238 (The National Marine Sanctuaries Preservation Act (Act); October 11, 1996), Congress directed the Secretary of Commerce to prepare a long-range, comprehensive plan for the management stabilization, preservation, and recovery of artifacts and materials of the USS MONITOR. NOAA, on behalf of the Secretary of Commerce, developed a draft plan, entitled "Charting a New Course for the MONITOR: Comprehensive, Long Range Preservation Plan with Options for Management, Stabilization, Preservation, Recovery, Conservation and Exhibition of Materials and Artifacts from the MONITOR National Marine Sanctuary." The draft plan presents a range of options including a comprehensive management strategy that should ensure that, insofar as possible, the MONITOR will be preserved and protected for future generations. The draft plan recommends the application of state-of-the-art technology in overcoming the present rapid deterioration of the MONITOR through the combined strategies of stabilization and selective recovery.

DATES: Comments on the draft plan are invited and will be considered if submitted in writing by February 2, 1998.

ADDRESSES: Copies of the draft plan may be obtained from Dana Hill, MONITOR National Marine Sanctuary, The Mariners Museum, 100 Museum Drive, Newport News, VA 23606, tel. (757) 599–3122.

The draft plan is also published on the World Wide Web at http://www/nos.gov/nmsp/monitor/

Comments should be submitted to John Broadwater, Manager, MONITOR National Marine Sanctuary, The Mariners Museum, 100 Museum Drive, Newport News, VA 23606.

FOR FURTHER INFORMATION CONTACT: Dana Hill at (757) 599–3122.

SUPPLEMENTRY INFORMATION:

I. Background

The USS MONITOR was a radical departure from traditional warship design. The vessel was built almost entirely of iron; it was fully steam powered with no masts or sails; the engineering spaces, crews and officers quarters, and galley were all below the waterline; the hull was completely armored with a 5-foot-high, 32-inch-thick armor belt encircling the vessel for protection during battle. The most novel feature was the MONITOR's 22-foot-diameter, 9-foot-high iron turret. Positioned amidships, the armored turret could be rotated to train its two 11-inch Dahlgren smoothbore cannon in any direction.

The MONITOR was launched at Greenpoint, New York, on January 30, 1862. In early March, the MONITOR was ordered to Hampton Roads, Virginia, where on March 9 it engaged the CSS VIRGINIA, a Confederate ironclad constructed over the modified hull of the scuttled USS MERRIMACK. In the ensuing four-hour battle, the two vessels frequently bombarded each other at point-blank range with no substantial damage to either vessel. Although the battle ended in a draw, the MONITOR's performance impressed the U.S. Navy and introduced features including full iron armor, low freeboard and revolving turret that altered naval technology forever.

Shortly after midnight on December 31, 1862, while under tow by the USS RHODE ISLAND to Beaufort, North Carolina, the MONITOR sank in a storm off Cape Hatteras, North Carolina, with a loss of sixteen officers and crewmen.

In 1973 the wreck of the USS MONITOR was located by an interdisciplinary scientific team operating from the Duke University Research Vessel EASTWARD. A second expedition in April 1974, partly sponsored by the U.S. Navy and the National Geographic Society, provided detailed photographic documentation from which an assessment of the wreck was made. A photomosaic produced by the Naval Intelligence Division revealed that, with the exception of damage to the stern section and the collapse of the lower hull forward of the midships bulkhead, the wreck was in relatively good condition.

In recognition of the MONITOR's significance in American history and its profound impact on naval technology, the MONITOR was designated by the Secretary of Commerce as the first National Marine Sanctuary on January 30, 1975, pursuant to Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (renamed the National Marine Sanctuaries Act or NMSA), 16 U.S.C. 1431 *et seq.* Regulations implementing the designation are found at 15 CFR part 922, subpart F. NOAA is responsible for the management of the Sanctuary. The Sanctuary encompasses a vertical column of water one nautical mile in diameter 16 miles off the coast of Cape Hatteras, North Carolina. The wreck of the MONITOR lies upside down in 230 feet of water, with the stern resting on the displaced turret, which is also upside down. Since 1977 NOAA has conducted numerous expeditions to the MONITOR designed to generate information on the condition of the wreck.

Since 1991, a dramatic increase in the deterioration of the MONITOR's hull has been documented, leading NOAA to conclude that the collapse of the MONITOR's hull is imminent. In 1992, responding to the alarming degradation of the MONITOR's hull, NOAA commenced a broad range of initiatives including several expeditions to the Sanctuary, a cooperative effort with the U.S. Navy to help stabilize the MONITOR's hull, and development of a comprehensive plan for management of the Sanctuary and possible recovery of portions of the MONITOR. Because of the importance of these efforts and the limitations on funding, NOAA developed partnerships with several organizations, including the U.S. Navy, the National Undersea Research Program, The Mariners Museum, private dive groups and organizations, and others.

In 1993 and 1995, NOAA conducted major engineering and archaeological surveys at the Sanctuary in conjunction with further archival research and several small-scale site operations. Private research divers also assisted NOAA during this period in the recovery of additional data on the MONITOR's condition. This research concluded that a concerted, well-planned effort would be required to preserve the remains of the MONITOR. Planning efforts were initiated for the conduct of additional archival, engineering and on-site research aimed at identifying viable options for the preservation of the MONITOR. NOAA also communicated the situation to Congress and the public.

In 1996, Congress directed the Secretary of Commerce to prepare a long-range, comprehensive plan for the management, stabilization, preservation, and recovery of artifacts and materials of the USS MONITOR. Section 4 of Public Law 104–238 (The National Marine Sanctuaries Preservation Act (Act); October 11, 1996. The Secretary was also directed, to the extent feasible, to utilize the resources of other Federal and private entities with expertise and capabilities that are helpful. NOAA, on behalf of the Secretary of Commerce, developed a draft plan, entitled "Charting a New Course for the MONITOR: Comprehensive, Long Range Preservation Plan with Options for Management, Stabilization, Preservation, Recovery, Conservation and Exhibition of Materials and Artifacts from the MONITOR National Marine Sanctuary." The draft plan presents a range of options including a comprehensive management strategy that should ensure that, insofar as possible, the MONITOR will be preserved and protected for future generations. The draft plan recommends the application of state-of-the-art technology in overcoming the crisis at the Sanctuary through the combined strategies of stabilization and selective recovery.

II. Summary of the Draft Plan

The draft plan includes a wide range of options for comprehensive preservation and management of the MONITOR National Marine Sanctuary. In developing these options, NOAA reviewed all previous reports and proposals for on-site activities, including papers presented at a MONITOR conference in Raleigh, North Carolina, previous engineering and corrosion reports and the Draft Revised Management Plan for the MONITOR National Marine Sanctuary (NOAA 1982), all of which addressed preliminary recommendations. NOAA sought and received assistance from the U.S. Navy, Oceaneering International, Inc., The Mariners Museum, and others. In addition, NOAA held informal discussions with numerous engineers, archaeologists, and other specialists in order to identify new technology that might be applicable for the MONITOR situation. The draft plan presents all options for stabilizing and/or preserving the MONITOR that were identified by NOAA as viable. The plan contains sufficient information to permit the formulation of a comprehensive phased approach to the problem. Once an option (or combination of options) has been selected, it will be necessary to seek expert assistance from appropriate disciplines (ocean engineers, nautical archaeologists, artifact conservators, etc.) to assist with the development of a detailed implementation plan.

The draft plan presents several options along with pertinent information on advantages, disadvantages, required action and estimated costs. Advantages and disadvantages address potential impacts on the MONITOR and its contents. Options are discussed and compared, and recommendations are presented.

Since the MONITOR is listed on the National Register of Historic Places, and in addition, is a National Historic Landmark, any plan proposing on-site activities that could disturb the site in any way must be reviewed by state and Federal officials, in compliance with section 106 of the National Historic Preservation Act, and other pertinent laws.

In establishing an archaeology plan, consideration must be given to the fact that the MONITOR's hull and contents are threatened with damage or loss due to the rapid deterioration of the hull and loss of structural integrity. NOAA considers the MONITOR to be a threatened site and, therefore, will develop the archaeology plan accordingly. Federal law includes special provisions for threatened sites, with consideration being given to the relative impact to a threatened resource if left undisturbed versus taking positive action to preserve the resource. In the MONITOR's case, an effective argument can be made that if positive steps are not taken to stabilize the hull and/or recover some of the material, the entire

site could be irreparably damaged by continued deterioration in as little as one to five years. The draft plan is in keeping with the National Marine Sanctuaries Program's Strategic Plan for the 21st Century. The Program's primary goal is to protect sanctuary resources, making our sanctuaries world-class models for effective, innovative management of protected areas (Sanctuaries and Reserves Division 1997).

III. Summary of Options

The options in the draft plan are summarized as follows:

A. Non-intervention. With this option, NOAA would continue to manage the Sanctuary in accordance with the current policy but would take no action to prevent continuing deterioration. This option would allow nature to take its course, likely resulting in the ultimate collapse of the MONITOR's hull.

B. In Situ Preservation by Encapsulation. With this option, the MONITOR would be entombed in some acceptable manner (i.e. covering with sand, grass mats, etc.). Possible impacts on the MONITOR and its environment might include additional damage to the wreck due to the weight of the covering material and the loss of access to the wreck.

C. In Situ Preservation by Shoring. This option would be accomplished through the use of approved methods and materials, such as sand bags, grout bags, or jacks, to support portions of the hull that are suspended above the bottom by the position of the turret. Impact to the MONITOR and its environment would be negligible and some portions of the wreck would be given improved support.

D. In Situ Preservation by Cathodic Protection. This option would involve the installation of a passive (sacrificial anode) or active (impressed current) cathodic protection system to reduce the corrosive action from the marine environment. Impact to the MONITOR and its environment is uncertain, and would not prevent inevitable collapse.

E. Selective Recovery. This option includes a selective approach to recovering hull components and artifacts that are of significant historic value. Objects being considered for selective recovery include the propeller, turret, cannons, engine and small artifacts. Possible impact to the MONITOR and its environment might include unavoidable damage to other portions of the wreck and contents during recovery operations.

F. Full Recovery. In this option, the entire hull, turret, cannons and all contents would be recovered, conserved, and, eventually displayed. This could include recovery of the entire hull as a single unit or a series of smaller recoveries. Possible impact to the MONITOR might include damage during recovery of portions of the hull and contents; however, if raised, the MONITOR could be conserved and reconstructed for display.

G. Selective Recovery Followed by Encapsulation. This option combines selective recovery with in situ preservation by encapsulation. Following recovery of all selected hull components and artifacts, the site would be encapsulated for protection of the remaining cultural material. Possible impact to the MONITOR might include unavoidable damage to other portions of the wreck and contents during recovery operations and additional damage to the wreck due to the weight of the covering material and the loss of access to the wreck.

H. Selective Recovery Combined with Shoring. This option combines selective recovery with in situ preservation by shoring of the remaining material, which would provide improved support. Possible impact to the MONITOR and its environment might include unavoidable damage to other portions of the wreck and contents during recovery operations.

I. Expanded Enforcement of Sanctuary Regulations. This option addresses evidence of increased illegal encroachment on the Sanctuary by increasing enforcement activities at the site to prevent further damage from illegal activities. Unless combined with one or more of the other options, the only impact might be a reduction of damage from human causes.

Because of the MONITOR's significance in American history and its status as a National Historic Landmark, NOAA is making this draft plan available to the public and invites comments and other pertinent information.

Dated: November 28, 1997.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–31748 Filed 12–3–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board's Special Committee to Review the Voluntary National Tests Development Contract. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date: December 16, 1997.

Time: 9:30 a.m. to 4:00 p.m.

Location: St. Louis Airport Marriott; I–70 at Lambert International Airport; St. Louis, Missouri, 63134.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving Americas Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001 and is required to review within 90 days (i.e., by February 11, 1998) and modify the contract to the extent the Board determines necessary; if the contract cannot be modified to the extent the Board determines necessary, the contract shall be terminated, and a new contract negotiated.

On December 16, 1997 the National Assessment Governing Board's Special Committee to Review the Voluntary National Tests Development Contract will hold a closed meeting. The purpose of the meeting is for the NAGB Special Committee to review the Test Development Contract, to formulate its recommendations to the NAGB for modification or termination and recompetition of the Development Contract for the Voluntary National Tests. This information relates to the source selection criteria by which government contracts may be modified or awarded. Not only would the disclosure of such data implicate proscriptions set forth in the Federal Acquisition Regulations, but also such disclosure would significantly frustrate a proposed agency action. Specifically, disclosure of the Subcommittee's discussion prematurely, including contract specifications and government cost estimates, could affect private decisions made by the contractor which might damage the financial interests of the government as a whole, by, for example, increasing the costs to the government, and might make it impossible for the two sides to reach agreement. Such matters are protected by exemption 9B of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of this closed meeting and other related matters, which are informative to the public and consistent with the policy of the Section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: December 1, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–31774 Filed 12–3–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program Special Projects Financial Assistance

AGENCY: The Department of Energy.

ACTION: Notice for 1998 State Energy Program special projects.

SUMMARY: As options offered under the State Energy Program (SEP) for fiscal year 1998, the Office of Energy Efficiency and Renewable Energy is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. States that are awarded funding for special projects will carry out their projects in conjunction with their efforts under SEP, with the special projects funding and activities tracked separately so that the end-use sector programs may follow the progress of their projects.

The projects must meet the relevant requirements of the programs providing the funding, as well as of SEP, as specified in the program guidance/solicitation. Among the goals of the special projects activities are to assist States to: Accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

DATES: The program guidance/solicitation is expected to be December 5, 1997. Applications must be received by February 14, 1998.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: Ms. Faith Lambert at the U.S. Department of Energy Headquarters, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2319, for referral to the appropriate DOE Regional Support Office.

SUPPLEMENTARY INFORMATION: Fiscal year 1998 is the third year special project activities are funded in conjunction with the State Energy Program (10 CFR part 420). Most of these State-oriented special projects are related to or based on similar efforts that have been funded separately by the various DOE end-use sector programs that are now providing funding for these optional SEP activities.

Availability of Fiscal Year 1998 Funds

With this publication, DOE is announcing the availability of $11.825 million in financial assistance funds for fiscal year 1998. The awards will be made through a competitive process. The end-use sector programs that are participating in the SEP special projects for fiscal year 1998, with the estimated minimum amount of funding available for each, are as follows:

- Clean Cities: Accelerating the introduction and increasing the use of alternative fuels and alternative fueled vehicles through the development of infrastructure and clean corridors ($2.0 million).
- Federal Energy Management Program: Developing Federal/State partnerships to increase technical capability and funding for energy efficiency, renewable energy, and water conservation measures for Federal and State buildings ($975,000).
- Industrial Programs: Accelerating industrial and clean production opportunities with regional industries through the programs of the Industrial Alliance (Inventions and Innovation, NICE^3, Industrial Assessment Centers, Motor Challenge, Climate Wise, and Steam Partnership. ($2.35 million)
- Rebuild America: Helping community and regional partnerships improve commercial and multifamily building energy efficiency ($1.0 million).
- Codes and Standards: Supporting States' actions to update, implement, and enforce residential and commercial building energy codes ($4.0 million).
- Utility Technologies: Projects to demonstrate and increase utilization of renewable energy sources, such as biomass, geothermal heat pumps, hydrogen technology, photovoltaics for utility scale applications, and wind energy ($1.5 million).

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, or any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program is 81.041.

Requirements for cost sharing or matching contributions will be addressed in the program guidance/solicitation for each special project activity, as appropriate. Cost sharing or matching contributions beyond any required percentage are desirable.

Any application must be signed by an authorized State official, in accordance with the program guidance/solicitation.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Support Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the respective participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. A decision as to the applications selected for funding will then be made by the Deputy Assistant Secretary for Building Technology, State and Community Programs, or designee, based on the findings of the technical merit review and any stated program policy factors. DOE reserves the right to fund, in whole

or in part, any, all or none of the applications submitted in response to this notice.

More detailed information is available from the U.S. Department of Energy Headquarters at (202) 586–2319.

Issued in Washington, D.C., on November 28, 1997.

Joseph Romm,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–31788 Filed 12–3–97; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4745–000]

Alpena Power Marketing, L.L.C.; Notice of Issuance of Order

December 1, 1997.

Alpena Power Marketing, L.L.C. (Alpena Marketing) filed an application for authorization to engage in the wholesale sale and brokering of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Alpena Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Alpena Marketing. On November 13, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above—docketed proceeding.

The Commission's November 13, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (F):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Alpena Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Alpena Marketing is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Alpena Marketing, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Alpena Marketing's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 15, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31784 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–81–000]

Colt Electric Corporation; Notice of Issuance of Order

December 1, 1997.

Colt Electric Corporation (Colt) submitted for filing a rate schedule under which Colt will engage in wholesale electric power and energy transactions as a marketer. Colt also requested waiver of various Commission regulations. In particular, Colt requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Colt.

On November 17, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Colt should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Colt is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Colt's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 17, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31783 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–33–000 and EL98–9–000]

Enron Power Marketing, Inc.; Order Accepting Rate Schedule for Filing, as Modified, Granting Waiver of Notice, and Announcing Policy Concerning Reassignment of Transmission Capacity by Power Marketers

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey

Issued November 28, 1997.

In this order, we accept for filing Enron Power Marketing, Inc.'s (Enron Marketing's) proposed rate schedule for reassignment of transmission rights, subject to certain modifications. We also inform all power marketers of an amendment to their existing rate schedules pertaining to reassignment of transmission rights, and waive the prior notice and filing requirements with respect to reassignments of transmission capacity by power marketers.

Background

On October 3, 1997, Enron Marketing submitted for filing a proposed tariff for the sale, assignment, or transfer of transmission rights procured under any open access transmission rate schedule by Enron Marketing on the transmission system of any transmission provider.

Enron Marketing's rate schedule provides that the charges for such transmission service would be capped at a price not to exceed the highest of: (1) The original transmission rate paid by Enron Marketing; (2) the transmission provider's maximum stated firm transmission rate at the time of the transmission reassignment; or (3) Enron Marketing's own opportunity costs capped at the cost of expansion at the time of reassignment. The rate schedule further provides that prior to any reassignment at a price based on opportunity costs, Enron Marketing will first file for Commission authorization pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994).

In addition, Enron Marketing commits to provide the Commission information concerning each reassignment in the quarterly transaction reports it files with the Commission for its power sales.[1] The specified information is: (1) The date of the assignment; (2) the name of the buyer; (3) the amount and type of transmission (*e.g.*, firm or non-firm); (4) the identity of the transmission system on which the reassigned capacity exists; and (5) the length of the assignment.

Enron Marketing requests waiver of the Commission's 60-day prior notice and filing requirement to allow an effective date of April 24, 1997.

Notice of Enron Marketing's filing was published in the **Federal Register**, 62 FR 55,240 (1997), with comments, protests, and interventions due on or before October 29, 1997. None was filed.

Discussion

The Commission's Policy

The Commission stated in Order No. 888 that a public utility that reassigns transmission capacity must "have on file with the Commission a Rate Schedule governing reassigned capacity."[2] We recently affirmed and clarified this policy in *Southwestern Public Service Company*, 80 FERC ¶ 61,245 at 61,905 (1997), *reh'g pending (Southwestern)*. In that order, we rejected the argument of a power marketer (Electric Clearinghouse, Inc.) that requiring all public utilities, including power marketers, to have on file a rate schedule for capacity reassignments would be unduly burdensome and would serve no purpose.

The Instant Proceeding

Enron Marketing's filing is consistent with the Commission's requirements regarding reassignment of transmission capacity.[3] The proposed reassignment provisions would not allow Enron Marketing to acquire or reassign transmission service without complying with the open access transmission tariffs of transmission providers, and none of the procedures for transmission service under those tariffs is changed or modified by the proposed reassignment provisions. Accordingly, we will accept Enron Marketing's proposed rate schedule for filing.

Enron Marketing states that the Commission has not established specific filing requirements in connection with reassignments of transmission capacity by power marketers. Enron Marketing proposes that, rather than file with the Commission a service agreement each time Enron Marketing makes a capacity reassignment, it provide in its quarterly transaction reports the information indicated above. Enron Marketing states that this is the same information that the Commission requires transmission-owning public utilities to provide when they file service agreements with the Commission.[4]

We agree that the quarterly transaction report is an appropriate place to provide the necessary information. However, the information Enron Marketing proposes to include with its reports exceeds that which we require transmission providers to include in their umbrella service agreements for capacity reassignments. We require transmission providers to report only the name of the assignee.[5] We will, therefore, require Enron Marketing to include only that information in its quarterly reports.

Finally, Enron Marketing states that it was not aware until *Southwestern* was issued that "non-traditional public utilities, such as power marketers," are subject to this requirement. Enron Marketing further states that, since learning of its obligation, it has acted promptly to ascertain its responsibilities and to comply. Because Enron Marketing made its first reassignment of capacity on April 24, 1997, it seeks waiver of the 60-day prior notice and filing requirement. We find good cause exists to grant Enron Marketing's request for waiver of the 60-day notice and filing requirement and we will allow the proposed rate schedule to become effective, as requested, on April 24, 1997.

Applicability to Other Power Marketers Reassigning Transmission Capacity

We take this opportunity to clarify, as explained in *Southwestern*, the applicability of the transmission capacity reassignment filing requirements to all power marketers. In order to avoid the need for each power marketers. In order to avoid the need for each power marketer to file for Commission review an individual rate schedule for the reassignment of transmission capacity, we hereby inform all power marketers that their existing rate schedules will be amended to include the following language:

> This power marketer may reassign transmission capacity that it has reserved for its own use at a price not to exceed the highest of: (1) The original transmission rate paid by the power marketer; (2) the applicable transmission provider's maximum stated firm transmission rate on file at the time of the transmission reassignment; or (3) the power marketer's own opportunity costs, capped at the applicable transmission provider's cost of expansion at the time of the sale to the eligible customer. The power marketer will not recover opportunity costs in connection with reassignments without making a separate filing under Section 205. Except for the price, the terms and conditions under which the reassignment is made shall be the terms and conditions governing the original grant by the transmission provider. Transmission capacity may only be reassigned to a customer eligible to take service under the transmission provider's open access transmission tariff or other transmission rate schedules. This power marketer will report the name of the assignee in its quarterly reports.

With the preceding language inserted in their existing rates schedules, all power marketers will have Commission authorization to engage in transmission capacity reassignments, without the necessity of making individual filings.[6]

Consistent with our action above granting Enron Marketing's request for waiver, we find good cause exists to waive the prior notice and filing requirement for all power marketers

[1] Enron previously has received Commission authorization to engage in wholesale power sales at market-based rates as a power marketer. *See* Enron Power Marketing, Inc., 65 FERC ¶ 61,305, *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994). The Commission subsequently accepted for filing changes to Enron's market-based rate schedule to reflect a merger between Enron Marketing's corporate parent and Portland General Corporation. *See* Enron Corporation, *et al.*, 78 FERC ¶ 61,179 (1997).

[2] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,697 n.324 (1998), *order on reh'g*, Order No. 888–A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 at 30,224 n.151 (1997), *order on reh'g*, Order No. 888–B, 62 FR ____ (1997), 81 FERC ¶ 61,248 (1997).

[3] See Order No. 888, FERC Stats. & Regs. at 31,694–97; Order No. 888–A, FERC Stats. & Regs. at 30,219–25; Commonwealth Edison Company, 78 FERC ¶ 61,312 at 62,335–36 (1997).

[4] See, *e.g.*, Virginia Electric and Power Company, 81 FERC ¶ 61,125, slip op. at 3 (1997).

[5] See, *e.g.*, Griffin Energy Marketing, L.L.C., 81 FERC ¶ 61,133, slip op. at 5 (1997).

[6] Any filings made after the date of the order by a power marketer seeking market-based or cost-based rates shall include this language in its proposed rate schedule.

with respect to transmission capacity reassignments. The effective date of the rate schedule amendment will be the date of the first reassignment.

Finally, consistent with the reporting requirement applied to Enron Marketing, we will require power marketers to include only the name of the assignee in their quarterly transaction reports. To the extent any power marketers already have made reassignments, they are directed to incorporate the required information in their next quarterly transaction report.

The Commission Orders

(A) Enron Marketing's request for waiver of the 60-day notice and filing requirement is hereby granted, and the proposed rate schedule for the reassignment of transmission capacity, as modified, is hereby accepted for filing, effective April 24, 1997.

(B) Enron Marketing is hereby informed of the following rate schedule designation: *Enron Power Marketing, Inc.*, Rate Schedule FERC No. 40.

(C) The power marketer rate schedules on file with the Commission are hereby revised, effective as of the date of the first reassignment of transmission capacity, to include the language discussed in the body of this order.

(D) The Secretary is hereby directed to arrange for the prompt publication of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31782 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–851–001]

H.Q. Energy Services (U.S.) Inc.; Notice of Issuance of Order

November 28, 1997.

H.Q. Energy Services (U.S.) Inc. (H.Q. Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, H.Q. Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by H.Q. Energy. On November 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by H.Q. Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, H.Q. Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of H.Q. Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of H.Q. Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31760 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–326–013 and RP95–242–012]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1997.

Take notice that on November 25, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 19 and Seventh Revised Sheet No. 20, to be effective January 1, 1998.

Natural states that the purpose of this filing is to implement certain provisions applicable to Rate Schedule BESS and NSS, and certain rates derived from the Rate Schedule BESS rate pursuant to the Stipulation and Agreement (Settlement) filed by Natural, in Docket Nos. RP95–326–010 and RP95–242–010 on May 31, 1996. The Settlement represents a comprehensive resolution of Natural's pending general rate case, which was approved by the Commission in a letter order issued on November 3, 1997, in said dockets.

Natural requested any waivers that may be required to permit the tendered tariff sheets to become effective on January 1, 1998.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies, and all parties set out on the official service lists in Docket Nos. RP95–326 and RP95–242.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31763 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4636–000; ER97–4652–000; ER97–4653–000; ER97–4654–000]

NEV, L.L.C., NEV East, L.L.C., NEV California, L.L.C.; NEV Midwest, L.L.C.; Notice of Issuance of Order

November 28, 1997.

NEV, L.L.C. (NEV), NEV East, L.L.C. (NEV East), NEV California, L.L.C. (NEV California), and NEV Midwest, L.L.C. (NEV Midwest) (hereafter Applicants), filed identical applications for authorization to sell capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On November 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NEV, NEV East, NEV California, and NEV Midwest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31761 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–275–010]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1997.

Take notice that on November 25, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, with an effective date of December 1, 1997:

Substitute Sixth Revised Sheet No. 54

On November 21, 1997, Northern filed tariff sheets to revise Mainline fuel retention percentages and the unaccounted for (UAF) percentage on Northern's system to be effective from December 1, 1997 through May 31, 1998, as agreed to at the settlement conference held on November 13, 1997, before Settlement Judge H. Peter Young. In this November 21, 1997, filing, Northern correctly stated all fuel percentages on Sheet Nos. 61–64, as agreed to by the active parties (the Parties) in these dockets at the settlement conference. However, Northern inadvertently failed to revise the Market Area fuel percentage on Sheet No. 54 to 1.23%. The reason for the instant filing is to correctly reflect the Market Area fuel percentage on sheet No. 54 as 1.23%.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31765 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4281–000]

NRG Power Marketing, Inc., Notice of Issuance of Order

November 28, 1997.

NRG Power Marketing Inc. (NRG Power), an affiliate of Northern States Power Company, filed an application for authorization to sell electric energy and capacity at market-based rates. NRG Power also requested certain waivers and authorizations. In particular, NRG Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances and assumptions of liabilities by NRG Power. On November 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NRG Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, NRG Power is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issued or assumption is for some lawful object within the corporate purposes of NRG Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of NRG Power's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31762 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–010; and ER96–1663–011]

Pacific Gas and Electric Company; Southern California Edison Company; San Diego Gas and Electric Company; Notice of Filing

November 28, 1997.

Take notice that on November 26, 1997, the California Independent System Operator Corporation (ISO) filed for Commission approval in this docket, pursuant to Rule 216 of the Commission's Rules and Regulations, a notice to withdraw a portion of an application to amend the ISO Tariff Sections 11.3.2 and 11.3.3 filed on November 21, 1997, and filed an application for Section 205 approval of a revised Section 11.3.2 and waiver of the 60 day notice requirement to allow the proposed tariff amendment to take effect on January 1, 1998.

The ISO states that the notice of withdrawal of the proposed tariff amendments regarding daily, weekly and monthly settlements and billing is necessary for the January 1, 1998, operations of the ISO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31759 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–536–001]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1997.

Take notice that on November 24, 1997, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the corrected tariff sheets listed on Appendix A to its filing, to become effective on November 1, 1997 and December 1, 1997, respectively.

Panhandle states that this filing corrects a clerical error on its tariff sheets to reflect the ST Volumetric Surcharge of 3.00¢ applicable to Rate Schedules IT and EIT during the twelve month Section 18.13 Reconciliation Recovery Period.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies, and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31766 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–98–000]

Texas Eastern Transmission Corporation; Koch Gateway Pipeline Company; Notice of Application

November 28, 1997.

Take notice that on November 21, 1997, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and Koch Gateway Pipeline Company (Koch) (jointly referred to as Applicants), filed in Docket No. CP98–98–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service by and between themselves, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants assert that they have agreed to terminate the exchange service pursuant to a letter agreement, dated April 12, 1996, which is evidenced by Texas Eastern's Rate Schedule X–131 and Koch's Rate Schedule X–168.

Any person desiring to be heard or to make protest with reference to said application should on or before December 19, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31764 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG94–75–000, et al.]

Entergy Power Development Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Development Corporation

[Docket No. EG94–75–000]

Take notice that on November 6, 1997, pursuant to Section 365.7 of the Commission's Regulations, 18 CFR 365.7, Entergy Power Development Corporation filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a) (1) of the Public Utility Holding Company Act of 1935, as amended.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF98–5041–000]

Take notice that on November 19, 1997, the Deputy Secretary of the Department of Energy submitted a request for final confirmation and approval of the Western Area Power Administration's Rate Schedules for Wholesale Firm Power Service (PD–F6), Firm Transmission Service (PD–FT6), Firm Transmission Service of Salt Lake City Area Integrated Projects Power (PD–FCT6), and Nonfirm Transmission Service (PD–NFT6) from the Parker-Davis Project for service to existing contractors. The Deputy Secretary requests confirmation and approval for a 59-month period beginning November 1, 1997, and ending September 30, 2002.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. EP EDEGEL, Inc.

[Docket No. EG94–78–000]

Take notice that on November 6, 1997, pursuant to Section 365.7 of the Commission's Regulations, 18 CFR 365.7, EP EDEGEL, Inc., filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a) (1) of the Public Utility Holding Company Act of 1935, as amended.

4. Equitable Power Services Co., Petroleum Source & Systems Group Inc., Strategic Energy Ltd., et al.

[Docket No. ER94–1539–014, Docket No. ER95–266–011, and Docket No. ER96–3107–004 (not consolidated)]

Take notice that the following informational filings have been made with the Commission an are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 15, 1997, Equitable Power Services Co. filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1539–000.

On October 15, 1997, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

On October 15, 1997, TransCanada Power filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–692–000.

On October 14, 1997, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 25, 1995, order in Docket No. ER95–751–000.

On October 15, 1997, Energy Resource Management Corporation filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–356–000.

On October 14, 1997, NGTS Energy Services filed certain information as required by the Commission's November 1, 1996, order in Docket No. ER96–2892–000.

On October 16, 1997, Strategic Energy Ltd. filed certain information as required by the Commission's November 13, 1996, order in Docket No. ER96–3107–000.

5. Northeast Utilities Service Co.

[Docket Nos. ER95–1686–004 and ER96–496–005]

Take notice that Northeast Utilities Service Company ("NUSCO"), on November 17, 1997, tendered for filing a schedule reflecting unbundled settlement rates for firm transmission and Scheduling, System Control and Dispatch services in compliance with an October 17, 1997 order in the captioned dockets.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. ER96–447–001]

Take notice that on November 10, 1997, Nevada Power Company ("Nevada Power") tendered for filing, in Docket No. ER96–447–000, revised tariff sheets which specify the on-peak and off-peak hours of non-firm point-to-point transmission service in compliance with the Commission's order dated October 17, 1997. Nevada Power requests a waiver of the 60 day notice requirement and requests that the revised tariff sheets be effective as of the date of the filing.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER96–713–001]

Take notice that on November 10, 1997, Public Service Company of Colorado filed a correction to the Energy Charge contained in the Rate for Generation Service under Rate Schedule FERC No. 44 to the City of Burlington, Colorado.

Copies of the filing have been served on the affected customer and on the Public Utilities Commission of the State of Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER96–2585–002]

Take notice that on November 17, 1997, pursuant to the Commission's letter order dated October 17, 1997, Niagara Mohawk Power Corporation submitted an amended Market-Based Power Sales Tariff in the above-captioned docket.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER97–3359–001]

On November 13, 1997, Florida Power & Light Company submitted its compliance filing as requird under the Commission's October 29, 1997 order in this proceeding.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–3447–000]

Take notice that Northeast Utilities Service Company, on behalf of Public Service Company of New Hampshire, tendered for filing, an amendment to its filing in this docket.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER97–4143–001]

Take notice that on November 17, 1997, American Electric Power Service Corporation tendered for filing an amendment in the above-referenced docket, in compliance with the Commission's Order Conditionally Accepting for Filing Proposed Market Based Rates.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER97–4498–001]

Take notice that on November 17, 1997, Virginia Electric and Power Company tendered for filing a revised form of network integration service agreement providing for its use of its transmission system in connection with requirements service to its wholesale power customers.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Co.

[Docket No. ER97–4553–001]

Take notice that on November 10, 1997, Louisville Gas and Electric Company (LG&E) tendered for filing a refund report for power sales transactions between LG&E and Southern Company Services under LG&E's Rate Schedule GSS.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power

[Docket Nos. ER97–4630–001 and ER97–4707–001]

Take notice that on November 17, 1997, Washington Water Power, tendered for reporting with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.19a, Refund Calculations and Customer Transmittal letters for Tenaska Power Services Co. and Tillamook People's Utility District as ordered by the Commission, by letter dated November 6, 1997, pursuant to WWP's failure to file Service Agreements within 30 days after service commenced.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services Inc.

[Docket No. ER98–3–000]

Take notice that on November 5, 1997, Cinergy Services Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER98–365–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreements and Certificates of Concurrence with PacifiCorp Power Marketing, Inc., under NEP's FERC Electric Tariff, Original Volumes No. 5 and 6.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER98–366–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreement and Certificates of Concurrence with Wheeled Electric Power Company, under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER98–525–000]

Take notice that on November 3, 1997, Arizona Public Service Company (the Company), tendered for filing an informational report on refunds of over billed amounts to wholesale customers through the Company's FERC Fuel Adjustment Clause.

Copies of this filing have been served upon the affected parties as follows:

Customer Name and APS/FPC/FERC Rate Schedule

Electrical District No. 3 (ED–3), 12
Tohono O'odham Utility Authority[1] (TOUA), 52
Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk), 58
Arizona Power Authority (APA), 59
Colorado River Indiana Irrigation Project[2] (CRIIP), 65
Electrical District No. 1 (ED–1), 68
Town of Wickenburg (Wickenburg), 74
Southern California Edison Company (SCE), 120
Electrical District No. 6 (ED–6), 126
Electrical District No. 7 (ED–7), 128
Electrical District No. 8 (ED–8), 140
Aquila Irrigation District (AID), 141
McMullen Valley Water Conservation and Drainage District (MVD), 142
Tonopah Irrigation District (TID), 143
Citizens Utilities Company (Citizens)[2], 149
Harquahala Valley Power District (HVPD), 153
Buckeye Water Conservation and Drainage District (Buckeye), 155
Roosevelt Irrigation District (RID), 158
Maricopa County Municipal Water Conservation District (MCMWCD), 168
City of Williams (Williams), 192
San Carlos Indiana Irrigation Project (SCIP), 201
Maricopa County Municipal Water Conservation District at Lake Pleasant (MCMWCD-Lk.Pl.), 209
The California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

[1] Formerly Papago Utility Tribal Authority.
[2] APA–FPC/FERC Rate Schedule in effect during the refund period.

19. Cinergy Services, Inc.

[Docket No. ER98–579–000]

Take notice that on November 7, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Louisville Gas and Electric Company (LG&E).

Cinergy and LG&E are requesting an effective date of October 15, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Cincinnati Gas & Electric Company and PSI Energy, Inc

[Docket No. ER98–580–000]

Take notice that on November 6, 1997, The Cincinnati Gas & Electric Company ("CG&E") and PSI Energy, Inc. ("PSI"), (hereinafter collectively referred to as "Cinergy Operating Companies"), tendered for filing pursuant to the Commission's November 15, 1996 Order issued in Docket Nos. ER96–2504–000 and ER96–2506–000 approving, among other things, Cinergy's market-based rate Power Sales Tariff, FERC Electric Tariff, First Revised Volume No. 4, Cinergy's revised quarterly transaction report for the calendar quarter ending September 30, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–581–000]

Take notice that on November 7, 1997, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company tendered for filing Notices of Cancellation of the Ohio Edison System Open Access Tariff and the Centerior Energy Open Access Tariff effective midnight January 6, 1998. These Open Access Tariffs will be superseded by the FirstEnergy Open Access Tariff, which became effective upon consummation of the merger of the four operating companies named above, at 12:01 A.M., November 8, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER98–583–000]

Take notice that on November 7, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Avista Energy, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER98–584–000]

Take notice that on November 7, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Williams Energy Services Company under LG&E's Open Access Transmission Tariff.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Central Vermont Public Service Corporation

[Docket No. ER98–585–000]

Take notice that on November 7, 1997, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Cinergy Services, Inc., as agent for and on behalf of the Cinergy Operating Companies under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on November 7, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER98–586–000]

Take notice that on November 7, 1997, PECO Energy Company (PECO), filed a Service Agreement dated October 21, 1997, with NorAm Energy Management, Inc. (NEM), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NEM as a customer under the Tariff.

PECO requests an effective date of October 21, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NEM and to the Pennsylvania Public Utility Commission.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–587–000]

Take notice that November 7, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated November 5, 1997, with Western Resources, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Western Resources, Inc., as a customer under the Tariff. DLC requests an effective date of November 5, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER98–588–000]

Take notice that on November 7, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with Central Louisiana Electric Company.

A copy of this filing has been served on the Arizona Corporation Commission and Central Louisiana Electric Company.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power & Light Company

[Docket No. ER98–590–000]

Take notice that on November 7, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Williams Energy Services Company for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Bangor Hydro-Electric Company

[Docket No. ER98–591–000]

Take notice that on November 7, 1997, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with the Indeck-Maine L.L.C.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER98–592–000]

Take notice that on November 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which City Water, Light & Power, Springfield, Illinois will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Florida Power & Light Company

[Docket No. ER98–593–000]

Take notice that on November 7, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Heartland Energy Services for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on March 12, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. UtiliCorp United Inc.

[Docket No. ER98–594–000]

Take notice that on November 7, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with SPS Power Marketing for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. UtiliCorp United Inc.

[Docket No. ER98–595–000]

Take notice that on November 7, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with SPS Power Marketing for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. UtiliCorp United Inc.

[Docket No. ER98–596–000]

Take notice that on November 7, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Williams Energy Services Company for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. PP&L, Inc.

[Docket No. ER98–597–000]

Take Notice that on November 7, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) ("PP&L"), filed a Service Agreement dated November 5, 1997, with Minnesota Power & Light Company (MP&L) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds MP&L as an eligible customer under the Tariff.

PP&L requests an effective date of November 7, 1997 for the Service Agreement.

PP&L states that copies of this filing have been supplied to MP&L and to the Pennsylvania Public Utility Commission.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Florida Power Corporation

[Docket No. ER98–598–000]

Take notice that on November 7, 1997, Florida Power Corporation (FPC), tendered for filing an amendment to Florida Power Corporation FERC Rate Schedule No. 92, an interchange contract for the provision of interchange service between itself and the City of Lakeland. As proposed, the amendment would add a service schedule to that interchange contract to provide for service under Schedule OS, Opportunity Sales. FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on November 8, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Florida Power Corporation

[Docket No. ER98–599–000]

Take notice that on November 7, 1997, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and NP Energy Inc. The contract provides for service under Schedule J, Negotiated Interchange Service, Schedule OS, Opportunity Sales, and Schedule S, NP Energy Inc., FERC Electric Schedule No. 1. FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on November 8, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Kansas City Power & Light Co.

[Docket No. ER98–600–000]

Take notice that on November 7, 1997, Kansas City Power & Light Company (KCPL), tendered for filing its quarterly report transactions under its Generation Sales Tariff which matches the information required in *Southern Company Services, Inc.*, 75 FERC ¶61,130 (1996).

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Indiana Michigan Power Company

[Docket No. ER98–601–000]

Take notice that on November 6, 1997, Indiana Michigan Power Company (I&M) submitted for filing a Facility Interconnection and Operation Agreement between I&M, on the one hand, and an alliance consisting of Southern Indiana Gas & Electric Company, Hoosier Energy Rural Electric Cooperative, Inc. and Southern Indiana Rural Electric Cooperative, Inc. (the Alliance), on the other.

I&M requests an effective date of March 1, 1998.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. New England Power Pool

[Docket No. ER98–602–000]

Take notice that on November 6, 1997, the New England Power Pool (NEPOOL), Executive Committee filed a Service Agreement for Through or Out Service or Other Point-to-Point Transmission Service pursuant to section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will permit NEPOOL to provide transmission service to Maine Public Service Company in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented, under the above-referenced dockets. NEPOOL requests a retroactive effective date of October 6, 1997, for commencement of transmission service. Copies of this filing were served upon all persons on the Commission's official service lists in the captioned proceedings, the NEPOOL members, the New England Public Utility Commissioners and all parties to the transactions.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Duquesne Light Company

[Docket No. ER98–604–000]

Take notice that on November 10, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Horizon Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Horizon Energy as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Duquesne Light Company

[Docket No. ER98–605–000]

Take notice that on November 10, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with QST Energy, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds QST Energy, Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Duquesne Light Company

[Docket No. ER98–606–000]

Take notice that on November 10, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with Allegheny Energy Solutions, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Allegheny Energy Solutions, Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Duquesne Light Company

[Docket No. ER98–607–000]

Take notice that on November 10, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with CMS Marketing, Services and Trading Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds CMS Marketing, Services and Trading Co., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. Duquesne Light Company

[Docket No. ER98–608–000]

Take notice that on November 10, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with NEV East, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds NEV East, L.L.C., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

46. West Texas Utilities Company

[Docket No. ER98–609–000]

Take notice that on November 10, 1997, West Texas Utilities Company (WTU) submitted for filing (1) a Wholesale Power Choice Tariff (WPC Tariff), (2) executed service agreements under the WPC Tariff with the following: Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Midwest Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., Stamford Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., (the WPC Customers); and (3) executed Agreements Concerning Implementation of Wholesale Power Choice Tariff between WTU and each of the WPC Customers.

WTU requests an effective date of January 1, 1997, for the WPC Tariff and the related service agreements and Implementation Agreements and, accordingly, requests waiver of the Commission's notice requirements. Copies of this filing have been served on each of the ten customers and the Public Utility Commission of Texas.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

47. Kansas City Power & Light Company

[Docket No. ER98–611–000]

Take notice that on November 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 9, 1997, between KCPL and Avista Energy, Inc., KCPL proposes an effective date of October 24, 1997, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

48. Kansas City Power & Light Company

[Docket No. ER98–612–000]

Take notice that on November 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 16, 1997, between KCPL and Florida Power Corp. KCPL proposes an effective date of October 24, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

49. Cinergy Services, Inc.

[Docket No. ER98–613–000]

Take notice that on November 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DTE Energy Trading (DTE).

Cinergy and DTE are requesting an effective date of October 21, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

50. Cinergy Services, Inc.

[Docket No. ER98–614–000]

Take notice that on November 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DTE Energy Trading (DTE).

Cinergy and DTE are requesting an effective date of October 21, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

51. UtiliCorp United, Inc.

[Docket No. ES98–7–000]

Take notice that on November 12, 1997, UtiliCorp United, Inc., filed an Application under Section 204 of the Federal Power Act for authorization to enter into corporate guarantees in the amount of not more than $150,000,000

in support of debt securities to be issued by UtiliCorp South Pacific.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

52. Chicago Housing Authority

[Docket No. TX98–1–000]

On November 14, 1997, the Chicago Housing Authority (CHA) filed with the Federal Energy Regulatory Commission (Commission) an application requesting that the Commission order Commonwealth Edison Company (ComEd) to provide transmission services pursuant to Section 211 of the Federal Power Act.

CHA requested firm network transmission service commencing on the later of 30 days after issuance of a Commission order or upon termination of CHA's purchase of electricity from ComEd pursuant to notice to be provided to ComEd by CHA. CHA requested that the Commission find that CHA is an eligible customer pursuant to ComEd's Open Access Transmission Tariff.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

53. Old Dominion Electric Cooperative

[Docket No. ES98–11–000]

Take notice that on November 20, 1997, Old Dominion Electric Cooperative tendered an Application under Section 204 of the Federal Power Act for authorization to issue up to $5,675,000 of debt securities.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

54. Maine Electric Power Company

[Docket No. ES98–12–000]

Take notice that on November 20, 1997, Maine Electric Power Company tendered an Application under Section 204 of the Federal Power Act for authorization to issue up to $9,500,000 of Short-term debt securities.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

55. ESEG, Inc.

[Docket No. ES98–13–000 and ES98–13–001]

Take notice that on November 20, and November 25, 1997, ESEG, Inc. tendered an Application and an amendment thereto under Section 204 of the Federal Power Act for authorization to issue up to $4,000,000 of long-term debt securities.

Comment date: December 22, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31757 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–92–001]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Mobile Bay Extension and Expansion Project

November 28, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed gas pipeline facilities including a total of 75.66 miles of pipeline and 30,000 horsepower (hp) of compression:

- 19.08 miles of 30-inch-diameter pipeline from existing compressor station 82 in Mobile County, Alabama to a new offshore connection platform in Mobile Block 822 (this segment involves approximately 4.00 miles of onshore pipeline);
- 56.58 miles of 24-inch-diameter pipeline from the new offshore connection platform in Mobile Block 822 to a new platform in Main Pass Viosca Knoll Block 261;
- 15,000 hp of additional compression at compressor station 82; and
- 15,000 hp of compression at a new compressor station 83 in Mobile County, Alabama.

The purpose of the proposed facilities would be to provide about 350,000 thousand cubic feet per day (Mcfd) of gas on the offshore facilities and 264,000 Mcfd on the onshore portion.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP97–92–001; and
- Mail your comments so that they will be received in Washington, DC on or before December 29, 1997.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31758 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–331–000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Cherokee Expansion Project

November 28, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA addresses the potential environmental effects of the construction and operation of the following facilities:

- construction of about 11.2 miles of 48-inch-diameter natural gas pipeline loop (Alabama Mainline Loop) in Marengo County, Alabama;
- uprating of the 16-inch-diameter Georgia Extension (Georgia Extension Uprating) in Walton and Gwinnett Counties, Georgia from a maximum allowable operating pressure (MAOP) of 780 pounds per square inch (psi) to a MAOP of 960 psi. The uprating would include:

a. replacement of about 3.7 miles of 16-inch-diameter pipeline;

b. expansion and/or uprating of four metering and regulating (M&R) stations;

c. hydrostatic testing of about 26.9 miles of 16-inch-diameter pipeline; and

d. abandonment in place of about 0.1 mile of 16-inch-diameter pipeline.

- construction of a new 15,000 horsepower (HP) compressor station in Coweta County, Georgia (Compressor Station 115);
- installation of two 4,000-HP compressor units at an existing compressor station in Walton County, Georgia (Compressor Station 125);
- rewheeling compressor units at existing compressor stations in Chilton County, Alabama (Compressor Station 100) and in Henry County, Georgia (Compressor Station 120); and
- installation of additional gas cooling capacity at an existing compressor station in Randolph County, Alabama (Compressor Station 110).

The purpose of the proposed facilities is to provide additional firm transportation capacity of up to 87,070 dekatherms per day of natural gas to two existing customers.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch II, PR–11.2;
- Reference Docket No. CP97–331–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 29, 1997.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31767 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5931–6]

Models-2000 Workshop; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Ecosystems Research Division of the National Exposure Research Laboratory of the U.S. Environmental Protection Agency is hosting a workshop on the development and use of computer models in risk assessment, including both dose-response and exposure modeling. The workshop will be held at the EPA Ecosystems Research Division, 960 College Station Rd. in Athens, GA from December 15–17, 1997, convening no earlier than 8:30 a.m. and adjourning no later than 6:00 p.m. For further information, contact Dr. Rosemarie Russo, Director of EPA's Ecosystems Research Division at (706) 355–8001 (russo.rosemarie@epamail.epa.gov).

Background

In March 1994, the Deputy Administrator endorsed the recommendations of the *ad hoc* Agency Task Force on Environmental Regulatory Modeling (ATFERM) that were designed to improve the procedures by which the Agency adopts and utilizes computer models in generating risk assessments. Following subsequent discussion in the Science Policy Council Steering Committee, the senior science policy body in the Agency, and in correspondence between the Agency's Science Advisory Board (SAB) Chair and the Administrator, a further effort is being undertaken to (a) facilitate Agency adherence to existing guidance on modeling and (b) define and implement improvements to the way in which the Agency develops and uses modeling. A key aspect of this new effort is the convening of a workshop, aimed primarily at Agency modelers and risk assessors.

The intended goal of the workshop is to recommend to the Science Policy Council (SPC) and the Administrator/Deputy Administrator of EPA a Models Implementation and Improvement Plan

for enhancing modeling within EPA. The Plan is likely to include the following: model development and application, peer review and quality assurance/control, training, technical support, applications acceptability criteria, and identification and penetration of barriers to improved use of models within EPA.

The Agency will convene experts in a workshop format to critically review existing EPA and other appropriate guidance, policies and procedures, plus recent analyses of associated problems, such as the ATFERM report. The aim is to improve adherence to existing policies; identify needed guidance changes (additions or deletions) to those policies; identify barriers to effective implementation of policies; and recommend actions to overcome these barriers (e.g., training in model use, organizing a standing model users support group).

The workshop is designed primarily for EPA scientists. Some outside scientists are being invited to attend, including some who may have been members of past Science Advisory Board panels. They will be participating as individuals, not as SAB members, and the SAB will not be making any advice on the basis of this meeting. There is some limited space for observers from the public.

Robert R. Swank, Jr.,

Acting Director, Ecosystems Research Division, Athens, GA.

[FR Doc. 97–31793 Filed 12–3–97; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 97–31384.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 4, 1997, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Establishment of Filing Requirements for the Pennsylvania Special Election in the 1st Congressional District.

* * * * *

DATE AND TIME: Tuesday, December 9, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437G.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, December 11, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Election of Officers.
Future Meeting Dates.
Advisory Opinion 1997–21: Firebaugh for Congress Committee by counsel, Judith Corley. (Reconsideration of issued opinion on use of campaign funds to restore candidate's funds used to pay bank loan owed by her committee.)
Administrative Matters.
Service pins.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–31900 Filed 12–2–97; 11:58 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Betty Lou Johnson Trust, Betty Lou Johnson, Trustee, Winthrop, Minnesota; and Mark L. Johnson, Dassel, Minnesota to acquire voting shares of Winthrop Bancshares, Inc., Winthrop, Minnesota, and thereby indirectly acquire Winthrop State Bank, Winthrop, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

2. Fred C. and Kellie P. Harlan, Okmulgee, Oklahoma; to acquire voting shares of First Okmulgee Corporation, Okmulgee, Oklahoma, and thereby indirectly acquire First National Bank & Trust Company, Okmulgee, Oklahoma.

Board of Governors of the Federal Reserve System, November 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31745 Filed 12–3–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. National Commerce Bancorporation, and National Commerce Community Bancorp, Inc., a wholly owned subsidiary of National Commerce Bancorporation, both of Memphis Tennessee; to acquire 100 percent of the voting shares of Bancshares of West Memphis, Inc., West Memphis, Arkansas, and thereby indirectly acquire Bank of West Memphis, Inc., West Memphis, Arkansas. National Commerce Community Bancorp, Inc., also has applied to become a bank holding company.

2. National Commerce Bancorporation, and National Commerce Community Bancorp, Inc., a wholly owned subsidiary bank holding company of National Commerce Bancorporation, both of Memphis, Tennessee; to acquire 100 percent of the voting shares of First Citizens Bancshares Company, Marion, Arkansas, and thereby indirectly acquire Citizens' Bank, Marion, Arkansas. National Commerce Community Bancorp, Inc., also has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, November 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31744 Filed 12–3–97; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Broker and Direct Move Management Services Provider Participation in the General Services Administration's Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment.

SUMMARY: Earlier this year, GSA provided the household goods transportation industry an opportunity to comment on its draft 1997 Household Goods Tender of Service (HTOS). GSA has received and reviewed the industry's comments on the draft 1997 HTOS and is in the process of making appropriate revisions to the document before issuing it in final. The provisions contained in this notice apply to household goods transportation broker and direct move management services provider participants in CHAMP and were not included in the original draft HTOS. We are offering these provisions for industry review and comment at this time.

DATES: Please submit your comments by January 5, 1998.

ADDRESSES: Mail comments to the Travel and Transportation Management Staff (FBX), General Services Administration, Washington, DC 20406, Attn: **Federal Register** Notice. GSA will consider your comments in developing the final move management services provisions. In the interim, rates filed in response to GSA's 1996 Request for Offers have been extended for 90 days from October 31, 1997 to January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Analyst, Travel and Transportation Management Staff, FSS/GSA, 703–305–7660.

Section xx—Move Management Services

Subsection A—General

xx-1. Scope

This section establishes terms and conditions for participation by licensed move management services providers (hereinafter referred to as "broker") and direct move management services providers in the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP).

xx-2. Applicable Provisions

Except as otherwise provided in this section, the provisions of sections 1 through — — of this Household Goods Tender of Service (HTOS), and any amendments thereto, apply both to brokers and direct move management services providers covered under this section and to the transportation services furnished by them.

xx-3. Definition of Services

CHAMP offers Federal agencies the following two kinds of services:

A. *Transportation services.* Transportation services are the transportation and accessorial services normally associated with a household goods move as set out in interstate and intrastate tariffs or this HTOS for international moves.

B. *Move management services.* Move management services are those set out in subsection B of this section plus transportation services as defined in paragraph xx-3A, above.

xx-4. Move Management Services Provider Treated as Carrier

A. *Use of the term "carrier".* The term "carrier" as used in sections 1 through—— of this HTOS includes both a broker and a direct move management services provider.

B. *Service performance requirements.* For purposes of participation in CHAMP, a broker or a direct move management services provider must furnish or otherwise comply with all applicable requirements of this HTOS, including services, delivery timeframes, billing, reporting, and liability responsibilities, unless waived by the GBL Issuing Officer or responsible Transportation Officer. A broker must handle any shipment an agency tenders it the same as if it were a carrier. A direct move management services provider must provide the move management services set out in subsection B of this section in conjunction with transportation services; it may not conduct any brokering of shipments under CHAMP.

C. *Other performance requirements.* For purposes of participation in CHAMP, both a broker and a direct move management services provider must file a schedule of their service charges, including carrier transportation rates, and comply with requirements for paying GSA the specified shipment surcharge the same as any other participant in the program. Additionally, both are subject to the Customer Satisfaction Rating system.

D. *Carrier as subcontractor of broker.* Since a broker participating in CHAMP is included in the term "carrier" as used in sections 1 through—— of this HTOS, an actual carrier the broker uses to perform transportation under CHAMP is considered to be a subcontractor of the broker.

E. *Issuance of Government bill of lading (GBL) to broker.* When an agency tenders a shipment to a broker, the agency will issue a GBL directly to the broker. The broker is responsible for billing shipment charges in conformity with its filed rates. The broker also is responsible for paying its agents directly for services furnished.

F. *Broker commission.* If a broker has an agreement with a carrier it engages to provide transportation services under CHAMP and the agreement yields a commission, a discount, or anything else of value to the broker, the broker must comply with the following before it may accept the commission, discount, or anything else of value for work performed under CHAMP:

(1) For agreements that yield a commission to the broker, the broker

must propose a single commission rate and a uniform rate structure forming the basis for the commission which it will use with all carriers it selects to perform work under CHAMP. The broker must disclose in writing to GSA its commission rate and structure (describing what the commission represents; e.g., a percentage of full tariff charges) and state that it will use only this rate for work performed under CHAMP;

(2) For agreements that do not specify a commission but yield a discount or anything else of value to the broker, the broker must establish a rate structure with a uniform spread between the rate the Government pays the broker and the rate the broker pays the carrier it uses to perform work under CHAMP. The broker must disclose and fully describe in writing to GSA its uniform rate structure and uniform spread, including the basis (e.g., full tariff charges) for calculations under the rate structure, and must state that it will use only this rate structure and spread for work performed under CHAMP;

(3) A broker must send its disclosure letter to the following address: General Services Administration (6FBX), 1500 E. Bannister Road, Room 1076, Kansas City, MO 64131, Attn: HHG Rate Filing; and

(4) GSA will review the broker's proposed commission rate or uniform rate structure and either approve or reject the broker's arrangement.

xx–5. Restriction on Services Provided

A broker may offer only move management services as described in paragraph xx–3B, above. A direct move management services provider may offer move management services only in conjunction with transportation services, as described in paragraph xx–3A, above, which it furnishes within its current approved scope of operations.

Subsection B—Move Management Services Provided

xx–100. General

A broker or direct move management services provider is responsible for arranging, coordinating, and monitoring a relocated employee's household goods move from initial notification by the shipping agency through delivery at the new residence. A household goods move within the continental United States is a basic move consisting of one shipment of household goods and personal effects from one or more origins to one or more destinations. The move may include shipment of a privately owned vehicle(s), and a move outside the conterminous United States, including Alaska, may include shipment of unaccompanied air baggage.

xx–101. Carrier Performance Responsibility

Notwithstanding the provisions of paragraph xx–11, below, "Origin and destination on-site quality control," the broker or direct move management services provider, as applicable, must ensure that it furnishes transportation services in accordance with the provisions of this HTOS. It also must take necessary and appropriate action to protect the interests of the shipping agency, ensure proper service performance, and protect the real and personal property of the relocating employee. In the event the broker or direct move management services provider is negligent in executing its responsibilities and the shipping agency or relocating employee is adversely affected, the broker or direct move management services provider is liable for damages.

xx–102. Service Performance Audit

The broker or direct move management services provider, as applicable, must audit transportation billings to determine that billed services were necessary to complete the move, properly authorized, and actually performed (this audit is unrelated to an audit of the billing charges). In performing the audit, the broker or direct move management services provider must issue a service performance certification specifying by line item whether the service (including any unauthorized service specifically requested by the relocating employee) was or was not necessary to complete the move, properly authorized, and actually performed. The broker or direct move management services provider may develop its own form for this purpose subject to shipping agency pre-approval when the agency so requests.

xx–103. Employee Counseling

The broker or direct move management services provider, as applicable, must provide employee counseling services including, but not limited to, information on the following: Applicable Federal Travel Regulation (FTR) provisions including employee's household goods transportation and weight allowance entitlement; extra pickup/delivery service; temporary storage-in-transit (SIT) authorized by the shipping agency; non-temporary storage (NTS) for the duration of the assignment; unauthorized items; assembly and disassembly of property; shipment of perishable items; firearms and hazardous materials exclusions; insurance coverage, options, and costs; reporting of concealed damages; employee rights and responsibilities; third-party servicing; packing, unpacking, crating, and uncrating; preparation and filing of claims; responsibility for name and address of origin or destination storage; delivery out of storage; services that will be paid by the shipping agency; services that will be the responsibility of and paid for by the employee even when the GBL Issuing Officer authorizes the service on the GBL for charge back to the employee; moving practices of household goods carriers; carrier's role in the relocation process; and the Government's role in a commuted rate system (Do-it-Yourself) move under the FTR including the limitation on reimbursement to the employee for such a move.

xx–104. Customer Assistance

The broker or direct move management services provider, as applicable, must provide a 24-hour, toll-free, single point of contact(s) by name and telephone number for assistance in resolving any problems that occur during the move, including quality control problems, as well as help in filing a post delivery claim. The broker or provider also must furnish, at no additional cost to the Government, a pocket-sized pamphlet that lists relevant procedures and information useful to the relocating employee.

xx–105. Completion of GSA Form 3080

The broker or direct move management services provider, as applicable, must furnish the relocating employee a GSA Form 3080, Household Goods Carrier Evaluation, for completion of the section entitled "Relocating Employee's Response" and instruct the employee to return the form to the shipping agency for completion of the section, "GBL Issuing Officer's Response." Once the shipping agency completes its section, it must return the form to GSA, Traffic Management Branch, 6FBX, 1500 East Bannister Road, Kansas City, MO. 64131.

Within 30 days of delivery of the household goods to the new residence, the broker or direct move management services provider must contact the shipping agency or employee, as appropriate, to ensure the return of Form 3080 to GSA.

xx–106. Claim Preparation, Filing, and Settlement

A. *Organizational involvement.* The broker or direct move management services provider must establish an independent claims section within its own organization or contract with an independent firm to perform the responsibilities described in paragraph xx–106B, below. The term "independent claims section" means a section which is independent of the broker's or direct move management services provider's primary claim function and which has personnel assigned specifically to handle Federal agency claims. These personnel may be assigned to perform other duties not related to Federal agency claims. The broker or direct move management services provider, not the Government, is responsible for any costs incurred in establishing an independent claims section within its organization or for contracting with an independent firm to handle GSA claims.

B. *Broker/direct move management services provider responsibilities.* If requested by the relocating employee or the employing agency, the broker or direct move management services provider must:

(1) Provide assistance in the preparation and filing of a claim immediately upon receiving information from the employee that loss or damage occurred during shipment of his/her household goods;

(2) Inform the employee that if he/she discovers additional loss or damage at a later date it will provide additional assistance in preparing and filing additional claims as necessary; and

(3) Counsel the employee in regard to the signing of any full and unconditional releases on any settlement or offer of settlement received before all claims resulting from the move have been resolved.

xx–107. Preparation and Maintenance of Government Bills of Lading (GBL'S)

A. *Optional use of service.* Preparation and maintenance of GBL's as specified in paragraphs xx–106 B through G is optional with the shipping agency. If the shipping agency elects to exercise this option, it must complete a written memorandum of understanding (MOU) with the broker or direct move management services provider setting out the terms and conditions, including those required in paragraphs xx–106 B through G, applicable to GBL preparation and maintenance. The terms and conditions should specify instructions for completing each block of the GBL.

B. *GBL accountability/responsibility.* The shipping agency ultimately is accountable/responsible for all GBL stock and must issue and obtain a signed receipt, as required by Federal Property Management Regulations 101–41.3024(2) and 101–41.308–1, for any GBL's it issues to the broker or direct move management services provider.

C. *Preparation of GBL forms.* The broker or direct move management services provider must prepare a GBL (Standard Form 1103) or Government Personal Property Bill of Lading (SF 1203) (either hereinafter referred to as GBL) in accordance with its MOU with the shipping agency and instructions published in the GSA Federal Supply Service (FSS) Guide, "How to Prepare and Process U.S. Government Bills of Lading," National Stock Number, 7610–00–682–6740, FPMR 101–41.305–1. A separate GBL must be prepared for each authorized shipment of a privately owned vehicle(s) or unaccompanied air baggage (UAB). Since ultimate responsibility and accountability for GBL's remains with the shipping agency and its GBL Issuing Officer, the name and address of the issuing office and GBL Issuing Officer, not that of the preparer, must appear on the GBL. Distribution of the completed GBL must be in accordance with the above referenced FSS guide and FPMR 101–41.302–2. The broker or direct move management services provider must give the shipping agency issuing officer a legible memorandum copy of each GBL it has prepared and distributed before the pickup date of the shipment.

D. *Maintenance of GBL forms.* The broker or direct move management services provider is accountable for all blank GBL's provided by the shipping agency and must:

(1) Keep them in a locked container at all times;

(2) Maintain a GBL register for all GBL's it prepares showing the date of issuance and the employee for whose shipment it was issued; and

(3) Make the register available for review at any time upon request by the GBL Issuing Officer or his/her designee.

E. *Amendments to original GBL.* If a GBL must be amended after distribution, the broker or move management services provider must complete a GBL Correction Notice (Standard Form 1200). Only the GBL Issuing Officer may sign the SF 1200 and must return the signed form to the broker or move management services provider for the same distribution as the original GBL.

F. *Lost GBL's.* If the original copy of an issued GBL is lost, the broker or direct move management services provider must notify the GBL Issuing Officer and prepare a certification in accordance with FPMR 101–41.307 for forwarding to the GBL Issuing Officer for signature. Only the GBL Issuing Officer may sign (certify) a true memorandum copy of an issued GBL for use instead of the original SF 1103 for billing purposes.

G. *Damaged GBL's.* A GBL that is damaged in preparation, prepared for issuance but not used, or unusable for any other reason must be marked "canceled" on all copies and returned to the GBL Issuing Officer. The GBL Issuing Officer must sign a receipt for any canceled, damaged, or otherwise unusable GBL returned to him/her. The GBL Issuing Officer is responsible for disposing of any unused, obsolete, or canceled GBL's in accordance with General Records Schedule 9, Travel and Transportation Records, 36 CFR Chapter XII, § 1228.22.

xx–108. Data Communications Capabilities

The broker or direct move management services provider must be able to electronically transmit task orders and messages, and must provide on-line access to its database as follows:

A. *Accessibility.* The GBL Issuing Officer or his/her designee and the GSA Program Management Office (PMO) must have on-line access to all database information pertaining to task orders and shipment records applying to all accounts established under the terms of this HTOS. The broker or direct move management services provider must establish sufficient safeguards to prevent unauthorized access to the database, and furnish clearly documented procedures for access and use of the database. Electronic access must be available through an asynchronous modem with a baud rate of at least 2400.

B. *Database elements.* The database must contain, at a minimum, task order and shipment information sufficient to generate the reports specified in paragraph xx-113. Shipment information must be maintained in a separate directory with a separate record for each employee move. Shipment files for HTOS shipments must not be commingled with non-HTOS shipment files. Each shipment record must contain all information required for that particular shipment, including information relevant to any claim filed with the carrier, status of the claim, etc.(made available on a continuous computer terminal screen when necessary). Performance data reflecting the handling of the move must be independently collected and maintained in this file. The broker or direct move management services provider must be able to extract and consolidate data, such as carrier performance information, for any specific report that may be required.

C. *Database maintenance.* The database must be updated at a minimum every 24 hours. The broker or direct move management services provider must maintain on-line access to database elements for each shipment for a period of one year from the date of pickup. For record retention requirements after one year, see 48 CFR 4.7.

xx–109. Identification of, and Authorization for, Special Services

A. *Identification of special services.* The broker or direct move management services provider must identify all services that may be needed in connection with the shipment of a particular relocated employee's household goods, including but not limited to shuttle service, special crating, third party servicing, elevator charges, long carry, and or stair carries. The broker or direct move management services provider must provide this information to the GBL Issuing Officer and obtain any written waivers or authorizations that may be required under the HTOS.

B. *Authorization for special services.* The broker or direct move management services provider must obtain written pre-authorization from the GBL Issuing Officer prior to authorizing special services on the GBL, such as shuttle service, telephone pre-move survey, SIT at origin, custom-built crating, third party servicing, hoisting and lifting, disassembly of waterbeds and German shrunks (large cabinets which require disassembly to move), pickup and delivery on Saturday, Sunday, or holidays, reweighs, etc. All written authorizations and waivers must be maintained in the shipment file. The broker or direct move management services provider must specify all requested services on the GBL, both those that are authorized and will be paid as an entitlement of the employee and those that are advanced and will be charged back to the employee. The employee must be counseled about charges for any service that will be advanced and charged back to the employee before the service is performed. A generic form may be developed for this purpose, and any service shown on the form that is not applicable to a particular shipment must be "crossed out" or marked "none" or "not applicable" prior to submitting the form to the GBL Issuing Officer for written authorization/approval.

xx–110. Origin and Destination On-Site Quality Control

A. *Optional use of this service.* Origin and destination on-site quality control services as specified in this paragraph *xx–110* are optional with the shipping agency. If the shipping agency elects to exercise this option, the actual cost of the service to be performed is negotiable between the broker or direct move management services provider and the shipping agency. The agreed upon price for the service to be performed must be in writing and retained by both parties. The written agreement shall be construed as a one-time only amendment to the broker's/direct move management services provider's rate filing and a copy of the agreement must be included in its voucher for payment.

B. *Origin services on-site quality control.* If the shipping agency requests, quality control personnel must provide on-site inspection service at the origin residence on the packing and loading dates. Such service must include at a minimum verification of: Correct inventory coding; the use of proper packing, crating, and wrapping materials and techniques; equipment and personnel suitability; appropriate article servicing and disassembly; and appropriate protection for the residence and adjacent real property. The broker/direct move management services provider must make a pre-visit telephone call to confirm the availability of the transferee.

C. *Destination services on-site quality control.* If the shipping agency requests, quality control personnel must provide on-site inspection service at the destination residence at the time of delivery. Such service must include at a minimum verification of: The inventory coding; satisfactory performance of the unpacking service; equipment and personnel suitability; appropriate article servicing and re-assembly; and appropriate protection for the residence and adjacent real property.

D. *Firms authorized to perform origin and destination on-site quality control.*

(1) *Broker.* A broker may engage another firm to perform these services, including but not limited to a household goods carrier or freight forwarder or representative, employee, or agent thereof.

(2) *Direct move management services provider.* A direct move management services provider may engage another firm to perform these services, provided that such other firm must be a household goods carrier or freight forwarder or representative, employee, or agent thereof.

xx–111. Storage-In-Transit (SIT)

A. *Placement in SIT.* When storage-in-transit (SIT) is authorized the shipment will be placed into SIT in accordance with all applicable provisions of this HTOS. The broker/direct move management services provider must carefully counsel the employee in regard to the duration of storage authorized. It must notify the employee of the actual location of the SIT, including the storage company's telephone number, within five calendar days of delivery of the shipment into SIT.

B. *Monitoring shipments in SIT.* The broker or direct move management services provider must monitor shipments that have been placed in SIT and notify the employee and the shipping agency destination facility representative in writing, at least ten working days before the expiration of any authorized period of SIT, of the impending SIT expiration. Further, it must counsel the employee that upon expiration of the authorized SIT period, the Government no longer will be liable for storage charges, and request disposition of the household goods, in writing, from the shipping agency destination facility representative and the employee.

C. *Storage in excess of 180 days.* In cases when an employee's household goods remain in temporary storage in excess of the maximum 180-day SIT period, the broker or direct move management services provider must at the end of the 180-day period ascertain the condition of the property to protect both the Government's and the relocating employee's right to recovery for losses or damages for which the carrier is responsible. The broker or direct move management services provider is responsible for arranging delivery of the property from storage to the residence in accordance with the shipping agency destination facility representative's instructions. Payment of storage for any period in excess of the 180-day maximum is the employee's responsibility.

xx–112. Quality Assurance Plan

If the shipping agency requests, the broker or direct move management services provider must provide the agency with a quality assurance plan and designate quality assurance personnel to assist in ensuring quality service is provided. *xx–113. Management Reports.*

If the shipping agency requests, the broker or direct move management services provider must furnish on a timely basis the management reports specified in paragraphs *xx–113* A through F, below. The format, content, and frequency of the reports will be established in accordance with the shipping agency's requirements. The broker or direct move management services provider may be required to provide special or one-time reports to the shipping agency upon written approval of the GSA Program Management Office.

A. *Shipment summary report.* A report presenting a summary of shipments including the total number of shipments, the number of shipments by agency organization, number of shipments by carrier including line-haul carrier, number of interstate shipments, number of intrastate shipments, number of international shipments, total line haul costs, and total accessorial service costs.

B. *Claims summary report.* A report presenting a summary of claims including claims frequency, number of claims by agency organization, number of claims by carrier, number of interstate claims, number of intrastate claims, number of international claims, average number of days between the date of claim filing and the date of issuance of the initial settlement offer, average number of days between the date of receipt of the initial settlement offer and the date of final settlement, average amount claimed and settled interstate, average amount claimed and settled intrastate, and the average amount claimed and settled international. For each claim that is not settled within 30 days (or 60 days when approved by the shipping agency's GBL Issuing Officer or responsible Transportation Officer) an explanation for the delay must be provided using the delay codes specified in section 9 of this HTOS.

C. *Counseling contact summary report.* A monthly summary report of employee counseling contacts showing employee names, date of initial contact, and current status of the shipment including the date of the pre-move survey, packing date, shipment pickup date, and proposed delivery date into SIT and/or the residence.

D. *On-time services summary report.* A monthly summary report listing employee names, each employee's scheduled pick up date, actual pick up date, scheduled delivery date into SIT and/or the residence, actual delivery date into SIT and/or the residence, scheduled date for delivery out of SIT, and the actual delivery date out of SIT. When scheduled and actual dates are not the same, an explanation must be provided.

E. *Billing accuracy summary report.* A monthly summary report of billing accuracy showing the number of transportation bills submitted and the number returned for correction. An explanation of the correction must be provided.

F. *Special or one-time report.* A specially requested report approved by the GSA Program Management Office and provided to the GBL Issuing Officer or the Responsible Transportation Officer.

xx–114. User Agency and Applicant Responsibilities–Memorandum of Understanding

The applicant and each Federal agency desiring to use move management services pursuant to this HTOS shall, prior to the commencement of service, enter into a Memorandum of Understanding (MOU). The MOU shall include, but not be limited to, a description of services the agency requires, carrier selection criteria, service performance auditing instructions, non-temporary storage delivery instruction information, names of agency personnel who will have authority to order move management services, and management report requirements. Both parties must sign the MOU and send a copy for approval to the address contained in paragraph *xx–202B* of subsection C of this section. The agency reserves the right to specify the form, format, and minimum requirements of the MOU.

Subsection C—Participation

xx–200. General

The provisions in section 2 of this HTOS do not apply to brokers or direct move management services providers. The provisions contained in this section apply instead.

xx–201. Participation

A. *Broker.* Participation in the Move Management Services Program under CHAMP is open to any broker holding a household goods brokers license from the U.S. Department of Transportation (or its predecessor, the Interstate Commerce Commission (ICC)), the Federal Maritime Commission (FMC), or a state regulatory authority.

B. *Direct move management services provider.* Participation in the Move Management Services Program under CHAMP is open to any direct move management services provider that is currently approved to participate in CHAMP and that has an approved assigned scope of operations.

xx–202. Application to Participate

A. *General.* Except as provided in paragraphs *xx–204* B and C of this subsection, and subject to the restrictions in paragraph *xx–207* of this subsection, any broker or direct move management services provider desiring to participate in the program must request approval to participate (see section 2–2 of this HTOS for information on when to submit application for approval to participate).

B. *Request to participate.* A request to participate must be sent on company letterhead to the following address: General Services Administration, Federal Supply Service Bureau, Traffic & Travel Services (6FBX), 1500 East Bannister Road, Kansas City, MO 64131–3088. (hereinafter referred to in this subsection C as Program Management Office (PMO))

xx–203. Application Requirements

A broker or direct move management services provider that wishes to participate in the program must submit an application in its own name to be considered for approval to participate. A broker or direct move management services provider (hereinafter referred to in this subsection as "applicant" unless more specifically stated) may be subject to punishment by fine, imprisonment, or both (see U.S. Code, title 18, section 1001)if it: (a) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (b) makes a false, fictitious, or fraudulent statement or representation; or (c) makes or uses a false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry on any part of the application or on any document furnished pursuant to this HTOS. To be considered for approval, the applicant must meet the following requirements:

A. *Agreement to abide by this HTOS.* The applicant must agree to abide by the terms and conditions of this HTOS, and any amendments thereto.

B. *Operating authority.* The applicant must hold in its own name from an appropriate regulatory body(ies) all necessary operating authorities, permits, and business licenses required for the "brokering" (applicable only to brokers) or "furnishing" (applicable only to direct move management services providers) of transportation of personal property. The applicant must provide a copy of each authority, permit, or business license to the PMO upon demand, or provide proof that it is exempt from such regulatory certification by operation of law or order of an appropriate regulatory body and state that in addition to tariff and legal requirements it agrees to abide by provisions of this HTOS

C. *Broker applicant's agents.* A broker applicant by agreeing to abide by the terms and conditions of this HTOS certifies that it will use only those household goods carriers approved to participate in CHAMP to provide transportation services.

D. *Broker applicant's agent agreements.* A broker applicant by agreeing to abide by the terms and conditions of this HTOS certifies that each agent it will use to provide transportation services is at the time of application, or will be at the time of use, party to a valid written agreement with the broker applicant. The agreement must, at a minimum, include the language contained in HTOS paragraph 8.5.26.6.1 and .2 and specify the terms and conditions of the agent's representation of the broker applicant, the services the agent will provide, the terms and method of payment for services rendered, the quality control standards the broker applicant expects including the method of quality measurement, and the terms under which the agreement may be terminated.

E. *SCAC (Standard Provider Alpha Code) Designation/Taxpayer Identification Number.* The applicant must have a valid SCAC issued by the National Motor Freight Association, Washington, DC and a valid Taxpayer Identification Number.

F. *Trading partner agreement.* The applicant must complete and sign the Trading Partner Agreement (TPA) that accompanies the application and send it back in hard copy along with all other required documentation. If applying to handle both domestic and international shipments, the applicant need complete only one TPA. GSA will not process an applicant's request without the TPA.

G. *Broker applicant provision of performance bond.* A broker applicant must maintain a performance bond in accordance with this HTOS. It must renew the bond on the approval anniversary date of each subsequent year it continues to participate in the move management services program. The bond must be in a minimum amount of $20,000 and executed by a surety included on the list contained in Department of Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds" (for additional information, see the following Internet address: www.fms.treas.gov/c570.html).

H. *Experience.* The applicant must maintain its operations in a manner consistent with standard industry practices and this HTOS and demonstrate that it will provide an acceptable level of service.

I. *Quality control program.* The applicant must have a documented and published corporate quality control plan that ensures services it will provide equal or exceed the standards of service established under this HTOS. The published plan must fully explain all facets of the applicant's quality control system.

J. *Agent.* The applicant by agreeing to abide by the terms and conditions of this HTOS certifies that each agent it will use has a documented and published corporate quality control plan that ensures services it will provide equal or exceed the standards of service established under this HTOS. The published plan must fully explain all facets of the agent's quality control system.

K. *Financial responsibility.* The applicant must demonstrate that it is financially responsible and has the working capital and other financial, technical, and management resources to perform under this HTOS.

xx–204. Submission Requirements

GSA's approval of a request to participate in the move management services program is contingent on the applicant demonstrating compliance with the provisions of paragraph xx–203 of this subsection through the furnishing of documentary evidence required in paragraphs xx–204 A through H of this subsection. GSA reserves the right to waive the approval requirements in paragraphs xx–204 E and F of this subsection if the applicant has been formally registered as compliant with the International Organization for Standardization Standard 9000 or one of the standards within the 9000 series (referred to hereafter as ISO 9000) by an internationally recognized ISO 9000 registrar. Before GSA will consider waiving the approval requirements, the applicant must provide a certified true copy of its certificate of conformity with ISO 9000.

A. *HTOS certification.* A signed copy of the applicant's HTOS certification sheet entitled "Request to Participate and Agreement to Abide by the Terms and Conditions of the General Services Administration's Centralized Household Goods Traffic Management Program" (see paragraph xx–203A of this subsection).

B. *SCAC designation/Taxpayer Identification Number.* A letter from the National Motor Freight Association, Washington, DC showing that the applicant has been assigned a SCAC (see paragraph xx–203E of this subsection); statement of the applicant's Taxpayer Identification Number.

C. *Brokers license (applicable only to broker applicants).* A copy of a valid brokers license issued by an appropriate regulatory body (see paragraph xx–201A of this subsection).

D. *Applicant information.* Information about the applicant such as name, postal address, electronic mail address, telephone and facsimile numbers, corporate office, and operating authorities. The applicant must indicate whether it is under the financial or administrative control (as addressed in this subsection C) of any carrier, forwarder, or other provider of household goods services and state the name of the controlling carrier, forwarder, or other provider. Additionally, the applicant must provide a listing of any carrier(s), forwarder(s), and/or other provider(s) of household goods services under its financial or administrative control.

E. *Quality control program.* A copy of the applicant's published internal quality control program covering the functions of traffic management (carrier selection, employee counseling, routing, tracing, and billing), packing/packaging/containerizing, employee training, supervision, and if appropriate, agent supervision including quality control goals and objectives showing measurable performance standards, measurement techniques, and plans of action based on the performance standards.

F. *Quality control interface with agents (applicable only to broker applicants).* Information on how the broker applicant applies, and monitors the application of, its quality control program to its designated agents. In addition, the broker applicant must describe how its quality control program relates to and reinforces the quality control programs of its designated agents.

G. *Corporate account trends.* Information concerning the applicant's corporate account activity during the preceding five calendar years.

xx–205. Application Evaluation

GSA will evaluate an applicant's request for approval to participate in the move management services program according to the following criteria:

A. *ISO 9000 registration.* GSA will review each submitted certification to determine its legitimacy and applicability and whether required periodic audits have been performed.

B. *HTOS certification.* GSA will review the HTOS certification to determine whether the applicant has agreed to abide by the terms and conditions of the HTOS.

C. *SCAC designation/Taxpayer Identification Number.* GSA will verify that the National Motor Freight Association, Washington, DC, has issued the applicant a SCAC and that the applicant has provided a Taxpayer Identification Number.

D. *Brokers license (applicable only to broker applicants).* GSA will verify that the broker applicant's brokers license is valid.

E. *Quality control program.* GSA will determine whether the applicant's internal quality control program has been formally published; contains quality control goals and objectives with measurable performance standards, measurement techniques, and plans of action based on the performance standards; and is sufficient to ensure that the applicant's operations, employees, and agents, if appropriate, are familiar with and will be held accountable for achievement of the program's goals and objectives. In evaluating a broker applicant's request, GSA also will determine whether the interface between the applicant's quality control program and the quality control programs of each of its designated agents is such that the programs' goals and objectives and performance standards are relatively consistent and will result in a unified approach to the delivery of quality service.

F. *Performance bond (applies only to broker applicants and only at time of rate filing unless otherwise superseded by specific criteria in the Request for Offers).* Upon receipt of the broker applicant's performance bond from the surety, GSA will verify that the surety company executing the bond appears on the list contained in Department of Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds," and that the amount of the bond is at least $20,000. If the bond is determined to be unacceptable, approval of the broker applicant's rate filing will be subject to compliance with the GSA Request for Offers. xx–206. APPROVAL. GSA will approve an applicant's request for participation in the move management services program if it determines that the applicant possesses sufficient qualifications, experience, facilities, quality control processes, and financial capacity to satisfactorily perform under the HTOS.

xx–207. Approval Limitation

A. *Broker applicants.* An approved broker applicant's scope of operations must be the complete coverage of the move management services program. A "new broker" is a broker applicant approved during a specific approval window. The designation "new" applies from October of the year in which GSA grants approval until October of the following calendar year (for example, an applicant approved in 1997 will be considered "new" until October, 1998).

B. *Direct move management services provider applicant.* An approved direct move management services provider applicant's scope of operations must be identical to that of the applicable scope of operations currently in place in CHAMP.

xx–207. Continued Participation

A. *General.* Once an applicant has been approved to participate in the move management services program, continued participation is contingent upon: (1) The participant's showing a willingness and ability to meet the transportation requirements of the United States Government and to comply with all provisions of the HTOS, and (2) the participant's satisfactorily maintaining financial responsibility, working capital, and other financial, technical, and quality control processes and management resources to perform under the HTOS.

B. *Continuation Of ISO 9000 certification.* If an applicant's approval is predicated in part on ISO 9000 certification and the certification lapses or is terminated by the certification registrar, the applicant participant's approval will become conditional. The approval will remain conditional until the participant successfully complies with all requirements waived due to its ISO 9000 certification, provided that if the participant fails to meet evaluation standards, GSA will terminate its approval.

C. *Continuation of performance bond (applicable only to broker participants).* If at any time a broker participant's performance bond is canceled and not replaced with an acceptable new bond, GSA will immediately terminate the broker's participation in the program.

D. *Assignment of rights.* Except for assignment of payment of the broker's or direct move management provider's original bills to a bank for collection, GSA will immediately terminate a broker's or direct move management provider's approval if it exercises any right under a currently existing agreement or enters into an agreement with a party(ies) not subject to its control which in any way infringes, controverts, or otherwise subordinates or prevents it from unilaterally deciding whether it will or will not submit a claim or file suit against the Government or pay a claim made by the Government after Government audit of the original bill for services performed under this HTOS.

E. *Submission of false information.* Willful submission of false information on any document furnished by an applicant or a participating broker or direct move management services provider pursuant to this HTOS is punishable by fines, imprisonment, or both (U.S. Code title 18, section 1001), and may result in denial or termination of approval to participate in the move management services program. Federal user agencies are responsible for selection of a broker or direct move management services provider which best serves its needs and final evaluation of the selected broker's or provider's performance. If it is later discovered that a broker or direct move management services provider was in Common Financial and Administrative Control (CFAC) and did not disclose that fact, GSA will terminate its approval.

Subsection D—Agreement to Abide

xx–300. Acceptance of These Terms and Conditions

A broker or direct move management services provider desiring to participate in the move management services program established under this HTOS section xx must, for approval consideration, complete the following statement and return this entire document to the General Services Administration, Centralized Household Goods Traffic Management Program (6FBX), 1500 East Bannister Road, Kansas City, MO 64131:

Request to Participate and Agreement to Abide by the Terms and Conditions of the General Service Administration's Centralized Household Goods Traffic Management Program

By signing below, I, a fully authorized representative of the [indicate one] (broker) or (direct move management services provider), represent that I have read and understand the terms and conditions contained herein and that I for and on behalf of the [indicate one] (broker) or (direct move management services provider) agree to all terms and conditions of the HTOS.

Applicant Name:
Signature and Date:
Printed Name:
Title:
Street Address:
City, State and Zip:
Telephone No.:
Fax No.:
E-mail Address:

VG–13. Cancellation of this agreement.

Except as otherwise provided in this HTOS, this agreement may be canceled by the broker or direct move management services provider, as applicable, or the General Services Administration upon such terms and conditions as are mutually acceptable to the parties.

VG–14. Acceptance by the Government.

Accepted by the General Services Administration:

[Typed name]

Manager, GSA Centralized Household Goods Traffic Management Program

Dated: November 26, 1997.

Janice Sandwen,

Director, Travel and Transportation Management Staff.

[FR Doc. 97–31779 Filed 12–3–97; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and environmental documents, pursuant to the National Environmental Policy Act and its implementing regulations, for Rachel Carson National Wildlife Refuge, York and Cumberland Counties, Maine; and Great Bay National Wildlife Refuge, Rockingham County, New Hampshire. The Service is furnishing this notice in compliance with Service CCP policy:

(1) to advise other agencies and the public of our intentions, and

(2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Written comments should be received on or before January 5, 1998.

ADDRESSES: Address comments and requests for more information to one of the following:

Refuge Manager, Rachel Carson National Wildlife Refuge, 321 Port Road, Wells, Maine 04090

Refuge Manager, Great Bay National Wildlife Refuge, 336 Nimble Hill Road, Newington, New Hampshire 03801.

SUPPLEMENTARY INFORMATION: It is U.S. Fish and Wildlife Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the time and place of such opportunities for public input to the CCP.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improved Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available by November, 1998.

Dated: November 24, 1997.

Ronald E. Lambertson,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 97–31749 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lower Sioux Indian Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that the Lower Sioux Indian Community of Minnesota Liquor Control Ordinance was duly adopted and certified by Resolution No. 39–97 of the Lower Sioux Indian Community Council on March 25, 1997. The ordinance provides for the regulation, sale possession and use of alcoholic liquor and beer within the Tribe's jurisdiction.

DATES: This ordinance is effective as of December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, N.W., MS 4641 MIB, Washington, D.C. 20240–4401; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Lower Sioux Indian Community of Minnesota Liquor Ordinance is to read as follows:

Lower Sioux Indian Community in Minnesota

[Resolution No. 39–97]

Be it resolved that the following LIQUOR CONTROL ORDINANCE is hereby adopted by the Lower Sioux Community Council.

I certify that Resolution No. 39–97 was duly adopted by the Lower Sioux Community Council at a meeting held on the 25th day of March , 1997, a quorum being present, by a vote of 4 in favor, 0 opposed, and 0 abstaining.

Betty Lee,

Secretary.

Liquor Control Ordinance; Lower Sioux Indian Community in Minnesota

Section 1. Requirement of License

No person shall sell alcoholic beverages within the Indian Country that lies within the jurisdiction of the Lower Sioux Indian Community, unless such sale meets the requirements of this Ordinance and takes place pursuant to a license issued by the Lower Sioux Community Council under this Ordinance.

Section 2. Definitions

For purposes of this Ordinance, the following terms have the meanings given them.

Subd. 1. "Alcoholic beverage" shall mean any beverage containing more than one-half of one percent alcohol by volume.

Subd. 2. "Community" shall mean the Lower Sioux Indian Community in Minnesota.

Subd. 3. "Community Council" shall mean the Community Council of the Lower Sioux Indian Community in Minnesota.

Subd. 4. "Community Court" shall mean the Court of the Lower Sioux Indian Community.

Section 3. Licenses

Subd. 1. On-Sale Licenses. Licenses for the sale of alcoholic beverages for consumption on the premises of sale within the Indian Country that lies within the jurisdiction of the Community may be issued by the Community Council only to an organization wholly owned by the Community, to a subordinate organization of the Community chartered under the provisions of Article V, section (n) of the Community Constitution, or to a person under contract with the Community or such a subordinate organization.

Subd. 2. Off-Sale Licenses. Not more than two licenses for the sale of alcoholic beverages for consumption off the premises of sale within the Indian Country that lies within the jurisdiction of the Community may be issued by the Community Council; and such licenses, if issued, shall be only to an organization wholly owned by the Community, to a subordinate organization of the Community chartered under the provisions of Article V, section (n) of the Community Constitution, or to a person under contract with the Community or such a subordinate organization.

Section 4. Applications: Required Information

Applications for a license to sell alcoholic beverages under this Ordinance shall be submitted in writing to the Community Council, on a form prepared by the Community Council. The application shall contain the following information:

Subd. 1. Name and Address. The application shall set forth the name and address of the applicant.

Subd. 2. Relationship to Community. The application shall set forth whether the applicant is an organization wholly owned by the Community, a subordinate organization of the Community chartered under the provisions of Article V, section (n) of the Community Constitution, or a person under contract with the Community or such an organization.

Subd. 3. Proposed Location. The application shall describe specifically the land or building where the applicant will sell alcoholic beverages.

Subd. 4. State Law Requirements. The application shall contain an acknowledgment that the applicant conforms to the requirements of the laws of the State of Minnesota as they relate to the obtaining of liquor licenses elsewhere in the State of Minnesota, and that the applicant will conform to the requirements of the State of Minnesota as they relate to transactions involving alcoholic beverages elsewhere in the State of Minnesota.

Subd. 5. Signature. The application shall be dated and signed by the applicant, if the applicant is a natural person, or by the person authorized to legally bind the applicant to compliance with the terms of this Ordinance, if the applicant is an organization, and such signature shall constitute an acknowledgment that the provisions of this Ordinance shall apply to any license issued hereunder.

Section 5. Finding Prerequisite to License Issuance

Licenses for the sale of alcoholic beverages may be issued by the Community Council if the Community Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Community Council may deem relevant, that such issuance is in the best interests of the Community, and that the licensing requirements of the State of Minnesota have been met by the applicant. The Community Council may reject any application for a license, or for a renewal of a license, if the applicant previously has committed acts which have resulted in the suspension or revocation of a license under this Ordinance or under the laws of the State of Minnesota, or if the Community Council is of the view, in its sound discretion, that granting the application would not be in the best interests of the Community. The Community Council shall state, in writing, its reasons for granting or denying each application.

Section 6. Requirements Contained in Licenses

Licenses for the sale of alcoholic beverages shall contain the following requirements:

Subd. 1. Conformance to Community and State Law. Each license shall require its holder to conform its operations to the laws of the State of Minnesota that relate to the sale or possession of alcoholic beverages, and the continued effectiveness of each license shall be expressly conditioned upon the compliance of its holder with all provisions of this Ordinance and the laws of the State of Minnesota that relate to the sale or possession of alcoholic beverages.

Subd. 2. Terms; Renewals. Each license shall state the term of its effectiveness. No license shall be effective for a term of more than three years from the date of its issuance, and each renewal thereof shall be subject to the same procedures that apply to the initial issuance of a license.

Section 7. Inspection of Premises

The Community Council, and its officers and agents designated in writing for such purposes, shall have the authority, with or without notice, to inspect the premises of any licensee under this Ordinance during normal business hours.

Section 8. Suspension and Revocation—Procedures

The Community Council shall have the authority to suspend or revoke any license issued under this Ordinance, under the following procedures:

Subd. 1. Written Notice to Licensee. Upon receiving information giving the Community Council probable cause to conclude that a licensee under this Ordinance may have violated the terms of the license or applicable law, the Community Council shall give the licensee written notice of the apparent violation and, if the Community Council so determines, that the Community Council intends to suspend or revoke the licensee's license. Such notice shall specify the grounds for the proposed suspension or revocation, and shall be served personally upon the licensee, or sent by certified mail to the licensee, return receipt requested.

Subd. 2. Temporary Emergency Suspension. If, in the judgment of the Community Council, the actions of a licensee pose an immediate threat of irreparable harm to the Community or the public, the Community Council may, by issuing the written notice required by this section, immediately suspend the licensee's license. The written notice shall state the reasons which justify such immediate suspension.

Subd. 3. Right to Request Hearing; Effect of Failure to Request Hearing. Any licensee who receives notice of a proposed suspension or revocation may request a hearing by the Community Council by sending a written request therefor, certified mail, return receipt requested, to the Chairman of the Community Council within seven days of the licensee's receipt of the Community Council's notice. If after receipt of a notice of a proposed suspension or revocation, a licensee fails to timely request a hearing, the Community Council may without a hearing suspend or revoke the licensee's license, and the licensee shall have no right to any further review of such action by the Community Court under Section 9 of this Ordinance.

Subd. 4. Time of Hearing. Upon receipt of a timely request for hearing under this Ordinance, the Community Council shall set a date for a hearing on the revocation or suspension of a license, which date shall be not later than thirty days from the date of the Community Council's receipt of the hearing request, provided that if the license has been the subject of an emergency suspension, the hearing shall be held not later than seven days from the date of the Community Council's receipt of the hearing request.

Subd. 5. Evidence at Hearing. At a hearing held under this Ordinance, the licensee shall be permitted to present evidence with respect to its compliance

with the terms of its license and applicable law. In reaching its decision, the Community Council may consider such evidence, together with all other evidence it deems relevant. Following a hearing, if in the judgment of the Community Council the licensee has not complied with the terms of its license and applicable law, the Community Council shall suspend or revoke its license; and if in the judgment of the Community Council the terms of the license and applicable law have been complied with, the proceedings shall be dismissed. Decisions of the Community Council to suspend or revoke a license, or to dismiss suspension or revocation proceedings, shall be in writing, and shall be subject to review only under the provisions of Section 9 of this Ordinance.

Subd. 6. Suspension or Revocation Sole Community Sanction. Suspension or revocation of a license shall be the sole sanction which the Community Council shall impose for a licensee's noncompliance with this Ordinance. No civil or criminal penalties shall be imposed by the Community Council upon a licensee under this Ordinance.

Section 9. Review of Community Council Decisions

Any person or organization which has applied for a license or a renewal of a license and to which a license has been denied under Section 5 of this Ordinance, and any licensee whose license has been suspended or revoked by the Community Council after a hearing under Section 8 of this Ordinance, may seek review of the decision of the Community Council by filing a civil action in the Community Court within thirty days after the decision is rendered. Such actions shall be heard under the provisions of the Judicial Code of the Community, and the Community herewith waives its sovereign immunity from unconsented suit as to such actions. The jurisdiction of the Community Court to review decisions of the Community Council under this Ordinance shall be exclusive of all other courts.

Subd. 1. Standard of Review. The Community Court shall reverse the decision of the Community Council only if clear and convincing evidence supports the conclusion that the Community Council abused its discretion, or denied the licensee due process or equal protection of the laws in contravention of the Indian Civil Rights Act of 1988, 25 U.S.C. § 1302.

Subd. 2. Effect of Decision Pending Appeal. The decision of the Community Council denying, suspending, or revoking a license shall be effective pending appeal from the decision, unless the Community Court decides, following an evidentiary hearing, that it is highly likely that the appellant will succeed on the merits of the appeal and issues an order accordingly.

Dated: November 19, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–31747 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Isleta Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 97–045, enacting the Liquor Ordinance of the Pueblo of Isleta was duly adopted by the Pueblo of Isleta on July 17, 1997. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Pueblo of Isleta lands under the jurisdiction of the Pueblo of Isleta, the provisions for criminal jurisdiction to be exercised in acordance with applicable Federal case law, statutes, and regulations.

DATES: This Ordinance is effective as of December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street, NW., MS 4641–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Liquor Ordinance of the Pueblo of Isleta is to read as follows:

Pueblo of Isleta Liquor Ordinance

Section 1

Introduction

A. *Title.* The title of this ordinance shall be the Liquor Ordinance of the Pueblo of Isleta.

B. *Authority.* This ordinance is being passed and enacted in accordance with the inherent governmental powers of the Pueblo of Isleta, and specifically under Article V, Section 2(e) of the Pueblo of Isleta Constitution. This Ordinance is in conformance with the laws of New Mexico, as required in 18 U.S.C. 1161.

C. *Purpose.* The purpose of this ordinance is to regulate the sale of intoxicating liquor within the exterior boundaries of the Pueblo of Isleta.

Section 2

Definitions

"Governor" means the Governor of the Pueblo of Isleta or his designee.

"Individuals employed by the Pueblo" means persons who are tribal employees.

"Intoxicating beverage" includes the four varieties of liquor commonly referred to as alcohol, spirits, wine, and beer, and all fermented, spiritous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating, and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine, or beer.

"Licensed establishment" means a physical area of Pueblo of Isleta tribal land designated by the Pueblo of Isleta Tribal Council as a licensed establishment for the purpose of selling intoxicating beverages. Designation by the Tribal Council must show the perimeters of the land and building of the establishment. A map and general description will be required.

"Minor" means any person under the age of twenty-one (21) years.

"Permittee" means a person employed by the Pueblo of Isleta and authorized by the Pueblo of Isleta Tribal Council to sell and serve intoxicating beverages, the permit for such designation having been issued pursuant to Section 6 of this Ordinance.

"Pueblo" means the Pueblo of Isleta, a federally-recognized tribe of Indians, located within the exterior boundaries of the State of New Mexico.

Section 3

General

The sale of intoxicating beverages shall be lawful within the exterior boundaries of the Pueblo of Isleta and all other lands of the Pueblo over which the Pueblo has jurisdiction if such sale is made in conformance with New Mexico state law, if applicable, and authorized by this Ordinance.

Section 4

Location of Sales

All sales of intoxicating beverages must be made at establishments which are wholly owned and operated by the Pueblo and which are duly licensed to engage in such sales by the Pueblo. No licensed establishment shall be located closer than 500 feet from any church, school, or military installation. A licensed establishment will be specifically designated so as to permit sales either by the package or by the drink.

Section 5

Sales Allowed

Only individuals employed by the Pueblo and specifically authorized by the Pueblo of Isleta Tribal Council may engage in the sale of intoxicating beverages within the exterior boundaries of the Pueblo of Isleta and in accordance with this Ordinance.

Section 6

Permits

Only individuals employed by the Pueblo of Isleta and specifically authorized by the Pueblo of Isleta Tribal Council may sell and serve intoxicating beverages:

A. *Permit Procedure.*

1. Only persons authorized by the Pueblo of Isleta Tribal Council may be duly granted a permit to sell intoxicating beverages.

2. A person applying for a permit must furnish to the Governor and Tribal Council a completed application for a "Liquor Permit." Such application must contain, among other things, the following information:

(a) An exhaustive listing of all jobs, businesses, and other employment for the immediately preceding ten years;

(b) A listing of all residences for the immediately preceding ten years, including street address, city, and state, and dates of residence at each different location;

(c) A list of every liquor license or permit, by number and state, in which the applicant has directly or indirectly owned or had any interest;

(d) Detail with respect to past criminal activity, including conviction for any felony, conviction for any misdemeanors, and conviction for a violation of any federal or state liquor control act in any calendar year, except that traffic offenses need not be listed;

(e) Detail as to whether the applicant ever applied for a liquor license or permit from any governmental entity and was denied and the reasons for any denial.

3. The applicant shall provide two complete sets of fingerprints on a form designated; the costs associated with supplying the complete sets and the investigation thereafter will be borne exclusively by the applicant.

4. The applicant must give his consent that the fingerprints may be processed by local and national law enforcement agencies and all other available agencies. If the search, by virtue of the fingerprint submission, reveals any adverse information which was not shown by the applicant on the application, the applicant will be given an opportunity to explain the circumstance of such omission or challenge the authenticity of the revealed information.

B. *Granting, Denial, Termination or Revocation of Permit.* The granting, denial, termination, or revocation of a permit to an applicant will be within the discretion of the Pueblo of Isleta Tribal Council. The Governor, after reviewing the application and making appropriate inquiry, will make a recommendation to the Tribal Council. The following classes of persons shall be prohibited from being granted a permit to sell or serve intoxicating beverages:

1. Any person convicted of a felony;

2. A minor.

Upon termination of employment with the Pueblo, an individual's authorization shall be revoked as of said employee's termination date.

Revocation of a permit will occur only following an opportunity to be heard.

C. *Licensed Establishments.* Sales of intoxicating beverages will occur only at establishments wholly owned and operated by the Pueblo and duly licensed by the Pueblo. The license for an establishment must show the perimeters of the land and building of the establishment. A map and general description will be required. A parcel of land not containing a building, so long as the perimeters thereof are defined, may be a Licensed Establishment, including but not limited to areas within a golf course.

D. *Prohibited Sales and Practices.*

No permittee shall:

1. Sell, serve, or dispense intoxicating beverages to any person who is obviously intoxicated;

2. Award intoxicating beverages as prizes;

3. Sell intoxicating beverages at a drive-up or walk-up window;

4. Sell intoxicating beverages to a minor who has not attained the age of twenty-one (21);

5. Knowingly sell intoxicating beverages to an adult purchasing such liquor on behalf of a minor or an intoxicated person.

6. Allow a person to bring intoxicating beverages onto the premises of a Licensed Establishment for the purposes of consuming them himself, or providing them to other individuals.

Section 7

Penalties

A. *Criminal Penalties.*

1. A permittee who is found guilty of violating any portion of this Ordinance shall have his/her permit immediately revoked and such individual shall be subject to a fine not to exceed $500.00 for each violation.

2. Any person who is found guilty of purchasing intoxicating beverages on behalf of a minor or an intoxicated person shall be subject to a fine of $500.00 for each violation or one (1) month in jail.

3. Any minor attempting to purchase intoxicating beverages or found in possession of intoxicating beverages shall be fined not more than $500.00 for each violation.

4. Any person who is found guilty of having made any false statement or concealed any material facts in his application for the permit granted him pursuant to the provisions of this Ordinance shall be immediately discharged from employment and fined not more than $500.00 for each violation.

B. *Civil Penalties.*

1. Any permittee violating any provision of this Ordinance or regulations promulgated hereunder may be subject to immediate revocation of his permit as well as immediate termination of his employment.

2. Any person possessing intoxicating beverages in violation of this Ordinance will be subject to having those beverages summarily confiscated by an authorized person. Confiscation will not preclude other civil and criminal penalties.

Section 8

Rules and Regulations

The Tribal Council may adopt and enforce rules and regulations to implement this Ordinance. The rules and regulations will be in conformance with New Mexico state law, if applicable, and with this Ordinance.

Section 9

Citations; Enforcement

Citations for violations of a provision of this Ordinance or rules or regulations promulgated hereunder may be issued by an officer of the Pueblo of Isleta police department or any person authorized by the Governor.

Section 10

Repeal

This Ordinance repeals the prior Liquor Ordinance of the Pueblo of Isleta, enacted in 1969. This repeal shall be effective on December 4, 1997.

Section 11

Severability

In the event any provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect.

Section 12

Sovereign Immunity

The sovereign immunity of the Pueblo of Isleta shall not be waived by this Ordinance.

Dated: November 19, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–31746 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–01]

Florida Canyon Mine Expansion and Comprehensive Reclamation Plan, Environmental Impact Statement Record of Decision and Plan of Operations Approval

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Record of Decision and Plan of Operations Approval for Florida Canyon Mining Company's Mine Expansion and Comprehensive Reclamation Plan Project.

DATES: The Record of Decision and Plan of Operations Approval will be distributed and made available to the public on December 2, 1997. Anyone wishing to appeal the Record of Decisions has 30 days following the date of publication of this notice in the **Federal Register**. The appeal must be postmarked no later than January 5, 1998.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Ken Loda, Project NEPA Coordinator, at the above Winnemucca Field Office address, phone (702) 623–1500, or email <kloda@nv.blm.gov>.

SUPPLEMENTARY INFORMATION: The Record of Decision consists of the action proposed in the Plan of Operation and analyzed in the Draft and Final Environmental Impact Statements. The agency Preferred Alternative includes all components of the Proposed Action. The Agency Preferred Alternative is also the environmentally preferred alternative incorporating mitigation and monitoring measures. The Proposed Action consists of expanding mining and ore processing activities at the Florida Canyon Mine, and a reclamation plan encompassing the entire operation.

Dated: November 26, 1997.

Ron Wenker,

Winnemucca District Manager.

[FR Doc. 97–31750 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–08–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet on Thursday, January 8, 1998, at Ridgway State Park south of Montrose, Colorado.

DATES: The meeting will be held on Thursday, January 8, 1998.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

SUPPLEMENTARY INFORMATION: The January 8, 1998, meeting will begin at 9:00 a.m. at Ridgway State Park Headquarters, (Dutch Charlie entrance) on US Highway 550 approximately 21 miles south of Montrose, Colorado. The agenda will include updates on the Gunnison Basin travel management planning effort, Lake Fork Project and Squirrel Exchange, and discussions on recreation guidelines and ethics, and road closures/proliferation. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: November 24, 1997.

Jamie E. Connell,

Associate District Manager.

[FR Doc. 97–31751 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–JB–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Panel, National Heritage Fellowships Section, to the National Council on the Arts will be held on December 15–17, 1997. The panel will meet from 9:00 a.m. to 10:30 p.m. on December 15, from 9:00 a.m. to 6:30 p.m. on December 16, and from 9:00 a.m. to 3:30 p.m. on December 17 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on nominations for National Heritage Fellowship awards under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by nominees. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/682–5532, TYY/TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: December 1, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31868 Filed 12–3–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Final Standard Review Plan for Antitrust Reviews: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) is issuing this final Standard Review Plan (SRP) for Antitrust Reviews to describe the procedures (prescribed in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended) for performing antitrust reviews and enforcing antitrust license conditions. This SRP reflects current regulations and policy and will be updated as necessary to reflect changes in NRC regulations.

The revised text for the SRP for Antitrust Reviews includes the resolution of public comments received in response to the draft version issued on December 27, 1996 (61 FR 68309). The purpose of the draft SRP was to solicit comments on the current NRC staff practice in carrying out the NRC's antitrust mandate in accordance with the Atomic Energy Act, to review construction permit and operating license applications and transfer requests, and to enforce antitrust license conditions.

The NRC has published its Standard Review Plan for Antitrust Reviews (NUREG–1574), under Section 109, Nuclear Regulatory Commission Appropriation Authorization, Public Law 96–295. The SRP describes the procedures used to implement the antitrust review and enforcement provisions in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended.

The final SRP for Antitrust Reviews is a "rule" for the purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff, in consultation with the Office of Management and Budget (OMB), has confirmed that this SRP is a not a major rule.

The final SRP for Antitrust Reviews does not, by itself, establish any new or revised requirements. It incorporates previously established NRC staff positions, public comments on the draft SRP for Antitrust Reviews, and lessons learned from completed reviews of various restructuring and reorganization applications. The review guidance in the SRP will be used by the NRC staff in evaluating future submittals in connection with applications for construction permits, operating licenses, combined operating licenses, and operating license transfer requests.

The final SRP for Antitrust Reviews is being made available to the public as part of the NRC's policy to inform the nuclear industry and the general public of regulatory procedures and policies. The SRP will be revised periodically to reflect changes to statutes and NRC rules and regulations.

Copies of NUREG–1574 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 26th day of November, 1997.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Acting Chief, Generic Issues and Environmental Projects Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31799 Filed 12–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become

final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: July 1, 1997.

Brief description of amendment: On July 1, 1997, United States Enrichment Corporation (USEC) submitted a request to revise Issue 3 of the Plan for Achieving Compliance with NRC Regulations at the Portsmouth Gaseous Diffusion Plant (Compliance Plan) and Chapter 3 of the Safety Analysis Report (SAR). The proposed amendment corrects statements made in Issue 3 of the Compliance Plan and Chapter 3 of the SAR which incorrectly depict the Autoclave Locking Ring Interlock System as having two redundant pressure "switches" set at +0.5 psig to prevent the autoclave from being inadvertently opened while under pressure. In fact, the autoclaves have always had only one "switch" set at +0.5 psig.

The existing Commitments section of Issue 3 of the Compliance Plan states:

"In addition to the safety systems summarized above, the following systems and limits are present to enhance safety:

• The Locking Ring Interlock contains pressure limit switches which interlock with the hydraulic system to prevent opening the autoclave shell while under pressure (above 0.5 psig). Although only * * *"

USEC has proposed to replace the phrase "pressure limit switches" with "a pressure limit switch."

The existing Justification for Continued Operation section of Issue 3 of the Compliance Plan states:

4. * * * alarm condition. Also, the autoclave locking ring interlock contains pressure limit switches which lock out the hydraulics to prevent the autoclaves from being opened when the internal pressure is greater than 0.5 psig. The autoclave * * *

USEC has proposed to replace the phrase "pressure limit switches which lock" with "a pressure limit switch which locks."

Accordingly, the pertinent SAR Chapter 3 sections have also been modified to address this oversight made when the initial certificate application was submitted.

PORTS uses thirteen cylindrical (6, 7, and 8 foot diameter) steam autoclaves in buildings X–342, X–343 and X–344 to feed, transfer and sample UF6 contained in cylinders. These autoclaves were designed and constructed in accordance with ASME Section VIII and provide safety by confining UF6 and any reaction products in the event of a major UF6 release inside an autoclave. Steam used to heat UF6 cylinders within autoclaves is typically controlled at approximately 5 psig. This pressure differential between the autoclave and the outside environment is maintained by way of a locking ring between the autoclave's hydraulically mobile shell and fixed head. An Autoclave Locking Ring Interlock (ALRI) system, which permits steam to be supplied to an autoclave only while it is closed, also contains a pressure switch set at −0.5 psig, which prevents the opening of an autoclave while it has an internal pressure greater than 0.5 psig. This system protects workers, who may be located in close proximity to the autoclave, from steam burns and possible contamination, in the event an autoclave is inadvertently opened while its internal pressure is greater than 0.5 psig. This pressure switch is considered to be important to safety. The ALRI system includes another pressure switch set at -0.5 psig to prevent possible damage to the autoclave hydraulic system if the autoclave is opened at a significant internal vacuum. This pressure switch is not considered to be important to safety.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The ALRI is designed to protect workers, from exposures to UF6 and the products of its reaction with steam, while they are in close proximity to a closed autoclave. Such exposures could only occur following an inadvertent opening of the autoclave while it is pressurized with UF6 and its reaction products resulting from a UF6 release accident in a closed autoclave. In addition, the ALRI is designed to protect workers from steam burns while they are in close proximity to an inadvertently opened autoclave that was pressurized with steam.

USEC has identified the ALRI systems, including the pressure switches and control relays, as Augmented Quality (AQ) systems. As such, USEC is required to apply a high level of quality control (portions of ASME NQA–1) as committed to in the Quality Assurance Plan. Application of additional QA requirements to the ALRI augments the reliability of the system (no such failure events have been reported since March 3, 1997). In addition, the interlocks are fail safe in that while the autoclave is closed, an electrical interruption to the interlock would cause the pressure switch contact and the control relay contact to remain open, which in turn would deactivate the hydraulic system keeping the locking ring from disengaging.

The UF6 containment boundaries provided by the cylinder, pigtail and valves inside an autoclave, and steam and UF6 reaction product confinement boundaries provided by the autoclave shell and piping and valves out to and including the second containment valve, are designated as "Q" systems. As such, USEC is required to apply the highest level of quality control (ASME NQA–1) to ensure that the pressure boundaries within these systems are maintained. Taking into consideration the applicable safety requirements (administrative and installed hardware) for preventing and/or mitigating UF6 releases associated with autoclaves, and past operational history at PORTS, the staff concludes that a major accidental release of UF6 inside a closed autoclave is highly unlikely. However, if such an accident were to occur, the pressure rise inside the autoclave would activate the autoclave containment system and the operators would be promptly alerted. Small releases of UF6 are also unlikely to occur in a closed autoclave. However, in the event of a small release, the condensate conductivity monitoring cells, which are not considered as important to safety but rather as enhancements to safety, would also activate the autoclave containment system and the operators would be promptly alerted.

The staff has concluded that having a single pressure switch in the ALRI set at +0.5 psig, which has always been the operating condition at PORTS, as opposed to having redundant pressure switches, which is indicated in USEC's Compliance Plan and SAR approved by the NRC, will not significantly increase the risk of an inadvertent release of UF6, or of the products of its reaction with steam, from the autoclave. Therefore, this amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a UF6 release. Therefore, having a single pressure switch in the ALRI set at +0.5 psig, as opposed to having redundant pressure switches, will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a release of UF6 or of the products of its reaction with steam. Therefore, having a single pressure switch in the ALRI set at +0.5 psig, as opposed to having redundant pressure switches, will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

Based on the staff's review of the proposed amendment, no new or different accidents were identified.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a release of UF6 or of the products of its reaction with steam. Based on the staff's review of the proposed amendment, the staff concludes that there will be no significant reduction of any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For similar reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a release of UF6 or of the products of its reaction with steam. In addition, the staff has not identified any criticality related implications from the proposed amendment. Based on the staff's review of the proposed amendment, the staff concludes that there will be no decrease in the effectiveness of the overall plant's safety program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective 5 days after issuance by NRC.

Certificate of Compliance No. GDP–2: The amendment will revise the Compliance Plan and the SAR.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 26th day of November 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–31797 Filed 12–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

Private Fuel Storage Limited Liability Company Establishment of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for records pertaining to Private Fuel Storage Limited Liability Company's (PFS) proposed independent spent fuel storage facility (ISFSI) to be constructed on the Skull Valley Goshute Indian Reservation, Utah.

Members of the public may now inspect and copy documents related to the proposed ISFSI at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860. The library documents division is open on the following schedule when school is in session: Monday through Thursday 7:00 a.m. to 11:00 p.m.; Friday 7:00 a.m. to 5:00 p.m.; Saturday 9:00 a.m. to 5:00 p.m.; and Sunday 11:00 a.m. to 9:00 p.m. Confirm the hours of operation during holiday and vacation periods.

For further information interested parties in the Tooele County area may contact the LPDR directly through Mr. Lee Warthen, Documents Division, telephone number (801) 581–8394. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555–0001, telephone number toll-free 1–800–397–4209.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this 1st day of December, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 97–31798 Filed 12–3–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39368; File No. SR–NASD–97–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change Filed by the National Association of Securities Dealers, Inc. Relating to Trading Halts

November 26, 1997.

I. Introduction

On August 20, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] the proposed rule change, prepared by the Nasdaq Stock Market, Inc. ("Nasdaq"), relating to trading halts. The proposed rule change was published for comment in Securities Exchange Act Release No. 39196 (October 3, 1997), 62 FR 53361 (October 14, 1997) ("Notice of Proposed Rule Change"). No comments were received on the proposal. For the reasons discussed below, the

[1] 15 U.S.C. 78s(b)(1).

Commission is approving the proposed rule change.

II. Description

Nasdaq has proposed to amend NASD Rule 4120 and IM–4120–1 to expand Nasdaq's trading halt authority and to clarify procedures for initiating certain trading halts. Rule 4120 currently sets out the bases on which Nasdaq may initiate trading halts. In addition to the existing bases, the proposed amendments authorize Nasdaq to: halt trading in the third market of a Consolidate Quotation System ("CQS") security when a national securities exchange halts trading in such security for operational reasons; halt trading in a Nasdaq-listed security that is a derivative or component of a CQS security (such as a convertible bond, warrant, or unit), when a national securities exchange halts trading in the underlying CQS security for operational reasons; halt trading in an American Depository Receipt ("ADR") or other Nasdaq-listed security when a national or foreign securities exchange or regulatory entity imposes a regulatory trading halt in the security underlying the ADR or the Nasdaq-listed security; and halt trading when Nasdaq requests from an issuer information relating to material news or the issuer's compliance with Nasdaq listing qualification requirements. Additionally, the proposed amendments clarify that the procedures in the rule permit Nasdaq to initiate trading halts when material information emanates from a source other than the issuer.

First, the proposed amendments expand Nasdaq's existing authority to initiate a trading halt in the third market of an exchange-listed security when the primary market initiates an operational trading halt in such security.[2] Rule 4120(a)(3) currently authorizes Nasdaq to impose an operational trading halt in those exchange-listed securities traded through the ITS/CAES linkage.[3] Under the current rule, Nasdaq may initiate a trading halt when there is an order imbalance or influx in the security and the primary market halts trading to resolve operational issues. The proposed amendments expand Nasdaq's authority and permit Nasdaq to halt trading in all exchange-listed securities traded in the third market (*i.e.*, CQS securities)[4]—not just those securities traded through the ITS/CAES linkage—when a national securities exchange initiates an operational trading halt in the CQS security.[5]

In addition, the amendments authorize Nasdaq to halt trading in an exchange-listed security and which also is a derivative or component of a CQS security, when a national securities exchange imposes an operational trading halt in the CQS security, *i.e.*, when a national securities exchange halts trading in a CQS security for an order imbalance. Currently, the Nasdaq-listed derivative security would not be halted in conjunction with the operational trading halt in the CQS security, thus making it difficult for market makers in the Nasdaq-listed security to price accurately the derivative security due to the lack of current pricing information in the underlying CQS security. That is, because the primary market is temporarily closed, price discovery is not occurring in that venue, and market makers must attempt to determine pricing independent of the primary market or may wait until the primary market reopens to price their issues. The proposed amendments, however, would allow Nasdaq to halt trading in the Nasdaq-listed security, such as a Nasdaq-traded convertible bond whose value is tied closely to an exchange-listed security, when a national securities exchange initiates an operational trading halt in a CQS security. Similar to the current provisions of Rule 4120(a)(3), the proposed amendments permit CQS and Nasdaq market makers to commence quotations and trading at any time following the initiation of the operational trading halt. Nasdaq believes that the proposed amendments foster orderly markets and investor protection because they allow Nasdaq to halt trading—based on a national securities exchange's operational trading halt—to allow market makers in related issues to assess the situation and determine the appropriate pricing of the security.

Second, Rule 4120 is being amended to authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when a national or foreign securities exchange or regulatory authority, for regulatory reasons, imposes a trading halt in the security underlying the ADR or the dually-listed (Nasdaq) security. There are times when another exchange, market, or regulatory entity—such as a Canadian commission or European market center with which a Nasdaq company's securities are registered or listed—implements a regulatory trading halt. These trading halts sometimes occur because the issuer is delinquent in making a required filing with the national or foreign securities exchange or regulatory entity, or the market or regulatory entity halts trading in the company's stock for a violation of that entity's rules or regulations. For example, an issuer, which is registered as a reporting company with a Canadian regulatory commission and which also is a Nasdaq-listed company or has its ADRs listed on Nasdaq, becomes delinquent in its filings with the Canadian commission. The Canadian commission subsequently initiates a trading halt in the issuer's securities. Currently, trading would continue on Nasdaq even though regulatory concerns prompted another regulatory entity to halt trading in the issuer's securities, because the issuer is in compliance with Nasdaq filing requirements. Under the proposed amendments, however, Nasdaq would now have the authority to halt trading.

Specifically, the amendments authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market and trading is halted in the security for regulatory reasons by such exchange or market, or regulatory authority overseeing such exchange or market. Thus, the amendments ensure investor protection because they allow Nasdaq to take coordinated action when another market or regulatory authority identifies a regulatory basis for halting trading in an issue.

Third, Rule 4120(a)(1) currently permits Nasdaq to halt trading in a Nasdaq-listed security to permit the dissemination of material news, and Rules 4120(b)(1)–(3) set out the procedures for doing so.[6] Specifically, Rule 4120(b)(1) requires Nasdaq issuers to inform Nasdaq of any material news prior to the release of such information, and Rule 4120(b)(3) authorizes Nasdaq to evaluate information provided by the issuer to determine if trading should be halted prior to the release of such information. Rule 4120(b)(3) does not specifically set out procedures for initiating a trading halt when Nasdaq is advised of material news about a particular Nasdaq issuer and such news emanates from a source other than that issuer. For instance, a Nasdaq issuer may be subject to an unsolicited take-over bid by another company, of which the Nasdaq-listed company is unaware. In such instance, the acquiring issuer might disseminate news about the unsolicited take-over bid to the public; thus, Nasdaq may learn of information warranting a trading halt from a source other than the Nasdaq issuer, such as a news headline.[7] The proposed amendments to Rule 4120(b)(3) and IM–4120–1 clarify that Nasdaq may halt trading when Nasdaq learns of material news about an issuer, regardless of whether the news emanates from the particular issuer or from another source. Furthermore, proposed amendments to Rule 4120(b)(3) reflect that Nasdaq may halt trading without first consulting the issuer about material news because it may not be practicable or possible for Nasdaq to do so, such as when material news is released (without consultation with Nasdaq) by a source other than the issuer.

Next, the proposed amendments permit Nasdaq to halt trading when Nasdaq requests information from an issuer relating to material news or qualification matters. For example, Nasdaq may be advised of material news about an issuer which appears to be factually inaccurate or incomplete. This incomplete or inaccurate disclosure may raise regulatory and listing qualification issues (*i.e.*, whether the issuer is in compliance with all Nasdaq listing requirements, as set out in the Rule 4300 and 4400 Series), which Nasdaq staff would thoroughly investigate, *i.e.*, when a Nasdaq-listed company issues a press release making highly questionable claims of a significant discovery. The Nasdaq company is unable to immediately substantiate the basis for the claims, which raises serious concerns with Nasdaq as to the accuracy of the company's public statement. Accordingly, Nasdaq staff determines that additional information from the issuer is required to evaluate whether the company's public statement is accurate or requires further clarification. The proposed amendments permit Nasdaq, upon the request of certain information, to halt trading so that it may determine whether continued trading is advisable once the information is received and reviewed.

Nasdaq is proposing to amend IM–4120–1 to clarify that all trading halts initiated under Rule 4120—not just those imposed to permit the dissemination of material news—generally last one half hour, but may last longer if necessary to permit the dissemination of material news or if the original or an additional basis under Rule 4120(a) exits for continuing the halt. Furthermore, the statement in IM–4120–1 that Nasdaq will keep denials of rumors confidential is deleted to reflect Nasdaq's policy of issuing press releases indicating that MarketWatch has reviewed unusual trading activity, has contacted the issuer, and is not initiating a halt because it has not been advised of a basis for doing so.[8]

The proposed amendments also include minor conforming changes to both Rule 4120 and IM–4120–1. For example, the procedures for halting trading have been consolidated into a revised Rule 4120(b)(4) in light of the inclusion of the additional bases for initiating trading halts. References in Rule 4120 and IM–4120–1 to the "Association" and "Market Regulation Department" have been replaced with references to "Nasdaq" and "MarketWatch Department" respectively, to reflect that Nasdaq has authority for trading halts under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. Changes to Rule 4120(b)(2) reflect that issuers may notify MarketWatch of material news by facsimile, as well as by telephone—which is stated in the accompanying footnote to the rule but not in the rule text. Finally, references in Rules 6350(b) and 6430(b) to operational trading halts for ITS/CAES market makers have been changed to reflect that Rule 4120 will authorize Nasdaq to initiate trading halts for CQS market makers, as well as ITS/CAES market makers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations applicable to the NASD and, in particular, with the requirements of Section 15(b). In particular, the Commission believes the proposal is consistent with the Section 15A(b)(6) requirements that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule is consistent with Section 15A(b)(11) that requires that rules of the association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission believes NASD Rule 4120 and IM–4120–1 will benefit investors because the expanded authority to halt trading will give Nasdaq third market makers the ability to allow a national securities exchange to adjust to an order imbalance or influx to better determine the appropriate price for a security. Third market makers will no longer have a disparate requirement to continuing pricing an exchange-listed security when a competing specialist has halted trading in that particular security. Moreover, Nasdaq may now also halt trading in a Nasdaq listed security that is a derivative of a security halted on a national securities exchange. Nasdaq market makers will no longer be required to price a derivative Nasdaq listed security when no accurate pricing information on the underlying security is available from a national securities exchange.

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[2] The "third market" is the market for exchange-listed securities away from exchange markets.

[3] ITS/CAES is the NASD's link to the Intermarket Trading System ("ITS"), which is a system that enables ITS/CAES market makers to trade certain exchange-listed securities—known as SEC Rule 19c–3 securities—by allowing such market makers to direct agency and principal orders to, and receive orders from, other ITS members. SEC Rule 19c–3 prohibits off-board trading restrictions from applying to securities that: (1) Were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. [The Computer Assisted Execution System ("CAES") is the NASD's automated system that allows members to direct principal and agency orders in exchange-listed securities to CAES for automated execution in the third market). Thus, pursuant to the ITS Plan, trading in ITS/CAES is limited to SEC Rule 19c–3 securities and excludes those securities not subject to SEC Rule 19c–3.

[4] The Consolidated Quotation System ("CQS") is a service that provides quotations of all participating exchange specialists and market makers on all securities listed on the New York Stock Exchange and the American Stock Exchange, and selected securities listed on the regional stock exchanges.

[5] Thus, the proposed amendments would give Nasdaq expanded authority to initiate operational trading halts in the third market of SEC Rule 19c–3 securities, as well as those securities not subject to SEC Rule 19c–3.

[6] The proposed change to Rule 4120(a)(1) specifies that trading in a Nasdaq-listed security may be halted "to permit" the dissemination of material news. (Rule 4120(a)(1) currently provides that trading in a Nasdaq-listed security may be halted "pending" the dissemination of material news.) The rule is being amended to specifically authorize Nasdaq to halt trading when material news technically is not "pending," but a trading halt is necessary to protect investors and maintain an orderly market. For example, there are instances where Nasdaq is not advised of pending material news, material news is disseminated partially, and Nasdaq learns of such news, and Nasdaq quickly determines that a halt is necessary to permit complete dissemination of the material news. Additionally, the amendments to Rule 4120(a)(1) will bring it into parity with the language in Rule 4120(a)(2).

[7] If the company initiating the unsolicited take-over bid is a Nasdaq issuer, that company, in certain circumstances, may not be required to report the take-over bid to Nasdaq if such information is not material to the company. Thus, even if the company initiating the bid is listed on Nasdaq, Nasdaq may not be apprised of such information by either the Nasdaq company which is initiating the unsolicited take-over or the Nasdaq company which is the target of the unsolicited take-over.

[8] Note that under the proposed amendments, Nasdaq still is required to keep confidential all non-public information and use such information only for regulatory purposes.

In addition to Nasdaq's expanded authority to initiate operational trading halts, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer). The Commission believes that Nasdaq's expanded authority will help prevent fraudulent practices and protect investors.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6) and 15A(b)(11).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act[10] that the proposed rule change (SR–NASD–97–60) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31753 Filed 12–3–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39367; File No. SR–NASD–97–53]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Trading in Exchange-Listed Securities in the Third Market

November 26, 1997.

I. Introduction

On July 28, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act").[1] The proposed rule change relating to automated quotations in exchange-listed securities in the third market, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 38985 (August 27, 1997).[2] Two comment letters were received on the proposal.[3] On October 10, 1997, the NASD filed Amendment No. 2, prepared by Nasdaq, which deferred the proposal for permissible uses of automated quotations with respect to exchange-listed securities included in the Intermarket Trading System ("ITS"). For the reasons discussed below, the Commission is approving the proposed rule change and granting accelerated approval to Amendment No. 2.

II. Description of the Proposal

The NASD's proposal included changes to several rules governing the trading in exchange-listed securities in the over-the-counter market, the so-called "third market." Specifically, the NASD proposedl to amend rules of the NASD to: (1) Codify permissible uses of computer-generated quote systems with respect to exchange-listed securities;[4] (2) eliminate the excess spread rule for market makers in exchange-listed securities; (3) reduce the minimum quotation size applicable to market makers in exchange-listed securities to one unit of trading (*i.e.*, 100 shares), regardless of whether the CQS market maker[5] is displaying a customer's limit order or quoting for its own proprietary account; (4) extend exemptive provisions of the NASD's limit order protection rule applicable to Nasdaq-listed securities (the "Manning Rule") to exchange-listed securities; and (5) reduce from 1000 to 100 the number of shares that CAES will execute automatically.

a. Permissibility of the Use of Certain Automated Quotation Generation Systems

The plan governing the ITS Plan currently provides that exchange specialists and CQS market makers may use "automated quotation tracking systems," provided that the quotations generated by such systems are for 100 shares or less ("100-Share Autoquoting Limitation"). Despite the ITS plan's allowance of 100-share autoquotes, the NASD currently prohibits CQS market makers from using autoquote systems to effect automated quote updates or to track the inside market. In addition, the NASD currently requires CQS market makers to maintain a minimum quotation size of 500 shares, with the exception of displaying a customer limit order, which also effectively prohibits CQS market makers from autoquoting.

The NASD's proposal explicitly accommodates computer-generated quotations that add value to the market and do not raise quotation accessibility concerns or compromise the capacity or integrity of Nasdaq. Specifically, the proposed rule change amends NASD Rule 6330 to permit computer-generated quotations in exchange-listed securities that generate proprietary quotes for 100 shares or more if such quote systems equal or improve either or both sides of the NBBO. For example, if a CQS market maker utilized a computer-generated quotation program to match the best offer (bid) and the market responsible to the best offer (bid) subsequently increased (decreased) its offer (bid) price, the CQS market maker could not use the program to track such inferior price. Thus, if the best offer is 20¼, a CQS market maker could use the program to improve its offer to 20¼. If the market responsible for the 20¼ offer moved to 20⅜, however, the CQS market maker could not use the program to move its offer to 20⅜.

In addition, the proposed rule change amends Rule 6330 to permit computer-generated quotations that add size to the NBBO, or are used to expose a customer's market or marketable limit order for price improvement opportunities. These uses would be in addition to three other forms of computer-enhanced quotation maintenance programs referenced in the NASD's Autoquote Policy which are also being incorporated into Rule 6330 with respect to exchange-listed securities.[6] With the exception of these types of computer-generated quotation and maintenance systems, all other types of computer-generated quotations would continue to be prohibited. Thus, market makers could not use computer-generated quotations to track away from the inside market ("autoquoting away").

b. Elimination of the Excess Spread Rule

The NASD also proposed to enhance the quotation flexibility of CQS market makers by eliminating the excess spread rule for CQS securities. The NASD determined that the potential adverse competitive consequences on highly automated CQS market making firms who are prohibited from autoquoting away could be minimized if the excess spread rule was eliminated. Specifically, by eliminating the excess spread rule for CQS securities, the NASD believes that CQS market makers will have more flexibility in quoting, Nasdaq capacity will not be needlessly consumed by processing voluminous quote updates autoquoting away from the market, and the competitiveness of the third market will not be compromised.

c. Changes to the Minimum Quote Size Rule for CQS Market Makers

In an environment where investors are able to directly impact quoted prices in the third market by having their limit orders displayed publicly, the NASD believes it is appropriate to treat CQS market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements. The NASD believes the increased order-driven nature of the third market brought about by the SEC's Limit Order Display Rule obviates the justification for the 500 Share Quote Rule. Accordingly, the NASD proposed to amend the 500 Share Quote Rule to permit a CQS market maker to post quotations commensurate with their own freely-determined trading interest, provided, however, that the quotations must be for at least one normal unit of trading.

d. Modifications to CAES

The implementation of the Order Execution Rules has required market makers to display customers limit orders, thereby compelling CQS market makers, who are not only obligated to execute trades up to 1,000 shares at another market maker's quote, to execute trades at superior-priced limit orders displayed by any other CQS market maker, even if such limit orders are only for 100 shares. In addition, because Nasdaq no longer processes CQS quotes,[7] CAES executes orders at the best bid or offer price in the third market instead of the national best bid or offer ("NBBO"). As a result, when there are no CQS market makers at the NBBO, CAES is providing inferior executions to customer orders.

In order to facilitate the best execution of customer orders and not subject CQS market makers to automatic executions at prices other than their posted quotes, the NASD believes it is imperative that CAES be appropriately modified. Accordingly, the NASD has proposed to amend the operation of CAES so that it automatically executes orders up to 100 shares instead of 1,000 shares. An order can be preferenced for larger than 100 shares to a CQS market maker and, although the order will not be automatically executed, the order will be processed by the CQS market maker pursuant to its firm quote obligations.[8]

e. Modifications to the Limit Order Protection Rule Applicable to CQS Securities

NASD proposed to amend Rule 6440 to permit a member to negotiate special terms and conditions with a customer that would enable the firm to trade ahead of, or at the same price as, the limit order price. Specifically, under the Manning Rule, member firms may attach terms and conditions with respect to the handling of limit orders that are either: (1) For institutional accounts,[9] or (2) limit orders that are for 10,000 shares or greater, regardless of whether they are for institutional accounts, provided that the order is $100,000 or more in value. The NASD proposed to extend the "terms and conditions" language of the Manning Rule to the CQS limit order protection rule.

III. Discussion

In August 1996, the Commission adopted new Rule 11Ac1–4 ("Limit Order Display Rule") and amendments to Rule 11Ac1–1 ("Quote Rule").[10] As amended, the expanded definition of "subject security" [11] within the Quote Rule obligates any NASD member that acts in the capacity of an over-the-counter ("OTC") market maker [12] to provide continuous two-sided quotations for any exchange-listed security [13] in which that member, during the most recent calendar quarter, comprised more than 1% of the aggregate trading volume for such security as reported in the consolidated system ("1% Rule").[14] An OTC market maker must, within 10 business days of the end of each calendar quarter, compute its trading volume for each subject security, and if the volume exceeds 1%, the market maker must begin publishing two-sided quotations.

The Commission began implementing the Order Execution Rules on January 20, 1997. The Commission, however, deferred implementation of the expanded 1% Rule until September 30, 1997.[15] In light of the implementation of the 1% Rule to all exchange-listed securities, the NASD proposed the aforementioned amendments to its rules governing trading in exchange-listed securities in the third market.

The Commission received two comment letters on the proposed rule change. The BankOne comment letter supported the NASD's proposal. The

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[9] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 300.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 62 FR 46787 (September 4, 1997).

[3] See letter from Steven Alan Bennett, Senior Vice President and General Counsel, BankOne, to Mr. Jonathan Katz, Secretary, SEC, dated September 25, 1997 ("BankOne Letter"); and letter from James E. Buck, Senior Vice President and Secretary New York Stock Exchange to Mr. Jonathan G. Katz, Secretary, SEC, dated September 29, 1997 ("NYSE Letter").

[4] However, with the approval of Amendment No. 2 to the proposal, exchange-listed securities that are included in the ITS/Computer Assisted Execution System ("CAES") linkage are not subject to the NASD's rule regarding permissible uses of computer-generated quote systems.

[5] Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service ("CQS") through The Nasdaq Stock Market only by an Association member registered with it as a CQS market maker. See NASD Rule 6320.

[6] See NASD IM–4613. Specifically, these three forms are: (1) Quotation updates in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) quotation updates that require a physical entry (such as manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); and (3) quotation updates that reflect the receipt, execution, or cancellation of a customer limit order.

[7] See Exchange Act Release No. 37663, September 10, 1996 (61 FR 48725) (order approving File No. SR–NASD–96–28).

[8] See 17 CFR 240.11Ac1–1.

[9] Institutional limit orders are orders for institutional accounts. NASD Rule 3110(c) defines an institutional account as an account for: (1) Banks, savings and loan associations, insurance companies, or registered investment companies; (2) investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[10] See Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Adopting Release") adopting the Limit Order Display Rule and amendments to the Quote Rule (collectively the "Order Execution Rules").

[11] Rule 11Ac1–1(a)(25).

[12] See Rule 11Ac1–1(a)(13).

[13] See Rule 11Ac1–1(a)(10) which defines "exchange-traded security" to mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange; provided, however, that securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

[14] The 1% Rule, prior to being expanded in the Order Execution Rules, applied only to 19c–3 securities. Exchange Act Rule 19c–3 prohibits the application of off-board trading restrictions to securities that: (1) Were not traded on an exchange on or before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c-3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-Rule 19c-3 securities. The 1% Rule was expanded to include all exchange-listed securities, both Rule 19c-3 and non-Rule 19c-3.

[15] See Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 8, 1997); 38490 (April 9, 1997), 62 FR 18514 (April 16, 1997); and 38870 (July 24, 1997), 62 FR 40732 (July 30, 1997). Therefore, until September 30, 1997, OTC market makers were only obligated to publicly disseminate quotations when they were responsible for 1% or more of the trading volume in a 19c-3 security.

NYSE comment letter did not address the specifics of the NASD proposal. Nevertheless, the NYSE was concerned with the NASD proposal to amend Rule 6330 to effectively lift its ban on autoquoting because of the conflict with the ITS Plan. Although the ITS Participants are currently discussing whether to amend the ITS Plan with regard to permissible uses of computer-generated quotations, the current ITS Plan limits computer-generated quotations to 100 shares. The ITS Plan governs all ITS Participants, including the NASD. Therefore, the NYSE does not believe the NASD Rule permitting the use of computer-generated quotations should be extended to those exchange-listed securities that are included in the ITS.

In response to the NYSE comment letter, and in recognition of the lack of unanimous consensus from ITS Participants, the NASD filed Amendment No. 2 to the proposal requesting the Commission to proceed with the proposed rule change with respect to non-Rule 19c-3 securities. The NASD also noted that they are concerned that market makers may experience difficulty in using enhanced automation support if they are only permitted to do so for a portion (*i.e.*, non-Rule 19c-3 securities) of the exchange-listed securities they maintain quotations in. Therefore, the practical result of removing the burdens of complying with the 1% Rule would be lost.

In expanding the 1% Rule, the Commission recognized that it raised an issue with respect to the ability of NASD members to autoquote. The Commission stated that "a total prohibition on the use of computer generated quotes is not appropriate" and that "[s]uch an approach excessively limits the use of sophisticated trading strategies that rely on automation in the quotation process for their success, and it also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently." [16] While the Commission noted that it "recognizes traditional concerns related to the accessibility of computer generated quotes and the impact of such quotes on system capacity, it believes that more can and should be done in this area." [17] The Commission stressed that more should be done particularly "given the enhanced quotation obligations that will be imposed on some market participants under the revised Quote Rule." [18] The Commission, therefore, urged the "NASD, ITS Participants, and other interested market participants to develop revised standards that would permit the use of computer generated quotes that contribute value to the market." [19]

The Commission believes the NASD proposal provides its members with the ability to use computer-generated quotations that add value to the market and do not raise quotation accessibility concerns. The NASD proposal does not permit autoquoting away which would subject Nasdaq to capacity constraints as well compromise the value of quotations. The Commission believes the proposal facilitates the implementation of the Order Execution Rules, specifically, the 1% Rule by providing OTC market makers with the ability to use computer-generated quotations. The Commission notes, however, that permitting computer-generated quotations for only non-Rule 19c–3 securities may inhibit some market makers because they may not be able to distinguish those quotations from their quotations in other exchange-listed securities. The Commission expects that the ITS Participants will continue in their discussions to amend the ITS Plan to permit computer-generated quotations. In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.[20]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 11A(a)(1)(D), 11A(a)(2) and 15A(b)(6) of the Exchange Act.[21] Section 11A(a)(1)(D) of the Exchange Act states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders and contribute to best execution of such orders, and subsection (a)(2) thereunder directs the Commission to facilitate the establishment of a national market system for qualified securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just an equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above should be submitted by December 29, 1997.

V. Conclusion

For the reasons discussed in this order, pursuant to Section 19(b)(2) of the Exchange Act,[22] the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (NASD–97–53) be, and hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31754 Filed 12–3–97; 8:45 am]

BILLING CODE 8010–01–M

[16] See Adopting Release at Section III.B.3.c.i.

[17] *Id.*

[18] *Id.*

[20] 15 U.S.C. 78c(f).

[21] In addition, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule will likely contribute to more accurate and informative quotations because market makers are able to use automated measures to produce accessible quotations that add value to the market. The Commission believes that permitting the use of automated quotations by CQS market makers allows them to utilize technology to fulfill their quotation obligations efficiently. Moreover, allowing CQS market makers to utilize technology in this manner reduces any competitive disadvantage that the previous auto-quote ban may have created. 15 U.S.C. § 78c(f).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(A)(12).

DEPARTMENT OF STATE

[Public Notice 2658]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, December 17–18, 1997, in Conference Rooms 1205 and 7516.

The Committee will meet in open session from 9 a.m. through 12 p.m. on the morning of Wednesday, December 17, 1997. The remainder of the Committee's sessions from 1:45 p.m. on Wednesday December 17, until 5 p.m. on Thursday, December 18, 1997, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail pahistoff@panet.us-state.gov).

Dated: November 17, 1997.

William Z. Slany,

Executive Secretary.

[FR Doc. 97–31773 Filed 12–3–97; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–60]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 or Tawana Matthews (202) 267–9783, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on December 1, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28846.

Petitioner: Gulfstream International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.2(d)(1)(f)(D), 121.337(b)(8), 121.359(g).

Description of Relief Sought: To permit Gulfstream to operate 25 Beechcraft 1900C airplanes in passenger-carrying operations without approved smoked and fume protective breathing equipment for flight crewmembers until March 20, 1998.

[FR Doc. 97–31790 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5990 Hazeltine National Dr., Suite 400, Orlando Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Director of Aviation of the Melbourne Airport Authority at the following address: Melbourne Airport Authority, Melbourne International Airport, One Air Terminal Parkway, Suite 220, Melbourne, Florida 32901–1888.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon P. Rupinta, Project Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, 407–812–6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose and use a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 26, 1997, the FAA determined that the application to impose and use a PFC submitted by Melbourne Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 4, 1998.

The following is a brief overview of PFC Application No. 98–02–C–00–MLB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: January 1, 1999.

Total estimated PFC revenue: $614,362.

Brief description of proposed project(s): Runway 9R–27L Improvements—Phase 1.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Melbourne Airport Authority.

Issued in Orlando, Florida.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 97–31791 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Norfolk-Virginia Beach Light Rail Transit Project in the Norfolk-Virginia Beach, Virginia Corridor

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Tidewater Transportation District Commission (TRT), in cooperation with the Virginia Department of Rail and Public Transportation and the Hampton Roads Metropolitan Planning Organization, intend to prepare an Environmental Impact Statement (EIS), for the Norfolk-Virginia Beach Light Rail Transit Project in the Norfolk-Virginia Beach, Virginia corridor. The EIS is being prepared in conformance with the National Environmental Policy Act (NEPA) and will also satisfy the requirements of the 1990 Clean Air Act Amendments (CAAA). The EIS will evaluate the following transportation alternatives: a No-Build alternative, a Transportation Systems Management (TSM) alternative, and the light rail transit alignment. The Tidewater Transportation District Commission will be the lead agency for the preparation of the EIS.

SCOPING PROCESS: The purpose of the Public Scoping Meeting is to provide interested individuals with an introduction to and an overview of the EIS process and the opportunity for comments on the significant issues and impacts to be addressed in the EIS. Comments may be submitted orally at the Scoping Meeting or in Writing to Ms. Jayne Whitney, Project Director, Tidewater Transportation District Commission, 1500 Monticello Avenue, Norfolk, Virginia 23510 during the Scoping comment period for the preparation of the Draft Environmental Impact Statement (DEIS) which ends on Thursday, January 22, 1998.

The Scoping Meeting will begin with an "open house" where attendees will be able to view graphics and discuss the project with the project representatives. A presentation on the project will be given at 6:00 P.M., followed by an additional opportunity for questions and answers. Scoping material will be available at the meeting or in advance of the meeting by contacting Ms. Janette Crumley at (757) 640–6295 or Ms. Delores Gee at (757) 640–6251. A sign language interpreter will be available for the hearing impaired. A TDD number (757) 640–6255 is also available. The buildings are accessible to people with disabilities. Scoping meetings will be held on:

1. Tuesday, December 9, 1997, 4 p.m.–7 p.m., Tidewater Transportation District Commission Headquarters, 1500 Monticello Avenue, Norfolk, Virginia 23510.

2. Thursday, December 11, 1997, 4 p.m.–7 p.m., ODU/NSU Virginia Beach Higher Education Center, 3300 South Building, 397 Little Neck Road, Virginia Beach, Virginia 23452.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Lebeau, Transportation Program Specialist, Federal Transit Administration, Region III, (215) 656–7100.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and TRT invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or have less environmental impacts while achieving similar transit objectives. During Scoping comments should focus on the alternatives under consideration and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the draft EIS comment period. Scoping comments may be made at the Public Scoping Meeting or in writing within 45 days after publication of this notice. See the "Scoping Process" section above for locations and times.

II. Description of Study and Project Need

The proposed project consists of an 18.25 mile light rail transit system between Downtown Norfolk and the Virginia Beach Pavilion Convention Center generally following the Norfolk Southern Railroad right-of-way. A combination of single and double track light rail transit construction is being studied. The study includes a proposal for 13 stations, many of which will provide both bus and park-and-ride access.

The Norfolk-Virginia Beach corridor has been and continues to be an area of significant growth for the region. One hundred thousand people commute into the City of Norfolk and 30,000 into Virginia Beach every day from outside those communities. Virginia Beach Boulevard and Route 44/I–264 are at or over capacity at many locations at this time with traffic forecast to grow by another 87 percent on Route 44 by the Year 2015. Both of these roadways have been expanded to the limits of the existing, available right-of-way.

The study corridor shows population concentrations along the Virginia Beach to Norfolk corridor that would potentially support further justification for expanded transit service. Population densities, particularly of minority, elderly or low-income individuals often rely on transit for their transportation needs. Regional employment also has continued to grow. Norfolk continues to be the major employment center in the region with two major employment destinations: the Naval Base Norfolk and Norfolk's Central Business District. The emergence of new activity centers along the corridor within the last fifteen years has created new commuting patterns and additional demands on transportation facilities.

In response to this need, TRT has completed a Major Investment Study (MIS) for the Norfolk-Virginia Beach corridor. The results of the MIS study resulted in a preferred alternative of a light rail transit system with limited stops along the corridor, and includes stations, park and ride lots, and transit centers. Transit improvements are intended to alleviate traffic congestion in the Norfolk-Virginia Beach corridor and help achieve regional air quality goals by providing an alternative to the single occupant vehicle.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include: (1) No-Build, which involves no change to transportation services or facilities in the corridor beyond already committed projects, (2) a Transportation System Management (TSM) alternative which consists of low to medium cost improvements to the facilities and operations of the TRT bus system in addition to the currently planned transit improvements in the corridor, and (3) a new light rail alignment (including line, station locations and support facilities) generally following the existing Norfolk Southern rail corridor between Norfolk and Virginia Beach and on surface streets in Downtown Norfolk and to the Virginia Beach Pavilion, and a modified bus service component.

IV. Probable Effects

The FTA and TRT will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: Land use and neighborhood protection, traffic and parking, visual, noise and vibration, safety, aesthetics, stormwater management, archaeological, historic, cultural and ecological resources, wildlife corridors. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and potentially contaminated sites will also be studied. Displacements and relocations, ecosystems, water resources, hazardous waste, parklands, and energy impacts will be assessed. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate any significant adverse impacts will be developed.

V. FTA Procedures

In accordance with the federal transportation planning regulations (23 CFR Part 450), the Draft EIS will be prepared to include an evaluation of the social, economic and environmental impact of the alternatives. The DEIS will consider the public and agency comments received and the TRT in concert with the Secretary of the Virginia Department of Rail and Public Transportation and Hampton Roads Metropolitan Planning Organization and other affected agencies, will select the preferred alternative. Then the TRT, as lead agency, will continue with the preparation of the Final EIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued: December 1, 1997.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 97–31803 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33514]

Buffalo & Pittsburgh Railroad, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant bridge trackage rights to Buffalo & Pittsburgh Railroad, Inc. (B&P), described as follows: (1) Conrail's Olean Secondary between the B&P/Conrail connection at milepost 408.8± at Carrollton, NY, and milepost 395.0± at Olean, NY, the connection with Conrail's Buffalo Line, including that portion of Conrail's track known as the North West Connection Track (connection between Conrail's Olean Secondary and its Buffalo Line), a distance of approximately 13.8 miles; (2) Conrail's Buffalo Line between milepost 69.4± at CP North Olean, and milepost 5.7± CP–GJ, a distance of approximately 63.7 miles; (3) Conrail's Ebenezer Secondary between milepost 5.7± (connection with Conrail's Buffalo Line) and milepost 0.4± (connection with Conrail's Chicago Line, within CP–Draw), a distance of approximately 5.3 miles; (4) Conrail's Chicago Line between milepost 1.7± (connection with Conrail's Ebenezer Secondary) and milepost 1.77± (connection with B&P), a distance of approximately 0.07 of a mile; and (5) Conrail's Transco Wye in Buffalo, NY, between milepost 1.9± (Erie) on Conrail's Ebenezer Secondary and the end of Conrail's Transco Wye (connection with Conrail's Bison Runner), a distance of approximately 0.6 of a mile.[1] The total combined distance of the trackage rights is approximately 83.47 miles.[2]

B&P was expected to commence operations on or after the November 24, 1997 effective date.[3]

The purpose of the proposed trackage rights is to allow B&P to shift overhead traffic from a roughly parallel line that is in need of rehabilitation.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33514, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Eric M. Hocky, Esquire, Gollatz, Griffin &

[1] B&P states that at this point it has existing rights over Conrail's line of railroad to conduct interchange between its Buffalo Creek Yard and "SK" Yard of the Delaware and Hudson Railway (CP Rail system) Buffalo, NY, subject to a separate agreement it has with Conrail, dated February 1, 1980.

[2] The trackage rights are granted for the sole purpose of B&P's use for bridge traffic only between B&P/Conrail connections. B&P shall not perform any local freight service at any point located on the subject trackage. The trackage rights also provide that B&P shall not have the right to permit or admit any third party to the use of all or any portion of the subject trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars of any third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of B&P; provided however, that the foregoing shall not prevent B&P, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under the trackage rights agreement.

[3] On November 20, 1997, Samuel J. Nasca, on behalf of United Transportation Union-New York State Legislative Board, filed a petition to reject the notice of exemption, or to revoke the exemption, and/or for stay of the effective date of the exemption pending disposition of the request for rejection or revocation. The petition will be addressed in a separate decision.

Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: November 26, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31796 Filed 12–3–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[TD 97–96]

Reasonable Care Checklist

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document sets forth, for guidance, a checklist of measures which importers and their agents may find helpful in meeting the "reasonable care" requirements of the Customs laws.

DATES: Effective December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch, International Trade Compliance Division, Office of Regulations and Rulings, (202) 927–1203.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1997, the Customs Service published a Second Discussion Draft in the Customs Bulletin (as well as the Customs Electronic Bulletin Board and Customs Internet Website) concerning the importer's obligation to use reasonable care. Based on comments received in response to the initial discussion draft on reasonable care, Customs decided to adopt a "checklist" approach—as a means to provide guidance regarding an importer's obligation to use reasonable care. The second discussion draft set forth an expanded and revised checklist, and requested public comment on the document by June 30, 1997..

Customs has finalized its review of all second discussion draft comments received from interested parties. The "final" checklist follows the discussion of the public comments, and Customs notes that the document contains relatively minor revisions to the checklist published on May 16, 1997. Customs also notes that the majority of the comments received from the public favored the adoption of the checklist. It should also be pointed out that although Customs is publishing the "final" checklist, the agency's adoption of this format for providing guidance may readily be expanded in the future to suit the changing nature of international trade—without resort to statutory or regulatory amendment. Also it should be reiterated that, as new Customs regulations are proposed, it is anticipated that regulatory references to the reasonable care standard will be included.

Discussion

The majority of comments received by Customs applauded the agency's decision to adopt the checklist approach to the issue of reasonable care. There is a general consensus that a "black and white" definition of reasonable care is impossible, inasmuch as the concept of acting with reasonable care depends upon individual circumstances.

The most prevalent concern about the checklist raised by commenters involved Customs use of the term "expert" in those checklist questions pertaining to relying on the advice of an "expert." Some commenters are concerned that unlicensed and unregulated individuals are regularly advising importers in Customs matters—i.e., holding themselves out as "Customs experts" or Customs consultants, in violation of section 641 of the Tariff Act of 1930. In addition, one commenter is of the opinion that the public should not be misled into believing that it constitutes reasonable care to consult with anyone who chooses to call himself or herself a Customs expert.

With respect to the above concerns, Customs notes that publication of the checklist is not intended to condone the unlawful conduct of Customs business by unlicensed individuals or entities. Rather, the agency's use of the term "expert" is in conformity with the Customs Modernization Act's legislative history as reflected in the language of the House of Representatives and Senate Reports (H.Rep. 103–361, pg. 120; S. Rep. 103–189, pg. 73) discussion of the reasonable care standard. A party's selection of an expert, and the expert's qualifications are part and parcel of the review of all of the facts and circumstances in the agency's determination whether the party has exercised reasonable care. In Customs view, the importer who retains the services of an "expert" bears some responsibility in ensuring that the party is qualified to render advice on the Customs matter at issue. In Customs view, it is not unreasonable to expect that a party selecting an expert will inquire about the Customs experience and credentials of an expert. Customs believes this responsibility to be particularly important in cases involving selection of unlicensed experts such as consultants. The existence of experienced Customs lawyers and licensed brokers makes fulfillment of this responsibility an easier task—but in Customs view, to limit the selection of an expert to these individuals runs contrary to the language of the congressional reports. In sum, the importer or party selecting an expert must use judgment and reason in making his or her selection.

One commenter expressed a reservation about the checklist in that "assiduous compliance with the list for every entry would require an impossible expenditure of time and resources." The commenter believes that the checklist fails to keep sight of "commercial realities and business realities."

Customs believes it is important to underscore that the checklist is not a law or Customs regulation, and that it merely serves to provide guidance and information to the importing community to assist the members of the community in meeting reasonable care obligations. In publishing the checklist, Customs is not mandating that each and every question be asked by each and every importer for all transactions. Rather, the checklist serves as a flexible tool to help importers find and/or understand statutory and regulatory obligations involved in the importation process. Customs notes that the agency rejected the regulatory and policy statement approaches set forth in the first discussion draft for the very reasons set forth by the commenter. In this regard, Customs believes the following excerpts from the second discussion draft warrant reiteration:

> * * * [I]t is important to remember that not every incident of non-compliance involves a failure to exercise reasonable care. The circumstances surrounding an incident of non-compliance determine whether or not the incident involves culpable conduct.
>
> * * * For example, if Customs were to enact a regulation, or issue a policy statement setting forth "reasonable care" parameters and standards, such regulation or policy statement could be considered helpful, cost-effective and instructive to a large multi-national importer, yet harmful, impractical, intrusive and cost-defective to a smaller organization.
>
> Rather than attempting to dictate specific methods of compliance with regard to a standard that demands flexibility and is dependent upon circumstance, Customs believes that by providing guidance and education the agency is working toward fulfilling the principle of informed compliance which underscores the Customs Modernization Act.

One of the commenters suggested that the agency abandon General Question No. 3 pertaining to alerting Customs of different treatment at different ports for the same merchandise or transactions. The commenter believes that it is the responsibility of the Customs Service to coordinate and ensure uniformity. In addition, the commenter believes it is unnecessary to require that the importer attach a ruling it receives to every entry, provided that the importer follows the ruling.

Customs does not agree that it is reasonable for an importer to remain silent when it becomes aware that the same merchandise or transaction is receiving different treatment at different ports. Further, it is important to remember that the checklist is not a vehicle to amend existing law or regulation or law—rather, the checklist questions pertaining to the Customs rulings program simply point out the importer's obligations under existing law and regulation.

Several commenters recommended that Customs revise some of the questions in the checklist to emphasize that the exercise of reasonable care also applies to the process employed by the importer in preparing its Customs entries. The commenters suggest that some questions be added and/or revised to reflect that the exercise of reasonable care also encompasses an importer's development and maintenance of reasonable steps or reasonable procedures to ensure compliance with the Customs laws and regulations.

Customs agrees and has added new questions and/or revised some of the existing questions to reflect the recommendations set forth above.

As a convenience to the public, the checklist published below also includes the checklist previously published in the **Federal Register** for use in certain textile and apparel importations. The full document was published in 62 FR 48340 (September 15, 1997).

Reasonable Care Checklist

Preamble

One of the most significant effects of the Customs Modernization Act is the establishment of the clear requirement that parties exercise "reasonable care" in importing into the United States. Section 484 of the Tariff Act, as amended, requires an importer of record "using reasonable care" to make entry by filing such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody," and using reasonable care—"complete the entry by filing with the Customs Service the declared value, classification and rate of duty" and "such other documentation * * * or information as is necessary to enable the Customs Service to * * * properly assess duties * * * collect accurate statistics * * * determine whether any other applicable requirement of law * * * is met." Despite the seemingly simple connotation of the term "reasonable care," this explicit responsibility defies easy explanation. The facts and circumstances surrounding every import transaction differ—from the experience of the importer to the nature of the imported articles. Consequently, neither the Customs Service nor the importing community can develop a foolproof reasonable care "checklist" which would cover every import transaction. On the other hand, in keeping with the Modernization Act's theme of "informed compliance," the Customs Service would like to take this opportunity to recommend that the importing community examine the list of questions below. In Customs view, the list of questions may prompt or suggest a program, framework or methodology which importers may find useful in avoiding compliance problems and meeting "reasonable care" responsibilities.

Obviously, the questions below cannot be exhaustive or encyclopedic—ordinarily, every import transaction is different. For the same reason, it cannot be overemphasized that although the following information is provided to promote enhanced compliance with the Customs laws and regulations, it has no legal, binding or precedential effect on Customs or the importing community. In this regard, Customs notes that the checklist is not an attempt to create a presumption of negligence, but rather, an attempt to educate, inform and provide guidance to the importing community. Consequently, Customs believes that the following information may be helpful to the importing community and hopes that this document will facilitate and encourage importers to develop their own unique compliance measurement plans, reliable procedures and "reasonable care" programs.

As a convenience to the public, the checklist also includes the text of a checklist previously published in the **Federal Register** for use in certain textile and apparel importations. The full document was published in 62 FR 48340 (September 15, 1997).

As a final reminder, it should be noted that to further assist the importing community, Customs issues rulings and informed compliance publications on a variety of technical subjects and processes. It is strongly recommended that importers always make sure that they are using the latest versions of these publications.

Asking and answering the following questions may be helpful in assisting importers in the exercise of reasonable care

General Questions for all Transactions

1. If you have not retained an expert to assist you in complying with Customs requirements, do you have access to the Customs Regulations (Title 19 of the Code of Federal Regulations), the Harmonized Tariff Schedule of the United States, and the GPO publication "Customs Bulletin and Decisions?" Do you have access to the Customs Internet Website, Customs Electronic Bulletin Board or other research service to permit you to establish reliable procedures and facilitate compliance with Customs laws and regulations?

2. Has a responsible and knowledgeable individual within your organization reviewed the Customs documentation prepared by you or your expert to ensure that it is full, complete and accurate? If that documentation was prepared outside your own organization, do you have a reliable system in place to insure that you receive copies of the information as submitted to Customs; that it is reviewed for accuracy; and that Customs is timely apprised of any needed corrections?

3. If you use an expert to assist you in complying with Customs requirements, have you discussed your importations in advance with that person and have you provided that person with full, complete and accurate information about the import transactions?

4. Are identical transactions or merchandise handled differently at different ports or Customs offices within the same port? If so, have you brought this to the attention of the appropriate Customs officials?

Questions Arranged by Topic

Merchandise Description & Tariff Classification

Basic Question: Do you know or have you established a reliable procedure or program to ensure that you know what you ordered, where it was made and what it is made of?

1. Have you provided or established reliable procedures to ensure you provide a complete and accurate description of your merchandise to Customs in accordance with 19 U.S.C. 1481? (Also, see 19 CFR 141.87 and 19 CFR 141.89 for special merchandise description requirements.)

2. Have you provided or established reliable procedures to ensure you provide a correct tariff classification of your merchandise to Customs in accordance with 19 U.S.C. 1484?

3. Have you obtained a Customs "ruling" regarding the description of the merchandise or its tariff classification (See 19 CFR part 177), and if so, have you established reliable procedures to ensure that you have followed the ruling and brought it to Customs attention?

4. Where merchandise description or tariff classification information is not immediately available, have you established a reliable procedure for providing that information, and is the procedure being followed?

5. Have you participated in a Customs pre-classification of your merchandise relating to proper merchandise description and classification?

6. Have you consulted the tariff schedules, Customs informed compliance publications, court cases and/or Customs rulings to assist you in describing and classifying the merchandise?

7. Have you consulted with a Customs "expert" (e.g., lawyer, broker, accountant, or Customs consultant) to assist in the description and/or classification of the merchandise?

8. If you are claiming a conditionally free or special tariff classification/provision for your merchandise (e.g., GSP, HTS Item 9802, NAFTA, etc.), How have you verified that the merchandise qualifies for such status? Have you obtained or developed reliable procedures to obtain any required or necessary documentation to support the claim? If making a NAFTA preference claim, do you already have a NAFTA certificate of origin in your possession?

9. Is the nature of your merchandise such that a laboratory analysis or other specialized procedure is suggested to assist in proper description and classification?

10. Have you developed a reliable program or procedure to maintain and produce any required Customs entry documentation and supporting information?

Valuation

Basic Questions: Do you know or have you established reliable procedures to know the "price actually paid or payable" for your merchandise? Do you know the terms of sale; whether there will be rebates, tie-ins, indirect costs, additional payments; whether "assists" were provided, commissions or royalties paid? Are amounts actual or estimated? Are you and the supplier "related parties"?

1. Have you provided or established reliable procedures to provide Customs with a proper declared value for your merchandise in accordance with 19 U.S.C. 1484 and 19 U.S.C. 1401a?

2. Have you obtained a Customs "ruling" regarding the valuation of the merchandise (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you have followed the ruling and brought it to Customs attention?

3. Have you consulted the Customs valuation laws and regulations, Customs Valuation Encyclopedia, Customs informed compliance publications, court cases and Customs rulings to assist you in valuing merchandise?

4. Have you consulted with a Customs "expert" (e.g., lawyer, accountant, broker, Customs consultant) to assist in the valuation of the merchandise?

5. If you purchased the merchandise from a "related" seller, have you established procedures to ensure that you have reported that fact upon entry and taken measures or established reliable procedures to ensure that value reported to Customs meets one of the "related party" tests?

6. Have you taken measures or established reliable procedures to ensure that all of the legally required costs or payments associated with the imported merchandise have been reported to Customs (e.g., assists, all commissions, indirect payments or rebates, royalties, etc.)?

7. If you are declaring a value based on a transaction in which you were/are not the buyer, have you substantiated that the transaction is a bona fide sale at arm's length and that the merchandise was clearly destined to the United States at the time of sale?

8. If you are claiming a conditionally free or special tariff classification/provision for your merchandise (e.g., GSP, HTS Item 9802, NAFTA, etc.), have you established a reliable system or program to ensure that you reported the required value information and obtained any required or necessary documentation to support the claim?

9. Have you established a reliable program or procedure to produce any required entry documentation and supporting information?

Country of Origin/Marking/Quota

Basic Question: Have you taken reliable measures to ascertain the correct country of origin for the imported merchandise?

1. Have you established reliable procedures to ensure that you report the correct country of origin on Customs entry documents?

2. Have you established reliable procedures to verify or ensure that the merchandise is properly marked upon entry with the correct country of origin (if required) in accordance with 19 U.S.C. 1304 and any other applicable special marking requirement (watches, gold, textile labeling, etc)?

3. Have you obtained a Customs "ruling" regarding the proper marking and country of origin of the merchandise (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you followed the ruling and brought it to Customs attention?

4. Have you consulted with a Customs "expert" (e.g., lawyer, accountant, broker, Customs consultant) regarding the correct country of origin/proper marking of your merchandise?

5. Have you taken reliable and adequate measures to communicate Customs country of origin marking requirements to your foreign supplier prior to importation of your merchandise?

6. If you are claiming a change in the origin of the merchandise or claiming that the goods are of U.S. origin, have you taken required measures to substantiate your claim (e.g., Do you have U.S. milling certificates or manufacturer's affidavits attesting to the production in the U.S.)?

7. If you are importing textiles or apparel, have you developed reliable procedures to ensure that you have ascertained the correct country of origin in accordance with 19 U.S.C. 3592 (Section 334, Pub. L. 103–465) and assured yourself that no illegal transshipment or false or fraudulent practices were involved?

8. Do you know how your goods are made from raw materials to finished goods, by whom and where?

9. Have you checked with Customs and developed a reliable procedure or system to ensure that the quota category is correct?

10. Have you checked or developed reliable procedures to check the Status Report on Current Import Quotas (Restraint Levels) issued by Customs to determine if your goods are subject to a quota category which has "part" categories?

11. Have you taken reliable measures to ensure that you have obtained the correct visas for your goods if they are subject to visa categories?

12. In the case of textile articles, have you prepared or developed a reliable program to prepare the proper country declaration for each entry, i.e., a single country declaration (if wholly obtained/produced) or a multi-country declaration (if raw materials from one country were produced into goods in a second)?

13. Have you established a reliable maintenance program or procedure to ensure you can produce any required entry documentation and supporting information, including any required certificates of origin?

Intellectual Property Rights

Basic Question: Have you determined or established a reliable procedure to permit you to determine whether your merchandise or its packaging bear or use any trademarks or copyrighted matter or are patented and, if so, that you have a legal right to import those items into, and/or use those items in, the U.S.?

1. If you are importing goods or packaging bearing a trademark registered in the U.S., have you checked or established a reliable procedure to ensure that it is genuine and not restricted from importation under the "gray-market" or parallel import requirements of U.S. law (see 19 CFR 133.21), or that you have permission from the trademark holder to import such merchandise?

2. If you are importing goods or packaging which consist of, or contain registered copyrighted material, have you checked or established a reliable procedure to ensure that it is authorized and genuine? If you are importing sound recordings of live performances, were the recordings authorized?

3. Have you checked or developed a reliable procedure to see if your merchandise is subject to an International Trade Commission or court ordered exclusion order?

4. Have you established a reliable procedure to ensure that you maintain and can produce any required entry documentation and supporting information?

Miscellaneous Questions

1. Have you taken measures or developed reliable procedures to ensure that your merchandise complies with other agency requirements (e.g., FDA, EPA/DOT, CPSC, FTC, Agriculture, etc.) prior to or upon entry, including the procurement of any necessary licenses or permits?

2. Have you taken measures or developed reliable procedures to check to see if your goods are subject to a Commerce Department dumping or countervailing duty investigation or determination, and if so, have you complied or developed reliable procedures to ensure compliance with Customs reporting requirements upon entry (e.g., 19 CFR 141.61)?

3. Is your merchandise subject to quota/visa requirements, and if so, have you provided or developed a reliable procedure to provide a correct visa for the goods upon entry?

4. Have you taken reliable measures to ensure and verify that you are filing the correct type of Customs entry (e.g., TIB, T&E, consumption entry, mail entry, etc.), as well as ensure that you have the right to make entry under the Customs Regulations?

Additional Questions for Textile and Apparel Importers

Note: Section 333 of the Uruguay Round Implementation Act (19 U.S.C. 1592a) authorizes the Secretary of the Treasury to publish a list of foreign producers, manufacturers, suppliers, sellers, exporters, or other foreign persons who have been found to have violated 19 U.S.C. 1592 by using certain false, fraudulent or counterfeit documentation, labeling, or prohibited transshipment practices in connection with textiles and apparel products. Section 1592a also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Under section 1592a, reliance solely upon information regarding the imported product from a person named on the list does not constitute the exercise of reasonable care. Textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

1. Has the importer had a prior relationship with the named party?

2. Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

3. Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

4. Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

5. Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

6. Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

7. What is the history of this country regarding this commodity?

8. Have you asked questions of your supplier regarding the origin of the product?

9. Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

Dated: December 1, 1997.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 97–31802 Filed 12–3–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Munich American Reinsurance Company, Munich Reinsurance Company, U.S. Branch

SUMMARY: (Dept. Circ. 570, 1997—Rev., Supp. No. 3).

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to Munich American Reinsurance Company and Munich Reinsurance Company, U.S. Branch, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety and as an acceptable reinsuring company on Federal bonds are hereby terminated.

Munich American Reinsurance Company was last listed as an acceptable surety on Federal bonds at 62 FR 35567, July 1, 1997 and Munich

Reinsurance Company, U.S. Branch, was last listed as an acceptable reinsuring company on Federal bonds at 62 FR 35581, July 1, 1997.

With respect to any bonds currently in force with both these companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: November 20, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–31807 Filed 12–3–97; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before February 2, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Forms 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 26, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–31805 Filed 12–3–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Regional Scholar Exchange Program With the New Independent States and Freedom Support Act Fellowships in Contemporary Issues

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations with at least four years of experience in conducting international exchange programs with the New Independent States and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer the recruitment, selection, orientation, placement, monitoring, evaluation, and alumni activities for two programs:

The Regional Scholar Exchange Program with the new Independent States: Research fellowships for four months and six months at host institutions in the United States for approximately 130 highly qualified advanced graduate students pursuing dissertation research and university faculty and scholars at the early stages of their careers in one of twenty-five designated fields of the social sciences and humanities who are citizens of Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan and for research fellowships for four months and six months at host institutions in the New Independent States for approximately twenty advanced graduate student pursuing dissertation research or special projects and university faculty in one of twenty-five designated fields of the social sciences and humanities who are citizens of the United States.

The Freedom Support Act Fellowships in Contemporary Issues: Research fellowships for four months at host institutions in the United States for approximately 75 highly qualified practitioners in diverse professions in the public, private, and not-for-profit sectors who are citizens of Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan and who are shaping public policy or otherwise contributing to the transformation of their societies in one of five designated areas: Sustainable Growth and Economic Development; Democratization, Human Rights and the Rule of Law; Political, Military, Security, and Public Policy Issues; Strengthening Civil Society; Internet, the Communications Revolution, and Intellectual Property Rights.

Interested organizations should read the complete **Federal Register** Announcement and request a Solicitation Package from USIA prior to preparing a proposal.

• **Please note:** Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities.

Both programs are merit-based open competitions that must be conducted nationally in the home countries of the applicants. Applicants who have participated in a USIA-sponsored academic program of more than six weeks after March 1, 1997 are not eligible to receive fellowships.

Each program has separate conditions and requirements which are stated in this announcement and detailed in the full Solicitation Package. Organizations should apply for an assistance award for both programs and should submit a single proposal and a single budget to address the administration of both programs. Applicant organizations may apply to administer the programs individually, or via a subcontract arrangement as long as one organization is designated to be the recipient of the grant, or as a consortia in partnership with other organizations where each applicant organization submits a separate proposal and separate budget that cites the division of labor and duties among the members. USIA anticipates awarding one or two assistance awards for the administration of the programs cited in this announcement. Awards are expected to begin no earlier than May 1, 1998 and must be completed by October 31, 2000.

Applicant organizations must demonstrate the ability to administer all aspects of both programs, including publicity, advertisement, recruitment, selection, placement, orientation, Fellow monitoring and support, logistics, financial management, evaluation, and alumni tracking and programming.

Overall grant making authority for the Regional Scholar Exchange Program is contained in the mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended. Programs shall also maintain their scholarly integrity and shall meet the highest standards of academic excellence.

Overall grant making authority for the Freedom Support Act Fellowships in Contemporary Issues is made possible through legislation sponsored by the U.S. Congress and incorporated in the Foreign Relations Authorization Act of FY 1993. The legislation was established to assist the economic and democratic development of the New Independent States of the former Soviet Union. The funding authority for the program cited above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds. USIA reserves the right to reduce, revise, or increase the proposal budgets in accordance with the needs of the programs.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEE–98–07.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, February 12, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of the applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Division of Academic Exchanges, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; telephone number (202) 205–0525; fax: (202) 260–7985; Internet address treed@usia.gov to request a Solicitation Package containing more detailed award criteria. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitations Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Manager Rhonda E. Boris on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 14 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEE–98–07, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review,

with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION: The Regional Scholar Exchange Program empowers outstanding citizens of the NIS and the U.S. who are committed to careers in academia to obtain access to the resource materials and specialists of the host country in order to conduct research and consult with colleagues on specific topics in one of twenty-five designated fields of the social sciences and humanities, write scholarly articles, dissertations, and books, audit classes, deliver occasional lectures, and participate in academic conferences with the goal of contributing to the advancement of higher education, scholarship, and university teaching in their academic fields in their home countries. NIS participants will be expected to begin their fellowships in the U.S. as a group at a program orientation in Washington, D.C. in late August 1999 and attend a pre-departure orientation in their home countries in February 1999. However, in some cases where it is necessary, a limited number of NIS participants may begin their U.S. programs at other appropriate times during the academic year. U.S. participants will be expected to begin their fellowships in the NIS at appropriate times in summer and fall 1999 and attend a program orientation in their host countries. At the end of their fellowships, all participants must return immediately to their home countries.

The Freedom Support Act Fellowships in Contemporary Issues empower outstanding citizens of the New Independent States who are practitioners in diverse fields to obtain access to the resource materials and specialists of the U.S. in order to conduct research and policy analysis on specific topics in one of five designated areas, write reports, articles, and studies, deliver lectures, and engage counterparts in the United States with the goal of framing the terms of debate in their fields and playing a more active role in consolidating the transition to democracy, free markets, and civil society in their home countries. Participants will be expected to begin their fellowships in the U.S. as a group at a program orientation in Washington, D.C. in March 1999 and attend a pre-departure orientation in their home countries in February 1999. At the end of their fellowships, all NIS participants must return immediately to their home countries.

Further details about specific program requirements and additional information can be found in the Project Objectives, Goals, and Implementation (POGI) Statement which are part of the full Solicitation Package.

Guidelines

Visa/Health Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Exchange program regulations require that all J visa holders carry health and accident insurance. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal.

Proposed Budget

Funding for the FY 1998 Regional Scholar Exchange Program is anticipated at $2,000,000. Funding for the FY 1998 Freedom Support Act Fellowships in Contemporary Issues is anticipated at $955,000.

Applicant organizations must submit a comprehensive line item budget request for general program costs, participant program costs, and administrative costs based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget and a budget narrative demonstrating how costs were derived. Organizations whose proposals include an administrative budget that is less than 20% of the grant amount requested from the USIA will be given preference.

Allowable costs for each category include the following:

(1) General Program Costs
(2) Participant Program Costs
(3) U.S. Administrative Costs
(4) NIS Administrative Costs
(5) Start Up for FY 1999 Recruitment

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation.

1. *Quality of the program plan:* Proposals should include academic rigor, thorough conception of program, demonstration of meeting participants' needs, contributions to understanding the partner country, specific details of recruitment, selection, placement, monitoring, alumni activities, alumni tracking, and relevance to USIA's mission.

2. *Program planning and organizational capacity:* A detailed work plan citing all critical program components and timeline should demonstrate the organization's logistical and administrative capacity to implement both programs. Proposals must demonstrate how the organization and its staff will meet both programs' objectives. Proposed personnel and organizational resources must be adequate and appropriate to implement the program in each country.

3. *Organization's track record:* Relevant USIA and outside assessments of the organization's experience with academic exchanges with the NIS, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by USIA's Office of Contracts.

4. *Multiplier effect/impact:* Proposed programs must demonstrate an impact on the wider community through the sharing of information and the establishment of long-term institutional and individual linkages.

5. *Cost-effectiveness:* A key measure of cost-effectiveness is USIA's cost per participant. This is the total funds requested from USIA divided by the number of participant-months (number of participants multiplied by the number of program months). Overhead and administrative costs, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

6. *Cost-sharing:* Preference will be given to proposals that seek to maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

7. *Value of U.S.-partner country relations:* The assessment by USIA's geographic area office of the need potential impact, and significance of the project with the partner country.

8. *Support of diversity and pluralism:* Proposals should demonstrate substantive support of the Bureau's policy on diversity through the recruitment, selection and placement of participants, to the extent feasible for organizations.

9. *Follow-on activities:* Proposals should provide a plan for alumni activities and other follow on programs (without USIA support) which ensures that USIA supported programs are not isolated events. Proposals should include a plan for alumni tracking that demonstrates the willingness to provide data to and coordinate tracking with USIA and USIS posts.

10. *Program evaluation:* Proposals should include a plan to evaluate the program's success. A draft survey questionnaire plus a description of a methodology to be used to link outcomes to original project objectives is required.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Options for Renewals

Subject to the availability of funding for FY 1999 and FY 2000, and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewal assistance awards for two fiscal year cycles.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 1, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–31787 Filed 12–3–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

FY 1998 Ron Brown Fellowship Program

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds for FY 1998, the Office of Academic Programs, Academic Exchanges Division, European Branch of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. American public or private nonprofit organizations with at least four years of experience in conducting international academic exchange programs and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer the FY 1998 Ron Brown Fellowship Program. Preference will be given to organizations that have placement experience at the graduate level and a demonstrated ability to conduct academic exchange programs in Central and Eastern Europe. Organizations are invited to submit a proposal with a budget not to exceed $2,000,000 to develop and administer the final selection (from a pool of applicants), placement, orientation, monitoring, evaluation and follow-on/alumni activities of at least 42 Fellows from the following countries: Albania, Bosnia, Bulgaria, Croatia, Hungary, Macedonia, Poland, Romania, Serbia and Solvenia. Participants will be enrolled in two-year degree programs, or in one-year non-degree professional development programs (except for the one-year degree programs in law) at accredited U.S. academic institutions for study at the Masters' level in the fields of business administration, economics, education administration/civic education, environmental policy/resource management, journalism/mass communication, law, public administration and public policy.

Please Note: This program will not support Ph.D. studies.

Overall grant making authority for the Ron Brown Fellowship Program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the program cited above is provided through the Support for East European Democracies (SEED) Act of 1989, targeted to advance the democratic and economic transition of Central and Eastern Europe. In order to comply with mandates for this program, grantee organization is required to keep track of the spending for each of the ten countries under the FY98 Ron Brown Fellowship Program. Specific country allocations will be provided at the time of the award. Funds allocated for one country should not be used to support Fellows from other countries.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to: The Ron Brown Fellowship Program, reference number E/AEE–98–05.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, D.C. time on Monday, January 26, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchanges Division, European Branch, E/AEE Room 238, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; Telephone: (202) 619–4420; Fax: (202) 619–4927; Internet: TREED@USIA.GOV to request a Solicitation Package containing more detailed information. Please request required application forms and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire package may be received via the Bureau's "Grants Information Fax on Demand System," which is accessed by calling (202) 401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Effie Wingate on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and seven copies of the completed application, including required forms, should be sent to: U.S. Information Agency, Ref.: E/AEE–98–05, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) formatted with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts and Fulbright Commissions overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grant review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic, location, socioeconomic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The FY 1998 Ron Brown Fellowship Program will provide funding for at least 42 fellowships to citizens from Albania, Bosnia, Bulgaria, Croatia, Hungary, Macedonia, Poland, Romania, Serbia and Slovenia. Fellowships will be distrubted according to specified country-quotas. The goal of the Ron Brown program is to provide an opportunity for university graduates and young professionals who are selected through open, merit-based competition in the aforementioned nine European countries to participate in quality graduate study programs in the fields of business administration, economics, education administration/civic education, environmental policy/resource management, journalism/mass communication, law, public administration and public policy at accredited universities throughout the United States. Fellowships will be awarded for one-year, non-degree professional development programs, except for one-year degree programs in law, or for two-year degree granting programs. Program enhancements such as workshops, professional enrichment activities, internships, alumni conferences, networking, etc. are integral components of the Ron Brown Fellowship Program and highly encouraged. Internships of up to six months for Fellows in one-year programs and up to three months for Fellows in two-year programs are recommended. USIA's goal for 1998 is to award the greater number of Fellowships for two-year degree programs, and to attain equitable representation of the eight eligible fields while achieving wide distribution among the U.S. host universities. Clustering of Fellows should be avoided with no more than three Fellows at any one university.

The Ron Brown Fellowship Program will not support Ph.D. programs.

Guidelines

For 1998, program advertisement and participant recruitment will be the responsibility of the United States Information Service (USIS) posts and/or the Fulbright commissions. USIS posts and/or commissions will screen applications for eligibility, arrange for TOEFL, GMAT and GRE testing where possible, conduct personal interviews, and compile a dossier on each qualified applicant. Each USIS post and/or commission will compile a pool of applicants to be forwarded to the administering organization for the final selection.

Applicants are asked to develop a program plan to conduct the final selection, placement, monitoring, follow-on and alumni activities. The duration of the program should be for two academic years, 1998–99 and 1999–2000. The program may not begin before May 1, 1998, and must be completed by December 31, 2000. Proposals should address and discuss in detail the following areas:

1. Final Selection

Describe in detail the process for the final selection of Fellows including method of reviewing a pool of qualified applications submitted by USIS posts and/or Fulbright commissions; specific details about the final selection committee(s); and notification of selectees and non-selectees.

Please note: As in previous years, advertising, recruitment, screening and semi-final selection will be conducted by the USIS posts and/or Fulbright commissions in the participating countries.

2. Placement of Fellows

Describe criteria for selecting host universities and measures to ensure participants' academic and cultural needs are met.

3. Notification

Describe plans for notifying applicants who have been selected for an award, including timely confirmation of placement, scheduling of pre-departure orientation, and all logistical arrangements.

4. Special Programs

Describe provisions for ESL or pre-academic programs, if necessary;

5. Orientation

Describe plans for pre-departure, post-arrival and/or pre-academic orientation programs.

6. Enrichment Activities

Describe arrangements for cultural and professional development activities, internships, and other program enhancements including recommendations for workshops and alumni activities.

7. Monitoring/Evaluation/Tracking

Describe methodologies for on-going monitoring and evaluation and adjustment of program accordingly. Mechanisms for alumni networking and alumni tracking should also be detailed.

8. Alumni Activities

Ron Brown Alumni Associations were formed in several participating countries in October 1997. Describe plans to assist the development and expansion of these fledgling associations.

9. Program Identity

Describe ways you will ensure that participants and alumni identify themselves as Ron Brown Fellows or Ron Brown Alumni.

10. Personnel

Proposals should include curriculum vitae of personnel assigned to administer the Ron Brown program.

Participants

Fellows will be selected from a pool of applicants with a variety of professional and educational backgrounds. Since one of the purposes of the fellowships is to promote the development of professional expertise among the future leaders of Central and Eastern Europe, grant recipients should ideally be in the early stages of their careers, with perhaps a few years of work experience, a demonstrated ability for leadership, a clearly expressed purpose for studying in the United States, and a commitment to return home at the end of their fellowships to share their knowledge and skills in the development of their countries. Fellows must be under the age of forty, possess the equivalent of a bachelor's degree, and demonstrate fluency in spoken and written English (or the ability to attain such a level following a limited ESL program prior to the beginning of their studies).

Visa/Insurance/Tax Requirements

All foreign participants must be sponsored under an Exchange Visitors Program on a J visa. Programs must comply with J–1 visa regulations and should reference this adherence in the proposal narrative. Ron Brown Fellows must comply with the two-year home residency requirement as stipulated by the J–visa guidelines. It is the expressed intent of this program that Fellows return immediately to their home country following completion of the academic and professional components of their program. Please refer to program specific guidelines in the Application Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes, as applicable. Organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Participants will be covered by USIA-sponsored Health and Accident Insurance. The administering organization will be responsible for enrolling the participants in the insurance program.

Proposed Budget

Funding for the FY 1998 Ron Brown Fellowship Program is anticipated at $2,000,000. Applicants must submit a comprehensive line item budget for general program costs, participant program cost, alumni costs, and administrative costs. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the application packet for complete formatting instructions. Preference will be given to organizations whose administrative costs, including indirect costs, are less than 20% of the total request from USIA.

USIA reserves the right to reduce, revise, or increase the proposal budget in accordance with the needs of the program.

Allowable costs for the program include the following:

(1) General Program Costs
(2) Participant Program Costs
(3) U.S. Administrative Costs
(4) Overseas Administrative Costs
(5) Alumni Activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Medical insurance for participants will be paid directly by USIA and, therefore, should not be included as a line-item cost in the program budget. However, a modest line-item may be included for health insurance for universities not accepting the USIA policy.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIS posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program

Proposals should include academic rigor, thorough conception of project, demonstration of meeting participant needs, contributions to understanding the partner countries, specific details of selection, placement, monitoring, follow-on plan, alumni activities, alumni tracking, evaluation plan and relevance to USIA's mission.

2. Program Planning/Institutional Capacity

A detailed agenda and relevant work plan should demonstrate substantive undertakings and the organization's logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposed personnel and organizational resources should be adequate and appropriate to implement the program and achieve project goals.

3. Organization's Track Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term linkages.

5. Cost-Effectiveness/Cost-Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Area Expertise

Proposals should demonstrate the organization's expertise and capacity to conduct graduate level academic exchange programs in Central and Eastern Europe.

7. Placement Experience

Proposals should demonstrate the organization's ability and experience with placements at U.S. universities at the graduate level.

8. Professional and Academic Contacts

Proposals should demonstrate substantive staff knowledge of the relevant academic fields and professions to ensure productive engagement with professional and academic contacts in every phase of program planning and implementation, including the arrangement of internships and selection panels.

9. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity through the selection and placement of participants, to the extent feasible for organizations.

10. Project Evaluation/Follow-On Activities

Proposals should include a plan to evaluate the program's success. A draft survey questionnaire plus a description of a methodology to be used to link outcomes to original project objectives is required. Proposals should provide a plan for alumni activities and other follow-on programs (without USIA support) which ensures that USIA-supported programs are not isolated events. Proposals should include a plan for alumni tracking that demonstrates the willingness to provide data to and coordinate tracking with USIA and USIS posts and/or Fulbright commissions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposed budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 1, 1998. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: December 1, 1997.

Robert L. Earle,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 97–31786 Filed 12–3–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on December 19, 1997, from approximately 9:00 a.m. to approximately 4:00 p.m., at the United States Information Agency, Washington, D.C. Pursuant to 19 U.S.C. 2605(g), the Committee will review the status of implementation of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador, signed in March 1995. This portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

The Committee's agenda will also include a discussion of its internal procedures for developing findings and recommendations for bilateral cultural property agreements and emergency measures. This portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(2). The closed portions of the meeting will be from approximately 10:30 a.m. to approximately 4:00 p.m.

In addition, the Committee will review a CD-Rom image database project and a worldwide website project being developed in support of the ongoing efforts of the Committee and the Agency to implement the 1970 UNESCO Convention. This portion of the meeting will be open from approximately 9:00 a.m. to approximately 10:30 a.m. during which time public comment concerning matters before the Committee will be invited. Seating is limited. Persons wishing to attend this portion of the meeting must notify Cultural Property staff at 202–619–6612 by 12:00 Noon (EST) Thursday, December 18, 1997, to arrange for admission.

Dated: November 28, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

Determination to Close a Portion of the Meeting of the Cultural Property Advisory Committee, December 19, 1997

In accordance with 5 U.S.C. 552b(c)(9)(B), 19 U.S.C. 2605(h), and 5 U.S.C. 552b(c)(2), I hereby determine that portions of the Cultural Property Advisory Committee meeting on December 19, 1997, during which there will be discussions involving (a) information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, and (b) the internal operating procedures of the Committee, will be closed.

Dated: November 28, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–31785 Filed 12–3–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
December 4, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0017]

International Conference on Harmonisation; Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled "S1C(R) Addendum to 'Dose Selection for Carcinogenicity Studies of Pharmaceuticals': Addition of a Limit Dose and Related Notes." The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance is intended to define the conditions under which it would be considered acceptable to use a "limit dose" for the high dose selection of nongenotoxic pharmaceuticals in long-term carcinogenicity studies, and is an addendum to an earlier ICH guidance on criteria for establishing uniformity among international regulatory agencies for dose selection for carcinogenicity studies of human pharmaceuticals.

DATES: Effective December 4, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:
Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.
Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of April 2, 1997 (62 FR 15715), FDA published a draft tripartite guideline entitled "Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on the Limit Dose" (S1C(R)). The notice gave interested persons an opportunity to submit comments by June 2, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance is an addendum to an ICH final guidance published in the **Federal Register** of March 1, 1995 (60 FR 11278), entitled "Dose Selection for Carcinogenicity Studies of Pharmaceuticals." The guidance is intended to define the conditions under which it would be considered acceptable to use a "limit dose" for the high dose selection of nongenotoxic pharmaceuticals in long-term carcinogenicity studies.

This guidance represents the agency's current thinking on dose selection for carcinogenicity studies of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance.htm).

The text of the guidance follows:

"S1C(R) Addendum to 'Dose Selection for Carcinogenicity Studies of Pharmaceuticals': Addition of a Limit Dose and Related Notes"[1]

Limit Dose

In determining the high dose for carcinogenicity studies using the approaches outlined in this guidance, it may not be necessary to exceed a dose of 1500 milligrams (mg)/kilograms (kg)/day (Note 1). This limit dose applies only in cases where there is no evidence of genotoxicity and where the maximum recommended human dose does not exceed 500 mg/day (Note 2).

Data should be provided comparing exposure of rodents and humans to drug and metabolites primarily to support dose selection for and interpretation of the carcinogenicity study. Based on such information, there may be cases where the limit of 1500 mg/kg/day is not acceptable because it cannot be assured that animal exposure after 1500 mg/kg/day is sufficiently high compared to the exposure achieved in humans. The rodent systemic exposure at 1500 mg/kg/day should be greater by at least an order of magnitude than human exposure measured at the intended human therapeutic dose. [If this is not the case, efforts should be made to increase the rodent exposure or to reconsider the animal model in a case-by-case approach.] If the human dose exceeds 500 mg/day, the high dose may be increased up to the maximum feasible dose.

Note 1

Review of the FDA carcinogenicity database of nearly 900 carcinogenicity tests indicated that about 20 tests had been conducted that used doses of 1000 mg/kg or greater as the highest dose tested. About 10 of these tests were considered as having demonstrated a carcinogenic response. Seven of these were positive only at or above 1000 mg/kg, including two that were positive in two species (in neither case were doses above 1000 mg/kg necessary to detect the carcinogenic response in both species, but rather in only one of the two species was a dose greater than 1000 mg/kg necessary).

Some of the one species positives were also only positive at doses greater than 1000 mg/kg. In one case where the drug was considered as demonstrating a significant tumor response only above 1000 mg/kg, it was positive in several nonstandard genotoxicity assays but not in standard genotoxicity studies. Regulatory action has resulted from some of these cases. Based on these results, the limit dose for carcinogenicity testing should be 1500 mg/kg rather than 1000 mg/kg to eliminate the risk that a genotoxic carcinogen will not be able to be identified as a result of adoption of a limit dose of 1000 mg/kg.

Note 2

It has been agreed that if a nongenotoxic drug is only positive in rodents at doses above those producing a 25-fold exposure over humans, such finding would not be considered likely to pose a relevant risk to humans.

It has been shown that systemic exposure comparisons between rodents and humans are better estimated by dose using mg/square meters (m^2) than using mg/kg (Note 4 of the S1C document "Dose Selection for Carcinogenicity Studies of Pharmaceuticals"). Therefore, the human dose should be at least 25-fold lower on a mg/m^2 basis than the high dose in the carcinogenicity study. The factor, 6–7 (6.5), is used to convert rat doses from mg/kg to mg/m^2 and 40 is used to convert human doses from mg/kg to mg/m^2. Thus, the estimated systemic exposure ratio of 25-fold rodent to human is equal to about a 25-fold mg/m^2 ratio or a 150-fold mg/kg ratio (150 = 25 x 40/6.5). Therefore, a human dose below 10 mg/kg/day (about 500 mg/day or less) could be tested in rats at 1500 mg/kg as the high dose.

Dated: November 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31780 Filed 12–4–97; 8:45 am]

BILLING CODE 4160–01–F

[1] This guidance represents the agency's current thinking on dose selection for carcinogenicity studies of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

S. 819/P.L. 105–122
To designate the United States courthouse at 200 South Washington Street in Alexandria, Virginia, as the "Martin V. B. Bostetter, Jr. United States Courthouse". (Dec. 1, 1997; 111 Stat. 2532)

S. 833/P.L. 105–123
To designate the Federal building courthouse at Public Square and Superior Avenue in Cleveland, Ohio, as the "Howard M. Metzenbaum United States Courthouse". (Dec. 1, 1997; 111 Stat. 2533)

S. 1228/P.L. 105–124
50 States Commemorative Coin Program Act (Dec. 1, 1997; 111 Stat. 2534)

S. 1354/P.L. 105–125
To amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers. (Dec. 1, 1997; 111 Stat. 2540)

S. 1378/P.L. 105–126
To extend the authorization of use of official mail in the location and recovery of missing children, and for other purposes. (Dec. 1, 1997; 111 Stat. 2542)

S. 1417/P.L. 105–127
Hispanic Cultural Center Act of 1997 (Dec. 1, 1997; 111 Stat. 2543)

S. 1505/P.L. 105–128
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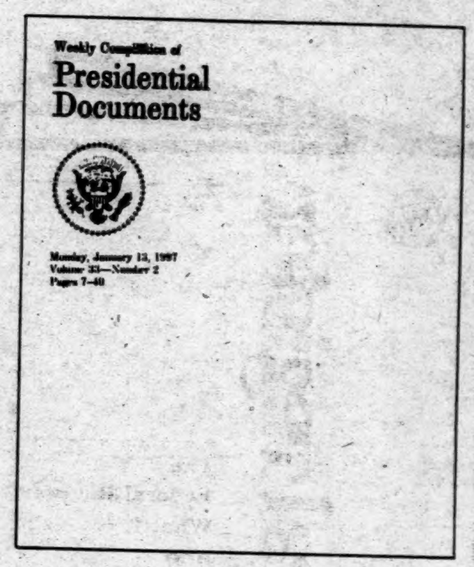
S. 1507/P.L. 105–129
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S. 1519/P.L. 105–130
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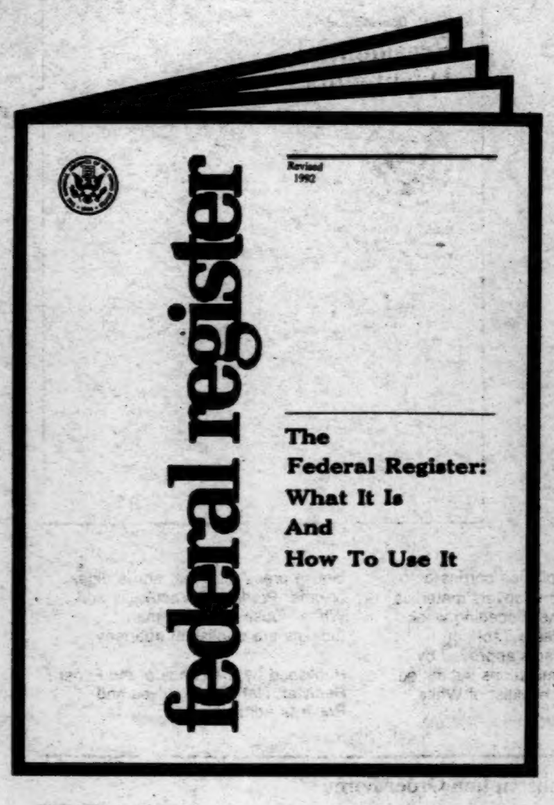
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